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THIS INDEX is based on a consolidation of contents entries appearing in the January-June subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of Energy, Bonneville Power Administration	BPA Manual Index dated 1-25-89 (12 pages). Policy, procedural, and directives material indexed by subject and BPA Manual chapter number	The public may review the index, obtain a copy of the index, without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Office of Media Relations, 905 NE. 11th Avenue, Portland, OR 97232, or the Washington, DC, Office, Forrestal Building, Room 8G-033, 1000 Independence Ave., SW., Washington, DC 20585	Bonneville Power Administration offices listed in previous column or BPA Areas and Districts at the following: 1500 NE. Irving, Portland, OR 97208; 201 Queen Anne Ave., N., Seattle, WA 98109; U.S. Cthse, West 920 Riverside Ave., Spokane, WA 99201; West 101 Poplar St., Walla Walla, WA 99362; U.S. Federal Bldg., 211 E. 7th Ave., Eugene, OR 97401; 800 Kensington, Missoula, MT 59801; U.S. Federal Bldg., 301 Yakima St., Wenatchee, WA 98807; 1650 Hollipark Dr., Idaho Falls, ID 83401; and 550 West Fort Street, Boise, ID 83724
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	Compliance Program Guidance Manual: Programs, plans and instructions directed to FDA field operations for Program Management System (PMS) project implementation	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Entire manual accession #PB89-920499, $157.95; subscription accession #PB89-920-400, $425.00	
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Department of the Interior, Office of Personnel Policy	Electronic Library of Interior human resources management issuances; includes an index of Personnel Bulletins, Personnel Management Letters, Personnel Handbooks, and Departmental Manual Chapters. These documents contain descriptions of delegations of personnel management authority, internal policies, guidelines, procedures, and other administrative matters dealing with human resources management.	Internet address: www.doi.gov/hrm/guidance/curronly.htm (Copies of documents in the system may be downloaded at no charge.)	Questions or requests for assistance in obtaining copies of these issuances should be directed to: Office of Personnel Policy, U.S. Department of the Interior, Washington, DC 20240. Telephone 202–208–6751
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Department of the Interior, U.S. Geological Survey	Table of Contents, Checklist, and Subject Index relating to the U.S. Geological Survey Manual.	Directives Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 No charge	Directives Officer, U.S. Geological Survey; 807 National Center, Reston, VA 20192 Telephone 703–648–7313

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Department of the Interior, Minerals Management Service	Table of Contents and Checklist to Basic Minerals Management Service Manual. Listed numerically by part, series, chapter, release number, date, and pages. Index of Director's appeal decisions	In accordance with fee schedule in 43 CFR 2, Appendix A In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Strategic Direction and Coordination Branch, 381 Elden Street, MS-2200, Herndon, VA 20170-4817 Telephone 703–787–1258 Chief, Appeals Division, Office of Policy and Management Improvement, 1849 C St., NW., MS-4230, Washington, DC 20240, Telephone 202–208–2622
Department of the Interior, National Park Service	Checklist of the NPS Guidelines and Directives Dated Jan. 1, 1993	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division No charge Telephone 202–523–5043	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division
Department of the Interior, National Park Service, Administrative Program Center	Electronic Director Orders/Procedures	No charge	www.nps.gov/refdesk/Refdesk.htm
Department of the Interior, National Park Service, Office of Policy	Listing of Director's orders, handbooks, reference manuals, and other documents that guide employees in managing parks/programs administered by the NPS. List of guidelines, special directives, and staff directives still in effect.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202–208–7456.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202–208–7456. www.nps.gov/refdesk/policie.html
Department of the Interior, Office of Hearings and Appeals	Index-Digest. Index of synopses for all decisions decided by Office of Hearings and Appeals Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791 Price: $495.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, Office of Hearings and Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791

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Department of the Interior, Office of Surface Mining	Listing of Directives which are considered in effect with respect to current operations of the Bureau. Historical listing of Directives not currently in effect. Internet address: www.osmre.gov/directiv.htm	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 One copy only, no charge. Telephone 202–208–2593	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone 202–208–2593
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Telephone 202–523–9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
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Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to Dec. 31, 1994. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202–622–0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Telephone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone 202–245–1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through Nov. 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. Apr. 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. Apr. 21, 1975 to date	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202–254–6314

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	Index of Commission administrative manuals and instructions to staff that affect a member of the public. Apr. 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, l8th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: l500 East Bannister Rd., Kansas City, MO 64l3l Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 142x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

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	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since Apr. 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. Telephone 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

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	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of Jan. 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

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	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grarit policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and Operating Manuals, OPM-OCAS-PSD-01. As of September 1996. A listing of publications, periodicals, and operating manuals arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room 5H35, 1900 E St. NW., Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since Oct. 27, 1972, to date. The index is updated semi-annually (Mar. and Sept.).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, Suite 240, 1200 K St., NW., Washington, DC 20005 Telephone 202–326–4040 (202–326–4179 for TTY and TDD)
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

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Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp.	
Department of Veterans Affairs	Board of Veterans' Appeals Index I–01–1, an index to appellate decisions. Decisions of the BVA that were written prior to 1977 are available only in a "digest" form that consists of summaries of decisions, organized by subject. Final decisions are published in redacted form from 1977 through 1993. The text of these decisions are on microfiche and may be retrieved by subject matter through the use of BVA Decisions Index I-01-1 for the following years: 1977 through 1993.	The microfiche index may be purchased for approximately $22.50 per copy from: Promisel & Korn, Inc., 7201 Wisconsin Ave., Suite 620, Bethesda, MD 20814. Make check payable to: Promisel & Korn, Inc.	The index is available for inspection at Department of Veterans Affairs regional offices.
	Board of Veterans' Appeals Decisions CD-ROM are available in CD-ROM format. Decisions from 1992 through 1995 may be searched by subject or by any word that appears in them. Included in this format are BVA Indexes for 1993 and 1994 decisions; and a subject index, identified as "VOCABULARY" that pertains to the following years: 1993, 1994 and 1995.	The Board of Veterans' Appeals Decisions CD-ROM may be purchased for $19.00 from: Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250-7954. Make check payable to: Superintendent of Documents.	The CD-ROM is available for copying and inspection at Department of Veterans' Affairs regional offices or at the Board of Veterans' Appeals Research Center, 811 Vermont Avenue, NW., Washington, DC 20420.
Department of Veterans Affairs	Department of Veterans Affairs Publication I–03–1. All information is current as of April 1991. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the VA Service and Distribution Center, Forms and Publications Services (901P), P.O. Box 7010, Hines, IL 60141.	VA Central Office, IRM Policies and Standards Service (045A3), Room 583, 810 Vermont Ave., NW., Washington, DC 20420. Telephone: 202–273–8129 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Department of Veterans Affairs, or ask your Directory Assistance Operator for the number in your area.

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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–12564; AD 2001–25–11]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes two airworthiness directives (AD's), AD 99–17–16 and AD 2001–15–12. Those AD's both apply to Pratt and Whitney (PW) model PW4000 series turbofan engines. AD 99–17–16 generally requires that operators limit the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane, and requires initial and repetitive on-wing and test cell engine stability tests. It also establishes reporting requirements for stability testing data. AD 2001–15–12 also limits the number of PW4000 engines with potentially reduced stability on each airplane by applying rules based on airplane and engine configuration. In addition, AD 2001–15–12 also requires that engines that exceed high pressure compressor (HPC) cyclic limits based on cycles-since-overhaul (CSO) are removed from service, limits the number of engines with the HPC cutback stator (CBS) configuration to one on each airplane, and establishes a minimum rebuild standard for engines that are returned to service. These AD's were prompted by reports of surges during takeoff on airplanes equipped with PW4000 series turbofan engines.

This amendment continues the limitation on the number of PW4000 engines with potentially reduced stability on each airplane to no more than one, and introduces a new cool engine fuel spike test to allow engines to be returned to service after having exceeded cyclic limits or undergone work in the shop. This AD also continues the limitation on the number of engines with HPC CBS configuration to one on each airplane, places a cyclic limit on how long a CBS engine may remain in service, and establishes a minimum rebuild standard for engines that are returned to service. This amendment is prompted by further analyses of compressor surges in PW4000 engines, and continuing reports of surges in the PW4000 fleet. The actions specified by this AD are intended to prevent engine power losses due to HPC surge.

DATES: Effective January 17, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Since 1999, the FAA has noted a growing number of takeoff (T/O) surge events in Pratt and Whitney PW4000 series turbofan engines. These surges typically occur within 20 to 60 seconds after throttle advance to T/O power, a critical phase of flight. These events have resulted in numerous aborted T/O's, in-flight engine shutdowns, and diverted flights. To date, two events have occurred where two engines have surged at once, the latest in March 2001 involving a twin-engine airplane on takeoff.

The investigation into these surges revealed that these events are due to low stability resulting from open clearances in the aft stages of the high pressure compressor (HPC). The most open clearance condition in the aft stages of the HPC due to temperature differences between the compressor rotor and the compressor stator occurs about 20–60 seconds after the throttle is advanced for T/O. A binding of the compressor flowpath and stator segments within the outer case may add to this normal thermal mismatch condition, resulting in uneven wear patterns and areas of increased locally open clearances. Further investigation revealed common factors that can increase the likelihood for a single or multiple-engine surge event. These "common factors" have been identified as Engine Pressure Ratio (EPR), and ambient temperature and pressure. Pratt and Whitney (PW) has used this information to better understand the occurrence of the two dual surge events experienced to date in the PW4000 series fleet.

Since 1999, the FAA has issued five AD's that apply to the PW4000 series engines to address this surge condition. On August 12, 1999, the FAA issued AD 99–17–16 (64 FR 45426, dated August 20, 1999) to require that operators limit the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane, and require initial and repetitive on-wing and test cell engine stability tests. AD 99–17–16 also establishes reporting requirements for stability testing data.

On October 19, 2000, the FAA issued AD 2000–22–01 (65 FR 63793, dated October 25, 2000), to limit the number of engines to one on each airplane with

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the HPC in a configuration known as the cut-back stator (CBS) configuration. AD 2000–22–01 established cyclic limits for the removal of HPC's in the CBS configuration and prohibited operators from using engines with HPC modules that incorporated the CBS configuration after the effective date of that AD. AD 2000–22–01 was later superseded by AD 2001–15–12.

On April 13, 2001, the FAA issued emergency AD 2001–08–52 in response to the March 2001, dual-engine surge event. That emergency AD restricted the use of and, ultimately, required the removal of certain PW4000 engines identified by serial number. Those engines were all suspect of reduced stability, and, therefore, at higher risk of surges. Emergency AD 2001–08–52 was superseded by AD 2001–09–07.

On April 20, 2001, the FAA issued AD 2001–09–07 (66 FR 21083, dated April 27, 2001), to supersede emergency AD 2001–08–52. AD 2001–09–07 made changes to the list of serial numbers identifying the affected engines, clarified the requirements of the emergency AD, and added engines with the HPC CBS configuration to the restrictions contained in the emergency AD to limit the number of PW4000 engines to no more than one engine with potentially reduced stability on each airplane and removal of certain PW4000 engines before exceeding cyclic limits that are determined by airplane model and engine configuration. AD 2001–09–07 was also superseded by AD 2001–15–12.

Finally, on July 17, 2001, the FAA issued AD 2001–15–12 (66 FR 38896, dated July 26, 2001) that superseded both AD 2000–22–01 and AD 2001–09–07. AD 2001–15–12 was issued as an interim measure to maintain fleet safety while an improved stability screening test was created, which would allow improved discrimination of low-surge margin engines. AD 2001–15–12 continued the limitation on the number of engines with the HPC CBS configuration and with potentially reduced stability on each airplane, but based those limitations on an evaluation by configuration, installation, thrust rating and other variables. That evaluation was used to create cyclic limits for each airplane and engine combination to maintain the risk of a multiple engine surge at an acceptable level. AD 2001–15–12 also introduced a minimum build standard for engines returned to service. Since AD 2001–15–12 was issued, the FAA has received reports of 11 additional takeoff surges in the PW4000 fleet. This amendment supersedes AD 2001–15–12 and AD 99–17–16. The FAA has continued to evaluate the PW4000 fleet surge data and improve its understanding of the PW4000 fleet's engine surge behavior, and has determined that the requirements of currently effective AD's are not sufficient to meet the original safety intent of those AD's. An evaluation of the PW4000 fleet by configuration, installation, thrust rating and utilizing the "common factor" variables was performed to determine which subpopulations of engines are most prone to high power takeoff surges. As a result of this evaluation, cyclic limits were created for each airplane and engine combination to maintain the risk of multiple-engine surge risk at an acceptable level. An improved off-wing (test cell) stability margin verification test was developed to allow return to service of engines, which were removed for exceeding the cycles-since-overhaul threshold, or that have had flowpath work performed while in the shop.

Although AD 2001–15–12 was adopted without notice, the FAA invited comments on the rule. The FAA received one comment from an operator of PW4000 engines. The operator notes that the AD contains a requirement that engines which exceed the specified cyclic limits be removed from service within 50 cycles after the effective date of the AD and "thereafter." The operator requests that the FAA clarify whether that initial grace period of 50 cycles is available to only engines that have exceeded the cyclic limits on the effective date of the AD or if the 50-cycle grace period is also be available to engines that reach the cyclic limits after the effective date of the AD. This AD contains similar cyclic limits and a similar initial grace period. The FAA has changed the wording of the requirement to make clearer that the initial grace period applies only to those engines that would otherwise be required to be removed immediately upon the AD becoming effective. The FAA has determined that allowing those engines to operate for an additional 50 cycles will not result in an unacceptable level of safety while mitigating some of the cost of an unscheduled engine removal. As engines approach the cyclic limits after the effective date of the AD, however, the FAA expects that operators will schedule engine removals so that no unscheduled removals will be necessary.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other PW4000 series turbofan engines of the same type design, this AD is being issued to prevent engine power losses due to HPC surge events. This AD requires:

- Limiting the number of engines with the HPC CBS configuration to one on each airplane prior to further flight after the effective date of this AD, and
- Limiting the number of engines that exceed cyclic limits, based upon airplane and engine configuration, within 50, 100 or 200 CIS after the effective date of this AD, and
- A minimum rebuild standard for engines that are returned to service.

This AD also allows engines removed from service due to exceeded cyclic limit to be returned to service after either an HPC overhaul, or successfully completing a cool engine fuel spike stability evaluation.

Interim Action

The actions specified in this AD are considered interim action and further action is anticipated based on the continuing investigation of the HPC surges. This AD has been coordinated with the FAA Transport Airplanes Directorate.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–47–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in airplanes, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Airplanes, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12346 (66 FR 38896, dated July 26, 2001) and Amendment 39–11263 (64 FR 11263, dated August 20, 1999), and by adding a new airworthiness directive (AD), Amendment 39–12564, to read as follows:

2001–25–11 Pratt and Whitney: Amendment 39–12564. Docket No. 2000–NE–47–AD. Supersedes Amendment 39–12346, and Amendment 39–11263.

Applicability: This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (o) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent engine power losses due to high pressure compressor (HPC) surge, do the following:

(a) When complying with this AD, determine the configuration and category of each engine on each airplane as follows:

(1) Use the following table 1 to determine the configuration of the engine:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration designator	Description
(i) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of SB PW4ENG 72–514.
(ii) Phase 1 with 1TVCB	B	Same as configuration (1) except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(iii) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(iv) Phase 3, 1st Run	D	Same as configuration (3) except that that the engine has not had an HPC overhaul since new.
(v) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711
(vi) Engines that have passed Testing-21	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (h)(1) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.

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(2) Use the following Table 2 to determine the category of Airbus engines:

TABLE 2.—AIRBUS AIRPLANE ENGINE CATEGORY LISTING

Engine model	Category	Engine serial number (SN)
(i) PW4156, PW4156A, and PW4158 engines.	1	717201, 717205, 717702, 717703, 717710, 717752, 717788, 717798, 717799, 724023, 724026, 724027, 724033, 724034, 724036, 724037, 724040, 724041, 724044, 724045, 724048, 724049, 724050, 724051, 724052, 724055, 724056, 724059, 724061, 724062, 724063, 724065, 724067, 724073, 724074, 724075, 724079, 724088, 724089, 724090, 724091, 724094, 724095, 724551, 724552, 724555, 724556, 724557, 724558, 724561, 724562, 724563, 724564, 724567, 724568, 724569, 724570, 724571, 724572, 724573, 724574, 724575, 724576, 724577, 724578, 724640, 724806, 724807, 724808, 724809, 724811, 724820, 724821, 724827, 724833, 724835, 724836, 724840, 724841, 724848, 724849, 724855, 724857, 724858, 724861, 724862, 724865, 724866, 724868, 724909, 724910, 724913, 724914, 724924, 724925, 724926, 724927, 727912, 728519, 728520, 728521, 728522, 728523, 728524, 728525, 728526, 728527, 728528, 728534, 728535, 728536, 728537, 728538, 728539, 728540, 728541, 728542, 728543, 728544, 728545, 728546, 728547, 728548, 728549, 728550, 728551, 728552, 728553, 728554, 728557, 728558, 728559, 728560, 728561, 728562, 728563, 728564.
(ii) PW4158 engines	2	717704, 724001, 724002, 724004, 724005, 724006, 724007, 724008, 724009, 724010, 724011, 724019, 724020, 724031, 724035, 724038, 724039, 724042, 724043, 724047, 724068, 724069, 724071, 724076, 724077, 724080, 724085, 724086, 724087, 724092, 724093, 724096, 724097, 724801, 724802, 724803, 724804, 724805, 724813, 724814, 724819, 724823, 724824, 724825, 724826, 724828, 724831, 724832, 724843, 724846, 724847, 724851, 724852, 724853, 724854, 724859, 724860, 724863, 724864, 724867, 724869, 724870, 724871, 724872, 724873, 724874, 724875, 724876, 724880, 724881, 724882, 724883, 724884, 724885, 724886, 724887, 724888, 724889, 724890, 724892, 724893, 724894, 724895, 724896, 724897, 724898, 724899, 724900, 724932, 727315, 727436, 728501, 728502, 728503, 728504, 728505, 728506, 728507, 728508, 728509, 728510, 728511, 728515, 728518, 728531, 728532, 728533.
(iii) PW4156, PW4156A, and PW4158.	3	All others not listed by SN in this Table.

Engines Used on Boeing Airplanes

(b) Except as provided in paragraph (g) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the engine cycles-since-new (CSN), engine cycles-since-overhaul (CSO), or engine cycles since passing Testing-21 (CST) limits listed in the following Table 3, to:

(1) No more than one engine per airplane for dual-engine airplanes.

(2) No more than two engines per airplane for three-engine airplanes.

(3) No more than three engines per airplane for four-engine airplanes:

TABLE 3.—ENGINE STAGGER LIMITS FOR BOEING AIRPLANES

Configuration designator	B747–PW4056	B767–PW4052	B767–PW4056	B767–PW4060/ PW4060A/PW4060C/ PW4062	MD–11 PW4460/ PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,300 CSN or CSO.
D	2,600 CSN or CSO	4,400 CSN or CSO	3,000 CSN or CSO	2,200 CSN or CSO	2,000 CSN or CSO.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

(c) Except as provided in paragraph (g) of this AD, within 100 airplane cycles after the effective date of this AD, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 3, to:

(1) No more than one engine per airplane for three-engine airplanes.

(2) No more than two engines per airplane for four-engine airplanes.

(d) Within 200 airplane cycles after the effective date of this AD, limit the number of engines that, exceed the CSN, CSO, or CST limits listed in Table 3, to no more than one engine per airplane for four-engine airplanes.

(e) Thereafter, ensure that no more than one engine per airplane exceeds the CSN, CSO, or CST limit listed in Table 3.

Engines Used on Airbus Airplanes

(f) For engines installed on Airbus airplanes, do the following:

(1) Within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed, the CSN, CSO, or CST limits listed in the following Table 4, to no more than one engine per airplane:

TABLE 4.—ENGINE STAGGER LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A310 PW4156 and PW4156A and A300 PW4158 Category 1	A300 PW4158 Category 2	A310 PW4156 and PW4156A and A300 PW4158 Category 3	A310 PW4152
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO	1,050 CSN or CSO
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO	4,000 CSN or CSO
C	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO	4,000 CSN or CSO
D	4,400 CSN or CSO	4,400 CSN or CSO	4,400 CSN or CSO	4,400 CSN or CSO
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO
F	800 CST	800 CST	800 CST	800 CST

(2) Thereafter, ensure that no more than one engine per airplane, that exceeds the CSN, CSO, or CST limit listed in Table 4.

Configuration E Engines

(g) For all configuration E engines, do the following:

(1) Before further flight, limit the number of engines with configuration E from Table 1 of this AD to one on each airplane.

(2) Remove all engines with configuration E from service before accumulating 1,300 CSN or cycles-since-conversion to configuration E, whichever is later.

Stability Testing Requirement

(h) Engines removed from service in accordance with paragraphs (b), (c), (d) or (f) of this AD may be returned to service under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manual (EM) Temporary Revisions (TR's) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 PW EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001.

(ii) PW EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001.

(iii) PW EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001.

(iv) Engines tested before the effective date in accordance with PW IEN 96KC973D, dated October 12, 2001, meets the requirements of Testing-21, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) An engine whose HPC has been overhauled, or replaced with an overhauled HPC.

Minimum Build Standard

(i) For any engine that undergoes an HPC overhaul after the effective date of this AD, do the following:

(1) Inspect the HPC mid-hook and rear-hook of the HPC inner case for wear in accordance with PW4000 Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check–04, Indexes 8–11, revised September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG72–714, issued June 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with any revision of PW4000 CIR PN 51A357 Section 72–35–68, Repair–16, issued June 15, 1996.

(2) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of the following PW SB's: PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(j) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(k) After the effective date of this AD, Testing-21 must be performed in accordance with paragraph (h) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The HPC was overhauled, or replaced with an overhauled HPC, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) The shop visit did not result in the separation of a major engine flange, with the exception of the "A" flange or "T" flange.

(l) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made, during an HPC overhaul period, use the lowest cyclic limit associated with any configuration used during that overhaul period.

(m) For engines that experience a surge, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service and perform an HPC overhaul.

(2) For engines that experience a surge at Engine Pressure Ratios (EPR's) greater than 1.25, remove the engine from service within 25 cycles and perform Testing-21.

Definitions

(n) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) A Phase 3 engine is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a "CN" suffix after the engine serial number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(3) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms during takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after following aircraft level surge-during-forward-thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud "bang(s)."

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

Alternative Methods of Compliance

(o) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(p) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(q) Report the results of the cool engine fuel spike stability assessment tests (Testing-21) to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to 9-ane-surge-ad-reporting@faa.gov. The following data must be reported:

(1) Engine serial number.

(2) Engine configuration designation per Table 1.

(3) Date of the cool engine fuel spike stability test.

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(4) HPC Serial Number, and HPC time and cycles since new and since compressor overhaul at the time of the test.

(5) Results of the test (Pass/Fail).

Documents That Have Been Incorporated by Reference

(r) The inspection shall be done in accordance with the following Pratt & Whitney service bulletin (SB), Internal Engineering Notice (IEN), Temporary Revisions (TR's), Clean, Inspection, and Repair Manual (CIR) repair procedures:

Document No.	Pages	Revision	Date
PW SB PW4ENG72–714	1–2	1	November 8, 2001.
	3	Original	June 27, 2000.
	4	1	November 8, 2001
	5–12	Original	June 27, 2000.
Total pages: 12.			
PW IEN 96KC973D	All	Original	October 12, 2001.
Total pages: 19.			
PW TR 71–0026	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0018	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0035	All	Original	November 14, 2001.
Total pages: 24.			
PW CIR 51A357, Section 72–35–68, Inspection/Check–04, Indexes 8–11.	All	Original	September 15, 2001.
Total pages: 5.			
PW CIR 51A357, Section 72–35–68, Repair 16	All	Original	June 15, 1996.
Total pages: 1.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(s) This amendment becomes effective on January 17, 2002.

Issued in Burlington, Massachusetts, on December 12, 2001.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–31296 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–45194]

Commission Guidance on the Scope of Section 28(e) of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are publishing interpretive guidance on the application of Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act"). This section provides a safe harbor to money managers who use the commission dollars of their advised accounts to obtain research and brokerage services. The guidance we are publishing today clarifies that the term "commission" for purposes of the Section 28(e) safe harbor encompasses, among other things, certain transaction costs, even if not denominated a "commission."

EFFECTIVE DATE: The guidance is effective on January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Joseph Corcoran, Special Counsel, (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

If money managers use commission dollars of their advised accounts to obtain research and brokerage services, Section 28(e) prevents them from being held to have breached a fiduciary duty, provided the conditions of the section are met.[1] Previously, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an "agency" capacity.[2] That interpretation prevented money managers from relying on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a "principal" capacity.

The Nasdaq Stock Market, Inc. ("Nasdaq") asked us to reconsider this interpretation of Section 28(e). In particular, Nasdaq urged us to interpret the Section 28(e) safe harbor to apply not just to research and brokerage services obtained in relation to commissions on agency transactions, but also to such services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. ("NASD") members and reported under certain NASD trade reporting rules.[3] In Nasdaq's view, the recent amendments to its trade reporting rules for certain riskless principal transactions support a modification of the Commission's interpretation of Section 28(e).[4]

[1] 15 U.S.C. 78bb(e).

[2] Investment Advisers Act Release No. 1469 (February 14, 1995), 60 FR 9750 (February 21, 1995). In this release, the Commission stated, "[t]he safe harbor does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions," adopting a position originally outlined in a 1990 staff letter, authorized by the Commission, to the Department of Labor. *See* Letter re: *Section 28(e) of the Securities Exchange Act of 1934* (July 25, 1990).

See also Investment Company Act Release No. 20472 (August 11, 1994), 59 FR 42187 (August 17, 1994).

[3] *See* Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, Commission, dated September 7, 2001.

[4] *See* Exchange Act Release Nos. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) (File No. SR–NASD–98–59); 41606 (July 8, 1999), 64 FR 38228 (July 15, 1999) (File No. SR–NASD–98–08); 43303 (September 19, 2000), 65 FR 57853 (September 26, 2000) (File No. SR–NASD–00–52). These filing amended NASD Rules 4632 (the trade reporting rule for Nasdaq National Market securities), 4642 (the trade reporting rule for Nasdaq SmallCap Market securities), and 6420 (the trade reporting rule for eligible securities).

II. Discussion

Section 28(e) of the Exchange Act prevents a person who exercises investment discretion with respect to an account from being "deemed to have acted unlawfully or to have breached a fiduciary duty * * * solely by reason of his having caused the account to pay a [broker-dealer] an amount of commission for effecting a securities transaction in excess of the amount of commission another [broker-dealer] would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such [broker-dealer]. * * *"[5]

This release clarifies the meaning of the term "commission" in the context of Section 28(e), and, therefore, the type of fees paid by a managed account to a broker-dealer for a securities transaction that may be used by the money manager to obtain research and brokerage services within the safe harbor. As noted above, the Commission to date has interpreted the term "commission" to include fees paid by a managed account to a broker-dealer for effecting a transaction in an agency capacity. This interpretation is based on the understanding that the term "commission" generally connotes an agency transaction.[6] However, that interpretation is not mandated by the language of the statute. In fact, the reference to "dealer" in Section 28(e) might suggest that the term "commission" includes fees paid to a broker-dealer acting in other than an agency capacity.

The meaning of the term "commission" in Section 28(e) is informed by the requirement that a money manager relying on the safe harbor must determine in good faith that the amount of "commission" is reasonable in relation to the value of research and brokerage services received. This requirement presupposes that a "commission" paid by the managed account is quantifiable in a verifiable way and is fully disclosed to the money manager. When we issued our guidance in 1995, an agency transaction had more cost transparency than a principal transaction because frequently embedded within the cost of a principal transaction was undisclosed compensation to the dealer. In other words, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.

Since that time, the NASD has modified its trade reporting rules for certain riskless principal transactions. Currently, NASD Rule 4632 (applicable to Nasdaq National Market securities), NASD Rule 4642 (applicable to Nasdaq SmallCap Market securities), and NASD Rule 6420 (applicable to "eligible securities") require a riskless principal transaction in which both legs are executed at the same price ("Eligible Riskless Principal Transaction") to be reported once, in the same manner as an agency transaction, exclusive of any markup, markdown, commission equivalent, or other fee.[7] Coupled with Exchange Act Rule 10b–10, this form of trade reporting means that a money manager agreeing to an Eligible Riskless Principal Transaction receives the same price as received in the offsetting trade and that this price is disclosed on a confirmation that also fully discloses the remuneration to the NASD member for effecting this transaction.[8] Thus, a money manager opting for an Eligible Riskless Principal Transaction would now be informed of the entire amount of a market maker's charge for effecting the trade.

In recognition of the transparency achieved in the Nasdaq market for certain riskless principal transactions, which allows a money manager to make the necessary determination under Section 28(e), we are modifying our interpretation of Section 28(e). Specifically, we now interpret the term "commission" in Section 28(e) of the Exchange Act to include a markup, markdown, commission equivalent or other fee paid by a managed account to a dealer for executing a transaction where the fee and transaction price are fully and separately disclosed on the confirmation and the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight.

Fees paid for Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 would fall within this interpretation.[9] Fees paid to an NASD member for effecting an Eligible Riskless Principal Transaction are distinguishable from fees paid on traditional riskless principal transactions as well as traditional principal transactions involving a dealer's inventory. Fees on other riskless principal transactions can include an undisclosed fee (reflecting a dealer's profit on the difference in price between the first and second legs of the transaction). Fees on traditional principal transactions also can include an undisclosed fee based on some portion of the spread. In addition, the price of the trade, if reported, is to some degree within the control of the dealer. In contrast, fees on Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 must be fully and separately disclosed. Moreover, the price of the trade is validated by the offsetting leg of the transaction.

Required disclosure of fees under confirmation rules and reporting of the trade under self-regulatory organization rules at a single price for both offsetting transactions, which provides independent verification of this price, give money managers information about fees and trade prices sufficient to make the determination of reasonableness of these charges. It is therefore reasonable to treat such fees as a "commission" for purposes of Section 28(e) only. As other markets develop equivalent regulations to ensure equivalent transparency, transaction charges in those markets that meet the requirements of this interpretation will be considered to fall within the interpretation.

[5] 15 U.S.C. 78bb(e). *See also* Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004 (April 30, 1986).

[6] In adopting the position in 1995 that Section 28(e) does not encompass principal transactions, we noted a 1990 staff letter to the Department of Labor. In that letter, the Division of Market Regulation stated that, "Section 28(e) refers to 'commissions' only, which connote transactions effected on an agency basis, and does not refer to markups or markdowns, which would more clearly have suggested that Congress intended to extend the safe harbor to principal transactions." *See supra* note 2.

[7] *See* NASD Rules 4632(d)(3)(B) (for Nasdaq Market securities), 4642(d)(3)(B) (for Nasdaq SmallCap Market securities), and 6420(d)(3)(B) (for eligible securities). Each of these rules defines a riskless principal transaction as a "transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell."

[8] Exchange Act Rule 10b–10(a)(2)(ii), 17 CFR 240.10b–10(a)(2)(ii). Nasdaq SmallCap Market securities are subject to Exchange Act Rule 10b–10. *See* Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

[9] Riskless principal transactions in the debt market, however, are not currently subject to confirmation and reporting requirements that meet these conditions, under either NASD or Commission rules, and therefore would not be within the Section 28(e) safe harbor. Such transactions do not afford money managers the level of transparency necessary to determine if the remuneration paid is reasonable in relation to the value received, as required to rely on Section 28(e). The interpretation does not currently extend to other securities that may have similar reporting requirements, but that do not have the same confirmation requirements for market makers, *e.g.*, OTC Bulletin Board stocks, Pink Sheet stocks, and convertible securities.

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III. Conclusion

For the foregoing reasons, we find that this interpretation is consistent with Section 28(e) of the Exchange Act and the requirements of that section.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 241 is amended by adding Release No. 34–45194 and the release date of December 27, 2001 to the list of interpretative releases.

Dated: December 27, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32199 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8975]

RIN 1545–BA21

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 2, 2002.

Applicability Dates: For dates of applicability, see §§ 1.337(d)–6T(e) and 1.337(d)–7T(f).

FOR FURTHER INFORMATION CONTACT: Lisa A. Fuller, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1672. Responses to this collection of information are required to obtain a benefit, i.e., to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Sections 631 and 633 of the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514, 100 Stat. 2085, 2272), as amended by section 1006(e) and (g) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342, 3400–01), amended the Internal Revenue Code (Code) to repeal the *General Utilities* doctrine. In particular, the 1986 Act amended sections 336 and 337 to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to "ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *" Absent special rules, the transfer of property owned by a C corporation to a RIC or REIT could result in permanently removing the property's built-in gain from tax at the corporate level, because RICs and REITs generally are not subject to tax on income that is distributed to their shareholders.

On February 4, 1988, the IRS issued Notice 88–19 (1988–1 C.B. 486) announcing its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88–19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The Notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The Notice provided, however, that the regulations would not allow the recognition of a net loss and that, except as provided in the Notice, the regulations would not affect the characterization for tax purposes of, or the tax treatment of parties to, any transactions to which they apply. For example, shareholders of a C corporation who received RIC shares in a transaction that qualified as a reorganization under section 368(a)(1)(C) would not recognize gain or loss solely because the C corporation was subject to tax. The Notice also provided that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88–19 also indicated that the regulations would apply retroactively to June 10, 1987. Notice 88–96 (1988–2 C.B. 420), amplifies Notice 88–19 by providing that the regulations described in Notice 88–19 would provide an exception to the general gain recognition rules for any C corporation that qualified to be taxed as a RIC for at least one taxable year, then failed to so qualify for one taxable year, and then requalified to be taxed as a RIC in the next taxable year.

On February 7, 2000, Treasury and the IRS published temporary regulations [TD 8872] (the 2000 temporary regulations) reflecting the principles set forth in Notice 88–19 and Notice 88–96, a notice of proposed rulemaking by cross-reference to temporary regulations, and a notice of public hearing [REG–209135–88]. The 2000 temporary regulations apply retroactively to June 10, 1987.

Treasury and the IRS have received a number of comments, both written and oral, on the 2000 temporary regulations. A public hearing was held on May 10, 2000. After considering these comments, Treasury and the IRS have decided to issue two new sets of temporary regulations, one that will apply to conversion transactions occurring on or after June 10, 1987 and before January 2, 2002 (the –6T regulations), and another that will apply to conversion transactions occurring on or after January 2, 2002 (the –7T regulations). Alternatively, taxpayers generally may apply the 2000 temporary regulations in lieu of the –6T regulations to any conversion transaction that occurred on or after June 10, 1987 and before January 2, 2002. However, RICs and REITs that rely on the 2000 temporary regulations and that are subject to section 1374 treatment may not rely on certain provisions in the 2000 temporary regulations, but instead must apply certain provisions of the –6T regulations, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Furthermore, taxpayers are not prevented from relying on the 2000 temporary regulations merely because they elect section 1374 treatment in the manner described in the –6T regulations rather than in the manner described in the 2000 temporary regulations.

Explanation of Provisions

This preamble first discusses the –6T regulations and how the –6T regulations differ from the 2000 temporary regulations. This preamble then explains the differences between the –7T regulations and the –6T regulations.

Summary of –6T Regulations

The –6T regulations provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Thus, the C corporation generally recognizes gain and loss as if it sold the property converted to RIC or REIT property or transferred to the RIC or REIT (the converted property) to an unrelated party at fair market value immediately before the conversion transaction. If the C corporation recognizes net gain on the deemed sale, then the basis of the converted property in the hands of the RIC or REIT is adjusted to its fair market value immediately before the conversion transaction. The –6T regulations do not permit a C corporation to recognize a net loss on the deemed sale. For this purpose, *net loss* is defined as the excess of aggregate losses over aggregate gains (including items of income), without regard to character. Where there is a net loss, the C corporation recognizes no gain or loss on the deemed sale, and the C corporation's basis in the converted property carries over to the RIC or REIT.

Clarification of Deemed Sale Treatment

The 2000 temporary regulations provide that, unless a section 1374 election is made, a C corporation that elects RIC or REIT status or transfers property to a RIC or REIT is "treated for all purposes, including recognition of net built-in gain, as if it had sold all of its assets at their respective fair market values on the deemed liquidation date * * * and immediately liquidated." Commentators objected to this provision on two grounds. First, they argued that the provision is overly broad, because it treats the C corporation that is transferring property to a RIC or REIT as having sold all of its property, even where all of its property may not have been transferred to the RIC or REIT. Second, they argued that the "for all purposes" language could be read to suggest that the deemed liquidation results in the imposition of a shareholder tax, a result that they view as inconsistent with Notice 88–19 and the purposes of section 337(d). Commentators also argued that deemed liquidation treatment would inappropriately eliminate the C corporation's tax attributes, such as net operating loss carryforwards and earnings and profits, to which the RIC or REIT might otherwise succeed.

Treasury and the IRS agree with these comments. Accordingly, the –6T regulations clarify that the C corporation is treated as having sold only that property actually transferred to the RIC or REIT and that a shareholder-level tax is not imposed. In addition, the deemed liquidation construct has been eliminated.

Deemed Sale Loss Disallowance

The 2000 temporary regulations do not permit a C corporation to recognize a net loss on a conversion transaction. Some commentators argued that loss disallowance is inappropriate, noting that a net loss can be recognized under section 336 and § 1.337(d)–4, which governs certain transfers of property from taxable to tax-exempt entities.

Treasury and the IRS believe that loss disallowance is appropriate in the context of the –6T regulations for two reasons. First, Treasury and the IRS are concerned that a C corporation may selectively contribute loss property to a RIC or REIT in a section 351 transaction, generating an immediate loss. Because section 336 and § 1.337(d)–4 apply only where a C corporation transfers substantially all of its assets, selective contribution concerns are minimal in those contexts. Second, section 336 and § 1.337(d)–4 require C corporations to recognize both gains and losses immediately, whereas the –6T regulations allow taxpayers to defer the recognition of net gain on a conversion transaction by making an election to be subject to tax under section 1374. Allowing immediate net loss recognition while allowing deferral of net gain would provide C corporations engaging in conversion transactions with an inappropriate degree of selectivity. Taxpayers that otherwise would recognize a net gain on a conversion transaction would likely elect section 1374 treatment. Taxpayers that would recognize a net loss on a conversion transaction would likely choose deemed sale treatment. For these reasons, the –6T regulations disallow recognition of a net loss on a conversion transaction.

Section 1374 Double Tax Issue

Some commentators argued that conversion transactions do not implicate concerns regarding avoidance of *General Utilities* repeal to the extent that the RIC or REIT has C corporations as shareholders after the conversion transaction. The commentators explained that, if a C corporation continues to own stock in the RIC or REIT after a conversion transaction, then the built-in gain attributable to the transferred property is preserved in the basis of the C corporation's RIC or REIT stock. Further, the C corporation generally will be fully taxable on dividends distributed by the RIC or REIT, even where the RIC or REIT pays

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tax on built-in gains. Accordingly, the commentators requested that the 2000 temporary regulations be modified to mitigate the combined impact of tax at the RIC or REIT level under section 1374 and tax at the C corporation shareholder level on RIC and REIT dividends.

Treasury and the IRS considered several approaches suggested by commentators for mitigating this double corporate tax. These approaches include: (1) Exempting section 351 transfers of property by a C corporation to a RIC or REIT from the scope of these regulations, (2) removing the requirement that RICs and REITs distribute recognized built-in gains, and (3) allowing C corporation shareholders of RICs and REITs to claim a dividends received deduction for built-in gains distributed by the RIC or REIT.

After consideration, Treasury and the IRS decided that it could not accept any of these approaches. The first two approaches were not accepted because they could create opportunities to avoid corporate-level tax on built-in gains. The third approach was not accepted because the dividends received deduction is only available for distributions characterized as ordinary income, not distributions characterized as capital gains. As explained below, under the –6T regulations, RICs and REITs may characterize most distributions of built-in gains as capital gain dividends. Moreover, all three approaches would give rise to administrative difficulties that could be addressed only through extensive rulemaking.

Section 1374 Operational Rules

The 2000 temporary regulations provide that the built-in gain of a RIC or REIT electing section 1374 treatment and the corporate-level tax imposed on that gain are subject to rules similar to the rules relating to net income from foreclosure property (NIFP) of REITs. The comments pointed out certain differences between the section 1374 rules and the NIFP rules. For example, under section 1374, any recognized built-in gain retains its character as capital gain or ordinary income. In contrast, NIFP is always treated as ordinary income. In addition, net operating losses of a C corporation can offset recognized built-in gains of an S corporation but cannot offset NIFP. Similarly, business credit carryforwards from a C corporation can reduce the tax on the net recognized built-in gain of an S corporation but cannot reduce the tax on NIFP.

In light of these differences, Treasury and the IRS have adopted an alternative approach that does not rely on the NIFP rules for coordinating the built-in gains tax imposed by this section with the provisions of subchapter M. Unlike the NIFP rules, this approach generally preserves the character of recognized built-in gains and recognized built-in losses. Under this approach, recognized built-in gains and recognized built-in losses that have been taxed in accordance with these regulations are treated like other gains and losses of RICs and REITs that are not subject to tax under these regulations. Thus, they are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), net capital gain for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

In addition, consistent with section 1374, the –6T regulations generally allow RICs and REITs to use loss carryforwards and credits and credit carryforwards arising in taxable years for which the corporation that generated the attribute was a C corporation (and not a RIC or REIT) to reduce net recognized built-in gain and the tax thereon, subject to the limitations imposed by sections 1374(b)(2) and (b)(3) and §§ 1.1374–5 and 1.1374–6. In addition, the –6T regulations provide an ordering rule for applying loss carryforwards, credits, and credit carryforwards to reduce net recognized built-in gain (and the tax thereon) and RIC or REIT taxable income (and the tax thereon). Under this ordering rule, loss carryforwards of a RIC or REIT must be used to reduce net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year. Similarly, credits and credit carryforwards of a RIC or REIT must be used to reduce the tax on net recognized built-in gain imposed under this section for the taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

The –6T regulations also make adjustments to the taxable income limitation of section 1374 to take into account items that are unique to REITs. Under the –6T regulations, taxable income of a RIC or REIT is initially computed under sections 1374(d)(2) and 1375(b)(1)(B) as if the RIC or REIT were an S corporation. Thus, the RIC's or REIT's taxable income is its taxable income under section 63(a) without regard to—(i) deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organizational expenditures), and (ii) the deduction under section 172. In addition, the RIC or REIT would not be allowed a deduction for dividends paid, as the dividends paid deduction is not available to S corporations. Under the –6T regulations, this amount is then reduced for REITs by certain items that are subject to a 100-percent penalty tax. Items subject to a 100-percent penalty tax, along with net income from foreclosure property, are also excluded in computing a REIT's net recognized built-in gain.

In response to comments, the –6T regulations also provide that the entity-level tax imposed on net recognized built-in gain is treated as a loss that reduces the RIC's or REIT's taxable income and earnings and profits. The character of the loss attributable to the tax on net recognized built-in gain is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

Commentators also requested that built-in gain recognized by a RIC or REIT that is subject to section 1374 treatment generate subchapter M earnings and profits. They explained that a RIC or REIT cannot qualify as such under subchapter M if it retains any subchapter C earnings and profits. Thus, if earnings and profits attributable to recognized built-in gain were subchapter C earnings and profits, a RIC or REIT would retain its qualification only if it distributed 100 percent of the net recognized built-in gain in excess of the entity-level tax. In response to these comments, the examples in the –6T regulations clarify that earnings and profits attributable to built-in gain recognized by a RIC or REIT are subchapter M earnings and profits.

Electing Section 1374 Treatment

The 2000 temporary regulations provide that a RIC or REIT makes a section 1374 election by attaching a statement to its Federal income tax return for the first taxable year in which the assets of a C corporation become assets of the RIC or REIT. The 2000 temporary regulations also provide a special rule for making a section 1374 election where the first taxable year in which the assets of a C corporation became the assets of a RIC or REIT ends after June 10, 1987, but before March 8, 2000 (an interim period election). Under the 2000 temporary regulations, a RIC or REIT may file an interim period election with its first Federal income tax return filed after March 8, 2000.

Commentators expressed concern that the rule applicable to interim period elections required a RIC or REIT to make an election on its first Federal income tax return filed after March 8, 2000, even if the RIC or REIT previously had made a section 1374 election. They also expressed concern that RICs and REITs were not given sufficient time after the promulgation of the 2000 temporary regulations to make interim period elections. In response to these comments, the –6T regulations allow a RIC or REIT that converted from a C corporation or acquired property with a carryover basis from a C corporation before January 2, 2002, to make a section 1374 election with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. In addition, under the –6T regulations, an interim period election is not necessary if the RIC or REIT can demonstrate that it has previously informed the IRS of its intent to make a section 1374 election.

Some commentators also requested that Treasury and the IRS clarify that a RIC or REIT must make a separate section 1374 election for each conversion transaction in which it participates. The –6T regulations make this clarification. Thus, a RIC or REIT can elect section 1374 treatment for one conversion transaction and not elect section 1374 treatment for another conversion transaction.

Exception for Re-Election of RIC or REIT Status

Under the 2000 temporary regulations, the rule requiring recognition of gain on a conversion transaction does not apply to a C corporation that qualified to be a RIC for at least one taxable year, then failed to so qualify for a period not in excess of one taxable year, and then requalifies as a RIC. Although this exception implements Notice 88–96, the language of the 2000 temporary regulations differs slightly from the language used in Notice 88–96. Some commentators have noted that the change in language might be misinterpreted as a substantive change where none was intended. In response to these comments, this language has been clarified in the –6T regulations.

In addition, some commentators requested that the exception be expanded to cover periods longer than one taxable year. They argued that a corporation that fails to meet the RIC qualification requirements for as short a period as 6 months could be taxed as a C corporation for two taxable years. This could happen where a RIC fails the quarterly diversification test for the last quarter of one calendar year and the first quarter of the subsequent calendar year.

Other commentators requested that this exception be expanded to cover REITs. They noted that Congress generally treats RICs and REITs similarly and that there is no justification for excluding REITs from the benefit of this exception.

The –6T regulations incorporate these comments by extending the exception to REITs and the maximum period for loss of RIC or REIT status from one taxable year to two taxable years.

Retention of Retroactive Effective Date

Commentators argued that, due to the 12-year gap between the promulgation of Notice 88–19 and the issuance of the regulations implementing Notice 88–19, the regulations should not apply retroactively.

Notice 88–19 notified taxpayers that the section 337(d) regulations would apply as of June 10, 1987. The 2000 temporary regulations, which were published on February 7, 2000, do, in fact, apply as of June 10, 1987. Moreover, since February 7, 2000, taxpayers have relied on the 2000 temporary regulations. For these reasons, the 2000 temporary regulations and the –6T regulations retain the June 10, 1987, applicability date.

Summary of –7T Regulations

The –7T regulations follow the –6T regulations in most respects. However, certain changes were included in the –7T regulations that were not included in the –6T regulations, because Treasury and the IRS were concerned that these changes, if made retroactively, could have an adverse impact on taxpayers that have relied on the 2000 temporary regulations. The following sections highlight these differences between the –6T regulations and the –7T regulations.

Section 1374 Treatment as Default Rule

A number of commentators, particularly REIT commentators, expressed the view that, when a C corporation engages in a conversion transaction, section 1374 treatment should apply automatically and taxpayers that desire deemed sale treatment should be allowed to elect such treatment. They pointed out that the automatic application of a section 1374 regime is consistent with the treatment of C corporations that elect S status. Further, they argued that most taxpayers would prefer to be subject to section 1374 treatment than to deemed sale treatment. If section 1374 treatment is the default treatment, then the incidence of inadvertent failures to make elections will be reduced. However, to protect the expectations of taxpayers that engaged in conversion transactions prior to the promulgation of these regulations, the commentators recommended that section 1374 treatment be adopted as the default treatment on a prospective basis. In accordance with these comments, the –7T regulations provide that section 1374 treatment applies unless the C corporation elects deemed sale treatment.

Anti-Stuffing Rule for Taxpayers Electing Deemed Sale Treatment

Treasury and the IRS are concerned that taxpayers electing deemed sale treatment might attempt to decrease net gains on conversion transactions by stuffing loss property into a C corporation prior to a conversion transaction. Treasury and the IRS note that section 336 and § 1.337(d)–4 both have anti-stuffing rules. Accordingly, the –7T regulations include an anti-stuffing rule applicable to transactions taxed under the deemed sale approach. The anti-stuffing rule is similar to those contained in section 336 and § 1.337(d)–4.

Aggregate Principles To Apply to Partnership Transactions

Treasury and the IRS believe that a partnership with C corporation partners should be treated as an aggregate for purposes of applying these regulations. Accordingly, the –7T regulations provide that these regulations apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property. For example, if a C corporation owns a 20 percent interest in a partnership and that partnership contributes an asset to a REIT in a section 351 transaction, then the partnership shall be treated as a C corporation with respect to 20 percent of the asset contributed to the REIT. If the partnership were to elect deemed sale treatment with respect to such

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transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Precedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–6T also issued under 26 U.S.C. 337.

Section 1.337(d)–7T also issued under 26 U.S.C. 337. * * *

Par. 2. § 1.337(d)–5T is amended by:

1. Revising the section heading.

2. Revising paragraph (d).

The revisions read as follows:

§ 1.337(d)–5T Old transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

* * * * *

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987, and before January 2, 2002. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987, and before January 2, 2002. However, RICs and REITs that are subject to section 1374 treatment under this section may not rely on § 1.337(d)–5T(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of § 1.337(d)–6T, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. In lieu of applying this section, taxpayers may rely on § 1.337(d)–6T to determine the tax consequences (for all taxable years) of any conversion transaction. For transactions and qualifications that occur on or after January 2, 2002, see § 1.337(d)–7T.

Par. 3. Sections 1.337(d)–6T and 1.337(d)–7T are added immediately after § 1.337(d)–5T to read as follows:

§ 1.337(d)–6T New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then deemed sale treatment will apply as described in paragraph (b) of this section, unless the RIC or REIT elects section 1374 treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term C corporation has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term conversion transaction means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Deemed Sale Treatment*—(1) *In general.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the C corporation recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (b)(3) of this section). This paragraph (b) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (b)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 1991. On May 31, 1994, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). X does not elect section 1374 treatment under paragraph (c) of this section and chooses not to rely on § 1.337(d)–5T. As a result of the transfer, Y is subject to deemed sale treatment under this paragraph (b) on its tax return for the short taxable year ending May 31, 1994. On May 31, 1994, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 1994, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 1994, other than gain recognized under this paragraph (b). In 1997, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (b), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 1994, recognizing $60,000 of gain ($150,000 amount realized—$90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 1994. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 1997, X recognizes $10,000 of gain, which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

(c) *Election of section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* Paragraph (b) of this section does not apply if the RIC or REIT that was formerly a C corporation or that acquired property from a C corporation makes the election described in paragraph (c)(4) of this section. A RIC or REIT that makes such an election will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (c), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under sections 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (c)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (c)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (c) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (c) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Making the section 1374 election*—(i) *In general.* A RIC or REIT makes a section 1374 election with the following statement: "[Insert name and employer identification number of electing RIC or REIT] elects under § 1.337–6T(c) to be subject to the rules of section 1374 and the regulations thereunder with respect to its property that formerly was held by a C corporation. [insert name and employer identification number of the C corporation, if different from name and employer identification number of the RIC or REIT]." However, a RIC or REIT need not file an election under this paragraph (c), but will be deemed to have made such an election if it can demonstrate that it informed the IRS prior to January 2, 2002, of its intent to make a section 1374 election. An election under this paragraph (c) is irrevocable.

(ii) *Time for making the election.* An election under this paragraph (c) may be filed by the RIC or REIT with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods.

(5) *Example.* The rules of this paragraph (c) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 1994 tax return, which it files on March 15, 1995. As a result, X is a REIT for its 1994 taxable year and would be subject to deemed sale treatment under paragraph (b) of this section but for X's timely election of section 1374 treatment under this paragraph (c). X chooses not to rely on § 1.337(d)–5T. As of the beginning of the 1994 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and

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which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted net operating loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 1997, X sells Real Property for $110,000. For its 1997 taxable year, X has net income other than recognized built-in gain. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of net operating loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 1994 taxable year.

(iii) Upon X's sale of Real Property in 1997, X recognizes gain of $30,000 ($110,000–$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X has net income other than recognized built-in gain for its 1997 taxable year, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of net operating loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce this tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (c). For purposes of subchapter M, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (c)).

(iv) To compute X's net capital gain for purposes of section 857(b)(3) for the taxable year, the $20,000 of net recognized built-in gain less the $3,950 of tax imposed on that gain is added to X's capital gain (or loss), if any, that is not recognized built-in gain (or loss).

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 356, 357(c), 367, and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from another corporation (whether or not a C corporation) in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (c) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (c) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Effective date.* This section applies to conversion transactions that occur on or after June 10, 1987, and before January 2, 2002. In lieu of applying this section, taxpayers generally may apply § 1.337(d)–5T to determine the tax consequences (for all taxable years) of any conversion transaction that occurs on or after June 10, 1987 and before January 2, 2002, except that RICs and REITs that are subject to section 1374 treatment with respect to a conversion transaction may not rely on § 1.337(d)–5T(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Taxpayers are not prevented from relying on § 1.337(d)–5T merely because they elect section 1374 treatment in the manner described in paragraph (c)(4) of this section instead of in the manner described in § 1.337(d)–5T(b)(3) and (c). For conversion transactions that occur on or after January 2, 2002, see § 1.337(d)–7T. This section expires on December 31, 2004.

§ 1.337(d)–7T Tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then section 1374 treatment will apply as described in paragraph (b) of this section, unless the C corporation elects deemed sale treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term C corporation has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term conversion transaction means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (b), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under section 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (b)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (b)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (b) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (b) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 2004 tax return, which it files on March 15, 2005. As a result, X is a REIT for its 2004 taxable year and is subject to section 1374 treatment under this paragraph (b). X does not elect deemed sale treatment under paragraph (c) of this section. As of the beginning of the 2004 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted net operating loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 2007, X sells Real Property for $110,000. For its 1997 taxable year, X has net income other than recognized built-in gain. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of net operating loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 2004 taxable year.

(iii) Upon X's sale of Real Property in 2007, X recognizes gain of $30,000 ($110,000—$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X has net income other than recognized built-in gain for its 2007 taxable year, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of net operating loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–6, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce the tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (b). For purposes of subchapter M, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (b)).

(iv) To compute X's net capital gain for purposes of section 857(b)(3) for the taxable year, the $20,000 of net recognized built-in

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gain less the $3,950 of tax imposed on that gain is added to X's capital gain (or loss), if any, that is not recognized built-in gain (or loss).

(c) *Election of deemed sale treatment*—(1) *In general.* Paragraph (b) of this section does not apply if the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT makes the election described in paragraph (c)(5) of this section. A C corporation that makes such an election recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). See paragraph (c)(4) of this section concerning limitations on the use of loss in computing gain. This paragraph (c) does not apply if its application would result in the recognition of a net loss. For this purpose, net loss is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (c)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Anti-stuffing rule.* A C corporation must disregard converted property in computing gain or loss recognized on the conversion transaction under this paragraph (c), if—

(i) The converted property was acquired by the C corporation in a transaction to which section 351 applied or as a contribution to capital;

(ii) Such converted property had an adjusted basis immediately after its acquisition by the C corporation in excess of its fair market value on the date of acquisition; and

(iii) The acquisition of such converted property by the C corporation was part of a plan a principal purpose of which was to reduce gain recognized by the C corporation in connection with the conversion transaction. For purposes of this paragraph (c)(4), the principles of section 336(d)(2) apply.

(5) *Making the deemed sale election.* A C corporation makes the deemed sale election with the following statement: "[Insert name and employer identification number of electing corporation] elects deemed sale treatment under § 1.337(d)–7T(c) with respect to its property that was converted to property of, or transferred to, a RIC or REIT, [insert name and employer identification number of the RIC or REIT, if different from the name and employer identification number of the C corporation]." This statement must be attached to the Federal income tax return of the C corporation for the taxable year in which the deemed sale occurs. An election under this paragraph (c) is irrevocable.

(6) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Deemed sale treatment on merger into RIC. (i) X, a calender-year taxpayer, has qualified as a RIC since January 1, 2001. On May 31, 2004, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). As a result of the transfer, Y would be subject to section 1374 treatment under paragraph (b) of this section but for its timely election of deemed sale treatment under this paragraph (c). As a result of such election, Y is subject to deemed sale treatment on its tax return for the short taxable year ending May 31, 2004. On May 31, 2004, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 2004, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 2004, other than gain recognized under this paragraph (c). In 2007, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (c), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 2004, recognizing $60,000 of gain ($150,000 amount realized − $90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 2004. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 2007, X recognizes $10,000 of gain which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

Example 2. Loss limitation. (i) Assume the facts are the same as those described in *Example 1*, but that, prior to the reorganization, a shareholder of Y contributed to Y a capital asset, Capital Asset 2, which has a fair market value of $10,000 and a basis of $20,000, in a section 351 transaction.

(ii) Assuming that Y's acquisition of Capital Asset 2 was made pursuant to a plan a principal purpose of which was to reduce the amount of gain that Y would recognize in connection with the conversion transaction, Capital Asset 2 would be disregarded in computing the amount of Y's net gain on the conversion transaction.

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 356, 357(c), 367, and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from another corporation (whether or not a C corporation) in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (b) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (b) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Special rule for partnerships.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property. For example, if a C corporation owns a 20 percent interest in a partnership and that partnership contributes an asset to a REIT in a section 351 transaction, then the partnership shall be treated as a C corporation with respect to 20 percent of the asset contributed to the REIT. If the partnership were to elect deemed sale treatment under paragraph (c) of this section with respect to such transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

(f) *Effective date.* This section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987 and before January 2, 2002, see § 1.337(d)–5T and § 1.337(d)–6T. This section expires on December 31, 2004.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.337(d)–6T	1545–1672
1.337(d)–7T	1545–1672
* * * * *	

Approved: December 20, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–31969 Filed 12–31–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09–01–122]

RIN 2115–AA98

Special Anchorage Area: Henderson Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule; request for additional comments.

SUMMARY: The purpose of this document is to solicit comments on the appropriate size of the Henderson Harbor Special Anchorage Area. On March 7, 2000, the Coast Guard published a final rule that substantially increased the size of the special anchorage area. Due to concerns from the local community, the Coast Guard is soliciting additional comments regarding the appropriate size of the Special Anchorage Area.

DATES: Comments must be received by April 2, 2002.

ADDRESSES: You may mail comments to Commander (mco–1), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6056.

The Ninth Coast Guard District Marine Safety Office maintains the public docket. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Ronald Branch, Chief, Marine Safety Compliance Operations Branch, Ninth Coast Guard District Marine Safety Office, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060. The phone number is (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit data, views, or arguments. Persons submitting comments should include their names and addresses, identify this docket (CGD09–01–122) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background Information

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 5, 1999 (64 FR 60399). During the comment period for the NPRM, the Coast Guard received several positive comments from the community regarding the proposed enlargement of the anchorage area. Following the close of the comment period on January 4, 2000, the Coast Guard published a final rule in the **Federal Register** on March 7, 2000 (65 FR 11892).

The final rule extended anchorage area A approximately 1000 feet while keeping the width approximately the same as the existing anchorage area. The additional anchorage area was requested to compensate for the loss of safe anchorage area due to lower water levels. Since vessels must request permission from the Henderson Harbor Town Harbormaster before anchoring or mooring in the special anchorage area, the additional area gave the Town Harbormaster increased deepwater areas in which to direct vessels for safe anchorage.

The Coast Guard has received letters and requests from members of the community, as well as town leaders, indicating that they would like to see an additional change to the anchorage area. Persons submitting comments should do as directed under request for comments above, and reply to the following specific suggested anchorage areas. Form letters simply citing anecdotal evidence or stating support for or opposition to regulations, without providing substantive data or arguments do not supply support for regulations. The following two options are being considered:

1. Continue To Use Current Enlarged Anchorage Area

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at latitude 43°51′ 08.8″ N, longitude 76°12′ 08.9″ W, thence to 43°51′09.0 N, 76°12.19.0 W, thence to 43°51′33.4″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′09.6″ W, thence to the point of the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude

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43°51'21.8" N, longitude 76°11'58.2" W, thence to latitude 43°51'21.7" N, longitude 76°12'05.5" W, thence to latitude 43°51'33.4" N, longitude 76°12'06.2" W, thence to latitude 43°51'33.6" N, longitude 76°12'00.8" W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

2. Revert Anchorage Area A Back to Previous Smaller Size

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht club bounded by a line beginning at 43°51'08.8' N, 76°12'08.9" W, thence to 43°51'09.0" N, 76°12'19.0" W, thence to 43°51'23.8" N, 76°12'19.0 W, thence to 43°51'23.8" N, 76°12'09.6" W, and then back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude 43°51'21.8" N, longitude 76°11'58.2" W, thence to latitude 43°51'21.7" N, longitude 76°12'05.5" W, thence to latitude 43°51'33.4" N, longitude 76°12'06.2" W, thence to latitude 43°51'33.6" N, longitude 76°12'00.8" W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

Dated: December 17, 2001

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 01–32042 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–0312c; FRL–7118–3]

Interim Final Determination That State Has Corrected the Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern Mojave Desert Air Quality Management rule 1161. EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposal, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on May 11, 2000. This action will defer the imposition of the offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This action becomes effective January 2, 2002. Comments must be received by February 1, 2002.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Mohave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972–3960

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1995, the State submitted MDAQMD Rule 1161, for which EPA published a limited disapproval in the **Federal Register** on May 11, 2000. 65 FR 11674. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised version of this rule on November 8, 2001. EPA is taking direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of California's submittal of MDAQMD Rule 1161. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

Based on the proposal set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on May 11, 2000. However, this action will defer the imposition of the offset and highway sanctions. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiency and the sanctions consequences described in the sanctions rule will apply.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiency that started the sanctions clock. Based on this action, imposition of the offset and highway sanctions will be deferred until EPA's direct final action fully approving the

State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 01–32098 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–312a; FRL–7116–1]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from cement kilns. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 4, 2002 without further notice, unless EPA receives adverse comments by February 1, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule

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Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
MDAQMD	1161	Portland Cement Kilns	10/22/01	11/8/01

On November 21, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 1161 into the SIP on May 11, 2000. The MDAQMD adopted revisions to the SIP-approved version on October 22, 2001 and CARB submitted them to us on November 8, 2001.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 1161 applies to cement manufacturing operation within the Federal Ozone non-attainment area regulated by the MDAQMD. This rule controls emission of oxides of nitrogen (NO_X) from Portland cement kilns.

On May 11, 2000, the EPA published a limited approval and limited disapproval of this rule, because some rule provisions conflicted with section 110 and part D of the Clean air Act. Those provisions included the following:

1. Alternative Compliance strategy in section (D).
2. Exemption during start-up and shutdown in section (G)(1)(a).
3. Referring to a rule not approved in the SIP in section (G)(1)(c).

The revisions are designed primarily to correct these deficiencies. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MDAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1161 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. Nitrogen Oxides (NO_X) reasonably Available Control Technology (RACT) for the repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule corrects the deficiencies identified in our May 11, 2000 action and is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by February 1, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 4, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.
Laura Yoshii,
Deputy Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(286) and (c)(287) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) [Reserved].

(287) New and amended regulations for the following APCD were submitted on November 8, 2001 by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(1) Rule 1161 adopted on October 22, 2001.

* * * * *

[FR Doc. 01–32099 Filed 12–31–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 1]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2000 rail industry random testing positive rate was .20 percent for drugs and .79 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2002 through December 31, 2002 will remain at 25 percent of covered railroad employees. Since the random alcohol

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testing violation rate has remained below .5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

DATES: This notice is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2002 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 219.608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .20 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than .5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .5 percent for two calendar years while testing at a higher rate. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–32047 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 13]

RIN 2130–AA74

Qualification and Certification of Locomotive Engineers; and Other Proceedings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the definition of *filing* as used in the Federal Railroad Administration's rule on engineer certification in order to address recent, unavoidable postal delays. Due to terrorism, the Department of Transportation has implemented additional security procedures regarding mail delivery. The purpose of this interim final rule is to temporarily amend the regulation so that parties in adjudicatory proceedings pursuant to subpart E, Dispute Resolution Procedures of part 240 will not be prejudiced by circumstances beyond their control.

DATES: (1) *Effective Date:* This regulation is effective January 2, 2002.

(2) Written comments concerning this rule must be filed no later than March 4, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments should be submitted to the Docket Clerk, Department of Transportation Central Docket Management System (DMS), Nassif Building, Room Pl–401, 400 Seventh Street, SW., Washington, DC 20590 or, in accordance with the electronic standards and requirements, at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6049).

SUPPLEMENTARY INFORMATION:

I. Background

In response to acts of terrorism beginning on September 11, 2001, the timely delivery of mail by the United States Postal Service (USPS) and private mail services were negatively impacted by the temporary closing of airline shipping facilities. About one month later, additional delays were caused by more acts of terrorism. On Tuesday, October 16, USPS mail delivery to the Department of Transportation's (DOT) headquarters buildings was halted and did not resume until November 2. DOT's mail was halted in order to take appropriate safety measures concerning the threat of bio-terrorism through mail handling and delivery. The safety of DOT employees and the public clearly override the short-term concern of timely mail delivery. Although it was necessary to establish new security systems, the delay in processing mail may have had unintended consequences.

As envisioned in a notice posted on DMS's website, FRA will take these mail delays into account with respect to rulemaking documents that have comment periods that may have closed before regular mail delivery resumed. FRA will do everything it can to ensure that comments that would otherwise have been received before the close of the comment period are considered. For example, FRA generally has authority to consider late-filed comments and will do so to the extent that it can; FRA will also take note of the postmark date for late-filed comments.

In contrast, federal agencies do not have authority to consider late-filed petitions in adjudicatory proceedings where the filing date requirements have been established by regulation. This is the situation FRA faces in trying to fairly consider documents filed by parties that (1) have been harmed or delayed by the recent mail disruptions or (2) could potentially be harmed or delayed by these disruptions.

The source of FRA's timeliness issue with regard to engineer certification proceedings is found in the definition of *filing*. That definition is applicable to the adjudicatory proceedings provided for in Subpart E, Dispute Resolution Procedures of the Locomotive Engineer Certification Standards. 49 CFR Part 240. According to section 240.7, "*[f]iling* means that a document to be filed under this part shall be deemed filed only upon receipt by the Docket Clerk." As a result of this definition and the mail delivery delays beginning September 11, it is possible that a party could have attempted to file a document by mail, the document could have been received by DOT, and yet the document may not have been date stamped as received until days or weeks later. In order to prevent any unfair and unintended consequences, FRA is relaxing this filing requirement to permit the date mailing was completed (i.e., the postmark date unless the filer proves otherwise) to take the place of the receipt date during this unique state of alert.

This change in the filing requirements will ensure that documents mailed in a timely fashion will not be considered late if received after the due date by FRA's Docket Clerk pursuant to sections 240.403 and 240.405, or by DMS's Docket Clerk pursuant to sections 240.407 and 240.409, and by FRA's Administrator pursuant to section 240.411. The amended rule reflects this policy by adding the phrase "or if sent by mail on or after September 4, 2001, the date mailing was completed" to the definition. This change covers items postmarked on or after September 4, 2001 by the USPS or sent by other mail services on or after that date. By including all items sent by that date, FRA hopes to effectively include all documents that parties attempted to timely file under the original filing rule without being either under-inclusive or over-inclusive.

In addition, filers are encouraged to use the electronic submission system on the dockets Web page (*http://dms.dot.gov*) by clicking on "ES Submit" and following the online instructions. This option is available for filing hearing requests and documents pursuant to sections 240.407 and 240.409. A party filing electronically should note that the rule has not been amended to accept late electronic filings. Electronic filings that are received after the specified dockets facility hours shall be deemed to be constructively received on the next dockets facility business day. *See* 14 CFR 302.3.

Furthermore, FRA rewrote the remaining part of the definition to more clearly state what is meant by *filing* without using the defined word itself in the definition. Thus, "*[f]iling* means that a document to be filed under this part shall be deemed filed upon receipt by the Docket Clerk" has been amended to read that "*[f]ile, filed and filing* mean submission of a document under this part on the date when the Docket Clerk receives it * * *" Both phrases have the same meaning. In addition, the rule was amended to reflect that all of the tenses of "file" are covered by the definition.

II. Regulatory Evaluation

A. Public Proceedings

The Administrative Procedure Act, specifically 5 U.S.C. 553(b)(3)(B), provides that a notice and comment period is not required when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Accordingly, this amendment to part 240 is issued without notice and comment. FRA has chosen this course of action because notice and comment under these circumstances would be impracticable, unnecessary, and contrary to the public interest. The implementation of new security systems vis-a-vis mail handling in response to national security interests requires emergency action. If FRA did not amend this definition, it is foreseeable that parties relying on USPS or other mail services would be prejudiced. FRA is making this rule effective immediately for the same reasons it is dispensing with the need for prior comment.

Despite the need for prompt action, FRA is soliciting comments on this rule and will consider those comments in determining whether there is a need to take further action to improve these regulations. If comments persuade FRA that additional amendment to the definition is necessary, it will address them in a subsequent notice. Written comments must be submitted no later than 60 days after publication in the **Federal Register**, but late comments will be considered to the extent practicable.

B. Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with existing regulatory policies and is considered to be nonsignificant under Executive Order 12866 and is not significant under the DOT policies and procedures (44 FR 11034; February 26, 1979).

C. Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads are subject to this regulation, the economic impact of this amendment to the rule will not be significant since it only modifies a definition involved in dispute resolution proceedings conducted by FRA. The provisions do not make any changes to the way that a railroad would conduct its own proceedings pursuant to this part. This technical change should prevent injustice that would otherwise result from the actions of the DOT to ensure the safety of mail it receives.

This interim final rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in the portion of part 240 that includes the definition.

D. Paperwork Reduction Act

There are no new collection of information requirements contained in this rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the record keeping and reporting requirements already contained in this rule have been approved by the Office of Management and Budget. The OMB approval number was published in a previous amendment to part 240 and can be found in section 240.13. The information collection requirements of this rule became effective on June 19, 1991, and were later amended on April 9, 1993.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from

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detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly effecting the quality of the human environment.

F. Federalism Implications

FRA believes that it is in compliance with Executive Order 13132. This rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have federalism implications that impose compliance costs on State and local governments.

List of Subjects in 49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, FRA amends part 240, Title 49, Code of Federal Regulations as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

* * * * *

2. Section 240.7 is amended by removing the definition of *filing* and adding the following definition in alphabetical order:

§ 240.7 Definitions.

As used in this part—

* * * * *

File, filed and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date mailing was completed.

* * * * *

Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Administrator.

[FR Doc. 01–32049 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 67, No. 1
Wednesday, January 2, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS–2001–003a]

RIN 0580–AA79

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to increase certain fees by approximately 4.6 percent; i.e., contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.6 percent anticipated January 2002 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $703,000 in additional revenue.

DATES: February 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW, Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by e-mail to: *comments@gipsadc.gov*. Please state that your comments refer to Docket No. FGIS 2001–003a. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his e-mail address: *Dorr@gipsadc.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION: Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available, GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. The current reserve negative balance of $2,572,080 is well below the desired 3-month reserve of approximately $6 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The anticipated general and locality salary increase that averages 4.6 percent for GIPSA employees, effective January 2002, will increase GIPSA's costs by approximately $703,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs along with the projected FY 2002 workload of 77 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.6 percent increase will have to be recovered through increases in fees.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.6 percent increase in the cost of official inspection and weighing services. This proposed increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning

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the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on July 9, 2001 (66 FR 35751), and became effective on August 8, 2001.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available, GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. The current reserve negative balance of $2,572,080 is well below the desired 3-month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that GIPSA anticipates becoming effective in January 2002 averages 4.6 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately $703,000. GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2002 workload of 77 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.6 percent increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	$27.40	$29.80	$38.60	$46.40
6-month contract	30.20	32.00	41.00	53.00
3-month contract	34.40	35.60	44.60	55.40
Noncontract	40.00	42.00	51.00	62.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The anticipated 4.6 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.6 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing an approximate 4.6 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1-Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2-Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3, Miscellaneous Services.

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because grain export volume and associated requests for official services for such grain are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY[1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime[2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$28.60	$31.20	$40.40	$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY[1]—Continued

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime[2]	Holidays
Noncontract	41.80	44.00	53.40	65.40
(2) Additional Tests (cost per test, assessed in addition to the hourly rate)[3]				
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50			
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00			
(iii) Corn oil, protein, and starch (one or any combination)	1.50			
(iv) Soybean protein and oil (one or both)	1.50			
(v) Wheat protein (per test)	1.50			
(vi) Sunflower oil (per test)	1.50			
(vii) Vomitoxin (qualitative)	12.50			
(viii) Vomitoxin (quantitative)	18.50			
(ix) Waxy corn (per test)	1.50			
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container	.30			
(2) Railcar	1.25			
(3) Barge	2.50			
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier)				
(i) All outbound carriers (per-metric-ton)[4]				
(a) 1–1,000,000	$0.1152			
(b) 1,000,001–1,500,000	0.1051			
(c) 1,500,001–2,000,000	0.0568			
(d) 2,000,001–5,000,000	0.0420			
(e) 5,000,001–7,000,000	0.0230			
(f) 7,000,001 +	0.0105			

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).
[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.
[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.
[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY[1 2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$19.25
(b) Railcar (per carrier)	28.90
(c) Barge (per carrier)	185.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	11.50
(b) Warehouseman inspection (per sample)	19.50
(c) Factor only (per factor—maximum 2 factors)	5.15
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	12.80
(f) Class X Weighing (per hour per service representative)	55.00
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.00
(b) Aflatoxin (per test—TLC method)	110.00
(c) Corn oil, protein, and starch (one or any combination)	8.80
(d) Soybean protein and oil (one or both)	8.80
(e) Wheat protein (per test)	8.80
(f) Sunflower oil (per test)	8.80
(g) Vomitoxin (qualitative)	30.50
(h) Vomitoxin (quantitative)	37.50
(i) Waxy corn (per test)	10.00
(j) Canola (per test—00 dip test)	10.00

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TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(k) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service. [4]	
(i) Board Appeals and Appeals (grade and factor)	79.50
(a) Factor only (per factor—max 2 factors)	41.80
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	29.50
(b) Aflatoxin (TLC)	118.00
(c) Corn oil, protein, and starch (one or any combination)	16.80
(d) Soybean protein and oil (one or both)	16.80
(e) Wheat protein (per test)	16.80
(f) Sunflower oil (per test)	16.80
(g) Vomitoxin (per test—qualitative)	40.00
(h) Vomitoxin (per test—quantitative)	45.00
(i) Vomitoxin (per test—HPLC Board Appeal)	136.00
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(iii) Review of weighing (per hour per service representative)	79.20
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$55.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	55.00
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	55.00
(ii) Evaluation of weighing and material handling systems	55.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	55.00
(iv) NTEP Prototype evaluation of Railroad Track Scales	55.00
	110.00 (plus usage fee per day for test car)
(v) Mass standards calibration and reverification	55.00
(vi) Special projects	55.00
(4) Foreign travel (per day per service representative)	490.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.60
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $55.00 per hour.

[2] Regular business hours-Monday through Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: December 26, 2001.

John Pitchford,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–32154 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to replace the metered connector and oxygen tubing and related components in the rear seat bench. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to correct for insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions, which could result in reduced occupant safety at the rear bench seat location.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 19, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–07–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a design problem, the flow of oxygen to each occupant on the rear seat bench is insufficient. The current configuration uses two-metered connectors, which restricts the flow of oxygen.

What are the consequences if the condition is not corrected? If not corrected, insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions could occur which could result in reduced occupant safety at the rear bench seat location.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC–12 Service Bulletin No: 35–002, dated December 19, 2000.

What are the provisions of this service information? The service bulletin includes procedures for replacing the two-metered connector and oxygen tubing with a system that incorporates a single-metered connector. This includes replacements in the following areas:

—The tubing assembly—oxygen (with coupling);

—Assembly—bracket and grommet; and

—Clamp-hose.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2001–001, dated December 28, 2000, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–12 and PC–12/45 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	$0. Pilatus will provide free parts	$120 per airplane	$600

Compliance Time of this Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is within the next 30 calendar days after the effective date of this AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The oxygen flow on the rear bench seat is reduced through two metered connectors when only one reduction is necessary. Because these parts of poor design could have been installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 1,000 hours TIS. Therefore, we believe that 30 calendar days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 2001–CE–07–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers with rear bench seats (part number 525.22.12.016) installed, that are certificated in any category:

Model	Serial numbers
All PC–12 and PC–12/45.	From 101 through 365

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct for insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions, which could result in reduced occupant safety at the rear bench seat location.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the tubing assembly—oxygen (with coupling) (P/N 957.10.25.231), assembly—bracket and grommet (P/N Service 525.22.12.044), and clamp—hose (946.33.21.301), or FAA-approved equivalent parts in the rear bench seat (part number (P/N) 525.22.12.016) with a new tubing assembly—oxygen (with coupling) (P/N 957.10.25.232), assembly—bracket and grommet (P/N 525.22.12.049), and clamp—hose (P/N 946.33.21.302), or FAA-approved equivalent part.	Within the next 30 days after the effective date of this AD.	Follow the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Aircraft Ltd. PC–12 Service Bulletin, 35–002, dated December 19, 2000
(2) Do not install any rear bench seat (P/N 525.22.12.016), or any FAA-approved equivalent part unless installed with tubing assembly—oxygen (with coupling) (P/N 957.10.25.232), assembly—bracket and grommet (P/N 525.22.12.049), clamp—hose (946.33.21.302), or FAA-approved equivalent parts.	As of the effective date of this AD	Not Applicable
(3) Do not install tubing assembly—oxygen (with coupling) (P/N 957.10.25.231), assembly—bracket and grommet (P/N 525.22.12.044), clamp—hose (946.33.21.301), or FAA-approved equivalent parts.	As of the effective date of this AD	Not Applicable

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–001, dated December 28, 2000.

Issued in Kansas City, Missouri, on December 21, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32151 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–350–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require a one-time inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. This action is necessary to prevent leakage of the valve, which could result in failure of the "blue" hydraulic system and consequent failure of alternate parking brake and emergency braking systems. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–350–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–350–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus

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Model A330 and A340 series airplanes. The DGAC advises that leakage of the hydraulically operated valve of the parking brake of the main landing gear has been identified on certain Model A320 series airplanes. Hydraulic fluid leakage was found at the hydraulic connections and the vent hole of the valve. Leakage of the hydraulically operated valve, if not corrected, could result in failure of the "blue" hydraulic system and consequent failure of alternate parking brake and emergency braking systems.

Certain valves having serial numbers marked with a "V" or "VF+E" were modified and are not subject to the unsafe condition addressed by this AD.

Similar Model

The same hydraulically operated valve is installed on Model A330 and A340 series airplanes. Therefore, those airplanes are also subject to the unsafe condition identified by this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32A3139 and A340–32A4176, both including Appendix 01, both dated September 14, 2001. The service bulletins describe procedures for a one-time detailed visual inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. The follow-on actions consist of a visual inspection for hydraulic fluid leakage at the valve; repair or replacement of the valve with a new or serviceable valve if leakage is found, or repeat inspections if valve is not replaced, or if the valve is replaced with a valve having the same part or serial number; and an operational test following repair or replacement of the valve. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC issued French airworthiness directives 2001–516(B) and 2001–517(B), both dated October 31, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between this AD and the Service Bulletins

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repairs, this AD would require such repairs to be accomplished per a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this AD.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–350–AD.

Applicability: Model A330 and A340 series airplanes, as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both dated September 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the hydraulically operated valve of the parking brake of the main landing gear, which could result in failure of the "blue" hydraulic system and consequent failure of alternate parking brake and emergency braking systems, accomplish the following:

Inspections/Follow-On Actions

(a) Within 7 days after the effective date of this AD: Do a one-time detailed visual inspection to determine the part number (P/N) and serial number (S/N) of the hydraulically operated valve of the parking brake of the main landing gear per Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both including Appendix 01, both dated September 14, 2001, as applicable.

(1) If no P/N or S/N is identified as affected equipment per the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment per the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the valve; repair or replacement of the valve with a new or serviceable valve if leakage is found; repetitive inspections if valve is not replaced, or if the valve is replaced with a valve having the same P/N or S/N; and an operational test), according to the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–516(B) and 2001–517(B), both dated October 31, 2001.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32193 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that would have required repetitive tests of double-skin feeder tanks for fuel leaks, and corrective actions, if necessary. It also would have required modification of seals in the feeder tanks, which would have terminated the repetitive leak tests. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. This new action revises the proposed rule by making the proposed requirements applicable to additional airplanes. The actions specified by this new proposed AD are intended to prevent fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources. The actions are intended to address the identified unsafe condition.

DATES: Comments must be received by February 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–335–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

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submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–335–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD) applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 25, 2001 (66 FR 38585). That NPRM would have required repetitive tests of double-skin feeder tanks for fuel leaks, and corrective actions, if necessary. It also would have required modification of seals in the feeder tanks, which would have terminated the repetitive leak tests. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. That condition, if not corrected, could result in fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received information that the defect of the seals on double-skin feeder tanks on frames 28, 29, and 31, which was the subject of the NPRM, may exist on additional airplanes. Though the NPRM would have applied to Model Mystere-Falcon 50 series airplanes with serial numbers 253 to 286 inclusive, 288, 290, and 291; airplanes with serial numbers 222 to 252 inclusive are also subject to the identified unsafe condition. Therefore, these airplanes also must be made subject to the repetitive tests of double-skin feeder tanks for fuel leaks, corrective actions, if necessary, and modification of seals in the feeder tanks, as proposed in the original NPRM.

Conclusion

Since the change described previously expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Comments Received in Response to the NPRM

Due consideration has been given to the following comments, which were received in response to the NPRM.

Refer to New Service Information

The commenter, the airplane manufacturer, requests that the FAA revise paragraphs (a) and (b) of the NPRM to refer to certain work cards of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001. The NPRM refers to Temporary Revision No. 19 to the Dassault Falcon 50 Maintenance Manual, dated April 2000, as the appropriate source of service information for the actions in those paragraphs. The commenter states that it is preferable to refer to the work cards in Revision 7 of the maintenance manual, rather than to Temporary Revision No. 19, because the work cards more clearly identify the relevant material.

We concur that the work cards in Revision 7 of the Dassault Falcon 50 Maintenance Manual, as specified by the commenter, are a more definitive source of service information. We have revised paragraphs (a) and (b) of the supplemental NPRM accordingly.

Clarify Paragraph (c)

The commenter also asks us to revise the wording of paragraph (c) of the NPRM to include the words "double skin." We concur that this change will provide clarification and, accordingly, have revised paragraph (c) of this supplemental NPRM to specify that the action described in that paragraph consists of rework of the seals of the DOUBLE-SKIN feeder tanks at frames 28 and 31.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 8 work hours per airplane to accomplish the proposed leak tests, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed leak tests on U.S. operators is estimated to be $22,080, or $480 per airplane, per test.

The FAA estimates that it would take approximately 50 work hours per airplane to accomplish the proposed reworking of the seals in the feeder tanks, and that the average labor rate is $60 per work hour. The required parts would be provided at no charge to the operator. Based on these figures, the cost impact of the reworking of the seals on U.S. operators is estimated to be $138,000, or $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2000–NM–335–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, certificated in any category, serial numbers 222 to 286 inclusive, 288, 290, and 291.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources, accomplish the following:

Leak Testing

(a) Within 7 months after the effective date of this AD: Perform a feeder tank leak test by sampling at the drain ports of frames 29 and 31, in accordance with Work Card No. 686.3/1 of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001. Repeat the leak test at intervals not to exceed 13 months, until accomplishment of paragraph (c) of this AD.

Corrective Action

(b) If the feeder tank leak test indicates that a leak is present: Prior to further flight, renew the seal, in accordance with Work Card No. 686.4/1 of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001.

Modification

(c) Within 78 months since the date of manufacture of the airplane: Rework the seals of the double-skin feeder tanks at frames 28 and 31, in accordance with Dassault Service Bulletin F50–328, dated May 31, 2000. Accomplishment of the rework terminates the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–163–030(B), dated April 19, 2000.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32194 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require an inspection of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. For certain airplanes, this proposal also would require inspection and replacement of the existing tripod struts with new, adjustable struts, if necessary. This action is necessary to prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–209–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

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• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–209–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The airplane manufacturer has informed the FAA that damaged bushings were found in the tripod strut assembly of the inboard support of the leading edge slat of the wings of a Model 767 series airplane in production. The damage was due to preload in the tripod assembly during installation. The tripod assembly is used to support the inboard leading edge slat and is the primary inboard-outboard load path of the slat. Loss of primary inboard-outboard load path for the slat can result in an unstable slat-to-wing connection, and separation of the slat from the airplane. Such conditions, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999, which describes procedures for a check (inspection) of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. The follow-on actions include:

• If no preload condition is found, a visual inspection of the components in the fitting assembly to determine if bushing holes are round.

• Replacement of the fitting assembly if the bushing holes are not round.

• If a preload condition is found, a high frequency eddy current inspection of the lug bore and base of the fitting assembly for cracking.

• Rework of the fitting assembly if no cracking is found, or if cracking is found in the lug bore only.

• Replacement of the fitting assembly if cracking is found in the lug base or the lug bore and base.

• Adjustment of the tripod struts, if necessary, to eliminate preload condition, and a check of the rigging of the inboard leading edge slat, and re-rigging if necessary.

• For certain airplanes, inspection for improperly cut and spliced struts, and strut replacement, if necessary.

The FAA also has reviewed and approved Boeing Service Bulletin 767–57–0037, dated January 14, 1993. For Group 2 airplanes (as defined in the service bulletin) the service bulletin describes procedures for doing a visual inspection of the tripod struts of the inboard leading edge of the wings to determine if they have been cut and spliced, and replacement with new, adjustable struts if the existing struts are cut and spliced with fewer than six hi-loks.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of certain actions specified in the service bulletins described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletins

The service bulletins do not specify what type of visual inspection of the tripod assembly and tripod struts should be used. The FAA has determined that the procedures in the service bulletins describe a general visual inspection. Note 2 of this proposed AD defines that type of inspection.

Other differences include the following:

• Boeing Service Bulletin 767–57A0058, Revision 1, specifies doing a "check" for preload, however, this proposed AD uses the term "general visual inspection."

• The compliance time for doing the actions specified in the Boeing Service Bulletin 767–57A0058, Revision 1, is within 5,000 flight cycles or 24 months after the receipt of the service bulletin, whichever comes first. The airplane manufacturer has informed us that "whichever comes first" is an error in the compliance time and would put certain airplanes immediately out of compliance. The correct compliance time is "whichever comes later," and this proposed AD requires that compliance time.

• The effectivity in Boeing Service Bulletin 767–57–0037 specifies line numbers 1 through 469 inclusive. The airplane manufacturer has informed us that line numbers 1 through 159 inclusive had a fixed strut which was not cut and spliced or preloaded. Line numbers 160 through 469 inclusive may have had a fixed strut which was cut and spliced, and if it was not cut and spliced it was still subject to being preloaded. Therefore, the affected line numbers are 160 through 469 inclusive, and those line numbers are included in this proposed AD.

Cost Impact

There are approximately 379 airplanes of the affected design in the worldwide fleet. The FAA estimates that 136 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspections of the tripod strut assembly and bushing holes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $8,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the rework of the fitting assembly, it would take approximately 4 work hours per airplane to accomplish the proposed rework, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed rework would be $240 per airplane.

Should an operator be required to accomplish the high frequency eddy current inspection, it would take approximately 5 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection would be $300 per airplane.

Should an operator be required to accomplish the replacement of the main strut support fitting, it would take approximately 14 work hours per airplane to accomplish the proposed replacement (on both the left and right wings of the airplane, excluding the time for gaining access and closing up), at an average labor rate of $60 per work hour.

Required parts would cost approximately $12,380 per airplane. Based on these figures, the cost impact of the proposed replacement would be $13,220 per airplane.

Should an operator be required to accomplish the inspection for improperly cut and spliced struts, it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the struts proposed by this AD would be $60 per airplane.

Should an operator be required to accomplish the replacement of a cut and spliced strut with a new, adjustable tripod strut, it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the replacement proposed by this AD would be $240 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–209–AD.

Applicability: Model 767 series airplanes, line numbers 160 through 541 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Inspections

(a) For all airplanes: Before the accumulation of 5,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later: Do a general visual inspection (check) of the tripod strut assembly of the inboard leading edge slat of each wing for a preload condition, per Figure 2 of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no preload condition is found, before further flight, inspect the fitting assembly bushing holes for roundness, per Figure 5 of the Accomplishment Instructions of the service bulletin.

(i) If all the bushing holes are round, before further flight, do the inspection required by paragraph (c) of this AD.

(ii) If any bushing hole is not round, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

(2) If a preload condition is found, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

Follow-on Actions

(b) For airplanes subject to paragraph (a)(1)(ii) or (a)(2) of this AD: Do a high frequency eddy current inspection of the fitting assembly lug for cracking, per Figure 6 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If no cracking is found, or if cracking is found in the lug bore only, before further flight, rework the fitting assembly lug per Figure 7 of the Accomplishment Instructions of the service bulletin.

(2) If cracking is found in the fitting lug base or the lug bore and base, before further flight, purge the auxiliary fuel tank and replace the fitting assembly lug per Figure 8 of the Accomplishment Instructions of the service bulletin.

(c) For airplanes subject to paragraph (a)(1)(i), (a)(1)(ii), or (a)(2) of this AD: Do a general visual inspection of the bushing holes of the main strut assembly to determine if the bushing holes are round, per Figure 9 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If the bushing holes are round, before further flight, assemble the tripod assembly per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

(2) If the bushing holes are not round, before further flight, replace the main strut fitting assembly per Figure 10 of the Accomplishment Instructions of the service bulletin, then assemble the tripod assembly per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

Note 3: Inspections and follow-on actions done before the effective date of this AD per Boeing Alert Service Bulletin 767–57A0058, dated June 11, 1998, are considered acceptable for compliance with the applicable actions specified in this AD.

Inspection/Replacement of Tripod Struts

(d) For Group 2 airplanes that have not accomplished Boeing Service Bulletin 767–57–0037, dated January 14, 1993: Before further flight after doing the inspections and follow-on actions required by paragraphs (a),

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(b), and (c) of this AD, do a general visual inspection of the tripod struts to determine if they have been cut and spliced, per the Accomplishment Instructions of the service bulletin.

(1) If the tripod struts have been cut and spliced with fewer than six hi-loks, before further flight, replace with new, adjustable struts, per Figure 1 of the Accomplishment Instructions of the service bulletin.

(2) If the tripod struts have not been cut and spliced, or they have been cut and spliced with six hi-loks, no further action is required by this paragraph.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32195 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–39–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes. This proposal would require one-time inspections for cracking in certain upper deck floor beams and follow-on actions. This action is necessary to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–34–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–34–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracking on the left and right ends of the upper chord of the station (STA) 340 upper deck floor beam on several Boeing Model 747 series airplanes. Also, during fatigue tests on a Boeing 747SR test airplane, multiple cracks up to 0.3 inch long were found in both the left and right ends of the upper chord of the STA 340 floor beam. On certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes, the STA 340 upper deck floor beam, as well as the floor beam at STA 360, are made from 7075 aluminum. Other upper deck floor beams on these models are made from 2024 aluminum, which is known to be more durable than 7075 aluminum against fatigue. Cracking of the upper deck floor beam at STA 340 or STA 360, if not corrected, could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, which describes procedures for one-time detailed visual and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at STA 340 and STA 360, and follow-on actions. The follow-on actions consist of repair of any cracking found during the inspections or, if no cracking is found, modification of the upper deck floor beams. These follow-on actions are described below:

- The repair described in the service bulletin is identified as a "time-limited repair" and includes removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if necessary, and installing new straps. The service bulletin specifies that the time-limited repair must be replaced with a permanent repair after a certain amount of time and that operators are to contact Boeing for instructions for such permanent repair.
- The modification described in the service bulletin involves removing the existing straps, and installing new straps. Also, the service bulletin notes that, if this modification is not accomplished immediately following the inspections described previously, the inspections must be repeated one time, immediately before the modification is accomplished.

The service bulletin also specifies accomplishment of repetitive post-repair or post-modification open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or, alternatively, surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame. However, the service bulletin does not provide detailed instructions for these inspections or for repairs of any cracking that is found.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, including instructions for a permanent repair, if necessary, this proposal would require such repairs to be accomplished according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Also, while the service bulletin specifies that instructions for post-modification/repair inspections will be included in future revisions of the service bulletin, paragraph (d) of the proposed AD would require post-modification/repair inspections to be done according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 539 airplanes of the affected design in the worldwide fleet. The FAA estimates that 168 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the initial inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $80,640, or $480 per airplane.

It would take approximately 24 work hours per airplane to accomplish the modification or permanent repair, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification or repair on U.S. operators is estimated to be $241,920 or $1,440 per airplane.

It would take approximately 8 work hours per airplane to accomplish the post-modification/repair inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed post-modification/repair inspections on U.S. operators is estimated to be $80,640 or $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–34–AD.

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Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes; line numbers 1 through 810 inclusive; certificated in any category; and NOT equipped with a nose cargo door.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane, accomplish the following:

Inspections

(a) At the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, perform one-time detailed visual and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at station (STA) 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

(1) For airplanes with 22,000 or fewer total flight cycles as of the effective date of this AD: Do the inspections prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with more than 22,000 total flight cycles as of the effective date of this AD: Do the inspections within 500 flight cycles after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Modification

(b) If no crack is found during the inspections per paragraph (a) of this AD: Within 5,000 flight cycles after the initial inspections, modify the upper deck floor beams at STA 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001. If this modification is not accomplished before further flight after the inspections required by paragraph (a) of this AD, those inspections must be repeated one time, immediately before accomplishing the modification in this paragraph. If any crack is found during these repeat inspections, before further flight, accomplish paragraph (c)(2) of this AD.

Repair

(c) If any crack is found during the inspections per paragraph (a) of this AD: Before further flight, repair according to either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish repairs according to paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Accomplish a temporary repair (including removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if applicable, and installing new straps) according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; except where the service bulletin specifies to contact Boeing for appropriate action, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. AND,

(ii) Within 18 months or 1,500 flight cycles after installation of the temporary repair according to paragraph (c)(1)(i) of this AD, whichever is first, do paragraph (c)(2) of this AD.

(2) Accomplish a permanent repair according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 3: Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, does not contain instructions for permanent repairs.

Repetitive Inspections: Post-Modification/Repair

(d) Within 15,000 flight cycles after modification of the upper deck floor beams per paragraph (b) of this AD, or repair of the upper deck floor beams per paragraph (c) of this AD, as applicable: Perform either open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame; and repeat these inspections at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Perform these inspections and repair any cracking found during these inspections according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For an inspection or repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(1) If the most recent inspection used the surface HFEC method: Repeat the inspection within 1,000 flight cycles.

(2) If the most recent inspection used the open-hole HFEC method: Repeat the inspection every 3,000 flight cycles.

Note 4: There is no terminating action at this time for the repetitive post-modification/repair inspections according to paragraph (d) of this AD, and instructions for these inspections are not provided in Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32196 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 F4–605R Airplanes; Model A300 B4–600 and A300 B4–600R Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes. That earlier proposed AD would have required repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. That earlier proposed AD also would have provided for optional terminating action for the repetitive inspections. This new action would retain those proposed actions but require that actions be done in accordance with newly revised service bulletins. This new action also would revise the applicability. The actions specified by this new proposed AD are intended to prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–205–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–205–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes; was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50588). That original NPRM would have required repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. The original proposed AD also would have provided for optional terminating action for the repetitive inspections. The original NPRM was prompted by reports of wire chafing and short circuits in the wing leading edge/pylon interface area. That condition, if not corrected, could result in loss of the power supply generator and/or system functions.

Since Issuance of the Original NPRM

Since the original NPRM was issued, Airbus has issued new service information that would affect the requirements proposed by that NPRM.

Explanation of Relevant Service Information

Airbus Service Bulletin A300–24–0053, Revision 05, was cited in the original NPRM as the appropriate source of service information for the inspection of the fillet seals and feeder cables for Model A300 series airplanes. Airbus has since issued Revision 06 of the service bulletin, dated September 10, 2001, which describes the basic pylon and common pylon configurations and distinguishes the procedures for repairing damaged fillet seals for the two configurations.

The original NPRM cited Airbus Service Bulletin A300–54–0095, Revision 01, as the appropriate source of service information for the optional replacement of the fillet panel assemblies on Model A300 series airplanes. Airbus has since issued Revision 02 of the service bulletin, dated September 7, 2001, to include a new kit for airplanes in the basic pylon configuration. Either Revision 01 or Revision 02 would eliminate the need for the repetitive inspections for airplanes in the common pylon configuration; only Revision 02 would eliminate the need for the repetitive inspections for airplanes in the basic pylon configuration.

The original NPRM cited Airbus Service Bulletin A300–24–6039, Revision 06, as the appropriate source of service information for the inspection and repair of the wiring looms for Model A300–600 series airplanes. Airbus has since issued Revision 07 of the service bulletin, dated August 9,

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2001, which includes minor changes only.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, approved these service bulletin revisions.

Accomplishment of the actions specified in Airbus Service Bulletins A300–24–0053, Revision 06, A300–24–6001, Revision 05, A310–24–2021, Revision 06, A300–24–0083, Revision 03, A300–24–6039, Revision 07, and A310–24–2052, Revision 04, is intended to adequately address the identified unsafe condition.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Extend the Compliance Time for the Inspection

One commenter requests that the compliance time specified by the original NPRM be extended from 500 flight hours to 600 flight hours. According to the commenter, a "600 FH "grace period" is compatible with the highest existing interval for an A-check."

The FAA concurs with the request. The FAA finds it appropriate to extend the compliance time to 600 flight hours and has determined that such an extension would not adversely affect the safety of the fleet. Paragraphs (a) and (b) of this supplemental NPRM have been revised accordingly.

Requests to Cite Latest Service Bulletin Revisions

The commenters request that the original NPRM be revised to refer to the latest service bulletin revisions (described previously). Airbus Service Bulletins A300–24–0053, Revision 06, and A300–54–0095, Revision 02, have included procedures for the inspection and repair of airplanes in the basic pylon configuration. One commenter states that the earlier revisions of these service bulletins properly cover the common pylon configuration but are not suitable for the basic pylon configuration. The commenters also request that Revision 07 of Service Bulletin A300–24–6039 be cited as the primary service information for the wiring loom inspection for Model A300–600 series airplanes.

The FAA partially concurs with the requests. Although accomplishment of the actions specified by earlier service bulletin revisions may be acceptable for certain airplanes, the FAA has determined that, for simplicity, this supplemental NPRM will cite only the latest service bulletin revisions for the proposed actions specified in paragraphs (a) and (b) of this supplemental NPRM. As a result, paragraphs (a) and (b) of this supplemental NPRM have been revised, and Note 3 and Note 5 of the original NPRM have been removed (and the remaining Notes have been renumbered). However, paragraph (c) of this supplemental NPRM has been revised to specify accomplishment of the terminating action in accordance with either Revision 01 or Revision 02 of Airbus Service Bulletin A300–54–0095 for airplanes in the common pylon configuration, but would require Revision 02 for airplanes in the basic pylon configuration. Operators should note that the provisions of paragraph (d) of this supplemental NPRM would enable the FAA to approve requests for alternative methods of compliance (e.g., per an alternative service bulletin revision) if data are submitted to substantiate that such alternative methods would provide an acceptable level of safety.

Request to Disallow Credit for Repair Per Certain Service Bulletin Versions

One commenter requests that the original NPRM be revised to specifically exclude credit for repairs done in accordance with revisions prior to Revision 05 of Airbus Service Bulletin A300–24–6011 and Revision 06 of Airbus Service Bulletin A310–24–2021. Note 3 of the original NPRM would have provided this credit. Note 3 of the original NPRM refers to paragraph (a) of the original NPRM. The commenter states that earlier revisions of these service bulletins are acceptable for accomplishment of detailed visual inspections to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, but not the repairs of damage on applicable affected airplanes.

The FAA partially concurs. The FAA agrees that the repair procedures described in those earlier revised service bulletins are not acceptable for the basic pylon configuration, and notes that the repair procedures have been deleted from Airbus Service Bulletins A300–24–6011, Revision 05, and A310–24–2021, Revision 06. However, as stated earlier, Note 3 and Note 5 of the original NPRM, which provided credit for prior accomplishment of the earlier service bulletin revisions, have been removed from this supplemental NPRM, but operators may request approval of an alternative method of compliance in accordance with paragraph (d) of this supplemental NPRM. No additional change is necessary in this regard.

Request to Change Inspection Type

One commenter, the manufacturer, requests that the original NPRM be revised to change the inspection type from a general visual inspection to a detailed visual inspection. According to the manufacturer, "even if not always clearly stated in the Airbus SBs, visual inspection means detailed visual inspection and not general visual inspection."

The FAA finds that detailed visual inspections are appropriate to address the identified unsafe condition, and concurs with the commenter's request. Paragraphs (a) and (b) of this supplemental NPRM have been revised to specify detailed, rather than general, visual inspections. In addition, Note 2 of this supplemental NPRM has been revised to define a detailed visual inspection.

Request to Revise Applicability of Proposed AD

One commenter requests that Table 1 of the original NPRM be revised to reflect the correct applicability. The original NPRM indicates that airplanes would be excluded from the applicability if either of two specified modifications had been accomplished. The commenter states that the applicability should exclude only airplanes on which both of the specified modifications have been accomplished.

The FAA concurs. The original NPRM inadvertently substituted the conjunction "or" for "and" between the modification numbers listed in Table 1. The applicability of this supplemental NPRM has been revised to exclude airplanes only if both of the specified modifications have been accomplished.

Conclusion

Since these changes expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 107 airplanes of U.S. registry would be affected by this supplemental NPRM.

It would take approximately 6 work hours per airplane to inspect the seals/cables at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $38,520, or $360 per airplane, per inspection cycle.

It would take approximately 5 work hours per airplane to inspect the wiring looms and apply the protection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $32,100, or $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to perform the optional terminating action, it would take approximately 5 work hours per airplane to replace the fillet panel assemblies, at an average labor rate of $60 per work hour. Required parts would cost approximately $350 to $470 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $650 to $770 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–205–AD.

Applicability: The following airplanes, certificated in any category:

Model	Excluding those modified per Airbus modification
A300 B2–1C, A300 B2–203, A300 B2K–3C, and A300 B4 series	11349 and airplanes 12309.
A300 F4–605R airplanes, A300 B4–600 series airplanes, and A300 B4–600R series airplanes	11348 and 12303.
A310 series airplanes	11350 and 12310.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions, accomplish the following:

Inspections

(a) Within 600 flight hours after the effective date of this AD, perform a detailed visual inspection to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001 (for Model A300 series airplanes); A300–24–6011, Revision 05, dated May 18, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2021, Revision 06, dated May 18, 2001 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until the actions specified by paragraph (c) are accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection to each feeder cable in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Airbus Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–0054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed visual inspection of the wiring looms in the area of the wing leading edge/pylon interface to detect damage (including chafing, burning, and short circuits), in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6039, Revision 07, dated August 9, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2052, Revision 04, dated April 6, 2001 (for Model A310 series airplanes); as applicable. Repeat the inspection thereafter at least every 1,000 flight hours, until the actions specified by paragraph (c) of this AD have been accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Optional Terminating Action

(c) Replacement of the fillet panel assemblies with new, improved assemblies,

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as specified by paragraphs (c)(1), (c)(2), or (c)(3) of this AD, as applicable, terminates the requirements of this AD.

(1) For Model A300 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done as specified by paragraph (c)(1)(i) or (c)(1)(ii) of this AD.

(i) For airplanes in the common pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001, or Revision 02, dated September 7, 2001.

(ii) For airplanes in the basic pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001.

(2) For Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001.

(3) For Model A310 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32197 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

(Docket No. RM96–1–020)

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued December 20, 2001.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend § 284.12 of its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.5, promulgated August 18, 2001 by the Gas Industry Standards Board (GISB). Version 1.5 of the GISB standards can be obtained from GISB at 1100 Louisiana, Suite 4925, Houston, TX 77002, 713–356–0060, *http://www.gisb.org*.

DATES: Comments are due February 1, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT:
Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294
Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283
Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. The Federal Energy Regulatory Commission (Commission) proposes to amend § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to adopt the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission also is proposing to remove § 284.12(a) of its regulations dealing with pipeline Electronic Bulletin Boards (EBBs), since all pipelines are required under Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.[1] The proposed rule is intended to benefit the public by adopting the most recent and up-to-date standards governing electronic communication that includes new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637.[2]

2. Background

3. Since 1996, in the Order No. 587 series,[3] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by GISB, a private consensus standards developer composed of members from all segments of the natural gas industry. GISB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

4. On October 19, 2001, GISB filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.5. On December 3, 2001, GISB filed with the Commission a report listing errata to the Version 1.5 standards.

[1] 18 CFR 284.12(c)(3)(i)(A) (2001).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091 (Feb. 9, 2000).

[3] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Dec. 11, 2000).

5. GISB reports that its newest version contains some of the following highlights: modifications to the data set, data element, and code value tables to support Internet web page standards and the transition of EBBs to the Internet; business practice standards and data sets governing imbalance netting and trading (although standards for electronic data interchange of the imbalance netting and trading are still in process); standards for title transfer tracking (TTT), with a recommendation from the GISB Executive Committee that these standards be implemented no earlier than eight months from publication of these standards on August 18, 2001; and standards to support the implementation of Order No. 637 (additional standards are still being considered at the subcommittee level). GISB also reports that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the GISB Electronic Delivery Mechanism (EDM) standards.

6. Discussion

7. The Commission is proposing to adopt Version 1.5[4] of GISB's consensus standards.[5] Pipelines would be required to implement the standards three months after a final rule is issued.[6]

8. Version 1.5 of the GISB standards provides added flexibility to shippers, standardizes additional business practices, and update and improves the current standards.[7] The principal changes occur in the areas of title transfer tracking, imbalance netting and trading, and improvement of the standards for conducting business transactions electronically over the Internet. Version 1.5 incorporates a series of standards (Standards 1.3.64 through 1.3.78) providing that natural gas pipelines track title transfers at pooling points. These standards will provide shippers with greater flexibility in structuring business transactions, and will enhance the liquidity of the natural gas market by providing for accurate accounting of gas purchase and sale transactions and integrating such transactions into the pipeline scheduling process. Version 1.5 includes new standards (standards 2.3.36 through 2.3.50) for transmitting statements of allocation and implementing imbalance netting and trading as required by the Commission's regulations.[8] Version 1.5 also updates and improves the standards by modifying the electronic communication standards to better support Internet web page standards and the transition of EBBs to the Internet and by effectuating changes to accommodate the recommendations of Sandia National Laboratories. Commission adoption of these standards will keep the Commission regulations current.[9]

9. GISB approved the standards under its consensus procedures.[10] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[11]

10. While comments are requested on all of the GISB standards, the Commission specifically requests comment on whether it should adopt revised standard 5.3.2 dealing with the timeline for capacity release transactions. The revision to standard 5.3.2 in Version 1.5 was made in response to Order No. 637 in which the Commission adopted a regulation requiring pipelines to provide scheduling equality between capacity release transactions and pipeline transportation services.[12] The regulation states:

11. Pipelines must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity.

12. GISB standards adopted by the Commission currently provide for four nomination cycles: a timely nomination at 11:30 a.m. to take effect at 9 a.m. central clock time (CCT)[13] the next gas day, an Evening nomination at 6 p.m. CCT to take effect at 9 a.m. CCT the next gas day, an Intra-Day 1 nomination at 10 a.m. CCT to take effect at 5:00 p.m. CCT on the same gas day, and an Intra-Day 2 nomination at 5 p.m. CCT to take effect at 9 p.m. CCT on the same gas day.[14] In implementing the scheduling equality requirement, the Commission held that a replacement shipper under a capacity release transaction must be able to nominate coincident with notification to the pipeline of a pre-arranged capacity release transaction or coincident with the award of capacity

[4] The incorporation includes the errata sheets published by GISB.

[5] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.5 of the standards are available from GISB. 5 U.S.C. 552 (a)(1); 1 CFR 51 (2001).

[6] GISB standard 1.3.78 provides that implementation of TTT not take place until eight months after publication of the TTT standards in the GISB standards manual (which took place on August 18, 2001), and the Commission proposes to adopt that recommendation.

[7] In Version 1.5, GISB made the following changes to its standards. It added Principles 1.1.20, 1.1.21 and 2.1.5; Definitions 1.2.13 through 1.2.19, 2.2.2, 2.2.3, and 4.2.20; Standards 1.3.64 through 1.3.78, 2.3.36 through 2.3.50, 3.3.26, 4.3.86, 4.3.87, and 5.3.43; and Data Sets 2.4.7 through 2.4.16. It revised Standards 1.3.2, 1.3.54, 1.3.61, 1.3.63, 2.3.30, 2.3.32, 2.3.34, 4.3.16, 4.3.23, 4.3.35, 5.3.2, 5.3.22, 5.3.24, 5.3.31, 5.3.32, and 5.3.33, and Data Sets 1.4.1 through 1.4.7, 2.4.1, 2.4.3 through 2.4.6, 3.4.1, 3.4.2, 3.4.4, 5.4.1 through 5.4.10, 5.4.12, 5.4.13, and 5.4.16 through 5.4.19. It deleted Principles 4.1.5 and 4.1.8, and Standard 4.3.77.

[8] 18 CFR 284.12 (c)(2)(ii) (2001).

[9] The Commission also is continuing its previous practice by proposing to exclude standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas (18 CFR 284.12(c)(2)(i) (OBAs), (c)(2)(ii) (netting and trading of imbalances), and (c)(3)(v) (record retention)), so that incorporation of the GISB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

[10] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[11] Pub. L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[12] 18 CFR 284.12 (c)(1)(ii) (2001); Order No. 637, 65 FR at 10191, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297.

[13] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. See 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1 (2001). Under the GISB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1 (2001).

[14] 18 CFR 284.12(b)(1)(i) (2001), Nominations Related Standard 1.3.2 (2001).

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subject to the Commission's bidding requirements.[15]

13. With respect to pre-arranged capacity release transactions not subject to bidding, the Commission found that releasing shippers should be able to inform the pipeline of such prearranged deals at any of the four nomination opportunities and the replacement shipper should be able to submit a nomination at the time the pipeline is informed of the release. For example, if the pipeline is informed of a capacity release transaction at the 6 p.m. CCT timely nomination timeline, the replacement shipper should be permitted to submit an evening nomination for the next gas day at 6 p.m.[16]

14. With respect to capacity release transactions subject to bidding, the Commission found that shippers should be able to nominate coincident with the award of capacity. For example, under the existing Version 1.4 of the GISB standards, award notification for short-term biddable capacity release transactions is made at 5 p.m.[17] The Commission found that replacement shippers should be permitted to submit a nomination at the 5 p.m. Intra-Day 2 cycle for that capacity award.[18]

15. In Version 1.5, GISB made a number of changes to its timeline for capacity release transactions (standard 5.3.2). It reconfigured its timeline for short-term biddable releases (less than one year) so that posting of bidding will begin at 12 p.m. on a business day with the award of capacity made by 3:00 p.m.[19] The standard then provides that "contract issued within one hour of award posting (with a new contract number, when applicable); nomination possible beginning at the next available nomination cycle for the effective date of the contract. (Central Clock Time)." Thus, under the reconfigured timeline a shipper awarded capacity at 3 p.m. can make a nomination at the next available nomination cycle (the 5 p.m. Intra-Day 2 Nomination cycle). This appears to be the same result obtained under the Commission's implementation of Order No. 637.

16. However, with respect to non-biddable pre-arranged capacity release transactions not subject to bidding, the GISB Version 1.5 standard differs from the implementation process established by the Commission. Under the GISB standard, shippers must notify the pipeline of a pre-arranged capacity release transaction one-hour prior to the nomination deadline. For example, the standard for the Timely Nomination states: "posting of prearranged deals not subject to bid are due by 10:30 A.M. on a Business Day; contract issued within one hour of award posting (with a new contract number, when applicable); nomination possible beginning at the next available nomination cycle for the effective date of the contract. (Central Clock Time)." The requirement for one-hour prior notice is not consistent with the Commission's implementation of Order No. 637 in which the Commission required pipelines to permit notice coincident with the nomination deadline (*e.g.*, 11:30 a.m. notice for an 11:30 a.m. nomination).

17. The Commission requests comment on whether it should adopt the one-hour prior notice requirement in GISB standard 5.3.2. Comments should discuss the benefits or detriments of adopting the one-hour prior notice requirement notwithstanding that pipelines already are required to implement scheduling equality without such prior notice.

18. In addition, the Commission is proposing to eliminate existing § 284.12(a) dealing with Electronic Bulletin Boards (EBBs) to clean up its regulations. In 1998, in Order No. 587–G, the Commission required pipelines to provide all electronic information and to conduct electronic transactions using the public Internet.[20] At that time, the Commission retained its regulations governing EBBs to provide for a transition period as pipelines began the process of converting from EBBs to Internet communication. At this time, the transition to Internet communication should be complete and continuation of regulations regarding EBB communication, therefore, no longer appears necessary.[21]

19. Notice of Use of Voluntary Consensus Standards

20. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation containing a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this NOPR, the Commission is proposing to incorporate by reference Version 1.5 (August 18, 2001) of the voluntary consensus standards developed by GISB.

21. Information Collection Statement

22. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs for implementing GISB's Version 1.5 standards which incorporate the most recent and up-to-date standards governing electronic communication including new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637. The burden estimates are primarily related to start-up for implementing the latest version of the standards and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534

[15] Colorado Interstate Gas Company, 95 FERC ¶61,321, at 62,111–12 (2001), 97 FERC ¶61,011 (2001). *See, e.g.*, Kinder Morgan Interstate Gas Transmission, LLC, 97 FERC ¶61,062 (2001); MIGC, Inc., 97 FERC ¶61,042 (2001); National Fuel Gas Supply Corporation, 96 FERC ¶61,182, at 61,804–805 (2001); Paiute Pipeline Company, 96 FERC ¶61,167, at 61,748–49 (2001); Transcontinental Gas Pipe Line Corporation, 96 FERC ¶61, 352, at 62,323 (2001); Trailblazer Pipeline Company, 97 FERC ¶61,056 (2001).

[16] Colorado Interstate Gas Company, 95 FERC ¶61,321, at 62,111–12 (2001).

[17] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.2 (2001).

[18] Colorado Interstate Gas Company, 95 FERC ¶61,321, at 62,111–12 (2001).

[19] Biddable releases of one year or more have a three day bidding period.

[20] 18 CFR 284.12(c)(3)(i)(A) (2001).

[21] Current §§ 284.12(c)(3)(ii) and (v) contain similar posting requirements for Internet communication as existing § 284.12(a) does for EBBs, so retention of § 284.12(a) would be duplicative and unnecessary.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	93	1	4,526	420,918

Total annual Hours for Collection
(Reporting and Recordkeeping, (if appropriate) = 424,452

23. Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$198,857	$23,684,934
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	198,857	23,684,934

24. OMB regulations[22] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business.))

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

25. *Necessity of Information:* This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by GISB (Version 1.5). These standards include new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637. The implementation of these standards are necessary to increase the efficiency of the pipeline grid.

26. The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

27. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

28. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425 email: michael.miller@ferc.fed.us].

29. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7318, fax: (202) 395–7285].

30. Environmental Analysis

31. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[23] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[24] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[25] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

32. Regulatory Flexibility Act Certification

33. The Regulatory Flexibility Act of 1980 (RFA)[26] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

34. Comment Procedures

35. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals

[22] 5 CFR 1320.11.

[23] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[24] 18 CFR 380.4.

[25] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[26] 5 U.S.C. 601–612.

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that commenters may wish to discuss. Comments are due February 1, 2002. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

36. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM96–1–020.

37. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Website at *www.ferc.gov* and click on "Make An E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

38. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us*.

39. Document Availability

40. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's homepage *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

41. From FERC's homepage on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

42. CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

43. CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

44. RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's homepage using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

45. User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

46. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended as follows:

§ 284.12 [Amended]

a. Paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

b. In newly redesignated paragraphs (a)(1)(i), (ii), (iii), and (v), revise all references to "Version 1.4, August 31, 1999" to read "Version 1.5, August 18, 2001."

c. In newly redesignated paragraph (a)(1)(iv), revise all references to "Version 1.4, November 15, 1999" to read "Version 1.5, August 18, 2001."

[FR Doc. 01–32004 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142299–01] [REG–209135–88]

RIN 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this proposed regulation.

DATES: Written or electronic comments must be received by April 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU [REG–142299–01], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU [REG–142299–01], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent to the IRS Internet site at: *http://www.irs.gov/taxregs/reglist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa A. Fuller, (202) 622–7750; concerning submissions of comments, Donna Poindexter (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 4, 2002. Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)–6T and 1.337(d)–7T. This information is necessary for the IRS to determine whether section 1374 treatment or deemed sale treatment is appropriate for the entity for which the regulation applies. The collection of information is required to obtain a benefit, i.e., to elect section 1374 treatment in lieu of deemed sale treatment in § 1.337(d)–6T, or to elect deemed sale treatment in lieu of section 1374 treatment in § 1.337(d)–7T. The likely respondents for deemed sale elections are C corporations. The likely respondents for section 1374 elections are RICs and REITs.

Section 1.337(d)–6T provides that a section 1374 election is made by filing a statement and attaching it to any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. Alternatively, a RIC or REIT can also make a section 1374 election by informing the IRS prior to January 2, 2002 of its intent to make a section 1374 election. Section 1.337(d)–7T provides that a deemed sale election is made by filing a statement and attaching it to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Estimated total annual reporting burden: 70 hours.

Estimated average annual burden per respondent: 30 minutes.

Estimated number of respondents: 140.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** revise and add the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations generally provide that, if property owned by a C corporation or property subject to section 1374 owned by a RIC, a REIT, or an S corporation becomes the property of a RIC or REIT by (1) the qualification of the C corporation as a RIC or REIT, or (2) certain transfers of property to a RIC or REIT, then the RIC or REIT will be subject either to section 1374 treatment or the C corporation will be subject to deemed sale treatment. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. When a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–6 also issued under 26 U.S.C. 337.

Section 1.337(d)–7 also issued under 26 U.S.C. 337. * * *

Par. 2. Sections 1.337(d)–6 and 1.337(d)–7 are added to read as follows:

§ 1.337(d)–6 New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.

[The text of proposed § 1.337(d)–6 is the same as the text of § 1.337(d)–6T published elsewhere in this issue of the **Federal Register**.]

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

[The text of proposed § 1.337(d)–7 is the same as the text of § 1.337(d)–7T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–31968 Filed 12–31–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–312b; FRL–7118–2]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District (MDAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from cement kilns. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by February 1, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812. Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the local rule: MDAQMD Rule 1161. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 01–32100 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 1
Wednesday, January 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice, renewal of charter, and request for nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Lake Tahoe Federal Advisory Committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region. Nominations of persons to serve on the Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by February 1, 2002.

ADDRESSES: Send nominations and applications with telephone numbers for membership on the Committee to: FACA Nomination, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, California 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson, Forest Supervisor, or Jeannie Stafford, Environmental Improvement Program and Partnership Liaison, Lake Tahoe Basin Management Unit, telephone (530) 573–2773.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to renew the charter of the Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives. Representatives will be selected from the following sectors: (1) Gaming, (2) environmental, (3) national environmental, (4) ski resorts, (5) North Shore economic/recreation, (6) South Shore economic/recreation, (7) resort associations, (8) education, (9) property rights advocates, (10) member-at-large, (11) member-at-large, (12) science and research, (13) local government, (14) Washoe Tribe, (15) State of California, (16) State of Nevada, (17) Tahoe Regional Planning Agency, (18) labor, (19) transportation, and (20) member-at-large. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee. The Committee Chair will be recommended by the Committee and approved by the Secretary. Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: December 21, 2001.

Maribeth Gustafson,

Acting Forest Supervisor.

[FR Doc. 01–32138 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Deep Management Project, Colville National Forest, Stevens County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to conduct vegetation and road management, and implement riparian and wetlands management. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Proposed Action is within portions of the South Deep Creek, Little Smackout Creek, Meadow Creek, Rocky Creek, Kolle Creek, Clinton Creek, Rogers Creek, Kenny Creek, and Scott Creek subwatersheds on the Three Rivers Ranger District and scheduled for implementation in fiscal year 2003. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by February 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Sherri Schwenke, District Range, 255 West 11th, Kettle Falls, Washington, 99141. Comments may also be sent by FAX (509–738–7701). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Sherri Schwenke, District Ranger, or to Tom Pawley, Planning Assistant, 255 West 11th Ave, Kettle Falls, Washington 99141 (phone: 509–738–7700).

SUPPLEMENTARY INFORMATION: The Proposed Action includes vegetation management using commercial and precommercial thinning on approximately 6,100 acres. Prescribed Fire may be applied on up to 6,500 acres. The road management projects will include local governments and adjacent landowners in the evaluation and development of a road strategy for these drainages. Part of that strategy will include both building and closing roads.

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This proposal includes construction of approximately 19 miles of new roads. Research studies are proposed as a part of the South Deep Management Project in conjunction with the University of Washington, Washington State University, the University of Idaho, and the U.S. Forest Service Pacific Northwest Research Station. Studies concerning soil compaction, erosion, sedimentation resulting from active stream corridor treatments, silviculture, harvesting systems, and use of a computerized landscape management system are included in the project design.

The project would be located approximately 15 miles northeast of Colville, Washington, along the Aladdin Highway. The South Deep Management Project is proposed within the South Deep Creek, Little Smackout Creek, Meadow Creek, Rocky Creek, Kolle Creek, Clinton Creek, Rogers Creek, Kenny Creek, and Scott Creek subwatershed on the Three Rivers Ranger District. This analysis will evaluate a range of alternatives for implementation of the project activities. The area being analyzed is approximately 38,300 acres, of which 29,740 acres are National Forest System lands. The other ownership areas are included only for analysis of effects. The project area does not include any wilderness, RARE II, or other inventoried roadless land.

The preliminary issues that have been identified include: water quality and watershed restoration; forest stand density; uses of unroaded areas; forest road management and maintenance; and soil stabilization. A range of alternatives will be considered, including a no-action alternative.

Initial scoping began in October, 1998. The scoping process will include the following: identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 2002. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*,, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by December, 2002. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Responsible Official is Colville National Forest Supervisor, Nora Rasure. She will decide which, if any, of the alternatives will be implemented. Her decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 17, 2001.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 01–32171 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trout-West Fuels Reduction Project, Pike and San Isabel National Forests, Teller, Douglas and El Paso Counties, Colorado

AGENCY: Forest Service, United States Department of Agriculture (USDA–FS).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA–FS will prepare an Environmental Impact Statement (EIS) to analyze and disclose the potential impacts of a site-specific proposal to reduce hazardous fuels on National Forest Lands in the Trout-West area. Management direction guiding the proposed project is contained within the 1984 Pike and San Isabel National Forests; Comanche and Cimarron National Grasslands Land and Resource Management Plan, and the 2000 National Fire Plan. The National Fire Plan identified Woodland Park, Colorado as an urban interface community at risk from catastrophic wildfire. The proposed project is intended to decrease the threat of wildfire to Woodland Park and surrounding communities by reducing hazardous fuels within the urban interface and municipal watershed. Approximately 32,000 acres are proposed for treatment. This proposal is scheduled for implementation for ten years following the issuance of a Record of Decision (ROD), approximately 2003 to 2013.

DATES: Issues and comments concerning the Proposed Action must be *received* in writing before February 8, 2002. Correspondence should be addressed to Rochelle Desser, Trout West Team Leader, 201 Caves Highway, Cave Junction, OR 97523.

FOR FURTHER INFORMATION CONTACT: Rochelle Desser in Oregon at 541–592–4075 (*rdesser@fs.fed.us*) or Bob Post at Fairplay, Colorado, 719–836–2031, (*bpost@fs.fed.us*). Information about the project will be posted on the Pike-San Isabel National Forest Web site: (*http://www.fs.fed.us/r2/psicc/pp/*).

SUPPLEMENTARY INFORMATION: The Trout and West Creek Watersheds contain approximately 137,990 acres, located within all or parts of T.9S, R.68W; T.9S, R69W; T.9S, R70W; / T.10S, R.68W; T.10S, R69W; T.10S, R70W; / T.11S, R.68W; T.11S, R69W; T.11S, R.70W; T.11S, R.71W; / T.12S, R.68W; T.12S, R69W; T.12S, R.70W; T.12S, R.71W; / T.13S, R.69W; T.13S, R.70W. The analysis area boundary is bordered to the north by Devils Head Peak and a ridge between Ruby and Bridge Gulch, the eastern boundary is the Rampart Range Road, the southern boundary is bordered by Raspberry Mountain, and the western boundary is just west along County Road 51 to County Road 3 and following north to the west side of Sheepnose Mountain and Thunder Butte connecting at the confluence of Trout and West creek.

The Purpose and Need for the Proposed Action is to decrease the threat of wildfire to Woodland Park and neighboring communities by reducing hazardous fuels within the urban interface and adjacent National Forest lands. Project goals include promoting sustainable forest conditions; encouraging aspen regeneration; reducing risk of erosion and sediment to streams; maintaining municipal water quality; maintaining quality of life; and meeting Forest Plan Standards and Guidelines.

A mix of fuel treatments is proposed across seven project areas within the Trout and West Creek Watersheds including thinning, machine and hand slash piling, and prescribed burning. Private land including developed subdivisions occurs within the seven project areas, however only National Forest within these project areas is considered for treatment. These treatments are intended to reduce the canopy closure, continuity and overall biomass to create more moderate fire behavior if a wildfire were to start in the area.

Some of the trees that need to be cut may be sold as fuel wood, Christmas trees, post and poles, and/or saw logs; however, many areas are not expected to yield a commercial byproduct.

The EIS will analyze the potential effects of the Proposed Action on physical, biological, and social issues including ecosystem health, fuel loading and fire risk, soil and water, air quality, species viability, noxious weeds, cultural resources, and economics. Additional issues may be identified through the scoping process. The Forest Service will develop alternatives to respond to significant issues with the Proposed Action. A no action alternative will be considered.

Public participation is important throughout the analysis. The first time is during the scoping period, when the Forest Service invites input from Federal, State, and local agencies, Indian tribes, and other individuals who may be interested in or affected by the Proposed Action. Please refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1501.7 for more information about scoping.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review June 2002. A comment period for the Draft EIS will be 45 days from the date that the EPA published the Notice of Availability for appears in the **Federal Register**.

The Forest Service believes it is important to give Reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a Draft EIS must structure their participation in the environmental review process of the proposal so that it is specific, meaningful, and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. Please refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 for more information about how to comment on the upcoming EIS.

After the 60-day comment period ends on the draft EIS, comments will be considered and analyzed by the Agency in preparing the final EIS. The final EIS is scheduled for completion by September 2002. In the final EIS, the Forest Service is required to respond to substantive comments and responses during the comment period.

The Responsible Official for this project is the Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands National Forest Supervisor. The Responsible Official will document the decision and rationale in a Record of Decision (scheduled for November 2002). The Forest Service decision will be subject to appeal under regulations at 36 CFR 215.

Dated: December 10, 2001.

William A. Wood,

Deputy Forest Supervisor.

[FR Doc. 01–32140 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington Resource Advisory Committee (RAC) will meet on January 23, 2002 in Pomeroy, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 23, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Forest Service office located at 71

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West Main Street, Pomeroy, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members and becoming familiar with duties and responsibilities. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 19, 2001.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 01–32202 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on January 30, 2002 in Dayton, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 30, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Youth Building located at the Columbia County Fairgrounds, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members and becoming familiar with duties and responsibilities. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 20, 2001.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 01–32203 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on January 29, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 29, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the second meeting of the committee, and will focus on establishing meeting norms and committee operating guidelines, as well as the process for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 01–32136 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on February 5, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 5, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail:*lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on developing the overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 01–32137 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 25, 2002, at the South Lake Tahoe City Council Chambers, 1052 Tata Lane, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 25, 2002, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the South Lake Tahoe City Council Chambers, 1052 Tata Lane, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include a review of the Sierra Nevada Forest Plan Amendment, Success of Committee advice, Air Resources Board presentation, and update by HUD on the Chodo project, a long term urban lot strategy, status of the Forest Service land acquisition program at Lake Tahoe, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 21, 2001.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 01–32139 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rouge/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Wednesday, January 30, and Thursday, January 31, 2002. The meeting is scheduled to begin at 9:30 a.m. on January 30, and at 8:30 a.m. on January 31. Both meetings will conclude at approximately 4:00 p.m. The meetings will be held at the Grants Pass Inn and Suites; 243 NE Morgan Lane, Grants Pass, Oregon; (541) 472–1808. The tentative agenda for January 30 includes: (1) FACA Overview; (2) Roles and Responsibilities for Advisory Committees; (3) Timelines for projects related to the Secure Rural Schools and Community Self-Determination Act of 2000; (4) Election of RAC chairperson; and (5) Public Forum. The Public Forum is tentatively scheduled to begin at 3:20 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. The tentative agenda for January 31 includes: (1) Presentation of projects proposed by the Forest Service; (2) Public Forum. The Public Forum is tentatively scheduled to begin at 3:45 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the January 30 and 31 meetings by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957–3200.

Dated: December 21, 2001.

Richard Sowa,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 01–32141 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on January 28, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 28, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, PO Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The focus of the meeting is to continue the development of an overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 01–32134 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on February 4, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 4, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, PO Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 01–32135 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place

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in Washington, DC on Monday, Tuesday, and Wednesday, January 7–9, 2002, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, January 7, 2002

11 a.m.–Noon. Ad Hoc Committee—Public Rights-of-Way (Closed Meeting).
1:30 p.m.–5 p.m. Ad Hoc Committee—Public Rights-of-Way (Closed Meeting).

Tuesday, January 8, 2002

9:30 a.m.–10:30 a.m. Committee of the Whole—Recreation Facilities Final Rule (Closed Meeting).
10:30 a.m.–Noon. Technical Programs Committee.
1:30 p.m.–5 p.m. Ad Hoc Committee—Passenger Vessels (Closed Meeting).

Wednesday, January 9, 2002

9 a.m.–10:30 a.m. Planning and Budget Committee.
10:30 a.m.–Noon. Executive Committee.
1:30 p.m.–3 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, extension 113 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the March 7, and May 9, 2001 Board Meetings.
- Technical Programs Committee: Construction tolerances, and on-going research and technical assistance projects.
- Planning and Budget Committee: Budget spending plan for fiscal year 2002; fiscal year 2003; and out-of-town meetings.
- Executive Committee: Executive Director's report; and nominating committee.

Closed Meeting

- Ad Hoc Committee on Public Rights-of-Way.
- Committee of the Whole; Recreation Facilities.
- Ad Hoc Committee on Passenger Vessels.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

David M. Capozzi,
Director, Office of Technical and Information Services.

[FR Doc. 01–32235 Filed 12–31–01; 8:45 am]
BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of January 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings Period	
Brazil:	
Brass Sheet and Strip, A–351–603	1/1/01–12/31/01
Stainless Steel Wire Rod, A–351–819	1/1/01–12/31/01
Canada: Brass Sheet and Strip, A–122–601	1/1/01–12/31/01
France:	
Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/01–12/31/01
Stainless Steel Wire Rods, A–427–811	1/1/01–12/31/01
Taiwan: Stainless Steel Cooking Ware, A–583–603	1/1/01–12/31/01
The People's Republic of China: Potassium Permanganate, A–570–001	1/1/01–12/31/01
The Republic of Korea: Stainless Steel Cooking Ware, A–580–601	1/1/01—12/31/01
Countervailing Duty Proceedings	
Brazil: Brass Sheet and Strip, C–351–604	1/1/01—12/31/01
Taiwan: Stainless Steel Cooking Ware, C–583–604	1/1/01—12/31/01
The Republic of Korea: Stainless Steel Cooking Ware, C–580–602	1/1/01—12/31/01
Suspension Agreements	
Japan: Sodium Azide, A–588–839	1/1/01—12/31/01

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of January 2002. If the Department does not receive, by the last day of January 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 19, 2001.

Holly A. Kuga,
Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 01–31838 Filed 12–31–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("Sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering the same antidumping duty orders.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2001). Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for conducting sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

Initiation of Reviews

In accordance with 19 CFR 351.218 we are initiating sunset reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–570–844	731–TA–741	China	Melamine Institutional Dinnerware
A–560–801	731–TA–742	Indonesia	Melamine Institutional Dinnerware
A–583–825	731–TA–743	Taiwan	Melamine Institutional Dinnerware

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's "Sunset" Internet website at the following address: *http://ia.ita.doc.gov/sunset*

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service lists before filing any submissions. The Department will make additions to and/or deletions from the service lists provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service lists all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset reviews. The

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Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset reviews must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 18, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–32245 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On November 21, 2001, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 66 FR 58436 (November 21, 2001) (*Preliminary Results*). We have now completed that review. For these final results, as in the *Preliminary Results*, we have determined that the restructured manufacturing and marketing joint ventures, Showa DDE Manufacturing KK (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan), are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene, for purposes of determining antidumping liability in this proceeding.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (2001).

Background

In a letter dated September 27, 2001, DuPont Dow Elastomers L.L.C. (Dupont Dow) and DDE Japan advised the Department that in 1998, SDP was restructured. The production portion of SDP was renamed SDEM. Further, the marketing end of SDP's business was separated from SDEM and renamed DDE Japan. According to Dupont Dow and DDE Japan, these entities were renamed to reflect Dupont Dow's participation in the joint ventures and to make the companies more globally competitive. Nevertheless, like SDP and similar to Showa Neoprene, the two firms, SDEM and DDE Japan, remained jointly owned ventures of Dupont Dow and Showa Denko KK.

On November 21, 2001, the Department published a notice of initiation and preliminary results of a changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan. *See Preliminary Results*. Interested parties were invited to comment on the preliminary results. On December 11, 2001, Dupont Dow Elastomers L.L.C. and DDE Japan Kabushiki Kaisha submitted comments. *See* Comments section below.

Scope of Review

Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and for U.S. Customs Service purposes. The written descriptions remain dispositive.

Successorship

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (Canadian Brass). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Therefore, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We have examined the information provided by Dupont Dow and DDE Japan in their September 27, 2001 letter and determined that SDEM and DDE Japan are the successor-in-interest companies to SDP and its predecessor, Showa Neoprene. The management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of SDP, and before that, Showa Neoprene. Therefore, we determine that the new joint venture entities essentially operate in the same manner as the predecessor companies of SDP and Showa Neoprene.

Final Results of Review

Based on our analysis in the *Preliminary Results*, we find that effective January 1, 1998, the restructured manufacturing and marketing joint ventures, SDEM and DDE Japan, are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene. Further, SDEM and DDE Japan should be given the same antidumping duty treatment as SDP and its predecessor, Showa Neoprene, *i.e.*, zero percent antidumping duty cash deposit rate.

Comment: Successorship Effective Date

DuPont Dow and DDE Japan state that the final determination should explicitly indicate that, according to the facts on the record, SDEM and DDE Japan became the successor-in-interest companies to SDP and its predecessor, Showa Neoprene, effective January 1, 1998. *Department's Position*: We agree with DuPont Dow and DDE Japan and the effective date of January 1, 1998 is reflected in the Final Results of Review section below.

Cash Deposit

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next relevant administrative review. We will instruct the U.S. Customs Service accordingly.

Notification

This notice also serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and Sec. 351.216 of the Department's regulations.

Dated: December 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–32244 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review: Silicon Metal From the People's Republic of China

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

In accordance with 19 CFR 351.213(b)(2), on June 29, 2001, the Department received the timely and properly filed June 28, 2001 request from Groupstars Chemical Company, Ltd., that we conduct a new shipper review of its sales of silicon metal. On July 31, 2001, the Department initiated a new shipper review of the antidumping duty order on silicon metal for the period of review (POR) of June 1, 2000 through May 31, 2001 (66 FR 41508).

Extension of Time Limit for Preliminary Results

Section 351.214(i)(1) of the Department's regulations requires the Department to issue preliminary results of a new shipper review within 180 days of the date of initiation. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days under section 351.214(i)(2) of the Department's regulations. Because of the problems the respondent has encountered in meeting the Department's filing requirements and the resultant delay to the analysis and verification, we find this review to be extraordinarily complicated.

Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the 180-day time limit to 300 days. Since the 300th day falls on a federal holiday, the due date for the preliminary results is now the next business day, May 28, 2002. The final results will continue to be due 90 days after the date of issuance of the preliminary results.

Dated: December 20, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–32248 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–818]

Certain Pasta From Italy: Amended Final Results of the Fourth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment of final results of Countervailing Duty Administrative Review.

SUMMARY: On December 12, 2001, the Department of Commerce published in the **Federal Register** its final results of the fourth administrative review of the countervailing duty order on certain pasta from Italy for the period January

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1 through December 31, 1999 (66 FR 64214). On December 10, 2001, we received a timely filed ministerial error allegation. Based on our analysis of this information, the Department of Commerce has revised the net subsidy rate for N. Puglisi & F. Industria Paste Alimentari S.p.A.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Meg Weems or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or 482–1778, respectively.

Corrections

N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi")

On December 10, 2001, respondent Puglisi timely filed a ministerial error allegation. Puglisi states that, with respect to a Law 64/86 industrial development loan ("IDL"), the Department of Commerce ("the Department") failed to deduct loan guarantee payments from the gross loan subsidy received by Puglisi during the period of review, resulting in a clerical error. Puglisi further explains that the Department added the loan guarantee payments to the "total amount of interest and fee payments made" and then again added the loan guarantee payments to the "total benchmark interest and fees," thereby nullifying the deduction of these fees from the countervailable subsidy. Puglisi suggests that the clerical error be corrected by either not including the annual fee payments in the "benchmark interest and fee amounts," or by deducting the annual fee payments from the gross countervailable subsidy for the loan. The petitioner has not commented on this ministerial error allegation.

We agree with Puglisi that the Department miscalculated the duty rate for one of Puglisi's Law 64/86 IDLs by inadvertently nullifying the deduction of the loan guarantee fees from the countervailable subsidy. We have corrected this error for the amended final results by deducting the annual fee payments from the "total interest and fee payments made," while excluding them from the "benchmark interest and fee amounts."

In the final results, we specified a total duty rate of 7.18 percent for Puglisi. In calculating this rate, we erroneously calculated the subsidy rate for Puglisi's Law 64/86 IDL to be 0.14 percent. The Law 64/86 IDL subsidy rate should have been 0.06 percent.

Amended Final Results of Review

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct the *ad valorem* rate for Puglisi to be 7.12 percent.

The Department will instruct the Customs Service ("Customs") to assess countervailing duties on all appropriate entries on or after January 1, 1999, and on or before December 31, 1999. The Department will issue liquidation instructions directly to Customs. The amended cash deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This amendment to the final results of the countervailing duty administrative review is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1), 19 CFR 351.213, and 19 CFR 351.221(b)(5)).

Dated: December 26, 2001.

Richard W. Moreland,

Acting Assistant Secretary for, Import Administration.

[FR Doc. 01–32247 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122701A]

Proposed Information Collection; Comment Request; Deep Seabed Mining Regulations for Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph P. Flanagan at 301-713-3155, ext. 201 (or via Internet at joseph.flanagan@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. Persons with licenses are required to conduct monitoring and make reports, and they may request revisions to or transfers of licenses.

II. Method of Collection

Paper submissions are used.

III. Data

OMB Number: 0648-0145.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 2000-4000 hours per application (no applications are expected) and 20 hours per report.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost to Public: $120.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–32239 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072401A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Marine Mammals Incidental to Power Plant Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a renewal of a Letter of Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that a Letter of Authorization (LOA) to unintentionally take small numbers of pinnipeds incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH (Seabrook Station) has been issued to the North Atlantic Energy Service Corporation (North Atlantic).

DATES: Effective from October 19, 2001, until June 26, 2002.

ADDRESSES: A copy of the application, Environmental Assessment, LOA, and other materials used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona Perry Roberts, (301) 713–2322, ext 106; Jonathan Wendland, (978) 281–9146.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible method of taking and the requirements pertaining to the monitoring and reporting of such taking.

Five-year regulations (effective from July 1, 1999 through June 30, 2004), including mitigation, monitoring, and reporting requirements, for the incidental taking of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH are set out in 50 CFR 216.130 through.137.

Summary of Request

NMFS received a request from North Atlantic in June 2001 for renewal of their LOA, which expired on July 2, 2000, to lethally take 20 harbor seals and 4 of any combination of gray, harp, and hooded seals incidental to power plant operations at Seabrook Station.

Permissible Methods of Taking

According to 50 CFR 216.132, LOAs issued to North Atlantic for Seabrook Station authorize the incidental, but not intentional, take of harbor, gray, harp, and hooded seals in the course of operating the station's intake cooling water system. For a more complete description of the intake systems utilized at Seabrook Station please refer to the final rule (64 FR 28114, May 25, 1999).

Mitigation Requirements

NMFS, in the May 25, 1999, final rule (64 FR 28114), allowed North Atlantic to use the 5-year authorization period (July 1, 1999 through June 30, 2004) to fully explore any feasible mitigation methods, and if methods were not found to be suitable, to explore and undertake, in conjunction with NMFS, steps to promote the conservation of the population of Gulf of Maine seals as a whole.

Monitoring and Reporting Requirements

Monitoring under the renewed LOA must include: (1) twice daily visual inspection of the circulating water and service water forebays; (2) daily inspections of the intake transition structure from April 1 through December 1, unless weather conditions prevent safe access to the structure; (3) screen washings once per day during the peak months of seal takes and twice a week during non-peak months of seal takes; and, (4) examination of the screen wash debris to determine if any seal remains are present.

Seal takes must be reported to NMFS through both oral and written notification. NMFS must be notified via telephone by the close of business on the next day following the discovery of any marine mammal or marine mammal parts. Written notification to NMFS must be made within 30 days and must include the results of any examinations conducted by qualified members of the Marine Mammal Stranding Network as well as any other information relating to the take.

National Environmental Policy Act

NMFS issued an Environmental Assessment (EA) in 1998, in conjunction with the notice of proposed authorization. As a result of the findings made in the EA, NMFS concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. Therefore, preparation of an environmental impact statement on these actions was not required by Section 102(2) of the National Environmental Policy Act or its implementing regulations. Copies of the 1998 EA and the Finding of No Significant Impact are available upon request (see **ADDRESSES**).

Determinations

NMFS has determined (see 64 FR 28114, May 25, 1999) that the taking of up to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals, annually from July 1, 1999, through June 30, 2004, will have no more than a negligible impact (as defined in 50 CFR 216.3) on these stocks of marine mammals. The best scientific information available indicates that since 1981, the Western North Atlantic harbor seal stock has had an average annual rate of increase of 4.2 percent (Waring *et al.*, 2000). In addition, the Western North Atlantic stocks of gray, harp, and hooded seals also appear to be increasing in abundance (Waring *et al.*, 1999, 2000). The small number of takes at Seabrook Station relative to current population estimates is unlikely to reduce the rate of population growth for any of these pinniped stocks.

According to North Atlantic reports received in NMFS' Northeast Region, no seals have been entrapped since the installation of Seal Deterrent Barriers in August 1999.

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Authorization

In recognition of the timely receipt and acceptance of the reports required under 50 CFR 216.135 and a determination that the mitigation measures required pursuant to 50 CFR 216.134 and the LOA have been undertaken, NMFS issued an LOA to the North Atlantic Energy Services Corporation on June 26, 2001, for the taking of harbor seals, gray seals, harp seals, and hooded seals incidental to routine operations of the Seabrook Station nuclear power plant, provided the mitigation, monitoring, and reporting requirements described in 50 CFR 216.134 through 135 and in the LOA are undertaken.

Dated: December 20, 2001.

David Cottingham

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–32238 Filed 12–31–01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121701C]

Endangered and Threatened Species; Amendment of Permit # 1291

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an amended application for a scientific research permit (1291); Request for comments.

SUMMARY: Notice is hereby given that NMFS has received an amended application for an ESA section 10(a)(1)(A) scientific research permit from the U.S. Geological Survey at Cook, WA (USGS).

DATES: Written comments on the amended permit application must be received no later than 5pm Pacific standard time on February 1, 2002.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: For permit 1291: Robert Koch, Portland, OR (ph: 503-230-5424, Fax: 503–230–5435, e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species and evolutionary significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR).

Steelhead (*O. mykiss):* threatened LCR.

Amended Application Received

Notice was published on February 21, 2001 (66 FR 11002) that the Columbia River Research Laboratory, USGS applied for a 5–year scientific research permit (1291) for annual takes of ESA-listed salmon and steelhead juveniles associated with a scientific research project at John Day, The Dalles, and Bonneville Dams on the lower Columbia River in the Pacific Northwest. The purpose of the research is to monitor juvenile fish movement, distribution, behavior, and survival from John Day Dam downstream past Bonneville Dam using radiotelemetry technology. The research will benefit ESA-listed fish species by providing information on spill effectiveness, forebay residence times, and guidance efficiency under various flow regimes that will allow Federal resource managers to make adjustments to bypass/collection structures to optimize downriver migrant survival at the hydropower projects. NMFS has received an amended application from USGS to include annual takes of juvenile, threatened, LCR chinook salmon and juvenile, threatened, LCR steelhead associated with the fish sampling at Bonneville Dam. ESA-listed salmon and steelhead juveniles are proposed to be obtained by Smolt Monitoring Program personnel at Bonneville Dam, handled, and released or implanted with radio transmitters, transported, held for as long as 24 hours, released, and tracked electronically. Smolt Monitoring Program personnel are authorized to collect ESA-listed juvenile fish under a separate take authorization. Based on the above average spawning success this year, the estimates of total out-migrants for LCR chinook and LCR steelhead are expected to exceed 300,000 juveniles. The indirect mortalities of 162 ESA-listed juvenile salmon and 11 steelhead juveniles associated with the research will not impede recovery of the species. In fact, it should assist in recovery planning by providing information on how juveniles migrate through hydro-power systems.

Dated: December 21, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–32241 Filed 12–31–01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121701B]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of periodic need for break-bulk refrigerated cargo vessels.

SUMMARY: NMFS publishes for public review and comment information provided by U.S. joint venture (JV) partners regarding their need for break-bulk refrigerated cargo vessels to support approved foreign fishing operations in the U.S. Exclusive Economic Zone (EEZ).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), any person may submit an application requesting a permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States.

This notice concerns the fact that potential U.S. JV partners have reported that they will need to have a number of break-bulk refrigerated cargo vessels permitted under section 204(d) of the Magnuson-Stevens Act to support approved foreign fishing operations in the EEZ. The JV partners have reported that arrangements for such support vessels must generally be made on short notice immediately prior to the need for transport services. The U.S. JV partners have also reported that they are not aware of the availability of any U.S.-flag break-bulk refrigerated cargo vessels and that it will therefore be necessary for them to employ foreign break-bulk refrigerated cargo vessels to support their operations.

In the interest of expediting the issuance of required permits and in accordance with section 204 (d)(3) of the Magnuson-Stevens Act, the U.S. JV partners have requested and received from the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council, a general recommendation that any break-bulk refrigerated cargo vessels required to support approved foreign fishing operations in the EEZ be permitted under section 204 (d) of the Magnuson-Stevens Act.

In accordance with section 204 (d)(3)(D) of the Magnuson-Stevens Act, NMFS is notifying interested parties of the periodic need of the U.S. JV partners for break-bulk refrigerated cargo vessels to transship processed fishery products at-sea and transport the products to points outside the United States. Further information about the requirements of the U.S. JV partners is available from NMFS (See **ADDRESSES**). Owners or operators of vessels of the United States who purport to have vessels with adequate capacity to perform the required transportation at fair and reasonable rates should indicate their interest in doing so to NMFS (See **ADDRESSES**).

In consideration of the Councils' recommendation, the apparent lack of available U.S.-flag break-bulk refrigerated cargo vessels (as reported by the U.S. JV partners), and the requirement to process and issue on short notice permits requested in accordance with section 204 (d) of the Magnuson-Stevens Act, until an owner or operator of a vessel of the United States having adequate capacity to perform the required transportation at fair and reasonable rates is identified, NMFS intends to approve as expeditiously as possible all complete applications for 204 (d) transshipment permits submitted by U.S. JV partners in support of approved foreign fishing operations in the EEZ.

Dated: December 21, 2001.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–32240 Filed 12–31–01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2001.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Minority Science and Engineering Improvement Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 200

Burden Hours: 8,000

Abstract: This Minority Science and Engineering Improvement Program application is designed to effect long-range improvement where enrollments are predominantly Alaska Native, American Indian, Blacks (not of Hispanic origin), Hispanics (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islanders or any combination of these.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32158 Filed 12–31–01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

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DATES: Interested persons are invited to submit comments on or before February 1, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren.Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2001.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Extension.
Title: Lender's Application for Payment of Insurance Claim.
Frequency: On Occasion.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:

Responses: 1,804
Burden Hours: 487

Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32159 Filed 12–31–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–035]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 26, 2001.

Take notice that on December 17, 2001, ANR Pipeline Company (ANR) tendered for filing and approval a Service Agreement between ANR and Duke Energy Fuels, L.P., pursuant to ANR's Rate Schedule FTS–1, and a related Negotiated Rate Letter Agreement. ANR requests that the Commission accept and approve the agreements to be effective December 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32190 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–8–001]

Metro Energy, L.L.C.; Notice of Filing

December 26, 2001.

Take notice that on December 14, 2001, Metro Energy, L.L.C. (Metro Energy), filed with the Federal Energy Regulatory Commission (Commission) an amendment to an application pursuant to section 203 of the Federal Power Act (16 U.S.C. 842b) and part 33 of the Commission's Regulations, originally filed on October 18, 2001 (Application). The Commission granted the authorizations requested in the Application by letter order dated November 16, 2001.

The purpose of this amendment is to reflect a change in one of the conditions stated in the Application and the Letter Order. The change, which affects the manner in which Metro Energy satisfies the regulation prong of the public interest test under Section 203 of the Federal Power Act and Section 33.2(g) of the Commission's Regulations, is that Metro Energy will not cancel its market-based rate tariff, and wishes to have the option to continue its authorization to operate as a wholesale power marketer after the transfer of ownership of the Project to the County.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 9, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32181 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3075–003]

Michigan Electric Transmission Company; Notice of Filing

December 26, 2001.

Take notice that on December 12, 2001, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the November 14, 2001 order issued in this proceeding. (The sheets make up the entirety of METC's pro forma Generator Interconnection Agreement, Tariff Sheets 125–168.)

Original Sheet Nos. 126A, 127A, 129A, 130A, 132A, 134A, 136A, 138, 141A, 143A, 146A, 150A, 152A, 154A, 155A and 159A, First Revised Sheet Nos. 125 through 135, 135A, 141, 142, 146 through 153, 153A, 155 through 166, Sub First Revised Sheet Nos. 139, 139A, 143 and 144, Second Revised Sheet Nos. 136 and 137, Second Sub Revised Sheet No. 137, Second Sub First Revised Sheet Nos. 140, 145, 154, 167 and 168, and Second Sub Original Sheet No. 145A.

The sheets are to become effective on September 19, 2001. Copies of the filing were served upon the Michigan Public Service Commission and upon those on the official service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32182 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–137–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001]

Mohawk River Funding III, L.L.C.; Notice of Issuance of Order

December 26, 2001.

Mohawk River Funding III, L.L.C. (Mohawk River) filed with the Commission, in the above-docketed proceedings, a long-term purchase power agreement under which Mohawk River will sell wholesale electric power and energy at market-based rates to USGen New England, Inc. directly, at various delivery points in the New England Power Pool. Mohawk River also requested certain waivers and authorizations. In particular, Mohawk River requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Mohawk River. On December 18, 2001, the Commission issued an order that accepted Mohawk River's application for sales of power and energy at market-based rates (Order).

The Commission's December 18, 2001 Order granted Mohawk River's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Mohawk River should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Mohawk River is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Mohawk River, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Mohawk River's issuances of securities or assumptions of liabilities....

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32183 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–561–000]

New England Power Pool; Notice of Filing

December 26, 2001.

Take notice that on December 21, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to implement alternative payment and financial assurance arrangements with Enron power Marketing, Inc. (EPMI), Enron energy Marketing Corp. (EEMC), and Enron Energy Service, Inc. (EESI) with respect to transactions occurring on and after December 21, 2001 and (2) to terminate immediately and automatically the participation by EPMI, EEMC and EESI, as the case may be, as members in NEPOOL should there be a failure to make a required payment under the filed arrangements. Those arrangements are defined in a term sheet that will be reflected in definitive Standstill Agreements which NEPOOL states will be submitted to the Commission. A December 21, 2001 effective date was requested for the arrangements.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOOL.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32184 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–194–000]

Niagara Mohawk Power Corporation; Notice of Filing

December 26, 2001.

Take notice that on December 12, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its July 10, 2001 Compliance Filing in the above docket to supply additional information requested by the Federal Energy Regulatory Commission (Commission) in its November 7, 2001 letter Order in the above referenced proceeding.

Copies of the filing have been served on all parties listed on the official service list maintained by the Commission for this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32185 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Site Visit

December 26, 2001.

On January 8–10, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (NWP) Evergreen Pipeline Project in Skagit, King, Pierce, Whatcom, Snohomish, and Lewis Counties, Washington. The site visit will start at the following dates and locations:

January 8—Sedro-Woolley Loop. Meet outside of 3-Rivers Inn Restaurant, 211 Central Ave, Sedro-Woolley, WA at 10:45 a.m.

January 9—Mt. Vernon Loop. Meet outside of 3-Rivers Inn Restaurant, 211 Central Ave, Sedro-Woolley, WA at 8 a.m.

January 10—Auburn Loop. Meet in Pepper Tree Inn Lobby, 401 8th Street S.W., Auburn, WA at 8 a.m.

Covington Loop. Meet at the Timberlane Homeowners Association, 26612–192 Ave, S.E., Covington, WA at 12:15 p.m.

Representatives of NWP will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For schedule changes and updates, contact the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32180 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–230–002, *et al.*]

Alliant Energy Corporate Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

December 21, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–230–002]

Take notice that on December 18, 2001, Alliant Energy Corporate Services, Inc., submitted to the Federal Energy Regulatory Commission (Commission) an updated market power analysis.

Comment date: January 8, 2002.

2. Progress Genco Ventures, LLC

[Docket No. ER01–2929–000 and ER01–2929–001]

Take notice that on November 30, 2002, Progress Genco Ventures, LLC tendered for filing a notice of withdrawal of its application for authorization to sell capacity, energy and ancillary services at market-based rates, filed on August 24, 2001, as amended on November 2, 2001, in the above-referenced docket.

Comment date: January 11, 2002.

3. Cinergy Services, Inc.

[Docket No. ER02–177–001]

Take notice that on December 14, 2001, Cinergy Services, Inc. (Services), The Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI), and Cinergy Power Investments, Inc. (CPI) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) an Application for Various Approvals Under Section 205 of the FPA. This filing is a supplement to a larger package of interrelated filings and associated settlements in which Applicants requested Commission action by December 31, 2001.

Comment date: January 4, 2002.

4. Virginia Electric and Power Company

[Docket No. ER02–559–000]

Take notice that on December 17, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Fifth Amended Service Agreement for Firm Point-to-Point Transmission Service designated Seventh Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Fifth Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Seventh Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests an effective date of November 15, 2001, the date the customer first requested service.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 7, 2002.

5. Exelon Generation Company, LLC

[Docket No. ER02–560–000]

Take notice that on December 17, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Bryan Texas Utilities, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment date: January 8, 2002.

6. Pacific Gas and Electric Company

[Docket No. ER02–561–000]

Take notice that on December 18, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Generator Special Facilities Agreement (GSFA) and a Generator Interconnection Agreement (GIA) between PG&E and GWF Energy LLC (GWF) (collectively Parties).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge GWF a monthly Cost of Ownership Charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 3 of this filing. PG&E has requested certain waivers.

Copies of this filing have been served upon GWF, the California Independent System Operator Corporation and the CPUC.

Comment date: January 8, 2002.

7. Reliant Energy Osceola, LLC

[Docket No. ER02–473–000 and ER02–473–001]

Take notice that on December 4, 2001, Reliant Energy Osceola, LLC (Reliant Osceola) in Docket No. ER02–473–000 as amended on December 12, 2001 in Docket No. ER02–473–001 tendered for filing a Power Purchase Agreement between reliant Osceola and Seminole Electric Cooperative, Inc. (Seminole) as a customer under reliant Osceola's market-based tariff.

Reliant Osceola requests and effective date of December 1, 2001.

Comment date: January 2, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32179 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3074–002, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 26 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in

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accordance with Standard Paragraph E at the end of this notice.

1. San Diego Gas & Electric Company

[Docket No. ER01–3074–002]

Take notice that on December 6, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing documentation that support project costs and explains its use of an annual fix charge to calculate transmission revenues.

Comment date: January 7, 2002.

2. Entergy Nuclear Vermont Yankee, LLC

[Docket No. ER02–564–000]

Take notice that on December 19, 2001, Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Entergy Nuclear VY also tendered for filing a long-term power purchase agreement between Entergy Nuclear VY and Vermont Yankee Nuclear Power Corporation (VYNPC) for acceptance as a service agreement under Entergy Nuclear VY's proposed market-based rate tariff.

Copies of this filing were served upon VYNPC, the Vermont Public Service Board, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the Council of the City of New Orleans and the Texas Public Utility Commission.

Comment date: January 11, 2002.

3. Duke Energy Enterprise, LLC

[Docket No. ER02–565–000]

Take notice that on December 19, 2001, Duke Energy Enterprise, LLC (Duke Enterprise) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Enterprise seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Enterprise also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Enterprise requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for this application of February 14, 2002, the date on which Duke Enterprise anticipates commencing the sale of test energy.

Comment date: January 11, 2002.

4. Meriden Gas Turbines LLC

[Docket No. ER02–566–000]

On December 19, 2001, Meriden Gas Turbines LLC (Meriden) filed, under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) Accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates within ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment date: January 11, 2002.

5. Consumers Energy Company

[Docket No. ER02–567–000]

Take notice that on December 19, 2001, Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Duke Power, a division of Duke Energy Corporation, (Customer) under Consumers FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of December 13, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: January 11, 2002.

6. Canal Electric Company

[Docket No. ER02–568–000]

Take notice that on December 20, 2001, Canal Electric Company tendered for filing the Eighth Amendment to the Power Contract between Canal Electric Company and Commonwealth Electric Company and Cambridge Electric Light Company, as well as revised tariff sheets to implement the Eighth Amendment, for effectiveness on January 1, 2002. The Eighth Amendment modifies the schedule of nuclear decommissioning expenses to reflect the schedule approved by the New Hampshire Nuclear decommissioning Financing Committee in its Final Report and Order issuedNovember 5, 2001.

Comment date: January 11, 2002.

7. New England Power Pool

[Docket No. ER02–569–000]

Take notice that on December 20, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-First Agreement Amending New England Power Pool Agreement (the Eighty-First Agreement), which proposes to restate the existing Financial Assurance Policy for NEPOOL Members, which is Attachment L to the NEPOOL Tariff, and the Financial Assurance Policy for NEPOOL Non-Participant Transmission Customers, which is Attachment M to the NEPOOL Tariff. The Eighty-First Agreement also proposes minor, clarifying changes to Section 21.2(d) of the Restated NEPOOL Agreement. A January 21, 2002 effective date is requested for the revised Restated NEPOOL Agreement and NEPOOL Tariff sheets reflecting the changes proposed by the Eighty-First Agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment date: January 11, 2002.

8. Allegheny Energy Service Corporationon behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–570–000]

Take notice that on December 20, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 152 to add one (1) new Customer to the Market Rate tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements for an effective date of December 1, 2001 for service to Morgan Stanley Capital Group, Inc. Confidential treatment of information in the Service Agreement has been requested. Copies of the filing have been provided to the customer.

Comment date: January 11, 2002.

9. RAMCO, Inc.

[Docket No. ER02–571–000]

Take notice that on December 19, 2001, RAMCO, Inc. (RAMCO) tendered for filing two service agreements for power sales with the California Independent System Operator for sales by RAMCO to the CAISO at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

10. Mountain View Power Partners, LLC

[Docket No. ER02–572–000]

Take notice that on December 19, 2001, Mountain View Power Partners, LLC (Mountain View) filed a Master Agreement (the Master Agreement) and a Confirmation

entered into thereunder (collectively, the "Agreement") for power sales with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of February 9, 2001. See Mountain View Power Partners, LLC, Docket No. ER01–1336–000 (delegated letter order issued February 9, 2001) (Section 205 Letter Order). The Agreement commits Mountain View to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

11. Mountain View Power Partners II, LLC

[Docket No. ER02–573–000]

Take notice that on December 19, 2001, Mountain View Power Partners II, LLC (Mountain View II) filed a Master Agreement (the Master Agreement) and a Confirmation entered into thereunder (collectively, the Agreement) for power sales with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of April 16, 2001. Mountain View Power Partners II, LLC, Docket No. ER01–1336–000 (delegated letter order issued April 16, 2001) (Section 205 Letter Order). The Agreement commits Mountain View II to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

12. Michigan Electric Transmission Company

[Docket No. ER02–574–000]

Take notice that on December 19, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreements for services associated with Network Integration Transmission Service with Sebewaing Light & Water Department and Thumb Electric Cooperative and for Firm and/or Non-Firm Point-to-Point Transmission Service with participants listed on the Commission's Service List.

Comment date: January 9, 2002.

13. American Electric Power Service Corporation

[Docket No. ER02–575–000]

Take notice that on December 19, 2001, American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Service Agreement No. 296 between AEPSC as agent for Indiana Michigan Power Company and Duke Energy Berrien, L.L.C. under American Electric Power Operating Companies' Open Access Transmission Tariff (OATT) pursuant to Section 35.15 of the Commission's regulations.

AEPSC requests an effective date of February 17, 2002 for the cancellation.

AEPSC served copies of the filing upon Duke Energy Berrien, L.L.C. c/o Duke Energy North America, LLC.

Comment date: January 9, 2002.

14. Appalachian Power Company

[Docket No. ER02–576–000]

Take notice that on December 19, 2001, Appalachian Power Company tendered for filing a Letter Agreement with Mirant Danville, L.L.C.

AEP requests an effective date of February 17, 2002.

Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment date: January 9, 2002.

15. Appalachian Power Company

[Docket No. ER02–577–000]

Take notice that on December 19, 2001, Appalachian Power Company tendered for filing a Letter Agreement with Allegheny Energy Supply Company, L.L.C.

AEP requests an effective date of February 17, 2002.

Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment date: January 9, 2002.

16. Carolina Power & Light Company

[Docket No. ER02–578–000]

Take notice that on December 19, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Oglethorpe Power Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of December 3, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 9, 2002.

17. Capital District Energy Center Cogeneration Associates

[Docket No. ER02–579–000]

Take notice that on December 19, 2001, Capital District Energy Center Cogeneration Associates (CDECCA), filed with the Federal Energy Regulatory Commission (Commission) an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

CDECCA is a general partnership that owns and operates a 56-MW generating plant located in Hartford, Connecticut.

Comment date: January 11, 2002.

18. Pawtucket Power Associates Limited Partnership

[Docket No. ER02–580–000]

Take notice that on December 19, 2001, Pawtucket Power Associates Limited Partnership (Pawtucket), filed with the Federal Energy Regulatory Commission an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

Pawtucket is a limited partnership formed under the laws of Massachusetts. Pawtucket owns and operates a 68-MW generating plant located in Pawtucket, Rhode Island.

Comment date: January 9, 2002.

19. Fitchburg Gas and Electric Light Company

[Docket No. ER02–582–000]

Take notice that on December 19, 2001, Fitchburg Gas and Electric Light Company (Fitchburg) filed a service agreement with New Hampshire Electric Cooperative, Inc. for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of November 28, 2001.

Comment date: January 9, 2002.

20. Duke Energy Southaven, LLC

[Docket No. ER02–583–000]

Take notice that on December 20, 2001, Duke Energy Southaven, LLC (Duke Southaven) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Southaven seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Southaven also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Southaven requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive

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the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date of February 18, 2002, the date on which Duke Southaven anticipates commencing the sale of test energy.

Comment date: January 10, 2002.

21. Wisconsin Public Service Corporation

[Docket No. ER02–584–000]

Take notice that on December 20, 2001, Wisconsin Public Service Corporation (WPSC), a subsidiary of WPS Resources Corp. (WPSR) on behalf of itself and Upper Peninsula Power Company (UPPCo), also a WPSR subsidiary (collectively the Operating Companies) tendered for filing Notices of Cancellation of Service Agreement Nos. 18, 19, 99 and 100. The service agreements are transmission service agreements with El Paso Merchant Energy, L.P. (El Paso) under WPS Resources Operating Companies' open Access Transmission Tariff. In conformity with Order No. 614 WPSC also tenders service agreement cover sheets that show that the service agreements have been canceled.

WPSC respectfully requests that the Commission accept its filing and allow the cancellation to become effective as of December 21, 2001.

Copies of the filing were served upon El Paso, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 10, 2002.

22. Pacific Gas and Electric Company

[Docket No. ER02–585–000]

Take notice that on December 20, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Notice of Cancellation of the PG&E First Revised Rate Schedule FERC No. 210 (Reliability Must-Run Service Agreement between Pacific Gas and Electric Company and the California Independent System Operator Corporation for Kings River Power Plant).

Copies of this filing have been served upon the California Independent System Operator Corporation (ISO) and the California Public Utilities Commission.

Comment date: January 10, 2002.

23. Public Service Company of New Mexico

[Docket No. ER02–586–000]

Take notice that on December 20, 2001, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement with the Valley Electric Association, Inc. dated December 17, 2001, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff. PNM has requested an effective date of December 6, 2001 for the agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the Valley Electric Association, Inc. and to the New Mexico Public Regulation Commission.

Comment date: January 10, 2002.

24. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–587–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company), respectfully tendered for filing the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Allegheny Energy Supply Company, LLC, designated as Service Agreement No. 4, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November 24, 2000. A copy of the filing was served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of November 30, 2001, as requested by the customer.

Comment date: January 10, 2002.

25. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–588–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company) respectfully tendered for filing the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Connecticut Municipal Electric Energy Cooperative, designated as Service Agreement No. 5, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November 24, 2000.

The Company requests an effective date of December 11, 2001, as requested by the customer.

A copy of the filing was served upon Connecticut Municipal Electric Energy Cooperative, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 10, 2002.

26. Duke Energy Enterprise, LLC

[Docket No. EG02–55–000]

Take notice that on December 29, 2001, Duke Energy Enterprise, LLC (Duke Enterprise) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Enterprise is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Clarke County, Mississippi. The eligible facilities will consist of a simple cycle electric generation plant with a nominal capacity of 640 MW and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

27. Meriden Gas Turbines LLC

[Docket No. EG02–56–000]

Take notice that on December 19, 2001, Meriden Gas Turbines LLC (Meriden) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

As more fully explained in the application, Meriden is a limited liability company that will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Connecticut.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

28. MPX Termoceará Ltda.

[Docket No. EG02–57–000]

Take notice that on December 19, 2001, MPX Termoceará Ltda. (Applicant), Rua Dom Luis 500, sala 1925, Fortaleza, Ceará, Brazil filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a 49%-owned subsidiary of MDU Resources Group, Inc. Applicant will own and operate a simple cycle natural gas-fired power generation plant with a nominal 200 MW gross capacity (the Facility). All of the capacity and energy available from the Facility will be sold at wholesale.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32178 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659–011 Oregon]

PacifiCorp; Notice of Availability of Final Environmental Assessment

December 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Powerdale Hydroelectric Project, located on the Hood River in Hood River County, Oregon, and has prepared a Final Environmental Assessment (FEA) for the project. There are no federal lands within the project boundaries although a portion of the project is located in the Columbia River Gorge National Scenic Area.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Bob Easton at (202) 219–2782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32187 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11588–001 Alaska]

Alaska Power & Telephone Company; Notice of Availability of Draft Environmental Assessment

December 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for an original license for Alaska Power and Telephone Company's proposed Otter Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The proposed project would be located on Kasidaya Creek, at Taiya Inlet, 3 miles south of the City of Skagway, and 12 miles southwest of the City of Haines, Alaska. The proposed project would occupy approximately 6.0 acres of land within the Tongass National Forest, administered by the U.S. Forest Service.

This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Any comments to this DEA should be filed within 45 days from the date of this notice and should be addressed to Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32188 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, Conditions, and Prescriptions

December 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2142–031.

c. *Date filed:* December 28, 1999.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Indian Pond Hydroelectric Project.

f. *Location:* On the Kennebec River, near the town of The Forks, Somerset and Piscataquis counties, Maine. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Robert C. Richter III, Senior Environmental Coordinator; FPL Energy Maine Hydro, LLC; 100 Middle Street; Portland, ME 04101; (207) 771–3536.

i. *FERC Contact:* Jarrad Kosa, FERC Project Coordinator, at (202) 219–2831 or via e-mail at *jarrad.kosa@ferc.fed.us.*

j. Deadline for filing comments, recommendations, terms, conditions, and prescriptions: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms, conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

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The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The proposed peaking project consists of the following existing facilities: (1) A 2,000-foot-long dam, consisting of (a) a 270-foot-long, 175-foot-high concrete section, (b) a 200-foot-long attached powerhouse section, and (c) an earthen section in excess of 1,500 feet in length; (2) four steel penstocks ranging from 6 feet to 24 feet in diameter; (3) a concrete powerhouse containing four generating units, having a total rated hydraulic capacity of 7,140 cubic feet per second and installed generation capacity of 76.4 megawatts (4) a 3,746-acre impoundment varying in width from 0.9 to 1.5 miles, extending about 9 miles upstream, that has a usable storage capacity of 850 million cubic feet; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 202 million kilowatt hours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32186 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 21, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Exempt

1. Project No. 11495–000: 12–10–01, Kenneth D. Thomas
2. Project Nos. 2699–001 and 2019–017: 12–10–01, Carol Gleichman
3. Project No. 11563–002: 12–10–01, Carol Gleichman
4. RP00–241–000: 12–11–01, Office of Clerk/U.S. House of Representatives
5. CP01–415–000: 12–13–01 Medha Kochlar
6. CP01–176–000 and CP01–179–000: 12–13–01, Ray Hellwig
7. P–2342–011: 12–13–01, Loree Randall
8. CP01–76–000, CP01–77–000, RP01–217–000, and CP01–156–000: 12–18–01, Chris Zerby

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32189 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7123–7]

Notice of Deficiency for Clean Air Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Washington's (Washington or State) Clean Air Act title V operating permits program, which is administered by two State agencies and seven local air pollution control authorities. The notice of deficiency is based upon EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Washington's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: December 14, 2001. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Denise Baker, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

I. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act (CAA or Act) title V operating permits program for the State of Washington. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiency that is the subject of this notice relates to Washington's requirements for insignificant emissions units (IEUs) and applies to all State and local permitting authorities that implement Washington's title V program.

A. Approval of Washington's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permits program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval of Washington's operating permits program on one issue, along with a notice of correction, on December 8, 1995 (60 FR 62992).

Washington's title V operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Commission (EFSEC), and seven local air pollution control authorities: the Benton County Clean Air Authority (BCCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Air Pollution Control Authority (OAPCA); the Puget Sound Clean Air Agency (PSCAA); the Spokane County Air Pollution Control Authority (SCAPCA); the Southwest Clean Air Agency (SWCAA); and the Yakima Regional Clean Air Authority (YRCAA). After these State and local agencies revised their operating permits programs to address the conditions of the interim approval, EPA promulgated final full approval of Washington's title V operating permits program on August 13, 2001 (66 FR 42439).

B. Additional Public Comment Process on Title V Programs

On December 11, 2000 (65 FR 77376), EPA published a **Federal Register** notice notifying the public of the opportunity to submit comments identifying any programmatic or implementation deficiencies in State title V programs that had received interim or full approval. Pursuant to the settlement agreement discussed in that notice, EPA committed to respond to the merits of any such claims of deficiency on or before December 1, 2001, for those States, such as Washington, that had received interim approval. On March 12, 2001, EPA received comments from Smith & Lowney, PLLC, on behalf of pacific Air Improvement Resource, Waste Action Project, Washington Toxics Coalition, and the Washington Environmental Council (the commenters). The commenters identified numerous alleged deficiencies in the title V operating permits programs administered by all Washington permitting authorities.

After thoroughly reviewing all issues raised by the commenters, EPA identified one area where EPA believes that Washington's regulations do not meet the requirements of title V and part 70—Washington's exemption of "insignificant emission units" from certain permit content requirements. Accordingly, EPA is issuing this notice of deficiency. In a separate document, EPA has responded to the other issues raised by the commenters, which EPA does not believe constitute deficiencies in Washington's operating permits program at this time.

C. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a State program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in part 70, however, authorizes a State to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6.

Washington's regulations contain criteria for identifying IEUs. *See* WAC 173–401–200(16), –530, –532, and –533. Sources that are subject to a Federally-enforceable requirement other than a requirement of the State Implementation Plan that applies generally to all sources in Washington (a so-called "generally applicable requirement") are not deemed "insignificant" under Washington's program even if they otherwise qualify under one of the five lists. *See* WAC 173–401–530(2)(a). Washington's regulations also expresely state that no permit application can omit information necessary to determine the applicability of, or to impose any applicable requirement. *See* WAC 173–401–510(1). In addition, WAC 173–401–530(1) and (2)(b) provide that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. The Washington program, however, specifically exempts IEUs from testing, monitoring, recordkeeping, and reporting requirements except where such requirements are specifically imposed in the applicable requirement itself. *See* WAC 173–401–530(2)(c). The Washington program also exempts IEUs from compliance certification requirements. *See* WAC 173–401–530(2)(d).

Because EPA does not believe that part 70 exempts IEUs from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, EPA initially determined that Ecology must revise its IEU regulations as a condition of full approval. *See* 60 FR at 62993–62997 (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of

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Washington's operating permits program on same basis). The Western States Petroleum Association (WSPA), together with several other companies and the Washington Department of Ecology, challenged EPA's determination that Ecology must revise its IEU regulations as a condition of full approval. *See* 66 FR at 19. On June 17, 1996, the Ninth Circuit found in favor of the petitioners. *WSPA* v. *EPA*, 87 F.3d 280 (9th Cir. 1996). The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval. The Court then remanded the matter to EPA, instructing EPA to give full approval to Washington's IEU regulations.

In light of the Court's order in the WSPA case, EPA determined that it must give full approval to Washington's IEU regulations. Therefore, on August 13, 2001, EPA published a **Federal Register** notice granting final full approval to Washington's title V program notwithstanding what EPA believed to be a deficiency in its IEU regulations. 66 FR 42439–42440 (August 13, 2001). Nonetheless, as EPA stated in its final full approval of Washington's program, EPA maintained its position that part 70 does not allow the exemption of IEUs subject to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6 and intended to issue a notice of deficiency in another rulemaking action if the deficiencies in Washington's IEU regulations were not promptly addressed.

Since issuance of the Court's order in WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts; North Dakota; Knox County, Tennessee) are in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. *See* 61 FR 39338 (July 29, 1996). North Carolina, Florida, and Jefferson County, Kentucky have made revisions to their IEU provisions. EPA has approved the changes made by North Carolina and Florida. 65 FR 38744, 38745 (June 22, 2000) (Forsyth County, North Carolina); 66 FR 45941 (August 31, 2001) (all other North Carolina permitting authorities); 66 FR 49837 (October 1, 2001) (Florida). EPA has not yet taken action on the changes made by Jefferson County, Kentucky. EPA has notified Ohio and Hawaii that their provisions for IEUs do not conform to the requirements of part 70 and must be revised. If Ohio and Hawaii do not revise their provisions for IEUs to conform to part 70, EPA intends to issue notices of deficiencies to these permitting authorities in accordance with the time frames set forth in the December 11, 2000 **Federal Register** notice soliciting comments on title V program deficiencies. *See* 65 FR 77376. Having addressed the inconsistencies identified by the Ninth Circuit when it ordered EPA to approve Washington's IEU provisions, EPA is now notifying Washington that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and local title V programs or face withdrawal of its title V operating permits program.

Because WAC 173–401–530(2)(c) and (d), the regulations that exempt IEUs from certain permit content requirements, apply throughout the State of Washington, this notice of deficiency applies to all State and local agencies that implement Washington's operating permits program. As discussed above, those agencies include Ecology, EFSEC, BCCAA, NWAPA, OAPCA, PSCAA, SCAPCA, SWACAA, and YRCAA.

D. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this document within 18 months after signature of this document.[1] In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Washington's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Washington has taken significant action to correct the deficiency.

II. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of January 2, 2002.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 14, 2001.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 01–32103 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439M; FRL–6818–1]

Pesticide Program Dialogue Committee;Committee and Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

[1] EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

SUMMARY: As required by the Federal Advisory Committee Act, 5 U.S.C., App. 2 section 9(c), EPA's Office of Pesticide Programs (OPP) is giving notice of the renewal of the Pesticide Program Dialogue Committee (PPDC) and its Charter and the appointment of new members.

DATES: The PPDC Charter, which was filed with Congress on November 9, 2001, will be in effect for 2 years, until November 9, 2003.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–4775 or (703) 305–7093; fax number: (703) 308–4776; e-mail address: Fehrenbach.Margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, it may be of interest to persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act; the Federal Food, Drug, and Cosmetic Act; and the amendments to both of these major pesticide laws by the Food Quality Protection Act (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/ppdc.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00439M. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Pesticide Program Dialogue Committee (PPDC). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Participate in PPDC Meetings?

PPDC meetings and workshops will be open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463. Outside statements by observers will be welcome. Oral statements will be limited to 3–5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address in Unit II.2.

II. Background

The PPDC is composed of 42 members appointed by the EPA Deputy Administrator. Committee members were selected from a balanced group of participants from the following sectors: Pesticide users, grower and commodity groups; industry and trade associations; environmental/public interest and farmworker groups; Federal, State and tribal governments; public health organizations; animal welfare; and academia. PPDC was established to provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science policy issues associated with evaluating and reducing risks from use of pesticides.

List of Subjects

Environmental protection, Agriculture, Chemicals, Drinking water, Foods, Pesticides, Pests.

Dated: December 21, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 01–32214 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–6

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7124–1]

Peer Review of EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer Review Workshop and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development is announcing an external peer review workshop to review the revised draft document entitled, "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization" (NCEA–I–0503). The EPA is also announcing a public comment period for this draft document. The workshop is being organized and convened by the Eastern Research Group, Inc. (ERG), an EPA contractor.

DATES: The two-day peer review workshop will begin on Tuesday, March 5, 2002, at 9 a.m. and will end on Wednesday, March 6, 2002, at 4:30 p.m. The 30-day public review and comment period will begin January 9, 2002, and will end February 11, 2002.

ADDRESSES: The external peer review meeting will be held at a facility in Sacramento, California. To attend the meeting as an observer, please register with ERG via the Internet by visiting *www.meetings@erg.com*. You may also register by calling ERG's conference registration line at 781–674–7374 or by faxing a registration request to 781–674–2906. Upon registering, you will be sent an agenda and a logistical fact sheet containing information on the meeting site, overnight accommodations, and ground transportation. The deadline for pre-registration is February 25, 2002. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for oral comments on the revised draft document during the meeting. When registering, please let ERG know if you

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wish to make a brief statement not to exceed five minutes.

Document Availability: The external review draft of the perchlorate document will be available by January 9, 2002, on EPA's National Center for Environmental Assessment (NCEA) Web site at *http://www.epa.gov/ncea*. In addition, a compact disk (CD) containing documents cited in the "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization" report that cannot be readily obtained from the open literature will be available by request as of January 9, 2002. To obtain a copy of the CD, you may contact the EPA Superfund Records Center in San Francisco, California. A shipping and handling fee may apply. The circulation desk phone number for the Superfund Records Center is 415–536–2000. Copies of the perchlorate document and CD are not available from ERG.

Comment Submission: Written comments should be submitted to ERG, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *www.meetings@erg.com*. Written comments must be postmarked by the end of the public comment period (February 11, 2002). Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to EPA's contractor, ERG, Inc., at 781–674–7374. For technical inquiries, please contact: Annie Jarabek, U.S. Environmental Protection Agency (MD 52), USEPA Mailroom, Research Triangle Park, NC 27711; telephone 919–541–4847; facsimile 919–541–1818; *e-mail jarabek.annie@epa.gov*.

SUPPLEMENTARY INFORMATION: Perchlorate (ClO_4) is an anion that originates as a contaminant in groundwater and surface waters from the dissolution of ammonium, potassium, magnesium, or sodium salts. Perchlorate is exceedingly mobile in aqueous systems and can persist for many decades under typical groundwater and surface water conditions. A major source of perchlorate contamination is the manufacture of ammonium perchlorate for use as the oxidizer component and primary ingredient in solid propellant for rockets, missiles, and fireworks.

EPA's Superfund Technical Support Center issued a provisional reference dose (RfD) for perchlorate in 1992 and a revised provisional RfD in 1995 based on the effects of potassium perchlorate in patients with Graves' disease (an autoimmune disease that results in hyperthyroidism). (An RfD is an estimate of a daily oral human exposure that is anticipated to be without adverse noncancer health effects over a lifetime.) In March 1997, the existing toxicologic database on perchlorate was determined to be inadequate for quantitative human health risk assessment by an external peer review panel. A lack of data on the ecotoxicological effects was also noted. In May 1997, a testing strategy was developed based on the known mode-of-action for perchlorate toxicity (the inhibition of iodide uptake in the thyroid and subsequent perturbations of thyroid hormone homeostasis), and an accelerated research program was initiated to gain a better understanding of the human health effects of perchlorate, examine possible ecological impacts, refine analytical methods, develop treatment technologies, and better characterize the occurrence of perchlorate in groundwater and surface waters.

In December 1998, the National Center for Environmental Assessment (NCEA) developed an external peer review draft document that assessed the human health and ecological risk of perchlorate ("Perchlorate Environmental Contamination: Toxicology Review and Risk Characterization Based on Emerging Information," NCEA–I–0503). This document presented an updated human health risk assessment that incorporated results of the newly performed health effects studies available as of November 1998 and a screening-level ecological assessment. The human health risk assessment model utilized a mode-of-action approach that harmonized noncancer and cancer approaches to derive a single oral risk benchmark based on precursor effects for both neurodevelopmental and thyroid neoplasia. A workshop was convened in February 1999 in San Bernardino, California, to provide external peer review of that document. Peer reviewers endorsed the conceptual approach proposed by NCEA, but recommended that new analyses be conducted and that several additional studies be planned and performed. NCEA has prepared a revised perchlorate assessment that addresses comments from the 1999 external peer review workshop and incorporates data from additional studies that were either nearing completion at the time of the 1999 review or were recommended at that time. This revised draft document is the subject of the external peer review workshop announced in today's **Federal Register** notice.

The external peer review panel will consist of a panel of independent scientists selected by EPA's contractor, ERG, from the fields of developmental toxicology, reproductive toxicology, neurotoxicology, immunotoxicology, pharmacokinetics, genetic toxicology, endocrinology, pathology, epidemiology, statistics, ecotoxicology, and environmental transport and biotransformation. Peer reviewers will review the revised human health and ecological risk assessment for perchlorate as well as new studies performed since the 1999 external peer review. Following the external peer review workshop, ERG will prepare a report summarizing the workshop. EPA will address the comments of the external peer reviewers in finalizing the perchlorate risk assessment document and in developing revised toxicity values. The human health and ecological risk assessment may be used in the future to support development of a health advisory or possible drinking water regulations and cleanup decisions at hazardous waste sites. However, any such future decisions would be subject to all applicable statutory and regulatory requirements and policy considerations for use of the assessments under those programs.

Dated: December 20, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–32088 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 19, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 1, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92–06).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 30,000.

Estimated Time Per Response: 31.2 hours per response (avg.).

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 936,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Parts 64 and 68 of the Commission's rules contain procedures for avoiding unwanted telephone solicitations to residences, and to regulate the use of automatic telephone dialing systems, artificial or pre-recorded voice messages, and telephone facsimile machines. The Commission believes that the recordkeeping requirement is the best means of preventing unwanted telephone solicitations.

OMB Control No.: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form No.: FCC Form 302–DTV.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 600.

Estimated Time Per Response: 1.5–6 hours per response (avg.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 950 hours.

Total Annual Cost: $245,000.

Needs and Uses: FCC Form 302–DTV is used by licensees and permittees of DTV broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes to the station's authorized facilities, made without prior Commission approval, will not have any impact on other stations and the public. Data is extracted from FCC 302–DTV for inclusion in the license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–32249 Filed 12–31–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Policy Statement Regarding Minority-Owned Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: The FDIC is proposing to revise its Policy Statement Regarding Minority-Owned Depository Institutions. Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") requires the Secretary of the Treasury to consult with the Director of the Office of Thrift Supervision and the Chairperson of the Board of Directors of the FDIC to determine the best methods for preserving and encouraging minority ownership of depository institutions. The FDIC has long recognized the unique role and importance of minority-owned depository institutions and has historically taken steps to preserve and encourage minority ownership of financial institutions. The revised Policy Statement updates, expands, and clarifies the agency's policies and procedures related to minority-owned institutions.

DATES: Written comments must be received on or before March 4, 2002.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (fax number (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be posted on the FDIC Internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html* and may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Brett A. McCallister, Risk Management and Applications Section, Division of Supervision (202) 898–3803 or Grovetta N. Gardineer, Counsel, Legal Division, (202) 898–3728, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On April 3, 1990, the Board of Directors of the FDIC adopted a Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions. The framework for the original Policy Statement resulted from several key provisions contained in Section 308 of FIRREA, which enumerated several goals as follows: (1) Preserving the number of minority depository institutions; (2) preserving the minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now insolvent; (4) promoting and encouraging creation of new minority depository institutions; and (5) providing for training, technical assistance, and education programs.

The original Policy Statement provided guidance to the industry regarding the agency's efforts in achieving the goals of Section 308. The revised Policy Statement attempts to provide a more structured framework that sets forth initiatives of the FDIC to promote the preservation of, as well as to provide technical assistance, training and educational programs to, minority-owned institutions by working with

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those institutions, their trade associations and the other federal financial regulatory agencies.

Section 308(b) of FIRREA provides that "minority" means any Black American, Native American, Hispanic American or Asian American. The FDIC adopts this definition of minority in the revised Policy Statement. Section 308(b) of FIRREA defines the term "minority depository institution" as: any depository institution that—(A) If a privately owned institution, 51 percent is owned by one or more socially and economically disadvantaged individuals; (B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (C) in the case of a mutual institution where the majority of the Board of Directors, account holders, and the community which it services is predominantly minority. The revised Policy Statement defines the term "minority-owned institution" as any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. Additionally mutual, publicly traded, and widely held institutions will be considered minority-owned if a majority of the Board of Directors, account holders, and the community which the institution serves are predominantly minority, regardless of non-minority or non-U.S. citizen ownership of the capital stock. The proposed Policy Statement also clarifies that the FDIC's program is targeted at institutions owned by U.S. citizens, and ownership by non-U.S. citizens is not counted in determining minority-owned status. The FDIC invites the public to comment on the proposed definition of "minority-owned institution". The FDIC specifically seeks comment on the proposed treatment of mutual, publicly traded and widely held institutions, as to the feasibility of collecting information regarding the account holders and the community in making a determination regarding its status as a minority-owned institution.

The proposed Policy Statement also provides for the FDIC to maintain a list of minority-owned institutions to ensure that all eligible minority-owned depository institutions are able to participate in the program. If not already identified as minority-owned, an institution can be added to the list by self-certifying that the institution meets the above definition. FDIC examiners will review the accuracy of the list during regular examinations, and case managers will incorporate any changes due to mergers, acquisitions, and changes in control. The FDIC will also work with the other Federal regulatory agencies to make certain that the minority-owned institutions that they supervise are included on the list. The revised Policy Statement makes it clear, however, that inclusion on the list is voluntary and any institution that does not want to be included will be removed from the official list. The FDIC invites comments on this approach to compile a list of minority-owned institutions.

The revised Policy Statement also proposes to designate a national coordinator for the FDIC's minority-owned institution program. The national coordinator will be located at the FDIC's Washington, DC headquarters. That person will act as a liaison between the Division of Supervision and officials from the Division of Compliance and Consumer Affairs, the Office of Diversity and Economic Opportunity and the Division of Resolutions and Receiverships and the other federal financial regulators. The national coordinator will regularly contact the various minority-owned institution trade associations to obtain feedback on the FDIC's efforts under the program. The national coordinator will be responsible for contacting the other Federal financial regulatory agencies to discuss their outreach efforts and to identify opportunities for the agencies to work together to assist minority-owned institutions. The national coordinator will also guide subject matter experts in each of the FDIC's eight regional offices who will oversee their region's efforts under the program. The FDIC believes that the more formalized structure within the Division of Supervision will facilitate more meaningful and helpful communications between the FDIC and minority-owned institutions since these employees will be available to answer questions or provide assistance on issues presented by minority-owned institutions. The FDIC specifically seeks comment on this proposed organizational structure.

The revised Policy Statement also discusses the types of technical assistance that will be provided by the FDIC to minority-owned institutions. The Policy Statement sets forth examples of ways that FDIC staff will be able to provide assistance to minority-owned institutions while making it clear that staff will not perform duties and tasks reserved for management of a minority-owned institution. In addition to being available to answer questions and provide guidance to a minority-owned institution, the FDIC is also proposing to have staff return to any minority-owned institution approximately 90 to 120 days after the conclusion of an examination to review any areas of concern identified during the examination or any issues of particular interest to the institution. The minority-owned institution may accept or decline this offer of assistance. The FDIC invites comments on the scope of technical assistance that would be provided by the FDIC and the optional return visit at the conclusion of an examination of a minority-owned institution.

The revised Policy Statement also proposes that the FDIC work with trade associations representing minority-owned institutions, as well as other regulatory agencies, to discuss and provide for training opportunities for minority-owned institutions. The proposed Policy Statement provides that the FDIC will partner with certain trade associations to offer training programs during their annual conferences and regional meetings. The FDIC solicits comments on other methods to identify and provide training and educational programs that would be beneficial to minority-owned institutions.

The revised Policy Statement also discusses the issue of failing institutions. The revised Policy Statement states that the Division of Resolutions and Receiverships is the appropriate division in the FDIC to deal with issues regarding failing institutions. While the original Policy Statement provided for certain preferences to be given to minority-owned institutions in the resolution of failed institutions pursuant to Sections 13(k) and 13(f)(12) of the FDI Act, the revised Policy Statement takes into account both the decision of the United States Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995) and the statutory requirement under Section 13(c)(4) enacted in 1991 that failed institutions be resolved in a manner that results in the least cost to the insurance fund. The *Adarand* decision held that federal affirmative action programs that use racial and ethnic criteria as a basis for decisionmaking are subject to strict judicial scrutiny. The decision set forth a two-prong test to determine whether federally administered affirmative action programs are constitutional. The first prong of the test requires the government to demonstrate a compelling interest in remedying past or persistent continuing or lingering discrimination against minorities and the second prong requires that any remedy be narrowly tailored to cure a specific identified problem. While *Adarand* was a contracts case, the strict scrutiny standard of review will apply whenever the federal government voluntarily adopts a racial or ethnic classification as a basis for decisionmaking. As a result, this ruling has had a significant impact on the FDIC's ability to give preference to minority institutions in a resolutions context. In October of 2001, the U.S. Supreme Court heard another case involving Adarand Constructors. While the FDIC had hoped to gain additional guidance on what actions may be permissible regarding the minority preference statutes, the Supreme Court declined to render a decision in the case citing procedural problems with the case that prevented the Court from addressing the merits of the affirmative action complaint.

Additionally, the least-cost resolution requirement also significantly reduced the ability of the FDIC to give preference to minority institutions in the resolution of failed institutions. However, the Division of Resolutions and Receiverships will work with the Division of Supervision and the Office of Diversity and Economic Opportunity to ensure that all qualified minority institutions and individuals that have expressed an interest in acquiring a minority-owned institution are notified of any potential failure. The FDIC invites the public to comment on the methodology to be used to ensure that all qualified minority-owned institutions will be made aware of situations involving the failure of a minority-owned institution.

To ensure that the regional coordinators are meeting the goals associated with the revised Policy Statement, the proposed Policy Statement requires them to provide quarterly reports to the national coordinator on their region's activities relating to minority-owned institutions. The national coordinator, in turn, will compile the results of the eight regional reports and provide a quarterly summary to the Office of the Chairman. The FDIC's Annual Report will also contain information relating to the agency's efforts to promote and preserve minority-owned financial institutions. The proposed Policy Statement also provides for the FDIC to create a Webpage on its Internet site (*www.fdic.gov*) to promote the minority-owned institution program. It is anticipated that the Webpage will describe the program, contain information regarding the national coordinator and the regional coordinators and provide links to the list of minority-owned institutions, their trade associations and other programs that specifically affect minority-owned institutions. The FDIC invites the public to comment on the types of information that would be helpful and beneficial to include on the agency's Web page regarding the minority-owned institution program.

The text of the proposed Policy Statement follows:

Federal Deposit Insurance Corporation

Policy Statement Regarding Minority-Owned Depository Institutions

Minority-owned depository institutions often promote the economic viability of minority and under-served communities. The FDIC has long recognized the importance of minority-owned institutions and has historically taken steps to preserve and encourage minority ownership of insured financial institutions.

Statutory Framework

In August 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Section 308 of FIRREA established the following goals:

- Preserve the number of minority-owned depository institutions;
- Preserve the minority character in cases of merger or acquisition;
- Provide technical assistance to prevent insolvency of institutions not now insolvent;
- Promote and encourage creation of new minority-owned depository institutions; and
- Provide for training, technical assistance, and educational programs.

Definition

"Minority" as defined by Section 308 of FIRREA means any Black American, Asian American, Hispanic American, or Native American. For the purposes of this Policy Statement, the term "minority-owned institution" means any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. This includes institutions collectively owned by a group of minority individuals, such as a Native American Tribe. However, ownership by non-U.S. citizens will not be counted in determining minority-owned status. Mutual, publicly traded, and widely held institutions will be considered minority-owned if a majority of the Board of Directors, account holders, and the community which the institution serves are predominantly minority, regardless of non-minority or non-U.S. citizen ownership.

Identification of Minority-Owned Institutions

To ensure that all minority-owned depository institutions are able to participate in the program, the FDIC will maintain a list of federally insured minority-owned institutions. Institutions that are not already identified as minority-owned by the FDIC can request to be designated as such by certifying that they meet the above definition. For institutions supervised directly by the FDIC, our examiners will review the accuracy of the list during the examination process. In addition, case managers in our regional offices will note changes to the list while processing deposit insurance applications, merger applications, change of control notices, or failures of minority-owned institutions. The FDIC will work closely with the other Federal regulatory agencies to ensure that institutions not directly supervised by the FDIC are accurately captured on our list. In addition, the FDIC will periodically provide the list to relevant trade associations and seek input regarding its accuracy. Inclusion in the FDIC's minority-owned institution program is voluntary. Any minority-owned institution not wishing to participate in this program will be removed from the official list upon request.

Organizational Structure

The Division of Supervision has designated a national coordinator for the FDIC's minority-owned institutions program in the Washington Office and a regional coordinator in each Regional Office. The national coordinator will consult with officials from the Division of Compliance and Consumer Affairs, the Office of Diversity and Economic Opportunity, the Legal Division, and the Division of Resolutions and Receiverships to ensure appropriate personnel are involved in program initiatives. The national coordinator will regularly contact the various minority-owned institution trade associations to seek feedback on the FDIC's efforts under this program, discuss possible training initiatives, and explore options for preserving and promoting minority ownership of depository institutions. As the primary Federal regulator for State nonmember banks, the FDIC will focus its efforts on these institutions. However, the national coordinator will meet with the other Federal regulators periodically to discuss each agency's outreach efforts, to share ideas, and to identify opportunities where the agencies can work together to assist minority-owned institutions. Representatives of other divisions and offices may participate in these meetings.

The regional coordinators are knowledgeable about minority-owned bank issues and are available to answer questions or to direct inquiries to the

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appropriate office. However, each FDIC insured institution has previously been assigned a specific case manager in their regional office who will continue to be the institution's central point of contact at the FDIC. At least annually, regional coordinators will contact each minority-owned, State nonmember bank in their respective regions to discuss the FDIC's efforts to promote and preserve minority ownership of financial institutions and will offer to have a member of regional management meet with the institution's board of directors to discuss issues of interest. Finally, the regional coordinators will contact all new minority-owned State nonmember banks identified through insurance applications, merger applications, or change in control notices to familiarize the institutions with the FDIC's minority-owned institution program.

Technical Assistance

The FDIC can provide technical assistance to minority-owned institutions in several ways on a variety of issues. An institution can contact its case manager for assistance in understanding bank regulations, FDIC policies, examination procedures, etc. Case managers can also explain the application process and the type of analysis and information required for different applications. During examinations, examiners are expected to fully explain any supervisory recommendations and should offer to help management understand satisfactory methods to address such recommendations.

At the conclusion of each examination of a minority-owned institution directly supervised by the FDIC, the FDIC will offer to have representatives return to the institution approximately 90 to 120 days later to review areas of concern or topics of interest to the institution. The purpose of the return visit will be to provide technical assistance, not to identify new problems. The level of technical assistance provided should be commensurate with the issues facing the institution, but FDIC employees will not perform tasks expected of an institution's management or employees. For example, FDIC employees may explain Call Report instructions as they relate to specific accounts, but will not assist in the preparation of an institution's Call Report. As another example, FDIC employees may provide information on community reinvestment opportunities, but will not participate in a specific transaction.

Training and Educational Programs

The FDIC will work with trade associations representing minority-owned institutions and other regulatory agencies to periodically assess the need for, and provide for, training opportunities and educational opportunities. We will partner with the trade associations to offer training programs during their annual conferences and other regional meetings.

Failing Institutions

In the event of a potential failure of a minority-owned institution, the Division of Resolutions and Receiverships will contact all minority-owned institutions nationwide that qualify to bid on failing institutions. The Division of Resolutions and Receiverships will solicit qualified minority-owned institutions' interest in the failing institution, discuss the bidding process, and upon request, offer to provide technical assistance regarding completion of the bid forms. In addition, the Division of Resolutions and Receiverships, with assistance from the Office of Diversity and Economic Opportunity, will maintain a list of minority individuals and nonbank entities that have expressed an interest in acquiring failing minority-owned institutions. Trade associations that represent minority-owned institutions (the National Bankers Association, the American League of Financial Institutions, and the North American Native Bankers Association) will also be contacted periodically to help identify possible interested parties.

Reporting

The regional coordinators will report their region's activities related to this Policy Statement to the national coordinator quarterly. The national coordinator will compile the results of the regional offices' reports and submit a quarterly summary to the Office of the Chairman. Our efforts to preserve and promote minority ownership of depository institutions will also be highlighted in the FDIC's Annual Report.

Internet Site

The FDIC will create a Webpage on its Internet site (*www.fdic.gov*) to promote the minority-owned institution program. Among other things, the page will describe the program and include the name, phone number, and email address of the national coordinator and each regional coordinator. The page will also contain links to the list of minority-owned institutions, pertinent trade associations, and other regulatory agency programs. We will also explore the feasibility and usefulness of posting other items to the page, such as statistical information and comparative data for minority-owned institutions. Visitors will have the opportunity to provide feedback regarding the program on the Web page.

By order of the Board of Directors.

Dated at Washington, DC., this 20th day of December, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–32155 Filed 12–31–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. CoVest Bancshares, Inc. Employee Stock Ownership Plan Trust, James L. Roberts (Trustee), Paul A. Larsen (Trustee), and Barbara A. Buscemi (Trustee), all of Des Plaines, Illinois; to retain voting shares of CoVest Bancshares, Inc., and Covest Banc, National Association, both of Des Plaines, Illinois.

Board of Governors of the Federal Reserve System, December 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32132 Filed 12–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. CRSB Bancorp, Inc., Delano, Minnesota; to become a bank holding company by acquiring 99.91 percent of the voting shares of Crow River State Bank, Delano, Minnesota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First York BanCorp, York, Nebraska; to acquire 100 percent of the voting shares of K.L. & D.M., Inc., Polk, Nebraska and thereby indirectly acquire Citizens State Bank, Polk, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BNP Paribas, Paris, France, and BancWest Corporation, Honolulu, Hawaii; to acquire 100 percent of the voting shares of United California Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, December 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32133 Filed 12–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 7, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 28, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32256 Filed 12–28–01; 12:12 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10:30 a.m.

Date: January 15, 2002.

Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C.

Status: Open.

Matters to Be Considered:

1. Approve minutes of the June 27, 2000, meeting.

2. Report of the Executive Director on Thrift Savings Plan status.

3. November 15, 2001-January 31, 2002, Thrift Savings Plan Open Season.

4. Legislation.

5. New TSP record keeping system.

6. New business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: December 27, 2001.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 01–32252 Filed 12–28–01; 5:23 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Dates: 9 a.m.–5 p.m. January 24, 2002,
9 a.m.–1 p.m. January 25, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Background: The National Committee on Vital and Health Statistics is the statutory public advisory body to the Secretary of Health and Human Services in the area of health data, statistics, and health information policy. It is established by section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and its mandate includes advising the Secretary on the

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implementation of the Administrative Simplification provisions (Social Security Act, title XI, part C, 42 U.S.C. 1320d to 1320d–8) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104–191.

Its Subcommittee on Privacy and Confidentiality monitors developments in health information privacy and confidentiality on behalf of the full Committee and makes recommendations to the full Committee so that it can advise the Secretary on implementation of the health information privacy provisions of HIPAA.

Purpose: This meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The regulation and further information about it can be found on the Web site of the Office for Civil Rights, at *http://www.hhs.gov/ocr/hipaa/*. The regulation has been in effect since April 14, 2001. Most entities covered by the regulation must come into compliance by April 14, 2003, and many are beginning the process of implementing it.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather detailed information about implementation of the regulation's provisions for use and disclosure of health information for marketing and fundraising. The Subcommittee will invite specific representatives of affected groups, in order to obtain information about practical issues in implementation of the regulation with respect to these uses and disclosures of information, and to obtain suggestions about possible solutions for such issues.

The format will include one or more invited panels on these issues and time for questions and discussion. The Subcommittee will ask the invited witnesses for focused, detailed analyses and description, with examples, of the effect the regulation is expected to have, on individuals and on entities subject to the regulation, with respect to these matters, based on early implementation efforts and preliminary assessments of impact.

The second day of the meeting will consist of Subcommittee discussion of the testimony it has heard and deliberations about possible recommendations to the Secretary.

In addition to the panels that will be invited to address these issues, members of the public who would like to make a brief (3 minutes or less) oral comment on one or more of the specified issues during the hearing will be placed on the agenda as time permits. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by E-mail at *mrawlinsen@cdc.gov*, or postal address at NCHS, Presidential Building, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782 by January 17, 2002.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the day of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shortly before the hearing date.

Contact Person for More Information: Information about the content of the hearing and matters to be considered may be obtained from John P. Fanning, Lead Staff Persons for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 440D Humphrey Building, 200 Independence Avenue SW., Washington DC 20201, telephone (202) 690–5896. E-mail *jfanning@osaspe.dhhs.gov*. or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov*.

Dated: December 20, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for, Planning and Evaluation.

[FR Doc. 01–32198 Filed 12–31–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immunosuppressive Drugs Subcommittee of the Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Immunosuppressive Drugs Subcommittee of the Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 24, 2002, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss new drug applications (NDAs) 21–083/SE1–006 and 21–110/SE1–004, RAPAMUNE (sirolimus) oral solution and tablets, Wyeth-Ayerst Research, approved for prophylaxis of organ rejection in patients receiving renal transplants. As stated in the approved labeling, it is recommended that RAPAMUNE be used in a regimen with cyclosporine and corticosteroids. The discussion is for the proposed elimination of cyclosporine from the immunosuppressive regimen 2 to 4 months after transplantation under certain conditions.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by January 16, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 16, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 19, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–32175 Filed 12–31–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 16, 2002, from 10 a.m. to 12:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas, or Sheila D. Langford, Center for Biologics Evaluation and Research (CBER) (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 16, 2002, the committee will hear presentations relevant to the site visit report on the review of the research programs of the Laboratory of Bacterial, Parasitic, and Unconventional Agents, and the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, CBER.

Procedure: On January 16, 2002, from 10:00 a.m. to 10:45 a.m., and from 11:30 a.m. to 12:30 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 9, 2002. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. on January 16, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 9, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 16, 2002, from 10:45 a.m. to 11:30 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the reports of the review of individual research programs in the Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

FDA regrets that it was unable to publish this notice 15 days prior to the January 16, 2002, Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 26, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–32253 Filed 12–27–01; 5:02 pm]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services(other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
Bilenkin, Elana Old Bridge, NJ	12/20/2001
Birdsong, Stacie Detroit, MI	12/20/2001
Bitz, Jennifer M Jamestown, ND	12/20/2001
Boguslavskiy, Vadim Lavenel, NJ	12/20/2001
Brown, Maurice Chevale Sterling, CO	12/20/2001
Dallakyan, Naira M Pasadena, CA	12/20/2001
Greer, J Randall Memphis, TN	12/20/2001
Gutman, Marci Miami, FL	12/20/2001
Maddox, Yolanda Gail Troy, AL	12/20/2001
McDonald, Anita Fletcher Palestine, TX	12/20/2001
New York Health Plan New York, NY	12/20/2001
Norman, Brigid Riverdale, GA	12/20/2001
Paulin, John Gregory Florence, CO	12/20/2001
Rapp, Donna Lynn Lakewood, CO	12/20/2001
Reyes, Gloria Miami, FL	12/20/2001
Rose, Melba L Miami, FL	12/20/2001
Scarpitta, Janet Newark, NJ	12/20/2001
Stolyar, Yelena Golden, CO	12/20/2001
Taylor, Shirley Jean Pearl, MS	12/20/2001
Urban, Edward J Chargin Fall, OH	12/20/2001
Felony Conviction for Health Care	
Brathwaite, Stephen Earl W Valley City, UT	12/20/2001
Burstein, Donald A Warminster, PA	12/20/2001
Casiano, Janet Carle Place, NY	12/20/2001
Fergusson, Olantungie Clarence Sherman Oaks, CA	12/20/2001
Oldham, Susan G Lexington, KY	12/20/2001
Runk, Lisa D Wichita, KS	12/20/2001
Seals, Carlos V Los Angeles, CA	12/20/2001
Felony Control Substance Conviction	
Davis, Donna K Kidd	12/20/2001

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Subject city, state	Effective date
Somerset, KY	
Gleason, Laura Jane	12/20/2001
Phoenix, AZ	
Hendrick, Vickie	12/20/2001
Gallatin, TN	
McMenamin, Deborah J	12/20/2001
Carbondale, PA	
Sommer, Deborah Jane	12/20/2001
Dayton, TX	
Patient Abuse/Neglect Convictions	
Barsuk, Joseph Jr	12/20/2001
Churchville, NY	
Boykins, Loretta Penny	12/20/2001
Baltimore, MD	
Cathey, Deborah	12/20/2001
Nashville, TN	
Coleman, Tracy Lavonne	12/20/2001
Laurora, CO	
Conyers, Leonard E	12/20/2001
Wilmington, DE	
Dickinson, Sharon Lee	12/20/2001
Corunna, MI	
Ferdon, Michael Kevin	12/20/2001
Ontario, OR	
Kegel, Alan	12/20/2001
Wheeling, IL	
Lambong, Noky Herams	12/20/2001
Diamond Bar, CA	
Maxian, Therese M	12/20/2001
Binghamton, NY	
Pawlak, Patricia	12/20/2001
Barker, NY	
Quinones, Ariel	12/20/2001
Garfield, NJ	
Risley, Charles	12/20/2001
S Saugerties, NY	
Stocker, Charles Edward	12/20/2001
Lancaster, OH	
Thompson, Robert J	12/20/2001
Raymond, MS	
Watson, Marlene Maria	12/20/2001
Bronx, NY	
Conviction for Health Care Fraud	
Plyler, Mark	12/20/2001
Williamson, NY	
License Revocation/Suspension/ Surrendered	
Amundson, Terri Sue	12/20/2001
Lawrenceville, GA	
Banda-Orman, Selina	12/20/2001
Des Moines, IA	
Barolin, Linda	12/20/2001
Manlua, NJ	
Beeler, Mildred Stich	12/20/2001
Pottsville, PA	
Bell, Donna S	12/20/2001
Douglas, AK	
Bryant, Laurie L	12/20/2001
Davenport, IA	
Burgess, Marleen K	12/20/2001
Cresco, IA	
Carico, Paula J	12/20/2001
Kendallville, IN	
Cigelske, Michael Allen	12/20/2001
Phoenix, AZ	
Duffie, Brenda L	12/20/2001
Burlington, IA	
Dykes, Judy R	12/20/2001
Phoenix, AZ	
Garrett, Herman Alpha	12/20/2001
Norcross, GA	
Harple, Carol Weiler	12/20/2001
Gordonville, PA	
Hernandez, Stephen Louis	12/20/2001
Hudson, FL	
Heuberger, Sally	12/20/2001
Sheffield, IA	
Hummell, Alan	12/20/2001
Cocoa, FL	
Jewkes, Mindy	12/20/2001
Salt Lake City, UT	
Kadish, William A	12/20/2001
Shrewsbury, MA	
Larson, Richard Warren	12/20/2001
Cherokee Village, AR	
Leonard, Rhonda Lynn	12/20/2001
Tyler, TX	
Long, Jill Suzanne	12/20/2001
W Blocton, AL	
Lucero, Glen M	12/20/2001
Denver, CO	
McGraw, Daniel P	12/20/2001
Haverhill, MA	
Milam, Stephen Robert	12/20/2001
Cicero, IN	
Moore, Jerry Gayle	12/20/2001
Houston, TX	
Newman, William T	12/20/2001
Chapel Hill, NC	
Petanovich, E John	12/20/2001
Emlenton, PA	
Peyton, Bret W	12/20/2001
Iowa Falls, IA	
Porter, Mary Jo	12/20/2001
Norfolk, VA	
Rice, Cynthia M	12/20/2001
Phoenix, AZ	
Richardson, Lawrence John	12/20/2001
Los Angeles, CA	
Rollins, Jane	12/20/2001
Michigan City, IN	
Shellhase, Barbara J	12/20/2001
Cleona, PA	
Spencer, Craig A	12/20/2001
Frankfort, IL	
Sugden, Mark F	12/20/2001
Virginia Beach, VA	
Tabotabo, Armando M	12/20/2001
Keyport, NJ	
Vail, Sheree Behr	12/20/2001
Malvern, PA	
Wehby, Michael Daniel	12/20/2001
Fort Thomas, KY	
West, Malynda Susan	12/20/2001
San Francisco, CA	
Fraud/Kickbacks	
Rousseau, Andre M	09/10/2001
Chicago, IL	
Entities Owned/Controlled By Convicted	
Arroyo Chiropractic	12/20/2001
Arroyo Grande, CA	
Carlin Chiropractic Health Ctr	12/20/2001
San Antonio, TX	
Cosmetic Surgery & Laser Inst	12/20/2001
Tustin, CA	
Gregory W Stephens, D C, P C	12/20/2001
Houston, TX	
Lund Chiropractic	12/20/2001
Arlington, TX	
Martin Family Chiropractic Ctr	12/20/2001
Cameron Park, CA	
Y & L Corporation	12/20/2001
Denver, CO	
Default on Heal Loan	
Alams, Humphrey A Jr	12/20/2001
Seattle, WA	
Anillo-Sarmiento, Manuel F	12/20/2001
Miami, FL	
Baron, Spencer H	12/20/2001
N Miami Beach, FL	
Bell, Robert E	12/20/2001
Phoenix, AZ	
Bornstein, Mark L	12/20/2001
Pembroke Pines, FL	
Buckingham, Guy M	12/20/2001
Orleans, MI	
Dauphin, Michelle M	12/20/2001
Pembroke Pines, FL	
Dinozzi, Anthony D	12/20/2001
Batavia, OH	
Dupuis, Edward J	12/20/2001
Dallas, TX	
Evans, Charla J	12/20/2001
Mobile, AL	
Ferguson, Camilla M	12/20/2001
Fairborn, OH	
Fredericks, Duane A	12/20/2001
Philadelphia, PA	
Fryer, Thomas J	12/20/2001
Ferron, UT	
Gilyot, Glenn David Sr	12/20/2001
New Orleans, LA	
Hansen, Hunter J	12/20/2001
Andrews, NC	
Havriliak, Stephen J	12/20/2001
Huntingdon Valley, PA	
Huber, Mark	12/20/2001
Princeton, MN	
Kardelis, Eugene C Jr	12/20/2001
Nazareth, PA	
Kardos, William P	12/20/2001
Apollo, PA	
Knott, Kevin Thomas Jr	12/20/2001
Oceanside, CA	
Kron, Kathy A	12/20/2001
Norton, MA	
Lallouz, Solomon Y	12/20/2001
Hollywood, FL	
Lantz, Larry S	12/20/2001
Broomall, PA	
Leavitt, Albert M Jr	12/20/2001
Alexandria, VA	
Legault, Michelle A	12/20/2001
Coon Rapids, MN	
Leon, Maria I	12/20/2001
Hollywood, FL	
Levy, Richard S	12/20/2001
Forthee, NJ	
Milbourne, Michael W	12/20/2001
Lafayette Hill, PA	
Milot, Sheila Inez	12/20/2001
Vernon Hills, IL	
Moore, Charles E	12/20/2001
Kansas City, KS	
O'Brien, Matthew P	12/20/2001
Romeo, MI	
Parenti, Lisa C	12/20/2001
Nashville, TN	
Parker, Melissa M	12/20/2001
Clinton, NC	
Parsons, Tien M	12/20/2001
Marathon, FL	
Payne, Carol D	12/20/2001
Memphis, TN	
Pitts, Angela R	12/20/2001
Odessa, FL	
Powell, Michael N	12/20/2001
Wollaston, MA	
Pugh, Melvoria C	12/20/2001
Mobile, AL	
Ray, Donald Elton	12/20/2001
Orange Beach, AL	
Richichi, Mark S	12/20/2001
Ctr Moriches, NY	
Roberts, Pamela	12/20/2001
Charlotte, NC	
Robinson, Cynane Ann Yetta	12/20/2001
Southfield, MI	
Rodebaugh, Cheryl Lynn	12/20/2001
Denver, CO	
Rose, Keith D	12/20/2001
Big Rapids, MI	
Roudebush, Mark D	12/20/2001
Cordova, TN	
Rouselle, Dionne Marie	12/20/2001
Memphis, TN	
Rubinstein, David M	12/20/2001
Tamarac, FL	
Schwirian, Jay A	12/20/2001
White Oak, PA	
Smith, Terrance Herbert	12/20/2001
Sioux Falls, SD	
Smith, William H III	12/20/2001
Philadelphia, PA	
Sparks, Darlene V	12/20/2001
Annandale, VA	
Stevens, Joanne K	12/20/2001
Havriliak, OH	
Strasser, Robert T	12/20/2001
Lake Zurich, IL	
Thompson, Emma R	12/20/2001
Lithonia, GA	
Van Brookhoven, Gloria	12/20/2001
Atlanta, GA	
Vodvarka, James M	12/20/2001
Steubenville, OH	
Webb, James R	12/20/2001
Shawnee Mission, KS	
Wohlschlaeger, Michael Alan	12/20/2001
Panama City Bch, FL	
Wolf, Jacob M	12/20/2001
Akron, OH	
Wright, Bill G	12/20/2001
Lincoln, NE	
Yoder, Patricia L	12/20/2001
Ocklawaha, FL	
Young-Cheney, Joan E	12/20/2001
Creswell, OR	
Peer Review Organization Cases	
Hinkley, Bruce Stanton	11/14/2001
Dallas, TX	

Dated: December 3, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–32158 Filed 12–31–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

LL–37 is an Immunostimulant

Oleg Chertov (NCI), Joost Oppenheim (NCI), De Yang (NCI), Qian Chen (NCI), Ji Wang (NCI), Mark Anderson (EM), Joseph Wooters (EM)

Serial No. 09/960,876 filed 21 Sep 2001

This invention relates to use of an antimicrobial peptide as a vaccine adjuvant. LL–37 is the cleaved antimicrobial 37-residue C-terminal peptide of hCAP18, the only identified member in humans of a family of proteins called cathelicidins. LL–37/hCAP18 is produced by neutrophils and various epithelial cells. LL–37 is well known as an antimicrobial peptide. However, although antimicrobial peptides have generally been considered to contribute to host innate antimicrobial defense, some of them may also contribute to adaptive immunity against microbial infection. The inventors have shown that LL–37 utilizes formyl peptide receptor-like 1 (FPLR1) as a receptor to activate human neutrophils, monocytes, and T cells. Since leukocytes participate in both innate and adaptive immunity, the fact that LL–37 can chemoattract human leukocytes may provide one additional mechanism by which LL–37 can contribute to host defense against microbial invasion, by participating in the recruitment of leukocytes to sites of infection. The invention claims methods of enhancing immune responses through the administration of LL–37 alone, in conjunction with a vaccine, and methods of treating autoimmune diseases. The invention is further described in Chertov et. al., "LL–37, the neutrophil granule- and epithelial cell-derived cathelicidin, utilizes formyl peptide receptor-like 1 (FPRL1) as a receptor to chemoattract human peripheral blood neutrophils, monocytes, and T cells," J Exp. Med. 2000 Oct 2;192(7):1069–74.

A Method for Bioconjugation Using Diels-Alder Cycloaddition

Vince Pozsgay (NICHD)

Serial Number 09/919,637 filed 01 Aug 2001

This invention relates to a new method for the synthesis of conjugate vaccines using the Diels-Alder cycloaddition reaction to covalently attach a carbohydrate antigen from a pathogen to a protein carrier. The Diels-Alder reaction has not been extended to conjugation involving biopolymers or other types of polymeric materials. Advantages of this method are that cross-linking during conjugation is entirely avoided in addition to the mild chemical conditions under which this synthesis method proceeds. Diels-Alder reactions commonly take place in high-temperature environments; the method contemplated by this invention takes place at much lower temperatures. In addition to claiming methods of synthesis for conjugate vaccines using the Diels-Alder cycloaddition, the patent application claims vaccines produced utilizing the method, and methods of inducing antibodies which react with the polysaccharides contemplated by the invention.

Identification of New Small RNAs and ORFs

Susan Gottesman (NCI), Gisela Storz (NICHD), Karen Wassarman (NICHD), Francis Repoila (NCI), Carsten Rosenow (EM)

Serial No. 60/266,402 filed 01 Feb 2001

The inventors have isolated a number of previously unknown sRNAs found in E. coli. Previous scientific publications by the inventors and others regarding sRNAs have shown these sRNAs to serve important regulatory roles in the cell, such as regulators of virulence and survival in host cells. Prediction of the presence of genes encoding sRNAs was accomplished by combining sequence information from highly conserved intergenic regions with information

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about the expected transcription of neighboring genes. Microarray analysis also was used to identify likely candidates. Northern blot analyses were then carried out to demonstrate the presence of the sRNAs. Three of the sRNAs claimed in the invention regulate (candidates 12 and 14, negatively and candidate 31, positively) expression of RpoS, a major transcription factor in bacteria that is important in many pathogens because it regulates (amongst other things) virulence. The inventors' data show that these sRNAs are highly conserved among closely related bacterial species, including Salmonella and Klebsiella, presenting a unique opportunity to develop both specific and broad-based antibiotic therapeutics. The invention contemplates a number of uses for the sRNAs, including, but not limited to, inhibition by antisense, manipulation of gene expression, and possible vaccine candidates.

Peptides that Stabilize Protein Antigens and Enhance Presentation to CD8+ T Cells

Roger Kurlander, Elizabeth Chao, Janet Fields (CC)
DHHS Reference No. E–172–99/1 filed 12 Dec 2000 (PCT/US00/33027, published as WO 01/40275), with priority to 06 Dec 1999

This invention relates to compositions and methods for stabilizing an antigen against proteolytic degradation and enhancing its presentation to CD8+ cells. The invention claims "fusion agents," isolated molecules comprising a hydrophobic peptide joined to an epitope to which a CD8+ T cell response is desired. Also claimed in the invention are the nucleic acid sequences that encode the fusion agents. Recently, there has been great interest in developing vaccines to induce protective CD8+ T cell responses, however, there are practical obstacles to this goal. Although purified antigenic peptides are effectively presented in vitro, introduced in a purified form they often do not stimulate effective T cell responses in vivo because the antigens are insufficiently immunogenic and too easily degraded. Adjuvants or infectious "carriers" often can enhance these immune responses, however, these added agents can cause unacceptable local or systemic side effects. The present invention increases antigen stability and promotes in vivo responses in the absence of an adjuvant or active infection.

The invention describes three variants of lemA, an antigen recognized by CD8+ cells in mice infected with Listeria monocytogenes. The antigenic and stabilizing properties of lemA can be accounted for by the covalent association of the immunogenic aminoterminal hexapeptide with the protease resistant scaffolding provided by amino acids 7 to 33 of the lemA sequence (lemA(7–33)). Variants t-lemA, and s-lemA bearing an antigenic sequence immediately preceding lemA(7–33), and lemS containing an immunogenic sequence immediately after lemA(7–33), each induce a CD8+ T cell response and protect the crucial immunogenic oligopeptide from protease degradation. The site of antigen insertion relative to lemA(7–33) can influence antigen processing by preferentially promoting processing either in the cytoplasm or endosomal compartment. Therefore, several embodiments of the invention involve the construction of antigen processing protein molecules and their methods of use. Alternatively, a DNA sequence coding lemA(7–33) may be inserted at an appropriate site to enhance the immunogenicity of the antigenic element coded by a DNA vaccine. In sum, this invention is an attractive, nontoxic alternative to protein/adjuvant combinations in eliciting CD8 responses in vivo and a useful element for enhancing the efficiency with which products coded by DNA vaccines are processed and presented in vivo. Because lemA(7–33) is particularly effective in protecting oligopeptides from proteases, this invention may have particular usefulness in enhancing local T cell at sites such as mucosal surfaces where there may be high proteolytic activity.

For more specific information about the invention or to request a copy of the patent application, please contact Peter Soukas at the telephone number or e-mail listed above. Additionally, please see a related article published in the Journal of Immunology at: 1999;163:6741–6747.

Vibrio cholerae O139 Conjugate Vaccines

Shousun Szu, Zuzana Kossaczka, John Robbins (NICHD)
DHHS Reference No. E–274–00/0 filed 01 Sep 2000 (PCT/US00/24119)

Cholera remains an important public health problem. Epidemic cholera is caused by two Vibrio cholerae serotypes O1 and O139. The disease is spread through contaminated water. According to information reported to the World Health Organization in 1999, nearly 8,500 people died and another 223,000 were sickened with cholera worldwide. This invention is a polysaccharide-protein conjugate vaccine to prevent and treat infection by Vibrio cholerae O139 comprising the capsular polysaccharide (CPS) of V. cholerae O139 conjugated through a dicarboxylic acid dihydrazide linker to a mutant diphtheria toxin carrier. In addition to the conjugation methods, also claimed in the invention are methods of immunization against V. cholerae O139 using the conjugates of the invention. The inventors have shown that the conjugates of the invention elicited in mice high levels of serum antibodies to CPS, a surface antigen of Vibrio cholerae O139, that have vibriocidal activity. Clinical trials of the two most immunogenic conjugates have been planned by the inventors. This invention is further described in Infection and Immunity 68(9), 5037–5043, Sept. 2000.

Dated: December 19, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–32170 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: December 21, 2001.
Time: 8:30 am to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: December 21, 2001.
Time: 3:30 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32160 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: January 15–16, 2002.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32161 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: January 14, 2002.
Time: 1:30 am to 3:30 pm.
Agenda: To review and evaluate contract proposals.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David I Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32162 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.
Date: January 24–25, 2002.
Closed: January 24, 2002, 10:30 am to recess.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Open: January 25, 2002, 8 am to adjournment.
Agenda: Presentation of NIMH Acting Director's report and discussion of NIMH program, and policy issues.
Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.
Contact Person: Jane A. Steinberg, PhD., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee

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may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's homepage: *www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32163 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 8–9, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Cambridge Hotel, 575 Memorial Drive, Cambridge, MA.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 16–17, 2002.

Time: 7 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32164 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Adviser Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 16–17, 2002.

Open: January 16, 2001, 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 17, 2002, 9:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's homepage: *www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health.

Dated: December 20, 2001

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32166 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 22, 2002.

Time: 11:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4552.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32167 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

Date: February 12, 2002.

Open: 7:30 am to 8:30 am.

Agenda: Program documents.

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 12–13, 2002.

Open: February 12, 2002, 9:00 am to 4:30 pm.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 12, 2002, 4:30 pm. to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: February 13, 2002, 9:00 am to 12:00 pm.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: February 12, 2002.

Closed: 12:00 pm. to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32168 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Special Review Panel—Telephone Conference (ZLM1 MMR P J2).

Date: January 15, 2002.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (Telephone Conference Call).

Contact Person: Merlyn M Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32169 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: January 25, 2002.

Open: 9 am to 12 pm.

Agenda: For discussion of programmatic policies and issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 12 pm to 1 pm.

Agenda: To review and evaluate personnel qualifications.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's homepage: *www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32165 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Workplace Helpline Call Record Form and Followup Survey

New—The Workplace Helpline is a toll-free, telephone consulting service which provides information, guidance and assistance to employers, community-based prevention organizations and labor offices on how to deal with alcohol and drug abuse problems in the workplace. The Helpline was required by Presidential Executive Order 12564 and has been operating since 1987. It is located in the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP), where it is managed out of the Division of Workplace Programs.

Callers access the Helpline service through one of its Workplace Prevention Specialists (WPS) who may spend up to 30 minutes with a caller, providing guidance on how to develop a comprehensive workplace prevention program (written policy, employee assistance program services, employee education, supervisor training, and drug testing) or components thereof. When a call is received, the WPS uses a Call Record Form to record information about the call, including the name of the company or organization, the address, phone number, and the number of employees. Each caller is advised that their responses are completely voluntary, and that full and complete consultation will be provided by the WPS whether or not the caller agrees to answer any question. To determine if the caller is representing an employer or other organization that is seeking assistance in dealing with substance abuse in the workplace, each caller is asked for his/her position in the company/organization and the basis for the call. In the course of the call, the WPS will try to identify the following information: basis or reason for the call (i.e., crisis, compliance with State or Federal requirements, or just wants to implement a prevention program or initiative); nature of assistance requested; number of employees and whether the business has multiple locations; and the industry represented by the caller (e.g., mining, construction, etc.). Finally, a note is made on the Call Record Form about what specific type(s) of technical assistance was given.

Callers to the Helpline may not, for a variety of reasons, contact the Helpline to describe any successes or failures they are having in implementing any prevention initiatives discussed with the Helpline staff. In addition, CSAP wants to know if the Helpline service is working as intended. Accordingly, the Helpline staff contacts a sample of callers to discuss the caller's progress in taking action based on the Helpline consultation, and whether or not they were satisfied with the Helpline service. Callers are told the reasons for the call and that their responses to questions are completely voluntary. If the caller is willing to participate, they are asked about the actions, if any, they took as a result of the consultation with the Helpline and if there were any obstacles to taking the desired action, such as resistance from employees and lack of time. The callers are also asked several questions to help determine if the consultation was useful and if the Helpline staff was helpful, and whether or not they would refer others to the Helpline. The annual average burden associated with the Helpline Call Record and Followup Survey are summarized below.

Form	Number of responses	Responses/respondent	Burden/response (hrs.)	Total burden (hrs.)
Call Record Form	4,200	1	.250	1,050
Followup Survey	960	1	.167	160
Total	4,200			1,210

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 20, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–32172 Filed 12–31–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4653–N–12]

Notice of Proposed Information Collection for Public Comment: Housing Choice Voucher Tenant Accessibility Study: 2002–2003

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement concerning a project to obtain information on the Housing Choice Voucher Tenant Accessibility Study 2002–2003 will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dianne Thompson, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8154, Washington, DC 20410, telephone number (202) 708–5537 extension 5863 (this is not a toll-free number). Copies of the proposed forms and other available documents may be obtained from Ms. Thompson.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Choice Voucher Tenant Accessibility study: 2002–2003.

Description of the need for the information and proposed use: The primary purpose of the proposed data collection is to develop a mail questionnaire for HUD that can be used with a national sample of Housing Choice Voucher tenants with physical disabilities to determine their satisfaction with the search process and the quality of their housing unit.

Members of affected public: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of response	Hours per response	Burden hours
Questionnaire	400	once	25	50

Total Estimated Annual Burden Hours: 50 (one time).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 21, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary, for Policy Development and Research.

[FR Doc. 01–32192 Filed 12–31–01; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–19]

Housing Opportunities for Persons With AIDS Program; Announcement of Funding Award FY 2001

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department under the Fiscal Year 2001 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice announces the selection of 22 renewal applications, three new project applications, and three technical assistance applications under the three 2001 HOPWA national competitions which were announced under the Super Notice for HUD's Housing Community Development and Empowerment Programs and published in the Federal Register on February 26, 2001. The notice contains the names of award winners, describes grant activities and provides the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7212, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1934. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–2565. (Telephone numbers, other than "800" TTY numbers are not toll free.) Information on HOPWA, community development and

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consolidated planning, and other HUD programs may also be obtained from the HUD homepage on the World Wide Web. In addition to this competitive selection, 105 jurisdictions received formula based allocations during the 2001 fiscal year for $229.372 million in HOPWA funds. Descriptions of the formula programs is found at *www.hud.gov/offices/cpd/aidshousing.*

SUPPLEMENTARY INFORMATION: The purpose of the HOPWA program competition was to award project grants for the renewal continuing activities or for new projects that provide housing assistance and supportive services. Grants are made under two categories of assistance: (1) grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for low-income persons living with HIV/AIDS and their families in areas that do not receive HOPWA formula allocations. The purpose of the technical assistance competition was to select qualified providers to support the national goal for the sound management of the HOPWA program.

Under this year's competition HUD was required to renew all existing grants that were expiring in 2001 and if funding remained after funding eligible HOPWA renewal projects, HUD would consider applications for new HOPWA projects. A total of $21.5 million was awarded to the 22 eligible renewal grants. The remaining amount of $3.9 million, plus $107,526 in recaptured funds was made available to the three highest rated HOPWA competitive applications for new projects.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the HUD Appropriations Act for 2001. The competition was announced in a Super Notice for HUD's Housing Community Development and Empowerment Programs published in the **Federal Register** on February 26, 2000 (66 FR 12223). Each application was reviewed and rated on the basis of selection criteria contained in that NOFA.

Public Benefit

The award of HOPWA funds to the 22 renewal projects, three new projects and three Technical Assistance awards will significantly contribute to HUD's mission in supporting projects that provide safe, decent and affordable housing for persons living with HIV/AIDS and their families who are at risk of homelessness. The projects proposed to use HOPWA funds to support the provision of housing assistance to an estimated 2,777 low-income people with HIV/AIDS and their families. In addition, an estimated 2,985 persons with HIV/AIDS are expected to benefit from some form of supportive service or housing information referral service that will help enable the client to maintain housing and avoid homelessness. The recipients of this assistance are expected to be very-low income or low-income households. These 25 applicants also documented that the Federal funds awarded in this competition, $25.5 million, will leverage an additional $38 million in other funds and non-cash resources including the contribution of volunteer time in support of these projects, valued at $10/hour. The leveraged resources will expand the HOPWA assistance being awarded by 149 percent.

A total of $25.5 million was awarded to 25 organizations to serve clients in the twenty-four listed States and $1.9 million for technical assistance activities across the nation.

In accordance with section 102(a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

FY 2001 HOPWA Renewal Awards by State

Alabama

AIDS Alabama, Inc. of Birmingham will receive a HOPWA renewal grant for $899,180 to continue the Alabama Rural AIDS Project (ARAP) to: (1) Outreach to eligible HIV positive, low-income persons; (2) link them with medical and supportive services, and (3) house (ultimately permanently) those HIV-positive, low-income persons who are homeless or marginally housed in the state's 35 most rural counties. ARAP will house 300 low-income, homeless persons with HIV/AIDS and 300 additional family members and provide 1,400 persons with supportive services over the three years of the project. AIDS Alabama will partner in this project with AIDS Services Centers of Anniston, AIDS Action Coalition of Huntsville, Montgomery AIDS Outreach, Mobile AIDS Support Services, East Alabama AIDS Outreach of Auburn, and West Alabama AIDS Outreach of Tuscaloosa. All partners are members of the AIDS Service Organization Network of Alabama. For information contact: AIDS Alabama, Inc. P.O. Box 55703; 3521 7th Avenue South Birmingham, AL 35222. Mr. Randall H. Russell, MSW, LGSW Executive Director; Phone: (205) 324–9822; Fax: (205) 324–9311; E-mail: *randall@aidsalabama.org.*

Arizona

The Pima County, Community Services Department will receive a HOPWA renewal grant in collaborative effort of Pima County and two project sponsors: the Southern Arizona AIDS Foundation (SAAF), and the City of Tucson. The project is designed to create a continuum of care for people who are low-income and HIV+, and their families, by filling gaps in both housing and services in Tucson and Pima County. Recognizing the importance of stable housing, the two primary goals of the Positive Directions project are: (1) to increase independence through subsidized, supportive housing; and (2) to maximize self-sufficiency through intensive, personalized services. The project addresses these through three key components: transitional housing; long-term rent subsidies; and support and referral services through intensive case management. For information contact: Pima County, Community Services Department, 32 North Stone Avenue, Suite 1600, Tucson, AZ 85701; Gary Bachman, (520) 740–5205 or by E-mail: *gbachman@csd.co.pima.az.s.*

California

In Los Angeles, the West Hollywood Community Housing Corporation will receive a HOPWA renewal grant for $630,535. Funds will be used to continue the Los Angeles Consortium for Service-Coordinated AIDS Housing, a collaboration of four nonprofit agencies providing permanent, supportive housing to very low-income persons living with HIV/AIDS. The three other partner agencies are the Hollywood Community Housing Corporation, Project New Hope and the Skid Row Housing Trust. Funding supports an Enhanced Management Model program, as well as expand services that promote long-term residential stability with residential and vocational service coordinators and an on-site learning program focused on computer skills. The project makes use of life skills development, and employment training and placement opportunities with permanent affordable housing to reach residents in at least 468 units at 26 sites over this grant period. For information contact: West Hollywood Community Housing Corporation, 8285 Sunset Blvd., Suite 3 West Hollywood, CA 90046. Mr. Lee Meyers, Director of Resident Services; Phone: (323) 650–8771 x13; Fax: (323) 650–4745; E-mail: *lee@whchc.org.*

The County of San Diego, Department of Housing and Community Development (DHCD) will receive a HOPWA renewal grant for $308,116 to continue the La Posada Project. DHCD works with the County Health and Human Services Agency and the Office of AIDS Coordination. The project provides service enriched housing opportunities throughout San Diego County to homeless and very low-income HIV positive women and their children who have not participated in either the HIV or the homeless service delivery systems. The program provides operating costs, addiction services coordination, resident services coordination, and longitudinal outcome evaluation. The original grant supported the rehabilitation of 24-units in apartment complexes, which focus on needs for women and their children. The project will also continue to provide services to a minimum of six to twelve families at Fraternity House, Inc., a licensed residential care facility, and 12 families at La Posada Apartments with services from South Bay Community Services. An additional 100 clients will receive out-patient addiction counseling and recovery services and case management support through Stepping Stone of San Diego, Inc. For information contact: County of San Diego Department of Housing and Community Development, 3989 Ruffin Road, San Diego, CA 92134–1890. Ms. Marilee Hansen, Housing Program Analyst; Phone: (858) 694–8712; E-mail: *mhanse@co.san-diego.ca.us.*

In San Francisco, Lutheran Social Services of Northern California will receive a HOPWA renewal grant for $1,014,080 to continue The Bridge Project, a six-agency collaboration that provides transitional housing while addressing the complex service needs of indigent, multiply-diagnosed clients living with HIV/AIDS. The goals of the Bridge Project are threefold: (1) Increase the quantity and quality of housing for homeless, multiply-diagnosed persons with HIV/AIDS; (2) Provide direct access to health care, substance abuse counseling, mental health care, and benefits counseling for underserved multiply-diagnosed populations, and (3) Deliver these services through an integrated system of care which is cost-effective and meets the complex needs of the multiply-diagnosed client. With success in achieving its original goals, a renewal grant for one of the Multiple Diagnosis Initiative (MDI) Projects from HUD will enable this partnership to continue providing stable housing to current number of participants. For information contact: Lutheran Social Services of Northern California, 433 Hegenberger Road, #103 Oakland, CA 94621; Mr. Kevin Fautaux, Director, San Francisco Office; Phone: (415) 581–0891 ext. 103 Fax: (415) 581–0898; E-mail: *LSSkfaut@aol.com.*

In San Francisco, the Bernal Heights Neighborhood Center, Housing Services Affiliate will receive a HOPWA renewal grant for $692,648 to continue the operation of Positive MATCH. As one of the Multiple Diagnosis Initiative (MDI) Projects, this effort has provided a nationally significant model of integrated services and care for homeless multiply diagnosed mothers and children living with HIV. The innovative network of services and housing provides a specialized continuum of care for families that comprehensively addresses the needs of the family prior to and after the death of the infected parent. The project is an innovative collaborative project between a housing developer and four social service agencies skilled at providing social, legal, and mental health services for multiply diagnosed homeless women with HIV and their children. In October of 2001, the collaborative will complete the rehabilitation of the seven unit multi-bedroom permanent housing facility. Positive MATCH is seeking renewal funding to continue the provision of the integrated and replicable continuum of care that ensures permanent exits from homelessness. For information contact: Housing Services Affiliate-Bernal Heights Neighborhood Center, 515 Cortland Ave., San Francisco, CA 94110. Ms. Mary Dorst, Housing Project Manager; Phone: (415) 206–2140 ext. 147; Fax: (415) 648–0793; E-mail: *bernaldev@aol.com.*

Connecticut

The City of Bridgeport, Central Grants Office, will receive a HOPWA renewal grant for $1,312,821. The City will be coordinating with seven (7) project sponsors, in continuing support to 50 households under one of the Multiple Diagnosis Initiative (MDI) Projects. Under the Bridgeport AIDS/HIV Housing Initiative, the seven project sponsors include Prospect House, Bethel Recovery Center, and Alpha Home who are the housing providers; Helping Hand Center, Catholic Family Services, and Evergreen Network who are support service providers, and the Connecticut AIDS Residence Coalition which provides technical assistance and resource identification services. Based on the number of people served from the original HOPWA grant, these organizations anticipate that it will provide emergency services to a minimum of 175 multiple diagnosed persons with HIV/AIDS, and provide housing services to 60 multiply diagnosed individuals and families, through the project's unique Transitional Living Program (TLP). For information contact: City of Bridgeport, Central Grants Office, 999 Broad Street, Bridgeport, CT 06604; Kathleen Hunter, Assistant Director, Social Services; Phone (203) 576–8475, Fax (203) 567–8405; E-mail: *huntekl@ci.bridgeport.ct.us.*

District of Columbia

The Whitman-Walker Clinic, Inc. of Washington, DC will receive a HOPWA renewal grant for $1,139,255 to continue the Bridge Back Program a residential treatment facility for multiply diagnosed men and women with HIV/AIDS, substance abuse, and persistent mental illness. DC Bridge Back offers six months of intensive addiction treatment, medical, and psychosocial services for up to eight residents at a time. Bridge Back is a safe and supportive link back to appropriate housing in the community for people living with HIV/AIDS who suffer from severe substance abuse and chronic mental illness. Staff and clients work collaboratively to establish a treatment plan while in the program, and a discharge plan including appropriate housing and accessibility of supportive services in the community upon leaving the program. For information contact: Whitman-Walker Clinic, Inc., 1407 S. Street, NW., Washington, DC 20009. Ms. Mary L. Bahr, Associate Executive Director; Phone: (202) 797–3515; Fax: (202) 797–3504; E-mail: *mbahr@wwc.org.*

Florida

The City of Key West Community Development Office will receive a HOPWA renewal grant for $1,188,500 to continue their housing voucher program for persons living with HIV/AIDS in Monroe County. The City partners with AIDS Help, Inc. in providing assistance to clients in this high cost housing market. This Special Project of National Significance was modeled after HUD's Section 8 program with support to provide for independence and self-determination for clients. The program serves an estimated 50 households each year through tenant-based rental assistance and residency in housing facilities. Additionally, for disabled

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persons who experience improved health due to medical treatment advances, support from other sources includes back to work training in collaboration with the Florida Keys Employment and Training Council. For information contact: City of Key West Community Development Office, 1403 12th Street, Key West, FL 33040. Ms. Lee-Ann Broadbent, Program Administrator; Phone: (305) 292–1221; Fax (305) 292–1162.

Georgia

The City of Savannah, Community Planning and Development Division, will receive renewal funding of $1,229,636 to continue operating Project House Call. The City partners with Union Mission, Inc., and two project partners—Georgia Legal Services Program and Hospice Savannah—and operate activities within the 10-member Savannah-Chatham AIDS Continuum of Care. Assistance is based on the use of a 10-unit community residence and short-term housing payments for 75 households. Under the original grant, this program prevented homelessness for 213 unduplicated individuals with HIV/AIDS who enrolled in Project House Call and received the provision of home-based services. The program provides services in the homes of PLWA/A's who might not otherwise have access to services within the Chatham/Effingham County areas. Project House Call is a lifeline for the population it serves, linking them with primary medical care, legal services, transportation assistance, substance abuse counseling, group therapies, and hospice services. For information contact: Community Planning and Development Division, Office of the City Manager, P.O. Box 1027, Savannah, GA 31402. Ms. Taffanye Young, Director; Phone: (912) 651–6520; Fax: (912) 651–6525; E-mail: *Taffanye_Young@ci.savannah.ga.us.*

Illinois

Cornerstone Services, Inc., of Joliet, will receive a HOPWA renewal grant of $789,160 to continue to provide scattered site permanent housing with supportive services for 16 households with persons living with HIV/AIDS who also have mental illness and who may be homeless. The program is located in Joliet and Cornerstone has partnered with the AIDS Ministry of Illinois (AMI), Stepping Stones (substance abuse treatment center) and Metro Infectious Disease Consultants (MIDC) to provide persons with HIV/AIDS and mental illness by offering a comprehensive array of services promoting choice, dignity, and the opportunity to live and work in the community. For information contact: Cornerstone Services, Inc., 777 Joyce Road, Joliet, IL 60436. Ms. Bette J. Reed Phone: (815) 741–6743; Fax: (815) 723–1177; E-mail: *breed@cornerstoneservices.org.*

Kentucky

The Division of Community Development for the Lexington-Fayette Urban County Government will received $1,362,860 to continue the AVOL AIDS Housing Program. This program provides housing, related case management, education and referrals, as well as transitional and supportive housing services for persons living with HIV/AIDS in Central and Eastern Kentucky. Activities are based at two housing facilities, Rainbow Apartments and Solomon House. Rainbow Apartments is a transitional housing program designed to respond to persons with HIV/AIDS who are homeless or at risk of homelessness and in need of a spectrum of supportive services while they work through issues that may have contributed to their homelessness. Solomon House is a community residence for individuals who require personal care, supervision and supportive services following an acute medical episode or who are in the advanced stages of their illness. Over the three year grant period, this program will serve 75 persons with HIV/AIDS through the housing facilities and an additional 300 individuals will receive housing information services. For information contact: Division of Community Development, Lexington-Fayette Urban County Government, 200 East Main Street Lexington, KY 40507. Ms. Irene Gooding, Grants Manager; Phone: (859) 258–3079; Fax: (859) 258–3081; E-mail: *ireneg@lfucg.com.*

Louisiana

UNITY for the Homeless of New Orleans will receive a HOPWA renewal grant for $1,216,896 to continue a program by six sponsor agencies, working within the community's extensive and well-established homeless continuum of care system to provide an integrated range of services and housing for persons with HIV/AIDS and their families who are homeless or at risk of becoming homeless. The Sponsors are the New Orleans AIDS Task Force, Project Lazarus, Children's Hospital FACES, Volunteers of America, Belle Reve and United Services for AIDS Foundation. The range of assistance to be provided includes: case management, mental health counseling, outreach services, day services, specialized employment services for person able to return to work, in-home and center-based respite care and residential substance abuse treatment for 18 individuals and two families. Direct housing support includes: residence at a care facility for 24 persons who are at the end stage of their illness, short-term rent, mortgage, utility assistance for 60 persons, and emergency shelter for 30. These AIDS housing efforts are also integrated with other homeless assistance programs operated by 45 agencies and coordinated through the City's continuum of care. For information contact: UNITY for the Homeless 2475 Canal Street, Suite 300 New Orleans, LA 70119; Ms. Margaret Reese, Executive Director; Phone: (504) 821–4496 ext.107; Fax: (504) 821–4709; E-mail: *pegreese@aol.com.*

Massachusetts

The AIDS Housing Corporation of Boston will receive a grant of $928,752 to continue SHARE 2000+, a cooperative partnership designed to meet the needs of HIV/AIDS housing programs and consumers in Greater Boston. SHARE 2000+ consists of four components: the Direct Care Relief Program, the Staff Development Program, the Donations Assistance Program, and the Staff Training Program. First funded in 1995, the program design is an innovative approach to capitalizing on existing expertise in the HIV/AIDS provider community and sharing resources to augment the efficiency and capacity of HIV/AIDS housing programs. Over the course of the grant period, SHARE 2000+ will provide services to 980 individuals and offer 4,000 hours of relief staffing. Share 2000+ consists of four core program components, representing four non-profit human service agencies: Direct Care Relief Program: Justice Resource Institute/JRI Health; Donations Assistance Program: Massachusetts Coalition for the Homeless; Staff Development Program: Victory Programs, Inc.; and Staff Training Program: AIDS Action Committee. For information contact: AIDS Housing Corporation, 29 Stanhope Street Boston, MA 02116. Joe Carleo Executive Director; Phone: (617) 927–0088 x31; Fax: (617) 927–0852; E-mail: *jcarleo@ahc.org.*

Maryland

The City of Baltimore, Department of Housing and Community Development, Office of Homeless Services will receive a HOPWA renewal grant for $1,363,136 to continue Back to Basics (B2B), a comprehensive case management program serving families in the Baltimore, MD who are dealing with the issues of HIV/AIDS, who are newly diagnosed (or newly disclosing their HIV status), who are in crisis, and who voluntarily elect to participate in an intensive case management program. Begun with the support of a 1998 SPNS grant, the goal is to empower families by helping them initially to meet their basic needs, such as food, clothing, and housing. Over time, help will be extended to develop client resources and skills to access the necessary healthcare and services to function as a unit, to maintain housing and economic stability in a safe environment and to live productive lives, for as long as possible. For information, contact: Baltimore Office of Homeless Services, 417 E. Fayette Street Room 1211 Baltimore, MD 21202. Ms. Leslie Leitch Director, Phone: (410) 396–3757; Fax: (410) 625–0830; E-mail: *leslie.leitch@baltimorecity.gov.*

New Hampshire

Harbor Homes, Inc. of Nashau, New Hampshire will receive a HOPWA renewal grant for $447,057 to continue a HOPWA program that serves Hillsborough County, with the exception of Manchester. This area has an estimated 500 persons living with HIV/AIDS. The Southern New Hampshire HIV/AIDS Task Force, the only HIV/AIDS service provider in the area, is the designated Project Sponsor. The program will continue to provide emergency rental and utility assistance and supportive services, including barrier reduction, to a minimum of 391 persons living with HIV/AIDS over the three year period of the grant. Preference will be given to those who are homeless, in imminent danger of homelessness and/or those with dual or multiple diagnoses. For information contact: Harbor Homes, Inc., 12 Amherst Street, Nashau, NH, 03064. Peter Kelleher, Executive Director, Phone (603) 882–3616; Fax (603) 595–7414; E-mail *kelleher@harhomes.org.*

New Mexico

The Santa Fe Community Housing Trust will receive a HOPWA renewal grant for $1,286,000 to continue a Reentry Housing Strategies Program to assist persons living with HIV/AIDS (PLWAs) to transition back into a productive life. The program makes use of homeownership support for 14 households each year and recognizes that for some clients, the longevity and future life expectancy of PLWAs has changed significantly with the advent of new medical treatments. The purpose of the reentry program is to strategize a permanent solution to housing and income stabilization by assisting people to design their own reentry plan. It covers job training, educational prospects, and one-on-one counseling is provided to assist the clients to contact creditor and clean up credit issues. The reentry program makes homeownership possible and affordable through a mutual self help savings effort for downpayments and through leveraging community bank assistance for home purchases. The Trust issues loans or notes and has leveraging arrangements for over $8 million through area banks. Under the original grant, homeownership has been shown to be a significant incentive for clients in encouraging them to adhere to their difficult medical regimen, to pursue employment opportunities, and to transition into mainstream living. For information contact: Santa Fe Community Housing Trust, PO Box 713, Santa Fe, NM 87504–0713; Ms. Sharron L. Welsh, Executive Director; Phone: 505 989–3960; Fax: (505) 982–3690; E-mail: *sfcht505@aol.com.d*

New York

The Hudson Planning Group, Inc. will receive a HOPWA renewal grant for $451,700 to continue a resource identification program of shared financial management services for a New York City network of AIDS housing agencies and other service providers. The project, Management Services Organization (MSO), is presently serving two housing providers, Harlem United Community AIDS Center and Housing Works, Inc., through shared staff and technology that improves the infrastructure of nonprofit management. The use of MSO management tools, standard assessment, operating and reporting procedures, has resulted in more efficient use of management resources and higher levels of budgeting and planning advice in making use of financial data. The continuing project will include support for other non-profit, community based AIDS Services Organizations (ASOs), such as the Callen Lorde Community Health Center, the AIDS Day Services Association of New York (VidaCare subsidiary) and Hope Community, Inc., and is expected to reach nine providers over the next three years. This shared services model will also be tested for replication in other communities to promote similar management collaborations to establish, coordinate and develop housing assistance resources in those areas. In New York City, approximately 2,500 persons with HIV/AIDS will be served by the agencies participating in this project. For information contact: Hudson Planning Group, Inc., 180 Varick St., 16th Floor, New York, NY 10014; Mr. David Terrio, Managing Director; Phone: (212) 627–7900 x219; Fax: (212) 627–9247; E-mail: *Dterrio@BurchmanTerrio.com.*

Rhode Island

The Rhode Island Housing and Mortgage Finance Corporation (RIH), will continue its highly successful operations of a multi-faceted housing and supportive service program for persons living with HIV/AIDS (PLWAs) through a HOPWA renewal grant for $1,212,153. The grant sponsors, House of Compassion (HOC) located in northern RI, and AIDS Care Ocean State (ACOS) located in Providence will maintain a continuum of care for single adults and families affected by HIV/AIDS. The program provides supportive services, housing, and housing information services. Specific programs include the operation of two group homes, 12 scattered site apartments, and supportive services for all clients of both agencies. The past HOPWA grant has enabled the development of a seamless delivery of services ranging from housing referral to independent living and then supportive housing and related services. For information contact: Rhode Island Housing and Mortgage Finance Corporation; 44 Washington Street Providence, RI 02903. Ms. Susan Bodington, Director of Housing Policy; Phone: (401) 457–1286 Fax: (401) 457–1140 E-mail: *sbodington@rihousing.com.*

Washington

The Bailey-Boushay House project of the Virginia Mason Medical Center will receive a HOPWA renewal grant for $950,000 to sustain supportive services for people living with HIV/AIDS. Bailey-Boushay House is a nationally recognized care facility, which has provided intensive residential nursing health care and adult day care to more than 2,500 individuals since 1992. The goal of the project is to maintain and/or improve the behavioral stability of program participants and residents of the facility, enhancing their ability to obtain medical treatment and live independently in the community. The project will support mental health and substance abuse treatment for residents and program consumers, enhance clinical and management information systems, and assist the facility in developing capacity to conduct structured evaluations of the services. For information contact: Virginia Mason Medical Center, Bailey-Boushay House; 2720 East Madison Seattle, WA 98112; Ms. Leslie V. Ravensberg; Phone: (206) 720–3307 Fax: (206) 720–2299 E-mail: *leslie.von.ravensberg@vmmc.org.*

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West Virginia

The State of West Virginia, Office of Economic Opportunity (OEO), will receive $1,085,928 of renewal funds for the continued operation of HOPWA assistance throughout the State. OEO is the supervising agent of a non-profit collaborative—the West Virginia Housing and Advocacy Coalition for People with AIDS, Inc. (Coalition), which consists of three partners: Covenant House, Inc. in Charleston; Caritas House, Inc. in Morgantown; and Community Networks, Inc. in Martinsburg. The Coalition is a statewide non-profit organization created to establish a comprehensive and effective delivery of services to a homeless population with special needs associated with living with HIV/AIDS. The HOPWA program initiatives provide housing, supportive services, technical assistance, and resource identification to people living with HIV/AIDS and their family members. This project funding includes the continued operation of five (5) houses in which people with HIV/AIDS live, and the continuation of services to a growing number of over 350 persons infected with HIV and their affected family and household members. For information contact: West Virginia Office of Economic Opportunity; 950 Kanawha Blvd. E. 3rd Floor Charleston, WV 25301. Mr. Essa R. Howard Director; Phone: (304) 558–8860 Fax: (304) 558–4210 E-mail: *ehoward@oeo.state.wv.us.*

Wisconsin

The AIDS Resource Center of Wisconsin will receive a HOPWA renewal grant for $1,218,576 to continue providing intensive housing case management, rent assistance, and supportive services to persons living with HIV disease and who are also diagnosed with chronic drug abuse or mental illness issues and residing anywhere in the state of Wisconsin. In it's first two years of operations, ARCW's programs served 134 clients and reduced homelessness, increased adherence to medical, mental health and substance abuse treatment, reduced criminal behavior, and improved access to other HIV services. This support improved the client's quality of life, increased independence and reduced utilization of emergency medical care. The renewal funding will serve 195 people living with HIV/AIDS and allow for a 28 percent increase in the number of clients to be served. For more information: AIDS Resource Center of Wisconsin; P.O. Box 92487 Milwaukee, WI 53202. Mr. Doug Nelson, Executive Director; Phone: (414) 273–1991; Fax: 414–273–2357; e-mail: *doug.nelson@arcw.org.*

FY 2001 HOPWA New Projects by State

Iowa

The Iowa Finance Authority (IFA) is receiving $1,370,000 in HOPWA funding to create the AIDS Housing Network of Iowa. IFA has partnered with AIDS service organizations and housing agencies across the state, including to Siouxland Community Health Center, AIDS Project of Central Iowa, American Red Cross Grant Wood Area Chapter (Rapids AIDS Project), Family Service League, Iowa Center for AIDS Resources and Education, and John Lewis Coffee Shop. Under this grant, eighty-four of Iowa's counties, including those counties with the highest percentage of AIDS cases, will be served with housing and related supportive services. The AIDS Housing Network of Iowa will provide housing assistance to 237 persons living with HIV/AIDS and their families through 218 units of housing. Housing assistance will be provided through a 150 on-going tenant-based rental assistance units and 68 short-term emergency assistance subsidies. Additionally, 177 persons will receive related supportive services to ensure housing stability. Through the assistance of the Iowa Coalition for Housing and the Homeless, technical assistance will be provided to project sponsors and assistance will be given to the AIDS Housing Network in the development of a long-term housing strategy to evaluate needs for persons with HIV/AIDS across the State of Iowa.

For information contact: The AIDS Housing Network of Iowa, c/o Iowa Finance Authority, 100 East Grand Ave., Suite 250, Des Moines, IA, 50309. Donna Davis, Deputy Director, and Director of Housing Programs-IFA; Phone: (515) 242–4990; E-mail: donna.davis@ifa.state.ia.us.

Montana (and North Dakota and South Dakota)

The State of Montana Department of Public Health and Human Services in conjunction with the States of South Dakota and North Dakota will receive $1,309,501 for a three-year project to create the TRI-STATE HELP, Housing Environments for Living Positively (TS HELP). TS HELP is a continuum of housing and related supportive services opportunities for people living with HIV/AIDS and their families serving all three states, which do not qualify for HOPWA formula funding. TS HELP is a partnership between one State agency and four private agencies in North Dakota, South Dakota, and Montana. Overall grant administration will be undertaken by the Montana Department of Public Health and Human Services. The Sioux Empire Red Cross in South Dakota, Missoula AIDS Council in Montana, Yellowstone AIDS Project in Montana, Community Action Program, and Region VII in North Dakota will serve as sponsors. The Montana Department of Public Health and Human Services will conduct an independent evaluation of program outcomes and AIDS Housing of Washington, HOPWA Technical Assistance provider, will conduct a statewide HIV/AIDS housing needs assessment. TS HELP will assist persons living with HIV/AIDS by strengthening and expanding HIV/AIDS housing and related supportive services by providing 70 tenant-based rental assistance subsidies, 70 emergency assistance subsidies and housing coordination services to an estimated 232 individuals living with HIV/AIDS and their families. A variety of additional services and resources will be available to 175 persons living with HIV/AIDS and their families through HOPWA funding and leveraged resources.

For information contact: State of Montana, Department of Public Health and Human Services, 1400 Carter Drive, Helena, MT, 59620. Jim Nolan, Project Coordinator; Phone:(406) 447–4260; e-mail: *jnolan@state.mt.us.*

Oregon

The Health Division of the State of Oregon is awarded $1,370,000 of HOPWA funding to create the Oregon Housing Opportunities in Partnership (OHOP) program. OHOP will serve all 31 Oregon counties that are outside of the Portland metropolitan statistical area (MSA), which receives HOPWA formula funding. OHOP is a partnership between two State and four private agencies. The State of Oregon Health Division will serve as grantee and will work in partnership with the Oregon Housing and Community Services Department, the HIV Alliance, the Central Oregon Community Action Agency Network, On Track and the Mid-Willamette Valley Community Action Agency. The University of Oregon at Eugene will conduct an independent evaluation of program outcomes. Through leveraged funds, AIDS Housing of Washington, a nationally recognized HIV/AIDS technical assistance provider, and Development Solutions Group, a private consulting firm specializing in affordable housing, will provide assistance relating to needs assessment and program implementation. OHOP will provide tenant-based rental assistance and housing coordination services to an estimated 225 eligible clients. Through a variety of additional services and resources 120 persons living with HIV/AIDS and their families will benefit through increase housing stability.

For information contact: Oregon Department of Human Services, Health Division, 800 NE Oregon Street, #21, Portland, OR 97232–2162. Victor J. Fox, HIV Client Services Manager; Phone: (503) 731–4029; FAX: (503) 731–4608; e-mail: *victor.j.fox@state.or.us.*

HOPWA Technical Assistance Supplementary: Additionally, HUD awarded $2.5 million to three applicants under the HOPWA Technical Assistance programs. The Purpose of the HOPWA Technical Assistance competition was to award grants that provide support from program operations. HUD established national goals for these funds: (1) Ensuring the sound management of HOPWA programs; and (2) targeting resources to underserved population.

FY 2001 Technical Assistance Awards by State

AIDS Housing of Washington

Under this award, AIDS Housing of Washington (AHW), based in Seattle, has been selected to receive $1,400,000 to continue the provision of National HOPWA Technical Assistance activities. AHW has provided assistance since 1995 and served as a pioneer in developing collaborations with housing and supportive services organizations for persons living with HIV/AIDS. AHW will continue its collaboration with Bailey House, Inc., (New York City), Abt Associates, the Corporation for Supportive Housing, and the AIDS Housing Corporation (Boston) and others to provide technical assistance to nonprofit organizations and State and local governments in planning, operating and evaluating housing assistance for persons who are living with HIV/AIDS and their families.

AHW will continue core assistance to help communities establish and enhance their comprehensive strategies for HIV/AIDS housing. In addition, the collaboration will promote the sound management and operation of HOPWA programs and coordinate evaluation activities that improve service delivery. In addition information services will help clients and communities better connect to available assistance and report on program accomplishments. This project adds a number of additional meetings and special initiatives to help assure that AHW and its partners meet the changing needs of HIV/AIDS housing providers and HOPWA grantees.

Through a new partnership with AIDS Alabama in Birmingham, AHW will launch a "Southern Initiative" that will bring all the skills, knowledge and resources of the National Technical Assistance Program to rural and urban southern parts of this country, with special emphasis on states comprising the lower Mississippi Delta. The desired outcome is to create permanent housing units dedicated to house persons living with HIV/AIDS and their families throughout the Southeast by networking with special needs housing agencies and support service delivery systems.

AHW also proposes to create eight to ten AIDS housing needs assessment plans, including four in the Southeastern States. The results of the needs assessment plans will help AHW in providing technical assistance on the full range of issues in AIDS housing planning, financing, development, operations, and program evaluation. Activities are being planned for a National HIV/AIDS Symposium in Summer 2002, a Fifth National HIV/AIDS Housing Conference in June 2003, and a National Meeting of HOPWA Formula Grantees in Fall 2003.

Outreach and education efforts will continue to be maintained and expanded on the World Wide Web site. AHW and its partners and subcontractors will research, and disseminate training resources and manuals on critical AIDS topics through the website database and existing curricula materials.

For information, contact: Donald Chamberlain, Director of Technical Assistance, AIDS Housing of Washington, 2014 East Madison Street, Suite 200,Seattle, Washington 98122, (206) 322–9444, (206) 322–9298 fax, e-mail: *donald@aidshousing.org, www.aidshousing.org*

Center for Urban Community Services, Inc.

The Center for Urban Community Services (CUCS), a non-profit organization based in New York City, received a National HOPWA Technical Assistance award of $400,000 to continue the provision of services throughout the country.

CUCS will continue the Housing Innovation Partnership to support sound management of AIDS housing programs. The partnership involves five sponsors: the Hudson Planning Group, a New York based provider that specializes in community based planning, knowledge of HUD programs and services, housing development for special needs populations, and financial management; the Corporation for Supportive Housing, a national intermediary organization with branch offices located in eight cities across the country has an array of skills in management operations of HUD programs, Lakefront SRO, a Chicago based operator of supportive SROs, with experience in supportive housing development, management with supportive services delivery; Barry University School of Social Work, located in Miami, which brings an understanding of the latest trends in academic theory and research; and Debbie Grieff Consulting, a Los Angeles based firm, brings substantial experience in supportive housing development and operations. Technical assistance training sessions recently were provided in the cities of New York, Chicago, Atlanta, Memphis, New Orleans and Raleigh-Durham under their FY1999 HOPWA technical assistance award.

Under this new grant, CUCS proposes to address these priority technical assistance needs: developing programs and services for people with multiple diagnosis; adapting programs to serve the changing needs of people living with the HIV; assisting providers in developing new housing services; strengthening the management of AIDS housing organizations and developing innovative solutions to maximize resources and ensure comprehensiveness. A series of Guidebooks will be produced on subjects related to HOPWA Program activities. Linkages with project sponsors throughout the country will be strengthened to coordinate on site delivery of technical assistance. Outreach and education opportunities will be increased with the operation of the CUCS "800" training /TA phone line which permits underserved populations and interested persons to raise housing issues as they occur and receive a one-on-one TA relationship. CUCS will continue to contact HUD field offices, persons living with HIV/AIDS, grantees, and project sponsors for insight in addressing housing and supportive services issues.

For information, contact: Suzanne Wagner, Director of Training and Technical Assistance, Center for Urban Community Services, 120 Wall Street, 25th Floor, New York, New York 10005, (800) 533–4449, (212) 801–3318, (212) 635–2191/fax, e-mail: *suzannew@cucs.org, www.cucs.org*

The Enterprise Foundation—Denver

Under this award for $100,000, the Denver Office of the Enterprise Foundation will support HOPWA

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projects in Colorado and other mountain States. Enterprise will make use of training and technical assistance materials, state-of-the art information technology, and hands-on assistance to transfer its expertise to community-based providers. In Denver, Enterprise will provide technical support to the City's Housing and Neighborhood Services Agency which manages HOPWA and Ryan White CARE Act funds in the Denver metropolitan area and collaborates with the City's HIV/AIDS Housing Advisory Committee. The support activities include training on:

- HOPWA program management, including development of effective client tracking systems, training on performance reporting and financial management; and development of program management handbooks.
- Cultural competency, such as training for service providers to enable more responsive and effective work with diverse client populations.
- Improved service coordination, particularly in helping residents access needed services from other mental health, drug and alcohol rehabilitation, and physical health service providers.
- Employment support, such as advice in developing effective back-to work programs that enable residents to start and continue working while addressing the health care issues that interfere with their ability to work on a regular schedule, or in certain occupations.

Enterprise will also assess support needed by nonprofits to improve financial and program management systems, and to strengthen collaborations among housing and other service providers. The assistance will be provided by Enterprise-Denver staff and consultants who have experience in strategic planning, organizational development, housing development and management, program management and supportive services for HIV/AIDS populations. Enterprise-Denver will also be supported by its national office in drawing upon a wide range of existing Enterprise tools and experience in the development and operation of affordable housing programs and community-based development.

For information, contact: Karen Lado, Director, Denver Office, The Enterprise Foundation, 1801 Williams Street, Suite 200, Denver, CO 80218, (303) 376–5410. William Frey, Interim President, The Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, MD 21044, (410) 772–2422.

Total for all 22 Renewal Grants	$21,544,025
Total for 3 New Project Grants	4,049,501
Total for 3 Technical Assistance Grants	1,900,000
Total	27,493,526

Dated: December 21, 2001.

Donna M. Abbenante,

General Deputy, Assistant Secretary for Community, Planning and Development.

[FR Doc. 01–32191 Filed 12–31–01; 8:45 am]

BILLING CODE 4210-29-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permit and Habitat Conservation Plan for Cyanotech Corporation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Cyanotech Corporation (Cyanotech) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 3-year permit to Cyanotech that would authorize take (harm, harassment, death or injury) of the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*) incidental to otherwise lawful activities. Such take would occur as a result of ongoing operation and maintenance of Cyanotech Corporation's acquaculture facility at Keahole Point on the island of Hawaii.

We request comments from the public on the permit application which includes a Habitat Conservation Plan (HCP) for the Hawaiian stilt. We also request comments on our preliminary determination that the Cyanotech HCP qualifies as a "low-effect" habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act.

DATES: Written comments should be received on or before February 1, 2002.

ADDRESSES: Comments should be addressed to Mr. Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; facsimile (808) 541–3470.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Shultz, Supervisory Fish and Wildlife Biologist, at the above address or telephone (808) 541–3441.

SUPPLEMENTARY INFORMATION:

Document Availability

Cyanotech's permit application and associated HCP, and the Service's Environmental Action Statement, are available for public review. The HCP describes the existing conditions at the Cyanotech aquaculture facility and the proposed measures that Cyanotech would undertake to minimize and mitigate take of the Hawaiian stilt. The Environmental Action Statement describes the basis for the Service's preliminary determination that the Cyanotech HCP qualifies as a low effect plan eligible for a categorical exclusion from further documentation under the National Environmental Policy Act.

You may obtain copies of the documents from review by contacting the office named above. You also may make an appointment to view the documents at the above address during normal business hours. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

Background

Section 9 of the Act and its implementing regulations prohibit the "take" of threatened or endangered species. Take is defined under the Act to include harass, harm, pursue, hunt shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in any such conduct (16 U.S.C. 1538). Harm includes significant habitat modification where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering 50 CFR 17.3(c). Under limited circumstances the Service may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22, respectively.

Cyanotech cultivates and harvests microalgae for commercial sale. The Cyanotech facility currently occupies approximately 90 acres of land and includes a series of man-made ponds or "raceway ponds" where the microalgae is grown; office and maintenance buildings; and laboratory, research, and processing buildings. The nutrient rich ponds support high-density invertebrate populations, a primary food source for the endangered Hawaiian stilt. Stilts are attracted to and nest within and adjacent to the aquaculture facility. Hawaiian stitl chicks that hatch at the facility are led by parents stilts to the ponds to feed where they are suspected either of drowning in the rapidly flowing waters or dying from adverse physiological reactions (e.g., acute dehydration) associated with ingestion of the hypersaline, high-alkaline

conditions of the alga medium required for production. Cyanotech's aquaculture operation thus inadvertently attracts stilts to a man-made habitat that is unsuitable for successful stilt reproduction.

Under the HCP, Cyanotech would minimize incidental take of the Hawaiian stilt by implementing deterrence measures designed to eliminate stilt foraging and nesting at the Cyanoteck Facility. The following non-lethal deterrence measures would be evaluated and may be implemented: (1) reduce or eliminate the invertebrate food source, (2) reconfigure raceway ponds to make them unattractive to the Hawaiian stilt, (3) net ponds to exclude Hawaiian stitl, (4) use biodegradable repellents, and (5) implement various hazing methods. Cyanotech will mitigate for incidental take of Hawaiian stilt eggs and chicks by creating suitable nesting habitat onsite. These measures would ensure (1) positive Hawaiian stilt reproductive success, (2) recruitment of fledged birds into the overall population, and (3) that the Cyanotech facility does not become a reproductive sink for stilts.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize the incidental take of Hawaiian stilt eggs, chicks, subadults, and adults, and measures to mitigate any incidental take of Hawaiian stilts eggs and chicks at the Cyanotect facility. The four alternatives to the proposed alternative considered in the HCP are: (1) No Action, (2) Long-term Management Off Site, (3) Haze/Fee, and (4) Integrated Management Approach.

Under the No Action Alternative, no permit would be issued. Cyanotech would continue its microalgae operation without an HCP to address take of the Hawaiian stilt. Cyanotech did not select this option as it would be in violation of Section 9 of the Act.

Under the Long-term Management Off Site Alternative, Cyanotech would contribute funds to create, restore, or enhance habitat for Hawaiian stilt at an off site location. This alternative would provide mitigation for take of the Hawaiian stilt however, Cyanotech did not select this alternative due to the prepetutation of incidental take that would be caused by continued foraging and nesting of stilts at the Cyanotech facility.

Under the Haze/Fee Alternative, Cyanotech would haze Hawaiian stilts using non-lethal deterrents. This alternative may minimize take, however, Cyanotech did not select this alternative because hazing birds from a site has not proven effective as a long-term solution and would likely result in a long-term commitment of resources without reducing stilt numbers at the Cyanotech facility.

Under the Integrated Management Approach Alternative, Cyanotech would implement non-lethal bird deterrence, manage protected nesting habitat for 1 year only, and reallocate funds from on-site management to an off-site mitigation fund in years 2 and 3. Cyanotech did not select this alternative due to the unconditional closure of the on-site protected habitat after 1 year and the desire for flexibility provided by adaptive management.

The Service has made a preliminary determination that the Cyanotech HCP qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, or candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonable foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, Cyanotech's HCP for the Hawaiian stilt qualifies as a "low-effect" plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Hawaiian stilt. The Service does anticipate significant direct or cumulative effects to the Hawaiian stilt from Cyanotech's microalgae operation.
2. Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.
3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore would not result in significant adverse effects on public health or safety.
4. The HCP does not require compliance with Executive Order 11998 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or Fish and Wildlife Coordination Act, nor does it threaten or violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.
5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, HCP, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and National Policy Act regulations. If we determine that the requirements are met, we will issue a permit under section 10(a)(1)(B) of the Act to Cyanotech for take of Hawaiian stilt incidental to otherwise lawful activities in accordance with the HCP. We will fully consider all comments received during the comment period and will not make our final decision until after the end of the 30-day comment period.

Dated: December 18, 2001.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 01–32142 Filed 12–31–01; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A; OMB Approval Number 1004–0005]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 21, 2001, the BLM published a notice in the **Federal Register** (66 FR 43901) requesting comments on this proposed collection. The comment period ended on October 22, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the

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Office of Management and Budget, Interior Department Desk Officer (1004–0005), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity and methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Grazing Application-Grazing Schedule (43 CFR 4130).

OMB Approval Number: 1004–0005.

Bureau Form Number: 4130–1.

Abstract: The Bureau of Land Management uses the information to provide the opportunity for grazing operators to apply for changes to the grazing schedules in their BLM authorized grazing leases or permits.

Frequency: On occasion.

Description of Respondents: Holders of BLM-issued grazing leases and permits.

Estimated Completion Time: 20 minutes.

Annual Responses: 6,000.

Application Fee per Response: 0. There is no filing fee.

Annual Burden Hours: 2,000.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–32126 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–43388]

Proposed Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the San Diego Gas And Electric Company Valley-Rainbow 500 kV Interconnect Project, CA

AGENCY: Bureau of Land Management (BLM), and the California Public Utilities Commission (CPUC).

ACTION: Notice of Intent to prepare a joint EIS/EIR addressing the proposed Valley-Rainbow 500–kV Interconnect Project; an electrical transmission line project.

SUMMARY: In compliance with regulations at 40 CFR 1501.7 and 43 CFR 1610.2, notice is hereby given that the BLM, together with the CPUC, propose to direct the preparation of a joint EIS/EIR for the 500 kilovolt (kV) Valley-Rainbow Interconnect Project, proposed by the San Diego Gas and Electric Company (SDG&E). The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulation for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and the Department of the Interior's manual guidance on NEPA; and the CPUC is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et. seq.*), and implementing guidelines (California Code of Regulations [CCR] Title 14, Section 15000 *et. seq.*), and CPUC's Rules and Regulations to Implement CEQA. This notice initiates the public scoping for the EIS and also serves as an invitation for other cooperating agencies. Potential cooperating agencies include the U.S. Fish and Wildlife Service, the Department of Defense, the Bureau of Indian Affairs, the State Historic Preservation Officer, U.S. Corps of Engineers and the California Department of Fish and Game.

DATES: For scoping meeting and comments: One NEPA public scoping openhouse will be held during 2002 on the following date: January 8, 2002, from 3:00 pm to 8:00 pm, at the Comfort Inn, 27338 Jefferson Ave., Temecula, California.

Written comments must be postmarked no later than 30 days from the date of this notice in order to be included in the draft EIR/EIS. Please submit any comments to the address listed below.

ADDRESSES: Written comments should be addressed to Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260.

FOR FURTHER INFORMATION CONTACT: John Kalish, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260, (760) 251–4849.

SUPPLEMENTARY INFORMATION: The Valley-Rainbow 500 kV Interconnect Project is proposed by SDG&E to provide an interconnection between SDG&E's existing 230 kV transmission system at the proposed Rainbow Substation, on Rainbow Heights Road near the unincorporated community of Rainbow in San Diego County, and the Southern California Edison's (SCE) existing 500 kV transmission system at the Valley Substation on Menifee Road in the unincorporated community of Romoland in Riverside County. The project area is located entirely in California within northern San Diego County and western Riverside County.

This project consists of the following new or expanded electric transmission and substation facilities. A single circuit 500 kV electric transmission line approximately 31 miles in length would connect a proposed new SDG&E 500 kV/230 kV bulk power transmission substation near the community of Rainbow, San Diego County to SCE's Valley substation near Romoland, Riverside County. The proposed 500 kV transmission line would be built on steel poles and lattice towers within a new right-of-way. To support this proposed 500 kV Interconnect system, a second 230 kV circuit would be added to the existing Talega to Escondido 230 kV transmission line on the U.S. Marine Corps Base, Camp Pendleton and private lands within San Diego County. This proposed second 230 kV circuit would be placed on existing steel supported structures. A 7.7 mile section of an existing 69kV transmission circuit, currently installed on one side of the Talega-Escondido 230 kV transmission line structures, would be rebuilt on new structures within the existing right-of-way between SDG&E's Pala and Lilac Substations, San Diego County. Voltage support upgrades to SDG&E's existing Mission, Miguel and Sycamore Canyon substations would also be needed.

The CPUC held public scoping meetings from July 10–12, 2001 in the communities of Temecula, Winchester and Pauma Valley and accepted comments from June 30 through August 7, 2001. The BLM actively participated in this State scoping process as the lead Federal agency. The State scoping process resulted in substantial comment that is broadly summarized as involving environmental issues and concerns, growth inducement, purpose and need for the project and alternatives. Possible impacts to quality of life, property values, visual and aesthetic qualities of the area, wine making and other agricultural operations, placement of schools and parks, community and residential development, recreation including hot air ballooning and human health were addressed by the public. In addition to these concerns, the BLM has identified issues related to wildlife, including threatened and endangered species, cultural resources, and Native American concerns.

Interested members of the public are now invited to participate in a NEPA scoping process, and are requested to help identify new issues or concerns and alternatives to be considered related to this proposed Project. Comments previously submitted during the CPUC scoping process are part of the official record and need not be resubmitted during this NEPA process. Written comments must be submitted no later than 30-days from the date of this notice to ensure that your comments are included in the draft EIS/EIR. When available, the public will be provided a 60-day public review period on the EIS/EIR. These documents will be made available on the Internet at BLM's Web site: *www.ca.blm.gov* and the CPUC Web site: *www.cpuc.ca.gov/divisions/energy/Environmental/info/DUDEK/valleyrainbow.htm* and at local public libraries in the California communities of Chula Vista, Escondido, Fallbrook, San Clemente, Sun City and Temecula. Contact the BLM if you would like to be included in the mailing list to receive copies of all public notices relevant to this project. Local notice will be provided a minimum of 15 days prior to the scoping open house date.

Dated: November 30, 2001.

James G. Kenna,

Field Manager.

[FR Doc. 01–32124 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WO–220–01–1020–JA–VEIS)

Notice of Extension of Public Comment Period and Schedule of Public Scoping Meetings for the Environmental Impact Statement for the Conservation and Restoration of Vegetation, Watershed, and Wildlife Habitat Treatments on Public Lands Administered by the Bureau of Land Management in the Western United States, Including Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period for scoping; and dates and locations for public scoping meetings.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on (1) management opportunities and treatment methods for noxious weeds and other invasive species, and (2) the conservation and restoration of native vegetation, watersheds, and wildlife habitat. The EIS will cover the public lands administered by BLM in 16 western states, including Alaska. The period for initial scoping comments from the public has been extended to March 29, 2002.

DATES: Written or e-mailed comments for the initial scoping phase may be submitted through March 29, 2002. BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS.

Dates and locations for the scoping meetings are as follows:

Date and time	Locations	BLM contact
January 8, 5–8 p.m	Utah Dept. of Natural Resources Bldg. 1594 W. North Temple, Salt Lake City, UT.	Verlin Smith (801) 539–4055.
January 10, 3–6 p.m	Western Wyoming Community College, Room 1003, 2500 College Drive, Rock Springs, WY.	Lance Porter (307) 352–0252.
January 14, 6–9 p.m	Holiday Inn Express—Neptune Room, 1100 North California, Socorro, NM.	Margie Onstad (505) 838–1256.
January 16, 3–5 p.m. and 6–9 p.m	Holiday Inn Crown Plaza, 2532 W. Peoria Avenue, Phoenix, AZ.	Deborah Stevens (602) 417–9215.
January 22, 6–9 p.m	BLM Office Conference Room, 345 E. Riverside Drive, St. George, UT.	Kim Leany (435) 688–3208.
January 24, 2–5 p.m. and 6–9 p.m	Grand Vista Hotel, 2790 Crossroads Blvd, Grand Junction, CO.	Harley Metz (970) 244–3076.
January 29, 4–7 p.m	Miles Community College—Room 108, 2715 Dickinson, Miles City, MT.	Jody Weil (406) 896–5258.
January 31, 4–7 p.m	Elks Lodge 604 Coburn Avenue, Worland, WY	Janine Terry (307) 347–5194.
February 5, 5–8 p.m	Sacred Heart Parish Hall, 507 East 4th Street, Alturas, CA.	Jennifer Purvine (530) 233–7932.
February 11, 5–8 p.m	U.S. Forest Service, Helena National Forest Headquarters, 2880 Skyway Drive, Helena, MT (across from airport).	Jody Weil (406) 896–5258.
February 13, 6–9 p.m	Vista Inn, 2645 Airport Way Boise, ID	Barry Rose (208) 373–4014.
February 14, 6–9 p.m	College of Southern Idaho, 315 Falls Ave, Shields Bldg, Room 117, Twin Falls, ID.	Eddie Guerrero (208) 736–2355.
February 19, 4–7 p.m	BLM-Nevada State Office, 1340 Financial Blvd., Reno, NV.	JoLynn Worley (775) 861–6515.
February 21, 2–5 p.m. and 6–9 p.m	Hilton Garden Inn, 3650 East Idaho Street, Elko, NV	Mike Brown (775) 753–0200.
February 26, 5–8 p.m	Holiday Inn Select, 801 Truxton Ave,Bakersfield, CA	Stephen Larson (661) 391–6099.

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Date and time	Locations	BLM contact
February 28, 6–9 p.m	Valley Library, 12004 East Main, Spokane, WA	Kathy Helm (509) 536–1252.
March 4, 6–9 p.m	Days Inn City Center, 1414 SW 6thPortland, OR	Chris Strebig (503) 952–6003.
March 6, 3–6 p.m	Anchorage Field Office—BLM, 6881 Abbott Loop Road, Anchorage, AK.	Gene Terland (907) 271–3344.
March 12, 9 a.m.–12 noon	Washington Plaza Hotel, Franklin Room, 10 Thomas Circle (Massachusetts and 14th Street), Washington, D.C..	Sharon Wilson (202) 452–5130.

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list, contact Brian Amme, Acting Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; E-mail *brian_amme@nv.blm.gov;* telephone (775) 861–6645. Comments will be available for public inspection at the BLM Nevada State Office, 1340 Financial Blvd.; Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written or e-mailed comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This national, programmatic EIS will provide a comprehensive cumulative analysis of BLM conservation and restoration treatments involving vegetation communities, watersheds and wildlife habitats.

- It will also consider state-specific, reasonably foreseeable activities, including hazardous fuels reduction treatments.
- It will address human health risk assessments for proposed use of new chemicals on public lands.
- Restoration activities may include but are not limited to prescribed fire, riparian restoration, native plant community restoration, invasive plants and noxious weeds treatments, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems.

The EIS is not a land-use plan or a land-use plan amendment. It will provide a comprehensive programmatic NEPA document to allow effective tiering and serve as a baseline cumulative impact assessment for other new, revised or existing land use and activity level plans that involve vegetation, wildlife habitat and watershed treatment, modification or maintenance.

- This EIS will consolidate four existing BLM vegetation treatment EISs developed in compliance with the NEPA between 1986 and 1992 into one programmatic document for the western United States, including Alaska. The EIS will update information and change to reflect new information and changed conditions on public lands since that time.
- An updated EIS is necessary for BLM to analyze proposed treatments of 4 to 5 million acres of prescribed and managed natural fire, Integrated Weed Management, hazardous fuels reduction, Emergency Stabilization and Restoration, and landscape-level restoration initiatives such as Great Basin Restoration Initiative. Current average annual acres of treatment selected in the existing BLM records of decision (RODS) equate to about 350,000 acres.
- The analysis area includes only surface estate public lands administered by 11 BLM state offices: Alaska, Arizona, California, Eastern States, Idaho, Montana (Dakotas), New Mexico (Oklahoma/Texas/Nebraska), Nevada, Oregon (Washington), Utah and Wyoming.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatment including mechanical treatments, wildlife habitat improvement, restoration of ecosystem processes; protection of cultural resources, watershed and vegetative community health, new listings of threatened and endangered species and consideration of other sensitive and special status species, new chemical formulations for herbicides deemed to be more environmentally favorable, smoke management and air quality, emergency stabilization and restoration, and watershed and water quality improvement.

Dated: December 10, 2001.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 01–32232 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1020–PG]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Butte, Dillon, and Missoula Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will have a meeting on January 15, 2002, at the BLM—Butte Field Office Conference Room, 106 North Parkmont, Butte, Montana starting at 9 a.m. Primary agenda topics include orientation for new members and the Dillon Resource Management Plan.

The meeting is open to the public and the public comment period is set for 11:30 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Butte Field Office Manager and Designated Federal Official, (406) 533–7600.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: November 21, 2001.

Scott Powers,

Dillon Field Manager.

[FR Doc. 01–32128 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include manager's reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council at 2:30 p.m. on Thursday, January 17, 2002. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 647–5046 by January 11, 2002.

DATES & TIME: The RAC will meet on Thursday, January 17 and Friday January 18, 2002 at the Red Rock Canyon National Conservation Area Visitors Center Friends Room from 8:30 a.m. to 4 p.m. daily.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by phone at (702) 498–6088.

Dated: December 5, 2001.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 01–32129 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Meeting

December 6, 2001.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The BLM Alaska Resource Advisory Council will conduct an open meeting Thursday, January 31, 2002, from 9:30 a.m. until 4 p.m. and Friday, February 1, 2002, from 8:30 a.m. until noon. The meeting will be held at the Campbell Creek Science Center, 6881 Abbott Loop Road, Anchorage.

Primary agenda items for the meeting include land use planning starts in Alaska and scoping for the northwest National Petroleum Reserve—Alaska and Colville River multiple use activity plans. The council will hear public comments Thursday, January 31, from 1–2 p.m. Written comments may be mailed to BLM at the address below.

ADDRESSES: Inquiries or comments should be sent to BLM External Affairs, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, 907–271–3322, or via E-mail to *teresa_mcpherson@ak.blm.gov.*

Linda S.C. Rundell,

Associate State Director.

[FR Doc. 01–32130 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Location andTimes.

SUMMARY: The next Upper Snake River District Resource Advisory Council (RAC) Meeting will be held on February 27, 2002, beginning at 1 p.m., and February 28, 2002, beginning at 8 a.m. The meeting will be held at the Best Western Burley Inn, 800 N Overland Avenue in Burley, Idaho.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. The Upper Snake River District RAC will discuss scoping topics for the upcomingFire Management Direction Plan Amendments (FMDPA). The FMDPA will amend 12 land use plans in the district for hazardous fuels management. The RAC will also discuss the results of scoping for the Craters of the Moon National Monument ExpansionGeneral/Resource Management Plans. All meetings are open to the public. Each formal council meeting has time allocated for hearing public comments, and the public may present written or oral comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact the address below.

FOR FURTHER INFORMATION: David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephones (208) 524–7559.

Dated: December 6, 2001.

James E. May,

District Manager.

[FR Doc. 01–32131 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–1020–00]

Science Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to discuss DOI science goals, update recent BLM science initiatives, receive a briefing on the President's Energy Plan, and to discuss science and management of the National Landscape Conservation System units.

DATES: BLM will hold the public meeting on Friday, February 8, 2002, from 9 a.m. to 5 p.m. local time.

ADDRESSES: BLM will hold the public meeting at the Four Points Sheraton, Cottonwood Room, 10220 North Metro Parkway, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, PO Box 25047, Denver, CO 80225–0047, 303–236–6454.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting Is as Follows

9 a.m. Introduction and Opening Remarks
9:30 a.m. DOI Science Goals
10:30 a.m. Update on Recent BLM Science Initiatives

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1 p.m. Briefing on the President's Energy Plan
2:45 p.m. The National Landscape Conservation System—A Discussion on Science and Management of the Units
4 p.m. Open Discussion by the Board and Drafting of Recommendations to the Director

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom on Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: les_barkow@blm.gov. Please include the identifier "Science4" in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listedunder **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Lee Barkow,

National Science and Technology Center.

[FR Doc. 01–32125 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31896]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 20 acres of National Forest System land to protect the Federal investment in the Rocky Mountain Research Station. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before April 2, 2002.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest,

Gila and Salt River Meridian,

T. 21 N., R. 7 E.,
sec. 27, S½NW¼NW¼.

The area described contains 20 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: December 2, 2001.

Steve J. Gobat,

Acting Deputy State Director, Resources Division.

[FR Doc. 01–32127 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–741–743 (Review)]

Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on melamine institutional dinnerware from China, Indonesia, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on melamine institutional dinnerware from China, Indonesia, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 02–5–067, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

assured of consideration, the deadline for responses is February 21, 2002. Comments on the adequacy of responses may be filed with the Commission by March 18, 2002. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1997, the Department of Commerce issued antidumping duty orders on imports of melamine institutional dinnerware from China, Indonesia, and Taiwan (62 FR 8426). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China, Indonesia, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as melamine institutional dinnerware.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of melamine institutional dinnerware.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is February 25, 1997.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR § 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 21, 2002. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the

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Commission should conduct expedited or full reviews. The deadline for filing such comments is March 18, 2002. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1996.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 20001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s") operations on that product during calendar year 2001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s") imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s") operations on that product during calendar year 2001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s") production; and

(b) the quantity and value of your firm's(s") exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s") exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–32246 Filed 12–31–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CER part 50.7, notice is hereby given that on November 7, 2001, a proposed Consent Decree in *United States* v. *Aristech Chemical Corporation*, Civil Action No. C–1–01–772, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

In this action the United States seeks civil penalties and injunctive relief against Aristech Chemical Corporation ("Aristech") pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), for alleged violations at Aristech's Ironton, Ohio facility. Under the settlement, Aristech will pay a civil penalty of $450,000, and apply for and obtain a permit for the Phenol Expansion Project, under the CAA's Prevention of Significant Deterioration ("PSD") program, from the State of Ohio, the permitting authority.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Aristech Chemical Corporation*, D.J. Ref. 90–5–2–1–06701/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Western Division, Potter Stuart Federal Courthouse, 5th and Walnut Streets, Room 220, Cincinnati, Ohio 45202, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 01–32223 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Complaint and Consent Decree in *United States* v. *Conoco Inc.*, Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. ("Conoco") pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's 4 refineries in Colorado, Montana, Oklahoma and Louisiana. Under the settlement, Conoco will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides ("No_X") and sulfur dioxide ("SO2") from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Conoco will pay a civil penalty of $1.5 million and spend $5.5 million on supplemental and beneficial environmental projects. The states of Colorado, Montana, Oklahoma and Louisiana will join in this settlement as a signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Conoco Inc.*, D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $36.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32222 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 20, 2001 a proposed Consent Decree ("Decree") in *United States* v. *Conoco, Inc.* Civil Action No. 01–2478, was lodged with the United States District Court for the District of Colorado.

The proposed consent resolves claims for civil penalties and permanent injunctive relief for violation of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") requirements of section 112 of the CAA, 42 U.S.C. 7412, and the implementing regulations pertaining to petroleum refineries found at 40 CFR part 63, subpart CC, at Conoco's petroleum refinery located at 5801 Brighton Blvd. in Commerce City, Co.

Under the terms of the decree Conoco will pay a civil penalty of $38,775.20, and comply with all performance test and reporting requirements applicable

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to the flares. Conoco will also complete two supplemental environmental projects, at a cost of no less than $130,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, Suite 945NT, Denver, Co 80202, and should refer to *United States* v. *Conoco, Inc.*, D.J. Ref. 90–5–2–1–07295.

The Decree may be examined at the offices of the EPA Library, EPA Region VIII, located at 999 18th Street, First Floor, Denver, Colorado 80202. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of the Decree, please enclose a check payable to the Consent Decree Library for $8.50 for a complete copy of the decree (25 cents per page, reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32224 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Loding of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Honeywell International Inc.* (E.D. Va.), Civil Action No. 3:01CV789 was lodged on November 23, 2001 with the United States District Court for the Eastern District of Virginia. The Consent Decree resolves the United States' claims against defendant, Honeywell International Inc., with respect to violations of the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Resource Conservation and Recovery Act ("RCRA") at its chemical manufacturing facility in Hopewell, Virginia.

Under the Consent Decree, defendant will pay the United States $110,000 in penalties. In addition, the defendant will implement five Supplemental Environmental Projects, or "SEPs," at an estimated cost of $772,000. These SEPs include (1) within ten months of entry of the Consent Decree and at a cost of no less than $375,000, the conversion of a refrigeration unit from use of chlorfluorocarbon-based refrigerant to hydrofluorocarbon-based refrigerant; (2) within seventeen months of entry of the Consent Decree and at a cost of no less than $300,000, the installation of an air emissions control system to reduce the release of ammonia; (3) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $35,000, the purchase of a "reverse 911" interactive notification system for the Hopewell Local Emergency Planning Committee; (4) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $20,000, the purchase of a skirted boom and trailer and associated training services for the Henrico Regional Hazardous Incident Team; and (5) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $42,000, the purchase of mass decontamination equipment and associated training for emergency response teams at two local medical centers, the John Randolph Medical Center in Hopewell, VA and the Southside Regional Medical Center in Petersburg, VA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Honeywell International, Inc.*, DOJ reference number 90–7–1–06900.

The proposed Consent Honeywell may be examined at the Office of the United States Attorney, 600 East Main Street, Suite 1800, Richmond, Virginia; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.00 ($.25 per page for production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32219 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Kenneth McDonald and Nicholas Menegatos*, C.A. No. 3:CV–01–0510, was lodged on September 11, 2001, with the United States District Court for the Middle District of Pennsylvania. This notice was previously published in the **Federal Register** on October 4, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in the mail service, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been received. As a result, the United States is providing this opportunity for any prior persons who previously submitted comments to resubmit their comments as directed below.

The consent decree resolves the United States' claims against Defendant Nicholas Menegatos for violations of the Clean Air Act, 42 U.S.C. 7401–7671q, and the National Emission Standards for Hazardous Air Pollutants for asbestos ("asbestos NESHAP"), 40 CFR part 61, with respect to the partial demolition of a facility, located in Tannersville, Pennsylvania.

Under the consent decree, Defendant Menegatos, based upon his ability-to-pay, has agreed to pay a civil penalty in the amount of $2700 and has agreed to take a training course that will familiarize him with the Clean Air Act and the asbestos NESHAP regulations.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree. Comments previously submitted by mail should be resubmitted to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kenneth McDonald and Nicholas Menegatos*, C.A. No. 3:CV–01–0510, DOJ Reference No. 90–5–2–1–2217. The comments should be faxed to the Acting Assistant Attorney General at 202/616–6583.

The proposed consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, Pennsylvania 17108; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32218 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y), was lodged with the United States District Court for the Eastern District of New York on December 13, 2001, pertaining to the payment of a civil penalty, compliance and other injunctive relief, and implementation of a supplemental environmental project in connection with the Mobil Oil Corporation's ("Mobil") violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at the Port Mobil facility in Staten Island, New York City, New York.

Under the proposed consent decree, Mobil will pay a civil penalty of $8.2 million, will agree to comply with RCRA at the Port Mobil facility and implement corrective action as directed by the U.S. Environmental Protection Agency, will agree to refrain from making certain legal arguments under specified circumstances, and will agree to implement a supplemental environmental project—purchasing land for preservation in the Staten Island or New York city harbor area—at a cost of at least $3 million. The Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.), and DOJ Reference No. 90–7–1–794. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA Section 7003(d), 42 U.S.C. 6973(d).

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of New York, One Pierrepoint Plaza, Brooklyn, New York 11201, (718) 254–7000; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York 10007 (contact Stuart Keith in the office of Regional Counsel). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $6.00 (24 pages at 25 cents per page reproduction costs), may payable to the Consent Decree Library.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32221 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed Consent Decree *United States, et al.* v. *Montrose Chemical Corporation of California, et al.*, No. CV 90–3122–R (C.D. Cal), was lodged on December 21, 2001 with the United States District Court for the Central District of California.

The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Montrose Chemical Corporation of California ("Montrose"), Aventis CropScience USA, Inc., Chris-Craft Industries, Inc. (now News Publishing Australia Ltd., by merger), and Atkemix Thirty-Seven, Inc. (now Stauffer Management Company, LLC, by merger) (collectively, the "DDT Defendants"), for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the "Current Storm Water Pathway." The Current Storm Water Pathway consists of the following system of man-made storm water conveyances: the Kenwood Drain, the Torrance Lateral, the Dominguez Channel (from Laguna Dominguez, the most northern point of tidal influence in the Dominguez Channel, to the Consolidated Slip), and the portion of the Los Angeles Harbor known as the Consolidated Slip from the mouth of the Dominguez Channel south to but not extending beyond Pier 200B and 200Y.

The proposed consent decree requires the DDT Defendants to pay $1.4 million to the United States Environmental Protection Agency, $50,000 to the California Department of Toxic Substances Control, and $450,000 to the California Regional Water Quality Control Board, Los Angeles Region, which commits to spend this money on the Current Storm Water Pathway only. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.*, No. CV 90–3122–R (C.D. Cal), and DOJ Ref. #90–11–3–511/3.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction

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costs), payable to the Consent Decree Library.

Bruce Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32220 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a Consent Decree in *United States, et al.* v. *Navajo Refining, Co., et al.*, Civil Action No. Civ–01–1422 LH/LCS, was lodged with the United States District Court for the District of New Mexico.

In a complaint that was filed simultaneously with the Consent Decree, the United States sought injunctive relief and penalties against Navajo Refining Company ("Navajo") and Montana Refining Company ("Montana Refining"), pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991) for alleged CAA violations at Navajo's two refineries in Artesia and Lovington, New Mexico, and at Montana Refining's refinery in Great Falls, Montana.

Under the settlement, Navajo and Montana Refining will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides ("NO_x") and sulfur dioxide ("SO_2") from refinery process units and they will adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Navajo and Montana Refining will pay a civil penalty of $400,000 for settlement of the claims in the United States' complaint, and Navajo will pay $350,000 for settlement of claims raised by the State of New Mexico in two compliance orders that New Mexico issued to Navajo in May and July of 2001. Navajo also will perform environmentally beneficial projects totaling approximately $1.4 million. The States of New Mexico and Montana will join in this settlement as signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.*, v. *Navajo Refining Co., et al.* D.J. Ref. 90–5–2–1–2228/1.

The Consent Decree may be examined at the Office of the United States Attorney, 201 3rd St., NW., Suite 900, Albuquerque, New Mexico, 87102, and at U.S. EPA Region 6, Fountain Place, 1445 Ross Avenue, Dallas, TX 75202. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $53.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32216 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Sequa Corporation and John H. Thompson*, C.A. No. 01–CV–4784 (E.D.Pa.), was lodged on September 20, 2001, with the United States District Court for the Eastern District of Pennsylvania. This notice was previously published in the **Federal Register** on October 15, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in the mail service, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been received. As a result, the United States is providing this opportunity for any persons who previously submitted comments to resubmit their comments as directed below.

The consent decree resolves the United States' claims against defendants Sequa Corporation ("Sequa") and John H. Thompson ("Thompson") with respect to past response costs incurred through September 30, 1999, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. 9607. The costs were incurred in connection with the Dublin TCE Site, located in the Borough of Dublin, Bucks County, Pennsylvania. Defendant Thompson owns the Site property, or a portion thereof, and defendant Sequa conducted manufacturing activities at the Site, which became contaminated with trichloroethylene.

Under the consent decree, defendants will pay the United States $3,200,000 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree. Any persons who previously submitted comments should resubmit and address their comments to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sequa Corporation and John H. Thompson*, DOJ Reference No. 90–11–2–780. The comments should be faxed to the Acting Assistant Attorney General at 202/616–6583. Alternatively, the comments may be mailed to the Office of the United States Attorney, ATTN: Barbara Rowland, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32217 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,039]

Fashion International A.D.M. Services, Inc. Scranton, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 7, 2001, applicable to workers of Fashion International located in Scranton, Pennsylvania. The notice was published in the **Federal Register** on June 27, 2001 (66 FR 34256).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Company information shows that worker separations occurred at A.D.M. Services, Inc. when it closed in March, 2001. A.D.M. Services provided designing services and markers supporting the production of men's sport coats and men's and ladies' blazers at Fashion International, Scranton, Pennsylvania which also closed in March, 2001. A.D.M. Services, Inc. workers were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of Fashion International who were adversely affected by increased imports of men's sport coats and men's and ladies' blazers.

Accordingly, the Department is amending the certification to cover the workers of A.D.M. Services, Inc., Scranton, Pennsylvania.

The amended notice applicable to TA–W–39,039 is hereby issued as follows:

"All workers of Fashion International and A.D.M. Services, Inc., Scranton, Pennsylvania who became totally or partially separated from employment on or after February 24, 2001, through June 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32209 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 12/10/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,396	Lady Ester Lingerie (Co.)	Berwick, PA	10/24/2001	Lingerie, Sleepwear.
40,397	Lorber Industries (Co.)	Snyder, TX	10/22/2001	Cotton Yarn.
40,398	R.G. Barry Texas LP (Co.)	San Angelo, TX	11/20/2001	Soles for Slippers.
40,399	Hermes Floral (Wrks)	Becker, MN	10/17/2001	Cut Flowers.
40,400	Meridian Automotive (UAW)	Centralia, IL	10/18/2001	Fiberglass Auto Parts.
40,401	ASARCO, Inc. TN Mines Div (Wrks)	Strawberry Plns, TN	11/20/2001	Zinc Concentrate.
40,402	Prime Tanning Corp (UFCW)	St. Joseph, MO	10/24/2001	Wet Blue Leather.
40,403	Gen Corp (GDX) (USWA)	Marion, IN	11/28/2001	Vehicle Sealing.
40,404	Fender Musical Instrument (Co.)	Westerly, RI	10/19/2001	Guitars.
40,405	Xerox Corp. (UNITE)	Canandaigua, NY	11/27/2001	Ink Jet Printhead Cartridges.
40,406	VF Jeanswear (Co.)	Oneonta, AL	11/27/2001	Ladies' Jeans.
40,407	TRW Automotive Braking (USWA)	Milford, MI	11/27/2001	Automotive Braking Systems.
40,408	Carrier Corp (Wrks)	Conway, AR	10/19/2001	Commercial Refrigeration Products.
40,409	Bogner of America, Inc. (Co.)	Newport, VT	11/21/2001	Men's and Ladies' Ski Parkas.
40,410	Thyssen Mining (Wrks)	Nye, MT	11/27/2001	Platinum and Paladium.
40,411	Bowen Machine (Co.)	El Paso, TX	11/19/2001	Construction Labor and Equipment.
40,412	Alcatel USA (Co.)	Andover, MA	11/28/2001	Network Switch (7420 Router).
40,413	Mikes, Inc. (Co.)	South Roxana, IL	11/13/2001	Rods for Diesel Engines.
40,414	Catawissa Lumber (Co.)	West Jefferson, NC	11/28/2001	Hardwood Furniture.
40,415	Pressman Gutman Co., Inc (Co.)	New York, NY	10/25/2001	Textile Piece Goods
40,416	Schaffstall Manufacturing (Wrks)	North Collins, NY	10/24/2001	Components For Xerox Copy Machines.
40,417	NTN Bower Corp (Wrks)	Hamilton, AL	10/18/2001	Tapered Roller Bearings.
40,418	Wood and Hyde Leather (Wrks)	Gloversville, NY	10/17/2001	Finished Leather.

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APPENDIX—Continued

[Petitions Instituted on 12/10/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,419	Flextronics International (Wrks)	Portsmouth, NH	10/09/2001	Electronic Circuit Boards.
40,420	International Wire Group (Co.)	Pine Bluff, AR	10/02/2001	Shielding Wire.
40,421	Exide Technologies (UAW)	Shreveport, LA	11/27/2001	Batteries—Automobile.
40,422	Crown Marking Equipment (Co.)	Warrington, PA	10/24/2001	Plastic Self Inking Rubber Stamp.
40,423	Wells Lamont Industry (Co.)	Warsaw, IN	10/24/2001	Terry Cloth Gloves.
40,424	Georgia Pacific (Wrks)	Superior, WI	12/03/2001	Superior Hardboard.
40,425	Tenneco Automative (Co.)	Ligonier, IN	11/26/2001	Exhaust Systems.
40,426	Gilbert Western Co. (Wrks)	Nye, MT	11/28/2001	Construction Workers.
40,427	National Ring Traveler Co (Wrks)	Pawtucket, RI	11/21/2001	Jewelry Chains.
40,428	Sunlite Casual Furniture (Krs)	Paragould, AR	12/04/2001	Outdoor Patio Furniture.

[FR Doc. 01–32205 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,333]

Lynchburg Foundry Company, Radford, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 2001 in response to a worker petition which was filed on October 30, 2001 on behalf of workers at Lynchburg Foundry Company, Radford, Virginia. The subject firm is a subsidiary of Intermet Corporation.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–40,060). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of December 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32207 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,367]

STMicroelectronics, Inc. (ST) San Diego, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 3, 2001, in response to a petition filed by a company official on behalf of workers at STMicroelectronics, Inc., San Diego, California.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32208 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,645]

Texel USA, Inc., Henderson, North Caroline; Notice of Revised Determination on Reconsideration

By letter of July 24, 2001, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 2, 2001, based on the finding that imports of nonwoven needle punched felts did not contribute importantly to worker separations at the Henderson plant. The denial notice was published in the **Federal Register** on July 20, 2001 (66 FR 38026).

To support the request for reconsideration, the company supplied additional information which helped clarify information that was provided during the initial investigation. The company indicated they shifted subject plant projection to an affiliated plant located in Canada and simultaneously began importing nonwoven needle punched felts back to the United States to serve their domestic customer base during the relevant period. The imports accounted for a meaningful portion of the subject plant production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Texel USA, Inc., Henderson, North Carolina, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provision of the Act, I make the following certification:

"All workers of Texel USA, Inc., Henderson, North Carolina, who become totally or partially separated from employment on or after January 29, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC this day 11th of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–32213 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,307]

Universal Furniture Limited, Goldsboro, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 2001 in response to a worker petition which was filed on behalf of workers at Universal Furniture Limited, Goldsboro, North Carolina.

As active certification covering the petitioning group of workers is already in effect (TA–W–38,811A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32211 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,811 and TA–W–38,811A]

Universal Furniture Limited, Morristown, Tennessee and Goldsboro, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 30, 2001, applicable to workers of Universal Furniture Limited, Morristown, Tennessee. The notice was published in the **Federal Register** on May 18, 2001 (66 FR 27690).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Goldsboro, North Carolina location of the subject firm when it closed in March, 2001. The Goldsboro, North Carolina workers were engaged in the production of bedroom and dining room furniture.

Accordingly, the Department is amending the certification to include workers of Universal Furniture Limited, Goldsboro, North Carolina.

The intent of the Department's certification is to include all workers of Universal Furniture Limited who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,811 is hereby issued as follows:

"All workers of Universal Furniture Limited, Morristown, Tennessee (TA–W–38,811) and Goldsboro, North Carolina (TA–W–38,811A) who became totally or partially separated from employment on or after March 10, 2000, through April 30, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 12th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32212 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. [TA–W–38, 495]

VF Imagewear, East (Formerly VF Knitwear) Martinsville, Virginia including Employees of VF Imagewear East Located in Golden Valley, Minnesota Dallas, Texas, Portland, Oregon, Salisbury, Maryland; Amended Certification Regarding Eligibility To Apply Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1994 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear East (formerly VF Knitwear), Martinsville, Virginia. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22262).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland. These employees are engaged in employment related to the production of fleece apparel, including jerseys and T-shirt at the Martinsville, Virginia location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland.

The intent of the Department's certification is to include all workers of VF Imagewear East (formerly VF Knitwear) adversely affected by increased imports.

The amended notice applicable to TA–W–38, 495 is hereby issued as follows:

"All workers of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia, including workers of the Martinsville, Virginia facility located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland, who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 24th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32210 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200

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Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 12/03/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,376	Wheeling Corrugating Co. (Wkrs)	Kirkwood, NY	11/25/2001	Corrugated Steel Roofing and Siding.
40,377	Dexter Shoe (Co.)	Dexter, ME	11/20/2001	Footwear.
40,378	Chrisann Dress Co. (UNITE)	Franklin Square, NY	10/18/2001	Ladies' Dresses.
40,379	HC Contracting, Inc (UNITE)	New York, NY	10/31/2001	Ladies' Sportswear.
40,380	HLS Fashions Corp (UNITE)	New York, NY	10/31/2001	Ladies' Dresses.
40,381	Four Seasons Fashion Mfg (UNITE)	New York, NY	10/31/2001	Ladies' Sportswear.
40,382	Corning Asahi Video (AFGWU)	State College, PA	11/25/2001	TV Panels and Tubes.
40,383	New GLI, Inc (Wkrs)	Columbus, IN	06/03/2001	Television Cabinets.
40,384	K.S. Bearing, Inc. (UAW)	Greensburg, IN	11/16/2001	Bushings, Bearings and Washers.
40,385	Steag Hamatech (Wkrs)	Saco, ME	11/20/2001	Unijet DVD.
40,386	Celestica Corporation (Co.)	Milwaukie, OR	11/19/2001	Power Supplies.
40,387	STMicroelectronics (Co.)	San Diego, CA	11/16/2001	Semiconductor Wafers.
40,388	X Fab Texas (Wkrs)	Lubbock, TX	11/15/2001	Micro Chips.
40,389	BP/Amoco Oil (Wkrs)	Chicago, IL	11/26/2001	Exploration & Prod. of Oil and Gas.
40,390	Carlisle Engineered (USWA)	Lake City, PA	10/23/2001	Plastic Injected Molded Parts.
40,391	Deck Bros (USWA)	Buffalo, NY	09/18/2001	Heat Sinks, Bus Bar and Castings.
40,392	A.S. Haight (UNITE)	Cartersville, GA	11/19/2001	Screen Printing Cloth.
40,393	Stylemaster Apparel (Wkrs)	Union, MO	11/27/2001	Hats.
40,394	N and H Corporation (Co.)	Mohnton, PA	11/06/2001	Knit Sportswear.
40,395	Lexmark International (Co.)	Lexington, KY	11/20/2001	Laster and Inkjet Printers, Cartridges.

[FR Doc. 01–32206 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5505]

Syst-A-Matic Tool and Design, Meadville, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 29, 2001, in response to a petition filed by the company on behalf of workers at Syst-A-Matic Tool and Design, Meadville, Pennsylvania.

The petitioning worker group is the subject of an existing NAFTA petition investigation (NAFTA–5471). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of December 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32204 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

1611 Negotiated Rulemaking Working Group Meeting Notice

TIME AND DATE: The Legal Services Corporation's 1611 Negotiated Rulemaking Working Group will meet on January 7–8, 2002. The meeting will begin at 9 a.m. on January 7, 2002. It is anticipated that the meeting will end by 5 p.m. on January 8, 2002.

LOCATION: The meeting will be held in the First Floor Conference Room at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

STATUS OF MEETING: This meeting is open to public observation.

CONTACT PERSON FOR INFORMATION: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20001; (202) 336–8817.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov.*

Dated: December 27, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–32250 Filed 12–31–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 19, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by fax to 301–713–6852 or by e-mail to *records.mgt@arch2.nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@arch2.nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–98–2, 2 items, 2 temporary items). Analytical reports and related materials pertaining to the evaluation of pesticides and commodities for potential benefits and risks under the National Agricultural Pesticide Impact Program. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–02–2, 2 items, 2 temporary items). Records relating to the receipt, storage, maintenance, and disposition of installed property and facilities engineering stock. Included are vouchers, stock record cards, purchase orders, property turn-in slips, and inventory adjustment reports. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Commerce, Emergency Steel Loan Guarantee Board and Emergency Oil and Gas Guaranteed Loan Board, (N1–40–01–3, 6 items, 4 temporary items). Loan guarantee records, including electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of program correspondence and files of Board meeting minutes and testimony.

4. Department of Defense, Joint Staff (N1–218–00–3, 42 items, 36 temporary items). Records relating to personnel and payroll matters accumulated by the Joint Staff and combatant commands. Records relate to such matters as directives, general personnel and payroll administration, civilian employment, merit pay, pay differentials and allowances, retirement operations, displaced employee programs, equal employment opportunity surveys, labor management relations, promotions and demotions, military awards and assignments, training, time and attendance, and employee political activities. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of records documenting such matters as decorations to civilians and foreign nationals, military awards, nominations for promotion submitted to the Secretary of Defense, casualty reporting, and training and education programs are proposed for permanent retention.

5. Department of Defense, Defense Information Systems Agency (N1–371–02–1, 4 items, 4 temporary items). Records relating to the Defense Department's Public Key Infrastructure program. Included are paper copies and scanned images of completed forms documenting subscriptions to the Department of Defense Public Key Infrastructure and related actions. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Defense, Defense Contract Audit Agency (N1–372–01–3, 6 items, 6 temporary items). Records pertaining to the management of the agency Web site. Included are policies and procedures, Web site usage statistics, and recurring reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also

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authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, National Reconnaissance Office (N1–525–02–1, 11 items, 10 temporary items). Audit files, posters covering routine events and subjects, poster production materials, equipment and property accounting files, certification authority records, and application system security files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are posters relating to mission-related subjects, such as agency facilities, operations, achievements, and historical commemorations.

8. Department of Energy, Office of the Executive Secretariat (N1–434–00–5, 4 items, 4 temporary items). Correspondence from the general public addressed to the President of the United States relating to energy that has been forwarded to the agency for response as well as public correspondence addressed to the Secretary of Energy. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of the Interior, National Park Service (N1–79–01–1, 2 items, 2 temporary items). Administrative case files accumulated by the Historic American Buildings Survey/Historic American Engineering Record relating to efforts to document endangered structures. Also included are electronic copies of records created using electronic mail and word processing.

10. Department of State, Bureau of Human Resources (N1–59–00–11, 15 items, 13 temporary items). Records relating to performance evaluations of agency employees and the granting of awards, including subject files and tracking databases. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of general subject files documenting the performance evaluation of Foreign Service Officers and promotion board meeting files.

11. Department of State, Bureau of Political-Military Affairs (N1–59–01–17, 15 items, 13 temporary items). Records of the Office of International Security Operations relating to such matters as clearances for overflights, foreign employment, medical requests, military exercises, counter-drug operations and deployments, and daily activity reporting. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of subject files on international security operations and files that relate to specific issues, such as human rights, port visits, military exercises, and humanitarian assistance.

12. Department of the Treasury, Bureau of the Public Debt (N1–53–02–1, 10 items, 10 temporary items). Electronic system containing annual maintenance fee information for investor accounts exceeding a threshhold par value. Included are inputs, outputs, master files, and system documentation. Also included are electronic copies of system documentation created using electronic mail and word processing.

13. Department of the Treasury, Bureau of the Public Debt (N1–53–02–2, 8 items, 8 temporary items). Electronic system containing transactional information and verification tables for securities investors conducting purchases or reinvestments via telephone or the Internet. Included are inputs, outputs, master files, and system documentation. Also included are electronic copies of system documentation created using electronic mail and word processing.

14. Tennessee Valley Authority, Fossil Power Group (N1–142–02–2, 3 items, 3 temporary items). Records relating to safety inspections of heavy machinery and equipment. Included are such records as visual inspection checklists, monthly crane safety inspections, and daily truck inspection reports. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: December 19, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–32174 Filed 12–31–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 52, "Early Site Permits (ESP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants".

2. *Current OMB approval number:* 3150–0151.

3. *How often the collection is required:* One occasion and every 10 to 20 years for applications for renewal.

4. *Who is required or asked to report:* Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

5. *The number of annual respondents:* 5—3 applications for Early Site Permits, 1 combined license application, and 1 design certification application.

6. *The number of hours needed annually to complete the requirement or request:* 211,820.

7. *Abstract:* 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, duplicate plant licenses, standard design approvals, and pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of these approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information from the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

Submit, by March 4, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 26th day of December, 2001.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–32215 Filed 12–31–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 31, 2001, January 7, 14, 21,28, February 4, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 31, 2001

There are no meetings scheduled for the Week of December 31, 2001.

Week of January 7, 2002—Tentative

There are no meetings scheduled for the Week of January 7, 2001.

Week of January 14, 2002—Tentative

Tuesday, January 15, 2002

9:30 a.m.

Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of January 21, 2002—Tentative

There are no meetings schedules for the Week of January 21, 2002.

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.

Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 30, 2002

9:30 a.m.

Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2:00 p.m.

Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:30 a.m.

Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: December 27, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–32255 Filed 12–28–01; 12:12 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extension: Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–14—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act") and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to be issued in business combination transactions specified in Rule 145(a) (17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 485 and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 257,770 annual burden hours.

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Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission's mission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 20, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32201 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45183; File No. SR–Phlx–2001–97]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Establishment of a Competing Specialist Program

December 21, 2001.

On October 22, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a competing specialist program.

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on November 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, with the requirements of Section 6(b)(5).[5]

The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it is designed to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that a competing specialist program will assist the Exchange in maintaining an efficient and open market.

The Commission approves this proposed rule change provided that the priority of the customer limit order book is preserved by proposed rule 229A consistent with Phlx Rules 218 and 452.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2001–97), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32200 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45013 (November 2, 2001), 66 FR 56879.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3866]

Culturally Significant Objects Imported for Exhibition; Determinations: "Benjamin Brecknell Turner: Rural England Through a Victorian Lens"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Benjamin Brecknell Turner: Rural England Through a Victorian Lens," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about January 22, 2002 to on or about April 21, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32226 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3865]

Culturally Significant Objects Imported for Exhibition Determinations: "Dreaming with Open Eyes: Dada and Surrealist Art From the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Dreaming with Open Eyes: Dada and Surrealist Art from the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA from on or about February 2, 2002 to on or about April 28, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32225 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3869]

Culturally Significant Objects Imported for ExhibitionDeterminations: "Gerhard Richter: Forty Years of Painting"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Gerhard Richter: Forty Years of Painting," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about February 13, 2002, through May 21, 2002; The Art Institute of Chicago from on or about June 22, 2002, to September 15, 2002; the San Francisco Museum of Modern Art from on or about October 11, 2002, to January 14, 2003; and the Hirshhorn Museum and Scultpure Garden from on or about February 20, 2003, to May 18, 2003, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32230 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3870]

Culturally Significant Objects Imported for Exhibition; Determinations: "Orazio and Artemisia Gentileschi: Father and Daughter Painters in Baroque Italy"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Orazio and Artemisia Gentileschi: Father and Daughter Painters in Baroque Italy" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about February 11, 2002, through May 12, 2002, and The St. Louis Art Museum in Missouri, from on or about June 15, 2002, to September 15, 2002, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32229 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3867]

Culturally Significant Objects Imported for Exhibition; Determinations: "Reflections of Sea and Light: Paintings and Watercolors by J.M.W. Turner From Tate"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Reflections of Sea and Light: Paintings and Watercolors by J.M.W. Turner from Tate," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Baltimore Museum of Art, Baltimore, MD from on or about February 11, 2002 to on or about May 26, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

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Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32227 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3666]

Culturally Significant Objects Imported for Exhibition; Determinations: "Treasures of the Russian Czars"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Treasures of the Russian Czars," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at Wonders, Memphis, TN from on or about April 15, 2002 to on or about September 15, 2002, the Kansas International Museum, Topeka, KS from on or about October 15, 2002 to on or about March 15, 2003, and possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32228 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Determination of Action To Increase Duties on Certain Products of Ukraine Pursuant to Section 301(b): Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice

SUMMARY: The United States Trade Representative (Trade Representative) has determined that appropriate action to obtain the elimination of the acts, policies, and practices of the Government of Ukraine that result in the inadequate protection of intellectual property rights includes the imposition of prohibitive duties on the annexed list of Ukrainian products.

EFFECTIVE DATES: A 100 percent *ad valorem* rate of duty is effective with respect to the articles of Ukraine described in the Annex to this notice that are entered, or withdrawn from warehouse, for consumption on or after January 23, 2002. In addition, any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as "privileged foreign status".

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative (202) 395–6864; David Birdsey, Office of European Affairs, Office of the United States Trade Representative, (202) 395–3320; or William Busis, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3150. For questions concerning product classification, please contact the General Classification Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 927–2388, and for questions concerning entries, please contact Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133.

SUPPLEMENTARY INFORMATION: In a notice published on April 6, 2001 (66 FR 18,346), the Office of the United States Trade Representative ("USTR") announced the initiation of an investigation under sections 301 to 309 of the Trade Act of 1974, as amended (the Trade Act), regarding the Government of Ukraine's intellectual property protection laws and practices, including the Government of Ukraine's failure to use existing law enforcement authority to stop the ongoing unauthorized production of optical media products and failure to enact an optical media licensing regime that would preclude the piracy of such products. See 66 FR 18,346 (April 6, 2001). In a notice published on August 10, 2001, USTR announced that the Trade Representative had determined that these acts, policies, and practices of Ukraine with respect to the protection of intellectual property rights are unreasonable and burden or restrict United States commerce and are thus actionable under section 301(b) of the Trade Act. See 66 FR 42,246 (Aug. 10, 2001). The notice also announced that the Trade Representative had determined that appropriate action to obtain the elimination of such acts, policies, and practices included the suspension of duty-free treatment accorded to products of Ukraine under the Generalized System of Preferences.

The August 10, 2001 notice announced that further action might include the imposition of prohibitive duties on products of Ukraine to be drawn from a preliminary product list. USTR invited interested persons to submit written comments and to participate in a public hearing on September 11, 2001. Because the development of the final product list involved complex and complicated issues that required additional time, the Trade Representative determined under section 304(a)(3)(B) of the Trade Act to extend the investigation by 3 months, or until December 12, 2001. The public hearing was postponed and held on September 25, 2001. See 66 FR 48,898 (Sep. 24, 2001).

On December 11, 2001, the Trade Representative determined under section 304(a)(1)(B) of the Trade Act that appropriate action under section 301(b), in addition to the prior suspension of GSP benefits, included the imposition of 100 percent *ad valorem* duties on Ukrainian products with an annual trade value of approximately $75 million. The level of sanctions is based on the level of the burden or restriction on U.S. commerce resulting from Ukraine's inadequate protection of U.S. intellectual property rights.

The Ukrainian parliament was scheduled to vote on an Optical Disc Licensing (ODL) law on December 20, 2001, and the Government of Ukraine assured in writing that it would make best efforts to ensure passage of the law. In light of these developments, the Trade Representative determined under section 305(a)(2)(A) of the Trade Act that substantial progress was being made and that a delay was necessary or desirable to obtain a satisfactory solution, and postponed implementation of the action until December 20, 2001.

On December 20, 2001, however, the Ukrainian parliament voted down the ODL law. Consequently, on that same day the Trade Representative announced that he was imposing prohibitive duties on Ukrainian products with an annual trade value of approximately $75 million, and announced the final product list on the following day.

Imposition of Prohibitive Duties

The Trade Representative has determined that appropriate action under section 301(b) of the Trade Act is to impose a 100% *ad valorem* rate of duty on the articles of Ukraine described in the Annex to this notice, effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after January 23, 2002. Accordingly, effective January 23, 2002, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified in accordance with the Annex to this notice. In addition, any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41.

The scope of this action under section 301 is governed by the HTS nomenclature for the preexisting HTS subheadings identified in parentheses for each of the new Chapter 99 subheadings in the Annex to this notice. The verbal product descriptions for the new Chapter 99 subheadings in the Annex are not definitive. Issues regarding the classification of particular products would be decided by the U.S. Customs Service under its usual rules and procedures for product classification.

William L. Busis,

Chairman, Section 301 Committee.

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1–General", respectively.

	"Articles the product of Ukraine:	
9903.27.01	Distillate and residual fuel oils (including blended fuel oils) and wastes of distillate and residual fuel oils (whether or not blended) (provided for in subheading 2710.19.05, 2710.19.10,2710.99.05 or 2710.99.10)	100%
9903.27.02	Rare gases, other than argon (provided for in subheading 2804.29.00)	100%
9903.27.03	Germanium oxides and zirconium dioxide (provided for in subheading 2825.60.00)	100%
9903.27.04	Carbides of silicon (provided for in subheading 2849.20.10 or 2849.20.20)	100%
9903.27.05	Other mineral or chemical fertilizers, containing nitrates and phosphates (provided for in subheading 3105.51.00)	100%
9903.27.06	Pigments and preparations based on titanium dioxide (provided for in subheading 3206.11.00 or 3206.19.00)	100%
9903.27.07	Other uncoated, unbleached kraft paper and paperboard, in rolls or sheets, weighing 225 g/m2 or more (provided for insubheading 4804.51.00)	100%
9903.27.08	Other footwear with outer soles of rubber, plastics or composition leather and uppers of leather (provided for in subheading 6403.99.60, 6403.99.75 or 6403.99.90)	100%
9903.27.09	Other footwear with outer soles of rubber or plastics and uppers of textile materials, with open toes or open heels, or of the slip-on type (provided for in subheading 6404.19.35)	100%
9903.27.10	Diamonds, unsorted (provided for in subheading 7102.10.00)	100%
9903.27.11	Diamonds, nonindustrial (provided for in subheading 7102.31.00 or 7102.39.00)	100%
9903.27.12	Catalysts in the form of wire cloth or grill, of platinum (provided for in subheading 7115.10.00)	100%
9903.27.13	Unrefined copper; copper anodes for electrolytic refining (provided for in heading 7402.00.00)	100%
9903.27.14	Other unwrought aluminum alloys (provided for in subheading 7601.20.90)	100%
9903.27.15	Other refrigerating or freezing equipment; heat pumps (provided for in subheading 8418.69.00)	100%"

[FR Doc. 01–32231 Filed 12–31–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 14, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–11132
Date Filed: December 10, 2001
Parties: Members of the International Air Transport Association
Subject: PTC3 0528 dated 11 December 2001
Mail Vote 185—Resolution 010q
TC3 Japan, Korea-South East Asia Special Passenger Amending Resolution from Korea (Rep. of) to Chinese Taipei
Intended effective date: 15 December 2001

Docket Number: OST–2001–11163
Date Filed: December 12, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC3 0521 dated 11 December 2001
TC3 Areawide Expedited Resolution 015v r–1
PTC3 0522 dated 11 December 2001
TC3 Within South East Asia Expedited Resolutions r2–r4
PTC3 0523 dated 11 December 2001
TC3 Within South West Pacific Expedited Resolution 002yy r–5
PTC3 0524 dated 11 December 2001
TC3 between South East Asia and South West Pacific
Expedited Resolution 002tt r–6
PTC3 0525 dated 11 December 2001
TC3 between Japan, Korea and South Asian Subcontinent
Expedited Resolution 002xx r–7
PTC3 0526 dated 11 December 2001
TC3 between Japan, Korea and South East Asia ExpeditedResolution 002vv r–8
Intended effective date: 15 January 2002

Docket Number: OST–2001–11175
Date Filed: December 12, 2001
Parties: Members of the International Air Transport Association
Subject: PTC23 EUR–SASC 0083 dated 11 December 2001
TC23 Europe-South Asian Subcontinent Expedited Resolutions

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Intended Effective Date: 1 February 2002

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 01–32237 Filed 12–31–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 14, 2001

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11156.
Date Filed: December 11, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2002.
Description: Application of Westjet, pursuant to 49 U.S.C. section 41303, requesting a transfer of the foreign air carrier permit of WestJet Airlines Ltd. to engage in chartered and scheduled foreign air transportation of persons, property and mail between US and Canadian points, operating as "WestJet."

Docket Number: OST–2001–11164.
Date Filed: December 12, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2002.
Description: Application of Caribbean Star Airlines, Inc., pursuant to 49 U.S.C section 41102 and subpart B, requesting the issuance of a certificate of public convenience and necessity to engage in scheduled and charter foreign air transportation of persons, property and mail between points in Florida and Puerto Rico, on the one hand, and points throughout the Caribbean region, Mexico and Central and South America, on the other hand.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 01–32236 Filed 12–31–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Yuba and Sutter Counties, State of California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yuba and Sutter Counties, State of California. The proposed project is called the Third Bridge Crossing of the Feather River.

FOR FURTHER INFORMATION CONTACT:
Mike Bartlett, Chief, Office of Environmental Management, 1303 O Street, 2nd Fl., Sacramento, CA 95814, (916) 324–5150.
Maiser Khaled, Chief, District Operations, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814, (916) 498–5020.

SUPPLEMENTARY INFORMATION: The proposed project would construct a freeway system to link SR 65/70 with SR 99 and construct a bridge structure over the Feather River. The east-west freeway link would cross the Feather River south of Marysville (Yuba County) and Yuba City (Sutter County). Located near and within the project area are the communities of Olivehurst, Alicia, Linda, Yuba City and the City of Marysville.

Scoping Process

The project has been in the planning stages since the 1980's. A Notice of Intent was published in December 1989, however, the project was tabled due to lack of funding. In the interim, the California Department of Transportation (Caltrans) has conducted meetings with the public, with local governmental officials and with jurisdictional agencies. A preliminary environmental analysis was performed in June and July 2000. Caltrans with FHWA initiated the NEPA/404 Integration and the Purpose and Need for the project has been reviewed by agencies with jurisdiction. In addition, a series of four workshops was held in the twin-cities area of Yuba City/Marysville in the last three years. One workshop was specifically for the Hmong (Southeast Asian refugees) community of Yuba County, which is in close proximity to the eastern end of the project. Special outreach efforts were complemented with Hmong-English translators and community representatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations/citizens who have previously expressed or are known to have interest in this proposal. At the time the draft environmental impact statement is circulated for public comments, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 29, 2001.

Maiser Khaled,
Chief, District Operations, California Division.
[FR Doc. 01–32157 Filed 12–31–01; 8:45 am]
BILLING CODE 4910–22–M

Corrections

Federal Register
Vol. 67, No. 1
Tuesday, January 2, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Terephthalate Film, Sheet, and Strip From India

Correction

In notice document 01–31515 beginning on page 65893 in the issue of Friday, December 21, 2001, make the following correction:

On page 65899, in column one, "Dated: December 15, 2001" should read "Dated: December 13, 2001".

[FR Doc. C1–31515 Filed 12–31–01; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 4

Rules of Practice

Correction

In final rule document 01–30441 beginning on page 64142 in the issue of Wednesday, December 12, 2001 make the following correction:

§ 4.13 [Corrected]

On page 64144, in the first column, in § 4.13, in amendatory instruction 7, paragraph c. should read, "c. Section 4.13 (d)-(f), (h), (j), (k).".

[FR Doc. C1–30441 Filed 12–31–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–206–AD; Amendment 39–12544; AD 2001–24–27]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; Model MD–88 Airplanes; and C–9 Airplanes

Correction

In final rule document 01–30203 beginning on page 64109 in the issue of Wednesday, December 12, 2001, make the following corrections:

§ 39.13 [Corrected]

1. On page 64111, in the second column, under heading **Restatement of Requirements of AD 96–02–05:**
a. In paragraph (a):
(1) In the second line, "A27–325R02" should read, "A27–325".
(2) In the third line from the bottom, "A27–325R02" should read, "A27–325".
b. In paragraph (a)(2), in the seventh line, "A27–325R02" should read, "A27–325".

2. On page 64111, in the third column, under heading **Restatement of Requirements of AD 96–02–05:**
a. In paragraph (b):
(1) In the second line "A27–325R02" should read, "A27–325".
(2) In the third line from the bottom, "A27-325R02" should read, "A27-325".
b. In paragraph (b)(2), in the seventh line, "A27–325R02" should read, "A27–325".

3. On page 64111, in the third column, under heading **New Actions Required by This AD**, in **Note 2:**, in the third line, DC9–27–325R02" should read, "DC9–27–325".

4. On page 64112, in the first column under heading *Incorporation by Reference:*
a. In paragraph (f):
(1) In the third line, "A27–325R02" should read, "A27–325".
(2) In the fifth line, "A27–325R" should read, "A27–325".
b. In paragraph (f)(2), in the third line, "A27–325R02" should read, "A27–325".
c. In paragraph (f)(3), in the third line, "A27–325R02" should read, "A27–325".

[FR Doc. C1–30203 Filed 12–31–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2001-11128]

RIN 2120-AG34

Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park

Correction

In proposed rule document 01–30836 appearing on page 64778 in the issue of Friday, December 14, 2001, make the following corrections:

1. On page 64778, in the first column, under the heading **SUMMARY:**, in the 12th line "fairies" should read "fairness".

2. On the same page, in the second column, under the heading **FOR FURTHER INFORMATION CONTACT:**, in the ninth line "*thomas.1.connor@faa.gov*" should read "*thomas.l.connor@faa.gov*".

3. On the same page, in the same column,in the first paragraph, in the third line under the heading **Background** "Nose" should read "Noise".

4. On the same page, in the same column, in the second paragraph, in the eighth line "the" should read "The".

[FR Doc. C1–30836 Filed 12–31–01; 8:45 am]
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Part II

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 2002 Apportionments, Allocations and Program Information; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2002 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2002 (FY 2002 DOT Appropriations Act) (Pub. L. 107–87) was signed into law by President Bush on December 18, 2001, and provides FY 2002 appropriations for the Federal Transit Administration (FTA) transit assistance programs. Based upon this Act, the Transportation Equity Act for the 21st Century (TEA–21), and 49 U.S.C. Chapter 53, this notice contains a comprehensive list of apportionments and allocations for transit programs.

In addition, prior year unobligated allocations for the section 5309 New Starts and Bus Programs are listed. The FTA policy regarding pre-award authority to incur project costs, Letter of No Prejudice Policy, and other pertinent program information are provided.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Rural Transit Assistance Program, the Elderly and Persons with Disabilities Program, the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, the Capital Investment Program, or the Job Access and Reverse Commute Program; or Paul L. Verchinski, Chief, Statewide and Intermodal Planning Division, (202) 366–1626, for general information concerning the Metropolitan Planning Program and the Statewide Planning and Research Program; or Henry Nejako, Program Management Officer, Office of Research, Demonstration and Innovation, (202) 366–3765, for general information about the National Planning and Research Program.

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I. Background

Metropolitan Planning funds are apportioned by statutory formula to the Governors for allocation to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof to provide funds for their Unified Planning Work Programs. Statewide Planning and Research funds are apportioned to States by statutory formula to provide funds for their Statewide Planning and Research Programs. Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to Governors for capital, operating and administrative assistance in nonurbanized areas. Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. New Starts identified in the FY 2002 DOT Appropriations Act and Bus Allocations identified in the Conference Report accompanying the Act are included in this notice. FTA will honor those designations included in report language to the extent that the projects meet the statutory intent of the specific program. Job Access and Reverse Commute (JARC) funds are awarded on a competitive basis. JARC projects identified in the FY 2002 DOT Appropriations Act are included in this notice. Over-the-Road Bus Accessibility Program projects are also competitively selected.

II. Overview

A. Fiscal Year 2002 Appropriations

The FY 2002 funding amounts for FTA programs are displayed in Table 1. The following text provides a narrative explanation of the funding levels and other factors affecting the apportionments and allocations.

B. TEA–21 Authorized Program Levels

TEA–21 provides a combination of trust and general fund authorizations that total $7.737 billion for the FY 2002 FTA program. Of this amount, $6.747 billion was guaranteed under the discretionary spending cap and made available in the FY 2002 DOT Appropriations Act. See Table 12 for fiscal years 1998–2003 guaranteed funding levels by program and Table 12A for the total of guaranteed and non-guaranteed levels by program.

Information regarding estimates of the funding levels for FY 2003 by State and urbanized area is available on the FTA Web site. The FY 2003 numbers are intended for planning purposes only but may be used for programming Metropolitan Transportation Improvement Programs and Statewide Transportation Improvement Programs. Actual apportionment figures for FY 2002 are contained in this notice, while apportionment figures for FY 1998–FY 2001 can be found in the appropriate FTA fiscal year apportionment notice, which is available on the FTA Web site.

C. Project Management Oversight

Section 5327 of Title 49 U.S.C., permits the Secretary of Transportation to use up to one-half percent of the funds made available under the Urbanized Area Formula Program and the Nonurbanized Area Formula Program, and three-quarters percent of funds made available under the Capital Investment Program to contract with any person to oversee the construction of any major project under these statutory programs to conduct safety, procurement, management and financial reviews and audits, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits. Language in the 2002 DOT Appropriations Act increases the amount made available under the Capital Investment Program for oversight activities to one percent.

D. VIII Paralympiad for the Disabled

The FY 2002 DOT Appropriations Act made $5 million available from the formula grants program for the VIII Paralympaid for the Disabled, to be held in Salt Lake City, Utah. The funds shall be available for grants for the costs of planning, delivery and temporary use of transit vehicles for special transportation needs and construction of temporary transportation facilities for the VIII Paralympiad for the Disabled.

III. Fiscal Year 2002 Focus Areas

A. Transit Safety and Security

Public transit agencies throughout the nation have stepped up security efforts following the terrorist events of September 2001. FTA has launched an FY 2002 effort to assist transit providers to address security issues and has refocused funding to specific security-related activities. Initially, FTA will deploy security assessment teams to the largest transit systems in the country. These assessment findings and best practices will enable the FTA to provide extended assistance to all transit agencies to evaluate and update their emergency response plans. FTA will provide technical and funding assistance to transit agencies for full-scale emergency response drills based on their updated response plans and vulnerability assessments. Free regional workshops will offer security and emergency response training to local transit employees.

FTA has identified $2 million of FY 2002 research funding to undertake security-related transit research under the auspices of the Transit Cooperative Research Program of the National Academy of Sciences.

Also, recipients of section 5307 formula funding are reminded that at least one percent of the amount a grantee receives each fiscal year must be expended on "mass transportation security projects" unless the grantee certifies, and the Secretary of Transportation accepts, that the expenditure for security projects is unnecessary. It is unlikely that FTA will waive this requirement.

Another potential source of funding for transit security enhancements is through the FHWA transfer of flexible formula funds, as provided in 23 U.S.C. 104, which, in conjunction with Title 23 U.S.C. 120, provides transit agencies a 100 percent Federal share for safety projects (subject to a nationwide 10 percent program limitation).

B. 2000 Census

The Census Bureau identifies and classifies urban and rural population and delineates urbanized areas after each decennial census. The FTA uses urbanized and rural designations and statistical data for a number of purposes, including the apportionment of funds for its formula based programs.

The Census Bureau had not completed the process of delineating urbanized and rural areas for the 2000 Census at the time FTA apportioned FY 2002 funds. Therefore, the 1990 Census data was used for the FY 2002 apportionments contained in this notice.

It is anticipated that a number of areas will change categories under the 2000 Census, as a result of growth in population and/or the application of new criteria that will be used to define/designate urbanized and rural areas. Once FTA receives the 2000 Census data, we will post, on the FTA Website, estimated FY 2003 apportionments for the formula programs.

For further information contact Ken Johnson, FTA Office of Resource Management and State Programs, at (202) 366–2053.

C. TEAM-Web

The Transportation Electronic Award Management system (TEAM) is FTA's electronic grant making and record keeping system. On October 1, 2001, FTA released TEAM-Web, a new Internet version of the TEAM system. TEAM-Web permits grantees to submit their grant information via the Internet and provides for continued and enhanced submission of grant information electronically.

TEAM-Web provides the recipients of financial assistance online access to the FTA information resources that support their mission critical operations,

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including real time access to detailed disbursements by project, balances in formula budget accounts, and the status of applications in the award process. The new system also has an email notification process that will ensure accountability when processing applications through the FTA Offices and the Department of Labor. All current user information has been migrated to the Web version of TEAM. FTA has conducted training sessions on how to navigate TEAM-Web in its Headquarters and Regional Offices. For information on future training sessions, contact the appropriate FTA Regional Office.

To access TEAM-Web, log onto the Internet at *http://FTATEAMWeb.fta.dot.gov*. For additional information, contact Glenn Bottoms, Chief, Transit Data and Support Division, (202) 366–1632.

D. New Starts Rule and Workshops

TEA–21 requires the FTA to issue regulations on the manner in which candidate projects for capital investment grants or loans for new fixed guideway systems and extensions to existing systems (New Starts) will be evaluated and rated. The Major Capital Investment Projects Final Rule (49 CFR Part 611), referred to as the New Starts Final Rule, was published in the **Federal Register** on December 7, 2000, and became effective on April 6, 2001.

Electronic access to this Final Rule and related documents is available through the FTA Web site (*http://www.fta.dot.gov*), under the New Starts section. Paper copies of this Final Rule and other documentation can be obtained by contacting FTA at one of our Regional Offices.

As in the previous fiscal year, FTA will conduct outreach sessions and workshops in FY 2002 to introduce the Final Rule and to continue longstanding outreach efforts on the New Starts program. Information on scheduled workshops can be obtained by contacting any FTA Regional Office, as well as the FTA Office of Planning and the FTA Office of Budget and Policy.

E. Intelligent Transportation Systems (ITS)

Section 5206(e) of TEA–21 requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to National ITS Architecture and Standards. The FTA National ITS Architecture Consistency Policy for Transit Projects implements the TEA–21 requirements and went into effect on April 8, 2001. The Policy is available on the FTA Web site, and guidance material is available on the Departmental ITS Web site at *www.its.dot.gov*. These standards and requirements apply to FY 2002 allocations included in this notice that contain ITS components. Using existing FTA oversight procedures, FTA has initiated a program to provide initial oversight and technical assistance with respect to National ITS Architecture Consistency requirements.

Questions regarding the applicability of these standards and requirements should be addressed to the FTA Regional Office or FTA Office of Research, Demonstration and Innovation, at (202) 366–4991.

F. Environmental Streamlining

TEA–21 directs DOT to expedite the environmental review process for proposed highway and transit projects. With this apportionments notice, FTA is introducing two measures concerning proposed major transit investments (New Starts) that will support timely delivery of projects, while maintaining and enhancing protection of the human and natural environment.

First, FTA is extending automatic pre-award authority to proposed New Starts projects for costs incurred to acquire real property and real property rights upon the completion of the National Environmental Policy Act (NEPA) review of the proposed project. NEPA review is complete when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI) or makes a Categorical Exclusion (CE) determination. This measure will enable grant applicants to begin earlier to assist persons and businesses that will be displaced by the project in a manner consistent with commitments made as part of the NEPA review and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). It will also help grant applicant to initiate the lengthy process of acquiring property earlier.

Second, FTA will extend automatic pre-award authority to proposed New Starts projects for costs incurred to carry out the NEPA review process and to prepare an Environmental Impact Statement (EIS), Environmental Assessment (EA), Categorical Exclusion (CE), or other environmental documents for that project upon the inclusion of that project in a federally approved State Transportation Improvement Program (STIP). FTA had previously given pre-award authority for use of formula funds. Now New Starts funds may serve as a funding source for these New Starts project NEPA activities. This measure will eliminate unnecessary delays in starting up the conceptual engineering, public involvement process, and interagency coordination for the project.

For additional information, contact Joseph Ossi, FTA Office of Planning, (202) 366–1613.

IV. Metropolitan Planning Program and State Planning and Research Program

A. Metropolitan Planning Program

Funding made available for the Metropolitan Planning Program (49 U.S.C. 5303) in the FY 2002 DOT Appropriations Act is $55,422,400, which is the guaranteed funding level under TEA–21. The FY 2002 Metropolitan Planning Program apportionment to States for MPOs' use in urbanized areas totals $55,662,971. This amount includes $55,422,400 in FY 2002 funds, and $240,571 in prior year deobligated funds available for reapportionment under this program. A basic allocation of 80 percent of this amount ($44,530,377) is distributed to the States based on the State's urbanized area population as defined by the U.S. Census Bureau for subsequent State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining 20 percent ($11,132,594) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 2 contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment, which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in FY 1991 (minimum MPO allocation). Each State formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

By April 2002, the Census Bureau is expected to make available detailed results of the 2000 Census and designate new urbanized areas. When the Census Bureau issues its population data, FTA will request that States reaffirm these in-State formulas. A reaffirmation or new in-State formula should be submitted to the FTA Regional Office in time to receive approval before October 1, 2002. Currently, guaranteed and authorized funding levels for each State over the life of TEA–21 (fiscal years 1999–2003) based on the 1990 Census, are posted at *http://www.fta.dot.gov/office/planning/gaf.htm*. FTA will post revised fiscal year 2003 guaranteed and authorized funding levels based on the 2000 Census for each State at this same Web site address, when 2000 Census data becomes available. This information should be utilized by each State when reaffirming or revising in-State formulas.

B. State Planning and Research Program

Funding made available for the State Planning and Research Program (49 U.S.C. 5313(b)) in the FY 2002 DOT Appropriations Act is $11,577,600, the guaranteed funding level under TEA–21.

The FY 2002 apportionment for the State Planning and Research Program (SPRP) totals $11,698,648. This amount includes $11,577,600 in FY 2002 funds, and $121,048 in prior year deobligated funds, which have become available for reapportionment under this program. Final State apportionments for this program are also contained in Table 2. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement metropolitan planning funds allocated by the State to its urbanized areas, as the State deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each State by administrative formula in FY 1991 was used as a "hold harmless" base in calculating funding to each State.

D. FHWA Metropolitan Planning Program

For informational purposes, the estimated FY 2002 apportionments for the FHWA Metropolitan Planning Program (PL) are contained in Table 3. Estimated apportionments for the FY 2002 FHWA State Planning and Research Program (SPRP) were not available at the time of publication of this notice.

E. Local Match Waiver for Specified Planning Activities

Job Access and Reverse Commute Planning. Federal, State and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA permit the waiver of the local match requirement for job access and reverse commute planning activities undertaken with both FTA and FHWA Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in Metropolitan Unified Planning Work Programs and State Planning and Research Programs and meet all other appropriate requirements.

F. Planning Emphasis Areas for Fiscal Year 2002

The FTA and FHWA identify Planning Emphasis Areas (PEAs) annually to promote priority themes for consideration, as appropriate, in metropolitan and statewide transportation planning processes. To support this, FTA and FHWA will prepare an inventory of current practice, guidance and training in those areas. Opportunities for exchanging ideas and experiences on innovative practices in these topic areas also will be provided throughout the year. For FY 2002, five key planning themes have been identified: (1) Consideration of safety and security in the transportation planning process; (2) integration of planning and environmental processes; (3) consideration of management and operations within planning processes; (4) consultation with local officials; and (5) enhancing the technical capacity of planning processes.

1. Safety and Security in the Transportation Planning Process

TEA–21 emphasizes the safety and security of transportation systems as a national priority and calls for transportation projects and strategies that "increase the safety and security of transportation systems." This entails integration of safety and facility security into all stages of the transportation planning process.

FTA and FHWA are working together to advance the state-of-practice in addressing safety and security in the metropolitan and statewide planning process through workshops and case studies. A report prepared by the Transportation Research Board (TRB), Transportation Research Circular E–C02, "Safety-Conscious Planning," January 2001, describes the issues and recommendations identified at a Safety in Planning workshop held earlier. The report is available on the TRB Web site at www.nas.edu/trb. Also, the Institute of Transportation Engineers (ITE) has prepared a discussion paper on the topic, entitled "The Development of the Safer Network Transportation Planning Process," which is posted to their Web site at [*www.ite.org.*]

2. Integrated Planning and Environmental Processes

TEA–21 mandates the elimination of the Major Investment Study as a stand-alone requirement, while integrating the concept within the planning and project development/environmental review processes. A training course entitled "Linking Planning and NEPA" is being developed and will be made available at the National Transit Institute Web site—[*www.ntionline.com*].

3. Consideration of Management and Operations Within Planning Processes

TEA–21 challenges FHWA and FTA to move beyond traditional capital programs for improving the movement of people and goods—focusing on the need to improve the way transportation systems are managed and operated. FTA and FHWA have convened a working group and have commissioned discussion papers on the topic. This information is available at *http://plan2op.fhwa.dot.gov*.

4. Consultation With Local Officials

Consultation with local officials is a vital yet sensitive issue within the transportation planning process. Within metropolitan areas, the MPO provides the venue and policy context for this. Outside of metropolitan areas, FHWA and FTA are working to facilitate the most effective consultation processes within each State. FTA and FHWA will continue to ensure effective consultation between States and local officials in non-metropolitan areas in reviewing statewide planning and, specifically, in making findings in support of FTA and FHWA STIP approvals.

5. Enhancing the Technical Capacity of Planning Processes

Reliable information on current and projected usage and performance of transportation systems is critical to the ability of planning processes to supply credible information to decision-makers

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to support preparation of plans and programs that respond to their localities' unique needs and policy issues. To ensure the reliability of usage and performance data, as well as the responsiveness of policy forecasting tools, an evaluation is needed of the quality of information provided by the technical tools, data sources, forecasting models, as well as the expertise of staff to ensure its adequacy to support decision-making. And if this support is found to be lacking, the responsible agencies within metropolitan and statewide planning processes are encouraged to devote appropriate resources to enhancing and maintaining their technical capacity.

The metropolitan and statewide transportation planning processes have become critical tools for responding to increasingly complex issues at the State and local levels. Many of these issues are encompassed in previously listed planning emphasis areas (e.g., integrated planning and environmental processes, management and operations, analytical tools and methods) and include much more. It is essential that FTA and FHWA provide technical assistance, training, and information to our customers to further enhance the skills and capabilities they utilize to conduct effective transportation planning processes. The FTA and FHWA have created the Metropolitan Capacity Building (MCB) Program, and the Statewide and Rural Capacity Building Programs as tools to disseminate and coordinate information, training, and foster a dialogue for the exchange of ideas. More information on the MCB program can be found at *www.mcb.fhwa.dot.gov*.

For further information on these PEAs, contact Ken Lord, FTA Metropolitan Planning Division, (202) 366–2836, or Shana Baker, FHWA Office of Metropolitan Planning and Programs, (202) 366–1862.

G. Federal Planning Certification Reviews

The Intermodal Surface Transportation Efficiency Act (ISTEA) initiated, and TEA–21 continued, the requirement for the FTA and FHWA to certify, at least every three years, that the planning processes conducted in the largest metropolitan areas were being carried out in compliance with applicable provisions of Federal law. This provision applies specifically to localities termed "Transportation Management Areas" (TMA), which are urbanized areas with populations of 200,000 and above, or other urbanized areas that may be designated by the Secretary of Transportation. TEA–21 further required that, in conducting these certification reviews, provisions be made for public involvement appropriate to the metropolitan area under review.

To that end, an annual calendar of prospective dates and locations for certification reviews of TMAs anticipated in FY 2002 has been prepared and is posted on the FTA Web site at *http://www.fta.dot.gov/library/planning/cert2002.htm*.

For further information regarding Federal certifications of the planning process, contact: for FTA, Charles Goodman, FTA Metropolitan Planning Division, (202) 366–1944, or Scott Biehl, FTA Office of Chief Counsel, (202) 366–4063; for FHWA, Sheldon Edner, FHWA Metropolitan Planning Division, (202) 366–4066, or Reid Alsop, FHWA Office of the Chief Counsel, (202) 366–1371.

H. Consolidated Planning Grants

Since FY 1997, FTA and FHWA have offered States the option of participating in a pilot Consolidated Planning Grant (CPG) program. Additional State participants are sought so that FTA and FHWA can benefit from the widest possible range of participant input to improve and further streamline the process.

With the fund transfer provisions of TEA–21, which were applied to the CPG beginning in FY 2000, all funds (more than 35 post-FY 1999 FHWA sources are eligible for transfer) can be accessed by indicating only whether the funds are for State or metropolitan planning. This streamlined fund drawdown process eliminates the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first.

Under the CPG, States can report metropolitan planning expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program. Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, the State (through FTA) can request a waiver of the 20 percent local share requirement in order that all FTA funds used for metropolitan planning in a CPG can be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent. Currently, three western States participating in the pilot (California, Idaho, and Wyoming) are using the FHWA PL match rate for FTA's Metropolitan Planning Program.

Pre-award authority has been granted to FTA's planning programs for the life of TEA–21. This pre-award authority enables States to continue planning program activities from year to year with the assurance that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency. Beginning in FY 2000, the transfer procedures established to implement the transfer provision in TEA–21 (section 1103(i) "Transfer of Highway and Transit Funds") is applicable to FHWA funds used in CPG. For planning projects funded through CPG, the State DOT requests the transfer of funds in a letter to the FHWA Division Office. The FHWA-funded planning activities must be in accordance with the State's or MPO's Planning Work Program. The letter must be signed by the appropriate State official or their designee and must specify the State and the amount of funding to be transferred for the CPG by apportionment category (e.g. STP, CMAQ, Donor State Bonus, Funding Restoration, etc.) and by appropriation year. The letter should include only the funding for planning activities contained in the State's or MPO's Planning Work Program. If no FTA program, either Metropolitan Planning (49 U.S.C. 5303) or Statewide Planning and Research (49 U.S.C. 5313(b)), is indicated for transfers to CPG, funds will be credited to the Metropolitan Planning Program.

As part of the pilot, FTA will continue to work with participating States to increase the flexibility and further streamline the consolidated approach to planning grants. For further information on participating in the CPG Pilot, contact Candace Noonan, Intermodal and Statewide Planning Division, FTA, at (202) 366–1648 or Anthony Solury, Office of Planning and Environment, FHWA, at (202) 366–5003.

I. New Starts Approval to Enter Preliminary Engineering and Final Design

TEA–21 extends FTA's long-standing authority for approving the advancement of candidate New Starts projects into preliminary engineering (PE) by requiring that FTA also approve entrance into the final design (FD) stage of project development. Specifically, 49 U.S.C. 5309(e)(6) requires that a proposed New Starts project may advance into preliminary engineering or final design only if FTA finds that the project meets the statutory criteria specified in § 5309(e), and that there is a reasonable likelihood that it will continue to do so. In making such findings, FTA evaluates and rates proposed New Starts projects as "highly recommended," "recommended," or "not recommended," based on the results of alternatives analysis, the statutory criteria for project justification, and the degree of local financial commitment. FTA has established a set of decision rules for approving entrance into preliminary engineering and final design at 49 CFR part 611. After first meeting several basic planning, environmental, and project management requirements which demonstrate the "readiness" of the project to advance into the next stage of project development, candidate projects are subject to FTA evaluation against the New Starts project justification and local financial commitment criteria. Projects may advance to the next appropriate stage of project development (PE or FD) only if rated "recommended" or "highly recommended," based on FTA's evaluation under the statutory criteria. Projects rated "not recommended" will not be approved to advance.

Section 5309(e)(8)(A) of Title 49 U.S.C. exempts projects which request a section 5309 New Starts share of less than $25 million from the requirements of section 5309(e). TEA–21 also provides statutory exemptions to certain specific projects. It is important to note that any exemption under section 5309(e)(8)(A) applies only to the statutory New Starts project evaluation criteria that serves as the basis for FTA's approval to advance to preliminary engineering and final design for such projects. Proposed New Starts projects seeking less than $25 million in funding from the § 5309 New Starts program must still request approval to enter the next stage of development, and must fulfill all appropriate planning, environmental, and project management requirements. Nonetheless, FTA encourages sponsors of projects they believe to be exempt to submit the full range of data to FTA for evaluation and rating. This will provide FTA with the means necessary to make funding recommendations for such projects to Congress, and will protect project sponsors in the event that further project development activities reveal the need for additional § 5309 New Starts funding beyond $25 million.

V. Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

The amount made available to the Urbanized Area Formula Program (49 U.S.C. 5307) in the FY 2002 DOT Appropriations Act is $3,216,040,006. In addition, $7,092,285 in deobligated funds became available for reapportionment under the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

After reserving $16,080,200 for oversight, the amount of FY 2002 funds available for apportionment is $3,199,959,806. The funds to be reapportioned, described in the previous paragraph, are then added and increase the total amount apportioned for this program to $3,207,052,091. Table 4 displays the amounts apportioned under the Urbanized Area Formula Program. Table 13 contains the apportionment formula for the Urbanized Area Formula Program.

An additional $4,849,950 is made available for the Alaska Railroad for improvements to its passenger operations. After reserving $24,250 for oversight, $4,825,700 is available for the Alaska Railroad.

B. Fiscal Year 2001 Apportionment Adjustments

Adjustments were made to the apportionment of two urbanized areas because of corrections to data used to compute the FY 2001 Urbanized Area Formula Program apportionments, published in the **Federal Register** of January 18, 2001 (66 FR 4918). The differences between the previously published apportionment and the corrected apportionment for these areas have been resolved and the necessary adjustment made to the areas' apportionment for FY 2002. The amounts published in this notice contain the adjustments and the affected urbanized areas have been advised.

C. Data Used for Urbanized Area Formula Apportionments

Data from the 2000 National Transit Database (NTD) Report Year (49 U.S.C. 5335) submitted in late 2000 and early 2001 were used to calculate the FY 2002 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. Population and population density data are also used in calculating apportionments under the Urbanized Area Formula Program.

D. Urbanized Area Formula Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each State is shown in Table 4. This table also contains the total apportionment amount attributable to each urbanized area within the State. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed in Section G below, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

E. Transit Enhancements

One percent of the Urbanized Area Formula Program apportionment in each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. Table 4 shows the amount set aside for enhancements in these areas.

The term "transit enhancement" includes projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. Eligible enhancements include the following: (1) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities); (2) bus shelters; (3) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights; (4) public art; (5) pedestrian access and walkways; (6) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles; (7) transit connections to parks within the recipient's transit service area; (8) signage; and (9) enhanced access for persons with disabilities to mass transportation.

It is the responsibility of the MPO to determine how the one percent will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent being expended in an urbanized area for transit enhancements. Items that are only eligible as enhancements—in particular, operating costs for historic facilities—may be assisted only within the one percent funding level.

The recipient must submit a report to the appropriate FTA Regional Office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount awarded. The report must be submitted with the Federal fiscal year's final quarterly progress report in TEAM-Web. The report should include the following elements: (a) Grantee name, (b) urbanized area name and number, (c) FTA project number, (d) transit enhancement category, (e) brief description of enhancement and progress towards project implementation, (f) activity line item code from the approved budget, and (g)

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amount awarded by FTA for the enhancement.

F. Fiscal Year 2002 Operating Assistance

FY 2002 funding for operating assistance is available only to urbanized areas with populations under 200,000. For these areas, there is no limitation on the amount of the State apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50.

TEA–21 provides two exceptions to the restriction on operating assistance in areas over 200,000 in population. These exceptions have been addressed and eligible areas previously notified.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as Transportation Management Areas (TMAs), in accordance with 49 U.S.C. 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160). Additional areas have been designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. During FY 2001, no additions to existing TMAs were designated.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program "Governor's Apportionment" funds for urbanized areas with less than 200,000 in population is restricted, i.e., the Governor only has discretion to allocate Governor's Apportionment funds attributable to areas that are outside of designated TMA boundaries.

If any additional small urbanized areas—within the boundaries of a TMA—are identified, notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590, no later than July 1 of each fiscal year. FTA's most recent list of urbanized areas with population less than 200,000 that are included within the planning boundaries of designated TMAs, is contained in the "FTA Fiscal Year 2001 Apportionment, Allocations and Program Information; Notice" which, can be found on the FTA Web site.

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA can be transferred to FHWA and made available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO in writing after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

Urbanized Area Formula funds that are designated for highway projects will be transferred to and administered by FHWA. The MPO should notify FTA of its intent to use FTA funds for highway purposes, as prescribed in section VIII.A., below.

I. National Transit Database (NTD) Internet Reporting and Redesign Effort

The NTD is the FTA database for nation-wide statistics on the transit industry, including safety data. Prior to FY 2001, FTA reporters utilized diskettes to submit statistics on their operating, financial and safety activities to FTA. Last year, reporters had the option of using the diskette system or the FTA new Internet reporting system. Beginning with FY 2002, all reports will need to be submitted via the Internet. Diskettes will no longer be accepted. The FTA NTD reporting seminars, held six times annually across the country, have concentrated on the Internet reporting system. The changeover to Internet reporting has received favorable comments and has resulted in accelerated data collection and validation.

NTD statistics are utilized, in part, to apportion Urbanized Area Formula Program funds for areas over 200,000 in population. In addition, NTD data is summarized and used to report to Congress on the performance of the transit industry and associated costs. These data are used to assist in assessing whether annual FTA Strategic Plan goals are achieved.

The overall effort to modernize and redesign the NTD—as detailed in the FTA May 31, 2001 report to Congress entitled "Review of the National Transit Database"—continues and is now in the programming phase. Plans call for reporting via the new NTD in the Fall of 2002 with training for NTD reporters to begin in the winter of 2001. The monthly/quarterly reporting of summary safety, security, and extent of service data, as well as immediate reporting of major safety and security incidents, will be implemented in calendar year 2002. This reporting has been structured to exempt smaller transit properties (under 100 vehicles in maximum service) from the monthly reporting requirement. An increased number of NTD seminars are scheduled to assist transit properties in reporting. See the NTD Web site for further information at *www.ntdprogram.com.*

VI. Nonurbanized Area Formula Program and Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The amount made available for the Nonurbanized Area Formula Program (49 U.S.C. 5311) in the FY 2002 DOT Appropriations Act is $224,555,243. The FY 2002 Nonurbanized Area Formula apportionments to the States total $226,410,089 and are displayed in Table 5. Of the $224,555,243 available, $1,122,776 was reserved for oversight. The funds apportioned include $2,977,622 in deobligated funds from fiscal years prior to FY 2002.

The Nonurbanized Area Formula Program provides capital, operating and administrative assistance for areas under 50,000 in population. Each State must spend no less than 15 percent of its FY 2002 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met.

B. Rural Transit Assistance Program (RTAP)

Funding made available for the RTAP (49 U.S.C. 5311(b)(2)) in the 2002 DOT Appropriations Act was $5,250,000, the guaranteed funding level under TEA–21. The FY 2002 RTAP allocations to the States total $5,270,729 and are also displayed in Table 5. This amount includes $5,250,000 in FY 2002 funds, and $20,729 in prior year deobligated funds, which are available for reapportionment.

The funds are allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the Nonurbanized Area Formula Program.

FTA also supports RTAP activities at the national level within the National Planning and Research Program (NPRP). The National RTAP projects support the States in their use of the formula allocations for training and technical assistance. Congress did not designate any funds for the National RTAP among the NPRP allocations in the Conference Report accompanying the FY 2002 DOT Appropriations Act. FTA will, however, include the National RTAP among priority projects to be funded from available NPRP funds. During FY 2002, FTA will conduct a competitive selection to choose providers of the National RTAP services for the next five years.

VII. Elderly and Persons with Disabilities Program

Funds in the amount of $84,604,801 are made available for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310) in the FY 2002 DOT Appropriations Act. A total of $84,930,249 is apportioned to the States for FY 2002 for the Elderly and Persons with Disabilities Program. In addition to the FY 2002 funding of $84,604,801, the FY 2002 apportionment includes $325,448 in prior year unobligated funds, which are available for reapportionment under the Elderly and Persons with Disabilities Program. Table 6 shows each State's apportionment.

The formula for apportioning these funds uses Census population data for persons aged 65 and over and for persons with disabilities. The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the State that there are no non-profit organizations in the area that are readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. FHWA Surface Transportation Program and Congestion Mitigation and Air Quality Funds Used for Transit Purposes (Title 23, U.S.C. 104)

A. Transfer Process

The process for transferring flexible formula funds between FTA and FHWA programs is described below. Information on the transfer of FHWA funds to FTA planning programs can be found in section IV.H., above.

Transfer From FHWA to FTA

FHWA funds designated for use in transit capital projects must result from the metropolitan and statewide planning and programming process, and must be included in an approved Statewide Transportation Improvement Program (STIP) before the funds can be transferred. The State DOT requests, by letter, the transfer of highway funds for a transit project to the FHWA Division Office. The letter should specify the project, amount to be transferred, apportionment year, State, Federal aid apportionment category (i.e., Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ), Interstate Substitute, or congressional earmark), and a description of the project as contained in the STIP.

The FHWA Division Office confirms that the apportionment amount is available for transfer and concurs in the transfer by letter to the State DOT and FTA. The FHWA Office of Budget and Finance then transfers obligation authority and an equal amount of cash to FTA. All CMAQ, STP, and FHWA funds allocated to transit projects in the Appropriations Act or Conference Report will be transferred to one of the three FTA formula capital programs (i.e. Urbanized Area Formula (section 5307), Nonurbanized Area Formula (section 5311) or Elderly and Persons with Disabilities (section 5310).

The FTA grantee's application for the project must specify which capital program the funds will be used for and the application should be prepared in accordance with the requirements and procedures governing that program. Upon review and approval of the grantee's application, FTA obligates funds for the project.

The transferred funds are treated as FTA formula funds, but are assigned a distinct identifying code for tracking purposes. The funds may be used for any purpose eligible under the FTA formula capital program to which they are transferred. FTA and FHWA have issued guidance on project eligibility under the CMAQ program in a **Federal Register** notice dated February 23, 2000 (65 FR 9040). All FTA requirements are applicable to transferred funds except local share—FHWA local share requirements apply. Transferred funds should be combined with regular FTA funds in a single annual grant application.

Transfers From FTA to FHWA

The Metropolitan Planning Organization (MPO) submits a request to the FTA Regional Office for a transfer of FTA section 5307 formula funds (apportioned to an urbanized area 200,000 and over in population) to FHWA based on approved use of the funds for highway purposes, as contained in the Governor's approved State Transportation Improvement Program. The MPO must certify that: (1) The funds are not needed for capital investments required by the Americans with Disabilities Act; (2) notice and opportunity for comment and appeal has been provided to affected transit providers; and (3) local funds used for non-Federal match are eligible to provide assistance for either highway or transit projects. The FTA Regional Administrator reviews and concurs in the request, then forwards the approval to FTA Headquarters, where a reduction is made to the grantee's formula apportionment and FTA's National Operating Budget in TEAM-Web, equal to the dollar amount being transferred to FHWA.

For information regarding these procedures, please contact Kristen D. Clarke, FTA Budget Division, at (202) 366–1699; or Richard Meehleib, FHWA Finance Division, at (202) 366–2869.

B. Matching Share for FHWA Transfers

The provisions of Title 23 U.S.C., regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, FHWA funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by FHWA.

There are three instances in which a Federal share higher than 80 percent would be permitted. First, in States with large areas of Indian and certain public domain lands and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transfers used to fund transit projects in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using FHWA transfers administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA.

The third instance includes the 100 percent Federal safety projects;

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however, these are subject to a nationwide 10 percent program limitation.

IX. Capital Investment Program (49 U.S.C. 5309)

A. Fixed Guideway Modernization

The formula for allocating the Fixed Guideway Modernization funds contains seven tiers. The apportionment of funding under the first four tiers, through FY 2003, is based on data used to apportion the funding in FY 1997. Funding under the last three tiers is apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old, as reported to the NTD.

Table 7 displays the FY 2002 Fixed Guideway Modernization apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to maintain, modernize, or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the NTD reporting system to ensure that all eligible fixed guideway data is included in the calculation of the apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the NTD are not included.

For FY 2002, $1,136,400,000 is made available for Fixed Guideway Modernization in the FY 2002 DOT Appropriations Act, which is the guaranteed funding level in TEA–21. An amount of $11,364,000 was then deducted for oversight, and $7,047,502 was set aside for the Alaska Railroad as directed by language in Section 1124 of the FY 2001 Omnibus Consolidated Appropriations Act (Pub. L. 106–554), leaving $1,117,988,498 available for apportionment to eligible urbanized areas. In addition to the FY 2002 funding, $547,205 in deobligated funds from fiscal years prior to FY 2002 is added and increases the total amount apportioned to $1,118,535,703 under Fixed Guideway Modernization. Table 14 contains information regarding the Fixed Guideway Modernization apportionment formula.

The Alaska Railroad has been determined to be eligible for funding under the Fixed Guideway Modernization program for service provided in the Anchorage, AK, urbanized area. The FY 2002 Fixed Guideway Modernization apportionment for the Alaska Railroad is, in part, based on a calculated amount derived from application of the Fixed Guideway Modernization formula—using approved Alaska Railroad data for fixed guideway directional route miles located within the Anchorage, AK, urbanized area. In addition, the Alaska Railroad apportionment includes the $7,047,502 set aside for the Alaska Railroad as directed in Public Law 106–554.

The Alaska Railroad eligibility to receive funds under the Fixed Guideway Modernization program is pursuant to FTA's determination that: (1) it is the fixed guideway system for the Anchorage, AK urbanized area (which is an urbanized area eligible for assistance under section 5336(b)(2)(A) of 49 U.S.C. Chapter 53, and therefore eligible for funding under sections 5337(a)(5)(B), 5337(a)(6)(B), and 5337(a)(7)(B)); and (2) the Alaska Railroad meets the standard of having been in service for at least seven years.

The Alaska Railroad was built by the Federal Government between 1914 and 1923. The Railroad operated under the control of the Interior Department until April 1967 when the Department of Transportation assumed that responsibility. After passage of special Federal legislation, the assets of the Alaska Railroad were sold to the State of Alaska, which assumed ownership of the railroad in January 1985. Since Federal ownership of the Alaska Railroad has extended over the greater part of its existence, the DOT acknowledges a special stewardship towards the Alaska Railroad within the Anchorage urbanized area. For purposes of formula apportionments beginning in FY 2004 and beyond, FTA will create a mode code exclusively for reporting to the NTD by the Alaska Railroad in the NTD Reporting Manual for report year 2002.

B. New Starts

The amount made available for New Starts in the FY 2002 DOT Appropriations Act is $1,136,400,000, which was fully allocated and represents the guaranteed funding level under TEA–21. Of this amount, $11,364,000 is reserved for oversight activities, leaving $1,125,036,000 available for allocations to projects. Prior year unobligated funds specified by Congress to be reallocated in the amount of $1,488,840 are then added and increase the total amount allocated to $1,126,524,840. The reallocated funds are derived from unobligated and deobligated balances for the following projects: Hartford-Old Saybrook, CT, project, $496,280; New London-Waterfront, CT, access project, $496,280; and North Front Range, CO, corridor feasibility study, $496,280. The final allocation for each New Starts project is listed in Table 8.

Prior year unobligated allocations for New Starts in the amount of $543,136,665 remain available for obligation in FY 2002. This amount includes $531,342,762 in fiscal years 2000 and 2001 unobligated allocations, and $11,793,903 for fiscal years 1998 and 1999 unobligated allocations that are extended in the FY 2002 Conference Report. These unobligated amounts are displayed in Table 8A.

Capital Investment Program funds for New Starts projects identified as having been extended in the FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act, will lapse September 30, 2002. A list of the extended projects and the amount that remains unobligated as of September 30, 2001, is appended to Table 8A for ready reference.

C. Bus

The FY 2002 DOT Appropriations Act provides $568,200,000, for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. This amount represents the guaranteed funding level under TEA–21.

TEA–21 established a $100 million Clean Fuels Formula Program under 49 U.S.C. 5308 (described in section XII below). The program is authorized to be funded with $50 million from the Bus category of the Capital Investment Program and $50 million from the Formula Program. However, the FY 2002 DOT Appropriations Act directs FTA to transfer the formula portion to, and merge it with, funding provided for the Bus category of the Capital Investment Program. Thus, $618,200,000 appropriated in FY 2002 is available for funding the Bus category of the Capital Investment Program. In addition, Congress directed that funds made available for bus and bus facilities be supplemented with $1,733,658 from projects included in previous Appropriations Acts, which increases the total amount made available to $619,933,658. The supplemental funds are derived from unobligated balances for the following projects: Carroll County, NH transportation alliance buses, $198,500; New Hampshire statewide buses, $34,001; Gary, IN transit consortium buses, $310,157; Jefferson Parish, LA bus and bus facilities, $347,375; Louisiana state infrastructure bank, bus and bus facilities, $347,375; and North Slope borough, AK, $496,250.

After deducting $6,182,000 for oversight, the amount available for allocation under the Bus category is $613,751,658. Table 9 displays the allocation of the FY 2002 Bus funds by State and project. The FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act allocated all of the FY 2002 Bus funds to specified States or localities for bus and bus-related projects. FTA will honor those allocations to the extent that they comply with the statutory authorization for that program.

Prior year unobligated balances for Bus Program allocations in the amount of $494,182,292 remain available for obligation in FY 2002. This includes $477,559,360 in fiscal years 2000 and 2001 unobligated allocations, and $16,622,932 for fiscal years 1998 and 1999 unobligated allocations that are extended in the FY 2002 Conference Report or the FY 2001 Supplemental Appropriations Act Conference Report. These unobligated amounts are displayed in Table 9A.

Capital Investment Program funds for Bus projects identified as having been extended in the Conference Report accompanying the FY 2002 DOT Appropriations Act or the FY 2001 Supplemental Appropriations Act, will lapse September 30, 2002. A list of the extended projects and the amount that remains unobligated as of September 30, 2001, is appended to Table 9A for ready reference.

In addition, the FY 2002 Conference Report provides clarification for FY 2001 projects and permits the use of FY 2001 appropriations for additional work as follows:

(1) Funds appropriated for the Lowell, Massachusetts transit hub can be used for the Hale Street bus maintenance and operations center;

(2) Funds appropriated for the Municipal Transit Operators in California can be used for bus and bus facilities;

(3) Funds appropriated for the King County Metro Eastgate park and ride can be used for the Issaquah Highlands park and ride;

(4) Funds allocated for buses for Suburban Mobility Authority for Regional Transportation (SMART) in Southeast Michigan may also be available for bus facilities; and

(5) Funds appropriated to the Burlington, Vermont multi-modal transit project in fiscal years 1998, 1999, 2000, and 2001 will be available for construction of the multimodal project and other transit improvements.

X. Job Access and Reverse Commute Program

The FY 2002 DOT Appropriations Act provides $125 million for the Job Access and Reverse Commute (JARC) Program, which is the guaranteed funding level under TEA–21. In the FY 2002 Conference Report the appropriators indicated their desire that $109,339,000 of this amount be awarded to certain specified States and localities. These areas and the corresponding amounts are listed in Table 10. States and localities listed in the FY 2002 Conference Report, along with other States and localities not so listed, are invited to apply for JARC funding according to the procedures that will be published in a separate **Federal Register** notice. That notice will solicit applications for the $125 million available in FY 2002 and the $150 million that is the guaranteed level of funding for FY 2003.

Because recipients of JARC funds have expressed the need for multi-year funding through the early stages of implementation, FTA will no longer limit awards to a single year, but rather will consider multi-year funding in appropriate cases. To give effect to this new policy, FTA will give priority to funding continuation of previously selected projects. FTA will solicit applications for continued funding from those applicants previously funded under the JARC program. Grantees may apply for up to two additional years of continuation funding beyond that previously approved. Continuation does not include expansion of services beyond those previously funded. Expanded services will be treated as new projects. Continuation projects are expected to document their progress through their most recent progress report. Evaluation of JARC projects' progress will be a key element in determining continued FTA financial support.

FTA will solicit applications for new JARC projects both from existing recipients and from States, localities and nonprofit organizations that have not previously been awarded JARC funds. Because FY 2003 is the last year of the TEA–21 authorization of the JARC program, applicants for new projects will be encouraged to apply for a level of funding that would allow them to sustain service for at least two years.

Applicants identified in the FY 2002 Conference Report must participate in this application process along with all other applicants. FTA will evaluate and rank all projects submitted in response to this new solicitation. Because it is expected that FY 2002 funds will be used primarily, if not entirely, for continuation projects, it is expected that new projects will not be funded until FY 2003 funds become available.

The JARC program, established under TEA–21, provides funding for the provision of transportation services designed to increase access to jobs and employment-related activities. Job Access projects are those that transport welfare recipients and low-income individuals, including economically disadvantaged persons with disabilities, in urban, suburban, or rural areas to and from jobs and activities related to their employment. Reverse Commute projects provide transportation services for the general public from urban, suburban, and rural areas to suburban employment opportunities. A total of up to $10,000,000 from the appropriation can be used for Reverse Commute Projects.

One of the goals of the JARC program is to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations, States, and affected communities and individuals. All projects funded under this program must be derived from an area-wide Job Access and Reverse Commute Transportation Plan, developed through a regional approach which supports the implementation of a variety of transportation services designed to connect welfare recipients to jobs and related activities. A key element of the program is making the most efficient use of existing public, nonprofit and private transportation service providers.

XI. Over-the-Road Bus Accessibility Program

The amount made available for the Over-the-Road Bus Accessibility (OTRB) Program in the FY 2002 DOT Appropriations Act is $6,950,000, which is the guaranteed funding level under TEA–21. Of this amount, $5,250,000 is available to providers of intercity fixed-route service, and $1,700,000 is available to other providers of over-the-road bus services, including local fixed-route service, commuter service, and charter and tour service.

The OTRB program authorizes FTA to make grants to operators of over-the-road buses to help finance the incremental capital and training costs of complying with the DOT over-the-road bus accessibility final rule, published on September 28, 1998 (63 FR 51670). Funds will be provided at 90 percent Federal share. FTA conducts a national solicitation of applications and grantees are selected on a competitive basis.

In FY 2001, a total of $3 million was available to intercity fixed-route

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providers and $1.7 million was available to all other providers. FTA selected 61 applicants from among the 84 applications submitted for funding incremental capital and training costs of complying with DOT's OTRB Accessibility requirements.

A separate **Federal Register** Notice providing program guidance and application procedures for FY 2002 will be issued.

XII. Clean Fuels Formula Program

TEA–21 established the Clean Fuels Formula Grant Program under section 5308 of Title 49 U.S.C., to assist non-attainment and maintenance areas in achieving or maintaining attainment status and to support markets for emerging clean fuel technologies. Under the program, public transit agencies in maintenance and non-attainment areas (as defined by the EPA) are to apply for formula funds to acquire clean fuel vehicles. The legislation specified the program to be funded with $50 million from the bus category of the Capital Investment Program, and $50 million from the Urbanized Area Formula Program in each fiscal year of TEA–21. However, congressional appropriation actions in this fiscal year as well as in fiscal years 1999, 2000, and 2001 have provided no funds for this program.

A Notice of Proposed Rulemaking was published in the **Federal Register** on August 28, 2001 (66 FR 45561). The proposed rule establishes the procedures potential recipients must use to apply for this program. Comments on the proposed rule were due October 12, 2001. Responses to those comments and preparation of the final rule are in progress.

For further information contact Nancy Grubb, FTA Office of Resource Management and State Programs, at (202) 366–2053.

XIII. National Planning and Research Program

The amount made available to the National Planning and Research Program in the FY 2002 DOT Appropriations Act is $31,500,000, of which Congress allocated $15,500,000 for specific activities. These allocations are listed in Table 11.

The program's core effort is the deployment of technological innovation to improve personal mobility, enhance the safety and security of transit operations, minimize fuel consumption and air pollution, increase ridership and enhance the quality of life of all communities. Emphasis is placed on mainstreaming proven cost-effective technological innovation through the FTA planning and capital assistance programs. Primary target areas are security technologies to protect against weapons of mass destruction, safety systems for railroad grade crossing protection and shared-track operations, cost reduction in advances in bus technology, and bus rapid transit.

FTA is directing resources for research, development, demonstration and deployment activities associated with technology and other innovations in four priority areas:

- Safety and security systems—to improve driver operations, minimize pedestrian conflicts, reduce terrorist threats and to facilitate shared track operations;
- Transit buses—to reduce operating and maintenance costs through improved energy management; to introduce rapid bus operations; to foster trade opportunities; to deploy low emission vehicles; and to leverage the $600 million or more invested annually through the FTA Bus capital assistance program;
- Infrastructure—to support the $4.9 billion annual FTA capital investment; to protect the integrity of federally supported assets; and to facilitate the deployment of lower cost systems options for expanding capacity; and
- Knowledge Management—to expand U.S. transit industry professional capacity and participation in global markets.

For additional information contact Henry Nejako, Program Management Officer, Office of Research, Demonstration and Innovation, at (202) 366–3765.

XIV. Unit Values of Data for Urbanized Area Formula Program, Nonurbanized Area Formula Program, and Fixed Guideway Modernization

The dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Investment Program—Fixed Guideway Modernization apportionments are displayed in Table 15 of this notice. To replicate an area's apportionment amount multiply its population, population density, and data from the NTD by the appropriate unit value.

XV. Period of Availability of Funds

The funds apportioned under the Metropolitan Planning Program and the Statewide Planning and Research Program, the Urbanized Area Formula Program, and Fixed Guideway Modernization, in this notice, will remain available to be obligated by FTA to recipients for three fiscal years following FY 2002. Any of these apportioned funds unobligated at the close of business on September 30, 2005, will revert to FTA for reapportionment under the respective program.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following FY 2002. Any such funds remaining unobligated at the close of business on September 30, 2004, will revert to FTA for reapportionment among the States under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this notice must be obligated by September 30, 2002. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States under the Elderly and Persons with Disabilities Program. The FY 2002 DOT Appropriations Act includes a provision requiring that FY 2002 New Starts and Bus funds not obligated for their original purpose as of September 30, 2004, shall be made available for other projects under 49 U.S.C. 5309.

JARC funds for projects selected by FTA for funding in FY 2002 will remain available for two fiscal years following FY 2002. Any such funds remaining unobligated at the close of business on September 30, 2004, will revert to FTA for reallocation under the JARC program.

Capital Investment Program funds for New Starts and Bus projects identified as having been extended in the FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act will lapse September 30, 2002.

XVI. Automatic Pre-Award Authority to Incur Project Costs

A. Policy

FTA provides blanket or automatic pre-award authority to cover certain program areas described below. This pre-award authority allows grantees to incur project costs prior to grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions, which are described below, are met to retain eligibility. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in paragraphs B and C immediately below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. In addition, grantees are strongly encouraged to consult with the appropriate FTA regional office if there is any question regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Pre-award authority was extended in the June 24, 1998 **Federal Register** Notice on TEA–21 to all formula funds and flexible funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Investment Bus allocations identified in this notice. For such section 5309 Capital Investment Bus projects, the date that costs may be incurred is the date that the appropriation bill in which they are contained is enacted. Pre-award authority does not apply to Capital New Start funds, or to Capital Investment Bus projects not specified in this or previous notices, except as described in D below.

B. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) The pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

(7) The Financial Status Report, in TEAM–Web, must indicate the use of pre-award authority.

C. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementing activities such as final design, construction, and acquisition for a project that is expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has issued either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a record of decision. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. For planning projects, the project must be included in a locally approved Planning Work Program that has been coordinated with the State. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in this notice or previous notices, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

D. Pre-Award Authority for New Starts Projects

1. Preliminary Engineering and Final Design

New Starts projects are required to follow a federally defined planning process. This process includes, among other things, FTA approval of entry of a project into preliminary engineering and approval to enter final design. The grantee request for entry into preliminary engineering and the request for entry into final design both document the project and how it meets the New Starts statutory criteria for project evaluation and rating in detail. With FTA approval to enter preliminary engineering, and subsequent approval to enter final design, FTA will automatically extend pre-award authority to that phase of project development.

2. Acquisition Activities

In the past, FTA provided applicant grantees pre-award authority to incur costs for right-of-way acquisition for projects funded by sources other than New Starts funds under the conditions described in paragraphs A, B and C, above. With the issuance of this Notice, FTA will extend automatic pre-award authority for the acquisition of real property and real property rights for a New Starts project upon completion of the National Environmental Policy Act (NEPA) review of that project. NEPA review is completed when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination. The real estate acquisition activities for a proposed New Starts project prior to approval of Federal funding, no longer require a Letter of No Prejudice (LONP) described in section XVII below. Real estate acquisition may now commence upon completion of the NEPA review process.

Most major FTA-assisted projects require the acquisition of residential and/or business properties and the relocation of the occupants. Often real property rights, like railroad track usage rights, are needed. With limited exceptions set forth in FTA's NEPA guidance, the purchase of real property can prejudice the consideration of less damaging alternatives and may not take place until the NEPA process has been completed by FTA's signing of an environmental ROD or FONSI or making a CE determination.

For FTA-assisted projects, acquisition of real property must be made in accordance with the requirements of the Uniform Relocation Assistance and Real

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Property Acquisition Policies Act (URA) and its implementing regulations (49 CFR part 24). Compliance with the URA regulations requires substantial lead-time. Properties must be appraised, persons who will be displaced must be educated about their relocation rights, proper housing must be found for displaced residents, and businesses must be relocated in accordance with the URA. In some cases, the remediation of contaminated soils or groundwater, or the removal of underground storage tanks must be dealt with during the acquisition process. Potentially responsible parties to the contamination must be identified and their financial liability negotiated or litigated. Acquisition of railroad right-of-way or usage rights is frequently a negotiated transaction that is fundamental to the transit project and therefore should be negotiated as early as possible after the completion of the NEPA process. Delays in the closing on an acquisition can lead to inconvenience or hardship for residents and businesses that are being displaced. Delays can also lead to increases in property values or in the current owners' financial expectations that prolong negotiated settlements.

To facilitate the acquisition process for New Starts projects, FTA will extend automatic pre-award authority to the acquisition of real property and real property rights with the signing of the environmental ROD or FONSI or the CE determination. This pre-award authority is strictly limited to costs incurred to acquire real property and real property rights and to provide relocation assistance in accordance with the URA regulation. It is limited to the acquisition of real property and real property rights that are explicitly identified in the final EIS, EA or CE determination, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or the CE determination. It does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA. At FTA's discretion, these other activities may be covered by Letters of No Prejudice, described in section XVII, below. This pre-award authority does not cover the acquisition of construction equipment or vehicles or any other acquisition except that of real property and real property rights.

Grant applicants should use this pre-award authority for real property very discreetly with a clear understanding that it does not constitute a funding commitment by FTA. On occasion, even projects that received a "recommended" rating from FTA under the New Starts regulation (49 CFR part 611) have not received a Full Funding Grant Agreement from FTA simply because the competition for the limited New Starts funds is so intense.

This pre-award authority for the acquisition of real property and real property rights, in accordance with the URA and after FTA's signing of a ROD or FONSI or making a CE determination, is intended to streamline the project delivery process, to enhance relocation services for residents and businesses, and to avoid the escalation in the cost of real property caused by delays in its acquisition. In granting this pre-award authority, FTA is aware that the risk taken by the grant applicant in acquiring real property without an FTA commitment is somewhat mitigated by the re-sale value of the real property, in the event that FTA funding assistance is not ultimately forthcoming and the project is abandoned.

3. National Environmental Policy Act (NEPA) Activities

The National Environmental Policy Act (NEPA) requires that projects with potentially significant adverse impacts proposed for Federal funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives with potentially less damaging actions. Projects for which FTA experience indicates there are no significant impacts are subject to NEPA, but categorically excluded from the more rigorous levels of NEPA review.

FTA regulations (23 CFR 771.105(e)) state that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA assistance. FTA has previously extended pre-award authority to incur costs for environmental reviews and documents from other funding sources but not from New Starts funds.

With issuance of this notice, FTA extends automatic pre-award authority for costs incurred to conduct the NEPA environmental review, including historic preservation activities, and to prepare an EIS, EA, CE, or other environmental documents for a proposed New Starts project, effective as of the date of the federal approval of the relevant Statewide Transportation Improvement Program (STIP) or STIP amendment that includes the project. This pre-award authority applies to New Starts funding, as well as other funding sources. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and prepare environmental and historic preservation documents. It does not cover preliminary engineering activities beyond those absolutely necessary for NEPA compliance. As with any pre-award authority, FTA participation in costs incurred is not guaranteed.

This pre-award authority for using New Starts funds for environmental and historic preservation work for proposed New Starts projects, as long as those projects are in FTA-approved STIPs, is being provided for the first time with this Notice. It is intended to streamline the NEPA process in accordance with TEA–21 section 1309, "Environmental Streamlining," by eliminating unnecessary delays in starting up the conceptual engineering and environmental reviews, the public involvement process, and the interagency coordination process for New Starts projects.

XVII. Letters of No Prejudice (LONP) Policy

A. Policy

Letter of No Prejudice (LONP) authority allows an applicant to incur costs on a future project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects not covered by automatic pre-award authority. The majority of LONPs will be for section 5309 New Starts funds not covered under a full funding grant agreement or for section 5309 Bus funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only, for example, to permit real estate purchased as it becomes available to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA, DOT, and other Federal statutory, regulatory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (see 23 CFR section 771.117(d)), a finding of no significant impact, or a record of decision. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a capital project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. For planning projects, the project must be included in a locally approved Planning Work Program that has been coordinated with the State. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this pre-award authority requires a grantee to make certain that no Federal requirements are circumvented. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate FTA regional office.

D. Request for LONP

Before an applicant may incur costs for a project not covered by automatic pre-award authority, it must first submit a written request for an LONP to the appropriate regional office. This written request must include a description of the project for which pre-award authority is desired and a justification for the request.

XVIII. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA Web site, including this Apportionment Notice. Also posted on the Web site are FTA program Circulars: C9030.1C, Urbanized Area Formula Program: Grant Application Instructions, dated October 1, 1998; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated October 1, 1998; C9070.1E, The Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 1, 1998; C9300.1A, Capital Program: Grant Application Instructions, dated October 1, 1998; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1C, Grant Management Guidelines, dated October 1, 1998; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The FY 2002 Annual List of Certifications and Assurances is also posted on the FTA Web site. Other documents on the FTA Web site of particular interest to public transit providers and users include the annual Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

FTA circulars are listed at *http://www.fta.dot.gov/library/admin/checklist/circulars.htm*. Other guidance of interest to Grantees can be found at *http://www.fta.dot.gov/grantees/index.html*. Grantees should check the FTA Web site frequently to keep up to date on new postings.

XIX. FTA Fiscal Year 2002 Annual List of Certifications and Assurances

The "Fiscal Year 2002 Annual List of Certifications and Assurances" is published in conjunction with this notice. It appears as a separate Part of the **Federal Register** on the same date whenever possible. The FY 2002 list contains several changes to the previous year's **Federal Register** publication. As in previous years, the grant applicant should certify electronically. Under certain circumstances the applicant may enter its PIN number in lieu of an electronic signature provided by its attorney, provided the applicant has on file the current affirmation of its attorney in writing dated this Federal fiscal year. The applicant is advised to contact the appropriate FTA Regional Office for electronic procedure information.

The "Fiscal Year 2002 Annual List of Certifications and Assurances" is accessible on the Internet at *http://www.fta.dot.gov/library/legal/ca.htm*. Any questions regarding this document may be addressed to the appropriate Regional Office.

XX. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. FTA utilizes TEAM-Web, an Internet accessible electronic grant application system, and all applications should be filed electronically. FTA has provided exceptions to the requirement for electronic filing of applications for certain new, non-traditional grantees in the Job Access and Reverse Commute and Over-the-Road Bus Accessibility programs as well as to a few grantees that have not successfully connected to or accessed TEAM-Web.

In FY 2001, FTA established a 90-day goal for processing and approving all capital, planning and operating grants, including the section 5307 Urbanized Area Formula Program, section 5309 Fixed Guideway Modernization, New Starts and Bus Programs, the section 5310 Elderly and Persons with Disabilities Program, the section 5311 Nonurbanized Area Formula Program, the TEA–21 Job Access and Reverse Commute Program, the TEA–21 Over-the-Road Bus Accessibility Program, section 5303 Metropolitan Planning Program, and section 5313(b) Statewide Planning and Research Program. The 90-day processing time begins with the receipt of a complete application by the Regional Office. In order for an application to be considered complete, it must meet the following requirements: all projects must be contained in an approved STIP (when required), all environmental findings must be made by FTA, there must be an adequate project description, local share must be secure, all required civil rights submissions must have been submitted, and certifications and assurances must

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be properly submitted. Once an application is complete, the FTA Regional Office will assign a project number and when required submit the application to the Department of Labor for a certification under section 5333(b). The FTA circulars referenced below contain more information regarding application contents and complete applications. State applicants for section 5311 are reminded that they must certify to DOL that all subrecipients have agreed to the standard labor protection warranty for section 5311 and provide DOL with other related information for each grant.

Formula and Capital Investment grant applications should be prepared in conformance with the following FTA Circulars: Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996; Urbanized Area Formula Program: Grant Application Instructions—C9030.1C, October 1, 1998; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1E, October 1, 1998; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions C9070.1E, October 1, 1998; and Section 5309 Capital Program: Grant Application Instructions—C9300.1A, October 1, 1998. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Web site.

Applications for grants containing transferred FHWA funds (STP, CMAQ, and others) should be prepared in the same manner as for funds under the program to which they are being transferred. The application for flexible funds needs to specifically indicate the type and amount of flexible funds being transferred to FTA. The application should also describe which items are being funded with transferred funds, consistent with the Statewide Transportation Improvement Program (STIP).

Issued on: December 26, 2001.

Jennifer L. Dorn,

Administrator.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 1

FY 2002 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCE OF FUNDS	APPROPRIATION
TRANSIT PLANNING AND RESEARCH PROGRAMS	
Section 5303 Metropolitan Planning Program	$66,422,400
Reapportioned Funds Added	240,571
Total Apportioned	$66,662,971
Section 5313(b) State Planning and Research Program	$11,577,800
Reapportioned Funds Added	121,049
Total Apportioned	$11,698,849
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	$5,250,000
Reapportioned Funds Added	20,729
Total Apportioned	$5,270,729
Section 5314 National Planning and Research Program	$31,000,000
FORMULA PROGRAMS	$3,642,000,000 a/
Alaska Railroad (Section 5307)	4,849,500
Less Oversight (one-half percent)	(24,250)
Total Available	4,825,700
Section 5309 Clean Fuels Formula Program	(50,000,000)
Over-the-Road Bus Accessibility Program	6,900,000
VIII Paralympiad for the Disabled in Salt Lake City	$5,000,000
Section 5307 Urbanized Area Formula Program	
91.23% of Total Available for Sections 5307, 5311, and 5310	$3,216,040,806
Less Oversight (one-half percent)	(16,080,200)
Reapportioned Funds Added	7,092,286
Total Apportioned	$3,207,052,891
Section 5311 Nonurbanized Area Formula Program	
6.37% of Total Available for Sections 5307, 5311, and 5310	$224,595,243
Less Oversight (one-half percent)	(1,122,776)
Reapportioned Funds Added	2,977,622
Total Apportioned	$226,410,089
Section 5310 Elderly and Persons with Disabilities Formula Program	
2.4% of Total Available for Sections 5307, 5311, and 5310	$84,604,861
Reapportioned Funds Added	325,448
Total Apportioned	$84,930,249
CAPITAL INVESTMENT PROGRAM	$2,891,000,000
Section 5309 Fixed Guideway Modernization	$1,136,400,000
Less Oversight (one percent)	(11,364,000)
Reapportioned Funds Added	547,295
Total Apportioned	$1,125,583,295
Section 5309 New Starts	$1,136,400,000
Less Oversight (one percent)	(11,364,000)
Reallocated Funds Added	1,488,840 b/
Total Allocated	$1,126,524,840
Section 5309 Bus	$618,200,000 c/
Less Oversight (one percent)	(6,182,000)
Reallocated Funds Added	1,733,668 d/
Total Allocated	$613,751,668
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$125,000,000
TOTAL APPROPRIATION (Above Grant Programs)	$6,861,780,000

a/ The FY 2002 DOT Appropriations Act transfers $50 million appropriated for the Clean Fuels Formula Program to the Section 5309 Bus category.

b/ FY 2002 Conference Report reallocated unobligated balances from specified New Starts projects to FY 2002 projects.

c/ Includes $50 million transferred from the Clean Fuels Formula Program.

d/ FY 2002 Conference Report supplemented FY 2002 Bus funds with funds made available from projects included in previous Appropriations Acts.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 2

FY 2002 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATEWIDE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

STATE	SECTION 5303 APPORTIONMENT	SECTION 5313(b) APPORTIONMENT
Alabama	$467,549	$128,085
Alaska	222,652	58,493
Arizona	586,707	164,891
Arkansas	222,652	58,493
California	9,489,958	1,772,709
Colorado	724,233	185,526
Connecticut	650,704	170,947
Delaware	222,652	58,493
District of Columbia	360,176	58,493
Florida	3,035,249	708,491
Georgia	1,074,487	228,984
Hawaii	222,652	58,493
Idaho	222,652	58,493
Illinois	3,252,532	590,223
Indiana	789,513	187,444
Iowa	249,782	65,621
Kansas	288,755	70,906
Kentucky	345,873	88,885
Louisiana	597,687	155,096
Maine	222,652	58,493
Maryland	1,292,294	249,315
Massachusetts	1,576,195	329,294
Michigan	2,030,568	404,621
Minnesota	824,522	165,047
Mississippi	222,652	58,493
Missouri	911,816	193,714
Montana	222,652	58,493
Nebraska	222,652	58,493
Nevada	241,419	63,424
New Hampshire	222,652	58,493
New Jersey	2,750,494	461,499
New Mexico	222,652	58,493
New York	5,903,514	982,854
North Carolina	665,852	174,927
North Dakota	222,652	58,493
Ohio	1,918,238	463,499
Oklahoma	358,570	94,279
Oregon	463,109	98,554
Pennsylvania	2,487,963	501,733
Puerto Rico	603,336	147,944
Rhode Island	222,652	58,493
South Carolina	378,053	99,319
South Dakota	222,652	58,493
Tennessee	587,721	154,401
Texas	3,782,241	791,851
Utah	349,851	91,957
Vermont	222,652	58,493
Virginia	1,244,977	266,596
Washington	901,578	223,786
West Virginia	222,652	58,493
Wisconsin	694,234	171,576
Wyoming	222,652	58,493
TOTAL	$56,662,971	$11,896,648

FEDERAL HIGHWAY ADMINISTRATION

TABLE 3

FY 2002 ESTIMATED METROPOLITAN PLANNING PROGRAM (PL) APPORTIONMENTS

STATE	PL APPORTIONMENT
Alabama	$2,172,212
Alaska	978,212
Arizona	3,136,595
Arkansas	978,212
California	30,064,802
Colorado	2,907,188
Connecticut	2,899,127
Delaware	978,212
District of Columbia	978,212
Florida	12,015,418
Georgia	3,849,460
Hawaii	978,212
Idaho	978,212
Illinois	10,009,791
Indiana	3,178,896
Iowa	1,112,869
Kansas	1,202,535
Kentucky	1,507,419
Louisiana	2,630,335
Maine	978,212
Maryland	4,228,172
Massachusetts	5,584,556
Michigan	6,862,043
Minnesota	2,799,059
Mississippi	978,212
Missouri	3,285,222
Montana	978,212
Nebraska	978,212
Nevada	1,075,613
New Hampshire	978,212
New Jersey	7,828,649
New Mexico	978,212
New York	16,665,004
North Carolina	2,966,619
North Dakota	978,212
Ohio	7,859,037
Oklahoma	1,566,899
Oregon	1,576,482
Pennsylvania	8,506,969
Rhode Island	978,212
South Carolina	1,684,368
South Dakota	978,212
Tennessee	2,618,517
Texas	13,425,756
Utah	1,557,825
Vermont	978,212
Virginia	4,521,283
Washington	3,796,230
West Virginia	978,212
Wisconsin	2,909,799
Wyoming	978,212
TOTAL	$196,642,258

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FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
OVER 1,000,000 IN POPULATION	$23,476,898	$2,347,689,576
200,000-1,000,000 IN POPULATION	5,482,662	548,266,199
50,000-200,000 IN POPULATION	———	311,186,826
NATIONAL TOTAL	$28,959,560	$3,207,052,601

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 1,000,000 and Over in Population:		
Atlanta, GA	$441,438	$44,143,810
Baltimore, MD	368,383	36,838,330
Boston, MA	991,674	99,167,394
Chicago, IL-Northwestern IN	2,098,327	209,832,668
Cincinnati, OH-KY	164,022	16,402,161
Cleveland, OH	273,960	27,395,973
Dallas-Fort Worth, TX	455,063	45,506,300
Denver, CO	304,543	30,454,334
Detroit, MI	391,731	39,173,052
Ft Lauderdale-Hollywood-Pompano Beach, FL	250,877	25,087,694
Houston, TX	516,633	51,663,266
Kansas City, MO-KS	119,183	11,918,318
Los Angeles, CA	2,223,973	222,397,333
Miami-Hialeah, FL	368,306	36,830,639
Milwaukee, WI	212,130	21,212,977
Minneapolis-St. Paul, MN	366,886	36,688,628
New Orleans, LA	167,236	16,723,629
New York, NY-Northeastern NJ	6,575,348	657,534,791
Norfolk-Virginia Beach-Newport News, VA	165,386	16,538,613
Philadelphia, PA-NJ	1,147,896	114,789,846
Phoenix, AZ	262,326	26,232,617
Pittsburgh, PA	333,816	33,381,589
Portland-Vancouver, OR-WA	281,767	28,176,729
Riverside-San Bernardino, CA	290,791	29,079,119
Sacramento, CA	164,227	16,422,661
San Antonio, TX	196,902	19,690,206
San Diego, CA	474,913	47,491,274
San Francisco-Oakland, CA	1,292,644	129,264,363
San Jose, CA	369,763	36,976,296
San Juan, PR	328,296	32,829,796
Seattle, WA	620,413	62,041,338
St. Louis, MO-IL	265,179	26,517,914
Tampa-St. Petersburg-Clearwater, FL	179,661	17,966,147
Washington, DC-MD-VA	1,114,817	111,481,749
TOTAL	$23,476,898	$2,347,689,576

a/ *The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.*

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population		
Akron, OH	967,296	96,729,613
Albany-Schenectady-Troy, NY	66,918	6,691,992
Albuquerque, NM	57,676	5,767,696
Allentown-Bethlehem-Easton, PA-NJ	55,040	5,504,045
Anchorage, AK	27,909	2,789,930
Ann Arbor, MI	40,988	4,098,880
Augusta, GA-SC	18,766	1,876,827
Austin, TX	126,897	12,689,720
Bakersfield, CA	42,309	4,230,978
Baton Rouge, LA	43,388	4,338,812
Birmingham, AL	43,206	4,320,461
Bridgeport-Milford, CT	77,463	7,746,314
Buffalo-Niagara Falls, NY	128,396	12,839,811
Canton, OH	36,489	3,648,957
Charleston, SC	36,077	3,607,716
Charlotte, NC	75,799	7,579,973
Chattanooga, TN-GA	24,687	2,469,706
Colorado Springs, CO	40,327	4,032,695
Columbia, SC	28,466	2,846,496
Columbus, GA-AL	17,527	1,752,689
Columbus, OH	122,178	12,217,764
Corpus Christi, TX	37,963	3,796,317
Davenport-Rock Island-Moline, IA-IL	30,920	3,092,040
Dayton, OH	123,444	12,344,362
Daytona Beach, FL	31,296	3,128,630
Des Moines, IA	46,940	4,694,067
Durham, NC	39,789	3,978,926
El Paso, TX-NM	64,726	6,472,466
Fayetteville, NC	29,016	2,901,623
Flint, MI	66,273	6,627,316
Fort Myers-Cape Coral, FL	28,831	2,883,143
Fort Wayne, IN	22,623	2,262,341
Fresno, CA	62,193	6,219,271
Grand Rapids, MI	63,891	6,389,123
Greenville, SC	15,966	1,596,596
Harrisburg, PA	39,490	3,948,963
Hartford-Middletown, CT	102,532	10,253,177
Honolulu, HI	229,127	22,912,763
Indianapolis, IN	99,369	9,936,942
Jackson, MS	20,277	2,027,726
Jacksonville, FL	91,069	9,106,890
Knoxville, TN	28,179	2,817,936
Lansing-East Lansing, MI	39,749	3,974,898
Las Vegas, NV	173,923	17,392,296
Lawrence-Haverhill, MA-NH	37,161	3,716,112
Lexington-Fayette, KY	24,594	2,459,428

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FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population (continued)		
Little Rock-North Little Rock, AR	30,836	3,083,572
Lorain-Elyria, OH	17,447	1,744,741
Louisville, KY-IN	110,373	11,037,295
Madison, WI	53,120	5,311,962
McAllen-Edinburg-Mission, TX	17,436	1,743,617
Melbourne-Palm Bay, FL	27,160	2,715,045
Memphis, TN-AR-MS	103,327	10,332,723
Mobile, AL	23,360	2,334,966
Modesto, CA	32,326	3,232,473
Montgomery, AL	14,366	1,436,466
Nashville, TN	53,712	5,371,189
New Haven-Meriden, CT	124,806	12,480,536
Ogden, UT	34,066	3,406,560
Oklahoma City, OK	58,227	5,822,744
Omaha, NE-IA	59,360	5,936,008
Orlando, FL	174,629	17,461,967
Oxnard-Ventura, CA	77,629	7,762,948
Pensacola, FL	22,677	2,267,714
Peoria, IL	23,236	2,323,589
Providence-Pawtucket, RI-MA	169,166	16,916,572
Provo-Orem, UT	32,465	3,246,536
Raleigh, NC	32,991	3,299,068
Reno, NV	36,169	3,616,897
Richmond, VA	68,837	6,883,699
Rochester, NY	77,378	7,737,761
Rockford, IL	20,831	2,083,140
Salt Lake City, UT	160,866	16,086,635
Sarasota-Bradenton, FL	48,669	4,866,942
Scranton-Wilkes-Barre, PA	36,367	3,636,664
Shreveport, LA	27,107	2,710,686
South Bend-Mishawaka, IN-MI	33,690	3,369,627
Spokane, WA	63,461	6,346,129
Springfield, MA-CT	85,686	8,568,574
Stockton, CA	62,513	6,251,267
Syracuse, NY	49,992	4,999,191
Tacoma, WA	114,029	11,402,912
Toledo, OH-MI	64,066	6,406,571
Trenton, NJ-PA	48,387	4,838,664
Tucson, AZ	97,229	9,722,866
Tulsa, OK	49,196	4,919,522
West Palm Beach-Boca Raton-Delray Bch, FL	186,978	18,697,777
Wichita, KS	34,291	3,429,066
Wilmington, DE-NJ-MD-PA	87,829	8,782,993
Worcester, MA-CT	48,812	4,881,171
Youngstown-Warren, OH	29,142	2,914,196
TOTAL	$5,482,662	$548,266,196

a/ The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population	
ALABAMA:	$6,705,051
Anniston, AL	668,008
Auburn-Opelika, AL	447,890
Decatur, AL	610,962
Dothen, AL	429,199
Florence, AL	697,806
Gadsden, AL	628,431
Huntsville	1,877,473
Tuscaloosa, AL	1,035,461
ALASKA:	$0
ARIZONA:	$1,514,271
Flagstaff, AZ	595,717
Yuma, AZ-CA (AZ)	918,554
ARKANSAS:	$2,210,305
Fayetteville-Springdale, AR	610,005
Fort Smith, AR-OK (AR)	530,304
Pine Bluff, AR	661,166
Texarkana, TX-AR (AR)	208,790
CALIFORNIA:	$33,956,950
Antioch-Pittsburg, CA	1,914,688
Chico, CA	835,991
Davis, CA	1,014,849
Fairfield, CA	1,232,869
Hemet-San Jacinto, CA	1,028,329
Hesperia-Apple Valley-Victorville, CA	1,311,537
Indio-Coachella, CA	621,797
Lancaster-Palmdale, CA	2,206,844
Lodi, CA	863,951
Lompoc, CA	630,536
Merced, CA	943,193
Napa, CA	995,534
Palm Springs, CA	1,227,911
Redding, CA	709,941
Salinas, CA	1,868,225
San Luis Obispo, CA	884,725
Santa Barbara, CA	2,890,232
Santa Cruz, CA	1,484,506
Santa Maria, CA	1,369,716
Santa Rosa, CA	2,636,339
Seaside-Monterey, CA	1,771,585
Simi Valley, CA	1,576,913
Vacaville, CA	1,018,069
Visalia	1,162,799
Watsonville, CA	649,991
Yuba City, CA	1,022,146
Yuma, AZ-CA (CA)	3,639

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TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
COLORADO:	$6,239,496
Boulder, CO	1,399,149
Fort Collins, CO	1,188,197
Grand Junction, CO	699,253
Greeley, CO	924,745
Longmont, CO	842,710
Pueblo, CO	1,289,362
CONNECTICUT:	$29,327,728
Bristol, CT	983,277
Danbury, CT-NY (CT)	4,148,499
New Britain, CT	1,841,176
New London-Norwich, CT	1,491,697
Norwalk, CT	4,343,985
Stamford, CT-NY (CT)	6,332,982
Waterbury, CT	5,299,912
DELAWARE:	$470,845
Dover, DE	470,845
FLORIDA:	$14,344,249
Deltona, FL	476,941
Fort Pierce, F	1,142,991
Fort Walton Beach, FL	1,167,595
Gainesville, FL	1,419,339
Kissimmee, FL	981,894
Lakeland, FL	1,459,996
Naples, FL	964,953
Ocala, FL	941,466
Panama City, FL	982,695
Punta Gorda, FL	929,844
Spring Hill, FL	491,253
Stuart, FL	936,795
Tallahassee, FL	1,617,976
Titusville, FL	483,189
Vero Beach, FL	886,573
Winter Haven, FL	949,595
GEORGIA:	$8,299,272
Albany, GA	777,991
Athens, GA	745,919
Brunswick, GA	429,199
Macon, GA	1,284,249
Rome, GA	437,539
Savannah, GA	1,924,225
Warner Robins, GA	671,389
HAWAII:	$1,999,139
Kailua, HI	1,999,139

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
IDAHO:	$3,303,509
Boise City, ID	2,021,464
Idaho Falls, ID	724,665
Pocatello, ID	657,380
ILLINOIS:	$16,131,732
Alton, IL	917,766
Aurora, IL	2,290,318
Beloit, WI-IL (IL)	104,617
Bloomington-Normal, IL	1,317,421
Champaign-Urbana, IL	1,958,136
Crystal Lake, IL	746,464
Decatur, IL	1,046,516
Dubuque, IA-IL (IL)	24,377
Elgin, IL	1,662,124
Joliet, IL	1,910,334
Kankakee, IL	748,761
Round Lake Beach-McHenry, IL-WI (IL)	1,087,990
Springfield, IL	1,525,060
INDIANA:	$8,825,483
Anderson, IN	713,351
Bloomington, IN	1,064,483
Elkhart-GosheN, IN	1,066,892
Evansville, IN-KY (IN)	1,976,410
Kokomo, IN	718,369
Lafayette-West Lafayette, IN	1,428,169
Muncie, IN	1,049,877
Terre Haute, IN	807,932
IOWA:	$4,904,491
Cedar Rapids, IA	1,483,075
Dubuque, IA-IL (IA)	726,736
Iowa City, IA	969,272
Sioux City, IA-NE-SD (IA)	794,547
Waterloo-Cedar Falls, IA	929,861
KANSAS:	$2,332,729
Lawrence, KS	883,356
St. Joseph, MO-KS (KS)	7,292
Topeka, KS	1,442,082
KENTUCKY:	$1,838,672
Clarksville, TN-KY (KY)	224,344
Evansville, IN-KY (KY)	276,466
Huntington-Ashland, WV-KY-OH ((KY)	549,370
Owensboro, KY	788,370
LOUISIANA:	$5,445,102
Alexandria, LA	794,594
Houma, LA	988,918
Lafayette, LA	1,374,843
Lake Charles, LA	1,104,366
Monroe, LA	1,969,184
Slidell, LA	982,255

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TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MAINE:	$2,369,867
Bangor, ME	498,956
Lewiston-Auburn, ME	666,536
Portland, ME	1,206,895
Portsmouth-Dover-Rochester, NH-ME (ME)	107,132
MARYLAND:	$2,635,240
Annapolis, MD	868,336
Cumberland, MD-WV (MD)	458,599
Frederick, MD	619,330
Hagerstown, MD-PA-WV (MD)	781,166
MASSACHUSETTS	$10,437,162
Brockton, MA	1,906,558
Fall River, MA-RI (MA)	1,959,513
Fitchburg-Leominster, MA	763,957
Hyannis, MA	536,120
Lowell, MA-NH (MA)	2,360,919
New Bedford, MA	2,045,072
Pittsfield, MA	467,124
Taunton, MA	497,199
MICHIGAN:	$8,906,659
Battle Creek, MI	743,873
Bay City, MI	831,026
Benton Harbor, MI	901,103
Holland, MI	674,628
Jackson, MI	830,888
Kalamazoo, MI	1,793,576
Muskegon, MI	1,994,007
Port Huron, MI	719,998
Saginaw, MI	1,617,556
MINNESOTA:	$3,174,068
Duluth, MN-WI (MN)	772,388
Fargo-Moorhead, ND-MN (MN)	446,991
Grand Forks, ND-MN (MN)	97,979
La Crosse, WI-MN (MN)	47,947
Rochester, MN	871,176
St. Cloud, MN	938,977
MISSISSIPPI:	$2,728,892
Biloxi-Gulfport, MS	1,887,127
Hattiesburg, MS	525,828
Pascagoula, MS	512,947
MISSOURI:	$3,788,091
Columbia, MO	741,361
Joplin, MO	829,634
Springfield, MO	1,748,936
St. Joseph, MO-KS (MO)	744,176

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA:	$2,499,788
Billings, MT	964,089
Great Falls, MT	999,695
Missoula, MT	636,704
NEBRASKA:	$2,779,975
Lincoln, NE	2,659,761
Sioux City, IA-NE-SD (NE)	120,214
NEVADA:	$0
NEW HAMPSHIRE:	$3,374,676
Lowell, MA-NH (NH)	6,907
Manchester, NH	1,414,718
Nashua, NH	1,131,304
Portsmouth-Dover-Rochester, NH-ME (NH)	821,749
NEW JERSEY:	$2,856,942
Atlantic City, NJ	1,842,968
Vineland-Millville, NJ	713,974
NEW MEXICO:	$1,392,393
Las Cruces, NM	773,480
Santa Fe, NM	618,913
NEW YORK:	$7,725,440
Binghamton, NY	1,938,115
Danbury, CT-NY (NY)	28,283
Elmira, NY	796,262
Glens Falls, NY	647,577
Ithaca, NY	662,688
Newburgh, NY	717,643
Poughkeepsie, NY	1,907,804
Stamford, CT-NY (NY)	178
Utica-Rome, NY	1,638,229
NORTH CAROLINA:	$12,541,518
Asheville, NC	968,044
Burlington, NC	702,236
Gastonia, NC	1,828,240
Goldsboro, NC	633,988
Greensboro, NC	2,211,640
Greenville, NC	614,831
Hickory, NC	996,369
High Point, NC	988,884
Jacksonville, NC	964,709
Kannapolis, NC	699,211
Rocky Mount, NC	889,941
Wilmington, NC	991,139
Winston-Salem, NC	1,911,413

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FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH DAKOTA:	$2,436,797
Bismarck, ND	702,670
Fargo-Moorhead, ND-MN (ND)	1,016,240
Grand Forks, ND-MN (ND)	717,887
OHIO:	$6,700,060
Hamilton, OH	1,394,842
Huntington-Ashland, WV-KY-OH (OH)	362,665
Lima, OH	788,861
Mansfield, OH	730,720
Middletown, OH	962,185
Newark, OH	699,137
Parkersburg, WV-OH (OH)	85,905
Sharon, PA-OH (OH)	86,648
Springfield, OH	1,101,396
Steubenville-Weirton, OH-WV-PA (OH)	396,238
Wheeling, WV-OH (OH)	302,813
OKLAHOMA:	$1,942,828
Fort Smith, AR-OK (OK)	18,294
Lawton, OK	1,924,534
OREGON:	$5,439,321
Eugene-Springfield, OR	2,569,936
Longview, WA-OR (OR)	17,026
Medford, OR	791,139
Salem, OR	2,070,221
PENNSYLVANIA:	$14,216,739
Altoona, PA	971,201
Erie, PA	2,486,393
Hagerstown, MD-PA-WV (PA)	9,569
Johnstown, PA	996,599
Lancaster, PA	2,269,871
Monessen, PA	614,728
Pottstown, PA	983,344
Reading, PA	2,636,237
Sharon, PA-OH (PA)	408,395
State College, PA	949,969
Steubenville-Weirton, OH-WV-PA (PA)	2,969
Williamsport, PA	712,562
York, PA	1,775,374
PUERTO RICO:	$13,133,269
Aguadilla, PR	1,149,994
Arecibo, PR	1,073,581
Caguas, PR	2,811,557
Cayey, PR	931,273
Humacao, PR	719,481
Mayaguez, PR	1,546,739
Ponce, PR	3,439,733
Vega Baja-Manati, PR	1,562,942

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
RHODE ISLAND:	$836,989
Fall River, MA-RI (RI)	191,649
Newport, RI	644,339
SOUTH CAROLINA:	$3,640,237
Anderson, SC	476,133
Florence, SC	489,740
Myrtle Beach, SC	513,586
Rock Hill, SC	645,317
Spartanburg, SC	960,897
Sumter, SC	554,965
SOUTH DAKOTA:	$1,787,831
Rapid City, SD	589,842
Sioux City, IA-NE-SD (SD)	15,997
Sioux Falls, SD	1,182,292
TENNESSEE:	$2,720,980
Bristol, TN-Bristol, VA (TN)	254,290
Clarksville, TN-KY (TN)	529,994
Jackson, TN	499,294
Johnson City, TN	716,341
Kingsport, TN-VA (TN)	681,841
TEXAS:	$25,199,976
Abilene, TX	893,696
Amarillo, TX	1,957,998
Beaumont, TX	1,140,973
Brownsville, TX	1,957,998
Bryan-College Station, TX	1,199,990
Denton, TX	999,570
Galveston, TX	936,997
Harlingen, TX	914,398
Killeen, TX	1,557,729
Laredo, TX	1,957,344
Lewisville, TX	992,152
Longview, TX	999,991
Lubbock, TX	1,939,434
Midland, TX	949,789
Odessa, TX	942,991
Port Arthur, TX	1,928,333
San Angelo, TX	983,844
Sherman-Denison, TX	442,321
Temple, TX	992,157
Texarkana, TX-AR (TX)	496,209
Texas City, TX	1,977,199
Tyler, TX	942,262
Victoria, TX	983,876
Waco, TX	1,271,999
Wichita Falls, TX	1,914,547

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FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UTAH:	$603,466
Logan, UT	603,466
VERMONT:	$883,435
Burlington, VT	883,435
VIRGINIA:	$5,964,196
Bristol, TN-Bristol, VA (VA)	161,037
Charlottesville, VA	843,212
Danville, VA	478,843
Fredericksburg, VA	662,174
Kingsport, TN-VA (VA)	34,178
Lynchburg, VA	802,190
Petersburg, VA	1,016,957
Roanoke, VA	1,945,603
WASHINGTON:	$5,541,786
Bellingham, WA	662,929
Bremerton, WA	1,264,845
Longview, WA-OR (WA)	662,493
Olympia, WA	994,059
Richland-Kennewick-Pasco, WA	1,026,592
Yakima, WA	1,060,868
WEST VIRGINIA	$4,259,126
Charleston, WV	1,713,377
Cumberland, MD-WV (WV)	20,492
Hagerstown, MD-PA-WV (WV)	6,176
Huntington-Ashland, WV-KY-OH (WV)	961,956
Parkersburg, WV-OH (WV)	618,661
Steubenville-Weirton, OH-WV-PA (WV)	296,175
Wheeling, WV-OH (WV)	673,290
WISCONSIN:	$11,659,527
Appleton-Neenah, WI	2,135,066
Beloit, WI-IL (WI)	457,666
Duluth, MN-WI (WI)	200,466
Eau Claire, WI	836,278
Green Bay, WI	1,621,696
Janesville, WI	615,462
Kenosha, WI	1,126,619
La Crosse, WI-MN (WI)	669,641
Oshkosh, WI	776,467
Racine, WI	1,730,797
Round Lake Beach-McHenry, IL-WI (WI)	649
Sheboygan, WI	731,516
Wausau, WI	543,396
WYOMING:	$1,220,639
Casper, WY	559,838
Cheyenne, WY	660,761
TOTAL	$311,199,525

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

FY 2002 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b)(2) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	SECTION 5311 APPORTIONMENT	SECTION 5311(b)(2) APPORTIONMENT
Alabama	$6,466,217	$110,761
Alaska	866,462	71,824
America Samoa	114,940	10,973
Arizona	2,367,576	86,933
Arkansas	4,323,646	101,884
California	10,562,667	164,289
Colorado	2,252,589	84,699
Connecticut	2,943,294	82,289
Delaware	666,788	69,313
Florida	6,783,662	122,399
Georgia	7,967,388	131,967
Guam	327,233	12,769
Hawaii	867,494	72,699
Idaho	1,799,472	90,199
Illinois	7,284,667	126,383
Indiana	7,667,767	124,286
Iowa	4,667,466	103,139
Kansas	3,588,546	96,336
Kentucky	5,918,963	116,662
Louisiana	4,896,492	106,622
Maine	2,362,223	84,998
Maryland	2,949,121	89,963
Massachusetts	3,169,562	91,743
Michigan	8,669,342	137,423
Minnesota	4,925,467	106,676
Mississippi	4,866,568	106,670
Missouri	5,736,831	113,641
Montana	1,469,423	77,273
Nebraska	2,188,696	83,516
Nevada	714,514	71,046
New Hampshire	1,891,946	81,096
New Jersey	2,764,936	87,987
New Mexico	2,126,491	82,983
New York	9,521,796	146,566
North Carolina	10,114,964	169,586
North Dakota	1,672,663	74,676
Northern Marianas	166,534	10,991
Ohio	10,297,636	162,132
Oklahoma	4,462,133	102,348
Oregon	3,466,332	94,576
Pennsylvania	11,467,119	163,196
Puerto Rico	3,432,713	94,045
Rhode Island	439,736	68,721
South Carolina	5,962,640	107,936
South Dakota	1,367,499	76,963
Tennessee	6,536,161	120,256
Texas	13,797,649	161,746
Utah	991,142	73,366
Vermont	1,169,899	74,991
Virgin Islands	259,294	12,117
Virginia	5,794,663	114,825
Washington	4,969,829	99,361
West Virginia	3,462,617	94,269
Wisconsin	5,964,661	116,469
Wyoming	834,228	72,969
TOTAL	$226,419,999	$6,279,729

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FEDERAL TRANSIT ADMINISTRATION

TABLE 6

FY 2002 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	APPORTIONMENT
Alabama	$1,468,570
Alaska	283,999
America Samoa	53,110
Arizona	1,298,987
Arkansas	1,016,376
California	8,999,711
Colorado	994,996
Connecticut	1,143,830
Delaware	324,346
District of Columbia	321,769
Florida	5,454,499
Georgia	1,913,574
Guam	136,342
Hawaii	421,383
Idaho	431,983
Illinois	3,514,512
Indiana	1,828,899
Iowa	1,096,998
Kansas	912,819
Kentucky	1,408,977
Louisiana	1,419,730
Maine	548,282
Maryland	1,617,554
Massachusetts	2,058,994
Michigan	3,002,256
Minnesota	1,437,996
Mississippi	996,582
Missouri	1,854,995
Montana	383,679
Nebraska	634,994
Nevada	463,463
New Hampshire	436,843
New Jersey	2,474,834
New Mexico	853,754
New York	6,777,199
North Carolina	2,181,939
North Dakota	330,399
Northern Marianas	52,840
Ohio	3,668,212
Oklahoma	1,208,967
Oregon	1,121,799
Pennsylvania	4,485,634
Puerto Rico	1,662,427
Rhode Island	484,395
South Carolina	1,167,823
South Dakota	369,273
Tennessee	1,739,859
Texas	4,561,149
Utah	613,849
Vermont	291,495
Virgin Islands	138,131
Virginia	1,811,275
Washington	1,621,119
West Virginia	644,441
Wisconsin	1,655,754
Wyoming	243,991
TOTAL	$84,930,249

FEDERAL TRANSIT ADMINISTRATION
TABLE 7

FY 2002 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE	AREA	APPORTIONMENT
AK	Anchorage - Alaska Railroad	$6,974,767 a/
AZ	Phoenix	1,697,963
CA	Los Angeles	33,191,641
CA	Oxnard-Ventura	1,893,704
CA	Riverside-San Bernardino	1,883,469
CA	Sacramento	3,239,889
CA	San Diego	8,389,396
CA	San Francisco	66,633,961
CA	San Jose	12,794,697
CO	Denver	1,982,696
CT	Hartford	1,422,249
CT	Southwestern Connecticut	37,849,244
DC	Washington	63,821,972
DE	Wilmington	831,286
FL	Ft. Lauderdale	2,777,993
FL	Jacksonville	166,281
FL	Miami	11,268,886
FL	Tampa	66,991
FL	West Palm Beach	2,833,993
GA	Atlanta	23,114,533
HI	Honolulu	1,994,132
IL	Chicago/Northwestern Indiana	132,997,980
IN	South Bend	694,918
LA	New Orleans	2,981,274
MA	Boston	66,982,946
MA	Lawrence-Haverhill	1,843,946
MA	Worcester	961,966
MD	Baltimore	8,947,183
MD	Baltimore Commuter Rail	17,982,511
MI	Detroit	467,178
MN	Minneapolis	6,994,649
MO	Kansas City	39,299
MO	St. Louis	4,236,478
NJ	Northeastern New Jersey	52,683,119
NJ	Trenton	1,383,494
NY	Buffalo	1,383,996
NY	New York	348,199,362
OH	Cleveland	12,572,133
OH	Dayton	4,783,739
OR	Portland	4,167,996
PA	Harrisburg	699,631
PA	Philadelphia/Southern New Jersey	91,299,611
PA	Pittsburgh	29,224,323
PR	San Juan	2,313,166
RI/MA	Providence	2,619,464
TN	Chattanooga	91,991
TN	Memphis	347,274
TX	Dallas	939,991
TX	Houston	6,967,939
VA	Norfolk	1,346,992
WA	Seattle	16,766,254
WA	Tacoma	764,199
WI	Madison	799,499
	TOTAL	$1,128,883,396

a/ Includes $7,847,562 set aside in accordance with Section 1124 of Pub. L. 106-554.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FY 2002 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
AK/HI	Alaska or Hawaii Ferry Projects	$10,193,175
AK	Wasilla, Alaska, Alternative Route Project	2,475,033
AL	Birmingham, Alabama, Transit Corridor Project	1,980,026
AR	Little Rock, Arkansas, River Rail Project	1,980,026
AZ	Phoenix, arizona, Central Phoenix/East Valley Corridor Project	9,900,131
CA	San Francisco, California, BART Extension to the Airport Project	74,918,042
CA	Los Angeles, California, East Side Corridor Light Rail Transit Project	7,425,098
CA	Los Angeles, California, North Hollywood Extension Project	9,196,783
CA	Sacramento, California, Light Rail Transit Extension Project	324,724
CA	San Diego, California, Mission Valley East Light Rail Project	59,400,785
CA	San Diego, California, Mid Coast Corridor Project	990,013
CA	San Jose, California, Tasman West Light Rail Transit Project	112,204
CA	Oceanside - Escondido, California, Light Rail Extension Project	6,435,085
CA	Stockton, California, Altamont Commuter Rail Project	2,970,039
CA	Yosemite, California, Area Regional Transportation System Project	396,005
CO	Denver, Colorado, Southeast Corridor Light Rail Transit Project	54,450,720
CO	Denver, Colorado, Southwest Corridor Light Rail Transit Project	190,570
CT	Stamford, Connecticut, Urban Transitway Project	4,950,065
FL	Fort Lauderdale, Florida, Tri-County Commuter Rail Upgrades Project	26,730,353
FL	Miami, Florida, South Miami-Dade Busway Extension Project	4,950,065
GA	Atlanta, Georgia, Northline Extension	24,750,327
HI	Honolulu, Hawaii, Bus Rapid Transit Project	11,880,157
IA	Des Moines, Iowa, DSM Bus Feasibility Project	148,502
IA	Iowa, Metrolink Light Rail Feasibility Project	297,004
IA	Sioux City, Iowa, Light Rail Project	1,583,022
IA	Dubuque, Iowa Light Rail Feasibility Project	198,002
IL	Chicago, Illinois, METRA Commuter Rail and Line Extension Projects	54,450,720
IL	Chicago, Illinois, Douglas Branch Reconstruction Project	32,422,929
IL	Chicago, Illinois, Ravenswood Reconstruction Project	2,970,039
IN	Northeast Indianapolis, Indiana, Downtown Corridor Project	2,475,033
IN	Northern Indiana South Shore Commuter Rail Project	2,475,033
LA	New Orleans, Louisiana, Desire Corridor Streetcar Project	1,188,016
LA	New Orleans, Louisiana, Canal Street Car Line Project	14,850,196
MA	Boston, Massachusetts, South Boston Piers Transitway Project	10,525,072
MA	Boston, Massachusetts, Urban Ring Transit Project	495,006
MD	Baltimore, Maryland, Central Light Rail Transit Double Track Project	12,870,170
MD	Baltimore, Maryland, Rail Transit Project	1,485,020
MD	Maryland (MARC) Commuter Rail Improvements Projects	11,880,157
MD	Largo, Maryland, Metrorail Extension Project	54,450,720
MI	Grand Rapids, Michigan, ITP Metro Area, Major Corridor Project	742,510
MN	Minneapolis- Rice, Minnesota, Northstar Corridor Commuter Rail Project	9,900,131
MN	Minneapolis-St. Paul, Minnesota, Hiawatha Corridor Light Rail Transit Project	49,500,654
MO	Johnson County, Kansas-Kansas City, Missouri, I-35 Commuter Rail Project	1,485,020
MO	St. Louis-St. Clair, Missouri, MetroLink Extension Project	27,720,366
NC	Charlotte, North Carolina South Corridor Light Rail Transit Project	8,930,092
NC	Raleigh, North Carolina Triangle Transit Project	8,910,118
NH	Lowell, Massachusetts-Nashua, New Hampshire Commuter Rail Extension Project	2,970,039
NJ	Newark-Elizabeth Rail Link MOS-1 Project	19,800,262
NJ	New Jersey Hudson - Bergen Light Rail Transit Project	139,591,845
NM	Albuquerque, New Mexico, Light Rail Project	990,013

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FY 2002 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
NY	Long Island Railroad, New York, East Side Access Project	14,667,190
NY	New York, New York, Second Avenue Subway Project	1,980,026
OH	Cleveland, Ohio, Euclid Corridor Transportation Project	5,940,079
OH	Ohio, Central Ohio North Corridor Rail (COTA) Project	495,006
OR	Portland, Oregon, Interstate MAX LRT Extension Project	53,360,837
OR	Washington County, Orego, Wilsonville to Beaverton Commuter Rail Project	495,007 a/
PA	Philadelphia, Pennsylvania, Schuylkill Valley Metro Project	8,910,118
PA	Pittsburgh, Pennsylvania, North Shore-Connector Light Rail Transit project	7,920,105
PA	Pittsburgh, Pennsylvania, Stage II Light Rail Transit Reconstruction Project	17,820,236
PR	San Juan, Puerto Rico, Tren Urbano Project	39,600,523
RI	Pawtucket-T.F. Green, Rhode Island, Commuter Rail and Maintenance Facility Project	4,950,065
TN	Memphis, Tennessee, Medical Center Rail Extension Project	18,975,551
TN	Nashville, Tennessee, East Corridor Commuter Rail Project	3,960,052
TX	Dallas, Texas, North Central Light Rail Transit Extension Project	69,300,916
TX	Forth Worth, Texas, Trinity Railway Express Project	1,980,026
TX	Houston, Texas, Metro Advanced Transit Project	9,900,131
UT	Salt Lake City, Utah, University Medical Center Light Rail Transit Extension Project	2,970,039
UT	Salt Lake City, Utah, CBD to University Light Rail Transit Project	13,860,183
VA	Dulles Corridor, Virginia, Bus Rapid Transit Project	24,750,327
VA	Virginia Railway Express Station Improvements Project	2,970,039
WA	Puget Sound, Washington, RTA Sounder Commuter Rail Project	19,800,262
WI	Kenosha-Racine-Milwaukee Rail Extension Project	1,980,026
	TOTAL ALLOCATION	$1,126,524,840

a/ The provision at Section 322 of the FY 2002 DOT Appropriations Act amends Public Law 105-178, Section 3030(b) to authorize final design and construction.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 8A

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2000 UNOBLIGATED ALLOCATIONS	FY 2001 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATION
AK/HI	Hawaii Ferry Project	$0	$5,429,469	$5,429,469
AK	Girdwood, Alaska Commuter Rail Project	4,198,947	14,868,947	19,068,894
AL	Birmingham- Transit Corridor	2,135,786	4,953,216	7,089,002
CA	Hollister/Gilroy Branch Line Rail Extension Project	0	990,644	990,644
CA	Los Angeles-San Diego LOSSAN Corridor Project	981,979	2,971,930	3,953,909
CA	San Diego- Mid-Coast Corridor Project	987,494	0	987,494
CA	San Diego- Oceanside-Escondido Light Rail Project	0	9,966,431	9,966,431
CA	San Jose Tasman West Light Rail Project	0	12,136,379	12,136,379
CA	Stockton-Altamont Commuter Rail	981,979	5,943,859	6,924,838
CA	Orange County-Transitway Project	981,979	1,981,286	2,962,365
CO	Roaring Fork Valley Project	981,979	990,644	1,971,723
CT	Stamford-Fixed Guideway Connector	981,979	7,926,145	8,908,224
DE	Wilmington-Downtown Transit Connector	0	4,953,216	4,953,216
FL	South Miami-Dade Busway Extension	1,471,618	0	1,471,618
FL	Orlando-Central Florida Light Rail Project	0	2,971,930	2,971,930
FL	Pinellas County-Mobility Initiative Project	2,462,697	0	2,462,697
GA	Atlanta-North Line Extension Rail Project	0	24,766,089	24,766,089
GA	Atlanta-South Dekalb Lindbergh Light Rail Project	634,029	0	634,029
HI	Honolulu bus Rapid Transit Project	0	2,476,608	2,476,608
IL	Chicago Metra Commuter Rail Exts. & Upgrades-North Central	14,574,996	14,246,653	28,821,589
IL	Chicago Metra Commuter Rail Exts. & Upgrades-Southwest	708,699	12,129,838	12,828,536
IL	Chicago Metra Commuter Rail Exts. & Upgrades-Union Pacific West	3,666,382	8,366,822	11,361,204
IL	Chicago- Ravenswood Branch Line Project	3,433,776	0	3,433,776
IN	Indianapolis-Northeast Downtown Corridor Project	981,979	2,971,930	3,953,909
MA	Boston-North Shore Corridor	981,979	990,644	1,971,723
MA	Boston-South Boston Piers Transitway	0	4,000,000	4,000,000
MA	Boston-Urban Ring Project	981,979	990,644	1,971,723
MA/NH	Lowell, MA - Nashua, NH Commuter Rail Project	3	1,981,286	1,981,289
MD	MARC Expansion Programs [Silver Spring Intermodal Center & Penn-Camden Rail Connection]	738,980	4,953,216	5,689,924
ME	Calais Branch Rail Line Regional Transit Program	0	990,644	990,644
ME	Portland Marine Highway Project	0	1,981,286	1,981,286
MI	Detroit Metropolitan Airport Light Rail Project	0	496,321	496,321
MN	Minneapolis- Transitways Hiawatha Corridor Project	8,647,867	0	8,647,867
MN	Minneapolis-Twin Cities Transitways Projects	2,943,236	4,953,216	7,896,452
MO	Kansas City Southtown Corridor Project	0	3,467,251	3,467,251
MO	St. Louis-MetroLink Cross County Corridor Project	2,462,697	990,644	3,453,341
NC	Charlotte-North-South Corridor Transitway Project	1,780,575	4,953,216	6,733,791
NC	Raleigh-Durham-Chapel Hill-Triangle Transit Project	0	2,780,586	2,780,586
NJ	Northwest New Jersey-Northeast Pennsylvania Passenger Rail Project	0	990,644	990,644
NJ	West Trenton Rail Project	981,979	1,981,286	2,962,365
NY	New York - Second Avenue Subway	3,000,000		3,000,000
NM	Greater Albuquerque Mass Transit Project	6,867,551	496,321	7,362,872
NM	Santa Fe/El Dorado Rail Link	2,943,236	1,486,986	4,429,201
NV	Clark County RTC Fixed Guideway Project	1,488,780	1,486,986	2,974,716
OH	Canton-Akron-Cleveland Commuter Rail Project	0	1,981,286	1,981,286
OH	Cleveland-Euclid Corridor Improvement Project	0	3,962,572	3,962,572
OH	Dayton-Light Rail Study	981,979	0	981,979
PA	Harrisburg-Capital Area Transit Corridor 1 Commuter Rail	488,530	496,321	985,969

FEDERAL TRANSIT ADMINISTRATION

TABLE 8A

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2000 UNOBLIGATED ALLOCATIONS	FY 2001 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATION
PA	Philadelphia-Reading SEPTA Schuylkill Valley Metro Project	3,924,315	9,966,431	13,890,746
PA	Philadelphia-SEPTA Cross County Metro	169	1,981,286	1,981,455
PA	Pittsburgh-North Shore- Central Business District Corridor	2,443,337	4,953,216	7,396,553
PR	San Juan, Puerto Rico Tren Urbano	31,394,519	74,298,238	105,692,757
RI	Pawtucket and T.F. Green Commuter Rail and Maintenance Facility	0	496,321	496,321
SC	Charleston - Monobeam Corridor Project	2,462,697	0	2,462,697
TN	Memphis-Medical Center Rail Extension Project	0	3	3
TN	Nashville-Commuter Rail Project	0	5,883,198	5,883,198
TX	Austin Capital Metro Light Rail Project	0	990,644	990,644
TX	Dallas Southeast Corridor Light Rail Project	0	987,200	987,200
TX	Houston-Advanced Transit Program	2,943,236	2,476,608	5,419,844 a/
TX	Houston Regional Bus Project	0	19,849,414	19,849,414
VA	Dulles Corridor Project	9,460,366	49,532,163	58,992,529
VT	Burlington-Bennington (ABRB) Commuter Rail Project	0	1,981,286	1,981,286
WA	Seattle Central Link Light Rail Project	0	49,532,163	49,532,163
WA	Spokane-South Valley Corridor Light Rail Project	0	3,962,572	3,962,572
WI	Kenosha-Racine-Milwaukee Commuter Rail Project	981,979	3,962,572	4,943,551
	TOTAL UNOBLIGATED ALLOCATION	$127,863,988	$463,479,674	$631,342,762

Fiscal Years 1998 and 1999 Allocations Extended in Conference Report 107-308

NM	*Albuquerque, NM Light Rail Project*	*$2,954,765*
OH	*Cleveland-Berea, OH Red Line*	*992,550*
PA	*Philadelphia-Reading, PA-SEPTA Schuylkill Valley Metro*	*2,977,660*
VT	*Burlington-Essex Junction Commuter Rail*	*2,883,828*
VT	*Burlington-Essex Junction Commuter Rail*	*1,985,100*
	Total Extended Allocations	*$11,793,903* c/

a/ Language in Public Law 106-346 directs that funds remaining unobligated or deobligated for the Miami Metro-Dade Transit east-west multimodal corridor project and the Miami Metro-Dade North 27th Avenue corridor project, as of or after September 30, 2000, are to be made available for the South Miami-Dade Busway Extension.

b/ The provision at Section 323 of the FY 2002 DOT Appropriations Act amends Public Law 105-178, Section 5309(h) to authorize alternative analysis preliminary engineering.

c/ The provision at Section 351 of the FY 2002 DOT Appropriations Act allows all public and private non-federal contributions made on or after January 1, 2000, to be used to meet the non-federal share requirement of any element or phase of this project.

d/ The provision at Section 333 of the FY 2002 DOT Appropriations Act prohibits funds for design or construction of a light rail system in Houston, Texas. Available funds are allowed to be obligated under certain conditions for a Houston, Texas metro advanced transit plan project.

e/ Period of availability for funds extended in FY 2002 Appropriations Act is one additional year and they will lapse September 30, 2002. Projects extended in the FY 2002 Conference Report whose funds were obligated as of September 30, 2001 are not listed.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
		9994,017
AK	City of Wasilla bus facility	1,486,944
AK	Fairbanks buses and bus facility	2,178,864
AK	Fairbanks intermodal facility	1,366,041
AK	Mat-su Community Transit buses and facilities	2,920,888
AK	Port of Anchorage intermodal facility	1,486,044
AK	Port McKenzie buses and bus facilities	2,772,981
AK	Seward intermodal facility	
		486,016
AL	Alabama A&M buses and bus facilities	4,960,146
AL	Alabama State Dock intermodal passenger and freight terminal	446,613
AL	Alabama-Tombigbee Regional Commission buses and vans	1,980,088
AL	Birmingham-Jefferson County Transit Authority buses	247,897
AL	Gadsden Transportation Services	980,029
AL	Huntsville Public Transit intermodal facility	2,979,087
AL	Montgomery Union Station/Moulton St. intermodal facility and parking	1,980,088
AL	University of North Alabama transit projects	2,476,073
AL	University of South Alabama	
		4,960,146
AR	Statewide buses and bus facilities for urban, rural, elderly and disabled agencies	
		173,255
AZ	City of Glendale buses	6,683,683
AZ	Phoenix Regional Public Transportation Authority buses and bus facilities	1,732,881
AZ	Sun Tran CNG replacement buses and facilities	2,772,981
AZ	Tucson intermodal center	
		486,016
CA	AC Transit	486,016
CA	Anaheim Resort transit project	486,016
CA	Antelope Valley transit authority bus facilities	247,897
CA	Bella Vista park and ride	346,616
CA	Boyle Heights bus facility	396,012
CA	City of Burbank shuttle buses	297,999
CA	City of Calabasas CNG smart shuttle	486,016
CA	City of Carpinteria electric-gasoline hybrid bus	980,029
CA	City of Commerce CNG buses and bus facilities	742,522
CA	City of Fresno buses	297,396
CA	City of Monrovia natural gas vehicle fueling facility	148,694
CA	City of Sierra Madre bus replacement	2,476,073
CA	City of Visalia transit center	346,616
CA	Contra Costa Connection buses	247,897
CA	Costa Mesa CNG facility	117,013
CA	County of Amador bus replacement	193,953
CA	County of Calaveras bus fleet replacement	479,284
CA	County of El Dorado bus fleet expansion	991,626
CA	Davis, Sacramento hydrogen bus technology	1,486,044
CA	El Garces train/intermodal station	694,017
CA	Folsom railroad block project	1,237,636
CA	Foothill Transit, CNG buses and bus facilities	297,999
CA	Glendale Beeline CNG buses	247,897
CA	Imperial Valley CNG bus maintenance facility	1,486,044
CA	Livermore Amador Valley Transit Authority buses and facility	247,897
CA	Livermore park and ride	3,465,162
CA	Los Angeles Metro Transportation Authority rapid buses and bus facilities	297,999
CA	Merced County Transit CNG buses	198,666
CA	City of Modesto, bus facilities	1,486,044
CA	Monterey-Salinas Transit facility	980,029
CA	Morongo Basin Transit maintenance and administration facility	980,029
CA	MUNI Central Control Facility	1,980,088
CA	Municipal Transit Operators Coalition	297,999
CA	North Ukiah Transit Center	297,999
CA	Orange County buses	247,897
CA	Palmdale Transportation Center	247,897
CA	Palo Alto intermodal transit center	396,012
CA	Pasadena Area Rapid Transit System	

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
CA	Placer County, CNG bus project	980,029
CA	Sacramento Regional buses and bus facilities	980,029
CA	Sam Trans zero-emissions fuel cell buses	980,029
CA	San Bernardino CNG/LNG buses	371,261
CA	San Diegulo Transportation Cooperative	297,999
CA	San Francisco Municipal buses and bus facilities	3,960,116
CA	San Joaquin Regional Transit District Bus facility	486,016
CA	San Mateo County Transit Districts clean fuel buses	1,486,044
CA	Santa Ana bus base	1,237,636
CA	Santa Barbara hybrid bus rapid transit project	1,980,088
CA	Santa Clara Valley Transportation Authority line 22 articulated buses	694,017
CA	Santa Fe Springs CNG bus replacement	486,016
CA	Sierra Madre Villa & Chinatown intermodal transportation centers	2,979,087
CA	Solano Beach intermodal transit station	486,016
CA	Sonoma County landfill gas conversion facility	486,016
CA	South Pasadena circulator bus	297,999
CA	Sun Line Transit hydrogen refueling station	486,016
CA	Transportation Hub at the Village of Indian Hills	980,029
CA	Yolo County, CNG buses	980,029
CO	Statewide buses and bus facilities	7,672,726
CT	Bridgeport intermodal corridor project	5,197,082
CT	East Haddam transportation vehicles and transit facilities	416,012
CT	Greater New Haven Transit District CNG vehicle project (ConnDOT)	980,029
CT	Hartford-New Britain bus rapid transitway	9,910,281
CT	New Haven bus facility	486,016
DC	Washington Metropolitan Area Transit Authority buses	2,979,087
DC	Fuel cell buses and bus facilities (TEA21)	4,951,941
DE	Statewide buses and bus facilities, Delaware	4,366,128
DE	Wrangle Hill buses and maintenance facility	2,979,087
FL	Broward County alternative vehicle mass transit buses and bus facilities	2,476,073
FL	Central Florida Regional Transportation Authority (LYNX) bus and bus facilities	1,980,088
FL	Duval County/JTA community transportation coordinator program, paratransit vehicles & equipment	980,029
FL	Gainesville Regional Transit System, buses	486,016
FL	Hillsborough Area Transit Authority buses and bus facilities	1,980,088
FL	Jacksonville Transit Authority buses	742,522
FL	Lakeland Citrus connection buses and bus facilities	742,522
FL	Miami Beach development electrowave shuttle service	2,979,087
FL	Miami-Dade bus fleet	1,980,088
FL	Northeast Miami-Dade passenger center	371,261
FL	Palm Tran buses	486,016
FL	Pinellas Suncoast Transit buses, trolleys, and information technology	3,960,116
FL	South Florida Regional Transit buses and bus facilities	3,960,116
FL	South Miami intermodal pedestrian access project	980,029
FL	Tallahassee bus facilities	396,012
FL	TALTRAN intermodal center	694,017
FL	Tri-Rail Cypress Creek intermodal facilities	486,016
FL	VOTRAN buses	2,722,899
FL	Winter Haven Area Transit bus and bus facilities	742,522
GA	Atlanta, Metro Atlanta Rapid Transit Authority clean fuel buses	6,940,174
GA	Chatham Area Transit buses and bus facilities	3,954,184
GA	Cobb County Community Transit bus facilities	980,029
GA	Georgia Department of Transportation replacement buses	980,029
GA	Georgia Regional Transit Authority express bus program	6,940,174
GA	Gwinnett County operations and maintenance facility	486,016
GA	Macon terminal intermodal station	1,486,044
HI	Honolulu buses and bus facilities	7,920,232
HI	Middle Street Transit Center	742,522

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FEDERAL TRANSIT ADMINISTRATION

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FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
IA	Cedar Rapids intermodal facility	4,883,634
IA	Statewide bus replacement	4,969,146
ID	Statewide buses, bus facilities, and equipment	3,485,162
IL	Statewide buses and bus facilities	9,336,574
IN	Cherry Street Project multi-modal facility	1,267,639
IN	Indiana bus consortium, buses and bus facilities	3,969,116
IN	Indianapolis downtown transit facility	3,143,342
IN	South Bend Public Transit bus fleet replacement	2,476,673
IN	West Lafayette Transit Project buses and bus facilities	1,732,691
KS	Fort Scott Public Transit buses and bus facilities	297,999
KS	Kansas City Area Transit Authority buses	1,485,644
KS	Statewide buses and bus facilities, Kansas	2,970,667
KS	Topeka Transit transfer center	694,017
KS	Wichita Transit Authority buses	990,948
KY	City of Frankfort transit program buses	95,043
KY	City of Maysville buses	134,644
KY	Leslie County parking structure	1,999,999
KY	Murray-Calloway Transit Authority bus facility	198,666
KY	Pikeville parking and transit facility	4,969,145
KY	Statewide buses and bus facilities	990,529
KY	Audubon Area Community Services buses, vans, cutaways, and bus facilities	198,666
KY	Bluegrass Community Action Services buses, vans, cutaways and bus facilities	694,017
KY	Central Kentucky Community Action Council buses, vans, cutaways and bus facilities	269,269
KY	Community Action Council of Fayette and Lexington buses, vans, cutaways and bus facilities	45,541
KY	Community Action Council of Southern Kentucky buses, vans, cutaways and bus facilities	198,666
KY	Kentucky River Foothills buses, vans, cutaways and bus facilities	134,644
KY	Lake Cumberland Community services buses, vans, cutaways and bus facilities	79,202
KY	Southern and Eastern Kentucky transit vehicles	1,999,999
KY	Transit Authority of Northern Kentucky	1,485,644
KY	Transit Authority of River City buses and bus facilities	1,999,999
LA	Louisiana Public Transit Association buses and bus facilities	999,999
LA	Baton Rouge bus and bus related facilities	1,221,999
LA	Jefferson Parish bus and bus related facilities	2,349,439
LA	Lafayette bus and bus related facilities	399,012
LA	Lake Charles bus and bus related facilities	1,193,996
LA	Louisiana Department of Transportation bus and Bus related facilities	829,996
LA	Monroe bus and bus related facilities	5,149,251
LA	New Orleans bus and bus related facilities	1,499,399
LA	Shreveport bus and bus related facilities	999,029
LA	Louisiana State University Health Sciences Center-Shreveport, intermodal parking facility	999,029
LA	St. Bernard Parish intermodal facility	445,513
LA	St. Tammany Parish park and ride	999,029
MA	Attleboro intermodal facilities	742,522
MA	Berkshire Regional Transit Authority buses	999,029
MA	Brockton intermodal transit center	999,029
MA	Gallagher Intermodal Transportation bus hub and CNG trolleys	742,522
MA	Holyoke Police Center	495,015
MA	Merrimack Valley Regional Transit Authority (Amesbury) buses and bus facilities	495,015
MA	Merrimack Valley Regional Transit Authority (Lawrence) buses and bus facilities	495,015
MA	MetroWest buses and bus facilities	2,476,673
MA	Montachusett intermodal facilities and parking in Fitchburg/N. Leominster	99,669
MA	Montachusett Regional Transit Authority bus facilities	495,015
MA	Salem/Beverly Intermodal Center	3,969,116
MA	Springfield Union Station intermodal facility	247,507
ME	Auburn intermodal facility and parking garage	2,970,667
ME	Statewide buses	

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MD	Statewide buses and bus facilities	8,416,247
MI	Alger County Public Transit	198,666
MI	Antrim County Transportation buses	98,142
MI	Berry County Transit buses	79,202
MI	Bay Area Transit Authority	347,507
MI	Berrien County Department of Planning and Public Works buses	198,666
MI	Blue Water Area Transportation Commission bus facilities	1,486,644
MI	Capital Area Transportation Authority buses, bus facilities, and equipment	2,227,996
MI	Charlevoix County Public Transit	123,754
MI	City of Niles buses and bus facilities	41,591
MI	Crawford County Transportation Authority buses	173,295
MI	Delta County Transit Authority	59,492
MI	Detroit Department of Transportation bus replacement	5,992,667
MI	Eastern UP Transportation Authority	99,669
MI	Flint Mass Transportation Authority replacement buses and vans	1,999,999
MI	Greater Lapeer Transportation Authority bus and bus facilities	346,010
MI	Harbor Transit bus and bus facilities	198,666
MI	Interurban Transit Authority buses	91,162
MI	Interurban Transit Partnership surface transportation center (Grand Rapids)	4,969,145
MI	Ionia Area Transportation Dial-a-Ride	391,199
MI	Isabella County facilities and equipment	224,737
MI	Kalamazoo County Care-A-Van buses and equipment	128,784
MI	Kalkaska Public Transit buses	347,507
MI	Livingston Essential Transportation Service buses and equipment	344,537
MI	Ludington Transit Facility	495,015
MI	Marquette County Transit Authority buses and bus facility	999,029
MI	Midland County buses	297,999
MI	Milan Public Transit buses	99,669
MI	Muskegon Area Transit System facility	1,833,648
MI	Northern Oakland Transportation Authority	148,894
MI	Otsego County Public Transit	297,999
MI	Sault Ste. Marie dial-a-ride	87,128
MI	Statewide buses and bus facilities	1,999,999
MI	Suburban Mobility Authority for Regional Transportation buses	2,969,991
MI	Van Buren County Public Transit buses	198,666
MN	Duluth Transit Authority buses, bus facilities, and equipment	495,015
MN	Grand Rapids/Gilbert buses and bus facilities	297,999
MN	Greater Minnesota Transit Authority bus, paratransit and transit hub (MNDOT)	3,712,699
MN	Metro transit buses and bus facilities (Twin Cities)	13,365,362
MN	Moorhead buses, bus facilities, and equipment	99,669
MN	Mower County Public Transit initiative facility	495,015
MN	Rush Line Corridor buses and bus facilities	495,015
MN	St. Cloud buses, bus facilities, and equipment	1,485,644
MS	Brookhaven multi-modal facility	999,029
MS	Harrison county multi-modal facilities and shuttle service	3,969,116
MS	Hattiesburg intermodal facility	3,465,102
MS	Jackson multi-modal transportation center	1,999,999
MO	Cab Care paratransit facility	495,015
MO	Kansas City Area Transit Authority buses and radio equipment	4,455,131
MO	Kansas City bus rapid transit	2,476,673
MO	Missouri Pacific Depot	495,015
MO	OATS buses and bus facilities	1,999,999
MO	Southeast Missouri State, Dunklin, Mississippi, Scott, Stoddard, and Cape Girardeau Counties buses and facilities	1,732,691
MO	Southwest Missouri State University intermodal transfer facility	2,476,673
MO	St. Louis Bi-State Development Authority buses and facilities	3,969,116
MT	Billings Logan International airport bus terminal and facility	1,485,644
MT	Butte-Silver Bow bus facility	495,015
MT	Statewide bus and bus facilities	999,029

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TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MT	Area II agency on aging bus facility	544,516
MT	Ravalli County Council on aging bus facility	594,017
NE	Buffalo County buses and maintenance facility	99,003
NV	Las Vegas Boulevard North Corridor BRT, clean diesel-electric buses	1,732,591
NV	Regional Transport Commission of Southern Nevada bus rapid transit	4,465,131
NV	Reno Bus Rapid Transit high-capacity articulated buses	1,485,044
NV	Reno/Sparks buses and bus facilities	3,960,116
NV	Reno Suburban transit coaches	495,015
NH	Granite State Clean Cities Coalition CNG buses and facilities	990,029
NH	Town of Ossipee multimodal visitor center	1,584,046
NJ	Bergen intermodal stations, park and ride and shuttle service	2,326,568
NJ	Middlesex County jitney transit buses	396,012
NJ	Trenton Rail Station rehabilitation	2,475,073
NM	Albuquerque Alvarado Transportation Center (phase II)	1,485,044
NM	Albuquerque buses and paratransit vehicles	495,015
NM	Las Cruces buses	495,015
NM	Las Cruces intermodal transit facility	1,980,058
NM	Santa Fe buses and bus facilities	990,029
NM	Statewide buses and bus facilities	990,029
NM	Village of Taos Ski Valley bus and bus facilities	495,015
NM	West Side Transit facility and buses	3,712,609
NY	Binghamton intermodal terminal	1,980,058
NY	Central New York Regional Transportation Authority	3,217,594
NY	Greater Glens Falls Transit bus facility renovation	495,015
NY	Long Island Rail Road Jamaica intermodal facilities	2,970,087
NY	Martin Street Station	321,759
NY	MTA Long Island buses	1,980,058
NY	Nassau University Medical Center bus service extension	990,029
NY	New Rochelle intermodal center	1,485,044
NY	New York City Dept. of Transportation, CNG buses and facilities	2,475,073
NY	Niagara Frontier Transportation Authority buses	2,475,073
NY	Pulham trolley	257,466
NY	Poughkeepsie intermodal project	990,029
NY	Rochester buses and facilities	990,029
NY	Saratoga Springs intermodal station	1,881,055
NY	Station Plaza commuter parking lot	495,015
NY	Sullivan County Coordinated Public Transportation Service bus facility	495,015
NY	Tompkins Consolidated Area transit center	617,778
NY	Tompkins County replacement buses	1,485,044
NY	Union Station--Oneida County facilities	1,237,536
NY	Westchester County Bee-Line low emission buses	1,485,044
NC	Statewide buses and bus facilities	6,930,203
ND	Statewide buses and bus facilities, and rural transit vehicles	3,465,102
OH	Butler County transit facility	990,029
OH	Dayton, Wright-Dunbar Transit Access Project	2,722,580
OH	Alliance intermodal facility	990,029
OH	Statewide buses and bus facilities, Ohio	5,712,255
OK	Central Oklahoma transit facilities	3,960,116
OK	Oklahoma Department of Transportation transit program buses and bus facilities	2,970,087
OR	Canby Transit buses	198,006
OR	Clackamas County south corridor transit improvements	3,712,609
OR	Fort Clatsop Shuttling system	1,980,058
OR	Lincoln County transportation service district bus garage	74,252
OR	Milwaukee Transit Center	198,006
OR	Rogue Valley Transit District, CNG buses	941,525

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
OR	Salem Area Mass Transit, CNG buses	990,029
OR	Springfield bus transfer station	1,980,058
OR	Tillamook County Transportation District bus facilities	346,510
OR	Wasco County buses (Mid-Columbia Council of Governments)	198,006
PA	Altoona bus facility (TEA-21)	2,970,087
PA	Allentown intermodal transportation center	495,015
PA	Area Transit Authority of North Central PA buses and bus facilities	990,029
PA	Berks Area Reading Transportation Authority buses and bus facilities	2,772,081
PA	Bucks County intermodal facility improvement	742,522
PA	Butler Township multi-modal transfer center	495,015
PA	Callowhill bus garage replacement	3,267,096
PA	Cambria County operations and maintenance facility	742,522
PA	Centre Area Transportation Authority CNG buses	792,023
PA	County of Lackawanna Transit bus facility	495,015
PA	Doylestown Area Regional Transit buses	99,003
PA	Endless Mountain Transportation Authority buses and bus facilities	346,510
PA	Fayette County Transit facility	990,029
PA	Hershey intermodal transportation center	1,237,536
PA	Indiana County Transit Authority buses and bus facilities	495,015
PA	Lehigh and Northampton Transportation Authority bus facility	495,015
PA	Luzerne County Transit Authority buses	297,009
PA	Mid Mon Valley Transit Authority buses and bus facilities	247,507
PA	Mid-County Transit Authority buses and bus facilities	297,009
PA	Monroe County Transit Authority park and ride	594,017
PA	Montgomery County intermodal facility	990,029
PA	Port Authority of Allegheny buses	2,227,565
PA	Red Rose transit transfer center	495,015
PA	Schuylkill Transportation System	396,012
PA	Southeastern Pennsylvania Transportation Authority trackless trolleys	990,029
PA	Somerset County Transpiration System buses	247,507
PA	Wilkes-Barre intermodal facility	990,029
PA	York County bus replacement	990,029
RI	Providence transportation information center	1,485,044
RI	Statewide buses and bus facilities, Rhode Island	4,455,131
SC	Statewide buses and bus facility	9,900,290
SD	Aberdeen Ride Line buses	99,003
SD	Mobridge Senior Citizen handicap-accessible vehicles	69,402
SD	Oglala Sioux Tribe buses and bus facilities	2,227,565
SD	Rosebud Sioux Tribe transportation vans	64,402
TN	Memphis International Airport intermodal facility	1,722,609
TN	Statewide buses and bus facilities	5,940,290
TX	Abilene bus replacement	495,015
TX	Austin Metrobus	742,522
TX	Brazos Transit ADA compliant buses	396,012
TX	Brazos Transit buses for Texas A & M University	742,522
TX	Brazos Transit buses, intermodal facility, and parking facility	742,522
TX	Brazos Transit park and ride facility	396,012
TX	Brownsville multimodal facility study	99,003
TX	Capital Metro park and ride	495,015
TX	City of Huntsville buses	495,015
TX	Connection Capital Project for Community Transit Facilities	247,507
TX	El Paso buses	495,015
TX	Fort Worth Transportation Authority CNG buses	1,237,536
TX	Fort Worth intermodal center park and ride facility	495,015
TX	Fort Worth 9th Street Transfer Station	1,584,048
TX	Houston Barker Cypress park and ride	4,949,145
TX	Houston Main Street Corridor master plan	495,015
TX	Liberty County buses	371,261

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TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
TX	San Antonio VIA Metro Transit Authority clean fuel buses	1,732,551
TX	Sun Metro buses and bus facilities	495,015
TX	Texas Tech University buses, park and ride	990,029
TX	Waco Transit maintenance and administration facility	1,633,548
TX	Woodlands District park and ride	495,015
UT	Statewide regional intermodal transportation centers, Utah	2,970,087
UT	Utah Transit Authority and Park City Transit buses	495,015
UT	Utah Transit Authority intermodal terminals	990,029
VA	Colonial Williamsburg CNG buses	990,029
VA	Greater Richmond Transit Downtown Transit Center	990,029
VA	Hampton Roads regional buses	3,465,102
VA	Main Street multi-modal transportation center	2,475,073
VA	Potomac & Rappahannock Transportation Commission buses	2,970,087
VA	Roanoke Area Dial-A-Ride	990,029
VT	Vermont Public Transit alternative fuel/hybrid buses and facility	1,980,058
VI	Virgin Islands Transit (VITRAN) buses	495,015
WA	Bellevue Transportation Center	1,584,046
WA	City of Kent facility/Sound Transit, transit and transit-related facilities	891,026
WA	Everett Transit buses and vans	1,732,551
WA	I-5 Trade Corridor/88th St facility	3,663,107
WA	Issaquah Highlands park and ride	1,980,058
WA	King County Transit Oriented Development Projects	990,029
WA	Mukilteo multi-modal terminal and ferry	1,436,542
WA	Pierce Transit buses, vans, and equipment	2,475,073
WA	Snohomish county transit buses and bus facilities	1,980,058
WA	Spokane Transit Authority, buses and bus facilities	990,029
WA	Sound Transit regional transit hubs	9,405,276
WA	Statewide small transit systems, buses, and bus facilities, Washington	28,711
WA	Clallam Transit buses and bus facilities	436,613
WA	Grays Harbor Transportation buses and bus facilities	918,747
WA	Island Transit buses and bus facilities	625,696
WA	Link Transit buses and bus facilities	332,669
WA	Mason County Transportation Authority buses and bus facilities	391,161
WA	Valley Transit buses and bus facilities	742,522
WV	Huntington Tri-State Authority bus facility	742,522
WV	Morgantown Intermodal parking facility	1,980,058
WV	Statewide buses and bus facilities	3,960,116
WI	Statewide buses, bus facilities, and equipment	13,860,363
WY	Statewide buses and bus facilities	2,475,073
WY	Southern Teton Area Rapid Transit bus facility	495,015
	TOTAL ALLOCATION	$613,791,666

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
	FY 2000 Unobligated Allocations	
AK	Anchorage , Intermodal Facility	$4,414,928
AK	Fairbanks, Intermodal rail/bus transfer facility	1,947,190
AK	Juneau, Downtown mass transit facility	1,471,843
AK	Wasilla , Intermodal facility	981,896
AL	Birmingham-Jefferson County, Buses	1,226,869
AL	Dothan Wiregrass, Vehicles and transit facility	494,926
AL	Huntsville, Space and Rocket Center intermodal center	3,433,833
AL	Jefferson/Montevallo, Pedestrian walkway	196,219
AL	Mobile, Waterfront terminal complex	4,906,476
AL	Montgomery, Union Station intermodal center and buses	3,433,833
AL	Wilcox County, Gees Bend Ferry facilities	98,110
CA	Bell, Buses and bus facilities	196,219
CA	Commerce, Buses and bus facilities	363,194
CA	Cudahy, Buses and bus facilities	117,731
CA	Lodi, Multimodal facility	833,931
CA	Los Angeles County, Foothill Transit Buses and HEV vehicles	92,736
CA	Maywood, Buses and bus facilities	117,731
CA	Norwalk, I-5 Corridor intermodal transit centers	1,226,369
CA	Redlands, trolley project	784,876
CA	San Bernardino, train station	2,943,286
CA	Santa Clarita , Bus maintenance facility	1,226,369
CA	Santa Clarita , Bus maintenance facility	741,835
CA	Santa Cruz, Buses and bus facilities	1,721,822
CA	Santa Maria Valley/Santa Barbara County, Buses	236,463
CA	Westminster, senior citizen vans	147,164
CO	Colorado, Buses and bus facilities	1,944,869
DC	Georgetown University, Fuel Cell bus and bus facilities program	123,716
DC	Washington, D.C., Intermodal Transportation Center, District	2,462,738
FL	Miami Beach, electric shuttle service	736,821
GA	Chatham, Area Transit bus transfer center and buses	3,433,833
GA	Georgia, Regional Transportation Authority buses	1,962,190
HI	Hawaii , buses and bus facilities	1,909,898
IA	Cedar Rapids, Intermodal facility	3,276,857
IA	Fort Dodge, Intermodal Facility (Phase II)	88,148
IL	East Moline transit center	637,712
IL	Illinois statewide buses and bus-related equipment	956,492
IN	Gary, Transit Consortium buses	366,699
KS	Girard, buses and vans	686,767
KS	Girard Southeast Kansas Community Action Agency maintenance facility	470,926
LA	Baton Rouge, buses and bus-related facilities	294,329
LA	Jefferson Parish, buses and bus-related facilities	44,149
LA	Monroe, buses and bus-related facilities	294,510
MA	Greenfield Montague, buses	490,547
MA	Merrimack Valley Regional Transit Authority bus facilities	490,992
MA	Pittsfield intermodal center	3,531,943
MA	Swampscott, buses	93,772
MN	Greater Minnesota transit authorities	125,000
MN	Northstar Corridor, Intermodal facilities and buses	916,991

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FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
MO	Jackson County buses and bus facilities	228,576
MO	Southeast Missouri transportation service rural, elderly, disabled service	981,599
MO	Southwest Missouri State University park and ride facility	981,996
MO	St. Louis, Bi-state Intermodal Center	1,226,369
MS	Harrison County multimodal center	2,943,286
MS	North Delta planning and development district, buses and bus facilities	1,177,314
ND	North Dakota statewide bus and bus facilities	208,067
NH	New Hampshire statewide transit systems	2,943,286
NJ	New Jersey Transit alternative fuel buses	4,906,476
NJ	New Jersey Transit jitney shuttle buses	1,716,916
NJ	Newark intermodal and arena access improvements	1,618,907
NJ	Newark, Morris & Essex Station access and buses	1,226,369
NJ	South Amboy, Regional Intermodal Transportation Initiative	1,226,369
NM	Las Cruces buses and bus facilities	279,321
NM	*Northern New Mexico park and ride facilities and State of New Mexico, Buses and Bus-Related Facilities*	*2,698,013* a/
NV	Lake Tahoe CNG buses	686,767
NV	Washoe County transit improvements	25,661
NY	Buffalo, Auditorium Intermodal Center	1,962,190
NY	Ithaca intermodal transportation center	1,103,732
NY	Putnam County, vans	461,115
OK	Oklahoma statewide bus facilities and buses	231,269
OR	Lincoln County Transit District buses	245,274
OR	South Metro Area Rapid Transit (SMART) maintenance facility	196,219
PA	City of Johnstown, intermodal facilities and buses	900,000
PA	Fayette County, intermodal facilities and buses	445,991
PA	Philadelphia, Intermodal 30th Street Station	1,226,369
PA	Somerset County bus facilities and buses	171,691
PA	Towamencin Township, Intermodal Bus Transportation Center	1,471,643
PA	Washington County intermodal facilities, bus and bus related facilities	618,089
PA	Wilkes-Barre, Intermodal Facility	1,226,369
SC	Central Midlands COG/Columbia transit system	769,210
SC	Florence, Pee Dee buses and facilities	982,906
SC	Greenville transit authority	490,547
SC	Santee-Wateree regional transportation authority	392,438
SC	South Carolina Statewide Virtual Transit Enterprise	1,196,936
SC	Transit Management of Spartanburg, Incorporated (SPARTA)	980,657
SD	South Dakota statewide bus facilities and buses	1,471,643
TN	*Southern Coalition for Advanced Transportation (SCAT) (TN, GA, FL, AL)*	*3,433,833* b/
VA	Alexandria, bus maintenance facility	490,548
VA	Alexandria, Transit Center	981,096
VA	Fair Lakes League	196,219
VA	Northern Virginia, Dulles Corridor Park-and-Ride Express Bus Program	1,962,190
VA	Richmond, GRTC bus maintenance facility	1,226,369
VT	Burlington multimodal center	2,648,966
VT	Essex Junction multimodal station rehabilitation	490,547
VT	*Marble Valley Regional Transit District buses*	*245,274* c/
WA	Grant County, Grant Transit Authority	490,547
WA	Grays Harbor County, buses and equipment	1,226,369
WA	King County Metro Atlantic and Central buses	1,471,643
WA	King County park and ride expansion	1,334,478

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
WA	Pierce County Transit buses and bus facilities	396,666
WA	Sequim, Clallam Transit multimodal center	981,096
WA	Spokane, HEV buses	1,471,643
WV	Parkersburg, intermodal transportation facility	4,414,928
WV	West Virginia Statewide intermodal facility and buses	673,036
	Subtotal FY 2000 Unobligated Allocations	*$121,231,410*
	FY 2001 Unobligated Allocations	
AK	Alaska State Fair park and ride and passenger shuttle system	980,316
AK	Denali Depot intermodal facility	2,970,946
AK	Fairbanks Bus/Rail Intermodal Facility	3,869,976
AK	Homer Alaska Maritime Wildlife Refuge intermodal and welcome center	941,766
AK	Port McKenzie intermodal facilities	7,427,361
AK	Ship Creek pedestrian and bus facilities and intermodal center/parking garage	4,951,574
AL	Statewide, bus and bus facilities	1,436,966
AL	Birmingham-Jefferson County Transit Authority buses and bus facilities	990,316
AL	University of Alabama Birmingham fuel cell bus	1,980,630
AL	Dothan-Wiregrass Transit Authority buses and bus facilities	742,736
AL	Alabama A&M University buses and bus facilities	496,990
AL	Huntsville International Airport intermodal center	4,951,574
AL	Huntsville Space and Rocket Center intermodal center	1,980,630
AL	Lamar County vans	49,516
AL	Lanett, vans	247,579
AL	Alabama State Docks intermodal passenger and freight facility	990,316 d/
AL	Mobile Waterfront Terminal	4,951,574
AL	University of South Alabama, buses and bus facilities	2,476,787
AL	Montgomery - Moulton Street Intermodal Facility	2,970,946
AL	Montgomery, civil rights trail trolleys	247,579
AL	University of North Alabama, bus and bus facilities	1,980,630
AL	Shelby County, vans	198,063
AL	Tuscaloosa interdisciplinary science building parking and intermodal facility	9,467,981
AR	Central Arkansas Transit Authority, bus and bus facilities	1,044,782
AR	Nevada County, vans and mini-vans	98,128
AR	Pine Bluff, buses	287,182
AR	River Market and College Station Livable Communities Program	1,980,346
AR	State of Arkansas, small rural and elderly and handicapped transit buses and bus facilities	2,448,221
CA	Anaheim, buses and bus facilities	247,579
CA	Brea, buses	148,547
CA	Calabasas, buses	496,157
CA	Commerce, buses	990,316
CA	Compton, buses and bus-related equipment	247,579
CA	Culver City, buses	742,736
CA	El Dorado, buses	496,157
CA	El Segundo, Douglas Street gap closure and intermodal facility	2,079,961
CA	Folsom, transit stations	1,486,472
CA	Fresno, intermodal facilities	496,157
CA	Humboldt County, buses and bus facilities	496,157
CA	City of Livermore, park and ride facility	496,157
CA	Foothill Transit, buses and bus facilities	2,476,787

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FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
CA	Municipal Transit Operators Coalition, buses	1,980,630
CA	Marin County, bus facilities	991,186
CA	Modesto, bus facility	247,679
CA	Monrovia, electric shuttles	574,383
CA	Monterey Salinas Transit Authority, buses and bus facilities	495,157
CA	Oceanside, intermodal facility	1,980,630
CA	Sunline transit agency, buses	990,316
CA	Placer County, buses and bus facilities	495,157
CA	Playa Vista, shuttle buses and bus-related equipment and facilities	2,970,945
CA	Redlands, trolley project	792,252
CA	Rialto, intermodal facility	544,673
CA	Riverside County, buses	495,157
CA	Sacramento, buses and bus facilities	990,316
CA	San Bernardino, intermodal facility	1,884,903
CA	San Bernardino, train station	594,189
CA	Santa Barbara County, mini-buses	237,676
CA	Santa Clara Valley Transportation Authority, buses	495,157
CA	Santa Clarita, maintenance facility	1,980,630
CA	Santa Cruz, buses and bus facilities	1,534,988
CA	Sonoma County, buses and bus facilities	990,316
CA	Temecula, bus shelters	198,063
CA	Vista, bus center	297,094
CO	Statewide bus and bus facilities	1,903,466
CT	Bridgeport, intermodal center	4,951,574
CT	Hartford/New Britain busway	742,736
CT	New Haven, trolley cars and related equipment	990,315
CT	New London, parade project transit improvements	1,980,630
CT	Norwich bus terminal and pedestrian access	990,316
CT	Waterbury, bus garage	990,316
DC	Georgetown University fuel cell bus program	4,993,027
FL	Statewide bus and bus facilities (including Tallahassee)	4,882,948
GA	Atlanta, buses and bus facilities	1,980,630
GA	Chatham, buses and bus facilities	1,980,630
GA	Cobb County, buses	1,237,894
GA	Georgia Regional Transit Authority, buses and bus facilities	2,970,945
HI	Honolulu bus and bus facility improvements	5,941,889
IA	Ames maintenance facility	1,188,378
IA	Cedar Rapids intermodal facility	1,188,378
IA	Des Moines park and ride	989,221
IA	Dubuque, buses and bus facilities	346,668
IA	Mason City, bus facility	988,236
IA	Sioux City multimodal ground transportation center	1,980,630
IA	Sioux City Trolley system	989,221
IA	Waterloo, buses and bus facilities	631,799
ID	Statewide, bus and bus facilities	1,284,285
IL	Harvey, intermodal facilities and related equipment	247,679
IL	Statewide, bus and bus facilities	5,941,889
IN	Evansville, buses and bus facilities	1,485,472
IN	Greater Lafayette Public Corporation -- Wabash Landing buses and bus facilities	1,485,472
IN	Gary - Adam Benjamin intermodal center	792,252

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
IN	South Bend, buses	2,970,945
IN	West Lafayette, buses and bus facilities	2,970,891
KS	Kansas City, JOBLINKS	247,679
KS	Kansas Department of Transportation, rural transit buses	2,970,945
KS	Wichita, buses and ITS related equipment	327,162
KS	Wyandotte County, buses	247,679
KY	Audubon Area Community Action	198,188
KY	Hardin County, buses	297,894
KY	Lexington, LexTran, buses and bus facilities	2,466,162
KY	Louisville, bus and bus facilities	2,970,945
KY	Pikeville, transit facility	1,944,630
LA	Alexandria buses and vans	39,615
LA	Baton Rouge buses and bus equipment	49,516
LA	Jefferson Parish buses and bus related facilities	19,806
LA	Lafayette buses and bus related facilities	297,894
LA	Lafayette multi-model facility	1,237,894
LA	Monroe buses and bus related facilities	133,662
LA	New Orleans bus lease-maintenance	1,485,375
LA	Plaquemines Parish ferry	990,316
LA	Shreveport buses	282,143
LA	St. Bernard Parish intermodal facilities	1,237,894
LA	St. Tammany Parish park and ride	14,864
MA	Attleboro, intermodal facilities	990,316
MA	Berkshire, buses and bus facilities	990,316
MA	Beverly and Salem, intermodal station improvements	594,189
MA	Brockton, intermodal center	990,315
MA	Lowell, transit hub and Hale Street bus maintenance/operations center	1,237,894
MA	Merrimack Valley Regional Transit Authority, bus facility	495,157
MA	Montachusett, bus facilities, Leominster	247,679
MA	Montachusett, intermodal facility, Fitchburg	1,361,063
MA	Springfield, intermodal facility	495,157
MA	Woburn, buses and bus facilities	247,679
MD	Statewide bus and bus facilities	7,476,882
ME	Bangor intermodal transportation center	1,485,472
ME	Statewide, bus, bus facilities and ferries	3,961,259
MI	Detroit, buses and bus facilities	2,970,945
MI	SMART community transit, buses and paratransit vehicles	4,955,948
MI	Flint, buses and bus facilities	495,157
MI	Lapeer, multi-modal transportation facility	49,516
MI	Statewide, buses and bus facilities	990,288
MI	Traverse City, transfer station	990,316
MN	St. Cloud, buses and bus facilities	2,164,419
MO	Southeast Missouri Transportation Service bus and bus facilities	990,316
MO	Southwest Missouri State University, intermodal facility	990,316
MO	OATS buses and vans	1,980,630
MO	State of Missouri bus and bus facilities	618,982
MS	Brookhaven multimodal transportation center	990,316
MS	Harrison County, multimodal center	1,485,472
MS	Picayune multimodal center	643,705
MS	State of Mississippi rural transit vehicles and regional transit centers	2,970,945

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FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
MT	Great Falls Transit district buses and bus facilities	990,316
MT	Missoula Ravalli Transportation Management Association buses	742,736
MT	Blackfoot Indian Reservation bus facility	495,157
ND	Statewide bus and bus facilities	1,981,494
NE	Missouri River pedestrian crossing - Omaha	3,961,289
NJ	Elizabeth Ferry Project	495,157
NJ	New Jersey Transit alternative fuel buses	3,961,289
NJ	Newark Arena bus improvements	3,961,289
NJ	Trenton, train/intermodal station	4,961,574
NM	Angel Fire bus and bus Facilities	742,736
NM	Carlsbad, intermodal facilities	623,998
NM	Clovis, buses and bus facility	1,969,282
NM	Las Cruces, buses	495,157
NM	Valencia County, transportation station improvements	1,237,894
NV	Clark County bus passenger intermodal facility - Henderson	1,980,630
NV	Lake Tahoe CNG buses and fleet conversion	1,980,630
NV	Reno and Sparks, buses and bus facilities	990,316
NV	Washoe County buses and bus facilities	2,970,946
NY	Buffalo, intermodal facility	495,157
NY	Eastchester, Metro North facilities	247,579
NY	Greenport and Sag Harbor, ferries and vans	99,419
NY	Highbridge pedestrian walkway	98,632
NY	Jamaica, intermodal facilities	247,579
NY	Larchmont, intermodal facility	990,316
NY	Suffolk County, senior and handicapped vans	495,157
NY	Sullivan County, buses, bus facilities, and related equipment	1,237,894
NY	Syracuse, buses	3,144,249
NY	Tompkins County, intermodal facility	618,946
NY	Westchester and Duchess counties, vans	198,063
NY	Westchester County, buses	990,316
OH	Columbus Near East transit center	990,316
OH	Ohio Statewide bus and bus facilities	8,442,946
OK	Oklahoma City bus transfer center	2,475,787
OK	Statewide bus and bus facilities	3,961,289
OK	Metropolitan Tulsa Transit Authority pedestrian and streetscape improvements	2,475,787
OR	Albany bus purchase - Linn-Benton transit system	198,063
OR	Sunset Empire Transit District improvements to Clatsop County Intermodal Facility	792,252
OR	Basin Transit System buses	168,451
OR	Sandy buses	217,870
OR	Columbia County ADA buses	168,936
OR	Coos County buses	69,322
OR	Corvallis Transit System operations facility	257,482
OR	Hood River County bus and bus facility	237,676
OR	Lakeview buses	49,516
OR	Philomath buses	39,613
OR	Redmond, buses and vans	49,516
OR	Rogue Valley buses	989,702
OR	Salem Area Transit District buses	1,486,472
OR	South Clackamas Transportation District bus	99,128
OR	South Corridor Transit Center and park and ride facilities in Clackamas County	1,486,472

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
OR	Union County bus	49,574
OR	Wasco County buses	99,070
PA	Allegheny County, buses	247,579
PA	Altoona bus testing facility	2,970,946
PA	Bethlehem intermodal facility	1,485,472
PA	Bradford County, buses and bus facilities	346,316
PA	Bucks County, intermodal facility improvements	1,237,894
PA	Cambria County Transit Authority, maintenance facilities	742,736
PA	Fayette County, maintenance facilities	495,157
PA	Indiana, maintenance facilities	346,910
PA	Lancaster, buses	990,316
PA	Lycoming County, buses and bus facilities	1,980,630
PA	Monroe County, buses and bus facilities	990,316
PA	Phoenixville, transit related improvements	1,237,894
PA	Somerset County, ITS related equipment	99,032
PA	Wilkes-Barre intermodal transportation center	990,316
PA	Area Transit Authority, ITS related activities	1,782,887
SC	Statewide, buses and bus facilities	5,610,361
TN	*Southern Coalition for Advanced Transportation, buses*	*1,906,639*
TN	Statewide, buses and bus facilities	3,961,289
TX	Brazos Transit District, buses	495,157
TX	Corpus Christi, buses and bus facilities	990,316
TX	Forth Worth, buses and bus facilities	2,970,946
TX	Galveston, buses and bus facilities	247,579
TX	Harris County, buses and bus facilities	1,980,630
TX	Houston Metro, Main Street Transit Corridor improvements	990,316
TX	Lubbock, buses and bus facilities	990,316
TX	Texas Rural Transit Vehicle Fleet Replacement Program	3,961,289
TX	Waco, maintenance facility	1,634,019
VA	Charlottesville bus and bus facilities	978,946
VA	Danville bus replacement	86,727
VA	Fair Lakes League	499,023
VA	Fairfax County Transportation Association of Greater Springfield	499,023
VA	Falls Church Bus Rapid Transit Terminus	978,946
VA	Hampton Roads bus and bus facilities	2,446,113
VA	Jamestown/Yorktown and Williamsburg CNG bus	1,467,067
VA	City of Richmond bus and bus facilities	1,966,000
VA	Springfield station improvements	499,023
VT	Bellows Falls Multimodal	1,486,472
VT	Brattleboro multimodal center	2,476,786
VT	Burlington multimodal transportation center	1,486,472
VT	Chittenden County transportation authority	990,316
VT	Central Vermont Transit Authority buses and bus facilities	1,486,472
VT	Vermont Statewide paratransit	1,486,472
WA	Clallam County, transportation center	495,157
WA	Clark County, intermodal facilities	990,316
WA	Ephrata, buses	436,738
WA	Everett, buses	1,486,472
WA	King County Metro Eastgate Park and Ride	2,970,946
WA	King County Metro transit bus and bus facilities	1,980,630

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TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
WA	Renton/Port Quendall transit project	496,167
WA	Richland, bus maintenance facility	998,316
WA	Snohomish County, buses and bus facilities	998,316
WA	Thurston County, bus-related equipment	1,237,894
WV	Statewide buses and bus facilities	1,988,630
WY	Cheyenne transit and operation facility	911,089
	Subtotal FY 2001 Unobligated Allocations	*$356,327,950*
	TOTAL UNOBLIGATED ALLOCATIONS	$477,599,390

Fiscal Years 1998 and 1999 Extended Allocations

AL	*Pritchard, bus and bus facilities*	*$496,250*
AL	*Tuscaloosa Intermodal center*	*1,935,375* a/
CA	*Folsom, multimodal center*	*992,500*
DC	*Washington, D.C., intermodal center*	*2,481,250*
MO	*St. Louis, Bi-state intermodal center*	*1,240,625*
NY	*Buffalo, auditorium intermodal center*	*2,977,000*
PA	*Chambersburg, intermodal facility and transit vehicles*	*913,100*
PA	*Fayette County, buses*	*225,475*
PA	*Red Rose, transit bus terminal*	*992,500*
PA	*Somerset County, bus facilities and buses*	*173,688*
PA	*Towamencin Township, intermodal bus transportation center*	*1,488,750*
PA	*Wilkes-Barre, intermodal facility*	*1,465,794*
PA	*Wilkes-Barre, intermodal facility*	*1,240,625*
	Total Extended Allocations	*$16,622,932* g/

a/ The provision at Section 2901(b) of Conference Report 107-48 "Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2001, and for Other Purposes" amended this project by changing the name from "Northern New Mexico Transit Express/Park and Ride buses" to "Northern New Mexico park and ride facilities and State of New Mexico, Buses and Bus Related Facilities".

b/ The provision at Section 368 of the FY 2002 DOT Appropriations Act directs that funds made available to the southern coalition for advanced transportation (SCAT) in the FY 2000 and FY 2001 DOT Appropriations Acts (Pub. L. 106-69 and 106-346) that remain unobligated shall be transferred to Transit Planning and Research and made available to the electric transit vehicle institute (ETVI) in Tennessee for research administered under the provisions of 49 U.S.C. 5312. FTA will transfer these funds during FY 2002.

c/ The provision at Section 372 of the FY 2002 DOT Appropriations Act amended this project by changing the name from "Killington-Sherburne satellite bus facility" to "Marble Valley Regional Transit District Buses".

d/ The provision at Section 361 of the FY 2002 DOT Appropriations Act amends Section 3030(d)(3) of Public Law 105-178 by adding Alabama State Docks intermodal passenger and freight facility to the intermodal centers eligible for funding under section 5309(m)(1)(C) notwithstanding any other provision of law.

e/ Conference Report 107-48 "Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2001, and for Other Purposes" directs that FTA not reallocate funds provided in the FY 1999 DOT Appropriations Act for this project and that the funds are extended for one additional year. Funds for this project will lapse September 30, 2002.

f/ Period of availability for remaining unobligated funds extended one additional year and will lapse September 30, 2002. Projects extended in the FY 2002 Conference Report whose funds were obligated as of September 30, 2001 are not listed.

FEDERAL TRANSIT ADMINISTRATION

TABLE 10

FY 2002 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
AK	Kenai Peninsula Transit Planning, Alaska	$500,000
AK	MASCOT Matanuska, Susitna Valley, Alaska	200,000
AK	Seward Transit Service, Alaska	200,000
AL	Jefferson County, Alabama	2,000,000
AL	Tuscaloosa, Alabama disabilities advocacy program	1,000,000
AR	Central Arkansas Transit Authority	500,000
AZ	Maricopa County, Arizona	1,200,000
CA	AC Transit, California	2,000,000
CA	Del Norte County, California	700,000
CA	Los Angeles, California	2,000,000
CA	Metropolitan Transportation Commission LIFT Program, California	3,000,000
CA	Sacramento, California	2,000,000
CA	Santa Clara County, California	800,000
CT	State of Connecticut	3,500,000
DE	Delaware Department of Transportation	750,000
DC	Community Transportation Association of America	625,000
DC	Georgetown Metro Connection	1,000,000
DC	Washington Area Metropolitan Transit Authority	2,500,000
FL	Jacksonville Transportation Authority's Choice Ride Program	1,000,000
FL	Hillsborough Area Regional Transit, Tampa, Florida	900,000
FL	Palm Beach County, Florida	500,000
FL	State of Florida, Choice Ride program	1,000,000
GA	Atlanta Regional Commission, Georgia	1,000,000
GA	Chatham, Georgia	1,000,000
GA	Macon-Bibb County, Georgia	400,000
ID	State of Idaho	300,000
IA	State of Iowa	1,700,000
IL	Bloomington to Normal, Illinois, Wheels to Work	500,000
IL	DuPage County, Illinois	500,000
IL	Pace, Illinois suburban buses	561,000
IL	Springfield, Illinois Transportation to employment and self-sufficiency	250,000
IN	Indianapolis Public Transportation Corporation, Indiana (Indyflex)	1,000,000
KS	Topeka, Kansas Metropolitan Transit Authority	600,000
KS	Wichita, Kansas Transit	1,450,000
KS	Wyandotte County/Kansas City, Kansas	1,000,000
LA	Baton Rouge, Louisiana Ways to Work	750,000
MA	Northern Tier Dial-A-Ride, Massachusetts	400,000
MA	Southeastern Massachusetts Regional Transit Authority	100,000
MA	Worchester, Massachusetts	400,000
MD	State of Maryland	5,000,000
MI	Flint, Michigan Mass Transportation Authority	1,000,000
MN	Minneapolis/St. Paul, Minnesota	1,000,000
MO	Metropolitan Kansas City, Missouri	1,000,000
MO	Southeast Missouri Council, Missouri	1,200,000
MO	Workforce Investment Board of Southeast Missouri	900,000

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TABLE 10

FY 2002 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
MO	Workforce Investment Board of Southwest Missouri	$600,000
NM	New Mexico State Highway and Transportation Department	2,000,000
NM	Santa Fe, New Mexico	630,000
NV	State of Nevada	300,000
NJ	State of New Jersey	3,000,000
NY	Broome County, New York Transit	500,000
NY	Columbia County, New York	100,000
NY	Genesee-Rochester Regional Transportation Authority, New York	400,000
NY	New York Metropolitan Area Transportation Authority	1,900,000
NY	Sullivan County, New York	400,000
NY	Westchester County, New York	1,000,000
NC	Buncombe County, North Carolina	100,000
NC	Charlotte Area Transit, North Carolina	500,000
ND	Oglala Sioux Tribe, North Dakota	150,000
OH	Central Ohio Transit Authority	1,000,000
OH	Ohio Ways to Work	1,500,000
OH	State of Ohio	1,500,000
OK	Oklahoma Transit Association	5,000,000
OR	Salem Area Transit, Oregon	700,000
OR	Tri-Met Region, Oregon	1,900,000
PA	Lancaster County, Pennsylvania	198,000
PA	Lehigh and Northampton Transportation Authority, Pennsylvania	250,000
PA	Pennsylvania Ways to Work Program	1,500,000
PA	Pittsburgh, Pennsylvania	2,000,000
PA	Port Authority of Allegheny County	2,000,000
PA	Red Rose Transit, Pennsylvania	200,000
PA	SEPTA, Philadelphia, Pennsylvania	6,000,000
PA	State of Pennsylvania	1,500,000
RI	State of Rhode Island	2,000,000
TN	Chattanooga, Tennessee	500,000
TN	State of Tennessee	4,500,000
TN	Tennessee small rural systems	1,000,000
TX	Austin, Texas	500,000
TX	Abilene Texas Chilink Program	150,000
TX	Corpus Christi, Texas	550,000
TX	Galveston, Texas	600,000
VA	Charlottesville, Virginia Jefferson Area United Transportation	375,000
VA	Winchester, Virginia	1,000,000
VT	Burlington Community Land Trust/Good New Garage	850,000
WA	State of Washington	3,000,000
WA	WorkFirst Transportation Initiative, State of Washington	3,000,000
WV	State of West Virginia	800,000
WI	State of Wisconsin	5,200,000
	TOTAL ALLOCATIONS	$100,330,000

FEDERAL TRANSIT ADMINISTRATION

Table 11

FY 2002 NATIONAL PLANNING AND RESEARCH PROGRAM ALLOCATIONS

STATE	PROJECT	ALLOCATION
AL	Center for Composites Manufacturing	$900,000
CA	CALSTART (BRT and Mobility.dot.com)	2,500,000
CA	Santa Barbara Electric Transportation Institute	400,000
FL	University of South Florida rapid bus initiative	250,000
GA	Georgia Regional Transportation Authority/Southern California Association of Governments transit trip planning partnership	400,000
MN	Hennepin County community transportation	1,000,000
MO	Missouri Soybean Association biodiesel transit demo	750,000
ND	North Dakota State University transit center for small urban areas	400,000
MI	Southeast Michigan transportation feasibility study	500,000
NY	Long Island, NY City links study	250,000
TN	Electric Vehicle Institute	500,000
VA	Crystal City-Potomac Yard transit alternatives	250,000
WA	Washington State WestStart innovative transit vehicle	2,000,000
WV	West Virginia transit vehicle exhaust emissions evaluation	1,400,000
——	Joblinks	1,000,000
——	Project ACTION (TEA-21)	3,000,000
	TOTAL ALLOCATIONS	$15,500,000

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FEDERAL TRANSIT ADMINISTRATION

TABLE 12

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,296,852,727	$2,648,190,791	$2,772,890,281	$2,997,316,081	$3,220,601,506	$3,445,939,606	$17,283,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,500,000	43,841,600	49,632,000	52,113,600	55,422,400	60,385,600	300,895,200
State Planning & Research (Section 5313(b))	8,250,000	9,158,400	10,368,000	10,886,400	11,577,600	12,614,400	62,854,800
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	48,738,000	64,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	$4,643,738,000	$5,315,000,000	$5,797,000,000	$6,271,000,000	$6,747,000,000	$7,226,000,000	$35,999,738,000

– Fiscal Years 1998-2003 funding for the Clean Fuels Program established under TEA-21 equals $100,000,000. $50,000,000 is shown under the Clean Fuels Program (Section 5308) and $50,000,000 is included under the Bus and Bus Related (Section 5309).

FEDERAL TRANSIT ADMINISTRATION

TABLE 12A

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,296,852,727	$2,696,190,791	$2,922,890,281	$3,147,316,081	$3,370,601,506	$3,595,939,606	$18,033,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,302,800,000	1,380,400,000	1,458,400,000	1,536,400,000	1,844,400,000	8,182,400,000
Job Access and Reverse Commute Program	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,500,000	70,312,000	78,929,600	80,238,400	84,374,400	90,184,800	441,519,200
State Planning & Research (Section 5313(b))	8,250,000	14,688,000	16,070,400	16,761,600	17,635,600	18,835,200	92,236,800
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	48,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
TOTAL FUNDING ALL PROGRAMS:	$4,643,738,000	$6,341,000,000	$6,810,000,000	$7,274,000,000	$7,737,000,000	$8,194,000,000	$40,999,738,000

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FEDERAL TRANSIT ADMINISTRATION

TABLE 13

FY 2001 APPORTIONMENT FORMULA FOR FORMULA PROGRAM

Percent of Formula Funds Available

Section 5310: 2.4% States - allocated to states based on state's population of elderly and persons with disabilities

Section 5311: 6.37% Nonurbanized Areas - allocated to states based on state's nonurbanized area population

Section 5307: 91.23% Urbanized Areas (UZA)

UZA Population and Weighting Factors

50,000-199,000 in population: 9.32% of available Section 5307 funds
(Apportioned to Governors)
50% apportioned based on population
50% apportioned based on population x population density

200,000 and greater in population: 90.68% of available Section 5307 funds
(Apportioned to UZAs)
33.28% (Fixed Guideway Tier*)
95.61% (Non-incentive Portion of Tier)
— at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
80% - fixed guideway revenue vehicle miles
40% - fixed guideway route miles

4.39% ("Incentive" Portion of Tier)
– at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
– fixed guideway passenger miles x fixed guideway passenger miles/operating cost

66.71% ("Bus" Tier)
90.8% (Non-incentive Portion of Tier)
73.39% for UZAs with population 1,000,000 or greater
50% - bus revenue vehicle miles
25% - population
25% - population x population density
26.61% for UZAs pop. < 1,000,000
50% - bus revenue vehicle miles
25% - population
25% - population x density
9.2% ("Incentive" Portion of Tier)
– bus passenger miles x bus passenger miles/operating cost

*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

FEDERAL TRANSIT ADMINISTRATION

TABLE 14

FY 1998 - 2003 SECTION 5309 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,862,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1; Tier 2(B): 50 percent is allocated to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $185,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 15

FISCAL YEAR 2002 FORMULA GRANT APPORTIONMENTS - UNIT VALUES OF DATA

	APPORTIONMENT UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier	
Urbanized Areas Over 1,000,000:	
Population	$3.39166136
Population x Density	$0.00086987
Bus Revenue Vehicle Mile	$0.41804338
Urbanized Areas Under 1,000,000:	
Population	$3.08502342
Population x Density	$0.00134983
Bus Revenue Vehicle Mile	$0.49602152
Bus Incentive (PM denotes Passenger Mile):	
Bus PM x Bus PM = / Operating Cost	$0.00568461
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier	
Fixed Guideway Revenue Vehicle Mile	$0.57872824
Fixed Guideway Route Mile	$32,394
Commuter Rail Floor $6,942,181	
Fixed Guideway Incentive:	
Fixed Guideway PM x Fixed Guideway PM = / Operating Cost	$0.00046828
Commuter Rail Incentive Floor $318,756	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000	
Population	$5.53721696
Population x Density	$0.00276693
Section 5311 Nonurbanized Area Formula Program	
Areas Under 50,000	
Population	$2.45758671

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:						
Revenue Vehicle Mile	$0.63643443	—	$1.13683131	$0.83791143	$0.82446314	$0.89679444
Route Mile	$2,122.43	—	$7,932.62	$2,778.71	$1,832.12	$7,267.86
Other Urbanized Areas:						
Revenue Vehicle Mile	$0.16377369	$0.89679369	$1.13683131	$0.11258332	$0.89189928	$0.54666114
Route Mile	$4,772.78	$169.53	$7,932.62	$3,125.00	$2,551.51	$15,199.74

Federal Register

Wednesday,
January 2, 2002

Part III

Department of Transportation

Federal Transit Administration

Fiscal Year 2002 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2002 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the Federal Fiscal Year 2002 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2002, as required by 49 U.S.C. 5323(n).

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact the Office of Public Affairs, Federal Transit Administration (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts Telephone # 617–494–2055.

Region 2: New York

States served: New York, New Jersey, and Virgin Islands Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia Telephone # 215–656–7100.

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico Telephone # 404–562–3500.

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico Telephone # 817–978–0550.

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota, Telephone # 303–844–3242.

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska Telephone # 206–220–7954.

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must provide to FTA all certifications and assurances pertaining to itself or its project as required by Federal laws and regulations. The requisite certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2002 cover all projects for which the Applicant seeks funding during that fiscal year. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect either for the life of the grant or cooperative agreement to closeout, or for the life of the project or project property when a useful life or industry standard life is in effect, whichever occurs later; except, however, if in a later year, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, except as FTA otherwise permits.

Background

Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into a single document. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2002 Changes

The following changes have been made:

(1) In Certification 1.)(18), a reference to the latest OMB A–133 Compliance Supplement provisions for the Department of Transportation, dated March 2001 has been substituted for the previous compliance supplement.

(2) In Certification 10, new FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655, replace FTA's former separate drug and alcohol regulations.

(3) A new Intelligent Transportation Systems Program Assurance, (Number 12) has been added to cover the provisions of Section VII of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 FR 1455 *et seq.*, January 8, 2001. Accordingly, former Certifications 12, 13, 14, and 15 have been renumbered 13, 14, 15, and 16.

(4) In Certification 16, a reference to Federal guidance was substituted for the reference to FTA guidelines because it is unlikely that FTA will issue State Infrastructure Bank guidelines.

Text of Federal Fiscal Year 2002 Certifications and Assurances

A detailed compilation of the provisions of the Certifications and Assurances and the Signature Page as set forth in Appendix A of this Notice, also appears in the "Cert's & Assurances" tab page of FTA's electronic award and management system. It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories contained in this Notice, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2002; do not rely on the statements within certifications and assurances appearing in circulars.

Significance of Certifications and Assurances

Selecting and submitting certifications and assurances to FTA, either through FTA's electronic award and management system or submission of the Signature Page of Appendix A, signifies the Applicant's intent to comply with the requirements of those certifications and assurances to the extent they apply to a program for which the Applicant submits an application for assistance in Federal Fiscal Year 2002.

Requirement for Attorney's Signature

FTA requires a current (Federal Fiscal Year 2002) attorney's affirmation of the Applicant's legal authority to certify compliance with the funding obligations in this document. Irrespective of whether the Applicant chooses to make a single selection for all 16 categories or select individual options from the 16 categories, the attorney's signature from a previous year is not acceptable.

Deadline for Submission

All Applicants for FTA capital investment program or formula program assistance, and current grantees with an active project financed with FTA capital investment program or formula program assistance, are expected to provide Federal Fiscal Year 2002 Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 2002, whichever is first. Other Applicants are encouraged to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission

FTA has expanded the use of the electronic programs for Applicants, first introduced in 1995. FTA expects Applicants registered in FTA's electronic award and management system to submit their applications as well as certifications and assurances electronically through FTA's electronic award and management system. Only if an Applicant is unable to submit its certifications and assurances through FTA's electronic award and management system should the Applicant use the Signature Page form in Appendix A of this Notice.

Procedures for Electronic Submission

The "Cert's & Assurances" tab page of FTA's electronic award and management system contain fields for selecting the certifications and assurances to be submitted. Within that tab page are fields for the Applicant's authorized representative and its attorney to enter their personal identification numbers (PINs), and thus "sign" the certifications and assurances for electronic transmission to FTA. In certain circumstances, the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice or the Helpdesk for FTA's electronic award and management system for more information.

Procedures for Paper Submission

The following procedures apply to an Applicant that is unable to submit its certifications electronically. The Applicant must mark the certifications and assurances it is making on the Signature Page form in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space at the top of the Signature Selection Page in Appendix A. In certain circumstances, the Applicant may certify in lieu of the signature of its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice for more information.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Dated: December 21, 2001.

Jennifer L. Dorn,

Administrator.

BILLING CODE 4910–57–P

Appendix A

Federal Fiscal Year 2002 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many certifications and assurances as needed to cover all programs for which it will seek FTA assistance in Federal Year 2002. FTA strongly encourages the Applicant to submit its certifications and assurances through FTA's electronic award and management system.

The 16 Categories of certifications and assurances are listed by numbers 1 through 16 on the Cert's & Assurances tab page of the FTA electronic award and management system and on the opposite side of the Signature Page at the end of this document. Categories 2 through 16 will apply to some, but not all, applicants. The designation of the 16 categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements.

1. Certifications and Assurances Required of Each Applicant

Each Applicant for FTA assistance awarded must provide all certifications and assurances in this Category "1." FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category "1."

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices might be modified from time to time and they may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more

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public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR part 29, Subpart F, and as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employee about:

(a) The dangers of drug abuse in the workplace;

(b) Its policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement; and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate state and local agencies in accordance with applicable state requirements. The Applicant also assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients", and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, will be incorporated by reference and made part of the grant agreement or cooperative agreement for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the Recipient, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to

participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and FTA third party contracting regulations when promulgated, as well as other requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications Required by the U.S. Office of Management and Budget (SF–424B and SF–424D)

A required by the U.S. Office of Management and Budget (OMB), the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply, or has compiled, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be found by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements;

(8) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801,

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which prohibits the use of lead-based paint in construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscriminating during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with 49 CFR part 41 seismic design and construction requirements;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303;

(j) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems; and

(k) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*;

(15) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance and DOT regulations, "Protection of Human Subjects," 49 CFR part 11;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance;

(18) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, March 2001"; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

2. Lobbying Certification for an Application Exceeding $100,000:

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category "2."

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Certification pertaining To The Effects of The Project on Private Mass Transportation Companies

A State or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property of or an interest therein of a private mass transportation company or to operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category "3."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

4. Public Hearing Certification For a Capital Project That Will Substantially Affect A Community or Its Transit Service

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or the community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category "4."

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

5. Certification of Pre-Award And Post-Delivery Reviews Required For Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting Category "5."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subpart B, C, and D.

6. Bus Testing Certification Required For New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category "6."

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

7. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities financed with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. must enter into the following charter service agreement. FTA may not provide assistance for projects authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. until the Applicant enters into this agreement by selecting Category "7."

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment of facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

8. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment using Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category "8."

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operation," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and implementing regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

9. Certification Required for the Direct Award of FTA Assistance to an Applicant for Its Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category "9."

As required by U.S. DOT regulation, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Prevention of Alcohol Misuse and Prohibited Drug Use Certification

If the Applicant is required by Federal regulations to provide the following certification concerning its activities to prevent alcohol misuse of prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "10."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 665, subpart I, the Applicant certifies that it has established and implemented an anti-drug and alcohol misuse program, and has complied with or will comply with applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 665.

11. Certification Required For Interest or Other Financing Costs

An Applicant that intends to request reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selection Category "11."

As required by 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs until its records demonstrate it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA might require.

12. Intelligent Transportation System Program Assurance

An Applicant for FTA assistance for an Intelligence Transportation System Project (ITS Project), defined as any project that in

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whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture," must provide the following assurance. FTA may not award any Federal assistance until the Applicant provides this assurance by selecting Category "12."

In compliance with Section VII of FTA Notice, "FTA National ITs Architecture Policy on Transit Projects," at 66 FR 1459, January 8, 2001, in the course of implementing an ITS Project, the Applicant assures that it will comply, and require its third party contractors and subrecipients to comply, with all applicable requirements imposed by Section V (Regional ITS Architecture) and Section VI (Project Implementation) of that Notice.

13. Certifications and Assurances For The Urbanized Area Formula Program, The Job Access and Reverse Commute Program and The Clean Fuels Formula Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for the Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance, the Job Access and Reverse Commute Program assistance, or the Clean Fuels Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Category "13." A state or other Applicant providing certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

In addition, each Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1) must include within its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects carried out during the preceding Federal fiscal year with those Transit Enhancement funds. That list constitutes the report of transit projects carried out during the preceding fiscal year to be submitted as part of the Applicant's annual certifications and assurances, as required by 49 U.S.C. 5307(k)(3), and is thus incorporated by reference and made part of that Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and that report contains the requisite list.

A. Certifications Required by Statute

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It will adequately maintain the equipment and facilities;

(c) It will ensure that elderly or handicapped persons, or any person presenting a Medicare card issued to himself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(d) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, or the Job Access and Reverse Commute Program at section 3037 of TEA–21, 49 U.S.C. 5309 note, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(e) It has complied or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it has made available, or before submitting its application, it will make available: (1) to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposed to undertake with those funds; (2) in consultation with interested parties including private transportation providers, develop a proposed program of projects for activities to be financed; (3) publish a proposed program of projects in a way that affected citizens, private transportation providers and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (5) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (7) make the final program of projects available to the public;

(f) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(g) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts for designing and providing mass transportation for the elderly and persons with disabilities);

(h) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(i) As required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of projects implemented in the preceding Federal fiscal year using Transit Enhancement funds, and that report is made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," at 49 CFR 639.15(b)(1) and 49 CFR 639.21, to the extent the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

D. Clean Fuels Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that, in connection with any application for assistance authorized for the Clean Fuels Formula Program, vehicles purchased with grant funds made available for 49 U.S.C. 5308 will be operated only with clean fuels.

14. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category "14."

The Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formula approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

G. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that each subrecipient has:

(1) Coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(2) Complied or will comply with all applicable civil rights requirements;

(3) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(4) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(5) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(6) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(c), if it purchases non-accessible vehicles for use in demand responsive service for the general public;

(7) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue;

(8) Complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(9) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(10) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(11) Complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(12) Complied or will comply with all applicable bus testing requirements for new bus models;

(13) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(14) Complied or will comply with all applicable pre-award and post-delivery review requirements.

H. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FT regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

I. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

J. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also knowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories "1" through 11" and "15."

The Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assurances that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

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C. The state assures that before issuing the state's formal approval of the project, its Nonurbenized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assure, on behalf of each subrecipient, that each subrecipient has:

(1) Coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(2) Complied or will comply with all applicable civil rights requirements;

(3) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(4) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(5) Complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbenized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(6) Complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(7) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(8) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(C), if it purchases non-accessible vehicles for use in demand responsive service for the general public;

(9) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue;

(10) Complied or will comply with the requirement that its project provides for the participation of private enterprise to the maximum extent feasible;

(11) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(12) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(13) Complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(14) Complied or will comply with all applicable bus testing requirements for new bus models;

(15) Complied or will comply with all applicable pre-award and post-delivery review requirements;

(16) Complied with or will comply with all assurances FTA requires for projects involving real property;

(17) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(18) Complied with, or to the extent required by FTA will comply with, applicable anti-drug and alcohol program requirements.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

G. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipient to assure compliance with applicable Federal requirements.

I. As required by 49 U.S.C. 5311(f), the state will expend not less than fifteen (15) percent of the Federal assistance authorized for 49 U.S.C. 5311(f) and apportioned during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

16. Certifications and Assurances for the State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in the State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the State Infrastructure Bank program to the Applicant until the Applicant provides these certifications and assurances by selecting Categories "1" through 11," and "16."

The state serving as the Applicant for Federal assistance for the Transit Account of its State Infrastructure Bank (SIB) program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with the:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) Provisions of any applicable Federal guidance that may be issued;

(3) Terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) Provisions of FHWA and FTA cooperative agreement with the state to establish the state's SIB program; and

(5) Provisions of the FTA grant agreement with the state that obligating Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, and Federal guidance on SIBs, the provisions of the cooperative agreement establishing the SIB program within the state, or the text within the FTA grant agreement.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of assistance under the SIB with all applicable requirements for the SIB program, as those requirements may be amended from time and time. Pursuant to the requirements of subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, applicants for assistance authorized by the state Infrastructure Bank Pilot Program agree that previous cooperative agreements entered into with states under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, will be revised to comply with new requirements.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state recognizes that the SIB, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient under which Federal assistance will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB and each subrecipient, the state assures, on behalf of each subrecipient, that each subrecipient has:

(1) Complied or will comply with all applicable civil rights requirements;

(2) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(3) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) Complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) Complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(c), if it purchases non-accessible vehicle for use in demand responsive service for the general public;

(8) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue;

(9) Complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) Complied or will comply with all nonprocurement suspension and debarment requirements;

(13) Complied with or will comply with all applicable bus testing requirements for new bus models;

(14) Complied with or will comply with all applicable pre-award and post-delivery review requirements;

(15) Complied with or will comply with all assurances FTA requires for projects involving real property;

(16) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(17) Complied with, or to the extent required by FTA will comply with, applicable anti-drug and alcohol program requirements.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

Selection and Signature Pages follow.

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Appendix A

FEDERAL FY 2002 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE
(Alternative to Electronic Filing)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 1 - 16. ____
(The Applicant may make this selection in lieu of individual selections below.)
OR
The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

1. Certifications and Assurances Required of Each Applicant. ____
2. Lobbying Certification ____
3. Certification Pertaining to Effects on Private Mass Transportation Companies ____
4. Public Hearing Certification for a Project with Substantial Impacts ____
5. Certification for the Purchase of Rolling Stock ____
6. Bus Testing Certification. ____
7. Charter Service Agreement. ____
8. School Transportation Agreement. ____
9. Certification for Demand Responsive Service ____
10 Prevention of Alcohol Misuse and Prohibited Drug Use Certification ____
11 Certification Required for Interest and Other Financing Costs ____
12. Intelligent Transportation Systems Program Assurance ____
13. Certifications and Assurances for the Urbanized Area Formula Program, the Job Access and Reverse Commute Program, and the Clean Fuels Formula Program ____
14. Certifications and Assurances for the Elderly and Persons with Disabilities Program ____
15. Certifications and Assurances for the Nonurbanized Area Formula Program ____
16. Certifications and Assurances for the State Infrastructure Bank (SIB) Program ____

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2002 FTA CERTIFICATIONS AND ASSURANCES
(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2002.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2002.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____
Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____
Name_____
Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

[FR Doc. 01–32118 Filed 12–31–01; 8:45 am]
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Federal Register

Wednesday,
January 2, 2002

Part IV

Department of Veterans Affairs

38 CFR Parts 3, 17, and 21
Monetary Allowance Payments, Health Care, and Vocational Training for Certain Children of Vietnam Veterans; Proposed Rules

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK67

Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement recent legislation. In addition, the proposed rule would amend the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions. Companion documents concerning the provision of health care (RIN 2900–AK88) and vocational training benefits (RIN 2900–AK90) for eligible children of Vietnam veterans are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK67." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, amends chapter 18 of title 38, United States Code, effective December 1, 2001, to authorize VA to provide certain benefits, including a monthly monetary allowance, for children with covered birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era. This document proposes to amend existing VA adjudication regulations and to add § 3.815 to title 38, Code of Federal Regulations, to implement this new authority.

Effective December 1, 2001, 38 U.S.C. 1823 provides that receipt of this allowance shall not affect the right of the child, or the right of any individual, based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally-assisted program. We propose to amend 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs.

We also propose to amend 38 CFR 3.27, 3.29, 3.31, 3.105, 3.114, 3.158, 3.216, 3.403, 3.500, and 3.503 so that regulations applying to adjustment of benefit rates, rounding of dollar figures of the monthly payment, commencement of the period of payment, revision of decisions, mandatory disclosure of social security numbers, abandonment of claims, and effective date of the award and of reductions and discontinuances, apply to these benefits.

Further, we propose to make non-substantive changes to 38 CFR 3.814 concerning the monetary allowance for individuals with spina bifida to reflect section 401 of Public Law 106–419, to make conforming changes, and to remove unnecessary or obsolete provisions.

In addition, we propose to make changes for purposes of clarity in § 3.814 and in other provisions mentioned above.

Until December 1, 2001, 38 U.S.C. chapter 18 is titled "Benefits for Children of Vietnam Veterans Who Are Born with Spina Bifida." It provides benefits for the children of Vietnam veterans on the basis of a report by the Institute of Medicine (IOM) of the National Academy of Sciences called "Veterans and Agent Orange: Update 1996," in which the IOM noted what it considered "limited/suggestive evidence of an association" between herbicide exposure and spina bifida in the offspring of Vietnam veterans. Effective December 1, 2001, 38 U.S.C. chapter 18 is retitled "Benefits for Children of Vietnam Veterans." Statutory provisions that have been in 38 U.S.C. chapter 18 concerning benefits for individuals with spina bifida who are children of Vietnam veterans are amended effective December 1, 2001, to be in subchapter I of chapter 18, renamed "Children of Vietnam Veterans Born with Spina Bifida." Subchapter II is added effective December 1, 2001, to chapter 18 and is titled "Children of Women Vietnam Veterans Born with Certain Birth Defects." Subchapter III is added effective December 1, 2001, to chapter 18 and is titled "General Provisions." That new subchapter contains provisions applicable to both categories of individuals.

The new statutory provisions, primarily 38 U.S.C. 1815, authorize VA to provide a monetary allowance for an individual with disability resulting from one or more covered birth defects who is a child of a woman Vietnam veteran. The statute is based on the results of a comprehensive health study by VA of 8,280 women Vietnam-era veterans (half of whom served in the Republic of Vietnam and half of whom served elsewhere) that was mandated by Public Law 99–272. The study, completed in October 1998, and titled "Women Vietnam Veterans Reproductive Outcomes Health Study" (VA study), was conducted by the Environmental Epidemiology Service of the Veterans Health Administration of the Department of Veterans Affairs. For purposes of satisfying the basic statistical requirement of independence of observations (i.e., in this study one pregnancy per woman), the VA study selected the first pregnancy after entrance date to Vietnam service, for women Vietnam veterans, as the "index pregnancy." For the non-Vietnam group, the index pregnancy was defined as the first pregnancy after July 4, 1965. The VA study defined "likely" birth defects as congenital anomalies and included structural, functional, metabolic, and hereditary defects. It excluded developmental disorders, perinatal complications, miscellaneous pediatric illnesses, and conditions that were not classifiable. A report of part of the VA study, "Pregnancy Outcomes Among U.S. Women Vietnam Veterans" (Pregnancy Outcomes report), was published in the American Journal of Industrial Medicine (38:447–454 (2000)).

As provided in 38 U.S.C. 1815(c), the amount of the monthly monetary allowance payable to an individual with disability resulting from covered birth defects will be: For the lowest level of disability (Level I), $100; for the lower intermediate level of disability (Level II), the greater of $214 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the lowest level of disability prescribed for an individual with spina bifida who is the child of a Vietnam veteran; for the higher intermediate level of disability (Level III), the greater of $743 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the intermediate level; for the highest level of disability (Level IV), the greater of $1272 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the highest level of disability.

We propose to amend 38 CFR 3.27, "Automatic adjustment of benefit rates" to reflect the amendments to 38 U.S.C. chapter 18. Under the provisions of 38 U.S.C. 1805(b)(3) and 1815(d), these amounts are subject to adjustment under the provisions of 38 U.S.C. 5312, which provide for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

We propose to amend the provisions of 38 CFR 3.29, "Rounding" to apply to increases in the monthly monetary amounts payable under 38 U.S.C. 1815. Whenever rates are increased under the provisions of 38 U.S.C. 5312, the Secretary may, under section 5312(c)(2), round those rates in such manner as the Secretary considers equitable and appropriate. The Secretary has determined that it is equitable and that, for ease of administration, it is appropriate to round up rate increases concerning the covered birth defects monetary benefit, as they are for the spina bifida monetary benefits. The proposed rule will amend § 3.29 accordingly.

We also propose to revise 38 CFR 3.31, "Commencement of the period of payment"; 38 CFR 3.114, "Change of law or Department of Veterans Affairs issue"; and 38 CFR 3.216, "Mandatory disclosure of social security numbers" to reflect that these provisions also apply to an individual with covered birth defects who is the child of a woman Vietnam veteran. All these provisions reflect statutory requirements.

Where a change in disability level warrants a reduction of the monetary allowance under 38 U.S.C. 1805 for individuals with spina bifida, the provisions of 38 CFR 3.105(g) direct VA to notify the beneficiary of the proposed reduction, allow the beneficiary 60 days to present evidence showing that the reduction should not occur, and provide that in the absence of such additional evidence the reduction will be effective the last day of the month following 60 days from the date of the notice. The proposed rule would expand the procedures to make them applicable to proposed reduction or discontinuance of any monetary allowance under 38 U.S.C. chapter 18. This reflects statutory requirements.

The provisions of 38 CFR 3.158 concern the circumstances under which VA will consider a claim abandoned. In view of the similarity between this benefit and other monetary benefits which VA administers, and in order to maintain consistency with respect to the administration of these benefits, we propose to apply these provisions to the monetary monthly allowance for individuals with covered birth defects, and we are proposing to amend 38 CFR 3.158 accordingly.

We propose to amend 38 CFR 3.403 by adding a new paragraph (c) to state that an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with covered birth defects who is a child of a woman Vietnam veteran will be the later of date of claim (or date of birth if a claim is received within one year of that date), the date entitlement arose, or December 1, 2001. This reflects statutory requirements.

VA is also proposing to amend 38 CFR 3.503 to specify that any monetary allowance under 38 U.S.C. chapter 18 will terminate the last day of the month before the month in which the death of a beneficiary occurs. This reflects statutory requirements.

VA is proposing to remove § 3.814(b), which sets forth an obsolete version of the "Application for Spina Bifida Benefits" form. The Office of Management and Budget has approved a revised version of the form.

We propose to add a new 38 CFR 3.815 to implement the provisions of 38 U.S.C. 1811, 1812, 1815, and 1821, as well as other provisions of 38 U.S.C. chapter 18, subchapters II and III. While § 3.815 primarily contains provisions concerning payment of monetary benefits, some of the proposed provisions of § 3.815 (for example, concerning whether an individual has a "covered birth defect") also would be used to determine eligibility for health care under 38 U.S.C. 1813 and vocational training under 38 U.S.C. 1814. Companion documents concerning the provision of health care (RIN 2900–AK88) and vocational training (RIN 2900–AK90) for certain children of Vietnam veterans with covered birth defects or spina bifida are set forth in the Proposed Rules section of this issue of the **Federal Register**.

In accordance with the statutory framework, paragraph (a)(1) of proposed § 3.815 provides that VA will pay a monthly allowance, under subchapter II of 38 U.S.C. chapter 18, to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Paragraph (a)(1) further provides that, except as provided in paragraph (a)(3) of that section, the amount of the monetary allowance will be based on the level of disability suffered by an individual as determined in accordance with the provisions of paragraph (e), which sets forth criteria for evaluating levels of disability suffered by individuals with covered birth defects. Paragraph (a)(2) provides that no monetary allowance will be provided under this section to an individual based on disability from a particular birth defect in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of that veteran during the Vietnam era and that, in determining the level of disability, VA will not consider the particular defect in question. This will not prevent VA from paying a monetary allowance under subchapter II of 38 U.S.C. chapter 18 for any other birth defect for which affirmative evidence of another cause does not exist. We believe these provisions accord with the statutory intent of 38 U.S.C. 1812.

Paragraph (a)(3) of proposed § 3.815 provides that, in the case of an individual (as defined in § 3.815(c)(2)) whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under § 3.815, nor will the individual be evaluated for disability under § 3.815. Thus, the individual's disability would be evaluated under § 3.814 ("Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran") and the monetary allowance would be paid under the terms of that section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under § 3.815 and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for application of this paragraph, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section would be not less than Level II, III or, IV, respectively. These provisions

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reflect statutory requirements under 38 U.S.C. 1824(a) and our interpretation that Congress intended that the provisions of 38 U.S.C. 1824(a) are solely to provide for nonduplication of benefits between subchapters I and II, and are not intended in any other way to reduce the amount of monetary allowance that would be payable under 38 U.S.C. chapter 18 for an individual with spina bifida.

Paragraph (b) of proposed § 3.815 states, in accord with the statute, that receipt of the monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual with covered birth defects, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

Paragraph (c)(1) of proposed § 3.815 contains a definition of "Vietnam veteran" for purposes of that section. The term "Vietnam veteran" is defined to mean a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. This reflects the statutory provisions in 38 U.S.C. 1821(2) and 1821(3)(B). We also propose to provide for purposes of § 3.815 that "service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. This is consistent with the definition of *service in the Republic of Vietnam* that appears at 38 CFR 3.307(a)(6)(iii).

Paragraph (c)(2) of proposed § 3.815 defines "individual" for purposes of that section to mean a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Although 38 U.S.C. chapter 18 uses the terms "child" and "children," many of those entitled to this benefit are now adolescents or adults. This definition will make it clear that these regulations apply to eligible persons regardless of age. Paragraph (c)(2) also provides that to establish whether a person is the biological son or daughter of a Vietnam veteran, VA will require the types of evidence specified in 38 CFR 3.209 and 3.210.

A birth defect is defined by the March of Dimes organization as an abnormality of structure, function, or metabolism, whether genetically determined or a result of environmental influence during embryonic or fetal life (*http://www.modimes.org*). Similar definitions are used by other State, national, and international organizations. The VA study of women Vietnam veterans did not define the term "birth defects" but stated that it included structural, functional, metabolic, and hereditary defects. It also stated that the causes of most congenital anomalies are unknown and that a combination of genetic and environmental factors may contribute to 20–25% of anomalies.

In the VA study, "likely" birth defects, reported by women Vietnam veterans in their children, were divided by pediatricians who reviewed the mothers' descriptions of the defects into the following seven categories: chromosomal abnormality; multiple anomalies (except chromosomal and heritable genetic); isolated anomaly; congenital neoplasms; heritable genetic disease; undescribed isolated heart abnormality; and other poorly described defect (non-cardiac). The VA study stated that there is a notable lack of difference between the children of women Vietnam veterans and the children of women non-Vietnam veterans for classes of known genetic/heritable conditions (including congenital malignancies). In the children resulting from index pregnancies, there was one congenital malignancy in a child of a Vietnam veteran and one in a child of a non-Vietnam veteran; there were four cases of heritable genetic disease in each group of veterans; and there were three chromosomal abnormalities in children of Vietnam veterans and four in the children of non-Vietnam veterans. Thus, the VA study provides no evidence of an association between service in Vietnam and three of the seven categories (chromosomal abnormalities, congenital malignancies, and heritable genetic diseases). Since under 38 U.S.C. 1812(a)(1) VA has authority to identify birth defects of children of women Vietnam veterans as covered birth defects only if the birth defects "are associated with the service of those veterans in the Republic of Vietnam during the Vietnam era," we believe it would not be appropriate to identify these three categories of birth defects as covered birth defects. Other conditions reported by the mother as birth defects that were something else included developmental disorders, such as autism, and miscellaneous pediatric conditions, such as asthma.

In addition, the statute specifically excludes familial disorders, birth-related injuries, and fetal or neonatal infirmities with well-established causes from the category of covered birth defects.

Therefore, we propose in paragraph (c)(3) of § 3.815 to define the term "covered birth defect" for purposes of that section to mean:

> [A]ny birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:
> (i) Familial disorder;
> (ii) Birth-related injury; or
> (iii) Fetal or neonatal infirmity with well-established causes.

We believe that this definition reflects the intent of Congress with respect to provision of benefits for individuals under 38 U.S.C. chapter 18, subchapters II and III.

In paragraph (d) of proposed § 3.815, VA lists some, but not all, specific conditions that VA would identify or would not identify as covered birth defects. Paragraph (d)(1) contains a list, based on the VA study, of some, but not all, conditions that VA would consider to be covered birth defects, unless a condition is familial in a particular case. Each of paragraphs (d)(2) through (d)(8) contains a non-exclusive list of certain conditions that, for different reasons, VA would not consider to be covered birth defects. Because of the vast number of possible birth defects, and the fact that many are sometimes familial and sometimes not (when they arise de novo, or anew, in a particular individual), it is not practical to develop an exclusive or definitive list in proposed § 3.815(d). For example, achondroplasia and Marfan syndrome are sometimes familial and sometimes not. We propose to include achondroplasia in the list of covered birth defects because 75% of cases are due to gene mutation (*www.med.jhu.edu/Greenberg.Center/achon.htm*) rather than being familial, but it will not be a covered birth defect in any case where it is determined to be familial. On the other hand, Marfan syndrome is familial in two-thirds to three-quarters of cases (*www.marfan.org*), so we propose to exclude it as a covered birth defect, unless there is no indication that it is familial in a particular family, in which case it would not be excluded as familial.

Proposed § 3.815(d)(1) states that covered birth defects include, but are not limited to, the following (but that if a birth defect is determined to be familial in a particular family, it would not be a covered birth defect): achondroplasia, cleft lip and cleft palate, congenital heart disease, congenital talipes equinovarus (clubfoot), esophageal and intestinal atresia, Hallerman-Streiff syndrome, hip dysplasia, Hirschprung's disease (congenital megacolon), hydrocephalus due to aqueductal stenosis, hypospadias, imperforate anus, neural tube defects (including spina bifida, encephalocele, and anencephaly), Poland syndrome, pyloric stenosis, syndactyly (fused digits), tracheoesophageal fistula, undescended testicle, and Williams syndrome.

Familial, according to Dorland's Illustrated Medical Dictionary, 27th edition (1988), means occurring or affecting more members of a family than would be expected by chance. The category of familial disorders includes all heritable (that is, hereditary) genetic conditions, but not all genetic conditions, because a genetic mutation may arise for the first time during early development and not be hereditary. In that case, the parents would not have the genetic disorder, and the condition would not be familial.

Proposed § 3.815(d)(2) states generally that conditions that are familial disorders, including hereditary genetic conditions (as they are called in the VA study) are not covered birth defects. However, as proposed § 3.815(d)(2) also provides, if a birth defect is not familial in a particular family, VA would not consider it to be a familial disorder. (Thus, it would be a covered birth defect unless excluded under another provision of paragraph (d).) It states that familial disorders include, but are not limited to, the following, unless not familial in a particular family: albinism, alpha-antitrypsin deficiency, Crouzon syndrome, cystic fibrosis, Duchenne's muscular dystrophy, galactosemia, hemophilia, Huntington's disease, Hurler syndrome, Kartagener's syndrome (Primary Ciliary Dyskinesia), Marfan syndrome, neurofibromatosis, osteogenesis imperfecta, pectus excavatum, phenylketonuria, sickle cell disease, Tay-Sachs disease, thalassemia, and Wilson's disease (the VA study, The Merck Manual). These and other conditions, depending on the circumstances, may or may not be familial. For example, pectus excavatum is generally considered to be a familial birth defect but may also occur in the absence of a family history. Congenital blindness has some established causes, such as maternal rubella during pregnancy or metabolic disorders, but in other cases, it has no established cause and would be a covered birth defect. Similarly, congenital deafness may be familial or may be due to an unknown cause. Some types of hydrocephalus are due to maternal infection and some have no known cause. Whether the disease is familial or not will be reported in most cases in medical records containing a family history.

Proposed § 3.815(d)(3) states that congenital malignant neoplasms (referred to in the VA study as congenital malignancies) are not covered birth defects. It states that these include, but are not limited to, the following: medulloblastoma, neuroblastoma, retinoblastoma, teratoma, and Wilm's tumor (The Merck Manual (17th edition, 1999 *http://www.neonatology.org/syllabus/teratoma.html*, *http://cancer.med.upenn.edu/pdq_html/1/engl/100048.html*, and *http://cancernet.nci.nih.gov/clinpdq/pif.html*).

Proposed § 3.815(d)(4) states that chromosomal abnormalities are not covered birth defects. It states that these include, but are not limited to, the following: Down syndrome and other Trisomies, Fragile X syndrome, Klinefelter's syndrome, Turner syndrome (the VA study, The Merck Manual).

Proposed § 3.815(d)(5) states that conditions that are due to birth-related injury are not covered birth defects. It states that these conditions include, but are not limited to, the following: brain damage due to anoxia during or around the time of birth; cases of cerebral palsy due to birth trauma; facial nerve palsy or other peripheral nerve injury; fractured clavicle; and Horner's syndrome due to forceful manipulation during birth.

Proposed § 3.815(d)(6) states that conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. VA considers that these include, but are not limited to, the effects of maternal infection during pregnancy, such as rubella, toxoplasmosis, or syphilis, and include fetal alcohol syndrome or fetal effects of maternal drug use (known to result from maternal use of alcohol or drugs during pregnancy). Miscellaneous pediatric conditions are conditions which the Pregnancy Outcomes report discusses as "unlikely birth defects." They were reported by the mother in telephone interviews as birth defects, but pediatricians determined them to be pediatric conditions rather than birth defects. Accordingly, proposed § 3.815(d)(6) states that the following are not covered birth defects: asthma and other allergies, hyaline membrane disease, maternal-infant blood incompatibility, neonatal infections, neonatal jaundice, post-infancy deafness/hearing impairment (occurring after the age of one year), prematurity, and refractive disorders of the eye (for example, farsightedness and astigmatism).

Proposed § 3.815(d)(7) states that developmental disorders are not covered birth defects. VA considers that the following, which are listed in proposed § 3.815(d)(7), are developmental disorders rather than birth defects: attention deficit disorder; autism; epilepsy diagnosed after infancy (after the age of one year); learning disorders; and mental retardation (unless part of a syndrome that is a covered birth defect) (the VA study, *http://www.autism-society.org/whatisautism/autism.html#causes*, and *http://www.cdc.gov/nceh/cddh/ddhome.htm*).

Proposed § 3.815(d)(8) states that conditions that do not result in permanent physical or mental disability are not covered birth defects. VA believes that these include, but are not limited to, the following, which are listed in proposed § 3.815(d)(8): conditions rendered non-disabling through treatment; congenital heart problems surgically corrected or resolved without disabling residuals; heart murmurs unassociated with a diagnosed cardiac abnormality; hemangiomas that have resolved with or without treatment; and scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

Paragraph (h) of proposed § 3.815 provides that if a regional office is unclear in any case as to whether a condition is a covered birth defect it may refer the issue to the Director of the Compensation and Pension Service to make the determination as to whether a condition is a covered birth defect.

Paragraph (e) of proposed § 3.815 provides, in accordance with 38 U.S.C. 1815(a) and (b), that VA will determine the level of disability currently resulting, in combination, from an individual's covered birth defects and associated disabilities. It further provides that no monetary allowance will be payable under subchapter II of 38 U.S.C. chapter 18 if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Also, as required by 38 U.S.C. 1815(b), paragraph (e) sets forth a schedule for rating disabilities resulting from covered birth defects at four levels of disability, identified as

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Level I, Level II, Level III, and Level IV, with Level I having the lowest, and Level IV the highest, level of disability. The schedule also includes Level 0 when VA determines that an individual has one or more covered birth defects, but has no current disability resulting therefrom. Disability determinations would be based on an assessment of the effect on day-to-day functioning or the extent of disfigurement of the head, face, or neck due to one or more covered birth defects or associated disabilities. These proposed criteria are necessarily broad because of the array of potential disabilities affecting any body system or multiple systems and are designed to be applicable to the widest possible variety of disabilities. We propose that the functions to be considered in assessing limitation of daily activities be mobility (ability to stand and walk, including balance and coordination), manual dexterity, stamina, speech, hearing, vision (other than correctable refraction errors), memory, ability to concentrate, appropriateness of behavior, and urinary and fecal continence. While disfigurement does not necessarily limit any of these functions, although it may limit communication, it may, in our judgment, and based on our experience with disability assessment in veterans, be significantly disabling in and of itself, and we are therefore proposing to include it in the criteria. These are similar to the types of functional impairments described in literature pertaining to disabilities, for example, in Americans with Disabilities Act (ADA) documents, such as the Glossary of Common Characteristics and Limitations of Disabilities in ADA Handbook, Appendix IV and ADA Title III Regulations, and in a 1997 Institute of Medicine document, "Enabling America: Assessing the Role of Rehabilitation Science and Engineering."

We propose that Level I be assigned if the individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities, or the individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level II be assigned if the individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or, the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level III be assigned on one of four bases: if the individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; the individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty; the individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level IV be assigned on one of three bases: if the individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We believe these criteria will establish objective measures to identify discrete levels of disability, in accordance with the payment levels established by Congress that can be applied consistently.

Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners and pediatric specialists and some of the other specialists who might participate in the evaluation and care of individuals with covered birth defects. Therefore, paragraph (f) of proposed § 3.815 provides that VA may accept statements from private physicians, as well as examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and rating claims from individuals with covered birth defects. It also provides that if they are adequate for such purposes, VA may make the determination and rating without further examination.

Paragraph (g) of proposed § 3.815 provides that VA will reconsider its determination that an individual has a covered birth defect and/or the level of disability due to covered birth defects whenever it receives medical evidence indicating that a change is warranted. In general, we believe that the severity of these conditions will be stable but that this provision provides a reasonable procedure for evaluating those that are not.

Paragraph (i) of proposed § 3.815 contains effective date provisions for awards, and increases, of the monetary allowance under 38 U.S.C. chapter 18, subchapter II. Paragraph (j) of proposed § 3.815 contains provisions concerning reductions and discontinuances of that monetary allowance. These reflect statutory requirements.

Comment Period

We are providing a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible that would enable identification of, and evaluation of disability from, covered birth defects in order to avoid delay in the commencement of those benefits.

Paperwork Reduction Act of 1995

This proposed rule would remove the approved information collection provisions contained in 38 CFR 3.814 as unnecessary or obsolete. The version of the "Application for Spina Bifida Benefits" form that is published in § 3.814(b) is no longer being used. The Office of Management and Budget (OMB) has approved a revision of the form, under the same OMB control number, 2900–0572. VA intends to seek from OMB approval under the Paperwork Reduction Act for further modifications to that form. This proposed rule does not contain provisions constituting new collections of information under the Paperwork Reduction Act. Any provisions that might otherwise require approval as a modification to an information collection would not affect 10 or more persons in a twelve-month period.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers for benefits affected by this rule are 64.104, 64.109, 64.127, and 64.128. There are no Catalog of Federal Domestic Assistance program numbers for other benefits affected by this rule.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraphs (c) and (d) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. chapter 18.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. chapter 18 made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312(c)(1))

3. In § 3.29, paragraph (c) is revised to read as follows:

§ 3.29 Rounding

* * * * *

(c) *Monthly rates under 38 U.S.C. chapter 18.* When increasing the monthly monetary allowance rates under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans, VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

§ 3.31 [Amended]

4. Section 3.31 is amended by:

a. In the introductory text, removing "the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida" and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18 for an individual".

b. In paragraph (c)(4)(ii), removing "the monetary allowance for children suffering from spina bifida" and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18".

c. Revising the authority citation.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1822, 5111)

5. In § 3.105, paragraph (g) is revised to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

(Authority: 38 U.S.C. 1822, 5112(b)(6))

* * * * *

§ 3.114 [Amended]

6. Section 3.114 is amended by:

a. In the introductory text of paragraph (a), removing "the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida" each place it appears and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18 for an individual".

b. Revising the authority citation at the end of paragraph (a).

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

* * * * *

(Authority: 38 U.S.C. 1822, 5110(g))

* * * * *

§ 3.158 [Amended]

7. In § 3.158, paragraphs (a) and (c) are amended by removing "1805" and adding, in its place, "chapter 18".

§ 3.216 [Amended]

8. Section 3.216 is amended by:

a. Removing "or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part" and adding, in its place, "a monetary allowance under 38 U.S.C. chapter 18".

b. Revising the authority citation.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1822, 5101(c))

* * * * *

9. In § 3.261, paragraph (a)(40) is revised to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

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Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; Section 306 (veterans, surviving spouses and children)	See—
* * *	*	*	*	*	*
(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans (38 U.S.C. 1823(c)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

10. In § 3.262, paragraph (y) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 18 to or for an individual who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

11. In § 3.263, paragraph (g) is revised to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

12. In § 3.272, paragraph (u) is revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

13. In § 3.275, paragraph (i) is revised to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

14. In § 3.403, paragraph (b) is revised and paragraph (c) is added, to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran.* An award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1822, 5110; sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

(c) *Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran.* Except as provided in § 3.114(a) or § 3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is later.

(Authority: 38 U.S.C. 1815, 1822, 1824, 5110)

15. In § 3.503, paragraph (b) is revised to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(Authority: 38 U.S.C. 1822, 5112(b))

16. Section 3.814 is amended by:

a. Revising the section heading.

b. Adding a heading to paragraph (a).

c. In paragraph (a), revising the first sentence and, in the second sentence, removing "other related individual" and adding, in its place, "related person".

d. Removing and reserving paragraph (b).

e. In paragraph (c)(1), removing "an individual" and adding, in its place, "a person" and removing "individual's" and adding, in its place, "person's".

f. In paragraph (c)(2), removing "§ .3.204(a)(1), VA shall" and adding, in its place, "§ 3.204(a)(1), VA will" and by removing "an individual's biological father or mother is or was" and adding, in its place, "a person is the biological son or daughter of".

g. Removing designation "(d)" from paragraph (d)(1) and by adding a heading for paragraph (d).

h. Removing the authority citation at the end of paragraph (d).

i. In paragraph (e), removing "children" and adding, in its place, "an individual".

j. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. * * *

* * * * *

(d) *Disability evaluations.* * * *

* * * * *

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

17. Section 3.815 is added to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

(a) *Monthly monetary allowance.* (1) *General.* VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era.* No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III or, IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions.* (1) *Vietnam veteran.* For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Individual.* For the purposes of this section, the term *individual* means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section the term *covered birth defect* means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:

(i) Familial disorder;
(ii) Birth-related injury; or
(iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

(i) Achondroplasia;
(ii) Cleft lip and cleft palate;
(iii) Congenital heart disease;
(iv) Congenital talipes equinovarus (clubfoot);
(v) Esophageal and intestinal atresia;
(vi) Hallerman-Streiff syndrome;
(vii) Hip dysplasia;
(viii) Hirschprung's disease (congenital megacolon);
(ix) Hydrocephalus due to aqueductal stenosis;
(x) Hypospadias;
(xi) Imperforate anus;
(xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);
(xiii) Poland syndrome;
(xiv) Pyloric stenosis;
(xv) Syndactyly (fused digits);
(xvi) Tracheoesophageal fistula;
(xvii) Undescended testicle; and
(xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

(i) Albinism;
(ii) Alpha-antitrypsin deficiency;
(iii) Crouzon syndrome;
(iv) Cystic fibrosis;
(v) Duchenne's muscular dystrophy;
(vi) Galactosemia;
(vii) Hemophilia;
(viii) Huntington's disease;
(ix) Hurler syndrome;
(x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
(xi) Marfan syndrome;
(xii) Neurofibromatosis;
(xiii) Osteogenesis imperfecta;
(xiv) Pectus excavatum;
(xv) Phenylketonuria;
(xvi) Sickle cell disease;
(xvii) Tay-Sachs disease;
(xviii) Thalassemia; and
(xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

(i) Medulloblastoma;
(ii) Neuroblastoma;
(iii) Retinoblastoma;
(iv) Teratoma; and
(v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Down syndrome and other Trisomies;
(ii) Fragile X syndrome;
(iii) Klinefelter's syndrome; and
(iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

(i) Brain damage due to anoxia during or around time of birth;

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(ii) Cerebral palsy due to birth trauma,
(iii) Facial nerve palsy or other peripheral nerve injury;
(iv) Fractured clavicle; and
(v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:
(i) Asthma and other allergies;
(ii) Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;
(iii) Fetal alcohol syndrome or fetal effects of maternal drug use;
(iv) Hyaline membrane disease;
(v) Maternal-infant blood incompatibility;
(vi) Neonatal infections;
(vii) Neonatal jaundice;
(viii) Post-infancy deafness/hearing impairment (onset after the age of one year);
(ix) Prematurity; and
(x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:
(i) Attention deficit disorder;
(ii) Autism;
(iii) Epilepsy diagnosed after infancy (after the age of one year);
(iv) Learning disorders; and
(v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:
(i) Conditions rendered non-disabling through treatment;
(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;
(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;
(iv) Hemangiomas that have resolved with or without treatment; and
(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability.*

(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:
(i) Mobility (ability to stand and walk, including balance and coordination);
(ii) Manual dexterity;
(iii) Stamina;
(iv) Speech;
(v) Hearing;
(vi) Vision (other than correctable refraction errors);
(vii) Memory;
(viii) Ability to concentrate;
(ix) Appropriateness of behavior; and
(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is later. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(j) *Reductions and discontinuances.* VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

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BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK88

Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding health care benefits for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children in accordance with recently enacted legislation. The revisions would also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. Companion documents entitled "Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects" (RIN 2900–AK67) and "Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida" (RIN 2900–AK90) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK88." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Chief, Policy & Compliance Division, VHA Health Administration Center, Department of Veterans Affairs, P.O. Box 65020, Denver, CO 80206, telephone (303) 331–7552.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as "covered birth defects").

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's "Medical" regulations (38 CFR part 17) by revising the regulations in §§ 17.900 through 17.905 concerning the provision of health care. These regulations currently only concern the provision of health care for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. As the proposed rule provides, the mailing address for the VHA Health Administration Center for spina bifida is P.O. Box 65025, Denver, CO 80206–9025 and for covered birth defects is P.O. Box 469027, Denver, CO 80246–9027.

As a condition of eligibility for the provision of health care for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning

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identification of covered birth defects are included in proposed § 3.815 set forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900–AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

Consistent with the authorizing legislation, a note to the proposed rule explains that the proposed provisions are not intended to be a comprehensive insurance plan and do not cover health care unrelated to spina bifida and covered birth defects.

The statutory provisions state that the Secretary may provide health care directly or by contract or other arrangement with any health care provider. VA proposes to contract or arrange for provision of covered health care only through approved health care providers. In this regard, it is proposed that such health care providers be only those currently approved, for the services provided, by the Center for Medicare and Medicaid Services (CMS), Department of Defense (DoD) TRICARE program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), or Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or currently approved under a license or certificate issued by a governmental entity with jurisdiction. This appears to provide reasonable assurance that individuals providing health care for these children under this authority are qualified to do so. These provisions already apply to the regulations concerning the provision of health care for Vietnam veterans' children with spina bifida, except that they reflect a title change in the Department of Defense program; clarify that approved health care providers include those issued a license or certificate by a governmental entity with jurisdiction; and clarify the definition of *respite care* by stating that the care must be furnished by an approved health care provider.

The proposal includes a note clarifying when VA is the exclusive payer for health care provided. The note states that VA would provide payment under the proposal only for health care relating to spina bifida or covered birth defects (under the definitions of *spina bifida* and *covered birth defects* in proposed § 17.900, this includes complications or medical conditions that according to the scientific literature are associated with spina bifida or with the covered birth defects). The note also states that VA is the exclusive payer for services authorized under this proposal regardless of any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. The note further states that any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

It is proposed as a condition of payment that preauthorization from a benefits advisor of the VHA Health Administration Center be required, in accordance with prescribed procedures, for rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants) other than mileage at the General Services Administration rate for privately owned automobiles. This will help VA provide necessary care under its statutory authority. Except for the following changes these preauthorization provisions already apply to children with spina bifida. The proposal would remove the requirement for preauthorization related to case management, home care, and respite care. The VHA Health Administration Center's experience has found that case management, home care, and respite care are approved in the vast majority of cases and review of these services prior to their provision has not resulted in a change to the overall outcome of care or expenses. Preauthorization would continue to be required for the rental or purchase of durable medical equipment, however, it is proposed that it not be required for the rental or purchase of equipment with a total rental or purchase price of $300 or less, respectively. The VHA Health Administration Center's experience has shown that requiring preauthorization for durable medical equipment with a rental or purchase price of $300 or less is not cost-effective for the government. The proposal also reflects a change in title of VHA Health Administration Center personnel.

Under the proposal, payment to approved health care providers would be made using the methodology already established for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.270 *et seq.*). We believe this methodology based on Medicare and DoD principles would result in fair payments and allow VA to utilize a payment mechanism already in place. Use of the CHAMPVA payment methodology is currently a requirement under the regulations for spina bifida health care.

It is proposed that claims from approved health care providers be submitted to the VHA Health Administration Center for payment and that the claims contain specified information. The Center already provides claims processing services for eligible veterans' dependents under CHAMPVA and the spina bifida program. The specified information is necessary to make determinations concerning authorization for payment.

The proposal also includes time frames for submission of claims to ensure an orderly and efficient payment system. It is proposed that claims must be filed no later than one year after the date of service; or in the case of inpatient care, one year after the date of discharge; or in the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility. Further, it is proposed that in response to a request for payment, VA will provide an explanation of benefits to ensure that VA determinations of payments would be understood by claimants. This already applies to spina bifida health care and is consistent with other VA health care programs for veterans' dependents.

The proposal sets forth a review and appeal process concerning determinations relating to the provision of health care or payment. A note states that the final decision of the VHA Health Administration Center Director, concerning provision of health care or payment, will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals. This already applies to spina bifida health care, except that the review and appeal process reflects a change in title of an organizational unit.

Consistent with the statutory scheme, we propose that payments made will constitute payment in full. Accordingly, providers will not be permitted to bill the patient for charges in excess of the VA-determined allowable amount. The proposed rule also includes a specific list of items that would be excluded from payment since we believe they were not intended to be subject to payment. This already applies to spina bifida health care.

The proposal includes provisions concerning medical records. It is proposed that copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no charge when requested by VA. This already applies to spina bifida health care.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this proposed rule contains information collections in proposed 38 CFR 17.902 through 17.904. These sections concern the provision of certain health care for Vietnam veterans' children with spina bifida or children born with certain other birth defects to women Vietnam veterans. VA is proposing to revise the information collection currently approved by the Office of Management and Budget (OMB) under control number 2900–0578 to substitute the information collections in proposed 38 CFR 17.902 through 17.904 for the information collections currently approved for those sections of the regulations. Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273–9289; or by e-mail to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK88." All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Preauthorization—Section 17.902

Title: Preauthorization for Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.902 would require individuals to submit to a benefits advisor of the VHA Health Administration Center a preauthorization request for health care consisting of rental or purchase of durable medical equipment with a rental or purchase price in excess of $300, respectively; mental health services; training; substance abuse treatment; dental services; transplantation services; or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization request would contain the child's name and Social Security number; the veteran's name and Social Security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: Such information would be necessary to make preauthorization determinations in accordance with proposed 38 CFR 17.902.

Description of likely respondents: Individuals seeking provision of health care to certain children of Vietnam veterans.

Estimated number of respondents: 400.

Estimated frequency of responses: Occasionally.

Estimated total annual reporting and recordkeeping burden: 200 hours.

Estimated burden per respondent: 30 minutes (2 × 15 minutes).

Payment of Claims—Section 17.903

Title: Payment of Claims for Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.903 would require that, as a condition of payment, claims from "approved health care providers" for health care provided under 38 CFR 17.900 through 17.905 must include the following information, as appropriate: with respect to patient identification information: the patient's full name, Social Security number, address, and date of birth; with respect to provider identification information (inpatient and outpatient services): full name and address (such as hospital or physician), remittance address, address where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or Social Security number; with respect to patient treatment information (longterm care or institutional services): dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all other health care providers and ancillary outpatient services: diagnosis, procedure code for each procedure, service, or supply for each date of service, and individual billed charge for each procedure, service, or supply for each date of service; with respect to prescription drugs and medicines; name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity, date dispensed, and pharmacy receipt for each drug dispensed.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: Such information would be necessary to make payment determinations in accordance with proposed 38 CFR 17.903.

Description of likely respondents: Individuals seeking payment for provision of health care for certain children of Vietnam veterans.

Estimated number of respondents: 3,000.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 3,000 hours.

Estimated burden per respondent: 60 minutes (10 × 6 minutes).

Review and Appeal Process—Section 17.904

Title: Review and Appeal Process Regarding Provision of Health Care or Payment Relating to Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.904 would establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination would be required to submit such request to the VHA Health Administration Center (Attention: Chief, Benefit and Provider Services), in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits

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advisor would issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity would be permitted to make a written request for review by the Director, VHA Health Administration Center.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: The information proposed to be collected under § 17.904 appears to be necessary to make review and appeal determinations.

Description of likely respondents: Beneficiaries and providers disagreeing with determinations regarding covered services and benefits.

Estimated number of respondents: 200.

Estimated frequency of responses: 3.

Estimated total annual reporting and recordkeeping burden: 200 hours.

Estimated burden per respondent: 60 minutes (3 × 20 minutes).

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only a total of 1200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veterans' children who suffer from covered birth defects. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this document is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, the undesignated center heading immediately preceding § 17.900 and §§ 17.900 through 17.905 are revised to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

§ 17.900 Definitions.

For purposes of §§ 17.900 through 17.905—

Approved health care provider means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child for purposes of spina bifida means the same as *individual* as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as *individual* as defined at § 3.815(c)(2) of this title.

Covered birth defects means the same as defined at § 3.815(c)(3) of this title and also includes complications or medical conditions that are associated with the covered birth defects according to the scientific literature.

Habilitative and rehabilitative care means such professional, counseling, and guidance services and such treatment programs (other than vocational training under 38 U.S.C. 1804 or 1814) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual that furnishes health care, including specialized clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to a child in the child's home or other place of residence.

Hospital care means care and treatment furnished to a child who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to a child who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment, including preventive health services, furnished to a child other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished by an approved health care provider on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or medical conditions that are associated with spina bifida according to the scientific literature).

Vietnam veteran for purposes of spina bifida means the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and for purposes of covered birth defects means the same as defined at § 3.815(c)(1) of this title.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.901 Provision of health care.

(a) *Spina bifida.* VA will provide a Vietnam veteran's child who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for spina bifida. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(b) *Covered birth defects.* VA will provide a woman Vietnam veteran's child who has been determined under § 3.815 of this title to suffer from spina bifida or other covered birth defects with such health care as the Secretary determines is needed by the child for the covered birth defects. However, if VA has determined for a particular covered birth defect that § 3.815(a)(2) of this title applies (concerning affirmative evidence of cause other than the mother's service during the Vietnam era), no benefits or assistance will be provided under this section with respect to that particular birth defect.

(c) *Providers of care.* Health care provided under this section will be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider.

(d) *Submission of information.* For purposes of §§ 17.900 through 17.905:

(1) The telephone number of the VHA Health Administration Center is (888) 820–1756;

(2) The facsimile number of the VHA Health Administration Center is (303) 331–7807;

(3) The hand-delivery address of the VHA Health Administration Center is 300 S. Jackson Street, Denver, CO 80209; and

(4) The mailing address of the VHA Health Administration Center—

(i) For spina bifida is P.O. Box 65025, Denver, CO 80206–9025; and

(ii) For covered birth defects is P.O. Box 469027, Denver, CO 80246–9027.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

Note to § 17.901: This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida or unrelated to covered birth defects. VA is the exclusive payer for services paid under §§ 17.900 through 17.905 regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

§ 17.902 Preauthorization.

(a) Preauthorization from a benefits advisor of the VHA Health Administration Center is required for the following services or benefits under §§ 17.900 through 17.905: rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (other than mileage at the General Services Administration rate for privately owned automobiles). Authorization will only be given in those cases where there is a demonstrated medical need related to the spina bifida or covered birth defects. Requests for provision of health care requiring preauthorization shall be made to the VHA Health Administration Center and may be made by telephone, facsimile, mail, or hand delivery. The application must contain the following:

(1) Name of child,
(2) Child's Social Security number,
(3) Name of veteran,
(4) Veteran's Social Security number,
(5) Type of service requested,
(6) Medical justification,
(7) Estimated cost, and
(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization is not required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone to the VHA Health Administration Center within 72 hours of the emergency.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.903 Payment.

(a)(1) Payment for services or benefits under §§ 17.900 through 17.905 will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see § 17.270).

(2) As a condition of payment, the services must have occurred:

(i) For spina bifida, on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title.

(ii) For covered birth defects, on or after December 1, 2001, and must have occurred on or after the date the child was determined eligible for benefits under § 3.815 of this title.

(3) Claims from approved health care providers must be filed with the VHA Health Administration Center in writing

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(facsimile, mail, hand delivery, or electronically) no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility.

(4) Claims for health care provided under the provisions of §§ 17.900 through 17.905 must contain, as appropriate, the information set forth in paragraphs (a)(4)(i) through (a)(4)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites, and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service, or supply for each date of service, and

(C) Individual billed charge for each procedure, service, or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) National Drug Code (NDC) for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis for which each drug is prescribed.

(b) Health care payment will be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures, or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides, at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.904 Review and appeal process.

For purposes of §§ 17.900 through 17.905, if a health care provider, child, or representative disagrees with a determination concerning provision of health care or with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing (by facsimile, mail, or hand delivery) within one year of the date of the initial determination to the VHA Health Administration Center (Attention: Chief, Benefit and Provider Services). The request must state why it is believed that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses, or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may submit in writing (by facsimile, mail, or hand delivery) to the VHA Health Administration Center (Attention: Director) a request for review by the Director, VHA Health Administration Center. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses, or modifies the previous decision. An appeal under this section would be considered as filed at the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

Note to § 17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.906 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

[FR Doc. 01–31674 Filed 12–31–01; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK90

Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects. This is necessary to provide vocational training and rehabilitation for such children in accordance with recently enacted legislation. Companion documents entitled "Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects" (RIN 2900–AK67) and "Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida" (RIN 2900–AK88) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK90." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Consultant, Vocational Rehabilitation and Employment Service (282), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273–7410.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as "covered birth defects").

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's "Vocational Rehabilitation and Education" regulations (38 CFR part 21) by revising the regulations in part 21, subpart M (§§ 21.8010 through 21.8410) concerning the provision of vocational training and rehabilitation. These regulations currently only concern the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also correct the references to § 21.222 in § 21.8210 and to § 21.8020 in § 21.8082 and make other nonsubstantive changes for purposes of clarity. These would include amending § 21.8050(c) to clarify that VA does not provide for room and board for a vocational training program under part 21, subpart M, other than for a period of 30 days or less in a special rehabilitation facility for purposes of an extended evaluation or to improve and enhance vocational potential.

As a condition of eligibility for the provision of vocational training and rehabilitation under 38 U.S.C. 1814 for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning identification of covered birth defects are included in proposed § 3.815 set forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900–AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

This proposed rule includes a definition of *eligible child* that describes a child for whom the statute authorizes VA to provide vocational training under this subpart. In the revised § 21.8282, "Termination of a vocational training program," we propose to add provisions that would be applicable if VA makes a determination that a child no longer has a covered birth defect.

By statute, a child would only be eligible for one program of vocational training under 38 U.S.C. chapter 18 (even if, for example, a child has spina bifida and one or more other covered birth defects). It is proposed to reflect this in § 21.8016.

It is proposed that a woman Vietnam veteran's child with covered birth defects receive testing and evaluative services, as needed, similar to the testing and services that VA offers a veteran for the purposes of evaluation for eligibility and entitlement under a vocational rehabilitation program under 38 U.S.C. chapter 31. These testing and evaluative services are appropriate for determining whether it is reasonably feasible for the child to achieve a vocational goal and to guide the child, parent, or guardian in choosing a vocational training program for the child. This already applies to vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that an eligible child would receive vocational training program services and assistance under provisions that, under the 38 U.S.C. chapter 31 program, already apply to vocational training program services and assistance for eligible veterans with service-connected disabilities. In this regard, it is proposed that the following provisions of 38 CFR part 21, subpart A, would apply as set forth in the text portion of this document:

- § 21.35 concerning certain definitions and explanations (see proposed § 21.8010).
- § 21.250(a) and (b)(2), concerning provision of employment services, including the definition of job development; § 21.252 concerning job development and placement services; § 21.254 concerning supportive services; § 21.256 concerning incentives for employers; and §§ 21.257 and 21.258 concerning rehabilitation through self-employment, including special assistance for persons engaged in self-employment programs (see proposed § 21.8020).

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- §§ 21.50(b)(5) and 21.53(b) and (d) concerning the scope and nature of an evaluation of the reasonable feasibility of achieving a vocational goal (see proposed § 21.8032).
- §§ 21.80, 21.84, and 21.88 concerning the requirements for an individualized written plan of vocational rehabilitation and its purposes, to include employment assistance; and §§ 21.92, 21.94 (a) through (d), and 21.96 concerning preparation of, changes to, and review of an individualized written plan of vocational rehabilitation (see proposed §§ 21.8080 and 21.8082).
- §§ 21.100 and 21.380 concerning counseling (see proposed § 21.8100).
- § 21.120 concerning vocational training; §§ 21.122 through 21.132 concerning types of allowable vocational training; and § 21.146 concerning independent instructor courses (see proposed § 21.8120).
- §§ 21.290 through 21.298 concerning course approval and facility selection (except that the provisions pertaining to use of facilities offering independent living services to evaluate independent living potential (see § 21.294(b)(1)(i)) and to provide a program of independent living services to individuals for whom an Individualized Independent Living Plan (IILP) has been developed (see § 21.294(b)(1)(ii)) do not apply, and provisions concerning authorization of independent living services as an incidental part of a plan (see § 21.294(b)(1)(iii)) apply, in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, only to the extent allowable under proposed § 21.8050 for an individualized written plan of vocational rehabilitation) (see proposed §§ 21.8120 and 21.8286).
- § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150, other than paragraph (b); § 21.152, other than paragraph (b); § 21.154, other than paragraph (b); and § 21.156 concerning special rehabilitative services of the following types: adult basic education, vocational course in a sheltered workshop or rehabilitation facility, independent instructor course, tutorial assistance, reader service, interpreter service for the hearing impaired, special transportation assistance, and other vocationally oriented incidental services (see proposed § 21.8140).
- §§ 21.212 through 21.224 concerning supplies (however, the following provisions do not apply to this subpart: § 21.216(a)(3) concerning special modifications, including automobile adaptive equipment; § 21.220(a)(1) concerning advancements from the 38 U.S.C. chapter 31 program revolving loan fund; and § 21.222(b)(1)(x) concerning release or repayment for independent living services program supplies) (see proposed § 21.8210).
- § 21.262 concerning reimbursement for costs of training and rehabilitation facilities, supplies, and services (see proposed § 21.8260).
- §§ 21.60 and 21.62 concerning a medical consultant and the Vocational Rehabilitation Panel and § 21.310 concerning rate of pursuit measurement (see proposed § 21.8310).
- § 21.326 concerning the commencement and termination dates of a period of employment services (see proposed § 21.8320).
- §§ 21.362 and 21.364 concerning satisfactory conduct and cooperation (see proposed § 21.8360).
- § 21.154 concerning special transportation allowance; § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply) and § 21.372 concerning intraregional and interregional travel at government expense; and § 21.376 concerning authorization of transportation services for evaluation or counseling (see proposed § 21.8370).
- § 21.380 concerning personnel qualification standards; §§ 21.412 and 21.414 (except § 21.414(c), (d), and (e)) concerning finality and revision of decisions; § 21.420 concerning notification that VA will provide as to findings, decisions, and appeal rights; and § 21.430 concerning accountability for authorization and payment of program costs for training and rehabilitation services (see proposed § 21.8380).

As set forth in the text portion of this document, these provisions appear to be appropriate to apply to the provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. The same provisions apply to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is also proposed that VA officials will inform children who have covered birth defects about any vocational training and rehabilitation that may be available under other governmental and nongovernmental programs. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that VA provide case management to assist the eligible child throughout a planned vocational training program. This would help to ensure that the child achieves the maximum vocational benefit from the program. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of proposed §§ 21.8014 and 21.8370. Proposed § 21.8014 would amend the provisions prescribing the information to be submitted for an application for a Vietnam veteran's child suffering from spina bifida to participate in a VA vocational training program. Proposed § 21.8370 would permit a request for reimbursement for certain transportation costs and would require submission of supporting documentation to receive reimbursement. Although provisions in the current § 21.8016 previously had been approved by the Office of Management and Budget (OMB) as an information collection under control number 2900–0581, VA is not seeking reinstatement and is requesting OMB to discontinue that approval because, as currently in effect and as proposed to be revised, § 21.8016 affects fewer than 10 respondents annually. As required under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the OMB for its review of the collections of information in this proposed rule.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273–9289; or by e-mail to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK90." All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Title: Application for Vocational Training Benefits—Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 21.8014 would extend to women Vietnam veteran's children with covered birth defects the requirement that is applicable to Vietnam veterans' children with spina bifida for submitting an application for vocational training to be considered for this benefit.

Type of review: Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900–0579).

Description of need for information and proposed use of information: VA needs to know sufficient identifying information about the applicant and the applicant's natural parent who was a Vietnam veteran to be able to relate the claim to other existing VA records. The information collected allows the Vocational Rehabilitation and Employment (VR&E) Division to review the existing records and to set up an appointment for an applicant to meet with a VR&E staff member to evaluate the claim.

Description of likely respondents: Adult children with spina bifida or other covered birth defects, parents or guardians of minor or incompetent children with spina bifida or other covered birth defects, authorized representatives, or Members of Congress.

Estimated number of respondents: 50.

Estimated frequency of responses: Once.

Estimated total annual reporting and recordkeeping burden: 12.5 reporting burden hours. The total annual reporting burden is based on each respondent taking 15 minutes to write to VA indicating a desire to take part in a vocational training program and providing the necessary identifying information. Although there is no set format for this application, the applicant must provide certain information to perfect the claim. There are no recordkeeping requirements.

Estimated average burden per respondent: 15 minutes.

Title: Request for Transportation Expense Reimbursement.

Summary of collection of information: The provisions of proposed 38 CFR 21.8370 would extend to women Vietnam veteran's children with covered birth defects the current requirement applicable to Vietnam veterans' children with spina bifida that a child receiving vocational training to request VA payment for travel expenses. VA must determine that the child would be unable to pursue training or employment or employment without this assistance. To obtain payment, the child must submit documentation showing the expenses of transportation.

Type of review: Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900–0580).

Description of need for information and proposed use of information: A child must specifically request VA assistance with transportation expenses. This allows VA to investigate the child's situation to establish that the child would be unable to pursue training or employment without VA travel assistance. To receive payment, the child must provide supportive documentation of actual expenses incurred for the travel. This prevents VA from making payment erroneously or for fraudulently claimed travel.

Description of likely respondents: Children with spina bifida or other covered birth defects.

Estimated number of respondents: 40. Approximately half of the children who plan and enter a program will need VA financial support for their transportation expenses while in a program.

Estimated frequency of responses: Once for the initial request; monthly to obtain the travel reimbursement.

Estimated total annual reporting and recordkeeping burden: 50 reporting burden hours. Each respondent will require 15 minutes to prepare and submit the initial request (40 × ¼ hour = 10 hours). Each respondent will then require 5 minutes to copy and submit receipts for transportation expenses to obtain reimbursement (40 × 12 × 1/12 hour = 40 hours).

Estimated average burden per respondent: 1 hour and 15 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only 1,200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veteran's children who suffer from spina bifida or other covered birth defects. They are widely dispersed geographically, and the services provided to them would not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to Vietnam veteran's children with covered birth defects or spina bifida are generally large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for benefits

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affected by this rule is 64.128. There is no Catalog of Federal Domestic Assistance program number for other benefits affected by this rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is proposed to be amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. In part 21, the heading of subpart M is revised to read as follows:

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

2. The authority citation for part 21, subpart M is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804–1805, 1811, 1811 note, 1812, 1814, 1816, 1821–1824, 5112, unless otherwise noted.

3. Sections 21.8010 through 21.8410 are revised to read as follows:

General

§ 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

Covered birth defect means the same as defined at § 3.815(c)(3) of this title.

Eligible child means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

Employment assistance means employment counseling, placement and post-placement services, and personal and work adjustment training.

Institution of higher education has the same meaning that § 21.4200 provides for the term *institution of higher learning.*

Program of employment services means the services an eligible child may receive if the child's entire program consists only of employment assistance.

Program participant means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

Spina bifida means the same as defined at § 3.814(c)(3) of this title.

Vietnam veteran means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

Vocational training program means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable the child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&E refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);
(2) Program of education;
(3) Rehabilitation facility;
(4) School, educational institution, or institution;
(5) Training establishment;
(6) Vocational goal;
(7) VRC (Vocational rehabilitation counselor);
(8) VRS (Vocational rehabilitation specialist); and
(9) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

§ 21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

§ 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;
(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and
(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001.

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1824)

Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and
(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under that subpart:

(1) Section 21.250(a) and (b)(2);
(2) Section 21.252;
(3) Section 21.254;
(4) Section 21.256 (not including paragraph (e)(2));
(5) Section 21.257; and
(6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;
(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or
(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.* (1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and
(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)

Evaluation

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and
(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and
(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;
(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;
(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and
(4) Evaluation of employability by professional staff of an educational or

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rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

Services and Assistance to Program Participants

§ 21.8060 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in another field or occupational family was

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identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

Counseling

§ 21.8100 Counseling.

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(5), 1804(c), 1814)

Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

Evaluation and Improvement of Vocational Potential

§ 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

Supplies

§ 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:

(1) An initial or extended evaluation;

(2) Vocational training, services, and assistance to reach the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

Program Costs

§ 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

§ 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:

(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.

(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.

(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

(1) Performing the duties of the occupation for which VA provided

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training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

§ 21.8280 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

Rate of Pursuit

§ 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

Authorization of Services

§ 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Leaves of Absence

§ 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, the running of the basic 24-month period of entitlement, plus any extensions thereto, shall be suspended until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

Satisfactory Conduct and Cooperation

§ 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

Transportation Services

§ 21.8370 Authorization of transportation services.

(a) *General.* VA will authorize transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* An eligible child eligible for reimbursement of transportation services both under this section and under § 21.154 will receive only the benefit under § 21.154.

(Authority: 38 U.S.C. 1804(c), 1814)

Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except paragraphs (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

Delegation of Authority

§ 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

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Federal Register

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January 2, 2002

Part V

Securities and Exchange Commission

17 CFR Part 230
Options Disclosure Document; Final Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–8049; File No. S7–19–98]

RIN 3235–AH31

Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a revision to a rule under the Securities Act of 1933 to clarify that an options disclosure document prepared in accordance with our rules under the Securities Exchange Act of 1934 is not a prospectus and is not subject to civil liability under Section 12(a)(2) of the Securities Act. This amendment codifies a long-standing interpretive position taken by the Division of Corporation Finance soon after we adopted the current registration and disclosure system applicable to standardized options in 1982. We are codifying this position to reduce the legal uncertainty regarding the liability issue.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting a revision to Rule 135b[1] under the Securities Act of 1933.[2]

I. Background

In 1998, we issued a release proposing an amendment to Rule 135b under the Securities Act to clarify that an options disclosure document prepared in accordance with Rule 9b–1 under the Securities Exchange Act of 1934 is not a prospectus and, accordingly, is not subject to civil liability under Section 12(a)(2) of the Securities Act.[3]

This clarification is consistent with the original intent of the simplified registration and disclosure system for standardized options that we adopted in 1982.[4] Under this system, the issuer of the standardized options, generally a clearing corporation, may register the options under the Securities Act on Form S–20.[5] This form is quite streamlined. The Form S–20 prospectus includes limited information about the clearing corporation issuer and the options being registered.[6] The registration statement includes additional information about the issuer's directors and executive officers and legal proceedings as well as its financial statements.

Investors are informed about the general characteristics of standardized options and the rules of options trading through a separate disclosure document we refer to as the "options disclosure document" or the "ODD." The ODD must meet the informational requirements of Rule 9b–1 under the Exchange Act. In addition to setting forth what information must be disclosed in the ODD, Rule 9b–1 requires brokers and dealers to furnish a copy of the ODD to a customer before or at the time they approve that customer's account or accept the customer's order to trade options covered by the ODD. The exchanges on which the registered options trade work closely with the clearing corporation to prepare and update the ODD.[7]

We adopted the simplified registration and disclosure system applicable to standardized options primarily to reduce the expense of preparing and updating a detailed prospectus, and to provide investors with a document that is easier to read and understand than a traditional options prospectus.[8] Securities Act Rule 135b and its adopting release provide that an ODD prepared in accordance with Rule 9b–1 under the Exchange Act "shall not be deemed to constitute an offer to sell or offer to buy any security" for purposes only of Section 5 of the Securities Act.[9] In that adopting release, we stated that "[f]or purposes of clarification, it should be noted that if the disclosure document is deemed not to be an offer to sell or buy, it cannot be deemed to be a prospectus."[10] In addition, we stated that Rule 135b "is intended to relieve the preparers of the disclosure document from liability under Section 12(1) [now Section 12(a)(1)] of the [Securities] Act for distributing a disclosure document to investors which might, absent such relief, violate Section 5 of the [Securities] Act."[11]

However, Rule 135b and its adopting release both are silent as to whether the ODD is subject to liability under Section 12(a)(2) of the Securities Act. Section 12(a)(2) generally imposes civil liability on a person using a prospectus that contains material misstatements or omissions to offer or sell a security.[12]

Shortly after we adopted Rule 135b, the Options Clearing Corporation, commonly known as the OCC, requested interpretive advice from the Division of Corporation Finance regarding the applicability of Section 12(a)(2) liability to an ODD. After considering the rule's adopting release, the Division advised the OCC that in its view, an ODD "is not a prospectus within the meaning of Section 2(10) [now Section 2(a)(10)] of the Securities Act and, thus, is not subject to liability under Section 12(2) [now Section 12(a)(2)] of the Securities Act."[13] In 1998, we proposed and sought comment on a revision to Rule 135b to clarify that the ODD is not subject to Section 12(a)(2) liability.[14]

II. Discussion

Despite this long-standing interpretive position, some uncertainty continues to exist about the applicability of Section 12(a)(2) liability to an ODD.[15] In response to informal requests from the Chicago Board Options Exchange and the OCC, we intend to reduce uncertainty in this area. We received two letters of comment on the 1998 proposal to amend Rule 135b.[16] Both letters supported clarification of the Section 12(a)(2) liability issue.

As noted above, the ODD informs investors of the general characteristics of standardized options and the rules of options trading. Because of the general nature of this document, the ODD does not encourage investors to invest in any particular standardized option. Rather, the ODD merely provides background information about standardized options. Therefore, we believe that the ODD is neither an offer under the Securities Act nor a prospectus and therefore is not subject to Section 12(a)(2) liability.[17]

Accordingly, we are adopting the proposed change to Rule 135b to codify the Division of Corporation Finance's position that an ODD prepared in accordance with Exchange Act Rule 9b–1 is not subject to liability under Securities Act Section 12(a)(2).[18]

III. Costs and Benefits

We solicited comment to assist us in our evaluation of the costs and benefits associated with the change to Rule 135b. In response, we received two comment letters from affected parties, the Philadelphia Stock Exchange and the OCC. Both commenters supported the amendment. The OCC noted that the amendment would eliminate uncertainty in this area of the law, which would be beneficial to all parties. The amendment will not result in any new costs because it simply codifies the long-standing interpretive position of the Division of Corporation Finance that an ODD prepared in accordance with Exchange Act Rule 9b–1 is not a prospectus and thus is not subject to liability under Section 12(a)(2) of the Securities Act. By reducing any uncertainty in the courts concerning the applicability of Section 12(a)(2) liability to an ODD, we anticipate that the amendment will reduce the time and money spent by plaintiffs, the options exchanges, the OCC and the courts in pursuing, defending and dismissing such claims.

As stated above, at least one federal district court has ruled that a claim may exist under Section 12(a)(2) even though the Division's interpretive position was in place.[19] This type of conflicting ruling has added to the cost of defending and adjudicating claims and added uncertainty regarding the Section 12(a)(2) liability issue. In addition, the OCC has informed us of another suit currently pending in which the plaintiffs have claimed that the ODD is subject to Section 12(a)(2) liability. We also contacted the OCC to help estimate the dollar cost of the uncertainty, which includes the cost of legal services. They were not able to provide dollar estimates because of the difficulty of separating the costs of defending one claim among a number of claims. Although it is not possible to quantify the extent to which plaintiffs would bring such suits in the future absent the amendment, we expect the rule clarification to result in cost savings to plaintiffs, defendants and courts by reducing any further need for these parties to address this issue.

IV. Effects on Efficiency, Competition and Capital Formation

We sought and received no comments on the amendment's effects on efficiency, competition and capital formation. The amendment to Rule 135b is intended to reduce the OCC's and the exchanges' risk of Section 12(a)(2) liability for the contents of the ODD. We do not expect this rule to have a negative impact on efficiency, competition and capital formation for the following reasons:

This amendment reduces the legal risks to the OCC as issuer. But the OCC does not receive the proceeds from the sale of these securities. Rather, it acts as the clearing agent between the buyers and sellers of the securities. As such, the risk to the seller is unchanged by this rule and will not impact the economic incentives of buyers and seller to transact. This rule therefore should have no impact on capital formation.

To the extent that this rule reduces the risk of legal actions against the OCC and the exchanges on the basis of differences of interpretation in Section 12(a)(2) liability, this rule will reduce the resources spent by the OCC and exchanges addressing suits. This rule therefore should increase the efficiency of the OCC and exchanges.

We do not expect the amendment to have a significant impact on competition because the OCC is currently the only clearing corporation for standardized options trading on exchanges in the United States. Any new clearing corporations in the United States would benefit from the clarification equally with the OCC. Similarly, the exchanges will equally benefit from the clarification. However, to the extent that the options exchanges and the OCC compete with foreign markets for the trading of standardized options, by improving the efficiency of these entities, the amendment will have some positive effect on the exchanges' and the OCC's ability to compete in this market.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, was attached to the proposing release, Release No. 33–7550, as Appendix A. We solicited comments on the potential impact of the amendment on small entities, but received no comments.

VI. Statutory Basis

We are adopting the amendment to Securities Act Rule 135b pursuant to Sections 2(a)(10), 2(b), 7, 10, 19(a) and 28 of the Securities Act, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

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[1] 17 CFR 230.135b.

[2] 15 U.S.C. 77a *et seq.*

[3] Release No. 33–7550 (July 1, 1998) [63 FR 38136].

[4] Release No. 33–6426 (Sept. 16, 1982) [47 FR 41950]. Rule 9b–1(a)(4) [17 CFR 240.9b–1(a)(4)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] defines standardized options as "options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate."

[5] 17 CFR 239.20.

[6] Rule 153b [17 CFR 230.153b] allows the issuer to satisfy its Securities Act Section 5(b)(2) [15 U.S.C. 77e(b)(2)] prospectus delivery requirement by delivering copies of the prospectus to each exchange on which the options are traded. The exchange then must deliver the prospectus to options customers upon request.

[7] See Release No. 34–43461 (Oct. 19, 2000) [65 FR 64137].

[8] Release No. 33–6426, see note 3 above; see also Release No. 33–6494, n.2 (Oct. 27, 1983) [48 FR 51328] (discussing the Commission's 1979 Special Study of the Options Market, recommending the simplified registration and disclosure scheme).

[9] 15 U.S.C. 77e. However, as stated in the release proposing Rule 135b, the ODD is subject to liability under the antifraud provisions of the federal securities laws. See Release No. 33–6411 (June 24, 1982) [47 FR 28688].

[10] Release No. 33–6426, see note 3 above.

[11] Release No. 33–6426, see note 3 above. Because Rule 135b states that Section 5 does not apply to distribution of the ODD, it is clear that Section 12(a)(1) liability is inapplicable because that section provides recourse only for offers or sales made in violation of Section 5. See 15 U.S.C. 77*l*(a)(1).

[12] Section 12(a)(2) also imposes civil liability for oral communications containing material misstatements or omissions. 15 U.S.C. 77*l*(a)(2).

[13] Letter dated September 23, 1982, from then Division of Corporation Finance Director, Lee B. Spencer, Jr. to Marc L. Berman, then Senior Vice President and General Counsel, of the Options Clearing Corporation. On its face, the text of Rule 135b does not address the applicability of Section 12 liability. In its interpretive letter, the Division noted that the limiting language "for purposes only of Section 5 of the Act" appearing in Rule 135b is intended to clarify that the ODD would be subject to the antifraud provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], but is not intended to suggest that the ODD remains subject to Section 12(a)(2) liability.

[14] Release No. 33–7550 (July 1, 1998) [63 FR 38136].

[15] See, for example, *Spicer* v. *Chicago Board Options Exchange*, No. 88 C 2139 (N.D. Ill. Oct. 24, 1990) (deciding that an ODD could be subject to Section 12(a)(2) liability), *motion to reconsider denied* (Jan. 24, 1991), *summary judgment granted* (Dec. 9, 1992) (finding in favor of the OCC on the Section 12(a)(2) claim on other grounds). We have never considered inclusion of the statement referring to the ODD that is required by Form S–20 as having the effect of incorporating the ODD by reference into the Form S–20 prospectus. Accordingly, we have added language to Rule 135b stating that the ODD shall not be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) [15 U.S.C. 77b(a)(10) and 77*l*(a)(2)] of the Act, even if it is referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S–20 prospectus.

[16] See the comment letters from Options Clearing Corporation (Aug. 26, 1998) and the Philadelphia Stock Exchange (Aug. 28, 1998). The comments we received are available in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–19–98.

[17] We note that this amendment is consistent with Congress' exemption of security futures products from Section 12(a)(2) liability. Congress generally intended that we treat standardized options and securities futures products similarly. See, for example, Exchange Act Section 6(h)(3)(C) [15 U.S.C. 78f(h)(3)(C)].

[18] Of course, the document would continue to be subject to the antifraud liability provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], and Rule 10b–5 under the Exchange Act [17 CFR 240.10b–5]. Thus, we believe that the rule, if amended as proposed, would continue to be consistent with protection of investors.

[19] See *Spicer* v. *Chicago Board Options Exchange* in note 15 above.

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Text of the Rule Amendment

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Revise § 230.135b to read as follows:

§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.

Materials meeting the requirements of § 240.9b–1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5 (15 U.S.C. 77e) of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77*l*(a)(2)) of the Act, even if such materials are referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S–20 prospectus.

By the Commission.

Dated: December 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32079 Filed 12–31–01; 8:45 am]

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Federal Register

Wednesday,
January 2, 2002

Part VI

Securities and Exchange Commission

17 CFR Parts 228, 229, 240, and 249
Disclosure of Equity Compensation Plan Information; Final Rules

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 33–8048, 34–45189; File No. S7–04–01]

RIN 3235–AI01

Disclosure of Equity Compensation Plan Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting amendments to the Securities Exchange Act of 1934 disclosure requirements applicable to annual reports filed on Forms 10–K and 10–KSB and to proxy and information statements. The amendments will enhance disclosure of the number of outstanding options, warrants and rights granted by registrants to participants in equity compensation plans, as well as the number of securities remaining available for future issuance under these plans. The amendments require registrants to provide this information separately for equity compensation plans that have not been approved by their security holders, and to file with us copies of these plans unless immaterial in amount of significance.

DATES: Effective Date: February 1, 2002. *Compliance Dates:* Registrants must comply with the new disclosure requirements for their annual reports on Forms 10–K or 10–KSB to be filed for fiscal years ending on or after March 15, 2002 and for proxy and information statements for meetings of, or action by, security holders occurring on or after June 15, 2002. Registrants voluntarily may comply with the new disclosure requirements before the compliance dates.

Comments: Comments on the "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 should be received by February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, Office of Rulemaking, Division of Corporation Finance, by telephone at (202) 942–2910, or in writing at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 201 [1] and 601 [2] of Regulation S–B,[3] Items 201 [4] and 601 [5] of Regulation S–K [6] and Form 10–K,[7] Form 10–KSB [8] and Schedule 14A [9] under the Securities Exchange Act of 1934.[10] Schedule 14C [11] under the Exchange Act also is affected by the amendments.[12]

I. Introduction

As the use of equity compensation has increased during the last decade,[13] so have concerns about its impact on registrants and their security holders.[14] Equity compensation grants and awards may result in a significant reallocation of ownership between existing security holders and management and employees.[15] Our current rules do not require disclosure in a single location of the total number of securities that a registrant has remaining available for issuance under all of its equity compensation plans. Also, because these plans may be implemented without the approval of security holders, it is possible that investors may not be able to determine the total size of a registrant's equity compensation program.

In January 2001, we proposed amendments to our equity compensation disclosure rules, where our intent was to furnish investors with a more understandable presentation of a registrant's equity compensation program.[16] We received 31 comment letters in response to the proposals.[17] While a majority of commenters supported the proposals, several questioned the need for disclosure that was, in their view, substantially equivalent to disclosure already required in registrants' audited financial statements. In addition, many of the supportive commenters offered suggestions for refining the proposals to better accomplish the goal of assuring that all material information about a registrant's equity compensation program is fully and clearly disclosed. We have made a number of changes to the proposals in response to these comments. These changes are discussed in Section II of this release.

As a result of today's amendments, registrants must include a new table in their annual reports on Form 10–K,[18] as well as in their proxy statements [19] in years when they are submitting a compensation plan for security holder action. This table requires information about two categories of equity compensation plans: plans that have been approved by security holders and plans that have not been approved by security holders. With respect to each category, a registrant must disclose the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights, as well as the number of securities remaining available for future issuance under the registrant's equity compensation plans.[20]

[1] 17 CFR 228.201.
[2] 17 CFR 228.601.
[3] 17 CFR 228.10 *et seq.*
[4] 17 CFR 229.201.
[5] 17 CFR 229.601.
[6] 17 CFR 229.10 *et seq.*
[7] 17 CFR 249.310.
[8] 17 CFR 249.310b.
[9] 17 CFR 240.14a–101.
[10] 15 U.S.C. § 78a *et seq.*
[11] 17 CFR 240.14c–101.
[12] Item 1 of Schedule 14C requires that a registrant yfurnish the information called for by all of the items of Schedule 14A (other than Items 1(c), 2, 4 and 5) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.
[13] A study of stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 15.2% of outstanding shares (calculated on a fully-diluted basis) for management and employee equity incentives in 2000, compared to only 6.9% in 1989. See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations* (2000).
[14] See Eric D. Roiter, *The NYSE Wrestles with Shareholder Approval of Stock Option Plans*, Corp. Gov. Adv., Vol. 8, No. 1 (Jan./Feb. 2000), at 1. See also, for example, Justin Fox, *The Amazing Stock Option Sleight of Hand*, Fortune, June 25, 2001, at 86.
[15] In its most recent study, the Investor Responsibility Research Center found that the average potential dilution for the 1,500 companies in the "S&P Super 1,500" (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600) was 14.6% in 2000, compared to 11.6% in 1997; an increase of approximately 26%. The increase was even greater for S&P 500 companies, with average potential dilution rising to 13.1% in 2000, compared to 9.2% in 1995. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000) (the "IRRC Dilution Study").
[16] The amendments were proposed in Release No. 33–7944 (Jan. 26, 2001) [66 FR 8732] (the "Proposing Release").
[17] The commenters included 11 individual and institutional investors, eight registrants and registrant associations (one registrant submitted two letters), one self-regulatory organization and 10 members of the executive compensation consulting, accounting and legal communities. These comment letters and a summary of comments prepared by our staff are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–04–01. Public comments submitted electronically and the summary of comments are available on our Web site *http://www.sec.gov*.
[18] The discussion of Form 10–K in this release also includes Form 10–KSB.
[19] The discussion of proxy statements in this release also includes Schedule 14C information statements.
[20] To help investors better understand equity compensation, our Office of Investor Education and Assistance will create educational materials about the available disclosure on equity compensation programs (including the information available in financial statements).

II. Discussion of Amendments

A. Content of Disclosure

1. Required Disclosure

Under the original proposals described in the Proposing Release, registrants were to disclose in tabular form several categories of information about their equity compensation plans, including the number of securities authorized for issuance under each plan, the number of securities issued, plus the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted, under each plan during the last fiscal year, the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted other than in the last fiscal year and the number of securities remaining available for future issuance under each plan. The proposals would have required registrants to list each plan separately in the table. We also sought comment as to whether any additional categories of information should be included in the table.

In response to concerns that the proposals would be costly and burdensome to implement and duplicative of some of the information required in registrants' financial statements, we have eliminated the first two proposed categories of disclosure. We have made a number of other changes as well, including a change that permits registrants to present the required information on an aggregated basis. These changes are discussed in detail below.

In addition to comments suggesting that we scale back the proposed disclosure, we also received comments citing the need for additional types of disclosure not originally proposed. For example, several commenters suggested that we add a column to the proposed table showing the weighted-average exercise price of outstanding options, warrants and rights.[21] These commenters asserted that investors need this information to assess the dilutive effect of a registrant's equity compensation program.[22] To enable investors to better understand dilution and to enhance the visibility of exercise price information, we have added a column to the table requiring disclosure of the weighted-average exercise price of all outstanding compensatory options, warrants and rights.[23]

As adopted, the amendments require a registrant to provide investors with the following tabular disclosure:

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

Registrants must provide the disclosure with respect to any equity compensation plan[24] in effect[25] as of the end of the registrant's last completed fiscal year that provides for the award of a registrant's securities or the grant of options, warrants or rights to purchase the registrant's securities to employees of the registrant or its parent, subsidiary or affiliated companies, or to any other person.[26] The disclosure also is to be provided without regard to whether the securities to be issued under the equity compensation plan are authorized but unissued securities of the registrant or reacquired shares.

2. Aggregated Disclosure

Several commenters suggested that we permit registrants to provide the required tabular disclosure on an aggregate, rather than a plan-by-plan, basis.[27] These commenters indicated that it would be unduly burdensome for many registrants if plans had to be listed separately in the table.[28] Another commenter expressed similar concerns if registrants were required to itemize plans assumed as the result of mergers, consolidations or other acquisition transactions.[29] We are persuaded that plan-by-plan disclosure may be

[21] See, for example, the Letter dated March 26, 2001 from the Council of Institutional Investors (the "CII Letter"), the Letter dated April 24, 2001 from the Association for Investment Management and Research and the Letter dated April 16, 2001 from the Association of the Bar of the City of New York (the "NYC Bar Letter").
[22] While the impact of outstanding options, warrants and rights is contained in the presentation of diluted earnings-per-share required by Statement of Financial Accounting Standards No. 128, *Earnings-Per-Share* (Feb. 1997) ("SFAS 128"), this disclosure does not necessarily isolate "compensatory" instruments. Typically, the diluted earnings-per-share figure combines the dilutive effect of compensatory options, warrants and rights with that of other outstanding convertible securities.
[23] See new Item 201(d)(2)(ii) of Regulation S–B [17 CFR 228.201(d)(2)(ii)] and new Item 201(d)(2)(ii) of Regulation S–K [17 CFR 229.201(d)(2)(ii)]. This weighted-average exercise price information may be different from that contained in a registrant's financial statements as required by Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (Oct. 1995) ("SFAS 123") because the information includes grants and awards to non-employees while the information required by SFAS 123 may not. See n. 55 below.
[24] This includes any equity compensation plan that provides for grants and awards to employees or non-employees in exchange for consideration in the form of goods or services as described in SFAS 123.
[25] For purposes of the amendments, we consider an equity compensation plan to be in effect as long as securities remain available for future issuance under the plan, or as long as options, warrants or rights previously granted under the plan remain outstanding.
[26] Disclosure is required without regard to whether participants are employees (including officers) or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders).
[27] See, for example, the Letter dated May 7, 2001 from the American Bar Association (the "ABA Letter"), the Letter dated April 2, 2001 from Lucent Technologies Inc. and the Letter dated May 22, 2001 from the New York State Bar Association (the "NY State Bar Letter").
[28] One commenter estimated that, based upon the number of equity compensation plans it administers, compliance could cost an additional $300,000 annually for printing and distribution. See the Letter dated April 9, 2001 from Lucent Technologies Inc. (the "Second Lucent Letter").
[29] See the Letter dated February 27, 2001 from Intel Corporation (the "Intel Letter").
[30] In addition, information on the number and identity of a registrant's equity compensation plans should be available in the footnotes to the registrant's financial statements as part of its required SFAS 123 disclosure. See paragraph 46 of SFAS 123.

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burdensome for many registrants.[30] Accordingly, we have revised the table to permit registrants to aggregate disclosure in two general categories:

- equity compensation plans approved by security holders; and
- equity compensation plans not approved by security holders.[31]

In the Proposing Release, we sought comment as to whether, when a registrant is submitting a new or existing equity compensation plan for security holder action, the required proxy statement disclosure should include that plan.[32] Several commenters suggested that we expand the table to include information about an existing plan upon which further action is being taken (for example, where a registrant is seeking the approval of security holders for an increase in the number of securities authorized for issuance under the plan).[33] These commenters indicated that, absent this requirement, a registrant amending an existing equity compensation plan otherwise might avoid disclosing information about the securities previously authorized for issuance under the plan. We are persuaded that registrants should include this information in the table.

Accordingly, where action is being taken to amend an existing equity compensation plan, the table should include information about the securities previously authorized for issuance under the plan; that is, the number of securities to be issued upon the exercise, and the weighted-average exercise price, of outstanding options, warrants and rights previously granted under the plan and the number of securities remaining available for future issuance under the plan.[34] A registrant should not include in the table the number of additional securities that are the subject of the plan amendment for which the registrant is seeking security holder approval.

3. Individual Arrangements and Assumed Plans

In the Proposing Release, we sought comment as to whether aggregated disclosure of individual equity compensation arrangements[35] was appropriate. We also asked whether aggregated disclosure should be permitted where a registrant had assumed an equity compensation plan in connection with a merger, consolidation or other acquisition transaction. Several commenters supported aggregated disclosure of individual arrangements,[36] and one commenter was in favor of aggregating the disclosure of individual arrangements with the disclosure of equity compensation plans.[37] Other commenters favored permitting aggregated disclosure of assumed plans.[38] Consistent with the concept of aggregated plan disclosure, we have revised the table to permit registrants to combine information about individual arrangements[39] and assumed plans (where further grants and awards can be made under these plans)[40] with information about other plans, all in the appropriate disclosure category.

4. Non-Security Holder-Approved Plans

As adopted, the amendments require a registrant to identify and describe briefly, in narrative form, the material features of each equity compensation plan in effect as of the end of the last completed fiscal year that was adopted without security holder approval.[41] While several commenters supported this requirement,[42] one commenter suggested that we permit registrants to cross-reference the portion of their required SFAS 123 disclosure containing descriptions of their non-security holder-approved plans to satisfy this requirement.[43] Because it streamlines compliance and ensures that investors have annual[44] access to this information, we are permitting registrants to satisfy the disclosure requirement in this manner.[45] The cross-reference should identify the specific plan or plans in the required SFAS 123 disclosure that have not been approved by security holders. In view of this change, we have eliminated the provision that would have permitted a registrant to satisfy this disclosure requirement by simply identifying the filing containing a narrative description of the plan in the years following the initial disclosure.

5. Foreign Registrants

Some commenters inquired about the applicability of the proposals to foreign registrants. Historically, we have applied a more flexible standard to foreign registrants than domestic registrants in the area of executive compensation disclosure. For example, foreign registrants need not disclose executive compensation information on an individual basis unless they disclose it in that manner under home country law or otherwise.[46] We do not find it necessary to vary from our historical treatment of executive compensation disclosure for foreign registrants,[47] and, thus, we do not extend the amendments to foreign registrants at this time.[48]

B. Relationship to Accounting Disclosure

We have made significant changes to the proposals in response to arguments by several commenters that the current accounting literature provides for adequate disclosure about stock-based compensation.[49] We agree that we should strive to minimize redundant disclosure under generally accepted accounting principles and our rules, where practical. Accordingly, we have revised the proposals and will not require disclosure of

- The number of securities authorized for issuance under each equity compensation plan;[50] and
- The number of securities issued, plus the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted, under each plan during the last fiscal year.[51]

The revised table will provide useful information to investors that is not always readily available in a registrant's financial statements.[52] This includes

- An indication of whether an equity compensation plan has been approved by security holders;[53]
- The total number of securities available for future issuance under a registrant's equity compensation program;[54] and
- The number of options and other securities granted or awarded to non-employees for compensatory purposes.[55]

Because this information may be important to investors in making informed voting and investment decisions, we believe it is appropriate to require all registrants subject to Exchange Act reporting to disclose it regularly.

Even where information, such as the number of securities to be issued upon the exercise, and the weighted-average exercise price, of outstanding options, warrants and rights, otherwise is available, it is not transparent to investors.[56] The amendments enhance the accessibility of this information, thereby making it easier for investors to assess the impact of a registrant's equity compensation policies and practices. Moreover, the amendments present the information in categories—plans that have been approved by security holders and plans that have not been approved by security holders—that investors have requested.[57]

The following table reflects the current relevant SFAS 123 disclosure requirements for stock-based compensation[58] and the new disclosure required by the amendments being adopted today, as adjusted to minimize redundancy between the two.

Equity compensation disclosure item	Required by SFAS 123	Required by Item 201	Required by Item 601	Location of disclosure (financial statements/form 10-K/proxy by statement)
Description of general terms of each plan	Yes (¶ 46)	No	No	Financial Statements.
Number of securities authorized for grants of options or other equity instruments.	Yes (¶ 46)	No	No	Financial Statements.
Number and weighted-average exercise price of:				
Options outstanding at beginning of year	Yes (¶ 47a)	No	No	Financial Statements.
Options outstanding at end of year	Yes (¶ 47a)	Yes*	No	Financial Statements/Form 10-K/ Proxy Statement.**
Options exercisable at end of year	Yes (¶ 47a)	No	No	Financial Statements.
Options granted during year	Yes (¶ 47a)	No	No	Financial Statements.
Options exercised during year	Yes (¶ 47a)	No	No	Financial Statements.
Options forfeited during year	Yes (¶ 47a)	No	No	Financial Statements.
Options expired during year	Yes (¶ 47a)	No	No	Financial Statements.

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[30] See new Item 201(d)(1) of Regulation S–B [17 CFR 228.201(d)(1)] and new Item 201(d)(1) of Regulation S–K [17 CFR 229.201(d)(1)].

[32] These plans otherwise are subject to the disclosure requirements of Item 10 of Schedule 14A. Item 10 requires a description of the material features of, and tabular disclosure of the benefits receivable or allocable under, the plan being acted upon, as well as additional information regarding specific types of plans.

[33] See, for example, the CII Letter, the Letter dated March 28, 2001 from the State of Wisconsin Investment Board (the "SWIB Letter") and the Letter dated March 29, 2001 from the Teachers Insurance and Annuity Association—College Retirement Equities Fund (the "TIAA-CREF Letter").

[34] See Instruction 1 to new Item 10(c) of Schedule 14A.

[35] For these purposes, an individual equity compensation arrangement includes a "plan" for a single person as defined by Item 402(a)(7)(ii) of Regulation S–K [17 CFR 229.402(a)(7)(ii)] ("A plan may be applicable to one person."), as well as an individual "written compensation contract" (see, for example, the Securities Act Rule 405 [17 CFR 230.405] definition of the term "employee benefit plan").

[36] See, for example, the NY State Bar Letter and the TIAA–CREF letter.

[37] See the ABA Letter.

[38] See the Intel Letter, the Letter dated August 17, 2001 from Leonard S. Stein and the Letter dated August 26, 2001 from Hendrick Vater.

[39] See Instruction 4 to new Item 201(d) of Regulation S–B [17 CFR 228.201(d)] and Instruction 4 to new Item 201(d) of Regulation S–K [17 CFR 229.201(d)].

[40] See Instruction 5 to new Item 201(d) of Regulation S–B and Instruction 5 to new Item 201(d) of Regulation S–K. In the case of individual options, warrants and rights assumed in connection with a merger, consolidation or other acquisition transaction, registrants should disclose the number of securities underlying the assumed options, warrants and rights and the related weighted-average exercise price information on an aggregated basis in a footnote to the table. *Id.*

[41] See new Item 201(d)(3) of Regulation S–B [17 CFR 228.201(d)(3)] and new Item 201(d)(3) of Regulation S–K [17 CFR 229.201(d)(3)].

[42] See, for example, the CII Letter, the Letter dated April 2, 2001 from the Investment Company Institute and the TIAA–CREF Letter.

[43] See the NYC Bar Letter. Similar cross-referencing is permitted under Item 101(b) (financial information about segments) and Item 101(d) (financial information about geographic areas) of Regulation S–K [17 CFR 229.101(b) and (d)].

[44] As originally proposed, the plan description would have been provided only once—following the year of adoption. The Proposing Release contemplated that, in subsequent years, registrants simply would identify the prior filing containing the plan description. Since SFAS 123 requires plan descriptions to be provided annually, the information will be available each year.

[45] See Instruction 7 to new Item 201(d) of Regulation S–B and Instruction 7 to new Item 201(d) of Regulation S–K. Paragraph 46 of SFAS 123 requires a description of each stock-based compensation plan, including the general terms of awards under the plan, such as vesting requirements, the maximum term of options granted and the number of shares authorized for grants of options or other equity instruments. See also paragraph 362 of SFAS 123. If the SFAS 123 plan description does not contain all of the material features of the plan, cross-referencing is not permitted.

[46] See Item 6.B of Form 20–F [17 CFR 249.220f]. Item 6.B requires disclosure of compensation information about a foreign private issuer's directors and senior management on an aggregated basis, including the amount of compensation paid and benefits in kind granted.

[47] Item 6.E.2 of Form 20–F requires a foreign private issuer to "describe any arrangements for involving the employees in the capital of the company, including any arrangement that involves the issue or grant of options or shares or securities of the company."

[48] In addition, while the use of equity compensation by foreign companies is increasing, it still trails use by U.S. companies. See Towers Perrin, *Stock Options Around the World* (2001).

[49] See the Letter dated April 2, 2001 from Arthur Andersen LLP, the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants, the Letter dated May 29, 2001 from Emerson Electric Co., the Letter dated March 26, 2001 from the Institute of Management Accountants, the Letter dated April 12, 2001 from Microsoft Corporation, the Letter dated April 2, 2001 from PricewaterhouseCoopers LLP, the NY State Bar Letter and the Letter dated March 30, 2001 from Verizon Communications. These commenters also pointed out that duplicative disclosure is inconsistent with initiatives that we jointly have undertaken with the accounting profession to simplify disclosure and eliminate redundancies in financial reporting. See FASB Business Reporting Research Project, *Report of GAAP–SEC Disclosure Requirements Working Group* (2001), available at *http://www.rarc.rutgers.edu/fasb/brrp/BRRP3pl.PDF*.

[50] This information is required by paragraph 46 of SFAS 123.

[51] This information is required by paragraphs 47(a) and (c) of SFAS 123.

[52] See *Report of the New York Stock Exchange Special Task Force on Stockholder Approval Policy* (Oct. 1999) (the "NYSE Task Force Report"), at 14, available at *http://www.nyse.com/pdfs/policy.pdf*.

[53] While SFAS 123 requires an entity to provide a description of each stock-based compensation plan, these descriptions need not indicate whether a plan has been approved by security holders. See paragraphs 46 and 362 of SFAS 123.

[54] Paragraph 46 of SFAS 123 provides for disclosure of the number of shares authorized for grants of options or other equity instruments pursuant to stock-based compensation plans. It does not specifically require disclosure of the *current* number of authorized shares available for grant. In addition, it may be difficult for investors to determine this number. Currently, a registrant submitting an equity compensation plan for security holder action need not provide any specific disclosure about its other equity compensation plans. In its annual study on stock plan dilution, the Investor Responsibility Research Center found that approximately 22% of the companies surveyed did not disclose the number of shares available for future issuance under their employee stock plans. See the IRRC Dilution Study.

[55] Paragraph 46 of SFAS 123 provides that "[a]n entity that uses equity instruments to acquire goods or services other than employee services shall provide disclosures similar to those required [for employee transactions] *to the extent that those disclosures are important* in understanding the effects of those transactions on the financial statements" (emphasis added). Consequently, a registrant has discretion to exclude non-employee grants and awards of equity instruments from its SFAS 123 disclosure. In addition, registrants need not apply the disclosure provisions of SFAS 123 to immaterial items, as determined based on a registrant's particular circumstances. See paragraph 244 of SFAS 123.

[56] See, for example, the NYSE Task Force Report, n. 52 above, at 14 ("The requisite information [to make dilution calculations] is not consistently available in any one place or format in corporate disclosure documents * * *."), the Letter dated April 2, 2001 from the Association of Publicly Traded Companies ("[t]he sheer volume and complexity of most corporate compensation proposals, coupled with stock option plans, makes it difficult for the average investor to interpret and effectively utilize the information provided.") and the TIAA–CREF Letter ("[l]ack of transparency * * * limits the ability of shareholders * * * to protect themselves against plans that can be highly dilutive.").

[57] See the Proposing Release at n. 17.

[58] This table does not describe all of the information that registrants must disclose under SFAS 123.

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Equity compensation disclosure item	Required by SFAS 123	Required by Item 201	Required by Item 601	Location of disclosure (financial statements/form 10-K/proxy by statement)
Terms of significant modifications of outstanding awards.	Yes (¶ 47f)	No	No	Financial Statements.
Range of exercise prices for outstanding options.	Yes (¶ 48)	No	No	Financial Statements.
Weighted-average exercise price of outstanding options and similar instruments.	Yes (¶ 48)	Yes*	No	Financial Statements/Form 10–K/Proxy Statement.**
Weighted-average remaining contractual life of outstanding options.	Yes (¶ 48)	No	No	Financial Statements.
Number of securities remaining available for future issuance.	No	Yes*	No	Form 10-K/Proxy Statement.**
Description of material terms of each plan that has not been approved by security holders.	No	Yes	No	Form 10-K/Proxy Statement.**
Filing of compensatory plans in which named executive officers and directors participate and any other compensatory plan unless immaterial.	No	No	Yes	Form 10-K.

*Disclosed by category: plans approved by security holders and plans not approved by security holders.
**May be incorporated by reference into the annual report on Form 10-K by including in proxy statement.

C. Location of Disclosure

As proposed, registrants were to include the table in the proxy statement whenever they submitted a compensation plan for security holder action and in the annual report on Form 10–K in all other years. In the Proposing Release, we sought comment as to whether the proposed location of the disclosure was appropriate. Most commenters suggested that, for consistency and to avoid confusion, we should require disclosure in the same document each year.[59] Citing the relevance of the information when electing directors, several commenters suggested that we require disclosure in the proxy statement in all instances, even if a registrant were not submitting a compensation plan for security holder action.[60] Other commenters, on the other hand, recommended that we require the disclosure only in the annual report on Form 10–K.[61]

Although the idea of requiring the disclosure in a single location is appealing, we have elected not to do so for several reasons. If we adopted a requirement that the table appear only in proxy statements, a significant number of companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act[62] would not be subject to the requirement. These companies are not required to prepare and file proxy statements. Further, we are not persuaded that, as a general rule, the proposed disclosure is material to voting decisions by security holders other than those relating to compensation plans.[63]

We also do not believe that the table should be located exclusively in the annual report on Form 10–K. Although the annual report on Form 10–K is filed with us, a registrant is not required to deliver it to security holders.[64] Thus, security holders must take some affirmative action to obtain the information.[65] In addition, limiting the table to the annual report on Form 10–K would misplace the disclosure in those cases when the information would be useful to investors in assessing the merits of a compensation plan submitted for security holder action.[66]

[59] In the Proposing Release, we also sought comment as to whether the table should be required in registration statements filed under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*]. While no commenter favored a blanket requirement for all registration statements, two commenters suggested that registrants include the table in registration statements filed in connection with initial public offerings. See the NYC Bar Letter and the NY State Bar Letter. Two commenters expressly opposed a registration statement disclosure requirement. See the ABA Letter and the Letter dated June 11, 2001 from the New York Stock Exchange (the "NYSE Letter"). Generally, registrants already include information about the possible effects of future sales of securities, including outstanding options, in registration statements for initial public offerings to the extent that this information is material. Item 506 of Regulation S–K [17 CFR 229.506] requires specific information in a registration statement filed in connection with an initial public offering about dilution, as well as with respect to common equity securities that have been acquired by officers and directors. In addition, Item 201(a)(2) of Regulation S–K [17 CFR 229.201(a)(2)] requires disclosure of the amount of common equity that is subject to outstanding options or warrants. Further information is available pursuant to the disclosure required by Item 402 of Regulation S–K. Accordingly, except where the table is part of an annual report on Form 10–K or 10–KSB that is incorporated by reference into a prospectus, we are not extending the disclosure requirements to registration statements at this time. See Instruction 10 to new Item 201(d) of Regulation S–B and Instruction 10 to new Item 201(d) of Regulation S–K.

[60] See, for example, the ABA Letter, the CII Letter and the SWIB Letter.

[61] See, for example, the Letter dated March 29, 2001 from Ernst & Young LLP, the Second Lucent Letter and the NYC Bar Letter.

[62] 15 U.S.C. § 78o(d).

[63] Some commenters argued that even where a registrant is not submitting a compensation plan for security holder action, the new disclosure contains relevant information with respect to the backgrounds and compensation of directors and executive officers that should be available for evaluation in connection with the election of directors. In general, we find the relevance of the new disclosure to be somewhat attenuated from decisions regarding the election of directors. Moreover, there would be little connection when a nominee has not served previously as a director of the registrant. Finally, the relevance of the new disclosure to decisions concerning the remuneration of directors and officers also is questionable because the table requires general information that does not specifically identify director and executive officer awards.

[64] Registrants are required, however, to provide security holders with an annual report to security holders pursuant to Exchange Act Rule 14a–3(b) [17 CFR 240.14a–3(b)] when soliciting proxies in connection with an annual meeting of security holders at which directors are to be elected. Typically, this annual report to security holders includes the financial statements of the registrant, including the required SFAS 123 disclosure. In some instances, registrants use their annual report on Form 10–K to satisfy this delivery requirement. See Exchange Act Rule 14a–3(d) [17 CFR 240.14a–3(d)].

[65] Under Exchange Act Rule 14a–3(b)(10) [17 CFR 240.14a–3(b)(10)], a registrant must include in its proxy statement or annual report an undertaking to provide without charge to each security holder solicited, upon written request, a copy of the registrant's annual report on Form 10–K. Once filed, the annual report on Form 10–K also is available via our Electronic Data Gathering, Analysis and Retrieval, or EDGAR, system.

[66] Another possible location for the table is the annual report to security holders required by Exchange Act Rule 14a–3(b). This alternative has several drawbacks, however. First, because it is not considered a "filed" document, the annual report is not subject to the express civil liability provisions of Section 18 of the Exchange Act [15 U.S.C. § 78r]. See Exchange Act Rule 14a–3(c) [17 CFR 240.14a–3(c)]. Second, as with proxy statements, the disclosure would not apply to registrants subject to reporting solely under Section 15(d) of the Exchange Act. Finally, because principally financial information is required to be included in the annual report, non-financial disclosure such as the table would appear out of place.

We have concluded that the best way to promote consistency, clarity and relevant placement of the new information is to require that the table be included each year in a registrant's annual report on Form 10–K[67] and, additionally, in the proxy statement when the registrant is submitting a compensation plan for security holder action.[68] In situations where a registrant is required to include the information in both filings, it may satisfy its Form 10–K disclosure obligation by incorporating the required information by reference from its definitive proxy statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the Form 10–K.[69]

D. Filing Copies of Non-Security Holder-Approved Plans

In the Proposing Release, we sought comment as to whether, in lieu of, or in addition to, the narrative disclosure required for an equity compensation plan that has been adopted without the approval of security holders, a registrant should be required to file a copy of the plan as an exhibit to the registrant's annual report on Form 10–K for the fiscal year in which the plan was adopted.[70] Several commenters favored a filing requirement in addition to requiring registrants to provide narrative disclosure of the "material features" of non-security holder-approved equity compensation plans.[71]

Item 601(b)(10) of Regulation S–K[72] requires registrants to file material contracts as exhibits to many of their documents filed under the Securities Act of 1933 (the "Securities Act") and the Exchange Act. Of particular relevance is the provision in Item 601(b)(10)(iii) stating that "any management contract or other compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing * * * in which any director or any of the named executive officers of the registrant * * * participates shall be deemed material and shall be filed."[73] Item 601(b)(10)(iii) also states that "any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance."[74] Some commenters expressed concern that non-security holder-approved plans, many of which exclude executive officers and directors, often do not fall within these provisions.[75]

We believe this concern has merit. Accordingly, we have amended Item 601(b)(10) to require registrants to file any equity compensation plan adopted without the approval of security holders in which any employee (whether or not an executive officer or director of the registrant) participates, unless immaterial in amount or significance.[76] Compliance with this requirement should ensure that significant non-security holder-approved plans are available to investors.[77] Coupled with the required narrative description of non-security holder-approved plans, investors should have access to complete information about a registrant's principal equity compensation plans.

III. Paperwork Reduction Act Analysis

The amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[78] or PRA. We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget, or OMB, for review.[79] Subsequently, OMB approved the proposed information collection requirements.

As discussed in Section I above, we received several comment letters on the proposals. We have made a number of changes to the proposals in response to these comments. Accordingly, we are revising our previous burden estimates. We are submitting the revised estimates to the OMB for approval.[80] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Amendments

The amendments require tabular disclosure of the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Registrants must include the table in their annual reports on Form 10–K or 10–KSB, and, additionally, in their proxy or information statements in years when they are submitting a compensation plan for security holder action. Registrants also must file copies of their non-security holder-approved plans with us, unless immaterial in amount or significance. Preparing and filing an annual report on Form 10–K or 10–KSB is a collection of information. Similarly, preparing, filing and disseminating a proxy or information statement is a collection of information.[81] The collection of

[67] See revised Item 12 of Part III of Form 10–K and revised Item 11 of Part III of Form 10–KSB.

[68] See new Item 10(c) of Schedule 14A. Proxy or information statement disclosure is triggered by the submission of any compensation plan for security holder action, including cash-only plans.

[69] Similar incorporation by reference is permitted with respect to the other disclosure items required by Part III of Form 10–K and 10–KSB. See General Instruction E(3) to Form 10–KSB and General Instruction G(3) to Form 10–K.

[70] See Section II.A.4 above.

[71] See, for example, the CII Letter, the SWIB Letter and the TIAA–CREF Letter. Other commenters suggested that we require registrants to file copies of all equity compensation plans (whether or not approved by security holders). See the ABA Letter and the NYSE Letter.

[72] 17 CFR 229.601(b)(10).

[73] 17 CFR 229.601(b)(10)(iii)(A). Nondiscriminatory, broad-based compensatory plans, contracts or arrangements are exempt from this requirement. See Item 601(b)(10)(iii)(B)(*4*) [17 CFR 229.601(b)(10)(iii)(B)(*4*)].

[74] *Id.*

[75] See, for example, the CII Letter and the Letter dated March 29, 2001 from the Office of the State Comptroller of the State of New York.

[76] See new Item 601(b)(10)(iii)(B) of Regulation S–B [17 CFR 228.601(b)(10)(iii)(B)] and new Item 601(b)(10)(iii)(B) of Regulation S–K [17 CFR 229.601(b)(10)(iii)(B)]. This is consistent with our action in 1981 amending then-Item 7 of Regulation S–K to reformulate the definition of "material contracts" as applied to remunerative plans, contracts or arrangements. See Release No. 33–6287 (Feb. 6, 1981) [46 FR 11952]. Previously, we had indicated that remuneration plans in which directors or executive officers of the registrant did not participate generally did not need to be filed as exhibits. See Release No. 33–6230, Section II.A.2.b.i. (Aug. 27, 1980) [45 FR 58822].

[77] With respect to an existing non-security holder-approved equity compensation plan subject to new Item 601(b)(10)(iii)(B) of Regulation S–B or new Item 601(b)(10)(iii)(B) of Regulation S–K that is in effect as of the effective date of these amendments and that has not been filed previously, a copy of the plan must be filed as an exhibit to the annual report on Form 10–K or 10–KSB filed by the registrant for its first fiscal year ending on or after March 15, 2002.

[78] 44 U.S.C. § 3501 *et seq.*

[79] Publication and submission were in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11.

[80] The titles for the collections of information affected by the amendments are (1) "Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A)," (2) "Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)," (3) "Form 10–K," (4) "Form 10–KSB," (5) "Regulation S–B" and (6) "Regulation S–K."

[81] The likely respondents subject to the collections of information include entities whose reporting obligations arise under the Exchange Act. The reporting requirements of Section 13 of the Exchange Act [15 U.S.C. § 78m], as well as the proxy disclosure requirements of Section 14 of the

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information is mandatory for all registrants and there is no mandatory retention period for the information collected. The collection of information will not be kept confidential.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release. We received six comment letters specifically addressing the estimated paperwork burden associated with the collections of information.[82] These commenters indicated that the amount of time required to comply with the proposals would be significant for many registrants and substantially greater than our estimates. One commenter estimated that, if adopted, the proposals would add at least four pages to its disclosure documents and, where the disclosure appeared in the proxy statement, would result in additional printing costs of $100,000 and additional mailing costs of $200,000 for the extra pages.[83] Another commenter suggested that we offset any increased costs to registrants by eliminating current requirements that do not result in the disclosure of useful information.[84] A third commenter suggested that we consider providing a model form of disclosure for small businesses to reduce their compliance burden.[85]

In response to these comments, we have made a number of changes to the proposals, including eliminating two of the proposed tabular columns and permitting aggregated disclosure. We also are permitting registrants with non-security holder-approved plans to describe the material terms of these plans by cross-referencing to their SFAS 123 disclosure. These changes will streamline compliance and, correspondingly, reduce the burden on registrants. While the amendments require the filing of non-security holder-approved equity compensation plans unless immaterial in amount or significance, this should not increase the burden for registrants significantly as these documents are readily available and will be filed electronically.

C. Revisions to Reporting and Cost Burden Estimates

As a result of the changes described above and a change in one of our underlying assumptions,[86] the reporting and cost burden estimates for the collections of information have changed. Accordingly, we have revised the estimated information collection requirements that were originally submitted to the OMB. With respect to Forms 10–K and 10–KSB, we have increased our estimate by 1,174 hours in the case of Form 10–K and increased our estimate by 707 hours in the case of Form 10–KSB. With respect to Schedules 14A and 14C, we have decreased our estimate by 13,139 hours in the case of Schedule 14A and decreased our estimate by 139 hours in the case of Schedule 14C.

Our estimates are based on several assumptions. First, we estimate that approximately 60%[87] of the registrants that file an annual report on either Form 10–K or 10–KSB maintain equity compensation plans and will be required to provide the new disclosure table.[88] We also estimate that approximately 20%[89] of these registrants maintain non-security holder-approved equity compensation plans and, thus will be required to describe the material features of these plans and file copies with us unless immaterial in amount or significance.[90] We further estimate that, in any year, 30%[91] of the registrants with equity compensation plans will either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan, thereby triggering proxy or information statement disclosure.[92] In this situation,

Exchange Act, apply to entities that have securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l]. The reporting requirements of Section 15(d) of the Exchange Act apply to entities with effective registration statements under the Securities Act that are not otherwise subject to the registration requirements of Section 12 of the Exchange Act.

[82] See the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants (the "AICPA Letter"), the Letter dated April 2, 2001 from the Association of Publicly-Traded Companies (the "APTC Letter"), the Letter dated April 2, 2001 from Lucent Technologies Inc. (the "First Lucent Letter"), the Letter dated May 22, 2001 from the New York State Bar Association, the Letter dated August 17, 2001 from Leonard S. Stein (the "Stein Letter") and the Letter dated August 28, 2001 from Hendrick Veter.

[83] See the Letter dated April 9, 2001 from Lucent Technologies Inc.

[84] See the APTC Letter.

[85] See the Stein Letter.

[86] We have changed our assumption about the number of registrants with equity compensation plans that, in any year, either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan. In the Proposing Release, we estimated that 50% of the registrants with equity compensation plans would either adopt a new plan or amend an existing plan each year. Based on the available survey data, we have revised this assumption to 30%. See n. 91 below.

[87] This estimate is made after a review of available survey data, which varies widely. For example, in its most recent study of the "S&P Super 1,500" (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600), the Investor Responsibility Research Center determined that, of the 1,157 companies examined, 1,142 (98.7%) awarded equity to some portion of their employees. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In contrast, a Pilot Survey conducted by the Bureau of Labor Statistics in 1999 determined that 22% of publicly-held companies offered stock options to their employees. This survey sampled 2,100 "establishments," of which approximately 1 in 10 were publicly-held companies. See Bureau of Labor Statistics, *Pilot Survey on the Incidence of Stock Options in Private Industry in 1999*, (Oct. 11, 2000), available at *http://www.bls.gov/ncs/ocs/sp/ncnr0001.txt*. Further, in the Proposing Release we sought comment as to whether our estimates of the burden of the proposed collections of information were accurate. We received no comment letters responding to that request. Because of variations in the available data, we also have estimated the reporting and cost burdens for the proposed collections of information assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure. See nn. 106 and 110 below.

[88] Based on the actual number of registrants filing annual reports on Form 10–K and 10–KSB, we estimate that 6,229 registrants that file on Form 10–K (10,381 × 60%) maintain equity compensation plans ("Form 10–K Filers") and 2,185 registrants that file on Form 10–KSB (3,641 × 60%) maintain equity compensation plans ("Form 10–KSB Filers").

[89] In the Proposing Release, we estimated that this figure was 25%. The available survey data does not appear to be representative of the general registrant population. See William M. Mercer, Inc., *Equity Compensation Survey* (2001) (48% of survey respondents (83 participants) maintained non-security holder-approved stock option plans for employees below management level; 60% of such plans most prevalent in large companies (more than 5,000 employees)); iQuantic, Inc., *Trends in Equity Compensation 1996–2000* (2000) (27.3% of survey respondents in 1999 (161 participants) maintained non-security holder-approved stock option plans, compared to 3.2% before 1996). After discussions with several compensation professionals, we reduced our estimate to 20%.

[90] We estimate that of the Form 10–K Filers, 1,246 (6,229 × 20%) maintain a non-security holder-approved equity compensation plan ("Form 10–K Filers with Non-Approved Plans") and 4,983 (6,229 × 80%) do not ("Form 10–K Filers with Only Approved Plans"). We estimate that of the Form 10–KSB Filers, 437 (2,185 × 20%) maintain a non-security holder-approved equity compensation plan ("Form 10–KSB Filers with Non-Approved Plans") and 1,748 (2,185 × 80%) do not ("Form 10–KSB Filers with Only Approved Plans").

[91] This estimate is based on a review of available survey data. In its most recent study, the Investor Responsibility Research Center determined that, of 1,157 companies studied in calendar year 2000, 337 (29%) presented proposals for new or amended equity compensation plans to security holders. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In its most recent study, Pearl Meyers & Partners found that new plan authorizations among the top 200 companies were submitted by 58 companies in 2000 (29%). See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations (2000).*

[92] We estimate that of the Form 10–K Filers with Only Approved Plans, 1,495 (4,983 × 30%) submit a new or amended equity compensation plan for security holder approval annually ("Form 10–K Filers with Only Approved Plans Subject to Section 14") and of the Form 10–K Filers with Non-Approved Plans, 374 (1,246 × 30%) submit a new or amended equity compensation plan for security holder approval annually ("Form 10–K Filers with Non-Approved Plans Subject to Section 14"). Similarly, we estimate that of the Form 10–KSB Filers with Only Approved Plans, 524 (1,748 × 30%) submit a new or amended equity compensation plan for security holder approval annually ("Form 10–KSB Filers with Only Approved Plans Subject to Section 14") and of the Form 10–KSB Filers with Non-Approved Plans, 131 (437 × 30%) submit a new or amended equity compensation plan for security holder approval annually ("Form 10–KSB Filers with Non-Approved Plans Subject to Section 14").

[93] This estimate is based on a comparison of the actual number of registrants filing annual reports on Form 10–K or 10–KSB during the 2000 fiscal year (10,381 + 3,641 = 14,022) with the actual number of registrants filing proxy or information statements during the 2000 fiscal year (9,892 + 253 = 10,145), or 10,145/14,022.

[94] Thus, we have subtracted 419 registrants (1,495 × 28%) from the group of Form 10–K Filers with Only Approved Plans Subject to Section 14, 105 registrants (374 × 28%) from the group of Form 10–K Filers with Non-Approved Plans Subject to Section 14, 147 registrants (524 × 28%) from the group of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 and 37 registrants (131 × 28%) from the group of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14.

[95] This estimate is based on a comparison of the actual number of registrants filing proxy statements during the 2000 fiscal year (9,982) with the actual number of registrants filing information statements during the same period (253), or 9,982/10,145.

[96] Thus, we estimate that of the 1,076 Form 10–K Filers with Only Approved Plans Subject to Section 14, 1,054 (1,076 × 98%) will file proxy statements and 22 will file information statements, of the 269 Form 10 × K Filers with Non-Approved Plans Subject to Section 14, 264 (269 × 98%) will file proxy statements and five will file information statements, of the 377 Form 10–KSB Filers with Only Approved Plans Subject to Section 14, 369 (377 × 98%) will file proxy statements and eight will file information statements and of the 94 Form 10–KSB Filers with Non-Approved Plans Subject to Section 14, 92 (94 × 98%) will file proxy statements and two will file information statements.

[97] Even though we have streamlined compliance in order to reduce the burden on registrants, we have not reduced the number of estimated burden hours to prepare the required disclosure. This decision is in response to comments that our initial burden hour estimate was too low. See the AICPA Letter and the First Lucent Letter.

[98] We estimate that registrants will prepare 50% of the required disclosure and outside counsel will prepare the remaining 50%. Accordingly, this estimate reflects the addition of one burden hour to prepare the required tabular disclosure. See n. 97 above and the accompanying text.

[99] We estimate that registrants will prepare 50% of the required disclosure and outside counsel will prepare the remaining 50%. Accordingly, this estimate reflects the addition of two burden hours to prepare the required tabular and narrative disclosure. See n. 97 above and the accompanying text.

[100] We arrived at this estimate by taking the number of Form 10–K Filers (see n. 88 above) and subtracting (a) the number of Form 10–K Filers with Non-Approved Plans (see n. 90 above) and (b) the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (6,229 − 1,246 − 1,076).

[101] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans (see n. 90 above) and subtracting the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (1,246 − 269).

[102] We arrived at this estimate by taking the number of Form 10–KSB Filers (see n. 88 above) and subtracting (a) the number of Form 10–KSB Filers with Non-Approved Plans (see n. 90 above) and (b) the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (2,185 − 437 − 377).

[103] We arrived at this estimate by taking the number of Form 10–KSB Filers with Non-Approved Plans (see n. 90 above) and subtracting the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (437 − 94).

[104] We arrived at this estimate by taking the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 that will file proxy statements and adding the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 that will file proxy statements (see n. 96 above), or (1,054 + 369).

[105] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 that will file proxy statements and adding the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 that will file proxy statements (see n. 96 above), or (264 + 92).

[106] We arrived at this estimate by taking the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 that will file information statements and adding the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 that will file information statements (see n. 96 above), or (22 + 8).

[107] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 that will file information statements and adding the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 that will file information statements (see n. 96 above), or (5 + 2).

we have assumed that a registrant will include the required disclosure in its proxy or information statement and incorporate that disclosure by reference into its annual report on Form 10–K or 10–KSB. We estimate that approximately 28%[93] of the registrants filing annual reports on Form 10–K or 10–KSB are subject to Section 13 of the Exchange Act by virtue of Section 15(d) of the Exchange Act, and thus, do not file proxy or information statements,[94] and that approximately 98%[95] of the registrants file proxy, rather than information, statements in connection with their annual meeting of security holders at which directors are to be elected.[96] Finally, we estimate that preparation of the required tabular disclosure will take two burden hours and, where required, preparation of the description of the material features of a non-security holder-approved equity compensation plan will take two burden hours.[97]

Our revised estimate of the total burden hours of the required collections of information is set forth in the following table.

TABLE—BURDEN HOUR ESTIMATES

Form	Filings/year			Estimated burden hours/filing			Estimated burden hours/year	
	Estimated filings/year	Estimated filings subject to tabular disclosre	Estimated filings subject to tabular and narrative disclosrue	Before amendments	Adjusted for tabular disclosure	Adjusted for tabular and narrative disclosure	Before amendments	After amendments
	(A)	(B)	(C)	(D)	(E)[98]	(F)[99]	(G) = (A) x (D)	(H) = (B) x (E) + (C) x (F)
0-K	10,381	[100] 3,907	[101] 977	430	430.4	430.6	4,463,830	4,469,691
10-KSB	3,641	[102] 1,371	[103] 343	294	294.4	294.6	1,070,454	1,072,511
14A	9,892	[104] 1,423	[105] 356	18.2	18.3	18.4	179,966	182,101
14C	253	[106] 30	[107] 7	18.1	18.2	18.3	4,582	4,626
Total							5,718,832	5,728,929

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In addition to the internal hours they will expend,[108] we expect that registrants will retain outside counsel to assist in the preparation of the required disclosures.[109] The total dollar cost of complying with Form 10–K and Form 10–KSB, revised to include outside counsel costs expected from the amendments, is estimated to be $2,345,268,300 for Form 10–K, an increase of $1,758,300 from the current annual burden of $2,343,510,000, and $562,605,100 for Form 10–KSB, an increase of $617,100 from the current annual burden of $561,988,000. The total dollar cost of complying with Regulations 14A and 14C, revised to include outside counsel costs expected from the amendments, are estimated to be $93,254,500 for Regulation 14A, an increase of $640,500 from the current annual burden of $92,614,000, and $2,382,200 for Regulation 14C, an increase of $13,200 from the current annual burden of $2,369,000.[110]

D. Request for Comment

We request comment in order to (a) evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the collections of information, (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[111]

Any member of the public may direct to us any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, with reference to File No. S7–04–01. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–04–01 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Costs and Benefits of Final Rules

A. Background

The use of equity compensation, particularly stock options, has grown significantly during the last decade.[112] Consequently, existing security holders may face higher levels of dilution of their ownership interests as some companies issue more shares of their stock to employees.[113] Since the distribution of equity may result in a significant reallocation of ownership in an enterprise between existing security holders and management and employees, investors have a strong interest in understanding a registrant's equity compensation program.[114]

Until recently, security holder approval was required for most equity compensation plans. However, as approval requirements have been relaxed[115] and as opposition to these plans has grown,[116] an increasing number of registrants have adopted stock option plans without the approval of security holders,[117] thus potentially obscuring investors' ability to assess the dilutive effect of a registrant's equity compensation program. Our current rules do not require that a registrant disclose specific information about its non-security holder-approved equity compensation plans.[118] Nor do current financial reporting disclosure rules require that non-security holder-approved plans be identified.[119]

Consequently, it is often difficult for investors to determine whether they have adequate information about a registrant's equity compensation program. In response to ongoing investor concerns,[120] in January 2001 we proposed amendments to our rules to enhance the quality of information available to investors about equity compensation plans.[121]

B. Response to Comment Letters

In the Proposing Release, we noted that registrants would incur costs in complying with the proposals. We also noted that these costs, to the extent that they could be estimated, would not be significant, as the required disclosure can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs. We requested comment on the costs and benefits of the proposals. Of the comment letters we received, 22 respondents discussed the costs and benefits associated with the proposals.[122] Most of the comment letters addressed these matters in general terms.

Several respondents asserted that, because the proposals duplicated disclosure already required in registrants' audited financial statements, the cost of providing information to investors would increase without any useful benefit.[123] In response to these comments, we have revised the proposals to eliminate redundant disclosure and to minimize the overlap with financial reporting requirements, thereby reducing the cost of compliance. As discussed in Subsection C below, the amendments will enhance the quality of the disclosure available to investors about the dilutive effect of registrants' equity compensation programs.

Other respondents, while generally supporting the proposals, suggested that we scale back the required disclosure to reduce compliance costs. For example, some respondents indicated that requiring plan-by-plan disclosure would create an undue burden for registrants without providing an incremental benefit to investors.[124] In response to these comments, we have revised the proposals to permit aggregated disclosure of information about plans and individual equity compensation arrangements and to allow the required narrative summary of a non-security holder-approved stock option plan to be provided by a cross-reference to a description of the plan in a registrant's financial statements.[125] Some respondents suggested that we expand the required disclosure to include additional information, such as weighted-average exercise price data and information about existing equity compensation plans being submitted for security holder action. They also requested that we require the filing of non-security holder-approved equity compensation plans. We have made these changes.[126]

Most respondents suggested that the proposed disclosure be required in the same document each year, to both streamline compliance and to minimize investor confusion. While we carefully considered this suggestion, ultimately we concluded that these concerns were outweighed by the need for consistent application of the disclosure to all registrants.[127] Accordingly, the required disclosure is to be provided each year in a registrant's annual report on Form 10–K or 10–KSB and, additionally, in the proxy or information statement in years when the registrant is submitting a compensation plan for security holder action.

C. Benefits

1. Disclosure of Non-Security Holder-Approved Plans

New Item 201(d)(1) of Regulation S–K and Regulation S–B requires registrants to disclose whether they have one or more non-security holder-approved stock option plans by separately providing information about the dilutive effects of these plans. New Item 201(d)(3) of Regulation S–K and Regulation S–B requires that this disclosure be accompanied by a narrative summary of the material features of each non-security holder-approved plan. Also, as amended Item 601(b)(10) of Regulation S–K and Regulation S–B requires registrants to file a copy of any non-security holder-approved equity compensation plan with us unless the plan is immaterial in amount or significance.

Presently, it is difficult for investors to ascertain whether a registrant has adopted a non-security holder approved stock option plan.[128] If a plan is broad-based, restricts or prohibits the participation of officers and directors and does not permit the grant of tax-qualified stock options, for instance, it is unlikely to require security holder approval. Frequently, investors must examine the required public filings of a registrant made over several years in order to identify the registrant's stock option plans and determine if they have been approved by security holders. Even when a non-security holder-approved plan is identified, information about the plan may be limited since it may not be subject to our disclosure rules and may not be filed with us. The amendments will enable investors to ascertain if a registrant has adopted a non-security holder approved plan and highlight a

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[108] Assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure, the estimated burden hours per year resulting from the amendments would be 16,511 hours, increasing this estimate to 5,735,343 hours.

[109] One-half of the total burden resulting from the amendments is reflected as burden hours and the remainder is reflected in the total cost of complying with the information collection requirements. We have used an estimated hourly rate of $300.00 to determine the estimated cost to respondents of the disclosure prepared by outside counsel. We arrived at this hourly rate estimate after consulting with several private law firms.

[110] These cost burden increases reflect a change in our assumption of the number of registrants with equity compensation plans that either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan (see n. 85 above) and a change in the estimated hourly rate of outside counsel. With respect to Forms 10–K and 10–KSB, we increased our estimate by $937,300 in the case of Form 10–K and increased our estimate by $483,100 in the case of Form 10–KSB. With respect to Schedules 14A and 14C, we decreased our estimate by $8,089,500 in the case of Schedule 14A and decreased our estimate by $209,800 in the case of Schedule 14C. Assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure, the estimated cost burden per year resulting from the amendments would be $4,946,400.

[111] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[112] A study of stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 15.2% of outstanding shares (calculated on a fully-diluted basis) for management and employee equity incentives in 2000, compared to only 6.9% in 1989. See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations* (2000). Both the size of individual awards and the number of companies that use equity broadly throughout the organization have increased significantly. See Core, Guay and Larcker, *Executive Equity Compensation and Incentives: A Survey*, Working Paper, University of Pennsylvania (2001), at 3–7.

[113] This question should be considered in the context of any open market stock repurchase program that has been instituted by a registrant. Repurchases by its own securities by a registrant under such a program may mitigate the dilutive effects of the registrant's equity compensation program.

[114] There is evidence that companies with high levels of dilution earn lower market-adjusted returns in future periods than companies with comparatively lower levels of dilution. See Garvey and Milbourn, *Do Stock Prices Incorporate the Potential Dilution of Employee Stock Options?*, Working Paper, Claremont Graduate University & Washington University in St. Louis (2001), at 2–3. But see Core, Guay and Larcker, *Executive Equity Compensation and Incentives: A Survey*, Working Paper, University of Pennsylvania (2001) (discussing the difficulty in documenting a relationship between equity compensation and corporate performance).

[115] See Release No. 34–41479 (June 4, 1999) [64 FR 31667] (under NYSE listing standards, security holder approval not required if plan is "broadly-based"; that is, at least a majority of the registrant's full-time employees are eligible to participate and at least a majority of the shares underlying options actually granted are to employees who are not officers or directors); Release No. 34–37260 (May 31, 1996) [61 FR 30376] (security holder approval requirement of Exchange Act Rule 16b–3 [17 CFR 240.16b–3] eliminated). See also the Proposing Release at n. 21.

[116] According to the Investor Responsibility Research Center, the average negative vote on stock option plans submitted for security holder action in 2000 was 20.7%, up from 17.4% in 1997. In addition, in 2000 a relatively large number of stock plan proposals were rejected. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000) (the "IRRC Dilution Study").

[117] See Gillan, *Option-based Compensation: Panacea or Pandora's Box?*, Journal of Applied Corporate Finance (2001) 115–128.

[118] Our rules require proxy statement disclosure of the material features of a compensation plan being submitted for security holder action. See Item 10(a)(1) of Schedule 14A. This disclosure does not reach a plan that is never submitted for security holder action. While Item 402(c) of Regulation S–B [17 CFR 228.402(c)] and Item 402(c) of Regulation S–K [17 CFR 229.402(c)] require disclosure of the number of stock options granted during the last fiscal year, this disclosure only covers the named executive officers of the registrant (as defined in the item). *See also* Item 402(b)(2)(iv)(B) of Regulation S–B [17 CFR 228.402(b)(2)(iv)(B)] and Item 402(b)(2)(iv)(B) of Regulation S–K [17 CFR 229.402(b)(2)(iv)(B)].

[119] Although financial reporting disclosure requirements concerning stock-based compensation are extensive, they do not require the identification of non-security holder-approved equity compensation plans. See paragraph 46 of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (Oct. 1995) ("SFAS 123"). Given its recent comprehensive project on accounting for stock-based compensation and its current lengthy agenda, it is not expected that the FASB will revisit this subject in the immediate future. Thus, it is unlikely that the FASB could address this matter through a technical enhancement of its disclosure requirements in the near term.

[120] See the Proposing Release at n. 17. See also the Letter dated October 16, 2001 from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors to Jonathan G. Katz.

[121] Certain equity awards, such as stock bonuses and restricted stock purchases for a nominal price, may, in some situations, be more dilutive from an economic standpoint than options, warrants and rights. While the amendments apply to all types of equity compensation, for two reasons our discussion focuses primarily on stock options. First, they represent the most popular form of equity compensation used today. It is estimated that more than 80% of the securities reserved for conversion and exercise by U.S. registrants relate to stock options. See Huson, Scott and Wier, *Earnings Dilution and the Explanatory Power of Earnings for Returns*, The Accounting Review (2001). Second, most alternative forms of equity compensation involve issued securities. Consequently, their dilutive effect may already have occurred and is likely to be reflected in the basic earnings-per-share computation and security holders' equity data.

[122] These commenters included seven individual and institutional investors, four registrants and registrant associations, one self-regulatory organization and 10 members of the executive compensation consulting, accounting and legal communities.

[123] See, for example, the Letter dated April 2, 2001 from Arthur Andersen LLP (the "AA Letter"), the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants (the "AICPA Letter"), the Letter dated March 29, 2001 from Emerson Electric Co., the Letter dated April 12, 2001 from Microsoft Corporation and the Letter dated April 2, 2001 from PricewaterhouseCoopers LLP (the "PWC Letter").

[124] See, for example, the Letter dated March 29, 2001 from Ernst & Young LLP and the Letter dated April 2, 2001 from Lucent Technologies Inc.

[125] See Sections II.A.2, II.AB.3 and II.A.4 above.

[126] See Sections II.A.1 and II.A.2 above.

[127] See Section II.C above.

[128] Available information on non-security holder-approved stock option plans is sparse. See William M. Mercer, Inc. *Equity Compensation Survey* (2001) (48% of survey respondents (83 participants) maintained non-security holder-approved stock option plan for employees below management level; such plans (60%) most prevalent in large companies (more than 5,000 employees); iQuantic, Inc., *Trends in Equity Compensation 1995–2000* (2000) (27.3% of survey respondents in 1999 (161 participants) maintained non-security holder-approved stock option plans, compared to 3.2% before 1998).

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description of the plan's material features.

2. Tabular Disclosure

New Item 201(d)(1) of Regulation S–K and Regulation S–B requires registrants to disclose, for their entire equity compensation program as in effect as of the end of the last completed fiscal year, the number of securities underlying, and the weighted-average exercise price of, outstanding options, warrants and rights and the number of securities remaining available for future issuance. This disclosure is to be made separately for plans approved by security holders and plans that have not been approved by security holders.

The required disclosure will assist investors in assessing the potential dilution from a registrant's equity compensation program in two ways. First, the required disclosure of the number of securities to be issued upon the exercise, and weighted-average exercise price, of all outstanding options, warrants and rights will enable investors to view this information in two categories: plans approved by security holders and plans not approved by security holders. While numerical and weighted-average exercise price information is presently available in the footnotes to a registrant's audited financial statements, this disclosure does not separately identify the potential dilutive effect of any non-security-holder approved stock option plans.

Second, disclosure of the number of securities available for future issuance under a registrant's equity compensation plans will enable investors to better calculate the "overhang[129] resulting from the registrant's entire equity compensation program. Under existing disclosure requirements, it is not always possible to make this calculation.[130] This information may be useful to investors where the cost of a registrant's equity compensation plan exceeds its incentive effects. The new disclosure also will enhance the ability of investors and others, such as proxy review firms, to monitor the impact of a board of directors' actions concerning equity compensation matters. Access to this information will make it easier for investors to determine both the portion of the current value of a business that will be transferred to option holders upon exercise and the potential allocation of future cash flow rights.[131]

While the economic impact of outstanding options, warrants and rights is incorporated into the presentation of diluted earnings-per-share under SFAS 128, this calculation differs from the new disclosure in several ways. First, it does not isolate "compensatory" instruments. Typically, the diluted earnings-per-share figure combines the dilutive effect of compensatory options, warrants and rights with that of other outstanding convertible securities. Second, SFAS 128 employs the so-called "treasury stock method" to compute diluted earnings-per-share. Among other things, this methodology excludes "out-of-the-money" options and warrants from the computation and requires certain assumptions about the timing of option exercises and the use of the assumed proceeds of exercise to arrive at the total number of potentially dilutive securities. Finally, while weighted-average exercise price information is available for various option groupings under SFAS 123, it does not differentiate between equity compensation plans that have been approved by security holders and plans that have not been approved by security holders.

D. Costs

The amendments will increase the cost of preparing annual reports on Form 10–K and 10–KSB and proxy and information statements. Registrants must compile the required information, place it in the appropriate category and prepare the required table. In addition, registrants with non-security holder-approved stock option plans must prepare a narrative summary of the material features of each plan and file a copy of any material plan with us.

Registrants also will incur an increase in printing and distribution costs as a result of the amendments.

While several respondents indicated that the cost estimates in the Proposing Release were too low,[132] only one provided an alternative cost estimate. This respondent stated that compliance could result in additional costs approximating $300,000 in years when disclosure was required in its proxy statement.[133] The respondent's estimate is no longer relevant because of the substantial revisions that we have made to the proposals, as discussed in Subsection B above.

The required disclosure will provide investors both with new information and with an alternative means for analyzing currently available information. With respect to the dilution disclosure, we believe that the compliance costs are warranted because this information is not otherwise available to investors. Moreover, these costs should be minimal because this information can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs.

With respect to the information concerning non-security holder-approved stock option plans, much of the required tabular disclosure, such as the number of outstanding options, warrants and rights and the related weighted-average exercise price data, is already maintained for purposes of satisfying financial reporting requirements. The amendments merely require registrants to disclose this information on the basis of whether or not the related plan has been approved by security holders. In addition, many registrants summarize the material features of their equity compensation plans to satisfy their SFAS 123 disclosure obligations. Indeed, one respondent indicated that the amendments would result in only minimal additional costs to registrants because, in their experience, most registrants already maintain the required information in order to comply with SRO rules and for effective plan administration.[134]

Although the amendments will increase the length of registrants' annual reports on Form 10–K and 10–KSB, as well as their proxy and information statements, generally this should not have a major impact on a registrant's printing and distribution costs. We have revised the proposals to reduce and standardize the size of the required tabular disclosure. These revisions should ensure that registrants do not incur significant additional printing and postage charges to prepare and distribute their proxy or information statements to security holders. While in most instances, the required disclosure should not exceed one-third of a page, where a registrant has one or more non-security holder-approved stock option plans, the disclosure may be longer. These registrants may incur additional expense to print and distribute their proxy or information statement materials. While we do not expect these costs to be significant, we have estimated these amounts to be approximately $750 per registrant.[135]

For the reasons discussed above, we do not believe that the amendments will lead to significant compliance costs for registrants.[136] Notwithstanding the foregoing, we have adjusted our initial cost estimates to reflect the revisions made to the proposals. Because the size and scope of equity compensation programs vary among registrants, it is difficult to provide an accurate cost estimate with which all parties will agree; however, we estimate that each of the approximately 8,400 registrants[137] subject to the amendments will spend an average of approximately one to two hours each year and incur an average annual cost of approximately $393[138] to prepare the disclosure. Thus, the aggregate cost of the amendments is estimated to be approximately $3,300,000.

E. Conclusion

Based on the information provided in the comment letters and our own analysis, we believe that the amendments will enhance the quality of disclosure available to investors about registrants' equity compensation plans, thereby leading to better-informed investment and voting decisions. These benefits are difficult to quantify. We also believe that these benefits will justify the minimal costs of compliance.

V. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[139] This FRFA relates to rule amendments adopted under the Exchange Act that revise the disclosure requirements with respect to registrants' equity compensation plans. Specifically, the amendments revise Item 201 of Regulation S–B, Item 201 of Regulation S–K and Form 10–K, Form 10–KSB, Exchange Act Rule 14a–3 and Schedule 14A under the Exchange Act to require tabular disclosure of the number and weighted-average exercise price of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Registrants must include the table in their annual reports on Form 10–K or 10–KSB, as well as in their proxy or information statements in years when they are submitting a compensation plan for security holder action. Copies of most equity compensation plans will be required to be filed with us for public inspection.

A. Need for the Amendments

The increased use of equity compensation has raised investor concerns about the potential dilutive effect of a registrant's equity compensation plans, the absence of full disclosure to security holders about these plans and the adoption of many plans without the approval of security holders. These concerns may be especially acute for investors in small entities, which use equity compensation in order to attract and retain key employees and to preserve scarce cash resources.[140] The amendments enhance the quality of information available to investors about a registrant's equity compensation plans.

B. Significant Issues Raised by Public Comment

A summary of the Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release.[141] We requested comment on any aspect of the IRFA, including the number of small businesses that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received no comment letters responding to that request.

C. Small Entities Subject to the Amendments

Exchange Act Rule 0–10[142] defines the term "small business" to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[143] There are approximately 770 issuers that are subject to the reporting requirements of Section 13 of the Exchange Act that have assets of $5 million or less.[144] Only small businesses that have a reporting obligation under the Exchange Act *and* adopt or maintain an equity compensation plan will be subject to the amendments. We estimate that there are approximately 460 entities that have

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[129] This measure may be formulated in different ways. For purposes of this discussion, "overhang" means the sum of the number of securities underlying outstanding options, warrants and rights plus the number of securities remaining available for future issuance under the registrant's existing equity compensation plans, and is often expressed as a percentage of the total number of outstanding securities.

[130] It may be difficult for investors to calculate the "overhang" of a registrant's equity compensation program because the number of securities available for future issuance under the registrant's plans may not be disclosed or apparent. Currently, a registrant submitting an equity compensation plan for security holder action need not provide any specific disclosure about its other equity compensation plans. Moreover, in its annual study on stock plan dilution, the Investor Responsibility Research Center found that approximately 22% of the companies surveyed did not disclose the number of shares available for future issuance under their employee stock plans. See the IRRC Dilution Study.

[131] While the full dilutive impact of these authorized but unissued securities cannot be assessed until derivative instruments have been granted and the prices for which the underlying securities may be issued can be compared to existing market values, this information, combined with knowledge of the minimum exercise price at which these instruments may be granted, may provide useful insight into the potential future economic consequences of the program.

[132] See, for example, the AA Letter, the AICPA Letter, the Letter dated May 22, 2001 from the New York State Bar Association and the PWC Letter.

[133] See the Letter dated April 9, 2001 from Lucent Technologies Inc.

[134] See the ABA Letter.

[135] This estimate is based on the Letter dated April 9, 2001 from Lucent Technologies, Inc., in which the commenter estimated that providing four additional pages of disclosure to its over five million security holders would result in additional printing costs of $100,000 and additional mailing costs of $200,000. Assuming that the required disclosure consists of one additional page and that a registrant has 50,000 security holders, the registrant may incur additional costs of $750 to prepare and distribute the additional disclosure.

[136] Since all registrants are required to make the same disclosure, the amendments will impose the same dollar costs on each registrant. Accordingly, for small entities the relative burden of compliance will be higher than for large entities.

[137] This figure is based on our estimate that 60% of the actual number of registrants filing annual reports on Form 10–K or 10–KSB (14,022 registrants) maintain equity compensation plans. This estimate is made after a review of available survey data, which varies widely. For example, in its most recent study of the "S&P Super 1,500" (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600), the Investor Responsibility Research Center determined that, of the 1,157 companies examined, 1,142 (98.7%) awarded equity to some portion of their employees. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In contrast, a Pilot Survey conducted by the Bureau of Labor Statistics in 1999 determined that 22% of publicly-held companies offered stock options to their employees. This survey sampled 2,100 "establishments," of which approximately 1 in 10 were publicly-held companies. See Bureau of Labor Statistics, *Pilot Survey on the Incidence of Stock Options in Private Industry in 1999*, (Oct. 11, 2000), available at *http://www.bls.gov/ncs/ocs/sp/ncnr0001.txt*.

[138] We arrived at this estimate by assuming that approximately 80% of these registrants will be required to provide the tabular disclosure only and 20% of these registrants will be required to describe the material features of their non-security holder-approved plans as well. See n. 90 above and the accompanying text. Thus, 80% of the registrants will incur an average annual outside counsel cost of $300 (80% of 8,400 x $300 = $2,016,000) while 20% will incur an average annual outside cost of $600 (20% of 8,400 x $600 = $1,008,000). In addition, we estimate that approximately 365 registrants with non-security holder-approved plans will incur additional printing and distribution costs of $750 each, or $273,750. See n. 135 above. The sum of these amounts averaged over 8,400 registrants equals $393.

[139] 5 U.S.C. § 603.

[140] A recent study of approximately 250 companies conducted by the National Center for Employee Ownership found that 55% of the respondents had less than 200 employees (with 17% having less than 31 employees) and that 55% of the respondents had less than $40 million in annual revenue (with 14% having annual revenues of $1.1 million or less). See National Center for Employee Ownership, *An Overview of How Companies are Granting Stock Options* (2001).

[141] See the Proposing Release at Section V.

[142] 17 CFR 240.0–10(c).

[143] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[144] This estimate is based on filings with the Commission.

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total assets of $5 million or less that meet this criteria.[145]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments impose new reporting requirements by requiring specific annual disclosure by all registrants, including "small businesses," concerning their equity compensation plans in effect as of the end of the most recently completed fiscal year. Consequently, the amendments will increase the costs associated with the preparation of the disclosure included in annual reports on Form 10–K or 10–KSB and furnished to security holders in proxy and information statements. Specifically, the amendments require registrants to disclose the number and weighted-average exercise price of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Since this information can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs, we do not expect these additional costs to be significant.

We do not anticipate that the amendments will impose any significant recordkeeping requirements in addition to those already required under the Exchange Act. The information to be disclosed can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs. All registrants with equity compensation plans have various legal, financial reporting and other disclosure obligations that require maintenance of information regarding these plans similar to that covered by the amendments.

E. Agency Action To Minimize Effect on Small Entities

As required by Sections 603 and 604 of the Regulatory Flexibility Act, we have considered alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered several alternatives, including the following:

- Establishing different compliance and reporting requirements that take into account the resources of small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Overall, the amendments are intended to assist investors in understanding a registrant's equity compensation policies and practices. The quality of information available about the potential dilutive effect of a registrant's equity compensation plans is relevant to investors in both small and large entities. Different compliance or reporting requirements for small entities are not appropriate because small entities may use equity compensation plans to a greater extent than large entities to preserve scarce cash resources.[146] In addition, it is not feasible to further clarify, consolidate or simplify the amendments for small entities because the amendments require only minimal information about a registrant's equity compensation plans. Because uniformity and comparability are important, especially where small entities have equity compensation plans, we do not propose to use performance standards to specify different requirements for small entities. Finally, we believe that the amendments should apply equally to all entities required to disclose information, in order to safeguard protection of all investors.

VI. Analysis of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[147] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We have considered the amendments in light of the standards in Section 23(a)(2). We requested comment on any anti-competitive effects of the proposals. We received no comment letters responding to that request.

The amendments may have a disparate impact on registrants that use equity compensation extensively, such as smaller firms or registrants in certain industry sectors (such as high-technology companies), as compared to registrants with limited or no equity compensation programs.[148] Thus, we are sensitive to the concern that registrants with a greater compliance obligation will be placed at a competitive disadvantage. In addition, several commenters, while not specifically addressing this issue, did argue that the new disclosure would be duplicative of information currently required to be included in registrants' audited financial statements. In response to these concerns, we have revised the proposals to eliminate redundant requirements and to streamline the compliance process. Because these changes should enable registrants to keep compliance costs low, we do not believe that the amendments will impose a significantly disproportionate cost on smaller firms or high-technology companies.

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act[149] require us, when engaging in rulemaking requiring us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We have considered the amendments in light of the standards in these provisions. We requested comment on how the proposals would affect efficiency, competition and capital formation. We received no comment letters responding to that request.

It is widely believed that equity compensation, particularly instruments such as stock options, can be used to align the interests of employees and security holders, thereby promoting effective corporate governance.[150] Because an equity compensation plan may necessarily have an unintended dilutive effect on the existing ownership interests, however, it is important that the plan be closely monitored to ensure that its cost is commensurate with its benefit to investors. The amendments are intended to enhance the quality of disclosure about registrants' equity compensation programs that is available to investors. Increasing the transparency of these programs should result in better monitoring by investors. This should result in better corporate governance, thereby increasing the efficiency of the organization. This should promote capital formation.

VII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The general authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11, unless otherwise noted.

2. Section 228.201 is amended by adding paragraph (d) before the *Instruction* to read as follows:

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the small business issuer are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the small business issuer are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to Paragraph (d).

1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the small business issuer (or parent, subsidiary or affiliate of the small business issuer) under which equity securities of the small business issuer are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, or any successor standard. No disclosure is required with respect to:

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the small business issuer as such on a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S–B (§ 228.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a small business issuer should aggregate plan information for each class of security.

4. A small business issuer may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this item, as applicable.

5. A small business issuer may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A small business issuer shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of

[145] This figure is based on our estimate that 60% of the registrants that file an annual report on either Form 10–K or 10–KSB maintain equity compensation plans and will be required to provide the new tabular disclosure. See n. 87 above.

[146] See n. 140 above.

[147] 15 U.S.C. 78w(a).

[148] See n. 140 above.

[149] 15 U.S.C. § 77b(b) and 78c(f).

[150] See, for example, the American Benefits Council, *Taking Stock in Employee Benefits: The Democratization of Broad-Based Stock Plans* (Feb. 2001), at 2–3.

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plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a small business issuer's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the small business issuer, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

3. Section 228.601 is amended by redesignating paragraph (b)(10)(ii)(B) as paragraph (b)(10)(ii)(C) and by adding new paragraph (b)(10)(ii)(B) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of Exhibits* * * *

(10) *Material Contracts* * * *

(ii) * * *

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the small business issuer) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a small business issuer in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make further grants or awards of its equity securities shall be considered a compensation plan of the small business issuer for purposes of the preceding sentence.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

5. The authority citation following § 229.201 is removed.

6. Section 229.201 is amended by adding paragraph (d) before the *Instructions to Item 201* to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the registrant are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total.			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the registrant are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to Paragraph (d).

1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the registrant (or parent, subsidiary or affiliate of the registrant) under which equity securities of the registrant are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, or any successor standard. No disclosure is required with respect to:

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the registrant as such on a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S–K (§ 229.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a registrant should aggregate plan information for each class of security.

4. A registrant may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable.

5. A registrant may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A registrant shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a registrant's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the registrant, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

7. Section 229.601 is amended by redesignating paragraph (b)(10)(iii)(B) as paragraph (b)(10)(iii)(C) and by adding new paragraph (b)(10)(iii)(B) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) *Description of Exhibits* * * *

(10) *Material Contracts* * * *

(iii) * * *

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

8. The general authority citation for Part 240 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

9. The authority citation following § 240.14a–3 is removed.

10. Section 240.14a–3 is amended by revising paragraph (b)(9) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter).

* * * * *

11. In § 240.14a–101, amend Item 10 of Schedule 14A by adding paragraph (c) before the undesignated heading *Instructions* and revise Item 14(d)(4) of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 10. Compensation Plans. * * *

* * * * *

(c) *Information regarding plans and other arrangements not subject to security holder action.* Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter).

Instructions to paragraph (c).

1. If action is to be taken as described in paragraph (a) of this Item with respect to the approval of a new compensation plan under which equity securities of the registrant are authorized for issuance, information about the plan shall be disclosed as required under paragraphs (a) and (b) of this Item and shall not be included in the disclosure required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter). If action is to be taken as described in paragraph (a) of this Item with respect to the amendment or modification of an existing plan under which equity securities of the registrant are authorized for issuance, the registrant shall include information about securities previously authorized for issuance under the plan (including any outstanding options, warrants and rights previously granted pursuant to the plan and any securities remaining available for future issuance under the plan) in the disclosure required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter). Any additional securities that are the subject of the amendments or modification of the existing plan shall be disclosed as required under paragraphs (a) and (b) of this Item and shall not be included in the Item 201(d) disclosure.

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. * * *

* * * * *

(d) *Information about parties to the transaction: registered investment companies and business development companies.* * * *

* * * * *

(4) Information required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

13. By amending Form 10–K (referenced in § 249.310) by revising Item 12 of Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

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Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter) and by Item 403 of Regulation S–K (§ 229.403 of this chapter).

* * * * *

12. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 11 of Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

* * * * *

Item 11. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S–B and by Item 403 of Regulation S–B.

* * * * *

By the Commission.

Dated: December 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32078 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
January 2, 2002

Part VII

Department of Transportation

14 CFR Part 330
Procedures for Compensation of Air Carriers; Final Rule and Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; response to comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act ("the Act"). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In order to fulfill Congress' intent to expeditiously provide compensation to eligible air carriers, the Department used procedures set out in Program Guidance Letters to make initial estimated payments amounting to about 50 percent of the authorized funds. On October 29, 2001, the Department published a final rule and request for comments establishing application procedures for air carriers interested in requesting compensation under this statute. This document makes amendments to the rule and otherwise responds to the comments the Department received.

DATES: This rule is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act ("the Act"), Public Law 107–42.

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for "direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks." The Department of Transportation previously disbursed initial estimated payments of nearly $2.5 billion of the $5 billion amount that Congress authorized, using procedures set forth in the Department's Program Guidance Letters that were widely distributed and posted on the Department's Web site.

On October 29, 2001 (66 FR 54616), the Department published in the **Federal Register** a final rule and request for comments to establish procedures for air carriers who had received or wished to receive compensation under the Act. The rule covered such subjects as eligibility, deadlines for application, information and forms required of applicants, and audit requirements. The Department has received submissions from many carriers pursuant to this rule and is continuing to process requests for compensation.

The Department received 18 comments on the rule during the comment period; correspondence, memoranda of meetings, and late filed comments, have also been entered into the docket. The following portion of the preamble summarizes the comments that we received and describes the Department's responses to those comments, including, where appropriate, amendments that the Department is making to the October 29 final rule.

Wet Lease Issues

Several commenters disagreed with the rule's provisions concerning how RTMs are counted in cargo "wet lease" situations. In a wet lease, one air carrier (the lessor) provides an aircraft, crew, maintenance, and insurance (ACMI) for another air carrier (the lessee). The rule, consistent with an existing regulatory definition of an RTM and Bureau of Transportation Statistics (BTS) guidance concerning it, provided that for purposes of the statutory formula for determining the proper amount of compensation for which an air carrier is eligible, RTMs would be attributed to the lessee who had reported the RTMs to the Department. This approach, the preamble to the rule said, was in keeping with the statutory direction to rely on RTMs "as reported to the Secretary."

Comments on this subject included letters from Atlas Air, Southern Air, Cargo Airline Association (CAA), Custom Air Transport (CAT), National Air Carrier Association (NACA), Air Transport Association (ATA), Congressman James P. McGovern, and a group of six members of the Florida Congressional delegation. They were in agreement that the Department's approach to this issue should be changed.

These commenters asserted that there would not be a "double-counting" situation to fear by granting wet lessors compensation. Atlas claims this is because "scope clauses in labor agreements typically prevent U.S. carriers from utilizing ACMI services"; thus, "virtually all ACMI business is with foreign carriers, which by definition are not entitled to compensation under the Act." Consequently, they said, the Department's rule would unreasonably preclude any compensation for certain flights, since foreign carrier lessees are not eligible for compensation and the lessors could not count the RTMs involved for compensation purposes.

These commenters also made the point that the Department's rule elsewhere emphasizes (in denying compensation to indirect air carriers) the role of the direct air carrier in actually flying the aircraft and in fact specifies that RTMs must be flown by the air carrier submitting the claim. In this context, wet lessors better meet these standards than their lessees, they said, since the lessor is the party that actually flies the aircraft.

A number of these comments said that it was unreasonable for the Department to rely on the way RTMs are reported to the Department on the BTS "Form 41," since they viewed this report as being provided for unrelated purposes. In addition, some pointed out, the Department had previously proposed a rule that would change reporting requirements so that operating carriers (i.e., the lessor in a wet lease situation) would report the RTMs.

Some of these comments referred to the "other auditable measure" language in the Act, saying that this language provided greater flexibility than the Department had provided in the rule. However, none of the commenters suggested any other auditable measures. Instead, several requested that they be able to count what they believed were their own RTMs for operating as wet lessors, even though these RTMs had previously been reported to the Department by the lessees.

In a late-filed comment, CAT urged that the Department reverse its position that wet lessees, rather than wet lessors, be credited with RTMs. CAT is a wet lessor that operates flights on behalf of other U.S. carriers. CAT asserted that it is irrelevant who reports RTMs to the Department; what should be dispositive in all cases, in CAT's view, is who actually operated the flights. This is just as true in the case of situations in which U.S. carriers are the lessees as in which foreign carriers are the lessees.

In the Conference Report on the Aviation Transportation Security Act (House Report 107–296 at p. 79), the managers made the following comment on this issue:

> It is the Conferees' position that the Stabilization Act's section 103 compensation formula language, "revenue ton miles or other auditable measure" should be broadly construed and should not restrict compensation exclusively to revenue ton miles reported on previously filed DOT Form 41s. If Air, Crew, Maintenance, Insurance lessors can provide accurate and auditable records of their revenue-ton-miles during the relevant time period, then they should be eligible for compensation based under the Stabilization Act."

DOT Response

Double counting—compensating more than one carrier for the same operation—is contrary to the statutory scheme of the Act. Under the Act, the amount of compensation available to a carrier is not simply a function of actual documented losses. Rather, compensation availability is limited by a formula based on the available seat-miles or revenue ton-miles (or other auditable measure) as reported by the carriers. The formula approach was clearly envisioned as a way to permit carriers to participate in a finite amount of compensation based on their proportionate market shares. Market shares are not "shared" due to multiple carriers participating in particular operations. Indeed, permitting two or more carriers to be compensated for the same operation would give greater weight to some operations than others, contrary to the broad and proportionate distribution principle evident from the language of both section 101 and 103.

For example, suppose carrier A and carrier B both participated in operation X. Meanwhile, carrier C flew the same amount of cargo over the same route in operation Y, without the involvement of another carrier. Both operations result in 100,000 RTMs. If double counting were permitted, operation X would generate twice as much compensation as operation Y, reducing the total pool of funds available to all carriers, depriving other carriers of the proportionate amount of compensation that Congress intended them to receive.

We would also point out that there are many forms of multiple participation in operations, such as wet leases, charters, code shares, and indirect/direct air carrier relationships. Attempting to find ways of accommodating all these situations, and the variety of types of double counting that would be involved, would not only be administratively impracticable but inevitably involve multiple inequities. Congress could not have intended such a result.

We do not agree with commenters who would disregard the role of the Department's reporting requirements (i.e., the Form 41 process) in determining the appropriate carriers to receive "credit" for ASMs or RTMs. Knowledge of this long-standing reporting scheme can clearly be attributed to Congress, and the Act's explicit and repeated references to ASMs and RTMs "as reported to the Secretary" show that Congress implicitly adopted the Department's reporting requirements. There is no evidence that Congress sought to revise these requirements or nullify them for purposes of the statutory compensation formula so that, for example, wet lessors would get credit for ASMs and RTMs while wet lessees would not.

We recognize Congress did add the term "or other auditable measure" to the calculus with respect to RTMs. While neither the Department nor commenters have been able to suggest what such measures might be, this addition at least stands for the proposition that Congress intended some flexibility in the way that compensation was distributed among cargo carriers. That interpretation is fortified by the Conferees' statement in House Report 107–296 as cited above, which we note was directly in support of the compensation claims of wet lessors.

Working with these principles, together with the mandates of the Act itself, we believe that the comments discussed above have some merit, and that wet lessors in some circumstances can participate in compensation payments. The primary condition to that participation is that an eligible carrier with a superior claim to RTMs under our rules has not applied for compensation. This requirement is necessary in order to avoid either double counting or the displacing of the claim of another carrier (e.g., the lessee in a wet lease situation) that Congress, through its "as reported to the Secretary" language, intended the Department to recognize.

Therefore, we will accept applications from wet lessors if they (1) Otherwise qualify as an air carrier; (2) identify and document their status as wet lessor, explaining thereby why they have not previously reported ASMs or RTMs for the operations in question; (3) identify the wet lessees involved in these operations; (4) document that such lessees are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and (5) provide accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

We recognize that it is possible that some wet lessors either did not apply for compensation because of the way that the rule addressed this issue or would seek to amend their applications to claim additional RTMs or ASMs. We are amending the application procedures of the rule to allow carriers to do so within 14 days of the publication of this amendment.

Claims to confidentiality of information provided under this provision will be carefully scrutinized. In any situation in which the Department determines that both wet lessors and wet lessees have claimed compensation for the same operations, the Department's general rule that wet lessees report RTMs will be given effect and lessees given priority.

Indirect Air Carrier Issues

A number of commenters objected to the provision of the rule that only direct air carriers are eligible for compensation. These commenters (Emery Air Freight, CAA, BAX Global, and the Association of Air Medical Services (AAMS)) pointed out, first, that indirect air carriers are within the statutory definition of "air carrier," and consequently should be eligible for compensation. These commenters disagreed with the Department's contention, in the rule's preamble, that the intent of Congress was to compensate carriers who actually operated flights. Emery added that, as an air freight forwarder, it has been recognized in DOT administrative decisions as responsible for the transportation of property, even though it did not actually operate flights.

Emery also asserted that, as a lessee for air freight transportation, it suffered losses because the direct air carriers whose aircraft it leased could not fly during the period of the Secretary's September 11 ground stop order. This is exactly the sort of loss Congress intended to compensate, Emery said.

Reporting ASMs or RTMs to the Department should not be an *eligibility* requirement, these commenters said. All air carriers should be eligible for

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compensation regardless of whether the Department could calculate the "formula cap" for compensation using RTMs, particularly since the statute allows for "other auditable measures" to be used in place of RTMs.

In some cases, CAA said, indirect air carriers should get credit for the RTMs involved in cargo operations, since they "generate" the freight carried, contract with direct air carriers for dedicated lift which requires payment regardless of how much freight is carried, and bear the entire financial risk for the operation. Emery also said that it, rather than the direct air carriers involved, should be regarded as generating RTMs, which the direct air carrier merely reports.

BAX asserted that it is the Department's obligation to find an appropriate "other auditable measure" for indirect air carrier operations for carriers that do not report RTMs, though BAX did not suggest what such measures might be. BAX did suggest, however, that the flexibility given to air taxis in the rule, for whom DOT could estimate RTMs based on other data, could be given to indirect air carriers as well.

BAX dismissed the Department's concern about "duplicating" ASMs or RTMs, saying that such overlap between direct and indirect air carriers is not "inherently injurious." BAX appears to mean that a carrier will not be able to get "double recovery," though it concedes that some carriers might have their compensation reduced as a result. Emery agreed that allowing indirect air carriers to claim RTMs will not require DOT to pay more than once for a specific loss. Emery added that the parties to a contract (i.e., a direct and indirect air carrier) should be able to provide DOT the information needed to make appropriate allocations of relief.

AAMS, representing air ambulance operators, also requested that the Department provide compensation to those air ambulance operators who are indirect air carriers.

DOT Response

Much of the discussion above concerning wet lease issues also pertains to the comments on indirect air carrier issues. In particular, the Department believes that double counting is impermissible. We find nothing in the text of the statute or its legislative history suggesting that Congress meant for carriers to be able to "share" RTMs. Further, none of these commenters have offered a way to calculate "other auditable measures" that may be applicable to them in a way that is free of the problem of duplicating the claims of other carriers. (BAX's analogy to air taxis is inapposite, since air taxis have been required to construct RTM data in a manner consistent with other carriers and no duplication of data is involved.)

Nor are we persuaded by the suggestions that indirect air carrier/freight forwarders have a superior claim to RTMs that are flown with their cargo aboard. As noted above, we believe that Congress implicitly adopted the reporting requirements of the Department in the Act, and we find no suggestion that it intended to displace, as eligible for compensation under the Act, the direct air carriers that report RTMs in accordance with our rules in favor of indirect air carriers that do not.

As to comments analogizing the role of freight forwarders to that of wet lessees, there are clearly differences between the two. While both assume economic risks, a wet lessee assumes economic control and responsibility for the flight, which the freight forwarder does not. As to claims that freight forwarder operations are economically equivalent to a wet lease, if an air carrier has in fact reported RTMs to the Department as a wet lessee, then its application can be processed on that basis. We believe that the manner in which carriers have actually defined their relationships and reported the data to DOT—without regard to the economic incentive created by the availability of compensation—should be given credibility.

That said, we are deleting the provision of the rule that made indirect air carriers ineligible to apply for compensation. In order to be consistent with the approach we have taken above for wet lessors, we will accept for processing applications from indirect air carriers if they (1) Otherwise qualify as an air carrier; (2) identify and document their status as an indirect air carrier, explaining thereby why they have not previously reported ASMs or RTMs on claimed operations; (3) identify the direct air carriers involved in their operations; (4) document that such direct air carriers are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and (5) provide accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

We recognize that it is possible that some indirect air carriers may not have applied for compensation in the past because the rule said that they were ineligible. We are amending the application procedures of the rule to allow indirect air carriers who did not apply previously to so do within 14 days of the publication of this amendment.

As noted above, claims to confidentiality of information provided under this provision will be carefully scrutinized. In any situation in which the Department determines that both indirect and direct air carriers have claimed compensation for the same operations, the Department's general rule that direct air carriers report RTMs will be given effect and they will be given priority.

Air Ambulance Issues

AAMS expressed concern about the provisions of the Act and the rule that based calculations of compensation for which air carriers are eligible on available seat-miles (ASMs). AAMS said that ASMs are not a good measure of the capacity of air ambulance services, because air ambulances must be staffed and ready to go on a 24-hour basis, yet fly relatively few ASMs. Given the way the statutory formula works, this would result in very little compensation being made available to air ambulance services.

In place of the ASM calculations that are used for other kinds of air carriers, AAMS recommended that the Department calculate lost volume by comparing the flight volume of August and September 2001, multiplying the difference by the average revenue per flight, and extrapolating the result to the industry as a whole. AAMS suggested that the functional equivalent of ASMs (i.e., as a measurement of capacity) could be calculated by multiplying the average number of seats in air ambulances aircraft (six) times the average speed of the aircraft (150 m.p.h.) times the hours per day it is staffed and ready (24). This, AAMS suggested, would create a reasonable approximation of the capacity of an air ambulance aircraft per day.

In the Aviation and Transportation Security Act (Pub. L. 107–71), Congress also addressed the situations of air ambulances. Section 124(d) of this statute amended section 103 of the Air Transportation Safety and System Stabilization Act. The purpose of this amendment, according to the Conference Report (House Report 107–296 at p. 79), is to "to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry wide losses." The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) Set-Aside.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,00,000 specified in section (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

Under the statutory language, use of this set-aside authority is discretionary ("The President may set aside * * *"). Neither the statute nor the Conference Report provides any guidance concerning the appropriate size of such a set-aside or the identity of any other "classes" of air carriers that could be included in it, if the President chooses to use the authority.

DOT Response

The Department will consider using the discretion provided by section 124(d) of the Transportation Security Act to set aside a portion of the $4.5 billion compensation available for passenger carriers for air ambulances and other classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses. The Department is issuing a separate document in today's **Federal Register** requesting comment on the issue of whether we should establish a set-aside, which classes of carriers a set-aside should cover, and what method or methods should be used to allocate funds from a set-aside.

Charter Carrier Issues

NACA, representing charter air carriers, asked for changes in the data the Department collects. NACA said that Parts 2 and 4 of Form 330–A request a variety of types of information (e.g., forecast ASMs and RTMs; volume, revenue and cost information related to individual passengers; break even load factor, average length of passenger haul, departures planned, average passenger fares, and passenger yield per RPM) that are not relevant to charter air carriers' operation. Charter air carriers, NACA said, typically sell full planeload charter flights to tour operators, who in turn pay for the whole airplane by "block hour." Charter revenue forecasts are based on aircraft utilization, which is the predicted monthly number of block hours the carrier expects to operate. The forecast units then become revenue and cost per block hour, rather than ASMs and RTMs.

DOT Response

The Department understands that some charter carriers may not have some of the data elements in the form the Department has asked for them. The Department has received applications from a number of such carriers, and we are working with the carriers in question to clarify information necessary to permit determinations on compensation to be made. Consequently, the Department does not believe that it is necessary to make any changes in the current rule or forms to accommodate NACA's concern. However, we will consider whether, in connection with the third increment of compensation we intend to distribute in 2002, we should change any of the data elements for charter carriers.

Accounting Issues

The American Institute of Certified Public Accountants (AICPA) recommended a number of changes in the way that the rule describes the independent audit requirements of the final rule. Rather than requiring a "review" of a carrier's "forecasts," or an "audited financial statement," AICPA suggested that DOT require carriers to perform an "agreed-upon procedures engagement." This change would make the rule more consistent with accounting terms of art, AICPA said. AICPA provided a suggested draft of such agreed-upon procedures as well as technical amendments to the rule's language that would accommodate the group's concerns.

AICPA also commented concerning the rule's requirement that carriers report and support reports of losses for the period beginning September 11, 2001. Generally, AICPA said, carriers prepare financial data on a monthly, rather than a daily basis, so it would make more sense to report losses beginning September 1 rather than September 11. Also, carriers and the DOT should have access to the independent auditors' working papers on request, but the carrier should not routinely obtain and retain them. Doing the latter would be inconsistent with AICPA auditing standards, the organization asserted.

The Air Transport Association noted in its comments that it supported the AICPA's views.

DOT Response

In the interest of facilitating auditing of carriers' records, the Department will make the regulatory text changes suggested by AICPA, with minor edits. These changes in the Department's rule include adoption of the "agreed-upon procedures engagement" approach that AICPA suggested. However, the Department does not adopt or otherwise approve the specific agreed-upon procedures document enclosed with AICPA's comment.

In implementing the agreed-upon procedures approach, DOT will require that airlines and their accountants use procedures that are acceptable to applicants and the Department. The Department intends to issue, in the near future, guidance that will provide the essential elements of procedures that the Department will accept. As part of this process, the Department is considering guidance relating to abbreviated procedures for smaller air carriers.

Before- and After-Tax Reporting

TEM Enterprises noted that the rule requires that carriers report both "net losses, before taxes" and "total net income after taxes, based on application of standard corporate income tax rates." TEM recommended that the Department use before-tax information in determining compensation, particularly where a carrier projected losses even before the September 11 attacks, since no tax would have been paid in that case. It would not make sense to use after-tax data except, perhaps, in the case of carriers who project having taxable income at the end of their tax years. TEM also objected to the possibility that the reference to "standard corporate tax rates" would mean that the Department would uniformly apply a 34 percent tax rate against a carrier's projected net income.

AICPA also asked for clarification on whether compensation will be based on pre-tax or net income after taxes, and on what is meant by the rule's reference to "standard corporate income tax rates."

DOT Response

The Department has determined, as the result of reviewing both compensation applications and comments to the docket for this rule, that the Department will rely on pre-tax data for purposes of determining carriers' losses. Consequently, issues concerning use of after-tax data, including the appropriate corporate tax rate to apply, are moot. We have deleted the after-tax income lines from the reporting forms in Appendices A–C of the regulation.

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Documentation of pre-September 11 Forecasts

TEM Enterprises and Custom Air Transport made similar comments concerning the rule's requirement that carriers submit documentation that pre-September 11 forecasts were, in fact, completed before September 11. The problem, they said, was that carriers such as themselves do not routinely prepare forecasts of the kind contemplated by the rule. They could produce, for purposes of their applications, they said, detailed forecasts based on information existing before September 11, but these forecasts were prepared after September 11. It would be unreasonable, they said, to exclude carriers from compensation because their normal business practices before September 11 did not involve preparing detailed forecasts. Like air taxis, some other air carriers should be given flexibility to make a good faith effort to categorize their revenues and expenses according to the rule's forms.

DOT Response

The Department believes that it is fair to accommodate the situation of carriers that did not prepare actual forecasts before September 11. In reviewing applications that have been submitted, the Department has accepted some carriers' estimates of pre-September 11 expectations for their performance, based on historical data, in lieu of a forecast actually made before that date. As a matter of interpretation, the Department will continue this practice. While the Department will scrutinize the carrier's data to make sure the estimates of expectations are reasonable, the Department will not exclude carriers in this category from eligibility for compensation.

Other Issues

Worldwide Flight Services, an aviation services firm that provides ramp, passenger, cargo, maintenance, container leasing, and fueling services, commented that it has suffered significant losses as the result of the September 11 attacks. The company is not receiving its expected revenue because carrier customers operating fewer flights are using their services less. Worldwide asserted it is not an indirect air carrier and that its unique position and the services it provides to carriers should result in its becoming eligible for compensation. Generally, Worldwide believes its services are vital to the flights of aircraft.

If its operations stopped tomorrow, Worldwide said, many flights could not operate because essential services would not be provided, especially in smaller communities. According to Worldwide, in view of the Act's mandate that the Secretary take appropriate action to ensure the continuation of scheduled air service to small communities, the Department should compensate the company. In addition, acccording to worldwide, if Worldwide stopped providing its service, there would be interruptions of mail deliveries.

ATA expressed concern about the provision that carriers must provide all requested information with their applications or face rejections of their applications by the Department. This requirement is too stringent, in ATA's view, particularly since carriers may be unable to meet precisely some of the rule's information requirements. For example, carriers may well be unable to provide an auditable forecast and actual losses for the September 11–30 period, since they do not keep records in a daily or weekly, as opposed to monthly, fashion. Like AICPA, ATA recommended that the rule's information collection requirements relate to the entire month of September.

Finally, ATA disagreed with the rule's requirement that independent auditors review carriers' forecasts for accuracy. This, ATA said, would be difficult given the variation among carriers' forecasting methods. Instead, the auditors should certify that the forecast submitted to DOT was the carrier's most recently available forecast prior to September 11.

DOT Response

The events of September 11 had serious economic effects on a wide variety of businesses. For example, airport concessionaires, hotels and resorts, and other tourism-related businesses appear to have lost substantial amounts of money. We do not doubt that an aviation services company like Worldwide may have suffered significant financial losses as the result of the September 11 attacks, and we recognize that firms like Worldwide can play an important role in the aviation industry.

Nevertheless, Congress provided compensation in the Act only to air carriers. Worldwide is not only not an indirect air carrier; it is not an air carrier at all, as defined in the Act. We do not have the legal discretion to provide compensation to parties that are not air carriers, even though doing so could help to achieve other purposes of the Act, such as maintaining service to small communities.

The Act requires losses to be calculated from September 11, not September 1. The Department cannot assume that a forecast pertaining to all of September will permit an accurate calculation of losses pertaining to September 11–30. Certainly, merely pro-rating data for the entire month as a means of estimating losses for September 11–30 would not be an accurate method for doing so. It is appropriate and possible, in the Department's view, for carriers—even those who did not originally structure their forecasts in this fashion—to break out data pertaining to September 1–10 and September 11–30, respectively.

As noted in the response to the AICPA comment, DOT is modifying audit requirements and will rely on "agreed-upon procedures" as distinct from a formal "review" or "audit" of carrier information. This change adequately responds to ATA's comments on this point. We do not believe it would be adequate to have an auditor merely attest to the recency of a carrier's documents. To ensure that the Department distributes funds in accordance with Congress' direction, auditors need to consider the accuracy of the substance of this information.

Regulatory Analyses and Notices

This rule is an economically significant rule under Executive Order 12886, since it will facilitate the distribution of more than a billion dollars into the economy during the 12-month period following its issuance. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, we are not required to provide an assessment of the potential cost and benefits of this regulatory action. The Department has determined that this rule is being issued in an emergency situation, within the meaning of Section 6(a)(3)(D) of Executive Order 12866. However, this impact is expected to be a favorable one: making these funds available to air carriers to compensate them for losses resulting from the terrorist attacks of September 11. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for a brief review.

Because a notice of proposed rulemaking is not required for this rulemaking under 5 U.S.C. 553, we are not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604. However, we do note that this rule may have a significant economic effect on a substantial number of small entities. Among the entities in question are air taxis, as well as some commuters and small certificated air carriers. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the rule impacts small air carriers, the impact will be a favorable one, since it will consist of receiving compensation. We have facilitated the participation of small entities in the program by allowing a longer application period for air taxis, which are generally the smallest carriers covered by this rule and which do not otherwise report traffic or financial data to the Department. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

We are making this rule effective immediately, without prior opportunity for public notice and comment. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, prior notice and comment would be impractical, unnecessary, and contrary to the public interest. Consequently, prior notice and comment under 5 U.S.C. 553 and delay of the effective date under 5 U.S.C. 801, *et seq.*, are not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days. We are providing for a 14-day comment period following publication of the rule, however. The Department will subsequently respond to comments we receive.

The Office of Management and Budget has approved the information collection requirements of this rule, with Control Number 2105–0546.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 26th day of December, 2001, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

For the reasons set forth in the preamble, the Department amends 14 CFR Part 330 as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

1. The authority citation for Part 330 is revised to read as follows:

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 115 Stat. 631 (49 U.S.C. 40101 note).

2. Amend § 330.7 by revising paragraph (c) to read as follows:

§ 330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

* * * * *

(c) If, as an air carrier, you are able to submit data, subsequent to your application under this part but before December 31, 2001, demonstrating and documenting conclusively that you have incurred actual losses as defined in section 101(a)(2) of the Act that exceed the amount of compensation for which you demonstrate you are eligible under the formula of section 103(b)(2) of the Act, the Department may disburse to you, without waiting for a submission in Calendar Year (CY) 2002, the remainder of the formula amount of compensation for which you are eligible.

(1) A carrier that requests a final installment before December 31, 2001 must submit its claim of actual losses for the period of the claim, a forecast for the same period that was prepared before September 11, 2001, and an independent public accountant's report based on the performance of agreed-upon procedures approved by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements.

(2) The consideration of requests for final payment before December 31, 2001 is contingent upon the establishment by the Department of a fixed comprehensive universe of ASMs and RTMs for all eligible air carriers to be used as the basis of the final compensation formula for all eligible air carriers as established in the Act.

§ 330.11 [Amended]

3. Amend § 330.11 by removing and reserving paragraph (b).

4. Amend § 330.21 by adding new paragraphs (d) and (e), to read as follows:

§ 330.21 When must air carriers apply for compensation?

* * * * *

(d) Notwithstanding any other provision of this section, if you are an eligible air carrier that did not submit an application or wishes to amend its application, you may do so by January 16, 2002 if you are one of the following:

(1) An indirect air carrier which did not file an application because indirect air carriers were formerly ineligible to apply for compensation; or

(2) A wet lessor that either did not file an application, or submitted fewer ASMs or RTMs with its application than it now believes can be counted for compensation purposes, because this rule formerly limited the ASMs or RTMs that you could submit.

(e) If you are submitting a new or amended application under paragraph (d) of this section, you must include a signed statement, under penalty of perjury, that you are submitting the new or amended application for the reason stated in paragraph (d)(1) or (d)(2) of this section.

5. Revise § 330.31 to read as follows:

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (d) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your system-wide air service (e.g., scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (d) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) In calculating and submitting ASMs and RTMs under paragraphs (a) and (b) of this section, there are certain things you must not do:

(1) Except at the direction of the Department, or to correct an error that you document to the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(3) You must not include ASMs or RTMs that are reported by or attributable to flights by another carrier.

(d) If you have not previously reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section for a given operation or operations, you may submit your calculation of ASMs or RTMs to the Department with your application. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(1) If you are a direct air carrier that has operated your aircraft for a lessee (i.e., a wet lease, or aircraft, crew,

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maintenance, and insurance (ACMI) operation), you may submit your calculation of ASMs or RTMs for these flights. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are a wet lessor, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the wet lessees involved in these operations;

(iv) Documentation that such lessees are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and

(v) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

(2) If you are an indirect air carrier, you may submit your calculation of ASMs or RTMs for flights that direct air carriers have operated for you under contract or other arrangement. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are an indirect air carrier, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the direct air carriers involved in these operations;

(iv) Documentation that such direct air carriers are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and

(v) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

6. Amend § 330.35 by revising paragraph (a)(4) to read as follows:

§ 330.35 What records must carriers retain?

* * * * *

(a) * * *

(4) You must agree to have your independent public accountant retain all reports, working papers, and supporting documentation pertaining to the agreed-upon procedures engagement conducted by your independent public accountant under the requirements of this part for a period of five years. The accountant must make this information available for audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

* * * * *

7. Amend § 330.37 by revising paragraph (b) to read as follows:

§ 330.37 Are carriers which participate in this program subject to audit?

* * * * *

(b) Before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent public accountant's report based on the performance of procedures agreed upon by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements. You must submit the results of the agreed-upon procedures engagement to the Department with your application for payment of the final installment.

8. Amend Appendix A to Part 330 by revising Page 1 of 5 and Page 3 of 5 of Form 330–A to read as follows:

Appendix A to Part 330—Forms for Certificated and Commuter Air Carriers

BILLING CODE 4910-62-P

FORM 330-A
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED AND COMMUTER AIR CARRIERS (PROVIDING PASSENGER AND COMBINATION PASSENGER/CARGO SERVICE)

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

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FORM 330-A
Page 3 of 5

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

9. Amend Appendix B to Part 330 by revising Page 1 of 5 and Page 3 of 5 of Form 330–B to read as follows:

Appendix B to Part 330—Forms for Certificated Cargo Carriers

FORM 330-B
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION
FOR CERTIFICATED CARRIERS
THAT PROVIDE ALL CARGO OPERATIONS ONLY

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

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Page 3 of 5

NAME OF AIR CARRIER	

Part 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

10. Amend Appendix C to Part 330 by revising Page 1 of 7 and Page 3 of 7 of Form 330–C to read as follows:

Appendix C to Part 330—Forms for Air Taxi Operators

FORM 330-C
Page 1 of 7

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT
APPLICATION FOR COMPENSATION
FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD
SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001
(in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

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FORM 330-C
Page 3 of 7

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD OCTOBER 1, 2001 TO DECEMBER 31, 2001 (in whole dollars)

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

[FR Doc. 01-32176 Filed 12-27-01; 4:28 pm]
BILLING CODE 4910-62-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST-2001-10885]

RIN 2105-AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.
ACTION: Request for comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act ("the Act"). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In a final rule being published in today's **Federal Register**, the Department is amending its application procedures for this compensation program. This document requests further comments on the issue of whether the Department should establish a set-aside of compensation funds for classes of air carriers, such as air ambulances and air tour operators, for whom the final rule's compensation formula may not adequately reflect their share of direct and incremental losses.

DATES: Comments should be received by January 16, 2002; late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should sent comments to Docket Clerk, Docket OST-2001-10885, Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/*. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202-366-1213.

SUPPLEMENTARY INFORMATION: As noted in the preamble to the final rule on airline compensation procedures that the Department is publishing in today's **Federal Register**, commenters expressed a concern about the provisions of the Act that based calculations of compensation for which air carriers are eligible on available seat-miles (ASMs). The concern was basically that this ASM-based formula would not adequately compensate air ambulances and air tour operators for the losses they suffered as the result of the September 11 attacks.

In the Aviation and Transportation Security Act (Public Law 107-71), Congress addressed the situations of air ambulances, air tour operators and other similarly situated classes of air carriers. Section 124(d) of this statute amended section 103 of the Air Transportation Safety and System Stabilization Act. The purpose of this amendment, according to the Conference Report (House Report 107-296 at p. 79), is to "to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry wide losses." The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) Set-aside.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,00,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

Under the statutory language, use of this set-aside authority is discretionary ("The President may set aside * * *"). Neither the statute nor the Conference Report provides any guidance concerning the appropriate size of such a set-aside, the methodology for proportionally allocating any funds set aside, or the identity of any other "classes" of air carriers that could be included in it, if the President chooses to use the authority.

The Department is considering using the discretion provided by section 124(d) of the Transportation Security Act to set aside a portion of the $4.5 billion compensation available for passenger carriers for air tour operators, air ambulances and other classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses. The Department does not have sufficient information to determine whether to create such a set-aside at this time, which classes of carriers a set-aside would cover, what the appropriate size of such a set-aside would be, or how any funds set aside should be allocated. While we have some information about the situation of air ambulances, we have little information about the situation of other classes of air carriers to which such a set-aside could apply.

Both because of this lack of information and our desire to avoid delays in distributing the second increment of compensation funds to carriers, the Department did not make a determination, for purposes of today's final rule, about whether to create a set-aside. After this second increment of funds is distributed, approximately 15 percent of the authorized $4.5 billion will remain. This should be more than enough to use for the purpose of compensating carriers who would be subject to such a set-aside. If the Department decides to implement a set-aside, we would do so in connection with the third increment of compensation funds. To help the Department decide whether to implement a set-aside, the Department requests information concerning whether there are classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses for which use of this set-aside authority would be appropriate. This information should pertain to classes of carriers, not just to individual carriers, and concern such subjects as the type of operations conducted by a class of carriers and the reasons why use of the statute's general approach to compensation is inadequate for the class. Commenters should note that the statute's general approach does not assure that all losses attributable to the terrorist events will be compensated; because of the statute's default provision to the ASM formula, the vast majority of passenger carriers are scheduled to receive compensation well below their claimed losses.

If the Department were to establish a set-aside, there are a number of possible ways that funds from the set-aside could

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be allocated. In its comment, the Association of Air Medical Services (AAMS) recommended that the Department calculate lost volume by comparing the flight volume of August and September 2001, multiplying the difference by the average revenue per flight, and extrapolating the result to the industry as a whole. AAMS suggested that the functional equivalent of ASMs (i.e., as a measurement of capacity) could be calculated by multiplying the average number of seats in air ambulances aircraft (six) times the average speed of the aircraft (150 m.p.h.) times the hours per day it is staffed and ready (24). This, AAMS suggested, would create a reasonable approximation of the capacity of an air ambulance aircraft per day. This suggestion, a variation of it, or some other surrogate for ASMs could be one possible approach to distribution of compensation under a set-aside.

Subsequent to the enactment of the Transportation and Aviation Security Act, AAMS and the air carrier MEDjet approached the Department separately with alternative approaches for compensating air ambulances, that do not rely on ASM's as a factor. These proposed alternative approaches are derived from the Medicare Fee Schedule, which both AAMS and MEDjet propose could be used as a benchmark for determining lost revenue based on lost volume. Both AAMS and MEDjet propose that the lost revenues for an air ambulance could be determined by taking a base rate for each lost trip and adding that amount to the product of the lost miles for that trip and a fixed mileage rate. The base rate and the mileage rate would be derived from the Medicare Fee Schedule. Both AAMS and MEDjet proposed a different, limited period of time to be used for calculating lost trips as well as different base rate and mileage rate figures. One disadvantage to these approaches is that they may not be readily adaptable to use for air tour operators or other classes of carriers.

Another approach could be to calculate the average percentage of documented direct and incremental losses that applicant carriers have received in compensation. We could then apply that percentage to the direct and incremental losses that carriers in the class or classes subject to the set-aside could document. For example, if on average all carriers were eligible, under the statutory formula, for compensation equivalent to 60 percent of their documented losses, the Department could compensate carriers participating in the set-aside for 60 percent of their documented losses.

The Department seeks comments on these or other approaches that the Department could use to allocate funds from a set-aside, as well as on the underlying question of whether the Department should use its discretionary authority to establish a set-aside in the first place.

The Department will keep the docket open for 14 days to receive comments on this set of issues. If the Department decides to establish a set-aside, we would amend Part 330 in the future to provide application instructions for carriers who sought compensation under the set-aside.

Regulatory Analyses and Notices

This request for comments pertains to an underlying rule (49 CFR Part 330) that is significant for purposes of Executive Order 12886 and the Department of Transportation's rulemaking policies and procedures. If the Department decides to undertake further rulemaking after reviewing comments, the Department will follow applicable provisions of these requirements.

If the Department proceeds with further rulemaking on the subject of this notice, the rulemaking may have a significant economic effect on a substantial number of small entities. Among the entities in question are air ambulances and other classes of air carriers that include small entities. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the use of the Department's set-aside authority impacts small air carriers, the impact will be a favorable one, since it will consist of receiving additional compensation. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 26th day of December, 2001, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 01–32177 Filed 12–27–01; 4:28 pm]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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To designate the facility of the United States Postal Services located at 8588 Richmond Highway in Alexandria, Virginia, as the "Herb Harris Post Office Building". (Dec. 21, 2001; 115 Stat. 898)

H.R. 2061/P.L. 107–93
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S. 494/P.L. 107–99
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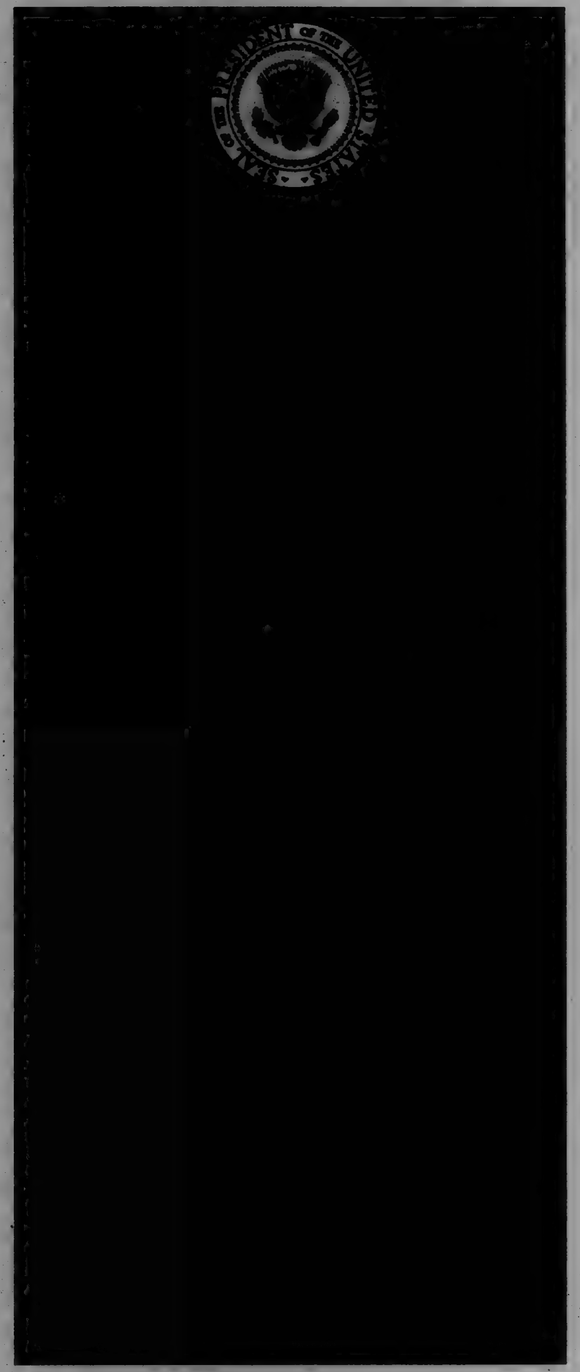

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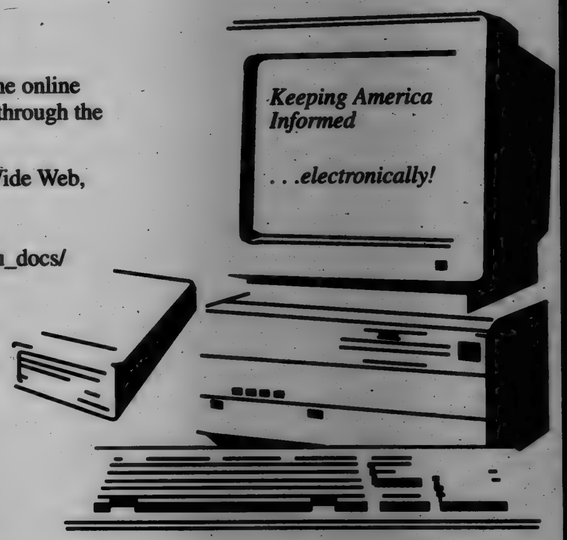

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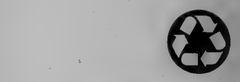

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[Docket No. 2001–NM–311–AD; Amendment 39–12585; AD 2001–26–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a one-time inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts, if necessary. This action is necessary to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Effective January 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–311–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Piccola, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1509; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports that entry and service doors did not open fully during deployment of emergency escape slides on several Boeing Model 767 series airplanes. Most reported incidents occurred during testing; however, one incident occurred during an actual emergency evacuation. Investigation has revealed that this condition is due to failure of the separation link assembly to release the deployment cable from the deployment bar of the emergency escape system on the entry or service door. Such failure to release may occur when the snap ring or washer which hold the separation link in place, or the internal spring, is missing or installed incorrectly. Failure of an entry or service door to open fully during an emergency evacuation could impede exit from the airplane. This condition, if not corrected, could result in injury to passengers or crewmembers.

Explanation of Related Service Information

Boeing has issued Service Letter 767–SL–25–101, dated August 30, 2001. That service letter describes the background of the unsafe condition related to the separation link assembly on the deployment bar of the emergency escape slide system and provides a "Suggested Operator Action" for correcting the condition. The service letter suggests performing an inspection to determine whether snap rings are present and properly installed on the separation link assembly, and replacing any damaged snap ring or installing a new snap ring if one is missing or installed incorrectly. The service letter specifies that maintenance information for the separation link assembly is available in the Boeing 767 Component Maintenance Manual.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of an entry or service door to open fully during an emergency evacuation. Failure of a door to open fully could impede exit from the airplane, which could result in injury to passengers or crewmembers. This AD requires a one-time detailed visual inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts, if necessary. These actions are required to be accomplished according to the procedures and the applicable sections of the Boeing 767 Airplane Maintenance Manual (AMM) and Component Maintenance Manual (CMM) specified in paragraph (a) of this AD.

This AD also requires that, if any missing, damaged, or incorrectly installed part is found in the separation link assembly on the deployment bar of the emergency escape system on any entry or service door, operators must report the results of the inspection to the FAA Certificate Management Office—Boeing. The intent of this reporting requirement is to enable the FAA to determine the number of missing or damaged parts in the affected fleet.

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Differences Between This AD and Service Letter

As stated above, Boeing Service Letter 767–SL–25–101 describes the background of the unsafe condition related to the separation link assembly on the deployment bar of the emergency escape slide system. However, this AD requires accomplishment of necessary actions according to certain sections of the AMM and CMM, not according to the "Suggested Operator Action" in the service letter. Because the actions required by this AD differ in key ways from those described in the service letter, the FAA finds it necessary to describe specifically how this AD differs from the service letter. The differences are as follows:

- This AD requires a detailed visual inspection for missing, damaged, or incorrectly installed snap rings, washers, or internal springs in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door. The service letter suggests an inspection for missing, damaged, or incorrectly installed snap rings only. The FAA's decision to require an inspection for missing, damaged, or incorrectly installed washers and internal springs, as well as snap rings, is based on inspections of in-service airplanes which have revealed missing washers and missing or incorrectly installed internal springs.
- Although the service letter recommends accomplishing the inspection during any scheduled or unscheduled maintenance on the service door escape slide, the FAA has determined that a specific compliance time is necessary to ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation (developed with affected operators through the "lead airline" process), but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a 60-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–311–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–19 Boeing: Amendment 39–12585. Docket 2001–NM–311–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 854 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Boeing Service Letter 767–SL–25–101, dated August 30, 2001, provides information related to this AD; however, the actions required by this AD are not identical to those in the "Suggested Operator Action" section of that service letter. Where this AD differs from the service letter, this AD prevails.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane and result in injury to passengers or crewmembers, accomplish the following:

One-Time Inspection and Corrective Actions

(a) Within 60 days after the effective date of this AD, do a one-time detailed visual inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, according to the procedures specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD.

(1) Remove the escape slide pack bustle according to Section 25–66–00 of the Boeing 767 Airplane Maintenance Manual (AMM).

(2) Position the deployment bar of the escape slide to expose the forward and aft separation links, according to Section 25–66–00 of the Boeing 767 AMM and Section 25–66–30 of the Boeing 767 Component Maintenance Manual (CMM), Revision 2, dated November 1, 2000.

(3) Do a detailed visual inspection to determine whether the snap ring, washer, and internal spring of the separation link assembly are installed correctly on both the forward and aft separation links, and to detect any damage of the snap ring, washer, and spring, according to Items 65 and 70 of Section 25–66–30 of the CMM, Revision 2, dated November 1, 2000.

(4) If any snap ring, washer, or internal spring is missing or found damaged or installed incorrectly during the inspection required by paragraph (a)(3) of this AD, before further flight, install a new snap ring, washer, and internal spring according to Section 25–66–30 of the CMM, Revision 2, dated November 1, 2000.

(5) Ensure that the separation links and deployment cables are installed as depicted on placard BAC27TPPS5141 or BAC27TPPS5142, as applicable. Placards are adjacent to each link on the deployment bar. If any separation link or deployment cable is installed incorrectly, before further flight, correct the installation as shown on the applicable placard.

(6) Reinstall the escape slide pack bustle according to Section 25–66–00 of the Boeing 767 AMM.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Reporting Requirement

(b) If there is any missing, damaged, or incorrectly installed part in the separation link assembly on the deployment bar of the emergency escape system on any entry or service door: Submit a report of inspection findings to the FAA Certification Management Office—Boeing, ANM–108B, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include: the serial number of the affected airplane, the total number of doors inspected, the number of deployment bars with missing or damaged parts, an identification of what parts are missing or damaged, and the calendar date of the last inspection or test of any emergency escape system with missing or damaged parts. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The exposure of the forward and aft separation links; inspection for snap ring, washer, and internal spring; and installation of new snap ring, washer, and internal spring; shall be done in accordance with Section 25–66–30 of the Boeing 767 Component Maintenance Manual, Revision 2, dated November 1, 2000, which contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
List of Effective Pages; Page 1.	2	Nov. 1, 2000.

(Only the "Highlights" page of Section 25–66–30 shows the appropriate revision level; no other page of this document contains the revision level.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 18, 2002.

Issued in Renton, Washington, on December 21, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–148 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30285; Amdt. No. 2084]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

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Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 21, 2001.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN: § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 21, 2002*

Dillingham, AK, Dillingham, VOR RWY 1, Amdt 8
Dillingham, AK, Dillingham, VOR/DME RWY 19, Amdt 6
Dillingham, AK, Dillingham, LOC/DME RWY 19, Amdt 5
Dillingham, AK, Dillingham, NDB RWY 1, Amdt 1
Dillingham, AK, Dillingham, RNAV (GPS) RWY 1, Orig
Dillingham, AK, Dillingham, RNAV (GPS) RWY 19, Orig
Dillingham, AK, Dillingham, GPS RWY 1, Orig CANCELLED
Dillingham, AK, Dillingham, GPS RWY 19, Orig CANCELLED
Gustavus, AK, Gustavus, VOR/DME RWY 29, Orig-A CANCELLED
Gustavus, AK, Gustavus,VOR/DME RWY 29, Orig
Gustavus, AK, Gustavus, NDB–A, Orig
Gustavus, AK, Gustavus, RNAV (GPS) RWY 29, Orig
St. Paul Island, AK, St Paul Island, LOC/DME BC RWY 18, Amdt 2
St. Paul Island, AK, St Paul Island, RNAV (GPS) RWY 18, Orig
St. Paul Island, AK, St Paul Island, GPS RWY 18, Orig CANCELLED
Lancaster, CA, General William J. Fox Airfield, VOR–B, Amdt 3

Lancaster, CA, General William J. Fox Airfield, NDB–C, Amdt 3
Lancaster, CA, General William J. Fox Airfield, RNAV (GPS)–A, Orig
Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 2
Danielson, CT, Danielson, VOR–A, Amdt 6
Danielson, CT, Danielson, RNAV (GPS) RWY 31, Orig
Danielson, CT, Danielson, GPS RWY 31, Orig, CANCELLED
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 6, CANCELLED
Marathon, FL, The Florida Keys Marathon, NDB OR GPS RWY 7, Amdt 3
Miami, FL, Miami, Intl, NDB RWY 27L, Amdt 20
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR RWY 27L, Amdt 4B
Ames, IA, Ames Muni, VOR RWY 31, Amdt 10
Ames, IA, Ames Muni, NDB RWY 1, Amdt 2
Ames, IA, Ames Muni, ILS RWY 1, Amdt 1
Ames, IA, Ames Muni, RNAV (GPS) RWY 1, Amdt 1
Ames, IA, Ames Muni, RNAV (GPS) RWY 13, Orig
Ames, IA, Ames Muni, GPS RWY 13, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 19, Orig
Ames, IA, Ames Muni, GPS RWY 19, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 31, Orig
Ames, IA, Ames Muni, GPS RWY 31, Orig, CANCELLED
Audobon, IA, Audobon County, RNAV (GPS) RWY 32, Orig
Audobon, IA, Audobon County, GPS RWY 32, CANCELLED
Carroll, IA, Arthur N. Neu, NDB RWY 31, Amdt 7
Carroll, IA, Arthur N. Neu, RNAV (GPS) RWY 13, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 13, Amdt 1, CANCELLED
Carroll, IA, Arthur N. Neu, RNAV (GPS) RWY 31, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 31, Amdt 1, CANCELLED
Denison, IA, Denison Muni, RNAV (GPS) RWY 12, Orig
Denison, IA, Denison Muni, GPS RWY 12, Orig, CANCELLED
Denison, IA, Denison Muni, RNAV (GPS) RWY 30, Orig
Denison, IA, Denison Muni, GPS RWY 30, Orig, CANCELLED
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 17, Orig
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 35, Orig
Lousiville, KY, Louisville Intl-Standiford Field, VOR OR TACAN RWY 29, Amdt 22A, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 9, Orig
Flint, MI, Bishop Intl, VOR RWY 9, Amdt 23, CANCELLED
Flint, MI, Bishop Intl, VOR, RWY 18, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 18, Amdt 18, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 27, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 27, Amdt 20, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 36, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 36, Amdt 14, CANCELLED
Flint, MI, Bishop Intl, NDB RWY 9, Amdt 25
Flint, MI, Bishop Intl, ILS RWY 9, Amdt 22
Flint, MI, Bishop Intl, ILS RWY 27, Amdt 4
Flint, MI, Bishop Intl, RADAR–1, Amdt 8
Flint, MI, Bishop Intl, RNAV (GPS) RWY 9, Orig
Flint, MI, Bishop Intl, GPS RWY 9, Orig, CANCELLED
Flint, MI, Bishop Intl, RNAV (GPS) RWY 18, Orig
Flint, MI, Bishop Intl, RNAV (GPS) Y RWY 27, Orig
Flint, MI, Bishop Intl, RNAV (GPS) Z RWY 27, Orig
Flint, MI, Bishop Intl, RNAV (GPS) RWY 36, Orig
Lapeer, MI, Dupont-Lapeer, VOR–A, Orig
Lapeer, MI, Dupont-Lapeer, VOR OR GPS–A, Amdt 12, CANCELLED
Owosso, MI, Owosso Community, VOR/DME RWY 28, Orig
Owosso, MI, Owosso Community, VOR OR GPS RWY 28, Amdt 5A, CANCELLED
Owosso, MI, Owosso Community, RNAV (GPS) RWY 28, Orig
Sault Ste Marie, MI, Chippewa County Intl, NDB OR GPS RWY 34, Amdt 4C
Duluth, MN, Sky Harbor, RNAV (GPS) RWY 32, Orig
Duluth, MN, Sky Harbor, GPS RWY 32, Orig, CANCELLED
Park Rapids, MN, Park Rapids Muni-Konshok Field, VOR/DME OR GPS RWY 13, Amdt 8B
Park Rapids, MN, Park Rapids Muni-Konshok Field, NDB OR GPS RWY 31, Amdt 1B
Thief River Falls, MN, Thief River Falls Regional, NDB, OR GPS RWY 31, Amdt 1B
Warroad, MN, Warroad Intl-Swede Carlson Field, NDB OR GPS RWY 31, Amdt 1B
Worthington, MN, Worthington Muni, NDB OR GPS RWY 29, Orig-B
Whitefield, NH, Mount Washington, Regional, LOC RWY 10, Amdt 5
Whitefield, NH, Mount Washington, Regional, NDB RWY 10, Amdt 8
Whitefield, NH, Mount Washington, Regional, RNAV (GPS) RWY 10, Orig
Seneca Falls, NY, Finger Lakes Regional, RNAV (GPS) RWY 36, Orig
Liberty, NC, Causey, VOR OR GPS RWY 2, Amdt 4
Louisburg, NC, Franklin County, ILS RWY 4, Amdt 1
Salisbury, NC, Rowan County, RNAV (GPS) RWY 20, Orig
Block Island, RI, Block Island State, VOR/DME RWY 10, Amdt 5
Block Island, RI, Block Island State, RNAV (GPS) RWY 10, Orig
Muskogee, OK, Davis Field, GPS RWY 31, Orig-A
Okmulgee, OK, Okmulgee Muni, GPS RWY 17, Orig-A
Perry, OK, Perry Muni, GPS RWY 17, orig-A
Shawnee, OK, Shawnee Muni, GPS RWY 17, Orig-A
Medford, OR, Rouge Valley International-Medford, VOR/DME–C, Amdt 3
Medford, OR, Rouge Valley International-Medford, ILS RWY 14, Amdt 1
Medford, OR, Rouge Valley International-Medford, RNAV (GPS)–D, Orig
Medford, OR, Rouge Valley International-Medford, RNAV (GPS) RWY 14, Orig
Honey Grove, PA, EWT 4, Copter RNAV (GPS) 086, Orig
Block Island, RI, Block Island State, VOR/DME RWY 10, Amdt 5
Block Island, RI, Block Island State, RNAV (GPS) RWY 10, Orig
Columbia, SC, Columbia Metropolitan, RADAR–1, Amdt 11
Madisonville, TX, Madisonville Muni, VOR/DME RWY 18, Amdt 2
Madisonville, TX, Madisonville Muni, RNAV (GPS) RWY 18, Orig
Madisonville, TX, Madisonville Muni, RNAV (GPS) RWY 36, Orig
Madisonville, TX, Madisonville Muni, GPS RWY 36, Orig, CANCELLED
Palestine, TX, Palestine Muni, VOR/DME OR GPS RWY 17, Amdt 4A
Temple, TX, Draughon-Miller Central Texas Regional, VOR RWY 15, Amdt 17
Temple, TX, Draughon-Miller Central Texas Regional, VOR RWY 33, Amdt 3
Temple, TX, Draughon-Miller Central Texas Regional, ILS RWY 15, Amdt 11
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 15, Orig
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 33, Orig
Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Orig
Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Amdt 2D, CANCELLED
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Orig
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Amdt 2C, CANCELLED
Norfolk, VA, Chesapeake Regional, NDB RWY 5, Orig
Norfolk, VA, Chesapeake Regional, NDB RWY 5, Amdt 1C, CANCELLED
Norfolk, VA, Chesapeake Regional, RNAV (GPS) RWY 5, Orig
Norfolk, VA, Chesapeake Regional, GPS RWY 5, Amdt 1A, CANCELLED

[FR Doc. 02–51 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30286; Amdt. No. 2085]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational

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facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standards for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA hs determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 21, 2001.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Istrument Approach Procecures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME of TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows: Effective Upon Publication.

FDC date	State	City	Airport	FDC No.	Subject
12/03/01	NY	New York	La Guardia	1/2883	NDB or GPS Rwy 22, Amdt 12A.
12/04/01	PA	Corry	Corry-Lawrence	1/2936	NDB or GPS Rwy 14, Amdt 4.
12/05/01	KS	Fort Scott	Fort Scott Muni	1/2934	NDB or GPS Rwy 17, Amdt 11.
12/05/01	FL	Dunnellon	Dunnellon/Mario N Co & Park of Commerce.	1/2977	GPS Rwy 23, Orig-A.
12/05/01	NH	Rochester	Skyhaven	1/2979	NDB or GPS–B, Amdt 1A.
12/05/01	NH	Rochester	Skyhaven	1/2980	NDB Rwy 33, Amdt 4.
12/05/01	NH	Rochester	Skyhaven	1/2981	VOR/DME or GPS–A, Amdt 1.
12/05/01	NH	Rochester	Skyhaven	1/2982	GPS Rwy 33, Orig.
12/10/01	ME	Bangor	Bangor Intl	1/3020	ILS Rwy 33, Amdt 10A.
12/10/01	ME	Bangor	Bangor Intl	1/3021	NDB Rwy 33, Amdt 5C.
12/10/01	MN	Faribault	Faribault Intl	1/3024	VOR or GPS–A, Amdt 5.
12/10/01	SC	Orangeburg	Orangeburg Muni	1/3036	NDB or GPS Rwy 5, Orig-B.
12/10/01	NC	Beaufort	Michael J. Smith Field	1/3044	LOC Rwy 26, Orig.
12/10/01	NC	Beaufort	Michael J. Smith Field	1/3046	NDB or GPS Rwy 21, Orig.
12/10/01	AL	Dothan	Dothan Rgnl	1/3051	VOR Rwy 14, Amdt 3C.
12/10/01	AL	Dothan	Dothan Rgnl	1/3052	LOC BC Rwy 14, Amdt 6E.
12/10/01	AL	Dothan	Dothan Rgnl	1/3053	ILS Rwy 32, Amdt 7E.
12/10/01	AL	Dothan	Dothan Rgnl	1/3056	RNAV (GPS) Rwy 14, Orig.
12/10/01	AL	Dothan	Dothan Rgnl	1/3057	VOR Rwy 18, Amdt 3B.
12/10/01	AL	Dothan	Dothan Rgnl	1/3058	VOR or TACAN or GPS–A, Amdt 11D.
12/10/01	DC	Washington	Ronald Reagan Washington National	1/3108	VOR Rwy 15, Amdt 9A.
12/10/01	DC	Washington	Ronald Reagan Washington National	1/3110	VOR/DME or GPS Rwy 15, Amdt 1A.
12/10/01	AL	Dothan	Dothan Rgnl	1/3120	RNAV (GPS) Rwy 18, Orig.
12/11/01	RI	Providence	Theodore Francis Green State	1/3146	ILS/DME Rwy 34, Amdt 9B.
12/12/01	TX	Galveston	Scholes Int at Galveston	1/3174	VOR Rwy 13, Amdt 3.
12/13/01	IA	Dubuque	Dubuque Rgnl	1/3183	ILS Rwy 36, Orig-A.
12/13/01	IA	Dubuque	Dubuque Rgnl	1/3184	VOR or GPS Rwy 36, Amdt 5D.
12/13/01	WI	Green Bay	Austin Straubel Intl	1/3200	Radar-1. Amdt 9A.
12/13/01	AR	Bentonville	Bentonville Muni/Louise M. Thaden Field.	1/3202	VOR–A, Amdt 11.
12/13/01	MN	St Paul	St Paul Downtown Holman Field	1/3210	ILS Rwy 14, Orig.

[FR Doc. 02–50 Filed 1–2–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 00F–1482]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 26, 2001 (66 FR 33829). The document amended the food additive regulations to provide for the safe use of ozone in gaseous and aqueous phases as an antimicrobial agent on food, including meat and poultry. A reference to 9 CFR part 381, subpart P was inadvertently omitted. This document corrects that error.

DATES: The rule was effective on June 26, 2001.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 2001 (66 FR 33829), FDA added a food additive regulation at § 173.368 (21 CFR 173.368) to provide for the safe use of ozone in gaseous and aqueous phases as an antimicrobial agent on food, including meat and poultry (unless precluded by standards of identity in 9 CFR part 319). A reference to 9 CFR part 381, subpart P was inadvertently omitted. Therefore, the agency is amending § 173.368(d) to correct this omission. After publication of the final rule, the agency received an objection within the 30-day comment period. The agency is currently evaluating that objection.

In FR Doc. 01–15963, appearing on pages 33829 to 33830 in the **Federal Register** of Wednesday, June 26, 2001, the following correction is made:

§ 173.368 [Corrected]

1. On page 33830, in the second column, under § 173.368 *Ozone*, in paragraph (d), in the fourth line, after "9 CFR part 319 " add the phrase "or 9 CFR part 381, subpart P".

Dated: December 18, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–44 Filed 1–2–02; 8:45 am]
BILLING CODE 4160–02–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R4–200212(a), FRL–7124–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Alabama, Georgia, Kentucky, and South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the small Municipal Waste Combustion (MWC) units section 111(d) negative declarations submitted by the states of Alabama, Georgia, Kentucky, and South Carolina. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and

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129 of the Clean Air Act (CAA) do not exist in these states.

DATES: This direct final rule will be effective March 4, 2002 unless EPA receives adverse comments by February 4, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Scott Davis, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 4 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Scott Davis at (404) 562–9127 or Sean Lakeman at (404) 562–9043.

SUPPLEMENTARY INFORMATION: Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Emission guidelines for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish emission guidelines for small MWC units. On December 6, 2000 (65 FR 76378), EPA finalized the section 111(d) emission guidelines for existing small MWC units. The emission guidelines contained in this final rule are equivalent to the 1995 emission guidelines for small MWC units. The emission guidelines are codified at 40 CFR part 60, subpart BBBB.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the CFR provides the procedural framework for the submission of these plans. When designated facilities are located in a state, a state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B for that designated pollutant. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Final Action

The states of Alabama, Georgia, Kentucky, and South Carolina have determined there are no existing sources in their states subject to the small MWC units emission guidelines. Consequently, each state has submitted a letter of negative declaration certifying this fact. We are taking final action to approve these negative declarations.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state negative declarations as meeting Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves state negative declarations and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves state negative declarations relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Municipal waste combustion units, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: December 21, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Subpart B is amended by adding an undesignated center heading and § 62.106 to read as follows:

Air Emissions From Small Existing Municipal Waste Combustion Units

§ 62.106 Identification of plan—negative declaration.

Letter from the Alabama Department of Environmental Management submitted January 11, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

Subpart L—Georgia

3. Subpart L is amended by adding an undesignated center heading and § 62.2609 to read as follows:

Air Emissions From Small Existing Municipal Waste Combustion Units

§ 62.2609 Identification of plan—negative declaration.

Letter from the Georgia Department of Natural Resources submitted December 13, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

Subpart S—Kentucky

4. Subpart S is amended by adding an undesignated center heading and § 62.4371 to read as follows:

Air Emissions From Small Existing Municipal Waste Combustion Units

§ 62.4371 Identification of plan—negative declaration.

Letter from the Kentucky Department for Environmental Protection submitted March 5, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

Subpart PP—South Carolina

5. Subpart PP is amended by adding an undesignated center heading and § 62.10180 to read as follows:

Air Emissions From Small Existing Municipal Waste Combustion Units

§ 62.10180 Identification of plan—negative declaration.

Letter from the South Carolina Department of Health and Environmental Control submitted November 6, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 02–104 Filed 1–2–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 2
Thursday, January 3, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–15]

Jeffery C. Angel; Denial of Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Jeffery C. Angel (PRM–35–15). The petitioner requested that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection. In addition, the petitioner requests amendments to require the use of the "Angel Shield" instead of the currently used syringe radiation shields. The NRC is denying the petition because it would be inconsistent with the Commission's overall program for revising its regulatory framework for the medical use of byproduct material, to make requirements more risk-informed, more performance based, and less prescriptive.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1F23, Rockville, Maryland 20852. These documents are also available on NRC's rulemaking website at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905, email: *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Comfort, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8106, e-mail: *GCC1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On August 23, 1999 (64 FR 45907), the Commission published in the **Federal Register** a notice of receipt of a petition for rulemaking filed by Jeffery C. Angel. The petitioner requested that the NRC amend its regulations concerning the medical use of byproduct material (10 CFR part 35) to prohibit the hand-held administration of radiopharmaceuticals by injection. The petitioner also requested the amendment of 10 CFR 35.60(c), "Syringe shields and labels," to require the use of the "Angel Shield," designed by the petitioner, instead of the syringe radiation shields currently in use. The petitioner believes that recent improvements in technology, specifically the invention of the Angel Shield, support the need to require its use by all NRC licensees when preparing or injecting radiopharmaceuticals in patients or human research subjects.

In his supporting information, the petitioner contends that the use of the Angel Shield instead of the currently required syringe radiation shield would reduce radiation exposures by:

1. Eliminating hand-held injections of radiopharmaceuticals.
2. Completely encapsulating the syringe within the administrator, providing 360 degrees of protection.
3. Shielding 100 percent of low energy (140 Kev) and 88 percent of high energy photons (511 Kev).
4. Allowing for the remote administration of the radiopharmaceutical.
5. Reducing the number of missed injections and subsequent multiple exposures.

The petitioner supports his contention by stating that he has been a nuclear medicine technologist for over 20 years and has been exposed to radiation daily, using the traditional syringe radiation shield. The petitioner invented the Angel Shield to protect himself and others administering radiopharmaceuticals by injection. He states that other syringe radiation shields are neither designed nor engineered according to sound radiation protection principles.

Public Comments on the Petition

The NRC received five comment letters. Three comment letters opposed the petition. Two of these were from certified health physicists and consultants in the area of radiation protection, and one was from an industry trade association. Two comment letters supported the petition. One of the letters is from a certified nuclear medicine technologist and the other is signed by five radiology physicians.

One commenter stated that the petition cannot be justified in terms of cost-benefit, and that the petitioner failed to demonstrate that current exposures were excessive, thus presenting a significant risk to workers. Two commenters stated that the petition is self-serving in that it would provide a monopoly for the petitioner, as he is the only manufacturer of the Angel Shield. Another commenter said that licensees should be able to decide what procedures and equipment are necessary for the practice of their "as low as reasonably achievable" (ALARA) programs. One commenter said that prohibiting hand-held injections would adversely affect the practice of medicine, while another commenter stated that existing radiation syringe shields have been in use for many years without compromising worker or patient safety.

A commenter supporting the petition stated that the majority of her occupational exposure as a nuclear medicine technologist came from the injection of radiopharmaceuticals and their preparation. The commenter contends that lowering radiation dose rates is more than enough justification for granting the petition, stating that this device will make her profession safer. The commenter also stated that unless the device is mandated, employers would not spend the money to provide adequate protection to achieve ALARA objectives.

The other commenters in favor of the petition cite NRC Regulatory Guides 8.10 and 8.29 in support of their conclusion that the petitioner's device clearly furthers the objective of reducing occupational exposures as far below the specified limits as is reasonably achievable. According to these commenters, the Angel Shield should simply be viewed as a new, better, and safer syringe radiation shield than the ones currently employed and required pursuant to 10 CFR 35.60(c). These commenters also assert that the new technology would permit the rejection of the antiquated practice and the unnecessary exposure associated with hand-held injections.

Reasons for Denial

Based on consideration of the petition and public comments, the NRC is denying the petition because it would be inconsistent with the Commission's overall program for revising its regulatory framework for the medical use of byproduct material. This framework focuses Commission regulation on those medical procedures that pose the highest risk, structures its regulations to be more risk-informed and more performance-based and significantly reduces regulatory burden in many areas, consistent with NRC's "Strategic Plan for Fiscal Year 1997—Fiscal Year 2002," cited in "Medical Use of Byproduct Material; Policy Statement; revision," 65 FR 47654 (August 2, 2000).

The amendment the petitioner seeks would be contrary to this regulatory approach by prohibiting the hand-held administration of radiopharmaceuticals by injection and/or requiring the use of a specific shield (the Angel Shield). Licensees should have the flexibility to determine what kind of syringe or vial shields to use in order to meet the requirements contained in 10 CFR 20.1101, "Radiation protection programs." This regulation requires licensees to use practical procedures and engineering controls designed to achieve doses that are ALARA (as low as reasonably achievable). In its inspection program, the NRC assesses whether licensees have complied with these requirements. Denial of this petition does not prohibit the licensee from using the "Angel Shield" or other shields, as practicable to meet these requirements. However, if this petition were granted, it would limit the flexibility of licensees to use other, including more effective, strategies to meet ALARA without additional rulemaking.

The decision to deny the petition is consistent with our performance goals. There is no impact on public health and safety, the environment, or common defense and security. Use of the requested device is not essential to limit or minimize doses to the public, workers, or patients. Public confidence should not be affected because the existing regulations require licensees to minimize doses and this decision continues to allow licensees the flexibility to use the "Angel Shield" or other strategies, as best fits their individual practices, in achieving this outcome. The decision maintains the effectiveness, efficiency, and realism of the current regulations. Lastly, the denial decision does not impose unnecessary regulatory burden on licensees or the NRC staff, whereas granting the petition would cause undue burden by imposing prescriptive criteria on licensees.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 18th day of December, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–72 Filed 1–2–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC83

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Procedures for Dealing With Sustained Casing Pressure

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to March 9, 2002, the deadline for submitting comments on the proposed rule that describes procedures for dealing with sustained casing pressure (SCP) in oil and gas wells on the Outer Continental Shelf. The rule will codify these procedures and ensure uniform regulatory practices among MMS regional offices, and will also help ensure that lessees will continue to conduct operations in a safe manner.

DATES: We will consider all comments received by March 9, 2002, and we may not fully consider comments received after March 9, 2002.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: rules.comments@MMS.gov. Reference "AC83 SCP Comments" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Larry Ake, Engineering and Operations Division, at (703) 787–1559.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subpart E to describe procedures for dealing with SCP in oil and gas wells. The request stated that the complexity of the issue and the high cost to the domestic petroleum industry require careful consideration for comprehensive comments.

Public Comments Procedures: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 5, 2001.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–42 Filed 1–2–02; 8:45 am]

BILLING CODE 4310–MR–W

POSTAL SERVICE

39 CFR Part 111

Eligibility Standards for Free Matter for the Blind and Other Physically Handicapped Persons

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend the Domestic Mail Manual (DMM) to clarify and simplify the eligibility standards for free matter for the blind and other physically handicapped persons in conformance, to the extent practicable, with similar standards adopted by the Library of Congress for its National Library Service for the Blind and Physically Handicapped. This proposed rule also would require free matter mailers that

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submit mailings of at least 200 pieces to register with the post office(s) of mailing and submit statements of mailing that document information relating to each such mailing.

DATES: Comments on the proposed standards must be received on or before February 4, 2002.

ADDRESSES: Written comments should be delivered to the Manager, Mail Preparation and Standards, United States Postal Service, 1735 N. Lynn St., Room 3025, Arlington, VA 22209–6038. Comments transmitted via facsimile or by e-mail cannot be accepted. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 703–292–3652.

SUPPLEMENTARY INFORMATION: Congress established the free matter privilege in 1904 to provide reading materials for the blind when sent by public institutions and public libraries as a loan and when returned by the blind readers to those institutions (Ch. 1612, 33 Stat. 313, Pub. L. No. 171). In 1931, the national books-for-the-blind program was established under the auspices of the Library of Congress to provide books for use by adult residents of the United States, "including the several States, Territories, insular possessions, and the District of Columbia" (Ch. 400, 46 Stat. 1487, Pub. L. No. 787). The Library of Congress issued standards for making arrangements for circulation of books (using the free matter privilege) to and from blind users through libraries designated as local or regional centers.

In 1966, Congress expanded the books-for-the-blind program to include other physically handicapped persons (Pub. L. 89–522, 2 U.S.C. secs. 135a and 135b). Congress expanded the program to meet the reading needs of physically handicapped persons who cannot read or use conventional printed books because of impaired eyesight or other factors that make them physically unable to manipulate these materials. Certification by competent authority of individuals for eligibility to participate in the program was (and remains today) pursuant to regulations prescribed by the Library of Congress. From this time on, the program became known as the National Library Service for the Blind and Physically Handicapped (*see* 36 CFR 701.10).

Consistent with the intent of Congress embodied in the Act that created the Library of Congress National Library Service for the Blind and Physically Handicapped, the Postal Reorganization Act (39 U.S.C. 3403(a)(1)) expanded the free matter privilege to include mail for the use of the blind or other persons who cannot use or read conventionally printed material because of a physical impairment. The persons also must be certified by competent authority in accordance with the regulations established by the Library of Congress. Under the current law, Congress reimburses the Postal Service for free matter mailings (39 U.S.C. 2401(c)). Accordingly, the Postal Service is clarifying its eligibility standards for the free matter privilege to incorporate, as closely as practicable, the standards devised by the Library of Congress for establishing eligibility and certification for participation in the National Library Service for the Blind and Physically Handicapped (*see* 36 CFR 701.10). In addition, the Postal Service is proposing a process to identify the quantity of mailings being made and to verify that those using the free matter privilege are using it for mailings that qualify for the privilege.

On September 1, 2000, the Postal Service published a proposed rule amending the standards for free matter for the blind and other physically handicapped persons (65 FR 53212). In view of changes from the original proposal and because we believe that the public interest will be served by the fullest practicable exposition of views on these issues, the Postal Service is publishing this revised proposal for comment. There are two major changes from the first proposed rule. First, based on comments received from the original proposal, this new proposal eliminates the requirement that organizations maintain individual records of eligible recipients and makes the maintenance of such records optional. Second, this new proposal requires mailers of free matter that enter mailings of 200 or more pieces to register with the post office(s) of mailing and to submit statements of mailing. Mailers are required to register once at each facility where they deposit bulk mailings. Mailers must submit statements of mailing with each free matter mailing of 200 pieces or more. The Postal Service will provide a form that will require minimal mailing information for this purpose. In addition, this proposal includes a provision that the Postal Service may audit an organization's use of the free matter privilege. This standard is new to the Domestic Mail Manual, but codifies existing authority and practice.

The Postal Service received six comments on the original proposed rule. All of them supported the overall goal to clarify standards for eligibility and certification for recipients of free matter. Two commenters supported the rulemaking without reservation or revision. Of the remaining four, each commenter had reservations and recommendations for revisions to proposed DMM E040.1.5, Certification by Organizations. Two organizations objected to the record-keeping requirement described in E040.1.5, asserting that this requirement places an undue burden on the resources of organizations that mail free matter. This objection has been addressed in this new proposed rule by making the standard for maintaining records optional and not requiring organizations to maintain individual records of eligible recipients. Under these standards, any organization that mails under the free matter privilege, whether maintaining individual records or not, is subject to postal reviews of the eligibility of the addressees. This may include a review of the individuals on the organization's mailing list to ensure they meet the eligibility standards for receipt of free matter. The procedures used in these reviews may depend on the records maintained by the organization. Record keeping by organizations making use of the free matter privilege will facilitate any audits that take place. For example, if the organization chooses to maintain records substantiating that each person on its mailing list is eligible to receive free matter, the Postal Service might be able to complete an audit simply by reviewing a sample of those records. If the organization does not maintain such records, the Postal Service might need to contact an outside source, such as the Library of Congress, for addressees registered with that organization to determine whether the addressees are eligible to receive free matter. If no other source is available to provide that confirmation, the Postal Service might, as a last resort, contact the individual addressees directly. However, it should be noted that, under current policy, all recipients of free matter are required to provide such evidence of eligibility to their postmasters; this is not routinely required of all addressees in the new process established under this proposal. It should be noted that, whether or not they maintain records to confirm that addressees meet the eligibility standards for free matter, the entry of matter at the "free" rates is the mailer's certification that the matter qualifies for free matter privileges.

Two commenters requested amendments to DMM E040.1.5 to allow permanent eligibility for persons who are "intermittently" eligible; one commenter requested an amendment to indicate an organization may certify eligible individuals provided the organization had a "good faith" belief of the individual's eligibility; and one commenter requested the "competent authority" requirement as defined in E040.1.4 be replaced with a "self-declaration" requirement. These requests cannot be accommodated. Eligibility for free matter is established by statute and the postage for this mail is provided to the Postal Service through appropriations. As explained above, this privilege is related to programs provided by the Library of Congress. Accordingly, to ensure consistency and adherence to congressional intent in the administration of the program, the proposed standards for free matter conform as near as practical with the standards of the Library of Congress. Consistent with those standards, this rule proposes that an eligible individual must meet the standards in E040.1.3 at the time of mailing and the proposed rule continues to establish eligibility by a competent authority as defined in E040.1.4. Persons certified by competent authority as meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors are eligible for the period specified by the certifying authority.

One commenter requested an amendment to DMM E040.3.0 to provide for letters sent by eligible individuals to include handwritten letters in equivalent size of 14-point sightsaving type. The history of the free matter privilege does not support that the intent was to include handwritten letters. Section 3404 of Title 39 specifically requires that letters sent using the privilege must be "in raised characters, or sightsaving type, or in the form of sound recordings * * *" Therefore, this request is not accommodated in this proposed rule.

Lastly, one commenter objected to the use of the term "handicapped" in the proposed standards, suggesting the term be replaced throughout with "persons with disabilities." Although the Postal Service is sympathetic to the request, the proposed standards continue the use of the term "handicapped" to remain consistent with the language in the statute and that used by the Library of Congress.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. (*see* 39 CFR part 111).

For the reasons discussed above, the Postal Service hereby proposes the following amendments to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations (*see* 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follows:

E Eligibility

E000 Special Eligibility Standards

* * * * *

[Amend E040 to insert the word "physically" before the word "handicapped" in each instance where it appears.]

E040 Free Matter for the Blind and Other Physically Handicapped Persons

1.0 BASIC INFORMATION

[Amend 1.1 to read as follows:]

1.1 General

Subject to the standards below, matter may be entered free of postage if mailed by or for the use of blind or other persons who cannot read or use conventionally printed materials due to a physical handicap. The provisions of E040 apply to domestic mail only.

* * * * *

[Amend titles and text of 1.3 and 1.4 and add new 1.5 and 1.6 to read as follows:]

1.3 Eligibility

The following persons are eligible to send and receive free matter:

a. Certified participants in the Library of Congress National Library Service for the Blind and Physically Handicapped (NLS).

b. Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting lenses, or whose widest diameter of visual field subtends angular distance no greater than 20 degrees.

c. Other physically handicapped persons as follows:

(1) Persons certified by competent authority as someone whose visual disability, with correction and regardless of optical measurement, prevents the reading of standard printed material.

(2) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(3) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(4) Persons certified by competent authority as meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors are eligible during the time in which the person is certified by a competent authority as unable to read or use conventional materials.

d. Eligible participants must be residents of the United States, including the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

1.4 Certifying Authority

For purposes of this standard:

a. The postmaster may extend the free matter privilege to an individual recipient based on personal knowledge of the individual's eligibility.

b. In cases of blindness, visual impairment, or physical limitations, "competent authority" is defined to include doctors of medicine; doctors of osteopathy; ophthalmologists; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions, and public or private welfare agencies (e.g., social workers, caseworkers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress (See 36 CFR 701.10(b)(2)(i)).

c. In the case of reading disability from organic dysfunction, "competent authority" is defined as doctors of medicine and doctors of osteopathy.

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1.5 Certification of Eligible Recipients by Organizations

An organization using the free matter privilege (for mailings of at least 200 pieces) to mail matter to persons who claim eligibility under 1.3 is required to certify on statements of mailing that each recipient is eligible to receive free matter. An organization is subject to Postal Service audits of addressees receiving free matter to substantiate recipients' eligibility consistent with the standards of eligibility articulated by the Library of Congress on its applications for free library service and as specified in these standards.

1.6 Qualifying Individuals

The Postal Service may require individuals claiming entitlement to the free matter privilege to furnish evidence of eligibility consistent with the standards in 1.3 and 1.4, or verify by other means that the recipients are eligible to receive free matter.

2.0 Matter Sent to Blind or Other Physically Handicapped Persons

2.1 Acceptable Matter

Subject to 2.2, this matter may be mailed free:

[Amend item a by adding "in braille or 14-point or larger sightsaving type" to read as follows:]

a. Reading matter in braille or 14-point or larger sightsaving type and musical scores.

* * * * *

2.2 Conditions

The matter listed in 2.1 must meet these conditions:

* * * * *

[Amend item d by adding "as defined in E211" to read as follows:]

d. The matter contains no advertising as defined in E211.

* * * * *

3.0 Matter Sent by Blind or Other Physically Handicapped Persons

[Amend 3.1 to read as follows:]

3.1 Acceptable Letters

Only letters in braille or in 14-point or larger sightsaving type or in the form of sound recordings, and containing no advertising, may be mailed free, and only if unsealed and sent by a blind or other physically handicapped person as described in 1.3.

* * * * *

[Add new section 5.0 to read as follows:]

5.0 Documentation

5.1 Register to Mail

Before submitting free matter mailings of 200 pieces or more, mailers must register with the post office(s) where the mailings will be presented.

5.2 Reporting Mailings

Each mailing of 200 pieces or more of free matter must be presented with a statement of mailing, Statement of Mailing, Free Matter for the Blind and Other Physically Handicapped Persons. [Note: This statement of mailing is currently being developed.] The statement of mailing must be completed in ink, by typewriter, or by computer printer (in duplicate if the mailer wants a receipted copy) and signed by the mailer. The mailer may submit a computer-generated facsimile of the USPS form.

* * * * *

An appropriate amendment to 39 CFR part 111 will be published if this proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–78 Filed 1–2–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 3, 51, 60, 63, 70, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

[FRL–7125–3]

RIN 2025–AA07

Extension of Comment Period for and Public Meetings on the Proposed Establishment of Electronic Reporting; Electronic Records Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period; announcement of public meetings.

SUMMARY: The Environmental Protection Agency (EPA) is extending by an additional 30 days the comment period on its proposed rule for establishment of electronic reporting and electronic records. On August 31, 2001 (66 FR 46162), EPA proposed conditions under which EPA would allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. The comment period is being extended by 30 days to provide the public with additional time to evaluate and comment upon the complex provisions of this proposed rule. As extended by this action, the comment period will now close on February 27, 2002.

This document also announces the dates and locations for two additional public meetings on the proposed rule's recordkeeping provisions, which will be held before the public comment period closes.

DATES: The meetings will be held on: (1) Thursday, January 17, 2002, 10:00 a.m. to 5:30 p.m. (EST); and (2) Thursday, January 31, 2002, 10:00 a.m. to 5:30 p.m. (CST).

In order to be considered, written comments on the proposed electronic reporting and electronic records rule must be submitted on or before February 27, 2002. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) February 27, 2002.

ADDRESSES: The meetings will be held at: (1) The Wyndham Washington, 1400 M Street, NW, Washington, DC; and (2) the Holiday Inn Select, 4440 West Airport Freeway, Irving, Texas.

Comments should be addressed to the United States Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, (Mail Code 2201A), Attn: Docket Number EC–2000–007, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by February 27, 2002. No facsimiles (faxes) will be accepted. Public comments and supporting materials are available for viewing in the Enforcement and Compliance Docket and Information Center, located at 1200 Pennsylvania Avenue, NW, (Ariel Rios Building), 2nd Floor, Room 2213, Washington, DC 20460. The documents are available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 564–2614 or (202) 564–2119. The public may copy a maximum of 266 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The rule and some supporting materials

are also available electronically on the Internet for public review, using a www browser type, at *http://www.epa.gov/*.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: docket.oeca@epa.gov. Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Comments in electronic format should also be identified by the docket number EC–2000–007. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

FOR FURTHER INFORMATION CONTACT: David Schwarz (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–2710, schwarz.david@epa.gov, or Evi Huffer (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–8791, huffer.evi@epa.gov.

SUPPLEMENTARY INFORMATION:

On August 31, 2001 (66 FR 46162), EPA proposed a rule that would set forth the conditions under which EPA would prospectively allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. As noted in the proposal (66 FR 46163), the rule would affect a broad spectrum of EPA programs (not merely those where specific amendments to the Code of Federal Regulations would be made). While the rule is voluntary because it does not require electronic reporting or recordkeeping, for most programs regulated entities that currently maintain electronic records and who wish to continue to do so after the rule takes effect would be required to meet the recordkeeping criteria in subpart D. As currently defined in the proposal, the term electronic record is broad in scope. Given the breadth and complexity of the rule, several commenters have requested additional time to evaluate and comment upon the proposed rule. EPA greatly values the input provided by the regulated community as well as the input from States that administer EPA programs. Accordingly, the comment period was extended by 60 days, to January 28, 2002, in a notice published in the **Federal Register** on Wednesday, November 28, 2001 (66 FR 59392–59393), to provide additional time to evaluate and comment upon the proposed rule.

To help foster this comment and evaluation, EPA has scheduled two additional public meetings on the proposed rule's recordkeeping provisions, on January 17, 2002, and on January 31, 2002. The meetings will focus on electronic recordkeeping issues raised by the proposed rule, and will be structured to take comments on at least the following questions: What kinds of records do companies currently keep electronically to satisfy EPA regulatory requirements? How prevalent is this electronic recordkeeping, and what kinds of systems are used? How are automatically captured data and other raw data maintained electronically? How will the proposed rule affect companies' electronic recordkeeping practices, and do some of the proposed provisions raise more issues than others? How do companies currently ensure the integrity and reliability of their electronic records, especially where they do not use audit trails, and what role do recognized industry standards play? What special issues are raised by proposed criteria for long-term archiving, and how do companies currently address this problem? Where archiving involves the conversion of electronic records to paper, how do companies assure data integrity and reliability, and what role do recognized industry standards play? Are there new products or technologies that will help companies address the proposed standards for electronic recordkeeping?

Also, to allow participants and other interested stakeholders to develop comments based on discussions at these public meetings, EPA is extending the comment period an additional 30 days. During this extended comment period, EPA particularly seeks comment on whether or not the recordkeeping provisions in subpart D of the proposed rule should be withdrawn and addressed in a separate rulemaking. EPA also seeks comment on revisions to the recordkeeping criteria or other provisions of the proposed rule that would make it easier for those in the regulated community who already maintain electronic records to continue to do so after the rule takes effect.

Dated: December 21, 2001.

Kim Nelson,

Assistant Administrator and Chief Information Officer, Office of Environmental Information.

[FR Doc. 02–109 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R4–200212(b), FRL–7124–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Alabama, Georgia, Kentucky, and South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the small Municipal Waste Combustion (MWC) units section 111(d) negative declarations submitted by the states of Alabama, Georgia, Kentucky, and South Carolina. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in these states. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 4, 2002.

ADDRESSES: Comments may be mailed to Scott Davis, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 4 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Scott Davis at (404) 562–9127 or Sean Lakeman at (404) 562–9043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: December 21, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–105 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–P

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Miami Blue Butterfly as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Miami blue butterfly (*Hemiargus thomasi bethunebakeri*) under the Endangered Species Act of 1973, as amended. The range of this butterfly, which once extended north along the Florida coasts to about St. Petersburg and Daytona, has been shrinking for many years. We find that the petition presented substantial information indicating that listing this species may be warranted. We are initiating a status review to determine if listing the Miami blue butterfly is warranted.

DATES: The finding announced in this document was made on December 20, 2001. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by March 4, 2002.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David Martin at the above address (561–562–3909, extension 230).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition and promptly publish it in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the species involved if one has not already been initiated under our internal candidate assessment process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is in fact warranted.

On June 15, 2000, we received a petition, dated June 13, 2000, from Dr. Jeffrey Glassberg, president of the North American Butterfly Association, Morristown, New Jersey, and Mr. Mark Salvato, an entomologist in St. Petersburg, Florida. The petition requested that we list the Miami blue butterfly as an endangered species on an emergency basis, and that critical habitat be designated concurrent with listing.

The petitioners cited habitat loss as a threat to the Miami blue butterfly. They suggested that fragmentation of habitat is a threat to this butterfly because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat. The petition also suggested that vegetation management on public land (notably lack of prescribed fires and suppression of natural ones) is adversely affecting Miami blue butterflies, as it does not maintain the appropriate native plant species required by the butterfly. Further, the petition cited unethical butterfly collection as a potential threat to the Miami blue. Finally, the petition asserted that mosquito control measures (i.e., spraying of adulticides) may threaten this species.

The Miami blue is the only subspecies of *Hemiargus thomasi* in the United States. The other subspecies are in the Bahamas, Hispaniola, and islands further east in the Antilles. Guides to Florida and Caribbean butterflies differ over whether the Miami blue also occurs in the Bahamas. Minno and Emmel (1993) considered it restricted to Florida, while Smith *et al.* (1994) noted that it had been recorded from the Bimini Islands in the Bahamas as does Calhoun (1997). Calhoun *et al.* (in press) surmise that it may not be a permanent resident in the Bahamas. In any case, the vast majority of this subspecies' distribution was in Florida, with any populations in the Bahamas being peripheral.

Little historic information exists on the abundance of the Miami blue, but its distribution has clearly shrunk. Kimball (1965) stated that "it is not rare in the area from Gainesville and Tampa south, and is common in Dade and Monroe Counties. It has been taken in the Dry Tortugas." Opler and Krizek (1984) showed its range as being from Tampa Bay and Cape Canaveral southward. Minno and Emmel (1993) stated that "although populations of the Miami blue have declined on the southern mainland, it is still locally common in the Keys" (pp. 134–35). However, this statement was based on a 1980 reference. Calhoun et *al.* (in press) place the historic limits of the species' northern distribution at Hillsborough and Volusia Counties, extending southward along the coasts to the Marquesas Keys to the west of Key West, based on information from Forbes (1941) and Kimball (1965), as well as unpublished data assembled by Calhoun.

The Miami blue is closely related to the nickerbean blue (*Hemiargus ammon*), a Cuban species that has recently become established on Big Pine Key (Calhoun *et al.* in press). The potential for confusing these two species, as well as a third, the Florida blue (*Hemiargus ceraunus antibubastus*), makes it essential to base distribution records on specimens or photographs rather than sightings.

The petitioners' evidence, augmented by other available information, especially a paper by Calhoun et *al.* (in press), demonstrate that this subspecies has become hard to find. No observations of the Miami blue were supported by photographs or specimens from 1993 (Calhoun *et al.* in press) until November 1999, when Jane Ruffin provided a photographically verified report of about 50 individuals at a site in southern Florida. Her report was published in the spring 2000 issue of American Butterflies (Ruffin and Glassberg 2000). Calhoun *et al.* (in press) note an additional confirmed population near the one observed in 1999 as well as a credible sighting by R. Gillmore on Key Largo, which was posted on the North American Butterfly Association's website (*http://www.naba.org/sightings/sightingsMay2001Archive.htm*). The petitioners cited biologists and others who have searched for butterflies in southern Florida in recent years without sighting the Miami blue. This strongly indicates that the Miami blue is now very restricted in its distribution and nowhere abundant.

Larval food plants for the Miami blue butterfly include the seed pods of nickerbeans (*Caesalpinia* spp.), which are common tropical coastal shrubs and vines, as well as blackbeards (*Pithecellobium* spp.) and perhaps other members of the pea family, such as *Acacia* (Calhoun *et al.* in press). Miami blue larvae also utilize balloon vine (*Cardiospermum halicababum*) seedpods (Opler and Krizek 1984, Minno and Emmel 1994). These vines, belonging to the soapberry family, are not native to Florida, but are relatively common, especially in urban areas. Additionally, Calhoun *et al.* (in press) suggest that larvae of the Miami blue, like those of the nickerbean blue, may feed on species of *Acacia* that are abundant on Big Pine Key.

The petition cites habitat loss and fragmentation as a threat. The Miami blue was a coastal species, known to feed on distinctly coastal trees and shrubs, which occur in tropical coastal hammocks (forests) and scrub. It also occurred in pine rocklands (slash pine with small palms and a grassy understory) on Big Pine Key (Calhoun *et al.* in press) and presumably in Miami-Dade County. Much of that habitat is gone, especially on the mainland, and what is left is fragmented. For example, the entire coastline in Palm Beach, Broward, and Miami-Dade Counties (as far south as Miami Beach) is densely urban, with only small remnants of coastal vegetation conserved in parks. In coastal areas where undeveloped land remains, the Miami blue's larval food plants are likely to be displaced by invasive exotic plants such as Brazilian pepper (*Schinus terebinthifolius*), which is now a dominant plant in coastal Florida. The seriousness of the loss and fragmentation of natural habitats is uncertain, partly because larvae of the Miami blue feed on balloon vines, which are exotic, weedy, and likely to be present in the urban landscape. It is possible that balloon vines could provide patches of suitable larval feeding habitat that would allow Miami blue butterflies to disperse between patches of suitable natural habitats.

The petition suggests that fragmentation of habitat is a threat to this butterfly because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat. Calhoun *et al.* (in press) provide indirect evidence that this may be the case on Big Pine Key, which appears to be unoccupied by the Miami blue, but is occupied by the nickerbean blue butterfly. The food plants of the two species seem similar enough to indicate that the Miami blue became extirpated from Big Pine Key in the 1990s for reasons other than loss of suitable habitat, and has not recolonized the island.

The petition suggests that vegetation management on public land, notably lack of prescribed fires and suppression of natural ones, is adversely affecting butterflies. Calhoun *et al.* (in press) report that, until it disappeared from Big Pine Key in the early 1990s, the Miami blue most commonly occurred in pine rocklands that are now used by the nickerbean blue. This is a fire-dependent habitat and it is conceivable that the success of the Miami blue in pinelands depended on regular burning, although as Calhoun *et al.* (in press) note, host plants (*Caesalpinia* and *Acacia*) appear to be abundant. It did not seem to them that habitat loss or modification was likely to have caused the loss of the Miami blue from Big Pine Key.

The petition cited unethical butterfly collection as a potential threat to this species. While we have listed several butterflies to, in part, protect them from collectors, it is not yet possible to demonstrate that collecting is threatening this species. However, unless this butterfly proves to be more widespread than is currently known, collection may be a threat due to the species rarity and apparently spotty distribution.

Butterflies are potentially subject to intense collection pressures, and recent listings of butterflies as endangered or threatened species have been based on this threat (notably the Saint Francis' satyr (*Neonympha mitchellii francisci*), emergency-listed, 59 FR 18324, April 15, 1994; callippe and Behren's silverspot butterflies (*Speyeria callippe callippe* and *Speyeria zerene behrensii*), 62 FR 64306, December 5, 1997; and Blackburn's sphinx moth (*Manduca blackburni*), 65 FR 4770, February 1, 2000). The Saint Francis' satyr was demonstrated to have been hard hit by collectors in just a 3-year period. On the other hand, our 90-day petition finding for the Santa Monica Mountains hairstreak (*Satyrium auretorum fumosum*) (64 FR 62641, November 17, 1999) found that collection and other threats were not serious enough to warrant listing. Along with collectors interested in making money, butterflies also attract obsessive collectors (Alexander 1996, Williams 1996).

The Miami blue butterfly's apparent rarity makes it vulnerable to random events such as hurricanes or possibly freezes that can temporarily destroy the foliage of larval food plants.

The petition asserted that mosquito control measures (i.e., spraying of adulticides) may threaten this species. Salvato (1999) studied factors influencing the declining populations of three butterfly species in the lower Keys. Although the species he studied have life histories that are different from that of the Miami blue, his masters thesis demonstrates that mosquito adulticide spraying can harm butterflies at the National Key Deer Refuge on Big Pine Key. He suggested specific expansions of the existing no-spray zones to protect the breeding grounds of these butterflies. His study is one of several conducted by a group of researchers on the problems of mosquito control pesticides in the ecosystem (Emmel 1991), which focused on conservation of the endangered Schaus swallowtail butterfly (*Papilio aristodemus*) on Key Largo. They found a "probably causal" correlation between the history of mosquito control on Key Largo and the decline of the Schaus swallowtail butterfly there.

The petitioners stated that, due to aspects of the Miami blue's natural history, especially its association with ants, "roadside adulticide applications may be having much larger negative impacts on *H. t. bethunebakeri* populations than on those of other lycaenid species in the Keys. Miami blue larvae mature in the stem and seed pods of their host. These larvae leave the entrance holes open so that ants can enter the seed pods and stems and interact with the larvae. Dr. Jenella Loge (University of Utah) has discovered that these ants and the Miami blue larvae die when spraying begins in late spring on the Keys. Larvae of other lycaenid species on the Keys, ones without mutualistic relationships with ants, plug the holes of their seed pods and stems to keep would-be predators outside, and this may also restrict the entrance of adulticide spray." About half of the world's lycaenid butterfly species associate with ants. Cushman and Murphy (1993) suggest that ant-dependent lycaenid butterflies are inherently more vulnerable to extinction than those that are not ant-dependent because of the consequences of needing both the right food plants and the right ants, simultaneously. Based on information from Calhoun *et al.* (in press) and Salvato (1999), mosquito spraying appears likely to have contributed to the decline of the Miami blue and might be inhibiting recolonization of suitable habitats.

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find the petition presents substantial information that listing this species may be warranted. Habitats that were probably formerly occupied by the Miami blue butterfly have been

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destroyed or fragmented. The available information suggests that the Miami blue is rare and may exist only in small numbers at a few sites. This probable rarity suggests that the species might not be able to recolonize former portions of its range that may have suitable, but unoccupied, habitat. Also, the available information demonstrates that mosquito spraying in the Florida Keys and probably other parts of the Miami blue's former range has the potential to harm this species.

The petitioners stated that the Miami blue butterfly's last known population may be destroyed by mosquito control adulticide treatments, by human-caused changes to its habitat on the public land it inhabits, or by unethical butterfly collectors, and they requested emergency listing of the species. We may issue an emergency rule when an immediate threat poses a significant risk to the well-being of a species. Although the Miami blue butterfly appears to be in danger of extirpation, we do not believe that the threats are so great that extirpation is imminent. Upon receiving the petition, we reviewed the available information to determine if the existing and foreseeable threats posed an emergency. Consequently, we determined that an emergency listing was not warranted at this time. However, if at any time we determine that emergency listing of the Miami blue butterfly is warranted, we would seek to initiate an emergency listing. The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the Miami blue butterfly is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Miami blue butterfly. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Miami blue butterfly. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Supervisor, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

You may request a list of all references cited in this document, as well as others, from the South Florida Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this document is David Martin, South Florida Ecological Services Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 2001.

Marshall P. Jones Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 02–36 Filed 1–2–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 010918229–1229–01; I.D. 022301A]

RIN 0648–AP15

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify the management measures applicable to the American lobster fishery. This action responds to the following recommendations made by the Atlantic States Marine Fisheries Commission (ASMFC): To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area (LCMA) 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone (EEZ) from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this announcement is intended to make the regulations easier to understand.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on February 19, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Harry Mears, Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments will not be accepted if submitted via e-mail or the Internet. Comments regarding the collection-of-information requirements contained in the proposed rule should be sent to Harry Mears at the above address, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer). Copies of a Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) can be obtained from Harry Mears at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ross, NMFS, Northeast Region, 978–281–9234.

SUPPLEMENTARY INFORMATION:

Proposed Action

NMFS is proposing regulations to modify Federal lobster conservation management measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the ASMFC and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The lobster management program uses a fishing effort limitation strategy, among other measures, to control lobster fishing mortality. Fishing effort is currently limited by restricting the access of new vessels to the fishery and by limiting the number and size of traps that may be fished by each vessel. This proposed rule, issued as part of a Federal/state cooperative management effort, would implement a historical participation management regime to control lobster fishing effort and to preserve the socio-economic character of the associated lobster fisheries in Areas 3, 4, and 5. It would also establish a process for the evaluation of recommendations from ASMFC for Federal lobster regulations implementing ASMFC-approved conservation-equivalency measures in state coastal waters. In this regard, the proposed action would respond to an ASMFC recommendation to modify trap limit restrictions for Federal lobster permit holders fishing in EEZ Nearshore Management Area 1 who also possess a New Hampshire state lobster license. Finally, the proposed action would modify boundaries of lobster management areas in Massachusetts state waters for clarity and consistency with past fishing practices.

Effort Control in Lobster Conservation Management Areas 3, 4, and 5

In 1994, NMFS implemented a 5-year moratorium on new entrants into the EEZ lobster fishery via a limited access permit system. In December 1999, that moratorium was extended indefinitely under Federal regulations found at 50 CFR part 697 (64 FR 68228). Based upon its approval of selected management measures proposed by the Areas 3, 4, and 5 Lobster Conservation Management Teams, the ASMFC recommended that access to, and levels of effort in, the lobster trap fishery in EEZ Offshore Area 3 and Nearshore EEZ waters of Areas 4 and 5 be based on historical participation. The ASMFC recommendations for qualification based on historical participation addressed qualification criteria, allocation of fishing effort, and limitations on vessel upgrades. Qualification criteria are different among the areas and include demonstration of active involvement in the fishery through provision of certain documents. The ASMFC plan for Area 3 proposes that potential participants must meet or exceed both a landing and a fishery intensity threshold in order to qualify, whereas the plans for Areas 4 and 5 would only require fishermen to have held a lobster trap permit during the qualification period (see details provided in subsequent text).

The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action, and the number of vessels that do not qualify for future participation in the LCMA 3, 4, and/or 5 fisheries may be higher than the number identified in this proposed rule and in the DSEIS/RIR/IRFA.

Area 3 Fishing Effort Control Program

Area Coordinates

EEZ Offshore Management Area 3 is defined at 50 CFR 697.18(d). A copy of a map showing the American lobster EEZ management areas is available upon request from the Director of the State, Federal and Constituent Programs Office, see **ADDRESSES**.

Qualification Period and Establishment of a Federal Control Date

NMFS proposes to limit the number of traps fished in Area 3 based on proof of historical participation in the Area 3 fishery and the number of traps fished by a vessel during a qualifying period from March 25, 1991 (date recommended by the ASMFC) through September 1, 1999. NMFS is not proposing to use the ASMFC's recommended ending date of November 1, 1997, for this qualification period because of NMFS' policy to provide advance notice to the public of qualification dates. On September 1, 1999, NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (64 FR 47756), to give notice that NMFS was considering September 1, 1999, the publication date of the ANPR, as a possible control date, or cut-off date, to be used to determine eligibility for future access to the Federal lobster trap fishery. This proposed qualification period is similar to the recommendations pertaining to historical participation in the EEZ for Areas 3, 4, and 5 approved by the ASMFC under the ISFMP on August 1, 1999.

NMFS is proposing to use the ASMFC's recommended criterion that would require fishermen to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during 2 consecutive calendar months within the qualification period. The use of a 2-consecutive calendar month period would maintain consistency with the ASMFC's ISFMP, and avoid the potential for conflicting state and Federal regulations when implementing this qualification criterion. In addition, the NMFS dealer landing and vessel trip report data, which would likely be used for qualification purposes, is based on calendar month time periods. Due to the calendar month configuration of the NMFS databases, the use of an alternative time frame, such as 60-consecutive days, would be more prone to error.

NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time

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period, rather than some other time period, such as a Federal lobster fishing year (May 1 through April 30). The use of calendar years would be consistent with recommendations provided by the ASMFC. In addition, documents provided by fishermen to demonstrate historic participation, such as tax returns, are commonly based on a calendar year rather than a fishing year. Also, there is often less lobster fishing effort in the winter months due to weather conditions and the availability of the resource. Therefore, it is less likely that a 2-consecutive month period used to qualify a vessel would overlap the December to January time period.

Qualification Criteria

In order to qualify to fish for lobster with traps in Area 3, Federal lobster permit holders would need to meet all of the following criteria:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year during the qualification period, from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

3. Provision of sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the year used as the qualifying year from March 25, 1991, through September 1, 1999.

Trap Allocations

Federal permit holders intending to fish for lobster with traps in Area 3 would also have to provide a signed affidavit to NMFS certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation used to demonstrate compliance with qualification criterion number 2. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate qualification criterion number 2.

The use of Federal Fishing Vessel Trip Reports to document historical fishing effort (fishing location and number of traps fished) in the lobster fishery would be possible for some, but not all, Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A recent review by NMFS indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62 percent) held Federal permits for other fisheries requiring mandatory reporting. The utility of these reports for documenting lobster fishing effort would be further restricted to those permit holders who accurately noted, on the reports, the number of individual lobster traps fished on an area-by-area basis. Similarly, an informal review of the utility of official state reports for determination of lobster trapping effort concludes that such documents may be relevant only to Connecticut and Massachusetts residents (approximately 34 percent of Federal lobster permit holders).

Use of Federal Fishing Vessel and Gear Damage Compensation Reports will be limited to an unknown number of Federal lobster permit holders who have submitted compensation claims for gear loss under the provisions of the Fishermen's Protective Act (22 U.S.C. 1980 *et seq.*). Vessel logbooks, receipts from the sale of lobsters or the purchase of lobster traps, observer trip reports, and income tax forms provide other examples of documentation that could be used to help substantiate previous levels of lobster fishing effort (i.e., number of traps). Due to the varying degrees to which each of these forms of documentation may be either available or relevant for purposes of certifying historical trapping effort on a case-by-case basis, NMFS proposes that the discretion should be left to the individual permit holder to decide which documents to use. Accordingly, NMFS does not agree with the ASMFC's recommendations that a priority ranking should be assigned to the use of any one form of documentation over another.

Some fishermen would likely need a combination of documents to certify the number of traps fished historically. Although NMFS recognizes the importance of this information as a basis to certify historical participation in the Area 3 fishery, it is sensitive to the fact that no mandatory reporting requirements in the lobster fishery exist. NMFS believes, at this point, that the use of an affidavit, with the provision of supporting documentation to NMFS, would accommodate the necessary procedures to implement lobster trap fishing effort controls on the basis of historical participation.

The ASMFC has also recommended that NMFS contract with an independent outside entity to determine and recommend trap allocations and publish a notice that specifies initial trap allocations for each lobster permit holder. NMFS disagrees and believes that an in-house review would be the most efficient and equitable means of approving trap allocations. In addition, the release of personal documents and records to an outside review body raises privacy issues. NMFS also believes that the issuance of a public notice that would specify individual trap allocations for each Federal permit holder, as recommended by the ASMFC, also raises privacy issues and serves no constructive purpose.

Trap Reduction Plan

Once qualified, a lobster permit holder would be allocated a certain number of lobster traps, based on the affidavit and supporting documentation provided, but no Federal lobster permit holder would be given an initial lobster trap allocation of more than 2,656 lobster traps. (This maximum trap allocation was recommended by ASMFC as a result of Addendum II to Amendment 3 of the ISFMP.) Each trap allocation of more than 1,200 traps would be reduced annually on a sliding scale basis over 4 years. Trap reductions would not go below a baseline of 1,200 traps. Each initial allocation in Area 3 of fewer than 1,200 traps would remain at that allocation. The reduction schedule recommended by the ASMFC is shown in Table 1.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

Number of Traps Approved by the Regional Administrator	Trap Allocation by Fishing Year*			
	2002	2003	2004	2005 and beyond until changed
1200-1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300-2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267

* Trap allocations below 1,200 will not be subject to further reductions.

This proposed rule would require that any Federal lobster permit holder applying for an Area 3 trap allocation who also applies for a trap allocation in Area 4, Area 5, or in all three of those areas use the same qualifying year for all areas and avoid a combined trap allocation greater than the number of traps that the permit holder fished with any one vessel in any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide by the most restrictive regulations, including trap allocations, in any one elected area at any one time, would remain in effect.

Vessel Upgrades

NMFS is not proposing to adopt the ASMFC's recommendation to limit vessel upgrades for Federal permit holders receiving an Area 3 trap allocation. This limitation, if implemented, would preclude federally permitted vessels in the Area 3 lobster fishery that measure over 50 ft (15.24 m) in length, or upgrading to over 50 ft (15.24 m) in length, from upgrades or replacement that would result in more than a 10-percent increase in length overall, or a 20-percent increase in shaft horsepower, for 2 years.

NMFS does not concur with this recommendation. A prohibition on an increase in vessel length or an increase in horsepower for a 2-year period would require existing permit holders to substantiate existing baseline vessel characteristics. Lobster trap vessels are generally small, with an average length of 39 ft (11.9 m). Many such vessels are not U.S. Coast Guard documented, and, therefore, information on length and horsepower may not be available to NMFS. The implementation of lobster vessel upgrade criteria may accordingly require a marine survey to establish legal vessel specifications, adding a financial burden on vessel owners. The potential cost to hire a marine surveyor or naval architect to verify existing baseline vessel characteristics can range from $150 to $600, with associated costs increasing with vessel size, and would result in added delays for vessel replacement and transfers, if implemented. NMFS' review of requests for transfers would take more time, because NMFS would need to verify whether the specific vessel with a limited access American lobster permit would qualify to fish in Area 3 and, therefore, would be restricted by the upgrade provision.

NMFS is concerned that implementation of the ASMFC's recommended, temporary upgrade restrictions would be unnecessarily burdensome for fishermen and NMFS and would afford no obvious conservation benefits to the lobster resource, unlike the permanent restrictions on vessel and horsepower upgrades in the scallop and groundfish fisheries. In addition, an unknown number of vessels that would qualify for historical participation in Area 3 as specified in this proposed rule may currently hold a Federal fisheries permit in another fishery that permanently restricts vessel and horsepower upgrades. The implementation of trap limits, either fixed or based on a historical level of participation, has the potential to effectively limit fishing effort in the offshore lobster fishery without an additional requirement for vessel upgrade restrictions.

Areas 4 and 5 Fishing Effort Control Program

Area Coordinates

EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 are defined in 50 CFR 697.18(e) and (f), respectively. A copy of a map showing the American lobster EEZ management areas is available upon request to the Director, State, Federal and Constituent Programs Office, see **ADDRESSES**.

Qualification Period and Establishment of a Federal Control Date

The eligibility of Federal lobster permit holders to fish with traps in the Areas 4 and/or 5 fishery would be based on proof of historical participation and numbers of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. NMFS is not proposing to adopt the ASMFC-recommended ending date (control date) of September 15, 1998, for this qualification period because NMFS previously notified the public that it may use September 1, 1999, as the control date. See Area 3 discussion for

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associated rationale. NMFS is proposing to use the ASMFC's recommended 2-consecutive calendar month period criterion within the qualification period to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 4 or 5. See Area 3 discussion for associated rationale. NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time period, rather than some other time period such as a Federal lobster fishing year (May 1 through April 30). See Area 3 discussion for associated rationale.

Qualification Criteria for EEZ Nearshore Management Area 4

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 4:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year.

Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

Qualification Criteria for EEZ Nearshore Management Area 5

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 5:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen as the qualifying year, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation indicating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period.

Rationale for Provision of Documentation in Support of a History of Lobster Trap Fishing in Areas 4 or 5

Although not recommended by the ASMFC, NMFS believes that requiring documentation to substantiate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in either or both Areas 4 or 5, during a 2-consecutive calendar month period in any calendar year during the qualification period is necessary to effectively establish historical participation, consistent with the qualification criteria of the Area 3 plan. NMFS has no conclusive data for determining historical numbers of traps fished in Areas 4 and 5. However, on the basis of the best information available to NMFS and associated comments received with respect to the DSEIS, NMFS believes that the setting, soaking, hauling back, and re-setting of at least 200 lobster traps in Areas 4 or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period represents a reasonable indicator of a fisherman's socio-economic reliance on the lobster fishery.

Trap Allocations for Areas 4 and 5

Similar to the proposed action for Area 3, this proposed rule would require Federal permit holders qualifying to fish for lobster with traps in Areas 4 and/or 5 to provide a signed affidavit certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 4 and/or 5 at any one time during the qualifying year. The affidavit would be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation for Areas 4 and/or 5. This proposed rule would require that such certification be based upon the same or similar type of documentation used to fulfill the qualification criterion number 2, and that the affidavit be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate trap fishing activity in qualification criterion number 2.

ASMFC recommendations for the Areas 4 and 5 fisheries, unlike those for the Area 3 fishery, do not contain either trap limits or trap reduction schedules. Although not recommended by the ASMFC, NMFS is proposing a trap limit not to exceed 1,440 lobster traps per vessel, on the basis of public comment received on the DSEIS, and the conservation benefit to the resource. NMFS believes the removal of existing trap limits in Areas 4 and 5 (800 lobster traps per vessel under current Federal Regulations), without implementation of an alternative trap limit, would likely result in excessive lobster fishing mortality. Implementation of a maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel, in combination with the proposed qualification criteria for participation in the Areas 4 and 5 trap fishery, may preclude excessive trap fishing effort and corresponding levels of lobster fishing mortality.

The implementation of a trap limit is also consistent with the proposed measure for controlling lobster trap fishing effort on the basis of historical participation proposed for Area 3. A trap limit not to exceed 1,440 lobster traps was initially analyzed as a non-preferred alternative in the DSEIS. In accordance with ASMFC recommendations, NMFS is not proposing a trap reduction requirement once the initial trap allocations have been determined for qualified participants in the Areas 4 and 5 trap fisheries.

This proposed rule would require any Federal lobster permit holder applying for access to more than one of the 3 areas (Areas 3, 4, or 5) to use the same qualifying year for all areas in order to avoid a combined allocation greater than the number of traps that the permit holder ever fished with any one vessel at any one time during any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide at all times by the most restrictive regulations, including trap allocations, in any one elected area regardless of the area being fished, would remain in effect.

Appeals Process

Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5 could appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal would need to be in writing. The only ground for appeal would be that the Regional Administrator erred in concluding that the vessel did not meet the criteria specified in this proposed rule. The appeal would need to set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

The Regional Administrator would appoint a designee to make the initial decision on the appeal. Within 30 days of the date on the notice of the initial decision on the appeal, the appellant could request in writing a review by the Regional Administrator of the initial decision. The appellant could present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer would make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator would make a decision on the appeal, which would be the final decision of the Department of Commerce. If the appellant did not request a review within 30 days of the date on the notice of the initial decision on the appeal, the initial decision would be the final administrative action of the Department of Commerce.

A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 could fish in Areas 3, 4, and/or 5, provided that the denial had been appealed, the appeal was pending, and the vessel had on board a letter from the Regional Administrator authorizing the vessel to fish in Areas 3, 4, and/or 5. The Regional Administrator would issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal was pending, the vessel could fish up to 800 lobster traps, unless the vessel's Federal lobster permit had designated only Area 3 for lobster trap fishing, whereby, the vessel could fish up to 1,800 lobster traps in Area 3 only. If the appeal was finally denied, the Regional Administrator would send a notice of final denial to the vessel owner; the authorizing letter would become invalid 5 days after receipt of the notice of denial or 15 days after the date it was sent, whichever occurred first.

Clarification of Procedures for Consideration of Conservation Equivalency Measures as They Apply to Federal Lobster Permit Holders

The ISFMPs developed by ASMFC allow states to adopt management measures that differ from the specific management measures in the ISFMPs as long as the states' alternative measures achieve the same quantified level of conservation for the resource under management. Such alternative management measures are referred to as "conservation equivalent measures." For example, any state may request a change to regulations in waters under its jurisdiction pertaining to the default trap limits specified in the ISFMP. Such requests are reviewed by ASMFC's Lobster Technical Committee, which provides its evaluation of the biological merit of such proposals to ASMFC's Lobster Board for subsequent policy review and approval. Upon approval of such measures, the ASMFC, under the provisions of the ACFCMA, may decide to recommend modifications to Federal lobster regulations, as may be deemed necessary, to complement a state's conservation equivalent measures. This proposed rule would clarify a procedure by which NMFS would consider such recommended modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s).

Specifically, under 50 CFR 697.25, NMFS would consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to the agency in writing by the ASMFC and that contain the following supporting information: (1) a description of how Federal regulations would be modified; (2) an explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations; (3) an explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and (4) a detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering a recommendation for conservation equivalent measures and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

In the DSEIS prepared for this action, NMFS expressed concern that recommendations from the ASMFC for Federal implementation of conservation equivalent measures may unduly burden the agency, given that there are 15 member states in the ASMFC and that each state may seek Federal implementation of the conservation equivalent of several different types of measures under the ISFMP. NMFS believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NMFS to respond to recommendations for Federal rulemaking in a more timely and efficient manner. This cooperative approach to the implementation of conservation equivalent measures would benefit the states, fishermen, and enforcement of fishery regulations by minimizing the time lag between state and Federal implementation of approved conservation equivalent

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measures and by reducing the time period during which state-only permit holders and Federal permit holders from the same state may be subject to different requirements.

Modification of Area 1 Trap Limits for New Hampshire Lobster License Holders

In October 1998, ASMFC approved a proposal from the State of New Hampshire for conservation equivalent lobster trap limits that vary from the 800 lobster trap limit in Area 1. That state's lobster management program provides for a two-tier lobster license system: State fishermen who provide documentation of landing more than 12,000 lb (5,443 kg) of lobster in at least 2 years, from 1994 to 1998, receive a full commercial lobster license issued by the State of New Hampshire; those who cannot provide this documentation are issued a limited commercial lobster license. Those fishermen who qualify for a full license may fish up to 1,200 lobster traps in state waters, and those in the limited category may fish a maximum of 600 lobster traps in state waters. Following approval of the New Hampshire proposal under the ISFMP, the ASMFC recommended that NMFS modify Federal regulations to maintain the biological and socio-economic basis of New Hampshire's lobster management program. The ASMFC has not received similar proposals, although allowable, from the States of Maine and Massachusetts, which also border Area 1. The ASMFC requested that NMFS modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

There are approximately 80 Federal lobster permit holders with vessel ports in New Hampshire (1998 data) who harvest lobster primarily with trap gear. Twenty-two of these individuals also possess a full commercial lobster license, and 26 possess a limited commercial lobster license issued by the State of New Hampshire, as described in the DSEIS.

Under current regulations, Federal lobster permit holders must abide by the stricter of either Federal or state lobster management measures. Under the preferred alternative, NMFS would waive this requirement with respect to the number of lobster traps for Federal lobster permit holders who elect to fish in Area 1 and who possess a valid New Hampshire full commercial lobster license for Area 1. Specifically, this proposed rule would not make any change in the number of traps allowed to be fished in the Federal waters of Area 1. However, a New Hampshire full commercial lobster licensee fishing aboard a federally permitted vessel would be allowed to fish an additional 400 lobster traps in New Hampshire state waters.

Lobster Management Area Boundary Clarification

In Addendum 1 to the American Lobster ISFMP, the ASMFC revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP.

NMFS proposes to implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area to maintain consistency with the ASMFC's American lobster ISFMP and to avoid confusion if the Federal and ASMFC area boundaries and their associated lobster management measures differ.

Cape Cod Canal Overlap

The Cape Cod Canal (Canal) cuts through the Cape Cod peninsula in Massachusetts and connects the waters of Cape Cod Bay to the north (within Area 1) with the waters of Buzzards Bay to the south (within Area 2). The Canal is large enough at certain points to allow the setting of lobster trap gear, and lobster fishermen from both Areas 1 and 2 have historically set trap gear in the Canal.

To allow fishermen in the adjacent areas of Area 1 and Area 2 to maintain their historical ability to fish in the Canal, the Cape Cod Canal would be considered an area of overlap between Areas 1 and 2. To establish this overlap area, the existing boundaries of both Area 1 and Area 2 would be modified to encompass the Cape Cod Canal.

Outer Cape Lobster Management Area's Northern Boundary

As a result of an oversight contained in Amendment 3 to the ISFMP, the boundary line coordinates separating the Outer Cape Area from Area 1 did not extend to the shoreline of Massachusetts and, therefore, did not effectively separate these management areas. To correct this situation, under Addendum 1 to the ISFMP, the coordinates for the boundary line separating Area 1 and the northern boundary of the Outer Cape Area were revised and extended around the western tip of Cape Cod. This revision effectively extended the boundary line to the shoreline of Massachusetts and created an area of overlap between Area 1 and the Outer Cape Area.

NMFS proposes to revise the existing boundary line coordinates as follows:

Northern Boundary: Following the LORAN C 9960-Y-44120 line to the intersection with the 9960-W-13850 line (42°04.25′ N. lat., 70°17.22′ W. long.), then following that line in a southeasterly direction to the intersection with the 9960-Y-44110 line (42°02.84′ N. lat., 70°16.1′ W. long.), then following that line in an easterly direction to Race Point (42°03.35′ N. lat., 70°14.2′ W. long.) in the town of Provincetown, MA.

Overlap Zone Boundary: Beginning at Race Point, MA (42°03.35′ N. lat., 70°14.2′ W. long.) following the LORAN C 9960-Y-44110 in a westerly direction to its intersection with 9960-W-13850 line (42°02.84′ N. lat., 70°16.1′ W. long.), then following that line in a southeasterly direction to its intersection with a 9960-X-25330 line (41°52′ N. lat., 70°07.49′ W. long.), then following that line in a northeasterly direction to where it meets the shoreline of Great Island in the town of Wellfleet, MA (41°54.46′ N. lat., 70°03.99′ W. long.), then following the shoreline in a northerly direction back to the beginning.

When the coordinates for the recommended revision to the Overlap Zone boundary between Area 1 and the Outer Cape Area were plotted, there was a problem with the information provided in Addendum I. As a result, the chart included in the Addendum does not agree with the associated LORAN C coordinates. The chart in Addendum I indicates that the area of overlap extends to a point northeast of and beyond Race Point, MA, continuing around the tip of Cape Cod, while the coordinates denote an overlap area beginning at Race Point, MA. NMFS developed the coordinates in this section based on the coordinates in Addendum I, not on the graphics (chart) in Addendum I. The ASMFC has been informed of this discrepancy.

Boundary Change Between Area 2 and The Outer Cape Management Area

In Addendum I the ASMFC revised the boundary separating Area 2 and the Outer Cape Area, which runs from the southeastern tip of Cape Cod to Nantucket Island, by shifting it west by 5 minutes of longitude, from 70° W. Long. to 70° 05′ W. Long.

Revised Boundary Description for Area 1, Area 2, and the Outer Cape Area

EEZ Nearshore Management Area 1

EEZ Nearshore Management Area 1 is defined by the area including state and Federal waters that are nearshore in the Gulf of Maine. This proposed rule would re-define Area 1 to be the area bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

Point	Latitude	Longitude
A	43°58′ N.	67°22′ W.
B	43°41′ N.	68°00′ W.
C	43°12′ N.	69°00′ W.
D	42°49′ N.	69°40′ W.
E	42°15.5′ N.	70°40′ W.
F	42°10′ N.	69°56′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G3	42°03.35′ N.	70°14.2′ W.

From point "G3" along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

EEZ Nearshore Management Area 2

EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40′ N.	70°05′ W.
I	41°15′ N.	70°05′ W.
J	41°21.5′ N.	69°16.5′ W.
K	41°10′ N.	69°06.5′ W.
L	40°55′ N.	68°54′ W.
M	40°27.5′ N.	71°14′ W.
N	40°45.5′ N.	71°34′ W.
O	41°07′ N.	71°43′ W.
P	41°06.5′ N.	71°47′ W.
Q	41°11.5′ N.	71°47.25′ W.
R	41°18.5′ N.	71°54.5′ W.

From point "R" along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point "H" along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

EEZ Nearshore Outer Cape Lobster Management Area

EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10′ N.	69°56′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G4	41°52′ N.	70°07.49′ W.
G5	41°54.46′ N.	70°03.99′ W.
From Point "G5" along the outer Cape Cod coast to point "H"		
H	41°40′ N.	70°05′ W.
H1	41°18′ N.	70°05′ W.
From Point "H1" along the eastern coast of Nantucket Island, MA, to Point "I"		
I	41°15′ N	70°00′ W.
J	41°21.5′ N.	69°16′ W.
From Point "J" Back to Point "F."		

Clarification of Lobster Trap Tag Requirements

NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not clearly specified in the regulatory text. This amendment would clarify a tagging requirement that was previously specified by reading several sections in combination, including regulations found under 50 CFR 697.7 and 50 CFR 697.19. This technical amendment is intended to make the regulations easier to understand.

Classification

This proposed rule has been determined to be significant for the purposes of Executive Order 12866.

NMFS prepared a DSEIS/RIR/IRFA for this action; a notice of availability was published on November 24, 2000 (65 FR 70567). The Initial Regulatory Flexibility Analysis (IRFA), in compliance with the Regulatory Flexibility Act, describes the economic impacts of the proposed rule, if adopted, on small entities. A summary of the IRFA follows: Reasons why the action is considered, as well as the objectives and legal basis for this rule, are described in the IRFA and the preamble to this rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. Implementation of historical participation and lobster trap limits in Areas 3, 4, and 5 is expected to result in a reduction in the number of Federal permit holders qualified to fish for lobster with traps in these management areas. Individuals failing to meet the proposed qualification criteria may: (1) decide to fish in areas not subject to historical participation; (2) decide to retain their lobster fishing permit but not use it; (3) leave the lobster fishery entirely by selling his/her lobster vessel; or (4) fail to renew their Federal lobster permit.

Although it can be assumed that there will be no immediate impact on existing fishing operations that do not harvest lobster in substantial numbers with lobster trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This may affect the economic value associated with their Federal lobster permit in the event that permit holders wish to sell their vessel to buyers who would otherwise desire to fish for lobster with traps. Vessels that qualify to participate in Areas 3, 4, and/or 5 will likely see a reduction in gear conflict and be protected from lobster fishing effort expansion. The proposed action will also alleviate socio-economic impacts from any reduction in lobster harvests which may have resulted if qualifying vessels historically fished a number of lobster traps in excess of the current fixed trap limits. Permit holders who fish greater amounts of gear than allowed by the proposed maximum lobster trap limits may experience a small, yet unquantifiable, reduction in landings if they are unable to alter their fishing practices to mitigate this lower level of lobster trap fishing effort.

The proposed action to allow owners of vessels who are in possession of a Federal limited access lobster permit and who also possess a New Hampshire full commercial lobster fishing license to fish up to 800 lobster traps in Federal waters and a maximum of 400 additional lobster traps in New Hampshire state waters would alleviate adverse impacts on fishing practices and income which would otherwise be imposed by a lower lobster trap limit. Due to more restrictive lobster trap limits imposed on New Hampshire part time commercial lobster permit holders, a potential overall reduction in traps fished by commercial lobster permit holders in that state could result in some unquantified decrease in lobster fishing mortality and marine mammal and sea turtle trap gear entanglements.

The proposed action to revise and clarify the boundary coordinates within the state waters of Massachusetts for Area 1, 2, and the Outer Cape

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Management Area would: allow Federal lobster permit holders to maintain traditional fishing practices; avoid confusion and maintain consistency with the ISFMP; and allow Federal American lobster permit holders to fish under lobster management measures associated with the respective management area. If implemented, the proposed boundary revisions would have no direct effect on the lobster resource since it is specific to a minor modification of coordinates for lobster area boundaries in Massachusetts state waters and is not expected to substantially affect marine mammals or sea turtles.

The DSEIS/RIR/IRFA analyzed a preferred alternative which recommended the implementation of historical participation measures to control lobster fishing effort in Areas 3, 4 and 5, with a maximum lobster trap limit and a lobster trap reduction schedule for Area 3; implementation of conservation equivalent trap limits in New Hampshire waters of Area 1; and clarification of boundaries of specific lobster management areas. The DSEIS/RIR/IRFA also analyzed five alternatives to specific components of the preferred alternative. Three of these alternatives propose implementation of historical participation as a means to control lobster fishing effort in Areas 3, 4, and 5. Due to the unique nature of the proposed action relating to Area 1 lobster trap limits for Federal lobster permit holders fishing in New Hampshire waters and management area boundary clarifications, only one alternative (no action-status quo) was presented for each of these two components of this proposed rule.

Impacts of Historical Participation for Areas 3, 4, and 5

The three alternatives relating to historical participation included: taking no action; implementing historical participation requirements for Areas 3, 4, and 5, but retaining current trap limits; and implementing historical participation requirements as identified under the proposed action, but incorporating a maximum trap allocation for Areas 4 and 5.

Under current Federal regulations, owners of vessels that elect to harvest American lobsters with traps are required to inform NMFS each year of the lobster management area(s) they intend to set trap gear in. The election of one or more LCMA requires only that the vessel possess a current Federal American lobster limited access permit. The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year, from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action and the total number that do not qualify may be higher. Following the comment period on this proposed rule, a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) will analyze and evaluate the effects of implementing regulations for this action and will incorporate the most current data available to NMFS at that time.

The DSEIS/RIR/IRFA analysis for this action indicated that approximately 3,361 vessels possess a current Federal lobster permit and fish for lobster with either trap or non-trap gear. Of the 3,361 lobster vessels that possess a current Federal lobster permit, 769 have designated Area 3 as at least one of their areas for trap fishing. Of these, NMFS estimates that the total number of vessels that would qualify under the proposed historical qualification criteria to continue fishing for lobster with traps in the Area 3 lobster trap fishery would range from a low of 53 to a high of 117.

Similarly, of the approximately 405 vessels in possession of current Federal lobster permits that were designated for trap fishing in either Areas 4 or 5, the total number of vessels that would qualify to continue fishing with traps in Areas 4 and 5 on the basis of the proposed qualification criteria for the Areas 4 and 5 lobster trap fisheries would range from 47 to 60. The proposed implementation of a maximum trap limit of 1,440 lobster traps in Areas 4 and 5 is expected to result in a reduction in the number of lobster traps fished in these areas. Although NMFS has no information on the total number of lobster traps fished in those areas, data provided to NMFS by New Jersey, summarizing the results of a survey of New Jersey lobstermen, indicate that approximately 15% (14 individuals) of fishermen responding to the survey who possess both a New Jersey lobster trap license and a Federal lobster permit have fished with greater than 1,440 traps in LCMA 4. The fishing effort for these 14 permit holders has ranged from 1,500 to 2,500 (with an average of 1,868) traps. On the basis of this information, establishment of a maximum trap limit for LCMA 4 would result in at least a reduction of 26,152 traps, with a corresponding, but unquantifiable, reduction in lobster fishing mortality.

The exact degree of lobster trap reductions in Areas 4 and 5 is unquantifiable because, in the Federal American lobster fishery, there are currently no requirements to submit vessel trip reports. In Area 3, where lobster traps will be reduced over a 4-year period, the scheduled lobster trap reductions are likely to result in a small, yet unquantifiable, reduction in Area 3 landings. If markets are affected, the effect is likely to be small. Landings in Areas 4 and 5 accounted for less than 10 percent of total domestic lobster landings in 1999, and market effects from lobster trap reductions in Area 3 may occur in a limited segment of the market for larger lobsters (i.e., the offshore fishery lands larger lobsters, on average, than other components of the lobster fishery as a whole). If lobster prices do increase, vessels fishing in areas not subject to historical participation and where expansion of trap effort is possible (i.e., up to the 800 lobster trap limit) may increase their effort and offset any reduction in landings from Areas 3, 4, and 5. In this dynamic setting, lobster prices are likely to be unaffected by regulatory action under this proposed rule.

The effect of limiting access to historical participants in Areas 3, 4, and 5 is expected to have two major economic effects. First, limiting access in these areas will protect qualifiers from effort expansion. Second, lobster trap allocations in Areas 3, 4, and 5 and overall trap reductions in Area 3 over a 4-year period based on historical participation will preserve the competitive position and structure of the offshore fishery. Although it can be assumed that there will be no immediate impact on current fishing operations that do not harvest lobster in substantial numbers with trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This situation may also impact the "economic value" associated with these permits in the event that permit holders wish to sell their vessels to buyers who would otherwise desire to fish in the lobster trap fishery, but would be unable to do so. Economic effects will be greater for those vessels that are currently fishing lobster traps in Areas 3, 4, or 5, but will not qualify for historical participation in these areas because they will not be able to meet

one or more of the qualification criteria. Effective on May 1, 2000, Federal lobster permit holders are required to elect on their permits the lobster management areas in which they intend to fish for lobster with traps. However, NMFS does not have adequate data on the extent to which permit holders, although authorized, actually fish with traps in the elected management areas. Given this uncertainty, Federal lobster permit data indicates that a maximum of 769 permit holders elected to fish for lobster with traps in Area 3. On the basis of NMFS analyses, a low of 652 to a high of 716 Federal permit holders, who would meet the qualification criteria to fish with lobster traps in Area 3 under this proposed rule, would no longer be able to continue fishing with lobster traps in this management area.

Analyses of impacts for current participants in the Areas 4 and 5 lobster trap fisheries are combined because of the lack of more precise information on lobster trap fishing locations in these areas. Federal lobster permit data indicates that, under current Federal regulations, 405 vessels in possession of current Federal lobster permits were designated for lobster trap fishing in Areas 4 and/or 5. NMFS estimates that a low of 47 to a high of 60 vessels would be able to meet the proposed qualification criteria for Areas 4 and/or 5 under this proposed rule and, consequently, would be able to continue fishing with lobster traps in Areas 4 and 5. Lobster vessels that do not qualify will still be able to fish for lobster with traps, but they will have to do so by moving their traps into lobster management areas (other than Areas 3, 4, and 5) that may already be congested, likely resulting in increased fishing effort, additional congestion, and a potential reduction in overall productivity and profitability. The extent to which non-qualifiers would potentially decide to move trap operations to other management areas is unknown. Furthermore, moving may be most difficult for non-qualifying lobster permit holders who fish traps in inshore areas and have vessel ports south of New York, since Area 2 (waters between Cape Cod and Long Island Sound) would be the closest lobster management area not requiring historical participation.

Based on available information, approximately 14 vessels fished more than 1,440 lobster traps in Areas 4 and 5 combined, out of the total number of vessels electing to fish in Areas 4 and/or 5. On average, these vessels fished 1,868 lobster traps prior to the implementation of a fixed trap limit in January 2000. However, current regulations limit vessels electing to fish in Areas 4 and/or 5 to 800 lobster traps. There may be a small, yet unquantifiable, reduction in landings if impacted vessels are unable to alter their fishing practices to mitigate this lower level of trap fishing effort compared to historical trap levels. Yet, given that the current regulations limit these vessels to 800 lobster traps, some qualifying vessels that previously fished traps in excess of the current fixed trap limit may be able to increase the number of traps fished up to the proposed trap cap of 1,440 lobster traps for Areas 4 and 5, assuming they are allocated 1,440 lobster traps under a historical participation regime.

The incentive and/or ability to increase traps fished would depend on the scale of operation and other socio-economic factors. Incentives may include a desire to establish and document a history of lobster trap fishing in anticipation of future fishing effort reduction measures and of a decline in alternative fishing opportunities in other fisheries. Since the lobster trap fishery is a territorial fishery, removal of traps by non-qualifiers or by vessels fishing in excess of the proposed 1,440 lobster trap cap will open up territory that other vessels may exploit.

In addition, an increase in the number of lobster traps fished does not automatically translate to higher gross revenue; other factors such as market conditions and operating costs have to be evaluated. Fishermen setting lobster traps close to shore are likely to be able to maintain landing levels because they can tend their lobster traps more often. Harvest costs may decline for vessels that have historically fished more than 1,440 lobster traps prior to the implementation of a fixed trap limit; however, revenues may decline if fishing fewer lobster traps translates into fewer lobster being landed. Assuming non-qualifiers cannot or will not move trap operations to other management areas, they would no longer be able to fish for lobster with trap gear. Some such fishermen may be able to switch to other fisheries.

Historical Qualification Costs

Vessel owners would be required to provide an affidavit and supporting documentation to substantiate their historical participation application when attempting to qualify in one, two, or in all three of the lobster management areas proposing to implement historical participation in this proposed rule. The estimated time required to provide an affidavit and supporting documentation to substantiate the historical participation application are specified under collection-of-information requirements, while historical qualification costs are primarily associated with costs to locate, copy, telephone, and mail the submission of the supporting documentation. The average historical qualification cost, per vessel, for vessel owners who have been notified by NMFS that they pre-qualify for historical participation in Areas 3, 4, and/or 5, based on data available to NMFS, is estimated to be $5.45 to provide an affidavit concurring with the NMFS pre-qualification determination.

Vessels that do not pre-qualify need to submit the necessary forms and all supporting documentation. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in one area ranges from $7.38 for Areas 4 and 5 to $8.89 for Area 3. Documentation costs are higher for Area 3 due to the requirement to show landings of at least 25,000 pounds during the qualifying year, while criteria for Areas 4 and 5 have no minimum landings requirement. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in two lobster management areas reflects the higher documentation costs associated with the Area 3 minimum landings criteria. The per vessel qualification costs range from $9.98 for vessels submitting documentation to qualify for Areas 4 and 5 (but not Area 3), to $10.45 for vessels submitting documentation to qualify for Area 3 and either Areas 4 or 5. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in all three lobster management areas is $14.35. These costs are considered insignificant relative to other costs of doing business.

The proposed action concerning New Hampshire conservation equivalent trap limits would allow those Federal lobster permit holders who are also authorized by the State of New Hampshire to fish more lobster traps in state waters (1,200 rather than 600 lobster traps) to maintain or increase their relative share of landings in state waters and to preserve the competitive position of that industry sector. It is expected that Federal permit holders who are authorized to fish only 600 rather than 1,200 lobster traps in state waters under New Hampshire state regulations would also be able to retain their historical competitive position but will be unable to expand fishing operations above 600 lobster traps.

Revision and clarification of the boundary coordinates for lobster management areas in Massachusetts waters will allow fishermen to maintain

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traditional fishing practices and fish under the lobster management measures associated with the respective management area. Implementation of the proposed revision to these boundary lines will also maintain consistency with the identification of lobster management areas as established under the ISFMP and will avoid the confusion that could result if ISFMP and Federal area boundaries and their associated lobster management measures differ.

This proposed rule, supplemented by the DSEIS, describes associated reporting, record keeping, and compliance requirements. Special professional skills would not be required to fulfill these requirements. There are no other Federal regulations that overlap or duplicate measures under this proposed rule. This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements are being restated and have already been approved by the Office of Management and Budget (OMB) as shown: vessel permit applications approved under OMB control number 0648–0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications; and a lobster trap tag requirement approved under OMB control number 0648–0351 with a response time of 1 minute per tag.

This proposed rule also contains new collection-of-information requirements subject to the PRA which have been submitted to OMB for approval. The public reporting burden for each collection of information per response is indicated in parentheses in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The new requirements are as follows:

1. Provision of documentation of possession of a current valid Federal lobster permit (5 minutes);

2. Provision of documentation to demonstrate at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999 (15 minutes);

3. (For Area 3 only) Provision of sales receipts or other documents pertaining to the sale of lobsters indicating the landing of at least 25,000 pounds of lobster from any location during the year used as the qualifying year from March 25, 1991, to September 1, 1999 (10 minutes);

4. Provision of documentation for proof of historical participation in two rather than one lobster management area (additional 15 minutes if different consecutive two-month periods of trap fishing are used);

5. Provision of documentation for proof of historical participation in three rather than one lobster management area (additional 30 minutes if three different consecutive two-month periods are used);

6. Completion of lobster trap fishing area eligibility application form (2 minutes for each area selected);

7. Provision of affidavit stating total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 at any one time during the qualifying year (15 minutes); and

8. Provision of a written appeal request to the Regional Administrator by non-qualifying permit holders (15 minutes).

Public comment is sought regarding: whether these proposed collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including information through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

An updated Biological Opinion under Section 7 of the Endangered Species Act (ESA) was issued for the American lobster fishery on December 17, 1998. A formal consultation concluded that the continued operation of the American lobster fishery operating under new measures implemented to reduce entanglements, "may affect but is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle and is not likely to destroy or adversely modify critical habitat that has been designated for the northern right whale." In June 2000, formal consultations on the lobster fishery were reinitiated. An updated Biological Opinion under Section 7 of the ESA was issued for the Federal American lobster fishery on June 14, 2001. The updated Biological Opinion concluded that the Federal American lobster fishery is likely to jeopardize the continued existence of the western North Atlantic right whale, but is not likely to destroy or adversely modify critical habitat designated for the right whale. The Biological Opinion also concluded that the Federal American lobster fishery is not likely to jeopardize the continued existence of humpback, fin, sei, blue, and sperm whales; or loggerhead, Kemp's ridley, green, leatherback, and hawksbill sea turtles. Following release of the updated Biological Opinion on June 14, 2001, a formal consultation was initiated on the effects of this proposed action on endangered and threatened species.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Rebecca Lent.

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.4, paragraphs (a)(7)(vi) through (xi) are added to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) * * *

(7) * * *

(vi) *Participation requirements for EEZ Nearshore Management Area 4.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 4 (Area 4), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year (hereinafter, "the qualifying year") during the period from March 25, 1991, through September 1, 1999 (hereinafter, "the qualification period") excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 4 at any one time during the chosen qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vi)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vi)(B) of this section.

(vii) *Participation requirements for EEZ Nearshore Management Area 5.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 5 (Area 5), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year (hereinafter, "the qualifying year") during the period from March 25, 1991, through September 1, 1999 (hereinafter, "the qualification period") excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 5 at any one time during the qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vii)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vii)(B) of this section.

(viii) *Participation requirements for EEZ Offshore Management Area 3.* For fishing year 2002 and beyond, to fish for lobster with traps in EEZ Offshore Management Area 3 (Area 3), a Federal lobster permit holder must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year (hereinafter, "the qualifying year") during the period from March 25, 1991, through September 1, 1999 (hereinafter, "the qualification period") excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation that indicate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any chosen qualifying year during the qualification period.

(C) Sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the calendar year used as the qualifying year from March 25, 1991, through September 1, 1999, to qualify to fish for lobster with traps Area 3; and

(D) A signed affidavit to NMFS, certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation identified in paragraph (a)(7)(viii)(B). Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(viii)(B) of this section.

(ix) *Qualifying year for vessels seeking to fish for lobster with traps in more than one area of Areas 3, 4, and 5.* Any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas, to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year.

(x) *Notification of eligibility to fish for lobster with lobster traps in 2002 in Areas 3, 4, and 5.* (A) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet some or all of the qualification criteria described in paragraph (a)(7)(vi), (a)(7)(vii), or (a)(7)(viii) of this section and that they may qualify for a limited access American lobster permit for one or more of Areas 3, 4, and/or 5. Vessel owners must still provide documentation indicating that the vessel meets the qualification criteria for which NMFS lacks information, complete an affidavit

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certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year, and apply for a limited access lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to be considered for an Areas 3, 4, and/or 5 limited access lobster permit. Consistent with paragraph (a)(7)(ix) of this section, any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year. In addition, Federal lobster permit holders who elect to fish in multiple lobster conservation management areas are required under paragraph (a)(7)(iv) of this section to abide by the most restrictive regulations of all areas elected, regardless of which area the permit holder is fishing in at any given time.

(B) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access American lobster permit for Areas 3, 4, and/or 5, and the vessel owner believes that there is credible evidence that the vessel does qualify under the listed criteria, the vessel owner must apply for a limited access American lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to fish for lobster with traps in Areas 3, 4, and/or 5 after that date and submit documentation substantiating that the vessel meets the area qualification criteria as described in paragraphs (a)(7)(vi)(A) and (B); (a)(7)(vii)(A) and (B); and (a)(7)(viii)(A) through (C) of this section; and submit a signed affidavit certifying the total number of lobster traps he/she set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year as described in paragraphs (a)(7)(vi)(C), (a)(7)(vii)(C), and (a)(7)(viii)(D) of this section.

(xi) *Appeal of denial of permit.* (A) Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal must be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(vi), (vii), and/or (viii) of this section. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(B) *Appeal review.* (*1*) The Regional Administrator will appoint a designee who will make the initial decision on the appeal.

(*2*) The appellant may request a review by the Regional Administrator of the initial decision on the appeal by so requesting such a review in writing within 30 days of the date on the notice of the initial decision on the appeal. The appellant may present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer must make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator must decide on the appeal, which will be the final decision of the Department of Commerce. If the appellant does not request a review of the initial decision on the appeal within 30 days of the date on the notice of the initial decision on the appeal, then the initial decision is the final administrative action of the Department of Commerce.

(C) *Status of vessels pending appeal.* A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 may fish in Areas 3, 4, and/or 5, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish in the area for which access is sought through the appeals process, unless otherwise determined by the Regional Administrator. The Regional Administrator will issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal is pending, the vessel may fish up to 800 lobster traps, unless the vessel's Federal lobster permit has designated only Area 3 for lobster trap fishing, whereby, the vessel may fish up to 1,800 lobster traps in Area 3 only. If the appeal is finally denied, the Regional Administrator must send a notice of final denial to the vessel owner; the letter of authorization will become invalid 5 days after receipt of the notice of denial or 15 days after the date it is sent, whichever occurs first.

* * * * *

3. In § 697.18, paragraphs (a), (b), and (h) are revised to read as follows:

§ 697.18 Lobster management areas.

* * * * *

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are nearshore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

Point	Latitude	Longitude
A	43°58′ N.	67°22′ W.
B	43°41′ N.	68°00′ W.
C	43°12′ N.	69°00′ W.
D	42°49′ N.	69°40′ W.
E	42°15.5′ N.	70°40′ W.
F	42°10′ N.	69°56′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G3	42°03.35′ N.	70°14.2′ W.

From point "G3" along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40′ N.	70°05′ W.
I	41°15′ N.	70°05′ W.
J	41°21.5′ N.	69°16.5′ W.
K	41°10′ N.	69°06.5′ W.
L	40°55′ N.	68°54′ W.
M	40°27.5′ N.	71°14′ W.
N	40°45.5′ N.	71°34′ W.
O	41°07′ N.	71°43′ W.
P	41°06.5′ N.	71°47′ W.
Q	41°11.5′ N.	71°47.25′ W.
R	41°18.5′ N.	71°54.5′ W.

From point "R" along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point "H" along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

* * * * *

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10′ N.	69°56′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G4	41°52′ N.	70°07.49′ W.
G5	41°54.46′ N.	70°03.99′ W.

Point	Latitude	Longitude
From Point "G5" along the outer Cape Cod coast to point "H"		
H	41°40′ N.	70°05′ W.
H1	41°18′ N.	70°05′ W.
From Point "H1" along the eastern coast of Nantucket Island to Point "I"		
I	41°15′ N.	70°00′ W.
J	41°21.5′ N.	69°16′ W.
From Point "J" Back to Point "F."		

* * * * *

4. Section 697.19 is revised to read as follows:

§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Through April 30, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying one or more EEZ Nearshore Management Area(s), whether or not in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 lobster traps.

(2) Beginning May 1, 2002, vessels fishing in or issued a valid limited access American lobster permit specifying one or more of EEZ Nearshore Management Areas 1, 2, or the Outer Cape Management Area, regardless of whether it is in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area(s) more than 800 lobster traps, except as noted in paragraph (d) of this section.

(3) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 4 may not fish more lobster traps in Area 4 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vi), which will not exceed 1,440 lobster traps.

(4) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 5 may not fish more lobster traps in Area 5 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vii), which will not exceed 1,440 lobster traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Through April 30, 2002, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than 1,800 lobster traps.

(2) Beginning May 1, 2002, for fishing years 2002, 2003, 2004, 2005, and beyond until changed, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps indicated in Table 1 for the appropriate fishing year with respect to the number of lobster traps approved by the Regional Administrator under § 697.4(a)(7)(vii) for each vessel. Area 3 lobster trap allocations for the initial fishing year, beginning May 1, 2002, will not exceed 2,656 lobster traps.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

Number of Traps Approved by the Regional Administrator	Trap Allocation by Fishing Year*			
	2002	2003	2004	2005 and beyond until changed
1200-1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300–2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267

* Trap allocations below 1,200 will not be subject to further reductions.

(3) For example, if a limited access Federal lobster permit holder elects 1991 as the qualifying year, and is assigned a fishing effort level of 2,323 lobster traps under §697.4(a)(7)(viii), then the lobster trap allocation for that vessel would be 2,003 lobster traps during fishing year 2002 and would decrease annually by incremental reductions until reaching a lobster trap allocation of 1,789 lobster traps in fishing year 2005. Thus, each lobster trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale over 4 years. The

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respective lobster trap reductions will not go below a baseline of 1,200 lobster traps. Each initial allocation in Area 3 of fewer than 1,200 lobster traps will remain at that allocation.

(c) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ Management Area.* A vessel owner who elects to fish in more than one EEZ Management Area may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(d) *Notwithstanding any other provision, lobster trap limits in New Hampshire state waters.* Any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, as may be authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps at any one time in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1. When fishing in the Federal waters of EEZ Nearshore Management Area 1, any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in excess of the maximum number of lobster traps specified at paragraph (a)(2) of this section.

(e) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(f) *Maximum Lobster Trap Tags Authorized for Direct Purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

(g) *EEZ Management Area 5 Trap Waiver Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

5. In § 697.25, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and new paragraph (b) is added to read as follows:

§ 697.25 Adjustment to management measures.

* * * * *

(b) Conservation equivalency measures. A conservation equivalency measure is defined as a measure adopted by a state that differs from the specific requirements of the interstate fishery management plan, but achieves the same quantified level of conservation for the resource under management. Under this section, the Regional Administrator may consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to him/her in writing by the ASMFC and that contain the following supporting information:

(1) A description of how Federal regulations should be modified;

(2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;

(3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

* * * * *

[FR Doc. 02–142 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 2, No. 67
Thursday, January 3, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Notice

Date and Time: January 8, 2002; 11:15 a.m.–5 p.m.

Place: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or William Ohlhausen at (202) 401–3736.

Dated: December 28, 2001.

William Ohlhausen,

Acting General Counsel.

[FR Doc. 01–32257 Filed 12–28–01; 4:28 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 11, 2002, 8:30 a.m.

PLACE: Hilton Washington, 1919 Connecticut Avenue, NW., Monroe Room, Washington, DC 20425.

STATUS: Open to the public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of December 7, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments of District of Columbia, Maryland, Virginia, and West Virginia
VI. Future Agenda Items
9:30 a.m. Document Production Hearing for the Education Accountability Project.
10:00 a.m. Environmental Justice Hearing.

Debra Carr,

Deputy General Counsel.

[FR Doc. 01–32258 Filed 12–28–01; 4:56 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a November 30, 2001 request made by Shinho Steel Co., a producer/exporter from the Republic of Korea of circular welded non-alloy steel pipe, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea for Shinho Steel Co. (covering the period November 1, 2000 to October 31, 2001). *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 65470 (December 19, 2001). This review has now been rescinded as a result of the withdrawal of the request for review by Shinho Steel Co.

EFFECTIVE DATE: January 3, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Andrew McAllister, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations refer to 19 CFR part 351 (2001).

Background

On November 30, 2001, Shinho Steel Co. ("Shinho"), a producer/exporter of circular welded non-alloy steel pipe in the Republic of Korea, requested an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea covering the period November 1, 2000 to October 31, 2001. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on December 19, 2001. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 65470. On December 19, 2001, Shinho withdrew its request for review.

Rescission of Review

The Department's regulations provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. 19 CFR 351.213(d)(1). Shinho's request for

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review was withdrawn within the ninety-day deadline.

As a result of the withdrawal of the request for review and because the Department received no other request for review, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 26, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–128 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part: Certain Pasta from Turkey.

SUMMARY: On June 28, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey. This review covers the following exporters/producers of subject merchandise: (1) Pastavilla Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla); and (2) Filiz Gida Sanayi ve Ticaret A.S. (Filiz). The period of review (POR) is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section *"Final Results of Review."* For our final results, we have found that during the POR, Pastavilla sold subject merchandise at less than normal value (NV). In addition, we are not revoking the antidumping order with respect to Pastavilla, because it has not had three years of sales in commercial quantities at less than NV. See *"Determination Not to Revoke"* section of this notice. We have also found that during the POR, Filiz did not make sales of the subject merchandise at less than NV (*i.e.*, it had "zero" or *de minimis* dumping margins).

EFFECTIVE DATE: January 3, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Lyman Armstrong, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–3601, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (2000).

Case History

On June 28, 2001, the Department published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Turkey. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 66 FR 34410 (June 28, 2001) (*Preliminary Results*). The review covers two manufacturers/exporters. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. In response to the Department's invitation to comment on the preliminary results of this review, New World Pasta, a petitioner[1] in the case, filed a case brief on August 2, 2001, and the respondents filed case briefs on August 6, 2001. We received rebuttal briefs from New World Pasta and Pastavilla on August 13, 2001. A public hearing was not held with respect to this review because no party requested one. On September 26, 2001, respondents requested that the Department extend its final results in order to incorporate in our margin calculation programs the results from the most recently completed reviews of the countervailing duty order on pasta from Turkey. On November 1, 2001, the Department published a notice postponing the final results of this review until December 25, 2001 (66 FR 55160). The Department has conducted this administrative review in accordance with section 751(a) of the Act.

[1] The petitioners are Borden Inc., Hershey Foods Corp. (Hershey Pasta), Grocery Corp Inc., and Gooch Foods, Inc. (effective January 1, 1999, Hershey Pasta and Grocery Corp., Inc. became New World Pasta, Inc.).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 (the CRU).

Determination Not To Revoke

Pastavilla has had zero or *de minimis* dumping margins for the previous two review periods. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey* 64 FR 69493 (December 13, 1999); *see also, Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Turkey* 63 FR 68429 (December 11, 1998). However, as shown in the final results of this review, Pastavilla's weight-averaged dumping margin is 2.78 percent, which is above the *de minimis* rate of 0.50 percent. *See* 19 CFR 351.106(c). Consequently, Pastavilla has not made sales of subject merchandise "at not less than NV for a period of at least three consecutive years" as required by the Department's regulations. Because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is necessary to offset dumping with regard to Pastavilla. Thus, we determine not to revoke this order with respect to Pastavilla.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review (Decision Memorandum)* from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We calculated the export price and normal value using the same methodology stated in the *Preliminary Results*, except as follows:

- For the countervailing duty field (*i.e.*, CVDU) reported by Filiz, in the preliminary results, the Department mistakenly divided Filiz's reported figure by one thousand, on the premise that the figure was reported in $/metric ton and therefore must be converted to $/kilogram. We have corrected this error by not converting this field for purposes of these final results. In addition, we have reevaluated the appropriate amount of countervailing duties applicable to the dumping calculations for Filiz and Pastavilla.
- The Department has deleted its re-indexing of Pastavilla's fixed overhead (FOH) field and, instead, accepted Pastavilla's indexing of its FOH reported in the cost database.
- The Department corrected a typographical error for the amount to be indexed for hyper-inflation for the month of August 1999 in its affiliated party program.

These changes are discussed in the relevant sections of the *Decision Memorandum*.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1999, through June 30, 2000:

Manufacturer/exporter	Margin (percent)
Filiz	0.00
Pastavilla	2.78

Assessment Rate

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

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Dated: December 26, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Filiz and Pastavilla

1. Calculation of the Countervailing Duty (CVD) Field

Pastavilla

2. Calculation of Warranty Expense
3. Application of Negative Interest Cost
4. Indexing Fixed Overhead Costs
5. Revocation of the Antidumping Duty Order with Respect to Pastavilla
6. Clerical Error in the Affiliated Party Program

[FR Doc. 02–126 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review, partial rescission of antidumping duty administrative review and revocation of antidumping duty order in part.

SUMMARY: On June 28, 2001, the Department of Commerce (the "Department") published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Italy. This review covers the following exporters/producers of subject merchandise: (1) Barilla G.e.R. F.lli S.p.A.. ("Barilla"), (2) CO.R.EX S.p.A. ("Corex"), (3) Delverde S.p.A. and its affiliate, Tanama Industrie Alimentari di Capitanata, S.r.L. (collectively,'Delverde"), (4) Pastificio Guido Ferrara S.r.l. ("Ferrara"), (5) Pastificio F.lli Pagani S.p.A.("Pagani"), (6) Pastificio Antonio Pallante S.r.l. and its affiliate, Industrie Alimentari Molisane S.r.l. (collectively, "Pallante"), (7) P.A.M., S.r.l. and its affiliate, Liguori (collectively, "PAM"), (8) N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi"), (9) Pastificio Riscossa F.lli Mastromauro S.r.l ("Riscossa"), and (10) Rummo S.p.A. Molino e Pastificio ("Rummo"). The period of review ("POR") is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section "*Final Results of Review.*" For our final results, we have found that during the POR, Barilla, Ferrara, Pallante, PAM, and Riscossa sold subject merchandise at less than normal value ("NV"). We have also found that during the POR, Corex, Pagani, Puglisi and Rummo did not make sales of the subject merchandise at less than NV (*i.e.*, they had "zero" or de minimis dumping margins). Based on a decision of the U.S. Court of Appeals for the Federal Circuit, we are rescinding the review with respect to Delverde. *See Determination to Rescind* section of this notice. In addition, we are revoking the antidumping order with respect to Corex and Puglisi, based on three years of sales in commercial quantities at not less than NV. *See Determination to Revoke* section of this notice.

EFFECTIVE DATE: January 3, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Geoffrey Craig, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965, or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On June 28, 2001, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414 (June 28, 2001) ("*Preliminary Results*"). The review covers ten manufacturers/exporters. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. We received case briefs on August 6, 2001, from Ferrara, Pallante, and PAM. On August 6, 2001, Riscossa submitted a letter with one clerical error allegation. A public hearing was not held with respect to this review.[1] On November 1, 2001, the Department published a notice extending the final results until no later than December 25, 2001. *See Certain Pasta from Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews*, 66 FR 55160 (November 1, 2001). We also received a letter from PAM dated December 5, 2001.[2] The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

[1] On July 22, 2001, PAM requested a hearing. However, instead the Department and PAM held an *ex parte* meeting. *See* Memorandum from Melissa G. Skinner to the File, "Ex Parte Meeting with Counsel for PAM S.r.l. in the Antidumping Duty Administrative Review of Certain Pasta from Italy," dated August 22, 2001, on file in the Central Records Unit, room B–099, of the Department's main building (the "CRU").

[2] This letter requests that the Department combine shape categories 5 (short cuts), 6 (specialty short cuts) and 7 (soupettes). PAM argues that the Department has acknowledged that it erred with respect to this issue in the judicial review of the third administrative review. In its brief to the Court of International Trade, the Department stated, "We respectfully request that the Court remand this issue to Commerce for the limited purpose of reviewing the record with regard to shape categories." *See* United States' Memorandum in Opposition to Plaintiff's Motion for Judgment Pursuant to Rule 56.2," dated November 2, 2001. PAM has inferred from this statement that "this is a clear and unequivocal statement in which the U.S. concedes that it erred in the original determination in the 98/99 administrative review." Therefore, PAM has requested that the Department modify the final results of the current review (*i.e.*, combine shape categories 5, 6, and 7) in light of the Department's request to the Court for a remand. To the contrary, we simply requested from the Court the opportunity "to review the record with regard to shape categories."

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act. *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

Verification

As provided in section 782(i) of the Act, we verified U.S. sales information provided by Puglisi's U.S. affiliate, Rienzi & Sons. We used standard verification procedures, including an examination of relevant sales and financial records. Our verification results are outlined in the Puglisi verification report placed in the case file in the CRU. We revised certain sales verification findings. *See* the Puglisi verification report and calculation memorandum.

Determination To Rescind

On March 12, 2001, the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") reversed a ruling by the U.S. Court of International Trade ("CIT") and issued an order remanding to the CIT the final determination of the antidumping duty less-than-fair-value ("LTFV") investigation (covering the period from May 1, 1994 through April 31, 1995) on certain pasta from Italy. The CIT subsequently remanded the case to the Department. Delverde's LTFV margin is now *de minimis*. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta From Italy*, 66 FR 65889 (December 21, 2001). Therefore, because Delverde's LTFV margin is de minimis, Delverde is not subject to suspension of liquidation and has been excluded from the antidumping duty order on Pasta from Italy. We are rescinding this review with respect to Delverde because it has been excluded from the antidumping duty order.

Determination To Revoke

On July 13, 2000, and July 31, 2000, Puglisi and Corex, respectively, submitted letters to the Department requesting, pursuant to 19 CFR 351.222(b) and (e), revocation of the antidumping duty order with respect to their sales of the subject merchandise. In accordance with 19 CFR 351.222(e), on July 31, 2000 and September 13, 2000, respectively, Puglisi and Corex submitted the required certifications and agreements that they had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and that they sold the subject merchandise in commercial quantities to the United States during each of these three years. Puglisi and Corex also have stated that they would not sell the subject merchandise at less than NV to the United States in the future, and each agreed to the reinstatement of the antidumping order with respect to its merchandise, as long as any exporter or producer is subject to the order, if the Department concludes that either Puglisi or Corex sold the subject merchandise at less than NV. See 19 CFR 351.222(e)(1)(i)–(iii).

In our preliminary results, in accordance with 19 CFR 351.222(f)(2), we stated our intent to revoke, in part, the order for certain pasta from Italy as it pertains to Corex and Puglisi sales of the subject merchandise. *See Preliminary Results*. No parties submitted comments on either Puglisi's or Corex's requests for revocation.

Therefore, because Puglisi has made sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Geoffrey Craig to File, "Shipments of Pasta to the United States by Puglisi," dated June 21, 2001) and because there is no evidence on the record to indicate the likelihood of resumption of sales at dumped prices, we are revoking the antidumping duty order, in part, with respect to subject merchandise produced or produced and sold by Puglisi. *See Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part*, 65 FR 39367 (June 26, 2000). Also, because Corex has made

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sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Cindy Robinson to File, "Shipments of Pasta to the United States by Corex," dated June 21, 2001) and because there is no evidence on the record to indicate continued application of the order is necessary to offset dumping, we are revoking the antidumping duty order, in part, with respect to subject merchandise produced or produced and sold by Corex. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for Puglisi's and Corex's merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2000 (the first day after the period under review), and will instruct the U.S. Customs Service to release any bond and refund any cash deposit.

Use of Facts Available

In the *Preliminary Results*, we applied adverse facts available ("FA") to determine Barilla's dumping margin. *See Preliminary Results*, at 66 FR 34116. We did not receive comments regarding this issue; therefore, pursuant to section 776(a)(2)(A) of the Act, we have continued to apply adverse FA to determine Barilla's dumping margin in the final results.

Selection of Adverse FA

Consistent with the *Preliminary Results*, in accordance with section 776(b) of the Act, we are assigning Barilla an adverse facts available rate of 45.59 percent. *See Id.* We did not receive comments with respect to the selection of this rate; therefore we have continued to apply the 45.59 percent rate for Barilla.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the "*Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review*" ("*Decision Memorandum*") from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1999, through June 30, 2000:

Manufacturer/exporter	Margin (percent)
Barilla	45.59
Corex	0
Ferrara	2.03
Pagani	0
Pallante	1.78
PAM	4.10
Puglisi	*0.09
Riscossa	1.03
Rummo	*0.01

**De minimis.*

Assessment

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. In situations in which the importer-specific assessment rate is above de miminis, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 26, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Ferrara

1. Billing adjustments
2. CONNUM construction

Pallante

3. Entered value calculation
4. Export subsidy rate
5. Mismatched CONNUM and shape product characteristic
6. Level of trade

PAM

7. Cost of production and constructed value data
8. Classification of certain sales as U.S. sales
9. Home market sales used in below-cost test
10. Entry-by-entry basis
11. "Zeroing" negative margins
12. Startup adjustment
13. Exchange rate conversions
14. De minimis amounts
15. Currency of transaction
16. Level of trade methodology
17. Level of trade adjustment
18. General shape methodology
19. Department's shape classification of certain cuts
20. Release of data
21. Inclusion of constructed export price language in the margin program
22. Miscellaneous
23. Accuracy of final results

Riscossa

24. Clerical error

[FR Doc. 02–127 Filed 1–2–02; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administartion

[A–570–001]

Potassium Permanganate From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review of Potassium Permanganate from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) in response to a request from Groupstars Chemical Co. Ltd. (Groupstars). The review covers the period January 1, 2000 through December 31, 2000. The Department has preliminarily determined that the sale of subject merchandise during the period of review (POR) was made below normal value (NV). If the preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on the entry under review.

The Department invites interested parties to comment on the preliminary results.

EFFECTIVE DATE: January 3, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Chris Brady, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC. On January 30, 2001, in accordance with section 751(a)(2)(B) of the Act and section 351.214 of the Department's regulations, the Department received a timely request from Groupstars to conduct a new shipper review of the antidumping order on potassium permanganate from the PRC.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) A statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; (iii) in an antidumping proceeding involving inputs from a non-market economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government; and (iv) documentation establishing: (a) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Groupstars' new shipper review request was accompanied by information and certifications establishing the date on which the company first shipped and entered potassium permanganate for consumption in the United States, the volume of the shipment, and the date of first sale to an unaffiliated customer in the United States. Also, Groupstars certified that it did not export potassium permanganate from the PRC during the POI and was not affiliated with any company which had exported during the POI. In addition, Groupstars certified that its export activities are not controlled by the PRC's central government.

On February 28, 2001, the Department initiated a new shipper review of Groupstars covering the period January 1, 2000, through December 31, 2000. *See Potassium Permanganate From the People's Republic of China: Initiation of Antidumping New Shipper Review*, 66 FR 13895 (March 8, 2001). On August 17, 2001, the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until December 25, 2001. *See Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review*, 66 FR 43183.

On March 28, 2001, the Department issued its antidumping questionnaire to Groupstars. Groupstars responded to the Department's questionnaire on May 11, 2001 and June 14, 2001. Additionally, Groupstars submitted responses to the Department's May, August and October, 2001 supplemental questionnaires during May, August and October 2001, respectively. On September 28, 2001, the Department provided all interested parties the opportunity to submit any information which they wanted the Department to consider when valuing factors of production (FOP) in this new shipper review. On October 14, 2001, Groupstars submitted publicly available information and comments for consideration in valuing the FOP used in our NV calculations. On October 15, 2001, petitioner also submitted publicly available information and comments for this purpose.

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes.

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The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted a verification of the responses of Groupstars. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. At verification, we found that the Groupstars-Jinan plant, one of the two plants that produced the merchandise which Groupstars sold during the POR, was not operating. Company officials explained that other than producing a portion of the sale under review in July 2000, and 20 metric tons of potassium permanganate in September 2001, one month before verification, the Groupstars-Jinan plant had not produced any potassium permanganate due to problems with machinery. During our tour of the plant, we did not observe any repairs being performed on plant machinery. Moreover, none of the personnel that we interviewed at the plant were able to recall when the plant had last produced potassium permanganate. However, company officials were able to provide documentation to substantiate the FOP reported for the Groupstars-Jinan plant. For the preliminary results, we have used these FOP, as well as the verified FOP for Groupstars' other supplier, to calculate the margin reported in this notice. Complete information regarding our verification results is in our verification reports, which are in the public file of the Central Records Unit (CRU) in room B099 of the main Commerce building.

Affiliation

In its June 18, 2001 submission to the Department, Carus Chemical Company, the petitioner in this proceeding, alleged that Mr. Eugene Ji (also known as Ji Yue Qin), Groupstars' owner during the POR, has had multiple close affiliations with producers and exporters of potassium permanganate covered by the investigation in this proceeding, and therefore, pursuant to section 751(a)(2)(B) of the Act, and section 351.214 of the Department's regulations, Groupstars cannot be considered a new shipper.[1] Specifically, the petitioner alleges that Groupstars is or has been affiliated with investigated producers and exporters from the PRC because in 1992, Mr. Ji formed Waterman Chemical Company Ltd. (Waterman), a U.S. company which attempted to build a potassium permanganate plant in Baton Rouge, Louisiana using PRC equipment and technology from Jinan Tailu, the PRC joint venture that in the mid-1980's took over the Jinan Huaiyin plant, one of the plants that supplied the exporter examined in the original investigation. In addition, the petitioner notes that Groupstars operated and produced potassium permanganate during the POR using the facilities of the former Jinan Huaiyin.

Based upon the questionnaire responses received from Groupstars, and our verification thereof, we preliminarily determine that Groupstars qualifies for a new shipper review. We have determined that Groupstars made its first sale or shipment of subject merchandise to the United States during the POR, and that it was not affiliated with any exporter or producer that previously shipped to the United States. For a complete discussion of this issue, see the memorandum *Whether Groupstars Chemical Co. Ltd. Qualifies as a New Shipper* from Holly A. Kuga to Bernard T. Carreau, dated December 26, 2001, which is in the CRU public file.

Separate Rates Determination

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Groupstars provided the separate rates information requested by the Department and reported that its export activities are not subject to government control.

We examined the separate rates information provided by Groupstars in order to determine whether the company is eligible for a separate rate. The Department's separate rates test which is used to determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508 (May 6, 1991).

Groupstars reported that the subject merchandise was not restricted to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POR. Groupstars submitted copies of its business license in its May 11, 2001 submission. See May 11, 2001 submission at attachment 3. We found no inconsistencies with Groupstars' statement regarding the absence of restrictive stipulations associated with its business license. Groupstars submitted copies of PRC legislation demonstrating the statutory authority for establishing the de jure absence of government control over the company. Thus, we believe that the evidence on the record supports a preliminary finding of de jure absence of governmental control based on: (1) an absence of restrictive stipulations associated with Groupstars' business license; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See Silicon Carbide, 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Groupstars reported that it determines its prices for sales of the subject merchandise based on the cost of the merchandise, movement expenses, overhead, profit, and the market situation in the United States. Moreover, Groupstars stated that it negotiated the price directly with its customer. Also, Groupstars claimed that its prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Groupstars has the authority to negotiate and sign contracts and other agreements. Further, Groupstars claimed that its negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of contracts.

Furthermore, Groupstars reported that it has autonomy in making decisions regarding the selection of management. Groupstars claimed that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of Groupstars' management.

Finally, Groupstars reported that it retains the proceeds of its export sales, it uses profits according to its business needs, and its management determines how to allocate profits. There is no evidence on the record to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses. Therefore, we find that the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing that: (1) Groupstars sets its own export prices independent of the government and without the approval of a government authority; (2) Groupstars has the authority to negotiate and sign contracts and other agreements; (3) Groupstars has autonomy from the government regarding the selection of management; and (4) Groupstars retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this investigation by Groupstars demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of this preliminary determination, we are granting a separate rate to Groupstars.

Normal Value Comparisons

To determine whether the respondent's sale of subject merchandise was made at less than normal value, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below.

Constructed Export Price

For all sales made by Groupstars to the United States, we used CEP in accordance with section 772(b) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

We calculated CEP based on the packed prices from Groupstars Chemical L.L.C. (Groupstars LLC) (Groupstars' affiliated U.S. reseller) to the first unaffiliated U.S. customer. We made deductions, where appropriate, from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, U.S. Customs charges, and U.S. brokerage. Foreign inland freight, foreign brokerage and handling, and ocean freight, were provided by NME vendors, and thus, we based the deductions for these movement charges on surrogate values as discussed below. In accordance with 772(d)(1) of the Act, we deducted from the starting price those selling expenses that related to economic activity in the United States. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit. For additional information regarding these adjustments, see the calculation memorandum from John Conniff to the File dated December 26, 2001 which is in the CRU public file.

We valued foreign brokerage and handling using the Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Review*, 65 FR 31302 (May 17, 2000). We valued ocean freight using the international freight expense reported in the public version of the questionnaire response that the Viraj Group submitted in the stainless steel wire rod from India review covering the period December 1996 through November 1997. *See Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews* 64 FR 856 (January 6, 1999). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We accounted for inflation or deflation between the time period that the values for movement charges were in effect and the POR, as described below in the *Normal Value* section of this notice.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that if an interested party or any other person: "(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 * * * or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] * * * shall, subject to section 782(d), use the facts otherwise

[1] As noted previously, these provisions require that an exporter or producer requesting a review under section 751 (a)(2)(B) of the Act (a new shipper review) must not have been affiliated, within the meaning of section 771(33) of the Act, with any exporter or producer who exported the subject merchandise during the POI.

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available in reaching the applicable determination under this title."

The Department was unable to verify the total amount of indirect selling expenses incurred by Groupstars LLC during the POR. At verification, the Department found that Mr. Ji paid for certain indirect selling expenses incurred on Groupstars LLC's behalf using both his personal funds and the funds of New Phoenix Ltd. (New Phoenix), a company which he wholly owns. See US Verification Report at 8. Thus, not all of Groupstars LLC's indirect selling expenses were reported in the company's financial statement. At verification, Mr. Ji identified certain expenses (*e.g.*, rent) that did not appear on the company's financial statement and provided documents to substantiate the amount of such expenses. In addition, Mr. Ji provided the Department with access to his personal records and the records of New Phoenix. However, the record keeping systems he employed did not allow Department officials to identify which expenses related to Groupstars LLC. Because Groupstars LLC failed to provide the information the Department requested in the form and manner requested, and because we could not verify the information as provided, we find that the use of facts otherwise available is appropriate. As facts available, we allocated a portion of New Phoenix's expenses to Groupstars LLC. For further discussion of this issue, see the calculation memorandum from John Conniff to the File dated December 26, 2001 which is in the CRU public file.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if: (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value pursuant to section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing potassium permanganate include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. See Memorandum *From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement*, dated July 31, 2001, which is in the CRU public file.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOP using surrogate values that were in effect during the POR. However, when we were unable to obtain surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We valued the direct materials, potassium hydroxide and manganese dioxide using the rupee per metric ton or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (*Indian Import Statistics*).[2]

(2) We valued salt using the rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in Indian Import Statistics.

(3) We valued coal using the rupee per metric ton or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in *Indian Import Statistics*.

(4) We valued electricity using the 1997 Indian electricity prices for industrial use as reported by the International Energy Agency (IEA), as adjusted for inflation. This rate is available in the IEA publication *Energy, Prices and Taxes, 2nd Quarter 2000*.

(5) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's Web site. *See http://ia.ita.doc.gov/wages*.

(6) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1992–1993 in the *Reserve Bank of India Bulletin* of January 1997. This is the most recent information that we were able to obtain. Using the information from the *Reserve Bank of India Bulletin*, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(7) We valued packing materials, including pallets and steel drums using the rupee per piece or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in *Indian Import Statistics*.

(8) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

Truck Freight: We valued truck freight services using the 1999 rate quotes reported by Indian freight companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000).

Rail Freight: We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association, as adjusted for inflation.

(9) We used the following sources to value ocean freight and marine insurance services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

Ocean Freight: We valued ocean freight services using the 1997 rate quotes reported by the Viraj Group in *Certain Stainless Steel Wire Rod from India; Notice of Preliminary Results of the Administrative and New Shipper Review*, 63 FR 48184.

Marine Insurance: We valued marine insurance using the 1997 rate quotes reported by the Viraj Group in *Certain Stainless Steel Wire Rod from India; Notice of Preliminary Results of the Administrative and New Shipper Review*, 63 FR 48184. For further discussion of the surrogate values used in this review, see *Memorandum From Chris Brady to the File Regarding Surrogate Values Used for the Preliminary Results of the New Shipper Review of Potassium Permanganate from the People's Republic of China*, dated December 26, 2001, which is in the CRU public file.

[2] For each of the FOP, we were unable to find Indian import statistics for March 2000.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period January 1, 2000 through December 31, 2000:

Exporter/Manufacturer	Margin (percent)
Groupstars Chemical Co., Ltd.[3]	262.90.

The Department will disclose the calculations it performed in this review to the parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 21 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

[3] Although the new shipper review was initiated on Groupstars Chemical Co., Ltd. ("Shandong") (66 FR 13895, March 8, 2001), it was later clarified by respondent's counsel that the correct name should be Groupstars Chemical Co., Ltd.

Assessment

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of this preliminary result, unless the time limit is extended. Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for potassium permanganate from the PRC. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above de minimis, we will direct U.S. Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR.

Cash Deposit

Furthermore, the following deposit rates will be effective upon publication of the final results of this review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the current PRC-wide rate, 128.94 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

Notification

This notice also serves as a preliminary reminder to importers of their responsibility under Sec. 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 26, 2001.

Richard W. Moreland,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 02–125 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Egypt Presidents' Council: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to Notice of Membership Opportunity: Extension to deadline for applications.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice and counsel to both governments. The **Federal Register** published a notice of membership opportunities for American business representatives on the U.S. side of the Council on November 19, 2001. The deadline was December 28, 2001. This notice hereby extends the deadline by which applications must be received.

DATES: In order to receive full consideration, requests must be received no later than: Friday, January 25, 2002.

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ADDRESSES: Please send your requests for consideration to Maram R. Talaat, Egypt Desk Officer, Office of the Middle East, U.S. Department of Commerce by fax on 202–482–0878 and by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION, CONTACT: Maram R. Talaat, Office of the Middle East, Room H–2029B, U.S. Department of Commerce, Washington, D.C. 20230, phone: 202–482–3752.

SUPPLEMENTARY INFORMATION: This amends the notice of membership opportunities on the U.S.-Egypt Presidents' Council published in the **Federal Register** on November 19, 2001 (66 FR 57937–57938).

Dated: December 27, 2001.

Cherie A. Loustaunau,

Director, Office of the Middle East.

[FR Doc. 02–82 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121401A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for two research permits (1355, 1356).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Mr. Eugene Greer, of Columbia Environmental Research Center (CERC) and NMFS has received an application for a scientific research permit from Mr. Michael J. Bresette, of Inwater Research Group Inc.

DATES: Comments or requests for a public hearing on any of the new applications must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 4, 2002.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301–713–2289, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (phone: 301–713–2289).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301-713-2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered green turtle (*Chelonia mydas*)

Endangered hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Threatened loggerhead turtle (*Caretta caretta*)

Fish

Endangered shortnose sturgeon (Acipenser brevirostrum)

New Applications Received

Application 1355

The applicant proposes to test the effects of the ambient levels of discharged waste found in the waters of North Carolina on the growth and survival of shortnose sturgeon fry. Preliminary results of acute toxicity tests indicate these species are among the more sensitive fish relative to contaminant effects, indicating the importance of testing the hypothesis that water quality may be a limiting factor to the species recovery. Up to 3,000 fry will be placed into water shipped in from the rivers of North Carolina and observed for growth and survival.

Application 1356

The applicant proposes to investigate the demographic composition and genetic origin of sea turtles within the Key West National Wildlife Refuge. This will be done by the capturing of up to 100 green, 100 loggerhead, 50 Kemp's ridley, and 50 hawksbill turtles with nets and by hand. The turtles will be weighed, measured, blood sampled, PIT and flipper tagged, have stomach lavage and released back into the area where they were captured.

Dated: December 21, 2001.

Ann Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–130 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 4, 2002.

Title, Form, and OMB Number: United States Air Force Academy Application; USAFA Form 149; OMB Number 0701–0087.

Type of Request: Extension.

Number of Respondents: 9,850.

Responses per Respondent: 1.

Annual Responses: 9,850.

Average Burden Per Response: 24 minutes.

Annual Burden Hours: 3,940.

Needs and Uses: The information collection requirement is necessary to obtain data on candidates' background and aptitude in determining eligibility and selection to the Air Force Academy. The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required To Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 21, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–29 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety: Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on February 4 and 5, 2002 at Science Applications International Corporation, San Diego, California.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons systems safety and security.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. Section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: December 21, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Service; Privacy Act of 1974; System of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The National Security Agency/Central Security Service is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on February 4, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 21, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 18

SYSTEM NAME:

NSA/CSS Operations Files (February 22, 1993, 58 FR 10531).

CHANGES:

* * * * *

SYSTEM NAME:

Delete 'NSA/CSS' from entry.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals identified in foreign intelligence, counterintelligence, or information system security reports, and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security interest, the compromise of classified information, or terrorism.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'information systems security analysis and reporting.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'National Security Directive 42.'

PURPOSE(S):

Add to entry 'and information systems security.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to second paragraph 'information systems security information.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by individual's name, Social Security Number, or identification number.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete the first paragraph and replace with 'Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal

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law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.'

* * * * *

GNSA 18

SYSTEM NAME:

Operations Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified in foreign intelligence, counterintelligence, or information system security reports and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security interest, the compromise of classified information, or terrorism.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; biographic information; intelligence requirements, analysis, and reporting; information systems security analysis and reporting; operational records; articles, public-source data, and other published information on individuals and events of interest to NSA/CSS; actual or purported compromises of classified intelligence; countermeasures in connection therewith; and identification of classified source documents and distribution thereof. Authority for maintenance of the system: National Security Act of 1947, as amended, 50 U.S.C. 403–3(d)(2); National Security Agency Act of 1959, Pub. L. 86–36, as amended, 50 U.S.C. 402 Note; E.O. 12333; E.O. 12958; E.O. 9397 (SSN); and National Security Directive 42.

PURPOSE(S):

To maintain records on foreign intelligence, counterintelligence, and information systems security matters relating to the mission of the National Security Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Government agencies, and in some instances foreign government agencies or their representatives, to provide foreign intelligence, counterintelligence, information systems security information, and other information.

To U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization.

Records may further be disclosed to agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, disk or other computer storage media, computer listings and databases, paper in file folders, audio recordings, microfilm or microfiche.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number, or identification number.

SAFEGUARDS:

For paper, computer printouts, audio recordings, and microfilm secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by NSA/CSS regulations. For records on the computer system, access is controlled by passwords or physical protection and limited to authorized personnel only.

RETENTION AND DISPOSAL:

Records are reviewed for retention on a scheduled basis every 120 days to 5 years. Evidential, informational, and historical data are archived as permanent records. All other records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individuals themselves; U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, and correspondence. Exemptions claimed for the system:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be entitled, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. 02–31 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Release of the Notice of Availability (NOA) on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Oakland Army Base, Oakland, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Army prepared this FEIS in compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality. The closure of the Oakland Army Base (OARB), Oakland, California, was mandated in accordance with the recommendations of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the "BRAC law"). The July 27, 2001, edition of the **Federal Register** (66 FR 39153–54 and 39162) contained the NOA for the Army's OARB Supplemental Draft EIS.

DATES: The review period for the Final EIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Direct questions and/or written comments regarding the Final EIS to, or a request for a copy of the document from: Mr. Chuck Hubbard, U.S. Army Corps of Engineers, Sacramento District (CESPK–PD) 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Hubbard at (916) 557–6958; by facsimile at (916) 557–7850; or by e-mail at CHubbard@spk.usace.army.mil.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three alternative courses of action with respect to the disposal and subsequent reuse of the 425 acres (371 land acres and 54 submerged land acres) comprising the OARB: (1) The no action disposal alternative, under which the property would be maintained in a caretaker status after closure; (2) the unencumbered disposal alternative, under which the Army would transfer the property without encumbrances, such as environmental restrictions, land use controls, and easements; and (3) the encumbered disposal alternative, under which the Army would transfer the property with various environmental restrictions, land use controls, and easements, limiting the future use of the property. The FEIS also analyzes the potential environmental and socioeconomic consequences of a range of community reuse alternatives: (1) Low intensity reuse alternative; (2) low-medium intensity reuse alternative, (3) medium intensity reuse alternative; (4) medium-high intensity reuse alternative (5) medium-high/high intensity reuse alternative; (6) high intensity reuse alternative; and (7) very-high intensity reuse alternative.

The FEIS concludes the no action alternative is not reasonable because the BRAC law mandates closure of the Oakland Army Base, and the Army has no requirement to retain the property. This FEIS also concludes that the unencumbered disposal alternative is not feasible given environmental conditions and legal requirements.

The Army's preferred alternative course of action is the encumbered disposal of excess property. Possible encumbrances include: covenants and restrictions pertaining to asbestos-containing material; lead-based paint; biological resources; historic properties; ground water usage; excavations; future remedial activities after transfer; infrastructure easements; and rights-of-way.

The FIES analyzes community reuse of the OARB property as a secondary action resulting from closure and disposal by the Army. While the Army does not control the community's reuse of the property, NEPA requires the Army to analyze the reasonable foreseeable impacts of its disposal action. The local community established the Oakland Base Reuse Authority (OBRA) to develop and implement a reuse plan for the installation. Approval and implementation of the reuse plan are within the discretion of the OBRA.

Comments on the FEIS, received during the 30-day public comment period, will be considered in preparing the Army's Record of Decision.

Copies the FEIS are available for review at the following libraries: the Oakland Public Library Main Branch, Science, Social Science and Documents Section, 125 Fourteenth Street, Oakland, California 94612; the West Oakland Branch Library, 1801 Adeline Street, Oakland, California 94607; and the Base Transition Office, 2475–D West 12th Street, Oakland, California 94607.

Dated: December 21 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 02–77 Filed 1–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on Febuary 4, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The

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proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 21, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS) (March 29, 2000, 65 FR 16568).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "The following ATRRS reports are permanent for the offices performing Army-wide responsibility only: Army Program for Individual Training (ARPRINT), the Mobilization Army Program for Individual Training (MOB ARPRINT), and the Military Manpower Training Report (MMTR).

For all other offices, the ARPRINT, MOB ARPRINT and MMTR reports and all other ATRRS reports are kept until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Records not classified as reports are destroyed when no longer needed for current operations."

* * * * *

A0351 DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS).

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300; U.S. Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of all Army schools and some DoD schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for training or is currently in the training base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army and 4301; and E.O. 9397 (SSN).

PURPOSE(S):

The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and tr.in soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System—Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage medium.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.

RETENTION AND DISPOSAL:

The following ATRRS reports are permanent for the offices performing Army-wide responsibility only: Army Program for Individual Training (ARPRINT), the Mobilization Army Program for Individual Training (MOB ARPRINT), and the Military Manpower Training Report (MMTR).

For all other offices, the ARPRINT, MOB ARPRINT and MMTR reports and all other ATRRS reports are kept until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Records not classified as reports are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–30 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–300–001 and ER02–301–001]

Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC; Notice of Filing

December 27, 2001.

Take notice on December 14, 2001, Pleasants Energy, LLC (Pleasants Energy), Armstrong Energy limited Partnership, LLLP (Armstrong Energy) and Troy Energy LLC (Troy Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter requesting the Commission to issue an order on the merits of their Purchase Power Agreements with Virginia Electric and Power Company.

Armstrong Energy and Troy Energy request that the Commission take action by February 18, 2002 since the units will commence test energy operations shortly after that date.

Copies of the filing were served upon the Ohio Public Utilities Commission, Pennsylvania Public utility Commission, Public Service Commission of West Virginia and Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–70 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–40–000 and ER02–40–001]

Attala Energy Company, LLC; Notice of Issuance of Order

December 27, 2001.

Attala Energy Company, LLC (Attala) filed with the Commission, in the above-docketed proceeding, an application for market-based rate authority with accompanying tariffs that provides for the sale of capacity, energy, and/or ancillary services, the resale of firm transmission rights and the reassignment of transmission capacity. Attala also requested certain waivers and authorizations. In particular, Attala requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Attala. On December 19, 2001, the Commission issued an order (Order) that accepted Applicants application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted Attala's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Attala should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Attala is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Attala, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Attala's issuances of securities or assumptions of liabilities. * * *

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Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–68 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–305–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001]

Condon Wind Power, LLC; Notice of Issuance of Order

December 27, 2001.

Condon Wind Power, LLC (Condon) filed with the Commission, in the above-docketed proceedings, an application requesting acceptance of initial rate schedule that provides for Condon to make wholesale sales of electric energy and capacity form new wind energy project at market-based rates. Condon's application also requested certain waivers and authorizations. In particular, Condon requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Condon. On December 19, 2001, the Commission issued an order (Order) that accepted Condon's application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted the Condon's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Condon should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Condon are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Condon, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Condon's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–71 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–44–000]

Dominion Transmission, Inc.; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity to construct and operate pipeline facilities for the transportation of natural gas all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Specifically, Dominion seeks to construct and operate 4,735 of additional horsepower at its existing Little Greenlick Compressor Station located in Potter County, Pennsylvania. Dominion, together with Tennessee Gas Pipeline Company (Tennessee), has also filed to lease 150,000 Dth per day of capacity to Tennessee from Ellisburg, Pennsylvania to Leidy, Pennsylvania.[1] The capacity created by this proposal, 130,000 Dth per day, and by a proposal to expand the facilities jointly owned by Dominion and National Fuel Gas Supply Corporation (National Fuel) will provide the volume to be leased to Tennessee.[2] The estimated cost of the proposed facilities is $10.3 million.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 17, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–60 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

[1] The lease is the subject of Docket No. CP02–47–000.

[2] The expansion of the joint facilities owned by Dominion and National Fuel is the subject of Docket No. CP02–53–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–47–000]

Dominion Transmission, Inc. and Tennessee Gas Pipeline Company; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301 and Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed a joint application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing a capacity lease between Dominion and Tennessee all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Specifically, Dominion seeks to lease capacity of up to 150,000 Dth per day to Tennessee on a firm basis from Ellisburg, Pennsylvania to Leidy, Pennsylvania for a term of ten years commencing November 1, 2002. This leased capacity is part of Tennessee's Can-East Project (also known as the Leidy Extension) which is designed to provide firm transportation of gas from various points on Tennessee's system for delivery to Texas Eastern Transmission Company and Transcontinental Gas Pipe Line Corporation at Leidy.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.com* and Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com.*

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 17, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–62 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–22–000, ER02–23–000, ER02–24–000, and ER02–25–000]

Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC; Notice of Issuance of Order

December 27, 2001.

Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP, and Troy Energy, LLC (collectively, Applicants) filed with the Commission, in the above-docketed

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proceedings, applications for market-based rate authority, with accompanying tariffs (market-based rate tariffs). The proposed market-based rate tariffs provide for sales of capacity, energy, and/or ancillary services and the resale of transmission rights. The Applicants also requested certain waivers and authorizations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On December 19, 2001, the Commission issued an order (Order) that accepted the Applicants' applications in these proceedings, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted the Applicants' request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–67 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2688–000, ER01–2688–001, ER01–2688–002, ER01–2689–000, ER01–2689–001, and ER01–2689–002]

Gilroy Energy Center, LLC and King Center Energy Center, LLC; Notice of Issuance of Order

December 27, 2001.

Gilroy Energy Center, LLC and King City Energy, LLC (collectively, Applicants) filed with the Commission, in the above-docketed proceedings, an application requesting acceptance of initial rate schedules under which Applicants will make wholesale sales of electric energy, capacity, replacement reserves and certain ancillary services and will reassign transmission capacity and resell firm transmission rights. Applicants' application also requested certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On December 20, 2001, the Commission issued an order (Order) that accepted Applicants application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 20, 2001 Order granted Applicants request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–65 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–159–000]

GNE, LLC; Notice of Issuance of Order

December 27, 2001.

GNE, LLC (GNE) filed with the Commission, in the above-docketed proceeding, an application for market-based rate authority. GNE's rate schedule provides for the sale of capacity, energy, and/or ancillary services and the reassignment of transmission capacity. GNE also requested certain waivers and authorizations. In particular, GNE requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by GNE. On December 19, 2001, the Commission issued an order that accepted the tariff for sales of capacity and energy at market-based rates (Order), subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

The Commission's December 19, 2001 Order granted GNE's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by GNE should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, GNE is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of GNE, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of GNE's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–69 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–48–000]

National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 and Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed a joint application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing a capacity lease between National Fuel and Tennessee and to abandon service currently provided by National Fuel to Tennessee all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Specifically, National Fuel seeks to abandon the currently certificated transportation service it provides to Tennessee under Rate Schedule X–51 between Clarence, New York and Ellisburg, Pennsylvania. Further, National Fuel seeks authority to lease capacity to Tennessee on a firm basis for a term of ten years commencing November 1, 2002. The lease will include 90,000 Dth per day of capacity from Clarence to Ellisburg and 130,000 Dth per day from Ellisburg to Leidy, Pennsylvania. This leased capacity is part of Tennessee's Can-East Project (also known as the Leidy Extension) which is designed to provide firm transportation of gas from various points on Tennessee's system for delivery to Texas Eastern Transmission Company and Transcontinental Gas Pipe Line Corporation at Leidy.

Any questions regarding the application should be directed to National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203 at 716–857–7949 or by E-mail at *reitzd@natfuel.com* and Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com*.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 17, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–63 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2783–000 and ER01–2783–001]

ODEC Power Trading, Inc.; Notice of Issuance of Order

December 27, 2001.

ODEC Power Trading, Inc. (ODEC) filed with the Commission, in the above-docketed proceeding, an application for authority to sell electric energy and capacity at market-based rates. ODEC also requested certain waivers and authorizations. In particular, ODEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ODEC. On December 19, 2001, the Commission issued an order that accepted ODEC's application for sales of capacity and energy at market-based rates (Order), subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

The Commission's December 19, 2001 Order granted ODEC's request for

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blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ODEC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, ODEC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ODEC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ODEC's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–66 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–43–000]

Southern California Water Company, Complainant, v. Mirant Americas Energy Marketing, L.P., Respondent; Notice of Complaint

December 27, 2001.

Take notice that on December 21, 2001, Southern California Water Company (SCWC) filed a Complaint against Mirant Americas Energy Marketing, L.P. (MAEM). SCWC requests that the Commission issue an order finding that a firm power purchase contract between SCWC and MAEM was not the product of a competitive wholesale power market and the rate charged by MAEM under this contract is unjust and unreasonable.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 10, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–64 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–46–000]

Tennessee Gas Pipeline Company, Notice of Application

December 27, 2001.

Take notice that on December 10, 2001, Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity to construct and operate a new compressor station and to authorize incremental recourse rates for service through Tennessee's Leidy Extension all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Specifically, Tennessee seeks to construct and operate a 4,730 horsepower compressor station and other appurtenant facilities in Potter County, Pennsylvania. The proposed facilities will allow Tennessee to make firm deliveries of up to 150,000 Dth per day directly to Dominion Transmission, Inc. (Dominion). The proposed compressor station is part of Tennessee's larger Can-East Project which will establish its Leidy Extension. Tennessee states that the Can-East Project will extend its existing mainline system to the Leidy Hub by utilizing 280,000 Dth per day of capacity that Tennessee intends to lease from Dominion and National Fuel Gas Supply Corporation (National Fuel).[1] The estimated cost of the proposed facilities is $9.7 million.

Tennessee also proposes to offer service over its Leidy Extension under its existing FERC Gas Tariff at incremental recourse rates under its Rate Schedules FT–A and IT. Tennessee states that its customers will also have the option of selecting negotiated rates. Tennessee has included pro forma tariff sheets reflecting the proposed changes to its tariff necessary to effect service on the Leidy Extension.

[1] The lease between Tennessee and Dominion is the subject of Docket No. CP02–47–000. The lease between Tennessee and National Fuel is the subject of Docket No. CP02–48–000.

Any questions regarding the application should be directed to Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 17, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–61 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7125–5]

Agency Information Collection Activities: Proposed Collection, Comment Request; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; EPA ICR # 1292.05; OMB No. 2060–0135; expires May 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 4, 2002.

ADDRESSES: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the ICR can be obtained free of charge by contacting Jack McLaughlin as provided below.

FOR FURTHER INFORMATION CONTACT: Jack McLaughlin, Telephone: (303) 236–9513; Facsimile number: (303) 236–9514; e-mail: *mclaughlin.jack@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are manufacturers and installers of aftermarket automobile catalytic converters.

Title: Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (OMB Control number 2060–0135; EPA ICR # 1292.05.) expiring 5/31/2002.

Abstract: Section 203(a)(3) of the Clean Air Act (Act) prohibits removing or rendering inoperative automobile emission control devices or elements of design. But for the adoption of the aftermarket catalytic converter enforcement policy (51 FR 28114–28119, 28133 (Aug. 5, 1986); 52 FR 42144 (Nov. 3, 1987)), the manufacture, sale or installation of aftermarket catalytic converters (catalysts) not equivalent to new original equipment (OE) catalysts would constitute a violation of the Act. However, because replacement OE catalysts are expensive, many consumers had elected to not replace catalysts that malfunctioned subsequent to the expiration of the emissions warranty on their vehicles.

The Agency believes that allowing the installation of aftermarket catalysts on older vehicles can be environmentally beneficial if the Agency can be assured that the aftermarket catalysts meet certain standards and if installers are accountable to select the proper aftermarket catalyst for each vehicle application. Manufacturers of new aftermarket catalysts are required, on a

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one-time basis, for each catalyst line manufactured, to identify the catalyst physical specifications and summarize pre-production testing of the prototype. In addition, the manufacturer must submit semi-annual reports to EPA of the number of each type of catalyst manufactured and a summary of warranty card information (or copies of warranty cards, at the manufacturer's option). Companies that recondition used catalysts must, on a one-time basis, identify the company and provide information regarding procedures to be used to test used catalysts. All used catalysts must be individually bench-tested, and the company must submit semi-annual reports to EPA of the identity of persons who distribute the reconditioned catalysts and the number of reconditioned catalysts of each type that are sold to each distributor. Companies that install aftermarket catalysts have no reporting requirements but for 6 months must keep copies of installation invoices and records that show the reason an aftermarket catalyst installation was appropriate. Removed catalysts must be tagged with identifying information and be kept for 15 days. EPA allows the use of pre-printed documents or computer-generated documents. All the recordkeeping under the policy is authorized by section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542. Parties who comply with these policies are allowed to install aftermarket catalysts instead of OE catalysts.

Confidentiality provisions are found at 40 CFR part 2. These requirements have been in effect for over 10 years. Startup costs have been completed. The proposed ICR utilizes assumptions that are the same as the previous ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

In addition to this information, you may obtain a copy of the draft ICR supporting statement as provided above. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For new catalyst manufacturers the average hourly burden per year per respondent is about 5 hours for the reporting required by the policy and the associated recordkeeping. The reporting is mandatory. The frequency of response is estimated to be 1 report per year for a new product line and 2 reports per year on manufacturing and warranty card information. There are 6 entities in the country covered by the requirements. Total burden for all new catalyst manufacturers is about 60 hours per year. There are annual operating and maintenance costs of about $60 per manufacturer. There are annualized purchased service costs of $35,700 per respondent. There are no annualized capital costs. Startup costs have been completed.

For parties who recondition used catalysts, the average annual hourly reporting burden is 631 hours per respondent. The reporting is mandatory. The frequency of response is 2 reports per year based on about 8,900 tests of used catalysts per respondent. Total burden for all 8 respondents is about 5,048 hours. There are annual operation and maintenance costs of about $200 per respondent. There are annualized capital costs of about $38,244 per respondent.

For parties who install aftermarket catalysts there is no reporting burden. The average annual recordkeeping burden is about 3.5 hours per respondent. There are no annualized operation and maintenance costs or annualized capital costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 28, 2001.

Barry N. Breen,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–108 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7124–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR Number 0138.07, OMB Control Number 2040–0088, expiring July 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 4, 2002.

ADDRESSES: U.S. EPA; Office of Wetlands, Oceans and Watersheds; Oceans and Coastal Protection Division (4504F); 1200 Pennsylvania Avenue, SW; Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person identified below.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, 202–260–8448 (phone), 202–260–9920 (facsimile), fox-norse.virginia@epa.gov (electronically).

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, have applied for a renewal of a section 301(h) waiver, or those with a pending section 301(h) waiver application, and the states within which these municipalities are located.

Title: Modification of Secondary Treatment Requirements for Discharges into Marine Waters (OMB Control Number 2040–0088; EPA ICR Number 0138.07), expiring July 31, 2002.

Abstract: Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW seeking to obtain a section 301(h) waiver, holding a current waiver or reapplying for a waiver, provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are 4 situations where information will be required under the section 301(h) program:

(1) A POTW continuing the application process for a section 301(h) waiver, or reapplying for a waiver. As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) Monitoring and toxic control program information: Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by § 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information? For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur with or deny a section 301(h) decision made by the EPA Regional Office.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated annual average burden for the 51 respondents totals 65,037 hours for this information collection. The average annual reporting burden varies depending on the size of the respondent and the category of the information collection. The frequency of response varies from once every five years, to case-by-case, depending on the category. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9 and 48 CFR chapter 15.

Please send comments regarding these matters, or any other aspect of information collection, including suggestions for reducing the burden, to the address listed above.

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Dated: December 20, 2001.
Robert H. Wayland III,
Director, Office of Wetlands, Oceans and Watersheds.
[FR Doc. 02–111 Filed 1–2–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7124–6]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 1759.03/OMB Control No. 2070–0148; Agricultural Worker Protection Standard Training and Notification

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Worker Protection Standard Training and Notification; EPA ICR No. 1759.03; OMB Control No. 2070–0148. The ICR, which is abstracted below, describes the nature of the information collection activity and its estimated burden and costs. The **Federal Register** document required under 5 CFR 1320.8(d) that solicited comments on this collection of information published on January 31, 2001 (66 FR 8397). EPA received no comments on this ICR during the 60-day comment period that was provided.
DATES: Additional comments may be submitted on or before February 4, 2002.
ADDRESSES: Send your comments, referencing the proper ICR numbers to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and send a copy of your comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on 202–260–2740, by E-mail: *farmer.sandy@epa.gov* or access the ICR at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No. 1759.03; OMB Control No. 2070–0148.
SUPPLEMENTARY INFORMATION:

ICR Title: Worker Protection Standard Training and Notification (EPA ICR 1759.03, OMB Control No. 2070–0148).

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on December 31, 2001. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136) requires the Agency (EPA) to register pesticides prior to distribution and sale within the United States. The Agency is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170, includes requirements for protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries and in greenhouses. The WPS is designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The WPS requirements include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides; basic safety training and distribution and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance. The information collection activity involves the training of agricultural workers and information exchanges (third party notifications) between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

Burden Statement: The total annual respondent burden for providing the notifications associated with the Pesticides Worker Protection Standards as a whole is estimated to be 2,294,625 hours, with incremental activity burdens ranging from 2 minutes per respondent to provide initial basic safety information and 45 minutes per respondent for handler training. According to the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The ICR provides a detailed explanation of the information collection activity and the corresponding burden estimate, which is only briefly summarized here.

Respondents/affected entities: 4,476,250.

Estimated total number of potential respondents: 4,476,250.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 3.

Estimated total annual burden hours: 2,294,625.

Estimated total annual burden costs: $94,883,757.

Changes in the ICR Since the Last Approval: The total annual burden associated with this ICR has increased by 52,183 hours, from 2,242,442 hours in the previous ICR to 2,294,625 hours for this renewal ICR. The change is primarily related to information EPA obtained through the consultation process required by the PRA that led the Agency to increase its training burden estimate, and is described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: December 19, 2001.
Oscar Morales,
Director, Collection Strategies Division.
[FR Doc. 02–112 Filed 1–2–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7125–2]

Clean Air Scientific Advisory Committee, Subcommittee on Particle Monitoring; Notification of Public Advisory Committee Meeting

Summary—Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) Subcommittee on Particle Monitoring will meet on Monday, January 28, 2002 from 8:30 am to 4 p.m. Eastern Time. The meeting will be held in Classroom 1 (ground floor near the visitor entrance) of the US EPA Environmental Research Center, Route 54 and T.W. Alexander Drive, Research Triangle Park, NC. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis.

Background—The CASAC Subcommittee on Particle Monitoring (formerly the CASAC Technical Subcommittee for Fine Particle Monitoring) was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter.

Purpose of the Meeting—During this meeting, the Subcommittee will develop advice on implementation of EPA's continuous PM monitoring program. The discussion will be based on the draft document *Continuous Monitoring Implementation Plan* prepared by EPA's Office of Air Quality Planning and Standards (OAQPS). EPA will provide an overview briefing of that document to the subcommittee during the meeting to clarify areas of confusion, stimulate further discussion and receive verbal input from subcommittee members. Following the meeting, the Subcommittee will develop a report advising EPA on the implementation plan addressing: (a) program strengths; (b) areas of concern; and (c) any recommendations that might optimize implementation of the PM continuous mass program. Once completed by the Subcommittee, the report will be reviewed by the Clean Air Scientific Advisory Committee during a public teleconference to be announced in a subsequent **Federal Register** notice.

Availability of Review Materials—A copy of the review document, and referenced enclosures, are available from EPA on their website (see *www.epa.gov/ttn/amtic/pmcont.html*).

For Further Information—Members of the public wishing an Agenda or a roster of the Subcommittee should contact Ms. Rhonda Fortson, Management Assistant, Clean Air Scientific Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4563; fax at (202) 501–0582; or via e-mail at *fortson.rhonda@epa.gov*. Those desiring additional information about the meeting, should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at *flaak.robert@epa.gov*. A copy of the draft agenda will be posted on the SAB Website (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 2 weeks before the meeting. The Agenda may also be obtained from Ms. Fortson at the same time.

Members of the public who wish to make a brief oral presentation must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, January 23, 2002 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization, with a total time of ninety minutes overall for all speakers. Written comments must be received no later than the day prior to the meeting, preferably in electronic format (see below for details).

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until two days following the date of the meeting (unless otherwise stated above), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak or Ms. Fortson at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 21, 2001.
John R. Fowle, III,
Acting Staff Director, EPA Science Advisory Board.
[FR Doc. 02–107 Filed 1–2–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–1010; FRL–6773–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

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SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1010, must be received on or before February 4, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1010 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Carol E. Frazer, Ph.D., Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1010. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1010 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1010. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Biopesticides, Feed additives, Food additives, Pesticides and pests, Pollution prevention, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioners and represents the view of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 1F6244 from Nutra-Park Inc., 8383 Greenway Blvd., Suite 520, Middleton, WI 53562, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide Lysophosphatidylethanolamine (LPE) in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Nutra-Park Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Nutra-Park Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

I. Nutra-Park Inc.

PP 1F6244

A. Product Name and Proposed Use Practices

The commercial name for the end use product containing Lysophosphatidylethanolamine (LPE) is LPE E94; 10% Aqueous, EPA File Symbol 70515-R. Presently, the product is being registered for use as a pre-harvest and post-harvest ripening and shelf life enhancer for fruits and vegetables. As a pre-harvest spray, 100 400 parts per million (ppm) of the active ingredient is sprayed on the raw agricultural commodities until run-off. As a post-harvest treatment, the raw agricultural commodities are dipped into or sprayed with a solution containing 25 100 ppm and air dried prior to storage.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient LPE is a phospholipid derived from phosphatidylethanolamine (PE) by the enzymatic removal of one fatty acid. The residues in or on raw agricultural commodities are likely to be primarily the LPE. Small amounts of free fatty acid, phosphate and ethanolamine may be present. However, none of the residues would be distinguishable from the naturally occurring moieties.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The current analytical methodology cannot distinguish between naturally occurring residues and those residues resulting from the application of LPE. LPE is found in large quantities in egg yolk and meat. LPE is naturally present in small amounts in plant tissues and other biological matrices and can account for up to 10% of the phospholipid content of cell membranes. The additional amount of LPE as a result of its use as a ripening agent and shelf life enhancer will not significantly add to the amount of naturally occurring residues.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* As stated above, the current analytical methodology cannot distinguish between naturally occurring residues present in or on the raw agricultural commodities and the residues resulting from application of the product. Based on the natural occurrence of the chemical, its favorable toxicological profile and inconsequential exposure resulting from label-directed uses, measuring of the residues is not warranted.

C. Mammalian Toxicological Profile

Based on the available acute toxicity data, LPE technical and its 20% formulation, do not pose any acute toxicity risks. The acute toxicity studies place LPE technical in acute toxicity category IV for acute oral (LD_{50} >5,000 milligrams/kilograms (mg/kg) male and female), inhalation (LC_{50} >2.5mg/L male and female), skin irritation (dermal irritation index is 0.0), and eye irritation (no irritation at 72 hours) and toxicity category III for acute dermal (LD_{50} >2,000 mg/kg male and female). The acute toxicity studies place the LPE 10% formulation in acute toxicity category IV for acute oral (LD_{50} >5,000 mg/kg male and female), eye irritation (no irritation at 72 hours), skin irritation (dermal irritation index is 0.0), and inhalation (LC_{50} >4.63 mg/L male and female) and toxicity category III for acute dermal (LD_{50} >2,000 mg/kg male and female). Both LPE technical and its 10% formulation cause skin sensitization in the guinea pig.

Information on the chronic effects of LPE is obtained from the open literature. LPE and related phospholipids, such as phosphatidylcholine, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol, phosphatidic acid, phosphatidylglycerol, lysophosphatidylcholine, and lysophosphatidylserine, are synthesized by microorganisms, plants and animals. These important biomolecules are ubiquitous in nature and have multifunctional properties in living cells. Lysophospholipids are continuously generated in microbial, plant and animal systems and are readily utilized in various cell functions or used in synthesizing new phospholipids. All phospholipids have specific roles in executing certain cellular functions and maintaining the integrity of cellular membranes. Furthermore, these biomolecules are of immense importance to various food and non-food industries as safe multifunctional natural additives/

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ingredients. Presence of hydrolytic enzymes, known as lipases, phospholipases and lysophospholipases, in microbial (including soil microorganisms), plant and animal (including humans) systems ensures the biodegradation of phospholipids and their lyso counterparts into harmless metabolites/by-products.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* LPE is a member of the phospholipids. Phospholipids are a heterogeneous group of compounds that are classed together partially on the basis of solubility and partially on the basis of the ester phosphorus present in the compounds. Phospholipids are found in all cellular organisms as part of the structure of the cellular membrane.

The framework of membranes surrounding the cell and intracellular organelles is composed of a bilayer of lipid. The basic unit of the bilayer is a composite of phospholipids (phosphatidylcholine, sphingomyelin, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol). LPE is a phospholipid derived from phosphatidylethanolamine by the enzymatic removal of one fatty acid. Residues of LPE naturally occur in raw agricultural commodities and are consumed daily. The level of residues of LPE in raw agricultural commodities through the use of this product will not be significantly increased over the level naturally occurring.

ii. *Drinking water.* Because of the benign nature of the compound and because it is composed of moieties that are consumed by all organisms, dissipation of LPE in the environment will, in all likelihood, be through microbial mediated degradation. There is little or no possibility of LPE leaching into the ground water. LPE may get into surface water during a run-off event. However, microbial degradation will rapidly remove the residues. The levels of residues that might get into ground or surface water used for drinking water will not be significant compared to the exposure from naturally occurring residues of LPE.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the potential use sites are commercial, agricultural, and horticultural settings. However, non-dietary exposure would not be expected to pose any quantifiable risk due to a lack of residues or a level of residues present that are of no toxicological concern.

E. Cumulative Exposure

Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of LPE. This includes all anticipated dietary exposures and all other exposures for which there are reliable information. The exposure to LPE as a result of its label directed use on raw agricultural food or feed commodities will not result in a significant increase in the cumulative exposure over the present exposure, daily consumption by the human population from both naturally occurring sources and from processed foods.

F. Safety Determination

1. *U.S. population.* LPE is naturally present in small amounts in plant tissues and other biological matrices and can account for up to 10% of the phospholipid content of cell membranes. LPE is found in many food or feed commodities such as human breast milk, cow milk, corn grain and starch, oats and wheat. Large quantities are present in egg yolk and meat. Based on its abundance in nature and long historical use of the ingredient by the human population without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population.

2. *Infants and children.* LPE is found in mother's milk and in cow milk. It is also present in egg yolk and meat and corn, oats, and wheat. These commodities do constitute a significant percentage of infant and children diets. Based on its long consumption by infants and children without deleterious effects, there is reasonable certainty that no harm will result from this additional inconsequential exposure to infants and children.

G. Effects on the Immune and Endocrine Systems

LPE is a naturally occurring residue in raw agricultural food and feed commodities and in processed food. To date, there is no evidence to suggest that LPE affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

H. Existing Tolerances

LPE is a constituent naturally found in eggs and various animal tissue derived products (e.g., fish meal, fish oil, lard, meat meal) already exempted from regulation under section 25(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. There is a temporary exemption from the requirement of a tolerance established specific to LPE (40 CFR 180.1199).

I. International Tolerances

Nutra-Park Inc. is not aware of any tolerance, exemption from tolerance, or maximum residue level issued for LPE.

[FR Doc. 02–113 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7124–4]

Pemaco Superfund Site; Notice of Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Pemaco National Priorities List Superfund Site was executed by the United States Environmental Protection Agency (EPA) on December 7, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, against The Trust for Public Lands, a nonprofit corporation, and The City of Maywood, California, (the Purchasers). The Trust for Public Lands plans to acquire the 5-acre parcel constituting the Superfund Site, located in Los Angeles County at 5050 Slauson Avenue, Maywood, California (the Property). The Trust for Public Land plans to transfer the Property to the City for use as a public park. The park will be part of the Los Angeles River Greenway, a system of public parks and paths along a 51-mile stretch of the Los Angeles River.

In exchange for the settlement, the Purchasers have agreed to pay EPA a one-time payment of $10,000 in cash that will be placed in a special account for use at the Site.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before February 4, 2002.

ADDRESSES: The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "The Trust for Public Lands PPA, Pemaco Superfund Site" and "Docket No. 2002–03" and should be addressed to William Keener at the above address.

FOR FURTHER INFORMATION CONTACT: William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3940; fax (415) 947–3570; e-mail: *keener.bill@epa.gov.*

Dated: December 12, 2001.

Jane Diamond,

Acting Director, Superfund Division, Region IX.

[FR Doc. 02–110 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–13]

Notice of Annual Adjustment of the Limit in Average Total Assets For Community Financial Institutions and Notice of Annual Adjustment of the Limits on Annual Compensation for Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has adjusted the limit in average total assets that defines a "Community Financial Institution" (CFI) based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL), pursuant to the requirements of Section 2(13)(B) of the Federal Home Loan Bank Act (Bank Act) and the Finance Board's regulations. Notice is hereby given that the Finance Board also has adjusted the limits on annual compensation for the Federal Home Loan Bank (Bank) directors, based on the CPI–U, as published by the DOL, pursuant to the requirements of Section 7(i)(2)(B) of the Bank Act and the Finance Board's regulations concerning statutory limits on Bank Directors' compensation.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director and Chief Economist, (202) 408–2821; Scott L. Smith, Acting Director, Office of Policy, Research and Analysis, (202) 408–2991; or Kirsten L. Landeryou, Office of Policy, Research and Analysis, (202) 408–2552. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Bank Act (12 U.S.C. 1422(13)(B)), as amended by the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999)) and § 900.1 of the Finance Board's regulations (12 CFR 900.1) require the Finance Board to adjust annually the limit in average total assets (CFI Asset Cap) set forth in section 2(13)(A)(ii) of the Bank Act (12 U.S.C. 1422(13)(A)(ii)) and § 900.1 of the Finance Board's regulations that defines a CFI, based on the annual percentage increase, if any, in the CPI–U, as published by the Department of Labor (DOL). Section 7(i)(2)(B) of the Bank Act (12 U.S.C. 1427(i)(2)(B)), as amended by the GLB Act, and § 918.3(a)(1) of the Finance Board's regulations (12 CFR 913.3(a)(1)), require the Finance Board, beginning January 1, 2001, to make a similar annual adjustment to the compensation limits set forth in section 7(i)(2)(A) of the Bank Act (12 U.S.C. 1427(i)(2)(A)) and § 918.3(a)(1) of the Finance Board's regulations, for members of the boards of directors of the Banks based on the annual percentage increase, if any, in the CPI–U, as published by the DOL.

Pursuant to the Finance Board's regulations, for purposes of the CFI Asset Cap, the Finance Board is required to publish notice by **Federal Register** of the CPI–U-adjusted cap. For purposes of the Banks' board of directors annual compensation adjustments, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CPI–U-adjusted limits on annual compensation. The annual adjustment of the existing CFI Asset Cap and annual Bank director compensation limits, effective January 1 of a particular calendar year, reflects the percentage by which the CPI–U published for November of the preceding calendar year exceeds the CPI–U published for November of the year before the preceding calendar year (if at all). For example, the adjustment of the limits effective January 1, 2002 are based on the percentage increase in the CPI–U from November 2000 to November 2001. The Finance Board has determined that it is appropriate to use data from November rather than waiting for the December data to become available so that the Banks can be notified of the revised asset limit and compensation limits as close to the effective date as possible. Other Federal agencies do not rely on December data, which is published in mid-January, when calculating annual inflation adjustments and, as a result, are able to announce the adjustments prior to the effective date of January 1.

The DOL encourages the use of CPI–U data that has not been seasonally adjusted in "escalation agreements" because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to five years following the original release; unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that had not been seasonally adjusted to calculate the new CFI Asset Cap and annul Bank director compensation limits.

The unadjusted CPI–U increased 1.9 percent between November of 2000 and November of 2001. Based on this data, the Finance Board adjusted the CFI Asset Cap for 2001 from $517 million to $527 million, beginning January 1, 2002.

The Finance Board also adjusted, based on the 1.9 percent increase in the CPI–U, the annual compensation for the listed members of the boards of directors of the Banks as follows, beginning January 1, 2002: for a Chairperson—$26,341; for a Vice-Chairperson—$21,073; for any other member of a Bank's board of directors—$15,805.

Dated: December 27, 2001.

By the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 02–49 Filed 1–2–02; 8:45 am]

BILLING CODE 6725–01–P

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FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is nd supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer–Mary M. West–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer–Alexander T. Hunt–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

SUPPLEMENTARY INFORMATION:

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:

1. Report title: Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey.
Agency form number: FR 29a, b, c.
OMB Control number: 7100–0290.
Frequency: FR 29a, once each year; FR 29b, on occasion; FR 29c, once each year.
Reporters: Employers considered competitors for Federal Reserve employees.
Annual reporting hours: FR 29a, 270 hours; FR 29b, 30 hours; FR 29c, 1,300 hours.
Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour; FR 29c, 2 hours.
Number of respondents: FR 29a, 45; FR 29b, 10; FR 29c, 650.
Small businesses are affected.
General description of report: This information collection is voluntary (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C §§ 552 (b)(4) and (b)(6)).
Abstract: The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.

2. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.
Agency form number: Reg H–3.
OMB Control number: 7100–0196.
Frequency: Development of policy statement, one–time; Trust company report, quarterly; Transactions recordkeeping, on occasion; and Disclosure, on occasion.
Reporters: State member banks and trust companies.
Annual reporting hours: 158,423 hours.
Estimated average hours per response: Development of policy statement, 30 minutes; Trust company report, 15 minutes; Transaction recordkeeping, 3 minutes; and Disclosure, 3 minutes.
Number of respondents: 1,324.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).
Abstract: State–chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti–fraud and insider trading provisions of the Securities Exchange Act of 1934.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report:

1. Report title: Application for Employment with the Board of Governors of the Federal Reserve System.
Agency form number: FR 28.
OMB Control number: 7100–0181.
Frequency: On occasion.
Reporters: Employment applicants.
Annual reporting hours: 8,625 hours.
Estimated average hours per response: 1 hour.
Number of respondents: 8,500.
Small businesses are not affected.
General description of report: This information collection is required to obtain a benefit (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)). The Board is required to treat the information collected on the Application as confidential pursuant to the requirements of the Privacy Act (5 U.S.C. 552a). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(2) and (b)(6)).
Abstract: The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school.
Current actions: The Federal Reserve will add two short supplemental forms to the Application. One form will be given to all applicants and collects information about the gender and race of the applicant. The information from this form will be used to assist the Board with federal equal opportunity record keeping, reporting, and other legal requirements. The second form will be filled out by applicants for Research Assistant positions in the divisions of Monetary Affairs, International Finance, and Research and Statistics. The survey will serve to streamline the recruiting process by attempting to determine an applicant's interest in the policy and research topics that are germane to individual research sections.

Final Approval Under OMB Delegated Authority to the Implement the Following Report:

1. Report title: Survey of Board Publications.
Agency form number: FR 1373a and b.
OMB Control number: 7100–0301.
Frequency: FR 1373a, 1.5; FR 1373b small–panel, 8; and FR 1373b large–panel,
2. Reporters: FR 1373a, educators who have previously requested materials from the Board; FR 1373b, current subscribers of Board publications.
Annual reporting hours: 762 hours.
Estimated average hours per response: FR 1373a, 30 minutes; FR 1373b, 15 minutes.

Number of respondents: FR 1373a, 400; FR 1373b small–panel, 131; FR 1373b large–panel, 400.
Small businesses are affected.
General description of report: This information collection is voluntary. The FR 1373a survey is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. 57(a)); the FR 1373b survey is authorized pursuant to 12 U.S.C. 248(i). The specific information collected is not considered confidential.
Abstract: Data from the FR 1373a survey will help the Board staff to 1) conduct periodic reviews and evaluations of the consumer education resources available to consumers and consumer educators, and to 2) evaluate consumer education resources under consideration for distribution. Data from the FR 1373b survey will help the Board staff to evaluate Board publications that are available to the public. The staff will use the FR 1373b data to help determine if the Board should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, issuance frequency, content, or format/appearance.

Board of Governors of the Federal Reserve System, December 28, 2001.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 02–123 Filed 1–2–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 17, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Joseph R. Doherty and the Joseph R. Doherty Family Limited Partnership, L.P., Somerville, Massachusetts; to acquire voting shares of Central Bancorp, Inc., Somerville, Massachusetts, and thereby indirectly acquire voting shares of Central Co-operative Bank, Somerville, Massachusetts.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Brian and Elizabeth Riddell as general partners of Riddell Family Limited Partnership, Dakota Dunes, South Dakota, and William and Linda Biles, Tie Siding, Wyoming; to acquire additional voting shares of First Heartland Bancorp., Sioux Center, Iowa; and thereby indirectly acquire additional voting shares of First National Bank of Sioux Center, Sioux Center, Iowa; and Pender State Bank, Pender, Nebraska.

Board of Governors of the Federal Reserve System, December 27, 2001.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 02–34 Filed 1–2–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Trustco Bank Corp NY, Glenville, New York; to acquire 9.9 percent of the common stock of Troy Financial Corporation, and thereby indirectly acquire The Troy Commercial Bank, and the Troy Savings Bank, all of Troy, New York.

Board of Governors of the Federal Reserve System, December 27, 2001.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 02–35 Filed 1–2–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

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from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. United National Bancorp and UnitedTrust Bank, both of Bridgewater, New Jersey; to acquire and merge with Vista Bancorp, Inc., Phillipsburg, New Jersey, and thereby indirectly acquire Vista Bank, N.A., Phillipsburg, New Jersey.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Service Financial Company, Crestwood, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of FirstService Bank, Crestwood, Missouri (in organization).

Board of Governors of the Federal Reserve System, December 28, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–124 Filed 1–2–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0023]

Proposed Collection; Comment Request Entitled Surplus Personal Property Mailing List Application

AGENCY: Property Management Division (FBP), GSA.

ACTION: Notice of request for public comments regarding extension of a currently approved OMB clearance (3090–0023).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved collection concerning Surplus Personal Property Mailing List Application.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSA, mainly on the Surplus Mailing List, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Victor Arnold-Bik, Property Management Division, GSA (703) 305–5809.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to extend a currently approved information collection, 3090–0023, concerning Surplus Personal Property Mailing List Application. This GSA Form 2170 is completed by persons who wish to have their names placed on the Surplus Personal Property Mailing List maintained by GSA Regional Sales Offices. Mailing labels are produced based on the type of property and geographical area indicated by the prospective bidder on the mailing list application.

B. Annual Reporting Burden

Respondents: 12,000.
Annual responses: 12,000.
Burden hours: 996.
Obtaining Copies of Proposals: A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or be telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0023, Surplus Personal Property Mailing List Application, in all correspondence.

Dated: December 21, 2001.

Michael Carleton,

Chief Information Officer.

[FR Doc. 02–119 Filed 1–2–02; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0006]

Submission for OMB Review and Extension GSAR Clause, 552.237–71, Qualifications of Employees

AGENCY: General Services Administration (GSA).

ACTION: Notice of emergency reinstatement and request for public comments of the reinstated collection 3090–0006.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration requested in August 2001 that the Office of Management and Budget (OMB) reinstate an information collection that pertains to GSAR Clause, Qualifications of Employees. OMB reinstated the collection November 2001. Information collected under this authority is required by regulation. This notice indicates GSA's intent to request an extension by 3 years of OMB's emergency reinstatement of this collection and to request public review and comment on the collection.

Public comments are particularly invited on: Whether this information collection generated by the GSAR Clause, Qualifications of Employees, is necessary for security reasons, to properly determine if an employee is suitable to work under a GSA service contract for guards, child care, cleaning, and maintenance contract; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of service contracts for guards, childcare, cleaning, and maintenance. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 15,496.
Responses Per Respondent: 1.
Total Responses: 15,496.
Hours Per Response: 1.
Total Burden Hours: 15,496.
Obtaining Copies of Proposals: A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Plese cite OMB Control No. 3090–0006, Qualifications of Employees, in all correspondence.

Dated: December 21, 2001.

Michael Carleton,

Chief Information Officer.

[FR Doc. 02–120 Filed 1–3–02; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0014]

Submission for OMB Review; Comment Request Entitled Transfer Order-Surplus Personal Property and Continuation Sheet

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance (3090–0014).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transfer Order-Surplus Personal Property and Continuation Sheet. A request for public comments was published at 66 FR 43871, August 21, 2001. No comments were received.

DATES: Comments may be submitted on or before February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Denise Thomas, Federal Supply Services, GSA (703) 308–0742.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0014, concerning Transfer Order-Surplus Personal Property and Continuation Sheet. This form is used by public agencies, nonprofit educational or public health activities, programs for the elderly, service education activities, programs for the elderly, service educational activities, and public airports to apply for donation of Federal surplus personal property. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

B. Annual Reporting Burden

Respondents: 63,000.
Annual Responses: 63,000.
Burden Hours: 18,900.
Obtaining Copies of Proposals: A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

Dated: December 21, 2001.

Michael Carleton,

Chief Information Officer.

[FR Doc. 02–118 Filed 1–2–02; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding an extension of a currently approved OMB Clearance (3090–0112).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSA, to conduct a report assessing the distribution of surplus property, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Denise Thomas, Federal Supply Services (703) 308–0742.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget (OMB) to renew information collection, 3090–0112, concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report

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complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55.
Annual responses: 220.
Burden hours: 330.

Copy of Proposal. A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–4744 or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0112, State Agency Monthly Donation Report of Surplus Property, in all correspondence.

Dated: December 21, 2001.

Michael Carleton,

Chief Information Officer.

[FR Doc. 02–121 Filed 1–2–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Shaan F. Munjee, M.S., Wake Forest University School of Medicine: Based on the report of an investigation conducted by the Wake Forest University School of Medicine (WFUSM) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Shaan F. Munjee, M.S., former research fellow, Department of Cancer Biology at WFUSM, engaged in scientific misconduct by falsifying and fabricating data in research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grants 5 R29 DK52623–03 and 5 R29 DK52623–04, "PTHRP and prostate growth."

Specifically, PHS found that Ms. Munjee falsified data relating to the signaling of protein kinase in prostate cancer cell lines. From March 2000 through October 2000, Ms. Munjee falsified and fabricated data in her notebook from experiments to misrepresent her productivity and the significance of her findings. Ms. Munjee reported the falsified and fabricated data in: (1) Laboratory group meetings, a journal club, and a Cancer Biology retreat within WFUSM; (2) NIH grant application 5 R29 DK52623–04, "PTHRP and prostate growth"; and (3) an abstract submitted to the American Association for Cancer Research. Given the extensive nature of Ms. Munjee's data falsification and fabrication, none of her research can be considered reliable. Her actions adversely and materially affected the laboratory's ongoing research in prostate cancer by causing an unproductive avenue of research to be pursued and by preventing the principal investigator from submitting a competitive renewal application for a NIH grant. No publications required correction or retraction.

Ms. Munjee has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed for a period of three (3) years, beginning on December 17, 2001:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations); and

(2) to exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–25 Filed 1–2–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2002. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Web site located at http://www.fda.gov/oc/advisory/default.htm. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2002. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 16, November 12	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	March 15, November 4	12388
Biological Response Modifiers Advisory Committee	February 28–March 1 (Alternate: January 30–31), July 18–19 (Alternate: May 9–10), November 7–8 (Alternate: October 10–11).	12389
Blood Products Advisory Committee	March 14–15, June 13–14, September 12–13, December 12–13.	19516
Transmissible Spongiform Encephalopathies Advisory Committee.	January 16–17, June 26–27, October 17–18	12932
Vaccines and Related Biological Products Advisory Committee	January 30–31, March 6–7, May 21–22, July 10–11, September 10–11, November 18–19.	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	February 25–26, May 7–9, October 23–25	12539
Advisory Committee for Reproductive Health Drugs	September 13	12537
Anesthetic and Life Support Drugs Advisory Committee	January 30–31, April 11–12	12529
Anti-Infective Drugs Advisory Committee	February 19–20	12530
Antiviral Drugs Advisory Committee	January 24, March 19, June 24–25, October 16–17.	12531
Arthritis Advisory Committee	February 19–20, May 14–15, July 29–30, September 12–13, December 10–11.	12532
Cardiovascular and Renal Drugs Advisory Committee	January 17–18, April 11–12, July 18–19, October 10–11.	12533
Dermatologic and Ophthalmic Drugs Advisory Committee	September 20	12534
Drug Abuse Advisory Committee	No meetings planned	12535
Endocrinologic and Metabolic Drugs Advisory Committee	March 14–15, May 23–24, July 22–23, September 26–27, December 5–6.	12536
Gastrointestinal Drugs Advisory Committee	September 27	12538
Medical Imaging Drugs Advisory Committee	April 18, August 15	12540
Nonprescription Drugs Advisory Committee	April 22–23	12541
Oncologic Drugs Advisory Committee	January 31, February 27–28, June 6–7	12542
Peripheral and Central Nervous System Drugs Advisory Committee.	February 15	12543
Pharmacy Compounding Advisory Committee	September 27	12440
Psychopharmacologic Drugs Advisory Committee	September 13	12544
Pulmonary-Allergy Drugs Advisory Committee	January 17–18, May 16–17	12545
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	June 4–5, September 24–25	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings planned	12398
Medical Devices Advisory Committee:		

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Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
Anesthesiology and Respiratory Therapy Devices Panel	March 18, May 13, September 23, October 28	12624
Circulatory System Devices Panel	March 4–5, June 3–4, September 9–10, November 4–5, December 2–3.	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	February 11–12, May 23–24, August 19–20, November 8.	12514
Dental Products Panel	May 9–10, August 22–23, October 29–30	12518
Ear, Nose, and Throat Devices Panel	February 21–22, April 25–26, June 20–21, August 15–16, October 17–18, December 12–13.	12522
Gastroenterology and Urology Devices Panel	February 1, May 17, August 9, November 7	12523
General and Plastic Surgery Devices Panel	February 7–8, April 9–10, July 8–9, October 1–2	12519
General Hospital and Personal Use Devices Panel	March 11–12, June 10–11, September 9–10, December 5–6.	12520
Hematology and Pathology Devices Panel	April 15–16, June 17–18, September 26–27	12515
Immunology Devices Panel	March 15, June 14, September 13, December 6	12516
Medical Devices Dispute Resolution Panel	As needed	10232
Microbiology Devices Panel	February 21–22, May 9–10, September 19–20, October 28–29.	12517
Molecular and Clinical Genetics Panel	April 19, July 26, November 1	10231
Neurological Devices Panel	February 25–26, May 9–10, August 1–2, November 21–22.	12513
Obstetrics and Gynecology Devices Panel	April 22–23, July 22–23, October 21–22	12524
Ophthalmic Devices Panel	January 17–18, March 14–15, May 16–17, July 18–19, September 12–13, November 14–15.	12396
Orthopaedic and Rehabilitation Devices Panel	January 10, April 11–12, July 11–12, October 17–18.	12521
Radiological Devices Panel	February 4, May 20, August 12, November 18	12526
National Mammography Quality Assurance Advisory Committee	May 6, September 23	12397
Technical Electronic Product Radiation Safety Standards Committee.	May 15	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	January 22–24, September 16	12548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.	March 13–14, September 24–25	12560
Science Advisory Board to the National Center for Toxicological Research.	June 11–12	12559

Dated: December 26, 2001.
Linda A. Suydam,
Senior Associate Commissioner.
[FR Doc. 02–26 Filed 1–2–02; 8:45 am]
BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming joint meeting of two public advisory committees of the Food and Drug Administration (FDA). At least one portion of the joint meeting will be closed to the public.

Name of Committees: Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 16, 2002, from 1 p.m. to 4:30 p.m.; and on January 17, 2002, from 8 a.m. to 5:15 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 17, 2002, the committees will listen to updates on the "Revised FDA Guidance on Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" document, and other related topics. For the purpose of further evaluating the adequacy of our present blood deferral recommendations, the committee will then discuss the effectiveness of measures taken to protect humans from foodborne exposure to the bovine spongiform encephalopathy (BSE) agent in countries with BSE.

Procedure: On January 17, 2002, from 8 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 11, 2002. Oral presentations from the public will be scheduled between approximately 1:20 p.m. and 2:20 p.m. on January 17, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 16, 2002, from 1 p.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

FDA regrets that it was unable to publish this notice 15 days prior to the January 16 and 17, 2002, Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 26, 2001.
Linda A. Suydam,
Senior Associate Commissioner.
[FR Doc. 02–45 Filed 1–2–02; 8:45 am]
BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

XAGE–1, A Gene Expressed in Multiple Cancers and Uses Thereof

Drs. Ira H. Pastan (NCI), Xiu F. Liu (NCI), Byungkook Lee (NCI) and Lee J. Helman (NCI)

DHHS Ref. No. E–161–00/0 (Provisional Application) filed September 1, 2000 and E–161–00/1 (PCT Application) filed August 31, 2001

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*.

The XAGE–1 gene is a human X-linked gene that is strongly expressed in breast cancer, lung cancer and several other cancers as well as normal testes. The largest open reading frame of the XAGE–1 transcript encodes a putative protein of 16.3 kD (p16) with a potential transmembrane domain at the amino terminus. In addition, the XAGE–1 transcript contains a second ATG in the reading frame corresponding to residue 66, which would encode a 9 kD protein (p9). *In vitro* transfection experiments using 293 T cells have revealed a 9 kD protein. However, the size of the endogenously expressed protein is not yet known. XAGE–1 shares homology with GAGE/PAGE proteins in the C-terminal end.

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The invention relates to the fact that the XAGE–1 gene is expressed in a number of human cancers, specifically: breast, lung, prostate, pancreatic, and ovarian cancers. The proteins p9 and p16, immunogenic fragments thereof, analogs of these proteins, and nucleic acids encoding these proteins, fragments, or analogs, can be administered to persons with XAGE–1 expressing cancers to raise or augment an immune response to the cancer. The invention further provides nucleic acid sequences encoding the protein, as well as expression vectors, host cells, and antibodies to the proteins. Further, the invention provides immunoconjugates that comprise an antibody to p16 or to p9, and an effector molecule, such as a label, a radioisotope, or a toxin. The invention also provides methods of inhibiting the growth of XAGE–1 expressing cells by contacting them with immunoconjugates of an anti-p9 or p16 antibody and a toxic moiety. The invention also provides kits for the detection of p9 or p16 proteins in a sample. The XAGE–1 gene and encoded protein could be of value in the development of a cancer diagnostic and/or a cancer immunotherapy.

The above mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms

Tito A. Fojo and Susan Bates (NCI)
DHHS Reference No. E–286–00/0 filed 10 Jan 2001

Licensing Contact: Matthew Kiser; 301/496–7056 ext. 224; e-mail: *kiserm@od.nih.gov*.

The invention disclosed are novel approaches to thyroid cancer therapy. These approaches include methods to enhance thyroid specific gene expression, for example methods to enhance expression of thyroglobulin and/or the Na/I symporter in thyroid cancer cells. Enhanced expression of thyroid-specific genes promotes cellular differentiation and reduces biologically aggressive behavior such as invasion and metastasis. In addition, enhanced expression of thyroglobulin and/or the Na/I symporter increases the ability of thyroid cancer cells to concentrate iodine, thereby making the cells more susceptible to radioactive iodine therapy. Also disclosed are methods for detecting thyroid neoplasms in a subject, by administering a therapeutically effective amount of a histone deacetylase inhibitor, administering a detectable agent whose uptake or concentration in thyroid cells is increased by administration of the histone deacetylase inhibitor, and detecting the detectable agent.

Dated: December 20, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–11 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Animal Imaging Resources Program.

Date: January 16, 2002.

Time: 10:15 a.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8043, Bethesda, MD 20892, 301–946–7576.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Science Education Partnership Award.

Date: February 7–8, 2002.

Time: February 7, 2002, 8 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, (301) 435–0814, *wellstoods@ncrr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–131 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: February 7–8, 2002.

Closed: February 7, 2002, 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 8, 2002, 8 am to 9 am.

Agenda: To discuss program planning and other issues.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 8, 2002, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, Room 6018, Bethesda, MD 20892–7965, (301) 435–0824, *dgpatel@ncrr.nih.gov*.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: February 7–8, 2002.

Closed: February 7, 2002, 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 8, 2002, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 8, 2002, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0815, *kingc@ncrr.nih.gov*.

Name of Committee: National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

Date: February 12–14, 2002.

Open: February 12, 2002, 8 a.m to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: February 12, 2002, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John L. Meyer, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, 301–435–0806, meyerj@ncrr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–136 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: February 26–27, 2002.

Time: February 26, 2002, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mohan Viswanathan, PHD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0829, *viswanathanm@ncrr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–137 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Severe Asthma Research Program.

Date: December 27, 2001.

Time: 9:00 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne P Clark, PhD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 9–10, 2002.

Open: January 9, 2002, 7:00 PM to 10:00 PM.

Agenda: To discuss matters of program relevance.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Closed: January 10, 2002, 8:30 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 10, 2002.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Rudy O. Pozzatti, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: February 9, 2002.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Room 2220, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH Room 2217, 6700–B Rockledge Drive, MSC–7610, Bethesda, MD 20892–7610, 301–496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: February 25, 2002.

Time: 1 pm to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drice, MSC–7610, Bethesda, MD 20892–7610, 301–496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: February 26, 2002.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC–7610, Bethesda, MD 20892–7610, 310–496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: February 27, 2002.

Time: 1 pm to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879, (Telephone Conference Call).

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC–7610, Bethesda, MD 20892–7610, 310–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plant to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed in the public in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council of Aging.

Date: January 29–30, 2002.

Closed: January 29, 2002, 3 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: January 30, 2002, 8 AM to 1:30 PM.

Agenda: Call to Order; report on Task force on Minority Aging; reports on Clinical Investigators Working Group and Working Group on Program; report on Intramural Research Program; and Program Highlights

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Agenda: To review and evaluate intramural Research Program.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: www.nih.gov/nia/naca/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Y. Stringfield,

Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 02–14 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 4, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93,846, Arthritis and Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 9, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

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proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 15, 2002.

Time: 8:30 AM to 1 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: December 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel.

Date: January 2, 2002.

Time: 11 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971 jrichters@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

Date: January 4, 2002.

Time: 11 a.m. to 12:59 p.m.

Agenda: 45 Center Drive, Natcher Bldg., Conf. Rms., A & D, Bethesda, MD 20892.

Contact Person: Tommy L. Broadwater, PhD, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–134 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 23, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–133 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: January 17, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 600 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ronald Suddendorf, PhD., Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–135 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 26, 2001.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 7, 2002.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Names of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 7, 2002.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 8, 2002.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 11, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 11, 2002.

Time: 4:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

Name of Committee: Oncological Sciences Integrated Review Group, Pathology B Study Section.

Date: January 28–30, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Keystone Resort, Keystone, CO 80222.

Contact Person: Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 21, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 4, 2002
Time: 4 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045. *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 31. 2002.
Time: 11 a.m.. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dharam S. Dhindsa. DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–132 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: "cDNA for Human and Pig Dihydropyrimidine Dehydrogenase'

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an co-exclusive license to practice the inventions embodied in U.S. Patents 5,856,454 and 6,015,673, entitled "cDNA for Human and Pig Dihydropyrimidine Dehydrogenase" to Variagenics, Inc. of Cambridge, MA.

The prospective co-exclusive license territory will be worldwide and the field of use may be limited to *in vitro* diagnostics.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before March 4, 2002 will be considered.

ADDRESSES: Requests for copies of the patents, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056 x224; Facsimile (301) 402–0220; E-mail kiserm@od.nih.gov.

SUPPLEMENTARY INFORMATION: The technology relates to the DPD gene. Cancer patients having a DPD deficiency are at risk of a severe toxic reaction to the commonly used anticancer agent 5-fluorouracil (5–FU). Claimed are DPD genes from human and pig, methods for detecting the level of nucleic acids that encode DPD in patient, and nucleic acids that are useful as probes for this purpose.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–12 Filed 1–2–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1430–ES; N–41565–30]

Notice of Realty Action: Lease/Conveyance for Recreation or Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Partial assignment of 30.0 acres and change of use for recreation or public purposes lease amendment.

SUMMARY: The Clark County School District (CCSD) proposes an amendment to Recreation or Public Purposes (R&PP) Lease N–41565–30 to add 30.0 acres to an existing lease of 12.5 acres and to change the use of the lease from a maintenance facility to a high school. CCSD would acquire the additional 30.0 acres through partial assignment from Clark County's R&PP Lease N–51437 which will be a change of use from a park to a high school. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

T. 21 S., R. 60 E., M.D.M.,
Sec. 15, W½NE¼NW¼SW¼, NW¼NW¼SW¼, SW¼NW¼SW¼, W½SE¼NW¼SW¼, W½NE¼SW¼SW¼, E½NW¼SW¼SW¼, NW¼NW¼SW¼SW¼.

Containing 42.5 acres, more or less, located at the corner of Buffalo Drive and Twain Avenue.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–24659 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–24663 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–58098 under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for power line purposes which have been granted to the Nevada Power Company by Permit No. N–59318 under the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for roadway purposes which have been granted to Clark County by Permit N–59691 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

Application Comments

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for a high school to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a high school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior.

Dated: December 14, 2001.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–83 Filed 1–2–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Water Exchange Agreements With Mendota Pool Group, 2003–2013, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS, pursuant to the National Environmental Policy Act (NEPA), to evaluate the proposed exchange of up to 25,000 acre-feet of water per year over a 10-year period with the Mendota Pool Group. Alternatives will be identified and evaluated on the basis of criteria adopted to maintain environmental quality and provide for continued agricultural production. The purpose of the proposed project is to provide water to irrigable lands on Mendota Pool Group properties in Westlands Water District and San Luis Water District to offset substantial reductions in contract water supplies attributable to the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act listings and regulations, and new Delta water quality rules. Providing this water would enable the Mendota Pool Group farmers to maintain production on historically irrigated lands. The project is not intended to increase the amount of water for farming activities, but would replace some of the contract water lost because of increased environmental regulations that restrict water deliveries south of the export pumps at Tracy, California.

Through initial scoping meetings, Reclamation will seek public input on the scope of the project and potential alternatives, or combination of alternatives, for consideration in the EIS.

There are no known Indian Trust Assets or environmental justice issues associated with the proposed action.

DATES: One scoping meeting will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting is scheduled for Monday, January 14, 2002, 6 to 8 p.m., in Mendota, California.

Submit written comments on the proposed project scope on or before January 28, 2002.

ADDRESSES: The scoping meeting will be held at the City Council Chambers, Mendota City Hall, 643 Quince St., Mendota, CA 93640; telephone: (559) 655–3291.

Written comments on the scope of the alternatives and impacts to be considered should be sent to Mrs. Judi Tapia, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno CA 93721–1813; by telephone at (559) 487–5179 (TDD 559–487–5933); by E-mail at *jtapia@mp.usbr.gov;* or faxed to (559) 487–5397.

FOR FURTHER INFORMATION CONTACT: Mrs. Tapia, Environmental Specialist, at the above address or by telephone at (559) 487–5179 (TDD 559–487–5933).

SUPPLEMENTARY INFORMATION: The Delta export service area of the Central Valley Project (CVP) has total contractual obligations and delivery losses of approximately 3.45 million acre-feet per year. The theoretical maximum pumping capability of CVP facilities serving this area is approximately 3.09 million acre-feet per year. Available supplies are apportioned under a hierarchy of allocation in which agricultural water service contracts, totaling about 1.85 million acre-feet per year, are provided water only after all other obligations are met. Implementation of the CVPIA provided water only after all other obligations are met. Implementation of the CVPIA (1992), Endangered Species Act (1993–1995), and revised Bay-Delta water quality standards has further reduced pumping capabilities and water supplies available to agricultural contractors. Currently these parties can expect to receive a long-term average supply of about 50 to 55 percent of contract water as compared to a pre-1992 average of 88 to 92 percent.

The project proponents propose to pump an average of 27,000 acre-feet of groundwater per year over the 10-year period from non-CVP wells located adjacent to the Mendota Pool into the Mendota Pool to make up for a portion of the annual shortfall in the contract water to be delivered via the CVP. The actual quantity of water to be pumped would depend on whether the year is classified as wet (0 acre-feet per year),

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normal (31,600 acre-feet per year), or dry (40,000 acre-feet per year). Of the total quantity pumped, a maximum of 25,000 acre-feet per year would be exchanged with Reclamation. This water would be made available to Reclamation in the Mendota Pool to offset their existing water contract obligations. In exchange, Reclamation would make an equivalent amount of CVP water available to the members of the Mendota Pool Group for irrigation purposes at Check 13 of the Delta-Mendota Canal. Any quantity of water pumped beyond the 25,000 acre-feet exchanged would be delivered directly to other lands that are presently under irrigation around the Pool. As part of this program, a maximum of 12,000 acre-feet per year of groundwater would be pumped from deep wells (i.e., screened interval greater than 130 feet deep), with the remainder coming from shallow wells (i.e., screened interval less than 130 feet deep). The proposed project will comply with the terms specified in the Settlement Agreement for Mendota Pool Transfer Pumping Program, effective January 1, 2001.

The primary environmental resource issues that have been identified, and that will be evaluated in the EIS, include groundwater levels, groundwater quality, subsidence, surface water quality, and biological resources.

The environmental review will be conducted pursuant to NEPA, the Endangered Species Act, and other applicable laws, to analyze the potential environmental impacts of implementing each of the feasible alternatives. All reasonable alternatives as required by NEPA and its implementing regulations will be examined. The final Environmental Impact Report, certified by Westlands Water District in 1998, will provide a useful beginning, as will subsequent environmental reports and ongoing sampling activities, thus allowing Reclamation to expedite completion of the analysis. Alternatives, with their related designs and cost estimates identified in the earlier document, will be re-evaluated and updated to reflect current conditions. Public input on additional alternatives, or combinations of alternatives, that should be considered will be sought through the initial scoping meeting. In addition, public input will be sought on the criteria that should be used to carry forward alternatives, or combination of alternatives, for further consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

Dated: December 3, 2001.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02–33 Filed 1–2–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES AND LOCATION: The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting.

Phoenix, Arizona—January 17–18, 2002. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs,—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to approve the Strategic Plan, and discuss the following: FY 2003 budget, basin hydrology, Protocol Evaluation Panel (PEP) recommendations, environmental compliance, and other administrative and resource issues pertaining to the AMP.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation Web site under Environmental Programs at: *http://www.uc.usbr.gov*. Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

ADDRESSES: To allow full consideration of information by the AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the AMWG members at the meeting.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov*.

Dated: November 30, 2001.

Rick L. Gold,

Regional Director.

[FR Doc. 02–32 Filed 1–2–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–910–912 (Final)]

Low Enriched Uranium From Germnay, the Netherlands, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: On December 21, 2001, the Department of Commerce published notice in the **Federal Register** of negative final determinations of sales at less than fair value in connection with the subject investigations (66 FR 65886, December 21, 2001). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigations concerning low enriched uranium from Germany, the Netherlands, and the United Kingdom (investigations Nos. 731–TA–910–912 (Final)) are terminated.

EFFECTIVE DATE: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: These investigations are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: December 28, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 02–138 Filed 1–2–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–762]

Static Random Access Memory Semiconductors From Taiwan; Notice of Final Decision Affirming Remand Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of a final court decision affirming its final negative determination, made pursuant to court remand, in the antidumping duty investigation of static random access memory semiconductors (SRAMs) from Taiwan.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3095. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: In April of 1998, the Commission published its determination that an industry in the United States was materially injured by reason of imports of SRAMs from Taiwan found by the Department of Commerce (Commerce) to be sold at less than fair value. The Commission also found that the domestic industry was not materially injured or threatened with material injury by reason of subject imports of SRAMs from the Republic of Korea. Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Investigation Nos. 731–TA–761–762 (Final), USITC Pub. 3098 (April 1998). See 63 FR 18443 (April 15, 1998).

The Taiwan Semiconductor Industry Association and others sought review of the affirmative determination in the United States Court of International Trade (CIT). On June 30, 1999, the CIT remanded the determination to the Commission with instructions to provide further explanation regarding the Commission's volume and price effects determinations. Taiwan Semiconductor Industry Ass'n v. United States, 59 F.Supp.2d 1324 (CIT 1999) (Taiwan I).

After an additional remand from the CIT on April 11, 2000, Taiwan Semiconductor Industry Ass'n v. United States, 105 F.Supp.2d 1363 (2000) (Taiwan II), the Commission determined that a domestic industry in the United States was not materially injured or threatened with material injury by reason of subject imports of SRAMs from Taiwan. Static Random Access Memory Semiconductors from Taiwan (Views on Remand), Investigation No. 731–TA–762 (Second Remand), USITC Pub. 3319 (June 2000). On August 29, 2000, the CIT affirmed the Commission's negative remand determination. Taiwan Semiconductor Industry Ass'n v. United States, 118 F.Supp.2d 1250 (CIT 2000) (Taiwan III).

On September 28, 2000, Commerce published notice of the CIT decision, pursuant to 19 U.S.C. 1516a(c). 65 F.R. 58263. In accordance with Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990), Commerce stated that it would continue to order the suspension of liquidation of the subject merchandise. Commerce also indicated that, if the CIT decision was affirmed on appeal, it would revoke the antidumping duty order.

Petitioner Micron Technology, a domestic producer of SRAMs, appealed the CIT's decisions in Taiwan I and Taiwan III. On September 21, 2001, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the CIT's decision to remand for further explanation in Taiwan I, and affirmed the Commission's negative remand determination. Taiwan Semiconductor Industry Ass'n v. United States, 266 F.3d 1339 (2001). The CAFC issued its mandate on December 11, 2001.

The judicial proceedings having ended and the final court decision having been issued, the Commission, pursuant to 19 U.S.C. 1516a(e), publishes notice of the final court decision affirming its negative remand determination.

Issued: December 28, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 02–139 Filed 1–2–02; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on November 7, 2001, a proposed Consent Decree in the *United States* v. *Aristech Chemical Corporation*, Civil Action No. C–1–01–772, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

In this action the United States seeks civil penalties and injunctive relief against Aristech Chemical Corporation ("Aristech") pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), for alleged violations at Aristech's Ironton, Ohio facility. Under the settlement, Aristech will pay a civil penalty of $450,000, and apply for and obtain a permit for the Phenol Expansion Project, under the CAA's Prevention of Significant Deterioration ("PSD") program, from the State of Ohio, the permitting authority.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Aristech Chemical Corporation*, D.J. Ref. 90–5–2–1–06701/1.

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The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Western Division, Potter Stuart Federal Courthouse, 5th and Walnut Streets, Room 220, Cincinnati, Ohio 45202, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–91 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Request for Resubmission of Comments on Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, the Department of Justice published a notice on October 4, 2001 that a proposed consent decree in *United States* v. *Caribbean Airport Facilities, Inc, and Anthony Tirri*, Civil Action No. 01–2178 (JAG) (D.P.R.), had been lodged with the United States District Court for the District of Puerto Rico, and provided a public comment period that ended on November 6, 2001. The notice provided an address to which comments should be mailed.

The Department of Justice has experienced disruptions in mail delivery in October and November. To date, the Department has received no comments on the proposed consent decree in this case.

In recognition of the possibility that comments were mailed but did not reach the Department due to the mail disruptions, the Department is requesting that any persons who sent comments on the proposed consent decree during the period resubmit a copy of those comments to the Department. To be clear, the Department is *not* reopening the comment period or accepting new comments. The Department will only consider comments that were previously mailed during the comment period that ended on November 6, 2001.

Any person who submitted comments to the Department during the comment period and wishes to have those comments considered must resubmit their comments within 10 days of the date of publication of this notice. Resubmitted comments should be sent either (1) by telecopy to Scott J. Jordan at 202–514–8865 or (2) by mail to Camille Vélez-Rivé, Assistant United States Attorney, US Attorney's Office, Room 452, Federal Office Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918.

Mary F. Edgar,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 02–39 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *The Ed Krewatch Partnership, Antonio* v. *Nero, Gardner Asphalt Corporation, Emulsion Products Company, and Raymond T. Hyer, Jr.*, Civil Action No. 01:659, was lodged with the United States Court for the District of Delaware on September 28, 2001.

The proposed partial consent decree pertains to the Krewatch Farm Superfund Site ("Site"), located near Seaford, Delaware. The United States has sued a number of defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, to recover past response costs incurred at the Site. Two defendants, Antonio V. Nero and The Ed Krewatch Partnership ("Settling Defendants"), have agreed to a settlement memorialized in the partial consent decree. In the settlement, defendant Antonio V. Nero agrees to pay $10,000 for reimbursement of costs expended in the cleanup by the Environmental Protection Agency. Defendant The Ed Krewatch Partnership agrees to pay $152,000 in cash and 40% of the proceeds of the sale of the farm on which the Site is located. In addition, The Ed Krewatch Partnership agrees to reimburse $22,667.25 to the state environmental agency Delaware Department of Natural Resources and Environmental Control ("DNREC").

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Ed Krewatch Partnership, et al.*, DOJ Ref. # 90–11–3–07224.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.75 ($.25 per page reproduction cost), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–95 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7 and 38 FR 19029, notice is hereby given that on November 13, 2001, a proposed Consent Decree in *United States* v. *Frederick Gendron, et al.*, Civil Action No. 01–422–JD, was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended ("CERCLA"), on behalf of the U.S. Environmental Protection Agency ("EPA") against the defendant relating to the Gendron Junkyard Site located at 11–13 Hobbs Road in Pelham, New Hampshire (the "Site"). The Complaint alleges that the defendants are liable under Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of response costs incurred at or in connection with the release or threatened release of hazardous substances at the Site.

The Consent Decree requires the Settling Defendants to pay to the U.S. EPA Hazardous Substance Superfund $650,000 in reimbursement of past response costs, and includes a covenant not to sue by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Gendron, et al.*, Civil Action No. 01–422–JD, Ref. 90–11–3–07116.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire U.S. Department of Justice, 55 Pleasant Street, Room 352, Concord, New Hampshire 03301–3904, and at U.S. EPA New England (Region 1), One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $6.00 payable to the Consent Decree Library.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 02–90 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a third proposed consent decree in *United State* v. *Viacom, Inc. and Schindler Elevator Corporation*, Civil Action No. 1:01–CV–123, was lodged on November 1, 2001, with the United States District Court for the Middle District of Pennsylvania.

The proposed Consent Decree concerns the Westinghouse Elevator Plant Superfund Site ("Site"), which is located on approximately 90 acres, and has its southern boundary adjacent to part of the Gettysburg Battlefield National Park. The Site is located about 1.5 miles north of downtown Gettysburg in Cumberland Township, Adams County, Pennsylvania. Pursuant to the proposed consent decree and section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), the defendants will pay the United States for unreimbursed past costs at the Site, in the amount of $569,000 plus certain interest in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Viacom, Inc. and Schindler Elevator Corporation*, DOJ Ref. #90–11–3–1004/1.

The proposed consent decree may be examined at the office of the United States Attorney, 228 Walnut Street, Suite 220 Harrisburg, Pennsylvania 17108 and the Region 3 Office of the U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check (25 cents per page reproduction costs) in the amount of $5.25 for the consent decree (21 pages), payable to the Consent Decree Library.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–92 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 254–2001]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published March 7, 1997, (62 FR 10580):

The Immigration and Naturalization Service, Office of Internal Audit Investigations (OIA) Index and Records, JUSTICE/INS–002.

INS proposes to republish the notice to: (1) Include new information in the Categories of Records section, (2) add two new routine uses (J and K), and (3) modify the "Retention and Disposal" section as described in the attached **Federal Register** notice.

Routine use J will allow contractors working for INS to have access to the information in this system of records. Routine use K allows disclosure to former employees when the Department of Justice requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes regarding a matter within that person's former area of responsibility. Also, INS is making a modification to the Retention and Disposal section of the notice. The National Archives and Records Administration (NARA) has oversight responsibility for retention and disposal schedules. NARA withdrew the entire General Records Schedule (GRS) 22, Inspector General Records, and the disposal authority formerly provided under this schedule. GRS 22 covered the records in this system. Therefore, INS is modifying this notice to include a new Retention and Disposal Schedule for OIA records. Also, other minor corrections and edits have been made to reflect the current status of this system of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which the comment on new routine use disclosures and system modifications. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of this revised system notice. Therefore, please submit any comments by February 4, 2002. OMB, the Congress, and the public are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: December 20, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–002

SYSTEM NAME:

Office of Internal Audit Investigations Index and Records

SYSTEM LOCATION:

Headquarters office, Immigration and Naturalization Service (INS), 425 I Street, NW., Washington, DC. In addition, field offices of the INS have access only to hardcopy files during an

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investigation. A complete address list of the principal offices of INS is detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including:

a. Letters, memoranda, and other documents citing complaints of alleged criminal, civil, or administrative misconduct (i.e., program subject files and internal review case files).

b. Investigative files (i.e., selected and non-selected cases) which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or non-criminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; public source materials; and employee identifying data (e.g., full name, social security number, address, duty station, grade, job series, entrance on duty [EOD] date, and date of birth) obtained from the National Finance Center [NFC] payroll system.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

B. To General Service Administration and National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

* * * * *

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

* * * * *

RETENTION AND DISPOSAL:

Program subject files are destroyed when 10 years old. Internal review case files are maintained until the end of the fiscal year in which the case was closed. One year after these records are closed, they are transferred to the National Records Center and kept for 10 years and then are destroyed. General internal review files will be destroyed when superseded, obsolete, or no longer needed for reference. Investigative case files concerning selected cases are maintained permanently. Ten years after the case is closed, it is transferred to NARA. Non-selected investigatory files are destroyed 10 years after the case is closed. Electronic versions of records created by the electronic mail and word processing applications are deleted when a file copy is generated or when no longer needed for reference or updating.

* * * * *

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e) (1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1) pursuant to 5 U.S.C. 552a(k)(2). INS has published implementing regulations in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and these were published in the **Federal Register** of June 25, 1997 (62 FR 34169) and can be found at 28 CFR 16.99 (g) and (h).

[FR Doc. 02–37 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Waste Management, Inc. et al.

On October 23, 2001, a Joint Motion to Modify the Final Judgment was filed with the United States District Court for the Eastern District of New York, in a civil antitrust case, *United States et al.* v. *Waste Management, Inc. et al.*, Civil No 98 CV 7168. On December 5, 2001, the United States published a notice in the **Federal Register** seeking public comments on the proposed modification to the Final Judgment during a 60 day period. The comment period will expire on February 4, 2002. Given recent mail delivery interruptions in Washington, DC., and current uncertainties involving the resumption of timely mail service, the Department of Justice strongly encourages that comments be submitted via e-mail or fax to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (facsimile: (202) 307–5802; e-mail *comments.lit2@usdoj.gov;* telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

[FR Doc. 02–40 Filed 1–2–02; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Technology Institute: National Shipbuilding Research Program ("NSRP")

Notice is hereby given that, on October 24, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the National Shipbuilding Research Program ("NSRP"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bender Shipbuilding and Repair Company, Mobile, AL has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open,and Advanced Technology Institute intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, Advanced Technology Institute filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on April 11, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39428).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–99 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on October 12, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A&R Cambridge Limited, Cambridge, Cambridgeshire, UNITED KINGDOM; AD Device Corporation, Tokyo, JAPAN; ANAM Electronics Co., Ltd., Ansan-City, Kyungki-Do, REPUBLIC OF KOREA; Applied Research Corporation, Taipei Hsien, TAIWAN; Aplus Technics Co., Ltd., Taipei, TAIWAN; Apollo Electronics Group Limited, Kowloon Bay, Kowloon, HONG KONG—CHINA; Argus Electronics Co., Ltd., Taipei, TAIWAN; Arts Electronics Co. Ltd., Hong Kong, HONG KONG—CHINA; Behavior Tech Computer Corp., Taipei, TAIWAN; Beijing Durban Yu Chang Electronics Co. Ltd., Kowloon, HONG KONG—CHINA; CNERC–OD, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Coach Master International dba CMI Worldwide, Inc., Seattle, WA; Comjet Information Systems Corp., Taipei, TAIWAN; Concord Disc Manufacturing Corp., Anaheim, CA; Cyrus Electronics Ltd., Huntingdon, Cambridgeshire, UNITED KINGDOM; D.M. Technology Co., Ltd., Anyang City, Kyunggi-Do, REPUBLIC OF KOREA; Diskware Co., Ltd., Koutou-Ku, Tokyo, JAPAN; Diversion Technologies, Inc., Castro Valley, CA; Dragon DVD Technology Sdn Bhd, Kuala Lumpur, MALAYSIA; Duplico 2000, S.L., Barcelona, SPAIN; Eltech Electronics Technology (M) Sdn Bhd, Senai, Johore, MALAYSIA; Enlight Corporation, Taipei, TAIWAN; Fujitsu Ten Limited, Hyogoku, Kobe, JAPAN; GBM Advanced Technology Corp., Taipei, TAIWAN; Gigastorage Corporation Taiwan, Hsinchu, TAIWAN; Gradiente Electronica S.A., Sao Paulo, SP, BRAZIL; Hanpin Electron Co., Ltd., Tainan Hsien, TAIWAN; Kanematsu Corporation, Tokyo, JAPAN; Koninklijke Philips Electronics N.V., Eindhoven, THE NETHERLANDS; Lection Technology Co., Ltd., Nei-Hu, Taipei, TAIWAN; Microsoft Corporation, Redmond, WA; MRT Technology, City of Industry, CA; Nokia Corporation, Espoo, FINLAND; nReady Netware Ltd., Quarry Bay, HONG KONG—CHINA; Nvidia Corporation, Santa Clara, CA; Optical Experts Manufacturing, Inc., Charlotte, NC; OptoMedia Electronics Corp., Taipei Hsien, TAIWAN; Paramount Pictures Corporation, Los Angeles, CA; Planet Optical Disc Limited FZE, Dubai, UNITED ARAB EMIRATES; Princo Corporation; Hsin-Chu, TAIWAN; Proside Corporaton, Chiba, JAPAN; Pro-Tech Industries Corp., Kowloon, HONG KONG—CHINA; Provac Disc Media Inc., Toronto, Ontario, CANADA; Raymedia Co., LTD., Kyungki-do, REPUBLIC OF KOREA; Regency Recordings, Braeside, Victoria, AUSTRALIA; Shenzhen E-Boda Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Hongyu Industrial Co. Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shunde Xiongfeng Electric Industrial Company, Shunde City, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Silicon Integrated Systems Corporation, Sunnyvale, CA; SM Summit Holdings Limited, Singapore, SINGAPORE; Soft4D Co., Ltd., Songnam-Si, Kyungki-Do, REPUBLIC OF KOREA; Sony Pictures Entertainment Inc., Culver City, CA; STMicroelectronics, Inc., Carrollton, TX; The Walt Disney Company, Burbank, CA; Trident Microsystems, Inc., Santa Clara, CA; TVIA, Inc., Santa Clara, CA; Videon Central Inc., State College, PA; ViXS Systems Inc., Toronto, Ontario, CANADA; Welton Electronics Ltd., Chai Wan, HONG KONG—CHINA; Zenix Electronics Limited, Tsimshatsui, Kowloon,HONG KONG—CHINA; and Zomax Incorporated, Plymouth, MN have been added as parties to this venture. Also, Shiba Tech Co., Ltd., Kowloon, HONG KONG—CHINA; and Vision Tech International Holdings, Limited, Wan Chai, HONG KONG—CHINA have been dropped as parties to this venture. The following members have changed their names: Changzhou Shinco Digital Technology to Jiangsu Shinco Electronic Group Co., Ltd., Changzhou Jiangsu, PEOPLE'S REPUBLIC OF CHINA; Advanced Media Corporation to AMC Co., Ltd., Tokushima, JAPAN; and BMG Storage Media to Arvato Storage Media, Gutersloh, GERMANY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD Copy Control Association ("DVD CCA") intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association ("DVD CCA") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–101 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IAP Research, Inc.

Notice is hereby given that, on October 22, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IAP Research, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Litton Systems Inc., Poly-Scientific Division, a subsidiary of Northrop Grumman Corporation, Blacksburg, VA; Rea Magnet Wire Co., Inc., Lafayette, IN; and Quebec Metal Powders Limited, Sorel-Tracy, Quebec, CANADA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IAP Research, Inc. intends to file additional written notification disclosing all changes in membership.

On July 21, 1999, IAP Research, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department

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of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act of December 14, 1999 (64 FR 69799).

The last notification was filed with the Department on June 19, 2001. A notice was published in the Federal Register pursuant to section 6(b) of the Act on July 27, 2001 (66 FR 39203).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–97 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative ("OSCI")

Notice is hereby given that, on October 9, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative ("OSCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are ARM Ltd., Cambridge, UNITED KINGDOM; Cadence Design Systems, Inc., San Jose, CA; CoWare, Inc., Santa Clara, CA; Fujitsu Limited, Tokyo, JAPAN; Mentor Graphics Corporation, Wilsonville, OR; Motorola, Inc., Schaumburg, IL; NEC Electronics Inc., Santa Clara, CA; and Synopsys, Inc., Mountain View, CA.

The nature and objectives of the venture are research and development of a rich computer language and reference implementation, based on C++ class libraries, called "SystemC", to form a freely available, open source, and interoperable platform for system-level design and intellectual property modeling.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–100 Filed 12–26–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Origen Therapeutics, Inc./Embrex, Inc.

Notice is hereby given that, on October 23, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Origen Therapeutics, Inc./Embrex, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are Origen Therapeutics, Inc., Burlingame, CA; and Embrex, Inc., Research Triangle Park, NC. The nature and objectives of the venture are to conduct research on the use of avian embryonic stem cell technology, coupled with automated egg injection technology to form highly chimeric poultry. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–98 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 26, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Ms. Marlene Howze (202) 693–4158) or by e-mail to *Howze-Marlene@dol.gov*.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–4718), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration.

Title: Worker Information—Terms and Conditions of Employment.

OMB Number: 1215–0187.

Frquency: On occasion.

Affected Public: Businesses or other for-profit; Individuals or households; Farms.

Number of Respondents: 137,000.

Estimated Time Per respondents: 32 minutes.

Total Burden Hours: 73,067.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $29,160.

Description: The Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors, agricultural employer and agricultural associations who recruit migrant and seasonal agricultural workers to disclose in writing the terms and conditions of employment and to provide, upon request, a written statement of such terms.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–47 Filed 1–2–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 21, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or *e-mail: King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Respirator Program Records—30 CFR 56.5005 and 57.5005.

OMB Number: 1219–0048.

Affected Public: Business or other for-profit.

Frequency: On occasion, Annually, and Monthly.

Type of Reporting: Recordkeeping.

Number of Respondents: 310.

Requirement	Annual responses	Average response time (hours)	Estimated annual burden (hours)
Develop a respirator program	310	5	1,550
Fit-testing records	1,500	.25	375
Respirator inspection records	3,720	.83	310
Total	5,530		2,235

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $156,350.

Description: Where protective equipment or respirators are required because of exposure to harmful substances, 30 CFR 56.5005 and 57.5005 require a written respirator program that addresses such issues as selection, fitting, use, and maintenance of respirators to ensure that workers are properly and effectively using the equipment, and that such equipment offers adequate protection for workers. Records of fit-testing are essential for determining that the worker is wearing the proper respirator. Certain records are also required to be kept in connection with respirators, including records of the date of issuance of the respirator, and fit-test results. The fit-testing records are essential for determining that the worker is wearing the proper respirator.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–48 Filed 1–2–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10886, et al.]

Proposed Exemptions; Morgan Stanley & Co. Incorporated (MS&Co)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513,

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200 Constitution Avenue, N.W., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York

[Exemption Application No. D–10886]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the September 16, 1998 acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds (the Sale) resulted in the Fund's receipt of a one-day profit totaling $147,250.01;

(e) Upon identifying the Acquisition as a "prohibited transaction", MS&Co and Alliance acted promptly to comply with the relevant provisions of ERISA and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

EFFECTIVE DATE OF EXEMPTION: The effective date of this proposed exemption, if granted, is September 16, 1998.

Summary of Facts and Representations

1. The Fund is a jointly managed Taft-Hartley Plan established in 1955. As of September 30, 1998, the Fund had approximately 375,604 participants and beneficiaries and an approximate fair market value of $17 billion.

2. At the time of the Acquisition, the named fiduciary for the Fund was Morgan Stanley Dean Witter & Co. (MSDW). MSDW is a worldwide financial services firm that provides services, either directly or through its subsidiaries, to corporations, governments, and individual investors. MSDW became the Fund's named fiduciary as a result of a court order issued pursuant to a consent decree (the Consent Decree) that, among other things, prohibited the Fund's investment managers from engaging in transactions with "parties in interest" such as MS&Co.[1]

MS&Co is a wholly-owned subsidiary of MSDW having business offices in New York and other cities worldwide. MS&Co is, among other things, a registered broker-dealer, a member of the National Association of Securities Dealers, and a member of most major United States and foreign commodity exchanges.

3. Pursuant to an agreement dated May 2, 1994 (the Agreement), MSDW (through its predecessor-in-interest, the Morgan Stanley Group, Inc.) appointed Alliance as an investment manager with respect to a portion of the assets in the Fund. In this regard, at the time of the Acquisition, Alliance acted as a "qualified professional asset manager"[2] with respect to certain Fund assets invested in the Trust, a Massachusetts trust in which the Fund was a participant.[3] Specifically, Alliance was hired to manage a particular type of asset class, International Fixed Income-Emerging Markets Debt. The applicant represents that Alliance, an investment adviser registered with the Securities and Exchange Commission, is entirely independent of MSDW and its affiliates and does not have any management or ownership relationship with such entities.

Relevant sections of the Agreement provided that Alliance would: (a) invest Fund assets held in the Trust in accordance with investment objectives specified in writing by MSDW; (b) act in accordance with the Consent Decree and ERISA and not engage in any unexempted "prohibited transaction"; and (c) comply with all federal or state law requirements that are imposed with respect to transactions involving the assets of the Fund.

In addition, the applicant represents that MSDW delivered to Alliance, on a regular basis, a "prohibited transaction" notice. According to the applicant, such notice specifically advised that Alliance should not, among other things, execute trades through MS&Co. Furthermore, the applicant represents that Alliance's "Current Investment Guidelines" for the Trust, dated October 31, 1997, provided that Alliance: would not effect a prohibited transaction; and would not deal with any MSDW entity.

4. The applicant represents that, on September 16, 1998, Alliance learned through news reports that the

[1] The Consent Decree was issued pursuant to *Raymond J. Donovan, Secretary of Labor,* v. *Frank Fitzsimmons, et al.,* Civil Action No. 78 C 342.

[2] As such term is defined in Section V(a) of the Department's Prohibited Transaction Class Exemption 84–14 (49 FR 9494 (1984)).

[3] The applicant represents that the beneficial interests of the Trust were held by two employee benefit plans subject to ERISA and thus the Trust itself was an entity the assets of which were subject to ERISA. At the time of the Acquisition, the Fund owned approximately 98.1% of the beneficial interests in the Trust, and the Marsh & McLennan US Retirement Plan owned approximately 1.9% of such interests.

International Monetary Fund and certain banks were preparing a package of loans worth $4.5 billion for Argentina. The applicant states that Alliance believed the news would have a positive effect on Argentine fixed income securities. As a result, Alliance contacted MS&Co and asked for an "offering" on the Bonds in contravention of the safeguards described above. The applicant represents that the Bonds are $9,500,000 Face Amount Argentina Floating Rate Bonds due March 31, 2005.

According to the applicant, as a result of inadvertent errors made by personnel involved in the Acquisition, MS&Co agreed to fill the order. Alliance's purchase of the Bonds was made for settlement on September 21, 1998 for $7,566,947.91 (the Acquisition Price). Of this amount, $7,262,750.00 consisted of principal and $304,197.91 consisted of accrued interest.

5. At the time of the Acquisition, MS&Co was a market maker in the Bonds. The applicant represents, however, that the Bonds were not in MS&Co's inventory at the time of the Acquisition. In this regard, the applicant states that a market maker will, from time to time, go into the market to replenish a particular security which the market maker has sold out of its inventory. Similarly, in this instance, MS&Co made a business decision to sell the Bonds at the Acquisition Price to Alliance even though it did not contemporaneously hold the Bonds. The applicant states that MS&Co committed itself to the Acquisition Price based on the belief that it could go into the market and obtain the Bonds at a discount relative to such price.

However, in meeting its obligations with respect to the Acquisition, MS&Co was ultimately required to purchase the Bonds at a price higher than the Acquisition Price. In this regard, despite its commitment to sell the Bonds to Alliance for $7,566,947.91, market conditions were such that MS&Co was forced to acquire the Bonds in two separate trades for a total cost of approximately $7,714,000. In so doing, the applicant represents, MS&Co lost approximately $147,000.

6. The applicant represents that the Acquisition Price represented the Bonds' fair market value at the time of the Acquisition. In this regard, it is represented that in providing the Acquisition price to Alliance, the MS&Co trader responsible for the emerging markets fixed income desk used pricing mechanisms commonly employed in the over-the-counter fixed income markets such that the purchase price was fair and reasonable. Specifically, the Acquisition Price was determined in consideration of: Bid and ask prices for the Bonds available on interdealer computer screens;[4] news events relating to Argentina's receipt of potential economic relief; prior bid and ask data historically furnished by interdealer brokers; certain volume requirements; and other objective criteria.

The applicant states that at the time the Acquisition occurred, the Bonds traded in relatively high volumes and were well known and well followed. As a result, the market for the Bonds was extremely "transparent" at the time of the Acquisition with only a nominal spread between relevant bid and ask prices. In consideration of these and other factors such as Alliance's status as a valued MS&Co client, the MS&Co trader offered to sell the Bonds to Alliance at the Acquisition Price.

7. Shortly after the Acquisition, Alliance decided to sell the Bonds. In this regard, during the course of the September 16, 1998 trading day, Alliance observed significant fluctuations in the price of the Bonds. The applicant states that when relevant bond prices rose to the extent that Alliance believed selling the Bonds would be in the best interest of the Fund, Alliance sold the Bonds. In this regard, Alliance sold the Bonds to Goldman, Sachs & Co. (Goldman, Sachs) for $7,714,197.92 (the Sale). The applicant notes that the Fund, through the Trust, made a profit of $147,250.01 on the Acquisition and Sale.[5]

8. In certifying its compliance with the Agreement to MSDW, Alliance noted that the Acquisition may have constituted a "prohibited transaction". Upon being so alerted, the applicant represents that MS&Co filed a Form 5330 with the Internal Revenue Service on June 30, 1999, and paid an excise tax of $1,135,042.19 (15% of $7,566,947.91). The applicant notes that the Acquisition was fully disclosed in the Fund's audited financial statements and was corrected within the meaning of section 4975(f)(5) of the Code.[6]

9. The applicant states that neither Alliance nor MS&Co intended to engage in a "prohibited transaction" when consummating the Acquisition. In this regard, various mechanisms were in place to prevent Alliance from inadvertently violating the "prohibited transaction" provisions of ERISA, all of which failed, the applicant represents, in an unforeseeable and improbable manner.[7] Subsequent to the Acquisition, Alliance has devised an internal computer system in an effort to ensure that future "prohibited transactions" do not similarly occur. Such system identifies situations when a specific trade is placed between a client plan and a party in interest who is a named fiduciary. The system flags the trade and alerts Alliance's compliance department.

10. The applicant represents that the proposed exemption is administratively feasible in that the Bonds were sold on the same day they were acquired. In addition, the applicant states that the transaction was in the interests of the Fund's participants and beneficiaries since the Acquisition and Sale resulted in the Fund's receipt of a one-day profit totaling $147,250.01. Finally, the applicant represents that the Acquisition was fair to the Fund since the Fund paid no more than the current fair market value for the Bonds at the time of the Acquisition.

11. In summary, the applicant represents that the requested retroactive individual exemption will satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and the Sale resulted in the Fund's receipt of a one-day profit totaling $147.250.01;

[4] The applicant states that interdealer brokers, who are independent of the approximately 30–40 securities dealers that comprise the major market makers, collect and post dealer quotes (and execute trades between dealers). Information concerning dealer quotes is updated via computer monitors available to each of the primary securities dealers.

[5] The applicant states that although there was one other participant in the Trust, the Trust implemented separate accounting such that all of the profit attributable to the Acquisition and Sale went solely to the Fund. In this regard, the Department is not providing relief to any other participant in the Trust, nor is it expressing any opinion as to representations made by the applicant concerning the composition and operations of the Trust.

[6] The Department is expressing no opinion as to whether the Acquisition was corrected in accordance with relevant provisions of the Code.

[7] In addition to the safeguards discussed above, the applicant states that Morgan Stanley Dean Witter Investment Management Inc., a wholly owned subsidiary of MSDW, had provided materials to Alliance at the outset of its appointment as an investment manager for the Fund which noted the restrictions on trading with MS&Co. In addition, prior to the Transaction, Mellon Bank, N.A., the Fund's custodian, had created and implemented a prohibited transaction surveillance system designed to reject attempted trades on behalf of the Fund and the Trust with parties with whom the Fund or the Trust were prohibited from dealing, including MSDW and its affiliates.

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(e) Upon identifying the Acquisition as a "prohibited transaction", MS&Co and Alliance, an investment manager for the Fund, acted promptly to comply with the relevant provisions of ERISA and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Union Bank of California (UBOC), Located in San Francisco, California

[Application No. D–10976]

Proposed Exemption

Section I—Retroactive and Prospective Exemption for In-Kind Redemption of Assets

If the proposed exemption is granted, the restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, as of June 15, 2001, to certain in-kind redemptions (the Redemptions) by the Union Bank of California Retirement Plan or any other employee benefit plan sponsored by UBOC or an affiliate of UBOC (an In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by the HighMark Funds or other investment companies (the Funds) for which HighMark Capital Management, Inc. or an affiliate thereof (the Adviser) provides investment advisory and other services, provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and affiliates of UBOC (UBOC Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, the Adviser, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval for such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, UBOC or the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) The current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing. For Redemptions occurring on June 15, 2001,the Independent Fiduciary's review included testing a limited sampling of certain material aspects of the Redemption deemed in its judgment to be representative; [8]

(K) Each of the In-house Plan's dealings with: the Funds, the Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) UBOC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBOC, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than UBOC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

[8] The reason for this difference is to conform to the language used in the initial independent fiduciary agreement that U.S. Trust and UBOC entered into with respect to the June 15, 2001 transactions.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary, (iv) any employer with respect to the In-house Plan, and (v) any employee organization whose members are covered by such In-house Plan.

(2) None of the persons described in paragraphs (M)(1)(ii) through (v) shall be authorized to examine trade secrets of UBOC, the Funds, or the Adviser, or commercial or financial information which is privileged or confidential.

(3) Should UBOC, the Funds, or the Adviser refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (M)(2) above, UBOC, the Funds, or the Adviser shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) Independent of and unrelated to UBOC and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to UBOC if: (i) such fiduciary directly or indirectly controls, is controlled by or is under common control with UBOC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; (except that an Independent Fiduciary may receive compensation from UBOC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision); and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by UBOC and its affiliates in the fiduciary's current tax year.

(E) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and (2) which are not: (i) securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family," as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Summary of Facts and Representations

1. UnionBanCal Corporation (UNBC) is a bank holding company headquartered in San Francisco, California, the majority of the shares of which are owned by The Bank of Tokyo—Mitsubishi, Ltd., which in turn is wholly owned by Mitsubishi Tokyo Financial Group, Inc. UBOC, a federally chartered bank also headquartered in San Francisco, is a wholly owned subsidiary of UNBC. As of December 31, 2000, UNBC had approximately $35.2 billion in total assets.

2. UBOC is the trustee of the Union Bank of California Retirement Plan (the Retirement Plan). The Retirement Plan is an In-house defined benefit Plan maintained by UBOC for certain current and former employees of UBOC and UBOC Affilates. As of January, 2001, the Retirement Plan had approximately 13,895 participants. As of May 31, 2001 the Retirement Plan had approximately $616 million in assets.

3. According to the applicant, UBOC's Employee Deferred Compensation and Benefit Plans Administrative Committee (the Committee) determined previously that the Retirement Plan would benefit from the investment of its assets in certain Portfolios of the HighMark Funds [9] (the HighMark Portfolios). The HighMark Portfolios are mutual fund portfolios organized within the HighMark Funds. The HighMark Funds and any other Funds to which the exemption may apply are open-end investment companies registered under the 1940 Act with respect to which HighMark Capital Management, Inc. or an affiliate (the Adviser) acts as an investment adviser.

At the time, the Committee considered the HighMark Portfolios to be an appropriate vehicle for diversifying the Retirement Plan's assets. In addition, the Committee determined that investment in the HighMark Portfolios by the Retirement Plan would allow the Retirement Plan to continue to use in-house investment managers that had provided investment services to the Plan. As a result, the Committee decided to invest Retirement Plan assets in the HighMark Portfolios in accordance with Prohibited

[9] The HighMark Funds formerly were known as The HighMark Group.

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Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734 (1977)).[10]

4. The applicant states that the Committee decided recently to reallocate the management of Retirement Plan assets among the affiliated and unaffiliated investment managers who would manage such assets on a separate account basis.[11] The allocation of assets among the managers was based on a revised, comprehensive asset allocation strategy and policy developed by the Committee with the assistance of an independent consulting firm. The applicant notes such management avoids mutual fund fees and regulatory costs associated with investment in SEC-registered mutual fund portfolios.

5. HighMark Capital Management, Inc., a wholly-owned subsidiary of UNBC (HCM), serves as investment adviser to each of the Portfolios of the HighMark Funds. HCM is registered under the Investment Advisers Act of 1940 (the Advisers Act). The applicant describes the HighMark Funds and Portfolios as follows:

HighMark Funds, a Massachusetts business trust, is an open-end management investment company registered under the 1940 Act. HighMark Funds currently is comprised of thirteen portfolios, including the following three Portfolios:

(i) HighMark Value Momentum Fund
(ii) HighMark Growth Fund
(iii) HighMark Small Cap Value Fund

As previously noted, HCM serves as investment adviser to each of the HighMark Portfolios listed above. The applicant represents that, in addition, HCM, UBOC, and UBOC Affiliates may provide other services to the HighMark Funds and the HighMark Portfolios, including accounting, administration, and shareholder services.

6. The applicant also represents that, as of June 15, 2001:

(i) A total of approximately $63.2 million in Retirement Plan assets was invested in the HighMark Value Momentum Fund (representing a 10.51% ownership in such Portfolio);

(ii) A total of approximately $46.1 million in Retirement Plan assets was invested in the HighMark Growth Fund (representing a 12.40% ownership interest in such Portfolio); and

(iii) A total of approximately $61.7 million in Retirement Plan assets was invested in the HighMark Small Cap Value Fund (representing a 43.94% ownership interest in such Portfolio).[12]

7. The applicant represents that, on June 15, 2001, the Retirement Plan redeemed all of its Shares in the HighMark Value Momentum Fund and the HighMark Growth Fund and approximately $40 million of its Shares of the HighMark Small Cap Value Fund (the June 15, 2001 Redemptions). The applicant further represents that the June 15, 2001 Redemptions were an appropriate means of effectuating this diversification of investment managers and the shift to separate account management for the Retirement Plan. In this regard, the applicant represents that the HighMark Funds, under the supervision of the HighMark Funds' board of trustees (none of whom are directors, officers or employees of UBOC, HCM, or their affiliates), had the option to determine whether to effect the June 15, 2001 Redemptions in cash or in kind, and determined to effect such Redemptions in kind.[13]

8. The applicant represents that it is possible that the Committee or other fiduciaries of the Retirement Plan or other In-house Plans[14] may at a later date determine that it is in the best interest of the Retirement Plan or other In-house Plan and its participants and beneficiaries to redeem such Plan's interest in HighMark Portfolios or other Funds, other than those described in Paragraphs 5 and 6 above, for which UBOC or a UBOC Affiliate provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption that is effected in-kind.

9. The applicant states that the June 15, 2001 Redemptions involved ministerial transactions performed in accordance with pre-established, objective procedures. As a result, the applicant represents that the transactions did not permit UBOC or a UBOC Affiliate to use its influence or control to purchase particular securities from the HighMark Portfolios. In addition, the applicant states that all Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

10. The applicant states that, to the extent possible, the Retirement Plan transferred Shares in return for a proportionate share of the securities

[10] The applicant has not requested exemptive relief with respect to any investment in the HighMark Portfolios by the Retirement Plan. The applicant notes that the Retirement Plan may acquire or redeem shares in the HighMark Portfolios or any other Funds pursuant to Prohibited Transaction Exemption (PTE) 77–3. In this regard, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company be an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds by the Retirement Plan or any other In-house Plan is covered by PTE 77–3.

[11] The affiliated managers would include HighMark Capital Management, Inc. The applicant states that HighMark Capital Management, Inc. manages any separate account holding In-house Plan assets outside the Funds without compensation from the in-house Plan, other than reimbursement of direct expenses as permitted by ERISA.

[12] As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77–3 to the acquisition of the Shares by the Retirement Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the Retirement Plan. In this regard, the Department directs the applicant's attention to an advisory opinion issued to Federated Investors [Advisory Opinion 98–06A (July 30, 1998)], in which the Department noted that if the decision by a plan fiduciary to enter into a transaction is not "solely in the interest" of the plan's participants and beneficiaries, e.g., if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77–3.

[13] The applicant represents that the HighMark Funds' board of trustees in 2000 adopted a resolution establishing objective procedures for in-kind redemptions intended to conform with the requirements set forth in a no-action letter issued by the staff of the Securities and Exchange Commission re *Signature Financial Group, Inc.* (1999 SEC No-Act.LEXIS 981, avail. 12/28/99)) ("the Signature Financial letter") governing in-kind redemptions of shares held by "affiliated shareholders" of the HighMark Funds. The procedures require, among other things, that the redemption be effected on a pro rata basis, based on the relevant HighMark Portfolios' current net assets at the time of redemption, and that the board of trustees verify that an in-kind redemption is effected in accordance with the procedures.

[14] The applicant informed the Department that on November 26, 2001, an in-kind distribution was made of the Retirement Plan's entire investment in the HighMark International Fund. U.S. Trust served as the independent fiduciary for this transaction. The applicant represents that UBOC also sponsors a 401(k) Plan which permits participants to direct the investment of their plan accounts among various investment options, including several HighMark Funds. According to the applicant, the 401(k) plan intends to redeem all of its shares in the Highmark Growth Fund and the HighMark Large Cap Value Fund (formally known as the Income Equity Fund) in connection with a change of investment options. The applicant has been informed by the Funds that it will effect the requested redemptions in-kind. According to the applicant, the securities will be distributed to mutual funds that replace the Highmark Growth Fund and the Highmark Large Cap Value Fund as investment options under the 401(k) Plan. UBOC anticipates that these redemptions would occur on or about December 14, 2001, subject to completion of the independent fiduciaries review and approval of the transactions.

held by each HighMark Portfolio in the June 15, 2001 Redemptions. According to the applicant, the Retirement Plan received only cash and Transferable Securities pursuant to the June 15, 2001 Redemptions. In this regard, each Transferable Security subject to a Redemption was transferred in-kind to the Retirement Plan. However odd lot securities, fractional shares and accruals on such securities were transferred in cash.[15] The applicant states that the June 15, 2001 Redemptions were carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Retirement Plan.[16]

11. The applicant represents that, for purposes of the June 15, 2001 Redemptions, the values of the HighMark Portfolio securities were determined based on the current market price of such securities as of the close of business on June 15, 2001 (the Valuation Date). As required by the no action letter re Signature Financial Group, Inc. issued by the staff of the Securities and Exchange Commission, the value of the securities in each Portfolio were determined by using the valuation procedures established by the HighMark Funds in accordance with Rule 2a–4 under the 1940 Act.[17] In this regard, responsibility for valuations rests with the HighMark Funds' administrator (the Administrator), which is unrelated to UBOC. The Administrator has contracted with independent, third-party pricing agents approved by the HighMark Funds' board of trustees to provide security quotations.[18]

12. The applicant represents that, in connection with the June 15, 2001 Redemptions, U.S. Trust Company, N.A. (U.S. Trust), a federally chartered bank, confirmed its independence from UBOC and is qualified to serve as an Independent Fiduciary, as that term is defined in Section II of the proposed exemption. U.S. Trust, in turn, represented that it understood and accepted the duties, responsibilities and liabilities in acting as a fiduciary under ERISA for the Retirement Plan.

U.S. Trust represents that it was responsible for (i) determining whether the terms of each Redemption of Shares of the HighMark Portfolios was fair to the participants of the Retirement Plan and comparable to and no less favorable than terms that would be reached at arms' length between unaffiliated parties, and (ii) opining as to the fairness and reasonableness of each such Redemption, as compared to a redemption for cash and subsequent reinvestment of such cash. This determination and opinion was set forth in a written report (the Report) dated June 8, 2001. Specifically, in the Report, U.S. Trust stated that:

(a) the Redemptions would not involve certain transaction costs

must use those procedures for transactions with its in-house plans, as these in-house plans are affiliates of the mutual fund. The Department agreed to the use of the Signature Financial Letter procedures for determining the value of the securities in this in-kind transaction, with certain limitations.

The Signature Financial Letter requires pro rata distribution of the securities. The letter does not address the marketability of such securities. The range of securities distributed pursuant to this "safe harbor" may therefore be broader than range of securities covered by SEC Rule 17a–7, 17 CFR Sec. 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fall within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which "market quotations are readily available." SEC Rule 17a–7(a). The Department has determined, and the applicant agrees, that exemptive relief in this case will also be limited to in-kind distribution of securities for which market quotations are readily available. The value of any other securities will be paid to the plan in cash.

[18] Under the exemption requested by UBOC, the Plan will receive only securities for which market quotations are readily available (as determined pursuant to the Funds' procedures described above) or cash.

otherwise incurred in a cash redemption;[19]

(b) the Shares and cash associated with the Redemptions would be valued in accordance with procedures established by the HighMark Funds and applicable law, and that the same procedures are used to determine the net asset value of the HighMark Portfolios; and

(c) U.S. Trust reviewed a written document detailing the procedures for in-kind redemptions for affiliated parties, and concluded that it matched its understanding of procedures for in-kind redemptions.

[19] The Report states that, with respect to the Redemptions involving Shares of the HighMark Value Momentum Fund and the HighMark Growth Fund, if the Retirement Plan were to receive cash rather than securities pursuant to the transaction, substantially all (in the case of the HighMark Value Momentum Fund) or the majority (in the case of the HighMark Growth Fund) of that cash would be reinvested in securities which would result in brokerage commissions and a buy-sell spread, the costs of which would be incurred by the Retirement Plan. The Report states further that depending on the form and timing of the Redemptions, part of the Portfolios' selling costs might be absorbed by the Retirement Plan as a shareholder in the Portfolios. Therefore, according to U.S. Trust, to the extent that the Redemption of the Retirement Plan's Shares of the HighMark Value Momentum Fund and the HighMark Growth Fund were effected in-kind, those costs would be avoided.

U.S. Trust notes, however, that the Retirement Plan would sell substantially all of the securities received in redemption of its Shares of the HighMark Small Cap Value Fund shortly after the Redemption. In this regard, the applicant represents that the unaffiliated investment manager appointed to manage the "small capitalization stock" portion of the Retirement Plan's assets on a separate account basis after the June 15, 2001 Redemptions pursues an investment strategy that is different from that pursued by the HighMark Small Cap Value Fund. Accordingly, the Retirement Plan, at the request of the new manager, sold substantially all of the securities it received from the HighMark Small Cap Value Fund in connection with the June 15, 2001 Redemptions. However, UBOC contributed a cash payment to the Retirement Plan in an amount estimated by U.S. Trust to be equal to the difference between the transaction costs associated with the Retirement Plan's in-kind redemption of Shares of the HighMark Small Cap Value Fund and the transaction costs associated with a hypothetical cash redemption of such Shares. In calculating the transaction costs of a hypothetical cash redemption, U.S. Trust assumed that, prior to the cash redemption, the Fund would raise cash by selling the securities that were, in fact, distributed in kind. Under this scenario, those selling costs would be allocated proportionately across all shareholders in the Fund (including the Retirement Plan) before the Retirement Plan received its cash distribution. U.S. Trust concluded that UBOC's cash payment to the Retirement Plan made the Retirement Plan whole for redeeming its HighMark Small Cap Value Fund Shares in kind rather than in cash and, consequently, the redemption of such shares was fair to Retirement Plan participants.

In connection with the November 26, 2001 in-kind distribution from the HighMark International Fund, the same issue arose, i.e., the new investment manager choose not to retain most of the securities distributed in kind. As in the earlier Small Cap Value Fund transaction, UBOC has agreed to make a cash payment sufficient to make the Retirement Plan whole.

[15] According to the report submitted by the Independent Fiduciary, none of the HighMark Portfolios held securities which were not Transferable Securities at the time of the June 15, 2001 Redemptions, and, therefore, there was no cash adjustment to reflect the value of such securities. The applicant states, however, that such cash adjustments may be made with respect to future Redemptions to the extent relevant Fund holds such excluded securities.

[16] According to the applicant, the securities transferred from each HighMark Portfolio in the June 15, 2001 Redemptions were selected under a "first in, first out" (FIFO) procedure. Under this procedure, "tax lots" of securities to be distributed in kind in satisfaction of the in-kind redemption were selected on the basis of when the securities were acquired for the Portfolio, with the securities held longest by the Portfolio being distributed first, until distribution of the Plan's pro rata share of such security was completed. The applicant represents that the FIFO procedure is the one normally used by the High Mark Funds equity and fixed income funds for selecting securities to be sold or distributed in kind. The applicant further represents that with respect future in-kind redemptions pursuant to this exemption, securities will also be selected on a "first in, first out" basis or similar objective, ministerial procedure.

[17] In the no action letter to Signature Financial Group, Inc. discussed above, the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to Section 17(a) of the Investment Company Act of 1940 for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this "safe harbor" must value the securities to be distributed to an affiliate in an in-kind distribution "in the same manner as they are valued for purposes of computing the distributing fund's net asset value." The applicant represented that, having adopted the Signature Financial Letter procedures for use in its affiliate-transactions, it

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In the Report, U.S. Trust stated that, based upon its review of the methodology of the Redemptions of Shares of each of the HighMark Portfolios and an analysis of the costs associated with the Redemptions versus a cash redemption for the Retirement Plan's assets held by the HighMark Portfolios (and, with respect to the HighMark Small Cap Value Fund, the cash payment to the Retirement Plan noted above), the Redemptions would be fair to the participants of the Retirement Plan. The Report also stated that the methodology used to conduct the Redemptions would be comparable to and no less favorable than a similar in kind redemption reached at arms' length between unaffiliated parties. Therefore, U.S. Trust approved the Redemptions from the HighMark Portfolios, provided the Redemptions were conducted in accordance with the information provided to it by UBOC and the HighMark Funds.

The Report also states that, if the Redemptions were thereafter undertaken, U.S. Trust would confirm in writing whether each such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report, based on representations requested from UBOC and testing a limited sampling of certain material aspects of the Redemptions, deemed in U.S. Trust's judgment to be representative. Accordingly, subsequent to the June 15, 2001 Redemptions, U.S. Trust conducted the post-transaction review described above and concluded, based on information provided to it, that the Retirement Plan received its pro rata portion of each Transferable Security (rounded to the nearest round lot) held by the HighMark Portfolios and its pro rata portion of cash that the HighMark Portfolios held based on the Plan's ownership percentage of each such Portfolio (or, in the case of the Small Cap Fund, the percentage of the Small Cap Fund that the Redemption amount represented), and that the June 15, 2001 Redemptions were effectuated in a manner consistent with the required criteria and procedures set forth in the Report.

13. In summary, it is represented that the June 15, 2001 and November 26, 2001 Redemptions satisfied, and any Redemptions to occur in the future will satisfy, the statutory criteria for an exemption under section 408(a) of ERISA for the following reasons:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and UBOC Affiliates);

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a-4 under the 1940 Act (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, or any UBOC affiliate, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to the Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval of such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing; and

(K) Each of the In-house Plan's dealings with the Funds, the Investment Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares.

Notice to Interested Persons

The applicant will provide notice of the proposed exemption within 30 days after publication thereof in the **Federal Register** (i) to active participants in the Retirement Plan by electronic communication through applicant's on-line employee intranet service and by posting at major job sites, and (ii) to retiree participants in pay status in the Retirement Plan by first class mail. Notices posted at major job sites will include a copy of the proposed exemption as published in the **Federal Register**. The notices will inform interested persons of their right to comment and/or request a hearing. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan, et al (the Original Plans) Located in Minneapolis, Minnesota

[Application Nos. D–11017 through D–11023]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, effective October 18, 1996, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act, and the sanctions resulting from section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the acquisition (the Stock Acquisition) and holding of certain shares of Cargill, Incorporated common stock (the Common Stock) by the Cargill, Incorporated and Associated Companies Master Pension Trust (the Master Trust); and (2) the acquisition, holding and, where relevant, exercise by the Master Trust of a certain irrevocable put option associated with the Common Stock (the Put Option); provided that the following conditions are satisfied:

(A) Prior to the Stock Acquisition, a qualified, independent fiduciary acting on behalf of the Master Trust (the Independent Fiduciary) determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary took and will take whatever action is necessary to protect the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option.

(E) Upon request by the Independent Fiduciary, Cargill, Incorporated (Cargill) purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) the price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by: (1) any Original Plan; or (2) after the Original Plans were merged into each other on January 1, 1997, any remaining Original Plan that continued to have an undivided interest in the assets of the Master Trust (a Remaining Plan).

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25 percent (25%) of the total current fair market value of the Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust, or between Cargill and any Original Plan or Remaining Plan (collectively, the Plans), arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (the Reimbursement), for the Master Trust's payment of certain legal expenses associated with the Master Trust's holding of the Common Stock (the Legal Fees).

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures which require that a Remaining Plan fiduciary: (1) review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures which require that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) In the event this proposed exemption is granted, Cargill, within 60 days of the date of such grant, files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

EFFECTIVE DATE: The effective date of this proposed exemption, if granted, is October 18, 1996.

Summary of Facts and Representations

1. Cargill is a Delaware corporation established in 1865 by William W. Cargill (Mr. Cargill). Cargill is engaged in, among other things, the wholesaling of agricultural and other bulk commodities. As of February 28, 2001, Cargill had approximately 85,000 employees and annual revenues in excess of $47 billion.

2. By October of 1993, Cargill had established certain tax qualified defined benefit plans (the Original Plans). At that time, the Original Plans were comprised as follows:

a. Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan (the Salaried Employees' Pension Plan);

b. Cargill, Incorporated Pension Plan for Seaboard Grain Miller Represented Employees (the Seaboard Grain Miller Employees' Pension Plan);

c. Cargill, Incorporated and Associated Companies Pension Plan for Grain Miller Represented Employees (the Grain Miller Employees' Pension Plan);

d. Cargill, Incorporated and Associated Companies Pension Plan for Union Represented Hourly Wage Employees (the Hourly Wage Employees' Pension Plan);

e. Cargill, Incorporated and Associated Companies Pension Plan for Production Employees (the Production Employees' Pension Plan);

f. Cargill, Incorporated and Associated Companies Pension Plan for Poultry Products Employees (the Poultry Products Employees' Pension Plan); and

g. Cargill, Incorporated and Associated Companies Pension Plan for Union Represented Poultry Products Employees (the Union Poultry Products Employees' Pension Plan);

3. The Common Stock is one of five classes of stock authorized by Cargill. Each share of Common Stock, and, generally, each share of Cargill's other classes of stock, is entitled to one vote. In addition, holders of the Common Stock are entitled to receive dividends on their shares in an amount decided annually by Cargill's Board of Directors.

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4. Prior to October 18, 1996, the Common Stock was held solely by the lineal descendants of Mr. Cargill and their spouses and ex-spouses (the Cargill Common Stock Holders), either directly or indirectly through corporations and trusts of which they are beneficiaries.[20] On October 18, 1996, the Original Plans obtained a portion of the Common Stock through the Stock Acquisition.[21] In this regard, on that date, the Master Trust acquired 167,832 shares of the Common Stock pursuant to the Stock Acquisition, for a purchase price of $178.75 per Share. The applicant represents that the Original Plans paid cash for the Common Stock, the aggregate value of which was $29,999,970 as of the date of the Stock Acquisition. According to the applicant, immediately after the Stock Acquisition, the Common Stock represented less than 10% of the assets in the Master Trust.[22]

5. The applicant represents that State Street Bank and Trust Company (State Street) acted as Independent Fiduciary for purposes of the Stock Acquisition. State Street represents that it is independent of Cargill and receives less than 1% of its aggregate annual gross revenue from Cargill. In addition, State Street represents that it is qualified to act as Independent Fiduciary on behalf of the Master Trust due to its status as one of the country's largest trust companies and its extensive experience in managing retirement plan assets. The applicant represents that, subsequent to the Stock Acquisition, State Street has acted as Independent Fiduciary with respect to the Plans' continued holding of the Common Stock and the Put Option.

[20] As a result, the Common Stock did not satisfy the definition of "qualifying employer security". In this regard, with respect to defined benefit plans, 407(d)(5)(A) of the Act defines a "qualifying employer security" as, among other things, "stock" which satisfies the requirements of section 407(f)(1) of the Act. Section 407(f)(1)(b) of the Act states that "stock" meets the requirements of that section to the extent that at least 50 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by persons independent of the issuer.

[21] Since the Common Stock was not a "qualifying employer security", the Stock Acquisition violated section 407(a)(1)(A) of the Act which provides that a plan may not acquire or hold any employer security which is not a qualifying employer security. In violating section 407(a) of the Act, the Stock Acquisition also violated section 406(a)(1)(E) of the Act which provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction involving the acquisition, on behalf of the plan, of any employer security in violation of section 407(a) of the Act.

[22] The applicant states that, as of November 30, 2000, the Common Stock represented approximately 4% of the total assets held by the Master Trust.

6. The applicant represents that, for purposes of the Stock Acquisition, the Cargill Common Stock Holders proposed a price of $178.75 per share. The applicant states that the Independent Fiduciary retained a qualified, independent advisor for the purpose of determining whether: (1) the proposed $178.75 per share sale price exceeded the fair market value of such shares; and (2) the terms of the proposed Stock Acquisition were fair and reasonable to the Master Trust from a financial point of view. In this regard, the applicant states that the Independent Fiduciary selected Duff & Phelps Financial Consulting Co. (Duff & Phelps) to make such determinations.

In a letter dated October 18, 1996, Duff and Phelps stated that, in its capacity as financial advisor to the Independent Fiduciary for purposes of the Stock Acquisition, it reviewed, among other things: audited financial statements of Cargill; unaudited interim financial statements of Cargill for the three months ended August, 31, 1996; and certain internal documents and analyses provided by Cargill management. In carrying out its duties, Duff and Phelps stated that it additionally reviewed relevant financial and operating information for specific publicly traded companies which it deemed comparable in whole or in part to Cargill.

Upon this review, Duff and Phelps compared Cargill's historical results and future prospects against several sets of publicly traded companies. Duff and Phelps stated that the fair market value of the Common Stock was thereafter determined upon reviewing the relative performance and pricing multiples of such companies and discounting the derived common stock value to reflect the illiquidity of the Common Stock. In the October 18, 1996 letter, Duff and Phelps concluded that: (a) the price of $178.75 per share to be paid by the Master Trust was not in excess of fair market value within the meaning of ERISA; and (b) the terms of the proposed Stock Acquisition were fair and reasonable to the Master Trust from a financial point of view.

The applicant represents that, upon the Independent Fiduciary's review of the information provided by Duff and Phelps, the Independent Fiduciary determined that, as of October 18, 1996, the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust. The applicant states that, in consideration of this, on that date, the Independent Fiduciary directed that the Master Trust acquire the Common Stock pursuant to the Stock Acquisition.

7. The applicant represents that at no time subsequent to the Stock Acquisition did the Common Stock represent more than 10% of the fair market value of any Original Plan or, after the merging of the Original Plans (see paragraph 9), any Remaining Plan. The applicant additionally represents that the Master Trust has never held, and will never hold, more than 25% of the aggregate amount of Cargill's issued and outstanding Common Stock.

8. In addition to receiving the Common Stock pursuant to the Stock Acquisition, the Trust received the Put Option. In this regard, the Trust received an option which requires that Cargill, at the direction of the Independent Fiduciary, purchase from the Master Trust any or all of the Common Stock held by the Master Trust. According to the terms of the Put Option, the price of any share sold pursuant to a Put Option shall be the greater of: (1) the price at which the Master Trust acquired the Common Stock; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised. The applicant represents that the Put Option has remained in effect since the Stock Acquisition and will continue to remain in effect to the extent the Master Trust continues to hold any of the Common Stock.

9. After the Stock Acquisition, Cargill decided to merge certain of the Original Plans. In this regard, on January 1, 1997, the Seaboard Grain Miller Employees' Pension Plan, the Grain Miller Employees' Pension Plan, and the Union Poultry Products Employees' Pension Plan were merged into the Salaried Employees' Pension Plan. In addition, at the same time, the Poultry Products Employees' Plan was merged into the Production Employees' Pension Plan. Thus, after the mergers, the following plans remained: the Salaried Employees' Pension Plan having 22,726 participants and $652,213,466 in total assets as of December 31, 1999; the Production Employees' Pension Plan having 6,564 participants and $48,773,333 in total assets as of December 31, 1999; and the Hourly Wage Employees' Pension Plan having 8,449 participants and $147,72,972 in total assets as of December 31, 1999.

10. Subsequent to the Stock Acquisition, State Street retained responsibility for monitoring the Master Trust's continued ownership of the Common Stock. Thus, for as long as the Master Trust held the Common Stock, State Street, as Independent Fiduciary, was required to determine whether it would be in the interests of the Master Trust for the Master Trust to exercise the Put Option. State Street was, therefore, responsible for monitoring the financial status of Cargill at regular intervals to determine whether the Common Stock continued to be a stable and prudent investment for the Plans and the Master Trust.

State Street was also given full investment discretion with respect to the Common Stock. As a result, State Street had the authority to: (1) Direct the trustee of the Master Trust with respect to the exercise of voting rights, conversion rights or tender offers; (2) join in or oppose voting trusts, mergers, consolidations, foreclosures, reorganizations, recapitalizations and liquidations and (3) exercise any and all rights relating to the Common Stock. The applicant represents that State Street will continue to have each of these responsibilities for as long as the Master Trust and the Plans hold the Common Stock.

11. Cargill established, and continues to maintain, an escrow account (the Escrow Account) to secure Cargill's obligations under the Put Option. The applicant represents that the Escrow Account will remain in effect for the duration of the Trust's ownership of any of the Common Stock and will be maintained at an independent banking institution approved by State Street. The purpose of the Escrow Account, the applicant states, is to ensure that the Master Trust will receive a price for the Common Stock that is in accordance with the terms of the Put Option. Specifically, pursuant to any exercise of the Put Option by the Master Trust, State Street is entitled, as Independent Fiduciary, to draw upon the Escrow Account to satisfy Cargill's obligations under the terms of the Put Option in the event Cargill fails to purchase the Common Stock at the price required by such option. According to the applicant, the Escrow Account contains only cash and/or United States government securities amounting to at least 25% of the total fair market value of the Common Stock held by the Master Trust. Subsequent to the Stock Acquisition, the Master Trust has at all times had, the applicant states, a lien against the assets in the Escrow Account that gives the Master Trust priority over all creditors of Cargill with respect to the assets in the Escrow Account. The applicant represents that this lien will remain in place to the extent the Master Trust continues to hold any of the Common Stock.

12. Cargill previously received temporary exemptive relief, pursuant to Prohibited Transaction Exemption (PTE) 94–23 (59 FR 10830 (March 8, 1994)), for the purchase and holding of Common Stock by the Master Trust.[23] Subsequent to the publication of the proposed exemption in the **Federal Register** (58 FR 58194 (October 29, 1993), the Department received a written comment objecting to the Master Trust's payment of the fees of State Street and Duff and Phelps. In response, as noted in PTE 94–23, Cargill agreed to pay such fees in order to avoid the depletion of the assets of the Master Trust.

Cargill failed to meet this requirement when it inadvertently caused the Master Trust to pay the Legal Fees. In this regard, subsequent to the Stock Acquisition, Cargill directed that the Master Trust pay certain of the Independent Fiduciary's legal fees, the amount of which totaled $80,791. The applicant represents that such payment was due, in part, to certain personnel changes occurring within Cargill. Since Cargill failed to act in accordance with the representations it made in response to a commentator under PTE 94–23, the relief provided by the exemption ceased to be available. As a result, the applicant is seeking retroactive relief for the Stock Acquisition, as well as the Plans' subsequent holding of the Common Stock, and the acquisition, holding and potential exercise of the Put Option, by means of this proposed exemption.

13. The applicant states that Cargill has taken the appropriate steps to reimburse the Master Trust for its payment of the Legal Fees. In this regard, the applicant represents that the Master Trust was reimbursed $80,791 for the Legal Fees. The applicant states that, in addition, Cargill paid certain interest to the Master Trust. According to the applicant, the amount of such interest, $36,696, represented the Master Trust's overall rate of return on its entire portfolio of investments from the date the Legal Fees were paid by the Master Trust to the date the Legal Fees were refunded to the Master Trust.

The applicant represents that Cargill will undertake certain steps to prevent future inappropriate payments of expenses by the Master Trust. In this regard, the applicant represents that, if this proposed exemption is granted, Cargill will designate a fiduciary, as such term is defined by the Act, to review all expenses submitted for payment by the Master Trust. The applicant represents that, only upon such fiduciary's determination that an expense is reasonable and necessary for the administration of a Remaining Plan will the fiduciary approve, in writing, the payment of the expense. In addition, the applicant represents that no expense associated with any transactions between Cartill and a Remaining Plan will be paid by such Remaining Plan unless Cargill obtains a written opinion from independent legal counsel.

[23] In this regard, the relief provided by PTE 94–23 expired on March 8, 1999 with respect to the acquisition of Common Stock by the Master Trust. As noted in the granted exemption, however, the Master Trust was allowed to hold the Common Stock subsequent to the end of the five year period.

14. In summary, that applicant represents that the proposed exemption is protective of, and in the best interests of, the Remaining Plans and the Master Trust since:

(A) Prior to the Stock Acquisition, the Independent Fiduciary determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and continues to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary protected the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to protect such rights as long as the Master Trust holds such stock and Put Option.

(E) Upon request by the Independent Fiduciary, Cargill purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) The price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date any Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by any Original Plan or any Remaining Plan.

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25% of the total current fair market value of the

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Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust; or between Cargill and a Plan, arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (i.e., the Reimbursement), for the Legal Fees.

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures requiring that a plan fiduciary: (1) review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures requiring that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) In the event this proposed exemption is granted, Cargill, within 60 days of the date of such grant, files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

Notice to Interested Persons: The applicant represents that notice to interested persons will be made within twenty (20) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Blue Cross and Blue Shield of Kansas, (the Company) and Anthem Insurance Companies, Inc. (Anthem), Located in Topeka, KS and Indianapolis, IN, Respectively

[Application No. D–11030]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[24]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the receipt of cash (Cash), including without limitation, Cash held in an escrow fund (the Escrow Fund), by any eligible policyholder (the Eligible Policyholder) of the Company and Anthem, the Company's future parent,[25] which is an employee benefit plan (the Plan), as well as the Blue Cross and Blue Shield of Kansas, Inc. Health Benefit Plan (the Company Health Plan), which is sponsored by the Company, in exchange for the termination of such Plan's membership interest in the Company, in accordance with the terms of a plan of conversion (the Plan of Conversion) adopted by the Company and implemented pursuant to Article 40, Chapter 40 of the Kansas Statutes Annotated (the K.S.A.)

The proposed exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is implemented in accordance with procedural and substantive safeguards that are imposed under Kansas Insurance Law for a "sponsored demutualization" and is subject to review and approval by the Kansas Insurance Commissioner (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of the Company as part of such Commissioner's review of the Plan of Conversion, and only approves the Plan following a determination that —

(1) Such Plan is (i) fair and equitable to policyholders, (ii) complies with the requirements of Kansas law, and

(iii) does not unjustly enrich any officer, director, agent or employee of the company; and

(2) The new stock insurer meets the minimum requirements to obtain a certificate of authority to transact business in Kansas and its operation is not hazardous to existing or future policyholders or the public.

(c) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Conversion after receiving full written disclosure from the Company.

(d) With the exception of the Company Health Plan, one or more independent fiduciaries of a Plan that is an Eligible Policyholder elects to receive Cash pursuant to the terms of the Plan of Conversion and neither the Company nor any of its affiliates exercises any discretion or provides "investment advice," within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(e) In the case of the Company Health Plan, a committee (the Company Health Plan Committee), comprised of management-level employees of the Company, determines whether to vote for or against the implementation of the Plan of Conversion, but does not otherwise exercise investment discretion over the Company Health Plan's assets.

(f) All Eligible Policyholders that are Plans participate in the demutualization on the same terms and conditions as other Eligible Policyholders that are not Plans.

(g) One-third of the total Cash consideration is distributed to an Eligible Policyholder on a *pro rata* basis as the "fixed component" and the remaining two-thirds Cash consideration is allocated among each Eligible Policyholder as the "variable component" in accordance with a fair and objective standard, based upon actuarial formulas which take into account a policy's past and future contributions to the Company's surplus.

(h) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of the demutualization consideration.

(i) All of the Company's policyholder obligations remain in force and are not affected by the Plan of Conversion.

(j) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

[24] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[25] For purposes of this proposed exemption, references to the Company will generally include references to Anthem, unless noted, or unless the context requires otherwise.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term "Blue Cross and Blue Shield of Kansas, Inc." means the Company and its future parent, Anthem, unless otherwise noted, or unless the context requires otherwise.

(b) An "affiliate" of the Company includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Company (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term "Eligible Policyholders" means persons who, according to the Company's records, are the holders of certain in force group and non-group insurance policies of the Company on the date on which the Company's Board of Directors approves and adopts the Plan of Conversion.

Summary of Facts and Representations

Description of the Parties

1. The Company, which is located in Topeka, Kansas, is a mutual insurance company organized in 1992 under Kansas law. Through its operating divisions and subsidiaries, the Company is engaged in a variety of activities including providing accident and health coverage to subscribers, substantially all of whom are residents of the State of Kansas. The Company also performs administrative services and claims processing for other Blue Cross and Blue Shield plans' subscribers and for programs such as Medicare, Medicaid and the Federal Employee Health Benefits Program. As of December 31, 2000, the Company had total assets of approximately $731 million. As of February 9, 2001, the Company's most recent financial strength rating from A.M. Best Company, Inc. was "A–" or "Excellent."

As a mutual insurance company, the Company does not have capital stock but instead has members (Members) who are owners of policies and contracts issued by the Company. A policyholder's membership interest in the Company includes the right to vote, and to participate in the distribution of the Company's surplus in the event of the Company's voluntary dissolution or liquidation. Each Member has one vote. Pursuant to Article 40, Chapter 40 of the Kansas Statutes Annotated (i.e., the K.S.A.), the Company may be converted to a stock company under a process called "demutalization." In the event of such a demutualization, Eligible Policyholders of the Company may receive Cash consideration (some or all of which may be held in an escrow fund, as described below) in exchange for their mutual membership interests in the Company. The Company's demutualization will not affect the rights of policyholders under their insurance contracts. In addition, only the Company's policyholders, and not policyholders of an affiliate of the Company, may vote and receive Cash consideration in connection with the demutualization.

2. The Company provides a variety of insurance products to both non-group and group policyholders. As of October 25, 2001, the Company had 171,403 Eligible Policyholders. The non-group policyholders include 124,347 Medicare Supplement policyholders and 36,317 policyholders holding non-group major medical policies or specialty policies such as "cancer only" indemnity policies. The remaining 10,739 are group policyholders. Of the group policyholders, approximately 6,000 are ERISA-covered welfare plans.

3. Anthem, which will become the ultimate parent of the Company pursuant to the Plan of Conversion, maintains its principal place of business in Indianapolis, Indiana. Anthem is currently organized as a stock insurance company under the laws of the State of Indiana. Together with its subsidiaries, Anthem is one of the nation's largest health benefits companies. As an independent licensee of the Blue Cross Blue Shield Association (BCBSA), Anthem and its affiliates offer BCBSA-branded products throughout Indiana, Ohio, Kentucky, Connecticut, Colorado, Nevada, New Hampshire and Maine. In addition, Anthem and its affiliates provide health care coverage or services to over 7 million people in these states. As of December 31, 2000, Anthem had approximately $5.7 billion in assets, $3.8 billion in liabilities and surplus of $1.9 billion.

4. The Company sponsors the Company Health Plan, a welfare plan which is expected to be an Eligible Policyholder entitled to receive consideration in connection with the implementation of the Plan of Conversion discussed herein. The Company Health Plan provides health insurance benefits to approximately 2,200 employee and retiree participants (and their respective dependents) through three separate benefit programs based on the participants' location within Kansas: (a) a health maintenance organization program with a self-referral benefit; (b) a preferred provider program; and (c) a traditional major medical program. Each program includes coverage for medical care, hospitalization, prescription drugs, and dental care, subject to the terms and conditions of the program. Thus, the Company Health Plan's assets consist solely of insurance and premiums withheld from employees which are remitted to the insurers and there is no valuation of the assets of such Plan.

Active employees do not have an option among these three programs. Instead, those living in the service area of the health maintenance organization are enrolled in that coverage, and those outside the service area are enrolled in the preferred provider program. Retirees in the health maintenance organization service area can choose between that coverage and the traditional major medical program. Retirees living outside that service area are enrolled in the preferred provider program. The Company pays 75 percent of the cost of coverage of employees, retirees and their respective dependents. Under the Plan of Conversion, the Company may receive approximately $1,178,000 in the distribution if the total distribution is $321 million. The Company intends to use the entire amount of the distribution in respect of the Company Health Plan to defray employee and retiree costs of coverage within a year of the distribution.

The Company Restructuring

5. On May 24, 2001, the Company's Board of Directors (the Board) authorized management to develop a plan of demutualization (i.e., the Plan of Conversion) pursuant to which the Company would be converted from a mutual insurance company to a stock insurance company. The Plan of Conversion, which was adopted by the Board on October 25, 2001, provides for the conversion (the Conversion) of the Company into a stock insurance company and the sale by the Company, pursuant to an Alliance Agreement, dated as of May 30, 2001 (the Alliance Agreement), of certain newly-issued shares of common stock to Anthem, Anthem West, Inc., an Indiana company and a wholly-owned subsidiary of Anthem, or to Anthem, Inc., a newly-formed public holding company and the parent of Anthem, to hold all of the shares of its common stock.[26] In the

[26] Anthem has separately applied to the Department for an administrative exemption in

Continued

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Conversion, all policyholders' membership interests in the Company will be extinguished in exchange for a special distribution (the Special Distribution), to the extent declared by the Board, plus an additional amount of Cash that will be deposited into the Escrow Fund (described in Representation 9 of the proposal) and distributed, after resolution of a potential contingent litigation matter (the Contingent Litigation Matter) of the Company, to the Eligible Policyholders as provided in the Plan of Conversion.

The Board believes that the Company's Conversion into a stock corporation and the sale of the Company to Anthem, which makes possible the distribution of the value of the Company to Eligible Policyholders, is in the best interests of the Company's policyholders. If the Company is to continue to provide high quality insurance services at reasonable costs to its policyholders in a health insurance market that has become national in scope, it must spread its costs over a sufficiently large policyholder base. The Company, however, holds a certificate of authority to sell insurance only in Kansas.

Even if it were to seek to sell coverage in other states, it could not use the Blue Cross and Blue Shield names and service marks to do so, for those names and service marks are controlled by the BCBSA, whose licensees are provided exclusive areas within which they may use those names and service marks.

In addition to being unable to expand geographically, the Company finds that its potential customer base within the state shrinks every year, as national corporations purchase or supplant local businesses. The Company is also unable to diversify its risks geographically. An adverse local illness, or adverse local legislation, or a natural disaster could have substantial impact on its financial soundness. The Conversion, wherein the Company will become a part of a substantially larger, multi-state insurer, will benefit the Company and its policyholders in several ways:

- The Conversion will provide the Company with sufficient capital to compete with national commercial companies as well as access to a larger total capital pool with which to acquire other health plans or related businesses.
- The Conversion will enable the Company to take advantage of economies of scale by eliminating duplicative resources and streamlining its compliance efforts in an increasingly complex regulatory environment.
- By virtue of the Company's becoming part of the diversified geographical base of Anthem that results from the demutualization, the Company will have increased flexibility in responding to localized adverse risk events, avoiding the twin perils of decreased financial stability or excessive increases in rates to avoid financial instability. By having such a diversified base, the Company will have the ability to participate better in insurance offerings to multi-state accounts.
- The Conversion will result in the Company being able to offer a greater variety of career paths to its employees and the potential for greater and more varied challenges, which in turn should permit it to continue to attract and retain the kinds of employees needed to provide its policyholders with quality service.
- The Conversion will allow the Company to take advantage of best practices in health insurance from Anthem and its health insurance affiliates.
- The Conversion will allow the Company to maintain a significant level of local employment.
- The Conversion will provide for sustained local input into medical policy.
- The Conversion will provide Eligible Policyholders with an opportunity to receive Cash in exchange for their otherwise illiquid membership interests, which will be extinguished. Thus, Eligible Policyholders will realize economic value from their membership interests that is not currently available to them so long as the organization remains a mutual company.

6. Accordingly, the Company requests an administrative exemption from the Department which, if granted, will permit the receipt of Cash (including, without limitation, the Cash consideration to be held in the Escrow Fund described herein) by an Eligible Policyholder that is a Plan, including the Company Health Plan, in exchange for such Eligible Policyholder's membership interest in the Company, in accordance with the Plan of Conversion adopted by the Company and implemented pursuant to Kansas Insurance Law.

The Company represents that the receipt of Cash by a Plan, in exchange for such Eligible Policyholders' mutual membership interest in the Company, may be viewed as a prohibited sale or exchange of property between the Plan and the Company in violation of section 406(a)(1)(A) of the Act. Moreover, the Company states that the transaction may also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest in violation of section 406(a)(1)(D) of the Act.

The proposed exemption is conditioned upon a number of substantive safeguards. Among the safeguards is the requirement that distributions to Plans pursuant to the exemption must be on terms that are no less favorable to the Plans than Eligible Policyholders that are not Plans. In this regard, Plans that are Eligible Policyholders must participate in the demutualization transaction on the same terms and conditions as Eligible Policyholders that are not Plans. Further, the demutualization will not, in any way, change premiums or reduce policy benefits, guarantees or other policy obligations of the Company to its policyholders and contractholders.

Procedural Requirements under Kansas Insurance Law for Restructuring

7. Kansas Insurance Law provides a regulatory framework for the conversion of a mutual insurance company into a stock company, including a "sponsored demutualization," whereby all of the stock of an insurer is acquired by another company in return for cash. It is represented that the Company's proposed Conversion will be in the nature of a "sponsored demutualization."

K.S.A. 40–4002 requires the demutualizing insurer's board of directors to adopt, by a two-thirds majority, a resolution stating the reasons a conversion to a stock insurance company would be in the best interests of the policyholders of the mutual insurance company. Following adoption of the resolution, a detailed plan of conversion will be developed and approved by a two-thirds majority of the board. The plan of conversion must also be submitted to the Kansas Insurance Commissioner for approval, subject to certain hearing requirements.

Additionally, such plan must be approved by two-thirds of the policyholders of the mutual insurer (or by a simple majority, if a majority of policyholders vote) at a meeting called for the purpose of considering the plan of conversion.[27] Policyholders may vote in person or by proxy. A copy of the plan of conversion and any information the Commissioner deems necessary to

connection with its contemplated demutualization. On November 6, 2001, the Department issued a final exemption (Prohibited Transaction Exemption 2001–44) to Anthem at 66 FR 56133.

[27] It is represented that neither the Company nor any of its affiliates will exercise investment discretion or provide "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to any election made by an Eligible Policyholder that is a Plan.

policyholder understanding, including a summary of the plan of conversion, must be furnished to policyholders.

K.S.A. 40–4003a sets forth alternative structures which may be used for a conversion, including a plan in which policyholders exchange their membership interests for cash or other consideration, and requires the insurer to file a plan of conversion complying with the terms and conditions set forth for such structure. Existing policyholders of a converting insurer have their rights protected under K.S.A. 40–4003c, which provides for policies in force on the effective date of conversion remaining in force, with only voting rights, assessment provisions, and rights to share in surplus being extinguished.

The Commissioner is required to hold a hearing regarding the plan of conversion, giving not less than 20 days' notice to the insurer and the policyholders of the insurer of the hearing. The Commissioner must approve the plan if she finds it is fair and equitable to policyholders, complies with the requirements of the law, does not unjustly enrich any director, officer, agent or employee of the company, and the new stock insurer would meet the minimum requirements to obtain a certificate of authority to transact business in Kansas and its operation would not be hazardous to existing or future policyholders or the public. The amount of consideration provided to policyholders is deemed to be fair and equitable if it is at least equal to the amount of statutory surplus contributed by policyholders. If the Commissioner approves the plan of conversion, he or she will issue a new certificate of authority to the converted insurer and the date of such issuance is deemed to be the conversion date.

In addition to the provisions governing conversion to a stock company, because this transaction involves Anthem's acquisition of the Company's stock, it will also be subject to review under K.S.A. 40–3304. This provision of the statute regulates the acquisition of a domestic insurer and requires Commissioner review and public hearings.

As far as timing is concerned, between November 19 and November 27, 2001, the Company sent notices to policyholders regarding a January 11, 2002 policyholder meeting to consider the Plan of Conversion. The Company anticipates that the Commissioner will hold a hearing on the Plan of Conversion between January 7 and January 9, 2002 and that the Commissioner will approve such Plan during the first quarter of 2002.

Distributions to Eligible Policyholders

8. Under the proposed transaction, Eligible Policyholders of the Company will be entitled to receive total Cash consideration, currently estimated at $321 million, in exchange for their mutual membership interests in the Company.[28] The Cash consideration will consist of two components. In this regard, one-third of the Cash consideration will be distributed to Eligible Policyholders, *pro rata*, as the "fixed component" while the remaining two-thirds will be allocated among Eligible Policyholders as the "variable component." Such latter allocation will be made in accordance with a fair and objective standard, based upon actuarial formulas which will take into account a policy's past and estimated future contributions to the Company's surplus.

On the effective date of the Conversion (the Conversion Date), Eligible Policyholders will be entitled to receive $190 million in exchange for their mutual membership interests in the Company. Of this amount, Anthem will pay $48 million in Cash to the Escrow Fund. In addition, at or prior to the closing, the Company will declare the Special Distribution, which will be payable after the closing to the Eligible Policyholders, in an amount equal to the excess of the Company's consolidated closing book value over $155 million, subject to certain rounding considerations.[29]

The amount of this excess is currently estimated to be approximately $131 million. The Special Distribution, together with 7 percent interest from the Conversion Date, will be paid directly to the Eligible Policyholders as soon as is reasonably practicable following the resolution of the closing balance sheet used to calculate the amount of the Special Distribution.

As stated above, of the $190 million purchase price, $48 million will be held in the Escrow Fund pending the resolution of the Contingent Litigation Matter, involving a subpoena dated February 28, 2001 received by the Company from the Office of the Inspector General, U.S. Department of Health and Human Services. The subpoena seeks documents related to an investigation of possible improper claims against Medicare. The amounts held in the Escrow Fund will be used to pay all costs, expenses and liabilities related to the Contingent Litigation Matter, to pay related taxes which might become payable, and to pay all costs and expenses of the escrow, with any remaining amounts to be distributed to Eligible Policyholders following the final resolution of such matter.[30] At present, the Company has been responding to the subpoena which underlies the Contingent Litigation Matter through the production of documents, which production is nearly complete, except for certain issues with respect to which the Company is awaiting clarification from the U.S. Department of Justice.

Both the Special Distribution and any amounts remaining in escrow will be distributed to Eligible Policyholders in accordance with the distribution principles set forth in the Plan of Conversion. The Board has received an opinion from Dresdner Kleinwort

[28] The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets." See ERISA Advisory Opinion 2001–02A, February 15, 2001.

[29] The Alliance Agreement formerly provided that in the event the Special Distribution equal to the entire excess of the closing book value over $155 million was not paid, the purchase price would be increased by 30 percent of the excess of the undistributed closing book value over $155 million. Under the Alliance Agreement, as amended, and pursuant to a resolution adopted by the Company on October 25, 2001, the Special Distribution is currently equal to the excess of the closing book value over $155 million.

The parties expect that the full amount of the Special Distribution will be paid. It is represented that it is a condition to the company's obligation to close that the Commissioner must grant "any required approval to the payment of the Special Distribution" or the Company will be required to obtain an opinion from its financial advisor confirming the fairness, from a financial point of view, of the purchase price to the Eligible Policyholders in the absence of the Special Distribution.

[30] Even if the entire Escrow Fund were applied to costs related to the Contingent Litigation Matter, it is represented that Eligible Policyholders would still receive $142 million plus the Special Distribution amount (currently estimated at $131 million) within 90 to 120 days after the Conversion Date. Thus, the Company asserts that there is no possibility that Eligible Policyholders will receive nothing in return for their mutual membership interests.

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Wasserstein, independent financial advisors to the Company, that the purchase price payable to the Eligible Policyholders and into the Escrow Fund for the benefit of the Eligible Policyholders pursuant to the Alliance Agreement is "fair" to the Eligible Policyholders, from a financial point of view.

The Escrow Fund

9. The Alliance Agreement provides that $48 million of the $190 million purchase price to be received by the Company from Anthem will be deposited by the Company (or Anthem or its specified affiliate on the Company's behalf) into the Escrow Fund. The Escrow Fund will be a separately-designated, interest-bearing deposit account established on or prior to the Conversion Date, under the terms of an escrow agreement (the Escrow Agreement) which will be entered into by and among the Company, Anthem and an escrow agent (the Escrow Agent).[31] The Escrow Agent will be an unrelated New York bank with trust powers that is selected by the Company, and accepted by Anthem, to act as Escrow Agent under the Escrow Agreement.

The Company will deposit, into the Escrow Fund, amounts recovered from insurers with respect to the Contingent Litigation Matter, net of any reasonable out-of-pocket costs and expenses incurred in effecting such recovery. The Escrow Fund will also provide funding for the payment of (a) the net after-tax amount of costs and expenses attributable solely to the Contingent Litigation Matter and (b) such other amounts as may be specified in the Escrow Agreement or in the Alliance Agreement. Following the satisfaction of all such costs and expenses, the Escrow Agreement will provide for the payment of Cash consideration by the Company to Eligible Policyholders. Tax benefits related to the costs and expenses will be determined once they are finally realized by the Company. However, the Company may withdraw amounts, from time to time, to cover such costs and expenses.

The Escrow Fund will continue until the Contingent Litigation Matter has been finally disposed of by binding settlement or court order, all tax amounts have been finally determined, all amounts that are reasonably recoverable from any insurer in respect of the Contingent Litigation Matter are recovered, and all amounts in the Escrow Fund have been paid or distributed by the Escrow Agent in accordance with the Escrow Agreement and the Alliance Agreement. Upon delivery by the Company and the Policyholder Committee of a certificate certifying that all such amounts have been paid, the Escrow Fund will terminate and all remaining amounts held in the Escrow Fund will be distributed to Eligible Policyholders in accordance with the Plan of Conversion. No amounts need be distributed if the Policyholder Committee determines that it would be impractical to do so, taking into account the costs of distribution in relation to the amounts to be distributed. Any amounts that are not so distributed will instead be distributed to a charitable foundation selected by the Policyholder Committee.

Amounts held in the Escrow Fund will be invested by the Escrow Agent solely in obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States of America or an agency or instrumentality thereof with a maturity date of one year or less from the date of investment. All costs and expenses of maintaining the Escrow Fund, including the fees and expenses of the Escrow Agent, the costs and expenses of making distributions out of the Escrow Fund and the fees and expenses of the Policyholder Committee, will be borne by the Escrow Fund. The rights of Eligible Policyholders to amounts held in the Escrow Fund will not be represented by any form of certificate or instrument and will not be transferable or assignable except by will, the laws of intestacy or by other operation of law.

A committee comprised of five individuals who were members of the Board of Directors of the Company prior to the Conversion Date and are acceptable to Anthem (the Policyholder Committee) will oversee the conduct of the Contingent Litigation Matter.[32] The Policyholder Committee will also certify amounts payable to the Company out of the Escrow Fund for the indemnification of costs incurred by the Company related to the Contingent Litigation Matter. The Policyholder Committee may then dispute the amounts claimed by the Company. However, once the dispute is settled pursuant to provisions in the Alliance Agreement, the Policyholder Committee will certify the indemnification amounts payable to the Company.

In addition, the Commissioner will retain regulatory oversight over the investment and distribution of the assets held in the Escrow Fund to ensure that the interests of Eligible Policyholders are protected.

The Company expects that less than 25 percent of the interests in the Escrow Fund will be held by "benefit plan investors" within the meaning of the Department's Plan Asset Regulations, 29 CFR 2510.3–101(f), and, accordingly, the assets of the Escrow Fund should not constitute "plan assets" subject to the Act. If the Company determines that 25 percent threshold has been exceeded by Plan investors, it will inform the Department of this determination.

Company Health Plan Oversight

10. The Company has arranged for the retention of a committee, comprised of three management-level employees, to act as a fiduciary for the Company Health Plan in connection with the implementation of the Plan of Conversion. The Company Health Plan Committee will determine whether to vote for or against the implementation of the Plan of Conversion. The Company Health Plan Committee's vote on behalf of the Company Health Plan will represent one vote out of the approximately 171,403 votes which may be cast by Eligible Policyholders. The Company does not believe that the Company Health Plan Committee will exercise any investment discretion with respect to the type of consideration to be distributed in the demutualization, since the compensation will consist solely of Cash.

11. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with procedural and substantive safeguards that are imposed under Kansas law and will be subject to review and supervision of the Commissioner.

(b) The Commissioner will review the terms and options that are provided to Eligible Policyholders, including Plans, as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that, among other things, the Plan of Conversion is fair and equitable to policyholders.

(c) The Plan of Conversion will provide the Company with access to new sources of capital that should help sustain the Company's financial strength, increase its ability to conduct its business efficiently and improve the Company's competitive position in the insurance industry.

(d) With the exception of the Company Health Plan, one or more independent Plan fiduciaries will determine whether to vote for or against the implementation of the Plan of Conversion, following the receipt of full written disclosure from the Company.

(e) In the case of the Company Health Plan, the Company Health Plan Committee will determine whether to vote for or against the implementation of the Plan of Conversion, but it will not otherwise exercise investment discretion over the Company Health Plan's assets.

(f) Each Eligible Policyholder will have an opportunity to comment on the Plan of Conversion and will be solely responsible for any decisions that may permitted under the Plan of Conversion regarding the Cash consideration to be received in the demutualization.

(g) The proposed exemption will allow Eligible Policyholders that are Plans to receive Cash in exchange for their membership interests in the Company, which will be extinguished, and neither the Company nor any of its affiliates will exercise investment discretion or provide "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(h) All Plans that are Eligible Policyholders will participate in the transactions and on the same basis as Eligible Policyholders that are not Plans.

(i) The demutualization will not, in any way, change premiums or reduce policy benefits, guarantees or other policy obligations of the Company to its policyholders and contractholders.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of December, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–24 Filed 1–2–02; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 191 to Facility Operating License No. DPR–19 and Amendment No. 185 to Facility Operating License No. DPR–25, issued to Exelon Generation Company, LLC (the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Dresden Nuclear Power Station, Units 2 and 3 (DNPS) located in Grundy County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS to allow an increase of the authorized operating power level from 2527 megawatts thermal (MWt) to 2957 MWt at DNPS. The change represents an increase of approximately 17 percent above the current rated thermal power and is considered an extended power uprate.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on November 20, 2001 (66 FR 58183). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 65752).

Further details with respect to the action may be found in (1) The application for amendment dated December 27, 2000, as supplemented by letters dated February 12; April 6 and 13; May 3, 18, and 29; June 5, 7, and 15; July 6 and 23; August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters); September 5 (two letters), 14, 19, 25, 26, and 27 (two letters); October 17; November 2, 16, and 30; and December 10, 17 and 18, 2001, (2) Amendment Nos. 191 and 185 to License Nos. DPR–19 and DPR–25, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://*

[31] It is represented that the Escrow Fund was required due to the difficulty in estimating the potential costs related to the Contingent Litigation Matter and to assure Eligible Policyholders that the acquisition offers received by the Company did not reflect any discount to the value of the Company due to the Contingent Litigation Matter. Thus, the Escrow Fund is intended to facilitate the Anthem transaction without diminishing potential returns to policyholders.

[32] It is represented that no members of the Policyholder Committee will serve on the Company Health Plan Committee that is described in Representation 10.

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www.nrc.gov/NRC/ADAMS/index.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December, 2001.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–73 Filed 1–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 202 to Facility Operating License No. DPR–29 and Amendment No. 198 to Facility Operating License No. DPR–30, issued to Exelon Generation Company, LLC (the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (QCNPS) located in Rock Island County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS to allow an increase of the authorized operating power level from 2511 megawatts thermal (MWt) to 2957 MWt at QCNPS. The change represents an increase of approximately 17.8 percent above the current rated thermal power and is considered an extended power uprate.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on November 19, 2001 (66 FR 57990). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 65759).

Further details with respect to the action may be found in (1) the application for amendment dated December 27, 2000, as supplemented by letters dated February 12, March 20, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5, 19, 25, and 27 (two letters), October 17, November 2 (two letters), 16, and 30, and December 10 and 17, 2001, (2) Amendment Nos. 202 and 198 to License Nos. DPR–29 and DPR–30, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December, 2001.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 02–74 Filed 1–2–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2001 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Agency Inventories of Activities That Are Not Inherently Governmental.

SUMMARY: Agency Inventories of Activities that are not Inherently Governmental are now available to the public from the agencies listed below, in accordance with the "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act"). This is the third release of the 2001 FAIR Act inventories. In addition, the Office of Federal Procurement Policy has prepared and has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html.* This User's Guide will help interested parties review 2001 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The FAIR Act requires that OMB publish an announcement of public availability of agency Inventories of Activities that are not Inherently Governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has now completed this process for the year 2001.

The attached Inventories of Activities that are not Inherently Governmental are now available.

Mitchell E. Daniels, Jr.,

Director.

Attachment.

ATTACHMENT

Agency	Contact
Agriculture	Joseph Marshall, 202–720–8345 Website: www.usda.gov/ocfo.
Agriculture (OIG)	Deimas Thornsbury, 202–720–4474 Website: www.usda.gov/oig.
Commodity Futures Trading Commission	Emory Bevill, 202–418–5187 Website: www.cftc.gov/.

ATTACHMENT—Continued

Agency	Contact
Central Intelligence Agency	CIA Office of Public Affairs, 703–482–0623. No Website available.
Federal Financial Institutions Examinations Council Appraisal Subcommittee.	Marc Weinberg, 202–872–7520 Website: www.asc.gov.
General Services Administration	Tom Fitzpatrick, 202–501–0324 Website: www.cfo.gsa.gov.
Housing and Urban Development	Janice Blake-Green, 202–708–0638 Website: www.hud.gov/cfo/cforept.html.
Justice	Larry Silvis, 202–616–3754 Website: www.usdoj.gov.
Labor	Kathy Alejandro, 202–693–4026 Website: www.dol.gov.
National Capital Planning Commission	Connie Harshaw, 202–482–7200 Website: www.ncpc.gov.
National Labor Relations Board (OIG)	Emil George, 202–273–1960 Website: www.nlrb.gov/active.html.
Social Security Administration	Phil Kelly, 410–965–4656 Website: www.ssa.gov/budget.
Smithsonian Institution	Bruce Dauer, 202–357–2917 Website: www.si.edu.
Transportation	Bill Moga, 202–366–9666 Website: www.dot.gov.
Treasury	Kevin Whitfield, 202–622–0248 Website: www.treas.gov/fair.
U.S. Commission on Civil Rights	George Harbison, 202–376–8356 Website: www.usccr.gov.
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OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final guidelines.

SUMMARY: These final guidelines implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." By October 1, 2002, agencies must issue their own implementing guidelines that include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency" that does not comply with the OMB guidelines. These final guidelines also reflect the changes OMB made to the guidelines issued September 28, 2001, as a result of receiving additional comment on the "capable of being substantially reproduced" standard (paragraphs V.3.B, V.9, and V.10), which OMB previously issued on September 28, 2001, on an interim final basis.

DATES: *Effective Date:* January 3, 2002.

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SUPPLEMENTARY INFORMATION: In section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658), Congress directed the Office of Management (OMB) to issue, by September 30, 2001, government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies * * *" Section 515(b) goes on to state that the OMB guidelines shall:

"(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

"(2) require that each Federal agency to which the guidelines apply—

"(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

"(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

"(C) report periodically to the Director—

"(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and

"(ii) how such complaints were handled by the agency."

Proposed guidelines were published in the **Federal Register** on June 28, 2001 (66 FR 34489). Final guidelines were published in the **Federal Register** on September 28, 2001 (66 FR 49718). The Supplementary Information to the final guidelines published in September 20001 provides background, the underlying principles OMB followed in issuing the final guidelines, and statements of intent concerning detailed provisions in the final guidelines.

In the final guidelines published in September 2001, OMB also requested additional comment on the "capable of being substantially reproduced" standard and the related definition of "influential scientific or statistical information" (paragraphs V.3.B, V.9, and V.10), which were issued on an interim final basis. The final guidelines published today discuss the public comments OMB received, the OMB response, and amendments to the final guidelines published in September 2001.

In developing agency-specific guidelines, agencies should refer both to the Supplementary Information to the final guidelines published in the **Federal Register** on September 28, 2001 (66 FR 49718), and also to the Supplementary Information published today. We stress that the three "Underlying Principles" that OMB followed in drafting the guidelines that we published on September 28, 2001 (66 FR 49719), are also applicable to the amended guidelines that we publish today.

In accordance with section 515, OMB has designed the guidelines to help agencies ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate (meaning to share with, or give access

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to, the public). It is crucial that information Federal agencies disseminate meets these guidelines. In this respect, the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines. Recognizing the wide variety of information Federal agencies disseminate and the wide variety of dissemination practices that agencies have, OMB developed the guidelines with several principles in mind.

First, OMB designed the guidelines to apply to a wide variety of government information dissemination activities that may range in importance and scope. OMB also designed the guidelines to be generic enough to fit all media, be they printed, electronic, or in other form. OMB sought to avoid the problems that would be inherent in developing detailed, prescriptive, "one-size-fits-all" government-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner. Through this flexibility, each agency will be able to incorporate the requirements of these OMB guidelines into the agency's own information resource management and administrative practices.

Second, OMB designed the guidelines so that agencies will meet basic information quality standards. Given the administrative mechanisms required by section 515 as well as the standards set forth in the Paperwork Reduction Act, it is clear that agencies should not disseminate substantive information that does not meet a basic level of quality. We recognize that some government information may need to meet higher or more specific information quality standards than those that would apply to other types of government information. The more important the information, the higher the quality standards to which it should be held, for example, in those situations involving "influential scientific, financial, or statistical information" (a phrase defined in these guidelines). The guidelines recognize, however, that information quality comes at a cost. Accordingly, the agencies should weigh the costs (for example, including costs attributable to agency processing effort, respondent burden, maintenance of needed privacy, and assurances of suitable confidentiality) and the benefits of higher information quality in the development of information, and the level of quality to which the information disseminated will be held.

Third, OMB designed the guidelines so that agencies can apply them in a common-sense and workable manner. It is important that these guidelines do not impose unnecessary administrative burdens that would inhibit agencies from continuing to take advantage of the Internet and other technologies to disseminate information that can be of great benefit and value to the public. In this regard, OMB encourages agencies to incorporate the standards and procedures required these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. The primary example of this is that the guidelines recognize that, in accordance with OMB Circular A–130, agencies already have in place well-established information quality standards and administrative mechanisms that allow persons to seek and obtain correction of information that is maintained and disseminated by the agency. Under the OMB guidelines, agencies need only ensure that their own guidelines are consistent with these OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines. Similarly, agencies may rely on their implementation of the Federal Government's computer security laws (formerly, the Computer Security Act, and now the computer security provisions of the Paperwork Reduction Act) to establish appropriate security safeguards for ensuring the "integrity" of the information that the agencies disseminate.

In addition, in response to concerns expressed by some of the agencies, we want to emphasize that OMB recognizes that Federal agencies provide a wide variety of data and information. Accordingly, OMB understands that the guidelines discussed below cannot be implemented in the same way by each agency. In some cases, for example, the data disseminated by an agency are not collected by that agency; rather, the information the agency must provide in a timely manner is compiled from a variety of sources that are constantly updated and revised and may be confidential. In such cases, while agencies' implementation of the guidelines may differ, the essence of the guidelines will apply. That is, these agencies must make their methods transparent by providing documentation, ensure quality by reviewing the underlying methods used in developing the data and consulting (as appropriate) with experts and users, and keep users informed about corrections and revisions.

Summary of OMB Guidelines

These guidelines apply to Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. chapter 35). Agencies are directed to develop information resources management procedures for reviewing and substantiating (by documentation or other means selected by the agency) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies are to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the OMB or agency guidelines. Consistent with the underlying principles described above, these guidelines stress the importance of having agencies apply these standards and develop their administrative mechanisms so they can be implemented in a common sense and workable manner. Moreover, agencies must apply these standards flexibly, and in a manner appropriate to the nature and timeliness of the information to be disseminated, and incorporate them into existing agency information resources management and administrative practices.

Section 515 denotes four substantive terms regarding information disseminated by Federal agencies: quality, utility, objectivity, and integrity. It is not always clear how each substantive term relates—or how the four terms in aggregate relate—to the widely divergent types of information that agencies disseminate. The guidelines provide definitions that attempt to establish a clear meaning so that both the agency and the public can readily judge whether a particular type of information to be disseminated does or does not meet these attributes.

In the guidelines, OMB defines "quality" as the encompassing term, of which "utility," "objectivity," and "integrity" are the constituents. "Utility" refers to the usefulness of the information to the intended users. "Objectivity" focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. "Integrity" refers to security—the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. OMB modeled the definitions of "information," "government information," "information dissemination product," and "dissemination" on the longstanding definitions of those terms in OMB Circular A–130, but tailored them to fit into the context of these guidelines.

In addition, Section 515 imposes two reporting requirements on the agencies. The first report, to be promulgated no later than October 1, 2002, must provide the agency's information quality guidelines that describe administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB and agency guidelines. The second report is an annual fiscal report to OMB (to be first submitted on January 1, 2004) providing information (both quantitative and qualitative, where appropriate) on the number, nature, and resolution of complaints received by the agency regarding its perceived or confirmed failure to comply with these OMB and agency guidelines.

Public Comments and OMB Response

Applicability of Guidelines. Some comments raised concerns about the applicability of these guidelines, particularly in the context of scientific research conducted by Federally employed scientists or Federal grantees who publish and communicate their research findings in the same manner as their academic colleagues. OMB believes that information generated and disseminated in these contexts is not covered by these guidelines unless the agency represents the information as, or uses the information in support of, an official position of the agency.

As a general matter, these guidelines apply to "information" that is "disseminated" by agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)). See paragraphs II, V.5 and V.8. The definitions of "information" and "dissemination" establish the scope of the applicability of these guidelines. "Information" means "any communication or representation of knowledge such as facts or data * * *" This definition of information in paragraph V.5 does "not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views."

"Dissemination" is defined to mean "agency initiated or sponsored distribution of information to the public." As used in paragraph V.8, "agency INITIATED * * * distribution of information to the public" refers to information that the agency disseminates, e.g., a risk assessment prepared by the agency to inform the agency's formulation of possible regulatory or other action. In addition, if an agency, as an institution, disseminates information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to these guidelines. By contrast, an agency does not "initiate" the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes and communicates his or her research findings in the same manner as his or her academic colleagues, even if the Federal agency retains ownership or other intellectual property rights because the Federal government paid for the research. To avoid confusion regarding whether the agency agrees with the information (and is therefore disseminating it through the employee or grantee), the researcher should include an appropriate disclaimer in the publication or speech to the effect that the "views are mine, and do not necessarily reflect the view" of the agency.

Similarly, as used in paragraph V.8., "agency * * * SPONSORED distribution of information to the public" refers to situations where an agency has directed a third-party to disseminate information, or where the agency has the authority to review and approve the information before release. Therefore, for example, if an agency through a procurement contract or a grant provides for a person to conduct research, and then the agency directs the person to disseminate the results (or the agency reviews and approves the results before they may be disseminated), then the agency has "sponsored" the dissemination of this information. By contrast, if the agency simply provides funding to support research, and it the researcher (not the agency) who decides whether to disseminate the results and—if the results are to be released—who determines the content and presentation of the dissemination, then the agency has not "sponsored" the dissemination even though it has funded the research and even if the Federal agency retains ownership or other intellectual property rights because the Federal government paid for the research. To avoid confusion regarding whether the agency is sponsoring the dissemination, the researcher should include an appropriate disclaimer in the publication or speech to the effect that the "views are mine, and do not necessarily reflect the view" of the agency. On the other hand, subsequent agency dissemination of such information requires that the information adhere to the agency's information quality guidelines. In sum, these guidelines govern an agency's dissemination of information, but generally do not govern a third-party's dissemination of information (the exception being where the agency is essentially using the third-party to disseminate information on the agency's behalf). Agencies, particularly those that fund scientific research, are encouraged to clarify the applicability of these guidelines to the various types of information they and their employees and grantees disseminate.

Paragraph V.8 also states that the definition of "dissemination" does not include "* * * distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes." The exemption from the definition of "dissemination" for "adjudicative processes" is intended to exclude, from the scope of these guidelines, the findings and determinations that an agency makes in the course of adjudications involving specific parties. There are well-established procedural safeguards and rights to address the quality of adjudicatory decisions and to provide persons with an opportunity to contest decisions. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

The Presumption Favoring Peer-Reviewed Information. As a general matter, in the scientific and research context, we regard technical information that has been subjected to formal, independent, external peer review as presumptively objective. As the guidelines state in paragraph V.3.b.i: "If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity." An example of a formal, independent, external peer review is the review process used by scientific journals.

Most comments approved of the prominent role that peer review plays in the OMB guidelines. Some comments contended that peer review was not accepted as a universal standard that incorporates an established, practiced, and sufficient level of objectively. Other

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comments stated that the guidelines would be better clarified by making peer review one of several factors that an agency should consider in assessing the objectivity (and quality in general) of original research. In addition, several comments noted that peer review does not establish whether analytic results are capable of being substantially reproduced. In light of the comments, the final guidelines in new paragraph V.3.b.i qualify the presumption in favor of peer-reviewed information as follows: "However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance."

We believe that transparency is important for peer review, and these guidelines set minimum standards for the transparency of agency-sponsored peer review. As we state in new paragraph V.3.b.i: "If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by the petitioner in particular instance. If agency-sponsored peer review is employed to help satisfy the objectively standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB–OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, 'that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclosed to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.'"

The importance of these general criteria for competent and credible peer review has been supported by a number of expert bodies. For example, "the work of fully competent peer-review panels can be undermined by allegations of conflict of interest and bias. Therefore, the best interests of the Board are served by effective policies and procedures regarding potential conflicts of interest, impartiality, and panel balance." (*EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO–01–536, General Accounting Office, Washington, DC, June 2001, page 19.) As another example, "risk analyses should be peer-reviewed and accessible—both physically and intellectually—so that decision-makers at all levels will be able to respond critically to risk characterizations. The intensity of the peer reviews should be commensurate with the significance of the risk or its management implications." (*Setting Priorities, Getting Results: A New Direction for EPA*, Summary Report, National Academy of Public Administration, Washington, DC, April 1995, page 23.)

These criteria for peer reviewers are generally consistent with the practices now followed by the National Research Council of the National Academy of Sciences. In considering these criteria for peer reviewers, we note that there are many types of peer reviews and that agency guidelines concerning the use of peer review should tailor the rigor of peer review to the importance of the information involved. More generally, agencies should define their peer-review standards in appropriate ways, given the nature and importance of the information they disseminate.

Is Journal Peer Review Always Sufficient? Some comments argued that journal peer review should be adequate to demonstrate quality, even for influential information that can be expected to have major effects or public policy. OMB believes that this position overstates the effectiveness of journal peer review as a quality-control mechanism.

Although journal peer review is clearly valuable, there are cases where flawed science has been published in respected journals. For example, the NIH Office of Research Integrity recently reported the following case regarding environmental health research:

> "Based on the report of an investigation conducted by [XX] University, dated July 16, 1999, and additional analysis conducted by ORI in its oversight review, the US Public Health Service found that Dr. [X] engaged in scientific misconduct. Dr. [X] committed scientific misconduct by intentionally falsifying the research results published in the journal SCIENCE and by providing falsified and fabricated materials to investigating officials at [XX] University in response to a request for original data to support the research results and conclusions report in the SCIENCE paper. In addition, PHS finds that there is no original data or other corroborating evidence to support the research results and conclusions reported in the SCIENCE paper as whole." (66 FR 52137, October 12, 2001).

Although such cases of falsification are presumably rare, there is a significance scholarly literature documenting quality problems with articles published in peer-reviewed research. "In a [peer-reviewed] meta-analysis that surprised many—and some doubt—researchers found little evidence that peer review actually improves the quality of research papers." (*See, e.g., Science*, Vol. 293, page 2187 (September 21, 2001.)) In part for this reason, many agencies have already adopted peer review and science advisory practices that go beyond journal peer review. *See, e.g.*, Sheila Jasanoff, *The Fifth Branch: Science Advisers as Policy Makers*, Cambridge, MA, Harvard University Press, 1990; Mark R. Powell, *Science at EPA: Information in the Regulatory Process*. Resources for the Future, Washington, DC., 1999, pages 138–139; 151–153; *Implementation of the Environmental Protection Agency's Peer Review Program: An SAB Evaluation of Three Reviews*, EPA–SAB–RSAC–01–009, A Review of the Research Strategies Advisory Committee (RSAC) of the EPA Science Advisory Board (SAB), Washington, DC., September 26, 2001. For information likely to have an important public policy or private sector impact, OMB believes that additional quality checks beyond peer review are appropriate.

Definition of "Influential". OMB guidelines apply stricter quality standards to the dissemination of information that is considered "influential." Comments noted that the breadth of the definition of "influential" in interim final paragraph V.9 requires much speculation on the part of agencies.

We believe that this criticism has merit and have therefore narrowed the definition. In this narrower definition, "influential", when used in the phrase "influential scientific, financial, or statistical information", is amended to mean that "the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." The intent of the new phrase "clear and substantial" is to reduce the need for speculation on the part of agencies. We added the present tense—"or does have"—to this narrower definition because on occasion, an information dissemination may occur simultaneously with a particular policy change. In response to a public comment, we added an explicit reference to "financial" information as consistent with our original intent.

Given the differences in the many Federal agencies covered by these guidelines, and the differences in the nature of the information they disseminate, we also believe it will be helpful if agencies elaborate on this definition of "influential" in the context of their missions and duties, with due consideration of the nature of the information they disseminate. As we state in amended paragraph V.9, "Each agency is authorized to define 'influential' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible."

Reproducibility. As we state in new paragraph V.3.b.ii: "If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties." OMB believes that a reproducibility standard is practical and appropriate for information that is considered "influential", as defined in paragraph V.9—that "will have or does have a clear and substantial impact on important public policies or important private sector decisions." The reproducibility standard applicable to influential scientific, financial, or statistical information is intended to ensure that information disseminated by agencies is sufficiently transparent in terms of data and methods of analysis that it would be feasible for a replication to be conducted. The fact that the use of original and supporting data and analytic results have been deemed "defensible" by peer-review procedures does not necessarily imply that the results are transparent and replicable.

Reproducibility of Original and Supporting Data. Several of the comments objected to the exclusion of original and supporting data from the reproducibility requirements. Comments instead suggested that OMB should apply the reproducibility standard to original data, and that OMB should provide flexibility to the agencies in determining what constitutes "original and supporting" data. OMB agrees and asks that agencies consider, in developing their own guidelines, which categories of original and supporting data should be subject to the reproducibility standard and which should not. To help in resolving this issue, we also ask agencies to consult directly with relevant scientific and technical communities on the feasibility of having the selected categories of original and supporting data subject to the reproducibility standard. Agencies are encouraged to address ethical, feasibility, and confidentiality issues with care. As we state in new paragraph V.3.b.ii.A, "Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicably be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints." Further, as we state in our expanded definition of "reproducibility" in paragraph V.10, "If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (*e.g.* standards for replication of laboratory data)." OMB urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data. For example, it may not be ethical to repeat a "negative" (ineffective) clinical (therapeutic) experiment and it may not be feasible to replicate the radiation exposures studied after the Chernobyl accident. When agencies submit their draft agency guidelines for OMB review, agencies should include a description of the extent to which the reproducibility standard is applicable and reflect consultations with relevant scientific and technical communities that were used in developing guidelines related to applicability of the reproducibility standard to original and supporting data.

It is also important to emphasize that the reproducibility standard does not apply to all original and supporting data disseminated by agencies. As we state in new paragraph V.3.b.ii.A, "With regard to original and supporting data related [to influential scientific, financial, or statistical information], agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement." In addition, we encourage agencies to address how greater transparency can be achieved regarding original and supporting data. As we also state in new paragraph V.3.b.ii.A, "It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.*, a new experiment, test, or sample) shall not be required prior to each dissemination." Agency guidelines need to achieve a high degree of transparency about data even when reproducibility is not required.

Reproducibility of Analytic Results. Many public comments were critical of the reproducibility standard and expressed concern that agencies would be required to reproduce each analytical result before it is disseminated. While several comments commended OMB for establishing an appropriate balance in the "capable of being substantially reproduced" standard, others considered this standard to be inherently subjective. There were also comments that suggested the standard would cause more burden for agencies.

It is no OMB's intent that each agency must reproduce each analytic result before it is disseminated. The purpose of the reproducibility standard is to cultivate a consistent agency commitment to transparency about how analytic results are generated: the specific data used, the various assumptions employed, the specific analytical methods applied, and the statistical procedures employed. If sufficient transparency is achieved on each of these matters, then an analytic result should meet the "capable of being substantially reproduced" standard.

While there is much variation in types of analytic results, OMB believes that reproducibility is a practical standard to apply to most types of analytic results. As we state in new paragraph V.3.b.ii.B, "With regard to analytic results related [to influential scientific, financial, or statistical information], agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to agency analysis of data from a single study as well as to analyses that combine information from multiple studies." We elaborate upon this principle in our expanded definition of "reproducibility" in paragraph V.10: "With respect to analytic results, 'capable of being substantially reproduced' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error."

Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study. *See, e.g.*, "Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality," A Special Report of the Health Effects Institute's Particle Epidemiology Reanalysis Project, Cambridge, MA, 2000.

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The primary benefit of public transparency is not necessarily that errors in analytic results will be detected, although error correction is clearly valuable. The more important benefit of transparency is that the public will be able to assess how much an agency's analytic result hinges on the specific analytic choices made by the agency. Concreteness about analytic choices allows, for example, the implications of alternative technical choices to be readily assessed. This type of sensitivity analysis is widely regarded as an essential feature of high-quality analysis, yet sensitivity analysis cannot be undertaken by outside parties unless a high degree of transparency is achieved. The OMB guidelines do not compel such sensitivity analysis as a necessary dimension of quality, but the transparency achieved by reproducibility will allow the public to undertake sensitivity studies of interest.

We acknowledge that confidentiality concerns will sometimes preclude public access as an approach to reproducibility. In response to public comment, we have clarified that such concerns do include interests in "intellectual property." To ensure that the OMB guidelines have sufficient flexibility with regard to analytic transparency, OMB has, in new paragraph V.3.b.ii.B.i, provided agencies an alternative approach for classes or types of analytic results that cannot practically be subject to the reproducibility standard. "[In those situations involving influential scientific, financial, or statistical information * * *] making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections." Specifically, in cases where reproducibility will not occur due to other compelling interests, we expect agencies (1) to perform robustness checks appropriate to the importance of the information involved, e.g., determining whether a specific statistic is sensitive to the choice of analytic method, and, accompanying the information disseminated, to document their efforts to assure the needed robustness in information quality, and (2) address in their guidelines the degree to which they anticipate the opportunity for reproducibility to be limited by the confidentiality of underlying data. As we state in new paragraph V.3.b.ii.B.ii, "In situations where public access to date and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed."

Given the differences in the many Federal agencies covered by these guidelines, and the differences in robustness checks and the level of detail for documentation thereof that might be appropriate for different agencies, we also believe it will helpful if agencies elaborate on these matters in the context of their missions and duties, with due consideration of the nature of the information they disseminate. As we state in new paragraph V.3.b.ii.B.ii, "Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible."

We leave the determination of the appropriate degree of rigor to the discretion of agencies and the relevant scientific and technical communities that work with the agencies. We do, however, establish a general standard for the appropriate degree of rigor in our expanded definition of "reproducibility" in paragraph V.10: "'Reproducibility' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased)." OMB will review each agency's treatment of this issue when reviewing the agency guidelines as a whole.

Commercial also expressed concerns regarding interim final paragraph V.3.B.iii, "making the data and models publicly available will assist in determining whether analytic results are capable of being substantially reproduced," and whether it could be interpreted to constitute public dissemination of these materials, rendering moot the reproducibility test. (For the equivalent provision, see new paragraph V.3.b.ii.B.i.) The OMB guidelines do not require agencies to reproduce each disseminated analytic result by independent reanalysis. Thus, public dissemination of data and models per se does not mean that the analytic result has been reproduced. It means only that the result should be CAPABLE of being reproduced. The transparency associated with this capability of reproduction is what the OMB guidelines are designed to achieve.

We also want to build on a general observation that we made in our final guidelines published in September 2001. In those guidelines we stated: "... in those situations involving influential scientific[, financial,] or statistical information, the substantial reproducibility standard is added as a quality standard above and beyond some peer review quality standards" (66 FR 49722 (September 28, 2001)). A hypothetical example may serve to illustrate this point. Assume that two Federal agencies initiated or sponsored the dissemination of five scientific studies after October 1, 2002 (see paragraph III.4) that were, before dissemination, subjected to formal, independent, external peer review, i.e., that met the presumptive standard for "objectivity" under paragraph V.3.b.i. Further assume, at the time of dissemination, that neither agency reasonably expected that the dissemination of any of these studies would have "a clear and substantial impact" on important public policies, *i.e.*, that these studies were not considered "influential" under paragraph V.9, and thus not subject to the reproducibility standards in paragraphs V.3.b.ii.A or B. Then assume, two years later, in 2005, that one of the agencies decides to issue an important and far-reaching regulation based clearly and substantially on the agency's evaluation of the analytic results set forth in these five studies and that such agency reliance on these five studies as published in the agency's notice of proposed rulemaking would constitute dissemination of these five studies. These guidelines would require the rulemaking agency, prior to publishing the notice of proposed rulemaking, to evaluate these five studies to determine if the analytic results stated therein would meet the "capable of being substantially reproduced" standards in paragraph V.3.b.ii.B and, if necessary, related standards governing original and supporting data in paragraph V.3.b.ii.A. If the agency were to decide that any of the five studies would not meet the reproducibility standard, the agency may still rely on them but only if they satisfy the transparency standard and—as applicable—the disclosure of robustness checks required by these guidelines. Otherwise, the agency should not disseminate any of the studies that did not meet the applicable standards in the guidelines at the time it publishes the notice of proposed rulemaking.

Some comments suggested that OMB consider replacing the reproducibility standard with a standard concerning "confirmation" of results for influential scientific and statistical information. Although we encourage agencies to consider "confirmation" as a relevant standard—at least in some cases—for assessing the objectivity of original and supporting data, we believe that "confirmation" is too stringent a standard to apply to analytic results. Often the regulatory impact analysis prepared by an agency for a major rule, for example, will be the only formal analysis of an important subject. It would be unlikely that the results of the regulatory impact analysis had already been confirmed by other analyses. The "capable of being substantially reproduced" standard is less stringent than a "confirmation" standard because it simply requires that an agency's analysis be sufficiently transparent that another qualified party could replicate it through reanalysis.

Health, Safety, and Environmental Information. We note, in the scientific context, that in 1996 the Congress, for health decisions under the Safe Drinking Water Act, adopted a basic standard of quality for the use of science in agency decisionmaking. Under 42 U.S.C. 300g–1(b)(3)(A), an agency is directed, "to the degree that an Agency action is based on science," to use "(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data)."

We further note that in the 1996 amendments to the Safe Drinking Water Act, Congress adopted a basic quality standard for the dissemination of public information about risks of adverse health effects. Under 42 U.S.C. 300g–1(b)(3)(B), the agency is directed, "to ensure that the presentation of information [risk] effects is comprehensive, informative, and understandable." The agency is further directed, "in a document made available to the public in support of a regulation [to] specify, to the extent practicable—(i) each population addressed by any estimate [of applicable risk effects]; (ii) the expected risk or central estimate of risk for the specific populations [affected]; (iii) each appropriate upper-bound or lower-bound estimate of risk; (iv) each significant uncertainty identified in the process of the assessment of [risk] effects and the studies that would assist in resolving the uncertainty; and (v) peer-reviewed studies known to the [agency] that support, are directly relevant to, or fail to support any estimate of [risk] effects and the methodology used to reconcile inconsistencies in the scientific data."

As suggested in several comments, we have included these congressional standards directly in new paragraph V.3.b.ii.C, and made them applicable to the information disseminated by all the agencies subject to these guidelines: "With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B))." The word "adapt" is intended to provide agencies flexibility in applying these principles to various types of risk assessment.

Comments also argued that the continued flow of vital information from agencies responsible for disseminating health and medical information to medical providers, patients, and the public may be disrupted due to these peer review and reproducibility standards. OMB responded by adding to new paragraph V.3.ii.C: "Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations (*e.g.*, imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines."

Administrative Correction Mechanisms. In addition to commenting on the substantive standards in these guidelines, many of the comments noted that the OMB guidelines on the administrative correction of information do not specify a time period in which the agency investigation and response must be made. OMB has added the following new paragraph III.3.i to direct agencies to specify appropriate time periods in which the investigation and response need to be made. "Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made."

Several comments stated that the OMB guidelines needed to direct agencies to consider incorporating an administrative appeal process into their administrative mechanisms for the correction of information. OMB agreed, and added the following new paragraph III.3.ii: "If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may file for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, and specify appropriate time limits in which to resolve such requests for reconsideration." Recognizing that many agencies already have a process in place to respond to public concerns, it is not necessarily OMB's intent to require these agencies to establish a new or different process. Rather, our intent is to ensure that agency guidelines specify an objective administrative appeal process that, upon further complaint by the affected person, reviews an agency's decision to disagree with the correction request. An objective process will ensure that the office that originally disseminates the information does not have responsibility for both the initial response and resolution of a disagreement. In addition, the agency guidelines should specify that if the agency believes other agencies may have an interest in the resolution of any administrative appeal, the agency should consult with those other agencies about their possible interest.

Overall, OMB does not envision administrative mechanisms that would burden agencies with frivolous claims. Instead, the correction process should serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes. Agencies, in making their determination of whether or not to correct information, may reject claims made in bad faith or without justification, and are required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved, and explain such practices in their annual fiscal year reports to OMB.

OMS's issuance of these final guidelines is the beginning of an evolutionary process that will include draft agency guidelines, public comment, final agency guidelines, development of experience with OMB and agency guidelines, and continued refinement of both OMB and agency guidelines. Just as OMB requested public comment before issuing these final guidelines, OMB will refine these guidelines as experience develops and further public comment is obtained.

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Dated: December 21, 2001.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

I. OMB Responsibilities

Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Public Law 106–554) directs the Office of Management and Budget to issue government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies.

II. Agency Responsibilities

Section 515 directs agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)) to—

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency no later than one year after the date of issuance of the OMB guidelines;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with these OMB guidelines; and

3. Report to the Director of OMB the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved.

III. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

1. Overall, agencies shall adopt a basic standard of quality (including objectivity, utility, and integrity) as a performance goal and should take appropriate steps to incorporate information quality criteria into agency information dissemination practices. Quality is to be ensured and established at levels appropriate to the nature and timeliness of the information to be disseminated. Agencies shall adopt specific standards of quality that are appropriate for the various categories of information they disseminate.

2. As a matter of good and effective agency information resources management, agencies shall develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated. Agencies shall treat information quality as integral to every step of an agency's development of information, including creation, collection, maintenance, and dissemination. This process shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

3. To facilitate public review, agencies shall establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines. These administrative mechanisms shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.

i. Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.

ii. If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may filed for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, and specify appropriate time limits in which to resolve such requests for reconsideration.

4. The Agency's pre-dissemination review, under paragraph III.2, shall apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative's mechanisms, under paragraph III.3., shall apply to information that the agency disseminates on or after October 1, 2001, regardless of when the agency first disseminated the information.

IV. Agency Reporting Requirements

1. Agencies must designate the Chief Information Officer or another official to be responsible for agency compliance with these guidelines.

2. The agency shall respond to complaints in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases or mass mailings that correct a widely disseminated error or address or frequently raised complaint.

3. Each agency must prepare a draft report, no later than April 1, 2002, providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency. This report must also detail the administrative mechanisms developed by that agency to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines.

4. The agency must publish a notice of availability of this draft report in the **Federal Register**, and post this report on the agency's website, to provide an opportunity for public comment.

5. Upon consideration of public comment and after appropriate revision, the agency must submit this draft report to the OMB for review regarding consistency with these OMB guidelines no later than July 1, 2001. Upon completion of that OMB review and completion of this report, agencies must publish notice of the availability of this report in its final form in the **Federal Register**, and post this report on the agency's web site no later than October 1, 2002.

6. On an annual fiscal-year basis, each agency must submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines and how such complaints were resolved. Agencies must submit these reports no later than January 1 of each following year, with the first report due January 1, 2004.

V. Definitions

1. "Quality" is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms, collectively, as "quality."

2. "Utility" refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the agency disseminates to the public, the agency needs to reconsider the uses of the information not only from perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information.

3. "Objectivity" involves two distinct elements, presentations and substance.

a. "Objectivity" includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a specific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users.

b. In addition, "objectivity" involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods.

i. If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance. If agency-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB–OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, "that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and vigorous manner."

ii. If an agency is response for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.

A. With regard to original and supporting data related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement. Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicable be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination.

B. With regard to analytic results related thereto, agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to agency analysis of data from a single study as well as to analyses that combine information from multiple studies.

i. Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

ii. In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for such the agency is responsible.

C. With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the equality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)). Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations (*e.g.*, imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.

4. "Integrity" refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. "Information" means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

6. "Government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. "Information dissemination product" means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD–ROM, or web page.

8. "Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or Sponsor")). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records,

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public filings, subpoenas or adjudicative processes.

9. "Influential", when used in the phrase "influential scientific, financial, or statistical information", means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Each agency is authorized to define "influential" in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.

10. "Reproducibility" means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerate is reduced (increased). If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (*e.g.*, standards for replication of laboratory data). With respect to analytic results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

[FR Doc. 02–59 Filed 1–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No 34–45191; File No. SR–CBOE–2001–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Amendment of CBOE Disciplinary Rules 17.9 and 17.10 and the Addition of CBOE Disciplinary Rule 17.15

December 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 on December 17, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Sapna Patel, Attorney, Division of Market Regulation, Commission, dated December 13, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE made some technical corrections to the proposed rule text.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend several provisions of its disciplinary rules and add a new disciplinary rule.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Chapter XVII—Discipline

Rule 17.9. Decision

Following a hearing conducted pursuant to Rule 17.6 of this Chapter, the Panel shall issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor. Where the Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Such modification may include an increase or decrease of the sanction. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provision of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation. The Respondents *and the Office of Enforcement* shall be promptly sent a copy of the decision. After Board review pursuant to Rule 17.10, or the time for such review has expired, the decision will be considered final, and the Exchange shall publish a summary of the decision in the Exchange Bulletin.

Rule 17.10. Review

(a)(1) Petition. *Both t[T]he Respondent and the Office of Enforcement* shall have 15 days after service of notice of *any*[a] decision made pursant to Rule 17.9 of this Chapter to petition for review of the decision by filing a copy of the petition with the Secretary of the Exchange ("Secretary") and *with all other parties to the hearing* [the Exchange's Office of Enforcement]. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(2) Written Submissions. Within 15 days after a [Respondent's]petition for review has been filed with the Secretary of the Exchange pursuant to paragraph (a)(1) of this Rule, *the other parties to the hearing*[Exchange staff] may *each* submit to the Secretary a written response to the petition. A copy of the response must be served upon the *petitioner*[Respondent]. *The petitioner*[A Respondent] has 15 days from the service of the response to file a reply with the Secretary and the *other parties* [Office of Enforcement].

(b) Conduct of Review. The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board. Any Director who participated in a matter before the Business Conduct or other Committee may not participate in any review of that matter by the Board. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. New issues may be raised by the Board; *the parties to the hearing*[Respondents] shall be given notice of and any opportunity to address any such new issues. The Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent *and the Office of Enforcement*, and shall be final.

(c) Review on Motion of Board. The Board may on its own initiative order review of a decision made pursuant to Rule 17.7 or 17.9 of this Chapter within 30 days after notice of the decision has been served on the Respondent *and the Office of Enforcement*. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

(d) No change.

Rule 17.15. Ex Parte Communications

Members and persons associated with members shall not make or knowingly cause to be made an ex parte communications with any member of the Board with the intent to influence the outcome of any pending investigation or disciplinary proceeding. Members of the Board shall not make a knowingly cause to be made an ex parte communication with any members or persons associated with members with the intent to influence the outcome of any pending investigation or disciplinary proceeding. No violation of this Rule shall be deemed to occur if the ex parte communication deals solely with procedural matters rather than the merits of the investigation or proceeding.

Interpretations and Policies:

.01 "Ex parte communication" means an oral or written communication made without notice to all parties, that is, regulatory staff and Subjects of investigations or Respondents in proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Ex Parte Communications With Board of Director ("Board") Members Prohibited*

Currently, Exchange Rule 17.4(d) prohibits members or persons associated with members from making or causing ex parte communications with any member of the Business Conduct Committee ("BBC") concerning the merits of any matter pending under the disciplinary rules of the Exchange. This prohibition is to eliminate the potential that such communications might somehow influence the outcome of an investigation or enforcement matter. The Exchange believes that Exchange disciplinary rules should also forbid ex parte communications with members of the Exchange Board. Such communications are already prohibited by other self-regulatory organizations.[4] Therefore, the exchange proposes to add a new Exchange Rule 17.15, "Ex Parte Communications," which would prohibit ex parte communications with members of the Board that are made with the intent to influence the outcome of any pending investigation or disciplinary proceeding. The Exchange represents that proposed Exchange Rule 17.15 would expressly create a safe harbor for communication dealing solely with procedural matters rather than the merits of the investigation or proceeding. The text of the current Interpretation and Policy .01 to Exchange Rule 17.4(d) defining "Ex Parte Communications" will be duplicated as Interpretation and Policy .01 of proposed Exchange Rule 17.15.

b. *Exchange Right to Appeal*

Exchange Rule 17.10(a) permits a Respondent in a disciplinary matter to appeal a decision of the BCC to the Board, but does not grant the Exchange's Office of Enforcement ("OOE") a similar right of appeal. Again, the Exchange believes that its OOE should have such a right, both to appeal factual findings that the OOE thinks may have been in error, as well as to appeal disciplinary sanctions that the OOE deems insufficient. Such appeals are already authorized at other exchanges.[5] Therefore, the Exchange proposes to amend Exchange Rules 17.9 and 17.10 to give the OOE and the Respondent equivalent rights in the appellate process.

2. Statutory Basis

The Exchange believes that the proposed rule change described above is consistent with the provisions of section 6(b)[6] of the Act, in general, and specifically furthers the objectives of sections 6(b)(1),[7] 6(b)(6),[8] and 6(b)(7)[9] of the Act, in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. It will help ensure that members and persons associated with members are appropriately disciplined when they violate those provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[4] *See* American Stock Exchange LLC Exchange Disciplinary Proceedings Rule 11(a); National Association of Securities Dealers, Inc. ("NASD") Rule 9143(a); and Pacific Exchange, Inc. Rule 10.3(a).

[5] *See* New York Stock Exchange, Inc. Rule 476(f); NASD Rule 9311; and Securities Exchange Act Release No. 43554 (November 14, 2001), 65 FR 69975 (November 21, 2001) (File No. SR–Amex–00–22).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

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Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–59 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–76 Filed 1–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45193; File No. SR–Phlx–2001–118]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Implementation of a Fee with Respect to Certain Individuals Who Work on the Exchange's Trading Floor

December 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to adopt a fee of $25 per month to be imposed on member/participant organizations for individuals employed by such member/participant organizations who work on the Exchange's trading floor, but who are not registered as Exchange members or foreign currency options ("FCO") participants.[3] The Exchange intends to charge member/participant organizations a $25 fee per month for such individuals registered as of the first trading day of the month. The Exchange states that it intends to implement this fee beginning on January 1, 2002.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange states that the purpose of the proposed rule change is to impose a fee on Exchange member/participant organizations for their employees who are registered to be on the Exchange's trading floor, but are not registered as members or FCO participants. The Exchange states that this fee is intended to help it offset the costs it incurs in registering these individuals.[5]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members because the member/participant organizations who pay the additional, minimal amount for registering their employees incur the benefit of having these employees on the Exchange's trading floor.

B Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) hereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act. The Exchange has stated that it intends to implement this fee beginning on January 1, 2002.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] According to the Exchange, individuals registered to be on the Exchange's trading floor, but who are not registered as members or FCO participants, include trading floor personnel such as clerks, interns, stock execution clerks, and other associated persons of member/participant organizations. These individuals are required to be registered with the Exchange Pursuant to Exchange Rule 620(b).

[4] The Exchange states that this fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] According to the Exchange, individuals who are registered as inactive nominees pursuant to Exchange By-Law Article XII, Section 12–10 and Exchange Rule 21 will not be subject to the proposed fee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–118 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–75 Filed 1–2–02; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Rate for Attorney Fee Assessment Beginning in 2002

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Social Security Administration is announcing that the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d), is 6.3 percent for 2002.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email: *John.Watson@ssa.gov*.

SUPPLEMENTARY INFORMATION: Section 406 of Public Law No. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). The legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under either section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. For 2001, the Commissioner of Social Security determined that the assessment rate under section 206(d) of the Act would be 6.3 percent. (See 66 FR 5521, January 19, 2001).

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2002. This assessment rate was based on information compiled by a private contractor, KPMG Consulting, who were tasked by the Social Security Administration to determine the costs we incur to determine and certify fees to attorneys. We will continue to review our costs on a yearly basis.

Thomas G. Stapleton,

Acting Deputy Commissioner for Finance, Assessment and Management.

[FR Doc. 02–27 Filed 1–2–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 3837]

30-Day Notice of Proposed Information Collection: Form DS–3035, J–1 Visa Waiver Review Application

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New Collection.

Originating Office: Bureau of Consular Affairs, Office of Visa Services (CA/VO).

Title of Information Collection: J–1 Visa Waiver Review Application.

Frequency: Once.

Form Number: DS–3035.

Respondents: All J–1 visa waiver applicants.

Estimated Number of Respondents: 10,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 20,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Marcia Pryce, 2401 E St NW., U.S. Department of State, Washington, DC 20520, (202) 663–2866. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: October 9, 2001.

Wayne E. Griffith,

Deputy Assistant, Secretary of State for Visa Services, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 02–114 Filed 1–2–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3871]

Culturally Significant Objects Imported for Exhibition; Determinations: "Russian Pictorialism"

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Russian Pictorialism," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Williams Tower Gallery, Houston, TX, and FotoFest Gallery at Vine Street Studios, Houston, TX, from on or about March 1, 2002, to on or about April 1, 2002, is in the national

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interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–116 Filed 1–2–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at the Laughlin/Bullhead International Airport, Bullhead City, Arizona From Airport Improvement Program Grant Obligations and Assurances

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Request to Release Airport Land from certain Airport Improvement Program Grant Obligations and Assurances.

SUMMARY: The FAA proposes to rule and invites public comment on the release of approximately 83 acres of land at the Laughlin/Bullhead International Airport, Bullhead City, Arizona, from certain Airport Improvement Program grant obligations and assurances. The purpose of the grant release is to permit the use of approximately 83 acres of airport property to be developed for non-aeronautical purposes.

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, P.O. Box 92007, Los Angeles, CA 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Norman Hicks, Executive Director/C.E.O., Mohave County, Airport Authority, Inc., 2550 Laughlin View Drive, Suite 117, Bullhead City, AZ 86429.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Flynn, Supervisor, Arizona Standards Section, Airports Division, AWP–623, P.O. Box 92007, Los Angeles, CA 90009, Telephone: (310) 725–3632. Arrangements may be made with Mr. Flynn to review the request to release the subject airport property from certain grant obligations in person at the FAA Western-Pacific Regional office, 15000 Aviation Blvd., Hawthorne, CA 90250.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest is surplus property.

The following is a brief overview of the request:

On February 18, 1987, the State of Arizona, granted patent No. 7213 to Mohave County, Arizona, for 433.37 acres to be developed as a public use airport. Since 1987, the Mohave County Airport Authority, Inc. has received Airport Improvement Program (AIP) grants, which contain certain grant obligations and assurances that the airport land be dedicated for aeronautical purposes. The Mohave County Airport Authority, Inc. has requested the release of approximately 83 acres of dedicated airport land from certain AIP grant obligations and assurances at the Laughlin/Bullhead International Airport located in Bullhead City Arizona. The purpose of the release is to permit the use of dedicated airport property for non-aeronautical purposes. Net proceeds from the leasing and development of the subject land will be utilized by the Authority for capital improvements, operation, and maintenance at the Laughlin/Bullhead International Airport.

Issued in Hawthorne, California, on December 19, 2001.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–56 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–07–C–00–MFR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International-Medford Airport, Submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International-Medford Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: 3650 Biddle Road, Medford, OR 97504.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International-Medford Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–07–C–00–MFR) to impose and use PFC revenue at Rogue Valley International-Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, Oregon, was substantially complete with requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 27, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: May 1, 2004.

Total requested for use approval: $816,466.

Brief description of proposed projects: Realignment and Rehabilitation of Taxiway A; Terminal Area Plan (planning study).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instructions, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rouge Valley International-Medford Airport:

Issued in Renton, Washington on December 20, 2001.

Carolyn T. Read,

Acting Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–52 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lawton-Ft. Sill Regional Airport, Lawton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara McNally, Manager of Lawton-Ft. Sill Regional Airport at the following address: Airport Manager, PO Box 351, Lawton-Ft. Sill Regional Airport, Lawton, OK 73502.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Adminsitration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 19, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 12, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: April 1, 2003.

Total estimated PFC revenue: $361,000.

PFC application number: 02–02–C–00–LAW.

Brief description of proposed projects(s):

Projects to Impose and Use PFC'S

1. Develop Pavement Management Program.
2. PFC Application and Administrative Fees.
3. Install Perimeter Security Fencing.
4. Construct Perimeter Service Road.
5. Upgrade Runway Markings.
6. Runway Safety Area Drainage Improvements.
7. Acquire Snow Removal Equipment.
8. Construct Apron.
9. Acquire 1.7 Acres for Development.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lawton-Ft. Sill Regional Airport.

Issued in Fort Worth, Texas on December 19, 2001.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–53 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Francisco International Airport, San Francisco, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

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SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 150000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John L. Martin, Airport Director, San Francisco International Airport, at the following address: P.O. Box 8097, San Francisco, CA. 94128. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Francisco Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 14, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Francisco Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 2002.

The following is a brief overview of the impose and use application No. 02–02–C–00–SFO:

Level of proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: April 1, 2008.

Total estimated PFC revenue: $224,034,821.

Brief description of the proposed projects: Taxiway Improvements and Realignment, and Boarding Area "A" and "G" Apron Construction and Common Use Systems.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled On-Demand Air Carriers (formerly called Air Taxi/Commercial Operators).

Any persons may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Francisco Airport Commission.

Issued in Hawthorne, California, on December 14, 2001.

Hermane C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–55 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 258 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 14, 2001, the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 20, 2002.

The following is a brief overview of the impose and use application No. 02–13–G–00–SJC:

Level of proposed PFC: $4.50.

Proposed charge effective date: September 1, 2008.

Proposed charge expiration date: May 1, 2010.

Total estimated PFC revenue: $142,846,000.

Brief description of the proposed project: Expanded Noise Attenuation within the 65 Community Noise Equivalent Level (CNEL) Noise Contour.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/ On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on December 14, 2001.

Herman G. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–54 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9800]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; reopening of comment period.

SUMMARY: The FMCSA is reopening the comment period on its notice proposing to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs), from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). This action allows the public to view relevant information added to the docket after the earlier October 1, 2001, deadline for comments.

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as see the submissions of other commenters at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed diabetes exemption program in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2001, FMCSA published a notice requesting comments on its proposal to issue exemptions to certain insulin-treated diabetic drivers of commercial vehicles from the diabetes requirement at 49 CFR 391.41(b)(3) (66 FR 39548). The comment period closed on October 1, 2001. That notice referenced analytical results of crash risks for CMV operators with insulin-treated diabetes mellitus from an agency sponsored study ("A Preliminary Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus," 1999). Although the final results of this study were available and presented at the time of the July 31st notice, the report presenting the study methodology and findings had not been finalized and approved by FMCSA, and was not available to the public.

Therefore, we are placing a copy of this final report entitled, "A Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus," 2001, in the docket and reopening the comment period.

Issued on: December 21, 2001.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–57 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for wavier of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

New York State Department of Transportation

[Docket Number FRA–2001–11233]

The New York State Department of Transportation (NYSDOT), with the cooperation and input of CSX Transportation, Inc. (CSX) and the National Railroad Passenger Corp. (Amtrak) seeks a permanent waiver of compliance from CFR Title 49 § 213.347—Automotive or railroad crossings at grade.

NYSDOT seeks approval to operate passenger trains at Class 7 speeds through highway rail grade crossings on the Empire State High Speed Corridor between New York City, New York and Schenectady, New York by implementing a Grade Crossing Risk Mitigation Plan. Specifically, CFR Title 49 § 213.347(b)(1) requires railroads to submit to FRA for approval a warning/barrier system. NYSDOT believes that present systems for prevent vehicles from entering the right of way are not yet reliable enough to prevent vehicles from entering the right of way to protect motorist and rail passenger safety. Accordingly, NYSDOT desires to address safety concerns at highway rail grade crossings by implementing a Five Year Hazard Mitigation Action Plan with highway railroad grade crossing improvement, elimination, and closing projects that will substantially reduce estimated risks.

Since FRA has not yet concluded its investigation of the "Empire State High Speed Corridor Grade Crossing Mitigation Plan and Request for Waiver to Operate in Revenue Service at Speeds Over 100 MPH," the agency takes no position at this time on the merits of the stated justifications of the NYSDOT.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–11233) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is

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taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, December 28, 2001.

Edward W. Pritchard,

Acting Director, Office of Safety Assurance and Compliance.

[FR Doc. 02–58 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2001. No comments were received.

DATES: Comments must be submitted on or before February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Evelyn Harley, Maritime Administration, MAR–580, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5867 or FAX 202–366–7901.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Uniform Financial Reporting Requirements.

OMB Control Number: 2133–0005.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Form (S): MA–172.

Abstract: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration (MARAD). Regulations requiring financial reports to MARAD are authorized by section 801, Merchant Marine Act, 1936, as amended.

Annual Estimated Burden Hours: 1881 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on December 27, 2001.

Michael J. McMorrow,

Acting Secretary, Maritime Administration.

[FR Doc. 02–38 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–81–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Thursday,
January 3, 2002

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility; Notice

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45156; File No. SR–NASD–2001–90]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility

December 14, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD amended the proposed rule change on December 14, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its rules to reflect Nasdaq's separation from the NASD upon its approval as a national securities exchange and to establish rules that would govern trading otherwise than on an exchange, including rules governing the NASD Alternative Display Facility ("ADF"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

0100. General Provisions

0120. Definitions.

(a) No Change.

(b) "Association'

The term "Association" means, collectively, the NASD, NASD Regulation, [Nasdaq,] and NASD Dispute Resolution.

(c) through (q) No Change.

0130. Delegation, Authority and Access

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and NASD Dispute Resolution, Inc. [The Nasdaq Stock Market, Inc.], hereinafter "Subsidiaries") the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Commission pursuant to its authority under the Act.

(b) No Change.

* * * * *

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

* * * * *

1022. Categories of Principal Registration

(a) through (d) No Change.

(e) Limited Principal—Direct Participation Programs

(1) No Change.

(2) For purposes of the Rule 1000 Series, "direct participation programs" shall mean programs [which] *that* provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code (Code) and individual retirement plans under Section 408 of the Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Code and any company including separate accounts registered pursuant to the Investment Company Act of 1940. Also excluded from this definition is any program [for which quotations are displayed on Nasdaq or which] *that* is listed on a registered national securities exchange or any program for which an application for [quotation on Nasdaq or] listing on a registered national securities exchange has been made.

(3) No Change.

(f) through (g) No Change.

* * * * *

2000. BUSINESS CONDUCT

2100. GENERAL STANDARDS

2110. Standards of Commercial Honor and Principles of Trade

A member, in the conduct of [his] *its* business, shall observe high standards of commercial honor and just and equitable principles of trade.

IM–2110–1. "Free-Riding and Withholding'

(a) No Change.

(b) Violations of Rule 2110

Except as provided herein, it shall be inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Rule 2110 for a member, or a person associated with a member, to fail to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins regardless of whether such securities are acquired by the member as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group or otherwise. Therefore, it shall be a violation of Rule 2110 for a member, or a person associated with a member, to:

(1) through (8) No Change.

(9) Sell any of the securities to any person, or to a member of the immediate family of such person who is supported directly or indirectly to a material extent by such person, who owns or has contributed capital to a broker/dealer, other than solely a limited business broker/dealer as defined in paragraph (c) of this interpretation, or the account in which any such person has a beneficial interest, provided, however, that:

(A) The prohibition shall not apply to any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, as long as:

(i) Such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Alden S. Adkins, Senior Vice President, NASD Market Operations Administration, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2001 ("Amendment No. 1"). First, Amendment No. 1 revises proposed Rule 4200(a)(12) to (i) clarify that the market where the security is listed, rather than the NASD, determines whether a normal unit of trading should be an amount other than 100 shares and (ii) delete an inadvertent reference to Nasdaq. Second, Amendment No. 1 deletes the phrase "that enters into a contractual relationship with an NASD Market Participant" from the definition of "customer broker/dealer" in proposed Rule 4300(d)(1) and adds the word "not" to the definition of "indirect electronic access" before the word "affiliates" in the first sentence of proposed Rule 4300(d)(3). Finally, Amendment No. 1 waives the 35-day period for Commission action until such time as the waiver is withdrawn by the NASD.

(ii) such member's shares or shares of a parent of such member are publicly traded on a[n] *registered national securities* exchange [or Nasdaq].

(B) and (C) No Change.

(c) through (m) No Change.

* * * * *

IM–2110–2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, the Association's Board of Governors is issuing an interpretation to the Rules of the Association dealing with member firms' treatment of their customer limit orders in Nasdaq-*listed* securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members acting as market makers to handle their customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order.[, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the Association is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.][1]

[Rule 2110 of the Association's Rules states that:]

[A member, in the conduct of [his] its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

[Rule 2320, the Best Execution Rule, states that:]

[In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.]

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in a Nasdaq-*listed* security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that, [until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order, and provided further, that] a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) For customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

[By rescinding the safe harbor position and adopting this interpretation,] [t]The Association wishes to emphasize that members may not trade ahead of their customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The Association believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market making capacity does not occur. For purposes of this interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Association also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. [As set out above, the Best Execution Rule] Rule 2320 requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The Association emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

(b) No Change.

* * * * *

IM–2110–3. Front Running Policy

It shall be considered conduct inconsistent with just and equitable principles of trade for a member or person associated with a member, for an account in which such member or person associated with a member has an interest, for an account with respect to which such member or person associated with a member exercises investment discretion, or for certain customer accounts, to cause to be executed:

(a) No Change.

(b) an order to buy or sell an underlying security when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in an option overlying that security, or when a customer has been provided such material, non-public market information by the member or any person associated with a member; prior to the time information concerning the block transaction has been made publicly available.

The violative practice noted above may include transactions [which] *that* are executed based upon knowledge of less than all of the terms of the block transaction, so long as there is knowledge that all of the material terms of the transaction have been or will be agreed upon imminently.

[1] FN1 For purposes of the pilot program expanding the operation of certain Nasdaq transaction and quotation reporting systems and facilities in SR-NASD–99–57 during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent ("opt-in") to processing of their limit order(s) during the extended hours period commencing after the normal close of the Nasdaq market, limit order protection will not apply to that customer's order(s).

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The general prohibitions stated above shall not apply to transactions executed by member participants in automatic execution systems in those instances where participants must accept automatic executions.

These prohibitions also do not include situations in which a member or person associated with a member receives a customer's order of block size relating to both an option and the underlying security. In such cases, the member and person associated with a member may position the other side of one or both components of the order. However, in these instances, the member and person associated with a member would not be able to cover any resulting proprietary position(s) by entering an offsetting order until information concerning the block transaction involved has been made publicly available.

The application of this front running policy is limited to transactions that are required to be reported on the last sale reporting systems administered by Nasdaq, Consolidated Tape Association (CTA), or Option Price Reporting Authority (OPRA). Information as to a block transaction shall be considered to be publicly available when it has been disseminated via the tape or high speed communications line of one of those systems or of a third-party news wire service.

A transaction involving 10,000 shares or more of an underlying security or options covering such number of shares is generally deemed to be a block transaction, although a transaction of less than 10,000 shares could be considered a block transaction in appropriate cases. A block transaction that has been agreed upon does not lose its identity as such by arranging for partial executions of the full transaction in portions [which] *that* themselves are not of block size if the execution of the full transaction may have a material impact on the market. In this situation, the requirement that information concerning the block transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

IM–2110–4. Trading Ahead of Research Reports

The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an interpretation to the Rules regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust the firm's inventory position in [Nasdaq-listed securities,] an exchange-listed security traded *otherwise than on an exchange* [in the OTC market,] or a derivative security based primarily on a specific [Nasdaq or] exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.

The Association believes that such activity is conduct [which] *that* is inconsistent with just and equitable principles of trade, and not in the best interests of the investors. Thus, this interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in [a Nasdaq-listed security,] an exchange-listed security traded *otherwise than on an exchange* [in the third market] or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.

[Rule 2110 states that:

A member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

In accordance with Article VII, Section 1(a)(ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110:

Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in [a Nasdaq security,] an exchange-listed security traded *otherwise than on an exchange* [in the over-the-counter market] or a derivative security based primarily upon a specific [Nasdaq or] exchange-listed security, in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade and is a violation of Rule 2110.

For purposes of this interpretation, a "purposeful" change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the interpretation does not apply to changes in an inventory position related to unsolicited order flow from a firm's retail or broker/dealer client base or to research done solely for in-house trading and not in any way used for external publication.

Under this interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop "Chinese Wall" procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.

* * * * *

IM–2110–5. Anti-Intimidation/ Coordination

The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any [automated system] *facility* operated by the *NASD* [The Nasdaq Stock Market, Inc. (Nasdaq),] or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

(1) Set unilaterally its own bid [and] *or* ask in any [Nasdaq] security, the prices at which it is willing to buy or sell any [Nasdaq] security, and the quantity of shares of any [Nasdaq] security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any [Nasdaq] security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) through (7) No Change.

* * * * *

2200. Communications with Customers and the Public

2210. Communications with the Public

(a) and (b) No Change.

(c) Filing Requirements and Review Procedures

(1) through (6) No Change.

(7) The following types of material are excluded from the foregoing filing requirements and (except for research reports under paragraph (G)) spot-check procedures:

(A) No Change.

(B) Advertisements or sales literature [which] *that* do no more than identify the [Nasdaq] symbol of the member and/or of a security in which the member is a [Nasdaq] registered market maker;

(C) through (G) No Change.

(8) and (9) No Change.

* * * * *

2300. TRANSACTIONS WITH CUSTOMERS

2310. No Change.

* * * * *

IM–2310–1. Possible Application of SEC Rules 15g–1 through 15g–9

Members should be aware that, effective January 1, 1990, any transaction [which] *that* involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those Rules should be reviewed to determine if an executed customer suitability agreement is required.

Accounts opened, and recommendations made, prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) of the Rules of Fair Practice as previously in effect, as set forth in Notice to Members 90–52 (August 1990).

* * * * *

IM–2310–2. Fair Dealing with Customers

(a) through (d) No Change.

(e) Fair Dealing with Customers with Regard to Derivative Products or New Financial Products.

The Board emphasizes members' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members must follow specific guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

(1) Index Warrants

Members are obliged to comply with the Rules, regulations and procedures applicable to index warrants and foreign currency warrants contained in the Rule 2840 Series.

(2) Hybrid Securities and Selected Equity-Linked Debt Securities ("SEEDS") Designated as Nasdaq National Market Securities [Pursuant to the Rule 4400 Series]

With respect to Hybrid Securities and Selected Equity-Linked Debt Securities ("SEEDS") that have been designated as Nasdaq National Market Securities, [M]members are obligated to comply with any Rules, regulations, or procedures applicable to such securities [pursuant to the Rule 4420 Series], *including those of Nasdaq,* as well as any other applicable Rule, regulation, or procedure of the Association. *Prior to the commencement of trading of a particular SEEDS, Nasdaq or the Association will distribute a circular providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.*

* * * * *

2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g) (1) Unless two or more priced quotations for a [non-Nasdaq] *non-exchange-listed* security (as defined in the Rule [6700] *6600* Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, in any transaction for or with a customer pertaining to the execution of an order in a [non-Nasdaq] *non-exchange-listed* security, a member or person associated with a member[,] shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Members that display priced quotations on a real-time basis for a [non-Nasdaq] *non-exchange-listed* security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.

(3) through (5) No Change.

* * * * *

2340. Customer Account Statements

(a) through (b) No Change.

(c) Definitions.

For purposes of this Rule, the following terms will have the stated meanings:

(1) through (2) No Change.

(3) direct participation program or direct participation program security refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange [or The Nasdaq Stock Market], or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) "real estate investment trust" or "real estate investment trust security" refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange [or The Nasdaq Stock Market].

(5) No Change.

(d) No Change.

* * * * *

2520. Margin Requirements

(a)–(e) No Change.

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(f) Other Provisions

(1) Determination of Value for Margin Purposes

Active securities dealt in on a national securities exchange [or OTC Marginable securities listed on Nasdaq] shall, for margin purposes, be valued at current market prices provided that, whether or not dealt in on an exchange [or listed on Nasdaq], only those options contracts on a stock or stock index, or a stock index warrant, having an expiration that exceeds nine months and that are listed or guaranteed by the carrying broker-dealer, may be deemed to have market value for the purposes of Rule 2520. Other securities shall be valued conservatively in view of current market prices and the amount [which] *that* might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried in "long" or "short" positions are subject to unusually rapid or violent changes in value, or do not have an active market [on Nasdaq or] on a national securities exchange, or where the amount carried is such that the position(s) cannot be liquidated promptly.

(2)–(9) No Change.

(10) Margin For Index/Currency Warrants

(A) This subparagraph (10) sets forth the minimum amount of margin [which] that must be deposited and maintained in margin accounts of customers having positions in index warrants, currency index warrants or currency warrants dealt in on [Nasdaq or] a national securities exchange. The Association may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. The initial deposit of margin required under this Rule must be made within five full business days after the date on which a transaction giving rise to a margin requirement is effected. The margin requirements set forth in this subparagraph (J) are applicable only to index warrants, currency index warrants and currency warrants listed for trading on Nasdaq or a national securities exchange on or after September 28, 1995.

(B) Definitions

The following definitions shall apply to transactions in index warrants, currency index warrants, and currency warrants.

(i) through (ii) No Change.

(iii) The term "current market value" of an index warrant, currency index warrant or currency warrant shall mean the total cost or net proceeds of the transaction on the day the warrant was purchased or sold and at any other time shall mean the most recent closing price of that issue of warrants on [Nasdaq, in the case of a Nasdaq-listed index warrants, or] the exchange on which it is listed on any day with respect to which a determination of current market value is made.

(iv) through (xiv) No Change.

(C) through (D) No Change.

* * * * *

2522. Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions

(a) The following definitions shall apply to the margin requirements for options, currency warrants, currency index warrants and stock index warrants transactions:

(1) through (46) No Change.

(47) Options Trading

The term "options trading" means trading in any option issued by The Options Clearing Corporation, whether or not of a type, class or series [which] *that* has been approved for trading [on Nasdaq or] on a national securities exchange.

(48) through (49) No Change.

(50) Primary Market

The term "primary market" means (A) in respect of an underlying security that is principally traded on a national securities exchange, the principal exchange market in which the underlying security is traded and (B) in respect of an underlying security that is principally traded in the over-the-counter market, the market reflected by any widely recognized quotation dissemination system or service [(Nasdaq in the case of a Nasdaq stock)].

(51) through (77) No Change.

* * * * *

2700. SECURITIES DISTRIBUTIONS

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) No Change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) through (2) No Change.

(3) Bona fide independent market—a market in a security [which] *that:*

(A) through (D) No Change.

(4) Bona fide independent market maker—a market maker [which] *that:*

(A) is registered *with the NASD* [as a Nasdaq] *or a national securities exchange as* a market maker in the security to be distributed pursuant to this Rule;

(B) through (C) No Change.

(5) through (18) No Change.

(c) through (p) No Change.

* * * * *

2800. SPECIAL PRODUCTS

2810. Direct Participation Programs

(a) No Change.

(b) Requirements

(1) No Change.

(2) Suitability

(A) through (C) No Change.

(D) Subparagraphs (A) and (B), and, only in situations where the member is not affiliated with the direct participation program, subparagraph (C) shall not apply to:

(i) A secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program [for which quotations are displayed on Nasdaq or which] *that* is listed on a registered national securities exchange; or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for [inclusion on Nasdaq or] listing on a registered national securities exchange has been approved by [Nasdaq or] such exchange and the applicant makes a good faith representation that it believes such [inclusion on Nasdaq or] listing on an exchange will occur within a reasonable period of time following the formation of the program.

(3) through (5) No Change.

(6) Participation in Rollups

(A) through (B) No Change.

(C) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(i) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

a. to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program [which] *that* values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of

sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely[-] tradeable securities; provided, however, that:

1. through 3. No Change.

4. freely[-] tradeable securities [utilized] *used* as compensation to dissenting limited partners must be previously listed on a *registered* national securities exchange [or previously traded on Nasdaq] prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely[-] tradeable securities in the 20-day period following the date of the meeting at which the vote on the limited partnership rollup transaction occurs. If the issuer of the freely[-] tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be [utilized] *used* as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is "affiliated" with the issuer of the freely[-] tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this subparagraph.

b. and c. No Change.

(ii) No Change.

(c) No Change.

* * * * *

2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants

2841. General

(a) Applicability—This Rule 2840 Series shall be applicable[: (1) To the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on The Nasdaq Stock Market ("Nasdaq"); and (2)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(b) and (c) No Change.

* * * * *

2850. Position Limits

[(a)] Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed [on Nasdaq or] on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Association[, in the case of Nasdaq-listed index warrants,] or the exchange on which the index warrant is listed.

[(b) In determining compliance with this Rule, the position limits for Nasdaq-listed index warrants are as follows:]

[(1) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.]

[(2) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.]

[(3) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent-of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size of such index warrant position. After recalculating a warrant position pursuant to this subparagraph, such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in subparagraph (1) or (2) above. For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.]

2851. Exercise Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly,[:]

[(1) Has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Rule 2850; or

(2)] Has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant [not dealt in on Nasdaq].

(b) The Association, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time by action of the Association. Reasonable notice shall be given of each new limitation fixed by the Association. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

[2852. Reporting Requirements] *Reserved*

[(a) Each member shall file with the Association a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or a national securities exchange.]

[(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The

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report shall be in such form as may be prescribed by the Association and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with the Association such additional periodic reports with respect to such account as the Association may from time to time prescribe.]

* * * * *

2854. [Trading Halts or Suspensions]
Reserved

[(a) The trading in an index warrant on Nasdaq shall be halted whenever the Senior Vice President for Market Regulation, or its designee, shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:]

[(1) Trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

[(2) the current calculation of the index derived from the current market prices of the stocks is not available;]

[(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.]

[(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if the Senior Vice President for Market Regulation, or its designee, determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading. In either event, the reopening may not occur until the Association has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.]

* * * * *

2860. Options

(a) No Change.

(b) Requirements

(1) General

(A) Applicability—This Rule shall be applicable (i) [to the trading of options contracts issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market and to the terms and conditions of such contracts; (ii)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members [who] *that* are not members of an exchange on which the option executed is listed; [(iii)] *(ii)* to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and [(iv)] *(iii)* other matters related to options trading.

Unless otherwise indicated herein, subparagraphs (3) through (12) shall apply only to [options displayed on Nasdaq and] standardized and conventional options on common stock and subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a), including common stock. The position and exercise limits for FLEX Equity Options for members [who] *that* are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.

(B) through (C) No Change.

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(A) through (F) No Change.

(G) Call—The term "call" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract. In the case of a "call" issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from The Options Clearing Corporation the number of units of the underlying security or receive a dollar equivalent of the underlying index covered by the option contract.

(H) through (DD) No Change. [(EE) Nasdaq Market Index Option—The term "Nasdaq market index option" means an option contract issued by The Options Clearing Corporation and displayed on Nasdaq based upon an underlying index which has been deemed by the Commission to be a market index.]

[(FF) Nasdaq Option Transaction—The term "Nasdaq option transaction" means a transaction effected by a member of the Association for the purchase or sale of an option contract which is displayed on The Nasdaq Stock Market or for the closing out of a long or short position in such option contract.]

(GG) through (II) are renumbered as (EE) through (GG).

[(JJ)] *(HH)* Options Contract—The term "options contract" means any option as defined in paragraph (a). For purposes of subparagraphs (3) through (12), an option to purchase or sell common stock shall be deemed to cover 100 shares of such stock at the time the contract granting such option is written. [A Nasdaq index option shall be deemed to cover a dollar equivalent to the numerical value of the underlying index multiplied by the applicable index multiplier.] If a stock option is granted covering some other number of shares, then for purposes of subparagraphs (3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (e.g., an option to buy or sell five hundred shares of common stock shall be considered as five option contracts). A stock option contract [which] *that*, when written, grants the right to purchase or sell 100 shares of common stock shall continue to be considered as one contract throughout its life, notwithstanding that, pursuant to its terms, the number of shares [which] that it covers may be adjusted to reflect stock dividends, stock splits, reverse splits, or other similar actions by the issuer of such stock.

(KK) through (NN) are renumbered as (II) through (LL).

[(OO)] *(MM)* Put—The term "put" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract. In the case of a "put" issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with terms of the option, to sell to The Options Clearing Corporation the number of units of the underlying security covered by the option contract or to tender the dollar equivalent of the underlying index.

[(PP) Registered Nasdaq Index Options Market Maker—The term "registered Nasdaq index options market maker" means a member who meets the qualifications for such, as set forth in subparagraph (3), is willing and able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

(QQ) through (VV) are renumbered as (NN) through (SS).

[(WW)] *(TT)* The Options Clearing Corporation—The term "The Options Clearing Corporation" means The Options Clearing Corporation, the issuer of exchange-listed options [and options displayed on The Nasdaq Stock Market].

(XX) through (YY) are renumbered as (UU) through (VV).

[(ZZ) Underlying Index—The term "underlying index" means an index upon which a Nasdaq index option contract is based.]

(AAA) through (BBB) are renumbered as (YY) through (ZZ).

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through [Nasdaq,] the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) No Change.

(ii) 22,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 22,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 22,500 option contracts; or

(iii) 31,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security provid[ing]*ed* that the 31,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 31,500 option contracts; or

(iv) 60,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 60,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 60,000 option contracts; or

(v) 75,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 75,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or

(vi) through (ix) No Change.

(B) Index Options

[(i)] Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options [displayed on Nasdaq or] dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by [the Association, in the case of Nasdaq index options, or] the exchange on which the option trades.

[(ii) In determining compliance with this subparagraph (3), option contracts on a market index displayed in Nasdaq shall be subject to a contract limitation fixed by the Association, which shall not be larger than the equivalent of a $300 million position. For this purpose, a position shall be determined by the product of the closing index value times the index multiplier times the number of contracts on the same side of the market.]

(C) through (D) No Change.

(4) through (6) No Change.

(7) Limit on Uncovered Short Positions

Whenever the Association shall determine in light of current conditions in the markets for options, or in the markets for underlying securities, that there are outstanding a number of uncovered short positions in option contracts of a given class in excess of the limits established by the Association for purposes of this subparagraph or that a percentage of outstanding short positions in option contracts of a given class are uncovered, in excess of the limits established by the Association for purposes of this subparagraph, the Association, upon its determination that such action is in the public interest and necessary for the protection of investors and the maintenance of a fair and orderly market in the option contracts or underlying securities, may prohibit any further opening writing transactions in option contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short position in option contracts of one or more series of options of that class. [The Association may exempt transactions in Nasdaq options by registered Nasdaq options market makers from restrictions imposed under this subparagraph and it shall rescind such restrictions upon its determination that they are no longer appropriate.]

(8) through (11) No Change.

(12) Confirmations

Every member shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying security or index, the expiration month, the exercise price, the number of option contracts, the premium, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, whether the transaction was effected on a principal or agency basis and, for other than options issued by The Options Clearing Corporation, the date of expiration. The confirmation shall by appropriate symbols distinguish between exchange listed [and Nasdaq option transactions] and other transactions in option contracts.

(13) through (22) No Change.

(23) Tendering Procedures for Exercise of Options

(A) Exercise of Options Contracts

(i) Subject to the restrictions established pursuant to paragraph (b)(4) hereof and such other restrictions [which] *that* may be imposed by the Association, The Options Clearing Corporation or an options exchange pursuant to appropriate rules, an outstanding option contract issued by The Options Clearing Corporation may be exercised during the time period specified in the rules of The Options

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Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account the option contract is carried. Exercise instructions of their customers relating to exchange listed [or Nasdaq] option contracts shall not be accepted by members after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract. Exercise instructions in respect of such option contracts carried in any proprietary account of a member shall similarly not be accepted by any other member with [whom] *which* such member maintains an account after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract.

(ii) through (iii) No Change.

(B) through (D) No Change.

[(E) Exercise of Nasdaq Index Option Contracts

(i) With respect to Nasdaq index option contracts, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations also are required to comply with the following procedures:]

[a. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a customer or market maker account at The Options Clearing Corporation must be received or prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is received or prepared. Member organizations must accept exercise instructions until 4:10 p.m. (Eastern Time) each business day.]

[b. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a firm account at The Options Clearing Corporation must be prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is prepared.]

[c. Any member or member organization that intends to submit an exercise notice for 25 or more contracts in the same series of Nasdaq index options on the same business day on behalf of an individual customer, registered Nasdaq options market maker or firm account must notify the Association of such exercises in a manner prescribed by the Association no later than 4:10 p.m. (Eastern Time) on that day. For purposes of this subparagraph (E), exercises for all accounts controlled by the same individual must be aggregated.]

[(ii) The provisions of subparagraphs (i) a. and b. above are not applicable in respect to any series of Nasdaq index options on the last day of trading prior to the expiration date of such series.]

(24) No Change.

* * * * *

2870. [Nasdaq Index Options] ***Reserved***

[2871. Definitions]

[(a) Aggregate Current Index Value—The term "aggregate current index value" means the value required to be delivered to the holder of a call or by the holder of a put (against payment of the aggregate exercise price) upon the valid exercise of an index option. Such value is equal to the index multiplier times the current index value on the trading day on which an exercise notice is properly tendered to The Options Clearing Corporation, or, if the day on which such notice is so tendered is not a trading day, then on the most recent trading day.]

[(b) Aggregate Index Option Exercise Price—The term "aggregate index option exercise price" in respect of an index option means the exercise price of such option times the index multiplier.]

[(c) Best Bid and Asked—The term "best bid" means the best or highest price of all the open, active bids. The term "best asked" means the best or lowest (but greater than zero) price of all the open active offers.]

[(d) Cabinet Transaction—The term "cabinet transaction" means a transaction in a Nasdaq index option executed at a price of $1.00 per contract for the purpose of opening or closing a position in an index option having a nominal market value.]

[(e) Call—The term "call" means an option contract under which the holder of the options has the right, in accordance with the terms of the option, to buy a number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract.]

[(f) Class of Options—The term "class of options" means all option contracts of the same type of option covering the same underlying security or index.]

[(g) Clearing Member—The term "clearing member" means a member of the Association which has been admitted to membership in The Options Clearing Corporation pursuant to the provisions of the rules of The Options Clearing Corporation.]

[(h) Closing Purchase Transaction—The term "closing purchase transaction" means an option transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction.]

[(i) Closing Sale Transaction—The term "closing sale transaction" means an option transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.]

[(j) Combination Order—The term "combination order" means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index or put and call option contracts representing the same number of shares or units of trading at option, which contracts do not have both the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares, or units of trading at option, which contracts do not have both the same exercise price and expiration date (e.g., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order). In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts represent the same number of shares or units of trading at option.]

[(k) Covered—The term "covered" in respect of a short position in a call option contract means that the writer's obligation is secured by a "specific deposit" or an "escrow deposit," meeting the conditions of Rules 610(e) or 610(h), respectively, of the rules of The Options Clearing Corporation, or the writer holds in the same account as the short position, on a unit-for-unit basis, a long position either in the underlying security or in an option contract of the same class of options where the exercise price of the option contract in such long position is equal to or less than the exercise price of the option contract in such short position. The term "covered" in respect of a short position in a put option contract means that the writer holds in the same account as the short position, on a unit-for-unit basis, a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position.]

[(l) Current Index Value—The term "current index value" means the level of a particular index (derived from the current market prices and capitalization of the underlying securities in the index group) at the close of trading on any trading day, or any multiple or fraction thereof specified by the Association as such value is reported by the reporting authority.]

[(m) Expiration Cycle—The term "expiration cycle" means all option contracts covering the same underlying security or index having the same expiration month, or the time period during which such options are authorized for trading.]

[(n) Expiration Date—The term "expiration date" of a Nasdaq option contract issued by The Options Clearing Corporation means the day and time fixed by the rules of The Options Clearing Corporation for the expiration of all option contracts having the same expiration month as such option contract.]

[(o) Expiration Month—The term "expiration month" in respect of an option contract means the month and year in which such option contract expires.]

[(p) Index Dollar Equivalent—The term "index dollar equivalent" is the dollar amount which results when the index value is multiplied by the appropriate index multiplier.]

[(q) Index Group—The term "index group" means a group of securities, whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values in a widely disseminated securities index specified by the Association.]

[(r) Index Multiplier—The term "index multiplier" as used in reference to an index option contract means the dollar amount (as specified by the Association) by which the current index value is multiplied to arrive at the index dollar equivalent. Such term replaces the term "unit of trading" used in reference to other kinds of options.]

[(s) Index Option Exercise Price—The term "index option exercise price" in respect of an index option means the specified index value which, when multiplied by the index multiplier, will yield the aggregate exercise price at which the aggregate current index value may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such option.]

[(t) Index Option Premium—The term "index option premium" means the price of each such option (expressed in points), as agreed upon by the purchaser and seller in such transaction, times the index multiplier and the number of options subject to the transaction.]

[(u) Index Underlying Security—The term index underlying security means any of the securities included in an index group underlying a class of Nasdaq index options.]

[(v) Internalized Trade Transaction—The term "Internalized Trade Transaction" or "ITT" means an OCT entered into The Nasdaq Stock Market by a participant containing the terms of a transaction executed by the participant as principal where the participant is also the order entry firm.]

[(w) Long Position—The term "long position" means the number of outstanding option contracts of a given series of options held by a person (purchaser).]

[(x) Nasdaq Index Option Contract—The term "Nasdaq index option contract" means an option contract which is authorized for quotation display on The Nasdaq Stock Market.]

[(y) Nasdaq Index Options Order Entry Firm—The term "order entry firm" shall mean a member of the Association who is registered as an order entry firm for purposes of participation in the Nasdaq Index Options Service which permits the firm to enter options orders via Order Confirmation Transactions (OCT) or Internalized Trade Transaction (ITT).]

[(z) Nasdaq Index Options Participant—The term "participant" shall mean either a Nasdaq index options market maker or Nasdaq index options order entry firm registered as such with the Association for participation in the Nasdaq Index Options Service.]

[(aa) Nasdaq Index Options Service—The term "Nasdaq Index Option Service" or "Service" means the Service owned and operated by The Nasdaq Stock Market, Inc. which enables participants to report transaction in Nasdaq index options, to have reports of all Nasdaq index options transactions automatically forwarded to the Options Price Reporting Authority (OPRA) for dissemination to the public and the industry, and to "lock-in" these trades by sending both sides to The Options Clearing Corporation for clearance and settlement; and to provide participants with sufficient monitoring and updating capabilities to participate in such trading environment.]

[(bb) Nasdaq Market Index Option—The term "Nasdaq market index option" means an option contract issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market based upon an underlying index which has been deemed by the Commission to be a market index.]

[(cc) Opening Purchase Transaction—The term "opening purchase transaction" means an option transaction in which the buyer's intention is to create or increase a long position in the series of options involved in such transaction.]

[(dd) Opening Writing Transaction—The term "opening writing transaction" means an option transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.]

[(ee) Options Clearing Corporation—The term "Options Clearing Corporation" (OCC) means The Options Clearing Corporation, the issuer of options displayed on The Nasdaq Stock Market.]

[(ff) Order Confirmation Transaction—The term "Order Confirmation Transaction" or "OCT" means a message entered into The Nasdaq Stock Market by an order entry firm which is directed to a market maker not simultaneously acting as both a market maker and an order entry firm, which message contains the information specified by the Association as necessary for trade reporting purposes and for submission of trade detail to The Options Clearing Corporation.]

[(gg) Outstanding—The term "outstanding" in respect of an option contract means an option contract which has neither been the subject of a closing sale transaction nor has been exercised nor has reached its expiration date.]

[(hh) Put—The term "put" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract.]

[(ii) Registered Nasdaq Index Options Market Maker—The term "registered Nasdaq index options market maker" means a member who meets the qualifications for such as set forth in Rule 2873, is willing and able to serve as such-in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

[(jj) Rules of The Options Clearing Corporation—The term "rules of The Options Clearing Corporation" means the by-laws and the rules of The Option Clearing Corporation, and all written interpretations thereof as may be in effect from time to time.]

[(kk) Series of Options—The term "series of options" means all option contracts of the same class of options having the same exercise price and expiration date and which cover the same number of units of the underlying security or index.]

[(ll) Short Position—The term "short position" means the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).]

[(mm) Spread Order—The term "spread order" means an order to buy a stated number of option contracts and

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to sell the same number of option contracts, or contracts representing the same number of shares or units of trading at option in a different series of the same class of options.]

[(nn) Straddle Order—The term "straddle order" means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option, and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option and having the same exercise price and expiration date, (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares, or units of trading at option.]

[(oo) Type of Options—The term "type of options" means the classification of an option contract as either a put or a call.]

[(pp) Uncovered—The term "uncovered" in respect of a short position in an option contract means the short position is not covered.]

[(qq) Underlying Index—The term "underlying index" means an index upon which a Nasdaq index option contract is based.]

[(rr) Unit of Trading—The term "unit of trading" means the number of units of the underlying security designated by The Options Clearing Corporation as the subject of a single option contract. In the absence of any other designation, the unit of trading for a common stock is 100 shares.]

[2872. Nasdaq Index Option Services Available]

[(a) Level 2 Nasdaq Index Options Service]

[(1) Nature of Service

This service will provide the subscriber with access to the quotations of all of the registered Nasdaq index options market makers entering quotes on each of the Nasdaq index options, in addition to the last reported sale for each Nasdaq index option, the most recent index computation for the underlying index, daily high and low, daily volume, time of last sale and inside quotations.]

[(2) Availability

This service is available only to persons approved and authorized by the Association for retrieval of Nasdaq index options quotation and last sale data.]

[(b) Level 3 Nasdaq Index Options Service]

[(1) Nature of Service

This service will enable a registered Nasdaq index options market maker to enter quotations in The Nasdaq Stock Market only on the Nasdaq index options as to which the Association has authorized it to enter quotes pursuant to the procedures set forth in Rule 2873. A subscriber to Level 3 Nasdaq Index Options Service shall also receive Level 2 Nasdaq Index Options Service.]

[(2) Availability

Level 3 Nasdaq Index Options Service is available to any member which, upon application, is approved and authorized by the Association to participate in The Nasdaq Stock Market as a registered Nasdaq index options market maker.]

[2873. Registration, Qualification and Other General Requirements Applicable to All Nasdaq Index Options Market Makers]

[(a) Registration of Nasdaq Index Options Market Makers—Prior to acting as a market maker in Nasdaq index options, a member must make application to the Association on a form prescribed by the Association and become registered as such with it. In connection with such application, a member must submit to the Association such financial and other information as required by the Association to determine if such member meets the qualifications of a registered Nasdaq index options market maker specified herein. Such other information will include those classes and series of Nasdaq options in which such member desires to be registered as an index options market maker.]

[(b) Participation in the Nasdaq Index Options Service shall be mandatory for all Nasdaq index options market makers. Accordingly, a Nasdaq index options market maker's registration as such shall be conditioned upon the member's initial and continuing compliance with the following requirements:]

[(1) execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options market maker to prevent the unauthorized entry of information into the Nasdaq Index Options Service;]

[(3) acceptance and settlement of each NASD index option trade that the Service identifies as having been effected by such Nasdaq index options market maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date;]

[(4) membership in The Options Clearing Corporation, or a clearing arrangement with such member; and]

[(5) compliance with all applicable rules and operating procedures of the Association and the Commission.]

[(c) Nasdaq index options market makers shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Obligation to Honor Trades—If a Nasdaq index options market maker, or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a trade, such market maker, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(e) Compliance with Rules and Registration Requirements—Failure by Nasdaq index options market makers to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participants to censure, fine, suspension or revocation of its registration as Nasdaq index options market maker and/or order entry firm or any other fitting penalty under the Rules of the Association.]

[(f) Market Maker Financial Requirements—A registered Nasdaq index options market maker shall continuously maintain net capital of at least $50,000 computed in accordance with the provisions of SEC Rule 15c3–1(c)(2) under the Act, plus $5,000 per options series up to a maximum requirement of $150,000.]

[(g) Normal Business Hours—A registered Nasdaq index options market maker shall keep the Association advised as to the normal business hours during which it shall enter quotations. All firms should be open and active between the hours of 9:30 a.m. and 4:10 p.m. (Eastern Time). Nasdaq shall publish a "close symbol" for a registered Nasdaq index options market maker on Level 2 and Level 3 terminals at the close of such firm's normal business hours.]

[(h) Initiation of Service—Upon initial application, the registration of a Nasdaq index options market maker in a Nasdaq index options series shall be effective at the start of business on the second business day following receipt of his registration application by the Association; provided, however, said registration is accepted by the Association. If said initial registration is received for a Nasdaq index options series which has not previously been authorized by the Association, the registered Nasdaq index options market maker's registration shall be effective at the start of business on the first day that the Nasdaq options series is authorized for quotation by the Association; provided, however, said registration is accepted by the Association. A Nasdaq index options market maker shall commence market making and participation in the Service by initially contacting the Nasdaq Market Operations Center to obtain authorization for the trading of a particular Nasdaq index options series and identifying those terminals on which the Service information is to be displayed and thereafter by an appropriate keyboard entry which obligates him to execute transactions for at least one contract at the market maker's displayed quotations so long as the market maker remains active. All entries shall be made in accordance with the requirements set forth in the User Guide.]

[(i) Withdrawal Procedure for Nasdaq Index Options Market Makers]

[(1) With the approval of the Association, a registered Nasdaq index options market maker may suspend its quotations in a Nasdaq index options series for a specified period of time upon a showing that it is seriously impaired in its ability to enter quotations, or, in the case of a contemplated financing in the underlying security, the presence of statutory prohibitions or restrictions, or such other reason acceptable to the Association.]

[(2) In the event of a malfunction in the Nasdaq index options market maker's equipment rendering on-line communications with the Service inoperable, the Nasdaq index options market maker is obligated to immediately contact the Nasdaq Market Operations Center by telephone to request withdrawal from the Service. Nasdaq operational personnel will in turn enter the withdrawal notification from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(3) A registered Nasdaq index options market maker who suspends its quotations in a Nasdaq index options series pursuant to subparagraphs (1) and (2) above may not re-enter quotations in such series during the same trading day without the prior approval of the Association.]

[(j) Voluntary Termination—A registered Nasdaq index options market maker may voluntarily terminate its registration as to any Nasdaq options series by withdrawing its quotations from the Service without prior approval of the Association, subject to the conditions set forth in Rules 2875 and 2876. Such Nasdaq index options market maker may, by making application to the Association under the procedures and requirements set forth in this Rule, re-register as a Nasdaq index options market maker in a Nasdaq options series in which his registration is terminated.]

[(k) A Nasdaq index options market maker withdrawing option quotations from the Nasdaq Index Options Service for any reason has a specific obligation to monitor his status to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(l) Suspension and Termination of a Registered Nasdaq Index Options Market Maker's Authority to Enter Quotations by Action of the Association—The Association may, pursuant to provisions specified in the Code of Procedure as set forth in the Rule 9000 Series, suspend, condition or terminate a registered index options market maker's authority to enter quotations on one or more series of Nasdaq index options for violations of applicable Rules of the Association.]

[(m) Termination of Service on the Failure to Promptly Pay Fines and Assessments]

[(1) The Association, upon notice, may terminate service on any level of Nasdaq Index Options Service for failure of a subscriber to maintain the standards of availability specified in this Rule for such service or to pay the Service operator for services rendered.]

[(2) Any member which is a respondent in a complaint pursuant to any Rule of the Association is required promptly to pay any fine or costs imposed to the Treasurer of the Association. In the event that the respondent fails to do so, the Association may, after ten business days notice in writing to such respondent, suspend his authority to enter options quotations into or receive options quotations from Level 2 and 3 of the Nasdaq Index Options Services.]

[2874. Character of Index Options Quotations Entered Into the Nasdaq Index Options Service by All Nasdaq Index Options Market Makers]

[(a) All bids or offers for Nasdaq index options shall be for at least one option contract or the minimum unit of trading.]

[(b) All bids and offers for Nasdaq index options shall be expressed in terms of the applicable index multiplier (e.g., a bid of five for a Nasdaq index option having an index multiplier of $100 shall represent a bid to pay a premium of $500 for an option contract).]

[(c) All bids or offers for a Nasdaq index option contract for which The Options Clearing Corporation has established an adjusted unit of trading in accordance with paragraphs (c) and (d) of Section 11 of Article VI of the OCC's By-Laws shall be expressed in terms of dollars per the appropriate fractional part of the total securities and/or other property constituting such adjusted unit of trading.]

[(d) A registered Nasdaq index options market maker who receives a buy or sell order must execute a trade for at least one contract at his quotation as they appear on the Nasdaq CRT screen at the time of receipt of any such buy or sell order. Each quotation entered by a registered Nasdaq index options market maker must be reasonably related to the prevailing market.]

[(e) A registered Nasdaq index options market maker will be permitted to enter a one-sided quotation (0–1/16) with respect to those options which have no present market value.]

[(f) Crossed Markets—A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter quotations into the Nasdaq Index Options Service if (1) the bid quotation entered is greater than the ask quotation of another registered market maker in the same options series or (2) the asked quotation is less than the bid quotation of another registered market maker in the same options series.]

[(g) Quote Spread Parameters—A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter index option quotations into the Nasdaq Index Options Service if the spread between the market maker's bid and ask exceeds the following parameters:]

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[(1) ¼ of $1, if the member's bid price is $.50 or less;]

[(2) ½ of $1, if the bid price is more than $.50 but does not exceed $10;]

[(3) ¾ of $1, if the bid price is more than $10 but does not exceed $20; or]

[(4) $1, if the bid price is more than $20;]

[Providing, however, that the allowable quote spread differentials for the longest term options series open for trading in each option class shall be twice the amounts stated in subparagraphs (1) through (4) above.]

[(h) Except under extraordinary circumstances, a registered Nasdaq index options market maker shall not be permitted to enter on an intra-day basis a bid quotation more than $1 lower and/or an offering more than $1 higher than the last reported transaction for the particular index option contract. However, this standard shall not ordinarily apply if the price per share (or other unit of trading of the underlying index value has changed since the last preceding transaction for the particular option contract, in which event a market maker may then bid no lower than or offer no more than $1 plus the aggregate change in the price per unit of trading) of the underlying index value since the time of the last preceding transaction for the particular index option contract. Nothing in this paragraph shall alter the maximum bid-ask differential established by paragraph (g) above.]

[(i) Whenever, in the judgment of the Association, the interest of maintaining a fair and orderly market so requires, the Association may waive the requirements of paragraph (h) above on a case by case basis.]

[(j) When unusual trading conditions exist, and the interest of maintaining a fair and orderly market, the Association may waive the requirements of paragraph (g) above in those option series 10 or more points in the money to allow market makers to make bid/ask differentials as wide as the quotation in the primary market as determined by the inside quotation displayed on Nasdaq. Such waiver shall not automatically carry over from one day to the next.]

[2875. Commitment Rules Applicable to Options Market Makers in Nasdaq Index Options]

[(a) Commitment Rule for Index Options Market Makers. A market maker in a Nasdaq index option, unless excused from entering quotations pursuant to Rule 2873(i) shall, during normal options business hours, continuously quote all options series in such index option through the expiration of the longest term index options authorized for trading at the time the member commences such market making. Failure to abide by this commitment shall cause the index options market maker to be subject to the sanctions contained in Rule 2876.]

[(b) The following examples illustrate the commitment rule for index option market makers established by this Rule.]

[(1) Member A is authorized as a Nasdaq index options market maker prior to the expiration of January Nasdaq-100 Index® Options. Member A is thus obligated to continuously quote all series of Nasdaq-100 put and call options authorized for trading in the January, February and March expirations through the expiration of the March options.]

[(2) Member B is authorized as a market maker in Nasdaq-100 Index® Options at the time these options are authorized for the Nasdaq Options Program, but prior to the commencement of trading in these index options. The first authorized expiration cycle in Nasdaq-100 Index options will consist of options expiring in April, May and June with trading to commence in March. Member B would be obligated to continuously quote all authorized Nasdaq-100 Index option series from the commencement of trading in such options in March through the expiration of June Nasdaq-100 Index options.]

[2876. Sanctions Applicable to Nasdaq Index Options Market Makers]

[(a) A registered Nasdaq market maker in index options whose quotation for any option series in which the member is a market maker is withdrawn without the approval of the Association shall, at or before the daily close of the Nasdaq Index Options Service, have its registration terminated in all Nasdaq index options series covering the same underlying index as that for which option quotations were suspended by the member, subject, however, to the re-registration procedures set forth in paragraph (b) below.]

[(b) A Nasdaq index options market maker in index options whose registration in options classes is terminated pursuant to paragraph (a) above may, by making application to the Association under the procedures and requirements set forth in Rule 2873, re-register as a Nasdaq index options market maker in any Nasdaq index options series in the options classes in which his registration was terminated pursuant to paragraph (a) above providing, however, that the Association shall not grant effectiveness to such registration until the near-term options and those in the following expiration cycle have expired.]

[(c) The following example illustrates the sanction for index options market makers established by paragraph (a) above.]

[(1) Market Maker A, without approval of the Association, withdraws quotations from the Nasdaq Index Options Service for a series of Nasdaq-100 Index® options causing the member's registration in all Nasdaq-100 Index options series to be terminated pursuant to paragraph (a) above.]

[(2) At the time Market Maker A's registration is terminated, January, February and March Nasdaq-100® Index options are trading. Pursuant to paragraph (b), any application by member A to again register as a market maker in Nasdaq-100 Index options would not be granted effectiveness by the Association until the expiration of the February Nasdaq-100 Index options.]

[(d) A registered market maker in Nasdaq index options who withdraws index options quotations from the Nasdaq Index Options Service in any options series without prior authorization during the 15 business days preceding the expiration of the near-term options on the same underlying index may be deemed to be in violation of Rule 2110.]

[2877. Requirements Applicable to Nasdaq Index Options Order Entry Firms]

[(a) Participation in the Nasdaq Index Options Service as an order entry firm requires current registration as such with the Association. Such registration shall be conditioned upon the order entry firm's initial and continuing compliance with the following requirements:]

[(1) Execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) membership in, or a clearing arrangement with, a member of The Options Clearing Corporation;]

[(3) compliance with all applicable rules and operating procedures of the Association and the Commission;]

[(4) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options order entry firm to prevent the unauthorized entry of information into the Nasdaq Index Options Service; and]

[(5) acceptance and settlement of each trade that the Service identifies as having been effected by such Nasdaq index options order entry firm or, if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date.]

[(b) The registration required hereunder will apply solely to the qualification of a participant to participate in the Nasdaq Index Options Service. Such registration shall not be conditioned upon registration in any particular eligible or active Nasdaq index options contracts.]

[(c) Each participant shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Upon the effectiveness of registration as a Nasdaq index options order entry firm, the participant may commence activity for entry of orders, as applicable. The operating hours of the Nasdaq Index Options Service are currently 9:30 a.m. to 4:10 p.m. (Eastern Time), but may be modified by the Association. The extent of participation in Nasdaq by a Nasdaq index options order entry firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.]

[(e) Market orders shall not be permitted in the Nasdaq Index Options Service. All orders entered into the Service other than accommodation transactions shall be priced and all orders shall be directed to a specified Nasdaq index options market maker. Nasdaq index options order entry firms will be immediately notified on the terminal screen and printer, if requested, of the execution or rejection of an order entered into via OCT.]

[(f) If a Nasdaq index options order entry firm or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a Nasdaq index option trade, such order entry firm or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(g) Failure by a Nasdaq index options order entry firm to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participant to censure, fine, suspension or revocation of its registration as a Nasdaq index options order entry and/or market maker firm or any other fitting sanction under the Rules of the Association.]

[2878. Transaction Reporting and Other Reporting Requirements]

[(a) All Nasdaq index options participants, upon becoming so registered and qualified, shall have access to, and be required to utilize, the Order Confirmation Transaction (OCT) and Internalized Trade Transaction (ITT) trade reporting systems established by the Association for Nasdaq index options transactions. Such trade reporting systems are designed to "lock-in" all Nasdaq index options transactions. Thus these systems serve trade comparison and clearing functions as well as trade reporting functions, and require the participation of both the order entry and the market making firms in the reporting process. Because these procedures, which are detailed in the User Guide, vary from those applying to transaction reporting in other Nasdaq securities, it is imperative that all Nasdaq index options participants become familiar with and comply with the provisions of this Rule. Failure on the part of a Nasdaq index options participant to comply with Nasdaq index options reporting provisions may subject participants to censure, fine, suspension or revocation of registration as a Nasdaq index options market maker and/or order entry firm or any other fitting sanction under the Rules of the Association.]

[(b) Order Confirmation Transaction (OCT)—Nasdaq index options order entry firms shall enter an OCT into the Service promptly upon the execution of their order. Upon the acceptance by a market maker of an OCT, the Service shall automatically forward a trade report to the Options Price Reporting Authority (OPRA). Nasdaq index options market makers shall accept an OCT via terminal entry within two minutes as specified by the Association, or the OCT shall be "timed-out," in which case the Service will notify the order entry firm of the market maker's non-acceptance of the order. The order entry firm will also be notified if the market maker affirmatively rejects the order via terminal entry. If the market maker wishes to subsequently confirm an OCT which has been timed-out or rejected, a new OCT must be entered into the Service by the order entry firm with a late trade indicator. Once accepted, an OCT may only be canceled or corrected by mutual consent of the market maker and order entry firm.]

[(c) Unsolicited Orders—Nasdaq index options market makers are not obligated to accept an OCT which is unsolicited but, if they choose to do so, must accept the order within two minutes of its receipt as specified by the Association. Upon the acceptance of an unsolicited OCT order by a Nasdaq index options market maker, the system will automatically forward a trade report to OPRA. Once accepted by the market maker, the OCT may only be canceled or corrected with the mutual consent of the market maker and the order entry firm.]

[(d) Internalized Trade Transaction (ITT)—Nasdaq Index Options Service participants shall, where appropriate, enter an ITT message into the Service within two minutes of the execution of an internalized trade. Upon the entry of an ITT message, the Service shall automatically forward a trade report to OPRA. An ITT may be subsequently canceled or corrected by the member.]

[(e) A Nasdaq index options order entry firm shall transmit OCT and ITT for transactions in Nasdaq index options other than cabinet transactions at the price recorded on the trade ticket exclusive of commission, taxes or other charges.]

[(f) Nasdaq index options participants may effect cabinet transactions in any class of options contracts authorized for trading via the Service at a price of $1.00 per contract, providing such price is reasonably related to the prevailing market for the option. In reporting cabinet transactions, participants shall designate these transactions as such with the appropriate indicator on OCT or ITT entered into the Service. Cabinet transactions will not be disseminated to OPRA but will be reported to OCC for clearance.]

[(g) Weekly and/or Monthly Reports—A member shall report weekly and/or monthly to the Association such data on Nasdaq index options quoted in the Service as the Board of Governors shall require. Such report shall be on a form prescribed by the Association.]

[(h) Trade Tickets—All trade tickets on transactions in Nasdaq index options and authorized underlying securities must indicate the time the order was received and the time the order was executed or canceled.]

[2879. Authorization of Nasdaq Index Option Market Making]

[(a) The Association shall not authorize index option market making in any options series unless, at the time such market making activity is to commence, there are a minimum of five registered Nasdaq index options market makers in the index option.]

[(b) Once market making has commenced in any class of Nasdaq index options, the Association shall withdraw approval of further market making activity with respect to any succeeding options series to be opened in that Nasdaq index option if there are fewer than three registered market makers in the index option.]

[(c) Whenever the Association shall withdraw its approval for index option market making activity in a particular

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Nasdaq index options series pursuant to paragraph (b) above, it shall not reinstate such market making until the provisions of paragraph (a) above have been satisfied.]

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[2880. Nasdaq Index Option Contracts Authorized for Trading]

[The Association may from time to time approve for display on Nasdaq put option contracts and call option contracts in respect of underlying indexes which have been selected by the Association and approved for trading. All such option contracts shall be designated as to the type of option, the underlying index, the expiration month and the exercise price. Only quotations in respect to option contracts in a class or series of options approved by the Association and currently open for display on the Service may be quoted by a registered Nasdaq index options market maker on the Nasdaq Index Options Service.]

[2881. Series of Nasdaq Index Options for Trading]

[(a) Nasdaq Index Options—After a particular class of index options has been approved for display on the Service and quotation thereon by registered Nasdaq index options market makers, the Association shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options the Association shall fix the expiration month and exercise price of options contracts included in each such series.]

[(1) Expiration Months—At the commencement of trading in a particular class of Nasdaq index options, series of options having three different expiration months will normally be opened. Such expirations shall occur in consecutive months. The first such expiration will occur in the month following the month in which such options are introduced, the second expiration will occur in the month following the first, and the third expiration will occur in the month following the second. Additional series of index options of the same class may be opened for trading at or about the time a prior series expires and the expiration month of each such series will normally be approximately three months following the opening of such series.]

[(2) Exercise Prices—The procedures for fixing the exercise or strike price of each series of index options opened for trading shall be as follows:]

[(A) Strike prices shall be fixed at an index value which is an integer.]

[(B) Regardless of the value of an index, the interval between strike prices will be $5.00.]

[(C) New series of index option contracts may be added up to the fifth business day prior to expiration.]

[(D) When new series of index option contracts within a new expiration cycle are opened for trading, two strike prices above and two strike prices below the current index value may be added.]

[(E) When the value of the index underlying a class of index options reaches a strike price, the Association may add one or more additional strike prices such that there are at least two strike prices above and two strike prices below the strike price which has been reached.]

[(F) In unusual market conditions, the Association may add additional series of index option contracts up to three strike prices above and three strike prices below the current index price.]

[(b) Specification Adjustments—The unit of trading and the exercise price initially established for index option contracts of a particular series are subject to adjustment in accordance with the rules of The Options Clearing Corporation. When such adjustment(s) have been determined, announcement thereof shall be made by the Association and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series.]

[(c) Contract Adjustments—Index option contracts shall be subject to adjustments in accordance with the rules of The Options Clearing Corporation.]

[(d) Puts and Calls—When calls are first opened for trading on an underlying index stock group, the Association may open a series of puts corresponding to each series of calls open or to be opened for trading on the same underlying index stock group.]

[2882. Unit of Trading]

[The unit of trading in each series of options displayed on the Service shall be the unit of trading established by The Options Clearing Corporation pursuant to the rules of The Options Clearing Corporation.]

[2883. Suspension of Authorization of Nasdaq Index Option Contracts]

[(a) The Association shall have the authority to suspend trading in Nasdaq index option contracts by either one or more market maker or all market makers where it deems it necessary and appropriate:]

[(1) to prevent fraudulent and manipulative acts and practices;]

[(2) to promote just and equitable principles of trade; or]

[(3) to prevent excessive speculation and promote the likelihood of a competitive and orderly market.]

[(b) The Association shall suspend trading in Nasdaq index options contracts by all market makers:]

[(1) If the underlying index is not being computed or disseminated; or]

[(2) if trading is halted or suspended in underlying stocks that collectively contribute (A) 20 percent of the current index group value (in the case of index stock groups comprised of more than 50 stocks); and (B) 10 percent of the current index group value (in the case of index stock groups comprised of 50 or fewer stocks).]

[2884. Trade Comparison Procedures for Nasdaq Index Options]

[(a) Scope and Applicability—All transactions in Nasdaq index options shall be reported to the Association pursuant to reporting procedures established by the Association. The Association shall report all compared transactions to The Options Clearing Corporation for clearance and settlement. All compared transactions in Nasdaq options which are cleared and settled through the facilities of The Options Clearing Corporation shall be subject to the rules of The Options Clearing Corporation.]

[(b) Responsibility of Clearing Members—Every member which is a member of The Options Clearing Corporation (a "clearing member") shall be responsible for the clearance and settlement of every Nasdaq index option transaction to which it is a party and for each Nasdaq index option transaction of a member for which it acts as correspondent and/or clearing agent pursuant to agreement. Unless specifically authorized by The Options Clearing Corporation, no member shall be permitted to have more than one such agreement with a clearing member in effect at any time.]

[(c) Reporting of Clearing Information]

[(1) Filing of Trade Information—Each Nasdaq index option participant shall individually report each transaction in a Nasdaq index option, for which it has a responsibility to report, each business day to the Association via OCT or ITT in the manner specified by the Association.]

[(2) (A) The Association will provide each Nasdaq index options participant with the opportunity to review on trade date OCT and ITT transactions to which the participant is a party.]

[(B) All OCT orders which are accepted by the contra party and all ITT which have not been canceled shall be considered to be compared trades, i.e., trades where the trade information agrees as to the identity of the other party to the transaction, the type of option contract, the underlying index, the exercise price, the expiration month, the number of options contracts, the amount of the premium, the designation of the parties as purchaser and writer, respectively, and the trade date, if other than the date of submission.]

[(3) Verification of Nasdaq Index Options Transactions—Each participant shall promptly review each OCT or ITT execution report received and report corrected trade information to the Association as soon as possible, but in any event, not later than the hour which shall be from time to time prescribed by the Association. It shall be the sole responsibility of participants to review the accuracy of all reports promptly upon receipt, and the Association shall not assume any responsibility for reviewing such reports for accuracy or for making any corrections not reported by a participant.]

[(4) Reporting of Compared Trades to The Options Clearing Corporation—On each business day, at or prior to such time as may be prescribed by The Options Clearing Corporation, the Association shall furnish The Options Clearing Corporation a report of each clearing member's compared trades as reported to the Association on that day. Only those trades which have been confirmed by both parties shall be furnished by the Association to The Options Clearing Corporation, and the Association shall assume no responsibility with respect to any unaccepted order nor for any delays or errors in the reporting of trades.]

[2885. Clearance and Settlement Procedures for Nasdaq Index Options]

[(a) Failure to Pay Premium]

[(1) Whenever The Options Clearing Corporation shall reject a Nasdaq index option transaction because of the failure of a clearing member acting on behalf of the purchaser to pay the premium due thereon as required by the rules of The Options Clearing Corporation, the member acting as or on behalf of the seller (writer) shall have the right either to cancel the transaction by giving notices thereof to the defaulting clearing member or to enter into either a new opening writing transaction or closing sale transaction, as the case may be, in respect of the same Nasdaq index option contract that was the subject of the rejected Nasdaq index option transaction, charging any loss resulting therefrom (including any commissions paid or payable in connection with such new transaction) to the defaulting clearing member. Such action shall be taken on the day the Nasdaq index option transaction was rejected by The Options Clearing Corporation, unless the Association shall extend such time.]

[(2) In the event the rejected transaction involves a Nasdaq index option contract of a series in which trading has been terminated or suspended before a new Nasdaq index option transaction can be effected to establish the amount of loss, the member acting as or on behalf of the seller shall have a claim against the defaulting clearing member for the amount of the premium due thereon.]

[(b) Index Option Contracts of Suspended Members—When announcement is made of the suspension from membership in the Association of a member, other than a clearing member of The Options Clearing Corporation (a "non-clearing member"), pursuant to the By-Laws of the Association, all open short positions in option contracts of such member and all open positions that are secured in full by a specific deposit or evidenced by an escrow receipt in accordance with the rules of The Options Clearing Corporation, shall be closed out without unnecessary delay by all members carrying such positions for the account of the suspended non-clearing member; provided, however, that upon any such suspension, the Association may, in its discretion and where it determines that such is necessary for the protection of investors, suspend the mandatory close-out provisions hereof and may, in its discretion and where it determines that such is necessary for the protection of investors, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions hereof shall relieve any suspended non-clearing member of its obligations or of any damages incurred by members carrying positions for the account of such suspended non-clearing member. Should an open short position or an open position resulting from an exercise of an option contract not be closed when required by this Rule, the price for the purpose of determining claims shall be fixed by the price current at the time when such position should have been closed under this Rule. When a member of The Options Clearing Corporation is suspended pursuant to the provisions of the By-Laws, the positions of such clearing member shall be closed out in accordance with the rules of The Options Clearing Corporation.]

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3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

(1) No Change.

(2) A person associated with a member shall indicate on the memorandum for each transaction in a [non-Nasdaq] *non-exchange-listed* security, as that term is defined in the Rule [6700] *6600* Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.

(c) No Change.

* * * * *

IM–3110. Customer Account Information

(a) Members should be aware that, effective January 1, 1990, any transaction [which] *that* involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) through (h) No Change.

* * * * *

[3350] *5100*. Short Sale Rule

(a) No member shall effect a short sale *in a Nasdaq National Market Security (as that term is defined in Rule 4200) otherwise than on an exchange* for the account of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding national best (inside) bid in the security.

(b) No change.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a [qualified] registered market maker registered in the security *with* NASD [on Nasdaq] in connection with bona fide market making activity. For purposes of this paragraph,

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transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) through (8) No Change.

(d) through (e) No Change.

(f) A member that is not currently registered as NASD [Nasdaq] market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) through (h) No Change

(i) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) The warrant market maker is a registered [Nasdaq] NASD market maker for the warrant; and

(B) No Change.

(j) No Change.

(k) Definitions

(1) through (2) No Change.

[(3)(A) Until February 1, 1996, the term "qualified market maker" shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subparagraph, after an offering in a stock has been publicly announced, a registration statement has been filed, or a merger or acquisition involving two issues has been announced, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:]

[(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days;]

[(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;]

[(iii) After a merger or acquisition involving an exchange of stock has been publicly announced and not yet consummated or terminated, a market maker may immediately register in either or both of the two affected securities as a qualified market maker pursuant to the same-day registration procedures in Rule 4611; provided, however, that if the market maker withdraws on an unexcused basis from any stock in which it has registered pursuant to this paragraph within 20 days of so registering, it shall not be designated as a qualified market maker pursuant to this subparagraph (3) for any subsequent merger or acquisition announced within three months subsequent to such unexcused withdrawal.]

[(B) For purposes of this subparagraph (3), a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through Nasdaq on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Rule 4619, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. Beginning February 1, 1996, the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Rule 4612.]

[(l) This Rule shall be in effect until March 1, 2002.]

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IM–[3350]*5100*. Short Sale Rule

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities *effected otherwise than on an exchange*, the Association *has* adopted an exemption to the Rule for certain market making activity. This exemption [was deemed] *is* an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by [qualified] *registered* [Nasdaq] *NASD* market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a ['qualified" Nasdaq] *registered NASD* market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, the Association wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) through (3) No change.

(b) (1) Rule [3350] *5100* requires that no member shall effect a short sale *otherwise than on an exchange* for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding best (inside) bid in the security. The Association has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least 1/16th point above the current *national* inside bid when the current inside spread is 1/16th point or greater. The last sale report for such a trade would, therefore, be above the *national* inside bid by at least 1/16th of a point. If the current spread is less than 1/16th of a point, however, the short sale must be executed at a price equal to or greater than the current inside offer price.

(2) Moreover, the Association believes that requiring short sales to be a minimum increment of 1/16th point above the *national best* bid when the current spread is 1/16th or greater and equal to or greater than the offer when the current spread is less than 1/16th ensures that transactions are not effected at prices inconsistent with the underlying purpose of the Rule. It would be inconsistent with Rule [3350] *5100* for a member or customer to cause the inside spread for an issue to narrow when the current best bid is lower than the preceding best bid (e.g., lowering its offer to create an inside spread less than 1/16th) for the purpose of facilitating the execution of a short sale at a price less than 1/16th above the inside bid.

(3) For Nasdaq National Market securities trading in decimals pursuant to the Decimals Implementation Plan for Equity and Options Markets, the Association has determined that in order to effect a "legal" short sale in such securities when the current bid is lower than the preceding bid the short sale must be executed at least $0.01 above the current inside bid. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(c) (1) No Change.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an "up bid" for the purpose of facilitating a short sale, the Association would consider such activity to be a manipulative act and a violation of the Association's Short Sale Rule. The Association also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a "down bid" for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid [in The Nasdaq Stock Market] in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule [3350] *5100*. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) No Change.

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The 4000 Series is replaced in its entirety by the following proposed rule language.

4000. NASD Alternative Display Facility

4100. General

The NASD Alternative Display Facility is the facility to be operated by the NASD for members that effect trades in Nasdaq and CQS/CTA ("ADF-eligible") securities otherwise than on an exchange. The NASD Alternative Display Facility will collect and disseminate quotations, compare trades, and collect and disseminate trade reports.

4110. Use of NASD Alternative Display Facility Data Systems

NASD may at any time authorize the use of NASD's Alternative Display Facility data systems on a test basis for whatever studies it considers necessary and appropriate.

4200. DEFINITIONS

(a) Unless the context requires otherwise, the terms used in the Rule 4000 through 6000 Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule 11Aa3–1.

(1) "Act" means the Securities Exchange Act of 1934.

(2) "ADF-eligible security" means a Nasdaq or CQS/CTA security.

(3) "CQS/CTA security" means a security that is eligible for inclusion in the CQ/CTA Plan as from time to time amended in accordance with the provisions of the Plan and with the approval of the SEC.

(4) "Nasdaq" means the registered national securities exchange and its facilities operated by The Nasdaq Stock Market, Inc.

(5) "Nasdaq market maker" shall have the meaning as defined in the Nasdaq rules.

(6) "Nasdaq National Market" or "NNM" is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market Security.

(7) "Nasdaq National Market security" or "NNM security" shall have the meaning as defined in the Nasdaq rules.

(8) "Nasdaq security" means a security that is listed on the Nasdaq Stock Exchange.

(9) "Nasdaq SmallCap Market" or "SCM" is a distinct tier of The Nasdaq Stock Market compromised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Security.

(10) "Nasdaq SmallCap Market security" shall have the meaning as defined in the Nasdaq rules.

(11) "Non-Registered Member" means a member of NASD that is not a Registered Market Maker or a Registered ECN.

(12) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, the market where the security is listed determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's symbol.

(13) "Otherwise than on an exchange" means a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade "on or through" a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(14) "Registered ECN" means a member of NASD that is an electronic communications network ("ECN") that elects to display orders in the NASD Alternative Display Facility. A member is a Registered ECN in only those designated securities for which it is registered with NASD. A member shall cease being a Registered ECN in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.

(15) "Registered Market Maker" means a member of NASD that is registered as an NASD market maker in a particular designated security and, with respect to that security, holds itself out (by entering quotations in the NASD Alternative Display Facility) as being willing to buy and sell such security for its own account on a regular and continuous basis. A member is a Registered Market Maker in only those designated securities for which it is registered as an NASD market maker. A member shall cease being a Registered Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.

(16) "SEC Rule 100," "SEC Rule 101," "SEC Rule 103," and "SEC Rule 104" mean the rules adopted by the Commission under Regulation M, and any amendments thereto.

(17) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.

(18) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b) For purposes of Rules 4619, and 4623, the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "independent bid," "net purchases,"

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"passive market maker," "penalty bid," "reference security," "restricted period," "subject security," and "syndicate covering transaction."

Selected NASD Notices to Members: 94–70, 95–64, 95–82.

4300. Quote and Order Access Requirements

(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Market Makers), or a bid or offer (for Registered ECNs), in the Alternative Display Facility, NASD Market Participants must:

(1) Provide other NASD Market Participants direct electronic access, as defined below; and

(2) Provide NASD member broker-dealers that are not NASD Market Participants direct electronic access or allow for indirect electronic access, as defined below. Indirect electronic access must be readily available to broker-dealers seeking access, otherwise the NASD Market Participant must provide direct electronic access. In any event, an NASD Market Participant is prohibited from (A) in any way directly or indirectly influencing or prescribing the prices that their customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access.

(b) Subject to the terms and conditions contained herein, all NASD Market Participants that display quotations in the NASD Alternative Display Facility must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive via direct or indirect electronic access, and report this information to the NASD as specified below.

(1) NASD Market Participants must record the following information for every order they receive via direct or indirect electronic access during the trading day:

(A) Unique Order Identifier
(B) Order Entry Firm (OEID)
(C) Order Side (Buy/Sell)
(D) Order Quantity
(E) Issue Identifier
(F) Order Price
(G) Order Price Modifier (i.e. .N)
(H) Time In Force (i.e. 3 minutes, day, etc.)
(I) Order Date
(J) Order Time (including seconds)
(K) Minimal Acceptable Quantity (i.e. C1, M1, AON, etc.)
(L) Market Making Firm (MMID)

The information described in paragraphs (A) through (L) must be reported to the NASD within 10 seconds of receipt of the order.

(2) In addition to the information previously provided pursuant to paragraph (b)(1), NASD Market Participants must record the following information, as applicable, for every order that has been acted upon or responded to:

(A) Unique Order Identifier (as provided in paragraph (b)(1)(A))
(B) Order Response (i.e. E=Execute, D=Decline, X=Cancel, T=timed out, P=partial, etc.)
(C) Order Response Time (including seconds)
(D) Partial Quantity
(E) Counter Price
(F) Total Execution Quantity
(G) Execution Price

The information described in paragraphs (A) through (G) must be reported to the NASD within 10 seconds of any response to or action taken regarding an order.

(3) Maintaining and Preserving Records

(A) In addition to submitting the information described herein to the NASD, each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a–4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.

(4) Orders Not Required To Be Recorded

The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via ITS or any system operated by a national securities exchange or national securities association.

(5) Method of Transmitting Data

Members shall transmit this information in such form as prescribed by the Association.

(6) Reporting Agent Agreements

(A) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.

(B) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(C) All written documents evidencing an agreement described in paragraph (6)(B) shall be maintained by each party to the agreement.

(D) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.

(7) Withdrawal of Quotations

If an NASD Market Participant knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations from the NASD Alternative Display Facility until such time that the member is satisfied that its order information is being properly recorded and reported.

(c) NASD Market Participants are required to specify as part of their NASD Alternative Display Facility Workstation Subscriber Agreement the method and terms by which they will comply with the requirements of this Rule. NASD Regulation staff will not approve a Market Participant's Subscriber Agreement unless the method and terms provided by the Market Participant are in compliance with this Rule.

(d) Definitions

(1) Customer broker-dealer is any broker-dealer that has, or seeks to have, an ongoing relationship with a Market Participant, including an ECN subscriber, for the purposes of executing securities transactions.

(2) Direct electronic access means the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid and offer subject to quote and order access obligations, as defined herein, without the need for voice communication, with the equivalent speed, reliability, availability, and cost, as are made available to the NASD Market Participant's own customer broker-dealers or other active customers or subscribers.

(3) Indirect electronic access means the ability to route an order through customer broker-dealers of an NASD Market Participant that are not affiliates of the NASD Market Participant, for execution against the NASD Market Participant's best bid and offer subject to quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers. The NASD Market Participant's customer broker-dealers providing indirect electronic access shall remain responsible for all orders routed through them as though the orders were the firms' own orders.

(4) NASD Market Participant means (a) an NASD Registered Market Maker,(b) an ATS, (c) or an NASD Registered ECN.

(5) Best bid and offer for purposes of this Rule includes the best-priced buy and sell orders of an NASD Registered ECN.

(6) Quote and Order Access Obligations include the requirements under this Rule and the firm quote obligations under Rule 11Ac1–1 under the Act, the standards under Rule 11Ac1–1(c)(5)(ii)(A)(2) under the Act, Sections 301(b)(3) through (5) of Regulation ATS and other order access-related regulatory requirements for ATSs, ECNs and market makers. Obligations under this Rule include providing the ability to send or receive Trade-or-Move messages, identifiable as such, as required by Rule 4613(d) and providing access to any reserved size orders as required by Rule 4623(c).

* * * * *

4600. TRADING IN NASDAQ SECURITIES

4610. Registration and Other Requirements

4611. Registration as a Market Maker

(a) Quotations and quotation sizes in Nasdaq securities may be entered into the NASD Alternative Display Facility only by a Registered Market Maker or other entity approved by NASD to function in a market-making capacity.

(b) An NASD member seeking registration as a market maker shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. It shall be sufficient to obtain registration as a market maker for a member to demonstrate proof that it is a registered Nasdaq market maker in good standing. A member's registration as a market maker shall become effective upon receipt by the member of notice of approval of registration from NASD.

(c) A market maker may become registered in an issue by entering a registration request via an NASD terminal or other NASD approved electronic interface with NASD's systems or by contacting NASD Alternative Display Facility Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered. It shall be sufficient to obtain registration in an issue for a member to demonstrate proof that it is currently registered in that issue as a Nasdaq market maker and is in good standing.

(d) A market maker's registration in an issue shall be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

Selected NASD Notices to Members: 93–24, 94–68, 94–83.

4612. Reserved

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each Nasdaq security for which a member is a Registered Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations through the NASD Alternative Display Facility, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A Registered Market Maker in a security listed on Nasdaq must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a Registered Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

(B) Minimum Price Variation for Decimal-based Quotations

The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01. Quotations failing to meet this standard shall be rejected.

(b) Firm Quotations

(1) A Registered Market Maker that receives an offer to buy or sell from another NASD member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the NASD Alternative Display Facility at the time of receipt of any such offer. If a Registered Market Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another NASD member, execute a transaction at least at the size displayed.

(2) If a Registered Market Maker, upon receipt of an offer to buy or sell from another NASD member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through the NASD Alternative Display Facility at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such Registered Market Maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Registered Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.

(c) Quotations Reasonably Related to the Market

A Registered Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Market Maker's quotations are no longer reasonably related to the prevailing market, NASD may require the market maker to re-enter its quotations. If a Registered Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the market maker's quotations in one or all securities.

(1) In the event that a Registered Market Maker's ability to enter or update quotations is impaired, the Registered Market Maker shall immediately contact NASD Alternative Display Facility Operations to request the withdrawal of its quotations.

(2) In the event that a Registered Market Maker's ability to enter or update quotations is impaired and the Registered Market Maker elects to continue to participate through the NASD Alternative Display Facility, the Registered Market shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through the NASD Alternative Display Facility.

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(d) Locked and Crossed Markets

(1) A Registered Market Maker shall not, except under extraordinary circumstances, enter or maintain quotations through the NASD Alternative Display Facility during normal business hours if:

(A) the bid quotation entered is equal to ("lock") or greater than ("cross") the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to ("lock") or less than ("cross") the bid quotation of another market maker entering quotations in the same security.

(2) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(A) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a Registered Market Maker that is a party to a lock/cross because the Registered Market Maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send a message, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving market maker's quoted price ("Trade-or-Move Message"). Any Registered Market Maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(B) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—If a Registered Market Maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the Registered Market Maker must immediately send, making use of direct electronic access in accordance with Rule 4300, to the market maker whose quotes it is locking or crossing a Trade-or-Move message that is at the receiving market maker's quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares. A Registered Market Maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(C) A Registered Market Maker that sends a Trade-or-Move Message pursuant to of this rule must append to the message a symbol indicating that it is a Trade-or-Move Message.

(D) For the purposes of this rule "agency order" shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an "institutional account" as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.

(3) A Registered Market Maker, prior to entering a quotation that locks or crosses another quotation, must make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Reasonable efforts shall include making use of direct electronic access in accordance with Rule 4300. Pursuant to the provisions of paragraph (b) of this Rule, a Registered Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the NASD Alternative Display Facility at the time of receipt of any order.

(4) For purposes of this Rule 4613(d), the term "Registered Market Maker" shall include:

(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), a order that is displayed through the NASD Alternative Display Facility;

(B) any NASD member that operates the ECN when the order being displayed has been entered by a person or entity that is not an NASD member;

(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, a priced order that is displayed through the NASD Alternative Display Facility; and

(D) any NASD member that operates the ATS when the priced order being displayed has been entered by a person or entity that is not an NASD member.

(e) Other Quotation Obligations

(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.

(2) A member that is registered as a market maker in a Nasdaq security shall be obligated to have available in close proximity to the NASD Alternative Display Facility terminal at which it makes a market in a Nasdaq security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of national securities exchanges and other market makers trading and quoting that Nasdaq security.

Selected NASD Notices to Members: 91–37, 93–2, 93–43, 99–61.

IM–4613. Autoquote Policy

(a) General Prohibition—NASD bans the automated update of quotations by market makers through the NASD Alternative Display Facility. Except as provided below, this policy prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations through the NASD Alternative Display Facility. This ban is necessary to offset the negative impact on the capacity and operation of the NASD Alternative Display Facility caused by certain autoquote techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market.

(b) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order. elected NASD Notices to Members: 99–61.

4614. Reserved

4615. Reserved

4616. Reserved

4617. Normal Business Hours

A Registered Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An NASD Registered Market Maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. Registered Market Makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

4618. Reserved

4619. Withdrawal of Quotations and Passive Market Making

(a) A Registered Market Maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by NASD Alternative Display Facility Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by NASD one business day in advance and is approved by NASD. Excused withdrawal status based on vacation may be granted only if:

(1) The request for withdrawal is received by NASD one business day in advance, and is approved by NASD;

(2) the request includes a list of the securities for which withdrawal is requested; and

(c) Excused withdrawal status may be granted to a Registered Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the Registered Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status; or

(d) Excused withdrawal status may be granted to a member that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).

(e) Excused withdrawal status may be granted to a Registered Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as a Registered Market Maker; provided however, that if NASD finds that the Registered Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620.

(f) Excused withdrawal status or passive market maker status may be granted to a Registered Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (f)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Registered Market Maker that it has been identified as a distribution participant or an affiliated purchaser to NASD Alternative Display Facility Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies NASD Alternative Display Facility Operations as required by subparagraph (f)(2), below.

(2) A Registered Market Maker that has been identified to NASD Alternative Display Facility Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify NASD Alternative Display Facility Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a Registered Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies NASD Alternative Display Facility Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit NASD from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact NASD Alternative Display Facility Operations to obtain an excused withdrawal as required by subparagraphs (a) of this Rule.

(4) The quotations of a passive market maker shall be identified on NASD Alternative Display Facility Data Systems as those of a passive market maker.

(5) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (f)(1) of this Rule shall submit a request to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution

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participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report.

(g) The NASD Alternative Display Facility Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal pursuant to this Rule, or the conditions imposed on their reentry. Selected NASD Notices to Members: 88–69, 89–15, 93–29, 93–41.

4620. Voluntary Termination of Registration

A Registered Market Maker may voluntarily terminate its registration in a security by (1) withdrawing its quotations from the NASD Alternative Display Facility and not re-entering its quotations for five (5) minutes or (2) failing to re-enter quotations within thirty (30) minutes of the end of a trading halt. A Registered Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days, absent an excused withdrawal specified in Rule 4619. Withdrawal from participation as a Registered Market Maker in the NASD Alternative Display Facility shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Registered Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and thereby terminates its registration as a market maker in Nasdaq securities may register as a market maker at any time after a clearing arrangement has been reestablished.

4621. Suspension and Termination of Quotations by NASD Action

NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Registered Market Maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622. Termination of NASD Alternative Display Facility Data System Service

NASD may, upon notice, terminate NASD Alternative Display Facility Data System service in the event that a Registered Market Maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD. Selected NASD Notices to Members: 88–43.

4623. Alternative Trading Systems

(a) NASD may provide a means to permit alternative trading systems ("ATSs"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule 11Ac1–1(a)(8), to comply with the display requirements of SEC Rule 301(b)(3) and the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) ("ECN display alternatives"). NASD will not facilitate compliance with access requirements, which are the responsibility of Market Participants under Rule 4300.

(b) An ATS or ECN that seeks to use the NASD-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives shall:

(1) Demonstrate to NASD that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as an NASD member;

(3) enter into and comply with the terms of an NASD Alternative Display Facility Workstation Subscriber Agreement, as amended for ATSs and ECNs;

(4) agree to provide for NASD's dissemination in the quotation data made available to quotation vendors the prices and sizes of NASD Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in the NASD Alternative Display Facility), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with NASD Alternative Display Facility Operations as an ATS or ECN; and

(5) comply with Rule 4300.

(c) When an NASD member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS's or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:

(1) Up to the size of the delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the NASD-delivered order; or

(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).

No ATS or ECN operating through the NASD Alternative Display Facility pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through the NASD Alternative Display Facility is 100 shares or greater. For purposes of this Rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

4624. Reserved

4625. Regulatory Cooperation

(a) The NASD may enter into agreements with other self-regulatory organizations, markets, associations and other entities that provide for the exchange of information and other forms of mutual assistance for regulatory purposes.

(b) No member or associated person shall refuse a request to appear and testify before, or provide documents or other information to, another self-regulatory organization, market, association or other entity with which NASD has entered into an agreement pursuant to paragraph (a) of this Rule, provided that the request is made in connection with an investigation or proceeding covered by the agreement with NASD. The requirements of this paragraph (b) shall apply irrespective of whether the NASD has initiated its own investigation or proceeding.

(c) Whenever a member or associated person responds to a request pursuant to this Rule, the member or associated person shall have all the same rights and obligations that would be accorded if the request had been made pursuant to Rule 8210.

4630. Reporting Transactions in Securities Listed on Nasdaq

4631. Reserved

4632. Reserved

4633. Transactions Reported by Members

(a) General

(1) This Rule governs the reporting of trades through the NASD's Trade Reporting and Comparison Service ("TRACS") in Nasdaq securities effected otherwise than on an exchange.

(2) All times referenced in this Rule are Eastern time.

(3) For Purposes of this Rule, the term "Reporting NASD Member" or "Reporting Member" shall mean an NASD member with the trade reporting obligation as set forth in Rule 4633(d).

(4) For purposes of this Rule, the term "Non-Reporting NASD Member" or "Non-Reporting Member" shall mean the contra side of a trade reported by a Reporting Member.

(5) For purposes of this Rule, the term "normal market hours" means from 9:30 a.m. to 4:00 p.m.

(6) Times in trade reports shall be expressed in hours, minutes, and seconds according to the 24 hour clock (e.g., a trade executed at 1:30:45 p.m. Eastern Time shall be reported as executed at 13:30:45). All times referenced in this Rule are Eastern Time.

(7) Participation in the trade reporting function of TRACS is mandatory for all members that have trade reporting obligations under this Rule. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.

(b) Normal Market Hours

Reporting NASD Members shall transmit last sale reports in Nasdaq securities effected otherwise than on an exchange to TRACS within 90 seconds after execution. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(c) Outside Normal Market Hours

Transactions in Nasdaq securities effected otherwise than on an exchange outside normal market hours shall be reported by members to TRACS as set out below.

(1) For transactions effected otherwise than on an exchange between the hours of 8:00 a.m. and 9:30 a.m. and 4:00 p.m. and 6:30 p.m.,

(A) A Reporting NASD Member shall transmit last sale reports to TRACS within 90 seconds after execution. Such last sale reports shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(2) For transactions effected otherwise than on an exchange between the hours of midnight and 8:00 a.m.,

(A) A Reporting NASD Member shall transmit last sale reports to TRACS between 8:00 a.m. and 9:30 a.m. on trade date. Such last sale reports shall be designated as ".T" trades, to denote their execution outside normal market hours, and must include the time of execution.

(3) For securities transactions effected otherwise than on an exchange between the hours of 6:30 p.m. and 12:00 p.m.

(A) A Reporting NASD Member shall transmit last sale reports to TRACS on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Such last sale reports shall be designated "as/of" trades, to denote their execution on a prior day, and must include the time of execution.

(d) Determining Which Party Reports a Transaction

(1) For transactions between two Registered Market Makers or Registered ECNs, the Registered Market Maker or ECN representing the sell side shall report the transaction.

(2) For transactions between a Registered Market Maker or Registered ECN and a Non-Registered Member, the Registered Market Maker or ECN shall report the transaction.

(3) For transactions between two Non-Registered Members, the Non-Registered Member representing the sell side shall report the transaction.

(4) For transactions between a member and a customer, the member shall report the transaction.

(5) For transactions between a member and a broker-dealer that is not a member of NASD, the member shall report the transaction.

(6) For all transactions between an NASD member and an NASD member that is also a member of Nasdaq or another national securities exchange, where the reporting party has a choice of reporting venues and chooses not to report to Nasdaq or another national securities exchange, the reporting party described in (1) through (5) above shall report the transaction to the NASD.

(e) Information To Be Reported—Two Party Trade Reports

(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the ("MMID") side of the trade report and the Non-Reporting Member is denoted as the ("OEID") side of the report.

(2) Each Two Party Last Sale Report Submitted by a Reporting NASD Member Should Contain:

(A) Security identification symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as' required by paragraph (h) below;

(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;

(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;

(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is a principal, riskless principal, or agent;

(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a principal, riskless principal, or agent;

(H) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:

(i) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1));

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.

(I) Execution time for any transaction not reported within 90 seconds of execution;

(J) The market participant identifier of the Reporting Member and the Non-Reporting Member;

(K) Reporting Member clearing broker;

(L) Reporting Member Executing Broker in case of a "give up;"

(M) Non-Reporting Member Executing Broker;

(N) Non-Reporting Member introducing broker in case of a "give up;"

(O) Non-Reporting Member clearing broker;

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(P) A designated symbol denoting whether the trade report should be published;

(Q) A designated symbol denoting whether the trade report should be compared in TRACS;

(R) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(S) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.

(T) For two party trade reports submitted pursuant to an Automated Give Up ("AGU") arrangement or a Qualified Service Representative ("QSR") Agreement, disclosure of the information set forth in subparagraphs (e) (2) (E) and (G) is mandatory.

(f) Information To Be Reported—Three Party Trade Reports

(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs shall only submit three party trade reports. Riskless principal trades may be submitted by reporting members as three party trade reports.

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

Transaction Information

(A) Security Identification Symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as required by paragraph (h) below;

(D) Execution time for any transaction not reported within 90 seconds of execution;

(E) The market participant identifier of the Reporting Member and the two Non-Reporting Members;

(F) A designated symbol denoting whether the trade should be published;

(G) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:

(i) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report;

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.

MMID Side

(H) All three party trade reports from ECNs must be marked as agency cross transactions;

(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;

(J) Reporting Member clearing broker;

(K) Reporting Member Executing Broker in the case of a "give up";

Buy Side OEID

(L) Buy Side OEID executing broker;

(M) Buy Side OEID introducing broker in case of a "give up";

(N) Buy Side OEID clearing broker;

(O) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;

(P) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(Q) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(R) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;

Sell Side OEID

(S) Sell Side OEID executing broker;

(T) Sell Side OEID introducing broker in case of a "give up";

(U) Sell Side OEID clearing broker;

(V) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;

(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;

(X) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(Y) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(Z) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS;

(AA) If the transactions between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraph (f) (2) (O) is mandatory; and

(BB) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraphs (f) (2) (V) and (W) is mandatory.

(g) Trade Report Modifiers

(1) Reporting Members shall append the following trade report modifiers to a last sale report if applicable:

(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) .PRP, if the trade reflects a price different from the current market when the execution is based on a prior reference point in time during normal market hours, which time shall be denoted in the trade report;

(C) .B, if the trade is executed during market hours and is an aggregation of transaction reports meeting the conditions set forth in paragraph (h) below;

(D) .SB, if the trade is executed during market hours and is a .B trade that is reported later than 90 seconds after execution;

(E) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;

(F) .C, if the trade is a Cash Trade;

(G) .ND, if the trade is a Next Day Trade;

(H) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;

(I) .T, if the trade is executed outside of normal market hours;

(J) .O, if the trade is priced beyond certain price validation parameters as established by the NASD; and

(K) Any other trade report modifier approved for use by the Securities and Exchange Commission.

(2) It will be a violation of this Rule for a Reporting Member to fail to append a required trade modifier or to append a modifier that is not required.

(3) A Reporting Member shall not append a .O modifier to a trade report unless the trade price is beyond certain price validation parameters as established by the NASD.

(4) The Association seeks to emphasize the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and the Association routinely monitors members' compliance with the 90 second requirement. If the Association finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110. Exceptional circumstances will be determined on a case by case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the Association's marketplace, and the Association will view noncompliance as a rule violation.

(h) Procedures for Reporting Price and Volume

(1) Members that are required to report transactions pursuant to paragraph (d) above shall transmit last sale reports in the following manner:

(A) For agency transactions, report the number of shares (or bonds) and the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

REPORT 100 shares at 40,

(B) For dual agency transactions, report the number of shares (or bonds) only once, and report the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

BUY as agent 100 shares at 40 plus a commission of $12.50;

REPORT 100 shares at 40.

(C) (i) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares (or bonds) and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares (or bonds) involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

Example:

BUY as principal 100 shares from a customer at 39.85 which includes a .15 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

Example:

SELL as principal 100 shares to a customer at 40.15, which includes a .15 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

Example:

BUY as principal 10,000 shares from a customer at 39.75, which includes a .25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(ii) Exception: A "riskless" principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one three party transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the NASD:

a. The member with the obligation to report the transaction pursuant to paragraph (d) above must submit a last sale report for the initial leg of the transaction.

b. Regardless of whether a member has a reporting obligation pursuant to paragraph (d) above, the firm must submit, for the offsetting, "riskless" portion of the transaction, either:

1. a clearing-only report with a capacity indicator of "riskless principal," if a clearing report is necessary to clear the transaction; or

2. a non-tape, non-clearing report with a capacity indicator of "riskless principal," if a clearing report is not necessary to clear the transaction.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;

REPORT 100 shares at 40 by submitting to the NASD either a single trade report marked with a "riskless principal" capacity indicator or by submitting the following reports:

3. where required by this Rule, a tape report marked with a "principal" capacity indicator; and

4. either a non-tape, non-clearing report or a clearing-only report marked with a "riskless principal" capacity indicator.

(D) For transactions that are executed at a price different from the current market when the execution is based on a prior reference point in time, members shall append to the transaction report a trade report modifier designated by NASD and shall include in the transaction report the prior reference time.

Example:

At 9:45 a.m., a member discovers that a customer's order to BUY 100 shares at the opening price has not been executed. The member executes the customer's order at 9:45 a.m. at the opening price (40). Current market is 41.

REPORT 100 shares at 40 and append the .PRP modifier with the time 9:30.

(i) Aggregation of Transaction Reports

(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.

(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.

Example:

A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.

REPORT 10,000 shares at 40.

(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.

Example:

A firm has several customer limit orders to sell which total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.

REPORT 10,000 shares at 40.

(C) Orders relayed to the trading department of the reporting member for

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simultaneous execution at the same price.

Example:

A firm purchases a block of 50,000 shares from an institution at a reported price of 40.

REPORT 50,000 at 40.

Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.

REPORT 12,500 at 40.

Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.

REPORT 15,000 at 40.

Example:

Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.

REPORT 10,000 at 40.

(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.

Examples:

A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.

First Example

11:01:00 500 shares at 40
11:01:05 500 shares at 40
11:01:10 9,000 shares at 40
11:01:15 500 shares at 40

REPORT 10,500 shares at 40 within ninety seconds of 11:01.

Second Example

11:01:00 100 shares at 40
11:01:10 11,000 shares at 40
11:01:30 300 shares at 40

REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).

Third Example

11:01:00 100 shares at 40
11:01:15 500 shares at 40
11:01:30 200 shares at 40
11:02:30 400 shares at 40

REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).

(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by Nasdaq.

(j) Reporting Transactions on Form T

All Reporting NASD Members required (or that elect) to report transactions to the NASD shall report, as soon as practicable to NASD Regulation's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into the NASD is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or the NASD will not accept the date of execution because the NASD Alternative Display Facility was closed on that date). Transactions that can be reported into the NASD, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(k) Trade Tickets

All trade tickets for transactions in Nasdaq securities shall be time-stamped at the time of execution.

(l) Special Trade Indicator

A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.

(m) Clearing Indicators

A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement ("AGU"); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement ("QSR").

(n) Transactions Not To Be Reported To NASD

The following types of transactions effected by NASD members otherwise than on an exchange shall not be reported to TRACS for publication:

(1) Odd-lot transactions;

(2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution;

(3) transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);

(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(o) Dissemination of Transaction Reports in Convertible Debt Securities

For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through the NASD Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less. Selected NASD Notices to Members: 83–1, 87–85, 93–9, 93–25, 93–83, 94–71, 98–82, 99–65, 99–66.

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5000. [OTHER NASDAQ AND NASD MARKETS] TRADING OTHERWISE THAN ON AN EXCHANGE

[5100. NASDAQ INTERNATIONAL SERVICE RULES]

[5101. Applicability]

[(a) These Rules shall be known as the "International Rules" and govern operation of the Nasdaq International Service ("Nasdaq International" or "Service"), as well as the obligations, access to and use of the Service by the following parties: broker/dealers admitted to membership in the Association (collectively, "Association members"); associated persons of such Association members; and any non-member broker/dealer having the status of an approved affiliate. Unless otherwise indicated, the requirements of the International Rules are in addition to those contained in the By-Laws and other Rules of the Association.]

[(b) Rules 5106, 5108, 5109, and 5112 of the International Rules establish requirements that apply exclusively to

participation in the Service during the European Session. As such, these provisions of the International Rules supersede the Rule 2870, 4640, 6300 and 6600 Series: and Rules 6410, 6420 and 6450. Non-compliance with any applicable requirement will subject the Association member and/or its associated person(s) to regulatory action under the Association's Code of Procedure, the Rule 9000 Series.]

[(c) Unless otherwise indicated within a particular provision of the International Rules, all procedures, requirements, and prohibitions shall apply with equal force to Association members, their associated persons, and approved affiliates that participate in the Service.]

[5102. Definitions]

[Unless the context otherwise requires, or unless defined in the International Rules, the terms used herein shall retain their present meanings as defined in the By-Laws and other Rules of the Association.]

[(a) "Approved affiliate" means a broker/dealer that meets all of the following requirements:]

[(1) it is not admitted to membership in the Association or any registered national securities exchange;]

[(2) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986;]

[(3) it controls, is controlled by, or is under common control with an Association member (hereinafter referred to as a "control relationship"); and]

[(4) it has been approved by the Association to participate as a Service market maker, in an agency capacity, on behalf of the Association member with whom it has a control relationship.]

[(b) "Domestic Session" refers to the market session operated by the Association between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each U.S. business day.]

[(c) "European-only market maker" means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE, but is not registered in the same security(ies) for purposes of making a market during the Domestic Session.]

[(d) European Session refers to the market session supported by the Service during the hours specified in Rule 5103.]

[(e) "International market maker" means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE and is also registered with the Association to make markets in the same security(ies) during the Domestic Session.]

[(f) The terms "Nasdaq International" and "Service refer to an extension of the basic automation capabilities that support Association members' market making in the Nasdaq National Market (NNM), and exchange-listed securities to the business hours fixed by Rule 5103.]

[(g) "Non-NNM security" means every qualified security in the subset defined by Rule 5104(b).]

[(h) Qualified security" means any security that satisfies the requirements contained in Rule 5104.]

[(i) "Service market maker" includes any Association member that is registered as a European-only or International market maker in one or more qualified securities, and any approved affiliate registered as a European-only market maker in one or more qualified securities.]

[5103. Normal Business Hours]

[The Nasdaq International market session (hereinafter referred to as the "European Session") will run from 3:30 a.m. to 9:00 a.m. Eastern Time on each business day in the U.S.; pre-opening procedures will commence at 2:30 a.m. Eastern Time. Appropriate adjustments will be made in the event that the U.S. and the U.K. move to (or from) daylight-saving time on different dates. All times referenced in the International Rules relate to the Eastern Time zone of the U.S.]

[5104. Qualified Securities]

[The Association deems the following classes of securities qualified for inclusion in Nasdaq International:]

[(a) any Nasdaq security that is designated an NNM security;]

[(b) any non-Canadian, foreign security or ADR that is included in Nasdaq but not designated an NNM security; and]

[(c) any equity security that is listed on a registered national securities exchange.]

[Inclusion of a qualified security in Nasdaq International requires a market making commitment by one or more broker/dealers that participate as Service market makers.]

[5105. Access]

[(a) Access to the market making capabilities provided by Nasdaq International is restricted to broker/dealers that are either Association members or approved affiliates and that have all equipment and communication lines specified by the Association for receipt of Nasdaq Workstation Service. Additionally, Association members that participate as Service market makers, either directly or through the agency of an approved affiliate, must satisfy the same financial and operational requirements applicable to market makers in Nasdaq securities and/or exchange-listed securities traded off-board during the Domestic Session.]

[(b) Association members that utilize Nasdaq Workstation units to receive Level 2 Nasdaq Service during the Domestic Session can also receive real-time quotation information entered by Service market makers. Similar access terms will be provided to non-member, Level 2 subscribers utilizing Nasdaq Workstation units.]

[5106. Requirements Applicable to Market Makers]

[(a) Service Market Maker]

[Association members and approved affiliates can function as Service market makers by registering with the Association in one or more qualified securities. Two classifications of market makers are authorized: (1) European-only and (2) International. Association members can register in either capacity in any qualified security; approved affiliates are limited to European-only registration. At the time of registration, a Service market maker must select one of the following time periods to define its daily market making commitment, on a security-by-security basis: 3:30 a.m. to 9:00 a.m.; 5:30 a.m. to 9:00 a.m., and 7:30 a.m. to 9:00 a.m. Every Service market maker must fulfill the market making obligations specified below in each of its registered securities while participating in the European Session. Based on experience gained with Service market makers' use of the multiple openings, the Association may determine to alter the specified times by up to one hour or to eliminate an opening altogether.]

[(b) Market Maker Obligations]

[The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.]

[(1) Registration]

[(A) Quotations and quotation size may be entered into the Service only by a Service market maker.]

[(B) To function as a Service market maker, an Association member must initially obtain registration as a European-only or International market maker by filing an application with the Association. The application shall certify the Association member's good standing with the Association,

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demonstrate compliance with the net capital and other financial responsibility provisions of the Act and the rules thereunder, and specify the qualified security(ies) in which the member is seeking to register as a European-only or International market maker. Initial registration as a Service market maker shall become effective upon the member's receipt of the Association's notice approving such registration.]

[(C) For an approved affiliate to function as a Service market maker, it must initially obtain registration as a European-only market maker by filing an application with the Association. Such application must be co-signed by a registered principal of the Association member for whom the approved affiliate will act as agent. The application shall certify the following: the Association member's good standing with the Association; the approved affiliate's authorization to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986; and the Association member's ability to comply and its assumption of compliance with the net capital and other financial responsibility requirements of the Act and the rules thereunder in respect of the approved affiliate's market making in the Service as agent for the Association member. The application shall also specify the qualified security(ies) in which the approved affiliate is seeking to register as a European-only market maker. Initial registration as a Service market maker shall become effective upon the approved affiliate's receipt of the Association's notice approving such registration.]

[(D) A Service market maker may become registered in a newly qualified security by telephoning Market Operations. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.]

[(E) A Service market maker may register in additional qualified securities by entering a registration request via its Nasdaq Workstation unit authorized for receipt of the Service. If registration is requested respecting a security that has been a qualified security for more than five (5) days, and the requirements of either subparagraph (B) or (C) above are satisfied, registration shall take effect on the day after the registration request is entered.]

[(F) Registration in a qualified security shall be terminated by the Association if the Service market maker fails to enter quotations in that security within five (5) business days after its registration in that security first became effective.]

[(2) Normal Business Hours]

[Service market makers must be open for business, on each U.S. business day, during the time periods established by their registration in one or more qualified securities. By virtue of the multiple openings feature, a Service market maker would have the flexibility, for example, to register and quote markets in some securities during the 5:30 a.m. to 9:00 a.m. segment and others during the 7:30 a.m. to 9:00 a.m. segment. This flexibility is equally available to Association members and approved affiliates that participate as Service market makers. Appropriate adjustments will be made in the event that the U.S. and U.K. move to (or from) daylight savings time on different dates.]

[(3) Character of Quotations]

[(A) For each security in which an Association member has registered as a Service market maker, it shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in the Service during the hours specified above in subparagraph (2), above, subject to the procedures for excused withdrawal set forth in subparagraph (4) below. An approved affiliate registered as a Service market maker shall assume identical obligations in each of its registered securities. Purchases and sales effected to fulfill those obligations shall be deemed to be made for the account of the Association member on whose behalf the approved affiliate acts as agent.]

[(B) A Service market maker that receives an offer to buy or sell from another Association member or approved affiliate shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the Service at the time of receipt of any such offer. If a Service market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another Association member or approved affiliate, execute a transaction at least at the size displayed.]

[(C) A Service market maker shall enter and maintain quotations that are reasonably related to the prevailing market. If it appears that such market maker's quotations are no longer reasonably related to the prevailing market, the Association may require the firm to re-enter its quotations. However, if that Service market maker fails to re-enter its quotations, the Association may suspend the market maker's quotations in one or all of the qualified securities in which it is registered.]

[(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Market Operations to request the withdrawal of its quotations.] [(E) If a Service market maker's ability to enter or update quotations is impaired and it elects to remain in the Service, the market maker shall execute an offer to buy or sell received from another Association member or approved affiliate at its quotations as disseminated through the Service.]

[(F) A Service market maker should refrain from entering quotations into the Service that exceed the guidelines for maximum allowable spreads set forth below:]

SPREAD GUIDELINES

Average spread	Maximum allowable spread
1/8 or less	1/4
1/4	1/2
3/8	3/4
1/2	1
5/8	1
3/4	1 1/2
7/8	1 1/2
1	1 1/2
1 1/8	1 5/8
1 1/4	1 3/4
1 3/8	1 7/8
1 1/2	2
1 5/8	2
1 3/4	3
1 7/8	3
2	3
2 1/8	3
2 1/4	3
2 3/8	3
2 1/2	3
2 5/8	4
2 3/4	4
2 7/8	4

[For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.]

[The Association regards these spread parameters as guidelines rather than absolute requirements. Nonetheless, the Association will continuously monitor the quotation spreads of every Service market maker and consider taking regulatory action upon finding a pattern of excessive spreads disseminated during European Sessions. A pattern of excessive spreads will be deemed to exist where a Service market maker exceeds the applicable guideline on five or more occasions in the same qualified security during a calendar month or exceeds the applicable guideline respecting at least 10% of its quotation updates entered into the Service during a calendar month.]

[(G) A Service market maker shall not, except under extraordinary circumstances, enter or maintain quotations in the Service during the European Session if: the bid quotation entered is equal to or greater than the asked quotation of another Service market maker displaying quotations in the same qualified security; or the asked quotation is equal to or less than the bid quotation of another Service market maker displaying quotations in the same qualified security.]

[(H) A Service market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all Service market makers whose quotations would be locked or crossed. A Service market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the Service at the time of receipt of any order.]

[(4) Withdrawal of Quotations]

[(A) A Service market maker that wishes to withdraw its quotations in a qualified security shall contact Market Operations to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by Market Operations only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.]

[(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by Market Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by the Association five (5) business days in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by the Association twenty (20) business days in advance, and is approved by the Association; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.]

[(C) Excused withdrawal status may be granted to a Service market maker that fails to maintain a clearing arrangement with a registered clearing agency or with another party that is a member of such an agency and is therefore withdrawn from participation in the Association's Automated Confirmation Transaction Service. However, if the Association finds that the Service market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be deemed a voluntary termination pursuant to subparagraph (5) below.]

[(5) Voluntary Termination of Registration]

[A Service market maker may voluntarily terminate its registration in a qualified security by withdrawing its quotations in that security from the Service. A market maker that voluntarily terminates its registration in a qualified security may re-register to quote that security in the Service in accord with procedures contained in paragraph (b)(1)(E) above. Nonetheless, if an International market maker voluntarily terminates both the domestic and European components of its registration in a qualified security that is included in Nasdaq (qualified Nasdaq security), this Association member cannot re-register to quote that qualified Nasdaq security during the Domestic Session until twenty (20) business days have elapsed. This waiting period would not apply where an International market maker in a qualified Nasdaq security had terminated the European component of its registration but maintained the domestic component.]

[(6) Stabilizing Bids]

[(A) A Service market maker may enter a stabilizing bid in the Service for a qualified Nasdaq security, which bid will be identified with the appropriate identifier on the quotation display. Only one market maker in an issue may enter a stabilizing bid. A stabilizing bid will not be displayed unless one market maker in addition to the market maker entering the stabilizing bid is registered in the issue and enters quotations during the European Session.]

[(B) A stabilizing bid, a pre-effective stabilizing bid, or a penalty bid may be entered into the Service. A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.]

[(C) Notice to the Association]

[(i) A Service market maker that wishes to enter a stabilizing bid shall so notify Market Operations in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless the Association determines otherwise.]

[(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless the Association determines otherwise.]

[(iii) A service market maker that has provided the written notice prescribed above shall also contact Market Operations for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.]

[(D) A Service market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the qualified Nasdaq security.]

[(E) A Service market maker entering a stabilizing bid shall report all purchases made on the stabilizing bid and enter "zero volume" for sales during the period in which the stabilizing bid is in effect.]

[5107. Automated Submission of Trading Data]

[Reserved for Future Use. Redesignated as 8212 by SR–NASD–97–81 eff. Jan. 16, 1998.]

[5108. Reports]

[Every Association member and approved affiliate that functions as a Service market maker shall submit the following reports to the Association at the frequency specified:]

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[(a) A Service market maker shall report each business day any data relating to qualified securities quoted in the Service as the Association shall require.]

[(b) A Service market maker shall report monthly such data on qualified securities that are quoted in the Service as the Association shall require.]

[(c) A Service market maker shall make such other reports as the Association may prescribe from time to time.]

[5109. Clearance and Settlement of International Transactions]

[(a) Association members and approved affiliates that effect international transactions must clear and settle all such transactions through a clearing agency registered with the Commission that uses a continuous net settlement system. This requirement may be satisfied through direct participation in a suitable clearing agency or through a clearing arrangement with another party.]

[(b) For purposes of this Rule, the term "international transaction" means every transaction having the following three characteristics: (1) the transaction involves a qualified security quoted in the Service by at least one registered market maker; (2) the transaction is consummated during the hours of the European Session between two Association members, two approved affiliates, or an Association member and an approved affiliate; and (3) the transaction involves at least one Association member (acting in a principal or agency capacity) that is registered as a European-only or International market maker in any qualified security, or alternatively, at least one approved affiliate (acting in a principal or agency capacity) that is registered as a European-only market maker in any qualified security.]

[(c) Participation in the Automated Confirmation Transaction Service is mandatory for self-clearing Association members participating in the Service directly or through an approved affiliate.]

[5110. Suspension and Termination of Quotations by Association Action]

[The Association may, pursuant to the procedures set forth in the Association Code of Procedure, the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Service market maker's authority to enter quotations in one or more qualified securities for violations of the applicable requirements or prohibitions contained in the By-Laws or Rules of the Association.]

[5111. Termination of Access]

[The Association may, upon notice, terminate access to Nasdaq International in the event that a Service market maker fails to qualify under specified standards of eligibility for Association membership or participation in the Service, or fails to pay promptly for services rendered by the Association or its subsidiaries.]

[5112. Transaction Reporting Requirements]

[During the European Session, broker/dealers registered as International or European-only market makers shall observe the following requirements for reporting transaction information to the Association on qualified securities quoted in Nasdaq International:]

[(a) Definitions]

[(1) "International Participant" includes any Association member registered as an International or European-only market maker in at least one qualified security, and any approved affiliate registered as a European-only market maker in at least one qualified security.]

[(2) "Reportable transaction" means any round-lot or mixed-lot transaction in a Service security effected during the European Session with an International Participant being on one or both sides. The following are not deemed to be reportable transactions:]

[(A) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf registrations) or of an unregistered secondary distribution;]

[(B) transactions executed on and reported to a securities exchange domiciled outside the U.S.;]

[(C) transactions made in reliance on Section 4(2) of the Securities Act of 1933;]

[(D) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for a Service security, e.g., to enable the seller to make a gift; and]

[(E) purchases or sales of Service securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a preestablished consideration unrelated to the current market.]

[(3) "Service security" means any qualified security that is quoted in Nasdaq International by at least one registered market maker.]

[(4) "Trade report" refers to the entry of the following elements of information for each reportable trans security symbol, price (exclusive of commission, mark-up, or mark-down), volume, and a symbol indicating whether the transaction is a buy, sell or cross.]

[(b) Timely Trade Reports]

[International Participants shall enter trade reports on all reportable transactions within three minutes of execution via a Nasdaq Workstation unit authorized for receipt of Nasdaq International or through a CTCI. Trade reports not submitted within three minutes of execution shall be designated as late by addition of the "SLD" indicator. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110 of the Association's Rules.]

[(c) Obligation To Submit Trade Reports on Reportable Transactions]

[(1) In transactions between two International Participants that are both Service market makers in the affected Service security, only the party representing the sell side shall report.]

[(2) In transactions between two International Participants where only one is a Service market maker in the affected Service security, the latter party shall report.]

[(3) In transactions between two International Participants where neither is a Service market maker in the affected Service security, only the party representing the sell side shall report.]

[(4) In transactions between an International Participant and a non-member (other than an approved affiliate), the International Participant shall report. Where an International Participant acts as a dual agent in a reportable transaction, it shall be reported only once by the International Participant.]

[(5) In transactions between an International Participant and another Association member that is not an International Participant, only the International Participant shall report.]

[(d) Aggregation of Trade Reports]

[(1) The following procedures and requirements apply exclusively to an International Participant registered as a Service market maker in a particular Service security.]

[(2) Under the following conditions, individual trade reports in a Service security at the same price may be aggregated into a single trade report by a Service market maker in that security:]

[(A) orders received prior to opening of the European Session and simultaneously executed at the opening;]

[(B) orders received during a trading halt and executed simultaneously when trading resumes;]

[(C) orders relayed to the trading department of the Service market maker for simultaneous execution at the same price;]

[(D) simultaneous executions by the Service market maker of customer transactions at the same price, e.g., multiple limit orders being executed at the same time when a limit price has been reached; or]

[(E) orders received or initiated by the Service market maker that are impractical to report individually and are executed at the same price within two minutes of execution of the initial transaction; provided, however, that no individual order of 10,000 shares or more may be aggregated in a trade report and that the aggregated trade report shall be made within three minutes of the initial execution reported therein.]

[(3) In no instance shall a Service market maker delay entry of its opening quotations or resumption of trading in a Service security for the purpose of aggregating trade reports. Further, a Service market maker is prohibited from withholding a trade report in anticipation of aggregating the transaction with others.]

[(4) A Service market maker shall identify aggregated trade reports and the underlying order tickets in a manner prescribed by the Association.]

[(e) Time Stamping of Transactions]

[All trade tickets for reportable transactions shall be time-stamped at the time of execution. Association members and approved affiliates that utilize screen-based systems for executing transactions shall satisfy this requirement by ensuring that such a system assigns an appropriate execution time to each reportable transaction.]

[(f) Weekly Reports]

[International Participants shall submit trade reports weekly respecting Service securities in the following circumstances:]

[(1) European-only market makers. Transactions in Service securities executed outside hours of the European Session;]

[(2) International market makers. Transactions in Service securities executed outside the hours of both the European Session and the Domestic Session;]

[(3) European-only and International Market Makers. Transactions in Service securities that were effected during the European Session and were omitted inadvertently from reported volume during the preceding week's European Sessions.]

[5113. Audit Trail Requirements]

[All existing requirements for submitting audit trail information to the Association, either directly or through a registered clearing agency, shall extend to Association members'/approved affiliates' participation in Nasdaq International. The applicable requirements were published in NASD Notices to Members 84–55 (October 15, 1984), 85–24 (April 12, 1985), and 85–72 (October 30, 1985), which notices are hereby incorporated by reference.]

* * * * *

5200. Trading Halts

(a) Authority To Initiate Halts in Trading Otherwise Than on an Exchange

NASD, pursuant to the procedures set forth in paragraph(b):

(1) shall halt trading otherwise than on an exchange an ADF-eligible security whenever any market eligible to trade that security imposes a trading halt, or suspends the listing, in order to:

(A) *Permit dissemination of material news;*

(B) *obtain information from the issuer relating to material news;*

(C) *obtain information relating to the issuer's ability to meet listing qualification requirements; or*

(D) *obtain any other information that is necessary to protect investors and the public interest.*

(2) *shall halt trading otherwise than on an exchange in an American Depository Receipt ("ADR") listed on a national securities exchange, when the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons.*

(3) *shall halt all trading through the NASD Alternative Display Facility (a) whenever the NASD Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor, or (b) whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange.*

(4) *may, in its discretion, halt all trading otherwise than on an exchange in a security listed on a national securities exchange when (i) a national securities exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"), or (ii) when the security is a derivative or component of a security listed on a national securities exchange and a national securities exchange imposes an operational trading halt in that security. In the event that the NASD, in its discretion, chooses not to halt trading otherwise than on an exchange in a security when the conditions of this paragraph exist, NASD members may continue to conduct trading in such security during the period of any such halt and shall continue to report all last sale prices reflecting transactions in such security.*

Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Commencement and Termination of a Trading Halt

(1) In the event NASD determines that a basis exists under Rule 5200(a) to initiate a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice via an administrative message.

(2) Trading in a halted security shall resume upon notice via an administrative message that a trading halt is no longer in effect.

(c) Authority To Initiate Trading and Quotation Halts in Non-Exchange-Listed Foreign Securities

In circumstances in which it is necessary to protect investors and the public interest, NASD Regulation may direct members, pursuant to the procedures set forth in paragraph (d), to halt trading and quotations in a quotation medium other than an exchange or the NASD Alternative Display Facility of an American Depository Receipt ("OTC ADR") or a security ("OTC Security") that is traded in the OTC market and that is not otherwise listed on a national securities exchange or included in the OTC Bulletin Board Service ("OTCBB") when the OTC Security or the security underlying the OTC ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange or market halts trading in such security for regulatory reasons ("Foreign Regulatory Halt"); provided, however, that NASD Regulation will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for the dissemination of

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material news, a regulatory filing deficiency, or operational reasons.

(d) Procedure for Initiating a Trading and Quotation Halt

(1) For a halt initiated under subparagraph (c) of this rule, NASD Regulation will promptly evaluate information received from a foreign securities exchange or market on which the OTC Security or the security underlying the OTC ADR is listed or registered or from a foreign regulatory authority overseeing such issuer, exchange, or market about a Foreign Regulatory Halt and determine whether a trading and quotation halt in the OTC Security is appropriate.

(2) Should NASD Regulation determine that a basis exists under this Rule for initiating a trading and quotation halt, NASD Regulation shall disseminate appropriate public notice that a trading and quotation halt is in effect and the commencement of the trading halt will be effective simultaneously with appropriate public notice.

(3) Trading and quotations in the OTC market may resume when NASD Regulation determines that the basis for the halt no longer exists or when five business days have elapsed from the date NASD Regulation initiated the trading and quotation halt in the security, whichever occurs first. NASD Regulation shall disseminate appropriate public notice that a trading and quotation halt is no longer in effect.

Selected NASD Notices to Members: 88–46, 94–98.

5300. Transactions Related to Initial Public Offerings

No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape or, for Nasdaq, the Nasdaq Tape.

[5200] *6500*. INTERMARKET TRADING SYSTEM[/COMPUTER ASSISTED EXECUTION SYSTEM]

[5210] *6510*. Definitions

(a) The term "ITS Participant Exchange" shall mean a participant in the ITS Plan that is a national securities exchange.

(b) The term "ITS Plan" shall mean the plan agreed upon by the ITS participants, as from time to time amended in accordance with the provisions therein, and approved by the Commission pursuant to Section 11A(a)(3)(B) of the Act and SEC Rule 11Aa3–2 thereunder.

(c) The term "ITS Security" shall mean any security [which] *that* may be traded through the System by an ITS/*ADF*[CAES] Market Maker.

(d) The term "ITS System" shall mean the communications network and related equipment that links electronically the ITS Participant Exchanges and ITS/*ADF*[CAES] Market Makers as described in the Plan.

(e) The term "ITS/*ADF*[CAES] Market" Maker shall mean a member of the Association that is registered as a market maker with the Association for the purposes of participation in ITS [through CAES] with respect to one or more specified ITS securities in which [he] it is then actively registered. Registration as an ITS/*ADF*[CAES] Market Maker is [mandatory] *optional* for all registered CQS market makers in securities eligible for inclusion in the ITS/*ADF*[CAES] linkage.

(f) The term "Participant Market" shall mean the securities trading floor of each participating ITS Exchange and the markets of ITS/*ADF*[CAES] Market Makers in ITS securities.

(g) The term "Pre-Opening Application" shall mean the application of the System which permits a specialist or ITS/*ADF*[CAES] Market Maker who wishes to open [his] *its* market in an ITS Security to obtain pre-opening interests from other specialists and ITS/*ADF*[CAES] Market Makers.

(h) The term "Previous Day's Consolidated Closing Price" shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions were reported by such system; provided, however, that the "previous day's consolidated closing price" for all Network A or Network B eligible [S]securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (Amex), if, because of unusual market conditions, the NYSE or the Amex price is designated as such pursuant to the ITS plan.

(i) A "Third Participating Market Center Trade-Through," as that term is used in this Rule, occurs whenever an ITS/*ADF*[CAES] Market Maker initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price [which] *that* is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed by [ITS/ CAES] Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through." [Amended eff. Nov. 24, 1989; Aug. 5, 1991; amended by SR–NASD–93–10 eff. Oct. 31, 1994; amended by SR–NASD–97–09 eff. May 30, 1997.] Selected Notices to Members: 94–81.

[5220] *6520*. ITS/*ADF*[CAES] Registration

In order to participate in ITS, a market maker must be registered with the Association as an ITS/*ADF*[CAES] Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/*ADF*[CAES] Market Maker's continuing compliance with the following requirements:

(a) Registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/*ADF*[CAES] Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) compliance with SEC Rule 15c3–1;

(d) compliance with the ITS Plan, SEC Rule 11Ac1–1 and all applicable Rules of the Association;

(e) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association. *Any registered ITS Market Maker (excluding ECNs) that participates in a pre-opening application process and does not enter and maintain continuous two-sided quotations in the security on that same trading day may not re-register to participate in ITS in such security for twenty (20) business days unless NASD Alternative Display Facility Operations grants an excused withdraw;*

(f) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/*ADF*[CAES] Market Makers to prevent the unauthorized entry of communications into the ITS System; and

(g) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/*ADF*[CAES] Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.

[5221] *6521*. Suspension or Revocation of ITS/*ADF*[CAES] Registration

Failure by an ITS/*ADF*[CAES] Market Maker to comply with the ITS Plan or any of the rules identified herein shall subject such ITS/*ADF*[CAES] Market Maker to censure, fine, suspension or revocation of its registration as an ITS/*ADF*[CAES] Market Maker, or any other fitting penalty.

[5230] *6530*. ITS Operations

(a) All transactions effected through ITS shall be on a "regular way" basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Commission [which] *that* maintains facilities through which ITS transactions may be compared and settled.

(b) Any "commitment to trade," which is transmitted by an ITS/*ADF*[CAES] Market Maker to another ITS participating market center through ITS, shall be firm and irrevocable for the period of *thirty (30) seconds*, [either] one minute or two minutes (specified in accordance with subparagraph (7) below) following transmission by the sender. All such commitments to trade shall, at a minimum:

(1) include the number or symbol which identifies the ITS/*ADF*[CAES] Market Maker;

(2) direct the commitment to a particular participant market;

(3) specify the security which is the subject of the commitment;

(4) designate the commitment as either a commitment to buy or a commitment to sell;

(5) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof;

(6) specify:

(A) A price equal to the offer or bid price then being furnished by the destination Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively;

(B) a price at the execution price in the case of a commitment to trade sent in compliance with the block trade rule; or

(C) that the commitment is a commitment to trade "at the market;"

(7) specify [either] *thirty (30) seconds*, one minute or two minutes as the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, a two minute period shall be assumed. It should be noted that the period of time represented by these designations may be changed in the future by action of the ITS Operating Committee, whose decision as to the applicable period shall be binding upon ITS/*ADF*[CAES] Market Makers;

(8) designate the commitment "short" or "short exempt" whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a–1(a) under the Act would apply.

(c) If a commitment to trade is directed to an ITS/*ADF*[CAES] Market Maker, and the execution of such commitment exhausts the size of the quotation being displayed by the ITS/*ADF*[CAES] Market Maker, then such ITS/*ADF*[CAES] Market Maker shall be placed in a functional excused withdrawal state pending the input of a new two-sided quotation with size into the Association's [Consolidated Quotation Service] *ADF*. The new two-sided quotation required of the ITS/*ADF*[CAES] Market Maker will be entered as promptly as possible into the Association's [Consolidated Quotation Service] *ADF*.

(d) Transactions in ITS securities executed [in CAES] by ITS/*ADF*[CAES] Market Makers or received through the ITS System and executed by an ITS/*ADF*[CAES] Market Maker are reported to the CTA Plan Processor [by the CAES System] at the price specified in the commitment or if executed at a better price, the execution price.

[5240] *6540*. Pre-Opening Application—Opening by ITS/*ADF*[CAES] Market Maker

The pre-opening application enables an ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange in any participant market who wishes to open [his] *its* market in an ITS Security to obtain through the ITS System [or CAES], any pre-opening interest of an ITS Participant Exchange or other ITS/*ADF*[CAES] Market Makers registered in that security and/or market makers in other participant markets.

(a) Notification Requirement—Applicable Price Change, Initial Notification

(1) Whenever an ITS/*ADF*[CAES] Market Maker, in an opening transaction in any ITS/*ADF*[/CAES] Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), [he] *its* shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the ITS/*ADF*[CAES] Market Maker shall not open the security in [his] *its* market until not less than three minutes after [his] *its* transmission of the pre-opening notification. The "applicable price changes" are:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over	¼ point.[1]
Network B	Under $5	⅛ point.
	$5 or over	¼ point.[2]
For transactions involving securities trading in decimal-based increments, the "applicable price changes" are:		
Network A	Under $15	$0.10
	$15 or over	$0.25[3]
Network B	Under $5	$0.10
	$5 or over	$0.25[4]

(2) a pre-opening notification shall:

(A) be designated as a pre-opening notification (POA);

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(B) identify the ITS/*ADF*[CAES] Market Maker and the security involved; and

(C) indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:

POA MMID/XYZ

(3) The price range shall not exceed the "applicable price range" shown below:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $50	½ point.
	$50 or over	1 point.[5]
Network B	Under $10	½ point.
	$10 or over	1 point.[6]

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the "applicable price range" shown below:

Security	Consolidated price	Price range
Network A	Under $50	$0.50
	$50 or over	$1.00[7]
Network B	Under $20	$0.50
	$10 or over	$1.00[8]

[1] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.

[2] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.

[3] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.

[4] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.

[5] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

[6] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Fund[s] Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

[7] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

[8] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Fund[s] Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a ⅛–⅝ price range would be permissible if the previous day's consolidated closing price were ⅛ or ⅝, but not if the closing price were ¼, ⅜ or ½).

For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15—40.65 price range would be permissible if the previous day's consolidated closing price were 40.15—40.65, but not if the closing price were within the price range 40.16—40.64).

(b) Subsequent Notifications

If, after sending a pre-opening notification, the situation in an ITS/*ADF*[CAES] Market Maker's market changes [he] *it* may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the ITS/*ADF*[CAES] Market Maker shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires, whichever is longer, before opening [his] *its* market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the ITS/*ADF*[CAES] Market Maker must wait for the rest of the period to pass before opening [his] *its* market).

(1) Increase or Decrease in Applicable Price Range

Where, prior to the ITS/*ADF*[CAES] Market Maker's opening of [his] *its* market in the security, [his] *its* anticipated opening price shifts so that it (A) is outside of the price range specified in [his] *its* pre-opening notification but (B) still represents a change from the previous day's consolidated closing price of more than the applicable price change, [he] *it* shall issue a replacement pre-opening notification (an "additional" notification) through the system before opening [his] *its* market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

(2) Shift to Within Applicable Price Change Parameter

(A) The ITS/*ADF*[CAES] Market Maker shall, by issuing a "cancellation" notification through the system, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which [he] *it* anticipates opening [his] *its* market shifts so that it (i) is outside of the price range specified in [his] *its* pre-opening notification but (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

(B) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

Example: CTA close at 30. Pre–Opening Notification sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

Example for Decimal-Based Securities: CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60. It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

(3) Participation as Principal Precluded ("Second Look")

If a responding market maker who has shown in [his] *its* pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., [his] *its* responding principal interest is to sell at a price ⅛ or more below the opening price established by paired agency orders), the ITS/*ADF*[CAES] Market Maker[s] shall send a "second look" notification through the System, notifying such responding market maker of the price and size at which [he] *it* could participate as principal (i.e., in the parenthetical example above, the total amount of the security that [he] *it* would have to sell at the ⅛-better price to permit the opening transaction to occur at that price).

For securities trading in decimal-based increments, if a responding market maker who has shown in [his] *its* pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. [his] *its* responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/*ADF*[CAES] Market Maker[s] shall send a "second look" notification through the System, notifying such responding market maker of the .01 price and size at which [he] *it* could participate as principal (i.e., in the parenthetical example above, the total amount of the security that [he] *it* would have to sell at the .01 better price to permit the opening transaction to occur at that price).

(c) Tape Indications

If the CTA Plan or the Association's rules require[s] or permits that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading or the reopening of trading following a halt or suspension in trading in one or more ITS Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the ITS/*ADF*[CAES] Market Maker, (1) initiate the pre-opening process, and (2) if applicable, substitute for and satisfy the requirements of paragraphs (a), (b)(1), and (b)(2) (while the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, an ITS/*ADF*[CAES] Market Maker should also transmit the indication through the System in the format of a standardized pre-opening administrative message). In any such situation, the ITS/*ADF*[/CAES] Market Maker shall not open or reopen the security until not less than three minutes after [his] *its* transmission of the opening or reopening indication of interest. For the purpose of paragraphs (b)(3), (d), (f), and (g) through (i), "pre-opening notification" includes an indication of interest furnished to the consolidated last sale reporting system.

(d) Pre-Opening Responses—Decision on Opening Transaction

Subject to paragraph (e), [I]if an ITS/*ADF*[CAES] Market Maker [who] *that* has issued a pre-opening notification receives "pre-opening responses" through the system containing "obligations to trade" from market makers in other Participant markets ("responding market makers"), [he] *it* shall combine those obligations with orders [he] *it* already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the ITS/*ADF*[CAES] Market Maker has received more than one pre-opening response from a Participant market, [he] *it* shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the ITS/*ADF*[CAES] Market Maker has effected [his] *its* opening transaction shall be to no effect.

(e) Pre-Opening Responses From Open Markets

(1) An ITS/*ADF*[CAES] Market Maker must accept only those pre-opening responses sent to the Association by market makers in other [p]*P*articipant markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading declared by the Association in an ITS Security, an ITS/*ADF*[CAES] Market Maker must accept only those pre-opening responses sent by market makers to the Association from other [p]*P*articipant markets that halted trading in the security contemporaneously with the Association and that had not resumed trading in the security at the time the pre-opening response was sent.

(2) In the event that one or more market makers from [p]*P*articipant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in the security contemporaneously with the Association, or has already resumed trading in the security, respond to a pre-opening notification in that security, the ITS/*ADF*[CAES] Market Maker need not, but may in [his] its discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or, with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in the Participant market sending a pre-opening response but prior to the opening or reopening transaction in ITS/*ADF*[CAES], the market maker who sent the pre-opening response to the Association must confirm the pre-opening response by sending an administrative message through the [s]*S*ystem stating that the response remains valid. If the market maker fails to so confirm the pre-opening response, the ITS/*ADF*[CAES] Market Maker need

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not, but may in [his] *its* discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.

(f) Allocation of Imbalances

Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the ITS/*ADF*[CAES] Market Maker may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the ITS/*ADF*[CAES] Market Maker shall allocate the remaining imbalance (which may be greater than 50 percent if the ITS/*ADF*[CAES] Market Maker elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated [himself] *itself* to take or supply as principal at the opening price in [his] *its* pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph, multiple responding market makers in the same ITS Security in the same Participant market shall be deemed to be a single responding market maker.

(g) Treatment of Obligations To Trade

In receiving a pre-opening response, an ITS/*ADF*[CAES] Market Maker shall accord to any obligation to trade as agent included in the response the same treatment as [he] *it* would to an order entrusted to [him]*it* as agent at the same time such obligation was received.

(h) Responses Increasing the Imbalances

An ITS/*ADF*[CAES] Market Maker shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

(i) Reports of Participation

Promptly following the opening in any security as to which an ITS/*ADF*[CAES] Market Maker issued a pre-opening notification, the ITS/*ADF*[/CAES] Market Maker shall report to each Participant responsible for a market in which one or more responding market makers are located (1) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof, or (2) if the responding market maker(s)'s response included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

[Amended eff. Aug. 5, 1991; Mar. 31, 1993; amended by SR–NASD–97–09 eff. May 30, 1997; amended by SR–NASD–00–46 eff. Aug. 28, 2000.]

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[5250] *6550.* Pre-Opening Application—Openings on Other Participant Markets

(a) Pre-Opening Responses

Whenever an ITS/*ADF*[CAES] Market Maker [who] *that* has received a pre-opening notification from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, [he] *it* may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/*ADF*[CAES] Market Maker's buy and/or sell[,] interest, (if any), both as principal for [his] *its* own account ("P") and as agent for orders left with [him]*it* ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40¾), reflected on a netted share basis.

For securities trading in decimal-based increments, whenever an ITS/*ADF*[CAES] Market Maker [who] *that* has received a pre-opening notification from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, [he] *it* may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/*ADF*[CAES] Market Maker's buy and/or sell[,] interest, (if any), both as principal for [his] *its* own account ("P") and as agent for orders left with [him] *it* ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40), reflected on a netted share basis.

The pre-opening response shall be formatted as follows:

POR (MMID) BUY [SELL] A–P 40¾

For securities trading in decimal-based increments the pre-opening response shall be:

POR (MMID) BUY (SELL) A–P 40.40

The response may also show market orders separately.

(b) Revised Responses

An ITS/*ADF*[CAES] Market Maker may cancel or modify [his] *its* pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in [his] *its* original response and, if a modification is desired, that substitutes new obligations to trade stating the ITS/*ADF*[CAES] Market Maker's aggregate interest (i.e., [his] *its* interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

(c) Pre-Opening Notification From Other Markets

No ITS/*ADF*[CAES] Market Maker, whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security through the System to any other [p]Participant market[,] prior to the opening of trading in such security on such other market (or prior to the resumption of trading in such security on such other market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification as to such security has been issued from such other market or a quotation has been disseminated from such other market pursuant to SEC Rule 11Ac1–1. No ITS/*ADF*[CAES] Market Maker that has opened for trading or, with respect to a halt or suspension of trading initiated by another Participant [M]*m*arket, did not halt trading in the security reasonably contemporaneously with the Participant [M]*m*arket or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.

(d) Sole Means of Pre-Opening Routing

Once a pre-opening notification as to any security is received by the ITS/*ADF*[CAES] Market Maker through the System, the ITS/*ADF*[CAES] Market Maker[s] in such security shall submit obligations to trade that security as principal for [his] *its* own account to the market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for [his] *its* own account to such market for participation at the opening in that market by any other means. However, this restriction shall not apply to any order sent to such market by the ITS/*ADF*[CAES] Market Maker prior to the issuance of the pre-opening notification.

(e) Duration of Obligations To Trade

Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an ITS/*ADF*[CAES] Market Maker includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on [him] *it*, until the security has opened in the market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such market, and until a subsequent cancellation or modification thereof has been received in such market.

(f) Request for Participation Report

The ITS Plan anticipates that an ITS/*ADF*[CAES] Market Maker [who] *that* has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to [his] *its* participation if [he] *it* does not receive a report as required promptly following the opening. If, on or following trade date, [he] *it* does request a report through the System as to [his] *its* participation before 4:00 p.m. Eastern Time, and [he] *it* does not receive a response by 9:30 a.m. Eastern Time on the next trading day, [he] *it* need not accept a later report. If [he] *it* fails to so request a report, [he] *it* must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Association does not intend this paragraph to relieve [him] *U the ITS/ASD Market Maker* of the obligation, when [he] it does not receive a report, to request a report as soon as [he] *it* reasonably should expect to have received it.

[Amended eff. Nov. 24, 1989; May 15, 1991; Aug. 5, 1991; amended by SR–NASD–97–09 eff. May 30, 1997; amended by SR–NASD–00–46 eff. Aug. 28, 2000.]

[5260]*6560.* System Trade and Quotations

[5261]*6561.* [Obligation To Honor System Trades] *Obligation Before Issuing External ITS Commitments*

[If an ITS/CAES Market Maker or clearing member acting on his behalf is reported on the clearing tape (as adjusted) at the close of any trading day, or shown by the activity reports developed by CAES as constituting a side of a System trade, such ITS/CAES Market Maker or clearing member shall honor such trade on the scheduled settlement date.]

Before formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, a member registered as an ITS Market Maker in an ITS Security shall first exhaust all interest at or better than such order, bid or offer which is resident in the ADF, and then expose for thirty seconds any remaining balance to all *ADF* Participants, whether or not registered in the ITS Security involved.

[5262]*6562.* Trade-Throughs

(a) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] [s]Security, shall avoid purchasing or selling such security, whether as principal or agent, at a price [which] *that* is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker ("trade-through"), unless the following conditions apply:

(1) The size of the bid or offer that is traded-through is for 100 shares;

(2) the ITS/*ADF*[CAES] Market Maker is unable to avoid the trade-through because of [the] *a* systems/equipment failure or malfunction;

(3) the transaction which constituted the trade-through is not a "regular way" contract;

(4) the bid or offer that is traded[-] through is being displayed from a [M]*m*arket [C]center whose members are relieved of their obligations under SEC Rule 11Ac1–1([C]*c*)(2) with respect to such bid or offer;

(5) the bid or offer that is traded[-] through has caused a locked or crossed market in the ITS Security;

(6) the commitment received by an ITS/*ADF*[CAES] Market Maker which caused the trade-through was originated by an ITS Participant Exchange;

(7) The transaction involves (A) purchases and sales effected by ITS/*ADF*[CAES] Market Makers participating in an opening (or reopening) transaction or (B) any "Block Transaction" as defined in the ITS/*ADF*[CAES] Rules; or

(8) In the case of a third participating market center trade-through, either:

(A) the ITS/*ADF*[CAES] Market Maker who initiated the trade-through (i) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded[-] through, and (ii) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through; or

(B) a complaint with respect to the trade-through was not received by the Association through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS [p]*P*articipating [m]*M*arket [c]*C*enter that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

(b) (1) If a trade-through occurs and a complaint is promptly received by the Association either through the ITS System from the appropriate ITS Participant Exchange whose member is the aggrieved party or from an ITS/*ADF*[CAES] Market Maker, then:

(A) If ITS/*ADF*[CAES] Market Makers are on both sides of a principal trade, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise (i) the initiating ITS/*ADF*[CAES] Market Maker shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with subparagraph (E) below, or, if the initiating ITS/*ADF*[CAES] Market Maker elects not to do so, (ii) the transaction shall be voided.

(B) If an ITS/*ADF*[CAES] Market Maker executed the transaction and the contra-side was not an ITS/*ADF*[CAES] Market Maker (i) the ITS/*ADF*[CAES] Market Maker registered in the security shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer, or, if the ITS/*ADF*[CAES] Market Maker elects not to do so, (ii) the price of the transaction [which] *that* constituted the trade-through shall be corrected by the

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ITS/*ADF*[CAES] Market Maker to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.

(C) If ITS/*ADF*[CAES] Market Makers are on both sides of a trade and one or both are acting as agent, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise, the ITS/*ADF*[CAES] Market Maker that initiated the transaction shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer.

(D) Whenever the provisions of subparagraphs (B) and (C) above apply, the customer's order or a portion thereof [which] *that* was executed in the transaction [which] *that* constituted the trade-through (whether such order or a portion thereof was executed by the member who initiated the trade-through or by the member on the contra-side of the transaction, or both) shall receive the price [which] *that* caused the trade-through, or the price at which the bid or offer traded-through was satisfied, if it was satisfied pursuant to subparagraph (B) above, or the adjusted price, if there was an adjustment pursuant to subparagraph (B) above, whichever price is most beneficial to the order or a portion thereof. Money differences resulting from the application of this paragraph shall be the liability of the member who initiated the trade-through.

(E) The price at which the bid or offer traded-through shall be satisfied shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of "block size" but did not constitute a "block trade" (as those terms are defined in the Block Trade Rule) and (ii) the ITS/*ADF*[CAES] Market Maker who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

(2) Such complaint shall be considered promptly received when no more than five minutes expire from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system, unless the transaction is between an ITS/*ADF*[CAES] Market Maker and another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange. In the latter case, the complaint must be received within ten minutes from the time the aggrieved party sent a complaint through the System to the ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange that received the commitment to trade that caused the trade-through, which first complaint must have been received within five minutes from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system.

(c) (1) The Association shall notify the ITS/*ADF*[CAES] Market Maker of any trade-through complaint received from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker. Upon receipt of such notification, the ITS/*ADF*[CAES] Market Maker shall promptly respond to the complaining ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker. Such response shall set forth either: (A) the conditions specified in paragraph (a) above, or (B) the corrective action to be taken under paragraph (b) above. If there is more than one ITS/*ADF*[CAES] Market Maker that is registered in the ITS Security and participating in the transaction, then the ITS/*ADF*[CAES] Market Maker that initiated the transaction will receive notification of the trade-through complaint.

(2) If it is ultimately determined that an ITS/*ADF*[CAES] Market Maker has engaged in a trade-through but has not taken corrective action required by paragraph (b) above, then the ITS/*ADF*[CAES] Market Maker shall be liable for the lesser of (A) the actual loss proximately caused by the trade-through and suffered by the aggrieved party, or (B) the loss proximately caused by the trade-through which would have been suffered by the aggrieved party had [he] *it* purchased or sold the security subject to the trade-through in order to mitigate [his] *its* loss and had such purchase or sale been effected at the "loss basis price." For purposes of this subparagraph the "loss basis price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system in the security in question, after one hour has elapsed from the time the complaint is received (or, if the complaint is so received within the last hour in which transactions are reported on the high speed line of the consolidated last sale reporting system on any day, then the price of the opening transaction in such security reported on such high speed line on the next day on which the security is traded).

(3) Any ITS/*ADF*[CAES] Market Maker that becomes the subject of a trade-through by another ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker may take whatever steps [are] necessary to mitigate any potential loss resulting from the trade-through of his bid or offer. Such action shall be promptly communicated to the offending ITS Participant market.

(4) The provisions of this trade-through rule shall not apply in respect to any Participant Exchange [which] *that* does not have in effect a similar rule imposing similar obligations and responsibilities.

(5) If a complaint of a purported trade-through is received by the Association and the complained-of transaction resulted from an ITS/*ADF*[CAES] Market Maker's execution of a commitment to trade received from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange, the ITS/*ADF*[CAES] Market Maker should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated by the ITS/*ADF*[CAES] Market Maker and (B) [of] the identity of the ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ITS/*ADF*[CAES] Market Maker for any loss associated with the complained-of transaction.

[5263]*6563*. Locked or Crossed Markets

(a) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] Security that makes a bid (offer) for such security at a price [which] *that* equals the offering (bid) price at that time from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker has created what is referred to in this [r]*R*ule as a "locked market."

(b) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] Security that makes a bid (offer) for such security at a price [which] *that* exceeds (is less than) the offering (bid) price at that time from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker has created what is referred to in this [r]*R*ule as a "crossed market."

(c) An ITS/*ADF*[CAES] Market Maker [who] *that* makes a bid or offer and in so doing creates a locked or crossed market with another ITS Participant or ITS/*ADF*[CAES] Market Maker shall promptly send to such other ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker a commitment to trade seeking either the bid or offer [which] *that* was locked or crossed, unless excused by operation of paragraph (d) below. Such commitment shall be for either the number of shares [he] *it* has bid for (offered) or the number of shares offered (bid for) on the ITS Participant Exchange or by the ITS/*ADF*[CAES] Market Maker, whichever is less.

(d) The provisions of paragraph (c) above shall not apply when:

(1) The bid or offer in the ITS Participating [m]*M*arket [c]*C*enter is for 100 shares;

(2) the issuance of the commitment to trade referred to above would be prohibited by SEC Rule 10a–1 under the Act;

(3) the ITS/*ADF*[CAES] Market Maker [who] *that* causes a locked or crossed market is unable to comply with the provisions of paragraph (c) above because of a systems/equipment failure or malfunction;

(4) the bid or offer that causes the locked or crossed market is not for a "regular way" contract;

(5) the locked or crossed market occurs at a time when, with respect to the ITS Security [which] *that* is the subject of the locked or crossed market, members of the ITS [p]Participating [m]*M*arket [c]*C*enter to which the commitment to trade would be sent pursuant to paragraph (c) above are relieved of their obligations under SEC Rule 11Ac1–1(c)(2);

(6) the transaction involves (A) purchases and sales effected by ITS/[CAES]*ADF* Market Maker[']s participating in an opening or (reopening) transaction or (B) any "Block Transaction" as defined in the ITS[/CAES] Rules.

[5264] *6564*. Block Transactions

(a) An ITS/*ADF*[CAES] Market Maker [who] *that* executes a "block transaction" in an ITS[/CAES] [s]*S*ecurity in which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker at an execution price outside the best quotation for the security displayed by any ITS [p]*P*articipant market or other ITS/*ADF*[CAES] Market Maker, shall, upon executing the block trade, send to each other [p]*P*articipant market and each ITS/*ADF*[CAES] Market Maker displaying a bid or offer (as the case may be) superior to the execution price, a commitment to trade, at the execution price, to satisfy the number of shares displayed in that [p]*P*articipant market's bid or offer.

(b) For purposes of this Rule, a block transaction shall be a trade that:

(1) Involves 10,000 or more shares of a common stock traded through ITS (an "ITS Security") or a quantity of any such security having a market value of $200,000 or more ("block size");

(2) is effected at a price outside the bid or offer displayed from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter; and

(3) involves either:

(A) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side); or

(B) any other transaction of block size (i.e., in which the ITS/*ADF*[CAES] Market Maker represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer of the ITS/*ADF*[CAES] Market Maker.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented by the ITS/*ADF*[CAES] Market Maker (including transactions resulting from commitments to trade sent by the ITS/*ADF*[CAES] Market Maker pursuant to paragraph (a) above) shall be deemed to constitute a single transaction for the purpose of this definition.

(c) A "current bid or offer" of the ITS/*ADF*[CAES] Market Maker, as that term is used in paragraph (b)(3)(B) above, means the price of the current quotation displayed by the ITS/*ADF*[CAES] Market Maker established independently of the order to buy or sell.

(d) A "bid or offer" displayed from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter (or any derivative phrase), as that term is used in this Rule, means the current quotations from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter displayed to the ITS/*ADF*[CAES] Market Maker as required by the ITS Plan, and does not include "away-from-the-market" limit orders or other interests that may be represented in such other ITS [p]*P*articipating [m]*M*arket [c]*C*enter.

(e) Inapplicability. Paragraph (a) above shall not apply under the following conditions:

(1) The size of the better priced bid or offer displayed by another ITS [p]*P*articipating [m]*M*arket [c]*C*enter was for 100 shares;

(2) the ITS/*ADF*[CAES] Market Maker representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS [p]*P*articipating [m]*M*arket [c]*C*enter but was unable to because of a systems/equipment failure or malfunction;

(3) the block trade was not a "regular way" contract;

(4) the bid or offer that is traded through is being displayed from a [m]*M*arket [c]*C*enter whose members are relieved of their obligations under SEC Rule 11Ac1–1(c)(2) with respect to such bid or offer;

(5) the bid or offer that is traded through has caused a locked or crossed market in the ITS Security;

(6) the better priced bid or offer was being displayed from an ITS [p]*P*articipating [m]*M*arket [c]*C*enter whose members were relieved of their obligations with respect to such bid or offer under SEC Rule 11Ac 1–1(c)(2) pursuant to the "unusual market" exception to SEC Rule 11Ac1–1(b)(3); or

(7) the better priced bid or offer had caused a "locked or crossed market[,]" in the ITS Security that was the subject of the block trade.

[5265. Authority To Cancel or Adjust Transactions]

[(a) In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in Rule 11890 of the Uniform Practice Code, declare any transaction arising out of the use or operation of the ITS[/CAES] System, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous; and the Association may reallocate stock between ITS[/CAES] Market Makers to correct an erroneous transaction.]

[(b) For purposes of this Rule, the terms of the transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, identification of the security, or if a specific commitment to trade has been executed with the wrong ITS/CAES Market Maker.]

[5300]*6700*. THE PORTAL® MARKET

[5310]*6710*. Definitions

For purposes of the PORTAL® Market Rules, unless the context requires otherwise:

(a) "Association" means the National Association of Securities Dealers, Inc. (Association) or its wholly owned subsidiary, *NASD Regulation, Inc.* [The Nasdaq Stock Market, Inc.,] as determined by the Association.

(a) through (aa) No Change.

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[5320]*6720.* Requirements Applicable to PORTAL Securities

[5321]*6721.* Application for Designation

(a) Application for designation as a PORTAL security shall be in the form required by the Association and shall be filed by a PORTAL participant. Applications may be made with or without the concurrence of the issuer. The application shall demonstrate to the satisfaction of the Association that the security meets or exceeds the qualification requirements set forth in Rule 5322.

(b) Designation of a security as a PORTAL security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a PORTAL security shall be determined by the Association giving due regard to the requirements of the PORTAL Market.

[5322]*6722.* Qualification Requirements for PORTAL Securities

(a) To qualify for initial designation and continued designation in the PORTAL Market, a security shall:

(1) be:

(A) a restricted security, as defined in SEC Rule 144(a)(3) under the Securities Act; or

(B) a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering;

provided, however, that if the security is a depositary receipt, the underlying security shall also be a security that meets the criteria set forth in subparagraphs (A) or (B) hereof;

(2) be eligible to be sold pursuant to SEC Rule 144A under the Securities Act;

(3) be in negotiable form and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any PORTAL participant;

(4) be assigned a CUSIP or CINS security identification number that is different from any identification number assigned to any unrestricted securities of the same class [which] *that* do not satisfy paragraph (a)(1)(B); or, if issued in physical certificate form to investors, have a legend placed on each certificate stating that the securities have not been registered under the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom; and

(5) satisfy such additional criteria or requirements as the Association may prescribe.

(b) Notwithstanding the provisions of paragraph (a)(1)(B) of this Rule, if a PORTAL security is sold pursuant to the provisions of Rule 144, including Rule 144(k), it will thereby cease being a PORTAL security and it must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.

[5323]*6723.* Suspension or Termination of a PORTAL Security Designation

(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:

(1) The security is not in compliance with the requirements of the PORTAL Rules;

(2) a holder or prospective purchaser that requested issuer information pursuant to SEC Rule 144A(d)(4) did not receive the information;

(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of PORTAL participants or the Association.

(b) The Association will promptly notify PORTAL participants of the suspension or termination of a security's designation as a PORTAL security. Such notification may be made through the facilities of the PORTAL Market. Suspension or termination shall become effective in accordance with the terms of notice by the Association. The Association also will promptly notify The Depository Trust Company of the suspension or termination.

(c) Notwithstanding the suspension or termination of designation of a security as a PORTAL security, such security shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in accordance with the terms of notice by the Association of the suspension or termination.

[5324]*6724.* PORTAL Entry Fees

When a PORTAL participant submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Association a filing fee of $2,000.00 for an application covering a security or group of identifiable securities issuable as part of a single private placement covered by the same offering documents, plus $200.00 per assigned security symbol that is in addition to the first symbol assigned.

[5330]*6730.* Requirements Applicable to Members of the Association

[5331]*6731.* Limitations on Transactions in PORTAL Securities

(a) No member shall sell a PORTAL security unless:

(1) The sale is to:

(A) an investor or member that the member reasonably believes is a "qualified institutional buyer" in a transaction exempt from registration under the Securities Act by reason of compliance with Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Rule 144A; or

(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with SEC Rule 144A or an applicable exemption under the Securities Act other than SEC Rule 144A; and

(2) the member maintains in its files information demonstrating that the transaction is in compliance with Rule 144A or with any other applicable exemption from registration under the Securities Act.

[5332]*6732.* Reporting Debt and Equity Transactions in PORTAL Securities

(a) A transaction in a PORTAL security in which a PORTAL dealer or PORTAL broker participates shall be reported to the PORTAL Market system in a PORTAL transaction report complying with Rule [5334] *6734* by:

(1) The seller, if each party in the transaction is either a PORTAL dealer or a PORTAL broker;

(2) the PORTAL dealer or PORTAL broker participating in the transaction, if only one party in the transaction is a PORTAL dealer or PORTAL broker; provided, however, that with respect to transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof, a PORTAL dealer or PORTAL broker may comply with its obligation to submit a PORTAL transaction report by submitting, instead, a PORTAL surveillance report [which] *that* reports such transaction to the Market Regulation Department of the Association as set forth in Rule [5336] *6736.*

(b) A transaction in a PORTAL security in which a member participates, but in which no PORTAL dealer or PORTAL broker participates, shall be reported to the Market Regulation Department of the Association in a PORTAL non-participant report complying with Rule [5335] *6735* by:

(1) The seller, if each party in the transaction is a member; or

(2) The member, if only one party in the transaction is a member.

(c) The member responsible for submitting a PORTAL transaction report shall also submit to the Market Regulation Department of the Association a PORTAL surveillance report as set forth in Rule [5336] *6736.*

(d) The reporting requirements of this Rule shall apply to any transaction in a PORTAL security, including transactions in reliance on SEC Rule 144 and sales to or purchases from a non-U.S. securities market.

[Rule [5332] *6732* will not be effective until a date is announced by the NASD.]

[5333]*6733.* PORTAL Settlement

(a) Transactions in the PORTAL Market where the PORTAL dealer or PORTAL broker that enters the PORTAL transaction report in the PORTAL Market system designates settlement in the PORTAL clearance and depository systems will settle five (5) business days after the date of the execution of the transaction, except as otherwise agreed between the PORTAL participants, in any currency accepted by the PORTAL depository organization.

(b) PORTAL securities and funds will be transferred on the books of the PORTAL depository system upon receipt from the PORTAL clearing system of the necessary settlement instructions designating settlement in the PORTAL clearance and depository systems from the PORTAL transaction report entered in the PORTAL Market system by the appropriate PORTAL dealer or PORTAL broker and subject to the purchaser meeting the requirements of the relevant PORTAL depository organization concerning deposit and availability of funds in accordance with the depository organization's procedures.

(c) PORTAL dealers and PORTAL brokers that settle a PORTAL transaction outside the PORTAL clearance and depository systems assume responsibility for the prompt settlement of the transaction in accordance with the protocols of the settlement method used and the transaction will not be compared in the PORTAL Market.

[5334]*6734.* PORTAL Transaction Reports

(a) Each PORTAL transaction report shall include: whether the report should be forwarded to the PORTAL depository and clearance systems for the clearance and settlement of the transaction; if the PORTAL depository and clearance system is to be used, the identity of the account where the transaction is to be settled; if the PORTAL depository and clearance system is not to be used and the contra-party is an Association member, the identity of the Association member that is the contra-party; whether the transaction is on an agency or principal basis; whether the transaction is a purchase or sale; whether a sale is a "short" sale; the quantity of the security; the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; and such additional information as the Association may require.

(b) PORTAL transaction reports shall be entered within 15 minutes after execution of the transaction during hours that the PORTAL Market system accepts PORTAL transaction reports. The PORTAL Market system shall accept PORTAL transaction reports from 8:30 a.m. Eastern Time to 6:30 p.m. Eastern Time. If a transaction is executed during hours that the PORTAL Market system does not accept PORTAL transaction reports, the PORTAL transaction report shall be entered between 8:30 a.m. Eastern Time and 9:30 a.m. Eastern Time when the PORTAL Market system is next open, with the trade date [of] the date of execution of the transaction. The Association, in its discretion, will establish hours for and additional time limitations on the entry of PORTAL transaction reports.

(c) Modification, correction or cancellation of a PORTAL transaction report must be entered in the PORTAL Market system.

(d) The Association will not disseminate PORTAL transaction reports that are entered in the PORTAL Market system between 8:30 a.m. Eastern Time and 9:30 a.m. Eastern Time, and between 4:00 p.m. Eastern Time and 6:30 p.m. Eastern Time. The Association shall, however, display daily aggregate volume of transactions effected pursuant to SEC Rule 144A, including the volume of transactions that are entered in the PORTAL Market system between 8:30 a.m. Eastern Time and 6:30 p.m. Eastern Time.

[Rule [5334] *6734* will not be effective until a date is announced by the NASD.]

[5335]*6735.* PORTAL Non-Participant Report

(a) Each PORTAL non-participant report shall include: whether the transaction is on an agency or principal basis, whether the transaction is a purchase or sale; whether a sale is a "short" sale; the quantity of the security; the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; a representation as to whether the buyer was a "qualified institutional buyer" under Rule 144A, a "non-qualified institutional buyer" institution, or an individual investor; and such additional information as the Association may require.

(b) PORTAL non-participant reports shall be submitted to the Market Regulation Department of the Association no later than the fifth day of the month following the month in which the transaction was effected.

(c) Modification, correction, or cancellation of a PORTAL non-participant report must be submitted in the manner specified by the Association.

[Rule [5335] *6735* will not be effective until a date is announced by the NASD.]

Selected Notices to Members: 95–34.

[5336] *6736.* PORTAL Surveillance Report

(a) Each PORTAL dealer or PORTAL broker shall submit to the Market Regulation Department of the Association, no later than the fifth day of each month, a PORTAL surveillance report [which] *that* reports every transaction effected during the preceding month (including transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof) for which the PORTAL dealer or PORTAL broker was required to submit a PORTAL transaction report under Rule [5332] *6732,* including transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof; provided, however, that a member shall not be required to submit a PORTAL surveillance report with respect to any transaction for which the member was not required to submit a PORTAL transaction report.

(b) The PORTAL surveillance report shall be submitted in the manner specified by the Association and shall include for each transaction reported: a representation as to whether the buyer was a "qualified institutional buyer" under Rule 144A, a "non-qualified

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institutional buyer" institution, or an individual investor; the information required under Rule [5334] *6734;* and such additional information as the Association may require.

(c) Modification, correction, or cancellation of a PORTAL surveillance report must be submitted in the manner specified by the Association.

[Rule [5336] *6736* will not be effective until a date is announced by the NASD.]

[5337]*6737*. Comparison of PORTAL Transaction Reports Entered in the PORTAL Market System

Each PORTAL dealer and PORTAL broker that executes a purchase transaction in a PORTAL security with another PORTAL dealer or PORTAL broker shall, within 30 minutes after execution of a transaction for which a report is entered into the PORTAL Market system that designates settlement in the PORTAL clearance and depository system:

(a) Accept a PORTAL transaction report entered by the seller by entering in the PORTAL Market system a matching PORTAL comparison report with the same terms as the seller's PORTAL transaction report;

(b) reject a PORTAL transaction report entered by the seller by entering a PORTAL comparison report in the PORTAL Market system with different terms than those included in the seller's PORTAL transaction report; or

(c) enter an affirmation or rejection in the PORTAL Market system with respect to the PORTAL transaction report entered by the seller.

[5338]*6738*. Registration Requirements for PORTAL Dealers

(a) A member of the Association that registers as a PORTAL dealer shall also be registered as a PORTAL qualified investor.

(b) To register as a PORTAL dealer, a member shall:

(1) Execute a participation agreement;

(2) demonstrate to the satisfaction of the Association that it is eligible to purchase securities under the financial criteria of SEC Rule 144A as it applies to a dealer registered under Section 15 of the Exchange Act by submission of the member's most recent Audited Financial Statements filed with the SEC pursuant to SEC Rule 17a–5(d) under the Exchange Act, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the Association, in its discretion, may require to be submitted to the Association;

(3) be a member of the Association and qualified to do business as a general securities firm; and

(4) agree to comply with the requirements of the PORTAL Rules, including the filing of such documents and the payment of such fees as may be required by the Association.

[5339]*6739*. Registration Requirements for PORTAL Brokers

To register as a PORTAL broker a member shall comply with Rule [5338] *6738*(b)(1), (b)(3), and (b)(4).

[5340]*6740*. Continuing Requirements for PORTAL Dealers and PORTAL Brokers

(a) For a PORTAL dealer to continue to be eligible to participate as a PORTAL dealer in the PORTAL Market, the PORTAL dealer shall demonstrate to the satisfaction of the Association that it continues to be eligible to purchase securities under the financial criteria of SEC Rule 144A as it applies to a dealer registered under Section 15 of the Exchange Act by submitting to the Association, concurrent with the dealer's SEC filing, the dealer's Audited Financial Statements filed with the SEC pursuant to SEC Rule 17a-5(d) under the Exchange Act, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the Association, in its discretion, may require to be submitted to the Association.

(b) The Association may suspend or terminate the registration of a PORTAL dealer or PORTAL broker if:

(1) It fails to comply with any requirement of the PORTAL Rules with respect to any PORTAL security;

(2) any application or other document submitted by or on behalf of it contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(3) it fails to file any documents or to pay any fee as may be required by the Association.

(c) Nothing in paragraph (b) shall prohibit the Association from taking such other action as it deems necessary under the circumstances against a PORTAL dealer or a PORTAL broker for violations of the requirements of the PORTAL Rules, any other rule or regulation of the Association, or any rule or regulation of the SEC.

[5350]*6750*. Requirements Applicable to PORTAL Qualified Investors

[5351]*6751*. Registration Requirements for PORTAL Qualified Investors

(a) No investor other than a dealer registered under Section 15 of the Exchange Act shall subscribe to PORTAL Market information directly through the PORTAL Market system or indirectly through a third-party distributor unless:

(1) The investor executes a subscriber agreement;

(2) a PORTAL dealer represents to the Association that it reasonably believes that the investor is a "qualified institutional buyer" under SEC Rule 144A; or

(3) the investor demonstrates to the satisfaction of the Association that it is a "qualified institutional buyer" under SEC Rule 144A; or

(4) the Association reasonably believes that the investor is a "qualified buyer" under SEC Rule 144A.

(b) The Association may classify PORTAL qualified investors in such manner as it deems advisable for the purpose of conforming with SEC Rule 144A.

(c) A PORTAL dealer that submits a representation to the Association pursuant to paragraph (a)(2) shall maintain in its files the basis for its representation that it reasonably believes that the investor satisfies the "qualified institutional buyer" requirements of SEC Rule 144A.

(d) No member of the Association may register as a PORTAL qualified investor unless the member is also registered as a PORTAL dealer.

[5352]*6752*. Continuing Requirements for PORTAL Qualified Investors

(a) For an investor other than a dealer registered under Section 15 of the Exchange Act, to continue to be eligible to subscribe to PORTAL Market information:

(1) A PORTAL dealer shall represent annually to the Association that it reasonably believes that the investor is a "qualified institutional buyer" under SEC Rule 144A; or

(2) the investor shall demonstrate to the satisfaction of the Association or the Association shall form a reasonable belief that the investor is a "qualified institutional buyer" under SEC Rule 144A.

(b) A PORTAL dealer that submits a representation to the Association pursuant to paragraph (a)(1) shall maintain in its files the basis for its representation that it reasonably believes that an investor satisfied the "qualified institutional buyer" requirements of SEC Rule 144A.

[5353]*6753*. Suspension or Termination of the Registration of a PORTAL Qualified Investor

(a) The Association shall suspend or terminate the registration of a PORTAL qualified investor if:

(1) Any application or document submitted by or on behalf of the PORTAL qualified investor contained an untrue statement of material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(2) the investor fails to comply with any requirements of the PORTAL Rules, or to file any documents or to pay any fee as may be required by the Association.

(b) Nothing in paragraph (a) shall prohibit the Association from taking such action as it deems necessary under the circumstances against a PORTAL qualified investor that is also a member of the Association for violations of the requirements of the PORTAL Rules, any other rule or regulation of the Association, or any rule or regulation of the SEC.

[5360]*6760*. Denial, Suspension or Termination Procedures

A determination by the Association to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL participant may be reviewed upon application by the aggrieved person pursuant to the provisions of the Rule [4800] *9700* Series.

[5370]*6770*. PORTAL Market Transactions

[5371]*6771*. Normal PORTAL Market Hours of Operation

The PORTAL Market shall be open for business from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, or as otherwise determined by the Association.

[5372]*6772*. PORTAL Quotations

The PORTAL Market will accept prices and quotations from PORTAL dealers and PORTAL brokers that are one- or two-sided, firm or indicative.

[5373]*6773*. PORTAL Contracts

The existence and terms of each PORTAL contract shall be conclusively established by a compared PORTAL transaction report pertaining to the underlying transaction in a PORTAL security. Notwithstanding the foregoing, the parties to any PORTAL contract may modify or correct the terms of any transaction in a PORTAL security in a manner consistent with the rules of the PORTAL Market.

[5374]*6774*. PORTAL Fees

PORTAL participants shall pay to the Association a fee for PORTAL transactions or such other fees as determined by the Association, including those set forth in Rule [5324] *6724*. The Board of Governors shall have the power to impose, alter, or amend such fees from time to time pursuant to Article VI, Section 1 of the By-Laws.

[5375]*6775*. "When, As and If Issued" Trading

PORTAL securities that are of a new issue of securities, primary or secondary, may trade "when, as and if issued" in the PORTAL Market subsequent to effectiveness of the designation of the securities as PORTAL securities, provided; however, that the lead manager shall:

(a) Establish a settlement date for the securities based on their anticipated availability; and

(b) in the event of any subsequent delay in the established settlement date, shall enter in the PORTAL Market a corrected PORTAL transaction report designating a substitute date for settlement and cancel the existing PORTAL transaction report.

[5376]*6776*. "Short" Sales

(a) "Short" sale transactions in PORTAL securities may be entered in the PORTAL Market. "Short" sale transactions shall be identified as such in the PORTAL transaction report.

(b) The settlement date for "short" sales in PORTAL securities shall be negotiated by the parties.

(c) The provisions of Rule [3370] *5100 and IM–5100* that relate to "short" sale transactions are applicable to transactions in PORTAL securities.

(d) The Association may adopt such restrictions on "short" sales, and the borrowing and return of securities, as it may deem necessary to prevent violation of the registration requirements of the Securities Act in connection with the transactions in the PORTAL Market.

[5377]*6777*. Stabilizing Bids

(a) A PORTAL dealer may enter a stabilizing bid in the PORTAL Market subject to compliance with SEC Rules 10b-6 and 10b-7 under the Exchange Act, which bid shall be identified in the PORTAL Market. When a stabilizing bid is entered, it shall be available for all outstanding securities in the PORTAL Market of the same class being offered.

(b) A PORTAL dealer shall notify the Association in writing prior to the first day in which the stabilizing bid is to appear in the PORTAL Market. The notice shall include:

(1) The name of the security and its PORTAL symbol;

(2) the date on which the distribution of the security will commence; and

(3) a copy of any offering document related to the distribution.

The PORTAL dealer shall contact the Association for authorization on the day that the dealer wishes to enter the stabilizing bid.

(c) A PORTAL dealer shall not enter a stabilizing bid at the same time it is quoting any other bid or offer in the issue.

[5378]*6778*. Partial Delivery

A PORTAL qualified investor is required to accept a partial delivery on any PORTAL contract due, provided the portion remaining undelivered is not an amount that includes an odd-lot [which] *that* was not part of the original transaction.

[5379]*6779*. Close-out Procedures—"Buying-In"

A PORTAL contract [which] *that* has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

(a) Notice of "Buy-In"

(1) Written notice of "buy-in" shall be delivered to the seller at the seller's office not later than 12 noon, the seller's local time, two business days preceding the execution of the proposed "buy-in."

(2) For purposes of this provision, written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission and a computerized network facility.

(b) Information Contained in the "Buy-In" Notice

(1) Every notice of "buy-in" shall state the date of the PORTAL contract to be closed, the quantity and contract price of the PORTAL securities covered by said contract, the settlement date of said PORTAL contract and any other information deemed necessary to properly identify the PORTAL contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 2:30 p.m. Eastern Time, the PORTAL security may be "bought-in" on the date specified for the account of the seller.

(2) Notice may be redelivered immediately to another PORTAL dealer or PORTAL broker from whom the securities involved are due in the form of a re-transmitted notice (re-transmit). Re-transmitted notice of buy-in must be delivered to subsequent PORTAL dealers or PORTAL brokers not later than one business day preceding the time and date of execution of the proposed buy-in.

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(c) Seller's Failure to Deliver After Receipt of Notice

On failure of the seller to effect delivery in accordance with the "buy-in" notice, or to obtain a stay as hereinafter provided, the buyer may close the PORTAL contract by purchasing all or part of the PORTAL securities necessary to satisfy the amount requested in the "buy-in" notice. Securities delivered subsequent to the receipt of the "buy-in" notice should be considered as delivered pursuant to the "buy-in" notice. Delivery of the requisite amount of securities as stated in the "buy-in" notice or execution will also operate to close-out all PORTAL contracts covered under re-transmitted notices of buy-in issued pursuant to the original notice of buy-in. A "buy-in" may be executed by a PORTAL dealer from its long position and/or from customers' accounts maintained with such PORTAL dealer. In all cases, PORTAL dealers must be prepared to defend the price at which the "buy-in" is executed relative to the current market at the time of the "buy-in".

(d) "Buy-In" Not Completed

In the event that a "buy-in" is not completed pursuant to the provisions of paragraph (b) hereof on the day specified in the notice of "buy-in," or as such date may be extended pursuant to the provisions of paragraph (f) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(e) Partial Delivery by Seller

Prior to the closing of a PORTAL contract on which a "buy-in" notice has been given, the buyer shall accept any portion of the PORTAL securities called for by the PORTAL contract, provided the portion remaining undelivered at the time the buyer proposes to execute the "buy-in" is not an amount which includes an odd-lot [which] *that* was not part of the original transaction.

(f) Securities in Transit

If prior to the closing of a PORTAL contract on which a "buy-in" notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are: (1) In transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers, except for those securities due from the depository, then the buyer must extend the execution date of the "buy-in" for a period of seven (7) calendar days from the date delivery was due under the "buy-in."

(g) Notice of Executed "Buy-In"

The party executing the "buy-in" shall immediately upon execution, but not later than the close of business, local time where the seller maintains its office, notify the PORTAL dealer or PORTAL broker for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If this written media is not available, the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must also be sent out simultaneously. In either case, formal confirmation of purchase along with a billing or payment (depending upon which is applicable) should be forwarded as promptly as possible after the execution of the buy-in. Notification of the execution of a "buy-in" shall be given to succeeding broker/dealers to whom a re-transmitted notice was issued pursuant to paragraph (b) using the same procedures stated herein. If a re-transmitted "buy-in" is executed, it will operate to close-out all contracts covered under the re-transmitted notices.

(h) "Close-Out" under Association or Exchange Rulings

(1) When a national securities exchange makes a ruling that all open contracts with a particular member, who is also a PORTAL dealer or PORTAL broker, should be closed-out immediately (or any similar ruling), PORTAL dealers and PORTAL brokers may close-out contracts as directed by the exchange.

(2) When the Association issues notification that all open contracts with the PORTAL dealer or PORTAL broker in question should be closed-out immediately, PORTAL dealers or PORTAL brokers may close-out contracts as directed by the Association.

(3) Within the meaning of this section, to close-out immediately shall mean that (A) "buy-ins" may be executed without prior notice of intent to "buy-in" and (B) "sell-outs" may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this subparagraph shall be executed for the account and liability of the PORTAL dealer or PORTAL broker in question. Notification of all close-outs shall immediately be sent to such PORTAL dealer or PORTAL broker.

(i) Failure to Deliver and Liability Notice Procedures

(1) If a contract is for warrants, rights, convertible securities or other securities [which] *that* (A) have been called for redemption; (B) are due to expire by their terms; (C) are the subject of a tender or exchange offer; or (D) are subject to other expiring events such as the record date for the underlying security and the last day on which the securities must be delivered or surrendered (the "expiration date") is the settlement date of the contract or any later day, the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g) of this Rule. Such Notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and date of the offer or other event in order to obtain the protection provided by this provision.

(2) If the delivering PORTAL dealer or PORTAL broker fails to deliver the securities on the expiration date, the delivering PORTAL dealer or PORTAL broker shall be liable for any damages [which] *that* may accrue thereby. A Liability Notice delivered in accordance with this provision shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) If the above procedures are not utilized, contracts may be "bought-in" without prior notice, after normal delivery hours established in the community where the buyer maintains its office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting PORTAL dealer or PORTAL broker.

(j) Information on Notices

Notices of "buy-in" and "re-transmitted buy-in" shall include all information contained in the sample forms prescribed by the Association.

(k) "Buy-In" Desk Required

PORTAL dealers or PORTAL brokers shall have a "buy-in" section or desk adequately staffed to process and research all "buy-ins" during normal business hours.

(l) "Buy-In" of Accrued Securities

Securities in the form of stock, rights or warrants [which] *that* accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall

be subject to the "buy-in" procedures as provided in this Rule.

[5380]*6780.* Close-Out Procedures—"Selling-Out"

A contract [which] *that* has not been completed by the buyer according to its terms may be closed by the seller in accordance with the following procedures:

(a) Conditions Permitting "Sell-Out"

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Reclamation Form, the seller may, without notice, "sell-out" in the PORTAL Market and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

(b) Notice of "Sell-Out"

The party executing a "sell-out" as prescribed above shall, as promptly as possible on the day of execution, by written or comparable electronic notice, notify the PORTAL dealer or PORTAL broker for whose account and risk such securities were sold of the quantity sold and the price received, and shall promptly mail or deliver formal confirmation of such sale.

[5390]*6790.* Miscellaneous

[5391]*6791.* Arbitration

The facilities of [the Association's Arbitration Department] *NASD Dispute Resolution, Inc.*, and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

[5392]6792. Rules of the Association

(a) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to the PORTAL Market:

(1) Rules 0113, 0114, 0115, 2110, 2120, 2230, 2240, 2250, 2260, 2270, 2310, 2410, 2420, 2430, 2440, 2510, 2760, 2770, 2780, 3010, 3120, 3310, 3320, 3330, 3370, and 8210;

(2) the Rule 8100 and 8300 Series; and

(3) IM–2310–2, IM–2420–1, IM–2440, IM–3310, and IM–3320.

(b) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to the PORTAL Market, with the exceptions specified below:

(1) Rule 2320, except for paragraph (g), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;

(2) Rule 2330, except for paragraph (d); and

(3) Rule 3110, except paragraph (b)(2).

(c) The following Rules of the Association are applicable to members and persons associated with members regardless of the member's participation in transactions in the PORTAL Market:

(1) Rules 0111, 0112, 0120, and 0121.

(2) Rules 2210, 3020, 3030, 3040, 3050, 3060, 3130, 3140, and 3340.

(d) The following Rules of the Association and Interpretative Material thereunder are not applicable to transactions and business activities relating to the PORTAL Market:

(1) Rules 1130, 2450, 2520, 2710, 2730, 2740, 2750, 2810, 2820, 2830, 2860, 3210, and 3360; and

(2) IM–2110–1.

* * * * *

5400. Clearance and Settlement

(a) A market maker shall clear and settle transactions effected otherwise than on an exchange in ADF-eligible securities that are eligible for net settlement through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in listed securities may be settled "ex-clearing" provided that both parties to the transaction agree.

Selected NASD Notices to Members: 94–73.

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6000. NASD SYSTEMS AND PROGRAMS

The 6100 Series is replaced in its entirety by the following proposed rule language:

6100. TRACS TRADE COMPARISON SERVICE

6110. Definitions

(a) The term "Browse" shall mean the function of TRACS that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACS Users Guide.

(b) The term "Clearing Broker/Dealer" or "Clearing Broker" shall mean the member firm that has been identified in the TRACS system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(c) The term "Correspondent Executing Broker/Dealer" or "Correspondent Executing Broker" shall mean the member firm that has been identified in the TRACS system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(d) The term "Introducing Broker/Dealer" or "introducing broker" shall mean the member firm that has been identified in the TRACS system as a party to the transaction, but does not execute or clear trades.

(e) The term "Participant" shall mean any member of NASD in good standing that uses the TRACS system as an NASD Registered Market Maker or CQS Market Maker according to the requirements of Rule 4611 or Rule 6320, an ECN registered in accordance with Rule 4623, an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.

(f) The terms "Participant," "TRACS Order Entry Firm," "correspondent executing broker/dealer," "correspondent executing broker," "introducing broker/dealer," "introducing broker," "clearing broker/dealer," and "clearing broker" shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule 6120(a)(5) below and their qualifying members.

(g) The term "Parties to the Transaction" shall mean the executing brokers, introducing brokers and clearing brokers, if any.

(h) The term "Reportable TRACS Transaction" shall mean those transactions in a TRACS eligible security that are required to be submitted to NASD pursuant to the Rule 4630, 6400, and 6620 Series. The term shall also include transactions in TRACS eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) The term "Reporting Party" shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4633.

(j) The term "Trade Reporting and Comparison Service" or "TRACS" shall mean the automated system owned and operated by NASD that reports trades and compares trade information entered by TRACS participants and submits "locked-in" trades to Depository Trust Clearing Corporation (DTCC) for clearance and settlement; transmits reports of the transactions automatically to the Securities Information Processor, if required, for dissemination to the

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public and the industry; and provides participants with monitoring capabilities to facilitate participation in a "locked-in" trading environment.

(k) The term "TRACS ECN" shall mean a member of NASD that is an electronic communications network ("ECN") that elects to display orders in the NASD Alternative Display Facility pursuant to Rule 4623 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. This term shall also include an NASD member that is an alternative trading system ("ATS") that displays orders in the NASD Alternative Display Facility pursuant to Rule 4623 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(l) The term "TRACS Eligible Security" shall mean all Nasdaq securities, all Consolidated Quotation Service (CQS) securities traded pursuant to unlisted trading privileges, all non-exchange-listed securities as defined in the Rule 6600 series, and all Direct Participation Programs as defined in the Rule 6900 series.

(m) The term "TRACS Market Maker" shall mean a member of NASD that is registered as an NASD or CQS Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(n) The term "TRACS Order Entry Firm" shall mean a member of NASD that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

6120. Participation in TRACS Trade Comparison Feature by Participants in the NASD Alternative Display Facility

The following Rules 6120 through 6190 apply to members that effect transactions in ADF-eligible securities otherwise than on an exchange.

(a) Mandatory Participation for Clearing Agency Members

(1) Participation in TRACS trade comparison feature is mandatory for any NASD member that effects transactions in ADF-eligible securities otherwise than on an exchange that are not locked-in and sent directly to Deposit Trust Clearing Corporation ("DTCC") by that member. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in Rule 4633.

(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker's initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

(C) registration as an NASD Market Maker or ECN for Nasdaq or CQS securities pursuant to Rule 4611 or Rule 6320, if applicable, and compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Market Maker to prevent unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Market Maker, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the TRACS trade comparison feature as an Order Entry Firm shall be conditioned upon the Order Entry Firm's initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Order Entry Firm to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Order Entry Firm, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(4) Participation in the TRACS trade comparison feature as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Clearing Broker to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(5) Participation in the TRACS trade comparison feature as an ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the ECN to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS ECN, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(6) Each TRACS trade comparison Participant shall be obligated to inform NASD of non-compliance with any of the participation requirements set forth above.

(b) Participant Obligations in TRACS

(1) Access to TRACS

Upon execution and receipt by NASD of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in TRACS eligible securities. TRACS trade comparison Participants may access the service via NASD terminals or Workstations or through computer interface during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to NASD by any third party, must obtain from NASD a unique identifying Market Participant Symbol ("MMID" or "MPID"), and use that identifier for trade reporting and audit trail purposes.

(2) Market Maker Obligations

(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.

(B) A TRACS Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by that Market Maker.

(C) A TRACS Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes an TRACS trade comparison participant and notify the TRACS Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Market Maker fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature, and be precluded from participation as a Market Maker in Nasdaq and CQS securities pursuant to the requirements of 6300 Series until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD. If, however, the NASD finds that the TRACS Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4619.

(3) Order Entry Firm Obligations

(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.

(B) A TRACS Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the Order Entry Firm.

(C) A TRACS Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.

(4) Clearing Broker Obligation

TRACS clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACS Operations Center and affirmative action has been completed by the Center to remove the clearing broker from the TRACS trade comparison feature for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).

(5) ECN Obligations

(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for TRACS eligible securities.

(B) A TRACS ECN that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the ECN.

(C) A TRACS ECN that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS ECN fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.

Selected NASD Notices to Members: Notice to Members 98–82.

6130. Trade Report Input

(a) Reportable TRACS Transactions

A member choosing to submit a trade to the NASD for comparison shall report the trade to TRACS. TRACS will also process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4633 will be transmitted to the applicable securities information processor; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC. All transactions in Direct Participation Program securities shall be reported to TRACS pursuant to the Rule 6900 Series as set forth therein.

(b) When and How Trade Reports Are Submitted to TRACS

(1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by Rule 4633 (e) or (f), as applicable, within 90 seconds of execution.

(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting

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Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule 4633(e) or (f), as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.

(3) Trades not required to be reported for public dissemination may still be compared and locked-in through TRACS.

(4) Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by the NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.

(5) Non-Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by the NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.

(6) If a TRACS Report from a Reporting Member did not include a necessary OATS order number for OATS/TRACS matching from the Non-Reporting Member's perspective, the Non-Reporting Member shall submit a non-published TRACS Report to compare the trades.

(7) A party entering a trade report into the TRACS trade comparison feature shall use a designated symbol to denote whether the party is submitting the trade report as the Reporting Member or the Non-Reporting Member.

6140. TRACS Processing

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

(a) Trade Acceptance

The reporting party enters its version of the trade into the system and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACS system at the end of trade date processing;

(b) Aggregate Volume Match

A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered uncompared trade reports (if all other matching fields agree) in order to effect matching;

(c) T+N Trade Processing

T+N entries may be submitted until 5:15 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the TRACS system. TRACS will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACS will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACS will not automatically lock in T+22 (calendar day) or older open "as-of" trades that were carried-over from the previous business day; these trades will be purged by TRACS at the end of the carry-over day if such trades remain open. Members may re-submit these T+22 or older "as-of" trades into TRACS on the next business day for continued comparison and reconciliation for up to one calendar year.

Selected NASD Notices to Members 94–73.

6150. Reserved

6160. Obligation to Honor Trades

If a TRACS trade comparison Participant is reported by TRACS as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

6170. Audit Trail Requirements

The data elements specified in Rule 6130(b) are critical to NASD's compilation of a transaction audit trail for regulatory purposes. As such, all member firms using the TRACS Service have an ongoing obligation to input Rule 6130(b) information accurately and completely.

6180. Reserved

6190. Termination of TRACS Service

NASD may, upon notice, terminate TRACS service as to a Participant in the event that a TRACS Participant fails to abide by any of the rules or operating procedures of the TRACS service or NASD, or fails to honor contractual agreements entered into with NASD or its subsidiaries, or fails to pay promptly for services rendered by the TRACS Service.

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6200. To be replaced in its entirety by SR–NASD–99–65, which currently is expected to be effective on February 1, 2002.

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The 6300 through 6500 Series are replaced in their entirety by the following proposed rule language.

6300. CONSOLIDATED QUOTATIONS SERVICE (CQS)

6310. General

The Rule 6300 through 6500 Series govern trading by members in CQS/CTA securities otherwise than on an exchange.

6320. Registration as a CQS Market Maker

(a) Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) through the NASD Alternative Display Facility only by an NASD member registered with it as a CQS market maker.

(b) An NASD member, including an operator of an ECN/ATS seeking registration as a CQS market maker, shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a CQS market maker shall become effective upon receipt by the member of notice of approval of registration by NASD. It shall be sufficient to obtain registration as a CQS market maker with NASD for a member to demonstrate proof that it is a registered CQS market maker with Nasdaq in good standing.

(c) A CQS market maker registered in a reported security may become registered in additional reported securities by entering a registration request via an NASD Alternative Display Facility terminal. Registration shall become effective at the time the registration request is entered.

(d) An NASD member that becomes registered as a CQS market maker in an issue shall enter quotations in the issue on the effective date of the issue's authorization. If quotations are not entered on the effective date of authorization and the CQS market maker remains inactive in the issue for five (5) business days, the CQS market maker's registration in the issue will be terminated.

(e) Any CQS market makers registered in reported securities that are eligible for inclusion in the Intermarket Trading System (ITS) may be registered as market makers in ITS and, if they so choose, shall be subject to the Rule 6500 Series.

6330. Obligations of CQS Market Makers

(a) Pursuant to SEC Rule 11Ac1–1, a CQS market maker's quotations in reported securities are required to be firm for the size displayed or, if no size is displayed, for a normal unit of trading. If a market maker displays quotations in a reported security in both a national securities exchange and NASD's CQS System, the market maker shall maintain identical quotations in each system.

(b) A CQS market maker's quotation must be at least one normal unit of trading.

(c) A CQS market maker shall be obligated to have available in close proximity to the NASD Alternative Display Facility terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of other national securities exchanges and CQS market makers trading and quoting that CQS security.

(d) Computer-Generated Quotations

(1) General Prohibition—Except as provided below, this Rule prohibits the automatic updating or tracking of inside quotations in CQS by computer-generated quote systems. This ban is necessary to offset the negative impact on the capacity and operation of NASD systems regarding certain systems that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market, without any cognizable human intervention.

(2) Exceptions to the General Prohibition—Automated updating of quotations is permitted when:

(A) The update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size);

(B) it requires a physical, cognizable entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to the NASD system);

(C) the update is to reflect the receipt, execution, or cancellation of a customer limit order;

(D) it is used to expose a customer's market or marketable limit order for price improvement opportunities; or

(E) it is used to equal or improve either or both sides of the national best bid or offer ("NBBO"), or add size to the NBBO.

(e) Minimum Price Variation for Decimal-Based Quotations

(1) The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01.

(f) Members that display priced quotations on a real-time basis for CQS securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.

Cross Reference—IM–4613, Autoquote Policy

6340. Normal Business Hours

A CQS market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An NASD market maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. A CQS market maker whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

6350. Withdrawal of Quotations

(a) Any registered CQS market maker (excluding ECNs) that initiates a pre-opening application and does not enter and maintain continuous two-sided quotations in the security on the same trading day may not re-register to enter quotations in such security for twenty (20) business days unless NASD Alternative Display Facility Operations grants an excused withdrawal.

(b) A CQS market maker that wishes to withdraw quotations in a reported security shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless NASD has initiated a trading halt for ITS Market Makers in the security, pursuant to Rule 5200.

6360. Voluntary Termination of Registration

A CQS market maker may voluntarily terminate its registration in a reported security by withdrawing its quotations from the NASD Alternative Display Facility. A CQS market maker that voluntarily terminates its registration in a reported security may not, however, re-register as a CQS market maker in that security for two (2) business days.

6370. Suspension and Termination of Quotations by NASD Action

NASD may, pursuant to the procedures set forth in NASD's Code of Procedure as set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a CQS market maker's authority to enter quotations in one or more reported securities for violations of the applicable requirements or prohibitions of the Rule 4000, 5000 and 6300 Series. Selected NASD Notices to Members: 94–81.

6400. REPORTING TRANSACTIONS IN CTA-ELIGIBLE SECURITIES

The provisions of this Rule 6400 Series shall apply to all transactions effected by members otherwise than on an exchange in securities listed on an exchange (other than Nasdaq) that are required to be reported to the Consolidated Tape ("eligible securities"), as provided in the Plan filed by NASD pursuant to SEC Rule 11Aa3–1 under the Act ("Plan"). Rule 6420 shall not apply to transactions executed through the Intermarket Trading System by market makers registered as CQS market makers.

Selected NASD Notices to Members: 94–81.

6410. Definitions

(a) Unless the context requires otherwise, terms used herein shall have the meaning below. Terms not specifically defined below shall have the meaning in the By-Laws and NASD Rules, SEC Rule 11Aa3–1 and the Plan.

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(b) "Consolidated Tape" means the consolidated transaction reporting system for the dissemination of last sale reports in eligible securities required to be reported pursuant to the Plan.

(c) "Eligible securities" means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is contained in Rule 6450. An updated list of eligible securities will be provided to members from time to time.

(d) "Initial Public Offering"—a security is subject to an "initial public offering" if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.

(e) "Non-Registered Member" shall have the meaning as defined in NASD Rule 4200.

(f) "Transaction effected through the NASD Alternative Display Facility" shall have the meaning as defined in Rule 4100.

(g) "Registered Member" means a member of NASD that is registered as a CQS market maker, pursuant to Rule 6320, in a particular eligible security. A member is a Registered Member in only those eligible securities for which it has registered as a CQS market maker. A member shall cease being a Registered Member in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.

(h) "Registered ECN" means a member of NASD that is an electronic communications network ("ECN") that has chosen to register with NASD and meets the terms of registration set forth in the NASD-provided agreement. A member is a Registered ECN in only those eligible securities for which it is registered with NASD. A member shall cease being a Registered ECN in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD. The term "Registered ECN" shall also include NASD members that are alternative trading systems ("ATS"), subject to SEC Regulation ATS, that comply with the requirements of this paragraph.

6420. Transaction Reporting

(a) General

(1) This Rule governs the reporting of trades in eligible securities through the NASD's Trade Reporting and Comparison Service ("TRACS").

(2) All times referenced in this Rule are Eastern time.

(3) For Purposes of this Rule, the term "Reporting NASD Member" or "Reporting Member" shall mean an NASD member with the trade reporting obligation as set forth in Rule 6420(c).

(4) For purposes of this Rule, the term "Non-Reporting NASD Member" or "Non-Reporting Member" shall mean the contra side of a trade reported by a Reporting Member.

(5) For purposes of this Rule, the term "normal market hours" means from 9:30 a.m. to 4:00 p.m. All times referenced in this Rule are Eastern Time.

(b) When and How Transactions are Reported

(1) Reporting NASD Members shall transmit to TRACS, within 90 seconds after execution, last sale reports of transactions in eligible securities effected by members otherwise than on an exchange during the trading hours of the Consolidated Tape. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution. Reporting NASD Members shall also transmit to TRACS, within 90 seconds after execution, last sale reports of transactions in eligible securities effected by members otherwise than on an exchange between 4:00 p.m. and 6:30 p.m.; trades executed and reported after 4:00 p.m. shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must include the time of execution on the trade report.

(2) (A) Reporting NASD Members shall report transactions in eligible securities effected otherwise than on an exchange outside the hours of 9:30 a.m. and 6:30 p.m. Eastern Time as follows:

(i) By transmitting the individual trade reports to TRACS on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time;

(ii) by designating the entries "as/of" trades to denote their execution on a prior day; and

(iii) by including the time of execution.

(c) Which Party Reports Transaction

(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.

(2) For transactions between two Registered Members or Registered ECNs, the Registered Market Maker or ECN representing the sell side shall report the transaction.

(3) For transactions between a Registered Member or Registered ECN and a Non-Registered Member, the Registered Member or Registered ECN shall report the transaction.

(4) For transactions between two Non-Registered Members, the Non-Registered Member representing the sell side shall report the transaction.

(5) For transactions between a member and a customer, the member shall report the transaction.

(6) For transactions between a member and a broker-dealer that is not a member of NASD, the member shall report the transaction.

(7) For all transactions between an NASD member and an NASD member that is also a member of Nasdaq or another national securities exchange, where the reporting party has a choice of reporting venues and chooses not to report to Nasdaq or another national securities exchange, the reporting party described in (1) through (6) above shall report the transaction to the NASD.

(d) Information To Be Reported—Two Party Trade Reports

(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the ("MMID") side of the trade report and the Non-Reporting Member is denoted as the ("OEID") side of the report.

(2) Each Two Party Last Sale Report Submitted by a Reporting NASD Member Should Contain:

(A) Security identification symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as required by paragraph (g) below;

(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;

(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;

(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is as principal, riskless principal, or agent;

(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is as principal, riskless principal, or agent;

(H) Execution time for any transaction not reported within 90 seconds of execution;

(I) The market participant identifier of the Reporting Member and the Non-Reporting Member;

(J) Reporting Member clearing broker;

(K) Reporting Member Executing Broker in case of a "give up;'

(L) Non-Reporting Member Executing Broker;

(M) Non-Reporting Member introducing broker in case of a "give up;'

(N) Non-Reporting Member clearing broker;

(O) A designated symbol denoting whether the trade report should be published;

(P) A designated symbol denoting whether the trade report should be compared in TRACS;

(Q) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(R) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.

(S) For two party trade reports submitted pursuant to an Automated Give Up ("AGU") arrangement or a Qualified Service Representative ("QSR") Agreement, subparagraphs (d) (2) (E) and (G) are mandatory.

(e) Information To Be Reported—Three Party Trade Reports

(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs shall only submit three party trade reports. Risklnnnqess principal trades may be submitted as three party trade reports.

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

Transaction Information

(A) Security Identification Symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as required by paragraph (g) below;

(D) Execution time for any transaction not reported within 90 seconds of execution;

(E) The market participant identifies of the Reporting Member and the two Non-Reporting Members;

(F) A designated symbol denoting whether the trade should be published;

MMID Side

(G) All three party trade reports from ECNs must be marked as agency cross transactions;

(H) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;

(I) Reporting Member clearing broker;

(J) Reporting Member Executing Broker in the case of a "give up," if applicable;

Buy Side OEID

(K) Buy Side OEID executing broker;

(L) Buy Side OEID introducing broker in case of a "give up";

(M) Buy Side OEID clearing broker;

(N) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;

(O) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(P) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(Q) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;

Sell Side OEID

(R) Sell Side OEID executing broker;

(S) Sell Side OEID introducing broker in case of a "give up";

(T) Sell Side OEID clearing broker;

(U) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;

(V) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;

(W) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(X) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member; and

(Y) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS.

(Z) If the transactions between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, subparagraphs (e) (2) (N) is mandatory.

(AA) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, subparagraphs (e) (2) (U) and (V) are mandatory.

(f) Trade Report Modifiers

(1) Reporting Members shall append the following trade report modifiers to a last sale report if applicable:

(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;

(C) .C, if the trade is a Cash Trade;

(D) .ND, if the trade is a Next Day Trade;

(E) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;

(F) .T, if the trade is executed outside of normal market hours;

(G) .O, if the trade is price beyond certain price validation parameters as established by the NASD; and

(H) Any other trade report modifier approved for use by the Securities and Exchange Commission.

(2) It will be a violation of this Rule for a Reporting Member to fail to append a required trade modifier or to append a modifier that is not required.

(3) A Reporting Member shall not append a .O modifier to a trade report unless the trade price is beyond certain price validation parameters as established by the NASD.

(4) The Association seeks to emphasize the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and the Association routinely monitors members' compliance with the 90 second requirement. If the Association finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110.

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Exceptional circumstances will be determined on a case by case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the Association's marketplace, and the Association will view noncompliance as a rule violation.

(g) Procedures for Reporting Price and Volume

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50; REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50; BUY as agent 100 shares at 40 plus a commission of $12.50; REPORT 100 shares at 40.

(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included).

REPORT 100 shares at 40.

Example:

BUY as principal 100 shares from a customer at 39¾, which includes a ⅛ mark-down from prevailing market of 39⅞; REPORT 100 shares at 39⅞.

Example

BUY as principal 100 shares from a customer at 39.75, which includes a $0.10 mark-down from prevailing market at $39.85; REPORT 100 shares at 39.85.

Example:

SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40; REPORT 100 shares at 40.

Example:

SELL as principal 100 shares to a customer at 40.10, which includes a .10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

(B) Exception: A "riskless" principal transaction in which a member, after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one three party transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the NASD:

(i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.

(ii) Regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, "riskless" portion of the transaction, either:

a. a clearing-only report with a capacity indicator of "riskless principal," if a clearing report is necessary to clear the transaction; or

b. a non-tape, non-clearing report with a capacity indicator of "riskless principal," if a clearing report is not necessary to clear the transaction.

A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.

Example:

BUY as principal 100 shares from another member at 40 to fill an existing order;

SELL as principal 100 shares to a customer at 40 plus mark-up of $12.50;

REPORT 100 shares at 40 by submitting to the NASD either a single trade report marked with a "riskless principal" capacity indicator or by submitting the following reports:

(1) Where required by this Rule, a tape report marked with a "principal" capacity indicator; and

(2) either a non-tape, non-clearing report or a clearing-only report marked with a "riskless principal" capacity indicator.

Example:

BUY as principal 100 shares on an exchange at 40 to fill an existing order; SELL as principal 100 shares to a customer at 40 plus a mark-up of $12.50.

DO NOT REPORT (will be reported by exchange).

(h) Reporting Transactions on Form T

All Reporting NASD Members required (or that elect) to report transactions in eligible securities to the NASD shall report, as soon as practicable to NASD Regulation's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into the NASD is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or the NASD will not accept the date of execution because the NASD Alternative Display Facility was closed on that date). Transactions that can be reported into the NASD, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(i) Trade Tickets

All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.

(j) Special Trade Indicator

A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.

(k) Clearing Indicators

A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) Compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement ("AGU"); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement ("QSR").

(l) Transactions Not Required To Be Reported

The following types of transactions shall not be reported for inclusion on the Consolidated Tape:

(1) Transactions executed on an exchange;

(2) odd-lot transactions;

(3) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf distributions) or of an unregistered secondary distribution effected off the floor of an exchange;

(4) transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(5) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;

(6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

(7) purchases of securities off the floor of an exchange pursuant to a tender offer, and

(8) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

Selected Notices to Members: 94–71; 99–66.

6430. Reserved

6440. Trading Practices

(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any eligible security at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price that does not reflect the true state of the market in such security.

(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an eligible security or creating or inducing a false or misleading appearance with respect to the market in such security:

(1) Execute any transaction in such security which involves no change in the beneficial ownership thereof; or

(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or

(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(c) No member shall execute purchases or sales of any eligible security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.

(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an eligible security shall be deemed to be a manipulative operation.

(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.

(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.

(e) No member shall make any statement or circulate and disseminate any information concerning any eligible security that such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

(f) (1) No member shall:

(A) Personally buy or initiate the purchase of an eligible security for its own account or for any account in which it or any person associated with it is directly or indirectly interested, while such member holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer; or

(B) sell or initiate the sale of any such security for any such account, while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.

(2) No member shall:

(A) Buy or initiate the purchase of any eligible security for any such account, at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer; or

(B) sell or initiate the sale of any eligible security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

(3) The provisions of this paragraph shall not apply:

(A) To any purchase or sale of any eligible security in an amount less than the unit of trading made by a member to offset odd-lot orders for customers,

(B) to any purchase or sale of any eligible security upon terms for delivery other than those specified in such unexecuted market or limited price order,

(C) to any unexecuted order that is subject to a condition that has not been satisfied.

(g) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an eligible security, unless such joint account is promptly reported to NASD. The report should contain the following information for each account:

(1) Name of the account, with names of all participants and their respective interests in profits and losses;

(2) a statement regarding the purpose of the account;

(3) name of the member carrying and clearing the account; and

(4) a copy of any written agreement or instrument relating to the account.

(h) No member shall offer that a transaction or transactions to buy or sell an eligible security will influence the closing transaction on the Consolidated Tape.

(i)(1) A member may, but is not obligated to, accept a stop order in an eligible security.

(A) A buy stop order is an order to buy that becomes a market order when a transaction takes place at or above the stop price.

(B) A sell stop order is an order to sell that becomes a market order when a transaction takes place at or below the stop price.

(2) A member may, but is not obligated to, accept stop limit orders in eligible securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.

(j) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

6450. Eligible Securities

Transactions required to be reported on the Consolidated Tape (eligible securities) include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed on the American Stock Exchange and/or the

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New York Stock Exchange and the following securities listed on regional stock exchanges.

Symbol	Security
ALK$	Alaska Airlines $2.77 Pfd.
ADN	Alden Electronic
AFI$D	Amer. Financial Corp. Pfd.D
AFI$E	Amer. Financial Corp. Pfd.E
AFI$F	Amer. Financial Corp. Pfd.F
AFI$G	Amer. Financial Corp. Pfd.G
AFI$H	Amer. Financial Corp. Pfd.H
BPP	Ballys Park Place
BSI	Bastian Inds., Inc.
BSI$	Bastian Inds., Inc. $1.00 Pfd
BBM	Berkeley Bio Medical
CSW	Canada Southern Petroleum
CNO	Casco Northern Corp.
CJI	Central Jersey Industries
CTE	Columbia Chase Corp.
DCT	DC Trading Development Corp.
EDG	Enterprise Devel. Group, Inc.
GEO	Geothermal Resources
GLR	Grolier Inc.
HWK	Hardwicke Companies, Inc.
MOD	Modine Manufacturing Company
OKC	OKC Limited Partnership
OGS	O's Gold Seed Company
PRI	Pacific Resources
PJH	Piper Jaffray, Inc.
PRB	Provident Bancorp, Inc.
REL.Z	Reliance Group 87 Wts.
SOU$A	Southern Cal Gas 6% A Pfd.
SOU$Q	Southern Cal Gas 6% Pfd.
SYN$B	Syntex Corp. Pfd.B
TEP$	Tucson Elec. Power Pfd.
UTC	United Canso Oil and Gas
WH	White Motor Corporation

Selected Notices to Members: 85–27, 87–12, 93–9, 93–25.

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6600. REPORTING TRANSACTIONS IN [OVER-THE-COUNTER EQUITY] NON-EXCHANGE-LISTED SECURITIES

This Rule 6600 Series sets forth the trade reporting requirements applicable to members' transactions in equity securities effected otherwise than on an exchange for which real-time trade reporting is not otherwise required (hereinafter referred to as "*non-exchange-listed securities* [OTC Equity Securities]"). Members shall [utilize] *use* the Automated Confirmation Transaction (ACT) for trade reporting in *non-exchange-listed securities* [OTC Equity Securities].

Those members effecting transactions otherwise than on an exchange in non-exchange-listed securities shall have in place contractual agreements with Nasdaq to use ACT for trade reporting. Members who use ACT to compare trades must comply with the applicable Nasdaq trade comparison rules. Members should refer to the Nasdaq rules for the specific rules that govern trade comparison through ACT.

6610. Definitions

(a) Terms used in this Rule shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified herein.

(b) "Automated Confirmation Transaction Service" or ACT is the *Nasdaq* service that, among other things, accommodates reporting and dissemination of last sale reports in *non-exchange-listed securities* [OTC Equity Securities]. Regarding those *non-exchange-listed securities* [OTC Equity Securities] that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the ACT comparison function will not be available. However, ACT will support the entry and dissemination of last sale data on such securities.

(c) "Non-Market Maker" means a member of the Association that is not an OTC Market Maker with respect to a particular *non-exchange-listed security* [OTC Equity Security].

(d) *"Non-exchange-listed security"* ["OTC Equity Security"] means any equity security *that is not traded on any national securities exchange.* [not classified as a "designated security," for purposes of the Rule 4630 and 4640 Series. This term also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not "eligible securities" as defined in Rule 6410(d).] The term *"non-exchange-listed securities"* ["OTC Equity Security"] shall not include "restricted securities," as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market, the Rule [5300] *6700* Series.

(e) "OTC Market Maker" means a member of the Association that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular *non-exchange-listed security* [OTC Equity Security] in any inter-dealer quotation system, including any system that the Commission has qualified pursuant to Section 17B of the Act. A member is an OTC Market Maker only in those *non-exchange-listed securities* [OTC Equity Securities] in which it displays market making interest via an inter-dealer quotation system.

6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) OTC Market Makers shall, within 90 seconds after execution, transmit through ACT last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Market Makers shall, within 90 seconds after execution, transmit through ACT or the *Nasdaq* ACT service desk (if qualified pursuant to Rule 7010(i)), or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(3) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in *Non-exchange-listed securities* [OTC Equity Securities] executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be transmitted through ACT within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed between the hours of 4:00 p.m. and 5:15 p.m. Eastern Time shall also be transmitted through *the NASD* [ACT] within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(B) Last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed outside the hours of 8:00 a.m. and 5:15 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in American Depository Receipts (ADRs), Canadian issues, or domestic *non-exchange-listed securities* [OTC Equity Securities] that are executed between midnight and 8:00 a.m. Eastern Time shall be transmitted through ACT between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ".T" trades to denote their execution outside normal market hours, and be accompanied by the time of execution. The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic *non-exchange-listed securities* [OTC Equity Securities] that are executed between 5:15 p.m. and midnight Eastern Time shall be transmitted through ACT on the next business day (T+1) between 8:00 a.m. and 5:15 p.m. Eastern Time, be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted through ACT on T+1 regardless of time of execution. Such reports shall be made between 8:00 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(B)(ii) above.

(4) All members shall report as soon as practicable to the Market [Surveillance] *Regulation* Department on Form T, last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] for which electronic submission into ACT is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported into ACT, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(5) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

(6) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) Which Party Reports Transaction

(1) In *a* transaction[s] between two OTC Market Makers, only the member representing the sell side shall report *the transaction.*

(2) In *a* transaction[s] between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report *the transaction.*

(3) In *a* transaction[s] between two Non-Market Makers, only the member representing the sell side shall report *the transaction.*

(4) In *a* transaction[s] between a member and a customer, the member shall report *the transaction.*

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) Symbol of the *non-exchange-listed security* [OTC Equity Security];

(2) Number of shares;

(3) Price of the transaction as required by paragraph (d) below; and

(4) A symbol indicating whether the transaction is a buy, sell, or cross.

(d) Procedures for Reporting Price and Volume

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in *non-exchange-listed securities* [OTC Equity Securities] in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

(3) (A) For principal transactions, except as provided in subparagraph (B) hereof, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price [which] *that* includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the *non-exchange-listed securities* [OTC Equity Security], the number of shares involved in the transaction, the published bids and offers with size displayed in any inter-dealer quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

(B) Exception: A "riskless" principal transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after receiving an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions [which] *that* are part of a primary distribution by an issuer or a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution;

(2) Transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(3) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security;

(4) Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

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[6700. REPORTING TRANSACTIONS IN NON-NASDAQ SECURITIES]

[6710. Definitions]

[For the purposes of this Rule 6700 Series, unless the context requires otherwise:]

[(a) "Issuer," in the case of quotations for American Depository Receipts (ADRs), shall mean the issuer of the deposited shares represented by such ADRs.]

[(b) "Non-Nasdaq Reporting System" means the electronic price and volume reporting system operated by the Association for non-Nasdaq securities.]

[(c) "Non-Nasdaq security" means any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange. For purposes of Rules 6720 and 6730 of this Series, the term "non-Nasdaq security" shall also mean any Nasdaq security, if transactions in that security are effected by market makers that are not registered Nasdaq market makers pursuant to Rule 4611, and any security listed on an exchange, if transactions are required to be reported pursuant to the Rule 6400 Series.]

[(d) "Priced entry" shall mean a quotation consisting of a bid, offer, or both at a specified price.]

[(e) "Quotation" shall mean any bid or offer at a specified price with respect to a non-Nasdaq security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-Nasdaq security.]

[(f) "Quotation medium" means any inter-dealer quotation system (except for the PORTAL Market) or any publication or electronic communications network or other device that is used by brokers

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or dealers to make known to others their interest in transactions in any non-Nasdaq security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.]

[6720. Price and Volume Reporting]

[(a) Each member shall report through the Non-Nasdaq Reporting System the following information on all principal transactions in non-Nasdaq securities:]

[(1) The highest price at which it sold and the lowest price at which it purchased each non-Nasdaq security;]

[(2) the total volume of purchases and sales executed by it in each non-Nasdaq security; and]

[(3) whether the trades establishing the highest price at which the member sold and the lowest price at which the member purchased the security represented an execution with a customer or with another broker/dealer. The price to be reported for principal sales and purchases from customers shall be inclusive of mark-up or mark-down.]

[(b) Members shall report the price and volume information required by paragraph (a) of this Rule through the Non-Nasdaq Reporting System between the hours of 4 p.m. and 6:30 p.m. Eastern Time on the trade date or between 7:30 a.m. and 9 a.m. Eastern Time on the next business day, or at such other time as determined by the Association.]

[(c) The reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to any non-Nasdaq security for which members are required to report individual transactions pursuant to the Rule 6600 Series.]

[6730. Automated Submission of Trade Data]

[RESERVED FOR FUTURE USE. REDESIGNATED AS 8213 BY SR–NASD–97–81 EFF. JAN. 16, 1998.]

6630[6740]. Submission of Rule 15c2–11 Information on [Non-Nasdaq] *Non-Exchange-Listed* Securities

(a) Except as provided in SEC Rule 15c2–11(f)(1), (2), (3) and (5) under the Act, no member shall initiate or resume the quotation of a non-*exchange-listed* [Nasdaq] security in any quotation medium unless the member has demonstrated compliance with this Rule and the applicable requirements for information maintenance under Rule 15c2–11. A member shall demonstrate compliance by making a filing with, and in the form required by, the Association, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2–11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-*exchange-listed* [Nasdaq] security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2–11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-*exchange-listed* [Nasdaq] security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by the Association, before inserting a priced entry for the affected non-*exchange-listed* [Nasdaq] security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by the Association at least three business days before the member's priced entry first appears in a quotation medium.

(d) No Change.

6640. Limit Order Protection

(a) Members shall be prohibited from "trading ahead" of customer limit orders that a member accepts in non-exchange-listed securities quoted on a quotation medium. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.

(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.

(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:

(1) For customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or

(2) for 10,000 shares or more, and greater than $200,000 in value.

(d) Contemporaneous trades.

A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.

(e) Application.

(1) This rule shall apply only to non-exchange-listed securities specifically identified as such on the NASD website.

(2) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.

(3) This rule shall be in effect until February 8, 2002.

[67]6650. Minimum Quotation Size Requirements For [OTC] *Non-Exchange-Listed* Equity Securities

[(a)] Every member firm that functions as a market maker in [OTC] *Non-Exchange-Listed* Equity Securities by entering firm quotations into [the OTC Bulletin Board Service (OTCBB) (or] any [other] inter-dealer quotation system that permits quotation updates on a real-time basis[)] must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities [(excluding OTC Equity Securities for which the OTCBB will not accept firm quotations)]. Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

Price (bid or offer)	Minimum quote size
0–.50*	5,000
.51–1.00	2,500
1.01–10.00	500
10.01–100.00	200
100.01–200.00	100
200.01–+	50

An [Nasdaq] *NASD* officer at the Executive Vice President level or above, within its discretion may modify the minimum quotation size for those securities with a price exceeding $200.

[(b) For purposes of this Rule, the term "OTC Equity Security" means any equity security not classified as a "designated security" for purposes of the Rule 4630 and 4640 Series, or as an "eligible security," for purposes of the Rule 6400 Series. The term does not include "restricted securities," as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market.SM]

* * * * *

6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS

All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a registered national securities exchange [or through Nasdaq] shall be reported to the Association in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.

* * * * *

6920. Transaction Reporting

(a) through (d) No Changes.

(e) Transactions Not Required To Be Reported

The following transactions are not required to be reported under the foregoing procedures:

(1) through (2) No Changes.

(3) Transactions executed on a registered national securities exchange [or through Nasdaq].

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT—TO BE DETERMINED

* * * * *

8200. INVESTIGATIONS

8210. No Change.

[8212. Automated Submission of Trading Data for the Nasdaq International Service Requested by the Association] *Reserved*

[(a) Every Association member and approved affiliate that participates in the Nasdaq International Service as defined in the Rule 5100 Series ("Nasdaq International") as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. In this rule the terms "participating firm" and "firm" include both Association members and approved affiliates that utilize the Service.]

[(b) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in which such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:]

[(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;]

[(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;]

[(3) Identifying symbol assigned to the security;]

[(4) Date transaction was executed;]

[(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale or short sale;]

[(6) Transaction price;]

[(7) Account number; and]

[(8) Market center where transaction was executed.]

[(c) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:]

[(1) The data described in subparagraphs (b)(1) through (8);]

[(2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and]

[(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.]

[(d) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.]

[(e) Pursuant to the Rule 9600 Series, the Association may exempt a person from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.]

8213. Automated Submission of Trading Data for Non-Exchange-Listed [Nasdaq] Securities Requested by the Association

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-*exchange-listed* [Nasdaq] securities as defined in the Rule [6700]*6600* Series that are the subject of a request for information made by the Association. Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to the Association in an automated format for good cause shown.

* * * * *

9000. CODE OF PROCEDURE

9100. APPLICATION AND PURPOSE

9110. Application

(a) through (b) No Change.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to Association offices or departments refer to offices so designated by the NASD[,] *or* NASD Regulation [or Nasdaq].

* * * * *

9120. Definitions

(a) through (r) No Change.

(s) "Market Regulation Committee"

The term "Market Regulation Committee" means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

(1) through (3) No Change.

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), [the Nasdaq Stock Market Rules] *the NASD Alternative Display Facility Rules* (Rule 4000 Series), other [Nasdaq and] NASD [Market] *Reporting Facility* Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

(t) through (cc) No Change.

* * * * *

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9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) through (c) No Change.

(d) Rule 9514 Hearing Panel

The NASD Regulation Board [or Nasdaq Board] shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b);

(e) through (g) No Change.

* * * * *

9230. Appointment of Hearing Panel, Extended Hearing Panel

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel

(a) No Change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) through (C) No Change.

(D) previously served as a Director[, a director of the Nasdaq Board of Directors,] or a Governor, but does not serve currently in any of these positions.

(2) No Change.

(c) through (d) No Change.

* * * * *

9500. OTHER PROCEEDINGS

9510. Summary and Non-Summary Proceedings

9511. No Change

9512. Initiation of Summary Proceeding

(a) Authorization

(1) No Change.

(2) The NASD Board may authorize the President of NASD Regulation [or the President of Nasdaq] to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

(b) through (c) No Change.

* * * * *

9514. Hearing and Decision

(a) No Change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

[(1)] If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

[(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.]

(c) through (e) No Change.

(f) Hearing Panel Consideration

(1) through (4) No Change.

(5) Custodian of the Record

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. [If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.]

(6) No Change.

(g) No Change.

* * * * *

9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS

9710. Purpose

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by the Association, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series, the Uniform Practice Code as set forth in the Rule 11000 Series.[, or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.]

9720. Form of Application

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to *the NASD* [Nasdaq].

* * * * *

9730. Request for Hearing

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, [Nasdaq] the NASD may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

* * * * *

9760. *Reserved* [Review by the Nasdaq Listing and Hearing Review Council]

[The decision shall be subject to review by the Nasdaq Listing and Hearing Review Council on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the Nasdaq Listing and Hearing Review Council, shall not operate as a stay of the decision.]

* * * * *

9770. *Reserved* [Findings of the Nasdaq Listing and Hearing Review Council on Review]

[Upon consideration of the record, and after such further hearings as it shall order, the Nasdaq Listing and Hearing Review Council shall affirm, modify, reverse, dismiss, or remand the decision. The Nasdaq Listing and Hearing Review Council shall set forth specific grounds upon which its determination is based.]

* * * * *

9780. *Reserved* [Discretionary Review by the Board]

[Determinations of the Nasdaq Listing and Hearing Review Council may be reviewed by the NASD Board of Governors solely upon the request of one or more Governors not later than the NASD Board meeting next following the Nasdaq Listing and Hearing Review Council's decision but which is 15 calendar days or more following the decision of the Nasdaq Listing and Hearing Review Council. Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any decision of the Nasdaq Listing and Hearing Review Council within the 15 calendar day period following the decision of the Nasdaq Listing and Hearing Review Council. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of Nasdaq Listing and Hearing Review Council determinations. The Board shall affirm, modify or reverse the determinations of the Nasdaq Listing and Hearing Review Council or remand the matter to the Nasdaq Listing and Hearing Review Council with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.]

* * * * *

11300. DELIVERY OF SECURITIES

11310. Book-Entry Settlement

(a) through (c) No Change.

(d) (1) No Change.

(2) A determination under r[R]ules [4310(c)(23) or under the corresponding rule] of a national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security "depository eligible" under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange;* or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange,* such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange.*

(e) through (g) No Change.

* * * * *

11500. DELIVERY OF SECURITIES WITH RESTRICTIONS

11580. Transfer of Limited Partnership Securities

(a) Each member [who] *that* participates in the transfer of limited partnership securities, as defined in Rule 2810, shall use standard transfer forms in the same form as set forth in IM–11580. This Rule shall not apply to limited partnership securities [which] that are traded on [The Nasdaq Stock Market or] a registered national securities exchange, or are on deposit in a registered securities depository and settle regular way.

* * * * *

11800. CLOSE-OUT PROCEDURES

11810. No Change

IM–11810. Sample Buy-In Forms

(a) through (b) No Change.

(c) Seller's Failure to Deliver After Receipt of Notice

(1) (A) No Change.

(B) For transactions in [Nasdaq] *exchange-listed* [S]ecurities where the buyer is a customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for "cash" in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(2) No Change.

(d) through (m) No Change.

* * * * *

[11890. Clearly Erroneous Transactions]

[(a) Authority to Review Transactions]

[(1) For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2) Officers of The Nasdaq Stock Market, Inc. ("Nasdaq") designated by the President of Nasdaq shall, pursuant to the procedures set forth in paragraph (b) below, have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, excluding transactions arising from use of the Nasdaq Application of OptiMark. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous, or, if the officer determines the transaction in dispute is clearly erroneous, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred. Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a

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written confirmation of the determination.]

[(b) Procedures for Reviewing Transactions]

[(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:]

[(A) For transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and]

[(B) for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.]

[(2) Once a complaint has been received in accord with subparagraph (b)(1) above:]

[(A) The complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise;]

[(B) the counterparty to the trade shall be verbally notified of the complaint by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise; and]

[(C) either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.]

[(3) Notwithstanding paragraph (b)(2) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(2) above.]

[(4) Each member and/or person associated with a member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraph (b)(2) above.]

[(5) Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(2).]

[(c) Procedures for Reviewing Transactions Executed During System Disruptions or Malfunctions]

[In the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, Nasdaq acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2), may, on its own motion pursuant to the standards set forth in paragraph (a), declare transactions arising out of the use or operation of such systems during the period of such disruption or malfunction null and void or modify the terms of these transactions; provided that, in the absence of extraordinary circumstances, a Nasdaq officer must take action pursuant to this paragraph within thirty (30) minutes of detection of the erroneous transaction(s), but in no event later than 6:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.]

[(d) Review by the Market Operations Review Committee ("MORC")]

[(1) A member or person associated with a member may appeal a determination made under paragraphs (a)(2) or (c) to the MORC provided such appeal is made in writing, via facsimile or otherwise, within thirty (30) minutes after the member or person associated with a member receives verbal notification of such determination, except that if Nasdaq notifies the parties of action taken pursuant to paragraph (c) after 4:00 p.m., either party has until 9:30 a.m. the next trading day to appeal. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information, via facsimile or otherwise, up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination made pursuant to paragraph (a)(2) or (c) above. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in paragraph (a), shall affirm, modify, reverse, or remand the determination made under paragraph (a)(2) or (c) above.]

[(2) The decision of the Committee shall be final and binding upon any member or person associated with a member and shall constitute final Association action on the matter in issue. Any adverse determination by a Nasdaq officer pursuant to paragraph (a)(2) or (c) or any adverse decision by the Committee pursuant to paragraph (d)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

The purpose of the proposed rule change is twofold: (1) to amend the Association's rules to reflect the anticipated approval of Nasdaq as a national securities exchange [4] and its resultant separation from NASD; and (2) to establish the rules that would govern trading otherwise than on an exchange, including the implementation and

[4] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

operation of the ADF. The ADF is a quotation collection, trade comparison, and trade reporting facility being developed by NASD in accordance with the Commission's SuperMontage Approval Order [5] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.

Proposed Rule Change Relating to the Separation of Nasdaq

The NASD is in the process of spinning off its Nasdaq subsidiary as an independent, for-profit company. As the result of a second private placement of Nasdaq shares completed on January 18, 2001, the NASD's ownership interest in Nasdaq was reduced to a minority interest. Before Nasdaq can fully separate from the NASD, it must become registered as a national securities exchange with the SEC. Nasdaq has filed a Form 1 with the SEC requesting such registration. Notice and a request for comments on Nasdaq's completed application for exchange registration was published for comment in the **Federal Register** on June 13, 2001,[6] and the comment period expired on August 29, 2001.

Upon Nasdaq's registration as a national securities exchange, the NASD will no longer control the voting rights in the common stock of Nasdaq. At that point, Nasdaq and the NASD will be unaffiliated corporate entities, and therefore each will need separate rules applicable to their respective members. To effectuate that change, the NASD must modify existing NASD rules, effective upon Nasdaq's registration as an exchange, to reflect this separation of Nasdaq from the NASD. These changes include deleting Nasdaq-specific rules, such as listing and qualification requirements; replacing references to "Nasdaq" with "NASD" or "exchange," as applicable; and renaming and renumbering certain rules. The proposed rule change also includes corrections of minor grammatical or typographical errors and other miscellaneous non-substantive changes.

Deleted Rules: The Association proposes to delete the following rules in their entirety because they either relate exclusively to participation in, and operation of, the Nasdaq Stock Market or would no longer be applicable upon the establishment of the ADF: 2852, 2854, 2870 through 2885; 5100 through 5113; 6700 through 6740; 8212 and 11890.

[5] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

[6] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

IM–2110–2 and Rule 6640 Trading Ahead of Customer Orders: The proposed rule change would eliminate an exemption in IM–2110–2 for certain customer limit orders received prior to September 1, 1995. The passage of time has rendered this exemptive language obsolete and therefore it no longer bears on the existing application of the interpretation. This change is consistent with Nasdaq's rule filing in connection with its exchange registration application, which contains an identical proposed rule change.

Existing Rule 6541 extends the principles of IM–2110–2 to certain OTC Bulletin Board stocks as part of a pilot program that will continue at least until February 8, 2002. Rule 6541 is renumbered in the rule proposal as new Rule 6640, and the language is changed to include "non-exchange-listed" securities, rather than "Bulletin Board" securities. Initially, Rule 6640 would cover the same Bulletin Board stocks that are part of the ongoing pilot program. The language change is made in anticipation of the Bulletin Board becoming part of the Nasdaq-listed stock market,[7] and its listed securities becoming subject to IM–2110–2. At that time, the NASD may extend the scope of Rule 6640 to include additional non-exchange-listed securities. The language change in the rule proposal would allow NASD that flexibility without having to amend the rule.

IM–2310–2 SEEDS Transactions: As a result of Nasdaq's anticipated separation from the NASD, the proposed rule change deletes Rule 4420, which primarily involves quantitative listing criteria for Nasdaq National Market securities. However, existing Rule 4420(g)(5) describes an obligation on the part of the Association to distribute a circular to member firms that provides guidance when handling Hybrid Securities and Selected Equity-linked Debt Securities ("SEEDS") transactions. Since that provision applies to the NASD and is regulatory in nature, it has been retained and moved to IM–2310–2. The proposed rule change also would allow either Nasdaq or the NASD to distribute the compliance circular.

Rule 2840 Trading in Index Warrants: The proposed rule change would delete language in Rule 2840 related to index warrants listed on the Nasdaq Stock Market. The existing rule was promulgated because Nasdaq expected eventually to list such index warrants. However, as evidenced by Nasdaq's proposed rule filing in connection with its application for exchange registration, Nasdaq no longer intends to list index warrants. The remainder of Rule 2840 remains unchanged, as it has continued applicability to NASD members that are not also members of an exchange on which they trade index warrants.

[7] See SR–NASD–2001–82, which is currently being reviewed by the Commission.

Rules 2850 through 2885 Position Limits and Options Trading: To reflect Nasdaq's separation from the NASD, the proposed rule change deletes from Rules 2850 through 2885 all language related to position limits and transactions in index warrants and options traded on Nasdaq. However, the rule change retains all provisions related to options trading in the over-the-counter market.

Rule 6600 Transactions in Non-Exchange-Listed Securities: The proposed rule change would combine the existing Rule 6600 and 6700 Series into a single Rule 6600 Series that governs transactions in non-exchange-listed equity securities. The proposed combination is intended to eliminate redundancies in the existing rules, while maintaining all of the regulatory requirements for trading and reporting transactions in such securities.

Proposed Rule 6620 also would require those NASD members that effect trades otherwise than on an exchange in non-exchange-listed securities to enter into contractual agreements to use Nasdaq's ACT system for trade comparison and trade reporting. The NASD has determined that this contractual agreement with Nasdaq would be the most practical, efficient and fair means to provide access to the ACT system for members that effect such trades.

First, most NASD members are already connected to ACT, since ACT is used currently to report these transactions. Second, this approach would relieve the NASD of significant additional cost to process and administer these services, and Nasdaq already has these operations in place. Third, the subject securities do not trade on Nasdaq; therefore, no competitive issues would be raised. Finally, the NASD would maintain regulatory responsibility to monitor and enforce compliance with the ACT rules by its members that effect transactions in non-exchange-listed securities. Nasdaq would function only as a vendor and systems operator.

Proposed rule change also would amend the minimum quotation size requirements required by Rule 6750 to reflect the fact that upon Nasdaq exchange registration, the NASD would no longer operate the OTC Bulletin Board Service. Therefore, references to the OTC Bulletin Board would be deleted from the rule.

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Proposed Rule Change Relating to Trading Otherwise Than on an Exchange

The proposed rule change generally would clarify that NASD rules that relate to trading practices (*e.g.*, quotations, trade reporting, short selling, trading halts) apply only to transactions otherwise than on an exchange. To achieve this, the proposal would add a definition of the term "otherwise than on an exchange" in Rule 4200 and also specify in particular rules where the rule applies only to trading otherwise than on an exchange.[8] The term "otherwise than on an exchange" is defined in the proposal to mean a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade "on or through" a national securities exchange would be left to the respective exchanges and applicable statutes, rules and regulations, as approved by the SEC.

The rule proposal, for the most part, maintains the same organization as the existing NASD rules. For example, rules related to trading Nasdaq securities otherwise than on an exchange are found in the Rule 4600 Series. Rules related to trading in Consolidated Quotation Service ("CQS") securities otherwise than on an exchange similarly remain in the Rule 6300 Series. While the rules governing CQS securities are similar to those governing Nasdaq securities (*e.g.*, the trade reporting rules) the proposal maintains the historically separate rule structure that has been considered helpful by many market participants.

The NASD is considering combining the similar rules, where possible, and placing them in a section that would encompass all rules related to trading otherwise than on an exchange. The current rule proposal begins such a process by establishing a new Rule 5000 Series, Trading Otherwise Than On An Exchange, that would contain some rules that apply both to Nasdaq and CQS securities, such as the short sale rule, trading halts, transactions involving initial public offerings, and clearance and settlement. Rules that previously resided in the Rule 5000 Series, and have not otherwise been deleted, have been moved. Under the proposal, rules related to the Intermarket Trading System ("ITS") (Rule 5200 Series) would be moved to the Rule 6500 Series. Rules related to The Portal Market (Rule 5300 Series) would be moved to the Rule 6700 Series.

The NASD Alternative Display Facility: The NASD would build a quote collection, trade comparison and trade reporting facility that meets specific performance and security standards and provides users with the necessary functionality to make it a viable alternative display facility to Nasdaq.

The facility would provide market participants—market makers, ECNs and order entry firms—the ability to collect and view quotations, and to report transactions to the appropriate Securities Information Processor ("SIP")[9] for consolidation and dissemination of data to vendors and ADF market participants. The facility also would provide for trade comparison through the Trade Comparison and Reporting Service ("TRACS"), the details of which are described below. The facility further would provide for real-time data delivery to NASD Regulation for regulatory purposes, including enforcement of firm quote and related rules.

The ADF is expected to launch by the end of the first quarter of calendar year 2002, provided that Nasdaq has been approved as a national securities exchange. The NASD or a vendor (other than Nasdaq) would maintain and operate the facility. The NASD would establish the rules that govern the ADF, and NASD Regulation will enforce the rules and provide market surveillance.

The proposed rule change also includes a number of changes that more specifically reflect the implementation and operation of the ADF. Most significantly, the proposed rule change would replace in their entirety the existing Rule 4000 Series and Rules 6100, 6300, 6400 and 6500 with a new set of rules to govern the ADF. For the most part, the proposed ADF rules closely track existing Nasdaq rules or rules proposed by Nasdaq in its exchange registration and existing rules that govern the CQS.[10] The ADF would provide trade comparison and trade reporting services that would be similar to Nasdaq's ACT system. However, the proposed ADF rules have been refined to reflect the more limited functionality of the ADF, most particularly the absence of an automatic execution or order routing system. Instead, the proposed rule change would require ADF market participants to provide direct or indirect access to their quotations, as described in more detail below.

As required by existing Nasdaq rules, ADF participants would be required to register as market makers or ECNs for each security in which they make a market or display orders. Market makers would receive approval for registration upon demonstration that they are members in good standing and comply with the net capital and other financial responsibility requirements of the Act. To ease the administrative burden on NASD members, the NASD rules initially would allow registration as a market maker in the ADF upon proof that a firm is a registered Nasdaq market maker. Eventually, members seeking to become an NASD registered market maker would have to comply either with Rule 1017(a)(5) (which requires an application for approval for a material change in business operations) or Rule 1010 (application for initial membership in the NASD).

Additionally, the proposed rule change tracks Nasdaq requirements that market makers maintain continuous two-sided, firm quotations and prescribes market maker obligations when a bid or offer locks or crosses the market. However, as described in more detail below, the rule proposal does not provide for stabilizing or penalty bids, as existing Nasdaq rules do. The proposal generally adopts Nasdaq's anticipated approach to trade reporting: the seller reports both intramarket and intermarket trades between market makers, the market maker reports trades between it and a customer, and an NASD member reports trades between it and a non-member.[11] ECNs would report all trades effected within the ECN (*i.e.*, when a market maker sells through an ECN). As described below, the ADF also would support a "three party trade report" for ECNs.

Order Access Rule: The ADF rules differ from existing Nasdaq rules most significantly with respect to participants' ability to reach quotes displayed in the ADF. The NASD would not provide ADF market participants an order routing capability, other than

[8] *See e.g.*, the new Rule 5000 Series, which sets forth rules that apply generally to trading otherwise than on an exchange (short selling and trading halts) and Rule 4633, which governs specifically transactions effected otherwise than on an exchange in Nasdaq securities.

[9] Nasdaq initially will be the designated SIP for all transactions in Nasdaq securities, while the Securities Industry Automation Corporation will continue to function as the SIP for transactions in listed securities.

[10] Should Nasdaq amend its exchange registration with respect to matters such as trade reporting, short selling, or quotation obligations, we anticipate making similar amendments to the proposed NASD rules.

[11] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). *But see* note 10, *supra*.

ITS.[12] In order to provide a means to enforce compliance with firm quote obligations, locked and crossed quotation obligations,[13] and to provide other market participants within the ADF and in other markets the ability to provide best execution, in the absence of an NASD-provided router, the proposed rule change contains new Rule 4300. This rule would require market participants to provide direct electronic access to other market participants and direct or indirect electronic access to all other NASD members seeking access. Proposed Rule 4300 defines "direct electronic access" as the ability to deliver an order for execution directly against an individual NASD market participant's best bid and offer without the need for voice communication, and with the equivalent speed, reliability, availability and cost as are made available to the NASD market participant's own customer broker/dealers or other active customers or subscribers. The proposal would not, however, preclude market participants from charging more for the access required by the rule—sometimes called "hit or take" access—than for full service access, so long as hit or take access is not charged discriminatorily, *i.e.*, charged differently for one group of users (*e.g.*, subscribers) than for others (*e.g.*, non-subscribers). While "hit or take" is more limited functionally than full book access, it also is a liquidity taking function and some markets—including Nasdaq—charge more for taking liquidity than providing it.[14]

The proposed rule change defines "indirect electronic access" as the ability to route an order through customer broker/dealers of an NASD market participant for execution against the NASD market participant's best bid and offer, without the need for voice communication, and with equivalent speed, reliability, availability and cost as are available to the market participant's customer broker/dealer providing the indirect access or other active customers or subscribers. Market participants would be prohibited from influencing the prices that customer broker/dealers impose for providing indirect access or in any way discouraging the provision of indirect access.

ADF market participants could satisfy these requirements either by providing their own bilateral linkages or by participating in multilateral linkage facilities provided by private vendors. In addition, with respect to links with exchanges, market participants could satisfy these requirements either by linking with the exchange or by linking with market participants operating within those exchanges.

To allow NASD Regulation to monitor compliance with certain trading rules, such as the firm quote rule and "trade or move" rules, the proposed rule also requires that all NASD market participants that display quotations or orders in the ADF record specified items of information pertaining to orders they receive via direct or indirect electronic access, and report this information to NASD Regulation on a real-time basis. The proposed rule requires this information to be provided to NASD Regulation within 10 seconds of the receipt of an order and, if applicable, when an order is acted upon or responded to. As part of the subscriber agreement approval process, market participants would be required to provide the terms and methods by which they would comply with these rules. The NASD would review these terms prior to approving a subscriber agreement.

Trade Reporting and Trade Comparison Service: As noted above, the NASD intends to operate trade reporting and comparison services as part of the ADF. The trade reporting service would collect trade reports for NASD registered market participants, as well as any NASD member required to report transactions occurring otherwise than on an exchange. The service would transmit the reports automatically to the respective SIPs, if required, for dissemination to the public and the industry. This mechanism would operate similar to the trade reporting functions of Nasdaq's ACT Service,[15] but would contain one notable distinguishing feature.

The ADF would support a "three party trade report" that would make it easier for ECNs to submit trade reports involving their subscribers and for market makers to submit riskless principal trade reports. A three party trade report would be a single last sale trade report that would denote one reporting member (*i.e.*, the party with the trade reporting responsibility as defined in Rules 4633 and 6420) and two contra parties. The ADF would be designed to split the three party trade report into two separate reports that would then be processed independently in accordance with existing trade reporting rules. Each of these reports would contain its own identifier and a reference to the original three party trade report, so that the separate reports can be mapped to the same transaction.

Therefore, the ADF trade reporting system would streamline the reporting process by reducing from three or two to one the number of trade reports for most ECN and riskless principal transactions. The proposed rules would require three party trade reports when the reporting party is a registered ECN, and would permit such reports by market makers that execute riskless principal transactions.

The NASD also intends to operate a trade comparison service as part of TRACS that would: (1) Compare trade information entered by TRACS participants and submit "locked-in" trades to Depository Trust Clearing Corporation ("DTCC") for clearance and settlement; (2) transmit reports of the transactions automatically to the respective SIPs, if required, for dissemination to the public and the industry; and (3) provide participants with monitoring capabilities to facilitate participation in a "locked-in" trading environment. The proposed trade comparison rules are found in proposed Rule 6100.

The NASD expects that a significant volume of trades would be locked-in and submitted directly to DTCC by way of agreements between market participants and Qualified Service Representatives ("QSR"). As a result, NASD expects the volume of trades sent through TRACS to be relatively low.[16] The proposed TRACS rules would apply only to those members that from time to

[12] The NASD does not intend to provide an order routing capability other than ITS because it believes it can better perform our core investor protection mission by focusing on regulation rather than market operations. The NASD also believes that market participants already do, and can continue to, establish and run order linkage facilities that are more efficient and innovative than a facility the NASD could provide. The ITS "exception" is based upon the fact that ITS is in place and is the current accepted mechanism for intermarket linkage for CQS securities. As discussed below, we would make use of ITS optional.

[13] This order access rule would be the basis for satisfying, among other things, locked and crossed quotation obligations. While this rule would require intermarket links with other market centers, as well as intra-ADF links, the proposed locked and crossed rule, Rule 4612(d), unlike other market center locked and crossed rules, is based on the ADF's own quotations. In the event that the markets agree on a locked and crossed rule approach that encompasses quotations in all markets, proposed Rule 4300 would still facilitate compliance.

[14] *See* Securities Exchange Act Release No. 44918 (Oct. 10, 2001), 66 FR 52814 (Oct. 17, 2001).

[15] The NASD service would not perform risk management services that are provided by Nasdaq's ACT service.

[16] The NASD has not yet resolved how to compare and report trades between an ADF market participant and a Nasdaq market participant that has access to Nasdaq's ACT service. The NASD is engaged in discussions with DTCC about the possibility of DTCC continuing its existing trade comparison service for over-the-counter equity securities to provide for those intermarket trades.

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time need to compare trades in Nasdaq or CQS securities that are effected otherwise than on an exchange and are not subject to QSR agreements that result in direct submission to DTCC.

Rules 4633(c) and 6420(b) Which Party Reports a Transaction: The proposed rule change adopts what the NASD understands to be the current Nasdaq approach to trade reporting. In its exchange application rule proposal, Nasdaq provides that the seller reports trades between market makers, the market maker reports trades between it and a customer, and an ECN reports only those trades where it is deemed to be the liquidity provider. The NASD's current best understanding is that Nasdaq has decided that the seller, rather than the liquidity provider, should report transactions between two market makers or ECNs.[17]

Rule 5100 Short Sale Rule and Rule 4612 Primary Market Maker Standards: The proposed rule change would amend the short sale rule and its accompanying interpretation to make them applicable to trading in Nasdaq-listed issues otherwise than on an exchange (including through the ADF), rather than Nasdaq. The rule proposal would renumber the rule and interpretation as Rule 5100 and IM–5100–1, respectively.

The proposed rule change would establish a different bid on which to base the applicability of the short sale rule. The existing rule prohibits members from effecting short sales in Nasdaq National Market securities at or below the best bid, when the current best bid as displayed in the Nasdaq Stock Market is below the preceding best bid in that security. The proposed amendment would substitute the national best (inside) bid for the Nasdaq best bid as the basis for determining when the rule applies. Although a best (inside) bid would be calculated for the ADF, the NASD believes that for the purposes of the short sale rule, the national best (inside) bid would be more reflective of market-wide trading in a security and therefore would better further the purposes of the rule.

Aside from the changes noted above, the NASD intends to have a short sale rule that mirrors Nasdaq's short sale rule. The rule proposal represents NASD's best understanding as to the content of Nasdaq's short sale rule. The existing Nasdaq rule provides an exemption from the rule for a "qualified market maker" engaged in bona fide market making activity. The existing rule—and Nasdaq's proposed rule filing in connection with its exchange registration—defines "qualified market maker" as a registered market maker that meets the requirement set forth in Rule 4612 to be deemed a Primary Market Maker. The proposed rule change would eliminate the "qualified market maker" and "Primary Market Maker" standards, and consequently delete Rule 4612. The existing Primary Market Maker Standards rule has been suspended since implementation of the SEC's Order Handling Rules in early 1997. In the event that Nasdaq makes the current Primary Market Maker Standard rule—or an amended rule—effective, the NASD would amend its rules accordingly. Until then, the NASD intends to have a short sale rule that reflects the current exemption for registered market makers engaged in bona fide market making activity.

Rule 5200 Trading Halts: Proposed Rule 5200 would provide NASD with authority to halt trading otherwise than on an exchange in securities quoted (*i.e.*, listed securities) through the ADF. The rule proposal also would provide NASD with the authority to halt trading in non-exchange-listed foreign securities that trade in a quotation medium other than a national securities exchange or through the ADF.

As under current NASD rules, trading halts require NASD members to cease effecting trades as agent or principal, but do not preclude customer-to-customer trades. For ADF-eligible securities, the proposed rule would mandate a trade halt when another market halts trading in a security for regulatory reasons and would give the NASD discretionary authority to halt trading when another market halts trading for operational reasons. Any trading halt initiated by the NASD would become effective simultaneously with notification via an administrative message sent through the ADF terminal or interface. Trading similarly would resume after an administrative notice has been issued.

Specifically, the proposed rule would require that the NASD halt trading through the ADF of a security listed on a national securities exchange whenever a market eligible to trade that security imposes a trading halt, or suspends a listing, for one of the following reasons: (1) To permit dissemination of material news; (2) to obtain information from the issuer related to material news; (3) to obtain information related to an issuer's ability to meet listing qualifications; or (4) to obtain other information that is necessary to protect investors and the public interest. The proposed rule change would further require the NASD to halt trading through the ADF in an American Depository Receipt ("ADR"), if that security is listed on a national securities exchange or foreign securities exchange, and one of those exchanges, or an overseeing regulatory authority, halts trading in the security. Finally, the rule would require the NASD to halt trading through the ADF whenever that system is unable to transmit real-time quotation or trade reporting information to the applicable SIP, or whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange.

Since the proposed trading halt rules do not differentiate between Nasdaq and other exchange-listed securities, there no longer is a need for the separate trading halt provisions of existing Rule 6430, which apply only to those securities eligible for trading and reporting to the Consolidated Tape, as described in Rule 6400. Accordingly, Rule 6430 would be deleted and its provisions would be absorbed in Rule 5200, including the obligation of members to notify the NASD whenever they have knowledge of information related to a security or issuer that has not been adequately disclosed to the public.

The rule proposal would grant discretionary authority to the NASD to halt trading otherwise than on an exchange by its members through the ADF whenever another national securities exchange halts trading in a security for operational reasons, defined as an order imbalance or influx. Similar discretionary authority would extend to circumstances where a security traded through the ADF is a derivative or component of a security that has been halted by a national securities exchange. In the event that NASD chooses not to halt trading under the aforementioned discretionary circumstances, market participants could continue to trade through the ADF and would be required to meet all applicable trade reporting requirements.

With respect to non-exchange-listed foreign securities, which do not trade through the ADF but only over-the-counter, the proposed rule allows the NASD to impose halts for over-the-counter trading in conjunction with regulatory halts imposed by foreign regulatory authorities because of potential fraudulent conduct. The proposal would not give the NASD authority to impose a trading and quotation halt if the foreign regulatory halt was imposed solely for the dissemination of material news, a regulatory filing deficiency, or operational reasons. Currently, the NASD has no authority to impose trading and quotation halts in securities that are quoted and traded in other quotation media, such as the National Quotation Bureau's Pink Sheets. This proposed rule would grant such authority with respect to foreign securities in circumstances in which it is necessary to protect investors and the public interest.

Rule 4619 Withdrawal of Quotations and Passive Market Making: The proposed rule change eliminates a condition in existing Rule 4619(b)(3) for a market maker seeking excused withdrawal status based on vacation. Under the current rule, excused withdrawal status may only be granted to a market maker that has three or fewer Nasdaq Level 3 terminals. The proposal does not replicate that requirement for ADF market makers because the ADF will not operate as a primary market. As such, the absence of a market maker with more than three ADF terminals would not have a significant impact on the liquidity in those securities in which it makes a market.

Rules 4614 and 4624 Stabilizing Bids and Penalty Bids: The proposed rule change would delete existing Rules 4614 and 4624 relating to stabilizing and penalty bids. These rules allow a market maker—usually the underwriter of a securities offering—to enter these special bids in connection with a distribution of securities under Rules 101 and 104 of SEC Regulation M. The NASD believes such activity should occur on the market listing the issue and thus proposes to delete these rules.

Obligations When Quoting in Multiple Market Centers: Existing Rule 2320(g)(2) requires members that display quotations for non-Nasdaq securities in two or more quotation mediums to post the same priced quotations in each medium. To reflect Nasdaq's registration as an exchange, the proposed rule change would amend the language of that provision to apply to "non-exchange-listed" securities. At the same time, the rule proposal would add a similar obligation for members that display quotations for Nasdaq and CQS securities in two or more market centers, including the ADF. The obligations for members quoting Nasdaq and CQS securities are found in proposed Rules 4613(e)(1) and 6330(f), respectively. Note that the proposed rules do not prohibit displaying different size quotations in two or more mediums or market centers, provided that the price displayed is the same.

Obligation To Have Quotations From Other Market Centers in Close Proximity: Proposed Rule 4613(e)(2) would require a registered NASD market maker to have in close proximity to the ADF terminal or interface at which it makes a market in a Nasdaq security, a quotation service that disseminates quotations in that security on behalf of national securities exchanges and other market centers. A similar rule, Rule 6330(c), currently exists with respect to CQS market makers. As with the CQS rule, it is the NASD's intention for the quotations displayed in the ADF terminals or interfaces to function as a verification mechanism whereby ADF market participants can monitor their current ADF quotations and ensure that the NASD is timely updating and disseminating their quotations. The NASD would not disseminate to ADF market participants any consolidated quotation or trade data in a security from securities exchanges and market centers. To ensure that ADF participants have the data necessary to make sound order routing decisions and to satisfy the Vendor Display Rule,[18] the NASD would require ADF market participants to obtain from vendors dynamic quotations and last-sale information on the securities they trade through the ADF, and to display this data in close proximity to the ADF data displayed on their terminals—just as is currently required by Nasdaq of CQS market makers in Rule 6330(c).[19]

A requirement to disseminate consolidated quotation and trade data from securities exchanges and other market centers would result in significantly increased costs to build the ADF because it would necessitate substantially greater capacity and would require a more complex technical design of the ADF terminals and user interfaces to allow for receipt of that information.

Rule 4620 Voluntary Termination of Registration: The proposal contains a new provision related to voluntary termination as an NASD market maker. Proposed Rule 4620 provides that registration as a market maker in a security is voluntarily terminated where the market maker (1) withdraws its quotations from the ADF and does not re-enter quotations in the security for five minutes or (2) fails to re-enter quotations within 30 minutes of the end of a trading halt. In either circumstance, a market maker would be prohibited from re-registering as a market maker in that security for twenty (20) business days, unless the market maker meets the conditions for excused withdrawal specified in Rule 4619.

Rules 6350(a) and 6520(e) Obligations of CQS and ITS Market Makers Related to Pre-Opening Applications: The proposed rule change contains new obligations on registered CQS and ITS market makers that participate in the pre-opening application process. Proposed Rule 6350(a) (CQS) and Rule 6520(e) (ITS) would provide that a registered market maker that participates in the pre-opening application process and does not enter and maintain two-sided quotations in the security on that same trading day may not re-register to participate as a market maker in that security for twenty (20) business days, unless the market maker is granted an excused withdrawal from the NASD.

Rule 6500 Intermarket Trading System: The proposed rule change reflects the NASD's anticipated participation in the ITS through the ADF. In many respects, the NASD anticipates participating in ITS in a manner similar to Nasdaq's current participation in ITS. However, the ITS rules have been amended in the proposal to reflect that the ADF will not use Nasdaq's Computer Assisted Execution System ("CAES") to effect ITS trades. As such, the proposed rule change deletes all references to "CAES" in the ITS rules and elsewhere. In addition, the proposal refers to market makers and ECNs participating in ITS as ITS/ADF market makers.

The rule proposal would renumber and move the ITS rules to the 6500 Series. Furthermore, unlike Nasdaq, NASD market participants that register to enter quotations in CQS securities would not be obligated to participate in ITS. Participation in ITS, with the associated obligations such as compliance with the trade-through rule and the market probing requirement, would be completely voluntary. If a market participant determines to participate in ITS, then it must abide by all rules applicable to ITS, including the trade-through rule and the market probing requirement. Also, the NASD would not provide an intra-market order routing system such as CAES. Accordingly, market participants would be responsible under Rule 4300 to establish links to facilitate execution of CQS securities in the intra-market and, in the case of non-ITS participants, direct or indirect linkages to the exchanges.

The quote access requirements of proposed Rule 4300 would not extend to intermarket access for trading Nasdaq securities. Unlike for CQS securities, the Commission has not mandated an intermarket linkage like ITS for Nasdaq securities. Moreover, intermarket

[17] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). *But see* note 10, *supra*.

[18] *See* Rule 11Ac1–1 under the Act. 17 CFR 240.11Ac1–1.

[19] Concurrent with this filing, the NASD plans to request an exemption from the Vendor Display Rule, as Nasdaq did with its similar CQS rule.

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linkage for trading Nasdaq securities is fundamentally a multilateral, intermarket structural issue. Accordingly, the NASD does not believe it appropriate for the NASD to unilaterally impose such an intermarket linkage obligation. Rather, the NASD would propose—as is the case today—that members of another market that desire to access an ADF market participant's quotes in Nasdaq securities establish an execution arrangement with that ADF market participant or, alternatively, become a member of the NASD.

Additionally, the proposed rule change would add the option of a 30-second commitment to trade period for ITS/ADF Market Makers. This option is permitted under an ongoing ITS Plan pilot program, and the NASD believes it would benefit our member participants.

Fees and Assessments: The proposed rule change does not include any proposed fees or assessments specifically related to the ADF. Existing fees and assessments, including the gross assessment and Section 8 fees, would continue to apply to NASD members. Any specific fees or assessments with respect to the ADF would be the subject of a future rule filing.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[20] which requires a national securities association to have rules that prevent fraudulent and manipulative acts, promote just and equitable principles of trade, foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, this rule proposal is consistent with Section 15A(b)(6) because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or regulate matters not related to the purposes of the Act or the administration of the Association.

Moreover, in the SuperMontage Order,[21] the SEC required the NASD to create a facility that "permits NASD members to comply with their obligations under Commission and NASD rules (including Exchange Act Rule 11Ac1–1(c)(5) and Regulation ATS) without participating in the Nasdaq execution facility. The facility will identify through the central processor the identity of the NASD member that is the source of each quote," as is required by Exchange Act Rule 11Ac1–1(b)(1)(ii).[22] Furthermore, the Commission stated that "[t]he facility will provide a market neutral linkage to the Nasdaq and other marketplaces, but not an execution service." The NASD believes that the proposed rule change fulfills the obligations specified by the Commission in the SuperMontage Order. In particular, the NASD believes that this proposal would provide a market neutral linkage by requiring market participants to link, either directly or indirectly, to all those seeking access to the market participants' quotations as required in proposed Rule 4300.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested that the proposed rule change become effective upon the later of Commission approval or the effectiveness of Nasdaq's Exchange Registration.[23] The NASD has waived the requirement that the Commission either approve the proposed rule change, or institute disapproval proceedings, within thirty-five days of publication of the proposed rule change in the **Federal Register**.[24]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. In particular, the Commission solicits comment on whether the proposed rules are sufficient to meet the NASD's obligations under Sections 15A(b)(11)[25] and 11A(c)(1)[26] of the Act with respect to the over-the-counter market, including providing NASD market makers and ECNs with the ability to comply with their obligations under the Commission's Order Handling Rules and Regulation ATS.[27]

In addition, in Rule 4300 the NASD proposes certain quote and order access obligations. The Commission requests comment on whether this rule will provide potential users with adequate access to quotations displayed through the ADF and will allow the NASD to effectively enforce its access requirements. In particular, the Commission requests comment on what it means to make indirect electronic access "readily available" (*see* proposed Rule 4300(a)(2)).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–90 and should be submitted by January 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01–31481 Filed 12–21–01; 8:45 am]
BILLING CODE 8010–01–P

[20] 15 U.S.C. 78o–3(b)(6).

[21] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

[22] 17 CFR 240.11Ac1–1(b)(1)(ii).

[23] The proposed effective date is based upon NASD's assumption that Nasdaq's exchange registration will be approved before SuperMontage launches. If that turns out not to be the case, the NASD would have to revisit the effective date of the proposed rule change, including whether the rules related to the ADF should become effective at a different time from the rules resulting from Nasdaq separation.

[24] *See* Amendment No. 1, *supra* note 3.

[25] 15 U.S.C. 78o-3(b)(11).

[26] 15 U.S.C. 78k-1(c)(1); *See also* Section 11A(c)(3)(A) of the Act.

[27] *See* Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules); Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation ATS).

[28] 17 CFR 200.30–3(a)(12).

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Part III

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Bureau of Export Administration

15 CFR Parts 743, 752, et al.
Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements; Final Rule

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 743, 752, 772 and 774

[Docket No. 011026261–1261–01]

RIN 0694–AC44

Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 6, 7 and 9 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 1, 2000 meeting and to make necessary revisions to reporting requirements. The majority of the changes that affected Category 4 items will be published in a separate rule.

DATES: This rule is effective January 3, 2002.

FOR FURTHER INFORMATION CONTACT: Tanya Hodge Mottley in the Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, U.S. Department of Commerce at (202) 482–1837.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with December 1, 2000 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 1—Materials, Chemicals, Microorganisms, and Toxins

1A002—amended by:

(1) Moving the exception contained in the NS control language for finished or semifinished items specially designed for civilian applications to two separate notes under paragraphs a. and b. of this entry. This revision clarifies that this entry does not control finished or semifinished items specially designed for purely civilian applications, as follows: sporting goods, automotive industry, machine tool industry, and medical applications; and

(2) Correcting a typographical error in note 2 of the Related Controls paragraph of this entry.

1B002—amended by:

(1) Clarifying that the equipment described by this entry is used for producing the highest performance ductile metal alloys in the entry heading; and

(2) Replacing the reference to controlled materials with a reference to the critical processes listed in 1C002.c.2. in the entry heading.

1C002—amended by:

(1) Reformatting the entry to specify the types of materials controlled (material in solid forms and powders/particulates suitable for making them). Specifically, each subparagraph has been revised to identify the main classes of controlled material, as follows:

(i) 1C002.a for aluminides;

(ii) 1C002.b for alloys made by powder metallurgy techniques;

(iii) 1C002.c for alloy powders suitable for re-melting to make controlled alloys; and

(iv) 1C002.d for material that has been refined to the correct composition for controlled alloys, which needs only to be mechanically reduced to powder in order to be suitable for re-melting to make controlled alloys; and

(2) Moving the Technical Notes that were after a.2.e to the beginning of the List of Items Controlled for this entry.

1C007—amended by:

(1) Clarifying that ceramic-ceramic "composite" materials are controlled when made from the listed "materials" instead of "systems" in paragraph (c);

(2) Clarifies that all the parameters in paragraph (c) must be met for the item to be subject to control; and

(3) Reformatting paragraph (c) to be consistent with the Wassenaar Information System.

Category 2—Material Processing

2A001—amended by revising the tolerance standards for ball bearings and solid roller bearings described in 2A001.a and 2A002.b. These tolerance standards are revised to add greater precision. Specifically, in 2A001.a, the following standards "ABEC 7, ABEC 7P, ABEC 7T or ISO Standard Class 4, or national equivalents, or better" are revised to read "ISO Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better". In 2A001.b, the following standards "ABEC 9, ABEC 9P or ISO Standard Class 2, or national equivalents" are revised to read "ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better".

Technical Notes to Category 2 B—amended by:

(1) Redesignating technical notes 2 through 5 as technical notes 3 though 6; and

(2) Adding a new technical note 2 to clarify the meaning of the term "contouring control".

2B001—amended by:

(1) Adding two notes to decontrol special purpose machine tools that produce certain type parts. Specifically, Note 1 specifies that 2B001 does not control special purpose machine tools limited to the manufacture of gears. Note 2 specifies that 2B001 does not control special purpose machine tools limited to the manufacture of crank shafts or cam shafts, tools or cutters, extruder worms, or engraving or facetted jewelry parts;

(2) Adding a new national security control for fly cutting machine tools, as described by 2B001.b.4. This new control introduces new parameters for the control of fly cutting machines, such as a spindle run-out and angular deviation of slide movement (2B001.b.4); and

(3) Adding clarifying text to paragraph (e), machine tools for removing metals, ceramics or "composites", to be consistent with the Wassenaar Information System.

2B008—amended by:

(1) Removing the reference to the term "inserts" in the entry heading. The term "inserts" has been removed because no inserts are contained in the List of Items Controlled;

(2) Replacing the phrase "for equipment controlled by 2B006 or 2B007" with the phrase "dimensional inspection or measuring systems and equipment" in the entry heading. The phrase referencing equipment controlled by 2B007 has been removed because the items listed in 2B008 are not key elements of robots controlled by 2B007; and

(3) Replacing the reference to 2B006 with the phrase "dimensional inspection or measuring systems and equipment" in the entry heading, in order to reduce the number of unnecessary cross-references to other entries.

2D002—amended by removing controls for "real-time processing" of data to modify tool path, feed rate and spindle data, during machining operation, by deleting 2D002.b. No such software currently is available. The parameters set forth in 2D002.a have been included in the entry heading and the List of Items Controlled has been removed.

2E003—Materials Processing Table for Deposition Techniques—Notes—amended by revising Note 17 to the Table by removing the exclusion from control for technology specially designed to deposit diamond like carbon on polycarbonate eyeglasses, bakery equipment and high quality lenses designed for cameras or telescopes.

Category 3—Electronics

3A001—amended by revising the following subparagraphs:

3A001.a.3.c—amended by clarifying that the control for this subparagraph applies only to the capability of processors directly interconnected with each other and by relaxing controls on the external interconnect transfer rate from 2.5 Mbytes/s to 150 Mbyte/s.

3A001.a.5.a.1—amended by relaxing controls for analog-to-digital converters by lowering the conversion time from 10 ns to 5 ns.

3A001.a.10—amended by:

(1) Relaxing controls for custom integrated circuits by increasing the control threshold on the number of terminals from 208 to 1,000 (3A001.a.10.a); and

(2) Decreasing the control threshold for basic gate propagation delay time from 0.35 ns to 0.1 ns (3A001.a.10.b).

3A001.a.12—amended by:

(1) Modifying the subparagraph to reflect advancements in Fast Fourier Transform (FFT) processors. The formula for determining the control parameters for FFT processors has been modified. This modification relaxes controls over the execution time from 1 millisecond to 500 microseconds for a 1024 point complex FFT; and

(2) Deleting the control parameter for butterfly throughput, because it is a software algorithm and does not describe performance levels of currently produced FFT processors.

3A001.b.1, b.2 and b.8—amended by revising the decontrol notes in these subparagraphs to clarify that bands within the frequency range between 0 to 31 GHz are not subject to national security controls.

3A001.b.1.a.1—amended by revising the phrase "higher than 31 GHz" to read "exceeding 31 GHz".

3A001.b.1.a.3—amended by replacing the term "instantaneous bandwidth" with "fractional bandwidth". The term "fractional bandwidth" more accurately reflects the appropriate control for this entry.

3A001.b.2—amended by:

(1) Adding the phrase "having one or more active elements" to further define the control of microwave integrated circuits and modules (3A001.b.2.a); and

(2) Adding a new decontrol note for certain satellite broadcast equipment.

3A002.b—amended by revising the phrase "assemblies" to read "electronic assemblies", to be consistent with the Wassenaar Arrangement.

3A002.c.2—amended by:

(1) Modifying controls for dynamic signal analyzers by increasing the control parameter for real-time bandwidth from 25.6 kHz to 500 kHz; and

(2) Moving the text of the technical note under paragraph c. (Constant percentage bandwidth filters are also known as octave or fractional octave filters) to the "Related Definitions" paragraph for the entry.

3A991—amended by:

(1) Adding a new parameter in paragraph (a) related to external interconnection for "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits;

(2) Adding a new paragraph (c) to include analog-to-digital converters having a resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

(3) Adding a new paragraph (e) to include Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms; and

(4) Redesignating paragraph (c) as paragraph (d), and paragraphs (d) through (l) as paragraphs (f) through (n).

3B002—amended by:

(1) Adding to the heading the phrase "as follows (see List of Items Controlled)";

(2) Modifying the note to 3B002.b to clarify that equipment to test memories are not controlled by 3B002.b; and

(3) Revising the phrase "assemblies" to read "electronic assemblies" to be consistent with the Wassenaar Arrangement.

3B991—amended by revising the phrase "assemblies" to read "electronic assemblies" in paragraph 3B991.b.

3B992—amended by revising the phrase "assemblies" to read "electronic assemblies" in paragraphs 3B992.b, 3B992.b.4.b, and in Note 1 to 3B992.b.4.b.

3C001—amended by:

(1) Adding silicon carbide to the list of controlled hetero-epitaxtial materials. Like silicon and germanium, silicon carbide is a Group IV material capable of producing strategic items (3C001.c); and

(2) Adding a note to clarify that equipment or material whose functionality has been unalterably disabled are not controlled by 3C001.

3D003—amended by modifying the control language to clarify the intent of computer-aided-design (CAD) software controls in order to remove any ambiguities in interpretation whether CAD software supplied without design rule libraries are subject to control under 3D003. Exports of CAD software with or without design rule libraries are both subject to national security controls.

3E001—amended by moving the Notes in the Related Controls paragraph to the List of Items Controlled to be consistent with the Wassenaar List.

3E002 and 3E003—amended by:

(1) Redesignating 3E002.a through 3E002.f as new ECCN 3E003;

(2) In the new ECCN 3E003, expanding eligibility under License Exception TSR to include silicon-on-insulator (SOI) technology as described in the new 3E003.e;

(3) Adding a Note to describe what 3E002 does not control to the List of Items Controlled in 3E002; and

(4) Redesignating 3E002.g as new ECCN 3E002.

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Category 4—Computers

4D003—amended by removing national security controls for expert system software as described by 4D003.b.

Category 5—Telecommunications, Part I

5D001—amended by removing national security controls for software which provides the capability of recovering "source code" of telecommunications "software" controlled by 5D001 (5D001.c).

5E001—amended by adding a decontrol note to 5E001.c.4.b specifying that this entry does not control "technology" for the "development" or "production" of equipment designed or modified for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Category 6—Sensors and Lasers

6A003—amended by:

(1) Revising the controls on instrumentation cameras specified in 6A003.a to include specially designed components therefor and by revising the note to 6A003.a to replace the term "electronic assemblies" with "plug-ins". This change is necessary to make the controls for instrumental cameras more complete, as plug-in modules are specially designed components of controlled cameras. Complementing this revision to 6A003.a, a new subparagraph 6A003.a.6 has been added to describe the control parameters for "plug-ins". In addition, License Exception LVS has been modified to exclude the new control for 6A003.a.6 "plug-ins" from eligibility; and

(2) Adding a new technical note to 6A003.b.1 to clarify that digital video cameras should be evaluated by the maximum number of "active pixels" used for capturing moving images.

6A005—amended by:

(1) Removing the phrase "or CW" from the control parameter for excimer lasers and metal vapor lasers, as described in 6A005.a.1 and 6A005.a.2. The deletion of the term "CW" from these subparagraphs more accurately describes the technical nature of control, as both excimer and metal vapor lasers are not physically capable of working the CW mode;

(2) Revising the control text for semiconductor lasers described by 6A005.b. Previously in 6A005.b.2, individual multiple-transverse mode semiconductor lasers and individual arrays of individual semiconductor lasers were controlled using the same threshold. However, since the output power of an array of semiconductor laser is greater than that of an individual semiconductor lasers it should be subject to a different control threshold. Therefore, a new subparagraph 6A005.b.3 has been added describing the control threshold for individual arrays of individual semiconductor lasers.

6A995—amended by correcting an abbreviation for a parameter for semiconductor lasers in b.1.a by revising "MW" to read "mW".

6C002—amended by revising 6C002.b to adopt the term "percent by mole fraction" rather than the term "percent by weight" for the control of zinc in cadmium zinc telluride (CdZnTe) substrates. The previous control language in 6C002.b incorrectly referred to the zinc percentage by weight. The formula for CdZnTe is an atomic formula which specifies the number of atoms of each constituent. Therefore, specifying the zinc percentage in terms of mole fraction percentage correctly relates the concentration of zinc to the concentration of cadmium in CdZnTe. In addition, a technical note is added to paragraph 6C002.b to define "mole fraction". Also, in 6C002.b text is added to clarify that Single crystals includes epitaxial wafers.

6C992—amended by revising the heading to adopt the term "percent by mole fraction" rather than the term "percent by weight" and adding the definition of "mole fraction" to the Related Definitions paragraph, to conform with changes to ECCN 6C002.

Category 7—Avionics

7A001—amended by:

(1) Revising the entry heading to limit control of this entry to certain linear accelerometers, rather than a broad category of accelerometers; and

(2) Adding a reference specifying that angular or rotational accelerometers are controlled under 7A002 in the Related Controls section.

7A002—amended by:

(1) Revising the entry heading to control certain angular or rotational accelerometers. Previously, accelerometers were controlled under 7A001; and

(2) Adding a reference specifying that linear accelerometers are controlled under 7A001 to the Related Controls section.

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

9B001—amended by:

(1) Revising the entry heading to remove the phrase "or measuring". In 1999, the subparagraph that specifically referenced measuring equipment was deleted; and

(2) Removing the corresponding reference in the entry heading.

9E003—amended by:

(1) Removing the control for "overhaul" technology for gas turbine engine components or systems described in 9E003.a; and

(2) Revising the phrase "of the following commercial aircraft engines, components or systems" to read "of any of the following gas turbine engine components or systems" to more accurately describe the controls of paragraph a.

Reformatting and conforming revisions to the structure of the entries on the CCL This final rule makes a number of reformatting revisions to the CCL in order to conform certain entries and subparagraphs to the new Wassenaar Automated Information System (WAIS). These conforming revisions do not affect or change the scope of control, but merely provide standard consistency in structure within the CCL. Specific revisions on the CCL include: ECCNs 2B001.b.1, 2B001.c.1, 2B001.e, 2B001.e.1, 9E003.d and 9E003.e.

Items placed under control by this rule will be subject to both national security (NS) and antiterrorism (AT) controls. These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

This final rule also revises the reporting and recordkeeping provisions of the Wassenaar Arrangement in § 743.1 by requiring reports for exports of sensitive list items made under the Special Comprehensive License Procedure. Conforming revisions are also made to the recordkeeping provisions in § 752.12. Extending Wassenaar Arrangement reporting requirements to the Special Comprehensive Licensing Procedure is necessary in order for the U.S. to fulfill its obligations in complying with the objectives of the regime.

This final rule also amends part 772 by adding two new definitions to § 772.1, they are "Allocated by the ITU" and "Fractional bandwidth." These definitions are added pursuant to agreements reached in the Wassenaar Arrangement.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until February 4, 2002. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for April 3, 2002, BXA will accept license applications for items described either by the entries in effect immediately before January 3, 2002 or the entries described in this rule.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections has been approved by the Office of Management and Budget under control numbers 0694–0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement," which carries a burden hour estimate of 5 minutes to record the information for each export and 1 minute to submit the report twice a year to BXA; and 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Parts 743 and 752

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

Accordingly, parts 743, 752, 772 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* Pub.L. 106–508; 50 U.S.C. 1701 *et seq;* E.O. 13206, 66 FR 18397, April 9, 2001.

2. The authority citation for parts 752 and 772 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, August 22, 2001.

3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

PART 743—[AMENDED]

4. Section 743.1 is amended by adding a note immediately following paragraph (a) and by revising paragraph (b) to read as follows:

§ 743.1 Wassenaar Arrangement.

(a) * * *

Note to paragraph (a) of this section: For purposes of part 743, the term "you" has the same meaning as the term "exporter", as defined in part 772 of the EAR.

(b) *Requirements.* You must submit two (2) copies of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) *Exports authorized under License Exceptions GBS, CIV, TSR, LVS, CTP and GOV* (see part 740 of the EAR). Note that exports of technology and source code under License Exception TSR to foreign nationals located in the U.S. should not be reported; and

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR).

* * * * *

PART 752—[AMENDED]

5. Section 752.12 is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

§ 752.12 Recordkeeping requirements.

* * * * *

(b) *SCL holder.* The SCL holder is responsible for complying with the special reporting requirements for exports of certain commodities, software and technology under the Wassenaar Arrangement as described in § 743.1 of the EAR.

* * * * *

PART 772—[AMENDED]

6. Part 772 is amended by adding a new definition "Allocated by the ITU" and a new definition "Fractional bandwidth" in alphabetical order to § 772.1, to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

"Allocated by the ITU". (Cat 3 and Cat 5 part 1)—The allocation of frequency bands according to the ITU Radio Regulations (Edition 1998) for primary, permitted and secondary services.

N.B. Additional and alternative allocations are not included.

* * * * *

"Fractional bandwidth". (Cat 3)—The "instantaneous bandwidth" divided by

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the center frequency, expressed as a percentage.

* * * * *

PART 774—[AMENDED]

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Requirements section and the List of Items Controlled section for ECCNs 1A002 and 1C002;

b. By revising the entry heading for ECCN 1B002; and

c. By revising the List of Items Controlled section for ECCN 1C007, to read as follows:

1A002 "Composite" Structures or Laminates, Having Any of the Following (See List of Items Controlled)

License Requirements

Reason for Control: NS, NP, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to 1A002.b.1 in the form of tubes with an inside diameter between 75 mm and 400 mm.	NP Column 1.
1 AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: (1) See also 1A202, 9A010, and 9A110. (2) Composite structures that are specially designed for missile application (including specially designed subsystems and components) are controlled by 9A110.

Related Definitions: N/A.

Items:

a. An organic "matrix" and made from materials controlled by 1C010.c, 1C010.d or 1C010.e; or

Note: 1A002.a does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;
b. Automotive industry;
c. Machine tool industry; and
d. Medical applications.

b. A metal or carbon "matrix" and made from:

b.1. Carbon "fibrous or filamentary materials" with:

b.1.a. A "specific modulus" exceeding 10.15×10^6 m; and

b.1.b. A "specific tensile strength" exceeding 17.7×10^4 m; or

b.2. Materials controlled by 1C010.c.

Note: 1A002.b does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;
b. Automotive industry;
c. Machine tool industry; and
d. Medical applications.

Technical Notes: (1) Specific modulus: Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2) °C) and a relative humidity of (50±5)%. (2) Specific tensile strength: ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((232) °C) and a relative humidity of (50±5)%.

Note: 1A002 does not control composite structures or laminates made from epoxy resin impregnated carbon "fibrous or filamentary materials" for the repair of aircraft structures of laminates, provided that the size does not exceed one square meter (1 m^2).

1B002 Equipment for Producing Metal Alloys, Metal Alloy Powder or Alloyed Materials, Specially Designed to Avoid Contamination and Specially Designed for Use in One of the Processes Specified in 1C002.c.2

* * * * *

1C002 Metal Alloys, Metal Alloy Powder and Alloyed Materials, As Follows (See List of Items Controlled)

License Requirements

Reason for Control: NS, NP, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to 1C002.b.3 or b.4 if they exceed the parameters stated in 1C202.	NP Column 1.
AT applies to entire entry	AT Column 1.

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: See also 1C202.

Related Definition: N/A.

Items:

Note: 1C002 does not control metal alloys, metal alloy powder or alloyed materials for coating substrates.

Technical Note 1: The metal alloys in 1C002 are those containing a higher percentage by weight of the stated metal than of any other element.

Technical Note 2: Stress-rupture life should be measured in accordance with ASTM standard E–139 or national equivalents.

Technical Note 3: Low cycle fatigue life should be measured in accordance with ASTM Standard E–606 "Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing" or national equivalents. Testing should be axial with an average stress ratio equal to 1 and a stress-concentration factor (K_t) equal to 1. The average stress is defined as maximum stress minus minimum stress divided by maximum stress.

a. Aluminides, as follows:

a.1. Nickel aluminides containing a minimum of 15 weight percent aluminum, a maximum of 38 weight percent aluminum and at least one additional alloying element;

a.2. Titanium aluminides containing 10 weight percent or more aluminum and at least one additional alloying element;

b. Metal alloys, as follows, made from material controlled by 1C002.c:

b.1. Nickel alloys with:

b.1.a. A stress-rupture life of 10,000 hours or longer at 923 K (650 °C) at a stress of 676 MPa; or

b.1.b. A low cycle fatigue life of 10,000 cycles or more at 823 K (550 °C) at a maximum stress of 1,095 MPa;

b.2. Niobium alloys with:

b.2.a. A stress-rupture life of 10,000 hours or longer at 1,073 K (800 °C) at a stress of 400 MPa; or

b.2.b. A low cycle fatigue life of 10,000 cycles or more at 973 K (700 °C) at a maximum stress of 700 MPa;

b.3. Titanium alloys with:

b.3.a. A stress-rupture life of 10,000 hours or longer at 723 K (450 °C) at a stress of 200 MPa; or

b.3.b. A low cycle fatigue life of 10,000 cycles or more at 723 K (450 °C) at a maximum stress of 400 MPa;

b.4 Aluminum alloys with a tensile strength of:

b.4.a. 240 MPa or more at 473 K (200 °C); or

b.4.b. 415 MPa or more at 298 K (25 °C);

b.5. Magnesium alloys with:

b.5.a. A tensile strength of 345 MPa or more; and

b.5.b. A corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G–31 or national equivalents;

c. Metal alloy powder or particulate material, having all of the following characteristics:

c.1. Made from any of the following composition systems:

Technical Note: X in the following equals one or more alloying elements,

c.1.a. Nickel alloys (Ni-Al-X, Ni-X-Al) qualified for turbine engine parts or components, i.e. with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 µ in 10^9 alloy particles;

c.1.b. Niobium alloys (Nb-Al-X or Nb-X-Al, Nb-Si-X or Nb-X-Si, Nb-Ti-X or Nb-X-Ti);

c.1.c. Titanium alloys (Ti-Al-X or Ti-X-Al);

c.1.d. Aluminum alloys (Al-Mg-X or Al-X-Mg, Al-Zn-X or Al-X-Zn, Al-Fe-X or Al-X-Fe); or

c.1.e. Magnesium alloys (Mg-Al-X or Mg-X-Al); and

c.2. Made in a controlled environment by any of the following processes:

c.2.a. "Vacuum atomization";

c.2.b. "Gas atomization";

c.2.c. "Rotary atomization";

c.2.d. "Splat quenching";

c.2.e. "Melt spinning" and "comminution";

c.2.f. "Melt extraction" and "comminution"; or

c.2.g. "Mechanical alloying";

d. Alloyed materials, having all the following characteristics:

d.1. Made from any of the composition systems specified in 1C002.c.1;

d.2. In the form of uncomminuted flakes, ribbons or thin rods; *and*

d.3. Produced in a controlled environment by any of the following:

d.3.a. "Splat quenching";

d.3.b. "Melt spinning"; or

d.3.c. "Melt extraction".

* * * * *

1C007 Ceramic Base Materials, Non-"Composite" Ceramic Materials, Ceramic-"Matrix" "Composite" Materials and Precursor Materials, As Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: See also 1C107.

Related Definitions: N/A.

Items:

a. Base materials of single or complex borides of titanium having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 µm and no more than 10% of the particles larger than 10 µm;

b. Non-"composite" ceramic materials in crude or semi-fabricated form, composed of borides of titanium with a density of 98% or more of the theoretical density;

Note: 1C007.b does not control abrasives.

c. Ceramic-ceramic "composite" materials with a glass or oxide-"matrix" and reinforced with fibers having all the following:

c.1 Made from any of the following materials:

c.1.a. Si-N;

c.1.b. Si-C;

c.1.c. Si-Al-O-N; or

c.1.d. Si-O-N; and

c.2. Having a "specific tensile strength" exceeding 12.7×10^3 m;

d. Ceramic-ceramic "composite" materials, with or without a continuous metallic phase, incorporating particles, whiskers or fibers, where carbides or nitrides of silicon, zirconium or boron form the "matrix";

e. Precursor materials (i.e., special purpose polymeric or metallo-organic materials) for producing any phase or phases of the materials controlled by 1C007.c, as follows:

e.1. Polydiorganosilanes (for producing silicon carbide);

e.2. Polysilazanes (for producing silicon nitride);

e.3. Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components);

f. Ceramic-ceramic "composite" materials with an oxide or glass "matrix" reinforced with continuous fibers from any of the following systems:

f.1. Al_2O_3; or

f.2. Si-C-N.

Note: 1C007.f does not control "composites" containing fibers from these systems with a fiber tensile strength of less than 700 MPa at 1,273 K (1,000 °C) or fiber tensile creep resistance of more than 1% creep strain at 100 MPa load and 1,273 K (1,000 °C) for 100 hours.

* * * * *

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 2A001 and 2B001;

b. By adding the entry heading and Notes for Category 2B—Test, Inspection and Production Equipment immediately following ECCN 2A999;

c. By revising the entry heading for ECCN 2B008;

d. By revising the entry heading, the License Requirements section and the List of Items Controlled section for ECCN 2D002; and

e. By revising Note 17 of the Notes to "Category 2E—Materials Processing Table; Deposition Techniques", that follows ECCN 2E003, to read as follows:

2A001 Anti-Friction Bearings and Bearing Systems, As Follows, (See List of Items Controlled) and Components Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: (1) See also 2A991. (2) Quiet running bearings are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: Annular Bearing Engineers Committee (ABEC).

Items:

Note: 2A001 does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings having tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having rings, balls or rollers made from monel or beryllium;

Note: 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings having tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

Note: 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; or

c.3. High temperature (450 K (177°C) and above) position sensors.

B. Test, Inspection and Production Equipment

Technical Notes for 2B001 to 2B009:

1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360o. A rotary axis can be driven by a linear device (e.g., a screw or a rack-and-pinion).

2. The number of axes which can be co-ordinated simultaneously for "contouring control" is the number of axes which affect relative movement between any one workpiece and a tool, cutting head or grinding wheel which is cutting or removing material from the workpiece. This does not include any additional axes which affect other relative movement within the machine. Such axes include:

2.a. Wheel-dressing systems in grinding machines;

2.b. Parallel rotary axes designed for mounting of separate workpieces;

2.c. Co-linear rotary axes designed for manipulating the same workpiece by holding it in a chuck from different ends.

3. Axis nomenclature shall be in accordance with International Standard

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ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

4. A "tilting spindle" is counted as a rotary axis.

5. Guaranteed "positioning accuracy" levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

6. The positioning accuracy of "numerically controlled" machine tools is to be determined and presented in accordance with ISO 230/2 (1988).

2B001 Machine Tools and Any Combination Thereof, for Removing (or Cutting) Metals, Ceramics or "Composites", Which, According to the Manufacturer's Technical Specification, Can Be Equipped With Electronic Devices for "Numerical Control"

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: (1.) See also 2B290 and 2B991; (2.) See also 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110.

Related Definitions: N/A.

Items:

Note 1: 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, see 2B003.

Note 2: 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;

b. Tools or cutters;

c. Extruder worms;

d. Engraved or facetted jewellery parts.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; and

a.2. Two or more axes which can be coordinated simultaneously for "contouring control";

Note: 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; and

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";

b.2. Five or more axes which can be coordinated simultaneously for "contouring control";

b.3. A positioning accuracy for jig boring machines, with "all compensations available", of less (better) than 4 µm along any linear axis; or

b.4. Fly cutting machines, having all of the following characteristics: b.4.a. Spindle "run-out" and "camming" less (better) than 0.0004 mm TIR; *and*

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics:

c.1. Having all of the following:

c.1.a. Positioning accuracy with "all compensations available" of less (better) than 4 µm along any linear axis; and

c.1.b. Three or more axes which can be coordinated simultaneously for "contouring control"; or

c.2. Five or more axes which can be coordinated simultaneously for "contouring control";

Notes: 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; and

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; or

b. The a-axis is configured to grind barrel cams.

3. Tool or cutter grinding machines limited to the production of tools or cutters.

4. Crank shaft or cam shaft grinding machines.

5. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for "contouring control";

e. Machine tools for removing metals, ceramics or "composites" having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; or

e.1.c. "Laser" beam; and

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for "contouring control"; and

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

2B008 Assemblies or Units, Specially Designed for Machine Tools, or Dimensional Inspection or Measuring Systems and Equipment, as Follows (See List of Items Controlled)

* * * * *

2D002 "Software" for Electronic Devices, Even When Residing in an Electronic Device or System, Enabling Such Devices or Systems to Function as a "Numerical Control" Unit, Capable of Coordinating Simultaneously More Than 4 Axes for "Contouring Control"

License Requirements

Reason for Control: NS, NP, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
NP applies to entire entry	NP Column 1.
AT applies to entire entry	AT Column 1.

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 2D202.

Related Definitions: N/A.

Items:

Note: 2D002 does not control "software" specially designed or modified for the operation of machine tools not controlled by Category 2.

The list of items controlled is contained in the ECCN heading.

* * * * *

Category 2E—Materials Processing Table; Deposition Techniques

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Notes to Table on Deposition Techniques

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17. "Technology" specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones or medical devices.

* * * * *

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNS) are amended:

a. By revising the List of Items Controlled section for ECCNs 3A001, 3A002, 3A991, 3B991, 3B992, 3C001, and 3E001;

b. By revising the entry heading and the List of Items Controlled section for ECCNs 3B002 and 3D003;

c. By revising the entire entry for ECCN 3E002; and

d. By adding a new entry for ECCN 3E003, to read as follows:

3A001 Electronic Components, As Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3A101, 3A201, and 3A991.

Related Definitions: For the purposes of integrated circuits in 3A001.a.1, 5 x 10^3 Gy(Si) = 5 x 10^5 Rads (Si); 5 x 10^6 Gy (Si)/s = 5 x 10^8 Rads (Si)/s.

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";

"Hybrid integrated circuits";

"Multichip integrated circuits";

"Film type integrated circuits", including silicon-on-sapphire integrated circuits;

"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5 x 10^3 Gy (Si), or higher; or

a.1.b. A dose rate upset of 5 x 10^6 Gy (Si)/s, or higher;

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; or

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; or

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 µs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Note:

1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; and

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns; or

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. Reserved.

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.1 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); or

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than (N $\log_2$ N)/20,480 ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 µs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; *and*

(b) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

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b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a "fractional bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing "monolithic integrated circuits" having one or more active circuit elements; *and*

b.2.b. Operating at frequencies above 3 GHz;

Note 1: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics: (a.) Does not exceed 31 GHz; *and* (b.) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz. b.3.

Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave "assemblies" capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; or

c.1.b.4. A dispersive delay of more than 10 µs; or

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwith in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; or

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; or

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (e.g., standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; and

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; and

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; and

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ± 2.5 seconds of arc.

3A002 General Purpose Electronic Equipment, as follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3A292 and 3A992.

Related Definitions: Constant percentage bandwidth filters are also known as octave or fractional octave filters.

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 µs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or

a.3.b. Being "space qualified";

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; and

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. "Frequency synthesizer", "electronic assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. "Signal analyzers", as follows:

c.1. "Signal analyzers" capable of analyzing frequencies exceeding 31 GHz;

c.2. "Dynamic signal analyzers" having a "real-time bandwidth" exceeding 500 kHz;

Note: 3A002.c.2 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; or

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; and

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1×10^{-11}/month; or

g.2. Being "space qualified".

Note: 3A002.g.1 does not control non-"space qualified" rubidium standards.

3A991 Electronic Devices and Components Not Controlled by 3A001

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List of Items Controlled

Unit: Equipment in number.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having any of the following:

a.1. A clock frequency rate exceeding 25 MHz; or

a.2. More than one date or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; or

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; or

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; or

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having a resolution of 8 bit or more, but less

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than 12 bit, with a total conversion time of less than 10 ns;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); or

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; or

f.2. A typical "basic propagation delay time" of less than 0.4 ns.

g. Travelling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An "instantaneous bandwidth" of half an octave or more; and

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An "instantaneous bandwidth" of less than half an octave; and

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; or

i.2. A carrier frequency of 1 GHz or less; and

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

Note: 3A991.j does not control batteries with volumes equal to or less than 26 cm^3 (e.g., standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.k does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; and

k.3. Rated for a magnetic induction of more than 8T or "overall current density" in the winding of more than 300 A/mm^2.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 MJ/M^3 or more; and

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope . thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

3B002 "Stored Program Controlled" Test Equipment, Specially Designed for Testing Finished or Unfinished Semiconductor Devices, As Follows (See List of Items Controlled), and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Number.
Related Controls: See also 3B992.
Related Definitions: N/A.
Items:

a. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

b. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 333 MHz;

Note: 3B002.b does not control test equipment specially designed for testing:

1. "Electronic assemblies" or a class of "electronic assemblies" for home or entertainment applications;

2. Uncontrolled electronic components, "electronic assemblies" or integrated circuits;

3. Memories.

Technical Note: For purposes of 3B002.b, pattern rate is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

c. For testing microwave integrated circuits controlled by 3A001.b.2.

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3B991 Equipment Not Controlled by 3B001 for the Manufacture of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and "electronic assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

Note: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. "Stored program controlled" crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5×10^5 Pa; or

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%; *or*

b.1.d.2. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced "sputtering" equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3. Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; or

b.1.g.4. Capable of high energy oxygen implant into a heated "substrate";

b.1.h. "Stored program controlled" equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; or

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; or

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: 1. "Batch types" refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. "Chemical vapor deposition" (CVD) equipment, e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. "Chemical vapor deposition" equipment operating below 10^5 Pa; or

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

Note: 3B991.b.1.i does not control low pressure "chemical vapor deposition" (LPCVD) systems or reactive "sputtering" equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; or

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; or

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. "Stored program controlled" equipment using "lasers" for the repair or trimming of "monolithic integrated circuits" with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; or

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask "substrates", mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

Note: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; or

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; and

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or "software";

b.2.b. Mask "substrates" as follows:

b.2.b.1. Hard surface (e.g., chromium, silicon, molybdenum) coated "substrates" (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; or

b.2.b.2. "Substrates" specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the "substrate";

b.2.d.2. Mask or reticle fabrication equipment using ion or "laser" beam

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lithography capable of producing line widths of less than 2.5 micrometer; or

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. "Stored program controlled" equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; and

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ±+ 0.3 micrometer; or

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: For focussed, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using "lasers" for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. "Stored program controlled" die bonders having all of the following characteristics:

b.3.a.1. Specially designed for "hybrid integrated circuits";

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; and

b.3.a.3. Placement accuracy in the X–Y plane of finer than ± 10 micrometer;

b.3.b. "Stored program controlled" equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m^3 and filter materials therefor.

3B992 Equipment Not Controlled by 3B002 for the Inspection or Testing of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor

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List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the inspection or testing of semiconductor devices, integrated circuits and "electronic assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B992.b also controls equipment used or modified for use in the inspection or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. "Stored program controlled" inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, "substrates", other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

Note: 3B992.b.1 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.2. Specially designed "stored program controlled" measuring and analysis equipment, as follows:

b.2.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.2.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.2.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.3. "Stored program controlled" wafer probing equipment having any of the following characteristics:

b.3.a. Positioning accuracy finer than 3.5 micrometer;

b.3.b. Capable of testing devices having more than 68 terminals; or

b.3.c. Capable of testing at a frequency exceeding 1 GHz;

b.4. Test equipment as follows:

b.4.a. "Stored program controlled" equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

Technical Note: Discrete semiconductor devices include photocells and solar cells.

b.4.b. "Stored program controlled" equipment specially designed for testing integrated circuits and "electronic assemblies" thereof, capable of functional testing:

b.4.b.1. At a pattern rate exceeding 20 MHz; or

b.4.b.2. At a pattern rate exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals;

Note: 3B992.b.4.b does not control equipment specially designed for testing integrated circuits not controlled by 3A001 or 3A991.

Notes: 1. 3B992.b.4.b does not control test equipment specially designed for testing "assemblies" or a class of "electronic assemblies" for home and entertainment applications.

2. 3B992.b.4.b does not control test equipment specially designed for testing electronic components, "assemblies" and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with "user accessible programmability".

b.4.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using "stored program controlled" measurements or computer aided evaluation and having any of the following characteristics:

b.4.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.4.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; or

b.4.c.3. Designed for evaluating arrays capable of creating images with more than 32 x 32 line elements;

b.5. Electron beam test systems designed for operation at 3 keV or below, or "laser" beam systems, for non-contactive probing of powered-up semiconductor devices having any of the following:

b.5.a. Stroboscopic capability with either beam blanking or detector strobing;

b.5.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; or

b.5.c. Electrical tests fixtures for performance analysis of integrated circuits;

Note: 3B992.b.5 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.6. "Stored program controlled" multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having either of the following characteristics:

b.6.a. Target-to-beam position feedback control precision of 1 micrometer or finer; or

b.6.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.7. Particle measuring systems employing "lasers" designed for measuring particle size and concentration in air having both of the following characteristics:

b.7.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 m^3 per minute or more; and

b.7.b. Capable of characterizing Class 10 clean air or better.

3C001 Hetero-Epitaxial Materials Consisting of a "Substrate" Having Stacked Epitaxially Grown Multiple Layers of Any of the Following (See List of Items Controlled)

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List of Items Controlled

Unit: $ value.
Related Controls: This entry does not control equipment or material whose functionality has been unalterably disabled are not controlled.
Related Definitions: III/V compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIIA and VA of Mendeleyev's periodic classification table (e.g., gallium arsenide, gallium-aluminium arsenide, indium phosphide).
Items:
a. Silicon;
b. Germanium;
c. Silicon Carbide; *or*
d. III/V compounds of gallium or indium.

3D003 Computer-Aided-Design (CAD) "Software", Having all of the Following (See List of Items Controlled)

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List of Items Controlled

Unit: $ value.
Related Controls: 3D003 does not control "software" specially designed for schematic entry, logic simulation, placing and routing, layout verification or pattern generation tape.
Related Definitions: (1.) Libraries, design attributes or associated data for the design of semiconductor devices or integrated circuits are considered as "technology". (2.) A lithographic processing simulator is a "software" package used in the design phase to define the sequence of lithographic, etching and deposition steps for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor material.
Items:
a. Designed for the "development" of semiconductor devices or integrated circuits; and
b. Designed to perform or use any of the following:
b.1. Design rules or circuit verification rules;
b.2. Simulation of the physically laid out circuits; or
b.3. Lithographic processing simulators for design.

3E001 "Technology" According to the General Technology Note for the "Development" or "Production" of Equipment or Materials Controlled by 3A (Except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C

* * * * *

List of Items Controlled

Unit: N/A.
Related Controls: See also 3E101 and 3E201.
Related Definition: N/A.
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E001 does not control "technology" for the "development" or "production" of:
(a) Microwave transistors operating at frequencies below 31 GHz;
(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:
(b.1) Using "technology" of 0.7 micrometer or more; and
(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

3E002 "Technology" According to the General Technology Note Other Than That Controlled in 3E001 for the "Development" or "Production" of "Microprocessor Microcircuits", "Micro-Computer Microcircuits" and Microcontroller Microcircuits Having a "Composite Theoretical Performance" ("CTP") of 530 Million Theoretical Operations Per Second (MTOPS) or More and an Arithmetic Logic Unit With an Access Width of 32 Bits or More

License Requirements

Reason for Control: NS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A.
TSR: Yes.

List of Items Controlled

Unit: N/A.
Related Controls: N/A.
Related Definitions: N/A.
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E002 does not control "technology" for the "development" or "production" of:
(a) Microwave transistors operating at frequencies below 31 GHz;
(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:
(b.1) Using "technology" of 0.7 micrometer or more; and
(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

3E003 Other "Technology" for the "Development" or "Production" of Items Described in the List of Items Controlled

License Requirements

Reason for Control: NS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A.
TSR: Yes, except .f.

List of Items Controlled

Unit: N/A.
Related Controls: See 3E001 for silicon-on-insulation (SOI) technology for the "development" or "production"

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related to radiation hardening of integrated circuits.

Related Definitions: N/A.

Items:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

c. "Superconductive" electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D003 is amended by revising the List of Items Controlled Section, to read as follows:

4D003 Specific "Software", As Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Operating system "software", "software" development tools and compilers specially designed for "multi-data-stream processing" equipment, in "source code";

b. [Reserved]

c. "Software" having characteristics or performing functions exceeding the limits in Category 5, Part 2 ("Information Security");

d. Operating systems specially designed for "real time processing" equipment that guarantees a "global interrupt latency time" of less than 20 µs.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications is amended by revising the List of Items Controlled section for Export Control Classification Numbers (ECCNs) 5D001 and 5E001, to read as follows:

5D001 "Software", As Described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5D991.

Related Definitions: N/A.

Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" as follows:

c.1. "Software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [Reserved];

c.3. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

d.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; or

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; or

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

5E001 "Technology", (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5E101 and 5E991.

Related Definitions: N/A.

Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001 or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. "Technology" for the "development" of digital cellular radio systems;

b.4. "Technology" for the "development" of "spread spectrum" techniques, including "frequency hopping" techniques.

c. "Technology" according to the General Technology Note for the "development" or "production" of any of the following telecommunication transmission or "stored program controlled" switching equipment, functions or features:

c.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; or

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001. c.2.e. does not control "technology" for the "development" or "production" of commercial TV systems.

c.3. Equipment employing "optical switching";

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; or

c.4.b. Operating at input or output frequencies exceeding 31 GHz; or

Note: 5E001.c.4.b. does not control "technology" for the "development" or "production" of equipment designed or modified for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c.5. Equipment employing "common channel signalling" operating in either non-associated or quasi-associated mode of operation.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Exception and List of Items Controlled sections for ECCNs 6A003 and 6A005;

b. By revising the List of Items Controlled section for ECCNs 6A995 and 6C002; and

c. By revising the Heading and the List of Items Controlled section for ECCN 6C992, to read as follows:

6A003 Cameras

* * * * *

License Exceptions

LVS: $1500, except N/A for 6A003.a.2 through a.6, b.1, b.3 and b.4.

GBS: Yes for 6A003.a.1.

CIV: Yes for 6A003.a.1.

List of Items Controlled

Unit: Number.

Related Controls: See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

Related Definitions: N/A.

Items:

a. Instrumentation cameras and specially designed components therefor, as follows:

Note: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/µs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 µs per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4 x 106 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4 x 106 "active pixels" per solid state array for color cameras incorporating three solid state arrays; or

b.1.c. More than 12 x 106 "active pixels" for solid state array color cameras incorporating one solid state array;

Technical Note: For the purposes of this entry, digital video cameras should be evaluated by the maximum number of "active pixels" used for capturing moving images.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; and

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating "focal plane arrays" having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

6A005 "Lasers", Components and Optical Equipment, As Follows (See List of Items Controlled)

* * * * *

License Exceptions

LVS: N/A for NP items. $3000 for all other items.

GBS: Yes, for 6A005.d (except d.2.c), CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW; CO_2 "lasers" controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a "peak power" not exceeding 400 MW; Neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-"Q-switched" multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

CIV: Yes, for 6A005.d (except d.2.c), CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW; CO_2 "lasers" controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a "peak power" not exceeding 400 MW; Neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-"Q-switched" multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

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List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: (1.) See also 6A205, 6A995, 0B001.g.5 and 0B001.b.6. (2.) Shared aperture optical elements, capable of operating in "super-high power laser" applications are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: (1.) Pulsed "lasers" include those that run in a continuous wave (CW) mode with pulses superimposed. (2.) Pulse-excited "lasers" include those that run in a continuously excited mode with pulse excitation superimposed. (3.) The control status of Raman "lasers" is determined by the parameters of the pumping source "lasers". The pumping source "lasers" can be any of the "lasers" described as follows:

Items:

a. Gas "lasers", as follows:

a.1. Excimer "lasers", having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; or

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; or

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; or

a.1.c.2. An average output power exceeding 500 W; or

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; or

a.1.d.2. An average output power exceeding 30 W;

N.B. For excimer "lasers" specially designed for lithography equipment, see 3B001.

a.2. Metal vapor "lasers", as follows:

a.2.a. Copper (Cu) "lasers" having an average output power exceeding 20 W;

a.2.b. Gold (Au) "lasers" having an average output power exceeding 5 W;

a.2.c. Sodium (Na) "lasers" having an output power exceeding 5 W;

a.2.d. Barium (Ba) "lasers" having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) "lasers" having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 5 kW; or

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide (CO_2) "lasers" having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a "pulse duration" exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; or

a.4.b.2. A pulsed "peak power" exceeding 100 kW; or

a.4.c. A pulsed output having a "pulse duration" equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; or

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. "Chemical lasers", as follows:

a.5.a. Hydrogen Fluoride (HF) "lasers";

a.5.b. Deuterium Fluoride (DF) "lasers";

a.5.c. "Transfer lasers", as follows:

a.5.c.1. Oxygen Iodine (O_2-I) "lasers";

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-CO_2) "lasers";

a.6. Krypton ion or argon ion "lasers" having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 50 W; or

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas "lasers", having any of the following:

Note: 6A005.a.7 does not control nitrogen "lasers".

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; or

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed "peak power" exceeding 10 W; or

a.7.c.2. An average or CW output power exceeding 10 W; or

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor "lasers", as follows:

b.1. Individual single-transverse mode semiconductor "lasers" having all of the following:

b.1.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.1.b. An average or CW output power exceeding 100 mW;

b.2. Individual, multiple-transverse mode semiconductor "lasers", having all of the following:

b.2.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.2.b. An average or CW output power exceeding 10 W.

b.3. Individual arrays of individual semiconductor "lasers", having any of the following:

b.3.a. A wavelength of less than 950 nm and an average or CW output power exceeding 60 W; *or*

b.3.b. A wavelength equal to or greater than 2000 nm and an average or CW output power exceeding 10 W;

Technical Note: Semiconductor "lasers" are commonly called "laser" diodes.

Note 1: 6A005.b includes semiconductor "lasers" having optical output connectors (e.g. fiber optic pigtails).

Note 2: The control status of semiconductor "lasers" specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state "lasers", as follows:

c.1. "Tunable" "lasers" having any of the following:

Note: 6A005.c.1 includes titanium—sapphire (Ti: Al_2O_3), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center "lasers".

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed "peak power" exceeding 20 W; or

c.1.b.2. An average or CW output power exceeding 20 W; or

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-"tunable" "lasers", as follows:

Note: 6A005.c.2 includes atomic transition solid state "lasers".

c.2.a. Neodymium glass "lasers", as follows:

c.2.a.1. "Q-switched lasers" having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; or

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-"Q-switched lasers" having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; or

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) "lasers", having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

N.B.: For neodymium-doped (other than glass) "lasers" having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.c.

c.2.b.1. Pulse-excited, mode-locked, "Q-switched lasers" having a "pulse duration" of less than 1 ns and having any of the following:

c.2.b.1.a. A "peak power" exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; or

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, "Q-switched lasers" having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A "peak power" exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; or

c.2.b.2.a.3. A pulsed energy exceeding 2 J; or

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A "peak power" exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; or

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-"Q-switched lasers", having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A "peak power" exceeding 500 kW; or

c.2.b.3.a.2. An average output power exceeding 150 W; or

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A "peak power" exceeding 1 MW; or

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited "lasers" having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A "peak power" exceeding 500 kW; or

c.2.b.4.a.2. An average or CW output power exceeding 150 W; or

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A "peak power" exceeding 1 MW; or

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-"tunable" "lasers", having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; or

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. "Q-switched lasers" having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 50 W; or

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode "lasers";

c.2.c.3.a.2.b. 30 W for multimode "lasers";

c.2.c.3.b. Non-"Q-switched lasers" having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 50 W; or

c.2.c.3.b.2. An average or CW output power exceeding 50 W; or

c.2.c.4. A wavelength exceeding 1,400 nm and having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid "lasers", having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; or

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the "pulse duration" is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 10 W; or

d.3.b. An average or CW output power exceeding 10 W; or

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; or

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

Technical Note: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled "lasers";

f. Optical equipment, as follows:

N.B. For shared aperture optical elements, capable of operating in "Super-High Power Laser" ("SHPL") applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; or

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. "Laser" diagnostic equipment capable of measuring "SHPL" system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array "SHPL" system for coherent beam combination to an

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accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with "SHPL" systems.

6A995 "Lasers", Not Controlled by 6A005 or 6A205

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Carbon dioxide (CO_2) "lasers" having any of the following:

a.1. A CW output power exceeding 10 kW;

a.2. A pulsed output with a "pulse duration" exceeding 10 microseconds; and

a.2.a. An average output power exceeding 10 kW; or

a.2.b. A pulsed "peak power" exceeding 100 kW; or

a.3. A pulsed output with a "pulse duration" equal to or less than 10 microseconds; and

a.3.a. A pulse energy exceeding 5 J per pulse and "peak power" exceeding 2.5 kW; or

a.3.b. An average output power exceeding 2.5 kW;

b. Semiconductor lasers, as follows:

b.1. Individual, single-transverse mode semiconductor "lasers" having:

b.1.a. An average output power exceeding 100 mW; or

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor "lasers", or arrays of individual semiconductor "lasers", having a wavelength exceeding 1,050 nm;

c. Solid state, non-"tunable" "lasers", as follows:

c.1. Ruby "lasers" having an output energy exceeding 20 J per pulse;

c.2. Neodymium-doped (other than glass) "lasers", as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

c.2.a. Pulse-excited, "Q-switched lasers", with a pulse duration equal to or more than 1 ns, and a multiple-transverse mode output with any of the following:

c.2.a.1. A "peak power" exceeding 200 MW; or

c.2.a.2. An average output power exceeding 50 W;

c.2.b. Pulse-excited, non-"Q-switched lasers", having a multiple-transverse mode output with an average power exceeding 500 W; or

c.2.c. Continuously excited "lasers" having a multiple-transverse mode output with an average or CW output power exceeding 500 W;

d. Free electron "lasers".

C. Materials

6C002 Optical Sensor Materials, As Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 6C992.

Related Definitions: N/A.

Items:

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;

b. Single crystals (including epitaxial wafers) of any of the following:

b.1. Cadmium zinc telluride (CdZnTe), with zinc content less than 6% by mole fraction;

b.2. Cadmium telluride (CdTe) of any purity level; *or*

b.3. Mercury cadmium telluride (HgCdTe) of any purity level.

Technical Note: Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

6C992 Optical Sensing Fibers Not Controlled by 6A002.d.3 Which Are Modified Structurally To Have a "Beat Length" of Less Than 500 mm (High Birefringence) or Optical Sensor Materials Not Described in 6C002.b and Having a Zinc Content of Equal to or More Than 6% by Mole Fraction

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: N/A.

Related Definitions: Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

Items:

The list of items controlled is contained in the ECCN heading.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, is amended by revising the entry heading and the List of Items Controlled section for ECCNs 7A001 and 7A002, to read as follows:

7A001 Linear Accelerometers Designed for Use in Inertial Navigation or Guidance Systems and Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 7A101 and 7A994. For angular or rotational accelerometers, see 7A002. MT controls do not apply to accelerometers that are specially designed and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.

Related Definitions: N/A.

Items:

a. A "bias" "stability" of less (better) than 130 micro g with respect to a fixed calibration value over a period of one year;

b. A "scale factor" "stability" of less (better) than 130 ppm with respect to a fixed calibration value over a period of one year; or

c. Specified to function at linear acceleration levels exceeding 100 g.

7A002 Gyros, and Angular or Rotational Accelerometers, Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 7A102 and 7A994. For linear accelerometers, see 7A001.

Related Definitions: N/A.

Items:

a. A "drift rate" "stability", when measured in a 1 g environment over a period of three months and with respect to a fixed calibration value, of:

a.1. Less (better) than 0.1° per hour when specified to function at linear acceleration levels below 10 g; or

a.2. Less (better) than 0.5° per hour when specified to function at linear acceleration levels from 10 g to 100 g inclusive; or

b. Specified to function at linear acceleration levels exceeding 100 g.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, the following Export Control Classification numbers (ECCNs) are amended:

a. By revising the entry heading for ECCN 9B001; and

b. By revising the License Requirement section and the List of Items Controlled section for ECCN 9E003, to read as follows:

9B001 Specially Designed Equipment, Tooling and Fixtures, As Follows (See List of Items Controlled), for Manufacturing Gas Turbine Blades, Vanes or Tip Shroud Castings

* * * * *

9E003 Other "Technology", As Follows (See List of Items Controlled)

License Requirements

Reason for Control: NS, SI, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
SI applies to 9E003.a.1 through a.11, and h. See § 742.14 of the EAR for additional information..	
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1.) Hot section "technology" specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State. (2.) "Technology" is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.

Related Definitions: N/A.

Items:

a. "Technology" "required" for the "development", "production"of any of the following gas turbine engine components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540 ° C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic "composite" materials designed to operate above 588 K (315 °C);

a.3.b. Metal "matrix" "composite", ceramic "matrix", intermetallic or intermetallic reinforced materials controlled by 1C007; or

a.3.c. "Composite" material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050 °C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370 °C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using "diffusion bonding" "technology" controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles; *or*

Note 1: Adjustable flow path geometry and associated control systems in 9E003.a.10 do net include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

Note 2: 9E003.a.10 does not control "development" or "production" "technology" for adjustable flow path geometry for reverse thrust.

a.11. Wide chord hollow fan blades without part-span support;

b. "Technology" "required" for the "development" or "production" of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; or

b.2. "Composite" propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. "Technology" "required" for the "development" or "production" of gas turbine engine components using "laser", water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; and

c.1.c. Incidence angles equal to or less than 25°; or

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; and

c.2.c. Incidence angles of more than 25°;

Technical Note: For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. "Technology" "required" for the "development" or "production" of helicopter power transfer systems or tilt rotor or tilt wing "aircraft" power transfer systems;

e. "Technology" for the "development" or "production" of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. A box volume of 1.2 m^3 or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; and

e.3. A power density of more than 700 kW/m^3 of box volume;

Technical Note: Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft center-line to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. "Technology" "required" for the "production" of specially designed components, as follows, for high output diesel engines:

f.1. "Technology" "required" for the "production" of engine systems having all of the following components employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; and

f.1.d. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

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f.2. "Technology" "required" for the "production" of turbocharger systems, with single-stage compressors having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. A mass flow in the range from 30 to 130 kg per minute; and

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. "Technology" "required" for the "production" of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)), having both of the following:

f.3.a. Injection amount in excess of 230 mm^3 per injection per cylinder; and

f.3.b. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. "Technology" "required" for the development" or "production" of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

h. "Technology" not otherwise controlled in 9E003.a.1 through a.10 and currently used in the "development", "production", or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

Dated: December 17, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–10 Filed 1–2–02; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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Regarding the use of the trust land and resources of the Confederated Tribes of the Warm Springs Reservation of Oregon. (Dec. 27, 2001; 115 Stat. 974)

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H.R. 2559/P.L. 107–104

To amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance. (Dec. 27, 2001; 115 Stat. 1001)

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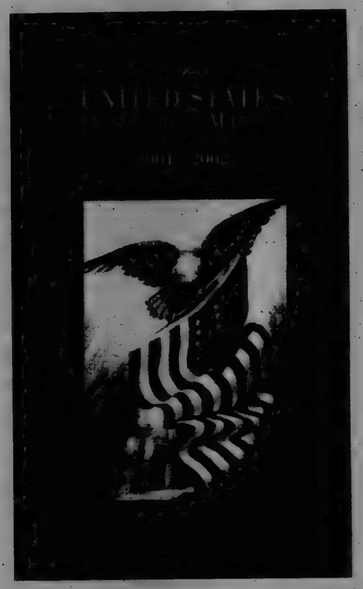

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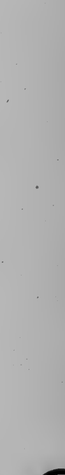

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Presidential Documents

Title 3—

The President

Proclamation 7516 of December 27, 2001

To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of the People's Republic of China

By the President of the United States of America

A Proclamation

1. The United States and the People's Republic of China (China) opened trade relations in 1980. Since that time, the products of China have received nondiscriminatory treatment pursuant to annual waivers of the requirements of section 402 of the Trade Act of 1974 (the "Trade Act") (19 U.S.C. 2432). Trade between the United States and China has expanded significantly even though China has maintained restrictions on market access for U.S. exports and investment.

2. On November 15, 1999, the United States and China agreed on certain terms and conditions for China's accession to the World Trade Organization (WTO) that when implemented will eliminate or greatly reduce the principal barriers to trade and investment in China.

3. On November 9, 2001, pursuant to section 101(b) of Public Law 106–286, 114 Stat. 881, I transmitted a report to the Congress certifying that the terms and conditions for the accession of China to the WTO are at least equivalent to those agreed between the United States and China on November 15, 1999. On November 10, 2001, the Ministerial Conference of the WTO approved the terms and conditions for China's accession and invited China to become a member of the WTO. China has accepted these terms and conditions and became a WTO member on December 11, 2001.

4. Pursuant to section 101(a)(1) of Public Law 106–286, 114 Stat. 881, I hereby determine that chapter 1 of title IV of the Trade Act should no longer apply to China.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 101(a)(2) and 102(a) of Public Law 106–286, 114 Stat. 881, do hereby proclaim that:

(1) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of China; and

(2) The extension of nondiscriminatory treatment to the products of China shall be effective as of January 1, 2002.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of December, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.

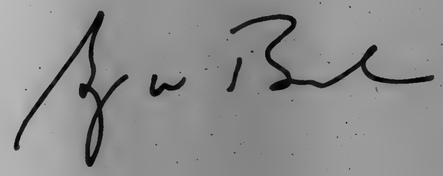

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AG51

Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Direct final rule.

SUMMARY: This rule will amend the Commodity Credit Corporation's tobacco marketing quota regulations at 7 CFR part 1464 to require burley tobacco producers to designate where they will sell their tobacco in order to qualify for price support and marketing cards. Currently only flue-cured tobacco producers, as a condition of price-support, must designate where they will market their tobacco. This "Grower Designation Program" is necessary because an increasing percentage of the burley tobacco being grown in the United States is being marketed directly to manufacturers or outside of traditional auction warehouses monitored by the Agency. These amendments will provide warehouse operators, the USDA, Agriculture Marketing Service (AMS) and others more complete and accurate information when planning for a tobacco auction marketing year.

DATES: This rule is effective February 4, 2002 without further action, unless adverse comment is received by January 22, 2002. If adverse comment is received, FSA will publish a timely withdrawal of the rule in the **Federal Register**. Comments concerning the information collection must be submitted by March 5, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to Director, Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW, room 5750–S, STOP 0514, Washington, DC 20250–0514; Fax: (202) 690–2298. All comments will be made available for public inspection in the Office of the Director during regular business hours.

FOR FURTHER INFORMATION CONTACT: Misty Jones, Agricultural Program Specialist, Tobacco and Peanuts Division, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW, STOP 0514, Washington, DC 20250–0514, telephone (202) 720–0200.

SUPPLEMENTARY INFORMATION:

Basis for Direct Final Rule

The burley tobacco market location intention information is necessary to promote, foster, and maintain an orderly marketing of burley tobacco in a swiftly changing market environment. Historically, 99 percent of all burley tobacco has been marketed at auction warehouses where the tobacco has been graded by AMS personnel where price-support has been offered.

However, between the 2000 marketing season and the current, 2001 marketing season, FSA predicts that as much as 80 percent of the 2001 crop of burley tobacco will not be sold at auction warehouses, based on the amount of flue-cured tobacco (the second major cigarette-producing tobacco) that was sold in this manner in 2001.

In the 2000 marketing year, only one major buying company offered direct contracts through a pilot program to burley tobacco producers. In late spring of 2001, it became known that all the major buying companies were intending to offer direct contracts to burley tobacco producers for the 2001 marketing year. In May 2001, FSA received designation numbers for flue-cured tobacco, which has had a designation program in place since 1974, that showed 79 percent of the crop would be sold through non-auction contracts and bypass the traditional auction market system; therefore, we believe a comparable percentage of burley tobacco will be sold non-auction.

Without the collection of designation information for burley tobacco, FSA will not know where the tobacco will be sold or how many pounds will be sold outside the traditional auction market system. Warehouse operators who, in the past, have handled almost all of any year's crop, will not have the information needed to keep their businesses open, and AMS will not know how to schedule the grading of burley tobacco. Farmers who wish to remain with the auction system will need to know which warehouses will still be open for auction marketing of their tobacco.

Currently, AMS policy bases sales time for burley warehouses on the previous 3 years volume of sales at individual warehouses. Due to the increase in direct contracting for 2001, AMS needs to know how this will change the volume of tobacco that will be available at the various warehouses.

Because of the recent high volume of direct contract purchases, the current manner of determining sales time no longer appears to be feasible. Thus, it is necessary to collect marketing intention information on burley tobacco farms. This is not a major departure from past policy since marketing-intention information has been collected on flue-cured tobacco farms for over twenty years. USDA is concerned that large quantities of "direct sales" could be disruptive to the orderly process of marketing burley tobacco. The "Grower Designation Program" will sustain orderly marketing of the 2001 burley tobacco crop. The Grower Designation Program" will track market volumes and thereby enable AMS to adjust its workforce and provide information to warehouse operators, receiving station officials and dealers for the 2001 marketing season.

This rule contains no controversial provisions and based on discussions with tobacco producers and industry representatives FSA anticipates no adverse comments. Accordingly, this rule will be effective as a final rule 30 days after filing for public inspection with the Office of the Federal Register unless there are adverse comments. If adverse comments are received, this rule will be withdrawn and will not become effective. In that case, this program will be implemented with a preposed and final rule. To expedite rulemaking in case this direct final rule is withdrawn, a separate proposed rule is being published in this issue of the **Federal Register** and will become the operative document for a regular final rule. Adverse comments received for this direct final rule will be considered

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with the comments received in response to the proposed rule.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, has been determined to be significant, and was reviewed by OMB.

Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this is that, through its extensive contacts with burley tobacco growers and warehouses, FSA found no significant objections to this action.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.0514.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined in Title II of the UMRA, for State, local and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

FSA has received emergency approval of the information collections associated with this rule. It has been assigned OMB Control Number 0560–0217. The Agency intends to publish a notice requesting comments on these collections and will submit a regular request for approval to OMB.

Background

Currently, AMS, working with local trade boards or with tobacco warehouse associations, schedules the days on which auction sales are to take place at designated auction markets, equitably distributing sales opportunity among the warehouses based on floor space, performance, or both.

Because of the recent high volume of direct contract purchases, the current manner of determining sales time no longer appears to be feasible. It is necessary to collect marketing-intention information on burley tobacco in the same manner that marketing-intention information has been collected on flue-cured tobacco since 1974. Therefore, in order to implement a successful burley tobacco designation program, producers were allowed to designate pounds to specific warehouses beginning June 1, 2001, as recommended by the Burley Tobacco Advisory Committee (Committee).

The 39-member Committee was established by the Secretary in 1990 to provide information essential to the orderly marketing of burley tobacco. At a meeting in June 2000, the Committee passed a motion that would affect the method of determining the number of days on which auction sales would be allowed to take place at each tobacco auction warehouse. The Committee's motion, to establish a Grower Designation Program for burley tobacco similar to the long standing Flue-cured Tobacco Warehouse Designation Program followed an announcement in early 2000 by a major cigarette manufacturer that it would contract with burley tobacco growers to buy tobacco directly from them at central buying points known as receiving stations, essentially acting as a dealer and bypassing the traditional auction market system.

The Flue-cured Tobacco Warehouse Designation Program requires that each flue-cured farm operator designate the warehouse(s) to which that farm's tobacco will be presented for sale and the number of pounds of tobacco that will be marketed at each designated location. Such designations provide information vital to the equitable scheduling among warehouses of the day(s) on which each location can hold an auction sale and the number of pounds that can be sold on each of those scheduled days. This information also allows AMS to schedule personnel to grade such tobacco when it is presented for sale. Designation is a condition of price support eligibility for flue-cured tobacco growers.

For the 2000 marketing year FSA had no advance information regarding the volume of burley tobacco that individual burley growers had placed under private contract with the buying company because such information was contained in individual and private contracts between grower and company. Thus, FSA did not know how much tobacco would bypass the traditional auction warehouse market system.

The buying company announced early in 2001 that it would dramatically expand its direct purchase program. It would contract to purchase both burley and flue-cured tobacco rather than just burley; and it would purchase these kinds of tobacco from receiving stations in Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Virginia rather than just Kentucky and Tennessee.

Seven other leaf-buying companies followed this announcement with announcements of their own. They, too, would contract with individual burley and flue-cured tobacco growers to buy their crops direct. Currently, there are eight companies with stated intentions of buying both burley and flue-cured tobacco at 72 established receiving stations in seven states.

On May 7, 2001, following the close of the flue-cured initial designation period, FSA received a report that predicted a need for a major information collection effort regarding burley tobacco: seventy-nine percent of the 2001 flue-cured tobacco available for sale has been designated to receiving stations.

FSA judges that a comparable percentage of burley will be sold during 2001 at receiving stations. However, with no designation program in place there is no way to collect the information that is vital to the industry, to the warehouses where burley tobacco has historically been marketed, and to USDA. In particular, AMS will be immediately adversely impacted by the lack of such data. From the historic 1 percent of sales that occurred outside the auction market system, much of the 2001 burley tobacco crop is likely to be sold in this manner. This is a sudden change in only one market season. FSA discerned the breadth of this change after the designation figures were collected from 2001 crop flue-cured growers and determined that this rule was immediately necessary for burley.

All eligible burley tobacco growers may avail themselves of the auction market system. However, only the growers/sellers and buyers involved in non-auction sale and purchase transactions know the amount of tobacco that will be involved in these private transactions. Without a burley designation program in place neither the buying companies, AMS, nor the warehouses will have any information concerning how much tobacco will be available for sale by auction because they will not have information about what tobacco won't be available for sale by auction.

USDA is concerned with the effects that large quantities of direct sales could have on the orderly process of marketing burley tobacco. The burley tobacco Grower Designation Program will track market volumes and thereby enable AMS to target its workforce.

FSA began collecting data through burley designations from growers voluntarily on June 1, 2001 in order to have data for planning the warehouse system needs prior to September 1, 2001. Although burley farmers may wait until the effective date of this rule to submit their information, they are encouraged to report now to facilitate the marketing of their crops. They may make changes during scheduled redesignation periods.

List of Subjects in 7 CFR Part 1464

Imports, Tobacco.

Accordingly, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1; 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, Pub. L. 106–113, Stat. 1135 and Pub. L. 106–224.

2. Revise § 1464.2 (b)(2) introductory text, (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), (b)(2)(v) and (b)(2)(vii) to read as follows:

§ 1464.2 Availability of price support.

* * * * *

(b) * * *

(2) *Special requirements for flue-cured and burley tobacco.* Price support will be available only on flue-cured and burley tobacco that has been designated for sale at specific warehouses by the producer under the following conditions:

* * * * *

(ii) *Producer designation of warehouses.* Producers will be required, as a condition of price support, to designate the warehouses at which they will market their tobacco.

(A) For flue-cured tobacco such designations may be at any warehouse or warehouses in any market within a radius of 100 miles from the county seat of the county in which the farm is located, or if such farm is physically within two counties, then from the county seat of the county in which the county FSA office administering that farm is located. To the extent there are less than eight markets within such radius, any warehouse or warehouses in any of the eight markets nearest to the county seat may be designated. A producer may obtain price support only in a warehouse which the producer has designated, and at each such warehouse only with respect to the quantity of tobacco designated for sale at such warehouse.

(B) For burley tobacco such designations may be at any warehouse or warehouses in any burley market.

(iii) *When producer designations shall be made.* Producers must designate the warehouse(s) at which they will market their tobacco during a period that shall be announced beforehand by the local county FSA office. Unless extended by the Deputy Administrator, the period for making designations shall be before May 31 each year for flue-cured tobacco and August 31 each year for burley tobacco. Producers who lease quota or whose farm is reconstituted (the combining or dividing of a farm due to a change in operation) after such period may designate the warehouse(s) at which their tobacco will be marketed according to procedures to be established by the Deputy Administrator, Farm Programs, FSA. Producers who have designated warehouses that cease to operate or cease to have tobacco inspection or price support available may change their designations at any time after such occurrences. Producers who have designated warehouses whose inspection services have been temporarily suspended for any reason for the equivalent of at least one sales day may change their designation at any time after such occurrences. Redesignation (changes in warehouse(s) designated or in pounds designated to a warehouse) or designations for farms that have not previously designated tobacco may be made by producers during the five business days ending on the first Friday of each month during the flue-cured or burley, as applicable, tobacco marketing season. Such redesignation or initial designation shall be made on any one day of each redesignation period. Such redesignation or initial designation shall be effective on the second Monday following the Friday on which the redesignation period ends.

(iv) *Form and content of designations.* For flue-cured tobacco a designation shall be made for each warehouse at which a producer desires to market tobacco by executing a form provided by the county FSA office. The producer will be required to indicate on such form the name of the warehouse or warehouses designated by the producer and the pounds of flue-cured tobacco the producer desires to sell at such warehouse as well as any other information required to be stated on such form. For burley tobacco a designation shall be made for each warehouse, receiving station or dealer at which a producer desires to market tobacco by executing a form provided by the county FSA office. The producer will be required to indicate on such form the name of the warehouse(s), receiving station(s) or dealer(s) designated by the producer and the pounds of burley tobacco the producer desires to sell at such warehouse, receiving station or dealer as well as any other information required to be stated on such form.

(v) *Entering designation information.* For flue-cured tobacco, the warehouse code number of the warehouse the producer has designated will be indicated on the farm marketing card. For burley tobacco, the warehouse, receiving station, or dealer code number of the warehouse, receiving station or dealer the producer has designated will be indicated on the farm marketing card. If an effective date is determined in accordance with paragraph (b)(2)(iii) of this section, such effective date will be shown on the farm marketing card. For flue-cured tobacco, if the producer has not designated a warehouse, a warehouse code will not be shown on the marketing card. Changes in designation by the producer shall be accomplished by the producer returning the marketing card to the county FSA office and requesting the transfer of any unmarketed pounds of flue-cured or burley tobacco shown on any marketing card to another eligible warehouse, receiving station or dealer, if applicable.

* * * * *

(vii) *Availability of designation information.* Each county FSA office shall send designations received to the Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, North Carolina for flue-cured tobacco, Burley Tobacco Growers Cooperative Association, Lexington, Kentucky and Burley Stabilization Corporation, Knoxville, Tennessee for burley tobacco, following each designation period and each period for changing designations. That association(s) shall inform the Flue-Cured Tobacco Advisory Committee or the Burley Tobacco Advisory Committee, as applicable, of the pounds designated to each

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warehouse and the pounds of any undesignated or non-auction tobacco that, for the purpose of recommending opening dates and selling schedules in accordance with part 29 of this title, is available for apportioning for sale at each warehouse. That association also shall furnish each warehouse the name and address of the producers who designated the warehouse, the pounds each designated and the pounds that represent 103 percent of the marketing quota of each such producer. The Director, Tobacco and Peanuts Division, shall furnish each receiving station the name and address of the producers who designated the receiving station, the pounds each designated and the pounds that represent 103 percent of the marketing quota of each such producer.

* * * * *

3. Revise § 1464.7(d) to read as follows:

§ 1464.7 Eligible producer.

* * * * *

(d) In addition to meeting all other requirements that apply elsewhere, including (but not limited to) the warehouse designation provisions of § 1464.2, must not be ineligible, in accordance with part 1400 of this title, to receive price support payments, loans and benefits.

* * * * *

4. Revise § 1464.10(i)(1)(i), (i)(2) and (i)(3)(i) to read as follows:

§ 1464.10 No-net-cost tobacco fund or account.

* * * * *

(i) * * *

(1) * * *

(i) From any dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

* * * * *

(2) A dealer, receiving station official or warehouse operator may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) * * *

(i) From the dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

* * * * *

Signed at Washington, DC, on December 21, 2001.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–185 Filed 1–3–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1721

RIN 0572–AB60

Extensions of Payments of Principal and Interest

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is adding procedures and conditions under which Borrowers may request extensions of the payment of principal and interest. These procedures and conditions are stated in RUS Bulletin 20–5:320–2, Extensions of Payments of Principal and Interest, dated May 10, 1972, and RUS Bulletin 20–23, Section 12 Extensions for Energy Resources Conservation Loans, dated December 8, 1980; however, these procedures and conditions were not codified in the Code of Federal Regulations. This regulation will set forth procedures and conditions under which Borrowers may request extensions of principal and interest. RUS will rescind upon the effective date of this regulation RUS Bulletin 20–5:320–2, and RUS Bulletin 20–23.

DATES: This rule will become effective on February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–205–3660.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeals procedures, if any are required, must be exhausted prior to initiating an action against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric program provides loans and loan guarantees to Borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0572–0123.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with state and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

Background

On January 9, 2001, at 66 FR 1604, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR part 1721—Extensions of Payments of Principal and Interest, which proposed adding procedures and conditions under which Borrowers may request extensions of the payment of principal and interest. These procedures and conditions are stated in RUS Bulletin 20–5:320–2, Extensions of Payments of Principal and Interest, dated May 10, 1972, and RUS Bulletin 20–23, Section 12 Extensions for Energy Resources Conservation Loans, dated December 8, 1980; however, these procedures and conditions were not codified in the Code of Federal Regulations. This final rule will set forth procedures and conditions under which Borrowers may request extensions of principal and interest. RUS will rescind upon the effective date of this regulation RUS Bulletin 20–5:320–2, and RUS Bulletin 20–23.

Written comments on the proposed rule were received and they are summarized as follows:

RUS received comments dated March 8, 2001, from the National Rural Electric Cooperative Association (NRECA), Oregon Rural Electric Cooperative Association (ORECA), and Harney Electric Cooperative, Inc. (HEC). The three cooperatives suggested that the language in § 1721.104(a)(2) be revised to reflect that the factors for determining qualifications for deferment of RUS loan payments listed not be inclusive, but only examples of the kinds of factors RUS should consider. RUS agrees with this comment and has made the change to the final rule wording under § 1721.104(a)(2).

In addition, NRECA commented on:

Section 1721.104(a)(2)(iv) Need to substantially upgrade a Borrower's system to bring it into compliance with the National Electric Safety Code (NESC).

NRECA states it is unclear as to the appropriateness of this factor since it is inconsistent with other RUS practices. Current RUS practices require annual certifications and assurances at loan application that systems are being properly maintained. RUS is in agreement with NRECA's comment. RUS requires and borrowers conform to annual certifications and assurances that systems are being properly operated and maintained, and these assurances include conformance to NESC provisions. RUS has removed § 1721.104(a)(2) from this final rule.

Section 1721.104(b) Deferments for energy resource conservation (ERC) loans.

NRECA states it is unclear to what extent this proposal is significantly different from the existing RUS Bulletin 20–23, dated December 8, 1980, which is being amended and codified through this regulation. As codified, the terms for ERC deferments contain fewer restrictions and limitations on the terms for the corresponding ERC loans between the Borrower and its members. Generally speaking, the terms of such loans will now be left to the discretion of the Borrower's management. RUS Bulletin 20–23, section 12, Extensions for Energy Resource Conservation Loans, dated December 8, 1980, will be rescinded upon publication of this final rule.

Section 1721.104(d)(2) Deferments for contributions-in-aid of construction.

NRECA states that it is unclear whether the calculation methodology of construction costs would be made without regard to contribution-in-aid of construction (CIAC). Should construction costs be calculated net of CIAC, a Borrower's line extension policy would have a significant impact on the eligible amount available for deferments. RUS agrees and the final rule wording has been changed to clarify the calculation methodology.

Other—Deferments for distributed generation projects. NRECA recommends RUS consider allowing a Borrower to defer principal payments to finance properly coordinated distributed generation projects. RUS has taken this comment under advisement and will consider whether to publish a proposed rule which would include deferments for certain distributed generation projects.

Additionally, under § 1721.103(d) RUS is clarifying that the maturity date of any such loan does not extend to a date beyond forty (40) years from the date of the note (not the date of the loan as indicated in the proposed rule).

List of Subjects in 7 CFR Part 1721

Electric power, Loan programs—energy, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR chapter XVII, part 1721 as follows:

PART 1721—POST LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

1. The authority citation for part 1721 continues to read:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. Add subpart B to read as follows:

Subpart B—Extensions of Payments of Principal and Interest

Sec.

1721.100 Purpose.
1721.101 General.
1721.102 Definitions.
1721.103 Policy.
1721.104 Eligible purposes.
1721.105 Application documents.
1721.106 Repayment of deferred payments.
1721.107 Agreement.
1721.108 Commencement of the deferment.
1721.109 OMB Control Number.

Subpart B—Extensions of Payments of Principal and Interest

§ 1721.100 Purpose.

This subpart contains RUS procedures and conditions under which Borrowers of loans made by RUS may request RUS approval for extensions for the payment of principal and interest.

§ 1721.101 General.

(a) The procedures in this subpart are intended to provide Borrowers with the flexibility to request an extension of principal and interest as authorized under section 12(a) of the RE Act and section 236 of the Disaster Relief Act of 1970 (Public Law 91–606).

(b) The total amount of principal and interest that has been deferred, including interest on deferred principal, will be added to the principal balance, and the total amount of principal and interest that has been deferred will be reamortized, through level payment, over the remaining life of the applicable note beginning in the first year the deferral period ends.

(c) Payment of principal and interest will not be extended more than 5 years after such payment is due as originally scheduled. However, in cases where the extension is being granted because, at the sole discretion of the Administrator, a severe hardship has been experienced, the Administrator may grant a longer extension provided that the maturity date of any such loan does not extend to a date beyond forty (40) years from the date of the note.

§ 1721.102 Definitions.

The definitions contained in 7 CFR 1710.2 are applicable to this subpart unless otherwise stated.

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§ 1721.103 Policy.

(a) In reviewing requests for extension of payment of principal and interest, consideration shall be given to the effect of such extensions on the security of the Government's loans, and on the ability of the Borrower to achieve program objectives. It is the policy of RUS to extend the time for payment of principal and interest on the basis of findings that such extension does not impair the security and feasibility of the Government's loans and:

(1) Is essential to the effectiveness of the Borrower's operations in achieving RUS program objectives which include providing reliable, affordable electricity to RE Act beneficiaries;

(2) Is necessary to help a Borrower place its operations on a more stable financial basis and thereby provide assurance of repayment of loans within the time when payments of such loans are due under the terms of the note or notes as extended; or

(3) Is otherwise in the best interest of the Government.

(b) Extensions will be given in the minimum amount to achieve the purpose of the extension.

§ 1721.104 Eligible purposes.

(a) *Deferments for financial hardship.* (1) In cases of financial hardship, a Borrower may request that RUS defer principal or interest or both. RUS will consider whether the deferral will help a Borrower place its operations on a more stable financial basis and thereby provide assurance of repayment of loans within the time when payment of such loans are due under the terms of the note or notes as extended.

(2) RUS will determine whether a Borrower qualifies for the deferment on a case-by-case basis, considering such factors as the following:

(i) Substantial unreimbursed or uninsured expenses relating to storm damage;

(ii) Loss of large power load (as defined in § 1710.7(c)(6)(ii) of this chapter, Large retail power contracts); or

(iii) Substantial loss of consumers or load due to hostile annexations and condemnations, without adequate compensation.

(b) *Deferments for energy resource conservation (ERC) loans.*

(1) A Borrower may request that RUS defer principal payments to make funds available to the Borrower's consumers to conserve energy. Amounts deferred under this program can be used to cover the cost of labor and materials for the following energy conservation measures:

(i) Caulking;

(ii) Weather-stripping;

(iii) Heat pump systems (including water source heat pumps);

(iv) Heat pumps, water heaters, and central heating or central air conditioning system replacements or modifications, which reduce energy consumption;

(v) Ceiling insulation;

(vi) Wall insulation;

(vii) Floor insulation;

(viii) Duct insulation;

(ix) Pipe insulation;

(x) Water heater insulation;

(xi) Storm windows;

(xii) Thermal windows;

(xiii) Storm or thermal doors;

(xiv) Electric system coordinated customer-owned devices that reduce the maximum kilowatt demand on the electric system;

(xv) Clock thermostats; or

(xvi) Attic ventilation fans.

(2) ERC loans will be amortized over not more than 84 months, without penalty for prepayment of principal.

(c) *Deferments for renewable energy projects.* (1) A Borrower may request that RUS defer principal payments to enable the Borrower to finance renewable energy projects. Amounts deferred under this program can be used to cover costs to install all or part of a renewable energy system including, without limitation:

(i) Energy conversion technology;

(ii) Electric system interface;

(iii) Delivery equipment;

(iv) Control equipment; and

(v) Energy consuming devices.

(2) A Borrower may request that RUS defer principal payments for the purpose of enabling the Borrower to provide its consumers with loans to install all or part of customer-owned renewable energy systems up to 5kW.

(3) A renewable energy system is defined in § 1710.2 of this chapter.

(4) For the purpose of this subpart, a renewable energy project consists of one or more renewable energy systems.

(d) *Deferments for contributions-in-aid of construction.*

(1) A Borrower may request RUS to defer principal payments to enable the Borrower to make funds available to new full time residential consumers to assist them in paying their share of the construction costs (contribution-in-aid of construction) needed to connect them to the Borrower's system.

(2) Amounts available for this purpose will be limited to the amount of the construction costs that are in excess of the average cost per residential consumer incurred by the Borrower to connect new full time residential consumers during the last calendar year for which data are available. The average cost per residential consumer is the total cost incurred by the Borrower and will not be reduced by the amounts received as a contribution-in-aid of construction.

§ 1721.105 Application documents.

(a) *Deferments for financial hardship.* A Borrower requesting a section 12 deferment because of financial hardship must submit the following:

(1) A summary of the financial position of the Borrower, based on the latest information available (usually less than 60 days old).

(2) A copy of the board resolution requesting an extension due to financial hardship.

(3) A 10-year financial forecast of revenues and expenses on a cash basis, by year, for the period of the extension and 5 years beyond to establish that the remaining payments can be made as rescheduled.

(4) A listing of notes or portions of notes to be extended, the effective date for the beginning of the extension, and the length of the extension.

(5) A narrative description of the nature and cause of the hardship and the strategy that will be instituted to mitigate or eliminate the effects of the hardship.

(b) *Deferments for energy resource conservation loans.* A Borrower requesting principal deferments for an ERC loan program must submit the following information:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of offering an ERC loan program to its members and describing the details of the program.

(2) A copy of the board resolution establishing the ERC loan program.

(c) *Deferments for renewable energy projects.* A Borrower requesting principal deferments for its renewable energy project must submit the following information:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of financing a renewable energy project and describing the details of the project.

(2) A copy of the board resolution establishing the renewable energy project.

(d) *Deferments for contribution-in-aid of construction.* A Borrower requesting principal deferments for contribution-in-aid of construction must submit the following information:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of offering a contribution-in-aid of construction program and describing the details of the program.

(2) A copy of the board resolution establishing the contribution-in-aid of construction program.

(3) A summary of the calculations used to determine the average cost per residential consumer. (See § 1721.104 (e)(2)).

§ 1721.106 Repayment of deferred payments.

(a) *Deferments relating to financial hardship.* The total amount of principal and interest that has been deferred, including interest on deferred principal, will be added to the principal balance, and the total amount of principal and interest that has been deferred will be reamortized over the life of the applicable note beginning in the first year the deferral period ends. For example: the amount of interest deferred in years 2001, 2002, 2003, 2004, and 2005, will be added to the principal balance and reamortized over the life of the applicable note for repayment starting in year 2006.

(b) *Deferments relating to the ERC loan program, renewable energy project, and the contribution-in-aid of construction.* An extension agreement is for a term of two (2) years. The installment will be recalculated each time the Borrower defers the payment of principal and recognition of the deferred amount will begin with the next payment. For example: the amount deferred in the October payment will be reamortized over a 84 month period starting with the next payment (November if paying on a monthly basis). When a Borrower defers principal under any of these programs the scheduled payment on the account will increase by an amount sufficient to pay off the deferred amount, with interest, by the date specified in the agreement (usually 84 months (28 quarters)).

§ 1721.107 Agreement.

After approval of the Borrower's request for a deferment of principal and interest, an extension agreement, containing the terms of the extension, together with associated materials, will be prepared and forwarded to the Borrower by RUS. The extension agreement will then be executed and returned to RUS by the Borrower.

§ 1721.108 Commencement of the deferment.

The deferment of principal and interest will not begin until the extension agreement and other supporting materials, in form and substance satisfactory to RUS, have been executed by the Borrower and returned to RUS. Examples of other supporting materials are items such as approving legal opinions from the Borrower's attorney and approvals from the relevant regulatory body for extending the maturity of existing debt and for the additional debt service payment incurred.

§ 1721.109 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0123.

Dated: December 18, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–234 Filed 1–3–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM204; Special Conditions No. 25–194–SC]

Special Conditions: Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Electronic Primary Flight Display systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 27, 2001.

Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM204, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM204.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On November 9, 2001, ElectroSonics, 4391 International Gateway, Columbus, Ohio, applied for a Supplemental Type Certificate (STC) to modify Dassault Aviation Model Mystere-Falcon 200,

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20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 are small transport category airplanes.

The Dassault Aviation Model Mystere-Falcon 200 airplanes are powered by two Garrett Turbine Engine Company ATF3–6A–4C turbine engines with a maximum takeoff weight of 32,000 pounds.

The Dassault Aviation Model Mystere-Falcon 20–C5, 20–D5, 20–E5 and 20–F5 airplanes are powered by two Garrett Engine Division Model TFE–5AR–2C engines with a maximum takeoff weight of 29,000 pounds. These airplanes operate with a 2-pilot crew and can hold up to 10 passengers.

The modification of these airplanes incorporates the installation of a Universal Avionics Electronic Flight Instrument System (EFI–550). The EFI–550 is a replacement for the existing Analog Flight Instrumentation, while also providing additional functional capability and redundancy in the system. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, ElectroSonics must show that the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A7EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations included in the certification basis for the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes include Civil Air Regulations 4b, effective December 1953, through Amendment 4b–12; Special Regulation 422B; and 14 CFR part 25, as amended to incorporate Amendments 25–1 through 25–43.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics will incorporate dual Electronic Primary Flight Display systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics.

These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

TABLE 1—Continued

Frequency	Field strength (volts per meter)	
	Peak	Average

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Dassault Aviation Model Mystere-Falcon 200, 20–C5, 20–D5, 20–E5, and 20–F5 airplanes modified by ElectroSonics.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 27, 2001.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–247 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–02–AD; Amendment 39–12514; AD 2001–23–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 747 series airplanes. That AD currently requires repetitive detailed visual inspections to find discrepancies of the installation of the midspar fuse pins of the inboard and outboard struts, and follow-on actions, if necessary. That AD also mandates accomplishment of a terminating modification. This document corrects the omission of the phrase "amendment 39–12514" from the first line of the AD. This correction is necessary to ensure that the amendment number is stated at the beginning of the AD.

DATES: Effective December 31, 2001.

The incorporation by reference of Boeing Service Bulletin 747–54A2206, Revision 2, dated May 17, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 31, 2001 (66 FR 58913, November 26, 2001).

The incorporation by reference of Boeing Service Bulletin 747–54A2206, Revision 1, dated February 22, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 21, 2001 (66 FR 13424, March 6, 2001).

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 15, 2001, the Federal Aviation Administration (FAA) issued AD 2001–23–15, amendment 39–12514 (66 FR 58913, November 26, 2001), which applies to certain Boeing Model 747 series airplanes. That AD requires repetitive detailed visual inspections to find discrepancies of the installation of the midspar fuse pins of the inboard and outboard struts, and follow-on actions, if necessary. That AD also provides for an optional terminating modification for the repetitive inspections. The actions required by that AD are intended to find and fix discrepancies of the installation of the midspar fuse pins, which could result in loss of the secondary retention capability of the fuse pins, migration of the fuse pins, and consequent loss of the strut and engine from the airplane.

Need for the Correction

The FAA has determined that a correction to AD 2001–23–15 is necessary. The correction will add the amendment number (amendment 39–12514) to the first line of the AD. That number was inadvertently omitted from the final rule, as published.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment

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to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 31, 2001.

Since this action only corrects the inadvertent omission of the amendment number from the first line of the AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2001–23–15 Boeing: Amendment 39–12514. Docket 2001–NM–02–AD. Supersedes AD 2001–05–05, amendment 39–12141.

Applicability: Model 747 series airplanes, line numbers 1 through 1046 that have accomplished Airworthiness Directives 95–10–16, 95–13–05, 95–13–06, or 95–13–07; and line numbers 1047 through 1271 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of the installation of the midspar fuse pins of the inboard and outboard strut, which could result in loss of the secondary retention capability of the fuse pins, migration of the fuse pins, and consequent loss of the strut and engine from the airplane; accomplish the following:

Restatement of the Requirements of AD 2001–05–05

Inspections/Follow-On Actions

(a) At the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable: Do a detailed visual inspection to find discrepancies (*e.g.*, incorrect thread protrusion, which is less than two threads protruding from the nut between the nut and the secondary retention washer; incorrect gap between the fuse pin primary nut and secondary retention washer; cracked or broken torque stripe) of the installation of the midspar fuse pins of the inboard and outboard struts, per Figure 2 of Boeing Service Bulletin 747–54A2206, Revision 1, dated February 22, 2001, or Revision 2, dated May 17, 2001.

(1) For airplanes having the production equivalent of one of the AD's listed in Table 1 of this AD: Do the inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before the accumulation of 8,000 total flight hours, or within 24 months since manufacture of the airplane, whichever occurs first.

(ii) Within 90 days after March 21, 2001 (the effective date of AD 2001–05–05, amendment 39–12141).

(2) For airplanes modified per one of the AD's listed in Table 1 of this AD: Do the inspection at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Table 1 follows:

TABLE 1

AD number	Amendment number
AD 95–10–16	39–9233
AD 95–13–05	39–9285
AD 95–13–06	39–9286
AD 95–13–07	39–9287

(i) Within 8,000 flight hours or 24 months after the modification, whichever occurs first.

(ii) Within 90 days after March 21, 2001.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(A) If no discrepancy is found: Repeat the inspection at intervals not to exceed 8,000 flight hours or 24 months, whichever occurs first, until you do the terminating modification specified in paragraph (b) of this AD.

(B) If any discrepancy is found, and the primary nut has backed off and contacts the secondary retention washer: Before further flight, do the terminating modification specified in paragraph (b) of this AD.

(C) If any discrepancy is found, and the primary nut does not contact the secondary retention washer: Repeat the inspection at intervals not to exceed 90 days. Within 18 months after the initial finding, or before March 21, 2001, whichever occurs later, do the terminating modification specified in paragraph (b) of this AD.

Note 4: Inspections done prior to the effective date of this AD per Boeing Alert Service Bulletin 747–54A2206, dated October 19, 2000, are acceptable for compliance with the inspections required by paragraph (a) of this AD.

New Requirements of this AD

Terminating Action

(b) Within 6 years after the effective date of this AD: Do the terminating modification (replacement of the primary nut of the midspar fuse pin, installation of torque strip, a detailed visual inspection of the fuse pin threads for damage, and replacement, if necessary) per Figure 3 of Boeing Service Bulletin 747–54A2206, Revision 1, dated February 22, 2001, or Figure 3 of Boeing Service Bulletin 747–54A2206, Revision 2, dated May 17, 2001. Doing this modification ends the repetitive inspections required by this AD.

Note 5: Doing the terminating modification prior to the effective date of this AD per Boeing Alert Service Bulletin 747–54A2206, dated October 19, 2000, is acceptable for compliance with the terminating action required by paragraph (b) of this AD.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Any alternative method of compliance which was approved previously in accordance with AD 2001–05–05 is approved for compliance with this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 747–54A2206, Revision 1, dated February 22, 2001; or Boeing Service Bulletin 747–54A2206, Revision 2, dated May 17, 2001.

(1) The incorporation by reference of Boeing Service Bulletin 747–54A2206, Revision 2, dated May 17, 2001, was approved previously by the Director of the Federal Register, as of December 31, 2001 (66 FR 58913, November 26, 2001).

(2) The incorporation by reference of Boeing Service Bulletin 747–54A2206, Revision 1, dated February 22, 2001, was approved previously by the Director of the Federal Register as of March 21, 2001 (66 FR 13424, March 6, 2001).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 31, 2001.

Issued in Renton, Washington, on December 20, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–84 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–132–AD; Amendment 39–12586; AD 2001–26–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires a one-time inspection of the forward and aft lower bogies of the left- and right-hand sliding windows of the flightcrew compartment for the presence of a lock pin. If the lock pin is missing, this amendment requires corrective action. This action is necessary to prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on October 26, 2001 (66 FR 54173). That action proposed to require a one-time inspection of the forward and aft lower bogies of the left- and right-hand sliding windows of the flightcrew compartment for the presence of a lock pin. If the lock pin is missing, that action also proposed to require corrective action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Allow Credit for Previously Accomplished Work

The manufacturer requests that the FAA give credit for the inspection and corrective actions accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Service Bulletin A320–56–1007, dated January 21, 2000.

The FAA concurs. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has approved this service bulletin for the accomplishment of the inspection and corrective actions. The FAA finds that the procedures in the original issue of the service bulletin are identical to those in Revision 01 of Airbus Service Bulletin A320–56–1007, dated February 9, 2001 (which is listed as the appropriate source of service information for accomplishment of the actions in this AD). Therefore, we have added a new **Note 3** in this final rule to give credit to operators that may have accomplished the required actions prior to the effective date of this AD in accordance with the original issue of the service bulletin. We have renumbered the succeeding notes accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 77 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

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under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–20 Airbus Industrie: Amendment 39–12586. Docket 2001–NM–132–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, as listed in Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position, accomplish the following:

Inspection

(a) Within one year after the effective date of this AD: Perform a one-time detailed visual inspection of the forward and aft lower bogie of the left-hand and right-hand sliding windows to check for the presence of a lock pin, in accordance with Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If the inspection required by paragraph (a) of this AD reveals that a lock pin is missing: Prior to further flight, perform the action required by either paragraph (b)(1) or (b)(2) of this AD.

(1) Install a new bogie equipped with a lock pin, in accordance with paragraph C.(1) of the Accomplishment Instructions of Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001, or

(2) Perform a temporary repair in accordance with paragraph C.(2) of the Accomplishment Instructions of Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001. Within 500 flight hours of the temporary repair, install a new bogie equipped with a lock pin, in accordance with paragraph C.(1) of the Accomplishment Instructions of the service bulletin.

Note 3: Inspection and corrective actions accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–56–1007, dated January 21, 2000, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–56–1007, Revision 01, including Appendix 01, dated February 9, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–518–157(B), dated December 13, 2000.

Effective Date

(f) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–9 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–255–AD; Amendment 39–12587; AD 2001–26–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires replacement of the low-pressure solenoid valve for the crew oxygen supply with a modified valve. This action is necessary to prevent faulty operation of the low-pressure solenoid valve for the crew oxygen supply, which could prevent oxygen from being supplied to the airplane crew when needed, such as in the event of smoke in the cabin or rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on September 25, 2001 (66 FR 48993). That action proposed to require replacement of the low-pressure solenoid valve for the crew oxygen supply with a modified valve.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter concurs with the content of the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 111 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,660, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–21 Airbus Industrie: Amendment 39–12587. Docket 2001–NM–255–AD.

Applicability: Model A319, A320, and A321 series airplanes; on which Modification 21946 (Airbus Service Bulletin A320–35–1003) or 21999 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent faulty operation of the low-pressure solenoid valve for the oxygen supply, which could prevent oxygen from being supplied to the airplane crew when needed, such as in the event of smoke in the cabin or rapid depressurization of the airplane, accomplish the following:

Replacement

(a) Within 16 months after the effective date of this AD, replace the low-pressure solenoid valve, part number (P/N) DVE90–04, for the crew oxygen supply with a modified valve, P/N DVE90–05 or DVE90–06, as applicable. Do the replacement according to Airbus Service Bulletins A320–35–1003, Revision 1, dated January 28, 1993; or A320–35–1016, dated July 31, 1996; as applicable.

Note 2: Airbus Service Bulletin A320–35–1003, Revision 1, refers to EROS Service Bulletin DVE90–35–40, dated September 10, 1991, as the appropriate source of service information for modifying the low-pressure solenoid valve for the crew oxygen supply.

Note 3: Airbus Service Bulletin A320–35–1016 refers to EROS Service Bulletin DVE90–35–49, dated January 31, 1995, as the appropriate source of service information for modifying the low-pressure solenoid valve for the oxygen supply.

Spares

(b) As of the effective date of this AD, no person shall install a low-pressure oxygen valve, part number DVE90–04, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Airbus Service Bulletin A320–35–1003, Revision 1, dated January 28,

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1993; or Airbus Service Bulletin A320–35–1016, dated July 31, 1996; as applicable. Airbus Service Bulletin A320–35–1003, Revision 1, dated January 28, 1993, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3, 5	1	Jan. 28, 1998.
4, 6	Original	Aug. 26, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 2001–237(B) R1, dated July 25, 2001.

Effective Date

(f) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–90–AD; Amendment 39–12588; AD 2001–26–22]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes, that requires a one-time inspection of the S4 and S5 static pipes of the pitot static system for discrepancies, and follow-on corrective actions, if necessary. This action is necessary to prevent failure of the S4 and S5 static pipes and consequent failure of the maximum differential pressure protection for the airplane, which could lead to the fuselage of the airplane being overstressed and result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes was published in the **Federal Register** on August 23, 2001 (66 FR 44311). That action proposed to require a one-time inspection of the S4 and S5 static pipes of the pitot static system for discrepancies, and follow-on corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Revised Statement of Unsafe Condition

The commenter, the airplane manufacturer, requests that the FAA revise the wording of the statement of unsafe condition as it appears in several sections of the proposed AD. The proposed AD states the unsafe condition as "holes in the static pipes, erroneous input to the instrumentation and warning systems associated with the pilot's instruments, and consequent reduced controllability of the airplane." The commenter states that the consequence of holes in the static pipes is more accurately characterized as "erroneous input into instrumentation associated with the maximum differential pressure protection for the aircraft."

The FAA concurs. Upon further review of the detail of the design and function of the S4 and S5 static types, we agree that the primary purpose of the S4 and S5 static pipes is maintenance of the maximum differential pressure protection for the airplane. If these pipes fail, the maximum differential pressure protection will fail, which could lead to the fuselage of the airplane being overstressed and result in reduced structural integrity of the airplane. Therefore, we have revised the statement of unsafe condition in the Summary section and the body of this AD accordingly.

Explanation of Change to Applicability Statement

The applicability statement of the proposed AD reads, "Model Avro 146–RJ series airplanes * * * on which modification HCM01080W has been performed." For clarity, we have revised the wording of the applicability statement in this final rule to read, "Model Avro 146–RJ series airplanes * * * on which modification HCM01080W is installed."

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 42 Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,520, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–22 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–12588. Docket 2001–NM–90–AD.

Applicability: Model Avro 146–RJ series airplanes, certificated in any category, on which modification HCM01080W is installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the S4 and S5 static pipes of the pitot static system and consequent failure of the maximum differential pressure protection for the airplane, which could lead to the fuselage of the airplane being overstressed and result in reduced structural integrity of the airplane, accomplish the following:

General Visual Inspection/Follow-On Corrective Actions

(a) Within 90 days after the effective date of this AD, do a general visual inspection of the S4 and S5 static pipes of the pitot static system for discrepancies (i.e., chafing, damage to pipes, inadequate clearance), per BAE Systems (Operations) Limited Inspection Service Bulletin ISB.34–338, dated February 14, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If any chafing is found, before further flight, do the applicable follow-on actions per the Accomplishment Instructions of the service bulletin. Where the service bulletin specifies to contact the manufacturer for disposition of certain repair conditions, the repair of those conditions is to be accomplished per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

(2) If no chafing is found and the clearance between the static pipes and the adjacent avionics structure is less than 0.10 inch, before further flight, do the applicable follow-on actions per the Accomplishment Instructions of the service bulletin.

(3) If no chafing is found and a minimum clearance of 0.10 inch exists between the static pipes and the adjacent avionics structure, no further action is required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a)(1) of this AD, the actions shall be done in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.34–338, dated February 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 008–02–2001.

Effective Date

(e) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–241–AD; Amendment 39–12589; AD 2001–26–23]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires replacement of the observer's seat latch assembly with a new, improved seat latch assembly. This action is necessary to prevent the observer's seat from separating from its attachment points in the event of an accident or emergency landing, due to an understrength seat latch assembly. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on September 25, 2001 (66 FR 48991). That action proposed to require replacement of the observer's seat latch assembly with a new, approved seat latch assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability Statement

In the applicability statement of the proposed rule, the FAA inadvertently included Model DHC–8–314 airplanes. This model is not listed on the type certificate data sheet and has been removed from the applicability statement of this final rule.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,372 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $56,420, or $1,612 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–23 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12589. Docket 2001–NM–241–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 408, 413, 434 through 507 inclusive; excluding serial numbers 452, 464, 490, and 506.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the observer's seat from separating from its attachment points in the event of an accident or emergency landing, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the observer's seat latch assembly by incorporating ModSum 8Q100890 (including removing and discarding existing latch and installing serrated plate, shim, and new latch assembly), in accordance with Bombardier Service Bulletin 8–25–307, dated November 13, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Bombardier Service Bulletin 8–25–307, dated November 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–18, dated May 4, 2001.

Effective Date

(e) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–290–AD; Amendment 39–12590; AD 2001–26–24]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and C–9 airplanes that requires replacing the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. The actions specified by this AD are intended to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes was published in the **Federal Register** on June 6, 2001 (66 FR 30345). That action proposed to require replacing the transformer ballast assembly in the first officer's console with a new, improved ballast assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter indicates that its DC–9 airplanes will be retired from service within the proposed compliance time of the AD and that, therefore, it has no comment.

Request To Reference Latest Service Bulletin

Several commenters request that the proposed AD refer to the latest service bulletin. They state that McDonnell Douglas Alert Service Bulletin DC9–33A114, dated November 1, 1999 (which is referenced in the notice of proposed rulemaking (NPRM) as the appropriate source of service information), erroneously indicates that the ballast assembly to be replaced is located in the first officer's console rather than in the pilot's console. A revision to the service bulletin (Revision 01, dated February 15, 2000) corrects the error and, therefore, should be cited in the AD as the service bulletin to use.

The FAA concurs. Since issuance of the NPRM, the FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000. The service bulletin describes procedures for replacing the transformer ballast assembly with a new, improved ballast assembly and identifies the pilot's console as the location of the ballast assembly. For clarification purposes, we have revised this AD to refer to the "pilot's console" rather than the "first officer's console" as the location of the transformer ballast assembly to be replaced.

Request To Allow Replacement With a "New or Serviceable" Ballast Assembly

Another commenter asks that operators be allowed to replace the existing ballast assembly with either a serviceable ballast assembly or a new, improved ballast assembly. The commenter suggests that replacement of

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a ballast assembly with a serviceable improved ballast assembly would provide an acceptable level of safety.

The FAA does not concur, because the part numbers of the old (serviceable) transformer ballast assembly are different from those of the new, improved assembly. Thus, there would be no way to tell whether ballast assemblies with the old part numbers were "old, unimproved" or "old, improved" assemblies.

Additional Change to Final Rule

The number of airplanes of U.S. registry affected by this AD has decreased since publication of the NPRM from approximately 543 to approximately 475. The estimated cost impact of the rule on U.S. operators has decreased correspondingly from between $781,377 and $1,042,560 (depending on the cost of parts) to between $683,525 and $912,000.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 575 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 475 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost between $1,379 and $1,860 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $683,525 and $912,000, or between $1,439 or $1,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–24 McDonnell Douglas: Docket 99–NM–290–AD. Amendment 39–12590

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; and C–9 airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the transformer ballast assembly from the pilot's console with a new, improved transformer ballast assembly, in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a transformer assembly, part number BA170–1, –11, –21, or –MOD.B, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–5 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–104–AD; Amendment 39–12542; AD 2001–24–25]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes. That AD currently requires modification of the spoiler control system, and installation of protective interlock box assemblies in the spoiler circuit. This document corrects the affected models specified in the "Applicability" of the AD. This correction is necessary to ensure that the appropriate affected airplane models are identified correctly.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64114, December 12, 2001).

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On November 28, 2001, the Federal Aviation Administration (FAA) issued AD 2001–24–25, amendment 39–12542 (66 FR 64114, December 12, 2001), which applies to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes. That AD requires modification of the spoiler control system, and installation of protective interlock box assemblies in the spoiler circuit. The actions required by that AD are intended to prevent smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane. That action is intended to address the identified unsafe condition.

Need for the Correction

The FAA has determined that a correction to AD 2001–24–25 is necessary. We note that the "Applicability" section of the AD specifies "Model DC–10–10, –20, –30, and –40 series airplanes and C–9 airplanes, as listed in Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001; certificated in any category." Although the applicability of the notice of proposed rulemaking (NPRM) was also stated incorrectly, the error was not noted until after publication of the final rule. However, all other references to the affected airplanes in the final rule are correct: "McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes." The correction will revise the "Applicability" section of the final rule to specify that the affected airplanes are "Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes."

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains January 16, 2002.

Since this action only corrects an inadvertent typographical error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2001–24–25 McDonnell Douglas: Amendment 39–12542. Docket 2001–NM–104–AD.

Applicability: Model DC–9–10, –20, –30, and –40 series airplanes, and C–9 airplanes, as listed in Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane; accomplish the following:

Modification of the Spoiler Control System

(a) Within 18 months after the effective date of this AD, modify the spoiler control system by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001, per the service bulletin.

Note 2: Modification per McDonnell Douglas Service Bulletin DC9–27–147, dated January 7, 1972; Revision 1, dated July 30, 1974; or Revision 2, dated May 9, 1975; before the effective date of this AD; is considered acceptable for compliance with paragraph (a) of this AD.

Installation of Protective Interlock Box Assemblies

(b) Prior to or in conjunction with the requirements of paragraph (a) of this AD,

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install protective interlock box assemblies in the spoiler circuit, per McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001, and McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64114, December 12, 2001). Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) The effective date of this amendment remains January 16, 2002.

Issued in Renton, Washington, on December 20, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–86 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–91–AD; Amendment 39–12576; AD 2001–23–12 R1]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document revises an existing airworthiness directive (AD) that applies to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. That AD currently requires a one-time review of records to determine whether an airplane has been repainted since its delivery from the factory; and a one-time inspection to detect damage associated with improper preparation for the repainting, and corrective action if necessary. The actions specified in that AD are intended to detect and correct damage to the aluminum skin of the airplane, which could result in a weakening of the structure of the airplane. This document corrects certain conditional requirements of the existing AD.

DATES: Effective December 31, 2001.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of December 31, 2001 (66 FR 58927, November 26, 2001).

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 15, 2001, the FAA issued AD 2001–23–12, amendment 39–12511 (66 FR 58927, November 26, 2001), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, to require a one-time review of records to determine whether an airplane has been repainted since its delivery from the factory; and a one-time inspection to detect damage associated with improper preparation for the repainting, and corrective action if necessary. That action was prompted by mandatory continuing airworthiness information from a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct damage to the aluminum skin of the airplane, which could result in a weakening of the structure of the airplane.

Need for the Correction

Information obtained recently by the FAA indicates that the final rule of this AD conveyed an inaccurate interpretation of a comment submitted on the proposed AD. The commenter had requested that paragraph "(B)(2)" of the proposed AD be revised to include a corrective action to immediately repaint the stripped areas, and to extend the compliance time to strip and repaint the airplane. As discussed in the response to the comments in AD 2001–23–12, the FAA concurred with the request and incorporated that instruction. However, the instruction was added to subparagraph (b)(2) when it appears the commenter intended the instruction to be inserted into subparagraph (b)(2)(ii)(B)(*2*).

The FAA has determined that a correction to AD 2001–23–12 is necessary. Under the current requirements of subparagraph (b)(2) of the AD, affected airplanes are allowed to operate for an additional 4,000 flight hours or 2 years with inadequate protective coating, which could subject the airplanes to damage (or further damage). This correction removes the requested language from subparagraph (b)(2) of the AD and incorporates the instruction into subparagraph (b)(2)(ii)(B)(*2*) to specify immediate repair of damage and delay the requirement to strip and repaint the airplane.

To clarify the 4,000-flight-hour/2-year compliance time for this conditional requirement, the FAA has added the phrase, "whichever occurs first."

In addition, the FAA has been advised that subparagraph (b)(2)(ii)(B)(*2*) of the proposed AD inaccurately specifies that the entire airplane must be repainted if damage is detected during the inspection and if an unapproved paint system had been used. The service bulletin specifies that the entire airplane must not be stripped and repainted if damage is found in only a certain section of the airplane—except for the forward and rear fuselage, stabilizer, and wing, which must always be stripped and repainted in total if any damage is found within the respective inspection area. The FAA did not intend that this AD differ from the service bulletin in that regard. This correction revises subparagraph (b)(2)(ii)(B)(*2*) to clarify the conditional requirement by referring to the service bulletin.

Correction of Publication

This document corrects these errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 31, 2001.

Since this action only corrects current requirements, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12511 (66 FR 58927, November 26, 2001), and by adding a new airworthiness directive (AD), amendment 39–12576, to read as follows:

2001–23–12 R1 Saab Aircraft AB: Amendment 39–12576. Docket 2001–NM–91–AD. Revises AD 2001–23–12, Amendment 39–12511.

Applicability: Model SAAB SF340A series airplanes having serial numbers –004 through –159 inclusive, and SAAB 340B series airplanes having serial numbers –160 through –459 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage to the aluminum skin of the airplane, which could result in a weakening of the structure of the airplane, accomplish the following:

Review of Records

(a) Within 2,000 flight hours or 1 year after December 31, 2001 (the effective date of AD 2001–23–12, amendment 39–12511), whichever occurs first: Perform a review of records to determine whether an airplane subject to this AD has been repainted since its delivery from the factory. If the airplane has not been repainted, no further action is needed.

Inspection and Corrective Action

(b) If an airplane has been repainted since its delivery from the factory: Within 2,000 flight hours or 1 year after December 31, 2001, whichever occurs first, perform chemical stripping of local areas of the skin and inspection to detect damage to (or removal of) the protective coat of bonding primer, in accordance with Saab Service Bulletin 340–51–020, Revision 01, dated May 16, 2001.

(1) If no damage to the protective coat of bonding primer is detected: Prior to further flight, repaint the stripped areas, in accordance with the service bulletin.

(2) If damage to (or removal of) the protective coat of bonding primer is detected: Prior to further flight, perform additional chemical stripping and inspection of the skin for pitting corrosion, in accordance with the service bulletin.

(*i*) If pitting corrosion is detected: Perform corrective action in a manner and within a compliance time approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Luftfartsverket (or its designated agent).

(*ii*) If no pitting corrosion is detected: Prior to further flight, measure the thickness of the skin of the airplane, in accordance with the service bulletin.

(A) If a reduction in skin thickness is detected: Perform corrective action in a manner and within a compliance time approved by the Manager, International Branch, ANM–116, or the Luftfartsverket (or its designated agent).

(B) If no reduction in skin thickness is detected: Prior to further flight, check records to determine whether the airplane was repainted using an approved paint system. For purposes of this AD, criteria for an "approved" paint system are found in section 51–20–43 of the Saab 340 Structural Repair Manual.

(*1*) If the airplane was repainted using an approved paint system: Prior to further flight, repaint the stripped areas of the airplane, in accordance with the service bulletin.

(*2*) If the airplane was repainted using an unapproved paint system: Prior to further flight, repaint the stripped areas in accordance with the service bulletin; and within 4,000 flight hours or 2 years after detection of the damage or removed protective coating, whichever occurs first, chemically strip and repaint the airplane as specified by and in accordance with the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as required by paragraphs (a), (b)(2)(i), and (b)(2)(ii)(A) of this AD: The actions shall be done in accordance with Saab Service Bulletin 340–51–020, Revision 01, dated May 16, 2001. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of December 31, 2001 (66 FR 58927, November 26, 2001). Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD 1–161R2, dated March 13, 2001.

Effective Date

(f) The effective date of this amendment remains December 31, 2001.

Issued in Renton, Washington, on December 20, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–85 Filed 1–3–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–187–AD; Amendment 39–12580; AD 2001–26–14]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328 Series Airplanes Equipped With Honeywell GP–300 Guidance and Display Controller

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Dornier Model 328 series airplanes, that currently requires modification of certain Honeywell GP–300 guidance and display controllers. That AD was prompted by reports of smoke and fumes emitting from the Honeywell GP–300 guidance and display controller due to a defective light bulb; and a report of failure of the autopilot to disconnect manually. The actions specified by this AD are intended to prevent a defective light bulb from causing a short circuit that emits smoke and fumes into the cockpit; or causing damage to the circuit cards and various components, which may lock the autopilot into the engaged mode. Locking of the autopilot into the engaged mode could lead to the inability of the pilot to disconnect the autopilot, which could result in reduced controllability of the airplane. This amendment requires verification of proper installation of the modification, and repair, if necessary.

DATES: Effective February 8, 2002.

The incorporation by reference of Honeywell Service Bulletin 7015327–22–4, dated March 31, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of February 8, 2002.

The incorporation by reference of Honeywell Service Bulletin 7015327–22–2, dated March 4, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 26, 1996 (61 FR 29465, June 11, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell, Inc., Attn: Customer Support Materiel, PO Box 21111, Phoenix, Arizona 85036. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–12–13, amendment 39–9656 (61 FR 29465, June 11, 1996), which is applicable to certain Dornier Model 328 series airplanes, was published in the **Federal Register** on May 28, 1998 (63 FR 29148). The action proposed to continue to require modification of certain Honeywell GP–300 guidance and display controllers. The action also proposed to require verification of proper installation of the modification of Honeywell GP–300 guidance and display controller, and repair, if necessary.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter, the airplane manufacturer, claims that 100 percent of Honeywell GP–300 guidance and display controllers for Dornier Model 328 series airplanes have been modified per paragraph (a) of the proposed AD. The commenter also claims that 98 percent of those controllers have been modified per paragraph (b) of the proposed AD, and that the four remaining controllers should be modified by the time the proposed AD becomes effective. Therefore, the commenter concludes that the proposed AD would pose a negative economic impact by creating unnecessary paperwork and sign-off of the proposed AD.

From this comment, the FAA infers that the commenter is requesting that the proposed AD be withdrawn. We do not agree. As stated by the airplane manufacturer, not all of the affected controllers, worldwide, have been modified; therefore, the possibility exists that an unmodified controller could be installed on a U.S. registered airplane at some future time. Issuance of this AD will ensure that only the modified controllers are installed on U.S. registered airplanes. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required modification and verification have been accomplished before the effective date of this AD, this AD does not require that those actions be repeated.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 50 Dornier Model 328–100 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–12–13, and retained in this AD, take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $21,000, or $420 per airplane.

The new actions that are required by this AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $12,000, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9656 (61 FR 29465, June 11, 1996), and by adding a new airworthiness directive (AD), amendment 39–12580, to read as follows:

2001–26–14 Dornier Luftfahrt GMBH: Amendment 39–12580. Docket 97–NM–187–AD. Supersedes AD 96–12–13, Amendment 39–9656.

Applicability: Model 328–100 airplanes, equipped with a Honeywell GP–300 guidance and display controller having part number (P/N) 7015327–901 or –902; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a defective light bulb from causing a short circuit that emits smoke and fumes into the cockpit, or causing damage to the circuit cards and various components, which may lock the autopilot into the engaged mode, accomplish the following:

Restatement of Requirements of AD 96–12–13

(a) Within 60 days after June 26, 1996 (the effective date of AD 96–12–13, amendment 39–9656), modify the Honeywell GP–300 guidance and display controller, having P/N 7015327–901 or –902, in accordance with Honeywell Service Bulletin 7015327–22–2, dated March 4, 1996.

New Requirements of This AD

(b) Within 60 days after the effective date of this AD, verify that the wiring of the Honeywell GP–300 guidance and display controller is correct by conducting a re-test of the circuit card assemblies, in accordance with Honeywell Service Bulletin 7015327–22–4, dated March 31, 1997. If any discrepancy is found, prior to further flight, repair in accordance with the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Honeywell Service Bulletin 7015327–22–2, dated March 4, 1996; and Honeywell Service Bulletin 7015327–22–4, dated March 31, 1997.

(1) The incorporation by reference of Honeywell Service Bulletin 7015327–22–4, dated March 31, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Honeywell Service Bulletin 7015327–22–2, dated March 4, 1996, was approved previously by the Director of the Federal Register as of June 26, 1996 (61 FR 29465, June 11, 1996).

(3) Copies may be obtained from Honeywell, Inc., Attn: Customer Support Materiel, PO Box 21111, Phoenix, Arizona 85036. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–239/2, dated June 19, 1997.

Effective Date

(f) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 21, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–143 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–161–AD; Amendment 39–12581; AD 2001–26–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, –83, and –87 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, that requires a detailed visual inspection of certain wires to detect chafing and preload; repair, if necessary; and modification of certain wire assemblies. This action is necessary to prevent insufficient clearance between wire assemblies and the ice protection airduct and airstair door interlock rod; chafing; and consequent arcing of wire assemblies. Such arcing could result in damage to electronic equipment and adjacent structures, or cause the insulation blankets to ignite, which could result in smoke and fire in the flight deck and main cabin. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft

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Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on June 5, 2001 (66 FR 30099). That action proposed to require a detailed visual inspection of certain wires to detect chafing and preload; repair, if necessary; and modification of certain wire assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Use a Previous Revision

One commenter request that the applicability of the proposed AD be revised to exclude airplanes on which the airstairs have been removed and the doors have been bolted shut. The commenter states that it is in compliance with McDonnell Douglas Service Bulletin MD80–24–126, Revision 01, dated May 14, 1998. The commenter notes McDonnell Douglas Alert Service Bulletin MD80–24A126, Revision 02, dated September 22, 1999 (which is referenced in the proposed AD as the appropriate source of service information), requires additional work, consisting of moving the airstair door to the open and closed position to ensure clearance of wiring. Therefore, the commenter concludes that the additional work in Revision 02 of the service bulletin is not necessary for its fleet.

The FAA does not agree with this commenter. A door bolted shut would clearly not allow inspection for wire clearance with the door in the open position. However, since the inspection required by this AD is also for clearance when the door is in the full-closed position, that part of the inspection would still be applicable. Also, additional wires need to be inspected per Revision 02 of McDonnell Douglas Alert Service Bulletin MD80–24A126. The fact that airplane structure has been altered does not necessarily mean that an unsafe condition has been eliminated or does not exist. Therefore, we find no change to the final rule is necessary in this regard. However, under the provisions of paragraph (b) of the final rule, we may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

Request for Change of Level of Inspection

The same commenter also requests that the term "detailed visual inspection" be changed to "visual inspection," because the Common Support Data Dictionary (CSDD) has a specific definition of "detailed visual inspection" and McDonnell Douglas Service Bulletin MD80–24A126, Revision 02, does not call for this level of inspection.

The FAA does not concur. The definition of the "detailed visual inspection" specified in **Note 2** of this AD is a standard definition that is used in all ADs that require a detailed visual inspection. We have determined that a detailed visual inspection is the appropriate level of inspection to be carried out for the unsafe condition being addressed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,037 Model DC–9–81, -82, -83, and -87 series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 830 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required detailed visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $49,800, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–15 McDonnell Douglas: Amendment 39–12581. Docket 2000–NM–161–AD.

Applicability: Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–24A126, Revision 02, dated September 22, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the flight deck and main cabin due to insufficient clearance between wire assemblies and the ice protection airduct and airstair door interlock rod; chafing; and consequent arcing of wire assemblies, accomplish the following:

Inspection and Modification

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of wire runs in the electrical/equipment compartment to detect chafing and preload against the airduct shroud assembly of the strake ice protection system and/or airstair door interlock rod between stations Y=148.00 and Y=160.000, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A126, Revision 02, dated September 22, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no chafed or preloaded wire is found, prior to further flight, install spacers, sta-straps, and tie-back wire bundles, in accordance with the service bulletin.

(2) If any chafed or preloaded wire is found, prior to further flight, repair, and install spacers, sta-straps, and tie-back wire bundles, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A126, Revision 02, dated September 22, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 21, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–144 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–162–AD; Amendment 39–12582; AD 2001–26–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–81, –82, –83, and –87 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, that requires replacing the interface connectors of the cabin fluorescent lighting ballast in the wiring harness of the overhead stowage compartment with new connectors. In lieu of the required replacement, this AD requires adding interface seals to the existing interface connectors of the cabin fluorescent lighting ballast between certain stations and reidentifying the connector assemblies. This action is necessary to prevent electrical shorting and arcing due to the presence of water in the lighting ballast interface connectors, which could result in smoke in the main cabin. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–

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130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, -82, -83, and -87 series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on June 5, 2001 (66 FR 30097). That action proposed to require replacing the interface connectors of the cabin fluorescent lighting ballast in the wiring harness of the overhead stowage compartment with new connectors.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter states that it does not own or operate the equipment affected by the referenced document, and therefore has no comments to offer. Another commenter notes that it does operate airplanes affected by the rule but has no comments regarding the AD as proposed.

Request for Use of Latest Revision

One commenter requests that Boeing Alert Service Bulletin MD80–33A096, Revision 03, dated August 14, 2001, be an approved method of accomplishment for the replacement required by the proposed AD. The commenter states that Boeing is currently developing Revision 03 of the subject service bulletin, and that revision will provide instructions to install an interfacial seal into the existing ballast connectors, rather than requiring complete replacement of the connectors. The commenter notes that Boeing has indicated that Boeing Alert Service Bulletin MD80–33A096, Revision 03, will provide a level of safety that is equivalent to the proposed connector replacement.

The FAA concurs. Since the issuance of the NPRM, the FAA has reviewed and approved Revision 03 of Boeing (McDonnell Douglas) Alert Service Bulletin MD80–33A096, dated August 14, 2001. Revision 03 adds an option to add interface seals to the existing interface connectors of the cabin fluorescent lighting ballast between stations Y=218.000 to Y=1338.000 and reidentify the connector assemblies. No more work is necessary on airplanes changed as shown in Revision 02 of the service bulletin (which was referenced in the NPRM as the appropriate source of service information). We have revised the final rule to reference Boeing Alert Service Bulletin MD80–33A096, Revision 03, dated August 14, 2001, as the appropriate source of service information, and to include in paragraph (a) of the final rule the option discussed above. We also have revised the Cost Impact section of the final rule to include the cost estimate associated with the new option. In addition, we have revised Note 2 of the final rule to include Revision 02 of the subject service bulletin as an acceptable method of compliance with the requirements of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 747 airplanes of the affected design in the worldwide fleet. The FAA estimates that 486 airplanes of U.S. registry will be affected by this AD.

In lieu of the required incorporation of interface seals, it will take approximately 15 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $510 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,410 per airplane.

In lieu of the required replacement, it will take approximately 3 work hours per airplane to accomplish the required incorporation of interface seals, at an average labor rate of $60 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the incorporation required by this AD on U.S. operators is estimated to be $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–16 McDonnell Douglas: Amendment 39–12582. Docket 2000–NM–162–AD.

Applicability: Model DC–9–81, -82, -83, and -87 series airplanes, and Model MD–88 airplanes, as listed in Boeing Alert Service Bulletin MD80–33A096, Revision 03, dated August 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical shorting and arcing due to the presence of water in the lighting ballast interface connectors, which could result in smoke in the main cabin, accomplish the following:

Replacement or Incorporation of Interface Seals

(a) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraph (a)(1) or (a)(2) of this AD per Boeing Alert Service Bulletin MD80–33A096, Revision 03, dated August 14, 2001.

(1) Replace the interface connectors of the cabin fluorescent lighting ballast in the wiring harness of the overhead stowage compartment with new connectors; or

(2) Add interface seals to the existing interface connectors of the cabin fluorescent lighting ballast between stations Y=218.000 to Y=1338.000 and reidentify the connector assemblies.

Note 2: Replacement of connectors prior to the effective date of this AD in accordance with McDonnell Douglas MD80 Service Bulletin 33–96, dated December 15, 1993; Revision 1, dated February 28, 1994; or Revision 02, dated November 1, 1999; is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install any connector, part number MB10R–6, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin MD80–33A096, Revision 03, dated August 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 21, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–145 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–28–AD; Amendment 39–12583; AD 2001–26–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 series airplanes, that requires removal of the shear pins that keep the rear fixed panels on the center landing gear closed and installation of new solid shear pins. This amendment is prompted by issuance of mandatory continuing airworthiness information from a foreign airworthiness authority. This action is intended to prevent the shear pins on the rear fixed panels of the center landing gear from failing, which could result in loss of the panels during flight with consequent injury to people on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 series airplanes was published in the **Federal Register** on August 31, 2001 (66 FR 45951). That action proposed to require removal of the shear pins that keep the rear fixed panels on the center landing gear closed and installation of new solid shear pins.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Changes Made to the Proposed AD

Since issuance of the proposed AD, Airbus has issued Service Bulletin A330–52–3058, Revision 01, dated February 8, 2001. The original issue of this service bulletin, dated April 7, 2000, was referenced in the proposed AD as the appropriate source of service information for the required replacement. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in France. The FAA finds that the procedures in Revision 01 of the service bulletin are essentially the same as those in the original issue. Therefore, we have revised paragraph (a) of the final rule to reference Revision 01 of the service bulletin, and we have included a new "**Note 2**" to give credit to

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operators that may have accomplished the required actions prior to the effective date of this AD in accordance with the original issue of the service bulletin. Subsequent notes have been renumbered accordingly. Additionally, we have revised the applicability of the final rule to include Revision 01 of the service bulletin.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no charge. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $120, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–17 Airbus Industrie: Amendment 39–12583. Docket 2001–NM–28–AD.

Applicability: Model A330–202, –223, –243, –301, –321, –322, –323, –341, –342, and –343 series airplanes, on which Airbus Modification 47707 has not been incorporated; or Airbus Service Bulletin A330–52–3058, dated April 7, 2000, or Revision 01, dated February 8, 2001, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the shear pins on the rear fixed panels of the center landing gear from failing, which could result in loss of the panels during flight with consequent injury to people on the ground, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Remove the shear pins that keep the rear fixed panels of the center landing gear closed and install solid shear pins, in accordance with Airbus Service Bulletin A330–52–3058, Revision 01, dated February 8, 2001.

Note 2: Accomplishment of the replacement in accordance with Airbus Service Bulletin A330–52–3058, dated April 7, 2000, prior to the effective date of this AD, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–52–3058, Revision 01, dated February 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–042(B), dated January 24, 2001.

Effective Date

(e) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 21, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–146 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–174–AD; Amendment 39–12584; AD 2001–26–18]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that requires, for certain airplanes, a one-time torque test (inspection) of the attachment bolts of the forward engine mount vibration isolators to determine if the bolts are adequately torqued, and corrective action, if necessary. For all airplanes, this amendment prohibits installation of an attachment bolt on the forward engine mount vibration isolators, unless the attachment bolt is torqued within certain limits. These actions are necessary to prevent failure of the engine mount, which could result in separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes was published in the **Federal Register** on September 14, 2001 (66 FR 47901). That action proposed to require, for certain airplanes, a one-time torque test (inspection) of the attachment bolts of the forward engine mount vibration isolators to determine if the bolts are adequately torqued, and corrective action, if necessary. For all airplanes, that action also proposed to prohibit installation of an attachment bolt on the forward engine mount vibration isolators, unless the attachment bolt is torqued within certain limits.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,320, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–18 Dornier Luftfahrt GMBH: Amendment 39–12584. Docket 2001–NM–174–AD.

Applicability: Model 328–300 series airplanes, on which a forward engine mount vibration isolator has been removed or reinstalled since the date of manufacture of the airplane, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine mount, which could result in separation of the engine from the airplane, accomplish the following:

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One-Time Inspection

(a) For airplanes on which a forward engine mount vibration isolator has been removed or reinstalled prior to the effective date of this AD: Within 2,500 flight cycles after the first removal or reinstallation of a forward engine mount vibration isolator, or within 30 days after the effective date of this AD, whichever comes later, do a one-time torque test (inspection) of the attachment bolts of the forward engine mount vibration isolators on the left- and right-hand sides of the airplane to determine if the bolts are adequately torqued, according to Dornier Service Bulletin SB–328J–71–109, dated March 26, 2001, including Dornier 328JET Aircraft Maintenance Manual (AMM) Temporary Revision (TR) 71–130, dated March 8, 2001.

Replacement of Bolts

(b) During the inspection required by paragraph (a) of this AD, if the torque value of any attachment bolt is found to be outside the limits specified in Dornier Service Bulletin SB–328J–71–109, dated March 26, 2001, including Dornier 328JET AMM TR 71–130, dated March 8, 2001: Before further flight, do all actions associated with replacing all bolts on the vibration isolator on which the improperly torqued bolt was found (including performing a detailed visual inspection to determine the condition of components of the vibration isolator and replacement of any damaged components with new components, removing the existing bolts and washers that attach the forward engine mount vibration isolators to the engine, installing new bolts to reattach the forward engine mount vibration isolators to the engine, and torquing the new bolts to adequate torque values), according to the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Torque Requirements

(c) For all airplanes: As of the effective date of this AD, no one may install an attachment bolt on the forward engine mount vibration isolators on any airplane, unless the attachment bolt is torqued within the limits specified in Dornier 328JET AMM TR 71–130, dated March 8, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Dornier Service Bulletin SB–328J–71–109, dated March 26, 2001, including Dornier 328JET Aircraft Maintenance Manual Temporary Revision 71–130, dated March 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 2001–163, dated June 14, 2001.

Effective Date

(g) This amendment becomes effective on February 8, 2002.

Issued in Renton, Washington, on December 21, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–147 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–7]

Amendment to Class E Airspace, Ankeny, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Ankeny, IA.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 24, 2001 (66 FR 48794). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 27, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 7, 2001.

Herman J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–166 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–17]

Establishment of Class E5 Airspace, Wauchula, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Wauchula, FL. A Non-Directional Beacon (NDB) Runway (RWY) 36 Standard Instrument Approach Procedure (SIAP) has been developed for Wauchula Municipal Airport, Wauchula, FL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Wauchula Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On November 20, 2001, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E5 airspace at Wauchula, FL (66 FR 58082) to provide adequate controlled airspace to contain the NDB RWY 36 SIAP and other IFR operations at Wauchula Municipal Airport. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.7 The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Wauchula, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, if, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" and DOT Regulatory Policies and Procedures (44 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 CF 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Wauchula, FL [New]

Wauchula Municipal Airport, FL
(Lat. 27°30′36″ N, long. 81°52′50″ W)
Wauchula NDB
(Lat. 27°30′36″ N, long. 81°53′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Wauchula Municipal Airport and within 4 miles east and 8 miles west of the 176° bearing from the Wauchula NDB extending from the 6.4-mile radius to 16 miles south of the airport.

* * * * *

Issued in College Park, Georgia, on December 27, 2001.

Cesar I. Perez,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–164 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–15]

Amendment of Class E5 Airspace, Andrews–Murphy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Andrews-Murphy, NC. A Area Navigation (RNAV), Global Positioning System (GPS), Runway (RWY) 8 Standard Instrument Approach Procedure (SIAP), has been developed for Andrews-Murphy, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On November 20, 2001, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Andrews-Murphy, NC, (66 FR 58080). This action provides adequate Class E airspace for IFR operations at Andrews-Murphy, NC. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Andrews-Murphy, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

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Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Andrews-Murphy, NC [Revised]

Andrews-Murphy Airport, NC
(Lat. 35°11′42″N, long. 83°51′50″W)
RUGIE Waypoint
(Lat. 35°08′57″N, long. 83°57′29″W)
Andrews-Murphy, NC, Point in Space Coordinates
(Lat. 35°11′10″N, long. 83°52′57″W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Andrews-Murphy Airport and within 3.2 miles each side of the 237° course from the RUGIE Waypoint, extending from the 6.5-mile radius to 8.1 miles southwest of the airport and that airspace within a 6-mile radius of the point in space (lat. 35°11′10″N, long. 83°52′57″W) serving Andrews-Murphy, NC; excluding that airspace within the Knoxville, TN, Class E airspace.

* * * * *

Issued in College Park, Georgia, on December 27, 2001.

Cesar I. Perez,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–163 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–14]

Establishment of Class E5 Airspace; Union, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Union, SC. A Non-Directional Beacon (NDB) Runway (RWY) 5 Standard Instrument Approach Procedure (SIAP) has been developed for Union County, Troy Shelton Field, Union, SC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Union County, Troy Shelton Field. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On November 20, 2001, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Union, SC, (66 FR 58081) to provide adequate controlled airspace to contain the NDB RWY 5 SIAP and other IFR operations at Union County, Troy Shelton Field. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Union, SC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR Part 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6055 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO SC E5 Union, SC [New]

Union County, Troy Shelton Field, SC
(Lat. 34°41′11″ N, Long. 81°38′30″ W)
Union NDB
(Lat. 34°41′02″ N, Long. 81°38′32″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Union County, Troy Shelton Field and within 4 miles north and 8 miles south of the 241° bearing from the Union NDB extending from the 6.3-mile radius to 16 miles southwest of the airport.

* * * * *

Issued in College Park, Georgia on December 27, 2001.

Cesar I. Perez,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–162 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–31]

Establishment of Class E Airspace, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the surface of Bellingham International Airport, Bellingham, WA. Class E controlled airspace, above the surface of the earth, is required to contain aircraft executing procedures in the Instrument Flight Rules (IFR). The effect of this action clarifies when two-way radio communication with Bellingham ATCT is required and to provide adequate Class E controlled airspace between the surface and the en route phase of flight for aircraft executing Instrument Flight Rules (IFR) operations at Bellingham International Airport, Bellingham, WA, when the Bellingham ATCT is closed. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The effect of this action is to provide adequate controlled airspace for IFR operations at Bellingham International Airport, Bellingham, WA.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–31, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On August 14, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Bellingham, WA, in order to provide a safer IFR environment at Bellingham International Airport, Bellingham, WA (66 FR 42618). This amendment established Class E2 surface area controlled airspace at Bellingham, WA, to contain IFR aircraft operating in the Bellingham terminal area during the hours when the Bellingham ATCT is closed. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. A comment was received from FAA, AVN–500. A discrepancy was found in the Airport Reference Point coordinates. This changes is reflected in the legal description. This change is considered to be an insignificant

The Rule

This amendment to Title 41 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E controlled airspace at Bellingham, WA. Bellingham ATCT recently changed its operating hours to less than a 24-hour-a-day operation. In the absence of the Class D airspace, Class E controlled airspace above the surface of the earth is required for aircraft executing IFR operations at Bellingham International Airport when the ATCT is closed. The FAA establishes Class E airspace where necessary to contain transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Bellingham International Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas, are published in Paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001 and effective September 16, 2001, is amended as follows:

Paragraph 6002 Class E airspace designated as surface area for an airport.

* * * * *

ANM WA E2 Bellingham, WA [New]

Bellington International Airport
(Lat. 48°56′34″ N., long. 122°32′15″ W.)
Whatcom VORTAC/CC
(Lat. 48°56′43″ N., long. 122°34′45″ W.)

Within a 4-mile radius of Bellingham International Airport, and within the 1.8 miles each side of the Watchcom VORTAC 169° radial extending north from the 4-mile radius of the Bellington International Airport to 2.7 miles south of the VORTAC. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on December 26, 2001.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–161 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–26]

Establishment of Class E Airspace; Kenmare, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kenmare, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 26 has been developed for Kenmare Municipal Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action creates Class E airspace for Kenmare, ND.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 19, 2000, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Kenmare, ND (65 FR 62655). The proposal was to create controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Kenmare, ND, to accommodate aircraft executing instrument flight procedures into and out of Kenmare Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Kenmare, ND [New]

Kenmare Municipal Airport, ND
(Lat. 48°40′03″ N, long. 102°02′51″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kenmare Municipal Airport, and that airspace extending upward from 1200 feet above the surface beginning at lat. 49°00′00″ N., long. 103°00′00″ W., to lat. 48°30′00″ N., long. 103°00′00″ W., to lat. 48°30′00″ N., long. 101°00′00″ W., to lat. 49°00′00″ N., long. 101°00′00″ W., thence to the point of beginning, excluding that airspace within the Minot AFB, ND, Mohall, ND, and Tioga, ND, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–253 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–27]

Establishment of Class E Airspace; Warren, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Warren, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 30 has been developed for Warren Municipal Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action creates Class E airspace for Warren, MN.

EFFECTIVE DATE: 0901 UTC February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 19, 2000, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Warren, MN (65 FR 62657). The proposal was to create controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Warren, MN, to accommodate aircraft executing instrument flight procedures into and out of Warren Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Warren, MN [NEW]

Warren Municipal Airport, MN
(Lat. 48° 11′ 28″ N, long. 96° 42′ 40″ W)
Point in Space Coordinates
(Lat. 48° 04′ 50″ N, long. 96° 31′ 08″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Warren Municipal Airport, and that airspace extending upward from 1200 feet above the surface within the State of North Dakota within a 30.0-mile radius of the Point In Space, excluding that airspace within the Grand Forks, ND, Class E airspace area.

* * * * *

Issued in Des Plains, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–255 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–29]

Proposed Modification of Class E Airspace; Hillsboro, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Hillsboro, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 16, and an RNAV SIAP to Rwy 34, have been developed for Hillsboro Municipal Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing these approaches. This action increases the radius of the existing controlled airspace for Hillsboro, ND.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 19, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Hillsboro, ND (65 FR 26823).

The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain aircraft executing instrument approach procedures and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Hillsboro, ND, to accommodate aircraft executing instrument flight procedures into and out of Hillsboro Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Exeucitive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 7.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Hillsboro, ND [Revised]

Hillsboro Municipal Airport, ND
(Lat. 47°21'34" N, long. 97°03'38" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Hillsboro Municipal Airport, and that airspace extending upward from 1200 feet above the surface within the State of North Dakota within a 45.0-mile radius of Hillsboro Municipal Airport, excluding that airspace within the Grand Forks, ND, and Fargo, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–256 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–28]

Establishment of Class E Airspace; Stanley, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Stanley, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Stanley Municipal Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action creates Class E airspace for Stanley, ND.

EFFECTIVE DATE: 0901 UTC February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 19, 2000, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Stanley, ND (65 FR 62653). The proposal was to create controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Kenmare, ND, to accommodate aircraft executing instrument flight procedures into and out of Stanley Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Stanley, ND [NEW]

Stanley Municipal Airport, ND
(Lat. 48°18'03" N, long. 102°24'23" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Stanley Municipal Airport, and that airspace extending upward from 1200 feet above the surface within a 40.0-mile radius of Stanley Municipal Airport, excluding that airspace within the Williston, ND, Tioga, ND, Minot, ND, Kenmare, ND, Hazen, ND, and New Town, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–257 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–24]

Modification of Class E Airspace; Youngstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Youngstown, OH. An VHF Omnidirectional Range–A (VOR–A) Standard Instrument Approach Procedure (SIAP) to Runway 26 has been developed for Youngstown-Warren Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action increases the width of the northerly extension and increases the radius of the existing Class E airspace for Youngstown, OH.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 6, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Youngstown, OH (65 FR 59762). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain aircraft executing instrument approach procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Youngstown, OH, to accommodate aircraft executing instrument flight procedures into and out of Youngstown-Warren Regional Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1063 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Youngstown, OH [Revised]

Youngstown-Warren Regional Airport, OH
(Lat. 41°15'39" N, long. 80°40'45" W)
Youngstown, Lansdowne Airport, OH
(Lat. 41°07'50" N, long. 80°37'10" W)
Youngstown VORTAC
(Lat. 41°19'52" N, long. 80°40'29" W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Youngstown-Warren Regional Airport, and within 3.6 miles each side of the Youngstown VORTAC 360° radial extending from the 7.0-mile radius to 10.0 miles north of the VORTAC, and within a 6.2-mile radius of the Lansdowne Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–258 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–187]

RIN 2115–AA84, 2115–AA97

Regulated Navigation Areas, Safety And Security Zones: Long Island Sound Marine Inspection and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) and two safety and security zones. The rule will regulate the circumstances under which certain vessels may enter, transit or operate within the regulated navigation area and will exclude all vessels from operating within 700 yards of the Millstone Nuclear Power Plant or 100 yards of an anchored Coast Guard vessel. This action is necessary to ensure public safety and prevent sabotage or terrorist acts.

DATES: This rule is effective from December 10, 2001 until June 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander P.J. Maguire, Group/Marine Safety Office Long Island Sound, Prevention Department, at (203) 468–4401.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the

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Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This rulemaking is urgently required to prevent future terrorist strikes within and adjacent to waters within the Long Island Sound Marine Inspection and Captain of the Port Zone. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render individuals, vessels and facilities within and adjacent to the Long Island Sound Marine Inspection and Captain of the Port Zone vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent future terrorist attack against individuals, vessels and waterfront facilities within or adjacent to the Long Island Sound Marine Inspection and Captain of the Port Zone. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating within the Long Island Sound Marine Inspection and Captain of the Port Zone present possible targets of terrorist attack or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. The Coast Guard has established a Regulated Navigation Area within the waters of Long Island Sound Marine Inspection and Captain of the Port Zone, as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. The Captain of the Port will determine the threat posed by and to affected vessels within the Regulated Navigation Area and may establish conditions, under which they are allowed to enter, transit or operate within the area. Prior to the determination of whether and under what conditions a vessel may enter, transit or operate within the Regulated Navigation Area, vessels may be directed by the Captain of the Port to temporarily anchor in a specific location within the Regulated Navigation Area. In addition, the Coast Guard has established a safety and security zone that restricts movement within 700 yards of the Millstone Nuclear Power Plant in Waterford, CT. Safety and security zones are established for all waters within 100 yards of all anchored Coast Guard vessels.

Regulated Navigation Area

The rule establishes a regulated navigation area (RNA) comprised of the waters of the Long Island Sound Marine Inspection and Captain of the Port Zone extending seaward 12 nautical miles from the territorial sea baseline. Affected vessels are required to obtain authorization from the Captain of the Port before crossing the three nautical mile line from any southern or eastern approach. The three nautical mile line is measured from the territorial sea baseline. This line is depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts, including chart numbers 13205, 12353, and 12326.

In order to obtain authorization, a vessel subject to this rule may be required to undergo a port security inspection to the satisfaction of the Captain of the Port. Vessels awaiting a port security inspection or Captain of the Port authorization to enter will be directed to anchor in a specific location.

All vessels over 1,600 gross tons operating inside the line extending seaward three nautical miles from the territorial sea baseline must receive authorization from the Captain of the Port prior to any vessel movement. This requirement enables the Captain of the Port to maintain control over the movement of vessels that pose a potential threat to other vessels, waterfront facilities and adjacent population centers. The Captain of the Port may authorize a vessel subject to this rule to enter a port or place within the RNA under such circumstances and conditions as he deems appropriate to minimize the threat of injury to the vessel, the port, waterfront facilities or adjacent population centers resulting from sabotage or terrorist acts launched against or from the vessel.

Vessels 300 gross tons or greater may not transit through the Lower Thames River and the Naval Submarine Base New London Restricted Area, established in 33 CFR 334.75(a), at a speed in excess of 8 knots. This speed restriction does not apply to public vessels as defined in 33 USC 1321(a)(4).

Safety and Security Zones

The rule also establishes safety and security zones. One zone is being established within a 700-yard radius from the stack at the Millstone Power Plant. This zone is being established to protect the power plant, persons and vessels from subversive or terrorist acts. We have created additional zone defined by reference to a fixed radius around Coast Guard vessels anchored in the RNA. These zones are intended principally to protect the vessels themselves from subversive or terrorist acts.

No person or vessel may enter or remain in the prescribed safety and security zone at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a safety and security zone and/or remove any person, vessel, article or thing from a security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the relatively small area which vessels are prohibited from operating within. It is contemplated that vessels will be able to operate elsewhere within the RNA once the Captain of the Port has determined that the vessels do not pose a threat to individuals, other vessels or waterfront facilities. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has not yet determined whether this proposal will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard is not presently able to certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. However, given the continued risk and potential damage to the national security interests of the United States, in addition to the need to protect and safeguard innocent civilians within and near the port, it is necessary to implement this regulation before said analysis may be fully accomplished. Maritime advisories will be initiated by normal methods and means and will be widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant Commander P.J. Maguire, Marine Safety Office Long Island Sound, at (203) 468–4401. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–153 to read as follows:

§ 165.T01–153 Regulated Navigation Area: Long Island Sound Marine Inspection and Captain of the Port Zone.

(a) *Regulated navigation area location.* All waters of the Long Island Sound Marine Inspection and Captain of the Port Zone, as delineated in 33 CFR 3.05–35, extending seaward to a line 12 nautical miles from the territorial sea baseline, are established as a regulated navigation area (RNA).

(b) *Applicability.* This section applies to all vessels operating within the RNA, except the following:

(1) Recreational vessels;

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(2) Vessels operating exclusively within the Marine Inspection and Captain of the Port Zone;

(3) Vessels on a single voyage which depart from and return to the same port or place within the RNA;

(4) U.S. flagged public vessels; and

(5) Primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo and issuing the securité calls required under 33 CFR 165.100(d)(2).

(c) *Effective dates.* This section is effective from December 10, 2001 until June 15, 2002.

(d) *Regulations.* (1) Speed restrictions in vicinity of Naval Submarine Base New London and Lower Thames River. Vessels of 300 gross tons or more may not proceed at a speed over eight knots in the Thames River from New London Harbor channel buoys 7 and 8 (Light List numbers 21875 and 21880 respectively) north through the upper limit of the Naval Submarine Base New London Restricted Area, as specified in 33 CFR 334.75(a). All vessels less than 300 gross tons are exempt from this rule. This speed restriction does not apply to public vessels as defined in 33 U.S.C. 1321(a)(4). The U.S. Navy and other Federal, State and municipal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

(2) All inbound vessels operating within the RNA must be inspected to the satisfaction of the United States Coast Guard and must obtain authorization from the Captain of the Port before crossing the line three nautical miles from the territorial sea baseline.

(3) Vessels awaiting inspection or Captain of the Port authorization to enter within the three nautical mile line will be directed to anchor in a specific location within the Regulated Navigation Area.

(4) Vessels over 1,600 gross tons operating in the RNA within the line extending seaward three nautical miles from the territorial sea baseline must receive authorization from the Captain of the Port prior to any vessel movements.

3. Add temporary § 165.T01–154 to read as follows:

§ 165.T01–154 Safety and Security Zones: Long Island Sound Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following are established as safety and security zones:

(1) *Safety and Security Zone A:* The waters of Long Island Sound south, east and west of the Millstone Power Plant within a seven hundred (700) yard radius of the stack at Millstone, Lat. 41°18′34″ North, Long. 72°9′57″ West (NAD 83).

(2) *Safety and Security Zone B.* U. S. Coast Guard vessels: All waters within a 100-yard radius of any anchored U. S. Coast Guard vessel.

(b) *Effective date.* This section is effective from December 10, 2001 until June 15, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 10, 2001.

G. N. Naccara,

Rear Admiral, U.S. Coast Guard, District Commander.

[FR Doc. 02–160 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 011108271–1271–01]

RIN 0651–AB44

Revision of the Time Limit for National Stage Commencement in the United States for Patent Cooperation Treaty Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT). This rule modifies the Office's rules of practice to comply with an amendment to the PCT. The changes in this rule specifically involve revising the rules of practice consistent with the change to the PCT to have a single time limit for national stage commencement for applications filed under the PCT, regardless of whether the applicant filed a Demand for an international preliminary examination.

DATES: *Effective Date:* April 1, 2002.

Applicability Date: The changes in this final rule apply to any international (PCT) application in which the twenty-month period from the priority date expires on or after April 1, 2002, and in which the applicant has not yet entered the national stage as defined in 37 CFR 1.491(b) by April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Pearson, Director, Office of PCT Legal Administration, by telephone at (703) 306–4145, or Boris Milef, Legal Examiner, Office of PCT Legal Administration, by telephone at (703) 308–3659, or by mail addressed to: Box PCT—Patents, Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308–6459, marked to the attention of Boris Milef.

SUPPLEMENTARY INFORMATION: During a September-October 2001 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted an amendment to the PCT Article 22. Specifically, PCT Article 22 was amended to change its time limit for entering the national stage of twenty months from the priority date of the PCT application to a time limit of thirty months from the priority date of the PCT application. *See* PCT Article 47 (allows the time limits fixed in PCT Chapters I and II to be modified by a decision of the Contracting States through the PCT Assembly, subject to certain conditions). This amendment to PCT Article 22 takes effect on April 1, 2002.

With this amendment to PCT Article 22, the time limit under PCT Article 22 and the time limit under PCT Article 39 will be the same: thirty months from the priority date of the PCT application. Thus, the PCT will provide a single time period for national stage commencement for PCT applications, regardless of whether the applicant filed a Demand for an international preliminary examination. Therefore, applicants will no longer be required to file a Demand for an international preliminary examination under PCT Article 31 (and pay the international preliminary examination fees under 37 CFR 1.482) in order to delay commencement of the national stage until thirty months from the priority date. An applicant's decision whether to file a Demand under PCT Article 31 may be based upon whether the applicant wants an international preliminary examination report, and not upon whether the applicant wants to delay commencement of the national stage until thirty months from the priority date.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.8: Section 1.8(a)(2)(i)(F) is amended to eliminate its reference to § 1.494 (which is removed and reserved).

Section 1.14: Section 1.14(d)(4) is amended to eliminate its reference to § 1.494 (which is removed and reserved).

Section 1.25: Section 1.25(b) is amended to eliminate its reference to § 1.494 (which is removed and reserved). Section 1.25 is also amended to place the sentence "[a]n authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee" at the end of the paragraph because that provision is applicable to all of the charges provided for in § 1.25(b).

Section 1.41: Section 1.41(a)(4) is amended to state that the inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, and to indicate that the inventorship set forth in the international application includes any change effected under PCT Rule 92*bis*. Section 1.41(a)(4) is also amended to refer to § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration filed under PCT Rule 4.17(iv).

Section 1.48: Section 1.48(f)(1) is amended to change "enter the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495" to "enter the national stage under 35 U.S.C. 371" (§ 1.494 is removed and reserved).

Section 1.103: Section 1.103(d)(1) is amended to eliminate its reference to § 1.494 (which is removed and reserved).

Section 1.417: Section 1.417 is amended to eliminate its reference to § 1.494 (which is removed and reserved).

Section 1.480: Section 1.480 is amended to remove paragraph (c) and redesignate paragraph (d) as paragraph (c). Former § 1.480(c) is now unnecessary because the provisions of § 1.495 apply regardless of whether a Demand is made prior to the expiration of the nineteenth month from the priority date.

Section 1.491: Section 1.491 is amended to define both commencement of the national stage and entry into the national stage. Because these two events (commencement of the national stage and entry into the national stage) may not take place at the same time, the Office is amending § 1.491 to clarify when each of these two events takes place. Section 1.491(a) incorporates the statutory language contained in 35 U.S.C. 371(b), thus providing that "[s]ubject to 35 U.S.C. 371(f), the national stage shall commence with the expiration of the applicable time limit under PCT Article 22(1) or (2), or under PCT Article 39(1)(a)." However, in view of the amendment to PCT Article 22, the time limit under PCT Article 22(1) or (2) is now the same as the time limit under PCT Article 39(1)(a): thirty months from the priority date of the PCT application.

Section 1.491(b) contains the provisions of former § 1.491 amended to eliminate its reference to § 1.494 (which is removed and reserved), and provides that an international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the period set in § 1.495.

The Office previously published a temporary rule that amends § 1.491 to define both commencement of the national stage and entry into the national stage in the manner discussed above. *See Timing of National Stage Commencement in the United States for Patent Cooperation Treaty Applications,* 66 FR 45775 (Aug. 30, 2001), 1250 *Off. Gaz. Pat. Office* 147 (Sept. 25, 2001). The Office also published a notice proposing the above change to § 1.491 for public comment. *See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications,* 66 FR 46409 (Sept. 5, 2001), 1251 *Off. Gaz. Pat. Office* 16 (Oct. 2, 2001). The Office received no comment on the proposed change to § 1.491.

Section 1.492: Sections 1.492(e) and (f) are amended to eliminate their reference to § 1.494 (which is removed and reserved).

Section 1.494: Section 1.494 is removed and reserved. Since the time period for commencement of the national stage in the United States of America will not depend upon whether the applicant has filed a Demand under PCT Article 31, it will no longer be necessary to provide separately in § 1.494 and § 1.495 for the time period for filing the documents and fees required by 35 U.S.C. 371(c) for: (1) Applications in which a Demand under Article 31 has not been filed within nineteen months from the priority date (§ 1.494); and (2) applications in which a Demand under Article 31 has been filed within nineteen months from the priority date (§ 1.495).

Section 1.495: Section 1.495 is amended to be applicable regardless of whether the applicant has filed a Demand under Article 31 within nineteen months from the priority date. Section 1.495 is also amended to eliminate unassociated text in § 1.495(b) and § 1.495(c).

Section 1.497: Sections 1.497(a) and 1.497(c) are amended to eliminate their reference to § 1.494 (which is removed and reserved).

Section 1.497(d) is amended to clarify that if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any oath or declaration that was filed in the application under PCT Rule 4.17(iv) or § 1.497, the requirements of § 1.497(d)(1) through (d)(4) apply only if the inventive entity changed pursuant to PCT Rule 92*bis* is different from the inventive entity identified in any previously filed oath or declaration application under PCT Rule 4.17(iv) or § 1.497. Section 1.497(d) is also amended such that a new oath or declaration is not required under § 1.497(d) unless a new oath or declaration is required by § 1.497(f). Section 1.497(f) is amended to provide that a new oath or declaration under § 1.497 is not required when a change in the inventive entity is effected under PCT Rule 92*bis* after the declaration was executed unless no declaration which sets forth and is executed by the inventive entity as so changed has been filed in the application. Therefore, if a declaration under PCT Rule 4.17(iv) naming and executed by a first inventive entity is followed by a change of inventive entity under PCT Rule 92*bis* and a new declaration under PCT Rule 4.17(iv) naming and executed by the new (second) inventive entity filed in the application, the applicant must comply with the requirements of § 1.497(d) to enter the national stage but a new oath or declaration under § 1.497 is not required because the application contains a declaration under PCT Rule 4.17(iv) setting forth the inventive entity as changed pursuant to PCT Rule 92*bis*.

Classification

Administrative Procedure Act

The changes in this final rule relate solely to Office practices and procedures for patent applications filed under the PCT. Accordingly, this final rule involves rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and may be adopted without prior

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notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d). *See Bachow Communications Inc.* v. **FCC**, 237 F.3d 683, 690 (D.C. Cir. 2001). However, the Office did provide notice and an opportunity for comment on the change to § 1.491 in order to obtain the benefit of public comment on this change.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, the regulatory flexibility analysis is not required, and none has been provided. *See* 5 U.S.C. 603.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under the following control numbers 0651–0021, 0651–0031, and 0651–0032. The Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this rulemaking do not affect the information collection requirements associated with the information collections under OMB control numbers 0651–0021, 0651–0031, or 0651–0032.

The title, description and respondent description of the information collections are shown below with an estimate of the annual reporting burdens. Included in the estimates are the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.
Title: Patent Cooperation Treaty.
Form Numbers: PCT/RO/101, ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.
Type of Review: Regular submission. (approved through December of 2003).
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.
Estimated Number of Respondents: 331,288.
Estimated Time Per Response: Between 15 minutes and 4 hours.
Estimated Total Annual Burden Hours: 401,083.
Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.
Title: Patent Processing (Updating).
Form Numbers: PTO/SB/08/21–27/30–32/35–37/42/43/61/62/63/64/67/68/91/92/ 96/97/PTO–2053/PTO–2055.
Type of Review: Regular submission (approved through October of 2002).
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 2,247,389.
Estimated Time Per Response: 0.45 hours.
Estimated Total Annual Burden Hours: 1,021,941 hours.
Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or may desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments; Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.
Title: Initial Patent Application.
Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.
Type of Review: Regular submission (approved through October of 2002).
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 319,350.
Estimated Time Per Response: 9.35 hours.
Estimated Total Annual Burden Hours: 2,984,360 hours.
Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in the processing and examination of the application.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.8 is amended by revising paragraph (a)(2)(i)(F) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *
(2) * * *
(i) * * *
(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b).
* * * * *

3. Section 1.14 is amended by revising paragraph (d)(4) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *
(d) * * *
(4) A registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.
* * * * *

4. Section 1.25 is amended by revising paragraph (b) to read as follows:

§ 1.25 Deposit accounts.

* * * * *
(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with a particular paper filed. An authorization to charge fees under § 1.16 in an international application entering the national stage under 35 U.S.C. 371 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.913 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

5. Section 1.41 is amended by revising paragraph (a)(4) to read as follows:

§ 1.41 Applicant for patent.

(a) * * *
(4) The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92*bis*. See § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration filed under PCT Rule 4.17(iv) (§ 1.48(f)(1) does not apply to an international application entering the national stage under 35 U.S.C. 371).
* * * * *

6. Section 1.48 is amended by revising paragraph (f)(1) to read as follows:

§ 1.48 Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. 116.

* * * * *
(f)(1) *Nonprovisional application—filing executed oath/declaration corrects inventorship.* If the correct inventor or inventors are not named on filing a nonprovisional application under § 1.53(b) without an executed oath or declaration under § 1.63 by any of the inventors, the first submission of an executed oath or declaration under § 1.63 by any of the inventors during the pendency of the application will act to correct the earlier identification of inventorship. See §§ 1.41(a)(4) and 1.497(d) and (f) for submission of an executed oath or declaration to enter the national stage under 35 U.S.C. 371 naming an inventive entity different from the inventive entity set forth in the international stage.
* * * * *

7. Section 1.103 is amended by revising paragraph (d)(1) to read as follows:

§ 1.103 Suspension of action by the Office.

* * * * *
(d) * * *
(1) The application is an original utility or plant application filed under § 1.53(b) or resulting from entry of an international application into the national stage after compliance with § 1.495;
* * * * *

8. Section 1.417 is revised to read as follows:

§ 1.417 Submission of translation of international publication.

The submission of the international publication or an English language translation of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and, unless it is being submitted pursuant to § 1.495, be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked "Box PCT."

9. Section 1.480 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

10. Section 1.491 is revised to read as follows:

§ 1.491. National stage commencement and entry.

(a) Subject to 35 U.S.C. 371(f), the national stage shall commence with the expiration of the applicable time limit under PCT Article 22 (1) or (2), or under PCT Article 39(1)(a).

(b) An international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the period set in § 1.495.

11. Section 1.492 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.492 National stage fees.

* * * * *
(e) Surcharge for filing the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a))	$65.00
By other than a small entity	130.00

(f) For filing an English translation of an international application or of any annexes to an international preliminary examination report later than thirty months after the priority date (§ 1.495(c) and (e))..... $130.00.
* * * * *

12. Section 1.494 is removed and reserved.

§ 1.494 [Removed and Reserved]

13. Section 1.495 is amended by revising the section heading and by revising paragraphs (a) through (e) and (h) to read as follows:

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§ 1.495 Entering the national stage in the United States of America.

(a) The applicant in an international application must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. The thirty-month time period set forth in paragraphs (b), (c), (d), (e) and (h) of this section may not be extended. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and

(2) The basic national fee (see § 1.492(a)).

(c) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits either a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)), or the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter*.1, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date. A "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of thirty months from the priority date will be considered to be canceled.

(e) A translation into English of any annexes to an international preliminary examination report (if applicable), if the annexes were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Translations of the annexes which are not received by the expiration of thirty months from the priority date may be submitted within any period set pursuant to paragraph (c) of this section accompanied by the processing fee set forth in § 1.492(f). Annexes for which translations are not timely received will be considered canceled.

* * * * *

(h) An international application becomes abandoned as to the United States thirty months from the priority date if the requirements of paragraph (b) of this section have not been complied with within thirty months from the priority date. If the requirements of paragraph (b) of this section are complied with within thirty months from the priority date but either of any required translation of the international application as filed or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

14. Section 1.497 is amended by revising the introductory text of paragraph (a) and paragraphs (c), (d) and (f) to read as follows:

§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

(a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter*.1, he or she must file an oath or declaration that:

* * * * *

(c) Subject to paragraph (f) of this section, if the oath or declaration meets the requirements of paragraphs (a) and (b) of this section, the oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4) and § 1.495(c). However, if the oath or declaration does not also meet the requirements of § 1.63, a supplemental oath or declaration in compliance with § 1.63 or an application date sheet will be required in accordance with § 1.67.

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17(i);

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter); and

(4) Any new oath or declaration required by paragraph (f) of this section.

* * * * *

(f) A new oath or declaration in accordance with this section must be filed to satisfy 35 U.S.C. 371(c)(4) if the declaration was filed under PCT Rule 4.17(iv), and:

(1) There was a change in the international filing date pursuant to PCT Rule 20.2 after the declaration was executed; or

(2) A change in the inventive entity was effected under PCT Rule 92*bis* after the declaration was executed and no declaration which sets forth and is executed by the inventive entity as so changed has been filed in the application.

* * * * *

Dated: December 27, 2001.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–157 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–16–P

Proposed Rules

Federal Register
Vol. 67, No. 3
Friday, January 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapters I, IX, X, and XI

[Doc. # L&RRS–01–01]

Regulatory Flexibility Act: Plan for Periodic Review of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Schedule for review of agency regulations.

SUMMARY: The Agricultural Marketing Service (AMS) is publishing this plan for the review of its regulations under the Regulatory Flexibility Act (RFA). AMS has included in this plan all regulations that warrant periodic review irrespective of whether specific regulations meet the threshold requirement for mandatory review established by the RFA. The identified rules will be reviewed as indicated during the next ten years.

FOR FURTHER INFORMATION CONTACT: Christine M. Sarcone, Director, Legislative and Regulatory Review Staff, AMS, USDA, P.O. Box 96456, Room 3510–South, Washington, D.C. 20090–6456; telephone: (202) 720–3203; fax: (202) 690–3767.

SUPPLEMENTARY INFORMATION:

Background

Sec. 610 of the RFA (5 U.S.C. 610) requires agencies to review all regulations on a periodic basis that have or will have a significant economic impact on a substantial number of small entities. Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which although they may not meet the threshold requirement under Sec. 610 of the RFA (5 U.S.C. 610) merit review.

This document updates the original plan which was published on February 18, 1999 (64 FR 8014). Since then, two reviews have been completed and summaries of the results published in the **Federal Register**—(1) California Olives, (7 CFR part 932), March 27, 2001 (66 FR 16593); and (2) Federal Seed Act Regulations, (7 CFR part 201), March 22, 2001 (66 FR 16015). Copies of these two completed reviews can be obtained from the Legislative and Regulatory Review Staff at the telephone number provided in the **FOR FURTHER INFORMATION CONTACT** section of this document. In addition, two other reviews have been completed with summaries of the results to be published in the **Federal Register** in the near future—(1) Watermelon Research and Promotion Program (7 CFR part 1210); and (2) Irish Potatoes Grown in Certain Designated Counties in ID, and Malheur County, OR (7 CFR part 945).

In the 1999 review plan, AMS stated that reviews for the Dairy Promotion Program, Potato Research and Promotion, Egg Research and Promotion, and Pork Promotion, Research and Consumer Information regulations would be conducted in calendar year 2001; however, it was determined that completion of such reviews was not feasible by the established dates, therefore, review of the regulations has been delayed until year 2002. In addition, a request for comments was published in the **Federal Register** on June 13, 2001, (66 FR 31850) for Almonds Grown in California (7 CFR part 981). However, completion of this review also has been delayed until year 2002.

AMS also stated that it would announce regulations to be reviewed in the semi-annual regulatory agenda which is published in the **Federal Register**; however, after further consideration, the agency has decided that it would announce the reviews in the **Federal Register** separate from the semi-annual regulatory agenda. AMS plans now to publish in the year the regulations are scheduled for review a **Federal Register** document announcing the review. At that time, a contact person will be identified to whom comments may be submitted concerning the review.

The purpose of each review will be to determine whether the rules should be continued without change, or should be amended or rescinded (consistent with the objectives of applicable statutes) to minimize impacts on small businesses. In reviewing its rules the AMS will consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments from the public concerning the rule;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with state and local regulations; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The attached document announces the revised schedule for reviewing the agency's regulations.

Dated: December 27, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

AGRICULTURAL MARKETING SERVICE 10-YEAR REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW REGULATORY FLEXIBILITY ACT

CFR part & authority	AMS program/regulation	Year implemented	Year for review
7 part 46; 7 U.S.C. 499a–499t	Perishable Agricultural Commodities Act, 1930	*1930	2008
7 part 110; 7 U.S.C. 136i–1	Pesticide Recordkeeping	1993	2003
7 part 205; 7 U.S.C. 6501–6522	National Organic Program	2000	2010
7 part 905; 7 U.S.C. 601–674	Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.	1939	2007
7 part 916; 7 U.S.C. 601–674	Nectarines Grown in California	1958	2003
7 part 917; 7 U.S.C. 601–674	Fresh Pears and Peaches Grown in California	1939	2003

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AGRICULTURAL MARKETING SERVICE 10-YEAR REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW REGULATORY FLEXIBILITY ACT—Continued

CFR part & authority	AMS program/regulation	Year implemented	Year for review
7 part 923; 7 U.S.C. 601–674	Sweet Cherries Grown in Designated Counties in Washington.	1957	2007
7 part 925; 7 U.S.C. 601–674	Grapes Grown in a Designated Area of Southeastern California.	1980	2006
7 part 927; 7 U.S.C. 601–674	Winter Pears Grown in Oregon and Washington	1939	2003
7 part 929; 7 U.S.C. 601–674	Cranberries Grown in States of Massachusetts, Rhode Island, etc..	1962	2003
7 Part 930; 7 U.S.C. 601–674	Tart Cherries Grown in MI, NY, PA, OR, UT, WA & WI.	1996	2006
7 part 948; 7 U.S.C. 601–674	Irish Potatoes Grown in Colorado	1941	2006
7 part 966; 7 U.S.C. 601–674	Tomatoes Grown in Florida	1955	2002
7 part 981; 7 U.S.C. 601–674	Almonds Grown in California	1950	2002
7 part 984; 7 U.S.C. 601–674	Walnuts Grown in California	1948	2008
7 part 989; 7 U.S.C. 601–674	Raisins Produced from Grapes Grown in California	1949	2004
7 part 993; 7 U.S.C. 601–674	Dried Prunes Produced in California	1949	2002
7 part 998; 7 U.S.C. 601–674	Marketing Agreement Regulating the Quality of Domestically Produced Peanuts.	1965	2005
7 Parts 1000–1139; 7 U.S.C. 601–674	Federal Milk Marketing Orders	1999	2009
7 part 1150; 7 U.S.C. 4501–4514	Dairy Promotion Program	1984	2002
7 part 1160; 7 U.S.C. 6401–6417	Fluid Milk Promotion Program	1993	2003
7 part 1205; 7 U.S.C. 2101–2118	Cotton Research and Promotion	1996	2002
7 part 1207; 7 U.S.C. 2611–2627	Potato Research and Promotion	1972	2002
7 part 1209; 7 U.S.C. 6101–6112	Mushroom Promotion, Research and Consumer Information Order.	1993	2004
7 part 1215; 7 U.S.C. 7481–7491	Popcorn Promotion, Research and Consumer Information.	1997	2007
7 part 1216; 7 U.S.C. 7401–7425	Peanut Promotion, Research, and Information Order	1999	2009
7 part 1218; 7 U.S.C. 7401–7425	Blueberry Promotion, Research, and Information Order.	2000	2010
7 part 1220; 7 U.S.C. 6301–6311	Soybean Promotion, Research and Consumer Information.	1991	2003
7 part 1230; 7 U.S.C. 4801–4819	Pork Promotion, Research, and Consumer Information.	1986	2002
7 part 1240; 7 U.S.C. 4601–4612	Honey Research, Promotion, and Consumer Information Order.	1987	2002
7 part 1250; 7 U.S.C. 2701–2718	Egg Research and Promotion	1976	2002
7 part 1260; 7 U.S.C. 2901–2911	Beef Promotion and Research	1986	2003

*Regs. Amended 1997.

[FR Doc. 02–241 Filed 1–3–02; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AG51

Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend the tobacco marketing quota regulations by making it a requirement that burley tobacco producers designate the specific warehouse, dealer or receiving station at which they will sell their tobacco in order to qualify for price support and marketing cards. The tobacco marketing quota regulations currently require that only flue-cured tobacco producers, as a condition of price-support, designate the warehouses at which they will market their tobacco and the amounts to be marketed at each designated location. These amendments will provide warehouse operators, the Agriculture Marketing Service (AMS) and others accurate information when planning for a tobacco auction marketing year.

DATES: Comments concerning the contents of the proposed rule must be submitted by January 22, 2002, to be assured of consideration. Comments concerning the information collection must be submitted by March 5, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to Director, Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW., room 5750–S, STOP 0514, Washington, DC 20250–0514; Fax: (202) 690–2298. All comments will be made available for public inspection in the Office of the Director during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Agricultural Program Specialist, Tobacco and Peanuts Division, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0514, Washington, DC 20250–0514, telephone (202) 720–2715.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be significant and was reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases-10.0514.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporations's (CCC) intention to request an extension of a currently approved information collection. This information will be used in support of the Tobacco Marketing Quota Program. Producers must agree to inform the Farm Service Agency (FSA) of the locations at which they will sell their tobacco and the number of pounds of that tobacco that will be sold at each location using form FSA–808, "Designation of Burley Tobacco Sales and Request for Marketing Cards" to collect the data.

Title: Designation of Burley Tobacco Sales and Request for Marketing Cards.

OMB #: 0560–0217.

Type of Request: Extension of a currently approved information collection.

Expiration Date: 3/31/02.

Abstract: The information is necessary to promote, foster, and maintain an orderly marketing of burley tobacco in a swiftly changing market environment. Historically, 99 percent of all burley tobacco has been marketed at auction warehouses where the tobacco has been graded by AMS personnel and where price-support has been offered.

However, between the 2000 marketing season and the current, 2001, marketing season, and based on figures that have become recently available through the designation period for flue-cured tobacco (the second major cigarette-producing tobacco), FSA predicts that as much as 80 percent of the 2001 crop of burley tobacco will *not* be sold at auction warehouses.

The figures compiled at the close of the flue-cured designation period showed that 79 percent of that tobacco would bypass the traditional auction system. This change has resulted in the known closing of up to 25 flue-cured tobacco warehouses and in an AMS reduction-in-force that has cost the jobs of more than 50 tobacco graders. It is expected that nearly half the existing flue-cured warehouses may be out of business by the end of the 2001 market season.

Without the collection of designation information for burley tobacco, FSA will not know where the tobacco will be sold or how many pounds will be sold outside the traditional auction market system. Warehouse operators who, in the past, have handled almost all of any year's crop, will not have the information needed to keep their businesses open; and AMS will not know how to schedule the grading of burley tobacco.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Farm operators, farm operators' authorized agents, or any producers who have an interest in the tobacco to be marketed.

Estimated number of Respondents: 150,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.25 hours. This estimate includes 60 minutes travel time for applicants to the local USDA service center office for those respondents who choose not to file the information electronically.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments concerning the information collection must be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Ann Wortham, Agricultural Program Specialist, USDA–FSA–TPD–TB, STOP 0514, 1400 Independence Ave., SW., Washington, DC 20250–0514; E-mail *Ann Wortham@wdc.fsa.usda.gov;* or facsimile (202) 2690–4917. Copies of the information collection may be obtained from Ms. Wortham at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Background

Currently, AMS, working with local trade boards or with tobacco warehouse associations, schedules the days on which auction sales are to take place at designated auction markets, equitably distributing sales opportunity among the warehouses based on floor space or performance or both.

Because of the recent high volume of direct contract purchases, the current manner of determining sales time no longer appears to be feasible. It is necessary to collect marketing-intention information on burley tobacco in the same manner that marketing-intention information has been collected on flue-cured tobacco since 1974.

In order to implement a successful burley tobacco designation program, producers were allowed to designate pounds to specific warehouses beginning June 1, 2001, as recommended by the Burley Tobacco Advisory Committee (Committee).

The 39-member committee was established by the Secretary in 1990 to provide information essential to the orderly marketing of burley tobacco. At a meeting in June, 2000, the Committee passed a motion that would affect the method of determining the number of days on which auction sales would be allowed to take place at each tobacco auction warehouse. The Committee's motion, to establish a Grower Designation Program for burley tobacco similar to the long standing Flue-cured Tobacco Warehouse Designation Program, followed an announcement in early 2000 by a major cigarette

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manufacturer that it would contract with burley tobacco growers to buy tobacco directly from them at central buying points known as receiving stations, essentially acting as a dealer and bypassing the traditional auction market system.

The Flue-cured Tobacco Warehouse Designation Program requires that each flue-cured farm operator designate to which warehouse(s) that farm's tobacco will be presented for sale and the number of pounds of tobacco that will be marketed at each designated location. Such designations provide information vital to the equitable scheduling among warehouses of the day(s) on which each location can hold an auction sale and the number of pounds that can be sold on each of those scheduled days. This information also allows AMS to schedule personnel to grade such tobacco when it is presented for sale. Designation is a condition of price support eligibility for flue-cured tobacco growers.

For the 2000 market year FSA had no advance information regarding the volume of burley tobacco that individual burley growers had placed under private contract with the buying company because such information was contained in individual and private contracts between grower and company; and thus did not know how much tobacco would bypass the traditional auction warehouse market system.

The buying company announced early in 2001 that it would dramatically expand its direct purchase program. It would contract to purchase both burley and flue-cured tobacco rather than just burley; and it would purchase these kinds of tobacco from receiving stations in Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Virginia rather than just Kentucky and Tennessee.

Seven other leaf-buying companies followed this announcement with announcements of their own: they, too, would contract with individual burly and flue-cured tobacco growers to buy their crops direct. Currently there are eight companies with stated intentions of buying both burley and flue-cured tobacco at 72 established receiving stations in seven states.

On May 7, 2001, following the close of the flue-cured initial designation period, FSA received a report that predicted a need for a major information collection effort regarding burley tobacco: seventy-nine percent of the 2001 flue-cured tobacco available for sale has been designated to receiving stations.

The FSA judges that a comparable percentage of burley will be sold during 2001 at receiving stations. However, with no designation program in place there is no way to collect the information that is vital to the industry, to the warehouses where burley tobacco has historically been marketed, and to USDA, in particular AMS, which is immediately impacted by the lack of such data. From the historic 1 percent of sales that occurred outside the auction market system, there is the possibility that much of the burley tobacco crop will go elsewhere. This is a sudden change in only one market season. The FSA did not have figures to make such a deduction until after the end of flue-cured designation and the compilations of figures collected from flue-cured growers nationwide.

All eligible burley tobacco growers may avail themselves of the auction market system. However, only the growers/sellers and buyers involved in non-auction sale and purchase transactions know the amount of tobacco that will be involved in these private transactions. Without a burley designation program in place neither the buying companies, AMS, nor the warehouses will have any information concerning how much tobacco will be available for sale by auction, because they will not have information about what tobacco *won't* be available for sale by auction.

USDA is concerned with the effects that nonauction sales will have on the orderly marketing of tobacco and that large quantities of direct sales could be disruptive to the orderly process of marketing burley tobacco. The Grower Designation Program is necessary for the 2001 orderly marketing of burley tobacco. USDA's implementation of the burley tobacco Grower Designation Program will track market volumes and thereby enable the AMS to implement a process of remobilizing its downsized workforce.

FSA began collecting data through burley designations from growers voluntarily on June 1, 2001 in order to have data for planning the warehouse system needs prior to September 1, 2001. Although burley farmers may wait until the effective date of this rule to submit their information, they are encouraged to report now to facilitate the marketing of their crops. They may make changes during scheduled redesignation periods. The comment period has been limited to 15 days in order that this schedule can be met and accordingly serve the emergency needs of warehouse operators, dealers and producers.

This proposed rule would amend the tobacco marketing quota regulations by requiring that burley tobacco producers designate the specific warehouse, dealer or contract buying point at which they will market their tobacco in order to qualify for price support and the issuance of a marketing card. Producers would have the option to make changes during scheduled redesignation periods.

Burley and flue-cured tobacco that is produced for market is sold on a nationwide market and moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer. The Agricultural Adjustment Act of 1938 as amended (the Act) gave to the Secretary of Agriculture the responsibility for the promotion and maintenance of an orderly flow of tobacco in commerce. The means by which producers market these tobaccos has changed more in the past 12 months than in the past 50 years.

Until recently, approximately 97% of both burley and flue-cured tobacco was delivered to a warehouse, sometimes weeks in advance of a sale date. There the tobacco was either sold at auction with payment of the highest bid going to the producer or placed in storage as USDA loan security with payment of a price support advance against the loan going to the producer.

There has been a strong USDA presence in the auction market venue. Obvious (and physically present) at an auction warehouse on each sales day are the marketing recorder and the tobacco grader. Not so obvious are the cooperative marketing associations that act on behalf of their producer members by entering into annual loan agreements with USDA in order to secure the money that is used to make price support available to producers through auction warehouses. The warehouses have, in turn, contracted with an association in order to make price support advances to producers on behalf of the association and also to store the loan tobacco on which price support advances have been made. The checks and balances inherent in the warehouse venue have provided USDA with many methods to audit the flow of tobacco into commerce. The following are examples.

1. Marketing Recorders

Review warehouse records and reports for maintenance, completeness, and accuracy;

Report deficiencies in warehouse reports and records;

Record on the marketing card each producer sale of tobacco;

Collect producer payments, penalties, liens, or levies;

2. Graders

Inspect tobacco presented for sale, determining and then applying quality standards and assigning a grade to the tobacco to establish the amount of price support available for each lot;

Collect and submit of grade/pounds information for statistical purposes such as using the distribution of grades sold in one market year in order to establish the grade loan rates for the following market year;

Work with the warehouse sale supervisor, providing information on the daily pound limit-for-sale for an orderly scheduling of sales of producer tobacco;

3. Associations/Warehouses

Verify that tobacco for which a price support advance has been made and which has been placed under loan is indeed eligible for price support;

Arrange for shipment of loan tobacco for processing (such as to a stemmery) where it is then containerized and returned to storage; and

Maintain inventory loan tobacco until its ultimate sale to a leaf buying company.

In other words, in the traditional auction venue, the entrance into and passage through commerce of tobacco—from the producer to the ultimate consumer—is carefully monitored, with the scheduling of sales the most important factor in guaranteeing that the tobacco is marketed in an orderly manner. Since 1974, flue-cured producers have informed USDA by way of a designation program of where they would market their tobacco. This designation information has been provided to associations so that sale time might be scheduled at auction warehouses; and to assure that tobacco graders and market recorders are available at those times. Designation further provides statistical information to USDA about the total number of pounds that will be presented for sale in order to provide an audit trail for reconciliation with the pounds that are ultimately sold. That the designation program was already in place for flue-cured tobacco accounts in large part for the orderly marketing of this kind of tobacco during the recently ended market year when, instead of almost all of the flue-cured crop going as usual to auction for sale or price support, almost all the tobacco went to a non-auction venue with almost no USDA presence (only a market recorder).

With the information provided by producer designation, USDA knew how much flue-cured tobacco was scheduled to be sold at auction and how much was scheduled to be sold at non-auction. And this information has provided USDA with methods of meeting the requirements set out in the Act of monitoring the commercial flow of tobacco and assuring that no more than the established national quota was presented for sale, thus preserving the supply and demand intentions provided for in the Act.

Until the last 12 months, monitoring the movement of burley tobacco from farm into commerce has been straightforward because almost all of it was sold at auction. The approximately 3 percent of burley tobacco that was sold outside the auction warehouse venue did not jeopardize USDA's mandate to monitor and insure an orderly marketing of this crop. Burley warehouses are predominantly family owned and run operations, many for generations, so there has developed a close and often personal relationship between warehouse staff and the producers who sell there, providing an accommodating business-to-customer framework intended to assure that the same customers (producers selling tobacco) return to the same warehouse year after year. Annual sales time at burley auction warehouses, which has been determined by using a "previous 5 years" formula, has changed little in the past 50 years because of this method of doing business. Just as warehouse operations passed down from one generation to another, so too did the marketing relationships of producers.

If a disruption in this long-standing method of scheduling burley tobacco sales had occurred as it did in the flue-cured marketing venue in the early 1970's, a sales designation program would have been necessary for burley tobacco as well.

However, no such disruption in the burley tobacco venue occurred until recently, and the disruption has been dramatic enough to necessitate a designation program to monitor the flow of burley tobacco to sales location. In 2000 a traditional 97% of burley was sold in the long-established auction warehouse venue; in 2001 approximately 80% of burley tobacco will have been sold at non-auction locations and at present USDA has no method of knowing where or when this tobacco will enter into commerce or if it will do so in an orderly manner.

List of Subjects in 7 CFR Part 1464

Imports, Tobacco.

Accordingly, 7 CFR part 1464 is proposed to be amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1; 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, Pub. L. 106–113, Stat. 1135 and Pub. L. 106–224.

2. Revise § 1464.2 (b)(2) introductory text, (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), (b)(2)(v) and (b)(2)(vii) to read as follows:

§ 1464.2 Availability of price support.

* * * * *

(b) * * *

(2) *Special requirements for flue-cured and burley tobacco.* Price support will be available only on flue-cured and burley tobacco that has been designated for sale at specific warehouses by the producer under the following conditions:

* * * * *

(ii) *Producer designation of warehouses.* Producers will be required, as a condition of price support, to designate the warehouses at which they will market their tobacco.

(A) For flue-cured tobacco such designations may be at any warehouse or warehouses in any market within a radius of 100 miles from the county seat of the county in which the farm is located, or if such farm is physically within two counties, then from the county seat of the county in which the county FSA office administering that farm is located. To the extent there are less than eight markets within such radius, any warehouse or warehouses in any of the eight markets nearest to the county seat may be designated. A producer may obtain price support only in a warehouse that the producer has designated, and at each such warehouse only with respect to the quantity of tobacco designated for sale at such warehouse.

(B) For burley tobacco such designations may be at any warehouse or warehouses in any burley market.

(iii) *When producer designations shall be made.* Producers must designate the warehouse(s) at which they will market their tobacco during a period that shall be announced beforehand by the local county FSA office. Unless extended by the Deputy Administrator, the period for making designations shall be before May 31 each year for flue-cured tobacco and August 31 each year for burley tobacco. Producers who lease quota or whose farm is reconstituted (the combining or dividing of a farm due to a change in operation) after such period may designate the warehouse(s) at which their tobacco will be marketed according to procedures to be

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established by the Deputy Administrator, Farm Programs, FSA. Producers who have designated warehouses that cease to operate or cease to have tobacco inspection or price support available may change their designations at any time after such occurrences. Producers who have designated warehouses whose inspection services have been temporarily suspended for any reason for the equivalent of at least one sales day may change their designation at any time after such occurrences. Redesignation (changes in warehouse(s) designated or in pounds designated to a warehouse) or designations for farms that have not previously designated tobacco may be made by producers during the five business days ending on the first Friday of each month during the flue-cured or burley, as applicable, tobacco marketing season. Such redesignation or initial designation shall be made on any one day of each redesignation period. Such redesignation or initial designation shall be effective on the second Monday following the Friday on which the redesignation period ends.

(iv) *Form and content of designations.* For flue-cured tobacco a designation shall be made for each warehouse at which a producer desires to market tobacco by executing a form provided by the county FSA office. The producer will be required to indicate on such form the name of the warehouse or warehouses designated by the producer and the pounds of flue-cured tobacco the producer desires to sell at such warehouse as well as any other information required to be stated on such form. For burley tobacco a designation shall be made for each warehouse, receiving station or dealer at which a producer desires to market tobacco by executing a form provided by the county FSA office. The producer will be required to indicate on such form the name of the warehouse(s), receiving station(s) or dealer(s) designated by the producer and the pounds of burley tobacco the producer desires to sell at such warehouse, receiving station or dealer as well as any other information required to be stated on such form.

(v) *Entering designation information.* For flue-cured tobacco, the warehouse code number of the warehouse the producer has designated will be indicated on the farm marketing card. For burley tobacco, the warehouse, receiving station, or dealer code number of the warehouse, receiving station or dealer the producer has designated will be indicated on the farm marketing card. If an effective date is determined in accordance with paragraph (b)(2)(iii) of this section, such effective date will be shown on the farm marketing card. For flue-cured tobacco, if the producer has not designated a warehouse, a warehouse code will not be shown on the marketing card. Changes in designation by the producer shall be accomplished by the producer returning the marketing card to the county FSA office and requesting the transfer of any unmarketed pounds of flue-cured or burley tobacco shown on any marketing card to another eligible warehouse, receiving station or dealer, if applicable.

* * * * *

(vii) *Availability of designation information.* Each county FSA office shall send designations received to the Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, North Carolina for flue-cured tobacco, Burley Tobacco Growers Cooperative Association, Lexington, Kentucky and Burley Stabilization Corporation, Knoxville, Tennessee for burley tobacco, following each designation period and each period for changing designations. That association(s) shall inform the Flue-Cured Tobacco Advisory Committee or the Burley Tobacco Advisory Committee, as applicable, of the pounds designated to each warehouse and the pounds of any undesignated or nonauction tobacco that, for the purpose of recommending opening dates and selling schedules in accordance with part 29 of this title, is available for apportioning for sale at each warehouse. That association also shall furnish each warehouse the name and address of the producers who designated the warehouse, the pounds each designated and the pounds that represent 103 percent of the marketing quota of each such producer. The Director, Tobacco and Peanuts Division, shall furnish each receiving station the name and address of the producers who designated the receiving station, the pounds each designated and the pounds that represent 103% of the marketing quota of each such producer.

* * * * *

3. Revise § 1464.7(d) to read as follows:

§ 1464.7 Eligible producer

(a) * * *

(b) * * *

(c) * * *

(d) In addition to meeting all other requirements that apply elsewhere, including (but not limited to) the warehouse designation provisions of § 1464.2, must not be ineligible, in accordance with part 1400 of this title, to receive price support payments, loans and benefits.

* * * * *

4. Revise § 1464.10 (i)(1)(i), (i)(2) and (i)(3)(i) to read as follows:

§ 1464.10 No-net-cost tobacco fund or account.

* * * * *

(i) * * *

(1) * * *

(i) From any dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

* * * * *

(2) A dealer, receiving station official or warehouse operator may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) * * *

(i) From the dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

* * * * *

Signed at Washington, DC, on December 21, 2001.

James R. Little,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 02–186 Filed 1–3–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–86–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R Series Airplanes; and Model A300 F4–605R Airplanes

AGENCY: Federal Aviation Administration, BOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R series airplanes, that would have required repetitive inspections for cracking of certain fittings, corrective action if necessary, and, for certain airplanes, a modification; and would have provided for optional terminating action for the repetitive inspections. This new action revises the proposed rule by including additional airplanes in the applicability. The actions specified by this new proposed AD are intended to detect and correct propagation of cracks on the frame 40 aft fittings due to local stress concentrations at the upper flange runout of frame 40, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 99–NM–86–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–86–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 22, 2001 (66 FR 44089). That supplemental NPRM would have required repetitive inspections for cracking of certain fittings, corrective action if necessary, and, for certain airplanes, a modification; and would have provided for optional terminating action for the repetitive inspections. That supplemental NPRM was prompted by reports of cracked frame 40 aft fittings at stringer 33 on the left and right sides of the fuselage. The cracking has been attributed to local stress concentration at the upper flange runout of frame 40. That condition, if not corrected, could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the first supplemental NPRM.

Support for the Proposal

One commenter, an operator, generally supports the proposal. The commenter reports that the proposed actions, including the optional terminating action, have already been accomplished on most of its airplanes. The commenter also provides the cost of accomplishing the work on its fleet.

Request to Revise Applicability

One commenter, the manufacturer, requests that the applicability of the first supplemental NPRM be revised to include all Airbus Model A300 F4–605R airplanes. This commenter had earlier requested, in response to the original NPRM, that Model A300 F4–622R airplanes be removed from the applicability of the original NPRM. However, the commenter notes that Model A300 F4–605R airplanes were also removed from the applicability, although they are subject to the unsafe condition and should be included.

The FAA concurs, for the reasons identified by the commenter. Model A300 F4–605R airplanes had been inadvertently omitted from the applicability. The applicability section of this second supplemental NPRM has been revised accordingly.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 70 airplanes of U.S. registry would be affected by this second supplemental NPRM.

For affected airplanes, it would take approximately 92 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost as much as $874 per airplane. Based on these figures, the cost impact of the proposed modification is estimated to be as much as $6,394 per airplane.

It would take approximately 10 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $42,000, or $600 per airplane, per inspection cycle.

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The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as planning time, time required to gain access and close up, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–86–AD.

Applicability: All Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R series airplanes; and Model A300 F4–605R airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct propagation of cracks on the frame 40 aft fittings due to local stress concentrations at the upper flange runout of frame 40, which could result in reduced structural integrity of the airplane, accomplish the following:

Modification

(a) For airplanes on which Airbus Modification 10430 has not been done before the effective date of this AD: Concurrently with the inspection required by paragraph (b) of this AD, modify the profile of frame 40 aft fittings per the service information specified in Table 1, as follows:

TABLE 1.—SERVICE INFORMATION

For model—	Do the actions in accordance with either—	Of Airbus Service Bulletin—	Dated—
(1) A300 B2 and A300 B4 series airplanes	(i) Revision 01 or	A300–53–0296	Sept. 30, 1998.
	(ii) Revision 02	A300–53–0296	May 12, 1999.
(2) A300 B4–600 and A300 B4–600R series airplanes and Model A300 F4–605R airplanes.	(i) Revision 01 or	A300–53–6048	Sept. 30, 1998.
	(ii) Revision 03	A300–53–6048	Feb. 21, 2000.

Note 2: For Model A300 B4–600 and A300 B4–600R series airplanes and Model A300 F4–605R airplanes: Actions performed in accordance with Airbus Service Bulletin A300–53–6048, dated January 16, 1996; or Revision 02, dated May 12, 1999, are acceptable for compliance with the applicable requirements of this AD.

Note 3: Airbus Service Bulletin A300–53–6048 refers to Airbus Service Bulletin A300–53–6063 as an additional source of service information for accomplishment of certain repairs.

Inspection

(b) For all airplanes, inspect the airplane per Table 2, as follows:

TABLE 2.—INSPECTION REQUIREMENTS

Requirements	Description
(1) Area to inspect	The frame 40 AFT fitting.
(2) Type of inspection	Nondestructive test (NDT).

TABLE 2.—INSPECTION REQUIREMENTS—Continued

Requirements	Description
(3) Compliance time	As specified by paragraph (c) of this AD.
(4) Discrepancies to detect	Cracking.
(5) Service information	Inspect in accordance with the applicable service bulletin listed in Table 1 of this AD.
(6) Follow-on actions if you find no cracking	Repeat the inspection thereafter at the applicable interval specified by Table 3 of this AD.
(7) Corrective actions if you find cracking	Do the specified actions by paragraph (d) of this AD.
(8) Terminating action	The modification specified by paragraph (e) of this AD terminates the requirements of this AD.

Note 4: An NDT per Part 6 53–15–30 procedure C of the NDT manual is also acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) Perform the inspection required by paragraph (b) of this AD per the schedule in Table 3 of this AD. For airplanes on which this inspection has been accomplished before the effective date of this AD, the initial compliance time may be extended by the repetitive interval following the date the inspection was accomplished. Table 3 follows:

TABLE 3.—COMPLIANCE TIMES FOR INSPECTION

For model—	If the total flight cycles accumulated on the airplane as of the effective date of this AD is—	Then inspect—	And repeat the inspection at least every—
(1) A300 B4–600 and A300 B4–600R series airplanes and Model A300 F4–605R airplanes, past-Modification 10430.	(i) Fewer than 6,200	Before the airplane accumulates 7,700 total flight cycles or 17,710 total flight hours, whichever occurs first.	7,500 flight cycles or 17,250 flight hours, whichever occurs first.
	(ii) At least 6,200 and fewer than 9,700.	Within 1,500 flight cycles or 3,450 flight hours after the effective date of this AD, whichever occurs first.	7,500 flight cycles or 17,250 flight hours, whichever occurs first.
	(iii) At least 9,700	Within 750 flight cycles or 1,725 flight hours after the effective date of this AD, whichever occurs first.	7,500 flight cycles or 17,250 flight hours, whichever occurs first.
(2) A300 B4–600 and A300 B4–600R series airplanes and Model A300 F4–605R airplanes, pre-Modification 10430.	(i) Fewer than 19,600	Before the airplane accumulates 21,100 total flight cycles or 48,530 total flight hours, whichever occurs first.	7,500 flight cycles or 17,250 flight hours, whichever occurs first.
	(ii) At least 19,600 and fewer than 23,100 9,700.	Within 1,500 flight cycles or 3,450 flight hours after the effective date of this AD, whichever occurs first.	7,500 flight cycles or 17,250 flight hours, whichever occurs first.
	(iii) At least 23,100	Within 750 flight cycles or 1,725 flight hours after the effective date of this AD, whichever occurs first.	7,500 flight cycles or 17,250 flight hours, whichever occurs first.
(3) A300 B2 series airplanes	(i) Fewer than 12,000	Before the airplane accumulates 14,000 total flight cycles or 15,120 total flight hours, whichever occurs first.	5,500 flight cycles or 5,940 flight hours, whichever occurs first.
	(ii) At least 12,000 and fewer than 17,000.	Within 2,000 flight cycles or 2,160 flight hours after the effective date of this AD, whichever occurs first.	5,500 flight cycles or 5,940 flight hours, whichever occurs first.

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TABLE 3.—COMPLIANCE TIMES FOR INSPECTION—Continued

For model—	If the total flight cycles accumulated on the airplane as of the effective date of this AD is—	Then inspect—	And repeat the inspection at least every—
	(iii) At least 17,000	Within 1,000 flight cycles or 1,080 flight hours after the effective date of this AD, whichever occurs first.	5,500 flight cycles or 5,940 flight hours, whichever occurs first.
(4) A300 B4–100 series airplanes	(i) Fewer than 9,500	Before the airplane accumulates 11,500 total flight cycles or 15,295 total flight hours, whichever occurs first.	4,500 flight cycles or 5,985 flight hours, whichever occurs first.
	(ii) At least 9,500 and fewer than 14,500.	Within 2,000 flight cycles or 2,660 flight hours after the effective date of this AD, whichever occurs first.	4,500 flight cycles or 5,985 flight hours, whichever occurs first.
	(iii) At least 14,500	Within 1,000 flight cycles or 1,330 flight hours after the effective date of this AD, whichever occurs first.	4,500 flight cycles or 5,985 flight hours, whichever occurs first.
(5) A300 B4–200 series airplanes	(i) Fewer than 8,500	Before the airplane accumulates 10,500 total flight cycles or 21,840 total flight hours, whichever occurs first.	4,000 flight cycles or 8,320 flight hours, whichever occurs first.
	(ii) At least 8,500 and fewer than 13,500.	Within 2,000 flight cycles or 4,160 flight hours after the effective date of this AD, whichever occurs first.	4,000 flight cycles or 8,320 flight hours, whichever occurs first.
	(iii) At least 13,500	Within 1,000 flight cycles or 2,080 flight hours after the effective date of this AD, whichever occurs first.	4,000 flight cycles or 8,320 flight hours, whichever occurs first.

Note 5: An NDT inspection is also required by AD 98–25–07, amendment 39–10933, to be repetitively performed on Model A300 B4–600 and A300 B4–600R series airplanes and Model A300 F4–605R airplanes on which Airbus Modification 10453 has not been installed. For those airplanes, if the inspection is done within the applicable compliance time specified by paragraph (c) of this AD, the threshold for the initial inspection of paragraph (b) of this AD may be extended by 1,500 flight cycles.

Corrective Actions

(d) If any cracking is found during any inspection required by paragraph (b) of this AD: Except as required by paragraph (f) of this AD, prior to further flight, perform all applicable corrective actions in accordance with the applicable service bulletin identified in Table 1 of this AD.

Terminating Action

(e) Accomplishment of the applicable modification in accordance with the applicable service bulletin specified by paragraph (e)(1) or (e)(2) of this AD terminates the requirements of this AD.

(1) For Model A300 B4–600 and A300 B4–600R series airplanes: In accordance with Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995; or Revision 02, dated June 2, 1999.

(2) For Model A300 B2 and A300 B4 series airplanes: In accordance with Airbus Service Bulletin A300–53–0297, Revision 2, dated October 31, 1995.

Exception to Service Bulletin Instructions

(f) During any inspection required by this AD, if the service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 7: The subject of this AD is addressed in French airworthiness directive 1998–481–270(B) R1, dated July 12, 2000.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–201 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–400–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–90–30 series airplanes. This proposal would require inspection of the power feeder cables on the left and right side of the aft cargo compartment between certain stations for minimum clearance from the adjacent structure and for the presence of a grommet in the lightening hole through the floor cusp, and corrective actions, if necessary. This action is necessary to detect and correct inadequate clearance of the power feeder cables on the left and right side of the aft cargo compartment, the lack of a grommet in the lightening hole through the floor cusp, and improper installation of the cabin sidewall grill during production. These conditions could lead to chafing of the power feeder cables, resulting in electrical arcing and possibly in a fire in the cargo compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–400–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–400–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–400–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–400–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that on McDonnell Douglas MD–90–30 series airplanes, there is a potential for the power feeder cables of the aft cargo compartment to contact the lightening hole through the floor cusp between certain stations on the left and right sides of the airplane. Analysis indicates that the cabin sidewall grill may not have been properly installed during production and a grommet may not have been installed in the lightening hole, leaving inadequate clearance between the power feeder cables and the lightening hole and forcing the cables to ride hard against the outboard edge of the lightening hole. These conditions, if not corrected, could lead to chafing of the power feeder cables of the aft cargo compartment, resulting in electrical arcing and possibly in a fire in the cargo compartment of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–24A025, Revision 01, dated January 11, 2000, which describes procedures for a general visual inspection of the power feeder cables of the left and right sides of the aft cargo compartment between stations Y=1344 and Y=1364. The inspection is to verify that the minimum clearance exists between the power feeder cables and the adjacent structure and that a grommet has been installed in the lightening hole through the floor cusp. The service bulletin also describes procedures for the following corrective actions, if necessary:

- Installation of the grommet if it is missing,
- Re-positioning of the power feeder cables to achieve the minimum clearance from the adjacent structure,
- Inspection of the power feeder cables for damage,
- Repair of any damaged power feeder cable, * Fabrication of trim, and
- Modification of the retainer assembly of the cabin sidewall grill.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 16 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is

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estimated to be $840, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–400–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A025, Revision 01, dated January 11, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct inadequate clearance of the power feeder cables on the left and right side of the aft cargo compartment, the lack of a grommet in the lightening hole through the floor cusp, and improper installation of the cabin sidewall grill, which could lead to chafing of the power feeder cables, resulting in electrical arcing and possibly in a fire in the cargo compartment of the airplane, accomplish the following:

Inspection

(a) Within one year after the effective date of this AD: Perform a general visual inspection of the power feeder cable installation on the left and right sides of the aft cargo compartment between stations Y=1344.000 and Y=1364.000 for the minimum clearance between the power feeder cables and the adjacent structure and for grommet installation, in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A025, Revision 01, dated January 11, 2000. If the inspection reveals that adequate clearance exists and a grommet is installed, no further action is required.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Inspections and repairs accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD90–24–025, dated July 31, 1996, are considered acceptable for compliance with the applicable actions specified in this amendment.

Corrective Action, If Necessary

(b) Subsequent to the inspection required by paragraph (a) of this AD and prior to further flight, perform the actions described in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A025, Revision 01, dated January 11, 2000.

(1) If minimum clearance exists and if a grommet is not installed: Install a grommet.

(2) If minimum clearance does not exist and if a grommet is installed: Conduct a general visual inspection of the power feeder cables for damage, repair any damaged cable, and re-position the cables inboard to achieve minimum clearance.

(3) If minimum clearance does not exist and if a grommet is not installed: Conduct a general visual inspection of the power feeder cables for damage, repair any damaged cable, install a grommet, and re-position cables inboard to achieve minimum clearance.

(4) If minimum clearance does not exist but cannot be accomplished or a hard riding condition exists: Conduct a general visual inspection of the power feeder cables for damage; repair any damaged cable; fabricate trim; install a grommet, if necessary; position power feeder cables to achieve the minimum clearance; and modify the retainer assembly of the cabin sidewall grill.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–202 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–195–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–90–30 series airplanes. This proposal would require replacement of the existing strake feed-thru and internal electrical connectors with new, moisture resistant connectors. This action is necessary to prevent moisture from entering the strake feed-thru and internal electrical connectors, which could lead to electrical arcing and a consequent fire in the electrical and electronic (E/E) compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–195–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–195–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received two reports indicating that on McDonnell Douglas Model MD–90–30 series airplanes, a strake internal electrical connector had arced to its corresponding feed-thru connector, damaging the pins and base metal in both connectors. Investigation revealed that moisture had entered the feed-thru and internal electrical connectors, which caused the arcing. This condition, if not corrected, could result in electrical arcing and a consequent fire in the electrical and electronic (E/E) compartment of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–30A017, Revision 02, dated September 26, 2000, which describes procedures for replacing the existing feed-thru and internal electrical connectors with new, moisture resistant connectors. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 99 airplanes of the affected design in the worldwide fleet. The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts are available at no charge from the manufacturer. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,000, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated

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with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–195–AD.

Applicability: Model MD–90–30 series airplanes, certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD90–30A017, Revision 02, dated September 26, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture from entering the strake feed-thru and internal electrical connectors, which could lead to electrical arcing and a consequent fire in the electrical and electronic (E/E) compartment of the airplane, accomplish the following:

Replacement

(a) Within one year after the effective date of this AD: Replace the existing strake feed-thru and internal wire connectors with new connectors, in accordance with McDonnell Douglas Alert Service Bulletin MD90–30A017, Revision 02, dated September 26, 2000.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD90–30A017, Revision 01, dated April 3, 2000, or original issue, dated August 12, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–203 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717 series airplanes. This proposal would require repetitive inspections for cracking of the spoiler hold-down actuator supports located on the left and right wing rear spars; adjustment of the spoiler hold-down actuators; and replacement of cracked spoiler hold-down actuator supports with new supports. The proposal would also require replacement of all spoiler hold-down actuator supports, which terminates the repetitive inspections. This action is necessary to detect and correct as well as to prevent cracks in the spoiler hold-down actuator supports, which could lead to reduced spoiler hold-down capability, resulting in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–244–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–244–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that four occurrences of cracks in the spoiler hold-down actuator supports had been observed by an operator of McDonnell Douglas Model 717 series airplanes. The cracks, which occurred on airplanes which had accumulated approximately 2,800 total flight hours, were caused by high fatigue loads due to excessive deflection of the supports. If not detected and corrected or prevented, cracks in the spoiler hold-down actuator supports could lead to reduced spoiler hold-down capability, resulting in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated October 2, 2001, which describes procedures for repetitive visual inspections of the spoiler hold-down actuator supports located on the left and right wing rear spars for cracks and adjustment of the spoiler hold-down actuators. The service bulletin recommends that spoiler hold-down actuator supports, which are found to be cracked, be replaced with new supports within 500 flight hours of the inspection.

The FAA has also reviewed and approved Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001, which describes procedures for replacement of the spoiler hold-down actuator supports, idler links, hinge pin, and attaching parts with new parts and for adjustment of the spoiler hold-down actuators. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Operators should note that, while it is not the FAA's normal policy to allow flight with known cracks, the proposed rule would permit further flight with a cracked spoiler hold-down actuator support, provided that the spoiler hold-down actuators are adjusted prior to further flight and that the cracked spoiler hold-down actuator support is replaced within 500 flight hours after the inspection during which a crack was detected.

Cost Impact

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 12 work hours per airplane to accomplish the proposed detailed visual inspection and adjustment of the spoiler hold-down actuator supports for cracks at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $25,920, or $720 per airplane, per inspection cycle.

It would take approximately 18 to 43 work hours per airplane to accomplish the proposed replacement of the spoiler hold-down actuator supports and associated parts at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it would bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be between $38,880 and $92,880, or between $1,080 and $2,580 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the

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future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–244–AD.

Applicability: Model 717 series airplanes, manufacturer's fuselage numbers 5002 through 5064 inclusive, and 5066 through 5073 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct as well as to prevent cracks in the spoiler hold-down actuator supports, which could lead to reduced spoiler hold-down capability, resulting in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement, accomplish the following:

Inspections

(a) Prior to the accumulation of 1,500 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection of the spoiler hold-down actuator supports on the left and right wing rear spar for cracks, in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated October 2, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Inspections accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 01, dated February 28, 2001, are considered acceptable for compliance with the applicable action specified in this amendment.

(1) If no crack is detected: Prior to further flight, adjust the spoiler hold-down actuators in accordance with the service bulletin. Repeat the detailed visual inspection at intervals not to exceed 500 flight hours until the accomplishment of the requirements of paragraph (b) of this AD.

(2) If any crack is detected: Prior to further flight, adjust the spoiler hold-down actuators in accordance with the service bulletin. Within 500 flight hours after accomplishment of the inspection, replace the cracked spoiler hold-down actuator supports(s) and associated idler link(s), hinge pins, and attaching parts with new parts and adjust the spoiler hold-down actuators, in accordance with Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001. Replacement of a cracked spoiler hold-down actuator support as required herein constitutes terminating action for that actuator support for the requirements of this AD.

Terminating Action

(b) Within 15 months after the effective date of this AD: Replace spoiler hold-down actuator supports, idler links, hinge pin, and attaching parts with new parts and adjust the spoiler hold-down actuators, in accordance with Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001. Any spoiler hold-down actuator supports, idler links, hinge pin, or attaching parts which have previously been replaced in accordance with paragraph (a)(2) of this AD do not need to be replaced. Replacement of all spoiler hold-down actuators in accordance with Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001, constitutes terminating action for the requirements of this AD.

Note 4: Replacement of a spoiler hold-down actuator support accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 717–57–0004, dated May 30, 2001, is considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–204 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–333–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require inspection of certain aft axle pivot pins of the main landing gear (MLG) for heat damage and either reworking of damaged pins or replacement of damaged pins with new pins. This action is necessary to prevent breakage of the aft axle pivot pin of the MLG, which could overload the center axle, causing the tires to blow out upon landing, and could disengage the aft axle so that it jams the gear in the wheel well, preventing proper extension of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–333–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–333–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a fractured aft axle pivot pin had been discovered in the main landing gear (MLG) of a Boeing Model 777 series airplane used as a flight test airplane with 488 total flight cycles. Metallurgical inspection of the aft axle pivot pin revealed heat damage to the base metal. Such heat damage, if not corrected, could cause breakage of the aft axle of the pivot pin of the MLG. A broken aft axle pivot pin could migrate from the joint, disengaging the aft axle and causing it to jam the gear in the wheel well, which could prevent proper extension of the MLG. In addition, the loss of function of the aft axle could overload the center axle, causing the tires to blow out upon landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing special Attention Service Bulletin 777–32–0029, dated May 18, 2000, which describes procedures for performing a visual inspection of the aft axle pivot pins of the MLG to determine their serial numbers, removal of certain pivot pins, inspection of the pivot pins for heat damage using either the Barkhausen Noise Inspection method for chromium-plated parts or the magnetic particle inspection method, and re-installation of undamaged pivot pins or replacement of damaged pivot pins with new pivot pins. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 263 airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be at least $17,520, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no

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operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–333–AD.

Applicability: Model 777 series airplanes, line numbers 1 through 263 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent breakage of the aft axle pivot pin of the main landing gear (MLG), which could overload the center axle, causing the tires to blow out upon landing, and could disengage the aft axle so that it jams the gear in the wheel well, preventing proper extension of the MLG, accomplish the following:

Inspection

(a) Within 18 months of the effective date of this AD: Perform the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing special Attention Service Bulletin 777–32–0029, dated May 18, 2000.

(1) For airplanes which have line numbers 1 through 68 inclusive (designated as Group 1 airplanes in the service bulletin) and on which the aft axle pivot pin of the main landing gear (MLG) has been replaced prior to the effective date of this AD: Inspect the serial number of the pivot pin.

(i) If the serial number of the pivot pin does not have the prefix of EGL, no further action is required.

(ii) If the serial number of the pivot pin does have the prefix of EGL, prior to further flight, perform the actions required by paragraph (a)(2) of this AD.

(2) For airplanes which have line numbers 69 through 263 inclusive (designated as Group 2 airplanes in the service bulletin): Remove the aft axle pivot pin, remove the lube insert from the aft axle pivot pin, and inspect the aft axle pivot pin for heat damage. The inspection must be done either by the Barkhausen Noise Inspection method for chromium-plated parts or by the magnetic particle inspection method, in accordance with the service bulletin.

(i) If heat damage is found by the inspection required by paragraph (a)(2) of this AD: Prior to further flight, re-work the existing aft axle pivot pin, re-install the existing lube insert, and re-install the re-worked aft axle pivot pin or install a new aft axle pivot pin in the MLG, in accordance with the service bulletin.

(ii) If no heat damage is found by the inspection required by paragraph (a)(2) of this AD: Prior to further flight, re-install the existing lube insert and re-install the existing aft axle pivot pin or install a new aft axle pivot pin in the MLG, in accordance with the service bulletin.

Spares

(b) After the effective date of this AD, no person shall install an aft axle pivot pin having a serial number with the prefix "EGL" in the MLG, unless the pivot pin has been inspected as required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–205 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes. This proposal would require modification of the main battery ground stud and installation of a nameplate which indicates torque requirements for the ground stud nut. This action is necessary to prevent the ground stud nut from being inadequately tightened or becoming loose, which could result in electrical arcing between the ground stud and the adjacent structure, leading to damage to electrical or electronic equipment or possibly to fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–198–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–198–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The manufacturer has received a report from an operator of a McDonnell Douglas Model DC–9–82 airplane that a main battery ground stud and the adjacent structure had been burnt. The damage was attributed to a loose or inadequately tightened ground stud, which caused electrical arcing. The main battery stud on the affected model is similar to that on MD–90–30 series airplanes. Therefore, the MD–90–30 series airplanes may be subject to the same unsafe condition reported on the DC–9–82 airplane. The proposed rule is necessary to prevent the ground stud nut from being inadequately tightened or becoming loose, which could result in electrical arcing between the ground stud and the adjacent structure, leading to damage to electrical or electronic equipment or possibly to fire in the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–24A004, Revision 01, dated January 11, 2000, which describes procedures for modification of the main battery ground stud and installation of a nameplate which specifies torque requirements for the ground stud nut. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 18 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $840, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, for affected airplanes within the period under the warranty agreement, the FAA has been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. The FAA has also been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or

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time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–198–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A004, Revision 01, dated January 11, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the ground stud nut from being inadequately tightened or becoming loose, which could result in electrical arcing between the ground stud and the adjacent structure, leading to damage to electrical or electronic equipment or possibly to fire in the airplane, accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD: Reverse the main battery ground stud and install a nameplate which indicates torque requirements for the ground stud nut, in accordance with McDonnell Douglas alert Service Bulletin MD90–24A004, Revision 01, dated January 11, 2000.

(b) After accomplishing paragraph (a) of this AD and prior to further flight: Inspect the electrical bonding of the ground stud, in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A004, Revision 01, dated January 11, 2000.

Note 2: Accomplishment of the reversal of the ground stud installation and installation of the nameplate in accordance with McDonnell Douglas Service Bulletin MD90–24–004, dated February 26, 1996, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–206 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F Series Airplanes; and Model 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SR series airplanes. For certain airplanes, this proposal would require repetitive inspections of the clevis bushings on the inboard and outboard sequence carriages of the wing foreflap for bushing migration, and corrective action, if necessary; replacement of existing bushings with new bushings, which would terminate the repetitive inspections; and replacement of the bushing markers with new markers, if necessary, to indicate the correct bushing orientation. For certain other airplanes, this proposal would require a one-time inspection to determine whether the bushings are in the correct orientation, and follow-on actions. This action is necessary to prevent the loss of an inboard trailing edge foreflap during flight, and subsequent damage to the airplane in flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–117–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–117–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator of a Boeing Model 747 series airplane with 22,141 total flight hours and 7,268 total flight cycles discovered a broken lug on the inboard sequence carriage clevis of the wing foreflap during a routine check. Subsequently, another operator, with a Model 747 series airplane that had accumulated 5,790 total flight hours and 1,965 total flight cycles, found a cracked lug. In both cases, the bushing at the outboard lug had migrated out of place, resulting in bending loads on the lug. In one event, a Model 747 series airplane that had accumulated 114,036 total flight hours and 20,438 total flight cycles had the wing foreflap separate from the airplane during flight as a result of migrated bushings. The detached foreflap impacted the fuselage, creating a 5.5-foot-by-3-foot hole in the main cabin during flight. No operational problems had been reported prior to the discovery of the cracked or broken lugs. Continued operation of the airplane without detecting and replacing migrated bushings could result in loss of an inboard trailing edge foreflap during flight, which could subsequently cause damage to the airplane in flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993, which, for certain airplanes, describes procedures for a general visual inspection of the bushings of the clevis on the inboard and outboard sequence carriages of the inboard trailing edge foreflap to detect bushing migration, and corrective action, if necessary; repetitive inspections of the bushings until they have been replaced; replacement of the bushings with new bushings; and replacement of the markers installed on the airplane, if necessary, to ensure correct orientation of the bushings. For certain other airplanes, the service bulletin describes procedures for a one-time general visual inspection to determine whether the bushings are in the correct orientation, and follow-on actions. If the bushings are correctly oriented, follow-on action involves replacement of the existing markers on the airplane with new markers, if applicable, to ensure that bushings are oriented correctly in future replacements. If the bushings are incorrectly oriented, follow-on actions in the service bulletin involve correction of the orientation and replacement of the existing markers with new markers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this proposed AD would require, within 5 years, the bushing replacement described in Boeing Service Bulletin 747–57–2166, Revision 5, as terminating action for the repetitive inspections. (Incorporation of the terminating action is optional in the service bulletin.) The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is consistent with these conditions.

Operators also should note that, for airplanes on which the bushings have been replaced prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–57–2166, Revision 4, dated December 6, 1990, or prior revisions, this proposed AD would require accomplishment of an inspection to determine whether the bushings are correctly oriented, and follow-on actions. This proposed AD would differ from the service bulletin in that, if any bushing is incorrectly oriented, the follow-on actions would involve accomplishment of the repetitive inspections for bushing migration and eventual replacement of the bushings with new bushings.

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Operators should also note that the number of airplanes to which this AD is applicable is larger than that published in the service bulletin. Additional line numbers of airplanes have been included, as advised in Boeing Service Letter 747–SL–57–77, dated November 18, 1993. However, the FAA has further learned that the Boeing 747SP flaps are of a different design and are excluded from the proposed rule.

Cost Impact

There are approximately 589 airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts costs would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $93,240, or $420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–117–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SR series airplanes; certificated in any category; line numbers 1 through 1009, except 968, 999, 1004, and 1007.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of an inboard trailing edge foreflap during flight, and subsequent damage to the airplane in flight, accomplish the following:

Inspections (Bushings Not Yet Replaced)

(a) For airplanes on which the bushings have not been replaced prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–57–2166, Revision 4, dated December 6, 1990, or prior revisions: Prior to the accumulation of 5,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a general visual inspection of the bushings of the clevis on the inboard and outboard sequence carriages, flap tracks 3, 4, 5, and 6 of the inboard trailing edge foreflap, for bushing migration, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For each nondiscrepant bushing (with no migration): Repeat the inspection of that bushing at intervals not to exceed 1,200 flight cycles, until the terminating action required by paragraph (c) of this AD has been accomplished.

(2) For any discrepant bushing: Prior to further flight, replace the discrepant bushing with a new bushing and, if applicable, replace the bushing marker with a new marker, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993. No further action is required by this AD for that bushing only.

Note 3: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993).

Inspection (Bushings Replaced)

(b) For airplanes on which the bushings have been replaced prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–57–2166, Revision 4, dated December 6, 1990, or previous revisions: Prior to the accumulation of 5,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time general visual inspection of the bushings of the clevis on the inboard and outboard sequence carriages, flap tracks 3, 4, 5, and 6 of the inboard trailing edge foreflap, to determine whether the bushings are oriented correctly, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993.

(1) For each bushing that is oriented correctly: Within 5 years after the effective date of this AD, replace the markers installed on the airplane with new markers, as applicable, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993.

Note 4: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993).

(2) For any bushing that is oriented incorrectly: Prior to further flight, perform a general visual inspection of the bushing for bushing migration, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993.

(i) For each nondiscrepant bushing (with no migration), repeat the inspection specified by paragraph (b)(2) of this AD at intervals not to exceed 1,200 flight cycles, until the terminating action required by paragraph (c) of this AD has been accomplished.

(ii) For any discrepant bushing: Prior to further flight, replace the discrepant bushing with a new bushing and, if applicable, replace the bushing marker with a new marker, in accordance with the service bulletin. No further action is required by this paragraph for that bushing only.

Note 5: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993).

Terminating Action

(c) Within 5 years after the effective date of this AD, replace the existing bushings of the clevis on the inboard and outboard sequence carriages, in flap tracks 3, 4, 5, and 6 of the inboard trailing edge foreflap, in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993. Replacement of the bushings in accordance with Boeing Service Bulletin 747–57–2166, Revision 4, dated December 6, 1990, or earlier, is acceptable, provided the bushings are inspected as required by paragraph (b) of this AD and found to be in the correct orientation. Also, as applicable, before further flight, replace the markers installed on the airplane with new markers in accordance with Boeing Service Bulletin 747–57–2166, Revision 5. Replacement of all bushings, and markers as applicable, terminates the requirements of this AD.

Note 6: It is not necessary to replace the marker if the marker installed on the airplane shows the correct bushing orientation (flange reversed, as shown in NEW CONFIGURATION, Figure 1, of Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993).

Spares

(d) As of the effective date of this AD, no person shall install on any airplane a carriage and toggle assembly unless it has been modified in accordance with Boeing Service Bulletin 747–57–2166, Revision 5, dated May 13, 1993.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–207 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–376–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Rolls Royce RB211 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, that currently requires modification of the nacelle strut and wing structure. This action would add a one-time inspection of the middle gusset of the inboard side load fitting for proper alignment, and a one-time inspection of certain fastener holes in the lower spar fitting of the nacelle strut and wing structure for cracking, and corrective actions, if necessary. For certain airplanes, this action would require installation of new fasteners. The actions specified by the proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–376–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

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submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–376–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 17, 1999, the FAA issued AD 99–24–07, amendment 39–11431 (64 FR 66370, November 26, 1999), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, to require modification of the nacelle strut and wing structure. That action was prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane's reaching its design service objective. The requirements of that AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–24–07, the FAA has reviewed and approved Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999. The procedures in this service bulletin are similar to those in Boeing Service Bulletin 757–54–0035, dated July 17, 1997, which was referenced as the appropriate source of service information for the modification of the nacelle strut and wing structure required by the existing AD. However, Revision 1 describes new procedures for an examination of the middle gusset of the inboard side load fitting to determine if the angle between the middle gusset and the outboard face of the lug is out of alignment. If the angle is out of alignment, the corrective action involves machining the middle gusset to the specified angle.

Revision 1 also describes procedures for removing and discarding the midchord and aft bulkhead fasteners of the lower spar fitting, and doing a one-time eddy current inspection of those fastener holes for cracking. If any indication of a crack is found, the service bulletin specifies contacting the airplane manufacturer for repair instructions. The service bulletin also describes procedures to increase the diameter of the fastener holes and install new, improved fasteners. For airplanes modified per the original issue of the service bulletin, these new procedures are described separately in Part V of Revision 1. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–24–07 to continue to require modification of the nacelle strut and wing structure. This action would add a one-time inspection of the middle gusset of the inboard side load fitting for proper alignment, and corrective action, if necessary; and a one-time inspection of the lower spar fitting of the nacelle strut and wing structure for cracking, and enlargement of the holes and replacement of certain fasteners with new, improved fasteners. The actions would be required to be accomplished according to the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, this proposed AD would require such repairs to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

This proposed AD requires accomplishment of the inspections within 3 years after accomplishment of the modification of the nacelle strut and wing structure, or 3 years after the effective date of this AD, whichever is later. The service bulletin recommends that operators accomplish the actions in the bulletin "at a maintenance time when the engines are removed, but before the airplane gets 50,000 total flight cycles." In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections (1 hour for detailed visual/8 hours for fastener removal/eddy current). In light of all of these factors, the FAA finds a 3-year compliance time for initiating the inspections to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Although the service bulletin specifies an examination of the middle gusset of the inboard side load fitting for proper alignment, this proposed AD would require a detailed visual inspection for accomplishment of that action. A note has been included in this proposed rule to define that inspection.

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD.

The modification that is currently required by AD 99–24–07 takes approximately 1,049 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. This work hour figure includes the time it will take to remove and reinstall the struts from the airplane as well as the time to gain and close access to the adjacent wing structure. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $11,077,440, or $62,940 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table I of the service bulletin.

It would take approximately 1 work hour per airplane to accomplish the new detailed visual inspection of the middle gusset, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $60 per airplane.

It would take approximately 8 work hours per airplane to accomplish the new fastener removal and eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the removal and inspection proposed by this AD on U.S. operators is estimated to be $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11431 (64 FR 66370, November 26, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–376–AD. Supersedes AD 99–24–07, Amendment 39–11431.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, line numbers 1 through 735 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Restatement of Requirements of AD 99–24–07

Modification

(a) Modify the nacelle strut and wing structure according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997, or Revision 1, dated April 15, 1999, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, or on page 7 of Revision 1 of the service bulletin, as applicable, must be accomplished according to those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph. After the effective date of this AD, use only Revision 1 of the service bulletin.

(1) Prior to the accumulation of 37,500 total flight cycles, or prior to 20 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 3,000 flight cycles after January 3, 2000 (the effective date of AD 99–24–07, amendment 39–11431).

New Requirements of This AD

One-Time Inspections/Corrective Actions

(b) For airplanes that have done the modification required by paragraph (a) of this AD according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Within 3 years after doing the modification required by paragraph (a) of this AD, or 3 years after the effective date of this AD, whichever is later, do the requirements specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Do a one-time detailed visual inspection of the middle gusset of the inboard side load fitting for proper alignment according to Part II of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999. If the gusset is not aligned properly, before further flight, machine the gusset to the specified angle, according to the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Remove and discard the midchord and aft bulkhead fasteners of the lower spar fitting and do a one-time eddy current inspection of those fastener holes for cracking according to Part V of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035; Revision 1, dated April 15, 1999.

(i) If any cracking is found during the inspection required by paragraph (b)(2) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Then do paragraph (b)(2)(ii) of this AD.

(ii) If no cracking is found during the inspection required by paragraph (b)(2) of this AD, or after repair of cracking as required by paragraph (b)(2)(i) of this AD: Before further flight, increase the diameter of the fastener holes and install new fasteners, according to the service bulletin.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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(2) Alternative methods of compliance, approved previously in accordance with AD 99–24–07, amendment 39–11431, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–208 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F Series Airplanes; and Model MD–10–10F and MD–10–30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; and Model MD–10–10F and MD–10–30F series airplanes. This proposal would require an inspection of the parallel power feeder cables of the number 2 generator for chafing or structure damage; repositioning of the cables; and repair, if necessary. This action is necessary to prevent wire chafing of the parallel power feeder cables of the number 2 generator, which, if not corrected, could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the aft door panel area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–121–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of a fault alert of the electrical power generator system with smoke in the right aft galley area on a McDonnell Douglas Model MD–11 series airplane. The affected airplane had accumulated 28,867 total flight hours and 4,878 total flight cycles. Investigation revealed that the parallel power feeder cable of the number 2 Integrated Drive Generator (IDG) was burned through 30 percent due to chafing on the aft track of door R4. The parallel power feeder cables on Model MD–11 and DC–10 series airplanes, and Model MD–10–10F and MD–10–30F series airplanes are routed the same at the aft track of door R4. Wire chafing of the parallel power feeder cables of the number 2 generator, if not corrected, could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the aft door panel area.

Other Relevant Rulemaking

On August 14, 2001, the FAA issued AD 2001–17–08, amendment 39–12399 (66 FR 44043, August 22, 2001), which applies to certain McDonnell Douglas Model MD–11 series airplanes. That AD is intended to prevent chafing and

arcing of the parallel feeder cables of the number 2 IDG, which could result in smoke and/or fire in the right aft galley area. The AD requires a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 IDG; repairing any chafed cable and damaged structure; and repositioning the parallel power feeder cables of the number 2 IDG.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A170, Revision 01, dated September 25, 2001, which describes procedures for a one-time general visual inspection of the parallel power feeder cables of the number 2 generator for chafing and structure damage; repositioning of the cables; and repair, if necessary. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

There are approximately 231 Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; and Model MD–10–10F and MD–10–30F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 157 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $9,420, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed repositioning of cables, at an average labor rate of $60 per work hour. Required parts would cost approximately $646 per airplane. Based on these figures, the cost impact of the repositioning of cables proposed by this AD on U.S. operators is estimated to be $120,262, or $766 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–121–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; and Model MD–10–10F and MD–10–30F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin DC10–24A170, Revision 01, dated September 25, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing of the parallel power feeder cables of the number 2 generator, which, if not corrected, could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the aft door panel area, accomplish the following:

Inspection and Follow-On Actions

(a) Within 6 months after the effective date of this AD, do a one-time general visual inspection of the parallel power feeder cables of the number 2 generator for chafing and structure damage, per Boeing Alert Service Bulletin DC10–24A170, Revision 01, dated September 25, 2001.

(1) Condition 1. If no chafing or structure damage is found: At the next scheduled maintenance visit, but no later than 6 months after the effective date of this AD, reposition the cables per the alert service bulletin.

(2) Condition 2. If any chafing or structure damage is found: Prior to further flight, repair the cable and damaged adjacent structure, as applicable, and reposition the cables, per the alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 21, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–209 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–19]

Proposed Establishment of Class E5 Airspace; Batesville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Batesville, MS. A Localizer (LOC)/Distance Measuring Equipment (DME) Runway (RWY) 19, a Area Navigation (RNAV) Global Positioning System (GPS) RWY 1 and a RNAV (GPS) RWY 19 Standard Instrument Approach Procedures (SIAP) have been developed for Panola County Airport, Batesville, MS. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Panola County Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–19, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments as self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Batesville, MS. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to kept the operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Batesville, MS [New]

Panola County Airport, MS

(Lat. 34°21'59"N, long. 89°54'32"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Panola County Airport.

* * * * *

Issued in College Park, Georgia, on December 20, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–165 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

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Notices

Federal Register
Vol. 67, No. 3
Friday, January 4, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of the 14 State Summer Food Service Program Pilot Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of the data collection instruments for the Evaluation of the 14 State Summer Food Service Program Pilot Project.

DATES: Written comments on this notice must be received by March 4, 2002 to be assured of consideration.

ADDRESSES: Comments may be sent to Jay Hirschman, Director, Special Nutrition Staff, Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Jay Hirschman, (703) 305–2117.

SUPPLEMENTARY INFORMATION: *Title:* Evaluation of the 14 State Summer Food Service Program Pilot Project.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: Subsection 18 (f) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1769 (f)), added by section 1(a)(4) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), authorized the Secretary of Agriculture, through the Administrator of the Food and Nutrition Service (FNS), to conduct a pilot in each eligible State to increase the number of children participating in the Summer Food Service Program (SFSP) in that State. Definition of "eligible State" was provided in the authorizing legislation. Fourteen States, specifically Alaska, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Nebraska, New Hampshire, North Dakota, Oklahoma, Puerto Rico, Texas and Wyoming, met the eligibility criteria and are participating in the pilot, which began in fiscal year (FY) 2001 and will continue through FY 2003. For SFSP purposes, Puerto Rico is defined as a "State" in section 13(a)(1) of the NSLA, 42 U.S.C. 1761(a)(1).

The authorizing legislation also requires FNS to conduct an evaluation of the pilot project to describe (a) any effect on participation by children and service institutions in the SFSP in the pilot States; (b) any effect of the pilot on the quality of meals and supplements served in the pilot States; and (c) any effect of the pilot on program integrity. OMB approval will be requested for the data collection instruments to be used for evaluating the impact of the 14 State SFSP Pilot Project on the three areas specified in the law.

Respondents: Respondents include: (a) State government SFSP staff; (b) continuing sponsors who were sponsoring SFSP before the pilot started; (c) new sponsors who began sponsoring the program since the pilot began; (d) former sponsors who did not participate in SFSP in FY 2000, 2001 or 2002; and (e) school food service directors of non-participating school districts with 50% or more enrolled students certified to receive free and reduced price school meals.

Estimated Number of Respondents: (a) up to 54 State government employees that administer SFSP; (b) 166 continuing sponsors; (c) up to 150 new sponsors; (d) up to 150 former sponsors; and (e) up to 150 school food service directors of non-participating school districts.

Estimated Number of Responses per Respondent: One response per respondent with the exception of the 14 State Administrators who may be asked follow-up questions about program participation in FY 2003.

Estimate of Burden: Public reporting burden is estimated to range from 15 minutes for school food service directors of non-participating school districts to 120 minutes for State government SFSP administration staff.

Estimated Total Annual Burden on Respondents: 383.5 hours. (a) State government SFSP administration staff (54 × 120 minutes) = 108 hours; (b) continuing sponsors (166 × 30 minutes) = 83 hours; (c) new sponsors (150 × 30 minutes)= 75 hours; (d) former sponsors (150 × 20 minutes + 30 × 60 minutes for focus groups) = 80 hours; and (e) school food service directors of non-participating school districts (150 × 15 minutes) = 37.5 hours.

Dated: December 28, 2001.

Alberta C. Frost,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–156 Filed 1–3–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children Program Reimbursement for 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Melissa A. Rothstein, Section Chief, Summer Food Service Program and Child and Adult Care Food Program, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

In accordance with section 13 of the National School Lunch Act (NSLA)(42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2002. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 2000 through November 2001.

Section 104(a) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) amended section 12(f) of the NSLA (42 U.S.C. 1760(f)) to allow adjustments to SFSP reimbursement rates to reflect the higher cost of providing meals in the SFSP in Alaska and Hawaii. Therefore, this notice contains adjusted rates for Alaska and Hawaii. This change was made in an effort to be consistent with other Child Nutrition Programs, such as the National School Lunch Program and the School Breakfast Program, which already had the authority to previde higher reimbursement rates for programs in Alaska and Hawaii.

The 2002 reimbursement rates, in dollars, for all States excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (NOT AK OR HI)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.32	$.1300	$.1025
Lunch or Supper	2.30	.2400	.2000
Supplement	.53	.0650	.0525

The 2002 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.14	$.2125	$.1675
Lunch or Supper	3.73	.3900	.3225
Supplement	.87	.1050	.0850

The 2002 reimbursement rates, in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.54	$.1525	$.1200
Lunch or Supper	2.69	.2825	.2325
Supplement	.62	.0775	.0600

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The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 3.17 percent increase during 2001 (from 170.4 in November 2000 to 175.8 in November 2001) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759 (a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: December 28, 2001.

Alberta Frost,

Acting Administrator.

[FR Doc. 02–238 Filed 1–3–02; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Idaho Panhandle National Forests' Idaho Panhandle Resource Advisory Committee will meet Friday, January 18, 2002 in Coeur d'Alene, Idaho for a business meeting. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Officer, at (208) 765–7210.

SUPPLEMENTARY INFORMATION: The business meeting on January 18, begins at 10:00 AM, at the Forest Supervisor's Office of the Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815. Agenda topics will include election of Chairperson, develop criteria for reviewing project proposals, how to solicit projects, review project proposals, if available, and establishment of future meeting schedule. Due to unforeseen circumstances this document will be published less than 15 days before the meeting date.

Dated: December 28, 2001.

Pat Aguilar,

Deputy Forest Supervisor.

[FR Doc. 02–242 Filed 1–3–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 4, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Administrative/General Support Services

Minerals Management Service, DOI, 381 Elden Street, Herndon, Virginia
NPA: ServiceSource, Inc., Alexandria, Virginia
Government Agency: Department of the Interior

Base Supply Center, Fort Meade, Maryland
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland
Government Agency: Fort Meade, Maryland

Customization & Distribution of Air Force Sales Promotional Items

HQ Air Force Recruiting Service, 550 D Street West, Suite 1, Randolph AFB, Texas
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin
Government Agency: HQ Air Force Recruiting Service

Food Service Attendant

Air National Guard-Iowa, 3100 McKinley Avenue, Des Moines, Iowa
NPA: Progress Industries, Newton, Iowa
Government Agency: Air National Guard—Iowa

Hospital Housekeeping Services

Great Lakes Naval Hospital, Great Lakes, Illinois
NPA: Relief Enterprise, Inc., Austin, Texas
Government Agency: Great Lakes Naval Hospital

Janitorial/Custodial

Veterans Affairs Medical Center, OI Services Center, Edward Hines Jr., 1st Avenue, Bldg 20, Hines, Illinois
NPA: Jewish Voc. Service & Employment Center, Chicago, Illinois
Government Agency: VA Medical Center—Brecksville, Ohio

Laundry Service

VA Medical Center, At the following locations:
Denver, Colorado
Pueblo, Colorado
Cheyenne, Wyoming
NPA: Goodwill Industrial Services Corporation, Colorado Springs, Colorado
Government Agency: VA Medical Center, Denver, Colorado

G. John Heyer,

General Counsel.

[FR Doc. 02–233 Filed 1–3–02; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia, Maryland and Virginia State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia, Maryland and Virginia Advisory Committees to the Commission will convene at 9:30 a.m. and adjourn at 1:00 p.m. on January 9, 2002, at the Fifth Floor Conference Room, 624 9th Street, NW., Washington, DC 20001. The Inter-SAC Committee will plan necessary details for the forthcoming Forum on the aftermath of 9–11 attacks.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 28, 2001.

Debra A. Carr,

Deputy General Counsel, Office of the General Council.

[FR Doc. 01–32259 Filed 12–31–01; 10:44 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission, and Postponement of Final Results of the Fourth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results, partial rescission, and postponement of final results of fourth antidumping duty administrative review.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on brake rotors from the People's Republic of China covering the period April 1, 2000, through March 31, 2001. This administrative review examines one exporter and five exporters included in three exporter/producer combinations.

We have preliminarily determined that sales have not been made below normal value by Qingdao Gren (Group) Co., the exporter under review. If these preliminary results are adopted for the final results of this review, we will instruct the Customs Service to assess no antidumping duties on entries of the subject merchandise during the period of review from this exporter. We are also preliminarily rescinding the review with respect to five exporters included in three exporter/producer combinations, because none of those respondents made shipments of the subject merchandise during the period of review.

Interested parties are invited to comment on these preliminary results. We will issue the final results of this review no later than 300 days from the date of publication of this notice.

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On April 30, 2001, the petitioner [1] requested an administrative review pursuant to 19 CFR 351.213(b) for one exporter [2] included in the antidumping duty order and five exporters included in three exporter/producer combinations [3] that received zero rates in the less-than-fair-value ("LTFV") investigation and thus were excluded from the antidumping duty order only with respect to brake rotors sold through the specified exporter/producer combinations.

On May 23, 2001, the Department initiated an administrative review covering Gren and the five exporters except with respect to excluded exporter/producer combinations (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews* (66 FR 28421, May 23, 2001)).

On June 6, 2001, we issued a questionnaire to each company listed in the brake rotor initiation notice. On June 25, 2001, the Department provided the parties an opportunity to submit publicly available information for consideration in these preliminary results.

On July 13, 2001, each of the exporters that received zero rates in the LTFV investigation stated that during the period of review ("POR") it did not make U.S. sales of brake rotors produced by companies other than those included in its respective excluded exporter/producer combination. On July 19, 2001, the petitioner submitted a letter requesting the Department to conduct a verification of: (1) The response submitted by Gren; and (2) the no-shipment claims made by the five exporters named in the three exporter/producer combinations excluded from the antidumping duty order. On July 27, 2001, Gren submitted its questionnaire response.

On August 3, 2001, the petitioner submitted a letter in which it requested that the Department investigate a potential change in ownership of the five exporters included in the three exporter/producer combinations excluded from the antidumping duty order. On August 24, 2001, the petitioner submitted another letter in which it requested that the Department also verify Laizhou Luyuan's and Shenyang Honbase's U.S. importer which held ownership during the

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The exporter is Qingdao Gren (Group) Co. ("Gren").

[3] The excluded exporters/producer combinations are: (1) China National Automobile Industry Import & Export Corporation ("CAIEC") or Shandong Laizhou CAPCO Industry ("Laizhou CAPCO")/Laizhou CAPCO; (2) Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase") or Laizhou Luyuan Automobile Fittings Co., Ltd. ("Laizhou Luyuan")/Shenyang Honbase or Laizhou Luyuan and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. ("Xinjiang")/Zibo Botai Manufacturing Co., Ltd. ("Zibo").

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period of investigation ("POI") in those two companies.

On August 20, 2001, the Department issued a supplemental questionnaire to Gren, for which it received a response on September 18, 2001.

On October 2, 2001, the Department conducted a data query on brake rotor entries made during the POR from all exporters named in the excluded exporter/producer combinations in order to substantiate their claims of no shipments of subject merchandise made during the POR. As a result of the data query, the Department requested that the Customs Service confirm the actual manufacturer for specific entries associated with the excluded exporter/producer combinations.

In response to the petitioner's August 3 and 6, 2001, letters, the Department notified the petitioner on September 5, 2001, that it considered the change-in-ownership allegation with respect to the exporter/producer combinations excluded from the antidumping duty order to be outside the scope of this review.

On September 28, 2001, the petitioner submitted a letter in which it requested the Department to reconsider its decision not to investigate allegations of changes in ownership with respect to the exporter/producers combinations in this review.

After reconsidering the petitioner's November 5, 2001, request to examine any change in ownership of Laizhou Luyuan and Shenyang Honbase since the POI, the Department issued Laizhou Luyuan and Shenyang Honbase questionnaires on November 6, 2001, regarding the ownership of both companies. On November 27, 2001, Laizhou Luyuan and Shenyang Honbase submitted their responses to the supplemental questionnaire.

On December 31, 2001, the Department issued a memorandum stating that it preliminarily found no evidence that shipments of merchandise subject to the order were made by the five exporters included in the three exporter/producer combinations during the POR.

Postponement of Final Results

In accordance with section 751(a)(3)(A) of the Act, as amended, we determine that it is not practicable to complete this review within the original time frame because of the Department's decision to verify certain respondents in this review (*see* "Verification" section of this notice for further discussion). We are currently unable to conduct verification and allow sufficient opportunity for the submission of interested party comments, prior to the current final results deadline. Thus, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for completion of the final results of these reviews until no later than 300 days from the date of publication of this notice.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished; ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The POR covers the period April 1, 2000, through March 31, 2001.

Verification

As provided in section 782(i)(2) of the Act and 19 CFR 351.307, we intend to verify certain information relied upon in making our final results. On August 24, 2001, the petitioner requested that the Department conduct verification of the information and statements submitted by all exporter/producer combinations excluded from this order (*i.e.*, Laizhou Luyuan and Shenyang Honbase, Xinjiang/Zibo, and CAIEC/Laizhou CAPCO), the U.S. importer MAT, and Gren. We intend to verify Laizhou Luyuan, Shenyang Honbase, and the company that purchased a significant share in Laizhou Luyuan in accordance with 19 CFR 351.307. We also intend to verify CAIEC and Laizhou CAPCO. However, we do not intend to verify Gren because we do not find just cause has been demonstrated with respect to this company. In addition, verification of this company is not statutorily required, nor, has the petitioner provided a sufficient basis for examining Laizhou Luyuan's U.S. importer's data (*i.e.*, MAT).

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that the exporters which are part of the three exporter/producer combinations which received zero rates in the LTFV investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo (*see* December 31, 2001, Memorandum from the case analyst to the file). In order to make this determination, we first examined PRC brake rotor shipment data maintained by the Customs Service. We then selected entries associated with each exporter and requested the Customs Service to provide documentation which would enable the Department to determine who manufactured the brake rotors included in those entries. On December 31, 2001, we placed on this record a memorandum which summarized the data provided by the Customs Service in response to our query. Based on the results of our query, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the administrative review because we found no evidence that the exporters in question made U.S. shipments of the subject merchandise during the POR. Although we still have not received manufacturer confirmation on some of the entries we selected in our sample, we will continue to pursue this matter with the Customs Service and seek to obtain the necessary data for consideration in our final results.

Based on information obtained in this proceeding, we issued supplemental questionnaires to two of the excluded companies, Laizhou Luyuan and Shenyang Honbase, in order to determine if a change in ownership occurred in either company.

Based on the data submitted by Shenyang Honbase, we find that there has been no change in ownership in this company since the POI. Therefore, there is no ownership issue with respect to Shenyang Honbase. Since the LTFV investigation, another company has purchased a significant portion of Laizhou Luyuan. The petitioner claims that because brake rotors exported by this other company are covered by the order, and because it owns the majority shares in Laizhou Luyuan, the Department should consider Laizhou Luyuan and this other company as one entity. Although a change in ownership has occurred with respect to Laizhou Luyuan, we find no evidence that this change in ownership has resulted in Laizhou Luyuan exporting subject merchandise to the United States which was not produced by itself or Shenyang Honbase (*i.e.*, the conditions under which Laizhou Luyuan's entries are excluded from the order).

In order to determine whether these two companies should be treated as one entity, we examined the extent to which the export operations of Laizhou Luyuan and this other company were intertwined such that this relationship has the potential to impact pricing and export decisions pertaining to the subject merchandise and create a potential for manipulation. Based on information in the record, we find that the export activities of Laizhou Luyuan and the company that purchased a significant portion of Laizhou Luyuan are not under common control even though common ownership does exist. For example, information in Laizhou Luyuan's response indicates that Laizhou Luyuan retained the same management before and after its purchase by the other company. Thus, we preliminarily find the export operations of Laizhou Luyuan and the other company are sufficiently separate of one another such that there is no significant potential for manipulation of pricing or export decisions.

Based on our examination of record evidence, we preliminarily determine that Laizhou Luyuan has not significantly changed its (1) management, (2) production facilities, (3) supplier relationships, or (4) customer base as a result of its purchase by the other company (*see* pages 4 through 10 of Laizhou Luyuan's November 27, 2001, submission). Although the petitioner claims that Laizhou Luyuan's management, suppliers, and customers have changed significantly since the LTFV proceeding, there is no evidence that these changes were a result of the other company's purchase of Laizhou Luyuan. On the contrary, information on the record indicates that the changes mentioned by the petitioner appear to have occurred prior to the other company purchasing a significant share of Laizhou Luyuan. However, we will examine this issue further at verification.

Finally, we have no evidence at this time that the other company is exporting Laizhou Luyuan-made brake rotors which are not being assessed the PRC-wide rate upon entry into the United States or that Laizhou Luyuan is exporting brake rotors sourced through the other company.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

The respondent in this review, Gren, is collectively-owned. Thus, a separate-rates analysis is necessary to determine whether this exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China ("Bicycles")* 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. De Jure Control

Gren has placed on the administrative record documents to demonstrate absence of *de jure* control, including the "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 3, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC;" and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China ("Furfuryl Alcohol")* 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Gren.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

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Gren has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, Gren's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of export functions performed by Gren. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that Gren has met the criteria for the application of separate rates.

Normal Value Comparisons

To determine whether sales of the subject merchandise by Gren to the United States were made at prices below normal value ("NV"), we compared its export prices to NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

We used export price methodology in accordance with section 772(a) of the Act because the subject merchandise was sold by the exporter directly to an unaffiliated customer in the United States prior to importation and constructed export price was not otherwise indicated.

For Gren, we calculated export price based on packed, CIF U.S. port or FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling charges in the PRC, marine insurance, and ocean freight in accordance with section 772(c) of the Act. Because foreign inland freight, foreign brokerage and handling fees, marine insurance, and ocean freight were provided by PRC service providers or paid for in an NME currency (*i.e.*, renminbi), we based those charges on surrogate rates from India (*see* "Surrogate Country" section below for further discussion of our surrogate country selection). To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies. To value foreign brokerage and handling expenses, we relied on public information reported in the 1997–1998 antidumping duty new shipper review of stainless steel wire rod from India. To value marine insurance, we relied on public information reported in the antidumping duty investigation of sulfur dyes, including sulfur vat dyes, from India. To value ocean freight, we used a May 2000 price quote from a U.S. shipping company.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value a NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India and Indonesia are among the countries comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Irene Darzenta Tzafolias, dated June 21, 2001). In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we used values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by Gren which produced the brake rotors it exported to the United States during the POR. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian or Indonesian values.

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we made adjustments for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

To value pig iron, steel scrap, ferrosilicon, ferromanganese, limestone, lubrication oil, ball bearing cups, and coking coal, we used April 2000–February 2001 average import values from *Monthly Statistics of the Foreign Trade of India*. We relied on the factor specification data submitted by the respondent for the above-mentioned inputs in its September 18, 2001, submission for purposes of selecting surrogate values from *Monthly Statistics*. Because we could not obtain a product-specific price from India to value lug bolts, we used a January-March 1999 product-specific import value from the Indonesian government publication *Foreign Trade Statistical Bulletin* (*see Bicycles*, 61 FR at 19040 (Comment 17)). We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

To value firewood, we used April 2000–February 2001 rather than April 1997–March 1998 average import values from *Monthly Statistics*. In its August 28, 2001, submission, the petitioner argues that the Department should value this input using data from Monthly Statistics which is less contemporaneous to the POR because new articles (*i.e.*, February 26, 2001, article from the *Times of India* and September 30, 1997, U.S. Department of Agriculture Report) submitted by the petitioner indicate that firewood values in India may have been increasing since 1997 due to a greater dependence and demand in rural areas. For these preliminary results, we have relied on the April 2000–February 2001 data from *Monthly Statistics* to value this input because it is contemporaneous with the POR and we find no basis for considering this value as aberrational or unrepresentative of firewood values applicable during the POR.

We based our surrogate value for electricity on data obtained from *Conference of Indian Industries: Handbook of Statistics* ("*CII Handbook*") and from the *Centre for Monitoring Indian Economy* ("*CMIE data*").

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general, and administrative ("SG&A") expenses, factory overhead and profit, we used the 1998 financial data of Jayaswals Neco Limited and the 1998–1999 financial data of Kalyani Brakes Limited ("Kalyani") and Rico Auto Industries Limited ("Rico"). We have not used the fiscal data obtained by the petitioner for Kalyani and Rico from the Indiainfoline.com web site because the data provided by this web site is incomplete for purposes of calculating ratios for SG&A, factory overhead profit. Specifically, the website data provided only expense data based on general categories of expenses and not on the basis of specific expenses. Specific expense data is necessary for determining whether a particular expense should be considered an overhead or selling expense and for calculating accurate surrogate value percentages.

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For further discussion of the adjustments made, see the Preliminary Results Valuation Memorandum, dated December 31, 2001.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. We have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value corrugated cartons, nails, paper cartons, paper cover, plastic bags, steel strip, tape, and tin clamps, we used April 2000–February 2001 average import values from *Monthly Statistics*. To value pallet wood, we used a 1998 pallet wood value from the Indonesian publication *Indonesia Foreign Trade Statistics* which the Department has used to value pallet wood in two recent antidumping duty proceedings (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953, 1955 (January 10, 2001) ("*TRBs*") and accompanying decision memorandum at Comment 10, and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 46691 (July 31, 2000)).

Preliminary Results of the Review

We preliminarily determine that the following margin exists for Gren during the period April 1, 2000, through March 31, 2001:

Manufacturer/producer/exporter	Margin percent
Qingdao Gren (Group) Co	*0.02

* De minimis.

We will disclose the calculations used in our analysis to the parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on June 28, 2002.

Interested parties who wish to request a hearing or te participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than June 14, 2002. Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than June 21, 2002. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 300 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we will subtract applicable movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Cash Deposit Requirements

Upon completion of this review, for entries from Gren, we will require cash deposits at the rate established in the final results pursuant to 19 CFR 351.214(e) and as further described below.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Gren will be the rate determined in the final results of review (except that if the rate is *de minimis*, *i.e.*, less than 0.50 percent, a cash deposit rate of zero will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME

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entity will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213.

Dated: December 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–246 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms From Chile: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping administrative review.

SUMMARY: In response to a timely request from the petitioner,[1] on January 31, 2001, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to Nature's Farm Products (Chile) S.A., Ravine Foods Inc., and Compañia Envasadora del Atlantico covering the period December 1, 1999, through November 30, 2000.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Sophie E. Castro, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the U.S. Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On October 22, 1998, the Department published in the **Federal Register** the final affirmative antidumping duty determination of sales at less than fair value (LTFV) on certain preserved mushrooms from Chile (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, (*LTFV Final Determination*)). We published an antidumping duty order on December 2, 1998 (*see Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile*, 63 FR 66529).

On January 31, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to Nature's Farm Products (Chile) S.A. (NFC), Ravine Foods Inc (Ravine), and Compañia Envasadora del Atlantico (CEA) (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 8378). On February 8, 2001, the Department issued the antidumping questionnaire to: NFC via its U.S. parent, Nature Farm Products, Inc. (NFP/USA); Ravine, a Canadian company; and CEA, a Colombian company.

NFP/USA advised the Department on February 13, 2001, that NFC did not export or sell the subject merchandise to the United States, nor did NFP/USA import or sell the subject merchandise to the United States. However, NFP/USA advised the Department to send a copy of the questionnaire directly to NFC (*see* Memorandum to the File dated February 13, 2001, which summarizes information received from NFP/USA), which the Department had already sent on February 12, 2001. We did not receive a response from NFC, nor did we receive a response from Ravine.

We received a questionnaire response from CEA in April 2001. We issued supplemental questionnaires in May and August 2001. CEA responded to these questionnaires in June, July, August and September 2001. On October 4, 2001, CEA's counsel confirmed in a telephone conversation that the entry of the subject merchandise reported in CEA's questionnaire response had already been liquidated by the Customs Service (*see* Memorandum to the File from Sophie Castro dated October 9, 2001).

In November 2001, we requested information concerning CEA's reported sale transaction from NFC, NFP/USA, and CEA's customer, Horley Trading Co., Ltd. (Horley). We received responses from NFP/USA and Horley; we did not receive a response from NFC.

On July 19, 2001, due to the reasons set forth in the *Notice of Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Preserved Mushrooms from Chile*, 66 FR 37640 (July 19, 2001), we extended the due date for the preliminary results to November 15, 2001, in accordance with section 751(a)(3)(A) of the Act. On November 19, 2001, we again extended the due date of the preliminary results to December 31, 2001, in accordance with section 751(a)(3)(A) of the Act (*see Notice of Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Preserved Mushrooms from Chile*, 66 FR 57937 (November 19, 2001)).

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUs subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Determination of Exporter/Respondent

According to the information developed in this review, CEA purchased provisionally preserved (*i.e.*, brined) mushrooms in bulk containers from NFC. CEA reported that it subsequently retorted and repacked the subject merchandise into commercial-size cans and sold and shipped them to its U.S. customer, Horley. These cans were packed with the Nature's Farm brand on the label and the statement "Distributed by Nature's Farm Products, Inc." on the label. CEA reported its sale to Horley for purposes of this review and stated that, to the best of its knowledge, NFC did not have knowledge that the merchandise was destined for the United States at the time of NFC's sale to CEA.

We have determined, based on our analysis of the information provided by CEA, NFP/USA, and Horley, that the first party with knowledge of destination was NFC and therefore the relevant transaction in accordance with section 772(a) of the Act is NFC's sale to CEA for exportation to the United States. Although CEA claims that it is the first party in the chain of distribution who had knowledge that the ultimate destination of the sale was the United States, our determination that NFC is the exporter who had knowledge of destination is based on evidence that NFC was affiliated with NFP/USA, that NFP/USA and Horley are affiliated, and that NFP/USA and Horley were engaged in sales negotiations with CEA immediately prior to or at the same time as their affiliate NFC sold subject merchandise to CEA.

Horley and NFP/USA

Horley and NFP/USA both claim to be unaffiliated with each other. They claim that Horley merely has a licensing, rental, and commission agreement with NFP/USA, which enables Horley to use the NFP/USA brand on canned mushroom labels, and that NFP/USA's senior staff members are employed with Horley only in the role of "technical consultants."

Among the specific "persons" considered in reaching an affiliated decision are officers and directors of organizations, employer and employee, and "any person who controls any other person or such persons." *See* section 771(33) of the Act. Moreover, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

The *Statement of Administrative Action*, H. Doc. No. 103–316, Vol. 1 (1994) (SAA) at 838 states that "[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm operationally in a position to exercise restraint or direction over another even in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises, or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other."

There are several factors on the record which lead us to believe that NFP/USA and its officers exercise control over Horley legally or operationally. NFP/USA claims that it ceased import operations immediately prior to Horley's commencement of business operations. Horley established an office at NFP/USA's facility, and the two entities continue to share the facility to this day. Furthermore, Horley commenced negotiations on the import of the subject merchandise from CEA even before it was legally incorporated, but only after NFP/USA, who was initially contacted by CEA, referred the business to Horley. In fact, NFP/USA's president is the only person on the record identified as negotiating the sale with CEA on Horley's behalf. Furthermore, NFP/USA's president is also the only person who has provided factual information on Horley's behalf in response to our questionnaires, although NFP/USA's vice president certified Horley's December 3, 2001, factual submission under 19 CFR 351.303(g)(1). In addition, Horley's accountant also has been employed as NFP/USA's accounting manager. Besides shared managers and shared facilities, Horley also shares something much more obvious with NFP/USA—NFP/USA's name. Horley has the rights to all of NFP/USA's brand names, according to the licensing agreement submitted to the Department. Therefore, although Horley does not market itself as NFP/USA, it markets its products as NFP/USA goods. Thus, for all intents and purposes, taken as a whole, we believe that the record demonstrates that NFP/USA and its officers have shepherded and significantly controlled Horley's transactions with CEA.

In *Ta Chen Stainless Steel Pipe*, 1999 Ct. Intl. Trade LEXIS 110 (October 28, 1999) (*Ta Chen*), the Department found two companies, Ta Chen and Sun, to be affiliated. In making this determination, the Department cited a number of factors, including (a) historical ties between the companies, (b) former Ta Chen employees working for Sun; and (c) Sun's distribution solely of Ta Chen products. *See id.* at 115–117. The Court of International Trade (CIT) affirmed the Department's affiliation determination, stating, "[e]ven if each of the individual connections between Ta Chen and Sun, standing alone, may not be sufficient to establish control, Commerce's conclusion that the numerous connections between Ta Chen and Sun were indicative of control was reasonable. Commerce did not rely on any one factor in concluding that Ta Chen and Sun were affiliated parties, rather, it determined that the combination of factors was sufficient proof of affiliation." *See id.*

We find that the circumstances in this case are comparable to those contemplated in the SAA and similar to those in *Ta Chen*. The totality of factors demonstrate that NFP/USA and Horley are affiliated companies. The two companies share officers, business opportunities, office space, and product brand names. Such a relationship between these two companies indicates that NFP/USA controls Horley for purposes of this review, within the meaning of section 771(33)(G) of the Act.

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkenamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

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NFP/USA and NFC

As discussed in both the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From Chile*, 63 FR 41786 (August 5, 1998), and the *LTFV Final Determination*, NFP/USA and NFC are closely affiliated companies. For example, all of NFC's sales in the LTFV investigation were made through NFP/USA as constructed export price transactions. NFP/USA incurred the expense for certain NFC production activities (*see LTFV Final Determination*, 63 FR at 56614). Further, NFP/USA acknowledged that "NFP/USA is the primary funding source of NFP's operations" (*id.*, 63 FR at 56623). The record of this review shows no change in this status until February 2000. Accordingly, NFP/USA was clearly affiliated with NFC when NFC sold its brined mushrooms to CEA in January 2000. Furthermore, CEA indicated in its questionnaire responses that it only pursued business with NFC after it was confident that Horley would purchase canned mushrooms from CEA (see CEA's December 7, 2001, submission at page 3). Thus, Horley was in sales negotiations with CEA at the same time NFP/USA's affiliate NFC was negotiating to sell the subject merchandise to CEA. As discussed above, Horley and NFP/USA are affiliated companies. Accordingly, we believe that the weight of the evidence supports our finding that NFC had knowledge at the time of its sale to CEA, through its affiliation with NFP/USA, that the ultimate destination of its sale of brined mushrooms to CEA was the United States.

NFP/USA claims that it agreed to sever its affiliation with NFC in November 1999 (*see* NFP/USA's December 3, 2001, submission at page 5). However, NFP/USA provided no evidence on the record of such an agreement. Moreover, NFP/USA acknowledges that NFC and NFP/USA remained legally affiliated until the formal transfer of NFP/USA's stock in February 2000.

NFP/USA and NFC were legally affiliated at the time of NFC's sale of brined mushrooms to CEA through NFP/USA's equity in NFC, as well as through their strong historical ties. Given that the subject merchandise was produced by NFC, and that it ultimately arrived in the United States in Horley's, and thereby NFP/USA's, control under the Nature's Farm brand name, the record evidence leads us also to conclude that NFC had knowledge of the ultimate destination of the product when it was sold to CEA.

Use of Facts Otherwise Available

As stated above under "Case History," the Department initiated an administrative review of three companies: Ravine, NFC, and CEA.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Because Ravine and NFC have provided no information, we are assigning Ravine and NFC margins on the basis of the facts available, in accordance with section 776(a) of the Act. As we have determined that CEA's sale should be considered a sale by NFC, we have included this transaction in the rate assigned to NFC.

Ravine

As noted above, Ravine did not respond to the Department's questionnaire. Therefore, the Department was unable to issue further questionnaires and review Ravine's information pursuant to sections 782(d) and 782(e) of the Act. Because of its refusal to cooperate in this review, we determine that the application of a rate based on facts available is appropriate pursuant to section 776(a)(2) of the Act.

NFC

As discussed above, NFC did not respond either to the Department's questionnaire, nor to the Department's November 2001 request for information. Thus we determine that the application of facts available is appropriate in the case of NFC.

Application of Adverse Facts Available

Because Ravine and NFC have refused to participate in this administrative review, we preliminarily determine that an adverse inference is warranted in selecting facts otherwise available, in accordance with section 776(b) of the Act (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (January 17, 1997) (applying an adverse inference, as explained in detailed in *Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel From Italy*, 61 FR 36551, 36552, (July 11, 1996))).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms."

Ravine and NFC failed to respond to our request for information in any manner, thereby failing to comply with this provision of the statute and making it impossible for the Department to conduct an administrative review of their sales or entries. Therefore, we have determined that Ravine and NFC failed to cooperate to the best of their abilities and we have made an adverse inference in applying the facts available.

In this proceeding, the only rate that has been in effect has been the rate of 148.51% calculated for NFC and All Others in the *LTFV Final Determination*. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof from Japan*, 61 FR 57392 (November 6, 1996) (*TRBs*). However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department "will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin" (*id.; see* also *TRBs* and *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As noted above, the highest calculated margin (and the only calculated margin) in the history of this proceeding is 148.51 percent. In the instant review, there are no circumstances indicating that this margin is inappropriate as facts available. Moreover, this rate is currently applicable to all subject merchandise. Assigning a lower rate, even if one were available, would effectively reward these companies for their failure to cooperate. Therefore, we find that the 148.51 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the dumping margin for the POR is as follows:

Manufacturer/exporter	Margin (percent)
Nature's Farm Products (Chile) S.A. (including merchandise shipped by the Colombian firm Compañia Envasadora del Atlantico)	148.51
Ravine Foods	148.51

If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review on an importer-specific basis. We are also instructing Customs to apply a specific rate to all entries manufactured by NFC and sold to CEA.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 148.51 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: December 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–245 Filed 1–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Notice of Rescission of Antidumping Administrative Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 4, 2002.

SUMMARY: On February 28, 2001, the Department received a timely request from the Paint Applicator Division of the American Brush Manufacturers Association (the petitioner), to conduct an administrative review of the sales of Hebei Founder Import & Export Company (Hebei Founder) and Hunan Provincial Native Products Import & Export Corp. (Hunan Provincial) on February 28, 2001. On March 22, 2001, the Department initiated an administrative review of the antidumping duty order on natural bristle paintbrushes and paint brush heads (natural paintbrushes) for the period of review (POR) of February 1, 2000 through January 31, 2001. On September 12, 2001, the Department rescinded this review with respect to Hebei Founder. We are now rescinding this review with respect to Hunan Provincial as a result of the petitioner's withdrawal of its request for review.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4236.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural paintbrushes from the People's Republic of China (PRC) (66 FR 10269). On February 28, 2001, the Department received a timely request from the petitioner for administrative reviews of Hunan Provincial and Hebei Founder in accordance with 19 CFR 351.213(b). On March 22, 2001, in accordance with 19 CFR 351.221(b)(1), the Department initiated an administrative review of the antidumping duty order on natural paintbrushes, for the period from February 1, 2000 through January 31, 2001, in order to determine whether merchandise imported into the United States is being sold at less than fair value prices. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part* (66 FR 16037).

On September 12, 2001, pursuant to 19 CFR 351.213(d)(3), the Department rescinded the administrative review with regard to Hebei Founder since we found no entries or shipments from Hebei Founder during the POR. (See 66 FR 47450.) On December 6, 2001, the petitioner withdrew its request for this review with regard to Hunan Provincial.

Recission of Antidumping Administrative Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation of the requested review. Although the petitioner's request for withdrawal was more than 90 days from the date of initiation, consistent with the Department's past practice in the context of administrative reviews conducted under section 751(a) of the Act, the Department has discretion to extend the time period for withdrawal on a case-by-case basis. (*See e.g. Iron Construction Casings from Canada: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 45797 (August 27, 1998).) Rescission of this review would not prejudice any party in this proceeding, as Hunan Provincial would continue to receive its company-specific cash deposit rate to which it was subject at the time of the initiation of this review. The petitioners are the only party that requested a review of Hunan Provincial's sales for the February 1, 2000 through January 31, 2001 POR. Moreover, the Department has not yet devoted extensive time and resources to this review. Therefore, we determine that it is reasonable to extend the deadline under section 351.213(d), and to rescind this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d).

Dated: December 27, 2001.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–243 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–828]

Notice of Final Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the final determination of sales at less than fair value investigation: welded large diameter line pipe from Mexico.

SUMMARY: On August 15, 2001, the Department of Commerce ("Department") published the preliminary determination in the less than fair value ("LTFV") investigation of welded large diameter line pipe from Mexico. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe from Mexico, 66 FR 42841 (August 15, 2001) ("Preliminary Determination").* This investigation covers one manufacturer/exporter of the subject merchandise.

Based upon our verification of the data and analysis of the comments received, we have not made changes to our margin calculations. Therefore, the final determination does not differ from the preliminary determination. The final weighted-average dumping margin is listed below in the section titled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mesbah Motamed or Robert Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1382 (Motamed) or 202–482–3434 (Bolling), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Period of Investigation

The period of investigation ("POI") is January 1, 2000 through December 31, 2000.

Final Determination

We determine that certain welded large diameter line pipe from Mexico is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Background

On January 30, 2001, the Department initiated the above referenced investigation. *See Notice of Initiation of Antidumping Duty Investigations: Welded Large Diameter Line Pipe from Mexico and Japan*, 66 FR 11266 (February 23, 2001). On August 15, 2001, the Department published a notice of its preliminary determination in the investigation. *See Preliminary Determination*, 66 FR 42841. From October 31, 2001 through November 5, 2001, the Department conducted a sales and cost verification for Productora Mexicana de Tuberia ("PMT"). *See Sales and Cost Verification Report* (November 14, 2001). We invited parties to comment on our Preliminary Determination. Petitioners submitted their case brief ("Petitioners' Brief") on November 21, 2001. PMT did not submit a case brief or a rebuttal brief. The Department has conducted and completed the investigation in accordance with section 735 of the Act.

Scope of the Investigation

The product covered by this investigation is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stenciled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications.

Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations of line pipe:

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
- Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

The product currently is classified under U.S. Harmonized Tariff Schedule ("HTSUS") item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case briefs to this investigation are addressed in the December 28, 2001 Issues and Decision Memorandum ("Decision Memo") from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III to Faryar Shirzad, Assistant Secretary for Import Administration, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, and other issues addressed, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memo, a public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Use of Total Adverse Facts Available

In the preliminary determination, the Department applied facts available to the mandatory respondent. Deficiencies present in respondent's response made it impossible for the Department to appropriately calculate a preliminary antidumping duty margin. Consequently, the Department assigned PMT-Tubacero the rate of 49.86 percent, the margin calculated from information in the petition and used for initiation. The Department also applied the 49.86 percent margin as the "All Others" rate.

Subsequent to the preliminary determination, we have determined that the use of total adverse facts available is appropriate for the final determination for our analysis of PMT and its collapsed affiliate Tubacero, hereinafter referred to as "PMT-Tubacero." For a discussion of our determination with respect to this matter, see the Decision Memo. Consequently, we have continued to apply the rate of 49.86 percent for purposes of this final determination.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all-others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the Statement of Administrative Action accompanying the URAA, H.R. Doc. No.

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316, 103d Cong., 2d Sess. 870 (1994) ("SAA") at 873 provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-price dumping margin, which the Department adjusted for purposes of initiation, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the published margin of 49.86 percent as the "all others" rate.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

STAINLESS STEEL BUTT-WELD PIPE FITTINGS

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
PMT-Tubacero	49.86
All Others	49.86

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: December 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

Issues in the Decision Memo

1. The Department should continue to collapse respondent Productora Mexicana de Tuberia, S.A. de C.V. ("PMT") with its affiliate, Tubacero, S.A. de C.V. ("Tubacero").
2. The Department should apply adverse facts available in determining the antidumping duty margin.

[FR Doc. 02–244 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System: Sediment Retention System in Goat Canyon Creek and Watershed at Tijuana National Estuarine Research Reserve

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of availability of the Final Environmental Impact Statement/ Environmental Impact Report on a proposed sediment retention system in the Goat Canyon Creek and watershed at the Tijuana River National Estuarine Research Reserve, Imperial Beach, California.

SUMMARY: Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the National Ocean Service (NOS), in cooperation with California Department of Parks and Recreation and California Coastal Conservancy, has completed the preparation of a joint Final Environmental Impact Statement/ Environmental Impact Report (FEIS/ EIR) addressing the potential effects on the human and natural environment that may result from construction of sedimentation, flood control and other facilities within and adjacent to Goat Canyon, and the elevation and/or realignment of Monument Road through Border Field State Park lands. The purpose of these proposed facilities is to enhance the existing Goat Canyon Creek and its natural habitat communities, including the Tijuana River Estuary, through the management of sediment within the canyon and on the adjacent alluvial fan.

The proposed project is in conformance with the Final Goat Canyon/Cañon de los Laureles Enhancement Plan prepared by the Southwest Wetlands Interpretive Association (SWIA) and California Coastal Conservancy. As a result of the construction of sedimentation basins, it is anticipated that Goat Canyon Creek, its watershed, and the Tijuana River Estuary will be enhanced.

The Final EIS/EIR is available for public review. All comments received, including names and addresses, will become part of the administrative record and be made available to the public. NOAA is not required to respond to comments received as a result of issuance of the FEIS/EIR, however comments will be reviewed and considered for their impact on issuance of a Record of Decision (ROD). The ROD will be printed in the **Federal Register** some time after the close of the public review period.

DATES: The review period for the joint Final EIS/EIR will end on Monday, February 4, 2002. All written comments received by this deadline will be considered in the preparation of the ROD.

ADDRESSES: Written comments on the joint Final EIS/EIR should be sent to Nina Garfield, NOAA, Estuarine Reserves Division, SSMC–4, 11th Floor, 1305 East-West Highway, Silver Spring, Maryland, 20910–3281.

FOR FURTHER INFORMATION CONTACT: Mayda Winter, Goat Canyon Enhancement Project, Southwest Wetlands Interpretive Association, 925 Seacoast Drive, Imperial Beach, California, 91932, tel. (619) 575–0550.

SUPPLEMENTARY INFORMATION: Goat Canyon Creek is located in the far western portion of the greater Tijuana River Watershed approximately one mile inland from the Pacific Ocean. The watershed is characterized by steep slopes, sandy soils with cobbles, pockets of native coastal sage scrub, riparian vegetation, and a high level of human-induced disturbance, especially during the last 20 to 30 years. A prominent result of changes in the watershed has been a significant increase in sediment yield in response to higher volumes of runoff and an increased sediment supply throughout the watershed. Increased sedimentation has adversely affected the local habitat communities of Goat Canyon and downstream within the Tijuana River Estuary. By the mid-1980s, it was estimated that erosion and sedimentation had resulted in the loss of 30 acres of intertidal wetland area in the Tijuana River Estuary. The composition and distribution of native habitat communities along the creek and on the alluvial fan have been altered, as has the morphology of the creek. Further, during storm events, sediment is deposited on Monument Road, which in turn blocks public access to Border Field State Park and impedes the U.S. Border Patrol.

On August 10, 2000, the National Ocean Service published in the **Federal Register** a Notice of Intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report (Vol. 65 No. 155, 48971–48972). The stated intent of the proposed project was to enhance the existing Goat Canyon Creek and its natural habitat communities, including the Tijuana River Estuary, through the management of sediment within the canyon and on the adjacent alluvial fan. A notice announcing the availability of the draft EIS/EIR was published on October 12, 2001.

The final EIS/EIR examines the potential effects of the No Project Alternative and four project alternatives for construction of a sedimentation retention system within Goat Canyon and the alluvial fan. NOAA has identified Alternative D–1 as the Preferred Alternative based on an evaluation of the comparison of the impacts between the alternatives.

Alternative D–1 features an in-canyon diversion structure and sedimentation basin system consisting of two basins in series to capture the flow in Goat Canyon Creek. The system has been designed to contain the full 100-year flood event. The Preferred Alternative also involves construction of access roads around the basins, staging areas adjacent to the basins, a visual berm located between the basins and Monument Road, improvements to part of Monument Road and a multi-purpose trail, and creation of wetland habitat. The Preferred Alternative would be the most efficient at capturing sediment and would result in the least impacts to sensitive wetland habitats and endangered species.

Document Availability

Copies of the final EIS/EIR are available for review at the California State Parks, San Diego Coast District Office, 9609 Waples, Suite 200, San Diego, California, 92108, (858) 642–4200, the Tijuana River National Estuarine Research Reserve at 301 Caspian Way, Imperial Beach, California 91932, (619) 575–3613, and at the Imperial Beach Public Library, 810 Imperial Beach Boulevard, Imperial Beach, 91932, (619) 424–6981.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: December 21, 2001.

Alan Neuschatz,

Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management.

[FR Doc. 02–3 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120701C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and cancellation of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Multi-Year Management Committee (GMMC) will hold a work session, which is open to the public. A previously noticed meeting of the GMMC is canceled.

DATES: The GMMC meeting noticed for Thursday, January 10, 2002, and Friday, January 11, 2002, is cancelled (see 66 FR 64954, December 17, 2001). Instead, the GMMC will meet Thursday, January 31, 2002, from 10 a.m. until 5 p.m; and Friday, February 1, 2002, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; telephone: 503–326–6352.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck or Dr. Don McIsaac, Pacific Fishery Management Council, 503–326–6352.

SUPPLEMENTARY INFORMATION: The formation of this ad hoc committee is in response to the Council's request for a committee to scope multi-year management approaches for the West Coast groundfish fishery. Multi-year management of the groundfish fishery would be synchronized with a multi-year groundfish stock assessment schedule. Full accommodation of federal notice and comment requirements would also be incorporated into the multi-year cycle. This is the second meeting of the committee, and the primary purpose of the meeting is to further develop the purpose and objectives of multi-year management, as well as alternative multi-year management approaches.

Although nonemergency issues not contained in the GMMC meeting agenda may come before the GMMC for discussion, those issues may not be the subject of formal GMMC action during the meeting. GMMC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMMC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: December 31, 2001.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–240 Filed 1–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Sand and Gravel Dredging on the Allegheny and Ohio Rivers, Pennsylvania

AGENCY: U.S. Army Corps of Engineers, DOD.

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ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Pittsburgh District (Corps), will prepare and circulate a draft Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and 40 CFR 1500 through 1508. The overall purpose of the EIS is to evaluate the environmental, economic, and social consequences related to the issuance of Section 10 and 404 Permits for Commercial Sand and Gravel Dredging in the Allegheny and Ohio Rivers in Pennsylvania. The action area studied includes River Miles 0 to 69.5 on the Allegheny River and River Miles 0 to 40 on the Ohio River. The Corps and Pennsylvania Department of Environmental Protection (PADEP) issue permits for commercial dredging activities.

FOR FURTHER INFORMATION CONTACT: Please address questions or comments regarding this notice to Mr. Albert H. Rogalla, CELRP–OR–F, Pittsburgh District, Corps of Engineers, William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186. Submit electronic comments to *lrp.sandgraveleis@usace.army.mil*

SUPPLEMENTARY INFORMATION: a. The commercial dredging companies seek extensions of their Corps Dredging Permits and PADEP Water Obstruction and Encroachment Permits, and PADEP Sand and Gravel License Agreements. These permits may be issued, suspended or modified pending completion of the NEPA process.

b. The purpose of this action is the issuance of permits to extract sand and gravel from the Allegheny and Ohio Rivers for commercial sale. This material supports diverse infrastructure and construction requirements for a variety of customers in the region.

c. Alternatives to be assessed are the complete cessation of commercial river dredging within the study area following denial of permit extensions and the expiration of existing permits held by the applicants; obtaining sand and gravel from the Allegheny and Ohio Rivers by commercial dredging by granting and extending the Department of the Army Section 10 and 404 permits to commercial sand and gravel companies for the removal of sand and gravel between river miles 0–69.5 on the Allegheny River and between river miles 0–40 on the Ohio River; and using land-based operations or importation of sand and gravel from other locations to meet the regional need for this material, implying complete cessation of commercial river dredging (other than for navigational purposes) and denial to extend existing permits held by the applicants.

d. The Corps has held numerous Stakeholder meetings between 1996 and 2000 in which the scope and direction of the study were discussed. State agencies; federal agencies; a public interest organization; and sand and gravel companies directly impacted by the permit request participated in these discussions.

e. Interested parties are encouraged to send written or electronic comments concerning issues to be addressed, required studies, alternatives, procedures or other related matters or requests for information regarding the proposed study process to the point-of-contact above. All comments and information requests should be postmarked no later than 30 days after this Notice of Intent is published in the **Federal Register**.

f. The EIS will assess the impacts of sand and gravel dredging on various ecological resources including aquatic resources (fish, mussels, threatened and endangered species, and water quality), hydrology, noise, and cultural resources.

g. Appendix B, 33 CFR Part 325, provides that the Corps District Engineer may require the Permit Applicant and/or his/her consultant to provide relevant information for the Corps use in preparing an EIS. The applicants are collecting information to provide to the Corps. Prior to preparation of the Draft EIS, however, the Corps is required to solicit public input into the process.

h. The Corps will schedule a public hearing after the Draft EIS is issued.

i. The Draft EIS is expected to be available to the public no later than June 2002.

Raymond K. Scrocco,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–129 Filed 1–3–02; 8:45 am]

BILLING CODE 3701–85–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 4, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 31, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Reading Excellence Act: School and Classroom Implementation and Impact Study.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 1,035
Burden Hours: 735.

Abstract: The Reading Excellence Act School and Classroom Implementation and Impact Study (REA–SCII) is a six-year study to learn about the implementation and impact of the REA legislation on instructional practice in reading and on student reading achievement. The Study has the following features: (1) A representative sample of 75 schools that have received REA Local Reading Initiative sub-grants; (2) a longitudinal sample of kindergarten students followed through the end of second grade; measures of student reading performance; multiple observations of classroom reading instruction in grades K–2; and surveys of and interview/focus groups with key school and district staff.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–5359 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS and IIPP, UISFUL, Business and International Education Program (BIE), Centers for International Business Education Program (CIBE) and American Overseas Research Centers (AORC) (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 60
Burden Hours: 2100.

Abstract: BIE, CIBE and AORC are being added for clearance to the system that already contains four other programs. Information collection assist IEGPS in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–235 Filed 1–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Notice of Request for Public Comment on the Department of Education's Initial Plans for Implementing a Consolidated State Application and a Consolidated Annual Report Under the Reauthorized Elementary and Secondary Education Act

SUMMARY: We invite the public to submit comments on the Department's initial plans under the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, for providing formula program grant funding to States on the basis of consolidated applications. Public comments will help the Department develop proposed criteria for submission of consolidated State applications and identify the information to be collected in the annual performance report that is required of each State. The Department expects to publish in February, for public review and comment, a separate notice in the **Federal Register** proposing criteria and procedures to govern the consolidated State application and annual State report.

DATES: Please send your comments on or before January 14, 2002.

ADDRESSES: Please address your comments to Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address: *marcia.kingman@ed.gov*. You should use the term "ESEA Consolidated Plan" in the subject line of your electronic message.

2. *Fax Machine.* You also may submit your comments by fax machine at (202) 205–5870.

3. *Surface Mail.* Alternatively, you may submit your comments via surface mail addressed to: Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E213, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E213, Washington, DC 20202. Telephone: (202) 260–2199.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person for information identified in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In mid-December of 2001, the Congress gave final approval to H.R. 1, the No Child Left Behind Act. This bill, which now awaits the President's signature, will substantially revise the Elementary and Secondary Education Act of 1965 (ESEA), offering all of America's school children the opportunity and means to achieve academic success. In particular, the bill embodies the four key measures of the President's education reform plan: (1) Stronger accountability for results, (2) expanded flexibility and local control, (3) expanded options for parents, and (4) an emphasis on teaching methods that have been proven to work, particularly in reading instruction.

These measures are designed to produce fundamental reforms in classrooms throughout America. They will provide officials and administrators at the school, school district, and State levels substantial flexibility to plan and implement school programs that will help close the achievement gap between disadvantaged and minority students and their peers. At the same time, the new law will hold school officials accountable—to parents, students, and the public—for achieving results. These and other major changes to the ESEA through the No Child Left Behind Act will redefine the federal role in K–12 education to better focus on improving the academic performance of all American students. The full text of this pending law, and the House-Senate conference report summary of the final bill, may be found on the Internet at: *http://edworkforce.house.gov/issues/107th/education/nclb/nclb.htm*.

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One key way that the Department provides flexibility for States and school districts to design their own approaches for improving the academic performance of all students is by encouraging the careful development and use of consolidated plans or applications. Use of consolidated plans or applications also will help accomplish the President's goal of reducing unnecessary and burdensome paperwork and focus planning and reporting on student achievement.

Sections 9301 and 9302 of the new law, like the predecessor provisions in sections 14301 and 14302 of the ESEA, as amended in 1994 by the Improving America's Schools Act (IASA), will offer States the option of seeking funding under most ESEA formula grant programs through these consolidated plans or applications instead of through individual program plans or applications that the law otherwise would require. As expressed in the forthcoming law, a consolidated plan or application would be designed "to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery, to provide greater flexibility to State and local authorities, and to enhance integration of [the ESEA] programs * * * with State and local programs" (section 9301). States would submit not the information required for individual ESEA program plans or applications, but rather "only descriptions, information, assurances, * * * and other materials that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application" (section 9302(b)(3)). Hence, the Department will be able to provide funding to States under many ESEA formula grant programs on the basis of this single plan or application.

In addition, section 9305 of the ESEA will extend similar flexibility to local educational agencies (LEAs), continuing the authority for LEAs to receive program funding through submission of consolidated local plans or applications under individual programs that the statute would otherwise require. It also clarifies existing law to ensure that State educational agencies (SEAs) do not require local education agencies (LEAs) to submit individual program plans or applications if they wish to submit a consolidated application.

Programs that may be included in a consolidated plan or application. Sections 9101(13) and 9302(a)(1) of the ESEA, as amended by the forthcoming No Child Left Behind Act, identify the programs that a State would be able to include in a consolidated plan or application. These programs are each of those authorized by—

Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies.

Title I, Part B, subpart 3: William J. Goodling Even Start Family Literacy Programs.

Title I, Part C: Education of Migrant Children.

Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.

Title I, Part F: Comprehensive School Reform.

Title II, Part A: Teacher and Principal Training and Recruiting Fund.

Title II, Part D: Enhancing Education Through Technology.

Title III, Part A: English Language Acquisition, Language Enhancement and Academic Achievement.

Title IV, Part A: Safe and Drug-Free Schools and Communities.

Title IV, Part B: 21st Century Community Learning Centers.

Title V, Part A: Innovative Programs.

Title VI, Part B, subpart 2: Rural and Low-Income School Program.

Other programs the Secretary may designate. Each State would be free either to submit a consolidated plan or application that includes any or all of these programs, or to submit a separate program plan or application for each of the programs the ESEA would otherwise require.

The Department's Experience With Consolidated State Plans

1. *Criteria for consolidated State plans.* After the 1994 reauthorization of the ESEA, the Department developed criteria for consolidated State plans that sought to align consolidated planning of the ESEA programs included in the States' plans with comprehensive school reform efforts that States were already undertaking on their own. Therefore, the criteria for the consolidated State plans that States have provided to the Department since 1994 stressed a comprehensive description of the State's—

- Goals and objectives for achievement of all students, including the content of the State's standards and assessments system under Title I, part A of the ESEA, and performance indicators, benchmarks, and timelines it had established for meeting these goals and objectives;
- Strategies, activities, and uses of resources under which the ESEA programs the State included in its consolidated plan would help to achieve State goals and objectives, including those related to such key components as Title I, part A schoolwide programs, professional development, safe and drug-free schools, and consolidated local planning;
- Process for ensuring that the consolidated State plan would continue to be revised, as necessary, to reflect changing circumstances and continuous improvement; and
- Process for promoting and maintaining public involvement in reviewing how well the plan was being implemented.

States also provided a limited amount of fiscal information that the Department needed to review before distributing ESEA program funding to ensure program accountability. All but one State now receive ESEA State formula grant program funding on the basis of these consolidated plans.

In the guidance it issued on preparation of these consolidated State plans, the Department informed States that its approval of those plans eliminated the need, for programs included in the plan, to develop separate program planning documents that the individual program statutes otherwise required. However, the Department also stressed that its approval of the consolidated State plans did not relieve States of their responsibility to adhere to all of the operational requirements that these statutes imposed, whether or not the statutes included them as required elements of individual program plans or applications.

2. *Consolidated performance reports.* In 1998, the Department distributed an initial consolidated performance reporting instrument that States began using to report annually on the performance of all programs included in their consolidated plans. This reporting instrument (and its subsequent revision) replaced the various individual program performance reports that States had previously sent at differing times to the Department. States report in a single document information in a number of areas, in particular (a) student achievement gains (principally for Title I, part A), (b) how LEAs carried out individual programs, including participation data, and (c) how well States and LEAs met performance measures for these programs that the Department had established in accordance with requirements of the Government Performance and Results Act (GPRA).

The Department's Working Model for Consolidated Applications Under the ESEA, As Amended by the No Child Left Behind Act

1. *An overview.* Consistent with the pending No Child Left Behind Act, the Department is developing proposed consolidated application and reporting procedures that States would integrate into a comprehensive State accountability system. Information States would submit in their consolidated applications would be integral to both overall State accountability and to the Department's ability to meet its basic administrative responsibilities.

We refer to the documents as "consolidated applications" rather than as "consolidated plans" to emphasize that this information would not constitute an educational or programmatic "plan" or "set of strategies." By this we mean that the Department has no intention of reviewing (or approving) a State's plans for achieving program-by-program goals for academic achievement of all students and most other objectives and requirements of the individual ESEA programs. Instead the Department will review a consolidated application that contains the State's overall and individual programmatic goals and objectives that relate to improved student achievement, and its descriptions of the overall State system for measuring progress in achieving them. A State would be responsible to its own students and parents—but *not to the Department*—for putting in place effective strategies for meeting those goals and objectives.

Hence, the criteria for consolidated State applications would be designed to reflect a focus on the data that States will use to demonstrate results, in particular, improved student achievement levels of all students and narrowing of "achievement gaps." In the consolidated annual reports, States would provide data on their success in achieving these results. Moreover, in order to reduce burden and enable the collection of more up-to-date information, the Department will be working to make this reporting system "web-based" so that information might be supplied electronically rather than in paper form.

2. *Proposed key components of the new consolidated State application.* More specifically, the consolidated State application would address—

- The State's definition of adequate yearly progress under section 1111(b)(2) of the ESEA, as amended by the No Child Left Behind Act, and its timeline to ensure that all students are proficient not later that 12 school years after the end of the 2001–2002 school year as the new law will require, as it applies to both public elementary and secondary school students as a whole and the required subgroups: economically disadvantaged students, students from major racial and ethnic groups, disabled students, and limited English proficient students.
- The State's key objectives for each of the Federal programs included in the consolidated application and the populations those programs serve, as those objectives support increased achievement of all students (*e.g.*, its goals for increasing migrant-student high school completion rates, goals for reducing school violence, and goals for increasing the number of highly qualified teachers);
- So that progress can be tracked through the State's annual reports, (1) baseline data for the 2001–2002 school year for the indicators on which States would provide information in their annual reports under section 1111(h)(4), and (2) other baseline data relative to key objectives for each of the Federal programs included in the consolidated application and the populations those program serve, as those objectives support increased student achievement.
- The principal approaches the State would use, with federal and non-federal funds, to achieve adequate yearly progress for all students and the key objectives for each of the included ESEA programs and the populations they assist;
- The assessment and accountability systems the State would use for measuring whether it is successful in meeting (1) its adequate yearly progress goals for all students under sections 1111(b)(3) and (b)(2), respectively, and (2) the State's key objectives for each of the included ESEA programs; and
- Key information on specific ESEA programs that the Department needs to review in order to ensure programmatic or fiscal integrity.

3. *Other considerations.*

a. The No Child Left Behind Act of 2001 will make significant changes to the ESEA that are designed to give school officials, educators, and parents the tools they need to ensure that all students can achieve. However, this Act also will build upon school reform strategies that were begun under the previous statute and other federal and State initiatives. In this regard, provided that State plans are consistent with Department requirements, States would be able to draw upon information and data that they developed under the previous statute.

b. To gauge the success of the Nation in implementing the new Act, it is important that where possible States report their assessment data using common formats and measures. Therefore, the Department intends to work with States to determine how their data management systems may align.

c. Only a limited amount of program-specific information would be included in a consolidated State application. Yet, even if not addressed in the consolidated application, all operational and program-planning requirements of each program (as amended by the No Child Left Behind Act) included in a consolidated application are extremely important and need to be met. Many ESEA program statutes establish some of these operational and planning requirements in provisions that govern the content of individual program plans or applications. States would need to adhere to all of those requirements (as well as to those that appear elsewhere in the individual program statutes), and to maintain for public inspection documentation that confirms they have been met. (In order to help promote public dialogue on how States can most effectively implement the federal programs included in their consolidated applications, the Department also would encourage States to post on their Internet sites information on how they propose to meet key requirements of each program.)

Specific questions on which the Department seeks comment. Consolidated State applications can provide the Department with important information on how the State intends federal programs included in the application to promote increased achievement of all students. However, the principal importance of these consolidated applications (and reports) is their ability to communicate to the public, policy-makers, and others in each State the basis on which the State officials responsible for implementing the new law propose to hold themselves accountable for ensuring that no child is left behind.

It is in both of these contexts that we are interested in receiving public comment and reaction to all aspects of this proposal. However, in formulating your comments we ask that you pay particular attention to the following questions:

1. *Goals, objectives, and baseline data.* What kinds of State goals and objectives—in addition to the adequate yearly progress standards set forth in Title I, part A—might States adopt for measuring the success of programs included in the consolidated application? What baseline data might

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States use to measure success in meeting these key goals and objectives? How might States measure their success in implementing each program included in the consolidated application?

2. *Phase-in process.* The Department will need to distribute FY 2002 funds to States this coming July. States will have insufficient time by then to prepare high-quality consolidated applications that would reflect all of the desired information. Consequently, the Department would establish initial procedures and criteria under which States choosing to submit consolidated applications will be able to receive FY 2002 funds in a timely manner. However, given the requirements of the pending No Child Left Behind Act, and the urgency with which all of us will be working to implement it, the Department would want all States to have submitted complete consolidated State applications by a specific deadline, no later than the beginning of the 2003–04 school year. States plainly will need to be able to submit this information to the Department in two or more phases that reflect the differing amounts of time that will be needed to prepare the different parts of their applications.

What might this phase-in process look like? Consistent with the exigencies and program-specific schedules underpinning the No Child Left Behind Act, how much time would States need to provide the different information that would be included in the complete consolidated State application? What information should States be expected to provide in each phase? In addition, while the Department would insist that each State submit all of the information to be included in its consolidated application by the end of the 2003–2004 school year, some States may be able to submit their information earlier than others. Should the Department have States submit their information on different schedules that depend on when they have their data available?

3. *Individual program requirements.* Without undermining the important purposes of consolidated State applications, how can the Department do a better job of helping to ensure State, school district, and school adherence to the requirements of the individual programs that those consolidated applications include?

4. *Consolidated performance reporting.* Consolidated performance reporting for school years 2000–01 and 2001–02 will be conducted through the Office of Management and Budget-approved reporting form the Department prepared under the previous law. Are there elements of this report that the Department should retain for reporting under the No Child Left Behind Act? Which ones?

5. *Flexibility initiatives under the new law.* What implications do the No Child Left Behind Act's flexibility initiatives have for the consolidated State application and annual reporting effort? These initiatives include:

- Transferability of program funds, allowing any SEA to transfer 50 percent of its State-level funds under certain programs to State-level activities under other programs or under Title I, and LEAs to transfer 50 percent of their funds among programs or into Title I (Title VI, Part A, Subpart 2);
- The Rural Education Achievement Program (REAP), which allows small rural LEAs to consolidate certain federal program funds (Part B of Title VI);
- The Secretary's waiver authority (Title IX, Part D), and waiver decisions available to States under the Ed-Flex Partnership Demonstration Act of 1999 (Ed-Flex);
- The State Flexibility Program (state-flex), which allows SEAs to use certain federal funds for any ESEA purpose, direct the use of funds provided under Title V, Part A (formerly Title VI of the ESEA), and enter into local performance agreements with ten LEAs in each State (Title VI, Part A, Subpart 3, Chapter A); and
- Local flexibility authority, under which up to 80 additional LEAs will receive broad authority to consolidate funds (Title VI, Part A, Subpart 3, Chapter B).

6. *Other considerations.* Are there criteria and procedures for consolidated State applications (or plans) that, consistent with the requirements of sections 9301 and 9302 of the new Act, would better promote accountability for increased academic achievement of all students and other objectives of the No Child Left Behind Act? What are they? How should they be reflected in the procedures and content for consolidated State applications or plans that the Department establishes?

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Dated: December 28, 2001.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–155 Filed 1–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Inventions Available for Licensing

AGENCY: Department of Energy (DOE) National Energy Technology Laboratory (NETL).

ACTION: Notice.

SUMMARY: The United States Department of Energy, National Energy Technology Laboratory hereby announces that the inventions listed below are available for licensing in accordance with 35 U.S.C. 207–209 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents rights have been retained on selected inventions to extend market coverage and may also be available for licensing. A copy of issued patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231. Address: Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Diane Newlon, Technology Transfer Manager for U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone (304) 285–4086; E-mail: *newlon@netl.doe.gov*

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for licensing has been announced in the **Federal Register**.

Issued Patents

Number and Title

6,267,849 Method for the Photocatalytic Conversion of Gas Hydrates

6,058,709 Dynamically Balanced Fuel Nozzle and Method of Operation
6,059,560 Periodic Equivalence Ratio Modulation Method and Apparatus for Controlling Combustion Instability
6,056,125 Cross Flow Cyclonic Flotation column for Coal and Minerals Beneficiation
6,056,796 Rigid Porous Filter
6,033,794 Multi-Stage Fuel Cell System Method and Apparatus
5,948,722 Method for Producing Iron-Based Catalysts
5,895,508 Down-Flow Moving-Bed Gasifier with Catalyst Recycle
5,827,903 Separation of Catalyst from Fischer-Tropsch Slurry
5,809,769 Control of Oscillation Attenuation Via the Control of Fuel-Supply Line Dynamics
5,798,088 Method for Producing Elemental Sulfur from Sulfur-Containing Gasses
5,791,889 Combustor Oscillating Pressure Stabilization and Method
5,728,953 Cable Load Sensing Device
5,721,186 Method for Producing Catalysts from Coal
5,720,858 Method for the Photocatalytic Conversion of Methane
5,706,645 Removal of Oxides of Nitrogen from Gases in Multi-Stage Coal Combustion
5,693,588 Reduction of Spalling in Mixed Metal Oxide Desulfurization Sorbents by Addition of a Large Promoter Metal Oxide
5,456,066 Fuel Supply System and Method for Coal-Fired Prime Mover
5,449,568 Indirect-Fired Gas Turbine Bottomed with Fuel Cell
5,413,878 An Improved System and Method for Networking Electrochemical Devices
5,369,214 Method for Selective Dehalogenation of Halogenated Polyaromatic Compounds
5,348,921 Method for Reducing Sulfate Formation During Regeneration of Hot-Gas Desulfurization Sorbents
5,333,044 Fluorescent Image Tracking Velocimeter
5,325,797 Staged Fluidized-Bed Combustion and Filter System
5,214,015 Synthesis of Iron Based Hydrocracking Catalysts
5,198,002 Gas Stream Clean-Up Filter and Method for Forming Same
5,170,670 Three Axis Velocity Probe System
5,167,676 Apparatus and Method for Removing Particulate Deposits from High Temperature Filters
5,144,251 Three-Axis Particle Impact Probe
5,139,991 Oxyhydrochlorination Catalyst
5,139,958 Method and Device for the Determination of Low Concentrations of Oxygen in Carbonaceous Materials
5,130,097 Apparatus for Hot-Gas Desulfurization of Fuel Gases
5,104,520 Apparatus and Method for Separating Constituents
5,061,363 Method for Co-Processing Waste Rubber and Carbonaceous Material
5,022,892 Fine Coal Cleaning Via the Micro-Mag Process
5,020,457 Destruction of Acid Gas Emissions
4,955,942 In-Bed Tube Bank for a Fluidized-Bed Combustor
4,939,376 Light Collection Device for Flame Emission Detectors
4,867,868 Selective Flotation of Inorganic Sulfides from Coal
4,775,387 Sulfur Removal and Comminution of Carbonaceous Material
4,769,504 Process for Converting Light Alkanes to Higher Hydrocarbons
4,769,045 Method for the Desulfurization of Hot Product Gases from Coal Gasifier
4,696,680 Method and Apparatus for the Selective Separation of Gaseous Coal Gasification Products by Pressure Swing Adsorption
4,695,372 Conditioning of Carbonaceous Material Prior to Physical Beneficiation
4,667,097 Compensated Vibrating Optical Fiber Pressure Measuring Device
4,587,113 Removal of Sulfur and Nitrogen Containing Pollutants from Discharge Gases
4,526,272 Laterally Bendable Belt Conveyor
4,523,465 Wireless Remote Liquid Level Detector and Indicator for Well Testing
4,475,884 Reversed Flow Fluidized-Bed Combustion Apparatus
4,466,360 Loop-Bed Combustion Apparatus
4,465,135 Fire Flood Method for Recovering Petroleum from Oil Reservoirs of Low Permeability and Temperature
4,451,826 Single Transmission Line Data Acquisition System
4,447,297 Combined Fluidized Bed Retort and Combustor

Patent Applications Filed

Flashback Detection Sensor for Lean PreMix Fuel Nozzles
Real-Time Combustion Controls and Diagnostics Sensors

Issued: December 18, 2001.

Rita A. Bajura,

Director, NETL.

[FR Doc. 02–211 Filed 1–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41428 entitled "Clean Coal Power Initiative." A draft program solicitation, as a precursor to potentially awarding multiple financial assistance cooperative agreements, is now being developed. Following release of the draft solicitation, expected in December 2001, a comment and response session with industry and other potential partners will be conducted prior to final issuance of the program solicitation. Final issuance of the program solicitation is slated for February 18, 2002 with awards expected late in fiscal year 2003. DOE will provide between $300–$400 million to fund the program, and industry must match (or exceed) the government cost share for every project. DOE anticipates making multiple awards under this program solicitation.

DATES: The draft solicitation will be available via the DOE's Industry Interactive Procurement System (IIPS) at *http://www.netl.doe.gov/business* on or about December 21, 2001.

ADDRESSES: For the contact to submit comments, where documents can be obtained, where meetings are being held, please see the **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jo Ann C. Zysk, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, E-mail Address: *zysk@netl.doe.gov*, Telephone Number: (412) 386–6600.

SUPPLEMENTARY INFORMATION: The Clean Coal Power Initiative (CCPI) is a cost-shared partnership between the government and industry to demonstrate advanced coal-based, power generation technologies. The goal is to accelerate commercial deployment of advanced technologies to ensure that the United States has clean, reliable, and affordable electricity. Electric power produced from coal is fundamental to a strong U.S. economy and to domestic energy security.

This CCPI solicitation is open to any technology advancement related to coal-based power generation that results in

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efficiency, environmental, and economic improvement compared to currently available state-of-the-art alternatives. The solicitation is also open to technologies capable of producing any combination of heat, fuels, chemicals, or other useful byproducts in conjunction with power generation. Prospective projects must ensure that coal is used for at least 75% of the fuel energy input to the process. Additionally, prospective projects must show the potential for rapid market penetration upon successful demonstration of the technology or concept.

The advanced technologies to be demonstrated under this program will be vital to the role that coal and other solid fuels will play on the world power production scene. Production of more electricity while creating a cleaner environment at lower cost has the potential to raise the standard of living of not only the citizens of the United States, but of the world as a whole.

Prospective applicants who would like to be notified as soon as the draft solicitation is available should register at *http://www.netl.doe.gov/business.* Click on the "Business Alert Registration and follow the instructions. Once you subscribe, you will receive an announcement by E-mail that the draft solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the draft solicitation package will not be accepted and/or honored. The draft solicitation will be open for public comments on December 21, 2001. A public meeting/webcast will be held on January 17, 2002 and the draft solicitation will be closed to public comments on January 23, 2002.

The final solicitation will be made available on or about February 18, 2002. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The final solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on December 19, 2001.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–212 Filed 1–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

COB Energy Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare an EIS, under the National Environmental Policy Act (NEPA), on a proposed electrical interconnection requested by Peoples Energy Resources Corporation (Peoples Energy), to integrate electrical power from the COB Energy Facility into the Federal transmission grid. BPA proposes to execute an agreement with Peoples Energy to provide them with an interconnection.

DATES: Written comments on the NEPA scoping process are due to the address below no later than February 26, 2002. Comments may also be made at an EIS scoping open house meeting to be held on January 15, 2002, at the address below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon 97212. You may also call BPA's toll-free comment line at 1–800–622–4519; name this project, and record your complete name, address, and comments. Comments may also be sent to the BPA Internet address at *comment@bpa.gov.* To be placed on the project mail list, call 1–800–622–4520.

An open house will be held on January 15, 2002, 7 p.m. to 9 p.m., at Bonanza Public Library, 31703 Highway 70, Bonanza, Oregon. At this informal scoping meeting, BPA staff will answer questions and accept oral and written comments, and representatives of BPA and Peoples Energy will be available to discuss the proposed project and topics to be addressed in the EIS. Information on the proposed project will be available for review.

FOR FURTHER INFORMATION CONTACT: Thomas C. McKinney, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–4749; or e-mail *tcmckinney@bpa.gov.* Additional information can be found at BPA's web site: *www.bpa.gov.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the agreement which BPA proposes with Peoples Energy, and the consequences of any modifications to the transmission system needed to provide an electrical connection under the terms of the agreement. In addition to these Federal actions, the EIS will consider the environmental consequences of construction and operation of the COB Energy Facility.

The proposed project has several components. In addition to the generating facility itself (described below), other components may include: (1) An electrical connection into the BPA's electrical transmission system, (2) upgrades to existing BPA Substations, (3) a new substation on-site, (4) potential system upgrades to be defined through impact studies of the facility, (5) a natural gas pipeline, and (6) water supply and process water pipelines.

A. Proposed Action

The proposed COB Energy Facility would be a power development project beginning as a simple-cycle generation facility and expanding to a combined-cycle electric generating facility. Nominal generating capacity is 600 megawatts in the simple-cycle configuration and 1,150 megawatts in the combined-cycle configuration. The facility site would be located approximately 3 miles south of the City of Bonanza, on the east side of West Langell Valley Road No. 520 in Klamath County. The combined-cycle facility would consist of four combustion turbine generators, and each turbine generator would be coupled with a heat-recovery steam generator (HRSG) and two HRSG's will couple with a steam turbine generator.

The proposed COB Energy Facility would be fueled by natural gas from the existing Pacific Gas & Electric Gas Transmission Northwest (PG&E GTN) pipeline and delivered through a new, approximately 4.6-mile natural-gas pipeline. Natural gas would be burned in the combustion turbines. Expanding gases from combustion would turn rotors within the turbines that are connected to electric generators. The hot gases exhausted from the combustion turbines would be used to raise steam in the HRSGs. Steam from the HRSGs would be expanded through a steam turbine that drives its own electric generator. To increase steam-generating capacity, a duct burner system will be included in each HRSG. The duct burner will increase the steam generated in the HRSGs and increase the steam generator's electrical output.

Water would be needed at the facility to generate steam and cool the steam process. Water would be supplied from an existing well, known as the Babson well, located approximately 2.8 miles from the facility. The well would draw water from the deep basalt aquifer, which is isolated from the shallow well aquifer in the area. Process water from the facility would be discharged either for land application through nearby irrigation district systems, land applied on site for irrigation, or discharged to the Lost River during periods allowed by the Oregon Department of Environmental Quality.

The COB Energy Facility would deliver electric power to the regional power grid through an interconnection to existing electric transmission lines that cross the facility site. The facility would tie into two or three of the existing electric transmission lines, owned by BPA, PacifiCorp, and Portland General Electric. A transmission planning study conducted by the three utilities will determine the optimal interconnection among the transmission lines. The study also will identify any upgrades to the existing lines or the Malin Substation that may be needed.

B. Process to Date

BPA is the lead Federal agency for the project EIS. The State of Oregon Energy Facility Siting Council is currently evaluating the Notice of Intent to Apply for a Site Certificate for the COB Energy Facility. Oregon's site evaluation process, like NEPA, provides opportunity for public participation, and a public meeting will be held by representatives from the Oregon Office of Energy at the January 15 meeting in Bonanza.

C. Alternatives Proposed for Consideration

Alternatives thus far identified for evaluation in the EIS are: (1) The proposed action and (2) no action. Other alternatives may be identified through the scoping process.

D. Public Participation and Identification of Environmental Issues

BPA intends to prepare an EIS addressing both the COB Energy Facility and the associated electric power interconnection facilities. BPA has established a 45-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold a public comment meeting on the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS.

BPA decided to prepare the EIS for the following reasons: (1) The COB Energy Facility would depend on an interconnect to existing electric transmission lines that may include a BPA line, (2) the interconnect could require upgrades to the existing BPA line, (3) the interconnection may include a new substation on the site, (4) the interconnection may require upgrades to the BPA Malin Substation, (5) the interconnect may result in other system impacts identified in the transmission study, and (6) no other Federal or State agency is currently preparing an EIS on the proposed project. Because no other EIS is being prepared, the scope of BPA's EIS will cover both the interconnection elements and the COB Energy Facility itself.

The principal issues identified thus far for consideration in the Draft EIS with respect to the COB Energy Facility are as follows: (1) Air and water quality impacts, (2) noise impacts from plant operation, (3) aesthetic impacts, (4) socioeconomic impacts created by an influx of construction workers into a sparsely populated area, (5) impacts on wildlife habitat, and (6) cultural resource impacts. The principal issues identified thus far for consideration in the Draft EIS with respect to the electric power transmission facilities are impacts of electrical interconnection on the grid system.

These issues, together with any additional significant issues identified through the scoping process, will be addressed in the EIS.

Issued in Portland, Oregon, on December 21, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–210 Filed 1–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 271–062—Arkansas]

Entergy Arkansas, Inc.; Notice of Availability of Environmental Assessment

December 28, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for new license for the Carpenter-Remmel Hydro Project, located on the Ouachita River in Garland and Hot Springs Counties, Arkansas, and has prepared an Environmental Assessment (EA). In the EA, the Commission staff has analyzed the potential environmental effects of the project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.fed.gov* using the "RIMS" link, select "Docket#" and follow the instructions. Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Carpenter-Remmel Hydroelectric Project No. 271–062" to all comments. For further information, contact Ed Lee at (202) 219–2809. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–175 Filed 1–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–44–000]

Indeck Maine Energy, L.L.C., Complainant, v. ISO New England, Inc., Respondent; Notice of Complaint

December 28, 2001.

Take notice that on December 27, 2001, Indeck Maine Energy, L.L.C. (Indeck Maine) filed a Complaint and Request for Appointment of Settlement Judgement against the ISO New England, Inc. (ISO NE) requesting that the Federal Energy Regulatory Commission (Commission) find (i) ISO-NE's actions in soliciting and

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contracting for Indeck Maine's electrical energy for October 16 and 17, 1999; and October 21, 23 and 26, 1999, to support system reliability were not barred by NEPOOL Market Rule and Procedure 5 (MRP); (ii) that ISO-NE's requests were outside the scope of the real time market and the day-ahead dispatch; (iii) that MRP 17 does not apply to Indeck Maine's October 16, 1999, operations under the facts of this case; and (iv) to the extent MRP 17 did apply to the facts of this case, under the facts of this case ISO-NE did not implement MRP 17 in the manner required by the rule.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 16, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–174 Filed 1–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–52–000]

Iroquois Gas Transmission System, L.P.; Notice of Application

December 28, 2001.

Take notice that on December 14, 2001, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act and parts 157 of the Commission's rules and regulations, for a certificate of public convenience and necessity authorizing Iroquois to construct and operate its Eastern Long Island Expansion Project (ELI Project) all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (please call 202–208–2222 for assistance).

Specifically, Iroquois requests authorization to construct and operate the following facilities: (i) 29.1 miles of 20-inch pipeline from a point offshore of Milford, Connecticut to a point in Brookhaven, Suffolk County, New York; (ii) a new compressor unit, with 20,000 (nominal) horsepower, in Milford, Connecticut; (iii) cooling facilities at the Dover, New York compressor station; (iv) various ancillary facilities at the existing Brookfield, Connecticut meter station; (v) various ancillary facilities associated with a new interconnection with the facilities of KeySpan Energy Delivery Long Island in Brookhaven, New York; and (vi) other necessary facilities, such as a tap valve in Long Island Sound, three mainline valves, pig launchers/receivers and temporary facilities, including pipe yards, storage yards, access roads and staging areas.

Iroquois states that the facilities are designed to provide approximately 175,000 dekatherms per day of firm transportation service to the eastern end of Long Island, and will be made pursuant to its Part 284 subpart G blanket certificate. Iroquois has executed precedent agreements with the following shippers:

- Consolidated Edison Energy, Inc., 10,000 dekatherms per day;
- Engage Energy America, LLC, 50,000 dekatherms per day;
- Long Island Power Authority, 160,000 dekatherms per day;
- Mirant Americas, Inc., 80,000 dekatherms per day; and
- New York Power Authority, 40,000 dekatherms per day.

Iroquois states that because the precedent agreements currently provide for firm transportation of 340,000 dekatherms per day which exceeds the capacity of the facilities, pro-ration of capacity among the shippers may be necessary; Iroquois expects to make a decision on any such pro-ration no later than March 1, 2003.

The total cost of the ELI Project is estimated to be about $105 million. Iroquois proposes to charge shippers its firm transportation rate in effect under its RTS rate schedule, plus an incremental surcharge, which, in total, is designed to recover the costs of the proposed facilities.

In order to meet a service commencement date of November 1, 2004, Iroquois requests that the Commission issue a preliminary determination on non-environmental aspects of the ELI Project by July 1, 2002, with final authorization no later than July 1, 2003.

Any questions regarding the application be directed to Jeffrey A. Bruner, Vice President, General Counsel and Secretary for Iroquois, One Corporate Drive, Suite 600, Shelton, Connecticut 06484, at 203–925–7200, or Donald F. Sanata, Jr., Troutman Saunders, LLP, 401 Ninth Street, NW, Suite 1000, Washington, DC 20004, at 202–274–2815.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 18, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–172 Filed 1–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–53–000]

National Fuel Gas Supply Corporation, Dominion Transmission, Inc.; Notice of Application

December 28, 2001.

Take notice that on December 13, 2001, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 and Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301, filed a joint application pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's rules and regulations for a certificate of public convenience and necessity to construct and operate facilities that will increase capacity on the jointly-owned Ellisburg, Pennsylvania to Leidy, Pennsylvania pipeline (Ellisburg-Leidy Line) all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Specifically, the applicants seek authorization to: (1) Install a new 8,010 horsepower compressor unit at National Fuel's Ellisburg Compressor Station in Potter County, Pennsylvania, (2) uprate the maximum allowable operating pressure of the jointly-owned pipeline (downstream of the Ellisburg Compressor Station) above the current level of 1405 psig, and (3) modify the Leidy M&R Station in Clinton County, Pennsylvania. The applicants state that these facility additions would allow an additional 150,000 Dth per day of firm capacity to the Ellisburg-Leidy Line. Of this total, 130,000 Dth per day of capacity would be allocated to National Fuel and 20,000 Dth per day would be allocated to Dominion. The applicants state that this incremental capacity, along with other capacity owned by Dominion and National Fuel, will be leased to Tennessee Gas Pipeline Company (Tennessee). The leases are the subject of other jointly-filed applications.[1] The estimated cost of the proposed facilities is $9.4 million.

Any questions regarding the application should be directed to David W. Reitz, Assistant General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203 at 716–857–7949 or by E-mail at *reitzd@natfuel.com* and Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 18, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings

[1] The lease between Tennessee and Dominion is the subject of Docket No. CP02–47–000. The lease between Tennessee and National Fuel is the subject of Docket No. CP02–48–000.

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associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–173 Filed 1–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–37–000, et al.]

Madison Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 27, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Madison Gas & Electric Company

[Docket No. EC02–37–000]

Take notice that on December 19, 2001, Madison Gas and Electric Co. (MGE) and MGE Energy, Inc. (MGE Energy) filed an application with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, for authorization of a disposition of jurisdictional facilities whereby a proposed corporate reorganization would be implemented.

MGE proposes to carry out a reorganization plan, which will result in a holding company structure under which MGE and its utility operation will be a wholly-owned subsidiary of the newly formed MGE Energy.

Comment Date: January 9, 2002.

2. Duke Energy Southaven, LLC

[Docket No. EG02–58–000]

Take notice that on December 20, 2001, Duke Energy Southaven, LLC (Duke Southaven) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Southaven is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Southaven, Mississippi. The eligible facilities will consist of a simple cycle electric generation plant with a nominal capacity of 640 MW and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: January 17, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Wisconsin Public Service Corporation, WPS Energy Services, Inc., WPS Power Development, Inc. (and its subsidiaries)

[Docket Nos. ER95–1528–006 and ER96–1088–031]

Take notice that on December 20, 2001, Wisconsin Public Service Corporation (WPSC), WPS Energy Services, Inc. (ESI) and WPS Power Development, Inc. (and its subsidiaries) (PDI) (collectively, the WPSR Companies), submitted a three-year update of the justification for their authorization to sell power at market-based rates.

The WPSR Companies state that copies of this filing have been served on the Public Service Commissions of Wisconsin, Michigan and Maine.

Comment Date: January 10, 2002.

4. Commonwealth Chesapeake Company, LLC

[Docket Nos. ER99–415–004]

Take notice that on December 21, 2001, Commonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake) filed with the Federal Energy Regulatory Commission (Commission) an updated market power study in accordance with the Commission's order issued December 21, 1998 in Docket No. ER99–415 conditionally accepting for filing Commonwealth Chesapeake's market-based rate tariff.

Comment Date: January 11, 2002.

5. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–010 and ER00–1969–012]

Take notice that on December 21, 2001, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) revisions to its Market Administration and Control Area Services Tariff in order to update the references to the formula used to calculate locational reserve prices, pursuant to the Commission's order issued on June 29, 2001, in the above-captioned dockets.

The NYISO has requested an effective date of September 30, 2001, for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment Date: January 11, 2002.

6. American Transmission Company LLC

[Docket No. ER01–521–002]

Take notice that on December 21, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Service Agreement No. 92 with additions to the Generation-Transmission Interconnection Agreement between Wisconsin Electric Power Company and ATCLLC.

ATCLLC requests an effective date of January 1, 2001.

Comment Date: January 11, 2002.

7. Consumers Energy Company

[Docket No. ER01–1587–003]

Take notice that on December 20 2001, Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) under protest the following tariff sheets as part of its FERC Electric Tariff, First Revised Volume No. 6 and the following Service Agreement under that tariff in compliance with the Commission's November 20, 2001 order issued in this proceeding:

Substitute First Revised Sheet Nos. 142 and 171 and Second Substitute Service Agreement No. 62

The sheets are to have an effective date of May 17, 2001. The Service Agreement is to have an effective date of March 21, 2001. Also included in the filing is an extra cover sheet for the Service Agreement reflecting the fact that the Service Agreement was assigned to Michigan Electric Transmission Company, effective April 1, 2001.

Copies of the filing were served upon the Michigan Public Service Commission and those on the official service list in this proceeding.

Comment Date: January 10, 2002.

8. New England Power Company

[Docket No. ER01–2156–002]

Take notice, that on December 21, 2001, New England Power Company (NEP), as successor in interest to Montaup Electric Company (Montaup) submitted for filing an errata to notices of cancellation of Montaup's FERC Electric Tariff, First Revised Volume No. 1 (Montaup Tariff No. 1) and all service agreements thereunder filed on November 8, 2001 in the above-captioned proceeding. The notices of cancellation failed to state that NEP was also canceling all amendments and supplements to Montaup Tariff No. 1.

NEP states that this filing has been served upon all persons designated on the official service list compiled by the Secretary in this proceeding and all parties affected by the cancellation.

Comment Date: January 11, 2002.

9. Mid-Continent Area Power Pool

[Docket Nos. ER01–2189–003, ER01–2744–001, ER01–3003–002, ER01–3011–001 and ER02–112–002]

Take notice that on December 21, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed a refund report related to orders by the Federal Energy Regulatory Commission in the above-referenced dockets.

A copy of this filing has been served on all parties to the service lists in the above-referenced proceedings and the state commissions in the MAPP region.

Comment Date: January 11, 2002.

10. Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant California, LLC, Mirant Canal, LLC, Mirant Chalk Point, LLC, Mirant Delta, LLC, Mirant Kendall, LLC, Mirant Lovett, LLC, Mirant Mid-Atlantic, LLC, Mirant Neenah, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Peaker, LLC, Mirant Potomas River, LLC, Mirant Potereo, LLC, Mirant Zeeland, LLC, State Line Energy, L.L.C.

[Docket No. ER01–3110–001]

Take notice that on December 18, 2001, the captioned parties filed an amendment to their September 24, 2001 filing with the Commission in the captioned docket, in accordance with the Letter Order issued November 20, 2001.

Comment Date: January 8, 2002.

11. Pleasants Energy, LLC

[Docket Nos. ER02–26–001]

Take notice that on December 20, 2001, Pleasants Energy, LLC (Pleasants Energy) tendered for filing a revised Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1 (Revised Tariff) to comply with a letter order issued by the Commission on December 6, 2001 in the above-captioned proceedings (Letter Order). Pleasants Energy, LLC, 97 FERC ¶ 61,259 (2001). The Letter Order allows the Revised Tariff to become effective as of December 1, 2001.

Copies of the filing were served upon the Public Service Commission of West Virginia and the Virginia State Corporation Commission.

Comment Date: January 10, 2002.

12. Carolina Power & Light Company

[Docket No. ER02–52–001]

Take notice that on December 20, 2001, Carolina Power & Light Company (CP&L) filed, pursuant to the Letter Order issued on November 20, 2001 in the above-captioned proceeding, a compliance filing making the required changes to the executed Facility Interconnection and Operating Agreement between CP&L and Dominion Person, Inc.

Comment Date: January 10, 2002.

13. Virginia Electric and Power Company

[Docket No. ER02–63–001]

Take notice that on December 20, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Wells Fargo Bank Northwest, National Association (Wells Fargo) that complies with the Commission's November 28, 2001 order (November 28th Order) in this docket. The executed Interconnection Agreement replaces the unexecuted Interconnection Agreement that was filed on October 9, 2001 and was accepted in the November 28th Order.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the executed Interconnection Agreement effective as of December 10, 2001, the same date the Commission made the unexecuted Interconnection Agreement effective in its November 28th Order.

Copies of the filing were served upon Wells Fargo Bank Northwest, National Association and the Virginia State Corporation Commission.

Comment Date: January 10, 2002.

14. PPL Electric Utilities Corporation

[Docket No. ER02–128–003]

Take notice that on December 18, 2001, PPL Electric Utilities Corporation (PPL Electric) and Williams Generation Company—Hazleton (WGC) filed with the Federal Energy Regulatory Commission (Commission) revisions to the Interconnection Agreement originally filed with the Commission on October 18, 2001, and supplemented on October 23, 2001 and November 26, 2001. PPL Electric and WGC request an effective date of October 19, 2001 for the Interconnection Agreement, as revised.

Comment Date: January 8, 2002.

15. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–589–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company) respectfully

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tendered for filing with the Federal Energy Regulatory Commission (Commission) the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Aquila Energy Marketing Corporation, designated as Service Agreement No. 6, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November, 24, 2000.

The Company requests an effective date of December 13, 2001, as requested by the customer.

A copy of the filing was served upon Aquila Energy Marketing Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: January 10, 2002.

16. Duke Power, a Division of Duke Energy Corporation

[Docket No. ER02–590–000]

Take notice that on December 20, 2001, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement under Duke's Wholesale Market-Based Rate Tariff Providing for Sales of Capacity, Energy, or Ancillary Services and Resale of Transmission Rights between Duke and Consumers Energy Company d/b/a Consumers Energy Traders. Duke requests that the proposed Service Agreement be permitted to become effective on December 13, 2001. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, 18 CFR Pt 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: January 10, 2002.

17. PSI Energy, Inc.

[Docket No. ER02–591–000]

Take notice that on December 20, 2001, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 2000 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment Date: January 10, 2002.

18. Wolverine Power Supply Cooperative, Inc.

[Docket No. ES02–18–000]

Take notice that on December 13, 2001, Wolverine Power Supply Cooperative, Inc. (Wolverine), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 204 of the Federal Power Act (16 U.S.C. 824c) seeking authorization to enter into a loan agreement with the National Rural Utilities Cooperative Finance Corporation under which Wolverine would assume up to $22,750,000 in debt, and seeking an exemption from the Commission's competitive bidding and negotiated placement issuance requirements set forth in section 34.2 of the Commission's regulations.

Comment Date: January 11, 2002.

19. American Electric Power Service Corporation

[Docket No. ER01–3141–002]

Take notice that on December 20, 2001, the American Electric Power Service Corporation (AEPSC), tendered for filing with the Federal Energy Regulatory Commission (Commission) amended service agreements in compliance with the Commission's November 20, 2001 Order Accepting Transmission Service Agreements, as Modified, 97 FERC ¶ 61,207.

AEPSC requests an effective date of September 1, 2001. A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 10, 2002.

20. Nevada Power Company

[Docket No. ER01–3149–002]

Take notice that on December 21, 2001, Nevada Power Company (Nevada Power) filed with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's Order issued in the above-referenced docket, a compliance filing making revisions to the unexecuted Interconnection and Operation Agreement between Nevada Power and Mirant Las Vegas, LLC.

Comment Date: January 11, 2002.

21. NU Operating Companies

[Docket No. ER02–217–001]

Take notice that on December 21, 2001, in compliance with the Federal Energy Regulatory Commission's (Commission) unreported letter order dated December 4, 2001 in the above-captioned proceeding, Northeast Utilities Service Company, on behalf of the Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, tendered for filing the corrected designation for NUSCO's market-based rate tariff, designated FERC Electric Tariff Third Revised Volume No. 7.

Comment Date: January 11, 2002.

22. Cambridge Electric Light Company, Central Maine Power Company, The Connecticut Light and Power Company, New England Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company

[Docket No. ER02–505–002]

Take notice that on December 20, 2001, Cambridge Electric Light Company, Central Maine Power Company, The Connecticut Light and Power Company, New England Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company (the Sponsors) submitted submit for filing a supplement to the Notice of Cancellations filed in this docket on December 7, 2001. The supplement gives notice of cancellation of a power contract between The Connecticut Light and Power Company (Connecticut Light) and Connecticut Municipal Electric Energy Cooperative (CMEEC). The contract to be canceled is The Connecticut Light and Power Company, Rate Schedule FERC No. 221.

Notice of the proposed cancellation has been served upon each person designated on the official service list for this proceeding and all affected customers.

Comment Date: January 10, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–171 Filed 1–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–54–000, et al.]

TXU Generation Company LP, et al.; Electric Rate and Corporate Regulation Filings

December 28, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. TXU Generation Company LP

[Docket No. EG02–54–000]

Take notice that on December 18, 2001, TXU Generation Company LP (TXU Generation) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment Date: January 18, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Yuba City Energy Center, LLC

[Docket No. EG02–59–000]

Take notice that on December 21, 2001, Yuba City Energy Center, LLC (Yuba City) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Yuba City, a Delaware limited liability company, proposes to own and operate one 48.7 MW simple cycle natural gas-fired combustion turbine peaking unit to be located in Yuba City, California. Yuba City will sell the output at wholesale to Calpine Energy Services, L.P.

Comment Date: January 18, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. ISO New England Inc.

[Docket No. EL00–62–041]

Take notice that on December 20, 2001, ISO New England Inc. (the ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance report on its Load Response Program and the addition of new generation in New England pursuant to the Commission's November 20, 2001 Order, 96 FERC ¶ 61,234 (2001).

Comment Date: January 22, 2002.

4. System Energy Resources, Inc.

[Docket No. ER95–1042–005]

Take notice that on December 21, 2001, Entergy Services, Inc. (Entergy Services), as agent for System Energy Resources, Inc. (SERI), submitted for filing with the Federal Energy Regulatory Commission (Commission) a refund report in compliance with the Commission's July 31, 2000 Order, 92 FERC ¶ 61,119.

Comment Date: January 11, 2002.

5. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–592–000]

Take notice that on December 21, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 153 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of November 30, 2001 to Dominion Nuclear Marketing II, Inc.

Comment Date: January 11, 2002.

6. Southern Company Services, Inc.

[Docket No. ER02–593–000]

Take notice that on December 21, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPC), and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed eight (8) agreements for network integration transmission service between Southern Companies and Energy Marketing, a department of SCS, as agent for MPC, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) for the delivery of power to the following delivery points all of which are member cooperatives of South Mississippi Electric Power Association (SMEPA): (1) Coast EPA's Wellman Delivery Point; (2) Singing River EPA's Monaca Lake Substation; (3) Singing River EPA's Hamill Farm Road Delivery Point; (4) Pearl River Valley EPA's OLOH Delivery Point; (5) Singing River EPA's Martin Bluff Road Delivery Point; (6) Coast EPA's Necaise Delivery Point; (7) Pearl River Valley EPA's Hattiesburg Industrial Park Delivery Point; and (8) Singing River EPA's South Lucedale Delivery Point. These agreements are being filed in conjunction with a power sale by SCS, as agent for MPC, to SMEPA under Southern Companies' Market-Based Rate Power Sales Tariff.

Comment Date: January 11, 2002.

7. PJM Interconnection, L.L.C.

[Docket No. ER02–594–000]

Take notice that on December 21, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: (i) a non-firm point-to-point transmission service agreement with WPS Westwood Generation, L.L.C. (WPS Westwood); and (ii) a non-firm point-to-point transmission service agreement with Sunbury Generation, L.L.C. (Sunbury). Copies of this filing were served upon WPS Westwood and Sunbury, and the state commissions within the PJM control area.

PJM requests a waiver of the Federal Energy Regulatory Commission notice requirements to permit an effective date of December 7, 2001, the date the agreements were executed.

Comment Date: January 11, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–595–000]

Take notice that on December 21, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing: an executed network integration transmission service agreement with FirstEnergy Solutions Corporation (FirstEnergy). Copies of this filing were served upon FirstEnergy, and the state commissions within the PJM control area.

PJM requested a waiver of the Federal Energy Regulatory Commission's notice requirements to permit an effective date for the agreement of December 1, 2001, the date service under the agreement commenced.

Comment Date: January 11, 2002.

9. Southwest Power Pool, Inc.

[Docket No. ER02–596–000]

Take notice that on December 21, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point

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Transmission Service with Southwestern Public Service Company (Transmission Customer). A copy of this filing was served on the Transmission Customer.

SPP requests an effective date of January 1, 2002 for this service agreement.

Comment Date: January 11, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER02–597–000]

Take notice that on December 21, 2001, PJM Interconnection, L.L.C. (PJM), at the request of, and on behalf of PPL Electric Utilities Corporation (PPL Electric) submitted for filing an Attachment H–8A to the PJM Open Access Transmission Tariff (PJM Tariff) and an agency agreement between PJM and PPL Electric. Attachment H–8A supplements Attachment H–8 to the PJM Tariff and sets forth "Other Supporting Facilities Charges" for transmission of service to certain municipal and cooperative customers utilizing PPL Electric's facilities at the primary voltage level of 12 kV. Because PJM does not have operational control over PPL Electric's facilities at voltage levels below 69 kV, the submitted agency agreement permits PJM to act as PPL Electric's agent for the purpose of executing service agreements with customers taking transmission service using PPL Electric's facilities at the primary voltage level of 12 kV and for performing tariff administration duties relating to such service.

At PPL Electric's request, PJM requests a waiver of the Federal Energy Regulatory Commission's notice requirements to permit an effective date of February 1, 1999, or in the alternative December 1, 2001, which is thirty days of the date of the filing.

Copies of this filing were served upon all affected customers and on the Pennsylvania Public Utility Commission.

Comment Date: January 11, 2002.

11. Soyland Power Cooperative, Inc.

[Docket No. ER02–598–000]

Take notice that on December 21, 2001, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed changes to its Rate Schedule A, designated as Supplement No. 2 to its Rate Schedules.

Soyland requests an effective date of January 1, 2002 for the proposed changes to its Rate Schedule A. Accordingly, Soyland requests waiver of the Commission's regulations. Rate Schedule A is the formulary rate under which Soyland recovers the costs associated with it service to its Members pursuant to the Wholesale Power Contract that Soyland has with each Member.

Comment Date: January 11, 2002.

12. California Independent System Operator Corporation

[Docket No. ER02–599–000]

Take notice that the California Independent System Operator Corporation (ISO), on December 21, 2001, submitted an informational filing as to the new transmission Access Charge rates that will be in effect on January 1, 2002.

The ISO states that this filing has been served the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including Vernon, with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: January 11, 2002.

13. Western Systems Power Pool, Inc.

[Docket No. ER02–601–000]

Take notice that on December 21, 2001, the Western Systems Power Pool, Inc. (WSPP) submitted changes to the WSPP Agreement that modified certain commercial terms pertaining to the sale of power. WSPP seeks an effective date of March 1, 2002, for these changes.

Copies of this filing have been served on all state commissions within the United States. This filing also has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: January 11, 2002.

14. Delta Energy Center, LLC

[Docket No. ER02–600–000]

Take notice that on December 21, 2001, Delta Energy Center, LLC, (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to construct, own and operate a 880-megawatt electric generation facility located in Contra Costa County, California.

Comment Date: January 11, 2002.

15. American Electric Power Service Corporation

[Docket No. ER02–602–000]

Take notice that on December 21, 2001, the American Electric Power Service Corporation (AEPSC), submitted and requested acceptance of a Notice of Cancellation for each ERCOT Ancillary Service Agreement made pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Second Revised Volume No. 6.

AEP respectfully requests that the Commission waive its usual minimum notice requirements, and any other requirements of its Rules and Regulations with which this filing may not comply, and accept the notices of cancellation for these agreements to be effective January 1, 2002, or the earliest permissible date thereafter.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 11, 2002.

16. Entergy Services, Inc.

[Docket No. RT01–75–001]

Take notice that on December 20, 2001, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed a notice of withdrawal of its application for approval of the Transco transmission rate structure filed with the Federal Energy Regulatory Commission on December 29, 2000 in Docket No. RT01–75–001.

Entergy has served a copy of this filing on all parties listed on the service list in Docket No. RT01–75–001.

Comment Date: January 10, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

For further information, contact Michael Spencer at 202–219–2846.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–214 Filed 1–3–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161–006 Wisconsin; Project Nos. 2192–008 and 2110–003 Wisconsin]

Rhinelander Paper Company; Consolidated Water Power; Notice of Availability of Draft Multiple Project Environmental Assessment

December 28, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486,52 FR 47879), the Office of Energy Projects has reviewed the applications for license for the Rhinelander, Stevens Point, and Biron projects, located on the Wisconsin River, in Oneida, Portage, and Wood Counties, Wisconsin, and has prepared a Draft Multiple Project Environmental Assessment (DEA) for these projects. There are no federal lands occupied by the project works or located within the project boundaries.

The DEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the projects, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix the Project No. 2161, 2192, or 2110 to the comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

For further information, contact Michael Spencer at 202–219–2846.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–176 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7125–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Public Water Systems Supervision Program: Public Notification Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq., this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Public Water Systems Supervision (PWSS) Program ICR: Public Notification Amendment, EPA No. 270.41; OMB No. 2040–0090. The current Public Notification ICR approval expires on 06/30/2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on the existing information collection as described below.

DATES: Comments must be submitted on or before March 5, 2002.

ADDRESSES: To obtain a copy of the draft Public Notification Amendment to the PWSS ICR without charge, please contact the Safe Drinking Water Hotline (800–426–4791). Hours of operation are 9 a.m. to 5:30 p.m. (ET), Monday–Friday, excluding Federal holidays. Copies are also available from the Office of Water Resource Center (RC4100), U.S. EPA Headquarters, 401 M Street SW., Washington, DC 20460. People interested in getting information or making comments about the Public Notification Amendment to the PWSS ICR should direct inquiries or comments to the Office of Ground Water and Drinking Water, Drinking Water Protection Branch, Mail Code 4606M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa Christ (202) 564–8354, fax (202) 564–3755, E-mail: *christ.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are Public Water Systems, primacy agents including regulators in the States, Puerto Rico, the U.S. Trust Territories; Indian Tribes and Alaska Native Villages, and in some instances, U. S. EPA Regional Administrators and staff.

Title: Information Collection Request for Public Water Systems Supervision Program: Public Notification Amendment. The current Public Notification ICR (EPA No. 1898.02; OMB No. 2040–0209) expires June 30, 2002.

Abstract: The 2001 PWSS Program ICR is the result of a consolidation of some rules and activities covered in the 1993 PWSS ICR and activities and rules previously covered in other OGWDW standalone ICRs. The current Public Notification ICR will be renewed as an amendment to the 2001 PWSS Program ICR. This ICR amendment revises the burden estimate for public notification regulations, as required by sections 1414(a)(1) and (a)(2) of the Safe Drinking Water Act. Public water systems are required to give notification to all persons served when a violation of EPA drinking water standards occurs and for other situations posing a risk to health. EPA regulations define the form, manner, frequency, and content of the notices. Ensuring implementation of these requirements by public water systems is principally a responsibility of the States, territories and tribe that have assumed primary enforcement responsibility (primacy) for public water systems under SDWA section 1413.

An Agency may not conduct or sponsor and a person is not required to respond to, a collection of information if it does not display a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and, (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology

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(e.g., permitting electronic submission of responses).

Burden Statement: The estimated burden for Public Notification is approximately: 51,449 responses per year; 748,811 hours per year; and $4.035 million per year of total cost.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Any recommendations from the drinking water community and the general public on this issue will be given consideration by the Agency.

Dated: December 21, 2001.

William R. Diamond,

Director, Drinking Water Protection Division.

[FR Doc. 02–222 Filed 1–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7125–9]

Environmental Laboratory Advisory Board (ELAB), Nominees, Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice, correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** on November 9, 2001 (66 FR 56675). The Date of the ELAB meeting has been changed. The Environmental Protection Agency (EPA) is soliciting nominees to serve on the Environmental Laboratory Advisory Board (ELAB). Nominees are being sought to fill vacancies in the following category: Field Testing. Terms of service will commence upon selection and terminate on July 27, 2003. Application forms must be submitted to provide information on experience, abilities, stakeholder interest, organizational description, and references. A copy of the application form can be obtained on the Internet (see address below).

The date for the Environmental Laboratory Advisory Board of Directors meeting has been changed to 3 PM to 6 PM on December 4, 2001 and the meetings scheduled on December 6 and 7 have been canceled. The ELAB meeting will be held at the Crystal Gateway Marriott at 1700 Jefferson Davis Highway, Arlington VA. At this meeting the ELAB board will discuss issues, ideas, and opinions previously submitted and time permitting, will take comments and questions from the public. ELAB is soliciting input from the public on issues related to the NELAC environmental laboratory accreditation program and NELAC standards. The agenda of the ELAB December 4 meeting will be based on input gathered from written comments as well as a review of recommendations and activities from earlier Board meetings.

Written comments on NELAC laboratory accreditation and standards are encouraged and should be sent to Edward Kantor DFO, PO Box 93478, Las Vegas NV 89193, or can be faxed to (702) 798–2261 or E-mailed to *kantor.edward@epa.gov*. ELAB nominee applications can be found at *http://www.epa.gov/ttn/nelac/arcmisc.html* and should be mailed, faxed, or E-mailed to the addresses previously given.

http://www.epa.gov/ttn/nelac/arcmisc.html

Dated: November 8, 2001.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–221 Filed 1–3–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6825–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa*. Weekly receipt of Environmental Impact Statements Filed December 24, 2001 Through December 28, 2001 Pursuant to 40 CFR 1506.9.

EIS No. 010538, Final EIS, FHW, WI, County Highway J/WIS 164 (I–94 to County E) Corridor Improvements Project, Funding, City of Pewaukee, Villages of Pewaukee and Sussex, Towns of Lisbon, Richfield and Polk, Waukesha and Washington Counties, WI, Wait Period Ends: January 28, 2002, Contact: Richard Madzak (608) 829–7510.

The above FHW EIS should have appeared in the December 28, 2001 **Federal Register**. The 30-day Wait Period is Calculated from December 28, 2001.

EIS No. 010539, Final EIS, COE, CA, White Slough Flood Control Study, Tidal Circulation Improvements and Section 205 Program Authorities Continuation, Vallejo Sanitation and Flood Control District, City of Vallejo, Solano County, CA, Wait Period Ends: January 28, 2002, Contact: Tamara Terry (415) 977–8545.

The above COE EIS should have appeared in the December 28, 2001 **Federal Register**. The 30-day Wait Period is Calculated from December 28, 2001.

EIS No. 010540, Draft EIS, FTA, AZ, Central Phoenix/East Valley Light Rail Transit Corridor, Construction, Operation and Maintenance, Funding, Cities of Phoenix, Tempe and Mesa, Maricopa County, AZ, Comment Period Ends: February 19, 2002, Contact: Hymie Luden (415) 744–3115.

EIS No. 010541, Draft EIS, COE, TX, Texas City's Proposed Shoal Point Container Terminal Project, Containerized Cargo Gateway Development, US Army COE Section 404 and 10 Permits Issuance, Dredged Material Placement Area (DMPA), City of Texas, Galveston County, TX, Comment Period Ends: February 19, 2002, Contact: Sharon Manella Tirpak (409) 766–3931.

EIS No. 010542, Draft Supplement EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Updated and New Information concerning Cumulative Effects and Introduction of Alternative F, Clancy-Unionville Implementation Area, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Comment Period Ends: February 19, 2002, Contact: Jerry Meyer (406) 449–5201.

EIS No. 010543, Final EIS, NOA, CA, Goat Canyon Enhancement Project, Sediment Basins, Staging Area and Visual Screening Berm Establishment, Tijuana River National Estuarine Research Reserve (TRNERR), Imperial Beach, City and County of San Diego, CA, Wait Period Ends: February 04, 2002, Contact: Nina Garfield (301) 563–1171.

EIS No. 010544, Final EIS, USA, CA, Oakland Army Base Disposal and Reuse Plan, Implementation, City of Oakland, Alameda County, CA, Wait Period Ends: February 04, 2002, Contact: Theresa Persick Arnold (703) 697–0216.

Dated: December 31, 2001.

Anne Norton Miller,

Director, Office of Federal Activities.

[FR Doc. 02–227 Filed 1–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D–BIA–K39071–00 Rating EC2, Truckee River Water Quality Settlement Agreement and Federal Water Right Acquisition, Implementation, Truckee River, Placer County, CA and Washoe, Storey and Lyon Counties, NV.

Summary: EPA recognized the WQSA signatories work to permanently improve Truckee River water quality and reduce violations of water quality standards. EPA encouraged them to continue to work with us in achieving full compliance with water quality standards. EPA expressed concerns with alternatives, monitoring and mitigation, and cumulative impacts.

ERP No. D–BLM–K40248–AZ Rating EC2, Diamond Bar Road Improvement Project, Road Pavement and Realignment of sections through Grapevine Wash, Right-of-Way Permits Issuance, Mohave County, AZ.

Summary: EPA expressed environmental concerns with potential cumulative impacts, particularly, those from reasonably foreseeable development scenarios. EPA suggested that alternatives further minimize adverse impacts to vegetation, wildlife and cultural resources.

ERP No. D–COE–D36179–WV Rating EO2, Marlington Local Flood Protection, Flood Damage Reduction Measures Evaluation, Levee and Floodwall Construction for Knapp Creek Flood Management, Greenbrier River, Town of Marlington, Pocahontas County, WV.

Summary: EPA expressed environmental concerns that non-structional alternatives, including relocation of residential and non-residential structures to a flood safe site, were not evaluated in detail. Insufficient information is provided for a reasonably available alternative (relocation) which could reduce the environmental impacts of the proposal.

ERP No. D–NOA–L91016–AK Rating LO, American Fisheries Act Amendments 61/61/13/8: Amendment 61 Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 61 Groundfish of the Gulf of Alaska; Amendment 13 Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 Scallop Fishery off Alaska, Fishery Management Plans, AK.

Summary: EPA lacked objections to ending the traditional race for fish by implementing action alternatives associated with the American Fisheries Act (AFA) because it results in a safer, more efficient fishery that utilizes a higher percentage of pollock biomass harvested. EPA suggested that the fishing industry could exploit the temporal and spatial discretion afforded by AFA, and extract a greater percentage of biomass to further reduce impacts of process waste discharge to water quality.

ERP No. DS–NRC–A00150–00 Rating EC2, Decommissioning of Nuclear Facilities, Updated Information on Dealing With Decommissioning of Nuclear Power Reactors (NUREG–0586).

Summary: EPA expressed environmental concerns with this supplement to a generic EIS and requested clarifications and supplementary information on: determining when a particular decommissioning activity or site or operating condition is covered by the generic analysis; explaining the differing impact levels and the assumptions used in setting them; updating the analysis of the site's environmental condition; and, providing a more robust discussion of impacts to ground water.

Final EISs

ERP No. F–AFS–L65377–OR, South Fork Burnt River Ranger Planning Area, Development of Five New Allotment Management Plans (AMPS), Wallowa-Whitman National Forest, Unity Ranger District, Baker County, OR.

Summary: While the FEIS added additional technical information on restoration actions, EPA continued to have some environmental concerns with the project. Principally, the FEIS did not include a no-graze or reduced graze restoration alternative.

ERP No. F–COE–J64008–SD, Title VI Land Transfer South Dakota, Transfer of 91,178 Acres of Land at Lake Oahe, Lake Sharp, Lake Francise Case, and Lewis and Clark Lake, from the US Army Corps of Engineers (USACE) to the South Dakota Department of Game, Fish and Parks (SDGFP), SD.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–F50003–IL, Fox River Bridge Crossings, Construction of up to Five-Bridges across the Fox River, Funding and NPDES and US Army COE Section 10 and 404 Permits Issuance, Kane County, IL.

SUMMARY: Based upon the highway agency's commitments (on travel-related mitigation and wetland compensation), EPA had no significant environmental concerns with the preferred alternative. EPA believed that the preferred alternative can satisfy the project's purpose and need while adequately mitigating direct and indirect impacts.

ERP No. F–FRC–L05221–WA, Cowlitz River Hydroelectric Project (No. 2016–044), Relicensing of the Existing 462–Megawatt Cowlitz River Hydroelectric Project, City of Tacoma, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NPS–K61137–AZ, Organ Pipe Cactus National Monument General Management Plan and Development Concept Plan, Updated Information concerning Re-Analysis of Cumulative Effects of the Sonoran Pronghorn Portion of the Sonoran Desert, Pima County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 28, 2001.

Anne Norton Miller,

Director, Office of Federal Activities.

[FR Doc. 02–228 Filed 1–3–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225F; FRL–6812–6]

Diazinon; Receipt of Requests for Amendments and Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Several companies that manufacture diazinon (O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate) pesticide products

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have asked EPA to cancel or amend the registrations for their end-use products containing diazinon to delete all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary termination of the above mentioned uses through registration cancellations or amendments were submitted to EPA in July, August, September, and October 2001. EPA intends to grant these requests by issuing a cancellation order at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of these requests. Upon the issuance of the cancellation order, any distribution, sale, or use of diazinon products listed in this Notice will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

DATES: Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided below and identified by docket control number OPP–34225F. Comments must be received on or before February 4, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225F in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Hebert, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–6249; fax number: 703–308–7042; e-mail address: hebert.john@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stocks provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34225F. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225F in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460,

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34225F. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

Certain registrants requested in letters dated June, August, and September 2001, that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon end-use registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requested cancellations and amendments are consistent with the requests in December 2000 by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children. The indoor uses and agricultural uses subject to cancellation are identified in List 1 below:

List 1--Uses to be Canceled

Indoor uses: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including but not limited to food/feed handling establishments, greenhouses, schools, residences, commercial buildings, museums, sports facilities, stores, warehouses and hospitals.

Agricultural uses: Alfalfa, bananas*, Bermuda grass, dried beans, dried peas, celery*, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers*, dandelions, forestry (ground squirrel/rodent burrow dust stations for public health use)*, kiwi, lespedeza, parsley*, parsnips*, pastures, peppers*, potatoes (Irish and sweet)*, sheep, sorghum, squash (winter and summer)*, rangeland, Swiss chard*, tobacco, and turnips (roots and tops)*. (The Agency does not intend to disapprove or cancel any 24(c) Special Local Need registrations issued for the uses designated with an asterisk).

As mentioned above, the requests announced in this **Federal Register** notice also include registration cancellations and/or amendments to terminate certain uses that the registrants do not wish to maintain. The specific requests are identified in Tables 1 and 2 of this notice.

EPA has begun the process of reviewing the requested amendments which cannot be finalized until the end of the public comment period and provided that no substantial comments need to be addressed. EPA also intends to grant the requested product and use cancellations by issuing a cancellation order at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of these requests.

B. Requests for Voluntary Cancellation of End-Use Products

The registrants and end-use product registrations containing diazinon for which cancellation was requested are identified in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration Number	Product
Bonide Products, Inc.	4-191	Bonide Lawn and Garden Insect Control with Diazinon 25% EC
	4-204	Bonide Ant Dust with Diazinon
	4-209	Bonide Diazinon 2 1/2 G
	4-272	Bonide Diazinon Soil Insect Granules
	4-284	Bonide Garden Soil Insecticide Diazinon 5% G
	4-359	Bonide Diazinon 4E Insecticide
	4-411	Bonide Diazinon Insect Control Ready-To-Use
	4-416	Bonide Lawn and Garden Spray with Diazinon
	4-417	Bonide Ant and Soil Insect Granules
The Scotts Company	239-2350	Ortho Fruit and Vegetable Insect Control
	239-2602	Ortho Home Pest Insect Killer Formula II
	239-2659	Ortho Diazinon Reacy Spray Insect Killer
	239-2660	Ortho Diazinon Lock'n Spray Insect Killer
Value Garden Supply, LLC	769-509	Diazinon 4-E
Southern Agricultural Insecticides, Inc.	829-261	SA-50 Brand Diazinon 4E Insecticide

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TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Registration Number	Product
Agriliance	1381-151 1381-164	Imperial 5% Diazinon Granular Insect Control Agrox DL Plus
Voluntary Purchasing Groups, Inc.	7401-86 7401-96 7401-99 7401-102 7401-103 7401-104 7401-105 7401-110 7401-214 7401-223 7401-236 7401-262 7401-277 7401-278 7401-295 7401-442	Ferti-lome® Worm Spray Ferti-lome® Lawn Insect Killer Ferti-lome® Special Cricket Spray Ferti-lome® Bagworm Spray Ferti-lome® Diazinon Chinch Bug Spray Ferti-lome® Vegetable Spray Ferti-lome® Aphid Spray Ferti-lome® Liquid Rose Spray Ferti-lome® Improved Rose Dust Ferti-lome® White Grub Spray Ferti-lome® White Grub Killer Ferti-lome® Lawn Food Containing Diazinon Ferti-lome® Wasp and Hornet Killer Ferti-lome® Ant and Roach Spray Ferti-lome® Garden Dust Hi-Yield Diazinon 4E Insect Spray
Gowan Company	10163-68 10163-103	Prokil Diazinon 4EC Gowan Diazinon 50WP
Lesco	10404-11	Diazinon 500 Insecticide
Platte Chemical Co.	34707-229 34704-288	Clean Drop Diazinon 4E Clean Drop Diazinon Seed Protectant
Hi-Yield Chemical Company	34911-3 34911-14 34911-15 34911-22 34911-24	Hi-Yield® Diazinon Insect Spray Hi-Yield® Diazinon Dust Hi-Yield® Ready-to-Use Professional Kill-A-Bug Hi-Yield® General Purpose Garden Dust Hi-Yield® Imported Fire Ant Killer
Control Solutions Inc.	53883-47	Martin's Diazinon Household Insect Spray Ready to Use

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. In this case, all of the registrants have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests.

C. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend the registrations of their pesticide end-use products containing diazinon to delete certain uses from certain products. The following Table 2 identifies the registrants, the product registrations that they wish to amend, and the uses that they wish to delete through registration amendments.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration Number	Product Name: Use Deletions
Value Garden Supply, LLC	192-161	Dexol Diazinon 5% Granules: Celery
Riverdale	228-177	Riverdale 5% Diazinon Insect Killer Granules
The Scotts Company	239-2364 239-2619 239-2643	Ortho Diazinon Insect Spray: Almonds Ortho Hi-Power Ant, Roach, and Spider Spray Formula II: Indoor Uses Diazinon Insect Spray 2: Almonds
Value Garden Supply, LLC	769-689	SMCP Diazinon AG500: Lawn Pest Control, Nuisance Pests in Outside Areas, and Barrier Strips

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Registration Number	Product Name: Use Deletions
	769-841 769-954	Miller Diazinon AG Insecticide: Field and Forage Uses, Mushroom Houses, Olives, Figs, Filberts and Pineapples AllPro Diazinon 50 WP Insecticide: Lawn Uses, Nuisance Pests, and Grassland Pests
Voluntary Purchasing Groups, Inc.	7401-213 7401-216 7401-441	Hi-Yield Diazinon AG500 Insecticide: Almonds, celery, cucumbers, parsley, parsnips, peppers, potatoes (Irish), squash (summer and winter), sweet potatoes, swiss chard, turnips, grassland insects, and lawn pest control Ferti-lome® Diazinon Insect Spray: Almonds Ferti-lome® Diazinon Water Base Concentrate: Almonds
Gowan Company	10163-100 10163-104 10163-116 10163-163 10163-241	Diazinon 4E: Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, indoor ornamentals, lawn pest control, and nuisance pests Diazinon 14G: Beans, celery, cucumbers, parsley, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, and indoor ornamentals Diazinon 5G: Beans, celery, cucumbers, parsley, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, indoor ornamentals, and lawn pest control Diazinon 50-WSB: Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, grassland insects, livestock Insects, fly control in livestock structures, and indoor ornamentals Diazinon 5F: Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, grassland insects, lawn pest control, nuisance pests, and indoor ornamentals
Hi-Yield Chemical Co.	34911-13	Hi-Yield 5% Diazinon Insect Killer Granules: Celery
Control Solutions Inc.	53883-45 53883-51	Martin's Diazinon 25E Lawn and Garden Insect Control: Almonds and Walnuts Martin's 5% Diazinon Granules: Celery

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The aforementioned companies have requested to amend their registrations and have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement, unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests.

III. Proposed Existing Stocks Provisions

EPA received requests for voluntary cancellation of the diazinon registrations identified in Tables 1 and requests for amendments to terminate certain uses of the diazinon registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant these requests by issuing a cancellation order at the end of the 30–day comment period unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests. In the event that EPA issues a cancellation order, EPA intends to include in that order the existing stocks provisions set forth in this section. For purposes of that cancellation order, the term "existing stocks" will be defined, pursuant to EPA's existing stocks policy published in the **Federal Register** of June 26, 1991 (56 FR 29362), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

EPA intends that the cancellation order includes the following existing stocks provisions:

1. *Distribution or sale of products bearing instructions for use on agricultural crops.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in List 1 will not be lawful under FIFRA 1 year after the effective date of the cancellation order. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order. However, it is lawful to ship such stocks for export consistent with the requirements of section 17 of FIFRA, or to properly dispose of the existing stocks in accordance with all applicable law.

2. *Distribution or sale of products bearing instructions for use on outdoor non-agricultural sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites will not be lawful under FIFRA 1 year after the effective date of the cancellation order. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order. However, it is lawful to ship such stocks for export consistent with the

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requirements of section 17 of FIFRA, or to properly dispose of the existing stocks in accordance with all applicable law.

3. *Distribution or sale of products bearing instructions for use on indoor sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for shipping stocks for export consistent with the requirements of section 17 of FIFRA, or properly disposing of the existing stocks in accordance with all applicable law.

4. *Retail and other distribution or sale of existing stock of products for indoor use.* The distribution or sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002, except for shipping stocks for export consistent with the requirements of section 17 of FIFRA, or properly disposing of the existing stocks in accordance with all applicable law.

5. *Use of existing stocks.* EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 19, 2001.

Lois A. Kossi,

Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. 02–225 Filed 1–3–02 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1059; FRL–6812–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1059, must be received on or before February 4, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1059 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs; Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1059. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1059 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1059. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 17, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP IF06300

EPA has received a pesticide petition (IF06300) from Aventis CropScience, 2 Alexander Drive, Research Trianagle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fenamidone, and its metabolites RPA 412708, RPA 412636, and RPA 410193 in or on the raw agricultural commodities: Potato, 0.05 parts per million (ppm) tomato, 1.0 ppm; tomato paste, 3.5 ppm, tomato puree, 3.5 ppm, bulb vegetable crop group, 1.5 ppm; cucurbit crop group, 0.1 ppm; head lettuce, 15.0 ppm; leaf lettuce, 20.0 ppm; wheat grain, 0.05 ppm, wheat straw, 0.5 ppm; wheat forage, 0.5 ppm, and wheat hay, 0.5 ppm. Tolerances are also proposed for fenamidone and its metabolite RPA 410193 on imported wine grapes at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of fenamidone (RPA 407213) is adequately understood in four distinct crops (lettuce, tomatoes, potatoes, and grapes) to support these tolerances. In all cases, the primary residue was the parent fungicide, RPA 407213. The only significant metabolite was RPA 410193 (~17 of the total radioactive residue (TRR) in grapes, ~9% of the TRR in tomatoes, <1% of the TRR in lettuce (mostly in the wrapper leaves), and <1% of the TRR in potatoes (haulm or tubers)). RPA 412708 and RPA 412636 were minor metabolites reported in the lettuce and potato metabolism studies, and may account for part of the unidentified residue reported in the grape and tomato metabolism studies.

2. *Analytical method.* Although residue levels approaching the proposed tolerances are unlikely, independently validated enforcement methods are available for determining residues of fenamidone and relevant metabolites. Residues are first extracted from the crop matrix by blending or shaking with a mixture of acetonitrile and water. After filtration, an aliquot of the extract is rotary evaporated to near dryness; then diluted with water. Cleanup is accomplished on a HRP polymeric solid phase extraction (SPE) cartridge and an amino SPE cartridge. Residues are quantified by high performance liquid chromotography (HPLC) with tandem mass spectrometric detection (LC/MS/MS). The method limits of quantification (LOQ) are 0.02 ppm for fenamidone, and its metabolites, RPA 412636, RPA 412708, and RPA 410193 in potato tubers, and processed fractions, tomatoes and processed fractions, cucumbers, squash, cantaloupes, head and leaf lettuce, onions, spinach, and wheat raw agricultural commodities and processed fractions.

3. *Magnitude of residues*—i. *Cucurbit crops.* The magnitude and decline of residues of fenamidone were determined on cucumber, cantaloupe, and summer squash, the representative commodities for the cucurbit vegetable

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crop group. Nine field trials were conducted on each crop during 1999. EXP 10623A, a suspension concentrate end use formulation containing 500 g fenamidone per liter, was applied as six broadcast applications, each at the maximum rate of 0.178 lb ai/acre (200 g ai/A/ha). Applications were made approximately 5 days apart, The target pre-harvest interval (PHI) was 14 days. Residues of fenamidone RPA 407213 were detected in two of nine trials of cucumbers at levels of 0.022 to 0.041 ppm, with the metabolite RPA 412708 measured in only one trial at 0.028 ppm. Quantifiable residues of fenamidone were measured in eight of nine trials of cantaloupes at levels ranging from 0.021 to 0.098 ppm, with no quantifiable residues of metabolites detected. Residues of parent fenamidone were found in only one of nine summer squash trials at 0.039 to 0.077 ppm with no quantifiable residues of any metabolites detected.

ii. *Tomato.* Seventeen residue trials were conducted in 1999–2000. EXP 10623A, a suspension concentrate containing 500 g fenamidone per liter, was applied as four broadcast applications of 0.268 lb ai/acre (300 g ai/ha) each or six broadcast applications of 0.178 lb ai/acre (200 g ai/A) each, for a maximum seasonal use rate of 1.068 lb ai/acre (1,200 g ai/ha). Applications were made approximately 5 days apart. The target PHI was 14 days. Cherry tomatoes were grown at 4 of the 18 trials. Trace residues of the fenamidone metabolite RPA 410193 were detected in tomatoes from only one trial, on cherry tomatoes, at levels of 0.023 to 0.028 ppm. Measurable residues of the parent fungicide, fenamidone were found in tomatoes from 15 of the 17 harvestable trials at levels ranging from 0.044 to 0.800 ppm. The residues did not seem to correlate with the application scenario. The extent of potential residue concentration in processed tomato fractions was estimated by processing tomatoes after application of fenamidone at 5X the maximum seasonal use rate. Fenamidone residues concentrated in tomato puree by a factor of about 2.2 and in tomato paste by a factor of about 3.5. When corrected to account for the exaggerated application rate, residue levels were 0.089 ppm in whole tomato fruit, 0.198 ppm in tomato puree and 0.316 ppm in tomato paste.

iii. *Lettuce.* In 2000, nine residue trials were conducted with fenamidone on leaf lettuce and nine trials were conducted on head lettuce. EXP 10623A was applied as four broadcast applications of 0.268 lb ai/acre (300 g ai/ha) each, for a maximum seasonal use rate of 1.068 lb ai/acre (1,200 g ai/ha). Applications were made approximately 5 days apart. The target PHI was 2 days. Residues of the parent fungicide, fenamidone (RPA 407213) were found in/on leaf lettuce from all nine trials at levels ranging from <LOQ to 17.5 ppm. Low levels of the metabolites RPA 410193 and RPA 412708 were found in five of the nine trials of leaf lettuce at levels up to 0.049 ppm. The metabolite RPA 412636 was found in one sample of leaf lettuce at a level of 0.031 ppm. Residues of the parent fungicide, fenamidone RPA 407213 were found in/on head lettuce from all nine trials at levels ranging from 0.815 to 11.7 ppm with the wrapper leaves, and from <LOQ to 2.90 ppm with the wrapper leaves removed. Low levels of the metabolite RPA 410193 were found in four of the nine trials of head lettuce with wrapper leaves at levels up to 0.029 ppm but not detected after the wrapper leaves were removed. Low levels of the metabolite RPA 412708 were found in five of the nine trials of head lettuce with wrapper leaves at levels up to 0.047 ppm but found in samples from only two trials after the wrapper leaves were removed. The metabolite RPA 412636 was found in head lettuce from only one trial at a level of 0.031 ppm before the wrapper leaves were removed and not at all after the wrapper leaves were removed.

iv. *Potato.* Eighteen residue trials were conducted with fenamidone on potatoes in 1999. EXP 10623A, a suspension concentrate containing 500 g fenamidone per liter, was applied as four broadcast applications of 0.268 lb ai/acre (300 g ai/ha) each or six broadcast applications of 0.178 lb ai/acre (200 g ai/ha) each, for a maximum seasonal use rate of 1.068 lb ai/acre (1200 g ai/ha). Applications were made approximately 5 days apart. The target PHI was 7 days. Residues of the parent fungicide, fenamidone RPA 407213 were found in/on head lettuce from all nine trials at levels ranging from 0.815 to 11.7 ppm with the wrapper leaves, and from <LOQ to 2.90 ppm with the wrapper leaves removed. Low levels of the metabolite RPA 410193 were found in four of the nine trials of head lettuce with wrapper leaves at levels up to 0.029 ppm but not detected after the wrapper leaves were removed. Low levels of the metabolite RPA 412708 were found in five of the nine trials of head lettuce with wrapper leaves at levels up to 0.047 ppm but found in samples from only two trials after the wrapper leaves were removed. The metabolite RPA 412636 was found in head lettuce from only one trial at a level of 0.031 ppm before the wrapper leaves were removed and not at all after the wrapper leaves were removed.

iv. *Potato.* Eighteen residue trials were conducted with fenamidone on potatoes in 1999. EXP 10623A, a suspension concentrate containing 500 g fenamidone per liter, was applied as four broadcast applications of 0.268 lb ai/acre (300 g ai/ha) each or six broadcast applications of 0.178 lb ai/acre (200 g ai/ha) each, for a maximum seasonal use rate of 1.068 lb ai/acre (1200 g ai/ha). Applications were made approximately 5 days apart. The target PHI was 14 days. No quantifiable residues of fenamidone or metabolites were found in any potato tuber sample above the LOQ (0.02 ppm). The extent of potential residue concentration in processed potato fractions was estimated by processing potatoes after application of fenamidone at 5X the maximum seasonal use rate. The potato fractions included flakes, chips and wet peel. There were no measurable residues in the potato tuber or the potato chips despite the exaggerated application rate. Only parent fungicide, fenamidone RPA 407213, residues were found in the wet peel at levels of 0.043 to 0.049 ppm with an estimated concentration factor of 4.6. Trace residues of two fenamidone metabolites were found only in the potato flake fraction, RPA 412708 at 0.029 to 0036 ppm and RPA 412636 at 0.026 ppm. When corrected to account for the exaggerated application rate, residue levels of processed fractions were < the RAC LOQ of 0.02 ppm.

v. *Onions.* The magnitude and decline of fenamidone residues was determined on both dry bulb and green onions. There were eight harvestable trials of dry bulb onions and four harvestable trials of green onions. EXP 10623A, a suspension concentrate containing 500 g fenamidone per liter, was applied as six broadcast applications of 0.178 lb ai/acre (200 g ai/ha) each, for a maximum seasonal use rate of 1.068 lb ai/acre (1200 g ai/ha). Applications were made approximately 7 days apart. The target PHI was 7 days. Trace residues of the fenamidone metabolite RPA 412636 were detected in dry bulb onions from only one trial, at levels of 0.027 to 0.035 ppm. Measurable residues of the parent fungicide, fenamidone (RPA 407213), were found in dry bulb onions from only two of the eight harvestable trials at levels ranging from 0.021 to 0.126 ppm. Residues of the parent fungicide, fenamidone RPA 407213, were found in scallions collected from all four green onion trials at levels of 0.221 to 1.10 ppm. Low levels, up to 0.058 ppm, of each of the metabolites were detected in scallions from some of the four green onion trials.

vi. *Wheat.* Twenty–two residue trials were conducted with fenamidone on wheat in the 1999–2000 season. At each trial, a single broadcast application of the fenamidone was made to bare soil at 1.068 lb ai/acre (1,200 g ai/ha) in the fall (September-October 1999), which is the maximum recommended seasonal use rate. The test substance was EXP 10623A, a soluble concentrate containing 500 g fenamidone per liter. The winter wheat was planted 30 days after application and was harvested the following summer of 2000. Storage stability studies indicate that fenamidone and its metabolites are stable for the length and condition of storage (see 6.1.1 Stability of Residues During Storage of Samples for details). No quantifiable residues were found in any UTC samples. No residues of fenamidone or metabolites were found in wheat grain from any of the 22 trials. The limit of detection was 0.006 ppm. Low but quantifiable levels of the metabolite RPA 412636 were found in wheat forage from 10 of the 22 trials. The residues of RPA 412636 ranged from 0.021 to 0.071 ppm in the wheat forage tissue. Residues of the metabolite RPA 412708 were measurable 0.031 to 0.071 ppm in wheat forage from 3 of the 22 trials. Measurable levels of the metabolite RPA 412636 were found in wheat hay from 16 of the 22 trials. The residues of RPA 412636 ranged from 0.022 to 0.321 ppm in the wheat hay tissue. Residues of the metabolite RPA 412708 were measured at the LOQ of 0.020 ppm in 1 sample of wheat hay from 44 samples from the 22 trials. Measurable residues of the metabolite RPA 412636, ranging from 0.022 to 0.200 ppm, were found in wheat straw from 14 of the 22 trials.

vii. *Wine grapes.* Seventeen residue trials were conducted with fenamidone on grapes in the 1997 and 1998 growing seasons in Western Europe. In each case, the fenamidone was applied in combination formulations to be registered in Europe (Fosetyl-Al, mancozeb, copper and/or BAY 12921F). At each trial, multiple broadcast applications of fenamidone were made to grape vines at rates of 0.083 to 0.118 lb ai/acre (93 to 133 g ai/ha) each. Applications were made approximately 7 or 14 days apart. The target PHI was 20 to 40 days. The storage stability studies indicate that fenamidone residues are stable for the length and condition of storage. No quantifiable residues were found in any UTC samples. Measurable residues of the parent fungicide, fenamidone (RPA 407213), were found in fresh grape fruit at levels ranging from 0.047 to 0.71 ppm. The metabolite, RPA 410193 was found at levels ranging from 0.026 to 0.28 ppm. The combined residue in grape fruit was calculated to be 0.067 to 0.84 ppm. Measurable residues of the parent fungicide, fenamidone (RPA 407213), were found in grape juice at levels ranging from <LOQ to 0.110 ppm. The metabolite, RPA 410193 was found at levels ranging from 0.027 to 0.074 ppm. The combined residue in grape juice was calculated to be 0.013 to 0.28 ppm. Measurable residues of the parent fungicide, fenamidone (RPA 407213), were found in grape wine at levels ranging from <LOQ to 0.027 ppm. The metabolite, RPA 410193, was found at levels ranging from <LOQ to 0.34 ppm. The combined residue in grape wine was calculated to be <LOQ to 0.40 ppm. Measurable residues of the parent fungicide, fenamidone (RPA 407213), were found in grape at levels ranging from 0.055 to 0.56 ppm. The metabolite, (RPA 410193) was found at levels ranging from 0.024 to 0.13 ppm. The combined residue in grape was calculated to be 0.11 to 0.71 ppm.

viii. *Dairy cows.* In a guideline feeding study, dairy cows were dosed twice a day for 35 days with technical fenamidone at rates of 0.8, 0.24 and 8.0 ppm based on the diet. No residues were detected in whole milk at a limit of detection of 0.003 ppm. No residues were found in muscle, liver, kidneys or fat at a limit of detection of 0.017 ppm. Based on these findings, no tolerances for fenamidone or its metabolites are proposed in animal commodities.

B. Toxicological Profile

1. *Acute toxicity.* A complete battery of acute toxicity studies for fenamidone have been conducted. The acute oral toxicity study in rats resulted in a LD_{50} of >5,000 mg/kg (males) and >2,028 mg/kg (females). The acute dermal toxicity study in rats resulted in a LD_{50} of >2,000 mg/kg for both males and females. The acute inhalation study in rats resulted in a LC_{50} of >5 mg/L for males and females. Fenamidone was not irritating in the primary eye irritation or primary dermal irritation studies. The dermal sensitization study in guinea pigs was negative.

In an acute neurotoxicity study in rats, fenamidone was not neurotoxic at doses up to the limit dose of 2,000 mg/kg. The no observed adverse effect level (NOAEL) was 500 mg/kg for males and 125 mg/kg for females.

2. *Genotoxicty.* Mutagenicity studies conducted include: A *Salmonella typhimurium* reverse mutation assay (negative at the limits of cytotoxicity and solubility with and without activation), *in vitro* unscheduled DNA synthesis test in rat liver (negative at the limits of cytotoxicity), *in vitro* chromosome aberrations test in human lymphocytes (positive at the limits of cytotoxicity and solubility), TK+/- mouse lymphoma assay (positive with activation, negative without), *in vivo* mouse micronucleus test (negative with toxicity at 2,000 mg/kg), and an *in vivo* unscheduled DNA synthesis assay in the rat (negative at up to 2,000 mg/kg with toxicity at the high dose level). Based on the data cited above, fenamidone is not considered to be mutagenic.

3. *Reproductive and developmental toxicity.* A teratology study was conducted with rats administered (orally) fenamidone on gestation days 6–15 at dose levels of 0, 25, 150, or 1,000 mg/kg/day. High dose dams had significantly decreased body weight and food consumption. High dose fetal body weights were less than controls and correlated with slightly delayed skeletal ossification secondary to maternal toxicity. The NOAEL for maternal and developmental toxicity is 150 mg/kg/day. The Lowest observed adversed effect level (LOAEL) was 1,000 mg/kg/day. A teratology study was conducted with rabbits administered (orally) fenamidone on gestation days 6–19 at dose levels of 0, 10, 30, or 100 mg/kg/day. The maternal NOAEL was 10 mg/kg/day. The developmental NOAEL was 100 mg/kg/day. The maternal LOAEL was 30 mg/kg/day, based on increased maternal liver weights at 30 and 100 mg/kg/day. Fenamidone demonstrates no potential to cause developmental toxicity in mammals.

A 2–generation definitive reproduction study was conducted with rats administered (orally) in the diet fenamidone at dose levels of 0, 3.9, 63.8, 328.3 mg/kg/day (males) and 0, 5.15, 84.4, 459.6 mg/kg/day (females). The NOAEL for maternal and off-spring toxicity was 5.15 mg/kg/day. The maternal NOAEL was based on decreased body weight and food consumption. The pup NOAEL is based on F1 pup body weight decrease. The reproductive NOAEL was >328.3 mg/kg/day (males) and >459.6 mg/kg/day (females). Fenamidone is not considered a reproductive toxicant at non-maternally toxic dose levels and shows no evidence of endocrine effects.

4. *Subchronic toxicity.* In a 13–week range-finding study, fenamidone was administered in the diets of male and female rats at dose levels of 0, 4.05, 10.41, 68.27, 343.93 mg/kg/day to males and 0, 4.81, 12, 83.33, 380.68 mg/kg/day to females. The NOAEL is 68.27 mg/kg/day (males) and 83.33 mg/kg/day (females) and the LOAEL is 343.93 mg/kg/day for males and 380.63 mg/kg/day for females based on adaptive liver changes at 68.27 mg/kg/day and increased liver and thyroid weights at the highest dose tested (HDT). In a 13–week subchronic feeding study, fenamidone was administered in the diet to mice at dose levels of 0, 11.33, 44.5, 220.2, 1,064.3 mg/kg/day to males and 0, 13.7, 54.1, 273.9, 1,375.2 mg/kg/day to females. The NOAEL is 44.5 mg/kg/day (males), and 54.1 mg/kg/day (females), and the LOAEL is 220.2 mg/kg/day (males), and 273.9 mg/kg/day (females) based on 14% increase in liver weight at the high dose. In a 28–day subchronic dermal study, fenamidone was applied to skin of male and female New Zealand white rabbits at doses of 0 or 1,000 mg/kg/day for 6 hours/day, 5 days/week. Treatment produced a slight decrease in food consumption (8–10%), and body weight (6%) in males only. In a 13–week study, fenamidone was administered in the diets of male and female dogs at 0, 10, 100, and 500 mg/kg/day. Based on clinical symptoms at the high dose, the NOAEL is 100 mg/kg/day and the LOAEL is 500 mg/kg/day.

In a subchronic neurotoxicity study, there was no evidence of neurotoxicity when fenamidone technical was administered to rats for 13 weeks at dosage levels up to 5,000 ppm (395.6–414.2 mg/kg/day), the MTD. The

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NOAEL for the study was 1,000 ppm (equivalent to 74.2–83.4 mg/kg/day).

5. *Chronic toxicity.* A 1–year oral study was conducted with dogs administered fenamidone at dose levels of 0, 10, 100, and 1,000 mg/kg/day in capsules. The NOAEL is 100 mg/kg/day for both sexes, based on significantly increased liver weights and biliary hyperplasia in the high dose. The LOAEL is 1,000 mg/kg/day.

A 2–year combined chronic toxicity/carcinogenicity study was conducted with fenamidone administered in the diet to rats at doses of 0, 2.83, 7.07, 47.68, 260.13 mg/kg/day (males) and 0, 3.63, 9.24, 60.93, 335.10 mg/kg/day (females). The NOAEL for systemic toxicity is 2.83 mg/kg/day (males) and 3.36 mg/kg/day (females). The LOAEL is 7.07 mg/kg/day (males) 9.24 mg/kg/day (females). No statistically significant linear dose response was observed for any tumor incidence.

A 104–week combined carcinogenicity study in mice was conducted with mice administered fenamidone in the diet at dose levels of 0, 9.5, 47.5, 525.5, 1,100.2 mg/kg/day (males) and 0, 12.6, 63.8, 690.5, 1,393.2 mg/kg/day (females). The NOAEL was 9.5 mg/kg/day (males) and 12.6 mg/kg/day (females). The LOAEL for carcinogenicity was 47.5 mg/kg/day (males) and 63.8 mg/kg/day (females). The NOAEL is based on non-neoplastic liver changes and decreased body weight gain at the top two dose levels. Fenamidone demonstrates no potential for carcinogenic effects in mammals.

6. *Animal metabolism.* Metabolism studies conducted with goat and hen demonstrate that fenamidone is rapidly metabolized and excreted. Residue levels in edible animal tissues (meat, milk and eggs) are negligible and do accumulate in those tissues. The metabolic pathway proceeds via cleavage of the amino-phenyl group and the thiomethyl group with further metabolism by hydroxylation. There is also evidence to that glucuronide and sulfate conjugates are formed.

A single low dose (3 mg/kg), a single high dose (300 mg/kg) and a low dose (3 mg/kg) administered for 15 consecutive days were fed to rats. Fenamidone was relatively well absorbed at a nominal dose of 3 mg/kg in both sexes and intensively metabolized by phase I (oxidation, reduction and hydrolysis) and phase II (conjugation) reactions. The elimination of radiolabeled fenamidone was relatively rapid with the majority of the administered dose being excreted via the biliary route (for the low dose experiments). The comparison of the levels of radioactivity recovered in bile kinetic and ADME studies suggested that a part of the radioactivity excreted via the bile could be reabsorbed and subsequently re-excreted via the urine. High levels of radioactivity measured in blood samples from the tissue kinetics also supported this hypothesis. At the high dose level fenamidone was not very well absorbed: Some 50–60% of the radioactivity was present as parent compound in the feces. Radioactivity was widely distributed in the tissues with predominance in the thyroids, blood, liver, kidneys, fat and pancreas. Fenamidone is therefore expected to be rapidly and extensively metabolized and excreted in mammals.

7. *Metabolite toxicology.* The major dietary metabolites of fenamidone, RPA 412708, RPA 410193 and RPA 412636 were evaluated for mammalian toxicity in an acute oral toxicity study, a 90–day repeated dose study and in genotoxicity tests. The metabolites are considered to be of comparable toxicity to the parent fenamidone.

8. *Endocrine disruption.* Chronic, lifespan, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of fenamidone is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Fenamidone is a fungicide with proposed uses on the food crops tomato, potato, head lettuce, leaf lettuce, the bulb vegetable crop group, and the cucurbit crop group. Although quantifiable residues are highly unlikely, wheat tolerances are also proposed to cover any conceivable plant back residues. An import tolerance for wine grapes is also proposed to cover imported wine. There are no residential uses proposed for fenamidone. Therefore the aggregate exposure would consist of any potential exposures to fenamidone residues from the above food crops from drinking water, and from imported wine. The chronic reference dose (RfD) of 0.03 mg/kg bwt/day is based on a NOAEL of 3 mg/kg bwt/day from a 2–year rat chronic study. There are no acute effects of concern for fenamidone and an acute analysis was not conducted.

i. *Food.* Chronic dietary exposure estimates resulting from the proposed and registered uses of fenamidone as listed above are well within acceptable limits for all sectors of the population. Potential dietary exposures from food were estimated using the chronic module of the DEEM™ software system, Version 7.62 (Novigen Sciences, Inc.), and the 1994–96 Department of Agriculture (USDA) consumption data. Anticipated residue values were calculated from the appropriate field trial studies conducted for fenamidone and its metabolites and submitted as part of the fenamidone petition. Processing factors were derived for tomato paste and puree and potato flakes and chips. For this chronic assessment, percent crop treated (PCT) values were estimated for the compound at market maturity. The PCT value for wine grapes is 20%. This assumes that all wine imported into the country (USDA FATUS tables) is made from grapes treated with fenamidone. This over estimates the risk significantly since fenamidone will only be registered on wine grapes in Western European countries. The wheat residue is included at 100% crop treated even though the actual plant back of a wheat crop behind vegetable crops (mostly potato) is estimated at 15%. Using these conservative assumptions, the most highly exposed population was children 1–6 utilizing 1.0% (0.000302 mg/kg/bwt/day) of the chronic RfD. The U.S. population utilized 0.8% (0.000236 mg/kg/bwt/day) of the RfD. Actual exposures are likely to be much less in real world situations because of the many conservative assumptions incorporated in this analysis.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessments, including water models such as SCI-GROW, FIRST, PRZMS/EXAMS, and monitoring data. If monitoring data are not available, then the models are used to predict potential residues in surface and ground water and the highest levels are assumed to be the drinking water residue. In the case of fenamidone, monitoring data do not exist, therefore SCI-GROW and FIRST were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for chronic exposure for all adults and children exceed the drinking water estimated concentration (DWEC) from the models. The chronic DWLOC for adults is 1,042 ppb. The chronic DWLOC for children/toddlers is 297 ppb. The DWEC for the worst case chronic scenario is 20 ppb. The drinking water levels of comparison are based on conservative dietary (food) exposures and are expected to be much higher in real world situations.

2. *Non-dietary exposure.* Fenamidone products are not labeled for residential uses (food or non-food), thereby eliminating the potential for residential exposure or non-occupational exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity. There is no available data to determine whether fenamidone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenamidone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that fenamidone has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the assumptions and data described above, based on the completeness, and reliability of the toxicity data, it is concluded that chronic dietary exposure to the proposed uses of fenamidone will utilize at most 0.8% of the chronic reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data, and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Drinking water levels of comparison based on the dietary and aggregate exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to residues of fenamidone.

2. *Infants and children.* The relevant toxicity studies as discussed in the toxicology section above show no extra sensitivity of infants and children to fenamidone, therefore, the food quality protection act (FQPA) safety factor can be removed. Using the assumptions and data described in the exposure section above, the percent of the chronic RfD that will be used for exposure to residues of fenamidone in food for children 1–6 (the most highly exposed subgroup) is 1.0% (0.000302 mg/kg/bwt/day). Infants utilize 0.2% (0.000056 mg/kg/bwt/day) of the chronic RfD. There are no non-dietary concerns for infants and children. As in the adult situation, drinking water levels in comparison are higher than the worst case drinking water estimated concentrations, and are expected to use well below 100% of the reference dose, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of fenamidone.

F. International Tolerances

To date, no Codex, Canadian or Mexican tolerances exist for fenamidone.

[FR Doc. 02–224 Filed 1–3–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7125–7]

Valley Chemical Superfund Site/ Greenville, Mississippi; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to amend the Agreement for Recovery of Response Costs, CERCLA Docket No. CER–04–2001–3755, in settlement of claims for response costs at the Valley Chemical Superfund Site (Site) located in Greenville, Mississippi, with Valley Chemical Company. EPA will consider public comments on the proposed settlement amendment for thirty days. EPA may withdraw from or modify the proposed settlement amendment should such comments disclose facts or considerations which indicate the proposed settlement amendment is inappropriate, improper, or inadequate. Copies of the proposed settlement amendment are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: December 18, 2001.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–220 Filed 1–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–CN; FRL–6811–5]

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Authorization of the Cherokee Nation's Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: On November 19, 1999, the Cherokee Nation of Oklahoma submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Notice of the receipt of the Cherokee Nation's application, a solicitation for public comment regarding the application, and background information supporting the application were published in the **Federal Register** of January 25, 2000. Today's notice announces the approval of the Cherokee Nation's application, and authorization of the Cherokee Nation's lead-based paint program for Cherokee Nation's Tribal Trust Lands in Oklahoma, effective October 15, 2001, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-based paint activities program authorization was granted to the Cherokee Nation effective on October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, Environmental Protection Agency, Region VI, 6PD-T, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Title IV of TSCA, Lead Exposure Reduction, 15 U.S.C. 2681-2692, and regulations promulgated thereunder, States and Tribes that choose to apply for lead-based paint activities program authorization must submit a complete application to the

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appropriate Regional EPA office for review. Complete, final applications will be subject to a public comment period, and reviewed by EPA within 180 days subject to a public comment period, and reviewed by EPA within 180 days of receipt. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, section 404(b) of TSCA. As determined by EPA's review and assessment, the Cherokee Nation's application successfully demonstrated that the Tribes' lead-based paint activities programs achieve the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of the Cherokee Natjons' application. EPA announced solicitation for public comment regarding the application in the **Federal Register** of January 25, 2000 (65 FR 3960) (FRL–6490–1).

II. Federal Overfiling

TSCA section 404(b), 15 U.S.C. 2684(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), 15 U.S.C. 2684(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: November 28, 2001.

Carl L. Edlund,

Division Director, Multimedia Planning and Permitting, Region VI.

[FR Doc. 02–226 Filed 1–3–02 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 26, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0653.

Title: Section 64.703(b) and (c), Consumer Information—Posting Requirement.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 56,200.

Estimated Time Per Response: 3.67 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 205,566 hours.

Total Annual Cost: N/A.

Needs and Uses: As required by 47 U.S.C. Section 226(c)(1)(A), 47 CFR 64.703(b) provides that aggregators (providers of telephone to the public or transient users) must post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, the FCC address to which consumers may direct complaints. Section 64.703(c) establishes a 30-day outer limit for updating the posted consumer information when an aggregator has changed the pre-subscribed operator service provider (OSP). Consumers will use this information to determine whether they wish to use the services of the identified OSP.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–213 Filed 1–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011223–027.

Title: Transpacific Stabilization Agreement.

Parties:

A.P. Moller-Maersk Sealand
American President Lines, Ltd.
APL Co. PTE Ltd.
CMA CGM, S.A.
COSCO Container Lines Company Limited
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie GmbH
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Yangming Marine Transport Corporation

Synopsis: The modification deletes references to the discontinued capacity management program, transfers authority found in Appendix C to Article 5, updates names and addresses of member lines and reorganizes and republishes the agreement.

Dated: December 28, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–151 Filed 1–3–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Advisory Committee on Regulatory Reform; Request for Public Input

ACTION: Request for public input.

SUMMARY: This notice seeks input from the public—including individuals and organizations—on ways to reduce current burdens imposed by existing regulations of the Department of Health and Human Services (HHS) that inhibit the delivery of high quality, timely, and efficient health care, inhibit the development of pharmaceuticals and other medical products, or inhibit biomedical research.

FOR FURTHER INFORMATION CONTACT: Christy Schmidt, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation: (202) 401–5182.

SUPPLEMENTARY INFORMATION: On June 8, 2001, Health and Human Services Secretary Tommy G. Thompson announced a department-wide initiative to reduce regulatory burdens in health care and respond faster to the concerns of patients, health care providers, state and local governments, other institutions, and other individual Americans who are affected by HHS rules. On September 4, 2001, the Department published a Notice of Intent in the **Federal Register** announcing its plans to establish an Advisory Committee on Regulatory Reform to provide findings and recommendations to the Secretary regarding potential regulatory changes. The Advisory Committee will commence its activities early in 2002.

Regulations play an important role in implementing statutes. Regulations establish and communicate rules and procedures for participation in public programs, for approval of products, and for the awarding of grants and contracts. The regulatory process also allows for public examination of proposed rules, comment on those proposals, and an explanation of how those comments were factored into final decisions by government agencies.

At the same time, in accomplishing these important tasks, regulations may impose a burden on individuals and organizations participating in public programs or seeking government approval or support. Some or most of these burdens may be necessary to carry out the statutory requirements and quite reasonable and appropriate in governing the expenditure of public funds and protecting the health and safety of individuals and the nation as a whole. But some of these burdens may be unnecessary, excessive, or inappropriate because they interfere with the operation of the programs to which they relate, are unduly intrusive, or are inconsistent with other requirements and thus unduly reduce flexibility, inhibit innovation, or impede efforts to improve quality of health care and access to health services or other rights and benefits for patients and consumers that are provided by law.

The Advisory Committee's ultimate goal is to (a) identify and prioritize regulations that impose barriers to delivering high quality, safe and effective care services, products and research, and (b) to recommend improvements or other ways to remove these barriers. To help the Committee achieve this goal, we are inviting the public to provide us with written comments on regulatory burdens created by HHS regulations. Those interested in responding to this request are asked to focus their comments on regulatory burdens in one or more of the following areas:

- Health care delivery,
- Health care operations,
- Development of pharmaceuticals and other medical products, and
- Biomedical and health services research

We encourage individuals as well as organizations to respond to this invitation, including but not limited to consumers, patients, researchers, clinicians and other health care professionals, employers, health care administrators, professional societies, trade associations, state and local governments, and universities. We encourage those who wish to respond to consider ways in which regulations or program requirements interfere with the delivery or receipt of care, innovation in health care delivery operations, or research, or the development of new products and treatments. In this regard respondents may find it helpful to consider their most recent interactions with HHS programs in order identify specific issues.

Because of the broad nature of the Committee's charge, it will be essential that comments be as specific as possible and focus on concerns related to burdens imposed by regulations or regulatory processes rather than the underlying statutes enacted by the Congress.

We ask that responses be limited to no more than five (5) one-sided, single-spaced pages and be accompanied by and IBM-compatible 3.5 inch diskette in WordPerfect or MS Word format. Additional attachments can be included but the Committee cannot guarantee that all of these materials can be read and considered. Therefore, major points should be made in the letter.

The Committee would appreciate it if those who respond would consider some or all of the following matters:

1. Which HHS regulations in the above-cited areas impose an unnecessary or unreasonable burden on individuals, groups, or organizations because these regulations:

- Are confusing;
- Impose unnecessary or excessive costs;
- Require an excessive number of reports or unreasonable record keeping;
- Impose requirements on the wrong individual or group;
- Carry excessive penalties;
- Are conflicting (examples include but are not limited to conflicts between

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HHS and State regulations, public and private sectors);

- Impede access to care or impede delivery of care;
- Impede efforts to innovate
- Are obsolete; and/or
- Interfere with the public or private sector's ability to respond to and prepare for emergencies.

2. What alternative approaches could be taken to achieve or accomplish the same goal with a lesser burden? For example, are there less burdensome approaches that are used by other entities such as state governments or private companies that could be adopted by HHS to achieve its goal with less burdensome requirements?

For each of the regulations discussed, the Committee asks you to include the following whenever possible:

- Citation of regulation involved or description of the regulation in as much detail as possible.
- Citation of relevant statute on which the regulation is based.
- A clear statement of the problem or concern.
- Identification of potential solutions to this problem or concern.
- A statement of how the proposed solutions would maintain the original intent of the statute (if possible, please provide citation of the original statute).

We recognize that many individuals may not be able to provide a full or accurate citation to particular regulations or statutes. That should not stop them from commenting. However, professional organizations and institutions, will probably have access to this information and are encouraged to provide specific citations.

We would also appreciate information on how you interact with the health care system (e.g., Are you a patient/consumer, physician, nurse, researcher, university, employer, health plan, hospital, nursing home, home health agency, pharmaceutical manufacturer, medical device, manufacturer?).

We will accept comments on regulatory reform if we receive them at the appropriate address, as provided below, by 5pm on March 5, 2002.

Individuals or organizations wishing to respond to this request may do so in writing by sending their comments to: Christy Schmidt, Executive Coordinator, Regulatory Reform Initiative, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Ave., SW., Washington, DC 20201. Responses also can be made electronically on the Committee's website: *www.regreform.hh.gov*. Those who respond should recognize that their comments would be part of the public record of the Committee and, under the Freedom of Information Act, available to anyone who wishes to read them. The Committee will make attempts to segregate those comments that are of a personal nature but cannot guarantee that all such comments will be recognized.

Comments will be available for public inspection by appointment as they are received, generally beginning approximately January 25, 2002 in Room 801 of the Department's offices at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 8:30 am to 5 pm. Appointments may be made by telephoning 202–401–5182.

After the close of the comment period, comments that are technically able to convert will be posted on the Regulatory Reform web site specified above.

Dated: December 26, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–239 Filed 1–3–02; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–19]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. NCID is requesting an emergency clearance from the Office of Management and Budget (OMB) to collect data under the Paperwork Reduction Act. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice. We are requesting that OMB respond to CDC within 21 days after receipt of the package.

Proposed Project

Requirement for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (0920–0263)—Renewal—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). To receive a special permit to import cynomolgus, African green and/or rhesus monkeys, a registered importer of nonhuman primates must submit to the Director, CDC, a written plan which specifies the steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for the importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and determine whether the measures being taken to prevent exposure of persons and animals during importation are adequate. Once CDC is assured, through the monitoring of shipments (normally no more than 2), that the provisions of a special permit plan are being followed by a new permit holder and that the use of adequate disease control practices is being demonstrated, the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This eliminates the burden on importers to repeatedly report identical information, requiring only that specific shipment itineraries and information on changes to the plan which require approval be submitted.

Respondents are commercial or not-for-profit importers of nonhuman primates. The burden represents full submission of information and itinerary/change information respectively. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondents	Average burden/responses (in hrs.)	Total burden (in hrs.)
Businesses (limited permit)	5	2	30/60	5
Businesses (extended permit)	1	3	10/60	.5
Organizations (limited permit)	3	2	30/60	3
Organizations (extended permit)	12	2	10/60	4
Total				12.5

Dated: December 27, 2001.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–196 Filed 1–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–21]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Qualitative Study of Young Men's Perceptions of An HIV Prevention Intervention—New—1—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC proposes to conduct a formative research study to examine how a CDC-funded, community-level HIV intervention study is perceived by, and has affected the lives of, the target population, young men ages 15–25. The goal of the study is to gain a better understanding of the relevance of an HIV prevention intervention to young men in three communities: Milwaukee, Wisconsin; Orange County, California; and West Hollywood, California.

A total of 90 young men will be interviewed; 30 from each of the three communities. Of the 30 participants selected for the study; 15 of them will have participated in an HIV intervention activity and 15 participants will not have participated in activity. CDC plans to recruit a total of 50 participants from local venues and screened them to determine eligibility for participation in the study. The objectives of the study will be to (1) explore how young men who have participated in HIV intervention activities have incorporated the knowledge and experience gained from their participation into their daily lives and (2) identify structural barriers to HIV prevention intervention activities. All participants will be interviewed by CDC staff. Each interview is estimated to take approximately 90 minutes to complete. In addition, screening of eligible participants for recruitment in the study is estimated to take approximately 15 minutes.

There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondents	Average response/burden (in hours)	Total burden (in hours)
Eligibility screening	150	1	15/60	38
Target population	90	1	90/60	135
Total				173

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Dated: December 27, 2001.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–197 Filed 1–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 17, 2002, from 9:30 a.m. to 5 p.m., and January 18, 2002, from 8:30 a.m. to 3:30 p.m.

Location: Hilton DC North—Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 17, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) on an endocapsular tension ring for the stabilization of the lens capsular bag. On January 18, 2002, the committee will discuss, make recommendations, and vote on a PMA on an orthokeratology contact lens for corneal refractive therapy with overnight wear for the temporary reduction of myopia. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public one business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the January 17 session will be posted on January 16, 2002; material for the January 18 session will be posted on January 17, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 7, 2002. On January 17, 2002, formal oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m., and on January 18, 2002, between approximately 8:45 and 9:15 a.m. Near the end of the committee deliberations on each PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Those desiring to make formal oral presentations should notify the contact person before January 7, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the January 17 and 18, 2002, Ophthalmic Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 28, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–152 Filed 1–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1631]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Final Guidance for Industry on "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing" (VICH GL23); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#116) entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing" (VICH GL23). This final guidance has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from a guidance regarding pharmaceuticals for human use, which was adopted by the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use (ICH). This final VICH guidance document recommends a basic battery of tests that can be used to evaluate the genotoxicity of veterinary drug residues in human food in the European Union, Japan, and the United States.

DATES: Submit written or electronic comments on this final guidance at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the full title of the final guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: lmulliga@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Final Guidance on Genotoxicity Studies

In the **Federal Register** of December 18, 2000 (65 FR 79106), FDA published the notice of availability of the VICH draft guidance, giving interested persons until January 17, 2001, to submit comments. After consideration of comments received, the final draft guidance was changed in response to the comments and submitted to the VICH Steering Committee. At a meeting held on June 28, 2001, the VICH Steering Committee endorsed the final guidance for industry, VICH GL23. Following the endorsement of the final guidance document by the VICH Steering Committee, a change was made to the document in which the reference for each genotoxicity test in the basic battery of tests was moved and used as the heading for the paragraph describing that test. The change was of an editorial nature and did not change the scientific content or intent of the guidance document.

This guidance is one of a series of VICH guidances developed to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities. The guidance on the overall strategy for the evaluation of veterinary drug residues in human food (VICH Guidance on General Testing Approach) will be made available at a later time. This guidance was developed after consideration of the existing ICH guidances for pharmaceuticals for human use entitled "Genotoxicity: A Standard Battery of Genotoxicity Testing of Pharmaceuticals" and "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals." Account was also taken of the Organization for Economic Cooperation and Development methodological guidances and of the current practices for evaluating the safety of veterinary drug residues in human food in the European Union, Japan, the U.S.A., Australia, and New Zealand.

This level 1 final guidance document is developed under the VICH process and is consistent with FDA's good guidance practices regulation (21 CFR 10.115). This document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

(Information collection is covered under OMB control number 0910–0117.)

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cvm.

Dated: December 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–193 Filed 1–3–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1630]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Final Guidance on "Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Toxicity Testing" (VICH GL22); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#115) entitled "Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Toxicity Testing" (VICH GL22). This final guidance has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from a guidance regarding

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pharmaceuticals for human use, which was adopted by the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use (ICH). This final VICH guidance document recommends a basic battery of tests that can be used to evaluate the reproduction safety of veterinary drug residues in human food.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance document.

Submit written comments on the final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the full title of the final guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: lmulliga@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Reproduction Studies

In the **Federal Register** of December 19, 2000 (65 FR 79373), FDA published the notice of availability of VICH draft guidance entitled "Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Studies" giving interested persons until February 20, 2001, to submit comments. FDA received no comments. The final guidance was submitted to the VICH Steering Committee. At a meeting held on June 28, 2001, the VICH Steering Committee endorsed the final guidance for industry entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Reproductive Toxicity Testing" (VICH GL22).

In order to establish the safety of veterinary drug residues in human food, a number of toxicological evaluations are recommended, including the assessment of any risks to reproduction. The objective of this guidance is to ensure international harmonization of reproduction toxicity testing, which is appropriate for the evaluation of risks to reproduction from long-term, low-dose exposures, such as may be encountered from the presence of veterinary drug residues in food.

The current final guidance is one of a series of guidances developed to facilitate the mutual acceptance of safety data necessary for the determination of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities. The guidance on the overall strategy for the safety evaluation of veterinary residues in human food (VICH Guidance on General Testing Approach) will be made available at a later time. VICH GL22 was developed after consideration of the existing ICH guidance for pharmaceuticals for human use on "Detection of Toxicity to Reproduction for Medicinal Products" and its addendum, "Toxicity to Male Fertility," in conjunction with the current practices for evaluating veterinary drug residues in human food in the European Union, Japan, the United States, Australia, and New Zealand.

This final level 1 guidance document was developed under the VICH process and is consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations. (Information collection is covered under OMB Control Nos. 0910–0117 and 0910–0032.)

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Comments may also be submitted electronically on the Internet site at http://www.fda.gov/dockets/ecomments. Once on this Internet site, select 00D–1630 "Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Toxicity Testing" (VICH GL22) and follow the directions.

Copies of the final guidance document entitled "Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Toxicity Testing" (VICH GL22) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm.

Dated: December 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–194 Filed 1–3–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 28, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–81 Filed 1–3–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permits for Incidental Take

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of 111 permits for incidental take of threatened and endangered species: Annual report.

SUMMARY: Between October 1, 2000 and September 30, 2001, Region 2 of the Fish and Wildlife Service issued 111 permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. Of the 111 permits issued in the greater Austin, Texas area; one is for the golden-cheeked warbler (GCW) related to the Balcones Canyonlands Preserve, one is for karst invertebrates, and 109 are for the Houston toad (HT). In addition, between October 1, 2000 and September 30, 2001, 2 permits had amendments.

ADDRESSES: If you would like copies of any of the above documents, please contact the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Leslie Dierauf, Regional Habitat Conservation Plan Coordinator, at the above address, 505–248–6651. Further details of these permits may also be viewed on the Internet at *http://ecos.fws.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal Regulation prohibit the "take" of wildlife species listed as threatened or endangered species. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize incidental take, i.e. that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

111 Incidental Take Permits Issued

Permittee	(State) species	Permit No.	Date of Issuance
Siefert	(TX)HT	TE–025997–0–005	10/2/00
Bastrop Seventh Day Adventist Church	(TX)HT	TE–025997–0–003	10/2/00
Becerra	(TX)HT	TE–025997–0–004	10/2/00
Kummermehr	(TX)HT	TE–025997–0–010	10/2/00
Jarrels	(TX)HT	TE–025997–0–006	10/13/00
Circle B Homes	(TX)HT	TE–025997–0–011	10/13/00
McClure	(TX)HT	TE–025997–0–014	10/13/00
McClure	(TX)HT	TE–025997–0–015	10/13/00
Schena	(TX)HT	TE–029608–0	10/27/00
MacQueen	(TX)HT	TE–025997–0–021	10/31/00
Ligon	(TX)HT	TE–025997–0–012	11/21/00
Smith	(TX)HT	TE–025997–0–024	11/21/00
Lindenau	(TX)HT	TE–025997–0–023	11/21/00
Pierson	(TX)HT	TE–025997–0–025	11/21/00
Kelley	(TX)HT	TE–025997–0–008	12/1/00
Groves	(TX)HT	TE–025997–0–026	12/21/00
Johnson	(TX)HT	TE–025997–0–027	12/21/00
Niehus	(TX)HT	TE–025997–0–029	12/21/00
Walraven	(TX)HT	TE–033185–0	1/18/01
Giffillan	(TX)HT	TE–033887–0	1/23/01
Holter	(TX)HT	TE–025997–0–030	1/29/01
Gillespie	(TX)HT	TE–025997–0–032	1/29/01
Vavricek	(TX)HT	TE–025997–0–028	1/29/01
Steins	(TX)HT	TE–025965–0–003	2/20/01
Stobaugh	(TX)HT	TE–025965–0–002	2/20/01

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Permittee	(State) species	Permit No.	Date of Issuance
Miller	(TX)HT	TE–025997–0–033	2/20/01
Nira	(TX)HT	TE–025997–0–034	2/20/01
Gardner	(TX)HT	TE–025997–0–035	2/20/01
Walters	(TX)HT	TE–025997–0–036	2/20/01
Parker	(TX)HT	TE–025997–0–037	2/20/01
Sinclair	(TX)HT	TE–025997–0–031	2/20/01
Live Oak Homes	(TX)HT	TE–025997–0–016	2/26/01
Cornerstone	(TX)HT	TE–025997–0–042	2/26/01
McClure	(TX)HT	TE–025997–0–040	2/26/01
Havens	(TX)HT	TE–025997–0–038	3/1/01
Macafee	(TX)HT	TE–025997–0–039	3/9/01
Sultan & Kahn	(TX)Karst	TE–035525–0	3/9/01
Roush	(TX)HT	TE–025997–0–041	3/9/01
Young	(TX)HT	TE–025965–0–004	3/9/01
Advantage Builders	(TX)HT	TE–025997–0–045	3/23/01
Advantage Builders	(TX)HT	TE–025997–0–046	3/23/01
Bishop	(TX)HT	TE–025997–0–049	3/23/01
McClure	(TX)HT	TE–025997–0–048	3/23/01
Miller	(TX)HT	TE–025997–0–047	3/23/01
Colter	(TX)HT	TE–025997–0–044	3/23/01
Mendoza	(TX)HT	TE–025965–0–009	4/6/01
Casey	(TX)HT	TE–025997–0–050	4/6/01
Smith	(TX)HT	TE–025965–0–008	4/6/01
Slater	(TX)HT	TE–025965–0–007	4/6/01
Mosley	(TX)HT	TE–025965–0–006	4/6/01
Hansen	(TX)HT	TE–025965–0–010	4/6/01
CT–820	(TX)HT	TE–036095–0	4/30/01
Skye/Eckhart	(TX)HT	TE–035908–0	4/30/01
Beeman	(TX)HT	TE–035919–0	4/30/01
Stobaugh	(TX)HT	TE–025965–0–011	5/10/01
Goode	(TX)HT	TE–025997–0–062	5/10/01
Phillips	(TX)HT	TE–025997–0–064	5/10/01
Shigo	(TX)HT	TE–025997–0–071	5/10/01
Haeffner/Rostetter	(TX)HT	TE–025997–0–063	5/10/01
Juarez	(TX)HT	TE–025965–0–016	5/10/01
Phillips	(TX)HT	TE–025965–0–014	5/10/01
Phillips	(TX)HT	TE–025965–0–015	5/10/01
DuCharme	(TX)HT	TE–025997–0–053	5/10/01
Phillips	(TX)HT	TE–025997–0–059	5/10/01
West	(TX)HT	TE–025997–0–056	5/10/01
Phillips	(TX)HT	TE–025997–0–060	5/10/01
Shen	(TX)HT	TE–025997–0–054	5/10/01
Phillips	(TX)HT	TE–025997–0–061	5/10/01
Hinkston	(TX)HT	TE–025997–0–057	5/10/01
Glenn	(TX)HT	TE–025997–0–055	5/10/01
Brigham	(TX)HT	TE–025997–0–075	6/15/01
Conrad	(TX)HT	TE–025997–0–073	6/15/01
Martinez	(TX)HT	TE–025997–0–080	6/15/01
Brady	(TX)HT	TE–025997–0–079	6/15/01
Ingram	(TX)HT	TE–025965–0–018	6/15/01
Alley	(TX)HT	TE–025965–0–017	6/15/01
Cornerstone	(TX)HT	TE–025997–0–076	6/15/01
Vasquez	(TX)HT	TE–037190–0	6/26/01
Bell	(TX)HT	TE–039440–0	6/28/01
Gray Mountain	(TX)GCW	TE–037888–0	6/28/01
Harding	(TX)HT	TE–036096–0	6/28/01
Wirries	(TX)HT	TE–037191–0	7/1/01
JRS Builders	(TX)HT	TE–025997–0–094	7/5/01
Kailing	(TX)HT	TE–025997–0–090	7/5/01
Ellington	(TX)HT	TE–025965–0–020	7/5/01
Wright	(TX)HT	TE–025965–0–019	7/5/01
JRS Builders	(TX)HT	TE–025997–0–093	7/5/01
City of Bastrop	(TX)HT	TE–025965–0–013	7/5/01
Greenwood	(TX)HT	TE–025997–0–096	7/27/01
Howard	(TX)HT	TE–025997–0–058	7/27/01
McClure	(TX)HT	TE–025997–0–098	7/27/01
McClure	(TX)HT	TE–025997–0–097	7/27/01
Bastrop Co WCID #2	(TX)HT	TE–025965–1–023	8/1/01
Matl	(TX)HT	TE–025997–1–101	8/1/01
Holberg	(TX)HT	TE–025997–1–100	8/1/01
Capstone	(TX)HT	TE–025965–1–021	8/3/01
Capstone	(TX)HT	TE–025965–1–022	8/3/01
Steiwig	(TX)HT	TE–025997–1–099	8/3/01

Permittee	(State) species	Permit No.	Date of Issuance
Cornerstone	(TX)HT	TE–025997–1–104	8/23/01
Fuller	(TX)HT	TE–025997–1–105	8/23/01
Whited	(TX)HT	TE–025997–1–108	8/23/01
Samaro	(TX)HT	TE–025997–1–107	8/27/01
Myers	(TX)HT	TE–025997–1–109	8/27/01
Bowman	(TX)HT	TE–025997–1–081	8/27/01
Bowman	(TX)HT	TE–025997–1–082	8/27/01
Tyre	(TX)HT	TE–025997–1–106	8/27/01
Garcia	(TX)HT	TE–025997–1–113	9/10/01
Burnham	(TX)HT	TE–025997–1–111	9/10/01
Fernandez	(TX)HT	TE–025997–1–112	9/10/01
Serna	(TX)HT	TE–025997–1–114	9/18/01
Taylor	(TX)HT	TE–025965–1–024	9/18/01
2 Amendments Issued			
Bastrop County 4 Low Quality Habitat	(TX)HT	TE–025965–1–000	7/27/01
Bastrop County 42 Medium Quality Habitat	(TX)HT	TE–025997–1–000	7/27/01

Geoffrey L. Haskett,
Regional Director, Region 2.

[FR Doc. 02–198 Filed 1–3–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Reconsidered Final Determination for Federal Acknowledgment of the Cowlitz Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.11(h)(3), notice is hereby given that on December 31, 2001, the Assistant Secretary—Indian Affairs (AS–IA) Neal A. McCaleb signed a reconsidered final determination which affirms the decision of February 18, 2000, to acknowledge that the Cowlitz Indian Tribe (CIT), c/o Mr. John Barnett, 1417 15th Avenue #5, P.O. Box 2547, Longview, Washington 98632–8594, exists as an Indian tribe within the meaning of Federal law. The reconsidered final determination was issued following full consideration of those issues which the Secretary of the Interior (Secretary) requested that the AS–IA address, which had been referred previously to the Secretary by the Interior Board of Indian Appeals (IBIA). The CIT satisfies the seven criteria set forth in 25 CFR part 83 for Federal acknowledgment of Indian tribes, and therefore meets the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.11(h)(3), this reconsidered final determination is effective on January 4, 2002.

ADDRESSES: Requests for a copy of the reconsidered final determination should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street, NW, Washington, DC 20240, Attention: Branch of Acknowledgment and Research, MS 4660–MIB.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary to the AS–IA by 209 DM 8. A notice proposing to acknowledge the CIT was published in the **Federal Register** on February 27, 1997. This Proposed Finding (PF) was issued under the 25 CFR part 83 regulations. The PF found that the CIT satisfied all of the mandatory criteria set forth in 25 CFR 83.7 as modified by 25 CFR 83.8. The PF found that substantial evidence demonstrated that the Federal Government recognized the Lower Cowlitz Tribe during 1855 treaty negotiations. The PF also found that a reasonable likelihood existed that the current petitioner evolved from an amalgamation of the Lower Cowlitz tribe and the Upper Cowlitz tribe. The Upper Cowlitz tribe had not participated in treaty negotiations. The PF made no finding as to whether the Lower Cowlitz tribe was recognized at any point after 1855 or whether the Upper Cowlitz tribe was ever recognized.

The Final Determination (FD) concluded that the CIT met the mandatory criteria in 83.7, as modified by 83.8, based on a finding that the Upper and Lower Cowlitz band(s), from which the petitioner evolved, were acknowledged in 1878 and 1880, and that these bands amalgamated during the second half of the 19th century. A notice of the decision to acknowledge the CIT was published in the **Federal Register**, on February 18, 2000, (Vol. 65 at 8436). The Quinault Indian Nation filed a request for reconsideration with the IBIA, and in an opinion issued May 29, 2001, the IBIA affirmed the Final Determination. Under provisions at 83.11(f)(2), the IBIA at the same time referred three issues to the Secretary as outside of its jurisdiction. After receiving comments from the Bureau of Indian Affairs's (BIA) Branch of Acknowledgment and Research (BAR), the Quinault Indian Nation, and the CIT, the Secretary on September 4, 2001, referred one issue and part of a second issue to the AS–IA as grounds for reconsideration of the FD. Under 83.11(g)(1), the AS–IA was to issue a reconsidered determination within 120 days of the Secretary's referral.

The AS–IA signed on December 31, 2001, a reconsidered final determination, which affirms and supplements the final determination and supersedes specific points in the final determination. A brief discussion of the issues addressed in the reconsidered final determination follows.

The first issue considered by the AS–IA concerned two misstatements in the FD Technical Report. The misstatements were that Cowlitz "métis," or "mixed-bloods" with French Canadian heritage, appeared on the 1878 and 1880 Indian censuses, when in fact it was not possible to determine whether any métis were included. The question was whether these two misstatements had an effect on BIA's analysis and ultimately on the AS–IA's decision. Because the mistakes were not on the draft technical report reviewed by the decision-maker,

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but were introduced late in the surnaming process, the mistake did not affect the BIA analysis and probably did not influence decision-makers, who saw an earlier draft. Nevertheless, the signed FD did have the mistakes in it, and a reevaluation of the evidence with a correct understanding of the 1878 and 1880 censuses was made during this reconsideration.

The PF found that the Cowlitz métis were part of the Lower Cowlitz which was recognized in 1855 during treaty negotiations. The FD found also that in 1878 and 1880, the Office of Indian Affairs recognized both the Lower and Upper Cowlitz, originally separate bands which amalgamated during the second half of the 19th century. The Lower Cowlitz census of 1878 listed 66 individuals, but it only named heads of households, none of whom had "métis" names. This census did not name "wives," "children," and "relatives in families," and thus, it is impossible to determine if métis "mixed-bloods" were among those listed as unnamed Lower Cowlitz. No names at all are available for the 1880 enumeration.

The PF, the transcripts of a technical assistance meeting held on-the-record as provided by the regulations at 83.10(j)(2), and the contextual discussion concerning the relationship between the métis mixed-bloods and the other Cowlitz in the FD, show that the Cowlitz métis were associated with the Cowlitz tribe through kinship, marriage, and association. Other evidence showed that the cultural distinctiveness of the métis was just beginning to emerge by the 1870's. Even if the OIA in the later 1800's did not specifically designate the métis as part of the tribe, the métis nonetheless interacted as part of the tribe at that time and in the following decades.

The evidence available does not define the full composition of the Lower and Upper Cowlitz bands as recognized by the Government in 1880. Further, how the Cowlitz defined their tribal members and how the government defined them may have differed. Under the regulations, the totality of the evidence is sufficient to establish by a reasonable likelihood that the Cowlitz métis were part of the Lower Cowlitz at its point of last unambiguous recognition. The misstatements concerning the 1878 and 1880 censuses do not impact the result of the FD.

The second issue considered by the AS–IA concerned whether the BIA misapplied the burden of proof under 25 CFR 83.6(d). The Secretary, however, limited her referral of this issue to "the portion that pertains to the application of the burden of proof in the context of unambiguous previous federal recognition." The Quinault Indian Nation submitted comments positing that the Cowlitz métis "half-bloods" were not part of the 1855 Lower Cowlitz tribe nor the 1878 and 1880 Lower Cowlitz band, and therefore the CIT could not show by a reasonable likelihood that its members descended from the previously acknowledged tribe. The AS–IA determined that the CIT demonstrated by substantial evidence that the Lower Cowlitz tribe was recognized in 1855, 1878 and 1880, and that the Upper Cowlitz tribe was recognized in 1878 and 1880. The AS–IA determined also that there is a reasonable likelihood that the Cowlitz métis were part of the previously recognized tribe in 1855, as well as of the Lower Cowlitz previously recognized in 1878 and 1880. The Upper Cowlitz and Lower Cowlitz having amalgamated during the second half of the 19th century, the AS–IA determined that there is a reasonable likelihood that the current petitioner has evolved from the previously acknowledged tribes.

Even if the métis were not part of the Lower Cowlitz recognized in 1878 and 1880, the analysis under the criteria could fall back on the earlier 1855 date of previous acknowledgment for the Lower Cowlitz, while maintaining the later date for the Upper Cowlitz. The PF already demonstrated that the Lower Cowlitz tribe was federally recognized in 1855 when they participated in treaty negotiations and that the métis were members of that entity. The petitioner has established that it descends from the previously recognized tribe in 1855.

The FD demonstrated substantial evidence, including the "Milroy" censuses, that in 1878 and 1880, the Upper Cowlitz and Lower Cowlitz were federally acknowledged as an Indian tribe. The FD found by a reasonable likelihood that the petitioner descends from these entities recognized in 1855, 1878 and 1880 and amalgamated through actions of the OIA in the last decades of the 1800's. The reconsidered FD affirms that analysis with the knowledge that the métis were not specifically named on the 1878 censuses and presumably were not named in the 1880 OIA censuses.

The reconsidered final determination supplements the original final determination and supersedes it to the extent the original is inconsistent with the reconsidered final determination. In conjunction with the original final determination, the reconsidered final determination is an amended final determination for the CIT petitioner and effective upon publication of the notice of this reconsidered determination in the **Federal Register**.

Dated: December 31, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–299 Filed 1–2–02; 2:14 pm]

BILLING CODE 4310–02–P

DEPARTMENT OF JUSTICE

Office of Violence Against Women Office; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection. Data Collection from Grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program.

The Department of Justice, Office of Justice Programs, Violence Against Women Office, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 4, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cathy Poston, Attorney/Advisor, Violence Against Women Office, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 305–2589.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Data Collection from Grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Violence Against Women Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: Institutions of Higher Education. Other: None.

The Grants to Reduce Violent Crimes Against Women on Campus Program was authorized through Section 826 of the Higher Education Amendments of 1998 to make funds available to institutions of higher education to combat domestic violence, dating violence, sexual assault and stalking crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 45 respondents to complete the data collection form is 60 minutes per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 45 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601D Street, NW., Washington, DC 20530.

Dated: December 18, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–159 Filed 1–3–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Employment Authorization Document.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 5, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection: Extension of a currently approved information collection.*

(2) *Title of the Form/Collection:* Employment Authorization Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collection on this form is used by the INS to determine eligibility for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,873,296 responses at 3.42 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,406,672 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 28, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–216 Filed 1–3–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: 60-day notice of information collection under review: Reinstatement, with change, of a previously approved collection for which approval has expired: The Annual Survey of Jails, Forms CJ–5, CJ–5A, CJ–5B.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to

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obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for "sixty days" until March 5, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Lawrence A. Greenfeld, Acting Director, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531. If you need a copy of the collection instruments with instructions, or have additional information, please contact Jennifer Karberg at (202) 307–1043, or via facsimile at (202) 514–1757.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired:

(2) *The title of the Form/Collection:* The Annual Survey of Jails.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Forms: CJ–5, CJ–5A, CJ–5B. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: County and City jail authorities and Tribal authorities. The "Annual Survey of Jails" (ASJ) is the only collection effort that provides an ability to maintain important jail statistics in years between jail censuses. The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond:* There are approximately 946 respondents responding to the survey, each taking an average 1.25 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,180 annual burden hours associated with this information collection.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: December 19, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–158 Filed 1–3–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed at the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the David-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*.

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the

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National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of December 2001.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–46 Filed 1–3–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL INDIAN GAMING COMMISSION

Paperwork Reduction Act

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The National Indian Gaming Commission (NIGC), in accordance with the Paperwork Reduction Act of 1995, is submitting to the Office of Management and Budget (OMB) a request to review and extend approval for the information collection activity associated with the submission of an annual audit report pursuant to 25 CFR 542.3(d) by Indian tribes conducting gaming under the Indian Gaming Regulatory Act. The OMB will consider comments from the public on this information collection activity.

DATES AND ADDRESSES: Comments regarding the NIGC's evaluation of the information collection activity and its request to OMB to extend approval for the information collection must be received by February 4, 2002. When providing comment, a respondent should specify the particular collection activity to which the comment pertains. Send comments to: Office of Information and Regulatory Affairs (Attn: Desk Officer for the National Indian Gaming Commission), Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. The NIGC regulation to which the information collection pertains is available on the NIGC Web site, *www.nigc.gov*. The regulation is also available by written request to the NIGC (Attn: Michele Mitchell), 1441 L Street NW., Suite 9100, Washington, DC, 20005, or by telephone request at (202) 632–7003. This is not a toll-free number. All other requests for information should be submitted to Michele Mitchell at the above address for the NIGC.

SUPPLEMENTARY INFORMATION:

Title: Minimum Internal Control Standards.

OMB Number: 3141–0009.

Abstract: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., authorizes the NIGC to promulgate regulations sufficient to shield Indian gaming from corrupting influences, to ensure that the tribes are the primary beneficiaries of gaming and to assure that Indian gaming is fair and honest. The NIGC's Minimum Internal Control standards provide a baseline from which to gauge whether a tribe has implemented controls sufficient to protect the assets of its gaming operation(s). The information required by 25 CFR 542.3(d) is essential to the Commission's ability to fulfill its oversight responsibilities. This evaluation may be completed within the annual financial audit of the gaming operation and does not require a separate audit of the gaming operation's internal control system.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 315.

Estimated Annual Responses: 315.

Estimated Annual Burden Hours per Respondent: 120 hrs.

Estimated Total Annual Burden on Respondents: 37,800 hours.

Estimated Total Annual Cost Burden: $3,780,000.

Richard Schiff,

Deputy Chief of Staff.

[FR Doc. 02–182 Filed 1–3–02; 8:45 am]

BILLING CODE 7565–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8502]

COGEMA Mining Incorporated

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1341 to authorize the licensee, COGEMA Mining Incorporated (COGEMA) to conduct surface (land and structures) decommissioning according to the submitted plan.

An Environmental Assessment (EA) was performed by the NRC staff in support of its review of COGEMA's license amendment request, in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The COGEMA Irigaray and Christensen Ranch In Situ Leach facilities are licensed by the U. S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA–1341 to possess byproduct material in the form of uranium waste as well as other radioactive wastes generated by past uranium processing operations.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the surface decommissioning plan, in accordance with 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The license amendment would authorize COGEMA to decontaminate structures (such as buildings) and equipment, remove contaminated soil and equipment for disposal, and restore the land according to the procedures and criteria present in the submitted plan. Ground water restoration has been addressed in a previous licensing action. The technical

aspects of the surface decommissioning plan are discussed separately in a Technical Evaluation Report (TER) that will accompany the agency's final licensing action.

The results of the staff's appraisal of potential environmental impacts are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with the decommissioning plan, and has determined that the requested amendment of Source Material License SUA–1341, authorizing implementation of the surface decommissioning plan, will: (1) be consistent with requirements of 10 CFR part 40, Appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents resulting from decommissioning activities are expected to remain below the regulatory limits.

2. Present and potential health risks to the public and risks of environmental damage from the proposed decommissioning were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–1341, for decommissioning of surface structures (buildings, well heads, piping) and land by removing the residual byproduct material to meet regulatory criteria and NRC recommended levels. The principal alternatives available to NRC are to:

1. Approve the license amendment request as submitted; or

2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of COGEMA's plans necessary for license termination (all uranium recovery operations have ceased) or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for decommissioning, specified in 10 CFR 40.42 and Part 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA–1341. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, COGEMA Mining Incorporated, P.O. Box 730, Mills, WY 82644;

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 26th day of December, 2001.

For The Nuclear Regulatory Commission.

Melvyn Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–232 Filed 1–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–10, 50–237, and 50–249]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 1, 2, and 3; Exemption

1.0 Background

The Exelon Generation Company, LLC, (Exelon, or the licensee) is the holder of Facility Operating License Nos. DPR–2, DPR–19, and DPR–25, which authorizes operation of the Dresden Nuclear Power Station (DNPS), Units 1, 2, and 3. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory

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Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of Unit 1, which is permanently defueled, and Units 2 and 3, which are both operating boiling water reactors. The facility is located in Grundy County, Illinois.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix E, section IV.F.2.c. requires that offsite emergency plans at each site be exercised every 2 years with full or partial participation by each offsite response organization (ORO) having a role under the plan. Normally during such biennial full-participation exercises, the NRC evaluates onsite, and the Federal Emergency Management Agency (FEMA) evaluates offsite, emergency preparedness activities.

The licensee conducted a biennial exercise on May 26, 2001, but participation by the OROs was curtailed due to the need to respond to emergency conditions caused by flooding within the State. The licensee rescheduled the ORO participation for September 18, 2001, but the national emergency preempted the conduct of that exercise. By letter dated December 18, 2001, the licensee requested an exemption to postpone the remaining portions of ORO participation into an exercise to be conducted in 2002. The last full participation exercise for DNPS was conducted on May 26, 1999. The period between exercises could be as long as 42 months if the exercise were conducted in December of 2002. This is outside the period of time normally allowed for the scheduling of biennial exercises. However, it is recognized that rescheduling the exercise is a challenge to the licensee. This being the case, a schedular exemption for conducting the remaining portions of the offsite exercise before the end of the third quarter of 2002 is appropriate. This could result in a maximum interval between FEMA-evaluated exercises of about 39 months if the licensee conducted the exercise in September of 2002. While this interval is longer than the 36 month period allowed by regulations, it is consistent with other exemptions recently granted due to the national emergency.

Exelon is among several licensees requesting exercise exemptions in the wake of the national emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security after the national emergency. The State of Illinois was initially involved with the recovery response to the national emergency and continues to respond to heightened security needs. Considering the extraordinary circumstances, a schedular exemption is acceptable. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the exercise as soon as practicable to maintain and demonstrate readiness. The following evaluation addresses the technical issues necessary to grant a schedular exemption from the requirements of 10 CFR Part 50, Appendix E, section IV.F.2.c, to conduct an evaluated biennial exercise.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The exemption only provides temporary relief from the applicable regulation, in that the licensee has committed to conduct the exercise during the next calendar year (2002) and has not requested any permanent changes in future exercise scheduling. The staff has also determined that conduct of the exercise as early as practicable in 2002 is prudent, but the exemption is not predicated on the licensee following this recommendation.

The licensee has stated that due to the number of Exelon nuclear facilities in the area around DNPS, most of the OROs have participated in other biennial exercises. There are three counties responsible for offsite emergency preparedness in support of DNPS. Will County participated in the Braidwood Exercise of March 1, 2000, and Grundy County participated in the LaSalle exercise of October 4, 2000. Kendall County, which is located in the five-to-ten mile portion of the DNPS emergency planning zone, has not participated in an exercise during the last two years. The Illinois Department of Nuclear Safety (IDNS) participated in the May 26, 2001, DNPS exercise (and four others during the last two years) and the Illinois Emergency Management Agency (IEMA) participated with various Exelon sites as follows: Braidwood, March 1, 2000; LaSalle, October 4, 2000; Clinton, August 28, 2001; and Byron, November 28, 2001.

The licensee stated that all past exercises were conducted using the Exelon standard evaluation techniques. Weaknesses and deficiencies were identified and entered into the corrective action program and are tracked to completion. Future exercises are to be conducted in the same manner. The licensee stated that an appropriate level of emergency preparedness is being maintained as evidenced by ORO participation.

For this exemption request, the special circumstances described in Section 50.12(a)(2) of 10 CFR 50 are present:

50.12(a)(2)(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made a good faith effort to comply with the regulation.

The national emergency of September 11, 2001, and the subsequent recovery and security responses prevented the OROs from participating in the re-scheduled biennial exercise. The licensee made a good faith effort to comply with regulations through the conduct of an exercise on May 26, 2001, and the rescheduling of the ORO participation aspects of that exercise for September 18, 2001. The circumstances dictating the request for exemption are beyond the licensee's control. Additionally, the licensee's exercise program includes multiple opportunities for the participation of OROs and is a compensating measure contributing to justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that the licensee has committed to conduct the remaining portions of the offsite exercise during the next calendar year (2002) and has not requested any permanent changes in future exercise scheduling. The staff has determined that conduct of the exercise as early as practicable in 2002, but no later than the end of the third quarter, is prudent even though the licensee is expected to conduct another full or partial participation exercise in 2003.

4.0 Conclusion

The staff finds that granting the licensee's request for a one-time schedular exemption from the requirement of section IV.F.2.c. of appendix E to 10 CFR part 50 to conduct a full participation emergency preparedness exercise in 2001 will not present an undue risk to the public health and safety, is consistent with the common defense and security, and that special circumstances are present as set forth in 10 CFR 50.12(a)(2). This conclusion is based on the expectation that the licensee will conduct the remaining offsite portions of the postponed exercise before the end of the third quarter 2002.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 66948).

This exemption is effective upon issuance and expires on September 30, 2002.

Dated at Rockville, Maryland, this 28th day of December, 2001.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–229 Filed 1–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08794]

Notice of Consideration of Amendment Request for Molycorp, Inc., York, PA, Site and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Materials License SMB–1408 issued to Molycorp, Inc., (Molycorp), to defer the second round of sampling groundwater monitoring wells in 2001 at the Molycorp, York, PA, site until the completion of its decommissioning activities in 2002. Molycorp's license requires that samples are to be drawn from designated wells biannually. One round of groundwater sampling results was submitted to NRC in March 2001, with the reported data below levels of concern. Molycorp then plugged and abandoned all existing groundwater wells on site in order to proceed with decommissioning. Due to the increased volume of contaminated soil encountered during the decommissioning of the York facility, and the extension of decommissioning activities, Molycorp will not be able to reinstall and sample the monitoring wells in 2001. Prior to installing the new wells, Molycorp has committed to confer with both NRC and the Pennsylvania Department of Environmental Protection to ensure that the new well locations are satisfactory. Molycorp shall install the new wells following the completion of decommissioning activities in 2002, and will sample the new wells on a biannual basis until its license is terminated. Molycorp's request is contained in a letter to NRC dated November 19, 2001.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License SMB–1408. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a safety evaluation report and an environmental assessment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary by mail or facsimile (301–415–1101) addressed to: The Rulemaking and Adjudications Staff of the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, Molycorp, Inc., 300 Caldwell Avenue, Washington, PA 15301, Attention: George Dawes, and,

2. The NRC staff, General Counsel, by mail, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and,

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION CONTACT: The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 27th day of December 2001.

For the Nuclear Regulatory Commission.

Tom McLaughlin,

Project Manager, Facilities Decommissioning Section, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–230 Filed 1–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8905]

Quivira Mining Company

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Quivira Mining Company to revise a site-reclamation milestone in License No. SUA–1473 for the Ambrosia Lake, New Mexico facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated November 6, 2001, a request from Quivira Mining Company to amend License Condition (LC) 40 B.(1) of Source Material License SUA–1473 for the Ambrosia Lake, New Mexico, facility. The license amendment request proposes to modify LC 40 B.(1) to change the completion date for placement of the erosion protection on the pile to December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Caverly, Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8 A33, Washington, D.C. 20555. Telephone (301) 415–6699, e-mail *jsc1@nrc.gov*.

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SUPPLEMENTARY INFORMATION: The portion of LC 40 B.(1) with the proposed change would read as follows:

40 B. Reclamation, to ensure required longevity of the covered tailings and groundwater protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR part 40—

For impoundment No. 1—December 31, 2001

For impoundment No. 2, excluding portions used for approved byproduct material disposal—December 31, 2003

Quivira's request to amend LC 40 B.(1) of Source Material License SUA–1473, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at NRC Headquarters in Rockville, Maryland.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provision of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications of Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Quivira Mining Company, 6305 Waterford Blvd., Suite 325, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceedings, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's area of concern about the licensing activity that is the subject matter of the proceedings; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Rockville, Maryland, this 27th day of December 2001.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–231 Filed 1–3–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25346]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 28, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 22, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Somerset Exchange Fund [File No. 811–7703]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 2, 2001, applicant's shareholders approved a proposal to convert applicant from a closed-end investment company to an open-end investment company. Shareholders of applicant were informed in proxy materials that following conversion to an open-end investment company, applicant would seek to deregister under the Act if redemptions caused the number of applicant's beneficial owners to fall below 100. Applicant will continue to operate as an unregistered pooled investment vehicle in reliance on section 3(c)(1) or section 3(c)(7) of the Act.

Filing Dates: The application was filed on November 13, 2001, and amended on December 20, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Kemper National Tax-Free Income Series [File No. 811–2353]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 11, 2001, applicant's two series, Kemper Municipal Bond Fund and Kemper Intermediate Municipal Bond Fund, transferred their assets and liabilities to Scudder Managed Municipal Bonds, a series of Scudder Municipal Trust, and Scudder Medium Term Tax Free Fund, a series of Scudder Tax Free Trust, based on net asset value. Expenses of $315,583 incurred in connection with the reorganization were paid by applicant and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Kemper Income Trust [File No. 811–8983]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 29, 2001, applicant transferred its assets to Scudder High Yield Fund (formerly Kemper High Yield Fund), a series of Scudder High Yield Series (formerly Kemper High Yield Series), based on net asset value. Expenses of $42,990 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Kemper Asian Growth Fund [File No. 811–7731]

Kemper International Fund [File No. 811–3136]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 29, 2001 and June 18, 2001, respectively, each applicant transferred its assets to a series of Scudder International Fund, Inc., based on net asset value. Expenses of $39,129 and $360,873, respectively, incurred in connection with the reorganizations were paid by applicants and Zurich Scudder Investments, Inc., investment adviser to the applicants.

Filing Date: The applications were filed on December 5, 2001.

Applicants' Address: 222 South Riverside Plaza, Chicago, IL 60606.

PaineWebber Investment Series [File No. 811–5259]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 9, 2001, applicant transferred its assets to PACE Global Fixed Income Investments, a series of PaineWebber PACE Select Advisors Trust, based on net asset value. Expenses of $161,041 incurred in connection with the reorganization were paid by applicant's investment adviser, Brinson Advisors, Inc.

Filing Date: The application was filed on December 17, 2001.

Applicant's Address: 51 West 52nd St., New York, NY 10019–6114.

Scudder California Tax Free Trust [File No. 811–3729]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 18, 2001, applicant transferred its assets to Scudder California Tax-Free Income Fund (formerly Kemper California Tax-Free Income Fund), a series of Kemper State Tax-Free Income Series, based on net asset value. Expenses of $94,058 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: Two International Place, Boston, MA 02110–4103.

Farmers Investment Trust [File No. 811–9085]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 9, 2001, applicant's five portfolios, Farmers Income Portfolio, Farmers Income with Growth Portfolio, Farmers Balanced Portfolio, Farmers Growth with Income Portfolio and Farmers Growth Portfolio, transferred their assets and liabilities to corresponding portfolios of Scudder Pathway Series based on net asset value. All expenses incurred in connection with the reorganization were paid by Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: Two International Place, Boston, MA 02110–4103.

AARP Tax Free Income Trust [File No. 811–4050]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 11, 2000, applicant's two series, AARP Insured Tax Free General Bond Fund and AARP High Quality Tax Free Money Fund, transferred their assets and liabilities to Scudder Managed Municipal Bonds, a series of Scudder Municipal Trust, and Scudder Tax-Free Money Fund, respectively, based on net asset value. Expenses of $626,383 incurred in connection with the reorganization were paid by applicant, Scudder Tax-Free Money Fund, and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: Two International Place, Boston, MA 02110–4103.

AARP Managed Investment Portfolios Trust [File No. 811–7933]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 25, 2000, applicant's two series, AARP Diversified Income with Growth Portfolio and AARP Diversified Growth Portfolio, transferred their assets and liabilities to corresponding series of Scudder Pathway Series, based on net asset value. Expenses of $149,688 incurred in connection with the reorganization were paid by Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: Two International Place, Boston, MA 02110–4103.

Scudder GNMA Fund [File No. 811–3699]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 17, 2000, applicant transferred its assets to Scudder GNMA Fund (formerly AARP GNMA and U.S. Treasury Fund), a series of Scudder Income Trust (formerly AARP Income Trust), based on net asset value. Expenses of $838,829 incurred in connection with the reorganization were paid by applicant and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: Two International Place, Boston, MA 02110–4103.

Kemper Global Income Fund [File No. 811–5829]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 18, 2001, applicant transferred its assets to Scudder Global Bond Fund, a series of Global/International Fund, Inc., based on net asset value. Expenses of $48,049 incurred in connection with the reorganization were paid by applicant and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Mercury Internet Strategies Fund, Inc. [File No. 811–9853]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 23, 2001, applicant's sole shareholder redeemed its shares at net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on November 28, 2001, and amended on December 18, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

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Master Internet Strategies Trust [File No. 811–9851]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 2001, applicant transferred its assets to Merrill Lynch Global Technology Fund, Inc. based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on November 28, 2001, and amended on December 18, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Kemper Income and Capital Preservation Fund [File No. 811–2305]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 2001, applicant transferred its assets to Scudder Income Fund, a series of Scudder Portfolio Trust, based on net asset value. Expenses of $173,273 incurred in connection with the reorganization were paid by applicant and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Kemper Short-Term U.S. Government Fund [File No. 811–5195]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 2001, applicant transferred its assets to Scudder Short Term Bond Fund, a series of Scudder Funds Trust, based on net asset value. Expenses of $55,843 incurred in connection with the reorganization were paid by applicant and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Kemper Horizon Fund [File No. 811–7365]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 11, 2001, applicant transferred its assets to Scudder Total Return Fund (formerly Kemper Total Return Fund), based on net asset value. Expenses of $933,275 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

Kemper Securities Trust [File No. 811–8393]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 11, 2001, applicant transferred its assets to Scudder Growth and Income Fund, a series of Investment Trust, based on net asset value. Expenses of $31,147 incurred in connection with the reorganization were paid by applicant and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 5, 2001.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

MCG Capital Corporation [File No. 811–10587]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company as of December 4, 2001, the date applicant elected to be regulated as a business development company.

Filing Dates: The application was filed on December 4, 2001, and amended on December 17, 2001.

Applicant's Address: 1100 Wilson Blvd., Suite 800, Arlington, VA 22209.

AARP Cash Investment Funds [File No. 811–3650]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 11, 2000, applicant's two series, AARP Premium Money Fund and AARP High Quality Money Fund, transferred their assets and liabilities to Scudder Money Market Series, a series of Scudder Money Market Trust, and Scudder Cash Investment Trust, respectively, based on net asset value. Expenses of $478,645 incurred in connection with the reorganization were paid by applicant, the surviving funds, and Zurich Scudder Investments, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 4, 2001.

Applicant's Address: Two International Place, Boston, MA 02110–4103.

Trust for Financial Institutions [File No. 811–7067]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By April 7, 1995, applicant's shareholders had voluntarily redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 4, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Merrill Lynch Internet Strategies Fund, Inc. [File No. 811–9783]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 2001, applicant transferred its assets to Merrill Lynch Global Technology Fund, Inc. based on net asset value. Expenses of $714,832 incurred in connection with the reorganization were paid by the surviving fund.

Filing Date: The application was filed on November 28, 2001.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Mercury Senior Floating Rate Fund, Inc. [File No. 811–10023]

Summary: Applicant, a feeder fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on December 4, 2001.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Blue Ridge Total Return Fund [File No. 811–8391]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 15, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $26,700 incurred in connection with the liquidation were paid by applicant and its investment adviser, Colonial Asset Management, Inc.

Filing Date: The application was filed on December 4, 2001.

Applicant's Address: 116 South Franklin St., P.O. Box 69, Rocky Mount, NC 27802–0069.

Mentor Funds [File No. 811–8550]

Cash Resource Trust [File No. 811–7862]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 21, 2001, each applicant made a liquidating distribution to its shareholders based on net asset value. Total expenses of $1,794,983 incurred in connection with both liquidations were paid by Wachovia Corporation, parent of the investment adviser to all series of the applicants.

Filing Dates: The applications were filed on October 1, 2001, and amended on December 7, 2001.

Applicants' Address: Evergreen Funds, 200 Berkeley St., Boston, MA 02116.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–177 Filed 1–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45207; File No. SR–OPRA–2001–03]

Options Price Reporting Authority; Notice of Filing of Amendment to OPRA Plan To Exclude Foreign Currency Options From the Calculation of Capacity Allocation Provided for in the OPRA Plan

December 28, 2001.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 10, 2001, the Options Price Reporting Authority ("OPRA"),[2] submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would exclude foreign currency options ("FCOs") from the calculation of capacity allocation provided for in the OPRA Plan. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed amendment would revise certain provisions of section III, "Definitions" and section V(d), "Quarterly Calculation of Capacity Allocation" in order to exclude FCOs from the calculation of system capacity allocation that is provided for in the OPRA Plan and make available exclusively for the processing and dissemination of FCO market data a fixed amount of system capacity as determined by OPRA from time to time. The proposed amendment provides that the capacity available for FCO market data will be capable of handling at least 350 messages per second ("mps"), the amount currently assigned by OPRA to FCO market data. OPRA represents that such capacity is sufficient to meet the anticipated needs of the FCO market. OPRA represents that the proposed amendment would make no substantive change to the provisions of the OPRA Plan.

II. Implementation of Plan Amendment

OPRA intends to make the proposed amendment to the OPRA Plan effective immediately upon approval of the amendment by the Commission pursuant to Rule 11Aa3–2 under the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2001–03 and should be submitted by January 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret F. McFarland,

Deputy Secretary.

[FR Doc. 02–215 Filed 1–3–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45199; File No. SR–MSRB–2001–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule A–4, on Meetings of the Board

December 27, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as concerned solely with the administration of the Board under section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change to amend rule A–4, on meetings of the Board, to include E-mail as a method of contacting and polling Board members. The text of the proposed rule change is set forth below. Additions are italicized; deletions are bracketed.

Rule A–4. Meetings of the Board

(a) No change.

(b) Notice of Meetings. Notice of the time and place of special meetings of the Board shall be mailed to each member, at such member's address appearing in the records of the Board, not later than the seventh calendar day preceding the date on which the

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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meeting is to be held, or by telephone, [telegraph,] *E-mail* or personal delivery not later than the third calendar day preceding the date on which the meeting is to be held. Written notice of special meetings of the Board shall be signed by the Secretary to the Board. Notice of a special meeting shall also set forth the purpose or purposes of the meeting and the name or names of the person or persons at whose request the meeting is being called. Notice of a special meeting need not be given to any member who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at the commencement thereof, the lack of notice to such member. No notice of regular meetings of the Board shall be required.

(c) No change.

(d) Action Without a Meeting. Action by the Board may be taken without a meeting by written consent of the Board setting forth the action so taken or by telephone *or E-mail* poll of all members of the Board, provided that, in the case of action taken by telephone *or E-mail* poll, the Board, at a meeting, or the chairman of the Board authorizes the action to be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone *or E-mail* poll is taken, a written statement setting forth the question or questions with respect to which the telephone *or E-mail* poll was taken and the results of the telephone *or E-mail* poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent, [or] telephone *or E-mail* poll, an affirmative vote of a majority of the whole Board is required.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule A–4, on meetings of the Board, establishes the procedures and requirements for holding Board meetings, the notice of the time and place required for special meetings, the quorum and voting requirements, and the procedures for taking action without a Board meeting.

Rule A–4(b), on notice of meetings, provides that notice of the time and place of special meetings of the Board shall be mailed to each Board member not later than the seventh calendar day preceding the date on which the meeting is to be held, or by telephone, telegraph or personal delivery not later than the third calendar day preceding the date on which the meeting is to be held. Notice of a special meeting shall also set forth the purposes or purposes of the meeting and the name or names of the person or persons at whose request the meeting is being called.

Rule A–4(d), on action without a meeting, provides that action by the Board may be taken without a meeting by written consent of the Board or by telephone poll of all members of the Board, provided that certain administrative procedures are followed.[3]

The proposed rule change amends rules A–4(b) and A–4(d) to include E-mail as a method of contacting and polling Board members. The amendment to rule A–4(b) provides that notification of special meetings of the Board may be made by e-mail and it removes notification of such meetings by the use of telegraph. The amendment to rule A–4(d) provides that e-mail may be used in conducting a poll of the Board for action taken without a meeting.

2. Basis

The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it only applies to the operation and administration of the MSRB.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB has designated the proposed rule change as concerned solely with the administration of the MSRB under section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt by the Commission. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2001–09 and should be submitted by January 25, 2002.

[3] The administrative procedures contained in rule A–4(d) are:

* * * in the case of action taken by telephone poll, the Board, at a meeting, or the chairman of the Board authorizes the action to be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone poll is taken, a written statement setting forth the question or questions with respect to which the telephone poll was taken and the results of the telephone poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent or telephone poll, an affirmative vote of a majority of the whole Board is required.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–180 Filed 1–3–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45206; File No. SR–NASD–2001–76]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Amending NASD Rules 4510, 4520 and 4530 Relating to Issuer Entry and Annual Fee Schedules

December 28, 2001.

I. Introduction

On October 31, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Association Rules 4510, 4520, and 4530 pertaining to issuer entry and annual fee schedules for The Nasdaq National and The Nasdaq SmallCap Markets for both domestic and non-U.S. listings as well as additional conforming changes. On November 21, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 30, 2001.[4] No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

The NASD proposed to amend the Association Rules 4510, 4520, 4530 pertaining to issuer entry and annual fees on The Nasdaq National Market and The Nasdaq SmallCap Market for both domestic and foreign listings. It has been approximately ten years since the NASD amended the entry and annual fees for SmallCap[5] and American Depository Receipts ("ADR") listings,[6] and four years since it amended The Nasdaq National Market entry and annual fees.[7]

The NASD proposed to increase entry and annual fees for The Nasdaq National Market, including ADRs. The Nasdaq National Market entry fees would be split into two fee schedules: one schedule for all U.S. issuers and foreign issuers raising capital in conjunction with their listing on Nasdaq; and another schedule for foreign issuers that are not raising capital in connection with their listing. This second schedule has somewhat lower fees for foreign listings under 5 million shares, in recognition of the fact that these listings are non-capital raising and generally represent secondary market listings. The NASD will also increase its existing annual fee structure for The Nasdaq National Market.

The NASD proposed to increase entry and annual fees for The Nasdaq SmallCap Market as well. ADRs on The Nasdaq SmallCap Market will follow the same annual fee schedule as domestic and foreign issues. Finally, the NASD intends to add a new fee schedule to the NASD Rule 4500 Series for Other Securities qualified under NASD Rule 4420(f). Finally, the NASD requested that the new fees apply as of January 1, 2002 in order to be consistent with the expectations of Nasdaq listed companies and to ease administration of the fees.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act[10] because it is designed to promote just and equitable principles of trade. In addition, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or systems which the association operates. Specifically, the increase reflects additional costs that Nasdaq has represented it incurs for services provided to issuers. As represented by the NASD, it has committed increased resources to provide regulatory oversight, client coverage, and professional services to listed companies. The Nasdaq represents that additional resources were committed to fund regulatory costs associated with the institution of corporate governance requirements on The Nasdaq SmallCap Market in 1997. Furthermore, Nasdaq represents that it has made several market improvements such as Nasdaq Online, the Nasdaq Marketsite, and enhancements to Nasdaq.com, as well as market quality improvements such as decimalization, SuperSOES, and the development of SuperMontage. In addition, Nasdaq has represented that it also intends to allocate resources to fund service enhancements requested by Nasdaq companies, such as creating a telephone and technology-based corporate-client information center to provide Nasdaq companies with a range of integrated products and services in a more centralized and timely manner.[12]

Nasdaq seeks to implement the proposed fees on January 1, 2002. In order to be consistent with the expectations of Nasdaq listed companies and to ease administration of the fees, Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposed rule change, as amended. The Commission believes that granting accelerated approval to the proposed rule change will allow Nasdaq to implement the new fees by January 1, 2002, and will provide issuers with notice and an opportunity to budget for the additional costs. Accordingly, the Commission finds good cause, consistent with

[4] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 21, 2001 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 45101 (November 23, 2001), 66 FR 59827.

[5] *See* Securities Exchange Act Release No. 30143 (January 2, 1992), 57 FR 726 (January 8, 1992).

[6] *See* Securities Exchange Act Release No. 28731 (January 2, 1991), 59 FR 906 (January 9, 1991).

[7] *See* Securities Exchange Act Release No. 39613 (February 2, 1998), 63 FR 6789 (February 10, 1998).

[8] *See* Amendment No. 1, *supra* note 3.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] *See* Amendment No. 1, *supra* note 3.

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section 15A(b)[13] and section 19(b)(2) of the Act[14] to approve the proposed rule change, as amended, on an accelerated basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASDA–2001–76), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–178 Filed 1–3–02; 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45184; File No. SR–Phlx–2001–98]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Relating to the Establishment of a Remote Specialist Program

December 21, 2001.

On October 22, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a remote specialist program.

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 12, 2001.[3] No comments were received on the proposal. The proposal was amended on November 29, 2001.[4] In this order, the Commission is approving the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, with the requirements of section 6(b)(5).[6]

The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[7] because it is designed to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that a remote specialist program will assist the Exchange in maintaining an efficient and open market.

The Commission approves this proposed rule change provided that the Exchange meet the following conditions: (i) The Exchange shall have place specific information barrier policies and surveillance policies that are consistent with the Exchange's existing rules and that are acceptable be the Commission's Office of Compliance Inspections and Examinations ("OCIE"); (ii) each remote PACE terminal shall be individually identified and associated with (an) authorized and qualified specialist(s) and/or registered clerk(s) and will require a non-transferable Remote Authorization; and (iii) all registered specialists and clerks, except those currently operating as floor specialists and clerks, must complete a floor training program.[8] The training may be waived by the Exchange for people in exceptional circumstances if other arrangements are made with and approved by the Exchange. However, a waiver will only be permitted if the Exchange is assured that the person requesting the waiver has made other arrangements that ensure that the person meet all of the training requirements. The training may not be waived for easily remedied reasons such as geographical location or inconvenience.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after notice of the publication in the **Federal Register**. Amendment No. 2 makes minor technical changes to the proposed rule language, dealing with non-transferability of the remote authorizations. The Commission therefore finds that acceleration of Amendment No. 2 is appropriate.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–98 and should be submitted by January 25, 2002.

It Is Therefore Ordered, pusuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Phlx–2001–98), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–179 Filed 1–3–02; 8:45 am]

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[13] 15 U.S.C. 78o–3(b).

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45014 (November 2, 2001), 66 FR 56888.

[4] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to John Riedel, Attorney Adviser, Division of Market Regulation ("Division"), Commission, dated November 28, 2001 ("Amendment No. 2"). In Amendment No. 2, several technical edits are made to subsection (n) of proposed rule 461 that do not need to be published for comment.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

[8] The floor training must include, among other things: communication procedures with Floor Brokers, PACE Desk, Surveillance, Systems Support, and ITS coordination with the Floor; remote/competing specialist program and Unlisted Trading Privilege applications and procedures, stock allocation procedures; trading halt procedures; and books and records/reports available.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3873]

Exchange Visitor Program Designation Staff, Bureau of Educational and Cultural Affairs; 30-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status; Control No. 1405–0119; Department of State Form DS–2019 and IAP–66P

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Submit comments to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Exchange Visitor Program Designation Staff, Bureau of Educational and Cultural Affairs (ECA/EC/ECD).

Title of Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status.

Frequency: On occasion.

Form Numbers: DS–2019 and IAP–66P.

Respondents: U.S. Department of State designated Exchange Vistor Program sponsors and exchange visitors.

Estimated Number of Respondents: 300,000.

Average Hours Per Response: 45 minutes.

Total Estimated Burden: 1,350,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from the Exchange Visitor Program Designation Staff (ECA/EC/PS), Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 Fourth Street, SW., Room 734, U.S. Department of State, Washington, DC 20520; telephone: 202–401–9810. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: December 6, 2001.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–237 Filed 1–3–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3872]

Privacy Act of 1974, as Amended: New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–40, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on December 18, 2001.

This system of records is being implemented by the Department of State to facilitate an electronic database of official, publicly accessible locator information for all Department of State personnel, domestic and overseas; overseas employees of other foreign affairs agencies receiving payroll services from the Department; and contractors. Emergency contact information is also maintained, but is not publicly available.

Any persons interested in commenting on this system of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, D.C. 20522–6001 or by fax at 202–261–8571.

This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The new system description, "Electronic Telephone Directory (e*Phone), STATE–40" will read as set forth below.

Dated: December 18, 2001.

William A. Eaton,

Assistant Secretary for the Bureau of Administration.

State–40

SYSTEM NAME:

Electronic Telephone Directory (e*Phone).

SECURITY CLASSIFICATION:

Sensitive but Unclassified (SBU).

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Civil Service (CS) and Foreign Service (FS) direct hire employees of the Department of State, domestic and overseas, regardless of employee type (i.e., full-time, part-time); direct hire overseas employees of other foreign affairs agencies who receive payroll services from the Department, regardless of employee type; direct hire personal service contractors, domestic and overseas; and all other contractor staff, domestic and overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in this system contains employees' and contractors' public and private contact information. Information, deemed part of the public domain, includes employee name, organization, office room number and building, and office phone number. Private information includes supervisor's name, e-mail address, date of birth, gender, marital status, category of employee, home address and home phone number for the individual, as well as emergency contact information, including name, home and work phone numbers of the contact, and the contact's relationship to the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State);

22 U.S.C. 2581 (General Authority of Secretary of State); 22 U.S.C. 2651a (Organization of the Department of State).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Bureau of Information Resources Management in the administration of its responsibility for maintaining the Department's centralized database of official, publicly accessible locator information for all

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personnel, both domestic and overseas, as well as contractors. Further, home and designated emergency contact information, not publicly accessible, is maintained for emergency use only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system may be used by any Department employee or contractor who needs an office address, including room number and building location as applicable, or office phone number for any other employee or contractor. Home and designated emergency contact information is provided on a need-to-know basis to specific, authorized Department of State officials in the event of an individual or general emergency, where such contact needs to be notified of the well-being of said employee(s) or contractor(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation and contractors have background investigations in accordance with their contracts. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. The database server is located in a restricted area, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street NW., Washington, DC 20522–6001 or by fax at 202–261–8571.

SYSTEM MANAGER AND ADDRESS:

Executive Director; Bureau of Information Resources Management; Department of State; 2201 C Street NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Information Resources Management might have records pertaining to themselves should write to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street NW., Washington, DC 20522–6001 or send by fax at 202–161–8571. The individual must specify that he/she wishes the Electronic Telephone Directory (e*Phone) to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; and preferably his/her social security number; a brief description of the circumstances that caused the creation of the record, and the approximate dates which give the individual cause to believe that he/she is/was listed in the Electronic Telephone Directory (e*Phone).

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should log on to e*Phone using their user-id and password to make updates/amendments. You may also request access or amendments by writing to the Director; Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information about employees that is automatically fed into e*Phone via a weekly interface with the Department's Human Resources System (Global Employment Management System). Information not publicly available is provided by the individual who is the subject of these records. Information regarding contractors and any other direct hire information is added by request of the individual, by the Post Administrative Office or the IRM Executive Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–236 Filed 1–3–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Henry Tift Myers Airport, Tifton, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Tift County Airport Authority to waive the requirement that a 9.246-acre parcel of surplus property, located at the Henry Tift Myers Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 4, 2002.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave, Suite 2–260, Campus Building, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed to Dr. Greg Anderson, Authority Chairman, of the Tift County Airport Authority at the following address: PO Box 826, Tifton, GA 31793–0826.

FOR FURTHER INFORMATION CONTACT: Rusty Nealis, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave, Suite 2–260, Campus Building, College Park, GA 30337–2747, (404) 305–7142. The Application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Tift County Airport Authority to release 9.246 acres of surplus property at the Henry Tift Myers Airport. The property will be purchased by Georgia Department of Transportation and will used as their maintenance facility as it has been for over 20 years. The use of this property as a maintenance facility has never adversely effected the airport's operations and is considered compatible. The property fronts State Route 125 and is adjacent and east of the existing National Guard Facility. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Tift County Airport Authority.

Issued in Atlanta, Georgia, on November 20, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–167 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Seattle-Tacoma International Airport under the provisions of 49 U.S.C. Sec. 47503(a) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing the proposed noise compatibility program that was submitted for Seattle-Tacoma International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before April 26, 2002.

EFFECTIVE DATE: The effective date of the FAA's determination on the Seattle-Tacoma International Airport noise exposure maps and the start of its review of the associated noise compatibility program is October 29, 2001. The public comment period ends December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Seattle-Tacoma International Airport are in compliance with applicable requirements for part 150, effective October 29, 2001. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 26, 2002. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503(a), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. 49 U.S.C. 47503(a)(1) requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to 49 U.S.C. 47503(a) may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Manager of the Airfield Line of Business for Seattle-Tacoma International Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review the noise exposure compatibility program under 49 U.S.C. 47504.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Seattle-Tacoma International Airport. The specific maps under consideration are Figures C40 and F1 in the submission. The FAA has determined that these maps for Seattle-Tacoma International Airport are in compliance with applicable requirements. This determination is effective on October 29, 2001. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under 49 U.S.C. 47503, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. 47507. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under 49 U.S.C. 47503(a)(1). The FAA has relied on the certification by the airport operator, under section 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Seattle-Tacoma International Airport, also effective on October 29, 2001. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 26, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, paragraph 150.33.

The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 621, Washington, DC.

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Federal Aviation Administration, Airports Division, Suite 315, 1601 Lind Avenue, SW., Renton, Washington.
Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington.
Seattle-Tacoma International Airport, Noise Abatement Office, Main Terminal, Room 6619, Mezzanine Level, Seattle, Washington.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, October 29, 2001.

Lowell H. Johnson,

Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 02–260 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The FAA will hold the meeting on January 23 and 24, 2002 from 9 a.m. to 4 p.m. on the first day and from 8 a.m. to 3:30 p.m. on the second day.

ADDRESSES: Northwest Airlines Training Facility, 1000 Inner Loop Road, Atlanta, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee, which will be held at the Northwest Airlines Training Facility, 1000 Inner Loop Road, Atlanta, Georgia 30337.

The agenda topics for the meeting will include the following:

Day One

- Aging Affects on Engine Wiring
- Small Transport Aircraft Study Plan
- Enhanced Airworthiness Program for Airplane Systems Update
- Research and Development Update
- Flammability Presentation
- FAA Economist Overview
- Intrusive Inspection Recommendations Status

Day Two

- Standard Wire Practice Manual Working Group and Enhanced Training Program for Wire Systems Working Group Interim Reports
- Wire System Certification Requirements Working Group and Enhance Maintenance Criteria for Systems Working Group Status Reports

Meeting attendance is open to the public. However, space will be limited by the size of the available meeting room. The FAA will provide teleconference services to individuals who wish to participate by telephone and who submit their requests before January 15th. If you use the teleconference service from within the Washington, DC metropolitan calling area, the call would be considered local. However, callers from outside this calling area will be responsible for paying long-distance charges.

In addition to teleconferencing services, we will provide sign and oral interpretation, as well as a listening device if requests are made within 7 calendar days before the meeting. You may arrange for these services by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will only be considered if time permits.

Issued in Washington, DC on December 31, 2001.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 02–259 Filed 1–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 213X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Wise County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.66-mile line of railroad between mileposts LT–0.0 and LT–0.66 at Banner, Wise County, VA. The line traverses United States Postal Service ZIP Code 24293.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 5, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 14, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 24, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 11, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historical preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 4, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: December 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–102 Filed 1–3–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by a $1000 filing fee. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 17, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 4, 2002.

Internal Revenue Service

OMB Number: 1545–1554.

Form Number: IRS Form MTQ/941.

Type of Review: Extension.

Title: Montana Quarterly Tax Report/Employer's Quarterly Federal Tax Return.

Description: Form MTQ/941 is used by employers to report payments made to employees subject to income and Social Security and Medicare taxes and the amounts of these taxes. The state of Montana and the Simplified Tax and Wage Reporting System (STAWRS) have formed a partnership to explore the potential of combining Montana's quarterly reports for state withholding, Old Fund Liability tax, and Unemployment Insurance with the Employer's Quarterly Federal Tax Return (Form 941). One form will satisfy both State and Federal requirements and will make employer filing faster and easier.

Respondents: Business or other for-profit, Individual or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 710.

Estimated Burden Hours Per Respondent/Recordkeeper:

For Form 941:

Recordkeeping—9 hr., 34 min.

Learning about the law or the form—30 min.

Preparing the form—40 min.

Copying, assembling, and sending the form to the IRS—16 min.

For Form 941 TeleFile:

Recordkeeping—5 hr., 16 min.

Learning about the law or the Tax Record—18 min.

Preparing the Tax Record—23 min.

TeleFile phone call—11 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 30,661 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–168 Filed 1–3–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 4, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0047.

Form Number: IRS Form 5300 and Schedule Q (Form 5300).

Type of Review: Extension.

Title: Application for Determination for Employee Benefit Plan, Schedule Q (Form 5300); and Elective Determination Requests (Schedule Q).

Description: IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a). Schedule Q provides information related to the manner in which a plan satisfies certain qualification requirements relating to minimum participation, coverage, and nondiscrimination.

Respondents: Individual or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 185,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

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Form/schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 5300	41 hr., 7 min	7 hr., 54 min	13 hr., 34 min	1 hr., 20 min.
Schedule Q (Form 5300)	6 hr., 13 min	9 hr., 14 min	9 hr., 45 min.	

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 17,955,750 hours.
OMB Number: 1545–0200.
Form Number: IRS Form 5307.
Type of Review: Extension.
Title: Application for Determination of Adopters of Master or Prototype or Volume Submitter Plans.
Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 100,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—27 hr., 58 min.
Learning about the law or the form—6 hr., 40 min.
Preparing the form—10 hr., 12 min.
Copying, assembling, and sending the form to the IRS—48 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 538,250 hours.
OMB Number: 1545–0229.
Form Number: IRS Form 6406.
Type of Review: Extension.
Title: Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.
Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 25,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—14 hr., 21 min.
Learning about the law or the form—2 hr., 13 min.
Preparing the form—4 hr., 25 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 538,250 hours.
Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 02–169 Filed 1–3–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary; List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the bet information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: December 20, 2001.
Barbara Angus,
International Tax Counsel (Tax Policy).
[FR Doc. 02–170 Filed 1–3–02; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Batavia, NY

AGENCY: Department of Veterans Affairs.
ACTION: Notice of Designation and Intent to Award.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating the Department of Veterans Affairs Medical Center, Batavia, NY, for an enhanced-use leasing development. The Department intends to enter into a 50-year lease of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage a transitional housing and homeless services facility, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Jake Gallun, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8862.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: December 27, 2001.
Anthony J. Principi,
Secretary of Veterans Affairs.
[FR Doc. 02–181 Filed 1–3–02; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 67, No. 3
Friday, January 4, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000629197-1282-02; I.D. 032900A]

RIN 0648-AN06

Atlantic Highly Migratory Species; Monitoring of Recreational Landings

Correction

In proposed rule document 01–31662 beginning on page 66386 in the issue of Wednesday, December 26, 2001, make the following correction:

On page 66386, in the first column, under the heading **DATES:**, in the third line, "February 25, 2002" should read "February 19, 2002".

[FR Doc. C1–31662 Filed 1–3–02; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934, Release No. 45179/December 20, 2001]

Securities Industry Association 1401 Eye Street, NW., Washington DC 20005–2225; Order Extending Broker-Dealer Exemption From Sending Financial Information to Customers

Correction

In notice document 01–31918 beginning on page 67341 in the issue of Friday, December 28, 2001 make the following correction:

On page 67341, in the second column, the subject line is corrected to read as set forth above.

[FR Doc. C1–31918 Filed 1–3–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 1

[Docket No. OST-1999-6189]

RIN 2105-ZZ04

Organization and Delegation of Powers and Duties to the under Secretary of Transportation for Security, Transportation Security Administration

Correction

In rule document 01–32021 beginning on page 67117 in the issue of Friday, December 28, 2001, make the following corrections:

§1.2 [Corrected]

1. On page 67118, in the first column, in § 1.2, in amendatory instruction 2, in the first line "new paragraph (1)" should read "new paragraph (l)."

2. On the same page, in the same column, in the same section, in the amendatory text "(1) The Under Secretary of Transportation for Security." should read "(l) The Under Secretary of Transportation for Security."

[FR Doc. C1–32021 Filed 1–3–02; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Friday,
January 4, 2002

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 23 and 52
Federal Acquisition Regulation; Hazardous Material Safety Data; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAR Case 1998–020]

RIN 9000–AJ21

Federal Acquisition Regulation; Hazardous Material Safety Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the language that provides policies and procedures for contractor submission of Material Safety Data Sheets (MSDSs).

DATES: Interested parties should submit comments in writing on or before March 5, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.1998–020@gsa.gov*.

Please submit comments only and cite FAR case 1998–020 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, (202) 208–7279. Please cite FAR case 1998–020.

SUPPLEMENTARY INFORMATION:

A. Background

The Occupational Safety and Health Act of 1970 (OSHA) and the Federal Hazard Communication Standard (29 CFR 1910.1200) provide protection for most of this nation's employees against the hazards of exposure to domestically produced or imported chemicals. This protection is provided by requiring the manufacturer or importer of chemicals to label their products and to develop and distribute detailed MSDSs that evaluate and discuss the impact of hazardous materials used in the nation's workplaces. The manufacturer or importer is required to provide a copy of the MSDS with initial shipments of the product and whenever revisions to the product require revising the MSDS. OSHA excludes public sector employees from the protection provided by the Federal Hazard Communication Standard. FED-STD 313 was originally developed to extend to Federal employees the protection provided by OSHA laws and regulations to private sector employees.

The current Federal Standard is FED–STD–313D, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities, dated April 3, 1996, including Change Notice 1, dated March 21, 2000. The standard establishes the requirement for the preparation and submission of MSDSs by Government contractors who provide hazardous materials to the Government. The standard includes in its definition of hazardous materials any item or chemical that—

1. Is a health hazard or physical hazard as defined by OSHA in 29 CFR 1910.1200;

2. Is reportable or potentially reportable or noticeable as inventory under the reporting requirements of the Hazardous Chemical Reporting (40 CFR part 302), or as an environmental release under the reporting requirements of the Toxic Chemical Release Reporting: Community Right to Know (40 CFR part 372);

3. When being transported or moved, is a risk to public safety or an environmental hazard; and

4. Is a special nuclear source, or by-product material as defined in 10 CFR part 40 or is regulated or referred to as radioactive.

FAR Subpart 23.3, Hazardous Material Identification and Material Safety Data, and FAR 52.223–3, Hazardous Material Identification and Material Safety Data, implement Federal Standard 313 requirements in Government contracts that require the delivery of hazardous materials. The FAR policies and procedures ensure that the Government has notice of hazardous materials that will be supplied under Government contract and receives MSDSs necessary for employee safety and health programs and information necessary for the safe handling, storage, use, transportation and environmentally acceptable disposal of hazardous materials. These policies and procedures also ensure that Federal agencies that have facilities that are required by Executive order to meet reporting and notice requirements under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) have the necessary information to make those reports or provide essential information in emergencies.

The Councils initiated this case at the request of industry to consider changes to FAR Subpart 23.3 and FAR 52.223–3. Industry's concerns with the existing FAR text include—

1. The definition of "hazardous material;"

2. The requirement to comply with any future revisions to Federal Standard 313 after contract award without an equitable adjustment;

3. Requiring from contractors information over and above information required by the Federal Hazard Communication Standard. (The FAR Council is analyzing the differences between the OSHA standard and FED STD 313. This analysis will be complete prior to promulgation of a final rule. The FAR Council requests comments whether further changes to FED STD 313 are needed to make it more in line with the Federal Hazard Communication Standard);

4. Ambiguous wording (*e.g.*, term of contract);

5. Virtually unlimited Government rights in the MSDS information and data without any protection for trade secrets or other proprietary data; and

6. Liability issues.

The Councils are proposing the following revisions to the FAR to address industry's concerns:

1. Removing the automatic inclusion of future Federal Standard 313 revisions into the contract. FAR 52.223–3(a) defines "hazardous material" as any material defined as hazardous under the latest version of Federal Standard 313 including revisions adopted during the term of the contract. The Councils agree with industry that the phrase "term of the contract" was ambiguous and that it is difficult to anticipate future changes and their cost impact. This rule modifies the clause to require the contractor to comply with only the version of the Federal Standard in effect at the time of award of the contract. The contracting officer may modify the contract to address subsequent revisions to FED–STD–313, and make an equitable adjustment, if appropriate.

2. Conforming FAR policy for proprietary information and information protected as trade secrets to policies provided in the Federal Hazard Communication Standard and Environmental Protection Agency (EPA) regulation at 40 CFR part 350.

3. Deleting FAR 52.223–3(f) that states that "neither the requirements of this clause nor any act or failure to act by the Government shall relieve the contractor of any responsibility or liability for the safety of the Government, contractor, or subcontractor personnel or property."

Additionally, the rule—

(a) Removes the solicitation provision requirements from FAR 52.223–3 and establishes a separate provision at FAR 52.223–XX;

(b) Clarifies that the rule applies if hazardous materials are expected to be delivered under the contract or incorporated into end items to be delivered under the contract (if certain conditions are met); and

(c) Makes a number of editorial changes.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply provides additional guidance on the current requirement at FAR Subpart 23.3 and the FAR clause at 52.223–3 for contractors to submit MSDSs if they provide hazardous materials to the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 23 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1998–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning OMB Control Number 9000–00XX, FAR case 1998–020, Hazardous Material Safety Data, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .268 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 37,000.

Responses per respondent: 1.45.

Total annual responses: 53,600.

Preparation hours per response: .268

Total response burden hours: 14,350.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than March 5, 2002 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FAR Case 1998–020, Hazardous Material Safety Data, in all correspondence.

List of Subjects in 48 CFR parts 23 and 52

Government procurement.

Dated: December 28, 2001.

Victoria Moss,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 23 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONVSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Revise Subpart 23.3, consisting of sections 23.300 through 23.303, to read as follows:

Subpart 23.3—Hazardous Material Identification and Material Safety Data

Sec.

23.300 Scope of subpart.
23.301 General.
23.302 Procedures.
23.303 Solicitation provision and contract clause.

23.300 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for acquisitions, other than for ammunition and explosives, that require the furnishing of data involving hazardous materials as defined in Federal Standard 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities; and

(b) Applies if hazardous material is expected to be—

(1) Delivered under the contract; or

(2)(i) Incorporated into end items to be delivered under the contract; and

(ii) Incorporation into the end items does not eliminate their hazardous nature throughout the life cycle of the end items.

(c) Agencies may prescribe special procedures for ammunition and explosives.

23.301 General.

(a) Federal Standard 313, issued and maintained by GSA—

(1) Includes criteria for identification of hazardous materials; and

(2) Establishes requirements for the preparation and submission of Material Safety Data Sheets (MSDSs) by contractors that provide hazardous materials to the Government.

(b) Agencies must obtain MSDSs on hazardous materials delivered under Government contracts to—

(1) Provide for safe handling, storage, use, transportation, and environmentally acceptable disposal of hazardous materials; and

(2) Apprise employees, in accordance with regulations issued by the Occupational Safety and Health Administration (OSHA), of—

(i) All hazards to which they may be exposed;

(ii) Relative symptoms and appropriate emergency treatment; and

(iii) Proper conditions and appropriate protective measures for safe use and handling.

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(c) OSHA Standards (29 CFR 1910.1200) or Environmental Protection Agency regulations (40 CFR part 350), as applicable, provide policy when the MSDS indicates that the specific chemical identity of the hazardous material is being withheld as a trade secret.

23.302 Procedures.

The contracting officer must—

(a) Require the apparently successful offeror or quoter to submit MSDSs before contract award; and

(b) Provide the safety officer or other designated individual with a copy of all MSDSs received.

23.303 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–XX, Hazardous Materials, in solicitations that include the clause at 52.223–3, Hazardous Material Identification and Material Safety Data.

(b)(1) Insert the clause at 52.223–3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of—

(i) A hazardous material; or

(ii) An end item that includes a hazardous material that does not lose its hazardous nature throughout the life cycle of the end item.

(2) If the agency awarding the contract is not the Department of Defense, use the clause with its Alternate I.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 52.223–XX to read as follows:

52.223–XX Hazardous Materials.

As prescribed in 23.303(a), insert the following provision:

Hazardous Materials (Date)

(a) *Definition. Hazardous material,* as used in this provision, means any material defined as hazardous in the version of Federal Standard 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities, in effect on the date of issuance of the solicitation.

(b) The offeror or quoter shall—

(1) Submit a list of hazardous materials to be—

(i) Delivered under the contract; or

(ii)(A) Incorporated into end items to be delivered under the contract; and

(B) Incorporation into the end items does not eliminate their hazardous nature throughout the life cycle of the end items; and

(2) Properly identify the hazardous materials and include any applicable identification numbers, such as the National Stock Numbers or the Special Item Numbers.

HAZARDOUS MATERIALS

(If none, insert "None")	Identification Nos.

(c) *Material Safety Data Sheets.* (1) The apparently successful offeror or quoter shall submit on or before the date specified by the Contracting Officer a Material Safety Data Sheet (MSDS) meeting the requirements of the version of Federal Standard 313 in effect on the date of issuance of the solicitation, for all hazardous materials identified in paragraph (b) of this provision, even if the apparently successful offeror or quoter is not the actual manufacturer.

(2) Failure to submit the MSDS prior to award may result in the apparently successful offeror or quoter being considered nonresponsible.

(End of provision)

4. Revise section 52.223–3 to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303 (b)(1), insert the following clause:

Hazardous Material Identification and Material Safety Data (Date)

(a) *Definition. Hazardous material,* as used in this clause, means any material defined as hazardous in the version of Federal Standard 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Act, in effect at the time of award of the contract.—

(b) *Hazardous material identification.* The Contractor shall—

(1) Update the list of hazardous materials provided under FAR 52.223–XX, Hazardous Materials. This list must be updated during performance of the contract whenever the Contractor determines that any other hazardous material will be—

(i) Delivered under the contract; or

(ii)(A) Incorporated into an end item to be delivered under the contract; and

(B) Incorporation into the end item does not eliminate its hazardous nature throughout the life cycle of the end item; and

(2) Provide the updated list to the Contracting Officer.

(c) *Material Safety Data Sheets (MSDSs).* The Contractor shall—

(1) Promptly notify and submit a revised MSDS to the Contracting Officer whenever there is a change in the composition of an item(s) that renders incomplete or inaccurate any MSDS previously submitted under FAR 52.223–XX, or this clause;

(2) Submit an MSDS if the Contractor determines that any other material to be delivered under this contract is hazardous, even if the Contractor is not the actual manufacturer;

(3) Submit any revised or new MSDS consistent with the version of Federal Standard 313 in effect at the time of award of the contract; and

(4) Make MSDSs available to the Government when using any hazardous materials in areas where Government employees may be exposed, including MSDSs for hazardous materials not included on the list of hazardous materials (see paragraph (b)(1) of this clause).

(d) The requirements of this clause shall not relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) concerning hazardous material.

(End of clause)

Alternate I (Date) As prescribed in 23.303(b)(2), add the following paragraph (e) to the basic clause:

(e) The Contractor shall—

(1) For items that are shipped to consignees identified by mailing address as agency depots, distribution centers, or customer supply centers, place one copy of the MSDS in—

(i) Each shipping container; or

(ii) A weather resistant envelope affixed to the outside of each shipping container; and

(2) For other consignees—

(i) Include a copy of the MSDS with the packing list or other suitable shipping document accompanying each shipment; or

(ii) If authorized in writing by the Contracting Officer, transmit the MSDSs to consignees in advance of shipment.

[FR Doc. 02–117 Filed 1–3–02; 8:45 am]

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Federal Register

Friday,
January 4, 2002

Part III

The President

Notice of January 3, 2002—Continuation of Libya Emergency

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Presidential Documents

Title 3—

The President

Notice of January 3, 2002

Continuation of Libya Emergency

On January 7, 1986, by Executive Order 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. Despite the United Nations Security Council's suspension of U.N. sanctions against Libya upon the Libyan government's hand over of the Pan Am 103 bombing suspects, Libya has not yet complied with its obligations under U.N. Security Council Resolutions 731 (1992), 748 (1992), and 883 (1993), which include Libya's obligation to accept responsibility for the actions of its officials and pay compensation.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

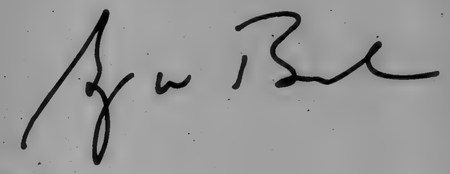

THE WHITE HOUSE,
January 3, 2002.

[FR Doc. 02–400
Filed 1–3–01; 11:35 am]
Billing code 3195–01–P

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S. 1438/P.L. 107–107

National Defense Authorization Act for Fiscal Year 2002 (Dec. 28, 2001; 115 Stat. 1012)

H.R. 2883/P.L. 107–108

Intelligence Authorization Act for Fiscal Year 2002 (Dec. 28, 2001; 115 Stat. 1394)

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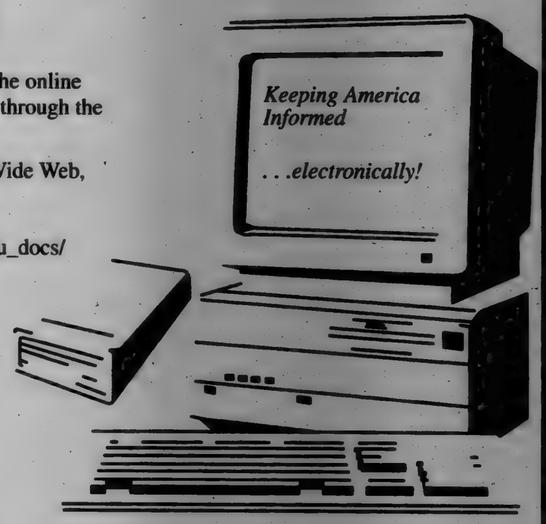

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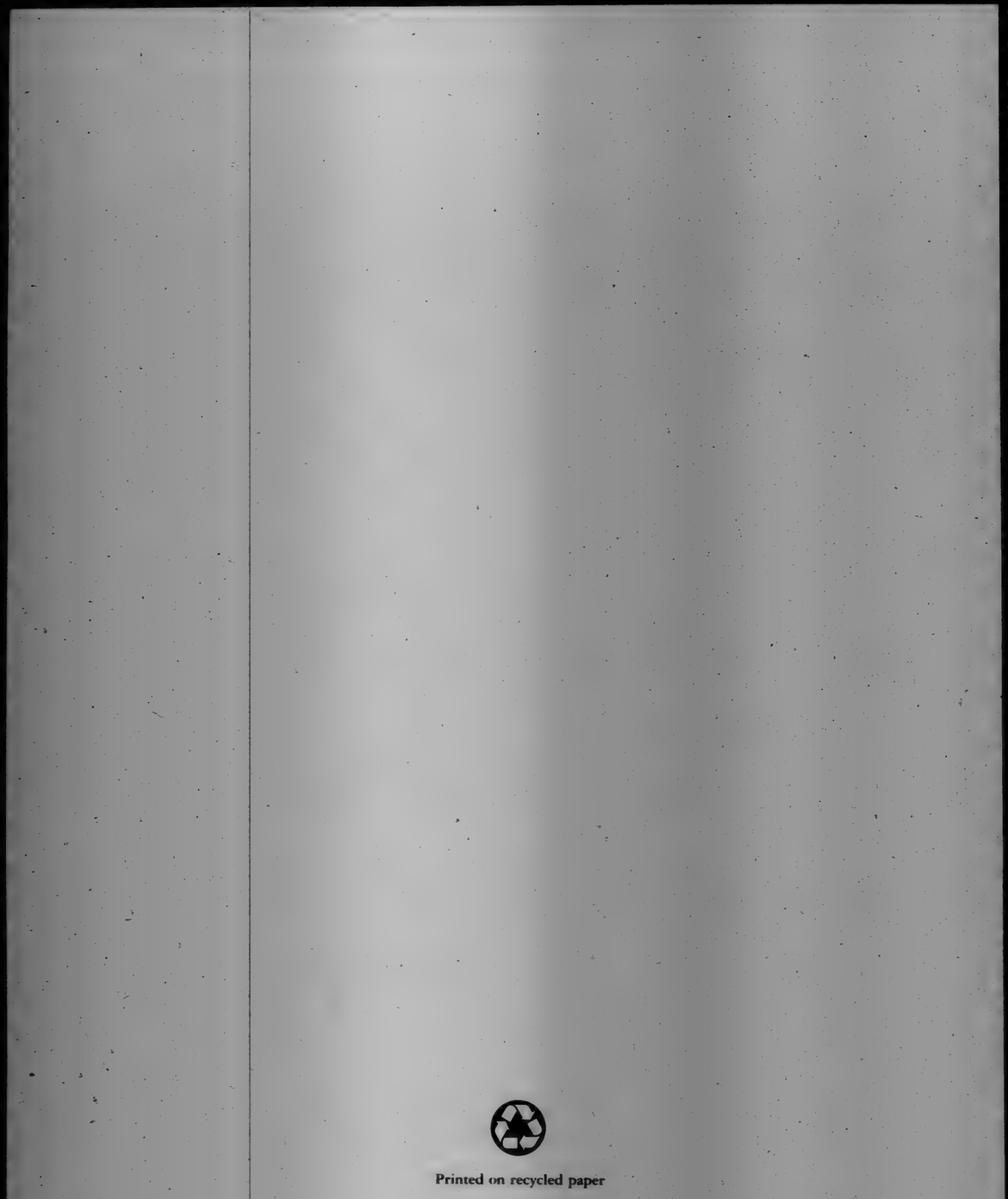

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Title 3—

The President

Executive Order 13249 of December 28, 2001

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of S. 1438, the National Defense Authorization Act for Fiscal Year 2002 (which I signed into law on December 28, 2001), the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to sections 5304 and 5304a of title 5, United States Code, and in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2002, Public Law 107–67, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2002. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2002.

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Sec. 8. *Prior Order Superseded.* Executive Order 13182 of December 23, 2000, is superseded.

THE WHITE HOUSE,
December 28, 2001.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

1	2	3	4	5	6	7	8	9	10
$14,757	$15,249	$15,740	$16,228	$16,720	$17,009	$17,492	$17,981	$18,001	$18,456
16,592	16,985	17,535	18,001	18,201	18,736	19,271	19,806	20,341	20,876
18,103	18,706	19,309	19,912	20,515	21,118	21,721	22,324	22,927	23,530
20,322	20,999	21,676	22,353	23,030	23,707	24,384	25,061	25,738	26,415
22,737	23,495	24,253	25,011	25,769	26,527	27,285	28,043	28,801	29,559
25,344	26,189	27,034	27,879	28,724	29,569	30,414	31,259	32,104	32,949
28,164	29,103	30,042	30,981	31,920	32,859	33,798	34,737	35,676	36,615
31,191	32,231	33,271	34,311	35,351	36,391	37,431	38,471	39,511	40,551
34,451	35,599	36,747	37,895	39,043	40,191	41,339	42,487	43,635	44,783
37,939	39,204	40,469	41,734	42,999	44,264	45,529	46,794	48,059	49,324
41,684	43,073	44,462	45,851	47,240	48,629	50,018	51,407	52,796	54,185
49,959	51,624	53,289	54,954	56,619	58,284	59,949	61,614	63,279	64,944
59,409	61,389	63,369	65,349	67,329	69,309	71,289	73,269	75,249	77,229
70,205	72,545	74,885	77,225	79,565	81,905	84,245	86,585	88,925	91,265
82,580	85,333	88,086	90,839	93,592	96,345	99,098	101,851	104,604	107,357

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SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$82,580	$66,914	$54,220	$43,934	$35,509	$31,825	$28,450	$25,434	$22,737
2	85,057	68,921	55,847	45,252	36,667	32,780	29,304	26,197	23,419
3	87,609	70,989	57,522	46,610	37,767	33,763	30,183	26,983	24,122
4	90,237	73,119	59,248	48,008	38,900	34,776	31,088	27,792	24,845
5	92,945	75,312	61,025	49,448	40,067	35,819	32,021	28,626	25,591
6	95,733	77,572	62,856	50,932	41,269	36,894	32,981	29,485	26,358
7	98,605	79,899	64,742	52,459	42,507	38,001	33,971	30,370	27,149
8	101,563	82,296	66,684	54,033	43,782	39,141	34,990	31,281	27,964
9	104,610	84,765	68,684	55,654	45,096	40,315	36,040	32,219	28,803
10	107,357	87,308	70,745	57,324	46,449	41,524	37,121	33,186	29,667
11	107,357	89,927	72,867	59,044	47,842	42,770	38,234	34,181	30,557
12	107,357	92,625	75,053	60,815	49,277	44,053	39,381	35,207	31,473
13	107,357	95,403	77,305	62,639	50,756	45,375	40,563	36,263	32,418
14	107,357	98,265	79,624	64,519	52,278	46,736	41,780	37,351	33,390

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)*

Deputy Under Secretary for Health	$140,243 **
Associate Deputy Under Secretary for Health	134,327 ***
Assistant Under Secretaries for Health	130,367 ***

	Minimum	Maximum
Medical Directors	$111,230	$126,064 ***
Service Directors	96,851	120,282
Director, National Center for Preventive Health	82,580	120,282

Physician and Dentist Schedule

Director Grade	$96,851	$120,282
Executive Grade	89,432	113,978
Chief Grade	82,580	107,357
Senior Grade	70,205	91,265
Intermediate Grade	59,409	77,229
Full Grade	49,959	64,944
Associate Grade	41,684	54,185

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$82,580	$107,357
Senior Grade	70,205	91,265
Intermediate Grade	59,409	77,229
Full Grade	49,959	64,944
Associate Grade	41,684	54,185

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$82,580	$107,357
Assistant Director Grade	70,205	91,265
Chief Grade	59,409	77,229
Senior Grade	49,959	64,944
Intermediate Grade	41,684	54,185
Full Grade	34,451	44,783
Associate Grade	29,646	38,538
Junior Grade	25,344	32,949

* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $130,000.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $121,600.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

ES-1	$113,000
ES-2	118,300
ES-3	123,700
ES-4	129,800
ES-5	130,000
ES-6	130,000

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

level I	$166,700
level II	150,000
level III	138,200
level IV	130,000
level V	121,600

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Vice President	$192,600
Senators	150,000
Members of the House of Representatives	150,000
Delegates to the House of Representatives	150,000
Resident Commissioner from Puerto Rico	150,000
President pro tempore of the Senate	166,700
Majority leader and minority leader of the Senate	166,700
Majority leader and minority leader of the House of Representatives	166,700
Speaker of the House of Representatives	192,600

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Chief Justice of the United States	$192,600
Associate Justices of the Supreme Court	184,400
Circuit Judges	159,100
District Judges	150,000
Judges of the Court of International Trade	150,000

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2002)

Part I--MONTHLY BASIC PAY

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
						TWO YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)									
									COMMISSIONED OFFICERS						
O-10 **	-	-	-	-	-	-	-	-	-	-	-	$11,601.90*	$11,659.20*	$11,901.30*	$12,324.00*
O-9	-	-	-	-	-	-	-	-	-	-	$9,259.50	10,147.50	10,293.60	10,504.80	10,873.80
O-8	$7,180.20	$7,415.40	$7,571.10	$7,614.90	$7,809.30	$8,135.10	$8,210.70	$8,519.70	$8,608.50	$8,874.30	9,614.70	9,694.90	9,694.90	9,694.90	9,852.00
O-7	5,966.40	6,371.70	6,371.70	6,418.20	6,657.90	6,840.30	7,051.20	7,261.80	7,472.70	8,135.10	8,694.90	8,694.90	8,694.90	8,694.90	8,738.70
O-6	4,422.00	4,857.90	5,176.80	5,176.80	5,196.60	5,418.90	5,448.60	5,628.60	6,305.70	6,627.00	6,948.30	7,131.00	7,316.10	7,316.10	7,675.20
O-5	3,537.00	4,152.60	4,440.30	4,494.30	4,673.10	4,673.10	4,813.50	5,073.30	5,413.50	5,919.00	6,079.80	6,262.80	6,262.80	6,262.80	6,262.80
O-4	3,023.70	3,681.90	3,927.60	3,982.50	4,210.50	4,395.90	4,696.20	4,930.20	5,092.50	5,255.70	5,310.60	5,310.60	5,310.60	5,310.60	5,310.60
O-3 ***	2,796.60	3,170.40	3,421.80	3,698.70	3,875.70	4,070.10	4,232.40	4,441.20	4,549.50	4,549.50	4,549.50	4,549.50	4,549.50	4,549.50	4,549.50
O-2 ***	2,416.20	2,751.90	3,169.50	3,276.30	3,344.10	3,344.10	3,450.30	3,630.00	3,768.90	3,872.40	3,872.40	3,872.40	3,872.40	3,872.40	3,872.40
O-1 ***	2,097.60	2,183.10	2,638.50	2,638.50	2,638.50	2,638.50	2,922.30	3,028.50	3,133.20	3,276.30	3,276.30	3,276.30	3,276.30	3,276.30	3,276.30
									COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER						
O-3E	-	-	-	-	$3,698.70	$3,875.70	$4,070.10	$4,232.40	$4,441.20	$4,617.00	$4,717.50	$4,855.20	$4,855.20	$4,855.20	$4,855.20
O-2E	-	-	-	-	3,276.30	3,344.10	3,450.30	3,630.00	3,768.90	3,872.40	3,872.40	3,872.40	3,872.40	3,872.40	3,872.40
O-1E	-	-	-	-	2,638.50	2,818.20	2,922.30	3,028.50	3,133.20	3,276.30	3,276.30	3,276.30	3,276.30	3,276.30	3,276.30

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,516.70 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $13,598.10 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,516.70 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)

Pay Grade	YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)												
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
						WARRANT OFFICERS									
W-5	-	-	-	-	-	-	-	-	-	-	-	$4,965.60	$5,136.00	$5,307.00	$5,478.60
W-4	$2,889.60	$3,108.60	$3,198.00	$3,285.90	$3,437.10	$3,586.50	$3,737.70	$3,885.30	$4,038.00	$4,184.40	$4,334.40	4,480.80	4,632.60	4,782.00	4,935.30
W-3	2,638.80	2,862.00	2,862.00	2,898.90	3,017.40	3,152.40	3,330.90	3,439.50	3,558.30	3,693.90	3,828.60	3,963.60	4,098.30	4,233.30	4,368.90
W-2	2,321.40	2,454.00	2,569.80	2,654.10	2,726.40	2,875.20	2,984.40	3,093.90	3,200.40	3,318.00	3,438.90	3,595.80	3,698.10	3,801.30	3,801.30
W-1	2,049.90	2,817.60	2,330.10	2,402.70	2,511.90	2,624.70	2,737.80	2,850.00	2,963.70	3,077.10	3,189.90	3,275.10	3,275.10	3,275.10	3,275.10
						ENLISTED MEMBERS									
E-9 *	-	-	-	-	-	$2,858.10	$3,423.90	$3,501.30	$3,599.40	$3,714.60	$3,830.40	$3,944.10	$4,098.30	$4,251.30	$4,467.00
E-8	-	-	-	-	-	2,562.90	2,940.60	3,017.70	3,110.10	3,210.30	3,314.70	3,420.30	3,573.00	3,724.80	3,937.80
E-7	$1,986.90	$2,169.00	$2,251.50	$2,332.50	$2,417.40	2,254.50	2,645.10	2,726.40	2,808.00	2,892.60	2,975.10	3,057.30	3,200.40	3,292.80	3,526.80
E-6	1,701.00	1,870.80	1,953.60	2,033.70	2,117.40	2,030.10	2,337.30	2,417.40	2,499.30	2,558.10	2,602.80	2,602.80	2,602.80	2,602.80	2,602.80
E-5	1,961.50	1,665.30	1,745.70	1,828.50	1,912.80	1,752.30	2,110.20	2,193.30	2,193.30	2,193.30	2,193.30	2,193.30	2,193.30	2,193.30	2,193.30
E-4	1,443.60	1,517.70	1,599.60	1,680.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30	1,752.30
E-3	1,303.50	1,385.40	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50	1,468.50
E-2	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30	1,239.30
E-1 **	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50	1,105.50
E-1 ***	1,022.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,382.90 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $734.10.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

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SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Locality Pay Area[1]	Rate
Atlanta, GA	9.74%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	13.57%
Chicago-Gary-Kenosha, IL-IN-WI	14.58%
Cincinnati-Hamilton, OH-KY-IN	12.09%
Cleveland-Akron, OH	10.33%
Columbus, OH	10.70%
Dallas-Fort Worth, TX	10.90%
Dayton-Springfield, OH	9.62%
Denver-Boulder-Greeley, CO	13.34%
Detroit-Ann Arbor-Flint, MI	14.71%
Hartford, CT	14.11%
Houston-Galveston-Brazoria, TX	18.61%
Huntsville, AL	9.08%
Indianapolis, IN	8.85%
Kansas City, MO-KS	9.28%
Los Angeles-Riverside-Orange County, CA	16.05%
Miami-Fort Lauderdale, FL	12.45%
Milwaukee-Racine, WI	10.05%
Minneapolis-St. Paul, MN-WI	11.56%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	15.23%
Orlando, FL	8.67%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	12.11%
Pittsburgh, PA	9.52%
Portland-Salem, OR-WA	11.64%
Richmond-Petersburg, VA	9.67%
Sacramento-Yolo, CA	11.99%
St. Louis, MO-IL	8.98%
San Diego, CA	12.70%
San Francisco-Oakland-San Jose, CA	19.04%
Seattle-Tacoma-Bremerton, WA	11.77%
Washington-Baltimore, DC-MD-VA-WV	11.48%
Rest of U.S.	8.64%

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

AL-3/A	$ 86,500
AL-3/B	93,100
AL-3/C	99,800
AL-3/D	106,500
AL-3/E	113,100
AL-3/F	119,700
AL-2	126,500
AL-1	130,000

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 02-448
Filed 1-4-02; 8:45 am]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01-055-2]

States Approved To Receive Stallions and Mares From CEM-Affected Regions; Rhode Island

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On November 1, 2001, the Animal and Plant Health Inspection Service published a direct final rule. (See 66 FR 55068-55071, Docket No. 01-055-1.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Rhode Island to the list of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis (CEM). We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Bischoff, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 26th day of December 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-264 Filed 1-4-02; 8:45 am]
BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01-010-2]

Change in Disease Status of Japan With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Japan to the list of regions that are considered free of rinderpest and foot-and-mouth disease. We are taking this action because we have determined that Japan is now free of foot-and-mouth disease. We are also adding Japan to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or foot-and-mouth disease-affected countries. These actions update the disease status of Japan with regard to foot-and-mouth disease while continuing to protect the United States from an introduction of rinderpest and foot-and-mouth disease by providing additional requirements for meat and meat products imported into the United States from Japan.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all other parts of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective on March 8, 2000, and affirmed on July 14, 2000, we amended the regulations in § 94.1(a)(2) by removing Japan from the list of regions that have been declared free of rinderpest and FMD. This action was necessary because FMD had been confirmed in Japan. (Although Japan continues to be free of rinderpest, § 94.1(a)(2) lists regions that are declared free of both rinderpest and FMD.) Additionally, in that interim rule, we removed Japan from the list in § 94.11 of countries that are declared to be free of these diseases, but that are still subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. As a result of that action, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or after March 8, 2000, was prohibited or restricted.

In response to the March 2000 outbreak of FMD, Japan undertook intensive efforts to eradicate the disease. Japan's last FMD-affected premises was depopulated on May 15, 2000.

On September 4, 2001, we published in the **Federal Register** (66 FR 46228-46230, Docket No. 01-010-1) a proposal to amend the regulations by adding Japan to the list in § 94.1(a) of regions that are considered free of rinderpest and FMD. In that document, we also proposed to add Japan to the list in § 94.11(a) of regions declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States.

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We solicited comments concerning our proposal for 60 days ending November 5, 2001. We received one comment by that date, from an organization representing American cattle producers. The commenter opposed the designation of Japan as free of FMD, arguing that insufficient time had passed since Japan's most recent reported case of FMD in May 2000 for the U.S. Department of Agriculture (USDA) to confirm eradication of the disease. The commenter recommended a 4- to 5-year disease-free waiting period from the time of the most recent recorded case of FMD to the designation of a country as FMD-free, during which time the importation into the United States of any animals, cut products, and byproducts from that country would be banned. Noting that the FMD virus can persist in the oropharynx of cattle for up to 30 months and can be preserved by refrigeration or freezing, the commenter argued that the 4- to 5-year time frame would provide a reasonable period within which the risk of FMD re-infection would be sufficiently diminished. The commenter also discussed the need for a comprehensive on-site review of the health of the livestock herds in the infected country by qualified U.S. animal health experts.

We continue to believe that designation of Japan as FMD-free is justified. International disease standards set by the Office International des Epizooties allow a country that was previously free of FMD but that subsequently suffered an occurrence to regain its FMD-free status 3 months after the last recorded case. Japan depopulated its last FMD-affected premises on May 15, 2000. While the virus can persist, surveillance conducted by Japanese authorities, which included serological testing and clinical assessment, did not reveal any carrier animals. In addition, the USDA did conduct an on-site visit to Japan in January 2001 and concluded that the depopulation and surveillance measures taken by Japanese authorities have ensured the eradication of FMD in Japan.

The commenter also stated that an outbreak of either FMD or bovine spongiform encephalopathy (BSE) in a country should be grounds to preclude disease-free certification for both of these diseases. According to the commenter, outbreaks of either of these diseases indicate a failure on the part of the affected country to take adequate precautionary measures to protect the health of its livestock. Therefore, the commenter contended that the confirmation of BSE in Japan on September 22, 2001, should preclude recognition of that country as FMD-free.

We are making no changes based on this comment. When a country first applies to the Animal and Plant Health Inspection Service (APHIS) to be recognized as free of a specific disease of concern, APHIS conducts an evaluation and considers a number of factors affecting the reliability of that country's animal disease prevention efforts. The factors considered include, but are not limited to, the disease history of the country; the authority, organization, and infrastructure of the veterinary services programs in the country; the extent to which movement of animals and animal products is controlled from regions of higher disease risk; the type and extent of disease surveillance in the country; and the policies and infrastructure for animal disease control in the country i.e., emergency response.

APHIS will recognize a country free of a specific disease only after it has determined that the factors listed above indicate an acceptable level of animal biosecurity in that country. As standard procedure, this determination is made only after APHIS representatives have conducted a site visit of the country in question. Based on the factors listed above, APHIS has determined that it is appropriate to consider Japan free of FMD.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores Japan to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations to add Japan to the list of regions that are considered free of rinderpest and FMD. We are taking this action because we have determined that Japan is now free of FMD. We are also adding Japan to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions update the disease status of Japan with regard to FMD while continuing to protect the United States from an introduction of rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Japan.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

The livestock industry plays a significant role in the U.S. economy. According to the National Agricultural Statistics Service, in 2000, the total number of cattle and calves in the United States was approximately 98.05 million, valued at approximately $67.01 billion. U.S. operations with cattle numbered 1,115,650 in 1997, the last year for which census data are available. More than 99 percent of these cattle operations had gross receipts of less than $750,000, which qualifies them as small entities according to the standards set by the Small Business Administration.

The U.S. livestock industry also plays an important role in international trade. U.S. competitiveness in international markets relies significantly upon this country's reputation for producing high-quality, disease-free animals and animal products. Maintaining these favorable trade conditions depends, in part, on continued aggressive efforts to prevent any threat of FMD introduction into the United States. A single outbreak of FMD anywhere in the United States would close our major export markets for livestock and livestock products overnight. Most exports of meat, animals, and animal byproducts would be stopped until the disease was completely eradicated.

In 1999, the total earnings from U.S. exports of live cattle, swine, beef and veal, pork, and dairy products to the rest of the world were approximately $4.80 billion. Additionally, the export of other animals and animal products and byproducts generated approximately $5.64 billion in sales for the United States. Consequently, an outbreak of FMD could result in the potential loss of export sales in the billions of dollars as well as other costs to those involved in the U.S. livestock industry.

Because we are declaring Japan to be free of FMD but subject to the restrictions of §94.11 due to its trading relationships with rinderpest- or FMD-affected regions, this rule will produce economic benefits by continuing to protect against the introduction of rinderpest and FMD into the United States. Import values of dairy products, red meat, and red meat products represented less than 0.01 percent of the overall value of U.S. imports from Japan in 1999. Since Japan is not a significant source, and is not expected to become a significant source, of these products for the U.S. market, this rule will not have a noticeable effect on producer, wholesale, or consumer prices in the United States. Therefore, we expect that there will be very little or no effect on U.S. entities, large or small, as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant HealthInspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the word "Japan,".

§94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by adding, in alphabetical order, the word "Japan,".

Done in Washington, DC, this 27th day of December, 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–262 Filed 1–4–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–124–AD; Amendment 39–12578; AD 2001–26–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200, 747–300, and 747SR Series Airplanes Powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100, 747–200, 747–300, and 747SR series airplanes powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 series engines, that currently requires a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections and corrective actions, if necessary. This amendment requires accomplishment of the previously optional replacement of any existing sealant with heat-resistant sealant as terminating action for the repetitive inspections required by this AD. This amendment is prompted by reports of heat damage to the forward end of the diagonal brace after accomplishment of a previous strut and wing modification. The actions specified by this AD are intended to prevent heat damage to the diagonal brace, which could cause cracking, fracture, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane.

DATES: Effective February 11, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001, was approved previously by the Director of the Federal Register as of June 27, 2001 (66 FR 31527, June 12, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–12–05, amendment 39–12260 (66 FR 31527, June 12, 2001), which is applicable to certain Boeing Model 747–100, 747–200, 747–300, and 747SR series airplanes powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 series engines, was published in the **Federal Register** on September 4, 2001 (66 FR 46241). The action proposed to continue to require a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections and corrective actions, if necessary. The action also proposed to require accomplishment of the previously optional terminating replacement of any existing sealant with heat-resistant sealant as terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Change to Final Rule

Since the issuance of the proposal, the FAA has approved two alternative methods of compliance for AD 2001–12–05. A new paragraph (d)(2) has been added to this final rule to include those approvals.

Conclusion

After careful review of the available data, the FAA has determined that air

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safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 145 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD.

The repetitive inspections that are currently required by AD 2001–12–05 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $2,340 per airplane, per inspection cycle.

The terminating action that is required by this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the cost impact of the requirements of this AD is estimated to be $8,580, or $220 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12260 (66 FR 31527, June 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–12578, to read as follows:

2001–26–12 Boeing: Amendment 39–12578. Docket 2001–NM–124–AD. Supersedes AD 2001–12–05, Amendment 39–12260.

Applicability: Model 747–100, 747–200, 747–300, and 747SR series airplanes; certificated in any category; powered by General Electric CF6–45/50 series engines, or Pratt & Whitney JT9D–70 series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent heat damage to the diagonal brace, which could cause cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2000–12–05:

Verification

(a) Within 90 days after June 27, 2001 (the effective date of AD 2001–12–05, amendment 39–12260), do the actions required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) If an operator's maintenance records verify that, during the accomplishment of AD 95–13–07, amendment 39–9287, the seal backup plates were restored and BMS 5–63 high-temperature sealant was used in that restoration, no further action is required by this AD.

(2) If an operator's maintenance records do not verify that the actions specified in paragraph (a)(1) of this AD were accomplished, do the actions required by paragraph (b) of this AD.

Inspections and Corrective Actions

(b) Within 90 days after June 27, 2001, do the inspections and applicable corrective actions specified by paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001. Thereafter, repeat the inspections at intervals not to exceed 6 months, until accomplishment of paragraph (c) of this AD.

Outboard Strut Diagonal Brace

(1) Do a detailed visual inspection of the forward 20 inches of the outboard strut diagonal brace, including all areas of the forward clevis lugs and brace body, for signs of heat damage or cracks, per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no sign of heat damage or cracking is found, repeat the detailed visual inspection at intervals not to exceed 6 months, per the service bulletin, until accomplishment of paragraph (c) of this AD.

(ii) If any primer discoloration is found, before further flight, do a non-destructive test (NDT) inspection of the area to determine if the diagonal brace has heat damage per Part 1 of the Accomplishment Instructions of the service bulletin.

(A) If no heat damage is found during the NDT inspection, and no cracking is found during the detailed visual inspection, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(B) If any heat damage is found during the NDT inspection, or any cracking is found during the detailed visual inspection, before further flight, do the actions specified in paragraph (c)(2) of this AD. Thereafter, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

Firewall Openings of the Strut Aft Bulkhead

(2) Do a detailed visual inspection of the firewall openings of the strut aft bulkhead to verify installation of seal backup plates and condition of the sealant application per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no discrepancy (including damaged or missing seal backup plates, or damaged or missing sealant) is found, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(ii) If the seal backup plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant, BMS 5–63, per Part 2 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

(iii) If the seal backup plates are installed, but the sealant application is damaged or missing, before further flight, remove any existing sealant and apply heat-resistant sealant, BMS 5–63, per Part 3 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

Note 2: Because it is difficult to distinguish between BMS 5–95 and BMS 5–63 sealants, removal and replacement of the existing sealant is required to ensure that the correct heat-resistant sealant, BMS 5–63, is used.

New Requirements of This AD

Terminating Action and Corrective Action

(c) Within 18 months after the effective date of this AD: Do the action specified by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable. Accomplishment of the applicable action constitutes terminating action for the repetitive inspections required by this AD.

(1) Following the inspections required by paragraphs (b)(1) and (b)(2) of this AD, if no cracking or heat damage is found during those inspections, and the seal backup plates are installed, before further flight, remove any existing sealant and apply heat-resistant sealant BMS 5–63, per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001.

(2) If any sign of heat damage or cracking is found during the inspections required by paragraph (b) of this AD, before further flight, do the actions specified by either paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Replace the diagonal brace per Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001.

(ii) Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(3) If the seal back-up plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant BMS 5–63, per Part 2 of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–12–05, amendment 39–12260, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraphs (a) and (c)(2)(ii) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001. The incorporation by reference of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001, was approved previously by the Director of the Federal Register as of June 27, 2001 (66 FR 31527, June 12, 2001). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 11, 2002.

Issued in Renton, Washington, on December 20, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–87 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–41–AD; Amendment 39–12593; AD 2002–01–02]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 1A Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arrius 1A turboshaft engines. This action requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. This amendment is prompted by routine inspections conducted in the repair workshop demonstrating that some main fuel injectors were partially or totally blocked. The actions specified in this AD are intended to prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2½ minute one engine inoperative (OEI) power.

DATES: Effective January 22, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Robert P. McCabe, Aerospace Engineer, Boston Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 1A turboshaft engines. The DGAC advises that during routine inspections in the repair workshop some main fuel injectors were discovered to be totally or partially blocked, and that this condition could cause flameouts during engine decelerations and OEI power shortfall occurrences.

Manufacturer's Service Information

Turbomeca S.A. (Group Snecma) has issued Alert Service Bulletin (ASB) No. A319 73 0071, dated January 1, 2001, that requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. The DGAC classified this service bulletin as

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mandatory and issued AD 2000–532(A) in order to assure the airworthiness of these Turbomeca S.A. Arrius 1A turboshaft engines in France.

Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arrius 1A engines of the same type design, this AD is being issued to prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2½ minute OEI (maximum emergency) power. This AD requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. Fuel injectors that have accumulated more than 1,350 hours of operation since new or last overhaul must be replaced before further flight. The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–41–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–01–02 Turbomeca S.A.: Amendment 39–12593. Docket 2001–NE–41–AD.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arrius 1A turboshaft engines installed on, but not limited to Eurocopter helicopters: Model AS355N, called the Ecureuil/Twinstar; and Model AS555UN, called the Fennic.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2-½ minute one engine inoperative (OEI) power, replace the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors using the following schedule:

Replacement Schedule

(a) Before further flight, replace any fuel injector that has accumulated more than 1,350 hours of operation since new or last overhaul.

(b) Fuel injectors that have accumulated less than 1,350 hours of operation since new or last overhaul must be replaced prior to achieving 1,350 hours of operation.

Service Documents for Reference

(c) Turbomeca S.A. (Group Snecma) Alert Service Bulletin (ASB) No. A319 73 0071, dated January 1, 2001, contains additional information concerning the replacement of these injectors.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ECO.

Special Flight Permits Prohibited

(e) Special flight permits are prohibited because fuel injector operation in excess of 1,350 hours is prohibited. However, operators can easily replace the fuel injectors at any location using standard maintenance tools.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (DGAC) airworthiness directive AD Number 2000–532(A), dated December 27, 2000.

Effective Date

(f) This amendment becomes effective on January 22, 2002.

Issued in Burlington, Massachusetts, on December 28, 2001.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–199 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule with request for comments; extension of comment period.

SUMMARY: On December 6, 2001, the FAA published a final rule with request for comments regarding criminal history records checks and invited comments. The comment period was originally scheduled to close on January 7, 2002; however, the FAA is extending the comment period an additional 10 days in response to a request from the Air Transport Association (ATA) and the Regional Airline Association (RAA).

DATES: Comments must be received on or before January 17, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590. You must identify the docket number FAA–2001–10999 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov*.

You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone 202–267–3413.

SUPPLEMENTARY INFORMATION:

Comments Invited

The final rule was adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons were, and are, invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

See **ADDRESSES** above for information on how to submit comments.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Office of the Federal Register's web page at *http://www.access.gpo.gov/su_docs/aces/aces140html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the amendment number or docket number of this final rule.

Extension of Comment Period

On December 6, 2001, the FAA published a final rule with request for comments entitled "Criminal History Records Checks" (66 FR 63474). The FAA requested that comments be submitted by January 7, 2002. By letter dated December 21, 2001, the Air Transport Association (ATA) and the Regional Airline Association (RAA) requested that the FAA extend the comment period for 10 days. The ATA and RAA stated that the rule raised practical and legal issues requiring resolution. They also stated that more time is needed for them to develop their recommendations and circulate them among their members before submitting them to the FAA.

The FAA determines that extending the comment period is in the public interest. Accordingly, the comment period for the final rule "Criminal Records Checks" is extended until January 17, 2002.

Issued in Washington, DC, on January 2, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–358 Filed 1–2–02; 4:38 pm]

BILLING CODE 4910–13–P

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Governing Stipulated Records Filed With the Board or With the Board's Administrative Law Judges

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending its regulations governing stipulated record cases to delete an outdated procedure for filing stipulated records with its Administrative Law Judges and to substitute an alternative procedure governing stipulated record cases filed either with the Board or with an Administrative Law Judge.

DATES: Effective: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, (202) 273–1936.

SUPPLEMENTARY INFORMATION: Section 102.35(a)(9) of the National Labor Relations Board's rules provides for a limited form of stipulation before Administrative Law Judges in which, following a hearing, transcripts are dispensed with and exceptions to findings of fact are waived. 29 CFR 102.35(a)(9). This provision was adopted several decades ago. It is never used today and was not used much at the time it was adopted. For this reason, the Board has decided to eliminate this procedure from its rules.

The Board has, on occasion, permitted parties to file stipulated records directly with it along with requests that the stipulated cases be decided without an evidentiary hearing. Typically these are cases in which the facts are not in dispute and the parties wish expedited consideration of what they perceive to be purely legal issues. Because this practice has never been memorialized in the Board's rules, the Board is adding it now. The same practice will also be made available in proceedings before Administrative Law Judges.

In describing the procedures for submitting a stipulation of facts, the rule states that a statement of the issues presented should be set forth in the stipulation and that each party should also submit a short statement (no more than three pages) of its position on the issues. The Board's experience with stipulations of facts has been that, while the parties know the contested issues and their positions on those issues, a mere stipulation of facts by itself may not be sufficient to convey that important information to the Board. Including a statement of issues in the stipulation of facts and submitting a short statement of each party's position on those issues will assist the Board in determining whether it wishes to decide a case without the benefit of a full hearing and a judge's decision.

For these reasons, the Board has decided to eliminate the former Section 102.35(a)(9) and subtitute for it a brief statement outlining the procedures for submitting stipulated records to it or to its Administrative Law Judges.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely permit parties to a Board proceeding to submit requests to have cases decided on a stipulated record.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as "significant rules'" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, the National Labor Relations Board is amending 29 CFR Chapter I, Part 102, as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 442a(j) and (k) of the Privacy Act (5 U.S.C. 55a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is amended by revising the heading and by further revising paragraph (a)(9) to read as follows:

§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.

(a) * * *

(9) To approve stipulations, including stipulations of facts that waive a hearing and provide for a decision by the administrative law judge. Alternatively, the parties may agree to waive a hearing and decision by an administrative law judge and submit directly to the Executive Secretary a stipulation of facts, which, if approved, provides for a decision by the Board. A statement of the issues presented should be set forth in the stipulation of facts and each party should also submit a short statement (no more than three pages) of its position on the issues. If the administrative law judge (or the Board) approves the stipulation, the administrative law judge (or the Board) will set a time for the filing of briefs. In proceedings before an administrative law judge, no further briefs shall be filed except by special leave of the administrative law judge. In proceedings before the Board, answering briefs may be filed within 14 days, or such further period as the Board may allow, from the last date on which an initial brief may be filed. No further briefs shall be filed except by special leave of the Board. At the conclusion of the briefing schedule, the judge (or the Board) will decide the case or make other disposition of it.

* * * * *

Dated, Washington, DC, December 21, 2001.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 02–80 Filed 1–4–02; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Eliminating Requirement to File Extra Copies of Unfair Labor Practice Charges and Representation Petitions With the National Labor Relations Board

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is revising its rules that govern filing extra copies of unfair labor practice charges and representation petitions with the Board. The revisions are being adopted in order to relieve persons filing charges and petitions from the requirement of having to file extra copies which, as a practical matter, the Board no longer needs. The intended effect of the revisions is to relieve members of the public of paperwork burdens without adversely affecting case processing.

EFFECTIVE DATE: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1936.

SUPPLEMENTARY INFORMATION: At present, the rules of the National Labor Relations Board (NLRB) provide that parties filing unfair labor practice charges (section 102.11, 29 CFR 102.11), petitions for certification or decertification (section 102.60(a), 29 CFR 102.60(a)), and petitions for referendum under 29 U.S.C. sec. 9(e)(1) of the National Labor Relations Act (section 102.83, 29 CFR 102.83) must file an original and at least four additional copies of such charges or petitions. Although the number of copies required has changed slightly over the years, the requirement to file extra copies of charges and petitions dates to the inception of the NLRB in 1936, a time predating modern photocopy methods. In those days, extra copies were required in order to facilitate service of those documents by the Board on other parties as well as for the Board to maintain extra copies that its staff needed when processing the charges or petitions. Upon receipt of the charge or petition, a Board employee would assign a case number to the incoming document, stamp that number on each of the copies, and then serve or distribute those copies as needed.

At the present time, Regional Offices of the Board generally find that it is simpler and more cost-efficient just to enter the date and the number of the case on the original of the filed charge or petition and then photocopy that document for service and distribution. This practice was implicitly recognized when the Board's Rules were amended in 1995 to permit filing charges and petitions by facsimile transmission and not to require extra copies filed in that manner, beyond the requirement to send in a signed original in addition to the document filed by facsimile. The amendments the Board is now making remove the requirements to file extra copies of charges or petitions filed in any manner.

Finally, in reviewing this proposal, we found that we had omitted to include in § 102.83 a reference to the requirement that persons who file petitions covered by that section by facsimile transmission shall also file an original for the Agency's records. We now amend § 102.83 to include that reference.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as "significant rules" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $ 100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely relieve members of the public of an unnecessary requirement to file extra copies of charges or petitions with the NLRB.

Paperwork Reduction Act

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

Small Business Regulatory Enforcement Fairness Act

Because these rules relate to Agency procedure and practice and merely modify the agency's filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

To relieve members of the public of the unnecessary burden of filing extra copies of charges or petitions with the NLRB, the Board amends 29 CFR part 102 as follows:

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PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.11 is revised to read as follows:

§ 102.11 Forms; jurat; or declaration.

Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of such charge shall be filed. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

3. Section 102.60(a) is revised to read as follows:

§ 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.*—A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

* * * * *

4. Section 102.83 is revised to read as follows:

§ 102.83 Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.

A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. One original of the petition shall be filed with the Regional Director wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the Regional Director for any of such Regions. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. The petition may be withdrawn only with the approval of the Regional Director with whom such petition was filed, except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Board. Upon approval of the withdrawal of any petition the case shall be closed.

Dated, Washington, DC, December 21, 2001.

By Direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 02–79 Filed 1–4–02; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1912 and 1912a

RIN 1218–AC04

Advisory Committees

ACTION: Final rule; amendments to procedural rules.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its rules governing membership on advisory committees to clarify that the Secretary has the discretion to remove and replace an advisory committee member at any time. The advisory committee rules, including the rules dealing with the tenure of members, are rules of agency organization, practice, or procedure, for which public notice and comment are not required.

DATES: These amendments are effective January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, OSHA Office of Public Affairs, U. S. Department of Labor, 200 Constitution Avenue, N.W., Room N3647, Washington, DC 20210, phone (202) 693–1999.

SUPPLEMENTARY INFORMATION: Section 7(a)(1) of the Occupational Safety and Health Act, 29 U.S.C. 656(a)(1), establishes a National Advisory Committee on Occupational Safety and Health (NACOSH). The purpose of NACOSH is to "advise, consult with, and make recommendations to the Secretary [of Labor] and the Secretary of Health and Human Services on matters relating to the administration of the Act." 29 U.S.C. 656(a)(2). NACOSH consists of 12 members, appointed by the Secretary of Labor, who represent management, labor, occupational safety and occupational health professions, and the public.

The Construction Safety Act (CSA), 40 U.S.C. 333, created the Advisory Committee on Construction Safety and Health (ACCSH), to advise the Secretary on standard-setting and other matters related to the administration of the CSA. See 29 CFR 1912.3. In addition, section 7(b) of the Act, 29 U.S.C. 656(b), gives the Secretary of Labor the authority to establish additional advisory committees to assist in the Secretary's standard-setting functions under 29 U.S.C. 655. Such committees may be either continuing committees or ad hoc committees established to render advice in particular rulemaking proceedings. 29 CFR 1912.2. The Secretary has exercised that authority to establish, as a continuing committee, the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), and has also established ad hoc committees to advise on particular rules.

Advisory committees have played an important role in the administration of the OSH Act by providing a means for the Secretary and the Assistant Secretary for Occupational Safety and Health to obtain the advice of persons representing a variety of interests on how best to fulfill the Act's objective of ensuring that American workers have safe and healthful workplaces. However, the advice the committees render is only valuable to the Secretary and the Assistant Secretary if they have full confidence in the members of the committees. To ensure such confidence, the Secretary must have the discretion to remove and replace any member in whom she lacks confidence.

The current regulations governing the tenure of all advisory committee members except those on NACOSH give the Secretary complete discretion to appoint members who have her confidence. Section 1912.3(e), which applies to ACCSH, allows the Secretary to remove and replace a member "in the interests of the administration of legislation involved." Section 1912.10(a), which governs other continuing advisory committees, allows the Secretary to remove a member "in the interest of the administration of the Act." Similarly, section 1912.11, which deals with ad hoc committees, allows the Secretary to remove a member "in the interest of the administration of the Act." These provisions also provide for the Secretary to remove a member of an advisory committee if that member becomes unable to serve or no longer meets the representational requirements of the Act. The current regulation governing tenure of members on NACOSH is unique in that it does not provide for removal of a member at the discretion of the Secretary. A member may be removed only if he or she becomes unable to serve, if the Secretary determines that he or she no longer meets the representational requirements of the Act. 29 CFR 1912a.3.

OSHA believes that the same removal requirements should apply to all advisory committees. As already discussed, the Secretary and Assistant Secretary must have complete confidence in all advisory committee members and must be able to remove any member in whom they have lost confidence. Therefore, section 1912a.3, which applies to NACOSH, is being amended to be consistent with the regulations applicable to the other advisory committees under the Act to give the Secretary full discretion to remove any advisory committee member for any reason. By providing that the Secretary has complete discretion to remove a member, it is no longer necessary to include the specific bases upon which a member may be removed (i.e., unable to serve or no longer meets the representational requirements of the Act). Therefore, the sections pertaining to removal—1912a.3, 1912.3(a), 1912.10(a), and 1912.11—are being amended so that they are worded consistently and provide that the Secretary may, in his or her discretion, remove any member at any time.

These amendments constitute a rule of agency organization, practice, or procedure. Hence, notice-and-comment procedures are not required. 5 U.S.C. 553(b). These amendments are to take effect immediately. Given the technical and procedural nature of these amendments, the agency finds that it is unnecessary to provide 30 days before this rule takes effect, and hence has good cause for making the effective date immediate pursuant to 5 U.S.C. 553(d)(3).

AUTHORITY AND SIGNATURE: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 7 and 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657), 5 U.S.C. 553, and Secretary's Order 3–2000 (65 FR 50017).

List of Subjects

29 CFR Part 1912

Advisory committees, Freedom of information, Occupational safety and health.

29 CFR Part 1912a

Advisory committees, Occupational safety and health.

Signed at Washington, DC, this 28th day of December, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

Accordingly, parts 1912 and 1912a of 29 CFR are hereby amended as set forth below:

PART 1912—[AMENDED]

1. The authority citation for 29 CFR part 1912 is revised to read as follows:

Authority: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

2. Paragraph (e) of § 1912.3 is revised to read as follows:

§ 1912.3 Advisory Committee on Construction Safety and Health.

* * * * *

(e) Except as provided in paragraphs (f) through (j) of this section, each member of the Advisory Committee shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

3. Paragraph (a) of § 1912.10 is revised to read as follows:

§ 1912.10 Terms of continuing committee members.

(a) Each member of a continuing committee established under section 7(b) of the Act, other than those appointed to a committee when it is formed initially shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

4. Section 1912.11 is revised to read as follows:

§ 1912.11 Ad hoc committees.

(a) The Secretary may establish ad hoc committees to advise him or her on particular rules. Each member of an ad hoc committee shall serve for a period of 2 years. Appointment of a member to the committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

PART 1912a—[AMENDED]

5. The authority citation for 29 CFR part 1912a is revised to read as follows:

Authority: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

6. Section 1912a.3 is revised to read as follows:

§ 1912a.3 Advisory Committee.

(a) There is established an Advisory Committee on Occupational Safety and Health (NACOSH) which shall advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

(b) The Committee shall consist of 12 members appointed by the Secretary of Labor, who represent management, labor, occupational safety and occupational health professions, and the public.

(c) Each member of the Committee shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

(d) The Committee shall meet at least twice a year.

(e) The Committee shall cease to exist on December 31, 2002, unless its charter is renewed prior to that date.

[FR Doc. 01–32 Filed 1–4–02; 8:45 am]

BILLING CODE 4510–26–P

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§ 1912.11 Terms of ad hoc committee members.

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

PART 1912a—[AMENDED]

5. The authority citation for 29 CFR Part 1912a is revised to read as follows:

Authority: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

6. Section 1912a.3 is revised to read as follows:

§ 1912a.3 Terms of membership.

Commencing on July 1, 1973, the terms of membership shall be divided into two classes, each consisting of six members. Members of the first class shall be appointed for a term of one year. Members of the second class shall be appointed for a term of two years. Thereafter, members shall be appointed for regular terms of two years. At all times the Committee shall be composed of representatives of management, labor, and occupational safety and health professions, and of the public. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

[FR Doc. 02–122 Filed 1–4–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 52

RIN 2900–AJ74

Per Diem for Adult Day Health Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes regulations setting forth a mechanism for paying per diem to State homes providing adult day health care to eligible veterans. The intended effect of the rule is to ensure that veterans receive high quality care in State homes.

DATES: *Effective Date:* February 6, 2002.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of February 6, 2002.

FOR FURTHER INFORMATION CONTACT: L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202–273–8538.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 28, 2000 (65 FR 39835), we proposed to establish a new part 52 setting forth a mechanism for the Department of Veterans Affairs (VA) to pay per diem to State homes providing adult day health care to eligible veterans. We provided a 60-day comment period which ended August 28, 2000. We received comments from six states and one association. The issues raised in the comments are discussed below. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule with changes explained below.

One commenter commended VA for including provisions in the rule to ensure that State homes meet the fire and safety provisions of the National Fire Protection Association's Life Safety Code entitled "NFPA 101, Life Safety Code." The final rule incorporates, by reference, the 2000 edition instead of the 1997 edition since the Life Safety Code has been updated.

A commenter questioned VA's authority to establish the provisions in § 52.40 that provide for State home payments to be made on a per diem basis. The commenter asserted that instead of per diem payments the payments should be made based on individual contracts between VA and the State. The commenter further asserted that the proposed per diem amount is inadequate to cover State costs, including construction and other capital expenditures. No changes are made based on these comments. In 38 USC 1741(a)(2) VA is authorized to make payments to State homes for adult day health care only on a per diem basis at a rate determined by VA. We believe Congress intended VA to determine one national per diem as is required for per diem payments for domiciliary, nursing home, or hospital care. We also do not believe this statute can be interpreted to permit contracting for care in State homes because it requires VA to "determine" a per diem rate. This per diem rate is not intended to cover costs of construction and capital expenditures. To obtain VA assistance in paying for those costs, States may apply for a State home construction or acquisition grant established under 38 USC 8131–8136.

One commenter stated that staffing would be cost-prohibitive with the low per diem amount paid by VA. No changes are made based on this comment. The per diem amount is a grant to a State under 38 U.S.C. 1741 for adult day health care, but was not intended to cover the total cost of care.

The proposed regulations at § 52.40(a)(2) state that per diem will be paid only for a day that the veteran is under care of the facility at least six hours. Three commenters asserted that the six-hour requirement should be lessened. They argue that their costs are fixed and based on the projected numbers for each day. We believe that we should provide per diem only for periods for which a veteran would be provided the full range of therapeutic activities that the veteran needs. Upon further reflection we believe this still can be accomplished if the veteran is present for at least three hours. Consistent with this conclusion and administrative concerns, we have changed the rule to allow for one per diem payment for a period of six hours or more in one calendar day or any two periods of at least three hours each (but each less than six hours) in any two calendar days in a calendar month.

The proposed regulations at § 52.50 set forth eligibility requirements for veterans receiving adult day health care on whose behalf VA pays per diem. One commenter asserted that the criteria are too restrictive. No changes are made based on this comment. The eligibility criteria reflect statutory requirements that may not be changed by regulation.

The proposed rule at § 52.80 provides that participants in the adult day health care program must meet certain conditions, including two of seven indicators. One of the indicators is met simply by being "75 years old or over."

One commenter asserted that the indicator should include individuals 65 years of age or older. No changes are made based on this comment. Age is only one of the seven criteria. We believe that 75 is the appropriate threshold for concluding that meeting at least one of the other criteria would customarily create the types of needs requiring admission to an adult day health care facility. Those younger than 75 could still meet the admission criteria if they meet at least two of the other criteria.

The proposed regulations at § 52.110(c)(1) provided a comprehensive assessment as follows: "The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) Health Care Administration Long-term Care Resident Assessment Instrument Version 2.0." These provisions reflect standards for inpatient care. We are changing the assessment tool to the "Minimum Data Set for Home Care (MDS-HC) Instrument Version 2.0" to provide a tool appropriate for outpatient type settings such as adult day health care.

The proposed regulations at § 52.110(c)(1)(ii) stated that one initial home visit must be conducted as part of the needs assessment for the veteran. Three commenters asserted that this should not be included as a requirement. Upon further consideration, we agree that these provisions should not be mandatory. Although we recommend home visits, information regarding the home environment can be obtained by other means, e.g., from family members. We have revised the regulations accordingly.

The proposed regulations at § 52.130 state that VA recommends that the nurse on duty at the adult day health care facility be a geriatric nurse practitioner or clinical nurse specialist. One commenter indicated that this would cause an undue hardship. We make no changes based on this comment. This is only a recommendation, not a requirement.

The proposed regulations at § 52.140(e)(1) provide that adult day health care patients must be provided at least two meals daily. Three commenters asserted that one meal a day should be sufficient. Most veterans stay at least six hours a day and come in time for breakfast. Accordingly, we believe that adult day health care facilities must provide at least two meals for these veterans. However, for a veteran stay of no more than four hours there would be no need to provide two meals. Accordingly, the final rule is modified to require two meals a day for a veteran stay of more than four hours and only one meal a day for a veteran stay of less than four hours.

One commenter noted a typographical error in proposed 52.150(b)(3) which refers to a paragraph "(f)". The reference, which is corrected by this document, should have been to paragraph "(e)".

The proposed regulations at § 52.200 set forth standards for the physical environment of State home adult day health care facilities. One commenter asserted that these provisions would be too demanding if applied to existing facilities. No changes are made based on this comment. Currently, there are no State homes receiving per diem under VA's State adult day health care program. We believe the proposed standards for physical environment represent the minimum standards needed to provide high quality care.

The proposed regulations at § 52.200(b)(3) state that the indoor space for an adult day health care facility must be at least 60 square feet per participant excluding office space for staff. One commenter asserted that the regulations should impose a 30-square feet requirement. No changes are made based on this comment. We believe that 60 square feet of program space per participant is necessary for participants to have access to the full range of program activities, services, and equipment that is needed to provide high quality care.

The proposed rule at § 52.210(e) states that if a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time, onsite basis. One commenter questioned whether the State employee would qualify as full-time, onsite if such individual on a full-time basis oversaw the adult day health care facility while also overseeing a colocated State home for nursing home and domiciliary services. We believe that the oversight function could be met under the factual situation presented by the comments. We have amended the rule accordingly.

The proposed regulations at § 52.210(g)(3) provide that "[t]he staff-participant ratio must be sufficient in number and skills (at least one staff to four participants) to ensure compliance with the standards of this part." Three commenters asserted that this should be no more stringent than the ratio of one staff to 4–6 participants, which VA adult day health care facilities use. We agree that under the criteria in § 52.210(g)(3) the ratio of one staff to 4–6 participants would be adequate to meet the needs of the participants. Accordingly, we have changed the provisions in § 52.210(g)(3) to allow the ratio of one staff to 4–6 participants.

The proposed rule at § 52.210(s) states that a facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care. One commenter asserted that this requirement would be too demanding. No changes are made based on this comment. We believe that designated spaces are needed for each level of care. Otherwise, the special needs for each program might not be adequately addressed.

The proposed regulations at § 52.220(a) state that "the adult day health care program management must provide, arrange, or contract for transportation" for participants. Three commenters asserted that State homes should not be required to provide transportation from a veteran's home to the adult day health care facility. We believe that transportation should be included in the cost of operating the adult day health care facility. Transportation is the single most important service the State can provide for a successful adult day health care program. The only way to ensure availability of transportation is to include it as a responsibility of a State. However, we also believe that the veteran or the veteran's family should be able to decline transportation offered by the adult day health care program management and make their own arrangements for the transportation. These concepts are consistent with the original purpose in the proposed rule. Changes are made to the final rule to more clearly reflect these concepts.

The proposed regulations at § 52.220(c) provide that all vehicles transporting participants to and from adult day health care facilities must be equipped with a device for two-way communication and one additional staff person besides the driver. One commenter asserted that these provisions should be deleted, and another commenter asserted that it was not necessary to have an additional staff person besides the driver. We have retained the provisions requiring the vehicle to be equipped with a device for two-way communication. This is necessary to ensure that the adult day health care officials would be able to provide any necessary information or assistance in an emergency situation. However, we are deleting the proposed requirement of one additional staff person besides the driver. We believe the driver would be able to provide or

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obtain assistance as necessary for patient safety.

The provision at § 52.40 sets forth the per diem amount for eligible veterans participating in a State home adult day health care. This is the amount authorized under 38 U.S.C. 1741 and Congressionally-approved in the budget. For fiscal year 2002 the amount is 34.64. Accordingly, the final rule includes the rate for fiscal year 2002. In addition to academic requirements, the proposed rule at § 52.2 provided that a clinical nurse specialist must have at least two years of successful clinical practice in the specialized area of nursing practice following academic preparation. Upon further review, we have determined that the academic requirements are sufficient to qualify an individual to conduct the duties of a clinical nurse specialist. Accordingly, we have deleted the practice requirement.

In § 52.10, we included transition provisions for recognized adult day health care facilities. However, we are deleting these provisions because there are no adult day health care facilities that would be eligible to utilize the transition provisions.

In § 52.100 we included requirements that a therapeutic recreation specialist must be licensed or registered, if applicable, by the State in which the individual practices. We are deleting the reference to "registered" since no State registers therapeutic recreation specialists.

In § 52.130, we proposed that the nurse staffing must be based on a staffing methodology that uses case mix. We have deleted this provision because the needs of patients are similar in adult day health care facilities and there is no need for case mix.

In § 52.200, we proposed that an adult day health care facility provide a quiet room that, among other things, would allow for rest. To accomplish this the room must have a bed. We have amended these provisions to specify that the room must have a bed. Also, editorial changes are made for purposes of clarity.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of §§ 52.20, 52.30, 52.40, 52.70, 52.71, 52.80, 52.90, 52.100, 52.110, 52.120, 52.130, 52.150, 52.160, 52.180, 52.190 and 52.210 of this rule. Many of these collections of information require the submission to VA of information on forms published at 38 CFR part 58.

The information collections in this document concern various activities related to the operation of a State home providing adult day health care to eligible veterans.

The collection of information contained in the notice of proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Interested parties were invited to submit comments on the collection of information. However, no comments were received. OMB has approved this information under control number 2900–0160.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. All of the entities that are subject to this final rule are State government entities under the control of State governments. Of the 102 State homes, all are operated by State governments except for 20 that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Executive Order 12866

This document has been reviewed by OMB pursuant to Executive Order 12866.

Executive Order 13132

This document does not have federalism implications under Executive Order 13132.

List of Subjects in 38 CFR Part 52

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 17, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reason set forth in the preamble, 38 CFR Chapter I is amended by adding a new part 52 to read as follows.

PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

Subpart A—General

Sec.
52.1 Purpose.
52.2 Definitions.

Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

52.10 Per diem based on recognition and certification.
52.20 Application for recognition based on certification.
52.30 Recognition and certification.

Subpart C—Per Diem Payments

52.40 Monthly payment.
52.50 Eligible veterans.

Subpart D—Standards

52.60 Standards applicable for payment of per diem.
52.61 General requirements for adult day health care program.
52.70 Participant rights.
52.71 Participant and family caregiver responsibilities.
52.80 Enrollment, transfer and discharge rights.
52.90 Participant behavior and program practices.
52.100 Quality of life.
52.110 Participant assessment.
52.120 Quality of care.
52.130 Nursing services.
52.140 Dietary services.
52.150 Physician services.
52.160 Specialized rehabilitative services.
52.170 Dental services.
52.180 Administration of drugs.
52.190 Infection control.
52.200 Physical environment.
52.210 Administration.
52.220 Transportation.

Authority: 38 U.S.C. 101, 501, 1741–1743, unless otherwise noted.

Subpart A—General

§ 52.1 Purpose.

This part sets forth the mechanism for paying per diem to State homes providing adult day health care to eligible veterans and includes quality assurance requirements that are intended to ensure that veterans receive high quality care in State homes.

§ 52.2 Definitions.

For purposes of this part—

Activities of daily living (ADLs) means the functions or tasks for self-care usually performed in the normal course of a day, i.e., mobility, bathing, dressing, grooming, toileting, transferring, and eating.

Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.

Facility means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of adult day health care or a building, or any part of a building, which VA has recognized as a State home for the provision of adult day health care.

Instrumental activities of daily living (IADLs) means functions or tasks of independent living, i.e., shopping, housework, meal preparation and cleanup, laundry, taking medication, money management, transportation, correspondence, and telephone use.

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses Association.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and to accomplish other clinical tasks under the appropriate supervision by the primary care physician.

Primary physician or *Primary care physician* means a designated generalist physician responsible for providing, directing and coordinating health care that is indicated for the residents.

State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State home means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

§ 52.10 Per diem based on recognition and certification.

VA will pay per diem to a State for providing adult day health care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility management meet the standards of subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for adult day health care, a State must:

(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

(b) Allow VA to survey the facility as set forth in § 52.30(c); and

(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction, regarding whether the facility and program management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the program, the State official authorized to oversee operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and program management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or program management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the program management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the program, the State official authorized to oversee the operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the certification, provisional certification, or noncertification.

(b) Once a program has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or program management does not meet the standards of subpart D of this part. Recognition of a program will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and program management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the program that have a bearing on compliance with any of the requirements of this part (including any

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reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home adult day care health program management must submit to the director a completed VA Form 10–3567, "Staffing Profile", set forth at 38 CFR 58.10. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; and representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or program management does not meet the standards of this part, the director will notify the State home program manager in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N1–22), the Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit an appeal to the Under Secretary for Health in writing within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

Subpart C—Per Diem Payments

§ 52.40 Monthly payment.

(a)(1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a State home for adult day health care, not to exceed $34.64 per diem.

(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means

(i) Six hours or more in one calendar day; or

(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10–5588, "State Home Report and Statement of Federal Aid Claimed." This form is set forth in full at 38 CFR 58.11.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10–10EZ, "Application for Medical Benefits", and 10–10SH, "State Home Program Application for Care—Medical Certification", at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are set forth in full at 38 CFR 58.12 and 58.13, respectively. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.

(b) For determining "the one-half of the total cost" under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circulars are available at the addresses in 5 CFR 1310.3).

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran meets the definition of a veteran in 38 U.S.C. 101, is not barred from receiving this VA care under 38 U.S.C. 5303–5303A, needs adult day health care, and is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for adult day health care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans of the Mexican Border period or of World War I;

(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA (U.S. Department of Veterans Affairs) hospital, nursing home, or outpatient care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

Subpart D—Standards

§ 52.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and program management must meet for the State to receive per diem for adult day health care provided at that facility.

§ 52.61 General requirements for adult day health care program.

Adult day health care must be a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of geriatric patients.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.70 Participant rights.

The participant has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The program management must protect and promote the rights of each participant, including each of the following rights:

(a) *Exercise of rights.* (1) The participant has the right to exercise his or her rights as a participant of the program and as a citizen or resident of the United States.

(2) The participant has the right to be free of interference, coercion, discrimination, and reprisal from the program management in exercising his or her rights.

(3) The participant has the right to freedom from chemical or physical restraint.

(4) In the case of a participant determined incompetent under the laws of a State by a court of jurisdiction, the rights of the participant are exercised by the person appointed under State law to act on the participant's behalf.

(b) *Notice of rights and services.* (1) The program management must inform the participant both orally and in writing in a language that the participant understands of his or her rights and all rules and regulations governing participant conduct and responsibilities during enrollment in the program. Such notification must be made prior to or upon enrollment and periodically during the participant's enrollment.

(2) Participants or their legal representatives have the right—

(i) Upon an oral or written request, to access all records pertaining to them including current participant records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of their records for review, to purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and with two working days advance notice to the facility management.

(3) Participants have the right to be fully informed in language that they can understand of their total health status.

(4) Participants have the right to refuse treatment, to refuse to participate in patient activities, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (a)(7) of this section.

(5) The program management must inform each participant before, or at the time of enrollment, and periodically during the participant's stay, of services available in the facility and of charges for those services to be billed to the participant.

(6) The program management must furnish a written description of legal rights which includes a statement that the participant may file a complaint with the State (agency) concerning participant abuse and neglect.

(7) The program management must have written policies and procedures regarding advance directives (e.g., living wills). These requirements include provisions to inform and provide written information to all participants concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law.

(8) Notification of changes: (i) Program management must immediately inform the participant; consult with the primary physician; and notify the participant's legal representative or an interested family member when there is—

(A) An accident involving the participant which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the participant's physical, mental, or psychosocial status (e.g., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the participant from the program.

(ii) The program management must also promptly notify the participant and the participant's legal representative or interested family member when there is a change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The program management must record and periodically update the address and phone number of the participant's legal representative, or interested family member, and the primary physician.

(c) *Free choice.* (1) The participant has the right to—

(i) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the participant's well-being; and

(ii) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(2) If the participant is determined incompetent or otherwise determined to be incapacitated under the laws of the State, the participant's legal representative or interested family member(s) has the right to participate in planning care and treatment or changes in care and treatment.

(d) *Privacy and confidentiality.* Participants have the right to privacy and confidentiality of their personal and clinical records.

(1) Participants have a right to privacy in their medical treatment and personal care.

(2) Except as provided in paragraph (d)(3) of this section, participants may approve or refuse the release of personal

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and clinical records to any individual outside the facility.

(3) The participant's right to refuse release of personal and clinical records does not apply when—

(i) The participant is transferred to another health care institution; or

(ii) The release is required by law.

(e) *Grievances.* A participant has the right to—

(1) Voice grievances without discrimination or reprisal. Participants may voice grievances with respect to treatment received and not received; and

(2) Prompt efforts by facility management to resolve grievances the participant may have, including those with respect to the behavior of other participants.

(f) *Examination of survey results.* A participant has the right to—

(1) Examine the results of the most recent VA survey with respect to the program. The program management must make the results available for examination in a place readily accessible to participants, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(g) *Work.* The participant has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work therapy in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for (work therapy) paid services is at or above prevailing rates; and

(iv) The participant agrees to the work therapy arrangement described in the plan of care.

(h) *Access and visitation rights.* (1) The program management must provide immediate access to any participant by the following:

(i) Any representative of the Under Secretary for Health;

(ii) Any representative of the State;

(iii) The State long-term care ombudsman;

(iv) Immediate family or other relatives of the participant subject to the participant's right to deny or withdraw consent at any time; and

(v) Others who are visiting subject to reasonable restrictions and the participant's right to deny or withdraw consent at any time.

(2) The program management must provide reasonable access to any participant by any entity or individual that provides health, social, legal, or other services to the participant, subject to the participant's right to deny or withdraw consent at any time.

(3) The program management must allow representatives of the State Ombudsman Program to examine a participant's clinical records with the permission of the participant or the participant's legal representative, subject to State law.

(i) *Telephone.* The participant has the right to reasonable access to use a telephone where calls can be made without being overheard.

(j) *Personal property.* The participant has the right to have at least one change of personal clothing.

(k) *Self-administration of drugs.* An individual participant may self-administer drugs if the interdisciplinary team has determined that this practice is safe for the individual and is a part of the care plan.

(Authority: 38 U.S.C. 101, 501, 1741–1743) (The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.71 Participant and family caregiver responsibilities.

The program management has a written statement of participant and family caregiver responsibilities that are posted in the facility and provided to the participant and caregiver at the time of the intake screening. The Statement of responsibilities must include the following:

(a) Treat personnel with respect and courtesy;

(b) Communicate with staff to develop a relationship of trust;

(c) Make appropriate choices and seek appropriate care;

(d) Ask questions and confirm understanding of instructions;

(e) Share opinions, concerns, and complaints with the program director;

(f) Communicate any changes in the participant's condition;

(g) Communicate to the program director about medications and remedies used by the participant;

(h) Let the program director know if the participant decides not to follow any instructions or treatment; and

(i) Communicate with the adult day health care staff if the participant is unable to attend the adult day health care program.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.80 Enrollment, transfer and discharge rights.

(a) Participants in the adult day health care program must meet the provisions of this part that apply to participants and—

(1) Must meet at least two of the following indicators:

(i) Dependence in two or more activities of daily living (ADLs).

(ii) Dependence in three or more instrumental activities of daily living (IADLs).

(iii) Advanced age, i.e., 75 years old or over.

(iv) High use of medical services, i.e., three or more hospitalizations in past 12 months; or 12 or more hospitalizations, outpatient clinic visits; or emergency evaluation unit visits, in the past 12 months.

(v) Diagnosis of clinical depression.

(vi) Recent discharge from nursing home or hospital.

(vii) Significant cognitive impairment, particularly when characterized by multiple behavior problems;

(2) Must have a supportive living arrangement sufficient to meet their health care needs when not participating in the adult day health care program; and

(3) Must be able to benefit from the adult day health care program.

(b) *Transfer and discharge.* (1) *Definition.* Transfer and discharge includes movement of a participant to a program outside of the adult day health care program whether or not that program or facility is in the same physical plant.

(2) *Transfer and discharge requirements.* All participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan. The possible reasons for discharge must be discussed with the participant and family members at the time of intake screening. Program management must permit each participant to remain in the program, and not transfer or discharge the participant from the program unless—

(i) The transfer or discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;

(ii) The transfer or discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care setting;

(iii) The safety of individuals in the program is endangered;

(iv) The health of individuals in the program would otherwise be endangered;

(v) The participant has failed, after reasonable and appropriate notice, to pay for participation in the adult day health care program; or

(vi) The adult day health care program ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a participant under any of the circumstances specified in paragraphs (b)(2)(i) through (vi) of this section, the primary physician must document the reason for such action in the participant's clinical record.

(4) *Notice before transfer.* Before a facility transfers or discharges a participant, the program management must—

(i) Notify the participant and a family member or legal representative of the participant of the transfer or discharge and the reasons for the move in writing and in a language and manner they can understand;

(ii) Record the reasons in the participant's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) The notice of transfer or discharge required under paragraph (b)(4) of this section must be made by program management at least 30 days before the participant is transferred or discharged, except when specified in paragraph (b)(5)(ii) of this section.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the program would be endangered;

(B) The health of individuals in the program would be otherwise endangered;

(C) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program;

(D) The resident's needs cannot be met in the adult day health care program.

(6) *Contents of the notice.* The written notice specified in paragraph (b)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the participant is transferred or discharged, if any;

(iv) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(v) The name, address and telephone number of the State long-term care ombudsman.

(7) *Orientation for transfer or discharge.* The program management must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer or discharge from the program.

(c) *Equal access to quality care.* The program management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Enrollment policy.* The program management must not require a third party guarantee of payment to the program as a condition of enrollment or expedited enrollment, or continued enrollment in the program. However, program management may require a participant or an individual who has legal access to a participant's income or resources to pay for program care from the participant's income or resources, when available.

(e) *Hours of operation.* Each adult day health care program must provide at least 8 hours of operation five days a week. The hours of operation must be flexible and responsive to caregiver needs.

(f) *Caregiver support.* The adult day health care program must develop a Caregiver Program which offers mutual support, information and education.

(Authority: 38 U.S.C. 101, 501, 1741–1743) (The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.90 Participant behavior and program practices.

(a) *Restraints.* (1) The participant has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention and documented in the participant's clinical record.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.

(2) The program management uses a system to achieve a restraint-free environment.

(3) The program management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.

(iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration, clothing, medical care, and good hygiene. It also includes placing the individual in unsafe or unsupervised conditions.

(v) Involuntary seclusion is a participant's separation from other participants against his or her will or the will of his or her legal representative.

(2) [Reserved]

(c) *Staff treatment of participants.* The program management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of participants and misappropriation of participant property.

(1) The program management must—

(i) Not employ individuals who—

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a program assistant or other program staff to the State oversight agency director and licensing authorities.

(2) The program management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of participant property are reported immediately to the State oversight agency director and to other officials in accordance with State law through established procedures.

(3) The program management must have evidence that all alleged violations are thoroughly investigated, and must prevent potential abuse while the investigation is in progress.

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(4) The results of all investigations must be reported to the State oversight agency director or the designated representative and to other officials in accordance with State law within five working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.100 Quality of life.

Program management must provide an environment and provide or coordinate care that supports the quality of life of each participant by maximizing the individual's potential strengths and skills.

(a) *Dignity.* The program management must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The participant has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the program; and

(3) Make choices about aspects of his or her life in the program that are significant to the participant.

(c) *Participant and family concerns.* The program management must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend participant or family meetings at the group's invitation.

(3) The program management must respond to written requests that result from group meetings.

(4) The program management must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.

(d) *Participation in other activities.* A participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) *Therapeutic participant activities.* (1) The program management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of the adult day health care program is to build relationships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity the adult day health care program must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participant feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) *Social services.* (1) The facility management must provide medically-related social services to participants and their families.

(2) An adult day health care program must employ or contract for a qualified social worker to provide social services.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient social worker and support staff to meet participant and family social services needs. The adult day health care social services must:

(i) Provide counseling to participants and families/caregivers;

(ii) Facilitate the participant's adaptation to the adult day health care program and active involvement in the plan of care, if appropriate;

(iii) Arrange for services not provided by the adult day health care program and work with these resources to coordinate services;

(iv) Serve as participant advocate by asserting and safeguarding the human and civil rights of the participants;

(v) Assess signs of mental illness and/or dementia and make appropriate referrals;

(vi) Provide information and referral for persons not appropriate for adult day health care program;

(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;

(viii) Provide individual or group counseling and support to caregivers and participants;

(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;

(x) Assist program staff in adapting to changes in participants' behavior; and

(xi) Provide or arrange for individual, group, or family psychotherapy for participants' with significant psychosocial needs.

(5) Space for social services must be adequate to ensure privacy for interviews.

(g) *Environment.* The program management must provide—

(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Private storage space for each participant sufficient for a change of clothes;

(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;

(5) A clean bed available for acute illness, when indicated;

(6) A shower for resident's need, when indicated;

(7) Adequate and comfortable lighting levels in all areas;

(8) Comfortable and safe temperature levels; and

(9) Comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.110 Participant assessment.

The program management must conduct initially, semi-annually and as required by a change in the participant's condition a comprehensive, accurate, standardized, reproducible assessment of each participant's functional capacity.

(a) *Intake screening.* An intake screening must be completed to determine the appropriateness of the adult day health care program for each participant.

(b) *Enrollment orders.* The program management must have physician orders for the participant's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the participant's condition, not to exceed 72 hours after enrollment, except when an examination was performed within five days before enrollment and the findings were provided and placed in the clinical record on enrollment.

(c) *Comprehensive assessments.* (1) The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) the Minimum Data Set for Home Care (MSD–HC) Instrument Version 2.0, August 2, 2000.

(2) Frequency. Participant assessments must be completed—

(i) No later than 14 calendar days after the date of enrollment; and

(ii) Promptly after a significant change in the participant's physical, mental, or social condition.

(3) Review of assessments. Program management must review each participant no less than once every six months and as appropriate and revise the participant's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the participant's individualized comprehensive plan of care, under paragraph (e) of this section.

(d) *Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(e) *Comprehensive care plans.* (1) The program management must develop an individualized comprehensive care plan for each participant that includes measurable objectives and timetables to meet a participant's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be provided by the program and by other sources to attain or maintain the participant's highest physical, mental, and psychosocial well-being as required under § 52.120;

(ii) Any services that would otherwise be required under § 52.120 but are not provided due to the participant's exercise of rights under § 52.70, including the right to refuse treatment under § 52.70(b)(4);

(iii) Type and scope of interventions to be provided in order to reach desired, realistic outcomes;

(iv) Roles of participant and family/caregiver; and

(v) Discharge or transition plan, including specific criteria for discharge or transfer.

(2) A comprehensive care plan must be—

(i) Developed within 21 calendar days from the date of the adult day care enrollment and after completion of the comprehensive assessment;

(ii) Assigned to one team member for the accountability of coordinating the completion of the interdisciplinary plan;

(iii) Prepared by an interdisciplinary team that includes the primary physician, a registered nurse with responsibility for the participant, social worker, recreational therapist and other appropriate staff in disciplines as determined by the participant's needs, the participation of the participant, and the participant's family or the participant's legal representative; and

(iv) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each participant's written plan of care.

(f) *Discharge summary.* Prior to discharging a participant, the program management must prepare a discharge summary that includes—

(1) A recapitulation of the participant's care;

(2) A summary of the participant's status at the time of the discharge to include items in paragraph (c)(2) of this section; and

(3) A discharge/transition plan related to changes in service needs and changes in functional status that prompted another level of care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.120 Quality of care.

Each participant must receive, and the program management must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of sentinel events.* (1) Definition. A *sentinel event* is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any participant death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide or attempted suicide of a participant, including suicides following elopement (unauthorized departure) from the program; or

(iii) Any elopement of a participant from the program resulting in a death or a major permanent loss of function; or

(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or

(v) Assault, homicide or other crime resulting in a participant's death or major permanent loss of function; or

(vi) A participant's fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall; or

(vii) A serious injury requiring hospitalization.

(3) The program management must report sentinel events to the director of the VA medical center of jurisdiction within 24 hours of identification. The director of the VA medical center of jurisdiction must report sentinel events

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to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), within 24 hours of identification and/or notification by the State home.

(4) The program management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event in an adult day health care program is to prevent future injuries to residents, visitors, and personnel.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the program management must ensure that—

(1) A participant's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the participant's ability to—

(i) Bathe, dress, and groom;
(ii) Transfer and ambulate;
(iii) Toilet; and
(iv) Eat.

(2) A participant is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section.

(3) A participant who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Vision and hearing.* To ensure that participants receive proper treatment and assistive devices to maintain vision and hearing abilities, the program management must, if necessary, assist the participant and family—

(1) In making appointments; and

(2) Arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Pressure ulcers.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without pressure ulcers does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A participant having pressure ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new ulcers from developing.

(e) *Urinary and fecal incontinence.* Based on the participant's comprehensive assessment, the program management must ensure that—

(1) A participant who enters the program without an indwelling catheter is not catheterized unless the participant's clinical condition demonstrates that catheterization was necessary;

(2) A participant who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and

(3) A participant who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) *Range of motion.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without a limited range of motion does not experience reduction in range of motion unless the participant's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A participant with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) *Mental and psychosocial functioning.* Based on the comprehensive assessment of a participant, the program management must ensure that a participant who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) *Accidents.* The program management must ensure that—

(1) The participant environment remains as free of accident hazards as is possible; and

(2) Each participant receives adequate supervision and assistance devices to prevent accidents.

(i) *Nutrition.* Based on a participant's comprehensive assessment, the program management must ensure, by working with the family, that a participant—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the participant's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(j) *Hydration.* The program management must provide each participant with sufficient fluid intake during the day to maintain proper hydration and health.

(k) *Unnecessary drugs.* (1) *General.* Each participant's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or
(ii) For excessive duration; or
(iii) Without adequate monitoring; or
(iv) Without adequate indications for its use; or
(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or
(vi) Any combinations of the reasons in paragraphs (k)(1)(i) through (v) of this section.

(2) *Antipsychotic drugs.* Based on a comprehensive assessment of a participant, the program management must ensure that—

(i) Participants who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed by the primary physician and documented in the clinical record; and

(ii) Participants who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(l) *Medication errors.* The program management must ensure that—

(1) Medication errors are identified and reviewed on a timely basis; and

(2) Strategies for preventing medication errors and adverse reactions are implemented.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.130 Nursing services.

The program management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by participant assessment and individualized comprehensive plans of care, of all participants in the program.

(a) There must be at least one registered nurse on duty each day of operation of the adult day health care program. This nurse must be currently licensed by the State and must have, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing and program assistants. VA recommends that this nurse be a geriatric nurse practitioner or a clinical nurse specialist.

(b) The number and level of nursing staff is determined by the authorized capacity of participants and the nursing care needs of the participants.

(c) Nurse staffing must be adequate for meeting the standards of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.140 Dietary services.

The program management must provide each participant with a nourishing, palatable, well-balanced meal that proportionally meets the daily nutritional and special dietary needs of each participant.

(a) *Food and nutritional services.* The program management provides and/or contracts with a food service entity and provides and/or contracts sufficient support personnel competent to carry out the functions of the food service.

(1) The program management must employ a qualified dietitian either part-time or on a contract consultant basis to provide nutritional guidance.

(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.

(3) The dietitian must—

(i) Conduct participant nutritional assessments and recommend nutritional intervention as appropriate.

(ii) Consult and provide nutrition education to participants, family/caregivers, and program staff as needed.

(iii) Consult and provide education and training to the food service staff.

(iv) Monitor and evaluate participants receiving enteral tube feedings and parenteral line solutions, and recommend changes as appropriate.

(b) *Menus and nutritional adequacy.* (1) The participant's total dietary intake is of concern but is not the adult day health care program's responsibility.

(2) The program is responsible for the meals served in the facility.

(c) *Food.* Each participant receives and the program provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to participants who refuse food served.

(d) *Therapeutic diets.* (1) Therapeutic diets must be prescribed by the primary care physician.

(2) Special, modified, or therapeutic diets must be provided as necessary for participants with medical conditions or functional impairments.

(3) An adult day health care program must not admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.

(e) *Frequency of meals.* (1) At regular times comparable to normal mealtimes in the community, each participant may receive and program management must provide at least two meals daily for those veterans staying more than four hours and at least one meal for those staying less than four hours.

(2) The program management must offer snacks and fluids as appropriate to meet the participants' nutritional and fluid needs.

(f) *Assistive devices.* The program management must provide special eating equipment and utensils for participants who need them.

(g) *Sanitary conditions.* The program must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.150 Physician services.

As a condition of enrollment in adult day health care program, a participant must obtain a written physician order for enrollment. Each participant must remain under the care of a physician.

(a) *Physician supervision.* The program management must ensure that—

(1) The medical care of each participant is supervised by a primary care physician;

(2) Each participant's medical record must contain the name of the participant's primary physician; and

(3) Another physician is available to supervise the medical care of participants when their primary physician is unavailable.

(b) *Frequency of physician reviews.* (1) The participant must be seen by the primary physician at least annually and as indicated by a change of condition.

(2) The program management must have a policy to help ensure that adequate medical services are provided to the participant.

(3) At the option of the primary physician, required reviews in the program after the initial review may alternate between personal physician reviews and reviews by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(c) *Availability of acute care.* The program management must provide or arrange for the provision of acute care when it is indicated.

(d) *Availability of physicians for emergency care.* In case of an emergency, the program management must provide or arrange for the provision of physician services when the program has participants under its care.

(e) *Physician delegation of tasks.* (1) A primary physician may delegate tasks to:

(i) A certified physician assistant or a certified nurse practitioner, or

(ii) A clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

(2) The primary physician may not delegate a task when the provisions of this part specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.160 Specialized rehabilitative services.

(a) *Provision of services.* If specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the participant's comprehensive plan of care, program management must—

(1) Provide the required services; or

(2) Obtain the required services and equipment from an outside resource, in accordance with § 52.210(h), from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.170 Dental services.

(a) Program management must, if necessary, assist the participant and family/caregiver—

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(1) In making appointments; and
(2) By arranging for transportation to and from the dental services.
(b) Program management must promptly assist and refer participants with lost or damaged dentures to a dentist.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.180 Administration of drugs.

The program management must assist with the management of medication and have a system for disseminating drug information to participants and program staff.
(a) *Procedures.* (1) The program management must provide reminders or prompts to participants to initiate and follow though with self-administration of medications.
(2) The program management must establish a system of records to document the administration of drugs by participants and/or staff.
(3) The program management must ensure that drugs and biologicals used by participants are labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration dates when applicable.
(4) The program management must store all drugs, biologicals, and controlled schedule II drugs listed in 21 CFR 1308.12 in locked compartments under proper temperature controls, permit only authorized personnel to have access, and otherwise comply with all applicable State and Federal laws.
(b) *Service consultation.* The program management must employ or contract for the services of a pharmacist licensed in the State in which the program is located who provides consultation, as needed, on all the provision of drugs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.190 Infection control.

The program management must establish and maintain an infection control program designed to prevent the development and transmission of disease and infection.
(a) *Infection control program.* The program management must—
(1) Investigate, control, and prevent infections in the program participants and staff; and
(2) Maintain a record of incidents and corrective actions related to infections.
(b) *Preventing spread of infection.* (1) The program management must prevent participants or staff with a communicable disease or infected skin lesions from attending the adult day health care program if direct contact will transmit the disease.
(2) The program management must require staff to wash their hands after each direct participant contact for which hand washing is indicated by accepted professional practice.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.200 Physical environment.

The physical environment must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.
(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code, 2000 edition. Incorporation by reference this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The document incorporated by reference is available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)
(b) *Space and equipment.* (1) Program management must—
(i) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide participants with needed services as required by these standards and as identified in each participant's plan of care; and
(ii) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.
(2) Each adult day health care program, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.
(3) The indoor space for an adult day health care program must be at least 100 square feet per participant including office space for staff and must be 60 square feet per participant excluding office space for staff.
(4) Each program will need to design and partition its space to meet its own needs, but a minimal number of functional areas must be available. These include:
(i) A dividable multipurpose room or area for group activities, including dining, with adequate table-setting space.
(ii) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.
(iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.
(iv) An examination and/or medication room.
(v) A quiet room (with at least one bed), which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation, must include a bed. It should be separate from activity areas, near a restroom, and supervised.
(vi) Bathing facilities adequate to facilitate bathing of participants with functional impairments.
(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, i.e., preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.
(viii) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.
(ix) An individual room for counseling and interviewing participants and family members.
(x) A reception area.
(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.
(c) *Furnishings* must be available for all participants. This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.
(d) *Participant call system.* The coordinator's station must be equipped to receive participant calls through a communication system from—
(1) Clinic rooms; and
(2) Toilet and bathing facilities.
(e) *Other environmental conditions.* The program management must provide a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The program management must—
(1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;
(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
(3) Equip corridors, when available, with firmly-secured handrails on each side; and
(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.210 Administration.

An adult day health care program must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each participant.
(a) *Governing body.* (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the program; and
(2) The governing body or State official with oversight for the program appoints the adult day health care program administrator who is:
(i) A qualified heath care professional experienced in clinical program management and, if required by the State, certified as a Certified Administrator in Adult Day Health Care; and
(ii) Responsible for the operation and management of the program including:
(A) Documentation of current credentials for each licensed independent practitioner employed by the program;
(B) Review of the practitioner's record of experience;
(C) Assessment of whether practitioners with clinical privileges act within the scope of privileges granted; and
(iii) Awareness of local trends in community adult day health care and other services, and participation in area adult day health care organizations.
(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:
(1) The State agency and individual responsible for oversight of a State home facility;
(2) The State adult day health care program administrator; or
(3) The State employee responsible for oversight of the State home adult day health care program if a contractor operates the State program.
(c) *Required information.* The program management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:
(1) The copy of the legal and administrative action establishing the State-operated facility (e.g., State laws);
(2) Site plan of facility and surroundings;
(3) Legal title, lease, or other document establishing the right to occupy the facility;
(4) Organizational charts and the operational plan of the adult day health care program;
(5) The number of the staff by category indicating full-time, part-time and minority designation, annually;
(6) The number of adult day health care participants who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities, annually;
(7) Annual State Fire Marshall's report;
(8) Annual certification from the responsible State home showing compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (VA Form 10–0143A set forth at 38 CFR 58.14);
(9) Annual certification for Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (VA Form 10–0143 set forth at 38 CFR 58.15);
(10) Annual certification regarding lobbying in compliance with 31 U.S.C. 1352 (VA Form 10–0144 set forth at 38 CFR 58.16);
(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) as effectuated in 38 CFR part 18 (VA Form 10–0144A located at 38 CFR 58.17);
(d) *Percentage of veterans.* At least 75 percent of the program participants must be eligible veterans except that the veteran percentage need only be more than 50 percent if the facility was acquired, constructed, or renovated solely with State funds. All non-veteran participants must be veteran-related family members or gold star parents of veterans.
(e) *Management contract facility.* If a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility. The State employee may also monitor other levels of care at a colocated facility, but must monitor the adult day health care facility and any colocated facility on a full-time onsite basis.
(f) *Licensure.* The facility and program management must comply with applicable State and local licensure laws.
(g) *Staff qualifications.* (1) The program management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. Professional disciplines involved in participant care must include registered nurses, program assistants, physicians, social workers, rehabilitation therapists, dietitians, and therapeutic activity therapists and pharmacists. Other disciplines may be considered depending upon the participant and/or program needs.
(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.
(3) The staff-participant ratio must be sufficient in number and skills (at least one staff to 4 to 6 participants) to ensure compliance with the standards of this part. There must be at least two responsible persons (paid staff members) at the adult day health care center at all times when there are two or more participants in attendance.
(4) Persons counted in the staff to participant ratio must spend at least 70 percent of their time in direct service with participants.
(5) All professional team members will serve in the role of case manager for designated participants.
(6) All personnel, paid and volunteer, will be provided appropriate training to maintain the knowledge and skills required for the participant needs.
(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the program management must have that service furnished to participants by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.
(2) Agreements pertaining to services furnished by outside resources must specify in writing that the program management assumes responsibility for—
(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a program; and
(ii) The timeliness of the services.

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(i) *Medical director.* (1) The program management must provide a primary care physician to serve as medical director and a consultant to the interdisciplinary program team.

(2) The medical director is responsible for:

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the program;

(iii) Ensuring continuous physician coverage to handle medical emergencies;

(iv) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the adult day health care program administrator; and

(v) Monitoring employees' health status and advising the program administrator on employee health policies.

(3) The medical director may also provide hands-on assessment and/or treatment if authorized by the participant's primary care provider. In programs where a medical director is available to act as a member of the team and authorizes care, information concerning the care provided must be shared with the primary care physician who continues to provide the ongoing medical care.

(4) The program management must have written procedures for handling medical emergencies. The procedures must include, at least:

(i) Procedures for notification of the family;

(ii) Procedures for transportation arrangements;

(iii) Provision for an escort, if necessary; and

(iv) Procedures for maintaining a portable basic emergency information file for each participant that includes:

(A) Hospital preference;

(B) Physician of record and telephone number;

(C) Emergency contact (family);

(D) Insurance information;

(E) Medications/allergies;

(F) Current diagnosis and history; and

(G) Photograph for participant identification.

(j) *Required training of program assistants.* (1) Program assistants must have a high school diploma, or the equivalent, and must have at least one year of experience in working with adults in a health care setting. Program assistants also must complete the National Adult Day Services Association training course or complete equivalent training.

(2) The program management must not use any individual working in the program as a program assistant whether permanent or not unless:

(i) That individual is competent to provide appropriate services; and

(ii) That individual has completed training or is certified by the National Adult Day Services Association as a certified Program Assistant in Adult Day Services.

(3) Verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must verify that the individual has successfully completed a training and competency evaluation program. Facilities must follow up to ensure that such an individual actually becomes certified, if available in the State.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes may include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The program management must complete a performance review of every nurse aide or program assistant at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides or program assistants, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in program assistants' performance reviews and address the special needs of participants as determined by the program staff; and

(iii) For program assistants or nurse aides providing services to individuals with cognitive impairments, address the care of the cognitively impaired.

(k) *Proficiency of program assistants.* The program management must ensure that program assistants or nurse aides are able to demonstrate competency in skills and techniques necessary to care for participants' needs, as identified through participant assessments, and described in the plan of care.

(l) *Laboratory and radiology results.* The program management must—

(1) Obtain laboratory or radiology results from the participant's primary physician to support the needs of its participants.

(2) Assist the participant and/or family/caregiver in making transportation arrangements to and from the source of laboratory or radiology services, if the participant needs assistance.

(3) File in the participant's clinical record laboratory or radiology reports that are dated and contain the name and address of the testing laboratory or radiology service.

(m) *Participant records.* (1) The facility management must maintain clinical records on each participant in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge if there is no requirement in State law.

(3) The program management must safeguard clinical record information against loss, destruction, or unauthorized use.

(4) The program management must keep confidential all information contained in the participant's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) A third-party payment contract;

(iv) The participant; or

(v) The participant's legal representative.

(5) The clinical record must contain—

(i) Sufficient information to identify the participant;

(ii) A record of the participant's assessments;

(iii) The plan of care and services provided;

(iv) The results of any pre-enrollment screening conducted by the State; and

(v) Progress notes.

(n) *Quality assessment and assurance.* (1) Program management must maintain a quality improvement program and a quality improvement committee consisting of—

(i) A registered nurse;

(ii) A medical director designated by the program; and

(iii) At least three other members of the program's staff.

(2) The quality improvement committee—

(i) Must implement a quality improvement plan for the evaluation of its operation and services and review and revise annually; and

(ii) Must meet at least quarterly to identify quality of care issues; and

(iii) Must develop and implement appropriate plans of action to correct identified quality deficiencies; and

(iv) Must ensure that identified quality deficiencies are corrected within an established time period.

(3) The VA Under Secretary for Health may not require disclosure of the records of such committee unless such disclosure is related to the compliance with the requirements of this section.

(o) *Disaster and emergency preparedness.* (1) The program management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, bomb threats, and missing participants.

(2) The program management must train all employees in emergency procedures when they begin to work in the program, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(p) *Transfer procedure.* (1) The program management must have in effect a written transfer procedure that reasonably assures that—

(i) Participants will be transferred from the adult day health care program to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by a physician; and

(ii) Medical and other information needed for care and treatment of participants will be exchanged between the institutions.

(2) The transfer must be with a hospital sufficiently close to the adult day health care program to make transfer feasible.

(q) *Compliance with Federal, State, and local laws and professional standards.* The program management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and the Cash Management Improvement Acts of 1990 and 1992 (31 U.S.C. 3335, 3718, 3720A, 6501, 6503).

(r) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, the program must meet the applicable provisions of other Federal laws and regulations, including but not limited to, those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993 (29 U.S.C. 794); Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707); restrictions regarding lobbying (31 U.S.C. 1352); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(s) *Intermingling.* A facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care.

(t) *VA management of State veterans homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing adult day health care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.220 Transportation.

Transportation of participants to and from the adult day health care facility must be a component of the overall program.

(a)(1) Except as provided in paragraph (a)(2) of this section, the adult day health care program management must provide or contract for transportation to enable participants, including persons with disabilities, to attend the program and to participate in facility-sponsored outings.

(2) The veteran or the family of a veteran may decline transportation offered by the adult day health care program management and make their own arrangements for the transportation.

(b) The adult day health care program management must have a transportation policy that includes routine and emergency procedures, with a copy of the relevant procedures located in all program vehicles.

(c) All vehicles transporting participants to and from adult day health care must be equipped with a device for two-way communication.

(d) All facility-provided and contracted transportation systems must meet local, State and federal regulations.

(e) The time to transport participant to or from the facility must not be more than 60 minutes except under unusual conditions, e.g., bad weather.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified

BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
CALIFORNIA		
FEMA Docket No. (B–7420)		
Alvarado Creek:		
At Pennsylvania Lane ext., approximately 1,000 feet downstream of 70th street	*379	City of La Mesa, City of San Diego
Approximately 2000 feet downstream of Lake Murray Boulevard	*407	
Approximately 900 feet downstream of Comanche Boulevard	*425	
Approximately 300 feet upstream of Fletcher Parkway	*454	
ADDRESSES: City of La Mesa: Maps are available for inspection at the Department of Public Works Community Development, City Hall, 8130 Allison Avenue, La Mesa, California. City of San Diego: Maps are available for inspection at the City Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, California.		
NEW MEXICO		
FEMA Docket No. (B–7421)		
Animas River:		
Approximately 1,300 feet downstream of Miller Avenue	+5,276	City of Farmington, San Juan County.
Just upstream of Broadway Street	+5,304	
Approximately 4,300 feet upstream of Browning Parkway	+5,361	
San Juan River:		
Approximately 8,600 feet downstream of Route 371	+5,223	
Approximately 2,200 feet downstream of Route 371	+5,242	
Wyper Arroyo:		
Approximately 100 feet upstream of U.S. Highway 550	+5,499	
Just upstream of confluence of Wyper Arroyo Tributary	+5,559	
Approximately 3,800 feet upstream of confluence of Wyper Arroyo Tributary	+5,668	
Wyper Arroyo Tributary:		
Just upstream of confluence of Wyper Arroyo	+5,559	
Approximately 3,450 feet upstream of confluence with Wyper Arroyo	+5,662	
Carl Arroyo:		
Approximately 1,700 feet downstream of U.S. Route 550	+5,451	
Just upstream of Winnifred Drive	+5,535	
Approximately 3,900 feet upstream of Winnifred Drive	+5,635	
Hood Arroyo:		
Approximately 1,800 feet downstream of Hubbard Street	+5,403	
Just upstream of Pinon Hills Blvd	+5,530	
Approximately 850 feet upstream of Hogan Avenue	+5,714	
Hood Arroyo Tributary:		
Just upstream of Hogan Avenue	+5,640	
Approximately 4,200 feet upstream of Hogan Avenue	+5,820	
Porter Arroyo:		
Approximately 1,300 feet downstream of Windsor Drive	+5,509	
Just upstream of confluence of Porter Arroyo Tributary C	+5,622	
Approximately 4,200 feet upstream of North College Road	+5,796	
Porter Arroyo Tributary C:		
At confluence with Porter Arroyo	+5,620	
Approximately 1,300 feet upstream of confluence with Porter Arroyo	+5,654	
Porter Arroyo Tributary B:		
At confluence with Porter Arroyo	+5,645	
Approximately 1,100 feet upstream of confluence with Porter Arroyo	+5,682	
Porter Arroyo Tributary A:		
At confluence with Porter Arroyo near North College Road	+5,670	
Approximately 2,100 feet upstream of confluence with Porter Arroyo	+5,752	
Butler Arroyo:		
Just upstream of 30th Street	+5,508	
Approximately 4,000 feet upstream of 30th Street	+5,606	
Dustin Arroyo:		
Approximately 400 feet downstream of 30th Street	+5,489	
Approximately 700 feet upstream of Cerrillos Drive	+5,667	
Farmers Mutual Ditch:		
Approximately 300 feet downstream of Westland Park Drive	+5,227	
Approximately 1,500 feet upstream of Westland Park Drive, near its divergence from San Juan River.	+5,236	
Westland Park Drive Runoff:		
Approximately 800 feet downstream of Westland Park Drive	+5,225	
Approximately 150 feet upstream of Westland Park Drive	+5,235	
ADDRESSES: City of Farmington: Maps are available for inspection at City Hall, 800 Municipal Drive, Farmington, New Mexico. San Juan County: Maps are available for inspection at the Office of Building Inspector, 100 South Oliver, Aztec, New Mexico.		
OREGON		
FEMA Docket No. (B–7421)		
Wagner Creek:		
Just upstream of Rapp Road	*1,654	Jackson County
Approximately 1,100 feet upstream of a Private Culvert in the Stream Valley just south of the junction of Ashland Mine Road and Wagner Creek Road.	*2,201	
At confluence with Bear Creek	*1,562	City of Talent
Just upstream of Rouge Valley Highway 99	*1,593	
Just downstream of Rapp Road	*1,652	
ADDRESSES: Jackson County: Maps are available for inspection at the Roads, Parks and Planning Services, 10 South Oakdale Avenue, Medford, Oregon. City of Talent: Maps are available for inspection at City Hall, 204 East Main Street, Talent Oregon.		
UTAH		
FEMA Docket No. (B–7420)		
Willow Creek (West):		
Just upstream of 11400 South Street	*4,362	City of Draper
Approximately 100 feet upstream of 12300 South Street	*4,409	
Approximately 1,250 feet upstream of 150 East Road	*4,441	
	*2,201	
Midas Creek:		
At confluence with Jordan River	*4,322	Salt Lake County. (Uninc. Areas), City of Riverton, City of South Jordan
Approximately 250 feet upstream of 3600 West Street	*4,603	
ADDRESSES:		

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
HAWAII	
Maui County, (FEMA Docket No. B–7421)	
Unnamed Stream at Kuau Point:	
Approximately 720 feet downstream of Hana Highway	*14
Approximately 750 feet upstream of Hana Highway	*29
Maps are available for inspection at the Department of Planning, 250 South High Street, Wailuku, Hawaii.	
WASHINGTON	
Skokomish Indian Tribe, (FEMA Docket No. B–7421)	
Skokomish River:	
Just downstream of State Route 106	*16
Approximately 3,000 feet upstream of U.S. Route 101	*31
Maps are available for inspection at the Natural Resources Office, North 541 Tribal Center Road, Shelton, Washington.	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Salt Lake County (Unincorporated. Areas): Maps are available for inspection at 2001 South State Street, Suite N3300, Salt Lake City, Utah.		
City of Draper: Maps are available for inspection at the Engineer Department, 12441 South 900 East, Draper, Utah.		
City of Riverton: Maps are available for inspection at City Hall, 949 East 12400 South Street, Riverton, Utah.		
City of South Jordan: Maps are available for inspection at 10996 South Redwood Road, South Jordan, Utah.		

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 19, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–321 Filed 1–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 6 and 7

[WT Docket No. 96–198; DA 01–2730]

Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the deadline by which providers of telecommunications services and manufacturers of telecommunications equipment and customer premises equipment must provide the Commission with the designation of an agent on whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission. Each provider and manufacturer must inform the Commission of its designation of an agent by January 31, 2002. The designation must include the agent's name or department designation, business address, telephone number, TTY number (if available), facsimile number, and Internet e-mail address.

DATES: The amendment to 47 CFR Part 6.18 and 7.18 published at 64 FR 63235 (November 19, 1999) will become effective January 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jenifer Simpson (202) 418–0008 (voice), (202) 418–0034 (TTY) or Dana Jackson (202) 418–2247 (voice), (202) 418–7898 (TTY), Disabilities Rights Office, Consumer Information Bureau.

SUPPLEMENTARY INFORMATION: This designation of agent must be filed with the Commission's Secretary, Magalie Salas, Office of the Secretary, 445 12th Street, SW, Room TW–A325, Washington, DC, 20554. An additional copy should be sent to the Disabilities Rights Office, Consumer Information Bureau, Room 5–A741, 445 12th Street, SW, Washington, DC, 20554, Attn: Dana Jackson. We intend to continue posting the required information on the FCC's web site within the Consumer Information Bureau (CIB) and administering the posting within CIB's Disabilities Rights Office. Contact information for manufacturers is posted at *http://www.fcc.gov/cib/dro/section255_manu.html;* contact information for service providers is posted at *http://www.fcc.gov/cib/dro/service_providers.html;* and contact information for affected colleges and universities is posted at *http://www.fcc.gov/cib/dro/section255_colleges.html.*

This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print and audio) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an email to fccinfo@fcc.gov.

On September 29, 1999, the Commission released a Report and Order and Further Notice of Inquiry (RO/FNOI) adopting a framework for implementing Section 255 of the Communications Act of 1934, as amended, which requires telecommunications equipment manufacturers and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. A summary of this RO/FNOI was published in the **Federal Register**. See 64 FR 63277; 64 FR 63235.

Among the new rules is a requirement that equipment manufacturers and service providers each designate an agent for service of informal and formal complaints received by the Commission. This rule entails information collection requirements, and in the RO/FNOI, the Commission stated that "some of the information collection requirements in this Report and Order are contingent on approval by OMB," including the designation of agent requirement. The information collection was approved by OMB on October 29, 2001. See OMB No. 3060–0833. This publication announces the effective date of the Commission's requirement that equipment manufacturers and service providers subject to the requirements of Section 255 of the Act designate an agent upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. The designation shall include, for both the manufacturer and the provider, a name or department designation, business address, telephone number, and if available, TTY number, facsimile number, and Internet e-mail address. More information on this subject can be found in the Commission's Public Notice, DA 01–2730, released December 19, 2001.

Federal Communications Commission.

Thomas D. Wyatt,

Associate Chief (Operations), Consumer Information Bureau.

[FR Doc. 01–32243 Filed 1–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–40; FCC 01–340]

Repeal of the Scrambling of Sexually Explicit Adult Video Service Programming Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has repealed a section of its multichannel video and cable television service rules dealing with the blocking of indecent sexually-oriented programming channels because the underlying statutory provision, 47 U.S.C. 561, was struck down as unconstitutional under the First Amendment.

DATES: Effective January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Cable Services Bureau, at 202–418–7111.

SUPPLEMENTARY INFORMATION:

1. By this Order, released November 21, 2001, we repeal § 76.227 of the Commission's rules because the underlying statutory provision, section 641 of the Communications Act of 1934, as amended (47 U.S.C. 561), was found to be unconstitutional by the United States Supreme Court. These actions finalize the staff recommendations considered by the Commission earlier this year in the 2000 Biennial Regulatory Review.

2. Section 641 requires that any multichannel video programming distributor, including any cable television operator, "providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming" either "fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel of programming does not receive it," or, alternatively, not provide that programming "during the hours of the day (as determined by the [Federal Communications] Commission) when a significant number of children are likely to view it." The provision addressed concerns regarding "signal bleed" of channels that are devoted to sexually explicit adult programming. Signal bleed may occur when a multichannel video program distributor partially scrambles or otherwise partially blocks the signal on sexually explicit channels in an effort to prevent clear reception for those subscribers that do not pay for such channels. When sexually explicit material is offered on an analog service tier, some images and sounds may be clearly identifiable if the scrambling technology is inadequate.

3. Section 640 of the Communications Act, a companion to section 641, also was enacted as part of the Telecommunications Act of 1996. Section 640 provides that, "upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it." One important difference between section 641 and section 640 is that the operator has a mandatory obligation to block programming to all households under section 641, rather than to individual households as provided in section 640. Further, section 640 applies only to cable operators while section 641 applies to all multichannel video programming distributors ("MVPDs"), including satellite carriers and open video system operators.

4. On March 5, 1996 (61 FR 9648, March 11, 1996), the Commission issued an Order to implement the new statutory language of section 641. At that time, the Commission adopted a rule incorporating section 641(a). The Commission also established an interim rule implementing section 641(b), providing that the programming described in subsection (a) may not be provided between the hours of 6 a.m. and 10 p.m. if not fully scrambled or fully blocked. The Commission did not address section 640 in that proceeding.

5. In 1996, Playboy Entertainment Group ("Playboy") brought suit against the government asserting that section 641 was unconstitutional under the First Amendment. A three judge district court panel agreed with Playboy, finding that section 641 was not the least restrictive means to advance the government's interest in protecting children from exposure to sexually-related material. Indeed, the district court concluded that section 640 provides a less restrictive alternative means to protect those who wish to block out unwanted programming. On that basis, the district court issued a permanent injunction barring enforcement of section 641.

6. On direct appeal by the government, the Supreme Court ruled that the scrambling, blocking, and time shifting requirements of section 641, implemented by the Commission, violate the First Amendment. The Court concluded that section 641 was not the least restrictive means to protect individuals from exposure to sexually explicit programming. The Court held that compliance with the scrambling limitation of section 641 silenced "protected speech for two-thirds of the day in every home in a cable service area, regardless of the presence or likely presence of children or of the wishes of the viewer." Like the district court below, the Court concluded that section 640 provides a less restrictive method for protecting children from exposure to explicit materials. The Court further found that the government failed to show that the alternative protection under section 640 would be so ineffective as to justify the more restrictive requirements of section 641.

7. Given the Court's decision regarding the unconstitutionality of the underlying statutory provision, we hereby repeal § 76.227 of our rules. We undertake these ministerial actions without the issuance of a Further Notice of Proposed Rulemaking because we believe that a further proceeding is unnecessary in light of the Supreme Court's decision in *Playboy* v. *FCC.*

8. We note that parents and others concerned about the availability of partially scrambled sexual content may rely on advances in technology to secure their households from undesirable programming. Specifically, we note that the phenomenon of signal bleed is present generally where the cable wire is directly connected to the television receiver. Signal bleed is circumvented when addressable analog set top boxes or digital set top boxes are connected to the set.

9. The Act provides several legal remedies, working in tandem with available technology, for those who object to certain content made available over a cable system. First, as section 640 requires, a cable operator must block programming, using any means, if such a request is made by a particular subscriber. Second, a cable subscriber may obtain a lock-box from the local cable operator if he or she wants to selectively block unwanted material. Finally, subscribers may purchase television sets equipped with V-Chips that enable individuals to block television programs, including sexually explicit content, assigned a particular rating by the video programmer.

10. Accordingly, IT IS ORDERED that § 76.227 of the Commission's rules IS REPEALED upon publication of this Order in the **Federal Register.**

11. IT IS FURTHER ORDERED that the Commission's rules ARE AMENDED as set forth in the rule changes.

12. These actions are taken pursuant to sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

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PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

§ 76.227 [Removed and Reserved]

2. Section 76.227 is removed and reserved.

[FR Doc. 02–332 Filed 1–4–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH80

Endangered and Threatened Wildlife and Plants; Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take final action to establish two additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) through a reduction in the level of take. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are establishing two manatee refuges in Brevard County, in which certain waterborne activities will be restricted. These two sites are located within the water bodies commonly known as the Barge Canal and Sykes Creek. Watercraft operating within these water bodies will be required to proceed at "slow speed" throughout the year.

DATES: These designations will become effective upon the posting of appropriate signage designating the boundaries of the manatee protection areas and restrictions on watercraft operating within those boundaries. Such posting will not occur sooner than February 6, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Cameron Shaw (see **ADDRESSES** section), telephone 904/232–2580; or visit our website at *http://northflorida.fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Florida manatee is Federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is also federally protected under the MMPA (16 U.S.C. 1361–1407). It resides in freshwater, brackish, and marine habitats of coastal and inland waterways in the southeastern United States. The majority of this population resides in the waters of the State of Florida throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm waters (above 20 degrees Celsius (68 degrees Fahrenheit)) to survive during periods of cold weather. During the winter months many manatees rely on the warm water from natural springs and industrial outfalls for warmth. During the summer months they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there is no indication that important threats to the species, including human-related mortality and harassment, have been effectively reduced or eliminated.

Human activities, particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a recent report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft which ply Florida waters. In 1999, 829,971 vessels were registered in the State of Florida. This is an increase in registered vessels of almost 20 percent since 1993 (Florida Fish and Wildlife Conservation Commission 2000). During this same period, the number of watercraft-related manatee mortalities has increased by 144 percent, from 35 to 82 deaths per year. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

The large increase in human use of waters inhabited by manatees has had direct and indirect impacts on this endangered species. Direct impacts include injuries and death from vessel impacts, deaths and injuries from water control structure operations, lethal and sub-lethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, decreases in water quality throughout some aquatic habitats, decreases in quantity of warm water at natural sites, marine debris, and general disturbance from human activities.

Over the past 10 years, more than 62 percent of watercraft-related manatee mortality has taken place in seven Florida counties (Duval, Volusia, and Brevard, on the east coast; and Collier, Lee, Charlotte, and Hillsborough on the west coast) (U.S. Fish and Wildlife Service 2001). Manatee mortality has continued to climb steadily. Average annual mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2), and this trend continued in 2000, when 273 dead manatees were recorded. Total mortalities over the past 4 years have averaged 45 percent higher than in the early 1990s. When the record high total of 1996 is added (the year in which the red tide die-off inflated total mortality to 416 animals), average annual mortality over the past 5 years has been nearly 60 percent greater than in the early 1990s (Marine Mammal Commission 2001).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (U.S. Fish and Wildlife Service 2001). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 979 manatees (from a total carcass count of 4,021) are confirmed victims of collisions with watercraft since 1976. This number may not accurately represent the actual number of watercraft-related mortalities since many of the mortalities listed as "undetermined causes" show evidence of collisions with vessels. Collisions with watercraft comprise approximately 24 percent of all manatee mortalities since 1976. The last 5 years have been record years for the number of watercraft-related mortalities, and watercraft-related deaths have become a larger proportion of total mortality. Since 1998, watercraft-related deaths have represented about 30 percent of all mortality, a 5 percent increase compared to the early 1990s. During the 1980s and 1990s the manatee population apparently grew; however, if population growth rate levels off and manatee mortality continues to increase, a decline in abundance is inevitable (Marine Mammal Commission 2001).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (U.S. Fish and Wildlife Service 2001). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1976 and 1999 (U.S. Fish and Wildlife Service 2000). While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 106 manatee deaths since 1976, an average of 4 deaths per year. As with watercraft-related mortalities, other human-related deaths also appear to be increasing, with 31 deaths, approximately 3 percent of the total mortalities, recorded between 1997 and 2000 attributed to these sources. This is an average of 7.75 deaths per year over the last 4 years attributable to other human-related activities.

Harassment of manatees is a concern, particularly when it impedes the use of warm water areas critical to manatee survival during periods of cold weather. In particular, an increasing number of swimmers and divers are visiting Florida's waters to view and swim with the manatees. The presence of large numbers of people and the resultant disturbance has been documented to cause manatees to leave warm water areas (Jay Gorzaleny, Mote Marine Laboratory, personal communication 2001). On occasion, divers and swimmers have been observed attempting to pet, chase, ride, and even sit on manatees. This type of harassment may cause the manatee to leave warmer water to find relief from the harassment in colder areas where there are fewer people. Such responses, if they are instigated by human harassment, are considered take under the ESA and MMPA.

In response to these problems and the watercraft-related impacts in particular, conservation agencies, such as the Service and the Florida Fish and Wildlife Conservation Commission (FWC), have increased their emphasis on enforcement and compliance with manatee speed zones by adding new officers, conducting enforcement task force initiatives, increasing overtime, and increasing the proportion of law enforcement time devoted to manatee conservation. We are also continuing to evaluate development proposals that would increase watercraft traffic in manatee habitats where speed zones, signage, and enforcement are insufficient. To further address the negative effects of human actions on manatees, we are establishing two additional manatee refuges in Florida.

The authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR part 17, subpart J. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR

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17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities.

Throughout the development of this rule, many commenters cited the increase in the overall size of the manatee population as evidence that the establishment of additional manatee protection areas is not needed. Recent data regarding the size of the manatee population are very encouraging, and indicate that local, State, and Federal efforts to recover the manatee are working. However, we remain concerned that waterborne activities are resulting in take of manatees, which is not allowed under the ESA and MMPA, and which may slow or even impede further recovery. Our obligation under the ESA and MMPA is to further manatee recovery, so that we may someday achieve our goal of removing the species from the List of Endangered and Threatened Wildlife and Plants. This includes using available tools, as practicable, to reduce the level of human-related manatee mortality. The establishment of manatee protection areas is one such tool. We are pursuing other complementary tools simultaneously, as described in the next two sections.

Synopsis of Manatee Lawsuit Settlement

In *Save the Manatee Club, et al. v. Ballard, et al*, Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA). Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of the settlement, we agreed to the following:

- Submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWC also voted to settle *Save the Manatee v. Egbert*, Case No. 90–00–400CIV17–WS (N.D.Fla) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. We also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. We published an advance notice of proposed rule-making in the **Federal Register** on September 1, 2000, and held a series of six public workshops in December 2000. We received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. We held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, we received approximately 3,500 comments. These comments are summarized and responded to in the "Summary of Comments and Recommendations" section of this rule.
- Revise the Manatee Recovery Plan. We were required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. We published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, we made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.
- Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, we were required to submit to the **Federal Register** an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the **Federal Register** on March 12, 2001, and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. We will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 U.S.C. 1371(a)(5). The process should result in—(1) if the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will identify and assess the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. We have determined that we will prepare an EIS in association with this action. Draft and final products are due on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, we must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the basis for denying the request. We must publish our negative finding by May 5, 2003. We will conduct public hearings on draft proposals as appropriate.
- By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how we will spend increased enforcement resources in FY 2001. This letter was sent on March 6, 2001.
- Revise, and make available for public review, our "interim guidance" for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. We were required to submit this document by March 6, 2001. The revised document appeared in the **Federal Register** on March 14, 2001 (66 FR 14924–32). We agreed to provide at least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the **Federal Register** on August 21, 2001 (66 FR 43885).
- Provide written progress reports on the status of tasks agreed upon in the settlement agreement every 6 months. The first report was due and was provided to the parties on July 5, 2001.
- Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever we send a letter to the Corps in response to the Corps' determination that a project "may affect" the manatee or "may affect but is not likely to adversely affect" the manatee, we are required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These letters have been provided accordingly.
- Provide copies of Biological Opinions (BO). Whenever we issue a final BO regarding the effect of a particular project on manatees or manatee critical habitat, we are required to concurrently make a copy of that opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These biological opinions have been provided accordingly.

Coordination With State Actions

A network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our current evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

The sites contained in the proposed rule were selected based on the criteria described below, prior to the disclosure of terms of the proposed settlement in the State case. That settlement contains a list of sites that the FWC will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in our proposed rule. The fact that the State's list of sites is more expansive than the list in our proposed rule does not indicate a determination on our part that sites on the State's list, and not proposed by us, do not warrant designation, but is rather a reflection of our focusing on sites for which we believe we can provide the most effective protection for manatees, given our staffing and funding limitations.

We have been coordinating closely with the FWC, since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, final agreement had not been reached on the terms of the proposed State settlement. Pursuant to the terms of our settlement agreement described previously we were required to submit our proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWC made a final decision regarding sites they intend to evaluate. As stated previously, the deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Alternatives to the proposed rule were rejected by the Plaintiffs, as were requests for further extensions; therefore, considerable overlap is possible between our proposal and potential State action.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. However, we also must meet our settlement obligations. Therefore, we will continue to participate in the State's evaluation. If the State adopts identical or comparable manatee protection measures to the ones we adopt, we will assess whether withdrawing Federal designations is appropriate. We will also continue to evaluate the other 14 proposed sites not currently included in this final rule, and will consider foregoing Federal designations if appropriate measures are adopted by the State or local governments. Additionally, we will continue to monitor other sites that may warrant additional protection. If we identify additional areas in need of protection, we will work with the State to establish necessary protection or may propose actions in the future, as appropriate.

Given that reducing watercraft-related manatee mortality is important to the recovery of the species, and given continuing watercraft-related mortality in Brevard County, we have decided to proceed with final designation of the Barge Canal and Sykes Creek sites. The remaining 14 sites in the proposed rule are somewhat less urgently in need of regulation than the Barge Canal and Sykes Creek sites. Therefore, we are deferring final rulemaking on these sites until December 1, 2002. At that time, if we determine that designation is warranted for the remaining 14 sites, and if the State has been unable to complete rulemaking on those sites, we intend to proceed with final rulemaking on those sites.

Site Selection Process and Criteria

In preparation for this action, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

As mentioned above, we published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas, and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39). An additional 36 comments were not specific to the topic or discussed other

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items. Fifteen commenters provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics. Of the remaining comments, 28 specifically opposed and 8 specifically supported the establishment of additional manatee protection areas.

We selected sites for inclusion in the proposed rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors: (1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available data including aerial survey data, manatee mortality data, and information from the Florida Marine Research Institute, Pathobiology Laboratory, and other information from State and Federal sources. These data were supplemented with information from manatee experts and the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing sites versus the benefits to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property would entail additional administrative burdens in terms of identifying and providing access to affected residents. We considered these administrative burdens in selecting sites. Finally, we evaluated the effectiveness of our actions against the likely effectiveness of actions by State and/or local governments. As stated previously, it was our goal to avoid sites that could be most effectively addressed by State or local government. However, the parallel suits against the State and Federal governments limited early coordination in the development of this proposal and the proposed State settlement. Therefore, duplication of effort may occur in the future. To resolve this, as appropriate we will consider withdrawing any actions where comparable State or local protection is established. We did, however, make every effort to make our designations consistent with the existing adjacent State or local designations.

Definitions

"Idle speed" means the minimum speed needed to maintain watercraft steerage.

"Planing" means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

"Slow speed" means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, and not creating an excessive wake.

"Slow speed (channel exempt)" designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

"Slow speed (channel included)" means that the slow-speed designation applies to the entire marked area, including within the designated channel.

"Wake" means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

We have amended the definition of "water vehicle" to include the terms watercraft and vessel. These terms are used interchangeably in the rule and in 50 CFR subpart J.

We have also added personal watercraft to this definition.

Areas Designated as Manatee Refuges

Barge Canal

We are establishing a manatee refuge, containing approximately 276.3 hectares (ha) (682.7 acres), for the purpose of regulating watercraft operation to slow speed (channel included) for the entire length of the Barge Canal and extending eastward to the Canaveral Locks, Brevard County. These regulations will be in effect all year.

The Barge Canal serves as a travel corridor between the Indian and Banana Rivers for manatees and mariners alike. Aerial survey data indicate significant use of the site by manatees. Currently there are four areas within the Barge Canal that are regulated by the State as 40-kilometers-per-hour (25-miles per hour) zones with a 7.6-meters (25-feet) slow-speed shoreline buffer, all year, while the remainder of the Barge Canal is a slow-speed all-year zone. High-speed vessel operation in a confined migration corridor has an enhanced likelihood of resulting in take of manatees. There have been 16 watercraft-related manatee mortalities in the Barge Canal and its vicinity (Florida Marine Research Institute 2000). Requiring vessels to operate at slow speed would minimize the potential for take of manatees.

The State recently approved new regulations for Brevard County that would also designate the Barge Canal as a slow-speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in the Barge Canal, we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

Sykes Creek

We are establishing a manatee refuge, containing 342.3 ha (845.8 acres) more or less, in Sykes Creek in Brevard County for the purpose of regulating watercraft operation to slow-speed (channel included) all year.

Aerial survey data indicate a significant amount of manatee use of Sykes Creek. Manatees consistently use this site for feeding, resting, and breeding. Like the Barge Canal, it is a fairly narrow water body and has been the site of 13 watercraft-related manatee mortalities (Florida Marine Research Institute 2000). High-speed vessel operation in this area has a high likelihood of resulting in take of manatees. Regulating vessels to proceed at slow speed minimizes the likelihood of a take incident.

The State recently approved new regulations for Brevard County that would also designate Sykes Creek as a slow speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in Sykes Creek we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

Summary of Comments and Recommendations

In the August 10, 2001, proposed rule (66 FR 42318), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press, Citrus County Chronicle, Daytona Beach News-Journal, and Naples Daily News*, on August 31, 2001, in the *St. Petersburg Times, Miami Herald, Orlando Sentinel, Charlotte Sun-Herald, and Tallahassee Democrat*, and on September 4, 2001, in *Florida Today*. The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11, 2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on perceived economic effects and potential inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from one State agency and the Governor of Florida. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Florida stated support for the proposed action. The following is a summary of the comments received. Comments of a similar nature have been grouped together. Comments related to specific sites in the proposed rule, other than the two discussed in this final rule, will be addressed when final determinations for those sites are published.

Comment 1: The FWC noted our intention to consider withdrawing Federal designations should State or local governments enact comparable protective measures, and recommended that we define the means by which we will determine if actions by State or local governments provide a comparable level of protection.

Response: With regard to the Barge Canal and Sykes Creek, we believe that the pending State rule for Brevard County provides, on balance, a greater level of manatee protection than our rule. While we continue to have reservations regarding certain exemptions that have been granted by the State (see response to Comment 21 below), it is clear that the FWC's Brevard County rule, taken as a whole, provides needed protection to a far greater area than our rule. The FWC rule addresses the four areas identified in our proposed rule (Barge Canal, Sykes Creek, Haulover Canal, and Cocoa Beach Municipal Park) with similar or identical measures. Additionally, the FWC rule provides additional protection for manatees throughout the Indian River and Banana River within Brevard County by adding additional shoreline buffers and by eliminating several high-speed access channels. As such, should the State prevail in the challenge to their rulemaking, we believe that the Federal designation of the Barge Canal and Sykes Creek would likely be unnecessary. We view this as a prime example of how the greater resources of the FWC can enable them to accomplish more through State action than can be accomplished through Federal action.

With respect to the other 14 sites identified in our proposed rule, we cannot, at this time, identify specific standards for what would constitute comparable levels of protection. We recognize that there may be alternative means of implementing effective protective measures at many of these sites. These alternatives may be beyond our authority or resources to implement through our rulemaking, but may be available to State or local governments. Rather than limiting the options of State and local governments by insisting that they enact regulations identical to those we have proposed, we intend to participate fully in the State and local rulemaking processes and to articulate our views and recommendations regarding proposed protective measures as early as possible in those processes, particularly with respect to whether we consider potential protection measures to provide a comparable level of protection.

Comment 2: The FWC noted that appropriate posting of designated manatee protection areas is a critical element in the success of manatee protection zones, and recommended that we incorporate meetings with the FWC, appropriate Inland Navigation Districts, and local governments, to develop a clear delineation of responsibilities for posting signs for federally designated areas.

Response: We agree that appropriate signage is a critical element to the effective implementation of manatee protection areas. We will fully involve the FWC, appropriate Inland Navigation District and local governments, as well as the U.S. Coast Guard, in the development of sign plans for all Federal manatee protection areas.

Comment 3: The FWC expressed concern regarding enforcement of the new manatee protection areas and recommended that we clarify that we are responsible for enforcement of these areas. They also expressed concern that establishment of Federal manatee protection areas in and adjacent to State speed zones, which carry different penalties for violation, may generate confusion among the boating public.

Response: Manatee protection areas are only effective to the extent that boaters comply with posted regulations. As such, enforcement is an essential component of our effort to establish additional manatee protection areas. FWC officers are authorized to enforce Federal manatee protection area regulations, just as our law enforcement officers can and do enforce State manatee protection regulations. We welcome any assistance that the FWC can provide in the enforcement of these manatee protection areas, but we have made a commitment to ensure that adequate enforcement is provided for these areas. As noted above, the ability to adequately post and enforce designated sites was an important factor in our site selection process.

Comment 4: The FWC noted that we have deferred action on the remaining 14 sites identified in the proposed rule until December 2002 to give State and local governments the opportunity to enact comparable protective measures.

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The FWC stated that they have no plans to consider rules in two of the sites in the proposed rule (Little Sarasota Bay and Shell Island) and that no final State action would be taken on sites in Tampa Bay by December 2002.

Response: We note that, while State action on the sites in Tampa Bay is not anticipated to occur prior to December 2002, local action is likely within this timeframe. Pinellas County has recently adopted an ordinance to provide increased manatee protection at the Bartow Power Plant, and we are currently evaluating the effectiveness of this action. Additionally, Hillsborough County is currently considering measures to improve manatee protection in much of Tampa Bay, including the Gannon and Tampa Electric Company power plant sites identified in our proposed rule. We will monitor the progress of these initiatives over the coming months to determine whether the proposed Federal designations are warranted.

Information regarding the Shell Island and Little Sarasota Bay sites was presented during the public comment period. We are continuing to evaluate the information and have made no decisions regarding final designation of these sites.

Comment 5: The FWC concurred with our determination that the data strongly support the decision to designate the Barge Canal and Sykes Creek as manatee protection areas. The FWC indicated they support our proposed designations for these areas, but recommended that the Federal rules be repealed if the FWC is successful in defending their recently adopted rules.

Response: We agree that, should the State prevail in the challenge to their Brevard County rule, the Federal designations would likely be unnecessary.

Comment 6: Several commenters recommended establishing manatee protection areas at several sites in addition to, or in lieu of, the 16 sites identified in the proposed rule. Other sites recommended for considerations included—the downtown Jacksonville portion of the St. John's River, Duval County; Goodby's Creek, Duval County; the Tomoka River, Volusia County; the Canaveral sewer outfall, Brevard County; the Indian River southeast of the railroad bridge causeway, Brevard County; the Haulover Canal observation area, Brevard County; the Riviera Beach power plant outfall, Palm Beach County; the Weeki Wachee River, Hernando County; the Little Manatee River, Hillsborough County; the Manatee and Braden Rivers, Manatee County; Charlotte Harbor, Charlotte County; Bokeelia Point, Lee County; San Carlos Bay, Lee County; the Caloosahatchee River, Lee County; Mullock Creek/Ten Mile Canal, Lee County; Estero Bay, Lee County; Everglades National Park, Collier and Monroe Counties; Faka Union Canal/Port of the Islands, Collier County; and Ten Thousand Islands/Chokoloskee Bay, Collier County.

Response: In designating manatee protection areas, we considered the needs of the species on an ecosystem level in an attempt to address life requirements of the manatee and to progress toward recovery of the species. Tempering this evaluation was the limited resources available to us, in terms of both staffing and funding, for accomplishing the establishment, maintenance, and regulation and enforcement of designated areas.

All of the above-mentioned sites, and many others, were considered at some point in the evaluation process. Some (such as the Weeki Wachee River, Goodby's Creek, and the Canaveral sewer outfall) did not meet our criteria for further consideration because adequate protective measures are currently in place at these sites and the likelihood of future take at these sites is limited, provided the existing regulations are appropriately enforced. Others (such as Caloosahatchee River, Everglades National Park, and Ten Thousand Islands/Chokoloskee Bay) did not meet our criteria for designation at this time because it is as yet unclear, based on current information, what additional protective measures could be implemented to effectively reduce on-going watercraft-related manatee mortality in these areas; however, we agree that these areas warrant further study. We note that even the commenter who recommended we take immediate action in the Ten Thousand Islands/Chokoloskee Bay area could offer no specific recommendation as to what to do in this area. We agree that the remaining sites mentioned above (the St. John's River in downtown Jacksonville, the Tomoka River, the Haulover Canal observation area, the Indian River southeast of the railroad bridge causeway, the Riviera Beach power plant outfall, the Little Manatee River, the Manatee and Braden Rivers, Charlotte Harbor, Bokeelia Point, Estero Bay, San Carlos Bay, Mullock Creek/Ten Mile Canal, and Faka Union Canal/Port of the Islands) do, or may, warrant further consideration, particularly if State or local efforts to improve manatee protection at these sites are unsuccessful, and if manatees do not make satisfactory progress toward recovery. However, we do not agree with the commenters that action at any of these sites is any more urgent than the actions identified in our proposed rule. As previously stated, we believe the sites included in this final rule are areas where federal action could be most effective for manatee conservation and is most urgently needed.

We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. We encourage State and local measures to improve manatee protection. Additionally, we have indicated that future actions could establish additional manatee protection areas if the need becomes apparent.

Comment 7: In recommending action at the sites identified in Comment 6, some commenters noted that several of the sites identified in our proposed rule were under consideration for designation by the FWC and/or local governments, and questioned our decision to include such sites in our proposed rule, given the likelihood that these sites would be appropriately regulated without Federal designation.

Response: Many of the sites in our proposed rule and the two sites in this final rule are currently under consideration for State action. We first became aware of this overlap when the Plaintiffs in the State lawsuit made the terms of the draft settlement agreement public. Due to our inability to discuss pending legal actions with the FWC, only the Plaintiffs were in a position to recognize the overlap and conflicts between the two settlement agreements. The Plaintiffs did not raise these conflicts to our attention. In fact we requested and received several extensions of the deadline for publishing the proposed rule, and during these extensions several options for resolving the situation were presented to the Plaintiffs. All were rejected along with our request for further extensions. As such, in order to meet our settlement obligations, we published the proposed rule. We are publishing this final rule at this time because we have determined that the actions are urgently needed at these sites and because these actions will fulfill our settlement obligations. We have deferred action on the remaining 14 sites because they are somewhat less urgently in need of action, and in order to allow for additional coordination with State and local governments.

Comment 8: One commenter stated that we excluded areas from the proposed rule that are, in their view, of extremely high priority, while including in our proposed rule a number of sites that are, in their view, of much lower concern and/or are being addressed in other ways.

Response: We have concluded that the sites recommended by this commenter either do not warrant additional protection, or are of no higher priority than the sites identified in our proposed rule. We note that this commenter agreed that the Barge Canal and Sykes Creek are in need of improved manatee protection.

Comment 9: Many commenters recommended that we take action on sites identified in the proposed rule sooner than we have proposed. Many recommended that we make emergency designations on the Barge Canal, Sykes Creek, and the Blue Waters on the Homosassa River, and make final designations on other sites sooner than December 2002.

Response: We are firmly committed to establishing appropriate manatee protection in concert with State and local agencies and authorities. We believe that the State should have a lead role in establishing additional manatee protection areas. As such, we are providing latitude to the State and local governments to establish protection at 14 of the proposed manatee protection areas prior to finalizing Federal action. Such protection must be the same or comparable to that described in our proposed rule. We decided to expeditiously enact protection at the Barge Canal and Sykes Creek sites after evaluation of the significant amount of manatee use at these sites and the high probability of take, especially lethal take, at these sites, and after we determined that we could implement effective measures to reduce take at these sites. We determined that enacting emergency designations at any of the sites identified in our proposed rule was not prudent given the high level of public use of these waters and the high level of public interest/concern regarding this rulemaking. While we have determined that effective actions to reduce take over the long term can be implemented at the remaining 14 sites identified in the proposed rule, immediate action at these sites is not necessary to prevent take, nor is it necessary for the recovery of the species.

Comment 10: One commenter implied that we were violating the terms of the settlement agreement in the Federal case by failing to propose actions at sites identified by the Plaintiffs in the Federal case to be of high priority.

Response: The plain language of the settlement states (paragraph 11): "The parties recognize that, in evaluating the need for refuges and sanctuaries the Service anticipates considering the needs of the manatee at an ecosystem level in order to ensure that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view towards the manatees' recovery within the meaning of section 4 of the ESA." The settlement agreement does not require designation of any specific sites as manatee protection areas, and nowhere in the settlement is there a requirement that all protected areas established to meet the needs of the manatee be Federal. Clearly, in "evaluating the need" we must consider the existing condition of the ecosystem of which the manatee is a part, which includes an extensive network of protected areas designed specifically to meet the "needs of the manatee." As long as appropriate protective measures are enacted, whether those actions are taken by State or Federal agencies does not matter.

The recovery plan for the Florida manatee makes clear that achieving the goal of recovery will necessarily require the cooperation and efforts of all stakeholders. Our proposed rule for manatee protection areas was also clear on this point when it stated:

> We acknowledge that there exists a network of manatee speed zones and sanctuaries, which have been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward the above-stated goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps.

As such, we have clearly met the letter and spirit of the settlement with respect to designation of manatee protection areas. As stated previously, we have concluded that many of the sites recommended by this commenter do not warrant Federal designation at this time, and we do not agree that the other sites recommended by the commenter are of any higher priority than the sites identified in the proposed rule.

Comment 11: One commenter noted that the sites identified in our proposed rule differ in some respects from the "areas with inadequate protection" identified in our Final Interim Strategy on Section 7 Consultations for Watercraft Access Projects that may Indirectly Affect the Florida Manatee (Final Interim Strategy) (66 FR 14924).

Response: The areas we have proposed for designation as Federal manatee protection areas are in some cases different from the waterbodies we identified as "areas with inadequate protection" for the purposes of the Final Interim Strategy. Specifically, of the 13 sites for which we proposed 16 manatee protection areas, only 6 are also identified as "areas with inadequate protection" in the Final Interim Strategy.

The standard for manatee protection areas is that such establishment is "necessary to prevent the taking of one or more manatees" (50 CFR 17.103). Because "take" is very broadly defined, action of some form could be justified for many coastal waters in the State of Florida. In order to focus our efforts in the current rulemaking, we defined four criteria for selecting sites as follows—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem. Again, many sites throughout Florida could be argued to satisfy the first three criteria to some extent; however, the vast majority of sites do not satisfy criterion four because of limitations we face in terms of personnel and budget and because many areas present manatee protection problems due to circumstances that are difficult or impossible to correct within our manatee protection area authority.

On the other hand, "areas with inadequate protection" were identified in the context of conducting ESA section 7 consultations regarding U.S. Army Corps of Engineers authorization of boat access facilities. In this context, watercraft-related "take" of manatees is a distant indirect effect of the authorization of a boat access facility. While we agree that construction of boat access facilities is a potential contributing factor to watercraft-related take of manatees, in the vast majority of cases a direct cause and effect relationship does not exist between the construction of a marina, dock, or boat ramp, and watercraft-related take of manatees. As such, in order to be considered an "area with inadequate protection" in this context, the existing protection measures on a given waterbody must be such that the likely result of adding additional boat access to the area is a foreseeable increase in watercraft-related take. This could be because current protection measures are either totally lacking or woefully inadequate in areas with chronic watercraft-related take, or because of issues peculiar to the waterbody such that incidental take of manatees is

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inevitable regardless of protective measures implemented.

As such, the standard for identifying a waterbody as an "area with inadequate protection" is generally higher than that for establishing a manatee protection area. This is why 7 of the 13 areas proposed as manatee protection areas are not also "areas with inadequate protection." Conversely, 11 sites identified as "areas with inadequate protection" were not proposed as manatee protection areas. This is because either we determined that we could take no action at this time to effectively address the identified problem at a given site, or we decided that action at a particular site was not as high a priority as action at the sites contained in the proposed rule, and was therefore not included in the proposed rule due to limitations of staff and/or budget. Designation as manatee protection areas could be proposed for this latter group of sites in the future, if staffing and funding permit, and if such actions are determined to be necessary for the recovery of the species. Our list of "areas with inadequate protection" will continue to be updated as new information becomes available.

Comment 12: Some commenters expressed concern that requiring boats to travel at slow speed throughout the entire length of the Barge Canal and Sykes Creek would add an unreasonable amount of time to boat trips through this area. One commenter estimated that the designations would add 3 hours and 12 minutes to a round trip.

Response: In response to this concern we tested the amount of time required to travel from the southernmost end of the slow speed zone on Sykes Creek, through Sykes Creek and the Barge Canal to the Canaveral Locks. This represents the longest possible distance that would need to be traveled at slow speed under this final rule. Under the existing speed zones this trip currently takes approximately 50 minutes. Under the conditions established in this final rule, the same trip will take approximately 1 hour and 25 minutes; an increase in travel time of 35 minutes.

Comment 13: Several commenters requested that we hold additional public hearings.

Response: One public hearing was announced with the proposed rule. We scheduled an additional three hearings in order to provide ample opportunity for public comment. All hearings were well attended, and everyone in attendance was afforded the opportunity to express their comments and concerns. Additionally, we afforded a 60-day public comment period to allow for the submission of written comments. Finally, additional information regarding the proposed rule, including the material presented at the public hearings has been available on our website. We have also responded, in timely fashion, to requests for information from specific stakeholders throughout the rulemaking process. We believe that we have provided sufficient opportunity for public comment on this rulemaking.

Comment 14: Some commenters expressed concern that human safety could be compromised by forcing all boaters into narrow channels, bottlenecks, and other confined circumstances.

Response: We were very cognizant of human safety issues during the design phase of the manatee protection area planning process. Human safety while boating has always been and will continue to be the responsibility of the vessel operator. The two manatee protection areas in this final rule require vessels to proceed at slow speed and, as such, enhance boater safety while in these areas. At no site does the designation of these manatee protection areas place mariners in a position of encountering high-speed vessel traffic with no alternative safe route.

Comment 15: Some commenters expressed concern that human safety will be compromised by requiring vessel operators to proceed at slow speeds in the face of emergency situations, like rapidly approaching thunderstorms or medical emergencies.

Response: Federal regulations allow for an exemption to manatee protection area regulations in the event of emergency. Specifically, our regulations (50 CFR 17.105(c)) state that "any person may engage in any activity otherwise prohibited by this subsection if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property."

Comment 16: Several commenters noted that the size of the manatee population appears to have increased over time, and questioned the need for additional protective measures.

Response: A discussion of the current status of the manatee population is provided in the "Background" section. Two of the criteria for determining whether species are endangered or threatened under the ESA are "(D) the inadequacy of existing regulatory mechanisms and (E) other natural or manmade factors affecting its continued existence" (16 USC 1533(a). Furthermore, the MMPA sets a general moratorium for the taking of marine mammals. Regardless of the size or status of the manatee population, we are required to ensure that take of manatees is minimized to the extent possible, and all take is prohibited unless authorized under the MMPA.

Minimizing, to the extent practical, the taking of manatees as a result of watercraft collisions is a top priority in manatee recovery and management programs. Currently, the areas addressed in this rule have a significant potential for "take" based on the amount of manatee use and are characterized by limited current protective regulations.

Comment 17: Several commenters stated that we should focus on better enforcement of existing regulations before imposing additional restrictions on boaters.

Response: This issue was identified as one of the alternatives addressed within the Manatee Protection Area Environmental Assessment. While improvements in both the enforcement and education arenas are laudable in enhancing manatee protection, such improvements may be of little effect when applied to areas without regulations or with inadequate protection to minimize the take of manatees. The State has placed an increased emphasis on enforcement, and we have made a substantial commitment to enforcing manatee protection areas over the past few years. We anticipate that these efforts will continue.

Comment 18: Some commenters recommended that we abstain from designation of Federal manatee protection areas and allow the State and local authorities to provide for manatee protection.

Response: We are the Federal agency responsible for manatee management and protection activities under both the ESA and the MMPA. As such, we must take an active role in regulatory activities involving the manatee. This in no way diminishes the important role that State and local agencies play, or the role of the private sector. Recognition is given to both State and local efforts to establish manatee protection, and we are committed to supporting these efforts. We have stated that the State should have leadership in establishing additional manatee protection areas. With this final rule, we have focused on sites where watercraft-related manatee mortality is highest, and where we determined that Federal action can effectively address the needs in the particular area. If the State is successful in implementing their pending rules for Brevard County, we will consider

withdrawing Federal designation of these sites.

Comment 19: Some commenters stated that the definition of "Slow Speed" is arbitrary and unenforceable, and recommended that we consider using some other standard, such as a "miles per hour" limit to regulate vessel speed.

Response: The definition of "slow speed" used in this rule is essentially the same as that used by the State in the Florida Manatee Sanctuary Act (F.A.C. 68C–22). This definition is generally understood by mariners and has proven to be enforceable. It is important to use a definition of "slow speed" that complements that used by the State. The sites included in this final rule are located in direct proximity to areas regulated by the State. The use of the same definition will ensure consistency and lessen confusion among the boating public.

The establishment of another definition of "slow speed" or the use of a "miles per hour" speed zone poses many problems. Establishment of a "miles per hour" standard would necessitate all boats operating in these zones to be equipped with accurate speedometers. This standard would also require enforcement officers to procure equipment and attend periodic training to enforce these conditions. Of more importance is that boats operating at speeds in excess of what is allowed under the current definition of "slow speed" pose increased threats to manatees. Boats proceeding while "plowing the water" with elevated bows, such as occurs when a vessel is operating at greater than "slow speed," both obscure the forward vision of the operator and place the propulsion systems of the watercraft lower in the water. Both of these conditions increase the likelihood of a vessel collision with a manatee. With a subsequent increase of speed, the configuration of the vessel changes to one of planing. While this condition places the hull and outdrives of vessels higher in the water, it also decreases the reaction time needed by both the operator and the manatee to detect one another and take action to avoid collision.

Comment 20: Many commenters stated that we have not adequately evaluated the economic impact of these designations.

Response: The economic analysis conducted as part of this rulemaking determined that these actions would not have a significant economic impact. The two sites identified in this final rule will remain open for public access, albeit at "slow speed" travel. Through public hearings and public comment periods we sought information and comment on the activities occurring in these two sites. To our knowledge of the activities in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

Comment 21: One commenter noted that the commenter operates boat manufacturing facilities on the Barge Canal, and stated that the proposed designation would adversely affect their ability to economically continue boat testing operations resulting in a substantial economic loss to the commenter's company. The commenter requested that we provide an exemption to our rule, similar to the exemption granted by the State, to allow the commenter to continue to conduct up to 40 tests per month at speeds up to 35 miles per hour in a portion of the Barge Canal.

Response: Federal regulations provide exceptions to manatee protection area regulations only in limited circumstances (50 CFR 17.105(c)). We have assessed the information and recommendations presented by this commenter and have concluded that we do not have the authority under our existing regulations to grant an exception for this type of activity based on economic hardship.

The MMPA prohibits the take of marine mammals, including manatees. As such, we cannot authorize, or exempt from regulation, any activities that may cause the take of manatees, other than those necessary for protecting life and property. Nonetheless, we recognize that certain existing uses of some waterbodies could be adversely affected or eliminated by designation of manatee protection areas. We do not oppose continuation of these uses, provided it can be demonstrated that such uses will not cause take of manatees. Flexibility exists under the MMPA to except certain waterborne activities in refuges from the speed zone restrictions if it can be shown that such activities will be carried out under stringent conditions that prevent the take of manatees. At this time we intend to propose amendments to our regulations to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees.

Comment 22: One commenter suggested that our proposed rule was contrary to the spirit and intent of Executive Order 12866, because we did not contact the commenter directly regarding the impact the proposed rule may have upon the individual's operations.

Response: As part of the rulemaking process, we published an advance notice of proposed rulemaking in which we solicited information from the public regarding issues that should be addressed through the rulemaking. We also held six public workshops that provided additional opportunities for the public to provide input and voice concerns. With publication of the proposed rule, we afforded a 60-day period for submitting written comments, and held four public hearings. Through the commenter's participation in this process, we are aware of their concerns. We have responded to those concerns to the best of our ability with this final rule and our stated intent to pursue amendments to our regulations. We have also updated the information regarding the economic effects of the rule, as appropriate, to reflect information submitted by the commenter. These actions meet the requirements of Executive Order 12866.

Comment 23: Many commenters suggested that technological advances may now make it possible for boaters and manatees to better detect the presence of one another and thereby avoid collisions, and recommended that these technologies be employed instead of restricting boat speeds.

Response: Ongoing research is evaluating the sensory abilities of the manatee and the environmental factors that may affect these abilities. Potential technologies may enable boaters to better detect the presence of manatees. However, no technology is currently available that is proven to be effective in avoiding collisions between manatees and boats. For the foreseeable future, detection and avoidance technology will likely be used to supplement, rather than replace, traditional management strategies.

Comment 24: Some commenters recommended that we selectively regulate watercraft and provide exemptions for those not responsible for take of manatees. These commenters stated that most watercraft-related manatee mortality is caused by large vessels and/or barges, and that boats without propellers do not harm manatees.

Response: The manatee mortality database contains information on the necropsy results of over 4,000 manatees. From this large information source, several interesting aspects of watercraft-related manatee mortality may be surmised. It is impossible to determine, in most cases, the size of the boat which

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struck a manatee. The exception to this is the very few cases where a responsible boater has reported a collision and researchers are able to compare the actual vessel to the observed injuries. In a few documented cases, manatees were obviously killed by a large vessel, the symptoms of which include massive crushing and or bifurcation (slicing into pieces) of the animal. The vast majority of cases involving watercraft-related mortality involve less dramatic injuries. Investigations comparing blade diameter and pitch indicate that the majority of manatees killed from watercraft-related collision are struck by smaller, fast-moving vessels.

As stated above, injuries to manatees from vessel impacts can be characterized as either lacerations or blunt trauma. Percentages generated by the mortality data-base indicate that 55 percent of the watercraft-related mortalities are the result of blunt trauma. Such trauma can result from impacts from vessel hulls, lower units, or other vessel components. Vessels without propellers (e.g., personal watercraft) still have the potential to "take" manatees.

Comment 25: Some commenters recommended that we consider factors such as water depth and the presence of aquatic vegetation when deciding the boundaries of manatee protection areas rather than base boundaries on unnatural features such as navigation channels or bank-to-bank designation of waterbodies.

Response: We considered such environmental features in evaluating potential manatee protection sites, because these factors influence manatee use of areas. There have been instances where habitat features (such as water depth) have been used to delineate boundaries of protection areas. The disadvantage of the use of such features for the purpose of this rule is the complexity and costs associated with such designs, and the potential for causing confusion among the regulated public resulting in poor compliance. Protection areas designed around environmental factors tend to be irregular and complex. This, in turn, results in significant increases in costs of implementation in terms of posting and the subsequent costs of maintenance. The limited resources available for this program required a less complex strategy for providing adequate protection for manatees and reasonable use of these areas by the public.

Comment 26: Some commenters recommended that we allow the challenge to the State rule for Brevard County to be adjudicated prior to taking action at the Barge Canal and Sykes Creek.

Response: Information regarding these sites indicates a clear need to establish protective measures to prevent, to the extent possible, take of manatees. The process of finalizing this rule is occurring simultaneously with the aforementioned challenge to the State rule. We concluded that we must move forward with designation of these sites at this time in order to ensure that appropriate protective measures are in place at these sites as soon as possible.

Comment 27: Some commenters noted that the Barge Canal and Sykes Creek provide ideal training sites for competitive rowers from around the Nation and the world, particularly during winter months. These waterbodies are ideally suited for training due to the fact that, regardless of wind direction, crews can find protected areas with flat water that prevents the rowing shells from being swamped. These commenters further noted that crews are accompanied by chase boats that carry the coaches, and that a primary function of these chase boats is to render aid to the crews in the event of an emergency. The chase boats are typically small john boats with 10 to 15 horsepower engines. The commenters stated that designating the Barge Canal and Sykes Creek as slow speed zones would deprive them of use of these waters as training facilities, and that no other suitable locales for such training are available in the area.

Response: We place a high priority on human safety. As such, we will allow chase boats operating in the Barge Canal and Sykes Creek manatee protection areas to travel in excess of "slow speed" for the purpose of safety during training of sculling/crewing athletes. The purpose of the chase boats is, in part, to render necessary assistance to persons or property, which is excepted under our existing regulations (50 CFR 17.105). Chase boats must remain in close proximity to rowing shells to provide safety equipment (such as personal flotation devices) and other needed assistance. Persons engaged in such activity must remain vigilant for manatees and must take appropriate action, including termination of training if necessary, to avoid take of manatees. These vessels will be required to comply with all posted speed zones when not actively engaged in training, including during transit to and from training areas.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the establishment of 2 manatee refuges (1,528.5 acres) in Brevard County in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method and reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of $3.2 billion (2001 dollars) on the protection of the manatee population. This amounts to a per-household value of $18.12. The $3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this rule is to establish two additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in these two areas. Affected waterborne activities include the use of water vehicles. The two areas designated would be slow-speed zones. The economic effect of these designations will be measured by the number of watercraft users who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and streams and 3 million acres of lakes and ponds so the designation of 1,528 acres for lower speed operation is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when, where, or how they pursue certain waterborne activities.

One watercraft manufacturer is known to use one of the designated sites as a boat testing area. While alternative sites without speed zones are available nearby that allow for continuation of boat testing, use of these sites would entail costs to the manufacturer due to additional travel time needed to conduct testing. This rule will affect the company's boat testing program. We are intending to propose amendments to our regulations (50 CFR 17.105) to allow for otherwise prohibited activities to continue provided those engaging in such activities can demonstrate that the activities will not result in take of manatees.

For some watercraft users, the inconvenience and extra time required to cross a slow-speed zone will reduce the quality of the waterborne activity. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has nearly 800,000 registered boats, but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, only a small percentage of boat users will likely be affected by this rule. The current designation of these two protection areas will cause some inconvenience in travel time, but alternative sites within the proximity of the sites are available for all waterborne activities. Recreationists may be inconvenienced by having to travel to an undesignated area, but they are not prohibited from participating in any waterborne activity. Currently, no data sources estimate the amount of recreational activity in and around the two designated areas. For these reasons, we believe some inconvenience to the public may occur because of reduced travel speeds but that the economic impact will not be significant.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. If comparable protections are put in place in the future, we will consider removing those areas from Federal protection.

c. This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule, and no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients will be affected.

d. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

We conducted both public hearings and public notice and comment periods to determine the activities occurring in Barge Canal and Sykes Creek that might be affected by the creation of these manatee refuges. Based on the activities that we are aware of being conducted in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

To determine the potential effects of this rule on small entities, we looked at economic data from Brevard County. Table 1, below, depicts general economic characteristics, and Table 2 gives employment data. As can be seen in Table 1, the growth rate is slightly lower than the State average. Larger households account for the lower per capita income estimate. The proportion of total industry earnings coming from the amusements and recreation sector is 0.5 percent. The service sector is the largest economic contributor followed by retail trade and the real estate sectors. Overall, only a small proportion of earnings come from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE SEVEN AFFECTED COUNTIES IN FLORIDA—1997

Selected Florida Counties	Employment	Per capita personal income (Dollars)	10 year rate of growth (Percent)	Personal Income ($000)	10 year rate of growth (Percent)	Total industry earnings ($000)	Services industry earnings for amusements and recreation ($000)	Percent of total
Establishing Sanctuaries:								
Citrus	35,663	$18,493	3.9	$2,060,167	6.9	$793,347	$6,650	0.8
Hillsborough	644,694	23,719	5.2	21,558,783	6.6	18,847,236	67,676	1.4
Pinellas	506,946	28,367	4.9	24,770,929	5.5	13,876,518	114,826	0.8
Establishing Refuges:								
Brevard	223,815	22,205	3.7	10,342,080	6.3	6,255,354	34,237	0.5
Charlotte	47,091	21,861	3.7	2,894,781	7.6	995,159	10,336	1.0
Lee	196,448	25,568	4.4	9,862,900	7.3	4,848,936	61,103	1.3
Saralota	169,984	35,654	5.2	10,706,931	6.8	4,239,034	114,742	2.7
State of Florida	8,032,538	24,799	4.5	363,979,647	6.6	220,985,959	4,255,304	1.9

Source: http://govinfo.library.orst.edu/cgi-bin/reis-list.

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data pertained to 1997 for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities.

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TABLE 2.—EMPLOYMENT CHARACTERISTICS OF BREVARD COUNTY, FLORIDA—1997

[Includes sic codes 09, 44, 59, 79, services, and nec][1]

	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Brevard County	65,049	5,292	3,145	1,075	581	591

Source: http://fisher.lib.virginia.edu/cig-local/cbpbin/go.cgi.
[1] sic 09—Fishing, hunting, and trapping.
sic 44—water transportation.
sic 59—miscellaneous retail services division.
sic 79—amusement and recreation services nonclassifiable establishments division.

All of the acreage designated (1,528.5 acres) by this rule is for manatee refuges, which would only require a reduction in speed. We acknowledge that watercraft operating in barge canal will be required to go slower in designated areas and will required approximately 35 additional minutes to traverse the canal. We believe the additional time necessary will cause more than an insignificant economic effect. The additional time required may cause some recreationists to go to alternative sites, which may cause some loss of income to some small businesses. However, the additional time required is minimal and we believe that this will not be a significant economic dislocation.

The only known direct effect will be on a boat manufacturer which tests boats in the Barge Canal. Testing boats require the manufacturer to operate boats at speeds of up to 35 mph, and the costs of relocating the test site have not been specifically estimated. However, based on information provided by the company, designation of the Barge Canal as a manatee protection area may have a more than minimal impact on the boat testing operations of this business. Substitute sites are available within a reasonable distance; however, the costs of operating at these sites will be substantially greater than the costs of using the current test site in the Barge Canal.

As mentioned above, we intend to propose amendments to our regulations (50 CFR 17.105) to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees. If the manufacturer is able to meet this standard, we anticipate that this rule will result in at most a temporary impact on their boat testing program.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this final rule may cause some inconvenience to recreationists because of the speed restriction on manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the seven potentially affected counties, aside from the above-mentioned boat manufacturer. An unknown portion of the establishments shown on Table 2 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Aside from the above-mentioned effects of this rule on the testing of boats in the Barge Canal, which have not been specifically quantified and which are anticipated to be temporary, unforeseen changes in costs or prices for consumers stemming from this rule are unlikely. The charter boat industry may be affected by lower speed limits for some areas when traveling to and from fishing grounds. No specific information regarding potential costs to the charter boat industry was provided during the rulemaking process. We do not believe that reduced speed limits will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists because of speed limits, and a temporary interruption in the testing of boats in the Barge Canal, but these effects are believed to be minor and will not interfere with the normal operation of other businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The final manatee protection areas are located over State-owned submerged bottoms. Any property owners in the vicinity will have navigational access to their property.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The final regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Jacksonville Field Office (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow speed along two small segments (600.6 ha or 1528.5 acres) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Cameron Shaw (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.102, remove the definition for "water vehicle" and add definitions, in the alphabetical order, as follows:

§ 17.102 Definitions.

* * * * *

Idle speed is defined as the minimum speed needed to maintain steerage (direction) of the vessel.

* * * * *

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a water vehicle's hull, sponsons, foils, or other surfaces. A water vehicle is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed is defined as the speed at which a water vehicle proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which water vehicles of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A water vehicle is *not* proceeding at slow speed if it is: on a plane; in the process of coming up on or coming off of plane; or creating an excessive wake. A water vehicle *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

Slow speed (channel exempt) means that the slow-speed designation does not apply to those waters within the maintained, marked channel.

Slow speed (channel included) means that the slow-speed designation applies both within and outside the designated channel.

Wake means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave, stern wave, and propeller wash, or a combination thereof.

* * * * *

Water vehicle, watercraft, and *vessel* include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

3. Amend § 17.108 as follows:

a. Remove the note following paragraph (b) and;

b. Add paragraph (c) as set forth below.

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) *Manatee refuges.* The following areas are designated as manatee refuges. For each manatee refuge, we will state on appropriate signs which, if any, waterborne activities are prohibited, and state the applicable restrictions, if any, on permitted waterborne activities. The areas that will be posted are described as follows:

(1) The Barge Canal Manatee Protection Area

(i) The Barge Canal Manatee Protection Area is described as all waters lying within the banks of the Barge Canal, Brevard County, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Barge Canal Manatee Protection Area.

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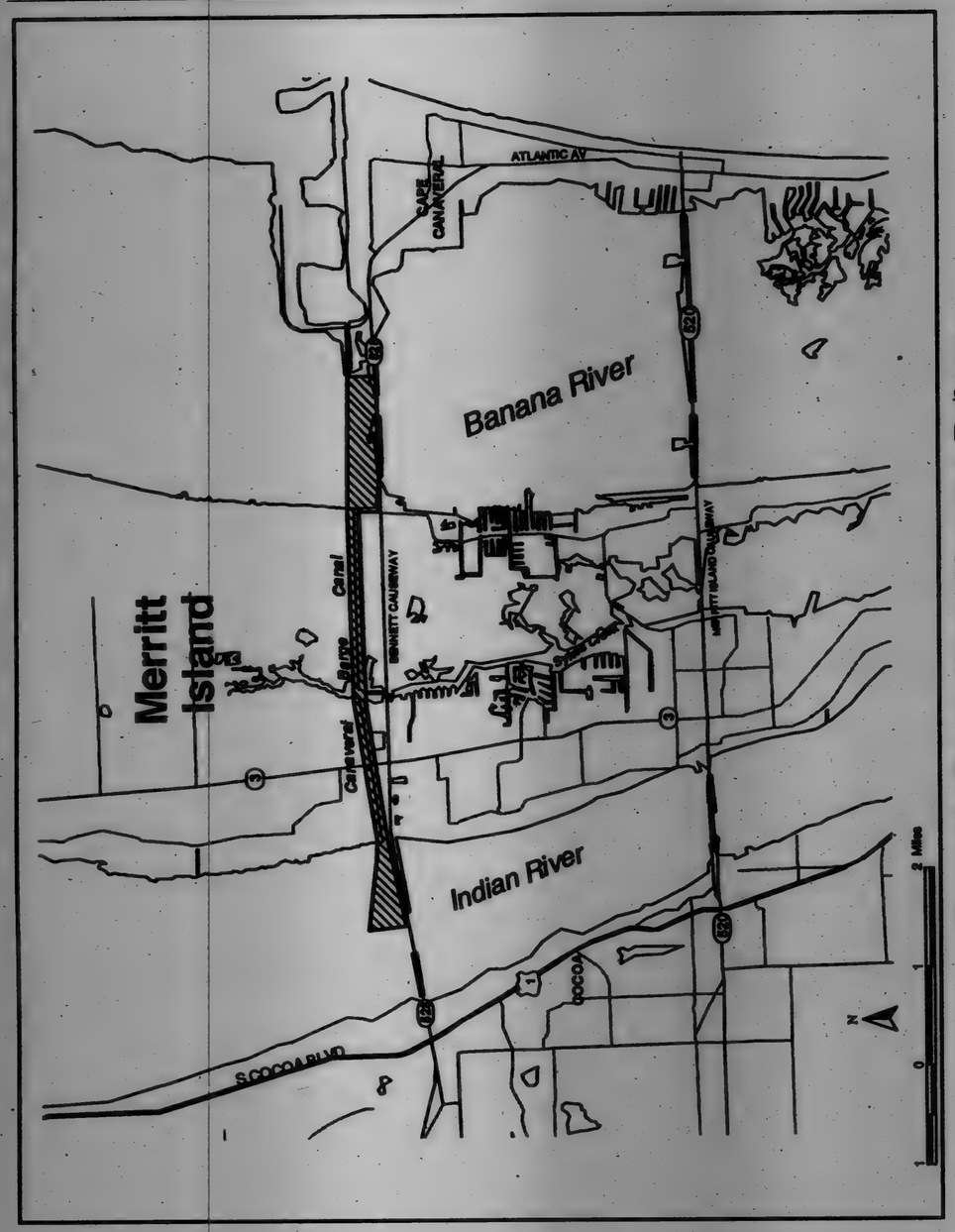

Figure 1. Barge Canal Manatee Refuge

(2) The Sykes Creek Manatee Protection Area.

(i) The Sykes Creek Manatee Protection Area is described as all waters, including the marked channel in Sykes Creek, Brevard County. In particular, the portion of Sykes Creek southerly of the southern boundary of that portion of the creek commonly known as the "S" curve (said boundary being a line bearing East from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23'24" N, approximate longitude 80 degrees 41'27" W) and northerly of the Sykes Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Sykes Creek Manatee Protection Area.

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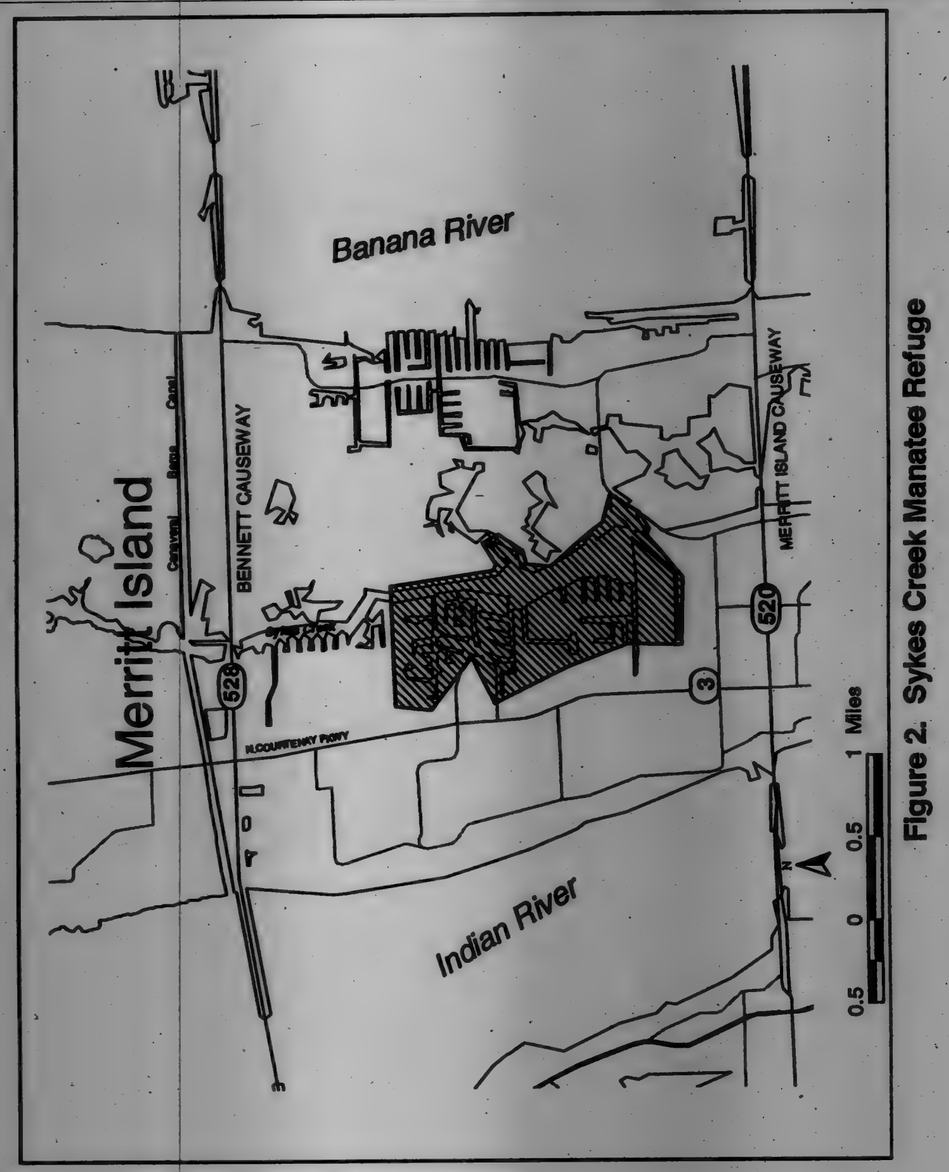

Figure 2. Sykes Creek Manatee Refuge

Dated: December 28, 2001.

Marshall P. Jones, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–265 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 95–095–3]

RIN 0579–AA80

Plant Pest Regulations; Update of Current Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 95–095–2. We will consider all comments we receive by that are postmarked, delivered, or e-mailed by February 6, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 95–095–2, Regulatory Analysis and Development, PPD,APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 95–095–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 95–095–2" on the subject line.

You may read any comments that we receive on Docket No. 95–095–2 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street andIndependence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Flanders, Risk Assessment Branch Chief, or Ms. Deborah Knott, Permits Branch Chief, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; phone 301–734–5930 (Dr. Flanders) or 301–734–5055 (Ms. Knott).

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2001, we published in the **Federal Register** (66 FR 51340–51358, Docket No. 95–095–2) a proposal to revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart.

Comments on the proposed rule were required to be received on or before December 10, 2001. We are reopening and extending the comment period on Docket No. 95–095–2 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between December 11, 2001(the day after the close of the original comment period) and the date of this notice.

In addition, we would like to point out that the **DATES** and **ADDRESSES** sections of this notice contain information regarding the submission of comments that was not contained in the October 9, 2001, proposed rule. Specifically, we are now accepting comments via e-mail and will consider comments submitted by postal mail that are postmarked rather than received in our offices by the close of the comment period.

Authority: 7 U.S.C. 450, 2260, 7711, 7712, 7714, 7718, 7731, 7734, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of December, 2001.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–263 Filed 1–4–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures.

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The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by March 8, 2002.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location by appointment between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 16, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–21–08, Amendment 39–11940 (65 FR 65731, November 2, 2000), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–21–08 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 5821 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $2,794,080 per year.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000 and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–48–AD. Supersedes AD 2000–21–08, Amendment 39–11940.

Applicability: Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D/09200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: "Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/N's	72–33–31	–02, –03, –04
Hub Assembly—All P/N's	72–33–31	–02, –03, –04
2nd Stage Compressor:		
Disk—All P/N's	72–33–33	–02
Disk Assembly—All P/N's	72–33–33	–02
Disk, 13th Stage Compressor:		
All P/N's	72–36–47	–02
HP Turbine Disk, First Stage w/Integral Shaft:		
All P/N's	72–52–04	–03
HP Turbine, First Stage, w/Separable shaft:		
Rotor Assembly—All P/N's	72–52–02	–04
Disk—All P/N's	72–52–02	–03
Disk, 2nd Stage Turbine:		
All P/N's	72–53–16	–02
Disk, 3rd Stage Turbine:		
All P/N's	72–53–17	–02
Disk (Separable), 4th Stage Turbine:		
All P/N's	72–53–15	–02
Disk (Integral Disk/Hub), 4th Stage Turbine:		
All P/N's	72–53–18	–02

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D/09200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on December 31, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–303 Filed 1–4–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by March 8, 2002.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 16, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–21–07, Amendment 39–11939 (65 FR 63540, October 24, 2000), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–21–07 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 1,279 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $613,920 per year.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11939 (65 FR 63540, October 24, 2000 and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–43–AD. Supersedes AD 2000–21–07, Amendment 39–11939.

Applicability: Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D/09200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Engine manual section	Inspection No.
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/N's	72–33–31	–02,–03
Hub Assembly—All P/N's	72–33–31	–02,–03
Disk, 13th Stage Compressor: All P/N's	72–36–47	–02
HP Turbine, First Stage:		
Rotor Assembly—All P/N's	72–52–02	–04
Disk—All P/N's	72–52–02	–03
Disk, 2nd Stage Turbine: All P/N's	72–53–16	–02
Disk, 3rd Stage Turbine: All P/N's	72–53–17	–02
Disk, 4th Stage Turbine	72–53–18	–02

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D/09200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

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Issued in Burlington, Massachusetts, on December 31, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–304 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–06]

Proposed Modification of Class D Airspace; Bloomington, Monroe County Airport, IN; and Modification of Class E Airspace; Bloomington, Monroe County Airport, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Bloomington, Monroe County Airport, IN, and modify Class E airspace at Bloomington, Monroe County Airport, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06, RNAV SIAP to Rwy 17, RNAV SIAP to Rwy 24, and a RNAV SIAP to Rwy 35 have been developed for Monroe County Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Monroe County Airport.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–06, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviatiaon Administation, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proopsed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–06." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Bloomington, Monroe County Airport, IN, by increasing the radius of the existing Class D airspace and Class E airspace for Monroe County Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL IN D Bloomington, Monroe County Airport, IN [REVISED]

Bloomington, Monroe County Airport, IN
(Lat. 39°08′40″ N., long. 86°37′00″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within an 4.3-mile radius of the Monroe County Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL IN E5 Bloomington, Monroe County Airport, IN [REVISED]

Bloomington, Monroe County Airport, IN
(Lat. 39°08′40″ N., long. 86°37′00″ W.)

That airspace extending upward from 700 Feet Above the surface within a 7.3 mile radius of Monroe County Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–252 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–01]

Proposed Modification of Class D Airspace; Rockford, IL; Modification of Class E Airspace; Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Rockford, IL, and modify Class E airspace at Rockford, IL. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, RNAV SIAP to Rwy 7, RNAV (Y) SIAP to Rwy 19, RNAV(Z) SIAP to Rwy 19, RNAV(Y) SIAP to Rwy 25, RNAV(Z) SIAP to Rwy 25 have been developed for the Greater Rockford Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Greater Rockford Airport.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–01, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Rockford, IL, by increasing the radius of the existing Class D airspace and Class E airspace for the Greater Rockford Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact

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on a substantial number of small entities under the criteria of the regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL IL D Rockford, IL [REVISED]

Greater Rockford Airport, IL
(Lat. 42°11′43″ N., long. 089°05′50″ W.)
Greater Rockford ILS Localizer
(Lat. 42°12′36″ N., long. 089°05′17″ W.)
GILMY LOM
(Lat. 42°06′52″ N., long. 089°05′55″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within an 4.6-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.6 mile radius to the GILMY LOM.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Rockford, IL [REVISED]

Greater Rockford Airport, IL
(Lat. 42°11′43″ N., long. 089°05′50″ W.)
GILMY LOM
(Lat. 42°06′52″ N., long. 089°05′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1 mile radius of the Greater Rockford airport and within 7 miles east and 4.4 miles west of the Rockford ILS localizer south course, extending from the airport to 10.4 miles south of the GILMY LOM.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division.

[FR Doc. 02–249 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–11]

Proposed Modification of Class E Airspace; Manistee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Manistee, MI. A VHF Omnidirectional (VOR) Standard Instrument Approach Procedure (SIAP) Runway (Rwy) 09, and VOR SIAP Rwy 27 have been developed for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would change the extensions to the existing Class E airspace for Manistee County-Blacker Airport.

EFFECTIVE DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Manistee, MI, by changing the extensions to the existing Class E airspace for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charters. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Manistee, MI [REVISED]

Manistee County-Blacker, MI
(Lat. 44°16′21″ N., long. 86°14′02″ W.)
Manistee VOR/DME
(Lat. 44°16′14″ N., long. 86°15′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manistee County-Blacker Airport and within 4 miles north and 8 miles south of the Manistee VOR/DME 285° radial extending from the 7 mile radius to 16 miles west of the VOR/DME, and within 4 miles south and 8 miles north of the Manistee VOR/DME 086° radial extending from the 7-mile radius to 16 miles east of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–251 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–08]

Proposed Modification of Class E Airspace; Frankfort, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace Frankfort, MI. A VHF Omnidirectional Range-A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Frankfort Dow Memorial Field, Frankfort, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would add an extension to the existing Class E airspace for Frankfort Dow Memorial Field Airport.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–08, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–08." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

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The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Frankfort, MI, by adding an extension to the existing Class E airspace for Frankfort Dow Memorial Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to deep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Frankfort, MI [REVISED]

Frankfort Dow Memorial Field Airport, MI
(Lat. 44°37'30" N., long. 86°12'33" W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Frankfort Dow Memorial Field Airport, and within 2 miles each side of the Manistee VOR/DME 186° radial extending from the 6.3 mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–250 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–02]

Proposed Modification of Class E Airspace; Greenville, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Greenville, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, and an RNAV SIAP Rwy 28 has been developed for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Greenville Municipal Airport.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–02, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Greenville, MI, by increasing the radius of the controlled airspace for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Greenville, MI [REVISED]

Greenville Municipal Airport, MI
(Lat. 43°08'32" N., long. 85°15'16" W.)

That airspace extending upward from 700 feet above the surface within an 7.1-mile radius of the Greenville Municipal Airport, MI.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–248 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 46

[REG–125450–01]

RIN 1545–AY93

Liability For Insurance Premium Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 19, 2002, at 10 a.m. must be received by February 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–125450–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125450–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amanda Ehrlich, (202) 622–3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The insurance premium excise tax imposed by section 4371 originated as a stamp tax on certain insurance policies in the Act of February 24, 1919, Title IX, section 1100. This provision was re-enacted unchanged in the Revenue Act of 1924, as section 800; in the Revenue Act of 1926, as section 800; and in the Internal Revenue Code of 1939 (1939 Code), as section 1804. Section 1809(a) of the 1939 Code required the tax imposed by section 1804 to be paid "by any person who makes, signs, issues, [or] sells * * * any of the documents [or] instruments * * * [including insurance policies subject to tax] * * * or for whose use or benefit the same are made, signed, issued, [or] sold * * *." Section 1809(b)(1) of the 1939 Code required the tax to be paid by the purchase of stamps to be affixed to taxable documents.

The insurance premium excise tax imposed by section 1804 of the 1939 Code was reenacted in the Internal Revenue Code of 1954 (1954 Code) as section 4371. Section 1809(a) and (b)(1) of the 1939 Code (relating to who is

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liable for the tax and how it is to be paid) were reenacted as sections 4383 and 4374 of the 1954 Code, respectively. Section 4383 of the 1954 Code was renumbered as section 4384 by the Excise Technical Changes Act of 1958.

Section 4374 was amended in 1965 to authorize the Secretary or the Secretary's delegate to provide by regulations that the tax imposed by section 4371 shall be paid on the basis of a return, instead of by stamp. Excise Tax Reduction Act of 1965, Public Law 89–44, section 804(a), 79 Stat. 136, 160 (1965). Pursuant to this statutory authorization, the Secretary promulgated 26 CFR 46.4374–1 in 1970, which provides that the tax imposed by section 4371 shall be paid on the basis of a return and remitted by the person who pays the premium to a foreign insurer or reinsurer. TD 7023; 1970–1 C.B. 233, 236. For these purposes, the person who makes payment of the premium is the resident person who actually transferred the money, check, or its equivalent to the foreign insurer or reinsurer. The regulation further provided a reference to section 4384 for purposes of determining the persons liable for the tax. § 46.4374–1(a).

The Tax Reform Act of 1976 (1976 Act) combined sections 4374 and 4384 into a single Code section, and eliminated any references therein to the payment of the tax by stamps. Tax Reform Act of 1976, Public Law 94–455, section 1904(a)(12), 90 Stat. 1520, 1812–14 (1976). The 1976 Act repealed section 4374, which had required payment of the tax by stamps or by return pursuant to regulations. It renumbered section 4384 as section 4374, which imposes liability for the tax. Finally, the 1976 Act amended the new section 4374 to require payment of the tax by return. The regulations under section 4374 have not been changed to reflect the 1976 statutory amendments.

Some taxpayers have taken the position, contrary to the statute, that § 46.4374–1 (which does not reflect the 1976 legislative changes) imposes liability and requires payment of tax only if a premium is paid by a resident of the United States. This interpretation ignores the cross-reference in § 46.4374–1(a) to prior Code section 4384 for purposes of determining the persons who are liable for the tax. The proposed regulations revise § 46.4374–1(a) to conform the regulations to the 1976 statutory amendments by providing that any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, is liable for the tax imposed by section 4371. Section 46.4374–1(c) also provides that the tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

Proposed Effective Date

These regulations are proposed to apply to premiums paid on or after the date final regulations are published in the **Federal Register**.

Special Analysis

It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Treasury and the IRS request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for March 19, 2002 at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 26, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Amanda Ehrlich of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 46 is proposed to be amended as follows:

PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

Paragraph 1. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 46.4374–1 is revised to read as follows:

§ 46.4374–1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–325 Filed 1–4–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7423]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFE and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

IOWA.—JOHNSON COUNTY, IOWA AND INCORPORATED AREAS

Flooding source(s)	Location of referenced elevation	Elevation feet *(NGVD)		Communities affected
		Effective	Modified	
Iowa River	Approximately 10,000 feet upstream of the confluence with Snyder Creek.	*636	*636	Johnson County, City of Iowa City and City of Coralville.
	Just downstream of U.S. Highway 6	*643	*644	
	Approximately 4,000 feet upstream of Coralville Dam	*657	*657	
Ralston Creek	Just upstream of the North Branch Ralston Creek Detention Dam.	*699	*700	City of Iowa City and Johnson County.
	Approximately 500 feet upstream of Scott Boulevard	None	*731	

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IOWA.—JOHNSON COUNTY, IOWA AND INCORPORATED AREAS—Continued

Flooding source(s)	Location of referenced elevation	Elevation feet °(NGVD) Effective	Modified	Communities affected
South Branch Ralston Creek ...	Just upstream of Scott Boulevard	None	°723	City of Iowa City and Johnson County.
	Approximately 3,700 feet upstream of Scott Boulevard	None	°727	
North Branch Snyder Creek	Approximately 4,550 feet downstream of U.S. Route 6	None	°650	City of Iowa City and Johnson County.
	Approximately 2,050 feet upstream of Chicago Rock Island and Pacific Railroad.	None	°668	
Clear Creek	At confluence with Iowa River	°653	°654	Johnson County, City of Iowa City and City of Tiffin.
	Approximately 4,100 feet upstream of Camp Cardinal Road.	°667	°668	
	Approximately 5,300 feet downstream of Interstate 80	°671	°672	
Willow Creek	At confluence with Iowa River	°641	°642	City of Iowa City and Johnson County.
	Approximately 650 feet upstream of U.S. Route 218 ...	None	°721	
West Branch Snyder Creek	At confluence with North Branch Snyder Creek	None	°662	Johnson County and City of Iowa City.
	Approximately 900 feet upstream of The West Spur Railroad.	None	°673	
Middle Branch Willow Creek ...	At confluence with Willow Creek	None	°677	City of Iowa City.
	Approximately 300 feet upstream of Mormon Trek Boulevard.	None	°690	

#Depth in feet above ground.

ADDRESSES:

Johnson County, Iowa and Incorporated Areas:

Maps are available for inspection at Johnson County and Planning and Zone, 913 South Dubuque Street, Iowa City, Iowa

Send comments to Ms. Sally Stutsman, Chairperson, Johnson County, Board of Supervisors, Iowa City, Iowa 52240

City of Iowa City, Iowa:

Maps are available for inspection at the County Courthouse, P.O. Box325, Allison, Iowa

Send comments to The Honorable Ernest W. Lehman, Mayor, 410 East Washington Street, Iowa City, Iowa 52240

City of Tiffin, Iowa:

Maps are available for inspection at Tiffin City Hall, 211 Main Street, Tiffin, Iowa

Send comments to the Honorable Glenn Potter, Mayor, P.O. Box 196, Tiffin, Iowa 52430

City of Coralville:

Maps are available for inspection at the Coralville City Hall, 1512 17th Street, Coralville, Iowa

Send comments to the Honorable Jim Fausett, Mayor, City of Coralville, 1512 7th Street, P.O. Box 5127 Coralville, City of Iowa 52241

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 19, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–320 Filed 1–4–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 529, 531, 533, 535, 537, 538, 541, 542, 543, 544, 551, 552, 553, 554, 555, 556, 557, 564, 565, 568, 567, 568, 569, 570, 572, 573, 574, 575, 576, 577, 578, 579

[Docket No. NHTSA–01–11227]

Federal Motor Vehicle Safety Standards (FMVSS); Small Business Impacts of Motor Vehicle Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice of regulatory review; Request for comments.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) seeks comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, motorcycles, and motor vehicle equipment.

DATES: Comments must be received on or before January 25, 2002.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. You may call Docket Management at: (202) 366–9324. You may visit the Docket from 10:00 am to 5:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nita Kavalauskas, Office of Regulatory Analysis and Evaluation, Office of Plans and Policy, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2584. Facsimile (fax): (202) 366–2559.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, "we") has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process-an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ended in the fall of 1999; Year 2 (1999) began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The schedule has been revised from its listing in the Semiannual Regulatory Agenda on November 22, 1999. A major revision to parts 591 through 594 has been proposed. Thus, we deemed it appropriate to delay our small business impact review of these parts from year 3 to year 8, and move the other regulations forward one year.

The following table shows the 10-year analysis and review schedule:

NHTSA SECTION 610 REVIEW PLAN[1]

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	1999	2000
3	49 CFR 571.101 through 571.110 and 571.135	2000	2001
4	49 CFR parts 529 through 579, except part 571	2001	2002
5	49 CFR 571.111 through 571.129 and parts 580 through 590	2002	2003
6	49 CFR 571.201 through 571.212	2003	2004
7	49 CFR 571.214 through 571.219, except 571.217	2004	2005
8	49 CFR parts 591 through 594	2005	2006
9	49 CFR 571.223 through 571.304, part 500 and new parts and subparts under 49 CFR	2006	2007
10	23 CFR parts 1200 and 1300 and new parts and subparts under 23 CFR	2007	2008

[1] Revised schedule.

C. Regulations Under Analysis

During Year 4 (2001), the Analysis Year, we will conduct a preliminary assessment of the following sections of 49 CFR Parts 529 through 579, except Part 571:

Section	Title
529	Manufacturers of multistage automobiles
531	Passenger automobile average fuel economy standards
533	Light truck fuel economy standards
535	3-year carryforward and carryback of credits for light trucks
537	Automotive fuel economy reports
538	Manufacturing incentives for alternative fuel vehicles
541	Federal motor vehicle theft prevention standard
542	Procedures for selecting lines to be covered by the theft prevention standard
543	Exemption from vehicle theft prevention standard
544	Insurer reporting requirements
551	Procedural rules
552	Petitions for rulemaking, defect, and noncompliance orders
553	Rulemaking procedures
554	Standards enforcement and defects investigation

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Section	Title
555	Temporary exemption from motor vehicle safety and bumper standards.
556	Exemption for inconsequential defect or non-compliance.
557	Petitions for hearings on notification and remedy of defects.
564	Replaceable light source information.
565	Vehicle identification number requirements.
566	Manufacturer identification.
567	Certification.
568	Vehicles manufactured in two or more stages.
569	Regrooved tires.
570	Vehicle in use inspection standards.
572	Anthropomorphic test devices.
573	Defect and noncompliance reports.
574	Tire identification and recordkeeping.
575	Consumer information regulations.
576	Record retention.
577	Defect and noncompliance notification.
578	Civil penalties.
579	Defect and noncompliance responsibility.

We are seeking comments on whether any requirements in parts 529 through 579, except part 571 have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in parts 529 through 579, except part 571 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

II. Plain Language

A. Background and Purpose

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review parts 529 through 579, except part 571 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically.

How Can I be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 02–154 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. NHTSA–2001–10774]

RIN 2127–AI41

Automotive Fuel Economy Manufacturing Incentives for Alternative FuelVehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent to issue a notice of proposed rulemaking (NPRM).

SUMMARY: To provide an incentive for the production of vehicles that can operate on certain alternative fuels as well as on regular petroleum fuels, Congress established a special procedure for calculating the fuel economy of those vehicles for the purpose of determining compliance with the Corporate Average Fuel Economy standards. This procedure increases the fuel economy attributed to such "dual-fueled" vehicles. By statute, the incentive is available through the 2004 model year and may be extended by up to four additional model years through rulemaking.

The purpose of this document is to announce the intention to issue a proposal to extend the availability of the incentive for one or more additional model years.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mr. Kenneth Katz, Consumer Programs Division, Office of Planning and Consumer Programs, NPS–32, Room 5320, telephone (202) 366–4936, facsimile (202) 493–2290.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, Room 5219, telephone (202) 366–5263, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

Congress created the Corporate Average Fuel Economy (CAFE) program when it enacted the Energy Policy and Conservation Act of 1975 (Public Law 94–163; Dec. 22, 1975). The CAFE statutory provisions, now codified in chapter 329 of Title 49 of the United States Code (49 U.S.C. 32901 *et seq.*), mandate fuel economy standards that must be met by vehicle manufacturers. These standards apply separately to each manufacturer's annual fleet of passenger cars and to its annual fleet of light trucks under 8,500 lbs. gross vehicle weight rating, instead of applying to individual vehicles. Each manufacturer's average fuel economy is determined by the Environmental Protection Agency in accordance with procedures set forth in 49 U.S.C. 32904. Those procedures provide for determining the fuel economy of a manufacturer's model types produced in a particular model year and calculating a weighted fuel economy average for the manufacturer.

Congress amended the CAFE provisions when it enacted the Alternative Motor Fuels Act of 1988 ("AMFA") (Public Law 100–94; October 14, 1988). The purposes of AMFA were to encourage the development and use of methanol, ethanol and natural gas as transportation fuels and to promote the production of alternative fuel vehicles (AFVs). For the latter purpose, AMFA provides special procedures for calculating the fuel economy of "dedicated" alternative fuel vehicles and "dual-fueled" vehicles that meet specified eligibility criteria. "Dedicated vehicles" are cars or light trucks designed to operate exclusively either on natural gas or on a methanol or ethanol fuel mixture composed of at least 85 percent of either substance. "Dual-fueled vehicles" have the capability to operate on conventional petroleum and the capability to operate on an alternative fuel. Most dual-fueled vehicles produced to date are capable of operating on E85 (a blend of 85% ethanol and 15% gasoline) and either gasoline or diesel. The special calculation procedures used in determining the fuel economy of alternative fuel vehicles substantially increase the fuel economy ratings of these vehicles.

In creating the incentive program for dual-fueled vehicles, Congress expressly limited both the extent to which a manufacturer can avail itself of the incentive in any model year as well as the duration of the incentives.[1] For the 1993–2004 model years, the maximum increase in CAFE available to a

[1] Congress did not apply either of these limitations to the incentive program for dedicated vehicles.

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manufacturer for producing qualifying dual-fueled vehicles is 1.2 miles per gallon.

AMFA provides that the incentive is available through the end of the 2004 model year. In addition, AMFA provides that the agency may either extend the program to model years beyond the end of the 2004 model year or allow the program to terminate at that time. An extension of up to four model years is authorized. If the program were extended, the maximum increase in CAFE that could be attributed to the incentive would be limited to .9 miles per gallon in any of those model years.

AMFA further directs that NHTSA evaluate the dual-fuel incentive program and provide a report to Congress analyzing the success of the incentive program and preliminary conclusion regarding extension of the program beyond the 2004 model year.

Forthcoming Actions

In the near future, the agency plans to issue the report to Congress and a proposal to extend the incentive program for one or more additional model years.

Issued on: December 31, 2001.

Noble Bowie,

Director, Office of Planning and Consumer Programs.

[FR Doc. 01–32260 Filed 12–31–01; 3:21 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 11, 2002, 8:30 a.m.

PLACE: The location of this event has been changed. The new address is the U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS: Open to the public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of December 7, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Commission Appointments for District of Columbia, Maryland, Virginia and West Virginia
VI. Future Agenda Items
9:30 a.m.—Document Production Hearing for the Education Accountability Project
10:00 a.m.—Environmental Justice Hearing

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–389 Filed 1–3–02; 10:53 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty reviews.

SUMMARY: The Department of Commerce has received requests to conduct three new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating these new shipper reviews.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Dunyako Ahmadu, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–0198, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references are made to the Department of Commerce's (the Department) regulations at 19 CFR part 351 (2001).

Background

On November 29, 2001, the Department received a request for a new shipper review from Shandong Heze International Trade and Developing Company (Shandong Heze). On November 30, 2001, we received requests for new shipper reviews from Jinan Yipin Corporation, Ltd. (Jinan Yipin) and Huaiyang Hongda Dehydrated Vegetable Company (Hongda). All three companies are Chinese producers and exporters of fresh garlic from the People's Republic of China. We have reviewed their requests and find that they comply with the content requirements for requests set forth under 19 CFR 351.214(b)(2). The period of review is November 1, 2000, through October 31, 2001.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i), Shandong Heze, Jinan Yipin, and Hongda provided certifications that they had not exported subject merchandise to the United States during the period of investigation. In accordance with 19 CFR 351.214(b)(2)(iii)(A), each company further certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation.

Also, as required by 19 CFR 351.214(b)(2)(iii)(B), each of the three companies certified that its export activities were not controlled by the central government. Thus, the requests from Shandong Heze, Jinan Yipin, and Hongda meet the content requirements set forth under 19 CFR 351.214(b)(2)(i) and (iii). In addition, the companies submitted documentation establishing the following: (1) the date on which their subject merchandise was first entered, or withdrawn from warehouse, for consumption or the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States. Thus, the requests for review meet the content requirements set forth under 19 CFR 351.214(b)(2)(iv). Accordingly, pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of fresh garlic from the People's Republic of China produced and exported by Shandong Heze, Jinan Yipin, and Hongda. The period of review covers the period November 1, 2000, through October 31, 2001. *See* 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the day on which these new shipper reviews are initiated. *See* 19 CFR 351.214(i).

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Shandong Heze, Jinan Yipin, and Hongda until the completion of the review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B)(ii)

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of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 28, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–317 Filed 1–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2000 through September 30, 2001. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2000 through September 30, 2001.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 28, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
Austria	European Union Restitution Payments	0.12	0.12
Belgium	EU Restitution Payments	0.02	0.02
Canada	Export Assistance on Certain Types of Cheese	0.23	0.23
Denmark	EU Restitution Payments	0.06	0.06
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.09	0.09
Germany	EU Restitution Payments	0.09	0.09
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.07	0.07
Italy	EU Restitution Payments	0.00	0.00
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.05	0.05
Norway	Indirect (Milk) Subsidy	0.27	0.27
	Consumer Subsidy	0.12	0.12
Total		0.39	0.39
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.04	0.04
Switzerland	Deficiency Payments	0.06	0.06
U.K.	EU Restitution Payments	0.05	0.05

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–318 Filed 1–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards And Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 17, 2002, from 8:00 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to hear about latest developments, status of plans for 2002 and the logic, background, progress and goals of the 360vu brand. There will also be a presentation on findings from a technology extension pilot partnering. Discussions scheduled to begin at 8:00 a.m. and to end at 9:30 a.m. and to begin at 2:30 p.m. and to end at 3:30 p.m. on January 17, 2002, on personnel issues and proprietary budget information will be closed.

DATES: The meeting will convene January 17, 2002 at 8:00 a.m. and will adjourn at 3:30 p.m. on January 17, 2002.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899–4800, telephone number (301) 975–5033.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on January 3, 2002, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–428 Filed 1–4–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010202A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on January 21– 24, 2002.

ADDRESSES: These meetings will be held at the Holiday Inn Fort Brown, 1900 East Elizabeth Street, Brownsville, TX 78520; telephone: 956–546–2201. Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

January 21

8:30 a.m. thru 10:30 a.m.–Convene the Mackerel Management Committee to develop recommendations for mackerel and cobia status determination criteria. The full Council will consider these recommendations on Thursday morning.

10:30 a.m. thru 11:30 a.m.–Convene the Shrimp Management Committee to hear a NMFS report on the Texas closure analyses and make recommendation for the full Council for discussion on Thursday morning.

1 p.m. thru 5:30 p.m.–Convene the Reef Fish Management Committee to review a draft regulatory amendment containing alternatives for rebuilding of the red grouper stock and to hear the total allowable catch (TAC) recommendations of the scientific panels and Reef Fish Advisory Panel (AP) for gag, vermillion snapper, and gray triggerfish. The Committee will also discuss development of a red snapper individual transferable quota protocol.

January 22

8:30 a.m. thru 10:30 a.m.–Continue the Reef Fish Management Committee, if necessary.

10:30 a.m. thru 11:30 a.m.–Convene the Deep-Water Crab Management Committee to discuss an options paper for the development of a Deep-water Crab Fishery Management Plan (FMP). The species that would be managed under the Deep-water Crab FMP will be the golden crab (*Chaceon fenneri*) and red crab (*Chaceon quinquedens*). The preliminary issues and options paper for the development of a Deep-water Crab FMP examines fisheries issues including management needs, gear requirements and restrictions, crab size and sex limitations for harvest, and requirements for fishery participants.

1 p.m. thru 3:30 p.m.–Convene the Administrative Policy Committee to discuss congressional bills entitled the "Fishery Recovery Act" and "Freedom to Fish Act." The Committee recommendations will be considered by the Council as recommendations for amending the Magnuson-Stevens Fishery Conservation & Management Act (Magnuson Stevens Act).

3:30 p.m. thru 4:30 p.m.–(Closed Session) Convene the AP Selection Committee to recommend members for two Ad Hoc panels to review preparation of a supplemental environmental impact statement (SEIS) for the Essential Fish Habitat (EFH) Amendment. 4:30 p.m. thru 5:30 p.m.–(Closed Session) Convene the Personnel Committee to consider revisions to the personnel section of the Administrative Handbook.

January 23

8:30 a.m.–Convene Council.

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8:45 a.m. thru 12 noon–Receive public testimony on the Texas closure, overfishing and overfished criteria for mackerel and cobia, and TAC recommendations for gag grouper, vermillion snapper, and gray triggerfish. Although the Council will hear public testimony on TAC for these three stocks, final action on gag will not be taken until the March Council meeting in Mobile, AL or the May Council meeting in Destin, FL. Final action on gray triggerfish will be taken at the March Council meeting in Mobile, AL.

1:30 p.m. thru 5:30 p.m.–Receive the report of the Reef Fish Management Committee.

5 p.m. thru 5:30 p.m.–(Closed Session) Receive a report of the AP Selection Committee.

5:30 p.m. thru 5:45 p.m.–(Closed Session) Receive a report of the Personnel Committee. January 24

8:30 a.m. thru 8:45 a.m.–Receive a report of the AP Selection Committee.

8:45 a.m. thru 9:30 a.m.–Receive a report of the Mackerel Management Committee.

9:30 a.m. thru 9:45 a.m.–Receive a report of the Shrimp Management Committee.

9:45 a.m. thru 10:15 a.m.–Receive a report of the Deep-Water Crab Management Committee.

10:15 a.m. thru 12 noon–Receive a report of the Administrative Policy Committee.

1:30 p.m. thru 2:30 p.m.–Receive a status report on contract for preparation of SEIS for the EFH Amendment.

2:30 p.m. thru 2:45 p.m.–Receive a report of the Coral Reef Task Team Meeting.

2:45 p.m. thru 3 p.m.–Receive a report on the Gulf and South Atlantic Fishery Foundation turtle excluder device workshop.

3 p.m. thru 3:30 p.m.–Receive Enforcement Reports.

3:30 p.m. thru 3:45 p.m.–Receive the NMFS Regional Administrator's Report.

3:45 p.m. thru 4 p.m.–Receive Director's Reports.

4 p.m. thru 4:15 p.m.–Other Business

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling 813 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 14, 2002.

Dated: January 2, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–319 Filed 1–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year (FY) 2002.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of FY 2002 claims for reimbursement under Title X of the Energy Policy Act of 1992. Approximately $19.5 million in funds for FY 2002 are available for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. This amount includes $1 million in FY 2002 appropriations plus approximately $18.5 million available from FY 2001 appropriations. The Department expects to make payments on approved FY 2001 claims from these appropriations by April 30, 2002.

DATES: The closing date for the submission of claims in FY 2002 is May 1, 2002. These claims will be processed for payment by April 30, 2003, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 18th of December, 2001.

David E. Mathes,

Team Leader, Albuquerque/Nevada Team, Small Sites Closure Office, Office of Site Closure.

[FR Doc. 02–287 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Advanced Liquid Natural Gas (LNG) Onboard Storage Systems

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of intent to issue a financial assistance solicitation.

SUMMARY: DOE intends to issue a financial assistance solicitation in February 2002 for research and development in the area of Advanced Liquid Natural Gas (LNG) Onboard Storage Systems. The long-term goal is to demonstrate cryogenic tank and pump systems that have commercial potential. The short-term goal is to validate cryogenic pumping design concepts through a laboratory proof-of-concept test program. The scope of work for the solicitation will be in two phases. Phase I activities will involve the "proof of concept" through a validation test program. Tasks under this phase will cover: construction of a test stand; fabrication of test items; component testing; pilot testing of a complete fuel delivery system; redesign and optimization; and prototype testing. Phase II activities will involve tank certification testing and road testing. (Phase II funding will be based on availability of funds, test data, design and market plan.) It is anticipated that these efforts will take place over a twenty-four month period under a cooperative agreement arrangement. One or two cooperative agreements will result from the solicitation. Total Government funding is expected to be approximately $1,000,000.00. Successful applicants are expected to cost-share a minimum of 30% of the project cost. Technical program requirements include (1) low-pressure (15 psig or less) on-board storage, and (2) a no-vent system, both on station refuel and fuel delivery to the engine. It is anticipated that award(s) as a result of the solicitation will be made in July, 2002. It is further anticipated that Phase II funding for this project will be available in the FY 2003 budget.

DATES: The solicitation will be available on DOE's "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about February 15, 2002. Prospective applicants can obtain access to the solicitation from the above Internet address or through the DOE Chicago Operations Office (CH) Internet address at *http://www.ch.doe.gov* under "current solicitations". The deadline for the submission of applications will be identified in the solicitation.

ADDRESSES: The solicitation, when issued, will include a narrative statement of work, program requirements, qualification criteria, evaluation criteria, and other information. The solicitation and any subsequent amendments will be published on the above mentioned Internet addresses. All applications must be submitted through IIPS in accordance with the instructions provided in the solicitation.

FOR FURTHER INFORMATION CONTACT: Sharon L. Donaldson, 630/252–0953.

SUPPLEMENTARY INFORMATION: An Advanced LNG Storage System incorporates the use of a fuel pump. LNG fuel pumps are currently being used on high-pressure (3600 psig) direct injected natural gas engines. There are, however, advantages to using LNG pumps for all types of engines, since 25% more natural gas can be stored in a tank when fuel tank saturation pressure is below 15 psig. The lower pressure of the vehicle's storage tank also helps standardize and simplify the operation of the natural gas refueling station. Operating at low pressures can also reduce venting losses and may offer savings in equipment costs. The major obstacle to low-pressure onboard storage is the availability of a highly reliable in-tank LNG pump. DOE, therefore, has interest in an R&D test program that further develops low-pressure onboard LNG pumping capability. Interested parties will be required to address the following program requirements: type of refueling (either single line fill or two line fill); thermal/pressure tank management; fuel weathering; fuel delivery sufficient for a 425-hp engine; cryogenic pump durability and maintenance schedule; tank hold time; redundancy in case of pump failure; business plan; and safety. It is DOE's intent to evaluate submitted designs and business plans, and support the further testing of the most promising approaches. Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Issued: Argonne, Illinois on December 26, 2001.

John D. Greenwood,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 02–281 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–03; Environmental Management Science Program (EMSP): Research Related to Subsurface Contamination in the Vadose and Saturated Zones

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy (DOE), hereby announce their interest in receiving grant applications to support specifically innovative, fundamental research to investigate DOE subsurface contamination in the vadose and saturated zones.

DATES: The deadline for receipt of formal applications is 4:30 P.M., E.S.T., Wednesday, March 27, 2002, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

ADDRESSES: Applications must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 02–03. This address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, facsimile: (301) 903–0567, e-mail: *roland.hirsch@science.doe.gov*, or Mr. Mark Gilbertson, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, D.C. 20585, telephone: (202) 586–7150, facsimile: (202) 596–1492, e-mail: *mark.gilbertson@em.doe.gov*. The full text of Program Notice 02–03 is available via the Internet using the following Web site address: *http://*

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www.science.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Science, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996, to (1) address long-term technical issues crucial to the EM mission, and (2) provide EM with near-term fundamental data critical to the advancement of technologies that are under development, but not yet at full scale nor implemented. Proposed basic research under this notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge.

This program is designed to inspire breakthroughs in areas critical to the EM mission through basic research and will be managed in partnership with SC. The Office of Science's procedures, as set forth in the Office of Science Merit Review System, as published in the **Federal Register**, March 11, 1991, Vol. 56, No. 47, pages 10244–10246, will be used for merit review of applications submitted in response to this notice.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained about the general program at: *http://emsp.em.doe.gov.*

Purpose

Over the past 50 years, the United States created an industrial complex to develop, test, manufacture, and maintain nuclear weapons for national security purposes. The production and testing of nuclear weapons created a legacy of significant environmental contamination, ranging from uranium mining and milling, waste disposal, and radionuclide migration in ground water and soil. In 1995, the 104th Congress authorized creation of the Environmental Management Science Program (EMSP) to develop a long term, basic science infrastructure to focus on the environmental cleanup effort DOE began formally in 1989. To address the largest environmental cleanup program in the world, from a cost perspective, EMSP has the following objectives:

- Provide scientific knowledge that will revolutionize technologies and cleanup approaches to significantly reduce future costs, schedules, and risks.
- "Bridge the gap" between broad fundamental research that has wide-ranging applicability, such as that performed in DOE's Office of Science and needs-driven applied technology development that is conducted in EM's Office of Science and Technology.
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Since 1996, the Program has held six competitions and has awarded over $290 million in funding to 361 research projects. A breakdown of the EMSP awards by year is as follows:

- 1996 and 1997: 202 awards totaling $160 million targeted at a broad spectrum of basic science cleanup and waste management issues.
- 1998: 33 awards totaling $30 million focused on high-level radioactive waste and decontamination and decommissioning issues.
- 1999: 39 awards totaling $30 million fostered basic research in the areas of vadose zone contamination and low dose radiation.
- 2000: 42 awards totaling $30 million in research renewals for 1996 and 1997 funded projects.
- 2001: 45 awards totaling $39 million focused on additional high-level radioactive waste and decontamination and decommissioning issues.

Representative Research Areas

Basic research is solicited in all areas of science with the potential for addressing problems in subsurface contamination and transport processes in the vadose and saturated zones. Processes and problems in the vadose zone constitute important subjects of concern to the Department's Environmental Management Program. Relevant scientific disciplines include, but are not limited to: geological sciences (including geochemistry, geophysics, hydrogeologic flow and transport modeling, process modeling, and hydrologic field-studies), plant sciences (including mechanisms of contaminant uptake, concentration, sequestration, and phytoremediation), chemical sciences(including fundamental interfacial chemistry, computational chemistry, actinide chemistry, and analytical chemistry and instrumentation), engineering sciences (including control systems and optimization, diagnostics, transport processes, fracture mechanics, and bioengineering), materials science (including other novel materials-related strategies), and bioremediation (including biogeochemistry; microbial science related to ex situ treatment of metals, radionuclides, and organics; and in situ treatment of organics). The Natural and Accelerated Bioremediation Research (NABIR) program in the Office of Biological and Environmental Research, Office of Science, may issue a Notice related to in situ treatment of metals and radionuclides during FY 2002. Research projects relating to this area should be submitted to NABIR rather than to EMSP. Additional information about the NABIR program can be found at: *http://www.lbl.gov/NABIR/.*

Project Renewals

Lead Principal Investigators of record for Projects funded under Office of Science Notice 99–06, Environmental Management Science Program: Research Related to Subsurface Contamination, are eligible to submit renewal applications under this solicitation.

Program Funding

It is anticipated that up to a total of $4,000,000 of Fiscal Year 2002, funds will be available for new and renewal EMSP awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution. Additionally, relevant innovative basic research pertaining to other sites will be considered.

Collaboration and Training

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National

Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to EMSP.

Application Format

Applicants are expected to use the following format in addition to following instructions in the Office of Science Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- Office of Science Face Page (DOE F 4650.2 (10–91)).
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section).
- Table of Contents.
- Project Abstract (no more than one page).
- Budgets for each year and a summary budget page for the entire project period (using DOE F–4620.1).
- Budget Explanation. Applicants are requested to include in the travel budget funds to attend: (1) An initial research kick-off meeting; (2) for each year, to attend either the National EMSP Workshop, or a Focus Area-specific Mid-Year Review; and (3) one or more extended visits (1 to 2 weeks in duration) to a cleanup site by either the Principal Investigator, or a senior staff member, or collaborator.
- Budgets and Budget explanation for each collaborative subproject, if any.
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages).
- Goals.
- Significance of Project to the EM Mission.
- Background.
- Research Plan.
- Preliminary Studies (if applicable).
- Research Design and Methodologies.
- Literature Cited.
- Collaborative Arrangements (if applicable).
- Biographical Sketches (limit 2 pages per senior investigator).
- Description of Facilities and Resources.
- Current and Pending Support for each senior investigator.

Application Categories

In order to properly classify each application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research:

1. Actinide Chemistry.
2. Analytical Chemistry and Instrumentation.
3. Bioremediation.
4. Engineering Sciences.
5. Geochemistry.
6. Geophysics.
7. Hydrogeology.
8. Interfacial Chemistry.
9. Materials Science.
10. Plant Science.
11. Other.

Application Evaluation and Selection

Scientific Merit

The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Relevance to Mission

Researchers are encouraged to demonstrate a linkage between their research projects and significant contamination problems at DOE sites. Researchers can establish this linkage in a variety of ways, for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could improve remediation capabilities. Of course, given the nature of basic research, there will not always be a clear pathway between research results and application to site remediation.

Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of EMSP. DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Past research solicitations, abstracts; and research reports of projects funded under EMSP can be viewed at: *http://emsp.em.doe.gov/researcher.htm.*

Application Guide and Forms

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is made.

Subsurface Contamination Research Needs

This research Notice has been developed for Fiscal Year 2002, with the primary objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. An overview of EMSP vadose and saturated zone research needs is summarized in this section based on the National Academy of Sciences, National Research Council (NRC) report published in 2000 titled "Research Needs in Subsurface Science." NRC recommendations for basic research focus in four areas:

- Location and characterization of subsurface contaminants and characterization of the subsurface.
- Conceptual modeling.
- Containment and stabilization.
- Monitoring and validation.

More detailed explanations of the nature and extent of environmental contamination throughout the DOE Complex, particularly at the six largest Field Offices, and reference web sites, can be found in the background section of this Notice. Interested investigators are referred to three web sites that provide information regarding subsurface contamination across the DOE Complex:

- Subsurface Contamination Focus Area (SCFA) at: *http://www.envnet.org/scfa/* provides new science technologies, approaches, and technical assistance to address soil and water pollution, reducing the risk and cost of cleanup and stewardship. Researchers are invited to review the SCFA Product Lines and Technical Targets; the later is

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under development to strategically guide research and technology products to end-users. A few of the critical research areas included in the Technical Targets are: characterizing and monitoring the lateral and vertical extent of dense nonaqueous phase liquids (DNAPLs) transport; reactive materials for barrier systems that maintain permeability over time; biogeochemical processes leading to the mobilization/immobilization of the contaminants in soils and sediments, as well as the those factors controlling their bioavailability; and monitored natural attenuation processes and validation strategies.

• Idaho National Engineering and Environmental Laboratory lead an effort to develop a National Roadmap for Vadose Zone Science and Technology described at: *http://www.inel.gov/vadosezone/* to improve vadose zone characterization and to monitor and simulate subsurface contamination fate and transport, integrating the saturated zone.

• Idaho National Engineering and Environmental Laboratory's (INEEL) role as EM's Lead Lab is to ensure the integration of critical new science, technology, and programmatic solutions for cleanup and long term stewardship, described at: *http://www.inel.gov/environment/em-lead.shtml*.

There are about 6.4 billion cubic meters of contaminated soil, groundwater, and other environmental media at the DOE sites. Contaminants of concern across the Complex broadly include: radionuclides, metals, and dense nonaqueous phase liquids (DNAPLs). More specifically, key chemicals by group are:

• Radionuclides: plutonium, strontium–90, cesium–137, isotopes of uranium, trituim, thorium, technecium–99, radium, and iodine–129.

• Metals: lead, chromium VI, mercury, zinc, beryllium, arsenic, cadmium, and copper.

• DNAPLs: carbon tetrachloride, trichloroethylene, dichloroethylene, tetrachloroethylene, chloroform, dichloromethane, and polychlorinated biphenyls.

The life cycle costs for the Office of Environmental Management cleanup program have been estimated to be $147 billion between 1997 and 2070 (DOE 1998a). During this period of time, the EMSP research results can make a significant impact on reducing risks, costs, and cleanup schedules.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by the Environmental Management Program can be found at: *http://www.em.doe.gov* and at the extensive links contained therein. The programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

Location and Characterization of Subsurface Contaminants and Characterization of the Subsurface

The challenges of locating and characterizing subsurface contamination are magnified by the wide range of contaminant types; the wide variety of geological and hydrological conditions across the DOE complex; and the wide range of spatial resolutions at which this contamination must be located and characterized, from widely dispersed contamination in groundwater plumes to small isolated hot spots in waste burial grounds. Basic research is needed to support the development of the following capabilities to locate and characterize contamination in the subsurface and to characterize subsurface properties at the scales that control contaminant fate and transport behavior:

• Improved capabilities for characterizing the physical, chemical, and biological properties of the subsurface.

• Improved capabilities for characterizing physical, chemical, and biological heterogeneity, especially at the scales that control contaminant fate and transport behavior. Approaches that allow the identification and measurement of the heterogeneity features that control contaminant fate and transport to be obtained directly (i.e., without having to perform a detailed characterization of the subsurface) are especially needed.

• Improved capabilities for measuring contaminant migration and system properties that control contaminant movement.

• Methods to integrate data collected at different spatial and temporal scales to better estimate contaminant and subsurface properties and processes.

• Methods to integrate such data into conceptual models.

Conceptual Modeling

Existing conceptual and predictive models have often proven ineffective for understanding and predicting contaminant movement, especially at sites that have thick vadose (unsaturated) zones or complex subsurface characteristics. Accurate conceptualizations are essential for understanding the long-term fate of contaminants in the subsurface and the selection and application of appropriate corrective actions. Basic research explicitly focused on fundamental approaches and assumptions underlying conceptual model development could produce a toolbox of methodologies that are applicable to contaminated sites both inside and outside the DOE complex. This research should focus on the following topics:

• New observational and experimental approaches and tools for developing conceptual models that apply to complex subsurface environments, including such phenomena as colloidal transport and biologic activity.

• New approaches for incorporating geological, hydrological, chemical, and biological subsurface heterogeneity into conceptual model formulations at scales that dominate flow and transport behavior.

• Development of coupled-process models through experimental studies at variable scales and complexities that account for the interacting physical, chemical, and biological processes that govern contaminant fate and transport behavior.

• Methods to integrate process knowledge from small-scale tests and observations into model formulations, including methods for incorporating qualitative geological information from surface and near-surface observations into conceptual model formulations.

• Methods to measure and predict the scale dependency of parameter values.

• Approaches for establishing bounds on the accuracy of parameters and conceptual model estimates from field and experimental data.

The research needs outlined above call for more hypothesis-driven experimental approaches that address how to integrate the understanding of system behavior. This research will require expertise from a wide range of disciplines and must be conducted at scales ranging from the laboratory bench top to contaminated field sites. Moreover, to have long-term relevance to the DOE cleanup mission, this research must be focused on the kinds of subsurface environments and contamination problems commonly encountered at major DOE sites.

Containment and Stabilization

There has been an increasing emphasis on, and acceptance of, waste containment and stabilization in recent years, both in DOE and by regulatory agencies. Decreasing cleanup budgets, evaluations that show containment is a low-risk choice for some problems, and recognition that some contamination cannot be remediated either with current technologies or conceivable new technologies are responsible for this change in philosophy. However, at some sites, containment and stabilization may be an interim measure and has its own set of associated technical problems. There is little understanding of the long-term performance of containment and stabilization systems, and there is a general absence of robust and cost-effective methods to validate that such systems are installed properly or that they can provide effective long-term protection.

The construction of stabilization and containment systems is properly within the province of applied technology development. However, basic research focused on the following topics will be needed to support this technology development effort:

• The mechanisms and kinetics of chemically and biologically mediated reactions that can be applied to new stabilization and containment approaches (e.g., reactions that can extend the use of reactive barriers to a greater range of contaminant types found at DOE sites) or that can be used to understand the long-term reversibility of chemical and biological stabilization methods.

• The physical, chemical, and biological reactions that occur among contaminants, soils, and barrier components so that more compatible and durable materials for containment and stabilization systems can be developed.

• The fluid transport behavior in conventional barrier systems, for example, understanding water infiltration into layered systems, including infiltration under partially saturated conditions and under the influences of capillary, chemical, electrical, and thermal gradients can be used to support the design of more effective infiltration barrier systems.

• The development of methods for assessing the long-term durability of containment and stabilization systems.

Monitoring and Validation

Monitoring and validation are necessary at both the front and the back ends of the site remediation process. At the front end, monitoring and validation are used to support the development of conceptual and predictive models of subsurface and contaminant behavior. At the back end, monitoring and validation are used to demonstrate the effectiveness of efforts to remove, treat, or especially to contain contamination and to gain regulatory acceptance for such corrective actions. Moreover, such monitoring and validation efforts can also improve the understanding of the contaminant fate and transport processes and can be used to recalibrate and revise conceptual and predictive models-important elements of the model building process.

The ability to monitor and validate is essential to the successful application of any corrective action to a subsurface contamination problem and regulatory acceptance of that action. However, the knowledge and technology bases to support these activities are not fully developed and are receiving little attention in EM's science and technology programs.

Many of the research opportunities for monitoring and validation have been covered in the research emphases discussed above. Basic research is needed on the following topics:

• Development of methods for designing monitoring systems to detect both current conditions and changes in system behaviors. These methods may involve the application of conceptual, mathematical, and statistical models to determine the types and locations of observation systems and prediction of the spatial and temporal resolutions at which observations need to be made.

• Development of validation processes. The research questions include (1) understanding what a representation of system behavior means and how to judge when a model provides an accurate representation of a system behavior—the model may give the right answers for the wrong reasons and thus may not be a good predictive tool; and (2) how to validate the future performance of the model or system behavior based on present-day measurements.

• Data for model validation. Determining the key measurements that are required to validate models and system behaviors, the spatial and temporal resolutions at which such measurements must be obtained, and the extent to which surrogate data (e.g., data from lab-scale testing facilities) can be used in validation efforts.

• Research to support the development of methods to monitor fluid and gaseous fluxes through the unsaturated zone, and for differentiating diurnal and seasonal changes from longer-term secular changes. These methods may involve both direct (e.g., in situ sensors) and indirect (e.g., using plants and animals) measurements over long time periods, particularly for harsh chemical environments characteristic of some DOE sites. This research should support the development of both the physical instrumentation and measurement techniques. The latter includes measurement strategies and data analysis (including statistical) approaches.

Background

The DOE has a 50-year legacy of environmental problems resulting from the production of nuclear weapons. Migration of some groundwater plumes threaten local and regional water sources, and in some cases, have adversely impacted off-site resources. The Department is responsible for the remediation of numerous landfills at facilities. These landfills are estimated to contain over three million cubic meters of radioactive and hazardous buried waste, some of which has migrated to the surrounding soils and groundwater. Currently available cleanup technologies are inadequate or unacceptable due to excessive costs, increased risks, long schedules, or the production of secondary waste streams.

Much of the defense-related contamination within the Department (the Complex has over 100 sites) occurs at six of the largest sites, as summarized below: Hanford, Washington; Idaho National Engineering and Environmental Laboratory (INEEL); Nevada Test Site (NTS); Oak Ridge Reservation (ORR), Tennessee; Rocky Flats Environmental Technology Site, Colorado, and Savannah River Site (SRS), South Carolina.

Hanford Site, Washington

Located in southeastern Washington State, Hanford encompasses 1450 square kilometers (km²). From 1940 to 1989, nuclear weapons production took place, leaving several production reactors, chemical separations plants, and solid and liquid storage sites. The unsaturated, or vadose zone, on the central plateau area is 60–90 meters (m) thick. Here, several trillion liters of contaminated water and supernatant liquid were discharged or gravity-settled via, basins, cribs, trenches, tanks, etc., causing ground water and soil contamination from radionuclides (primarily, tritium, uranium, cesium-137, strontium-90, technecium-99, and iodine-129), metals (e.g. chromium), and DNAPLs (e.g. carbon tetrachloride). Prior to the 1990s, it was thought that the sorption capabilities of the soil in the vadose zone would limit migration of radionuclides; however, recent conceptual and mathematical models indicate more rapid migration potential to the groundwater.

The DOE created the Groundwater/Vadose Zone Integration Project, described at: *http://www.bhi-erc.com/projects/vadose* to coordinate cleanup activities at Hanford. A number of projects were awarded in the 1999

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EMSP Vadose Zone research call that were highly relevant to science needs at the Hanford site. DOE/Richland has identified important, current scientific issues for research that are not being addressed by others at the Hanford site, or within the current EMSP program. Resolution of these issues would advance the state of remediation and site closure at Hanford and other DOE sites as well. These scientific issues may be found in a briefing document at: *http://www.bhi-erc.com/projects/vadose/sandt/stdocs.htm.* A 2001 report by the National Academy of Sciences and the National Research Council, titled "Science and Technology for Environmental Cleanup at Hanford" presents the successes and improvement areas of the science and technology program in the Hanford cleanup. Interested investigators are also referred to the Fiscal Year 2001, Subsurface Contaminations Technology Needs list at: *http://www.pnl.gov/stcg/fy01needs/ss/index.stm* for a detailed description of site research needs.

Idaho National Engineering and Environmental Laboratory

Located west of Idaho Falls, Idaho, INEEL occupies 2,300 km^2 of semi-arid desert along the northern margin of the Eastern Snake River Plain. The site was established as a building, testing, and operating station for various types of nuclear reactors and propulsion systems. Spent fuel from the naval reactor program is also managed there. Low levels of plutonium have been found in ground water beneath the Radioactive Waste Management Complex (RWMC)—a disposal site that received low-level and transuranic waste beginning in 1952. Pit 9, a trench within the RWMC, received an estimated 7,100 m^3 of sludge and solids contaminated with plutonium and americium. Similar to Hanford, at the time, the thick (60–240 m) unsaturated zone of volcanic strata was thought to impede contaminant migration to the underlying aquifers. Estimates today indicate travel times of tens of years, as opposed to estimates made in the 1950s and 1960s of thousand-year travel times. Interested investigators are referred to the INEEL Science and Technology Needs list at: *http://www.inel.gov/st-needs* for a detailed description of fundamental science studies that will assist, accelerate, or reduce the cost of cleanup.

Nevada Test Site

The NTS became the primary location for atmospheric and underground nuclear testing in 1951. The Test Site occupies 3,500 km^2 of land in southern Nevada, north of Las Vegas about 143 km. Surface and shallow soil are contaminated with americium, plutonium and depleted uranium, and with metals from nuclear detonations, safety test shots, and rocket engine testing. Underground nuclear testing resulted in over 300 million curies of subsurface contamination including, tritium, plutonium, uranium, cesium, strontium, and other fission products. Tritium plumes have been detected from testing locations because this radionuclide is very mobile in the water phase. Plutonium, once thought to be relatively immobile in groundwater due to low solubilities and strong sorption on mineral surfaces, was detected 1.3 km down gradient of the Benham test on Pahute Mesa, in a 600-m-deep monitoring well. The plutonium was detected on colloids, leaving open the question of the contribution of colloidal transport of plutonium versus the prompt injection effects of the detonation blast. Basic research in the mechanical and geochemical transport of plutonium is warranted. Other site-specific technology needs can be found at: *http://www.nv.doe.gov/programs/envmgmt/blackmtn/TDSTCGTechnologyNeeds.htm.*

Oak Ridge Reservation

Located about 10 km west of Knoxville, Tennessee, ORR was built originally to produce and chemically separate plutonium. Later, ORR produced isotopes and conducted isotopic and hazardous constituents research. ORR has three main facilities: the Oak Ridge National Laboratory supported plutonium production research and development, and the Y–12 and K–25 Plants produced highly enriched uranium via magnetic separation and gaseous diffusion, respectively. Wastes from these activities were placed in burial grounds, that have subsequently caused soil and water contamination in the Melton Valley Watershed, including strontium-90, tritium, cesium-137, and cobalt-60. Seepage from flooding of the waste trenches caused downgradient migration of radionuclides. The sediments behind White Oak Dam are significantly contaminated with radionuclides; White Oak Creek drains Melton Valley and the surface water contains tritium. Basic research is needed to better locate and characterize contamination hot spots in the burial grounds, as well as to improve the site conceptual and mathematical models, which include fractured-bedrock flow and karst hydrology. Containment systems, such as caps and barriers, and performance monitoring of engineered systems will be constructed under the cleanup program to verify and validate long-term performance and model results. Investigators are referred to the Technology Needs Database at: *http://www.em.doe.gov/techneed* to review Oak Ridge's needs list in the areas of characterization, treatment, storage, and disposal of hazardous and radioactive wastes.

Rocky Flats

Rocky Flats Environmental Technology Site is located on the western side of Denver, Colorado, and encompasses 140 hectares. Operations ceased in 1989 after years of fabrication and components assembly for nuclear weapons production. Materials used in these activities included plutonium and enriched uranium metals and oxides. Poor storage and disposal practices resulted in surface and groundwater contamination on and offsite, principally, soil contamination with americium, plutonium, and uranium. Cleanup and closure actions include removal and stabilization of contaminated media, construction of caps and barriers, and long term monitoring and surveillance. Investigators are referred to the Rocky flats website at: *http://www.aimsi.com/rockyflats/* to review science and technology needs, as well as related information.

Savannah River Site

The SRS was established in 1950 near Aiken, South Carolina, to produce radioactive isotopes for use in nuclear weapons production. Encompassing 800 km^2, the Site contains production reactors, chemical processing plants, and solid and liquid waste storage facilities. The Burial Ground Complex in the central part of SRS received low- and intermediate-level radioactive and mixed waste from 1952–1995. The source term of the waste is somewhat uncertain, and has leaked to groundwater creating plumes of hazardous chemicals, metals, and radionuclides. Closure of the Complex will include removal or stabilization of highly contaminated zones, an engineered and layered cover, possibly consisting of synthetic material, and long term monitoring and surveillance.

A persistent DNAPL plume of 140 hectares is associated with a manufacturing area in the northern portion of the site. From the 1950s to the 1980s, wastewater from fuel and target manufacturing seeped into the ground via an overflow basin, releasing solvents and heavy metals to the environment. A pump and treat system at the down gradient end of the plume controls spreading, 400 monitoring wells are used to collect data for surveillance and modeling. Site engineers and scientists continue to look for new technologies and methods to better characterize, describe, and remediate the plume and its source(s). Investigators are referred to the SRS website at: *http://www.srs.gov/general/scitech/scitech.htm* to review science and technology needs, as well as related information.

References

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE. 2001. A National Roadmap for the Vadose Zone Science & Technology. *http://www.inel.gov/vadosezone/*

DOE. 1998a. Accelerating Cleanup: Paths to Closure—June 1998. *http://www.em.doe.gov/closure*

DOE. 1998b. Report to Congress on the U.S. Department of Energy's Environmental Management Science Program—April 1998. *http://emsp.em.doe.gov/products.htm#rep*

DOE. 1996. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, DC. *http://www.energy.gov/library/sub/pubcenter.html*

National Research Council. 2001a. A Strategic Vision for Department of Energy Quality of Research and Development. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 2001b. Science and Technology for Environmental Cleanup at Hanford. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 2000. Research Needs in Subsurface Science, U.S. Department of Energy's Environmental Management Science Program. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

Richland Environmental Restoration Project, Groundwater/Vadose Zone Integration Project. *http://www.bhi-erc.com/projects/vadose/*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on December 18, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–284 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Notice of Restricted Eligibility; Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of restricted eligibility.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a select number of applicants based on the scientific merit of the application, relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Y. Mitchell, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940, telephone: 412–386–4862, fax: 412–386–6137, e-mail: *mitchell@netl.doe.gov.* The solicitation (available in both Word Perfect 6.1 for Windows and Portable Document Format (PDF)) will be released on DOE's NETL World Wide Web Server Internet System (*http://www.netl.doe.gov/business/solicit*) on or about December 20, 2001. No telephone requests will be honored for solicitation copies.

SUPPLEMENTARY INFORMATION: *Title of Solicitation:* "Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions"

Objectives: Through Program Solicitation No. DE–PS26–02NT41430, the Department of Energy seeks applications from HBCU and OMI and HBCU/OMI-affiliated research institutes for innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCU/OMI in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCU/OMI; and to provide for the exchange of technical information and to raise the overall level of HBCU/OMI competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU/OMI and the private sector fossil energy community is critical to the success of this program, and consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from an previously under-utilized resource.

Eligibility: Eligibility for participation in this Program Solicitation is restricted to HBCU and OMI recognized by the Office for Civil Rights (OCR), U.S. Department of Education, and identified on the OCR's U.S. Department of Education list of U.S. Accredited Postsecondary Minority Institutions list in effect on the closing date of the Program Solicitation. *Applications submitted by any institution not on OCR's aforementioned list are ineligible for technical evaluation and award.* For information regarding the qualification criteria and process of becoming recognized by the Education Department's OCR as a "Minority Institution," institutions should contact the Education Department directly at the following address: Mr. Peter A. McCabe, Office for Civil Rights, U.S. Department of Education, Washington DC 20202, telephone 202–205–9567.

Note: The Education Department should only be contacted on matters related to Institutional status; questions regarding the Program Solicitation should be directed to Ms. Mitchell at DOE.

Applications from HBCU/OMI-affiliated research institutes must be submitted through the college or

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university with which they are affiliated. The university (*not* the university-affiliated research institute) will be the recipient of any resultant DOE grant award. Applications submitted in response to the solicitation must meet the following two criteria: the Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; *and* a minimum of 30% of personnel time invoiced under the grant is to pay for student assistance for each year of the grant. Although it is not required as an application qualification criterion, collaboration with the private sector is encouraged, and applications proposing private sector collaboration may be evaluated more favorably. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. Collaboration by the private sector with the HBCU/OMI may be in the form of cash cost sharing, consultation, HBCU/OMI access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU/OMI.

Areas of Interest: In order to develop and sustain a national program of HBCU/OMI research in advanced and fundamental fossil fuel studies, the Department of Energy is interested in innovative research and development of advanced concepts pertinent to fossil fuel conversion and utilization limited to the following nine (9) technical topics:

Topic 1—Advanced Environmental Control Technologies for Coal
Topic 2—Advanced Coal Utilization
Topic 3—Clean Fuels Technology
Topic 4—Heavy Oil Upgrading and Processing
Topic 5—Advanced Recovery, Completion/Stimulation, and Geoscience Technologies for Oil
Topic 6—Natural Gas Supply, Storage, and Processing
Topic 7—Infrastructure Reliability for Natural Gas
Topic 8—Fuel Cells
Topic 9—Facility/Student Exploratory Research Training Grants

Note: Technical Topic No. 9, *Faculty/Student Exploratory Research Training Grants*, is the *only* topic under this Program Solicitation wherein the inclusion or exclusion of private sector collaboration will not affect the technical evaluation of the application.

Awards: DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

	Maximum award
Topics 1–8:	
0–12 months grant duration	$85,000
13–24 months grant duration	150,000
25–36 months grant duration	200,000
Topic 9:	
0–12 months grant duration	20,000

Approximately $900,000 is planned for this solicitation. The total should provide support for four to eight research and development application selections (Topics 1–8), and approximately two to twelve faculty/student exploratory research training application selections (Topic 9).

Solicitation Release Date: The Program Solicitation is expected to be ready for release on or about December 20, 2001. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

To be eligible, applications must be *received* by the designated DOE office by the closing time and date specified in the Program Solicitation (anticipated to be on or about February 1, 2002, at 5 PM Eastern Standard Time).

Issued in Pittsburgh, Pennsylvania on December 7, 2001.

William R. Mundorf,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 02–283 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–14; Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (BER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of (1) genetics and the workplace, (2) storage of genetic information and tissue samples, (3) education, or (4) complex or multigenic traits. The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research applications that address ethical, legal, and social implications resulting from the use of information and knowledge resulting from the HGP.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 02–14, should be received by 4:30 p.m., E.S.T., January 24, 2002. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., March 28, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

ADDRESSES: Preapplications, referencing Program Notice 02–14, should be sent by email to *Joanne.Corcoran@science.doe.gov* or by mail to Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 02–14, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–14. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4742 or email: *daniel.drell@science.doe.gov*. The full text of Program Notice 02–14 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in four broad areas:

I. Genetics and the Workplace

Research is encouraged on the uses, impacts, implications of, and privacy of genetic information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of worker genetic information. Research is also encouraged on the use of the workplace as a research venue and the resulting challenges for Institutional Review Boards (IRBs) that are responsible for the oversight of such activities. Research could explore historical experiences, current practices, international practices, the economics of, and lessons learned as they pertain to the collection and use of worker genetic information. Research can include issues arising from the creation, use, maintenance, privacy, and disclosure of genetic information obtained in workplace settings that can include, but are not limited to, workplaces at which DOE activities are taking place or have in the past.

II. Storage of Information and Samples

Research is encouraged on access to, and protection of genetic information stored in databases (especially computerized databases), or obtained from stored human tissue or sample archives. Research can explore threats to, issues surrounding, and protection of the confidentiality of genetic data in databanks and databases, approaches to anonymizing existing or new genetic records and samples, approaches to assessing the economics of genetic data collection, and explorations of the intellectual property protection of genetic information and genome research tools, technologies, and resources. Research can also explore the privacy and ownership issues associated with genetic data in records collected as part of occupational medical surveillance, as well as in academic genetics research.

III. Education

Research is encouraged to create and disseminate relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. A particular interest of this solicitation is the creation of innovative and novel materials for Institutional Review Boards (IRB) and Ethics Boards that review protocols involving the gathering of genetic information from genome investigators who work with human subjects, materials from which human genetic information can be obtained, or genetics research involving the workplace. Educational efforts should not target specific groups that have already been the subject of past ELSI awards (for further information about past awards under previous ELSI solicitations, see *http://www.ornl.gov/hgmis/elsi/elsi.html*). Applications for new mass media projects (e.g., TV documentaries) are not encouraged, nor are new high school- or college-level curricula, under this notice.

IV. Complex or Multigenic Traits

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions. Conditions may include, but are not limited to, behavioral conditions, diseases of aging, vulnerability to substance abuse, susceptibility to workplace exposure hazards (such as chemicals or radiation), or other common conditions with a partial genetic basis. This research may address:

(1) Gene—environment interactions that result in diseases or disease susceptibilities.

(2) Studies that explore the novel issues raised by research on complex conditions.

(3) The responses of institutions (e.g., courts, employers, companies or company health officers, schools, etc., including Federal Agencies) that must deal with "genetic uncertainty," e.g., uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to personal genetic data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should provide a plan to disseminate results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to evaluate progress or outcomes. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail and measures for assessment of effectiveness described. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, e.g., privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes and polymorphisms. Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcome or "deliverables" from the activity. For conference applications, a detailed and largely complete roster of speakers is necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for geographically limited efforts (e.g., college or school curricula that will not be disseminated) and requests detailed

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justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The BER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once BER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

Additional Request for Small Grants

The DOE also encourages small grant applications, to a maximum of $33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms that can be found on the Internet at: *http://www.sc.doe.gov/production/grants/grants.html*. The description of research activities should not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to seven of these awards might be made in FY 2002. As with larger applications to this notice, applications should be sent to the address given above.

Program Funding

It is anticipated that approximately $800,000 will be available for multiple grant awards (including any small grants) to be made during Fiscal Year 2002, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years (not applicable for any small grants as stated above). Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, DOE National Laboratories, industry, non-profit organizations, other federal laboratories and federally funded research and development centers (FFRDCs), where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and email address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

DOE policy requires that potential applicants adhere to 10 CFR part 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC December 21, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–282 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2814–000, ER01–2814–001]

Citizens Energy Corporation; Notice of Issuance of Order

December 31, 2001.

Citizens Energy Corporation (Citizens) submitted for filing a rate schedule under which Citizens will engage in wholesale electric power and energy transactions at market-based rates. Citizens also requested waiver of various Commission regulations. In particular, Citizens requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Citizens.

On December 19, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Citizens should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Citizens is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Citizens, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Citizens' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–279 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–38–000, et al.]

Montana-Dakota Utilities Co., et al.; Electric Rate and Corporate Regulation Filings

December 31, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. EC02–38–000]

Take notice that on December 26, 2001, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission an Application to Transfer Operational Control Over Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. under Section 203 of the Federal Power Act.

Comment Date: January 16, 2002.

2. Southern California Edison Company

[Docket No. ER02–608–000]

Take notice that on December 26, 2001, Southern California Edison Company (SCE) tendered for filing an amendment to the Firm Transmission Service Agreement (Victorville-Lugo/Miday) between SCE and M–S–R Public Power Agency (M–S–R) First Revised Rate Schedule FERC No. 339 (M–S–R Agreement)

The amendment to the M–S–R Agreement clarified scheduling obligations under that Agreement by deleting provisions concerning scheduling and dispatch service.

A copy of this filing was served upon the Public Utilities Commission of the State of California, the ISO and M–S–R.

Comment Date: January 16, 2002.

3. ExTex LaPorte Limited Partnership

[Docket No. EG02–60–000]

Take notice that on December 21, 2001, ExTex LaPorte Limited Partnership (ExTex) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 and Part 365 of the Commissions regulations.

ExTex currently is an EWG and owns and operates a 165 MW combustion turbine generating facility located in LaPorte, Texas. ExTex will acquire two additional generating facilities located in the Electric Reliability Council of Texas. ExTex will acquire the Handley Steam Electric Station ("Handley") and the Mountain Creek Steam Electric Station (Mountain Creek). Handley is a 1,440 MW gas-fired steam turbine generating facility located in Fort Worth, Texas. Mountain Creek is 894 MW gas-fired steam turbine generating facility located near Dallas, Texas.

Comment Date: January 22, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Kansas City Power & Light Company

[Docket No. ER99–1005–001]

Take notice that on December 27, 2001, Kansas City Power & Light Company (KCPL) tendered for filing an updated market power study under KCPLs market-based rate tariff.

Copies of this filing have been served on the Kansas Corporation Commission and the Missouri Public Service Commission.

Comment Date: January 17, 2002.

5. Cleco Power LLC

[Docket Nos. ER01–1099–007, ER01–3095–001, and ER02–54–001]

Take notice that on December 26, 2001, Cleco Power LLC (Cleco Power) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation pursuant to 18 CFR 35.15 and Cancellation Sheets, effective January 1, 2002, canceling Cleco Utility Group Inc.'s (Cleco Utility) Rate Schedules 6, 12, and 18 and all supplements. Cleco Power simultaneously filed Cleco Power

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Rate Schedules 9 and 15, which are essentially the same as Cleco Utility Rate Schedules 12 and 18, respectively. Cleco Power states that Cleco Utility's Rate Schedule 6 with Gulf States Utilities Company will not be filed as a Cleco Power Rate Schedule because the agreement with Gulf States Utilities Company has expired by its own terms.

Take notice that Cleco Power filed Substitute Original Sheet Nos. 77 and 78 to Cleco Powers FERC Electric Tariff, Original Volume No. 1. Cleco Power also gave notice that Cleco Utility service agreements T1S4 and T1S19, that were canceled effective May 29, 2001, will not be refiled as Cleco Power service agreements because service is no longer being provided under them.

Cleco Power also filed a Third Substitute Original Sheet No. 26 to RS 12 with the City of Lafayette, Louisiana.

Comment Date: January 16, 2002.

6. Carolina Power & Light Company and Florida Power Corporation

[Docket Nos. ER01–1807–008, and ER01–2020–005]

Take notice that on December 27, 2001 Progress Energy, Inc. (Progress Energy), on behalf of Florida Power Corporation (FPC), tendered for filing revised service agreements (Revised Service Agreements) under FPC's open-access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6 (FPCs OATT), in compliance with the Commissions June 25, 2001, September 21, 2001 and November 26, 2001 orders in these proceedings.

See Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001) (Carolina Power). Progress Energy also tendered: (1) An index of FPCs Revised Service Agreements (FPC Index); (2) revised versions of indices that were contained in the November 26, 2001 filing in these proceedings; (3) Notices of Cancellation of service agreements under both FPCs OATT and Carolina Power & Light Company's (CP&L), FERC Electric Tariff, Third Revised Volume No. 3 (CP&L's OATT); (4) canceled service agreement cover sheets to cancel service agreements under both FPCs OATT and CP&L's OATT in compliance with Order No. 614; and (5) First Revised Service Agreements filed under both FPCs OATT and CP&Ls OATT to reflect the succession of one entity by another.

Progress Energy respectfully requests that the Revised Service Agreements become effective on the date set forth on the cover sheet for each Revised Service Agreement and that the Notices of Cancellation become effective as of February 25, 2002.

Copies of the filing were served upon the Commissions official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: January 17, 2002.

7. New York Independent System Operator, Inc.

[Docket No. ER01–2967–002]

Take notice that on December 26, 2001, the New York System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open Access Transmission Tariff, which contains rules to allocate responsibility for the cost of new interconnection facilities, pursuant to the Commission's Order issued on October 26, 2001, in the above-captioned docket.

The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001.

The NYISO has served a copy of the compliance filing on each person designated on the official service list maintained by the Commission for the above-captioned docket.

Comment Date: January 16, 2002.

8. New York Independent System Operator, Inc.

[Docket No. ER01–2967–003]

Take notice that on December 27, 2001, the New York System Operator, Inc. (NYISO) filed revisions to Sheet Nos. 39 and 39A of its Open Access Transmission Tariff, to complete the compliance filing made on December 26, 2001 pursuant to the Commission's Order issued on October 26, 2001, in the above-captioned docket.

The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001.

The NYISO has served a copy of the compliance filing on each person designated on the official service list maintained by the Commission for the above-captioned docket.

Comment Date: January 17, 2002.

9. Southern Indiana Gas and Electric Company

[Docket No. ER02–603–000]

Take notice that on December 26, 2001, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an Agreement for Firm Point-To-Point Transmission Service with Dynegy Power Marketing, Inc. under Part II of SIGECO's Transmission Services Tariff, Docket No. 0A96–117–000, filed July 9, 1996. To date, no Service has been provided by SIGECO to Dynegy Power Marketing, Inc. pursuant to this Agreement.

SIGECO requests waiver of the 60-day prior notice requirement to allow the service agreements to become effective as of November 15, 2001.

Comment Date: January 16, 2002.

10. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–604–000]

Take notice that on December 26, 2001, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with OGE Energy Resources, Inc. and Florida Power Corporation.

Ameren Energy seeks Commission acceptance of these service agreements effective December 1, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counterparties.

Comment Date: January 16, 2002.

11. Puget Sound Energy, Inc.

[Docket No. ER02–605–000]

Take notice that on December 26, 2001, Puget Sound Energy, Inc. (PSE), tendered for filing a proposed Sixth Revised Volume No. 7 of its Open Access Transmission Tariff to reflect its reclassification of transmission and distribution facilities, desegregate and reduce its rates in accordance with the reclassification, and make other non-substantive changes in compliance with Order 614.

PSE requests an effective date of January 1, 2002 for the above-described tariff changes.

Copies of the filing were served on PSE's jurisdictional customers and the Washington State Utilities and Transportation Commission.

Comment Date: January 16, 2002.

12. PJM Interconnection, L.L.C.

[Docket No. ER02–606–000]

Take notice that on December 26, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to Schedules 11 and 11A the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to facilitate operation of the capacity credit markets in both PJM and PJM West (when it becomes effective) and to clarify certain provisions. Specifically the amendments eliminate (1) reference to "Fixed Block" bids, which are not contemplated; (2) conducting multiple Daily Markets on a Friday or day before a holiday; and (3) the requirement that Sell Offers and Buy Bids for the Daily Capacity market must be received on the day on which the market is to be conducted. Certain sections in Schedule 11 of the Operating Agreement also are deleted because the transition period for the capacity market in the PJM control area has expired and the sections no longer apply.

PJM is requesting an effective date for the amendments of January 1, 2002.

Copies of this filing were served upon all PJM members, Allegheny Power, and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: January 16, 2002.

13. Michigan Electric Transmission Company

[Docket No. ER02–607–000]

Take notice that on December 26, 2001, Michigan Electric Transmission Company (METC) tendered for filing an unexecuted Generator Interconnection and Operating Agreement between METC and Mirant Zeeland, LLC.

METC requested that the Agreement become effective December 26, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment Date: January 16, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–278 Filed 1–4–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12137–000.

c. Date filed: November 7, 2001, supplemented December 28, 2001.

d. Applicant: Cambria Somerset Authority.

e. Name of Project: Que Pump Storage Project.

f. Location: At the existing Quemahoning Reservoir on Stonycreek River, in Somerset County, Pennsylvania. The project does not utilize federal or tribal lands.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Paul C. Rizzo, Paul C. Rizzo Associates, Inc., 105 Mall Boulevard, Monroeville, Pennsylvania 15146, (412) 856–9700.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Deadline for filing motions to intervene, protests, and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–12137–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) A proposed 30-acre upper reservoir, (2) a proposed concrete intake structure, (3) a proposed 900-foot-long, 59-inch-diameter steel penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 100 MW, (5) the existing Quemahoning Reservoir (lower reservoir), (6) a proposed 2-mile-long, 23 kV transmission line, and (7) appurtenant facilities. The project would have an annual generation of 156 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business

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address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–280 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[TX–FRL–7126–1]

Notice of Deficiency for Clean Air Act Operating Permits Program; State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act (Act) and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency (NOD) for the Texas Clean Air Act title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOPs), statement of basis requirement, applicable requirement definition, and potential to emit registration regulation do not meet the minimum federal requirements of the Act and 40 CFR part 70. Publication of this notice is a prerequisite for withdrawal of Texas' title V program approval, but EPA is not withdrawing the program through this action.

EFFECTIVE DATE: January 7, 2002. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30–day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Jole C. Luehrs, Chief, Air Permits Section, Multimedia Planning & Permitting Division, Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7250.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" means EPA.

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I. Description of Action

We are publishing this NOD for the Texas Clean Air Act (CAA or Act) title V program, which was granted interim approval on June 25, 1996. 61 FR 32693.[1] On May 22, 2000, we promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. 65 FR 32035. The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, we agreed to publish a document in the **Federal Register** that would alert the public that it may identify and bring to our attention alleged programmatic and/or implementation deficiencies in title V programs, and that we would respond to the public's allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document (March 11, 2001).

Public Citizen, on behalf of the American Lung Association of Texas, Environmental Defense, the law firm of Henry, Lowerre & Federick, Lone Star Chapter of the Sierra Club, Texas Center for Policy Studies, Sustainable Energy and Economic Development Coalition, Texas Campaign for the Environment, Galveston Houston Association for Smog Prevention, Neighbors for Neighbors, and Texas Impact (collectively referred to as "commenters") filed comments with EPA alleging several deficiencies with respect to the Texas title V program (Comment Letter). We have completed our review of those comments. We have identified deficiencies relating to Texas' periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition, and potential to emit registration regulation. These deficiencies are discussed below.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD or take other affirmative actions.

[1] On December 6, 2001, we promulgated full approval of Texas' Operating Permits Program. 66 FR 63318.

II. Deficiencies

Below is a discussion of the comments that we have identified as deficiencies, and by this notice are requesting the State to correct the deficiencies.

A. Periodic Monitoring Regulations

The commenters allege that instead of ensuring that every title V permit includes periodic monitoring, as required by 40 CFR 70.6(a)(3)(i)(B), 30 TAC 122.142(c) makes periodic monitoring optional because it only requires permits to include periodic monitoring "as required by the executive director."[2] Further, the commenters contend that the Texas Natural Resource Conservation Commission's (TNRCC) rules specifically state that no facility need submit an application for periodic monitoring for approximately two years, or longer.[3] Therefore, the commenters conclude that these provisions are inconsistent with federal requirements. The commenters also assert that TNRCC's failure to require timely periodic monitoring has caused the issuance of numerous defective title V permits. Comment Letter at 12.

According to TNRCC,

> periodic monitoring is implemented in two phases. The first phase is at initial issuance for those emission limitations or standards with no monitoring, testing, recordkeeping, or reporting. The second phase is through the GOPs for those emission limitations or standards which only require a one-time test at start-up or when requested by the EPA. Each permit will contain periodic monitoring as appropriate.
>
> 26 *TexReg* 3747, 3785 (May 25, 2001).[4]

However, TNRCC's approach to implementing periodic monitoring does not comply with the requirements of part 70. The requirement for periodic monitoring is set forth in 40 CFR 70.6(a)(3)(i)(B), which requires that each permit must include:

> where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit * * *."

A review of the relevant Texas regulations reveals that Texas' periodic monitoring regulations do not meet the requirements of part 70 and must be revised. Under 30 TAC 122.600, the periodic monitoring requirements of 30 TAC 122.142(c) are implemented through a periodic monitoring GOP, or a periodic monitoring case by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Periodic Monitoring.[5] TNRCC's use of a phased approach through the GOP process does not ensure that all permits have periodic monitoring *when they are issued*, as required by 40 CFR 70.6(a)(3)(i)(B). The regulations do not meet the requirements of part 70 because a facility does not have to apply for a periodic monitoring GOP until two years after the periodic monitoring GOP has been issued. 30 TAC 122.604(a)(1). Since the two year period starts after issuance of the GOP, a source's title V permit could be in effect for longer than two years before periodic monitoring is incorporated into the permit.[6] Therefore, this regulatory deficiency must be corrected. TNRCC must revise its regulations to ensure that *all title V permits, including all GOPs, when issued*, contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B).

In addition, in implementing the periodic monitoring requirement, TNRCC must ensure that each permit includes monitoring sufficient to assure compliance with the terms and conditions of the permit. *See* 40 CFR 70.6(c)(1).[7] Each permit must also include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. *See* 40 CFR 70.6(a)(3)(i)(B). Thus, if the periodic monitoring for a particular applicable requirement is inadequate to assure compliance with the terms and conditions of the permit, 40 CFR 70.6(c)(1) and 30 TAC 122.142(b)(2)(B)(ii) require TNRCC to provide enhanced monitoring to assure compliance with the permit.

B. Compliance Assurance Monitoring Regulations

The commenters allege that TNRCC's permit content rules do not require that title V permits include testing and monitoring sufficient to assure compliance. Instead, the rules provide that applications for CAM need not be submitted for approximately two years, and maybe longer. 30 TAC 122.704.[8] Thus, the commenters assert that TNRCC's failure to require sufficient testing and monitoring in its title V permits is a defect in its title V program and has resulted in the issuance of many ineffective and incomplete title V permits. Comment Letter at 12—14.

According to TNRCC, CAM, like periodic monitoring, is also being implemented in a phased approach:

[2] 30 TAC 122.142(c) provides that "each permit shall contain periodic monitoring requirements, as required by the executive director, that are designed to produce data that are representative of the emission unit's compliance with the applicable requirements."

[3] 30 TAC 122.604(a)(1) & (2) provide that "for an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP. For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard."

The provisions of 30 TAC Chapter 122, Subchapter G (§ 122.606–122.612) "[do] not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has sufficient periodic monitoring (which may consistent of recordkeeping * * *." 30 TAC 122.602(b).

[4] However, a one-time test is not considered periodic monitoring. *Appalachian Power Company v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000).

[5] 30 TAC 122.600(b) does allow TNRCC to establish periodic monitoring requirements through the permitting process for specific emission limitations or standards to satisfy 30 TAC 122.142(c).

[6] If the emission unit becomes subject to an emission limitation or standard after the issuance date of a period monitoring GOP, the permit holder must submit the application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard. 30 TAC 122.604(a)(2).

[7] Also note that

> Where the applicable requirement already requires periodic testing or instrumental or non-instrumental monitoring, however, * * * the periodic monitoring rule in § 70.6(a)(3) does not apply even if that monitoring is not sufficient to assure compliance. In such cases, the separate regulatory standard at § 70.6(c)(1) applies instead. By its terms, § 70.6(c0(1)—like the statutory provisions it implements—calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit as necessary to be sufficient to assure compliance with the terms and conditions of the permit. *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII–00–1 at 18–19 (Administrator November 16, 2000).

[8] 30 TAC 122.704(a)(1) & (2) provide that "for an emission unit that subject to this subchapter on or before the issuance unit that subject to this subchapter on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the CAM GOP. For an emission unit that becomes subject to this subchapter after the issuance date of a CAM GOP that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter."

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The executive director is implementing CAM and periodic monitoring through a phased approach based on permit issuance and SIC codes. The commission considered several factors when developing the schedule for application due dates. Due to the technical requirements in 40 CFR part 64, compliance with CAM and periodic monitoring may require permit holders to purchase and install new equipment or conduct performance testing. The application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM and periodic monitoring requirements. Furthermore, the schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM and periodic monitoring GOPs issued over time. Finally, under the schedule, permit holders will submit applications to the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

26 *TexReg* at 3786–87.

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A). 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a title V permit application by April 20, 1998, or the title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a title V permit holder who filed a significant permit revision under title V after April 20, 1998. However, in this case, CAM would only apply to pollutant specific emission units for which the proposed permit revision is applicable.

40 CFR 70.6(a)(3)(i)(A) requires that each permit include "all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter [CAM] * * * "

The TNRCC implements CAM through either CAM GOPs or a CAM case-by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Compliance Assurance Monitoring. 30 TAC 122.700(a). The TNRCC's use of a phased approach does not ensure that all permits will have the CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5 because a facility does not have to apply for a CAM GOP until two years after the CAM GOP has been issued. Since the two year period starts after issuance of the GOP, a source's title V permit could be renewed (or a significant permit revision issued) before CAM is incorporated into the permit.[9] The TNRCC regulations do not meet the requirements of the Act and part 70 and TNRCC must revise its regulations to ensure that all title V permits, including all GOPs, will have the CAM required by CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5.

C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits

The commenters allege that periodic monitoring and CAM are permit conditions which are required to be included in each title V permit. The TNRCC, however, is issuing title V permits without periodic monitoring or CAM, and allowing facilities to utilize the GOP process to adopt periodic monitoring and CAM. The commenters assert that because periodic monitoring and CAM are permit conditions, and not operating permits, the periodic monitoring and CAM GOPs do not comply with the requirement in 40 CFR 70.6(d) that GOPs must "comply with all requirements applicable to other part 70 permits." For example, the commenters claim the periodic monitoring and CAM GOPs do not include enforceable emission limitations and standards, a schedule of compliance, and a requirement that the permittee submit to the permitting authority no less often than every six months, the results of any required monitoring, as required by title V. The commenters also assert that the CAM and periodic monitoring GOPs do not apply to "numerous similar sources", as required by 40 CFR 70.6(d). They apply statewide to any source that has to comply with applicable requirements which are listed in the GOP. Therefore, the commenters believe that CAM and periodic monitoring GOPs simply do not meet title V's definition of or requirements for general permits. Comment Letter at 21–22.

The TNRCC argues that

> the CAM and periodic monitoring GOPs were not designed to mimic a [site operating permit (SOP)]; therefore, the content will not be identical to the requirements of 40 CFR 70.6(a) and (b). The CAM and periodic monitoring GOPs are unique in that the information submitted will become a part of the existing SOP or GOP and are supplemental to an existing operating permit. The commission believes that Part 70 implements the requirements listed in 42 U.S.C. 7661b, Permit Applications. The commission believes its application requirement is consistent with 40 CFR 70.6(a) and (b). These requirements have been incorporated into a previously issued SOP or GOP and are not required for CAM or periodic monitoring GOP applications.

26 *TexReg* at 3786.

The TNRCC's use of GOPs to implement periodic monitoring and CAM does not comply with part 70. The requirements for GOPs are set forth in 40 CFR 70.6(d). 40 CFR 70.6(d)(1) provides that "any general permit shall comply with all requirements applicable to other part 70 permits." The requirements for part 70 permits are set forth in 40 CFR 70.6. A review of Periodic Monitoring GOP No. 1 and CAM GOP No. 1 shows that the terms and conditions of these GOPs only relate to the respective monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements.[10] Thus, they are missing a number of the requirements of 40 CFR 70.6, and therefore do not meet the requirements for GOPs set forth in 40 CFR 70.6(d). The fact that the missing requirements may be in another permit or permit application is irrelevant. 40 CFR 70.6(d) requires that all the requirements of 40 CFR 70.6 be included in a GOP. Therefore, Texas must revise its regulations to ensure that each GOP issued includes all of the requirements in 40 CFR 70.6, including the periodic monitoring and CAM requirements discussed in Sections II.A. and B above.[11] Furthermore, Texas must ensure that any GOP issued covers similar sources, as required by 40 CFR 70.6(d).

D. Statement of Basis Requirement

The commenters claim that TNRCC's rules do not require that it prepare and make available a statement setting forth the "legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)", otherwise known as a "statement of basis".[12] Further, the commenters assert that there have been no statements of basis in the title V facility files they have reviewed. The files, however, do include a "Technical Summary", which includes a process description and tracks the facility's movement through the permitting process. The commenters claim that these "Technical Summaries" do not explain the basis for the draft permit conditions. Therefore, the commenters contend that EPA should require TNRCC to prepare a statement of basis that meets the part 70 requirements. Comment Letter at 21–22.

According to TNRCC:

> [t]he executive director does not prepare a specific "statement of basis" for each permit, but rather has implemented this Part 70 provision by developing a permit that states a regulatory citation for each applicable requirement. The commission is unaware of any self-implementing statutory requirements that do not have parallel regulatory provisions. These permit conditions are based on the application and the technical review which includes a site inspection. The commission believes including this detail in the permits meets the requirements of Part 70 for including a statement of basis.

26 *TexReg* at 3769–70.

The TNRCC's approach to the "statement of basis" requirement does not comply with the requirements of part 70. 40 CFR 70.7(a)(5) requires that "[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it." For example, in the *Fort James Camas Mill* title V Petition Response, EPA stated that this section required that "the rationale for the selected monitoring method must be clear and documented in the permit record." *In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (Administrator December 22, 2000).

Our review of TNRCC's regulations reveals that there is no state regulation corresponding to 40 CFR 70.7(a)(5). The "Technical Summaries" do not set forth the legal and factual basis for the draft permit conditions. Furthermore, the elements of the statement of basis may change depending on the type and complexity of the facility, and would also be subject to change because of future regulatory revisions. Accordingly, a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected.

Therefore, Texas must revise its regulations to require that it prepare and make available a statement setting forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions), and that this statement be sent to EPA and any person who requests it, as required by 40 CFR 70.7(a)(5). This provision will require TNRCC to explain why certain specific requirements, as set forth above, were included in the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 ("rationale for selected monitoring method must be clear and documented in the permit record").

E. Applicable Requirement Definition

The commenters allege that Texas' definition of "applicable requirement" does not include all applicable provisions of the Texas State Implementation Plan (SIP). For example, 30 TAC Chapter 101, Sections 101.1 through 101.30 (Subchapter A), are included in the Texas SIP. Yet the TNRCC only includes Subchapter H of Chapter 101 as an "applicable requirement." Second, the commenters contend that the TNRCC's applicable requirement definition refers to Texas Administrative Code sections which may change without corresponding changes in the Texas SIP. Because title V facilities are obligated to comply with all provisions of the Texas SIP, the commenters assert that the Texas rules should generally state that any current provision of the Texas SIP is an applicable requirement. Comment Letter at 22–23.

The definition of applicable requirement in 40 CFR 70.2 includes, as they apply to emission units in a part 70 source, "any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act, that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 CFR part 52]". Thus, the phrase "relevant requirements of the Act" is not limited to requirements relating to permit content."[13]

A review of Chapter 101, Subchapter A reveals that a number of these regulations are applicable requirements of the Act, including, but not limited to, 30 TAC 101.1, 101.6, 101.7, and 101.11.[14] Therefore, TNRCC must revise its definition of "applicable requirement" in 30 TAC 122.10(2) to include all the applicable provisions of its SIP in its definition of applicable requirement.

However, contrary to the commenters' assertions, we have concluded there is no requirement that TNRCC adopt a definition to generally state that any current provision of the Texas SIP is an applicable requirement. A State may cite to specific provisions of its administrative code, as Texas has done. Failing to adopt the general definition as set forth in 40 CFR 70.2 may result in TNRCC having to revise its title V program if it adopts an applicable requirement elsewhere in the SIP that does not fit within its definition of applicable requirement in its title V regulations.

F. Potential to Emit Registration Regulation

The commenters state that although part 70 allows facilities to avoid title V permitting by limiting their potential to emit (PTE), EPA Guidance requires that the limits be practically enforceable. However, the commenters assert that 30 TAC 122.122(e), which allows a facility to keep all documentation of its PTE limitations on site without providing those documents to the State or to EPA, is not practically enforceable.[15] The public files on the facility would contain no information regarding the limitations that the facility has adopted. Neither the State nor EPA would know about the limitations unless they specifically inquire about them at the facility; and therefore these limits would not be practically enforceable. Thus, the commenters contend that EPA should require that any limitations Texas allows on PTE be recorded in public files and practically enforceable. Comment Letter at 26—27.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally enfotceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable.

* * *

* * * * * *

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in § 122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall

[9] If the emission unit that becomes subject to Subchapter G after the issuance date of a CAM GOP that applies to that emission unit, the permit holder must submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter. 30 TAC 122.704(a)(2).

[10] Periodic monitoring GOP No. 1 and CAM GOP No. 1 apply to nine different New Source Performance Standards, 40 CFR part 60, Subparts F, Y, CC, DD, HH, LL, NN, OOO, PPP; 30 TAC 111.111 (Visible Emissions), 30 TAC 111.151 (Emission Limits on Nonagricultural Processes), and 30 TAC 111.171 (Emission Limits on Agricultural Processes).

[11] Inclusion of CAM in GOPs is subject to the schedule set forth in 40 CFR 64.5.

[12] 40 CFR 70.7(a)(5).

[13] TNRCC has stated that it "includes in the definition of applicable requirement those chapters and portions of chapters provided in the SIP that are *relevant to permit content*." 26 *TexReg* at 3759 (emphasis added).

[14] This is not an exhaustive list. We will work with TNRCC to identify all applicable requirements that must be included in its definition of applicable requirements, including any regulations outside of Chapter 101.

[15] 30 TAC 122.122 reads as follows:

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be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

According to TNRCC,

[it] agrees that a regulation limiting a site's potential to emit must be practically enforceable, but that certified registrations kept on site meet this requirement. The § 122.10 potential to emit definition specifies that "any certified registration or preconstruction authorization restricting emissions * * * shall be treated as part of its design if the limitation is enforceable by the EPA." The EPA, in 40 CFR 52.21(b)(17), defines federally enforceable as "all limitations and conditions which are enforceable by the administrator, including those * * * requirements within any applicable SIP." Since the commission submitted § 122.122 for incorporation into the SIP, the commission considers limits established under § 122.122 to be federally enforceable. Further, § 122.122 specifies that certain registration of emissions and records demonstrating compliance with the registration must be kept on-site, or at an accessible location, and shall, upon request, be provided to the commission or any air pollution control agency having jurisdiction. The commission does not believe that a certified registration of emissions must be submitted in order to be practically enforceable since the owner or operator must make the registration and any supporting documentation available during an inspection.

26 *TexReg* at 3761.

The TNRCC's approach to PTE limitations does not comply with the requirements of the Act. First, 30 TAC 122.122 is not part of the Texas SIP. The EPA has not approved 30 TAC 122.122, into the SIP. Therefore it is not federally enforceable.[16]

Even if the rule were federally enforceable, the rule must also be practically enforceable.[17] One of the requirements for practical enforceability is notice to the State.[18] Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable. The revised regulation must also be approved into the SIP before it, and the registrations, become federally enforceable.

III. Effect of Notice of Deficiency

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to "assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter." CAA Section 502(b)(5)(A).

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority fails to promulgate or enact new authorities when necessary. 40 CFR 70.10(c)(1)(i)(A).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of deficiency. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may take action under 40 CFR 70.10(b)(2). 40 CFR 70.10(b)(3) provides that, if a state has not corrected the deficiency within 18 months of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the state has corrected the deficiencies identified in this notice within 18 months after signature of this notice.[19] 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Texas' title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Texas has taken significant action to correct the deficiencies.

IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2002.

Dated: December 20, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–298 Filed 1–4–02; 8:45 am]

BILLING CODE 6560–50–P

[16] Texas' definition of "federally enforceable" in 30 TAC 101.1(31) also supports this conclusion. Federally enforceable is defined as "all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 CFR parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program."

[17] Seitz and Van Heuvelen, *Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit* (January 22, 1996), and Stein, *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits* (January 25, 1995)

[18] Stein, *Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits* at 6–8.

[19] The EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7126–4]

Sole Source Aquifer Determination for Glen Canyon Aquifer System, Moab, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Acting Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Glen Canyon Aquifer System at Moab, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the area. The area is located in southeast Utah extending from the City of Moab, southeast, encompassing approximately 76,000 acres in Townships 25 through 28 South and Ranges 21 through 24 East SLB&M. The area is irregularly shaped with maximum dimensions of about 22 miles from southeast to northwest and approximately 9 miles from southwest to northeast. The entire area is within Grand County, Utah. No viable alternative sources of drinking water with sufficient available supply exist within the area for which this application for sole source designation has been submitted. If this aquifer becomes contaminated, a significant hazard to public health would occur.

The boundaries of the designated area have been reviewed and approved by EPA. As a result of this action, federal financially assisted projects constructed in the approximately 119 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health. For the purposes of this designation the Aquifer Service Area and the Project Review Area are the same as the Designated Area.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Mountain Standard Time on January 7, 2002.

ADDRESSEES: The data upon which these findings are based, and a map of the designated area are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466 or the Moab City Library, 25 South 100 East, Moab Utah 84523.

FOR FURTHER INFORMATION CONTACT: William J. Monheiser, Regional Sole Source Aquifer Coordinator, Ground Water Program, 8P-W-GW, USEPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Phone: 303.312.6271, Fax: 303.312.7084, E-mail: *monheiser.william@epa.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h–3(e), Public Law 93–523 as amended, the Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 8 has determined that the Glen Canyon Aquifer System is the sole or principal source of drinking water for the Moab area of southeast Utah described above. Pursuant to section 1424(e), federal financially assisted projects constructed anywhere in the Sole Source Aquifer area described above will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

"If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation was delegated to the U.S. EPA Regional Administrators.

On May 7, 2001 a petition was received from the City of Moab, 115 West 200 South, Moab Utah 84532, requesting that EPA designate the ground water resources of the Glen Canyon Aquifer System near the City of Moab as a Sole Source Aquifer. In response to this petition, EPA published a notice of a Public Meeting in the Times-Independent, a newspaper of general circulation in the Moab area. This notice announced receipt of the petition and requested public comment in writing or oral comments at the public meeting held August 14, 2001 and for a 34 day comment period following the meeting. Comments received by mail, telephone, Fax and e-Mail were also accepted. The public comment period extended from August 14, 2001 to September 17, 2001.

Subsequently, EPA determined that the petition is both administratively and technically complete and adequate.

II. Basis for Determination

Among the factors considered by the Regional Administrator for designation of a Sole Source Aquifer under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, (2) if the designated area has been adequately delineated and, (3) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Regional Administrator has made the following findings of fact, which are the basis for this determination:

1. The Glen Canyon Aquifer System serves as the "sole source" of drinking water for approximately 6000 permanent residents within the City of Moab. Most domestic wells and stock wells in the area derive their water from the shallow valley fill aquifer and are not affected by this action. There is no unappropriated alternative drinking water source or combination of sources which could provide fifty percent or more of the drinking water to the designated area, nor is there any projected future alternative source capable of supplying the area's drinking water needs at an economical cost.

2. Although the Glen Canyon Aquifer System underlies much of southeast Utah, in the Moab area the aquifer is of very high quality, able to be used as a drinking water source with the minimal treatment required by the State of Utah. This constitutes a limited resource in this immediate area that if contaminated would create a significant hazard to public health and result in significant economic, social and environmental costs. Potential sources of contamination include: (1) Petroleum, mineral exploration, and geophysical drilling, (2) poorly designed development (3) accidental spills along roadways, (4) abandoned but unplugged petroleum, mineral and geophysical wells, tunnels and (5) non-sustainable agricultural and forestry practices.

3. The City of Moab's petition and supporting documentation have appropriately delineated the boundaries of the subject aquifer.

III. Description of the Petitioned Aquifer

The designated area of the Glen Canyon Aquifer System encompasses about 76,000 acres in an irregularly shape area approximately 22 miles long by 9 miles wide. Drinking water production is from one developed spring from the Wingate Sandstone and three developed springs and five drilled wells from the Navajo Sandstone. The lower Jurassic Wingate Sandstone, overlain by the lower Jurassic Kayenta Sandstone, overlain by the lower Jurassic Navajo Sandstone comprise the approximately 800 feet thick Glen Canyon Aquifer System. Water production is primarily due to fracture flow. Combined production of the water system can be greater than 4,775 gallons per minute with 3,000,000 gallons of storage. The boundaries of the aquifer were determined by hydrogeologic mapping, which is the area interpreted to contribute water to the springs and well. The aquifer is exposed at the surface within its service area and considered to be moderately to very vulnerable.

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IV. Information Utilized in Determination

The information utilized in this determination includes the petition from the City of Moab, review of available literature, and the results of ground water investigations conducted by the State on the ground water resources of the area. These data are available to the public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466 or at the Moab City Library, 25 South 100 East, Moab, Utah, 84532.

V. Project Review

EPA, Region VIII, will work with the Federal Agencies that may, in the future, provide financial assistance to projects in the designated area. Interagency procedures will be developed in which EPA will be notified of proposed funding commitments for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should EPA determine that a project may contaminate the aquifer, so as to create a significant hazard to public health, no commitment for federal assistance may be entered into. However, a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms, to the maximum extent possible, in protecting the ground-water quality of the aquifer. Included in the review of any federal financially assisted project will be coordination with local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support state and local ground water quality protection mechanisms.

VI. Public Comments

In response to the Public Notice and Public Meeting, a detailed discussion of all questions, a transcript of the public meeting as well as all written comments can be found in the Administrative Record and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Participants at the Public Meeting voiced unanimous support for designation. Of the 52 written comments received all were supportive of designation except for one. All comments are addressed in EPA's Responsiveness Summary, which is part of the Administrative record.

No additional data were presented during the public comment period regarding aquifer characteristics, boundary delineation or potential errors of fact presented in the petition.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to projects with the potential to impact the Glen Canyon Aquifer System Sole Source Aquifer as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Many projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Glen Canyon Aquifer System in Grand County, Utah. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

VIII. Summary

This determination affects only the Glen Canyon Aquifer System, located in Moab Utah. As a result of this designation all federal financially assisted projects proposed in the delineated area will be subject to EPA review to ensure that they do not create significant hazard to public health,

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–297 Filed 1–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7126–6]

Program Requirement Revisions related to the Public Water System Supervision Program for the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

EPA has determined that the Revised Public Water System Definitions for the State of Connecticut and the Commonwealth of Massachusetts are no less stringent than the corresponding revised Federal definition, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve this Public Water System Supervision Program requirement for both Connecticut and Massachusetts.

The State of Connecticut has adopted drinking water regulations for Synthetic Organic Chemicals and Inorganic Chemicals (also known as Phase II, Phase IIB, and Phase V Drinking Water Regulations) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776) respectively. After additional review of the submitted documentation, EPA has determined that the State program revisions for its Phase II, Phase IIB and Phase V Drinking Water Regulations are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Connecticut.

In addition, the State of Connecticut has adopted drinking water regulations for controlling lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations promulgated on June 7, 1991 (56 FR 26460). After additional review of the submitted documentation, EPA has determined that Connecticut's Lead and Copper Rule program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Connecticut.

The State of Rhode Island has adopted drinking water regulations for the Phase II and Phase IIB (Synthetic Organic Chemicals and Inorganic Chemicals) Rules that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526) and July 1, 1991 (56 FR 30266) respectively. After review of the submitted documentation, EPA has determined that Rhode Island's Phase II and Phase IIB Rules are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Rhode Island.

The States of Rhode Island and Vermont have revised their Public Water System Supervision (PWSS) primacy programs by adopting regulations for their respective Consumer Confidence Report Rule that correspond to 40 CFR part 141, subpart O. After review of the submitted documentation, EPA has determined that Rhode Island's and Vermont's Consumer Confidence Report Rules are no less stringent than the corresponding Federal regulation. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Rhode Island and Vermont.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective thirty (30) days after the publication of this **Federal Register** notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30AM and 4:00PM, Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108.

CT Department of Public Health, Water Supplies Section, 450 Capitol Avenue, P.O. Box 340308—51 WAT, Hartford, CT 06134–0308.

Rhode Island Department of Health, Office of Drinking Water Quality, 3 Capitol Hill, Cannon Building, Room 209, Providence, RI 02908–5097.

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Barbara McGonagle, Office of Ecosystem Protection (telephone 617–918–1608).

SUPPLEMENTARY INFORMATION:

Authority: Section 1401 and Section 1413 (U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: December 19, 2001.

Robert W. Varney,

Regional Administrator, EPA-New England.

[FR Doc. 02–296 Filed 1–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0195.

Abstract: The CRS Program establishes a system for FEMA to grade communities' floodplain management activities that exceed Federal minimum standards and to qualify for lower insurance rates. The January 2002 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that will be used to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining activities for which they receive credit.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 940.

Estimated Time per Respondent: 29 hours.

Estimated Total Annual Burden Hours: 9,260.

Frequency of Response: Annual upate.

Comments: Interested persons are invited to submit written comments on the proposed information collection to

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the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov*.

Dated: December 21, 2001.

Muriel B. Anderson,

Acting Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–324 Filed 1–4–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 17, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–322 Filed 1–4–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include Public Assistance and the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001:

Benton, Coahoma, Marshall, Prentiss, Tallahatchie, and Tippah Counties for Public Assistance.

Bolivar, Humphreys, Panola, Quitman, Sunflower, and Washington Counties for Public Assistance (already designated for Individual Assistance).

Grenada, Lafayette, and Scott Counties for Individual Assistance.

Leake and Tunica Counties for Individual and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–323 Filed 1–4–02; 8:45 am]

BILLING CODE 6718–02–P

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Revised Public Financial Disclosure Access Customer Service Survey

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted the proposed revised information collection form, the updated OGE Public Financial Disclosure Access Customer Service Survey as in this notice, to the Office of Management and Budget (OMB) for review and three-year extension of approval under the Paperwork Reduction Act.

DATES: Comments by the public and agencies on this information collection as proposed for revision should be received by February 6, 2002.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the U.S. Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD 202–208–8025; FAX 202–208–8038. A copy of the survey may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics uses the Public Financial Disclosure Access Customer Service Survey (OGE) form to assess requester satisfaction with the service provided by OGE in responding to requests by members of the public for access to copies of Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Reports on file with OGE. Most of the SF 278 reports available at OGE are those filed by executive branch Presidential appointees subject to Senate confirmation. Requests for access to SF 278 reports are made pursuant to the special public access provision of section 105 of the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. appendix 105, and procedures in 5 CFR 2634.603 of OGE's executive branchwide regulations thereunder, by completing an OGE Form 201, "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Record."

The Office of Government Ethics distributes the survey form to requesters along with copies of requested SF 278 reports. Those who choose to respond can complete and return the survey to OGE via the self-contained postage-paid postcards (the reverse side of the survey form, when folded, becomes a pre-addressed postcard). The purpose of this anonymous survey is to determine through customer responses how well OGE is responding to such requests and how OGE can improve its customer service in this important area. The current paperwork approval for the survey form is scheduled to expire at the end of January 2002.

On June 18, 2001, OGE issued its first round **Federal Register** notice to announce its forthcoming request to OMB for paperwork renewal of the customer service survey form. See 66 FR 32823–32824 with comments due by September 4, 2001. (OGE did not receive any comments or requests for copies of the customer service survey form). In that notice, and this one, OGE has proposed minor changes to survey question 4 to achieve greater clarity. That question currently asks whether OGE's requirement to fax or mail requests that involve more than six filers creates a problem for the requester. Based on an analysis of customer responses to question 4, OGE believes that the following statement should be added: "SKIP this question if your request involved six or fewer filers." Additionally, one of the three requested responses to question 4, "Not Applicable," is being changed to "My request did not have to be faxed or mailed."

Pursuant to the Paperwork Reduction Act, OGE has not included in its public burden estimate for the survey form the limited number of access requests filed by other Federal agencies or Federal employees. Nor has OGE included in that estimate the limited number of requests for copies of other records covered under the special Ethics Act public access provision (such as certificates of divestiture) since the survey is only sent to persons who request copies of SF 278 reports. As so defined, the total number of access survey forms for copies of SF 278s estimated to be filed annually at OGE over the next three years by members of the public (primarily by news media representatives, public interest group members and private citizens) is 50. This estimate is based on a calculation of the number of survey forms received at OGE between April 1999 and June 2001 (70 surveys). This number also takes into account the increase in the number of public requests experienced as a result of the transition and the new Presidential administration. The estimated average amount of time to read the instructions on the proposed revised customer service survey form, and to complete the form remains at three minutes. Thus, the overall estimated annual public burden for the OGE Public Financial Disclosure Access Customer Service Survey as proposed for revision will be three hours (rounded up from two and a half hours(= 50 forms × 3 minutes per form)).

In this second round notice, public comment is again invited on all aspects of OGE's customer service survey form as proposed for renewal with minor revision, including specifically views on: the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility, and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: December 31, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–327 Filed 1–4–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov; http://www.drugfreeworkplace.gov;* and *http://www.health.org/workplace.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc. 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

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Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (Formerly: Hartford Hospital Toxicology Laboratory)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522 (Formerly: Alabama Reference Laboratories, Inc.)
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–419–7187x419 (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 02–277 Filed 1–4–02; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of the Battle of Midway National Memorial Planning Committee

AGENCY: Office of the Secretary, Interior.
ACTION: Notice of establishment.

SUMMARY: We are publishing this notice in accordance with section 9a of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, the Secretary of the Interior hereby establishes the Battle of Midway National Memorial Advisory Committee. The Committee will develop a strategy for a public dedication of the memorial, identify and plan for appropriate exhibits to commemorate this important event, and offer recommendations on improving visitor services on Midway Atoll National Wildlife Refuge.

DATES: On January 22, 2002, we will file a copy of the charter with the Committee on Environment and Public Works, United States Senate; Committee on Resources, House of Representatives; General Services Administration; and Library of Congress.

ADDRESSES: You may submit comments to Barbara Maxfield, Fish and Wildlife Service, P.O. Box 50617, Honolulu, Hawaii, 96850–5167, phone number (808) 541–1201.

FOR FURTHER INFORMATION CONTACT: Barbara Maxfield, U.S. Fish and Wildlife Service, (808) 541–1201.

SUPPLEMENTARY INFORMATION: The Committee will provide advice to the Secretary of the Interior through the Director, Fish and Wildlife Service on the management of the Battle of Midway National Memorial. The FY 2000 Interior Appropriations bill directed us to designate the Battle of Midway National Memorial on the Midway Atoll National Wildlife Refuge to commemorate the pivotal World War II Battle of Midway. The appropriations language also directed that we consult on a regular basis with other agencies and organizations on the management of the national memorial.

The Committee will be comprised of representatives from the Fish and Wildlife Service, National Park Service, Naval Historical Center, International Midway Memorial Foundation, Inc., Midway-Phoenix Corporation, Sixth Defense Battalion, the National Wildlife Refuge Association, Friends of Midway Atoll National Wildlife Refuge, National Trust for Historic Preservation, and a member of the Battle of Midway veterans' community. These agencies, organizations, and the veteran have demonstrated an interest and expertise in commemorating and preserving historical features associated with the Battle of Midway and reflect a balanced, cross-sectional representation of public and private sector organizations.

The Committee will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act.

The Certification for establishment of the committee is published below.

Certification

I hereby certify that the Battle of Midway National Memorial Planning Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Consolidated Appropriations Act for FY 2000, the National Historic Preservation Act of 1966, as amended, and the National Wildlife Refuge System Improvement Act of 1997. The Committee will assist the Fish and Wildlife Service by providing advice and developing recommendations for the long-term management and interpretation of the Battle of Midway National Memorial.

Dated: October 11, 2001.

Gale A. Norton,
Secretary of the Interior.
[FR Doc. 02–293 Filed 1–4–02; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections for Approval Under the Paperwork Reduction Act for Neotropical Migratory Bird Conservation Act Program

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to the Office of Management and Budget (OMB) for emergency approval under the provisions of the Paperwork Reduction Act of 1995, and received OMB approval number 1018–0113 with an expiration date of 6/30/2002. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before March 8, 2002. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 860—ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov*.

SUPPLEMENTARY INFORMATION:

The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). On December 19, 2001, the U.S. Fish and Wildlife Service (Service) provided information to OMB for collection of information in order to begin a grants program conducted under the Neotropical Migratory Bird Conservation Act (Public Law 106–247). The assigned OMB information collection control number is 1018–[to be assigned] , and temporary approval expires on [unknown]. The Service is requesting a three year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments are invited on : (1) Whether the collection of information is

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necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the Neotropical Migratory Bird Conservation Act of 2000.

Approval Number: 1018–0113.

Service Form Number(s): N/A.

Description and Use: Congress passed Neotropical Migratory Bird Conservation Act (Act) in 2000, having the following purposes:

(1) To perpetuate healthy populations of neotropical migratory birds;

(2) to assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

(3) to provide financial resources and to foster international cooperation for those initiatives.

The Act establishes "* * * a program to provide financial assistance for projects to promote the conservation of neotropical birds." (Sec. 5(a)). Section 5(c) "Project Proposals" describes the information to be included in a project proposal.

Proposals for funding will be submitted in response to the call for proposals posted on the Division of Bird Habitat Conservation website. These proposals will be reviewed for completeness and eligibility by staff of the Division, and then distributed to the Advisory Group referenced in Sec. 7(b) of the Act. The Advisory Group will then make a recommendation to the Secretary of the Interior regarding which of these proposals should be funded. The Secretary or her designee will make the final decision. All proposals will be kept on file at the Division. Information collected under this program will be used to respond to such needs as: GPRA reporting, SF 424s, grant agreements, budget reports and justification, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by the Act. This is a new collection.

In summary, information collection under these programs is required to obtain a benefit, *i.e.*, a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Once per year.

Description of Respondents: Individuals, businesses, not-for-profit institutions, Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: The reporting burden, or time involved in writing a project proposal, is estimated to be 40 hours.

Number of Respondents: It is estimated that 30 proposals will be submitted each year.

Dated: January 2, 2002.

Rebecca A. Mullin,

Information Collection Officer, U.S. Fish and Wildlife Service.

[FR Doc. 02–294 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection change approval—Boating Infrastructure Grant Program Survey.

SUMMARY: The U.S. Fish and Wildlife Service (Service) submitted the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). A copy of this information collection is included in this notice. You may obtain additional copies of the collection requirement, related survey and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below.

DATES: Consideration will be given to all comments received on or before February 6, 2002. OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–0106), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Michael Vandeford, (703) 358–2033, fax (703) 358–1837, or *Michael_Vanderford@fws.gov* E-mail.

SUPPLEMENTARY INFORMATION: *General:* Comments regarding this survey were received as a result of the survey being published in the **Federal Register**, Volume 65, Number 206, pages 63606–63617, October 24, 2000. We received 54 comments from 3 respondents. Most comments pertained to minor textual changes to improve clarity, while others addressed specific questions, use of survey data, and implementation of the survey. Comments regarding textual changes were used in revising the survey to the extent possible.

Written Comments:

Issue 1: One response suggested that Part A, question 12 and Part B, question 9 fail to address interstate boating facility needs.

Response: The survey instrument is designed to allow States to assess their boating access needs. The U.S. Fish and Wildlife Service will use the results of the State surveys to create a comprehensive national boating access needs assessment to address interstate access needs.

Issue 2: We received one comment suggesting that Part A, question 18 requesting subjective comments pertaining to recreational boating was too broad and should be limited to transient boating facilities. Similar comments were made regarding Part B, question 13; Part C, question 12; and Part D, question 23.

Response: Reducing subjective comments to only those concerning transient facilities is too limiting. However, we do agree that subjective comments must remain focused on facility issues. In response to this comment, we added the word "facilities" after "recreational boating" in the questions.

Issue 3: Two comments identified faulty numbering of questions in the survey instrument.

Response: We revised the numbering of the questions in all Parts of the survey.

Issue 4: One respondent suggested an answer for Part B, question 10 be revised to include portable toilet dump stations instead of waste pumpouts due to the frequent use of portable toilets by operators of boats under 26 feet in length.

Response: We agree in part with this comment and revised the available answer in Part A, question 13 and Part B, question 10 to read as follows, "pumpout/portable toilet dump stations." Similar changes were also made to Part C and Part D.

Issue 5: A comment regarding Part B, question 11 suggested the answers be revised to include launch lanes and parking areas as these are facilities desired by operators of trailerable boats. A similar comment was made regarding Part C, question 16.

Response: Part B, question 10 specifically addresses the satisfaction levels of boaters regarding launch ramps and parking areas. Part C, question 16 specifically addresses parking areas, restrooms, and launch areas. No changes were made in response to these comments.

Issue 6: Two comments suggested the respondent identifying question in Part C be revised to clearly distinguish between public and private facilities.

Response: We agree and revised the answer set to clearly identify public and private providers.

Issue 7: A comment suggested revising Part C, question 4 to focus on transient slips.

Response: We disagree as the survey was designed to assess the needs for all recreational boating facilities. We did not change Part C, question 4 in response to this comment.

Issue 8: One respondent was unclear about which questions in Part A refer to boats greater than or equal to 26 feet in length. The same comment was made regarding Parts B, C, and D.

Response: We agree and revised instructions in each Part for clarification.

Issue 9: A respondent suggested adding logistical instructions to Part A questions 1–3, Part B questions 1–3, and Part C question 1 informing respondents how to return completed surveys to the appropriate location.

Response: Each State agency administering the survey is responsible for providing logistical instructions to ensure the proper return of completed surveys. However, in response to this comment, we added instructions directing the respondents to return completed surveys.

Issue 10: One respondent suggested altering the available answers in Part A, question 5 and Part B, question 5 to clarify where the vessels are kept during the boating season.

Response: We agree and changed the answer sets in each question to clearly identify that the general location is the desired response.

Issue 11: One comment suggested that the words "transient tie-up facilities" in Part A, question 11 are jargon and require definition.

Response: The meaning of "transient tie-up facilities" is defined in the Boating Infrastructure Grant Program final rule which appeared in the **Federal Register** on January 18, 2001, Volume 66, Number 12, pages 5282–5294. No change was made in response to this comment.

Issue 12: One comment suggested Part C and Part D would be easier to complete if respondents were able to focus on answering questions pertaining to each facility managed, as opposed to answering questions for all facilities before continuing to the next question.

Response: During the revision of this survey, developers discussed this option. In order to keep the survey as short as possible, the current format was selected with the understanding that States administering the survey have substantial flexibility regarding presentation of the survey to potential respondents. No change was made in response to this comment.

Title: Boating Infrastructure Grant Program Survey.

OMB Control Number: 1018–0106 expires 3/31/2003. The Service may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Service Form Number: 3–2187.

Frequency of Collection: One-time.

Description and Use: The Service administers the Boating Infrastructure Grant Program authorized by the Federal Aid in Sport Fish Restoration Act. Under the Act, as amended, the Service is responsible for development of a survey to assess the needs for facilities for recreational boaters. This survey was previously approved under the referenced OMB control number. This request is for approval of changes to the previously approved survey instrument. These changes include dropping certain questions, rewording others for clarity, and reformatting the questionnaire, making it easier to understand and use. These changes reduced the hourly burden on respondents by 20,277 hours. Changes are discussed in detail in this notice under Supplementary Information.

Additional Information: The Service submitted the following information collection requirement to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Description of Respondents: Boaters and/or boating access providers in the States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

Completion Time and Response Estimate:

Type of information	Number of interviews*	Average time required per response (minutes)	Annual burden hours
Boat owners: Part A	11,200	12	2,240
Boat owners: Part B	28,000	12	5,600
Boating access providers: Part C	8,400	20	2,800
Boating access providers: Part D	4,000	20	1,333
Total			11,973

*These numbers are not additive since some of the boaters will fill out both Parts A and B, and most of the providers will fill out both Parts C and D.

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The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the Privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

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Dated: January 2, 2002.

Rebecca Mullin,

Information Collection Clearance Officer.

BOATING INFRASTRUCTURE GRANT PROGRAM NATIONAL FRAMEWORK

PART A: RECREATIONAL BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR BOATERS WITH BOATS 26 FEET OR MORE IN LENGTH

Please answer the following questions about your boating activities in [*name of State*]. [Add comment about confidentiality if applicable under state law]

1. Do you own a boat 26 feet or more in length?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

2. Have you boated in [*name of State*] within the past 2 years?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

3. Do you boat mainly for recreation (NOT for work)?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

4. What type of boat or boats do you own? (Please check all that apply)

☐ Cabin cruiser (gasoline) ☐ Cabin cruiser (diesel) ☐ Sailboat
Houseboat/pontoon boat ☐ Open motor boat ☐ Trawler
☐ Other (please specify)___

FOR QUESTIONS 5–9 PLEASE REFER TO THE BOAT OVER 26 FEET IN LENGTH THAT YOU USE THE MOST

5. Where do you usually keep this boat during the boating season? (Please check the one that MOST applies. If you keep your boat in a location other than your home please name the specific site)

☐ At waterfront property, which is your permanent residence	State_____
☐ At waterfront property, which is your seasonal residence	State_____
☐ On the water at a public or private marina	State/City/town:_____ Site name:_____
☐ At a 'dry-stack' marina or other storage facility	State/City/town:_____ Site name:_____
☐ Other (specify)_____	State/City/town:_____ Site name:_____

6. How many days a year do you use this boat to go boating in [name of state]? (Please check the one that MOST applies.)

☐ 1 to 10 days a year
☐ 11 to 20 days a year
☐ 21 to 50 days a year
☐ More than 50 days a year

7. How long is typical boating trip for you in [name of state]? (Please check the one that MOST applies.)

☐ Day trip or weekend
☐ Extended trip longer than one weekend

8. Where do you go in this boat? (Please check the one that MOST applies.)

☐ One the water body in which it is kept
☐ Connected waters up to 25 miles from 'home port'
☐ Connected waters 26 to 50 miles from 'home port'
☐ To destinations over 50 miles

9. What is the average distance that you travel in your boat on a day of boating in [name of state]?

☐_____miles.

10. Do you think there are enough transient tie-up facilities in [*name of State*]? (Please rate on a scale of 1 to 5.)

No, need a lot more	No, need a few more	The right amount	Yes, more than enough	Yes, there are too many
1	2	3	4	5

11. Please identify 3 areas in [*name of State*] where you see the greatest need for more transient tie-up facilities. (Please be as specific as possible and name the country and city or town, and the area name or location.)

Site name	County and city or town	Area name and/or location (such as lake, slough, bay, harbor, section of river or other)
Area #1		
Area #2		
Area #3		

12. Thinking about the boating area(s) you just mentioned in Question #11, what kinds of features do you think are needed at each? (Please check all that apply.)

	Area #1	Area #2	Area #3
Transient slips or tie-up facilities	☐	☐	☐
Transient moorings	☐	☐	☐
Fuel (gasoline)	☐	☐	☐
Fuel (diesel)	☐	☐	☐
Utilities (electric, water, phone)	☐	☐	☐
Restrooms	☐	☐	☐
Sewage pumpout/portable toilet dump stations	☐	☐	☐
Other (specify)			
Other (specify)			
Other (specify)			

13. Why don't you boat more often in [*name of State*]? Please rate how the following factors may impact your decision NOT to boat in [*name of State*] more frequently. (Please check one for each factor listed.)

	No impact	Low impact	Medium impact	High impact	Does not apply
Too few transient slips, moorings, or tie-up facilities	☐	☐	☐	☐	☐
Inaccessibility due to shallow water/channel depths	☐	☐	☐	☐	☐
Lack of information about transient tie-up facility locations	☐	☐	☐	☐	☐
Inadequate facilities (fuel, utilities, restrooms)	☐	☐	☐	☐	☐
Congested waterways (boats traffic)	☐	☐	☐	☐	☐
Poor water quality for fishing	☐	☐	☐	☐	☐
Poor water quality for swimming	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐

14. How do you reach the shoreline from your boat? (Please check ALL that apply.)

☐ Via shore slip or other transient tie-up facility
☐ Via a dinghy from a moored or anchored position
☐ Pulling onto shore or close to shore
☐ Other _____

15. If you checked MORE THAN ONE option in Question #14 above, which do you prefer? (Please check the one that you MOST prefer.)

☐ Via shore-side slip or other transient tie-up facility
☐ Via a dinghy from a moored or anchored position
☐ Pulling onto shore or close to shore
☐ Other _____

16. What is the minimum water depth in feet required for safe operation of the boat you use the most?

☐ _____ feet.

17. Please use the space below to make any other comments or suggestions about recreational boating facilities in your State.

_____

_____

_____

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

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PART B: BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR BOATERS WITH BOATS UNDER 26 FEET IN LENGTH

Please answer the following questions about your boating activities in [*name of State*]. [Add comment about confidentiality if applicable under state law]

1. Do you own a boat under 26 feet in length?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is mail survey, please stop and return the survey]

2. Have you boated in [*name of State*] within the past 2 years?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

3. Do you boat mainly for recreation (NOT for work)?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

4. What type of boat or boats do you own? (Please check all that apply.)

☐ Cabin cruiser (gasoline)
☐ Cabin cruiser (diesel)
☐ Houseboat/pontoon boat
☐ Sailboat
☐ Bass boat/jon boat
☐ Open motor boat
☐ Personal water craft
☐ Jet drive boat
☐ Unpowered rowboat
☐ Canoe/kayak
☐ Sailboard
☐ Inflatable boat/raft
☐ Other (please specify) _____

FOR QUESTIONS 5–7 PLEASE REFER TO THE BOAT UNDER 26 FEET IN LENGTH THAT YOU USE THE MOST

5. Where do you usually keep this boat during the boating season? (Please check the one that MOST applies. If you keep your boat in a location other than your home, please name the specific site.)

☐ Public or private marina
☐ At home on a trailer
☐ In a rented dry storage area (that is not a marina)
☐ Waterfront property that you own, rent, or lease
☐ Other _____

6. How do you put your boat in the water in [name of State]?

☐ I use a trailer ☐ I carry it down to the water

7. How many miles (one way) do you typically transport the boat over land to go boating in [name of State]?

☐ _____

8. Please identify 3 [*name of State*] areas where you see the greatest need for more boat access sites. (Please be as specific as possible and name the county and city or town, and the area name or location).

Area	County and city or town	Area name and/or location (such as lake, slough, bay, harbor, section of river or other)
Area #1		
Area #2		
Area #3		

9. Thinking about the boating area(s) you just mentioned in Question #8, what kinds of support features do you think are needed at each? (Please check all that apply.)

	Area #1	Area #2	Area #3
Carry-down walkway to the water's edge	☐	☐	☐
Boarding floats	☐	☐	☐
Launch ramp	☐	☐	☐
Parking	☐	☐	☐
Sewage pumpout/portable toilet dump stations	☐	☐	☐
Restrooms/showers	☐	☐	☐
Other (specify)			
Other (specify)			
Other (specify)			

10. Please rate how the following factors may impact your decision NOT to boat in [name of State] more frequently. (Please check one for each factor listed.)

	No impact	Low impact	Medium impact	High impact	Does not apply
Too few boat access sites	☐	☐	☐	☐	☐

	No impact	Low impact	Medium impact	High impact	Does not apply
Lack of information about access site locations	☐	☐	☐	☐	☐
Inadequate facilities (fuel, utilities, restrooms)	☐	☐	☐	☐	☐
Congested waterways (boat traffic)	☐	☐	☐	☐	☐
Poor water quality for fishing	☐	☐	☐	☐	☐
Poor water quality for swimming	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐

11. Do you think there are enough boat access sites in [*state name*]? (Please rate on a scale of 1 to 5.)

No, need a lot more	No, need a few more	The right amount	Yes, more than enough	Yes, there are too many
1	2	3	4	5

12. Please use the space below to make any other comments or suggestions about recreational boating facilities in your State.

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PART C

If you operate a marina or other tie-up facility in [name of State] that serves boats 26 feet or more in length, please answer the following questions. If you do not operate facilities for boats 26 feet or more in length but do operate an access site that services trailerable or car top boats under 26 feet in length, please go to Part D below.

IF YOU OPERATE MORE THAN 5 FACILITIES PLEASE ESTIMATE RESPONSES FOR ALL YOUR FACILITIES COMBINED. PLACE ANSWERS UNDER FACILITY #1.

RECREATIONAL BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR PROVIDERS

Please answer the following questions about your boating facility or access site in [name of State]. [Add comment about confidentiality if applicable under state law]

1. Are you a public or private boating facilities provider in [name of State]?

☐ Private provider available to the public (Non-government agency)
☐ Private provider unavailable to the public (You need not complete this questionnaire. If this is a mail survey, please stop and return the survey)
☐ Public provider (Government agency—includes private leases on public land)
☐ Neither (You need not complete this questionnaire. If this is a mail survey, please stop and return the survey)

2. How many boating facilities for boats over 26 feet do you operate in [name of State]?

☐ _____ facility(ies)

3. Please list the boating facility or facilities in [name of State] that you operate or manage for boats 26 feet or more in length.

	Name of facility (marina, courtesy dock, etc)	County/city or town	Area (Lake, cove, slough, bay, harbor or section of river)	Latitude (longitude or GPS
Facility #1:				
Facility #2:				
Facility #3:				
Facility #4:				
Facility #5:				

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4. For each facility listed in Question #3, indicate the requirements for boater use. (Check all that apply. List facilities in same order as Question #3.)

	None (first come first served)	Club membership required	Reservations required	Fee charged
Facility #1	☐	☐	☐	☐
Facility #2	☐	☐	☐	☐
Facility #3	☐	☐	☐	☐
Facility #4	☐	☐	☐	☐
Facility #5	☐	☐	☐	☐

5. For each facility listed in Question #3, estimate the number of transient tie-up slips, permanent tie-up slips, transient moorings and permanent moorings. (List facilities in same order as Question #3.)

	Number of transient slips/ tie-ups	Number of permanent slips/tie-ups	Number of transient moorings	Number of permanent moorings
Facility #1:				
Facility #2:				
Facility #3:				
Facility #4:				
Facility #5:				

6. For each facility listed in Question #3, identify the types of support features available at the facilities. (Check all that apply. List facilities in same order as Question #3.)

	Gas fuel	Diesel fuel	Restrooms	Sewage pumpout/dump stations	Electricity	Water	Telephones
Facility #1	☐	☐	☐	☐	☐	☐	☐
Facility #2	☐	☐	☐	☐	☐	☐	☐
Facility #3	☐	☐	☐	☐	☐	☐	☐
Facility #4	☐	☐	☐	☐	☐	☐	☐
Facility #5	☐	☐	☐	☐	☐	☐	☐

7. For each facility that you listed in Question #3, what repairs, replacements, expansions, or additions do you think are needed or you would do if you could? (Check all that apply. List facilities in same order as Question #3.)

Facility #1	None	Repair	Replace	Expand	Add	Does not apply
Transient slips or tie-ups	☐	☐	☐	☐	☐	☐
Transient moorings	☐	☐	☐	☐	☐	☐
Gasoline facilities	☐	☐	☐	☐	☐	☐
Diesel fuel facilities	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Electricity	☐	☐	☐	☐	☐	☐
Water	☐	☐	☐	☐	☐	☐
Telephone	☐	☐	☐	☐	☐	☐
Oil disposal	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #2	None	Repair	Replace	Expand	Add	Does not apply
Transient slips or tie-ups	☐	☐	☐	☐	☐	☐
Transient moorings	☐	☐	☐	☐	☐	☐
Gasoline facilities	☐	☐	☐	☐	☐	☐
Diesel fuel facilities	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Electricity	☐	☐	☐	☐	☐	☐
Water	☐	☐	☐	☐	☐	☐
Telephone	☐	☐	☐	☐	☐	☐
Oil disposal	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #2	None	Repair	Replace	Expand	Add	Does not apply
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #3	None	Repair	Replace	Expand	Add	Does not apply
Transient slips or tie-ups	☐	☐	☐	☐	☐	☐
Transient moorings	☐	☐	☐	☐	☐	☐
Gasoline facilities	☐	☐	☐	☐	☐	☐
Diesel fuel facilities	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Electricity	☐	☐	☐	☐	☐	☐
Water	☐	☐	☐	☐	☐	☐
Telephone	☐	☐	☐	☐	☐	☐
Oil disposal	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #4	None	Repair	Replace	Expand	Add	Does not apply
Transient slips or tie-ups	☐	☐	☐	☐	☐	☐
Transient moorings	☐	☐	☐	☐	☐	☐
Gasoline facilities	☐	☐	☐	☐	☐	☐
Diesel fuel facilities	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Electricity	☐	☐	☐	☐	☐	☐
Water	☐	☐	☐	☐	☐	☐
Telephone	☐	☐	☐	☐	☐	☐
Oil disposal	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #5	None	Repair	Replace	Expand	Add	Does not apply
Transient slips or tie-ups	☐	☐	☐	☐	☐	☐
Transient moorings	☐	☐	☐	☐	☐	☐
Gasoline facilities	☐	☐	☐	☐	☐	☐
Diesel fuel facilities	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Electricity	☐	☐	☐	☐	☐	☐
Water	☐	☐	☐	☐	☐	☐
Telephone	☐	☐	☐	☐	☐	☐
Oil disposal	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

8. For all of your facilities combined in [name of State], please identify how boaters know about your facilities. (Check all that apply).

Paid advertising	State publications	Chamber of commerce	World wide web/Internet	Other (specify)	Other (specify)
☐	☐	☐	☐		

9. Below is a list of reasons why boaters may use the facilities you listed in Question #3. Why do you think the public uses each facility? (Check all that apply for each facility. List facilities in same order as Question #3.

	Close to population centers	Good boating waters	Good support services (slips, fuel, restrooms, pumpouts, etc.)	Reasonable cost	Swimming opportunities	Fishing opportunities	Other (specify)
Facility #1	☐	☐	☐	☐	☐	☐	
Facility #2	☐	☐	☐	☐	☐	☐	
Facility #3	☐	☐	☐	☐	☐	☐	

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	Close to population centers	Good boating waters	Good support services (slips, fuel, restrooms, pumpouts, etc.)	Reasonable cost	Swimming opportunities	Fishing opportunities	Other (specify)
Facility #4	☐	☐	☐	☐	☐	☐	
Facility #5	☐	☐	☐	☐	☐	☐	

10. Please rate the overall condition of the facility(ies) you listed in Question $3. (Please check one for each facility. List facilities in same order as Question #3.)

	Poor (requires upgrade now)	Fair (will require upgrade within the next 2 to 5 years)	Good (will require upgrade within 6 to 10 years)	Excellent (no improvements needed for more than 10 years)
Facility #1	☐	☐	☐	☐
Facility #2	☐	☐	☐	☐
Facility #3	☐	☐	☐	☐
Facility #4	☐	☐	☐	☐
Facility #5	☐	☐	☐	☐

11. Do you think there are enough boat tie-up facilities in [name of State]?

☐ Yes ☐ No

12. If public funding sources were available for facility repair, improvement, expansion, or additions, would you be interested?

☐ Yes ☐ No

13. Please provide any comments about recreational boating facilities not covered in this section.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the Privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

PART D

If you operate a boating facility or access site for trailerable or car top boats under 26 feet in length, please answer the following questions.

IF YOU OPERATE MORE THAN 5 ACCESS SITES, PLEASE ESTIMATE FOR ALL YOUR FACILITIES COMBINED, PLACE ANSWERS UNDER FACILITY #1

14. How many boating facilities or access sites for boats under 26 feet in length do you operate in [name of State]?

__facilities or access sites

15. Please list the boating facility(ies) or access site(s) that you operate or manage in [name of State] for boats under 26 feet in length. (Please list each specific site.)

	Site name	County/city or town	Area (lake, cove, slough, bay, harbor, or section of river)	Latitute/longitude or GPS
Facility #1:				
Facility #2:				
Facility #3:				
Facility #4:				
Facility #5:				

16. For each facility listed in Question #15, please indicate any requirements for boater use. (Check all that apply. List access sites in same order as Question #15.)

	None (first come first served)	Club membership required	Reservations required	Fee charged
Facility #1	☐	☐	☐	☐
Facility #2	☐	☐	☐	☐
Facility #3	☐	☐	☐	☐
Facility #4	☐	☐	☐	☐
Facility #5	☐	☐	☐	☐

17. For each facility listed in Question #15, identify the types of support features available at each facility. (Check all that apply. List access sites in same order as Question #15).

	Carry down paths, etc.	Launch ramps	Boarding floats	Sewage pumpout/dump stations	Parking	Restrooms
Facility #1	☐	☐	☐	☐	☐	☐
Facility #2	☐	☐	☐	☐	☐	☐
Facility #3	☐	☐	☐	☐	☐	☐
Facility #4	☐	☐	☐	☐	☐	☐
Facility #5	☐	☐	☐	☐	☐	☐

18. For each facility listed in Question #15, what repairs, replacements, expansions, or additions do you think are needed? (Check one for each feature. List access sites in same order as Question #15.)

Facility #1	None needed	Repair	Replace	Expand	Add	Does not apply
Carry-down walkway to	☐	☐	☐	☐	☐	☐
Launch ramp	☐	☐	☐	☐	☐	☐
Boarding floats	☐	☐	☐	☐	☐	☐
Parking	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #2	None needed	Repair	Replace	Expand	Add	Does not apply
Carry-down walkway to	☐	☐	☐	☐	☐	☐
Launch ramp	☐	☐	☐	☐	☐	☐
Boarding floats	☐	☐	☐	☐	☐	☐
Parking	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #3	None needed	Repair	Replace	Expand	Add	Does not apply
Carry-down walkway to	☐	☐	☐	☐	☐	☐
Launch ramp	☐	☐	☐	☐	☐	☐
Boarding floats	☐	☐	☐	☐	☐	☐
Parking	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

Facility #4	None needed	Repair	Replace	Expand	Add	Does not apply
Carry-down walkway to water's edge	☐	☐	☐	☐	☐	☐
Launch ramp	☐	☐	☐	☐	☐	☐
Boarding floats	☐	☐	☐	☐	☐	☐
Parking	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

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Facility #5	None needed	Repair	Replace	Expand	Add	Does not apply
Carry-down walkway to	☐	☐	☐	☐	☐	☐
Launch ramp	☐	☐	☐	☐	☐	☐
Boarding floats	☐	☐	☐	☐	☐	☐
Parking	☐	☐	☐	☐	☐	☐
Restrooms	☐	☐	☐	☐	☐	☐
Pumpout/dump stations	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐
Other (specify)	☐	☐	☐	☐	☐	☐

19. For all of your facilities combined in [name of State], identify how boaters know about your facilities (Check all that apply.)

Paid advertising	State publications	Chamber of Commerce	World wide web	Other (specify)	Other (specify)
☐	☐	☐	☐	☐	☐

20. Below is a list of reasons why boaters may use facilities you identified in Question #15. Why do you think the public uses each facility? (Check all that apply. List access sites in same order as Question #15.)

	Close to population centers	Good boating waters	Good support services (slips, fuel, restrooms, pumpouts, etc.)	Reasonable cost	Fishing opportunities	Swimming opportunities	Other (specify)
Facility #1	☐	☐	☐	☐	☐	☐	
Facility #2	☐	☐	☐	☐	☐	☐	
Facility #3	☐	☐	☐	☐	☐	☐	
Facility #4	☐	☐	☐	☐	☐	☐	
Facility #5	☐	☐	☐	☐	☐	☐	

21. Please rate the overall condition of the facility(ies) you listed in Question #15. (Check one for each facility. List access sites in same order as Question #15.)

	Poor (requires upgrade now)	Fair (will require upgrade within the next 2 to 5 years)	Good will require upgrade within 6 to 10 years)	Excellent (no improvements needed for more than 10 years)
Facility #1	☐	☐	☐	☐
Facility #2	☐	☐	☐	☐
Facility #3	☐	☐	☐	☐
Facility #4	☐	☐	☐	☐
Facility #5	☐	☐	☐	☐

22. Do you think there are enough boating facilities or access sites in [state name]?

☐ Yes ☐ No

23. If public funding sources were available for access site repair, improvement, expansion, or additions, would you be interested?

☐ Yes ☐ No

24. Please provide any comments about recreational boating facilities or access sites not covered in this section.

_____

_____

_____

Thank you for your help! If you would like a representative of this State to contact you about any questions and concerns or if you would like additional information about facility and site development funding sources, please list your name, facility, telephone number, and best time to contact you.

Name _____

Facility _____

Telephone _____

Time _____

Paperwork Reduction Act and the Privacy Act—Notices

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

1. The gathering of information of fish and wildlife is authorized by:

(a) The Sportfishing and Boating Safety Act, Title VII, Subtitle D, Section 7404 (16 U.S.C. 777g–1); and,

(b) Title 50, Part 86, of the Code of Federal Regulations.

2. Information requested in this form is purely voluntary.

3. Routine use disclosures may also be made:

(a) To the U.S. Department of Justice when related to litigation or anticipated litigation;

(b) Of information indicating a violation or potential violation of statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulations, order or license;

(c) From the record of an individual in response to an inquiry from a Congressional office made at the request of that individual (42 FR 1903: April 11, 1977).

4. For individuals, personal information such as home address and telephone number, financial data, and personal identifiers (social security number, birth date, etc.) will be removed prior to any release of survey results.

5. The public reporting burden for this information collection varies on the specific activity use being requested. The relevant burden for the survey is 10 to 25 minutes. This burden estimate includes time for reviewing instructions, gathering and maintaining data and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of the forms to the Service Information Clearance Officer, Fish and Wildlife Service, Mail Stop 222, Arlington Square, U.S. Department of the Interior, 1849 C street, NW., Washington, D.C. 20240.

Freedom of Information Act—Notice

For organization, businesses, or individuals operating as a business (*i.e.*, permittees not covered by the Privacy Act), we request that yuo identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under FOIA. Confidential business information must be clearly marked "Business Confidential" at the top of the letter or page and each succeeding page, and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.15(d)(1)(i)].

Application Processing Fee

There is no processing fee associated with this survey.

[FR Doc. 02–295 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Distribution of Fiscal Year 2002 Contract Support Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of method of distribution and use of FY 2002 contract support funds.

SUMMARY: The purpose of this announcement is to issue the Bureau of Indian Affairs (BIA) administrative instructions for implementing Public Law 93–638, as amended. These administrative instructions are designed to provide BIA personnel with assistance in carrying out their responsibilities when distributing Contract Support Funds (CSF). These instructions are not regulations establishing program requirements.

DATES: The CSF Needs Report for ongoing/existing contracts and annual funding agreements are due on July 15, 2002. The CSF Needs Reports for new and expanded contracts and annual funding agreements are due periodically throughout the year as the need arises. All new and expanded contracts and annual funding agreements starting between October 11, 2001 and January 1, 2002, will be considered to have a January 1, 2002, start date.

ADDRESSES: Send the CSF Needs Report to Jim Thomas, Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Thomas, Chief, Division of Self-Determination Services, Telephone (202) 208–5727.

SUPPLEMENTARY INFORMATION: A total of $133,209,000 is available for contract support requirements (excluding construction requirements) during FY 2002. Congressional language allows the use of $130,209,000 in FY 2002 to pay costs of ongoing/existing self-determination and self-governance awards for programs under contract/compact before FY 2002 and $3,000,000 for the Indian Self-Determination Fund (ISD) to be used for new and expanded contracts/compacts. Each BIA Regional Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective region to work with the tribes in identifying new and expanded contracts and annual funding agreements and reporting this information to the Division of Self-Determination Services as mentioned in this announcement. CSF will be added to awards made under section 102 and title IV of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under section 103 of this Act will not receive CSF to meet indirect costs.

Basis for Payment of CSF

The BIA may only pay indirect costs attributable to programs included in the BIA's Public Law 93–638 awards. Awards by the BIA with funds originating from other agencies which have been transferred to the BIA for award under Public Law 93–638 are not eligible for CSF appropriated to the BIA. Contract support/indirect costs requirements for these awards must be met from within the amounts transferred. (One example would include funds transferred to the BIA from the Department of Transportation for roads construction.) BIA will use tribal indirect cost rates to determine the amount of CSF to be paid to contracting tribes and tribal organizations and self-governance tribes and tribal consortia. In determining legitimate indirect cost requirements each area and self-governance director should fund only those contracting or compacting tribal organizations that have an approved indirect cost rate or indirect cost proposal currently under consideration by the Office of Inspector General. In those instances where a tribe or tribal organization has more than one approved rate or a current proposal under consideration by the Office of the Inspector General, the director should use the most current rate or a pending proposal in determining the amount to award. For those tribes who are unable to negotiate an indirect cost rate because of circumstances beyond their control (i.e., which do not have the administrative capability to negotiate a rate), awarding officials may negotiate reasonable lump sum amounts with these tribes.

Indirect Cost Computation

The following steps must be followed by BIA personnel when computing contract support annual funding requirements:

(1) Determine total current year program funds.

(2) Subtract exclusions (See indirect cost agreements).°Examples of exclusions include capital expenditures and pass through funds (those programs requiring minimal administrative effort). Exclude other agency appropriations awarded by the BIA (i.e., roads construction funds transferred from the Department of Transportation).

(3) Direct cost base (results of steps 1 and 2).

(4) Multiply indirect cost rates against base determined in step 3.

(5) Results of step 4 equals indirect costs amount at 100 percent.

(6) Multiply current year CSF funding percentage against step 5.

(7) The result of step 6—The amount of current year CSF funding to be added to contract.

Ongoing/Existing Contracts/Annual Funding Agreements—Method of Distribution

Each office will send CSF Needs Report to the Central Office for ongoing contracts and annual funding agreements by July 15, 2002. A final determination of contract support will be made on or about July 31, 2002. If

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these reports show that $130,209,000 will not be enough to cover the entire need, this amount will be distributed pro rata, so that all contractors and compactors receive the same percentage of their reported need.

Should the amount provided for these existing contracts and annual funding agreements prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds from their Tribal Priority Allocation (TPA), or annual funding agreement. Congressional appropriations language does not provide authority for the BIA to reprogram funds from other Bureau programs to meet any CSF shortfalls.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program.

Each office should initially award 65 percent of required contract support to each contract/annual funding agreement meeting the criteria established below.

All contractors and self-governance tribes/consortia with either an approved indirect cost rate, current indirect cost proposal, or FY 2002 approved lump sum amount, are immediately eligible to be paid 65 percent of their need. On approximately July 31, 2002, all contractors and self-governance tribes/consortia should receive their pro rata share of all remaining CSF.

An ongoing/existing contract or annual funding agreement is defined as a BIA program operated by the tribal contractor or compactor on an ongoing basis which has been entered into before the current fiscal year. An increase or decrease in funding from year-to-year for such contracts or annual funding agreements would not affect the designation of such contracts or annual funding agreements as ongoing. An assumption of additional BIA program responsibilities would be required to trigger a change in designation.

Indian Self-Determination Fund—New and Expanded Contracts/Compacts and Start-Up Costs

Each office will send CSF Need Reports to the Central Office for new and expanded contracts and annual funding agreements periodically throughout the year as new contracts or annual funding agreements are awarded or existing contracts or annual funding agreements are expanded. Funds will be provided to the offices as these reports are received and will be taken from the $3,000,000. These funds will be distributed on a first-come, first-served basis at 100 percent of need using the office reports.

If the $3,000,000 is depleted, new or expanded contracts or annual funding agreements awarded after this fund has been exhausted will not be provided any CSF during this fiscal year. Requests received after this fund has been exhausted will be considered first for funding in the following year, from funds appropriated for this purpose.

The Indian Self-Determination Act defines the term start-up cost (Sec. 106(a)(5)) as follows:

Subject to paragraph (6) of section 106, during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) will include start-up costs consisting of the reasonable costs that have been incurred or will be incurred on a onetime basis under the contract necessary to:

(a) Plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and,

(b) Ensure compliance with the terms of the contract and prudent management.

For specific guidance, including examples of start-up costs, see the BIA web site under Tribal Services/Self-Determination Services.

Priority of Funding for New and Expanded Contracts/Annual Funding Agreements

Contract support will be awarded from the ISD fund to all new and expanded contracts/annual funding agreements based on the start date of the award, and the application date, on a first-come, first-served basis. An Indian Self-Determination Fund "applicant roster" will be maintained, which will list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of approved indirect cost rate agreement or lump sum agreement.

"Start date" means the date or beginning of operation of the new or expanded portion of the contract or annual funding agreement by the tribe/consortium or tribal organization. However, because the Self-Determination Act provides that contracts/annual funding agreements will be on a calendar year basis unless otherwise provided by the tribe, any start date on or before January 1 of each year will be considered a January 1 start date.

"Application date" means the date of the request by the tribe, which includes:

(1) A tribal resolution requesting a contract or annual funding agreement;

(2) A summary of the program or portion of that to be operated by the tribe/consortium or tribal organization; and

(3) A summary identifying the source and amount of program or services funds to contracted or included in an annual funding agreement and contract support requirements.

If two tribes or tribal organizations have the same start date and application date, the next date for determination of priority will be the date the fully complete application was received by the BIA.

If all are equal, and if funds remaining in the ISD fund are not enough to fill the entire amount of each award's contract support requirement, then each will be awarded a proportionate share of its requirement and will remain on the Indian Self-Determination Fund roster in appropriate order of priority for future distributions.

New contract/annual funding agreement is defined as the initial transfer of a program, previously operated by the BIA to the tribe/consortium or tribal organization.

An expanded contract/annual funding agreement is defined as a contract/annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs previously performed by the BIA.

Criteria for Determining CSF Need for Ongoing/Existing Contracts/Annual Funding Agreements

CSF for ongoing and existing contracts/annual funding agreements will be determined using the following criteria:

(1) All TPA contracted programs or those programs included in annual funding agreements in FY 2001 and continued in FY 2002, including contracted or annual funding agreement programs moved to TPA in FY 2002.

(2) Direct program funding increases due to inflation adjustments and general budget increases.

(3) TPA programs started or expanded in FY 2002 that are a result of a change in priorities from other already contracted/annual funding agreement programs.

(4) CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated by using the criteria prescribed in the Choctaw decision dated September 18, 1992, issued by the Contracting Officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in this announcement.

(5) CSF will be distributed to the Office of Self-Governance for ongoing annual funding agreements, on the same basis as regional offices.

(6) Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for payment of contract support costs.

(7) The use of CSF to pay prior year shortfalls is not authorized.

(8) Programs funded from sources other than those listed above that were awarded in FY 2001 and are to be awarded in FY 2002 are considered as ongoing.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: December 19, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–300 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–467]

Certain Canary Yellow Self-Stick Repositionable Note Products; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 3, 2001, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain canary yellow self-stick repositionable note products by reason of infringement of U.S. Trademark Registration No. 2,390,667. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDI-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 17, 2001, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain canary yellow self-stick repositionable note products by reason of infringement of U.S. Trademark Registration No. 2,390,667, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Minnesota Mining and Manufacturing Company, 3M Center, 2501 Hudson Road, St. Paul, Minnesota 55119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Print-Inform GmbH & Co., Borsigstr. 8, 24568 Kaltenkirchen, Germany.

Janel, S.A. de C.V., Soja 85, Col. Granjas Esmerelda, Distrito Federal CP 09810, Mexico.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: December 28, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 02–195 Filed 1–4–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

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TIME AND DATE: January 10, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meeting:* None.
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–986–987 (Preliminary) (Ferrovanadium from China and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on January 10, 2002; Commissioners opinions are currently scheduled to be transmitted to the Secretary of Commerce on January 17, 2002.)
5. Inv. Nos. 701–TA–267–268 and 731–TA–304–305 (Review) (Remand) (Top-of-Stove Stainless Steel Cooking Ware from Korea and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its view on remand to the Court of International Trade on January 25, 2002.)
6. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: January 3, 2002.

Donna R. Koehnke,

Secretary.

[FR Doc. 02–429 Filed 1–3–02; 1:50 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree resolving the liability of Mickie E. Jarvill in *United States of America* v. *Arlington Valley Land Company, Inc., et al.*, Civil Action No. C99–1711C(M) (W.D. Wa.), was lodged with the United States District Court for the Western District of Washington on October 11, 2001.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the unauthorized discharge of dredged or fill materials into waters of the United States at a location near Arlington, Washington (the "Site"). The consent decree enjoins Mickie E. Jarvill from discharging dredged or fill material into waters of the United States. The consent decree further requires that Mickie E. Jarvill pay civil penalties plus interest in the amount of $90,000 over a five-year period.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Michael J. Zevenbergen, Attorney, Environmental Defense Section, Seattle Field Office, c/o NOAA/Damage Assessment, 7600 Sand Point Way NE, Seattle, WA 98115, and should refer to *United States of America* v. *Arlington Valley Land Company, Inc., et al.*, DJ Reference No. 90–5–1–4–402.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 1010 Fifth Avenue Seattle, WA 98104.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources, Division, Department of Justice.

[FR Doc. 02–276 Filed 1–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley*, Civil Action No. 3:01CV1853 (RNC) (D. Conn.), was lodged with the United States District Court for the District of Connecticut on October 3, 2001. This proposed Consent Decree concerns a complaint filed by the United States against Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley, pursuant to sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, and imposes civil penalties against Defendant, Specialty Minerals, Inc., for the unauthorized discharge of dredged or fill material into waters of the United States located in wetlands adjacent to a tributary of Blackberry River, located in North Canaan, Connecticut.

The proposed Consent Decree requires the payment of civil penalties, in addition to the performance of onsite mitigation and partial restoration at the site of the violation.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the of publication of this notice. Please address comments to Brenda M. Green, Assistant United States Attorney, United States Attorney's Office, 157 Church Street, 23rd Floor, New Haven, Connecticut 06510 and refer to *United States* v. *Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley*, DJ#90–5–1–1–05702.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Connecticut, 141 Church Street, New Haven, Connecticut 06510.

Brenda M. Green,

Assistant U.S. Attorney, U.S. Attorney's Office, 157 Church Street, 23rd Floor, New Haven, CT 06510, (203) 821–3700.

[FR Doc. 02–275 Filed 1–4–02; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–001)]

U.S. Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

DATES: Wednesday, January 30, 2002, 1:00 p.m. to 5:00 p.m.

ADDRESSES: National Air and Space Museum, Independence Avenue, SW between 6th and 7th Streets, Directors Conference Room. Please check in at the security desk to be cleared into the building. Please call Ms. Beverly Farmarco at 202/358–1903 if you plan to attend so your name can be added to the attendees list.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows

—Report from Carter Ryley Thomas
—Budget Discussions
—Next First Flight Centennial Federal Advisory Board Meeting
—What the Commission Wants Accomplished in FY 2002
—Centennial Partner Deliberations
—Education Program

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–316 Filed 1–4–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (#10719).

Date/Time: Tuesday, January 22, 2002, 8 am to 5 pm PST.

Place: Caltech's Center for Advanced Computing Research, Pasadena, California in room 120 of the Powell-Booth Laboratory for Computational Science, and Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, and on the Access Grid, Lucky Labrador Virtual Venue.

Type of Meeting: Open Meeting. The meeting will also involve the use of the Access Grid to interview witness. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass. Persons wishing to attend the meeting at Caltech in Pasadena should contact Paul Messina for information. Persons wishing to watch the proceedings through the use of the Access Grid are invited to join the meeting in the Lucky Labrador Virtual Venue.

Contact Persons: Dr. Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov*. Paul Messina, Director, Center for Advanced Computing Research, Mail Code 158–79, 1200 E. California Blvd., California Institute of Technology, Pasadena, CA 91125. Tel: (626) 395–3907, e-mail: *messina@cacr.caltech.edu*.

Purpose of Meeting: To obtain testimony from expert witnesses to pertinent to the preparation of a report to the National Science Foundation concerning the broad topic of advanced cyberinfrastructure and the evaluation of the existing Partnerships for Advanced Computational Infrastructure.

Agenda (all times PST):

Tuesday, 22 January 2002

8–12:30 am—In-Person and Access Grid Testimony (8 people)
12:30–1:30 pm—Lunch
1:30–5 pm—In-Person and Access Grid Testimony (7 people)

Dated: January 2, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–289 Filed 1–4–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 7, 14, 21, 28, February 4, 11, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 7, 2002

There are no meetings scheduled for the Week of January 7, 2001.

Week of January 14, 2002—Tentative

Tuesday, January 15, 2002.

9:30 a.m.—Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of January 21, 2002—Tentative

There are no meetings scheduled for the Week of January 21, 2002.

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.—Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134).

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, January 30, 2002

9:25 a.m.—Affirmative Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on Status of the Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2:00 p.m.—Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:25 a.m.—Affirmative Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 5–0 on December 27 and 28, 2001, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (a) Private Fuel Storage (Independent Spent Fuel Storage Installation)" Docket No. 72–22–ISFSI; Petition to Suspend Proceedings in Response to Terrorist Attacks; (b) Duke Energy Corp. (McGuire Nuclear Station, United 1 & 2; Catawba Nuclear Station, Units 1 & 2); Blue Ridge Environmental Defense League's ("BREDL's") Petition to Dismiss Licensing Proceeding or, in the Alternative, Hold it in Abeyance (Oct. 23, 2001); and (c) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georgians Against Nuclear Energy & Nuclear Control Institute's Petition to Suspend Construction Authorization Proceeding for Proposed Plutonium Fuel (MOX) Fab Facility," be held on December 28, 2001, and no less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 3, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–405 Filed 1–3–02; 11:41 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the

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Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 7, 2002: Closed meetings will be held on Tuesday, January 8, and Thursday, January 10, 2002, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meetings scheduled for Tuesday, January 8, 2002, and Thursday, January 10, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Formal orders;

Amicus considerations; and

Adjudicatory matters.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 31, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–00333 Filed 1–2–02; 4:07 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of WSF Corporation; Order of Suspension of Trading

January 3, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WSF Corporation ("WSF"), a Delaware corporation headquartered in Honolulu, Hawaii. Questions have been raised about the adequacy and accuracy of publicly disseminated information because WSF has not filed its required periodic reports for any period subsequent to the quarter ended September 30, 2000. Moreover, WSF management has informed the Commission staff that WSF still has not retained a public auditor for its financial statements for the fiscal year ended December 31, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on January 3, 2002, through 11:59 p.m. EST on January 16, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–399 Filed 1–3–02; 11:55 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45220; File No. SR–ISE–2001–33]

Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Revising the Original Listing Criteria for Underlying Securities in ISE Rule 502.

I. Introduction and Description of the Proposal

On November 19, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 502(b)(5) to provide an alternative listing requirement for underlying securities that satisfy all of the initial listing requirements in ISE Rule 502, "Criteria for Underlying Securities," other than the requirement in ISE Rule 502(b)(5) that the market price per share of the underlying security be at least $7.50 per share for the majority of business days during the three calendar months preceding the date of selection. Specifically, the Exchange proposes to adopt ISE Rule 502(b)(5)(ii), which will permit the Exchange to list options on securities that satisfy all of the initial listing requirements other than the $7.50 per share requirement so long as: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503, "Withdrawal of Approval of Underlying Securities;" (2) options on the underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for the options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The proposed rule change was published for comment in the **Federal Register** on December 6, 2001.[3] The Commission received no comments on the proposal. On December 6, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[4] On December 31, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[5] This order approves the proposed rule change, as amended, on an accelerated basis. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal.

II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder.[7] The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to promote investors and the public interest.

The Commission believes that the ISE's proposal should benefit investors by enhancing competition and providing investors with an additional forum for trading options that are traded on at least one other registered national securities exchange and that satisfy the other criteria in ISE Rule 502(b)(5)(ii).[9] Under the proposal, an underlying security must meet all of the requirements in ISE Rule 502 other than the $7.50 per share requirement and must meet the guidelines for continued approval under ISE Rule 503. The Commission believes that these requirements should help to ensure that options traded on the ISE are based on securities of companies that are financially sound and subject to adequate minimum standards. In addition, because ISE Rule 502(b)(5)(ii) requires that options on an underlying security trade at least one other registered national securities exchange, the proposal will not permit the trading of any additional options that are not currently traded on a registered national securities exchange.

The ISE asked the Commission to approve the proposal of an accelerated basis to allow the ISE to begin to list several actively traded option classes that currently trade on other options exchanges prior to the January 2002 expiration.[10] The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of the proposal will allow the ISE to promptly begin trading options that currently trade on other options exchanges, thereby providing investors with an additional forum for trading these options. In addition, the Commission notes that it received no comments on the proposed rule change. Amendment No. 1 strengthens the ISE's proposal by clarifying the text of ISE Rule 502(b)(5)(ii). Amendment No. 2 requests accelerated approval of the proposal and explains the ISE's reasons for requesting accelerated approval. Accordingly, the Commission finds that there is good cause, consistent with sections (6)(b)(5)A[11] and 19(b)(2) of the Act,[12] to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to file number SR–ISE–2001–33 and should be submitted by January 28, 2002.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ISE–2001–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–286 Filed 1–4–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45119 (November 30, 2001), 66 FR 63423.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 4, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange added "trading" to the proposed text of ISE Rule 502(b)(5)(ii) to clarify that the requirement in the third clause of ISE Rule 502(b)(5)(ii) refers to the average daily trading volume of an option. This is a technical amendment and is not subject to notice and comment.

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 28, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange requested that the Commission grant accelerated approval to the proposal.

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78(b)(5).

[9] As noted above, ISE Rule 502(b)(5)(ii) will permit the ISE to list options on an underlying security where: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503; (2) options on the underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for the options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

[10] *See* Amendment No. 2, *supra* note 5.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *ID.*

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400 Sacramento, CA 95814–2724, Telephone: (916) 498–5860.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) on a proposal to improve Interstate Route 405 (I–405) in Los Angeles County. The proposed action involves the construction of a High Occupancy Vehicle (HOV) lane, in the northbound direction, between just south of the Interstate Route 10 (I–10) Connector and Greenleaf Street, a distance of approximately 10 miles. The proposed project may require additional ROW as well as possible entrance/exit ramp reconfigurations and/or closures. The purpose of the proposed project is considered necessary to provide continuity and connectivity in the Regional HOV system, alleviate traffic congestion, improve mobility, access, and goods movement on the I–405 freeway in the Los Angeles County area. Alternatives under consideration include:

Alternative 1: No Build Alternative.

Alternative 2: The widening of the existing facility to add a northbound HOV lane.

Alternative 3: The widening of the existing facility to add a northbound HOV lane and restore southbound freeway lane and shoulder widths to current design standards.

Alternative 4: The widening of the existing facility to provide for four HOV lanes (two each, both northbound and southbound) on an elevated viaduct, within the freeway median, throughout and project limits.

Alternative 5: Transit Enhancement Alternative. This would involve design features that would facilitate increased transit use in the corridor.

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Alternative 6: Transportation Systems Management/Transportation Demand Management. These basic alternatives may have additional design variations at specific locations in response to social, economic and environmental impacts of extraordinary magnitude, which may be identified during upcoming studies and analysis. **Note:** As required by the National Environmental Policy Act (NEPA), all other reasonable alternatives will be considered. These alternatives may be refined, combined with various different alternative elements, or be removed from further consideration, as more analysis is conducted on the project alternatives.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An agency scoping meeting will be held on January 16, 2002, at 3 pm, at the Veterans Administration 11301 Wilshire Boulevard. In addition, initial scoping meetings, for the general public, will be held on January 16, 2002, at the Veterans Administration 11301 Wilshire Boulevard, from 6 pm to 8 pm, and on January 17, 2002, at the Radisson Hotel 15433 Ventura Blvd, Sherman Oaks, from 6 pm to 8 pm. Additional public notice will be given of the time and place of these meetings.

Public meetings will be held after the draft EIS is completed. Public notice will be given of the time and place of the meetings. The draft EIS will be available for public and agency review and comment prior to the formal public hearing(s).

To ensure that the full range of issues related to the proposed routes are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addressed provided above.

(Catalog of Federal Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: December 27, 2001.

Cesar E. Perez,

Senior Transportation Engineer, Program Delivery Team-South, Sacramento, California.

[FR Doc. 02–41 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's argument in favor of relief.

Durbin & Greenbrier Valley Railroad, Inc.

[Docket Number FRA–1999–5183]

The Durbin & Greenbrier Valley Railroad, Inc. (DGVR) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.11, safety glazing requirements for existing locomotives.

DGVR stated that it has a locomotive (BL–2) which was built in 1948. The locomotive is on loan from the West Virginia State Rail Authority. This locomotive is used sporadically on track leased by DGVR's West Virginia Central Division.

DGVR requests the waiver based on the following three reasons: (1) The locomotive will be operated one to six excursions per week along 28 miles of rural and wildness track. There is no history of vandalism along this track. Most of this track passes through remote areas. Speed along the entire track is restricted under yard limit rules to no more than 15 miles per hour. There is only one overpass over the track and the overpass is a protected flood gate overpass which is continually patrolled. (2) The locomotive is a rare 1948 vintage BL–2 with the original glazing intact. Only a few of these types of engines were produced. Altering glazing on this old locomotive would change its appearance and would detract from its historic value and appeal. (3) This locomotive was originally built strictly for branch line service and it will be used exclusively in this manner.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–5183) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on December 17, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–308 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Farmrail System, Incorporated

[Docket Number FRA–2001–9998]

The Farmrail System owns and operates three passenger coaches which were built in 1954–56. These coaches are not used in regular service, but only on a limited seasonal basis primarily in conjunction with the Oklahoma Tourism and Recreation Department's resort and conference center located at Quartz Mountain State Park. The cars operate on trackage owned by the Oklahoma Department of Transportation for which Farmrail acts as lessee-operator. The excursion trains operate from a station near the entrance to Quartz Mountain State Park and run northward around Lake Lugert through a sparsely populated area to Lone Wolf, Oklahoma, and back. Farmrail requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.15 *Requirements for existing passenger cars* due to the infrequent use of the cars, the planned usage for excursion service, and the cost of installing compliant glazing. The cars are former VIA Rail Canada equipment, and have a double-pane combination of 1/4-inch thick safety glass inside and plate glass outside. This glazing system remains the standard in Canada for passenger equipment, and the petitioner believes that the operation of these cars, as equipped, would not pose a safety hazard to passengers or employees.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9998) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–312 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Kansas City Southern Railway Company (KCS)

[Docket Number FRA–2001–9746]

The Kansas City Southern Railway Company (KCS) seeks a permanent waiver of compliance with the Railroad Safety Appliance Standards, 49 CFR part 231.27(b)(3) which states that the location of the end platform shall be "One (1) centered on each end of car between inner ends of handholds not more than eight (8) inches above top of center sill." KCS has a series of 138 box cars, numbered KCS 125550 through KCS 125688, that were rebuilt in 1999. During the rebuild the end platforms were added to both ends of each car with approximately one inch off the center of the car. KCS's petition did not provide the specific "eccentricity" of the end platforms as measured from the center between inner ends of handholds. KCS believes this defect creates no unsafe conditions.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2001–9746) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–311 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Massachusetts Bay Transportation Authority

[Docket Number FRA–2000–8044]

Massachusetts Bay Transportation Authority (MBTA) seeks to resubmit a petition for reconsideration of a temporary waiver of compliance with the Railroad Safety Appliance Standards, 49 CFR 231.12(c)(4), which requires passenger car end handholds be securely fastened with bolts or rivets. MBTA states that the end handholds on their Bombardier and Kawasaki fleets of passenger coaches, as currently configured, are fastened with bolts to a slotted block that is welded to the end sill during the manufacturing process.

MBTA states that there are 146 Bombardier coaches in service since 1987–90 with no recorded failures, accidents, or injuries attributable to either the end handhold or the welded mounted blocks. There are 75 Kawasaki coaches that have been in service since 1990–91 and 17 in service since 1998 with no reported injuries attributable to the handhold or mounting blocks used to secure them.

MBTA reports having performed a recent inspection of both fleets, with no defects in the welds securing the

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mounting blocks being detected. In addition, MBTA states that the weldment is inspected daily in accordance with the MBTA's Commuter Rail Maintenance Sheets, CRM–12, Daily Trip Inspection. In the event a defect is noted, the coach would immediately be removed from service with written notification to the local FRA Office. A remedial action plan would be developed with concurrence from FRA to ensure the repair meets or exceeds the standard of the original design. MBTA states that they are at 100% utilization of their coach fleet and removing these cars from service, for retrofit, would impose an undue financial burden without substantially improving safety. They submit that of the four possible retrofits they have considered the least expensive would cost approximately $125,000.00.

This request includes 146 Bombardier coaches numbered 350–389, 600–653, 1600–1652, excluding coach 1648 and 92, Kawasaki coaches numbered 700–749, 1700–1724 and 750–766. The coaches would remain in service until they receive their mid-life overhaul, when a modification would be engineered. For the 146 Bombardier coaches, this is tentatively scheduled for July 2002 and the Kawasaki coaches for July 2004. On November 24, 2000, a letter of denial was forwarded to MBTA (Docket FRA–2000–8044–3). At that time, FRA had determined insufficient information was presented, particularly, in regards to repairs. FRA has indicated to the petitioner that the agency is willing to consider an interim waiver to cover welded securement until an industry standard has been approved and adopted by the industry and FRA. FRA requested that MBTA's petition include information detailing a quality control process for repairing the weldment in the event of damage or failure.

On April 2, 2001, MBTA resubmitted a petition for interim waiver of compliance of Railroad Safety Appliances Standards, 49 CFR 231.12 (Docket FRA–2000–8044–4). The coaches for which the waiver is requested are currently in service and are used to provide commuter rail service throughout Massachusetts. MBTA is resubmitting this petition for interim waiver with the information by incorporating ATPA's proposed "Repair Procedure for Welded Support Brackets," as the standard for repair of the end handholds, thus insuring American Welding Society (AWS) certified repair methods.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–8044) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on January 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–310 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Minnesota Northern Railroad

[Waiver Petition Docket Number FRA–2001–10214]

The Minnesota Northern Railroad owns and operates a caboose, number MNN 019. This caboose is not used in regular service, but only on a limited basis in work train service, to transport railroad officials and private persons for typical railroad business purposes. The caboose will primarily be stored on a live rail siding. The car operates on the Minnesota Northern Railroad in a rural/suburban area which is 50% wooded and 50% cultivated farm land. The MNN requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) § 223.13 Requirements for existing cabooses due to the infrequent use of the caboose, the planned usage for work and special train service, and the cost of installing compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2001–10214) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on January 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–313 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Ohio Central Railroad

[Waiver Petition Docket Number FRA–2000–7351]

The Ohio Central Railroad owns and operates a caboose, number OHCR 556, which was built in 1976. This caboose is not used in regular service, but only on a limited basis in work train service. The car operates on the Ohio Central Railroad, which is a Class III railroad, operating a single track, unsignaled, line between South Zanesville and New Lexington, Ohio, a distance of 25 miles, with a branch to Glass Rock, Ohio, a distance of approximately 8 miles. The railroad operates in mainly a rural area, with South Zanesville being the largest population center. The petitioner reported that there were no records of vandalism or stoning of moving trains since they began operation in 1986. The OHCR requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.13 Requirements for existing cabooses due to the infrequent use of the caboose, the planned usage for work train service, and the cost of installing compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–7351) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on January 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–309 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2001–11014]

The Union Pacific Railroad Company (UP) seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR part 229.21(a), as it pertains to the record keeping requirement for locomotive daily inspection reports. If their request is granted, UP would file the required report electronically in a secure centralized database that would be set up to track and store the records for the required ninety-two days. The railroad states that each employee performing the inspections has been provided a unique electronic identification which will be utilized in place of the signature. All requirements, date, time location, person conducting inspection and any non-complying conditions will be reported electronically. UP utilizes an onboard record of daily inspections and will continue to do so if their request is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2001–11014) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on December 17, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–315 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

WATCO Companies, Inc.

[Docket Number FRA–2001–10593]

WATCO Companies, Inc., (WATCO) has petitioned the FRA for a waiver of compliance from certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive, WAMX 804, which is operated at National Starch & Chemical, 1515 Drover Street, Indianapolis, Indiana 46221.

Locomotive WAMX 804 is covered by 49 CFR part 223.1 which states: 223.1 Scope. "This part provides minimum requirements for glazing materials in order to protect railroad employees and railroad passengers from injury as a result of objects striking the windows of locomotives, caboose and passenger cars."

Locomotive WAMX 804 is operated by WATCO Companies, Inc., Switching

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Services in an industrial/plant switching operation. The locomotive operates in two areas of speed restriction, one at 5 mph and one at 10 mph. WATCO Companies, Inc., advises that all broken or damaged glazing will be replaced by FRA approved glazing material.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (*e.g.*, Docket Number FRA–2001–10593) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practical. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on January 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–314 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

DATES: Comments must be submitted on or before February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Williams at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–01), 202–366–4327. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 552, Petitions for Rulemaking, Defects, and Noncompliance Orders.

OMB Number: 2127—0046.

Type of Request: Extension of a currently approved collection.

Abstract: 49 U.S.C. section 30162 specifies that any "interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding" to prescribe a motor vehicle safety standard under 49 U.S.C. chapter 301, or to decide whether to issue an order under 49 U.S.C. section 30118(b). 49 U.S.C. 30111 gives the Secretary authority to prescribe motor vehicle safety standards. 49 U.S.C. section 30118(b) gives the Secretary authority to issue an order to a manufacturer to notify vehicle or equipment owners, purchasers, and dealers of the defect or noncompliance and to remedy the defect or noncompliance.

Section 30162 further specifies that all petitions filed under its authority shall set forth the facts, which it is claimed establish that an order is necessary and briefly describe the order the Secretary should issue.

Affected Public: Business or other-for-profit.

Estimated Total Annual Burden: 20.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 31, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 02–305 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

DATES: Comments must be submitted on or before February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5227. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects.

OMB Number: 2127–0039.

Type of Request: Extension of a currently approved information collection.

Abstract: NHTSA's statutory authority at 49 U.S.C. sections 30118(e) and 30120(e) specifies that "on petition of any interested person," NHTSA may hold hearings to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a defect or noncompliance and to remedy a defect or noncompliance for Federal Motor Vehicle Safety Standards for some of the products the manufacturer produces.

To address these areas, NHTSA has promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects, which adopts a uniform regulation that establishes procedures to provide for submission and disposition of petitions, and to hold hearings on the issue of whether the manufacturer has met its obligation to notify owners, distributors, and dealers of safety related defects or noncompliance and to remedy the problems by repair, repurchase, or replacement.

Affected Public: Business or other-for-profit, individuals or households.

Estimated Total Annual Burden: 21.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 31, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 02–306 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

DATES: Comments must be submitted on or before February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5226. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 576, Record Retention.

OMB Number: 2127–0042.

Type of Request: Extension of a currently approved information collection.

Abstract: Under 49 U.S.C. 30166(e), NHTSA "reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable (NHTSA) to decide whether the manufacturer, distributor or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter."

49 U.S.C. 30118(c) requires manufacturers to notify NHTSA and owners, purchasers, and dealers if the manufacturer (1) "learns" that any vehicle or equipment manufactured by it contains a defect and decides in good faith that the defect relates to motor vehicle safety, or (2) "decides in good faith" that the vehicle or equipment does not comply with an applicable Federal motor vehicle safety standard. The only way for the agency to decide if and when a manufacturer "learned" of a safety-related defect or "decided in good faith" that some products did not comply with an applicable Federal motor vehicle safety standard is for the agency to have access to the information available to the manufacturer.

Affected Public: Business or other-for-profit, individuals or households.

Estimated Total Annual Burden: 40,000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 31, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 02–307 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 219X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Buchanan County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 2.23-mile line of railroad between milepost HS–0.0 at Oakwood and milepost HS–2.23 at Mills, in Buchanan County, VA. The line traverses United States Postal Service Zip Code 24631.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or

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local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 6, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 17, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 28, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 11, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by NSR's filing of a notice of consummation by January 7, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: December 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–103 Filed 1–4–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Customs Service

Extension of General Program Test Regarding Post Entry Amendment Processing

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces that the general program test regarding post entry amendment processing is being extended for a period of one year. The test will continue to operate in accordance with the notice published in the **Federal Register** on November 28, 2000.

DATES: The test allowing post entry amendment to entry summaries is extended to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management Branch, Office of Field Operations (202/927–1082).

SUPPLEMENTARY INFORMATION: Customs announced and explained the post entry amendment processing test in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. In fact, the test is scheduled to operate through December 31, 2001.

Briefly, the test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with Customs either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The previously published general notice explained how to file post entry amendments for revenue related errors and non-revenue related errors, and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements. This document announces that the test is being extended to December 31, 2002. To participate in the test, an importer need only follow the procedure set forth in the previously published general notice.

Comments received in response to the previously published general notice have been reviewed and the test is being evaluated. Changes to the test based on the comments and the evaluation will be announced in the **Federal Register** in due course. The test may be further extended if warranted. Additional information on the post entry amendment procedure can be found under "Importing and Exporting" at *http://www.customs.gov*.

Dated: December 31, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–288 Filed 1–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Cuban Remittance Affidavit

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control ("OFAC") within the Department of the Treasury is soliciting comments concerning OFAC's Cuban Remittance Affidavit information collection.

DATES: Written comments should be received on or before March 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Cuban Remittance Affidavit.

OMB Number: 1505–0167.

Abstract: The information is required of persons subject to the jurisdiction of the United States who make remittance to persons in Cuba pursuant to § 515.570 of the Cuban Assets Controls, 31 CFR part 515. The information will be used by the Office of Foreign Assets Control of the Department of the Treasury ("OFAC") to monitor compliance with regulations governing family and emigration remittance.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000 filers per quarter, each filing four times a year.

Estimated Time Per Respondents: 60 seconds per form, with four filed annually per person.

Estimated Total Annual Burden Hours: 66,667, assuming each filer files four times a year.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget ("OMB") control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Approved: December 28, 2001.

David W. Mills,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 02–290 Filed 1–4–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Travel Service Provider and Carrier Service Provider Submission

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control ("OFAC") within the Department of the Treasury is soliciting comments concerning OFAC's Travel Service Provider and Carrier Service Provider information collection.

DATES: Written comments should be received on or before March 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to David W. Mills, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Travel Service Provider and Carrier Service Provider Submission.

OMB Number: 1505–0168.

Abstract: The information is required of persons who have been authorized by the Office of Foreign Assets Control of the Department of the Treasury ("OFAC") to handle travel arrangements to, from, and or within Cuba or to provide charter air service to Cuba. Travel service providers are required to collect information on persons traveling on direct flights to Cuba and forward that information to carrier service providers, for ultimate submission to OFAC.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses.

Estimated Number of Respondents: 228,000.

Estimated Time Per Respondent: 5 minutes per entry for travel service providers, or up to 570,000 minutes annually for travel service providers in the aggregate (9,500 hours); and up to 5 minutes per entry for carrier service providers, or up to 570,000 entries annually for carrier service providers in the aggregate (9,500 hours).

Estimated Total Annual Burden Hours: 19,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget ("OMB") control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

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included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 28, 2001.

David W. Mills,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 02–291 Filed 1–4–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Registration of Libyan Travel

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of is continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control ("OFAC") within the Department of the Treasury is soliciting comments concerning OFAC's Libyan travel information collection. *See,* 31 CFR 550.560.

DATES: Written comments should be received on or before March 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filing or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Travel to Libya by Immediate Family members of Libyan Nationals.

OMB Number: 1505–0092.

Abstract: The information must be filed by United States persons with the Licensing Division of the Office of Foreign Assets Control of the department of the Treasury ("OFAC") or with the Belgian Embassy in Tripoli, Libya, with respect to their eligibility to travel to and reside in Libya pursuant to the provision of § 550.560 of the Libyan Sanctions Regulations, 31 CFR part 550.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget ("OMB") control number. Books or records relating to a collection of information must be retained for five years. However, respondent's are not required to maintain any documents but the data is of a type ordinarily retained (birth certificate, naturalization certificate, U.S. passport number).

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Approved: December 28, 2001.

David W. Mills,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 02–292 Filed 1–4–02; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Monday,
January 7, 2002

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560, and 2570

Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments; Final Rule

Furnishing Documents To The Secretary of Labor on Request Under ERISA Section 104(a)(6) And Assessment Of Civil Penalties Under ERISA Section 502(c)(6); Final Rule

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520 and 2560

RIN 1210–AA66

Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rulemaking that removes certain provisions from the Code of Federal Regulations (CFR) that were superseded, in whole or in part, by amendments of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of section 1503 of the Taxpayer Relief Act of 1997 (TRA "97). These TRA "97 amendments eliminated the ERISA requirements that plan administrators file summary plan descriptions (SPDs) and summaries of material modifications (SMMs) with the Department of Labor (Department). The amendments also eliminated all requirements pertaining to plan descriptions. In addition to removing superseded regulations from the CFR, this final rule makes miscellaneous technical amendments to the CFR designed to correct affected cross-references. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: The amendments contained herein will be effective March 8, 2002. The amendments contained herein will be applicable as of the August 5, 1997 effective date of section 1503 of TRA '97.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8500 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Overview

On August 5, 1999, the Department published in the **Federal Register** (64 FR 42792) a proposed rule to implement certain amendments to ERISA added as part of TRA '97. TRA '97 amended sections 101(b), 102, and 104(a)(1) of ERISA to eliminate the requirements that plan administrators file SPDs, SMMs, and plan descriptions with the Department.[1] TRA '97 also amended section 104(b) of ERISA to eliminate the requirement that plan administrators furnish plan descriptions to participants and beneficiaries. These statutory amendments superseded, in whole or in part, the Department's regulations that implemented the SPD, SMM, and plan description filing requirements. This final rule removes those superseded regulations from the CFR.[2] This final rule also makes several technical conforming amendments to reflect the fact that certain regulatory provisions granting relief from certain plan description, SPD, and SMM requirements have also been superseded and rendered obsolete by the TRA '97 amendments. Finally, the final rule corrects affected regulatory and statutory cross-references in parts 2520 and 2560 of Chapter XXV of Title 29 of the CFR. A chart identifying each regulation that is changed by this final rule is printed below.

2. Public Comments and Adoption of Final Rule

The Department received no comments concerning the proposal, and the final rule being adopted herein is substantially in the form proposed. A technical conforming change to 29 CFR 2520.104b–2(g) that was inadvertently omitted from the proposal has been added to the final rule.

3. Summary of Final Rule

This final rule removes, some in whole and some in part, the following superseded regulations from 29 CFR part 2520. This final rule also reserves certain removed sections of the CFR to preserve the continuity of codification in the CFR.

A. Removal of Regulations Superseded in Whole

This final rule removes and reserves sections 2520.102–1 and 2520.104a–2 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(2) and 104(a)(1)(B) of ERISA. The removed regulations required plan administrators to file a plan description with the Department in accordance with sections 101(b)(2) and 104(a)(1)(B) of ERISA. *See supra* note 1.

This final rule removes and reserves section 2520.104a–3 because it was superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(1) and 104(a)(1)(C) of ERISA. The removed regulation implemented the requirement in sections 101(b)(1) and 104(a)(1)(C) of ERISA that plan administrators file with the Department a copy of any SPD that is required to be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan.

This final rule removes and reserves sections 2520.104a–4 and 2520.104a–7 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA. The removed regulations implemented sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA which required plan administrators to file with the Department a copy of summaries of material modifications in the terms of the plan and summaries of any changes in the information required to be in the SPD.

B. Removal of Regulations Superseded in Part

This final rule amends section 2520.104–20 to reflect the fact that certain reporting relief granted by that regulation is no longer needed in light of TRA '97. Specifically, section 2520.104–20 exempts certain unfunded or insured welfare plans with fewer than 100 participants from, among others, the requirements to file plan descriptions, SPDs, and SMMs with the Department. Inasmuch as plan descriptions, SPDs, and SMMs are no longer required to be filed under ERISA as amended by TRA '97, this final rule amends section 2520.104–20(a) to remove the provisions that granted relief from those filing requirements.

This final rule similarly amends section 2520.104–21 to reflect the fact that the SPD, SMM, and plan description filing relief granted by that regulation is no longer needed in light of the TRA '97 elimination of those filing requirements. Specifically, section 2520.104–21 provides a limited exemption from, among others, the requirements to file SPDs, SMMs, and plan descriptions with the Department for welfare benefit plans that cover fewer than 100 participants at the beginning of the plan year, are part of a group insurance arrangement within the meaning of the regulation, and that otherwise satisfy the conditions of section 2520.104–21(b). This final rule amends section 2520.104–21(a) by removing the provisions on filing SPDs, SMMs, and plan descriptions because these documents are no longer required to be filed under ERISA as amended by TRA '97.[3]

This final rule amends sections 2520.104–20(c) and 2520.104–21(c) to confirm that, under the exemption, plan administrators continue to be obligated to furnish certain information to the Secretary on request by changing the reference in these subsections from section 104(a)(1) to section 104(a)(6). The amendments made by this final rule do not otherwise change the relief available in sections 2520.104–20 and 2520.104–21.

This final rule further amends sections 2520.104–20 and 2520.104–21 to reflect the fact that the relief granted by those regulations from the requirement to disclose plan descriptions is no longer needed in light of the TRA '97 elimination of all plan description requirements from Title I of ERISA. These regulations exempted eligible welfare plans from the requirements to (1) furnish upon written request of any participant or beneficiary a copy of the plan description and (2) make copies of the plan description available in the principal office of the administrator and such other places as may be necessary for examination by any participant or beneficiary. This final rule amends sections 2520.104–20(a)(2) and (a)(3) and 2520.104–21(a)(1) and (a)(2) by removing the provisions on disclosing plan descriptions because plan descriptions are no longer required to be furnished or made available under ERISA as amended by TRA '97.

This final rule amends sections 2520.104–26 and 2520.104–27 to reflect the fact that the relief granted by those regulations from the requirements to file plan descriptions, SPDs, and SMMs is no longer needed in light of the TRA '97 elimination of those filing requirements. These regulations provided certain unfunded dues financed welfare and pension plans maintained by employee organizations with a limited exemption from, among others, the requirement to file plan descriptions and a simplified option for complying with the filing and disclosure requirements applicable to SPDs. This final rule amends sections 2520.104–26 and 2520.104–27 by removing the provisions on plan descriptions and further amends sections 2520.104–26 and 2520.104–27 to remove the simplified option for complying with the SPD filing requirements because plan descriptions and SPDs are no longer required to be filed with the Department under ERISA as amended by TRA '97. The amendments made by this final rule do not otherwise change the relief available in section 2520.104–26 and 2520.104–27.

C. Technical Conforming Amendments

This final rule also makes technical changes that are needed to conform certain cross-references in 29 CFR parts 2520 and 2560 to sections of ERISA as amended by TRA '97. For example, regulation section 2520.104–43(a) refers to ERISA section 104(a)(1)(A) as the authority for the requirement to file annual reports with the Department. After TRA '97, the correct citation is to section 104(a)(1) of ERISA. Similar technical changes have also been made to conform internal CFR cross-references.[4]

D. Quick Reference Chart

The chart below is intended to provide interested persons with a quick reference tool for identifying each section of 29 CFR parts 2520 and 2560 that is being amended by this final rule. For each regulation section being amended, the chart lists, in separate columns, what is being removed, what is being added, and a brief statement of the reason for the change.

QUICK REFERENCE CHART

CFR section(s)	Remove	Add	Reason(s)
2520.102–1	The whole section	"Reserved"	All "plan description" requirements eliminated from ERISA.
2520.102–4	The last sentence	Nothing	SPD filing requirement eliminated.
2520.104–4(a)	Last sentence	Nothing	SPD filing requirement eliminated.
2520.104–20(a) (introductory text)	"any of the followind documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description,".	Nothing	All "plan description" requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated.
2520.104–20(a)(2)	"plan description,"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–20(a)(3)	"plan description and"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–20(c)	"(section 104(a)(1))"	"(section 104(a)(6))"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).

[1] Prior to 1979, the administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of ERISA was required to file with the Department a plan description (Form EBS–1) to satisfy the statutory filing requirements of section 104(a) and 29 CFR 2520.104a–2. *See* 41 FR 16957 (April 23, 1976). In 1979, the Department amended 29 CFR 2520.104a–2 (44 FR 31639 (June 1, 1979)), to provide that the administrator would satisfy the plan description filing requirements of section 104(a)(1)(B) by filing with the Department SPDs and updated SPDs in accordance with section 104(a)(1)(C) and the regulations thereunder.

[2] The Department is also publishing in today's **Federal Register** a separate final rule to implement related TRA '97 amendments that added sections 502(c)(6) and 104(a)(6) to Title I of ERISA. Section 104(a)(6) provides that the administrator of any employee benefit plan must furnish to the Department, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. Section 502(c)(6) provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request.

[3] Section 2520.104–21(d)(3) was previously amended to eliminate references to requirements to file plan descriptions, SPDs, and SMMs as part of a final rule adopting amendments to ERISA's annual reporting regulations. *See* 65 FR 21068, 21084 (April 19, 2000).

[4] The proposal included conforming amendments to sections 2520.103–1(a), 2520.103–5(a), 2520.103–5(c)(1)(i), 2520.103–5(c)(1)(iii), 2520.103–5(c)(2)(ii), 2520.103–5(c)(2)(iii), 2520.103–5(c)(3), 2520.103–12(a), and 2520.104–41(b) to reflect a cross-reference correction by replacing "section 104(a)(1)(A)" with "section 104(a)(1)." These changes were adopted as final as part of an April 12, 2000 final rulemaking relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. *See* 65 FR 21068 (April 19, 2000). Accordingly, these changes are not included in this rule.

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QUICK REFERENCE CHART—Continued

CFR section(s)	Remove	Add	Reason(s)
2520.104–21(a) (introductory text)	"with the Secretary any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this section:".	After the word file, add: "with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.".	All "plan description" requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated.
2520.104–21(a)(1)	All of (a)(1)	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–21(a)(2)	All of (a)(2)	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–21(c) (2nd parenthetical)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104–21(c) (3rd parenthetical)	"section 104(a)(1)"	"section 104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104–23(b)(2)	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104–24(b)	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104–25	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104–26(a)	All of paragraph (a), (a)(1), (a)(2), and (a)(3).	New paragraph (a), (a)(1), and (a)(2).	Paragraph (a) restructured to reflect the fact that "plan description" requirements and the SPD filing requirement were eliminated from ERISA.
2520.104–27(a)	All of paragraph (a), (a)(1), (a)(2), and (a)(3).	New paragraph (a), (a)(1), and (a)(2).	Paragraph (a) restructured to reflect the fact that "plan description" requirements and the SPD filing requirement were eliminated from ERISA.
2520.104–43(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104–44(d)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104a–2	Whole section	"Reserved"	All "plan description" requirements eliminated from ERISA.
2520.104a–3	Whole section	"Reserved"	SPD filingrequirement eliminated.
2520.104a–4	Whole section	"Reserved"	SMM filing requirement eliminated.
2520.104a–5(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104a–5(a)(1)	All text in paragraph (a)(1)	"Reserved"	Provision obsolete.
2520.104a–7	Whole section	"Reserved"	SMM filing requirement eliminated.
2520.104b–1(b)(3)	"plan description"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104b–2(g)	"to file with the Secretary or"	Nothing	SPD filing requirement eliminated.
2520.104b–3(f)	All of paragraph (f)	Nothing	Part of paragraph (f) superseded by TRA '97 and the rest of the paragraph made obsolete by this rule's removal of § 2520.104a–3.
2520.104b–3(g)	All of paragraph (9g)	Nothing	Paragraph (g) superseded by TRA '97 by this rule's removal of § 2520.104a–3.
2560.502c–2(a)	"section 101(b)(4)"	"section 101(b)(1)"	Cross-reference correction.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not significant within the meaning of the Executive Order.

Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a final regulatory flexibility analysis when promulgating a final rule unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. Because this rule would remove certain provisions of the CFR and make a number of technical amendments to the CFR designed to correct cross-references affected by amendments to ERISA enacted as part of TRA '97, the rule has no impact, independent of the statutory change eliminating the SPD and SMM filing requirements, on small plans. As a result, the undersigned certifies that this final rule does not have a significant impact on a substantial number of small entities. The factual basis for this certification is the same regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. Further, this final rule implements certain revisions to annual reporting and disclosure regulations which have been in effect in similar form for many years. The elimination of superseded regulations from the CFR and correction of cross-references ensure consistency between regulations and statutory requirements, and do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such has no implications for the States or the relationship or distribution of power between the national government and the States.

Statutory Authority

This final rule is promulgated pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) and sections 101(b) and 104(a)(1) of ERISA, as amended, and under the Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects

29 CFR Part 2520

Employee benefit plans, Group health plans, Pension plans, Welfare benefit plans.

29 CFR Part 2560

Claims, Employee benefit plans, Law enforcement, Pensions.

For the reasons set forth above, parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

§ 2520.102–1 [Removed]

2. Section 2520.102–1 is removed and reserved.

3. Revise § 2520.102–4 to read as follows:

§ 2520.102–4 Option for different summary plan descriptions.

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the

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amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See § 2520.104b–4). Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in § 2520.102–2, and shall contain all information which is required to be contained in the summary plan description under § 2520.102–3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page of the text contains a reference to the page or pages in the text which contain this information.

4. Revise paragraph (a) of § 2520.104–4 to read as follows:

§ 2520.104–4 Alternative method of compliance for certain successor pension plans.

(a) *General.* Under the authority of section 110 of the Act, this section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans.

* * * * *

5. Revise the introductory text in paragraph (a) and paragraphs (a)(2), (a)(3), and (c) of § 2520.104–20 to read as follows:

§ 2520.104–20 Limited exemption for certain small welfare plans.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or terminal report. In addition, the administrator of a plan exempted under this section—

* * * * *

(2) Is not required to furnish upon written request of any participant or beneficiary a copy of the annual report and any terminal report, as required by section 104(b)(4) of the Act;

(3) Is not required to make copies of the annual report available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by section 104(b)(2) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and which authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

6. Amend § 2520.104–21 by revising paragraphs (a) and (c) to read as follows:

§ 2520.104–21 Limited exemption for certain group insurance arrangements.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), file an annual report with the Secretary of Labor (section 104(a)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

§ 2520.104–23 [Amended]

7. Section 2520.104–23 is amended by removing from paragraph (b)(2) the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

§ 2520.104–24 [Amended]

8. Section 2520.104–24 is amended by removing from paragraph (b) the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

§ 2520.104–25 [Amended]

9. Section 2520.104–25 is amended by removing the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

10. In § 2520.104–26, revise paragraph (a) to read as follows:

§ 2520.104–26 Limited exemption for certain unfunded dues financed welfare plans maintained by employee organizations.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the Labor-Management

Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

11. In § 2520.104–27, revise paragraph (a) to read as follows:

§ 2520.104–27 Alternative method of compliance for certain unfunded dues financed pension plans maintained by employee organizations.

(a) *Scope.* Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries receiving benefits. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries receiving benefits, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or bylaws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

§ 2520.104–43 [Amended]

12. Section 2520.104–43 is amended by removing from paragraph (a) the term "section 104(a)(1)(A)" and adding, in its place, "section 104(a)(1)".

§ 2520.104–44 [Amended]

13. Section 2520.104–44 is amended by removing from paragraph (d) the term "section 104(a)(1)(A)" and adding, in its place, "section 104(a)(1)".

§ 2520.104a–2 [Removed]

14. Section 2520.104a–2 is removed and reserved.

§ 2520.104a–3 [Removed]

15. Section 2520.104a–3 is removed and reserved.

§ 2520.104a–4 [Removed]

16. Section 2520.104a–4 is removed and reserved.

§ 2520.104a–5 [Amended]

17–18. Section 2520.104a–5 is amended by removing from paragraph (a) the term "section 104(a)(1)(A)" and adding, in its place, the term "section 104(a)(1)"; and by removing and reserving paragraph (a)(1).

§ 2520.104a–7 [Removed]

19. Section 2520.104a–7 is removed and reserved.

§ 2520.104b–1 [Amended]

20. Section 2520.104b–1 is amended by removing from the third sentence of paragraph (b)(3) the term "plan description".

21. In § 2520.104b–2, revise paragraph (g)(1) to read as follows:

§ 2520.104b–2 Summary plan description.

* * * * *

(g) *Terminated plans.* (1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this section, the plan has terminated within the meaning of paragraph (g)(2) of this section, the administrator of such plan is not required to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

* * * * *

§ 2520.104b–3 [Amended]

22. Section 2520.104b–3 paragraphs (f) and (g) are removed and reserved.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

23. The authority citation for part 2560 continues to read as follows:

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

§ 2560.502c–2 [Amended]

24. Section 2560.502c–2 is amended by removing from paragraph (a)(1) and (a)(2) the term "section 101(b)(4)" each time it appears and adding, in its place, the term "section 101(b)(1)".

Signed at Washington, DC, this 22nd day of December, 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare, Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–140 Filed 1–4–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560 and 2570

RIN 1210–AA67, RIN 1210–AA68

Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rulemaking under the Employee Retirement Income Security Act of 1974 (ERISA) that implements certain amendments to ERISA added as part of the Taxpayer Relief Act of 1997 (TRA '97). The final rule implements section 104(a)(6) of ERISA by requiring the administrator of an employee benefit plan subject to Part 1 of Title I of ERISA to furnish to the Department, upon request, certain documents relating to the employee benefit plan. The final rule also establishes procedures relating to the assessment of civil penalties for failures or refusals by administrators to furnish requested documents to the Department and establishes procedures for review of such penalties by the Department. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: This regulation is effective March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 693–8500 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Taxpayer Relief Act of 1997 (TRA '97) eliminated the requirement under ERISA that employee benefit plan administrators automatically file

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summary plan descriptions (SPDs) and summaries of material plan modifications (SMMs) with the Department. TRA '97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to part 1 of Title I of ERISA is required to furnish to the Department, on request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD (including any summaries of plan changes not contained in the SPD), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.[1] TRA '97 also added section 502(c)(6) of ERISA providing the Secretary with the authority to assess civil penalties for a plan administrator's failure to furnish material requested under section 104(a)(6) of ERISA. Specifically, section 502(c)(6) provides that, if within 30 days of a request by the Department, the plan administrator fails to furnish materials requested by the Department, the Department may assess a civil penalty against the administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request. Section 502(c)(6) also provides that no penalty shall be imposed for failures resulting from matters reasonably beyond the control of the plan administrator.

On August 5, 1999, the Department published a notice in the **Federal Register** (64 FR 42797) inviting public comment on a proposal to add regulations at 29 CFR 2520.104a–8 and 29 CFR 2560.502c–6 that would implement the above TRA '97 amendments. In response to this notice, the Department received four public comment letters. Set forth below is a description of the regulations, and a discussion of public comments received and specific changes from the proposal reflected in the final rule.

B. Description of Regulations, Comments and Changes

Furnishing Documents to the Department on Request Under Section 104(a)(6)

Section 2520.104a–8 implements section 104(a)(6) of ERISA. As proposed, paragraph (a)(1) of § 2520.104a–8 provides that the administrator (within the meaning of section 3(16)(A) of ERISA) of any employee benefit plan subject to Part 1 of Title I of ERISA has an obligation to furnish to the Department, upon request, any document relating to the plan. Paragraph (a)(2) clarifies that multiple requests under ERISA section 104(a)(6) and § 2520.104a–8 for the same or similar document or documents shall be considered separate requests for purposes of penalties under ERISA section 502(c)(6) and § 2560.502c–6(a). Paragraph (b) of the proposal incorporates the service of notice rules in § 2560.502c–6(i), for purposes of serving the plan administrator with a request under ERISA section 104(a)(6); and paragraph (c) of the proposed regulation describes when a document would be deemed to be received by the Secretary.

Most of the commenters focused on two general issues—what documents will be requested by the Department and on whose behalf the Department will request documents. With regard to the first issue, the commenters expressed concern that the regulation, as proposed, would permit the Department to request, on behalf of participants and beneficiaries, any document relating to the plan, including proprietary, confidential and other plan-related information with respect to which participants and beneficiaries generally would not have access. Commenters argued that the Department should limit its authority to requesting only those documents that a participant or beneficiary is otherwise entitled under section 104(b)(4) of ERISA.[2] The second issue related to commenter concerns that plan-related information would be provided to persons who were not plan participants or beneficiaries. In this regard, the commenters suggested that the final regulation should make clear that the Department will only request documents on behalf of participants and beneficiaries and should include a process that the Department will follow in determining whether a given individual is entitled to obtain documents.

In the preamble to the proposed regulation, the Department indicated that, while section 104(a)(6) conferred broad authority on the Secretary to request documents, the Department generally intended to limit the exercise of its authority under § 2520.104a–8 to requesting SPDs on behalf of participants and beneficiaries. The Department also envisioned that it may intervene to assist a participant and beneficiary in obtaining documents or instruments pursuant to which a plan is established or operated where a plan administrator fails or refuses to respond to the request of a participant or beneficiary.

In response to the concerns of the commenters, the Department has modified the final regulation to more specifically comport with the Department's views expressed in the preamble to the proposed regulation. In this regard, the final regulation specifically limits the application of § 2520.104a–8 to requests from the Department for the latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description)[3] and any other documents described in section 104(b)(4) of ERISA with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the administrator has failed or refused to furnish to the participant or beneficiary. *See* § 2520.104a–8(a)(1)(i) and (ii).

As revised, the final regulation clearly limits the documents to be requested from plan administrators by the Department on behalf of participants and beneficiaries to those documents with respect to which participants and beneficiaries have a statutory right to examine and obtain copies.[4]

Also, by limiting the circumstances under which the Department will request documents and instruments pursuant to which a plan is established or operated to those where a participant or beneficiary has previously made a written request to the plan for such documents or instruments, plan administrators are afforded the opportunity to raise, with both the requesting individual and the Department, issues concerning the status of the requesting individual as a participant or beneficiary.

[1] Prior to TRA '97, this authority was in section 104(a)(1) of ERISA, which stated that "the administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated."

[2] Under section 104(b)(4) of ERISA, the administrator must, upon written request of any participant or beneficiary, "furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated."

[3] For purposes of a request by the Department under ERISA section 104(a)(6), any separate documents required to be furnished with the SPD, e.g., a plan's claims procedures provided as a separate document under 29 CFR § 2520.102–3(s), would be considered part of the plan's latest updated summary plan description.

[4] *See* sections 104(b)(2) and 104(b)(4) of ERISA. Also, the Department notes that the final rule relates solely to requests by the Department for documents pursuant to section 104(a)(6) and, accordingly, does not serve to limit or otherwise affect the authority of the Department to request documents pursuant to other provisions of ERISA, including the Department's authority under section 504.

The final regulation does not condition requests for updated summary plan descriptions on a participant or beneficiary first seeking the document directly from the plan. As explained in the preamble to the proposed regulation, the Department believes that the elimination of the SPD filing requirements, taken together with the establishment of civil penalties for failures to furnish requested documents, clearly evidences Congress' intent that the Department would exercise its authority to ensure that participants and beneficiaries would have an independent source for SPDs. The value of such access is predicated on the rights of participants and beneficiaries to choose not to go to the plan or plan sponsor for such information.

In addition to the foregoing, the final rule has been modified to clarify the persons who will be considered participants or beneficiaries for purposes of requests pursuant to section 104(a)(6) and the regulation. A new paragraph (b) was added to the final regulation,[5] provides that a participant or beneficiary will include any individual who is: (i) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively; (ii) an alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents); (iii) a qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child); (iv) an alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or (v) a representative of any of the foregoing. In the preamble to the proposed regulation, the Department expressed the view that such persons would be treated as participants and beneficiaries for purposes of the regulation. Upon further consideration, and taking into account there were no public comments objecting to the Department's position on this issue, the Department has determined that, in the interest of clarity, the persons to be treated as participants and beneficiaries for purposes of the regulation should be codified in the regulation.

In addition to the comments discussed above, one commenter suggested that plans should be required to include a notice in their SPDs informing participants and beneficiaries that they can ask the Department for help in obtaining documents from their plan administrator. The Department, as part of a separate rule amending its regulations governing the content of SPDs, made improvements to the "ERISA statement of rights" currently required to be included in each SPD pursuant to 29 CFR 2520.102–3(t) to ensure that participants and beneficiaries understand their right to request certain documents from their plan and the availability of assistance from the Department. *See* 65 FR 70226, 70243 (November 21, 2000).

One commenter argued that inasmuch as the plan may charge participants and beneficiaries for copies of documents available under section 104(b)(4) of ERISA, plans should be able to charge the Department for materials furnished in response to requests by the Department on behalf of participants and beneficiaries. The Department notes that there is no statutory basis for permitting the imposition of charges on the Department attendant to costs incurred in connection with requests under section 104(a)(6) of ERISA. Further, in view of the fact that SPDs have been available to participants through the Department's public disclosure room and that Congress, in enacting the TRA '97 changes, intended to ensure that participants have continued access to SPDs through the Department, the Department does not believe passing such charges back to participants would be consistent with Congressional intent. With respect to other documents described in section 104(b)(4) of ERISA, the Department's involvement in requesting such documents will result from the failure or refusal of a plan administrator to furnish the requested documents under circumstances where a reasonable charge could have been imposed for copies. For these reasons, the Department has not modified the regulation in response to the foregoing comments.

One commenter noted that the proposed regulation did not indicate whether the Department will retain copies of documents submitted in response to requests on behalf of participants and beneficiaries, nor did it indicate whether the Department will discard documents that were filed with the Department prior to the enactment of the TRA '97 amendments. The Department does not intend to retain copies of materials furnished in response to requests under ERISA section 104(a)(6) made on behalf of participants and beneficiaries or other persons. In the case of previously filed SPDs and SMMs, the Department is maintaining the SPDs and SMMs filed prior to the TRA '97 amendments. These documents are currently available for examination and copying through PWBA's public disclosure room.

One commenter expressed the view that proposed § 2520.104a–8(c), which provides that "a document is not considered furnished to the Secretary until the date on which such document is received by the Department of Labor at the address specified in the request," should be modified to provide that documents mailed by certified mail will be considered received when mailed. The Department agrees that such a change is appropriate and would establish consistency with the rules governing "service," as set forth in § 2560.502c–6(i), applicable to the assessment of civil penalties for a failure to comply with a request for documents from the Department. Accordingly, paragraph (d) of the final regulation (which was paragraph (c) of the proposal) has been amended to provide that, in the case of documents furnished to the Secretary by certified mail, the document shall be considered received on the date on which the document is mailed to the Department of Labor at the address specified in the request.

One commenter noted that the proposed regulation did not take into account that many multiemployer plans may not always be able to comply with the Department's requests for documents within 30 days. Due to the often decentralized administrative structure of multiemployer plans, necessitated by the large number of participants and contributing employers, the commenter noted that a multiemployer plan's designated plan administrator might not have possession or control of certain documents that the Department may request and such plan administrator may have to locate the person with control of the requested documents and then request copies of the documents from an unaffiliated third party over whom the plan administrator may not be able to exercise any authority. The commenter suggested that the final regulation include a procedure for plans to obtain an extension of time to respond to the Department's request for documents if good cause for the extension is demonstrated, without the imposition of the penalty prescribed in section 502(c)(6) of ERISA or the need for a penalty appeal. In addition, the commenter noted that, in the event multiple requests for documents are received from the Department one after another, the volume of requests may prevent a plan administrator from filing a response within 30 days, and the

[5] Paragraphs (b) and (c) of the proposal have been redesignated as paragraphs (c) and (d) of the final regulation.

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commenter recommended that the final regulation should provide that the Department will waive any fines that may otherwise be assessed under section 502(c)(6) of ERISA if the plan administrator demonstrates to the satisfaction of the Department that a timely response was not practicable. Two commenters suggested that a plan administrator should be allowed to initially decline production of documents and challenge the propriety of requests if the plan administrator believes that such documents do not relate to the plan or that they contain information of a confidential or proprietary nature and that a sanction should be stayed pending review of the claim and production of the documents following a decision adverse to the plan administrator. One of these commenters noted that the proposed regulation would subject plan administrators challenging the Department's requests to substantial fines that may only be reduced or waived by engagement in an adjudicatory process with the Department. This commenter noted that such adjudicatory proceedings to appeal the assessment of the Department's fines would result in expenditures of valuable resources that would be better used for providing benefits to plan participants.

The Department believes that most of the concerns raised by these commenters are adequately addressed by the changes to the final rule that clarify the limited range of documents the Department will request under section 104(a)(6). Moreover, the Department believes that the provisions of § 2520.104a–8 and § 2560.502c–6 provide the Department with sufficient flexibility, prior to the assessment of a civil penalty, to take into account matters reasonably beyond the control of a plan administrator that would affect an administrator's ability to comply with a request from the Department in a timely manner. Furthermore, the Department believes that the processes provided in the regulations are sufficiently flexible to enable plan administrators to raise concerns with the Department regarding the production or disclosure of requested documents. In particular, the Department notes that there is nothing in § 2520.104a–8 that would limit the Department's ability to consider, following the issuance of a request for documents, information provided by a plan administrator concerning the administrator's inability to comply with the request in a timely fashion or an administrator's concerns relating to the disclosure of the requested information. In addition, an administrator may, pursuant to § 2560.502c–6(e), submit a statement setting forth why matters reasonably beyond the control of the administrator precluded timely compliance with the Department's request for documents.

Authority To Assess Civil Penalties for Violations of Section 104(a)(6) of ERISA

Section 2560.502c–6(a) addresses the general application of section 502(c)(6) of ERISA. Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), of an employee benefit plan is liable for the civil penalties assessed under section 502(c)(6) in each case in which there is a failure or refusal to furnish to the Department any document requested under section 104(a)(6) of ERISA and § 2520.104a–8. Paragraph (a)(2) defines such a failure or refusal as a failure or refusal, in whole or in part, to furnish documents at the time and in the manner prescribed in the request.

Section 2560.502c–6(b) sets forth the amount of penalties that may be assessed under section 502(c)(6) of ERISA. Consistent with the terms of section 502(c)(6) of ERISA, paragraph (b)(1) provides that the Department may assess a penalty of up to $100 per day, but not in excess of $1,000 per request. Paragraph (b)(2) provides that the date of a failure or refusal to furnish any documents requested under section 104(a)(6) of ERISA and § 2520.104a–8 shall not be earlier than the thirtieth day after service of the request.

Section 2560.502c–6(c) provides that, prior to the assessment of any penalty under section 502(c)(6) of ERISA, the Department shall provide the administrator with written notice indicating the Department's intent to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice is to be served in accordance with § 2560.502c–6(i) (service of notice provision). Under § 2560.502c–6(f), the notice would become a final order of the Department, within the meaning of § 2570.111(g) (also published as part of this rulemaking), within 30 days of the service of the notice, unless a statement described in § 2560.502c–6(e) is filed with the Department.

Paragraphs (d), (e), (f), (g), and (h) of section 2560.502c–6 generally relate to the waiver of penalties under section 502(c)(6) of ERISA. Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(6) upon a showing by the administrator, under paragraph (e), that the failure or refusal to comply with a request under ERISA section 104(a)(6) and § 2520.104a–8 was due to matters reasonably beyond the control of the plan administrator. Under paragraph (e), the administrator has 30 days from receipt of the notice required under § 2560.502c–6(c) within which to make such a showing or offer other reasons why the penalty, as calculated, should not be assessed.[6]

Paragraph (f) provides that a failure to file a timely statement under paragraph (e) will constitute a waiver of the right to appear and contest the facts alleged in the notice (§ 2560.502c–6(c)) for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(6) of ERISA.

Paragraph (g)(1) provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). Paragraph (h) provides that the notice described in paragraph (g) will become the final order of the Department unless, within 30 days of the date of service of the notice, the administrator or representative files a request for a hearing under § 2570.110 *et seq.* (published as part of this rulemaking) and files an answer, in writing, opposing the proposed sanction.

Section 2560.502c–6(i) describes the rules relating to service of the (1) Department's notice of intent to assess a penalty (§ 2560.502c–6(c)), and (2) Department's notice of determination on the statement of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(g)).[7] Paragraph (i) provides that service shall be made in one of three ways: (1) by delivering a copy at the principal office, place of business, or residence of the administrator or representative thereof; (2) by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or (3) by mailing a copy to the last known address of the administrator or representative thereof.

[6] In the event another fiduciary of the plan has custody of or control over a document requested under ERISA section 104(a)(6) and § 2520.104a–8, or if the administrator engages a third party to perform services for the plan and, pursuant to the engagement, the third party has custody of or control over such a document, the administrator's lack of custody would not be considered by the Department to be a matter reasonably beyond the administrator's control.

[7] As noted above, under § 2520.104a–8(c) these service rules would also apply to the Department's initial request for documents under ERISA section 104(a)(6) and § 2520.104a–8.

Section 2560.502c–6(j) clarifies the liability of the parties for penalties assessed under section 502(c)(6) of ERISA. Paragraph (1) provides that, if more than one person is responsible as administrator for the failure to furnish document(s) requested by the Department, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provides that any person against whom a penalty is assessed under section 502(c)(6) of ERISA is personally liable for the payment of such penalty. Paragraph (2) also clarifies that liability for the payment of penalties assessed under section 502(c)(6) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan.

The Department's Office of Administrative Law Judges (OALJ) commented that, in its experience, various respondents in ERISA proceedings have found that the method for requesting a hearing is confusing. The OALJ suggested that the situation could be improved by changing proposed regulation § 2560.502c–6(h) to read as follows:

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 *et seq.*, and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.112. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of § 2560.502c–6.

The OALJ also recommended that proposed § 2570.111(c) be modified to define the term "Answer", rather than referencing the definition at § 18.5(d)(1). The term "Answer" is defined to mean "a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–6(g)." The Department has incorporated these recommendations into the final regulation sections 2560.502c–6(h) and 2570.111(c).

With regard to paragraph (i) of § 2560.502c–6, one commenter suggested that service should only be effectuated by the Department's mailing or delivering of the respective documents to the plan administrator's regular place of business, or such other location as the plan may specify in its communication with the Department. With respect to a multiemployer plan that designates its board of trustees as the plan administrator, the commenter noted that service of the Department's request for documents and notice of intent to assess a penalty should be made on the fund office, rather than on the individual trustees, as individual trustees should not be responsible for accepting service unless the trustees are acting in an official capacity. This commenter expressed the view that further clarification is needed with regard to service in the context of multiemployer plans.

The Department does not believe any further clarification of the service requirement is warranted. The proposal states that service of a request for documents or other notices may be served by delivering a copy to the administrator or representative thereof, by leaving a copy at the principal office, place of business or residence of the administrator or representative thereof, or by mailing a copy to the last known address of the administrator or representative thereof. It is the Department's view that application of the service of notice requirement does not need further clarification and, accordingly, the Department is adopting paragraph (i) of § 2560.502c–6 without change.

One commenter stated that the proposed regulation unfairly and unnecessarily requires that any fines assessed under section 502(c)(6) of ERISA be paid by the plan administrator, rather than the plan. The commenter urged the Department to revise the proposed regulation to permit plans to pay any fines that may be assessed under ERISA section 502(c)(6), unless the Department concludes that the plan administrator's failure to furnish the requested documents within the 30-day period was willful.

It is the view of the Department that, in the absence of statutory language to the contrary, liability for payment of civil penalties is a personal liability of the person against whom the penalty is assessed and not the liability of the plan. Accordingly, as noted in the supplementary information accompanying the proposal, the payment of penalties assessed under ERISA section 502(c)(6) from plan assets would not constitute a reasonable expense of administering a plan for purposes of ERISA sections 403 and 404. In contrast, reasonable expenses attendant to compliance with a request from the Department for documents, such as expenses for copying and mailing the requested documents, would constitute reasonable expenses of administering a plan for purposes of ERISA sections 403 and 404.

Administrative Law Procedures for Assessment of Civil Penalties Under ERISA Section 502(c)(6)

Except as noted above, § 2570.110, *et seq.*, establishing procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(6) and appealing an ALJ decision to the Secretary or her delegate are being adopted as proposed.

With regard to such procedures, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary's Order 1–87, 52 FR 13139 (April 27, 1987). The Department has already published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 (48 FR 32538 (1983)). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR part 18 to the assessment of civil penalties under ERISA section 502(c)(6) and has decided to adopt many, though not all, of the provisions thereunder for ERISA 502(c)(6) proceedings.

The final rule relates specifically to procedures for assessing civil penalties under section 502(c)(6) of ERISA and is controlling to the extent it is inconsistent with any portion of 29 CFR part 18. The final rule is designed to maintain the rules set forth at 29 CFR part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(6). For purposes of clarity, where a particular section of the existing procedural rules would be affected by the final rule, the entire section (with appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involves changes from, or additions to, the rules in 29 CFR part 18. The specific

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modifications to the rules in 29 CFR part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

The general applicability of the procedural rules under section 502(c)(6) of ERISA is set forth in § 2570.110. The definition section (§ 2570.111) incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(6). In particular, § 2570.111 states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. The Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or his or her delegee.

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party (respondent) against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(6). However, a respondent must comply with the procedures relating to agency review set forth in § 2560.502c–6 before initiating adjudicatory proceedings. Section 2570.111(c) and (d), together with § 2560.502c–6(h), contemplate that a notice issued pursuant to § 2560.502c–6(g) will become the final order of the Department, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 *et seq.*, and files an answer to the notice.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, are governed by § 2570.112. Section 2570.114 provides that if the respondent fails to request a hearing by filing an answer to the Department's notice of determination (§ 2560.502c–6(g)) within the 30-day period provided by § 2560.502c–6(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and shall be deemed to constitute an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of ERISA. Section 2570.114 makes clear that in the event of such failure, the assessment of penalty becomes final.

Section 2570.115 provides that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. This section also provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(6). The section on the designation of parties (§ 2570.113) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(6).

29 CFR 2570.116 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(6) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(6).

The section on summary decisions (§ 2570.117) provides for requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(6). The section concerning the decision of the ALJ (§ 2570.118) differs from its counterpart at § 18.57 of this title in that § 2570.118 states that the decision of the ALJ in an ERISA section 502(c)(6) case shall become the final decision of the Secretary unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(6) of ERISA would be governed solely by §§ 2570.119 through 2570.121, and without any reference to the appellate procedures contained in 29 CFR part 18. Section 2570.119 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined and the procedure for making the entire record before the ALJ available to the Secretary. Section 2570.120 provides that review of the Secretary shall not be on a *de novo* basis, but rather on the basis of the record before the ALJ and without an opportunity for oral argument. Section 2570.121 sets forth the procedure for establishing a briefing schedule for such appeals and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(6) of ERISA shall be compiled in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

The costs of the regulation will be borne by the plan when responding to requests from the Department for copies of the latest SPD and other documents described in section 104(b)(4) of ERISA that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The individual cost of each such request is estimated to be minimal because only a participant or beneficiary may make a request and each administrator of an employee pension or welfare benefit plan covered under Title I of ERISA already is required by section 101(a)(1) to furnish an SPD to each participant covered under the plan and each beneficiary who is receiving benefits under the plan, and to update the SPD on a regular basis in accordance with section 104(b)(1). Moreover, other documents under which the plan is established or operated and that may be requested must be made available to participants and beneficiaries pursuant to section 104(b)(2). Thus, administrators are not expected to incur costs in preparing or obtaining these documents in response to a request from the Department.

The regulation is expected to benefit plan participants and beneficiaries who may have been unable to obtain a current SPD or other document described in ERISA section 104(b)(4), and who might otherwise not have an effective means of obtaining such documents in the absence of the requirement for the plan administrator to file such documents with the Department. The provisions implementing the penalty for failure to furnish such documents on request may serve to ensure timely compliance with such requests.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA '95), the Department submitted the information collection request (ICR) included in this regulation to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (August 5, 1999, 64 FR 42797). OMB approved the ICR under OMB control number 1210–0112. The approval will expire on October 31, 2002. The public is not required to respond to an information collection request unless it displays a currently valid OMB control number.

The estimated burden cost has been adjusted in response to a revision in the terms of the proposal. In this final rule, the Department has adopted a commenter's suggestion that documents delivered by certified mail be considered received on the date the document is mailed instead of the date the document is actually received. Although the use of certified mail is not required, both the comment and the provisions of this final rule suggest that plan administrators do find it reasonable from time to time to use certified mail for important communications. To account for this in burden estimates, the mailing cost assumption has been increased to $4 per request from the $1 used for the proposal's estimate.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Furnishing Documents to the Secretary of Labor on Request under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6).

OMB Number: 1210–0112.

Affected Public: Individuals or households, Business or other for-profit institutions; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 1,000.

Total Responses: 1,000.

Estimated Burden Hours: 95.

Estimated Annual Costs (Operating and Maintenance): $4,000.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of Part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). PWBA solicited comments on the use of this standard for evaluating the effects of the proposal on small entities. No comments were received with respect to the standard. Therefore, a summary of the final regulatory flexibility analysis based on the 100 participant size standard is presented below. This final regulation is not expected to have a significant impact on small plans.

This regulation applies to all small employee benefit plans covered by Title I of ERISA. Employee benefit plans with fewer than 100 participants include 655,000 pension plans, 2.6 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans). Nonetheless, the Department estimates few of these small plans will be affected by the regulation because plans will receive relatively few requests for SPDs and other documents described under section 104(b)(4) that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The Department estimates about 1,000 requests for assistance by participants and beneficiaries in obtaining SPDs and other such documents per year, based on the actual rate of requests to the Public Disclosure Room during the last two years, adjusted for requests expected to be made with other offices. The percentage of these requests that pertain to small plans is unknown. However, even if it is assumed that all plans that receive requests for documents pursuant to section 104(a)(6) are small plans, the number affected in any year is very small (i.e., 1,000 of approximately 6.6 million plans).

The Department also believes that the time required to respond to a request under the regulation for an SPD or other document under which a plan was established or operated will be minimal. Responding to a request primarily requires clerical skills, although a professional may read the request and

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direct others to respond. The documents to be mailed in response to the request are expected to be readily available, so accumulating and mailing the documents is expected to take about 5 minutes. If it is assumed that a cost is incurred for this time at a rate of $20 per hour and that the maximum mailing cost per request is $4, the total cost per request is estimated at less than $6. This total cost is not expected to constitute a significant impact for any plan. For the purposes of this final RFA analysis, PWBA has increased the assumed labor rate from $11 to $20 to account for inflation, and the estimated mailing cost from $1 to $4, to account for the fact that some plans may make use of certified mail in responding to requests from the Department.

Further, the regulation is intended to assist small plan administrators by providing sufficient information for them to understand the request and the process they may use to offer a reasonable cause for failure to comply if they are unable to do so within the initial deadline, by ensuring that they receive notice before the assessment of a penalty is initiated.

Small Business Regulatory Enforcement Fairness Act

The rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million or more on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. This final rule implements the requirement that administrators of an employee benefit plan furnish the Department, on request, the latest SPD and any other documents described under section 104(b)(4) that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The final rule also establishes procedures relating to the assessments of civil penalties for failure to furnish such requested SPDs and documents and procedures for review of such penalties by the Department. The requirements implemented in this final rule do not alter the fundamental reporting and disclosure requirements or penalty provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

Statutory Authority

These final regulations set forth herein are issued pursuant to the authority contained in sections 505, 104(a), and 502(c)(6) of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1024, 1132, and 1135).

List of Subjects

29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Pension plans, and Reporting and recordkeeping requirements.

29 CFR Part 2560

Claims, Employee benefit plans, Law enforcement, Pensions.

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Party in interest, Law enforcement, Pensions, Prohibited transactions.

In view of the foregoing, Parts 2520, 2560, and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations are amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111 (c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1, and 2520.104b–3 also are issued under sec. 101(a), (c), and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Add § 2520.104a–8 to read as follows:

§ 2520.104a–8 Requirement to furnish documents to the Secretary of Labor on request.

(a) *In general.* (1) Under section 104(a)(6) of the Act, the administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act is required to furnish to the Secretary, upon request, any documents relating to the employee benefit plan. For purposes of section 104(a)(6) of the Act, the administrator of an employee benefit plan shall furnish to the Secretary, upon service of a written request, a copy of:

(i) The latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description); and

(ii) Any other document described in section 104(b)(4) of the Act with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the administrator has failed or refused to furnish to the participant or beneficiary.

(2) *Multiple requests for document(s).* Multiple requests under this section for the same or similar document or documents shall be considered separate requests for purposes of § 2560.502c–6(a).

(b) For purposes of this section, a participant or beneficiary will include any individual who is:

(1) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively;

(2) An alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents);

(3) A qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child);

(4) An alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or

(5) A representative of any of the foregoing.

(c) *Service of request.* Requests under this section shall be served in accordance with § 2560.502c–6(i).

(d) *Furnishing documents.* A document shall be deemed to be furnished to the Secretary on the date the document is received by the Department of Labor at the address specified in the request; or, if a document is delivered by certified mail, the date on which the document is mailed to the Department of Labor at the address specified in the request.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 2560 continues to read as follows:

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2)

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

4. Add § 2560.502c–6 to read as follows:

§ 2560.502c–6 Civil penalties under section 502(c)(6).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an employee benefit plan (within the meaning of section 3(3) of the Act and § 2510.3–1 of this chapter) shall be liable for civil penalties assessed by the Secretary under section 502(c)(6) of the Act in each case in which there is a failure or refusal to furnish to the Secretary documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter.

(2) For purposes of this section, a failure or refusal to furnish documents shall mean a failure or refusal to furnish, in whole or in part, the documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter at the time and in the manner prescribed in the request.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) of the Act shall be an amount up to $100 a day determined by the Department of Labor, taking into consideration the amount of willfulness of the failure or refusal to furnish the documents requested under section 104(a)(6) of the Act, but in no event in excess of $1,000 per request. Subject to paragraph (b)(2) of this section, the amount shall be computed from the date of the administrator's failure or refusal to furnish any document or documents requested by the Department.

(2) For purposes of calculating the amount to be assessed under this section, the date of a failure or refusal to furnish documents shall not be earlier than the thirtieth day after service of the request under section 104(a)(6) of ERISA and § 2520.104a–8 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(6) of the Act, the Department shall provide to the administrator of the plan a written notice that indicates the Department's intent to assess a penalty under section 502(c)(6) of the Act, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(6) of the Act on a showing by the administrator that the failure or refusal to furnish a document or documents requested by the Secretary was the result of matters reasonably beyond the administrator's control.

(e) *Statement showing matters reasonably beyond the control of the plan administrator.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of the notice, as described in paragraph (i) of this section, to file a statement that the failure resulted from matters reasonably beyond the control of the administrator or that the penalty, as calculated, should not be assessed. The statement must be in writing and set forth all the facts alleged as matters reasonably beyond the control of the administrator. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of matters reasonably beyond the control of the plan administrator.* Failure to file a statement of matters reasonably beyond the control of the administrator within the 30-day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter.

(g) *Notice of determination on statement of matters reasonably beyond the control of the plan administrator.* (1) The Department, following a review of all of the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (b) of this section. This notice is a "pleading" for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.111(g) of this chapter, 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 through 2570.121 of this chapter, and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.112 of this chapter. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notice.* (1) Service of notice under this section shall be made by:

(i) Delivering a copy to the administrator or representative thereof;

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(ii) Leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) Mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the document or documents requested under section 104(a)(6) of the Act and its implementing regulations (§ 2520.104a–8 of this chapter), all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(6) of the Act pursuant to a final order, within the meaning of § 2570.111(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.110 through 2570.121 of this chapter for procedural rules relating to administrative hearings under section 502(c)(6) of the Act.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

5. Revise the authority citation for Part 2570 to read as set forth below:

Authority: 29 U.S.C. 1108 (a), 1132 (c), 1132 (i), 1135; 5 U.S.C. 8477(c)(3); Reorganization Plan no. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart F is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373.

6. Add new Subpart F to part 2570 to read as follows:

Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

Sec.

2570.110 Scope of rules.
2570.111 Definitions.
2570.112 Service: Copies of documents and pleadings.
2570.113 Parties, how designated.
2570.114 Consequences of default.
2570.115 Consent order or settlement.
2570.116 Scope of discovery.
2570.117 Summary decision.
2570.118 Decision of the administrative law judge.
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2570.121 Procedures for review by the Secretary.

Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

§ 2570.110 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(6) civil penalty proceedings" (as defined in § 2570.111(n) of this subpart) under section 502(c)(6) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(6) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.111 Definitions.

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–6(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(6) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of matters reasonably beyond the control of the plan administrator described in § 2560.502c–6(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(6);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–6(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(6) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(6) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(6);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.112 Service: Copies of documents and pleadings.

For 502(c)(6) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents

shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(6) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.113 Parties, how designated.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent". The Department shall be designated as the "complainant".

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioner has the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.114 Consequences of default.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30-day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary.

§ 2570.115 Consent order or settlement.

For 502(c)(6) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing

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consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within 30 days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within 30 days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.116 Scope of discovery.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.117 Summary decision.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.119 through 2570.121 of this subpart, shall become a final order.

(2) A decision made under this paragraph (a) shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.118 Decision of the administrative law judge.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(6) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(6) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.119 through 2570.121.

§ 2570.119 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.120 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.121 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 22nd day of December, 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–141 Filed 1–4–02; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3442/P.L. 107–106
National Museum of African American History and Culture Plan for Action Presidential Commission Act of 2001 (Dec. 28, 2001; 115 Stat. 1009)

S. 1438/P.L. 107–107
National Defense Authorization Act for Fiscal Year 2002 (Dec. 28, 2001; 115 Stat. 1012)

H.R. 2883/P.L. 107–108
Intelligence Authorization Act for Fiscal Year 2002 (Dec. 28, 2001; 115 Stat. 1394)

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1, 2 (2 Reserved)	(869-044-00001-6)	6.50	[4]Jan. 1, 2001
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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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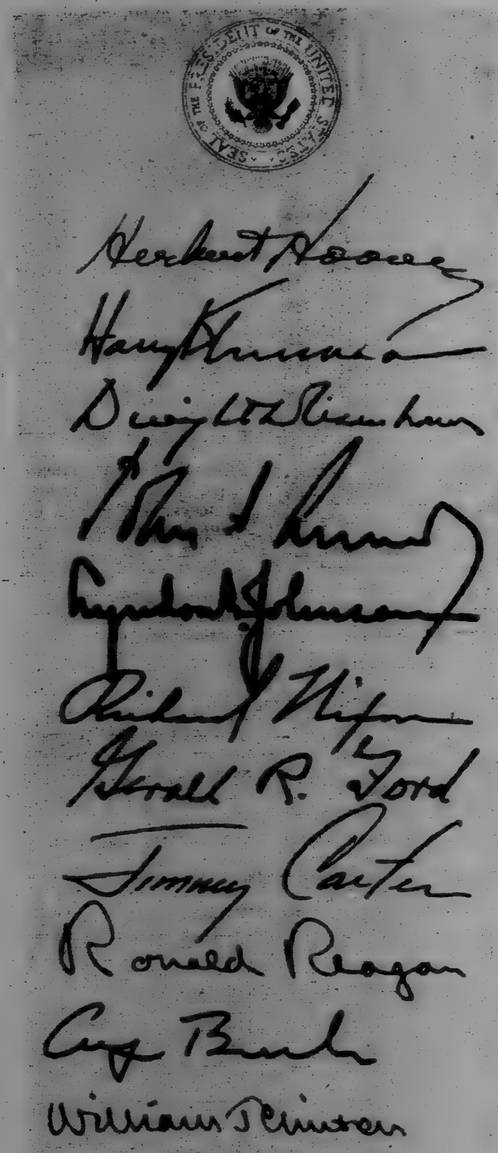

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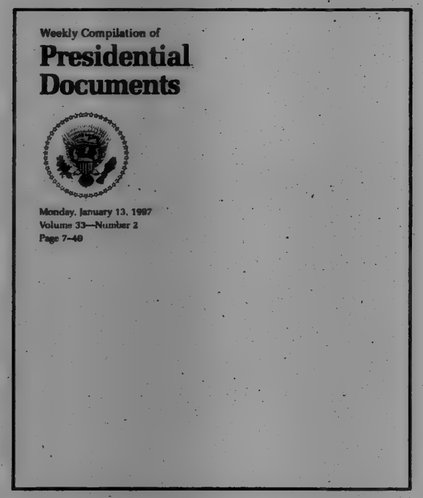

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Rules and Regulations

Federal Register
Vol. 67, No. 5
Tuesday, January 8, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 764

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1945

RIN 0560–AF72

Streamlining of the Emergency Farm Loan Program Loan Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency amends its regulations governing the Farm Service Agency's (FSA) Emergency Farm Loan Program. It clarifies, simplifies, and streamlines the procedures to apply for and make FSA emergency loans.

DATES: This regulation is effective on February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Hinton, Branch Chief, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522 telephone (202) 720–1632; or e-mail: *mike_hinton@wdc.fsa.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The FSA certifies that this rule will not have a significant economic effect on a substantial number of small entities because under the rule the economic effect of the regulation is reduced from the prior rule. Therefore, FSA is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601). This rule does not impact small entities to a greater extent than large entities.

Environmental Impact Statement

FSA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (42 U.S.C. 4321 *et seq.*) neither an Environmental Impact Statement nor an environmental assessment is required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The amendments to 7 CFR parts 764 and 1945 contained in this final rule require no revisions to the information collection requirements that are currently approved by OMB under control number 0560–0159. A proposed rule containing an estimate of the information collection burden of this rule was published on September 12, 2000 (65 FR 54973–54981). No comments regarding the burden estimates were received. This information collection has been approved through January 31, 2004.

Federal Assistance Programs

These changes affect the following FSA program as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans.

New CFR Part

The proposed rule proposed changes to the existing 7 CFR part 1945, subpart B, and removed subpart D. This final rule, in addition to finalizing, with changes, the proposed rule, moves these provisions to 7 CFR part 764 and removes 7 CFR 1945 subparts B, C, and D. In order to facilitate this change in the final regulation, in all places 1945.5 was replaced with 764 and any numbers following the .5 remained the same. An

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example of this is in the proposed rule there is a section 1945.53(b)(1) in the final rule this has been changed to 764.3(b)(1). FSA is moving its Emergency loan program regulations from Chapter XVIII to Chapter VII of the Code of Federal Regulations (CFR). Prior to the Department of Agriculture Reorganization Act of 1994 (1994 Act), Chapter XVIII was assigned to the Farmers Home Administration (FmHA) and Chapter VII was assigned to the Agricultural Stabilization and Conservation Service (ASCS). Under provisions of the 1994 Act, FmHA and ASCS were abolished. FmHA's Farm Loan Programs and ASCS programs were consolidated under the newly created FSA while the remaining FmHA programs were transferred to one of the following Rural Development mission agencies: Rural Business Cooperative Service, Rural Housing Service, and Rural Business Service. Chapter VII is now assigned to FSA while Chapter XVIII is shared by FSA and the Rural Development mission area agencies.

Discussion of Comments Received

In response to the proposed rule, 23 respondents, including a farm interest group and individuals, from 14 States commented. The comments received involved a number of different sections of the proposed rule and overwhelmingly supported most of the changes proposed by the Agency.

Emergency Loan Fund Uses

Eighteen comments were received concerning the authorized uses of emergency loan funds outlined in the proposed rule. Five comments supported items that were included as new specific emergency loan fund uses in the proposed rule.

One comment on proposed § 1945.53(b)(1), which is now § 764.3(b)(1), requested an administrative clarification regarding what reorganizing meant. This comment was not addressed in the final rule because the usage is the same as what is in the existing regulation and the Agency will follow the common definition of reorganizing. However, examples of reorganizing will be given in the Agency handbook for clarification.

One comment received expressed concern that the proposed regulation did not mention that loan funds can be used to replace dwellings or farm structures or other farm buildings. Another comment suggested that loan funds used for needs associated with the physical loss of real estate be limited to essential real estate. Wording to implement this suggestion was adopted in the introductory text of § 764.3(a)(1) of the final rule. This change makes the final rule consistent with the existing regulation, 7 CFR 1945.163(b), which requires that to qualify for a physical loss loan, if the destroyed property is not repaired or replaced, the farmer would be unable to continue the operations on a reasonably sound basis. If the lost or destroyed real estate is not essential to the operation then the policy is that an Emergency loan is not necessary for the operator to continue operation. A definition of "essential real estate (or chattel)" was also added to § 764.2 for clarity.

One comment suggested that use of funds should only be allowed for replacing buildings or other structures that are essential to the ongoing viability of the operation, that are modest in design and cost, and that meet the functionality of the property destroyed in the disaster. We agree that this loan purpose should be limited for practical reasons and to conserve limited emergency loan funds. Section 764.3(a)(1)(ii) has been modified to state that emergency loan funds may be used to replace or repair buildings or other structures essential to the ongoing viability of the operation. However, the Agency will only finance such replacement or repair to the extent the structures conform to industry standards and meet the needs of the operation and intended purposes of the structure. The intent of this language is to allow the replacement of what was lost with a similar structure which meets the needs of the operation but not necessarily exactly what was lost. One example of this would be the destruction of a family residence. An EM loan to rebuild the house would be based on an assessment of the current needs of the family, not necessarily on the replacement value of the lost residence. Another example is if a 300 foot poultry house was destroyed. Current industry standards require a 400 foot poultry house. The Agency in this case would make a loan for a 400 foot house since a 300 foot house no longer meets the needs of the operation.

Two comments suggested that use of physical loss loan funds be limited to replacing what was destroyed. These comments were partially adopted. Physical loss funds can be used to replace or repair what was lost as a result of the disaster. As discussed above, however, consideration of industry standards, needs of the operation, and purposes of the structure may result in a replacement similar to, but not the same as, the structure destroyed. The changes to § 764.3(a)(1)(ii) of the final rule address these concerns.

Two commentors suggested said that use of physical loss funds for family living, as included in the proposed rule, should not be allowed. This suggestion was not adopted. All livestock losses are treated as physical losses in the final rule, therefore, lost income from market animals should be allowed for family living expenses and operating expenses. However, the language of § 764.3(a)(2)(v) was changed to clarify that family living and operating expenses could not be paid if the physical loss was to breeding stock. If the loss was to breeding stock then the physical loss funds should be used to replace the breeding stock because that stock has been determined to be an essential part of the operation. Other livestock losses would be considered to generate normal production income and a loan to replace that income would be allowed for use as family living expenses.

One commentor suggested that the restriction in § 1945.53(a)(2)(vi) and § 1945.53(b)(6) of the proposed rule which prohibits the refinancing of a Farm Loan Program loan with emergency loan funds when the applicant has refinanced the loan more than four times, be removed. This suggestion was not adopted in the final rule as it is a statutory requirement for subtitle B loan purposes in § 312(a)(9) of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1942(a)(9)) as adopted by § 323 of the Act (7 U.S.C. 1963) for emergency loans.

One commentor suggested that livestock should be eligible as a production loss, as well as a physical loss. This suggestion was not adopted because based on the past history of the program and on the experience of Farm Loan Managers in the field, livestock loss rarely qualifies as production loss and by making all livestock losses physical losses it will be easier for livestock producers to qualify for a loan because they will not have to suffer a 30 persent loss to qualify, as is the case for production loans.

One commentor suggested that use of loan funds should not be allowed for the payment of bankruptcy expenses as a cost associated with reorganizing the farm. The Agency adopted this suggestion in § 764.3(b)(1) of the final rule because it does not make sense for the Agency to make a loan to file bankruptcy which could result in the Agency having to write-off the loan or other Agency debt. Such debt forgiveness generally renders the farmer in-eligible for further assistance from the Agency.

Eligibility Requirements

Twenty-two comments were received concerning eligibility requirements contained in the proposed rule. Ten of those comments addressed changes to the test for credit requirement. One comment suggested that the test for credit documentation requirements be consistent with existing requirements in other Agency direct loan programs. In response, § 764.4(a)(9) of the final rule was modified to eliminate the proposed extra letter requirement when the applicant's net worth exceeds $1 million. Instead, the final rule allows Agency officials flexibility to contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere. This addition allows the Agency to investigate cases where the applicant's net worth or other circumstances indicate that credit may be available elsewhere without increasing the applicant's burden in obtaining additional written declinations of credit. This current flexibility in § 1945.156(b)(2) was inadvertently left out of the proposed rule. The provisions in the existing Emergency loan procedures give the loan approval official the ability to contact other lenders and require more than the minimum number of rejection letters if they determine that, based on the applicant's financial condition or local lending practices, other credit should be available.

Two commentors disagreed with the proposed changes to the current test for credit documentation requirements. Two others disagreed with inclusion of a waiver for loans of less than $100,000. One suggested that all loans should have at least two rejection letters. Another suggested that one rejection letter be required if the loan request was for $200,000 or less and two rejection letters if the loan request was for more than $200,000, and one suggested that a letter from a Farm Credit institution be required as one of the rejection letters. Although the Agency understands the concerns expressed by these comments, it did not adopt any of these suggestions. The final rule gives the Agency maximum flexibility and is consistent with the minimum requirements of the Act.

One commentor pointed out that the proposed rule was inconsistent with § 373(b)(2) of the Act (7 U.S.C. 2008h(b)(2)) regarding when an applicant who has received debt forgiveness is eligible for an Emergency loan. This error is corrected in § 764.4(a)(10) of the final rule.

One comment was received suggesting that the proposed provision that an applicant may demonstrate managerial ability by farming experience within the last 5 years be changed to 3 years. This suggestion was not adopted because it is too restrictive. The Agency believes that farming experience in the last five years is current enough to demonstrate that the applicant understands current farming practices. Additionally, if the change to three years was made many college graduates who were raised on a farm and spent the last 4 years getting a degree would not be eligible for a loan because they had not farmed in the last three years.

One commentor suggested that the borrower training requirement contained in the proposed § 1945.54(a)(13) should only apply to beginning farmers or farmers who have demonstrated poor management. Section 335 of the Act (7 U.S.C. 2006) does not provide blanket exceptions for certain types of farmers. Furthermore, there are specific criteria under which a waiver of the borrower training requirements may be requested by an applicant in 7 CFR 1924.74. The final rule adopts the proposed language without change in § 764.4(a)(13).

One comment was received objecting to the proposed § 1945.54(a)(15), which established as an eligibility requirement that an applicant demonstrate that they would honestly endeavor to carry out the conditions of the loan and provide current, complete, and truthful information. The comment indicated that this was not an appropriate eligibility requirement because there was no objective criteria. Two other comments were received which supported the provision and one comment suggested incorporating the concept in the definition of past credit history. The Agency agrees that this should not be included as a separate eligibility criteria and removed the proposed requirement from the final rule. Instead, the eligibility requirement of past credit history in § 764.4(a)(8) of the final rule was expanded as suggested, to state that as part of the credit history analysis, the Agency will determine whether the applicant has dealt with the Agency in good faith which includes providing current, complete, and truthful information to the Agency and fulfilling its obligations to other Federal agencies and third parties. The Agency believes this language is sufficiently objective.

One commentor suggested that harvested and stored crops should be eligible as a physical loss. The Agency agrees and incorporated this very practical suggestion into the final rule in § 764.4(b)(2)(iii). This coverage in § 1945.163(b) was inadvertently left out of the proposed rule.

The Agency also is adding an eligibility requirement in § 764.4(a)(15) that the applicant must agree to repay any duplicative Federal assistance to the agency providing such assistance. A person receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the person for the same purpose from another source. This provision is required by 42 U.S.C. 5155, part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. If the Agency determines that it has provided duplicative assistance, the Agency will collect the duplicative assistance from the recipient in accordance with the Federal Debt Collection Act.

Loan Limitations

Fifteen comments were received regarding proposed changes to loan limitations, including qualifying losses. Three comments were received commending the change in maximum loan amount from 80 percent to100 percent of production loss while two others recommended that the level be left at 80 percent or raised to only 90 percent. Another commentor pointed out that increasing the limit will increase loan losses. Another commentor suggested that if the limit is increased to 100 percent, the Agency should make adjustments for costs not incurred and for substitute crops. Increasing the maximum loan amount to 100 percent should not increase loan losses. In many cases the Agency makes an operating loan for the additional 20 percent of the loss not currently covered by the Emergency loan. Therefore, the Agency has the same exposure as if the Emergency loan were made at 100 percent. However, because the Emergency loan is at a lower interest rate, there is a higher chance of repayment because less interest accrues. Therefore, loan losses could actually be reduced. The suggestions that adjustments be made for costs not incurred and substitute crops were not adopted because they are not required by statute, and such adjustments would only make the calculations more complicated and more prone to error. The Agency believes that the increase to 100 percent is needed to better serve the needs of applicants who have suffered a loss and would not add significant risk of loss to the Agency. Therefore, the language of the proposed § 1945.55(b) is incorporated in the final rule at § 764.5(b) without revision.

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One commentor suggested that when loan funds are used for construction, Agency regulations dealing with planning and monitoring construction should be followed. The Agency agrees and has adopted this comment by adding in § 764.5(a)(2) of the final rule a requirement that any construction financed by the Agency comply with 7 CFR part 1924, subpart A.

Two comments were received suggesting that the use of Emergency loan funds for refinancing consumer debt not be authorized or be restricted. In response, the final rule includes a new section § 764.5(a)(3) that prohibits use of emergency loan funds for refinancing consumer debt unless the debt is directly attributable to the farming operation. Subsidized Federal disaster assistance should not be used to refinance vacations, automobiles, or other expenses that were incurred by the farmer but have nothing to do with the farming operation or its recovery from the effects of the disaster. This change balances the farmer's need for funds with the Agency's need to allocate limited emergency loan funds.

Repayment and Security Requirements

Thirty-eight comments were received on the proposed § 1945.58 which addressed repayment and security requirements. One commentor recommended that this provision be reworded to ensure that the feasible plan demonstrate that the applicant will meet all other obligations for which the applicant is legally responsible. The Agency agrees and revised the wording in § 764.8(a)(1) accordingly.

Twelve comments were received expressing opposition to proposed § 1945.58(f) which allowed, under certain conditions, an Emergency loan to be made when adequate security is not available because of the disaster. These comments expressed the opinion that the Agency should never make a loan if the value of the security is less than the loan amount. Unfortunately, while we agree from a sound lending standpoint this should never be done, the statute requires otherwise. Due to provisions contained in section 324(d)(2) of the Act, the Agency is prohibited from rejecting a loan because it lacks a particular amount of security. The Agency believes that the proposed rule language complied with this statutory requirement while protecting the Agency's interest. Therefore, the proposed language is adopted as final, with some minor modifications, as discussed below, at § 764.8(f).

One commentor suggested that, at a minimum, an assignment on any USDA program payments to be received be required when adequate security was lacking. The Agency agrees and added § 764.8(f)(4) to the final rule which requires such assignment when there is a lack of adequate security. Incorporating this comment will result in sounder lending practices by allowing the Agency to take Government program payments and apply them to the applicant's loan, thereby reducing the under-secured position.

The proposed rule also required that the plan indicate how pricing risks will be addressed through the use of marketing contracts, hedging, options, or revenue insurance and include a marketing plan or similar risk management practice. One comment was received recommending revenue insurance be included as a method of addressing pricing risk, and six comments were received indicating concerns with requiring a marketing plan. The latter comments suggested that the Agency might be opening itself up to lender liability issues and that substantial guidance and clarification was needed as to what constituted an acceptable marketing plan. In response to these comments, the final rule, at § 764.8(f)(2), included revenue insurance as an example of risk management for clarity. The Agency removed the requirement for a marketing plan to avoid a wide variance in the interpretation of the term and administrative difficulty in establishing appropriate standards on what would be an acceptable marketing plan.

The proposed rule also provided that, where there is a lack of adequate security, the applicant must demonstrate a positive net cash income in at least 1 of the immediately preceding 5 years. The Agency received fifteen comments on this proposed requirement. One suggested that this requirement would keep farmers who have had droughts for the last 5 years from being eligible; 6 commentors said that 1 out of 5 years is not much of an indication that the farmer is successful; one suggested that it should be 50 percent of the time; three suggested it should be 3 out of the last 5 years; and one suggested 1 out of the last 3 years. The other three commentors were concerned that it was too easy to manipulate a farm plan to show repayment ability or wanted a much more complicated formula than that proposed based on net farm income. In response to these comments, § 764.8(f)(3) provides that if the applicant is using ability to repay the loan as security, the applicant must have had positive net cash farm income in at least 3 of the past 5 years. Due to natural disasters and fluctuating prices it was determined that 1 out of 3 years was too restrictive. Given the concern that 1 out of 5 years was too liberal and not a good indication of ability to repay, the Agency determined that requiring records from 3 out of the last 5 years to show net cash income made the most sense from a lending standpoint.

The proposed rule stated that the Agency will require that the applicant pledge all available assets (including personal assets for both individuals and members of entities). One commentor suggested that if substantial non-essential assets are available, the Agency should require that they be liquidated to reduce the need for an Emergency loan or, if they are not liquidated, the applicant would not be eligible. The Agency did not adopt this suggested change because it believes that taking a lien on such assets is adequate. Also, if there is a substantial amount of non-essential assets, the applicant may be able to obtain credit elsewhere and, therefore, would not be eligible for Agency assistance. The final rule adopted the proposed language at § 764.8(g).

One comment noted that the proposed regulation did not address taking Indian Trust land as security. In response to that comment, the Agency included § 764.8(j), which specifically authorizes taking Indian Trust land as security if the requirements in § 1943.17(a)(7) for such security are met.

Appraisal and Valuation Requirements

The proposed rule, at § 1945.59(b), provided that the security value of annual agricultural commodities production is presumed to be 100 percent of the amount loaned for annual operating and essential family household expenses. One commentor noted that this may overstate the security value in certain cases. The Agency agreed and revised the final regulation at § 764.9(b) to provide that the security value is the lower of the amount loaned for annual operating and essential family household expenses or the amount of expected crop revenue. The amount of expected crop revenue will be equal to the amount of gross receipts from all crop and livestock production as shown on the cashflow used to approve the loan. Expected revenue does not include farm program or crop insurance payments.

Insurance for Loan Security

The proposed rule, at § 1945.60(b), required that all security except growing crops be covered by hazard insurance. One commentor pointed out that this was too restrictive. The Agency agrees.

In response, the final rule, at § 764.10(b), provides that there must be hazard insurance if it is readily available (*i.e.* normally sold by insurance agents in the farmer's normal trade area) and economically feasible.

Definitions

Thirty comments were received concerning the proposed definitions. Thirteen of the comments were requests for clarifications and five comments pointed out errors. The proposed definitions of *additional security, adequate security, agency, agricultural commodity, applicant, basic part of an applicant's total farming operation, established farmer, majority interest, physical loss,* and *security value* were modified in the final rule at § 764.2 to clarify the definitions or to correct errors. For additional clarity, the definition of "entity" was properly alphabetized. Two comments suggested that the final rule include the entire definition, rather than a reference to another Agency regulation. This suggestion was adopted.

Three comments pointed out that the proposed definition of "normal production yield" could cause inconsistent treatment depending upon whether an applicant had or had not been an Agency borrower. The Agency agrees. The definition was revised as the comments suggested so that all applicants will be treated consistently when determining normal production yield.

The Agency modified the definition of *established farmer* to state that the term did not include an operation that employs a full-time manager. This provision in current § 1945.162(d) was unintentionally omitted in the proposed rule.

List of Subjects

7 CFR Part 764

Agriculture, Credit, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1945

Agriculture, Credit, Disaster assistance, Loan programs—Agriculture.

Accordingly, 7 CFR chapters VII and XVIII are amended as follows:

1. Part 764 is added to read as follows:

PART 764—EMERGENCY FARM LOANS

Sec.

764.1 Purpose.
764.2 Definitions.
764.3 Emergency loan funds uses.
764.4 Eligibility requirements.
764.5 Limitations.
764.6 Interest rate.
764.7 Loan terms.
764.8 Repayment and security requirements.
764.9 Appraisal and valuation requirements.
764.10 Insurance for loan security.
764.11 Charges and fees.

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 Purpose.

The purpose of the Emergency Loan Program is to provide financial assistance to family farmers who have suffered losses as the result of a disaster so that they can return to normal farming operations as soon as possible after the disaster. Specifically, this part describes the policies and procedures of the Agency for making Emergency loans to operators of such farms.

§ 764.2 Definitions.

Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Additional security means property that provides security in excess of the amount of security value equal to the loan amount, excluding security described in § 764.8(g).

Adequate security means property that provides a security value at least equal to the loan amount.

Agency means the Farm Service Agency, including its employees, any predecessor agency, and any successor agency.

Agricultural commodity means livestock, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other plant or animal production as determined by the Agency.

Allowable costs means those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.

Applicant means an individual or entity (including each owner of the entity unless specified otherwise) operating a farming operation at the time of the disaster, who is requesting assistance from the Agency under this part. All requirements of applicants apply to owners of the entity individually and collectively unless specified otherwise.

Aquacultural species means aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment which the applicant has exclusive rights to use.

Basic part of an applicant's total farming operation means any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

Borrower means an individual or entity which has an outstanding obligation to the Agency under any Farm Loan Program loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed; or who have been discharged of all such obligations owed to the Agency.

Chattel means any property that is not real estate.

Chattel or real estate essential to the farming operation means chattel or real estate that would be necessary for the applicant to continue operating the farm on a after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

Corporation means a private domestic entity recognized as a corporation and authorized as a corporation under the laws of the State or States in which the entity does business.

County means a local administrative subdivision of a State or similar political subdivision of the United States.

Debt forgiveness means reducing or terminating a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:

(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a Farm Loan Program loan guaranteed by the Agency.

Disaster means an event of unusual and adverse weather conditions or other natural phenomena that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area designated by the Agency.

Disaster area means the county, declared or designated as a disaster area for Emergency loan assistance as a result of disaster related losses and counties

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contiguous to those counties declared or designated as disaster areas.

Disaster yield means the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.

Entity means a partnership, corporation, cooperative, or joint operation that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

Essential family household expenses means the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.

Established farmer means a farmer who is an operator of the farming operation (in the case of a farming operation operated by an entity, its owners as a group) who:

(a) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of the farming operation at the time of the disaster;

(b) Spends a substantial portion of time in carrying out the farming operation;

(c) Planted the crop, or purchased or produced the livestock on the farming operation;

(d) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop year or the next 12 month period, as mutually determined; and

(e) Is not:

(1) A corporation with an ownership interest of 50 percent or more held by one or more estates, trusts, other corporations, partnerships, or joint operations;

(2) A partnership or joint operation with an ownership interest of 50 percent or more held by one of more estates, trusts, corporations, other partnerships or other joint operations;

(3) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as contained in the contract; or

(4) An operation that employs a full-time farm manager.

Family farm means a farm that:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a entity.

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to an entity.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

Farm Loan Program loan means a Farm Ownership loan, Operating loan, Emergency loan, Soil and Water loan, or Economic Emergency loan made or guaranteed by the Agency pursuant to the Act.

Farmer means individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

Feasible plan means a plan based upon the applicant's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for an applicant to at least be able to:

(a) Pay all operating expenses and all taxes that are due during the projected farm budget period;

(b) Meet necessary payments on all debts; and

(c) Provide living expenses for family members of an individual borrower or a wage of the farm operator in the case of a entity borrower which is in accordance with the essential family needs. Family members include the individual borrower, or farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

Hazard insurance means coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workman's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Household contents means the essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, clothes, etc. The term excludes all luxury items including jewelry, furs, antiques, paintings, etc.

Livestock means a member of the animal kingdom, or product thereof, as determined by the Agency.

Majority interest means an ownership interest of more than 50 percent of the entity.

Non-essential asset means those assets in which the applicant has an ownership interest that do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation and are not exempt from judgment creditors or in a bankruptcy action.

Nonfarm enterprise means any nonfarm business enterprise, including recreation, that is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Normal production yield means:

(a) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;

(b) When the actual production history is not available, the applicant's own production records for the previous three years will be used. If the applicant's production records are not available, the records of production on which FSA farm program payments are made that are contained in the applicant's farm program file, for the previous three years will be used;

(c) When the production records outlined in paragraphs (a) and (b) of this definition are not available, the county average production yield will be used.

Owner means those persons with an interest in the entity as a stockholder, partner, member, or joint operator.

Physical loss means verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

Production loss means verifiable damage or destruction with respect to annual growing crops.

Security value means the Agency-established market value of property (less the value of any prior liens) used as security for a loan under this part as of the date of the closing of the loan.

United States means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Working capital means cash available to conduct normal daily farming or ranching operations including, but not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.

§ 764.3 Emergency loan funds uses.

(a) *Physical losses*—(1) *Real estate losses.* Emergency loans may be used to address the needs of the farming operation associated with physical losses of essential real estate that were the result of a disaster to:

(i) Acquire or enlarge the farm, as specified in § 1943.16(a) of this title, as long such acquisition or enlargement does not cause the farm to exceed the requirements for a family farm;

(ii) Replace or repair buildings or other structures which are essential to the ongoing viability of the operation. The Agency will finance such replacement or repair only to the extent that the structures conform to industry standards and meet the needs of the operation and intended purposes of the structure.

(iii) Pay for activities to promote soil and water conservation and protection on the family farm as specified in § 1943.16(c) of this title;

(iv) Pay loan closing costs related to acquiring, enlarging, or improving the family farm as specified in § 1943.16(d) of this title, that an applicant cannot pay from other sources;

(v) Replace land or water resources on the family farm which resources cannot be restored;

(vi) Pay costs associated with land and water development for conservation or use purposes;

(vii) Establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(viii) Replace land from the family farm that was sold or conveyed as a direct result of the disaster, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* Emergency loans may be used to address the needs of the farming operation associated with the physical losses of essential chattel that were the result of a disaster to:

(i) Purchase livestock and farm equipment, including but not limited to quotas, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining, planning, and closing a loan that an applicant cannot pay from other sources (*e.g.* fees for legal, architectural, and other technical services, but not fees for agricultural management consultation and preparation of Agency forms);

(iii) Repair or replace *essential* household contents damaged in the disaster;

(iv) Pay the costs to restore perennials that produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) In the case of a farming operation that has suffered livestock losses not from breeding stock, pay essential farm operating and family household expenses; and

(vi) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times).

(b) *Production losses.* Emergency loans may be used to address the losses of the farming operation associated with production of agricultural commodities (except the losses associated with the loss of livestock) of the farming operation that were the result of a disaster to:

(1) Pay costs associated with reorganizing the family farm to improve its profitability except that such costs shall not include the payment of bankruptcy expenses;

(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(4) Pay training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times); and

(7) Replace lost working capital.

§ 764.4 Eligibility requirements.

(a) *General borrower eligibility requirements.* An applicant for an Emergency loan must meet the following requirements:

(1) *Legal capacity.* The applicant must have the legal capacity to incur the obligation of the loan.

(2) *Citizenship*—(i) *Applicant who is an individual.* The individual applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence as determined by the U.S. Immigration and Naturalization Service.

(ii) *Applicant that is an entity.* If the applicant is an entity, the majority interest of the applicant must be held by individuals who are citizens of the United States or aliens lawfully admitted to the United States for permanent residence, as determined by the U.S. Immigration and Naturalization Service.

(3) *Family farm and nonfarm enterprise.* The applicant's farming operation must qualify as a family farm and must not be a nonfarm enterprise.

(4) *Established farmer.* An applicant must be an established farmer.

(5) *Owner and operator requirements.*

(i) *Loans for physical losses to real estate.* In the case of a loan for a purpose specified in § 764.3(a)(1), an applicant must be:

(A) The owner and operator of the farming operation; or

(B) An operator of the farming operation whose lease on the affected real estate would exceed the term of the loan and give the Agency prior notification of the termination of the lease during the term of the loan, and whose lessor would provide the Agency a mortgage on the real estate as security for the loan.

(ii) *Loans for physical losses to chattel.* In the case of a loan for a purpose specified in § 764.3(a)(2), an applicant must be the operator of the farming operation.

(iii) *Loans for production losses.* In the case of a loan for a purpose specified in § 764.3(b), an applicant must be the operator of the farming operation.

(6) *Entity applicants.* For entity applicants:

(i) If the owners holding a majority interest in the entity applicant are

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related by blood or marriage, at least one of such related owners must operate the family farm.

(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the family farm.

(iii) If the entity applicant has an operator interest in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(7) *Intent to continue farming.* The applicant must demonstrate the intent to continue the farm operation after the disaster.

(8) *Credit history.* The applicant must demonstrate a credit history satisfactory to the Agency. As part of the credit history the Agency will determine whether the applicant has dealt with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance and in all past dealings with the Agency. The Agency will also examine whether the applicant has properly fulfilled its obligations to other parties, including other Federal agencies. The Agency may use credit reports or any other available information to evaluate credit history.

(9) *Availability of credit elsewhere.* The applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the declination as follows:

(i) In the case of a loan for $300,000 or more, two written declinations of credit are required;

(ii) In the case of a loan of less than $300,000, one written declination of credit is required; and

(iii) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(iv) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere.

(10) *Prior debt forgiveness.* The applicant must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(11) *Federal judgment lien.* The applicant's property must not be subject to a Federal judgment lien (other than a United States Tax Court lien).

(12) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last 5 years that covers an entire production cycle.

(13) *Borrower training.* The applicant must agree to meet the borrower training requirements in accordance with § 1924.74 of this title.

(14) *Prior drug convictions.* The applicant cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in 21 CFR part 1308, during the current crop year or the previous 4 crop years.

(15) *Recovery of duplicative benefits.* The applicant must agree to repay any duplicative Federal assistance to the agency providing such assistance. A person receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the person for the same purpose from another source.

(b) *Additional Emergency loan eligibility requirements*—(1) *Timely loan application.* A loan application must be received by the Agency not later than 8 months after the date the disaster is declared or designated in the county of the applicant's farming operation.

(2) *Qualifying losses*—(i) *Loss must occur in a disaster area.* The applicant may seek an Emergency loan only with respect to a family farm that had production or physical losses as a result of a disaster in a disaster area.

(ii) *Eligible production loss.* For production loss loans, the applicant must have a disaster yield that is at least 30 percent below the normal production yield of any single crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.

(iii) *Eligible physical loss.* For physical loss loans, the applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, to household items that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(3) *Changes in ownership structure.* The ownership structure of a family farm may change between the time of a qualifying loss and the time an Emergency loan is closed. In such case, all of the following requirements must be met:

(i) The applicant, in its new form, including all owners must meet all applicable eligibility requirements contained in this section;

(ii) The new individual applicant, or all owners of a new entity applicant must have had an ownership interest in the farming operation at the time of the disaster; and

(iii) The amount of the loan will be based on the percentage of the former farming operation transferred to the new applicant and in no event will the individual portions, aggregated, equal more than would have been authorized for the former farming operation.

(4) *Insurance requirement.* Emergency loan funds may not be used for physical loss purposes (excluding losses to livestock) unless that physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefits of the coverage (i.e. the amount of coverage equaling the lesser of the property's tax or cost depreciated value) justify the cost of the insurance.

§ 764.5 Limitations.

(a) *General limitations*—(1) *Highly erodible soil and wetlands conservation.* The Agency will not make a loan under this part for any purpose that contributes to erosion of highly-erodible land or the conversion of wetlands to produce an agricultural commodity.

(2) *Construction.* Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards and subpart A of part 1924 of this title.

(3) *Refinancing.* Emergency loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

(b) *Restriction on loan amount.* An Emergency loan may not exceed the lesser of:

(1) The amount of credit necessary to restore the family farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant calculated pursuant to paragraph (d) of this section.

(c) *Maximum cumulative loan principal.* The maximum cumulative Emergency loan principal that any individual or entity may have outstanding is $500,000.

(d) *Production losses.* The applicant's actual production loss with respect to a crop is calculated as follows:

(1) Subtract the applicant's disaster yield from the applicant's normal production yield to determine the applicant's per acre production loss;

(2) Multiply the applicant's per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the applicant's production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.

(e) *Physical loss*—(1) *Amount of loss.* The applicant's total eligible physical loss is calculated as follows:

(i) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(ii) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(iii) Add the value of livestock and livestock products (such valuation will be based on a national or regional valuation of species or product classification, whichever the Agency determines is more accurate);

(iv) Add the allowable costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Add, in the case of an applicant that is an individual, the allowable costs associated with repairing or replacing essential household contents, not to exceed $20,000; and

(vi) Subtract any other disaster-related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.

(2) *Documentation.* In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

§ 764.6 Interest rate.

The interest rate applicable for an Emergency loan will be the lower of the interest rate at the time of either loan approval or loan closing and in no event shall exceed 8 percent annually.

§ 764.7 Loan terms.

(a) *Basis for repayment.* The Agency schedules repayment of Emergency loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.

(b) *Minimum payment requirement.* The repayment schedule must include at least one payment every year.

(c) *Repayment of loans for annual operating expenses.* Emergency loans for annual operating expenses, except those expenses associated with establishing a perennial crop, must be repaid within 12 months. The Agency, however, may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities of the farming operation.

(d) *Repayment of loans for production or physical losses to chattel.* The repayment schedule for loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between 1 and 7 years) may not exceed 7 years. If necessary to improve the repayment ability of the loan and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years.

(e) *Repayment of loans for physical losses to real estate.* The repayment schedule for loans for physical losses to real estate is based on repayment ability of the applicant and the useful life of the security, but in no case will the term of repayment exceed 40 years.

§ 764.8 Repayment and security requirements.

(a) *General requirements*—(1) *Ability to repay.* The applicant must submit a feasible plan that demonstrates the applicant's ability to repay the loan. The plan also must demonstrate that the applicant will meet all other credit needs and obligations, including judgments, for which the applicant is legally responsible.

(2) *Sufficient equity.* The applicant must have sufficient equity in the security pledged for an Emergency loan to provide adequate security for the loan except as permitted in paragraph (f) of this section. The applicant must provide additional security, if available, not to exceed 150 percent of the loan amount.

(3) *Interests in property not owned by the applicant.* Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan and will be considered in determining whether adequate security is available.

(b) *Real estate loans.* In the case of an Emergency loan for real estate losses, the loan shall be secured at a minimum by the real estate that is being purchased, repaired, replaced, or improved with the loan funds.

(c) *Chattel and production loans.* In the case of an Emergency loan for chattel and production losses, the loan shall be secured, at a minimum, by the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(d) *Agency lien position*—(1) *Real estate security.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available, on the real estate. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(i) The prior lien does not contain any provision that may jeopardize the Agency's interest or the applicant's ability to repay the loan to the Agency;

(ii) Prior lienholders agree to notify the Agency of acceleration and foreclosure whenever State law or other arrangements do not require such notice; and

(iii) The applicant must agree to obtain permission from the Agency prior to granting any additional security interests in the real estate.

(2) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(i) The applicant must provide a security interest in the real estate;

(ii) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate;

(iii) The applicant must refinance the existing purchase contract, or demonstrate that financing is not available, if an acceptable contract of sale cannot be negotiated or the purchase contract holder refuses to agree to apply all the insurance proceeds to repair or replace the damaged real estate and wants to retain

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some of the proceeds as an extra payment on the balance owed;

(iv) The purchase contract must not be subject to summary cancellation on default and must not contain any provisions that are contrary to the Agency's best interests; and

(v) The contract holder must agree in writing to notify the Agency of any breach by the purchaser, and give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(3) *Chattel security.* If chattel property is pledged as security for a loan the Agency must obtain a first lien on the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(e) *Same security for multiple loans.* The same property may be pledged as security for more than one Farm Loan Program loan.

(f) *Lack of adequate security.* When adequate security is not available because of the disaster, the loan application may be approved if the Agency determines, based on the plan required in paragraph (a)(1) of this section, that there is a reasonable assurance that the applicant has the ability to repay the loan (based on an on-going operational basis, excluding special one-time sources of income or expenses) provided:

(1) The applicant has pledged as collateral for the loan, all available personal and business collateral, except those items listed in paragraphs (h)(1) and (h)(2) of this section;

(2) The feasible plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history and addresses applicable pricing risks through the use of marketing contracts, hedging, options, revenue insurance or similar risk management practices;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has given the Agency an assignment on any USDA program payments to be received.

(g) *Conditions for taking other assets as security*—(1) *Conditions.* In addition to the requirements for adequate and additional security, the Agency will take a security interest in other assets (other than assets listed under the exceptions in paragraph (h) of this section), if available, when:

(i) An applicant has non-essential assets that are not being converted to cash to reduce the loan amount; or

(ii) The real estate security and chattel security do not provide adequate security for the loan.

(2) *List of other assets.* Other assets may include:

(i) A pledge of real estate or chattel by a third party;

(ii) Patents, copyrights, life insurance, stocks, other securities, and membership in cooperatives, owned by the applicant;

(iii) Assets owned by an applicant that cannot be converted to cash without jeopardizing the farm operation; and

(iv) Non-essential assets owned by the applicant with an aggregate value in excess of $5,000.

(h) *Exceptions to security requirements.* The Agency will not take a security interest in certain property in the following situations:

(1) The property proposed as security has environmental contamination, restrictions, or historical impact that could impair the value or expose the Agency to potential liability;

(2) The Agency cannot obtain a valid lien on the security;

(3) The applicant's personal residence and appurtenances are on a parcel of land separate and apart from that real estate being used as adequate security for the loan; or

(4) The applicant's other assets are used for farming or for essential living expenses and are not needed for security purposes, including but not limited to, subsistence livestock, cash or special cash collateral accounts, retirement accounts, personal vehicles, household goods, and small tools and equipment such as hand tools, power lawn mowers.

(i) *Requirements for security.* (1) For loans over $25,000, title clearance is required when real estate is taken as security.

(2) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, naming the record owner of the real estate in question and listing the balances due on all known debts against the real estate. Whenever the loan approving official is uncertain of the record owner or debts against the real estate security, a title search is required.

(j) *Taking Indian Trust lands as security.* The Agency may take a lien on Indian Trust lands as security provided that the requirements of § 1943.19(a)(7) of this title are satisfied.

§ 764.9 Appraisal and valuation requirements.

(a) *Establishing value for real estate.* Real estate appraisals conducted pursuant to this part may be completed by designated appraisers or contract appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice guidelines and standards in accordance with § 761.8 of this chapter.

(b) *Establishing value for agricultural commodities and equipment.* Valuations of agricultural commodities and equipment shall be established as follows:

(1) The security value of the annual agricultural commodities production (excluding livestock) will be 100 percent of the amount loaned for annual operating and essential family household expenses, or the amount of expected crop revenue, excluding farm program and insurance payments, whichever is lower.

(2) The value of livestock and equipment will be the market value as determined by the Agency in accordance with § 761.8 of this chapter.

(c) *Assets damaged by the disaster.* In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

§ 764.10 Insurance for loan security.

(a) *Adequacy of insurance.* An applicant must obtain insurance, consistent with this section, equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.

(b) *Hazard insurance.* All security (except growing crops) must be covered by hazard insurance if it is readily available (*i.e.* sold by insurance agents in the applicants normal trade area) and economically feasible.

(c) *Flood or mudslide insurance.* Real estate security located in flood or mudslide prone areas, as determined by the Agency, must be covered by flood or mudslide insurance.

(d) *Crop insurance*—(1) *Requirement to obtain crop insurance.* Except as provided in paragraph (d)(2) of this section, prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of an applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.

(2) *Exception.* Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available.

(e) *Indemnities.* A borrower must:

(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(2) In the case of crop insurance, execute an assignment of indemnity in favor of the Agency.

§ 764.11 Charges and fees.

The applicant must pay all filing, recording, notary, and lien search fees necessary to process and close a loan. The applicant may pay or be reimbursed for these fees from Emergency loan funds.

PART 1945—EMERGENCY

2. Subparts B, C and D are removed.

Signed at Washington, DC, on December 31, 2001.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 02–359 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV01–905–2 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modifying Procedures and Establishing Regulations To Limit the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule modifies the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). This rule increases the number of weeks available under weekly percentage of size regulation from 11 weeks to 22 weeks and institutes weekly percentages for 6 additional weeks of the 2001–02 season. It will be beneficial to have the additional weeks available, when necessary, to help stabilize the market and improve grower returns. The percentages established for the 2001–02 season are intended to supply enough small red seedless grapefruit without saturating all markets with small sizes.

DATES: Effective January 7, 2002; comments received by January 23, 2002 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by March 11, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, Florida, 33881; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies the procedures used to limit the volume of sizes 48 (3$^{9}/_{16}$ inches minimum diameter) and 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market under the order by increasing the number of weeks available under weekly percentage of size regulation from 11 weeks to 22 weeks. This rule also institutes weekly percentages for 6 additional weeks of the 2001–02 season. It will be beneficial to have the additional weeks available, when necessary, to help stabilize the market and improve grower returns. This rule is intended to supply enough small red seedless grapefruit without saturating all markets with small sizes during 2001–02.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and approved by the USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. Currently, the regulation period

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covers 11 weeks starting the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule expands the weeks available for limiting the volume of small red seedless grapefruit entering the fresh market from the first 11 weeks of each season to the first 22 weeks. This adds 11 weeks to a tool that has been effective in stabilizing the market and in improving returns to growers. This rule also establishes weekly base percentages for 6 additional weeks of the 2001–02 season. The Committee recommended the percentages be set at 40 percent for the first 3 weeks (December 3 through December 23) and 30 percent for the remaining eight weeks (December 24 through February 17) of the second 11 weeks. These actions are based on unanimous recommendations of the Committee made at meetings on May 22, 2001, and August 29, 2001. Because of the current timeframe, this action establishes weekly percentages for the 6 remaining weeks of the second 11-week regulatory period (January 7 through February 17, 2002).

At the May 22, 2001, meeting, the Committee also unanimously voted to establish percentage of size regulation for the first 11 weeks of the season (September 17 through December 2, 2001). The Committee's initial recommendation was issued as a proposed rule published in the **Federal Register** on July 31, 2001 (66 FR 39459). No comments were received during the comment period, which expired August 10, 2001. At the August 29, 2001 meeting, the Committee unanimously recommended adjusting the proposed percentages. The Committee's revised recommendation was issued as an interim final rule published in the **Federal Register** on September 26, 2001 (66 FR 49088). No comments were received during the comment period, which expired October 9, 2001.

The first action considered in this rulemaking modifies the procedures for limiting the volume of small red seedless grapefruit entering the fresh market as specified in § 905.153 of the order. This change increases the number of weeks available for regulation from the first 11 weeks of each season to the first 22 weeks. The red seedless grapefruit season runs approximately 33 weeks, from mid-September through May. Prior to this rule, only the first 11 weeks of a season could be regulated to control shipments of sizes 48 and 56 red seedless grapefruit. This change in itself does not limit shipments, but expands the weeks available for percentage of size regulation to 22 weeks so small sizes can be regulated for an additional 11 weeks, if needed.

The original rule creating § 905.153 (December 31, 1996, 61 FR 69011) established procedures for percentage of size regulation of small red seedless grapefruit. This rule provided a tool, if needed, to help stabilize the price and supply of red seedless grapefruit. The procedures were established to cover an 11-week period to address problems associated with the oversupply of small-sized red seedless grapefruit early in the season. The Committee believed the overshipment of early, small-sized fruit was depressing the market for all red seedless grapefruit, and concluded having a tool to limit the amount of small red grapefruit entering the fresh market would be very helpful in addressing this problem.

Under the original procedures, authority to limit shipments of sizes 48 and 56 red seedless grapefruit was established for the period starting the third Monday in September through the next 11 weeks. The Committee recommended 11 weeks at the time because the majority of small sizes were being shipped during this period. By the end of the 11 weeks, fruit had begun to size naturally, and there were fewer small sizes available.

However, this is no longer the case. The fruit is not sizing as it has in past seasons for reasons yet to be determined. This leaves a larger supply of smaller sizes available later in the season. For the past three seasons, the volume of small sizes available from December through February has been much larger than in past seasons. Returns on red seedless grapefruit have also been declining during this period. The Committee has concluded that the problems associated with small red seedless grapefruit have begun to extend beyond the 11-week regulation period. The Committee believes the increased volumes of small red seedless grapefruit shipped or available to be shipped during the middle of the season is having a detrimental effect on the market. The Committee recommended increasing the weeks available for percentage of size regulation to address this problem.

The last three seasons, 1998–99, 1999–2000, 2000–01, have shown a marked increase in the volume of small-sized red seedless grapefruit available later in the season. For these three seasons, the percentage of the crop represented by small sizes in the month of February has averaged 51 percent. This compares to an average of 26 percent for the same month for the three prior seasons (1995–98). In fact, the last three seasons have averaged a greater percentage of smaller sizes across each month, October through February, than over the three previous seasons. The trend across the last six seasons has been a continuing increase in the volume of small sizes as a percentage of the overall crop. This is most dramatically evidenced by the 72 percent increase in small sizes as a percentage of the overall crop from February 1996 to February 2001.

The available volumes of small-sized red seedless grapefruit in December, January, and February for the 1998–99, 1999–2000, and 2000–01 seasons were comparable or exceeded volumes available for October, November, and December for the 1995–96, 1996–97, and 1997–98 seasons. The following chart that shows the volume of sizes 48 and smaller red seedless grapefruit available for these months as a percentage of the total crop.

SIZES 48 AND SMALLER AS A PERCENTAGE OF TOTAL CROP

	95–96	96–97	97–98		98–99	99–00	00–01
October	43	62	73	December	56	64	64
November	34	56	61	January	54	58	57
December	32	51	52	February	50	49	54

It was following the 1995–96 season that the Committee began its initial discussions regarding the need to control the volume of small-sized red seedless grapefruit entering the fresh market early in the season. Percentage of

size regulation was first used to control the volume of small sizes during the first 11 weeks of the 1997–98 season. Small sizes were problem at those volume levels for the months of October through December for the 1995–96, 1996–97, and 1997–98 seasons. Having comparable or greater volumes of small sizes available during midseason also represents a problem for the industry.

The University of Florida, Citrus Research and Education Center published an estimated cost of production per acre for the 2000–2001 season. The cost to produce Florida citrus fruit for the fresh market was estimated at $882.25 per acre for the SunRidge area, or the interior of the state, $907.72 per acre for the Gulf production area, and $974.46 per acre for the Indian River area, or the Atlantic coast region. Using an average of these estimates, it cost approximately $921 per acre to cultivate citrus for the fresh market in 2000–2001. This average represents a somewhat lower cost of production than what most growers of red seedless grapefruit experience because a major share of production is in the Indian River area.

During the past five seasons, red seedless grapefruit production has averaged around 409 boxes (1⅗ bushels) per acre. For the 2000–2001 season, the average on-tree value for red seedless grapefruit is estimated at $2.10 per box. Using these numbers, total on-tree revenue for the 2000–2001 season calculates as approximately $859 per acre. When combined with the cost of production, the average red seedless grapefruit producer in Florida had a negative return of more than $62 per acre or a $0.15 per box loss.

On-tree returns have been at below production costs for all but one of the last eight seasons. Eleven-week regulation has helped. Growers have benefited from several years of increased on-tree returns due to percentage of size regulation. While 11-week regulation has improved the situation, it has not solved all the problems.

For the first time since the 1997–98 season, grower returns have again decreased. Total on-tree returns declined from $3.36 during the 1999–2000 season to $2.10 for the 2000–01 season. On-tree returns for fresh red grapefruit also declined by 22 percent. Comparing on-tree returns for fresh sales by month, shows that for the seasons 1997–98, 1998–99, and 1999–2000, there was an average decline in returns of $.60 per box from November to February. When you combine this $.60 reduction with the average volume of 4.7 million boxes of all red seedless grapefruit moved during this period, the drop in revenue to growers is nearly $2.8 million. During a period when growers are struggling to realize returns that at least equal the cost of production, this $.60 can mean the difference between profit and loss.

A similar situation is observable with f.o.b. prices. F.o.b. prices have stabilized somewhat under 11-week regulation. However, while it has helped eliminate dramatic drops in price during the first 11 weeks, prices have continued to decrease throughout the season. In the three seasons 1998–99, 1999–2000, and 2000–01, prices of red seedless grapefruit fell from an average f.o.b. price of $7.72 per carton (⅘ bushel) in November to an average f.o.b. price of $7.02 in February. Also, as with grower returns, after two years of increased average season f.o.b. prices, this past season, 2000–01, represented a $.50 per carton decrease from the prior season.

The Committee believes the overshipment of smaller sized red seedless grapefruit during the middle of the season is contributing to poor returns and lower prices. While there is a market for small-sized red seedless grapefruit, the shipment of large quantities in a short time oversupplies the fresh market and negatively impacts the market for all sizes. Smaller sizes normally return the lowest prices, and when there is too much volume, the overabundance of lower priced fruit drives prices down for all sizes.

The purpose of this change is to provide the Florida citrus industry a tool, when needed, that helps stabilize the market and the price of red seedless grapefruit during the middle part of the season. Committee members agreed that extending the weeks available under § 905.153 for percentage of size regulation an additional 11 weeks provides a tool that will help address the problems associated with small sizes during the middle of the season. The Committee supports the additional weeks because they have successfully used the provisions of § 905.153 to address very similar problems for the first 11 weeks of the season.

For the seasons 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to $1.41 per carton during the 1996–97 season.

The Committee determined that one problem contributing to the market's condition was the excessive number of small-sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11-week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasted with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season.

To address this situation the Committee recommended weekly percentage of size regulation under § 905.153 for the first 11 weeks of the 1997–98, 1998–99, 1999–2000, 2000–01, and 2001–02 seasons. Under 11-week regulation, f.o.b. prices and on-tree returns increased and movement stabilized as compared to years with no 11-week percentage of size regulation.

Average f.o.b. prices were higher during the 11-week percentage of size regulation than for the three years prior to regulation. The average price for red seedless grapefruit in late October was $8.46 per carton for the regulated seasons compared to $7.22 for the same period for the three years before regulation. Prices have also remained at a higher level, with an average f.o.b. price of $7.29 per carton in mid-December during the years with regulation compared to $6.02 for the three prior years. The average season f.o.b. price has also been higher, averaging $7.15 per carton during years with 11-week regulation compared to $5.83 for the three prior seasons without regulation.

The on-tree returns per box for fresh red seedless grapefruit also improved during 11-week regulation, providing better returns to growers. On-tree returns increased from $2.85 in 1997–98, to $4.52 in 1998–99, to $5.52 for the 1999–2000 season.

Eleven-week percentage of size regulation also helped stabilize the volume of small sizes entering the fresh market early in the season. During the three years prior to the 11-week regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered. This compares to 31 percent for the same period during the last four years with 11-week regulation. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the 11-week regulatory period from 1995–96 to 2000–01.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the

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weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, helping raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Much of what the Committee is now seeing in the second 11 weeks of a season reminds them of the adverse conditions they were facing during the first 11 weeks for the 1994–95, 1995–96, and 1996–97 seasons. The Committee believes the problems successfully addressed by using the 11-week percentage of size regulation during the first part of the season are the same problems they are now seeing during the middle of the season. The Committee believes the overshipment of smaller sized red seedless grapefruit during the middle of the season is contributing to poor returns and lower prices. Therefore, the Committee believes expanding the period available for percentage of size regulation under § 905.153 from 11 weeks to 22 weeks will provide them with the best tool to address these problems.

In making this decision, the Committee considered expanding the regulated period to cover all thirty-three weeks of a season. However, it was decided that the addition of 11 weeks best serves the current marketing situation. A major factor in deciding to expand the regulated period by 11 weeks rather than 22 weeks is the timing of the majority of export shipments. On average, more than 45 percent of export shipments occur after the second week in February. Export markets also tend to prefer smaller grapefruit. Last season, 85 percent of shipments to the Pacific Rim, 75 percent of shipments to Canada, and 60 percent of shipments to Europe were sizes 48 and 56. Consequently, starting in February, there is a much larger demand for sizes 48 and 56 red seedless grapefruit. This effectively addresses the problem with the volume of small sizes during the last 11 weeks of the season. Therefore, the Committee believed that under these conditions, it was not necessary to be able to regulate small sizes during the last 11 weeks of a season, even though weak marketing conditions exist in some export markets.

During deliberations regarding percentage of size regulation in past seasons, the Committee considered how shipments had affected the market. Based on available statistical information, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee determined if shipments of small sizes could be maintained at or below 250,000 cartons a week, prices should stabilize and demand for larger sizes should increase.

In the last three seasons, weekly shipments of sizes 48 and 56 red seedless grapefruit exceeded 250,000 cartons an average of 5 of the 11 weeks of the second 11 weeks of the season. When the initial 11-week regulated period ends, handlers are shipping greater quantities of smaller sizes to the fresh market. In 1998–99, 1999–2000, and 2000–01, shipments of sizes 48 and 56 red seedless grapefruit during the second 11 weeks of the season exceeded shipments of small sizes for the first 11 weeks by an average of nearly one million cartons. These factors may have contributed to the marketing problems experienced by the industry.

Approximately 51 percent of red seedless grapefruit on average is shipped to fresh market channels. There is a processing outlet for grapefruit. The majority, 49 percent on average, is squeezed for juice. This outlet offers limited returns and currently is not profitable. Recent statistics from the Florida Department of Citrus show there is a 40-week inventory of processed grapefruit from last season. This will have an additional negative impact on expected returns.

For the 2000–2001 season, on-tree returns were negative for processed red seedless grapefruit. During the last five years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit.

A fair percentage of red seedless grapefruit shipped for processing tend toward the smaller sizes. When returns for processed red grapefruit are low, an additional volume of small sizes can be shifted toward the fresh market, further exacerbating problems with excessive volumes of small sizes. Current projections of on-tree prices for processed red seedless grapefruit for the 2001–02 season are low due to the large quantities of stored juice. This fact, combined with the past history for juice prices, further supports the need to have the additional 11 weeks available to control excessive volumes of small sizes during the middle of the season.

Shipments during the 11 weeks added by this regulation account for nearly 50 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the limited returns for processing, it is important that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The 11-week percentage of size regulation in place for the first part of the season has been having the desired effect on early markets the past four seasons. However, when the regulation period ends, there is an increased supply of small red seedless grapefruit shipped to the fresh market. This has had a depressing effect on price and grower returns. The Committee decided it needed to have a tool available to regulate shipments of small-sized red seedless grapefruit during the middle part of the marketing season. Therefore, the Committee voted to recommend increasing the weeks available for regulation under § 905.153 from 11 to 22 weeks to provide them with that tool.

To use these procedures, the committee would meet and recommend a base percentage of sizes 48 and 56 that could enter the fresh market in any week or weeks from the first Monday in September for the next 22 weeks. If approved by the USDA, this percentage would be applied to each handler's average week of fresh shipments to determine the amount of sizes 48 and 56 red grapefruit each handler could ship.

The second action taken by this rule establishes weekly base percentages for 6 additional weeks during the 2001–02 season. The Committee met August 29, 2001, and recommended that percentages be set at 40 percent for the first 3 weeks (December 3 through December 23) and 30 percent for the remaining eight weeks (December 24 through February 17). However, because of the current timeframe, this action establishes weekly percentages for 6 weeks of the second 11-week period at 30 percent (January 7 through February 17, 2002. This rule supplies enough small-sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This action will help stabilize the market and improve grower returns. This action is similar to those taken during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, 2000–01, and 2001–02 seasons.

For the 1998–99, 1999–2000, and 2000–01 seasons there has been a substantial increase in the volume of small sizes available later in the season. The percentage of the crop represented by small sizes in February averaged 51 percent for these three seasons, compared to a 26 percent average for the same month for the three prior seasons (1995–98). Small sizes available for shipment in December, January, and February for the 1998–99, 1999–2000, and 2000–01 seasons equal or exceed volumes available during October, November, and December for the 1995–96, 1996–97, and 1997–98 seasons.

Following the 1995–96 season the Committee began discussing the need to control the volume of small-sized red seedless grapefruit entering the fresh market. Small sizes were a problem for the months of October through December for the 1995–96, 1996–97, and 1997–98 seasons. Having equal or greater volumes available during midseason represents a comparable problem. Initial estimates by the Florida Agricultural Statistics Service show that small sizes represent a large percentage of the 2001–02 crop, accounting for over 83 percent of the fruit per September measurements.

The Committee believes excessive shipments of small-sized red seedless grapefruit during the second 11 weeks of the season is contributing to the market's poor condition. For the months of December through February shipments of small sizes exceed those shipped during September through November by nearly 91,000 cartons a week on average. There is a market for small red seedless grapefruit. However, shipping large quantities in a short period oversupplies the market for these small sizes and negatively impacts the market for all sizes. As previously stated, the midseason crop has had a greater percentage of small sizes the past few seasons, creating a glut of smaller, lower-priced fruit on the market, driving down the price for all sizes.

On-tree returns have been below production costs for seven of the last eight seasons. Growers benefited from several years of increased returns, due to the 11-week percentage of size regulations used during the first part of the seasons. However, for the first time since the 1997–98 season, on-tree returns have again decreased. On-tree returns dropped from $3.36 during the 1999–2000 season to $2.10 for the 2000–01 season. On-tree returns for fresh red grapefruit also declined by 22 percent. In addition, on-tree returns declined an average of $.60 from November to February for the seasons 1997–98, 1998–99, and 1999–2000. By combining this $.60 reduction with an average volume of 4.7 million boxes shipped during this period the loss in grower returns tops nearly $2.8 million.

In the past three seasons, 1998–99, 1999–2000, and 2000–01, prices of red seedless grapefruit fell from an average f.o.b. price of $7.72 per carton in November to an average f.o.b. price of $7.02 in February. Also, as with grower returns, after two years of increased average season f.o.b. prices, the 2000–01 season marked a $.50 per carton decrease from the prior season.

The Committee believes the overshipment of small sizes is contributing to the decreasing returns. To address similar problems with an oversupply of small sizes and decreasing returns during the first part of the season, the Committee successfully used the provisions of § 905.153, and recommended weekly regulation of small sizes during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, 2000–01, and 2001–02 seasons. Under the 11-week regulations, prices increased and movement stabilized as compared to seasons without 11-week regulation.

In making the recommendation to establish weekly percentages for the second 11 weeks, Committee members considered the success of the 11-week regulations during the early season and their experiences from past seasons. Members reviewed shipment data covering the second 11-week period for the last three seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week.

Committee members agreed that limiting the volume of small sizes available for the fresh market has been successful when used during the early part of a season. The Committee believes that the volume of small sizes will be a problem during the middle of the season, and that limiting the volume available for shipment will be beneficial.

Based on available statistical information, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes could be maintained at or below 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The last three seasons during the second 11-week period, shipments of sizes 48 and 56 red seedless grapefruit exceeded 250,000 cartons an average of 5 of the 11 weeks. During the 1998–99, 1999–2000, and 2000–01 seasons, shipments of sizes 48 and 56 red seedless grapefruit from the second 11 weeks exceeded shipments of small sizes from the first 11 weeks by an average of nearly one million cartons. This may have contributed to the problems facing the industry.

Setting the weekly percentages at 30 percent for the remaining 6 weeks provides a total available weekly allotment of approximately 244,000 cartons (30 percent of the total industry base of 813,191 cartons). Setting the weekly percentages at this level allows total shipments of small red seedless grapefruit to approach the 250,000-carton mark during the regulated period without exceeding it.

The Committee believes that the problems associated with an uncontrolled volume of small sizes entering the market in the middle of the season will continue without regulation. Therefore, this action establishes weekly percentages at 30 percent for the remaining 6 weeks (January 7 through February 17).

The Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant. The Committee recognized they could meet again in December and in the months following and use the most current information to consider adjustments in the weekly percentage rates. Any changes to the weekly percentages established by this rule would require additional rulemaking and the approval of the USDA.

The provisions governing the operation of percentage of size regulation remain the same. The Committee still cannot set restrictions tighter than 25 percent. The method for calculating base and allotment also remains the same. The only changes to § 905.153 are the number of available regulation weeks and the cut off period for overshipments.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the recommended percentage. By taking the weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee calculates an average week for each handler. To calculate an average week, the total red seedless

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grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May from the previous five seasons are added together, then divided by five to establish an average season. This average season is divided by the 33 weeks to derive the average week. This average week is the base for each handler for each of the 11 weeks of the regulatory period.

The weekly percentage is multiplied by a handler's average week. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week. Handlers can fill their allotment with sizes 48 or 56, or a combination of both sizes such that total shipments are within established limits. The Committee staff performs the specified calculations and provides them to each handler.

The average week for handlers with less than five seasons of shipments is calculated by averaging the total shipments for the seasons they did ship red seedless grapefruit during the previous five years and dividing that average by 33. New handlers have no prior shipments on which to base their average week. Therefore, a new handler can ship small sizes such that their volume of small sizes as a percent of their total shipments during their first week shipping are equal to the weekly percentage set for that week. Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

The regulatory period begins the third Monday in September, and runs for 22 weeks. Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday as the beginning of the workweek.

The rules and regulations governing percentage size regulation contain a variety of provisions designed to provide handlers with some marketing flexibility. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These provisions should allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

This rule makes one slight change to the provisions governing overshipments. During a week of percentage of size regulation, any person who has received an allotment can handle an amount of sizes 48 and 56 red seedless grapefruit equal to their weekly allotment, plus an additional overshipment amount not to exceed 10 percent of that week's allotment. The quantity of overshipments is deducted from the handler's allotment for the following week. Section 905.153 did state that overshipments were not allowed during week 11 because there were no allotments the following week from which to deduct the overshipments. This rule changes this to read that no overshipments are allowed during week 22 to reflect the longer regulated period.

The Committee can act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers' party to the loan. The Committee informs each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade or size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulation as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2000–01 season was approximately $7.20 per 4/5 bushel carton, and total fresh shipments for the 2000–01 season are estimated at 24.7 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 70 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

The overshipment of small-sized red seedless grapefruit has contributed to poor returns for growers and lower on-tree values. This rule increases the current number of regulated weeks available under weekly percentage of size regulation from 11 weeks to 22 weeks. With additional volumes of small size now available later in the season, it will be beneficial to have the additional weeks available, when necessary, to help stabilize the market and improve grower returns. This rule also institutes weekly percentages for an additional 6 weeks during 2001–02 season. Authority for this action is provided in § 905.52 of the order. This rule also uses the provisions of § 905.153. The rule is based on unanimous recommendations of the Committee at meetings on May 22, and August 29, 2001.

The first change this rule makes only provides additional weeks for percentage of size regulation. The goal of this change is to provide an additional tool, if needed, to help stabilize the price of red seedless grapefruit.

The second action establishes weekly percentages for an additional 6 weeks of the 2001–02 season. The Committee

recommended that weekly percentages be set at 40 percent for the first three weeks (December 3 through December 23) and 30 percent for the eight remaining weeks (December 24 through February 17) of the second 11-week period. However, because of the current timeframe, this action establishes weekly percentages for the remaining 6 weeks of the second 11-period regulatory period at 30 percent (January 7, 2002, through February 17, 2002).

This action is intended to supply enough small red seedless grapefruit, without saturating all markets with small sizes. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. This action will help stabilize the market and improve grower returns. This action is similar to the actions taken during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, 2000–01, and 2001–02 seasons.

During the past three seasons for the months of December through February available supplies of small sizes have been at levels previously only seen during the months of September to early December. For these three seasons, the percentage of the crop represented by small sizes in the month of February has averaged 51 percent. This compares to an average of 26 percent for the same month for the three prior seasons (1995–98). In the past three seasons, during the second 11 weeks of the season, prices of red seedless grapefruit have fallen. On-tree prices for fresh red seedless grapefruit have also declined. In many cases, prices have provided returns less than production costs. This is making it difficult for some small producers to remain in business.

The Committee believes having the ability to control the volume of small sized red seedless grapefruit has been an important tool during the first 11 weeks of the past four seasons. The Committee believes the benefits the industry derived under 11 weeks of volume regulation will continue if the period available for volume regulation is increased to 22 weeks. Recognizing the trend of having more small sizes available later in a season, the Committee believes having the ability to regulate volume during the middle of the season will be a valuable tool. The purpose of this change is not to eliminate small-sized red grapefruit. It is merely to provide a tool to prevent a surplus of small-sized red seedless grapefruit from damaging the overall grapefruit market during the middle part of the season. A tool that will help stabilize price and returns benefits both small and large producers and handlers.

The past three seasons, shipments of small sizes for December through February exceeded those shipped during September through November by nearly 91,000 cartons a week on average. For the first time since the 1997–98 season, on-tree returns have decreased. On-tree returns dropped from $3.36 during the 1999–2000 season to $2.10 for the 2000–01 season. On-tree returns for fresh red grapefruit also declined by 22 percent. In addition, on-tree returns declined an average of $.60 from November to February for the seasons 1997–98, 1998–99, and 1999–2000. By combining this $.60 reduction with an average volume of 4.7 million boxes shipped during this period the loss in grower returns tops nearly $2.8 million. The Committee attributes the decrease in returns to the volume of small sizes.

The Committee believes the volume of small sizes will continue to be a problem during the middle part of this season. Initial estimates by the Florida Agricultural Statistics Service show that small sizes represent a large percentage of the 2001–02 crop, accounting for over 83 percent of the fruit per September measurements. Therefore, the Committee recommended establishing volume regulation during the second 11 weeks of the 2001–2002 season. However, because of the current timeframe, this action establishes weekly percentages for the remaining 6 weeks of the second 11-week period.

While the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, many producers are already using the practice. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersize fruit is not harvested. These savings may result in reduced processing and packing costs. Also, regulation is only in effect for part of the season.

If a 25 percent restriction on small sizes had been applied during the second 11-week period for the three prior seasons, an average of 4.9 percent of the overall shipments during that period would have been subject to regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under percentage of size regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of overshipping their allotment by 10 percent in a week, provided any overshipments are deducted from the following week's shipments. Transfers and loans have been used very effectively during past seasons with percentage of size regulation. Therefore, the overall impact of this regulation on total shipments should not be substantial.

The Committee believes establishing volume regulation during the second 11 weeks of the season will have benefits similar to those realized under regulation of the first 11 weeks. Handlers and producers have received higher returns under the 11-week percentage of size regulations issued for the first 11 weeks of the last four seasons. In late October, during the four years with 11-week regulation, the average f.o.b. price for red seedless grapefruit was $7.99 per carton compared to $7.22 for the three years prior to regulation. F.o.b. prices also have remained higher, with an average price of $7.29 in mid-December during 11-week regulation compared to $6.02 for the three years prior to regulation. Season average prices have also been higher under 11-week regulation averaging $7.14 per carton compared to $5.83 for the prior three years. On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The on-tree price increased from $3.26 per box in 1996–97, to $3.42 for 1997–98, to $5.04 for 1998–99, to $5.62 for the 1999–2000 season.

If 11-week regulation applied at the start of a season has been successful in controlling the volume of small sizes and increasing returns, applying similar volume regulation during the second 11 weeks of the season should also be effective in addressing the problems with the overshipment of small sizes. Even if this action was only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this second 11 week period, would represent an increased return of nearly $1 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not

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expected to decrease the overall consumption of red seedless grapefruit. It is expected to benefit all red seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee discussed different alternatives to these changes. Several alternatives had to do with the number of weeks that would be available under percentage of size regulation. The alternatives considered included not increasing the number of weeks available, to increasing the regulation to include all 33 weeks of the season. Committee members agreed producers and handlers would benefit from smaller-sized fruit being controlled for a greater portion of the season. They also noted the majority of export shipments occur during the last 11 weeks of the season helping to alleviate problems with small sizes during that part of the season. Consequently, these alternatives were rejected.

Other alternatives considered had to do with the length of the holiday season and percentages set for that period. The holiday season is the weeks before Christmas when a large volume of small sizes are used for gift fruit shipments and fundraisers. One alternative was to add an additional week to those weeks considered as the holiday season, and set higher percentages for the first four weeks rather than the first three. Another alternative discussed was setting percentages higher than 40 percent for the weeks covered that were considered part of the holiday season. The Committee reviewed and discussed the suggestions and agreed that the weeks included and the percentages recommended were the best solutions based on the information available. The Committee further recognized that if marketing conditions indicated a change might be necessary the Committee could meet again later in the season and recommend that the percentages be relaxed. Therefore, these alternates also were rejected.

This action requires two new handler reports. These information collection requirements are discussed in the following section.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meetings were widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, and August 29, 2001, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS has obtained emergency approval for a new information collection request for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request was necessary because insufficient time was available to follow normal clearance procedures.

Title: Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida citrus marketing order program, which has been operating since 1939.

On May 22, and August 29, 2001, the Committee unanimously recommended revising the order's administrative rules and regulations to require handlers to report to the Committee information on small red seedless grapefruit during an additional 11-week volume regulation period. This information will be reported on two new Committee forms. *Form CAC 301A, Handler making/acquiring Loan and/or Transfer,* is used by handlers receiving base quantity loans, and by handlers receiving base quantity transfers during weeks 12 through 22 of the regulation period. *Form CAC 302A, Report of Red Grapefruit Shipments by Day and Regulation Week,* is used by handlers to inform the Committee of their daily shipments of sizes 48 and 56 red seedless grapefruit during weeks 12 through 22 of the regulation period.

The new reports are needed so the Committee can collect information on sizes 48 and 56 red seedless grapefruit during the second 11-week volume regulation period. The Committee will evaluate this information and determine whether a handler is in compliance with the regulation. These reports will ensure compliance with the volume regulation and assist the Committee and the USDA with oversight and planning.

The information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval of the new information collections under the order is as follows:

CAC 301A, Handler making/acquiring Loan and/or Transfer

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Handlers who acquire a loan or transfer for sizes 48 and 56 small red seedless grapefruit during the additional 11-week regulation period.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 11.21 hours.

CAC 302A, Report of Red Grapefruit Shipments by Day and Regulation Week

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response.

Respondents: Handlers who handle size 48 and/or 56 small red seedless grapefruit during the second 11-week regulation period.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 55.

Estimated Total Annual Burden on Respondents: 123.75 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Florida citrus marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS has obtained emergency approval from OMB for the use of the two new forms for the second 11-week volume regulation period. The forms will be added to the forms currently approved for use under OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition to the information collection burden, this rule also invites comments on the modification to the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order. This rule increases the number of weeks available under weekly percentage of size regulation from 11 weeks to 22 weeks and institutes weekly percentages for 6 additional weeks of the 2001–02 season. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place when the during the second 11-week regulatory period. Also, handlers need to know what their allotments of small sizes are to make their marketing plans. This issue has been widely discussed at various industry meetings, and the Committee has kept the industry well informed. Further, handlers are aware of this rule, which was recommended at public meetings. Also, a 15-day comment period is provided in this rule on increasing the number of weeks in the regulatory period from 11 to 22, and on the percentages established for the remaining 6 weeks of the second 11-week regulatory period. A 15-day comment period is deemed appropriate because this action should be finalized by the end of the regulatory period (February 17, 2002).

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 905.153, paragraph (a), the last sentence is revised, and in paragraph (d), the third sentence is revised to read as follows:

§ 905.153 Procedure for determining handlers' permitted quantities of red seedless grapefruit when a portion of sizes 48 and 56 of such variety is restricted.

(a) * * * The term *regulation period* means the 22-week period beginning the third Monday in September of the current season.

* * * * *

(d) * * * Overshipments will not be allowed during week 22. * * *

* * * * *

3. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3$^{9}/_{16}$ inches minimum diameter) and size 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/17/01 through 9/23/01	45
(b) 9/24/01 through 9/30/01	45
(c) 10/1/01 through 10/7/01	35
(d) 10/8/01 through 10/14/01	30
(e) 10/15/01 through 10/21/01	30
(f) 10/22/01 through 10/28/01	30
(g) 10/29/01 through 11/4/01	30
(h) 11/5/01 through 11/11/01	30
(i) 11/12/01 through 11/18/01	30
(j) 11/19/01 through 11/25/01	30
(k) 11/26/01 through 12/2/01	40
(l) 1/7/02 through 1/13/02	30
(m) 1/14/02 through 1/20/02	30
(n) 1/21/02 through 1/27/02	30
(o) 1/28/02 through 2/3/02	30
(p) 2/4/02 through 2/10/02	30
(q) 2/11/02 through 2/17/02	30

Dated: January 3, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–450 Filed 1–4–02; 10:39 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–48–AD; Amendment 39–12591; AD 2001–26–25]

RIN 2120–AA64

Airworthiness Directives; Grob-Werke Gmbh & Co KG Models G102 Club Astir III, G102 Club Astir IIIb, and G102 Standard Astir III Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Grob-Werke Gmbh & Co KG (Grob) Models G102 Club Astir III, G102 Club Astir IIIb, and G102 Standard Astir III sailplanes. This AD requires you to apply a red mark and install a placard on the airspeed indicator to restrict the Vne airspeed. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

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DATES: This AD becomes effective on January 31, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of January 31, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before February 11, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from GROB Luft- und Raumfahrt, Lettenbachstrasse 9, D86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The LBA, which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Grob Models G102 Club Astir III, G102 Club Astir IIIb, and G102 Standard Astir III sailplanes. The LBA reports two occurrences of elevator flutter on Model G102 Club Astir III sailplanes. The exact cause of this condition is unknown at this time; however, both airplanes were operating in the upper flight speed range.

What are the consequences if the condition is not corrected? Elevator flutter could cause structural damage to the sailplane. Such damage could result in loss of control of the sailplane.

Is there service information that applies to this subject? Grob has issued Service Bulletin No. MSB306–36/2, dated November 22, 2001.

The service bulletin includes procedures for:

—Applying a red mark on the airspeed indicator at 165 kilometers/hour (km/h), 89.1 knots (kts), or 102.5 miles per hour (mph) (according to the airspeed indicator calibration); and

—Installing a red placard to the airspeed indicator restricting the Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration).

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number 2001–317/2, dated November 30, 2001, in order to ensure the continued airworthiness of these sailplanes in Germany.

Was this in accordance with the bilateral airworthiness agreement? These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition (elevator flutter while operating in the upper flight speed range) referenced in this document could develop on other Grob Models G102 Club Astir III, G102 Club Astir IIIb, and G102 Standard Astir III sailplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Is there a modification I can incorporate instead of restricting the Vne airspeed? The FAA has determined that long-term continued operational safety would be better assured by design changes that correct the source of the problem rather than by restricting the Vne airspeed. With this in mind, FAA will continue to work with Grob in collecting information and in performing analysis to determine whether a future design change is feasible.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in loss of control of the sailplane, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–48–AD." We will date stamp and mail the postcard back to you.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is "within the next 10 calendar days after the effective date of this AD."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Although the elevator would only flutter during flight, this unsafe condition is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States. or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2001–28–25 Grob-Werke Gmbh & Co KG: Amendment 39–12591; Docket No. 2001–CE–48–AD

(a) *What sailplanes are affected by this AD?* This AD affects the following Models G102 Club Astir III, G102 Club Astir IIIb, and G102 Standard Astir III sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Apply a red mark on the airspeed indicator at 165 kilometers/hour (km/h), 89.1 knots (kts), or 102.5 miles per hour (mph) (according to the airspeed indicator calibration).	Within the next 10 calendar days after January 31, 2002 (the effective date of this AD).	In accordance with Grob Service Bulletin No. MSB306–36/2, dated November 22, 2001.
(2) Install a placard on the airspeed indicator at restricting the Vne airspeed as indicated in paragraph (d)(1) of this AD. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform the installation of the placard. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 10 calendar days after January 31, 2002 (the effective date of this AD).	In accordance with Grob Service Bulletin No. MSB306–36/2, dated November 22, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Grob Service Bulletin No. MSB306–36/2, dated November 22, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from GROB Luft- und Raumfahrt, Lettenbachstrasse 9, D86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 31, 2002.

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Note 2: The subject of this AD is addressed in German AD 2001–317/2, dated November 30, 2001.

Issued in Kansas City, Missouri, on December 27, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–89 Filed 1–7–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–383–AD; Amendment 39–12577; AD 2001–26–51]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2001–26–51 that was sent previously to all known U.S. owners and operators of certain Bombardier Model CL–600–2B19 series airplanes by individual notices. This AD requires deactivation of the center tank fuel transfer shutoff valves by opening circuit breakers and installing a circuit breaker lock ring and disconnecting and stowing the electrical wiring, replacing certain valves with valves having a different part number, reconnecting certain circuit breaker wires, removing lock rings, and resetting the associated circuit breakers. For certain airplanes, this AD requires an AFM revision to prohibit operation with more than 200 pounds of fuel in the center fuel tank. This AD also has a provision for operating other airplanes with the center fuel tank full and with both fuel transfer shutoff valves inoperative. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent ignition of fuel vapor in the center wing tank and consequent fire and explosion.

DATES: Effective January 14, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–26–51, issued December 14, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–383–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–383–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On December 14, 2001, the FAA issued emergency AD 2001–26–51, which is applicable to certain Bombardier Model CL–600–2B19 series airplanes. That action was prompted by the manufacturer's discovery of an unsafe condition while conducting the safety review of the fuel tank system required by Special Federal Aviation Regulation Number 88 (SFAR 88), Fuel Tank System Fault Tolerance Requirements. In addition to other requirements, SFAR 88 requires that certain type certificate and supplemental type certificate holders conduct a safety review of the airplane fuel tank system to determine that the design meets the latest fuel tank ignition prevention requirements.

The center tank fuel transfer shutoff valve is operated by a solenoid. The solenoid closes the valve and maintains it in the closed position when electrical power is applied to the solenoid. Certain valves have two solenoids. As a result of the safety review, the valve was tested with one solenoid failed. During this bench testing, the manufacturer found that a failed valve could overheat to a temperature that exceeds the fuel hot surface ignition point. This condition, if not corrected, could result in ignition of fuel vapor in the center wing tank and consequent fire and explosion.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–28–045, Revision "A," dated December 7, 2001, which describes procedures for deactivation of the center tank fuel transfer shutoff valves by opening circuit breakers and installing a circuit breaker lock ring, and disconnecting and stowing the circuit breaker electrical wire. Transport Canada Civil Aviation (TCCA) classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–47, dated December 11, 2001, in order to ensure the continued airworthiness of these airplanes in Canada.

In addition to the actions specified in the alert service bulletin, the Canadian airworthiness directive also requires replacing certain valves with valves having a different part number, reconnecting certain circuit breaker wires, removing lock rings, and resetting the associated circuit breakers. For airplanes on which a certain fuel tank vent modification has not been accomplished, the Canadian airworthiness directive also requires an airplane flight manual (AFM) revision to prohibit operation with more than 200 pounds of fuel in the center fuel tank. The Canadian airworthiness directive also has a provision for operating airplanes on which that modification has been accomplished with the center fuel tank full and with both fuel transfer shutoff valves inoperative.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to prevent ignition of fuel vapor in the center wing tank and consequent fire and explosion. The AD requires deactivation of the center tank fuel transfer shutoff valves by opening circuit breakers and installing a circuit breaker lock ring and disconnecting and stowing the electrical wiring. Those actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires replacing certain valves with valves having a different part number, reconnecting certain circuit breaker wires, removing lock rings, and resetting the associated circuit breakers. For certain airplanes, this AD requires an AFM revision to prohibit operation with more than 200 pounds of fuel in the center fuel tank. This AD also has a provision for operating other airplanes with the center fuel tank full and with both fuel transfer shutoff valves inoperative.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on December 14, 2001, to all known U.S. owners and operators of certain Bombardier Model CL–600–2B19 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–383–AD." The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–51 Bombardier, Inc. (Formerly Canadair): Amendment 39–12577. Docket 2001–NM–383–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 and subsequent, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition of fuel vapor in the center wing tank and consequent fire and explosion, accomplish the following:

Lock Ring Installation

(a) For all airplanes: Within 24 hours after the effective date of this AD, open circuit breakers identified in paragraph 2.B. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–28–045, Revision "A," dated December 7, 2001, and install a lock ring on the circuit breakers, in accordance with PART A of the Accomplishment Instructions of the alert service bulletin.

Note 2: Accomplishment of the requirements of paragraphs (a) and (c) in accordance with Bombardier Alert Service Bulletin A601R–28–045, dated December 6, 2001, prior to the effective date of this AD is acceptable for compliance with the requirements of those paragraphs.

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AFM Revision for Certain Airplanes

(b) For airplanes having serial numbers 7003 through 7109 inclusive: Concurrently with the accomplishment of the requirements of paragraph (a) of this AD, determine whether the fuel vent system has been modified in accordance with Bombardier Service Bulletin 601R–28–024, Revision "A," dated November 11, 1998.

(1) For airplanes on which the fuel vent system HAS been modified in accordance with the service bulletin: No further action is required by paragraph (b) of this AD.

(2) For airplanes on which the fuel vent system HAS NOT been modified in accordance with the service bulletin: Prior to further flight, revise the Limitations section of the Airplane Flight Manual (AFM) to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"THE AIRPLANE MUST NOT BE OPERATED WITH MORE THAN 200 POUNDS OF FUEL IN THE CENTER FUEL TANK."

Following accomplishment of the requirements of paragraph (d), the AFM revision shall be removed from the AFM. Where the provisions of this AD and the Master Minimum Equipment List (MMEL) differ, this AD prevails.

Disconnection and Stowage of Electrical Wiring

(c) For all airplanes: Within 4 days after the effective date of this AD, disconnect and stow the electrical wires from the circuit breakers opened as required by paragraph (a) of this AD, in accordance with Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–28–045, Revision "A," dated December 7, 2001.

Identification of Valve Part Number

(d) For all airplanes: Within 45 days after the effective date of this AD, determine the part number (P/N) of the fuel transfer shutoff valves installed in the center fuel tank, and accomplish the following, as applicable.

(1) If any valve has P/N 601R62256–5, remove the valve in accordance with Maintenance Manual task number 28–13–43–000–801, and replace it with a valve having P/N 601R62256–3 in accordance with Maintenance Manual task number 28–13–43–400–801; and reactivate the fuel transfer shutoff valve by accomplishing the requirements of paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For airplanes that have NOT been modified in accordance with Bombardier Service Bulletin 601R–28–022: Open the CBP–1; remove protective tubing, if applicable; release "Unstow" the wire and reconnect it to its respective breaker CB1–N9, in accordance with Wiring Manual 28–20–50; close the CBP–1; remove the "INOP" label and the lock ring from breaker CB1–N9; carry out AMM Task 28–13–43–710–801, "Operational Test of Fuel Transfer SOV"; and remove the AFM limitation required by paragraphs (b)(2) and (f) of this AD.

(ii) For airplanes that HAVE been modified in accordance with Bombardier Service Bulletin 601R–28–022: Open the CBP–1 and CBP–2; remove protective tubing, if applicable; release "Unstow" the wires and reconnect them to their respective breaker CB1–N9 or CB2–P9, in accordance with Wiring Manual 28–20–50; close the CBP–1 and CBP–2; remove the "INOP" labels and lock rings from breakers CB1–N9 and CB2–P9; carry out AMM Task 28–13–43–710–801, "Operational Test of Fuel Transfer SOV"; and remove the AFM limitation required by paragraph (f) of this AD.

(2) If all valves have P/N 601R62256–3, reactivate the fuel transfer shutoff valve by accomplishing the requirements of paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable.

(i) For airplanes that have NOT been modified in accordance with Bombardier Service Bulletin 601R–28–022: Open the CBP–1; remove protective tubing, if applicable; release "Unstow" the wire and reconnect it to its respective breaker CB1–N9, in accordance with Wiring Manual 28–20–50; close the CBP–1; remove the "INOP" label and the lock ring from breaker CB1–N9; carry out AMM Task 28–13–43–710–801, "Operational Test of Fuel Transfer SOV"; and remove the AFM limitation required by paragraphs (b)(2) and (f) of this AD.

(ii) For airplanes that HAVE been modified in accordance with Bombardier Service Bulletin 601R–28–022: Open the CBP–1 and CBP–2; remove protective tubing, if applicable; release "Unstow" the wires and reconnect them to their respective breaker CB1–N9 or CB2–P9, in accordance with Wiring Manual 28–20–50; close the CBP–1 and CBP–2; remove the "INOP" labels and lock rings from breakers CB1–N9 and CB2–P9; carry out AMM Task 28–13–43–710–801, "Operational Test of Fuel Transfer SOV"; and remove the AFM limitation required by paragraph (f) of this AD.

Dispatch of Airplane With Inoperative Valves

(e) Except as required by paragraph (b) of this AD: The airplane may be operated with the center fuel tank full and with both fuel transfer shutoff valves inoperative (applicable circuit breakers opened as specified by paragraph (a) of this AD), until accomplishment of paragraph (d) of this AD. Where the provisions of this AD and the MMEL differ, this AD prevails.

AFM Revision

(f) Concurrently with accomplishing the actions required by paragraph (a) of this AD, revise the Limitations section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"**Note:** When the applicable circuit breakers are opened, power is removed from the fuel transfer shutoff valves (SOVs). The fuel transfer SOVs remain open and will continuously allow the transfer of the fuel from the center tank to the wings. The fuel in the center tank is usable. The wing tanks will indicate FULL until the center tank is empty, and an EICAS LR X–FER SOV message will either indicate ON GROUND, or the message may disappear during climb but will remain on during the remainder of the flight."

Following accomplishment of the requirements of paragraph (d), the AFM revision shall be removed from the AFM. Where the provisions of this AD and the MMEL differ, this AD prevails.

Spares

(g) As of the effective date of this AD, no person may install a fuel transfer shutoff valve having P/N 601R62256–5 on any airplane.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) The actions required by paragraphs (a) and (c) of this AD shall be done in accordance with Bombardier Alert Service Bulletin A601R–28–045, Revision "A," dated December 7, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–47, dated December 11, 2001.

Effective Date

(k) This amendment becomes effective on January 14, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–26–51, issued December 14, 2001, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 20, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–88 Filed 1–7–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–61–AD; Amendment 39–12594; AD 2002–01–03]

RIN 2120–AA64

Airworthiness Directives; GE Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to GE Aircraft Engines (GE) CT7 series turboprop engines. This amendment requires removal of stage 2 turbine aft cooling plates of a certain part number (P/N) and installation of cooling plates of a new design. This amendment is prompted by a report of a stage 2 turbine aft cooling plate cracking, resulting in an uncontained engine failure. The actions specified by this AD are intended to prevent stage 2 turbine aft cooling plate cracking, which could result in uncontained engine failure, and damage to the airplane.

DATES: Effective date February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7146; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to GE Aircraft Engines (GE) CT7 series turboprop engines was published in the **Federal Register** on May 2, 2001 (66 FR 21898). That action proposed to require removal of stage 2 turbine aft cooling plates of a certain part number (P/N) and installation of cooling plates of a new design.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter suggests that the Economic Analysis paragraph be changed to reflect that not all cooling plates may be installed in engines, and, therefore, while there may be 564 cooling plates available worldwide, there are not 564 engines that will be affected by the AD. The FAA agrees. Not all cooling plates of the affected design are assembled into engines. GE estimates that only 288 affected cooling plates have been assembled into engines. Therefore, the Economic Analysis statement is changed to reflect that only 288 engines worldwide will be affected. The FAA's estimate for engines of the number of engines installed on airplanes of US registry, however, remains the same.

The manufacturer asks that paragraph (a) and (b) of the Compliance Section be changed by adding serial number prefix GFF to Stage 2 aft cooling plate P/N 6064T07P02. The FAA agrees, because only cooling plates with serial number prefix GFF are affected. The FAA has limited the applicabilty of this AD to just those cooling plates, P/N 6064T07P02 with serial numbers that begin with the letters "GFF." In addition, paragraphs (a) and (b) have been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 288 engines of the affected design in the worldwide fleet. The FAA estimates that 180 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required aft cooling plates would cost approximately $15,282 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,756,160. The manufacturer has stated that it may provide the new design aft cooling plate at no cost to operators, and that if the aft cooling plate is replaced at the next engine or hot section module overhaul shop visit, no additional labor costs will be incurred.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended adding a new airworthiness directive to read as follows:

2002–01–03 GE Aircraft Engines: Amendment 39–12594. Docket 2000–NE–61–AD.

Applicability: This airworthiness directive (AD) is applicable to GE Aircraft Engines (GE) CT7 Models CT7–5A2, –5A3, –7A, and –7A1 turboprop engines with part number (P/N) 6064T07P02 stage 2 aft cooling plates with serial numbers beginning with the letters GFF, installed on but not limited to Construcciones Aeronauticas, SA CN–235 series and SAAB Aircraft AB SF340 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or

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repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance is required at the next overhaul of the engine or hot section module, or within 8,000 cycles after the effective date of this AD, whichever occurs first, unless already done.

To prevent stage 2 turbine aft cooling plate cracking, which could result in uncontained engine failure, and damage to the airplane, do the following:

(a) Replace stage 2 aft cooling plates P/N 6064T07P02 with serial numbers that begin with the letters GFF with stage 2 aft cooling plate P/N 6064T07P05.

(b) After the effective date of this AD, do not install any stage 2 aft cooling plates P/N 6064T07P02 with serial numbers that begin with the letters GFF.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on February 12, 2002.

Issued in Burlington, Massachusetts, on December 31, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–302 Filed 1–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–23]

Modification of Class E Airspace; Cleveland, OH; Modification of Class E Airspace; Medina, OH; and Revocation of Class E Airspace; Elyria, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Cleveland, OH; modify Class E airspace at Medina, OH; and removes Class E airspace at Elyria, OH. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28 has been developed for Cleveland-Hopkins International Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action would increase the existing Class E airspace for Cleveland-Hopkins International Airport and at the same time simplify the extremely complicated existing Class E airspace legal description. Redefining the Class E airspace for Cleveland, OH, would then include the Class E airspace for Elyria, OH. This action would remove the existing Class E airspace for Elyria, OH. Finally, this action would modify the Class E airspace legal description for Medina, OH.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 6, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Cleveland, OH (65 FR 59765). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operations and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Cleveland and Medina, OH, and removes Class E airspace at Elyria, OH to accommodate aircraft executing instrument flight procedures into and out of Cleveland-Hopkins International Airport, Medina Municipal Airport and Elyria, OH. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Cleveland, OH [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°25′00″ N., long. 82°23′00″ W., to lat. 41°56′00″ N., long. 81°22′00″ W., to lat. 41°48′00″ N., long. 81°02′00″ W., to lat. 41°32′00″ N., long. 81°03′00″ W., to lat. 41°11′00″ N., long. 81°48′00″ W., to lat. 41°11′00″ N., long. 82°21′00″ W., thence to the point of beginning.

* * * * *

AGL OH E5 Medina, OH [Revised]

Medina Municipal Airort
(lat. 41°07′53″ N, long. 81°45′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Medina Municipal Airport, excluding that airspace within the Cleveland, OH, Class E airspace area.

* * * * *

AGL OH E5 Elyria, OH [Removed]

* * * * *

Issued in Des Plaines, Illinois on December 7, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–254 Filed 1–7–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8972]

RIN 1545–AW05

Averaging of Farm Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the election to average farm income in computing tax liability. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, as amended by the Tax and Trade Relief Extension Act of 1998, and provide guidance to individuals engaged in a farming business.

DATES: *Effective Date:* These regulations are effective January 8, 2002.

Applicability Date: These regulations apply to taxable years beginning after December 31, 2001. However, taxpayers may rely on the rules in these final regulations in computing tax liability for taxable years beginning on or before December 31, 2001.

FOR FURTHER INFORMATION CONTACT: John M. Moran, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1662. Taxpayers provide the information on Schedule J, "Farm Income Averaging," which is attached to Form 1040, "U.S. Individual Income Tax Return," for the taxable year in which income averaging is elected.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden for this requirement is reflected in the burden estimate for Schedule J. The estimated burden for the 2000 Schedule J is 2 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1301 was added to the Internal Revenue Code (the Code) by section 933(a) of the Taxpayer Relief Act of 1997 (Public Law 105–34; (111 Stat. 788, 881–82)), as amended by section 2011 of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105–277 (112 Stat. 2681, 2681–886, 2681–902)). On October 8, 1999, a notice of proposed rulemaking (REG–121063–97) containing proposed regulations under section 1301 was published in the **Federal Register** (64 FR 54836). A number of comments responding to the notice were received and a public hearing was held on February 15, 2000. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Treatment of Wages

The income averaging election is available only to individuals engaged in a farming business and only with respect to income from that business. The proposed regulations provide that farm income does not include wages but the notice of proposed rulemaking invited public comment on whether a different rule should apply to wages paid to a shareholder of an S corporation. Several comments on this issue supported a rule that would permit wages paid by an S corporation to a shareholder to qualify as income from a farming business, and the final regulations adopt this rule.

This change results in comparable treatment for S corporation shareholders, partners, and sole proprietors. A sole proprietor's Schedule F income, whether attributable to capital or labor, is treated as income from the business conducted through the proprietorship. In the case of a partnership engaged in a farming business, income earned by the partners that is attributable to the farming business is similarly treated as farm income for purposes of the income averaging rules whether the income takes the form of a distributive share or a guaranteed payment.

S corporations, like partnerships, are passthrough entities for Federal income tax purposes. In an S corporation, amounts paid to shareholders as wages would, if retained by the corporation, increase the shareholders' income qualifying for the income averaging election. There is no indication in the legislative history of section 1301 that Congress intended disparate treatment of S corporation shareholders depending on whether amounts are paid to the shareholders as wages or allocated to shareholders as a pro rata share of the corporation's income. Accordingly, the final regulations provide consistent treatment for shareholders in S corporations and partners in partnerships. Thus, a shareholder's income that is attributable to the S corporation's farming business qualifies as farm income for purposes of the income averaging rules whether paid to the shareholder as wages or allocated to the shareholder as a pro rata share.

In contrast, a C corporation is not a passthrough entity for Federal income tax purposes. Accordingly, the final regulations do not treat any amounts

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paid by a C corporation to its shareholder-employees as farm income.

Treatment of Rental Income

The proposed regulations contain no provision for treating rental income as income from a farming business. This is consistent with the general principle that lessors of farmland are not ordinarily treated as engaged in a farming business with respect to the leased land. Commentators were divided over whether rental income based on a tenant's production (*e.g.*, a crop share) should be treated as income from a farming business for purposes of section 1301. The final regulations provide that income from such arrangements is treated, subject to an anti-abuse rule, as income from a farming business. This rule is consistent with the policy underlying section 1301 of limiting the adverse effects of a progressive rate structure on farmers whose income varies significantly from year to year in response to fluctuations in the farm economy. A landlord's income from a crop-share lease or similar arrangement is affected by fluctuations in the farm economy to the same extent as that of any other farmer. Moreover, regulations under other Code sections provide precedent for the rule in the final regulations. For example, a similar rule in the regulations under section 175 (relating to the deduction for certain soil and water conservation expenditures) treats a landlord who receives rent (either cash or in kind) based on farm production as engaged in the business of farming.

Under the final regulations, a landlord's crop share income reported on Form 4835, "Farm Rental Income and Expenses," Schedule F, "Profit or Loss From Farming," or Part II of Schedule E, "Supplemental Income or Loss," is eligible for income averaging if the landlord's share of a tenant's production is set in a written rental agreement before the tenant begins significant activities on the land. If a landlord receives a fixed rent or a share of a tenant's production that is set after the tenant begins significant activities, the landlord is not considered to be engaged in a farming business with respect to the leased land, and the rental income is not eligible for income averaging, even if the landlord materially participates in the tenant's farming business.

Treatment of Income From Partnerships

A commentator asked whether income attributable to a farming business carried on by a partnership is farm income without regard to the size of a partner's interest in the partnership or the activities of the partner. The commentator also asked how the farm income of a partnership may be allocated. Farm income is allocated under the partnership rules in Subchapter K of the Code, and these regulations do not modify those rules. The final regulations, like the proposed regulations, permit income attributable to a farming business carried on by a partnership to be averaged without regard to the partner's level of participation in the partnership or size of ownership interest.

Effect of Adjustments

A commentator requested that the final regulations expressly require an amended return if there is a change to a base year return as a result of either an IRS or taxpayer initiated adjustment. The IRS and Treasury do not believe that a special rule in the final regulations is necessary to address this point, as the situation is not unique to section 1301. If the election year tax liability is changed as a result of an adjustment to a base year, then, as with any correction, an amended return should be made for the election year if the statute of limitations is open.

Making, Changing, or Revoking an Election

Under the proposed regulations an individual may not make a late election, change an election, or revoke an election unless there has been an adjustment to taxable income or tax liability or the Commissioner has consented. One comment suggested that these limitations on a taxpayer's ability to make, change, or revoke an election should be eliminated. This suggestion has been adopted. Under the final regulations, a taxpayer may make a late election, change an election, or revoke an election subject only to the generally applicable rules on the period of limitations on filing a claim for credit or refund.

Negative Taxable Income

A number of commentators criticized the computational rules contained in Schedule J, Farm Income Averaging, for 1999 and earlier years. These rules prohibited the use of a negative amount for a base year's taxable income. The commentators suggested that taxpayers should be permitted to use a negative amount if appropriate adjustments are made for amounts, such as net operating losses, that may provide a tax benefit in another taxable year.

The final regulations adopt this suggestion. Thus, a base year's taxable income may be negative but amounts, such as a net operating loss or certain capital losses, that may be deducted in one or more other taxable years in the form of a carryover or carryback must be added back in computing negative taxable income. The Schedule J for years after 1999 includes worksheets and instructions for determining negative taxable income for purposes of the income averaging computation.

Calculation of Section 1 Tax

The proposed regulations provide that the tax is computed by reducing the election year taxable income by the applicable amount and increasing taxable income for the base years by one-third of that amount. One commentator suggested that taxable income for the election year should be computed by excluding the elected amount from the taxpayer's gross income. This would reduce adjusted gross income, which in turn might reduce the effect of limitations and phase-outs based on adjusted gross income. The statutory language unambiguously provides, however, that any election-year decrease (or base-year increase) must be made to taxable income. Moreover, consistent application of the rule suggested in the comment would require recomputation of adjusted gross income and all related limitations and phase-outs in base years. This would substantially increase the complexity of the income averaging computation. Accordingly, the final regulations do not adopt this suggestion.

Farm Income

A commentator suggested that the final regulations list specific items of income and deductions to clarify which items are attributable to a farming business under section 1301. The regulations are not a suitable format for providing the comprehensive guidance requested because of the difficulty in identifying the myriad items of income and expense that may be attributable to a farming business and because, in each case, a determination based on specific facts and circumstances is necessary. Taxpayers are encouraged to raise questions they may have concerning any specific types of income so that guidance can be given by revenue ruling, instructions, or other appropriate means.

The proposed regulations treat gain from the sale or other disposition of property (other than land) as attributable to a farming business if, taking into account all the facts and circumstances, the property was regularly used in the farming business for a substantial period of time. A commentator asked that the final regulations provide more specific guidance on what constitutes a substantial period of time. The final regulations provide that property that has always been used solely in the farming business by the individual is deemed to meet both the regularly used and substantial period tests. For property not used solely in the farming business, what constitutes regular use or a substantial period of time is likely to vary significantly, depending upon the facts of the taxpayer's business. Accordingly, the final regulations retain the facts-and-circumstances test for such property.

The proposed regulations establish a presumption that sales or dispositions of property used in a farming business are attributable to that business if they occur within one year of its cessation. One comment expressed concern that this presumption may be construed as establishing a contrary presumption for sales or dispositions occurring after that one-year period. The comment suggested extending the period to two years, arguing that it is not uncommon for sales or dispositions of farm property to continue for more than one year after the cessation of the farming business, particularly in economically depressed areas.

The final regulations do not adopt this suggestion. The regulatory presumption is, however, only a safe harbor for sales or dispositions of property occurring within the one-year period; no contrary presumption is stated or implied for sales or dispositions occurring after that period. Rather, the determination of whether those sales or dispositions are attributable to a farming business appropriately depends upon all the facts and circumstances.

One commentator proposed an example to illustrate that elected farm income may not exceed taxable income, using a gross farm income amount reduced by farming deductions and the standard deduction. The regulations illustrate, as simply as possible, that elected farm income cannot exceed taxable income. These computations are illustrated in greater detail in Pub. 225, "Farmer's Tax Guide," which provides a sample tax return including a Schedule J.

Similarly, one commentator requested examples demonstrating calculations involving capital gains. Although no such examples are provided in the final regulations, Pub. 225 does provide an example, and the IRS will consider including other examples in future guidance.

Married Taxpayers

Several comments were received regarding the application of the rules to married taxpayers. Two commentators asked how farm income reported on a joint return is associated with the proper spouse in a noncommunity property state. Two other commentators asked about the application of community property laws.

The final regulations do not provide specific guidance on these issues. As a general matter, however, an individual's filing status does not affect determinations regarding whether the individual is engaged in a farming business or the amount of profit or loss from that business reported on the individual's Schedule F, Profit or Loss From Farming, or Schedule K–1, Partner's (Shareholder's) Share of Income, Credits, Deductions, etc. Thus, if only one spouse engages in farming in the election year, only that spouse may have elected farm income, and if both spouses engage in farming, each spouse may have elected farm income from the business in which that spouse is engaged. Similarly, as a general matter, community property laws determine income and property ownership for Federal income tax purposes. Although the Code may provide otherwise in specific instances, there are no such exceptions in either section 1301 or the final regulations.

Alternative Minimum Tax

One commentator requested that the final regulations provide an example showing that the alternative minimum tax limits the benefits of an income averaging election. Although the final regulations do not provide an example of the application of the alternative minimum tax, they continue to note that the income averaging election does not apply for purposes of determining the alternative minimum tax in the election year or any base year, except to the extent the election is taken into account in determining the regular tax offset to the tentative minimum tax. There is no exception in the Code provisions relating to the alternative minimum tax that would permit the minimum tax to be computed without regard to the effect of farm income averaging on the regular tax.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information imposed by these regulations is not significant as reflected in the estimated burden of information collection for Schedule J, which is 2 hours per respondent. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the IRS submitted the notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is John M. Moran of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1301–1 also issued under 26 U.S.C. 1301(c). * * *

Par. 2. An undesignated center heading and § 1.1301–1 are added immediately following the center heading "Readjustment of Tax Between Years and Special Limitations" to read as follows:

Income Averaging

§ 1.1301–1 Averaging of farm income.

(a) *Overview.* An individual engaged in a farming business may elect to compute current year (election year) income tax liability under section 1 by averaging, over the prior three-year period (base years), all or a portion of

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the individual's current year electible farm income as defined in paragraph (e) of this section. To average farm income, the individual—

(1) Designates all or a portion of his or her electible farm income for the election year as elected farm income; and

(2) Determines the election year section 1 tax by determining the sum of—

(i) The section 1 tax that would be imposed for the election year if taxable income for the year were reduced by elected farm income; plus

(ii) For each base year, the amount by which the section 1 tax would be increased if taxable income for the year were increased by one-third of elected farm income.

(b) *Individual engaged in a farming business*—(1) *In general. Farming business* has the same meaning as provided in section 263A(e)(4) and the regulations thereunder. An individual engaged in a farming business includes a sole proprietor of a farming business, a partner in a partnership engaged in a farming business, and a shareholder of an S corporation engaged in a farming business. Services performed as an employee are disregarded in determining whether an individual is engaged in a farming business for purposes of section 1301. An individual is not required to have been engaged in a farming business in any of the base years in order to make a farm income averaging election.

(2) *Certain landlords.* A landlord is engaged in a farming business for purposes of section 1301 with respect to rental income that is based on a share of production from a tenant's farming business and, with respect to amounts received on or after January 1, 2003, is determined under a written agreement entered into before the tenant begins significant activities on the land. A landlord is not engaged in a farming business for purposes of section 1301 with respect to either fixed rent or, with respect to amounts received on or after January 1, 2003, rental income based on a share of a tenant's production determined under an unwritten agreement or a written agreement entered into after the tenant begins significant activities on the land. Whether the landlord materially participates in the tenant's farming business is irrelevant for purposes of section 1301.

(c) *Making, changing, or revoking an election*—(1) *In general.* A farm income averaging election is made by filing Schedule J, "Farm Income Averaging," with an individual's Federal income tax return for the election year (including a late or amended return if the period of limitations on filing a claim for credit or refund has not expired).

(2) *Changing or revoking an election.* An individual may change the amount of the elected farm income in a previous election or revoke a previous election if the period of limitations on filing a claim for credit or refund has not expired for the election year.

(d) *Guidelines for calculation of section 1 tax*—(1) *Actual taxable income not affected.* Under paragraph (a)(2) of this section, a determination of the section 1 tax for the election year involves a computation of the section 1 tax that would be imposed if taxable income for the election year were reduced by elected farm income and taxable income for each of the base years were increased by one-third of elected farm income. The reduction and increases required for purposes of this computation do not affect the actual taxable income for either the election year or the base years. Thus, for each of those years, the actual taxable income is taxable income determined without regard to any hypothetical reduction or increase required for purposes of the computation under paragraph (a)(2) of this section. The following illustrates this principle:

(i) Any reduction or increase in taxable income required for purposes of the computation under paragraph (a)(2) of this section is disregarded in determining the taxable year in which a net operating loss carryover or net capital loss carryover is applied.

(ii) The net section 1231 gain or loss and the character of any section 1231 items for the election year is determined without regard to any reduction in taxable income required for purposes of the computation under paragraph (a)(2) of this section.

(iii) The section 68 overall limitation on itemized deductions for the election year is determined without regard to any reduction in taxable income required for purposes of the computation under paragraph (a)(2) of this section. Similarly, the section 68 limitation for a base year is not recomputed to take into account any allocation of elected farm income to the base year for such purposes.

(iv) If a base year had a partially used capital loss, the remaining capital loss may not be applied to reduce the elected farm income allocated to the year for purposes of the computation under paragraph (a)(2) of this section.

(v) If a base year had a partially used credit, the remaining credit may not be applied to reduce the section 1 tax attributable to the elected farm income allocated to the year for purposes of the computation under paragraph (a)(2) of this section.

(2) *Computation in base years*—(i) *In general.* As provided in paragraph (a)(2)(ii) of this section, the election year section 1 tax includes the amounts by which the section 1 tax for each base year would be increased if taxable income for the year were increased by one-third of elected farm income. For this purpose, all allowable deductions (including the full amount of any net operating loss carryover) are taken into account in determining the taxable income for the base year even if the deductions exceed gross income and the result is negative. If the result is negative, however, any amount that may provide a benefit in another taxable year is added back in determining base year taxable income. Amounts that may provide a benefit in another year include—

(A) The net operating loss (as defined in section 172(c)) for the base year;

(B) The net operating loss for any other year to the extent carried forward from the base year under section 172(b)(2); and

(C) The capital loss deduction allowed for the base year under section 1211(b)(1) or (2) to the extent such deduction does not reduce the capital loss carryover from the base year because it exceeds adjusted taxable income (as defined in section 1212(b)(2)(B)).

(ii) *Example.* The rules of this paragraph (d)(2) are illustrated by the following example:

Example. In 2001, F and F's spouse on their joint return elect to average $24,000 of income attributable to a farming business. One-third of the elected farm income, $8,000, is added to the 1999 base year income. In 1999, F and F's spouse reported adjusted gross income of $7,300 and claimed a standard deduction of $7,200 and a deduction for personal exemptions of $8,250. Therefore, their 1999 base year taxable income is −$8,150 [$7,300 − ($7,200+$8,250)]. After adding the elected farm income to the negative taxable income, their 1999 base year taxable income would be zero [$8,000+(−$8,150)=−$150]. If F and F's spouse elected to income average in 2002, and made the adjustments described in paragraph (d)(3) of this section to account for the 2001 election, their 1999 base year taxable income for the 2002 election would be −$150.

(3) *Effect on subsequent elections*—(i) *In general.* The reduction and increases in taxable income assumed in computing the election year section 1 tax (within the meaning of paragraph (a)(2) of this section) for an election year are treated as having actually occurred for purposes of computing the election year section 1 tax for any subsequent

election year. Thus, if a base year for a farm income averaging election is also an election year for another farm income averaging election, the increase in the section 1 tax for that base year is determined after reducing taxable income by the elected farm income from the earlier election year. Similarly, if a base year for a farm income averaging election is also a base year for another farm income averaging election, the increase in the section 1 tax for that base year is determined after increasing taxable income by elected farm income allocated to the year from the earlier election year.

(ii) *Example.* The rules of this paragraph (d)(3) are illustrated by the following example:

Example. (i) In each of years 1998, 1999, and 2000, T had taxable income of $20,000. In 2001, T had taxable income of $30,000 (prior to any farm income averaging election) and electible farm income of $10,000. T makes a farm income averaging election with respect to $9,000 of his electible farm income for 2001. Thus, for purposes of the computation under paragraph (a)(2) of this section, $3,000 of elected farm income is allocated to each of years 1998, 1999, and 2000. T's 2001 tax liability is the sum of—

(A) The section 1 tax on $21,000 (2001 taxable income minus elected farm income); plus

(B) For each of years 1998, 1999, and 2000, the section 1 tax on $23,000 minus the section 1 tax on $20,000 (the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to such year).

(ii) In 2002, T has taxable income of $50,000 and electible farm income of $12,000. T makes a farm income averaging election with respect to all $12,000 of his electible farm income for 2002. Thus, for purposes of the computation under paragraph (a)(2) of this section, $4,000 of elected farm income is allocated to each of years 1990, 2000, and 2001. T's 2002 tax liability is the sum of—

(A) The section 1 tax on $38,000 (2002 taxable income minus elected farm income); plus

(B) For each of years 1999 and 2000, the section 1 tax on $27,000 minus the section 1 tax on $23,000 (the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to such years after increasing taxable income for such years by the elected income allocated to such years from the 2001 election year); plus

(C) For year 2001, the section 1 tax on $25,000 minus the section 1 tax on $21,000 (the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to such year after reducing taxable income for such year by the 2001 elected farm income).

(e) *Electible farm income*—(1) *Identification of items attributable to a farming business*—(i) *In general.* Farm income includes items of income, deduction, gain, and loss attributable to the individual's farming business. Farm losses include a net operating loss carryover or carryback, or a net capital loss carryover, to an election year that is attributable to a farming business. Income, gain, or loss from the sale of development rights, grazing rights, and other similar rights is not treated as attributable to a farming business. In general, farm income does not include compensation received by an employee. However, a shareholder of an S corporation engaged in a farming business may treat compensation received from the corporation that is attributable to the farming business as farm income.

(ii) *Gain or loss on sale or other disposition of property*—(A) *In general.* Gain or loss from the sale or other disposition of property that was regularly used in the individual's farming business for a substantial period of time is treated as attributable to a farming business. For this purpose, the term *property* does not include land, but does include structures affixed to land. Property that has always been used solely in the farming business by the individual is deemed to meet both the regularly used and substantial period tests. Whether property not used solely in the farming business was regularly used in the farming business for a substantial period of time depends on all of the facts and circumstances.

(B) *Cessation of a farming business.* If gain or loss described in paragraph (e)(1)(ii)(A) of this section is realized after cessation of a farming business, such gain or loss is treated as attributable to a farming business only if the property is sold within a reasonable time after cessation of the farming business. A sale or other disposition within one year of cessation of the farming business is presumed to be within a reasonable time. Whether a sale or other disposition that occurs more than one year after cessation of the farming business is within a reasonable time depends on all of the facts and circumstances.

(2) *Determination of amount that may be elected farm income*—(i) *Electible farm income.* The maximum amount of income that an individual may elect to average (electible farm income) is the sum of any farm income and gains minus any farm deductions or losses (including loss carryovers and carrybacks) that are allowed as a deduction in computing the individual's taxable income. However, electible farm income may not exceed taxable income. In addition, electible farm income from net capital gain attributable to a farming business cannot exceed total net capital gain. Subject to these limitations, an individual who has both ordinary and net capital gain farm income may elect to average any combination of such ordinary and net capital gain farm income.

(ii) *Examples.* The rules of paragraph (e)(2)(i) of this section are illustrated by the following examples:

Example 1. A has farm gross receipts of $200,000 and farm ordinary deductions of $50,000. A's taxable income is $150,000 ($200,000 − $50,000). A's electible farm income is $150,000, all of which is ordinary income.

Example 2. B has ordinary farm income of $200,000 and ordinary nonfarm losses of $50,000. B's taxable income is $150,000 ($200,000 − $50,000). B's electible farm income is $150,000, all of which is ordinary income.

Example 3. C has a farm capital gain of $50,000 and a nonfarm capital loss of $40,000. C also has ordinary farm income of $60,000. C has taxable income of $70,000 ($50,000 − $40,000+$60,000). C's electible farm income is $70,000. C can elect to average up to $10,000 of farm capital gain and up to $60,000 of farm ordinary income.

Example 4. D has a nonfarm capital gain of $40,000 and a farm capital loss of $30,000. D also has ordinary farm income of $100,000. D has taxable income of $110,000 ($40,000 − $30,000+$100,000). D's electible farm income is $70,000 ($100,000 ordinary farm income minus $30,000 farm capital loss), all of which is ordinary income.

Example 5. E has a nonfarm capital gain of $20,000 and a farm capital loss of $30,000. E also has ordinary farm income of $100,000. E has taxable income of $97,000 ($20,000 − $23,000 ($30,000 loss limited by section 1211(b))+$100,000). E has a farm capital loss carryover of $7,000 ($30,000 − $23,000 allowed as a deduction). E's electible farm income is $77,000 ($100,000 ordinary farm income minus $23,000 farm capital loss), all of which is ordinary income.

(f) *Miscellaneous rules*—(1) *Short taxable year*—(i) *In general.* If a base year or an election year is a short taxable year, the rules of section 443 and the regulations thereunder apply for purposes of calculating the section 1 tax.

(ii) *Base year is a short taxable year.* If a base year is a short taxable year, elected farm income is allocated to such year for purposes of paragraph (a)(2) of this section after the taxable income for such year has been annualized.

(iii) *Election year is a short taxable year.* In applying paragraph (a)(2) of this section for purposes of determining tax computed on the annual basis (within the meaning of section 443(b)(1)) for an election year that is a short taxable year—

(A) The taxable income and the electible farm income for the year are annualized; and

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(B) The taxpayer may designate all or any part of the annualized electible farm income as elected farm income.

(2) *Changes in filing status.* An individual is not prohibited from making a farm income averaging election solely because the individual's filing status is not the same in an election year and the base years. For example, an individual who files married filing jointly in the election year, but filed as single in one or more of the base years, may still elect to average farm income using the single filing status used in the base year.

(3) *Employment tax.* A farm income averaging election has no effect in determining the amount of wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (Federal income tax withholding), or the amount of net earnings from self-employment for purposes of the Self-Employment Contributions Act (SECA).

(4) *Alternative minimum tax.* A farm income averaging election does not apply in determining the section 55 alternative minimum tax for any base year or the section 55(b) tentative minimum tax for the election year or any base year. The election does, however, apply in determining the regular tax under sections 53(c) and 55(c) for the election year.

(5) *Unearned income of minor child.* In an election year, if a minor child's investment income is taxable under section 1(g) and a parent makes a farm income averaging election, the tax rate used for purposes of applying section 1(g) is the rate determined after application of the election. In a base year, however, the tax on a minor child's investment income is not affected by a farm income averaging election.

(g) *Effective date.* The rules of this section apply to taxable years beginning after December 31, 2001, except with respect to the written agreement requirement of paragraph (b)(2) of this section.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1301–1	1545–1662
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 12, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–183 Filed 1–7–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–a; FRL–7123–2]

Approval and Promulgation of State Implementation Plans; Inspection and Maintenance Program and Fuel Requirements: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves two revisions to the carbon monoxide (CO) Alaska State Implementation Plan (SIP) in the Alaska Administrative Code (AAC). These two revisions to the SIP were submitted on February 24, 2000 and February 2, 2001. EPA is also granting final approval of Alaska's revised Inspection and Maintenance (I/M) Program SIP credit claim to 100% of credit applied to centralized I/M programs under Section 348 of the National Highway System Designation Act. This claim was resubmitted on November 7, 2001.

DATES: This direct final rule is effective on March 11, 2002 without further notice, unless EPA receives adverse comment by February 7, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Mr. Wayne Elson, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittals and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Elson, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

A. What SIP amendments is EPA approving?
B. What are I/M programs?
C. What are the changes that have been made to Alaska's I/M program that EPA is approving?
D. What is the new "sticker program"?
E. What changes are being made to oxygenated fuel requirements?
F. What is I/M program credit?
G. What is the basis for EPA's final approval of Alaska's I/M program credit claim of 100%?
H. How do these approvals effect on-going air quality planning in Alaska?

A. What SIP Amendments Is EPA Approving?

The following table outlines the submittals EPA received and is approving in this action:

Date of submittal to EPA	Items revised
2–24–2000	—Alaska State Air Quality Control Plan: Volume II, Sections II, III.A., III.B., and III.C. —Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52. —Alaska Inspection and Maintenance Program Manual Amendments 18 AAC 50.
2–2–2001	—Alaska State Air Quality Control Plan: Volume II, Sections II, III.A., III.B., and III.C. 18 AAC 50. —Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52. —Fuel Requirements for Motor Vehicles, and Air Quality Control Plan 18 AAC 53.

Date of submittal to EPA	Items revised
11–7–2001	—Alaska ECOS/STAPPA/EPA I/M Credit Evaluation Data resubmittal under the National Highway System Designation Act.

The SIP revisions cover amendments to I/M requirements for Motor Vehicles (18 AAC 52), the State Air Quality Control Plan (18 AAC 50), and Fuel Requirements for Motor Vehicles (18 AAC 53). The most salient aspects of these rule changes include: requiring new I/M equipment specifications and amending the Alaska I/M Program Manual; delaying the start date for On-Board Diagnostic (OBD II) I/M test requirements; making vehicle stickers mandatory; removing the "fast fail" option and begin to require that all inspections be full and complete; and streamlining and updating several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. This final approval of Alaska's I/M program credit claim to 100% removes the interim status of EPA's interim approvals of October 10, 1996 (61 FR 53163) and May 19, 1997 (62 FR 27199) for 85% of credit applied to centralized I/M programs.

B. What Are I/M Programs?

In local areas I/M programs are designed to reduce motor vehicle emissions by requiring that vehicles periodically pass a tailpipe emissions test or, depending on the model year, a check of the OBD II system. Vehicles emissions are reduced when vehicles are repaired in order to pass these tests.

C. What Are the Changes That Have Been Made To Alaska's I/M Program That EPA Is Approving?

The changes being made update the I/M regulations and program manual to include new equipment specifications scheduled for early in the year 2000. These are called the "Alaska 2000 Emissions Inspection System". The new specifications are necessary to replace any obsolete hardware and software with up-to-date versions; to avoid possible Y2K malfunctions; and to incorporate federal requirements for OBD II I/M emissions testing on new vehicles. Other changes include: implementing a vehicle sticker requirement to help visually identify vehicles in compliance with the program; removing of the "fast fail" option and requiring that all inspections be full and complete; increasing the state's flexibility in establishing motorist response time when they are issued a violation; expanding equipment manufacturer enforcement and certification criteria; and expanding the definition of "motorist" to include any operator of a motor vehicle within a nonattainment area. Also the start date for OBD II I/M test requirements will be delayed from January, 1, 2001 to July 1, 2001. The Air Quality Control Plan will be updated for equipment references, make "plain English" clarifications, remove redundancies, and update program information.

D. What Is the New "Sticker Program"?

EPA first approved the use of a sticker program in Alaska for the I/M program in a previous SIP revision (64 FR 72940, December 29, 1999). The new provision requires that the highly visible "sticker" program be implemented. This is to help visually identify vehicles in compliance with the I/M program.

E. What Changes Are Being Made To Oxygenated Fuel Requirements?

Gasoline fuel distributors, also referred to as Control Area Responsible parties (CAR), pay fees to ADEC to operate the oxygenated fuel program. These fees are being reduced to better match the costs of implementing the requirements of the oxygenated fuels program. This will reduce the initial costs by the CAR and reduce the unused fees refunded by ADEC at the end of the year.

F. What Is I/M Program Credit?

The National Highway System Designation Act of 1995 allowed states implementing a decentralized I/M programs, such as Alaska, to submit a SIP amendment that would allow more emissions credit than allowed under the automatic discount of 50% programmed in EPA's mobile emissions model (currently MOBILE5).

G. What Is the Basis for EPA's Final Approval of Alaska's I/M Credit Claim of 100%?

EPA is approving the I/M program credit claim of 100% under Section 348 of the National Highway System Designation Act of 1995 and Section 110 of the Clean Air Act. EPA proposed interim approvals on October 10, 1996 (61 FR 53163) and May 19, 1997 (62 FR 27199) for 85% of credit applied to centralized I/M programs. No comments were received by EPA on these interim approvals. The state subsequently submitted a qualitative program evaluation to document the credit claim on November 18, 1998. However, the state recognized that this credit request was probably conservative and that, based on new information and program changes, the Anchorage and Fairbanks I/M programs could justifiably request 100% credit. The state resubmitted the qualitative program on November 7, 2001, claiming 100% of centralized I/M program credit. This was done with the provision that Anchorage or Fairbanks I/M programs could select a lower level of credit (such as 85%). This would be viewed as taking a more conservative approach in air quality planning rather than a less stringent I/M program.

The qualitative program evaluation which was already submitted (Alaska ECOS/STAPPA/EPA I/M Program Evaluation Data Submittal, November 1998) demonstrates that Alaska's decentralized I/M program is similar to that of Oregon's centralized I/M program. Other improvements in Alaska's I/M program between 1995 and 2001 help reinforce this claim. Among these improvements include new test equipment; test procedures and quality control/quality assurance procedures that increase test accuracy and reduce fraud.

H. How Do These Approvals Effect On-Going Air Quality Planning in Alaska?

The Municipality of Anchorage and Fairbanks North Star Borough are currently preparing and submitting SIP revisions to demonstrate attainment of the national ambient air quality standard for carbon monoxide. The I/M program is an important and integral part of the ongoing local control measures for both communities. EPA's approval of these submittals, which include improvements and updates to the I/M programs in each community will support and strengthen these programs.

I. Summary of Action

The SIP revisions include amendments to I/M requirements for Motor Vehicles (18 AAC 52), the State Air Quality Control Plan (18 AAC 50), and Fuel Requirements for Motor Vehicles (18 AAC 53). EPA approves streamlining and updating of several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. This action also promulgates final approval of Alaska's I/M program credit claim to 100% and removes the interim status of EPA's interim approvals of October 10, 1996

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(61 FR 53163) and May 19, 1997 (62 FR 27199) for 85% of credit applied to centralized I/M programs.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 11, 2002 without further notice unless the Agency receives adverse comments by February 7, 2002.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 11, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. Section 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements.

Dated: December 12, 2001.

L. John Iani,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (31) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(31) The Environmental Protection Agency (EPA) approves various amendments to the Alaska State Air Quality Control Plan which are contained in two separate submittals to EPA, dated February 24, 2000 and February 2, 2001, and which include the inspection and maintenance and fuels program.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50. Effective December 30, 2000: Section 030.

(B) Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52.

(*1*) Effective January 1, 2000: Sections 005; 015; 020; 025; 035; 037; 055; 060; 065; 070; 085; 100; 105; 410; 415; 420; 440; 500; 510; 515; 520; 525; 527; 530; 535; and 540.

(*2*) Effective December 30, 2000: Sections 050 and 990.

(C) Fuel Requirements for Motor Vehicles 18 AAC 53. Effective December 30, 2000: Section 080.

[FR Doc. 02–218 Filed 1–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[VA001–1000; FRL–7126–8]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; State of Virginia; Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation.

SUMMARY: EPA is taking direct final action to approve the Virginia Department of Environmental Quality's (VADEQ's) request for delegation of authority to implement and enforce Virginia's hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors, portland cement manufacturing, and secondary aluminum smelting which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations (CFR). This approval will automatically delegate future amendments to these regulations once VADEQ incorporates those amendments into its regulations. In addition, EPA is taking direct final action to approve of VADEQ's mechanism for receiving delegation of future hazardous air pollutant regulations. This mechanism entails VADEQ's incorporation by reference of the Federal standards, unchanged, into its hazardous air pollutant regulations and VADEQ's notification to EPA of such incorporations. EPA is not waiving its notification and reporting requirements under this approval; therefore, sources will need to send notifications and reports to both VADEQ and EPA. This action pertains only to affected sources, as defined by the Clean Air Act's (CAA's or the Act's) hazardous air pollutant program, which are not located at major sources, as defined by the CAA's operating permit program. The VADEQ's request for delegation of authority to implement and enforce its hazardous air pollutant regulations at affected sources which are located at major sources, as defined by the CAA's operating permit program, was initially approved on April 20, 1998. EPA is taking this action in accordance with the CAA.

DATES: This direct final rule will be effective March 11, 2002 unless EPA receives adverse or critical comments by February 7, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and Dennis H. Treacy, Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street (3AP11), Philadelphia, PA 19103–2029, *mcnally.dianne@epa.gov* (telephone 215–814–3297). Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Act and Title 40 Code of Federal Regulations (40 CFR) part 63, subpart E authorize EPA to approve of State rules and programs to be implemented and enforced in place of certain CAA requirements, including the National Emission Standards for Hazardous Air Pollutants (NESHAPs) set forth at 40 CFR part 63. EPA promulgated the program approval regulations on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810). An approvable State program must contain, among other criteria, the following elements:

(a) a demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as the NESHAP requirements;

(b) a schedule demonstrating expeditious implementation of the regulation; and

(c) a plan that assures expeditious compliance by all sources subject to the regulation.

On April 20, 1998, the VADEQ received delegation of authority to implement all emission standards promulgated in 40 CFR part 63, as they apply to major sources, as defined by 40 CFR part 70. On May 25, 2001, VADEQ submitted to EPA a request to receive delegation of authority to implement and enforce the hazardous air pollutant regulations for the remaining affected sources defined in 40 CFR part 63. At the present time, this request includes the regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors, portland cement manufacturing, and secondary aluminum smelting which have been adopted, by reference, from the Federal requirements set forth in 40 CFR part 63, subparts M, N, O, T, X, EEE, LLL and RRR, respectively. The VADEQ also requested that EPA automatically delegate future amendments to these regulations and approve VADEQ's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts, unchanged, from the Federal requirements. This mechanism entails VADEQ's incorporation, by reference, of the Federal standard, unchanged, into its regulation for hazardous air pollutant sources found at 9 VAC 5–60–100, and notification to EPA of each such incorporation.

II. EPA's Analysis of VADEQ's Submittal

Based on VADEQ's program approval request and its pertinent laws and regulations, EPA has determined that such an approval is appropriate in that VADEQ has satisfied the criteria of 40 CFR 63.91. In accordance with 40 CFR 63.91(d)(3)(i), VADEQ submitted a written finding by the Commonwealth's Attorney General which demonstrates that the State has the necessary legal authority to implement and enforce its regulations, including the enforcement authorities which meet 40 CFR 70.11, the authority to request information from regulated sources and the authority to inspect sources and records to determine compliance status. In accordance with 40 CFR 63.91(d)(3)(ii),

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VADEQ submitted copies of its statutes, regulations and requirements that grant authority to VADEQ to implement and enforce the regulations. In accordance with 40 CFR 63.91(d)(3)(iii)–(v), VADEQ submitted documentation of adequate resources and a schedule and plan to assure expeditious implementation by the Commonwealth and compliance by all sources. Therefore, the VADEQ program has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of sources subject to the requirements of 40 CFR part 63, subparts M, N, O, T, X, EEE,[1] LLL and RRR, as well as any future emission standards, should VADEQ seek delegation for these standards. The VADEQ adopts the emission standards promulgated in 40 CFR part 63 into its regulation for hazardous air pollutant sources at 9 VAC 5–60–100. The VADEQ has the primary authority and responsibility to carry out all elements of these programs for all sources covered in Virginia, including on-site inspections, record keeping reviews, and enforcement.

III. Terms of Program Approval and Delegation of Authority

In order for VADEQ to receive automatic delegation of future amendments to the perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors,[2] portland cement manufacturing, and secondary aluminum smelting regulations, as they apply to facilities that are not located at major sources, as defined by 40 CFR part 70, each amendment must be legally adopted by the State of Virginia. As stated earlier, these amendments are adopted into VADEQ's regulation for hazardous air pollutant sources at 9 VAC 5–60–100. The delegation of amendments to these rules will be finalized on the effective date of the legal adoption. The VADEQ will notify EPA of its adoption of the Federal regulation amendments.

EPA has also determined that VADEQ's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements, as they apply to facilities that are not located at major sources, as defined by 40 CFR part 70, can be approved. This mechanism requires VADEQ to legally adopt the Federal regulation into its regulation for hazardous air pollutant sources at 9 VAC 5–60–100. The delegation will be finalized on the effective date of the legal adoption. The VADEQ will notify EPA of its adoption of the Federal regulation. The official notice of delegation of additional emission standards will be published in the **Federal Register**. As noted earlier, VADEQ's program to implement and enforce all emission standards promulgated under 40 CFR part 63, as they apply to major sources, as defined by 40 CFR part 70, was previously approved on April 20, 1998.

The notification and reporting provisions in 40 CFR part 63 requiring the owners or operators of affected sources to make submissions to the Administrator shall be met by sending such submissions to VADEQ and EPA Region III.

If at any time there is a conflict between a VADEQ regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of VADEQ. EPA is responsible for determining stringency between conflicting regulations. If VADEQ does not have the authority to enforce the more stringent Federal regulation, it shall notify EPA Region III in writing as soon as possible, so that this portion of the delegation may be revoked.

If EPA determines that VADEQ's procedure for enforcing or implementing the 40 CFR part 63 requirements is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR 63.96(b).

Certain provisions of 40 CFR part 63 allow only the Administrator of EPA to take further standard setting actions. In addition to the specific authorities retained by the Administrator in 40 CFR 63.90(d) and the "Delegation of Authorities" section for specific standards, EPA Region III is retaining the following authorities, in accordance with 40 CFR 63.91(g)(2)(ii):

(1) approval of alternative non-opacity emission standards, *e.g.*, 40 CFR 63.6(g) and applicable sections of relevant standards;

(2) approval of alternative opacity standards, *e.g.*, 40 CFR 63.9(h)(9) and applicable sections of relevant standards;

(3) approval of major alternatives to test methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(4) approval of major alternatives to monitoring, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.8(f) and applicable sections of relevant standards; and

(5) approval of major alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.10(f) and applicable sections of relevant standards.

The following provisions are included in this delegation, in accordance with 40 CFR 63.91(g)(1)(i), and can only be exercised on a case-by-case basis. When any of these authorities are exercised, VADEQ must notify EPA Region III in writing:

(1) applicability determinations for sources during the title V permitting process and as sought by an owner/operator of an affected source through a formal, written request, *e.g.*, 40 CFR 63.1 and applicable sections of relevant standards;[3]

(2) responsibility for determining compliance with operation and maintenance requirements, *e.g.*, 40 CFR 63.6(e) and applicable sections of relevant standards;

(3) responsibility for determining compliance with non-opacity standards, *e.g.*, 40 CFR 63.6(f) and applicable sections of relevant standards;

(4) responsibility for determining compliance with opacity and visible emission standards, *e.g.*, 40 CFR 63.6(h) and applicable sections of relevant standards;

(5) approval of site-specific test plans,[4] *e.g.*, 40 CFR 63.7(c)(2)(i) and (d) and applicable sections of relevant standards;

(6) approval of minor alternatives to test methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.7(e)(2)(i) and

[1] Delegation of the National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors (40 CFR part 63, subpart EEE) could be affected by the July 24, 2001 ruling by the United States Court of Appeals for the District of Columbia Circuit which vacated the rule.

[2] See Footnote 1.

[3] Applicabililty determinations are considered to be nationally significant when they:
(i) are unusually complex or controversial;
(ii) have bearing on more than one state or are multi–Regional;
(iii) appear to create a conflict with previous policy or determinations;
(iv) are a legal issue which has not been previously considered; or
(v) raise new policy questions and shall be forwarded to EPA Region III prior to finalization.
Detailed information on the applicability determination process may be found in EPA document 305–B–99–004 *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring*, dated February 1999. The VADEQ may also refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance.

[4] The VADEQ will notify EPA of these approvals on a quarterly basis by submitting a copy of the test plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

applicable sections of relevant standards;

(7) approval of intermediate alternatives to test methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(8) approval of shorter sampling times/volumes when necessitated by process variables and other factors, *e.g.*, 40 CFR 63.7(e)(2)(iii) and applicable sections of relevant standards;

(9) waiver of performance testing, *e.g.*, 40 CFR 63.7 (e)(2)(iv), (h)(2), and (h)(3) and applicable sections of relevant standards;

(10) approval of site-specific performance evaluation (monitoring) plans,[5] *e.g.*, 40 CFR 63.8(c)(1) and (e)(1) and applicable sections of relevant standards;

(11) approval of minor alternatives to monitoring methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.8(f) and applicable sections of relevant standards;

(12) approval of intermediate alternatives to monitoring methods, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.8(f) and applicable sections of relevant standards;

(13) approval of adjustments to time periods for submitting reports, e.g., 40 CFR 63.9 and 63.10 and applicable sections of relevant standards; and

(14) approval of minor alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), *e.g.*, 40 CFR 63.10(f) and applicable sections of relevant standards.

As required, VADEQ and EPA Region III will provide the necessary written, verbal and/or electronic notification to ensure that each agency is fully informed regarding the interpretation of applicable regulations in 40 CFR part 63. In instances where there is a conflict between a VADEQ interpretation and a Federal interpretation of applicable regulations in 40 CFR part 63, the Federal interpretation must be applied if it is more stringent than that of VADEQ. Written, verbal and/or electronic notification will also be used to ensure that each agency is informed of the compliance status of affected sources in Virginia. The VADEQ will comply with all of the requirements of 40 CFR 63.91(g)(1)(ii).

Quarterly reports will be submitted to EPA by VADEQ to identify sources determined to be applicable during that quarter.

[5] The VADEQ will notify EPA of these approvals on a quarterly basis by submitting a copy of the performance evaluation plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

Although VADEQ has primary authority and responsibility to implement and enforce the hazardous air pollutant general provisions and hazardous air pollutant emission standards for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors,[6] portland cement manufacturing, and secondary aluminum smelting, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

IV. Final Action

EPA is approving VADEQ's request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning secondary lead smelting, hazardous waste combustors,[7] portland cement manufacturing, and secondary aluminum smelting which have been adopted by reference from 40 CFR part 63, subparts M, N, O, T, X, EEE, LLL, and RRR, respectively. This approval will automatically delegate future amendments to these regulations. In addition, EPA is approving of VADEQ's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails legal adoption by the Commonwealth of Virginia of the amendments or rules into its regulation for hazardous air pollutant sources at 9 VAC 5–60–100 and notification-to EPA of such adoption. This action pertains only to affected sources, as defined by 40 CFR part 63, which are not located at major sources, as defined by 40 CFR part 70. The delegation of authority shall be administered in accordance with the terms outlined in this document. This delegation of authority is codified in 40 CFR 63.99. In addition, VADEQ's delegation of authority to implement and enforce 40 CFR part 63 emission standards at major sources, as defined by 40 CFR part 70, approved by EPA Region III on April 20, 1998, is codified in 40 CFR 63.99.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial rule and anticipates no adverse comment because VADEQ's request for delegation of the hazardous air pollutant regulations pertaining to perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors,[8] portland cement manufacturing, and secondary aluminum smelting and its request for automatic delegation of future amendments to these rules and future standards, when specifically identified, does not alter the stringency of these regulations and is in accordance with all program approval regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve of VADEQ's request for delegation if adverse comments are filed. This rule will be effective on March 11, 2002 without further notice unless EPA receives adverse comment by February 7, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule

[6] See Footnote 1.

[7] See Footnote 1.

[8] See Footnote 1.

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will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing requests for rule approval under CAA section 112, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove requests for rule approval under CAA section 112 for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for rule approval under CAA section 112, to use VCS in place of a request for rule approval under CAA section 112 that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the approval of VADEQ's request for delegation of authority for the hazardous air pollutant emission standards for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilizers, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors, portland cement manufacturing, and secondary aluminum smelting (CAA section 112), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Dated: December 26, 2001.

Judith M. Katz,

Director, Air Protection Division, Region III.

40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(46) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(46) Virginia.

(i) Virginia is delegated the authority to implement and enforce all existing and future unchanged 40 CFR part 63 standards at major sources, as defined in 40 CFR part 70, in accordance with the delegation agreement between EPA Region III and the Virginia Department of Environmental Quality, dated April 20, 1998, and any mutually acceptable amendments to that agreement.

(ii) Virginia is delegated the authority to implement and enforce all existing 40 CFR part 63 standards and all future unchanged 40 CFR part 63 standards, if delegation is sought by the Virginia Department of Environmental Quality and approved by EPA Region III, at affected sources which are not located at major sources, as defined in 40 CFR part 70, in accordance with the final rule, dated January 8, 2002, effective March 11, 2002, and any mutually acceptable amendments to the terms described in the direct final rule.

[FR Doc. 02–407 Filed 1–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 01–235 and 96–197; DA 01–2918]

RIN 4207

Cross-Ownership of Broadcast Stations and Newspapers

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of reply comment.

SUMMARY: This document extends the pleading cycle in an ongoing regulatory proceeding. The Commission takes this action at the request of a participant in the proceeding, and to ensure that the public has sufficient time to prepare comprehensive filings to help the Commission resolve the complex and significant public policy issues raised in the proceeding.

DATES: Reply comments are due February 15, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, Mass Media Bureau, Policy and Rules Division, (202) 418–2130 or *ebash@fcc.gov*.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the *Order* in MM Docket No. 01–235; DA 01–2918, adopted December, 14, 2001, and released December 14, 2001. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

2. On December 12, 2001, the AFL–CIO, Center for Digital Democracy, Civil Rights Forum on Communications Policy, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, Media Alliance, National Organization for Women, and Office of Communication of United Church of Christ (hereafter, "petitioners") filed a "Request for Extension of Time to File Reply Comments" in this proceeding. The current deadline to file reply comments is January 7, 2002; petitioners request the Commission to extend the deadline until February 15, 2002. Among other things, petitioners cite the volume and complexity of the record in this proceeding, and the pendency of various other proceedings in which they intend to participate, as reasons for their request. The petitioners claim that granting their requested extension will not prejudice this proceeding, and suggest that denying it could disadvantage them in particular.

3. On December 14, 2001, the Newspaper Association of America (hereafter, "NAA") filed an "Opposition to Request for Extension of Time." NAA contends that review of the newspaper/broadcast cross-ownership rule is long overdue, and that the petitioners' requested extension is excessive and will unnecessarily delay this proceeding.

4. While we appreciate NAA's concerns, we believe that the public interest would be best served by granting petitioners' request. To date, nearly 1500 commenters have filed in this proceeding. Some of these comments are extensive, with detailed factual allegations, legal arguments, policy proposals, and supporting studies. NAA has not explained how or why a delay of approximately one month would harm its members. Given these circumstances, we believe that additional time would assist petitioners and other members of the public alike in preparing comprehensive responses, which in turn will help the Commission in its decision-making and resolving the complex and significant public policy issues raised in this proceeding.

5. Accordingly, the petitioners' Request for Extension of Time to File Reply Comments is *granted*.

6. The reply comment deadline in this proceeding is *extended* to February 15, 2002.

Federal Communications Commission.

William, F. Caton,

Deputy Secretary.

[FR Doc. 02–372 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2909; MM Docket No. 98–188, RM–9346, RM–9656, RM–9657

Radio Broadcasting Services; Paonia and Olathe, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 63 FR 57637 (October 28, 1998), this document compared mutually exclusive proposals for Channel 293C at Olathe, Colorado, and Channel 293C1 at Paonia, Colorado, under the FM Allotment Priorities and allotted Channel 293C at Olathe because this would result in a first local service. The reference coordinates for Channel 293C at Olathe are 38–37–03 NL and 107–58–33 WL.

DATES: Effective January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Rhodes, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 98–188, adopted November 28, 2001, and released December 14, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Olathe, Channel 293C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–375 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2987; MM Docket No. 00–53; RM–9823, RM–9950]

Radio Broadcasting Services; Detroit Lakes, and Barnesville, MN, and Enderlin, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of T&J Broadcasting, Inc. this document reallots Channel 236C1 from Detroit Lakes, Minnesota, to Barnesville, Minnesota, and modifies the Station KRVI license to specify Barnesville as the community of license. This document also dismisses a Counterproposal filed by Enderlin Broadcasting Company for a Channel 233C1 allotment at Enderlin, North Dakota. *See* 65 FR 17618, published April 4, 2000. The reference coordinates for Channel 236C1 allotment at Barnesville, North Dakota, are 46–49–10 and 96–45–56.

DATES: Effective February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report*

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and Order in MM Docket No. 00–53, adopted December 19, 2000, and released December 21, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail: *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 236C1 at Detroit Lakes and adding Barnesville, Channel 236C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–374 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2968; MM Docket No. 01–110; RM–9927, RM–10336]

Radio Broadcasting Services; Newberry and Simpsonville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Georgia-Carolina Radiocasting Company, LLC, reallots Channel 292C3 from Newberry to Simpsonville, South Carolina, and modifies Station WGVC(FM)'s construction permit accordingly (RM–10336). We also dismiss petitioner's original proposal to downgrade Channel 292C3 to Channel 292A at Newberry, reallot Channel 292A to Simpsonville, and modify Station WGVC(FM)'s construction permit accordingly (RM–9927). *See* 66 FR 29747, June 1, 2001. Channel 292C3 can be reallotted to Simpsonville in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.8 kilometers (9.8 miles) southeast at petitioner's requested site. The coordinates for Channel 292C3 at Simpsonville are 34–39–04 North Latitude and 82–07–12 West Longitude.

DATES: Effective February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–110, adopted December 12, 2002, and released December 21, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Simpsonville, Channel 292C3; and by removing Newberry, Channel 292C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–373 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2908; MM Docket No. 99–233; RM–9662 & RM–9826]

Radio Broadcasting Services; Bridgeport, Bonham, Graham, Palestine, Price, Ranger, Stephenville, TX and Ardmore, Lawton, Tecumseh, Fort Towson, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration, withdrawal.

SUMMARY: This document dismisses a Petition for Reconsideration filed by North Texas Radio Group, L.P. ("North Texas") in this proceeding. *See* 66 FR 12920, March 1, 2001. In response to the Notice of Proposed Rule Making in this proceeding, North Texas filed a counterproposal requesting the substitution of Channel 252C for Channel 252A at Bridgeport, TX and modification of the license for Station KBOC accordingly. To accommodate the upgrade at Bridgeport, North Texas requested changes at Bonham, Graham, Palestine, Price, Ranger & Stephenville, TX and Ardmore, Lawton, Tecumseh & Fort Towson, OK. Stowell, Texas. On December 3, 2001, North Texas withdrew its Petition for Reconsideration in compliance with Section 1.420(j) of the Commission's Rules. As requested, we shall dismiss the Petition for Reconsideration. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 99–233, adopted December 5, 2001, and released December 14, 2001. The full text of this Commission decision is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–371 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–01–8663; Amdt. 195–75]

RIN 2137–AD56

Pipeline Safety: Hazardous Liquid Pipeline Accident Reporting Revisions

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule makes changes to the reporting requirements for hazardous liquid pipeline accidents. The rule lowers the current release reporting threshold of 50 barrels to a new threshold of 5 gallons, and makes changes to the accident report form. The changes are necessary because the existing reporting threshold and report form do not yield sufficient information for effective safety analysis. This final rule also changes the "bodily harm" criteria for accident reporting to conform to the gas pipeline reporting requirements. This change is necessary to harmonize reporting by hazardous liquid and gas pipeline operators.

DATES: This rule is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Little by phone at (202) 366–4569, by e-mail at *roger.little@rspa.dot.gov*, or by mail at the U.S. Department of Transportation (DOT), Research and Special Programs Administration (RSPA), Office of Pipeline Safety (OPS), Room 7128, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The mission of RSPA's OPS is to ensure the safe, reliable, and environmentally sound operation of the nation's approximately 154 thousand miles of hazardous liquid pipelines. OPS shares responsibility for inspecting and overseeing the nation's pipelines with State pipeline safety offices. Both Federal and State regulators depend on accident reports submitted by pipeline companies to manage inspection programs and to identify trends in hazardous liquid pipeline safety. In recent years, Congress, the National Transportation Safety Board (NTSB) and DOT's Office of the Inspector General (OIG) have urged OPS to improve the quality of accident data required to be submitted by hazardous liquid pipeline operators.

Release Threshold

RSPA published a Notice of Proposed Rulemaking (NPRM) on March 20, 2001 (66 FR 15681). The NPRM proposed changing the hazardous liquid accident reporting requirement from a threshold release of 50 barrels to 5 gallons; and adding to the report form (RSPA F7000–1), more specific questions on accident location, causes, and consequences.

The NPRM also proposed that a spill under 5 barrels meeting all of the following criteria, need not be reported to RSPA:

(1) The other circumstances enumerated in § 195.50 did not apply to the spill;

(2) The spill did not result in water pollution;

(3) The spill was attributable to a pipeline maintenance activity;

(4) The spill was confined to company property or pipeline right-of-way; and

(5) The spill was cleaned up promptly.

After consideration of all comments, this final rule amends the pipeline safety regulations to lower the reporting threshold for hazardous liquid pipeline releases from 50 barrels to 5 gallons, with an exception for spills under 5 barrels resulting from pipeline maintenance activities. This rule makes corresponding changes to the hazardous liquid accident report form to make it more useful for safety analysis.

The old report form consisted of two pages. The new report form consists of four pages. Completion of the first page only, is required for small releases (between 5 gallons and under 5 barrels) that are not reportable under the other § 195.50 criteria, nor result in water pollution (water pollution is as described in § 195.52(a)(4)). Completion of all four pages will be required for releases of: 5 barrels or more that are reportable under the other criteria in 49 CFR 195.50; or 5 gallons or more that result in water pollution.

Change in "Bodily Harm" Criteria for Accident Reporting

In another NPRM (Docket No. RSPA–99–6106; 65 FR 15290; March 22, 2000), RSPA proposed changing the "bodily harm" criteria in 49 CFR 195.50(e). RSPA proposed changing the language in 49 CFR 195.50(e) to require reporting only if an injury associated with a hazardous liquid pipeline accident requires hospitalization of the injured person.

The current language at § 195.50(e) which triggers a reporting requirement reads as follows:

Bodily harm to any person resulting in one or more of the following:

(1) Loss of consciousness.

(2) Necessity to carry the person from the scene.

(3) Necessity for medical treatment.

(4) Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.

These criteria require reporting of even the most minor injury. The lack of a definition of medical treatment in the regulations means, if a bandage is applied at the scene the accident is reportable, even if it does not meet any of the other reportability criteria.

The comparable language in the gas pipeline safety rules requires gas operators to report releases of gas that involve a "personal injury necessitating in-patient hospitalization." (49 CFR 191.3, 191.5, 191.9, and 191.15). As explained in the NPRM, this wording better describes the information that RSPA is seeking. Accordingly, RSPA proposed to update the hazardous liquid pipeline accident reporting requirements at § 195.50(e) to eliminate the discrepancy between the accident reporting criteria for gas and hazardous liquid pipelines.

This final rule removes the language currently in § 195.50(e) and replaces it with "a personal injury necessitating in-patient hospitalization."

Comments

Comments on Proposed Change in "Bodily Harm" Criteria

On May 3, 2000, the proposed changes in the injury criteria for reportability of hazardous liquid pipeline accidents were discussed at a joint meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee and the Technical Pipeline Safety Standards Committee. These statutorily mandated committees, which are made up of representatives from the government, industry, and the general public, review pipeline safety regulations. Some committee members expressed concern that the change would weaken the reporting requirements for hazardous liquid pipeline accidents. The concern was that some accidents that are reportable under the current language, would no longer be reportable under the proposed language.

We noted the proposed change would not cause any otherwise reportable hazardous liquid pipeline accident to

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become non-reportable. For example, under the proposed change, the 1994 San Jacinto River accident in Harris County, Texas, would still need to be reported based on product loss and property damage criteria. We also noted, most accidents causing serious injury are also reportable under one of the other criteria. The "bodily harm" category was included as a reporting criterion in the unlikely event that an accident resulting in such injury would not fall into one of the other reporting criteria. Additionally, we noted that the reporting language in Part 192, which embodies our original intent relative to the injury criteria for reportability of pipeline accidents, was adopted before the "bodily harm" language in part 195.

In response to the NPRM in Docket No. RSPA–99–6106, RSPA received comments from the American Petroleum Institute (API) and the Cascade Columbia Alliance.

API supported the proposed accident reporting criteria change in § 195.50 to make the injury criteria consistent with that used for natural gas pipelines. It noted that the clarification makes reporting of accidents consistent across gas and hazardous liquid pipelines, and "grew out of discussions among RSPA, the pipeline industry, and State regulators." In contrast, the Cascade Columbia Alliance asserted that the proposed injury language weakened reporting requirements for hazardous liquid pipelines and would "encourage pipeline operators to avoid hospitalization for their workers so as to avoid filing an accident report."

RSPA's intention for the change is to ensure that reporting of accidents is consistent for both gas and hazardous liquid pipelines. The regulation is not aimed at tracking worker injuries.

Comments on Lower Reporting Threshold

RSPA received comments from eleven sources in response to the NPRM in this docket (66 FR 15681; March 20, 2001). Virtually all commenters were supportive of the need for improved information about hazardous liquid pipeline accidents. The American Society of Safety Engineers supported the data improvement initiative and believed the benefits of the improved information would outweigh the small increased costs. The American Petroleum Institute (API) and the Association of Oil Pipe Lines (AOPL), trade associations that represent many companies involved in all aspects of the oil and gas industry, filed joint comments prepared in coordination with both API and AOPL's members.

Several commenters suggested that the $50,000 property damage threshold for an accident report was redundant and should be eliminated in light of the lowering of the volumetric release threshold for reporting from 50 barrels to 5 gallons. For the same reason, one commenter suggested that the $50,000 property damage threshold for telephonic notice of a release of hazardous material be eliminated.

The NPRM did not propose any change in the property damage threshold for filing accident report Form F7000–1. Although many "over-$50,000-property-damage" accidents may also be reportable under the 5 gallon threshold criterion, retaining the "over-$50,000-property-damage" criterion will continue to provide more complete data, than if eliminated. Changes to the telephonic reporting requirement are beyond the scope of the NPRM.

Several commenters believed we underestimated the time and cost of reporting the expanded information required by the revisions to Form F7000–1.

In response, we point the commenters to the analysis of costs in the "Paperwork Reduction Act" section of this Final Rule for more information on the basis of our estimates.

A group of students from Miami International University submitted four recommendations—

"(1) Given the twofold environmental effect of hazardous liquid or carbon dioxide spills to not only the immediate ground but also the atmosphere (air), and therefore, consequences realistic on any property, the reporting requirement should be lowered from 5 barrels to 10 gallons (38 liters) for spills on any property whether from accident or maintenance.

(2) Aggregate spills of hazardous liquid or carbon dioxide of a minimum of 10 gallons (38 liters) will pose sufficient damage to warrant immediate clean-up, and therefore, it should be mandated.

(3) Lowering the reporting requirement for spills from 5 barrels to 5 gallons (19 liters) only when it is not readily cleaned up on any property.

(4) Tools for Reporting Accidents (§ 195.50): Since technology has evolved and continues to do so, accident reporting should be done in an efficient, cost-effective, time-constrained manner in tune with the technology available to us today. Furthermore, electronic accident reporting is effective and productive for meaningful incident information. The DOT, Office of Public [sic] Safety, should establish a web site where different accident report-hazardous liquid pipeline forms could be electronically filled out in case of an accident. Some of the benefits of electronic filing are: (i) instant information available, (ii) immediate dangers readily visible, and, (iii) reduced cost to companies. * * *"

In addition, API and Colonial Pipeline Company suggested that access to information both by RSPA, the public, and pipeline operators can be significantly improved by providing for electronic reporting of accidents. They urged us to move expeditiously to provide operators with the ability to file accident reports electronically.

We believe the bulk of hazardous liquid releases remain liquid at ambient temperatures, and therefore have little impact on the atmosphere. The exception is highly volatile liquid spills, which are gaseous at ambient temperatures. We have chosen to exclude from the reporting requirement hazardous liquid releases under 5 barrels that result from maintenance operations. Our information is that such spills occur regularly upon the opening of pipelines for insertion of spheres, smart pigs, or for routine inspections. The spills are usually caught in a berm or other containment device; are cleaned up immediately; and have little or no impact on the environment. We believe information on such releases would not be helpful in accident trending analysis. Maintenance spills must be promptly cleaned up to avoid the reporting requirement. Any non-maintenance spill of 5 gallons or more must be reported.

With regard to electronic reporting, we agree that electronic reporting is efficient and economical. Electronic reporting for hazardous liquid pipeline accidents will be available via the OPS Internet homepage at *http://ops.dot.gov* beginning January 1, 2002.

API and AOPL suggested reorganizing the sections in the accident report to simplify it. API suggested that [the] first page of [the] accident reporting form should be reorganized to clearly differentiate the information that must be provided for all spills from that which is required for those spills greater than 5 barrels." API also suggested that latitude and longitude should be collected for all spills, not just those greater than 5 barrels as proposed in the NPRM. API suggested that the causal categories for small accidents should "use identical language to that for large spills (i.e., 'Excavation' should be 'Excavation damage or other outside force', 'Material and Welds' should be 'Material and/or weld failures,' 'Operation should be 'Incorrect Operation.' This will allow the longer

form to provide insight for defining causes consistently across both types of releases." In addition, API suggested that instead of collecting spill quantity in two separate places on the form, that spill size be collected on page one for all spills.

We agreed with these comments and reorganized and changed the form as suggested.

API further noted that "The instructions for the accident reporting form change the definition of 'injury' for the purpose of accident reporting. The regulations must also be changed in § 195.50 (reporting accidents) and § 195.52 (telephonic notification). The changes in the definition for 'injury' under the instructions will make hazardous liquid pipeline reporting requirements comparable to those for natural gas pipelines. These changes must be implemented in the regulations themselves under § 195.50 and § 195.52. The changes cannot be implemented through the reporting form or instructions alone."

We agree with the suggested change to § 195.50(e) and adopted it. However, Section 195.52 was not the subject of the NPRM, and a change to that section would be beyond the scope of this rulemaking.

API suggested that categories for property damage should be modified to more accurately define the categories that are applicable and that make sense to pipeline operators. "For accuracy, this section of the reporting form should be titled 'Compensated losses.' Losses that accrue to the operator should be separated from losses that accrue to affected individuals or the public. Property damage or loss is really a misnomer. Although losses do occur, on this reporting form we are really accounting for damages for which an operator has provided reimbursement to the community, the public, or affected individuals. It is actually a measure of those losses that can in some way be reimbursed or losses that accrue to the operating company itself. API recommends that this portion of the accident form be redrafted as follows:

Compensated Losses (Estimated)

* Public/Community Losses:
—Estimated Public/private property damage reimbursed by operator. $
—Cost of emergency response undertaken by or reimbursed by operator. $
—Cost of longer term environmental remediation undertaken by or reimbursed by operator. $
—Other ..... $

Operator losses:
—Value of product lost .... $
—Value of operator property damage. $
—Other ..... $"

We adopted the API suggestions with some changes.

API also suggested that:

"Form Part F (environmental impacts), item 6 should be changed from 'wildlife mortality' to 'wildlife impact.' Mortality is too high a threshold for measuring the impact of accidents on wildlife. As an example, any bird that is oiled during an accident and survives is clearly impacted. We believe that a reasonable person would judge such oiling as an impact and expect that the industry be held to such a reasonable standard."

We agree and changed the form accordingly.

Colonial Pipeline Company (Colonial) recommended that additional information be added to Part G (Leak Detection Information) of the proposed accident form. Specifically, Colonial recommended that line items be added for "estimated leak rate" and "estimated percentage of flow." Colonial believes this would provide valuable information to RSPA and the regulated community.

We may consider obtaining this additional information through a separate rulemaking.

Gregg Zimmerman, Administrator, Planning/Building/Public Works Department, with City of Renton, Washington, suggested that a "requirement for immediate notification of the local public safety/emergency management agencies is critical. These are the first line responders, and our experience shows us that often they are not contacted in the event of a leak for hours or even days. However, this requirement clearly should be part of the federal law, or at least the agency rules."

We determined this recommendation to be beyond the scope of this rulemaking.

Enron Transportation Services (ETS) commented that "[t]he availability of more detailed pipeline accident information is of value not only to OPS for regulatory purposes, but is also highly valued by the pipeline industry in identifying potential risks to pipeline safety and integrity. Most pipeline operators utilize this accident information to immediately evaluate their systems for the potential of similar risk factors and take steps to mitigate those factors on a timely basis whenever possible. ETS therefore strongly agrees that improving the method of accident data collection provides a benefit to the industry in being able to more reliably identify the cause of these accidents. Reducing the reporting limits to those proposed may indeed be counterproductive, however, in that the database will be flooded with information relating to minor pipeline problems as opposed to obtaining better information about potentially serious pipeline safety related issues. One of the reasons that the cost level limit for reportable accidents was raised in 1984 was to eliminate the reporting of non-significant pipeline accidents, and this proposed rulemaking will completely reverse that intent."

We noted that the cost threshold for reporting accidents was raised in 1994 from $5,000.00 to $50,000.00 to achieve parity between reporting of hazardous liquid and natural gas pipeline accidents, not "to eliminate reporting of non-significant pipeline accidents." Regarding "flooding the database with information relating to minor problems," we believe the only way to determine that small spills are "minor problems" is to collect information on such spills.

ETS commented that "the decision process for the determination of any pipeline remedial action should be the responsibility of the pipeline operator based upon that operator's assessment of the known risks and economic issues that only the operator must bear. Without first hand knowledge of all of the numerous factors that must be considered in making the repair versus replacement decision, this pipeline safety data may lead to hasty decisions that are not in the overall best interests of public safety. One of the consequences may be outside pressure to apply significant financial resources to a pipeline facility that presents a much lower risk to public safety than another less publicly visible facility."

We recognize that it is industry's responsibility to determine when rehabilitation and replacement of any pipeline facility may be needed. We believe that better overall accident information will provide industry with a useful tool to help make better decisions about rehabilitation and replacement.

ETS noted that "[t]he reduction in the spill reporting limit is noted in this section as being included in proposed bills now before Congress." ETS estimates that the low reporting limit is going to have a major impact on both the pipeline operators and DOT. Therefore, it believes the reporting limit should be established by Congress.

Based on outreach with the hazardous liquid pipeline industry and comments by that industry to the NPRM, we do not believe that a reduced spill reporting limit will have a major impact on pipeline operators because the additional burden to the pipeline

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industry to provide the data does not require significant effort. The additional data will improve the information available upon which to make safety decisions. Based on action thus far in Congress, we have no reason to believe that Congress would object to this final rule.

ETS also commented that "* * * flooding the DOT accident database with numerous minor leaks or spills will ultimately bias the accident cause data and thereby mask the causes of more serious pipeline accidents that need to be addressed by DOT and the industry. This reporting requirement is also redundant in that data concerning leaks impacting bodies of water are already being documented under the applicable environmental regulations."

We believe the accident database will not be flooded with minor releases because the proposed changes eliminate the need for reporting releases that occur during normal maintenance activities as described in the NPRM. We are focused on obtaining sufficient information about small releases to adequately categorize the risks posed by such accidents. At the same time we will obtain more precise information on spills of 5 or more barrels—information that is needed to further address safety issues. Although information on spills is being reported to environmental agencies under other regulations, we need to obtain this information to properly manage our pipeline safety responsibilities.

Tosco Corporation (Tosco) participated in an industry effort to accumulate information about releases that are now less than the current 50 barrel or more criteria. Tosco noted that "information has been collected by a majority of the liquid industry on releases down to 5 gallons for the past few years. We believe it is critical information that can be used in the future for risk and integrity management efforts." Tosco also suggested that "[t]he proposed * * * criteria for the non-reporting of releases of 5 gallons or more but less than 5 barrels may need to be better defined in the preamble to the final rule. Would a release occurring during the hydrostatic testing of a pipeline during maintenance activities that has a petroleum liquid as the test medium fall under this criteria?" Tosco also commented that the revisions to the accident reporting form are "well thought out" and that the information that "will be generated by this new form will indeed help to precisely detect trends in the causes of reportable pipeline accidents."

We pointed out that releases meeting the requirements of the normal maintenance operations exception in the final rule need not be reported.

The Citizens Advisory Committee on Pipeline Safety (Washington State) "disagreed with our proposal to reduce the threshold for reportable spills from the current level of 50 barrels to 5 gallons. The Committee stated that sufficient information can be acquired from pipeline operators by requiring reporting of incidents that are 1 (one) barrel or larger. The requirement of reporting all spills of 5 gallons or more appears to be more stringent than is required by good practice and necessary record keeping." OPS worked with a joint data team composed of State, Federal, and industry representatives to determine a reasonable accident reporting threshold. Higher reporting thresholds were considered, but we chose 5 gallons because we believe the benefit of reporting releases at the 5 gallon level outweighs the burden of collecting it. The benefit is in increased awareness of pipeline releases, especially the frequency of small spills. The data team believed that a higher threshold than 5 gallons would still leave concerns about the lack of information about such spills, especially if they impacted water.

The Minerals Management Service (MMS) of the U.S. Department of the Interior supported RSPA's efforts to improve pipeline accident data collection and analyses. MMS suggested that 49 CFR 195.1(b)(5) should be deleted since it includes jurisdictional criteria used prior to the 1996 Memorandum of Understanding (MOU) between MMS and OPS, which clarified each agency's jurisdiction over offshore pipeline facilities. MMS also questions whether the same reporting requirements and accident form would apply for a cumulative 5 gallons leaked from a pipeline slowly or intermittently over a period of weeks or months.

The NPRM did not address the jurisdictional issues raised by MMS. We are addressing those issues in a separate rulemaking. As for the intermittent leak scenario, 49 CFR 195.401(b) requires a hazardous liquid pipeline operator to correct within a reasonable time any condition that could adversely affect the safe operation of the pipeline system. We consider a release of hazardous material (a leak) from a pipeline to be a condition that must be promptly corrected.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Polices and Procedures

RSPA does not consider this rulemaking to be significant under Section 3(f) of Executive Order 12866 (85 FR 51735; October 4, 1993). RSPA also does not consider this rulemaking to be significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 20, 1979).

Benefits

The additional data that OPS will receive by lowering of the accident reporting threshold from 50 barrels to 5 gallons and the more detailed causation reporting, will enable RSPA and the hazardous liquid pipeline industry to better identify safety issues and trends in pipeline safety. Operators can then make informed decisions about changing their procedures to improve pipeline safety.

Costs

RSPA's revised form is composed of a "short" form (page one of the four page form for spills of less than 5 barrels as described above) and a "long" form of 4 pages for spills of 5 barrels or more, or spills to water as described above. We estimate that it will take each operator about 1 hour to complete the short form (2 minutes per field x 37 fields on short form) and that the long form will take about 7 hours to complete (2 minutes per fields x 224 fields). We recognize that some fields will take only a few seconds to complete and that some will take more than 2 minutes, but we estimate that the type of information requested on the long and the short forms will require 1 and 7 hours to complete, respectively. We also recognize that more time may be needed to collect the basic information required for completing the form, but we believe that companies already maintain this information as part of routine recordkeeping.

We estimate that the number of accidents reported annually will be 1,839. OPS extrapolated from data in the American Petroleum Institute (API) Pipeline Performance Tracking Initiative (PPTI), an anonymous reporting system that collects information on spills down to 5 gallons. Of the 1,839 annual reports, we estimate that 427 will require the long form and 1,412 will require the short form. Below is RSPA's estimates of the aggregate time required to complete the revised forms:

427 long forms × 7 hours = 2,989 hours.
1,412 short forms × 1 hour = 1,422 hours.
Total: 1,839 forms; 4,411 hours

We estimated the hourly cost of the person completing the form would be $40. This was based on the U.S. Department of Labor's National Occupational Employment and Wage Earnings for 1999. The hourly wage for a Transportation, Storage, and Distribution Manager (the closest category to a pipeline manager) was $26.03 per hour. This was multiplied by 1.35 to account for fringe benefits ($26.03 × 1.35 = $35.14). We added an inflation factor of 14% to account for inflation from 1999 to 2002 ($35.14 × 1.14 = $40.05). If the average cost per hour is $40, the total annual industry cost is $176,440 annually (4,411 × $40 = $176,440).

The hazardous liquid pipeline industry historically files an average of 166 reports annually. Completion of each of these reports was estimated to take 6 hours, based on the time needed to research the information, or 996 hours annually (166 reports × 6 hours). At $40 per hour, the total industry cost averages $39,840 annually (996 × $40 = $39,840).

The net annual increase to the hazardous liquid pipeline industry resulting from the revisions to the reporting criteria and to the form is $136,600 ($176,440 − $39,840 = $136,600). Dividing the incremental cost increase of $136,600 by approximately 200 hazardous liquid pipeline operators, the average incremental cost increase of this proposal is $683 per operator.

Comments

Two commenters, a pipeline operator and the Chief Counsel for Advocacy of the Small Business Administration (SBA), questioned RSPA's estimate of 7 hours to complete the long form. The SBA Chief Counsel for Advocacy wanted to know the basis for the 7 hour estimate.

We worked with a government/industry pipeline data team over the last several years to determine the extent of information that needed to be collected. RSPA is asking for only the most important information so as not to unduly burden pipeline operators. Moreover, the information requested on the revised form is not available from other sources.

We estimate that it will take each operator about 1 hour to complete the short form (2 minutes per field x 37 fields on short form) and that the long form will take about 7 hours to complete (2 minutes per fields x 224 fields). Electronic reporting of accidents, which will begin on January 1, 2002, should further reduce the time needed to complete the form. We believe this estimate is accurate based on these considerations.

Conclusion

RSPA believes that the additional cost of $136,600 annually is a minimal economic impact on the hazardous liquid pipeline industry. The benefits accruing to OPS and the pipeline industry; through the improvements in the quality of the information collected, should easily outweigh the cost.

Regulatory Flexibility Act

We sought input from the public on the impact of the proposed rule on small entities in the Notice of Proposed Rulemaking in this docket (66 FR 15681; March 20, 2001). No one responded to this request. The SBA Chief Counsel for Advocacy, however, made a few comments on behalf of small businesses. SBA asked the basis for using the short versus the long form. We described the usage of the short versus long form above. SBA also posed a question regarding how many operators RSPA would consider small. For several years, RSPA has sought public comment from small hazardous liquid operators. RSPA solicited public comment from small operators in its recent rulemakings on pipeline integrity management. No comments from small hazardous liquid operators were forthcoming.

The hazardous liquid pipeline industry is a highly competitive, capital intensive industry that has experienced many mergers and buyouts in recent years. SBA's criteria for defining a small entity in the hazardous liquid pipeline industry is 1,500 employees, as specified in the North American Industry Classification System codes (486110—Pipeline Transportation of Crude Oil and 486910—Pipeline Transportation of Refined Petroleum Products). We do not collect information on number of employees or revenues for pipeline operators. Such a collection would require OMB approval. However, we have discussed with SBA the characterization of hazardous liquid pipelines for purposes of this rulemaking. We intend to continue our dialog with SBA on its efforts to ascertain the number of small business operators in the hazardous liquid pipeline industry.

We made the following observations in assessing the effect of this rule on small businesses:

(1) Whether you characterize a hazardous liquid pipeline company as small or large, the cost is small in absolute terms. The average cost for all companies based on an estimated total impact of $136,600 annually is $683.00 per operator. We believe the benefits of this rule far outweigh the company cost.

(2) Assuming equal operating conditions across all pipeline mileage, the probability of having a reportable accident on a per mile basis is 1,839 expected reportable accidents per year over 154,000 miles of hazardous liquid pipeline, or about 1 reportable accident per hundred miles of pipeline. Companies with thousands of miles of pipe will typically have more reportable accidents than companies with hundreds of miles of pipe or less. Companies with less mileage will have a proportionately lower share of the estimated $136,600 annual cost posed by this rulemaking, for an average total per company cost of less than $683;

(3) We estimate that the nation's 80 largest hazardous liquid pipeline companies (based on pipeline mileage reported to RSPA by operators annually) operate more than 91% of the nation's total hazardous liquid pipeline mileage. About 120 companies operate the remaining 9% of mileage. Assuming this 9% of mileage were operated by "small operators," these operators would experience no more than 9% of the reportable accidents and incur 9% or less of the $136,600 annual cost. This amounts to $12,294 total annual costs, or about $102 per company. Many of these 120 operators are, however, owned by or parts of nationally recognized large corporations, so the burden would actually be less than $102 per small business annually.

Based on the increase in costs to the industry of this rulemaking, RSPA certifies, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains information collection requirements as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)). RSPA has previously submitted a copy of the Paperwork Reduction Act analysis to OMB for its review. The name of the information collection is "Transportation of Hazardous Liquids by Pipeline: Record Keeping and Accident Reporting." The purpose of this information collection is to improve the current hazardous liquid pipeline accident information collection.

According to the Paperwork Reduction Act, no persons are required to respond to a collection of information unless a valid OMB control number is displayed. OMB has approved the revised form RSPA F7000–1 and this information collection. The OMB control number for this information collection is 2137–0047. For more details, see the Paperwork Reduction Analysis available for copying and review in the public docket.

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Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on States and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply.

Executive Order 13211

This rulemaking is not a "significant energy action" within the meaning of Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.") It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

RSPA has analyzed the final rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and DOT Order 5610.1D, and has determined that this action would not significantly affect the quality of the human environment, because information collection does not impact the environment.

List of Subjects in 49 CFR Part 195

Anhydrous Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For all the reasons described in this final rule, RSPA is amending Title 49, Part 195, Code of Federal Regulations, as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Amend § 195.50 to revise paragraph (b), to remove paragraph (c), to redesignate paragraphs (d) through (f) as paragraphs (c) through (e) and revising the newly designated paragraphs, to read as follows:

§ 195.50 Reporting accidents.

* * * * *

(b) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:

(1) Not otherwise reportable under this section;

(2) Not one described in § 195.52(a)(4);

(3) Confined to company property or pipeline right-of-way; and

(4) Cleaned up promptly;

(c) Death of any person;

(d) Personal injury necessitating hospitalization;

(e) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000.

Issued in Washington, DC, on December 21, 2001.

Ellen G. Engleman,

Administrator.

BILLING CODE 4910–60–P

NOTICE: This report is required by 49 CFR Part 195. Failure to report can result in a civil penalty not to exceed $25,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $500,000 as provided in 49 USC 60122

Form Approved OMB No. 2137-0047

U.S. Department of Transportation
Research and Special Programs Administration

ACCIDENT REPORT – HAZARDOUS LIQUID PIPELINE SYSTEMS

Report Date _____

No. _____ (DOT Use Only)

INSTRUCTIONS

Important: *Please read the separate instructions for completing this form before you begin. They clarify the information requested and provide specific examples. If you do not have a copy of the instructions, you can obtain one from the Office Of Pipeline Safety Web Page at http://ops.dot.gov.*

PART A – GENERAL REPORT INFORMATION Check: ☐ Original Report ☐ Supplemental Report ☐ Final Report

1. a. Operator's OPS 5-digit Identification Number (if known) /_____/
2. b. If Operator does not own the pipeline, enter Owner's OPS 5-digit Identification Number (if known) /_____/
   c. Name of Operator _____
   d. Operator street address _____
   e. Operator address _____
   City, County, State and Zip Code

IMPORTANT: IF THE SPILL IS SMALL, THAT IS, THE AMOUNT IS AT LEAST 5 GALLONS BUT IS LESS THAN 5 BARRELS, COMPLETE THIS PAGE ONLY, UNLESS THE SPILL IS TO WATER AS DESCRIBED IN 49 CFR §195.52(A)(4) OR IS OTHERWISE REPORTABLE UNDER §195.50 AS REVISED IN CY 2001.

2. Time and date of the accident
   /_____/ hr. /_____/ month /_____/ day /_____/ year

3. Location of accident
   (If offshore, do not complete a through d. See Part C.1)
   a. Latitude: _____ Longitude: _____
   (if not available, see instructions for how to provide specific location)
   b. _____ City, and County or Parish
   c. _____ State and Zip Code
   d. Mile post/valve station ○ or survey station no. ○ (whichever gives more accurate location)
   _____

4. Telephone report
   /_____/ NRC Report Number /_____/ month /_____/ day /_____/ year

5. Losses *(Estimated)*

   Public/Community Losses reimbursed by operator:

   Public/private property damage $_____
   Cost of emergency response phase $_____
   Cost of environmental remediation $_____
   Other Costs $_____
   (describe) _____

   Operator Losses:

   Value of product lost $_____
   Value of operator property damage $_____
   Other Costs $_____
   (describe) _____
   Total Costs $_____

6. Commodity Spilled ○Yes ○ No
   (If Yes, complete Parts a through c where applicable)
   a. Name of commodity spilled _____
   b. Classification of commodity spilled:
   ○ HVLs /other flammable or toxic fluid which is a gas at ambient conditions
   ○ CO_2/ N_2 or other non-flammable, non-toxic fluid which is a gas at ambient conditions
   ○ Gasoline, diesel, fuel oil or other petroleum product which is a liquid at ambient conditions
   ○ Crude oil

   c. Estimated amount of commodity involved :
   ○ Barrels
   ○ Gallons (check only if spill is less than one barrel)
   Amounts:
   Spilled : _____
   Recovered: _____

CAUSE: FOR SMALL SPILLS ONLY (5 gallons to under 5 barrels): *(For large spills [5 barrels or greater] see Part H)*

○ Corrosion ○ Natural Forces ○ Excavation Damage ○ Other Outside Force Damage
○ Material and/or Weld Failures ○ Equipment ○ Incorrect Operation ○ Other

PART B – PREPARER AND AUTHORIZED SIGNATURE

_____ (type or print) Preparer's Name and Title
_____ Area Code and Telephone Number
_____ Preparer's E-mail Address
_____ Area Code and Facsimile Number
_____ Authorized Signature _____ (type or print) Name and Title _____ Date _____ Area Code and Telephone Number

Form RSPA F 7000-1 (01-2001) *Page 1 of 4*

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PART C – ORIGIN OF THE ACCIDENT (Check all that apply)

1. Additional location information
   a. Line segment name or ID _____
   b. Accident on Federal land other than Outer Continental Shelf O Yes O No
   c. Is pipeline interstate? O Yes O No

Offshore: O Yes O No *(complete d if offshore)*
d. Area _____ Block # _____
State / / / or Outer Continental Shelf ☐

2. Location of system involved *(check all that apply)*
   ☐ Operator's Property
   ☐ Pipeline Right of Way
   ☐ High Consequence Area (HCA)?
   Describe HCA _____
3. Part of system involved in accident
   O Above Ground Storage Tank
   O Cavern or other below ground storage facility
   O Pump/meter station; terminal/tank farm piping and equipment, including sumps
   O Other *Specify:* _____
   O Onshore **pipeline**, including valve sites
   O Offshore **pipeline**, including platforms
4. Failure occurred on
   O Body of Pipe O Pipe Seam O Scraper Trap
   O Pump O Sump O Joint
   O Component O Valve O Metering Facility
   O Repair Sleeve O Welded Fitting O Bolted Fitting
   O Girth Weld
   Other *(specify)* _____
   Year the component that failed was installed: / / / / /
5. Maximum operating pressure *(MOP)*
   a. Estimated pressure at point and time of accident: _____ *PSIG*
   b. MOP at time of accident: _____ *PSIG*
   c. Did an overpressurization occur relating to the accident? O Yes O No

If failure occurred on Pipeline, complete items a - g:

a. Type of leak or rupture
   O Leak: O Pinhole O Connection Failure *(complete sec. H5)*
   O Puncture, diameter *(inches)* _____
   O Rupture: O Circumferential – Separation
   O Longitudinal – Tear/Crack, length *(inches)* _____
   Propagation Length, total, both sides *(feet)* _____
   O N/A
   O Other _____
b. Type of block valve used for isolation of immediate section:
   Upstream: ☐ Manual ☐ Automatic ☐ Remote Control ☐ Check Valve
   Downstream: ☐ Manual ☐ Automatic ☐ Remote Control ☐ Check Valve
c. Length of segment isolated _____ ft
d. Distance between valves _____ ft
e. Is segment configured for internal inspection tools? O Yes O No
f. Had there been an in-line inspection device run at the point of failure? O Yes O No O Don't Know
   O Not Possible due to physical constraints in the system
g. If Yes, type of device run *(check all that apply)*
   ☐ High Resolution Magnetic Flux tool Year run: _____
   ☐ Low Resolution Magnetic Flux tool Year run: _____
   ☐ UT tool Year run: _____
   ☐ Geometry tool Year run: _____
   ☐ Caliper tool Year run: _____
   ☐ Crack tool Year run: _____
   ☐ Hard Spot tool Year run: _____
   ☐ Other tool Year run: _____

PART D – MATERIAL SPECIFICATION

1. Nominal pipe size *(NPS)* / / / / / in.
2. Wall thickness / / / / / in.
3. Specification _____ SMYS / / / / / /
4. Seam type _____
5. Valve type _____
6. Manufactured by _____ in year / / / / /

PART E – ENVIRONMENT

1. Area of accident
   O In open ditch
   O Under pavement
   O Above ground
   O Underground
   O Under water
   O Inside/under building
   O Other _____
2. Depth of cover: _____ inches

PART F – CONSEQUENCES

1. Consequences *(check and complete all that apply)*

a.	[redacted]	Injuries
Number of operator employees:	[redacted]	_____
Contractor employees working for operator:	[redacted]	_____
General public:	[redacted]	_____
Totals:	[redacted]	_____

b. Was pipeline/segment shutdown due to leak? O Yes O No
If Yes, how long? _____ days _____ hours _____ minutes

c. Product ignited O Yes O No d. Explosion O Yes O No
e. ☐ Evacuation *(general public only)* / / / / / people
Reason for Evacuation:
O Precautionary by company
O Evacuation required or initiated by public official
f. Elapsed time until area was made safe:
/ / / / hr. / / / / min.

2. Environmental Impact
   a. Wildlife Impact: Fish/aquatic O Yes O No; Birds O Yes O No; Terrestrial O Yes O No
   b. Soil Contamination O Yes O No
   If Yes, estimated number of cubic yards: _____
   c. Long term impact assessment performed: O Yes O No
   d. Anticipated remediation O Yes O No
   If Yes, check all that apply: ☐ Surface water ☐ Groundwater ☐ Soil ☐ Vegetation ☐ Wildlife
   e. Water Contamination: O Yes O No *(If Yes, provide the following)*
   Amount in water _____ barrels
   Ocean/Seawater O No O Yes
   Surface O No O Yes
   Groundwater O No O Yes
   Drinking water O No O Yes *(If Yes, check below.)*
   O Private well O Public water intake

PART G – LEAK DETECTION INFORMATION

1. Computer based leak detection capability in place? O Yes O No
2. Was the release initially detected by? (check one):
   O CPM/SCADA-based system with leak detection
   O Static shut-in test or other pressure or leak test
   O Local operating personnel, procedures or equipment
   O Remote operating personnel, including controllers
   O Air patrol or ground surveillance
   O A third party O Other (specify) _____
3. Estimated leak duration days ____ hours ____

PART H – APPARENT CAUSE

Important: *There are 25 numbered causes in this Part H. Check the box corresponding to the primary cause of the accident. Check one circle in each of the supplemental categories corresponding to the cause you indicate. See the instructions for guidance.*

H1 – CORROSION

1. ☐ External Corrosion
2. ☐ Internal Corrosion

(Complete items a – e where applicable.)

a. Pipe Coating: O Bare O Coated
b. Visual Examination: O Localized Pitting O General Corrosion O Other _____
c. Cause of Corrosion: O Galvanic O Atmospheric O Stray Current O Microbiological O Cathodic Protection Disrupted O Stress Corrosion Cracking O Selective Seam Corrosion O Other _____
d. Was corroded part of pipeline considered to be under cathodic protection prior to discovering accident? O No O Yes, Year Protection Started: / / / / /
e. Was pipe previously damaged in the area of corrosion? O No O Yes ⇒ Estimated time prior to accident: / / years / / months Unknown ☐

H2 – NATURAL FORCES

3. ☐ Earth Movement ⇒ O Earthquake O Subsidence O Landslide O Other _____
4. ☐ Lightning
5. ☐ Heavy Rains/Floods ⇒ O Washouts O Flotation O Mudslide O Scouring O Other _____
6. ☐ Temperature ⇒ O Thermal stress O Frost heave O Frozen components O Other _____
7. ☐ High Winds

H3 – EXCAVATION DAMAGE

8. ☐ Operator Excavation Damage (including their contractors/Not Third Party)
9. ☐ Third Party *(complete a-f)*
   a. Excavator group
      O General Public O Government O Excavator other than Operator/subcontractor
   b. Type: O Road Work O Pipeline O Water O Electric O Sewer O Phone/Cable
      O Landowner-not farming related O Farming O Railroad
      O Other liquid or gas transmission pipeline operator or their contractor
      O Nautical Operations O Other _____
   c. Excavation was: O Open Trench O Sub-strata (boring, directional drilling, etc...)
   d. Excavation was an ongoing activity (Month or longer) O Yes O No If Yes, Date of last contact / / / / /
   e. Did operator get prior notification of excavation activity?
      O Yes; Date received: / / mo. / / day / / / / yr. O No
      Notification received from: O One Call System O Excavator O Contractor O Landowner
   f. Was pipeline marked as result of location request for excavation? O No O Yes *(If Yes, check applicable items i - iv)*
      i. Temporary markings: O Flags O Stakes O Paint
      ii. Permanent markings: O
      iii. Marks were (check one): O Accurate O Not Accurate
      iv. Were marks made within required time? O Yes O No

H4 – OTHER OUTSIDE FORCE DAMAGE

10. ☐ Fire/Explosion as primary cause of failure ⇒ Fire/Explosion cause: O Man made O Natural
11. ☐ Car, truck or other vehicle not relating to excavation activity damaging pipe
12. ☐ Rupture of Previously Damaged Pipe
13. ☐ Vandalism

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H5 – MATERIAL AND/OR WELD FAILURES

Material

14. ☐ Body of Pipe ⇒ O Dent O Gouge O Bend O Arc Burn O Other _____
15. ☐ Component ⇒ O Valve O Fitting O Vessel O Extruded Outlet O Other _____
16. ☐ Joint ⇒ O Gasket O O-Ring O Threads O Other _____

Weld

17. ☐ Butt ⇒ O Pipe O Fabrication O Other _____
18. ☐ Fillet ⇒ O Branch O Hot Tap O Fitting O Repair Sleeve O Other _____
19. ☐ Pipe Seam ⇒ O LF ERW O DSAW O Seamless O Flash Weld
O HF ERW O SAW O Spiral O Other _____

Complete a-g if you indicate any cause in part H5.

a. Type of failure:
O Construction Defect ⇒ O Poor Workmanship O Procedure not followed O Poor Construction Procedures
O Material Defect

b. Was failure due to pipe damage sustained in transportation to the construction or fabrication site? O Yes O No

c. Was part which leaked pressure tested before accident occurred? O Yes, *complete d-g* O No

d. Date of test: /__/__/__/__/ yr. /__/__/ mo. /__/__/ day

e. Test medium: O Water O Inert Gas O Other _____

f. Time held at test pressure: /__/__/ hr.

g. Estimated test pressure at point of accident: _____ *PSIG*

H6 – EQUIPMENT

20. ☐ Malfunction of Control/Relief Equipment ⇒ O Control valve O Instrumentation O SCADA O Communications
O Block valve O Relief valve O Power failure O Other _____
21. ☐ Threads Stripped, Broken Pipe Coupling ⇒ O Nipples O Valve Threads O Dresser Couplings O Other _____
22. ☐ Seal Failure ⇒ O Gasket O O-Ring O Seal/Pump Packing O Other _____

H7 – INCORRECT OPERATION

23. ☐ Incorrect Operation
a. Type: O Inadequate Procedures O Inadequate Safety Practices O Failure to Follow Procedures
O Other _____
b. Number of employees involved who failed a post-accident test: drug test: /__/__/__/ alcohol test /__/__/__/

H8 – OTHER

24. ☐ Miscellaneous, describe: _____
25. ☐ Unknown
O Investigation Complete O Still Under Investigation *(submit a supplemental report when investigation is complete)*

PART I – NARRATIVE DESCRIPTION OF FACTORS CONTRIBUTING TO THE EVENT *(Attach additional sheets as necessary)*

Form RSPA F 7000-1 (01-2001) Page 4 of 4

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INSTRUCTIONS FOR FORM RSPA F 7000-1 (1-2001)
ACCIDENT REPORT - HAZARDOUS LIQUID PIPE SYSTEMS

GENERAL INSTRUCTIONS

Each hazardous liquid pipeline operator shall file Form RSPA F 7000-1 for an accident that meets the criteria in 49 CFR §195.50 as soon as practicable but not more than 30 days after the accident. Hazardous liquid releases during maintenance activities need not be reported if the spill was less than 5 barrels, not otherwise reportable under 49 CFR §195.50, and did not result in water pollution as described by 49 CFR §195.52(a)(4). Any spill of 5 gallons or more to water shall be reported.

Consult 49 CFR §195.50 for reporting requirements. If you have questions about this report or these instructions or need copies of Form RSPA F 7000-1, please write to the Information Resources Manager, or call (202)366-4569. All forms and instructions are on the OPS home page, http://ops.dot.gov.

SPECIAL INSTRUCTIONS

1. An entry should be made in each space.
2. Please try to obtain the information necessary to accurately and completely answer each question.
3. If the data is unavailable, enter "unknown"
4. If possible, provide an estimate in lieu of answering a question with "Unknown".
5. For unknown or estimated data entries, the operator should file a supplemental report when additional information becomes available.
6. If the block is not applicable, please enter N/A.

In blocks requiring numbers, all blocks should be filled in using zeroes when appropriate. When decimal points are required, the decimal point should be placed in a separate block.

Examples: (Part D, item 1) Nominal Pipe Size /0/0/2/4/ inches
/1/./5/0/ inches

(Part D, item 1) Wall Thickness /./5/0/0/ inches
/1/./2/5/ inches

If OTHER is checked, include an explanation or description on the line next to the item checked.

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SPECIFIC INSTRUCTIONS

PART A - GENERAL REPORT INFORMATION

Initial, Supplemental, Final Report Section

Check the appropriate box:
□ Original Report □ Supplemental Report □ Final Report.

If this is the initial report filed for this accident, check the box for "Original Report". If all of the information requested is known and provided at the time the initial report is filed, including final property damages and failure cause information, check the box for Final Report as well as the box for Original Report, indicating that no further information will be forthcoming.

If this is an update or revision to an Original Report but all information requested is still not known, check "Supplemental Report".

If all requested relevant information has been provided, and there will be no further updates to reported property damages or accident cause information, check the box for "Final Report".

If you are filing a supplemental or final report, please check the Supplemental Report or Final Report box and complete Part A(1)and Part B. Please do not enter previously submitted information.

A 1. The Research and Special Programs Administration (RSPA) assigns the operator's five-digit identification number. If you do not know the operator identification number, please leave that item blank. The operator address entry in 1.d and 1.e is the office filing the accident report. If the operator does not own the pipeline, enter the Owner's five digit identification number in 1.b. You may contact us at (202)366-8075 during our business hours of 7:30 AM to 5:00 PM Easter time if you need assistance with an identification number for 1.a or 1.b.

SMALL SPILLS (5 GALLONS TO 5 BARRELS)

IMPORTANT: For small spills not otherwise reportable under CFR 195.50 nor resulting in water pollution as described by 49 CFR 195.52, complete only page one. If spill is less than one barrel, enter loss in gallons. Estimate amount spilled and recovered as closely as possible. Estimate the total property damage for sections under property damage reporting if exact amounts aren't known. Complete preparer's name and contact information section. Check the box for FINAL REPORT and submit the report.

ALL OTHER REPORTABLE SPILLS

For spills: of 5 or more gallons resulting in water pollution as described in 49 CFR §195.52(A)(4); of 5 or more barrels; or reportable by other criteria as per 49 CFR §195.50, complete as much of the form as possible within the 30 day filing period. If total property damage, cause information or other information is not known within 30 days, submit the original report and provide supplemental updates every 6 months until such time as a final report can be submitted. We plan to remind operators every six months about reports needing updates.

A 2. The time of the accident should be shown by 24-hour clock notation.

Examples:

1. (0000) = midnight = /0/0/0/0/
2. (0800) = 8:00 a.m. = /0/8/0/0/
3. (1200) = Noon = /1/2/0/0/
4. (1715) = 5:15 p.m. = /1/7/1/5/
5. (2200) = 10:00 p.m.= /2/2/0/0/

A 3. Accident location information should be as complete as possible, including the nearest City, Town, Township, County or Parish, Borough, Section, and Range. Offshore accident identification should be located by State or Outer Continental Shelf (OCS) identification and block identification. In addition to the general location information, provide latitude and longitude, if available, including projection and datum used in collecting the data.

Federal Land other than Outer Continental Shelf means all lands the United States owns, including military reservations, except lands in National Parks and lands held in trust for Native Americans. Accidents at Federal buildings, such as Federal Court Houses, Custom Houses, and other Federal office buildings and warehouses, are not to be reported as being on Federal Lands.

A 5. Estimate costs/losses for the items provided in this section. Do not report costs incurred for facility repair, replacement, or change that is not related to the accident done solely for convenience. An example of doing work solely for convenience is working on facilities unearthed because of the accident. Litigation and other legal expenses related to the accident are not reportable.

PART B - PREPARER AND AUTHORIZED SIGNATURE

Preparer is the name of the person who prepared the responses to the form and who is to be contacted for more information (preferably the person most knowledgeable about the information in the report).

Authorized Signature may be the preparer, an officer, or other person whom the operator has designated to review and sign reports. Please enter the preparer's e-mail address if the preparer has one.

PART C - ORIGIN OF Accident

C 2. Location of System Involved:

High consequence area means:
1. A commercially navigable waterway, which means a waterway where a substantial likelihood of commercial navigation exists;
2. A high population area, which means an urbanized area as defined and delineated by the Census Bureau that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;
3. Any other populated area, which means a place as defined and

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delineated by the Census Bureau that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;
4. An unusually sensitive area, as defined in 195.6

C 3. Part of System Involved in Accident

If the failure occurred on an item not provided in this section, check the "OTHER" box and specify in the space provided the part of the structure that failed. If failure occurred on **onshore or offshore pipeline**, complete C a through g.

Leak - an unintentional release of product from a pipeline requiring repair to the pipeline. The source of the leak may be holes, cracks (including propagating and non-propagating, longitudinal and circumferential cracks), separation or pull-out, and loose connections.

Rupture - a complete failure of a portion of the pipeline.

Propagation - the extension of the original opening in the pipeline in an area of nominal wall thickness resulting from the internal forces on the pipeline.

Tear - an extension of the original opening in the pipeline resulting from an externally applied force, such as a bulldozer, backhoe, or grader.

Note: for C 3 a - {Type of Leak or Rupture}, *Connection Failure* refers only to accidents where failure occurred on a connection that joined two segments of pipe.

"Year the pipe/component which failed was installed" means the year installed at the accident location.

PART D - MATERIAL SPECIFICATION

Complete section D (1 through 6), if pipe or valve failed.

ITEM 1. Nominal pipe size is the diameter in inches used to describe the pipe size; for example, 2-inch, 4-inch, 8-inch, 12-inch, 30-inch.

ITEM 2. Enter pipe wall thickness in inches. Use decimals as necessary.

ITEM 3. Specification is the specification to which the pipe or component was manufactured, such as API 5L or ASTM A106. When more than one item has failed, and the origin of the failure is not clear, complete Part C ITEM 2 to explain the additional item(s).

ITEM 4. *Common seam types: (Acronyms used in Part H5, item 19:*
LF ERW : low frequency electro-resistance weld
HF ERW : high frequency electro-resistance weld
DSAW : double-submerged arc weld
SAW : submerged arc weld

ITEM 5. Some valve types are: flange-welded, bell-plug, etc.

PART E - ENVIRONMENT

"Under pavement" includes under streets, sidewalks, paved roads, driveways and parking lots.

Provide depth of cover in inches where accident involved buried pipe or component.

PART F - CONSEQUENCES

F 1 a. - injuries are those that require in-patient hospitalization, meaning hospital admission and at least one overnight stay.

For F 2 a, because of the difficulty in estimating number of individual animals or species affected, we do not ask quantity, rather, we only provide a check box to indicate if any species were impacted.

If product ignited, but there was no explosion, check box F1c. If an explosion occurred, check box F1d.

For F 1 f, "Elapsed time until the area was made safe" means the amount of time starting from the accident occurrence until the time that the accident is brought under control and does not significantly threaten public safety. This does not necessarily mean that the flow of product has been stopped. If the time of occurrence is unknown, the time when the operator was first notified or made aware of the accident should be used to calculate elapsed time.

PART G - LEAK DETECTION INFORMATION

Enter the requested information about leak detection systems.

PART H - APPARENT CAUSE

There are 25 numbered causes in Part H. The 25 causes are divided into 8 categories in sections H1 through H8. Check the box indicating the general cause of the accident and check the circle indicating the specific cause.

PART H1 - CORROSION

Corrosion includes a leak or failure caused by galvanic, bacterial, chemical, stray current, or other corrosive action. Examples: A corrosion leak is not limited to a hole in the pipe. If the bonnet or packing gland on a valve or flange on piping becomes loose and leaks due to corrosion and failure of bolts, it is classified as Corrosion. If the bonnet, packing, or other gasket has deteriorated before the end of its expected life and caused a leak or failure and a new gasket is required, it is classified as a Material Defect. Leaks resulting from materials deteriorating after the expected life of the materials are classified as "Other". Leaks due to deterioration from corrosion, however, are classified as "Corrosion".

Complete H1 parts a - e where applicable.
If the cause was Stress Corrosion Cracking, check the block for Stress Corrosion Cracking under H1 (c).

Subpart a - Pipe Coating
Galvanized pipe with no dielectric coating is considered bare.

Subpart d - Cathodic Protection

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"Under cathodic protection" means cathodic protection in accordance with Part 192, Appendix D. Recognizing that older pipelines may have had cathodic protection added over a number of years, provide an estimate if exact year cathodic protection started is unknown.

PART H2 - NATURAL FORCES

ITEMS 3 - 7: Natural Forces.

This includes all outside forces attributable to causes not involving humans. "Earth Movement" refers to failures caused by land shifts such as earthquakes, landslides, or subsidence.

"Heavy rains and floods" refer to all water related failure causes such as washouts, flotation, mudslides, or water scouring. While mudslides involve earth movement, report them here since typically they are an effect of heavy rains or floods.

"Temperature" refers to those causes that are related to temperature effects, or where temperature was the initial cause; for example, thermal stress, frost heave, or frozen component failures.

PART H3 - EXCAVATION DAMAGE

This section covers excavator damage by operator, operator's contractor, utilities, or others.

Complete subparts a - g if any cause was checked in Part H3(9).

ITEMS 8 - 9: Excavation.

Item 8: check this item if the operator or the operator's contractor or agent caused the failure, or if caused by another party working for the operator as a result of excavation.

Item 9: Third Party Damage- check this item if failure cause was from excavation damages resulting from action by a third party, that is, by a party other than the operator or the operator's agent.

Subpart 9e- "Prior notification" means that the operator had been notified that excavation or construction work was to be done near the pipeline before the accident occurred. If the operator was notified, but the operator believes the notice was inadequate, improper, or incomplete, check NO and explain in Part G, Narrative Description Of Factors Contributing to the Event, how the notice was inadequate, improper or incomplete.

Subpart 9f- "Was pipeline marked as a result of location request for excavation?": Indicate whether the pipeline was marked. If the pipeline was marked, complete all items i through iv that apply.

PART H4 - OTHER OUTSIDE FORCE DAMAGE

This section covers damages to pipelines or facilities caused by external forces other than excavation damage.

ITEMS 10- 13 Cover other failures caused by damages to pipelines by external

forces other than excavation or natural forces. Fire/explosion as primary cause of failure implies that fire/explosion occurred prior to failure and not as a result of failure. If a fire/explosion occurred as a result of the failure not as primary cause of the failure, do not check item 10, but check Part F item 1c or 1d. If the primary failure cause was damage by a vehicle other than a vehicle involved in excavation, check item 11. If a vehicle involved in excavation caused the damage, check the appropriate item under the Excavation Damage section (items 8 and 9).

PART H5 - MATERIAL AND/OR WELD FAILURES

"Fitting" means a device, usually metal, for joining lengths of pipe into various piping systems. It includes couplings, ells, tees, crosses, reducers, unions, caps and plugs.

ITEMS 14 - 16, Material.

This section includes leaks or failures from a defect within the material of the pipe, component or joint due to faulty manufacturing procedures. Leaks or failures resulting from material deterioration and not resulting from an original defect or corrosion are reported under "Other". Complete subparts a - g if any cause was checked in Part H5.

ITEMS 17 - 19, Welds.

Acronyms used in this section:
LF ERW : low frequency electro-resistance weld
HF ERW : high frequency electro-resistance weld
DSAW : double-submerged arc weld
SAW : submerged arc weld

"Weld-related material defects" includes leaks or failures from a defect within the material of the pipe, component or longitudinal weld or seam due to faulty welding or weld-related manufacturing procedures.

Sub-Elements a - g
"Construction defect" includes leaks in or failures of originally sound material due to force being applied during field construction that caused a dent, gouge, excessive stress, or some other defect that eventually resulted in failure. Included are leaks in or failures of wrinkle bends, field welds, and damage sustained in transportation to the construction or fabrication site.

PART H6 - EQUIPMENT

This section includes malfunctions of control and relief equipment (typically the result of failed and leaking valves), failures of threaded components and broken pipe couplings, including thread failures, and failures in seal/pump packings. Accidents resulting from incorrect operations or inadequate procedures are also included in this category. Report gasket or o-ring failures under Part H5, item 16, Joints, by checking the appropriate circle for gasket or o-ring.

Item 20- Malfunction of Control/Relief Equipment

Examples of this type of failure cause include: overpressurizations resulting from malfunction of control or alarm device; relief valve malfunction: and valves failing to open or close on command; or which opened or closed when not commanded to do so.

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Item 21 - Threads stripped, broken pipe coupling

Examples of this type of failure include failures on compressors, meters, or regulator stations where the failure resulted from a crack in a component or threads of a component such as nipples, flanges, valve connections, line pipe collars, etc.

Item 22 - Ruptured or Leaking Seal/Pump Packing

Examples of this type of failure generally include failures of compressor pump packing or other pump seals.

PART H7 - INCORRECT OPERATION

Incorrect operation failures typically result from faulty or inadequate procedures. These types of failures most often occur during maintenance activities. Some examples of this type of failure are unintentional product ignition during a welding or maintenance activity; other reportable accidents causing a fire, or failures where human error, employee fatigue, and/or lack of experience may have played a role.

PART H8 - OTHER

This section is provided for failure causes that do not fit in any category in Sections H1 through H7. If the failure cause is unknown at time of filing this report, check item 25. If the failure cause is known but doesn't fit in any category in sections H1 through H7, check item 24 and describe the cause. Continue in Part I, narrative description, if more space is needed.

PART I - NARRATIVE DESCRIPTION OF FACTORS CONTRIBUTING TO THE ACCIDENT

Concisely describe the accident, including the facts, circumstances, and conditions that may have contributed directly or indirectly to causing the accident. You may explain any estimated data in the narrative. If you checked the OTHER block in Part H8 item 24 or 25, the narrative should describe the accident in detail, including the timeline, sequence of events, and all known or suspected causes. Use this section to clarify or explain unusual conditions.

[FR Doc. 02-266 Filed 1-7-02; 8:45 am]
BILLING CODE 4910-60-C

Proposed Rules

Federal Register
Vol. 67, No. 5
Tuesday, January 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. FV-01-709]

Honey Research, Promotion, and Consumer Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of honey and importers of honey or honey products to determine whether they favor continuance of the Honey Research, Promotion, and Consumer Information Order (Order).

DATES: The referendum will be conducted from February 4 through March 1, 2002. To vote in this referendum, producers and importers must have been producing honey or importing honey or honey products during the period from October 1, 1999, through September 30, 2001.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, RP, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended (Act) [7 U.S.C. 4601–4613], it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers of honey and importers of honey or honey products. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from October 1, 1999, through September 30, 2001. Persons who are producers of honey or importers of honey or honey products at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from February 4 through March 1, 2002.

Section 13(c) of the Act provides that the Department of Agriculture (Department) shall conduct a referendum every five years to determine if persons subject to assessment under the Order approve continuation of the Order. Previous continuance referenda were conducted in 1991 and 1996.

Sections 12(b)(1)(A) and (B) of the Act provide that the Department shall continue the Order if continuance of the Order is approved by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or import not less than 50 percent of the quantity of the honey or honey products produced or imported during the representative period by those voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 3,500 producers and 700 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Kathie M. Birdsell, Margaret B. Irby, and Martha B. Ransom, RP, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W. Washington, D.C. 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures [7 CFR 1240.200 through 1240.207], which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known producers and importers prior to the first day of the voting period. Persons who are producers or importers at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer or importer who does not receive a ballot should contact the referendum agents no later than one week before the end of the voting period. Ballots must be received by the referendum agents on or before March 1, 2002, in order to be counted.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–449 Filed 1–4–02; 10:39 am]
BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–b; FRL–7123–3]

Approval and Promulgation of State Implementation Plans; Inspection and Maintenance Program and Fuel Requirements: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve two revisions to the carbon monoxide (CO) Alaska State Implementation Plan (SIP) in the Alaska Administrative Code (AAC). These two revisions to the SIP were submitted on February 24, 2000 and February 2, 2001. EPA is also proposing to grant final approval of Alaska's revised Inspection and Maintenance (I/M) Program SIP credit claim to 100% of credit applied to centralized I/M programs under Section

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348 of the National Highway System Designation Act. This was resubmitted on November 7, 2001.

DATES: Written comments must be received in writing by February 7, 2002.

ADDRESSES: Written comments should be addressed to Wayne Elson, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. The Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Elson, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION: The SIP revisions cover amendments to I/M requirements for Motor Vehicles (18 AAC 52), the State Air Quality Control Plan (18 AAC 50), and Fuel Requirements for Motor Vehicles (18 AAC 53). The most salient aspects of these rule changes include: new I/M equipment specifications and amending the Alaska I/M Program Manual; delayed start date for On-Board Diagnostic (OBD II) I/M test requirements; making vehicle stickers mandatory; removing the "fast fail" option and begin to require that all inspections be full and complete; and streamline and update several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. This final approval of Alaska's I/M program credit claim to 100% removes the interim status of EPA's interim approvals of October 10, 1996 (61 FR 53163) and May 19, 1997 (62 FR 27199) for 85% of credit applied to centralized I/M programs.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Dated: December 12, 2001.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–219 Filed 1–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[VA001–1000; FRL–7126–7]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; State of Virginia; Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Virginia Department of Environmental Quality's (VADEQ's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene dry-cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors, Portland cement manufacturing, and secondary aluminum smelting which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations. This proposed approval will automatically delegate future amendments to these regulations once VADEQ incorporates these amendments into its regulations. In addition, EPA is proposing to approve of VADEQ's mechanism for receiving delegation of future hazardous air pollutant regulations. This mechanism entails VADEQ's incorporation by reference of the unchanged Federal standard into its hazardous air pollutant regulation and VADEQ's notification to EPA of such incorporation. This action pertains only to affected sources, as defined by the Clean Air Act hazardous air pollutant program, which are not located at major sources, as defined by the Clean Air Act operating permit program. In the Final Rules section of this **Federal Register**, EPA is approving the State's request for delegation of authority as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 7, 2002.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and Dennis H. Treacy, Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, 215–814–3297, at the EPA Region III address above, or by e-mail at *mcnally.dianne@epa.gov*. Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information on this action, pertaining to approval of VADEQ's delegation of authority for the hazardous air pollutant emission standards for perchloroethylene dry-cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors, portland cement manufacturing, and secondary aluminum smelting (Clean Air Act section 112), please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 26, 2001.

Judith M. Katz,

Director, Air Protection Division, Region III.

[FR Doc. 02–408 Filed 1–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2985; MM Docket No. 01–345; RM–10344]

Radio Broadcasting Services; Wickenburg and Salome, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Circle S Broadcasting Co., Inc., licensee of Station KWSG(FM), Wickenburg, Arizona, requesting the substitution of Channel 242C for Channel 242C3 and modification of its authorization to specify the higher class channel. Additionally, to accommodate the upgrade, petitioner also proposes the substitution of Channel 270A for vacant Channel 241A at Salome, Arizona. Channel 242C can be allotted to Wickenburg consistent with the technical requirements of the Commission's Rules at the petitioner's specified site located 24.6 kilometers (15.3 miles) west of the community at coordinates 33–54–15 NL and 112–59–02 WL. Channel 270A can be substituted for vacant Channel 241A at Salome, Arizona, at the current reference site for the existing channel at coordinates 33–46–54 NL and 113–36–42 NL. Additionally, as Wickenburg and Salome are each located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposals must be obtained.

DATES: Comments must be filed on or before February 11, 2002, and reply comments on or before February 26, 2002.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lee Peltzman, Esq., Shainis and Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–345, adopted December 12, 2001, and released December 21, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 241A and adding Channel 270A at Salome; and removing Channel 242C3 and adding Channel 242C at Wickenburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–376 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2907; MM Docket Nos. 01–340, 01–341, 01–342, 01–343; RM–10345, RM–10346, RM–10347, RM–10348]

Radio Broadcasting Services; Pierce, NE; Coosada, AL; Pineview, GA; and Diamond Lake, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on proposals in four separate docketed proceedings in a multiple docket *Notice of Proposed Rule Making*. The first, filed by Pierce Radio, LLC, proposes to allot Channel 248C2 at Pierce, Nebraska as the community's first local aural transmission service. Channel 248C2 can be allotted at Pierce at a site 5 kilometers (3.1 miles) east of the community at coordinates 42–11–30 NL and 97–28–00 WL. The second, filed by Media Equities Corp., proposes to allot Channel 226A at Coosada, Alabama, as the community's first local aural transmission service. Channel 226A can be allotted at Coosada at a site 14 kilometers (8.7 miles) southeast of the community at coordinates 32–26–58 NL and 86–11–38 WL. The third, filed by Data+Corp., proposes the allotment of Channel 226A at Pineview, Georgia as the community's first local aural transmission service. Channel 226A can be allotted at Pineview at a site 8.4 kilometers (5.3 miles) southeast of the community at coordinates 32–00–44 NL and 83–28–19 WL. The fourth, filed by Robert W. Larson, proposes the allotment of Channel 299A at Diamond Lake as the community's first local aural transmission service. Channel 299A can be allotted at Diamond Lake without a site restriction at coordinates 43–10–44 NL and 122–8–16 WL. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before February 4, 2002, and reply comments must be filed on or before February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket Nos. 01–340, 01–341, 01–342, 01–343, adopted December 5, 2001, and released December 14, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference

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Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Pierce, Channel 248C2.

3. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Coosada, Channel 226A.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Pineview, Channel 226A.

5. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Diamond Lake, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–370 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. RSPA–01–10741 (HM–220C)]

RIN 2137–AC86

Hazardous Materials: Filling of Propane Cylinders; Denial of Petition for Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Denial of petition for rulemaking and termination of docket HM–220C.

SUMMARY: RSPA is denying a petition for rulemaking filed by the Barbecue Industry Association requesting we require the registration of facilities that fill liquefied petroleum gas (LPG) cylinders having a water capacity of less than 200 pounds.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin or Eileen Edmonson, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1996, the Research and Special Programs Administration (RSPA, we) published an advance notice of proposed rulemaking (ANPRM) (61 FR 43515) to solicit comments on the merits of a petition for rulemaking filed by the Barbecue Industry Association (BIA) (P–1298). In its petition, BIA requested we amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to require the registration of persons who fill DOT specification cylinders that have a water capacity of less than 200 pounds (about 24 gallons); are used for liquefied petroleum gas, a Division 2.1 (flammable) gas; and that come under the jurisdiction of the HMR. To obtain this registration, BIA proposed that the fillers' facilities and qualifications be reviewed by an independent inspection agency approved according to § 173.300a of the HMR. BIA proposed that registrants submit an application containing the following documentation:

(1) A certification of employee training;

(2) A certification that the filling equipment is suitable for use with LPG to provide for accurately filling the cylinders by weight according to current § 173.304(c);

(3) Proof of financial responsibility in the minimum amount of one million dollars; and

(4) An inspection report prepared by an independent inspection agency.

BIA's major concern is overfilling of propane cylinders used for barbecue grills. These cylinders are commonly called 20-pound cylinders, hold about five gallons, and are usually sold directly to consumers. BIA states that more than 5 million barbecue grills were sold in 1993, that the National Petroleum Gas Association (NPGA) estimates 50 million propane cylinders are currently in use, and that an additional 5 to 6 million are produced annually. BIA states that these market conditions have encouraged fill stations to use untrained employees to fill and service 20-pound cylinders. BIA asserts that the wide variations in current training and filling practices and inadequate regulations by state and local jurisdictions result in consumer injuries and deaths. BIA suggests Federal regulation will eliminate these differences and promote safer use of propane cylinders. BIA provided no estimates on the number of fillers that potentially would be affected by the proposal. The text of the petition was published verbatim in the ANPRM.

Comment Summary

To determine the possible impacts of BIA's proposal, the ANPRM included a request of commenters to provide estimates of the proposal's anticipated costs and safety benefits, burden hours, and the potential impact on small businesses and the environment. We received 11 comments from persons representing state and local agencies, trade associations, cylinder fillers and requalifiers, and the general public. The commenters unanimously oppose BIA's proposals, primarily because the costs associated with their implementation would be extremely high.

Most commenters agree that training is necessary for propane refillers; however, they object to BIA's training proposal. They state that existing state and Federal requirements cover most propane filling scenarios, including training, and that additional Federal regulations would be duplicative and confusing, and would increase costs. The NPGA states that the National Fire Protection Association (NFPA) Standard 58, titled "Storage and Handling of Liquefied Petroleum Gases," is consistent with the HMR and is used as the basis of LPG regulation "in virtually every state." This pamphlet discusses how to fill and transport these cylinders, even when customer-owned, and how to train employees performing these operations. The Railroad Commission of Texas (RCT) maintains that the BIA proposal would not enhance safety in Texas; it notes that Texas had only two reported overfilling accidents in the past five years, neither of which was serious.

Most commenters agree that certification of scales to ensure their accuracy is a necessary safety practice, but note that these activities are currently regulated by the states. As the NPGA states:

> At present, the Hazardous Materials Regulations do not contain a provision that a company weighing a package as part of a manufacturing or hazmat filling operation must use a scale certified in accordance with NIST/NCWM Handbook 44 *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*. It has always been understood that such weighing operations are subject to state weights and measure laws and regulations and, therefore, are not a matter of DOT jurisdiction. Consequently, NPGA believes that the amendments proposed by BIA to require certified scales for cylinder filling is beyond the scope of the HMR and should therefore be denied.

Commenters objecting to the BIA proposal to require each propane filler to carry one million dollars in liability insurance state that the proposal is excessive and few small businesses can afford the amount. Three commenters report existing insurance requirements in their states. The Louisiana Liquefied Gas Commission states that it requires propane filling businesses to carry a minimum of $100,000 in insurance. RTC states that Texas requires licensed small cylinder fillers "to carry a general liability policy including premises and operations in an amount of at least $25,000 per occurrence and $300,000 in the aggregate." This latter commenter estimates that carrying one million dollars in liability insurance would increase the insurance costs of its licensees from an average of $750 a year to $2,000 a year.

Finally, commenters object to the use of an independent inspection agency for inspecting a filler's qualifications and operations. They state that these agencies are not prepared to assume these additional responsibilities. One commenter notes that his state's Division of Weights and Measures requires all propane refilling scales to be tested yearly by an independent inspection agency and documented with the state.

Discussion

Federal hazardous materials transportation law (federal hazmat law), codified at 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations apply to persons who: (1) Transport hazardous materials in commerce; (2) cause hazardous materials to be transported in commerce; or (3) manufacture, mark, maintain, recondition, repair, or test packagings (or components thereof) that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A).

The HMR apply to hazardous materials in cylinders offered for transportation or transported in commerce. For example, DOT specification cylinders must be designed, manufactured, and maintained in accordance with applicable HMR requirements. In addition, cylinders offered for transportation and transported in commerce must be filled as specified in § 173.304 of the HMR. Further, persons who fill and offer such cylinders for transportation in commerce must be trained. A company that fills cylinders intended for use in barbecue grills and offers such cylinders for transportation to a distribution or retail facility is subject to all applicable HMR requirements.

Many state and local governments have adopted and are enforcing the standards contained in NFPA Standard 58. The 1998 edition of this standard requires certain propane cylinders having capacities from 4 to 40 pounds to be fitted with overfilling prevention devices (OPDs). The standard defines an OPD as "a safety device that is designed to provide an automatic means to prevent the filling of a container in excess of the maximum permitted filling limit." The standard requires an OPD and a fixed maximum liquid level gauge to be fitted on any cylinder manufactured after September 30, 1998, requalified after September 30, 1998, or filled on or after April 1, 2002. These newer OPDs are easily recognizable by a unique trilobular handwheel. The OPD handwheel is connected to the valve stem in a tamper-proof manner to prevent interchanging with a non-OPD valve. The use of OPDs on propane cylinders is supported by the Consumer Product Safety Commission and the Occupational Safety and Health Administration.

Conclusion

We agree with commenters to the ANPRM that the BIA proposal would impose significant costs on the industry. Further, the BIA proposals would not address safety problems involving refilling of consumer-owned barbecue cylinders since these are outside the scope of the Department's jurisdiction. Moreover, as commenters suggest, the BIA proposals unnecessarily duplicate state and local regulations applicable to refilling of cylinders. Finally, the NFPA 58 standard for OPDs on certain propane cylinders appears to address the safety issue of concern to BIA. For these reasons, we are denying BIA's petition. In consideration of the foregoing, Docket No. RSPA–01–10741 (HM–220C) is terminated.

Issued in Washington, DC, on January 2, 2002, under the authority delegated in 49 CFR part 106.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–445 Filed 1–7–02; 8:45 am]

BILLING CODE 4910–60–P

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Notices

Federal Register
Vol. 67, No. 5
Tuesday, January 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Emerging Markets Program for Fiscal Year 2002

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation is inviting private sector proposals for the FY 2002 Emerging Markets Program.

DATES: All proposals must be received by 5:00 p.m. Eastern Standard Time, March 11, 2002. Announcements of funding decisions for the EMP are anticipated sometime after mid-July 2002.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932S, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *emo@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that proposals are being accepted for participation in the Fiscal Year 2002 Emerging Markets Program (EMP). The purpose of the EMP is to assist U.S. organizations, public and private, to improve market access and to develop and promote U.S. agricultural products and/or processes in low-to middle income countries that offer promise of emerging market opportunities. This is to be accomplished by providing, or paying the costs of, approved technical assistance activities in those emerging markets. The EMP is administered by the Foreign Agricultural Service (FAS).

The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because funds are limited and the range of potential emerging market countries is worldwide, proposals for technical assistance activities ("proposals") will be considered which target those countries with: (1) Per capita income less than $9,265 (the ceiling on upper middle income economies as determined by the World Bank (World Development Indicators 2001)); and (2) population greater than 1 million. Proposals may address suitable regional groupings, e.g., the islands of the Caribbean Basin.

Authority

The EMP is authorized by Section 1542(d)(1)(D) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (the Act). Up to $10 million is available to fund the program.

Eligible Applicants, Commodities, and Activities

Any United States agricultural or agribusiness organization, university, or state department of agriculture is eligible to participate in the EMP. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by the U.S. industry. U.S. market development cooperators may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other FAS marketing programs, e.g. the Foreign Market Development Cooperator Program and the Market Access Program.

All agricultural products, except tobacco, are eligible for consideration. Proposals which include multiple commodities are also eligible.

Only technical assistance activities are eligible for reimbursement. Following are examples of the types of activities that may be funded:

—Projects designed specifically to improve market access in emerging foreign markets. *Examples:* activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share; responses to time-sensitive market opportunities;

—Marketing and distribution of value-added products, including new products or uses. *Examples:* food service development; market research on potential for consumer-ready foods or new uses of a product;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies should be specific in their focus and may include cross-commodity activities which focus on problems, e.g., distribution, which affect more than one industry. *Examples:* grain storage handling and inventory systems development; distribution infrastructure development;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. *Examples:* seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. product exports;

—Assessments and follow up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, and to determine the potential use for general export credit guarantees for commodities, facilities and services. *Examples:* product needs assessments and market analysis; assessments for using facilities credits to address infrastructural impediments;

—Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries. *Examples:* agricultural statistical analysis; development of market information systems; policy analysis;

—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system. *Examples:* retail training; marketing seminars; transportation seminars; training keyed to opening new or expanding existing markets.

The Program funds technical assistance activities on a project-by-project basis. EMP funds may not be used to support normal operating costs of individual organizations, nor as a source by which to recover prior expenses from previous or ongoing projects. Ineligible activities include restaurant promotions; branded product promotions (including labeling and supplementing normal company sales activities intended to increase awareness and stimulate sales of branded products); advertising; administrative and operational expenses for trade shows; and the preparation and printing of brochures, flyers, posters, etc., except in connection with specific technical assistance activities such as training seminars. Other items excluded from funding are contained in the FY 2002 EMP Guidelines.

Project Suitability and Qualification Requirements

The underlying premise of the EMP is that there are distinctive characteristics of emerging agricultural markets that necessitate or benefit significantly from U.S. governmental assistance before the private sector moves to develop these markets through normal corporate or trade promotional activities. The emphasis is on marketing opportunities where there are risks that the private sector would not normally undertake alone. The EMP is intended to supplement, not supplant, the efforts of the U.S. private sector and it complements the efforts of other FAS marketing programs. Once a market access issue has been addressed by the EMP, further market development activities may be considered under other programs such as GSM–102 or GSM–103 credit guarantee programs, the Facility Guarantee Program, the Supplier Guarantee Program, the Market Access Program, or the Cooperator Program. Section 108 funds may be used to complement funding provided by the EMP.

The following marketing criteria will be used to determine the suitability of projects for funding under the EMP:

1. Low U.S. market share and significant market potential.

- Is there a significant lag in U.S. market share of a specific commodity in a given country or countries?
- Is there an identifiable obstacle or competitive disadvantage facing U.S. exporters (e.g., competitor financing, subsidy, competitor market development activity) or a systemic obstacle to imports of U.S. products (e.g., inadequate distribution, infrastructure impediments, insufficient information, lack of financing options or resources)?
- What is the potential of a project to generate a significant increase in U.S. agricultural exports in the near-to medium-term? (Estimates or projections of trade benefits to commodity exports, and the basis for evaluating such, must be included in EMP proposals.)

2. Recent change in a market.

- Is there, for example, a change in a sanitary or phytosanitary trade barrier; a change in an import regime or the lifting of a trade embargo; or a shift in the political or financial situation in a country?

Application Requirements and Process

It is highly recommended that any organization considering applying to the Program for FY 2002 first obtain a copy of the 2002 Program Guidelines. These Guidelines contain information on requirements that a proposal must include in order to be considered for funding under the Program.

Requests for the 2002 EMP Guidelines and additional information may be obtained from the Marketing Operations Staff at the address above. The Guidelines are also available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.html*.

To assist FAS in making determinations regarding funding, applications should be no longer than ten (10) pages and include the following information: (a) Name of organization submitting the proposal; (b) Federal tax ID number of submitting organization; (c) date of proposal; (d) address, telephone and fax numbers of the organization; (e) full title of proposal; (f) constraint description activities (statement of problem to be addressed); (g) objectives and detailed description of project approach and specific; (h) benefits to U.S. agricultural exports as a result of the project, including specific performance measures; (i) target country/countries for proposed activities; (j) supporting market analysis of the target market(s)—brief economic analysis for each commodity and country, including current market conditions and relevant trade data—and existing size of U.S. export market share, in dollars and/or quantities, and the basis or source(s) for this data; (k) information on whether similar activities are or have previously been funded in target country/countries (e.g., under FAS's MAP and/or FMD programs); (l) a clearly stated explanation as to why participating organization(s) are unlikely to carry out activities without Federal financial assistance; (m) projected starting date (should be after 15 July 2002) and time line(s) for project implementation; (n) detailed, line item project budget, including other sources of funding and contributions from participating organizations (additional requirements are contained in the 2002 Program Guidelines) and any third party contributions. Qualifications of applicant(s) should be included, but as an attachment.

This notice is complemented by concurrent notices announcing other foreign market development programs administered by FAS including the Market Access Program (MAP), the Foreign Market Development Cooperator (Cooperator) Program, the Section 108 Program, and the Quality Samples Program (QSP). For FY 2002, EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of these programs. Applicants are not required to use the UES, but are strongly encouraged to do so because it reduces paperwork and expedites the FAS processing and review cycle.

Applicants planning to use the on-line system must contact the Marketing Operations Staff at (202) 720–4327 to obtain site access information. A login ID and password will be supplied to a prospective applicant upon request. A "Help" file will be available to assist applicants with the process. However, the on-line application for the EMP will not be available until approximately late January. Therefore, all organizations applying for funding assistance in FY 2002 are urged to begin preparing their applications in accordance with the requirements contained herein and the FY 2002 Program Guidelines, and provide this information once the online application is available. A notice concerning the availability of the online system will be posted on the FAS web site. A printed version of the proposal should also be submitted (using WordPerfect, Word or compatible format) to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932-South,1400 Independence Avenue, SW, Washington, DC 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042.

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Allocation of Funds

In general, all qualified proposals received before the application deadline will compete for EMP funding. The limited funds and the range of emerging markets worldwide in which the funds may be used preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most are funded at a level of less than $500,000 and for a duration of one year or less. Multi-year proposals may be considered in the context of a strategic detailed plan of implementation. Funding in such cases is normally provided one year at a time, with commitments beyond the first year subject to interim evaluations.

In general, priority consideration will be given to proposals that identify and seek to address specific problems or constraints in rural business systems or food and agribusiness systems in emerging markets through technical assistance activities to expand or maintain U.S. agricultural exports. Priority will also be given to those proposals that include the willingness of the applicant to commit its own funds, or those of the U.S. industry, to seek export opportunities in an emerging market. The percentage of private funding proposed for a project will therefore be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on their ability to provide benefits to the organization receiving EMP funds and to the broader industry which that organization represents.

Reporting Requirements

A performance report detailing the results of each project supported with EMP funds must be submitted to the Marketing Operations Staff at the address above. Because public funds are used to support EMP projects, these reports will be made available to the public. Complete final financial reports are to accompany performance reports.

Closing Date for Applications

The deadline for all applications to the EMP is 5:00 p.m. Eastern Standard Time, March 11, 2002. Announcements of funding decisions for the EMP are anticipated sometime after mid-July 2002.

Signed at Washington, DC on December 31, 2001.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 02–432 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Foreign Market Development Cooperator Program for Fiscal Year 2003

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation is inviting proposals for the Fiscal Year 2003 Foreign Market Development Cooperator Program.

DATES: All applications must be received by 5 p.m. Eastern Standard Time, March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that applications are being accepted for participation in the Fiscal Year 2003 Cooperator (Cooperator) program. The program is designed to create, expand, and maintain foreign markets for United States' agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The Cooperator program is administered by the Foreign Agricultural Service (FAS).

Under the Cooperator program, CCC enters into agreements with nonprofit U.S. trade organizations which have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations which are nationwide in membership and scope. Cooperators may receive assistance only for the promotion of generic activities which do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

Authority

The Cooperator program is authorized by section 5(f) of the Commodity Credit Corporation Charter Act, 15 U.S.C. 714c(f). Cooperator program regulations appear at 7 CFR part 1484.

Eligible Applicants

To participate in the Cooperator program an applicant must be a nonprofit U.S. agricultural trade organization.

Application Process

To be considered for the Cooperator program an applicant must submit to the FAS information required by the Cooperator program regulations set forth in 7 CFR part 1484. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, Section 108 foreign currency program, and several Export Credit Guarantee programs. Organizations which are interested in applying for Cooperator program funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade which they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the Internet-based system must contact the FAS Marketing Operations Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can download the UES handbook, including the suggested application format and instructions, from the following URL address: *http://www.fas.usda.gov/mos/ues/unified.html.* A UES handbook also may be obtained by contacting the Marketing Operations Staff on (202) 720–4327.

All cooperator program applicants, whether applying via the Internet on diskette, also must submit by March 11, 2002, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR section 1484.20(a)(14). The UES handbook contains an acceptable certification format.

Any organization which is not interested in applying for the Cooperator program but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff on (202) 720–4327.

Review Process and Allocation Criteria

The FAS allocates funds in a manner which effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine eligibility of the applicants and the completeness of the applications. These requirements appear at § 1484.14 and § 1484.20 of the Cooperator program regulations. Applications which meet the application requirements then will be further evaluated by the proper FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1484.21 and § 1484.22 of the Cooperator program regulations. The purpose of this review is to identify meritorious proposals and the recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6-year average share (1998–2003) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share (1998–2003) of all Cooperator marketing plan budgets.

(b) Past Export Performance (20)

- The 6-year average share (1997–2002) of the value of exports promoted by the applicant compared to
- The applicant's 6-year average share (1997–2002) of all Cooperator marketing plan budgets plus a 6-year average share (1996–2001) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (1997–2002) of the total value of world trade of the commodities promoted by the applicant compared to
- The applicant's 6-year average share (1997–2002) of all Cooperator marketing plan budgets plus a 6-year average share (1996–2001) of MAP program ceiling levels and a 6-year average share (1996–2001) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

- The project total dollar value of world trade of the commodities being promoted by the applicant for the year 2008 compared to
- The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projects (10)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2001 compared to
- The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2001, as specified in the 1998 Cooperator program application.

The Commodity Divisions' recommended funding level for each applicant is converted to a percentage of the total Cooperator program funds available then multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5 p.m. Eastern Standard Time, March 11, 2002. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5 p.m. Eastern Standard Time, March 11, 2002, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 1400 Independence Avenue, SW, Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042.

Signed at Washington, DC on December 31, 2001.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 02–433 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Market Access Program for Fiscal Year 2002

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation is inviting proposals for the Fiscal Year 2002 Market Access Program.

DATES: All applications must be received by 5 p.m. Eastern Standard Time, March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign

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Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that applications are being accepted for participation in the Fiscal Year 2002 Market Access Program (MAP). The MAP is designed to create, expand and maintain foreign markets for United States' agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The MAP is administered by the Foreign Agricultural Service (FAS).

Under the MAP, CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The program generally operates on a reimbursement basis.

Authority

The MAP is authorized under section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Eligible Applicants

To participate in the MAP an applicant must be: a nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (i.e., an association of State Departments of Agriculture), a U.S. agricultural cooperative, a State agency, or a small-sized U.S. commercial entity (other than a cooperative or producer association).

Available Funds

$90 million of cost-share assistance may be obligated under this announcement to eligible MAP applicants.

Application Process

To be considered for the MAP an applicant must submit to the FAS information required by the MAP regulations set forth in 7 CFR part 1485. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) program, Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, the Section 108 foreign currency program, and several Export Credit Guarantee programs. Organizations which are interested in applying for MAP funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade which they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the Internet-based system must contact the FAS Marketing Operations Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can download the UES handbook, including the suggested application format and instructions, from the following URL address: *http://www.fas.usda.gov/mos/ues/unified.html.* A UES handbook also may be obtained by contacting the Marketing Operations Staff on (202) 720–4327.

All MAP applicants, whether applying via the Internet or diskette, also must submit by March 11, 2002, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G). The UES handbook contains an acceptable certification format.

Any organization which is not interested in applying for the MAP but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff on (202) 720–4327.

Review Process and Allocation Criteria

The FAS allocates funds in a manner which effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at § 1485.12 and § 1485.13 of the MAP regulations. Applications which meet the requirements then will be further evaluated by the proper FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (1999–2002) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to
- The applicant's 4-year average share (1999–2002) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (1999–2001) of the value of exports promoted by the applicant compared to
- The applicant's 2-year average share (2000–2001) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (2001–2002) of Cooperator marketing plan budgets, and the 2-year average share (2000–2001) of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 2002 compared to
- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 2000 as reported in the 2002 MAP application compared to
- Past projections of exports for 2000 as specified in the 2000 MAP application.

The Commodity Divisions' recommended funding level for each applicant is converted to a percentage of the total MAP funds available then multiplied by the total weight factor as described above to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5 p.m. Eastern Standard Time, March 11, 2002. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5 p.m. Eastern Standard Time, March 11, 2002, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042.

Signed at Washington, DC on December 31, 2001.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 02–431 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Quality Samples Program for Fiscal Year 2002

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation is inviting proposals for the FY 2002 Quality Samples Program.

DATES: All proposals must be received by 5 p.m. Eastern Standard Time, March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that proposals are being accepted for participation in the Fiscal Year 2002 Quality Samples Program (QSP). The QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities. CCC will review all proposals it receives against the evaluation criteria contained herein and award QSP funds on a competitive basis. Financial assistance will be made available on a reimbursement basis.

Under the QSP, CCC enters into agreements with those entities whose proposals have been accepted. The QSP agreement between CCC and the participant will include the maximum amount of CCC funds that may be used to reimburse certain activity costs which have been approved by CCC and paid by the QSP participant. QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete. CCC will not reimburse the costs of providing technical assistance. QSP agreements are subject to review and verification by the Foreign Agricultural Service's (FAS) Compliance Review Staff. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation. Cash advances will not be made available to any QSP participant.

The QSP is administered by FAS. This notice supercedes any prior notices concerning the QSP.

Authority

The QSP is authorized under section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Available Funds

$2.5 million of cost-share assistance may be obligated under this announcement.

General Scope of QSP Projects

QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination. As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an

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appropriate target audience the proper preparation or use of the sample in the creation of an end product;

• Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers; and

• Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (e.g., not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

• Have not previously purchased the U.S. commodity which will be shipped under the QSP;

• Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity which will be shipped under the QSP;

• Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity which will be shipped under the QSP (e.g., because of improper specification, blending, or formulation; or sanitary or phytosanitary (SPS) issues);

• Are interested in testing or demonstrating the benefits of the U.S. commodity which will be shipped under the QSP; or

• Need technical assistance in processing or using the U.S. commodity which will be shipped under the QSP.

Major Changes From the FY 2001 Program

Due to limited funding, the FY 2001 program limited the number of projects which could be undertaken by a participant. Under this announcement, the number of projects per participant will not be limited.

The FY 2001 program limited the funding to $50,000 of QSP reimbursement. Under this announcement, projects will be limited to $60,000 of QSP reimbursement. Projects comprised of technical preparation seminars; that is, projects which do not include further processing or substantial transformation; will remain limited to $10,000 of QSP reimbursement, as these projects require smaller samples. Under the QSP, participants may be reimbursed for certain costs of purchasing and transporting commodity samples. Although providing technical assistance is required for all projects, costs of providing the actual technical assistance will not be reimbursed under the QSP.

Proposal Process

In order to be considered for participation in the QSP, interested parties should submit proposals to FAS as described in this notice. QSP proposals must contain complete information about the proposed projects. This notice is complemented by concurrent notices announcing four other foreign market development programs administered by FAS, including the Market Access Program (MAP), the Foreign Market Development Cooperator (Cooperator) Program, the Emerging Markets Program, and the Section 108 Foreign Currency Program.

The MAP and Cooperator Program notices detail a Unified Export Strategy (UES) application process which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of these programs. Some applicants to the QSP, particularly those who also are applying for funding under the MAP or Cooperator Program, are encouraged to use the UES application process. The Internet-based UES application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html*. Other applicants should follow the application procedures contained in this notice.

Entities interested in participating in the QSP are not required to submit proposals in any specific format; however, FAS recommends that proposals contain, at a minimum, the following:

(a) Organizational information, including:

• Organization's name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);

• Type of organization;

• Name, telephone number, fax number, and e-mail address of the primary contact person;

• A description of the organization and its membership;

• A description of the organization's prior export promotion experience; and

• A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) Market information, including:

• An assessment of the market;

• A long-term strategy in the market; and

• U.S. export value/volume and market share (historic and goals) for 1998–2004;

(c) Project information, including:

• A brief project title;

• Amount of funding requested;

• A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2002–2004 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2001, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;

• A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and their end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);

• A sample description (i.e., commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);

• An itemized list of all estimated costs associated with the project for which reimbursement will be sought; and

• The importer's role in the project regarding handling and processing the commodity sample;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash, goods, and services.

Review Process

Proposals will be evaluated by the applicable FAS commodity division. The divisions will review each proposal against the factors described below. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Commodity and Marketing Programs.

FAS will use the following criteria in evaluating proposals:

• The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;

• The extent to which the proposal is targeted to a market in which the United States is generally competitive;

• The potential for expanding commercial sales in the proposed market;

• The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;

• The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;

• The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and

• How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals which target countries which meet either of the following criteria:

• Per capita income less than $9,265 (the ceiling on upper middle income economies as determined by the World Bank (World Development Indicators 2001)); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or

• U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

Agreements

Following approval of a proposal, CCC will enter into an agreement with the organization that submitted the proposal. Agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for shipment of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly American Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement. Evaluation reports should address all performance measures which were presented in the proposal.

Closing Date for Proposals

All proposals must be submitted in duplicate and received by 5 p.m. Eastern Standard Time, March 11, 2002, at one of the following addresses:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Signed at Washington, DC on December 31, 2001.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 02–434 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 01–035N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will meet January 22–25, 2002. This meeting replaces the NACMCF meeting originally scheduled for September 17–20, 2001. The original meeting was postponed because of the September 11, 2001 terrorist attacks.

The meeting is open to the public. The committee will discuss *Salmonella* performance standards in meat and poultry products; *Escherichia coli* O157:H7 in blade-tenderized, non-intact beef; the evaluation of hot holding temperatures; Codex "Discussion Paper on Proposed Draft Guidelines for the Validation of Food Hygiene Control Measures," and the scientific basis for establishing safety-based "use by" date labeling for refrigerated, ready-to-eat foods.

FSIS will finalize an agenda on or before the meeting date and post it to its Internet web page.

DATES: The full Committee will meet on Wednesday, Thursday, and Friday, January 23, 24, and 25, 2002; subcommittee meetings will be held on January 22 and 23, 2002.

ADDRESSES: The meeting will be held at the Omni Shoreham Hotel at 2500 Calvert St., NW, Washington, DC 20008. Send an original and two copies of comments to the Food Safety and Inspection Service Docket Room: Docket #01–035N, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250. Comments may also be sent by facsimile (202) 205–0381. The comments and the official transcript of the meeting, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments should contact Brenda Halbrook (202) 690–6600, Fax (202) 690–6337, e-mail address: *brenda.halbrook@dchqexs1.hqnet.usda.gov*, or mailing address: Food Safety and Inspection Service, Department of Agriculture, Office of Public Health and Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Halbrook, by January 7, 2001.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established on March 18, 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for food, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal 1988. The Charter for the NACMCF is available for viewing on the FSIS internet Web page at *http://www.fsis.usda.gov/OA/programs/nacmcf_chart.htm*.

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense. Dr. I. Kaye Wachsmuth, Deputy Administrator, Office of Public Health and Science, FSIS, is the Committee Chair, Janice F.

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Oliver, Deputy Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration, is the Co-Chair, and Brenda Halbrook, FSIS, is the Executive Secretary.

At the January 22–25, 2002, meeting announced in this document, the Committee will

- Discuss *Salmonella* performance standards in meat and poultry products;
- Discuss *Escherichia coli* O157:H7 in blade-tenderized, non-intact beef;
- Discuss the evaluation of hot holding temperatures;
- Discuss the Codex "Discussion Paper on Proposed Draft Guidelines for the Validation of Food Hygiene Control Measures," and
- Discuss the scientific basis for establishing safety-based "use by" date labeling for refrigerated, ready-to-eat foods.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the meeting and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect, or would be of interest to, our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Margaret O'K Glavin,

Acting Administrator.

[FR Doc. 02–499 Filed 1–4–02; 11:35 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Section 108 Foreign Currency Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service invites proposals from interested parties to use certain foreign currencies acquired by the United States for activities to expand markets for U.S. agricultural commodities and for technical assistance activities.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Foreign Agricultural Service (FAS) will use available currencies of the Dominican Republic, Jamaica, Sri Lanka, and Tunisia, to provide assistance in market development and agricultural technical assistance activities. This use of foreign currencies is commonly referred to as the "section 108 foreign currency program." These foreign currencies were acquired by USDA pursuant to agreements made under Title I of the Agricultural Trade Development and Assistance Act of 1954, (Pub. L. 480).

Title I, Pub. L. 480 authorizes the U.S. government to finance the sale and exportation of agricultural commodities to foreign governments on concessional terms. Between 1986 and 1991, the U.S. entered into various Title I, Pub. L. 480 agreements with foreign governments, on terms which allowed repayment to the United States in local currencies. Pub. L. 480 authorizes the U.S. government to use these foreign currencies to implement market development and agricultural technical assistance activities.

This announcement supersedes all previous announcements regarding this program. On February 12, 2001, FAS published a notice in the **Federal Register** (66 FR 9818–9820) inviting proposals to use currencies of Costa Rica, Dominican Republic, Jamaica, and Tunisia for market development projects and technical assistance activities. The currencies of Costa Rica, which were available under the previous announcements, are no longer available. The currencies of Sri Lanka have been added to the list.

FAS must disburse local currencies to program participants, usually through the disbursing officer in the U.S. embassy in the country of origin. That is, FAS may not convert the local currency to any other currency prior to disbursement. Activities funded with section 108 currencies are not limited to the country where the currency originated. It is the responsibility of the recipient to arrange for receiving and using the foreign currencies made available, or converting the funds to other currencies. At the time of this announcement, approximately 28 million Dominican Republic pesos; 210 million Jamaica dollars; 12 million Tunisia dinars; and 1.7 million Sri Lanka rupees are available.

Proposal Process

This notice is complemented by concurrent notices announcing four other foreign market development programs administered by FAS, including the Market Access Program (MAP), the Foreign Market Development Cooperator (Cooperator) Program, the Emerging Markets Program, and the Quality Samples Program (QSP). The MAP and Cooperator Program notices detail a Unified Export Strategy (UES) application process which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of these programs. Some applicants to the section 108 foreign currency program, particularly those who are applying for funding under more than one program, may wish to use the UES application process. The Internet-based UES application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html*. Other applicants, particularly those who are applying for funding only under the section 108 foreign currency program, should follow the application procedures contained in this notice. Interested applicants that are unsure of how to apply are urged to contact the Marketing Operations Staff at the address or phone number above.

FAS recommends that proposals to participate in the section 108 foreign currency program contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);
- Type of organization, e.g., corporation, non-profit organization;

- Name, telephone number, fax number, and e-mail address of the primary contact person;
- If a trade organization, a description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing a trade or technical assistance activity;

(b) Market information, including:

- An assessment of the targeted market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share data and goals for 1999–2004;

(c) Project information, including:

- A brief project title;
- Request for funding in one of the available foreign currencies;
- A brief description of the specific market development trade constraint to be addressed by the project, performance measures for the years 2002–2004 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2002, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A method for evaluating and reporting results;
- A description of the activities planned to address the constraint; and
- An itemized list of all estimated costs associated with each project activity for which reimbursement will be sought;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, Commodity Credit Corporation, FAS, or other Federal agencies. Contributed resources may include cash, goods, and services; and,

(e) A completed Standard Form 424 (SF–424). This form is available on the Internet via the section 108 fact sheet at the following URL address: *http://www.fas.usda.gov/info/factsheets/108fact.htm*, or by calling the contact listed above.

Review Process and Allocation Criteria

The FAS allocates funds in a manner which effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP. FAS will provide financial assistance under this program on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. Proposals will be evaluated by the applicable FAS commodity division. The divisions will recommend funding levels for each applicant based on a review of the applications against the following factors:

- The ability of the organization to provide an experienced staff with the requisite technical and trade expertise to execute the proposal;
- The funding request and the organization's willingness to contribute resources, including cash, goods and services of the U.S. industry and foreign third parties;
- The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;
- The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of the targeted foreign market; and
- The degree to which the organization's proposal is coordinated with other private or U.S. government-funded market development projects.

The purpose of this review is to identify meritorious proposals and to suggest an appropriate funding level for each application based upon these factors. Meritorious proposals will then be reviewed by representatives of each FAS program area for the purpose of allocating available funds among the applicants. FAS will prioritize meritorious proposals according to the following criteria.

First priority consideration will be given to proposals which target the growth markets listed below. These developing markets account for a significant share of world imports of major farm commodities and much of the projected long-term growth in global import demand. As such, they are expected to be among the most supportive of USDA's primary export objective of increasing the U.S. share of world agricultural trade. First priority growth markets for allocation of section 108 funds: Brazil, countries in Central America, Chile, China, Egypt, India, Indonesia, Malaysia, Mexico, Philippines, Russia, South Africa, South Korea, Thailand, Turkey, and Vietnam. First priority consideration will also be given to proposals which target the countries from which the foreign currencies originate, i.e., Dominican Republic, Jamaica, Sri Lanka, and Tunisia.

Second priority consideration will be given to proposals which target other markets where growth prospects for the relevant agricultural product are high. These proposals would serve to open new markets or bring about substantial growth in existing markets.

In all cases, preference is given to nonprofit U.S. agricultural trade organizations that represent an entire industry or are nationwide in membership and scope.

Note: FAS generally reviews section 108 proposals on a quarterly basis. However, FAS may also consider proposals on an accelerated basis if an urgent marketing opportunity becomes available. FAS will evaluate such proposals according to the criteria specified in this notice. Details concerning the accelerated review can be obtained from the section 108 fact sheet on the Internet at the following URL address: *http://www.fas.usda.gov/info/factsheets/108fact.htm* or by calling the contact listed above.

Agreements

Following approval of a proposal, FAS will enter into an agreement with the organization that submitted the proposal. Agreements will incorporate the project details as approved by FAS and specify any other terms and conditions applicable to project funding. Agreements include the maximum amount of funds, in local currencies rather than U.S. dollars, which may be made available for a participant's approved activities. All agreements with non-profit organizations under this program are administered under 7 CFR part 3019—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations. These regulations can be found on the Internet at the following URL address: *http://www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3019_01.html*.

Submission of Proposals

Proposals may be submitted on a continuous basis. However, all Internet-based section 108 proposals (using the UES application) must be properly

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submitted by 5 p.m. Eastern Standard Time, March 11, 2002, because the UES entry Web site closes at that time. Signed SF–424 forms must be delivered to one of the addresses listed below.

All proposals on diskette (with two accompanying paper copies and a signed SF–424 form) and any other proposals must be delivered to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Ave., SW., Washington, DC 20250–1042.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Signed at Washington, DC on December 31, 2001.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 02–430 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Washington Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northeast Washington Resource Advisory Council will meet Wednesday and Thursday, January 23 and 24, 2002 at the Spokane Community College, Colville Campus Monumental Room at 985 S. Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. each day.

Agenda items include: (1) FACA overview, (2) roles and responsibilities, (3) review RAC guidebook, (4) communication strategies, (5) future agenda items, (6) future meeting dates, (7) project process and identification, (8) election of chairperson, and (9) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to designated federal official, Nora Rasure or Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114: (509) 684–7000.

Dated: December 28, 2001.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 02–395 Filed 1–7–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 5:30 p.m. and adjourn at 7:30 p.m. on January 31, 2002, at the Radisson Hotel & Conference Center, 4728 Constitution Avenue, Baton Rouge, Louisiana 70808. The purpose of the meeting is to discuss the draft report on environmental justice, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 3, 2002.

Debra A. Carr,

Deputy General Counsel, Office of the General Counsel.

[FR Doc. 02–447 Filed 1–7–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 4:30 p.m. on Thursday, January 17, 2002, at the Philadelphia Convention Center, Conference Room B, 12th and Arch Streets, Philadelphia, Pennsylvania 19107. The Advisory Committee will provide an orientation to members, plan a press conference to release its report, Barriers to Minority and Women Owned Businesses in Pennsylvania, and discuss new topic areas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 3, 2002.

Debra A. Carr,

Deputy General Counsel, Office of the General Counsel.

[FR Doc. 02–446 Filed 1–3–02; 2:46 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Notice of Antidumping Duty Order: Certain Folding Gift Boxes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: On December 5, 2001, the Department of Commerce issued its amended final determination of sales at less than fair value with respect to certain folding gift boxes from the People's Republic of China. On December 26, 2001, the International Trade Commission notified the Department of its determination that an industry in the United States is being injured by reason of imports of subject merchandise from the People's Republic of China that are sold at less than fair value. The Department of Commerce hereby issues an antidumping duty order on certain folding gift boxes from the People's Republic of China.

EFFECTIVE DATE: January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0410 and (202) 482–0180, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 2001).

Scope of the Order

The products covered by this order are certain folding gift boxes. Folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the order excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Folding gift boxes included in this scope are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the order also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under Harmonized Tariff Schedules of the United States (HTSUS) subheadings 4819.20.0040 and 4819.50.4060. These subheadings also cover products that are outside the scope of this order. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act, the Department made its final determination that certain folding gift boxes from the People's Republic of China ("PRC") are being sold at less than fair value. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 58115 (November 20, 2001). We received ministerial error allegations from one respondent and upon consideration of these allegations, we issued an amended final determination. See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 63216 (December 5, 2001).

On December 26, 2001, in accordance with section 735(d) of the Act, the International Trade Commission ("the Commission") notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of folding gift boxes from the PRC. These antidumping duties will be assessed on all unliquidated entries of folding gift boxes from the PRC entered, or withdrawn from the warehouse, for consumption on or after August 6, 2001, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 40973 (August 6, 2001). On or after the date of publication of this notice, the Customs Service must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below for all companies except Max Fortune Industrial Ltd. Because we found a *de minimis* margin for Max Fortune Industrial Ltd., Max Fortune Industrial Ltd. is excluded from this order. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Red Point Paper Products Co., Ltd	8.90
Max Fortune Industrial Ltd. (*de minimis*)	1.67
PRC-wide Rate	164.75

This notice constitutes the antidumping duty order with respect to folding gift boxes from the PRC. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: January 2, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–436 Filed 1–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the Viraj Group, Limited ("Viraj Group"), respondent, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel wire rod ("SSWR") from India. The period of review ("POR") is December 1, 1999, through November 30, 2000.

We have preliminarily determined that the Viraj Group has made sales below normal value ("NV"). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S.

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Customs Service to assess antidumping duties. We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR part 351 (2001).

Background

On October 20, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel wire rod from India (58 FR 54110). On December 20, 2000, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (65 FR 79802).

On December 27, 2000, the Viraj Group requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review of the Viraj Group on January 31, 2001 (66 FR 8378).

On January 31, 2001, the Department issued a questionnaire to the Viraj Group. The Department initiated a cost of production inquiry and requested that the Viraj Group respond to section D of the questionnaire in addition to sections A, B and C. The Viraj Group submitted its Section A questionnaire response on February 28, 2001, and re-submitted it on March 6, 2001, in the correct format pursuant to the Department's request. On April 17, 2001, the Viraj Group submitted its Sections B, C and D questionnaire responses. The Department, however, considered the Section D response to be insufficient and requested that Viraj Group re-submit its Section D questionnaire response, which it did on August 13, 2001. The Department issued supplemental questionnaires to the Viraj Group and received responses on June 20, 2001, July 9, 2001, August 24, 2001, November 13, 2001, November 28, 2001. Petitioners submitted comments on the record on May 3, 2001, October 10, 2001, and November 28, 2001.

On July 23, 2001, due to the reasons set forth in the *Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod From India*, 66 FR 38257, the Department extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results the maximum 120 days allowable, from the original due date of September 2, 2001, to December 31, 2001. The Department is conducting this review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by the Viraj Group from December 3–12, 2001, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Period of Review

The period of review is December 1, 1999 through November 30, 2000.

Scope of the Review

The merchandise under review is certain stainless steel wire rod (SSWR) which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Collapsing

The Viraj Group is composed of the following four companies: Viraj Forgings, Ltd. ("VFL"); Viraj Alloys, Ltd. ("VAL"); Viraj Impoexpo, Ltd. ("VIL"); and Viraj USA, Inc. ("Viraj USA"), which was incorporated during the POR on May 22, 2000. The Department has preliminarily determined that these four companies are affiliated for the purposes of this administrative review, and that the three producing companies, VAL, VIL, and VFL, should be collapsed and considered one entity pursuant to section 771(33) of the Act and section 351.401(f) of the Department's regulations. *See Memorandum from Edward C. Yang to Joseph A. Spetrini: 1999–2000 Administrative Review of Stainless Steel Wire Rod From India; Collapsing Memorandum of the Viraj Group, Limited*, dated December 31, 2001.

The Department has found the four companies affiliated based on the evidence on the record which states that Mr. Chhatwal and Mr. Kochhar are the directors for all four companies and they jointly run all four companies, and their decisions are made for the interest of the group as a whole. Furthermore, the stock of VAL, VFL and VIL is mainly held by Mr. Chhatwal, Mr. Kochhar, and their relatives. Collectively, this group holds more than 40% of the shares in VIL, VAL, and VFL. Also, VFL owns 100% of Viraj USA.

We find that the three producing companies (VAL, VIL, and VFL) should be collapsed because the evidence on the record indicates that VAL, VFL and VIL each use production facilities for similar or identical merchandise that would not require substantial retooling of any facility in order to restructure manufacturing priorities. For sales to the home market, VAL makes billets and then sends them to an unaffiliated subcontractor for rolling into wire rod. The subcontractor returns the black wire rod to VAL who sells it in the home market as subject merchandise. For sales to the U.S. market, VIL and VFL purchase the billets from VAL and send them to the same sub-contractor that VAL uses for rolling into wire rod. The subcontractor returns the black wire rod which is then annealed at VFL's facilities, pickled at VIL's facilities, packed and then exported. Consequently, VAL, VFL and VIL are all considered "producers" of this wire rod for purposes of this review. Given that VAL, VIL and VFL all produced wire rod during the POR, no substantial retooling would be needed to restructure priorities among the three companies. Moreover, the companies are under common control and ownership, they use the same production facilities for producing wire rod, and the operations of the companies are intertwined. Therefore, the companies are capable, through their sales and production operations, of manipulating prices or affecting production decisions.

Affiliation

The Department has analyzed the issue of whether the Viraj Group was affiliated with its U.S. customer, Kurt Orban Partners ("KOP"), for a portion of the POR, May 22, 2000 through November 30, 2000. At the Department's request, KOP submitted information on the record of this proceeding on November 5, 2001, and November 28, 2001. The evidence on the record indicates that KOP's Vice President and later President, Matt Orban, was also the Vice President of Viraj USA. The record indicates that his duties as Viraj USA's Vice President were clerical in nature. Specifically his duties included signing customs documents with power of attorney and signing bank papers on behalf of Viraj USA. The record indicates Matt Orban also answered correspondence with customs brokers and shipping companies on behalf of Viraj USA. At KOP, Mr. Orban had primary responsibility for the general administration, sales, purchasing, supplier relations, and information technology. Both the Viraj Group and KOP deny that Matt Orban had any control over Viraj USA's sales and pricing decisions. *See* Viraj Group's June 20, 2001 submission at 6. There is no information on the record that indicates Matt Orban did have control over Viraj USA; therefore, the Department preliminarily determines that the Viraj Group and KOP are not affiliated for purposes of this administrative review.

Normal Value Comparisons

To determine whether the Viraj Group's sales of subject merchandise from India to the United States were made at less than normal value, we compared the export price ("EP") and constructed export price ("CEP"), as appropriate, to the normal value ("NV"), as described in the "Export Price/ Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Transactions Reviewed

We compared the aggregate volume of the Viraj Group's home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product the Viraj Group sold in India was sufficient, pursuant to section 773(a)(1) of the Act, to form a basis for NV. Because the Viraj Group's volume of home market sales of the foreign like product was greater than five percent of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the Viraj Group's home market sales of the foreign like product. Thus, we based NV on the prices at which the foreign like product was first sold for consumption in India in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the CEP or EP sales, as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the **Scope of the Review** section above, which were produced and sold by the Viraj Group in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

We have preliminarily determined to consider grade 304L and grade 304LER as the same for purposes of the model match program. The Viraj Group submitted information on the record which claimed that these two grades should not be treated the same. However, after analyzing this data, we conclude that there is insufficient evidence on the record to support a determination that grades 304L and 304LER should be treated differently. Specifically, the evidence on the record is insufficient because the physical characteristics for each grade are not significantly different from one another. For example, in the grade specifications provided on the record by the Viraj Group, the grades 304L and 304LER have the same specifications for carbon, silicon, magnesium, phosphorus, and sulfur. Additionally, the ranges for chromium and nickel for 304LER are a subset of the ranges of those elements for grade 304L. The Department preliminarily determines that the specifications for these grades do not differ significantly. It is the Department's practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. *See e.g., Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781 (January 7, 1998). Therefore, we did not create an additional grade category for grade 304LER for purposes of these preliminary results.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this review, the Viraj Group has classified certain sales as EP sales and certain sales as CEP sales. Based on the information on the record, we are using export price as defined in section 772(a) of the Act for sales before May 22, 2000, and CEP for sales on or after May 22, 2000, because that is the date on which the U.S. re-seller, Viraj USA, was incorporated.

The Viraj Group has classified those sales made by VIL and VFL to the unaffiliated U.S. customer as EP sales. The Viraj Group reported that these sales are shipped directly from the factory in India to the U.S. customer. The Department calculated EP for the appropriate sales based on packed, delivered prices to customers in the United States. We made deductions, where appropriate, from the starting price for following movement expenses:

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marine insurance, international freight, inland freight, U.S. customs duties, and brokerage and handling in accordance with section 772(c)(2) of the Act.

The Viraj Group has classified those sales made by VIL and VFL through Viraj USA, an affiliated reseller that is 100% owned by VFL, as CEP sales. VIL and VFL make the shipment from India on a CIF basis to Viraj USA. Viraj USA clears the goods through customs and pays the customs duty. Then Viraj USA sells the good to the U.S. customer by issuing an invoice to the customer. The customer makes payment to Viraj USA.

Based on the evidence on the record, the Department preliminarily determines that VIL and VFL's U.S. sales through Viraj USA were made "in the United States" within the meaning of section 772(b) of the Act, and thus have been appropriately classified by the Viraj Group as CEP transactions.

We calculated CEP, in accordance with section 772(b) of the Act, based on the packed CIF prices to the first unaffiliated customer in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, marine insurance, customs clearance and delivery arrangements. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses. As explained in the "Duty Drawback" section below, we are not making any adjustments for duty drawback for EP or CEP sales.

Normal Value

1. Comparison Market Viability

The Viraj Group reported the home market sales of VAL, as well as the largest third country market sales of VIL and VFL, who did not make any home market sales during the POR. Since we have preliminarily determined to collapse the companies of the Viraj Group, we used the home market sales of VAL as the basis of normal value.

After testing home market viability, as discussed in the "Transactions Reviewed" section, supra, and after determining whether home market sales were at below-cost prices, in the "Cost of Production Analysis," infra, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value ("CV") Comparisons" sections of this notice.

2. Cost of Production Analysis

Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that the Viraj Group made sales in the home market at prices below the cost of producing the merchandise in this review. *See Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 65 FR 31302 (May 17, 2000), and section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on January 31, 2001, to determine whether the Viraj Group made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

3. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the Viraj Group's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. We used home market sales and COP information provided by the Viraj Group in its questionnaire responses.

4. Test of Home Market Prices

We compared the weighted-average COP for the POR to the Viraj Group's home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales: (1) Were made within an extended period of time in substantial quantities; and (2) were not made at prices which permitted the recovery of all costs within a reasonable period of time.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the Viraj Group's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the Viraj Group's sales of a given product were at prices less-than the COP, we determined such sales to have been made in "substantial quantities." The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act and 19 CFR 351.406(b). Because each individual price was compared to the weighted-average COP for the cost reporting period, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales.

Calculation of Constructed Value

We calculated CV in accordance with section 773(e)(1) of the Act based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COP included in the calculation of CV as noted above, in the "Calculation of COP" section of the notice. In accordance with section 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We calculated NV based on prices to unaffiliated home market customers. We made circumstances of sale adjustments for credit expenses, as appropriate.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find suitable home market sales of the foreign like product. For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1).

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. 19 CFR 351.412(c)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In the home market, the Viraj Group reported one level of trade. The Viraj Group sold through one channel of distribution in the home market: directly to unaffiliated customers (trading companies and actual users). The Viraj Group claimed one level of trade in its U.S. market. The Viraj Group sold through two channels of distribution in the U.S. market: (1) directly to unaffiliated customers in the United States prior to May 22, 2000, the date of incorporation of Viraj USA; and (2) directly from the mill through Viraj USA to unaffiliated customers after May 22, 2000.

For sales in the home market channel, the Viraj Group reported that all of its sales are sold ex-factory. The selling functions performed by the Viraj Group include business promotion (*e.g.*, salesmen travel, entertainment, and product testing), extension of credit, price negotiation, and order processing. Because there is only one sales channel in the home market, and because identical selling functions are performed for all home market sales, we preliminarily determine that there is one LOT in the home market.

We reviewed the selling functions and services performed by the Viraj Group in the U.S. market, as represented by the Viraj Group in its responses. The Viraj Group indicated that the selling functions performed by the Viraj Group were the same for EP sales and CEP sales (*i.e.*, sales to Viraj USA). Viraj USA was incorporated on May 22, 2000, and after that time, Viraj USA handled customs clearance, but there was no change in the selling functions of the Viraj Group. We find that the differences in the degree of selling functions performed (*i.e.*, price negotiation and provision of freight) to be minor. Therefore, we preliminarily determine that there is one LOT in the U.S. market.

The selling functions of the Viraj Group are very minimal for both the home market and the U.S. market. The Viraj Group does not incur warranty expenses, technical service expenses, royalties, or advertising expenses for either market, and only provides freight services for EP transactions. Accordingly, we preliminarily determine that sales in the home market and in the U.S. market were made at the same LOT and have not made a LOT adjustment.

Duty Drawback

In the previous administrative review (*see Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 65 FR 31302, (May 17, 2000)), the Department denied the Viraj Group's request for an upward adjustment to the U.S. starting price based on duty drawback because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test, which states there must be: (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipes Ltd.* v. *U.S. ("Rajinder Pipes")*, 70 F. Supp. 2d 1350, 1358. The Court of International Trade upheld the Department's decision to deny respondent an adjustment for duty drawback because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See Viraj Group, Ltd.* v. *United States of America and Carpenter Technology, Corp., et al.*, Slip Op. 01–104 (CIT August 15, 2001).

Similarly, in the current review, the Department finds that the Viraj Group has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported rebate for duty drawback. The Viraj Group has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. As in the previous review, the Viraj Group was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the Viraj Group for the period December 1, 1999, through November 30, 2000:

Producer/manufacturer/exporter	Weighted-average margin (percent)
The Viraj Group, Limited	0.73

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Issues raised in the hearing will be limited to those raised in the case briefs. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice in the **Federal Register**; rebuttal briefs may be submitted not later than five days thereafter. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), if applicable, we

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will calculate an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) For the Viraj Group, a deposit equal to the above margin will be required; (2) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 48.80 percent, the "All Others" rate made effective by the original investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2001.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–435 Filed 1–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.121401C]

Marine Mammals; File No. 555-1565

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that James Harvey, Ph.D., Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has requested an amendment to scientific research Permit No. 555–1565.

DATES: Written or telefaxed comments must be received on or before February 7, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 555–1565, issued on September 29, 2000 (65 FR 60411) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 555–1565 authorizes the permit holder to study the distribution, ecological role, health, and behavior of harbor seals (*Phoca vitulina*) along the west coast of North America via capture, tagging, marking, and biological sampling, and performing vocalization playback experiments. The Permit also authorizes research on harbor seals in rehabilitation, including captive feeding studies to quantify biases associated with using fecal samples for diet analysis, and surgical implantation of radio tags to determine the efficacy of using such tags for application to the wild population for monitoring animal movements. The permit holder requests authorization to collect from the wild up to 8 harbor seals per year for use in the captive feeding studies and release them back to the wild after approximately 6 months in captivity; conduct feeding experiments on 10 California sea lions (*Zalophus californianus*) undergoing rehabilitation; and harass up to 2000 California sea lions per year at haul-out sites throughout central California for scat collection.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 31, 2001.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–439 Filed 1–7–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

January 3, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Memorandum of Understanding of December 29, 2001, between the Governments of the United States and Cambodia amends and extends the bilateral textile agreement of January 20, 1999 to cover the period January 1, 2002 through December 31, 2004.

The limits under this agreement may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits, which include a nine percent (9%) increase to all of Cambodia's quotas under the Labor Standards provision described in **Federal Register** notice 64 FR 60428, published on November 5, 1999).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 3, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding, dated December 29, 2001, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 8, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	2,012,222 dozen pairs.
334/634	220,696 dozen.
335/635	84,383 dozen.
338/339	3,472,705 dozen.
340/640	973,656 dozen.
345	122,031 dozen.
347/348/647/648	3,894,622 dozen.
352/652	778,925 dozen.
435	21,037 dozen.
438	101,072 dozen.
445/446	123,533 dozen.
638/639	1,168,386 dozen.
645/646	324,552 dozen.

This directive cancels and supercedes the counting letter of December 26, 2001. The limits set forth above are subject to adjustment pursuant to the provisions of the Memorandum of Understanding of December 29, 2001 between the Governments of the United States and Cambodia.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated January 8, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

Moreover, these limits may be revised in light of the U.S. determination as to whether working conditions in the Cambodian textile and apparel sector substantially comply with Cambodian labor law and internationally recognized core labor standards (see **Federal Register** notice 64 FR 60428, published on November 5, 1999).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–437 Filed 1–7–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Forming a Parachute and a Parachute Formed Thereby

AGENCY: U.S. Army Soldier and Biological Chemical Command (SBCCOM), DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,328,262 B1 entitled "Method for Forming a Parachute and a Parachute Formed Thereby" issued December 11, 2001. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 of e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. The following Patent Number, Title and Issue date is provided:

Patent Number: US 6,328,262 B1.

Title: Method for Forming a Parachute and a Parachute Formed Thereby.

Issue Date: December 11, 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–444 Filed 1–7–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Application Concerning Parachute Assembly

AGENCY: U.S. Army Soldier and Biological Chemical Command (SBCCOM), DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,328,263 B1 entitled "Parachute Assembly" issued December 11, 2001. This patent has been assigned to the United States Government as

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represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: Robert Rosenkrans@natick.army.mil.

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. The following Patent Number, Title and Issue date is provided:

Patent Number: US 6,328,263 B1.
Title: Parachute Assembly
Issue Date: December 11, 2001.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–442 Filed 1–7–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000 (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held from 10 a.m. to 12 p.m. on Wednesday, January 23, 2002.

ADDRESSES: The meeting will be in room 3M60/70, 441 G Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (202) 512–6668.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army.

The agenda for the meeting includes a discussion of the draft national estuary restoration strategy, which the Council is required by law to develop. The strategy is designed to ensure a comprehensive approach to maximize benefits derived from estuary habitat restoration projects and to foster the coordination of Federal and non-Federal activities related to restoration of estuary habitat.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. on January 18, 2002. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendees' bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the meeting. Those that are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–443 Filed 1–7–02; 8:45 am]
BILLING CODE 3710–02–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 2, 2002.

John Tressler,
Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Program for International Student Assessment (PISA).
Frequency: One-time.
Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 1,440. Burden Hours: 4,817.
Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focuses on reading literacy; mathematics literacy will be the focus in 2003, and science literacy in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–328 Filed 1–7–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 7, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: January 2, 2002.

John Tressler,
Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Baccalaureate and Beyond Longitudinal Study, Third Followup (B&B:93/2003).
Frequency: On Occasion.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden: Responses: 830. Burden Hours: 385.
Abstract: The Baccalaureate and Beyond Longitudinal Study, Third Followup (B&B:93/2003) will survey 1992–93 bachelor's degree recipients from public and private postsecondary institutions. The data will provide long term information on graduates' additional postsecondary education and training, employment, workforce activities, and other life experiences. The study directs special focus on sample members who began teaching.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–329 Filed 1–7–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–02GO90014]

Solicitation for Financial Assistance Applications; Inventions and Innovation Program

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The Department of Energy's Office of Industrial Technologies (OIT) is funding a competitive grant program entitled the Inventions and Innovation (I&I) Program. The goals of the I&I Program are to improve energy efficiency through the promotion of innovative ideas and inventions that have a significant, potential energy impact and a potential, future commercial market. These goals are consistent with the mission of the Office of Energy Efficiency and Renewable Energy (EERE), which is to develop and promote the adoption of cost-effective renewable energy and energy efficiency technologies within the building, industrial, transportation, and power sectors for the benefit of economic competitiveness, energy security, and environmental quality of the nation. The following mission focus industries, comprised of the most energy intensive industries in the U.S. manufacturing sector, are of particular interest to the Program: Agriculture, Aluminum, Chemicals, Forest products, Glass, Metal-casting, Mining, Petroleum, and Steel. Category 1 applications must be applications relevant to the Glass mission focus industry. Only Glass specific applications will be accepted under Category 1. Category 2 applications are open to all the mission focus industries and the building, transportation, and power sectors.

DATES: DOE expects to issue the solicitation on or about December 19, 2001. The deadline for receipt of applications will be on or about 3 pm Mountain Time on February 15, 2002.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation Number DE–PS36–02GO90014, Inventions and Innovation (I&I) Program, through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov*. IIPS provides the medium for disseminating

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solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at the URL noted above and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Margo Gorin, Contract Specialist, at *margo_gorin@nrel.gov*

SUPPLEMENTARY INFORMATION: A selection of former projects funded by the I&I Program that have reached commercial markets included the following:

• Meta-Lax Stress Relief Equipment offers distinct advantages over conventional heat treatment methods. It uses less energy, is portable, can handle any size metal part, and treats metal stress in hours versus days.

• Aero Cylinder Technology replaces conventional cylinders by combining air spring bellows into assemblies for use on machines (such as punch presses) to control motion and large masses. The air springs act as counter balancers and press cushioners to eliminate alignment problems. This proper alignment reduces downtime and compressed air losses, resulting in significant energy savings.

• Electro-Optic Inspection of Heat Exchangers is a laser-based, nondestructive evaluation system for inspecting heat exchanger tubing for internal corrosion, erosion, scale buildup, and deformation. Benefits to petrochemical, pulp and paper, and power-generation plants include reduced downtime and increased efficiency.

• Hydrodynamic Multi-Deflection Pad Bearings optimize bearing operation in high-speed, combined heat and power turbines, high-load electric motors or gear boxes, air or gas compressors, and air conditioning refrigeration equipment. Energy loss due to friction is reduced up to forty-percent by using fluids as a wedge between pads and moving parts.

Solicitation Specifications: Eligibility requirements include the following: (1) Individuals that are U.S. citizens, either native-born or naturalized; (2) small businesses (as defined by the Small Business Administration) that are U.S. owned, as defined in 10 CFR part 600.501; or (3) institutions of higher learning located in the U.S. Individual inventors and very small businesses (15 or fewer employees) are especially encouraged to participate. More than one application may be submitted by an applicant for different innovations. However, funding will be limited to one award per applicant, per cycle. Also more than one organization may be involved in an application as long as the lead organization and lead financial assistance management responsibilities are defined. The Catalog of Federal Domestic Assistance number assigned to the I&I Program is 81.036. Cost sharing by applicants and/or cooperating participants is not required but highly encouraged. In addition to direct financial contributions, cost sharing can include beneficial services or items such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles.

The Golden Field Office has been assigned the responsibility of issuing the solicitation and administering the awards. Ideas that have a significant energy savings impact and future commercial market potential are chosen for financial support through the competitive solicitation process. The I&I Program will provide financial assistance of up to $40,000 for Category 1 and up to $200,000 for Category 2 to applications that fall within the "conceptual" and "developmental" stages of development, respectively. To be considered for a Category 2 award, a bench-scale model and/or other preliminary investigations must be complete. Each award may cover a project period of up to one year for Category 1 and up to two years for Category 2. In addition to financial assistance, the I&I Program offers technical guidance and commercialization support to successful applicants through the Resource Centers for Innovation (RCI).

Availability of Funds for FY 2001: DOE is announcing the availability of up to $2.16 million dollars in agreement funds for Fiscal Year 2002. The awards will be made through a competitive solicitation. DOE reserves the right to fund in whole or in part any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado on December 20, 2001.

Matthew A. Barron,

Acting Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 02–390 Filed 1–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES:

Thursday, February 7, 2002, 9 a.m.–5 p.m.

Friday, February 8, 2002, 8:30 a.m.–3 p.m.

ADDRESSES: West Coast Hotel, 1101 North Columbia Center Boulevard, Kennewick, WA (509–783–0611).

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, February 7, 2002

• Ad Hoc Task Force Report on January 15–16 workshop.

• Introduction of Advice on the River Corridor Tri-Party Agreement (TPA) Change Package.

• FY04 Budget Development Process.

• Follow-up Discussion on White Paper: "Evaluating Hanford Public Involvement: Goals, Activities, and a Framework for Discussion".

• Integrated Safety Management System (ISMS): Bechtel National Inc. Approach to ISMS.

Friday, February 8, 2002

• Adoption of Board Advice on the River Corridor Tri-Party Agreement (TPA) Draft Change Package

• Board Feedback on Addressing Agencies' Issues for Consideration

• Committee Updates

• Public Involvement Process Related to Budget Development

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on January 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–391 Filed 1–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–259–002]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 2, 2002.

Take notice that on December 26, 2001, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixteenth Revised Sheet No. 19, proposed to be effective January 1, 2002.

ANR states that the above-referenced tariff sheet is being filed to implement the Joint Offer of Settlement And Explanatory Statement and corresponding Stipulation and Agreement (Offer of Settlement) being filed simultaneously with this filing. As discussed in the Offer of Settlement, ANR has agreed to adjust the currently approved fuel matrix methodology for determining ANR's fuel use and lost-and-unaccounted-for retention percentages under its currently effective tariff mechanism. ANR has agreed to implement this revised methodology as to the current annual fuel matrix redetermination at issue in this proceeding, on an interim basis effective January 1, 2002, until ANR submits its next annual redetermination filing under its tariff to be effective April 1, 2002.

ANR states that, in general, the change in methodology results in fuel rate decreases only, but in any event, ANR is not proposing to put into effect any increases that result from the new methodology for the interim period January 1, 2002 through March 31, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–347 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–042]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 17, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of January 1, 2002:

Fifty-fourth Revised Sheet No. 25
Fifty-fourth Revised Sheet No. 26
Fifty-fourth Revised Sheet No. 27
Twenty-fourth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408 et al., approved by the Commission on April 17, 1997 (79 FERC 61,044 (1997)). Under the approved section of the Settlement, Columbia is required to true-up its collections pursuant to the Settlement Component for 12-month periods commencing November 1, 1996 and ending October 31, 2004. The fifth 12-month period (Period V) ended October 31, 2001. Columbia is making this true-up filing in compliance with the Settlement to return a net over-recovery of $3,070,840 for Period V, which includes interest and the true-up of the Period IV Settlement Component adjustment, through an adjustment to the Settlement Component of the base rates for the period January 1, 2002 through October 31, 2002.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–336 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–391–006]

Colorado Interstate Gas Company; Notice of Annual Revenue Report

January 2, 2002.

Take notice that on December 26, 2001, Colorado Interstate Gas Company tendered for filing its second and final report detailing the revenues received and credits distributed to eligible shippers from providing Interruptible Swing Service for the period July 1, 2000 through September 30, 2001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–341 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–007]

Colorado Interstate Gas Company; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 20, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendices A, B and C to the filing, to become effective October 1, 2001.

CIG states that the tariff sheets are being filed in compliance with the Commission's November 20, 2001 order in this proceeding to revise HEEN service and to re-file certain tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–348 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–42–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 28, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 284A, to be effective February 1, 2002.

CIG states that the tariff sheet and accompanying explanation address certain issues raised in the Commission's order issued December 10, 2001 in this proceeding regarding its Automatic Parking and Lending Service and similar imbalance services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–350 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–043]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 17, 2001, Columbia Gas Transmission Corporation (Columbia) tendered a filing in compliance with Stipulation II, Article III, Section F, of the settlement filed in Docket No. RP95–408 et al., approved on April 17, 1997 (79 FERC 61,044 (1997)) (Settlement). Pursuant to Article III, Section F, Columbia is filing to comply with the Settlement requirement that all facilities not sold by Columbia as of December 31, 2001, "shall be deemed to have been sold for zero dollars."

Columbia states further that copies of this filing have been mailed to all parties to the Docket Nos. RP95–408, et al. proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–337 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–038]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

January 2, 2002.

Take notice that on December 27, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

ITS–2 Service Agreement No. 71879 between Columbia Gulf Transmission Company and Amoco Energy Trading Corp. dated December 21, 2001

Transportation service is to commence January 1, 2002 under the agreement.

Columbia Gulf states that copies of the filing have been served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–338 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–039]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

January 2, 2002.

Take notice that on December 27, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

FTS–2 Service Agreement No. 71910 between Columbia Gulf Transmission Company and Dynegy Marketing and Trade dated December 24, 2001

Transportation service is to commence January 1, 2002 under the agreement.

Columbia Gulf states that copies of the filing have been served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–339 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–14–002]

Crossroads Pipeline Company; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, its entire tariff, with a proposed effective date of November 1, 2001. This tariff is being filed in compliance with the Commission's October 31, 2001 Letter Order in the above-referenced docket.

Crossroads states that the purpose of this filing is to change its tariff from 7 point font to 10 point font as required by the Commission.

Crossroads states that copies of its filing and has been sent by first-class mail, postage prepaid, by Crossroads to each of the parties on the official service list in Docket No. RP02–14–000. Copies have also been mailed to each of Crossroads' firm and interruptible customers and affected state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18

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CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–469 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–126–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 2, 2002.

Take notice that on December 18, 2001, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of November 1, 2001.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–352 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–130–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 2, 2002.

Take notice that on December 27, 2001, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, bear a proposed effective date of January 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–355 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–006]

Mississippi River Transmission Corporation; Notice of Negotiated Rates

January 2, 2002.

Take notice that on December 21, 2001, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective January 1, 2002:

Original Sheet No. 10D

MRT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–345 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–172–004]

Mojave Pipeline Company; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of February 1, 2002:

Seventh Revised Sheet No. 11
First Revised Sheet No. 105
First Revised Sheet No. 134
Original Sheet No. 243
Original Sheet No. 244
Original Sheet No. 245
Original Sheet No. 246
Sheet Nos. 247 through 399

Mojave states that the tariff sheets are being filed to comply with the Commission's order issued December 21, 2001 and to implement the terms of the Offer of Settlement and Stipulation and Agreement filed in this proceeding. The tariff sheets are proposed to become effective February 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–467 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–3719–001 and EC99–100–001]

Mountain West Independent System Admin. Sierra Pacific Power Co. and Nevada Power Co.; Notice of Filing

January 2, 2002.

Take notice that on December 21, 2001, Deseret Generation & Transmission Cooperative and Mt. Wheeler Power, Inc. notified the Commission of the withdrawal of their request for rehearing in Docket No. ER99–3719–001 and Docket No. EC99–100–001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Comment Date: January 11, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–335 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–047]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate Filing

January 2, 2002.

Take notice that on December 19, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26V, with an effective date of January 1, 2002.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with NRG Power Marketing, Inc. under Natural's Rate Schedules FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural requests waivers of the Commission's Regulations, including both the 30-day and the 60-day notice requirements of Section 154.207, to the extent necessary to permit the tariff sheet to become effective January 1, 2002.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

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instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–342 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–048]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

January 2, 2002.

Take notice that on December 27, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26W and Original Sheet No. 26W.01, to be effective December 28, 2001.

Natural states that the purpose of this filing is to implement four (4) new negotiated rate transactions under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreements do not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–343 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–223–006]

Northern Natural Gas Company; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 21, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective August 1, 2001 and June 1, 2001, respectively, in compliance with the Commission's Order dated October 24, 2001:

Substitute 1st Revised 56 Revised Sheet No. 51
Substitute 1st Revised 57 Revised Sheet No. 51

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–344 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–438–000]

Northwest Pipeline Corporation; Notice of Site Visit

January 2, 2002.

On January 15–16, 2002, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of Northwest Pipeline Corporation's (Northwest) Rockies Expansion Project in Pocatello, Idaho. We will examine the proposed project route and possible alternative routes in Pocatello. The inspection will be conducted by automobile and on foot. Representatives of Northwest will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–334 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–395–003, RP00–613–002, and RP96–348–011 (Not Consolidated)]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 28, 2001, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing proposed to be effective February 1, 2002.

Panhandle asserts that the purpose of this filing is to implement the terms of the July 23, 2001 Stipulation and Agreement in Docket Nos. RP00–395–000, RP00–395–001, RP00–613–000, and RP96–348–000 [Not Consolidated] (Settlement). The Settlement was approved, as modified, by the Commission's October 12, 2001 Order on Panhandle's Order No. 637 Settlement, 97 FERC ¶ 61,046 (2001), and the Commission's Order on Compliance Filing issued on December 19, 2001, 97 FERC ¶ 61,285 (2001), in the above referenced proceedings. In addition, the price references to Gas Daily on Tariff Sheet Nos. 272, 272D and 272E have been updated to reflect the current nomenclature in the subject publication.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–346 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–69–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 19, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following substitute tariff sheets: Substitute Thirty-fifth Revised Sheet No. 4, Substitute Nineteenth Revised Sheet No. 4A and Substitute Fourteenth Revised Sheet No. 6C. GTN states that these tariff sheets establish GTN's Gas Research Institute ("GRI") surcharge for calendar year 2002. GTN proposes that these sheets be made effective January 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–351 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–128–000]

Sea Robin Pipeline Company; Notice of Flowthrough Crediting Report

January 2, 2002.

Take notice that on December 21, 2001, Sea Robin Pipeline Company (Sea Robin) submitted its Annual Flowthrough Crediting Mechanism Filing. Sea Robin states that this filing was made pursuant to Section 27 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiables shippers and under its operational balancing agreements, and imposing scheduling penalties during the 12 month period ending October 31, 2001.

Sea Robin reports that it paid $298,131.88 in excess of amounts received from shippers. In accordance with Section 27.1, the excess amount paid by Sea Robin will be carried forward and offset against any accumulated amounts during the subsequent twelve-month period.

Sea Robin further states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–353 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–129–000]

Southern LNG Inc.; Notice of Tariff Filing

January 2, 2002.

Take notice that on December 21, 2001, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets in Appendix A to its filing, to become effective February 1, 2002.

SLNG states that the proposed changes would change the initial rates for open-access service at the liquefied natural gas (LNG) receiving terminal on

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Elba Island, Georgia (Elba Island Terminal). SLNG submits the changes as a limited filing under Section 4 of the Natural Gas Act, pursuant to an order of the Federal Energy Regulatory Commission issued on November 30, 2001 in Docket Nos. CP99–580–003 and CP99–582–004.

SLNG states that the proposed changes reflect the cost of recommissioning and modifying the Elba Island Terminal.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–354 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–17–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 2, 2002.

Take notice that on December 21, 2001, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Substitute First Revised Sheet No. 23F, Eighteenth Revised Sheet No. 25, Original Sheet No. 25A, and Substitute Sixth Revised Sheet No. 159, with an effective date of December 1, 2001.

Tennessee states that the purpose of this filing is to comply with the December 14 Order, in which the Commission approved Tennessee's proposal to provide Extended Receipt Service (ERS) and Extended Delivery Service (EDS) on Incremental Laterals for shippers receiving firm transportation service under Rate Schedule FT–A, but required Tennessee to file revised tariff sheets to properly reflect the services in the tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–349 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–131–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

January 2, 2002.

Take notice that on December 27, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective February 1, 2002.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account.

Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LF
Market 1	$0.029 /dth	$0.0009 /dth	$0.0019 /dth
Market 2	0.089 /dth	0.0029 /dth	0.0058 /dth
Market 3	0.130 /dth	0.0043 /dth	0.0086 /dth

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–356 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–019]

Transwestern Pipeline Company; Notice of Negotiated Rates

January 2, 2002.

Take notice that on December 21, 2001, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on January 1, 2002:

14 Revised Sheet No. 5B.05
Fourth Revised Sheet No. 5B.08

Transwestern states that the above sheets are being filed to implement a specific Reliant Energy Services Inc. negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–340 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–000]

Viking Gas Transmission Company; Notice of Tariff Filing

January 2, 2002.

Take notice that on December 28, 2001, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Attachment A (Primary Case) and Attachment B (Pro Forma Case) to the filing. Viking requests an effective date of July 1, 2002 for the tariff sheets listed on Attachment A and, accordingly, requests that the Commission suspend this filing for the maximum statutory period of five months.

Viking respectfully requests that the Commission allow Viking's Pro Forma Case to become effective only after a final Commission order on this proceeding. Should the Commission accept Viking's Pro Forma Case, Viking will submit actual tariff sheets in place of the Pro Forma tariff sheets to be effective on a prospective basis.

Viking states that the purpose of this filing is to revise Viking's rates for jurisdictional services to reflect current and projected costs and changes in demand on Viking's system. Viking is also filing to adopt term-differentiated rates and a demand rate for Daily Demand Service under Rate Schedule LMS, to change scheduling priority for interruptible services to ensure that capacity is allocated to those shippers that most value it and to provide for the termination of interruptible contracts with shippers who have not exercised any contractual rights for firm, interruptible or load management services for at least one year. In its Pro Forma Case, Viking is proposing to roll-in the costs of facilities installed during the 1999 expansion project approved by the Commission in Docket Nos. CP98–761–000. This project is appropriate for rolled-in rate treatment due to the significant systemwide reliability and operational benefits it provides to pre-expansion customers.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–357 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–425–005]

Williams Gas Pipelines Central, Inc.; Notice of Negotiated Rates

January 3, 2002.

Take notice that on December 28, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective January 1, 2002:

Fourth Revised Sheet No. 1

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Original Sheet No. 11
Sheet No. 12

Williams states that the purpose of this filing is to reflect the negotiated rate contract with Kansas Industrial Energy Supply Company.

Williams states that copies of the revised tariff sheets are being mailed to all parties on the service list, Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02–468 Filed 1–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–39–000, et al.]

UtiliCorp United Inc., et al.; Electric Rate and Corporate Regulation Filings

January 2, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. UtiliCorp United Inc.

[Docket No. EC02–39–000]

Take notice that on December 28, 2001, UtiliCorp United Inc. (UtiliCorp), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33. UtiliCorp requests authorization and approval of the sale by UtiliCorp and the purchase by the KAMO Electric Cooperative, Inc. (KAMO) of certain limited transmission facilities within the city of El Dorado Springs, Missouri.

Comment Date: January 18, 2002.

2. UtiliCorp United Inc.

[Docket No. EC02–40–000]

Take notice that on December 28, 2001, UtiliCorp United Inc. (UtiliCorp), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33. UtiliCorp requests authorization and approval of the sale by UtiliCorp and the purchase by the City of El Dorado Springs, Missouri (El Dorado Springs) of an electrical substation along with a transmission line and related assets.

Comment Date: January 18, 2002.

3. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER02–210–001]

Take notice that on December 27, 2001, Rayburn Country Electric Cooperative Inc., (Rayburn Electric) tendered for filing 1st Revised Rate Schedule No. 3 with the Federal Energy Regulatory Commission. Rayburn Electric has re-filed 1st Revised Rate Schedule No. 3 to comply with the requirements of Order No. 614 and as directed by the Commission in a letter order issued on December 7, 2001.

Comment Date: January 17, 2002.

4. Illinois Power Company

[Docket No. ER02–609–000]

Take notice that on December 26, 2001, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Firm Long-Term Point-To-Point Transmission Service Agreement entered into with Dynegy Power Marketing, Inc. Illinois Power requests an effective date of January 1, 2002 for the agreement and seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: January 16, 2002.

5. Progress Energy Inc. Florida Power Corporation

[Docket No. ER02–610–000]

Take notice that on December 26, 2001, Florida Power Corporation (FPC) tendered for filing an executed Osceola Facility Parallel Operation Agreement between FPC and Seminole Electric Cooperative, Inc. FPC is requesting an effective date of December 1, 2001 for this Rate Schedule.

A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: January 16, 2002.

6. Illinois Power Company

[Docket No. ER02–611–000]

Take notice that on December 26, 2001, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Firm Long-Term Point-To-Point Transmission Service Agreement entered into with Exelon Generation, L.L.C. Illinois Power requests an effective date of January 1, 2002 for the agreement and seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to Exelon Generation, L.L.C.

Comment Date: January 16, 2002.

7. Xcel Energy Services Inc.

[Docket No. ER02–612–000]

Take notice that on December 26, 2001, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service (SPS), submitted for filing an Interconnection Agreement between SPS and Texas New Mexico Power Company.

SPS requests that the Commission accept the agreement effective December 9, 2001, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment Date: January 16, 2002.

8. Calpine Energy Services, L.P.

[Docket No. ER02–614–000]

Take notice that on December 27, 2001, Calpine Energy Services, L.P., (the Applicant) tendered for filing, under section 205 of the Federal Power Act, an amendment to its rate schedule for authorization to make wholesale sales of certain ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: January 17, 2002.

9. Western Resources, Inc.

[Docket No. ER02–616–000]

Take notice that on December 26, 2001, Western Resources, Inc. (WR) tendered for filing a Service Agreement between WR and Energy USA—TPC Corp. WR states that the purpose of this agreement is to permit Energy USA—TPC Corp. to take service under WR's Market Based Power Sales Tariff on file with the Commission. This agreement is proposed to be effective December 21, 2001.

Copies of the filing were served upon Energy USA—TPC Corp. and the Kansas Corporation Commission.

Comment Date: January 16, 2002.

10. New York Independent System Operator, Inc.

[Docket No. ER02–617–000]

Take notice that on December 27, 2001, the New York System Operator, Inc. (NYISO) tendered for filing proposed revisions and additions to its Market Administration and Control Area Services Tariff (Services Tariff) designed to provide for payments to qualified suppliers of voltage support service. The NYISO has requested that the Commission act on this filing in an expedited manner, waive its usual 60-day notice period requirement and make the filing effective no later than January 1, 2002.

The NYISO has served a copy of this filing on all persons that have executed Service Agreements under the NYISO Services Tariff or the NYISO Open Access Transmission Tariff, on the New York Public Service Commission, and on the electric utility regulatory agencies in New Jersey and Pennsylvania. The NYISO has also emailed a copy of this filing to all of the subscribers to the NYISO Technical Information Exchange list.

Comment Date: January 17, 2002.

11. Mid-Continent Area Power Pool

[Docket No. ER02–618–000]

Take notice that on December 28, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, filed long-term firm point-to-point service agreements under MAPP Schedule F with Split Rock Energy and Utilicorp United, Inc.

Comment Date: January 18, 2002.

12. Public Service Company of New Mexico

[Docket No. ER02–619–000]

Take notice that on December 27, 2001, Public Service Company of New Mexico (PNM) filed a Notice of Cancellation with the Federal Energy Regulatory Commission (Commission) with respect to Amended and Restated Service Schedule C—Electric Service, under the Interconnection Agreement between PNM and the City of Farmington, New Mexico (COF) (Supplement No. 8 to PNM Rate Schedule FERC No. 51). Pursuant to the provisions of Amended and Restated Service Schedule C (Service Schedule C), Public Service Company of New Mexico provided notice to COF of its intent to terminate the service schedule. Consistent with the provisions of Service Schedule C, PNM's notice of termination and the notice requirements of 18 CFR 35.15, PNM requests that cancellation of Supplement No. 8 (as supplemented) to PNM Rate Schedule FERC No. 51 become effective on March 1, 2002.

A copy of the filing has been served upon COF and an informational copy was provided to the New Mexico Public Regulation Commission. The Notice of Cancellation is available for public inspection during normal business hours at PNM's offices in Albuquerque, New Mexico.

Comment Date: January 17, 2002.

13. Florida Power & Light Company

[Docket No. ER02–620–000]

Take notice that on December 27, 2001 Florida Power & Light Company (FPL) tendered for filing a proposed service agreement with City of Homestead for Long-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement becomes effective on December 21, 2001.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment Date: January 17, 2002.

14. Exelon Generation Company, LLC

[Docket No. ER02–621–000]

Take notice that on December 27, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing a power sales service agreement between Exelon Generation and Dynegy Power Marketing, Inc., under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 17, 2002.

15. New England Power Company

[Docket No. ER02–622–000]

Take notice that on December 27, 2001, New England Power Company (NEP) tendered for filing First Revised Service Agreement No. 4 for service under NEP's Wholesale Market Sales Tariff, FERC Electric Tariff, Original Volume No. 10 between NEP and Constellation Power Source, Inc.

Comment Date: January 17, 2002.

16. NewCorp Resources Electric Cooperative, Inc.

[Docket No. ER02–623–000]

Take notice that on December 27, 2001, NewCorp Resources Electric Cooperative, Inc. (NCR) tendered for filing with the Federal Energy Regulatory Commission (Commission) amendments to its Tariff for Electric Service (Tariff), which was previously accepted by the Commission in Docket No. ER95–973–000, and was revised pursuant to a notice of succession accepted in Docket No. ER97–1689–000. NCR proposes to change its rate design without increasing its tariff rates in order to unbundle the transmission service component from the power sales component of its rates, to true up its cost-of-service formula based on actual costs for 2000, to modify its purchased power adjustment clause to eliminate monthly demand cost adjustments, and to revise the list of delivery points for Cap Rock Electric Cooperative, Inc. NewCorp proposes that these changes be allowed to take effect on January 1, 2002, and requests waiver of notice requirements to allow this effective date.

Comment Date: January 17, 2002.

17. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–624–000]

Take notice that on December 26, 2001, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 368 to add Exelon Generation Company, L.L.C. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the Service Agreement is January 1, 2002.

Comment Date: January 16, 2002.

18. Pinnacle West Capital Corporation

[Docket No. ER02–625–000]

Take notice that on December 26, 2001, Pinnacle West Capital Corporation (PWCC) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) a Service Agreement, Rate Schedule FERC No. 5, under PWCC's rate Schedule FERC No. 1 for service to Tohono O'odham Utility Authority (TOUA).

A copy of this filing has been served on TOUA.

Comment Date: January 16, 2002.

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19. West Penn Power Company

[Docket No.ER02–626–000]

Take notice that on December 26, 2001, Allegheny Energy Service Corporation on behalf of West Penn Power Company (West Penn), submitted a Notice of Cancellation of Service Agreement No. 15 (including its Amendments and Supplements) with the Borough of Tarentum, a customer under West Penn's Rate Schedule designated as FERC Electric Tariff, First Revised Volume No. 1.

West Penn has requested that the cancellation be effective March 16, 2002.

Comment Date: January 16, 2002.

20. Carolina Power & Light Company

[Docket No. ER02–627–000]

Take notice that on December 27, 2001, Progress Energy, Inc. (Progress Energy), on behalf of Carolina Power & Light Company (CP&L), tendered for filing with the Federal Energy Regulatory Commission (Commission) revised service agreements (Revised Service Agreements) executed by Florida Power Corporation (FPC) under CP&L's open-access transmission tariff (OATT), FERC Electric Tariff, Third Revised Volume No. 3 (CP&L's OATT), to comply with the Commission's June 25, 2001, September 21, 2001 and November 26, 2001 orders in Docket Nos. ER01–1807–007, et al. and ER01–2020–000, et al. See Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001). Progress Energy also tendered for filing an index of FPC's Service Agreements as filed under CP&L's OATT.

Progress Energy respectfully requests that the Revised Service Agreements become effective on the date set forth on the cover sheet for each Revised Service Agreement.

Copies of the filing were served upon the Commission's official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: January 17, 2002.

21. El Paso Electric Company, Public Service Company of New Mexico, Texas-New Mexico Power Company

[Docket No. ER02–628–000]

Take notice that on December 27, 2001, El Paso Electric Company, Public Service Company of New Mexico, and Texas-New Mexico Power Company (collectively, Utilities) jointly tendered for filing an Interconnection Agreement between the Utilities and Duke Energy Luna, LLC under each of the Utilities' Open-Access Transmission Tariffs. The Utilities request that the Interconnection Agreement be permitted to become effective on December 26, 2001. The Utilities state that this filing is in accordance with part 35 of the Commission's regulations, 18 CFR 35, and that a copy has been served on the Texas Public Utility Commission and the New Mexico Public Regulation Commission.

Comment Date: January 17, 2002.

22. Talbot EMC

[Docket No. ER02–629–000]

Take notice that on December 27, 2001, Talbot EMC tendered for filing with the Federal Energy Regulatory Commission (Commission) an initial rate schedule pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's Regulations.

This filing consists of the Power Purchase Agreements, dated as of November 1, 2001, between Talbot EMC and each of its 30 member distribution cooperatives (the Members) pursuant to which Talbot EMC will sell power and/or energy to those Members. Copies of the filing were served upon all of the Members.

Talbot EMC is seeking wiavers of certain Commission requirements as part of this filing.

Comment Date: January 17, 2002.

23. Exelon Generation Company, LLC

[Docket No. ER02–630–000]

Take notice that on December 27, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Old Dominion Electric Cooperative under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 18, 2002.

24. Exelon Generation Company, LLC

[Docket No. ER02–631–000]

Take notice that on December 28, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Mirant Americas Energy Marketing, LP under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 18, 2002.

25. Exelon Generation Company, LLC

[Docket No. ER02–632–000]

Take notice that on December 28, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and The New Power Company under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 18, 2002.

26. Commonwealth Edison Company

[Docket No. ER02–633–000]

Take notice that on December 28, 2001, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Short-Term Firm Point-to-Point Transmission Service and an associated unexecuted Dynamic Scheduling Agreement with Exelon Generation Company, LLC (Exelon).

ComEd requests an effective date of January 1, 2002 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Exelon and Ormet.

Comment Date: January 18, 2002.

27. Delmarva Power & Light Company

[Docket No. ER02–634–000]

Take notice that on December 28, 2001, Delmarva Power & Light Company (Delmarva) tendered for filing an Interconnection Agreement between Delmarva and the Delaware Municipal Electric Corporation (DEMEC). The Interconnection Agreement provides for the interconnection of DEMEC's generating facilities with the Delmarva transmission system.

Delmarva respectfully requests that the Interconnection Agreement become effective on December 31, 2001.

Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: January 18, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–394 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–1–000]

Standardization of Generator Interconnection Agreements and Procedures; Notice of Staff Public Meeting

January 3, 2002.

In October 2001, the Federal Energy Regulatory Commission (Commission) issued an Advance Notice of Proposed Rulemaking seeking comments on a standard generator interconnection agreement and procedure that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act. As part of this process, on January 11, 2002, the Generator Interconnection Coalition [1] (Coalition) will file a single consensus document that will include a standard connection agreement and a standard interconnection procedures document.

The Commission staff will hold public meetings on Thursday, January 17, 2002, and Friday, January 18, 2002, to discuss and clarify the consensus document. The meetings are scheduled to take place each day from 9 a.m. to 5 p.m in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–470 Filed 1–7–02; 8:45 am]

BILLING CODE 6717–01–P

[1] The Coalition includes representatives from: generators, marketers, transmission owners, industrial power producers, transmission dependent utilities, regional transmission organizations, independent system operators, distributed resources and state commissions. A list of the Coalition Members is included in Attachment 1 of the Coalition's Status Report, which was filed in this docket on December 14, 2001.

ENVIRONMENTAL PROTECTION AGENCY

[GA–057–1–200210; FRL–7125–6]

Adequacy Status of the Atlanta, Georgia, Ozone Attainment Demonstration for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this action, EPA is notifying the public that we have found the motor vehicle emissions budgets in the Atlanta, Georgia, ozone attainment demonstration submitted on July 1, 2001, adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Atlanta ozone nonattainment area must use the motor vehicle emissions budgets from the submitted ozone attainment demonstration for future conformity determinations.

DATES: This finding is effective January 23, 2002.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

The SIP is available for public viewing at the United States Environmental Protection Agency, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. You can request a copy of the SIP submission by contacting Kelly Sheckler, Air Quality Modeling and Transportation Section, United States Environmental Protection Agency, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, phone: (404) 562–9042, fax: (404) 562–9019, e-mail: *Sheckler.Kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This notice is simply an announcement of a finding that we have already made. EPA Region 4 sent a letter to the Georgia Environmental Protection Division on December 20, 2001, stating that the motor vehicle emissions budgets in the Atlanta, Georgia, ozone attainment demonstration for 2004 are adequate. This finding has been announced on EPA's conformity website referenced above.

EPA Region 4 received comments on the motor vehicle emissions budget for transportation conformity purposes contained in the Atlanta, Georgia, 1-hour ozone attainment demonstration. EPA Region 4 has prepared a response to those comments and has posted the response on the website referenced above.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). This guidance was used in making our adequacy determination. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate action to approve or disapprove the SIP. The SIP could later be disapproved for reasons unrelated to the transportation conformity even though the budgets have been deemed adequate.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 20, 2001.

Mike Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 02–410 Filed 1–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7126–9]

Notice of Withdrawal of Proposed Prospective Purchaser Agreement in Relation to the Metcoe Radiation Superfund Site, Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986

AGENCY: Environmental Protection Agency.

ACTION: Notice.

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SUMMARY: Notice is hereby given of withdrawal by the Prospective Purchaser from a proposed Prospective Purchaser Agreement and Covenant Not To Sue, executed between the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), and Medure Development LLC ("Prospective Purchaser") in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9675, as amended ("CERCLA"). EPA and the U.S. Department of Justice consent to the withdrawal. Therefore, the Agreement will not take effect. The withdrawn agreement concerned the Metcoa Radiation Superfund Site ("Site") located on Route 551 and Metallurgical Way, approximately one-half mile north of the center of the village of Pulaski, and Route 208 in Pulaski, Lawrence County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Humane L. Zia (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; phone: (215) 814–3454.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency previously published in the **Federal Register** a Notice of Prospective Purchaser Agreement and Request for Public Comment, 65 FR 77876 (December 13, 2000), and a Notice of Reopening of Public Comment Period, 66 FR 8234 (January 30, 2001), concerning this Prospective Purchaser Agreement.

Dated: January 2, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–411 Filed 1–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 20, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0054.

Title: Application for Exemption From Ship Station Requirements.

Form No.: FCC Form 820.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; and individuals for household.

Number of Respondents: 250.

Estimated Time Per Response: 1.166 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 292 hours.

Total Annual Cost: $36,000.

Needs and Uses: FCC rules require this collection of information when exemptions from radio provisions of statute, treaty or international agreements are requested. The data is used by examiners to determine the applicant's qualifications for the requested exemption. The data collected on this form includes the applicant's Taxpayer Identification Number. However, this information will be redacted from public view. This form has been revised to include FCC Registration Number and to correct mailing addresses in the general instructions, where to file completed applications and filing for emergency requests. The estimated average burden and number of respondents has been corrected based on receipts for the past 2 years.

Federal Communications Commission.

Wiliam F. Caton,

Deputy Secretary.

[FR Doc. 02–366 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 28, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 11, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0170.

Title: Section 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

Form No.: None.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 57.

Estimated Hours Per Response: 1.5 hours (0.5 hours respondents; 1 hour contact consulting engineer).

Frequency of Response: Reporting, on occasion.

Cost to Respondents: $8,550.

Estimated Total Annual Burden: 29 hours.

Needs and Uses: Section 73.1030 requires licensees to provide written notification to the Interference Office at Green Bank, West Virginia, the Observatories at Green Bank, West Virginia, Sugar Grove, West Virginia, or the Arecibo Observatory, setting forth the particulars of a proposed station. The data are used by the Interference Office/Observatories to enable them to file comments or objections with the FCC in response to the notification in order to minimize potential interference.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–369 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 21, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0056.

Expiration Date: December 31, 2004.

Title: Part 68—Connection of Terminal Equipment to the Telephone Network.

Form No.: N/A.

Respondents: Business or other for-profit; Individuals or household.

Estimated Annual Burden: 54,369 respondents; .10 minutes—24 hours per respondent; 2.1 hours per response (avg.); 117,959 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $2,705,000.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Description: In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to review its rules every even-numbered year and repeal or modify those found to be no longer in the public interest. Consistent with the directive of Congress, in the year 2000, the Commission undertook its second comprehensive biennial review of the Commission's rules to eliminate regulations that are no longer necessary because the public interest can be better served through reliance on market forces. In a Report and Order issued in CC Docket No. 99–216, Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, released December 21, 2000 (Order), the Commission completely eliminate significant portions of Part 68 of our rules governing the connection of customer premises equipment (terminal equipment) to the public switched telephone network and privatize the standards development and terminal equipment approval processes. Specifically, in the Commission transferred responsibility for developing technical criteria to Standards Development Organizations (SDOs) that are accredited by the American National Standards Institute (ANSI), and the responsibility for compiling and publishing all standards ultimately adopted as technical criteria for terminal equipment to the Administrative Council for Terminal Attachments (Administrative Council). The Commission maintains its rules' broad principles, including a proscription against causing any of four harms to the public switched telephone network by the direct connection of terminal equipment. Once the Administrative Council publishes the technical criteria, the Commission shall presume the criteria to be valid for the prevention of the harms to the public switched telephone network by terminal equipment interconnection, subject to *de novo* review by petition to this Commission. Conformance with the technical criteria will be considered a demonstration of compliance with the Commission's rules prohibiting terminal equipment from harming the public switched telephone network. Terminal equipment manufacturers either will submit their products to telecommunications certification bodies (TCBs) for certification of conformity with the technical criteria (instead of submitting them for registration with the Commission), or they will use the Commission's Supplier's Declaration of Conformity (SDoC) process to show conformity with the technical criteria. This process will be more efficient and responsive to the needs of all segments of the industry, and remove the Commission from a role where governmental involvement is no longer necessary or in the public interest. Following is a summary of the collections contained in the Order and 47 CFR part 68. See the Order and 47 CFR part 68 for additional information. a. Administrative Council for Terminal Attachment's Requirements—Currently, under rule 68.102 manufacturers must register terminal equipment. FCC Form 730 is no longer required to be used to obtain registration of telephone equipment pursuant to part 68 of the Commission's rules, but applicants may be required to file information with Telecommunications Certification Bodies or with the Administrative Council for Terminal Attachments. The Commission has ceased accepting applications for registration of part 68 equipment and transferred responsibility for establishing and maintaining the database of approved equipment to the Administrative Council. While continued collection of the information formerly required by FCC Form 730 is permitted, the Commission only requires that the database contain sufficient information for providers of telecommunications, this Commission and the U.S. Customs Service to carry out their functions. (No. of respondents: 2400; hours per response: 24 hours; total annual burden: 57,600 hours). b. Section 68.106—Notification to Provider of Wireline Telecommunications—Section 68.106 requires customers connecting terminal equipment or protective circuitry to the public switched telephone network shall, upon request of the provider of wireline telecommunications inform the provider of wireline

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telecommunications of the particular line(s) to which such connection is made, and any other information required to be placed on that terminal equipment pursuant to Section 68.354. Customers connecting systems assembled of combinations of individually-approved terminal equipment and protective circuitry shall provide, upon the request of the provider of wireline telecommunications, provide the information delineated in Section 68.106(b)(i)–(iv). Customers who intend to connect premises wiring other than fully protected premises wiring to the public switched telephone network shall, in addition to the requirements in Section 68.106(b), give notice to the provider of wireline telecommunications in accordance with Section 68.215(e). (No. of respondents: 50,000; hours per response: .05 hours; total annual burden: 2500 hours). c. Section 68.108, Notification of Incidence of Harm—Section 68.108 requires that providers of wireline telecommunications notify the customer that temporary discontinuance of service may be required should terminal equipment, inside wiring, plugs and jacks, or protective circuitry cause harm to the public switched telephone network or should the provider reasonably determinate that such harm is imminent. (No. of respondents: 7500; hours per response: 0.5 hours; total annual burden: 750 hours). d. Section 68.110, Disclosure of Technical Information—Section 68.110(a) requires provider of wireline telecommunications to provide, upon request, technical information concerning interface parameters not specified by the technical criteria published by the Administrative Council for Terminal Attachments that are needed to permit terminal equipment to operate in a manner compatible with the communications facilities of a provider of wireline telecommunications. Section 68.110(b) requires that a provider of wireline telecommunications give the customer adequate notice in writing if changes can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance. (No. of respondents: 40; hours per response: .50 hours; total annual burden: 20 hours). Section 68.110(c) requires provider of wireline telecommunications to provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. (No. of respondents: 200, with 1200 responses; hours per response: 1 hours; total annual burden: 1200 hours). e. Section 68.215, Notarized Affidavit—Section 68.215 requires that a notarized affidavit and one copy thereof be prepared by the installation supervisor in advance of each operation associated with the installation, connection, reconfiguration and removal of other than fully-protected premises wiring (except when accomplished functionally using a cross-connect panel), except when involved with removal of the entire premises communications systems using such wiring. The affidavit and its copy must contain the information specified in 47 CFR 68.215(e)(1)–(9). (No. of respondents: 7500; hours per response: .50 hours; total annual burden: 3750 hours). f. Section 68.218, Compliance Warrants—Section 68.218 requires that the responsible party warrants that each unit of equipment marketed under such authorization will comply with all applicable rules and regulations of part 68 and with the applicable technical criteria of the Administrative Council for Terminal Attachments. (No. of respondents: 974, with 2350 responses; hours per response: .5 hours; total annual burden: 1175 hours).

g. Section 68.324, Supplier's Declaration of Conformity—Section 68.324(a)(1)–(6) lists the information that each responsible party must include in the Supplier's Declaration of Conformity. (No. of respondents: 974, with 2350 responses; hour per response: 20 hours; total annual burden: 47,000 hours). h. Section 68.326, Retention of Records—Section 68.326 requires that responsible party for a Supplier's Declaration of Conformity maintains records containing the information specified in Section 68.326(a)(1)–(4) for at least ten years after the manufacture of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding, if the responsible party is officially notified prior to the expiration of such ten year period that an investigation or any other administrative proceeding involving its equipment has been instituted, whichever is later. See 47 CFR 68.326. (No. of respondents: 974, with 2350 responses; hours per response: .5 hours; total annual burden: 1175 hours). i. Section 68.346, Description of Testing Facilities—Section 68.346 requires that each responsible party for equipment that is subject to a Supplier's Declaration of Conformity compiles and retains a description of the measurement facilities employed for testing the equipment. The description shall contain the information required by the Administrative Council for Terminal Attachments. See 47 CFR Section 68.346. (No. of respondents: 974, with 2350 responses; hours per response: .25 hours; total annual burden: 587 hours). j. Section 68.354, Numbering and Labeling Requirements—Section 68.354 requires that terminal equipment and protective circuitry that is subject to a Supplier's Declaration of Conformity or that is certified by a Telecommunications Certification Body have labels in a place and manner required by the Administrative Council for Terminal Attachments. Terminal equipment labels shall include an identification numbering system in a manner required by the Administrative Council for Terminal Attachments. FCC numbering and labeling requirements existing prior to the effective date of these rules shall remain unchanged until the Administrative Council for Terminal Attachments publishes its numbering and labeling requirements. See 47 CFR 68.354. See also 47 CFR 68.612. (No. of respondents: 974, with 2350 responses: .25 hours; total annual burden: 587 hours). k. Sections 68.400—68.417, Complaints. A complaint must be in writing and contain the information specified in Section 68.400(a)–(d). (No. of respondents: 5; hours per response: 20 hours; total annual burden: 20 hours). l. Section 68.418, Designation of Agents for Service—Pursuant to Section 68.418, every responsible party of equipment approved pursuant to part 68 must designate and identify one or more agents upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. See 47 CFR Section 68.418. (No. of respondents: 974, with 2350 responses: hours per response: .1 hour; total annual burden: 235 hours). m. Section 68.419, Answers to Informal complaints—Section 68.419 requires that any responsible party to whom the Commission or the Consumer Information Bureau directs an informal complaint file an answer within the time specified by the Commission or the Consumer Information Bureau, as required by in Section 68.419(a)–(e). (No. of respondents: 5; hours per response: 20 hours; total annual burden: 100 hours). n. Section 68.604, Requirements for submitting technical criteria—Any SDO that submits

standards to the Administrative Council for Terminal Attachments for publication as technical criteria shall certify to the Administrative Council for Terminal Attachments the information found in Section 68.604(c)(1)–(3). See 47 CFR Section 68.604. (No. of respondents: 5, with 10 responses; hours per burden: 5 hours; total annual burden: 5 hours). o. Section 68.610, Database of Terminal Equipment—Section 68.610 requires that the Administrative Council for Terminal Attachments operates and maintains a database of all approved terminal equipment. (No. of respondents: 974, with 2350 responses; hours per response: .5 hours; total annual burden: 1175 hours). To ensure that consumers, providers of telecommunications, the Administrative Council, TCBs, and the Commission are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers and suppliers to provide the information specified in the Order and 47 CFR part 68. Authority: 47 U.S.C. 151–154; 47 U.S.C. 201–205; 47 U.S.C. 303.

Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0972.

Expiration Date: June 30, 2002.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers (LECs) Subject to Rate-of-Return Regulation.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 8059 respondents; 4.8 hours per response (avg.); 38,760 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $228,000.

Frequency of Response: On occasion; Quarterly; Annually; One-time; Third Party Disclosure.

Description: In the Second Report and Order in CC Docket Nos. 00–256, Fifteenth Report and Order in CC Docket No. 96–45, and Report and Order in CC Docket Nos. 98–77 and 98–166 (Report and Order), consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission modifies its rules to reform the interstate access charge and universal service support system for incumbent local exchange carriers (LECs) subject to rate of return regulation. Below are summaries of the collections imposed on telecommunications carriers based on rules adopted in the Report and Order: a. Projected Revenue Requirements: In order to enable the Administrator to calculate per-line amounts of Interstate Common Line Support, rate-of-return carriers other than average schedule companies shall report to the Administrator their projected common line revenue requirement for each study area in which they operate. (No. of respondents: 769; hours per response: 2 hours; total annual burden: 1538 hours). In order to enable the Administrator to begin distributing Interstate Common Line Support to carriers on July 1, 2002, rate-of-return carriers will be required to submit to the Administrator projected common line revenue requirements for July 1, 2002, to June 30, 2003, by March 31, 2002. Consistent with carrier access tariff filing obligations and NECA's current procedures for the filing of revenue requirements by members of the carrier common line pool, the Commission will permit carriers to submit to the Administrator corrections of their projected common line revenue requirements until April 10, 2002. After April 10, 2002, any corrections to projected common line revenue requirements shall be made in the form of true ups, described below, using actual cost data. Rate-of-return carriers will be required to submit to the Administrator projected common line revenue requirements for subsequent years on the same schedule. (No. of respondents: 531; hours per response: 2 hours; total annual burden: 1062 hours). b. True Ups: On July 31st of each year, rate-of-return carriers will be required to submit actual interstate common line cost data to the Administrator for the preceding calendar year. The first date for filing actual cost data shall be July 31, 2003. The Administrator shall adjust a rate-of-return carrier's monthly per-line Interstate Common Line support in the following calendar year (i.e., January 1, 2004 through December 31, 2004) to the extent of any difference between the carrier's projected common line revenue requirement and its actual cost data. Because the July 1, 2003, filing will only include cost data for the first six months that Interstate Common Line Support is available (July 1, 2002, through December 31, 2002), trued-up support amounts distributed in the calendar year 2004 will be based on a pro-rated share of the 2002 annual cost data (i.e., 50 percent of the 2002 actual costs will be attributed to the final six months of 2002). Trued-up support amounts distributed in subsequent calendar years will be based on complete funding year cost data. (No. of respondents: 769; hours per response: 4 hours; total annual burden: 3076 hours). In order to provide rate-of-return carriers with opportunities to true up support amounts on a more frequent basis, the Commission will permit carriers to file updated cost data with the Administrator on a quarterly basis. Quarterly true ups will enable carriers that experience unforeseen costs to qualify for increased Interstate Common Line Support amounts. Quarterly true ups also will reduce risks associated with receiving Interstate Common Line Support based on a projected common line revenue requirement. Carriers wishing to submit cost data on a quarterly basis will file such data in accordance with the schedule provided in section 36.612 of the rules. (No. of respondents: 100; hours per response: 2 hours; total annual burden: 200 hours).

c. Line Counts: Consistent with rules adopted in the Rural Task Force Order, rate-of-return carriers will file their line counts, by disaggregation zone and customer class, in accordance with the schedule in sections 36.611 and 36.612 of our rules. Line count data for rural rate-of-return carrier study areas in which a competitive eligible telecommunications carrier has not begun providing service will be filed on an annual basis. Line count data will be filed on a regular quarterly basis upon competitive entry in rural rate-of-return carrier study areas. (No. of respondents: 1300; hours per response 6 hours: total annual burden: 7800 hours). Competitive eligible telecommunications carriers will file their line counts, by disaggregation zone and customer class on a quarterly basis, in accordance with the schedule in section 54.307 of our rules. (No. of respondents: 10; hours per response: 6 hours; total annual burden: 60 hours). d. Disaggregation Plans: Consistent with section 254 of the Act, we conclude that the plan for the geographic disaggregation and targeting of portable high-cost universal service support below the study area level recently adopted in the Rural Task Force Order will also apply to Interstate Common Line Support. To ensure the portability and predictability of support, rate-of-return carriers that elect to disaggregate and target support will be required to submit maps to the Administrator in which the boundaries of the designated disaggregation zones are clearly specified. The Administrator will make such maps available for public inspection by competitors and other interested parties. When submitting information in support of Path Three self-certification, incumbent carriers must provide the Administrator with publicly available information that allows competitors to verify and reproduce the algorithm used to determine zone support levels (Self-

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Certification of Disaggregation Plan). Similarly, carriers electing Path One must submit to the Administrator a copy of certifications to a state commission or appropriate regulatory authority that they will not disaggregate and target support (Notification to State of Change in Disaggregation Methodology). Carriers selecting Path Two must submit a copy to the Administrator of the order by the state commission or appropriate regulatory authority approving the disaggregation plan submitted, along with a copy of the disaggregation plan itself (Targeting Plan to State). The Commission extends until May 15, 2002, the date by which carriers will be required to select a disaggregation path for high-cost loop, LTS, LSS, and Interstate Common Line Support mechanisms. (No. of respondents: 100; hours per response: 1 hour; total annual burden 100 hours) e. Section 254(e) Certifications: Section 254(e) provides that a carrier receiving universal service support must use that support "only for the provision, maintenance, and upgrading of facilities and service for which the support is intended." In the Rural Task Force Order, the Commission sets forth rules requiring a state that wishes to receive federal universal service high-cost support for rural carriers within its territory to file a certification with the Commission stating that all federal high-cost funds flowing to rural carriers in such state will be used in a manner consistent with section 254(e). In addition, in the Interstate Access Support Order, the Commission adopted certification rules for the receipt of interstate access support. In the Rural Task Force Order, the Commission addressed federal universal service support for intrastate rates and the Commission required states to file a certification of section 254(e) compliance with the Commission because states have jurisdiction over rates for intrastate services. In this Order, the Commission addresses federal support for interstate rates, a matter over which the Commission has jurisdiction. Thus, to ensure that carriers receiving Interstate Common Line Support and LTS will use that support in a manner consistent with section 254(e), the Commission shall require carriers seeking such support to file a certification with the Commission and the Administrator. This requirement is consistent with rules adopted in the Interstate Access Support Order. This certification requirement will be applicable to rate-of-return carriers and eligible telecommunications carriers seeking support from our Interstate Common Line Support mechanism. The certification shall be filed with the Commission and the Administrator on March 31, 2002, at the same time a carrier files its first set of line count data with the Administrator. Such certification shall be filed in CC Docket No. 96–45 annually thereafter on June 30th. The certification may be filed in the form of a letter and must state that the carrier will use its Interstate Common Line Support and LTS only for the provision, maintenance, and upgrading of facilities and service for which support is intended. In the event that a certification is filed untimely, the carrier will not become eligible for support until the second calendar quarter after the certification is filed. Failure to file a certification will preclude a carrier from receiving Interstate Common Line Support or LTS. Carriers that fail to abide by their certification, or otherwise violate section 254(e), shall be subject to enforcement action by the Commission. (No. of respondents: 1300; hours per response: 2 hours; total annual burden: 2600 hours). f. Required tariff filings: All rate-of-return carriers are required to modify their access tariffs to comply with the new Subscriber Line Charge (SLC) caps, to become effective on January 1, 2002, and on July 1, 2002, and July 1, 2003 subject to a cost review study for price cap carriers. Rate-of-return carriers also must file tariffs to recover through a separate end-user charge the costs of ISDN line ports and line ports associated with other services that exceed the costs of a line port used for basic analog service. (No. of respondents: 116; hours per response: 69.9 hours (avg.); total annual burden: 8110 hours). g. Optional Line Port Cost Study: Rate-of-return carriers may use 30 percent of local switching costs as a proxy in shifting line port costs to the common line category, or may conduct a cost study based on geographically-averaged costs to be submitted in support of the tariff filing relying on the cost study. A carrier may rely on a cost study for subsequent tariff filings. (No. of respondents: 12; hours per response 40 hours; total annual burden: 480 hours). h. Establishment of TIC Caps: NECA is required to establish for carriers that participated in the NECA pool during the tariff year ending June 30, 2001, an individual carrier dollar limit based on its traffic volumes and the TIC rate for the twelve-month period ending June 30, 2001. Each carrier that was not in the pool during the tariff year ending on June 30, 2001, must determine its TIC limit and report it to NECA for purposes of administering future pool membership changes. (No. of respondents: 1186; hours per response: .13 hours; total annual burden: 2.6 hours). i. Optional tariff filings: Rate-of-return carriers may, at their option, establish the following local switching and transport rate elements: a flat charge for dedicated trunk port costs; a flat charge for the costs of DS1/voice grade multiplexers associated with terminating dedicated trunks at analog switches; a per-minute charge for shared trunk ports and any associated DS1/voice grade multiplexer costs; a flat charge for the costs of trunk ports used to terminate dedicated trunks on the serving wire center side of the tandem switch; individual charges for multiplexer costs associated with tandem switches; and a per-message call setup charge. (No. of respondents: 12; hours per response: 93 hours; total annual burden: 1116 hours). j. GSF allocation: Beginning July 1, 2002, rate-of-return carriers that use general purpose computers to provide non-regulated billing and collection services are required to allocate a portion of their general purpose computer costs to the billing and collection category, which will require them to determine general purpose computer investment. Carriers may use the general purpose computer investment amount they develop for a period of three years. (No. of respondents: 600; hours per response: 20 hours; total annual burden: 12,000 hours). The Commission will use the information collected to determine whether and to what extent non-price cap or rate-of-return carriers providing the data are eligible to receive universal service support. The Commission will use the tariff data to make sure that rates are just and reasonable, as required by section 201(b) of the Act. Obligation to respond: Mandatory. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–377 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 19, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0649.

Title: Sections 76.1601, Deletion or Repositioning of Broadcast Signals; 76.1617, Initial Must-Carry Notice; 76.1607 and 76.1708, Principal Headend.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 10,400.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 2,200 hours.

Total Annual Costs: None.

Needs and Uses: Under 47 CFR Sections 76.1601, 76.1607, 76.1617, and 76.1708 of FCC rules cable television system operators must provide various notification requirements—to provide written notice to any broadcast television station at least 30 days prior to deleting from carriage or repositioning the station; to provide written notice by certified mail to all stations carried on its system pursuant to the "must-carry" rules at least 60 days prior to any change in its principal headend designation; to notify all qualified non-commercial and educational stations of its principal headed within 60 days of system activation; and to maintain for public inspection the designation and location of its principal headend, including in this file a record of all changes of the designated headend.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–367 Filed 1–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 23, 2002..

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Jerry J. Williams, Naples, Florida; to retain voting shares of FirstBancorp, Inc., Naples, Florida, and thereby indirectly retain voting shares of Gulf Coast National Bank, Naples, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Douglas and Mary Kapnick, Mary E. Kapnick Trust, Douglas L. Kapnick Trust, Adrian, Michigan; to acquire additional voting shares of Lenawee Bancorp, Inc., Adrian, Michigan, and thereby indirectly acquire additional voting shares of Bank of Lenawee, Adrian, Michigan, and Bank of Washtenaw, Saline, Michigan. In addition, the Elmer L. Kapnick Trust, Adrian, Michigan; has applied to retain voting shares of Lenawee Bancorp, Inc., Adrian, Michigan, and acquire additional voting shares of Bank of Lenawee, Adrian, Michigan, and Bank of Washtenaw, Saline, Michigan.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. William R. Peeples, Santa Barbara, California; Ardyce M. Peeples, Santa Barbara, California; Melissa Peeples, Bronx, New York; Melanie D. Peeples, Davis, California; Michael F. Peeples, Sauh City, Wisconsin; Judith Ransom, Black River Falls, Wisconsin; Robert M. Peeples, Jr., Baton Rouge, Louisiana; Mary Ann Wander, Bradenton, Florida; Robert and Kathleen Peeples, Slidell, Louisiana; Daniel and Ardyce Acher, West Allis, Wisconsin; Shalla Acher, Haupen, Wisconsin; Michaela Moy, Madison, Wisconsin; Daniel Acher, West Allis, Wisconsin; all to retain voting shares of Community West Bancshares, Goleta, California, and thereby indirectly retain voting shares of Goleta National Bank, Goleta, California.

Board of Governors of the Federal Reserve System, January 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–474 Filed 1–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes

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and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 1, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Citizens Bancshares, Inc., ESOP, Edmond, Oklahoma; to become a bank holding company by acquiring up to 30 percent of the voting shares of Citizens Bancshares, Inc., Edmond, Oklahoma, and thereby indirectly acquire voting shares of Citizens Bank of Edmond, Edmond, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Pubco Bancshares, Inc., Slaton, Texas; to acquire 100 percent of the voting shares of Shamrock Bancshares, Inc., Shamrock, Texas, and thereby indirectly acquire voting shares of Shamrock Delaware Financial, Inc., Dover, Delaware, and First National Bank, Shamrock, Texas.

Board of Governors of the Federal Reserve System, January 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–473 Filed 1–7–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262]

Submission for OMB Review; Comment Request Entitled Identification of Products With Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for extension to previously approved OMB Clearance (3090–0262).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration (GSA), Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Identification of Products with Environmental Attributes.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of contracts, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

A request for public comments was published at 66 FR October 29, 2001. No comments were received.

DATES: Comment Due Date: February 7, 2002.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of Acquisition Policy (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Service Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0262, concerning the Identification of Products with Environmental Attributes. The GSA requires contractors submitting Multiple Award Schedule Contracts to identify in their GSA price lists those products that they market commercially that have environmental attributes. The identification of these products will enable Federal agencies to maximize the use of these products to meet the responsibilities expressed in statutes and executive orders.

B. Annual Reporting Burden

Respondents: 9,200.
Annual Responses: 9,200.
Burden Hours: 46,000.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes.

Dated: December 31, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–441 Filed 1–7–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Airborne Exposure Limits for Chemical Warfare Agents GA (Tabun), GB (Sarin), and VX

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice of proposed revisions to CDC recommendations for protection of public health and safety during disposal or transport of chemical warfare agents GA (tabun), GB (sarin), and VX through revision of worker and general population airborne exposure limits.

Purpose

CDC presents proposed recommendations for airborne exposure limits for the chemical warfare agents GA (tabun or ethyl N,N-dimethyl-phosphoramidocyanidate, CAS 77–81–6); GB (sarin or O-isopropyl-methylphosphonofluoridate, CAS 107–44–8); and VX (O-ethyl-S-(2-diisopropylaminoethyl)-methylphosphonothiolate, CAS 50782–69–9).

Before these recommendations are finalized, CDC requests comments from the public, all interested parties, environmental and health regulators, the Department of Defense (DOD), and other organizations involved in handling, transporting, or demilitarizing chemical warfare agents. More specifically, CDC seeks scientifically and professionally defensible data or information that would persuade CDC to alter its recommendations to be more or less conservative.

SUMMARY: CDC's recommendations are based on comments by scientific experts at a public meeting convened by CDC on August 23–24, 2000, in Atlanta, Georgia; the latest available technical reviews; and the latest available risk assessment approach frequently used by regulatory agencies and other organizations (1). Airborne exposure limits for chemical warfare agents GA (tabun), GB (sarin), and VX were re-evaluated by using a conventional risk assessment methodology for developing airborne exposure limits described by the U.S. Environmental Protection Agency (EPA). This methodology is considered conservative; however, the calculated exposure limits are not numerically precise and do not define precise thresholds of potential human toxicity.

Note: There is no indication that the current exposure limits, as implemented by the U.S. Army Program Manager for Chemical Demilitarization, have been less than fully protective of human health. This may be due to rigorous exposure prevention efforts in recent years as well as the conservative implementation of the existing limits.

Proposed Airborne Exposure Limits for GB: CDC proposes a worker population limit (WPL) value of 3×10^{-5} mg/m^3, expressed as an 8-hour time-weighted average (TWA). Additionally, CDC recommends a short-term excursion limit (STEL) of 1×10^{-4} mg/m^3 to be used in conjunction with the WPL. Exposures above the WPL up to the STEL should not be longer than 15 minutes and should not occur more than 4 times per day, and there should be at least 60 minutes between successive exposures in this range. The STEL should not be exceeded during the work day, even if the cumulative exposure over the 8-hour TWA is not exceeded. CDC proposes a decrease in the general population limit (GPL) to 1×10^{-6} mg/m^3. These WPL, STEL, and GPL values are approximately threefold lower than the values recently recommended by the U.S. Army. An immediately dangerous to life or health (IDLH) value of 0.1 mg/m^3 is proposed for GB.

Proposed Airborne Exposure Limits for GA: Although not as well-studied as GB, GA is approximately equal in potency to GB. Therefore, CDC proposes the same exposure limits for GA as for GB.

Proposed Airborne Exposure Limits for VX: CDC proposes that the VX WPL, expressed as an 8-hour time-weighted average, should be decreased to 1×10^{-6} mg/m^3. Additionally, CDC proposes a VX STEL of 4×10^{-6} mg/m^3. These proposed WPL and STEL exposure limits are a factor of 10 lower than the U.S. Army's recommendation. CDC proposes that the GPL for VX should be decreased to 6×10^{-7} mg/m^3 (a factor of 2 higher than the Army's recommendation). An IDLH value of 0.003 mg/m^3 is proposed for VX. Acknowledging the gaps in the data base for this agent, CDC considers the proposed VX exposure limits subject to re-evaluation in 3 years. New VX toxicity studies, which are anticipated to be completed within 3 years, have been recommended recently by the EPA National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee). CDC agrees that new toxicity studies may be helpful in setting VX exposure limits.

DATES: Submit comments within 60 days following the date of this publication in the **Federal Register**.

ADDRESSES: Comments may be sent to the following:

1. By mail. Submit your comments to Dr. Paul Joe, CDC, 4770 Buford Highway, Mail Stop F–16, Atlanta, Georgia 30341.

2. In person or by courier. Deliver your comments to Dr. Paul Joe, CDC, 4770 Buford Highway, Mail Stop F–16, Atlanta, Georgia 30341.

3. Electronically. You may submit your comments electronically by e-mail to Dr. Paul Joe at *pbj4@cdc.gov*, or you can submit a computer disk to Dr. Paul Joe, CDC, 4770 Buford Highway, Mail Stop F–16, Atlanta, Georgia 30341. Electronic documents will be accepted in WordPerfect or Microsoft Word.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Joe, Centers for Disease Control and Prevention, 4770 Buford Highway, Mail Stop F–16, Atlanta, Georgia 30341, Telephone number: 770–488–7091, E-mail address: *pbj4@cdc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The nerve agents GA, GB, and VX are organophosphate esters that were designed specifically to cause incapacitation or death in military use. These agents are among the most potent of all chemical warfare agents and have extraordinarily high levels of acute toxicity. In vapor or aerosol form, the nerve agents can be inhaled or absorbed through the skin or the eyes. As a liquid, they can be absorbed through the skin, conjunctiva, and upper gastrointestinal tract. The agents' toxicity is related primarily to their ability to inhibit acetylcholinesterase, which is a critical enzyme needed for nerve function (2). Health symptoms can include runny nose, tightness in the chest, dimness of vision and pinpointing of eye pupils, difficulty in breathing, drooling and excessive sweating, nausea, vomiting, cramps, involuntary defecation and urination, twitching, staggering, headache, confusion, drowsiness, coma, and convulsions. The signs and symptoms can be followed by cessation of breathing and death (3). At superlethal doses, GB caused delayed neuropathy in antidote-protected chickens. VX has not been shown to cause delayed neuropathy in animals or humans. The health effects from low-dose chronic (long-term) exposure have not been demonstrated clearly.

Studies of genotoxicity, carcinogenicity, developmental, and reproductive toxicity associated with GB and VX have been primarily negative (2,4).

GA, GB, and VX no longer are manufactured in the United States; however, they are stored currently at eight locations in the continental United States by the DOD. Section 1412 of Public Law 99–145 [50 U.S.C. 1521] mandates that the present stockpile of chemical warfare agents be destroyed. Public Law 91–121 and Public Law 91–441 [50 U.S.C. 1512] mandate that the Department of Health and Human Services (DHHS) review DOD plans for transporting and/or disposing of chemical warfare agents and make recommendations for protecting human health and safety. DHHS delegated this authority to CDC.

In 1987, CDC requested public comments on recommendations for protecting human health and the environment from potential adverse effects of long-term exposure to low-airborne doses of agents GA, GB, VX, mustard, and lewisite (L). CDC incorporated public comments, including comments from scientific experts outside CDC, and in 1988 recommended worker and general population airborne exposure limits for GA, GB, VX, mustard (H, HD, HT), and L. (See Table 1.) The U.S. Army adopted these airborne exposure limits in 1990.

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TABLE 1.—CURRENT CDC-RECOMMENDED AIRBORNE EXPOSURE LIMITS*

[All values expressed as milligrams per cubic meter air [mg/m³]]

Agent	General population limit (GPL)	Worker population limit (WPL)
GA, GB	0.000003 (3×10^{-6})	0.0001 (1×10^{-4}).
VX	0.000003 (3×10^{-6})	0.00001 (1×10^{-5}).
H, HD, HT	0.0001 (1×10^{-4})	0.003 (3×10^{-3}).
L	0.003 (3×10^{-3})	0.003 (3×10^{-3}).
Averaging Time	72 hours	8 hours.

*Referred to as "Control Limits" in Federal Register, Volume 53, No. 50, March 15, 1988, pp. 8504–07.

The GPL is the maximum concentration to which members of the general population may be continually exposed 24 hours per day, 7 days per week. The GPL is intended for application to the entire general population, including all ages and medical conditions (e.g., infants, elderly, infirm, and healthy). Historically, the GPL for VX did not reflect a tenfold reduction from GB GPL as was the case for the WPLs. The primary reason for the difference was the technical inability to conduct VX air monitoring at such low concentrations. The analytical limitations are reflected further in the 72-hour averaging period rather than a more conventional 24-hour period.

The WPL is intended to be assessed as a time-weighted average for a conventional 8-hour workday and a 40-hour week. This WPL represents a concentration to which it is believed that virtually all workers may be repeatedly exposed, day after day, without adverse effect. CDC recommends that the WPLs be implemented in conjunction with the medical surveillance provisions and other requirements defined in Department of Army Pamphlets 40–173 and 40–8 or successive documents (5,6).

Note: The proposed risk assessment methodology derives exposure limits below concentrations where any acute or chronic effects would be expected to occur. The existing and proposed exposure limits are intended to protect workers and the public from potentially adverse effects from short-term or long-term exposure to GA, GB, and VX. The existence of potential adverse health effects resulting from long-term, low-dose exposure to these agents has not been demonstrated clearly.

Now, 13 years later, CDC is re-evaluating the limits for GA, GB, VX, and mustard based on the latest risk assessment models and any updated scientific data. On August 23–24, 2000, CDC convened a public meeting in Atlanta, Georgia, where outside scientists joined CDC scientists to discuss the exposure limits for GA, GB, and VX. The re-evaluation consisted of lengthy review of all available information about the agents, including some information previously classified by allied nations, and therefore, are unavailable for the open review process used by CDC in the past. A public meeting to discuss the exposure limits for mustard was held on September 11–12, 2001. The proposed mustard exposure limits will be presented in a separate **Federal Register** announcement. The L stockpile is relatively small and located at only one storage site; therefore, revisions to the exposure limits for L are not being considered at the present time.

II. Approach and Methodology

A. Purpose of the Public Meeting

The purpose of the public meeting was to discuss the airborne exposure limits for GA, GB, and VX recently proposed by the US Army. Attendees at the August 23–24, 2000, public meeting convened by CDC included risk assessors, toxicologists, physicians, a veterinarian, and several chemists. These experts were from universities, state environmental agencies, and non-CDC federal agencies. The scientific experts were asked whether or not there was a need to modify exposure limits to reflect current risk assessment methodologies and any newly available data. The meeting agenda included the following:

- Presentations on risk assessment models and scientific data and recommended modifications to existing exposure limits based on comments from individual scientific experts,
- Panel discussions by scientific experts, and
- Discussions of the technical feasibility to monitor at proposed modified exposure limits by air monitoring experts.

The meeting was not held as a federal advisory committee; therefore, CDC did not seek unanimity or consensus; take votes; or rely solely on the attendees to formulate federal policy. Statements by members of the working group, which are included in this **Federal Register** notice, represent only one part of the information considered by CDC. The experts attended the meeting solely to provide their individual expert advice to CDC and the public for consideration.

B. Method for Deriving Exposure Limit Criteria

The EPA risk assessment approach, which was used in this assessment, is used to extrapolate potential biological effects in humans at low-level exposures where such epidemiologic or toxicologic data are not directly available. This method for deriving exposure criteria has evolved over 30 years. This evaluation's approach was based on guidance described in an EPA publication (7). The derivation of a non-cancer exposure criteria involve the following:

- Defining the critical adverse effect (which is assumed protective for all other, often more serious, effects);
- Selecting the most appropriate animal or human study or studies, if more than one yields the same end point, to serve as the basis for a limit;
- Establishing a threshold dose below which adverse health effects are not expected to occur or are extremely unlikely; and
- Defining appropriate uncertainty factors (UFs) to apply to the threshold dose.

In selecting a study, a no-observed-effect-level (NOEL)—a product of concentration and time (Ct) at which subjects showed no detectable effects-or a no-observed-adverse-effect-level (NOAEL)—a Ct at which subjects showed no detectable harmful effects—is preferred over a lowest-observed-effect-level (LOEL) or a lowest-observed-adverse-effect-level (LOAEL)—the lowest Ct at which an effect or adverse effect was seen. Studies of human responses generally are preferred over studies on laboratory animals. Such preferences are not rigid; the number of subjects and technical aspects of how the study was conducted play an important role.

As many as five uncertainty factors and one modifying factor may be applied to the selected exposure dose, which is usually a NOAEL or LOAEL (7,8). They are UF_H (heterogeneity of susceptibility within human populations), UF_A (animal to human extrapolation), UF_S (subchronic to chronic exposure extrapolation), UF_L (LOAEL to NOAEL extrapolation), UF_D (database incomplete), and MF (modifying factors). By convention, these factors assume values of 1, 3, or 10 and are multiplied together to yield an overall uncertainty factor. The observed Ct product (LOAEL or NOAEL) is divided by the overall UF and then adjusted for duration of exposure (40 hours per week for workers and 168 hours per week for the general population). This basic method was applied by EPA to many common toxicants to establish chronic reference doses for human exposure. In summary, the general equation for deriving the WPL would be as follows:

$$WPL = \frac{LOAEL_{inhal} \times Resp_{exptl} \times Exp_{exptl}}{Resp_{occup} \times Exp_{occup}} \times \frac{1}{UFs \times MF}$$

WPL = Worker population limit
$LOAEL_{inhal}$ = Lowest observed adverse effect level (if available, use no observed adverse effect level)
$Resp_{exptl}$ = Experimental subject minute volume
$Resp_{occup}$ = Occupational minute volume
Exp_{occup} = Occupational exposure time (480 minutes/day x 5 days)
Exp_{exptl} = Experimental exposure time
UFs = Uncertainty factors
MF = Modifying factor

The GPL would be derived in an analogous manner, adjusting for continuous exposure, differences in assumed respiratory rates, and possible differences in application of certain UFs.

The exposure criteria resulting from this risk assessment approach should be evaluated in context with the uncertainties and default assumptions used in the risk assessment approach. One of the uncertainties that needs to be considered is the "order-of-magnitude" imprecision associated with the exposure criteria estimate (9). From a purely mathematical standpoint, this refers to a $\log_{10}$ interval around the exposure criteria estimate (i.e., approximately threefold above and below). It is important to recognize that this imprecision includes only the statistical uncertainty in interpreting the underlying data. Uncertainties inherent in the choice of the model to conduct the extrapolation are potentially far larger and cannot be quantified easily. Research into specific areas of uncertainty associated with the EPA methodology has been reported. Most studies support the belief that the uncertainty factors described above provide estimates that are protective or err toward lower limits (9). That is, the composite uncertainty factor tends to result in an estimate of the dose (or exposure limit) that is likely not to cause adverse health effects.

III. Presentations at the Public Meeting

A. U.S. Army Proposal

The U.S. Army completed reviews of exposure limits for G-agents and VX and suggested lowering the GPL for one of the agents (10,11). (See Table 2.) The Army's proposals decreased the GPL for VX by one order of magnitude, from 3×10^{-6} milligrams per cubic meter air (mg/m³) to 3×10^{-7} mg/m³, and decreased the averaging time from 72 hours to 24 hours.

TABLE 2.—U.S. ARMY-PROPOSED EXPOSURE LIMITS

[All values expressed as milligrams per cubic meter air [mg/m³]]

Agent		General population limit (GPL)	Worker population limit (WPL)	Short-term exposure limit (STEL) ‡	Immediately dangerous to life and Health (IDLH) ‡
GA, GB	Proposed	0.000003 ($3x10^{-6}$) †	0.0001 ($1x10^{-4}$)	0.0004 ($4x10^{-4}$)**	0.1 ($1x10^{-1}$).
VX	Proposed	0.0000003 ($3x10^{-7}$)†	0.00001 ($1x10^{-5}$)	0.00004 ($4x10^{-5}$)	0.01 ($1x10^{-2}$).
GD	Proposed	0.000001 ($1x10^{-6}$)†	0.00003 ($3x10^{-5}$)	0.001 ($1x10^{-3}$)**	0.05 ($5x10^{-2}$).
GF	Proposed	0.000001 ($1x10^{-6}$)†	0.00003 ($3x10^{-5}$)	0.001 ($1x10^{-3}$)**	0.05 ($5x10^{-2}$).
Averaging time		24 hours	15 min, 4x/day	30 miyn..	

†24-hour time-weighted average.
** 8-hour time-weighted average worker limit may not be exceeded.

The U.S. Army proposed exposure limits for agents GD (Soman, O-pinacolyl-methylphosphonofluoridate, CAS 96–64–0) and GF (O-cyclohexyl-methylphosphonofluoridate, CAS 329–99–7). These agents are not part of the U.S. stockpile, and neither transportation nor open-air testing is being considered for these agents. Therefore, they fall outside the scope of the DHHS/CDC mandate and were not considered in this process.

The U.S. Army-proposed WPL for GB, expressed as an 8-hour time-weighted average, is identical to the existing WPL but was derived from a different source. The proposed WPL was based on a human study conducted in 1949 by McKee and Woolcott, which yielded a LOAEL of 0.06 mg/m³, 20 minutes/day for 4 days per week (12). Proposed uncertainty factors were $UF_H = 1$, $UF_A = 1$, $UF_S = 10$, $UF_L = 3$, $UF_D = 1$, MF = 1 for an overall uncertainty factor of 30. Adjusting for differences in breathing rates and exposure durations yielded 3.3×10^{-5} mg/m³, expressed as an 8-hour time-weighted average. This differs from the existing limit, 1×10^{-4} mg/m³ by a factor of 3. The U.S. Army authors concluded that the methodology was not sufficiently precise to warrant a change from the existing limit to the newly calculated limit and proposed leaving the current limit unchanged. The same study was used as a basis for a GPL of 1.1×10^{-6} mg/m³, which differed from the present GPL (3×10^{-6} mg/m³) by a factor of 3 and was deemed within an acceptable uncertainty range.

The Army proposed a STEL of 0.0004 mg/m³ for GB. The STEL is defined as a 15-minute time-weighted average exposure that should not be exceeded during the workday, even if the 8-hour WPL is not exceeded. Exposures up to the STEL should not be longer than 15 minutes and should not occur more than 4 times a day, and there should be at least 60 minutes between successive exposures in this range. The proposed STEL would have the effect of permitting four, 15-minute exposures per day up to 0.0004 mg/m³ of GB or GA

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with the added requirement that the 8-hour WPL may not be exceeded.

The Army proposed a value of 0.1 mg/m^3 as the immediately dangerous to life or health (IDLH) concentration for GB. The GB IDLH was based on an acute human toxicity study, and the value was calculated in accordance with National Institute for Occupational Safety and Health (NIOSH) guidance (10). The Army adjusted the IDLH down by a factor of 2 to address the female occupational worker population, which is potentially more sensitive than the male occupational worker population to GB vapor.

There are limited data on VX compared to some of the other G-agents, but the WPL recommendation was based on a relative potency estimate of 10 for pupillary constriction; so the Army-proposed WPL for VX is 1/10 of the corresponding value for GB or 1×10^{-5} mg/m^3, and the Army-proposed GPL is 3×10^{-7} mg/m^3. A STEL of 4×10^{-5} mg/m^3 for VX was proposed. The value was based ultimately on the WPL, such that four exposures per day at the STEL would not cause the WPL to be exceeded. The Army-proposed VX IDLH of 0.01 mg/m^3 was also determined using a relative potency estimate of 10.

B. Airborne Exposure Limits for GB

1. WPL for GB

The U.S. Army document served as the starting point for discussion at the public meeting (10). The expert panel members differed in their assessment of how best to derive limits from the available data. Most of the members thought that limits for GB should be based on the McKee and Woolcott study, which yielded a LOAEL of 0.06 mg/m^3 (12). However, one member was concerned about deriving long-term exposure limits from short-term experimental data, particularly when little long-term toxicity data are available.

One member noted that application of an interspecies uncertainty factor greater than 1 is unjustified when evidence suggests that the species studied is as sensitive or more sensitive than man. A calculation based on the Weimer animal data using an interspecies uncertainty factor of 1 would yield a GB WPL of 5×10^{-5} mg/m^3 (13). However, this member also thought that human studies should be given more weight and joined others in recommending a limit based on the McKee and Woolcott report (12). Another member argued for a limit of 4×10^{-6} mg/m^3 based on uncertainty factors of 10 for short-term to long-term extrapolation and 3 for interindividual variability. Yet another member argued that studies by Harvey and Johns would be better critical studies to utilize (14, 15). Working from these data would yield a 15-minute STEL of 0.008 mg/m^3 and a WPL for GB of 2.5×10^{-6} mg/m^3 after an eightfold adjustment for time of exposure and a tenfold adjustment for cumulative effect.

Four members recommended that if the U.S. Army-proposed derivation were used, CDC should accept the calculated exposure limit value (3.3×10^{-5} mg/m^3) rather than utilizing the rounded-up value 1×10^{-4} mg/m^3 that was recommended by the Army.

Several members speculated that information concerning human exposures during manufacture and disposal of GB could be more relevant than the studies cited. Unfortunately, records of environmental conditions from the time period GB was manufactured are not adequate to support such analysis. Conversely, worker and environmental monitoring records for recent GB demilitarization activities are well documented. However, engineering controls to prevent exposure have been rigorous; therefore, GB exposures have been very rare, have occurred primarily during maintenance operations, and have been minimal. Consequently, these data are not useful for developing exposure limits.

2. STEL for GB

The U.S. Army-proposed STEL was based on the WPL, such that four exposures per day at the STEL would not result in the WPL being exceeded. At the public meeting, the proposed STEL elicited considerable discussion. Several members of the expert panel thought that the Army-proposed STEL was too low numerically because of the method used to calculate it. Using the critical effect LOAEL, several experts recalculated a new value—a Temporary Excursion Limit (TEL). The TEL for GB was calculated to be 0.01 mg/m^3 for a 5-minute exposure not more than once per day.

3. General Population Limit for GB

The Army-proposed GPL for GB was based on the same study and the same method used for deriving the WPL. The GPL was calculated by adjusting for the longer time of exposure and greater population variability. The uncertainty factors were as follows: 10 for short-term to long-term extrapolation, 10 for variability among individuals, and 3 for low-effect to no-effect extrapolation. Three members of the working group thought the Army-proposed GPL was adequate. One thought that the proposed limits were probably at least tenfold lower than needed to protect public health. That is, the GPL could be at least tenfold greater and still be protective. The member who proposed a WPL of 2.5×10^{-5} mg/m^3 advised adding an uncertainty factor of 3 for variation within the population and an uncertainty factor of 3 for extrapolating from low-effect to no-effect yielding the proposed value 3×10^{-6} mg/m^3 but by a different line of reasoning. One member argued for a GPL of 1×10^{-6} mg/m^3, noting that using the lower value incorporated an uncertainty factor of 3 for variability within population. It was noted that the Johns data indicate that doses causing a given degree of pupillary constriction generally range over a factor of less than 2.0 from the geometric mean (that is, from about half the geometric mean to about twice the geometric mean), providing at least some evidence for small variability within human populations to this particular low-dose effect (15).

C. Airborne Exposure Limits for VX

Exposure limits for VX were more difficult for the experts to address because the experimental VX data were considered inadequate and do not form a good basis for VX exposure limits. Nonetheless, one of the working group members noted that the VX studies by Bramwell and Crook argue for a VX WPL of 4×10^{-7} mg/m^3 and 3×10^{-9} mg/m^3, respectively (16, 17). However, several panel members had scientific concerns about these studies. Regarding the Bramwell study, some panel members were concerned that benzene, which was used as a solvent in the VX generation, could alter the exposure characteristic of VX. As for the Crook study, the accuracy of the VX vapor concentrations was questioned.

Because the available experimental VX data were considered inadequate, the derivation of the exposure limit was based on the relative potency of VX as compared to GB. The exposure limits proposed by the Army are based on a tenfold difference (relative potency) in the ability of VX to cause miosis compared to GB. This tenfold potency difference was questioned because some publications stated that the potency difference may be twelvefold to thirty-threefold or higher, especially at low concentrations (18,19).

The Army's publication proposing VX exposure limits included little detail used in deriving the tenfold potency factor (11). However, discussion in a previous U.S. Army study indicated that recovery from the miosis effects of VX is about four times as fast as recovery from the effects of GB (19). According to this publication, if VX potency is about twenty-five times greater than GB but the effective recovery is four times greater, the relative VX potency for continuous exposure would be approximately 25/4 that of GB. The overall factor of 10 is a approximation (rounding) of 25/4. Compared to GB, VX does not undergo a second, irreversible, reaction known as aging as quickly when it reacts with acetylcholinesterase; this may be one reason that the biological effects of VX exposure recover more quickly when compared to GB.

CDC notes that the EPA NAC/AEGL committee for VX recently proposed a relative potency of 12 with application of a modification factor of 3 for the incomplete VX data set. The potency factor of 12 was based on a 1971 British study that measured the ability of VX to cause 90% pupil constriction in rabbits (18). The application of a relative potency of 12 with a modifying factor of 3 for the inadequate VX data base effectively resulted in a relative potency of 36 (3×12) (20).

All experts would have preferred better, VX-specific data and would have preferred avoiding the use of relative potency, but four of the experts concurred with the use of an overall tenfold difference in relative potency for extrapolating from GB to VX. Given the preference of several experts for a GB WPL of 3×10^{-5} mg/m^3, that would call for a WPL of 3×10^{-6} mg/m^3 for VX rather than the 1×10^{-5} mg/m^3 that was proposed by the Army. Accordingly, preference by several experts for a GB GPL of 1×10^{-6} mg/m^3 would suggest a VX GPL of 1×10^{-7} mg/m^3.

D. CDC's Proposed Recommendations

1. Airborne Exposure Limits for GB

Noting the opinions of the experts at the public meeting, CDC proposes a change from the present exposure limit to the lower exposure limit derived from the McKee and Woolcott studies (12). CDC believes that the calculated WPL value of 3×10^{-5} mg/m^3, expressed as an 8-hour time weighted average, will protect workers from short-term or long-term health effect exposures for a working lifetime. The CDC-proposed WPL value, consistent with the calculation from this risk assessment, is approximately threefold lower than the Army-recommended value of 1×10^{-4} mg/m^3. CDC recognizes that the risk assessment methodology is imprecise, and quantitative differences in risk between exposure concentrations of less than an order of magnitude generally are not discernable. However, CDC could not identify relevant examples from other risk assessments where such rounding-up had been conducted. Additionally, since the "calculated" WPL was thought to be technically feasible and four experts at the public meeting recommended using the "calculated" values from the risk assessment, CDC proposes the 3×10^{-5} mg/m^3 as the WPL for GB.

In addition to the WPL, CDC recommends a STEL of 1×10^{-4} mg/m^3 to be used in conjunction with the WPL. The STEL is defined as a 15-minute time-weighted average exposure that should not be exceeded during the workday, even if the 8-hour WPL is not exceeded. Exposures up to the STEL should not be longer than 15 minutes and should not occur more than 4 times a day, and there should be at least 60 minutes between successive exposures in this range. The purpose of this value is to provide a reasonable limit to excursions over the WPL. The value associated with the STEL is numerically identical to the existing 8-hour time-weighted worker exposure limit.

CDC proposes 1×10^{-6} mg/m^3 as the GB GPL, expressed as a 24-hour time-weighted average. This GPL value, which is consistent with the calculation from the risk assessment, is threefold lower than the Army-recommended value and the current GPL. CDC believes current analytical methods can be modified to monitor at this new concentration.

The expert panel members did not focus on, or object to, the Army-proposed immediately dangerous to life or health (IDLH) value of 0.1 mg/m^3 for GB (10). Accordingly, CDC proposes an IDLH of 0.1 mg/m^3.

2. Airborne Exposure Limits for GA

Although not as well-studied, GA is approximately equal in potency to GB. The Army proposed, and members of the expert groups agreed, that it would be reasonable to use the same exposure limits for both. CDC proposes the same exposure limits (WPL, STEL, GPL, and IDLH) for GA as those recommended for GB.

3. Airborne Exposure Limits for VX

Since the toxicity data for VX are inadequate, CDC proposes derivation of the VX WPL, STEL, and GPL from the calculated exposure limits for GB, using a relative potency of 12 compared to GB and application of a modifying factor of 3 for the incomplete VX data set. This approach, which effectively results in a relative potency of 36, is the same as that recently proposed by the EPA NAC/AEGL committee (20). CDC proposes that the WPL for VX should be decreased to 1×10^{-6} mg/m^3 (a factor of 10 lower compared to the current value and the U.S. Army's recommendation). Additionally, CDC proposes VX STEL of 4×10^{-6} mg/m^3.

CDC proposes a VX GPL of 6×10^{-7} mg/m^3, expressed as a 24-hour time-weighted average. The VX GPL, derived from the GB GPL to which the relative potency of 12 and a modifying factor of 3 was applied, was initially calculated as 3×10^{-8} mg/m^3. However, currently available monitoring methods are unable to reliably detect VX at this concentration. CDC believes that reliable monitoring is a crucial aspect for implementing the exposure limits and therefore proposes to increase the GPL to a concentration that can reliably be monitored. The CDC proposes 6×10^{-7} mg/m^3 for the VX GPL, a value that is both protective and technically feasible to monitor.

The proposed VX GPL of 6×10^{-7} mg/m^3, used in conjunction with the existing perimeter montoring programs, will be protective because long-term releases of VX are unlikely. Routine maintenance and monitoring procedures implemented for worker safety near the potential sources of releases (where concentrations potentially would be higher than at the perimeter) prevent long-term releases. At demilitarization sites, perimeter monitoring results for 12-hour samples are typically available within 72 hours. Detections of chemical agent above the action level result in (1) an investigation to determine the source of the vapor and (2) corrective action to eliminate the source. In the derivation of the GPL in accordance with EPA methodology, the exposure period of the critical study is adjusted for a continuous 7-day exposure for the general population. The perimeter monitoring results at demilitarization sites are obtained within 72 hours (3 days) following sampling. To correct the assumption of continuous exposure for 7 days, a factor of 3 days potential exposure per 7 days was applied to the calculated VX GPL of 3×10^{-8} mg/m^3. Additionally, in the derivation of the GPL, an uncertainty factor of 10 was applied to extrapolate from sub-chronic to chronic exposures. Since a chronic exposure is unlikely, this extrapolation would not be needed. These calculations result in adjusting the initially calculated VX GPL of 3×10^{-10} mg/m^3 to 6×10^{-7} and support the conclusion that the proposed GPL of 6×10^{-7} is protective of human health. This adjustment of the VX GPL was made in acknowledgment of the technical limitations of current air monitoring methods, while assuring that the GPL would be protective of public health.

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The expert group members did not object to the Army-proposed IDLH values for VX (0.01 mg/m³), although there was little specific discussion among the panel. In accordance with relative potency approach used for WPL and GPL (potency factor of 12 with a modifying factor of 3), CDC proposes a VX IDLH of 0.003 mg/m³.

4. Proposed Implementation of the VX GPL

Current data suggest that air monitoring at the proposed VX GPL concentration is on the fringe of technical feasibility for current methods. CDC investigated this issue with representatives from NIOSH, the U.S. Army, and other independent consultants. CDC representatives heard compelling evidence that current VX air monitoring methods may need further development. At the proposed VX GPL, the mass of other ambient organic materials normally found in the air (background chemicals) will greatly exceed the mass of VX to be measured. These background materials cause analytical problems in discerning and quantifying VX.

Halting disposal until improved monitoring methodology can be developed presents at least three grave problems:

a. There is greater cumulative risk from continued storage compared to continued disposal under the existing exposure limits.

b. The desired level of sensitivity and selectivity may not be easily attainable.

c. The United States has treaty obligations to complete the disposal within a specified time.

Inasmuch as delay in disposal presents an unacceptable risk to public health and safety, CDC proposes the following interim measures regarding monitoring at the proposed VX GPL:

a. CDC proposes a multifaceted research program to look at commercially available systems that have the potential to improve air monitoring at the proposed VX GPL. Further, CDC recommends that the Army use one or more Ph.D.-level analytical chemist(s) who have air monitoring experience to direct this program.

b. CDC proposes suspension of the 20% action level for the VX GPL until the monitoring methodology can be improved.

c. For all demilitarization sites handling VX, CDC proposes that all qualitative responses above a 3:1 signal-to-noise ratio for VX from perimeter stations be evaluated (i.e., those that are below the limit of quantification for VX). When VX is qualitatively detected, action should be taken to investigate the possible sources of these responses.

E. Summary of Proposed Recommendations

CDC's foremost concern is protecting human health and safety. This concern requires a carefully considered balance of utilizing best possible risk analysis while considering technical feasibility and avoiding unintended consequences of recommendations that could increase total risk. CDC's recommendations are made with this balance in mind.

CDC proposes adjustments to the exposure limits for GA, GB, and VX to the values shown in Table 3.

TABLE 3.—DC CURRENT AND PROPOSED AIRBORNE EXPOSURE LIMITS

[All values expressed as milligrams per cubic meter air [mg/m³]

Agent	General population limit* (GPL)		Worker population limit** (WPL)	Worker short-term exposure limit*** (STEL)	Immediately dangerous to life or health*** (IDLH)
GA, GB	Current proposed	3×10^{-6}	1×10^{-4}		
		1×10^{-6}	†3×10^{-5}	1×10^{-4}	0.1
VX	Current proposed	3×10^{-6}	1×10^{-5}		
		6×10^{-7}	‡1×10^{-6}	4×10^{-6}	0.003

* 24-hour time-weighted average. For the VX GPL, analyses of sample results within 72 hours is required.
** 8-hour time-weighted average.
† To be implemented in conjunction with the GB STEL.
‡ To be implemented in conjunction with a VX STEL.
*** Not previously considered by CDC.

Acknowledging the gaps in the database for VX, CDC considers the proposed VX exposure limits subject to re-evaluation in 3 years. New VX toxicity studies, which are anticipated to be completed within 3 years, have been recommended recently by the EPA NAC/AEGL Committee. CDC agrees that additional toxicity studies could be helpful in the derivation of exposure limits for VX.

CDC does not specifically recommend the use of these airborne exposure limits for uses other than transportation, demilitarization, or general population protection. For example, the 8-hour WPL value historically has been used for the Army-designated 3X decontamination, surveillance activities of leakers in storage, and charcoal unit mid-beds. CDC believes that the WPL is not necessarily applicable to all these activities, and the specific technical and safety requirements for each activity need to be considered individually.

The allowable limits for stack emissions were not discussed at the meeting. The allowable stack concentration (ASC) is a ceiling value that serves as a source emission limit and not as a health standard. It is used for monitoring the furnace ducts and common stack. The ASC provides an early indication of an upset condition and must be measurable in a timely manner. Modeling of worst-case credible events and conditions at each installation should confirm that the GPL monitoring level is not exceeded at the installation boundary as a consequence of a release at or below the ASC. Lowering the GPL might have the effect of lowering the stack concentration limit; therefore, modeling will need to be conducted to determine if the existing ASCs continue to be appropriate.

Dated: January 2, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* HIPAA Nondiscrimination Provisions; *Form No.:* CMS–10001 (OMB# 0938–0827); *Use:* Self-funded nongovernmental plans are required to give individuals who were previously discriminated against an opportunity to enroll, including notice of an opportunity to enroll; *Frequency:* Once; *Affected Public:* Business or other for-profit, not-for-profit institutions, Individuals or households, State, local, or tribal government; *Number of Respondents:* 583; *Total Annual Responses:* 583; *Total Annual Hours:* 200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS 10001, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 20, 2001.

Julie E. Brown,

Acting Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–P–0015SPA, CMS–250 through 254, CMS–10008, and CMS–287]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the

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following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Current Beneficiary Survey—Supplement on Patient Activation; *Form No.:* CMS–P–0015SPA (OMB# 0938–NEW); *Use:* A primary theme of the NMEP education efforts has been to help Medicare beneficiaries make choices. Simply providing uniform information to an undifferentiated audience is not sufficient. CMS needs to know whether beneficiaries have the communication skills, motivation and basic knowledge of their own health status to be partners in their own health care. The purpose of this survey supplement is to assess the degree to which Medicare beneficiaries participate actively in their own health care decisions; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 2,666.

(2) *Type of Information Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS–250 through CMS–254 (OMB# 0938–0214); *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. CMS contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. CMS charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, CMS has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary.

These information collection requirements describe the MSP requirements and consist of the following:

1. Initial enrollment questionnaire;
2. MSP claims investigation, which consists of first claim development, trauma code development, self-reporting MSP liability development, notice to responsible third party development (411.25 notice), secondary claims development, and "08" development (involving claims where information cannot be obtained from the beneficiary);
3. Provider MSP development, which requires the provider to request information from the beneficiary or representative during admission and other encounters; *Frequency:* On occasion; *Affected Public:* Individuals or households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 867,867,540; *Total Annual Responses:* 867,863,540; *Total Annual Hours Requested:* 2,926,254.

(3) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Recognition of Pass-Through Payment for Drugs and Biologicals Under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR, Section 419.43 formerly known as "Recognition of New Technology/Pass-Through Items Under the Prospective Payment System for Hospital Outpatient Services'; *Form No.:* CMS–10008 (OMB# 0938–0802); *Use:* This information is necessary to determine items eligible for payment as new technology within the ambulatory payment classification (APC) system as well as items eligible for the transitional pass-through payment provision as required by section 201 of the BBRA. This collection will enable CMS to implement those special payment provisions; *Frequency:* On Occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 193.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Office Cost Statement and Supporting Regulations in 42 CFR 413.17 and 413.20; *Form No.:* CMS–287 (OMB# 0938–0202); *Use:* Medicare law permits components of chain organizations to be reimbursed for certain costs incurred by the chain home offices. The Home Office Cost Statement is required by the fiscal intermediary to verify Home Office Costs claimed by the components. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions and Business or other for-profit; *Number of Respondents:* 1,231; *Total Annual Responses:* 1,231; *Total Annual Hours Requested:* 573,646.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 20, 2001.

Julie Brown,

Acting, Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–283]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Market Survey of Fraud, Waste and Abuse Detection Software; *Form No.:* CMS–R–0283 (OMB# 0938–0783); *Use:* This information collection tool is essential to providing the Centers for Medicare and Medicaid Services (CMS) a vehicle to ascertain cutting edge fraud, waste, and abuse detection products. CMS and its contractors presently use a number of these tools, as do other segments of government, the health care industry, and industry generally. New products taking advantage of new technologies are in continuous development. This completely voluntary survey will ensure that CMS is vigilant in identifying new advances to help fight the scourge of Medicare fraud and abuse; *Frequency:* Annually; *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 250; *Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS 10001, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 20, 2001.

Julie Brown,

Acting Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–424 Filed 1–7–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–273 and CMS–2088]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency=s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Site Visit Assessment Tool (previously known as Community Mental Health Center Site Visit Assessment Tool) and Supporting Regulations in 42 CFR 410.2. *Form No.:* CMS–R–0273 (OMB# 0938–0770). *Use:* This information collection tool is essential for CMS to ensure that new and existing Community Mental Health Centers (CMHC) are in compliance with Medicare provider requirements, as well as applicable Federal and State requirements. This revision is requested to implement the collection of information required by the Benefit Improvement and Protection Act of 2000 regarding the CMHC's provision of pre-admission screening to State mental health facilities and to expand the collection tool's use into other program areas as a means to screen applicants, enrollees, and existing providers/suppliers to ensure their legitimacy to participate in the Medicare program. *Frequency:* Upon initial application or re-enrollment into the Medicare program. *Affected Public:* Business or other for profit, Not for profit institutions, and state, local, or tribal Government. *Number of Respondents:* 4,550; *Total Annual Responses:* 4,550. *Total Annual Hours:* 17,400.

(2) *Type of Information Collection Request:* Extension of a currently approved collection. *Title of Information Collection:* Outpatient Rehabilitation Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24. *Form No.:* CMS–2088. *Use:* This form is used by Outpatient Rehabilitation Facilities to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. *Frequency:* Annually. *Affected Public:* Business or other for-profit, Not-for-profit institutions, and state, local or tribal government. *Number of Respondents:* 716. *Total Annual Responses:* 716. *Total Annual Hours:* 71,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Herron Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 20, 2001.

Julie Brown,

Acting, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–425 Filed 1–7–02; 8:45 am]

BILLING CODE 4120–03–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–0148]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection. *Title of Information Collection:* Limitation on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals; Medicaid and Supporting Regulations in 42 CFR 433.68, 433.74, 447.74 and 447.272; *Form No.:* HCFA–R–148 (OMB#0938–0618); *Use:* These information collection requirements specify limitations on the amount of Federal financial participation available for medical assistance expenditures in a fiscal year. States receive donated funds from providers and revenues are generated by health care related taxes. These donations and revenues are used to fund medical assistance programs; *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 50; *Total Annual Responses:* 40; *Total Annual Hours:* 2,880.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 27, 2001.

Julie Brown,

Acting CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–426 Filed 1–7–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Site Visit MMR B J2.

Date: January 6–8, 2002.

Time: January 6, 2002, 7 pm to 9 pm.

Agenda: To review and evaluate grant applications (Pre-Site Visit Meeting).

Place: Univ. of Florida Doubletree Hotel & Conf. Center, 1714 SW 34th Street, Gainesville, FL 32607.

Time: January 7, 2002, 7 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: University of Florida, Gainesville, FL 32610.

Time: January 7, 2002, 7 am to 8 pm.

Agenda: To review and evaluate grant applications (Post-Site Visit Meeting).

Place: Univ. of Florida Doubletree Hotel & Conf. Center, 1714 SW 34th Street, Gainesville, FL 32607.

Time: January 8, 2002, 8 am to 12 pm.

Agenda: To review and evaluate grant applications (Post-Site Visit Meeting).

Place: Univ. of Florida Doubletree Hotel & Conf. Center, 1714 SW 34th Street, Gainesville, FL 32607.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–475 Filed 1–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final Environmental Impact Statement; General Management Plan; Washita Battlefield National Historic Site, Oklahoma

Introduction

The Department of the Interior, National Park Service (NPS), has prepared this Record of Decision (ROD) on the Final General Management Plan/Environmental Impact Statement for Washita Battlefield National Historic Site, Oklahoma. This ROD includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a discussion of impairment of park resources or values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

Decision (Selected Action)

The National Park Service will implement the preferred alternative as described in the Final General Management Plan/Environmental Impact Statement issued in August 2001. Under the selected action, park managers will make several changes to in order to provide a better visitor experience and protect the resource values at Washita Battlefield National Historic Site. The site will be zoned to ensure that resources are protected and opportunities exist to provide a quality visitor experience. Most of the site (about 90%) will be restored to native vegetation as directed by the site's enabling legislation. A new loop trail system will allow visitors to access the site. At the US Forest Service's Black Kettle National Grassland ranger station a shared administrative, maintenance, visitor facility will be constructed. The existing overlook will be redesigned to provide a better interpretive experience for the visitor.

Other Alternatives Considered

Three other alternatives for managing Washita Battlefield National Historic Site were evaluated in the draft and final environmental impact statements.

The no-action alternative provides a baseline for evaluating the changes and impacts of the three action alternatives. Under the no-action alternative, park managers would continue to manage the park as it is currently managed, relying on the interim plans and other related existing plans. No new construction or major changes would take place, except for previously approved developments. All of the park's existing facilities would continue to be operated and maintained as they are currently.

Alternative A would provide a new administrative, maintenance and visitor facility at the US Forest Service's Black Kettle National Grassland. There would not be any trail access down onto the site. However, the overlook would be redesigned to provide for better interpretation of the site.

Alternative B would provide visitors with an onsite learning experience with an administrative, maintenance, and visitor facility on site. A loop trail would cross the river and return to the visitor area. The overlook would also be redesigned under this alternative.

Basis for Decision

The Organic Act established the National Park Service in order to "promote and regulate the use of parks.* * *" The Organic Act defined the purpose of the national parks as "to conserve the scenery and natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The Organic Act provides overall guidance for the management of Washita Battlefield National Historic Site.

In reaching its decision to select the preferred alternative, the National Park Service considered the purposes for which Washita Battlefield National Historic Site was established, and other laws and policies that apply to lands at Washita Battlefield National Historic Site, including the Organic Act, National Environmental Policy Act, and the NPS Management Policies. The National Park Service also carefully considered public comments received during the planning process.

Each alternative in the General Management Plan presents a different framework for managing Washita Battlefield National Historic Site. As a result, each alternative would have different impacts on park resources and visitors.

Compared to all of the alternatives considered, the preferred alternative (selected action) best accomplishes protection of park resources while providing of a range of quality visitor experiences. The preferred alternative would have both beneficial and adverse impacts on the park's resources, but most of the adverse impacts would be minor and localized. The new management zones would help ensure that opportunities exist for experiencing education and solitude for the visitor while protecting the site's cultural and natural resource values.

The preferred alternative provides the visitors with a better experience than Alternative A by allowing trail access down onto the site.

Compared to alternative B, the preferred alternative would result in far fewer adverse impacts on the cultural and natural resources of the site by having the major facility located off site. Unlike the preferred alternative, under Alternative B there would be the potential for moderate adverse impacts to the park resource values.

Environmentally Preferable Alternative

Records of decision are required under Council on Environmental Quality regulations to identify the environmentally preferable alternative. Environmentally preferable is defined as "the alternative that will promote the national environmental policy as expressed in section 101 of the National Environmental Policy Act. Section 101 states that "* * * it is the continuing responsibility of the Federal Government to * * * (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources."

The environmentally preferable alternative is the NPS preferred alternative in the Final Washita Battlefield National Historic Site General Management Plan/Environmental Impact Statement because it surpasses the other alternatives in realizing the full range of national environmental policy goals in section 101. This alternative provides a high level of protection of natural and cultural resources while concurrently providing for a wide range of neutral and beneficial uses of the environment. The alternative maintains an environment that supports a diversity and variety of individual choices. Also it integrates resource protection with an appropriate range of visitor uses.

The no-action alternative does not provide as much resource protection as the preferred alternative. Adverse visitor experience impacts also would likely increase under this alternative. Thus, compared to the preferred alternative, the no-action alternative is not as effective at meeting national environmental policy goals 3 (attain the widest range of beneficial uses of the environment without degradation), 4 (preserve important cultural and natural aspects and maintain an environment that supports diversity and variety of individual choice), 5 (achieve a balance between population and resource use), and 6 (enhance the quality of renewable resources).

Although alternative A provides a higher level of resource protection than the preferred alternative, it restricts visitor experiences and thus does not fully achieve goals 3 (providing the widest range of beneficial uses of the environment without degradation) and 5 (achieving a balance between population and resource use)—alternative A does not realize these national environmental policy goals to the same extent as the preferred alternative.

Alternative B does provide for more localized visitor experiences and access to the site. However, there would be a higher potential for adverse impacts to cultural and natural resources under this alternative compared to the preferred alternative. Thus, alternative B does not meet policy goals 3 (attain the widest range of beneficial uses without degradation), 4 (preserve important cultural and natural aspects), and ■

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(enhance the quality of renewable resources) to the same degree as the preferred alternative.

Findings on Impairment of Park Resources and Values

The National Park Service may not allow the impairment of park resources and values unless directly and specifically provided for by legislation or proclamation establishing the park. Impairment that is prohibited by the NPS Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. In determining whether an impairment would occur, park managers examine the duration, severity and magnitude of the impact; the resources and values affected; and direct, indirect, and cumulative effects of the action. According to NPS policy, "An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is: (a) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; (b) Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or (c) Identified as a goal in the park's general management plan or other relevant NPS planning documents."

This policy does not prohibit all impacts to park resources and values. The National Park Service has the discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impacts do not constitute an impairment.

Moreover, an impact is less likely to constitute an impairment if it is an unavoidable result, which cannot be further mitigated, of an action necessary to preserve or restore the integrity of park resources or values.

After analyzing the environmental impacts described in the Final General Management Plan/Environmental Impact Statement and public comments received, the National Park Service has determined that implementation of the preferred alternative will not constitute an impairment to Washita Battlefield National Historic Site's resources and values. The actions comprising the preferred alternative are intended to protect and enhance the park's natural and cultural resources, and provide for high-quality visitor experiences. Overall, the alternative would have minor, beneficial effects on such resources as cultural landscapes, ethnography and park collections; and a moderate, beneficial effect on visitor experience. From an overall, parkwide perspective, no major adverse impacts to the park's resources or the range of visitor experiences and no irreversible commitments of resources (other than a small loss of soil) would be expected. While the alternative would have some adverse effects on park resources and visitor experiences, most of these impacts would be site-specific, minor to moderate, short-term impacts.

Measures To Minimize Environmental Harm

Measures to avoid or minimize environmental harm that could result from implementation of the selected action have been identified and incorporated into the preferred alternative and are described in detail in the Final General Management Plan/Environmental Impact Statement. Cultural and natural resource mitigation measures are described in the "Alternatives" chapter, the description of the preferred alternative, and in the analysis of environmental impacts. Measures to minimize environmental harm include, but are not limited to: tribal consultations; siting projects and facilities in previously disturbed or developed locations; employing erosion control measures, restoration of habitats using native plant materials; visitor education programs, ranger patrols, erecting barriers and signs to reduce or prevent impacts; allowing only the use of weed-free materials and equipment in the park; conducting visitor surveys and monitoring visitor use patterns; monitoring changes in the condition of natural and cultural resources; monitoring construction activities; and consulting with the Oklahoma Historical Society, office of the state historic preservation officer and U.S. Fish and Wildlife Service when appropriate.

Public Involvement

The National Park Service provided numerous opportunities for the public to participate in the Washita Battlefield National Historic Site general management planning process. The planning team primarily used newsletters and public meetings to solicit public comments and suggestions for the plan. During the course of the planning process two newsletters were sent to the site's mailing list, which consisted of over 400 names. Each of the newsletters provided the opportunity for feedback and comments from the public. The planning team held three sets of public meetings to gain public input during scoping, preliminary alternatives development and the draft plan public review. In addition, members of the planning team consulted with and sought the views of several agencies and governments, including the Southern Cheyenne and Arapaho tribes, Northern Cheyenne, Apache, Wichita tribes, the Bureau of Indian Affairs, U.S. Fish and Wildlife Service, US Forest Service, and the Oklahoma Historical Society.

The comment period on the draft plan initially ran from February 15, 2001, through May 20, 2001. A notice of availability was published in the March 20, 2001, **Federal Register**. The planning team held six public meetings on the draft environmental impact statement from March 27 through March 30, 2001. Meetings were held in Anadarko, Concho, Clinton, and Cheyenne, Oklahoma. About fifteen separate written responses were received during the comment period.

Two individuals commented on the Final General Management Plan/Environmental Impact Statement during the 30-day no-action period. No new substantive issues were raised in the two comment letters.

The notice of availability for the final environmental impact statement was published in the September 21, 2001 **Federal Register**. The 30-day "no action" period ended on October 15, 2001.

Conclusion

Among the alternatives considered, the preferred alternative best protects the diversity of park resources while also maintaining a range of quality visitor experiences, meets NPS purposes and goals for managing Washita Battlefield National Historic Site, and meets national environmental policy goals. The preferred alternative would not result in the impairment of park resources and would allow the National Park Service to conserve park resources and provide for their enjoyment by visitors. The officials responsible for implementing the selected alternative are the Director, Intermountain Region, and the Superintendent, Washita Battlefield National Historic Site.

Dated: November 6, 2001.

John T. Crowley,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 02–380 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Urban Park and Recreation Recovery Program

AGENCY: National Park Service, Interior.

ACTION: Notice of FY 2002 grant round—UPARR Rehabilitation grants.

SUMMARY: This notice announces the availability of grant funds under the Rehabilitation phase of the Urban Park and Recreation Recovery (UPARR) Program and provides information on the application process including eligible recipients and deadlines for submission of proposals.

DATES: NPS will accept preapplications received on or before March 29, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for NPS addresses.

FOR FURTHER INFORMATION CONTACT: Michael D. Wilson, Chief, Recreation Programs Division, or Wayne Strum, National Park Service, Department of the Interior, 1849 "C" Street, NW., Washington, DC 20240; (202) 565–1200.

SUPPLEMENTARY INFORMATION: For Fiscal Year 2002, $28,900,000 is available for funding of Rehabilitation projects under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95–625). NPS will consider proposals for funding projects with a dollar limit of $1 million (Federal share of total project cost). Grants made in any one State shall not exceed in the aggregate 15 percent of the total available ($4,335,000). Preapplications must be received by the appropriate NPS field office by no later than March 29, 2002.

In order to minimize errors and to clarify program requirements, potential applicants are strongly encouraged to consult with the NPS field office during preparation of their proposals and to submit their preapplications prior to the above deadline.

Rehabilitation grants will be targeted to rehabilitate existing neighborhood recreation areas and facilities that have deteriorated to the point where health and safety are endangered or the community's range of quality recreation service is impaired. Proposals must be designed to provide recreation services within a specified area identified by the applicant. Proposals may identify improvements at multiple sites or facilities, each of which must be individually addressed. Grants may be used to remodel, rebuild, or develop existing outdoor or indoor recreation areas and facilities. Proposals that are entirely, or substantially oriented to expansion of existing facilities are not encouraged and will be closely scrutinized. If a UPARR project is part of a larger effort, the UPARR project, and its associated costs must be clearly separable and have a distinct budget for the UPARR portion of the effort.

Eligible Jurisdictions: Urban jurisdictions which have been determined eligible for the UPARR program are listed in 36 CFR part 72, appendix B. Eligible jurisdictions may compete for Rehabilitation grant funds if an approved Recovery Action Program (RAP) is on file with and approved by NPS. If a jurisdiction's RAP plan expired since FY 1995, the chief executive officer of that jurisdiction may submit either (1) a new or updated RAP for NPS review and approval, or (2) a letter of recertification. A letter of recertification must state that no significant changes have occurred in its assessment and action plan, and that the RAP remains current as a guide to community action and decision-making. In those cases where a jurisdiction has never submitted a RAP for participation in the UPARR program or its previously approved RAP plan expired prior to FY 1995, the chief executive officer of that jurisdiction may submit either (1) a new or updated RAP for NPS review and approval, or (2) copies of current budget, planning or other documents that reflect the jurisdiction's recreation priorities, policies, actions and decision-making processes; which when taken together, either satisfactorily update the pre-1995 RAP for the purposes of recertification or otherwise satisfies the RAP planning requirements for participation in the FY 2002 grant round. NPS may accept a recertification or approve the alternative RAP documentation through December 31, 2002, after which a new RAP is required. NPS may allow urban jurisdictions not on the list of eligibles to compete as a "discretionary" applicant if the jurisdiction is located in a Metropolitan Statistical Area and meets the criteria described in 36 CFR part 72, appendix A. All projects must be in accord with the priorities outlined in the recertified or approved RAP document.

Grant Implementation and Timing: Grantees must comply with all applicable Federal laws and regulations for the UPARR program, which includes completion of a final grant agreement within 120 days of a grant offer based on NPS evaluation of preapplications submitted for consideration.

Preapplication Requirements: The chief executive officer applying for a UPARR grant will be required to certify, in the preapplication, that the grantee will comply with all requirements of the UPARR program. Applicants must certify that they have adequate control and tenure over properties to be assisted through UPARR and must identify in their applications the type of control they have over those properties. Additional requirements are outlined in the "UPARR Preapplication Handbook" available from the NPS field offices (or on the internet at *http://www.nps.gov/uparr*).

Matching Requirements: UPARR Rehabilitation grants are awarded on a 70/30 (Federal/local) matching basis. As an incentive for state involvement in the program, the Federal Government will match, dollar for dollar, state contributions to the local share of the total project cost, up to 15 percent of the approved grant. The Federal share is limited to no more than 85 percent of the approved grant cost and the overall dollar limitations established above for Rehabilitation grants.

Pass-Through Funding: At the discretion of the applicant jurisdiction, grants may be transferred, in whole or in part, to independent general or special purpose local governments, private nonprofit agencies or community groups, and county or regional park authorities that provide recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction. In such situations, the applicant jurisdiction will bear full legal responsibility and liability for passed-through funds.

Post-Completion Requirements: In accordance with section 1010 of the UPARR Act of 1978, assisted properties may not be converted to other than public recreation use without the prior approval of NPS and the replacement of the converted site or facility with one of reasonably equivalent usefulness and location. This provision applies to all Rehabilitation projects.

FOR FURTHER INFORMATION CONTACT: Interested jurisdictions should consult their NPS field office for further information including grant round schedule and for technical assistance in applying for funding. The NPS field offices are listed below:

Northeast

(CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV)

Stewardship and Partnerships Team, Philadelphia Support Office, National Park Service, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, Tele: (215) 597–9195 (for all).

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Southeast

(AL, FL, GA, KY, LA, MS, NC, PR, SC, TN, VI)

Recreation Programs Branch, Southeast Regional Office, National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW., Atlanta, GA 30303, Tele: (404) 562–3175 (x530) (AL, FL, LA, MS, PR); (404) 562–3175 (x520) (GA, KY, TN); (404) 562–3175 (x519) (NC, SC).

Midwest

(AR, AZ, CO, IA, IL, IN, KS, MI, MN, MO, MT, ND, NE, NM, OH, OK, SD, TX, UT, WI, WY)

Partnerships—Grants, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102–2571, Tele: (402) 221–7282 (AR, IL, MI); (402) 221–3292 (AZ, IN, OH); (402) 221–7283 (CO, MO, NE); (402) 221–3310 (IA, OK, TX); (402) 221–3205 (KS, MN, WI); (402) 221–3202 (MT, UT, WY); (402) 221–7270 (NM, ND, SD).

Pacific West

(AS, CA, CM, GU, HI, NV)

Planning and Partnerships Team, Pacific Great Basin Support Office, National Park Service, Suite 700, 1111 Jackson Street, Oakland, CA 94607, Tele: (510) 817–1445, 1324, 1454 (for all).

(AK, ID, OR, WA)

Partnerships Programs, Columbia Cascades Support Office, National Park Service, 909 First Avenue, Seattle, WA 98104–1060, Tele: (206) 220–4126 (for all).

Dated: December 11, 2001.

D. Thomas Ross,

Assistant Director, Recreation and Conservation.

[FR Doc. 02–382 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), notice is hereby given that the National Park Service will hold a public meeting of the Denali National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to Order (Chairman).
(2) Roll Call: Confirmation of Quorum.
(3) Introduction of guests.
(4) Review Agenda.
(5) Review and approval of minutes from the last meeting.
(6) Superintendent's welcome and review of the Commission purpose.
(7) Commission membership status.
(8) Public and other agency comments.
(9) Old Business:
  a. Denali Backcountry Management Plan Status Report.
  b. Review comment on draft hunting plan recommendations.
(10) New Business:
  a. October 2001 Chairs Workshop Report.
  b. Federal Subsistence Board Report.
  1. Review Wildlife Proposals.
  2. Review Fisheries Proposals.
(11) Public and other agency comments.
(12) Subsistence Resource Commission Work Session.
(13) Set time and place of next Subsistence Resource Commission meeting.
(14) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Friday, February 22, 2002 and conclude at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The Meeting will be held at the Cantwell Community Hall, Cantwell, Alaska, Telephone (907) 768–2122.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence Manager, Denali National Park and Preserve, P.O. Box 9 Denali Park, Alaska, 99755. Phone (907) 456–0595.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487 and operate in accordance with the provisions of the Federal Advisory Committees Act.

In light of a recent attempt to relocate National Park Service administrative personnel and offices in Washington, DC, this notice may not be published at least 15 days prior to the meeting. The National Park Service regrets these events, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of commission members who have adjusted their schedules to accommodate the proposed meeting dates.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting at the Denali National Park and Preserve Office, PO Box 9, Denali Park, Alaska 99755.

Robert L. Arnberger,

Regional Director.

[FR Doc. 02–381 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the Superintendent of Lake Clark National Park and Preserve and the Chair of the Lake Clark Subsistence Resource Commission announce a forthcoming meeting of the Subsistence Resource Commission for Lake Clark National Park. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call—Confirm Quorum.
(3) Introductions.
(4) Superintendent's Welcome.
(5) Additions, corrections and agenda approval.
(6) Approval of SRC meeting minutes.
(7) SRC Purpose and Role.
(8) Status of Membership.
(9) Park Subsistence Coordinator's Report.
(10) October 2001 Chairs Workshop Report.
(11) Status of Lake Clark Subsistence Management Plan.
(12) Federal Subsistence Board Actions/Proposals.
(13) Agency Reports and Public Comments.
(14) SRC Work Session—Prepare correspondence/recommendations.
(15) Set time and place of next meeting.
(16) Adjournment.

DATES: The meeting will begin at 10:00 a.m. on Thursday, February 21, 2002 and conclude around 4:30 p.m.

LOCATION: The meeting will be held at the Lake Clark National Park and Preserve Office in Port Alsworth, Alaska, Telephone (907) 781–2218.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager, 2525 Gambell St., Anchorage, Alaska, 99503, Telephone (907) 257–2633.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

In light of a recent attempt to relocate National Park Service administrative personnel and offices in Washington, DC, this notice may not be published at least 15 days prior to the meeting. The National Park Service regrets these events, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of commission members who have adjusted their schedules to accommodate the proposed meeting dates.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting at the Lake Clark National Park and Preserve Office in Port Alsworth, Alaska, Phone (907) 781–2218.

Robert L. Arnberger,

Regional Director.

[FR Doc. 02–379 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. The Shawnee Tribe, also known also as the "Loyal Shawnee" or "Cherokee Shawnee," a nonfederally recognized Native American group at the time that they were consulted, has since been recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under provisions of P.L. 106-568.

The 50 human remains and 5,257 associated funerary objects described below were recovered from 5 different sites.

In 1939, human remains representing 13 individuals were recovered from Alton's Chickasaw Village during a legally authorized National Park Service excavation. No known individuals were identified. The 2,174 associated funerary objects are 2,107 glass beads, 55 kettle fragments, 2 brass buckles, 2 ear plugs, 2 pieces of wood, 2 cloth fragments, 1 animal bone fragment, 1 bell, 1 iron hoe, and 1 metal spring.

In 1940, human remains representing 26 individuals were recovered from the Ackia Village site during a legally authorized National Park Service excavation to gather information on historic Chickasaw sites. No known individuals were identified. The 88 associated funerary objects are 28 musket balls, 17 metal spring fragments, 12 buttons, 7 pieces of worked bone, 5 gunflints, 4 flake tools, 2 glass beads, 2 projectile points, 2 knife fragments, 2 bracelets, 1 brass bell, 1 nail, 1 metal fragment, 1 stone biface, 1 scraper, 1 cup, and 1 tobacco pipe.

In 1940, human remains representing three individuals were recovered from the Beldin's Ridge site during a legally authorized National Park Service project. No known individuals were identified. The 977 associated funerary objects are 972 glass beads, 2 copper ornaments, 2 Wilson Plain-variety Oktibbeha ceramic vessel fragments, and 1 stone tool.

In 1947 and 1948, human remains representing seven individuals were recovered from the Bynum Mounds site during a legally authorized project. No known individuals were identified. The 2,014 associated funerary objects are 1,916 glass beads, 27 metal fragments, 9 silver spoons, 9 flintlock fragments, 6 cloth fragments, 5 metal files, 4 metal knives, 4 wire fragments, 4 copper earrings, 4 ornaments, 3 metal cups, 2 shell gorgets, 2 musket balls, 2 rivets, 2 blades, 2 utensils, 1 tobacco pipe, 1 gunflint, 1 whetstone, 1 silver brooch, 1 silver crown, 1 metal spike, 1 metal spring, 1 button, 1 snuffbox, 1 bell, 1 powder flask, 1 ground stone, 1 polishing stone, 1 basket fragment, 1 worked antler, 1 metal screw, and 1 unidentifiable object.

In 1955, human remains representing one individual were recovered from the site of the Futorian Furniture Company. The site, which is located off of park property, was legally excavated. No known individual was identified. No associated funerary objects are present.

Ackia Village, Alton's Chickasaw Village, Beldin's Ridge, and the Futorian Furniture Company sites are all located in the vicinity of Tupelo, MS, within the area known as "Chickasaw Old Fields." In the early 18th century, the Chickasaw consolidated their settlements into this area. The locations of these villages are recorded on several historic maps. On the basis of historic maps and records, as well as the archeological data gathered during the excavations, the occupation of these sites has been dated to the first half of the 18th century (A.D. 1700-1750). Historical accounts also document that each of these sites was the location of a Chickasaw village and is within the historic homeland of the Chickasaw Nation.

The Bynum Mounds site is located south of Tupelo in Chickasaw County, MS. The site consists of a village and burial mound dating to the Woodland period (200-300 B.C.), and a historic period (A.D. 1750-1850) village occupation. On the basis of the artifacts associated with the burials, the human remains from the historic component are believed to date to the early 19th century (A.D. 1800-1830). The site is located within the historic homeland of the Chickasaw Nation.

Based on the above-mentioned information, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 50 individuals of Native American ancestry. The

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superintendent of Natchez Trace Parkway also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 5,257 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects recovered from Ackia Village, Alton's Chickasaw Village, Beldin's Ridge, the historic component the Bynum Mounds, and the Futorian Furniture Company sites, and the Chickasaw Nation, Oklahoma.

This notice has been sent to officials of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama and Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Wendell Simpson, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680-4005, before February 7, 2002. Repatriation of the human remains and associated funerary objects to the Chickasaw Nation, Oklahoma may begin after that date if no additional claimants come forward.

Dated: October 19, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–385 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. The Shawnee Tribe, also known also as the "Loyal Shawnee" or "Cherokee Shawnee," a nonfederally recognized Native American group at the time that they were consulted, has since been recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under provisions of P.L. 106-568.

In 1951 and 1963, human remains representing 124 individuals were recovered from the Mangum site during authorized National Park Service survey and excavation projects. No known individuals were identified. There are no funerary objects associated with the one individual recovered in 1951. The 123 individuals recovered in 1963 are associated with 34 funerary objects: 12 ceramic vessel fragments, 7 projectile points, 3 shell ornaments, 3 stone tools, 2 stone artifacts, 1 ceramic frog effigy, 1 celt, 1 polished stone, 1 tobacco pipe, 1 dipper, 1 ceramic jar, and 1 cupreous metal fragment.

The Mangum site is a large hilltop cemetery located in Claiborne County, MS. Objects recovered from the burials indicate that the site was in use during the Mississippian period (A.D. 1000-1650). The principal investigator of the 1963 excavation states that the burials date to approximately A.D. 1500, or possibly even more recently. In 1540, the De Soto expedition likely encountered the Taënsa people in the vicinity of the Mangum site. In 1682, the de La Salle expedition documented the Taënsa and Tunica in the same area. In 1706, the Taënsa were driven from the area, migrating first to Bayogula, and then to Mobile, where they may have settled with the Choctaw. In 1764, the Taënsa again moved, first to the Red River in south Louisiana, and finally to the Bayou Boeuf area where they lived with the Chitimacha. Representatives of the Chitimacha Tribe of Louisiana have identified similarities between the burial practices observed at the Mangum site and those of the Chitimacha. Historical documentation also indicates that the Tunica buried individuals in hilltop cemeteries in open country, matching the burial practice observed on the Mangum site. Historical documentation indicates that some Taënsa may have married into the Alabama tribe, the descendants of whom now constitute the Alabama-Coushatta Tribes of Texas and the Alabama-Quassarte Tribal Town, Oklahoma.

Based on the above mentioned information, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 124 individuals of Native American ancestry. The superintendent of Natchez Trace Parkway also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 34 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects recovered and the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; Jena Band of Choctaw Indians, Louisiana; and Tunica-Biloxi Indian Tribe of Louisiana.

This notice has been sent to officials of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Wendell Simpson, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680-4005, before February 7, 2002. Repatriation of the human remains and associated funerary objects to Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; Jena Band of Choctaw Indians, Louisiana; and Tunica-Biloxi Indian Tribe of Louisiana may begin after that date if no additional claimants come forward.

Dated: October 19, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–386 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. The Shawnee Tribe, also known also as the "Loyal Shawnee" or "Cherokee Shawnee," a nonfederally recognized Native American group at the time that they were consulted, has since been recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under provisions of P.L. 106-568.

In 1984 and 1985, human remains representing eight individuals were recovered from the Mayberry site during an authorized National Park Service contract with the University of Tennessee. No known individuals were identified. The eight associated funerary objects are four archeological field bags of limestone slab fragments believed to have been intentionally placed with the human remains to line the grave, three ceramic trowels, and one celt.

The Mayberry site is located in Hickman County, TN, on the southern river terrace of the Duck River. The human remains and associated funerary objects were excavated from five "box burials" and one bell-shaped burial discovered at the site. Box burials are characterized by placement of the flexed body into a limestone-, sandstone-, or pottery-lined pit. Artifacts associated with the human remains indicate that these individuals were buried during the Mississippian cultural period (A.D. 900-1650). The box burial practice was common in an area generally bounded by the Tennessee, Missouri, and Ohio Rivers. It appears to be most commonly practiced on the Cumberland Plateau, around Nashville, TN, during the Mississippian period. Box graves in this region are attributed to the Middle Cumberland Culture. Descendants of this prehistoric group have never been firmly established. One account of Delaware burial practice from the 18th century does closely match one burial from the Mayberry site. However, at the time of first sustained European contact in the 17th century, the tribes of the Delaware confederacy were located along the Atlantic slope in the present-day States of Pennsylvania, New Jersey, New York, and Delaware. Another early historic account links box burials with burial practices of the widespread Shawnee bands whose aboriginal range did extend into the area of the Mayberry site. The area is considered part of the traditional hunting lands of Cherokee and Chickasaw tribes, and -- according to Chickasaw representatives consulted on June 28, 2001 -- may have been part of the Chickasaw's traditional homelands during the Mississippian cultural period. The first documented long-term contact between Europeans and Native Americans in the area

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occurred around A.D. 1700 when a French trader, Charles Charleville, began trading with the Shawnee at French Lick in what is now Nashville, TN. The Mayberry site is located within the area ceded to the United States by the Cherokee on January 7, 1807, and by the Chickasaw on September 20, 1816.

Based on the above-mentioned information, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. The superintendent of Natchez Trace Parkway also has determined that, pursuant to 43 CFR 10.2 (d)(2), the eight objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe, Oklahoma, Cherokee Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians of Oklahoma; and the Chickasaw Nation.

This notice has been sent to officials of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama and Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation of Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Delaware Tribe of Indians; Delaware Nation; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Shawnee Tribe, Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Wendell Simpson, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680-4005, before February 7, 2002. Repatriation of the human remains and associated funerary objects to the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe, Oklahoma; Cherokee Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians of Oklahoma; and Chickasaw Nation may begin after that date if no additional claimants come forward.

Dated: October 19, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–387 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. The Shawnee Tribe, also known also as the "Loyal Shawnee" or "Cherokee Shawnee" a nonfederally recognized Native American group at the time they were consulted, has since been recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under provisions of P.L. 106-568.

In 1981, human remains representing five individuals were recovered from the Rock Creek site during a legally authorized excavation by Memphis State University under contract with the National Park Service. No known individuals were identified. The 77 associated funerary objects are fragments of ceramic jars and bowls.

The Rock Creek site is an open-air village and midden located in Colbert County, AL. All of human remains were found buried beneath the floor of living areas or immediately adjacent to dwellings, possibly in some sort of ceremonial structure. Ceramic fragments found associated with the human remains include examples of the Mississippi Plain and Dallas Noded pottery types.

On the basis of the objects recovered during the excavations, the Rock Creek site is believed to have been occupied during the late Mississippian period (A.D. 1400-1750). The Rock Creek site falls within the area thought to have been occupied by the Chickasaw when DeSoto camped near Tupelo, MS, in A.D. 1540-1541. Burial of human remains beneath the floor of living areas is a known Chickasaw practice. John Adair also identifies the Shawnee as traveling through the area in the A.D. 1700-1740 period. The Dallas ceramic tradition has been associated with ancestral Cherokee peoples.

Based on the above mentioned information, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. The superintendent of Natchez Trace Parkway also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 77 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the superintendent of Natchez Trace Parkway has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation of Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe, Oklahoma; and United Keetoowah Band of Cherokee Indians of Oklahoma.

This notice has been sent to officials of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama and Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muskogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; Tunica-Biloxi Indian Tribe of Louisiana; and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Wendell Simpson, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680-4005, before February 7, 2002. Repatriation of the human remains and associated funerary objects to the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe, Oklahoma; and United Keetoowah Band of Cherokee Indians of Oklahoma.

Dated: October 19, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–388 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Oregon State Museum of Anthropology, Eugene, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Oregon State Museum of Anthropology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon; the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon; the Confederated Tribes of the Grande Ronde Community of Oregon; and the Confederated Tribes of the Siletz Reservation, Oregon.

In 1940, human remains representing one individual were donated to the Oregon State Museum of Anthropology by a person whose name is withheld. No known individual was identified. No associated funerary objects are present.

Museum records note that a former museum director, L. S. Cressman, attributed the remains to "Klamath Country." It is unknown at the present time whether "Klamath Country" refers to the Klamath people or to a geographic locality.

Based on skeletal evidence, these remains are determined to be Native American. The reference in the museum records to "Klamath Country" suggests that the remains were removed from south-central Oregon or northeastern California. Historical documents, ethnographic sources, and oral history indicate that the Klamath-Modoc, Northern Paiute, and Shasta peoples have occupied these areas since precontact times.

Based on the above-mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Klamath Indian Tribe of Oregon; the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon; the Confederated Tribes of the Grande Ronde Community of Oregon; and the Confederated Tribes of the Siletz Reservation, Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon; the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon; the Confederated Tribes of the Grande Ronde Community of Oregon; and the Confederated Tribes of the Siletz Reservation, Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Melvin Aikins, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97403-1224, telephone (541) 346-5115, before February 7, 2002. Repatriation of the human remains to the Klamath Indian Tribe of Oregon; the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon; the Confederated Tribes of the Grande Ronde Community of Oregon; and the Confederated Tribes of the Siletz Reservation, Oregon may begin after that date if no additional claimants come forward.

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Dated: November 14, 2001.

Robert D. Stearns,

Manager, National NAGPRA Program

[FR Doc. 02–383 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Western Archeological and Conservation Center, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, National Park Service, Western Archeological and Conservation Center, Tucson, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. Members of the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, were contacted, but did not attend the consultation meeting and were represented by members of the Gila River Indian Community of the Gila River Indian Reservation, Arizona.

In 1959-1960, human remains representing 13 individuals were recovered from 4 sites during legally authorized excavations under the direction of National Park Service archeologist Wesley L. Bliss. The four sites were located along a linear transect through Cibola and McKinley Counties, NM, and Apache County, AZ, as part of the Transwestern Pipeline Project. No known individuals were identified.

Human remains representing two individuals were recovered from the TRW PPL L-WR-32 site. The three associated funerary objects are a Puerco black-on-white bowl, and a bowl and sherd of the White Mound black-on-white ceramic type. Diagnostic artifacts found associated with the burials indicate that the human remains were buried during the Basketmaker III-Pueblo I phases (A.D. 500-950).

Human remains representing nine individuals were recovered from the TRW PPL L-WR-39 site. The six associated funerary objects are a Gallup black-on-white pitcher and bowl, Escavada black-on-white pitcher and bowl, Red Mesa black-on-white duck-shaped pitcher, and a corrugated style ceramic jar. Diagnostic artifacts found associated with the burials indicate that the human remains were buried during the Pueblo II-III phases (A.D. 1100-1300).

Human remains representing one individual were recovered from the TRW PPL L-WR-43 site. The one associated funerary object is a Puerco black-on-red bowl. The diagnostic artifact found associated with the burials indicates that the human remains were buried during the Pueblo III phase (A.D. 1250-1300).

Human remains representing one individual were recovered from the TRW PPL L-WR-47 site. Osteological documentation of the remains shows cranial deformation. No associated funerary objects are present.

Similarities in site architecture, ceramics, and other items recovered from the sites in Cibola and McKinley Counties, NM, and Apache County, AZ, indicate a single, socially integrated early group lasting from the Basketmaker III phase through Pueblo III phase (A.D. 500-1300). The archeological literature refers to this community as a local variant of the widespread Anasazi cultural tradition. Cranial deformation is common to many Anasazi remains and is believed to reflect their widespread use of cradleboards to carry infants. A combination of less bountiful environment, changes in the social structure of the community, and drought are believed to have precipitated rapid migration out of this area in the late 1200s. Most researchers who have worked in the area have concluded that these populations moved to Zuni and Acoma. Some of the populations from the western portion of the area may have moved to Hopi.

Based on the above-mentioned information, the manager of the Western Archeological and Conservation Center has determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of 13 individuals of Native American ancestry. The manager of the Western Archeological and Conservation Center also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 10 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the manager of the Western Archeological and Conservation Center has determined that, pursuant to 43 CFR 10.2 (e) there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico, Pueblo of Santa Ana, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact George Teague, Manager, Western Archeological and Conservation Center, National Park Service, 1415 North 6th Avenue, Tucson, AZ 85705, telephone (520) 670-6501, extension 235, before February 7, 2002. Repatriation of the human remains and associated funerary objects may begin after that date if no additional claimants come forward.

Dated: November 30, 2001.

Robert Stearns,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–384 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) intends to seek approval of the following proposed new information collection form LS–924 entitled Summary of Water Requirements for Crops on Eligible Land. Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of that form.

DATES: Comments on this notice must be received by March 11, 2002.

ADDRESSES: Address all comments concerning this notice to Bureau of Reclamation, Northern California Area Office, Attention: Donald A. Bultema, PO Box 988, Willows, California 95988.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information form, contact Rita F. Hoofard at (530) 934–7069.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Summary of Water Requirements for Crops on Eligible Land.

Abstract: Reclamation developed Form LS–924, Summary of Water Requirements for Crops Grown on Eligible Land, to facilitate and standardize the submission of data from the Sacramento River settlement contractors that divert water from Sacramento River sources. The information requested is required to ensure the proper implementation of 43 CFR 426.15 and the commingling provisions in the Sacramento River settlement contracts.

Description of respondents: There are approximately 44 Sacramento River settlement contractors (individuals/districts) that are required to file Form LS–924 for the purpose of contract administration.

Frequency: Annually.

Estimated completion time: An average of 60 minutes per respondent.

Annual responses: 44 respondents.

Annual burden hours: 44.

Public Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 7, 2001.

Murlin H. Coffey,

Manager, Property and Office Services.

[FR Doc. 02–397 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) intends to submit for approval the following Reinstatement of an information collection. Rights-of-Use Applications. Before submitting the information collection request for the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of the information collection.

DATES: Comments on this notice must be received by March 11, 2002.

ADDRESSES: Address all comments concerning this notice to the Bureau of Reclamation, Office of Policy, Attention: Diane Trujillo (D–5300), PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Diane Trujillo, 303–445–2914.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and costs burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Rights-of-Use Applications.

OMB No.: 1006–0003.

Abstract: Reclamation is responsible for over 8 million acres of land in the 17 western States. Parties wishing to use any of that land must submit a Right-of-Use application. Reclamation will review the application and determine whether the granting of the right-of-use is compatible with the future uses of the land. After preliminary review of the application, the applicant will be advised of the estimated administrative costs for processing the application. In addition to the administrative costs, the applicant will also be required to pay a land use fee based on the fair market value for such land use, as determined by Reclamation. If the Right-of-Use application is for a bridge, building, or other types of major structure, Reclamation may require that all plans and specifications be signed and sealed by a professional engineer licensed by the State where the work is proposed. Linear facilities such as roads, pipelines, and transmission lines require a centerline survey of defining of limits of the requested right-of-use.

Description of respondents: Individuals, corporations, companies, and State and local entities that desire to use Reclamation lands.

Frequency: Each time a Right of Use is requested.

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Estimated completion time: An average of 2 hours per respondent.

Annual responses: 500 respondents.

Annual burden hours: 1,000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 3, 2001.

Elizabeth Cardova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–398 Filed 1–7–02; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–932 (Final)]

Certain Folding Metal Tables and Chairs From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–932 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of certain folding tables and chairs, provided for in subheadings 9401.71.00, 9401.79.00, and 9403.20.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal ("folding metal tables"). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal tables are the following: Lawn furniture; Trays commonly referred to as "TV trays" Side tables; Child-sized tables; Portable counter sets consisting of rectangular tables 36" high and matching stools; and Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28" to 36" wide by 48" to 96" long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal ("folding metal chairs"). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal chairs are the following: Folding metal chairs with a wooden back or seat, or both; Lawn furniture; Stools; Chairs with arms; and Child-sized chairs.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain folding metal tables and chairs from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 27, 2001, by MECO Corporation, Greeneville, TN.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on April 10, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 23, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 15, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 18, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 17, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 30, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 30, 2002. On May 16, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 20, 2002, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: January 2, 2002.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 02–393 Filed 1–7–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States and State of Marine* v. *A&S Motors, Inc., et al.*, Civil Nos. 01–238–B, was lodged on November 30, 2001 with the United States District Court for the district of Maine.

The proposed consent decree embodies an agreement with 60 potentially responsible parties, pursuant to section 107 of CERCLA, 42 U.S.C. 9607, to pay $155,281, in aggregate, in reimbursement of past response costs at the Hows Corner Superfund Site in Plymouth, Maine. A total of $128,748 of these amounts will be paid to the United States and the balance will be paid to the State of Maine.

The monies paid by the settling defendants under the consent decree is to reimburse past and future costs incurred and to be incurred at the Site. The consent decree provides the settling defendants with releases for civil liability for EPA's and the State's past and future response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States and State of Maine* v. *A&S Motors, Inc., et al., DOJ Ref. No. 90–11–3–1733/2.*

The proposed consent decree may be examined at the Office of the United States Attorney, 99 Franklin Street, 2nd Floor, Bangor, ME 04401, and at the Region I Office of the Environmental Protection Agency, Region I records Center, 1 Congress Street, Suite 1100, Boston, MA 02114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $22.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–363 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the Departmental Policy, 28 CFR 50.7 and section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), notice is hereby given that a Consent Decree in *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc. and TI Automotive Systems Corp.*, Civil Action No. 01–CV–6109, was lodged with the United States District Court for the Eastern District of Pennsylvania on December 6, 2001. This Consent Decree resolves certain claims of the United States' against Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp. ("Settling Defendants") under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a). The Consent Decree requires the Settling Defendants to perform remedial work at the Site consisting of all Operable Unit 2 response activities (as defined in the Decree) and to reimburse the Superfund for past response costs in the amount of $7 million and to pay future response costs for the Boarhead Farms Superfund Site

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located in Bridgeton Township, Pennsylvania.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp.*, DOJ # 90–11–2–06036/2.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $23.25 (for Decree without appendices) or $29.00 (for Decree with appendices), and please reference *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp.*, DOJ No. 90–11–2–06036/2.

Catherine McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–364 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Phillips Petroleum Company, et al.*, No. 3:00–CV–620–J–25c (M.D. Fla.) was lodged on November 19, 2001, with the United Stated District Court for the Middle District of Florida. The consent decree settles the United States' claims against numerous defendants, as well as counterclaims and third party claims against the United States, under sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607 and 9613, for past response costs incurred in connection the Bill Johns Waste Oil Superfund Site in Jacksonville, Florida. Under the proposed decree the defendants, and the United States as a counter defendant, would reimburse the Superfund $1,450,000.00 out of $2,611,662.86 in past costs. The contribution of the settling federal agencies is $140,184.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer the *United States* v. *Phillips Petroleum Company et al.*, No. 3:00–CV–620–J–25c (M.D. Fla.) and DOJ# 90–11–3–07139.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida 200 W. Forsyth Street, Suite 700 Jacksonville, Florida 32201 and the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, GA 30303. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–360 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act ("RCRA")

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Consent Decree in *United States et al.* v. *Precision Fabricating and Cleaning Co. Inc.*, Civil Action No. 6:99–CF–1529–ORL–22DAB was lodged with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief and penalties against Precision Fabricating and Cleaning Co., Inc. ("PFC") pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA") section 7003, 42 U.S.C. 6973; and the Safe Drinking Water Act ("SDWA") section 1431, 42 U.S.C. 300i. The United States sought to enjoin PFC to comply with an Administrative Order issued by EPA on September 30, 1996, in order to abate an imminent and substantial endangerment to public health, welfare, and the environment connected with the contamination of soil and groundwater at PFC's Facility at 3975 East Railroad Avenue, Sharpes, Brevard County, Florida. The United States also sought civil penalties for Defendant's violations of the Administrative Order pursuant to section 7003(b) of RCRA, 42 U.S.C. 6973(b), and section 1431 of the SDWA, 42 U.S.C. 300i.

The Complaint was amended to include claims by the State of Florida which sought to enjoin Defendant to comply with Consent Orders OGC No. 89–0257 (dated September 8, 1989) and No. 91–0825 (dated December 12, 1991) and to comply with Postclosure permit No. HF05–214090 (dated May 20, 1999).

The proposed Consent Decree, which settles the liability of PFC, for violations alleged in the Amended Complaint, provides that PFC will perform the environmental remedy at the Site estimated to cost $1.1 to $1.4 million, as set forth in the Remedial Measures Plan incorporated by reference in and attached to the Decree. Under the Decree, PFC will also pay to the United States a penalty of $75,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Precision Fabricating and Cleaning Co.*, D.J. Ref. 90–7–1–891.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602, and at the U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia 30303. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $52.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $16.75 payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–365 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Rentokil Initial Environmental Services, et al.*, No. 00–0395–BH–S (S.D. Ala.) was lodged on December 21, 2001, with the United States District Court for the Southern District of Alabama. The consent decree settles claims against Rentokil Initial Environmental Services, Inc. ("Rentokil"), Saraland Apartments, Ltd., The Roar Company, The Estate of Robert S. Coit (deceased) and Meador Contracting Company under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, in connection with the Redwing Carriers, Inc., (Saraland) Superfund Site located Saraland, Alabama (the "Site"). The consent decree requires Rentokil to perform the remedial action at the Site and the settling defendants will contribute, in cash or through the performance of the remedy, at least $9.26 million of $10.9 in total Site costs. The consent decree also resolves the United States' claims for treble punitive damages and fines against Rentokil and Saraland Apartments, Ltd. pursuant to section 107(c)(3), 42 U.S.C. 9607(c)(3) and section 106(b), 42 U.S.C. 9606(b). Finally, the consent decree provides for full payment of Saraland's debt, secured by the Site, to the United States Department of Housing and Urban Development (HUD); provided the payment does not exceed $500,000. The settling defendants are also settling claims among themselves through the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Rentokil Initial Environmental Services, et al.*, No. 00–0395–BH–S (S.D. Ala.) and DOJ# 90–11–2–635/1.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Alabama 63 Royal Street, Suite 600, Mobile, Alabama 36602 and the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, GA 30303. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $45.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–361 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Square D Co.*, Civ. A. 01–CV–6048, was lodged on December 4, 2001 with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree resolves the claims of the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act against Square D Co. for reimbursement of $138,193, one hundred percent of outstanding response costs incurred in responding to contamination at the Rodale Manufacturing Superfund Site ("the Site") located in the Borough of Emmaus, Lehigh County, Pennsylvania. The Commonwealth of Pennsylvania is also a party to the Consent Decree, which will reimburse the Commonwealth for all its past and future response costs.

The Consent Decree also requires Square D Co. to pay all future response costs not inconsistent with the National Contingency Plan and to finance and to perform remedial work at the Site.

The Department of Justice will receive, for a period of not less than thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Square D. Co.* (01–CV–6048), DOJ Ref. #90–11–2–06943.

The Consent Decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA, 19106, and at the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, PO Box 7611, Washington, DC 20044–7611. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $23.25 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044–7611.

[FR Doc. 02–362 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 14, 2001, and published in the **Federal Register** on April 4, 2001, (66 FR 17930), Noramco of Delaware, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The firm intends to import the listed controlled substances for the bulk manufacture of other controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties,

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conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco of Delaware, Inc., on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: December 21, 2001

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–416 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 1, 2001, OraSure Technologies, Inc., 1745 Eaton Avenue, Bethlehem, Pennsylvania 18018, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphamethadol (9605)	I
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to bulk manufacture the listed controlled substances to be used in-house to manufacture other controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 11, 2002.

Dated: December 21, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–420 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 10, 2001, Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2, 5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2, 5-dimethoxyamphetamine for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 11, 2002.

Dated: December 21, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–421 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 9, 2001, and published in the **Federal Register** on August 10, 2001, (66 FR 42240), Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392).	I
2, 5-Dimethoxyamphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3, 4-Methylenedioxymethamphetamine (7405).	I
1-[(2-Thienyl) cyclohexyl]piperidine (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Carfentanil (9773)	II
Levo-alphacetylmethadol (LAAM) (9648).	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Aldrich Research Biochemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research Biochemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest.

These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 28, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–415 Filed 1–7–02; 8:45 am]

BILLING CODE.4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form).

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until March 11, 2002.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Glaze, (202) 305–9628, or via facsimile at (202) 307–1463, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the variety of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of currently approved collection.

(2) *The title of the Form/Collection:* Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form).

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Forms: CJ–7; CJ–8; and CJ–8A. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections or State probation and Parole authority. Others: The Federal Bureau of Prisons, city and county courts and probation officers for which a central reporting authority does not exist. For the CJ–7 form, 54 central reporters (two State jurisdictions in California and one each from the remaining States, the District of Columbia, the Federal Bureau of Prisons, and one local authority) responsible for keeping records on parolees will be asked to provide information for the following categories:

(a) As of January 1, 2002 and December 31, 2002, the number of adult parolees under their jurisdiction;

(b) The number of adults entering parole during 2002 through discretionary release from prison, mandatory release from prison, or reinstatement of parole;

(c) The number of adults released from parole during 2002 through successful completion, incarceration, transfer to another parole jurisdiction, or death;

(d) Whether adult parolees supervised out of State have been included in the total number of parolees on December 31, 2002, and the number of adult parolees supervised out of State;

(e) As of December 31, 2002, the number of male and female parolees under their jurisdiction;

(f) As of December 31, 2002, the number of white (not of Hispanic origin), black (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian or Pacific Islander, or additional categories in their information systems;

(g) As of December 31, 2002, the number of adult parolees under their jurisdiction with a sentence of more than one year, or a year or less;

(h) As of December 31, 2002, the number of adult parolees under their jurisdiction who were active, inactive, absconders, or supervised out of state;

(i) As of December 31, 2002, the number of adult parolees under their jurisdiction who were supervised following a discretionary release, a mandatory release, a special conditional release, or other type of release from prison;

(j) Whether the parole authority operated an intensive supervision program, a program involving electronic monitoring, or had any parolees enrolled in a program that approximates a bootcamp, and the number of adult parolees in each of the programs as of December 31, 2002; and

(k) Of the adult parolees who died between January 1 and December 31, 2002, the number of deaths by gender and the number of deaths by race.

For the CJ–8 form, 333 reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons; and 295 from local authorities) responsible for keeping records on probations will be asked to provide information for the following categories:

(a) As of January 1, 2002 and December 31, 2002, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation during 2002 with and without a sentence to incarceration;

(c) The number of adults discharged from probation during 2002 through successful completion, incarceration, a detainer or warrant, transfer to another parole jurisdiction, and death;

(d) Whether adult parolees supervised out of State have been included in the total number of parolees on December 31, 2002, and the number of adult parolees supervised out of State;

(e) As of December 31, 2002, the number of male and female probationers under their jurisdiction;

(f) As of December 31, 2002, the number of white (not of Hispanic origin), black (not of Hispanic origin), Hispanic or Latino, American Indian or

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Alaska Native, Asian or Pacific Islander, or additional categories in their information system;

(g) As of December 31, 2002, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type;

(h) As of December 31, 2002, the number of adult probationers who had as their most serious offense a drug law violation, driving while intoxicated, other traffic offense, or domestic violence offense.

(i) Whether the probation authority supervised any probations held in local jails, prisons, or an INS holding facility, and the number of adult probationers held in each on December 31, 2002;

(j) As of December 31, 2002, the number of adult probationers under their jurisdiction who had entered probation with a direct sentence to probation, a split sentence to probation, a suspended sentence to incarceration, or a suspended imposition of sentence;

(k) As of December 31, 2002, the number of adult probationers under their jurisdiction who were active, inactive, absconders, or supervised out of state; and

(l) Whether the probation authority operated an intensive supervision program, a program involving electronic monitoring, or had any probationers enrolled in a program that approximates a bootcamp, and the number of adult probationers in each of the programs as of December 31, 2002.

(m) Whether the probation authority contracted out to a private agency for supervision, and the number of probationers supervised by a private agency that were included in the total population on December 31, 2002.

For the CJ–8A form, 150 reporters (from local authorities) responsible for keeping records on probationers will be asked to provide information for the following categories:

(a) As of January 1, 2002 and December 31, 2002, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation and discharged from probation during 2002;

(c) As of December 31, 2002, the number of male and female probationers under their jurisdiction; and

(d) As of December 31, 2002, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond: Five hundred and thirty-seven respondents each taking an average 1.17 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: Six hundred and fifty six annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: December 31, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–427 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 17, 2001, Cerilliant Corporation, 14050 Summit Drive, Suite 121, PO Box 80189, Austin, Texas 78708–0189, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2, 5-dimetnoxyamphetamine (7391).	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392).	I
4-Methyl-2, 5-dimethoxyamphetamine (7395).	I
2, 5-Dimethoxyamphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3, 4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine (9056)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacturer of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 7, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 21, 2001.

Laura M. Nagel,

Deputy Assistant Adminstrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–419 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 31, 2001, and published in the **Federal Register** on August 10, 2001, (66 FR 42239) Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made applications by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the phenylacetone to manufacture methamphetamine and amphetamine and to import racemic methamphetamine for resolution into the d- and 1- steroisomers.

No comments or objections have been received regarding these controlled substances. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Chattem Chemicals, Inc. is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Chattem Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: December 21, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–417 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 14, 2001, and published in the **Federal Register** on May 30, 2001, (66 FR 29344), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

No comments or objections were received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Mallinckrodt, Inc. to manufacture listed controlled substances is consistent with the public interest at this time. DEA has investigated a Mallinckrodt, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of the controlled substances listed above is granted.

Dated: December 21, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–418 Filed 1–7–02; 8:45 am]

BILLING CODE 4410–09–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, January 16, 2002, and Thursday, January 17, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on January 16, and at 9 a.m. on January 17.

Topics for discussion include: Should Medicare payments take into account other payers' behavior?; assessing payment adequacy and updating Medicare payments for physician services, outpatient dialysis services, inpatient and outpatient hospital services, skilled nursing facility care, and home health services, measuring changes in input prices in traditional Medicare; Medicare+Choice; adjusting for local differences in resident training

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costs, and assessing the Medicare benefit package.

Agendas will be mailed on January 8, 2002. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 02–368 Filed 1–7–02; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (02–002)]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection provides records of accountability, responsibility, transfer, location, and disposition of radioactive materials.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Radioactive Material Transfer Receipt.

OMB Number: 2700–0007.

Type of review: Extension.

Need and Uses: NASA Johnson Space Center is required by federal law to keep records of the receipt, transfer, and disposal of radioactive items and information on accountability, responsibility, transfer, disposition, and location.

Affected Public: Business or other for-profit; Federal Government, state, local or tribal government.

Number of Respondents: 25.

Responses Per Respondent: 2.

Annual Responses: 50.

Hours Per Request: Approximately ½ hr.

Annual Burden Hours: 29.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–378 Filed 1–7–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 7, 2001, through December 27, 2001. The last biweekly notice was published on December 26, 2001 (66 FR 64461).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 7, 2002 , the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to

intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm./adams.html*. Persons who do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdc@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 19, 2001.

Description of amendments request: The proposed amendments would change the Loss of Feedwater Flow analysis in the Updated Final Safety Analysis Report (UFSAR). The current analysis contained several non-conservative assumptions, which would be corrected by the reanalysis. These corrections include: incorporating a single-failure of the Auxiliary Feedwater System, including steam generator blowdown, accounting for the change in density of water once the feedwater flow has stopped, and assuming sludge deposition in the steam generators. Also assumed in the analysis is the installation of a modification to isolate steam generator blowdown on an auxiliary feedwater actuation signal and an operator action to adjust the auxiliary feedwater flow after the event initiation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

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1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendments would modify several assumptions in the UFSAR Loss of Feedwater Flow analysis to more accurately reflect the plant response to the event. The significant changes to the accident include the addition of an operator action to increase auxiliary feedwater (AFW) flow and the implementation of an automatic steam generator blowdown isolation following the event initiation. These changes do not affect any accident initiators or precursors because they only alter the operation of the plant following the accident initiation. Thus, the proposed amendments do not increase the probability of occurrence of any previously analyzed accidents. In addition, besides the aforementioned changes, the proposed amendments would not alter any design parameter, condition, equipment configuration, or manner in which Calvert Cliffs Units 1 and 2 are operated. Furthermore, the proposed modifications do not alter or prevent the ability of existing structures, systems, or components to perform their intended safety or accident-mitigating functions depicted in the UFSAR. The proposed modifications to the analysis account for a single-failure and update the assumptions to more recent standards. With these changes, the plant continues to meet the current acceptance criteria. Therefore, the proposed amendments do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendments alter the design function of the steam generator blowdown valves to isolate upon receipt of an auxiliary feedwater actuation system signal. The isolation of the steam generator blowdown will not create the possibility of a new or a different kind of accident because blowdown isolation already occurs on a high radiation signal or a containment spray actuation signal. The operator action to increase AFW flow only alters the operation of the AFW in the conservative direction. The other changes to the accident analysis do not alter any design parameter, condition, equipment configuration, or manner in which the units are operated. Furthermore, none of the changes alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed amendments do not change any design parameter, safety limit, or acceptance criteria. However, the amendments do change an analysis methodology. This change, performed with the objective of imposing conservative assumptions on the accident analysis, keeps the accident within the acceptance criteria for anticipated operational occurrences. Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan, Acting.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: November 19, 2001.

Description of amendment request: The proposed amendment would provide a one-time extension, from 10 to 14 days, of the allowed outage time (AOT) for one train of the Control Room Emergency Ventilation System (CREVS) to be inoperable due to the emergency power supply being inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment would allow a one-time extension of the AOT of one train of the CREVS. Since the CREVS is an accident mitigation system, the AOT extension would not affect any accident initiators or precursors. Therefore, the AOT extension would not increase the probability of an accident previously evaluated. Similarly, since the consequences of a design-basis accident coincident with a failure of the redundant CREVS train during a 14-day outage are the same as those during the already approved 10-day outage, the proposed change does not increase the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because the CREVS is not being modified nor will any unusual operator actions be required. The CREVS is not an accident initiator, but is an accident mitigator. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed amendment would allow a one-time extension of the AOT of one train of the CREVS from the currently allowed 10 days to 14 days. This action decreases the margin of safety. However, based upon the licensee's management of plant risk, the change increases the Core Damage Frequency (CDF) and Large Early Release Frequency (LERF) to less than the Regulatory Guide 1.174 criteria of 1E–6 per reactor year for CDF and 1E–07 per reactor year for LERF. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan, Acting.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 26, 2001.

Description of amendments request: The proposed amendments will add Technical Specification 5.5.12.f, "Programs and Manuals, Primary Containment Leakage Rate Testing Program." This addition will provide a one-time exception to the frequency of the performance-based leakage rate testing program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 5.5.12 provides a one-time extension to the testing frequency for containment integrated leakage rate (i.e., Type A) testing. The existing 10-year test interval is based on past test performance. The proposed Technical Specification change will extend the Type A testing frequency to 15 years, one month from the last Type A test for Unit 1 and to 15 years for Unit 2. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the primary containment does not involve the prevention or identification of any precursors of an accident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only a one-time change to the interval between Type A containment leakage tests. Type B and C containment leakage testing will continue to be performed at the frequency currently required by the BSEP Technical Specifications. As documented in NUREG–1493, "Performance-Based Containment Leakage-Test Program," industry experience has shown that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. In fact, an analysis of 144 integrated leak rate tests results, including 23 failures, found that no failures were due to containment liner breach. NUREG–1493 also concluded, in part, that reducing the frequency of Type A containment leakage rate testing to once per 20 years was found to lead to an imperceptible increase in risk. The BSEP, Unit 1 and 2 test history and risk-based evaluation of the proposed extension to the Type A test frequency supports this conclusion. The design and construction requirements of the primary containment, combined with the containment inspections performed in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI and the Maintenance Rule (i.e., 10 CFR 50.65) provide a high degree of assurance that the primary containment will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specification 5.5.12 involves a one-time extension to the testing interval for Type A containment leakage rate testing. The primary containment and the testing requirements invoked to periodically demonstrate the integrity of the primary containment exist to ensure the ability to mitigate the consequences of an accident. The primary containment and its associated testing requirements do not involve the prevention or identification of any precursors of an accident. The proposed change to the Type A leakage rate testing frequency does not involve any physical changes being made to the facility. In addition, the proposed changes to the Type A leakage rate testing frequency [do] not change the operation of the plants such that a new failure mode involving the possibility of a new or different kind of accident from any accident previously evaluated is created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The proposed extension to the Type A testing frequency will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year extension for Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes a very small amount to the individual risk and that the decrease in Type A testing frequency would have a minimal [effect] on this risk since most potential leakage paths are detected by Type B and C testing. The proposed change involves only an extension of the frequency for Type A containment leakage testing; the overall primary containment leakage rate limit specified by Technical Specifications is being maintained. Type B and C containment leakage testing will continue to be performed at the frequency currently required by the BSEP Technical Specifications. The regular containment inspections being performed in accordance with the ASME, Section XI, and the Maintenance Rule (i.e., 10 CFR 50.65) provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing. In addition, the on-line containment monitoring capability that is inherit to [a] boiling water reactor using an inert containment atmosphere allows for the detection of gross containment leakage that may develop during power operation. The combination of these factors ensures that the margin of safety is maintained. Therefore, the proposed license amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: December 5, 2001.

Description of amendment request: The proposed amendment incorporates Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–364, Revision 0, "Revision to Technical Specification Bases Control Program to Incorporate Changes to 10 CFR 50.59." The proposed change deletes reference to the term "unreviewed safety question," and replaces it with the phrase "requires NRC approval pursuant to 10 CFR 50.59."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is consistent with the changes described in TSTF change TSTF–364, "Revision to Technical Specification Bases Control Program to Incorporate Changes to 10 CFR 50.59." Specifically, the proposed change deletes the reference to the term "unreviewed safety question" as defined in 10 CFR 50.59 (pre-1999 revision) and replaces it with the phrase "requires NRC approval pursuant to 10 CFR 50.59." The deletion of the definition of "unreviewed safety question" was approved by the NRC in the current revision of the 10 CFR 50.59 regulation (October 1999). Changes to the Technical Specification Bases will still be evaluated in accordance with the requirements of 10 CFR 50.59. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is to an administrative program. The change does not involve any physical modifications to the facility nor add new equipment. The methods of plant operation have not been altered. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature, based upon the current version of 10 CFR 50.59 regulation. Changes to the Technical Specification Bases will still be evaluated by 10 CFR 50.59. The proposed change has no direct impact upon any plant safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney,

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FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308

NRC Section Chief: Anthony J. Mendiola.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: October 19, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) by the following: (1) Implement programmatic controls for radiological effluent technical specifications in the Administrative Controls section of the TSs, (2) relocate existing procedural details to licensee-controlled documents or new programs to accommodate the incorporation of Generic Letter 89–01 and relevant portions of the Improved Standard Technical Specifications (NUREG–1433), and (3) update the references to current regulatory requirements such as those set forth in 10 CFR 20.1–20.262 and 10 CFR 20.1001–20.2402.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which the unit is operated. Furthermore, it does not alter or prevent the ability of existing structures, systems, or components to perform their intended safety or accident-mitigating functions depicted in the Updated Final Safety Analysis Report. The proposed amendment is administrative and it only alters the format and location of programmatic controls and procedural details. These changes will not prevent the unit to continue to comply with applicable regulatory requirements. As a result, the proposed amendment will not alter the conditions or assumptions used in previous accident analyses. Therefore, operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which the unit is operated. Furthermore, it does not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any design parameter, analysis methodology, safety limits or acceptance criteria. It is administrative as outlined above, with the objective to assure continued compliance with applicable regulatory requirements governing the radiation protection plan, radioactive effluents, radioactive sources, and radiological environmental monitoring. Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP–1), Oswego County, New York

Date of amendment request: October 26, 2001.

Description of amendment request: Section 6.0 of the Technical Specifications (TSs) delineates the required administrative controls, including plant management responsibilities, station organization, staff qualifications and training, review and audit activities, procedures, reporting requirements, record retention, radiation area control, and various plant programs. The licensee proposed an amendment to revise Section 6.0 of the TSs to make it consistent with its counterpart, Section 5.0, of the Nine Mile Point Nuclear Station, Unit No. 2 (NMP–2) TSs. The NMP–2 TSs was fully converted to the format and style of the Improved Standard Technical Specifications (NUREG–1433 and NUREG–1434) by Amendment No. 91, dated February 15, 2000. While NMP–1 and NMP–2 are of different reactor designs, the administrative controls are, by necessity, either identical or very similar. Consistency of administrative controls between the two units is essential to avoid confusion and to improve efficiency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis, and performed its own, which is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment is concerned only with administrative controls, and does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which NMP–1 is operated. Furthermore, it does not alter or prevent the ability of existing structures, systems, or components to perform their intended safety or accident-mitigating functions depicted in the Updated Final Safety Analysis Report. The proposed amendment only affects the administrative controls in accordance with NUREG–1433 and NUREG–1434. These changes will not prevent NMP–1 to continue to comply with applicable regulatory requirements. As a result, the proposed amendment will not alter the conditions or assumptions used in previous accident analyses. Therefore, operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which the unit is operated. Furthermore, it does not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any design parameter, analysis methodology, safety limits or acceptance criteria. It is administrative as outlined above, with the objective to assure continued compliance with applicable regulatory requirements governing the various topics of administrative controls. Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan (Acting).

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: October 17, 2001.

Description of amendment requests: The proposed license amendments would modify Technical Specification 3.9.4, "Containment Penetrations," to allow the equipment hatch, both personnel air lock doors and both emergency air lock doors to remain open, and penetration flow path(s) providing direct access from the containment atmosphere to the outside atmosphere to be unisolated under administrative control, during core alterations and movement of irradiated fuel assemblies. In addition, the amendments revise Technical Specification 1.1, "Definitions," for Dose Equivalent I–131, to allow the use of the thyroid dose conversion factors, listed in the International Commission on Radiological Protection Publication 30, "Limits for Intakes of Radionuclides by Workers."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would allow the containment equipment hatch, Personnel Air Lock (PAL) doors, Emergency Air Lock (EAL) doors, and penetrations to remain open during fuel movement and core alterations. These penetrations are normally closed during this time period in order to prevent the escape of radioactive material in the event of a Fuel Handling Accident (FHA) inside containment. These penetrations are not initiators of any accident and the probability of a FHA is unaffected by the position of these penetrations.

The new FHA analysis with an open containment demonstrates the maximum offsite doses are well within (less than 25%) the limits specified in 10 CFR 100. These offsite dose values are also well within the acceptable limits provided in NUREG–0800, Section 15.7.4. This FHA analysis results in a maximum offsite dose of 60.62 Rem to the thyroid and 0.4281 Rem to the whole body. The calculated control room dose is also well below the acceptance criteria specified in General Design Criteria (GDC) 19. The analysis results in thyroid and whole body doses to the control room operator of 11.56 Rem and 0.0072 Rem, respectively. Although the offsite and-control room dose values are increased by the proposed changes, the resulting values are still well within acceptable limits and do not significantly increase the consequences of a FHA.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the addition or modification of any plant equipment. However, the proposed change does alter the containment closure configuration and method of operation of the plant during certain operational activities. The proposed change involves a change to the technical specification (TS) that would allow the equipment hatch door, the PAL doors, the EAL doors, and containment penetrations to be open during core alterations and fuel movement inside containment. This change only affects the containment barrier configuration of the plant during certain operational activities. Even allowing these doors and penetrations to be open, all of the resulting radiological consequences remain within acceptable limits and this configuration does not create the possibility of a new or different accident than previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This proposed change creates the potential for increased dose in the control room and at the site boundary due to a FHA. However, the new analysis demonstrates that the resultant doses are well within the 10 CFR 100 limits and well below the GDC [General Design Criterion] 19 limits. In the case of the offsite dose values, they remain less than 25% of the 10 CFR 100 limits, which is considered acceptable in NUREG–0800 [Standard Review Plan], Section 15.7.4. Based on this, even though the dose values have increased from the previously calculated values, the margin of safety is not significantly reduced.

In the new analysis, the offsite and control room doses due to a FHA with an open containment have been evaluated using conservative assumptions, such as all airborne activity caused by the FHA in the containment is released instantaneously to the outside atmosphere, which ensures the calculation bounds the expected dose. The new analysis also assumes closure of the containment within two hours. As a result, requiring immediate initiation of the closure of the containment and completion of closure within approximately 30 minutes following a containment evacuation requirement from the FHA will reduce the potential offsite doses in the event of a FHA, and provides additional margin to the calculated offsite doses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief; Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 13, 2001.

Description of amendment requests: The proposed license amendments would modify Technical Specifications 5.5.9, "Steam Generator (SG) Tube Surveillance Program," and 5.6.10, "SG Tube Inspection Report," of the Diablo Canyon Power Plant, Unit Nos. 1 and 2 Technical Specifications, to add new surveillance and reporting requirements associated with SG tube inspection and repair. The new requirements establish alternate repair criteria for axial primary water stress corrosion cracking at dented tube support plate intersections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Examination of crack morphology for primary water stress corrosion cracking (PWSCC) at dented intersections has been found to show one or two microcracks well aligned with only a few uncorroded ligaments and little or no other inside diameter axial cracking at the intersection. This relatively simple morphology is conducive to obtaining good accuracy in nondestructive examination (NDE) sizing of these indications. Accordingly, alternate repair criteria (ARC) are established based on crack length and average and maximum depth within the thickness of the tube support plate (TSP).

The application of the ARC requires a Monte Carlo condition monitoring assessment to determine the as-found condition of the tubing. The condition

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monitoring analysis described in WCAP–15573, Revision 1, is consistent with NRC Generic Letter 95–05 ["Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking"] requirements.

The application of the ARC requires a Monte Carlo operational assessment to determine the need for tube repair. The repair bases are obtained by projecting the crack profile to the end of the next operating cycle and determining the burst pressure and leakage for the projected profile using Monte Carlo analysis techniques described in WCAP–15573, Revision 1. The burst pressure and leakage are compared to the requirements in WCAP–15573, Revision 1. Separate analyses are required for the total crack length and the length outside the TSP due to differences in requirements. If the projected end of cycle (EOC) requirements are satisfied, the tube will be left in service.

A steam generator (SG) tube rupture event is one of a number of design basis accidents that are analyzed as part of a plant's licensing basis. A single or multiple tube rupture event would not be expected in a SG in which the ARC has been applied. The ARC requires repair of any indication having a maximum crack depth greater than or equal to 40 percent outside the TSP, thus limiting the potential length of a deep crack outside the TSP at EOC conditions and providing margin against burst and leakage for free span indications.

For other design basis accidents such as a MSLB [main steam line break], MFLB [main feed line break], control rod ejection, and locked reactor coolant pump motor, the tubes are assumed to retain their structural integrity.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed SG tube ARC does not introduce any significant changes to the plant design basis. A single or multiple tube rupture event would not be expected in a SG in which the ARC has been applied. Both condition monitoring and operational assessments are completed as part of the implementation of ARC to determine that structural and leakage margin exists prior to returning SGs to service following inspections. If the condition monitoring requirements are not satisfied for burst or leakage, the causal factors for EOC indications exceeding the expected values will be evaluated. The methodology and application of this ARC will continue to ensure that tube integrity is maintained during all plant conditions consistent with the requirements of Regulatory Guide (RG) 1.121 ["Bases for Plugging Degraded PWR Steam Generator Tubes"] and Revision 1 of RG 1.83 [Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes].

In the analysis of a SG tube rupture event, a bounding primary-to-secondary leakage rate equal to the operational leakage limits in the Technical Specifications (TS), plus the leak rate associated with the double-ended rupture of a single tube, is assumed. For other design basis accidents, the tubes are assumed to retain their structural integrity and exhibit primary-to-secondary leakage within the limits assumed in the current licensing basis accident analyses. MSLB leakage rates from the proposed PWSCC ARC are combined with leakage rates from other approved ARC (i.e., voltage-based ARC and W* ARC). The combined leakage rates will not exceed the limits assumed in the current licensing basis accident analyses.

The 40 percent maximum depth repair limit for free span indications provides a very low likelihood of free span leakage under design basis or severe accident conditions. Leakage from indications inside the TSP is limited by the constraint of the TSP even under severe accident conditions, and leakage behavior in a severe accident would be similar to that found acceptable by the NRC under approved ARC for axial outside diameter stress corrosion cracking (ODSCC) at TSP intersections. Therefore, even under severe accident conditions, it is concluded that application of the proposed ARC for PWSCC at dented TSP locations results in a negligible difference in risk of a tube rupture or large leakage event, when compared to current 40 percent repair limits or previously approved ARC.

Diablo Canyon Power Plant (DCPP) continues to implement a maximum operating condition leak rate limit of 150 gallons per day per SG to preclude the potential for excessive leakage during all plant conditions.

The possibility of a new or different kind of accident from any previously evaluated is not created because SG tube integrity is maintained by inservice inspection, condition monitoring, operational assessment, tube repair, and primary-to-secondary leakage monitoring.

3. The proposed change does not involve a significant reduction in a margin of safety.

Tube repair limits provide reasonable assurance that tubes accepted for continued service without repair will exhibit adequate tube structural and leakage integrity during subsequent plant operation. The implementation of the proposed ARC is demonstrated to maintain SG tube integrity consistent with the criteria of draft NRC RG 1.121. The guidelines of RG 1.121 describe a method acceptable to the NRC staff for meeting General Design Criteria (GDC) 2, 4, 14, 15, 31, and 32 by ensuring the probability or the consequences of SG tube rupture remain within acceptable limits. This is accomplished by determining the limiting conditions of degradation of SG tubing, for which tubes with unacceptable cracking should be removed from service.

Upon implementation of the proposed ARC, even under the worst-case conditions, the occurrence of PWSCC at the tube support plate elevations is not expected to lead to a SG tube rupture event during normal or faulted plant conditions. The ARC involves a computational assessment to be completed for each indication left in service ensuring that performance criteria for tube integrity and leak tightness are met until the next scheduled outage.

As discussed below, certain tubes are excluded from application of ARC. Existing tube integrity requirements apply to these tubes, and the margin of safety is not reduced. In addressing the combined loading effects of a loss-of-coolant (LOCA) and safe shutdown earthquake (SSE) on the SGs (as required by GDC 2), the potential exists for yielding of the TSP in the vicinity of the wedge groups, accompanied by deformation of tubes and a subsequent postulated in-leakage. Tube deformation could lead to opening of pre-existing tight through-wall cracks, resulting in secondary to primary in-leakage following the event, which could have an adverse affect on the Final Safety Analysis Report (FSAR) results. Based on a DCPP analysis of LOCA and SSE, SG tubes located in wedge region exclusion zones are susceptible to deformation, and are excluded from application of ARC.

A DCPP tube stress analysis for MFLB/MSLB plus SSE loading determined that high bending stresses occur in certain SG tubes at the seventh TSP, because the stresses exceed the maximum imposed bending stress for existing test data (equal to approximately the lower tolerance limit yield stress). These tubes are located in rows 11 to 15 and 36 to 46, and are excluded from application of ARC.

Tube intersections that contain TSP ligament cracking are also excluded from application of ARC.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to the plant safety analyses as defined in the FSAR or TS.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 16, 2001.

Description of amendment requests: The proposed license amendments would modify Technical Specification 5.5.16, "Containment Leakage Rate Testing Program," to allow a one-time extension of the ten-year interval for the performance-based leakage rate testing program for Type A tests as prescribed by Nuclear Energy Institute (NEI) Report NEI 94–01, Revision 0, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J," and applied by 10 CFR part 50, Appendix J, Option B.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension to the Type A testing interval from 1-in-10 years to 1-in-15 years will not increase the probability of an accident previously evaluated. The determination of containment integrity is not an accident initiator. The containment Type A testing interval extension does not involve a plant modification and the testing interval extension is not of a type that could lead to equipment failure or accident initiation.

The proposed extension to the Type A testing interval does not involve a significant increase in the consequences of an accident. Research documented in NUREG–1493 has determined that Type B and C tests can identify the vast majority (approximately 97 percent) of all potential leakage paths. Experience at Diablo Canyon Power Plant (DCPP) demonstrates that excessive containment leakage paths are detected by Type B and C local leakage rate tests. Type B and C testing will identify any containment opening, such as a valve, that would otherwise be detected by the Type A tests.

NUREG–1493 concluded that increasing the Type A test interval to 1-in-20 years leads to an imperceptible increase in risk. A DCPP plant specific probabilistic risk assessment of the change in the Type A testing interval from 1-in-10 years to 1-in-15 years determined the total integrated risk of the associated specific accident sequences increases by 0.03 percent. This risk impact when compared to other severe accident induced risks is negligible. The increase in the Regulatory Guide (RG) 1.174 [An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis] large early release fraction (LERF) figure-of-merit criteria resulting from a change in the Type A test interval from 1-in-10 years to 1-in-15 years is risk insignificant.

Testing and inspection provide a high degree of assurance that the containment will not degrade in a manner detectable only by Type A testing. The structural capability of the containment has been shown by the Type A testing results that have established that DCPP has had acceptable containment leakage rates with considerable margin. Inspections required by 10 CFR 50.65 and American Society of Mechanical Engineers code are performed in order to identify indications of containment degradation that could affect leak tightness. The results of containment concrete examination have concluded the containment concrete has had no loss of structural capacity and no areas of the concrete shell have experienced accelerated degradation or aging. The results of containment liner inspections have not identified any significant degradations that could adversely impact the containment structural integrity or leak tightness, such as through-holes in the containment liner. Due to the large containment leakage rate margin available, and no identified mechanism that would cause significant degradation of containment, a 5 year extension of the ILRT interval would not be expected to result in containment leakage above the acceptable limit.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed extension of the Type A testing interval will not create the possibility of a new or different type of accident from any previously evaluated. There are no physical changes being made to the plant and there are no changes in operation of the plant that could introduce a new failure mode, creating an accident.

The containment structure is passive. Under normal operating conditions, there is no significant environmental or operational stress present that would contribute to its degradation. Passive failures resulting in significant containment structural leakage are therefore extremely unlikely to develop between Type A tests.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed extension of the Type A testing interval will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing results in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the increase in the Type A testing interval would have a minimal effect on this risk because 97 percent of the potential leakage paths are detected by Type B and C testing.

A DCPP plant specific probabilistic risk assessment of the change in the Type A testing interval from 1-in-10 years to 1-in-15 years determined the total integrated risk of the associated specific accident sequences increases by 0.03 percent. This risk impact when compared to other severe accident induced risks is negligible. The increase in RG 1.174 LERF figure-of-merit criteria resulting from a change in the Type A test interval from 1-in-10 years to 1-in-15 years is risk insignificant.

Deferral of Type A testing for DCPP does not increase the level of risk to the public due to loss of capability to detect and measure containment leakage or loss of containment structural capability. Other containment testing methods and inspections will assure all limiting conditions of operation will continue to be met. The margin of safety inherent in existing accident analyses is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, PO Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 16, 2001.

Description of amendment requests: The proposed license amendments would modify Technical Specification (TS) 1.1, "Definitions, Dose Equivalent I–131," to allow the use of the thyroid dose conversion factors listed in the International Commission on Radiological Protection (ICRP) Publication 30, "Limits for Intakes of Radionuclides by Workers," 1979, in the steam generator tube rupture and main steam line break radiological consequences analyses.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revision of Technical Specification (TS) 1.1, Definitions, "Dose Equivalent I–131," to allow use of the iodine thyroid dose conversion factors from the International Commission on Radiological Protection (ICRP) Publication 30, 1979, and the revised steam generator tube rupture (SGTR) and main steam line break (MSLB) radiological consequences analyses are used to determine post-accident dose. They are not related to any accident initiator. Therefore, this change cannot increase the probability of an accident.

The revised SGTR thermal and hydraulic analysis input assumptions are consistent with actual plant limits and parameters.

The revised MSLB offsite and control room radiological consequences analysis dose results are within 10 CFR Part 100 limits and

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the NUREG–0800 Standard Review Plan (SRP) section 15.1.5 and section 6.4 guideline values.

The revised SGTR control room radiological consequences analysis dose results are within the SRP section 6.4 guideline values.

The revised SGTR offsite radiological consequences analysis dose results are within the 10 CFR part 100 dose limits. The SGTR offsite dose results also meet the SRP section 15.6.3 and section 6.4 guideline values, with the exception of the 2 hour Exclusion Area Boundary (EAB) thyroid dose. The calculated 2 hour EAB thyroid dose of 30.5 Rem is 1.5 percent above the SRP 15.6.3 guideline value of 30 Rem. The 2 hour EAB thyroid dose has been compared against the conservative thyroid dose SRP 15.6.3 guideline value of 30 Rem. The 2 hour EAB dose thyroid dose would be equivalent to a Regulatory Guide (RG) 1.183 methodology Total Effective Dose Equivalent (TEDE) of approximately 1.25 Rem, which is well below the RG 1.183 TEDE limit of 2.5 Rem for the accident-initiated iodine spike case. Therefore, the 2 hour EAB thyroid dose of 30.5 Rem is not considered to be a significant increase in dose.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the iodine thyroid dose conversion factors from ICRP Publication 30 and the revised SGTR and main steam line break MSLB radiological consequences analyses do not involve any physical plant changes. The change does not involve changes in operation of the plant that could introduce a new failure mode for creating an accident or affect the mitigation of an accident.

Therefore, the proposed change does not create the possibility of a new or different accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of ICRP Publication 30 thyroid dose conversion factors to calculate the radiological consequences for a SGTR and MSLB accident is endorsed by RG 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," US Nuclear Regulatory Commission, July 2000. Therefore, the revision of TS 1.1, Definitions, "Dose Equivalent I–131," to allow use of the iodine thyroid dose conversion factors from ICRP Publication 30 does not result in a significant reduction in the margin provided by TS 1.1. The revised SGTR thermal and hydraulic analysis input assumptions are consistent with actual plant limits and parameters.

The revised MSLB offsite and control room radiological consequences analysis dose results are within 10 CFR part 100 limits and the NUREG–0800 SRP section 15.1.5 and section 6.4 guideline values.

The revised SGTR control room radiological consequences analysis dose results are within the SRP section 6.4 guideline values.

The revised SGTR radiological consequences analysis dose results are within the 10 CFR part 100 dose limits. The SGTR dose results also meet the SRP section 15.6.3 and section 6.4 guideline values, with the exception of the 2 hour EAB thyroid dose. The calculated 2 hour EAB thyroid dose of 30.5 Rem is 1.5 percent above the SRP 15.6.3 guideline value of 30 Rem. The 2 hour EAB dose thyroid dose would be equivalent to a RG 1.183 methodology TEDE of approximately 1.25 Rem, which is well below the RG 1.183 TEDE limit of 2.5 Rem for the accident-initiated iodine spike case. Therefore, the 2 hour EAB thyroid dose of 30.5 Rem is not a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, PO Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: December 11, 2001.

Description of amendment requests: The proposed amendments would revise Technical Specification (TS) 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air," on the emergency diesel generators. The revisions would change (1) Conditions A and C of the Actions for Limiting Condition for Operation 3.8.3, and (2) Surveillance Requirement 3.8.3.1. The proposed amendments would change the minimum required diesel fuel oil storage to support (1) using California Diesel fuel rather than the existing Environmental Protection Agency (EPA) Clear diesel fuel, (2) revising the diesel generator load profile in reactor Modes 1 through 4, and (3) changing the units of the required diesel fuel oil storage. A "greater than or equal to" would also be changed to a "greater than" sign.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change revises the minimum amount of stored diesel fuel. The change is required to (1) support the use of California Diesel fuel rather than the existing EPA Clear diesel fuel, and (2) reflect a change in the diesel generator load profile in Modes 1 through 4.

In addition, this proposed change revises the units for the minimum diesel fuel storage requirements from tank level to a minimum required volume of fuel in gallons. A "greater than or equal to" sign is revised to a "greater than" sign for consistency. These are administrative changes only.

Technical Specification (TS) 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air," requires that each diesel generator have sufficient fuel to operate for a period of 7 days, while the Diesel Generator (DG) is supplying maximum post Loss of Coolant Accident (LOCA) load demand. This requirement is currently expressed as a minimum tank level limit. In Modes 1 through 4, the existing tank level limit is 89%, which ensures that a 7-day supply of fuel is available. TS 3.8.3, Condition A, states that during Modes 1 through 4, if one or more Diesel Generators (DG) has a fuel level in the storage tank less than 89% and greater than or equal to 76%, then fuel oil level must be restored to within limits within 48 hours. The 76% level requirement is based on maintaining a 6-day supply of diesel fuel in Modes 1 through 4. If the tank level is at or below 76% (6-day supply), the associated DG must be declared inoperable immediately.

Similarity, for Modes 5 and 6, the existing tank level limit is 72%, which ensures that a 7-day supply of fuel is available. TS 3.8.3, Condition C, states that during Modes 5 and 6, if one required DG has a fuel level in the storage tank less than 72% and greater than 63%, then [the] fuel oil level must be restored to within limits within 48 hours. The 63% level requirement is based on maintaining a 6-day supply of diesel fuel in Modes 5 and 6. If the tank level is at or below 63% (6-day supply), the associated diesel generator must be declared inoperable immediately.

As described in the Bases to TS 3.8.3, these tank level requirements are based on fuel volume requirements. In Modes 1 through 4, 89% and 76% level limits are based on a 7-day (49,724 gallons) and 6-day (42,960 gallons) fuel supply, respectively [plus an allowance for instrument Total Loop Uncertainty (TLU)]. In Modes 5 and 6, the 72% and 63% tank level limits are based on a 7-day (40,472 gallons) and 6-day (34,960 gallons) fuel supply, respectively (plus an allowance for instrument TLU).

Because the Lower Heating Value (LHV) per gallon of California Diesel fuel is less than that of EPA Clear diesel fuel, it was necessary to recalculate the amount of fuel required to supply necessary loads for the required time periods. For Modes 1 through 4, the resulting minimum volumes of California Diesel fuel are 45,662 gallons and 39,468 gallons for the 7-day and 6-day fuel supply, respectively. For Modes 5 and 6, the required volumes of California Diesel fuel are 41,691 gallons and 35,735 gallons for a 7-day supply and a 6-day supply, respectively.

It should be noted that the minimum volumes for Modes 1 through 4 are decreased due to a change in the calculated [diesel generator] load profile. SONGS no longer requires the third-of-a-kind High Pressure Safety Injection (HPSI) pump to be started following a Loss of Coolant Accident (LOCA) or Main Steam Line Break [MSLB]. Operation of the third-of-a-kind HPSI pump is no longer assumed as part of the DG load profile in Modes 1 through 4. This resulted in a net decrease in the amount of required stored diesel fuel in Modes 1 through 4, even when the use of the California Diesel fuel [with the lower heating value] is taken into account.

The diesel generators and the associated support systems such as the fuel oil storage and transfer systems are designed to mitigate accidents and are not accident initiators. Revising the minimum volumes of stored [diesel] fuel in the storage tanks will not result in a significant increase in the probability of any accident previously evaluated. [The revisions are to maintain the current requirements for a 7-day and 6-day supply of stored diesel fuel].

Following implementation of this proposed change, there will be no change in the ability of the diesel generators to supply maximum post-LOCA load demand for 7 days. The proposed minimum volumes of fuel, 45,662 gallons and 39,468 gallons, ensure that a 7-day and 6-day supply of fuel, respectively, are available in Modes 1 through 4. The proposed minimum volumes of fuel, 41,691 gallons and 35,735 gallons, ensure that a 7-day and a 6-day supply, respectively, of fuel is available in Modes 5 and 6. This is identical to the current requirements. Therefore this change will not result in a significant increase in the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Following this change, the diesel generators will still be able to supply maximum post-LOCA load demand. The current 7-day and 6-day fuel supply requirements will be maintained following this change. [The diesel generators fuel oil storage and transfer systems are not accident initiators].

The changes in units from tank level percentage to fuel volume in gallons is an administrative change only. The change from a "greater than or equal to" sign to a "greater than" sign in TS 3.8.3, Condition A, is for consistency with other parts of TS 3.8.3 and is also an administrative change.

Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident that has been previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Bases to TS 3.8.3 states that "Each diesel generator (DG) is provided with a storage tank having a fuel oil capacity sufficient to operate that diesel for a period of 7 days, while the DG is supplying maximum post loss of coolant accident load demand." When the fuel oil tank level is less than required to support [7 days] of operation, the required action depends on whether or not a 6-day supply of fuel is available. [The proposed tank level limits for Modes 1 through 4 will maintain the 7-day and 6-day fuel supply requirements following changeout to California Diesel fuel and the change in the DG load profile for Modes 1 through 4].

The proposed tank level limits for Modes 5 and 6 will maintain these 7-day and 6-day fuel supply requirements following changeout to California Diesel fuel.

The change in units from tank level percentage to fuel volume in gallons is an administrative change only. The change from a "greater than or equal to" sign to a "greater than" sign in TS 3.8.3, Condition A, is for consistency with other parts of the TS 3.8.3 and is also an administrative change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of amendment request: November 1, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 2.1.1.2, "Reactor Core Safety Limits," by modifying the safety limit minimum critical power ratio (SLMCPR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91(a), TVA has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment establishes revised SLMCPR values for two recirculation loop operation and for single recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR values.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPRs have been performed using NRC-approved methods and procedures. The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment involves a revision of the SLMCPR for two recirculation loop operation and for single loop operation based on the results of an analysis of the Cycle 11 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPRs are calculated using NRC-approved methods and procedures which are in accordance with the current fuel design and licensing criteria. The SLMCPRs remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 12, 2001 (TS 01–04).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Unit 1 and 2 Technical Specification (TS) 3/4 6.5.1 and associated Bases to reflect an increase in the ice condenser basket weight from 1071 pounds to 1145 pounds and the total ice condenser ice weight from 2,082,024 pounds to 2,225,880 pounds. This change is being made in response to a reanalysis by Westinghouse Electric Company that identified a modeling input error used in the original analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The analyzed accidents of consideration in regards to changes affecting the ice condenser are a loss-of-coolant accident (LOCA) and a main steam line break (MSLB) inside containment. The ice condenser is a passive system and is not postulated as being the initiator of any LOCA or main steam line break (MSLB) and is designed to remain functional following a design basis earthquake.

In addition, the ice condenser does not interconnect or interact with any systems that have an interface with the reactor coolant or main steam systems.

For SQN, the LOCA is the more severe accident in terms of containment pressure and ice bed meltout and is therefore the more limiting accident. SQN's LOCA Containment Integrity Analysis calculates the post-LOCA peak containment pressure to be 11.44 pounds per square inch gauge (psig), which is below SQN's containment design pressure of 12.0 psig. The analysis contains an assumed ice mass that is an input value to the calculation to ensure that sufficient heat removal capability is available from SQN's ice condenser to limit the accident peak pressure inside containment. The analyzed peak accident pressure must remain below the containment design pressure.

TVA's proposed TS revision reflects the ice mass assumed in the SQN ['s] Containment Integrity Analysis. Accordingly, TVA's proposed change ensures that ice mass values retain the existing margin between the calculated peak containment accident pressure and SQN's containment design pressure.

Since the proposed changes to the TS and TS bases are solely to revise ice weight values to reflect current margins within SQN's analysis, and are not the result of or require any physical changes to the ice condenser, there is no change in the probability of an accident previously evaluated in the Safety Analysis Report.

Based on the above discussions, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Because the TS and TS bases changes do not involve any physical changes to the ice condenser, or chemical changes to the ice contained therein, or make any changes in the operational aspects of the ice condenser as required by the TS, there are no new or different kind of accidents created from those already identified and evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The ice condenser TSs ensure that during a LOCA or MSLB the ice condenser will initially pass sufficient air and steam mass to preclude over-pressurizing lower containment, that it will absorb sufficient heat energy initially and over a prescribed time period to assist in precluding containment vessel failure, and that it will not alter the bulk containment sump pH and boron concentration assumed in the accident analysis.

TVA's proposed change does not physically alter the ice condenser, but rather accounts for changes to input assumptions for SQN's containment pressure analysis to correct a computer model input error. The correction to the model provides a more accurate accounting of the pressure response inside containment following a LOCA. The error correction requires an increase the ice mass assumed in the analysis to ensure that SQN's post-LOCA peak containment pressures remain unchanged. The margin that exists between the accident peak pressure and the containment design pressure is unaffected. Accordingly, TVA' s proposed change does not reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 20, 2001.

Description of amendment request: The proposed amendment would change the Technical Specifications Table 3.2.6 by revising the Allowed Outage Times (AOTs) and associated action requirements for certain post-accident monitoring (PAM) instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Will the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The PAM instrumentation is not considered as an initiator or contributor to any previously evaluated accident. The proposed change will not affect any Final Safety Analysis Report safety analysis. Because there are no credible failures of the PAM instrumentation that could initiate any accidents previously evaluated, changing the AOTs and related actions for PAM instrumentation will not increase the probability of any accident previously evaluated. The operability or inoperability of this instrumentation will not cause an accident because this instrumentation was not intended to and does not serve a function for preventing accidents. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The availability and use of PAM instrumentation ensures that the prescribed operator (manual) actions for mitigating the consequences of an accident will be implemented when necessary, and that the operator has sufficient information to verify required automatic actions have occurred as intended. The availability and use of PAM instrumentation provide assurance that the consequences of accidents will not be greater than previously evaluated. Changes to allowed outage times and shutdown completion times do not affect the consequences of accidents. The proposed change does not modify any parameters or assumptions contained in previously analyzed design-basis events. The continued availability and use of this instrumentation ensures that the prescribed manual operator actions for mitigating the consequences of an accident will be implemented when necessary, and that the operator has sufficient information to verify required automatic actions have occurred as intended. The requirements of the revised TS are adequate to ensure the required instrumentation is maintained operable such that PAM instrumentation will be available to perform its intended safety function. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Will the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical modification to the plant, change in TS setpoints, plant design-basis, or the manner in which the plant is operated. Because the PAM instrumentation serves a passive function and does not provide any automatic action, there are no credible failures of the PAM instrumentation that could initiate a new or different kind of accident from any accident previously evaluated.

The change to AOTs and related action requirements for PAM instrumentation will not result in a failure mode not previously analyzed. This instrumentation is not considered an accident precursor because its existence or availability does not have any adverse impact in the pre-accident state of the reactor.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the proposed changes involve a significant reduction in a margin of safety?

PAM instrumentation is assumed to be used by operators for monitoring only after an accident occurs and performs no automatic functions. The continued availability and use of this instrumentation ensures that the prescribed manual operator actions for mitigating the consequences of an accident will be implemented when necessary, and that the operator has sufficient information to verify required automatic actions have occurred as intended. The requirements of the revised TS are adequate to ensure the required instrumentation is maintained operable such that PAM instrumentation will be available to perform its intended safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 11, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714).

The licensee affirmed the applicability of the following NSHC determination in its application dated December 11, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety. Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

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Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdc@nrc.gov*.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 29, 2000, supplemented on October 11, 2001.

Brief description of amendment: The amendment revises the offsite power source identified in Technical Specification 3.7.A.3 to remove one listed source and add a different source. Also, the bases have been revised to reflect the availability of the offsite sources and to revise minor administrative changes.

Date of Issuance: December 27, 2001.

Effective date: December 27, 2001, and shall be implemented within 30 days of issuance.

Amendment No.: 222.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 4, 2001 (66 FR 17965).

The October 11, 2001, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 11, 2001, as supplemented June 14, 2001.

Brief description of amendment: The amendment revises the list of documents that describe the analytical methods used to determine the core operating limits specified in Technical Specification 6.9.1.8b. The revision consists of updating the list of documents to include the latest NRC-approved methodologies, along with deleting the revision numbers and dates of all documents in the list.

Date of issuance: December 19, 2001.

Effective date: As of the date of issuance and shall be implemented prior to restart from refueling outage 14 which is currently scheduled in early February of 2002.

Amendment No.: 260.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38760).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 2001.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 28, 2001.

Brief description of amendment: The amendment deletes the post-maintenance testing Surveillance Requirement 4.6.3.1 of containment isolation valves.

Date of issuance: December 21, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 200.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52799).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 12, 2001, as supplemented by letters dated October 15 and November 16, 2001.

Brief description of amendment: The amendment revised certain emergency diesel generator (EDG) Technical Specifications (TSs) to remove the requirement for an accelerated test frequency, remove the requirement to subject the EDGs to an inspection in accordance with the manufacturer's recommendations, allow that certain EDG tests may be done in modes other than shutdown, and remove the EDG special reporting requirements.

Date of issuance: December 17, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 237.

Facility Operating License No. NPF–6: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36340).

The October 15 and November 16, 2001, supplemental letters provided clarifying information and revised TSs that were within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 22, as supplemented by letters dated May 4, and September 13, 2001.

Brief description of amendments: The amendments revise reactor vessel water level—low scram and isolation setpoints in order to minimize unnecessary reactor scrams that might result from events involving a temporary reduction in feedwater flow. The revision to these setpoints was originally requested as part of the power uprate licensing amendment. However, since the setpoint reduction will provide a similar benefit when operating at the current thermal power, Exelon has requested to implement the requested changes prior to power uprate approval as part of efforts to improve summer reliability at Dresden and Quad Cities Nuclear Power Stations.

Date of issuance: December 18, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: Dresden Units 2 and 3—190/184; Quad Cities Units 1 and 2—200/196.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 6, 2001 (66 FR 30490).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 29, 2000, as supplemented by letters dated March 1, July 13, August 9, August 13, August 27, and October 17, 2001.

Brief description of amendments: The amendments change the technical specifications to reflect a change in fuel vendors from Siemens Power Corporation to General Electric, and a transition to GE14 fuel. As part of the transition, changes are made to (1) increase the number of required automatic depressurization system valves from four to five, and (2) remove an allowance to continue operating for 72 hours if certain combinations of emergency core cooling systems are inoperable.

Date of issuance: December 20, 2001.

Effective date: As of the date of issuance and shall be implemented as follows: for Unit 1, prior to reaching Startup (i.e., Mode 2) following refueling outage 17, scheduled for completion in November 2002; for Unit 2, prior to reaching Startup (i.e., Mode 2) following refueling outage 16, scheduled for completion in February 2002.

Amendment Nos.: 201 and 197.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 27, 2000, (65 FR 81912) and August 22, 2001 (66 FR 44172).

The submittals dated July 13, August 9, August 13, August 27, and October 17, 2001, did not change the scope of the amendment or the proposed no significant hazards findings dated December 27, 2000, (65 FR 81912) and August 22, 2001 (66 FR 44172).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: October 17, 2001.

Brief description of amendments: Revised St. Lucie Unit 1 and 2 Technical Specifications (TS) actions regarding inoperable redundant components when an Emergency Diesel Generator becomes inoperable, such that required actions will be based on the TS for the inoperable redundant components.

Date of Issuance: December 17, 2001.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 180 and 123.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57121).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: October 23, 2000.

Brief description of amendments: The amendments removed references to the containment hydrogen monitors in Technical Specification (TS) Tables 3.3–5, "Accident Monitoring Instrumentation," and 4.3–4, "Accident Monitoring Instrumentation Surveillance Requirements." In addition, the amendments deleted TS 3/4.6.5, "Combustible Gas Control—Hydrogen Monitors," and TS 3/4.6.6, "Post Accident Containment Vent System."

Date of issuance: December 20, 2001.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos: 217 and 211.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 10, 2001 (66 FR 2014).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 26, 2001.

Brief description of amendment: Amendment changes the Operating License to extend certain Technical Specification surveillance requirement intervals on a one-time basis.

Date of issuance: December 19, 2001.

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Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 206.

Facility Operating License No. DPR–20. Amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** November 13, 2001 (66 FR 56865).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 2001.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: September 19, 2001, as supplemented October 26, 2001.

Brief description of amendment: The amendment authorized a one-cycle delay in removal of the second reactor pressure vessel material surveillance capsule.

Date of issuance: December 20, 2001.

Effective date: As of date of issuance.

Amendment No.: 197.

Facility Operating License No. NPF–14: The amendment authorized a change to the Reactor Vessel Material Surveillance Program.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57122).

The October 26, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendments: December 10, 2001, as supplemented on December 21, and December 24, 2001.

Brief description of amendments: The amendment allows a one-time change to Technical Specifications (TSs) Limiting Condition for Operation 3/4.7.4, "Service Water System," to increase the Allowed Outage Time (AOT) from 72 hours to 10 days. The increase in the TS 3/4.7.4 AOT is necessary in order to allow repairs to a portion of the 12 Service Water System piping while remaining at power.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance.

Amendment No.: 248.

Facility Operating License Nos. DPR–70: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration determination are contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 5, 2001.

Brief description of amendments: The amendments revise Technical Specification 3/4.6.4, "Containment Systems, Combustible Gas Control, Hydrogen Analyzers," to reduce the channel calibration frequency of the Hydrogen Analyzers from quarterly to a frequency of once per refueling outage. The change also adds an additional surveillance requirement to perform a quarterly gas calibration.

Date of issuance: December 17, 2001.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 247 and 228.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of *initial notice in* ***Federal Register:*** April 18, 2001 (66 FR 20008).

The Commission's related evaluation, of the amendments is contained in a Safety Evaluation dated December 17, 2001.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 1, 2001.

Brief description of amendment: This amendment deletes Technical Specification 6.8.4.d requiring a program for post-accident sampling, and thereby eliminates the requirements to have and maintain the Post-Accident Sampling System at Virgil C. Summer Nuclear Station, Unit No. 1.

Date of issuance: December 20, 2001.

Effective date: December 20, 2001.

Amendment No.: 152.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55023).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 2001.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 8, 2000.

Brief description of amendments: The amendments delete or modify existing license conditions from the Unit 1 and Unit 2 Operating License, which have been completed or are otherwise no longer in effect. These activities have now been completed and the license conditions are either obsolete or are no longer needed.

Date of issuance: December 7, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 152 and 144.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Operating License.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13808).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 2001.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: September 10, 2001.

Brief description of amendment: These amendments eliminate the Technical Specification requirements to have and maintain a post-accident sampling system (PASS) at North Anna Power Station, Units 1 and 2. In addition, for North Anna Power Station, Unit 2, the amendment deletes a license condition associated with the implementation of PASS.

Date of issuance: December 19, 2001.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 229 and 210.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications for both units and the license for Unit 2 only.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55025).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 2001.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: September 10, 2001.

Brief Description of amendments: These amendments eliminate the Technical Specification requirements to have and maintain a post-accident sampling system at Surry Power Station, Unit Nos. 1 and 2.

Date of issuance: December 18, 2001.

Effective date: December 18, 2001.

Amendment Nos.: 229 and 229.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55026).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 2001.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 31st day of December 2001.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–301 Filed 1–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.78, "Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release," describes guidance acceptable to the NRC staff for assessing the habitability of the control room during and after a postulated external release of hazardous chemicals. This guide also provides guidance for the protection of control room operators against an accidental release of hazardous chemicals, including chlorine.

With the publication of Regulatory Guide 1.78, Regulatory Guide 1.95, "Protection of Nuclear Power Plant Control Room Operators Against an Accidental Chlorine Release," is being withdrawn because the guidance in Regulatory Guide 1.95 has been updated and incorporated into Revision 1 of Regulatory Guide 1.78.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's Web site at *www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by E-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of December, 2001.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 02–406 Filed 1–7–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

Board Votes To Close December 24, 2001, Meeting

By paper and telephone vote on December 21 and 24, 2001, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted to close to public observation its meeting held in Washington, DC via teleconference. The Board determined that prior public notice was possible.

Item Considered: Rate Case R2001–1.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information: Requests for information about the meeting should be addressed to the Secretary of the Board, David G. Hunter, at (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 02–512 Filed 1–4–02; 12:20 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 2002, shall be at the rate of 25 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 2002, 41.1 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 58.9 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

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Dated: November 30, 2001.
By Authority of the Board.
Beatrice Ezerski,
Secretary of the Board.
[FR Doc. 02–330 Filed 1–7–02; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27488]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 2, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 28, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 28, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–10021)

American Electric Power Company, Inc. ("AEP"), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed a declaration under sections 6(a), 7, 32, and 33 of the Act and rules 53 and 54 under the Act.

The Commission issued an order on April 20, 2001 (HCAR No. 27382) ("April Order") authorizing AEP to organize and acquire all of the common stock or other equity interests of one or more financing subsidiaries ("FS") for the purpose of effecting various financing transactions through June 30, 2004. These transactions involved the issuance and sale of up to $1.5 billion unsecured in any combination of preferred securities, debt securities, interest rate hedges, anticipatory hedges, stock purchase contracts, and stock purchase units, as well as stock issued under the stock purchase contracts and stock purchase units. AEP has issued $1.25 billion debt under the April Order. The Commission further authorized AEP to effect directly financing transactions involving preferred securities, debt securities, stock purchase contracts, or stock purchase units. By supplemental order dated May 29, 2001 (HCAR No. 27408) ("May Order"), the Commission released jurisdiction and authorized the use of proceeds of the financings authorized in the April Order for investment in exempt wholesale generators "(EWGs") and foreign utility companies ("FUCOs").

In addition to continuing to engage in the transactions authorized in the April Order and the May Order, AEP requests authorization to increase the investment limit from $1.5 billion to $3.0 billion. AEP also requests authorization to issue common stock directly and through FS. In the case of direct common stock sales, AEP proposes to sell its common stock other than as a component or in satisfaction of a stock purchase contract or stock purchase unit (a) through solicitations of proposals from underwriters or dealers; (b) through negotiated transactions with underwriters or dealers; (c) directly to a limited number of purchasers or to a single purchaser; and or (d) through agents. The price applicable to shares sold in any transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions. AEP is authorized under its restated articles of incorporation to issue 600,000,000 shares of common stock ($6.50 par value), of which 322,024,714 were issued and outstanding as of February 1, 2001. As of September 30, 2001, AEP's consolidated capitalization consisted of 63.0% indebtedness, 0.7% preferred stock, 1.3% mandatorily redeemable preferred securities, and 35.0% common equity.

AEP states that interest rate hedges and anticipatory hedges will be treated for accounting purposes under generally accepted accounting principles. The April Order authorized hedges that would qualify for hedge accounting treatment.

AEP states that it will not publicly issue unsecured indebtedness or preferred securities in this file unless it has maintained at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency.

AEP was authorized in the April Order to form special purpose subsidiaries ("SPS") in connection with the issuance of unsecured preferred securities. The April Order also authorized FS to issue and sell unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments ("Note" or "Notes"). AEP states that it expects the FS interest payments on the Notes will be deductible for federal income tax purposes and that each SPS will be treated as either a partnership or a passive grantor trust for federal income tax purposes. Consequently, holders of the preferred securities and AEP will be deemed to have received distributions in respect of their ownership interests in the respective SPS and will not be entitled to any "dividends received deduction" under the Internal Revenue Code. The preferred securities of any series, however, may be redeemable at the option of the SPS issuing the series (with the consent or at the direction of AEP) at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, (a) at any time after a specified date not later than approximately ten years from their date of issuance, or (b) upon the occurrence of certain events, among them that (x) the SPS is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the SPS, or (y) it is determined that the interest payments by FS on the related Notes are not deductible for income tax purposes, or (z) the SPS becomes subject to regulation as an "investment company" under the Investment Company Act of 1940. The preferred securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. FS also may have the right in certain cases or in its discretion to exchange the preferred securities of any SPS for the Notes or other junior subordinated debt issued to the SPS.

In the event that any SPS is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, the SPS may also have the obligation to "gross up" the payments so that the holders of the preferred securities issued by the SPS will receive the same payment after the withholding or deduction as they would have received if no withholding or deduction were required. In this event, FS obligations under its related Note may also cover this "gross up" obligation. In addition, if any SPS is required to pay taxes with respect to income derived from interest payments on the Notes issued to it, the FS may be required to pay additional interest on the related Notes as necessary in order that net amounts received and retained by the SPS, after the payment of the taxes, shall result in the SPS having the funds as it would have had in the absence of the payment of taxes.

The proceeds of any financing by FS or any SPS will be remitted, paid as a dividend, loaned or otherwise transferred to AEP or its designee. The proceeds of preferred securities, debt securities, stock purchase contracts and stock purchase units will be used to acquire the securities of associate companies and interests in other businesses, including interests in EWGs and FUCOs, or in any transactions permitted under the Act and for other general corporate purposes, including the reduction of short-term indebtedness. AEP had approximately $3.6 billion outstanding short-term indebtedness as of September 30, 2001. No proceeds will be used to purchase generation assets currently owned by AEP or any affiliate unless the purchase has been approved by order of this Commission under File No. 70–9785 or other similar applications.

AEP represents that no financing proceeds will be used to acquire the equity securities of any company or any interest in other businesses unless the acquisition has been approved by the Commission in this proceeding or in File No. 70–9353 or is in accordance with an available exemption under sections 32, 33 and 34 of the Act or rule 58 under the Act. AEP does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–402 Filed 1–7–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25353; 813–226]

DRW Venture Partners LP and RBC Dain Rauscher Corp.; Notice of Application

January 2, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and limited liability companies ("Partnerships") formed for the benefit of key employees of RBC Dain Rauscher Corp. ("DRC") and certain of its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

APPLICANTS: DRW Venture Partners LP (the "Initial Partnership") and DRC.

FILING DATES: The application was filed on January 20, 2000 and amended on December 28, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 60 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. DRC is a holding company that provides investment advice and services to individual and institutional investors and investment banking services to corporate and governmental clients through its principal subsidiary, Dain Rauscher Incorporated. Dain Rauscher Incorporated is a wholly-owned subsidiary of DRC and is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). DRC and its affiliates as defined in rule 12b-2 under the Exchange Act are referred to collectively in this notice as the "DRC Group."

2. DRC Group has offered and proposes to continue to offer various investment programs for the benefit of its Eligible Employees (as defined below). These programs may be structured as different Partnerships, as separate plans within a Partnership, or as investments by the Partnerships in investment entities formed by DRC Group, from time to time, which are exempt from registration under the Act in reliance on sections 3(c)(1), 3(c)(6), or 3(c)(7) of the Act and which are managed by DRC employees (the "DRC Funds"). Each Partnership will be a limited partnership or limited liability company formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified management investment company. The Partnerships have been or will be established primarily for the benefit of highly compensated employees of DRC Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. DRC, a Delaware corporation, is the general partner of the Initial Partnership (together with any DRC Group entity which acts as the general partner of a Partnership, "General Partner"). The General Partner of the Initial Partnership will not be registered under

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the Advisers Act pursuant to section 203(b)(3) of the Advisers Act and rule 203(b)(3)–1 thereunder. The General Partner of other Partnerships will register as an investment adviser under the Advisers Act if required under applicable law. The General Partner will manage, operate, and control each of the Partnerships. The General Partner will be authorized to delegate management responsibility to a DRC Group entity or to a committee of DRC Group employees (including, without limitation, the managers of other Partnerships). The General Partner will not receive a performance-based fee, or carried interest, from the Initial Partnership, and the General Partner does not currently anticipate receiving a performance-based fee, or carried interest, from any Partnership.[1]

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or Regulation D under the Securities Act, and will be sold only to "Eligible Employees" or, if permitted by DRC, to "Qualified Participants" (in each case as defined below) (collectively, "Participants"). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in a Partnership. An Eligible Employee is (a) an individual who is a current or former employee, officer, director, or "Consultant" of DRC Group and, except for a maximum of 35 individuals who either manage the day-to-day affairs of the Partnership in question ("Managing Employees") or who meet the alternative standards set forth in paragraph 5 below, meets the standards of an accredited investor under rule 501(a)(6) of Regulation D, or (b) an entity that is a current or former "Consultant" of DRC Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[2]

[1] A "carried interest" is an allocation to the General Partner based on the net gains of an investment program and is in addition to the amount that is allocable to the General Partner in proportion to its capital contributions. Any carried interest payable to a General Partner that is registered under the Advisers Act will be charged only to the extent permitted by section 205(a) of the Advisers Act and rule 205–3 under the Advisers Act. Any "carried interest" payable to a General Partner that is not registered under the Advisers Act will comply with the requirements of section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a business development company for purposes of that section).

[2] A "Consultant" is a person or entity whom DRC Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser to DRC Group and who shares a community of interest with DRC Group and DRC Group employees.

Eligible Employees will be experienced professionals in the investment banking and securities, investment management or financial services businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. In order for an individual who is not an accredited investor under rule 501(a)(6) of Regulation D to qualify as an Eligible Employee, the individual must (a) have a graduate degree in business, law, or accounting, (b) have a minimum of five years of consulting, investment banking or similar business experience, and (c) have had reportable income from all sources (including any profit shares or bonus) in the calendar year immediately preceding such individual's admission as a Limited Partner in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which such individual invests in a Partnership. In addition, an Eligible Employee in this category will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the Partnership and in all other Partnerships in the aggregate in which he or she has previously invested.

6. Managing Employees will have primary responsibility for operating the Partnership. These individuals will be officers or employees of DRC Group who meet the definition of Knowledgeable Employee in rule 3c–5(a)(4) under the Act with respect to a Partnership as if it were a "covered company" within the meaning of the rule.

7. A Qualified Participant (a) is an Eligible Family Member or Qualified Entity, (in each case as defined below) of an Eligible Employee, and (b) if purchasing an Interest from a Partner[3] or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee;[4] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee.

8. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, deductions, and other tax items.

9. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a DRC Group entity. No sales load will be charged in connection with the sale of an Interest.

10. An Eligible Employee's Interest in a Partnership may be subject to repurchase or cancellation if (a) the Eligible Employee's relationship with DRC Group is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of DRC Group; or (c) the Eligible Employee voluntarily resigns from employment with DRC Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), or (b) the fair market value of the Interest as determined at the time of repurchase by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

11. Subject to the terms of the applicable limited partnership agreement, a Partnership will be permitted to enter into transactions

[3] "Partner" means any partner of a Partnership, including the General Partner.

[4] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Entity" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between DRC Group and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the General Partner or DRC Group.

involving (a) a DRC Group entity; (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with DRC Group and over which a DRC Group entity will exercise investment discretion (a "Third Party Fund"), or (e) any partner or other investor of a Third Party Fund that is not affiliated with DRC Group (a "Third Party Investor"). These transactions may include (a) a Partnership's purchase or sale of an investment or an interest from or to any DRC Group entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

12. No Partnership will acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

13. A DRC Group entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are "usual and customary," subject to the requirements described below. DRC Group entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invests and entities that are competitors of these entities.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit (a) a DRC Group entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any DRC Group entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any DRC Group entity, or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any DRC Group entity, or Third Party Fund will become affiliated; and (iii) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with DRC Group. Applicants also state that, as professionals employed in the investment banking, investment management or financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and DRC Group will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Partnership (including without limitation, the General Partner, other DRC Group entities, or Third-Party Fund), or affiliated persons of any of these persons (including without limitation, Third-Party Investors) to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which a Partnership or a company controlled by a Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with DRC Group or DRC Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with DRC Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with DRC Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of DRC Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate; (b) investments made by DRC Group will not be generally available to investors even of the financial status of the Eligible Employees; and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

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7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by DRC Group and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the community of interest among DRC Group and the Participants, and the fact that senior officers and directors of DRC Group entities will be investing in the Partnership. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. (p. 16) Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a DRC Group entity.

8. Co-investments with Third Party Funds, or by a DRC Group entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that DRC Group invest its own capital in Third Party Fund investments, and that the DRC Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to DRC Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by DRC Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-à-vis* a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a DRC Group entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed to be "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a DRC Group entity will be deemed to be "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds; (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because DRC Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a DRC Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors of the General Partner who are not "interested persons" take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1 by having a majority of the directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1.

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a DRC Group entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between DRC Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnerships' directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transaction") will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners in the Partnership, and the Partnership's organizational documents and reports to its Partners. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the Commission and its staff.[5]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) DRC Group; (c) an officer or director of DRC Group; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (e) when the investment is comprised of securities that are listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the Commission and its staff.[6]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns and a report of the investment activities of the Partnership during that year.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a DRC Group director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–401 Filed 1–7–02; 8:45 am]

BILLING CODE 8010–01–P

[5] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

[6] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45211; File No. SR–Amex–2001–98]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Reinstate and Increase Options Transaction Charges

December 28, 2001.

On November 8, 2001, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [1] the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change to reinstate and increase options transaction charges in select products. In April 2000, the Exchange eliminated transaction, floor brokerage, and clearance charges for customer equity option trades. At that time, fees charged to customers for transactions in index options remained unchanged at $0.10 per contract. The Exchange proposes to increase the fees charged to (1) customers for transactions in index options from $0.10 to $0.15; and (2) member firms and non-member broker dealers for transactions in index options from $0.11 to $0.15. In addition, the Exchange is proposing to reinstate a customer transaction charge for equity options on the S&P 100 iShares. The transaction charge will be $0.15 per contract side.

The proposed rule change was published for comment in the **Federal Register**.[2] The Commission received no comments on the proposal.

The Commission finds the proposed rule change is consistent with section 6(b) of the Act,[3] in general and furthers the objectives of section 6(b)(4) of the Act [4] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[5] According to the Amex, these increases are necessary due to the increasing costs incurred in developing and implementing new technology for the fast and efficient trading of options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2001–98) be, and hereby is, approved.[7]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–285 Filed 1–7–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45068 (Nov. 11, 2001), 66 FR 58785 (Nov. 23, 2001).

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.c. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45177; File No. SR–Amex–2001–103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to a Utilization Fee for the 'Smart' Wiring Program

December 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase floor fees by assessing a $15.00 monthly utilization fee on registered options traders operating on the Harry's floow of the Exchange (new trading facility on the first floor of the 86 Trinity Exchange building) to enable registered options traders to hard-wire their handheld computers from certain locations in the Harry's floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to assess a $150.00 monthly utilization fee (regardless of amount of days service is utilized during a month) on registered options traders operating on the Harry's floor of the Exchange to recover the capital investment, as well as the implementation and operating costs, for the 'Smart' Wiring program.

'Smart' Wiring involves the installation of 'Smart' wired outlets throughout the Harry's floor to enable registered options traders to change their location within that trading floor from day to day by easily connecting into a 'Smart' outlet. The need for this program arose because of the desire of users to be able to move to any location in the trading crowd and get connectivity to their member firm's servers. Through the 'Smart' Wiring connection, registered options traders receive analytical data and other information from their member firms which assists them in making better markets. 'Smart' Wiring is not part of the Exchange's order routing or other trading system.

The 'Smart' Wiring program is being implemented in the Harry's floor first, since that space requires less work than the other Amex floors to effect implementation of the program. The Exchange will monitor the program and, based on its experience with the program as well as the demand for the service, the Exchange may decide to extend the service on the Harry's floor by adding additional 'Smart' outlets and/or extend new service to the other Amex floors.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [3] in general and furthers the objective of Section 6(b)(4) of the Act [4] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Amex has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from December 11, 2001, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(g)(6) thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–2001–103 and should be submitted by January 29, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–404 Filed 1–7–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)6.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45221; File No. SR–CBOE–99–45]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Clarify Certain Aspects of Interpretation and Policy .02 to Exchange Rule 6.8

January 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 2 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] On December 28, 1999, the proposed rule change was published for comment in the **Federal Register**.[4] On October 30, 2000, the CBOE filed Amendment No. 1 to the proposed rule change.[5] Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.[6] The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change its Interpretation and Policy .01 to CBOE Rule 6.8 (RAES Operations) in order to add specific, objective criteria describing the circumstances in which Exchange Floor Officials may determine that quotes from one or more markets in one or more particular classes of options are not reliable, and, thus, may be excluded from CBOE's Retail Automatic Execution System ("RAES") determination of the National Best Bid and Offer ("NBBO"). The text of Amendment No. 2 to the proposed rule change is provided below. Changes to the current rule text are in italics; deletions from the current rule text are in brackets.

RAES Operations in Equity Options

Rule 6.8 [No change]

* * * Interpretation and Policy

.01 [No change]

.02 (a) Orders to buy or sell options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES.

Under circumstances where two Floor Officials determine that quotes from one or more particular markets in one or more classes of options are not reliable, the Floor Officials may direct the senior person in charge of the Exchange's Control Room to exclude the unreliable quotes from the RAES determination of the NBBO in the particular option class(es).

I. Two Floor Officials may determine quotes in one or more particular options classes in a market are not reliable under any of the following circumstances:

(a) Quotes Not Firm: A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, Legal Department, CBOE to Stephen M. Cutler, Director, Division of Enforcement, Commission, Annette L. Nazareth, Director, Division of Market Regulation ("Division"), Commission, and Lori A. Richards, Director, Office of Compliance, Inspections and Examination, Commission, dated November 19, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE proposes to set forth specific, objective criteria describing the circumstances in which Exchange Floor Officials may determine that quotes from one or more markets in one or more particular classes of options are not reliable and, thus, may be excluded from CBOE's Retail Automatic Execution System ("RAES") determination of the National Best Bid and Offer ("NBBO").

[4] See Securities Exchange Act Release No. 42256 (December 20, 1999), 64 FR 72707 (December 28, 1999).

[5] See letter from Christopher R. Hill, Attorney II, Legal Department, CBOE to Terri Evans, Special Counsel, Division, Commission, dated October 24, 2000 ("Amendment No. 1").

[6] Telephone conversation between Patrick Sexton, Legal Division, CBOE, and Deborah Flynn, Assistant Director, Division, Commission, on December 14, 2001.

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the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm;

(b) Confirmed Quote Problems: A market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes;

(c) Crossed or Locked Markets: One or more floor officials observe that the market's quotes in six or more option series in a particular options class are crossed or locked with the disseminated quotes of two or more other markets (which may include the Exchange), and continue to be crossed or locked for 30 seconds or more, provided that the quotes must be crossed or locked at the time. Floor Officials determine to exclude the unreliable quotes from the RAES determination of the NBBO; or

(d) Documented Firm Quote Issues: One or more floor officials observe any of the following:

(1) One or more orders originating from an Exchange DPM or market-maker for a particular options class that are filled by the market at a worse price than its disseminated quote without a required quote change;

(2) One or more market orders or marketable limit orders originating from an Exchange DPM or market-maker for a particular options class that are confirmed to be unfilled or partially unfilled by the market without a required quote change; or

(3) One or more market orders or marketable limit orders originating from an Exchange DPM or market-maker for a particular options class partially filled by a "responsible broker or dealer" at its disseminated quote, followed by a quote change and a redisplay of the previously disseminated quote by the same "responsible broker or dealer" in less than 30 seconds.

In all such cases, the situation will be documented by the Exchange Control Room and reported to regulatory authorities at the appropriate market.

II. In all cases where floor officials exclude a market or any of its quotes from the RAES determination of the NBBO due to quote unreliability, the Exchange Control Room will promptly notify the market of the action, continue to monitor the reliability of the excluded quotes in consultation with Floor Officials, and maintain records showing the date, time, duration, and reasons for each such action, as well as the identity of the Floor Officials who authorized the action. Any determination to exclude a market or any of its quotes from the RAES determination of the NBBO pursuant to I(a) and (b) above will expire at the end of the trading day, or at such time as the quotes are confirmed by the market to be reliable again—whichever occurs first. Any determination to exclude a market or any of its quotes from the RAES determination of the NBBO pursuant to I(c) and (d) above will expire not later than 30 minutes after the initial determination, unless two Floor Officials determine that the excluded quotes continue to be unreliable in which case the quotes will continue to be excluded for an additional period of time not to exceed 30 minutes pending further Floor Official review. Exclusion of a market or its quotes from the RAES determination of the NBBO will be reported to Exchange member firms.

(b) In respect of those classes of options that have been specifically designated by the appropriate Floor Procedure Committee as coming within the scope of [this] *the first* sentence *of .02(a)* ("automatic step-up classes"), under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by no more than the "step-up amount" as defined below, such orders will be automatically executed on RAES at the current best bid or offer in the other market.

(i) In respect of automatic step-up classes of options under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up amount, or

(ii) In respect of series of option classes designated by the appropriate Floor Procedure Committee or its Chairman under circumstances where the NBBO for one of the series is crossed (e.g., 6.10 bid, 6 asked) or locked (e.g., 6 bid, 6 asked), or

(iii) In respect of specified automatic step-up classes or series of options or specified markets under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee has determined that automatic step-up should not apply because quotes in such options or markets are deemed not to be reliable, or

(iv) In respect of classes of equity options other than automatic step-up classes where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders will be rerouted for non-automated handling to the DPM or OBO for that class of options, or to any other location in the event of system problems or contrary routing instructions from the firm that forwarded the order to RAES. If the order has been rerouted to the DPM or OBO, the DPM or OBO will report the execution or non-execution of such orders to the firm that originally forwarded the order to RAES. With respect to the orders that are rerouted for manual handling pursuant to (ii) above, the appropriate Floor Procedure Committee may determine to have the orders for a particular series within a designated class of options executed on RAES notwithstanding the fact that the NBBO is either crossed or locked. Also, with respect to (ii) above, the appropriate Floor Procedure Committee may determine to have the orders rerouted for manual handling only when the CBOE RAES becomes crossed or locked as a result of applying the step-up amount.

As used in this Interpretation and Policy .02, the *term* "step-up amount" shall be expressed in an amount consistent with the minimum trading increment for options of that series established pursuant to Rule 6.42. The appropriate Floor Procedure Committee shall determine the step-up amount in respect of specified automatic step-up classes or series of options and may vary the "step-up amount"on the basis of order size parameters. The procedures described in this Interpretation *.02(b)* shall not apply in circumstances where a "fast market" in the options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply.

(c) For purposes of this Interpretation and Policy .02, the term "Exchange's best bid or offer" shall mean the price for the series as established by the DPM's Autoquote or proprietary automated quotation updating system. Classes of options in which Autoquote or a proprietary automated quotation updating system are not operative shall not be deemed to be "automatic step-up classes," as that term is defined in paragraph [(a)] *(b)* of this Interpretation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change, as amended by Amendment No. 2, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation and Policy .02 to CBOE Rule 6.8 provides that orders to buy or sell equity options that are multiply traded in one or more markets in addition to the CBOE will not be executed on RAES at prices inferior to the current best bid or offer in any other market, as the NBBO is identified in RAES.

Amendment No. 2 is designed to clarify procedures and specifically describe the circumstances under which the Exchange will be permitted to remove another market's quotes from the NBBO calculation. Specifically, removal will occur only when specific conditions set forth in this amendment allow Exchange Floor Officials to make a determination based on objective criteria that quotes in one or more options classes in a market are not reliable.

Reliable NBBO Calculations Benefit Public Customers

The CBOE believes that the presence of inaccurate and unreliable quotes is a significant problem because incorrect quotes undermine the integrity of the NBBO and by doing so, impede the very purpose of the National Market System, as well as inhibit the ability of public customers to obtain best execution for their orders. Removal of unreliable quotes, effected through objective criteria and well-defined procedures, is an appropriate function of the Exchange, necessary to protect the integrity and fairness of the market.

An NBBO is critical to the National Market System because it serve as the reference point for almost every options transaction effected on the Exchange. An accurate NBBO is essential because it allows market makers to compete actively with traders at other markets to offer improved pricing, which in turn, allows brokers to compare prices across markets to ensure that customers are getting the best prices. For example, CBOE's RAES system uses the Exchange's internally calculated NBBO to ensure that customer orders executed on RAES are executed quickly and at the best available price. Thus, CBOE rules generally provide for an automatic execution for customer orders for RAES eligible orders at the NBBO, if the NBBO is not more than one "tick" better than the prevailing price at CBOE. If the NBBO is more than one "tick" better than the current CBOE price, however, the order is removed from the RAES system and is routed to the trading floor for manual handling.

If the NBBO includes "unreliable" quotes, i.e., quotes that do not accurately reflect prevailing quotes at another market, and such unreliable quotes are more than one tick better than CBOE's quotes, customer orders will be removed from CBOE's RAES system. According to the CBOE, such orders will not be executed at the quoted NBBO, however, because no market actually will be trading at the unreliable NBBO quote. The presence of the unreliable quote in the NBBO therefore needlessly will deprive the customer of a fast, automatic execution through RAES. In fact, depending on the speed and direction of the market's movement, a rejected order may end up being executed at a price inferior to the CBOE's market at the time the order was entered. An incorrect NBBO may even prevent a customer order from being filled at all. For example, if a customer submitted a RAES-eligible marketable limit order, but the order was removed from RAES because of an unreliable quote in the NBBO that was more than one tick better than CBOE's quote, the market may move away from the customer's limit order price during the process of rerouting and manual handling of the customer's order. As a result, the customer's order may not get filled at all, or may receive a price less favorable than what would have been obtained had the customer's order been executed on RAES without the "unreliable" quotes.

The presence of unreliable quotes in the NBBO calculation therefore harms public customers, and it is the goal of the proposed rule change, as amended, to clarify the procedures for preventing such harm by removing unreliable quotes from the NBBO.

Specific Criteria for Unreliability Determinations

As indicated in new Subsection .02(A)(I) of the proposed rule change, as amended, two Floor Officials may determine that quotes in one or more particular option classes in a market are not reliable and thus may be excluded from the NBBO determination under any of the following circumstances:

(a) Where a market confirms that its quotes are not firm based upon direct communication to CBOE from the market or the disssemination through OPRA of a message indicating that disseminated quotes are not firm;

(b) Where a market directly communicates to CBOE or otherwise confirms that it is experiencing systems or other problems affecting the reliability of its disseminated quotes;

(c) Where one or more Floor Officials observe that six or more option series in a particular options class are crossed or locked with the disseminated quotes of two or more other markets, and continue to be crossed or locked for 30 seconds or more, provided that the quotes are crossed or locked at the time Floor Officials determine to exclude the unreliable quote from the RAES determination of the NBBO; or

(d) Where a Floor Official observes any of the following:

(1) One or more orders originating from an Exchange DPM or market-maker for a particular options class that are filled by the market at a worse price than its disseminated quote without a required quote change;

(2) One or more market orders or marketable limit orders originating from an Exchange DPM or market-maker for a particular options class that are confirmed to be unfilled or partially unfilled by the market without a required quote change; or

(3) One or more market orders or marketable limit orders originating from an Exchange DPM or market-maker for a particular options class partially filled by a "responsible broker or dealer" at a worse price than its disseminated quote, followed by a quote change and a redisplay of the previously disseminated quote by the same "responsible broker or dealer" in less than 30 seconds.

The Exchange believes that proposed new subsections I(a)–(d) to Interpretation .02 to Rule 6.8 provide Floor Officials with specific, objective criteria when making a determination that another market's quote are unreliable. In addition, the Exchange believes that the criteria set forth above are consistent with recent amendments to Rule 11Ac1–1 under the Act,[7] which require options exchanges and options market makers to publish firm quotes.[8] Specifically, in new subsections I(a) and (b), two Exchange Floor Officials may determine that another market's quotes are not reliable based on direct communication from that other market that its quotes are not firm or that it is experiencing systems or other problems affecting the reliability of its disseminated quotes.

In new subsection I(c), two Exchange Floor Officials may determine that another market's quotes are not reliable only after one or more Floor Officials observe that six or more option series in a particular options class are crossed or

[7] 17 CFR 240.11Ac1–1.

[8] Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

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locked with the disseminated quotes of two of more other markets, and continue to be crossed or locked for 30 seconds or more, provided that the quotes are crossed or locked at the time Floor Officials determine to exclude the unreliable quote from RAES determination of the NBBO. In new subsection I(d), two Exchange Floor Officials may determine that another market's quotes are not reliable only after one or more Floor Officials observe certain specific action with respect to the execution of orders originating from CBOE Designated Primary Market-makers or market-makers.

The Exchange believes that the objective criteria set forth in new subsection I provide an appropriate basis for Floor Officials to make a determination that another market's quotes are not reliable.

Procedures for Applying the Criteria

In developing these objective criteria for determining that another market's quotes are not reliable and, thus, may be excluded from the RAES determination of the NBBO, the Exchange has vested complete authority to make such determinations with Exchange Floor Officials. The market participants who are impacted by unreliable quotes have no authority or power to make determinations of unreliability.

As specified in Subsection (a)II, in all instances where Floor Officials exclude a market or any of its quotes from the RAES determination of the NBBO due to quote unreliability, the Exchange Control Room will promptly notify the market of the action and continue to actively monitor the reliability of the excluded quotes in consultation with Floor Officials. Any determination to exclude a market or any of its quotes pursuant to Subsections I(a) and (b) will expire at the end of the trading day, or at such time as the quotes are confirmed by the market to be reliable again—whichever occurs first.

Any determination to exclude a market or any of its quotes pursuant to Subsections I(c) and (d) will expire not later than 30 minutes after the initial determination, unless two Floor Officials determine that the excluded quotes continue to be unreliable, in which case the quotes will continue to be excluded for an additional period of time not to exceed 30 minutes pending further Floor Official review. This provisions is consistent with CBOE Rule 8.51(e)(iv),[9] which similarly requires CBOE Floor Officials to monitor options classes that are in non-firm mode every 30 minutes. Under CBOE Rule 8.51(e)(iv), continuation of the non-firm mode for longer than 30 minutes requires that Floor Officials reaffirm that the conditions which formed the basis for the determination to operate in non-firm mode continue to be present. Exclusion of a market or its quotes from the RAES determination of the NBBO will be reported to Exchange member firms.

Also, CBOE rules currently provide that CBOE will document in its Control Room log any action taken to disengage RAES or to operate RAES in a manner other than normal, the option classes affected by such action, the time such action was taken, the Exchange officials who undertook such action, and the reasons why such action was taken.[10] As a result, any determination by Floor Officials to exclude unreliable quotes from the RAES determination of the NBBO in particular option classes pursuant to subsections I(a) through (d) of Interpretation .02 will be documented in the Exchange's Control Room log.

As also indicated, this proposal relabels a portion of the previous Interpretation .02(a) text as .02(b) for greater ease of reference and relabels the previous Interpretation .02(b) text as .02(c).

2. Statutory Basis

CBOE believes that the proposed rule change, as amended, is consistent section 6(b) of the Act,[11] in general, and further the objectives of Section 6(b)(5),[12] in particular. By setting forth specific criteria that will be used to protect the integrity of the Exchange's NBBO calculations, public customers will receive better executions of their orders more frequently. This will improve the efficiency of RAES, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system, and thus protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. The Commission notes, in particular, that CBOE is a party to the intermarket options market linkage plan ("Linkage Plan") approved by the Commission in July 2000.[13] The Commission specifically seeks comment on the potential implications of this proposal on the implementation and operation of the Linkage Plan. Specifically, the Commission seeks comment on whether proposed Amendment No. 2 is consistent with the requirements of the linkage Plan.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File Number SR–CBOE–99–45 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–403 Filed 1–7–02; 8:45 am]

BILLING CODE 8010–01–M

[9] CBOE Rule 8.51(e)(iv) states that "[d]uring any period that the market in a reported security is in a non-firm mode, the Floor Officials shall monitor the activity or condition, which formed the basis for their determination. No more than 30 minutes after such market has been designated to be in a non-firm mode, the DPM shall review the condition of such market with the Floor Officials. Continuation of the non-firm mode for longer than 30 minutes shall require the reaffirmation of the reviewing Floor Officials. Such review and reaffirmation shall occur not less frequently than every 30 minutes thereafter while the non-firm mode is in effect."

[10] CBOE Rule 6.8, Interpretation .06.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[14] 17 CFR 200.30–2(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3389]

State of Minnesota

Ramsey County and the contiguous Counties of Anoka, Dakota, Hennepin and Washington in the State of Minnesota constitute a disaster area due to damages caused by a fire at the Shoreview Hills Apartments that occurred on November 24, 2001. Applications for loans for physical damage may be filed until the close of business on February 25, 2002 and for economic injury until the close of business on September 22, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 338905 and for economic injury is 9O0600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 21, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 02–472 Filed 1–7–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3383]

State of Mississippi; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Grenada, Lafayette, Leake, Scott, and Tunica Counties in the State of Mississippi as a disaster area due to damages caused by severe storms, tornadoes, and flooding and to establish the incident period for this disaster as beginning on November 24, 2001 and continuing through December 17, 2001.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Calhoun, Carroll, Jasper, Montgomery, Neshoba, Newton, Pontotoc, Smith, Union, Webster, and Winston Counties in Mississippi, and Lee County in Arkansas. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury is September 9, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 21, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–471 Filed 1–7–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: SR 20 (Sharpes Corner to SR 536) Skagit County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of Notice of Intent, FR document 99–23249.

SUMMARY: The FHWA is issuing this notice to rescind the previous Notice of Intent issued on August 27, 1999, to prepare an Environmental Impact Statement (EIS) for the proposed highway project in Skagit County, Washington. It was printed in the **Federal Register** on September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Healy, Transportation and Environmental Engineer, Federal Highway Administration, Washington Division, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, telephone: (360) 753–9480; Don Nelson, Director of Environmental and Engineering Programs, Washington State Department of Transportation, Transportation Administration Building, P.O. Box 47323, Olympia, WA (360) 705–6828, Director or Lorena Eng P.E., Northwest Region Administrator, WSDOT, 15700 Dayton Avenue North, P.O. Box 330310, Seattle, WA 98133–9710, telephone: (206) 440–4691.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), issued a Notice of Intent on September 8, 1999 to prepare an (EIS) on a proposal to prepare alternative solutions to reduce the accident rate and provide capacity to meet current and future needs along a seven miles of the State Route 20 corridor near Anacortes from Sharpe's Corner to SR 536. The SR 20 transportation safety improvement EIS is a National Environmental Policy Act (NEPA) "pilot" project, intended to evaluate and improve the application of the NEPA process specifically for EIS level of documentation. The "pilot" process was developed cooperatively by Washington State and Federal agencies, and is jointly sponsored by FHWA and WSDOT. As project limits and elements have been refined, the impacts have been more specifically identified, and the FHWA and WSDOT have jointly decided that the project will not result in significant impacts to the environment. A documented Categorical Exclusion (DCE) is the most appropriate environmental document under the NEPA rather than an EIS. The SR 20 transportation safety improvement project will phase-out of the "pilot" process upon definition of the preferred alternative, and be followed by preparation of the DCE and submission of the DCE for public comment. Any person with questions about the project may write to Paul Johnson P.E. at 15700 Dayton Avenue North, MS 210, P.O. Box 330310, Seattle, WA 98133–9710, or call (206) 440–4711.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

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Federal programs and activities apply to this program.)

Issued: November 8, 2001.

Elizabeth Healy,

Transportation & Environmental Engineer, Olympia, Washington.

[FR Doc. 02–331 Filed 1–7–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34141]

Brandywine Valley Railroad Company—Acquisition Exemption—Pennsylvania Department of Transportation

Brandywine Valley Railroad Company (BVRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 17.59 miles of rail line owned by the Pennsylvania Department of Transportation (PennDOT), between milepost 12.7 at the Delaware Pennsylvania line and milepost 30.29 at Modena, in Chester County, PA (rail line). BVRR currently operates the rail line under a modified rail certificate. See STB Finance Docket No. 33772, *Brandywine Valley Railroad Company—Modified Rail Certificate* (STB served Apr. 16, 1999).[1]

BVRR states that, while the transaction has already been consummated, BVRR is filing this notice to cover its acquisition of the ownership interest of the rail line, and the change in status of the rail line from a state-owned line to a privately-owned line. There will be no change in operations over the rail line. The exemption became effective on December 25, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34141, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796, (610) 692–9116.

Board decision and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: December 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–217 Filed 1–7–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Under the same modified rail certificate, BVRR also operates a rail line between milepost 18.0 at Wawa, PA and milepost 54.50 at the Pennsylvania/Maryland line near Sylmar, MD, a distance of 36.50 miles (Line 142), owned by Southeastern Pennsylvania Transportation Authority. BVRR has given notice of its intent to terminate service over Line 142, although it continues to operate Line 142 on a temporary basis.

Corrections

Federal Register
Vol. 67, No. 5
Tuesday, January 8, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Customs Service

19 CFR Part 12

Import Restrictions Imposed on Archaeological and Ethnological Materials from Bolivia

Correction

In rule document 01–30417 beginning on page 63490 in the issue of December 7, 2001, make the following correction:

§12.104g [Corrected]

On page 63499, in the third column, in amendment 2, under the headingfor §12.104g, "(2) * * *" is corrected to read "(a) * * *"

[FR Doc. C1–30417 Filed 1–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–869]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China

Correction

In notice document 01–31981 beginning on page 67197 in the issue of Friday, December 28, 2001, make the following correction:

On page 67202, in column two, in heading **Suspension of Liquidation**, in the second column of the table, "117.21" should read "177.21".

[FR Doc. C1–31981 Filed 1–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision

Correction

In notice document 01–19779, appearing on page 41550, in the issue of Wednesday, August 8, 2001, make the following correction:

In the first column, under the heading **EFFECTIVE DATE:**, " August 7, 2001." should read "August 8, 2001."

[FR Doc. C1–19779 Filed 1–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

Correction

In notice document 01–31608 beginning on page 66405 in the issue of Wednesday, December 26, 2001, make the following correction:

On the same page, in column two, under the heading "**DATES**", "February 25, 2002" should read "January 25, 2002".

[FR Doc. C1–31608 Filed 1–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

Correction

In notice document 01–31656 beginning on page 66494 in the issue of Wednesday, December 26, 2001 make the following correction:

On page 66494, the table is corrected to read as set forth below.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M	Solvay Fluorides St. Louis, MO (See Footnote 1).		3216
8215–M	Olin Corp., Brass & Winchester, Inc. East Alton, IL (See Footnote 2).		8215
10442–M	Kennedy Space Center Kennedy Space Center, FL (See Footnote 3).		10442
10798–M	Chemetall Foote Corporation Kings Mountain, NC (See Footnote 4).		10798
10929–M	Bulkmatic Transport Company Jersey City, NJ (See Footnote 5).		10929
11185–M	Medical Waste Solutions, Inc. Gary, IN (See Footnote 6).		11185

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Application No.	Docket No.	Applicant	Modification of exemption
11770–M	Gas Cylinder Technologies, Inc. Tecumseh, Ontario N8N 2M4 Canada (See Footnote 7).		11770
11911–M	RSPA–97–2735	Transfer Flow, Inc. Chico, CA (See Footnote 8)	11911
11924–M	RSPA–97–2744	Wrangler Corp., A Division of Lapoint Industries Auburn, ME (See Footnote 9).	11924
12817–M	RSPA–01–10513	Phibro-Tech, Inc. Fort Lee, NJ (See Footnote 10)	12817

[FR Doc. C1–31656 Filed 1–7–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 8, 2002

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2002 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska; Interim Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 121701A]

RIN 0648–AP69

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2002 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. These management measures will disperse fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts. This action also announces final 2002 harvest specifications and associated management measures for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA). The intended effect of this emergency interim rule is to protect the endangered western population of Steller sea lions, as required under the Endangered Species Act (ESA), and to conserve and manage the groundfish resources in the BSAI and the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 1, 2002, except for the addition of § 679.7(a)(18), the suspension of § 679.7(c)(3), and the addition of § 679.28(f)(3)(viii) which will be effective 1200 hours A.l.t. on June 10, 2002, through July 8, 2002, and § 679.7(k), § 679.50(c)(4)(vi) and (c)(6) which will be effective January 15, 2002, through July 8, 2002. Comments must be received by February 7, 2002.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Supplemental Environmental Impact Statement on Steller Sea Lion Protection Measures in the Federal groundfish fisheries off Alaska (SEIS), including the 2001 biological opinion, and the Environmental Assessment (EA) for the Total Allowable Catch for the Year 2002 Alaska Groundfish Fisheries may be obtained from the same address. The SEIS and EA are also available on the NMFS Alaska Region homepage at *http://www.fakr.noaa.gov*. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the Final 2002 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2001, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510 or from its homepage at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or e-mail at *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Introduction

The preamble to this emergency rule contains two parts. Part I explains the background surrounding actions taken to protect the endangered western population of Steller sea lions, including information on the development of protection measures for 2002. Part II describes the harvest specifications for the 2002 groundfish fisheries of the BSAI and GOA. These specifications are consistent with the 2002 Steller sea lion protection measures.

Part I. Steller Sea Lion Protection Measures

Steller Sea Lion Endangered Species Status

In 1990, NMFS designated the Steller sea lion as a threatened species under the ESA. The designation followed severe declines throughout much of the GOA and Aleutian Islands region. In 1993, NMFS designated critical habitat for the species to include (among other areas) the marine areas within 20 nautical miles (nm) of major rookeries and haulouts of the species west of 144° W longitude (long.). In 1997, NMFS recognized two separate populations and reclassified the western population (west of 144° W long.) as endangered.

NMFS first began collecting information on the abundance of Steller sea lions during the 1950s and 1960s. However, the first counts based on reliable data were not available until the late 1970s; these counts reported approximately 109,800 animals. During the 1980s, a precipitous decline of Steller sea lions was observed. By 1996, the population had declined by 80 percent from the late 1970s. Counts of adult and juvenile Steller sea lions have continued to decline over the last decade, but at a much lower rate.

Based on the best available scientific information, NMFS attributes the continued decline to multiple factors. Considerable evidence indicates that the lack of available prey is a substantial factor. Diet studies confirm that Steller sea lions depend on pollock, Pacific cod, and Atka mackerel as major prey resources, and that they may be particularly sensitive to reduced availability of prey during the winter. The occurrence of pollock, Pacific cod, and Atka mackerel in the diet of sea lions may have increased since the 1970s due to shifts in the Bering Sea ecosystem related to atmospheric and oceanographic changes. More information on the environmental changes and potential effects on Steller sea lions is detailed in section 4.4.1 of the October 19, 2001, Biological Opinion on the BSAI and GOA groundfish fisheries and the effects on Steller sea lions (see **ADDRESSES**).

Past Biological Opinions and Court Cases

In accordance with the requirements of the ESA, since 1990 the NMFS Office of Protected Resources has issued biological opinions (BiOps) on the pollock fisheries of the BSAI and GOA, on the Atka mackerel fishery of the Aleutian Islands subarea, and on the entire groundfish fishery for the GOA and BSAI. These opinions analyzed the effects of the various groundfish fisheries with emphasis on the Atka mackerel, Pacific cod, and pollock fisheries in the waters off Alaska and recommended actions to avoid jeopardy for the western population of Steller sea lions and to avoid adverse modification of its habitat. The term "jeopardize" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species" (50 CFR 402.02). The phrase "adversely modify its critical habitat" means "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical" (50 CFR 402.02).

Two BiOps were issued by NMFS in December 1998. The first one analyzed the Atka mackerel and pollock fisheries (1998–1 BiOp) and the second one analyzed the 1999 harvest specifications for all the 1999 groundfish fisheries in the BSAI and GOA (1998–2 BiOp). The 1998–1 BiOp, issued December 3, 1998, and revised December 16, 1998, concluded that the Atka mackerel fishery, as modified by regulatory changes (64 FR 3446, January 22, 1999), was not likely to jeopardize the endangered western population of Steller sea lions or adversely modify its critical habitat. However, the 1998–1 BiOp concluded that the pollock fishery, as then proposed, was likely to jeopardize the endangered western population of Steller sea lions and adversely modify its critical habitat. Rather than offering a specific reasonable and prudent alternative (RPA) for the BSAI and GOA pollock fisheries, the 1998–1 BiOp provided a framework in which specific management measures could be developed to avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions or adversely modifying its critical habitat. The framework consisted of three principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) protection from fisheries competition for Steller sea lion prey in waters adjacent to rookeries and important haulouts. For each of these principles, the 1998–1 BiOp provided guidance on the development of management measures to meet the objectives and, ultimately, to avoid jeopardy and adverse modification. The 1998–1 BiOp stated that certain conservation measures could be phased in over a 2-year period.

In December 1998, NMFS staff briefed the Council on the 1998–1 BiOp. The Council then prepared recommendations for alternative management measures based on the BiOp framework to avoid jeopardy and adverse modification. The Council's recommendation did not contain Bering Sea subarea (BS) pollock harvest specifications for the second half of 1999. However, the Council planned to recommend these measures prior to mid-1999. The Council also recommended closing all but nine of the haulout zones specified by the 1998–1 BiOp in the BSAI and GOA. NMFS determined these recommendations to be acceptable as part of a 2-year phase-in strategy, in which equivalent or better protections would be extended for those areas for 2000 and beyond.

On December 16, 1998, NMFS adopted the measures recommended by the Council (with modifications) into the 1998–1 BiOp as part of the reasonable and prudent alternatives (RPAs) for the Alaska pollock fisheries. NMFS published an emergency interim rule implementing these measures in the **Federal Register** on January 22, 1999 (64 FR 3437), as amended on February 17, 1999 (64 FR 7814), and on February 25, 1999 (64 FR 9375), and effective through July 19, 1999. The preamble to the emergency interim rule provides a detailed description of the purpose and need for the implementation of emergency measures in 1999.

The Council met again in February, April, and June 1999 to consider recommendations for extending the emergency rule for the second half of 1999, and, at its June meeting, voted to extend the emergency rule. Using the Council's recommendation, NMFS extended the emergency rule through December 31, 1999 (64 FR 39087, July 21, 1999; technical amendment 64 FR 43297, August 10, 1999), with revisions that included BS pollock harvest specifications for the second half of 1999.

In June 1999, the Council also deliberated on various management measures to implement permanently the RPAs as described in the 1998–1 BiOp for 2000 and beyond. After significant debate and public comment, the Council voted to recommend a series of conservation measures to protect Steller sea lions.

Greenpeace, the American Oceans Campaign, and the Sierra Club challenged the 1998–1 BiOp in the U.S. District Court for the Western District of Washington (*Greenpeace* v. *NMFS*, Civ. No. C98–0492Z (W.D. Wash.)). Several industry groups and Alaska communities joined the lawsuit as defendant-intervenors. In an Order issued on July 9, 1999 (and amended on July 13, 1999), the Court upheld the no-jeopardy conclusion for the Atka mackerel fishery and the jeopardy conclusion for the pollock fisheries. However, the Court also found that "the Reasonable and Prudent Alternatives * * * were arbitrary and capricious * * * because they were not justified under the prevailing legal standards and because the record does not support a finding that they were reasonably likely to avoid jeopardy." On August 6, 1999, the Court remanded the RPA back to NMFS for further analysis and explanation.

To comply with the Court's Order, NMFS conducted additional analyses and completed the Revised Final Reasonable and Prudent Alternatives (RFRPAs) on October 15, 1999. The RFRPAs described management measures to avoid the likelihood that the pollock fisheries authorized by regulations will jeopardize the continued existence of the endangered western population of Steller sea lions or adversely modify its critical habitat.

NMFS modified previous measures to conform with the RFRPA and implemented these measures by emergency interim rule for the 2000 groundfish fisheries (65 FR 3892, January 25, 2000, and 65 FR 36795, June 12, 2000). Although both environmental and fishing industry representatives challenged the adequacy of the RFRPAs in the U.S. District Court for the Western District of Washington, subsequent events in 2000 further modified measures to protect Steller sea lions (see below).

Greenpeace, the American Oceans Campaign, and the Sierra Club also challenged the legal adequacy of the 1998–2 BiOp, which NMFS issued on December 22, 1998. On January 25, 2000, the Court entered an Order finding the 1998–2 BiOp too narrow in scope (*Greenpeace* v. *NMFS*, 80 F. Supp. 2d 1137 (W.D. Wash. 2000)). On

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July 19, 2000, the Court issued an injunction prohibiting fishing for groundfish with trawl gear in the EEZ within Steller sea lion critical habitat west of 144° W long. until NMFS issued a comprehensive biological opinion adequately analyzing the full scope of the FMPs. (*Greenpeace* v. *NMFS*, 106 F. Supp. 2d 1066 (W.D. Wash. 2000)). The critical habitat areas closed by the Court's injunction were defined in regulations codified at 50 CFR 226.202, and in Tables 1 and 2 of 50 CFR part 226. NMFS issued an interim final rule prohibiting fishing for groundfish with trawl gear in Steller sea lion critical habitat during the pendency of the Court's injunction (65 FR 49766, August 15, 2000).

In response to the Court's Order finding the 1998–2 BiOp inadequate, NMFS issued a biological opinion on the BSAI and GOA groundfish fisheries FMPs (Comprehensive BiOp) on November 30, 2000. The Comprehensive BiOp evaluated the Federal groundfish fisheries as implemented by the BSAI and GOA FMPs and their implementing regulations. After analyzing the direct and indirect effects of the groundfish fisheries, as authorized by the BSAI and GOA FMPs, on listed species, the cumulative effects of non-Federal actions, and the environmental baseline, NMFS concluded that the pollock, Pacific cod, and Atka mackerel fisheries as then configured jeopardized the continued existence of the western population of Steller sea lions and adversely modified its critical habitat. This conclusion was reached based on the likelihood that pollock, Pacific cod, and Atka mackerel fisheries compete with Steller sea lions and reduce their ability to survive and recover in the wild. Competition with fisheries is likely to cause reduced availability of sea lion prey (especially on small scales) which would reduce their foraging success and lead to nutritional stress, especially of juveniles and to a lesser extent adult females. The Comprehensive BiOp included an RPA that modified the three fisheries in such a manner as to reduce the likelihood of causing local depletion of key sea lion prey species and thus avoid jeopardizing the continued existence of Steller sea lions or adversely modifying their critical habitat.

On December 21, 2000, prior to the implementation of the Comprehensive BiOp RPAs, the President signed Public Law 106–554. This law contained a one-year timetable for implementing the RPA from the Comprehensive BiOp as well as provisions affecting its implementation. Public Law 106–554, section 209(c)(2) required the RPA contained in the Comprehensive BiOp to become effective in its entirety on January 1, 2002, unless revised as necessary and appropriate based on independent scientific review or other new information. In accordance with Public Law 106–554, and starting on January 1, 2001, the 2001 BSAI and GOA groundfish fisheries were initially managed in accordance with the fishery management plans and Federal regulations in effect for such fisheries prior to July 15, 2000. This initial management regime was subsequently replaced as provided in Public Law 106–554, section 209(c)(4), via an emergency interim rule issued by NMFS under the Magnuson-Stevens Act and effective on January 18, 2001 (66 FR 7276, January 22, 2001). The emergency interim rule contained a suite of management measures that phased in certain provisions of the RPA.

In response to the conclusions of the biological opinions since 1998 and Public Law 106–554, NMFS issued permanent regulations for the Atka mackerel fishery (64 FR 3446, January 22, 1999) and a series of emergency regulations for the pollock fishery (64 FR 3437, January 22, 1999; 65 FR 3892, January 25, 2000) and for Atka mackerel, pollock, and Pacific cod fisheries (66 FR 7276, January 22, 2001, extended and amended 66 FR 37167, July 17, 2001, and corrected 66 FR 44073, August 22, 2001, and 66 FR 48371, September 20, 2001). These regulations disperse harvest over time and area and provide protection to areas important to Steller sea lions. In July 2001, the parties to the litigation concerning the biological opinions and the RFRPA filed a joint status report and agreed to stay further litigation until completion of the 2001 BiOp in October 2001. A subsequent joint status report dated November 1, 2001, agreed to continue the temporary stay of litigation until January 18, 2002, when a follow-up status report will be filed with the Court.

Development of 2002 Steller Sea Lion Protection Measures

In January 2001, the Council established an RPA Committee to make recommendations on Steller sea lion protection measures for the second half of 2001 and to develop Steller sea lion protection measures for 2002 and beyond. The Council's RPA Committee was composed of 21 members from the fishing community, the environmental community, NMFS, the Council's Science and Statistical Committee, the Council's Advisory Panel, and the State of Alaska Department of Fish and Game.

In developing the protection measures for the second half of 2001 and for 2002, the RPA Committee's first goal was to determine adequate forage for Steller sea lions using the best scientific and commercial information available and the second goal was to maximize the economic benefit to the fishing industry within constraints imposed by the ESA. The RPA Committee met numerous times to review Steller sea lion biology and habitat requirements, RPA from the Comprehensive BiOp, the draft SEIS and draft 2001 BiOp for this action, and commercial fishery and scientific survey information. Meetings in 2001 were held on February 10, February 20, March 6–7, March 26–29, April 9, May 9–11, May 21–24, and August 23–24. These meetings were open to the public and the public was provided with several opportunities to comment at each meeting.

After the available scientific information on Steller sea lion biology was discussed, the Committee reviewed commercial fisheries and harvest data to determine the competitive overlap between fisheries and Steller sea lions. With all of this information, the Committee then developed a fisheries management program intended to meet the requirements of applicable law. In April 2001, the RPA Committee presented its recommendations to the Council for fishery management measures for the second half of 2001. These recommendations were then forwarded by the Council to NMFS.

In June 2001, the RPA Committee recommended Steller sea lion protection measures for 2002 and beyond. However, the Committee did not reach consensus regarding the recommendations; two representatives from the environmental community objected and provided a minority report with the May 21–24 Committee minutes. Both the Committee's recommendation and the minority recommendation developed by the American Oceans Campaign and the National Environmental Trust were included as alternatives analyzed in the SEIS. Additionally, protection measures in the GOA, developed by the Alaska Marine Conservation Council, were included as an option to the preferred alternative in the SEIS. Minutes from all RPA Committee meetings have been distributed at Council meetings and are available on the Council's Web site at *http://www.fakr.noaa.gov/npfmc/default.htm*.

In June 2001, the Council recommended a suite of alternatives to be analyzed in the SEIS, including the RPA Committee's recommendation and the protection measures described in the minority report mentioned above. NMFS reviewed the recommendations and determined that they represented an adequate range of reasonable alternatives as required by the National Environmental Policy Act (NEPA). For purposes of identifying a proposed action in order to initiate formal consultation under Section 7 of the ESA, NMFS used the RPA Committee's recommendation as the preferred alternative (Alternative 4) in the draft SEIS. Alternative 4 also included three options added by the Council. Two of the options provided small boat exemptions for nontrawl gear Pacific cod fishing in the Chignik and Unalaska areas, and the third option established gear specific fishing zones for GOA Pacific cod fisheries (the Alaska Marine Conservation Council option).

In July 2001, the NMFS Office of Sustainable Fisheries (OSF) reinitiated consultation under the ESA with the NMFS Office of Protected Resources (OPR) based on the availability of new information and the substantial changes proposed in the fisheries since the completion of the Comprehensive BiOp. The new scientific information is described in more detail below under the specific protection measures. Consultation was requested on the management measures outlined in Alternative 4 of the draft SEIS. A draft biological opinion (2001 BiOp) was prepared by the OPR and distributed as Appendix A to the draft SEIS, which was available for public review on August 20, 2001 (comment period closed October 15, 2001). During informal consultations, the OSF and the OPR concurred that all other listed species occurring in Alaska other than Steller sea lions would not be adversely affected by the implementation of the proposed action. Therefore, only the endangered and threatened populations of Steller sea lions were the subject of the formal consultation and draft biological opinion issued by the OPR.

The draft 2001 BiOp, which is a consultation at the project level, did not supersede the previous Comprehensive BiOp. The Comprehensive BiOp remains valid and meets NMFS' requirement to consult at the FMP level. However, the RPA from the Comprehensive BiOp has been superseded by the managment measures in this rule.

The Council conducted a special meeting in September 2001 to review the draft SEIS and the draft 2001 BiOp. After review of these documents and public testimony, the Council identified Alternative 4 in the draft SEIS, with several modifications and without the options identified in June, as its preliminary preferred alternative. The Council decided not to include additional small boat exemptions for Unalaska and Chignik due to concerns that opening these areas would reduce their values as control sites for evaluating management measures and increase the likelihood for competitive interactions with sea lions, and that these sites have not been economically important to the small boat fleets. Also, the Council preliminarily decided not to include the GOA "gear zone" option due to potential conflicts with Magnuson-Stevens Act national standards 8 and 10 (i.e., local community access to fishing resources and safety).

Based on the analysis of alternatives in the SEIS, public testimony, and the draft 2001 BiOp, the Council made final recommendations for Steller sea lion protection measures. The 2001 BiOp determined that Alternative 4 met the requirements of the ESA by avoiding the likelihood of jeopardy to Steller sea lions and adverse modification of their critical habitat. Alternative 5 was determined in the SEIS to have similar effects as Alternative 4 on Steller sea lions and their critical habitat. Alternatives 2 and 3 were determined in the SEIS to have less adverse effects on Steller sea lions than Alternatives 4 and 5. Alternative 1 was more adverse to Steller sea lions than Alternative 4, based on the SEIS analysis. Given the results of the SEIS and the draft 2001 BiOp, the Council assumed that Alternatives 2, 3, 4, and 5 would meet the requirements of the ESA because Alternatives 2, 3, and 5 were considered to have similar or less adverse effects on Steller sea lions compared to Alternative 4. After the alternatives were identified that met the ESA requirements, the Council then determined which alternative provided the least impact on the human environment, including socioeconomic impacts, and which also met the requirements of the Magnuson-Stevens Act, including the national standards. The Council chose Alternative 4 because it met ESA requirements and came closer to meeting the overall objectives of the Magnuson-Stevens Act, including the national standards, and NMFS concurs with this decision. The final SEIS is available from NMFS (see **ADDRESSES**) or on the NMFS home page at *http://www.fakr.noaa.gov*.

NMFS solicited comments on the draft 2001 BiOp, which were considered in the final biological opinion. NMFS released the final 2001 BiOp on October 19, 2001, which was included as an appendix to the SEIS. Copies of the 2001 BiOp are available from the NMFS, Alaska Region homepage at *http://www.fakr.noaa.gov* (or see **ADDRESSES**). The 2001 BiOp concluded that the proposed action under Alternative 4, which is implemented by this emergency interim rule, is not likely to jeopardize the continued existence of either the eastern or western populations of Steller sea lions or adversely modify their critical habitat.

At its October 2001 meeting, the Council slightly modified its preferred alternative to provide limited relief to small vessels in response to public comments. These changes do not undermine the primary objective of avoiding jeopardy and adverse modifications to the Steller sea lions or their critical habitat. All of these modifications fell within the scope of the draft SEIS and the 2001 BiOp. Two modifications provided additional protection to Steller sea lions during 2002 in the Aleutian Islands subarea by eliminating the directed fishery for pollock and by reducing the proposed harvest of Atka mackerel in Steller sea lion critical habitat. The third modification is a near shore exemption for small vessels directed fishing for Pacific cod using hook-and-line or jig gear in the Bogoslof area and includes a harvest limit. Because of the extremely small harvest amount and closures around Steller sea lion haulouts in the area, this modification is expected to have no appreciable effects on Steller sea lions or their critical habitat. Public comment on the 2001 BiOp provided at the October Council meeting raised questions regarding the efficacy of using the Bogoslof area as a control site for comparing the fishery effects on Steller sea lions. Based on the extremely limited fishing by small vessels for Pacific cod and fishing prohibitions around Bishop Point, the Council changed its recommendation from September and requested NMFS implement a small boat exemption in the Bogoslof area (option 2 to Alternative 4 in the SEIS). The small vessel exemption in the Bogoslof area is within the scope of option 2 analyzed in the SEIS.

NMFS concurs with the protection measures recommended by the Council and these measures are contained in this emergency interim rule. NMFS intends to supersede this emergency interim rule implementing 2002 protection measures with proposed and final rulemaking to implement these or similar measures for the remainder of 2002 and beyond. The protection measures also replace the RPA identified in the Comprehensive BiOp.

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Protection Measures and the Most Recent Information

Scientists generally agree that the decline of the western population of Steller sea lions is due to a combination of factors including nutritional stress, predation, and natural environmental changes. These factors are primarily thought to affect juveniles, and to a lesser extent adult females, although how this occurs and the magnitude of the effects are largely unknown. Of these factors, the groundfish fisheries primarily affect nutritional stress and, through indirect mechanisms, may increase the likelihood for predation due to increased search time for prey. Funding for Steller sea lion research has increased over the past few years and may provide clarification on the causes for the sea lion decline.

The ESA requires NMFS to develop a Steller sea lion recovery plan, which includes criteria for delisting the species. A recovery plan was developed in 1992 with a set of delisting criteria, but these criteria were never adopted by the agency. A new Steller sea lion recovery team has been assembled and plans to meet in January 2002. Over a course of one to two years, the team will review the best available scientific and commercial data and will develop a new recovery plan replacing the outdated version. Because no recovery criteria are available, the 2001 BiOp addressed recovery in terms of effects of the proposed action on Steller sea lion population trajectories.

The 2001 BiOp concluded that the contribution of the groundfish fisheries to the Steller sea lion decline is likely to be small under the protection measures specified in this emergency interim rule. Although, adverse impacts to the two populations of Steller sea lions and their critical habitat are expected to result from these groundfish fisheries, the fisheries are unlikely to jeopardize the continued existence or adversely modify critical habitat for these populations. These protection measures are intended to avoid fishery-related reductions in abundance of Steller sea lion prey in key local foraging areas, as such reductions could reduce the effectiveness of sea lion foraging.

These protection measures address competitive interactions between the groundfish fishery and Steller sea lions in several ways. First, these measures will modify the existing harvest control rule to ensure that in the future enough prey resources exist overall and that prey densities are sufficient for Steller sea lions on a large scale. Second, the protection measures will distribute the catch of important prey species over zones of key importance to critical components of the Steller sea lion population and over time to reduce the effects of localized depletion. Localized depletion for a Steller sea lion is the reduction of prey resources to a level that decreases the efficiency of a foraging sea lion so that it adversely affects its health or increases its risk to predation. Finally, the protection measures will prohibit fishing in areas immediately surrounding all rookery and many haulout sites and curtail fishing for important prey species in significant portions of designated critical habitat to relieve competition in areas considered important to Steller sea lion survival and recovery.

In 1993, critical habitat was established to 20 nm seaward of haulouts and rookeries based on the best scientific information available at the time, such as Platform of Opportunity (POP) data (August 27, 1993, 58 FR 45269). In 1999 through 2001, protection measures included fishery restrictions out to 20 nm from Steller sea lion rookery and haulout sites. In most cases, the portion of critical habitat areas considered important for protection in 2002 and beyond is between 0 nm and 10 nm of haulout and rookery sites with areas closer to shore considered more important for animals with less foraging skills or for females with pups. POP data still provide the best information for adult male Steller sea lions because little telemetry data have been collected for these animals. Recent telemetry data have been collected and analyzed from primarily adult females and juveniles, which are the portion of the population that pose the most concern for localized depletion of prey. The new telemetry data indicate that waters beyond 10 nm are mainly used by adults and older juveniles, which are considered to have stronger foraging skills, and depletion of prey by groundfish harvesting in these waters is not as likely to adversely affect foraging by these individuals. Both telemetry data and POP data are known to have biased results, but NMFS recognizes that the telemetry data provide more recent information on the more sensitive components of population when considering potential localized depletion of prey by the groundfish fisheries. For these reasons, many of the protection zones or areas in this emergency interim rule extend to 10 nm from Steller sea lion rookeries and haulouts.

Steller sea lion count survey data also were used to determine the areas that needed more protection from potential fishery interaction. Some of the rookeries showed declines of more than 10 percent. In most cases, sites with higher rates of decline receive additional protection over areas with less decline under the measures in this emergency interim rule.

This emergency interim rule also includes provisions for control areas to aid in an experimental design to determine the effectiveness of management measures. The Bogoslof area and Seguam foraging area, and the Chignik critical habitat areas will be closed to pollock, Atka mackerel, and Pacific cod directed fishing, except to vessels using jig gear in the Chignik area and to small vessels fishing for Pacific cod using jig or hook-and-line gear in the Bogoslof area. The Chiniak Gully will be closed to trawling August 1 through September 20 to determine the impact of trawl fishing on localized depletion of pollock. A review of the 2001 BiOp by the National Academy of Science may provide further recommendations on an experimental design that would provide the information needed on the efficacy of management measures.

Summary of the 2002 Management Measures

The following is a summary of protection measures. More detailed descriptions by topic, fishery, and area follow in this preamble. The State of Alaska Board of Fisheries at its November 2001 meeting adopted the same protection measures for the State parallel fisheries with two exceptions in the Pacific cod pot fishery which are noted below. The State of Alaska Department of Fish and Game should be contacted for details on Steller sea lion protection measures inside State waters. The majority of the Steller sea lion protection measures contained in this emergency interim rule are effective January 1, 2002, through July 8, 2002. Protection measures include:

1. Area closures for federally permitted vessels to all groundfish fishing between 0 nm and 3 nm of 39 rookery sites. These sites are considered the most sensitive for females with pups and the near shore marine critical habitat the most important to protect from interactions between groundfish fisheries and Steller sea lions.

2. For the Atka mackerel, pollock, and Pacific cod directed fisheries in the waters off Alaska, protection measures include: (a) A modified harvest control rule (HCR) to prohibit directed fishing when the biomass reaches 20 percent of its unfished level, (b) closures within 10 or 20 nm of selected haulout and rookery sites to directed fishing for Atka mackerel, pollock, and Pacific cod in the GOA and BSAI, (c) closure of Seguam foraging area and most of the Bogoslof area to all gear types, (d) a VMS requirement, (e) closure of the Chignik area to pot, trawl, and hook-and-line gears, (f) closure within 10–20 nm of 46 rookeries and haulouts to hook-and-line fishing for Pacific cod, and 44 rookeries and haulouts to pot fishing for Pacific cod, and (g) modifications to the CDQ groundfish program.

3. Aleutian Island area protection measures include: (a) Closure of the subarea to directed fishing for pollock, (b) Pacific cod total allowable catch (TAC) apportionment by season and gear, as well as gear specific area restrictions that alternate with the Atka mackerel fishery in critical habitat in areas 542 and 543, (c) closure of the Seguam foraging area to pollock, Atka mackerel, and Pacific cod directed fishing by all gear types, (d) critical habitat harvest limit of 60 percent for Atka mackerel in areas 542 and 543, (e) a platoon management system for Atka mackerel fishing in critical habitat in areas 542 and 543, (f) two observers required for critical habitat Atka mackerel directed fishing, (g) at least 0–3 nm closures around all haulouts for Atka mackerel and Pacific cod trawl fishing and (h) no Atka mackerel critical habitat fishing west of 178° W long.

4. Bering Sea protection measures include: (a) Two seasons (40:60 percent apportionment) for the pollock fishery with no more than 28 percent of the annual directed fishing allowance taken from the Steller sea lion conservation area (SCA) before April 1, (b) continuation of BS pollock fishery cooperatives established under the AFA, (c) establishment of the BS Pollock Restriction Area during the A season, (d) closure of the Catcher Vessel Operation Area (CVOA) to non-CDQ pollock trawl catcher/processors during the B season, (e) Pacific cod TAC apportionments by season and gear, as well as gear specific area restrictions, and (f) closure of all BS subarea critical habitat to Atka mackerel fishing.

5. Gulf of Alaska protection measures include: (a) Distribution of pollock harvest evenly over 4 seasons, (b) closure of directed fishing for pollock in areas that vary from 0–20 nm to 0–3 nm around rookeries and haulouts, (c) two seasons (60 percent:40 percent) for Pacific cod fishing and area restrictions that are dependent on gear type and vessel size, and (d) continuation of the NMFS Chiniak Gully research project to explore the effects of commercial fisheries on pollock abundance and distribution in the GOA.

2002 Protection Measures Details for Harvest Time, Limits, and Apportionments

Modification of the Existing Harvest Control Rule (HCR)

The protection measures include a modification of the existing HCR for pollock, Pacific cod, and Atka mackerel. NMFS currently uses an HCR established under Amendments 56/56 to the FMPs when determining the maximum allowable biological catch (ABC). Under the existing HCR, the ABC for a majority of stocks, including pollock, Pacific cod, and Atka mackerel, is based on a fishing mortality rate intended to reduce the spawning biomass per recruit to 40 percent of its theoretical unfished level ($F_{40\%}$). When the biomass is below the amount necessary to produce the maximum sustainable yield (MSY), the fishing mortality rate is reduced linearly. When the spawning biomass per recruit is reduced to 2 percent of its unfished level, the fishing mortality rate becomes 0 and all fishing for that target stock is prohibited (see Figure 1). A new HCR was used in 2001 which reduced directed fishing for pollock, Pacific cod, and Atka mackerel in a more aggressive linear fashion than the original HCR and included a directed fishing prohibition at the 20 percent unfished biomass level.

The new HCR will be almost identical except that directed fishing would be prohibited when the spawning biomass is below 20 percent of the unfished level (as opposed to 2 percent in the current HCR).

Figure 1 shows the reduction in fishing mortality under the three methods of harvest control: (1) Amendments 56/56 to the BSAI and GOA FMPs for most groundfish species, (the existing HCR for most groundfish species), (2) the 2001 HCR, and (3) the 2002 HCR. The harvest rate under the 2002 HCR and under Amendments 56/56 would decrease at the same rate until 20 percent of the unfished spawning biomass is reached.

In a model, NMFS analyzed the difference in recovery rates back up to the MSY under the 2001 and 2002 HCRs and found very little difference (3–4 percent) between them. The 2001 BiOp concluded that the 2002 HCR is adequate to avoid locally depleting Atka mackerel, pollock, and Pacific cod for Steller sea lions.

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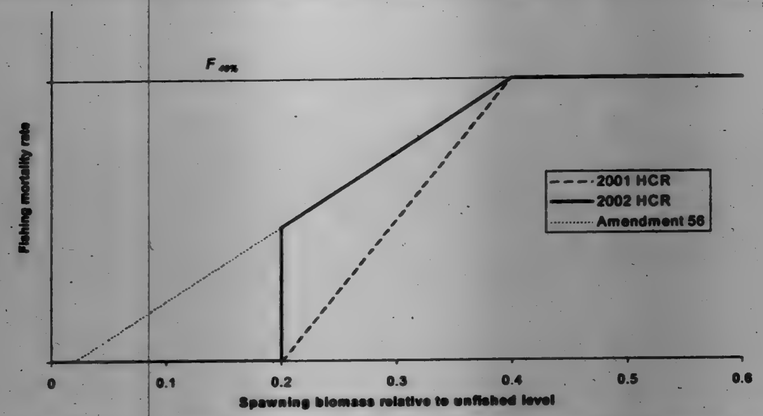

Figure 1. Relationship of fishing mortality rates under different control rules applied to pollock, Pacific cod, and Atka mackerel. FMP Amendments 56/56 harvest guidelines are used for groundfish species managed under the BSAI and GOA FMPs.

In 2002, the new HCR does not affect the harvest rates for any species. However, the GOA pollock biomass is estimated to be about 45 percent less than the 2000 estimate. Because of uncertainty in the point estimate and continued poor recruitment in the GOA pollock stock, the Plan Team recommended an ABC well below the maximum permissible using the HCR. Given the fact that in hindsight using the current model and known biomass amounts in 2001, the fishery would have overfished this stock if the total TAC would have been taken in areas 620 and 630. NMFS determines that this action is reasonable from a Steller sea lion and stock assessment perspective. See the SAFE reports for the GOA and BSAI and Part II of this preamble for more details. The SAFE reports are available from the Council (see ADDRESSES).

Steller Sea Lion Protection Measures for Pollock, Atka Mackerel, and Pacific Cod Fisheries

The 2002 Steller sea lion protection measures include fishing seasons and area restrictions for the pollock, Pacific cod, and Atka mackerel fisheries. The seasons will distribute these fisheries over time. Critical habitat harvest limits for pollock and Atka mackerel will be implemented by this emergency interim rule consistent with the Council recommendations. Critical habitat limits will distribute the Atka mackerel and pollock fisheries over area, reducing the potential for localized depletion of prey.

In order to manage fishing to prptect Steller sea lions, this emergency interim rule includes changes to the permit information collected under § 679.4. Vessels owners will need to register with NMFS to participate in the pollock, Pacific cod, and Atka mackerel fisheries. These directed fisheries will appear as endorsements on the vessel's Federal fishery permit for the area that the vessel owner has chosen for fishing these species. Vessel owners wishing to fish for Atka mackerel in critical habitat will also need to indicate whether they want to fish in Federal regulatory areas 542, 543, or both. The Atka mackerel registration information will be used for platoon management, which is explained later in this section.

Several AFA provisions from 2001 are extended into 2002 under this emergency interim rule as well as inshore/offshore allocations of GOA pollock and Pacific cod. These provisions effectively slow the rate of fishing and distribute fishing effort in a manner expected to reduce competition with Steller sea lions. These provisions also were evaluated by the Council as part of the new Steller sea lion protection measures. More details are in Part II of this preamble under the BSAI harvest specifications. Separate rulemaking is being pursued by NMFS to permanently implement these provisions in the future.

This action suspends the definition of directed fishing for pollock and other groundfish harvested under the CDQ program. It also revises the way that groundfish CDQ species may be used to calculate retainable amounts of other species, modifies groundfish CDQ retention requirements, and requires that a vessel's intended target fishery be reported on CDQ catch reports. These changes are necessary to ensure that the Steller sea lion protection measures being implemented by this emergency interim rule are applicable to groundfish CDQ harvesting activities.

Under current regulations, the general groundfish fisheries and groundfish CDQ fisheries have different definitions of directed fishing. For recordkeeping and reporting requirements, as well as for License Limitation groundfish fishing, directed fishing is defined as any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the current maximum retainable bycatch (MRB) amount, based on retained (or "basis") species on board a vessel at a given time. The pollock and groundfish CDQ directed fishing definitions differ from the MRB-based definition for two reasons. First, the AFA specifies that the only pollock that will accrue to the pollock CDQ reserve will be that amount caught by vessels directed fishing for pollock CDQ. Second, all other groundfish caught while groundfish CDQ fishing

must accrue towards one of the specified CDQ reserves, including economic discards or non-target species. In general, a vessel is considered groundfish CDQ fishing if it has been listed in a NMFS approved Community Development Plan and catches any amount of groundfish CDQ, including pollock. More specifically, the assessment of a vessel's particular target fishery is determined differently, depending on vessel type. For catcher/processors, the species composition of each haul is assessed to determine the directed fishery. For catcher vessels, the species composition on board the vessel at any time is used. Typically this information is used for pollock catch accounting purposes and the calculation of halibut bycatch mortality rather than at-sea enforcement of other management measures.

The definition of directed fishing for pollock CDQ uses a 60 percent threshold to determine whether a vessel using trawl gear is directed fishing for this species. If this criterion is met, then the pollock accrues toward the pollock CDQ reserve. If not, it accrues towards the pollock Incidental Catch Allowance (ICA). Pollock caught incidentally in groundfish CDQ fisheries by vessels using nontrawl gear also accrues towards the ICA. This definition of pollock CDQ fishing was established as part of a final rule implementing Amendment 66 to the BSAI FMP on March 7, 2001 (66 FR 13672), and was intended to meet the intent of the AFA. This definition was designed to facilitate pollock catch accounting, not to identify a vessel's overall target fishery. Defining CDQ directed fisheries via the use of MRB standards will offer a more accurate portrayal of a vessel's actual CDQ target fishery. For purposes of implementing the Steller sea lion protection measures, using the 60 percent definition of pollock CDQ fishing could conflict with the calculated target fishery derived by using MRB amount calculations. A vessel could, under current regulations, be considered directed fishing for pollock CDQ based on the species composition of a single haul, whereas under MRB calculations it would not.

The suspension of CDQ specific directed fishing definitions, modifications of the use of CDQ species as basis species, and suspension of the use of a 60 percent threshold to facilitate pollock CDQ catch accounting in this emergency interim rule are necessary to establish a means to readily enforce time and area closures to directed fishing for pollock, Pacific cod, and Atka mackerel. Applying the definition of directed fishing already used for the non-CDQ groundfish fisheries will enhance the monitoring and enforcement of Steller sea lion protection measures. This will give consistency to the at-sea determination of both a vessel's non-CDQ and CDQ target fisheries. Additionally, to lessen the potential for confusion by NMFS staff, U.S. Coast Guard boarding personnel, vessel operators, and CDQ groups, MRB amounts will be used to define directed fishing for all groundfish CDQ species.

These measures, along with a new requirement to report the intended target species on CDQ catch reports, will also assist NMFS management to determine when catch limits have been reached, when area closures should occur, and how to account for pollock caught in the groundfish CDQ fisheries. The target information that will be received on CDQ catch reports will be used by NMFS to determine whether to accrue pollock towards either the pollock CDQ allocation or the pollock ICA. Additionally, current regulations do not require regulatory discards in the groundfish CDQ fisheries. However, the use of MRB amounts may require that some Atka mackerel or Pacific cod be discarded at-sea if CDQ directed fishery closures are in effect for these two species. Such catch will still be required to be reported on CDQ catch reports and will be subtracted from their corresponding CDQ allocations.

The protection measures addressing temporal and spatial dispersion of the pollock, Atka mackerel, and Pacific cod directed fisheries are as follows:

1. Aleutian Island Subarea Pollock Fishery

In the AI subarea directed fishing for pollock is prohibited at all times.

2. Bering Sea Subarea Pollock Fishery

In the Bering Sea subarea, fishing seasons are continued for the four sectors of the Bering Sea pollock fishery that are defined in the AFA. These seasons are defined as the A season (January 20–June 10, 40 percent) and the B season (June 10–November 1, 60 percent).

Pollock fishing will be prohibited during the A season in the Bering Sea Pollock Restriction Area (BSPRA). This area is based on a series of straight lines tangential to haulouts, 10 nm from the shore between the eastern edge of the SCA and the western edge of Statistical Area 519. The BSPRA is intended to reduce the likelihood of localized depletion and competitive interactions during critical winter months when juvenile Steller sea lions are learning to forage.

This emergency interim rule extends the repeal of the "fair start" provisions at § 679.7(b) that required vessels fishing for pollock in the Bering Sea to cease fishing for groundfish during the week preceding each pollock season or face a mandatory stand-down period during the first week of the pollock season. The Council determined that these fair start requirements were no longer necessary given the changes to the pollock fishery that occurred under the AFA.

Catcher vessel exclusive fishing seasons at § 679.23(i) will be continued by this emergency interim rule. Vessels fishing in one season in the GOA or in the BSAI are restricted from fishing in the alternative management area until the following season. This restriction will limit the concentration of fishing effort in one area and reduce the potential for localized depletion of Steller sea lion prey. Catcher vessels less than 125 ft (38.1 m) LOA fishing east of 157° W long. are exempt from this restriction.

This emergency interim rule also will extend the use of the SCA established by the emergency interim rule published January 25, 2000 (65 FR 3892), at § 679.22(a)(11). The SCA includes the portion of Bering Sea critical habitat known as the Bogoslof Foraging area and the portion of the CVOA that extends eastward from the Bogoslof Foraging area. This eastern block of the CVOA overlaps with the pollock trawl exclusion zone for Sea Lion Rocks (Amak Island). Inclusion of this eastern block in the SCA is necessary to provide sufficient protection from concentrated fishing and resulting localized depletions of sea lion prey in (1) the narrow corridor between the Bogoslof Foraging Area and the Sea Lion Rocks (Amak Island) trawl exclusion zone and (2) the adjacent portions of critical habitat.

The SCA consists of the area of the Bering Sea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;
55°00′ N lat. 168°00′ W long.;
55°30′ N lat. 168°00′ W long.;
55°30′ N lat. 166°00′ W long.;
56°00′ N lat. 166°00′ W long.;
56°00′ N lat. 163°00′ W long.

This emergency interim rule specifies the amount of the annual pollock directed fishing allowance (PDFA) that can be taken from the SCA during the A season. The PDFA is equal to the sum of each sector's TAC minus the ICA and 10 percent CDQ reserve. Until April 1, the harvest within the SCA is limited to

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28 percent of the annual PDFA which is equivalent to 70 percent of the A season apportionment. The remaining 12 percent of the annual PDFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual PDFA is not taken inside the SCA before April 1, the remainder may be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the PDFA as set forth in the AFA. This action is necessary to avoid high harvest rates within a relatively small area of the BS subarea which is Steller sea lion critical habitat.

NMFS will monitor catch by each industry sector and close the SCA to directed fishing for pollock by sector when NMFS determines that a sector's specified portion of the SCA limit has been reached. As in 2001, in accordance with the Council's intent to address small vessel safety concerns, inshore catcher vessels less than or equal to 99 ft (30.2 m) LOA will continue to be exempt from SCA closures unless the cap for the inshore sector has been reached, as specified in § 679.22(a)(11)(vii). Under the authority of the AFA, NMFS will separate the inshore fishery into cooperative and non-cooperative sector allocations. For each sector, NMFS will announce the closure of the SCA to catcher vessels over 99 ft (30.2 m) LOA before the inshore sector SCA limit is reached. NMFS will implement the closure in a manner intended to leave remaining quota within the SCA that is sufficient to support directed fishing for pollock by vessels less than or equal to 99 ft (30.2 m) LOA for the duration of the inshore sector opening.

The CVOA will continue to be closed to pollock trawl catcher/processors during the B season (June 10-November 1) to reduce the amount of pollock taken from this area and to reduce the potential for competition with Steller sea lions.

3. GOA Pollock Fishery Seasons and Apportionments

Fishing seasons and pollock TAC apportionments in the GOA are summarized in Table 1.

TABLE 1.—POLLOCK FISHING SEASONS AND TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA

Season	TAC apportionment (percent)	Season dates
A	25	January 20–February 25.
B	25	March 10–May 31.
C	25	August 25–September 15.
D	25	October 1–November 1.

Rollover of a seasonal TAC apportionment is permitted as long as it does not exceed 30 percent of the annual TAC.

The start date of the C season has been changed from August 20 in 2001 to August 25 in 2002. This change is intended to reduce salmon bycatch and to optimize the use of shoreside processing facilities and the harvest of the pollock allocation in the C season. This change is expected to have no appreciable effect on Steller sea lions.

The 300,000 lb (136 mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA at § 679.7 supports temporal distribution objectives and is maintained by this rule. A catcher vessel fishing for groundfish in the GOA will be prohibited from retaining on board more than 300,000 lb (136 mt) of pollock harvested in the GOA any time during a trip. This trip limit will not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop fishing for pollock during a fishing trip before the 300,000 lb (136 mt) trip limit is reached to avoid a violation of either the 300,000 lb (136 mt) trip limit or the 100 percent retention requirement for pollock.

In addition, § 679.7 continues to prohibit vessels from operating as pollock tenders in the GOA east of 157°00′ W long. to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in the GOA west of 157°00′ W long. will be prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock or the equivalent of two fishing trips. Tendering west of 157°00′ W long. is allowed because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate east of 157°00′ W long. and deliver primarily to Kodiak.

4. BSAI Atka Mackerel Seasons, Apportionments, Critical Habitat Harvest Limits, and Platoons

In the BSAI at § 679.23(e)(7), the A season for Atka mackerel will begin January 20 and end April 15. The B season will begin September 1 and end November 1. The CDQ Atka mackerel fishery will have a single season from January 20 through November 1 because the vessels used in the non-CDQ Atka mackerel fishery are generally the same vessels used in the CDQ fishery, and the CDQ harvest historically takes place when the non-CDQ season is closed.

Fifty percent of the annual TACs for the western, central, and eastern Aleutian Islands districts is available during each season. No more than 60 percent of the seasonal TAC may be taken from within the harvest limit area (HLA) in statistical Areas 542 and 543 in the AI subarea. The HLA includes critical habitat and two additional Steller sea lion haulouts located west of 178° W long. and is further explained below. The apportionment is based on the assumed distribution of Atka mackerel based on depth contour of the continental shelf and on an objective to reduce the amount of rockfish bycatch that has occurred historically at relatively high levels outside of critical habitat in deeper waters in areas 542 and 543. Critical habitat limits in 2001 were between 48 and 46 percent. One of the objectives in setting harvest levels is to harvest at a level relative to the abundance of the fish in the area to avoid localized depletion. The biomass estimates in areas 542 and 543 indicated that up to 75 percent of the biomass occurs in critical habitat, but the Council recommended, and NMFS concurs, that a more conservative increase in the amount of harvest from critical habitat is appropriate because this fishery has caused measurable localized depletions in the past. Higher levels of harvest in critical habitat may be considered in the future after additional analysis. Analyzing the effectiveness of the platooning system for managing the fleet in the HLA will provide additional information to understand the potential impact of higher harvest limits in the future. The amount of harvest allocated to the HLA also needs to be enough to encourage the participation in platoons used to manage the critical habitat fisheries.

NMFS catch data indicate a higher catch rate of Atka mackerel in area 542 than in area 543 so that area 542 vessels will likely reach their HLA limit quicker than area 543 vessels. Thus, area 542 vessels could have an earlier opportunity to fish outside of critical habitat and encounter rockfish bycatch in amounts sufficient to pose overfishing concerns and close the Atka mackerel fishery without area 543 critical habitat limits being reached. With the 60 percent limit in the HLA, vessels will be able to spend more effort inside critical habitat and will be less likely to shut down the Atka mackerel fishery due to rockfish bycatch compared to a limit set at 50 percent or less.

To clearly identify the Steller sea lion protection areas for Atka mackerel directed fishing in areas 542 and 543, this emergency interim rule establishes a new definition at § 679.2. For purposes of Atka mackerel platooning and for restriction of Pacific cod trawling during the Atka mackerel HLA directed fishery, the definition of the HLA is waters within 20 nm seaward of Steller sea lion sites listed in Table 24 of 50 CFR part 679. This definition is needed to include Rat Island and Cape Ivakin haulouts because these are not listed under 50 CFR 226.202 as critical habitat but are identified by NMFS as needing protection as part of the measures implemented to avoid the likelihood of jeopardy.

Atka mackerel fishing is prohibited in critical habitat east of 178° W long. to provide maximum protection to Steller sea lions and because Atka mackerel is readily available in waters outside of critical habitat. Atka mackerel harvest is permitted in critical habitat west of 178° W long. under a system of platooning and with observers. All vessels fishing for Atka mackerel in HLA west of 178° W long. are required to have two observers so that NMFS can meet the requirements of the 2001 BiOp to adequately monitor fisheries to manage critical habitat limits.

To reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas, the Atka mackerel fleet is divided into two platoons assigned to fish in the HLA in either areas 542 or 543. NMFS will assign vessels to a platoon for each area that a vessel registered to fish. Each platoon in an area will be assigned to fish during one of the two directed fisheries held in the area during a season. This division will be done through a lottery system that ensures random selection of vessels to a platoon. The random selection process will be used to ensure that each participant in a platoon is provided an equal opportunity to fish in a platoon of vessels in an HLA in area 542 or area 543 and that the combination of vessels fishing together is determined by chance.

With the random selection process, the potential exists that vessels of less fishing capability may be in a group of vessels with more fishing capability, affecting the smaller vessel's opportunity to harvest fish. By dividing the vessels registered for an area into platoons, all vessels will be competing with half of the vessels that they normally compete against, reducing competition on the fishing grounds and potentially enhancing the overall harvest for smaller vessels in the HLA. However, the potential for competitive advantage of larger vessels from the same company working together over the smaller vessels will be reduced with the random platoon assignments, making it more likely that dispersion of catch over time is achieved.

During a fishing season, the fishing limit inside the HLA will be split into two predetermined Atka mackerel directed fisheries with each platoon fishing under a harvest limit in proportion to the number of vessels in the platoon compared to the number of vessels registered for the area. The time period of the directed fishery is based on the combined harvest potential of the vessels in the platoon. The start date for the first directed fishery is 48 hours after the closure of the area 541 Atka mackerel directed fishery. Historically, area 541 is harvested first with vessels, which later move into areas 542 and 543. Starting the HLA directed fisheries 48 hours after closure of area 541 provides a fair start to the HLA fisheries by allowing for off loading of catch and travel to areas 542 and 543. When the HLA directed fishery is closed in either areas 542 or 543, vessels may fish outside of the HLA anywhere in the Aleutian Islands where directed fishing is open.

If a vessel has registered to fish in an HLA in both areas 542 and 543 during a season, it will be assigned to fish in directed fisheries in area 542 and in area 543 that begin on different dates. Regardless of the number of vessels in a platoon, an HLA directed fishery would last no longer than 14 days to allow each platoon ample opportunity to harvest in the HLA in areas 542 or 543 before the end of the season.

During each season, vessels registered to fish in the HLA in areas 542 or 543 may not fish for groundfish in any other location while the first directed fishery in an HLA which the vessel is assigned is open. This stand down provision may last up to 14 days, the maximum length of an HLA directed fishery for Atka mackerel.

Vessels not wishing to participate in the platoons may fish for Atka mackerel outside of the HLA and outside of critical habitat in the BSAI subareas.

5. BSAI and Western and Central Districts of the GOA Pacific Cod Seasons, Apportionments, and Closures

For the BSAI and Western and Central Districts of the GOA Pacific cod seasons, this emergency interim rule separates the TACs into separate seasonal apportionments depending on gear type (Table 2). For the nontrawl vessels in the BSAI and Western and Central Districts of the GOA, the A season begins on January 1, 2002, and ends June 10, 2002. Sixty percent of the annual TAC, after subtraction of any reserves and incidental catch, will be available for harvest during the A season and will be allocated among the various sectors as provided in § 679.20(a)(6)(iii) and (a)(7). The nontrawl B season in both the BSAI and Western and Central Districts of the GOA begins at 1200 hours, A.l.t., on June 10, 2002, and ends on December 31, 2002. Forty percent of the annual TAC, after subtraction of any reserves and incidental catch, will be available for harvest during the B season and will be allocated among the various sectors as provided in § 679.20(a)(6)(iii) and (a)(7). Pot and hook-and-line vessels less than 60 ft (18.3 m) LOA in the BSAI have no seasonal apportionment. For the trawl fisheries in the BSAI, the annual TAC is apportioned to three seasons. The A season starts January 20 and ends April 1 with 60 percent of the annual TAC allocated. The B season starts April 1 (1200 hours, A.l.t.) and ends June 10 with 20 percent of the annual TAC allocated and the C season starts June 10 (1200 hours, A.l.t.) and ends November 1 with 20 percent of the annual TAC allocated. In the Western and Central Districts of the GOA, trawl vessels are allocated 60 percent of the annual TAC in the A season and 40 percent in the B season.

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TABLE 2.—BERING SEA AND ALEUTIAN ISLANDS SUBAREAS AND WESTERN AND CENTRAL DISTRICTS OF THE GULF OF ALASKA PACIFIC COD SEASONS AND TAC APPORTIONMENTS

Gear and area	A season and apportionment	B season and apportionment	C season and apportionment
Trawl in W/C GOA	January 20–June 10 (60%)	September 1–November 1 (40%).	
Trawl in BSAI	January 20–April 1 (60%)	April 1–June 10 (20%)	June 10–November 1 (20%)
Hook-and-line, pot, and jig in W/C GOA, and pot > 60 ft. LOA in BSAI.	January 1–June 10 (60%)	September 1–December 31 (40%).	
Hook-and-line > 60 ft. and jig in BSAI	January 1–June 10 (60%)	June 10– December 31 (40%).	
CDQ* pot, pot and hook-and-line < 60 ft in the BSAI	January 1–December 31		

*Community Development Quota program. CDQ vessels fishing with non-pot gear are governed by the gear specific seasonal restrictions listed in Table 2.

Unused Pacific cod allocations among sectors and unused apportionments for seasons in the BSAI and Western and Central GOA may be redistributed, considering bycatch and optimization of catch by gear groups and sectors.

Moving 20 percent of the BSAI Pacific cod TAC from the first season to the second season provides greater dispersion of the harvest and limits fishing in the most sensitive period for Steller sea lions. Apportioning the BSAI Pacific cod trawl TAC among three seasons shifts 20 percent of the harvest out of the June through October time period compared to 2001 apportionments. Moving 20 percent of the harvest from the second half of the year enhances the opportunity for the Pacific cod trawl fleet to harvest Pacific cod when it is aggregated, optimizing the potential to reach the annual harvest limit. The apportionment during the first half of the year is further divided into 60 percent and 20 percent of the annual TAC.

Apportioning Pacific cod between two or among three seasons may affect the ability of fishermen to fully utilize the TAC for Pacific cod. In previous years, a large portion of the Pacific cod TAC was taken during the early part of the calendar year. Pacific cod tends to aggregate during the early part of the calendar year when it is easier to locate and catch. Also, as Pacific cod becomes disaggregated, the increased fishing time and effort to catch the same amount of fish results in increases in bycatch, which also can affect the success of fully utilizing the TAC.

In the BSAI, the trawl allocations of Pacific cod TAC are further allocated to catcher vessels and catcher/processors. The seasonal allocation for the Pacific cod trawl catcher vessels is further split to 70 percent in the A season, 10 percent in the B season, and 20 percent in the C season. Pacific cod trawl catcher/processors' portion of the TAC is allocated 50 percent in the A season, 30 percent in the B season, and 20 percent in the C season. Many of these vessels participate in the AFA pollock fishery, which has resulted in the dispersion over time of not only pollock but also Pacific cod harvests in the BSAI. Rollovers between these sectors will continue to be allowed under § 679.20(a)(7)(ii). Regulatory provisions are added by this emergency interim rule to allow the rollover of BSAI Pacific cod trawl allocations between seasons. Trawl allocations to catcher vessels and catcher/processors may continue to be moved between vessel types within a season before reallocation to other gear types to allow for full optimization of an allocation by the trawl sector during a season. These gear allocations will help to further disperse the Pacific cod fishery over time and lessen the potential for depletion of prey.

In the GOA, bycatch of Pacific cod in other groundfish fisheries during the time period between the closure of the A season and the opening of the B season will be deducted from the B season apportionment. This recommendation by the Council is intended to optimize the harvest of Pacific cod when it is most vulnerable to fishing gear while fully providing for Pacific cod bycatch needs in other groundfish fisheries.

Under this emergency interim rule, Pacific cod harvest by trawl gear in the Aleutian Islands critical habitat in areas 542 and 543, west of 178° W long. is prohibited during the Atka mackerel HLA directed fisheries. (See above discussion of Atka mackerel for the definition of the HLA.) This provision reduces potential competition for prey posed by concurrent trawl fisheries in critical habitat. It also allows for easier management by NMFS of the Atka mackerel fishery during the short time period that HLA is open to directed fishing for Atka mackerel vessels. Vessels fishing in the HLA during the Atka mackerel directed fishing opening will be managed for Atka mackerel only, instead of managing directed fisheries for Atka mackerel and Pacific cod.

Closed Areas and Management Measures

The Steller sea lion protection measures include fishery closure areas designed to reduce competition with Steller sea lions, consistent with the concerns described in the 2001 BiOp. Scientific information suggests that the effects of the groundfish fisheries on Steller sea lions may be greatest around rookeries and haulouts. Fishing prohibitions around rookeries and haulouts is important to the most vulnerable Steller sea lions, lactating females, young-of-the-year, and juveniles.

Since publication of critical habitat definitions in 50 CFR 226.202, NMFS has identified 19 additional haulouts in the BSAI and the GOA as areas to be protected from fishery effects similarly to critical habitat. The Council recommended and NMFS agreed that the 19 additional haulouts should be treated in this manner to provide protection to Steller sea lions occurring in areas with the same features as areas listed as critical habitat. The majority of these sites had fishing prohibitions consistent with those for critical habitat closures sites in 2001. Cape Ivakin and Rat Island in the Aleutian Islands are two haulouts that are not listed as critical habitat and were not protected from fishing activities in 2001 in the same manner as critical habitat in the Aleutian Islands. More information and justification for including these haulouts is contained in the 2001 BiOp.

At its November 2001 meeting, the Alaska Board of Fish (BOF) accepted Steller sea lion protection measures for the State parallel fishery similar to Federal protection measures, with two exceptions. State parallel fisheries are open during the same time period as Federal directed fisheries in the EEZ. NMFS deducts harvest amounts which occur during the State parallel fisheries from the Federal TACs. Other State-managed groundfish fisheries function exclusively under State regulations and management policies and are not accounted for by NMFS management. The single exception is the State-managed Pacific cod fishery in the Central, Western, and Prince William Sound State waters of the GOA. The Federal TACs for Pacific cod in the Western and Central districts are reduced from the ABCs by the amounts anticipated to be taken in the State-managed Pacific cod fishery. The State parallel groundfish fisheries management plan requires the Commissioner by emergency order to open and close parallel seasons and implement gear, time, and area restrictions at the same time and in the same manner as Federal managers do under the regulations implementing the FMPs. The State intends to implement Steller sea lion protection measures in the State parallel fisheries regulations that apply to State waters 0 nm to 3 nm and in Prince William Sound and Cook Inlet.

The BOF gave the Commissioner of the Alaska Department of Fish and Game emergency order authority to exempt pot fishing for Pacific cod within 0–3 nm of Caton Island and Cape Barnabus from the parallel fishery closures which are based on Federal rules. Because of the slow rate of extraction in the pot fishery and the small amount of Pacific cod harvest by this gear sector, NMFS determined through continued consultation under section 7 of the ESA that this change to the action would not result in any appreciable effects on Steller sea lions not previously considered in the 2001 BiOp.

Four haulout sites listed as critical habitat under 50 CFR 226.202 occur in the internal waters of Prince William Sound. These sites are Pt. Elrington, The Needle, Perry Island, and Pt. Eleanor. Glacier Island also occurs in Prince William Sound and is one of the 19 haulouts not listed as critical habitat. There is no Federal fishery or State parallel fishery in this area. The State-managed fisheries are closed to pollock trawling from June 1–November 1 from 0 nm to 10 nm around Pt. Elrington, The Needle, and Glacier Island. Harvest of pollock is also apportioned across three areas of Prince William Sound with no more than 40 percent of the total harvest coming from a single area. This emergency interim rule includes no protection measures for these sites inside State internal waters.

The protection measures make no changes to the existing 3 nm no-entry zones around rookeries listed in 50 CFR 223.202. Those sites that are subject to the no-entry zones under 50 CFR 223.202 are also listed in Table 21 to 50 CFR part 679 for fishing closures. However, persons should refer to 50 CFR 223.202 for the appropriate locations of the no-entry zones. In some cases those locations may be different than locations for the same sites that are also listed in Table 21 to 50 CFR part 679. NMFS will reconcile any differences between the two sets of regulations in the near future. However, until that occurs, persons are advised to refer to 50 CFR 223.202 for the proper location of no-entry zones and Table 21 to 50 CFR part 679 for proper location of sites for fishery closures. Two additional rookeries currently not designated as critical habitat are included in Table 21 for groundfish fishing closures within 3 nm of the rookeries. These sites are Wooded Island and Seal Rocks (Cordova). The 3 nm groundfish fishing closures apply to all groundfish fishing vessels and all gear types. The State-managed and parallel fisheries through emergency orders and regulations prohibit entry and/or groundfish fishing in waters within 3 nm of all of the rookeries listed on Table 21.

The RPA Committee made recommendations for closures around haulouts and rookeries dependent on the rate of decline seen at the site and historical fishing patterns. In some cases, sites with higher rates of decline received greater protection over areas with lower declines. Jig vessels are exempt from most of the closure zones beyond 3 nm of rookeries and beyond the shore around haulouts. This is due to their slow rate of extraction and small number of vessels which prosecute these fisheries. Site specific closures are detailed in Tables 21 through 24 of 50 CFR part 679 and in § 679.22. Closures apply only to federally permitted vessels. A summary of area and fishery specific closures are as follows:

Groundfish Fishery Closures

1. All rookeries listed in Table 21 of part 679 are closed to directed groundfish fishing with federally permitted vessels using any gear type from 0 nm to 3 nm.

2. Five haulout areas in the Northern Bering Sea are closed to directed fishing with federally permitted vessels for pollock, Pacific cod, and Atka mackerel with vessels using trawl, pot, or hook-and-line gear from 0 nm to 20 nm. These haulouts are Hall Island, Round (Walrus) Island, St. Lawrence Island/S. Punuk Island, St. Lawrence Island/SW Cape, and Cape Newenham. Historically, only limited fishing has occurred for the three prey species near these haulouts, and closures offer protection from developing fisheries in this area.

3. The Seguam foraging area, and the Bogoslof area are closed to pollock, Pacific cod, and Atka mackerel fishing by federally permitted vessels using any gear types. Catcher vessels less than 60 ft (18.3 m) LOA may fish for Pacific cod using hook-and-line or jig gear in the Bogoslof Pacific cod exemption area. In addition, critical habitat areas around two rookeries and four haulouts in the Chignik area are closed to pot, hook-and-line, and trawl fishing for the three species.

Aleutian Island Closures

1. The Aleutian Islands subarea is closed to pollock fishing by federally permitted vessels in 2002. Pollock fishing was prohibited in the Aleutian Islands subarea in 2000 and 2001 as part of Steller sea lion protection measures. The Council recommended and NMFS agrees with the subarea closure in 2002 to allow for additional analysis and consideration for opening the AI subarea to pollock fishing outside of critical habitat in 2003.

2. Atka mackerel fishing by federally permitted vessels is prohibited in critical habitat east of 178° W long. in the Aleutian Islands and Bering Sea subareas. Historically, Atka mackerel has been harvested outside of critical habitat east of 178° W long. Because of this, the fishery is expected to be able to harvest their allocation while providing substantial protection to Steller sea lions. West of 178° W long., Atka mackerel directed fishing by federally permitted vessels is prohibited between 0 nm and 15 nm of Buldir rookery, and prohibited between 0 nm and 10 nm of the remaining rookeries. Due to a continued steep decline in the population at Buldir greater than 10 percent, an additional 5 nm protection zone was added. Additionally, Buldir is isolated from other near shore foraging locations making it more susceptible to local depletions. Atka mackerel directed fishing by federally permitted vessels is also prohibited between 0 nm and 3 nm of haulouts west of 178° W long. to protect near shore foraging areas.

3. Pacific cod fishing closure areas for federally permitted vessels are dependent on the gear used and location. Hook-and-line and pot vessels are prohibited from fishing (1) in critical habitat east of 173° W long. to the western boundary of the Bogoslof area to reduce gear conflicts with trawl

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vessels, (2) 0 nm to 10 nm of Buldir rookery, and (3) 0 nm to 20 nm of Agligadak rookery. Increased protection around Agligadak is established because this site has a high rate of Steller sea lion count declines. Due to limited extraction rates by hook-and-line and pot vessels, closures are limited to 0 nm to 3 nm around rookeries.

Pacific cod trawl closures for federally permitted vessels in the Aleutian Islands include (1) east of 178° W long. between 0 nm and 10 nm of rookeries, except Agligadak rookery which is closed 0 nm to 20 nm, and between 0 nm and 3 nm of haulouts, and (2) west of 178° W long., between 0 nm and 20 nm around haulouts and rookeries until the Atka mackerel HLA fishery is completed. After the HLA fishery for Atka mackerel is closed for the season, Pacific cod trawling is prohibited 0 nm to 3 nm of haulouts and 0 nm to 10 nm of rookeries. Trawl closures are more extensive around haulouts and rookeries due to higher removal rates and large extractions by trawl gear. Increased protection around Agligadak rookery is established because this site has a high rate of Steller sea lion decline.

Bering Sea Closures

1. Atka mackerel directed fishing by federally permitted vessels is prohibited in critical habitat in the Bering Sea subarea. This will provide protection to Steller sea lions by reducing the potential for competition for Atka mackerel prey.

2. Pollock directed fishing by federally permitted vessels is prohibited (a) between 0 nm and 10 nm of all rookeries and haulouts, except four Pribilof haulouts which are closed between 0 nm and 3 nm, (b) in the Bering Sea Pollock Restriction area during the A season, and (c) non-CDQ trawl catcher/processors are prohibited from fishing in the CVOA during the B season (June 10–November 1) to reduce the rate and amount of harvest in critical habitat. No Steller sea lions were observed during the last NMFS survey of the Pribilof haulouts in 1991; therefore, the Council recommended and NMFS concurs that these haulouts do not require 10 nm protection zones. The Pribilof Islands Conservation Zone described at § 679.22(a)(6) is a trawl closure area, which encompasses some of the Steller sea lion critical habitat areas. Five haulouts and one rookery are located in the Bering Sea Pollock Restriction Area. This area is closed to pollock fishing in the A season to provide protection to Steller sea lions in the near shore foraging areas during the most critical time of the year.

3. Pacific cod closures for federally permitted vessels are dependent on the type of gear used. Fishing for Pacific cod with vessels using trawl gear is prohibited between 0 nm and 10 nm around all rookeries and haulouts, except for the four Pribilof haulouts that are closed between 0 nm and 3 nm. All hook-and-line and pot gear vessels are prohibited from fishing between 0 nm and 3 nm of rookeries and haulouts, except the Amak rookery which is closed to hook-and-line and pot gear from 0 nm to 7 nm.

In 2001, the closures around rookeries in the Bering Sea subarea were 10 nm for vessels greater than 60 ft (18.3 m) LOA using nontrawl gear to harvest Pacific cod. For 2002, closure areas are 3 nm, a reduction from the 10 nm based on the lower rate of extraction by vessels using nontrawl gear. As stated earlier in the preamble, the Bogoslof area is closed to pollock, Pacific cod, and Atka mackerel directed fishing. The rest of the Bering Sea subarea, except within 3 nm of rookeries, has been open to Pacific cod nontrawl fisheries during the same time period that the non-pup counts have been increasing. Regardless, for the Bering Sea subarea, an amount of critical habitat closure was the target for designing the protection measures that apply to the Pacific cod nontrawl fisheries. Large amounts of this target were accounted for in the closures of the northern haulouts and the Bogoslof area. Amak rookery is closed out to 7 nm. The extension beyond 3 nm was important to reach an annual BS subarea critical habitat closure amount based on the total area.

A small exemption area was established in the southern portion of the Bogoslof area for catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or jig gear for directed fishing for Pacific cod. This area includes all water of the Bering Sea south of a line connecting a point 3 nm north of Bishop Pt. to Cape Tanak. The Bishop Pt. 10 nm closure area remains in effect for these vessels in the Bogoslof area. The amount of Pacific cod harvested from the exemption area is limited to 113 mt to minimize the possibility of localized depletion of Pacific cod. This exemption will allow a small number of vessels from the Dutch Harbor area a relatively safe location to harvest Pacific cod and will reduce the potential for gear conflicts east of Bishop Pt. These vessels have limited opportunities because there is no Pacific cod State-managed fishery in the Dutch Harbor area, and some vessels are constrained by their license limitation permit from fishing in Gulf of Alaska waters.

A 0–10 nm closure is also established around Bishop Pt. and Reef/Lava haulouts for vessels greater than or equal to 60 ft (18.3 m) LOA using hook-and-line gear. This restriction was added to reduce the possibility of gear conflicts between hook-and-line and pot vessels in the Pacific cod fishery and to provide added protection to Steller sea lions by reducing fishing effort near these haulouts.

Gulf of Alaska Closures

1. Atka mackerel directed fishing by federally permitted vessels is prohibited in the GOA subarea. Biomass has been insufficient to support a directed fishery for the past several years.

2. Pollock and Pacific cod directed fishing by federally permitted vessels using trawl gear is closed between 0 nm and 10 nm or 20 nm around most haulouts and rookeries year round. Exceptions include: (a) Marmot Island rookery is closed between 0 nm and 15 nm during the first half of the year and between 0 nm and 20 nm during the second half of the year, (b) Gull Point and Ugak Island are closed between 0 nm and 3 nm in the second half of the year, (c) Cape Barnabus, Cape Ikolik, Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, Castle Rock, and Canton haulouts are closed between 0 nm and 3 nm, and (d) Pinnacle Rocks rookery is closed between 0 nm and 3 nm.

Marmot Island is closed between 0 nm and 15 nm in the first half of the year to allow the pollock fishing fleet access to pollock that are likely to have roe and are more valuable. Marmot Island is closed between 0 nm and 20 nm in the second half of the year. Closures are reduced to 3 nm around a number of sites in the GOA year round or for the B season to provide opportunities for fishing by small, local trawl fleets that have historically fished near these sites in consideration of national standard 8 of the Magnuson-Stevens Act. These sites are located in areas that have lower rates of decline for non-pups since 1991 than other areas of the GOA. The rate of extraction by the small vessel trawl fleet is expected to be small enough to avoid any localized depletion of prey for Steller sea lions.

3. Directed fishing for Pacific cod with federally permitted vessels using hook-and-line or pot gear is prohibited: (a) 0 nm to 10 nm or 20 nm of all rookeries except for Seal Rocks, Wooded Island, Atkins, Chernabura, Clubbing Rocks, and Pinnacle Rock which are closed 0 nm to 3 nm; (b) 0 nm to 20 nm around Sutwik, Nagai Rocks, Lighthouse Rocks, and Kak haulouts; (c) 0 nm to 3 nm around Cape Barnabus, Cape Ikolik, Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, Castle Rock, and Canton haulouts; (d) 0 nm to 10 nm around haulouts between 170° W and 164°30′00″ W long. for hook-and-line; and (e) 0 nm to 20 nm around haulouts between 170° W and 164°30′00″ W long. for pot gear.

Closures around sites in the area of Chignik are to 20 nm to increase the overall closure area for the GOA. This area also has one of the higher rates of Steller sea lion non-pup count declines in the GOA since 1991, making it an area of greater potential sensitivity to fishing activities. In accordance with national standard 8 of the Magnuson-Stevens Act, sustained participation of the communities in the Pacific cod fishery in this area was considered by the RPA Committee and Council. Historically, Pacific cod available in the State-managed fishery has not been fully harvested. Even with the Federal fishery closure, opportunity still exists for Pacific cod fishing with vessels using pot or jig gear under the State-managed fishery. With these gear type fisheries available under the State of Alaska managed fishery and jig fishing available under the Federal fishery, the closure of this area should not pose excessive economic hardship on the residents of the small communities which use these fishing grounds.

Vessel Monitoring Systems

To ensure vessels are complying with area restrictions, § 679.7 prohibits all vessels permitted to directed fish for Pacific cod, pollock, or Atka mackerel with trawl, hook-and-line, or pot gear from directed groundfish fishing or fishing for halibut IFQ unless they have an operable VMS at all times that the Atka mackerel, Pacific cod, or pollock directed fisheries they have permits for are open. This is necessary to meet one of the reasonable and prudent measures detailed in the 2001 BiOp requiring that NMFS have the capability to detect illegal fishing activity inside closed areas. Halibut IFQ is included in the prohibition because many Pacific cod vessels may also be used for halibut IFQ fishing and not just groundfish harvest. This emergency interim rule makes this requirement effective 1200 hours, A.l.t., June 10, 2002, to allow the vessel owners time to purchase and install VMS equipment. The Atka mackerel fishing fleet is currently equipped with VMS, as required by § 679.7(c)(3). Jig vessels are exempt from this requirement due to the fact they generally are not restricted except within 3 nm of rookeries (no fishing zones in Table 21 to 50 CFR part 679) and in the Seguam foraging and Bogoslof areas. Before groundfish fishing, vessel owners will also be required to inform NMFS of the VMS transponder ID number and the vessel on which the transponder will be used so that equipment operation can be confirmed.

The Chiniak Gully Pollock Research Program

The Council endorsed a research project proposed by NMFS in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on pollock school dynamics and the likelihood of localized depletions. The experiment includes the closure of Chiniak Gully to trawl fishing from August 1 to no later than September 20. A more detailed description of the experiment is provided in the draft environmental assessment/regulatory impact review/final regulatory flexibility analysis for the proposed rule to implement a seasonal closure of a portion of the Central Regulatory Area, GOA, to vessels using trawl gear (65 FR 41044, July 3, 2000). For copies of these documents, please contact NMFS (see **ADDRESSES**). This experiment was implemented by emergency interim rule in 2001 (66 FR 37167, July 17, 2001). This emergency interim rule continues the implementation of this experiment including trawl closures necessary to conduct the experiment.

National Standards

A summary of how this action addresses relevant national standards under the Magnuson-Stevens Act follows. The Assistant Administrator for Fisheries finds that the Steller sea lion protection measures recommended by the Council meet the applicable national standards.

National Standard 1. Achieving optimum yield while preventing overfishing. The harvesting of pollock, Atka mackerel, and Pacific cod will be controlled so that directed fishing will stop if the biomass falls to below 20 percent of the unfished projected biomass. This will ensure that prey is available to Steller sea lions and that fish stocks may be maintained for optimal yield without the likelihood of overfishing. NMFS determined in the 2001 BiOp that the harvest control in this emergency interim rule is protective of Steller sea lions and their designated critical habitat and is consistent with this national standard.

National Standard 2. Use of best scientific information available. NEPA and ESA analyses of this action were based on the latest reliable information available regarding Steller sea lion mortality, diet, foraging behavior, count data, and recent scientific review of the Comprehensive BiOp and the draft 2001 BiOp. The RPA Committee and Council carefully considered these analyses during the development of their recommendations for Steller sea lion protection measures. The standard has been met because NMFS used the best available scientific information, meeting this national standard.

National Standard 3. Manage an individual stock of fish or interrelated stocks of fish as a unit throughout its range. Groundfish stocks are continuing to be managed under the Steller sea lion protection measures as units based on species and occurrence, and stock assessment information continues to be used in these management decisions. NMFS also works closely with the State of Alaska in managing fish stocks that occur across Federal and State waters as individual units. As an example, GOA Pacific cod acceptable biological catch (ABC) accommodates both a Federal fishery and a State-managed cod fishery. Further, the State opens and closes State waters consistent with the management of the groundfish fisheries in Federal waters.

National Standard 4. Fair and equitable allocation to individuals, corporations, or other entities. The RPA Committee was comprised of representatives from different regions and types of fisheries so that differential effects of changes to pollock, Pacific cod, and Atka mackerel were considered as the Steller sea lion protection measures were developed. The draft SEIS and public comments from fishing industry representatives and communities also were considered by the RPA Committee and Council before finalizing recommended protection measures. This allowed the RPA committee and Council to consider the impacts of the protection measures on different sectors of the fishing industry and on different communities and to take steps to fairly distribute the impacts so that no one sector or community suffered an excessive adverse economic impact. NMFS determined through SEIS analysis that the process described above provided recommendations that led to fair and equitable allocation of the impacts of the protection measures.

National Standard 5. Efficiency of using fishery resources. The RPA Committee and Council considered the efficiency of using the fishing resources when developing the Atka mackerel platooning management, and for setting closure areas and seasons for the pollock, Atka mackerel, and Pacific cod fisheries. Within the limitations of protection measures, the fisheries

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management measures were developed to ensure that as much of the available TAC as possible could be harvested with the least amount of effort. NMFS has determined that fishing will take place in a manner that protects Steller sea lions and their critical habitat and minimizes disruption to fisheries and allows for efficient use of resources.

National Standard 6. Consideration of variations among and contingencies in fisheries, fishery resources, and catches. The RPA Committee process ensured that the Steller sea lion protection measures were developed with understanding of the variations in fishing activities in the different areas and for different species and variations in the abundance of different fish stocks in different areas. NMFS determined that the protection measures were developed taking variations into consideration, consistent with this national standard.

National Standard 7. Minimize cost and avoid unnecessary duplication. The economic analysis in the SEIS for the Steller sea lion protection measures shows that the protection measures in this emergency interim rule minimized the cost to the industry while protecting Steller sea lions and their critical habitat. Based on the SEIS analysis, NMFS determined that the protection measures are consistent with this national standard.

National Standard 8. Consider the importance of fishing resources to fishing communities. Part of the SEIS analysis included socioeconomic impacts of the action and alternatives on small communities. Several provisions in the protection measures allow small vessels and vessels with nontrawl gear to fish near their home ports to ensure small community access to the fishing resources. Provisions in the protection measures also allow for fishing opportunities for small coastal communities in Alaska by providing for year long Atka mackerel fishing seasons and by allowing access to fishing areas used by these communities.

At its October 2001 meeting, the Council did recognize that its preferred alternative would impose costs and burdens, particularly on some small coastal communities and associated fishing fleets. The Council expressed its intent to explore management measures intended to provide further relief to these sectors, yet meet the requirements of applicable law. Council consideration of these measures is scheduled for its April 2002 meeting. NMFS determined that the impact of the protection measures in this emergency interim rule on fishing communities was considered in developing the Council's recommendation, consistent with this national standard.

National Standard 9. Reduce bycatch. In designing the protection measures, the RPA Committee considered areas and timing of fishing to address concerns about potential increases in bycatch in the Atka mackerel, pollock, and Pacific cod fisheries. The Atka mackerel additional harvest in the harvest limit area in 2002 is expected to reduce the amount of rockfish bycatch, normally encountered outside of critical habitat. Salmon bycatch will be evaluated in 2002 as the SCA is opened where salmon bycatch is known to occur, but the pollock fishing industry is implementing incentive measures to reduce bycatch. The regulations will continue to have bycatch closure areas for crab, herring, and salmon and prohibited species catch limits as detailed in Part II of this preamble. NMFS has determined through SEIS analysis that the protection measures minimize bycatch to the extent possible while providing protection to Steller sea lions and minimizing adverse economic impacts on the fisheries.

National Standard 10. Safety. Several provisions in the protection measures allow small vessels to fish near their home ports or in near shore waters that are more protected from bad weather than off shore waters. Some examples include the Bogoslof Pacific cod exemption area and Pacific cod nontrawl fishery in the Sand Point and King Cove area near haulouts.

Part II. Specifications

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the TAC for each target species and for the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) for the BSAI and within the optimum yield range of 116,000 mt to 800,000 mt for the GOA (§ 679.20(a)(1)).

NMFS is establishing the 2002 TAC specifications for the BSAI and GOA by this emergency interim rule. The normal procedure of publishing proposed, interim, and final TAC specifications was not followed in 2002 because the information needed to establish the harvest specifications did not become available until mid-November and the Council recommendations were not received by NMFS until December 11, 2001. Analysis of the action and the preparation of the **Federal Register** notification could not be completed until the Council recommendations were received for the final specifications as well as the Steller sea lion protection measures, of which the specifications are an integral part and must be in place by January 1, 2002, to allow the orderly commencement of the 2002 groundfish fisheries. Accordingly, it is impracticable to provide prior notice and an opportunity for public comment, or to delay for 30 days the effective date of this rule. Further, it would be contrary to the public interest to delay the start of the season to allow for prior notice, an opportunity for public comment, and for a 30-day delay in the effective date.

This emergency interim rule includes the following provisions for the BSAI and GOA: (1) AFA measures; (2) specifications of overfishing level (OFL), ABC, and TAC for each groundfish species category; (3) apportionments of reserves; (4) allocations of the sablefish TAC to vessels using hook-and-line and trawl gear; (5) apportionments of pollock TAC among regulatory areas, seasons, and allocations among different industry sectors including Bering Sea fishery cooperatives; (6) apportionments of Pacific cod TAC among regulatory areas, seasons, and allocations among different industry sectors; (7) apportionment of Atka mackerel in the BSAI among seasons, gear, and regulatory areas; (8) PSC limits; (9) fishery and seasonal apportionments of the Pacific halibut PSC limits; (10) fishery apportionments of other PSC limits in the BSAI; (11) Pacific halibut assumed discard mortality rates; (12) groundfish harvest and PSC limitations for AFA vessels; (13) closures to directed fishing for specified groundfish targets; (14) AFA measures for inshore and offshore component participation, crab harvesting, and observer requirements; and (15) an increase in the contribution of arrowtooth flounder to the CDQ non-specific reserve. A discussion of these measures follows.

AFA Measures

AFA prohibitions on crab harvesting and processing are continued with this emergency interim rule. In § 679.7, catcher vessels must have a sideboard endorsement for BSAI crab to retain crab and can not exceed the processing limits. These prohibitions are necessary to limit the advantage of AFA pollock fishery participants over open access crab fishery participants.

Another AFA measure maintained with this emergency interim rule under § 679.7 is prohibiting the participation in both the inshore and offshore component during a fishing year. This is necessary to maintain the Council's inshore and offshore policy of harvest allocation in the GOA.

Observer coverage requirements for AFA vessels in § 679.50(c)(4)(vi) are continued with this emergency interim rule to maintain consistency between observer requirements in the CDQ fishery and the AFA fishery where the same vessels are used and the same level of observer coverage is needed. This will allow for smoother transitions between the two types of fisheries.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available scientific information, including projected biomass trends; information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMPs specify the formulas, or tiers, to be used in computing ABCs and overfishing levels. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fishery scientists. This information is categorized into a successive series of six tiers.

In December 2001, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of groundfish stocks in the BSAI and GOA. This information was compiled by the Council's Plan Teams and is presented in the final 2002 SAFE reports for the BSAI and GOA groundfish fisheries, dated November 2001 (See **ADDRESSES**). The SAFE reports contain a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI and GOA ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Teams estimate an ABC for each species or species category.

The Council considered the ecological, socioeconomic, and ecosystem information in the SAFE reports, recommendations from its SSC and AP, as well as public testimony when recommending ABCs and TACs at its December 2001 meeting.

The final specifications are set forth in Tables 3 through 29 of this action. For 2002, the sum of TACs is 2 million mt in the BSAI and 237,890 mt in the GOA.

Bering Sea and Aleutian Islands Management Area

In December 2001, the SSC, AP, and Council reviewed the BSAI Plan Team's recommendations for OFL and ABC levels. Except for Bogoslof pollock, and the "other species" category, the SSC, AP, and Council endorsed the Plan Team's ABC recommendations. Based on the best available information, the SSC recommended a lower ABC for Bogoslof pollock and a slightly higher ABC for the "other species" category than the Plan Team recommended. For Bogoslof pollock, the SSC agrees with the Plan Team recommended ABC. The Plan Team recommended splitting the "other species" category into sculpins, skates, sharks and octopus with individual group ABCs based on mean catch since 1977. The SSC disagreed with this approach and recommended calculating the individual group ABCs, summing these ABCs to form an aggregate maximum allowable ABC and scaling the ABC down to be closer to recent TACs for the complex. For all species, the AP endorsed the ABCs recommended by the SSC, and the Council adopted the AP's recommendations.

The Council's TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 1.4 million to 2.0 million mt. The Council adopted the AP's TAC recommendations.

Through 2000, the "other red rockfish" complex was comprised of northern, sharpchin, rougheye, and shortraker rockfish in the Bering Sea subarea. In the Aleutian Islands subarea, this complex was split out into two groups comprised of northern/sharpchin and rougheye/shortraker rockfish. For 2002, the Council recommended species-specific BSAI OFLs and ABCs for each species in the "other red rockfish" complex to reduce the potential for one species to be fished disproportionately to its abundance and resulting in overfishing concerns. The Council also recommended that sharpchin rockfish, which were previously included in the "other red rockfish" complex, be moved into the "other rockfish" complex.

NMFS agrees with these recommendations, but will not be able to implement all of them in 2002 due to monitoring constraints in the hook-and-line gear fisheries. Shortraker and rougheye rockfish are reported by observers using a group species code, which, under current observer procedures, cannot be separated into specific species and incorporated into routine observer reports prior to the 2002 fishing year. Thus NMFS is modifying the Council's recommendation and is establishing BSAI wide OFL and ABC amounts for northern and rougheye/shortraker rockfish. The Bering Sea subarea and Aleutian Islands subarea now will be managed for CDQ and non-CDQ with one TAC group for shortraker/rougheye rockfish, a separate TAC for northern rockfish, and sharpchin rockfish will join the "other rockfish" category. Changing the Bering Sea and Aleutian Islands subareas "other red rockfish" complex in this manner addresses overfishing concern by decreasing the TAC amounts. The final ABCs as recommended by the Council and modified and approved by NMFS are listed in Table 3.

As in 2001, for the CDQ fisheries, NMFS is combining the northern and shortraker/rougheye rockfish in the Bering Sea into the "other red rockfish" species category. The CDQ reserves for rockfish are 7.5 percent of the TAC. If CDQ reserves were specified for the two rockfish TAC categories, they would be 1.4 mt for Bering Sea northern rockfish and 8.7 mt for Bering Sea shortraker/rougheye rockfish. If these CDQ reserves were further divided among the six CDQ groups, the northern rockfish CDQ amounts available to each group would be between 100 kg and 325 kg. NMFS recommends not splitting out the CDQ reserves to the individual species group because these small quotas could prevent the CDQ groups from harvesting much of their other groundfish CDQs. Therefore, to avoid premature closure of the CDQ fisheries, NMFS will continue to specify the CDQ reserve for the Bering Sea "other red rockfish" complex. The CDQ reserve for this complex will be calculated as the sum of an amount equal to 7.5 percent of the TAC for Bering Sea shortraker/rougheye plus 7.5 percent of the TAC for northern rockfish, for a total of 10 mt to the CDQ reserve for the "other red rockfish" complex.

None of the Council's recommended TACs for 2002 exceeds the final ABC for any species category. NMFS finds that the Council's recommended TACs are consistent with the biological condition of groundfish stocks as described in the 2002 SAFE document and approves them with the exception of the "other red rockfish" complex. NMFS has modified the Council's TAC recommendations for this complex as described above to accommodate monitoring and reporting constraints.

For 2002, the Plan Team recommended and the AP, SSC, and NMFS agreed to separate Alaska plaice from the "other flatfish" category. Because 85 percent of the "other flatfish" category is Alaska plaice and the ABC and OFL are calculated separately for Alaska plaice and the remaining "other flatfish" species, the Plan Team recommended setting the

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ABC and OFL for Alaska plaice separately from the "other flatfish" species.

Table 3 lists the 2002 OFL, ABC, TAC, initial TAC (ITAC) which is the TAC minus the reserves, and CDQ reserve amounts, overfishing levels, and initial apportionments of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 3.—2002 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]

[All amounts are in metric tons]

Species	Area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock [4]	Bering Sea (BS)	3,530,000	2,110,000	1,485,000	1,283,040	148,500
	Aleutian Islands (AI)	31,700	23,800	1,000	900	100
	Bogoslof District	46,400	4,310	100	90	10
Pacific cod	BSAI	294,000	223,000	200,000	170,000	15,000
Sablefish [5]	BS	2,900	1,930	1,930	821	265
	AI	3,850	2,550	2,550	541	431
Atka mackerel	BSAI	82,300	49,000	49,000	41,650	3,675
	Western AI		19,700	19,700	16,745	1,478
	Central AI		23,800	23,800	20,230	1,785
	Eastern AI/BS		5,500	5,500	4,675	413
Yellowfin sole	BSAI	136,000	115,000	86,000	73,100	6,450
Rock sole	BSAI	268,000	225,000	54,000	45,900	4,050
Greenland turbot	BSAI	36,500	8,100	8,000	6,800	600
	BS		5,427	5,360	4,556	402
	AI		2,673	2,640	2,244	198
Arrowtooth flounder	BSAI	137,000	113,000	16,000	13,600	1,200
Flathead sole	BSAI	101,000	82,600	25,000	21,250	1,875
Other flatfish [6]	BSAI	21,800	18,100	3,000	2,550	225
Alaska plaice	BSAI	172,000	143,000	12,000	10,200	900
Pacific ocean perch	BSAI	17,500	14,800	14,800	12,580	1,111
	BS		2,620	2,620	2,227	197
	AI Total		12,180	12,180	10,353	914
	Western AI		5,660	5,660	4,811	425
	Central AI		3,060	3,060	2,601	230
	Eastern AI		3,460	3,460	2,941	260
Northern rockfish [7]	BSAI	9,020	6,760	6,760	5,746	
	BS			19	16	(7)
	AI			6,741	5,730	506
Shortraker/Rougheye [7]	BSAI	1,369	1,028	1,028	874	
	BS			116	99	(7)
	AI			912	775	68
Other rockfish [8]	BS	482	361	361	307	27
	AI	901	676	676	575	51
Squid	BSAI	2,620	1,970	1,970	1,675	
Other species [9]	BSAI	78,900	39,100	30,825	26,201	2,312
Total		4,974,242	3,184,085	2,000,000	1,717,399	187,504

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea subarea includes the Bogoslof District.

[2] Except for pollock, squid, and the portion of the sablefish TAC allocated to hook-and-line or pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of the reserve.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see § 679.31).

[4] The American Fisheries Act (AFA) requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. NMFS then subtracts 4 percent of the remainder as an incidental catch allowance of pollock, which is not apportioned by season or area. The remainder is further allocated by sector as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

[5] The ITAC for sablefish reflected in Table 3 is for trawl gear only. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line or pot gear allocation for sablefish. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.31(c)).

[6] "Other flatfish" includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska Plaice.

[7] The CDQ reserves for shortraker, rougheye, and northern rockfish will continue to be managed as the "other red rockfish" complex for the BS. For 2002 the CDQ reserve for the "other red rockfish" complex is 10 mt.

[8] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[9] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Pollock Incidental Catch Allowance (ICA)

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the 2002 TAC for this species be fully allocated among the CDQ program, the ICA, inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve, with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a prohibited species quota (PSQ) reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under section 206(b) of the AFA, NMFS allocates a pollock ICA of 4 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This is unchanged from the 4 percent ICA specified for 2001. The 2002 allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1997 through 2001. During this 4-year period, the incidental catch of pollock ranged from a low of 3 percent in 1998 to a high of about 6 percent in 1997, with a 4-year average of 4 percent. In 2001, the actual incidental catch was only 3 percent of the TAC which resulted in 12,000 mt of pollock reallocated to the directed fishing allowance for non-CDQ fisheries in the fall (66 FR 49146, September 26, 2001). Based on this experience, NMFS believes that a 2002 ICA of 4 percent is appropriate, because the biomass has increased for 2002 to 2.1 million tons and there is the potential for increased bycatch of pollock in other groundfish fisheries.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be reapportioned to a target species or to the "other species" category during the year, providing that such reapportionments do not result in overfishing. The Regional Administrator has determined that the ITACs specified for the species listed in Table 4 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to harvest the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 4 from the non-specified reserve to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve.

TABLE 4.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[All amounts are in metric tons]

Species—area or subarea	Reserve amount	Final ITAC
Atka mackerel—Western Aleutian District	1,478	18,223
Atka mackerel—Central Aleutian District	1,785	22,015
Atka mackerel—Eastern Aleutian District and Bering Sea subarea	413	5,088
Pacific ocean perch—Western Aleutian District	425	5,236
Pacific ocean perch—Central Aleutian District	230	2,831
Pacific ocean perch—Eastern Aleutian District	260	3,201
Pacific cod—BSAI	15,000	185,000
Northern rockfish—Aleutian Islands subarea	506	6,236
Shortraker/Rougheye rockfish—Aleutian Islands subarea	68	843
Greenland turbot—Bering Sea subarea	402	4,958
Greenland turbot—Aleutian Islands subarea	198	2,442
Total	20,765	256,076

Pollock Allocations Under the AFA

Section 206(a) of the AFA requires the allocation of 10 percent of the BSAI pollock TAC as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, must be allocated as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component. These amounts are listed in Table 5.

The AFA also contains several specific requirements concerning pollock and pollock allocations. First, paragraph 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest by offshore catcher vessels listed in section 208(b) harvesting pollock for processing by offshore catcher/processors listed in paragraph 208(e). Second, paragraph 208(e)(21) of the AFA specifies that catcher/processors eligible to fish for pollock under such paragraph are prohibited from harvesting in the aggregate a total of more than one-half of a percent (0.5 percent) of the pollock allocated to vessels for processing by offshore catcher/processors. Third, paragraph 210(e)(1) of the AFA specifies that no particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. Other provisions of the AFA, including inshore pollock cooperative allocations and AFA harvest limitations are discussed later in this section. Table 5 lists the 2001 allocations of pollock TAC as described by the AFA.

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SCA Harvest Limits

The harvest within the SCA, as defined at § 679.22(a)(11), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA. These amounts, by sector, are listed in Table 5.

TABLE 5.—ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[All amounts are in metric tons]

Area and sector	2002 DFA	A Season [1]	B Season [1,2]	
		A DFA (40% of annual DFA)	SCA limit [3]	B DFA (60% of annual DFA)
Bering Sea subarea	1,485,000	594,000		891,000
CDQ	148,500	59,400	41,580	89,100
ICA [4]	53,460			
AFA Inshore	641,520	256,608	179,626	384,912
AFA C/Ps [5]	513,216	205,286	143,700	307,930
Catch by C/Ps	469,593	187,837		281,756
Catch by CVs [5]	43,623	17,449		26,174
Restricted C/P cap [6]	2,566	1,026		1,540
AFA Motherships	128,304	51,322	35,925	76,982
Excessive shares cap [7]	224,532			
Aleutian Islands:				
ICA [8]	900			
Bogoslof District:				
ICA [8]	90			

[1] After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI. The A season, January 20—June 10, is allocated 40 percent of the DFA and the B season, June 10—November 1 is allocated 60 percent of the DFA.

[2] This emergency interim rule expires on July 8, 2002, before the B season will conclude. Therefore, the B season is not fully authorized unless the emergency interim rule is extended.

[3] The SCA limits harvest to 28 percent of each sectors annual DFA until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] The pollock incidental catch allowance for the BS subarea is 4 percent of the TAC after subtraction of the CDQ reserve.

[5] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[6] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[7] Paragraph 210(e)(1) of the AFA specifies that "No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery."

[8] Consistent with the Steller sea lion protection measures, the Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocqtion of the Atka Mackerel TAC

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season) (Table 6). Under § 679.20(a)(8)(ii)(C)(1), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA in 542 and 543, west of 178° W long. is prohibited during the Atka mackerel HLA directed fisheries. Atka mackerel fishing is prohibited in critical habitat east of 178° W long. to provide maximum protection to Steller sea lions and because Atka mackerel is readily available in waters outside of critical habitat.

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The Council determines the amount of this allocation annually, based on several criteria including the anticipated harvest capacity of the jig gear fleet. In December 2001, the Council recommended that 1 percent of the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea be allocated to the jig gear fleet based on historic harvest capacity of the fleet. NMFS finds that this is consistent with the status of the stock and with the regulatory framework stated above. Based on an ITAC of 5,088 mt, the jig gear allocation is 51 mt.

A platoon system to reduce the amount of daily catch in critical habitat by about half and to disperse the fishery over two areas is discussed in the Steller sea lion protection measures part of this emergency interim rule and found in the regulations at § 679.20(a)(8)(iii).

TABLE 6.—SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC

(All amounts are in metric tons)

Subarea and component	TAC	CDQ reserve	ITAC [1]	Seasonal appointment [2]			
				A Season [3]		B Season [4]	
				Total	HLA Limit [5]	Total	HLA Limit [5]
Western Aleutian District (543)	19,700	1,478	18,223	9,111	5,467	9,111	5,467
Central Aleutian District (542)	23,800	1,785	22,015	11,008	6,605	11,008	6,605
Eastern AI/BS subarea [6]	5,500	413	5,088				
Jig (1%) [7]			51				
Other gear (99%)			5,037	2,518		2,518	
Total	49,000	3,676	45,326	22,637		22,637	

[1] The reserves have been released for Atka mackerel (See Table 4).

[2] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.

[3] The A season is January 1 through noon April 15.

[4] The B season is September 1 through noon November 1.

[5] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2002, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central AI. Pacific cod harvest by trawl gear in the Aleutian Islands HLA in 542 and 543, west of 178°W long. is prohibited during the Atka mackerel HLA directed fisheries.

[6] Eastern Aleutian Islands District and Bering Sea subarea.

[7] Regulations at § 679.20(a)(8) require that up to 2 percent of the Eastern AI/BS area ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the jig gear fleet. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish other than Pacific cod by vessels using these gear types. Based on anticipated bycatch in these fisheries, the Council proposed an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following directed fishing allowances: 80 percent to hook-and-line catcher/processor vessels, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, NMFS is implementing under this emergency interim rule temporal dispersion of fishing effort in the Pacific cod fisheries by apportioning the Pacific cod ITAC into two seasonal allowances. For most non-trawl gear the first allowance, 60 percent of the ITAC, is made available for directed fishing from January 1 to June 10, and the second seasonal allowance, 40 percent of the ITAC, is made available from June 10 to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear the first season is January 20 to April 1, and 60 percent of the TAC is allocated to the first season. The second season, April 1 to June 10, and third season, June 10 to November 1, are each allocated 20 percent of the TAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 7 lists the 2002 allocations and seasonal apportionments of the Pacific cod ITAC.

TABLE 7.—2001 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share of gear sector total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment [2]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	94,350				
Incidental Catch Allowance				500		
Processor and Vessel subtotal		93,850				
Hook-and-line Catcher Processors			80	75,080	Jan 1–Jun 10	45,048
					Jun 10–Dec 31	30,032
Hook-and-line Catcher Vessels			0.3	282	Jan 1–Jun 10	169
					Jun 10–Dec 31	113
Pot Gear Vessels			18.3	17,175	Jan 1–Jun 10	10,305
					Sep 1–Dec 31	6,870
Catcher Vessels <60 feet LOA using Hook-and-line or Pot gear.			1.4	1,314	Jan 1–Dec 31	1,314
Trawl gear Total	47	86,950				

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TABLE 7.—2001 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC—Continued

Gear sector	Percent	Share of gear sector total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment[2] Date	Seasonal apportionment[2] Amount (mt)
Trawl Catcher Vessel			50	43,475	Jan 1–Apr 1	30,433
					Apr 1–Jun 10	4,348
					Jun 10–Nov 1	8,695
Trawl Catcher Processor			50	43,475	Jan 1–Apr 1	21,738
					Apr 1–Jun 10	13,043
					Jun 10–Nov 1	8,695
Jig	2	3,700			Jan 1–Jun 10	2,220
					Jun 10–Dec 31	1,480
Total	100	185,000				

[1] The reserve has been released for Pacific cod (See Table 4).
[2] For non-trawl gear the first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the TAC and the second and third seasons are each allocated 20 percent of the TAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a 2002 ITAC of 844 mt, the trawl allocation is 591 mt and the non-trawl allocation is 253 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the BS and AI subareas be allocated between trawl and hook-and-line or pot gear. Gear allocations of TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be reserved as sablefish CDQ. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be reserved as groundfish CDQ. Gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 8.

TABLE 8.—GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TAC

[All amounts are in metric tons]

Subarea and Gear	Percent of TAC	Share of TAC	ITAC[1]	CDQ Reserve
Bering Sea				
Trawl[2]	50	965	821	72
Hook-&-line/pot gear[3]	50	965	N/A	193
Total	100	1,930	821	265
Aleutian Islands:				
Trawl[2]	25	637	541	48
Hook-&-line/pot gear[3]	75	1,913	N/A	383
Total	100	2,550	541	431

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.
[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the multi-species CDQ program.
[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch (PSC) Limits for Halibut, Crab, Salmon, and Herring

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt mortality of Pacific halibut. For non-trawl fisheries, the limit is 900 mt mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of Chinook salmon PSC limits until the final limit is reached in 2004. In 2002, the chinook salmon PSC limit for the pollock fishery is 37,000 fish.

The criteria for determining the PSC limits for red king crab in Zone 1 are set forth at § 679.21(e)(1)(ii). For 2002, the PSC limit of red king crab in Zone 1 for trawl vessels is 97,000 animals. The number of mature female red king crab is estimated in 2002 to be above the threshold of 8.4 million animals, and the effective spawning biomass is greater than 14.5 million lb (6,577 mt) but less than 55 million lb (24,948 mt). Based on the criteria set out at § 679.21(e)(1)(ii)(B), the limit is 97,000 animals.

The criteria for determining the PSC limits for *C. bairdi* crabs are set forth in § 679.21(e)(1)(iii). The 2002 *C. bairdi* PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits are based on the *C. bairdi* abundance of 624 million crab from 2001 survey data because the abundance is over 400 million crabs.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2001 survey estimate of 3.86 billion animals, the calculated limit would be 4,373,380 animals. Because this limit is less than 4.5 million, under § 679.21(e)(1)(iv)(B), the 2002 *C. opilio* PSC limit is 4,350,000 animals.

Under § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS' estimate of 2002 herring biomass is 152,574 mt. This amount was derived using 2001 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the herring PSC limit for 2002 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 9. These amounts are unchanged from those recommended by the Council at its December 2001 meeting.

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category and must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended and NMFS approves a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the flatfish fishery within the RKCSS in order to maximize harvest of groundfish relative to red king crab bycatch.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, is exempting pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take few halibut compared to other gear types such as nonpelagic trawl. In 2001, total groundfish catch for the pot gear fishery in the BSAI was approximately 16,655 mt with an associated halibut bycatch mortality of about 5 mt. The 2001 groundfish jig gear fishery harvested about 74 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, NMFS assumes a negligible amount of halibut bycatch mortality because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The sablefish IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This action results in less halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 2001 has not been calculated, but NMFS has no information indicating that it would be significantly different. NMFS approves the Council's recommendation to exempt the hook-and-line sablefish from halibut bycatch restrictions.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. In December 2001, the Council's AP recommended seasonal PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing PSC based on the criteria above.

NMFS approves the PSC apportionments specified in Table 9 below with one change. The AP recommended and the Council accepted a July 4 seasonal allocation of PSC to the yellowfin sole, rock sole/flathead sole/"other flatfish" and rockfish fishery categories. Under § 679.21(e)(5), factor (5) expected start of fishing effort, NMFS is changing the July 4 seasonal allocation to a June 30 seasonal allocation to facilitate the inseason management of these fishery categories. The June 30 opening will allow the collection of the data NMFS requires to close a fishery before the interruption of the July 4 holiday when Federal offices are closed.

TABLE 9.—PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES[1]

[All amounts are in metric tons]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI[7]	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ[2]	C. bairdi (animals) Zone 1	C. bairdi (animals) Zone 2
Trawl Fisheries						
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459

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TABLE 9.—PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]—Continued

[All amounts are in metric tons]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI [7]	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [2]	C. bairdi (animals) Zone 1	C. bairdi (animals) Zone 2
January 20–April 1	262					
April 1–May 21	195					
May 21–June 30	49					
June 30–December 31	380					
Rock sole/flat. sole/other flatfish [3]	779	20	59,782	969,130	365,320	596,154
January 20–April 1	448					
April 1–June 30	164					
June 30–December 31	167					
RKC savings subarea [3]			20,924			
Turbot/sablefish/arrowtooth [4]		9		40,238		
Rockfish (June 30–Dec. 31) [5]	69	7		40,237		10,988
Pacific cod	1,434	20	11,664	124,736	183,112	324,176
Pollock/Atka/other [6]	232	146	1,615	72,428	17,224	27,473
Midwater trawl pollock		1,184				
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries						
Pacific cod—Total	775					
January 1–June 10	320					
June 10–August 15	0					
August 15–December 31	455					
Other non-trawl—Total	58					
May 1–December 31	58					
Groundfish pot & jig	Exempt					
Sablefish hook-&-line	Exempt					
Total Non-Trawl	833					
PSQ Reserve [8]	342		7,275	326,250	73,500	222,750
Grand Total	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, fig. 13.
[3] The Council at its December 2001 meeting limited red king crab for trawl fisheries within the RKCSS to 35 percent of the total allocation to the rock sole/flathead sole/ "other flatfish" fishery category (§ 679.21(e)(3)(ii)(B)). "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] The Council at its December 2001 meeting apportioned the rockfish PSC amounts from June 30–December 31.
[6] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[7] Any unused halibut PSC apportionment may be rolled into the following seasonal apportionment.
[8] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE reports.

The Council recommended, and NMFS concurs, that the assumed halibut discard mortality rates (DMRs) developed by staff of the International Pacific Halibut Commission (IPHC) for the 2001 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for 2002 (Table 10). Results from analysis of halibut release condition data for 2000 showed continued stability in halibut DMRs for many fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. For 2002, the Council adopted Preseason Assumed DMRs, which included use of the long-term mean DMR for a 3-year period before revisions are proposed except for the BSAI hook-and-line Pacific cod fishery and CDQ fisheries, for which the Council recommended setting annual DMRs. The IPHC will also continue to conduct annual analyses of observer data and recommend changes to the Preseason Assumed DMR where a fishery DMR shows large variation from the mean and for the CDQ fisheries. For 2002, the BSAI hook-and-line Pacific cod fishery DMR did not change; but the CDQ fishery DMRs were adjusted. The justification for these mortality rates is discussed in the final SAFE report dated November 2001.

TABLE 10.—ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason Assumed discard mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	25
Pacific cod	12
Greenland turbot	18
Sablefish	22
Other Species	12
Trawl gear fisheries:	
Midwater pollock	84
Nonpelagic pollock	76
Yellowfin sole	81
Rock sole	76
Flathead sole	67
Other flatfish	71
Rockfish	69
Pacific cod	67
Atka mackerel	75
Greenland turbot	70
Sablefish	50
Other species	67
Pot gear fisheries:	
Pacific cod	8
Other species	8
CDQ Trawl fisheries:	
Atka mackerel	89
Flathead sole	83
Midwater pollock	88
Nonpelagic pollock	90
Rockfish	89
Yellowfin sole	77
CDQ Hook-and-line fisheries:	
Pacific cod	13
Greenland turbot	14
CDQ Pot fisheries:	
Pacific cod	7
Sablefish	38

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the following remaining allocation amounts will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2002 fishing year:

Bogoslof District:
Pollock—90 mt
Aleutian Islands subarea:
Pollock—900 mt
Northern rockfish—6,236 mt
Shortraker/rougheye rockfish—844 mt
"Other rockfish"—575 mt
Bering Sea subarea:
Pacific ocean perch—2,227 mt
"Other rockfish"—307 mt
Northern rockfish—16 mt
Shortraker/rougheye rockfish—99 mt

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS immediately is prohibiting directed fishing for these species in the specified areas and these closures will remain in effect through 2400 hrs, Alaska local time (A.l.t.), December 31, 2002, effective January 1, 2002, through July 8, 2002.

In addition, the BSAI Zone 1 annual red king crab bycatch allowance specified for the trawl rockfish fishery (§ 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories, (§ 679.21(e)(3)(iv)(C)) is 0 mt. Therefore, in accordance with § 1(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI for the entire 2002 fishing year. NMFS also is prohibiting directed fishing for rockfish outside Zone 1 in the BSAI until 1200 hrs, A.l.t, June 30, 2002, due to 0 amounts of halibut bycatch allowance apportioned to this fishery prior to that date.

While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. In the BSAI, "other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

BS Subarea Inshore Pollock Allocations

Under § 679.4, NMFS set out procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives. Table 11 lists the pollock allocations to the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS for the 2002 fishing year. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock. These allocations may be revised based on any corrections to AFA vessels' catch history.

TABLE 11.—BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (percent)	Annual co-op allocation
Akutan Catcher Vessel Association: ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,527	28.085	180,169
Arctic Enterprise Association: BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210	27,009

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TABLE 11.—BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (percent)	Annual co-op allocation
Northern Victor Fleet Cooperative: ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425	54,049
Peter Pan Fleet Cooperative: AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N	18,693	2.138	13,717
Unalaska Cooperative: ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209	78,324
UniSea Fleet Cooperative: ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE	201,566	23.056	147,910
Westward Fleet Cooperative: A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I	189,544	21.681	139,089
Open access AFA vessels	1,707	0.195	1,252
Total inshore allocation	874,238	100	641,520

[1] Under 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Under § 679.20(a)(5)(i)(C), NMFS must subdivide the inshore pollock allocation into allocations for cooperatives and vessels not fishing in a cooperative (i.e., the open access sector). In addition, under § 679.22(a)(11)(vii), NMFS must establish harvest limits inside the Steller sea lion conservation area (SCA) and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 12 lists the apportionment of the BS subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 12. These allocations may be revised based on any corrections to AFA vessels' catch history.

TABLE 12.—BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY. AMOUNTS ARE EXPRESSED IN METRIC TONS

	A season TAC	A season inside SCA [1]	B season TAC
Cooperative sector:			
Vessels > 99 ft	n/a	161,601	n/a
Vessels ≤ 99 ft	n/a	17,675	n/a
Total	256,107	179,275	384,161
Open access sector	501	[2] 351	751
Total inshore	256,608	179,626	384,912

[1] Steller sea lion conservation area established at § 679.22(a)(11)(vii). The harvest limit for the SCA applies until April 1.
[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)iiiv)(C)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

2002 Unrestricted AFA Catcher/Processor Sideboards

Regulations at § 679.63(a) establish a formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish and PSC in the BSAI. The basis for these sideboard amounts was recommended by the Council and is described in detail in the Emergency Interim Rule to Implement Major Provisions of the AFA (64 FR 4520, January 28, 2000). The 2002 catcher/processor sideboards are set out in Table 13 below.

All non-pollock groundfish that is harvested by unrestricted AFA catcher/processors, whether as targeted catch or bycatch, will be deducted from the harvest limits in Table 13. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the 2002 harvest limits for the listed catcher/processors.

TABLE 13.—2002 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARDS
(Amounts are Expressed in Metric Tons)

Target species	Area	1995–1997 Total catch	1995–1997 Available TAC	1995–1997 Ratio	2002 ITAC available to trawl C/Ps	2002 C/P sideboard amount
Pacific cod trawl	BSAI	13,547	51,450	0.263	43,475	11,434
Sablefish trawl	BS	8	1,736	0.005	820	4
	AI	1	1,135	0.001	542	1
Atka mackerel	Western AI			0.200		
	A season [1]	n/a	n/a	0.100	9,111	911
	CH limit [2]					547
	B season	n/a	n/a	0.100	9,111	911
	CH limit					547
	Central AI			0.115		
	A season [1]	n/a	n/a	0.058	11,008	633
	CH limit					380
	B season	n/a	n/a	0.058	11,008	633
	CH limit					380
Yellowfin sole	BSAI	123,003	527,000	0.233	73,100	17,032
Rock sole	BSAI	14,753	202,107	0.073	45,900	3,351
Greenland turbot	BS	168	16,911	0.010	4,958	50
	AI	31	6,839	0.005	2,442	12
Arrowtooth flounder	BSAI	788	36,873	0.021	13,600	286
Flathead sole	BSAI	3,030	87,975	0.034	34,000	1,156
Alaska Plaice	BSAI			0.034	10,200	347
Other flatfish	BSAI	12,145	92,428	0.131	2,550	1,336
Pacific ocean perch	BS	58	5,760	0.010	2,620	26
	Western AI	356	12,440	0.029	5,236	152
	Central AI	95	6,195	0.015	2,831	42
	Eastern AI	112	6,265	0.018	3,201	58
Northern rockfish	BS			0.078	16	1
	AI	1,034	13,254	0.078	6,236	486
Shortraker/rougheye	BS			0.024	99	24
	AI	68	2,827	0.024	843	20
Other rockfish	BS	39	1,026	0.038	307	12
	AI	95	1,924	0.049	575	28
Squid	BSAI	7	3,670	0.002	1,675	3
Other species	BSAI	3,551	65,925	0.054	26,201	1,415

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to harvesting no more than 20 and 11.5 percent of the available TAC in the Western and Central AI subareas respectively. Unrestricted AFA catcher/processors are prohibited from harvesting Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea (paragraph 211(b)(2)(C)).
[2] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (50 CFR part 679 Table 21). In 2002, the percentage of TAC available for fishing inside critical habitat area is 60 percent in the Western and Central AI.

Regulations at § 679.63(a)(2) establish a formula for PSC sideboards for unrestricted AFA catcher/processors. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 14. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, which were then used to determine the prohibited species harvest limits for unrestricted AFA catcher/processors in the 2002 non-pollock groundfish fisheries.

PSC that is caught by unrestricted AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 13 shall accrue against the 2002 PSC limits for the listed catcher/processors. Regulations at § 679.21(e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for unrestricted AFA catcher/processors once a 2002 PSC limitation listed in Table 14 is reached.

Crab or halibut PSC that is caught by unrestricted AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under § 679.21(e).

TABLE 14.—2002 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD AMOUNTS

PSC species	1995–1997 PSC catch	1995–1997 Total PSC	1995–1997 Ratio	2002 PSC available to trawl vessels	2002 C/P limit
Halibut mortality	955	11,325	0.084	3,400	286 mt.
Red king crab	3,098	473,750	0.007	89,725	628 crab.
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634 crab.
C. bairdi					
Zone 1	385,978	2,750,000	0.140	906,500	126,910 crab.

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TABLE 14.—2002 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD AMOUNTS—Continued

PSC species	1995–1997			2002 PSC available to trawl vessels	2002 C/P limit
	PSC catch	Total PSC	Ratio		
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363 crab.

2002 AFA Catcher Vessel Sideboards

Regulations at § 679.63(b) establish a formula for setting AFA catcher vessel groundfish and PSC sideboard amounts for the BSAI. The basis for these sideboard amounts was recommended by the Council and is described in detail in the Emergency Interim Rule to Implement Major Provisions of the AFA (64 FR 4520, January 28, 2000). For 2002, the ratio of 1995 to 1997 AFA catcher vessel retained catch to the 1995 to 1997 TAC has been revised from 2001 by NMFS. These revisions are based on ADF&G editing of fish tickets and NMFS editing of observer catch data and weekly production reports. The 2002 AFA catcher vessel sideboards amounts are shown in Tables 15 and 16.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits listed in Table 15.

TABLE 15.—2002 BSAI AFA CATCHER VESSEL (CV) SIDEBOARDS

[Amounts are Expressed in Metric Tons]

Species	Fishery by Area/Season/Processor/Gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2002 Initial TAC	2002 catcher vessel sideboard
Pacific cod	BSAI.			
	jig gear	0.0000	3,700	0
	hook-and-line CV			
	Jan 1—Jun 10	0.0006	169	0
	Jun 10—Dec 31	0.0006	113	0
	Pot gear			
	Jan 1—Jun 10	0.0006	10,305	6
	Sept 1—Dec 31	0.0006	6,870	4
	CV < 60 feet LOA using hook-and-line or pot gear.	0.0006	1,314	0
	trawl gear			
	catcher vessel			
	Jan 20—Apr 1	0.8609	30,433	26,200
	Apr 1—Jun 10	0.8609	4,348	3,743
	Jun 10—Nov 1	0.8609	8,695	7,486
Sablefish	BS trawl gear	0.0906	820	74
	AI trawl gear	0.0645	542	35
Atka mackerel	Eastern AI/BS			
	jig gear	0.0031	51	0
	other gear			
	Jan 1—Apr 15	0.0032	2,518	8
	Sept 1—Nov 1	0.0032	2,518	8
	Central AI			
	Jan—Apr 15	0.0001	11,008	1
	inside CH	0.0001	6,605	1
	Sept 1—Nov 1	0.0001	11,008	1
	inside CH	0.0001	6,605	1
	Western AI			
	Jan—Apr 15	0.0000	9,111	0
	inside CH	0.0000	5,467	0
	Sept 1—Nov 1	0.0000	9,111	0
	inside CH	0.0000	5,467	0
Yellowfin sole	BSAI	0.0647	73,100	4,730
Rock sole	BSAI	0.0341	45,900	1,565
Greenland Turbot	BS	0.0645	4,958	320
	AI	0.0205	2,442	50
Arrowtooth flounder	BSAI	0.0690	13,600	938
Alaska Plaice	BSAI	0.0441	10,200	450
Other flatfish	BSAI	0.0441	2,550	112
POP	BS	0.1000	2,620	262
	Eastern AI	0.0077	3,201	25
	Central AI	0.0025	2,831	7
	Western AI	0.0000	5,236	0
Northern rockfish	BS	0.0048	16	0
	AI	0.0089	6,239	56
Shortraker/Rougheye	BS	0.0048	99	0
	AI	0.0035	843	3

TABLE 15.—2002 BSAI AFA CATCHER VESSEL (CV) SIDEBOARDS—Continued

[Amounts are Expressed in Metric Tons]

Species	Fishery by Area/Season/Processor/Gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2002 Initial TAC	2002 catcher vessel sideboard
Other rockfish	BS	0.0327	307	10
	AI	0.0095	575	5
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	26,201	1,417
Flathead Sole	BS trawl gear	0.0505	21,250	1,073

Regulations at § 679.63(b) establish a formula for PSC sideboards for AFA catcher vessels. The AFA catcher vessel PSC bycatch limit for halibut in the BSAI, and each crab species in the BSAI for which a trawl bycatch limit has been established as a percentage of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are listed in Table 16.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 15 will accrue against the 2002 PSC limits for the AFA catcher vessels. Regulations at § 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a 2002 PSC limitation listed in Table 16 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 16.—2002 AFA CATCHER VESSEL (CV) PROHIBITED SPECIES CATCH (PSC) SIDEBOARD AMOUNTS [1] FOR THE BSAI

PSC species	Target fishery category [2] and season	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2002 PSC Limit	2002 AFA catcher vessel PSC sideboard
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole.			
	Jan. 20—Apr. 1	0.1144	262	30
	Apr. 1—May 21	0.1144	195	22
	May 21—June 30	0.1144	49	6
	June 30—Dec. 31	0.1144	380	43
	Rock sole/flat. sole/other flatfish.			
	Jan. 20—Apr. 1	0.2841	448	127
	Apr. 1—June 30	0.2841	164	47
	June 30—Dec. 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish	0.0245	69	2
	Pollock/Atka mackerel/Other sp	0.0227	232	5
Red King Crab	Pacific cod	0.6183	11,664	7,212
Zone 1	Yellowfin sole	0.1144	16,664	1,906
	Rock sole/flat. sole/other flatfish	0.2841	59,782	16,984
	Pollock/Atka mackerel/Other sp	0.0227	1,615	37
C. opilio	Pacific cod	0.6183	124,736	77,124
COBLZ [3,4]	Yellowfin sole	0.1144	2,776,981	317,687
	Rock sole/flat. sole/other flatfish	0.2841	969,130	275,330
	Pollock/Atka mackerel/Other sp	0.0227	72,428	1,644
	Rockfish [5]	0.0245	40,237	986
	Turbot/Arrowtooth/Sablefish	0.2327	40,238	9,363
C. bairdi	Pacific cod	0.6183	183,112	113,218
Zone 1	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flat. sole/other flatfish	0.2841	365,320	103,787
	Pollock/Atka mackerel/Other sp	0.0227	17,224	391
C. bairdi	Pacific cod	0.6183	324,176	200,438
Zone 2	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flat. sole/other flatfish	0.2841	596,154	169,367
	Pollock/Atka mackerel/Other sp	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.

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[4] The Council at its December 2001 meeting limited red king crab for trawl fisheries within the RKCSS to 35 percent of the total allocation to the rock sole/flathead sole/'other flatfish" fishery category (§ 679.21(e)(3)(ii)(B)). "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

[5] The Council at its December 2001 meeting apportioned the rockfish PSC amounts from June 30—December 31.

2002 Sideboard Directed Fishing Closures

Catcher/Processor Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor sideboard amounts listed in Table 13 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2002 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes these following amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by unrestricted AFA catcher/processors for the species in the specified areas set out in Table 17.

TABLE 17.—AFA UNRESTRICTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES.[1]

[These closures take effect 1200 HRS A.L.T., January 20, 2002 and remain in effect through 2400 HRS, A.L.T., December 31, 2002]

Species	Area	Gear types
Sablefish trawl	BSAI	all.
Greenland turbot	BSAI	all.
Arrowtooth flounder	BSAI	all.
Pacific ocean perch	BSAI	all.
Northern rockfish	BSAI	all.
Shortraker/Rougheye rockfish.	BSAI	all.
Other rockfish	BSAI	all.
Squid	BSAI	all.
Other species	BSAI	all.

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

AFA Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher vessel sideboard amounts listed in Table 15 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2002 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 18.

TABLE 18.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES[1]

[These closures take effect 12 Noon A.L.T., January 20, 2002. These closures will remain in effect through 2400 hrs, A.L.T., December 31, 2002]

Species	Area	Gear
Pacific cod	BSAI	hook-and-line, pot, jig.
Sablefish	BSAI	trawl.
Atka mackerel	BSAI	all.
Greenland Turbot	BSAI	all.
Arrowtooth flounder	BSAI	all.
Pacific ocean perch	BSAI	all.
Northern rockfish	BSAI	all.
Shortraker/rougheye rockfish.	BSAI	all.
Other rockfish	BSAI	all.
Squid	BSAI	all.
Other species	BSAI	all.

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

Increase in the Contribution of Arrowtooth Flounder CDQ to the CDQ Non-specific Reserve

Regulations at § 679.31(f) establish the CDQ non-specific reserve, comprised of 15 percent of the CDQ reserves of arrowtooth flounder and "other species" (skates, sharks, sculpin, and octopus). These species are taken incidentally in the CDQ fisheries. A CDQ group may request that NMFS transfer amounts in its CDQ non-specific reserve back into either its arrowtooth flounder or "other species" CDQ categories to reduce the possibility that the catch of these species would limit overall CDQ catch. Species or species groups that contribute to the CDQ non-specific reserve are low-valued species for which no target fishery currently exists. These species have an adequate buffer between the TAC and the overfishing limit (OFL).

During the 2002 harvest specification process for the BSAI fisheries, the Bering Sea pollock TAC was set at 1,485,000 mt, based on increases to the 2002 pollock ABC and OFL. This is a 6 percent increase over the 2001 pollock TAC of 1,400,000 mt. The total BSAI TAC for all groundfish must be maintained within a required optimum yield range of 1.4 million to 2.0 million mt. In order to stay within the 2.0 million mt limit, the Council often sets the TAC for a particular groundfish species below its designated ABC. It selected an arrowtooth flounder TAC of approximately 14 percent of the arrowtooth flounder 2002 ABC of 113,000 mt. This means that the amount of the arrowtooth flounder CDQ reserve and the subsequent contribution of this amount to the CDQ non-specified reserve is proportionately decreased for 2002.

During the first 3 years of the groundfish CDQ fisheries, the CDQ non-specific reserve contained sufficient amounts of quota to support the bycatch needs in the "other species" CDQ category. Arrowtooth flounder was the largest contributor to the non-specific reserve in 1999 and 2000, the first complete years of groundfish CDQ fishing. For these years, the arrowtooth flounder TAC was set at or close to the acceptable biological catch (ABC) level. However, in 2001, the arrowtooth flounder TAC was set significantly less than the arrowtooth flounder ABC. This initiated concern among CDQ program participants that vessels fishing for groundfish CDQ would catch the "other species" CDQ allocation before they fully harvested target species such as pollock, Pacific cod, sablefish, and Greenland turbot. One of the primary reasons they cited for the shortfall in "other species" CDQ was the reduction in the 2001 arrowtooth flounder TAC. NMFS regulations limit the amount of "other species" CDQ available to each CDQ group and prohibit the groups from exceeding their allocations.

At its April 2001 meeting, the Council stated that the CDQ non-specific reserve was "intended, in part, to provide adequate 'other species' quota to allow reasonable CDQ fisheries." At its June 2001 meeting, the Council requested that NMFS adjust the contribution of arrowtooth flounder CDQ to the CDQ non-specific reserve from 15 percent to 50 percent via emergency rulemaking. This was done in the SSL/Harvest Specifications interim emergency rule extension on July 17, 2001 (66 FR 37167). During the 2002 BSAI groundfish specification setting process, the Council again requested that NMFS amend the CDQ non-specific reserve to increase the contribution of arrowtooth flounder to the CDQ non-specific reserve from 15 percent of the arrowtooth flounder CDQ reserve to 50 percent of the arrowtooth flounder CDQ reserve for 2002.

In response to the Council's request, NMFS is amending the CDQ non-specific reserve to increase the contribution of arrowtooth flounder to the CDQ non-specific reserve from 15 percent of the arrowtooth flounder CDQ reserve to 50 percent of this reserve for 2002. This increase will allow CDQ groups to transfer additional quota from the CDQ non-specific reserve to the "other species" CDQ account to reduce the possibility that the incidental catch of "other species" would prevent the CDQ groups from fully harvesting their target species allocations.

The maximum amount of "other species" available for harvest in the combined CDQ and non-CDQ fisheries is the aggregate amount of the following components: The open access ITAC (26,201 mt), the CDQ reserve (2,312 mt), and the current amount of arrowtooth flounder in the CDQ non-specific reserve that could be released to the "other species" category (180 mt). The sum of these components is 28,693 mt. If 50 percent (600 mt) of the arrowtooth flounder CDQ reserve is moved to the non-specific CDQ reserve and subsequently released to the "other species" CDQ category, the revised total amount of "other species" available for harvest in the combined open access and CDQ fisheries would increase to 29,113 mt. This is 420 mt more than the currently available total "other species" amount of 28,693 mt. However, the increase in the overall amount of "other species" available for harvest via transfers from the CDQ non-specific reserve is still less than the combined CDQ and non-CDQ fisheries 2002 "other species" TAC of 30,825 mt and will not likely result in the total catch of "other species" exceeding the 2002 "other species" TAC. NMFS has determined that the TAC, ABC, and OFL controls associated with both the "other species" and arrowtooth flounder species categories are not compromised by this action. Even after adjusting the contribution of arrowtooth flounder to the CDQ non-specific reserve, the total permissible catch of "other species" and arrowtooth flounder in both the CDQ and non-CDQ groundfish fisheries remains below the initially recommended TAC for each species. The 2002 ABC and OFL thresholds are not impacted, since this action does not adjust permissible overall catch levels to the extent that they approach the ABC or OFL for either species. The aggregate amount of groundfish allocated to the CDQ sector will remain the same even with this increased contribution of arrowtooth flounder to the CDQ non-specific reserve, and the CDQ sector will still be constrained by existing prohibitions against exceeding specific CDQ amounts.

Gulf of Alaska

The SSC adopted the OFL recommendations from the Plan Team, which were provided in the November 2001 GOA SAFE report (See **ADDRESSES**) for all groundfish species categories. The SSC also adopted the ABC and area apportionment recommendations from the Plan Team, which were provided in the GOA SAFE report, for all of the groundfish species categories.

The AP adopted the SSC's OFL and ABC recommendations and developed TAC recommendations for all species. The Council adopted the AP's OFL, ABC, and TAC recommendations for all species.

The SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery as well as survey data, as in 2001. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA sablefish ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat (WYK) District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys conducted in 1996, 1999, and 2001. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2002 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska for the State-managed fishery. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below.

The Council's recommended ABCs are listed in Table 19. These amounts reflect harvest amounts that are less than the specified overfishing amounts. The sum of 2002 ABCs for all assessed groundfish is 394,780 mt, which is lower than the 2001 ABC total of 447,710 mt.

2002 GOA Harvest Specifications

Specifications of TAC and Reserves

The Council recommended that TACs be set equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, Pacific Ocean perch, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council recommended TACs be set less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The TAC for pollock in the combined W/C/WYK area of the GOA has decreased from 89,415 mt in 2001 to 51,790 mt in 2002. The 2002 TAC in the SEO District of the Eastern GOA is unchanged from 2001 at 6,460 mt. The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below.

Under this emergency interim rule, the annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned to the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1) in Statistical Areas 610, 620, and 630 of the GOA (§ 679.23(d)(3)(i) through (iv)). The derivation of the seasonal apportionment amounts in these areas is discussed below.

The 2002 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in State waters in the Central and Western GOA, as well as Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that the Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA so that the TAC for (1) The Eastern GOA is lower than the ABC by 864 mt, (2) the Central GOA is lower than the ABC by 6,890 mt, and (3) the Western GOA is lower than the ABC by 5,616 mt. These amounts reflect the sum of State's 2002 GHLs in these areas which are 25 percent, 21.75 percent, and 25 percent of the Eastern, Central,

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and Western GOA ABCs, respectively. These percentages are unchanged from 2001.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas at 60 percent of the annual TAC for the January 1 through June 10 A season for nontrawl gear and January 20 through June 10 A season for trawl gear. 40 percent of the annual TAC is allocated to the B season. For nontrawl gear, the B season extends from September 1 through December 31 and for trawl gear the B seasons extends from September 1 through November 1. These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The 2002 GOA-wide "other species" TAC is 11,330 mt, which is 5 percent of the sum of the combined TAC amounts (226,560 mt) for the assessed target species. The sum of the TACs for all GOA groundfish is 237,890 mt, which is within the OY range specified by the FMP. The sum of the 2002 TACs is lower than the 2001 TAC sum of 285,994 mt. NMFS has reviewed the Council's recommended TAC specifications and apportionments and hereby approves these specifications under § 679.20(c)(3)(ii). The 2002 ABCs, TACs, and OFLs are shown in Table 19.

TABLE 19.—2002 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are in metric tons]

Species	Area [1]	ABC	TAC	Overfishing
Pollock [2].				
Shumagin	(610)	17,730	17,730	
Chirikof	(620)	23,045	23,045	
Kodiak	(630)	9,850	9,850	
WYK	(640)	1,165	1,165	
Subtotal	W/C/WYK	51,790	51,790	75,480
SEO	(650)	6,460	6,460	8,610
Total		58,250	58,250	84,090
Pacific cod [3].				
	W	22,465	16,849	
	C	31,680	24,790	
	E	3,455	2,591	
Total		57,600	44,230	77,100
Flatfish (deep-water) [4]	W	180	180	
	C	2,220	2,220	
	WYK	1,330	1,330	
	SEO	1,150	1,150	
Total		4,880	4,880	6,430
Rex sole [4]	W	1,280	1,280	
	C	5,540	5,540	
	WYK	1,600	1,600	
	SEO	1,050	1,050	
Total		9,470	9,470	12,320
Flathead sole	W	9,000	2,000	
	C	11,410	5,000	
	WYK	1,590	1,590	
	SEO	690	690	
Total		22,690	9,280	29,530
Flatfish (shallow-water) [5]	W	23,550	4,500	
	C	23,080	13,000	
	WYK	1,180	1,180	
	SEO	1,740	1,740	
Total		49,550	20,420	61,810
Arrowtooth flounder	W	16,960	8,000	
	C	106,580	25,000	
	WYK	17,150	2,500	
	SEO	5,570	2,500	
Total		146,260	38,000	171,060
Sablefish [6]	W	2,240	2,240	
	C	5,430	5,430	
	WYK	1,940	1,940	
	SEO	3,210	3,210	
Subtotal	E	5,150	5,150	
Total		12,820	12,820	19,350
Pacific ocean perch [7]	W	2,610	2,610	3,110
	C	8,220	8,220	9,760

TABLE 19.—2002 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are in metric tons]

Species	Area [1]	ABC	TAC	Overfishing
	WYK	780	780	
	SEO	1,580	1,580	
Subtotal	E			2,800
Total		13,190	13,190	15,670
Short raker/rougheye [8]	W	220	220	
	C	840	840	
	E	560	560	
Total		1,620	1,620	2,340
Other rockfish [9,10]	W	90	90	
	C	550	550	
	WYK	260	150	
	SEO	4,140	200	
Total		5,040	990	6,610
Northern Rockfish [10,12]	W	810	600	
	C	4,170	4,170	
	E	N/A	N/A	
Total		4,980	4,980	5,910
Pelagic shelf rockfish [13]	W	510	510	
	C	3,480	3,480	
	WYK	640	640	
	SEO	860	860	
Total		5,490	5,490	8,220
Thornyhead rockfish	W	360	360	
	C	840	840	
	E	790	790	
Total		1,990	1,990	2,330
Demersal shelf rockfish [11]	SEO	350	350	480
Atka mackerel	GW	600	600	6,200
Other species [14]	GW	[15] N/A	11,330	N/A
Total [16]		394,780	237,890	509,450

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A and B seasons the apportionment is based on the relative distribution of pollock biomass at 23 percent, 68 percent, and 9 percent in Statistical Areas 610, 620, and 630 respectively. During the C and D seasons pollock is apportioned based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630 respectively. These seasonal apportionments are shown in Table 21. In the West Yakutat and the Southeast Outside Districts of the Eastern Regulatory Area the annual pollock TAC is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 22.

[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 20).

[7] "Pacific ocean perch" means *Sebastes alutus*.

[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means Slope rockfish.

[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), S. *goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), S. *proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), S. *diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and S. *reedi* (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish, *S. polyspinous*.

[11] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[12] "Northern rockfish" means *Sebastes polyspinis*.

[13] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of assessed target species.

[15] N/A means not applicable.

[16] The total ABC is the sum of the ABCs for assessed target species.

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Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). In 2001, NMFS reapportioned all of the reserves in the final harvest specifications. Between 1997 and 2000, NMFS retained the Pacific cod reserve to provide for a management buffer to account for excessive fishing effort and incomplete or late catch reporting. NMFS believes this is no longer necessary as estimates of catch and incidental catch needs in other directed fisheries have improved in recent years. For 2002, NMFS has reapportioned all of the reserve for pollock, Pacific cod, flatfish, and "other species". Specifications of TAC shown in Table 19 reflect apportionment of reserve amounts for these species and species groups.

Allocations of the Sablefish TACs to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended that 5 percent of the combined Eastern GOA sablefish be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. This recommendation results in an allocation of 258 mt to trawl gear and 1,682 mt to hook-and-line gear in the WYK District and 3,210 mt to hook-and-line gear in the SEO District. Table 20 shows the allocations of the 2002 sablefish TACs between hook-and-line gear and trawl gear.

TABLE 20.—2002 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons]

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,240	1,792	448
Central	5,430	4,344	1,086
West Yakutat	1,940	1,682	258
Southeast Outside	3,210	3,210	0
Total	12,820	11,028	1,792

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under this emergency interim rule implementing Steller sea lion protection measures for 2002, the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent (§ 679.20(a)(5)(ii)(C)). As established by § 679.23(d)(3), the A, B, C, and D season allowances are available from January 20 through February 25, from March 10 through May 31, from August 25 through September 15, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass as determined by a composite of NMFS winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, Alaska Region, NMFS, provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest at the beginning of the next season(s) shall be subtracted from or added to the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does exceed 15,187 mt in any single season. The WYK and SEO District pollock TACs of 1,165 mt and 6,460 mt, respectively, are not allocated seasonally.

Regulations at § 679.20(a)(6)(ii) require that 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 679.20(e) and (f). At this time, these bycatch amounts are unknown and will be determined during the fishing year.

The seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Table 21, except that amounts of pollock for processing by the inshore and offshore component are not shown.

TABLE 21.—DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC IN 2002

[Values are in mt]

	Area			
Season[1]	Shumagin (Area 610) (biomass distribution[2])	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,916 (23%)	8,618 (68%)	1,122 (9%)	12,656 (100%)
B	2,916 (23%)	8,618 (68%)	1,122 (9%)	12,656 (100%)
C	5,949 (47%)	2,905 (23%)	3,803 (30%)	12,657 (100%)
D	5,949 (47%)	2,904 (23%)	3,803 (30%)	12,656 (100%)
Annual Total	17,730	23,045	9,850	50,625

[1] These emergency interim regulations for pollock in the GOA which specify A and B season dates and harvest limitations, expires July 8, 2002, before the C and D seasons are scheduled to begin. Therefore, the C and D seasons are not authorized unless either this emergency rule is extended, or proposed and final rulemaking is completed.

[2] Biomass distribution is rounded to the nearest 1%.

Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

As described in Part I above, Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. The A season begins on January 1, 2002, and ends on June 10, 2002, for nontrawl gear and begins on January 20, 2002, and ends on June 10, 2002, for trawl gear. The B season begins on September 1, 2002, for all gear types and ends on December 31, 2002, for nontrawl gear and November 1, 2002, for trawl gear. After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components as provided in § 679.20(a)(6)(iii). Directed fishing for Pacific cod between the A and the B seasons is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable bycatch amounts allowed under regulations at § 679.20(e) and (f). The time of day of all openings and closures of fishing seasons, other than the beginning and ending of the calender fishing year, is 1200 hours, A.l.t. For purposes of clarification, NMFS points out that the A season and the B season Pacific cod fishery dates differ from those of the A, B, C, and D seasons for the pollock fisheries. Any overage or underage of Pacific cod harvest from the A season shall be subtracted from or added to the subsequent B season. Any incidental catch of Pacific cod after the A season closes will be subtracted from the B season.

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the Pacific cod TAC for 2002 are shown in Table 22.

TABLE 22.—2002 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are in mt]

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	16,849	15,164	1,685
A Season (60%)	10,109	9,098	1,011
B Season (40%)	6,740	6,066	674
Central	24,790	22,311	2,479
A Season (60%)	14,874	13,387	1,487
B Season (40%)	9,916	8,924	992
Eastern	2,591	2,332	259
Total	44,230	39,807	4,423

Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. As in 2001, the Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 2002. The Council recommended these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota program, which allows legal-sized halibut to be retained in the

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sablefish fishery. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by this gear type (336 mt in 2001) and the assumed high survival rate of any halibut that are incidentally taken and released.

As in 2001, the Council recommended a hook-and-line halibut PSC mortality limit of 300 mt. Ten mt of this limit are apportioned to the demersal shelf rockfish fishery in the Southeast Outside District. The fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Observer data are not available to verify actual bycatch amounts given that most vessels are less than 60 ft (13.5 m) LOA and are exempt from observer coverage. The remainder of the PSC limit is seasonally apportioned among the non-sablefish hook-and-line gear fisheries as shown in Table 23.

The Council continued to recommend a trawl halibut PSC mortality limit of 2,000 mt for 2002. The PSC limit has remained unchanged since 1989. Regulations at § 679.21(d)(3)(iii) authorize separate apportionments of the trawl halibut PSC limit between trawl fisheries for deep-water and shallow-water species. Regulations at § 679.21(d)(5) authorize seasonal apportionments of halibut PSC limits.

NMFS concurs in the Council's recommendations described above and listed in Table 23. The following types of information as presented in, and summarized from, the current SAFE report, or as otherwise available from NMFS, ADF&G, the International Pacific Halibut Commission (IPHC), or public testimony were considered:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2001. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 7, 2001, is 2,205 mt, 286 mt, and 4 mt, respectively, for a total halibut mortality of 2,495 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2001 fishing year. Trawling for the deep-water fishery complex was closed for the second season on May 25 (66 FR 29511, May 31, 2001) and for the third season on July 23 (66 FR 39119, July 27, 2001). The shallow-water fishery complex was closed for the second season on April 27 (66 FR 21886, May 2, 2001), the fishery was reopened from May 21 to May 26 (66 FR 28679, May 24, 2001, and 66 FR 29512, May 31, 2001), for the third season on June 27 (66 FR 34852, July 2, 2001), and for the fourth season on August 4 (66 FR 41455, August 8, 2001). The fishery was reopened from September 1 to September 4 (66 FR 34852, July 2, 2001, and 66 CF 46967, September 10, 2001). All trawling in the GOA closed (with the exception of pelagic trawl gear targeting pollock) for the remainder of the year on October 21 (66 FR 53736, October 24, 2001).

The three seasonal apportionments of the hook-and-line halibut bycatch mortality limit resulted in closures of hook-and-line gear fisheries for groundfish other than sablefish and demersal shelf rockfish on February 26 (66 FR 12912, March 1, 2001), May 17 (66 FR 27043, May 16, 2000), and on September 4 (66 FR 46404, September 5, 2001).

(B) Expected Changes in Groundfish Stocks

In December 2001, the Council adopted higher 2002 ABCs for rex sole, shallow water flatfish, flathead sole, other rockfish, northern rockfish, and demersal shelf rockfish than those established for 2001. The Council adopted lower 2002 ABCs for pollock, Pacific cod, deep water flatfish, arrowtooth flounder, sablefish, Pacific Ocean perch, shortraker and rougheye rockfish, pelagic shelf rockfish, and thornyhead rockfish than those established for 2001. More information on these changes is included in the final SAFE report (November 2001) and in the Council and SSC December 2001 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the 2002 TACs for the GOA is 237,888 mt, a decrease of 17 percent from the 2001 TAC total of 285,994 mt. Those fisheries for which the 2002 TACs are lower than in 2001 are pollock (decreased to 58,250 mt from 95,875 mt), Pacific cod (decreased to 44,230 mt from 52,110 mt), deep water flatfish (decreased to 4,880 mt from 5,300 mt), sablefish (decreased to 12,820 mt from 12,840 mt), Pacific Ocean perch (decreased to 13,190 mt from 13,510 mt), shortraker and rougheye rockfish (decreased to 1,620 mt from 1,730 mt), other rockfish (decreased to 990 mt from 1,010 mt), pelagic shelf rockfish (decreased to 5,490 mt from 5,980 mt), thornyhead rockfish (decreased to 1,990 mt from 2,310 mt), and "other species" (decreased to 11,330 mt from 13,619 mt). Those species for which the 2002 TACs are higher than in 2001 are rex sole (increased to 9,470 mt from 9,440 mt), flathead sole (increased to 9,280 mt from 9,060 mt), shallow water flatfish (increased to 20,420 mt from 19,400 mt), northern rockfish (increased to 4,980 mt from 4,880 mt), and demersal shelf rockfish (increased to 350 mt from 330 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2000. The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass for 2001 is estimated to be 249,007 mt, using an age-specific estimate for 2001. In the age-specific estimate, the assumption is that the selection of fish by the survey is based primarily on the age of the fish and reflects the availability of fish of different ages on the grounds. This is an increase from the estimate of 135,172 mt in 2000. The difference is in large part due to omitting a precautionary downward correction used in the 1999 assessment which was based on presumed increased fishing power of baits recently used in the surveys. The 2000 estimate for exploitable biomass in 2001 of 249,007 mt is now similar to the 1998 estimate for exploitable biomass in 1999 of 227,366 mt before the fishing power correction was made. The IHPC believes that exploitable biomass of the Pacific halibut stock peaked at 326,520 mt in 1988. According to the IHPA, the long-term average reproductive biomass for the Pacific halibut resource is estimated at 118,000 mt. Long-term average yield is estimated at 26,980 mt, round weight. The species is fully utilized. Average catches (1994–96) are 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch is 48 percent higher than the long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2001, the IPHC recommended commercial catch limits totaling 37,120 mt (round weight equivalents) for Alaska in 2001, up from 33,910 mt in 2000. Through November 23, 2001, commercial hook-and-line harvests of halibut in Alaska totaled 35,293 mt (round weight equivalents).

The major change in the assessment results for 2000 came from the elimination of the downward correction in recent survey catch rates that was applied in 1999, to account for a suspected increase in the fishing power of the surveys due to a bait change in 1993. Experiments conducted in 2000 have shown that the precautionary adjustment is not required. The stock assessment shows only minor changes for the southern portion of the range (Areas 2A, 2B, and 2C). Improvements in the estimated biomass of the stock in Area 3A are accounted for largely by the change in the treatment of historical survey data. Weight at age for halibut in the central portion of the range increased slightly in 2000 over the very low values of recent years. However, recruitment of year classes born between 1989 and 1993 appears to be poor. The outlook for the stock biomass over the near future is for a decline from the record high levels of recent years until increased recruitment to the stock occurs.

Additional information on the Pacific halibut stock assessment may be found in the final SAFE report (November 2001) and in the IPHC's 2000 Pacific halibut stock assessment (December 2000). The 2001 Pacific halibut stock assessment for 2002 will be considered by the IPHC at its January 2002 annual meeting in setting the 2002 commercial halibut fishery quotas. IPHC staff have made a preliminary catch recommendation of 36,812 mt (round weight equivalents) for Alaska waters in 2002, a decrease of 308 mt from 2001.

(E) Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2002 GOA groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

Methods available for reducing halibut bycatch include: (1) Reducing halibut bycatch rates through the Vessel Incentive Program; (2) modifications to gear; (3) changes in groundfish fishing seasons; (4) individual transferable quota programs; and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (§ 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (§ 679.2 Authorized fishing gear (12)) specify requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized fishing gear) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, to increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and to possibly lower overall halibut bycatch mortality in groundfish fisheries.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

Consistent with the goals and objectives of the FMP to reduce halibut bycatch while providing an opportunity to harvest the groundfish OY, NMFS approves the assignments of 2,000 mt and 300 mt of halibut PSC limits to trawl and hook-and-line gear, respectively. While these limits will reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they will not result in unfair allocation to any particular user group as these PSCs establish an upper limit on the impact of the groundfish fisheries on the commercial halibut fishery in the GOA. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut/sablefish IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery. NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Fishery and Seasonal Apportionments of the Halibut PSC Limits

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal apportionments of halibut PSC limits: (a) Seasonal distribution of halibut, (b) seasonal distribution of target groundfish species relative to halibut distribution, (c) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, (d) expected bycatch rates on a seasonal basis, (e) expected changes in directed groundfish fishing seasons, (f) expected actual start of fishing effort, and (g) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

In December 2001, the Council and its AP recommended seasonal PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based upon the criteria above. NMFS adjusts the Council's recommended start date for the third seasonal allowance of trawl halibut PSC from July 1 to June 30 to coincide with the trawl rockfish opening in the BSAI on June 30 and to facilitate inseason management of rockfish harvest over the July 4 holiday. NMFS approves the PSC apportionments specified in Tables 23 and 24, below. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2002 season.

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TABLE 23.—FINAL 2002 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. THE HOOK-AND-LINE SABLEFISH FISHERY IS EXEMPT FROM HALIBUT PSC LIMITS. (VALUES ARE IN MT)

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1– Apr 1	550 (27.5%)	Jan 1–June 10	250 (86.2%)	Jan 1–Dec 31	10 (100%)
Apr 1–June 30	400 (20%)	June 10–Sept 1	5 (1.7%)		
June 30–Sept 1	600 (30%)	Sept 1–Dec 31	35 (12.1%)		
Sept 1–Oct 1	150 (7.5%)				
Oct 1–Dec 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit to a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species". The apportionment for these two trawl fishery complexes is presented in Table 24.

TABLE 24.—FINAL 2002 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX (VALUES ARE IN METRIC TONS)

Season	Shallow-water	Deep-water	Total
Jan 20–Apr 1	450	100	550
Apr 1–June 30	100	300	400
June 30–Sept 1	200	400	600
Sept 1–Oct 1	150	Any Remainder	150
Subtotal: Jan 20–Oct 1	900	800	1,700
Oct 1–Dec 31			300
Total			2,000

No apportionment between shallow-water and deep-water fishery complexes during the 4th quarter of the calendar year.

Halibut Discard Mortality Rates

The Council recommended that the revised halibut discard mortality rates (DMRs) recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 2002 groundfish fisheries. NMFS concurs in the Council's recommendation. The IPHC recommended use of a long-term average as preseason assumed DMRs for the 2001–2003 groundfish fisheries. The IPHC recommendation also includes a provision that revised DMRs would be proposed should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. Rates were lacking for some fisheries, so rates from the most recent years were used. For the "other species" fishery, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The assumed mortality rates recommended for 2002 are unchanged from those used in 2001 in the GOA. The recommended rates for hook-and-line targeted fisheries range from 8 to 24 percent. The recommended rates for trawl targeted fisheries range from 58 to 72 percent. The recommended rate for all pot targeted fisheries is 14 percent. The 2002 assumed DMRs are listed in Table 25.

TABLE 25.—2002 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA (LISTED VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD)

Gear and target	Mortality rate
Hook-and-Line:	
Pacific cod	14
Rockfish	8
Other species	14
Sablefish	24
Trawl:	
Midwater pollock	72
Rockfish	69
Shallow-water flatfish	69
Pacific cod	61
Deep-water flatfish	60
Flathead sole	58
Rex sole	61
Bottom pollock	61
Arrowtooth Flounder	62
Atka mackerel	70
Sablefish	66
Other species	61
POT:	
Pacific cod Other species	14

Non-Exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

One of the provisions implemented under the AFA was to specify groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are considered necessary for fishermen and processors who have received exclusive harvesting and processing privilege under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA. In the GOA, unrestricted AFA catcher/processors are prohibited from fishing for any species of fish and from processing any groundfish harvested in Statistical Area 630 of the GOA. The Council recommended that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. Exempted AFA catcher vessels in the GOA are those less than 125 ft (38.1 m) length overall whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997 (§ 679.63(b)(1)(i)(B)).

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based upon their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The amounts of the groundfish harvest limits in the GOA are based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.63(b)(1)(ii)(C)). For 2002, the ratio of 1995 to 1997 non-exempt AFA catcher vessel retained catch to the 1995 to 1997 TAC has been revised from 2001 by NMFS. These revisions are based upon ADF&G editing of fish tickets and NMFS editing of observer catch data and weekly production reports. These amounts are listed in Table 26. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits in Table 26.

TABLE 26.—FINAL 2002 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS) (VALUES ARE IN MT)

Species	Apportionments and Allocations by Area/Season/processor/Gear	Ratio of 1995–1997 Non-Exempt AFA CV Catch to 1995–1997 TAC	2002 TAC	2002 Non-Exempt AFA Catcher Vessel Sideboard
Pollock	*A Season (W/C areas only).*			
	January 20—February 25.			
	Shumagin (610)	0.6112	2,916	1,782
	Chirikof (620)	0.1427	8,618	1,230
	Kodiak (630)	0.2438	1,122	274
	B Season (W/C areas only).			
	March 10—May 31.			
	Shumagin (610)	0.6112	2,916	1,782
	Chirikof (620)	0.1427	8,618	1,230
	Kodiak (630)	0.2438	1,122	274
	C Season (W/C areas only).			
	August 25—September 15.			
	Shumagin (610)	0.6112	5,949	3,636
	Chirikof (620)	0.1427	2,905	414
	Kodiak (630)	0.2438	3,803	927
	D Season (W/C areas only).			
	October 1—November 1.			
	Shumagin (610)	0.6112	5,949	3,636
	Chirikof (620)	0.1427	2,904	414
	Kodiak (630)	0.2438	3,803	927
	Annual.			
	WYK (640)	0.3499	1,165	408
	SEO (650)	0.3499	6,460	2,260
Pacific cod	A Season[1].			
	January 1—June 10.			
	W inshore	0.1423	9,098	1,295
	offshore	0.1026	1,011	104
	C inshore	0.0722	13,387	966
	offshore	0.0721	1,487	107
	B Season[2].			
	September 1—December 31.			
	W inshore	0.1423	6,066	863
	offshore	0.1026	674	69
	C inshore	0.0722	8,924	644
	offshore	0.0721	992	72
	Annual.			
	January 1—December 31.			
	E inshore	0.0079	2,332	18
	Offshore	0.0078	259	2
Flatfish deep-water	W	0.0000	180	0
	C	0.0670	2,220	149
	E	0.0171	2,480	42
Rex sole	W	0.0010	1,280	1
	C	0.0402	5,540	223
	E	0.0153	2,650	41
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	130
	E	0.0048	2,280	11
Flatfish shallow-water	W	0.0156	4,500	70

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TABLE 26.—FINAL 2002 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS) (VALUES ARE IN MT)—Continued

Species	Apportionments and Allocations by Area/Season/processor/Gear	Ratio of 1995–1997 Non-Exempt AFA CV Catch to 1995–1997 TAC	2002 TAC	2002 Non-Exempt AFA Catcher Vessel Sideboard
	C	0.0598	13,000	777
	E	0.0126	2,920	37
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	772
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	448	0
	C trawl gear	0.0720	1,086	78
	WYK trawl gear	0.0488	258	13
Pacific Ocean perch	W	0.0623	2,610	163
	C	0.0866	8,220	712
	E	0.0466	2,360	110
Shortraker/Rougheye	W	0.0000	220	0
	C	0.0237	840	20
	E	0.0124	560	7
Other rockfish	W	0.0034	90	0
	C	0.2065	550	114
	E	0.0000	350	0
Northern rockfish	W	0.0003	810	0
	C	0.0336	4,170	140
Pelagic shelf rockfish	W	0.0001	510	0
	C	0.0000	3,480	0
	E	0.0067	1,500	10
Thornyhead rockfish	W	0.0308	360	11
	C	0.0308	840	26
	E	0.0308	790	24
Demersal shelf rockfish	SEO	0.0020	350	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	11,330	102

Notes: [1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based upon the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.63(b)(1)(iii)). These amounts are shown in Table 27.

TABLE 27.—FINAL 2002 NON-EXEMPT AFA CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA (VALUES ARE IN MT)

PSC species	Target fishery and season	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2002 PSC limit	2002 Non-exempt AFA catcher vessel PSC limit
Halibut (mortality in mt)	Trawl 1st Seasonal Allowance; January 20–April 1.			
	shallow water targets	0.340	450	153
	deep water targets	0.070	100	7
	Trawl 2nd Seasonal Allowance; April 1–June 30.			
	shallow water targets	0.340	100	34
	deep water targets	0.070	300	21
	Trawl 3rd Seasonal Allowance; June 30–Sept. 1.			
	shallow water targets	0.340	200	68
	deep water targets	0.070	400	28
	Trawl 4th Seasonal Allowance; Sept. 1–October 1.			
	shallow water targets	0.340	150	51
	deep water targets	0.070	0	any remainder from 3rd season above
	Trawl 5th Seasonal Allowance; October 1–December 31.			
	all targets	0.205	300	62

Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts (Table 28) are necessary as incidental catch to support other anticipated groundfish fisheries for the 2002 fishing year.

TABLE 28.—INCIDENTAL CATCH NEEDED TO SUPPORT OTHER DIRECTED FISHERIES IN THE GOA IN 2002 (AMOUNTS ARE IN MT)

Target	Regulatory area	Gear/component	Amount
Atka Mackerel	Entire GOA	All	600
Thornyhead Rockfish	Entire GOA	All	1,990
Shortraker and Rougheye Rockfish	Entire GOA	All	1,620
Other Rockfish	Entire GOA	All	990
Sablefish	Entire GOA	Trawl	1,792
Pollock	Entire GOA	All/offshore	0

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero and in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, components, and seasons listed in Table 28.

Regulations at § 679.63(b)(1)(iv) provide for management of AFA catcher vessel groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at § 679.20(d)(1)(iv) and § 679.21(d)(8). The Regional Administrator has determined that in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard amounts listed in Table 26 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2001 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and specified areas set out in Table 29.

TABLE 29.—NON-EXEMPT AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA

Species	Regulatory Area/District	Gear
Pelagic shelf rockfish	Entire GOA	All.
Deep-water flatfish	W and E GOA	All.
Rex sole	W and E GOA	All.
Flathead sole	W and E GOA	All.
Arrowtooth Flounder	W and E GOA	All.
Northern rockfish	W GOA	All.
Shallow-water Flatfish	E GOA	All.
Pacific cod	E GOA	All.
Demersal shelf rockfish	SEO District	All.

Response to Comments

NMFS received two letters of comment in response to the July 17, 2001, emergency interim rule (66 FR 37167) that extended and modified Steller sea lion protection measures and harvest specifications through 2001. The letters indicated concern about the perceived inadequacy of the measures in the emergency interim rule to protect Steller sea lions, inadequacy of the accompanying NEPA analysis, and strength of data used for making decisions. The comments are responded to in this action because NMFS has completed the analysis of the current status of Steller sea lions and the interactions with the groundfish fisheries, making responses based on the best scientific information available. The changes made to Steller sea lion protection measures by the July 17, 2001, emergency interim rule were short-term changes that were likely to be modified for 2002 and the comments received were considered in the development of 2002 protection measures. Copies of the Environmental Assessment (EA) for the extension of the 2001 Steller sea lion protection measures and harvest specifications are available from NMFS (see **ADDRESSES**).

Comment 1. One of the main reasons for reducing 2001 protection measures is to allow access to certain areas important to commercial fisheries. According to the economic analysis for the 2001 protection measures, the selection of Alternative 3 from the Economic Assessment for the extension of the 2001 emergency rule ensures minimal economic impact. Minimizing economic hardship is not a legitimate reason for choosing protection measures.

Response. Economic considerations can be used as a basis for selecting Steller sea lion protection measures only from alternatives that avoid jeopardizing the continued existence of an endangered or threatened species and that avoid destroying or adversely modifying designated critical habitat.

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Because Alternative 2 and 3 met or exceeded the level of protection necessary to avoid the likelihood of jeopardy and adverse modification of critical habitat, NMFS was able to choose between Alternatives 2 and 3 and selected the option less likely to cause adverse economic impact. NMFS determined that Alternative 2 would have excessive adverse economic impact; therefore, Alternative 3 was chosen.

Comment 2. Recent telemetry data analysis has led NMFS to reduce the size of Steller sea lion protection areas. Using the telemetry data in this way ignores the facts that (1) Steller sea lions forage beyond 10 nm of land, (2) the telemetry data are biased because the data are limited to Steller sea lions likely to occur closer to shore (lactating females and pups), and (3) NMFS is required to prevent adverse modification in all designated critical habitat.

Response. The best available information on the foraging patterns of Steller sea lions was summarized in a series of white papers by NMFS and the Alaska Department of Fish and Game. This information, along with historical data, was incorporated into an October 2001 Section 7 consultation under the ESA for the two populations of Steller sea lions. This new information was primarily gathered through satellite telemetry on sea lions, observing their at sea distribution, dive characteristics, and haulout patterns. The data indicate a strong preference among juveniles and lactating females to remain close to shore, generally within 10 nm. Some trips by tagged sea lions went beyond 10 nm; however, these were infrequent and often much longer trips going well beyond the boundaries of critical habitat. About 90 percent of the at-sea observations of these tagged animals were within 10 nm from shore.

NMFS recognizes certain limitations in the data that could create undetected biases; these were described in detail in the biological opinion. However, at this time, NMFS has no data to support these possible biases and has no reason to believe that the data mis-represent the at sea distribution of these animals. Little detailed information exists on the foraging patterns of adult males, mostly due to the difficulty in capturing and tagging these large animals. Anecdotal observations, including the Platform of Opportunity (POP) database, indicated that adult males forage over very large areas, often many miles from shore. Additionally, the available data suggest that the lack of juvenile survival may be the greatest cause of the decline, further supporting the use of the telemetry information as a reasonable description of the foraging areas important to Steller sea lions.

In 2002, numerous areas will receive greater protection than in the past; many sites will be protected out to 20 nm as well as parts of the sea lion aquatic foraging areas. NMFS used a zonal approach for closure areas, prohibiting nearly all fishing for the three species within 3 nm from rookeries and haulouts; limited fishing from 3–10 nm by gear types less likely to cause localized depletions of prey; and finally prohibiting fishing with trawl gear from 10–20 nm from most sites. Over the next 1–2 years, the Steller Sea Lion Recovery Team will evaluate the most up to date scientific and commercial data and make recommendations to NMFS on the appropriate boundaries for Steller sea lion critical habitat. NMFS has determined that the limited fishing that is expected to occur in critical habitat would not adversely modify or destroy that critical habitat.

Comment 3. Observed increases in some population segments of Steller sea lions is no reason for reducing protection measures in those localized areas.

Response. In developing protection measures for 2002, the entire western population of Steller sea lions was taken into account. In most cases, where an area was experiencing greater decline, greater protection was provided. Conversely, in some regions with consistent population increases such as Amak Island, the trawl closure zones were actually reduced. Although NMFS did consider some local population trend analyses, the policy was to minimize the impacts on the entire population in order to get a resulting population trajectory that was better than the expected trajectory from the RPA from the November 2000 Biological Opinion. NMFS does not believe that it has adequate information on the sub-populations of sea lions or their prey resources in the western stock to implement management measures that rely on the underlying site-by-site trend of the prey biomass estimates on similarly small scales.

Comment 4. The EA improperly tiers off the 1998 SEIS and the 2001 Draft Programmatic SEIS. A full environmental impact statement should have been developed.

Response. The EA incorporated relevant and accurate discussion and analysis in the 1998 SEIS. The EA did not tier off of the draft programmatic SEIS but it did reference a significant amount of analysis that may be found in that document. This was the latest scientific information available regarding the harvest specifications and it was appropriate to reference this material.

A full environmental impact statement was not developed for the emergency interim rule extension because the short term nature of the action with the protection measures proposed made a significant impact on the environment unlikely, making an environmental impact statement unnecessary. An environmental impact statement for the 2002 Steller sea lion protection measures was in the process of being developed and has been completed for this action.

Comment 5. Many of the comments submitted for the draft Programmatic SEIS also apply to the EA. These comments should also be included with the emergency interim rule extension record.

Response. Comments received on the draft Programmatic SEIS are in the process of being reviewed by NMFS and will be addressed in the final Programmatic SEIS. The comments are included in the administrative record for the July 17, 2001, emergency interim rule extension.

Comment 6. The management decisions determining the 2001 protection measures were based on scat data indicating that a diversity of prey is consumed throughout the year. These data consistently indicated that pollock, Atka mackerel, and Pacific cod were the three most common prey items and that stricter proactive action was needed.

Response. In an analysis by Sinclair and Zeppelin (submitted for publication), scat samples were collected and analyzed from 1991–1998. That paper concluded that pollock, Pacific cod, Atka mackerel, and salmon were the most commonly found four prey items for Steller sea lions based upon the animals sampled. NMFS is implementing Steller sea lion conservation measures for the fisheries for the three species managed by NMFS under the groundfish FMPs.

Comment 7. The telemetry data was based on 100 animals, primarily mothers and nursing pups, and the sightings were from the summer. One cannot assume similar behavior during other times of the year. The data also miss the sub-adults which are experiencing the greatest rate of decline.

Response. The available information on the at-sea distribution of Steller sea lions is quite large, but admittedly incomplete. Numerous research projects are under way to attempt to obtain more information on the distribution of the animals NMFS considers to be most at-risk. Currently, the best available information indicates that juvenile and lactating females generally stay within 10 nm of shore during the summer, and perhaps make longer trips in the winter period as described in the biological opinion and associated white papers. NMFS is implementing management measures which avoid adverse impacts to these sensitive areas and time periods for Steller sea lions.

One letter of comments was received by NMFS on the draft EA prepared for the 2002 TAC specifications. A summary of the comments and NMFS' response follows:

Comment 1. The TAC setting process framework used by the Council and NMFS is inconsistent with the Magnuson-Stevens Act and the national standard guidelines because the North Pacific groundfish fisheries do not have overfishing status assessments consisting of both a maximum fishing mortality threshold and a minimum stock size threshold (MSST). Thus, NMFS and the Council lack criteria for determining whether stocks are overfished and thus subject to rebuilding plans.

The overfishing definitions employed by NMFS and the Council under Amendments 56/56 to the groundfish FMPs allow a stock abundance to drop to $B_{2\%}$ before harvest no longer is permitted. This policy allows for a species to be fished to the edge of extinction, with being declared overfished and for fishing efforts to be abandoned only at the edge of extinction. Thus, the 2002 TAC specifications are not in compliance with the Magnuson-Stevens Act. The failure of the Council and NMFS to adopt explicit MSSTs, to declare species as overfished, and to then institute multi-faceted "rebuilding" endangers the health of individual stocks already at low abundance levels. This, in turn, has significant impacts on the BSAI and GOA ecosystems and renders the analysis in the EA insufficient for NMFS to determine that the impacts on target species and the ecosystems as a whole are "insignificant."

Response. NMFS disagrees that the 2002 TAC specifications violate national standard 1 or the Magnuson-Stevens Act. The harvest control rules set forth in Amendments 56/56 (64 FR 10952, March 8, 1999) define OFL and constrain ABC for stocks managed under the fishery management plans for BSAI and GOA groundfish. In approving Amendments 56/56 (64 FR 10953, March 8, 1999), the Secretary of Commerce considered public comments submitted on the proposed amendments, including concerns that the amendments do not specify an MSST, and determined that the reasonable proxy for MSST is contained in the overfishing definitions and associated control rules are in compliance with national standard 1 and all other provisions of the Magnuson-Stevens Act.

Nonetheless, every stock managed under tiers 1–3 (defined under Amendments 56/56) of the BSAI and GOA groundfish FMPs was evaluated with respect to its MSST in the most recent SAFE reports. The TAC specifications use harvest control rules that are related to the MSY-based management required by the Magnuson Act. The control rules used to define OFL and the maximum permissible ABC restrict fishing at all stock sizes, not just at stock sizes below 5 percent of the MSY level. Not only is fishing restricted at all stock sizes, it is restricted in a conservative manner.

NMFS notes that the Steller sea lion protection measures recommended by the Council in October 2001, approved by NMFS, and described above under Part I of this preamble to the emergency interim rule, include a conservative modification of the existing harvest control rule for pollock, Pacific cod, and Atka mackerel.

Comment 1 appears to presume that harvest control rules can, by themselves, force stock biomass to increase. In fact, harvest control rules are rules used to control harvest, not biomass. All harvest control rules "allow" a depleted stock to remain at a low abundance level indefinitely, because no harvest control rule can control the size of incoming year classes. However, the control rules adopted in Amendments 56/56 are explicitly designed to be precautionary, especially in the context of managing stocks whose biomass have fallen below reference levels.

In 1998, NMFS did prepare a Supplemental Environmental Impact Statement (SEIS) on the TAC setting process. NMFS also recognizes that in a July 8, 1999 order, amended on July 13, 1999, the Court in *Greenpeace* v. *NMFS, Civ No. 98–0492 (W.D. Wash.)* held that the 1998 SEIS was too limited in scope by not adequately addressing aspects of the GOA and BSAI groundfish fishery management plans other than TAC setting and, therefore, was insufficient in scope under the National Environmental Policy Act. In response to the Court's order, NMFS prepared a new 2001 draft programmatic SEIS for the GOA and BSAI groundfish fishery management plans. In response to public comments and internal agency review, NMFS has determined that the draft 2001 programmatic SEIS should be revised to include additional analyses concerning environmental, economic, and cumulative impacts; to restructure alternatives; and to more clearly define the proposed action. The revised draft programmatic SEIS is scheduled to be distributed for public review and comment late Fall 2002.

Notwithstanding the less expansive scope of the 1998 SEIS, NMFS believes that the discussion and analysis of impacts and alternatives in the 1998 SEIS, which focused on the issue of TAC setting, is directly applicable to the EA prepared in support of this action-the setting of TACs for the 2002 fishery. Consequently, the EA adopts the discussion and analysis in the 1998 SEIS, as well as pertinent sections of the 2001 draft programmatic SEIS.

Finally, NMFS believes that the extensive discussion and analysis of the environmental impacts associated with various levels of TACs in the 1998 SEIS's and in the draft 2001 programmatic SEIS, coupled with the 2002 TAC EA's additional discussion, provide ample support for its determination that the 2002 specifications will not have significant environmental impacts.

Comment 2. Given the concerns expressed in Comment 1, above, many groundfish stocks are below B_{msy} and the 2002 TACs even would allow fishing on a number of stocks below $B_{2\%}$ without triggering a rebuilding plan, including GOA Greenland turbot, Bering Sea northern rockfish, GOA vermillion rockfish, and GOA Atka mackerel. The EA is deficient because the preferred alternative does not acknowledge that some species presently are at or approaching an "overfished" condition. The EA's failure to recognize overfished species means that the impacts to the ecosystem as a whole are not adequately analyzed. The NEPA analysis should look at the direct, indirect, cumulative, and synergistic effects of allowing TACs on species with very low biomasses.

Response. Currently, the best scientific information available indicates that no stock managed under the BSAI or GOA groundfish FMPs is being subjected to an inappropriate harvest rate and that no stock managed under tiers 1–3 of the BSAI or GOA groundfish FMPs are overfished. NMFS acknowledges that it is currently not possible to determine the status of stocks in tiers 4–6 with respect to their MSSTs because stocks qualify for management under these tiers only if the best scientific information available is insufficient to estimate the relevant biological reference points.

Currently, the best scientific information available indicates that no stock managed under the BSAI or GOA groundfish fishery management plans is

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being subjected to an inappropriate harvest rate, and that no stock managed under the groundfish FMPs is overfished. NMFS believes, therefore, that the 2002 TAC specifications reflect the correct use of MSSTs.

The EA addresses uncertainty and ecosystem considerations associated with each stock assessment and acknowledges that all of the groundfish species are predators or prey at some stage of life. A review of ecosystem status and trends also was provided in the ecosystems chapter of the SAFE reports.

Comment 3. The concept of combining rockfish assemblages masks the fact that individual species currently are at an overfished level and the EA does not adequately analyze the present status of these long lived species. Specifically, the EA fails to analyze their biomass in relation to an overfished determination criterion that complies with the Magnuson-Stevens Act.

Response. NMFS disagrees that rockfish species are at an overfished level. However, NMFS does agree that potential concerns about disproportionate harvest relative to abundance of species within groups or assemblages could be at least partially addressed if existing complexes or assemblages were broken out to separate species and managed accordingly. Species within the rockfish assemblages tend to reflect tiers 4 or 5 stocks and it is not possible to determine whether any species is overfished or whether it is approaching an overfished condition.

Difficulties exist in working towards species specific management for existing assemblages, particularly for some of the rockfish assemblages. Most paramount of these difficulties is the collection of adequate species specific catch data upon which to monitor and manage species specific TACs. NMFS is working with its North Pacific Observer Program and stock assessment scientists to address this issue for 2003 and arrive at a subsampling protocol for rockfish species to meet this need. At that time, enhanced species specific management may be possible, notwithstanding other management issues that arise from very small TAC amounts.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this emergency interim rule is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

The Steller sea lion protection measures have been determined to be significant for purposes of Executive Order 12866 and a regulatory impact review was prepared. The regulatory impact review is available from NMFS as part of the final SEIS. (see **ADDRESSES**).

Consistent with the National Environmental Policy Act, NMFS prepared an environmental assessment for the TAC specifications portion of this action. NMFS also prepared an SEIS for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS and the final document was issued November 23, 2001 (66 FR 58734). The final SEIS and EA are available from NMFS (see **ADDRESSES**). Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action meets the ESA requirements for Steller sea lion protection and environmental protection without providing extreme economic hardship that was anticipated from the most environmentally desirable alternative. Potential adverse impacts on marine mammals resulting from fishing activities conducted under this emergency interim rule are discussed in the EA and final SEIS for this action.

This rule contains and refers to collection-of-information requirements subject to the Paperwork Reduction Act. The requirement for a vessel fishing permit has been approved under OMB control number 0648–0444 (expiration date May 31, 2002). The estimated response time for an application to amend a permit and register for the Atka mackerel, pollock, or Pacific cod directed fisheries is 31 minutes. The CDQ reporting requirement has been approved by the OMB and issued OMB control number 0648–0269, expiration date October 31, 2004. Public reporting burden of CDQ collection of information is estimated to be an average of 15 minutes per response for a CDQ catch report. This time includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The requirement to install and use a VMS has been approved under OMB control number 0648–0445 (expiration date June 30, 2002). The response times for VMS-related requirements are 6 hours to install a unit, 12 minutes to fax a check-in report that the VMS is operational, 5 seconds per automated position report, and 4 hours per year for VMS maintenance.

The response-time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

A formal section 7 consultation under the ESA was initiated for this emergency interim rule under the FMPs for the groundfish fisheries of the BSAI and the GOA. In biological opinions dated October 17, 2001, December 22, 1999, and December 23, 1999, the Director of the Office of Protected Resources determined that fishing activities conducted under the emergency interim rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. In a memorandum dated December 11, 2001, from the Office of Protected Resources to the Office of Sustainable Fisheries, the 1999 BiOps were extended for one year from January 1, 2002, for purposes of this action. This emergency interim rule is consistent with the objectives for Steller sea lion protection measures implemented in 2001 under section 209(c)(6) of Public Law 106–554, the ESA, and other applicable laws.

NMFS is establishing the 2002 TAC specifications for the BSAI and GOA by this emergency interim rule. The normal procedure of publishing proposed, interim, and final TAC specifications was not followed in 2002 because the information needed to establish the harvest specifications did not become available until mid-November and the Council recommendations were not received by NMFS until December 11, 2001. Analysis of the action and the preparation of the **Federal Register** notification could not be completed until the Council recommendations were received for the final specifications as well as the Steller sea lion protection measures, of which the specifications are an integral part and must be in place by January 1, 2002, to allow the orderly commencement of the 2002 groundfish fisheries. Accordingly, it is impracticable to provide prior notice and an opportunity for public comment, or to delay for 30 days the effective date of this rule. Further, it would be contrary to the public interest to delay the start of the season to allow for prior notice, an opportunity for public comment, and for a 30-day delay in the effective date. Therefore, good cause exists to waive those requirements pursuant to 5 U.S.C. 553(b)(3). For the same reason, good cause exists to waive the 30-day delay in effective date. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived. Because prior notice and opportunity for public comment are not required for this emergency interim rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 27, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

2. In § 679.2, the definitions for "Steller Sea Lion Protection Areas" and paragraph (5) under "Directed Fishing" are suspended until July 8, 2002, and definitions for "Harvest limit area for platoon managed Atka mackerel directed fishing", "Inshore component in the GOA", and "Offshore component in the GOA" are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Harvest limit area for platoon managed Atka mackerel directed fishing (applicable through July 8, 2002) for the purposes of §§ 679.4(b)(5)(iv), 679.20(a)(8)(ii) and (iii) and 679.22(a)(12)(iv)(A), means the waters of statistical areas 542 and 543 west of 178° W long. within 20 nm seaward of sites listed in Table 24 of this part and located west of 177.58° W long.

* * * * *

Inshore component in the GOA (applicable through July 8, 2002) means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the BSAI or GOA:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) LOA that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod; and

(3) Vessels that process pollock or Pacific cod, harvested in a directed fishery for those species, at a single geographic location in Alaska State waters during a fishing year.

* * * * *

Offshore component in the GOA (applicable through July 8, 2002) means all vessels not included in the definition of "inshore component in the GOA" that process groundfish in the BSAI or GOA.

* * * * *

3. In § 679.4, paragraphs (b)(5)(iv)(E) and (F) are added to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(5) * * *

(iv) * * *

(E) (Applicable through July 8, 2002) If the vessel will be using pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel or Pacific cod in the GOA or in the BSAI.

(F) (Applicable through July 8, 2002) If the vessel owner will be fishing in the harvest limit area in Statistical Areas 542 or 543 in the directed fishery for Atka mackerel.

* * * * *

4. In § 679.5, paragraph (n)(2)(iii)(A)(*4*) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(A) * * *

(*4*) (Applicable through July 8, 2002) Indicate the intended target species.

* * * * *

5. In § 679.7, paragraphs (a)(11), (b), (d)(16), and (d)(23) are suspended until July 8, 2002, paragraph (c)(3) is suspended 1200 hours, A.l.t., June 10, 2002, until July 8, 2002, and paragraphs (a)(7)(iii) through (vii), (a)(17), (a)(18), (a)(19), (d)(26), (j), and (k) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(7) * * *

(iii) (Applicable through July 8, 2002) Operate any vessel in the BSAI under both the "inshore component in the GOA" and the "offshore component in the BSAI" or under both the "offshore component in the GOA" and the "inshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(iv) (Applicable through July 8, 2002) Operate any vessel in the GOA in more than one of the three categories included in the definitions of "inshore component in the GOA," in § 679.2, during any fishing year.

(v) (Applicable through July 8, 2002) Operate any vessel in the GOA under both the "inshore component in the GOA" and the "offshore component in the GOA" definitions in § 679.2 during the same fishing year.

(vi) (Applicable through July 8, 2002) Operate any vessel in the GOA under both the "inshore component in the GOA" and the "offshore component in the BSAI" or under both the "offshore component in the GOA" and the "inshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(vii) (Applicable through July 8, 2002) Operate any vessel that processes pollock or Pacific cod, harvested in a directed fishery for those species, at a single location in Alaska State waters under the "inshore component in the BSAI" and the "inshore component in the GOA" definitions in § 679.2 during the same fishing year.

* * * * *

(17) *Tender vessel* (applicable through July 8, 2002).

(i) Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) Use a catcher vessel or catcher/processor to harvest groundfish while operating as a tender vessel.

(18) *Pollock, Pacific Cod, and Atka Mackerel Directed Fishing and VMS* (applicable 1200 hours, A.l.t., June 10, 2002, through July 8, 2002). When a vessel using pot, hook-and-line, or trawl gear in the BSAI or GOA is authorized under § 679.4(b)(5)(iv)(E) to participate in the Atka mackerel, Pacific cod, or pollock directed fisheries; conduct directed fishing for groundfish or for Pacific halibut IFQ under § 679.4(d),

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unless the vessel carries an operable NMFS-approved Vessel Monitoring System (VMS) transmitter and complies with the requirements in § 679.28(f) at all times any of these directed fisheries which the vessel is authorized for is open.

(19) *Atka Mackerel Harvest Limit Area Groundfish Prohibition* (applicable through July 8, 2002). For vessels registered for the Atka mackerel harvest limit area directed fishery under § 679.20(a)(8)(iii), conduct directed fishing for groundfish, other than Atka mackerel in an assigned harvest limit area directed fishery under § 679.20(a)(8)(iii), during the time period that the first Atka mackerel directed fishery assigned to the vessel under § 679.20(a)(8)(iii)(B) is open.

* * * * *

(d) * * *

(26) (Applicable through July 8, 2002) Use any groundfish CDQ species as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

(j) *Prohibitions specific to the GOA* (applicable through July 8, 2002)—(1) *Southeast Outside trawl closure.* Use any gear other than non-trawl gear in the GOA east of 140° W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel at any time during a trip, more than 300,000 lb (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.* (i) Operate as a tender vessel east of 157°00′ W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157°00′ W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

(k) *Prohibitions specific to AFA* (applicable January 15, 2002, through July 8, 2002) It is unlawful for any person to do any of the following:

(1) *Catcher vessels.* Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(2) *Crab processing limits.* It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity. The owners and operators for the individual entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

6. In § 679.20, paragraphs (a)(5)(i)(A), (a)(5)(ii)(B), (a)(7)(i)(C)(*2*), (a)(7)(i)(C)(*3*), (a)(7)(ii)(A), (a)(7)(iii)(A), (a)(7)(iii)(B), (f)(2), and (f)(3) are suspended until July 8, 2002, and paragraphs (a)(5)(i)(B), (a)(5)(i)(F), (a)(5)(ii)(C), (a)(6)(ii), (a)(6)(iii), (a)(7)(i)(C)(*4*), (a)(7)(i)(C)(*5*), (a)(7)(ii)(D) and (E), (a)(7)(iii)(D), (a)(8)(ii)(C), (a)(8)(iii), (a)(11), (b)(2)(i), (b)(2)(ii), (d)(4), and (f)(4) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(B) *BSAI seasonal allowances* (applicable through July 8, 2002)—(*1*) *Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BS subareas pollock directed fishing allowances allocated to each component under sections 206(a) and 206(b) of the American Fisheries Act will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(5), as follows: A Season, 40 percent; B Season, 60 percent.

(*2*) *Inseason adjustments.* Within any fishing year, the Regional Administrator will add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the **Federal Register**.

* * * * *

(F) *Steller sea lion conservation area harvest limit* (applicable through July 8, 2002).

(*1*) For each component under Sections 206(a) and 206(b) of the American Fisheries Act and for the open access fishery, no more than 28 percent of the annual pollock directed fishery allowance may be taken from the Steller sea lion conservation area (SCA) before April 1. The SCA is defined at § 679.22(a)(11)(vii).

(*2*) After April 1, the unharvested amount available in the SCA before April 1 is available for directed fishing either within or outside the SCA during the remainder of the A season.

(ii) * * *

(C) *GOA seasonal apportionments* (applicable through July 8, 2002). Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons set out at § 679.23(d)(3) of this part as follows: A Season, 25 percent; B Season, 25 percent; C Season, 25 percent; D Season, 25 percent. Within any fishing year, under harvest or over harvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for the combined GOA Western and Central Regulatory Areas.

(6) * * *

(ii) *GOA pollock* (applicable through July 8, 2002). The apportionment of pollock in all GOA regulatory areas and for each seasonal apportionment described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod* (applicable through July 8, 2002). The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

(7) * * *

(i) * * *

(C) * * *

(*4*) (Applicable through July 8, 2002) Harvest of Pacific cod made by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(*i*) Will accrue against the 18.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

(*5*) (Applicable through July 8, 2002) Harvest of Pacific cod made by catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear:

(*i*) Will accrue against the 0.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is closed.

* * * * *

(ii) * * *

(D) *Reallocation within the trawl sector* (applicable through July 8, 2002). If, during a fishing season, the Regional Administrator determines that either catcher vessels using trawl gear or catcher/processors using trawl gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i) or (a)(7)(ii)(C) of this section, he/she may reallocate the projected unused amount of Pacific cod to vessels using trawl gear in the other trawl component through notification in the **Federal Register** before any reallocation to vessels using other gear type(s).

(E) *Unused seasonal allowance for trawl* (applicable through July 8, 2002). Any unused portion of a seasonal allowance of Pacific cod for vessels using trawl gear under paragraph (a)(7)(i)(C) of this section may be reapportioned by the Regional Administrator, through notification published in the **Federal Register**, to the subsequent seasonal allocations for vessels using trawl gear.

(iii) * * *

(D) *Seasonal apportionment and gear allocations* (applicable through July 8, 2002). The Pacific cod BSAI gear allocations and apportionments by seasons, as specified in § 679.23 (e)(6), are as follows:

Gear type	A season (percent)	B season (percent)	C season (percent)
Trawl	60	20	20
Trawl CV	70	10	20
Trawl CP	50	30	20
Hook-and-line ≥60 ft (18.3 m) LOA, non-CDQ pot vessels ≥60 ft (18.3 m) LOA, and jig vessels	60	40	
All other nontrawl vessels	No seasonal apportionment.		

CV = catcher vessels.
CP = catcher/processor vessels.

(8) * * *

(ii) * * *

(C) *Atka mackerel harvest limit area* (applicable through July 8, 2002). Harvest of Atka mackerel is limited in the harvest limit area, as defined in § 679.2, as follows:

(*1*) For the Atka mackerel harvest limit area as defined in § 679.2, the Regional Administrator will establish a harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(*2*) *CDQ fishing.* A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in the Western and/or Central districts of the AI specified in paragraph (a)(8)(ii)(C)(*1*) of this section for the harvest limit area as defined in § 679.2.

(iii) *Platoon management of Atka mackerel harvest limit area directed fishing* (applicable through July 8, 2002)—(A) *Registration.* All vessels using trawl gear for directed fishing for Atka mackerel in the harvest limit area, as defined in § 679.2, are required to register with NMFS by January 15, 2002. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(iv) for an endorsement to the vessel's Federal fishery permit issued under § 679.4.

(B) *Platoon assignment.* For each season, NMFS will manage the harvest limit area fishery for the vessels registered to fish in areas 542 or 543 under paragraph (a)(8)(iii)(A) of this section as follows:

(*1*) *Lottery.* The Regional Administrator or his/her designee randomly will assign each vessel to a platoon for one of two directed fisheries for each statistical area in which the vessel is registered under paragraph (a)(8)(iii)(A) of this section. Each platoon within a statistical area will be assigned an equal number of vessels unless there is an odd number of vessels registered under paragraph (a)(8)(iii)(A) of this section. In the case of an odd number of vessels, the Regional Administrator will assign one additional vessel to one platoon. Vessels registering under paragraph (a)(8)(iii)(A) of this section to fish in both area 542 and area 543 will be randomly assigned to a harvest limit area directed fishery in area 542 and will be placed in the area 543 harvest limit area directed fishery occurring at an alternate time during the season.

(*2*) *Notification.* The Regional Administrator will provide the results of the lottery under (a)(8)(iii)(B)(*1*) of this section by notification published in the **Federal Register** and other means of practicable notification.

(C) *Harvest limit area directed fisheries.* 48 hours after a seasonal closure of the area 541 Atka mackerel directed fishery, the Regional Administrator will open the directed fisheries within the harvest limit area in areas 542 and 543, as defined at § 679.2. The Regional Administrator will provide notification by publication in the **Federal Register** of the opening and closure date of the directed fisheries, as determined by paragraph (a)(8)(iii)(E) of this section. Closures specified in Table 24 of this part and in § 679.22(a)(12) will remain in effect.

(D) *Harvest limit area harvest limit.* The Regional Administrator will establish the harvest limit for each harvest limit area directed fishery for areas 542 and 543 based on the seasonal apportionment at paragraph (a)(8)(ii)(C) of this section and in proportion to the number of vessels in a platoon compared to the total number of vessels participating in the harvest limit area directed fishery for area 542 or 543 during a season.

(E) *Harvest limit area directed fisheries closures.* The Regional Administrator will establish the closure date of the Atka mackerel directed fisheries in the harvest limit area for areas 542 and 543 based on the estimated fishing capacity of vessels registered to fish in the area and assigned to the platoon under paragraph (a)(8)(iii)(B) of this section. Each harvest limit area directed fishery will last no longer than 14 days.

(F) *Groundfish directed fishery prohibition.* Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery other than the one assigned under paragraph (a)(8)(iii)(B) of this section during the opening of the first harvest limit area directed fishery to which the vessel is assigned in a season, as specified in § 679.7(a)(19).

* * * * *

(11) *GOA Pacific cod TAC* (applicable through July 8, 2002)—(i) *Seasonal apportionment.* The TAC established for Pacific cod in the Western and Central areas of the GOA will be divided 60 percent to the A season and 40 percent to the B season, as specified in § 679.23(d)(4).

(ii) The Regional Administrator may apply any underage or overage of Pacific

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cod harvest from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator must consider bycatch needed to optimize catch by gear groups and sectors.

(iii) *Bycatch.* Pacific cod bycatch taken between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment.

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment* (applicable through July 8, 2002). Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific Cod inshore-offshore reapportionment* (applicable through July 8, 2002). Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of this section.

* * * * *

(d) * * *

(4) *Harvest control for pollock, Atka mackerel and Pacific cod* (applicable through July 8, 2002). If a biological assessment of stock condition for pollock, Pacific cod, or Atka mackerel within an area projects that the biomass in an area will be below 20 percent of the projected unfished biomass during a fishing year, the Regional Administrator will prohibit the directed fishery for the relevant species within the area. The Regional Administrator will prohibit the directed fishery under this paragraph by notification published in the **Federal Register**. The directed fishery will remain closed until a subsequent biological assessment projects that the biomass for the species in the area will exceed 20 percent of the projected unfished biomass during a fishing year.

* * * * *

(f) * * *

(4) *Retainable amounts* (applicable through July 8, 2002). Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species. CDQ species may only be used to calculate retainable amounts of other CDQ species.

* * * * *

7. In § 679.22, paragraphs (a)(5)(i) through (iii), (a)(7), (a)(8), and (b)(2) are suspended until July 8, 2002, and paragraphs (a)(5)(iv), (a)(11), (a)(12), (b)(3), and (b)(6) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(5) * * *

(iv) *Catcher/processor restrictions* (applicable through July 8, 2002). A catcher/processor vessel authorized to fish for BSAI pollock under § 679.4 is prohibited from conducting directed fishing for pollock in the CVOA during the pollock B season defined at § 679.23(e)(5)(ii), unless it is operating under a CDP approved by NMFS.

* * * * *

(11) *Steller sea lion protection areas, Bering Sea subarea* (applicable through July 8, 2002)—(i) *Bogoslof area*—(A) Boundaries. The Bogoslof area consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00′ N lat./170°00′ W long., and 55°00′ N lat./168°11′4.75″ W long.;

(B) *Fishing prohibition.* All waters within the Bogoslof area are closed to directed fishing for pollock, Pacific cod, and Atka mackerel by federally permitted vessels, except as provided in paragraph (a)(11)(i)(C) of this section.

(C) *Bogoslof Pacific cod exemption area.* (*1*) All catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear for directed fishing for Pacific cod are exempt from the Pacific cod fishing prohibition as described in paragraph (a)(11)(i)(B) of this section in the portion of the Bogoslof area south of a line connecting a point that is 3 nm north of Bishop Point (54°01′25″ N lat./166° 57′00″ W long.) to Cape Tanak (53°33′50″ N lat./168°00′00″ W long.), not including waters of the Bishop Point Pacific cod fishing closures as described in Table 23 of this part.

(*2*) If the Regional Administrator determines that 113 mt of Pacific cod has been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area described in paragraph (a)(11)(i)(C)(*1*) of this section, the Regional Administrator will prohibit directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area by notification published in the **Federal Register**.

(ii) *Bering Sea Pollock Restriction Area*—(A) *Boundaries.* The Bering Sea Pollock Restriction Area consists of all waters of the Bering Sea subarea south of a line connecting the points 163°0′00″ W long./55°46′30″ N lat., 165°08′00″ W long./54°42′9″ N lat., 165°40′00″ W long./54°26′30″ N lat., 166°12′00″ W long./54°18′40″ N lat., and 167°0′00″ W long./54°8′50″ N lat.

(B) *Fishing prohibition.* All waters within the Bering Sea Pollock Restriction Area are closed to directed fishing for pollock by federally permitted vessels during the A season, as defined at § 679.23(e)(5).

(iii) Groundfish closures. Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by "Bering Sea" in column 2.

(iv) *Pollock closures.* Directed fishing for pollock by federally permitted vessels is prohibited within pollock no fishing zones around selected sites. These sites are listed in Table 22 of this part and are identifiable by "Bering Sea" in column 2.

(v) *Pacific cod closures.* Directed fishing for Pacific cod by federally permitted vessels using trawl, hook-and-line, and pot gear is prohibited within the Pacific cod no fishing zones around selected sites. These sites and gear types are listed in Table 23 of this part and are identifiable by "BS" in column 2.

(vi) *Atka mackerel closures.* Directed fishing for Atka mackerel by federally permitted vessels using trawl gear is prohibited within Atka mackerel no fishing zones around selected sites. These sites are listed in Table 24 of this part and are identifiable by "Bering Sea" in column 2.

(vii) *Steller sea lion conservation area (SCA).* (A) General. When the Regional Administrator announces, by notification in the **Federal Register**, that the criteria set out in paragraph (a)(11)(vii)(C) of this section have been met by one or more industry component(s) made of vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for pollock CDQ; directed fishing for pollock by that industry component(s) is prohibited within the SCA until April 1.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed: 55°00′ N lat., 170°00′ W long.; 55°00′ N lat., 168°00′ W long.; 55°30′ N lat., 168°00′ W long.; 55°30′ N lat., 166°00′ W long.; 56°00′ N lat., 166°00′ W long.; and, 56°00′ N lat., 163°00′ W long.

(C) *Criteria for closure*—(*1*) *General.* The directed fishing closures identified in paragraph (a)(11)(vii)(A) of this section will take effect when the Regional Administrator determines that the harvest limit for pollock within the SCA, as specified in § 679.20(a)(5)(i)(F)(*1*) is reached before April 1. The Regional Administrator will close the directed pollock fishery in the SCA by notification published in the **Federal Register**.

(*2*) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock to vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the harvest limit specified in § 679.20(a)(5)(i)(F) has been met before April 1.

(12) *Steller sea lion protection areas, Aleutian Islands subarea* (applicable through July 8, 2002)—(i) *Seguam Foraging area.* (A) The Seguam foraging area is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30′ W long. and 172°30′ W long.

(B) Directed fishing for pollock, Pacific cod, and Atka mackerel by federally permitted vessels is prohibited in the Seguam Foraging area as described in paragraph (a)(12)(i)(A) of this section.

(ii) *Pollock Closure.* Directed fishing for pollock by federally permitted vessels is prohibited within the Aleutian Islands subarea at all times.

(iii) *Groundfish closures.* Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by "Aleutian Islands" in column 2.

(iv) *Pacific cod closures*—(A) *Central and Western Aleutian Islands harvest limit area.* Directed fishing for Pacific cod by federally permitted vessels using trawl gear is prohibited in the Atka mackerel harvest limit area in area 542 or area 543, as defined in § 679.2, when the Atka mackerel harvest limit area directed fishery in area 542 or area 543 is open.

(B) *Gear specific closures.* Directed fishing for Pacific cod by federally permitted vessels using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no fishing zones around selected sites. These sites and gear types are listed in Table 23 of this part and are identifiable by "AI" in column 2.

(v) *Atka mackerel closures.* Directed fishing for Atka mackerel by federally permitted vessels using trawl gear is prohibited within Atka mackerel no fishing zones around selected sites. These sites are listed in Table 24 of this part and are identifiable by "Aleutian Islands" in column 2.

(b) * * *

(3) *Steller sea lion protection areas* (applicable through July 8, 2002)—(i) *Groundfish closures.* Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 21 of this part and are identifiable by "Gulf of Alaska" in column 2.

(ii) *Pollock closures.* Directed fishing for pollock by federally permitted vessels is prohibited within pollock no fishing zones around selected sites. These sites are listed in Table 22 of this part and are identifiable by "Gulf of Alaska" in column 2.

(iii) *Pacific cod closures.* Directed fishing for Pacific cod by federally permitted vessels using trawl, hook-and-line, or pot gear is prohibited within Pacific cod no fishing zones around selected sites. These sites and gear types are listed in Table 23 of this part and are identifiable by "GOA" in column 2.

(iv) *Atka mackerel closure.* Directed fishing for Atka mackerel by federally permitted vessels within the Gulf of Alaska is prohibited at all times.

* * * * *

(6) *Chiniak Gully Research Area* (applicable through July 8, 2002)—(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area is defined as that part of Statistical Area 630 bounded by straight lines connecting the coordinates in the order listed: 57.81° N lat., 152.37° W long.; 57.81° N lat., 151.85° W long.; 57.22° N lat., 150.64° W long.; 56.98° N lat., 151.27° W long.; 57.62° N lat., 152.16° W long.; and hence counterclockwise along the shoreline of Kodiak Island to 57.81° N lat., 152.37° W long.

(ii) *Closure.* (A) The Chiniak Gully Research Area is closed to federally permitted vessels using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24(d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(6)(ii)(A) of this section.

* * * * *

8. In § 679.23, paragraphs (d)(2), (e)(2), (e)(3), and (e)(4)(iii), are suspended until July 8, 2002, and paragraphs (d)(3), (d)(4), (e)(4)(iv), (e)(4)(v), (e)(5), (e)(6), (e)(7), and (i) are added to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) *Directed fishing for pollock* (applicable through July 8, 2002). Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., February 25;

(ii) *B season.* From 1200 hours, A.l.t., March 10 through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 25 through 1200 hours, A.l.t., September 15; and

(iv) *D season.* From 1200 hours, A.l.t., October 1 through 1200 hours, A.l.t., November 1.

(4) *Directed fishing for Pacific cod* (applicable through July 8, 2002)—(i) *Hook-and-line, pot, or jig gear.* Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

(e) * * *

(4) * * *

(iv) *Groundfish CDQ* (applicable through July 8, 2002). Fishing for

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groundfish CDQ species, other than pollock CDQ; hook-and-line, jig, or trawl Pacific cod CDQ; and fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1 through the end of each fishing year, except as provided under paragraph (c) of this section.

(v) *Pollock CDQ and Pacific cod CDQ harvested with hook-and-line, jig or trawl gear* (applicable through July 8, 2002). (A) Fishing for pollock CDQ is authorized under paragraph (e)(5) of this section.

(B) Fishing for Pacific cod CDQ with hook-and-line, jig or trawl gear is authorized under paragraph (e)(6) of this section.

(5) *Directed fishing for pollock in the Bering Sea Subarea by inshore, offshore catcher/processor, and mothership components and pollock CDQ fisheries* (applicable through July 8, 2002). Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea subarea or directed fishing for pollock CDQ in the Bering Sea subarea is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(6) *Directed fishing for Pacific cod* (applicable through July 8, 2002). (i) *Fixed gear.* Subject to other provisions of this part, directed fishing for Pacific cod with fixed gear in the BSAI is authorized only during the following two seasons:

(ii) *Hook-and-line and jig gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line and with vessels using jig gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31.

(iii) *Trawl gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with trawl gear in the BSAI is authorized only during the following three seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1;

(B) *B season.* From 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10; and

(C) *C season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(iv) *Pot gear.* Subject to other provisions of this part, non-CDQ directed fishing for Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

(7) *Directed fishing for Atka mackerel with trawl gear* (applicable through July 8, 2002). Subject to other provisions of this part, non-CDQ directed fishing for Atka mackerel with trawl gear in the Aleutian Islands subarea is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 15; and

(ii) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock* (applicable through July 8, 2002). Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction when fishing east of 157°00' W long. GOA and Bering Sea seasons are specified at § 679.23(d)(3) and § 679.23(e)(5).

If you own or operate a catcher vessel and engage in directed fishing for pollock in the	During the	Then you are prohibited from subsequently engaging in directed fishing for pollock with that catcher vessel in the
Bering Sea subarea	A season	GOA until the following C season.
	B season	GOA until the A season of the next year.
GOA	A season	BSAI until the following B season.
	B season	BSAI until the following B season.
	C season	BSAI until the A season of the following year.
	D season	BSAI until the A season of the following year.

8a. In §679.23, new paragraph (e)(6)(i) is suspended until July 8, 2002.

9. In § 679.28, paragraph (f)(3)(viii) is added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(3) * * *

(viii) (Applicable 1200 hours A. l. t. June 10, 2002, through July 8, 2002) For vessels permitted to fish in the pollock, Pacific cod, or Atka mackerel directed fisheries under § 679.4(b)(5)(iv)(E), the vessel owner must inform NMFS Enforcement Division by FAX at least 72 hours before entering the area the vessel is permitted to directed fish for pollock, Atka mackerel, or Pacific cod, of the VMS transponder ID and the vessel ID on which the VMS unit is used and the approximate time and location that the vessel will begin directed fishing for groundfish or halibut IFQ.

10. In § 679.31, paragraph (f) is suspended until July 8, 2002, and paragraph (g) is added to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(g) Non-specific CDQ reserve (applicable through July 8, 2002). Annually, NMFS will apportion 50 percent of the arrowtooth flounder CDQ and 15 percent of the "other species" CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific reserve to the CDQ group's arrowtooth flounder or "other species" CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

11. In § 679.32, paragraphs (a)(2) and (e) are suspended until July 8, 2002.

12. In § 679.50, paragraph (c)(4)(i) is suspended until July 8, 2002, paragraph (c)(5) is added and reserved, and paragraphs (c)(1)(x), (c)(4)(vi), and (c)(6) are added to read as follows:

§ 679.50 Groundfish observer program applicable through December 31, 2002.

* * * * *

(c) * * *

(1) * * *

(x) (Applicable through July 8, 2002) *A vessel directed fishing with trawl gear for Atka mackerel in the Aleutian Islands subarea* must carry two NMFS-certified observers at all times while directed fishing for Atka mackerel in the harvest limit area for platoon managed Atka mackerel directed fishing, as defined in § 679.2.

* * * * *

(4) * * *

(vi) *Motherships or catcher/processors using trawl gear* (applicable January 15, 2002, through July 8, 2002). (A) A mothership or catcher/processor vessel using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section.

(B) A mothership or catcher/processor vessel using trawl gear to participate in a directed fishery for other than pollock CDQ must have at least two CDQ observes as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

* * * * *

(6) *AFA catcher/processors and motherships* (applicable January 15, 2002, through July 8, 2002).

(i) *Coverage requirement*—(A) *Unrestricted AFA catcher/processors and AFA motherships.* The owner or operator of an unrestricted AFA catcher/processor or AFA mothership must provide at least two NMFS-certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction in paragraph (c)(6)(iii) of this section would otherwise preclude sampling.

(B) *Restricted AFA catcher/processors.* The owner or operator of a restricted AFA catcher/processor must provide at least two NMFS-certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or take deliveries of pollock harvested in the BSAI. When a restricted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements in paragraph (c)(1)(iv) of this section apply.

(ii) *Certification level.* At least one of the observers required under paragraphs (c)(6)(i)(A) and (B) of this section must be certified as a lead CDQ observer as specified in paragraph (h)(1)(i)(E)(*1*) of this section.

(iii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and the observer may not sample more than 9 hours in each 24-hour period.

* * * * *

13. In 50 CFR part 679, Tables 4, 5, and 6 are suspended until July 8, 2002, and Tables 21, 22, 23, and 24 are added to read as follows:

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Table 21 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		No transit [2]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	3 nm
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			Y
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	Y
Agattu I./Gillon Pt	Aleutian I.	52 24.13 N	173 21.31 E			Y
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	Y
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	Y
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	Y
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	Y
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			Y
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			Y
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	Y
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	Y
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			Y
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	Y
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			Y
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			Y
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	Y
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			Y
Agligadak I.	Aleutian I.	52 06.09 N	172 54.23 W			Y
Seguam I./Saddleridge Pt.	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	Y
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			Y
Adugak I.	Bering Sea	52 54.70 N	169 10.50 W			Y
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			Y
Bogoslof I./Fire I.	Bering Sea	53 55.69 N	168 02.05 W			Y
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	Y
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	Y

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		No transit [2]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	3 nm
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			Y
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			Y
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			Y
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			Y
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	Y
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	Y
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

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Table 27 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Pollock No Fishing Zones for Trawl Gear[2, 8] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Pollock No Fishing Zones for Trawl Gear[2, 8] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Unalaska/Bishop Pt[3]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[3]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20
Akun I./Billings Head[3]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20
Unimak/Cape Sarichef[3]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[3]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. and rocks[3]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3

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Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Pollock No Fishing Zones for Trawl Gear[2, 8] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Pollock No Fishing Zones for Trawl Gear[2, 8] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.78 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			20
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			10
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20

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Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Pollock No Fishing Zones for Trawl Gear[3, 8] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.
[3] Closures as stated in § 679.22(a)(11)(iv) and (b)(3)(ii).
[5]This site lies within the Bogoslof area (BA). The BA consists of all waters of Area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W.
[6]The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.
[8]Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.
[4]Restriction area includes only waters of the Gulf of Alaska Area.
[7]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[8] No fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.
[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.
[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

Table 23 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Pot Gear[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St. George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20,3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20,3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3]	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3]	Pacific Cod No Fishing Zone for Pot Gear[2,3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)
Kiska I./Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column Rocks[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20, 10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I[11].	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3]	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3]	Pacific Cod No Fishing Zone for Pot Gear[2,3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)
Tanaga I./Bumpy Pt.	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	BA	BA
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	BA	BA

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Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Pot Gear[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)			
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I[8]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[8]	BS	53 25.00 N	168 24.50 W			BA	BA	BA
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire Island[8]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[5]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[5]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[5]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. and rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Pot Gear[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)			
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	3
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Pot Gear[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)			
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	3
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75 N	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20	10	10
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 11.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No Fishing Zone for Pot Gear[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)			
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10		
Point Elrington[10,12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in § 679.22(a)(11)(v), (a)(12)(iv), and (b)(3)(iii).

[3] No fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof Area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[5] This site lies within the BA which is closed to all gear types. The BA consists of all waters of Area 518 as

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Column Number 1	2	3	4	5	6	7	8	9
Site name	Subarea	Boundaries from		Boundaries to [1]		Pacific Cod No Fishing Zones for Trawl Gear[2,3]	Pacific Cod No Fishing Zone for Hook-and-Line Gear[2,3]	Pacific Cod No Fishing Zone for Pot Gear[2,3]
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	(nm)	(nm)	(nm)

described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00'N/168°11'4.75" W.

[4]Hook-and-line no fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line vessels.

[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.

[9]Restriction area includes only waters of the Gulf of Alaska Area.

[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11]Trawling is prohibited 0 nm to 20 nm of rookeries and haulouts until the harvest limit area Atka mackerel fishery in the A or B season are completed. After closure of the Atka mackerel harvest limit area fishery, trawling is prohibited between 0 nm to 10 nm of rookeries and between 0 nm and 3 nm of haulouts.

[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[13] See § 679.22(a)(11)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

Table 24 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			20
St Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			20
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			20
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			20
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			20
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10
Agattu I./Gillon Pt	Aleutian Islands	52 24.13 N	173 21.31 E			10
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			3
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	3
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			3
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	15
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10

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Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	3
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			3
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			3
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	3
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			3
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			3
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			3
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10
Amatignak I./Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			3
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	3
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	3
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			3
Gramp Rock	Aleutian Islands	51 28.87 N	178 20.58 W			10
Tanaga I./Bumpy Pt.[4]	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20

Column Number 1	2	3	4	5	6	7
Site name	Subarea	Boundaries from		Boundaries to [1]		Atka mackerel no fishing zone[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20
Atka I./N. Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52 01.80 N	173 23.90 W			20
Sagigik I.[5]	Aleutian Islands	52 00.50 N	173 09.30 W			20
Amlia I./East[5]	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52 04.20 N	172 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20
Uliaga[6]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20
Kagamil[6]	Bering Sea	53 02.10 N	169 41.00 W			20
Adugak I.[6]	Bering Sea	52 54.70 N	169 10.50 W			20
Umnak I./Cape Aslik[6]	Bering Sea	53 25.00 N	168 24.50 W			BA
Bogoslof I./Fire Island[6]	Bering Sea	53 55.69 N	168 02.05 W			BA
Unalaska/Bishop Pt	Bering Sea	53 58.40 N	166 57.50 W			20

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Column Number 1	2	3		4		5		6		7
Site name	Subarea	Boundaries to[1]		Boundaries from		Boundaries to[1]				Atka mackerel no fishing zone[2,3] (nm)
		Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)			
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W					20
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W					20
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W							20
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W							20
Amak I. and rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W					20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in § 679.22 (a)(11)(vi) and (a)(12)(v).

[3] No fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the Bogoslof Area (BA).

[4] The 20 nm Atka mackerel fishery closure around the Tanaga I./Bumpy Pt. Rookery is established only for that portion of the area east of 178° W longitude.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[6] This site lies in the BA, closed to all gear types. The BA consists of all waters of Area 518 described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W and 55°00'N/168°11'4.75" W.

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Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 101, 201, and 352
Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities; Proposed Rule

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 201, and 352

[Docket No. RM02–3–000]

Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities; Notice of Proposed Rulemaking

December 20, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to revise its regulations to update the accounting and reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities, natural gas companies and oil pipelines. The Commission proposes to establish uniform accounting requirements and related accounts for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission proposes to add new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and derivative instruments. The Commission also proposes to add new general instructions and revise certain account instructions to incorporate the above changes in the existing Uniform Systems of Accounts.

Additionally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and new schedules proposed by this rulemaking.

An important objective of the proposed rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new instructions and accounts for recording the above transactions and events will result in improved, consistent and complete accounting and reporting. The addition of new accounts and new reporting schedule is intended to address and resolve the problems of lack of visibility, completeness and consistency of accounting and reporting changes in the fair value of certain financial instruments, items of other comprehensive income, derivative instruments and hedging activities, in the above mentioned FERC Forms.

DATES: Comments on the proposed rulemaking are due on or before March 11, 2002.

ADDRESSES: File written comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. Comments should reference Docket No. RM02–3–000. Comments may be filed electronically or by paper (an original and 14 copies, with an accompanying computer diskette in the prescribed format requested).

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Federal Energy Regulatory Commission

[Docket No. RM02–3–000]

Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities; Notice of Proposed Rulemaking

December 20, 2001.

I. Introduction

In this notice of proposed rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to amend its Uniform Systems of Accounts [1] for public utilities and licensees [2] (public utilities), natural gas companies [3] (gas companies) and oil pipeline companies [4] (oil pipelines). Briefly, the Commission proposes to establish uniform accounting requirements for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission proposes to add new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and changes in the fair value of derivative instruments. The Commission also proposes to add new general instructions for the accounting of derivative instruments and hedging activities along with new instructions for the accounting of items of other comprehensive income. Revisions to existing investment asset accounts and general instructions are proposed to incorporate fair value accounting for trading and available-for-sale type security investments.

Additionally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and a new schedule proposed by this rulemaking.[5]

The purpose of the proposed rule is to provide useful financial information to regulatory agencies and other users of the financial statements of public utilities, gas companies and oil pipelines by establishing uniform accounting and reporting requirements for items of other comprehensive income, changes in the fair value of investment securities, derivatives, and hedging activities. An important objective of the proposed rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The Commission is of the view that such requirements are needed at this time because these types of transactions and events are not specifically addressed in the existing Uniform Systems of Accounts or in FERC Forms 1, 1–F, 2, 2–A, and 6. This NOPR is part of the Commission's ongoing effort to address emerging accounting pronouncements within the context of the Uniform Systems of Accounts.[6]

There are, however, a number of entities with market-based rates that have been exempted from the Commission's Uniform System of Accounts, and thus would not be subject to the proposed rule. For instance, parts 41, 101, and 141 of the Commission's regulations prescribe certain informational requirements that focus on the assets that a public utility owns. For market-based applications, the Commission has taken the position that since a marketer does not own any electric power generation or transmission facilities, its jurisdictional facilities would be only corporate and documentary, its costs would be determined by utilities that sell power to it, and its earnings would not be defined and regulated in terms of an authorized return on invested capital, and that, accordingly, it would grant waivers to marketers of the requirements of these Parts. The Commission has also granted power marketers' requests for blanket approval under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability, assuming that no party objects to such treatment during a notice period which the Commission provides.[7] The purpose of section 204 of the Federal Power Act, which Part 34 implements, is to ensure the financial viability of public utilities obligated to serve electric consumers. The Commission concluded that since marketers do not obligate themselves to serve electric consumers, the requirements are inapplicable.[8]

As the development of competitive wholesale power markets continues, however, independent and affiliated power marketers and power producers are playing more significant roles in the electric power industry. In light of the evolving nature of the electric power industry, the Commission seeks comment on the extent to which these entities should be required to follow the Uniform System of Accounts, what financial information, if any, should be reported by these entities, how frequently it should be reported, and, in particular, whether these exempted entities should be subject to reporting the information required in the proposed regulations. Furthermore, the Commission seeks comments on whether we should rescind the part 34 blanket authorizations granted to these entities and require these entities to comply with the filing requirement of part 34 for all future issuances of securities and assumptions of liabilities.

Finally, the proposed rule is not intended to prescribe the ratemaking treatment for items of other comprehensive income or for derivative instruments and hedging activities. The Commission's proposal does not bar regulatory commissions (including this Commission) from adopting any particular ratemaking treatment for these transactions.

II. Background

A. General

In recent years, fair value measurements have become useful in assisting investors, creditors and other users of the financial data in making rational investment, credit and similar decisions. The use of fair value as a measurement attribute for financial reporting has grown in importance and relevance. Despite this fact, the companies that this Commission regulates have had only a relatively small number of transactions for which fair value measurements would be appropriate. This however is changing. As the regulated industries restructure, fair value will provide a relevant measure of economic effects for a growing number of transactions and events. The potential usefulness of fair value information has resulted in the Financial Accounting Standards Board (FASB) [9] issuing new accounting pronouncements affecting the manner in which certain types of financial instruments, derivatives and hedging activities are measured and reported in the financial statements applicable to entities in general.[10]

The Commission considers the requirements contained in Financial Accounting Standards (FAS) 115, 130 and 133 to be an improvement in financial accounting and reporting practices if properly implemented. Also, as a general proposition, the Commission considers it desirable for its accounting requirements and those used for general purpose financial reporting to be consistent. While some companies have implemented certain aspects of these pronouncements, the implementation has not been uniform concerning the accounting and reporting

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[1] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA), 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[2] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. 18 CFR part 101.

[3] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR part 201.

[4] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352.

[5] The FERC Annual Reports bear the following OMB approvals: Form No. 1 has OMB approval number 1902–0021; Form No. 1–F has OMB approval number 1902–0029; Form No. 2 has OMB approval number 1902–0028; Form No. 2–A has OMB approval number 1902–0030; and Form No. 6 has OMB approval number 1902–0022.

[6] On August 10, 2001, the Commission's Chief Accountant issued interim accounting guidance on the proper accounting and reporting requirements for changes in the fair value of certain investments in marketable securities, items of other comprehensive income, and derivatives and hedging activities. *See*, All Jurisdictional Public Utilities, Licensees, Natural Gas Companies, and Oil Pipeline Companies, 96 FERC ¶ 62,147 (2001).

[7] We note that the Commission's jurisdiction over issuances of securities and assumptions of liabilities under section 204 of the FPA applies only to entities that are public utilities as defined in the FPA and only where the public utilities' security issues are not regulated by a State commission (see FPA section 204(f)).

[8] *See, e.g.*, St. Joe Minerals Corp, 21 FERC ¶ 61,323 (1982); Cliffs Electric Service Company, 32 FERC ¶ 61,372 (1985); Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986); Howell Gas Management Company, 40 FERC ¶ 61,336 (1987); Citizens Power & Light Corporation, 48 FERC ¶ 61,210 (1989); National Electric Associates Limited Partnership, 50 FERC ¶ 61,378 (1990); and Nevada Sun-Peak Limited Partnership, 86 FERC ¶ 61,243 (1999).

[9] FASB and other accounting bodies are responsible for establishing and improving financial accounting and reporting standards for private sector companies.

[10] The accounting pronouncements issued by FASB were Financial Accounting Standards (FAS) 115, Accounting for Certain Investments in Debt and Equity Securities, 130, Reporting Comprehensive Income, and 133, Accounting for Derivative Instruments and Hedging Activities, as amended by 138, Accounting for Certain Derivative Instruments and Certain Hedging Activities. These accounting pronouncements may be obtained from FASB at (*http://accounting.rutgers.edu/raw/fasb/*).

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to the Commission in the FERC Forms 1, 1–F, 2, 2–A, and 6. Therefore the Commission plans to implement the principles and concepts set forth in FAS 115, 130 and 133 for FERC accounting and reporting purposes effective upon the issuance of a final order in this proceeding. Consequently, the interim accounting and reporting guidance provided by the Chief Accountant on August 10, 2001, will be superceded with the issuance of the final rule in this proceeding.[11]

In summary, the Commission considers that the proposed accounting and reporting changes will provide consistent accounting and reporting of changes in the fair value of financial investments, derivatives and hedging activities. The proposed changes will also minimize the accounting and reporting burden on jurisdictional entities and assist the Commission in its analysis of profitability, efficiency, risk management, and in its overall monitoring effort.

In order to provide a context for the Commission's proposed changes the key aspects of the relevant FASB pronouncements are provided below.

B. Investments in Debt and Equity Securities

In May 1993, the FASB issued Financial Accounting Standard (FAS) 115, Accounting for Certain Investments in Debt and Equity Securities, effective for fiscal years beginning after December 15, 1993. This statement addresses the accounting and reporting for investments in equity securities that have readily determinable fair value and for all investments in debt securities.

This accounting pronouncement requires entities to classify investments in securities into one of three categories, held-to-maturity, trading, or available-for-sale.

The first category of investments, held-to-maturity, consists of debt securities that the entity has the intent and ability to hold to maturity. For debt securities held to maturity, the cost will be the amount realized when the entity redeems the security. Therefore, changes in the fair value of securities held to maturity are not recognized during the period the entity holds the security investment.

Securities that fall into the second category, trading type securities, reflect active and frequent buying and selling. They are held for short periods of time with the objective of generating profits from short term differences in price. Entities must recognize unrealized holding gains and losses on trading type securities in earnings when the fair value of security changes.

Securities that do not fall into the category of held-to-maturity or trading type securities are considered to be available-for-sale. Changes in the fair value of available for sale type securities are reflected in the financial statements in "other comprehensive income" rather than earnings. This accounting treatment results in unrealized holding gains and losses on debt and equity securities that are available for sale being reported outside of earnings because they are not actively managed in a trading account.

C. Other Comprehensive Income

In June 1997, the FASB issued FAS 130, Reporting Comprehensive Income. This statement established the standards for reporting comprehensive income in a full set of general-purpose financial statements effective for fiscal years beginning after December 15, 1997. Comprehensive income represents the change in equity of an entity during a period from transactions and other events and circumstances from nonowner sources. Comprehensive income is composed of traditional net income plus items of "other comprehensive income."[12]

Items of other comprehensive income are amounts under existing accounting standards that were permitted to bypass the income statement and be recorded directly in a separate section of equity. These amounts were required to be classified by their category and reported separately from retained earnings and additional paid-in capital. Under existing accounting standards other comprehensive income categories include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedge amounts.

Under the provision's of FAS 130, entities may report the categories of other comprehensive income using an income statement format or by showing the amounts as part of the Statement of Shareholders Equity. Entities may also report the amounts on a before-tax or after-tax basis provided that certain disclosures are made in the notes to the financial statements.

D. Derivative Instruments and Hedging Activities

1. General

In June 1998, the FASB issued FAS No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended on June 2000, by FAS 138, Accounting for Certain Derivative Instruments and Certain Hedging Activities. This pronouncement was issued in a response to an increased use of derivatives and to resolve problems with the accounting and reporting practices for derivatives and hedging activities. These problems included incomplete and inconsistent accounting guidance on the effects of derivative transactions and hedging activities. The effects of derivatives were not transparent in the basic financial statements, and many derivative instruments were carried "off-balance-sheet" regardless of whether they were formally part of a hedging strategy. The FASB issued new accounting guidance to address these concerns.

2. Definition of a Derivative

A derivative instrument is defined for accounting purposes based on its distinguishing characteristics rather than by specific examples of derivative instruments such as futures or option contracts because the expansion of financial markets and other contracts could ultimately render obsolete a definition based solely on examples.

A derivative instrument is a financial instrument or other contract with all of the following characteristics:

First, the instrument has one or more underlyings. An underlying is a specified interest rate, security price, commodity price, foreign exchange rate, index of prices or rates, or other variable. An underlying may be a price or rate of an asset or liability but is not the asset or liability itself.

Second, the instrument must have one or more notional amounts or payment provisions. A notional amount represents quantity such as a number of currency units, shares, bushels, pounds or other units specified in a derivative instrument. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

Third, the instrument requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

Finally, the instrument requires or permits net settlement. It can readily be settled net by a means outside the contract, or it provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

Certain types of contracts are exempted from the requirements of this statement. For example, normal purchases and normal sales contracts that provided for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the reporting entity over a reasonable period in the normal course of business are not considered derivative instruments. This exception is commonly referred to as the normal purchases and normal sales scope exception. The exception would include typical purchases and sales of inventory items, certain insurance contracts, and employee compensation agreements. Derivative instruments that do not qualify for the normal purchases and normal sales scope exception, or other exceptions provided for under the statement, are reflected in the financial statements. Consequently, most futures, forwards, swaps, and option contracts meet the definition of a derivative instrument and changes in their fair value would be reflected in the financial statements.

3. Accounting for a Derivative Instrument

Changes in the fair value of derivative instruments depends upon its intended use and designation. Essentially, entities recognize in earnings in the period of the change gains or losses on certain derivative instruments not designated as a hedge instrument. The change in the value of the derivative instrument is reflected on the balance sheet as an asset or liability with a corresponding amount recognized in earnings. This accounting effectively provides users of the financial statements with information concerning the value of the derivative instrument as if it had been settled in the market place.

4. Hedge Accounting

Providing certain criteria are met, a derivative may be specifically designated as a fair value or cash flow hedge. Entities hedge to manage risk to prices, interest rates, or foreign currency exposures. Under the rules for hedge accounting the changes in the fair value of the derivative are measured at fair value with adjustments made to the carrying amount of the items being hedged (as in a fair value hedge) or to other comprehensive income (as in a cash flow hedge) to the extent the hedge is effective.

a. Fair Value Hedge

In a fair value hedge a derivative instrument is designated as a hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment. A firm commitment is defined as an agreement with an unrelated party, binding on both parties and usually legally enforceable. The agreement specifies all significant terms, including the quantity to be exchanged, the fixed price, and the timing of the transaction. The fixed price may be expressed as a specified amount of an entity's functional currency or a foreign currency. It may also be expressed as a specified interest rate or specified effective yield.

In a fair value hedge, the change in value of the derivative instrument is recognized in earnings in the period of the change together with the offsetting gain or loss on the item being hedged. To the extent that a hedge is perfectly effective, it will produce the same offsetting amounts in earnings so that net income is not impacted by the hedge. However, amounts would be reflected in earnings to the extent that the hedge is not effective in offsetting the change in value of the item being hedged.

Additionally, fair value hedge accounting results in an adjustment of the carrying amount of the hedged asset or liability. In the case of a fair value hedge of a firm commitment, a new asset or liability is created. As a result of the hedge relationship, the new asset or liability ultimately becomes part of the carrying amount of the item being hedged.

b. Cash Flow Hedge

A cash flow hedge uses a derivative instrument to protect against the risk caused by variable prices or costs, that cause future cash flows to be uncertain. It is a hedge against an anticipated or forecasted transaction that is probable of occurring in the future but the amount of the transaction has not been fixed.

In a cash flow hedge, the effective portion of the derivative's gain or loss is initially reported as a component of other comprehensive income. The ineffective portion of the gain or loss is reported in earnings immediately. Amounts recorded in other comprehensive income are reclassified into earnings when the hedged item affects earnings.

c. Documentation of Hedge Relationship

Entities must keep extensive documentation of the hedge relationship. An entity that elects to apply the special hedge accounting is required to document at the inception of the hedge the risk management objective and strategy for undertaking the hedge, including the hedge instrument, the related transaction, the nature of the risk being hedged, and how hedge effectiveness will be determined.

The company's documentation of its overall risk management philosophy is essential in addressing the role that derivative instruments and hedging activities play in achieving the company's risk management objectives.

Concurrent designation and documentation of a hedge is critical because an entity could retroactively identify a transaction as a hedge or change a method of measuring effectiveness to achieve a desired outcome. At the inception of the hedge formal documentation is required that identifies the hedging instrument and specifically identifies the hedged item or transaction along with the nature of the risk being hedged. Entities are required to formally document how effectiveness will be assessed at the adoption of the hedge and on an ongoing basis.

III. Discussion

A. General

The Commission's existing Uniform Systems of Accounts for public utilities, gas companies and oil pipelines do not specifically address the proper accounting and reporting for changes in the fair value of certain investment securities, derivative instruments, and hedging activities. Additionally, the existing Uniform Systems of Accounts do not contain specific accounts to record amounts related to items of other comprehensive income or a format to display comprehensive income in the FERC Forms 1, 1–F, 2, 2–A, and 6.

Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting will result. For example, if the effects of certain derivative instruments and hedging activities are not properly reported to the Commission in the FERC Annual Reports, it will be difficult for the Commission and others to determine the extent and effects of derivatives on a jurisdictional entity's' financial statements and results of operations. The addition of new accounts and related general instructions is intended to improve the visibility, completeness and consistency of accounting and reporting of changes in the fair value of certain investment securities, items of other comprehensive income, derivatives and hedging activities.

Also, the addition of the proposed new accounts and related reporting requirements to the FERC Forms 1, 1–F, 2, 2A and 6 will reduce regulatory uncertainty as to the proper accounting and reporting for these items and

[11] See note 6.

[12] Comprehensive income is defined by FASB in Concepts Statement No. 6 as, "the change in equity [net assets] of a business enterprise during a period from transactions and other events and circumstances from nonowner sources. It includes all changes in equity during a period except those resulting from investments by owners and distributions to owners."

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minimize regulatory burden by reducing the potential differences in the manner in which these amounts are reported to shareholders and to the Commission. Finally, the reporting of derivatives and hedging activities by jurisdictional entities will assist the Commission in its analysis of profitability, efficiency, risk and in its overall monitoring effort.

B. Proposed Accounting for Trading and Available-for-Sale Type Securities

Under the Commission's Uniforms Systems of Accounts for public utilities and gas companies, all types of securities are recorded at cost and subsequent changes in the fair value of security investments are not recognized in the financial statements. The Uniform System of Accounts for oil pipelines requires adjustments to the carrying value of security investments when certain conditions are met.

The Commission is of the view that fair value measurement of the trading and available-for-sale type securities presents relevant and useful information to existing and potential investors, creditors, regulators and others in making credit and other decisions. Fair value measurements will also provide useful information to the Commission concerning the status of certain amounts set aside to fund future obligations.

The Commission therefore proposes to add language to its security investment accounts for public utilities, gas companies, and oil pipelines to permit the recognition of changes in the fair value of trading and available-for-sale types of securities due to unrealized holding gains and losses.[13] The Commission also proposes amending its oil pipeline General Instruction 1–15, Accounting for marketable equity securities, and remove oil pipeline Accounts 23, 24, and 75.5 to conform the regulations to the proposed changes.

C. Proposed Accounting for Other Comprehensive Income

As part of the proposed rule, the Commission proposes to revise the Uniform Systems of Accounts for public utilities, gas companies and oil pipelines to provide accounting for items of other comprehensive income. As proposed, new equity Account 219, Accumulated other comprehensive income, would be created for public utilities and gas companies, and a new equity Account 77, Accumulated other comprehensive income, would be established for oil pipelines to include the accumulated balance for items of other comprehensive income. The accounts will require supporting records be maintained by each category of other comprehensive income for reporting the information in the FERC Form 1, 1F, 2, 2A, and 6.

As proposed, a new equity account entitled Account 219.1, Other comprehensive income, for public utilities and gas companies, and a new account entitled Account 77.1, Other comprehensive income, for oil pipeline companies, would be established to include amounts for items of other comprehensive income for the reporting year. The purpose of these accounts is to record the activity for items of other comprehensive income during the year. At year end, the amounts recorded in Account 219.1 and Account 77.1 would be transferred to the new equity Account 219 and Account 77, respectively. Consequently, Accounts 219.1 and 77.1 as proposed will always have a zero beginning and year end balance and therefore the Commission proposes not to include these accounts as part of the balance sheet schedules. Accounts 219.1 and 77.1 will capture activity during the year for items of other comprehensive income and the activity will be reported in a proposed new schedule entitled "Statement of Comprehensive Income and Hedging Activities."

The proposed instructions to the other comprehensive income accounts for all jurisdictional entities will require that supporting records be maintained by each category of other comprehensive income. This level of detail is required so that the entity is able to identify the amounts associated with the item when it enters into the determination of earnings in current or subsequent periods.

Finally, reclassification adjustments are required to be made for items of other comprehensive income to avoid double counting an item in net income and other comprehensive income. The proposed instructions to Accounts 219 and 219.1 for public utilities and natural gas companies, and the proposed instructions to Accounts 77 and 77.1 for oil pipeline companies will require that reclassification adjustments be made directly to these accounts as appropriate. This proposed accounting treatment for reclassification adjustments will minimize the need for creating a new account to capture amounts solely related to reclassification adjustments.

D. Proposed Accounting for Derivatives and Hedging Activities

1. General

The Commission's existing Uniform Systems of Accounts for public utilities, natural gas companies and oil pipelines do not contain specific accounts to record changes in the fair value of derivative instruments used in hedging and non-hedging activities. The Commission considers that the addition of new accounts and instructions will provide improved visibility, and completeness of accounting and reporting of derivatives and hedging activities by jurisdictional entities. As part of the proposed rule, the Commission proposes to revise the Uniform Systems of Accounts to provide accounting for derivatives and hedging activities.

2. Proposed General Instructions for Fair Value and Cash Flow Hedges

The Commission proposes to add a new general instruction that would require public utilities, natural gas companies, and oil pipelines to record changes in the fair value of the derivative instrument designated as a cash flow hedge to other comprehensive income. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of, or otherwise settled.

The proposed instructions would also require jurisdictional entities to record changes in the fair value of a derivative instrument designated as a fair value hedge in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge would be charged to the same income or expense account that would have been used if the hedged item had been disposed of, or otherwise settled.

3. Proposed Changes to General Instruction 21. Allowances

The Commission is also proposing to make technical changes to its existing general instructions concerning the accounting for hedge transactions related to exchange traded allowance future contracts. General Instruction No. 21. Allowances, of Part 101, directs public utilities to defer in Account 186, Miscellaneous deferred debits, or Account 253, Other deferred credits, the costs and benefits from hedging transactions associated with exchange traded allowance future contracts. The Commission is proposing to delete paragraph I to be consistent with proposed accounting for derivatives. The accounting framework proposed for derivatives would also include exchange traded future allowances.

4. Proposed Accounting for Derivative Assets and Liabilities

As proposed, two new asset and two new liability accounts would be established to include amounts related to the changes in the fair value of derivative instruments not designated as a cash flow or fair value hedges. The two new asset accounts are Account 175, Derivative instrument assets, for public utilities and natural gas companies, and Account 46, Derivative instrument assets, for oil pipeline companies. The two new liability accounts are Account 244, Derivative instrument liabilities, for public utilities and natural gas companies, and Account 65, Derivative instrument liabilities, for oil pipeline companies.

Public utilities and natural gas companies would charge Account 421, Miscellaneous nonoperating income, with the corresponding amount of the change in the fair value of the derivative instruments. Oil pipelines would charge Account 660, Miscellaneous income charges, with the corresponding amount of the change in the fair value of the derivative instruments.

The Commission recognizes that under certain circumstances rate regulators may include all or part of a derivative instruments change in value in the development of rates even though the derivative instrument is not part of a fair value or cash flow hedge. The Commission therefore proposes where regulators explicitly approve the inclusion of the changes in fair value of derivative instruments in the development of rates, company's will reclassify those amounts from Account 421 or Account 660 to the appropriate utility operating revenue or expense account that will be charged with the transaction when it settles.

The Commission also recognizes that companies are required to classify derivative asset and liabilities as current or long-term on their balance sheets. In order to facilitate reporting derivative asset and liabilities to shareholders in general purpose financial statements, companies may create current and long-term subaccounts associated with the proposed new derivative balance sheet accounts.

Finally, if the derivative instrument does not qualify for hedge accounting, but it is probable that the rate regulator will include the changes in the fair value of the derivative instrument in the future development of rates, the entity must follow the Commission's existing accounting regulations for the recognition of regulatory assets and regulatory liabilities.

5. Proposed Accounting for Fair Value and Cash Flow Hedges

As proposed, two new asset and two new liability accounts would be established to include amounts related to the changes in the fair value of derivative instruments designated as a cash flow or fair value hedges. The two new asset accounts are Account 176, Derivative instrument assets-Hedges, for public utilities and natural gas companies, and Account 47, Derivative instrument assets-Hedges, for oil pipelines. The two new liability accounts are Account 245, Derivative instrument liabilities-Hedges, for public utilities and natural gas companies, and Account 66, Derivative instrument liabilities-Hedges, for oil pipelines.

E. Proposed Changes to the FERC Annual Reports Forms

The proposed accounting changes, if adopted, will require one new schedule and changes to existing balance sheet schedules in the FERC Forms 1, 1–F, 2, 2–A, and 6 filed with the Commission by public utilities, gas companies, and oil pipelines. The proposed new schedule is attached in Appendix A and the proposed changes to the FERC Forms are discussed below.

As previously mentioned, entities have a choice of formats for their general purpose financial statements along with a choice of reporting certain items net of reclassification adjustments and a choice of reporting these amounts on a net-of-tax or pre-tax basis provided that certain footnote disclosure requirements are met. In order to provide consistent accounting and reporting of items of other comprehensive income the Commission is adding a new schedule entitled "Statement of Comprehensive Income and Hedging Activities" with instructions on the proper footnote disclosures for the FERC Forms 1, 1–F, 2, 2–A, and 6.

This proposed new schedule is modeled after an income statement approach which provides the most transparency for the components of other comprehensive income and is more consistent with the overall framework of the FASB Concepts Statements. The proposed income statement format would also avoid duplication of data already reported on other schedules. This new schedule will show the components of other comprehensive income and require:

(1) The reporting of categories of other comprehensive income on a net-of-tax basis, where appropriate, along with the reporting of the related tax effects allocated to each component, in a footnote to the schedule.

(2) The reporting of accumulated other comprehensive income balances at year end by category, in a footnote to the schedule.

(3) The reporting of fair value hedge balances at year end by category, in a footnote to the schedule.

The Commission concludes that the above reporting requirements would not be a significant reporting burden to industry since the information is already being captured by their accounting systems for internal and external reporting as needed.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[14] The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission concludes that this rule would not have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity.[15] As previously mentioned, the Commission concludes that this reporting would not be a significant burden to industry since the information is already being captured by their accounting systems and generally being reported to shareholders and others at a company, or at a consolidated business level.

However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission.

V. Environmental Impact Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[16] No

[13] The security investment accounts for public utilities and gas pipeline companies are: Account 124, Other investments; Account 125, Sinking funds (Major only); Account 126, Depreciation fund (Major only); Account 127, Amortization fund (Major only); Account 128, Other special funds (Major only); and Account 129, Special funds (Nonmajor only). The security investment asset accounts for oil pipelines are Account 11, Temporary investments; Account 21, Other investments; and Account 22, Sinking and other funds.

[14] 5 U.S.C. 601–612.

[15] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[16] 18 CFR 380.4.

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environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.[17] The proposed rule updates the Parts 101, 201 and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement and Public Reporting Burden

The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

Estimated Annual Burden: The Commission estimates that on average it will take respondents 2 hours to comply with the proposed requirements. This will result in total hours for the following collections of information:

Data collection	Number of respondents	Number of responses	Total annual hours
FERC-Form 1	210	210	420
FERC Form 1–F	7	7	14
FERC Form 2	57	57	114
FERC Form 2–A	57	57	114
FERC Form 6	159	159	318
Totals			980

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 980 + 470 hours* (recordkeeping) = 1,450 hours.

*This estimate is based on an average of 3 hours per respondent for recordkeeping purposes.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the cost for complying to be the following: 1,450 hours ÷ 2,080 × $117,041 = $81,596.

Annualized Capital/Startup Costs—$0
Annualized Costs (Operations & Maintenance)—$81,596
Total Annualized Costs—$81,596

OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.[18]

Title: FERC Form 1 Annual Report of Major Electric Utilities, Licensees and Others;

FERC Form 1–F Annual Report For Non-Major Public Utilities and Licensees;

FERC Form 2 Annual Report for Major Natural Gas Companies;

FERC Form 2–A Annual Report for Nonmajor natural gas companies;

FERC Form No. 6 Annual Report of Oil Pipeline Companies.

Action: Proposed Collections.

OMB Control No: 1902–0021; 1902–0029; 1902–0028; 1902–0030; and 1902–0022.

Respondents: Business or other for profit.

Frequency of Responses: Annual.

Necessity of the Information: The Commission's existing Uniform Systems of Accounts do not specifically address the proper accounting and reporting for changes in fair value of certain investment securities, and derivative instruments and hedging activities. Additionally, the existing Uniform Systems of Accounts do not contain specific accounts to record amounts related to items of other comprehensive income in its annual financial reports.

Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting will result. The addition of new accounts and related general instructions is intended to improve the visibility, completeness and consistency of accounting practices for derivative instruments and hedging activities, and items of other comprehensive income.

As these derivative instruments are risk-shifting devices, it is important to identify and fully comprehend the risks being assumed, evaluate those risks and continuously monitor and manage those risks. Part of the risk identification process is a determination of the monetary exposure of the parties under the terms of the derivative instrument. In a derivative situation, performance of the other party's obligations is highly dependent on the strength of its balance sheet.

Internal Review: The Commission has reviewed the requirements pertaining to the Uniform Systems of Accounts and to the financial reports it prescribes and determined the proposed revisions are necessary because the Commission needs to establish uniform accounting and reporting requirements for items of other comprehensive income, changes in the fair value of investment securities and derivatives, and hedging activities.

These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric, natural gas and oil pipeline industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: *mike.miller@ferc.fed.us*]

For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7318, fax: (202) 395–7285].

[17] 18 CFR 380.4(a)(2)(ii).

[18] 5 CFR 1320.11.

VII. Public Comment Procedures

The Commission invites all interested persons to submit comments on this NOPR.

To facilitate the Commission's review of comments, commenters are requested to provide an executive summary of their position on the issues raised in the NOPR. Commenters are requested to identify each specific question posed by the NOPR that their discussion addresses and to use appropriate heading. Additional issues the commenters wish to raise should be identified separately. The commenters should double space their comments.

Comments may be filed paper or electronically via the Internet and must be received by the Commission within 60 days after publication in the **Federal Register**. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM02–3–000.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on "e-Filing," and then follow the instructions on each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202–208–0258 or by e-mail to efiling@ferc.fed.us. Comments should not be submitted to the e-mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homespage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to RimsMaster@ferc.fed.us.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.fed.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's home page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the text of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; request for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and FERC Web site are available. User assistance is also available.

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 101, 201, and 352, Title 18 of the Code of Federal Regulations, as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

2. In part 101, General Instructions, section 21. Allowances, paragraph I is removed, and sections 23. Accounting for other comprehensive income, and 24. Accounting for derivative instruments and hedging activities, are added to read as follows:

General Instructions

* * * * *

23. *Accounting for other comprehensive income.*

(A) Utilities will record items of other comprehensive income in account 219.1, Other comprehensive income. Amounts included in this account will be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts.

(B) At year end, amounts recorded in account 219.1, Other comprehensive income, will be transferred to account 219, Accumulated other comprehensive income. Supporting records will be maintained for account 219 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

(C) When an item of other comprehensive income enters into the determination of earnings in the current or subsequent periods, a reclassification adjustment will be recorded in accounts 219 or 219.1 to avoid double counting of that amount.

* * * * *

24. *Accounting for derivative instruments and hedging activities.*

A. Utilities will recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value. A derivative instrument is a financial

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instrument or other contract with all of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

B. The accounting for the changes in the fair value of derivative instruments depends upon their intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges will be recorded in account 175, Derivative instrument assets, or account 244, Derivative instrument liabilities, as appropriate, with the gains or losses charged to earnings in account 421, Miscellaneous nonoperating income.

C. A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge is used to manage risk to price, interest rates, or foreign currency transactions. A company will maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

D. If the utility designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it will record the change in fair value of the derivative instrument to account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction will be reflected in the same income or expense account that would have been used if the hedged item had been disposed of or settled. In the case of a fair value hedge of a firm commitment a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

E. If the utility designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it will record changes in the fair value of the derivative instrument in account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding amount in account 219.1, Other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction will be reflected in the same income or expense account that would have been used if the hedged item had been disposed of or settled. Amounts recorded in other comprehensive income will be reclassified into earnings in the same period or periods that the hedged forecasted item affects earnings.

3. In part 101, Balance Sheet Accounts, accounts 124, paragraph A, 125, 126, 127, 128 introductory text preceding the Note, and 129 introductory text preceding the Note, are revised, and Accounts 175, 176, 219, 219.1, 244 and 245 are added to read as follows:

Balance Sheet Accounts

* * * * *

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See account 419, Interest and dividend income.)

* * * * *

125 Sinking funds (Major only).

This account shall include the amount of cash and book cost of investments held in sinking funds. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts may be made as necessary for the purpose of paying matured sinking-fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 Depreciation fund (Major only).

This account shall include the amount of cash and book cost of investments which have been segregated in a special fund for the purpose of indentifying such assets with the accumulated provisions for depreciation. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

127 Amortization fund—Federal (Major only).

This account shall include the amount of cash and book cost of investments of any investments of any fund maintained pursuant to the requirements of a federal regulatory body, as the cash and investments segregated for the purpose of identifying the specific assets associated with account 215.1, Appropriated retained earnings—Amortization reserve, Federal. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

128 Other special funds (Major only).

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, shall be kept for each fund.

* * * * *

129 Special funds (Nonmajor only).

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for bond retirements, property additions and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each fund.

* * * * *

175 Derivative instrument assets.

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, Miscellaneous nonoperating income, will be charged with the corresponding amount of the change in the fair value of the derivative instrument.

176 Derivative instrument assets-Hedges.

A. This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

B. When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219.1, Other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

C. When a utility designates a derivative instrument as a fair value hedge it will record the change in the fair of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

* * * * *

219. Accumulated other comprehensive income.

A. This account shall include amounts of other comprehensive income transferred from account 219.1, Other comprehensive income. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

B. This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items will be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

219.1 Other comprehensive income.

A. This account shall include revenues, expenses, gains, and losses that are appropriately includable in other comprehensive income during the period. At year end the total of other comprehensive income will be transferred to account 219, Accumulated other comprehensive income.

B. This account shall also be debited or credited, as appropriate, with amounts of other comprehensive income that have been included in the determination of net income in the same period. Separate records will be maintained to identify the amount of the reclassification adjustments to earnings during the period.

C. Examples of items of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

* * * * *

244 Derivative instrument liabilities.

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 421, Miscellaneous nonoperating income, will be charged with the corresponding amount of the change in the fair value of the derivative instrument.

245 Derivative instrument liabilities-Hedges.

A. This account shall include the change in the fair value of derivative instrument liabilities designated by the utility as cash flow or fair value hedges.

B. A utility will record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 219.1, Other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

C. A utility will record the change in the fair of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

4. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

5. In part 201, General Instructions, sections 22. Accounting for other comprehensive income, and 23. Accounting for derivative instruments and hedging activities, are added to read as follows:

General Instructions.

* * * * *

22. *Accounting for other comprehensive income.*

A. Utilities will record items of other comprehensive income in account 219.1, Other comprehensive income. Amounts included in this account will be classified by their nature and supporting records will be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts.

B. At year end, amounts recorded in account 219.1, Other comprehensive income, will be transferred to account 219, Accumulated other comprehensive income. Supporting records will be maintained for account 219 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

C. When an item of other comprehensive income enters into the determination of earnings in the current or subsequent periods a reclassification adjustment will be recorded in accounts 219 or 219.1 to avoid double counting of when an item included in net income was also included in other comprehensive income in the same or prior period.

23. *Accounting for derivative instruments and hedging activities.*

A. Utilities will recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value. A derivative instrument is a financial

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instrument or other contract with all three of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

B. The accounting for the changes in the fair value of derivative instruments depends upon their intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges will be recorded in account 175, Derivative instrument assets, or account 244, Derivative instrument liabilities, as appropriate, with the gains or losses charged to earnings in account 421, Miscellaneous nonoperating income.

C. A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge may be used to manage risk to price, interest rates, or foreign currency transactions. Utilities will maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

D. If the utility designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it will record the change in fair value of the derivative instrument to account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction will be reflected in the same income or expense account that would have been used if the hedged item had been disposed of or settled. In the case of a fair value hedge of a firm commitment a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

E. If the utility designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it will record changes in the fair value of the derivative instrument in account 176, Derivative instrument assets-Hedges, or account 245, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding amount in Account 219.1, Other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction will be reflected in the same income or expense account that would have been used if the hedged item had been disposed of or settled. Amounts recorded in other comprehensive income will be reclassified into earnings in the same period or periods that the hedged forecasted item affects earnings.

* * * * *

6. In part 201, Balance Sheet Accounts, Accounts 124, paragraph A, 125, 126, and 128, introductory text preceding the Note, are revised, and Accounts 175, 176, 219, 219.1, 244 and 245 are added to read as follows:

Balance Sheet Accounts

* * * * *

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See account 419, interest and dividend income.)

* * * * *

125 Sinking funds.

This account shall include the amount of cash and book cost of investments held in sinking funds. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts may be made as necessary for the purpose of paying matured sinking-fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 Depreciation fund.

This account shall include the amount of cash and book cost of investments which have been segregated in a special fund for the purpose of indentifying such assets with the accumulated provisions for depreciation. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

* * * * *

128 Other special funds.

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, shall be kept for each fund.

* * * * *

175 Derivative instrument assets.

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, Miscellaneous nonoperating income, will be charged with the corresponding amount of the change in the fair value of the derivative instrument.

176 Derivative instrument assets-Hedges.

A. This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

B. When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219.1, Other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

C. When a utility designates a derivative instrument asset as a fair value hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

* * * * *

219 Accumulated other comprehensive income.

A. This account shall include amounts of other comprehensive income transferred from account 219.1, Other comprehensive income. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

B. This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items will be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

219.1 Other comprehensive income.

A. This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. At year end the total of other comprehensive income will be transferred to account 219, Accumulated other comprehensive income.

B. This account shall also be debited or credited, as appropriate, with amounts of other comprehensive income that have been included in the determination of net income in the same period. Separate records will be maintained to identify the amount of the reclassification adjustments to earnings during the period.

C. Examples of items of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

* * * * *

244 Derivative instrument liabilities.

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 421, Miscellaneous nonoperating income, will be charged with the corresponding amount of the change in the fair value of the derivative instrument.

245 Derivative instrument liabilities-Hedges.

A. This account shall include the change in the fair value of derivative instrument liabilities designated by the utility as cash flow or fair value hedges.

B. A utility will record the change in the fair value of a derivative liability related to a cash flow hedge in this account, with a concurrent charge to account 219.1, Other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

C. A will record the change in the fair of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

* * * * *

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

7. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

* * * * *

8. In part 352, List of Instructions and Accounts, Definitions, paragraph 35(d) is revised to read as follows:

Definitions.

* * * * *

35. * * *

(d) *Cost*, as applied to a marketable equity security, refers to the original cost as adjusted for unrealized holding gains and losses.

* * * * *

9. In part 352, General Instructions, paragraph 1–15(a), (b) and (c) are revised, (d) and (e) are removed, and General Instructions paragraphs 1–17 and 1–18 are added to read as follows:

General Instructions

* * * * *

1–15 *Accounting for marketable securities owned.* (a) Accounts 11 "Temporary investments," 20 "Investments in affiliated companies," and 21 "Other investments" shall be maintained in such a manner as to reflect the marketable equity portion (see definition 35) and other securities or investments

(b) For the purpose of determining net ledger value, the marketable equity securities in account 11 shall be considered the current portfolio and the marketable equity securities in accounts 20 and 21 (combined) shall be considered the noncurrent portfolio.

(c) Carriers will categorize their security investments as held-to-maturity, trading, or available-for-sale. Unrealized holding gains and losses on trading type investment securities will be recorded in account 660, Miscellaneous income charges. Unrealized holding gains and losses on available-for-sale type investment securities will be recorded in account 77.1, Other comprehensive income.

* * * * *

1–17 *Accounting for other comprehensive income.*

(a) Carriers will record items of other comprehensive income in account 77.1, Other comprehensive income. Amounts included in this account will be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts.

(b) At year end, amounts recorded in account 77.1, Other comprehensive income, will be transferred to account 77, Accumulated other comprehensive income. Supporting records will be maintained for account 77 so that the carrier can readily identify the cumulative amount of other comprehensive income for each item included in this account.

(c) When an item of other comprehensive income enters into the determination of earnings in the current or subsequent periods a reclassification adjustment will be recorded in accounts 77 or 77.1 to avoid double counting of when an item included in net income was also included in other comprehensive income in the same or prior period.

* * * * *

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1–18 *Accounting for derivative instruments and hedging activities.*

(a) A carrier will recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value. A derivative instrument is a financial instrument or other contract with all three of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

(b) The accounting for the changes in the fair value of derivative instruments depends upon their intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges will be recorded in account 46, Derivative instrument assets, or account 65, derivative instrument liabilities, as appropriate, with the gains or losses charged to earnings in account 660, Miscellaneous income charges.

(c) A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge may be used to manage risk to price, interest rates, or foreign currency transactions. An entity will maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

(d) If the carrier designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it will record the change in fair value of the derivative instrument designated as a fair value hedge to account 47, Derivative instrument assets-Hedges, or account 66, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction will be reflected in the same income or expense account that would have been used if the hedged item had been disposed of or settled. In the case of a fair value hedge of a firm commitment, a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

(e) If the carrier designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction it will record changes in the fair value of the derivative instrument in account 47, Derivative instrument assets-Hedges, or account 66, Derivative instrument liabilities-Hedges, as appropriate, with a corresponding amount in account 77.1, Other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction will be reflected in the same income or expense account that would have been used if the hedged item had been disposed of or settled. Amounts recorded in other comprehensive income will be reclassified into earnings in the same period or periods that the hedged forecasted item affects earnings.

* * * * *

10. In part 352, Balance Sheet Accounts, Accounts 11, 21, and 22 are revised, Accounts 23, 24, and 75.5 are removed, and Accounts 46, 47, 65, 66, 77 and 77.1 are added to read as follows:

Balance Sheet Accounts

* * * * *

11 Temporary investments.

(a) This account shall include the cost of securities and other collectible obligations acquired for the purpose of temporarily investing cash, such as United States Treasury certificates, marketable securities, time drafts receivable, demand loans, time deposits with banks and trust companies, and other similar investments of a temporary character. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

(b) This account shall be subdivided to reflect the marketable equity securities' portion and other temporary investments. (See Instruction 1–15).

* * * * *

21 Other investments.

This account shall include the cost of investments in securities of (other than securities held in special funds) and advances made to other than affiliated companies. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Separate records shall be maintained to show the securities pledged and the following classes of investments in each nonaffiliated company:

(a) Stocks.
(b) Bonds.
(c) Other secured obligations.
(d) Unsecured notes.
(e) Investment advances.

22 Sinking and other funds.

(a) This account shall include cash and cost of investments in securities and other assets, trusteed or otherwise restricted, that have been segregated in distinct funds for purposes of redeeming outstanding obligations; purchasing or replacing assets; paying pensions, relief, hospitalization, and other similar items. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. The cash value of life insurance policies on the lives of employees and officers to the extent that the carrier is the beneficiary of such policies shall also be included in this account. Separate subsidiary records shall be maintained for each distinct fund.

23 and 24 [Removed]

* * * * *

46 Derivative instrument assets.

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 660, Miscellaneous income charges, will be charged with the corresponding amount of the change in the fair value of the derivative instrument.

47 Derivative instrument assets—Hedges.

(a) This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

(b) When a carrier designates a derivative instrument asset as a cash flow hedge, it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 77.1, Other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

(c) When a carrier designates a derivative instrument as a fair value hedge, it will record the change in the fair of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

* * * * *

65 Derivative instrument liabilities.

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 660, Miscellaneous income charges, will be charged with the corresponding amount of the change in the fair value of the derivative instrument.

* * * * *

66 Derivative instrument liabilities—Hedges.

(a) This account shall include the change in the fair value of derivative instrument liabilities designated by the carrier as cash flow or fair value hedges.

(b) A carrier will record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 77.1, Other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

(c) A carrier will record the change in the fair of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge will be charged to the same income or expense account that would have been used if the hedged item had been disposed of or otherwise settled.

* * * * *

75.5 [Removed]

* * * * *

77 Accumulated other comprehensive income.

(a) This account shall include amounts of other comprehensive income transferred from account 77.1, Other comprehensive income. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

(b) This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items will be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

* * * * *

77.1 Other comprehensive income.

(a) This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. At year end, the total of other comprehensive income will be transferred to account 77, Accumulated other comprehensive income.

(b) This account shall also be debited or credited, as appropriate, with amounts of other comprehensive income that have been included in the determination of net income in the same period. Separate records will be maintained to identify the amount of the reclassification adjustments to earnings during the period.

(c) Examples of items of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the carrier can furnish the amount of other comprehensive income for each item included in this account.

* * * * *

Note: The following Appendix A will not appear in the Code of Federal Regulations:

BILLING CODE 6717–01–P

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -1-

Name of Respondent	This Form is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

List of Schedules

Enter in column (c) the terms "none", "not applicable or "NA" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA"

Title of Schedule (a)	Reference Page No. (b)	Remarks (c)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS		
General Information	101	
Control Over Respondent	102	
Corporations Controlled by Respondent	103	
Officers	104	
Directors	105	
Security Holders and Voting Powers	106-107	
Important Changes During the Year	108-109	
Comparative Balance Sheet	110-113	
Statement of Income for the Year	114-117	
Statement of Retained Earnings for the Year	118-119	
Statement of Cash Flows	120-121	
Statement of Comprehensive Income and Hedging Activities	122	
Notes to Financial Statements	123	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)		
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201	
Nuclear Fuel Materials	202-203	
Electric Plant in Service	204-207	
Electric Plant Leased to Others	213	
Electric Plant Held for Future Use	214	
Construction Work in Progress -- Electric	216	
Construction Overheads -- Electric	217	
General Description of Construction Overhead Procedure	218	
Accumulated Provision for Depreciation of Electric Utility Plant	219	
Nonutility Property	221	
Investment in Subsidiary Companies	224-225	
Materials and Supplies	227	
Allowances	228-229	
Extraordinary Property Losses	230	
Unrecovered Plant and Regulatory Study Costs	230	
Other Regulatory Assets	232	
Miscellaneous Deferred Debits	233	
Accumulated Deferred Income Taxes (Account 190)	234	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)		
Capital Stock	250-251	
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and installments Received on Capital Stock	252	
Other Paid-in Capital	253	
Discount on Capital Stock	254	
Capital Stock Expense	254	
Long-Term Debt	256-257	

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -2-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	UTILITY PLANT			
2	Utility Plant (101)-106, 114)	200-201		
3	Construction Work in Progress (107)	200-201		
4	TOTAL UTILITY PLANT (Enter Total of Lines 2 and 3)			
5	(Less) Accum. Prov. For Depr. Amort. Depl. (108, 111, 115)	200-201		
6	Net Utility Plant (Enter Total of Line 4 less 5)	-		
7	Nuclear Fuel (120.1-120.4, 120.6)	202-203		
8	(Less) Accum. Prov. For Amort. Of Nucl. Fuel Assemblies (120.5)	202-203		
9	Net Nuclear Fuel (Enter Total of Lines 7 Less 8)	-		
10	Net Utility Plant (Enter Total of Line 6 and 9)	-		
11	Utility Plant Adjustments (116)	122		
12	Gas Stored Underground-Noncurrent (117)	-		
13	OTHER PROPERTY AND INVESTMENTS			
14	Nonutility Property (121)	221		
15	(Less) Accum. Prov. For Depr. And Amort. (122)	-		
16	Investments in Associated Companies (123)	-		
17	Investment in Subsidiary Companies (123.1)	224-225		
18	(For Cost of Account 123.1, See Footnote Page 224, Line 42)	-		
19	Noncurrent Portion of Allowances	228-229		
20	Other Investments (124)	-		
21	Special Funds (125-128)	-		
22	TOTAL Other Property and Investments (Total of Lines 14--17, 19--21)	-		
23	CURRENT AND ACCRUED ASSETS			
24	Cash (131)	-		
25	Special Deposits (132-134)	-		
26	Working Fund (135)	-		
27	Temporary Cash Investments (136)	-		
28	Notes Receivable (141)	-		
29	Customer Accounts Receivable (142)	-		
30	Other Accounts Receivable (143)	-		
31	(Less) Accum. Prov. For Uncollectible Acct. - Credit (144)	-		
32	Notes Receivable from Associated Companies (145)	-		
33	Accounts Receivable from Assoc. Companies (146)	-		
34	Fuel Stock (151)	227		
35	Fuel Stock Expenses Undistributed (152)	227		
36	Residuals (Elec) and Extracted Products (153)	227		
37	Plant Materials and Operating Supplies (154)	227		
38	Merchandise (155)	227		
39	Other Material and Supplies (156)	227		
40	Nuclear Materials held for Sale (157)	202-203/227		
41	Allowances (158.1 and 158.2)	228-229		
42	(Less) Noncurrent Portion of Allowances	228-229		
43	Stores Expenses Undistributed (163)	-		
44	Gas Stored Underground-Current (164.1)	-		
45	Liquefied Natural Gas Stored and Held for Processing (164.2-164.3)	-		
46	Prepayments (165)	-		
47	Advances for Gas (166-167)	-		
48	Interest and Dividends Receivable (171)	-		
49	Rents Receivable (172)	-		
50	Accrued Utility Revenues (173)	-		
51	Miscellaneous Current and Accrued Assets (174)	-		

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -3-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
52	Derivative Instrument Assets (175)			
53	Derivative Instrument Assets - Hedges (176)			
54	TOTAL Current and Accrued Assets (Enter Total of Lines 24 thru 53)			
55	DEFERRED DEBITS			
56	Unamortized Debt Expenses (181)	-		
57	Extraordinary Property Losses (182.1)	230		
58	U n recovered Plant and Regulatory Study Costs (182.2)	230		
59	Other Regulatory Assets (182.3)	232		
60	Prelim. Survey and Investigation Charges (Elec) (183)	231		
61	Prelim. Sur. and Invest. Charges (Gas) (183.1, 183.2)	-		
62	Clearing Accounts (184)	-		
63	Temporary Facilities (185)	-		
64	Miscellaneous Deferred Debits (186)	233		
65	Def.-Losses from Disposition of Utility Plant (187)	-		
66	Research, Devel. and Demonstration Expend. (188)	352-353		
67	Unamortized Loss on Reacquired Debt (189)	-		
68	Accumulated Deferred Income Taxes (190)	234		
69	Unrecovered Purchased Gas Costs (191)	-		
70	TOTAL Deferred Debits (Enter Total of Lines 56 thru 69)			
71	TOTAL Assets and Other Debits *(Enter Total of Lines 10, 11, 12, 22, 54, and 70)*			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -4-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stocked Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	122		
15	TOTAL PROPRIETARY CAPITAL *(Enter Total of lines 2 thru 14)*			
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt - Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total of Lines 17 thru 22)			
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases - Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and Damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provisions (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	TOTAL OTHER NONCURRENT LIABILITIES *(Enter Total of lines 25 thru 30)*			
32	CURRENT AND ACCRUED LIABILITIES			
33	Notes Payable (231)	-		
34	Accounts Payable (232)	-		
35	Notes Payable to Associated Companies (233)	-		
36	Accounts Payable to Associated Companies (234)	262-263		
37	Customer Deposits (235)	-		
38	Taxes Accrued (236)	-		
39	Interest Accrued (237)	-		
40	Dividends Declared (238)	-		
41	Matured Long-Term Debt (239)	-		
42	Matured Interest (240)	-		
43	Tax Collections Payable (241)	-		
44	Miscellaneous Current and Accrued Liabilities (242)	-		
45	Obligations under Capital Leases - Current (243)	-		
46	Derivative Instrument Liabilities (244)			
47	Derivative Instrument Liabilities-Hedges (245)			
48	TOTAL CURRENT & ACCRUED LIABILITIES (Enter Total of Lines 33-47)	-		

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -5-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
49	DEFERRED CREDITS			
50	Customer Advances for Construction (252)			
51	Accumulated Deferred Investment Tax Credits (255)	266-267		
52	Deferred Gains from Disposition of Utility Plant (256)			
53	Other Deferred Credits (253)	269		
54	Other Regulatory Liabilities (254)	278		
55	Unamortized Gain on Reacquired Debt (257)	-		
56	Accumulated Deferred Income Taxes (281-283)	272-277		
57	TOTAL DEFERRED CREDITS *(Enter Total of lines 50 thru 56)*			
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71	TOTAL Liabilities and Other Credits *(Enter Total of lines 15, 23, 31, 48 and 57)*			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -6-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1 Report in columns (b) and (c) the amounts of other comprehensive income items listed below in column (a).

2.Report amounts related to categories of other comprehensive income on a net-of-tax basis, where appropriate, and report the related tax effects allocated to each category in a footnote.

3. Report in a footnote, the accumulated other comprehensive income balances at year end, by category.

4. Report in a footnote, the fair value hedge balances at year end, by category.

Line No.	Item (a)	Total Current Year (in dollars) (b)	Total Prior Year (in dollars) (c)
1	Net Income (Carried forward from page 117, Line 72)		
2	CATEGORIES OF OTHER COMPREHENSIVE INCOME		
3	Unrealized gains and losses on available-for-sale type securities		
4	Minimum pension liability adjustment (net amount)		
5	Cash Flow Hedge Components		
6	Foreign currency hedges		
7	Other cash flow hedges		
8			
9			
10			
11			
12			
13			
14			
15	RECLASSIFICATION ADJUSTMENTS		
16	Unrealized gains and losses on available-for-sale type securities		
17	Cash Flow Hedge Components		
18	Foreign currency hedges		
19	Other cash flow hedges		
20			
21			
22			
23			
24			
25			
26			
27	Total Categories of Other Comprehensive Income (lines 3 through 26)		
28	Comprehensive Income (line 1 plus line 27)		
29			
30			
31			

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INSTRUCTIONS FOR FILING FERC Form No. 1-F

GENERAL INFORMATION

1. Purpose

This form is a regulatory requirement (18 CFR 141.2). It is designed to collect financial information from privately owned electric utilities and licensees who have generation, transmission, distribution and sales of electric energy, however produced throughout the United States and its possessions, subject to the jurisdiction of the Federal Energy Regulatory Commission.

II. Who Must Submit

Each Nonmajor Public Utility or Licensee, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (18 CFR 101 (US of A.) must submit this form.

Each Nonmajor public utility or licensee classified as Class C or Class D prior to January 1, 1984, may continue to file only the basic financial statements -Parts III, IV and V.

Note: Nonmajor means having total annual sales of 10,000 megawatt hours or more in the previous calendar year and not classified as "Major."

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART III: COMPARATIVE BALANCE SHEET

	Assets and Other Debits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Utility plant *(101 - 107, 114, 118)*		
02	Accumulated Provision for Depreciation and Amortization *(110, 119)*		
03	NET UTILITY PLANT *(Enter total of line 01 less 02)*		
04	Utility Plant Adjustments *(116)*		
05	Gas Stored Underground - Noncurrent		
06	Nonutility Property *(121)*		
07	Accumulated Provision For Depreciation and Amortization - Credit *(122)*		
08	Noncurrent Portion of Allowances		
09	Other Investments and Special Funds *(124-129)*		
10	CURRENT AND ACCRUED ASSETS:		
11	Cash and Working Funds *(130)*		
12	Temporary Cash Investments *(136)*		
13	Notes and Accounts Receivable *(141, 142, 143, 145, 146)(Report amounts applicable to associated companies in a footnote)*		
14	Accumulated provision for Uncollectible Accounts - Credit *(144)*		
15	Plant Materials and Operating Supplies *(154)*		
16	Allowances *(158.1 and 158.2)*		
17	(Less) Noncurrent Portion of Allowances		
18	Gas Stored *(164.1, 164.2)*		
19	Prepayments *(165)*		
20	Miscellaneous Current and Accrued Assets *(174)*		
21	Derivative Instrument Assets (175)		
22	Derivative Instruments Assets - Hedges (176)		
23	TOTAL CURRENT AND ACCRUED ASSETS *(Enter total of lines 11 thru 22)*		
24	DEFERRED DEBITS:		
25	Unamortized Debt Expense *(181)*		
26	Extraordinary Property Losses *(182.1)*		
27	Unrecovered Plant and Regulatory Study Costs *(182.2)*		
28	Other Regulatory sets *(182.3)*		
29	Miscellaneous Deferred Debits *(186)*		
30	Deferred Losses from Disposition of Utility Plant *(187)*		
31	Unamortized Loss on Reacquired Debt *(189)*		
32	Accumulated Deferred Income Taxes *(190)*		
33	Unrecovered Purchased Gas Costs *(191)*		
34	TOTAL DEFERRED DEBITS *(Enter total of Lies 25 thru 33)*		
35	TOTAL ASSETS AND OTHER DEBITS *(Enter total lines 03 thru 09, 23 and 34)*		

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F 2, 2-A, and 6 -10-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART III: COMPARATIVE BALANCE SHEET (Continued)

	Liabilities and Other Credits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Common Stock Issued (201)		
02	Preferred Stock Issued (204)		
03	Miscellaneous Paid-in Capital (211)		
04	Installments Received on Capital Stock (212)		
05	Discount on Capital Stock (213)		
06	Capital Stock Expenses - Debit (214)		
07	Retained Earnings (215-216)		
08	Reacquired Capital Stock - Debit (217)		
09	Noncorporate Proprietorship (218)		
10	Accumulated Other Comprehensive Income (219)		
11	TOTAL PROPRIETORSHIP CAPITAL (Enter Total of Lines 01 thru 10)		
12	Bonds (221)		
13	Advances from Associated Companies (223)		
14	Other Long-term Debt (Specify in footnote) (224)		
15	Unamortized Premium on Long-term Debt (225)		
16	Unamortized Discount on Long-term Debt - Debit (226)		
17	TOTAL LONG-TERM DEBT (Enter Total of Lines 12 thru 16)		
18	OTHER NONCURRENT LIABILITIES:		
19	Obligations Under Capital Leases - Noncurrent (227)		
20	Accumulated Provision for Property Insurance (228.1)		
21	Accumulated Provision for Injuries and Damages (228.2)		
22	Accumulated Provision for Pensions and Benefits (228.3)		
23	Accumulated Miscellaneous Operating Provisions (228.4)		
24	Accumulated Provision for Rate Refunds (229)		
25	TOTAL OTHER NONCURRENT LIABILITIES (Enter Total of Lines 19 thru 24)		
26	CURRENT AND ACCRUED LIABILITIES:		
27	Notes and Accounts Payable (Report amounts applicable to associated companies in a footnote) (231 to 234)		
28	Customer Deposits (235)		
29	Taxes Accrued (236)		
30	Interest Accrued (237)		
31	Miscellaneous Current and Accrued Liabilities (242)		
32	Obligations Under Capital Leases - Current (243)		
33	Derivative Instrument Liabilities (244)		
34	Derivative Instrument Liabilities - Hedges (245)		
35	TOTAL CURRENT AND ACCRUED LIABILITIES (Enter Total of Lines 27 thru 34)		
36	DEFERRED CREDITS:		
37	Customer Advances for Construction (252)		
38	Other Deferred Credits (253)		
39	Other Regulatory Liabilities (254)		
40	Accumulated Deferred Investment Tax Credits (255)		
41	Deferred Gains from Disposition of Utility Plant (256)		
42	Unamortized Gain on on Reacquired Debt (257)		
43	Accumulated Deferred Income Taxes (281-283)		
44	TOTAL DEFERRED CREDITS (Enter Total of Lines 37 thru 43)		
45	TOTAL LIABILITIES AND OTHER CREDITS (Enter Total of Lines 11, 17, 25, 35 and 44)		

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -11-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) and (c) the amounts of other comprehensive income items listed below in column (a)
2. Report amounts related to categories of other comprehensive income on a net-of-tax basis, where appropriate, and report the related tax effects allocated to each category in a footnote.
3. Report in a footnote, the accumulated other comprehensive income balances at year end, by category.
4. Report in a footnote, the fair value hedge balances at year end, by category.

Line No.	Item (a)	Total Current Year (in dollars) (b)	Total Prior Year (in dollars) (c)
1	Net Income (Carried forward from page 8, Line 63)		
2	COMPONENTS OF OTHER COMPREHENSIVE INCOME		
3	Unrealized gains and losses on available-for-sale type securities		
4	Minimum pension liability adjustment (net amount)		
5	Cash Flow Hedge Components		
6	Foreign currency hedges		
7	Other cash flow hedges		
8			
9			
10			
11			
12			
13			
14			
15	RECLASSIFICATION ADJUSTMENTS		
16	Unrealized gains and losses on available-for-sale type securities		
17	Cash Flow Hedge Components		
18	Foreign currency hedges		
19	Other cash flow hedges		
20			
21			
22			
23			
24			
25			
26			
27	Total Categories of Other Comprehensive Income (lines 3 through 26)		
27	Comprehensive Income (line 1 plus line 27)		
28			
29			
31			

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F 2, 2-A, and 6 -12-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

List of Schedules

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No.	Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	General Information	101		
2	Control over Respondent	102		
3	Corporations Controlled by Respondent	103		
4	Security Holders and Voting Powers	107		
5	Important Changes During the Year	108		
6	Comparative Balance Sheet	110-113		
7	Statement of Income for the Year	114-116		
8	Statement of Comprehensive Income and Hedging Activities	117		
9	Statement of Retained Earnings for the Year	118-119		
10	Statement of Cash Flows	120-121		
11	Notes to the Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
12	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201		
13	Gas Plant in Service	204-209		
14	Gas Property and Capacity Leased from Others	212		
15	Gas Property and Capacity Leased to Others	213		
16	Gas Plant Held for Future Use	214		
17	Construction Work in Progress - Gas	216		
18	General Description of Construction Overhead Procedure	218		
19	Accumulated Provision for Depreciation of Gas Utility Plant	219		
20	Gas Stored	220		
21	Investments	222-223		
22	Investments in Subsidiary Companies	224-225		
23	Prepayment	230		
24	Extraordinary Property Losses	230		
25	Unrecovered Plant and Regulatory Study Costs	230		
26	Other Regulatory Assets	232		
27	Miscellaneous Deferred Debits	233		
28	Accumulated Deferred Income Taxes	234-235		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
29	Capital Stock	250-251		
30	Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock	252		
31	Other Paid-in Capital	253		
32	Discount on Capital Stock	254		
33	Capital Stock Expense	254		
34	Securities Issued or Assumed and Securities Refunded or Retired During the Year	255		
35	Long-Term Debt	256-257		
36	Unamortized Debt Expense, Premium, and Discount on Long-Term Debt	258-259		
37	Unamortized Loss and Gain on Reacquired Debt	260		
38	Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes	261		

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -13-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amount have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No.	Title of Schedule (a)	Reference Page No. (b)	Date Received (c)	Remarks
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
39	Taxes Accrued, Prepaid, and Charged During Year	262-263		
40	Miscellaneous Current and Accrued Liabilities	268		
41	Other Deferred Credits	269		
42	Accumulated Deferred Income Taxes-Other Property	274-275		
43	Accumulated Deferred Income Taxes-Other	276-277		
44	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
45	Gas Operating Revenues	300-301		
46	Revenues from Transportation of Gas of Others Through Gathering Facilities	302-303		
47	Revenues from Transportation of Gas of Others Through Transmission Facilities	304-305		
48	Revenues from Storage Gas of Others	306-307		
49	Other Gas Revenues	308		
50	Gas Operation and Maintenance Expenses	317-325		
51	Exchange and Imbalance Transactions	328		
52	Gas Used in Utility Operations	331		
53	Transmission and Compression of Gas by Others	332		
54	Other Gas Supply Expenses	334		
55	Miscellaneous General Expenses-Gas	335		
56	Depreciation, Depletion, and Amortization of Gas Plant	336-338		
57	Particulars Concerning Certain income Deduction and Interest Charges Accounts	340		
	COMMON SECTION			
58	Regulatory Commission Expenses	350-351		
59	Distribution of Salaries and Wages	354-355		
60	Charges for Outside Professional and Other Consultative Services	357		
	GAS PLANT STATISTICAL DATA			
61	Compressor Stations	508-509		
62	Gas Storage Projects	512-513		
63	Transmission Lines	514		
64	Transmission System Peak Deliveries	518		
65	Auxiliary Peaking Facilities	519		
66	Gas Account-Natural Gas	520		
67	System Map	522		
68	Footnote Reference	551		
69	Footnote Text	552		
70	Stockholders' Reports (check appropriate box)			

☐ Four copies will be submitted
☐ No annual report to stockholders is prepared

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F 2, 2-A, and 6 -14-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
44	Allowances (158 1 and 158 2)			
45	*(Less)* Noncurrent Portion of Allowances			
46	Stores Expenses Undistributed (163)			
47	Gas Stored Underground - Current (164 1)	220		
48	Liquefied Natural Gas stored and Held for Processing (164 2 thru 164 3)	220		
49	Prepayments (165)	230		
50	Advances for Gas (166 and 167)			
51	Interest and Dividends Receivable (171)			
52	Rents Receivable (172)			
53	Accrued Utility Revenues (173)			
54	Miscellaneous Current and Accrued Assets (174)			
55	Derivative Instrument Assets (175)			
56	Derivative Instrument Assets - Hedges (176)			
57	TOTAL Current and Accrued Assets (Total of lines 27 thru 56)			
58	DEFERRED DEBITS			
59	Unamortized Debt Expense (181)			
60	Extraordinary Property Losses (182 1)	230		
61	Unrecovered Plant and Regulatory Study Costs (182 2)	230		
62	Other Regulatory Assets (182 3)	232		
63	Preliminary Survey and Investigation Charges (Electric) (183)			
64	Preliminary Survey and Investigation Charges (Gas) (183 1 and 183 2)			
65	Clearing Accounts (184)			
66	Temporary Facilities (185)			
67	Miscellaneous Deferred Debits (186)	233		
68	Deferred Losses from Disposition of Utility Plant (187)			
69	Research, Development, and Demonstration Expend (188)			
70	Unamortized Loss on Reacquired Debt (189)			
71	Accumulated Deferred Income Taxes (190)	234-235		
72	Unrecovered Purchased Gas Costs (191)			
73	TOTAL Deferred Debits (Total of lines 59 thru 72)			
74	TOTAL Assets and Other Debits (Total of lines 10-15, 25, 57 and 73)			

FERC FORM NO. 2 (12-01) Page 111

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -15-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	D... of Report (M... Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216 1)	118-119		
13	*(Less)* Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	117		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases – Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated Provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 31)			

FERC FORM NO. 2 (12-01) Page 112

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F 2, 2-A, and 6 -16-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
33	CURRENT AND ACCRUED LIABILITIES			
34	Current Portion of Long-Term Debt			
35	Notes Payable (231)			
36	Accounts Payable (232)			
37	Notes Payable to Associated Companies (233)			
38	Accounts Payable to Associated Companies (234)			
39	Customer Deposits (235)			
40	Taxes Accrued (236)	262-263		
41	Interest Accrued (237)			
42	Dividends Declared (238)			
43	Matured Long-Term Debt (239)			
44	Matured Interest (240)			
45	Tax Collections Payable (241)			
46	Miscellaneous Current and Accrued Liabilities (242)	268		
47	Obligations Under Capital Lease -- Current (243)			
48	Derivative Instrument Liabilities (244)			
49	Derivative Instrument Liabilities - Hedges (245)			
50	TOTAL Current and Accrued Liabilities (Total of lines 34 thru 49)			
51	DEFERRED CREDITS			
52	Customer Advances for Construction (252)			
53	Accumulated Deferred Investment Tax Credits (255)			
54	Deferred Gains from Disposition of Utility Plant (256)			
55	Other Deferred Credits (253)	269		
56	Other Regulatory Liabilities (254)	278		
57	Unamortized Gain on Reacquired Debt (257)	260		
58	Accumulated Deferred Income Taxes (281-283)			
59	TOTAL Deferred Credits (Total of lines 52 thru 58)			
60	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 32, 50, and 59)			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -17-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) and (c) the amounts of other comprehensive income items listed below in column (a).
2. Report amounts related to categories of other comprehensive income on a net-of-tax basis, where appropriate, and report the related tax effects allocated to each category in a footnote.
3. Report in a footnote, the accumulated other comprehensive income balances at year end, by category.
4. Report in a footnote, the fair value hedge balances at year end, by category.

Line No.	Item (a)	Total Current Year (in dollars) (b)	Total Prior Year (in dollars) (c)
1	Net Income (Carried forward from page 116, Line 72)		
2	CATEGORIES OF OTHER COMPREHENSIVE INCOME		
3	Unrealized gains and losses on available-for-sale type securities		
4	Minimum pension liability adjustment (net amount)		
5	Cash Flow Hedge Components		
6	Foreign currency hedges		
7	Other cash flow hedges		
8			
9			
10			
11			
12			
13			
14			
15	RECLASSIFICATION ADJUSTMENTS		
16	Unrealized gains and losses on available-for-sale type securities		
17	Cash Flow Hedge Components		
18	Foreign Currency hedges		
19	Other cash flow hedges		
20			
21			
22			
23			
24			
25			
26			
27	Total Categories of Other Comprehensive Income (lines 3 through 26)		
28	Comprehensive Income (line 1 plus line 27)		
29			
30			
31			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -18-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
33	CURRENT AND ACCRUED ASSETS			
34	Cash (131)			
35	Special Deposits (132-134)			
36	Working Funds (135)			
37	Temporary Cash Investments (136)			
38	Notes Receivable (141)			
39	Customer Accounts Receivable (142)			
40	Other Accounts Receivable (143)			
41	Accumulated Provision for Uncollectible Accounts (144)			
42	Notes Receivable from Associated Companies (145)			
43	Accounts Receivable from Associated Companies (146)			
44	Fuel Stock (151)	227		
45	Fuel Stock Expenses Undistributed (152)			
46	Residuals (Elec) and Extracted Products (153)			
47	Plant Materials and Operating Supplies (154)			
48	Merchandise (155)			
49	Other Materials and Supplies (156)			
50	Nuclear Materials Held for Sale (157)	202/227		
51	Allowances (158.1 and 158.2)			
52	(Less) Noncurrent Portion of Allowances			
53	Prepayments (165)			
54	Advances for Gas (166-167)			
55	Interest and Dividends Receivable (171)			
56	Rents Receivable (172)			
57	Accrued Utility Revenues (173)			
58	Miscellaneous Current and Accrued Assets (174)			
59	Derivative Instrument Assets (175)			
60	Derivative Instrument Assets - Hedges (176)			
61	TOTAL Current and Accrued Assets (Total of lines 34 thru 60)			
62	DEFERRED DEBITS			
63	Unamortized Debt Expenses (181)			
64	Extraordinary Property Losses (182.1)	230		
65	Unrecovered Plant and Regulatory Study Costs (182.2)	230		
66	Other Regulatory Assets (182.3)	232		
67	Prelim. Survey and Investigation Charges (Electric) (183)			
68	Preliminary Natural Gas Exploration and Development Costs (183.1)			
69	Other Preliminary Survey and Investigation Charges (183.2)			
70	Clearing Accounts (184)			
71	Temporary Facilities (185)			
72	Miscellaneous Deferred Debits (186)	233		
73	Deferred Losses from Disposition of Utility Plant (187)			
74	Research, Development and Demonstration Expenditures (188)			
75	Unamortized Loss on Reacquired Debt (189)			
76	Accumulated Deferred Income Taxes (190)			
77	Unamortized Loss and Gain on Reacquired Debt (257)			
78	TOTAL Deferred Debits (Total of lines 63 thru 77)			
79	TOTAL Assets and Other Debits (Total of lines 15, 32, 61, and 78)			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -19-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF CASH FLOWS

Line No.	Description (See Instructions for explanation of codes) (a)	Current Year (b)	Previous Year (c)
1	Net Cash Flow from Operating Activities:		
2	Net Income (Line 72)		
3	Noncash Charges (Credits) to Income:		
4	Depreciation and Depletion		
5	Amortization of (specify)		
6	Deferred Income Taxes (Net)		
7	Investment Tax Credit Adjustment (Net)		
8	Net (Increase) Decrease in Receivables		
9	Net (Increase) Decrease in Inventory		
10	Net (Increase) Decrease in Allowances Inventory		
11	Net Increase (Decrease) in Payables and Accrued Expenses		
12	Net (Increase) Decrease in Other Regulatory Assets		
13	Net Increase (Decrease) in Other Regulatory Liabilities		
14	(Less) Allowance for Other Funds Used During Construction		
15	(Less) Undistributed Earnings from Subsidiary Companies		
16	Other (net)		
17	Net Cash Provided by (Used in) Operating Activities (Total of lines 2 thru 16)		
18	Cash Flows from Investment Activities:		
19	Construction and Acquisition of Plant (including land):		
20	Gross Additions to Utility Plant (less nuclear fuel)		
21	Gross Additions to Nuclear Fuel		
22	Gross Additions to Common Utility Plant		
23	Gross Additions to Nonutility Plant		
24	(Less) Allowance for Other Funds Used During Construction		
25	Other		
26	Cash Outflows for Plant (Total of lines 20 thru 25)		
27	Acquisition of Other Noncurrent Assets (d)		
28	Proceeds from Disposal of Noncurrent Assets (d)		
29	Investments in and Advances to Assoc. and Subsidiary Companies		
30	Contributions and Advances from Assoc. and Subsidiary Companies		
31	Disposition of Investments in and Advances to Assoc. and Subsidiary Companies		
32	Purchase of Investment Securities (a)		
33	Proceeds from Sales of Investment Securities (a)		
34	Loans Made or Purchased		
35	Collections on Loans		
36	Net (Increase) Decrease in Receivables		
37	Net (Increase) Decrease in Inventory		
38	Net (Increase) Decrease in Allowances Held for Speculation		
39	Net Increase (Decrease) in Payables and Accrued Expenses		
40	Other (net)		
41	Net Cash Provided by (Used in) Investing Activities (Total of lines 26 thru 40)		
42	Cash Flows from Financing Activities:		
43	Proceeds from Issuance of:		
44	Long-Term Debt (b)		
45	Preferred Stock		
46	Common Stock		
47	Other (net)		
48	Net Increase in Short-Term Debt (c)		
49	Other (net)		
50	Net Cash Provided by (Used in) Financing Activities (Total of lines 43 thru 49)		
51	Net Increase (Decrease) in Cash and Cash Equivalents (Total of lines 17, 41 and 50)		
52	Cash and Cash Equivalents at Beginning of Year		
53	Cash and Cash Equivalents at End of Year		

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -18-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA"

Line No	Title of Schedule (a)	Reference Page No (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	Security Holders and Voting Powers	107		
2	Comparative Balance Sheet	110-113		
3	Statement of Income for the Year	114-116		
4	Statement of Comprehensive Income and Hedging Activities	117		
5	Statement of Retained Earnings for the Year	118-119		
6	Statements of Cash Flows	120-121		
7	Notes to Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
8	Gas Plant in Service	204-209		
9	General Information on Plant and Operations	211		
10	Gas Property and Capacity Leased From and to Others	212-215		
11	Accumulated Provision for depreciation of Gas Utility Plant	219		
12	Other Regulatory Assets - Gas	232		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
13	Capital Stock and Long-Term Debt Data	250		
14	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
15	Gas Operating Revenues	300-301		
16	Gas Operation and Maintenance Expenses	317-325		
	GAS PLANT STATISTICAL DATA			
17	Gas Account-Natural Gas	520		
18	Footnote Reference	551		
19	Footnote Text	552		

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -19-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
44	Allowances (158 1 and 158 2)			
45	*(Less)* Noncurrent Portion of Allowances			
46	Stores Expenses Undistributed (163)			
47	Gas Stored Underground - Current (164 1)	220		
48	Liquefied Natural Gas stored and Held for Processing (164 2 thru 164 3)	220		
49	Prepayments (165)	230		
50	Advances for Gas (166 and 167)			
51	Interest and Dividends Receivable (171)			
52	Rents Receivable (172)			
53	Accrued Utility Revenues (173)			
54	Miscellaneous Current and Accrued Assets (174)			
55	Derivative Instrument Assets (175)			
56	Derivative Instrument Assets - Hedges (176)			
57	TOTAL Current and Accrued Assets (Total of lines 27 thru 56)			
58	DEFERRED DEBITS			
59	Unamortized Debt Expense (181)			
60	Extraordinary Property Losses (182 1)	230		
61	Unrecovered Plant and Regulatory Study Costs (182 2)	230		
62	Other Regulatory Assets (182 3)	232		
63	Preliminary Survey and Investigation Charges (Electric) (183)			
64	Preliminary Survey and Investigation Charges (Gas) (183 1 and 183 2)			
65	Clearing Accounts (184)			
66	Temporary Facilities (185)			
67	Miscellaneous Deferred Debits (186)	233		
68	Deferred Losses from Disposition of Utility Plant (187)			
69	Research, Development, and Demonstration Expend (188)			
70	Unamortized Loss on Reacquired Debt (189)			
71	Accumulated Deferred Income Taxes (190)	234-235		
72	Unrecovered Purchased Gas Costs (191)			
73	TOTAL Deferred Debits (Total of lines 59 thru 72)			
74	TOTAL Assets and Other Debits (Total of lines 10-15, 25, 57 and 73)			

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -20-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216 1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	117		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated Provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 31)			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -21-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
33	CURRENT AND ACCRUED LIABILITIES			
34	Current Portion of Long-Term Debt			
35	Notes Payable (231)			
36	Accounts Payable (232)			
37	Notes Payable to Associated Companies (233)			
38	Accounts Payable to Associated Companies (234)			
39	Customer Deposits (235)			
40	Taxes Accrued (236)	262-263		
41	Interest Accrued (237)			
42	Dividends Declared (238)			
43	Matured Long-Term Debt (239)			
44	Matured Interest (240)			
45	Tax Collections Payable (241)			
46	Miscellaneous Current and Accrued Liabilities (242)	268		
47	Obligations Under Capital Leases -- Current (243)			
48	Derivative Instrument Liabilities (244)			
49	Derivative Instrument Liabilities - Hedges (245)			
50	TOTAL Current and Accrued Liabilities (Total of lines 34 thru 49)			
51	DEFERRED CREDITS			
52	Customer Advances for Construction (252)			
53	Accumulated Deferred Investment Tax Credits (255)			
54	Deferred Gains from Disposition of Utility Plant (256)			
55	Other Deferred Credits (253)	269		
56	Other Regulatory Liabilities (254)	278		
57	Unamortized Gain on Reacquired Debt (257)	260		
58	Accumulated Deferred Income Taxes (281-283)			
59	TOTAL Deferred Credits (Total of lines 52 thru 58)			
60	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 32, 50, and 59)			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -22-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME

Line No.	Account (a)	Reference Page Number (b)	Current Year to Date (in dollars) (c)	Previous Year to Date (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses (401)	320-323		
4	Maintenance Expense (402)	320-323		
5	Depreciation Expense (403)	336-337		
6	Depreciation Expense for Asset Retirement Costs (403 1)	336-337		
7	Amortization and Depletion of Utility Plant (404-405)	336-337		
8	Amortization of Utility Plant Acquisition Adjustment (406)	336-337		
9	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)	334-335		
10	Amortization of Conversion Expenses (407)	334-335		
11	Regulatory Debits (407 3)	334-335		
12	(Less) Regulatory Credits (407 4)	334-335		
13	Taxes Other Than Income Taxes (408 1)	262-263		
14	Income Taxes - Federal (409 1)	262-263		
15	Income Taxes - Other (409 1)	262-263		
16	Provision for Deferred Income Taxes (410 1)	234, 272-277		
17	(Less) Provision for Deferred Income Taxes - Credit (411 1)	234, 272-277		
18	Investment Tax Credit Adjustments - Net (411 4)	266		
19	(Less) Gains from Disposition of Utility Plant (411 6)			
20	Losses from Disposition of Utility Plant (411 7)			
21	(Less) Gains from Disposition of Allowances (411 8)			
22	Losses from Disposition of Allowances (411 9)			
23	Accretion Expense (411 10)			
24	TOTAL Utility Operating Expenses (Total of lines 3 thru 23)			
25	Net Utility Operating Income (Total of line 2 less 24)			
26	Other Income and Deductions			
27	Nonutility Operating Income			
28	Revenues From Merchandising, Jobbing and Contract Work (415)			
29	(Less) Costs and Expenses of Merchandising, Jobbing and Contract Work (416)			
30	Revenues From Nonutility Operations (417)			
31	(Less) Expenses of Nonutility Operations (417 1)			
32	Nonoperating Rental Income (418)			
33	Equity in Earnings of Subsidiary Companies (418 1)	119		
34	Interest and Dividend Income (419)			
35	Allowance for Other Funds Used During Construction (419 1)			
36	Miscellaneous Nonoperating Income (421)			
37	Gain on Disposition of Property (421 1)			
38	TOTAL Other Income (Total of lines 27 thru 36)			
39	Other Income Deductions			
40	Loss on Disposition of Property (421 2)			
41	Miscellaneous Amortization (425)	340		
42	Donations (426 1)	340		
43	Life Insurance (426 2)	340		
44	Penalties (426 3)	340		
45	Exp. for Certain Civic, Political & Related Activities (426 4)	340		
46	Other Deductions (426 5)	340		
47	TOTAL Other Income Deductions (Total of lines 40 thru 46)			
48	Taxes Applic. to Other Income and Deductions			
49	Taxes Other Than Income Taxes (408 2)	262-263		
50	Income Taxes-Federal (409 2)	262-263		
51	Income Taxes-Other (409 2)	262-263		
52	Provision for Deferred Income Taxes (410 2)	234, 272-277		
53	(Less) Provision for Deferred Income Taxes-Cr. (411 2)	234, 272-277		
54	Investment Tax Credit Adjustments-Net (411 5)			
55	(Less) Gains from Disposition of Utility Plant (411 6)			
56	Losses from Disposition of Utility Plant (411 7)			
57	(Less) Gains from Disposition of Allowances (411 8)			
58	Losses from Disposition of Allowances (411 9)			
59	TOTAL Taxes on Other Income and Deductions (Total of lines 49 thru 58)			
60	Net Other Income and Deductions (Total of lines 38, 47, 59)			
61	Interest Charges			
62	Interest on Long-Term Debt (427)	256-257		
63	Amort. of Debt Disc. and Expense (428)	256-257		
64	Amortization of Loss on Reacquired Debt (428 1)	256-257		
65	(Less) Amortization of Premium on Debt-Credit (429)	256-257		
66	(Less) Amortization of Gain on Reacquired Debt-Credit (429 1)	256-257		
67	Interest on Debt to Associated Companies (430)	256-257		
68	Other Interest Expense (431)	256-257		
69	(Less) Allowance for Borrowed Funds Used During Construction-Cr. (432)			
70	Net Interest Charges (Total of lines 62 thru 69)			
71	Income Before Extraordinary Items (Total of lines 25, 60 and 70)			
72	Extraordinary Items			
73	Extraordinary Income (434)			
74	(Less) Extraordinary Deductions (435)			
75	Net Extraordinary Items (Total of line 73 less line 74)			
76	Income Taxes-Federal and Other (409 3)	262-263		
77	Extraordinary Items After Taxes (line 75 less line 76)			
78	Net Income (Total of line 71 and 77)			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -23-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF RETAINED EARNINGS

Line No.	Account (a)	Reference Page Number (b)	Current Year to Date (in dollars) (c)	Previous Year to Date (in dollars) (d)
1	UNAPPROPRIATED RETAINED EARNINGS			
2	Balance-Beginning of Year			
3	Changes			
4	Adjustments to Retained Earnings (439)			
5	Equity in Earnings of Subsidiary Companies (418 1)	119		
6	(Less) Dividends Declared-Preferred Stock (437)			
7	(Less) Dividends Declared-Common Stock (438)			
8	Transfers from Acct 216 1, Unappropriated Undistributed Subsidiary Earnings			
9	Balance Transferred from Income (Line 78 less Lines 6, 7 and 8)			
10	Appropriations of Retained Earnings (436)			
11	Appropriations of Retained Earnings-Amortization Reserve, Federal (436)			
12	TOTAL Appropriations of Retained Earnings (Total of lines 10 and 11)			
13	Balance-End of Year (Total of lines 2, 9 and 12)			
14	APPROPRIATED RETAINED EARNINGS			
15	Appropriated Retained Earnings-Amortization Reserve, Federal (436)			
16	TOTAL Appropriated Retained Earnings (Total of lines 15)			
17	TOTAL Retained Earnings (Total of lines 13 and 16)			
18	UNAPPROPRIATED UNDISTRIBUTED SUBSIDIARY EARNINGS			
19	Balance-Beginning of Year			
20	Equity in Earnings for Year (418 1)	119		
21	(Less) Dividends Received (Debit)			
22	Balance-End of Year (Total of lines 19, 20 and 21)			

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F 2, 2-A, and 6 -22-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) and (c) the amounts of other comprehensive income items listed below in column (a).

2. Report amounts related to categories of other comprehensive income on a net-of-tax basis, where appropriate, and report the related tax effects allocated to each category in a footnote.

3. Report in a footnote, the accumulated other comprehensive income balances at year end, by category.

4. Report in a footnote, the fair value hedge balances at year end, by category.

Line No.	Item (a)	Total Current Year (in dollars) (b)	Total Prior Year (in dollars) (c)
1	Net Income (Carried forward from page 116, Line 63)		
2	CATEGORIES OF OTHER COMPREHENSIVE INCOME		
3	Unrealized gains and losses on available-for-sale type securities		
4	Minimum pension liability adjustment (net amount)		
5	Cash Flow Hedge Components		
6	Foreign currency hedges		
7	Other cash flow hedges		
8			
9			
10			
11			
12			
13			
14			
15	RECLASSIFICATION ADJUSTMENTS		
16	Unrealized gains and losses on available-for-sale type securities		
17	Cash Flow Hedge Components		
18	Foreign currency hedges		
19	Other cash flow hedges		
20			
21			
22			
23			
24			
25			
26			
27	Total Categories of Other Comprehensive Income (lines 3 through 26)		
27	Comprehensive Income (line 1 plus line 27)		
28			
29			
31			

FERC FORM NO. 2-A (12-01) Page 117

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -23-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

LIST OF SCHEDULES

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	ED 12-91	
Control Over Respondent	102	REV 12-95	
Companies Controlled by Respondent	103	NEW 12-95	
Principal General Officers	104	ED 12-91	
Directors	105	REV 12-95	
Important Changes During the Year	108-109	REV 12-95	
Comparative Balance Sheet Statement	110-113	REV 12-01	
Income Statement	114	ED 12-96	
Statement of Comprehensive Income and Hedging Activities	115	NEW 12-01	
Appropriated Retained Income	118	REV 12-95	
Unappropriated Retained Income Statement	119	REV 12-95	
Dividend Appropriations of Retained Income	119	REV 12-95	
Statement of Cash Flows	120-121	REV 12-95	
Notes to Financial Statements	122-123	REV 12-95	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
Receivables From Affiliated Companies	200	REV 12-00	
General Instructions Concerning Schedules 202 thru 205	201	REV 12-95	
Investments in Affiliated Companies	202-203	ED 12-91	
Investments in Common Stocks of Affiliated Companies	204-205	ED 12-91	
Companies Controlled Directly by Respondent Other Than Through Title to Securities	204-205	ED 12-91	
Instructions for Schedules 212 Thru 217	211	REV 12-00	
Carrier Property	212-213	REV 12-00	
Undivided Joint Interest Property	214-215	REV 12-00	
Accrued Depreciation-Carrier Property	216	REV 12-00	
Accrued Depreciation-Undivided Joint Interest Property	217	REV 12-00	
Amortization Base and Reserve	218-219	REV 12-95	
Noncarrier Property	220	REV 12-00	
Other Deferred Charges	221	REV 12-00	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Payables to Affiliated Companies	225	REV 12-00	
Long-Term Debt	226-227	ED 12-00	
Analysis of Federal Income and Other Taxes Deferred	230-231	REV 12-00	
Capital Stock	250-251	REV 12-95	
Capital Stock Changes During the Year	252-253	ED 12-91	
Additional Paid-in Capital	254	ED 12-87	

FERC FORM NO. 6 (REV. 12-01) Page 2

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -24-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

COMPARATIVE BALANCE SHEET STATEMENT - ASSETS

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT ASSETS			
1	Cash (10)			
2	Special Deposits (10-5)			
3	Temporary Investments (11)			
4	Notes Receivable (12)			
5	Receivables from Affiliated Companies (13)	200		
6	Accounts Receivable (14)			
7	Accumulated Provision For Uncollectible Accounts (14-5)			
8	Interest and Dividends Receivable (15)			
9	Oil Inventory (16)			
10	Material and Supplies (17)			
11	Prepayment (18)			
12	Other Current Assets (19)			
13	Deferred Income Tax Assets (19-5)	230-231		
14	TOTAL Current Assets *(Total of lines 1 thru 13)*			
	INVESTMENTS AND SPECIAL FUNDS			
	Investments in Affiliated Companies (20):			
15	Stocks	202-203		
16	Bonds	202-203		
17	Other Secured Obligations	202-203		
18	Unsecured Notes	202-203		
19	Investment Advances	202-203		
20	20 Undistributed Earnings from Certain Invest. in Acct.	204		
	Other Investments (21):			
21	Stocks			
22	Bonds			
23	Other Secured Obligations			
24	Unsecured Notes			
25	Investment Advances			
26	Sinking and Other Funds (22)			
27	TOTAL Investment and Special Funds *(Total lines 15 thru 26)*			

FERC FORM NO. 6 (REV. 12-01) Page 110

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -25-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20__

COMPARATIVE BALANCE SHEET STATEMENT - ASSETS (Continued)

1.) For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

2.) On line 30, include depreciation applicable to investment in property.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	TANGIBLE PROPERTY			
28	Carrier Property (30)	212-215		
29	(Less) Accrued Depreciation - Carrier Property (31)	216-217		
30	(Less) Accrued Amortization - Carrier Property (32)	218-219		
31	Net Carrier Property *(Line 28 less 29 and 30)*			
32	Operating Oil Supply (33)			
33	Noncarrier Property (34)	220		
34	Less Accrued Depreciation - Noncarrier Property			
35	Net Noncarrier Property *(Line 35 less 36)*			
36	TOTAL Tangible Property *(Total of lines 31, 32 and 35)*			
	OTHER ASSETS AND DEFERRED CHARGES			
37	Organization Costs and Other Intangibles (40)			
38	(Less) Accrued Amortization of Intangibles (41)			
39	Reserved			
40	Miscellaneous Other Assets (43)			
41	Other Deferred Charges (44)	221		
42	Accumulated Deferred Income Tax Assets (45)	230-231		
43	Derivative Instrument Assets (46)			
44	Derivative Instrument Assets - Hedges (47)			
45	TOTAL Other Assets and Deferred Charges *(37 thru 44)*			
46	TOTAL Assets *(Total of lines 14, 27, 36 and 45)*			

FERC FORM NO. 6 (REV. 12-01) Page 111

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Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -26-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

COMPARATIVE BALANCE SHEET STATEMENT - LIABILITIES (Continued)

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT LIABILITIES			
47	Notes Payable (50)			
48	Payables to Affiliated Companies (51)			
49	Accounts Payable (52)			
50	Salaries and Wages Payable (53)			
51	Interest Payable (54)			
52	Dividends Payable (55)			
53	Taxes Payable (56)			
54	Long - Term Debt - Payable Within One Year (57)	226-227		
55	Other Current Liabilities (58)			
56	Deferred Income Tax Liabilities (59)	230-231		
57	TOTAL Current Liabilities *(Total of lines 47 thru 56)*			
	NONCURRENT LIABILITIES			
58	Long-Term Debt - Payable After One Year (60)	226-227		
59	Unamortized Premium on Long-Term Debt (61)			
60	(Less) Unamortized Discount on Long-Term Debt-Dr. (62)			
61	Other Noncurrent Liabilities (63)			
62	Accumulated Deferred Income Tax Liabilities (64)	230-231		
63	Derivative Instrument Liabilities (65)			
64	Derivative Instrument Liabilities - Hedges (66)			
65	TOTAL Noncurrent Liabilities *(Total of lines 58 thru 64)*			
66	TOTAL Liabilities *(Total of lines 57 and 65)*			
	STOCKHOLDERS' EQUITY			
67	Capital Stock (70)	250-251		
68	Premiums on Capital Stock (71)			
69	Capital Stock Subscriptions (72)			
70	Additional Paid-In Capital (73)	254		
71	Appropriated Retained Income (74)	118		
72	Unappropriated Retained Income (75)	119		
73	(Less) Treasury Stock (76)			
74	Accumulated Other Comprehensive Income (77)	115		
75	TOTAL Stockholders' Equity *(Total of lines 67 thru 74)*			
76	TOTAL Liabilities and Stockholders' Equity *(Total of lines 66 and 75)*			

Appendix A Proposed Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -27-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1 Report in columns (b) and (c) the amounts of Other Comprehensive Income items listed below in column (a)

2. Report amounts related to categories of other comprehensive income on a net-of-tax basis, where appropriate, and report the related tax effects allocated to each category in a footnote.

3. Report in a footnote, the accumulated other comprehensive income balances at year end, by category.

4. Report in a footnote, the fair value hedge balances at year end, by category.

Line No.	Item (a)	Total Current Year (In dollars) (b)	Total Prior Year (In dollars) (c)
1	Net Income (Carried forward from page 114, Line 29)		
2	CATEGORIES OF OTHER COMPREHENSIVE INCOME		
3	Unrealized gains and losses on available-for-sale type securities		
4	Minimum pension liability adjustment (net amount)		
5	Cash Flow Hedge Components		
6	Foreign currency hedges		
7	Other cash flow hedges		
8			
9			
10			
11			
12			
13			
14			
15	RECLASSIFICATION ADJUSTMENTS		
16	Unrealized gains and losses on available-for-sale type securities		
17	Cash Flow Hedge Components		
18	Foreign currency hedges		
19	Other cash flow hedges		
20			
21			
22			
23			
24			
25			
26			
27	Total Categories of Other Comprehensive Income (lines 3 through 26)		
28	Comprehensive Income (line 1 plus line 27)		
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Rules and Regulations

Federal Register
Vol. 67, No. 6
Wednesday, January 9, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–081–1]

Imported Fire Ant; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: This interim rule was effective January 2, 2002. We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 11, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–081–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–081–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–081–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Adding portions of Faulkner and Polk Counties, AR, to the list of quarantined areas and changing the status of Grant, Hempstead, and Nevada Counties, AR, from partially to completely infested;
- Adding Rabun, Towns, and Union Counties, GA, to the list of quarantined areas (these three counties were the last remaining uninfested counties in Georgia, thus the entire State is now designated as a quarantined area);
- Adding portions of Harnett, Hertford, Johnston and Nash Counties, NC, and all of Lee County, NC, to the list of quarantined areas, changing the status of Moore and Sampson Counties, NC, from partially to completely infested, and revising the quarantine boundaries in Wake County, NC, to incorporate additional infested areas; and
- Changing the status of Henderson County, TN, from partially to completely infested and revising the quarantine boundaries in Franklin, Maury, and Moore Counties, TN, to incorporate additional infested areas.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

In addition to the changes to the quarantined areas described above, we are correcting the listing for Hot Spring County, AR, in § 301.81–3(e). That county is currently listed incorrectly as Hot Springs County.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has

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determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under $ U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule is necessary because infestations of imported fire ant have been discovered in additional areas of Arkansas, Georgia, North Carolina, and Tennessee. This action will establish quarantined areas in 10 new counties and revise the boundaries of the quarantined areas in 10 other counties in those States. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

The following analysis addresses the economic effects of this rule and the impact on small entities as required by the Regulatory Flexibility Act.

According to the 1997 Census of Agriculture, the market value of agricultural products sold in the 20 counties that are subject of this rule was more than $2.171 billion. During 1997, the value of sales from nursery and greenhouse crops in these 20 counties was at least $36.5 million. The five counties in Arkansas had $300.35 million in agricultural product sales, the three counties in Georgia had $30.96 million in agricultural product sales, the eight counties in North Carolina had $1.44 billion in agricultural product sales, and the four counties in Tennessee had $117.45 million in agricultural product sales. In 1997, the eight counties in North Carolina had 51 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 49 percent attributed to livestock. The four counties in Tennessee had 28 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 72 percent attributed to livestock. In two of the three Georgia counties, 17 percent of the value of agricultural sales was attributed to crops (including nursery and greenhouse crops), with the remaining 83 percent of that value attributed to livestock. (The relative contributions of crops and livestock to the value of agricultural sales in the third Georgia county could not be determined, as those figures were withheld from the 1997 Census of Agriculture to avoid disclosing data for individual farms.) The five counties in Arkansas had only 5 percent of the value of their agricultural sales attributed to crops, with the remaining 95 percent of the value attributed to livestock. These data indicate that there is a large agricultural economy at risk due to the potential for the imported fire ant to damage crops and injure or kill livestock.

Small entities potentially affected by this rule include nurseries, greenhouses, farm equipment dealers, construction companies, and companies that sell, process, or move regulated articles interstate from and through the quarantined areas. According to the Small Business Administration (SBA), Office of Advocacy, regulations create economic disparities when they have a significant economic impact on a substantial number of small entities. The SBA defines a small agricultural producer as one that generates less than $750,000 of annual sales; to be considered small by the SBA definition, an equipment dealer or agricultural service company must generate less than $5 million of annual sales.

In the four Tennessee counties, there were at least 94 entities that could be potentially affected by the changes in regulations. In 1997, these four counties received $32.5 million from crop sales, including greenhouse and nursery sales. In the three Georgia counties, there were at least 27 entities that could be potentially affected by the changes in regulations. In 1997, these three counties received at least $2.5 million from crop sales, including greenhouse and nursery sales. In the five Arkansas counties, there were at least 22 entities that could be potentially affected by the changes in regulations. In 1997, these five counties received $8.2 million from crop sales, including greenhouse and nursery sales. In the eight North Carolina counties, there were at least 265 entities that could be potentially affected by the changes in regulations. In 1997, these eight counties received $446.5 million from crop sales, including greenhouse and nursery sales.

In summary, there are at least 408 small entities potentially affected by the imported fire ant quarantine in the 20 counties. However, the number of these small entities that will be affected by this rule and the extent to which they are affected depend on the proportion of their sales outside the imported fire ant quarantined areas.

The adverse economic effects on these entities can be substantially minimized by the availability of various treatments that will permit the movement of regulated articles with only a small additional cost. The estimated annual cost of imposing a quarantine on these counties is very small in comparison to the benefit gained through agricultural sales. For example, the value of a "standard" sized tractor-trailer load of nursery plants ranges from $10,000 to $250,000. The treatment cost for this "standard" shipment of plants is only around $200. An average treatment cost, then, is between 2 percent and 0.8 percent per standard plant shipment. In contrast to the potential losses associated with an imported fire ant infestation, these treatment costs are not significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to prevent the spread of the imported fire ant will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.81–3, paragraph (e) is amended as follows:

a. Under the heading Arkansas, by adding, in alphabetical order, new entries for Faulkner and Polk Counties; by revising the entries for Grant, Hempstead, and Nevada Counties; and, in the entry for Hot Springs County, by removing the word "Springs" and adding the word "Spring" in its place.

b. Under the heading Georgia, by removing the individual county entries and adding a single entry for the entire State.

c. Under the heading North Carolina, by adding, in alphabetical order, new entries for Harnett, Hertford, Johnston, Lee, and Nash Counties and by revising the entries for Moore, Sampson, and Wake Counties.

d. Under the heading Tennessee, by revising the entries for Franklin, Henderson, Maury, and Moore Counties.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

Arkansas

* * * * *

Faulkner County. That portion of the county lying south of a line beginning at the intersection of Interstate 40 and the Faulkner/Conway County line; then southeast on Interstate 40 to U.S. Highway 64; then east on U.S. Highway 64 to the Faulkner/White County line.

* * * * *

Grant County. The entire county.

Hempstead County. The entire county.

* * * * *

Nevada County. The entire county.

* * * * *

Polk County. That portion of the county lying south of a line beginning at the intersection of State Highway 4 and the Oklahoma/Arkansas border; then east on State Highway 4 to U.S. Highway 71; then south on U.S. Highway 71 to State Highway 246; then east on State Highway 246 to the Polk/Howard County line.

* * * * *

Georgia

The entire State.

* * * * *

North Carolina

* * * * *

Harnett County. That portion of the county lying south of a line beginning at the intersection of U.S. Highway 421 and the Harnett/Lee County line; then east and southeast on U.S. Highway 421 to Interstate 95; then northeast on Interstate 95 to the Harnett/Johnston County line.

Hertford County. That portion of the county lying east of a line beginning at the intersection of U.S. Highway 13 and the Hertford/Bertie County line; then north on U.S. Highway 13 to County Route 1419 (Newsome Grove Road); then north on County Route 1419 to County Route 1415 (Catherine Creek Road); then northeast on County Route 1415 to County Route 1409 (Hall Siding Road); then northwest on County Route 1409 to County Route 1403 (Ahoskie-Cofield Road); then northeast on County Route 1403 to County Route 1400 (River Road); then northwest on County Route 1400 to County Route 1402 (Tunis Road); then northeast on County Route 1402 to the Chowan River and the Hertford/Gates County line.

* * * * *

Johnston County. That portion of the county lying south and east of Interstate 95.

* * * * *

Lee County. The entire county.

* * * * *

Moore County. The entire county.

Nash County. That portion of the county bounded by Interstate 95 on the west, the old Seaboard Railroad tracks on the south, the Nash/Edgecombe County line on the east, and on the north by State Highway 4 to its junction with U.S. Highway 301, then following a straight line east to the Nash/Edgecombe County line.

* * * * *

Sampson County. The entire county.

* * * * *

Wake County. That portion of the county lying south of a line beginning at the intersection of U.S. Highway 70 and the Wake/Durham County line; then south and east on U.S. Highway 70 to Interstate Highway 440; then east on Interstate 440 to Wake Forest Road; then north on Wake Forest Road to Spring Forest Road; then east on Spring Forest Road to State Highway 401; then north on State Highway 401 to the Neuse River; and then south along the Neuse River to the Wake/Johnston County line.

* * * * *

Tennessee

* * * * *

Franklin County. That portion of the county lying south a line beginning at the intersection of State Highway 50 and the Moore/Franklin County line; then east on State Highway 50 to U.S. Highway 64; then east on U.S. Highway 64 to U.S. Highway Alt 41; then east on U.S. Highway Alt 41 to the Grundy/Marion County line; also the entire city limits of Winchester, Decherd, and Estill Springs.

* * * * *

Henderson County. The entire county.

* * * * *

Maury County. That portion of the county lying south and west of a line beginning at the intersection of U.S. Highway 412 and the Maury/Lewis

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County line; then east on U.S. Highway 412 to State Highway 166; then southeast on State Highway 166 to Dry Creek Road; then south on Dry Creek Road to the Maury/Lawrence County line.

* * * * *

Moore County. That portion of the county lying south of a line beginning at the intersection of State Highway 82 and the Moore/Bedford County line; then southeast on State Highway 82 to State Highway 55; then northeast on State Highway 55 to Cobb Hollow Road; then east on Cobb Hollow Road to the Moore/Coffee County line.

* * * * *

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–455 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 01–111–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by revising commuted traveltime allowances for travel between various locations in the State of Washington. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger F. West, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into or exportation from the United States.

When an employee of the Animal and Plant Health Inspection Service's Plant Protection and Quarantine (PPQ) program must provide these services on a Sunday, holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services according to 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duties.

We are amending § 354.2 of the regulations by revising the commuted traveltime allowances for travel between various locations in the State of Washington. The revised allowances are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry and the features of the reimbursement plan for recovering the cost of furnishing port of entry services depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.2, the table is amended by revising the entry for the State of Washington to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* * *	*	*
Washington:			
Aberdeen	Seattle, maritime port		4
Anacortes	Blaine		3
Ault Field	Blaine		4
Bangor NSO	Seattle, maritime port		4
Bellingham	Blaine		2
Blaine		1	
Brewster	Ellensberg		6
Brewster	Spokane		6
Brewster	Wenatchee		4
Cherry Point	Blaine		1
Edmonds	Seattle, maritime port		2
Ellensburg		1	
Everett	Seattle, maritime port		3
Ferndale	Blaine		2
Fort Lewis	Tacoma		2
Grays Harbor	Seattle, maritime port		6
Grays Harbor	Tacoma		4
Hood River	Ellensburg		6
Lynden	Blaine		2
McChord AFB	Seattle, maritime port		3
McChord AFB	Tacoma		2
Moses Lake	Ellensburg		3
Moses Lake	Wenatchee		3
Olympia	Seattle, maritime port		3
Olympia	Tacoma		2
Oroville		1	
Paine Field	Seattle, maritime port		3
Pasco	Ellensburg		5
Pasco	Spokane		6
Pasco	Wenatchee		6
Point Wells	Seattle, maritime port		2
Port Angeles	Seattle, maritime port		6
Port Angeles	Tacoma		6
Port Townsend	Seattle, maritime port		4
Sawyer	Ellensburg		3
Sawyer	Wenatchee		5
SEA TAC Airport		2	
Seattle, maritime port		2	
Sumas	Blaine		2
Tacoma		2	
Wenatchee		1	
Wenatchee	Ellensburg		4
Wenatchee	Spokane		6
Yakima		1	
Yakima	Ellensburg		3
Yakima	Wenatchee		6
* * *	* * *	*	*

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Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–00453 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–031–3]

Change in Disease Status of The Netherlands and Northern Ireland With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding The Netherlands and Northern Ireland to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD) and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows interim rules that removed France, Great Britain, Ireland, The Netherlands, and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in The Netherlands and Northern Ireland, we have determined that The Netherlands and Northern Ireland meet the standards of the Office International des Epizooties for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from The Netherlands and Northern Ireland.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera (also known as classical swine fever), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest-or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. (The **Federal Register** published a correction (66 FR 18357) to the interim rule on April 6, 2001.) In an interim rule effective February 19, 2001, and published in the **Federal Register** on June 1, 2001 (66 FR 29686–29689, Docket No. 01–031–1), we amended the regulations by removing France, Ireland, and The Netherlands from the list of regions considered to be free of rinderpest and FMD. These actions were necessary because FMD had been confirmed in each of those regions. The effect of the interim rules was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain, Northern Ireland, France, Ireland, and The Netherlands.

In those interim rules, we recognized that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situations at a future date in accordance with Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rules. Additionally, we stated that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain, Northern Ireland, France, Ireland, and The Netherlands, or whether we could restore some or all of those regions to the list of regions in which FMD is not known to exist or, alternatively, regionalize portions of those regions as FMD-free.

We solicited comments concerning Docket No. 01–018–1 for 60 days ending May 14, 2001, and received one comment by that date, submitted by a medical product manufacturer, requesting permission to import a specific medical product for human use that would otherwise be prohibited importation from regions not listed as free of FMD. As a result of this request, we determined that the product could be imported with negligible risk of FMD, and allowed the product to be imported in accordance with § 94.3, which allows certain types of products to be imported from FMD-affected regions for pharmaceutical or biological purposes.

We solicited comments concerning Docket No. 01–031–1 for 60 days ending July 31, 2001, and received four comments by that date. They were from businesses, a livestock association, and a Member State of the European Union. We addressed those comments in a final rule (66 FR 55872–55876, Docket No. 01–031–2), published in the **Federal Register** and effective November 5, 2001, in which we restored France and Ireland to both the list of regions considered to be free of rinderpest and FMD and the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

One of the four comments we received suggested that The Netherlands be recognized as FMD free, claiming that the Netherlands would be free of the disease by August 25, 2001. We made no changes to the FMD status of the Netherlands in the November 5 final rule, but responded that we were continuing to monitor that country's progress with respect to the disease and were reevaluating its FMD status. We stated that we would publish a separate document in the **Federal Register** with respect to the FMD status of The Netherlands when our evaluation was complete.

Status of The Netherlands and Northern Ireland

In this final rule, we are restoring The Netherlands and Northern Ireland to the list in § 94.1(a) of regions that are considered to be free of rinderpest and FMD. Our reasons follow.

According to the OIE, when FMD occurs in an FMD-free country or zone where vaccination is not practiced before the outbreak, the following waiting periods are required to regain FMD-free status:

- In cases where stamping-out and serological surveillance are applied, 3 months after the last case; or
- In cases where emergency vaccination, stamping out, and serological surveillance are applied, 3 months after the slaughter of the last vaccinated animal.

Neither Northern Ireland nor The Netherlands vaccinated animals against FMD before the initial outbreaks that were confirmed in Northern Ireland on February 28, 2001, and in The Netherlands on March 21, 2001. Both countries initiated immediate destruction of affected animals and conducted clinical and serological surveillance. Additionally, The Netherlands adopted a policy of emergency vaccination.

The last case of FMD in Northern Ireland occurred on April 20, 2001, and the last case of FMD in The Netherlands occurred on April 22, 2001. The last vaccinated animal in The Netherlands was slaughtered on May 25, 2001. We find that Northern Ireland as well as The Netherlands meet the OIE standards for regaining FMD-free status.

We have evaluated the FMD eradication efforts in The Netherlands and Northern Ireland based on information provided to us by those regions and our own site visits. Our findings and site visit reports may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html*. You may also request paper copies of these documents by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. 01–031–3 when requesting copies. These documents are also available in our reading room. (The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.)

Based on our findings and after reviewing comments submitted to us on the interim rules, we are amending the regulations by restoring The Netherlands and Northern Ireland to the list in § 94.1(a)(2) of regions that are declared free of both rinderpest and FMD. We are also restoring The Netherlands and Northern Ireland to the list in § 94.11(a) of regions that are declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

This action relieves certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from The Netherlands and Northern Ireland. However, because The Netherlands and Northern Ireland have certain trade practices regarding animals and animal products that are less restrictive than are acceptable for importation into the United States, the importation of meat and other products from ruminants and swine into the United States from The Netherlands and Northern Ireland continues to be subject to certain restrictions.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores The Netherlands and Northern Ireland to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding The Netherlands and Northern Ireland to the list of regions considered to be free of rinderpest and FMD and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows interim rules that removed Great Britain, Northern Ireland, France, Ireland, and The Netherlands from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in The Netherlands and Northern Ireland, we have determined that The Netherlands and Northern Ireland meet the standards of OIE for being considered free of FMD. This rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from The Netherlands and Northern Ireland.

The Netherlands and Northern Ireland have not generally been major sources of U.S. imports of the products covered by the interim rule and this final rule, which include live ruminants, live swine, fresh (chilled or frozen) meat of ruminants and swine, processed ruminant and swine meat, some dairy products, animal feeds, and other ruminant and swine products such as semen, embryos, untanned hides and skins, unwashed wool, hair, bones, blood, and some other byproducts. Also, past imports of these products from The Netherlands and Northern Ireland represent a small fraction of the total U.S. imports or total U.S. production of these products. This final rule is not expected to alter these past trade patterns.

The majority of entities potentially affected by this final rule are considered small. For example, in 1997, approximately 97 percent (2,919 of 2,992) of meat and meat product wholesalers, 99 percent (1,490 of 1,503) of livestock wholesalers,[1] 92 percent (79,155 of 86,022) of dairy farms, 99.3 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46,353) of hog and pig farms, 99.5 percent (29,790 of 29,938) of sheep and goat farms,[2] 98 percent (1,272 of 1,297) of slaughtering establishments, and 95 percent (1,324 of

[1] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[2] 1997 Census of Agriculture, USDA, National Agricultural Statistics Service.

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1,393) of meat processing establishments[3] would be considered small entities under the criteria set by the Small Business Administration. However, these entities should be little affected by this rulemaking because of the negligible effect on imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713,7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the words "The Netherlands," and "Northern Ireland,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding, in alphabetical order, the words "The Netherlands," and "Northern Ireland,".

[3] 1997 Economic Census, Department of Commerce, Bureau of the Census.

Done in Washington, DC, this 2nd day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–454 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3864]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing Tajikistan and the Federal Republic of Yugoslavia (Serbia and Montenegro) from the list of proscribed destinations and makes additional clarifications to the ITAR.

EFFECTIVE DATE: January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Tajikistan was added to the list of proscribed destinations at section 126.1(a) of the ITAR in the **Federal Register** publication of July 22, 1993 (58 FR 39312). The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Tajikistan. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for Tajikistan involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

Licenses and other approvals for Yugoslavia were suspended by the **Federal Register** notice of July 19, 1991 (58 FR 33322) and a denial policy was instituted for any new license applications and other requests for approval. The Federal Republic of Yugoslavia (Serbia and Montenegro) was added to the list of proscribed destinations at section 126.1 of the ITAR in the **Federal Register** publication of July 12, 1996 (61 FR 36625). The United Nations Security Council instituted a comprehensive arms embargo on the Federal Republic of Yugoslavia on March 31, 1998 pursuant to U.N. Security Council Resolution No. 1160. The U.N. Security Council terminated that embargo in Resolution No. 1367 (September 10, 2001).

The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Federal Republic of Yugoslavia (Serbia and Montenegro). This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for the Federal Republic of Yugoslavia involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

The Department of State is also taking this opportunity to clarify two outdated references contained in section 126.1(a) of the ITAR. "Zaire" is currently listed as a proscribed country and is amended to "the Democratic Republic of the Congo (formerly Zaire)." Also, the Department is deleting the last sentence of 126.1(a) which refers to a license exemption that was formerly contained in section 123.27. That exemption was removed from 123.27 effective July 1, 2000, and the last sentence of 126.1(a) should have been deleted at that time.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, removal of Tajikistan, 2401 E. Street, NW., 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126, is being amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for Part 126 reads as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1(a) is revised to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

* * * * *

Dated: December 3, 2001.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–115 Filed 1–8–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8976]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 472 of the Internal Revenue Code that relate to accounting for inventories under the last-in, first-out (LIFO) method. The final regulations provide guidance regarding methods of valuing dollar-value LIFO pools and affect persons who elect to use the dollar-value LIFO and inventory price index computation (IPIC) methods or who receive dollar-value LIFO inventories in certain nonrecognition transactions.

DATES: *Effective Date:* These regulations are effective on December 31, 2001.

Applicability Date: For dates of applicability, see §§ 1.472–8(e)(3)(v) and 1.472–8(h)(4).

FOR FURTHER INFORMATION CONTACT: Leo F. Nolan II at (202) 622–4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in this final rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1767.

The collections of information in this regulation are in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv). To elect the IPIC method, a taxpayer must file Form 970, "Application to Use LIFO Inventory Method." This information is required to inform the Commissioner regarding the taxpayer's elections under the IPIC method. This information will be used to determine whether the taxpayer is properly accounting for its dollar-value pools under the IPIC method. The collections of information are required if the taxpayer wants to obtain the tax benefits of the LIFO method. The likely respondents are business or other for-profit institutions, and/or small businesses or organizations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The reporting burden contained in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv) is reflected in the burden of Form 970.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 472 of the Internal Revenue Code (Code) permits a taxpayer to account for inventories using a last-in, first-out (LIFO) method of accounting. Section 472(f) directs the Secretary to prescribe regulations that permit the use of suitable published governmental price indexes for purposes of the LIFO method. The IRS and Treasury Department prescribed the inventory price index computation (IPIC) method in § 1.472–8(e)(3) (TD 7814, 47 FR 11271, 1982–1 C.B. 84) (the current regulations), under the authority contained in sections 472 and 7805. A taxpayer using the IPIC method must base its inventory price indexes on the consumer price indexes or producer price indexes published by the United States Bureau of Labor Statistics (BLS). The IPIC method was intended to simplify the use of the dollar-value LIFO method, so that the LIFO method could be used by more taxpayers and so that taxpayers already using the dollar-value LIFO method would have a simpler alternative method of computing an index for their dollar-value pool.

On May 19, 2000, the IRS and Treasury Department published a notice of proposed rulemaking (REG–107644–98, 65 FR 31841, 2000–23 I.R.B. 1229) (the proposed regulations) intended to simplify and clarify certain aspects of the IPIC method. In addition, the proposed regulations provided rules for computing the LIFO value of a dollar-value pool when a taxpayer receives LIFO inventories in certain nonrecognition transactions. Comments responding to the notice were received,

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and a public hearing was held on September 15, 2000.

The IRS and Treasury Department received 16 comment letters concerning the proposed regulations. After considering the comments contained in these letters, the IRS and Treasury Department adopt the proposed regulations as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Overview

Under the last-in, first-out (LIFO) method, inventory on hand at the end of the year is treated as consisting of "layers," first of inventory on hand at the beginning of the year (in the order of acquisition), and then of any inventory acquired during the current year. Section 1.472–8 permits a taxpayer to use the dollar-value LIFO method, which accounts for all items in an inventory "pool" (dollar-value pool) in terms of dollars of cost rather than in terms of quantities and prices of specific goods. Specifically, the taxpayer annually determines the existence of an increase (increment) or decrease (liquidation) in a dollar-value pool by comparing inventory quantities measured in terms of equivalent-value dollars (base-year cost). The current-year cost of beginning and ending inventory is converted into base-year cost using an inflation index, which is the ratio of the dollar-value pool's total current-year cost to its total base-year cost. By subtracting the base-year cost of the dollar-value pool at the beginning of the taxable year from the base-year cost of the dollar-value pool at the end of the taxable year, the taxpayer determines the amount of any resulting increment or liquidation. Finally, the taxpayer computes the LIFO value of an increment (layer) by multiplying that increment's base-year cost by an inflation index.

The current regulations provide an alternative method for a taxpayer to determine an inflation index. Under the inventory price index computation (IPIC) method, the taxpayer computes an inventory price index (IPI) based on the consumer price indexes (CPI) or producer price indexes (PPI) published monthly by the United States Bureau of Labor Statistics (BLS) in the "CPI Detailed Report" and "PPI Detailed Report," respectively. See also *http://www.bls.gov*.

To facilitate a taxpayer's use of the IPIC method, the final regulations use new, more-descriptive terms for some IPIC method concepts. For example, *pool index* has been replaced with *IPI*, *appropriate index* has been replaced with *category inflation index*, and *index category* has been replaced with *BLS index category*. Within this preamble, the discussion of the current and proposed regulations uses both old and new terms, and the discussion of the final regulations generally uses the new terms.

2. Inventory Price Index—20 Percent Reduction

The current regulations state that "[a]n inventory price index computed [under the IPIC method] shall be a stated percentage of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods." For this purpose, "stated percentage" means "100 percent" in the case of an eligible small business, as defined in section 474 (i.e., average annual gross receipts for the three preceding taxable years do not exceed $5,000,000), and "80 percent" in all other cases. The proposed regulations retained this 20 percent reduction for large taxpayers.

Several commentators objected to the continuing requirement that large taxpayers reduce the IPI by 20 percent. Some of these commentators opined that the IPIC method is effectively a safe harbor method that significantly simplifies the LIFO computation and reduces IRS and taxpayer controversy; however, the 20 percent reduction is a major deterrent to its use by large taxpayers. Others argued that the CPI and PPI are representative of true inflation and, therefore, the 20 percent reduction decreases the accuracy of the IPIC method. Other commentators recommended that the stated percentage not be decreased by 20 percent until the taxpayer's gross receipts exceed $10,000,000. In their view, a taxpayer's gross receipts are likely to exceed $5,000,000 by the time the taxpayer's business is profitable enough to benefit by changing to the LIFO method.

The 20 percent reduction contained in the current regulations represents a balance between two competing tax policies—simplification and prevention of adverse selection. The IPIC method was developed originally to simplify the LIFO rules so that small businesses that could not compute an internal inflation index could use the LIFO method. Nonetheless, availability of the method was provided to all taxpayers because it was believed to be too difficult to define the class of taxpayers for which the LIFO rules were unduly burdensome and inappropriate to prevent large taxpayers from using the simplified method. Allowing all taxpayers to use the CPI or PPI regardless of the rate of inflation they actually experienced, however, provided an opportunity for adverse selection whereby a sophisticated taxpayer would adopt the IPIC method only when the inflation reflected in the CPI or PPI exceeded the taxpayer's internal rate of inflation. The 20 percent reduction of the IPI was incorporated into the current regulations to reduce this potential for adverse selection.

The IRS and Treasury Department now believe that the benefits of simplification (and reduced controversy) obtained from the IPIC method outweigh the need to prevent adverse selection. Consequently, the final regulations eliminate the requirement to reduce the IPI by 20 percent. All taxpayers electing to use the IPIC method may use 100 percent of the IPI to compute the LIFO value of a dollar-value pool.

3. Use of 10 Percent Categories and BLS Weights

The current regulations provide rules for assigning the items in a dollar-value pool to the applicable categories listed in the "CPI Detailed Report" or the "PPI Detailed Report" for which the BLS publishes corresponding cumulative price indexes (BLS categories and BLS price indexes, respectively) for purposes of computing the IPI for a dollar-value pool. In very simple terms, taxpayers use a process of elimination to assign all the items in a dollar-value pool to BLS categories that include at least 10 percent of the total inventory value (10 percent BLS categories) and then use the corresponding BLS weights to compute a weighted-average appropriate index for the items assigned to those 10 percent BLS categories.

The proposed regulations eliminate the requirements to use the 10 percent BLS categories and BLS weights to compute an appropriate index because it was believed that these requirements did not provide the intended simplicity but rather added unnecessary complexity to the IPIC method. Instead, the proposed regulations require the taxpayer to assign items in a dollar-value pool to the most-detailed BLS categories listed in the "CPI Detailed Report" or the "PPI Detailed Report," whichever is applicable, and to weight the BLS price indexes based on the relative current-year cost of the items assigned to those BLS categories.

Several commentators objected to the elimination of the requirement to use the 10 percent BLS categories and BLS weights to compute an appropriate index. They suggested that this regime does in fact provide simplification for some taxpayers and consequently should be retained as an option, particularly for retail grocers that would have to incur substantial administrative costs to have the items contained in their dollar-value pools assigned to numerous, most-detailed BLS categories. Other commentators supported the elimination of the requirement to use BLS weights, arguing that this will reduce both the complexity of the IPIC method and the potential for distortion caused by the use of the BLS weights. However, these commentators generally recommended retention of the 10 percent categories or, alternatively, modification of the proposed rule to permit a taxpayer to assign items in a dollar-value pool to less-detailed BLS categories (e.g., using 6-digit or 4-digit commodity codes in the PPI). Another commentator suggested lowering the testing threshold from 10 percent to 8 percent.

The IRS and Treasury Department now understand that the requirement to use 10 percent BLS categories and BLS weights provides simplicity for some taxpayers but complexity for others. Accordingly, the final regulations retain the 10 percent BLS categories and BLS weights as an elective method (10 percent method) of determining the category inflation index of a 10 percent BLS category. The final regulations clarify, however, that to determine whether a BLS category may be selected under the 10 percent method, a taxpayer must compare the current-year cost of the items in that category to the total current-year cost of the items in the dollar-value pool, not to the total current-year cost of the items in the taxpayer's entire inventory.

4. Weighted Harmonic Mean for Computing Inventory Price Index

A pool index computed using the dollar-value LIFO method should reflect a weighted average of the inflation rates of the items contained in the ending inventory of the dollar-value pool. The current regulations state that the appropriate indexes are weighted according to the relative current-year costs of the items in each selected BLS category. However, the regulations do not state how a taxpayer computes a weighted average of the appropriate indexes using the amount of relative current-year costs in each selected BLS category. An example of IPIC weighting methodology is found in Rev. Proc. 84–57 (1984–2 C.B. 496), which shows the computation of an IPI based on a weighted arithmetic mean of the appropriate indexes. (Weighted Arithmetic Mean = [Sum of (Weight x Appropriate Index)] / Sum of Weights). In addition, an example found in Rev. Proc. 98–49 (1998–2 C.B. 321) uses a weighted arithmetic mean to compute a weighted-average percent change for a selected BLS category.

The proposed regulations provide that the pool index must be computed using a weighted harmonic mean, instead of a weighted arithmetic mean, based on the relative current-year costs in the dollar-value pool. (Weighted Harmonic Mean = Sum of Weights / Sum of (Weight / Appropriate Index)).

Using a weighted arithmetic mean of the category inflation indexes of the BLS categories represented in a dollar-value pool is not a mathematically correct method of computing the IPI for the pool when the corresponding weights are the relative current-year costs at the end of the taxable year. If a taxpayer's dollar-value pool has the same quantity of two items with identical base-year costs, the IPI should reflect the inflation rates of the two items equally. However, a weighted arithmetic mean of the category inflation indexes will assign more weight to the inflation rate of the item that has the higher current-year cost. Thus, the mean will be skewed in favor of BLS categories that experience higher rates of inflation, and the IPI will be overstated. This result also will occur when the items in the dollar-value pool experience deflation because too much weight will be assigned to the BLS categories that experience less deflation.

Several commentators objected to the mandatory use of the weighted harmonic mean when computing an IPI. Acknowledging that an IPI based on a weighted harmonic mean is mathematically correct, these commentators stated that the inaccuracy built into a weighted arithmetic mean is offset (in the case of larger taxpayers) by the 20 percent reduction of the "stated percentage." Thus, they recommended that taxpayers be permitted to continue computing IPIs based on a weighted arithmetic mean rather than be required to incur additional administrative costs to begin computing IPIs based on a weighted harmonic mean.

The IRS and Treasury Department did not adopt these suggestions because a weighted arithmetic mean based on relative current-year costs at the end of the period is not mathematically correct and the conversion from a weighted arithmetic mean to a weighted harmonic mean is not unduly burdensome. To assist taxpayers that need to change to a weighted harmonic mean, the final regulations include the formula for, and examples of, computing a weighted harmonic mean.

On the other hand, the use of a weighted arithmetic mean is mathematically correct when computing a weighted-average category inflation index based on relative costs at the beginning of the taxable year. The published BLS weights applicable for a taxable year are essentially based on relative costs at the beginning of the period. Therefore, whenever it is necessary to compute the category inflation index of a 10 percent BLS category using BLS weights, taxpayers must compute a weighted arithmetic mean. When computing the IPI for a dollar-value pool, however, even taxpayers electing to use the 10 percent method must use the weighted harmonic mean based on the current-year cost of the items assigned to each 10 percent BLS category.

5. Selecting an Appropriate Month

The current regulations state that a taxpayer not using the retail method must select price indexes "as of the month or months" most appropriate to its method of determining current-year cost (appropriate month), or make a one-time binding election of an appropriate representative month (representative month). In the case of a retailer using the retail method, the appropriate month is the last month of the retailer's taxable year. The IRS has ruled that a month is a representative month if a nexus exists between the selected month, the taxpayer's method of determining current-year cost, and the taxpayer's historic experience of inventory purchases. Rev. Rul. 89–29 (1989–1 C.B. 168). In practice, many taxpayers have been confused about the meaning of "month or months most appropriate to the taxpayer's method of determining current-year cost."

The proposed regulations clarify that for each dollar-value pool, a taxpayer not using the retail method either must annually select an appropriate month or must make an election to use a representative month. The principles of Rev. Rul. 89–29, which have been incorporated into the final regulations, continue to apply for the purpose of determining whether a particular month is appropriate or representative.

Several commentators stated that taxpayers should be permitted to use two IPIs for each taxable year (dual indexes), so that they will not be denied the right to use the earliest acquisitions method of determining current-year costs. These commentators suggest that a taxpayer whose accounting system determines the current-year cost of ending inventory using a first-in, first-out (FIFO) method (i.e., most recent purchases) could compute an IPI based on indexes selected from the CPI or PPI applicable to a month late in the taxable

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year to deflate the current-year cost of items in ending inventory for the purpose of determining whether an increment or liquidation has occurred during the taxable year. If there is an increment, the taxpayer would compute a second IPI based on indexes selected from the CPI or PPI applicable to a month early in the taxable year to inflate the base-year cost of the increment to its LIFO value based on its "pricing election" (i.e., earliest acquisitions).

The IRS and Treasury Department did not adopt this suggestion for several reasons. First, the IPIC method and the earliest acquisitions method are not mutually exclusive. In fact, the current and proposed IPIC regulations clearly permit an electing taxpayer to use any method of determining current-year cost permitted under § 1.472–8(e)(2)(ii), including the earliest acquisitions method. A dual index IPIC method is not needed to ensure that an electing taxpayer will be able to use the earliest acquisitions method. However, the earliest acquisitions method is available under the IPIC method only to a taxpayer that actually computes the current-year cost of its ending inventory using the earliest acquisitions method because use of a dual index is inconsistent with the IPIC method's concept of an appropriate month. The appropriate month concept requires a taxpayer to select a month that correlates with its actual method of computing current-year cost and its experience with inventory purchases. As explained in Rev. Rul. 89–29, "[t]he timing of the index (and the month selected) must relate to the timing of the determination of current-year cost, otherwise distortion would occur." The determination of an appropriate month is not a choice between equally acceptable methods of determining current-year cost, but depends on the taxpayer's actual method of determining current-year cost and actual purchases. Thus, a taxpayer using a calendar tax year may select January as the appropriate month only if items represented in the ending inventory were purchased in January and the taxpayer determines the current-year cost of the ending inventory based on the cost of those January purchases.

Moreover, though a dual index IPIC method would eliminate the requirement to determine the actual earliest acquisitions cost of the items in a dollar-value pool, the method would not simplify a taxpayer's use of the dollar-value LIFO method. A dual index IPIC method will require an electing taxpayer to compute (and the IRS to examine) twice as many category inflation indexes because the taxpayer would need BLS price indexes that reflect its inflation experience under the most recent purchases method as well as under the earliest acquisitions method. Similarly, a dual index IPIC method would require a taxpayer to select twice as many appropriate or representative months for each taxable year. Not only does the requirement to select two appropriate months increase the complexity of the IPIC method, it also decreases the accuracy of the method as some accuracy is lost as a result of determining the appropriate month for the entire pool rather than for each inventory item or each BLS category.

In summary, the IPIC method was intended to simplify the dollar-value LIFO method, primarily so it could be used by taxpayers that were otherwise unable to use the method. The IPIC method was neither intended nor designed to serve as a surrogate for determining the earliest acquisitions cost of the items in a dollar-value pool. The prohibition on the use of dual indexes in connection with the IPIC method, however, does not necessarily mean that the use of dual indexes will be prohibited in the context of other LIFO methods.

Several commentators objected to the rule that requires a taxpayer using both the retail method and LIFO method to use the last month of the taxable year as its appropriate month. In their view, a month in the middle of the year would be more representative because the retail method produces an average cost for a group of goods based on purchases for an entire year.

The IRS and Treasury Department did not adopt this suggestion because they believe that the appropriate month for a taxpayer using the retail method is the last month of the taxable year. Section 1.471–8 generally requires that a taxpayer adjust retail selling prices of the goods on hand at the end of the year to cost based on the ratio of goods available for sale at cost to goods available for sale at retail (the cost complement percentage). While this ratio may reflect an average cost complement percentage for the year, it is applied to retail selling prices of the goods on hand at the end of the taxable year rather than the average retail selling price of these goods during the year. Consequently, the approximate cost determined under the retail method is not necessarily equal to the average cost of the inventory.

One commentator suggested that the final regulations should include factors for determining an appropriate month. Other commentators requested an example showing how to determine an appropriate month when a short taxable year follows the first taxable year that a taxpayer uses the IPIC method. In response to these comments, the final regulations incorporate the guidance on an appropriate representative month (including three of the examples) found in Rev. Rul. 89–29.

6. Calculation of a Category Inflation Index

The proposed regulations generally provide that in the case of a taxpayer using the double-extension IPIC method, the inflation index for a selected BLS category is equal to the quotient of the BLS price index for the appropriate or representative month of the current taxable year and the month preceding the first day of the base year. In the case of a taxpayer using the link-chain IPIC method, the inflation index for a selected BLS category is equal to the BLS price index for the appropriate or representative month of the current taxable year divided by the appropriate or representative month used for the immediately preceding taxable year. However, if the first taxable year the taxpayer uses the IPIC method also is the first taxable year the taxpayer uses the dollar-value LIFO method, the inflation index is equal to the quotient of the published cumulative index for the appropriate or representative month for the current taxable year divided by the published cumulative index for the month immediately preceding the first day of the taxable year.

Several commentators argued that the prescribed calculation for the first taxable year a taxpayer uses both the dollar-value LIFO and IPIC methods is likely to overstate or understate inflation if the taxpayer has opening inventories, unless the opening inventories were purchased during the last month of the preceding taxable year. To address this concern, the commentators suggested that a taxpayer be permitted to compare the BLS price index for the appropriate month of the first LIFO taxable year with the BLS price index for the appropriate month of the taxpayer's last non-LIFO taxable year. Another commentator suggested that the denominator in this formula should be the BLS price index that reflects prices during the last inventory turn of the immediately preceding taxable year.

The IRS and Treasury Department agree with the commentators' concerns. In addition, the IRS and Treasury Department recognize that the same problem exists under the proposed regulations as a result of the requirement to use the month preceding the first day of the base year to compute an appropriate index under the double-extension IPIC method. Accordingly, the final regulations generally provide that a category inflation index should be computed with reference to the BLS price indexes for an appropriate month of the year preceding its LIFO election (in the case of the double-extension IPIC method) or of the preceding year (in the case of the link-chain IPIC method). In addition, the final regulations incorporate the general guidance of Rev. Proc. 98–49 concerning the computation of a category inflation index when a selected BLS category is revised for the taxable year.

7. Scope of an IPIC Method Election

The current regulations generally require a taxpayer using the IPIC method to use that method to account for all items accounted for using the LIFO method (LIFO inventory items). The current regulations also prohibit the use of the IPIC method by a taxpayer that is eligible to use BLS price indexes prepared for the purpose of valuing the LIFO inventory items of a specific industry. For example, a taxpayer eligible to use the BLS retail price indexes published in "Department Store Inventory Price Indexes" (DSIP indexes) may not use the IPIC method.

The proposed regulations liberalize the eligibility restrictions applicable to the IPIC method in two respects. First, a taxpayer must use the IPIC method for all items accounted for under the dollar-value LIFO method, but not for all items accounted for under the LIFO method. Second, a taxpayer eligible to use DSIP indexes may elect to use the IPIC method for all its LIFO inventory items or for those LIFO inventory items that do not fall within any of the 23 major groups listed in "Department Store Inventory Price Indexes."

Several commentators objected to the proposed general requirement that an electing taxpayer use the IPIC method for all its LIFO inventory items. In their view, section 446(d) permits a taxpayer to elect the IPIC method for each trade or business. The requirement to use the IPIC method for all LIFO inventory items, as originally promulgated, was designed to prevent adverse selection. The IRS and Treasury Department understand, however, that taxpayers often have valid business reasons for using the IPIC method in some businesses but not in others. For example, a taxpayer may have difficulty using the double-extension method in one of its trades or businesses but not in another. Accordingly, the final regulations permit a taxpayer to limit its IPIC election to one or more specific trades or businesses.

8. Selection of "CPI Detailed Report" or "PPI Detailed Report"

The current regulations state that a retailer may select price indexes from the "CPI Detailed Report" or the "PPI Detailed Report," but if equally appropriate price indexes may be selected from either, a retailer using the retail method must select from the "CPI Detailed Report," and a retailer not using the retail method must select from the "PPI Detailed Report."

The proposed regulations eliminate the requirement that retailers determine whether the "CPI Detailed Report" and "PPI Detailed Report" contain equally appropriate price indexes. Instead, the proposed regulations require retailers using the retail method to select price indexes from the "CPI Detailed Report" and require all other taxpayers using the IPIC method to select price indexes from the "PPI Detailed Report."

Several commentators suggested that the IRS and Treasury Department permit all retailers using the IPIC method to select price indexes from either the "CPI Detailed Report" or the "PPI Detailed Report." These commentators argue that many retailers selecting price indexes from the CPI do not use the retail method and would be forced to change. This change would be particularly burdensome because the categories listed in the "PPI Detailed Report" are far more detailed (and less correlated) than those listed in the "CPI Detailed Report." In addition, these commentators argue that the proposed rule fails to recognize that the PPI does not necessarily reflect cost for retailers not using the retail method because the majority of retailers purchase their goods from wholesalers not producers. Finally, the commentators expressed concern that the proposed rule would preclude retailers that use the retail method at their stores and a cost method at their warehouses from using the price indexes listed in the "CPI Detailed Report" when retail price information is not ascertained or readily available for goods in warehouses.

The IRS and Treasury Department generally agree with the commentators' concerns. Accordingly, the final regulations permit all retailers using the IPIC method to assign items in dollar-value pools to the BLS categories listed in either the "CPI Detailed Report" or the "PPI Detailed Report," whichever is selected.

9. BLS Category for Work-in-Process

The proposed regulations provide that manufacturers and processors must assign all work-in-process (WIP) items in a dollar-value pool to the most-detailed index categories that include the finished goods into which the WIP item will be manufactured or processed. For this purpose, *finished good* means any good that is in a salable state.

Several commentators objected to the proposed requirement that a taxpayer compute a separate inflation index for a WIP item that is in a salable state but not regularly sold by the taxpayer.

The IRS and Treasury Department agree with the commentators' objection to the extent that the taxpayer's WIP items are merely salable. Accordingly, the final regulations provide that a taxpayer is not required to compute a separate category inflation index for a salable WIP item, unless the taxpayer regularly sells that WIP item.

10. Relocation and Clarification of Special Pooling Rules

The current regulations provide special, elective pooling rules for retailers, wholesalers, jobbers, and distributors that use the IPIC method. These taxpayers are permitted to establish a dollar-value pool for any group of goods included in one of the 11 general categories of consumer goods described in the "CPI Detailed Report." In addition, Rev. Proc. 84–57 provides that inventory pools may be established for any group of goods included within one of the 15 general categories of producer goods described in Table 6 of the "PPI Detailed Report." Finally, the regulations provide that dollar-value pools that comprise less than 5 percent of inventory value may be combined to form a single miscellaneous dollar-value pool. If the resulting miscellaneous dollar-value pool itself comprises less than 5 percent of inventory value, that pool may be combined with the largest dollar-value pool.

The proposed regulations retain the special, elective pooling rules for inventory items accounted for under the IPIC method contained in the current regulations and incorporate the special, elective pooling rules contained in Rev. Proc. 84–57.

Several commentators asked whether taxpayers must apply the 5 percent rules to a dollar-value pool annually and, if so, how they are to account for dollar-value pools that no longer satisfy the 5 percent threshold. One commentator suggested that the IRS and Treasury Department make these 5 percent rules optional, state whether these rules are methods of accounting, and require taxpayers to apply the principles of § 1.472–8(g)(2) when changing dollar-value pools because of these 5 percent rules. Another commentator recommended that taxpayers be permitted to include inventories not

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accounted for under the LIFO method in "inventory value" when determining whether the 5 percent rules apply.

The IRS and Treasury Department believe that both of the 5 percent rules for dollar-value pools have been, and remain, optional. Under the current and proposed regulations, a taxpayer may, but is not required to, combine two or more specific dollar-value pools into a single miscellaneous dollar-value pool when the cost of each specific dollar-value pool does not exceed 5 percent of the total cost of the taxpayer's LIFO inventory. In addition, a taxpayer may, but is not required to, combine the single miscellaneous dollar-value pool and the largest specific dollar-value pool when cost of the miscellaneous dollar-value pool does not exceed 5 percent of the total cost of the taxpayer's LIFO inventory. Furthermore, the IRS and Treasury Department believe that both of the 5 percent rules are methods of accounting within the broader IPIC pooling method, so a taxpayer may not change to, or cease using, either of the 5 percent rules without obtaining the Commissioner's prior consent. In addition, any change in pooling required by the taxpayer's proper use of the 5 percent rule(s) is a change in method of accounting. Thus, the final regulations require a taxpayer in these circumstances to combine and separate its dollar-value pools in accordance with § 1.472–8(g). Moreover, the final regulations require a taxpayer to determine whether to separate or combine the 5 percent pools every third taxable year based on current-year data rather than on average data.

11. New Base Year for IPIC Method Changes

The current regulations require a taxpayer that changes to the IPIC method from another dollar-value LIFO method to treat the year of change as the base year in determining the LIFO value of the dollar-value pool(s) for the year of change and later taxable years. The taxpayer is required to restate the base-year cost of the existing increments in terms of new base-year cost, which also requires the restatement of the IPI of each of the layers. This procedure is referred to alternatively as updating the base year or establishing a new base year.

One commentator suggested eliminating the reference to § 1.472–8(f)(2) in the case of a voluntary change from the specific goods LIFO method to the dollar-value LIFO method because taxpayers and tax practitioners have long questioned how to implement this change without updating the base year. The final regulations adopt this suggestion and require a taxpayer changing from the specific goods LIFO method to the IPIC method to establish a new base year. Although guidance addressing taxpayers changing from the specific goods LIFO method to a dollar-value LIFO method other than the IPIC method is outside the scope of these regulations, the IRS and Treasury Department are considering whether to issue additional guidance to address the commentator's concerns regarding changes from the specific goods method to a dollar-value LIFO method.

The proposed regulations clarify that the base-year-updating procedure is mandatory for voluntary changes to the IPIC method. However, the proposed regulations authorized examining agents to require a change to the IPIC method in circumstances where the taxpayer's prior method does not clearly reflect income and to implement the change using a cutoff method in circumstances where the taxpayer's books and records lacked the information necessary to compute a section 481(a) adjustment. The latter provision was intended to provide examining agents with an alternative to LIFO termination in appropriate circumstances.

One commentator objected to giving examining agents the authority to require a taxpayer using a LIFO method to change to the double-extension IPIC method even when the taxpayer produces records that will allow the agent to calculate the effect of changing to a correct method other than the IPIC method. This commentator requested "clear-cut" published guidance on the types of records that taxpayers using a LIFO method must retain and the length of time that they must retain them. In addition, because of the administrative burden associated with record retention (particularly those records needed for LIFO methods not used by the taxpayer), this commentator requested that the IRS and Treasury Department create a shortcut procedure, similar to the three-year transition rule under § 1.263A–7(c)(2)(iv), to calculate the effect of changing the taxpayer's LIFO method. Finally, this commentator suggested that the IRS and Treasury Department, as a matter of fairness, permit a taxpayer to recompute each year's layer using the IPI for that year.

Several commentators urged the IRS and Treasury Department to withdraw the involuntary change provisions entirely or, alternatively, to modify them to give examining agents discretion to impose a change to the double-extension IPIC method with or without establishing a new base year. One of these commentators also urged the IRS and Treasury Department to give these examining agents discretion to impose a change to either the double-extension IPIC method or the link-chain IPIC method.

In response to these comments, the final regulations provide that an examining agent may change a taxpayer from a LIFO method that does not clearly reflect income to the IPIC method. If the agent decides to change the taxpayer to the IPIC method, and the taxpayer does not provide sufficient information from its books and records to compute an adjustment under section 481, the agent may implement the change using the simplified transition method. Under the simplified transition method, the agent makes certain assumptions regarding the composition of ending inventory in prior taxable years and recomputes the LIFO value of each dollar-value pool as of the beginning of the year of change using the IPIC method. The section 481(a) adjustment arising from the accounting method change is equal to the difference between that recomputed LIFO value and the LIFO value of the dollar-value pool determined under the taxpayer's former method. The IRS and Treasury Department are considering other simplified methods of computing a section 481(a) adjustment arising from a change from one LIFO method to another and may publish additional guidance in the future. The suggestion regarding the issuance of guidance on a taxpayer's record keeping requirement is beyond the scope of this project, but will be considered for possible future guidance.

12. Inventories Received in Certain Nonrecognition Transactions

An election to use the dollar-value LIFO method for LIFO inventories received in a nonrecognition transaction to which section 381 does not apply (non-section 381 transfer) may not continue the LIFO reserve of the transferor. If the mix of goods in the inventory changes significantly after the transfer, the mechanics of the dollar-value LIFO method may produce an artificial increment in the year the inventories are received that effectively eliminates the LIFO reserve established by the transferor. This artificial increment occurs because the base-year cost of new items are reconstructed to the transferee's base year (i.e., the year it elects LIFO) and not to the transferor's base year. When a transferee elects the LIFO and IPIC methods for LIFO inventories received in a non-section 381 transfer, the transferee will have an artificial increment in the year the inventories are received even without a significant change in the mix of goods in its ending inventory. The IPIC method invariably produces an increment because the difference between the current-year cost and the carryover basis of the transferred inventories (i.e., the base-year cost) reflects more than one year's inflation and the IPI used to convert the current-year cost of the dollar-value pool at the end of the taxable year to base-year cost will reflect only one year's inflation.

To prevent the recapture of a transferor's LIFO reserve in a non-section 381 transfer, the proposed regulations require the transferee to update its base-year cost if a transferee uses the dollar-value LIFO method for inventories received in a non-section 381 transfer and the transferor accounted for those inventories using the dollar-value LIFO method as follows. First, the transferee's base year for the inventories received from the transferor is the year of transfer. Second, the transferee's base-year cost for the inventories received from the transferor is equal to the transferor's current-year cost for those inventories. Finally, if the transferee owned inventories prior to the transfer, the new base-year cost of those inventories will be equal to their current-year cost. The proposed regulations do not affect either the ability of a newly formed transferee to elect new accounting methods or the holdings of Rev. Rul. 70–564 (1970–2 C.B. 109) and Rev. Rul. 70–565 (1970–2 C.B. 110). However, the proposed regulations do not apply to a non-section 381 transfer if its principal purpose is to avail the transferee of a method of accounting that is unavailable to the transferor (or is unavailable to the transferor without the Commissioner's consent).

One commentator asserted that when a taxpayer described in Rev. Rul. 70–564 (i.e., no beginning LIFO inventories) applies the proposed rule to transferred inventories, the resulting IPI of the collapsed base-year layer will not equal 1. Because this result may cause some confusion, the commentator suggested including an example in the final regulations. The final regulations include an example demonstrating the computation of increments and liquidations after a new base year is established.

Several commentators asserted that the proposed rule may result in the creation of an artificial increment or liquidation when a transferee and transferor use different methods of determining current-year costs. Thus, the regulations should be changed to permit a transferee to establish (or reconstruct) the new base-year cost of the transferred inventories equal to the transferor's first-in, first-out cost for the year immediately preceding the year of transfer, or alternatively, if the final regulations continue to require the use of the transferor's current-year cost and current-year cost method, the regulations should be changed to provide that the period for measuring inflation for the base year is between the appropriate month for determining base-year cost and the appropriate month for determining current-year cost. In addition, one commentator suggested that the final regulations be changed to clarify that "beginning inventory, if any" refers only to inventory that the transferee actually owned before the nonrecognition transaction.

The IRS and Treasury Department agree with these commentator's concerns. Accordingly, the final regulations permit the transferee to compute the base-year cost of transferred inventories using its current-year cost and its method of determining current-year cost. The final regulations also clarify the meaning of beginning inventory.

Another commentator contended that the holding of Rev. Rul. 70–564 is incorrect and, thus, the average cost rule of section 472(b)(3) should not be applied to inventories received by a transferee without an existing LIFO election in a non-section 381 transfer. In addition, this commentator noted that the holding of Rev. Rul. 70–564 is inconsistent with § 1.1502–13 (concerning intercompany transactions), which generally provides that an intercompany transaction may not change the timing of the recognition of income or deductions. This commentator suggested that the holding of Rev. Rul. 70–565, which provides for a carryover of a transferor's LIFO layer history in a section 351 transfer to a transferee with an existing LIFO election, should be applied in all non-section 381 transfers.

The IRS and Treasury Department believe this comment is outside the scope of these final regulations. However, in response to this comment, the IRS and Treasury Department are reconsidering whether to continue to require different results upon the transfer of LIFO inventories in a non-section 381 transfer (as currently required by Rev. Rul. 70–564 and Rev. Rul. 70–565) depending upon whether the transferee has an existing LIFO election.

13. Effective Date of Final Regulations

The proposed regulations provide that proposed §§ 1.472–8(b)(4), (c)(2), and (e)(3) will apply to taxable years beginning on or after the date they are published in the **Federal Register** as final regulations. In addition, the proposed regulations provide that proposed § 1.472–8(h) will apply to transfers occurring on or after the date it is published in the **Federal Register** as a final regulation.

One commentator suggested that taxpayers be permitted, but not required, to apply §§ 1.472–8(b)(4), (c)(2), and (e)(3) for taxable years *ending* on or after the date the regulations are published in the **Federal Register** as final regulations. This commentator also suggested that taxpayers be permitted to apply § 1.472–8(h) to transfers occurring during the taxable year *ending* on or after the date the regulations are published in the **Federal Register** as final regulations. In addition, several commentators suggested that the transition period for an automatic change in method of accounting to comply with §§ 1.472–8(b)(4), (c)(2), and (e)(3) be extended to include the *second* taxable year ending on or after the date the regulations are published in the **Federal Register** as final regulations.

The IRS and Treasury Department agree with these suggestions. However, in order to ensure that taxpayers may implement these changes for taxable years ending December 31, 2001, as requested by the commentators, the final regulations are effective for taxable years ending on or after December 31, 2001.

Effect on Other Documents

Rev. Proc. 84–57, Rev. Rul. 89–29, and Rev. Proc. 98–49 are obsolete on January 9, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Code, the proposed regulations preceding this Treasury decision was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. It is hereby certified that the collections of information in this Treasury decision will not have a significant economic impact on a substantial number of small entities. First, only taxpayers that adopt, or change to, the IPIC method will be affected by the collections of information. Second, relatively few small entities are expected to adopt, or change to, the IPIC method. Third, the

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burden of the collections of information is not significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal author of these regulations is Leo F. Nolan II of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.472–8 also issued under 26 U.S.C. 472. * * *

Par. 2. Section 1.472–8 is amended as follows:

1. Paragraph (b)(4) is added.
2. The text of paragraph (c) following the paragraph heading is redesignated as paragraph (c)(1) and a paragraph heading for newly designated (c)(1) is added.
3. Paragraph (c)(2) is added.
4. Paragraph (e)(3) and (h) are revised.
5. The undesignated paragraph following paragraph (h) is removed.

The revisions and additions read as follows:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(b) * * *

(4) *IPIC method pools.* A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those items accounted for using the IPIC method based on the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report" published monthly by the United States Bureau of Labor Statistics (available from New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954). A taxpayer electing to establish dollar-value pools under this paragraph (b)(4) may combine IPIC pools that comprise less than 5 percent of the total current-year cost of all dollar-value pools to form a single miscellaneous IPIC pool. A taxpayer electing to establish dollar-value pools under this paragraph (b)(4) may combine a miscellaneous IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest IPIC pool. Each of these 5 percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5 percent rule without obtaining the Commissioner's prior consent. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5 percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5 percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating pools and must combine or separate its IPIC pools in accordance with paragraph (g)(2) of this section.

(c) * * * (1) *In general.* * * *

(2) *IPIC method pools.* A retailer that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those items accounted for using the IPIC method based on either the general expenditure categories (i.e., major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the "CPI Detailed Report" or the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report." A wholesaler, jobber, or distributor that elects to use the IPIC method for a trade or business may elect to establish dollar-value pools for any group of goods accounted for using the IPIC method and included within one of the 2-digit commodity codes (i.e., major commodity groups) in Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report." The "CPI Detailed Report" and the "PPI Detailed Report" are published monthly by the United States Bureau of Labor Statistics (BLS) (available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). A taxpayer electing to establish dollar-value pools under this paragraph (c)(2) may combine IPIC pools that comprise less than 5 percent of the total current-year cost of all dollar-value pools to form a single miscellaneous IPIC pool. A taxpayer electing to establish pools under this paragraph (c)(2) may combine a miscellaneous IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest IPIC pool. Each of these 5 percent rules is a method of accounting. Thus, a taxpayer may not change to, or cease using, either 5 percent rule without obtaining the Commissioner's prior consent. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5 percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted under a 5 percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to section 1.446–1(e) before combining or separating pools and must combine or separate its IPIC pools in accordance with paragraph (g)(2) of this section.

* * * * *

(e) * * *

(3) *Inventory price index computation (IPIC) method*—(i) *In general.* The inventory price index computation method provided by this paragraph (e)(3) (IPIC method) is an elective method of determining the LIFO value of a dollar-value pool using consumer or producer price indexes published by the United States Bureau of Labor Statistics (BLS). A taxpayer using the IPIC method must compute a separate inventory price index (IPI) for each dollar-value pool. This IPI is used to convert the total current-year cost of the items in a dollar-value pool to base-year cost in order to determine whether there is an increment or liquidation in terms of base-year cost and, if there is an increment, to determine the LIFO inventory value of the current year's layer of increment (layer). Using one IPI to compute the base-year cost of a dollar-value pool for the current taxable year and using a different IPI to compute the LIFO inventory value of the current taxable year's layer is not permitted under the IPIC method. The IPIC method will be accepted by the Commissioner as an appropriate method of computing an index, and the use of that index to compute the LIFO value of a dollar-value pool will be accepted as accurate, reliable, and suitable. The appropriateness of a taxpayer's computation of an IPI, which includes all the steps described in paragraph (e)(3)(iii) of this section, will be determined in connection with an examination of the taxpayer's federal income tax return. A taxpayer using the IPIC method may elect to establish dollar-value pools according to the special rules in paragraphs (b)(4) and (c)(2) of this section or the general rules in paragraphs (b) and (c) of this section. Taxpayers eligible to use the IPIC method are described in paragraph (e)(3)(ii) of this section. The manner in which an IPI is computed is described in paragraph (e)(3)(iii) of this section. Rules relating to the adoption of, or change to, the IPIC method are in paragraph (e)(3)(iv) of this section.

(ii) *Eligibility.* Any taxpayer electing to use the dollar-value LIFO method may elect to use the IPIC method. Except as provided in this paragraph (e)(3)(ii) or in other published guidance, a taxpayer that elects to use the IPIC method for a specific trade or business must use that method to account for all items of dollar-value LIFO inventory. A taxpayer that uses the retail price indexes computed by the BLS and published in "Department Store Inventory Price Indexes" (available from the BLS by calling (202) 606–6325 and entering document code 2415) may elect to use the IPIC method for items that do not fall within any of the major groups listed in "Department Store Inventory Price Indexes."

(iii) *Computation of an inventory price index*—(A) *In general.* The computation of an IPI for a dollar-value pool requires the following four steps, which are described in more detail in this paragraph (e)(3)(iii): First, selection of a BLS table and an appropriate month; second, assignment of items in a dollar-value pool to BLS categories (selected BLS categories); third, computation of category inflation indexes for selected BLS categories; and fourth, computation of the IPI. A taxpayer may compute the IPI for each dollar-value pool using either the double-extension method (double-extension IPIC method) or the link-chain method (link-chain IPIC method), without regard to whether the use of a double-extension method is impractical or unsuitable. The use of either the double-extension IPIC method or the link-chain IPIC method is a method of accounting, and the adopted method must be applied consistently to all dollar-value pools within a trade or business accounted for under the IPIC method. A taxpayer that wants to change from the double-extension IPIC method to the link-chain IPIC method, or vice versa, must secure the consent of the Commissioner under § 1.446–1(e). This change must be made with a new base year as described in paragraph (e)(3)(iv)(B)(1).

(B) *Selection of BLS table and appropriate month—(1) In general.* Under the IPIC method, an IPI is computed using the consumer or producer price indexes for certain categories (BLS price indexes and BLS categories, respectively) listed in the selected BLS table of the "CPI Detailed Report" or the "PPI Detailed Report" for the appropriate month.

(2) BLS table selection. Manufacturers, processors, wholesalers, jobbers, and distributors must select BLS price indexes from Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report", unless the taxpayer can demonstrate that selecting BLS price indexes from another table of the "PPI Detailed Report" is more appropriate. Retailers may select BLS price indexes from either Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the "CPI Detailed Report" or from Table 6 (or another more appropriate table) of the "PPI Detailed Report." The selection of a BLS table is a method of accounting and must be used for the taxable year of adoption and all subsequent years, unless the taxpayer obtains the Commissioner's consent under § 1.446–1(e) to change its table selection. A taxpayer that changes its BLS table must establish a new base year in the year of change as described in paragraph (e)(3)(iv)(B) of this section.

(3) Appropriate month. In the case of a retailer using the retail method, the appropriate month is the last month of the retailer's taxable year. In the case of all other taxpayers, the appropriate month is the month most consistent with the method used to determine the current-year cost of the dollar-value pool under paragraph (e)(2)(ii) of this section and the taxpayer's history of inventory production or purchases during the taxable year. A taxpayer not using the retail method may annually select an appropriate month for each dollar-value pool or make an election on Form 970, "Application to Use LIFO Inventory Method," to use a representative appropriate month (representative month). An election to use a representative month is a method of accounting and the month elected must be used for the taxable year of the election and all subsequent taxable years, unless the taxpayer obtains the Commissioner's consent under § 1.446–1(e) to change or revoke its election.

(4) Examples. The following examples illustrate the rules of this paragraph (e)(3)(iii)(B)(*3*):

Example 1. Determining an appropriate month. A wholesaler of seasonal goods timely files a Form 970, "Application to Use LIFO Inventory Method," for the taxable year ending December 31, 2001. The taxpayer indicates elections to use the dollar-value LIFO method, to determine the current-year cost using the earliest acquisitions method in accordance with paragraph (e)(2)(ii)(*b*) of this section, and to use the IPIC method under paragraph (e)(3) of this section. Although the taxpayer purchases inventory items regularly throughout the year, the items purchased vary according to the seasons. The seasonal items on hand at December 31, 2001, are purchased between October and December. Thus, based on the taxpayer's use of the earliest acquisitions method of determining current-year cost and its experience with inventory purchases, the appropriate month for the items represented in the ending inventory at December 31, 2001, is October.

Example 2. Electing a representative month. A retailer not using the retail method timely files a Form 970, "Application to Use LIFO Inventory Method," for the taxable year ending December 31, 2001. The taxpayer indicates elections to use the dollar-value LIFO method, the most recent purchases method of determining current-year cost under paragraph (e)(2)(ii)(*a*) of this section, the IPIC method under paragraph (e)(3) of this section, and December as its representative month under paragraph (e)(3)(iii)(B)(*3*) of this section. The items in the taxpayer's ending inventory are purchased fairly uniformly throughout the year, with the first purchases normally occurring in January and the last purchases normally occurring in December. The taxpayer's election to use December as its representative month is permissible because the taxpayer elected to use the most recent purchases method and the taxpayer's last purchases of the taxable year normally occur during December, the last month of the taxpayer's taxable year.

Example 3. Changing representative month. The facts are the same as in *Example 2*, except the taxpayer files a Form 3115, "Application for Change in Accounting Method," requesting permission to change to the earliest acquisitions method of determining current-year cost in accordance with paragraph (e)(2)(ii)(b) of this section and to change its representative month from December to January beginning with the taxable year ending December 31, 2003. If the Commissioner consents to the taxpayer's request to change to the earliest acquisitions method, December will no longer be a permissible representative month for this

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taxpayer because of the absence of a nexus between the earliest acquisitions method, the month of December (the last month of the taxpayer's taxable year), and the taxpayer's experience with inventory purchases during the year. Thus, the Commissioner will permit the taxpayer to change its representative month to January, the first month of the taxpayer's taxable year.

Example 4. Changing representative month. The facts are the same as in *Example 2.* In 2002, the taxpayer changes its annual accounting period to a taxable year ending June 30, which requires the taxpayer to file a return for the short taxable year beginning January 1, 2002, and ending June 30, 2002. As a result, December is no longer a permissible representative month because of the absence of a nexus between the most recent purchases method, the month of December, and the taxpayer's experience with inventory purchases during the year. The taxpayer should file a Form 3115 requesting permission to change its representative month from December to June beginning with the short taxable year ending June 30, 2002. Because the taxpayer's last purchases of the taxable year now will occur in June, the Commissioner will consent to the taxpayer's request to change its representative month to June.

Example 5. Changing representative month. The facts are the same as *in Example 2,* except that the taxpayer elects to use January as its representative month. The taxpayer timely files a Form 3115 requesting permission to change its representative month from January to December beginning with the taxable year ending December 31, 2003. January is not a permissible representative month because of the absence of a nexus between the most recent purchases method, the taxpayer's history of inventory purchases, and the month of January, the first month in the taxpayer's taxable year. Because December is a permissible representative month, the Commissioner will permit the taxpayer to change its representative month to December.

(C) *Assignment of inventory items to BLS categories—(1) In general.* Except as provided in paragraph (e)(3)(iii)(C)(*2*) of this section, a taxpayer must assign each item in a dollar-value pool to the most-detailed BLS category of the selected BLS table that contains that item. For example, in Table 6 of the "PPI Detailed Report" for a given month, the commodity codes for the various BLS categories run from 2 to 8 digits, with the least-detailed BLS categories having a 2-digit code and the most-detailed BLS categories usually (but not always) having an 8-digit code. For purposes of assigning items to the most-detailed BLS category, manufacturers and processors must assign each raw material item to the most-detailed PPI category that includes that raw material and must assign each finished good item to the most-detailed PPI category that includes that finished good. In addition, manufacturers and processors must assign each work-in-process (WIP) item to the most-detailed PPI category that includes the finished good into which the item will be manufactured or processed. For this purpose, *finished good* means a salable item that the taxpayer regularly sells. For example, a gasoline-engine manufacturer that also manufactures the pistons used in those engines and regularly sells some of the pistons (e.g., to retailers of replacement parts) must assign both finished pistons that have not been affixed to an engine block and piston WIP items to the most-detailed PPI category that includes pistons. Finished pistons that have been affixed to an engine block must be assigned to the most-detailed PPI category that includes gasoline engines. In contrast, if sales of these pistons occur infrequently, the taxpayer must assign both finished pistons and piston WIP items to the most-detailed PPI category that includes gasoline engines.

(2) 10 percent method. Instead of assigning each item in a dollar-value pool to the most-detailed BLS categories, as described in paragraph (e)(3)(iii)(C)(*1*) of this section, a taxpayer may elect to use the 10 percent method described in this paragraph (e)(3)(iii)(C)(*2*). Under the 10 percent method, items are assigned to BLS categories using a three-step procedure. First, when the current-year cost of a specific item is 10 percent or more of the total current-year cost of the dollar-value pool, the taxpayer must assign that item to the most-detailed BLS category that includes that item (10 percent BLS category). Any other item that is includible in that 10 percent BLS category (other than an item that qualifies for its own 10 percent BLS category under the preceding sentence) must be assigned to that 10 percent BLS category. Second, if one or more items have not been assigned to BLS categories in the first step, the taxpayer must investigate successively less-detailed BLS categories and assign the unassigned item(s) to the first BLS category that contains unassigned items whose current-year cost, in the aggregate, is 10 percent or more of the total current-year cost of the dollar-value pool (also, 10 percent BLS categories). This step must be repeated until all the items in the dollar-value pool have been included in an appropriate 10 percent BLS category, the current-year cost of the unassigned items, in the aggregate, is less than 10 percent of the total current-year cost of the dollar-value pool, or the taxpayer determines that a single BLS category is not appropriate for the aggregate of the unassigned items. Third, if items in a dollar-value pool have not been assigned to a 10 percent BLS category because the current-year cost of those items, in the aggregate, is less than 10 percent of the total current-year cost of the dollar-value pool, the taxpayer must assign those items to the most-detailed BLS category that includes all those items (also, a 10 percent category). On the other hand, if items in a dollar-value pool have not been assigned to a 10 percent BLS category because the taxpayer determines that a single BLS category is not appropriate for the aggregate of those items, the taxpayer must assign each of those items to a single miscellaneous BLS category created by the taxpayer (also, a 10 percent category). In no event may a taxpayer assign items in a dollar-value pool to a BLS category that is less detailed than either the major groups of consumer goods described in Table 3 of the monthly "CPI Detailed Report" or the major commodity groups of producer goods described in Table 6 of the monthly "PPI Detailed Report." Principles similar to those described in paragraph (e)(3)(iii)(C)(*1*) apply for purposes of assigning raw material, work-in-process, and finished good items to the most-detailed BLS category under the 10 percent method.

(3) Change in method of accounting. The 10 percent method of assigning items in a dollar-value pool to BLS categories is a method of accounting. In addition, a taxpayer's selection of a BLS category for a specific item is a method of accounting. However, the assignment of items to different BLS categories solely as a result of the application of the 10 percent method is a change in underlying facts and not a change in method of accounting. Likewise, the selection of a new BLS category for a specific item as a result of a revision to a BLS table is a change in underlying facts and not a change in method of accounting. A taxpayer that wants to change its method of selecting BLS categories (i.e., to or from the 10-percent method) or of selecting a BLS category for a specific item must secure the Commissioner's consent in accordance with § 1.446–1(e). A taxpayer that voluntarily changes its method of selecting BLS categories or of selecting a BLS category for a specific item must establish a new base year in the year of change as described in paragraph (e)(3)(iv)(B) of this section.

(D) Computation of a category inflation index—(1) In general. As described in more detail in this paragraph (e)(3)(iii)(D), a category inflation index reflects the inflation that occurs in the BLS price indexes for a selected BLS category (or, if applicable, 10 percent BLS category) during the relevant measurement period.

(2) BLS price indexes. The BLS price indexes are the cumulative indexes published in the selected BLS table for the appropriate month. A taxpayer may elect to use either preliminary or final BLS price indexes for the appropriate month, provided that the selected BLS price indexes are used consistently. However, a taxpayer that elects to use final BLS price indexes for the appropriate month must use preliminary BLS price indexes for any taxable year for which the taxpayer files its original federal income tax return before the BLS publishes final BLS price indexes for the appropriate month. If a BLS price index for a most-detailed or 10 percent BLS category is not otherwise available for the appropriate or representative month (but not because the BLS categories in the BLS table have been revised), the taxpayer must use the BLS price index for the next most-detailed BLS category that includes the specific item(s) in the most-detailed or 10 percent BLS category. If a BLS price index is not otherwise available for the appropriate or representative month because the BLS categories in the BLS table have been revised, the rules of paragraph (e)(3)(iii)(D)(*4*) of this section apply.

(3) Category inflation index. (i) In general. Except as provided in paragraph (e)(3)(iii)(D)(*4*) of this section (concerning compound category inflation indexes) or (e)(3)(iii)(D)(*5*) of this section (concerning category inflation indexes for certain 10 percent BLS categories), a category inflation index for a selected BLS category (or, if applicable, 10 percent BLS category) is computed under the rules of this paragraph (e)(3)(iii)(D)(*3*).

(ii) Double-extension IPIC method. In the case of a taxpayer using the double-extension IPIC method, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the appropriate month of the taxable year preceding the base year (base month). However, if the taxpayer did not have an opening inventory in the year that its election to use the dollar-value LIFO method and double-extension IPIC method became effective, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the month immediately preceding the month of the taxpayer's first inventory production or purchase.

(iii) Link-chain IPIC method. In the case of a taxpayer using the link-chain IPIC method, the category inflation index for a BLS category is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the appropriate month used for the immediately preceding taxable year. However, if the taxpayer did not have an opening inventory in the year that its election to use the dollar-value LIFO method and link-chain IPIC method became effective, the category inflation index for a BLS category for the year of election is the quotient of the BLS price index for the appropriate or representative month of the current year divided by the BLS price index for the month immediately preceding the month of the taxpayer's first inventory production or purchase.

(iv) Special rules concerning representative months. A taxpayer electing to use a representative month under paragraph (e)(3)(iii)(B)(*3*) of this section must use an appropriate month, rather than the representative month, to determine category inflation indexes in the circumstances described in this paragraph (e)(3)(iii)(D)(*3*)(*iv*) and in other similar circumstances. For example, in the case of a short taxable year, the category inflation index should reflect the inflation that occurs from the base month (in the case of the double-extension IPIC method), or the appropriate or representative month used for the preceding taxable year (in the case of the link-chain IPIC method), and the appropriate month for the short taxable year. Similarly, if a taxpayer using the link-chain IPIC method is granted consent to change both its method of determining the current-year cost of a dollar-value pool and its representative month, the category inflation index for the year of change should reflect the inflation that occurs between the old representative month used for the preceding taxable year and the new representative month used for the year of change.

(4) Compound category inflation index for revised BLS categories or price indexes—(i) In general. Periodically, the BLS revises a BLS table to add one or more new BLS categories, eliminate one or more previously reported BLS categories, or reset the base-year BLS price index of one or more BLS categories. If the BLS has revised the applicable BLS table for a taxable year, a taxpayer must compute the category inflation index for each BLS category for which the taxpayer cannot compute a category inflation index in accordance with paragraph (e)(3)(iii)(D)(*3*) of this section (affected BLS category) using a reasonable method, provided the method is used consistently for all affected BLS categories within a particular taxable year. For example, if the BLS revised the CPI by adding new BLS categories as of January 2001 and eliminating some previously reported BLS categories as of December 2000, January 2002 would be the first month for which it would be possible to compute a category inflation index for a 12-month period using the BLS price indexes for any affected category. The compound category inflation index described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section is a reasonable method of computing the category inflation index for an affected BLS category.

(ii) Computation of compound category inflation index. When the applicable BLS table is revised as described in paragraph (e)(3)(iii)(D)(*4*)(*i*) of this section, a taxpayer may use the procedure described in this paragraph (e)(3)(iii)(D)(*4*)(*ii*) to compute a compound category inflation index for each affected BLS category represented in the taxpayer's ending inventory. For this purpose, a compound category inflation index is the product of the category inflation index for the "first portion" multiplied by the corresponding category inflation index for the "second portion." The category inflation index for the first portion must reflect the inflation that occurs between the end of the base month (in the case of the double-extension IPIC method), or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method), and the end of the last month covered by the unrevised BLS table based on the old BLS category. The corresponding category inflation index for the second portion must reflect the inflation that occurs between the beginning of the first month covered by the revised BLS table based on the new BLS category and the end of the current year's appropriate or representative month. First, using the revised BLS table for the current-year's appropriate or representative month, the taxpayer assigns items in the dollar-value pool using its method of assigning items to BLS categories as described in paragraph (e)(3)(iii)(C) of this section. Second, for each affected BLS category represented in the ending inventory, the taxpayer computes the category inflation index for the second portion using this formula: [A/B], where A equals the BLS price index for the current year's appropriate or representative month and B equals the BLS price index for the last month covered by the unrevised BLS table (as

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published for the first month of the revised BLS table). Third, using the unrevised BLS table for the base month (in the case of the double extension IPIC method) or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method), the taxpayer assigns each of the items in the dollar-value pool using its method of assigning items to BLS categories. Fourth, for each affected BLS category represented in the ending inventory, the taxpayer computes the category inflation index for the first portion using this formula: [C/D], where C equals the BLS price index for the last month covered by the unrevised BLS table (as published for the last month of the unrevised BLS table) and D equals the BLS price index for the base month (in the case of the double-extension IPIC method) or the preceding year's appropriate or representative month (in the case of the link-chain IPIC method). Fifth, for each affected BLS category represented in the ending inventory, the taxpayer computes the compound category inflation index using this formula: [X*Y], where X equals the category inflation index for the second portion, and Y equals the corresponding category inflation index for the first portion. For the purpose of computing the compound category inflation index for each affected BLS category, the corresponding category inflation index for the first portion is the category inflation index for the unrevised BLS category that includes the specific inventory item(s) included in the revised BLS category. If items included in a single revised BLS category had been included in separate BLS categories before the revision of the BLS table, the corresponding category inflation index for the first portion is the weighted harmonic mean of the category inflation indexes for these unrevised BLS categories. See paragraph (e)(3)(iii)(E)(*1*) of this section for a formula of the weighted harmonic mean. When computing this weighted-average category inflation index, a taxpayer must use the current-year costs (or in the case of a retailer using the retail method, the retail selling prices) in ending inventory as the weights.

(*iii*) *New base year.* A taxpayer may establish a new base year in the year following the taxable year for which the taxpayer computed a compound category inflation index under this paragraph (e)(3)(iii)(D)(*4*) for one or more affected BLS categories in a dollar-value pool. See paragraph (e)(3)(iv)(B) of this section for the procedures and computations incident to establishing a new base year.

(*iv*) *Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii)(D)(*4*):

Example 1. BLS categories eliminated. (i) A retailer, whose taxable year ends January 31, elected to account for its inventories using the dollar-value LIFO method and double-extension IPIC method (based on the CPI), beginning with the taxable year ending January 31, 1997. The taxpayer does not use the retail method, but elected to use January as its representative month. On January 31, 1999, the taxpayer's only dollar-value pool contains only two items—lemons and peaches. The total current-year cost of these items is as follows: lemons, $40, and peaches, $30.

(ii) The CPI was revised in October of 1998 to eliminate the "Citrus fruits" subcategory of "Other fresh fruits." In addition, the base-year BLS price index for "Other fresh fruits" was reset to 100.00 as of October 1, 1998. In relevant part, the January 1999 CPI permits the assignment of both lemons and peaches to "Other fresh fruits." The January 1999 BLS price indexes for "Citrus fruits" and "Other fresh fruits" are 96.6 and 105.6, respectively. In relevant part, the September 1998 CPI permits the assignment of lemons to "Citrus fruits" and peaches to "Other fresh fruits." The September 1998 BLS price indexes for "Citrus fruits" and "Other fresh fruits" are 194.9 and 294.9, respectively, and the January 1997 BLS price indexes for "Citrus fruits" and "Other fresh fruits" are 190.2 and 290.2, respectively.

(iii) Because the BLS eliminated the category, "Citrus fruits," as of October 1998, it did not publish a BLS price index for that category in the January 1999 CPI. Thus, the taxpayer cannot compute a category inflation index for "Citrus fruits" under the normal procedures, but may compute a compound category inflation index for that affected BLS category using the procedures described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section.

(iv) The taxpayer computes a compound category inflation index for the two BLS categories that formerly included lemons and peaches. The taxpayer first assigns lemons and peaches to "Other fresh fruits," the most-detailed index in the January 1999 CPI, and then computes the category inflation index for the second portion as follows:

Item	1999 category	Jan. 1999 index/Sept. 1998 index (as published in Oct. 1998)	Category inflation index
Lemons and Peaches	Other fresh fruits	105.6/100.0	1.0560

(v) The taxpayer assigns the lemons and peaches to the most-detailed BLS categories in the January 1998 CPI as follows: lemons to "Citrus fruits" and peaches to "Other fresh fruits." Then, the taxpayer computes the category inflation index for the first portion as follows:

Item	1998 category	Sept. 1998 index (as published in Sept. 1998)/Jan. 1997	Category inflation index
Lemons	Citrus fruits	194.9/190.2	1.0247
Peaches	Other fresh Fruits	294.9/290.2	1.0162

(vi) Because lemons and peaches, which are included together in the revised "Other fresh fruits" category, had been included in separate BLS categories before the BLS table was revised, the taxpayer must compute a single corresponding category inflation index for the affected BLS categories for the first portion. This corresponding category inflation index is the weighted harmonic mean of the separate corresponding category inflation indexes for the first portion using the cost of the items in ending inventory as the weights. The taxpayer computes the corresponding category inflation index for "Other fresh fruits" for the first portion as follows:

Item	(I) Weight (cost of item)	(II) Category inflation index	(III) Quotient: (I)/(II)
Lemons	$40.00	1.0247	$39.04
Peaches	30.00	1.0162	29.52
Total	70.00		68.56

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Weighted harmonic mean of other fresh fruits: (IV)/(V)
$70.00	$68.56	1.0210

(vii) Finally, the taxpayer computes the compound category inflation index for Other fresh fruits as follows:

Item	(I) Category inflation index (second portion)	(II) Category inflation index (first portion)	(III) Compound category inflation index: (I)*(II)
Other fresh fruits	1.0560	1.0210	1.9782

(viii) The taxpayer may establish a new base year for the taxable year ending January 31, 2000.

Example 2. BLS categories separated. (i) The facts are the same as in *Example 1*, except prior to October 1998, both lemons and peaches were assigned to "Other fresh fruits" and in the October 1998 CPI, the BLS created a new category, "Citrus fruits," for citrus fruits, such as lemons. Moreover, the BLS reset the base-year BLS price index for "Other fresh fruits" to 100.0 as of October 1, 1998. As a result of these changes, the taxpayer may no longer assign lemons to "Other fresh fruits."

(ii) Because "Citrus fruits" is new as of October 1998, the BLS did not publish a BLS price index for this BLS category in the January 1999 CPI. Thus, because the taxpayer cannot compute a category inflation index for "Citrus fruits" under the normal procedures, the taxpayer may compute a compound category inflation index for the affected BLS category using the procedures described in paragraph (e)(3)(iii)(D)(*4*)(*ii*) of this section.

(iii) Based on the January 1999 CPI, the taxpayer assigns lemons to "Citrus fruits" and peaches to "Other fresh fruits." Then, the taxpayer computes a compound category inflation index for each of the two BLS categories. The computation of the category inflation index for the second portion is as follows:

Item	1999 category	Jan. 1999 index/Sept. 1998 index (as published in Oct. 1998)	Category inflation index
Lemons	Citrus fruits	96.6/100	0.9660
Peaches	Other fresh fruits	105.6/100	1.0560

(iv) Then, the taxpayer computes the category inflation index for the first portion as follows:

Item	1998 category	Sept. 1998 index (as published in Sept. 1998)/Jan. 1997	Category inflation index
Lemons & Peaches	Other fresh fruits	294.9/290.2	1.0162

(v) Finally, the taxpayer computes the compound category inflation index for "Citrus fruits" and "Other fresh fruits":

Item	(I) Category inflation index (second portion)	(II) Category inflation index (first portion)	(III) Compound category inflation index: (I)*(II)
Citrus fruits	0.9660	1.0162	0.9816
Other fresh fruits	1.0560	1.0162	1.0731

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(vi) The taxpayer may establish a new base year for the taxable year ending January 31, 2000.

(5) *10 percent method. (i) Applicability.* A taxpayer that elects to use the 10 percent method described in paragraph (e)(3)(iii)(C)(*2*) of this section must compute a category inflation index for a less-detailed 10 percent BLS category as provided in this paragraph (e)(3)(iii)(D)(*5*). A less-detailed 10 percent category is a BLS category that—

(*A*) subsumes two or more BLS categories;

(*B*) Does not have a single assigned item whose current-year cost is 10 percent or more of the current-year cost of all the items in the dollar-value pool;

(*C*) Has at least one item in at least one of the subsumed BLS categories; and

(*D*) Has at least one subsumed BLS category that either does not have any assigned items or is a separate 10 percent BLS category.

(*ii*) *Determination of category inflation index.* If the rules of this paragraph (e)(3)(iii)(D)(*5*) apply, the category inflation index for the less-detailed 10 percent BLS category is equal to the weighted arithmetic mean of the category inflation index (or, compound category inflation index, if applicable) for each of the subsumed BLS categories that have been assigned at least one item from the taxpayer's dollar-value pool (excluding any item that is properly assigned to a separate 10 percent BLS category). [Weighted Arithmetic Mean = Sum of (Weight x Category Inflation Index)]/Sum of Weights]. The appropriate weight for each of the most-detailed BLS categories referenced in the preceding sentence is the corresponding BLS weight. Currently, in January of each year, the BLS publishes the BLS weights determined for December of the preceding year. In the case of a taxpayer using the double-extension IPIC method, the BLS weights for December of the taxable year preceding the base year are to be used for all taxable years. In the case of a taxpayer using the link-chain IPIC method, the BLS weights for December of a given calendar year are to be used for taxable years that end during the 12-month period that begins on July 1 of the following calendar year. However, if the BLS weights are not published for all of the most-detailed BLS categories referenced above, the taxpayer may use the current-year cost (or in the case of a retailer using the retail method, the retail selling prices) of all items assigned to a specific most-detailed BLS category as the appropriate weight for that category, but must compute a weighted harmonic mean. See paragraph (e)(3)(iii)(E)(*1*) of this section for a formula of the weighted harmonic mean.

(E) *Computation of Inventory Price Index (IPI)—(1) Double-extension IPIC method.* Under the double-extension IPIC method, the IPI for a dollar-value pool is the weighted harmonic mean of the category inflation indexes (or, if applicable, compound category inflation indexes) determined under paragraph (e)(3)(iii)(D) of this section for each selected BLS category (or, if applicable 10 percent BLS category) represented in the taxpayer's dollar-value pool at the end of the taxable year. The formula for computing the weighted harmonic mean of the category inflation indexes is: [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The weights to be used when computing this weighted harmonic mean are the current-year costs (or, in the case of a retailer using the retail method, the retail selling prices) in each selected BLS category represented in the dollar-value pool at the end of the taxable year.

(*2*) *Link-chain IPIC method.* Under the link-chain IPIC method, the IPI for a dollar-value pool is the product of the weighted harmonic mean of the category inflation indexes (or, if applicable, the compound category inflation indexes) determined under paragraph (e)(3)(iii)(D) of this section for each selected BLS category (or, if applicable, 10 percent BLS category) represented in the taxpayer's dollar-value pool at the end of the taxable year multiplied by the IPI for the immediately preceding taxable year. The formula for computing the weighted harmonic mean of the category inflation indexes is: [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The weights to be used when computing this weighted harmonic mean are the current-year costs (or, in the case of a retailer using the retail method, the retail selling prices) in each selected BLS category represented in the dollar-value pool at the end of the taxable year.

(*3*) *Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii)(E):

Example 1. Double-extension method. (i) *Introduction.* R is a retail furniture merchant that does not use the retail method. For the taxable year ending December 31, 2000, R used the first-in, first-out method of identifying inventory and valued its inventory at cost. The total cost of R's inventory on December 31, 2000, was $850,000. R elected to use the dollar-value LIFO and double-extension IPIC methods for its taxable year ending December 31, 2001. R does not elect to use the 10 percent method described in paragraph (e)(3)(iii)(C)(*2*) of this section. R determines the current-year cost of the items using the actual cost of the most recently purchased goods. R elected to pool its inventory based on the major groups in Table 6 of the monthly "PPI Detailed Report" in accordance with the special IPIC pooling rules of paragraph (b)(4) of this section. All items in R's inventories fall within the 2-digit commodity code in Table 6 of the monthly "PPI Detailed Report" for "furniture and household durables." Therefore, R will maintain a single dollar-value pool.

(ii) *Select a BLS table and appropriate month for 2001.* R determines that the appropriate month for 2001 is October. R also determines that the appropriate month for 2000 would have been December if R had used the IPIC method for that year.

(iii) *Assign inventory items to BLS categories for 2001.* For 2001, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the October 2001 "PPI Detailed Report" that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120101	Living Room Table	$111,924.00
12120211	Dining Room Table	159,578.00
12120216	Dining Room Chairs	98,639.00
12130101	Upholstered Sofas	332,488.00
12130111	Upholstered Chairs	218,751.00
Total		921,380.00

(iv) *Compute category inflation indexes for 2001.* Because R elected to use the double-extension IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*ii*) of this section (BLS price indexes for October 2001 divided by BLS price indexes for December 2000). R computes the category inflation indexes for 2001 as follows:

Category	(I) Oct. 2001 index	(II) Dec. 2000 index	(III) Category inflation index: (I)/(II)
Living Room Table	172.4	169.2	1.018913
Dining Room Tab1e	171.9	168.1	1.022606
Dining Room Chairs	172.8	169.7	1.018268
Upholstered Sofas	142.2	140.9	1.009226
Upholstered Chairs	134.1	132.5	1.012075

(v) *Compute IPI for 2001.* R must compute the IPI for 2001, which is the weighted harmonic mean of the category inflation indexes for 2001. The formula for the weighted harmonic mean provided in paragraph (e)(3)(iii)(E)(*1*) of this section is [Sum of Weights/Sum of (Weight/Category Inflation Index)]. The IPI for 2001 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Table	$111,924.00	1.018913	$109,846.47
Dining Room Table	159,578.00	1.022606	156,050.33
Dining Room Chairs	98,639.00	1.018268	96,869.39
Upholstered Sofas	332,488.00	1.009226	329,448.51
Upholstered Chairs	218,751.00	1.012075	216,141.10
Total	$921,380.00		$908,355.80

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$921,380.00	$908,355.80	1.01433821

(vi) *Determine the LIFO value of the dollar-value pool for 2001.* For 2001, R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2001. The total base-year cost of R's ending inventory is $908,355.80 ($921,380/1.01433821). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2001 increment is $58,355.80 [$908,355.80—$850,000.00). R multiplies the base-year cost of the 2001 increment by the IPI for 2001 and determines that the LIFO value of the 2001 layer is $59,192.52 ($58,355.80 * 1.01433821). Thus, the LIFO value of R's total inventory at the end of 2001 is $909,192.52 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer)).

(vii) *Select a BLS table and appropriate month for 2002.* For 2002.0, R must compute a new IPI under the double-extension IPIC method to determine the LIFO value of its dollar-value pool. R determines that the appropriate month for 2002 is November.

(viii) *Assign inventory items to BLS categories for 2002.* For 2002, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the November 2002 "PPI Detailed Report" that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
Total		$951,743.00

(ix) *Compute category inflation indexes for 2002.* Because R uses the double-extension IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*ii*) of this section (BLS price indexes for November 2002 divided by BLS price indexes for December 2000). R computes the category inflation indexes for 2002 as follows:

Category	(I) Nov. 2002 index	(II) Dec. 2000 index	(III) Category inflation index (I)/(II)
Living Room Desks	172.6	160.3	1.076731
Dining Room Table	174.8	168.1	1.039857
Dining Room Chairs	177.0	169.7	1.043017
Upholstered Sofas	144.9	140.9	1.028389
Upholstered Chairs	136.6	132.5	1.030943

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(x) *Compute IPI for 2002.* R must compute the IPI for 2002, which is the weighted harmonic mean [Sum of Weights/Sum of (Weight/Category Inflation Index)] of the category inflation indexes for 2002. The IPI for 2002 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Desks	$125,008.00	1.076731	$116,099.56
Dining Room Table	136,216.00	1.039857	130,994.93
Dining Room Chairs	113,569.00	1.043017	108,885.09
Upholstered Sofas	343,900.00	1.028389	334,406.53
Upholstered Chairs	233,050.00	1.030943	226,055.17
Total	951,743.00		916,441.28

(IV) Sum of weights	(V) Category inflation index	(VI) Inventory price index: (IV)/(V)
$951,743.00	$916,441.28	1.03852044

(xi) *Determine the LIFO value of the pool for 2002.* For 2002, R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2002. The total base-year cost of the ending inventory is $916,441.28 ($951,743.00/1.03852044). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2002 increment is $8,085.48 ($916,441.28 − $908,355.80). R multiplies the base-year cost of the 2002 increment by the IPI for 2002 and determines that the LIFO value of the 2002 layer is $8,396.94 ($8,085.48 * 1.03852044). Thus, the LIFO value of R's total inventory at the end of 2002 is $917,589.46 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer) + $8,396.94 (2002 layer)).

Example 2. Link-chain method. (i) *Introduction.* The facts are the same as *Example 1*, except that R uses the link-chain IPIC method. The double-extension IPIC method and the link-chain IPIC method yield the same results for the first taxable year in which the dollar-value LIFO and IPIC methods are used. Therefore, this example illustrates only how R will compute the IPI for, and determine the LIFO value of, its dollar-value pool for 2002.

(ii) *Select a BLS table and appropriate month for 2002.* R determines that the appropriate month for 2002 is November.

(iii) *Assign inventory items to BLS categories for 2002.* For 2002, R assigns all items in the dollar-value pool to the most-detailed BLS categories listed in Table 6 of the November 2002 "PPI Detailed Report" that contain those items. The BLS categories and the current-year cost of the items assigned to them are summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
Total		951,743.00

(iv) *Compute category inflation indexes for 2002.* Because R uses the link-chain IPIC method and did not elect the 10 percent method, the category inflation indexes are computed in accordance with paragraph (e)(3)(iii)(D)(*3*)(*iii*) of this section (BLS price indexes for November 2002 divided by BLS price indexes for October 2001). R computes the category inflation indexes for 2002 as follows:

Category	(I) Nov. 2002 index	(II) Oct. 2001 index	(III) Category inflation index: (I)/(II)
Living Room Desks	172.6	162.0	1.065432
Dining Room Table	174.8	171.9	1.016870
Dining Room Chairs	177.0	172.8	1.024306
Upholstered Sofas	144.9	142.2	1.018987
Upholstered Chairs	136.6	134.1	1.018643

(v) *Compute IPI for 2002.* As provided in paragraph (e)(3)(iii)(E)(*2*) of this section, R must compute the IPI for 2002 by multiplying the weighted harmonic mean of the category inflation indexes for 2002 by the IPI for 2001. The IPI for 2002 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Living Room Desks	$125,008.00	1.065432	$117,330.81
Dining Room Table	136,216.00	1.016870	133,956.16

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
Dining Room Chairs	113,569.00	1.024306	110,874.09
Upholstered Sofas	343,900.00	1.018987	337,492.04
Upholstered Chairs	233,050.00	1.018643	228,784.77
Total	951,743.00		928,437.87

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Weighted harmonic mean of category inflation indexes for 2002: (IV)/(V)	(VII) Inventory price index for 2001	(VIII) Inventory price index for 2002: (VI)*(VII)
$951,743.00	$928,437.87	1.02510144	1.01433821	1.03979956

(vi) *Determine the LIFO value of the pool for 2002.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the items in the dollar-value pool by the IPI for 2002. The total base-year cost of the ending inventory is $915,313.91 ($951,743.00 / 1.03979956). Comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory, R determines that the base-year cost of the 2002 layer is $6,958.11 ($915,313.91−$908,355.80). R multiplies the base-year cost of the 2002 layer by the IPI for 2002 and determines that the LIFO value of the 2002 layer is $7,235.04 ($6,958.11 * 1.03979956). Thus, the LIFO value of R's total inventory at the end of 2002 is $916,427.56 ($850,000.00 (opening inventory) + $59,192.52 (2001 layer) + $7,235.04 (2002 layer)).

(iv) *Adoption or change of method—*(A) *Adoption or change to IPIC method.* The use of an inventory price index computed under the IPIC method is a method of accounting. A taxpayer permitted to adopt the dollar-value LIFO method without first securing the Commissioner's consent also may adopt the IPIC method without first securing the Commissioner's consent. The IPIC method may be adopted and used, however, only if the taxpayer provides the following information on a Form 970, "Application to Use LIFO Inventory Method," or in another manner as may be acceptable to the Commissioner: A complete list of dollar-value pools (including a description of the items in each dollar-value pool); the BLS table (i.e., CPI or PPI) selected for each dollar-value pool; the representative month, if applicable, elected for each dollar-value pool; the BLS categories to which the items in each dollar-value pool will be assigned; the method of assigning items to BLS categories (e.g., the 10 percent method) for each dollar-value pool; and the method of computing the IPI (i.e., double-extension IPIC method or link-chain IPIC method) for each dollar-value pool. In the case of a taxpayer permitted to adopt the IPIC method without requesting the Commissioner's consent, the Form 970 must be attached to the taxpayer's income tax return for the taxable year of adoption. In all other cases, a taxpayer may change to the IPIC method only after securing the Commissioner's consent as provided in § 1.446–1(e). In these latter cases, the Form 970 containing the information described in this paragraph (e)(3)(iv)(A) must be attached to a Form 3115, "Application for Change in Accounting Method," filed as required by § 1.446–1(e). A taxpayer that simultaneously changes to the dollar-value LIFO and IPIC methods from another LIFO method must apply the rules of paragraph (f)(2) of this section before applying the rules of paragraph (e)(3)(iv)(B)(*1*) of this section. To satisfy the requirements of § 1.472–2(h), taxpayers must maintain adequate books and records, including those concerning the use of the IPIC method and necessary computations.

Notwithstanding the rules in paragraph (e)(1) of this section, a taxpayer that adopts, or changes to, the link-chain IPIC method is not required to demonstrate that the use of any other method of determining the LIFO value of a dollar-value pool is impractical.

(B) *New base year—*(*1*) *Voluntary change—*(*i*) *In general.* In the case of a taxpayer using a non-IPIC method to determine the LIFO value of inventory, the layers previously determined under that method, if any, and the LIFO values of those layers are retained if the taxpayer voluntarily changes to the IPIC method. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the dollar-value pool, the year of change is used as the new base year for the purpose of determining the amount of increments and liquidations, if any, for the year of change and subsequent taxable years. The base-year cost of the layers in a dollar-value pool at the beginning of the year of change must be restated in terms of new base-year cost using the year of change as the new base year and, if applicable, the indexes for the previously determined layers must be recomputed accordingly. The recomputed indexes will be used to determine the LIFO value of subsequent liquidations. For purposes of computing an IPI under paragraph (e)(3)(iii)(E) of this section, the IPI for the immediately preceding year is 1.00. The new total base-year cost of the items in a dollar-value pool for the purpose of determining future increments and liquidations is equal to the total current-year cost of the items in the dollar-value pool (determined using the taxpayer's method of determining the total current-year cost of the items in the dollar-value pool under paragraph (e)(2)(ii) of this section). A taxpayer must allocate this new total base-year cost to each layer based on the ratio of the old base-year cost of the layer to the old total base-year cost of the dollar-value pool.

(ii) Example. The following example illustrates the rules of this paragraph (e)(3)(iv)(B)(*1*):

Example. (i) In 1990, X elected to use a dollar-value LIFO method (other than the IPIC method) for its single dollar-value pool. X is granted permission to change to the link-chain IPIC method, beginning with the taxable year ending December 31, 2001. X will continue using a single dollar-value pool. X's beginning inventory as of January 1, 2001, computed using its former inventory method, is as follows:

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Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I) * (II)
Base layer	$135,000	1.00	$135,000
1991 layer	20,000	1.43	28,600
1994 layer	60,000	1.55	93,000
1995 layer	13,000	1.59	20,670
1997 layer	2,000	1.61	3,220
Total	230,000		280,490

(ii) Under X's method of determining the current-year cost of items in a dollar-value pool, the current-year cost of the beginning inventory is $391,000. Thus, X's new base-year cost as of January 1, 2001, is $391,000. X allocates this new base-year cost to each layer based on the ratio of old base-year cost of the layer to the total old base-year cost of the dollar-value pool. To recompute the inflation indexes for each of its layers, X divides the LIFO value of each layer by the new base-year cost attributable to the layer. The new base-year cost, recomputed inflation indexes, and LIFO value of X's layers as of January 1, 2001, are as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
Total	391,000		280,490

(iii) In 2001, the current-year cost of X's ending inventory is $430,139. The weighted harmonic mean of the category inflation indexes applicable to X's ending inventory is 1.075347, and in accordance with paragraph (e)(3)(iv)(B)(*1*)(*i*) of this section, the inflation index for the immediately preceding taxable year is 1.00. Thus, X's IPI for 2001 is 1.075347 (1.00 * 1.075347). The total base-year cost of X's ending inventory is $400,000 ($430,139/1.075347). The base-year cost, IPI, and LIFO value of X's layers as of December 31, 2001, are as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
2001 layer	9,000	1.075347	9,678
Total	400,000		290,168

(iv) In 2002, the current-year cost of X's ending inventory is $418,000. The weighted harmonic mean of the category inflation indexes applicable to X's ending inventory is 1.02292562, and the IPI for the immediately preceding year is 1.075347. Thus, X's IPI for 2001 is 1.10 (1.075347 * 1.02292562). The total base-year cost of X's ending inventory is $380,000 ($418,000/1.10), which results in a liquidation of $20,000 ($400,000 − $380,000) in terms of base-year cost. This liquidation eliminates the 2001 layer ($9,000 base-year cost), the 1997 layer ($3,400 base-year cost), and part of the 1995 layer ($7,600 base-year cost). The base-year cost, indexes, and LIFO value of X's layers as of December 31, 2002, are as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I) * (II)
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	14,500	0.935294	13,562
Total	380,000		270,162

(2) *Involuntary change—(i) In general.* If a taxpayer uses a non-IPIC method to compute the LIFO value of a dollar-value pool, and if the Commissioner determines that the taxpayer's method does not clearly reflect income, the Commissioner may require the taxpayer to change to the IPIC method. If the Commissioner requires a taxpayer to change to the IPIC method, and the taxpayer does not provide sufficient information from its books and records to compute an adjustment under section 481, the Commissioner may implement the change using the simplified transition method described in paragraph (e)(3)(iv)(B)(*2*)(*ii*) of this section.

(ii) Simplified Transition Method. Under the simplified transition method, the Commissioner will recompute the LIFO value of each dollar-value pool as of the beginning of the year of change using the double-extension IPIC method or the link-chain IPIC method. The adjustment under section 481 is equal to the difference between the recomputed LIFO value and the LIFO value of the pool determined under the taxpayer's former method. The Commissioner will compute an IPI using the double-extension IPIC method or link-chain IPIC method for each taxable year in which the LIFO method was used by the taxpayer based on the assumptions that the ending inventory of the pool in each taxable year was comprised of items that fall into the same BLS categories as the items in the ending inventory of the year of change and that the relative weights of those BLS categories in all prior years were the same as the relative weights of those BLS categories in the ending inventory of the year of change. The base-year cost of the items in a dollar-value pool at the end of a taxable year will be determined by dividing the IPI computed for the taxable year into the current-year cost of the items in that pool determined in accordance with paragraph (e)(2)(ii) of this section. If the comparison of the base-year cost of the beginning and ending inventory produces a current-year increment, the base-year cost of that increment will be multiplied by the IPI computed for that taxable year to determine the LIFO value of that layer.

(iii) Example. The following example illustrates the rules of this paragraph (e)(3)(iv)(B)(*2*)(*ii*).

Example. (i) Z began using a dollar-value LIFO method other than the IPIC method in the taxable year ending December 31, 1998, and maintains a single dollar-value pool. Z's beginning inventory as of January 1, 2000, computed using its method of accounting, was as follows:

Layer	(I) Base-year cost	(II) Inflation index	(III) LIFO value: (I)*(II)
Base layer	$105,000	1.00	$105,000
1998 layer	3,000	1.40	4,200
Total	108,000		109,200

(ii) Upon examining Z's federal income tax return for the taxable year ending December 31, 2000, the examining agent determines that Z's dollar-value LIFO method does not clearly reflect income. The examining agent chooses to change Z to the double-extension IPIC method for 2000 and implements the change using the simplified transition method as follows. First, the inventory in Z's dollar-value pool at the end of 2000 is assigned to the most-detailed categories in the CPI or PPI, whichever is appropriate. Assume that 80 percent of the current-year cost of Z's inventory as of December 31, 2000, is assigned to Category 1, 10 percent is assigned to Category 2, and 10 percent is assigned to Category 3. Assume further that the current-year cost of the inventory in Z's dollar-value pool at the end of 1998 and 1999 was $133,000 and $145,000, respectively.

(iii) The category inflation indexes for 1998 computed under the double-extension IPIC method are 1.17 for Category 1, 1.26 for Category 2, and 1.19 for Category 3. The weights to be used in computing the IPI for 1998 are $106,400 ($133,000 * 80 percent) for Category 1, $13,300 ($133,000 * 10 percent) for Category 2, and $13,300 ($133,000 * 10 percent) for Category 3. The IPI for 1998 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
1	$106,400	1.17	90,940
2	13,300	1.26	10,556
3	13,300	1.19	11,176
Total	133,000		112,672

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$133,000	$112,672	1.180417

(iv) The base-year cost of the inventory in Z's pool at the end of 1998 is $112,672 ($133,000/1.180417), and the base-year cost of the 1998 increment is $7,672 ($112,672 − $105,000). The LIFO value of the 1998 layer is $9,056 ($7,672 × 1.180417).

(v) The category inflation indexes for 1999 computed under the double-extension IPIC method were 1.21 for Category 1, 1.29 for Category 2 and 1.23 for Category 3. The weights to be used in computing the IPI for 1999 are $116,000 ($145,000 × 80 percent) for Category 1, $14,500 ($145,000 × 10 percent) for Category 2, and $14,500 ($145,000 × 10 percent) for Category 3. The IPI for 1999 is computed as follows:

Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
1	$116,000	1.21	$95,868
2	14,500	1.29	11,240

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Category	(I) Weight	(II) Category inflation index	(III) Quotient: (I)/(II)
3	14,500	1.23	11,789
Total	145,000		118,897

(IV) Sum of weights	(V) Sum of (weight/category inflation index)	(VI) Inventory price index: (IV)/(V)
$145,000	$118,897	1.219543

(vi) The base-year cost of the inventory in Z's pool at the end of 1999 is $118,897 ($145,000/1.219543), and the base-year cost of the 1999 layer is $6,225 ($118,897 − $112,672). The LIFO value of the 1999 layer is $7,592 ($6,225 × 1.219543).

(vii) The LIFO value of Z's dollar-value pool at the end of 1999 computed under the double-extension IPIC method is as follows:

Layer	(I) Base-year cost	(II) Inventory price index	(III) LIFO value: (I)*(II)
Base layer	$105,000	1.000000	$105,000
1998 layer	7,672	1.180417	9,056
1999 layer	6,225	1.219542	7,592
Total	118,897		121,648

(viii) The section 481(a) adjustment is equal to the difference between the LIFO value of the inventory at the beginning of 2000 computed under Z's former method of accounting and recomputed by the examining agent under the double-extension IPIC method, or $12,448 ($121,648—$109,200).

(ix) Finally, the examining agent will recompute Z's taxable income for 2000 and succeeding taxable years using the double-extension IPIC method.

(v) *Effective date*—(A) *In general.* The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years ending on or after December 31, 2001.

(B) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this paragraph (e)(3) or with paragraphs (b)(4) or (c)(2) of this section is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first or second taxable year ending on or after December 31, 2001, a taxpayer is granted the consent of the Commissioner to change its method of accounting to a method required or permitted by this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section. A taxpayer that wants to change its method of accounting under this paragraph (e)(3)(v) must follow the automatic consent procedures in Rev. Proc. 2002–9 (2002–3 I.R.B. xxx) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply, and the five-year limitation on the readoption of the LIFO method under section 10.01(2) of the Appendix is waived. In addition, if the taxpayer's method of accounting for its LIFO inventories is an issue under consideration at the time the application is filed with the national office, the audit protection of section 7 of Rev. Proc. 2002–9 does not apply. If a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer or counsel for the government, as appropriate, at the same time it files the application with the national office. Any change under this paragraph (e)(3)(v)(B) must be made using a cut-off method and new base year as required by paragraph (e)(3)(iv)(B)(*1*) of this section. Because a change under this paragraph (e)(3)(v)(B) is made using a cut-off method, a section 481(a) adjustment is not permitted. However, a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) must comply with the requirements of section 10.06(3) of the APPENDIX of Rev. Proc. 2002–9 (concerning bargain purchases).

* * * * *

(h) *LIFO inventories received in certain nonrecognition transactions*—(1) *In general.* Except as provided in paragraph (h)(3) of this section, if inventory items accounted for under the LIFO method are received in a transaction described in paragraph (h)(2) of this section, then, for the purpose of determining future increments and liquidations, the transferee must use the year of transfer as the base year and must use its current-year cost (computed under the transferee's method of accounting) of those items as their new base-year cost. If the transferee had opening inventories in the year of transfer, then, for the purpose of determining future increments and liquidations, the transferee must use its current-year cost (computed under the transferee's method of accounting) of those inventories as their new base-year cost. For this purpose, "opening inventory" refers to all items owned by the transferee before the transfer for which the transferee uses, or elects to use, the LIFO method. The total new base-year cost of the transferee's inventory as of the beginning of the year of transfer is equal to the new base-year cost of the inventory received from the transferor and the new base-year cost of the transferee's opening inventory. The index (or, the cumulative index in the case of the link-chain method) for the year immediately preceding the year of transfer is 1.00. The base-year cost of any layers in the dollar-value pool, as determined after the transfer, must be recomputed accordingly. See paragraph (e)(3)(iv)(B)(*1*) of this section for an example of this computation.

(2) *Transactions to which this paragraph (h) applies.* The rules in this paragraph (h) apply to a transaction in which—

(i) The transferee determines its basis in the inventories, in whole or in part, by reference to the basis of the inventories in the hands of the transferor;

(ii) The transferor used the dollar-value LIFO method to account for the transferred inventories;

(iii) The transferee uses the dollar-value LIFO method to account for the inventories in the year of the transfer; and

(iv) The transaction is not described in section 381(a).

(3) *Anti-avoidance rule.* The rules in this paragraph (h) do not apply to a transaction entered into with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable to the transferor without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, a transfer is deemed made with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor without securing consent from the Commissioner if the transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and used a dollar-value LIFO method to account for that inventory that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items. Inventory is deemed acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was less than or equal to 50 percent of the replacement cost of physically identical inventory. Inventory is not considered acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was greater than or equal to 75 percent of the replacement cost of physically identical inventory.

(4) *Effective date.* The rules of this paragraph (h) are applicable for transfers that occur during a taxable year ending on or after December 31, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, in the table in paragraph (b), the entry for 1.472–8 is revised to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.472–8	1545–0028 1545–0042 1545–1767
. . . . .	.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
Approved: December 21, 2001.
Mark Weinberger,
Assistant Secretary of the Treasury.
[FR Doc. 02–184 Filed 1–8–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–048]

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River at Burlington, Iowa. This deviation allows the drawbridge to remain closed-to-navigation for 60 days from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002. The drawbridge shall open on signal if at least six (6) hours advance notice is given.

DATES: This temporary deviation is effective from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Branch maintains the public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Burlington Railroad Drawbridge provides a vertical clearance of 21.5 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

On November 27, 2001 the Burlington Northern Santa Fe Railroad requested the bridge be maintained in the closed-to-navigation position to allow the bridge owner time for preventative maintenance in the winter and when there is less impact on navigation; instead of scheduling maintenance in the summer, when river traffic increases.

This deviation allows the bridge to remain closed-to-navigation from 12:01 a.m. Central Standard Time (CST) on December 31, 2001, until 12:01 a.m. Central Standard Time (CST) on March 1, 2002. The drawbridge will open on signal if at least six (6) hours advance notice is given. Advance notice may be given by calling Mr. Louis Welte, (309) 345–6103 during work hours and Mr. Larry Moll, (309) 752–5244, after work hours.

Dated: December 28, 2001.
Roy J. Casto,
Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.
[FR Doc. 02–503 Filed 1–8–02; 8:45 am]
BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–045]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River. From 12:01 a.m., December 27, 2001, until 9 a.m., March 11, 2002, the drawbridge shall open on signal if at least 24 hours advance notice is given.

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This change is necessary to perform annual maintenance and repair on the bridge.

DATES: This rule is effective from 12:01 a.m. Central Standard Time on December 27, 2001, to 9 a.m. Central Standard Time on March 11, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD08–01–045 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the Canadian National/Illinois Central Railroad Company and the date of requested closure. The Coast Guard received the Canadian National/Illinois Central Railroad Company's request on 6 November 2001. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 24 (Mile 273.4 UMR) until March 2, 2002 and Lock No. 12 (Mile 556.7) until March 11, 2002, will preclude any significant navigation demands for the drawspan opening. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections were raised.

Background and Purpose

On November 6, 2001, the Canadian National/Illinois Central Railroad Company requested a temporary change to the Operation of the Illinois Central Railroad swing bridge across the Upper Mississippi River, Mile 579.9 at Dubuque, Iowa. Canadian National/Illinois Central Railroad Company requested that navigation temporarily provide 24 hours advance notice for bridge operation to facilitate required bridge maintenance during the winter months.

The Illinois Central Railroad Drawbridge navigation span has a vertical clearance of 19.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Canadian National/Illinois Central Railroad Company requested the drawbridge be permitted to remain closed-to-navigation from 12:01 a.m., December 27, 2001, until 9 a.m., March 11, 2002 unless 24 hours advance notice is given of the need for it to open. Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 24 (Mile 273.4 UMR) until March 2, 2002 and Lock No. 12 (Mile 556.7) until March 11, 2002, will preclude any significant navigation demands for the drawspan opening. The Illinois Central Railroad Drawbridge, Mile 579.9 Upper Mississippi River, is located upstream from Lock 24. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to bridge closures or advance notification requirements during the commercial navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections were raised.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic will be extremely limited by lock closures and ice during this period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1 (series), this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m., December 27, 2001, through 9 a.m., March 11, 2002, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

From 12:01 a.m., December 27, 2001 through 9 a.m., March 11, 2002, the drawspan of the Illinois Central Railroad Drawbridge, mile 579.9, requires 24 hours advance notice for bridge operation.

Dated: December 27, 2001.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–504 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 01–013]

RIN 2115–AA97

Security Zone; Port Hueneme Harbor, Ventura County, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone covering all waters within Port Hueneme Harbor in Ventura County, CA. This security zone is needed for national security reasons to protect the Naval Base Ventura County and the commercial port from potential subversive acts. Entry into this zone is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County, or their designated representatives.

DATES: The rule is effective from 12:01 a.m. PST on December 21, 2001 to 11:59 p.m. PDT on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 01–013 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ken O'Connor, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners advising of this new rule.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that further subversive activity may be launched against the United States. These terrorist acts have increased the need for safety and security measures on U.S. ports and waterways as further attacks may be launched from vessels within the area of Port Hueneme Harbor and the Naval Base Ventura County.

In response to these terrorist acts, to prevent similar occurrences, and to protect the Naval Facilities at Port Hueneme Harbor and the Naval Base Ventura County, the Coast Guard is establishing a security zone in all waters within Port Hueneme Harbor. This security zone is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard

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ports, harbors, or waters of the United States in Port Hueneme Harbor, Ventura County, CA. Specifically this security zone prohibits all vessels from entering Port Hueneme Harbor, beyond the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) demarcation line set forth in section 80.1120 of Title 33 of the Code of Federal Regulations (CFR), without first filing a proper Advance Notification of Arrival as required by sections 160.T208–T214 of Title 33 of the CFR as well as obtaining clearance from Commanding Officer, Naval Base Ventura County, "Control 1".

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including sections 6.01 and 6.04 of Title 33 of the CFR. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This rule will be enforced by the Captain of the Port Los Angeles-Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this rule. Commanding Officer, Naval Base Ventura County, "Control 1," will control vessel traffic entering Port Hueneme Harbor.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this zone will encompass a small portion of the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that it is categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add a new temporary § 165.T11–060 to read as follows:

§ 165.T11–060 Security Zone; Port Hueneme Harbor, Ventura County, California.

(a) *Location.* The following area is a Security Zone: The water area of Port Hueneme Harbor inside of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) demarcation line.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, the following rules apply to the security zone established by this section:

(i) No person or vessel may enter or remain in this security zone without the permission of the Captain of the Port Los Angeles-Long Beach, CA, or the Commanding Officer, Naval Base Ventura County, CA, "Control 1,";

(ii) Vessels that are required to make Advanced Notifications of Arrival as per §§ 160.T204–T214 of part 160 of this chapter continue to make such reports;

(iii) All vessels must obtain clearance from "Control 1" on VHF–FM marine radio 06 prior to crossing the COLREGS demarcation line at Port Hueneme Harbor;

(iv) Vessels without marine radio capability must obtain clearance in advance by contacting "Control 1" via telephone at (805) 982–3938 prior to crossing the COLREGS demarcation line at Port Hueneme Harbor.

(2) The Captain of the Port will notify the public of this Security Zone via broadcast and published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County or their authorized representatives.

(c) *Dates.* This section becomes effective at 12:01 a.m. PST on December 21, 2001, and will terminate at 11:59 p.m. PDT on June 15, 2002.

Dated: December 21, 2001.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–502 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–223]

RIN 2115–AA97

Safety Zone; Fore River Bridge Repairs—Weymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Fore River (Route 3A) Bridge Repairs, starting January 1, 2002 until September 30, 2002, in Weymouth, MA. The safety zone is to ensure the safe operation of a 55-foot-wide crane barge underneath the Fore River Bridge in order to conduct repair operations, Monday through Saturday of each week during the effective time period and is necessary to protect maritime traffic in the area of the safety zone. The safety zone prohibits vessels from operating within 30-feet of the barge.

DATES: This rule is effective from January 1, 2002 until September 30, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Regulatory History

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Discussions were held with all interests most likely to be affected by this safety zone. These include Massachusetts Highway Department, The Middlesex Corporation (TMC), Weymouth Fore River operators, barge and ferry companies, and recreational boater representatives. These interests agree that the parameters of the zone will not unduly impair business and unscheduled operations or transits of vessels. Therefore, notice and comment is unnecessary. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect marine traffic from bridge construction hazards while transiting a portion of the Fore River, Weymouth, Massachusetts, during the Fore River Bridge repairs. This safety zone should have minimal impact on vessel transits due to the fact that the safety zone does not block the entire channel, and procedures have been established for the movement of the construction barge, should larger vessels that are unable to transit around the barge while in the channel, need to transit the area. Notifications will be made to the maritime community via notice to mariners and marine information broadcasts informing them of boundaries of the zone.

Background and Purpose

A previous rulemaking, published at 66 FR 13851, effective from February 21 through December 31, 2001, established a safety zone identical to that established in this rulemaking to conduct repairs to the Fore River Bridge. Additional time is needed to complete the repairs required to allow for the proper operation of the bridge. The safety zone allows TMC to place a 55-foot-wide crane barge in the Fore River underneath the Fore River Bridge to conduct repair operations, Monday through Saturday of each week from January 1, 2002 through September 30, 2002. This safety zone prohibits vessels from operating within 30-feet of the barge. Most marine traffic may transit safely outside of the safety zone during the repairs. In the event a large vessel should need to transit the channel, the TMC barge shall move upon request. Requests to move the barge should be made directly to TMC at (781) 665–3261 or (978) 590–2754 with as much advance notice as possible (at least 8 hours is preferred). The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

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Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Weymouth Fore River during this bridge repair period, the effect of this regulation will not be significant for several reasons: maritime interests, which frequently use the channel, have provided input into the scheduling of the bridge repairs, the safety zone does not block the entire channel, advanced notice will be given through marine broadcasts, and the construction barge will be required to move upon request for larger vessels unable to transit around it while in the channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Weymouth Fore River between January 1 and September 30, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone does not block the entire channel, advanced notice will be given through marine broadcasts, and the construction barge will be required to move upon request for larger vessels unable to transit around it while in the channel.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Chief Petty Officer Michael Popovich, Marine Safety Office Boston, at (617) 223–3067. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From January 1, 2002 until September 30, 2002, add temporary § 165.T01–223 to read as follows:

§ 165.T01–223 Safety Zone: Fore River Bridge Repairs—Weymouth, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Weymouth Fore River within a 30-foot radius of The Middlesex Corporation (TMC) construction barge located under the Fore River Bridge.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety zone unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: December 14, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–505 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI–01–115]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones 100 yards around all tank vessels loaded with hazardous cargo and passenger vessels with passengers aboard when these vessels enter or depart the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. We are also establishing temporary fixed security zones 100 yards around all tank vessels loaded with hazardous cargo and passenger vessels with passengers aboard when these vessels are moored in the Ports of Palm Beach, Port Everglades, Miami, or Key West, Florida. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective from 11:59 p.m. on September 25, 2001 until 11:59 p.m. on June 15, 2002 unless terminated earlier by the Captain of the Port, Miami, Florida.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Miami 01–115 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139, between 7:30 p.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Joseph Boudrow, Coast Guard Marine Safety Office Miami, at (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity to advise mariners of the restriction.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida against tank vessels and cruise ships entering, departing and moored within these ports. There will be Coast Guard and local police department patrol vessels on scene to monitor traffic through these areas.

The security zone for the Port of Palm Beach is activated when a subject vessel passes the "LW" buoy, at approximate position 26° 46′ 18N, 080° 00′ 36W. The security zone for the Port of Miami is activated when a subject vessel passes the "M" buoy, at approximate position 25° 46′ 06N, 080° 05′ 00W. The Port Everglades security zone starts when a subject vessel passes "PE" buoy, at approximate position 26° 05′ 30N, 080° 04′ 48W. And the security zone for the Port of Key West is activated when a subject vessel passes "KW" buoy, at approximate position 24° 27′ 42N, 081° 48′ 06W. The zone for a vessel is deactivated when the vessel passes these buoys on its departure from port.

The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in the ports by identifying the names of the vessels around which the zones are centered. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter the zone on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's

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responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Party

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. It is not economically significant and creates no environmental risk to health or risk to safety disproportionately affecting children.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–115 is added to read as follows:

§ 165.T07–115 Security Zones; Ports of Palm Beach, Port Everglades, Miami, and Key West, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels with hazardous cargo onboard and all passenger vessels with passengers aboard during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: "LW" buoy, at approximate position 26° 46′ 18N, 080° 00′ 36W when entering the Port of Palm Beach, passes "PE" buoy, at approximate position 26° 05′ 30N, 080° 04′ 48W when entering Port Everglades; the "M" buoy, at approximate position 25° 46′ 06N, 080° 05′ when entering the Port of Miami; and "KW" buoy, at approximate position 24° 27′ 42N, 081° 48′ 06W when entering the Port of Key West. Temporary fixed security zones are established 100 yards around all tank vessels with hazardous cargo onboard and all passenger vessels with passengers aboard docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(b) *Regulations.* In accordance with the general regulations of § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, Miami or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in port by identifying the names of the vessels around which they are centered.

(c) *Dates.* This regulation becomes effective at 11:59 p.m. on September 25, 2001 and will terminate at 11:59 p.m. on June 15, 2002 unless terminated earlier by the Captain of the Port, Miami, Florida.

Dated: September 25, 2001.

J.A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 02–546 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301193; FRL–6812–5]

RIN 2070–AB78

Indian Meal Moth Granulosis Virus; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the Indian Meal Moth Granulosis Virus on dried fruits and nuts when applied/used as a microbial pesticide to control the Indian Meal Moth (*Plodia interpunctella*). AriVir, LLC. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Indian Meal Moth Granulosis Virus (IMMGV).

DATES: This regulation is effective January 9, 2002. Objections and requests for hearings, identified by docket control number [OPP–301193], must be received by EPA, on or before March 11, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number [OPP–301193] in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; and e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at ttp://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301193. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 7, 2000 (65 FR 41984) (FRL–6556–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by AgriVir, LLC., 1625 K St., NW., Washington, DC 20006. This notice included a summary of the petition prepared by the petitioner AgriVir, LLC. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of IMMGV.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the toxicology data cited and the limited exposure to humans and domestic animals, there is a reasonable certainty that no harm will result from aggregate exposure to IMMGV to the U.S. population including infants and children to residues of IMMGV when used as viral pest control agent to

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control the Indian Meal Moth on stored nuts and dried fruits. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of research, use and safety of testing baculoviruses which is documented in the public scientific literature (Doller, G. 1985. The safety of insect virus as biological control agents. In "Viral Insecticides for Biolocial Control" (Eds. Maramorosch, K. and Sherman, H.G.), Academic Press, New York: 399, Heimpel, A.M. 1971. Safety of insect pathogens for man and vertebrates. In "Microbial Control of Insects and Mites" (Eds. Burges, H.D. and Hussey, N.W.), Academic Press, New York: 469-489, Groner, A. 1986. Specificity and safety of baculoviruses. In "The Biology of Baculoviruses Vol. I: Biological Properties and Molecular Biology" (Eds. Granados, R.D. and Federici, B.A), CRC Press, Boca Raton, Florida: 177-202). Consigili, R.A., D.L. Russell and M.E. Wilson. 1986. The biochemistry and molecular biology of the granulosis virus that infects *Plodia interpunctella*. Cur. Top. Microbiol. and Immunol. 131: 69-101. Hunter, D.K. 1970. Pathogenicity of a granulosis virus of the Indian meal moth. J. Invertebr. Pahtol. 16: 339-341.

IMMGV is a naturally-occurring organism to which some environmental and dietary exposure is likely to be common for most individuals. The conclusion of safety is further supported by the lack of toxic or pathogenic effects on test animals at high doses (data submitted by the registrant, MRID #'s 453070-01, 450662-07 & 450662-08). Baculoviruses have been described in the scientific literature for approximately 40 years. In addition to their natural occurrence, these viruses have a long history of safe use as bioinsecticides. Baculoviruses have been studied extensively in both laboratory and field experiments, which have shown that the virus host range is limited to arthropods. IMMGV has been shown to be very restricted in its insect host range. No toxicological or pathogenic effects produced by the baculovirus itself, have been observed in mammals, birds, fish or plants. The lack of mammalian toxicity at high levels of exposure to IMMGV demonstrates the safety of the product at levels well above maximum possible exposure levels anticipated in the crops. There has been a significant amount of research performed on baculoviruses and numerous scientific references are available which describe the biology of these viruses, their host range, and their mode of action.

Toxicity studies submitted in support of this tolerance exemption include the following:

1. *Acute oral toxicity/pathogenicity (453070-01).* Thirteen male (254-321g) and 13 female (160-208g) albino rats were divided into three groups and treated with 0.1 milliliter (mL) of the test substance. Treatment was administered by oral gavage with at least 1 x 10^8 viral particles per animal. No deaths occurred in any of the test animals. Other than diarrhea during the first few hours following dosing, there were no other apparent clinical symptoms. Based upon the data there were no significant adverse effects reported upon doses of at least 1 x 10^8 viral capsules. Toxicity Category IV.

2. *In vitro mammalian cell viral infectivity in mammalian cells (450662-08).* Human WI-38 and WS1 cell cultures and African Green monkey CV-1 cell cultures were exposed to ≥ 1 x 10^6 units of the test substance. The cell cultures were observed daily for 21 days following inoculation for virus induced cytopathic effects. The test preparation was shown to be highly infectious and cytopathic to the target *Plodia interpunctella* larva. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to any cytopathic endpoint at any time post-inoculation. Based on the data, there was no evidence that the virus could infect any of the three mammalian cell lines.

3. *In vitro mammalian cell viral induced cytotoxicity (450662-07).* Human WI-38 and WS1 cell cultures and African Green monkey CV-1 cell cultures were exposed to ≥ 1 x 10^6 units of IMMGV Technical (IMMGV) for 1-hour. The cell cultures were then washed, refed with virus-free medium, incubated for 8 days, fixed, stained and the number of colonies counted. The test preparation was shown to be highly infectious and cytopathic to the target *Plodia interpunctella* larva although analysis determined that the actual number of viral capsules used was only 42% of the target value. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to cloning efficiency in any of the three cell lines. Based on the data, there was no evidence that the test substance was cytotoxic to any of the three mammalian cell lines.

4. *Acute eye irritation (450662-09).* The test substance was instilled in the eyes of four males and two female adult New Zealand albino rabbits at approximately 0.04 g/eye (~7.14 x 10^9 viral capsules). Animals were acclimated for 11 days and before treatment their eyes were checked for normalcy using ophthalmic fluorescein and an ultraviolet (UV) lamp. The right eye of each animal was treated and the other eye served as a control. No deaths occurred. Clinical signs noted included conjunctivitis, corneal opacity and iritis, all of which cleared within 4 days of treatment. Toxicity Category IV.

Data waivers were requested for the following studies:

1. *Acute dermal toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal, inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the IMMGV is a characteristically large molecular entity and is therefore unable to penetrate intact skin. However, in the unlikely event that viral penetration does occur through contact with broken skin, the studies submitted by the registrant have demonstrated a lack of toxicity/pathogenicity and infectivity associated with IMMGV.

2. *Acute inhalation toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute inhalation toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to a dust mask as a further measure of safety.

3. *Primary dermal irritation.* This study was waived based upon the lack of toxicity in animals dosed orally (453070-01) and more importantly cells inoculated with viral pest control agent (450662-07 & 450662-08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to wear gloves as a further measure of safety.

4. *Literature citations (450662-06).* Information from the open scientific literature has been cited in support of the relative safety and lack of mammalian toxicity associated with baculoviruses to include the IMMGV. The IMMGV is very host-specific, it does not infect any host other than the Indian Meal Moth larvae and does not cross-infect any Lepidopteran or other insect. The range for the insect host is worldwide. Studies listed in the literature review provide information on the life cycle and mode of action of IMMGV such that it acts by pathogenicity, not a toxic mechanism. It presents no hazard potential to mammals and non-target species.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Because baculoviruses are naturally-occurring organisms, there is a great likelihood for previous exposure for most, if not all individuals. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions resulting from exposure to IMMGV. The amount of product used will result in a negligible increase, if any, of virus exposure. In addition, even if there is a significant increase in exposure to the virus, the toxicity studies submitted by the registrant along with the extensive reports in the scientific literature indicating the safety of the viruses, suggest that there should not be any additional risk of adverse effects due to exposure to IMMGV.

2. *Drinking water exposure.* Because of the use site and amount of product that will be applied, potential non-occupational exposures in drinking water is negligible. Currently, there are no reports which show that IMMGV has been found in any drinking water. Baculoviruses occur naturally in soil and there is a low likelihood that they would survive passage through the soil to reach underground water (Consigili, R.A., and Wilson, M.E., 1986. The Biochemical and Molecular Biology of the Granulosis Virus that Infects *Plodia Interpunctella*. Current topics in Microbiology and Immunology 131:69-101. MRID 450662-06). Even if the virus is able to reach ground water, it is highly unlikely that the viruses would survive municipal water treatment due to its inability to survive outside its host. Therefore, it is likely there will not be an increase of IMMGV in drinking water. In addition, because the virus host range is limited to the Indian meal moth, even if the virus is found in drinking water, the results of the acute oral toxicity studies using a high dose of the virus, suggest that there will not be any adverse effects upon human consumption in the unlikely event any virus found its way into drinking water, therefore; the Agency has no drinking water exposure concerns.

B. Other Non-Occupational Exposure

Baculoviruses are naturally-occurring viruses that have been described in the scientific literature for approximately 40 years. In addition to scientific research, there has been a long history of safe use of baculoviruses to control arthropods. Because the amount of virus which will be applied is small, it is not likely that there will be a significant increase in potential exposure. Any increase in virus titer is likely to be negligible at most. Baculoviruses have been shown to have a host range limited to arthropods and the host range of this virus is even more restrictive than most baculoviruses (Consigili, R.A., and Wilson, M.E., 1986. The Biochemical and Molecular Biology of the Granulosis Virus that Infects *Plodia Interpunctella*. Current topics in Microbiology and Immunology 131:69-101. MRID 450662-06). Therefore, even if there was an increase in exposure, there should not be any increase in potential human health effects.

VI. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to this or other baculovirus-containing products, the Agency is confident that there will not be cumulative effects from the registration of this product.

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VII. Determination of Safety

1. *U.S. population.* There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population from exposure to residues of IMMGV. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of safe use of baculoviruses as bioinsecticides, the lack of mammalian toxicity associated with IMMGV, the limited host range of the virus and the inability of IMMGV to infect mammalian cell lines.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different MOE will be safe for infants and children. MOEs are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that IMMGV is practically non-toxic to mammals, including infants and children and that they will consume only minimal, if any, residues of the microbial pesticide. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

As a result, EPA has not used a MOE approach to assess the safety of the IMMGV.

VIII. Other Considerations

A. Endocrine Disruptors

There are no reports or indications in the available scientific literature which suggests that Indian meal moth granulosis virus has caused or has the potential to cause adverse effects on the endocrine and/or immune systems of humans or animals. The virus host range is limited to the Indian meal moth, where it would be expected to affect the defense systems of the target insect pest. The target insect's response is not different from any animal's response to a disease agent. These suppositions are confirmed by the results of the mammailian toxicity tests cited above.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numberical limitation for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for the IMMGV.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels established for residues of the IMMGV.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301193 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 11, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301193, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1218 is added to subpart D to read as follows:

§ 180.1218 Indian Meal Moth Granulosis Virus; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide Indian Meal Moth Granulosis Virus in or on dried fruits and nuts.

[FR Doc. 02–223 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 3]

RIN 2137–AD64

Pipeline Safety: High Consequence Areas for Gas Transmission Pipelines

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration (RSPA) is proposing to define areas of high consequence where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. This proposed rule is the first step in a two step process to address the integrity management programs for gas pipelines.

RSPA created the proposed definition from the comments received on the notice that invited further public comment about integrity management concepts as they relate to gas pipelines (Information Notice). Additionally, RSPA gathered information through a series of discussions and meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups. The proposed definition does not require any specific action by pipeline operators, but will be used in the pipeline integrity management rule for gas transmission lines that RSPA is currently developing.

DATES: Interested persons are invited to submit written comments by March 11, 2002. Late-filed comments will be considered to the extent practicable.

ADDRESSES:

Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, log on to the following Internet Web address: *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically.

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by E-mail at *mike.israni@rspa.dot.gov*, regarding the subject matter of this proposed rule. General information about the RSPA/OPS programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

We are issuing integrity management program requirements for pipelines in several steps. RSPA began the series of rulemakings by issuing requirements pertaining to hazardous liquid and carbon dioxide pipeline operators. A final rule which applies to hazardous liquid operators with 500 or more miles of pipeline was published on December 1, 2000 (65 FR 75378). That rule applies to hazardous liquid and carbon dioxide pipelines that can affect high consequence areas, which include populated areas defined by the U.S. Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways. We issued a similar proposed rule for hazardous liquid operators with less than 500 miles of pipeline (66 FR 15821; March 21, 2001).

We are now beginning the integrity management rulemakings for gas transmission lines by first proposing a definition of high consequence areas. This definition will be entirely separate from the definition established for hazardous liquid pipelines. We will then propose requirements for gas transmission pipeline operators to develop and implement integrity management programs to provide additional protections to those areas. We are proceeding in two steps for several reasons. We gathered and reviewed a great deal of information on where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. We compared this information to the areas we currently require enhanced protections. We are, however, still collecting information on and verifying the validity of pipeline assessment methods other than internal inspection devices and pressure testing. Information on viable alternative assessment methods for gas transmission pipelines is critical to our proposal for an integrity management program. Unlike hazardous liquid pipelines, a large percent of gas transmission pipelines are not configured for the use of internal inspection devices or cannot be taken out of service for any length of time due to the disruption of critical gas supply to customers. Therefore, we must complete this work before we issue a proposal to address protections for gas pipelines in high consequence areas.

Additionally, while a consensus standard on implementing an overall integrity management program is complete, many consensus standards on pipeline integrity management that could be incorporated into an integrity rulemaking are still under development. Therefore, we decided to proceed with a definition based on information we analyzed, and continue work on proposed assessment and protection requirements for an integrity management program.

RSPA created this definition through a process which began with the goal of improving the assurance of pipeline integrity in those geographic areas where a rupture could have the most significant consequence on people. We thought it necessary to focus on those geographic areas to ensure that operators would expend resources in the areas where the benefits would be greatest, while the regulatory agencies and the industry continued to learn how to effectively improve integrity for the entire pipeline system.

We next assembled technical information to support development of rules to define the geographic areas of focus and prescribe the process to be used to increase the assurance of pipeline integrity. This was accomplished through a series of discussions and meetings with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups. We digested the technical information from these meetings and developed preliminary hypotheses about how the rules should be structured. These hypotheses were documented in the Information Notice (66 FR 34318; June 27, 2001), which invited public comment both on the hypotheses and on the technical issues requiring resolution.

We developed the definition that we are proposing in this rulemaking based on the technical input received during the series of stakeholder meetings and the comments received on the **Federal Register** Notice. The use of this definition for areas of high consequence, in conjunction with implementation of future integrity management requirements, represents a major step in increasing the assurance of integrity for gas pipeline systems. Once integrity management program requirements are in place for the high consequence areas, RSPA will review the benefits achieved for future consideration of whether to extend integrity management requirements to other areas on pipelines. This review will also help us formulate effective practices to further enhance the integrity of the entire pipeline infrastructure.

RSPA's goal in developing the gas pipeline integrity management rules is to provide the regulatory structure required for operators to focus their resources on improving pipeline integrity in the areas where a pipeline failure would have the greatest impact on public safety. The RSPA philosophy toward gas pipelines is to build on current Class location regulations which require the operator to know what people by location would be impacted by a pipeline rupture, and to require added assurance of pipeline integrity in the areas where the population density is greatest.

These current Class location regulations, which are unique to gas pipelines, require an operator to periodically (typically done annually) monitor and record data on increases in population near its pipelines. Data monitoring gives a current and very accurate picture of where people live and work who could be affected by a pipeline release.

Since January 2000, RSPA has met with State agencies, representatives of the Interstate Natural Gas Association of America (INGAA), the American Gas Association (AGA), Battelle Memorial Institute, the Gas Technology Institute (GTI), Hartford Steam Boiler Inspection and Insurance Company, and operators covered under 49 CFR part 192. (See DOT Docket No. 7666 for summaries of the meetings.) We also met with the Western States' Land Commissioners, National Governors Association, National League of Cities, National Council of State Legislators, Environmental Defense, Public Interest Reform Group, and Working Group on Communities Right-To-Know.

From these meetings we gained a clearer understanding of four significant characteristics of gas pipelines that we used in developing a proposed definition of high consequence areas. First, the effects of a gas pipeline rupture and subsequent explosion are highly localized. The physical properties of natural gas dictate that it rises upward from a rupture or hole in the pipeline as the gas expands into the air. The observation of damage at the sites of pipeline ruptures confirmed this behavior of gas. Second, the zone of damage from an explosion and burning of gas following a pipeline rupture is related to the line's diameter and the pressure at which the pipeline is operated. Again, RSPA confirmed these patterns from observing the heat affected zone surrounding actual pipeline ruptures and explosions. We correlated these observations using a simplified mathematical model relating the properties of the gas, the pipe diameter, and the operating pressure to the predicted heat affected zone. Third, the size of the heat affected zone from pipeline ruptures where pipe diameter was less than 36 inches and operating pressures were at or below 1000 psig, was limited to a diameter of approximately 660 feet.

RSPA corroborated the size of the heat affected zone by observing the sites of actual ruptures. The size of the zone is also consistent with the current Class location definitions. This consistency is not surprising. Thirty-some years ago when the Class location regulations were developed, the 660 foot-wide zone around a pipeline was based on available data about a heat affected zone. However, at that time data only existed on pipeline failures where the pipe diameter was less than 36 inches and the operating pressures were lower than 1000 psig. The fourth piece of information relevant to our proposed definition is that the heat affected zone for pipelines of diameter equal to or greater than 36 inches, operating at pressures in excess of 1000 psig, can extend to as much as 1000 feet from the pipeline. The size of the zone for larger pipelines is based on mathematical models verified by comparison with data on the areas burned around actual gas pipeline ruptures.

On the dates of February 12–14, 2001, we held a public meeting in Arlington, VA, to discuss integrity management requirements for gas pipelines in high consequence areas, and ways to enhance communications with the public about hazardous liquid and gas pipelines. This meeting featured reports on the status of industry and government activities to improve the integrity of gas pipelines. Meeting attendees also participated in in-depth discussions on the integrity of gas pipelines. The reports can be found in the DOT docket (#7666) and on the RSPA Web site under Initiatives/Pipeline Integrity Management Program/Gas Transmission Operators Rule.

At the public meeting, industry and State representatives presented their perspectives on a number of issues relating to integrity management. Several members of the public also made comments. Topics included:

- Considerations for defining high consequence areas affected by gas pipelines;
- Evaluation of design factors currently used for gas transmission pipelines;
- Evaluation of performance history and experience with the impact zone in gas transmission failures;
- Integrity management best practices and relationship between incident causes and industry practices;
- Options for various forms of direct assessment of the integrity of gas pipelines, including costs and effectiveness;
- Basis for establishing test pressure intervals;
- Appropriateness of using pressure (stress) to differentiate integrity standards for pipelines
- Status of research activities; and
- Status of development of new national consensus standards.

These presentations can be viewed on the RSPA Web site under Initiatives/Pipeline Integrity Management Program/Gas Transmission Operators Rule.

We integrated the results from this meeting with the list of technical perspectives and issues that RSPA developed during the stakeholder meetings held over the previous twelve months. We then formulated the hypotheses on which we expected to base an integrity management rule and questions related to these hypotheses. We published both in a **Federal Register** Notice that we discuss in the next section.

Notice of Request for Comments

On June 27, 2001, RSPA issued a notice of request for comments (66 FR 34318) which asked for further information and clarification, and invited further public comment, on defining high consequence areas and developing integrity management requirements for gas transmission lines. In the notice, RSPA stated its objective to develop a rule on gas pipeline integrity management to address threats posed by pipeline segments in areas where the consequences of potential pipeline accidents pose the greatest risk

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to people and property, and provides additional protections for these areas. We had a similar objective when we developed the rules on liquid pipeline integrity management programs, although environmental protection played a larger role in those rules. We also advised on our intention to minimize any actual adverse impact of a new safety requirement on the supply of natural gas to customers.

In the notice, we described the seven elements we believed should be included in any gas pipeline integrity management rule. We used similar elements in developing the liquid pipeline integrity management rules. These elements were based on certain hypotheses we discussed in detail in the notice. Then, we invited comment about these elements and hypotheses. The notice further summarized the areas where RSPA was seeking further information before proposing an integrity management program rule for gas operators. We categorized these information needs into nine categories, seven of which were the elements we described as essential to any integrity management program rule. The other two categories were to seek information about the costs of an integrity management rulemaking, and the rule's potential impact on gas supply.

The first element we discussed was how to define high consequence areas, i.e., those areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. We put forth the following hypotheses for comment:

- Data from sites where gas pipelines ruptured and exploded show that the range of impact of such explosions is limited. Therefore, the area in which nearby residents may be harmed or there may be property damaged by potential pipeline ruptures, can be mathematically modeled as a function of the physical size of the pipeline and the material transported (typically, but not exclusively, natural gas).
- Because we require gas pipeline operators to maintain data on the number of buildings within 660 feet of their pipelines, the definition of potentially high consequence areas where additional integrity assurance measures are needed should incorporate these data.
- The range of impact from the rupture and explosion of very large diameter (greater than 36 inches) high pressure (greater than 1000 psi) gas pipelines is greater than the 660 feet currently used in the regulations.
- Special consideration must be given to protect people living or working near gas pipelines who would have difficulty evacuating the area quickly (*e.g.*, schools, hospitals, nursing homes, prisons).
- Due to the relatively small radius of impact of a gas pipeline rupture and subsequent explosion, and the behavior of gas products, environmental consequences are expected to be limited. At this time, RSPA has little information to indicate the definition of high consequence areas near gas pipelines should include environmental factors.
- Given that pipeline operators maintain extensive data on the distribution of people near their pipelines, RSPA intends for operators to use these data, together with a narrative definition of a high consequence area (defined by RSPA), to identify the specific locations of high consequence areas.

Electronic Discussion Forum

To promote greater discussion of these issues, RSPA also initiated an electronic discussion forum which was open from June 27 through August 13, 2001, at the RSPA Web site under the subheading "More Information Needed on Gas Integrity Management Program." A transcript of the electronic discussion forum is placed in this docket. Comments received relevant to a definition of high consequence areas are discussed here.

Comments to FR Notice on Integrity Management Concepts and Hypotheses (Gas Transmission Pipelines)

Comments to the docket were provided by one state public service agency, five industry associations (including one association of industrial gas consumers), sixteen companies or groups of companies that operate gas pipelines, one company that operates hazardous liquid pipelines, and one company that builds pipeline bridges. In this document we summarized the comments relating to the first element—Defining High Consequence Areas. We will summarize and discuss comments on the remaining elements when we propose a rule on requirements for gas pipeline integrity management programs.

Define the Areas of Potentially High Consequence

This element of a rule would define the areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and property. In the Information Notice, we discussed a model that was presented at the February public meeting relating gas pipeline diameter and operating pressure to the physical boundaries of the area impacted by the heat from a gas pipeline rupture and subsequent fire. C–FER, a Canadian research and consulting organization, developed the model which predicted the extent of the heat affected zone would be 660 feet for pipelines of up to 36 inches diameter and operating at pressures up to 1000 psig, and 1000 feet for larger pipelines operating at 1000 psig or higher. The model used 5000 BTU/hr-ft^2 as the critical heat flux for defining the impact radius. We requested comment on the validity of this model, and of any other models that could be used in developing a definition. We requested comment on the validity of limiting an impact zone to areas where there are more than 25 houses or a facility housing people of limited mobility.

We requested comment on the feasibility of including all populous areas where the impact radius could exceed 660 feet, and of including high traffic roadways, railways and places where people are known to congregate, such as, churches, beaches, recreational facilities, museums, zoos, and camping grounds. We also requested further information on the impacts of a gas release on areas of environmental significance, and for comment on including any of these areas in a definition.

Comments

AGA and APGA, trade associations representing investor-owned and municipally-owned gas utilities, submitted joint comments. They stated that high consequence areas should be defined by class location, census-based population data and the zone of influence analysis in the C–FER report. They commented that operators collect and use information establishing class location and that such data can be readily incorporated into a definition, but they believe census data should also be an option.

While AGA and APGA agreed with providing special protection for facilities housing people with limited mobility, they maintained that identifying these facilities may be very difficult if they are not licensed and listed by a city or state. They further maintained that it is not appropriate to analyze every place where people may congregate or every roadway intersection, because this information is very dynamic and would be very difficult to keep current. These associations also argued against including commercially navigable waterways or environmentally sensitive areas because Congress did not mandate

these areas be included in a gas pipeline integrity rule, and a gas release would not present a significant risk to these areas.

AGA and APGA argued that requiring operators to maintain and submit detailed population data is inefficient. They pointed out that some operators do not keep current data on populations near their pipelines, but rather treat all lines as though they were Class 4. Also, that for older pipelines, the most available record would be the class location distribution along their pipelines.

AGL Resources, Inc., a parent company of Atlanta Gas Light Co., Chattanooga Gas Co., and Virginia Natural Gas, supported using the current definitions of Class 3 and 4 locations because the large majority of their transmission lines are designed to operate in class 4 locations. .

The Association of Texas Intrastate Natural Gas Pipelines commented that using class locations to define high consequence areas would be appropriate since operators already maintain this information. The Association recommended we only include additional criteria that can be applied uniformly across all pipeline systems, such as class locations where the impact radius exceeds 660 feet. The Association argued against including high traffic roadways and places where people are known to congregate because these areas would be too subjective and therefore difficult to interpret or enforce uniformly. The Association maintained that although gas pipelines pose insignificant environmental risks, it would be appropriate to require operators to evaluate their systems to determine areas where condensate or other liquids are known to accumulate, and where a rupture would lead to release of these liquids near sensitive wildlife areas or bodies of water.

Baltimore Gas & Electric Company (BG&E), a natural gas distribution system operator, commented that a definition should incorporate non-population factors, particularly those based on the risk posed by a pipe segment, not simply the consequences of failure. BG&E also stated that the definition should differentiate transmission pipelines which are part of a distribution system where they are closely coupled to the distribution process, but did not suggest how to do this.

Chevron Pipe Line Company (CPL) supported protecting areas with facilities housing people unable to evacuate the area quickly. CPL was not in favor of including places where people congregate, because CPL thought the term too broad and it could easily encompass the entire length of a pipeline thereby diluting the focus on enhancing integrity in high risk areas.

Consumers Energy Company did not agree with defining high consequence area primarily by population density. Rather, Consumers Energy thought other factors that affect the overall risk a pipeline poses should be considered, such as pipeline operations, performance history and wall thickness.

El Paso Pipeline Group, an operator of five major natural gas transmission pipelines, commented that a definition should protect those areas where population density is greatest. El Paso urged RSPA to develop a workable definition which would take into consideration that operators have been collecting land use data relating to dwellings and other structures located within 660 feet of their pipelines. El Paso further urged RSPA to rely on the Gas Research Institute (GRI) study, dated December, 2001 (GRI–00/0189—"A Model for Sizing High Consequence Areas Associated With Natural Gas Pipelines") because this study shows that the impact on the heat-affected zone depends on many factors beyond the heat flux value. Due to many factors involved, El Paso was in favor of the value used in the C–FER analysis as a reasonable value.

Enron Transportation Services (ETS) commented that using the current definitions of Class 3 and 4 locations would allow operators to integrate the existing population data they maintain (data on populated areas within 660 feet of a pipeline) into an integrity management plan. ETS maintained that the current definitions of class 3 and 4 areas should pick up less densely-populated areas on the fringe of these areas. ETS recommended that a definition include locations of facilities housing people of impaired mobility because these locations are consistent with the purpose of the class location process. ETS further added that many operators are already locating these facilities as part of their class location survey determination. ETS also supported the critical heat flux value used in the C–FER analysis as a reasonable value for evaluating a high consequence area.

ETS was against including crossings of roads and railways because of the low relative risk posed by pipelines at these locations, compared to the risk presented by vehicle and train traffic. ETS maintained that patrols of these locations, as the pipeline safety regulations currently require, will identify any potential problems. ETS further argued that places where the public congregates are already treated as populated areas requiring an increased level of protection. As for environmental areas, ETS commented that natural gas presents little threat to water and many pipeline rights-of-way have already had cultural resource clearance. Although ETS did not dispute that a threatened species or habitat could be affected, it did not want such areas generally included. ETS recommended operators treat such areas on a case-by-case basis, but such areas not be mapped for security reasons (e.g., the sole remaining habitat of a threatened or endangered species).

INGAA, a trade organization which represents interstate natural gas transmission pipeline companies, offered several comments about the hypotheses for the high consequence area definition. INGAA explained the 660-foot radius used in developing part 192 was based on photographs of actual burn areas from the ignition of a pipeline rupture; however, in 1970, few pipelines larger than 30 inches in diameter or operating at pressures higher than 1000 psig existed. INGAA further explained that the 5000 BTU/hr-ft^2 radiation heat flux used in the C–FER model was developed as part of an integrated analysis to define the heat affected zone around a ruptured natural gas pipeline and the results of this analysis were validated against data on the extent of the burn zone from actual pipeline ruptures. INGAA explained that this model produced a 660-foot radius circle for a 30-inch diameter pipeline operating at 1000 psig. INGAA did not see why the methodology could not be applied to a pipeline transporting hydrogen.

INGAA stated that a 25-house limit for a high impact zone is consistent with the definition for hazardous liquid pipelines, where a population density of 1000 people or more per square mile was used. INGAA maintained that this translates to 25 houses within a circle of 660-foot radius, assuming two people per house. INGAA further argued that based on typical Class 3 population density, 25 houses is an appropriate number and consistent with class location regulations.

INGAA argued that it would be too expensive to collect data on areas beyond the 660-foot radius. However, INGAA would support extending the area of protection beyond the 660-foot corridor for structures containing concentrations of people with limited mobility, such as, hospitals, schools, childcare facilities, retirement communities or prisons. INGAA explained that this is consistent with the current draft of the Integrity

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Management Appendix to American Society of Mechanical Engineers (ASME) B31.8 Std.

INGAA argued that current definitions for Class 3 and 4 areas probably cover many areas where people congregate. INGAA acknowledged that high traffic roadways and railways would not be covered if they were not already in Class 3 and 4 areas, but thought these areas are probably addressed through design, construction, operation and maintenance requirements.

INGAA was opposed to including any environmental areas in the definition. INGAA explained that methane releases would inflict very limited collateral damage to wildlife and would not impact water supplies.

Keyspan Energy Delivery, a local distribution company (LDC), was in favor of defining high consequence areas as Class 3 and 4 locations because its lines comply with the requirements for these class locations. Keyspan was also in favor of clearly defined areas, but wanted any definition to recognize that LDCs cannot precisely evaluate and re-evaluate such areas. Keyspan recommended a definition which would allow for performance-based variables but did not provide any examples.

Kinder Morgan, Inc., a large midstream energy company, favored a definition of high consequence areas which uses a model, such as the one C–FER developed, relating pipeline diameter and operating pressure to the physical boundaries of the area of impact. Kinder Morgan recommended further that we use a sliding approach where high consequence areas would be defined as areas of high population density within the C–FER defined hazard area. Kinder Morgan maintained that areas where people congregate are currently covered in the definition of Class 3, and that these areas should be included in the high consequence area definition only if they are located within the defined hazard area for a given pipeline.

MidAmerican Energy Company, a combination gas and electric utility, generally agreed with the definitions recommended by AGA/APGA and INGAA, because these definitions would not impact its operations. MidAmerican commented that if high traffic roadways are included they need to be clearly defined, and suggested definitions. MidAmerican also clarified that including places where people congregate would have minimal impact on its operations.

The New York Gas Group (NYGAS), a natural gas utility trade association, suggested we replace the term high consequence area with a less inflammatory term such as Affected Area. NYGAS agreed with including Class 3 and 4 locations but argued that it will be virtually impossible for local distribution companies to identify facilities housing people with impaired mobility unless such facilities are licensed or are on a list that an operator can obtain. NYGAS was opposed to using census data to determine a high consequence area, because they believe the data is not accurate and is updated every ten years. NYGAS did not support including high traffic roadways, railways and places where people congregate in the definition because of the uncertainty and complexity of trying to include these elements.

New York State Department of Public Service (NYDPS) commented that in addition to facilities housing people with limited mobility, consideration should be given to special features near pipelines, such as places of public assembly, historical landmarks, parks, bridges, power line corridors, other pipeline facilities, major roadways, and railways.

NYDPS supported the concept of an impact radius for determining high consequence areas, but contended that the C–FER model (using 5000 BTU/hr-ft^2) conveniently results in an impact radius of about 660 feet. Based on this outcome, NYDPS believes the impact zone will never extend beyond the current class location for most operators. NYDPS suggested defining a more appropriate critical heat flux value (one lower than the C–FER model) so the impact radius could extend beyond the 660 feet.

The Energy Distribution Segment of NiSource Inc. (NiSource EDG), which is comprised of ten distribution companies, expressed concern that basing a high consequence area on the potential for considerable harm, would be too expansive to be of any practical value. NiSource EDG thought that a definition should consider the number of persons who might be harmed, as well as the potential significance of the harm, and that it should also include identifiable physical locations where people are unable to evacuate or to take protective actions.

NiSource EDG was against basing an impact zone on the number of houses, because data from which an operator could extrapolate the number of houses might not exist. NiSource explained that because many local distribution companies design their systems to be consistent with the requirements of a Class 4 location, they do not monitor housing distribution data near their pipelines. Therefore, NiSource EDG argued, imposing criteria which would require local distribution companies to initiate class location surveys would delay implementation of a rule, increase administrative and record-keeping burdens, and be extremely expensive.

NiSource argued against including an environmental component in the definition, and against including what it maintained were nebulous areas, i.e., high traffic roadways, railways, and places where people congregate.

Pacific Gas and Electric Company (PG&E), a utility subsidiary of PG&E Corporation, supported the use of structure data but noted that once a class location reaches 3, the structure data is no longer accumulated or may not be kept current. PG&E proposed that operators be allowed to use third party data sources which address the location of high consequence structures, as well as census data to determine whether housing density could reach or exceed 25 structures within a circle defined by an analysis such as the C–FER model. PG&E supported use of the C–FER model for larger diameter pipelines, and supported allowing more extensive models for operators that choose to perform a more detailed analysis of the impact zone following a pipeline rupture. PG&E supported including day-care facilities with more than 25 people, but was opposed to including any environmental component in a definition.

Tosco Corporation, an independent refiner and marketer of gasoline and other petroleum products, and a pipeline owner and operator, was in favor of using existing class 3 and 4 location criteria. Tosco also believed that other relevant factors must be considered in determining how to protect an area beyond 660 feet from the pipeline, such as line diameter, line pressure and local environmental conditions. Tosco was opposed to micro-determining a high consequence area down to a foot basis, as maintaining data on such precise areas could be unmanageable. Tosco was not in favor of using census data to define its high consequence areas, rather, it favored counting structures within 660 feet of a pipeline.

Electronic Forum Comments

A commenter to the electronic forum reminded RSPA that the Carlsbad, New Mexico, failure happened in a low consequence area, and high consequence areas should be defined as areas where there is a high probability that the pipeline could be damaged by outside forces.

Another commenter from a school facilities planning division argued that schools are extremely high consequence areas and should be explicitly mentioned.

The Proposed Rule

RSPA's goal for the gas integrity management rules (the definition and the integrity program requirements) is to provide greater assurance of pipeline integrity in geographic areas where a gas pipeline rupture could do the most harm to people. Through our proposed definition of high consequence areas, and the integrity management program requirements now under development, we will ensure that an operator's resources are expended on areas where the benefits will be the greatest. Once we propose and implement the integrity management program requirements for the areas we define, we will study the results and consider how effective it would be to extend added protection to other areas.

The areas we propose to define as high consequence areas for gas transmission pipelines are different from those we defined for hazardous liquid pipelines (see 49 CFR 195.450). The areas we defined for hazardous liquid pipelines were without regard to where the pipeline was located; whereas the proposed areas for gas transmission pipelines are defined with respect to a zone around a pipeline. Furthermore, certain sensitive environmental areas were included in the high consequence areas for hazardous liquid pipelines but are not included in the proposed definition for gas pipelines. The differences are due to differences in the physical properties of the products and consequences of a gas release versus a hazardous liquid release, and the benefits of having accurate data on population already maintained by gas transmission operators.

Due to the physical properties of gas, the rupture of a gas pipeline impacts a very limited area adjacent to the location of the rupture. In contrast, when a liquid pipeline ruptures, the liquid can flow a greater distance from the site of the rupture. Furthermore, unlike a liquid release, the rupture of a gas pipeline cannot lead to far-reaching damage to habitats of threatened or endangered species. Moreover, gas released from a pipeline rupture flows upward into the air following a rupture, and so cannot pollute drinking water or ecological resources.

RSPA based the population component of the definition for hazardous liquid pipelines on the U.S. Census Bureau's definition of urbanized areas and places. As hazardous liquid operators are not required to maintain population data, we decided to use the U.S. Census Bureau's definitions because they were the best available data on population adjacent to hazardous liquid pipelines. In contrast, because gas pipeline safety requirements are structured according to class location (i.e., population density), gas pipeline operators already maintain current data on the location of people in areas adjacent to their pipelines. We are confident this data is accurate. Thus, it seemed logical to structure a definition that would use the data pipeline companies already collect and maintain.

Nonetheless, even though the we structured the gas pipeline high consequence areas differently from the hazardous liquid high consequence areas, the inclusion of both Class 3 and 4 locations in the proposed definition is consistent with the census-defined areas encompassing population density of approximately 1000 people per square mile. In Class 3 locations, the lower limit on occupied buildings in a sliding mile is 46 (i.e., an area one mile long and 1320 (2 × 660) feet wide), which is equivalent to a population density of 460 people per square mile assuming 2.5 people per building. Other populated areas included in the hazardous liquid definition are picked up in the proposed definition by the lower population density value used in the Class 3 location definition and by including isolated buildings near a pipeline that house people with limited mobility.

RSPA's proposed definition of high consequence areas for gas transmission pipelines extends to areas beyond current class locations, or in other words, beyond areas where operators are currently required to have data. Our analysis of data on the area affected by a pipeline accident, demonstrated the need for special consideration of buildings located more than 300 feet from the pipeline that house people with limited mobility. It also demonstrated a need for consideration of areas near gas pipelines of diameter greater than 30 inches and operating at pressures in excess of 1000 psig. Therefore, we are including in the proposed definition, areas out to 660 feet from a pipeline (1000 feet from a pipeline with a diameter greater than 30 inches and operating at a pressure greater than 1000 psig) where there are buildings housing people with limited mobility and areas where people congregate. Although operators are not currently required to maintain data on these areas, operators are required to patrol their pipeline right-of-way. Based on these requirements, we believe operators should have knowledge of where people congregate near their pipeline. Additionally, this information should be available from local public safety officials.

Our basis for extending the area to 1000 feet is based on the C–FER model, previously discussed in this document. (Their report is in Docket #7666). The C–FER Model demonstrated that large diameter pipe (greater than 30 inches) operated at pressures greater than 1000 psig has the potential to impact an area greater than 660 feet from the pipeline. The C–FER analysis was based on a simplified model of a gas pipeline rupture. The model included simplified mathematical treatment of several phenomena important to characterizing the extent of damage following a pipeline rupture (for example, critical heat flux, the time of ignition of the escaping gas, the height of the burning jet, the pipe decompression rate). The model also included estimates of several important parameters associated with the phenomena. Due to the simplifications in the model and the need to select values for the key parameters, the model was validated by comparing its predictions with the results of actual incidents for which the burn radius (area around the rupture which experienced damage) associated with a pipeline rupture and ignition could be measured. The C–FER report shows these comparisons between model predictions and observed burn areas. The comparisons appear to validate the predictive ability of the model.

High Consequence Areas

We considered the comments and information received in response to the hypotheses presented in the Information Notice. We developed a proposed definition of high consequence areas for gas transmission pipelines based on the hypotheses and comments, as well as our extensive analysis of technical information from diverse sources. Our primary concern is with protecting populated areas from a gas release. Therefore, we are proposing to include the following class location areas, which are already defined in part 192. We concluded that these areas will encompass about 85% of populated areas, which is comparable to the percentage of populated areas picked by the hazardous liquid definition using the Census Bureau's definitions. These are the areas where gas transmission pipeline operators maintain data on population and buildings near their pipelines.

- Class 3 areas. Class 3 areas are defined in the pipeline safety regulations as a class location unit with 46 or more buildings intended for

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human occupancy. A class location unit is an area that extends 220 yards on either side of the centerline of any continuous one-mile length of pipeline. A class 3 area is also an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area, such as a playground, recreation area, outdoor theater, or other place of public assembly, which is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. Neither the days nor the weeks need be consecutive.

• Class 4 areas. Class 4 areas are any class location unit which include buildings with four or more stories.

We are proposing to extend the definition of areas of high consequence beyond the class location areas. We analyzed the C–FER model against RSPA accident data and concluded that a release from most pipelines would not affect an area greater than 660 feet. However, we also want to ensure that areas where there are facilities with people who may not be able to evacuate an area quickly are better protected from the likelihood of a pipeline release. Therefore, we propose to define these areas as follows:

An area where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility, or would be difficult to evacuate.

With the use of a commercial database, we are collecting data on the locations of these facilities to help identify these areas.

Our research further demonstrates that a rupture or release from a larger-sized pipeline would likely affect an area beyond 660 feet, i.e., those pipelines that are more than 30 inches in diameter and operate at pressures greater than 1000 psig. Therefore, we are defining a larger high consequence area for areas where there are larger high pressure pipelines. We propose to define these areas as follows:

An area where a pipeline lies within 1000 feet from a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate, where the pipeline is greater than 30 inches in diameter and operates at an maximum allowable operating pressure (MAOP) of 1000 psig or greater.

As with the previously described areas, we are using a commercial database to help identify these areas.

In light of recent accident history, particularly, the explosion near Carlsbad, New Mexico, RSPA recognizes that the class location definitions may not cover all areas where a pipeline may pose a risk to the public. There are areas where people may not live, but they gather regularly for recreational or other purposes. We propose to define these areas as follows:

An area where a pipeline lies within 660 feet (or within 1000 feet where the pipeline is greater than 30 inches in diameter and operates at a MAOP of 1000 psig or more) where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.) Examples of such areas include, but are not limited to, beaches, recreational facilities, camping grounds, and museums.

The 20-person number is used in the current definition of a class 3 location. We believe it is representational of the number of people that typically frequent a recreational area. This component of the proposed high consequence area definition should pick up most recreational areas or other areas where the public gathers on a regular basis. We have explicitly included camping areas to ensure that areas like those where the people were camping near the pipeline in Carlsbad will receive additional protection. Also, based on the C–FER model calculations, we propose to increase the area of the impacted zone from the current 300 feet to 660 feet (or 1000 feet for larger diameter pipelines).

As we previously mentioned, gas transmission operators are not currently required to maintain data on areas where people congregate near their pipelines. However, because operators are required to patrol their pipeline rights-of-way, they should have knowledge about these areas. This information should also be available from local public safety officials.

These proposed areas go beyond those specified in current regulations in the following ways:

1. A current Class 3 location includes buildings or areas where people congregate located within 300 feet of the pipeline. The proposed definition extends these areas from the pipeline out to 660 feet for most pipelines and out to 1000 feet for larger pipelines (those greater than 30 inches in diameter and operating at pressures greater than 1000 psig).

2. Current Class location regulations consider people located within 660 feet of a pipeline. The proposed definition includes an impact zone of 1000 feet from the pipeline for pipelines greater than 30 inches in diameter operating at pressures greater than 1000 psig.

3. Current Class location regulations include no explicit provision for facilities housing people with limited mobility. The proposed definition includes these facilities.

4. The proposed definition more explicitly references areas where people congregate near a pipeline, particularly, camping grounds.

We received no comment encouraging the inclusion of environmental areas as high consequence areas. In the proposed definition, we did not include sensitive environmental areas due to the highly localized impact of a gas pipeline rupture and explosion. Since a release from a gas pipeline accident is airborne, it is unlikely any major damage will occur to a threatened or endangered species. We received a similar response to our question on whether to include high traffic areas. We did not include such areas in the proposed definition because special attention is already given to these areas in the design and maintenance of pipelines near road crossings. Furthermore, the number of drivers that could be affected by a gas transmission pipeline accident is limited due to the highly localized effect of a gas release.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures.

DOT considers this action to be a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, the Office of Management and Budget (OMB) has not reviewed this rulemaking document. This proposed rule is also not significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979).

This proposed rule has no cost impact on the pipeline industry or the public, as it is only a definition. A regulatory evaluation is available in the Docket. The High Consequence Areas definition will be used in the forthcoming rulemaking on "Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators).". When we issue that proposed rule, we will then fully evaluate all the associated costs and benefits.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This proposed rulemaking will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. As this action only involves a definition, there are no cost implications, and thus, we determined it had no impact on small entities. Costs are likely to result once we issue requirements for actions that use this definition at a later date. RSPA will soon propose integrity management requirements for gas transmission pipelines in high consequence areas; at that time will examine the costs and benefits of that rulemaking. Based on this information demonstrating that this rulemaking will not have an economic impact, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This notice of proposed rulemaking contains no information collection subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)). Therefore, RSPA concludes the proposed rule contains no paperwork burden and is not subject to OMB review under the paperwork Reduction Act of 1995.

This proposed rule is simply a definition of high consequence areas. The definition will be used in the forthcoming rulemaking on "Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Operators)". RSPA will prepare a paperwork burden analysis for that proposed rule.

Executive Order 13084

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in public meetings on November 18–19, 1999, and February 12–14, 2001, RSPA invited the National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Since then RSPA held conference calls with NAPSR to receive their input before proposing a definition of high consequence areas.

Unfunded Mandates

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and preliminarily determined the action would not significantly affect the quality of the human environment. The Environmental Assessment of this proposal is available for review in the docket.

The Environmental Assessment (EA) considered the impacts of the proposed definition, in conjunction with future requirements of an integrity management rule. The EA found that the proposed definition by itself, did not by itself have any impact on the environment. When integrity management program requirements are issued which will incorporate the definition, there should be positive environmental benefits for the areas receiving additional protection.

However, because the environmental consequences from a gas release are limited, any impact is expected to be minimal. Therefore, the proposed definition of high consequence areas for gas pipeline integrity management will not have a significant environmental impact.

List of Subjects in 49 CFR Part 192

High consequence areas, Integrity assurance, Pipeline safety, and Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, and 60108; and 49 CFR 1.53.

2. A New §192.761 would be added under a new heading of "High Consequence Areas" in subpart M to read as follows:

Subpart M—Maintenance

* * * * *

High Consequence Areas

§ 192.761 Definitions.

The following definitions apply to this section and § 192.763:

High consequence area means any of the following areas:

(a) A Class 3 area as defined in §§ 192.5(b)(3) and 192.5(c);

(b) A Class 4 area as defined in §§ 192.5(b)(4) and 192.5(c);

(c) An area where a pipeline lies within 660 feet of a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate;

(d) An area where a pipeline lies within 1000 feet from a hospital, school, day-care facility, retirement facility, prison or other facility having persons who are confined, are of impaired mobility or would be difficult to evacuate, if the pipeline is greater than 30 inches in diameter and operates at a maximum allowable operating pressure (MAOP) greater than 1000 psig; or

(e) An area where a pipeline lies within 660 feet (or within 1000 feet where the pipeline is greater than 30 inches in diameter and operates at a MAOP greater than 1000 psig) where 20 or more persons congregate at least 50 days in any 12-month period. (The days need not be consecutive.) Examples of such areas include, but are not limited to, beaches, recreational facilities, camping grounds, and museums.

Issued in Washington, DC, on January 3, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–543 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. 2001–11213, Notice 2]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002; Corrections

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination; corrections.

SUMMARY: FRA published a document in the **Federal Register** of January 2, 2002, setting the minimum random drug and alcohol testing rates for calendar year 2002. The testing rates are based on the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Although the original notice correctly set the minimum random testing rates, the overall positive rates for drug testing and alcohol testing were inadvertently transposed. This document corrects the error.

DATES: This correction is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20005 (Telephone: (202) 493–6313).

Corrections

In the **Federal Register** issue of January 2, 2002, in FR Doc. 01–32047, two sentences need correcting. On page 21, in the third column, correct the first sentence of the **SUMMARY** caption to read:

Using data from Management Information System annual reports, FRA has determined that the calendar year 2000 rail industry random testing positive rate was .79 percent for drugs and .20 percent for alcohol.

On page 22, correct the last sentence in the first column that runs over into the second column, in the **SUPPLEMENTARY INFORMATION** caption to read:

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .79 percent.

Dated: January 3, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–559 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010521133-1307-02; I.D. No. 050101B]

RIN 0648-AP17

Endangered and Threatened Species; Final Rule Governing Take of Four Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Under the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall issue such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS now issues a final ESA 4(d) rule adopting regulations necessary and advisable to conserve four salmonid ESUs listed as threatened species. This final rule applies the take prohibitions enumerated in section 9(a)(1) of the ESA in most circumstances to three salmonid ESUs in California: California Central Valley Chinook, California Coastal Chinook, and Northern California steelhead. For these three ESUs, NMFS does not find it necessary and advisable to apply the take prohibitions described in the ESA to certain specified categories of activities that contribute to conserving these ESUs or are governed by a program that adequately limits impacts on these ESUs. Therefore, this final rule also includes 10 such limits on the application of the section 9(a)(1) take prohibitions for these three ESUs. This final rule also modifies an existing ESA 4(d) rule, which applies the take prohibitions to the threatened Central California Coast coho ESU, by incorporating the same 10 limits on the application of the take prohibitions as described for the chinook and steelhead ESUs.

DATES: Effective on March 11, 2002, except for §223.203 (b)(16)(v) and (b)(17)(vii) which are effective on July 8, 2002. Applications for a permit for scientific purposes or a permit to enhance the conservation or survival of Central Valley spring-run chinook, California Coastal chinook and Northern California steelhead must be received by the Assistant Administrator for Fisheries no later than April 9, 2002.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert at 562–980–4021, Miles Croom at 707–575–6068, Diane Windham at 916–930–3601, or Chris Mobley at 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1999, NMFS published a final rule listing the California Central Valley (CCV) Spring-run Chinook and California Coastal (CC) Chinook ESUs (*Oncorhynchus tshawytscha* or O. *tshawytscha*) as threatened species (64 FR 50394). In a final rule published on June 7, 2000, NMFS also listed the Northern California (NC) steelhead ESU (*O. mykiss*) as a threatened species (65 FR 36074). These final rules describe the background of the listing actions and provide a summary of NMFS' conclusions regarding the status of these three ESUs.

On October 31, 1996, NMFS listed the Central California Coast (CCC) coho salmon (*O. kisutch*) ESU as a threatened species (61 FR 56138). The final rule describes the background for this coho salmon listing action and also provides a summary of NMFS' conclusions regarding the status of the ESU. In conjunction with the final listing notice for the CCC coho salmon ESU, NMFS published a final ESA 4(d) rule which put in place all of the prohibitions of section 9(a)(1) of the ESA for this ESU.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as

endangered, unless with written authorization for incidental take. It is also illegal under section 9 of the ESA to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether take prohibitions or other protective regulations are necessary or advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. The salmon and steelhead ESUs that are covered by this final rule have survived for thousands of years through cycles in ocean conditions and weather; therefore, NMFS has concluded that they are at risk of extinction primarily because their populations have been reduced by human "take". These ESUs have declined in abundance due to take of fish from harvest, past and ongoing destruction or damage to freshwater and estuarine habitats, hydropower development, hatchery practices, and other causes. Two reports prepared by NMFS (NMFS 1996 and 1998) reviewed the factors which have contributed to the decline of west coast steelhead and chinook populations, including the ESUs covered by this rule, and both conclude that all of the factors identified in section 4(a)(1) of the ESA have played some role in their decline. The reports identify destruction and modification of habitat, over-utilization in fisheries, and hatchery effects as significant factors for the decline of these ESUs. While the most influential factors for decline differ from species to species and among ESUs depending on their geographic location, the loss and degradation of habitat conditions and impacts from harvest among other impacts, are factors that have affected all of the species and ESUs.

Accordingly, NMFS has determined that it is necessary and advisable to apply the section 9(a)(1) take prohibitions to the threatened ESUs covered in this final rule in order to reduce take and provide for their conservation.

NMFS believes that with appropriate safeguards, many state, local and other non-Federal activities can be specifically tailored to minimize impacts on listed salmonid ESUs such that additional Federal protections are unnecessary for their conservation. Although the primary purpose of state, local and other non-Federal programs is generally to further some activity such as maintaining roads, controlling development, ensuring clean water or harvesting trees, rather than conserving salmon or steelhead, some entities have modified one or more of these programs to protect and conserve listed salmonids and protect their habitat.

For this reason, NMFS has incorporated a mechanism (termed take limitations) in this final ESA 4(d) rule where state, local and other non-Federal entities can be assured that certain activities (see Substantive Content of Final Regulation for the 10 categories of activities specified in this rule) they conduct or permit are consistent with ESA requirements when they avoid or minimize the risk of take of listed ESUs. When NMFS determines that such programs provides sufficient conservation for the threatened salmonid ESUs covered by this final rule, NMFS will find that it is not necessary and advisable to apply take prohibitions to activities governed by those programs. In these circumstances, as described in more detail herein, additional Federal ESA regulation through the section 9(a) take prohibitions is not necessary and advisable because it would not meaningfully contribute to the conservation of the ESUs. NMFS believes that not applying take prohibitions to programs that meet such conservation standards may result in even greater conservation benefits for these threatened ESUs than would the blanket application of take prohibitions, through implementation of the program itself and by demonstrating to similarly situated jurisdictions or entities that practical and realistic salmonid protection measures exist. An additional benefit of using this take limitation approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of the ESUs covered by this rule.

Substantive Content of Final Regulation

On August 17, 2001, NMFS proposed to apply the ESA section 9(a)(1) take prohibitions to the CCV spring-run chinook salmon, CC chinook salmon, and NC steelhead ESUs. NMFS has concluded that the section 9 take prohibitions that automatically apply to endangered species are necessary and advisable for the conservation of these three threatened ESUs. Accordingly, this final rule applies the prohibitions of ESA section 9(a)(1) to each of these three ESUs. NMFS applied the section 9(a)(1) take prohibitions to the CCC coho salmon ESU in a previous rulemaking (see 61 FR 56138), and the August 17, 2001, proposed rule (66 FR 43150) did not propose to change those protections.

In its August 17, 2001, proposal (66 FR 43150), NMFS proposed that the take of listed fish in these four ESUs (i.e., CCV spring-run chinook, CC chinook, NC steelhead, and CCC coho salmon) would not be prohibited when it resulted from 10 specific categories of activities that meet specified levels of protection and conservation. As described in the proposed rule, these activities must be conducted in a way that contributes to the conservation of these ESUs, or they must be governed by a program that limits impacts on the ESUs to an extent that makes added protection through Federal regulation not necessary and advisable for their conservation. In this final rule NMFS has concluded that it will not apply the ESA section 9(a) prohibitions to these four ESUs for the 10 categories of activities described in this final rule when they meet the necessary level of protection and conservation.

As an alternative to utilizing the 10 limitations on the take prohibitions described in this final rule, affected entities may choose to seek an ESA section 10 permit from NMFS, or may be required to satisfy ESA section 7 consultation if Federal funding, management, or approval is involved. This final rule does not impose restrictions beyond those applied in other sections of the ESA, but rather provides another option beyond the provisions of sections 7 and 10 for the authorization of incidental take and in some instances directed take.

As discussed above, NMFS has identified 10 categories of activities or programs for which it is not necessary and advisable to impose take prohibitions when they contribute to the conservation of these four ESUs or are governed by a program that adequately limits impacts on these ESUs. Under the criteria specified in the final rule, these activities include the following: (1) Activities conducted in accordance with an existing ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) scientific research activities permitted or conducted by the State of California; (7) state, local, and private habitat restoration activities that are part of approved watershed conservation plans; (8) properly screened water diversion devices (i.e., screening devices per NMFS' guidelines or equivalent configurations); (9) routine road maintenance activities; and (10) municipal, residential, commercial, and industrial (MRCI) development activities. These limitations on the take prohibitions are described in more

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detail in the proposed rule and the specific criteria and standards that must be met to qualify for the limitations are described in detail in the regulations contained in this final rule. In general, these take limitations and associated approval criteria are for future programs where NMFS will limit the application of the ESA section 9(a)(1) take prohibitions rather than for existing programs. NMFS anticipates that new take limits for additional activities may be added to these regulations in the future.

NMFS emphasizes that these 10 limitations on the section 9 take prohibitions are not prescriptive regulations. The fact that an activity is not conducted within the specified criteria for one of the 10 take limits does not necessarily mean that the activity violates the ESA or this regulation. Many activities do not affect the threatened ESUs covered by this final rule, and, therefore, do not need to be conducted within any of the 10 categories of take limits to avoid ESA section 9 take violations. Nevertheless, an entity can be certain it is not at risk of violating the section 9 take prohibitions or at risk of enforcement actions if it conducts its activities in accordance with the take limits. Jurisdictions, entities, and individuals are encouraged to evaluate their practices and activities to determine the likelihood of whether take is occurring. Entities can comply with the ESA through this and other 4(d) rules, section 10 research, enhancement, and incidental take permits, or through section 7 consultation with Federal agencies. If take is likely to occur, then the jurisdiction, entity or individual should modify its practices to avoid the take of these threatened salmonid ESUs or seek protection from potential ESA liability through section 7, section 10, or section 4(d) rule procedures.

This final rule does not require jurisdictions, entities, and individuals to seek coverage from NMFS under any of the 10 take limits. In order to reduce its liability, a jurisdiction, entity, or individual may informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in the individual limits. Alternatively, a jurisdiction, entity, or individual may seek, at its discretion, to qualify its plans, activities, or ordinances for inclusion under one of the 10 take limits by obtaining an authorization from the NMFS' Southwest Region Administrator as detailed in the regulations contained in this final rule (see **ADDRESSES**).

NMFS will continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of these and other threatened salmonid ESUs, and to strengthen other programs so that they contribute to the conservation of listed salmonids. This final rule may be amended to add new limits on the take prohibitions, or to amend or delete adopted take limits as circumstances warrant.

The following section entitled "Notice of Availability" lists four documents referred to in the proposed rule and this final regulation. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components expected to be addressed in programs submitted for NMFS' review. These technical documents provide guidance to entities as they consider whether to submit a program to NMFS for coverage under one of the take limits in the final rule. The documents represent guidance, and are not binding regulations requiring particular actions by any entity or interested party.

For example, NMFS' technical report entitled: "Viable Salmonid Populations (VSP) and the Recovery of ESUs", which is referenced in the fishery and hatchery management take limits, provides a framework for identifying populations and their status as a component of developing adequate harvest or hatchery management plans. The final rule indicates that Fishery Management and Evaluation Plans (FMEPs) and Hatchery and Genetic Management Plans (HGMPs) should utilize the concepts of 'viable' and 'critical' salmonid population thresholds, consistent with the concepts contained in NMFS's VSP report. Similarly, NMFS' fish screening criteria explicitly recognize that they are general in nature and that site constraints or particular circumstances may require adjustments in design, which must be developed with a NMFS staff member or designee, to address site specific considerations and conditions. Finally, research involving electrofishing comes within the scientific research limit if conducted in accordance with NMFS' guidelines for electrofishing. The guidelines recognize that other techniques may be appropriate in particular circumstances, and NMFS can recognize those as appropriate during the approval process.

The Oregon Department of Transportation's (ODOT) road maintenance program for governing routine maintenance activities is an existing program currently being implemented that NMFS has found adequate for threatened ESU conservation and, therefore, has been established as a take limitation in a previous ESA 4(d) rule (65 FR 42422). Other jurisdictions may seek coverage under the road maintenance limit in this final rule if they use the ODOT program or submit a program that utilizes other practices found by NMFS to meet or exceed the ODOT standards for the protection of threatened salmonids.

Where this rule cites a guidance document, a program's consistency with the guidance is sufficient to demonstrate that the program meets the particular purpose for which the guidance is cited. However, the entity or individual requesting that NMFS concur that a program meets the criteria of a particular limit has the latitude to show that its variant or approach is, in the circumstances where it will apply and affect listed fish, equivalent or better.

NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections, or additions as needed. NMFS will use the mechanisms of this final rule to take comment on revisions of any of the referenced state programs. If any of these documents are revised in the future and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in 50 CFR 223.203(b).

Notice of Availability

The following is a list of documents cited in the regulatory text of this final rule. Copies of these documents may be obtained upon request (see Appendix A to 50 CFR 223.203).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS, 2000a).
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000).

The limits on the take prohibitions in this final rule do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect the ESUs covered by this rule or any other listed species. To the extent that actions subject to section 7 consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, a letter of concurrence from NMFS will greatly simplify the consultation process, provided the program is still consistent with the terms of the limit.

Applicability of Final Rule to Specific ESUs

In the regulatory language in this final rule, the limits on the applicability of the take prohibitions to specific ESUs are accomplished through citation to the Code of Federal Regulations' (CFRs') enumeration of threatened marine and anadromous species in 50 CFR 223.102. For the convenience of readers of this document, 50 CFR 223.102 refers to the threatened salmonid ESUs covered in this final rule through the following designations:

(a)(3) Central California Coast coho salmon

(a)(20) Central Valley spring-run chinook salmon

(a)(21) California Coastal chinook salmon

(a)(22) Northern California steelhead

Summary of Comments in Response to the Proposed Rule

The public comment period for the proposed rule was open from August 17, 2001, through October 1, 2001. During the comment period, NMFS held three public hearings (Chico, CA on 9/13/01; Eureka, CA on 9/18/01; and Ukiah, CA on 9/19/01) to solicit public comments. A limited number of individuals provided oral testimony at the three public hearings. During the comment period, NMFS received 8 written comments on the proposed rule from various agencies, non-governmental organizations, and individuals. A summary of the comments and NMFS' responses to those comments are presented here by specific issue.

Comments and Responses

Tribal Coordination

Comment 1: The Bureau of Indian Affairs (BIA) reminded NMFS of its obligation to consult with potentially affected Indian tribes that might be affected by this ESA 4(d) rule pursuant to Executive Order 13175 (Consultation and coordination with Indian tribal governments). In addition, BIA provided NMFS with a list of recognized Indian tribes that occur within the range of the threatened ESUs covered by this final rule.

Response: In response to the BIA's guidance, NMFS notified all of the potentially affected Indian tribes of the proposed ESA 4(d) rule and the U.S. District Court Order to finalize the rule by December 31, 2001. NMFS offered to meet with any tribe to explain the rule, discuss its potential impact on the tribe, and to explain its relationship to the Tribal ESA 4(d) rule which NMFS published on July 10, 2000 (65 FR 42481). NMFS has consulted in the past with many of these tribes on previous ESA 4(d) rules, as well as the Tribal ESA 4(d) rule, and will consult with any and all tribes as they request us to do so.

Comment 2: BIA requested clarification as to whether or not the Tribal ESA 4(d) rule (65 FR 42481, July 10, 2000) applied to the four ESUs covered in this ESA 4(d) rule.

Response: The Tribal ESA 4(d) rule (65 FR 42481) NMFS published on July 10, 2000, is actually a broadly defined limitation on the ESA section 9(a)(1) take prohibitions for recognized Indian tribes that applies to all threatened salmon and steelhead ESUs including the four covered by this final ESA 4(d) rule and any threatened salmonid ESUs that may be listed in the future. Under this Tribal ESA 4(d) rule, a section 9(a)(1) take limitation was created for resource management plans (e.g., harvest, habitat restoration, research and monitoring, etc.) developed by Tribes where NMFS has determined that implementation of the plan will not appreciably reduce the likelihood of survival and recovery for the listed ESU(s) that are affected by the plan. This Tribal ESA 4(d) rule was intended to harmonize NMFS' statutory conservation efforts under the ESA with tribal rights and the Federal Trust responsibility to tribes.

Comment 3: BIA advised NMFS that Tribal governments may incur direct compliance costs if they choose to pursue coverage under the Tribal ESA 4(d) rule or this final rule.

Response: NMFS does not anticipate that Indian Tribes will pursue coverage under the take limits in this final ESA 4(d) rule. Although Tribes are certainly eligible to pursue coverage under the limitations in this final rule, the purpose of the Tribal ESA 4(d) rule was to provide recognized tribes with a broad take limitation that could cover any type of resource management plan including those that might be developed pursuant to this final ESA 4(d) rule (e.g., routine road maintenance, fish harvest, habitat restoration, etc.). For this reason, NMFS would strongly recommend to Tribes that they utilize the Tribal ESA 4(d) rule instead of this final rule to obtain coverage for their activities if they choose to do so. Not only is the Tribal ESA 4(d) rule sufficiently flexible that it can accommodate the full range of tribal resource management plans, but it provides for a broad and open government-to-government consultation process in developing and evaluating such plans. NMFS recognizes that Tribes may incur direct compliance costs in the development of tribal resource management plans. NMFS is prepared to work closely with interested tribes to develop resource management plans for consideration under the Tribal ESA 4(d) rule that will minimize costs and will also provide technical expertise and other support wherever it can pursuant to the 1997 Secretarial Order (June 5, 1997).

Take Guidance

Comment 4: One commenter stated the proposed ESA 4(d) rule does not adequately state why a take prohibition is necessary for these threatened ESUs, nor does it establish a basis for the conclusion that specified activities are likely to result in a take.

Response: NMFS believes that the listing determinations for each of the ESUs covered by this final rule, as well as all other west coast salmonid listing determinations, have documented the historic and current factors responsible for their decline to the point where ESA protection was necessary. Factors responsible for the decline of these ESUs include loss and degradation of freshwater habitat from a wide range of habitat modifying activities, harvest of fish in recreational and in some cases commercial fisheries, predation, and natural fluctuations in the environment (e.g., ocean conditions, rainfall, drought, etc.). NMFS believes that historic and ongoing take of fish in these ESUs as a result of these factors has contributed significantly to their decline. For this reason, NMFS has concluded that it is necessary and advisable to prohibit and closely regulate the allowable take of these species. Failure to prohibit and regulate take by this final rule would result in continued decline of listed salmonids.

It is NMFS' policy to increase public awareness of, and to identify which activities we believe are likely or not likely to, injure or kill a listed species. The take guidance in the proposed rule and in this final rule are intended to do that. It is only possible based on direct experience with managing populations in their natural environment and from scientific literature to describe the types of activities that may have adverse impacts (i.e., result in take) on fish and their habitat and describe their consequences (e.g., blocking fish from reaching spawning grounds, dewatering incubating redds, etc.). NMFS understands that there is considerable

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interest by many entities in knowing as much as possible about what constitutes take of a listed species and the take guidance in this final rule attempts to provide that information. However, determining whether an individual local program or activity will or is likely to injure or kill a listed fish requires an accurate and credible assessment that takes into account local factors and conditions.

Comment 5: One commenter stated that NMFS' take guidance in the proposed rule identifies activities that "are very likely" or "may" injure or kill listed species, instead of stating only activities resulting in "actual death or injury."

Response: NMFS provided broad take "guidance" for the purpose of helping individuals understand what actions could possibly lead to take. By offering guidance on what type of activities may cause take, individuals can better avoid any illegal behavior that could result in an actual death or injury.

Comment 6: One commenter stated that the proposed ESA 4(d) rule is more restrictive than the ESA section 9 take prohibitions.

Response: NMFS disagrees. The proposed and final ESA 4(d) rule do impose the section 9(a)(1) take prohibitions in the ESA, but simultaneously it puts into place limitations on those take prohibitions for certain categories of activities under specified conditions. In effect, whenever NMFS finds that an activity falls within a take limit in the final rule, the section 9 take prohibitions do not apply to that activity. In this way, this rule is more flexible and potentially less restrictive than an alternative ESA 4(d) rule that would simply put into place the section 9 take prohibitions without limitation. In this latter case where only the take prohibitions are in effect, the only way to comply with the ESA is to either avoid taking entirely or to have take authorized through ESA sections 7 or 10.

Comment 7: One commenter requested clarification that the rule does not prohibit take associated with an activity when it is conducted pursuant to an approved Federal permit.

Response: If a Federal permit was subject to a previous section 7 consultation for which an incidental take permit was issued, then take associated with the project will have been previously authorized. However, if a Federal permit was issued without section 7 consultation or without an incidental take statement for the ESUs in this final rule, then the permitted activity would not have take authorization for these ESUs and might violate the ESA section 9 take prohibitions. Under this circumstance, ESA section 7 consultation should be initiated or reinitiated with NMFS so that incidental take can be properly authorized.

Comment 8: Several commenters suggested or requested that NMFS create take limitations for other programs such as the Natural Resources Conservation Service's Field Office Technical Guidance and some or all elements of the CALFED program in California's Central Valley.

Response: NMFS believes that the ESA 4(d) rule process provides another opportunity in addition to ESA sections 7 and 10, for state and other jurisdictions to assume leadership for threatened salmonid conservation at the state and local level in addition to the conventional tools that are available through sections 7 and 10 of the ESA. NMFS is prepared to collaborate with Federal, state, tribal, and local entities to develop and evaluate programs that will take advantage of the ESA 4(d) option for achieving salmonid conservation and compliance with section 9 take prohibitions of the ESA. NMFS is especially interested in state-level conservation programs because such programs can more efficiently and comprehensively provide for conservation of threatened salmonids. However, incorporation of any additional take limitations into this or future ESA 4(d) rules will need to go through the rulemaking process.

Federal programs, including many programs and activities being carried out as part of the CALFED implementation program, are subject to ESA section 7 consultation if they may affect listed species. This ESA 4(d) rule does not and cannot relieve Federal agencies of their ESA section 7 consultation obligations under the ESA and, therefore, authorization of incidental take for Federally permitted, conducted, or funded programs must occur through the section 7 process.

Legal Issues/Section 7/National Environmental Policy Act (NEPA)/ Regulatory Flexibility Analysis/ Regulatory Impact Review

Comment 9: The Department of the Interior commented that the ESA 4(d) rule may affect terrestrial and other species under the jurisdiction of the U.S. Fish and Wildlife Service (FWS) and that NMFS should, therefore, consult with FWS pursuant to section 7 of the ESA.

Response: NMFS recognizes that promulgation of this ESA 4(d) rule is a Federal action requiring consultation under section 7 of the ESA. NMFS must ensure through the ESA section 7 process that the 4(d) rule does not jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. NMFS has completed the required ESA section 7 consultation with itself concerning the effects of this 4(d) rule on listed species under NMFS' jurisdiction and concluded that the rule is not likely to adversely affect these listed species or adversely modify their critical habitat.

NMFS also consulted with FWS concerning the effects of promulgating this ESA 4(d) rule on listed species under FWS' jurisdiction (FWS' listed species) and their critical habitat. FWS concurred with NMFS that the imposition of ESA section 9(a)(1) take prohibitions for the ESUs addressed by this rule was not likely to adversely affect FWS' listed species or their critical habitat. However, both agencies recognized that plans, programs, or activities developed for future approval by NMFS pursuant to the take limits in this final rule have the potential to affect FWS' listed species or their critical habitat depending on their geographic location and the details of the plan, program or activity. Through the consultation process NMFS has committed to work closely with FWS during development of such plans, programs or activities to determine if and how they may affect FWS' listed species or their critical habitat. As part of this early coordination process, NMFS has committed to work with FWS and any applicant seeking a take limit approval under this final rule to ensure that any plan, program, or activity that is developed either avoids impacts to, or does not adversely affect any of FWS' listed species or their critical habitat. Finally, if a plan, program or activity cannot be developed that will not adversely affect or not avoid impacts to FWS' listed species or their critical habitat NMFS will continue to work with FWS to ensure appropriate compliance with the ESA for FWS' listed species or critical habitat. On the basis of these determinations and commitments, FWS concluded that promulgation of this rule is not likely to adversely affect species under FWS' jurisdiction.

Comment 10: Some commenters asked NMFS to clarify the extent which NEPA applies to the ESA 4(d) rule.

Response: NEPA applies to this and other ESA 4(d) rules, and as this final rule states, NMFS completed Environmental Assessments (EAs) for this regulatory action. Those documents were made available during the comment period and continue to be

available via NMFS' Southwest Region website (http://swr.nmfs.noaa.gov).

Comment 11: One commenter suggested that the EAs prepared by NMFS were inadequate and failed to examine a full range of alternatives, particularly with regard to some of the take limitations contained in the proposed rule.

Response: NMFS believes that the range of alternatives examined in the EAs is appropriate and that no additional alternatives need to be considered.

NMFS believes that the EAs that were prepared for this final rule are adequate to support the regulatory action of imposing the section 9(a)(1) take prohibitions on the CCV spring-run chinook, CCC chinook, and NC steelhead ESUs. However, NMFS has determined that additional NEPA analysis is necessary to support any future agency approvals under the 10 take limitations contained in the rule. NMFS intends to conduct additional, programmatic NEPA analysis that specifically addresses the environmental impacts of approving activities under each of the take limitations (e.g., water diversion screening, etc.) contained in this final rule. This is consistent with the approach NMFS is now taking for the ESA 4(d) rule it published in July 2000 which covered 14 threatened salmon and steelhead ESUs. Until programmatic NEPA analyses are completed for each of the take limitations in this final rule as described above, NMFS will prepare separate NEPA analysis for any plan or activity for which the agency is requested to make an approval under any of the rule's take limitations. For example, until a programmatic NEPA document is completed which specifically addresses recreational angling under the Fishery Management and Evaluation Plan (FMEP) take limitation in this final rule, NMFS will not approve any FMEPs until approval of that plan has been addressed in a plan specific NEPA document.

Comment 12: Two commenters argued that according to the holding in *Alsea Valley Alliance* v. *Evans*, 99-6265-HO (D. Oreg., September 12, 2001), the four threatened salmonid ESUs covered by this ESA 4(d) rule have been improperly listed under the ESA, and hence, NMFS has no statutory authority to issue an ESA 4(d) rule pertaining to them.

Response: NMFS disagrees. Unless a listing decision is invalidated by a court, or superceded by another formal rule making, an ESU remains listed and, thus, properly subject to ESA 4(d) rule protection. None of the four ESUs covered by this final rule were de-listed as a result of the *Alsea* case and, thus, NMFS has an obligation to promulgate ESA 4(d) rules that it believes are necessary and advisable for their conservation.

Comment 13: The National Association of Home Builders (NAHB) commented that it opposes the proposed ESA 4(d) rule on many of the same grounds that are currently being litigated by NAHB against NMFS in *Kittitas County* v. *Evans* with regard to the July 10, 2000 ESA 4(d) rule, particularly the MRCI limit.

Response: NMFS will not address arguments and objections that are raised generally by reference to a pending case, such as Kittitas County. Rather, NMFS will respond to specific comments made in this rulemaking.

Comment 14: NAHB commented that with this ESA 4(d) rule NMFS is interpreting the ESA in a way that alters the federal-state framework by permitting Federal encroachment upon a traditional state power such as the states' traditional and primary power over land and water use. NAHB also asserted that NMFS had failed to demonstrate what it is necessary and advisable to place the additional burden on local governments of creating and submitting to NMFS for approval, ordinances that actively conserve these threatened salmonid ESUs

Response: NMFS disagrees that the ESA 4(d) rule alters the federal-state framework by encroaching on land and water use regulation by state/local governments. NMFS also disagrees that the rule places any additional burdens on state and local governments. To the extent that state or local regulation or permitting of land use or water use may result in the take of these threatened salmonids, the Municipal Residential Commercial and Industrial (MRCI) and other take limitations contained in this rule provide a mechanism for the state/local entity to relieve itself of the take prohibitions. Also, development and submittal of a plan to NMFS for consideration under any of the take limitations in the ESA 4(d) rule is completely voluntary. Should individuals, local governments or the state instead wish to obtain a take exception for threatened species subject to the section 9 prohibitions, they may submit a Habitat Conservation Plan to NMFS under section 10 of the ESA.

Comment 15: NAHB commented that NMFS did not demonstrate why it is necessary and advisable to require that each ordinance be approved by NMFS and placed in the **Federal Register** and be subjected to 30 days of public notice and comment in order to obtain coverage for the MRCI take limitation.

Response: In order for NMFS to determine whether a particular ordinance or plan may be sufficiently protective of threatened species, it must be submitted to NMFS for review and consideration. Prior to making any such determination, NMFS believes that it is important to obtain public and/or agency comments on both the ordinance or plan and our pending determination. For this reason, this final rule calls for publishing a notification in the **Federal Register** announcing the availability of the ordinance or plan for review and comment.

Comment 16: NAHB commented that NMFS cannot hold local governments liable for take under the ESA.

Response: The take limitations in the rule are permissive and not mandatory. Any vicarious liability determination would arise from application of the take prohibitions to the local government, depend upon the specifics of the regulations and the regulated activity, and so would depend upon the circumstances of each case.

Comment 17: NAHB asserted that the proposed ESA 4(d) rule raises 10th Amendment concerns by creating a state duty to administer the Federal law of "take" against third parties.

Response: The take limitations in this final rule are permissive, not mandatory (i.e., they impose no requirements on state and local governments). The only prohibition in this final rule is against take of the threatened species covered by this final rule. This final rule does not impose any affirmative duty upon the state to administer the ESA.

Viable Salmon Population (VSP) Framework

Comment 18: One commenter said that references to "historic abundance levels" and "habitat capacity of the population" in the discussion in the proposed rule about how NMFS would assess population status as part of its VSP framework are ambiguous and unclear.

Response: Historic conditions are meant to serve as one possible reference point in evaluating population status because under historic conditions populations were assumed to have been viable. The time frame, therefore, refers to a period in time where the population or ESU was considered self sustaining and may represent different time frames for different species or populations. Although historical data, if it is available, may be a useful tool in this assessment, it does not mean that NMFS will require or assume that every population must be at a historic

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abundance level in order to be viable. Where historic data are not available or are of uncertain accuracy, the assessment of viable population levels could be based upon an evaluation of the habitat capacity or carrying capacity of the habitat available to a population.

Take Limitations - General Comments

Comment 19: Several commenters stated that each of the take limitations should have provisions for monitoring and oversight where NMFS is approving plans or ordinances (e.g., FMEPs, routine road maintenance, water diversion screening, etc.).

Response: NMFS agrees that programs that are approved under the take limits in this rule are incomplete if there is no mechanism to track their effectiveness and implementation. NMFS believes that this final rule provides for a sufficient level of monitoring and oversight of activities that may qualify for coverage under the 10 take limitations. Several of the take limits (e.g., recreational fishing, hatchery and genetic management, routine road maintenance, MRCI) in this final rule specifically require that monitoring be incorporated into programs or plans in order to qualify for coverage under the limitation. In addition, the final rule indicates that NMFS will evaluate on a regular basis the effectiveness of all programs that are approved under the take limits to insure that they are achieving the level of protection that is consistent with the conservation of the threatened ESUs covered in the rule. If a program or plan does not meet the required objectives, NMFS will work with the relevant entity to make adjustments to the program accordingly. If the relevant entity chooses not to adjust the program to meet the necessary objectives for coverage under the take limit, then NMFS will publish notification in the **Federal Register** that the program is no longer exempt from the ESA section 9(a)(1) take prohibitions because it does not sufficiently conserve the threatened ESUs.

Comment 20: One commenter was concerned that activities falling under any one of the 10 take limitation categories in the proposed rule were automatically exempt from the take prohibitions and would not be monitored by NMFS.

Response: Virtually all of the take limitations in this final rule require that entities seeking a limitation submit a plan to NMFS which addresses a wide range of detailed criteria specified in the rule. These include habitat modifying activities such as routine road maintenance, MRCI development, and water diversion screening. Only after NMFS has reviewed these plans against the specified criteria in the rule and responded to public comments on the plans, will NMFS make a determination as to whether or not the plan qualifies for coverage under a limit. As discussed in the preceding response to comment, NMFS believes this final rule requires sufficient monitoring of activities covered under the take limits, and ample opportunity for NMFS to provide oversight of activities covered under the take limits.

MRCI Take Limitation

Comment 21: One commenter expressed concerns that the MRCI take limitation does not explicitly require entities seeking coverage to address cumulative impacts or mitigation and recommended the final rule include such a requirement.

Response: NMFS recognizes the importance of assessing cumulative impacts for MRCI development and other types of activities covered by the take limitations in this final rule. For some take limitations such as recreational angling (i.e. the FMEP take limit), NMFS has explicitly incorporated consideration of cumulative impacts into the rule where it is feasible. For habitat modifying activities, however, this is difficult. NMFS believes, however, that cumulative impacts are addressed at least in part for habitat modifying activities, such as MRCI development and routine road maintenance, since coverage of such an activity under the rule requires NMFS to find that it is contributing to the attainment of, or is contributing to the maintenance of, properly functioning habitat conditions for the threatened ESUs covered in the rule.

Comment 22: One commenter stated that the description of the evaluation criteria relating to riparian management areas in MRCI plans should indicate that such areas are often larger than one site-potential tree height and that it should also specify the types of riparian functions that should be protected in such plans.

Response: NMFS recognizes that riparian areas are important to threatened salmonids and, therefore, provided guidance in this final rule that MRCI plans should provide sufficient riparian management requirements or measures within a distance of one site-potential tree height from the stream channel. This general guidance was based on the best available scientific information which indicates that this stream side area is the one in which development activities most affect riparian zone habitat functions. Although this is a good rule of thumb, NMFS recognizes, as stated in the guidance for riparian zone management, that this distance can vary substantially from location to location and should be determined on a site-specific basis taking into account the conditions of the site or area and the type of habitat that may be affected by the MRCI development.

Comment 23: One commenter indicated that it was unclear whether a plan must be submitted to NMFS when an entity requests coverage under the MRCI take limit, and that it was also unclear who is responsible for approving such a plan if warranted.

Response: NMFS does expect interested jurisdictions to submit a plan to NMFS which describes the MRCI activities to be covered and which addresses the twelve evaluation criteria contained in the take limit. As indicated in this final rule, the Southwest Regional Administrator is responsible for determining whether a MRCI plan qualifies for coverage under this take limit.

Comment 24: The MRCI limit is subjective, violates the ESA, and is arbitrary and void for vagueness.

Response: The MRCI limitation was intended to be more broadly flexible than most of the other take limitations in order to address and provide coverage to the wide variety of circumstances that may arise under this category of activities. As noted elsewhere in this final rule, tailoring activities to comply with the take limitations and submittal of any plan to NMFS for consideration under any of the take limits, including the MRCI limit, is strictly voluntary. The MRCI limit has 12 specific land use considerations relevant to preserving fish habitat that NMFS will use to evaluate submitted land use regulations. NMFS' use of these considerations to make its consistent with conservation and attaining and maintaining properly functioning condition determinations gives adequate clarity and certainty to this part of this regulation.

Comment 25: One commenter felt that NMFS should provide performance standards that ordinances should meet and that the twelve evaluation criteria contained in the MRCI take limit were too vague.

Response: As discussed in this final rule, the fundamental performance standard against which ordinances or plans will be evaluated under this take limit is whether they contribute to maintaining and/or restoring properly functioning habitat conditions that will conserve the threatened ESUs. Under this limit, NMFS will evaluate

ordinances or plans to determine if and how they affect conditions on the landscape and the extent to which they are contributing to the maintenance of or restoration of essential habitat functions. If such plans would maintain or contribute to restoring these functions, then they may qualify under the take limitation.

The 12 considerations contained in this final rule identify the specific issues and/or factors NMFS will use as a framework for evaluating ordinances or plans. These considerations are based on current scientific understanding of salmonid biological requirements. By assessing these twelve considerations, NMFS believes it can evaluate the extent to which an ordinance or plan contributes to maintaining or restoring properly functioning habitat conditions that will conserve the threatened ESUs. Depending on the scope of the ordinance or plan, all twelve of these considerations may not be relevant. NMFS recognizes this fact and will base its evaluation on only those considerations that are relevant.

Recreational Fisheries Take Limitation

Comment 26: One commenter suggested that the final rule should provide a mechanism allowing FMEPs to be "tiered" off of Pacific Fishery Management Council (PFMC) approved Fishery Management Plans in order to avoid redundancy and duplication.

Response: The FMEP take limitation in this final rule is intended to provide a more efficient mechanism for insuring that freshwater recreational fisheries managed by the State of California adequately protect and contribute to the conservation of the threatened ESUs covered by the rule while still providing for angling opportunities. Coverage of State managed fisheries in this manner will provide assurance to the State and anglers that they are in compliance with the ESA. Such fisheries are under the jurisdiction of the State and are not managed by PFMC. Since the PFMC manages marine fisheries covered by Federal Fishery Management Plans it is unclear how the FMEP process in this final rule can be tiered off of the FMP process that is implemented by the PFMC. Because the two processes manage two separate fisheries, NMFS does not believe that there will be unnecessary duplication or redundancy in the development of FMEPs. To the extent feasible, however, NMFS will encourage the State to utilize information gathered as part of the FMP process in the development of FMEPs that are submitted for coverage under this rule.

Water Diversion Screening Take Limitation

Comment 27: One commenter argued that the water diversion screening take limitation is inappropriate and does not meet the requirements of the ESA.

Response: NMFS believes strongly that the water diversion screening take limit is appropriate, that it provides for the conservation of the threatened ESUs covered by the rule, and that it is consistent with the ESA. As the commenter pointed out, NMFS is well aware that the entrainment of juvenile salmonids in unscreened or poorly screened water diversions is a problem, both in the central valley and in coastal watersheds. The water diversion screening limit in this rule is intended to provide an incentive for screening unscreened or poorly screened diversions. This final rule and this take limit do not allow unregulated take of listed salmonids at water diversions in the central valley or in coastal watersheds. In fact, this final rule imposes the ESA section 9(a)(1) take prohibitions on these three threatened ESUs making it illegal to entrain these fish into water diversions, and only relieves diverters of the take prohibitions if they qualify by meeting the criteria in the water diversion screening take limit or by obtaining take authorization through the processes of ESA section 7 or 10. NMFS will only provide coverage to water diverters under the water screening diversion take limit if they meet the criteria specified in the rule. These criteria call for: (1) NMFS to certify that a diversion is screened, maintained, and operated in compliance with NMFS' fish screening criteria; and (2) the owner/operator of the facility to allow NMFS to inspect the facility to insure compliance with the criteria. NMFS believes these screening criteria are fully protective of juvenile salmonids and presently uses them as the basis for evaluating water screening diversion projects under ESA sections 7 and 10 of the ESA.

Comment 28: One commenter was concerned that this final rule and this take limitation in particular would exempt all take of these threatened ESUs at the Federal and state water pumping facilities that operate in the central valley, provided they are operated in compliance with whatever screening criteria are in place.

Response: As discussed elsewhere, this final rule will impose the ESA section 9(a)(1) take prohibitions on three threatened ESUs, including the CCV spring-run chinook ESU. The water diversion screening take limit is primarily built into the rule to provide an incentive to smaller, non-Federal water diverters to screen their diversions with appropriate screens. In contrast, the Federal and state pumps and the associated fish protection facilities are part of the Federal and state water projects which are operated in a coordinated fashion by the Bureau of Reclamation and the Department of Water Resources. The combined operation of the Federal and state water projects, including the Federal and state pumps and the associated fish protection facilities, constitute a Federal project activity which is subject to section 7 of the ESA. This final rule does not relieve Federal agencies such as the Bureau of Reclamation of their obligation to consult under the ESA, nor does it exempt the take of these threatened species by Federal agencies. For this reason, the incidental take of CCV spring-run chinook at the Federal and state pumps and the associated fish protection facilities are authorized through section 7 of the ESA, not this final ESA 4(d) rule. Future modifications of the fish protection facilities in the Delta will comport to the extent appropriate with NMFS' fish screening criteria and the mechanism for any required ESA compliance will be section 7 of ESA through the Bureau of Reclamation.

Comment 29: One commenter asserted that NMFS' screening criteria are not well supported or justified scientifically.

Response: NMFS disagrees. NMFS' fish screening criteria are extensively detailed and have undergone a high degree of scientific scrutiny. They are based on decades of operational experience that have yielded some of the best screen designs for salmonid protection in existence. Several States, including California, have adopted NMFS' screening criteria and use them extensively. Lastly, extensive biological evaluations have demonstrated little or no injury to fish when testing screen facilities constructed to NMFS' criteria.

Comment 30: One commenter suggested that this take limit should also "grandfather" in older fish screen and passage facilities provided they met the standards that were in existence at the time they were installed.

Response: The intent of this take limitation is to allow a water diversion to be made as safe as possible for the threatened ESUs covered by the rule. Therefore, we believe that the best available information regarding fish screen criteria that are protective of salmonids should be used as the basis for providing coverage to water diversions under this limit. In our view, the 1997 criteria constitute the best

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available information. As new biological information becomes available, however, it may be necessary to update these criteria and all new facilities from that point forward would need to comply with any updated criteria. NMFS recognizes that it may not be necessary to retrofit all existing screen facilities with new features every time that new information becomes available and that some older facilities may still function in a manner that is protective of threatened salmonids. In such cases, NMFS may consider certification of screen designs that meet the criteria in place at the time of construction providing there is no evidence to show that the device is causing the take of listed salmonids.

Habitat Restoration Take Limitation

Comment 31: One commenter argued that NMFS should not insert itself in the process of approving watershed conservation plan guidelines. This commenter also contended that NMFS does not have the authority to require states or local governments to consult with the agency in the development of such plans.

Response: The goal of this take limitation is to provide a mechanism for exempting habitat restoration projects from the ESA section 9 take prohibitions when those projects have been identified as being necessary to restore watershed function as a result of watershed scale assessments. In order for NMFS to provide this type of blanket coverage for habitat restoration projects and to avoid having to review all watershed conservation plans and habitat restoration projects separately, we believe it is appropriate for NMFS to link this exemption to an approval of watershed conservation plan guidelines. Absent the process described by this take limitation, the only means available for NMFS to authorize take that may occur as a result of habitat restoration projects is to review and approve them individually through ESA section 7 or section 10 processes. The process described in this take limit, if implemented by the state, can serve to expedite implementation of habitat restoration projects while at the same time promote watershed assessments and the development of watershed conservation plans on the basis of standard guidance. As clearly stated in the proposed and final rule, state and local entities are not required to use any of the take limitations, including the limitation for habitat restoration. In other words, NMFS is not requiring the state and local entities to develop guidelines or watershed conservation plans. We have made this option available as part of a process for facilitating the implementation of habitat restoration projects through exemption from the section 9 take prohibitions. As an alternative to using this take limitation, state or local entities may choose to utilize the section 7 or section 10 processes to obtain take authorization for habitat restoration projects they plan to implement.

Take Guidance

The threatened salmonid ESUs addressed in this final rule are in danger of becoming extinct throughout all or a significant portion of their range in the foreseeable future. Abundance of these ESUs has been reduced by over-fishing, past and ongoing freshwater and estuarine habitat destruction, hydropower development, hatchery practices, and other causes. NMFS has concluded, therefore, that it is necessary and advisable to apply the ESA section 9(a)(1) prohibitions to these ESUS to aid in their conservation. ESA section 9(a)(1) prohibitions make it illegal for any person subject to the United States' jurisdiction to "take" these species without written authorization. "Take" is defined to occur when a person engages in activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a species or attempt to do any of these. Impacts on a protected species' habitat may harm members of that species and, therefore, constitute a "take" under the ESA. Such acts may include significant habitat modification or degradation that actually kills or injures listed fish by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding or sheltering (64 FR 60727, November 8, 1999).

On July 1, 1994 (59 FR 34272), NMFS and the FWS published a policy committing both agencies to identify, to the extent possible, those activities that would or would not violate section 9 of the ESA. The intent of this policy is to increase public awareness about ESA compliance and focus public attention on those actions needed to protect listed species.

Based on the best available information, NMFS believes the categories of activities that follow are those activities which as a general rule may be most likely to result in injury or harm to listed salmonids. It is important to emphasize, however, that whether injury or harm results from a particular activity is entirely dependent upon the facts and circumstances of each individual case. The mere fact that an activity may fall within one of these categories does not mean that the specific activity is causing harm or injury. These categories of activity, however, are ones that may be most likely to cause harm and, thus, violate the ESA section 9(a)(1) take prohibitions in this final rule. The activities listed below in A thru J are as cited in NMFS' harm rule (64 FR 60727, November 8, 1999).

A. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate.

B. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat.

C. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns.

D. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat.

E. Removing water or otherwise altering stream flow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns.

F. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species.

G. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat.

H. Constructing, maintaining, or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat.

I. Conducting timber harvest, grazing, mining, earth-moving, or other operations which result in substantially increased sediment input into streams.

J. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

K. Illegal fishing. Harvest in violation of fishing regulations.

L. Various streambed disturbances may trample eggs or trap adult fish preparing to spawn. The disturbance could be mechanical disruption caused by constructing push-up dams, removing gravel, mining, or other work in a stream channel. It may also take the form of egg trampling or smothering by livestock in the streambed or by vehicles or equipment being driven across or down the streambed (as well as any similar physical disruptions).

M. Interstate and foreign commerce dealing in listed salmonids and importing or exporting listed salmonids may harm the fish unless it can be shown through an ESA permit that they were harvested in a manner that complies with ESA requirements.

N. Altering lands or waters in a manner that promotes unusual concentrations of predators.

O. Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) that may retard or prevent the development of certain habitat characteristics upon which the fish depend (e.g., removing riparian trees reduces vital shade and cover, floodplain gravel mining, development, and armoring shorelines reduces the input of critical spawning substrates, and bulkhead construction can eliminate shallow water rearing areas).

P. Filling or isolating side channels, ponds, and intermittent waters (e.g., installing tide gates and impassable culverts) can destroy habitats the fish depend upon for refuge areas during high flows.

The list provides examples of the types of activities that could have a high risk of causing take, but it is by no means exhaustive. It is intended to help people avoid activities that may violate the ESA and to encourage efforts to protect and conserve the threatened ESUs covered in this final rule. A determination as to whether take has actually occurred depends on the circumstances of a particular case.

Many activities that may kill or injure salmonids, such as fill and removal authorities, National Pollutant Discharge Elimination System or other water quality permitting, and pesticide use are regulated by state and/or Federal processes. For those types of activities, NMFS would not concentrate enforcement efforts on those who operate in conformity with current permits. Rather, if the regulatory program does not provide adequate salmonid protection, NMFS intends to work with the responsible agency to make necessary changes in the program.

For instance, concentrations of pesticides may affect salmonid behavior and reproductive success. Current EPA label requirements were developed in the absence of information about the impacts of such pesticides on aquatic species such as salmonids. Where new information indicates that pesticide label requirements are not adequately protective of salmonids, NMFS will work with EPA through the ESA section 7 consultation process to develop more protective use restrictions and, thereby, provide the best possible guidance to all users. Similarly, where water quality standards or state authorizations lead to pollution loads that may cause take, NMFS intends to work with the state water quality agencies and EPA to bring those standards or permitting programs to a point that does protect salmonids.

Persons or entities concluding that their activity is likely to injure or kill protected fish are encouraged to immediately adjust that activity to avoid take (or adequately limit any impacts on the species) and seek NMFS' authorization for incidental take under: (a) an ESA section 10 incidental take permit; (b) an ESA section 7 consultation; or (c) one of the limits (if available) on the take prohibitions provided in this final rule. The public is encouraged to contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location (involving these activities or any others) would constitute a violation of this final rule.

Impacts on listed salmonids resulting from actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA would not constitute a violation of this final rule. Section 10 permits may be issued for research activities, enhancement of a species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. NMFS consults on a broad range of activities conducted, funded, or authorized by Federal agencies. These include fisheries harvest, hatchery operations, silviculture activities, grazing, mining, road construction, dam construction and operation, discharge of fill material, and stream channelization and diversion. Federally funded or approved activities that affect listed salmonids and for which ESA section 7 consultations have been completed will not constitute violations of this final rule provided the activities are conducted in accord with all reasonable and prudent measures and terms and conditions contained in any biological opinion and incidental take statement issued by NMFS.

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

In accordance with the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), therefore, NMFS prepared an IRFA which was made available through the proposed ESA 4(d) rule for public comment. Although no comments were received on the IRFA during the public comment period, NMFS has made some revisions to the Final Regulatory Flexibility Analysis (FRFA) by defining further geographic subareas to insure its consistency with the Final Regulatory Impact Review (RIR). The FRFA is available upon request (see **ADDRESSES**) and a summary follows.

This ESA 4(d) rule has no specific requirements for regulatory compliance. Instead, the rule sets an enforceable performance standard in the form of the section 9(a)(1) take prohibitions (i.e., do not "take" the threatened ESUs) that applies to all entities and individuals unless an activity is within a carefully circumscribed set of activities for which NMFS will not impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is potentially broad.

The entities potentially affected by imposition of the ESA section 9 take prohibitions occur over a large geographic area which includes the Sacramento River basin in California's central valley, as well as coastal watersheds ranging from the Russian River to Redwood Creek. Activities potentially affecting salmon and steelhead ESUs covered by the proposed rule are those associated with agriculture, fishing, hatcheries, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities may potentially be impacted. The activities of some nonprofit organizations may also be affected by these regulations.

NMFS examined the potential impact of the ESA 4(d) rule on a sector-by-sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, contiguity to waterways, individual strategies for dealing with the take prohibitions, etc. Finally, most of the activities that would be subject to the take prohibitions in the rule are already subject to the take prohibitions

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imposed by existing ESA 4(d) rules that protect other salmonid ESUs utilizing the same habitat. Thus, determining the incremental cost of this rule requires information concerning regulated entities' response to pre-existing ESA 4(d) rules, some of which have been in effect for only a little over a year.

In the absence of 4(d) rules, entities could comply with the ESA through section 10 research, enhancement, and incidental take permits with private entities, or through ESA section 7 consultation with Federal agencies. Since implementation of the July 2000 4(d) rule NMFS has received plans from various entities in Oregon, Washington, Idaho and California for approval under the limits to the take prohibitions. States can now send a list of research activities they expect to authorize for the following year instead of sending individual ESA section 10 applications. During promulgation of the July 2000 rule NMFS did not have a complete understanding of the economic impacts entities would incur as a result of imposition of the take prohibitions. To gain some insight as to how entities may have changed their activities in response to implementation of the take prohibitions, we have summarized the numbers of plans submitted and their status under the July 4(d) rule in the following table. While portions of these plans were developed independently of the July 4(d) rule, they may have been modified in order to qualify for the take limits of the rule, as opposed to undergoing ESA section 7 or 10 procedures. Authorization under the rescue/salvage limit, City of Portland, Oregon Parks and Recreation Department's Pest Management Program and Washington's Forest Practices became effective September 8, 2000, and January 8, 2001, for the steelhead and salmon ESUs respectively, and are not listed in the table. Oregon Department of Transportation's (ODOT's) Routine Road Maintenance program also became effective with the effective dates, but other entities can qualify for ESA coverage under this limit if they use ODOT's program or an equivalent program.

Limit	Number of Plans Received to Date	Number of Plans Pending Approval	Number of Plans Approved	Number of Plans Expected in Next Year
Research	3	0	3	4 yearly (Oregon Washington Idaho, California)
Fishery Management Plans	13	12	1	33
Hatchery Genetic Management Plans	9	9	0	61
Joint State/Tribal Plans	2	0	2	12
Habitat Restoration Activities	0	0	0	4
Diversion Screening	20	2	0	100
Oregon Department of Transportation's (ODOT's) Routine Road Maintenance or Equivalent Plan	11	0	0	7-10
Municipal, Residential, Commercial, and Industrial Plans	0	0	0	10

Entities that are now subject to the July 4(d) rule fall into 4 categories: (1) Those entities who have sought or are actively seeking ESA compliance via the July 4(d) rule limits; (2) those who are not sure if their activities will harm salmonids, but are seeking guidance from NMFS; (3) those who are actively seeking ESA compliance via the section 10 or section 7 process; and (4) those entities that are taking salmon but are not seeking ESA compliance.

Examination of the geographical aspects of overlapping ESUs, and consideration of differences in the distribution of the different ESUs within river systems revealed five subareas composing the geographic extent of the four ESUs combined. Subarea 1 consists of that area where this rule's take prohibition for Central Valley spring chinook would be superimposed on existing take prohibitions for threatened Central Valley steelhead and endangered winter-run chinook salmon. In this region only a small variety of activities involving deliberate take of spring-run chinook is expected to be affected.

Subarea 2 consists of that area where Central California coast coho will be subject to limitations on the take prohibition not presently allowed by the existing ESA 4(d) rule for that threatened ESU and no new take prohibition is being added. The impact of this rule in this subarea is the increased flexibility allowed by the 10 take prohibition limits.

Subarea 3 consists of that area where this rule superimposes the take prohibitions for Northern California steelhead and California coastal chinook on the existing take prohibition for Central California coast coho. Deliberate take of the steelhead and chinook will be newly affected in this subarea and the take limits will be introduced for coho, making them congruent with the take limits for steelhead and chinook in that area.

Subarea 4 consists of the area where this rule superimposes the take prohibition for steelhead and chinook on the existing take prohibition for the Southern Oregon/Northern California coho ESU. Deliberate take of steelhead and chinook will be newly regulated in this area, but no change will be made for the take limits applicable to coho.

Subarea 5 consists of those portions of the Northern California steelhead and California coastal chinook ESUs not utilized by either coho ESU. Because steelhead (and chinook to a lesser extent) are much more widely distributed within the ESU boundaries than coho, there are substantial areas where steelhead and/or chinook will be protected which are not utilized by coho. Modifications to habitat which have no risk of taking coho may risk taking steelhead and chinook in such areas.

Although there may be some limited impact in all of these subareas the only substantial economic impacts on individual small entities from this rule, therefore, are expected to occur in the non-federal portions of subarea 5, which lie almost entirely in low population density areas of Humboldt, Mendocino, and Sonoma counties. These three counties had a combined 1998 population of about 640,000 with personal income of about $18 billion. However, most of the people and income are contributed by urban centers in Sonoma and Humboldt counties which are not contained in subarea 5. No population estimate is available for subarea 5, but it is believed to be less than 15,000. Small entities in this subarea likely to be directly affected by this rule include private timber harvesters, cattle ranches, a small number of farms and vineyards, and possibly small businesses engaged in road and culvert construction. The number of such entities is not known, but is a small subset of the same classes of entities found in the three counties containing subarea 5.

This final rule applies the take prohibitions enumerated in ESA section 9(a)(1), and also limits application of the take prohibitions to certain specified categories of activities that contribute to conserving these ESUs or are governed by a program that adequately limits impacts on these ESUs. There are no record keeping or reporting requirements associated with imposition of the take prohibition; therefore, it is not possible to simplify or tailor record keeping or reporting to be less burdensome for small entities. However, some programs for which NMFS may in the future find it is unnecessary to prohibit take because they fall under one of the take limitations in this final rule would involve recordkeeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with these programs.

The public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on screening of a water diversion or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an MRCI ordinance development package; and 10 hours for an MRCI development annual report.

This rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed conservation plans that has received PRA approval from OMB under control number 0648-0230. The public reporting burden for the approval of watershed conservation plans is estimated to average 10 hours.

These estimates include any time required for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

In formulating this final rule, NMFS considered several alternative approaches which are described in the IRFA. These included: (1) Enacting a "global" ESA 4(d) protective regulation for threatened species through which NMFS would automatically apply the section 9 take prohibitions to all threatened species at the time of listing; (2) enacting ESA 4(d) protective regulations that include the take prohibitions, but contain no take limits, or only a few limits, on the application of the take prohibitions for relatively uncontroversial activities such as fish rescue/salvage; (3) enacting ESA 4(d) regulations which include the take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) enacting ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/Northern California coast coho salmon which includes four additional limitations on the extension of the take prohibitions, for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) enacting ESA 4(d) regulations similar to the interim rule for Southern Oregon/Northern California coast coho, but with recognition of more programs and circumstances in which application of take prohibitions is neither necessary or advisable, and (6) enacting no ESA 4(d) protective regulations for the threatened salmonid ESUs. This last approach would leave the threatened ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus.

The approach taken in this final rule is alternative 5 which would impose the ESA section 9 take prohibition and also create 10 limits to the take prohibitions for specific circumstances or categories of activity (see discussion of take limitations in the proposed rule). This approach is fundamentally the same as that taken in NMFS's July 2000 ESA 4(d) rule for 14 threatened salmonids (65 FR 42422). For several of these activity categories (i.e., recreational harvest, artificial propagation, habitat restoration, road maintenance, and municipal, residential, commercial and industrial development) the regulation is structured so that it allows plans or programs developed after promulgation of this final rule to be submitted to NMFS for review and approval under criteria described in the rule.

All of the other alternatives which provide take prohibitions for the threatened ESUs may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species. NMFS believes this final rule provides the greatest latitude for individual entities and regulatory agencies to tailor activities and programs to fit individual circumstances while avoiding or minimizing take of threatened salmonids. At present, NMFS concludes that there are no legally viable alternative rules that would have less impact on small entities and still fulfill the agency's obligations to protect these threatened salmonid ESUs.

Executive Order (E.O.) 12866

Pursuant to E.O. 12866 (58 FR 51735, October 4, 1993), NMFS has prepared a Regulatory Impact Review (RIR) which considers costs and benefits of the regulatory alternatives that were considered in developing this ESA 4(d) rule, including the alternative of not promulgating a protective rule. Copies of the RIR are available upon request (see **ADDRESSES**).

Costs and benefits of this final rule and other alternative rule making approaches include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits where estimates cannot be meaningfully made for impacts that are essential to consider. The benefit provided by this rule, as well as each of the other alternatives NMFS considered that afford sufficient protection for the threatened ESUs, is its contribution to the recovery of the threatened ESUs. No monetized measure of the benefit of recovery is available.

The RIR finds that in Area 1, Area 3, and Area 4 the only activities likely to be affected by this final rule are those involving deliberate direct take of listed species, especially angling, hatchery operation, and research. The costs of these activities, either to the state or private parties, are estimated to increase over the baseline due to increased permitting, NEPA documentation, and monitoring requirements. Activities in Area 2, where coho already have a take prohibition in place, will become less costly due to reduced permitting and NEPA requirements. In Area 5, timber harvest, grazing, stream diversions, summer dams, road construction and maintenance, and construction of new or improved culverts will come under increased regulation. Incremental costs associated with summer dams, roads, and culverts are significant but could not be quantified at this time. Aggregate quantified incremental first-year costs for the proposed rule are estimated to be between $11.8 million and $17.7 million, while annual costs thereafter are estimated to be from $4.6 million to $9.1 million. The same costs estimated for a blanket take prohibition with no limits are estimated at $18.9 million to $21.6 million and $6.2 million to $10.7 million, respectively.

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The RIR concludes that the proposed rule would substantially improve conditions favorable to recovery of the threatened ESUs compared to taking no action, that the only alternative which could achieve quicker results (detailed prescriptive requirements) is too costly and intrusive, and that the proposed rule is the least costly rule among the alternatives which are sufficiently protective of threatened salmon and steelhead ESUs.

Because this final rule will eliminate application of the section 9 take prohibition to those State or local programs or activities that fall within defined take limitation criteria protective of salmonids, those programs will encourage participation and contribute to the conservation of the threatened ESUs covered by the rule; NMFS' involvement will be more collaborative and less often require enforcement actions. This approach has the greatest probability that compliance burdens will be equally shared, that economic incentives will be employed in appropriate cases, and that practical standards adapted to the particular characteristics of the state or region will aid citizens in reducing the risks of take in an efficient way. For these reasons, it is likely that this final rule will minimize the cost to the public of avoiding or minimizing take over the long term in comparison with the other alternatives that were considered.

Executive Order 13175-Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13175 do not apply to this final rule.

Nonetheless, NMFS took steps to inform potentially affected tribal governments, to provide information to tribes on the content and scope of the rule and its relationship to the Tribal ESA 4(d) rule (65 FR 42481, July 10, 2000), and to solicit tribal input on the rule. NMFS did not receive any formal comments from Indian tribes, but remains prepared to meet with interested tribes to discuss the rule and its relationship to their activities. As a result of the July 2000 Tribal ESA 4(d) rule, NMFS has already established efforts to coordinate with many of the tribes that are located within the range of ESUs affected by this rule.

Executive Order 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In fact, this final rule provides a mechanism by which NMFS may defer to state and local government programs, where they provide necessary protections for threatened salmonids.

NMFS' July 2000 ESA 4(d) rule for 14 threatened salmonids (65 FR 42422), including three steelhead ESUs in California, was the first instance in California where the agency defined some reasonably broad categories of activities, both public and private, for which take prohibitions were not considered necessary and advisable when specified criteria were met. Since that rule was promulgated, NMFS has engaged in discussions with various State and local agencies and other organizations in California wishing to pursue development of programs that would qualify under the various take limits contained in that final rule. In addition, NMFS has sought working relationships with other governmental and non-governmental organizations, and endeavored to promote use of the ESA 4(d) rule. Because the threatened ESUs addressed in this rule overlap substantially with the ESUs addressed in the July 2000 ESA 4(d) rule (65 FR 42422), working relationships have already been established with many agencies and organizations that may be affected by this rule.

In addition to these efforts, NMFS staff have given presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and staff have met with them whenever possible. Lastly, NMFS staff have continued coordination with the state aimed at developing recreational fisheries and artificial propagation management plans and other programs that will be protective of threatened salmonids and ultimately may be recognized within the July 2000 ESA 4(d) rule or this final rule.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB under control number 0648-0399.

The public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on screening of a water diversion or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an MRCI ordinance development package; and 10 hours for an MRCI development annual report.

This final rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed conservation plans that has received PRA approval from OMB under control number 0648-0230. The public reporting burden for the approval of watershed conservation plans is estimated to average 10 hours.

These estimates include any time required for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

NMFS prepared EAs, as defined under the authority of NEPA of 1969, addressing each threatened ESU covered by this final rule. Based on a review and evaluation of the information contained in these NEPA documents, NMFS has determined that promulgation of protective regulations for these four threatened salmonid ESUs, including the creation of limitations on the applicability of the prohibitions on taking any of those salmonids, is not a major Federal action that would significantly affect the quality of the

human environment within the meaning of section 102(2)(c) of NEPA of 1969. NMFS believes these EAs examined appropriate alternatives, and that preparation of an Environmental Impact Statement is not required. Copies of the EAs/Findings of No Significant Impact are available on request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.203, paragraphs (a), (b)(1), and (c) are revised and introductory text to this section, paragraphs (b)(14) through (b)(22), and Appendix A to this section are added to read as follows:

§ 223.203 Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22), except as provided in paragraph (b) of this section and § 223.209(a).

(b) *Limits on the prohibitions.* (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22).

* * * * *

(14) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(20) through (a)(22) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than April 9, 2002. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or September 9, 2002, whichever occurs earliest.

(15) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3), and (a)(20) through (a)(22) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(16) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3), and (a)(20) through (a)(22) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of "viable" and "critical" salmonid population thresholds, consistent with the concepts contained in NMFS's technical report entitled "Viable Salmonid Populations and the Recovery of ESUs" (NMFS, 2000b). This report provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

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(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by the NMFS' Southwest Regional Administrator. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the program is deficient, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS' Southwest Region web site (http://swr.nmfs.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species listed in § 223.102 (a)(20) do not apply to fishery harvest activities managed solely by the State of California until July 8, 2002.

(17) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or is intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in NMFS' technical report entitled: "Viable Salmonid Populations and Recovery of ESUs" (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Broodstock collection programs reflect appropriate priorities taking into account health, abundances, and trends in the donor population. The primary purpose of broodstock collection programs of listed species is to re-establish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS for secondary purposes such as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For those programs of which the purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) The HGMP provides for adequate artificial propagation facilities to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) The HGMP provides for adequate monitoring and evaluation to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure consistency with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of an HGMP shall be a written approval by NMFS' Southwest Regional Administrator.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, NMFS will identify to the responsible agency ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's web site (www.nwr.noaa.gov).

(vii) The prohibitions of paragraph (a) of this section relating to threatened species listed in § 223.102 (a)(20) do not apply to artificial propagation programs managed solely by the State of California until July 8, 2002.

(18) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take are conducted by employees or contractors of CDFG or as a part of a monitoring and research program overseen by or coordinated with CDFG.

(ii) CDFG provides for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) CDFG annually provides to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by CDFG personnel, or are in accord with a permit issued by the CDFG.

(v) CDFG provides NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS' Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS' Southwest Regional Administrator.

(19) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to habitat restoration activities, as defined in paragraph (b)(19)(iv), provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of California to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species that are listed as threatened.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of watershed conservation plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) "Habitat restoration activity" is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. "Primary purpose" means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving state watershed conservation plan guidelines under paragraph (b)(19)(ii) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of not less than 30 days.

(20) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(3) and (a)(20) through (a)(22) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with NMFS' Southwest Region "Fish Screening

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Criteria for Anadromous Salmonids, January 1997" or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case-by-case basis, NMFS or an Authorized Officer will review and may approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or the Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not include any impacts or take caused by reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(21) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance conducted by employees or agents of the State of California, or any county, city or port in California, that complies with a program substantially similar to that contained in the Oregon Department of Transportation's (ODOT) Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999) or that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of the State of California or any county, city or port in California that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in paragraph (a)(21)(ii) of this section. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS' Southwest Regional Administrator. Any jurisdiction desiring its routine road maintenance activities to be considered within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of the State of California, or any city, county, or port, to be consistent with the conservation of threatened salmonids' habitat when it contributes to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened ESUs. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as to being within this limit.

(iv) Prior to approving any State of California, city, county, or port program as being within this limit, or approving any substantive change in a program as being within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(22) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(3) and (a)(20) through (a)(22) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of threatened species by maintaining or restoring properly functioning habitat conditions. NMFS approval or determinations about any MRCI development ordinances or plans shall be a written approval by the NMFS Southwest Regional Administrator. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve threatened salmonids by maintaining and restoring properly functioning habitat conditions:

(A) The MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) The MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) The MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to properly functioning habitat conditions caused by MRCI development impacts to riparian management areas.

(D) The MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimizes impacts through choice of mode, sizing, and placement.

(E) The MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.

(F) The MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) The MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) The MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) The MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) The MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) The MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) The MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of threatened salmonids' habitat when it contributes to the attainment and maintenance of properly functioning habitat conditions. For this purpose, NMFS defines properly functioning habitat conditions as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. To contribute to the attainment and maintenance of properly functioning habitat conditions, activities that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward achieving properly functioning habitat conditions. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened species. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as being within this limit, or approving any substantive change in an ordinance or plan as being within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(c) *Affirmative Defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a)(3), (a)(5) through (a)(10) and (a)(12) through (a)(22), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.209(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

* * * * *

Appendix A to §223.203 - List of Guidance Documents

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in § 600.502 of this title).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.

[FR Doc. 02–440 Filed 1–8–02; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334-1312-02; I.D. 091401B]
RIN 0648-AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to clarify its authority to temporarily restrict the use of lobster trap and gillnet fishing gear within defined areas to protect North Atlantic right whales, and to establish criteria and procedures for implementing a Dynamic Area Management (DAM) program in areas north of 40o N. latitude, in order to further reduce risk of entanglement of right whales by such gear.

DATES: This final rule is effective February 8, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), its Regulatory Impact Review (RIR), and the

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Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard at the address above or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. Copies of the EA, including the RIR and FRFA, can be obtained from the ALWTRP website listed under the Electronic Access portion of this document.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this final rule and the take reduction planning process can be downloaded from the ALWTRP web site at http://www.nero.nmfs.gov/whaletrp/. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at http://www.wh.whoi.edu/psb/sar2000.pdf. In addition, copies of the document entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" are available by writing to Diane Borggaard, (see ADDRESSES) or can be downloaded from the Internet at http://www.nero.nmfs.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of four species of large whales (fin, humpback, minke, and North Atlantic right) in East Coast lobster trap and finfish gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), the interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), and interim final (65 FR 80368, December 21, 2000) rules implementing the ALWTRP. Copies of these documents and supporting Environmental Assessments are available from the NMFS, Northeast Region (see ADDRESSES).

This final rule implements approved modifications to the ALWTRP deemed by NMFS necessary to satisfy requirements of the Endangered Species Act (ESA) and MMPA. Details concerning the justification for and development of the DAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 50160, October 2, 2001) and are not repeated here.

DAM Trigger Mechanism

Areas that will be considered for DAM are limited to areas north of 40o N latitude. A DAM zone will be triggered by a single reliable report from a qualified individual of 3 or more right whales within an area (75 nautical miles (nm2) (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting based upon which a DAM zone would be triggered.

Procedures and Criteria to Establish a DAM Zone

NMFS will use the following procedures and criteria to establish a DAM zone:

1. A circle with a radius of at least 2.8 nm (5.2 km) would be drawn around each individual sighting (event). This radius would be adjusted for the number of right whales seen in the sighting such that the density of 4 right whales per 100 nm2 (185.3 km2) is maintained. The length of the radius would be determined by taking the inverse of the 4 right whales per 100 nm2 (185.3 km2) density, which is 24 nm2 (44.5 km2) per whale. This is equivalent to a radial distance of 2.8 nm (5.1 km) for a single right whale sighted, 3.9 nm (7.3 km) for two whales, 4.8 nm (8.9 km) for three whales, etc.

2. If any circle or group of contiguous circles includes 3 or more right whales, this core area and its surrounding waters would be a candidate DAM zone.

Criteria to Determine the Extent of the DAM Zone

Once NMFS identifies a core area containing 3 or more right whales, as described here, it would expand this initial core area to provide a buffer in which the right whales could move and still be protected. NMFS will determine the extent of the DAM zone as follows:

1. A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

2. The DAM zone will then be defined by a polygon drawn outside, but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

Decision Factors for Implementing Restrictions in a DAM Zone

Once a DAM zone is identified, NMFS will determine whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination would be based on a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Public Notification

If NMFS determines restrictions are necessary in the zone, NMFS may require removal of all gillnet and lobster trap gear from the zone within 2 days of the publication of a notice in the **Federal Register**. At this time, NMFS does not have criteria developed that would allow gillnet or lobster trap gear to be fished within a DAM zone. NMFS may allow fishing within a DAM zone with specified gear if that gear is determined to sufficiently reduce the risk of entanglement to right whales. NMFS may identify acceptable fishing practices and gear in a **Federal Register** document. Gear not in compliance with the imposed restriction may not be set in the DAM zone after the effective date of the restriction. NMFS will publish a document in the **Federal Register** and other appropriate media announcing the establishment of the zone with restrictions imposed. It will also announce them immediately upon filing the document with the Office of the **Federal Register**, which is generally 3 to 5 days before publication of the notice in the **Federal Register**.

If NMFS decides not to implement restrictions within a DAM zone, it will issue an alert to fishermen using

appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In addition, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it.

Duration of DAM Zones

NMFS will maintain a DAM zone for a minimum of 15 days from the date NMFS issues an alert (in the case of a zone where no restrictions are imposed), or the 15-day period from the effective date of restrictions (in the case where restrictions are imposed). At the conclusion of a 15-day period, the DAM zone would automatically expire, unless whales are still sighted in the DAM zone, in which case, NMFS will continue the zone to further protect concentrations of right whales. Each extension would be for up to 15 days unless NMFS extends the time frame based on additional sightings.

NMFS may remove restrictions on the DAM zone or rescind an alert prior to its automatic expiration if there are survey efforts and no confirmed sightings of right whales by qualified individuals for 1 week or if other credible evidence indicates that right whales have left the designated zone. NMFS will notify the public by issuing a notification in the **Federal Register** and through other appropriate media.

Comments and Responses

Approximately 58 letters of comment were received during the public comment period on the proposed rule, which ended on November 1, 2001. A complete summary of the comments and NMFS' responses is provided here.

Comment 1: Several letters were received from private individuals in support of NMFS' proposal to implement DAM. Most of those letters expressed serious concerns about the future survival of North Atlantic right whales. In addition, these comments encouraged NMFS to work closely with gillnet and lobster fishermen to protect right whales from future entanglements in fishing gear.

Response: NMFS will continue to work with the ALWTRT and members of the fishing industry to minimize interactions between right whales and fishing gear. NMFS believes that DAM will reduce serious injuries and mortalities to right whales from entanglements by temporarily restricting lobster trap and gillnet fishing gear in areas where right whales congregate to feed. *Comment 2*: Several comments questioned the DAM trigger mechanism. Many felt that it was inappropriate to base a DAM zone on a single sighting by one person. In addition, the Maine Department of Marine Resources requested that NMFS determine a clearer definition of "qualified individual." It was suggested that NMFS establish a tiered process for judging whether or not a report is credible and further suggested that NMFS request corroborating information from the individual providing the report while continuing to verify the initial report during the 5-to 7-day period between filing notice with the **Federal Register** and publication. Furthermore, there were concerns that false sightings would be reported by disgruntled crew or competitors identifying themselves as "qualified individuals" wishing to cause hardship on fishermen by closing down their fishing grounds.

Response: NMFS anticipates that it may receive false or exaggerated reports of right whale sightings from people claiming to be "qualified individuals." Therefore, NMFS intends to thoroughly investigate all reports for credibility and reliability. The definitions of "qualified individual" and "reliable report" were developed with this intent in mind. In addition, NMFS will require that the individual providing the report identify him or herself and the vessel from which the sighting was made. Anonymous reports will not be considered reliable and, therefore, cannot trigger a DAM zone. Furthermore, a document prepared by the Northeast Fisheries Science Center entitled, "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options," concluded that a single sighting is appropriate because foraging whales are at risk of entanglement whenever they are feeding, regardless of how quickly a food source is consumed. (Clapham and Pace, 2001). Therefore, to trigger a DAM zone, NMFS feels that a single report of right whales is an adequate trigger mechanism. Simply stated, as long as a single sighting can establish that the whales are feeding in an area, and not merely transiting through, no additional sightings would be necessary based on the understanding that feeding whales are at a greater risk of entanglement.

Comment 3: Many commenters questioned the implementation of a DAM zone based on the proposed trigger of three right whales. Comments from lobstermen and state agencies indicated that NMFS should adopt the trigger of eight whales sighted twice over 2 days, which was discussed at the ALWTRT meeting. Commenters encouraged NMFS to explore all other information available to ensure that the three-whale trigger is appropriate for the implementation of a DAM zone.

Response: The issue of the number of right whales that would trigger a DAM zone was discussed at the ALWTRT meeting. However, the ALWTRT did not produce any consensus recommendations on any one set of whale density criteria and/or triggering levels. NMFS determined that a trigger based on the sighting of three right whales was appropriate after considering the analysis of sighting data performed by the Northeast Fisheries Science Center. Foraging whales are assumed to be at risk of entanglement and DAM was designed to respond quickly to situations where feeding whales and fishing gear overlap in order to reduce the chances that a whale will get entangled. Therefore, the scientific research conducted on DAM sought to establish the smallest number of right whales that could be advanced as a reliable indicator that the animals were engaged in feeding behavior. The scientists concluded that a sighting of three or more right whales in an area was a reasonably good indicator that the animals were residing in an area to feed. (Clapham and Pace, 2001).

Comment 4: Comments were received expressing concern about the size of the DAM zone. In particular, several lobstermen felt that it would take months to remove their gear from a DAM area of 1,000 nm or more and suggested that DAM areas of 10 nm would be more realistic for compliance by the industry. One lobsterman estimated that it would take 12 trips, each lasting up to 10 days, to remove gear from a 1,000-nm DAM zone. In addition, many comments from fishermen explained that if all gear is removed from the DAM zone it will be reset around the boundary of the area, thus creating a wall around the DAM zone, which may create a greater risk of entanglement to right whales.

Response: NMFS appreciates the amount of effort that may be required to remove gillnet and lobster trap gear from a DAM zone. The analysis of sighting data presented in the document "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options," found that a 15-nm buffer around the initial core area would enclose all of the whales sighted, irrespective of their movements during the course of the event. (Clapham and Pace, 2001). The size of the DAM zone is dependent on the number of whales that would trigger an event.

Comment 5: Several comments were received that expressed concerns about the amount of time proposed for

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compliance with gear restrictions within DAM zones. For example, a comment received from a lobsterman stated that it would be impossible to remove all lobster gear in the time allotted under the proposed rule and, furthermore, the chaos and confusion created would present a safety hazard.

Response: NMFS appreciates the time, effort, and risk involved in hauling fishing gear and removing it from an area that has been designated for DAM. In order to provide fishermen with time to respond to the implementation of gear restrictions within a DAM zone, NMFS will issue a notice at the time the notice is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to the regulation being published in the **Federal Register**. Once the decision has been made to remove gear from a DAM zone, NMFS will notify the commercial fisheries affected as quickly and comprehensively as reasonably possible. In addition, when a right whale sighting meets the DAM trigger, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at www.nero.nmfs.gov/whaletrp/. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help insure that the fishermen who may have to eventually remove gear from a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the Internet should provide their email address to the Northeast Regional Office (See **ADDRESSES** section). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office (See **ADDRESSES** section). In addition, NMFS will investigate using a news bulletin service to provide notice through the local press.

Comment 6: Several comments were received that questioned the length of the restricted period. In particular, the Massachusetts Division of Marine Fisheries felt that the rule making process and the time required for fishermen to remove all of their gear from a DAM area would exceed the duration of most sighting "events."

Response: NMFS intends to respond to reports of right whale sightings that trigger a DAM as quickly as possible in order to insure that restrictions are implemented in a timely fashion to maximize protection for the animals. See NMFS' response to the previous comment. NMFS believes that an initial restricted period of 15 days with the ability for extension is an adequate and appropriate management measure for protecting right whales. Research conducted by the Northeast Fisheries Science Center concluded that a 15-day restricted period represented the average mean duration of the 13 documented events that began with an initial sighting of three or more right whales. (Clapham and Pace, 2001). Therefore, based on these findings, NMFS established an initial restricted period of at least 15-days with additional extensions to the restricted period if whales continue to meet the trigger for DAM.

Comment 7: A comment from an environmental group expressed concern with the automatic expiration of the DAM zone after 15 days and felt that NMFS should be required to lift restrictions, through notification in the **Federal Register**, once the whales are no longer sighted in the area.

Response: NMFS intends to provide protection for concentrations of right whales that remain present in the area after the conclusion of the 15-day period, if necessary and appropriate, by extending the restricted period, through notification in the **Federal Register**. NMFS believes that an initial restricted period of 15 days with the ability for extension is an adequate and appropriate management measure for protecting right whales. Research conducted by the Northeast Fisheries Science Center concluded that a 15-day restricted period represented the average mean duration of the 13 documented events that began with an initial sighting of three or more right whales. (Clapham and Pace, 2001). Therefore, based on these findings, NMFS established an initial restricted period of at least 15 days with additional extensions to the restricted period if whales continue to meet the trigger for DAM.

Comment 8: Several comments were received from fishermen who felt it is unnecessary to implement DAM because the gear they are currently utilizing is already considered "whale safe". Lobstermen fishing in Cape Cod Bay with sinking and neutrally buoyant line and weak links felt that this gear adequately reduces the risk of serious injury or mortality to right whales from entanglements without NMFS requiring further alterations or requiring the removal of gear from the area. Lobstermen also expressed concerns about the economic impact of DAM on their business and added that changing over to neutrally buoyant and sinking line has already been very costly, and expressed displeasure at what was perceived as NMFS' apparent disregard for the efforts of the ALWTRT towards developing gear that can coexist with whales without making closures necessary. In addition, the Massachusetts Division of Marine Fisheries (DMF) encouraged NMFS to adopt more universal "whale safe" gear modifications instead of implementing DAM because improving devices, such as buoy line breakaways, eliminates the need to completely remove gear from an area. Conversely, several environmental groups commenting on this issue recommended that NMFS require the removal of all lobster trap and gillnet gear from the DAM zone, in light of the fact that NMFS and the ALWTRT can not agree on gear modifications that sufficiently reduce the risk of entanglement.

Response: NMFS will continue to work with the ALWTRT to modify and develop fishing gear that adequately reduces the risk of entanglement to large whales and when such gear is deemed adequate, NMFS may allow it to be used for fishing within DAM zones. In addition, NMFS encourages fishermen to collaborate with the gear research team towards developing fishing gear that completely reduces the risk of entanglement to right whales. However, until then, the most reliable means for reducing the risk of entanglements to right whales within DAM zones is by requiring the complete removal of all lobster trap and gillnet fishing gear. See response to comment 18.

Comment 9: A comment from an environmental group questioned how NMFS planned to enforce voluntary compliance with gear restrictions within DAM zones.

Response: In the event that right whale sightings trigger a DAM zone, NMFS will determine whether to impose restrictions on fishing and/or fishing gear. This determination will be based on a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety to human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data. If NMFS determines restrictions are necessary in the zone, NMFS may require removal of all gillnet and lobster trap gear from the zone within two days of the publication of the notice in the **Federal Register**. If NMFS decides not to implement restrictions within the DAM zone, NMFS will follow the protocol developed cooperatively between NMFS and the ALWTRT for voluntary compliance. NMFS will issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In addition, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove lobster trap and gillnet gear from the DAM zone and no additional gear be set inside it. NMFS believes providing this information to interested parties and requesting compliance with gear restrictions, which is in every fisherman's interest, is an appropriate means for maintaining communication with industry while providing protection for right whales.

Comment 10: Several comments suggested that the regulation of state waters would be better served if left to state agencies. Specifically, lobstermen fishing in Cape Cod Bay felt that NMFS should follow the Massachusetts DMF approach to developing rules to reduce entanglements. Other commenters from the lobster fishing industry expressed opposition to Federal regulations that would supersede rules already imposed within state waters because of the feeling that DMF knows the state waters better than NMFS. In addition, a comment received from a member of the lobster industry encouraged NMFS to allow the State of Maine to assess and provide the appropriate regulations in consideration of the unique variability and spacial distribution between right whales and fishing gear off the Maine coast. The Maine Department of Marine Resources echoed these concerns and also believed that the state whale protection plans offer the greatest chance of success.

Response: Although the MMPA provides NMFS with authority to regulate in State waters, states can develop equally protective or more protective restrictions if they choose, and NMFS encourages such action. Further, NMFS has cooperative agreements in place with a number of Atlantic states, which enable states to enforce requirements of the MMPA and its implementing regulations.

NMFS tries to coordinate with states on other issues as well. For example, with regard to gear markings that yield individual vessel information, many of the state and Federal fishery management plans currently require marking of buoys and/or traps with individual vessel identification. NMFS plans to continue to work with state fisheries agencies to investigate gear marking coast-wide and identify gaps in marking of surface gear, gillnets, and traps. This information will be presented to the ALWTRT for future consideration

Comment 11: Comments were received that expressed concerns about the procedure for providing notice to fishermen in the event of a DAM closure. For example, the Massachusetts DMF felt that the May 2001, DAM closure was a failure because NMFS did not contact all of the fishermen affected and questioned whether NMFS could dedicate the staff time to informing fishermen of future DAM closures. Another commenter questioned how NMFS would provide notification to fishermen prior to the publication in the **Federal Register**.

Response: Once the decision has been made to remove gear from a DAM zone, based on the criteria outlined in the preamble, NMFS will notify the commercial fisheries affected as quickly and comprehensively as possible. In order to provide fishermen with time to respond to the implementation of gear restrictions within a DAM zone, NMFS will issue a notice at the time the notice is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to publication in the **Federal Register**. In addition, when a right whale sighting meets the DAM trigger, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at www.nero.nmfs.gov/whaletrp/. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help insure that the fishermen who may have to eventually remove gear from a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the internet should provide their e-mail address to the Northeast Regional Office. (See the **ADDRESSES** section). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office in addition to posting such notification on the Northeast Regional Office web site at www.nero.nmfs.gov. In addition, NMFS will investigate using a news bulletin service to provide notice through the local press.

Comment 12: Several commenters pointed out that the procedure for creating a DAM zone in the proposed rule differed from how the process is described in the document "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options."

Response: NMFS agrees and this inconsistency has been corrected in this final rule. The justification and rationale for the correction can be found in the preamble of this final rule under "Changes in the Final Rule from the Proposed Rule."

Comment 13: Many comments received questioned the decision factors NMFS proposed when considering whether to impose restrictions on fishing and/or fishing gear within a DAM zone. In particular, several environmental groups felt that, except for the consideration of weather conditions as they relate to the safety of life at sea, the factors listed in the proposed rule should not influence the decision to impose restrictions on fishing because such restrictions should be automatic once a concentration of right whales triggers a DAM zone. It was also noted that NMFS should require the complete removal of all gear automatically once a DAM zone has been triggered. A letter from the Marine Mammal Commission also expressed concerns over the discretion reserved by NMFS with respect to whether to impose restrictions within a DAM zone and felt that the factors should only be considered for setting a deadline when gear should be removed.

Response: NMFS believes that the agency should be provided with some level of discretion when deciding whether to impose gear restrictions within a DAM zone. Therefore, NMFS will base its decision on the enumerated factors that are relevant based on the circumstances surrounding the implementation of a DAM zone.

Comment 14: Several comments from environmental groups expressed concerns over the proposed regulatory language which provides NMFS with the option of deciding whether or not to require the complete removal of lobster trap and gillnet gear from a DAM zone. For example, one commenter felt that this discretion merely maintains the status quo and, therefore, would not sufficiently reduce jeopardy. Another commenter felt that, because NMFS and the ALWTRT cannot agree on gear modifications that would sufficiently reduce the risk of entanglement to right whales, NMFS should require the complete removal of all lobster trap and gillnet gear from the DAM zone.

Response: NMFS believes that reserving the discretion to decide whether to implement gear restrictions within DAM zones gives the agency a reasonable amount of flexibility to respond to the vast multitude of scenarios under which a DAM zone may be triggered. NMFS feels that DAM, in combination with the proposed rules for Seasonal Area Management (SAM) and additional gear modifications, are collectively sufficient to remove the likelihood of jeopardy to the continued existence of North Atlantic right whales.

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DAM was specifically included as one of the multiple management components to the Reasonable and Prudent Alternative (RPA) discussed in the four BOs on the Fishery Management Plans for spiny dogfish, monkfish, multispecies, and Federal regulations for the American lobster fishery. According to the RPA, DAM, SAM, and expanded gear modifications were developed to cumulatively eliminate serious mortality and serious injuries of right whales in gillnet and lobster trap gear, eliminate serious and prolonged entanglements, and significantly reduce the total number of right whale entanglements in gillnet and lobster trap gear. NMFS does not feel that reserving the discretion on deciding whether to implement gear restrictions within DAM zones implies that the agency will fail to respond when sightings of right whales trigger DAM. In addition, while NMFS feels that, at the current time, requiring the complete removal of gillnet and lobster trap gear from within a DAM zone is the appropriate means for reducing the risk of entanglement to right whales, the agency continues to encourage fishermen and gear researchers to work on innovating and developing ways to improve fishing gear to avoid serious injury and mortality from entanglements. In recognition of the fact that gear research and development is ongoing, NMFS felt it was important to maintain the option of allowing fishing with "risk averse" gear inside a DAM zone in the event that such gear is perfected and approved.

Comment 15: One commenter suggested that NMFS clarify the circumstances under which a DAM would continue and how it would be limited. The commenter expressed concern regarding a hypothetical situation where, during the 15-day restricted period for a DAM zone, a second grouping of whales triggered another separate DAM zone outside but adjacent to the initial zone specified in the notice. Based on this scenario, the commenter was concerned that the initial DAM zone would be enlarged to create a single, very large closure.

Response: In the event that right whales are sighted and a DAM zone is triggered, NMFS would maintain the area for at least 15 days. If a DAM zone is triggered, but no restrictions are implemented, the 15-day period would begin from the time NMFS issues the alert. If, on the other hand, NMFS implements gear restrictions within the DAM zone, the 15-day period would begin on the date the restrictions become effective (i.e., 2 days after publication in the **Federal Register**). In response to the hypothetical situation described, while it is possible that there may be some days that the successive DAM zones overlap, the first DAM zone will automatically expire after 15 days, unless NMFS decided to extend the restricted period to further protect concentrations of right whales. However, NMFS also has the option of removing restrictions prior to the 15-day automatic expiration if subsequent survey efforts confirm that right whales have left the designated area. The second DAM zone would be maintained separately with its own 15-day restricted period.

Comment 16: The U.S. Coast Guard commented on aerial patrols to assist in confirming sightings and enforcing restrictions within the DAM zone. Due to a re-prioritization of law enforcement missions, the Coast Guard will only be able to devote minimal aircraft hours to assist NMFS in the implementation and enforcement of DAM. In addition, surface patrols will be more limited than in the past. Finally, the U.S. Coast Guard stated that, if fishing gear is modified and approved for use within a DAM zone, the U.S. Coast Guard will not be able to assist in enforcement of those restrictions because they are not equipped or trained to haul fixed gear.

Response: NMFS greatly appreciates the support the U.S. Coast Guard has provided in the past for implementing and enforcing management programs designed to protect and conserve marine mammals. These two agencies have a strong commitment to cooperating in the development, implementation, and enforcement of programs for marine protected resources, including North Atlantic right whales and other marine mammals. NMFS acknowledges the fact that the duties of the U.S. Coast Guard have been re-prioritized in light of recent national events. NMFS notes, however, that other means of enforcing the DAM restrictions exist aside from pulling gear and that other law enforcement resources can be used to enforce DAM restrictions.

Comment 17: Several comments were received expressing concerns over the burden placed on American fishing to protect whales while only a token effort is directed towards ship strikes and Canadian fixed gear.

Response: NMFS acknowledges that ship strikes and entanglements with fishing gear of foreign flag vessels also cause serious injury and mortality to right whales. NMFS is currently addressing these threats through other means and policy discussions. NMFS is issuing this final rule specifically to address commercial fishery impacts from four fisheries. This final rule stems from a component of the RPA resulting from consultations required under the ESA on the continued operation of the monkfish, spiny dogfish, multispecies, and lobster fisheries. However, the ALWTRP is designed to respond to the threats posed by domestic fishing gear. NMFS appreciates the continued involvement of the gillnet and lobster trap fisheries in the ALWTRT and their efforts to reduce serious injury and mortality to marine mammals, especially right whales. NMFS understands that right whales are injured and killed by other sources and will continue to work toward reduction of those impacts. For example, NMFS is currently taking into consideration recommendations from the Northeast Implementation Team for the Recovery of the Northern Right whale and the Humpback whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team on ways to reduce the impacts of ship strikes from the recreational and commercial shipping sectors. In addition, NMFS is working on a proposed rule to regulate whale watching. Finally, NMFS is working with representatives from the Canadian Department of Fisheries and Oceans to develop and implement protective measures for right whales in Canadian waters.

Comment 18: A comment received from an environmental groups requested that, if NMFS is planning on allowing gear to be fished within a DAM zone that is determined to sufficiently reduce the risk of entanglement to right whales, then NMFS should clarify what constitutes a "sufficient" reduction.

Response: Although NMFS is considering gillnet and lobster trap gear modifications as part of the proposed rule for the SAM program, at present, NMFS does not have criteria developed that would allow gillnet or lobster trap gear to be fished within a DAM zone. NMFS may allow fishing within a DAM zone with specified gear if that gear is determined to sufficiently reduce the risk of entanglement to right whales. The DAM program is designed for a rapid response to the presence of right whales in areas at times that are generally unpredictable. The regulatory text and preamble of the proposed rule notes that any gear modifications determined by NMFS to sufficiently reduce the risk of entanglement to right whales would be identified in the **Federal Register** notice implementing the DAM zone. To the extent practicable, NMFS will provide a separate notification in the **Federal Register** regarding any determination that gear modifications sufficiently reduce the risk of entanglement to right whales in DAM zones in advance of imposition of any DAM zones with those gear modifications.

Comment 19: One commenter suggested that NMFS initiate inter-agency and international cooperation to assist in the development of programs to protect right whales.

Response: NMFS notes that under section 7 of the Endangered Species Act, Federal agencies must consult with NMFS to insure that any action authorized, funded, or carried out by such agency (referred to as the "action agency") is not likely to jeopardize the continued existence of any endangered or threatened species. After discussions with the action agency, if NMFS concludes in a biological opinion that an activity is likely to jeopardize the continued existence of any endangered or threatened species, NMFS must include in its opinion any RPAs to avoid the likelihood of jeopardy to the listed species from the Federal activity. Furthermore, NMFS has established Memoranda of Agreement between several Federal agencies, such as the U.S. Navy, U.S. Coast Guard, and U.S. Army Corps of Engineers, to help better protect and recover listed species. With respect to international cooperation, NMFS is continuing to work with the Canadian government to develop and implement protective measures for right whales in Canadian waters. In addition, NMFS is working with Canadian whale biologists and support teams to improve and expand disentanglement efforts in Canadian waters.

Comment 20: One commenter suggested that NMFS issue regulations to close portions of the Right Whale Critical Habitat Areas to gillnet and lobster fishing and completely prohibit the use of "high risk" types of fishing gear in critical habitat during periods of known use by the whales.

Response: Although NMFS has not specifically defined or designated "high risk" types of fishing gear, data collected from past entanglements indicates that serious injuries and mortalities to right whales have occurred from interactions with gear used by the anchored gillnet and lobster trap fisheries. As a result, NMFS has implemented regulations that restrict the use of these gear types within right whale critical habitat during the months that the whales are present in these areas. For example, from April 1 to June 30, no lobster trap or anchored gillnet gear may be set in the Great South Channel Critical Habitat. In addition, from January 1 to May 15, anchored gillnetting is prohibited within the Cape Cod Bay Critical Habitat. Lobster trap fishing is permitted during this restricted period within Cape Cod Bay Critical Habitat, but the gear must be set with weak links and sinking lines that reduce the risk of serious injury and mortality from entanglements.

Comment 21: NMFS should develop take reduction plans (TRPs) that would mitigate bycatch of all strategic stocks of marine mammals in commercial fisheries.

Response: NMFS has chosen to develop TRPs on particular stocks. NMFS manages multiple stocks through some TRPs such as the ALWTRP. Decisions on whether a TRP addresses single or multiple stocks is dependent on the similarities of the fisheries that impact these stocks. No take reduction team can be tasked with suggesting recommendations to mitigate bycatch of all strategic marine mammal stocks in commercial fisheries, and NMFS does not have the funds to develop additional take reduction teams at this time. Presently, NMFS is considering the take reduction teams currently formed, and the success of each TRP toward reaching the goals of the MMPA, in order to determine whether funds could be redirected to support additional take reduction teams.

Comment 22: One commenter noted that NMFS must undertake an adequate program of research and development for the purpose of devising improved fishing methods and gear so as to reduce the incidental taking of right whales in commercial fishing.

Response: NMFS is committed to gear research and development, and will expand this program as funding allows. NMFS has gear laboratories and research teams that specifically focus on gear development and testing. Additionally, NMFS contracts with researchers, individuals and companies to develop gear solutions. Many of the current TRP measures are based on the outcome of such gear research (e.g. weak links) conducted and/or funded by NMFS. The gear modifications are important to reduce interactions between right whales (and other large whales) and fishing gear to further reduce serious injury and mortality of large whales due to entanglement in fishing gear. In addition, NMFS intends to continue to support the contributions made by the ALWTRT's Gear Advisory Group. NMFS is collaborating with other organizations to host a gear workshop, tentatively scheduled for February 2002, to investigate additional options and gear enhancements for gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration of future gear recommendations to NMFS.

Comment 23: Several commenters expressed concerns over the lack of notification regarding the publication of the proposed rules.

Response: Time constraints prevented NMFS from holding public hearings on the current regulations; however, NMFS used other ways to let the public know that public comments were being sought on a proposed rule to address commercial fishery/large whale interactions. In addition to publication of the proposed rule in the **Federal Register**, efforts included distributing the information to ALWTRT members who represent various stakeholder groups and provide valuable links to distribute information to the public, NOAA press release, announcement in NOAA's FishNews, and communications with state managers. NMFS will consider other means of communicating with the public and welcomes recommendations on ways to disseminate such information such as through letters to permit holders.

Comment 24: One commenter suggested that NMFS use emergency publication to expedite the process for implementing DAM.

Response: NMFS is not planning on using emergency publication to implement DAM based on the following reasons. Once the agency has determined to implement gear restrictions within a DAM zone, NMFS intends to forward the signed document to the Office of the **Federal Register** with a request for "file immediately" status. As soon as the notification is filed, NMFS will begin to notify interested parties. NMFS has found that requesting emergency publication does not significantly expedite the process for providing notice above what is being provided in this final rule. However, NMFS will consider requesting emergency publication if the particular facts of a situation indicate that doing so would be warranted.

Changes in the Final Rule from the Proposed Rule

This final rule will correct and clarify one of the criteria used to determine the extent of a DAM zone. The description of the criterion presented in the proposed rule did not accurately reflect NMFS' intent in establishing the size of a DAM zone. At issue is the location of the 15 nm (27.8 km) radius that is used to determine the size of a DAM zone.

As published in the preamble of the proposed rule, a 15-nm (27.8 km) radius from the "event epicenter" would be used to draw a larger circular zone around each core area encompassing a concentration of right whales. The event epicenter was defined in the proposed rule as the geographic center of all

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sightings on the first day of an event. However, the criterion described in the proposed rule does not clearly describe the intent contained in the reference document. The reference document used to establish this criterion, "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" (see **ADDRESSES** for copies), describes the DAM zone buffer as the boundary of a circle that extends 15 nm (27.8 km) from the perimeter of a circle around the initial whale sightings or core area. The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

Therefore, § 229.32(g)(3)(ii) is revised to identify the DAM zone as a larger circular zone drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

Classification

NMFS prepared a FRFA for this rule. A copy of this analysis is available from NMFS (see ADDRESSES). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of that analysis follows:

(1) The "No Action" alternative would leave in place the existing regulations promulgated under the ALWTRP, but specific criteria and procedures for DAM would not be included in the regulations. The no action alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this final rule may be necessary in the future to protect endangered right whales. The No Action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BOs required under the ESA.

(2) NMFS considered but rejected an alternative that would require different triggers within each respective state jurisdiction as discussed by the ALWTRT. None of the proposals offered by the states were supported by data. No information has been presented to demonstrate the potential for these triggers to result in DAM zones that would reduce the risk of entanglement to right whales. The ALWTRT discussed having different triggers within each respective state jurisdiction. This could only be considered if the state trigger was found to be more restrictive than the Federal trigger, which is not the case with the triggers suggested by Maine, Massachusetts and/or Rhode Island. The state triggers were evaluated as if they would apply consistently to all waters - federal and state.

(3) NMFS considered but rejected an alternative that would trigger a DAM zone using the observation of one right whale on a single day. In addition, a buffer of 15 nm would be drawn around each individual animal observed. The observation of one or two right whales does not appear to be a good indicator of residency. The trigger in this alternative is not effective at predicting residency, and thus may trigger DAM zones more often than necessary.

(4) NMFS considered but rejected an alternative in which the trigger and buffer would generally be the same as in the preferred alternative (PA)(i.e., the observation of four right whales in a 100-nm2 area and the buffer would be 15 nm), however, instead of imposing a restriction requiring removal of all lobster gear, a 50-percent reduction in vertical lines would be required for lobster gear. The restrictions for gillnet gear would be the same as in the PA which requires complete removal. Based on right whale sightings data in 2000, six areas could potentially be closed. Because this alternative would require the removal of only 50 percent of vertical lines for lobster gear rather than all vertical lines (i.e. all gear), NMFS is concerned that this alternative may not be consistent with statutory objectives.

(5) The PA will temporarily restrict lobster trap and gillnet fisheries when NMFS receives a single reliable report from a qualified individual of three or more right whales within an area (75 nm2) such that right whale density is equal to or greater than 0.04 right whale per nm2. Based on right whale sightings data from 1999 and 2000, a DAM zone would have been triggered four times in 1999 and six times in 2000. NMFS accepted this alternative as these DAM zones are appropriate to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BO's.

The action is part of the RPA that resulted from the BOs issued by NMFS, in accordance with section 7 of the ESA, to remove the likelihood of jeopardy of North Atlantic right whales posed by the continued operation of the multispecies, spiny dogfish, monkfish and lobster fisheries. The objective of this action is to reduce the level of serious injury to and mortality of North Atlantic right whales in East Coast lobster trap and finfish gillnet fisheries.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA by reserving discretion to issue an alert or impose gear restrictions, rather than closing DAM areas, if these measures would be sufficient to protect concentrations of right whales. The small entities affected by this final rule are gillnet and lobster trap fishermen. The geographic areas for consideration for DAM are limited to areas north of 40° N latitude. Since DAM will be used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. It is difficult to quantify the economic impacts of NMFS using its discretion in implementing 50 CFR 229.32(g)(2) as the restrictions that will be are unknown at this time in addition to the unknowns of the particular event such as the time and location of the restrictions and the level of fishing effort at that time and location. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. Based on the available data, a maximum of 7,539 state and federally permitted lobster vessels and 310 gillnet vessels, which includes federally permitted vessels and may include state permitted vessels, could be affected by this action. However, NMFS does not expect that number of vessels to be affected by any one DAM closure because of the limited size of a DAM zone. For example, the retrospective analysis of the April-May 2000 DAM Area 1 estimated that 210 lobster vessels and 42 gillnet vessels would have been affected by the hypothetical closure.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are characterized and responded to by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response numbers four and eight. No changes to the rule were made as a result of these comments.

This action contains no new reporting or record keeping requirements. There are no relevant Federal rule actions that duplicate, overlap, or conflict with this action.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that the rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to this notification. However, one affected state did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response number 10. No changes to the rule were made as a result of the comment received.

This final rule implements a portion of the RPA, which resulted from ESA section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This final rule implements a component of the RPA contained in the BOs issued by NMFS on June 14, 2001. Therefore, no further section 7 consultation is required.

This rule has been determined to be not significant for the purposes of Executive Order 12866.

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National Marine Fisheries Service. 2001. Endangered Species Act section 7 consultation. Biological opinion regarding Fishery Management Plans for monkfish, spiny dogfish, and multispecies and Federal regulations for American lobster. June 14, 2001.

Dated: December 31, 2001.

Rebecca Lent,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

List of Subjects in CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and record keeping requiremnts.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, a definition of "Qualified individual" and "Reliable report" are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Qualified individual means an individual ascertained by NMFS to be reasonably able, though training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

* * * * *

Reliable report means a credible right whale sighting report based upon which a DAM zone would be triggered.

* * * * *

3. In § 229.32, paragraph (g)(3) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g)***

(3) For the purpose of reducing the risk of fishery interactions with right whales, NMFS may establish a temporary Dynamic Area Management (DAM) zone in the following manner:

(i) *Trigger.* Upon receipt of a single reliable report from a qualified individual of three or more right whales within an area NMFS will plot each individual sighting (event) and draw a circle with a 2.8 nm (5.2 km) radius around it, which will be adjusted for the number of right whales sighted such that a density of at least 0.04 right whales per nm2 (1.85 km2) is maintained within the circle. If any circle or group of contiguous circles includes 3 or more right whales, NMFS would consider this core area and its surrounding waters a candidate DAM zone.

(ii) *DAM zone.* Areas for consideration for DAM zones are limited to areas north of 40o N latitude. Having identified any circle or group of contiguous circles including 3 or more right whales as candidates for protection, as identified in paragraph (g)(3)(i) of this section, NMFS will determine the extent of the DAM zone as follows:

(A) A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

(B) The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

(iii) *Requirements and prohibitions within DAM zones.* Notice of specific area restrictions will be published in the **Federal Register** and will become effective 2 days after publication. Gear not in compliance with the imposed restrictions may not be set in the DAM zone after the effective date. NMFS may either:

(A) require owners of gillnet and lobster gear set within the DAM zone to remove all such gear within 2 days after notice is published in the **Federal Register**, or

(B) allow fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement to right whales. Acceptable fishing practices and gear modifications would be identified in the **Federal Register** notification implementing the DAM zone.

(C) The determination of whether restrictions will be imposed within a DAM zone would be based on NMFS' review of a variety of factors, including but not limited to: the location of the

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DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

(iv) *Restricted period.* Any DAM zone will remain in effect for a minimum period of 15 days. At the conclusion of the 15-day period, the DAM zone will expire automatically unless it is extended by subsequent publication in the **Federal Register**.

(v) *Extensions of the restricted period.* Any 15-day period may be extended if NMFS determines that the trigger established in paragraph (g)(3)(i) of this section continues to be met.

(vi) *Reopening of restricted zone.* NMFS may remove any gear restriction or prohibition and reopen the DAM zone prior to its automatic expiration if there are no confirmed sightings of right whales for at least 1 week, or other credible evidence indicates that right whales have left the DAM zone. NMFS will notify the public of the reopening of a DAM zone prior to the expiration of the 15-day period by issuing a document in the **Federal Register** and through other appropriate media.

[FR Doc. 02–272 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 011120279–1311–02; I.D. 092401E]

RIN 0648–AP68

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS is issuing an interim final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a Seasonal Area Management (SAM) program. The SAM program defines two areas based on the annual predictable presence of North Atlantic right whales in which gear restrictions for lobster trap and anchored gillnet gear will be required. This action is necessary due to the critical status of the North Atlantic right whale population. The intent of this action is to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear.

DATES: Effective March 1, 2002. Comments on this interim final rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on February 8, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this interim final rule to the Chief, Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries and progress reports on implementation of the ALWTRP may be obtained by writing to Gregg LaMontagne, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291 or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this proposed rule and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/prot_res/mammals/sa_rep/sar.html*. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, *http://www.coastalstudies.org/*.

Background

This interim final rule implements modifications to the ALWTRP as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On June 14, 2001, NMFS issued four Biological Opinions (BOs) as the result of ESA section 7 consultations on the three Fishery Management Plans (FMP) for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. The BOs concluded that the fisheries conducted pursuant to the three FMPs and the lobster regulations are likely to jeopardize the continued existence of right whales. In response to the section 7 consultation's jeopardizing finding, NMFS developed a Reasonable and Prudent Alternative (RPA) with multiple management components. As part of its RPA, NMFS developed gear restrictions for the anchored gillnet and lobster trap fisheries based on predictable annual concentrations of right whales. Details concerning the justification for and development of the SAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 59394, November 28, 2001) and are not repeated here.

Approved Measures

SAM Areas

The SAM program is established to protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the Exclusive Economic Zone line (see figure 1) as observed in aerial surveys from 1999–2001 (Merrick, et al. 2001). NMFS has defined two areas, called SAM West and SAM East, in which gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description). SAM West and SAM East will occur on an annual basis for the period March 1 through April 30 and May 1 through July 31, respectively. The dividing line between SAM West and SAM East is at the 69° 24′ W. longitude line. See table 1 for the spatial and temporal definitions of the areas.

TABLE 1.—SEASONAL AREA MANAGEMENT AREAS

Point	Latitude (north)	Longitude (west)	Comment
			SAM West Polygon—In effect from March 1–April 30
1	42° 04.8′	70° 10′	NE landfall of Cape Cod Bay (CCB) Critical Habitat (CH) at shoreline.
2	42° 12′	70° 15′	NE corner CCB CH.
3	42° 30′	70° 15′	NW Corner SAM West.
4	42° 30′	69° 24′	NE Corner SAM West.
5	41° 48.9′	69° 24′	NW side of GSC CH.
6	41° 45′	69° 33′	Runs along GSC CH.
7	41° 45′	69° 55.8′	SW landfall at Cape Cod return along shoreline to point 1.
			SAM East Polygon—In effect from May–July 31
1	41° 48.9′	69° 24′	NW side of GSC CH.
2	42° 30′	69° 24′	NW corner of SAM East.
3	42° 30′	67° 27′	NE corner SAM East.
4	41° 45′	66° 48′	SE corner SAM East.
5	41° 45′	68° 17′	Runs to GSC.
6	42° 10′	68° 31′	Runs along NE side GSC CH return along NW side of GSC CH to point #1.

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Figure 1

Atlantic Large Whale Take Reduction Plan Seasonal Area Management (SAM)

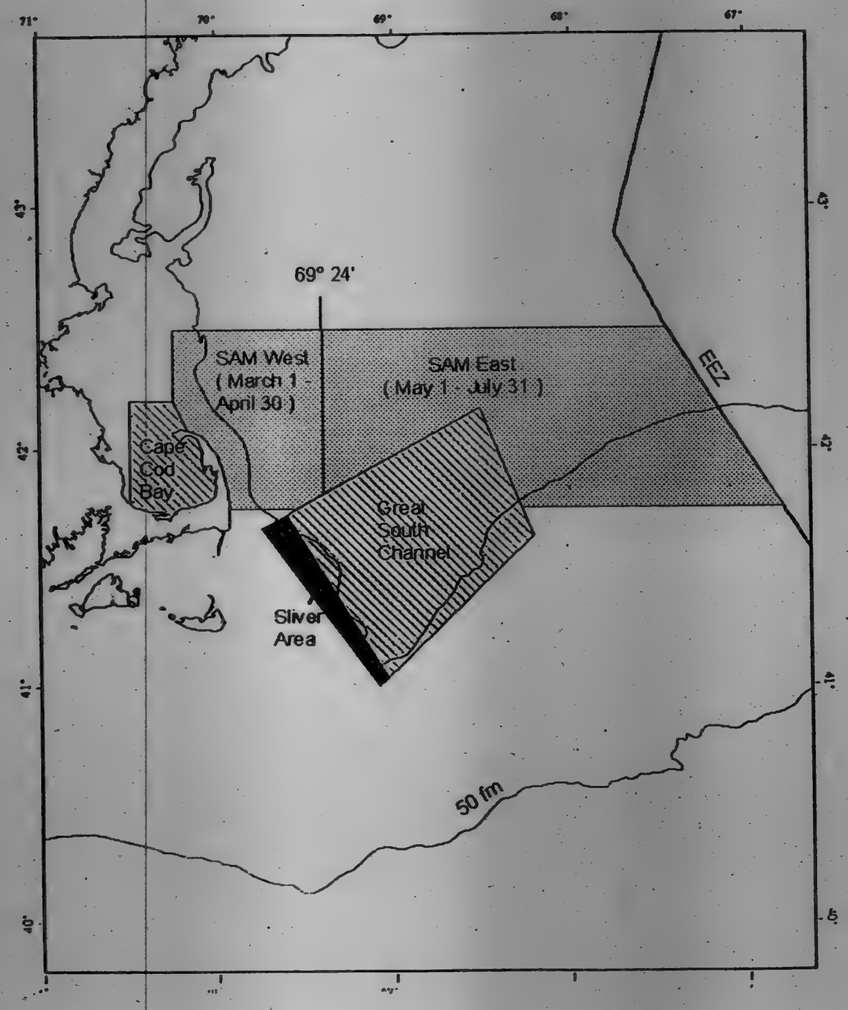

Lobster Trap Gear

Fishermen utilizing lobster trap gear within the portions of the Northern Nearshore and Northern Inshore State Lobster Waters that overlap with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines and buoy lines must be made entirely of either sinking or neutally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link must be placed at all buoys with a maximum breaking strength of 600 lb (272.2 kg) at each buoy. Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 1); and

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Fishermen utilizing lobster trap gear within the portion of the Offshore Lobster Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link must be placed at all buoys with a maximum breaking strength of 1,500 lbs (680.4 kg). Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 2);

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

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Figure 2

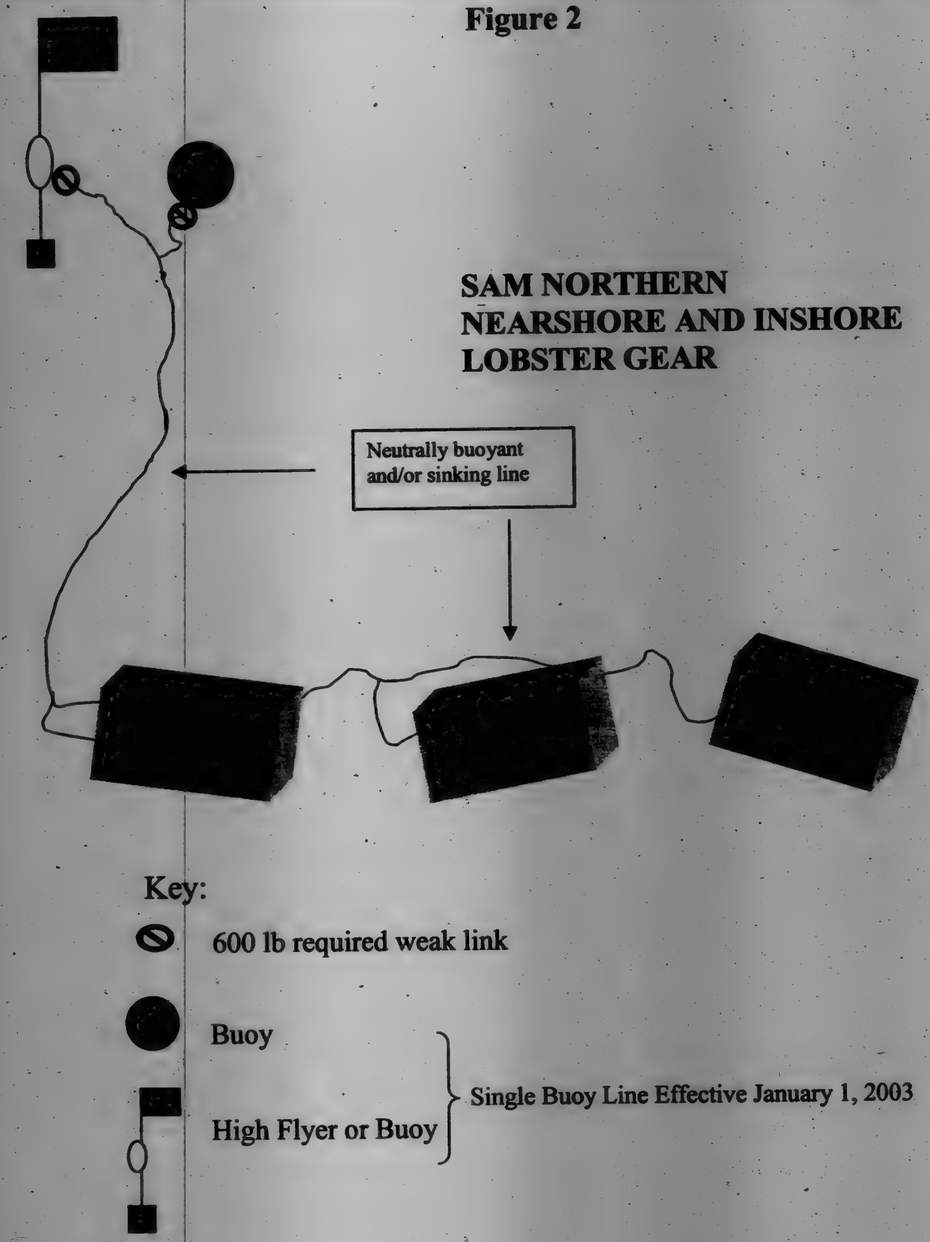

Figure 3

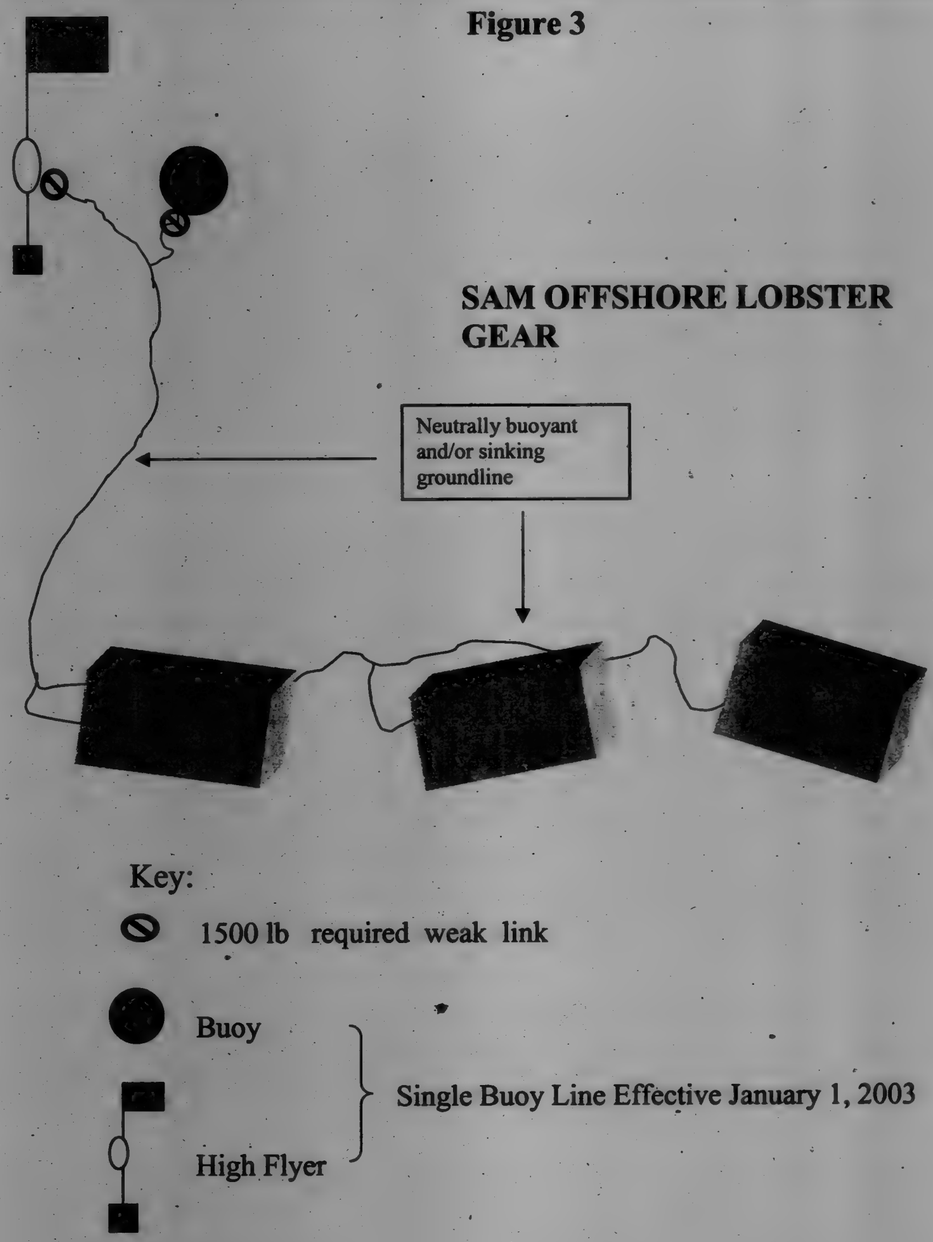

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Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

1. Groundlines (the lines between the net bridle and the anchors) and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be, one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends (See figure 4);

3. Fishermen utilizing gillnets within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth style anchor at each end of the net string.

Figure 4

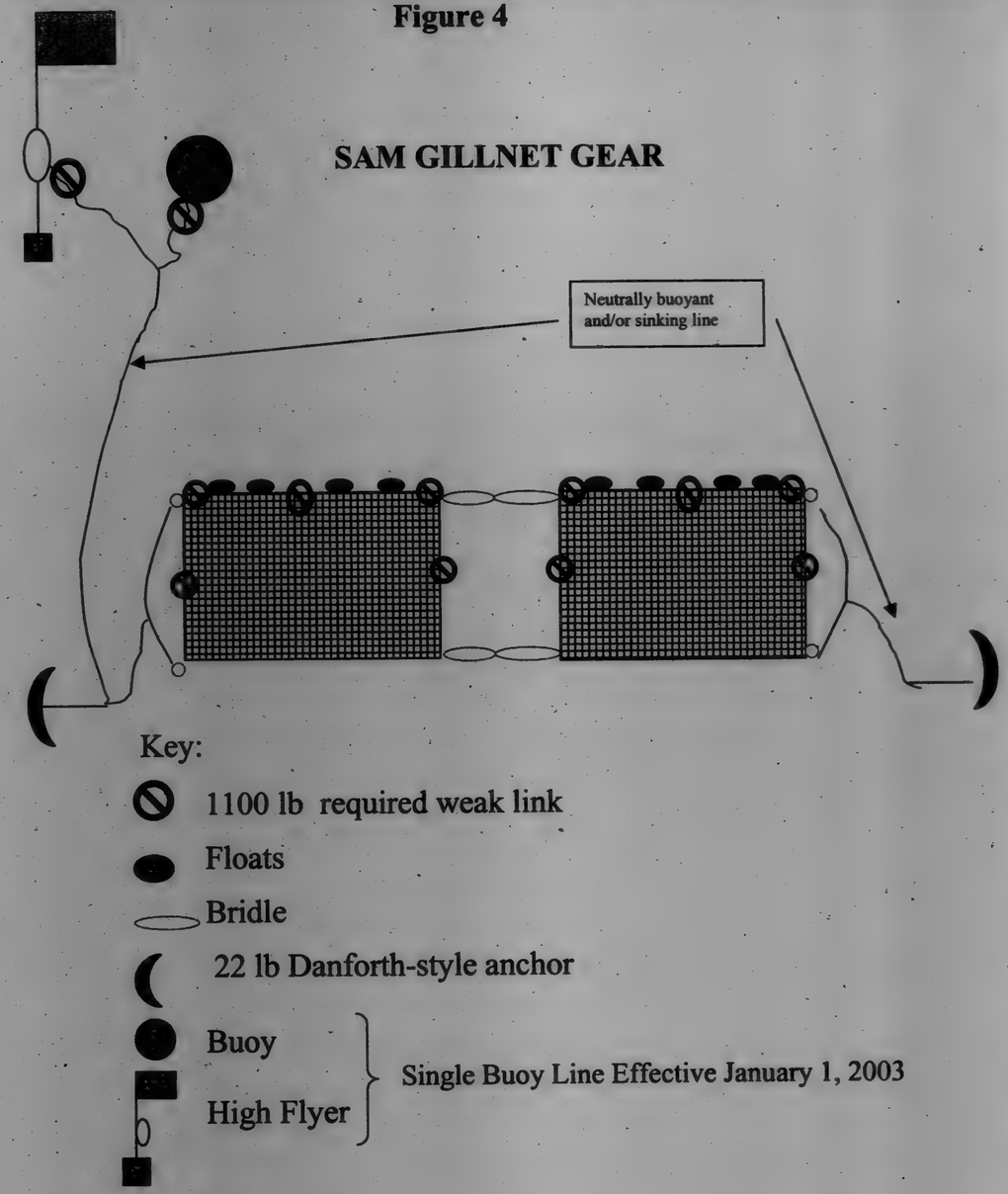

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Interaction With Other Restrictions

The gear restrictions required for the SAM areas do not preempt existing restrictions within Cape Cod Bay and the Great South Channel critical habitat for North Atlantic right whales. As described in the proposed rule to implement the Dynamic Area Management (DAM) program (66 FR 50160, October 2, 2001), NMFS maintains its authority to implement the DAM program, if conditions warrant such action. DAM is designed to respond to unexpected aggregations of North Atlantic right whales outside of critical habitat and other regulated waters, such as the proposed SAM areas. NMFS anticipates that the DAM program will be implemented as a final rule no later than December 31, 2001. Because SAM areas would protect areas of known North Atlantic right whale aggregations, NMFS does not anticipate that DAM areas will be established within SAM areas. However, the DAM program allows NMFS to implement DAM within SAM areas if conditions warrant such action. NMFS anticipates that the DAM program could be necessary during the times and in the areas when SAM is not in effect. NMFS will consider comments received on this interim final rule on SAM to further refine the relationship between DAM and SAM.

Comments and Responses

On October 3, 2001, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) and a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for SAM (66 FR 50390). As discussed in the preamble to the proposed rule for this action (66 FR 59394, November 28, 2001), the Federal District Court for the District of Massachusetts ordered NMFS to have a signed proposed SAM rule by November 23, 2001. Consequently, NMFS published a proposed rule and requested public comments regarding the proposed action. Approximately 168 letters of comment were received during the public comment periods for the ANPR and proposed rule. NMFS considered the comments received on both the ANPR and proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses is provided here.

ANPR Comments

NMFS received 14 sets of comments on the SAM ANPR. The comment period for the ANPR ended November 2, 2001.

General Comments

Comment 1: Seven commenters generally supported additional regulations or management measures, including Seasonal Area Management (SAM), to protect North Atlantic right whales (right whales). Four of these commenters further stated that fixed gear fisheries should be allowed to continue operating in SAM areas with modified fixed gear and practical regulations.

Response: NMFS believes SAM is necessary as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect the right whales. NMFS acknowledges the preference for a management plan that facilitates continued fishing with gear modifications that address both the goal of reducing the total number of entanglements and the goal of avoiding serious injury or mortality to North Atlantic right whales.

Comment 2: One commenter was opposed to any regulatory changes.

Response: Due to the endangered status of the North Atlantic right whale population, there is a need to further reduce serious injury and mortality caused by the multispecies, spiny dogfish, monkfish, and lobster fisheries as currently prosecuted. NMFS believes SAM is necessary as an element of the RPA required to protect the right whales. NMFS has determined that the additional regulatory measures included in SAM, DAM and the additional gear modifications are necessary to meet the objectives of the ESA and the MMPA. The ESA requires that the NMFS ensure that activities it authorizes, including commercial fishing, do not jeopardize the continued existence of right whales. The MMPA provides that the immediate goal of a take reduction plan is to reduce incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to levels less than the potential biological removal level and the long-term goal is to reduce such incidental mortality or serious injury to insignificant levels approaching a zero rate. Because the potential biological removal level for right whales is zero, these goals are essentially the same for right whales. These regulatory changes are necesssary to attain these goals.

Comment 3: One commenter stated strong opposition to removal of lobster gear from a SAM zone as a management measure.

Response: NMFS did consider closure to lobster and gillnet gear in the proposed rule and selected gear modification as the management measure of choice. In selecting the approach of gear modifications, we determined that it was consistent with the reasonable and prudent alternative (RPA) in the biological opinions for the gillnet, Northeast multispecies, and monkfish fishery management plans and the Federal regulations for the lobster fishery. The Management Action identified in the RPA is to utilize data to "effect annual restrictions to minimize interactions between fishing gear and right whales." Area restrictions that could be included in the management scheme as specified in the RPA include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to right whales. It is important to note that the language in the RPA did not direct NMFS to eliminate interactions between fishing gear and right whales but to minimize the interaction. Another factor in NMFS' identification of gear modifications rather than closures as the preferred option was the concern that closures would result in concentration of gear at the edges of the SAM management area. Since that gear would not include the additional gear modifications that NMFS is requiring within the SAM zone, it would pose a greater risk to right whales. Additional conservation benefit gained through the adoption of a gear modification approach is obtained due to the fact that once fishermen re-rig their gear to comply with the SAM gear modifications, it is likely that they will maintain these gear modifications even while fishing outside of the SAM restricted zone.

Comment 4: One commenter expressed a preference for measures such as SAM versus management measures contained in the Dynamic Area Management (DAM) proposed rule. The commenter's interpretation is that SAM would include the widespread use of practical whale safe gear.

Response: NMFS acknowledges the preference for SAM over DAM given that SAM is predictable and allows for fishing activity to continue with the use of modified gear. DAM and SAM are both elements of the RPA's management plan and as such both must be utilized to provide protection to right whales. NMFS anticipates that the need to utilize DAM will be significantly decreased through the implementation of SAM since the vast majority of sightings of right whale concentrations occur during the time and area identified in the SAM.

Comment 5: One Commenter stated that the input and support of the fishing industry is critical to the success of these regulations in meeting the objectives. There was further concern expressed that the comment and response process NMFS utilized did not allow adequate time for response.

Response: NMFS values the input and support of the fishing industry in developing measures to protect right whales. NMFS is engaged in the Atlantic Large Whale Take Reduction Team (ALWTRT) process as a means to incorporate the knowledge and experience of the constituents early in the regulatory process. Some of the recommendations contained in this interim final rule are a product of the ALWTRT. Though NMFS may not always implement ALWTRT recommendations exactly as stated, NMFS does consider this information when developing regulations. The comments and response process was expedited in this interim final rule due to a court order to finalize rulemaking by December 31, 2001 associated with the critical status of the North Atlantic right whale population.

Comment 6: One commenter indicated that NMFS should immediately identify at-sea enforcement as a high priority and develop protected resource penalty schedules for the ALWTRP.

Response: NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and will conduct enforcement activities as the budget allows. NMFS also relies on its partnership with the U.S. Coast Guard and state agencies to monitor compliance with the ALWTRP. NMFS has existing penalty schedules for violations of the MMPA and the ESA, and regulations pursuant to those statutes. In addition, NMFS enforcement has entered into agreements with many states to encourage and facilitate joint enforcement of regulations.

Gear Modification Comments

Comment 7: Three commenters stated that lobster gear modifications for use in the SAM area should correspond to what is currently used and proposed for use in Cape Cod Bay Critical Habitat (CCBCH). These gear modifications would include neutrally buoyant and/or sinking line for groundlines and weak links for buoy lines. Two commenters also endorsed neutrally buoyant line as a gear modification to be employed in SAM areas. One of these commenters is already using neutrally buoyant line and weak links and believes this gear is "whale safe".

Response: NMFS does endorse the measures currently employed in CCBCH and acknowledges that some fishermen are already using gear similar to what is proposed for use in SAM areas. NMFS has included neutrally buoyant line and/or sinking line as well as weak links as gear modifications for lobster trap gear to be used in SAM areas.

Comment 8: Two commenters endorsed the use of neutrally buoyant line for gillnet bridles in SAM areas. One of these commenters endorsed the expanded use of weak links in the net panels of gillnets.

Response: NMFS has prohibited the use of floating line for gillnet bridles in SAM areas and increased the number of weak links in the gillnet panels as a part of this rule. Neutrally buoyant or sinking line are methods of complying with this prohibition.

Comment 9: One commenter indicated that NMFS should prohibit fishing in SAM areas until such time as whale safe or low risk gear, as defined at the June 27–28, 2001, ALWTRT meeting, is developed. This commenter further indicated that the ANPR did not specify gillnet gear modifications and as such gillnets should be prohibited from any SAM.

Response: NMFS has included a description of gillnet and lobster trap gear which NMFS believes does meet the low risk definition. Lobster trap and gillnet gear that meets the definition is described in this rule. Gear research and testing will continue to identify ways to further reduce risk and to make progress toward the goal of identifying "whale safe gear."

Rulemaking Process Comments

Comment 10: Two commenters indicated that the full administrative process, including an Environmental Impact Statement (EIS) as required under the National Environmental Policy Act, should be carried out prior to the final determinations of SAM area boundaries. These commenters also wanted the conservation equivalencies of closures required under the Harbor Porpoise Take Reduction Plan and existing groundfish closures to be considered in determining management actions and the SAM boundaries.

Response: NMFS has completed an Environmental Assessment (EA) for the SAM interim final rule which is available to the public (see Addresses section). NMFS did consider other management actions in the Gulf of Maine when drafting these regulations. The closures/restrictions referenced by the commenter will impact gillnet activities but not lobster trap activities in the SAM areas and as such other management measures may or may not contribute to the protection of right whales.

SAM Implementation Comments

Comment 11: One commenter indicated that the SAM area should encompass the Jeffreys Ledge area which is reported to be a seasonal high use area in a recent paper titled: Right Whales (*Eubalaena glacialis*) on Jeffreys Ledge: A Habitat of Unrecognized Importance. This commenter supports designating areas that encompass approximately 90 percent of seasonal sightings as SAM areas.

Response: NMFS utilized the Dynamic Area Management (DAM) trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). NMFS utilized the criteria that the animals were sighted in sufficient density, as described in the DAM trigger document, in at least 2 survey seasons. This approach was utilized to impose predictable restrictions in areas and times where animals were sighted while also accounting for inter-annual variation. NMFS will continue aerial survey efforts in 2002 and should animals appear in sufficient density in the Jeffreys Ledge area, NMFS could implement a DAM closure to provide further protection for North Atlantic right whales. Additional survey data could also support expansion of the SAM area or delineation of additional separate SAM areas.

Comment 12: One commenter favored the implementation of the entire area for the entire time period rather than dividing the area.

Response: NMFS did not believe that data supported a SAM area for the entire area over a 5-month period. NMFS did employ a divided polygon to define the SAM areas. The SAM West and East designation was determined based on the distribution (spatially and temporally) of North Atlantic right whales.

Comment 13: Three commenters preferred "rolling restrictions" running from west to east as the animals moved east and the season progressed. This concept would result in no initial restrictions until right whales were sighted, followed by the lifting of restrictions as the animals depart the area. One commenter indicated that an initial restriction date with sequential openings to follow as the animals departed an area would be preferred.

Response: NMFS did consider this approach in developing this rule. The

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approach was not employed due to the logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area. The areas defined in this interim final rule support sufficient right whale density to trigger a management action, as demonstrated by data for the last three consecutive years. NMFS will continue survey efforts to refine the boundaries of SAM as required. In addition, a programmed restriction, at a predetermined time and location, which the industry is aware of in advance, is reported to be preferred by the fishing industry thereby increasing the likelihood of compliance. The gear modifications required to fish in a SAM area are extensive and NMFS believes fishermen will not be able to change gear quickly to comply with SAM. NMFS believes that fishermen who want to fish in a SAM area will need to plan months in advance to have their gear in compliance. These factors were considered in using programmed restrictions. An additional logistical difficulty in using sightings to impose or lift SAM regulations is that it requires regular monitoring and surveillance of right whales over such a large area. NMFS has determined that there is sufficient survey data to support the SAM area in this rule; additional survey data may provide insights into other candidate SAM areas.

Comment 14: One commenter indicated that additional survey effort is urgently needed to assure that seasonal management zones are adequate in time and area.

Response: NMFS agrees that additional survey data is necessary to refine management initiatives for right whales. NMFS will continue aerial survey efforts in the Gulf of Maine/New England area in 2002 in pursuit of this goal.

SAM Timing Comments

Comment 15: One commenter indicated that a SAM zone east of Cape Cod for the period April–June 30 might be a reasonable measure.

Response: NMFS utilized aerial survey data from the last 3 field seasons (1999–2001) to determine the time and areal extent of the SAM areas. The SAM West and SAM East areas represent times and areas where right whales were sighted in all 3 survey seasons. This area is east of Cape Cod and covers the time period from March 1–July 31.

Comment 16: One commenter indicated that the SAM area should be in effect beginning in January of every year to protect right whales as they arrive from the southern wintering areas and any animals that wander out of the Cape Cod Bay Critical Habitat Area.

Response: NMFS utilized the DAM trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM would be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. SAM was not intended to encompass every right whale sighting, but to provide additional protection to feeding aggregations of right whales due to their increased vulnerability.

Comment 17: Two commenters suggested a specific area be defined as an Offshore Lobster SAM area. The suggestion was an area east of a point defined by the easternmost location of a whale aggregation that met the DAM trigger as shown during the June 27–28 ALWTRT and reflected on page 4 of the meeting summary prepared by Resolve, Inc. This commenter indicated that fishermen in this area would fish with neutrality buoyant or sinking line and weak links at the buoy of not more than 1500 lbs (680.4 kg) breaking strength.

Response: NMFS believes this area corresponds to an area east of 68°15′ W. long. out to the Hague Line. NMFS did include these gear modifications for the area specified as well as all Offshore Lobster Waters (as defined by the ALWTRP, 50 CFR 229.32(c)(5)(i)) within a SAM area. It is important to note that at the time of the ALWTRT meeting, NMFS presented only preliminary data that included only 2001 sightings. Many commenters discuss the SAM area and refer only to the preliminary data that was presented at the ALWTRT meeting. The analysis that was conducted following the ALWTRT meeting included sightings data from 1999, 2000 and 2001. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001).

Comment 18: One commenter stated that the ANPR/NOI was inadequate to meet the RPA and that all three actions (DAM, SAM and gear modifications) must be in place simultaneously.

Response: NMFS recognizes the concern expressed by the commenter. NMFS followed the ANPR with a proposed rule which provided additional information. This interim final SAM rule addresses the concern that a rule implementing SAM be in place with the DAM and gear modification rules, which are also being published in final form.

Comment 19: One commenter indicated that SAM is a poor substitute for stronger regulations in critical habitat and that critical habitat should be extended to the areas determined to be appropriate for SAM.

Response: NMFS recognizes the concern expressed by the commenter. The designation of an area as critical habitat does not automatically add regulations stronger than those in place for SAM areas. NMFS will consider designating SAM areas as critical habitat as part of the comprehensive EIS planned for 2002.

Proposed Rule Comments

NMFS received a total of 168 sets of comments on the proposed rule for SAM. Approximately 150 of these were of a standard format. The comment period ended December 13, 2001.

General Comments

Comment 1: Four commenters stated that the SAM regulations as proposed do not provide the protection necessary to achieve the reasonable and prudent alternative under the ESA or constitute an effective take reduction plan under the MMPA.

Response: NMFS believes that the SAM program in combination with other measures in the RPA constitute the level of protection necessary to meet the requirements under the ESA and coupled with the other elements of the ALWTRP does constitute an effective take reduction plan under the MMPA. NMFS is implementing a strategy for addressing the threat posed by commercial fishing practices to right whales which includes the following components: Adoption of broad based gear modifications to reduce the risk of serious injury or mortality of right whales; specific, more restrictive, gear modifications in areas and at times of greater concentration of right whales (SAM); specific, more restrictive, restrictions in areas which contain physical or biological features essential to the conservation of North Atlantic right whales (and, therefore, designated as critical habitat under the ESA); an ability to impose restricts in areas and at times when concentrations of right whales are observed (DAM); support for implementation of a disentanglement program to respond to observed entangled marine mammals; and investigation and testing of additional gear modifications to further reduce the risk of entanglement and serious injury or mortality of rights whales. Collectively, this approach is designed to avoid jeopardy to right whales from commercial fishing practices and supports the achievement of a zero mortality rate goal.

Comment 2: One commenter stated that management initiatives based on the distribution and occurrence of right whales may have little or no impact on the entanglement rate of other large whales species the ALWTRP is charged with protecting.

Response: NMFS disagrees with the commenter and does believe that the management initiatives implemented by this interim final rule will benefit other species of large whales that NMFS is charged with protecting. Obviously right whale distribution was the principal driving force in the delineation of the SAM area. However, the additional gear modifications reduce the risk posed by this gear to large whales, including but not limited to right whales. Since we expect that fishermen who modify their gear to be able to fish within the SAM zone will likely fish that same modified gear outside the time and area of the SAM restriction, additional benefits to right whales and to other large whales outside of SAM will be realized.

Comment 3: All commenters supported the concept of SAM which facilitates continued fishing coupled with gear modifications which reduce entanglements and hence serious injury or mortality. Several commenters wanted to see specific changes to the implementation of the measure or questioned the overall conservation benefits of the SAM program as described in the proposed rule.

Response: NMFS has responded to the comments received and adopted some specific recommendations shown in this interim final rule. The conservation benefit of the SAM program is that it offers increased protection to anticipated concentrations of right whales at a time when they may be more vulnerable to entanglement, i.e. when they are feeding. NMFS has used past sightings data to predict right whale concentrations in time and in space and has identified and required modified fishing gear that poses a low risk to right whales of serious injury or mortality. This SAM program is a very important component in the overall NMFS strategy for the protection and recovery of right whales.

Comment 4: One commenter supported SAM in concept but indicated that all gillnet and lobster fishing should be prohibited in the SAM area until such time as fishing gear proven to be unlikely to seriously injure or kill right whales has been developed. Three commenters supported gear modifications as opposed to total closures.

Response: NMFS considered the concept of a total closure to lobster trap and gillnet gear in the SAM areas and determined that gear modifications developed through the TRT process would result in more conservation benefits to the animals. The basis for this determination is that total closures refocus fishing efforts to other areas and may result in an edge effect where gear is concentrated around the periphery of a closure posing a greater risk of entanglement. NMFS believes that the gear modifications required in this interim final rule prevent entanglements where possible and reduce the severity of entanglements when they do occur and will alleviate the threat of serious injury or mortality. NMFS maintains that the data available and presented in the proposed rule provides sufficient evidence that fishing within the SAM area with the gear modifications required is unlikely to result in serious injury or mortality of a right whale.

Comment 5: Two commenters identified at-sea enforcement as a priority and requested a schedule of protected resources penalties be developed for the ALWTRP regulations.

Response: See comment and response 6 in the ANPR Comments and Responses.

Comment 6: Two commenters stated that ship strikes remain a major problem for right whales. One of the two wanted to know how DAM and SAM would impact vessel traffic.

Response: NMFS agrees that ship strikes remain an issue and is addressing the issue under the Northeast Implementation Team for the Recovery of the Northern Right Whale and the Humpback Whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team, including their Ship Strike Committees. The shipping industry has been responsive in this forum and the agency is actively seeking solutions to the problem. DAM and SAM are management actions directed at the commercial lobster and gillnet fisheries in the SAM area and will not impact vessel traffic.

Comment 7: One commenter indicated that NMFS should seek out additional historical data other than the 1999–2001 aerial survey data in developing the SAM boundaries as the SAM area may be overstated.

Response: The aerial survey efforts of 1999–2001 were partially based on the historical presence of right whales such as the data used to support the critical habitat designation in Great South Channel. Historical data is not available in suitable quantity for the areas in question and as such could not be utilized in this analysis. There is no reason to expect that the observations of right whales in 1999, 2000 and 2001 are not representative of the future presence of right whales.

Comment 8: Four commenters stated that NMFS should develop broad based gear modifications for regional use based on the tracking data from several right whales observed during the 2001 field season which demonstrated these animals can range far and wide and may not remain in the areas defined as critical habitat. A broad based gear requirement would also be less complex to implement and more readily enforced.

Response: NMFS agrees with the concept of broad based gear modifications but the experience to date is that unique physical environments require unique gear modifications. Different breaking strength weak links for the Offshore Lobster Waters versus Nearshore Lobster Waters is an example of such unique environmental requirements. The fishing industry has objected to gear modifications in areas that are not documented to support whales as an unnecessary economic burden with no perceived benefit to the animal. NMFS recognizes the economic impact on industry and has strived, through the ALWTRT process and outreach, to minimize economic impact while maximizing conservation benefit from the management measures implemented. The gear modifications required in the SAM areas are over and above broad based gear modifications; however, NMFS believes that the additional burden to comply with these more restrictive gear modifications is justified based on the increased potential for interactions between right whales and fishing gear in the SAM area (due to the observed concentrations of right whales).

Comment 9: One commenter indicated that the rulemaking process did not facilitate a full and open process to include public hearings and industry feedback on the management plan.

Response: See comment and response 5 and in the ANPR Comments and Responses.

Comment 10: Two commenters indicated that a regulation with gear modifications of this magnitude will require time. One of the commenters indicated that NMFS should develop a

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phase-in schedule to change over all lobster and gillnet gear that is fished in waters where right whales occur routinely.

Response: NMFS appreciates the comments which address the need for manufacturers and suppliers to manufacture the neutrally buoyant and/or sinking line in sufficient quantity and time for the fishermen to replace the existing gear. In fact, the limitation on supply, as well as the increased economic cost, is one of the reasons why it is not reasonable at this time to impose these gear modifications more broadly. Due to the critically endangered status of right whales, and agency mandates under the ESA and MMPA, however, we must take immediate action within SAM areas to decrease the risk to right whales. Fishermen who cannot comply with the gear requirements in the allotted timeframe still have the option of fishing outside of the SAM areas.

Comment 11: One commenter encourages NMFS to utilize passive acoustics and aerial surveys to detect right whales for DAM actions.

Response: NMFS will continue to conduct aerial and shipboard surveys to detect right whales for research and monitoring purposes. The use of passive acoustics appears promising based on a presentation at the 2001 Right Whale Consortium held in October and its use may be more prevalent in the future.

Comment 12: Three commenters indicated that NMFS should continue survey efforts to modify SAM boundaries and effective dates. One commenter indicated that survey efforts may have been inadequate to detect aggregations in areas such as Jeffreys Ledge.

Response: See response to comment 15 in the ANPR Comments and Responses.

SAM Timing Comments

Comment 13: One hundred and fifty commenters indicated that the proposed rule for SAM should be strengthened to protect right whales. The commenters recommended that restrictions in the entire SAM area should be in effect from January 1 through July 31st with areas only open to unrestricted fishing after the whales have left the area. Sixty of these commenters also stated that they are willing to pay more for products if it will ensure the protection and survival of whales.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. The rationale provided for having the SAM areas in effect beginning March 1st as opposed to January 1st, are stated in the proposed rule. NMFS is aware of the migration of right whales into the CCBCH, but believes these animals are transiting the area and not aggregating to feed as described in the DAM trigger document (Clapham and Pace 2001). As stated previously in this document, the SAM area is not intended to encompass every right whale, but rather to offer increased protection to concentrations of feeding right whales, which we believe may be at higher risk of entanglement. Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM could be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. NMFS appreciates the fact that these commenters recognize that conservation comes at some economic cost to fishermen, which may be passed on to the consumer in the form of higher prices for seafood products.

Comment 14: Four commenters indicated that the timing for the SAM West and SAM East was incorrect and should be expanded. The comments generally supported SAM West from January–May 31 and SAM East from March 1–July 31. This expansion of time was considered necessary to protect animals arriving into the Cape Code Bay Critical Habitat and animals that may wander out of the critical habitat as evidenced by two specific animals during the 2001 season.

Response: See response to comment 16 under ANPR section above.

SAM Area Division/Extent Comments

Comment 15: Two commenters stated that the division between SAM West and SAM East was incorrect based on discussions at the ALWTRT meeting on June 27–28, 2001. These commenters indicated the dividing line between these two areas should be in the vicinity of the western most side of the eastern most DAM circle shown on the figure on page 4 of the meeting summary (Resolve 2001). This division would be at approximately the 68° 15′ W. long. line.

Response: NMFS agrees that the dividing line between SAM West and SAM East is not as recommended in the ALWTRT meeting summary. NMFS welcomes such recommendations from the TRT process through the recommendations are not always implemented for a variety of reasons. At the time of the ALWTRT meeting, NMFS presented only preliminary data from 2001 sightings. The discussion at the ALWTRT meeting and any recommendations made at that time were based only on the limited preliminary data presented for general discussion purposes. Following the ALWTRT meeting, NMFS conducted an analysis of the distribution of animals from the aerial surveys conducted from 1999–2001 to determine the appropriate division in time and space of the SAM area. NMFS uses the best available scientific data in developing its regulations which would include all three years of survey data. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, et al. 2001). NMFS based the areas on this analysis and overlaid it on the existing ALWTRP areas.

Comment 16: Three commenters stated that the SAM area is too large and the eastern end of the SAM East area should be at 67° 45′ W. long. as there are infrequent sightings of animals east of this longitude line. Two of these commenters indicated that right whales do not appear south of the 50-fathom line on the Georges Bank Northern Edge and, therefore, the polygon should be adjusted to exclude waters south of the 50-fathom line that occur east of the Great South Channel Critical Habitat.

Response: NMFS extended the SAM area out to the Hague Line based on the sightings of right whales as reported in the document titled: Identification of SAM Zones for North Atlantic right whale conservation (Merrick, et al. 2001). Figure 9 of that document shows whale aggregations clustered around the Hague Line in all three survey years, 1999–2001. The portion of the SAM East area south of the 50 fathom line is necessary to encompass the 15 nautical mile buffer, as described in Clapham and Pace 2001, which provides a margin of protection to encompass the movement of the animals during an aggregation.

Comment 17: Two commenters opposed the boundaries as presented in the proposed rule and indicated that states should be able to manage whale issues in their waters. One of the commenters indicated that the SAM area should not extend into state waters located east of Cape Cod, MA due to the fact that right whales are only seen on occasion in that area during March and April and furthermore that fishing gear is rarely seen close to shore in that area. The commenter indicated that there was not sufficient risk to the animals to justify federal regulations that would preempt state regulations.

Response: The data presented in Merrick, *et al.*, 2001 demonstrates that aggregations of right whales do occur east of Cape Cod in March and April. While these aggregations have not been observed in state waters, within 3 nautical miles of the shore, the 15-nautical mile protective buffers from the sightings do encompass state waters. NMFS has determined that Federal regulations are required in order to achieve the mandates and goals of the ESA and MMPA.

Comment 18: Two commenters indicated that the Jeffreys Ledge area should be included as part of the SAM program. One of the commenters acknowledged that NMFS has proposed DAM in order to address such aggregations, but they lack confidence in DAM and therefore stated that the agency should not rely on that measure.

Response: See comment and response 11 above in the ANPR Comments and Responses. NMFS does believe that DAM is a meaningful management measure which will result in real protection for right whales. Furthermore, NMFS maintains that sufficient data is needed to confidently identify an area of predictable right whale concentration prior to designating it as a SAM area. Sufficient data is not currently available for Jeffreys Ledge.

SAM Gear Modifications Comments

Comment 19: One hundred and fifty commenters stated that, within a SAM area buoy lines extending from the fishing gear to the surface should break at no more than 1,100 lbs (498.8 kg.) to allow right whales to break free in the event of an entanglement. Other commenters questioned the value of this additional weak link at all.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. NMFS interprets these comments to mean that all lobster and gillnet gear allowed to fish in the SAM areas should utilize a weak link with a maximum breaking strength of 1100 lbs (498.8 kg). This comment appears to be in response to the 3780-lbs (1714.3-kg) weak link proposed for the Offshore Lobster Waters and Other Northeast Waters, as defined by the ALWTRP (50 CFR 229.32 (c)(5)(1)), for lobster and gillnet fishermen operating within a SAM area. NMFS proposed this 3780-lbs (1714.3-kg) maximum breaking strength "system" weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. This proposal was to introduce an additional weak link at a new location (between the surface and subsurface gear), not to increase the breaking strength of any of the existing required weak links. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy link (which is required at the buoy itself). The buoy weak links for gillnet buoys are 1100 lbs (498.8 kg), and for lobster trap buoys are 1500 lbs (680.4 kg) for SAM in Offshore Lobster Waters and 2000 lbs (906.9 kg.) for Offshore Lobster Waters outside of SAM. The values of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have all been exceeded in load cell testing measurements. If a weak link of any of these breaking strengths was introduced between the surface and subsurface system, it would likely break when gear was being hauled, potentially leading to a dangerous situation and also contributing to ghost gear. These load cell measurements exceeded the 2800 lbs (363.2 kg) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have occurred in these gear types. Based on this load cell data, NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the interim final rule and will be discussed further with the ALWTRT.

NMFS proposed the weak link between the surface and subsurface system with the intention of introducing another point where the gear could break away from a right whale. Many of the comments questioned the value of the proposed weak link. The theory behind this proposal was that if a right whale encountered the vertical line in the buoy/end line reaching to the surface it could exert sufficient drag on the line to part it. The right whale would then be able to swim freely with little or no gear attached. Several commenters stated that the effectiveness of a weak link at this location is severely compromised by the fact that there would not be resistance on either side of the weak link to exert the pressure needed to break this weak link. Given these concerns, we will table this requirement for now and discuss it further with the ALWTRT and also at the upcoming gear workshop.

Comment 20: Nine commenters indicated that dropping an endline or the use of only a single buoy line is operationally problematic throughout the SAM areas. Four of these nine commenters stated that this measure raised safety issues as well. The basis of the safety contention is that extreme tides and weather from Cape Cod to the Hague Line are a major factor in determining which end of a trawl line to haul from in order to minimize strain on the lines, assuming there are two buoys/high flyers per lobster trap trawl/gillnet string. These commenters further indicated that a single mark, buoy/highflyer, will lead to gear conflicts and an increase in lost gear resulting in increased ghost gear and a resulting potential increase in entanglement risk. Three commenters offered strong support for the reduction in endlines as a step resulting in a tangible decrease in vertical line in the water column.

Response: NMFS acknowledges the comments concerning potential safety issues. NMFS also acknowledges that a 50 percent reduction in endlines/buoy lines furthers the goal of eliminating entanglements as indicated in the comments. NMFS further recognizes the potential for gear conflicts and other fishery management regulations which require both ends to be marked.

NMFS continues to support this measure as an acceptable risk reduction measure due to the very real decrease in the volume of line in the water column. The operational difficulties will require the industry to work together to come up with coordinated procedures to reduce gear conflicts. NMFS has required the single buoy to be at the northern or western end of the trawl string depending on the direction of the set as a standard procedure. NMFS will work with the industry to define more suitable standard practices if the industry has a better approach to this issue. As noted earlier in this rule, NMFS is accepting comments regarding this interim final rule (see **DATES** Section of this interim final rule) and is seeking additional comments on this measure.

Four of the nine commenters indicated their operation is partly based on safety. As this was not a universal concern NMFS interprets this to mean that the issue may be fishery specific (offshore versus inshore) and, as noted, is seeking additional comment during the 30-day comment period for this interim final rule which may lead to unique solutions in the fisheries/areas where safety is an issue.

In 2002, NMFS will pursue resolution of the safety and gear conflict issues at a gear workshop in February and also at the next meeting of the ALWTRT. Representatives from the environmental community and the fishing industry will participate in these meetings.

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Comment 21: One commenter indicated that weak link characteristics need to be more clearly and uniformly defined.

Response: The Atlantic Large While Take Reduction Plan Regulations (50 CFR 229.32) define a weak line as a breakable component of gear that will part when subject to a certain tension load. The regulations further provided a variety of known weak link configurations and offer that other material or devices may be approved in writing by the Assistant Administrator for Fisheries of NMFS. NMFS believes the regulations adequately define various methods of compliance with the weak link requirements and offer a process for innovative techniques to be developed and introduced for consideration.

Comment 22: One commenter indicated that they disagreed with NMFS' conclusion regarding the entanglement of right whale #2427 which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS concluded in the proposed rule that the gear measures required for SAM would have likely allowed the animal to free itself of all gear.

Response: NMFS agrees with the commenter and has decided to eliminate the requirement for the 3780 lb weak link, which was based on the conclusion regarding the entanglement of right whale #2427. NMFS has provided its basis for this change under changes in the Interim Final Rule from the Proposed Rule.

Comment 23: Two commenters indicated that weak links, as they are employed in the proposed rule, do not prevent entanglement of whales in the fishing gear remaining in the water or provide sufficient risk reduction to render gear "whale safe" and further are not proven to meet the criteria of "low risk" gear as defined in the proposed rule.

Response: NMFS recognizes that weak links in and of themselves do not constitute "whale safe" gear. However, NMFS does believe the weak links are an important component of the low risk gear determination. The weak links are intended to facilitate the animal's escape from gear should an entanglement occur in SAM gear or any gear in which weak links are required. The ability to escape from gear quickly and relatively easily is very important to avoid serious injury or mortality. As illustrated by the load cell and testing data presented in the proposed rule. NMFS does believe that there is sufficient data to demonstrate that weak links do break when sufficient strain is exerted on them. Breaking of line at the point of the weak links reduces the likelihood that a whale will become wrapped in the gear and will either not be able to freely swim away from the gear or only be able to swim away with a significant portion of the gear remaining attached. The weak links allow an entangled whale to break away from the gear with little or no gear attached minimizing the potential for the entanglement episode to have any significant adverse effects on the individual right whale.

Comment 24: Three commenters indicated that it is technically feasible to remove all vertical lines from the water column in gillnet and lobster fisheries using a corrodible link (link which corrodes in sea water at a known rate) with a bundled or coil buoy line and a hard float.

Response: NMFS recognizes these techniques exist and are reported to be used in some Caribbean pot fisheries. The NMFS Gear Research Team presented data on field tests using corrodible links as part of the June 27–28 ALWTRT. This technique has not been employed in the fixed gear fisheries which occur along the Eastern seaboard due to the potential for gear conflicts which are expected to result in lost gear further resulting in increased ghost gear with associated entanglement risks. The observations of these commenters are correct that it is technologically feasible to elimiante endlines/buoy lines for part of the time that fixed gear is in the water. NMFS has determined it is not practical at this time for the reasons stated earlier. NMFS will seek further discussion of these techniques and resolution of the gear conflict issues in the upcoming gear workshop and the 2002 meeting of the ALWTRT.

Comment 25: One commenter indicated that the fixed gear (lobster trap and gillnet) and mobile gear fisheries (trawling) should be segregated to specific parts of the ocean to reduce gear conflicts.

Response: NMFS acknowledges that this management approach would alleviate gear conflicts between fixed and mobile gear fisheries, but has determined that conflicts within the fixed gear fishery are also a problem of considerable magnitude. Lobster and gillnet fisheries rely on the visual or radar reflector reference to an endline/buoy line when setting out and retrieving gear to prevent gear conflicts and subsequent gear loss. Without this visual guide, one lobster fishermen could set his gear directly on top of another set of traps. Segregation of mobile and fixed gear types does not appear to solve the problem of gear conflicts.

Comment 26: One commenter indicated that NMFS should develop a ghost gear recovery program, similar to the program in the Commonwealth of Massachusetts, in conjunction with the states to remove gear that may entangle whale from the water.

Response: NMFS acknowledges the comment and will discuss the viability of ghost gear programs with state managers in an effort to remove ghost gear as an entanglement risk. The concept will also be suggested as a discussion item at the next ALWTRT Meeting.

Comment 27: One commenter indicated that states should reduce the number of recreational lobster pots allowed which would result in a reduced number of vertical lines in the water column.

Response: NMFS does not have jurisdiction over state managed recreational fisheries through the ALWTRT. The concept has merit and NMFS will suggest it as a discussion item with the participating states at the next ALWTRT Meeting.

Comment 28: Two commenters endorsed the concept of SAM which allows modified gear into an area in lieu of a complete closure based on the fact that a complete closure results in an edge effect. The commenter described an edge effect as a situation where a concentration of gear is set along the periphery of the closed area.

Response: NMFS acknowledges the comment in support of the SAM program and has experienced the edge effect as a result of other commercial fishery closures. For the reasons specified in the proposed rule, in the response to comments and elsewhere in this interim final rule, NMFS believes that greater conservation benefit is realized from gear restrictions within SAM areas as compared to a complete closure.

Comment 29: One commenter indicated that NMFS should provide estimates of the amount of actual lobster trap and gillnet gear which will be displaced in the event of a total closure or if fishermen decide the gear modifications are not feasible and consequently decide to fish elsewhere.

Response: NMFS has completed an EA for the SAM interim final rule which is available for public review. NMFS has identified impacts on the fishing industry, including the number of vessels impacted, in that document.

Comment 30: Four commenters indicated that NMFS should modify the requirement for a weak link between the surface and subsurface system. These commenters indicated the proposed weak link should be at the same breaking strength as the buoy weak link or be completely removed. The basis for removal or replacement was that the proposed maximum breaking strength of 3780 lbs (1714.3 kg) provided no benefit to entangled animals as it may actually prevent the animal from physically reaching the lower breaking strength buoy weak link(s) thus reducing the ability of an animal to free itself from an entanglement.

Response: NMFS proposed this 3780-lb (1714.3-kg) maximum breaking strength "system" weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy weak link, but the buoy weak links are 1100 lbs (498.8 kg) for gillnet buoys and 1500 lb (680.4 kg) (SAM in Offshore Lobster Waters maximum) and 2000 lb (906.9 kg) (Offshore Lobster Waters maximum for non-SAM use) for lobster trap buoy weak links. The values of 1100, 1500 and 2000 (498.8, 680.4, 906.6 kg.) have all been exceeded in load cell testing measurements. These load cell measurements exceeded the 2800 lb (363.2 kg.) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.6 kg.) have occurred in these gear types. Based on this load cell data NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the attached interim final rule and will be discussed further with the ALWTRT.

Comment 31: Four commenters indicated that NMFS did not propose a 600-lbs (272.4-kg) weak link in all SAM areas west of the proposed offshore SAM area agreed to by the offshore lobster fishery representative at the June 27–28, 2001, ALWTRT meeting. This proposed division was at approximately 68° 15′ W. long.

Response: NMFS recognizes that a 600-lb (272.4-kg) weak link west of the proposed offshore SAM area was not proposed. The entire SAM area includes 4 distinct areas which have year round gear requirements in place already per the ALWTRP (50 CFR 229.32). These areas, from west to east, are the Northern Inshore Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area description). The intent of the SAM program is to leave these distinct areal definitions in place and require additional gear modifications for the portions of these areas that have a SAM area overlaid on them. This approach is clarified in this rulemaking. Given that this is the approach, a subdivision of the Offshore Lobster Waters area into two areas with a 600-lb (272.4-kg) buoy weak link for one area and a 1500-lb (680.4-kg) buoy weak link for the other area during a SAM period was determined by NMFS to be too complex. Complex regulatory structure can result in confusion which may lead to unintended non-compliance.

Comment 32: Three commenters indicated that NMFS should require gillnet weak link breaking strengths at values less than 1100 lb (498.8 kg) based on NMFS testing reported in the proposed rule.

Response: NMFS did conduct research with 1100 lb (498.8 kg) and reduced strength weak links, 600 lb (272.4 kg), in gillnets as reported in the proposed rule and continues to work towards reducing weak link breaking strengths to the lowest possible value which will allow fishing and provide an increased probability that an entangled animal will be able to break free from gear should an entanglement occur. The difficulty with going to a 600-lb (272.4-kg) breaking strength weak link at this point in time is that the Other Northeast Waters (as defined by the ALWTRP, 50 CFR 229.32) includes waters out to the Hague Line. The expansive area covered by the gillnet ALWTRP includes physical environments that require that the 1100-lb (498.8-kg) breaking strength weak link be maintained. As stated previously, NMFS will continue gear research to determine the lowest possible value which will allow fishing to continue safely and provide a higher probability that an entangled animal will be able to free itself in the event of an entanglement.

Neutrally Buoyant Line Issues

Comment 33: Five commenters specifically indicated their support for the use of neutrally buoyant or sinking line for ground lines and buoy lines to reduce the risk of entanglement.

Response: NMFS acknowledges the general support for the use of neutrally buoyant line to reduce the probability of entanglement. This measure was included in the interim final rule based on the support of the fishing industry and the environmental community and NMFS' belief that this measure will provide considerable benefits in the elimination of entanglements.

Comment 34: Four commenters expressed concern over the cost of neutrally buoyant line for replacement of ground lines and buoy lines in the lobster and gillnet fisheries. Commenters estimated costs ranging from $6,000 for inshore fishermen to $65,000 for offshore fishermen to change over from their present gear to neutrally buoyant line. One of these commenters indicated that the SAM East would impact one particular company quite hard in that they operate five offshore lobster vessels in that area. Due to the territorial nature of lobster fishing, these fishermen cannot relocate their gear as a general matter. Two of these commenters also referenced the poor quality of neutrally buoyant line available and cited a usable life of 6 months for some of this neutrally buoyant line recently tested in the field.

Response: NMFS is aware that the cost of compliance with these regulations will be greater than any previous whale plan gear modifications. The status of the animals is such that a measure of this magnitude is required to continue prosecuting the fishery. The higher cost and burden on the industry in order to be able to fish within the SAM areas is justified by the increased risk posed of entanglement in this area due to the presence of concentrations of feeding right whales. NMFS acknowledges that some of the neutrally buoyant line which was field tested by NMFS in cooperation with the fishing industry was of inferior quality and would not be suitable for use. NMFS does believe that other manufacturers of neutrally buoyant line have performed well and the manufacturer that had difficulty is working to improve their product through the information gained during these experimental gear deployment with the industry.

Comment 35: Three commenters opposed the measure that endlines/buoy lines be composed of entirely neutrally buoyant line or sinking line due to operational difficulties associated with the buoy line snagging on the fishing gear or other bottom materials. These commenters requested that the requirement be modified to require that the top two-thirds of the buoy line be composed of neutrally buoyant and/or sinking line and that the bottom section of line be allowed to be floating line, not to exceed one-third the length of the buoy line.

Response: NMFS recognizes the operational difficulty of a buoy line composed entirely of neutrally buoyant and/or sinking line as well as the industry practice of splicing in floating

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line at the base of the buoy line to prevent snags. NMFS also recognizes that existing winter restricted period regulations for fishing in the Cape Cod Bay Restricted Area (CCBRA) allows a section of floating line not to exceed one-third the overall length of the buoy line. However, the status of the North Atlantic right whale is such that a measure of this magnitude is required to continue prosecuting the fishery. The BOs provide that the Conservation Significance of the SAM component of the RPA is "reducing the potential for interactions between North Atlantic right whales and fishing gear". NMFS believes that the gear restrictions for SAM reduce the potential for interaction to occur and also reduce the potential for interaction between North Atlantic right wales and fishing gear that would otherwise result in serious injury and/or mortality.

Changes in the Interim Final Rule From the Proposed Rule

NMFS proposed to require the installation of weak links with a maximum breaking strength of 3,780 lb in the offshore lobster trap and anchored gillnet gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl and gillnet, respectively. This proposed measure was the result of analysis conducted by NMFS from a successful disentanglement of a 7-year-old male North Atlantic right whale, catalog #2427, on July 20, 2001. NMFS' analysis concluded that the gear recovered during the disentanglement and the description of the owner's typical gear configuration indicated that the surface system was separated from the buoy line going to the trawl by a weak link with a breaking strength of 3,780 lb. It was felt that the presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line.

However, since the publication of this proposed measure, NMFS technical experts have re-evaluated this proposed measure. Although in theory the proposed measure would add an extra level of protection to potentially prevent the risk of serious injury to North Atlantic right whales should they become entangled in the buoy line, this measure is not practical from a mechanical standpoint. Operationally, having any weak link below the float system will essentially be ineffective. In order to break, a link would need to have adequate resistance from the relevant end of the gear. Given that any whale that is caught below the link would be pulling against nothing more than the surface system and the buoy, one cannot reasonably conclude that the resistance involved would be sufficient to trigger the break of the weak link. Therefore, NMFS has reconsidered this measure and is not requiring the use of weak links between the surface system and the buoy line for the offshore lobster trap and anchored gillnet gear within the SAM areas.

A technical change was also made to correct and clarify the intent of the regulations. ALWTRP gear requirements are described for designated areas which include: Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area). These areas require specific gear modifications to meet the ALWTRP regulations. As proposed, the SAM gear modifications are required in addition to or in place of existing requirements based on the fishery specific area defined by the ALWTRP.

Although the proposed rule discussed the relationship between the proposed SAM restrictions and the current gear requirements within the ALWTRP, the description of the lobster trap gear and anchored gillnet gear requirements in the proposed rule did not explicitly articulate the specific gear requirements for the portions of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area) that are overlapped by the SAM areas. this interim final rule will correct and clarify the regulations to explicitly define the gear requirements for each of these areas that are overlapped by SAM Areas.

Classification

This interim final rule has been determined to be significant for the purposes of Executive Order 12866, because the proposal is controversial.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this rule. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of the analysis follows:

1. NMFS considered but rejected a "no-action" alternative that would result in no changes to the current measures under the Atlantic Large Whale Take Reduction Plan. The "no-action" alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this interim final rule may be necessary in the future to protect endangered right whales from the fisheries. The no action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BO required under the ESA.

2. NMFS considered but rejected an alternative that would implement one SAM zone comprised of the two separate SAM zones with gear restrictions throughout the designated time frame. From the data collected during the 3 years of aerial surveys, it was determined that the core SAM area, in combination with the existing Cape Cod Bay and Great South Channel Restricted Areas, encompassed 134 (90 percent) of the 149 events from 1999–2001. The analysis of this data also led to the finding that, within the core SAM area, right whale events occur more frequently in the western part of the zone (near Cape Cod Bay and the Great South Channel) in March–April than in June–July. For example, 13 of the 15 events outside of the Cape Cod Bay and Great South Channel Restricted Areas occurred in the area NMFS has defined as SAM West, which lies west of 69° 24″ W. long.

Conversely, during May–July, all of the events within the area defined as SAM East, which were not in the Great South Channel Restricted Area, were east of 69° 24″ W. long. This analysis strongly suggests that right whales migrate from west to east within the SAM core area between the months of March and July. Therefore, NMFS does not believe that the scientific data supported a single SAM zone covering the entire area for the duration of the 5 month period.

3. NMFS considered but rejected an alternative that would implement a single SAM zone based on gear restrictions initially required throughout the zone, but lifted sequentially over time as concentrations of right whales move across the zone from west to east. This alternative is similar to the one described in section 5.3 of the EA with the only differences being the sequential lifting of gear restrictions as right whales migrate across the SAM zone from west to east instead of maintaining gear restrictions for the 5 month duration of the SAM zone. The analysis of the aerial surveys found that, during the 3 years data was collected, right whales consistently migrated across the core SAM area from west to east between the months of March and July. Therefore, this alternative acknowledges and responds to the most recent scientific study of right whale distribution and abundance in the Gulf of Maine.

However, although sequential openings would make this alternative somewhat less burdensome than sustaining restrictions over the entire area for a 5 month period, implementation of this alternative presents significant logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area.

4. NMFS considered but rejected an alternative that would implement a single SAM zone based on the same criteria as the preferred alternative (PA) with no initial gear restrictions required until concentrations of right whales begin to appear in the area and then lifted as the animals leave the area. This alternative would be extremely difficult if not impossible to implement, as NMFS would need to continuously monitor for the presence of right whales and then inform industry in a timely manner.

5. The PA would protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the exclusive Economic Zone line. NMFS has defined two areas (SAM East and SAM West), where gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description).

The time/area restrictions are based on the annual predictable presence of North Atlantic right whales as observed in aerial surveys from 1999–2001. SAM West will occur on an annual basis for the period March 1–April 30. SAM East will occur on an annual basis for the period May 1–July 31. NMFS accepted this alternative as these gear modifications are necessary to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BOs.

The small entities affected by this interim final rule are gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area). Under the preferred alternative, 49 vessels are affected, of which 18 are lobster vessels and 31 are sink gillnet vessels. This action contains no new reporting or record-keeping requirements. However, it does require modifications to lobster and sink gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with this interim final rule except the requirements related to no more than one buoy line per trawl being allowed in the SAM area. These requirements supersede the requirements at 50 CFR 697.21, which require one radio reflector at each end of a trawl with more than three traps.

NMFS received only one public comment relating to the economic impacts of this interim final rule. This comment was considered by NMFS before it approved this action, and is characterized and responded to by NMFS in the "Comments and Responses" section of the preamble to this interim final rule. No changes to the rule were made as a result of the comment received.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA. The PA meets a portion of the EPA designed to remove jeopardy, consistent with the requirements of the ESA, while allowing fishing to continue and, therefore, reduces economic impacts compared to fishery closures.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this interim final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This interim final rule implements a portion of the RPA, which resulted from section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This interim final rule implements a component of the RPA contained in the BOs issued by NMFS on July 14, 2001. Therefore, no further section 7 consultation is required.

This interim final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to the October 2001 letter.

References

Merrick, R.L.; Clapham, P.J.; Cole, T.V.N.; Gerrior, P.; Pace, R.M., III. 2001. Identification of seasonal area management zones for North Atlantic right whale conservation. Northeast Fisheries Science Center Reference Document 01–14. October 2001.

Clapham, P.J.; Pace, R.M., III. 2001. Defining triggers for temporary area closures to protect right whales from entanglements: issues and options. Northeast Fisheries Science Center Reference Document 01–06. April 2001.

Resolve. 2001. Meeting Summary Atlantic Large Whale Take Reduction Team Meeting, June 27–28, Portland, Maine. October 22, 2001.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.32, paragraph (g)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(4) Seasonal Area Management (SAM) Program. All vessels deploying anchored gillnet or lobster trap gear may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, provided the vessel complies with the gear requirements during the times specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i) *SAM West.* (A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

Point	N. Lat.	W. Long.
SAM1	42°04.8′	70°10′
SAM2	42°12′	70°15′

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SAM WEST—Continued

Point	N. Lat.	W. Long.
SAM3	42°30′	70°15′
SAM4	42°30′	69°24′
SAM5	41°48.9′	69°24′
SAM6	41°45′	69°33′
SAM7	41°45′	69°55.8′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the following gear characteristics:

(*1*) *Anchored gillnet gear.* (*i*) Ground line—All ground lines area made entirely of sinking or neutrally buoyant line.

(*ii*) Buoy weak links—All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Net panel weak link—Each net panel must have a total of five weak links. The breaking strength of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(*iv*) Buoy line—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*v*) Gillnet anchor—All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22-lb (9.9-kg) Danforth-style anchor at each end of the net string.

(*2*) *Lobster Trap gear.* (*i*) Sinking ground line—All ground lines must be made entirely of sinking or neutrally buoyant line.

(*ii*) Offshore Lobster buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Buoy line—No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41°48.9′	69°24′
SAM4	42°30′	69°24′
SAM8	42°30′	67°26′
SAM9	42°30′	66°50′
SAM10	41°45′	66°50′
SAM11	41°45′	68°17′
SAM12	42°10′	68°31′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

[FR Doc. 02–274 Filed 1–8–02; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121701E]

Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2002

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2002. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2002, through 2400 hours, A.l.t., June 30, 2002. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., February 7, 2002.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21 (f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the Federal Register. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23 (c)), the Administrator, Alaska Region, NMFS (Regional Administrator), is promulgating bycatch rate standards for the first half of 2002 effective from January 20, 2002, through June 30, 2002.

As required by § 679.21 (f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At the October 2001 Council meeting, NMFS staff presented an analysis of recent bycatch rates of Pacific halibut and red king crab in the groundfish trawl fisheries to provide the Council with a basis for setting bycatch rate standards for the first half of 2002. The analysis showed that since 1999, actual bycatch rates experienced by vessels participating in the groundfish trawl fisheries were lower than the established bycatch rate standards with the exception of vessels participating in the BSAI yellowfin sole and the GOA "other trawl" fisheries. Based on this information, NMFS suggested to the Council that an upward adjustment of the bycatch rate standard in the yellowfin sole fishery may be warranted and that downward adjustments of the halibut bycatch rate standards in the BSAI and GOA midwater pollock fisheries and the red king crab bycatch rate standards in the BSAI yellowfin sole and "other trawl" fisheries may be warranted. Specifically, for the BSAI yellowfin sole fishery, the analysis indicated that an increase of the halibut bycatch rate standard to 15 kg/mt of groundfish would encompass 73 percent of the vessels participating in the yellowfin sole fishery. For the BSAI and GOA midwater fisheries, the analysis indicated that a decrease of the halibut bycatch rate standard to 0.5 kg/mt of groundfish would encompass 99 percent of the vessels participating in the BSAI midwater pollock fishery and 90 percent of the vessels in the GOA midwater pollock fishery. Finally, for the BSAI yellowfin sole fishery and "other trawl" fisheries, the analysis indicated that a decrease of the BSAI Zone 1 red king crab bycatch rate standard to 1.0 kg/mt of groundfish would encompass 82 percent of the vessels participating in the BSAI yellowfin sole fishery and 92 percent of the vessels participating in the BSAI "other trawl" fishery.

The Advisory Panel recommendation and public testimony did not agree. The public testified that upward adjustments of the rates appeared to reward violators of the rates while downward adjustments appeared to penalize fishermen for their effort in avoiding prohibited species. The public also testified that the Council should pursue the development of alternative incentive programs such as an individual vessel bycatch allowance or similar program in which the costs or benefits of excess or reduced bycatch would be limited to the vessel conducting the fishing.

After considering public testimony, the Council recommended that the same rates used in the first half of 2001 be used for the first half of 2002. Further, the Council requested that NMFS consider the effects of observer sampling procedures and changing fishing practices due to the American Fisheries Act, improved retention/improved utilization, and Steller sea lion protection measures on prohibited species bycatch rates. Until such an assessment is conducted, the Council recommended that the existing bycatch rate standards adequately meet the intent of the VIP. The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2002 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2002 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock	
Qt 1	5.0
Qt 2	5.0
BSAI Yellowfin sole	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl	
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

In 2001, BSAI pollock combined A/B season was January 20 through June 10. In 2001, the inshore and offshore component fisheries for pollock ended 6 to 10 weeks prior to June 10, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries reopened June 10, the start of the 2001 pollock combined C/D season. Also, the community development quota pollock fishery ended 7 weeks before the end of the combined A/B season and did not resume until mid-June. In 2002, the proposed A season allowance for Bering Sea pollock (60 percent of the directed fishing allowance) would be available January 20 through June 10, with the remainder available June 10 through November 1. As in past years, the directed fishing allowances specified for the first 2002 pollock season likely will be reached before June 10.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock

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fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The average halibut bycatch rates for the BSAI 2001 first and second calendar quarter fisheries are equal to 0.13 and 0.15 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2001 first and second calendar quarter fisheries are equal to 0.36 and 0.17 kg halibut/mt groundfish, respectively. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since 1999, the use of nonpelagic trawl gear has been prohibited in the BSAI non-CDQ directed pollock fishery (§ 679.24 (b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21 (f)(2) because assignment to a fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to the BSAI bottom pollock fishery. The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery with an average halibut bycatch rate for the 2001 first and second calendar quarter fisheries equal to 0.89 and 1.89 kg halibut/mt groundfish, respectively.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2001 showed an average bycatch rate of 19.74 and 18.54 kg halibut/mt of groundfish, respectively. These rates are significantly higher than in past years. One explanation of relatively higher rates might include changes in the physical or biological conditions driving the rate of bycatch in the yellowfin sole fishery. A second explanation might be that vessels are using larger mesh gear to reduce discards and comply with increased retention/utilization standards for pollock and Pacific cod. A third explanation might be that with the decline of trawl Pacific cod catch, halibut mortality historically assigned to the trawl Pacific cod target has not been used by that fishery and instead has been made available to the flatfish fisheries. The availability of "extra" halibut mortality could allow vessels catching flatfish to be less concerned about avoiding halibut bycatch. Thus, although the amount of groundfish catch may be decreased in a haul, the amount of halibut retained in the net may remain the same and result in an increase in the bycatch rate of halibut. The Council's recommendation to use the same bycatch rates in 2002 as was used in 2001 should work as a deterrent to these higher rates given the explanation that increased bycatch rates caused by the perception of "extra" halibut and is consistent with the intent of the VIP in that vessels should avoid halibut bycatch regardless of whether there is more halibut bycatch available to a fishery.

For the "other trawl" fisheries, the Council supported a 30 kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2001 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 11.02 and 23.79 kg halibut/mt of groundfish, respectively. Observer data collected from the 2001 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 10.89 and 56.84 kg halibut/mt of groundfish, respectively.

Since 1997, with the exception of the GOA second quarter "other trawl" fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the "other trawl" fisheries, including the second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards will provide some leniency to those vessel operators who choose to use large mesh trawl gear or other device as a means to reduce groundfish discard amounts or are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 during the first and second quarters of 2001 averaged 0.57 and 0.08 crab/mt of groundfish, respectively. Although these rates are lower than the standards, the first quarter's rate is higher than bycatch rates experienced in previous years. The average bycatch rates of red king crab experienced in the BSAI "other trawl" fishery during the first and second quarters of 2001 were 0.09 and 0.00 crab/mt groundfish, respectively. The low 2001 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 2001, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 32,856 crab, considerably less than the 97,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2002 red king crab bycatch in Zone 1 will be similar to 2001 because the crab bycatch reduction measures will remain the same.

In spite of anticipated 2001 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at these levels. These levels continue to provide protection against unacceptably high rates of bycatch in these fisheries while providing some leniency to those vessel operators who choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21 (f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2002 as set forth in Table 1. These bycatch rate standards may be revised and these revisions published in the Federal Register when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21 (f)(4).

As required in regulations at §§ 679.2 and 679.21 (f)(5), the 2002 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 2;
Month 2: February 3 through March 2;
Month 3: March 3 through March 30;
Month 4: March 31 through April 27;
Month 5: April 28 through June 1;
Month 6: June 2 through June 29;
Month 7: June 30 through August 3;
Month 8: August 4 through August 31;
Month 9: September 1 through September 28;
Month 10: September 29 through November 2;
Month 11: November 3 through November 30; and
Month 12: December 1 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: January 3, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–552 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 091301C]

RIN 0648–AL98

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Overfishing Definitions for the Salmon Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 6 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone Off the Coast of Alaska (salmon FMP). This amendment is necessary to implement overfishing definitions for the salmon fishery authorized under the salmon FMP. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its jurisdiction.

DATES: The amendment was approved on January 2, 2002.

ADDRESSES: Copies of Amendment 6 to the salmon FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published a notice of availability for Amendment 6, which described the proposed amendment and invited comments from the public, in the Federal Register on October 5, 2001 (66 FR 51001). Comments were invited until December 4, 2001. NMFS received no public comments.

The Council and NMFS prepared an EA for Amendment 6 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

Amendment 6 to the salmon FMP implements overfishing definitions in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act defines the terms "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield (MSY) on a continuing basis, and requires that all fishery management plans:

specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery (Section 303 (a)(10)).

Section 301 (a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all fishery management plans contain management measures consistent with those standards. National standard 1 requires that conservation and management measures shall "prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." Pursuant to section 301(b) of the Magnuson-Stevens Act, NMFS issued national standard guidelines to provide comprehensive guidance for the development of fishery management plans and amendments that comply with the national standards (May 1, 1998, 63 FR 24212). These guidelines are codified in Title 50, Code of Federal Regulations, part 600 (50 CFR 600.305–600.355).

The salmon FMP allows a commercial troll fishery in the exclusive economic zone (EEZ) off southeast Alaska (SEAK EEZ), and closes the remaining EEZ in central and western Alaska to commercial salmon fishing. All other salmon fishing occurs either in waters of the State of Alaska (State) or in one of three historical State-managed net fishing areas that extend into the EEZ. The fisheries in these three historical fishing areas are not covered by the salmon FMP. The salmon FMP defers management of the commercial troll fishery to the State and the U.S.-Canada Pacific Salmon Commission (PSC).

Through the salmon FMP, the Council intends to conserve and manage the salmon resources in the North Pacific Ocean and to allow the fisheries in State and EEZ waters to be managed as one fishery. Regulations for the Alaska salmon fishery are made by the Alaska Board of Fisheries (Board) consistent with State and Federal laws and with negotiated agreements of the PSC. The State manages the fishery inseason and issues emergency regulations to achieve conservation objectives and to implement allocation policies established by the Board.

The SEAK troll fishery is a mixed-stock, mixed-species fishery that primarily targets chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*O. kisutch*), with pink salmon (*O. gorbuscha*), chum salmon (*O. keta*), and sockeye salmon (*O. nerka*) taken incidentally. The catch in this fishery represents approximately 6 percent of the total chinook and coho salmon landed by all salmon fisheries in Southeast Alaska (1991-1996 average). This fishery harvests less than 1 percent of the total harvest of pink, chum, and sockeye salmon occurring in Southeast waters. The chinook salmon originate in the waters of British Columbia and the coho salmon originate mainly in Alaska waters. The chinook salmon stocks that originate in Canada or pass through U.S-

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Canada boundaries are managed by the PSC under the Pacific Salmon Treaty.

In June 1998, the Council adopted Amendment 6 to the salmon FMP. In October 1998, the NMFS Alaska Fisheries Science Center (AFSC) stated it could not certify that the overfishing definitions comply with the national standard guidelines (50 CFR 600.310) without a considerably more explicit analysis. NMFS worked with scientists from the State to analyze how the State's policies comport with the national standard guidelines.

In consultation with the Council and the State, NMFS revised the preferred alternative to include the status determination criteria recommended by the national standard guidelines. Using the State's sustainable salmon fisheries policy and salmon escapement goal policy and the June 1999 Amendment to the Pacific Salmon Treaty, NMFS developed an MSY control rule, fishing mortality rate, maximum fishing mortality threshold, and minimum stock size threshold for the chinook salmon and coho salmon stocks caught in the troll fishery in the SEAK EEZ. The chinook and coho stocks serve as indicator stocks for the stock complex of salmon caught in this fishery. These status determination criteria specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished or when overfishing is occurring. This analysis is presented in the EA for Amendment 6 (see **ADDRESSES**).

In June 2001, the Council and its Scientific and Statistical Committee reviewed the revised preferred alternative. The Council concurred that the revised preferred alternative is consistent with the alternative recommended by the Council in June 1998 in that it is consistent with State policies.

Amendment 6 amends the salmon FMP by providing overfishing definitions, consistent with the national standard guidelines and the salmon FMP's policy of Federal/State coordination. The overfishing definitions are based on State salmon management and the Pacific Salmon Treaty. The State's policy for management of mixed-stock salmon fisheries is consistent with sustained yield of wild fish stocks and is sufficiently conservative to satisfy the Magnuson-Stevens Act.

The Director of the AFSC, NMFS, has certified without reservations that the proposed definitions of overfishing: (1) have sufficient scientific merit, (2) contain the criteria for stock determination specified in 50 CFR 600.305 (d)(2), (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) are operationally feasible.

NMFS determined that Amendment 6 to the salmon FMP is consistent with the Magnuson-Stevens Act and other applicable laws and, therefore, approved Amendment 6 on January 2, 2002. Additional information is contained in the October 5, 2001, notice of availability (66 FR 51001). No regulatory changes are necessary to implement this FMP amendment.

Dated: January 3, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–554 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 6

Wednesday, January 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables at the aft inboard side of the electrical power center, and corrective actions, if necessary. This action is necessary to prevent the AC power relay feeder cables from chafing against the aft inboard side of the electrical power center due to improper installation, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–165–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–165–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that one operator discovered several instances of the alternating current (AC) power relay feeder cables chafing against the aft inboard side of the electrical power center on a McDonnell Douglas Model DC–9–82 series airplane. The cause of such chafing has been attributed to the support clamp of the AC power relay feeder cables not being properly installed during production of the airplane. These conditions, if not corrected, could result in electrical arcing and damage to adjacent structures, which could result in smoke and/or fire in the electrical power center area.

The AC power relay feeder cables on certain Model DC–9–81 and -83 series airplanes, and Model MD–88 airplanes are identical to those on the affected Model DC–9–82 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000, which describes

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procedures for a general visual inspection to verify proper installation of the support clamp of the AC power relay feeder cables at the aft inboard side of the electrical power center; and corrective actions, if necessary. The corrective actions include performing a general visual inspection of the power relay feeder cables for chafing; repairing of the cables, if necessary; and installing the clamp, grommet, and sta-strap. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 162 airplanes of the affected design in the worldwide fleet. The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–165–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the alternating current (AC) power relay feeder cable from chafing against the aft inboard side of the electrical power center, which could result in electrical arcing and damage to adjacent structures, and consequent smoke and/or fire in the electrical power center area, accomplish the following:

Inspection

(a) Within 1 year from the effective date of this AD, do a general visual inspection to verify proper installation of the support clamp of the alternating current (AC) power relay feeder cables (includes the clamp, grommet, and sta-strap) at the aft inboard side of the electrical power center, per McDonnell Douglas Alert Service Bulletin MD80–24A145, Revision 01, dated June 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Proper Installation: No Further Action

(1) If the installation of the clamp, grommet, and sta-strap is correct, no further action is required by this AD.

Improper Installation: Corrective Actions

(2) If any installation of the clamp, grommet, or sta-strap is not correct, before further flight, do the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Do a general visual inspection of the power relay feeder cables for chafing, per the service bulletin. If any chafing is found, before further flight, repair per the service bulletin.

(ii) Install the clamp, grommet, and sta-strap, per the service bulletin.

Note 3: Accomplishment of the actions specified in McDonnell Douglas MD80–24–145, dated December 15, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 2, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–458 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–45/50, Pratt & Whitney (P&W) JT9D–70, or JT9D–7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes powered by GE CF6–45/50, P&W JT9D–70, or JT9D–7 series engines. This proposal would require repetitive inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes, this proposal provides for an optional terminating modification for the inspections of the outboard nacelle struts. This action is necessary to find and fix cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–40–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking of the inboard and outboard nacelle struts of the rear engine mount bulkhead was found on certain Boeing Model 747 series airplanes powered by General Electric CF6–45/50 and Pratt & Whitney (P&W) JT9D–3, –7, and –70 series engines. Cracking found on airplanes powered by P&W JT9D–3 and –7 series engines was located in the frame webs at the inner angles, extending in a radial direction. Cracking also was found in the inner flange radius and web. Cracking found on airplanes powered by GE CF6–45/50 and P&W JT9D–70 series engines was located in the frame flange common to the strut skin. Such cracking, if not found and fixed, could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, which describes procedures for repetitive detailed visual and high frequency eddy current (HFEC) inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes with web doublers installed per the Boeing service bulletins listed below, an HFEC inspection is to be done in the stop-drilled holes or around the fasteners, if installed. The service bulletin specifies contacting Boeing for repair instructions if discrepancies (cracks, broken fasteners) are found.

The FAA also has reviewed and approved Boeing Service Bulletins 747–54–2033, Revision 2, dated July 29, 1977, and 747–54–2065, Revision 6, dated May 29, 1997. These service bulletins describe procedures for a detailed visual inspection for cracks and broken fasteners, and modification of

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the outboard nacelle struts of the rear engine mount bulkhead. These service bulletins are referenced in Boeing Alert Service Bulletin 747–54A2202.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

The alert service bulletin specifies that the manufacturer must be contacted for repair of certain conditions, but this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. At this time, the FAA is considering a separate rulemaking action to mandate accomplishment of the optional terminating modification for certain outboard struts, and the manufacturer has advised that it currently is developing a terminating modification for the inboard struts and the remaining outboard struts.

Cost Impact

There are approximately 456 airplanes of the affected design in the worldwide fleet. The FAA estimates that 165 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $39,600, or $240 per airplane, per inspection cycle.

It would take approximately 32 work hours per airplane to accomplish the proposed high frequency eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed high frequency eddy current inspection on U.S. operators is estimated to be $316,800, or $1,920 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional terminating modification that would be provided by this AD action, it would take approximately 368 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $20,000 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $42,080 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–40–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane, accomplish the following:

Detailed Visual Inspections

(a) Do a detailed visual inspection to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Do the inspection per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000. Repeat the inspection at least every 350 flight cycles until paragraph (b) of this AD has been done.

(1) For airplanes on which the inspections specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAVE NOT been done: Within 120 days after the effective date of this AD.

(2) For airplanes on which the inspections specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAVE been done: Within 1,600 flight hours after doing the last inspection with no crack finding, or within 600 flight hours after doing the last inspection with a crack finding.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Detailed Visual/High Frequency Eddy Current Inspections

(b) Within 1,200 flight cycles or 18 months after the effective date of this AD, whichever is first: Do detailed visual and high frequency eddy current (HFEC) inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead per Part 1 and Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, as applicable. Doing the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes on which the modification of the inboard struts specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAS NOT been done: Repeat the applicable inspection at least every 1,200 flight cycles or 18 months, whichever is first.

(2) For Groups 3 and 4 airplanes on which the modification of the inboard struts specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, HAS been done: Repeat the applicable inspection at least every 1,200 flight cycles.

(c) For Groups 1 and 5 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000, with web doublers and angle chords installed to repair cracking, as specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997; or Boeing Service Bulletin 747–54–2033, Revision 2, dated July 29, 1977: Within 1,200 flight cycles or 18 months after the effective date of this AD, whichever is first, do an HFEC inspection of the stop-drilled holes per Figure 1, Flag Notes 1 and 2, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000. Repeat the inspection at least every 600 flight cycles.

Note 3: Accomplishment of the actions specified in paragraphs (b)(1), (b)(2), and (c) of this AD before the effective date of this AD, per Boeing Service Bulletin 747–54–2033, dated September 13, 1974; or Revision 1, dated November 14, 1975; or Boeing Service Bulletin 747–54–2065, dated October 30, 1981; Revision 1, dated December 19, 1983; Revision 2, dated October 23, 1984; Revision 3, dated March 14, 1986; or Revision 5, dated November 2, 1989; is considered acceptable for compliance with the applicable actions specified in this AD.

Repair

(d) Except as provided by paragraph (e) of this AD: Before further flight, repair any discrepancy (crack or broken fastener) found during any inspection required by this AD, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(e) Web cracks in the existing bulkhead frames repaired with the web doublers and angle chords are acceptable, provided they are stop drilled and are within the limits specified in Figure 1, Flag Notes 1 and 2, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000.

Optional Terminating Modification

(f) For Groups 3, 4, and 5 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2202, dated December 21, 2000: Accomplishment of the modification of the outboard nacelle struts, as specified in Boeing Service Bulletin 747–54–2065, Revision 6, dated May 29, 1997, terminates the repetitive inspections required by paragraphs (a) and (b) of this AD for the outboard nacelle struts only.

Note 4: Accomplishment of the modification of the outboard nacelle struts before the effective date of this AD per Boeing Service Bulletin 747–54–2065, dated October 30, 1981; Revision 1, dated December 19, 1983; Revision 2, dated October 23, 1984; Revision 3, dated March 14, 1986; or Revision 5, dated November 2, 1989; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 2, 2002.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–457 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes. This proposal would require an inspection of the electrical power feeder cables in the aft cargo compartment sidewall for chafing and/or preloading, and corrective actions, if necessary. This action is necessary to prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–164–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–

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0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–164–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that chafed electrical power feeder cables in the aft cargo compartment sidewall were found during a "C" check on a McDonnell Douglas Model DC–9–82 series airplane. Investigation has revealed that cables rubbing against a floor support cutout due to a preload condition was the cause. This condition, if not corrected, could result in possible arcing of the electrical power feeder cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment.

The existing design of the electrical power feeder cables on certain McDonnell Douglas Model DC–9–81 and –83 series airplanes, and Model MD–88 airplanes is identical to that on the affected Model DC–9–82 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000. The service bulletin describes procedures for a one-time general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.000 for chafing and preloading against the adjacent floor support cutout, and corrective actions, if necessary. The corrective actions include repairing the cables; installing a shim on the bracket; and repositioning the cables; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–164–AD.

Applicability: Model DC–9–81, –82, and –83 series airplanes, and Model MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A124, Revision 01, dated August 24, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible arcing of the electrical power cables in the aft cargo compartment sidewall and consequent damage to equipment and the adjacent structure, which could result in smoke and/or fire in the cargo compartment, accomplish the following:

Inspection and Corrective Action, if Necessary

(a) Within 1 year after the effective date of this AD, perform a general visual inspection of the electrical power feeder cables on each side of the floor support strut at station Y=1231.00 for chafing and preloading against the adjacent floor support cutout, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A124, dated Revision 01, dated August 24, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Accomplishment of the actions required by this AD, before the effective date of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 24–124, dated September 26, 1991, is considered acceptable for compliance with the requirements of this AD.

(1) Condition 1. If no chafing and preloading of the electrical power feeder cables are found, no further action is required by this AD.

(2) Condition 2. If any chafing of the electrical power feeder cable is found, before further flight, repair the cable, install a shim on the bracket, and reposition the cable; in accordance with the service bulletin.

(3) Condition 3. If any preloading of the electrical power feeder cable is found, before further flight, install a shim on the bracket and reposition the cable, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 2, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–456 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf; Suspension of Operations for Exploration Under Salt Sheets

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS proposes to modify regulations that govern suspensions of operations for oil and gas leases on the Outer Continental Shelf (OCS). There are instances where oil and gas lessees begin timely analysis of geophysical data early in the lease term, but the analysis proves inconclusive because of problems caused by the existence of salt sheets underlying the seabed and overlying possible hydrocarbon deposits. In such cases, the proposed rule would allow lessees to apply for a suspension of operations (SOO) to complete the necessary geophysical analysis before drilling a well. To qualify for a suspension of operations, the lessee must show it has made and will continue to make substantial efforts and financial commitment to process and reprocess its geophysical data.

DATES: MMS will consider all comments received by February 8, 2002. MMS may not fully consider comments received after February 8, 2002.

ADDRESSES: You may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, (703) 787–1598.

SUPPLEMENTARY INFORMATION: When a lessee obtains an oil and gas lease on the OCS, MMS regulations allow the lessee flexibility to schedule activities during the primary term. At the end of the primary term, the lease can continue in force only by production, suspension, drilling, or well reworking operations as approved by the Secretary. MMS regulations authorize suspensions before discovery of oil or gas in paying quantities only in limited circumstances. Generally, when a lease reaches the end of the primary term, the lessee must conduct drilling operations until it has made a discovery of oil or gas and a commitment to proceed to development and production.

Although lessees have made great progress in imaging potential objectives in areas under salt sheets, processing, analyzing, and interpreting geophysical, geological, and other relevant data and information is complex and time-consuming. As a result, lessees have been faced with the end-of-lease-term decisions to either allow the lease to expire or drill a well without sufficient geophysical information.

On December 21, 2000, MMS issued Notice to Lessees (NTL) 2000–G22, Subsalt Lease Term Extension. That NTL provides for extension of lease terms for subsalt exploration in cases where the lessee has drilled a well on the lease during the primary term but needs additional time to process geophysical data before drilling another well. The NTL did not provide

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additional time to process geophysical data in cases where a well had not been drilled. This rule would authorize MMS to grant a suspension for a lease when the operator has conducted timely analysis and interpretation of the geophysical data that may ultimately lead to a drilling objective but, due to the complexity of the salt sheet, needs additional time to complete the geophysical analysis before drilling. The provision requires the lessee to conduct timely analysis of geophysical information before the lessee may be granted additional time because of complications associated with the presence of the salt sheet. In considering whether the analysis of geophysical information is timely, MMS will require the lessee to have collected and analyzed geophysical information (i.e., full 3–D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year and to have completed additional data reprocessing before MMS will grant a suspension. MMS finds that this provision will address those special circumstances and that appropriate suspensions may lead to improved opportunities for effective exploration, development, and production.

Procedural Matters

Public Comment Procedure

Comments on the proposed rule, including names and home addresses of respondents, are available for public review during regular business hours. Individual respondents may request that we withhold their home address or identity from the rulemaking record to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

Over the next 5 years, MMS anticipates that companies would make 3 to 5 requests each year under the proposed rule. We estimate that in three of the cases each year, this new rule will prevent unnecessary compelled drilling of wells that may not otherwise have been drilled had the geophysical analysis been sufficient. Depending on the water depth and the well depth, we estimate that drilling each well, on average, would have cost $10 million. Selective suspensions will help reduce potential environmental impact and produce approximately $30 million in private sector savings.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule may directly or indirectly affect lessees and operators of leases on the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these companies are considered small. We expect few, if any, of the small companies to apply for a suspension under this rule. Some small companies may be included in partnerships with larger companies that are exploring in the subsalt areas.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed above, this rule will have a positive effect on the private sector of approximately $30 million per year in avoided costs.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The proposed revisions to 30 CFR part 250, subpart A, refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control numbers 1010–0114, current expiration date of September 30, 2002. The rule proposes no new reporting or recordkeeping requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule does not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the proposed rule does not have significant Takings implications. A Takings Implication Assessment is not required. The proposed rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule may have a small positive effect on energy supplies.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Department of the Interior has established that "issuance and/or modification of regulations" is considered a categorically excluded action as it results only in administrative effects causing no significant impacts on the environment and, therefore, will not require preparation of an environmental assessment or impact statement. MMS has determined that this action does not represent an exception to the categorical exclusion. A detailed statement under NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 21, 2001.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.175, redesignate the existing text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(b) The Regional Supervisor may grant an SOO not to exceed 3 years in the Western Gulf of Mexico when all of the following conditions are met:

(1) The lease was issued with an initial lease term of 5 years, or with an initial term of 8 years with a requirement to drill within 5 years;

(2) The lessee has collected and analyzed appropriate geophysical information prior to the end of the third lease year;

(3) The geophysical information confirms the presence of a salt sheet as well as evidence that a drillable objective may exist beneath the salt sheet;

(4) The applicant has completed additional reprocessing prior to submitting the application for suspension; and

(5) The applicant demonstrates that additional time is necessary to gather new geophysical data or to reprocess or reinterpret existing data to further define drilling objectives beneath a salt sheet.

[FR Doc. 02–521 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–042–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions, general environmental resource information, operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places, bond release applications, termination of jurisdiction, prime farmland reclamation, inspection frequency of abandoned sites, hearings for charges of violation, the qualifying criteria for assistance under the small operator's program, areas where mining is prohibited or limited, criteria for designating areas unsuitable for surface coal mining, applications for and approval of coal exploration operations of more than 250 tons, criteria for permit approval or denial, application and approval criteria for demonstrating valid existing rights, the one square mile criterion in the definition of intermittent streams, and miscellaneous non-substantive editorial revisions. New Mexico intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t., February 8, 2002. If requested, we will hold a public hearing on the amendment on February 4, 2002. We will accept requests to speak until 4 p.m., m.s.t., on January 24, 2002.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW, Suite 1200, Albuquerque, New Mexico 87102, Telephone: 505–248–5096.

Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1120 South St

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Francis Drive, Santa Fe, New Mexico 87505, Telephone: 505–476–3400.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: 505–248–5096.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Description of the Proposed Amendment

By letter dated November 28, 2001, New Mexico sent us a proposed amendment (administrative record No. NM–853) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to the June 19, 1997, and April 2, 2001, letters (administrative record Nos. NM–796 and NM–851) that we sent to New Mexico in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 931.16(e), (u) and (v); and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, New Mexico proposes, in response to the June 19, 1997, 30 CFR part 732 letter, to:

1. Revise 19.8.1.7.O(5) NMAC, the definition of "other treatment facilities," to include chemical treatments or mechanical structures that have a point-source discharge and are utilized to comply with all applicable State and Federal water-quality laws and regulations;

2. Revise 19.8.1.7.P(12) NMAC, the definition of "previously mined areas," to mean land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the requirements of SMCRA, the Act, and the New Mexico regulatory standards;

3. Revise 19.8.1.7.Q(1) NMAC, the definition of "qualified laboratory," to specify, in addition to the listed services, those services allowed under the small operator assistance program (SOAP) at 19.8.32.3203 NMAC;

4. Revise 19.8.8.801.B, concerning general environmental resources information in a permit application, to require (1) at paragraph B(1), a description (based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies) of the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas, and (2) at paragraph B(2), further evaluation of important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses;

5. Revise 19.8.9.912 NMAC, concerning proposed operations that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places, to (1) require a plan to either (a) describe the measures to be used to prevent adverse impacts, or (b) minimize adverse impacts when valid existing rights exist or joint agency approval must be obtained, and (2) require the applicant to prevent or minimize impacts to any historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures, which may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

6. Revise 19.8.14.1412 NMAC, concerning general requirements for bonding, by adding paragraph (2)(h) that requires an operator to include in an application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the Act, the regulatory program, and the approved reclamation plan;

7. Add 19.8.14.1415.A and B NMAC, concerning termination of jurisdiction, stating that the Director (1) may terminate regulatory jurisdiction over a reclaimed surface coal mining and reclamation operation upon a written finding that all reclamation requirements have been successfully completed or the performance bond has been released and (2) must reassert jurisdiction over a site if it is demonstrated that either the written finding to release a performance bond or regulatory jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact;

8. Revise 19.8.20.2057.A NMAC, the definition of "thin overburden," to allow a variation from backfilling to the approximate original contour when the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and the coal bed prior to removing the coal;

9. Revise 19.8.20.2058.A NMAC, the definition of "thick overburden," to allow a variation from backfilling to the approximate original contour when the overburden thickness times the swell factor exceeds the combined thickness of the overburden and the coal bed prior to removing the coal;

10. Revise 19.8.24.2400 NMAC, concerning performance standards for operations on prime farmlands, by adding paragraph C requiring that the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining; water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area; and the creation of any such water bodies must be approved by the regulatory authority with the consent of all affected property owners within the permit area;

11. Add 19.8.29.2900.G and H NMAC that define "abandoned site" to mean a surface coal mining and reclamation operation for which the Director has made specified written findings and allow for a reduced inspection frequency determined by specified conditions at the site, but no less frequently than one complete inspection per quarter;

12. Revise 19.8.31.3107.A NMAC, concerning a request for a hearing by a person charged with a violation, to allow 30 rather than 15 days from the date of service of the conference officer's action for the person to contest the proposed penalty or alleged violation;

13. Revise 19.8.32.3200.B NMAC by allowing an applicant to be eligible for assistance under SOAP if he establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the permit term or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 300,000 rather than 100,000 tons;

14. Revise 19.8.32.3203.A and B NMAC, concerning the small operators assistance program, to allow funding for additional services performed by a qualified laboratory including engineering analyses and designs necessary for the determination of probable hydrologic consequences, drilling, development of cross-section maps and plans, collection of archaeological and historic information and related plans, pre-blast surveys, and collection of site specific resources information and production of protection and enhancement plans for fish and wildlife habitats; and

15. Revise 19.8.32.3206.A and A(2) and (3) NMAC to clarify that the SOAP applicant shall reimburse the Director for the costs of the services rendered if either the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons (rather than 100,000 tons) or the permit is sold, transferred or assigned to another person and the transferee's total actual attributed annual production of coal for all locations exceeds 300,000 tons (rather than 100,000 tons) during any consecutive 12-month period either during the permit term or during the first 5 years after issuance of his permit.

In response to the April 2, 2001, 30 CFR part 732 letter, New Mexico proposes revisions and additions of rules concerning valid existing rights (VER). Specifically, New Mexico proposes to:

1. Revise 19.8.2.201.C NMAC, concerning areas where mining is prohibited or limited, to prohibit mining within 300 feet of any occupied dwelling unless, among other things, an access or haul road connects with an existing public road on the side of the public road opposite the dwelling;

2. Revise 19.8.2.201.E NMAC, concerning areas where mining is prohibited or limited, to prohibit mining within 100 feet of a cemetery, unless the cemetery is relocated in accordance with all applicable laws and regulations;

3. Add 19.8.2.201.F.(5) NMAC, concerning areas where mining is prohibited or limited, to prohibit mining on federal lands within a national forest, unless the U.S. Secretary of the Department of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and any surface operations or surface impacts will be incidental to an underground coal mine, or; with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the U.S. Secretary of Agriculture has determined that the surface mining operation is in compliance with several Federal acts;

4. Revise 19.8.2.202 NMAC, concerning areas designated unsuitable for mining, to incorporate new procedures for determining whether an applicant proposes surface coal mining operations on lands protected under 19.8.2.201 NMAC and, if proposed, whether the applicant has valid existing rights to disturb protected lands;

5. Add 19.8.2.203 NMAC, concerning criteria for designating areas unsuitable for mining, to identify when the prohibitions and limitations of 19.8.2.201 NMAC do not apply;

6. Revise 19.8.3.300.C, concerning criteria for designating lands unsuitable for mining, to add a statement that all lands protected under 19.8.2 NMAC, concerning areas designated unsuitable for surface coal mining, are subject to designation as unsuitable for all or certain types of surface coal mining operations pursuant to the appropriate petitions;

7. Revise 19.8.6.602.A(9), concerning an application for coal exploration of more than 250 tons and lands designated as unsuitable for mining, to add the requirements that an applicant (1) demonstrate that the proposed exploration will minimize interference with values for which the land was designated unsuitable and (2) include documentation of consultation with the owner of the feature causing the land to be protected and, when applicable, the agency with the primary jurisdiction over the feature;

8. Add 19.8.6.603.B(4) NMAC, concerning approval of coal exploration for more than 250 tons, to require that the Director of the New Mexico program approve an application only if he finds that the activities on any lands protected under 19.8.2.201 NMAC will minimize interference with the values for which the lands were designated as unsuitable for mining. Prior to making this finding, the Director must provide reasonable opportunity to the owner of the features and, when applicable, to the agency with primary jurisdiction over the features, to comment on whether the finding is appropriate;

9. Revise 19.8.7.704.C, concerning application requirements for identification of areas with a proposed permit that are within areas designated unsuitable for mining, to require that when an applicant proposes to conduct surface coal mining operations within 100 feet of a public road, an applicant must meet the requirements concerning the necessary approvals and public notice and hearing provided for at 19.8.2.202.D;

10. Revise 19.8.11.1106.D(3), concerning the criteria for permit approval or denial, to require that the Director find that the proposed permit area is not within an area designated as unsuitable for surface coal mining operations under 19.8 NMAC Parts 3 and 4, or within an area subject to the prohibitions of 19.8.2.201 NMAC; and

11. Add a new part at 19.8.35.1 NMAC through 19.8.35.14 NMAC, concerning the definition of "valid existing rights" (VER), the requirement for an applicant to demonstrate compliance with the "good faith/all permits standard" or the "need for and adjacent standard" with respect to areas with VER, roads and VER, the submission and processing of requests for VER determinations, the requirements for a VER property rights demonstration, the initial review of a VER request, the public notice and comment requirements and procedures for processing a VER request, how decisions on a VER request will be made, opportunities for administrative and judicial review of VER determinations, and the availability of records for VER requests and determinations.

In response to required program amendments at 30 CFR 931.16(e), (u) and (v), concerning the inclusion of a one square mile criterion in the definition of intermittent streams, New Mexico proposed an explanation of how the existing New Mexico rules governing ephemeral streams provide environmental protection for drainages of one square mile that is as effective as the Federal regulations. New Mexico's justification is based on unique regional characteristics of low rainfall in an arid environment and implementation of performance standards for diversions of ephemeral streams requiring use of site-specific designs that take into account the local watershed and rainfall conditions, use of the best technology currently available; protection against material damage both on and off-site; and, minimization of impacts to the hydrologic balance.

In addition, at its own initiative, New Mexico proposes to revise the following rules:

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1. 19.8.1.7.(2) NMAC, concerning the definition of "fixed assets," to clarify the meaning by adding "facilities and equipment not used for the production, transportation or processing of coal;"
2. 19.8.1.7.(5) NMAC, concerning the definition of "fixed assets," to clarify that fixed assets and land or coal in place shall not be considered assets for the purposes of calculating net worth;
3. 19.8.8.802.A(1) NMAC, concerning application requirements for hydrology and geology, to replace the word "by" with "to;"
4. 19.8.13.1307.A.(1)(d) NMAC, concerning transfer, assignment or sale of permit rights, to delete an inappropriate rule reference;
5. 19.8.19.1900.A and B NMAC, concerning coal exploration, to correct a referenced rule citation;
6. 19.8.19.1902.C.(2) NMAC, concerning coal exploration, to correct reference rule citations; and
7. 19.8.20.2009.E and E(5) NMAC, concerning protection of the hydrologic balance, to correct referenced rule citations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on January 24, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 2001.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 02–481 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–070]

RIN 2115–AE46

Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for marine events held on the waters of the Western Branch of the Elizabeth River, Portsmouth, Virginia. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of the Western Branch of the Elizabeth River during the events.

DATES: Comments and related material must reach the Coast Guard on or before March 11, 2002.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Operations Oversight Branch, Auxiliary and Recreational Boating Safety Section, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–01–070), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Portsmouth, Ports Events, Inc., and other event organizers sponsor marine events throughout the year on the waters of the Western Branch of the Elizabeth River. These marine events are held adjacent to the Portsmouth City Park. A fleet of spectator vessels traditionally gathers near the event site to view the marine events. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard proposes to temporarily restrict the movement of all vessels operating in the event area during the marine events.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent regulated area on specified waters of the Western Branch of the Elizabeth River. The proposed special local regulations will restrict general navigation in the regulated area during the events. Except for persons or vessels authorized by the Coast Guard Patrol

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Commander, no person or vessel will be allowed to enter or remain in the regulated area. The proposed regulated area is needed to control vessel traffic during the marine events to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1D, and determined that this proposed rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. § 100.525 is added to read as follows:

§ 100.525 Western Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points:

Latitude	*Longitude*
36°50′18″ North	076°23′ 10″ West, to
36°50′18″ North	076°21′42″ West, to
36°50′12″ North	076°217prime;42″ West, to
36°50′12″ North	076°23′10″ West, to
36°50′18″ North	076°23′10″ West

All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates.* This section is effective annually from 6 a.m. to 6 p.m. local time on the fourth Friday and fourth Saturday in March, the fourth Friday and fourth Saturday in April, the second Friday and second Saturday in May, and the second Saturday and second Sunday in October.

Dated: December 11, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–545 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 725

[OPPTS–50645; FRL–6809–2]

RIN 2070–AD43

Burkholderia Cepacia Complex; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for *Burkholderia cepacia* complex (Bcc), a group of naturally-occurring microorganisms. Bcc microorganisms, when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a cystic fibrosis (CF) patient, have the potential to cause a severe infection, resulting in significantly increased rates of mortality. This proposed rule would require persons who intend to manufacture, import, or process Bcc for a significant new use to notify EPA at least 90 days before commencing the manufacturing(including import) or processing of Bcc for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments, identified by docket control number OPPTS–50645, must be received on or before March 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50645 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including import), process, or use products that contain living microorganisms subject to jurisdiction under TSCA, especially if you know that your products contain or may contain Bcc. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Chemical manufacturers	325	Persons manufacturing, importing, or processing products for commercial purposes containing Bcc for biofertilizers; biosensors; biotechnology reagents; commodity or specialty chemical production; energy applications; and other TSCA uses
Waste management and remediation	562	Waste treatment or pollutant degradation

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This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the list of substances excluded by TSCA section (3)(2)(B), and the applicability provisions at 40 CFR 725.105(c) for SNUR related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 725 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr725_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50645. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50645 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50645. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This proposed rule would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of Bcc, a group of naturally occurring microorganisms, for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) authorizes EPA to determine that a use of a chemical substance is a "significant new use." See also, 40 CFR part 725, Subparts L–M. EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Section 5(a)(2) of TSCA lists the following as potentially relevant factors for EPA to consider: (A) the projected volume of manufacturing and processing of a chemical substance, (B) the extent to which a use changes the type or form of exposure to human beings or the environment to a chemical substance, (C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and (D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Once EPA promulgates a rule designating "significant new uses" for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 725.105(c).

EPA has interpreted the TSCA section 3(2) definition of "chemical substance" as authorizing EPA to regulate microorganisms under TSCA. See the **Federal Register** of April 11, 1997 (62 FR 17910 and 17913) (FRL–5577–2). Microorganisms that are not intergeneric are implicitly included on the TSCA Inventory, which would include naturally-occurring microorganisms such as Bcc (40 CFR 725.8(b)). Thus, such microorganisms are only subject to TSCA section 5 notification requirements upon promulgation of a SNUR, pursuant to TSCA section 5(a)(2).

C. Which General Provisions Apply?

General provisions for SNURs appear under subpart L of 40 CFR part 725. These provisions describe persons subject to the proposed rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the proposed rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of Microbial Commercial Activity Notices (MCANs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the conditions necessary to qualify for the exemptions under TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), as codified in the regulations at 40 CFR part 725. In contrast to the provisions of 40 CFR part 721, under 40 CFR part 725, EPA has adopted a narrow interpretation of the TSCA section 5(h)(3) exemption for small quantities used in research. Under 40 CFR 725.3, EPA has defined small quantities solely for research and development as "quantities of a microorganism manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that meet the requirements of § 725.234." Any other research and development activity of a microorganism subject to a SNUR must comply with the section 5(a)(1)(A) notification requirements unless that activity has been excluded from coverage under the SNUR. See, 40 CFR 725.3, Subparts E and F of 40 CFR part 725, and the **Federal Register** of April 11, 1997 (62 FR 17921–17926).

Once EPA receives an MCAN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the MCAN notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy addressing the import certification appears at 40 CFR part 707.

III. Summary of the Proposed Rule

On July 31, 2001, The Cystic Fibrosis Foundation submitted a petition under section 21 of TSCA which requested EPA to "establish regulations prohibiting the manufacture, processing, distribution in commerce, use, and improper disposal of bacterial species within the *Burkholderia cepacia* complex." The Bcc was defined by the petitioner as nine species including *B. cepacia*, *B. multivorans*, *B. stabilis*, *B. vietnamiensis*, *B. ambifaria*, *B. pyrrocinia*, and three as yet unnamed species referred to as *B. cepacia* genomovars III, VI, and VIII. The petitioner stated that "exposure of individuals with CF to Bcc frequently results in life-threatening infections" and "these actions are necessary to address the significant threat that these microorganisms pose to individuals with CF and other diseases that compromise the immune system." On November 6, 2001 (66 FR 56105) (FRL–6808–7) EPA published in the **Federal Register** a notice denying that petition. EPA also stated in the notice that it intended to issue a SNUR for Bcc.

It is well established that when encountered in sufficient numbers through an appropriate route of exposure by a member of a sensitive population, such as a CF patient, Bcc has the potential to cause a severe infection, resulting in significantly increased rates of mortality. There is also the possibility of increased exposure from several potential commercial uses especially for bioremediation where EPA has identified environmental research and development of Bcc that has already occurred. EPA believes that there is currently no general commercial use of Bcc. Therefore, EPA is proposing to designate any use of Bcc other than research and development in the degradation of chemicals via injection into subsurface groundwater as a significant new use.

This proposed rule, when finalized, would require persons, who intend to manufacture, import, or process Bcc for a significant new use to notify EPA, through submission of an MCAN or TSCA Experimental Release Application (TERA), at least 90 days before commencing the manufacture or importation of any of these microorganisms for any use other than research and development in the degradation of chemicals via injection into subsurface groundwater. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs.

IV. Hazard and Exposure of Bcc

A. Defining Bcc

B. cepacia complex is comprised of former *Pseudomonas* species (*P. cepacia* and *P. pyrrocinia*), existing *Burkholderia* species newly allied with Bcc (*B. vietnamiensis*), newly named *Burkholderia* species split off from *Burkholderia cepacia* (*B. multivorans*, *B. stabilis*, and *B. ambifaria*), and the three as yet unnamed genomovars (genomovars III, VI, and VIII). Of these nine components, only seven appear generally accepted as members of the Bcc in the current literature. Most current literature and reports refer to seven genomovars/species in the Bcc. One of these components, *B. pyrrocinia* had not been universally associated with Bcc until recently, but new information appears to move *B. pyrrocinia* from a unique species to part of a new genomovar of the Bcc. Additionally, recent information indicates that a publication is in

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preparation which will establish a new genomovar (VIII). Acceptance of these two additional genomovars may be a function of the time needed for common usage by the research community (Ref. 1).

For purposes of this proposed rule EPA is defining Bcc as including all nine species. EPA is also proposing to use the provisional name, *Burkholderia cepacia* genomovars III, VI, and VIII, for the three unnamed genomovars, in the codified text and to replace these names with species designations via an administrative amendment when the species names are accepted by the scientific community. If in the future the composition of the Bcc is modified to include new species equivalents, or existing Bcc members are removed from that group, EPA will consider whether an additional rulemaking is warranted to revise the definition of Bcc in this proposed rule.

B. Bcc Hazard Assessment

Although *B. cepacia* is not a frank pathogen for humans, it is an important opportunistic pathogen for patients with CF and other diseases resulting in immune defects (Refs. 2 and 3). CF is an autosomal recessive disorder resulting in the dysfunction of the cystic fibrosis transmembrane regulator (CFTR), that actively transports chloride ions across the plasma membrane of mammalian cells (Ref. 3). This defect results in high salt concentrations in epithelial secretions and a production of a thick mucus within the airways of the CF lung. The airway mucus impairs normal mucociliary clearance mechanisms, thus promoting infection with a variety of microbial pathogens.

CF patients suffer from a variety of health problems including infection, intestinal obstruction, pancreatic insufficiency, reproductive problems, and malnutrition (Ref. 4). These result in symptoms such as gastrointestinal pain, diarrhea, fatigue, weight loss, and wheezing. These problems are the result of mutations in the CFTR gene (Ref. 5). There have been more than 600 different mutations of this gene documented (Ref. 6). Different mutations have resulted in different phenotypes of the disease. Thus, CF is not an "all or none" disease, and the spectrum of CF disease can vary from very mild to very severe (Ref. 7).

Bacterial colonization and associated inflammation are the major causes of morbidity and mortality in patients with CF (Ref. 3). Surprisingly, the spectrum of bacteria that are routinely isolated from CF sputum is narrow (Ref. 3). Characteristically, infant CF patients are infected with *Staphylococcus aureus* and *Haemophilus influenzae*. In adolescent and adult CF patients, the prevalence of pulmonary infection with *Pseudomonas aeruginosa* (80–90% in most CF adults) exceeds that of all other pathogens. Other organisms isolated from CF patients include *Stenotrophomonas maltophilia*, *Alcaligenes xylosoxidans*, *Aspergillus* species, *Ralstonia pickettii*, and *Bordetella*.

Although *Pseudomonas aeruginosa* is the dominant pathogen for the CF patient, *B. cepacia* has been isolated with increasing frequency over the last 15 years (Ref. 3). According to the Cystic Fibrosis Foundation, 3.5% of all people with CF receiving care at CF Foundation-accredited Care Centers in 1988 were infected with *B. cepacia*. An adult CF infection rate of 6% has been reported (Ref. 6). The clinical outcome for CF patients can vary considerably. Some patients have only transient infection or are chronically infected without impact. Infection in other patients results in a more rapid deterioration of lung function. In about 20% of CF patients infected with *B. cepacia*, colonization results in the so-called "cepacia syndrome," which is characterized by fever, pneumonia, and ultimately a fatal clinical decline.

B. cepacia causes pulmonary infections in CF patients. Respiratory tract infections, in general, are mainly caused by invasion of the mucus membranes lining the respiratory tract (Ref. 8). Thus, inhalation exposure would be the most relevant route of exposure for *B. cepacia* risk assessment. The level of exposure needed to cause infection is not known (Ref. 9).

B. cepacia is a pathogen in other immunocompromised patients as well. For example, patients with chronic granulomatous disease (CGD) are at a high risk of invasive *B. cepacia* infection (Ref. 10). This can result in fatal pneumonia in these patients. CGD is an inherited disorder of the immune system that leaves patients vulnerable to bacterial and fungal infections.

The virulence factors that allow *B. cepacia* to cause disease are only beginning to be defined (Ref. 11). Several virulence factors have been proposed for *B. cepacia* infecting CF patients. These include *B. cepacia* lipopolysaccharide catalase, a hemolysin, lipases, proteases, siderophores, and a so-called giant cable pilus. However, it is difficult to determine if the virulence traits identified actually contribute to pathogenicity in CF patients. This is partly due to animal models that do not reproduce the human CF phenotype with high fidelity.

Ascertaining the virulence factors important for *B. cepacia* infection would help in determining the relative pathogenicity of each distinct *B. cepacia* genomovar. Formerly a member of the genus *Pseudomonas*, *B. cepacia* is now known to be a complex of bacteria (*B. cepacia* complex) consisting of nine distinct species or genomovars (Ref. 3). Currently, it is not known if all genomovars of the *B. cepacia* complex are human pathogens. Based on analyses of isolates associated with human disease, genomovar III appears to be the most pathogenic for CF patients (Ref. 11). Some of the other genomovars are only rarely encountered in a clinical setting, and their ability to cause disease in CF patients is unknown. Thus far, however, no *B. cepacia* strains can currently be determined to be free from the potential to cause disease in CF patients (Ref. 12).

Ascertaining the virulence factors important for *B. cepacia* infection would also help in determining the source of all the infections that cause disease in CF patients. For example, epidemic transmission of *B. cepacia* is most commonly seen with genomovar III (Ref. 11). However, CF patients can also be infected by non-epidemic strains of *B. cepacia* (Refs. 2, 4, and 11). The source of all the infections that cause disease in CF patients is unknown. Potential infection sources could include: a) humans, b) hospital/treatment centers (nosocomial), c) food, or d) the environment (soil, water, plants). Thus far, only patient to patient transmission has been demonstrated to be an infection source (Ref. 13). Importantly, environmental isolates of *B. cepacia* cannot thus far be distinguished from human pathogenic strains (Ref. 11).

The therapy for *B. cepacia* remains a challenge (Ref. 11). *B. cepacia* is highly resistant to antibiotic drugs, and there is poor penetration of antibiotics into respiratory secretions. There have been reports of bacterial isolates for which no single anti-bacterial agent is effective *in vitro*. According to one author (Ref. 14), the most effective reagents appear to be carbapenems, extended-spectrum β-lactam drugs, and trimethoprim-sulfamethoxazole.

C. Potential Uses of Bcc

Studies suggest that Bcc microorganisms may be useful in a variety of TSCA applications, including bioremediation (degradation of toxic chemicals, as well as degradation of grease in drains), turf management, and specialty chemicals production. In order to gauge the scope of commercial use of Bcc, EPA conducted a survey of over 100 firms, associations, and researchers. In sum, EPA was able to discover no evidence that Bcc is contained in a commercial product currently available for use in the U.S. The only potential TSCA uses of Bcc for which information is available are field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. Specifically, one company has injected a strain of Bcc into aquifers in New Jersey to demonstrate its ability to degrade trichloroethylene, and a consulting firm carried out a pilot study in Wichita, Kansas to verify the effectiveness and overall feasibility of injecting *Burkholderia cepacia* $PR1_{301}$ into groundwater to degrade chlorinated aliphatic hydrocarbons. The conclusion to the pilot study report suggests that the use of *Burkholderia cepacia* $PR1_{301}$ was quite successful and should reduce clean-up time and costs at many other sites. However, none of these strains is currently available for general commercial use.

No companies indicated that Bcc was currently used for the degradation of grease (typically in drain cleaners) or for turf management (typically in thatch reduction), although researchers and firms cautioned that even the companies that produce such products may be unaware of the presence of Bcc.

One respondent indicated that lipases harvested from Bcc are used in the production of specialty chemicals. One company web site lists seven lipases derived from Bcc species available for sale under their brand names. However, when this company was contacted, it indicated that it imports the lipases from an overseas firm and does not work with Bcc microorganisms. No more information was available.

Many respondents indicated a knowledge of Bcc and its possible applications, but very few had any knowledge that it was actually being used. Some contacts indicated that Bcc's potential for opportunistic pathogenicity had led them to disregard it for use in their products. Thus, the information available to EPA indicates that the only existing TSCA use of Bcc in the U.S. are the demonstration studies of its effectiveness in degrading chlorinated solvents in groundwater. EPA considers these studies to fall under the description of research and development (Ref. 15).

D. Exposures

Bcc is a naturally occurring microorganism which is found in a wide range of habitats but especially in high populations in the soil. While Bcc is not known to be in general commercial use at this time, the potential uses identified could give rise to exposures in different ways. To produce microorganisms on a commercial scale, they first are cultured in large commercial fermentation facilities to obtain adequate amounts for a potential use. If used for specialty chemical manufacture the microorganisms are cultured first then killed after harvesting the chemical substance to be manufactured. EPA has identified potential dermal and inhalation exposures as well as environmental release from manufacture of microorganisms. These exposures could occur for any potential use of microorganisms. Sources of potential environmental release include exhaust gas from the fermentor and wastes from cleanup of equipment. Potential exposures result from laboratory propogation of cells, sampling, equipment cleaning/maintenance, and from cell recovery. Estimates of potential inhalation exposure were derived from area monitoring data in fermentation facilities. Estimates of potential dermal exposure were derived from laboratory experiments involving liquids which measured the retention on the hands for various types of exposures.

In addition to exposure from fermentation, there is also potential for dermal and inhalation exposures as well as environmental release from uses in bioremediation, turf builders, and drain cleaners. The primary source of potential release and dermal exposure is from the intended injection or application of the material. Application of turf builders would be spray applications resulting in increased inhalation exposures. Other release sources include air releases from off-gassing of aerated shipping containers and residue left in the shipping containers. Exposure to bioaerosols may occur from the aerated shipping containers. Although there is no evidence that Bcc specifically is used in the turf building or drain cleaning applications, there are commercially available products that contain microbials. (Ref. 16)

V. Objectives and Rationale of the Proposed Rule

In determining what would constitute a significant new use for the microorganisms that are the subject of this proposed SNUR, EPA considered relevant information on the toxicity of the microorganisms, likely exposures associated with potential uses, information provided by industry sources, and the relevant factors listed in TSCA section 5(a)(2) and Unit II.B. of this document. Based on these considerations, EPA has determined that all uses other than research and development in the degradation of chemicals via injection into subsurface groundwater, are significant new uses.

EPA's considerations under each of the relevant factors are discussed below:

1. *Projected volume of manufacturing and processing of a chemical substance.* Microorganisms may reproduce and increase beyond the number initially introduced and may spread beyond the site of manufacture or use. Thus, what begins as a small localized population of microorganisms may become a large widespread population which could contribute to increased exposure potential for Bcc beyond that which occurs naturally. These facts complicate the Agency's ability to project the potential volume and processing of Bcc.

2. *Extent to which a use changes the type, form, magnitude, and duration of exposure to human beings or the environment to a chemical substance.* EPA has not currently identified any general commercial use of Bcc. EPA has identified field studies of Bcc in the biodegradation of chlorinated solvents in groundwater. All other research and development activities, other than such field studies involving injection into groundwater, that do not meet the definition of small quantities for research and development would require reporting under 40 CFR 725.105(c) if included in a final SNUR. EPA is specifically soliciting comments on whether all other research and development activities should be captured under the SNUR or whether the SNUR should be limited to general commercial use of Bcc.

EPA expects only limited exposures from the identified field studies of Bcc as only technically qualified individuals are growing and injecting Bcc directly into groundwater. The potential uses identified in Unit IV.C. of this document, which include bioremediation (degradation of toxic chemicals, as well as degradation of grease in drains), turf management, and specialty chemicals production, could significantly increase dermal and inhalation exposures of Bcc to humans. In some cases these exposures could be higher than typically found in nature and more likely to be encountered by a member of a sensitive population. These exposures would significantly increase the type, form, magnitude, and duration of exposures to human beings from known uses of Bcc.

EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this proposed rule. EPA wants to ensure that:

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1. EPA will receive notice of any company's intent to manufacture, import, or process Bcc for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in an MCAN before the notice submitter begins manufacturing, importing, or processing Bcc for a significant new use.

3. EPA would be able to regulate prospective manufacturers, importers, or processors of Bcc before a significant new use occurs, provided such regulation is warranted pursuant to TSCA section 5(e) or section (f).

VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for Bcc. In addition, EPA determined that Bcc is currently not subject to Federal notification requirements.

1. *Promulgate a TSCA section 8(a) reporting rule for Bcc.* Under a TSCA section 8(a) rule, EPA could require any person to report information to the Agency when they intend to manufacture or import Bcc. However, the use of TSCA section 8(a) rather than the SNUR authority, would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about Bcc and its interest in having the opportunity to review these substances and regulate them as appropriate, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for Bcc would not meet all of EPA's regulatory objectives.

2. *Regulate Bcc under TSCA section 6.* EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. Based on EPA's findings that there is currently no general commercial use of Bcc, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This proposed SNUR would allow the Agency to address the potential risks associated with any intended significant new use of Bcc. If EPA is notified of any additional existing commercial uses, EPA may reconsider the decision and pursue additional regulatory action as appropriate.

VII. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a MCAN or TERA. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 725.160).

However, in view of the potential health risks posed by the significant new uses of Bcc, EPA requests that potential MCAN or TERA submitters include data that would permit a reasoned evaluation of risks posed by Bcc when used for an intended significant new use. EPA also requests that potential MCAN or TERA submitters include data that demonstrate that the bacteria which would be the subject of the MCAN or TERA are in fact in the Bcc. EPA encourages persons to consult with the Agency before submitting an MCAN or TERA for Bcc. As part of this optional pre-notice consultation, EPA will discuss specific data it believes are necessary to evaluate a significant new use of Bcc. EPA urges MCAN or TERA submitters to provide detailed information on human and environmental exposures that would result or could reasonably be anticipated to result from the significant new uses of Bcc. In addition, EPA encourages persons to submit information on risks posed by Bcc compared to risks posed by possible substitutes. An MCAN or TERA submitted without sufficient data to reasonably evaluate risks posed by a significant new use of Bcc may increase the likelihood that EPA will take action under TSCA section 5(e).

VIII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture, import, or processing of Bcc, for the significant new use in this proposed SNUR, after the proposal has been published must stop that activity before the effective date of the final rule. To resume commercial manufacture, import or processing of Bcc, those persons will have to meet all applicable MCAN or TERA requirements and wait until the notice review period, including all extensions, expires before engaging in any commercial manufacture, import, or processing of Bcc for a significant new use. If, however, persons who begin commercial manufacture or import of Bcc for a significant new use between the proposal and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 725.912, those persons would be considered to have met the requirements of the final SNUR for those activities.

IX. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for potential manufacturers, importers, and processors of Bcc. These potential costs are related to the submission of MCANs, TERAs, and the export notification requirements of TSCA section 12(b). EPA notes that, the costs of submission of MCANs or TERAs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this proposed SNUR.

A. MCANs and TERAs

Because of uncertainties related to predicting the number of MCANs or TERAs that will be submitted as a result of this proposed SNUR, EPA is unable to calculate the total annual cost of compliance with the final rule. However, EPA estimates that the cost for preparation and submission of an MCAN ranges from approximately $7,582 to $42,736, which includes the $2,500 user fee required by the Agency. EPA notes that small businesses with annual sales of less than $40 million are subject to a reduced user fee of $100. The cost of a TERA is estimated to range from $6,905 to $73,562 (Ref. 17).

Based on past experience with SNURs and the low number of Significant New Use Notices (SNUNs) which are submitted on an annual basis, EPA believes that there would be few, if any, MCANs or TERAs submitted as a result of this SNUR. Furthermore, no company is required to submit an MCAN or TERA for Bcc unless the company decides to begin manufacture or importation of Bcc. As a result, EPA expects that companies would be able to determine if the burden of submitting an MCAN or TERA would be likely to create significant adverse economic impacts for the company prior to incurring MCAN/TERA-related costs.

B. Export Notification

As noted in Unit II.C. of this document, persons who intend to export a microorganism identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that a company notify EPA of the first shipment to a particular country of an affected microorganism. The estimated cost of the TSCA section 12(b)(1) export notification, which would be required for the first export to a particular country of a microorganism subject to this proposed rule, is estimated to be $158.35 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $14.43 for each subsequent export notification submitted by that exporter (Ref. 17).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this proposed SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market Bcc commercially. If companies were to manufacture the microorganisms covered by this proposed SNUR for export only, these companies would incur costs associated with export notification even if these companies decided to forgo any domestic significant new use. EPA is not aware of any companies in this situation, and expects that any potential impact would be limited to the small burden of export notification.

X. References

These references have been placed in the official record that was established under docket control number OPPTS–50645 for this document as indicated in Unit I.B.2. of this document.

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15. Commercial Uses of *Burkholderia cepacia* complex, USEPA, October 2001.

16. Assessment of Potential Worker Exposure and Environmental Releases From Commercial Uses of *Burkholderia cepacia* complex, USEPA, October 2001.

17. Economic Analysis to Support the Proposed SNUR for *Burkholderia cepacia* complex, USEPA, October 15, 2001.

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This proposed rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001 do not apply to this proposed rule. Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section

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12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this proposed SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting an MCAN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 900 SNURs, the Agency has received fewer than 25 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of an MCAN or TERA (see Unit IX.A. of this document) are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit an MCAN or TERA to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost between $5,957 and $7,192 per MCAN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required MCAN or TERA. This burden estimate does not include the $2,500 user fee submission of an MCAN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

This proposed rule is not subject to Executive Order 13211, "*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 725

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 725 be amended as follows:

PART 725—[AMENDED]

1. The authority citation for part 725 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

2. By adding new § 725.1075 to subpart M to read as follows:

§ 725.1075 Burkholderia cepacia complex.

(a) *Microorganism and significant new uses subject to reporting.*(1) The microorganisms identified as the *Burkholderia cepacia* complex defined as containing the following nine species, *Burkholderia cepacia, Burkholderia multivorans, Burkholderia stabilis, Burkholderia vietnamiensis, Burkholderia ambifaria, Burkholderia pyrrocinia*, and *Burkholderia cepacia* genomovars III, VI, and VIII are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is any use other than research and development in the degradation of chemicals via injection into subsurface groundwater.

(b) [Reserved]

[FR Doc. 02–513 Filed 1–8–02; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 123101B]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2002 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent Federal Register documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by April 2, 2002, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Dr. Hans Radtke, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220, facsimile 503–326–6831. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone 503–326–6352.

SUPPLEMENTARY INFORMATION:

Schedule For Document Completion and Availability

March 5, 2002: "Review of 2001 Ocean Salmon Fisheries" and "Preseason Report I-Stock Abundance Analysis for 2002 Ocean Salmon Fisheries" will be available to the public from the Council office.

March 26, 2002: "Preseason Report II" and public hearing schedule will be mailed to the public. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 24, 2002: Newsletter describing adopted ocean salmon fishing management measures will be mailed to the public.

May 1, 2002: Federal regulations will be implemented and "Preseason Report III- Analysis of Council-Adopted Ocean Salmon Management Measures for 2002 Ocean Salmon Fisheries" will be available from the Council office.

Meetings and Hearings

January 22–25, 2002: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft "Review of 2001 Ocean Salmon Fisheries" and to consider any other estimation or methodology issues pertinent to the 2002 ocean salmon fisheries.

February 19–22, 2002: STT will meet at the Council office in a public work session to draft "Preseason Report I-Stock Abundance Analysis for 2002 Ocean Salmon Fisheries" and to consider any other estimation or methodology issues pertinent to the 2002 ocean salmon fisheries.

March 11–15, 2002: Council and advisory entities will meet at the Red Lion Hotel Sacramento, Sacramento, CA to adopt the 2002 salmon management options for public review.

April 1–3, 2002: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

April 1, 2002: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

April 1, 2002: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

April 2, 2002: Red Lion Hotel Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501, telephone 707–445–0844.

April 8–12, 2002: Council and advisory entities meet at the DoubleTree Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR 97217, to adopt 2001 management measures for implementation by NMFS.

April 9, 2002: Testimony on the management options is taken during the Council meeting at the DoubleTree Hotel - Columbia River, Riverview Ballroom, 1401 North Hayden Island Drive, Portland, OR 97217, telephone 503–283–2111.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this notice requiring emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 (voice), or 503–326–6831 (fax) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 3, 2002..

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–551 Filed 1–8–02; 8:45 am]
BILLING CODE 3510–22–S

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Notices

Federal Register
Vol. 67, No. 6
Wednesday, January 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of Members.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, *as amended*, the United States Department of Agriculture announces the appointment of 11 individuals to fill vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board. Appointments are for a three-year term, effective October 1, 2001, until September 30, 2004, with the exception of one two-year appointment resulting from a member resignation after serving one year. Advisory Board terms beyond September 30, 2002, are contingent upon the reauthorization of the Board in accordance to Sec. 802 of Pub. L. 104–127.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP 2255; 1400 Independence Avenue, SW., Washington, DC 20250–2255; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: smorgan@reeusda.gov.

SUPPLEMENTARY INFORMATION: Section 802 of Pub. L. 104–127, the Federal Agricultural Improvement and Reform Act of 1996, authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996, and one-third of the 30 members were appointed for a one, two, and three-year terms, respectively.

As a result of the staggered appointments, the terms for 10 of the 30 members expired September 30, 2001. In addition, one vacancy exists due to the resignation of the Category P appointee. The Secretary of Agriculture has designated appointees to fill all 11 vacancies. Appointees, by category, are as follows: Category E—National Animal Commodity Organizations, Paul C. Genho, Vice President, King Ranch, Inc., Kingsville, Texas, and Former Chair, National Cattleman's Beef Association; Category H—National Food Animal Science Societies, Jeffrey D. Armstrong, Dean, College of Agriculture and Natural Resources, Michigan State University, and President, American Society of Animal Science; Category I—National Crop, Soil, Agronomy, Horticulture or Weed Science Societies, Martin A. Massengale, President Emeritus, Foundation Distinguished Professor, and Director, Center for Grassland Studies, University of Nebraska-Lincoln (reappointed); Category N—1890 Land-Grant Colleges and Universities, including Tuskegee University, McArthur Floyd, Research Director, School of Agricultural and Environmental Sciences, Associate Director, Alabama Agricultural Experiment Station, and Professor of Soil Microbiology, Alabama A&M University; Category O—1994 Equity in Education Land-Grant Institutions, Judith Davis, Dean, Academic Affairs, Dull Knife Memorial College, Lame Deer Montana; Category P—Hispanic-Serving Institutions (2-year term), Castell Vaughn Bryant, President, Miami-Dade Community College North Campus, Miami, Florida; Category T—Food Retailing and Marketing, George H. Hoffman, President and CEO, Restaurant Services, Inc., Coral Gables, Florida; Category V—Rural Economic Development, Walter J. Armbruster, President, Farm Foundation, Oak Brook, Illinois; Category W—National Consumer Interest Groups, Barbara Stowe, Dean Emeritus, College of Human Ecology, Kansas State University, former Senior Advisor, AESOP Enterprises, Ltd., Washington, DC (reappointed); Category X—National Forestry Groups, George Samuel Foster, Jr., Dean, College of Forest Resources, Director, Forest and Wildlife Research Center, Mississippi State University; and Category Y—National Conservation or Natural Resource Groups, Peter H. Raven, Director, Missouri Botanical Garden, and National Medal of Science recipient.

Appointees' terms began on October 1, 2001, and end September 30, 2004, with the exception of the Category P term which ends on September 30, 2003.

Done at Washington, DC this 20th day of December 2001.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–452 Filed 1–8–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011214300–1300–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, purchases, accounts receivables, and, for select industries, merchandise line sales and percent of sales by class of customer.

FOR FURTHER INFORMATION CONTACT: Scott Scheleur, Service Sector Statistics Division, on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Annual Retail Trade Survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides on a comparable classification basis, annual sales, e-commerce sales, and purchases for 2001 and year-end inventories for 2000 and 2001. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 2001 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Retail Trade Survey under OMB Control Number 0607–0013. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–506 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020103003–2003–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, year-end inventories, and purchases.

FOR FURTHER INFORMATION CONTACT: Scott Scheleur, Service Sector Statistics Division, on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Annual Trade Survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales, e-commerce sales (including Electronic Data Interchange-EDI) and purchases for 2001 and year-end inventories for 2000 and 2001. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 2001 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Trade Survey under OMB Control Number 0607–0195. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–507 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Closed Meeting

The Materials Technical Advisory Committee will meet on January 24, 2002, at 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to materials and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 7, 2000, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

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A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020. U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: January 3, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–519 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990810211–1294–02]

RIN 0648–ZA69

Sea Grant Fellowships: National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics; and Sea Grant—Industry Fellowship Program: Request for Applications for FY 2002

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for applications.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is seeking applications for two fellowship programs to fulfill its broad educational responsibilities, to strengthen the collaboration between Sea Grant and the National Marine Fisheries Service (NMFS), and to strengthen ties between academia and industry:

(1) The NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Fisheries Fellowship Program), which is available to U.S. citizens who are graduate students enrolled in PhD degree programs in academic institutions in the United States and its territories, with required institutional matching funds, expects to support six new Fisheries Fellows in Population Dynamics and Marine Resource Economics in FY 2002. Fisheries Fellows will work on thesis problems of public interest and relevance to NMFS and have summer internships at participating NMFS Science Centers or Laboratories under the guidance of NMFS mentors.

(2) The Sea Grant—Industry Fellowship Program (Industry Fellowship Program), which is available to graduate students enrolled in either MS or PhD degree programs in academic institutions in the United States and its territories, with required matching funds from private industrial sponsors, expects to support five new Industry Fellows in FY 2002. Industry Fellows will work on research and development projects on topics of interest to a particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative will work together, sharing research facilities and the cost of the activity.

DATES: Applications must be received by 5 pm (local time) on February 15, 2002 by a state Sea Grant Program (or by the NSGO in the case of an academic institution in a non-Sea Grant state). Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (see "Addresses" below) prior to the specified closing date and time; in any event, applications received by the NSGO or the State Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted. It is anticipated that successful applicants will be able to initiate Fisheries Fellowships on approximately June 1, 2002 or Industry Fellowships on approximately September 1, 2002.

ADDRESSES: Applications originating from academic institutions in Sea Grant states must be submitted to the state Sea Grant Program. Applications originating elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Sea Grant's web site lists the addresses of the state Sea Grant College Program directors (*http://www.nsgo.seagrant.org/SGDirectors.html*) and the participating NMFS Facilities (*http://www.nsgo.seagrant.org/research/rfp/NMFS_Labs.html*), or those addresses may also be obtained by contacting the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Information about the Fisheries Fellowship Program may be obtained from Dr. Emory D. Anderson, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 144; e-mail: *emory.anderson@noaa.gov;* from any state Sea Grant Program (see **ADDRESSES**); or from any participating NMFS facility (see **ADDRESSES**). Information about the Industry Fellowship Program may be obtained from Dr. Vijay G. Panchang, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 142; e-mail: *vijay.panchang@noaa.gov*.

SUPPLEMENTARY INFORMATION:

National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics and Sea Grant—Industry Fellowship Program

I. Program Authority

Authority: 33 U.S.C. 1127. Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Description of Programs

A. Fisheries Fellowship Program

The National Sea Grant Office (NSGO) and the National Marine Fisheries Service (NMFS) established a new Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Fisheries Fellowship Program) in 1999. The intent of the Fisheries Fellowship Program is to award fellowships to four students each year who are intereted in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. Two new fellowships were to be awarded each year in each of the above two disciplines resulting in an anticipated six students per discipline to be supported annually when the Fisheries Fellowship Program reached its maximum level three years following its inception.

For the FY 2002 competition now being announced, funds are available to award six new fellowships in the two disciplines combined, with a potential maximum of four in one of the two disciplines.

The goals of the Fisheries Fellowship Program are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of the status of the stocks of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

The fellowships will provide support for up to three years for highly qualified graduate students working towards a PhD in population dynamics or related fields of study and for up to two years for highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. Continued support after the first year will be contigent upon the availability of Federal funds and satisfactory performance by the Fellow. In addition to his/her faculty adviser, each Fellow will be required to work closely with an expert (mentor) from NMFS who will provide data for the Fellow's thesis, serve on the Fellow's committee, and host an annual summer internship at the participating NMFS facility.

Mentors will be from participating NMFS Science Centers or Laboratories. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual award. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, faculty adviser, and Fellow.

Newly-selected Fellows must submit a one-page description of their thesis research or assignment based on discussions involving mentor, faculty adviser, and Fellow to the Fisheries Fellowship Program Manager by April 30, 2002. The thesis research or assignment description must reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Fisheries Fellowship Program Manager. This summary must accompany the request for each additional year's funding. Fellows will be expected to present a review of their research during the annual Fellows Meeting held in the spring in Silver Spring, MD.

The award for each Fisheries Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant or cooperative agreement of up to $38,000 per year, 50 percent (up to $19,000) of which will be contributed by NMFS, 33⅓ percent (up to $12,667) by the NSGO, and 16⅔ percent (up to $6,333) by the acadamic institution as the required 50 percent match of NSGO funds. The portion of the award previded to each Fellow for salary (stipend), living expenses (per diem), tuition (unless waived), health insurance and other institution fees, and travel necessary to carry out the proposed thesis research and to attend the annual Fellows Meeting in the spring in Silver Spring, MD will be determined and distributed by the institution in accordance with its guidelines.

B. Industry Fellowship Program

Today's global economy is putting unprecendented demands on the U.S. industrial community for innovation and new technology. This situation presents challenges to industry and academic institutions to develop new paradigms leading to more efficient utilization of available human, fiscal, and technical resources. This can be accomplished through the recruitment of graduates trained in technologies relevant to an industry's future and the creation of opportunities for collaboration between industrial and academic scientists and engineers. Academically well-trained students with exposure to advanced industrial issues constitute a critical component of success in that endeavor. To respond to the need for strengthened ties between academia and industry, Sea Grant developed the Sea Grant—Industry Fellowship Program (Industry Fellowship Program) in 1995.

For the FY 2002 competition new being announced, funds are available to award five new Industry Fellowships. Each fellow will be a graduate student selected through national competition, and will be known as a (Company Name)/Sea Grant Industry Fellow.

The goals of the Industry Fellowship Program are to (1) enhance the education and training provided to top graduate students in academic institutions in the United States and its territories; (2) provide real-world experience of industrial issues to graduate students and to accelerate their career development; (3) increase interactions between the nation's top scientists and engineers and their industrial counterparts; (4) accelerate the exchange of information and technologies between academic institutions and industry; (5) provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and (6) forge long-term relationships between Sea Grant Colleges and industrial firms.

The Industry Fellowship Program, in cooperation with specific companies, provides support for highly-qualified graduate students who are pursuing research and development projects on topics of interest to a particular industry/company. The projects may be up to two years duration. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative work together on a project from beginning to end. Research facilities and the cost of the activity are shared. Academic institution faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners including the Sea Grant Marine Advisory Services, university industrial relations offices, and the National Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Industry Fellowship Program Manager. This summary must accompany the request for each additional year's funding.

The award for each Industry Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant of up to $30,000 per year from the NSGO; matching funds equal to at least 50 percent of the Federal request must also be provided by the industrial partner to support the budget for the proposed project.

III. Eligibility

A. Fisheries Fellowship Program

Any student may apply who is a United States citizen: At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an academic

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institution in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at an academic institution in the United States or its territories.

B. Industry Fellowship Program

Applications must be prepared by individuals affiliated with academic institutions in the United States or its territories. A prospective Fellow must be enrolled or accepted in either an MS or PhD degree program in the institution which submits the application.

IV. Selection Criteria

A. Fisheries Fellowship Program

Selection criteria will include: (1) Relevant academic ability and achievement, particularly quantitative skills (35 percent); (2) demonstrated research ability in the discipline and appropriateness/importance of proposed thesis topic (30 percent); (3) expertise of major professor (20 percent); and (4) additional relevant experience (15 percent).

B. Industry Fellowship Program

Selection criteria will include: (1) The caliber of the prospective Fellow, including special skills, past experiences, or training that render him/her especially qualified for the proposed project; participation by the Fellow in proposal preparation will be viewed favorably (25 percent); (2) the benefit accruing to the student from his or her participation as a Sea Grant—Industry Fellow, including exposure to industrial methods and mentoring by the industrial partner (25 percent); (3) the level of commitment of the industrial partner to the project, as demonstrated by financial support, mentoring on technical and other issues such as industry trends, problems, and opportunities, offering exposure to an industrial setting, facilities/equipment, etc. (25 percent); and (4) the importantance of the problem and the benefits expected to the industrial partner and the nation due to the advancement of technology (25 percent).

V. Selection Procedures

Applications will be ranked in accordance with the above criteria and their assigned weights by independent review panels consisting of government, academic, and industry experts. The panel members will provide individual evaluations of each applicant, but there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those applications receiving a minimum score of 50 percent by the panel will be eligible for funding. For those applications, the NSGO will: (1) Ascertain which best meet the objectives of the particular program (as stated in Section II. Descriptions of Programs); (2) give priority, in the case of Fisheries Fellowship applications to NMFS Fisheries Science Centers which do not currently have Fellows; and (3) select the applications to be funded. Accordingly, awards may not necessarily be made to the highest-scoring applications in each program or discipline therein. Applicants may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the review of the application by the review panel will be provided to each applicant.

VI. Timetable

February 15, 2002, 5 pm (local time)—Applications due at state Sea Grant Program (or at NSGO, only if application is from an academic institution in a non-Sea Grant state).

February 20, 2002, 5 pm EST—Applications due at NSGO from state Sea Grant Programs.

June 1, 2002 (approximate)—Funds awarded for the Fisheries Fellowships.

September 1, 2002 (approximate)—Funds awarded for the Industry Fellowships.

Note that applications arriving after the above deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (see "Addresses" above) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VII. Application Instructions

A. General Requirements

All printed pages in the application must be on metric A4 (210 mm × 297 mm) or 8.5″ × 11″ paper with at least a 10-point font. Applications must include the items listed below.

1. *Signed Title Page:* The title page must identify the prospective Fellow, be signed by the Faculty Advisor and the institutional representative, and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with either "NMFS—Sea Grant Fisheries Fellowship" or "Sea Grant—Industry Fellowship". The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary:* The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: (a.) *Title:* Use the exact title as it appears in the rest of the application. (b.) *Investigators:* List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For Sea Grant Fellowships, the faculty advisor or the state Sea Grant Director may be used. (c.) Funding request for each year of the Fellowship, including matching funds if appropriate. (d.) *Project Period:* Start and completion dates. Applications for a Fisheries Fellowship should request a start date of July 1, 2002, and applications for an Industry Fellowship should request a start date of September 1, 2002. (e.) *Project Abstract:* This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Budget and Budget Justification:* There should be a separate budget for each year as well as a cumulative annual budget for the entire period of the proposed fellowship. The Sea Grant Budget Form 90–4 should preferably be used, but the institution may use its own form as long as it provides the same information as the Sea Grant form. Sub-contractors should have a separate budget page. Indirect costs are not allowable for either the fellowship or for any costs associated with fellowship (15 CFR 917.11(e), "Guidelines for Sea Grant Fellowships").

For Fisheries Fellows: Matching funds equivalent to 50 percent of the NSGO funds must be provided by the Fellow's institution. Allocation of matching funds must be specified in the budget and may consist of up to one/half month's salary for the faculty adviser, waived tuition, equipment and supplies, and any other costs typically used as matching funds. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel (see "Description of Programs" above).

For Industry Fellows: Matching funds equivalent to 50 percent of the NSGO funds must be provided by the industrial partner. Allocation of matching funds must be specified in the budget. The budget should include adequate travel funds for the Fellow, the industrial mentor, and the faculty advisor to meet at least twice per year during the fellowship period, preferably at the site of the industrial partner. The budget may also include up to one month of salary or stipend support for the faculty advisor or one other project participant, in addition to the Fellow, who is affiliated with the academic institution.

4. Curriculum vitae of the student, the faculty advisor, and NMFS or company-appointed research mentor (2-page maximum per investigator).

5. Signed letter of commitment from the prospective NMFS mentor or industrial partner.

6. Official copies of all undergraduate and graduate student transcripts.

7. Additional Material for Fisheries Fellowship Program only:

a. Education and career goal statement (not to exceed two pages) from the student indicating the number of years for which fellowship support is being sought and the student's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economic (a summary of the proposed thesis or the general intended area of study should be included, if available).

b. Three signed letters of recommendation, including one from the student's faculty adviser.

c. Proof of application, acceptance, provisional acceptance, and enrollment (only for Population Dynamics applicants) in the case of students entering graduate school (i.e., who have not yet completed one semester of graduate work) if they are selected for a fellowship.

8. Additional Material for Industry Fellowship Program only:

a. *Project Description (10-page limit):* Brevity will assist reviewers and program staff in dealing effectively with applications. Therefore, the Project Description may not exceed 10 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations, are included in the 10-page limitation; literature citations are not included in the 10-page limitation. Conformance to the 10-page limitation will be strictly enforced. All information needed for review of the application should be included in the main text; no appendices are permitted.

Introduction/Background/Justification: What is the problem being addressed and what is its scientific and economic importance to the advancement of technology, to the cooperating industrial partner, and to the region or nation?

Research or Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the application should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities does the industrial partner possess that will benefit the Fellow?

Output/Anticipated Economic Benefits: Upon successful completion of the project, what are the anticipated benefits to the student, the industrial partner, the academic institution and its faculty, the sponsoring Sea Grant Program, and the nation?

References and Literature Citations: Should be included, but will not be counted in the 10-page project description limit.

b. A brief (1-page) description of the collaborating industrial firm.

VIII. How To Submit

Ten (10) copies of applications must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined above (See "Addresses" and "Timetable"). The addresses of the state Sea Grant College Programs may be found at the following Internet web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*), or may be obtained by contacting Mr. Joseph Brown at the NSGO (tel: 301–713–2438 × 135). Applications sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Applications Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 10910 (telephone number for express mail applications is 301–713–2445). Facsimile transmissions and electronic mail submission of applications will not be accepted.

IX. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. The Federal Register notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet web site: *http://www.ed.gov/offices/OCR/minorityinst.html*.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the

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Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

X. Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as the term is defined in EO 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S. C. 553(a)), a Regulatory Flexibility Analysis is not required and had not been prepared for this notice, 5 U.S.C. 601 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

John E. Herring,

Acting Director, Officer of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 02–514 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 991027290–1295–02]

RIN 0648–ZA74

Sea Grant National Strategic Investments in Technology, Marine Environmental Biotechnology, and Fisheries Habitat: Request for Proposals for FY 2002

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for National Strategic Investments in the following three programs:

(1) The Technology Program, which involves the development and transfer of technologies pertaining to engineering and the physical sciences; this program is intended to fulfill Sea Grant's broad responsibilities in fostering economic competitiveness through the transfer of technology pertaining to the development and utilization of ocean, coastal, and Great Lakes resources. The maximum Federal award for each project will be $150,000 per year for up to two years.

(2) The Marine Environmental Biotechnology Program, which seeks to fund innovative research, education, and outreach projects to (i) develop and utilize molecular and cellular biology for assessing the effects of contaminants and pathogens on the health of the coastal ecosystem; and (ii) educate and inform the public about marine biotechnology. The maximum Federal award for each project will be $150,000 per year for up to two years.

(3) The Fisheries Habitat Program, which deals with innovative research, education, and outreach projects that address critical and high priority problems related to fisheries habitat in U.S. coastal and Great Lakes waters. The maximum Federal award for each project will be $300,000 per year for up to two years.

To support projects in the above three programs, Sea Grant expects to provide a total of about $1,750,000, $2,750,000, and $2,000,000, respectively, over a two-year period (FY2002 and FY2003). Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects, which will have a maximum duration of two years, will be selected through national competitions.

DATES: Preliminary proposals must be received by 5 pm (local time) on February 15, 2002 by a state Sea Grant College Program. Preliminary proposals from non-Sea Grant states, if submitted directly to the National Sea Grant Office (NSGO), must be received by 5 pm EST on February 15, 2002. After evaluation at the NSGO, some proposers will be encouraged to prepare full proposals, which must be received by 5 pm (local time) on April 18, 2002 by a state Sea Grant College Program or the NSGO. (See **ADDRESSES** for where to submit preliminary and full proposals.) Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the address listed below (see **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of proposals will not be accepted. It is anticipated that funding decisions will be made by June 20, 2002, and that successful applicants will be able to initiate projects approximately December 1, 2002.

ADDRESSES: Preliminary proposals and full proposals originating in Sea Grant states must be submitted to the state Sea Grant Program. Preliminary proposals and full proposals originating elsewhere may be submitted either to the nearest Sea Grant Program or directly to the NSGO. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting the NSGO. Preproposals and proposals submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Dr. Vijay G. Panchang (Program Director for Technology Transfer), Dr. Linda Kupfer (Program Director for Biotechnology), or Dr. Emory Anderson (Program Director for Fisheries) at the National Sea Grant Office, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435, e-mail: *Vijay.Panchang@noaa.gov*; *Linda.Kupfer@noaa.gov*; *Emory.Anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Description of Programs

A. Technology Program

Background

The ocean environment has traditionally provided an abundance of economic opportunities over a wide spectrum of activities. As a result of growing population pressures, the demands to maintain a sustainable and healthy environment, and ongoing scientific advancements, the economic potential afforded by the marine environment may be expected to increase. On the other hand, globalization has put unprecedented demands on U.S. industry for innovation and the development of new technologies. Economic competitiveness can be fostered by creating opportunities for collaboration between industrial and academic scientists and engineers, as well as by supporting post-fundamental work to accelerate the conversion of academic research into products with commercial value.

The "National Sea Grant College Program Reauthorization Act of 1997" (33 U.S.C. 1121–1131) calls upon the National Sea Grant College Program (Sea Grant) to foster economic competitiveness, invest in technology transfer, and create partnerships between the Federal Government and universities, private industry, and other agencies in the development and utilization of marine resources. To meet these objectives, Sea Grant's Technology program is meant to serve as a catalyst for scientific entrepreneurship and technology transfer and thereby enhance commerce. In particular, the goals are: To conduct focused projects that can lead to the development of marine and Great Lakes related technological innovations and their acceptance in the marketplace (both in the U.S. and abroad); to increase interactions between the nation's academic scientists and engineers and their industrial counterparts; to stimulate Sea Grant's research and development activities in the physical sciences and engineering; to accelerate the transfer of research-based marine science from universities to new technologies in industry; to provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and to forge long-term relationships between Sea Grant colleges and industrial firms.

Funding Priorities and Availability

The Sea Grant Technology program provides support for applied research and development projects that ultimately facilitate the transfer of new products and processes that pertain to the development of marine technologies, including cost reductions for processes and product safety. In a true partnership that benefits national or regional economies, industrial cooperation in academic research and development efforts could be expected and such cooperation should be sought. University faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners or user groups, such as the Sea Grant Marine Extension Program, university industrial relations offices, and the Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry or other user groups.

Several types of projects will be considered under this announcement. These include, for example, the following:

1. Additional developmental work that can accelerate the transition of academic research to marketplace acceptance or practice. For example, pilot-scale testing of technologies developed in academia may be necessary to establish economic feasibility. A private sector partner may or may not be identified. (If the work has imminent commercial implications and an industrial partner is involved, the partner is encouraged to provide matching funds.)
2. A project which does not lead to a commercializable product per se, but is of mutual benefit to industry and academia. For example, if an industry sector anticipates future trends either due to market forces or government regulations, it may wish to prepare for them by developing technologies with help from academia. If there is actual transfer of technologies to industry, then participation by an industrial partner may be appropriate.
3. Technology transfer or demonstration projects and workshops/forums given by academic researchers and mainly targeted to industry, involving registration or other fees paid by industry which can constitute industrial match.
4. Technology transfer to user groups in government or other agencies that enhances cost-effectiveness of operations.

Proposals that will be considered under this announcement are not limited to the above types of projects, which are given by way of example only.

This announcement is intended to stimulate Sea Grant developments in the physical sciences and engineering. (See the Long Range Plan on Sea Grant's home page or that of the nearest Sea Grant College Program). Examples of possible project areas include:

1. Improved ocean observation technology and data management systems pertaining to a "digital ocean", including predictive models of coastal/shoreline/basin ocean/lake circulation and sensors for currents/tides, marine contamination and water quality, storms/winds/waves, and other natural chemical/physical properties.
2. Marine weather prediction techniques for users in coastal regions.
3. Determining the extent and implications of shoreline erosion and developing new solutions (including social science approaches).
4. Sea level issues such as rise/fall, hazard analysis, etc.
5. Harbor/channel problems such as management for commercial, public, and private/recreational uses as well as engineering design and operations (e.g. improved techniques for dredging and spoil analysis/distribution, "intelligent" waterways and enhanced navigability, etc).
6. Improved wastewater treatment technologies to reduce coastal contamination.
7. Vessel design.
8. Life raft/lifesaving/rescue communications devices.
9. Material science in relation to the marine environment for structures, vessels, antifouling products, etc.
10. Programmable online robotic submersibles for marine observations.
11. Improvements in land use practice, watershed management, smart growth, risk analysis, etc.

The above list is not intended to be restrictive and projects covering other topics in the physical sciences and engineering are welcome.

To support projects in the Technology program, Sea Grant expects to provide a total of about $1,750,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $150,000 per year. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

B. Marine Environmental Biotechnology Program

Background

Preservation of coastal ecosystems is critically important to the American public. There are growing concerns with the status and health of vital marine resources. Increasing development of coastal areas and pollution from variety of sources now exert relentless pressure upon these environments. Recognition that widespread threats to coastal ecosystems impact human health as well as traditional and emerging economic interests resonates throughout the scientific and management communities. The National Research Council's Ocean Studies Board reported in "Challenges on the Horizon" that improving the health of the coastal oceans and sustaining ocean ecology in the fact of mounting anthropogenic impacts represent key challenges for ocean research. Realization of the close link between the oceans and human health has sparked interest and involvement from scientists, health care professionals and other stakeholders as cited in the Ocean Studies Board's report "From Monsoons to Microbes."

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There are numerous chemical and biological threats to the health of the marine environment, which can affect its potential to sustain essential biodiversiry, its ability to fuel valuable economic interests, and its effect on human health. These range from severe impacts of point-source contamination and diseases to far more subtle stress imposed by sublethal and non-point source contamination exposure over long time frames. Development of coastal areas and the associated changes in land use patterns apply additional impacts to the coastal ecosystem. The response of the biota to the cumulative stress is now evident in a variety of compelling ways.

While these problems have continued to mount, our understanding of the concurrent biological and ecological ramifications have not followed in step. Consequently, we are poorly equipped to evaluate these problems and to adequately suggest and implement remedies. Historically, a number of factors have prevented this. We are using for the most part the tools of early twentieth century biology when better ones are available. Techniques with sufficient resolution to discern the mechanisms underlying these problems have rarely been applied within the context of the health of the marine environment. In addition, owing to their highly interdisciplinary nature, some of these problems have been difficult to address through traditional funding paths. The early promise of molecular biology and genetics continues to be realized as evidenced by the publishing of the human genome in February of this year. New methodologies are being developed and applied to the field such as the microarray or "gene chip". Yet, while many scientists utilize the tools of biotechnology to answer pertinent questions regarding human health, the state of the environment and food production and safety, the extension, education and communication of information about biotechnology has largely been neglected.

There is a significant lack of understanding in the public domain regarding biotechnology and its applications in the marine environment. An accelerated program of biotechnology education, communication and outreach is critical to public acceptance and trust in the use of marine biotechnology tools.

Overcoming these barriers is the present emphasis of this program, which is meant to support the application of innovative and state-of-the-art molecular and cellular biotechnology research designed specifically to address tractable problems pertaining to the health of the marine ecosystem as well as education and outreach projects designed to inform the public about marine biotechnology.

The same innovative technology that has yielded such profound changes in the way that biomedical research is conducted and has become commonplace in virtually all modern biology laboratories will be applied in the critical area of environmental research. Techniques utilized in a typical molecular and cellular biology laboratory can now be viewed as an accessible biological toolbox that enables researchers to answer insightful questions relating to stress detection and monitoring methodologies. Marine biotechnology has become a mature and powerful driving force that is poised to lead to new developments in our understanding of how marine organisms and the coastal ecosystems respond to pollution, disease and environmental stress.

This announcement builds upon the successes of previous marine biotechnology initiatives funded by Sea Grant. These initiatives were instrumental in focusing university molecular and cellular biology research on marine issues. The benefits of previously funded research in marine biotechnology include new natural products and pharmaceuticals, new tools for fisheries management as well as development of new research systems for fundamental research and new insights into ocean dynamics. With this request for proposals, Sea Grant will focus the considerable power of molecular and cellular biology on the aquatic ecosystem.

Funding Priorities and Availability

Sea Grant will fund a nationwide research, education, and outreach program that is designed to foster innovative approaches to the study of health of the marine environment. It is designed to encourage collaboration among academics and key resource decision makers to ensure that the research is pertinent to the end users and that the results are distributed in an appropriate fashion among a variety of key user groups ranging from the research and management communities to the general public.

1. The focus of the research conducted under this initiative addresses a topic of pressing national importance: To better understand the marine ecosystem and the impact of contaminants and pathogens on this system.

The overarching goal is to add new focus and direction to Sea Grant funded research and to enhance its impact through innovative research studies, interdisiplinary studies, educational programs and outreach efforts. Research proposals should focus on tractable problems and specific, identifiable outcomes which impact the problem. Project areas may include the application of cellular and molecular biological techniques for the detection and characterization of pollutants and disease on the coastal ecosytem, including (a) the development of novel biosensors (including in situ biosensors) for major groups of pollutants and contaminants (toxics; heavy metals such as cadmium, copper and mercury; organics such as PCBs, PAHs, and pesticides; and endocrine disrupters); (b) the detection and characterization of sublethal effects of pollutants, contaminants, and pathogens (excluding effects of harmful algal blooms) in ecologically and economically important stocks in the natural environment (excluding aquacultured animals); and (c) the identification and use of biomarkers for the purpose of health and environmental quality assessment.

2. Outreach projects conducted under this initiative will focus on the fact that while the science of biotechnology has literally sprinted forward, public understanding of this technology has merely limped along, creating an uninformed and at times bewildered public. This situation is addressed in a January 2000 report by the National Association of State Universities and Land-Grant Colleges entitled "Agricultural Biotechnology: Critical Issues and Recommended Responses from the Land-Grant Universities." With this request for proposals, Sea Grant will begin the process of bringing the public up to speed on marine biotechnology, its promise as well as the issues surrounding its use. Proposals should address the communication, education, and extension of marine biotechnology to the public. Examples in the field of communication include the development of a Sea Grant marine biotechnology web site which is a one-stop shop, critical for users learning about the many facets of marine biotechnology and for tying together all the work in marine biotechnology currently going on in the Sea Grant network. In addition, synthesis documents describing the results of Sea Grant sponsored research in marine biotechnology to both the scientist and the layperson are essential to tell the story of Sea Grant successes in marine biotechnology. An integrated project in this area could also include fact sheets on a variety of areas applicable to marine biotechnology suitable for diverse audiences. Examples of extension would be symposia geared to educate laypersons, industry, government regulators and policy makers on marine biotechnology. Similarly, workshops designed to assemble researchers who have been funded by national strategic investments in marine biotechnology to present their results and discuss the state of the science are encouraged. Publication of workshop proceedings would document a body of work and suggest future investments, similar to the NRC publication "Opportunities for Environmental Applications of Marine Biotechnology" upon which this request for proposals is based. Other themes for workshops might include policy issues surrounding marine biotechnology such as Federal and state regulations, risk assessment issues, legal policies such as patents and licensing, and regional marine biotechnology issues. Examples of proposals in the area of education include those focused on teaching marine biotechnology to high school students and teachers of high school students, aquarium exhibits focused on teaching marine biotechnology, traveling exhibits and museum exhibits, a course or series of courses in marine biotechnology for extension agents, specialists, or specific user groups such as policy makers or management.

To support projects in the Marine Environmental Biotechnology program, Sea Grant expects to provide a total of about $2,750,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $150,000 per year. For the Marine Environmental Biotechnology Program, about one quarter of the available funds will be devoted to support outreach projects. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have a maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

C. Fisheries Habitat Program

Background

Human and non-anthropogenic activities threaten the environments of our marine and Great Lakes waters. Habitats important to stocks of finfish and shellfish species exist in riverine, estuarine, coastal, and offshore continental shelf waters within the U.S. Exclusive Economic Zone as well as in waters of the Great Lakes. A long-term threat to the viability of commercial and recreational fisheries is the continuing adverse impacts of various human activities and natural hazards on our marine and Great Lakes aquatic habitats.

The U.S. Congress, in re-authorizing the Magnuson-Stevens Fishery Conservation and Management Act through the Sustainable Fisheries Act (SFA) (16 U.S.C. 1801 *et seq.*) in October 1996, mandated the identification of habitats essential to Federally managed marine finfish and shellfish species and the identification of measures to conserve and enhance these habitats. The SFA defined essential fish habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." This has been further interpreted by NOAA to include aquatic areas and their associated physical, chemical, and biological properties needed to support sustainable fisheries and healthy ecosystems involving managed species.

Since Congressional intent in the SFA was to prevent further loss of marine, estuarine, and other aquatic habitats, the eight regional Fishery Management Councils (Councils) have had to amend their fishery management plans (FMPs) to describe and identify EFH for all life stages of managed species, provide information on fishing and non-fishing activities that may adversely impact EFH, recommend measures to conserve and enhance EFH, and minimize, to the extent practicable, adverse impacts on EFH caused by fishing activities. The SFA also requires consultations between the National Marine Fisheries Service (NMFS) and any Federal agency whose actions may adversely affect EFH.

Although the EFH mandate in the SFA was directed towards the conservation and management of habitat for Federally managed fisheries, it has served to heighten awareness and stimulate similar efforts by state resource agencies and interstate Marine Fisheries Commissions responsible for near-shore and estuarine waters and by state, Federal, and international bodies responsible for Great Lakes waters.

Huge gaps in knowledge exist regarding habitat preferences and requirements of the life stages of many finfish and shellfish species, the role played by various habitats in the fishery production process, and the impacts of various anthropogenic and natural activities on habitat structure and function. In order for Fishery Management Councils, NMFS, interstate Marine Fisheries Commissions, and other Federal and state regulatory bodies and agencies responsible for either marine or Great Lakes waters to adequately manage habitats, these gaps in knowledge must be filled through expanded research and extension efforts.

The importance of addressing the requirement for and present deficiency in knowledge regarding fisheries habitat, and the need to consider habitat to a greater extent in fisheries management, has recently received considerable national attention in scientific symposia and conferences and popular and peer-reviewed publications. This research initiative is helping to address that lack of knowledge.

Funding Priorities and Availability

The Sea Grant Fisheries Habitat Program encourages proposals that address the topical fisheries habitat issues listed below. Proposals that are particularly encouraged are those that: (1) Involve collaboration with multiple investigators and various Federal agencies (e.g., National Marine Fisheries Service, National Undersea Research Program, Environmental Research Laboratories, National Ocean Service, U.S. Geological Survey, Environmental Protection Agency) in which the cooperating agencies provide additional funding, personnel, specialized equipment, research vessel time, and the like; (2) address regional or national issues with broad application; (3) demonstrate local and regional resource manager and stakeholder involvement in the planning and development process; (4) provide results in digital, metadata, GIS-capable format; and (5) incorporate applied areas of education, outreach, socioeconomic, and management components and applications of direct benefit to stakeholders. Proposals with narrow focus from single investigators are not encouraged and will have a minimal likelihood of being funded.

Proposals are requested that address the following issues:

1. Documentation of the functional role of habitats for particular species and life stages.

a. Documentation of the associations between managed fish and shellfish species and their habitats and characterization of the ecological processes that control species distribution.

b. Identification of the specific types of habitat that contribute most to the growth, reproduction, and survival of managed fish and shellfish species.

c. Development of survey strategies for seabed mapping, combining large-scale mapping technology with finer-scale survey techniques such as underwater video and sediment sampling.

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2. Determination of the short- and long-term (cumulative) effects of commercial and recreational fishing gear and activities on fish and shellfish habitats.

a. Documentation of the effects of fishing activities on the physical and chemical structure of habitats, community composition of associated species, and growth, reproduction, and survival of managed fish and shellfish species.

b. Evaluation of the recovery rates for benthic habitats and associated fish and shellfish species disturbed by fishing gear and activities with respect to the frequency and magnitude of disturbance.

To support projects in the Fisheries Habitat program, Sea Grant expects to provide a total of about $2,000,000 over a two-year period (FY2002 and FY2003). The maximum Federal award for each project will be $300,000 per year. Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects will have a maximum duration of two years; however, the second year of funding is contingent upon availability of funds and submission of an annual report showing satisfactory progress.

III. Eligibility

Applications may be submitted by individuals, public or private corporations, partnerships, or other associations or entities (including institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof. Directors of the state Sea Grant Programs are not eligible to compete for funds under this announcement, although for administrative purposes, they will be considered to be the Principal Investigator for all awards made to their state programs.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under these three programs are:

A. *Impact of Proposed Project* (50%): Significance of the problem addressed; impacts/benefits expected to the nation as a consequence of the project; degree to which the activity will advance the state of the science or discipline; potential for technology transfer to user groups such as industry and/or for enhanced economic/scientific/educational/management value.

B. *Project Design* (50%): Appropriateness of methodologies to be used; advanced synthesis of existing information; use or extension of state-of-the-art methods; qualifications of the investigators (education, training, and/or experience and record of achievement with previous funding); the degree to which multiple investigators, other Federal agencies, and potential users of the results of the proposed activity have been involved in planning the activity and/or will be involved in the execution of the activity, as appropriate; proposed project schedule (timeline).

V. Selection Procedures

Preliminary proposals will be reviewed at the NSGO by panels composed of government, industry, and academic experts. The panels will be asked to assess each preliminary proposal according to the evaluation criteria. The panels will make individual recommendations to the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panels' recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the described procedures.

Individual state Sea Grant Programs receiving full proposals will conduct the mail peer review of the proposed projects in accordance with the Evaluation Criteria listed above. Complete proposals (12 copies) and copies of the mail reviews will then be sent by the state Sea Grant programs to the National Sea Grant Office. The NSGO will conduct mail reviews for proposals submitted directly to it by applicants not in Sea Grant states.

The proposals will be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. These panel members will provide individual evaluations on each proposal; thus there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those proposals awarded a score of 50% or greater by the panel will be eligible for funding. For those proposals, the NSGO will: (a) Ascertain which proposals best meet the program priorities (stated in Section II), and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other Federal agencies, hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subcontracts. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

A. General Requirements

The ideal project attacks a well-defined problem that will be or is a significant societal, research, or technology development and transfer issue. The organization or people whose task it will be to make related decisions or who will be able to make specific use of project results will have been identified and contacted by the Principal Investigator(s). The proposal demonstrates an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and shows how that information will be provided by the proposed activity or in concert with other planned activities.

Proposals are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem or outreach opportunity; a strong rationale for the proposed work; and a clear relationship with the ultimate users of the information. Projects undertaken jointly with industry, business, multiple investigators, or other agencies with interest in the problem are encouraged. Their contribution to the project may be in the form of collaboration, in-kind services, or dollar support. Projects that are solely monitoring efforts are not appropriate for funding. Proposals that incorporate educational, outreach, socioeconomic, and management components and applications will be viewed favorably.

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals; based on advice provided by the NSGO, proposers may subsequently submit full proposals. Full proposals submitted by applicants who do not first submit a preliminary proposal will be returned without review. Applications may be made for Federal funds to support up to two-thirds of the total budget. Allocation of matching funds, equal to at least one-third of the total budget (in other words, at least 50% of the Federal request), must be specified. No more than $150,000 (for the Technology and the Marine Environmental Biotechnology Programs) or $300,000 (for the Fisheries Habitat Program) of Federal funds per year will be awarded to a project. The maximum duration for funded projects will be two years. Awards may be made either as grants or, if there is substantial involvement by one or more Federal agencies, as cooperative agreements. Investigators are encouraged to review the budgeting and grant-making policies of their state's Sea Grant Program, if any, before finalizing their proposal submissions.

B. How To Submit

Interested parties must submit applications (preliminary and full proposals) as follows. Applications originating in one of the Sea Grant states must be submitted to the state's Sea Grant College Program, which will submit the final grant application to the NSGO. Applications originating in a state with no Sea Grant College Program may be submitted to the nearest state Sea Grant College Program which will then submit the final grant application to the NSGO, or the application may be submitted directly to the National Sea Grant Office. Twenty (20) copies of preliminary proposals and proposals must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined below (See "Timetable"). The addresses of the Sea Grant College Program directors may be found on Sea Grant's World Wide Web home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Mr. Joseph Brown at the NSGO (phone: 301–713–2438 x135 or e-mail: joe.brown@noaa.gov). Preproposals and proposals sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Ms. Geri Taylor, Proposals Processing, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2435 for express mail applications). Facsimile transmissions and electronic mail submission of applications will not be accepted.

C. Timetable

February 15, 2002, 5 p.m. (local time)—Preliminary proposals (20 copies) due at state Sea Grant Program, or at NSGO if application is being submitted by an institution in a non-Sea Grant state.

February 20, 2002, 5 pm EST—Preliminary proposals received at state Sea Grant Programs due at NSGO (18 copies).

April 18, 2002, 5 pm (local time)—Full proposals (20 copies) due at state Sea Grant Program, or at NSGO if application is being submitted by an institution in a non-Sea Grant state.

April 24, 2002, 5 pm EST—Full proposals (12 copies) received at state Sea Grant Programs due at NSGO.

June 4, 2002, 5 pm EDT—Reviews received at state Sea Grant Programs due at NSGO.

December 1, 2002 (approximate)—Funds awarded to selected recipients; projects begin.

Note that applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the appropriate address (see **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted.

D. What To Submit

Preliminary Proposal Requirements

Preliminary proposals must be printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper with at least a 10-point font. The following information should be included:

1. Signed Title Page: The title page must be signed by the Principal Investigator and should clearly identify the program to which the proposal is submitted by starting the project title with "Sea Grant Technology Program" or "Sea Grant Marine Environmental Biotechnology Program" or "Sea Grant Fisheries Habitat Program" (as appropriate). Principal Investigators and collaborators should be identified by affiliation and contact information. The total project costs (Federal funds being requested and matching funds) should be listed as well as the source of the matching funds. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

2. A concise (2-page limit) description of the project, its experimental design, its expected output or products, the anticipated users of the products, and its anticipated impact. Proposers should consult the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

3. Resumes (1-page limit) of the Principal Investigators.

4. Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well-qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

No institutional signatures or Federal government forms are needed while submitting preliminary proposals.

Full Proposal Requirements

All pages must be printed on metric A4 (210 mm × 297 mm) or 8½" x 11" paper with at least a 10-point font. Each full proposal should include the items listed below. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support are not included in the 15-page limitation. No appendices are permitted. Applicants may obtain all required application forms through the World Wide Web at *http://www.nsgo.seagrant.org/research/index.html* and *http://www.ofa.noaa.gov/~grants/pdf/*, from the state Sea Grant Programs, or from Mr. Joseph Brown at the National Sea Grant Office (phone: 301–713–2438 ×135 or e-mail: *joe.brown@noaa.gov*).

1. *Signed Title Page*: The title page must be signed by the Principal Investigator and the institutional representative and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with "Sea Grant Technology Program" or "Sea Grant Marine Environmental Biotechnology Program" or "Sea Grant Essential Fisheries Habitat Program" (as appropriate). The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary*: The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: A. Title: Use the exact title as it appears in the rest of the application. B.

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Investigators: List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For graduate fellowships, the faculty advisor or the state Sea Grant Director may be used. C. Funding request for each year of the project, including matching funds if appropriate. D. Project Period: Start and completion dates. Proposals should request a start date of December 1, 2002. E. Project Abstract: This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Project Description (15-page limit)*:

a. *Introduction/Background/Justification*: Subjects that the investigator(s) may wish to include in this section are: (i) Previous fundamental research, including relevant work funded by Sea Grant, and a description of what additional work is needed to enhance the value of that work; and (ii) impacts of the study to the particular discipline or subject area.

b. *Research or Technical Plan*: (i) Objectives to be achieved, hypotheses to be tested; (ii) Experimental design and statistical analysis to be used; (iii) Plan of work, detailed methodology, collaboration with industry or other user groups (if appropriate), and a timetable for project activities; and (iv) Role of project personnel.

c. *Output/Anticipated Economic Benefits*: These may be measured in many ways (for instance the benefits of using biotechnological tools as opposed to other methods, the value of better understanding and managing the ecosystem or fisheries habitats, etc). To the extent possible, proposers are urged to devise appropriate metrics to quantify the benefits. Examples of metrics may include patents or licenses; commercializable new products (e.g. products used in or obtained from marine engineering operations, computer models for simulation of marine processes, etc.); process improvements (e.g. harbor design or dredging procedures, biochemical engineering, etc.); corporate investments in academic research efforts; private sector job opportunities for students involved in the project; number of end users or persons affected by the projects long-term goals, etc.

d. *Coordination with other Program Elements*: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

e. *References and Literature Citations*: Should be included but will not be counted in the 15-page project description limit.

4. *Budget and Budget Justification:* There should be a separate budget for each year and one cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may also use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated. The budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested, and indicates the source for all matching funds. Please pay special attention to any travel, supply or equipment budgets and provide details. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subcontractors with all necessary indirect costs included in the original budget submission.

Investigators are strongly advised to consult with and follow any budgeting guidelines available through their state's Sea Grant Program. Local institutional policies may affect how a project budget should be submitted, and what may be included (i.e., application of indirect costs, availability of fellowships, and other restrictions or cost-saving opportunities). Proposals generated from Sea Grant states must follow local guidelines, if any. In no case will proposals be funded at a level which exceeds the funding limitations as set in this announcement.

5. *Current and Pending Support:* Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

6. Vitae (2 pages maximum per investigator).

7. Letters of commitment and letter of support from any industry or other partner, if appropriate.

VII. Other Requirements for Successful Applicants

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. The **Federal Register** notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. For projects selected in Sea Grant states, the Sea Grant Program will prepare and submit these forms on behalf of all projects selected from that state. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Pursuant to Execute Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet website: *http://www.ed.gov/offices/OCR/minorityinst.html*.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. THe use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

VIII. Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–515 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302G]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee and Groundfish Oversight Committee in January, 2002, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on January 24 and January 25, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, January 24, 2002, 9:30 a.m.– Research Steering Committee Meeting.

The committee will review its roles and responsibilities. They will review experimental fishery permit correspondence. They will also discuss the development of a mechanism for project tracking and evaluation and incorporation into the management process. The agenda will include planning for the next Request For Proposals. Time permitting, the committee will review Dr. William Phoel's silver hake project report.

Friday, January 25, 2002, 9:30 a.m.– Groundfish Oversight Committee Meeting.

The Groundfish Oversight Committee will resume its work on Amendment 13 to the Northeast Multispecies Fishery Management Plan. Amendment 13 will establish rebuilding programs for overfished stocks, and end overfishing for those stocks where it is occurring. The Committee will review the goals and objectives for the Amendment, and may revise them if necessary. In addition, the Committee will review the management measures under consideration and may select additional management alternatives for future consideration. The Committee will also plan its future work on the Amendment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 4, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–550 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: A subcommittee of the Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will hold a meeting which is open to the public.

DATES: The meeting will convene at 1 p.m. on Wednesday, January 30, 2002, recess when business for the day is completed, then reconvene at 8 a.m. Thursday, January 31, 2002, and adjourn at 10 a.m.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Fishery Economics Staff Officer, telephone: 503–326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to continue development of a SPOC subcommittee report on options for controlling capacity in the open access fishery. The SPOC subcommittee will discuss catch and participation analyses of the open access fishery, potential qualification criteria for permitting, and other data and issues relevant to capacity reduction in the open access fishery.

Although non-emergency issues not contained in the meeting agenda may come before the SPOC subcommittee for discussion, those issues may not be the subject of formal SPOC subcommittee action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice requiring emergency action under

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section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SPOC subcommittee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: January 3, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–553 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 January 2002 at 10:00 am in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 2 January 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–493 Filed 1–8–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

January 4, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Olympic Mills Corporation has violated the requirements for participation in the Special Access Program and has suspended Olympic Mills Corporation from participation in the Program for the one-year period January 14, 2002 through January 13, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation during the period January 14, 2002 through January 13, 2003, and to prohibit entry by or on behalf of Olympic Mills Corporation under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 4, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Olympic Mills Corporation from participation in the Special Access Program for the period January 14, 2002 through January 13, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation during the period January 14, 2002 through January 13, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Olympic Mills Corporation manufactured from fabric exported from the United States during the period January 14, 2002 through January 13, 2003.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–509 Filed 1–8–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Tracey A. Dodenhoff

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Tracey A. Dodenhoff, a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent No. 5,769,084, issued June 23, 1998, entitled "Method and Apparatus For Diagnosing Sleep Breathing Disorders" and U.S. Patent Application Serial No. 09/724,402, filed on November 28, 2000, entitled "Method and Apparatus For Diagnosing Sleep Breathing Disorders While A Patient Is Awake" in the field of underwater acoustic systems.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code 00OC, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Mr. M. J. McGowan, Deputy Counsel-Patents, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 112T, Code 00OC, Newport, RI 02841, telephone (401) 832–4736.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: December 5, 2001.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–518 Filed 1–8–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: New.
Title: Experimental Sites Initiative—Data Collection Instrument.
Frequency: Annually.
Affected Public: Individuals or household; not-for-profit institutions; state, local, or tribal gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 150.
Burden Hours: 1,650.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of nine experiments. This effort will assist ED/Student Financial Assistance (SFA) in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. The experiments cover major financial aid processes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–459 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 3, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: FRSS Survey on High School Guidance Counseling.
Frequency: One-time.
Affected Public: State, local or tribal gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,000.
Burden Hours: 500.

Abstract: This survey will provide the only national source of information on high school guidance since 1984. The survey is designed to indicate both now counseling in high schools has changed since that time and what the major roles and functions of counseling programs are today. The information will help local, state, and federal policymakers better understand the role of guidance counseling and how it is changing with change in education and labor market systems.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland

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Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–460 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 3, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: PEQIS survey on distance education in higher education institutions.

Frequency: One-time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,350.

Burden Hours: 675.

Abstract: This survey will provide current nationally representative data about distance education in higher education institutions. This is an area of education that is rapidly changing and the survey will measure change since 1995 and 1998 when previous PEQIS survey collected the first and second nationally representative measures of distance education course offerings and future institutional plans.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–461 Filed 1–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–07; Atmospheric Radiation Measurement Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for experimental and theoretical studies of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests new applications and renewal applications of grants currently funded by DOE under previous ARM Program notices that are relevant to the terms of reference for this announcement and responsive to the particular needs defined below.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. The deadline for submission of preapplications is March 15, 2002. Early submission of preapplications is encouraged to allow time for meaningful responses.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., April 11, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 02–07 may be sent to the program contact, Dr. Wanda Ferrell, via electronic mail at: *wanda.ferrell@science.doe.gov* or by U.S. Postal Service Mail at: Office of Biological and Environmental Research, Dr. Wanda Ferrell, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Electronic mail is recommended to speed up response to preapplications.

Formal applications referencing Program Notice 02–07 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contract Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–07. This address also must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple application copies using more than one delivery or mail service.

FOR FURTHER INFORMATION CONTACT: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Environmental Sciences Division, SC–74; U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–0043, fax (301) 903–8519, Internet e-mail address: *wanda.ferrell@science.doe.gov*. The full text of Program Notice 02–07 is available via the World Wide Web using the following web site address: *http://www.sc.doe/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION:

Background

Atmospheric Radiation Measurement (ARM) Program

Two of the major scientific objectives of the Environmental Sciences Division (ESD) are to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models particularly the General Circulation Models (GCMs) used to predict future climate. This program is one component of a major interagency effort to improve the quality of current models and to support the development of sets of climate models capable of simulating and predicting climate and climate change. The major component of the ARM Program is an experimental testbed to gather data for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This facility is referred to as the Cloud and Radiation Testbed (CART).

The ARM program has established CART sites in three climatic regimes. The first site, Southern Great Plains (SGP), began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. The second site, the Tropical Western Pacific (TWP), is the area roughly between 10° N to 10° S of the equator from Indonesia to near Christmas Island. This region of the world plays a large role in the interannual variability observed in the global climate system. The first and second of the TWP Atmospheric Radiation and Clouds Stations (ARCS) are operating on the islands of Manus, Papua, New Guinea and the Republic of Nauru respectively, and a third station at Darwin, Australia will be operational in early 2002. Similar instrumentation is gathering data in the vicinity of Point Barrow, on the North Slope of Alaska (NSA) and an inland site near Atqasak. Program information is available on the DOE/OBER WWW site using the URL: *http://www.sc.doe.gov/production/OBER/GC/arm.html*.

Request for Grant Applications

This notice requests applications for grants, both new and renewals that address the broad ARM goal of improving cloud and radiation parameterizations in climate models.

Successful applicants for renewal of previously awarded grants, shall demonstrate: (a) continued relevance of their work to the goals of the ARM Program; (b) the contribution of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM Program, particularly the design and development of ARM facilities, as a result of previous funding. Renewal applications should include a special section covering items (b) and (c) entitled "Accomplishments Under Previous Support." (See *http://www.science.doe.gov/production/grants/App.html*.)

Applications are requested in one or more of the following three areas: (a) The development of models and parameterization of radiative transfer or cloud processes, including aerosol effects, or the testing of these models in climate GCMs or in process-level models; (b) experimental studies at ARM facilities to test elements of process-level models and their performance; or (c) the analysis of existing data, including field data and satellite data, to support model development or testing. Applicants should specifically describe the role of their proposed research in the improvement of climate GCMs and/or related models and delineate the path that their results will take to make those improvements.

The efforts proposed must have as a focus the conduct of research using the ARM data streams or ARM sites. Successful applicants for research on either parameterization development and evaluation or data assimilation will be encouraged to cooperate with the Initial Tendency Error Analysis (*http://www-pcmdi.llnl.gov/itea/*) effort at DOE's Program for Climate Model Diagnosis and Intercomparison (PCMDI). Successful applicants will participate in the continuing development of the detailed experimental approaches for the ARM.

Efforts that request funding to support the development of an instrument or to prove the scientific utility of an instrument will not be considered.

Specific areas of interest to the ARM Program include, but are not limited to:

- Use of ARM data to test quantitatively cloud and radiation parameterizations used in GCMs
- Development of new cloud and radiation parameterizations
- Determination of the concentration and advection of cloud water and ice on the regional scale
- Statistics of cloud fields and their interaction with atmospheric radiation
- Realistic retrievals of the 3D structure of clouds on scales of 10 to 100 km
- Retrieval of ice water path and ice cloud microphysics using remote sensing measurements from the ground or ground and satellite
- Calculation of heating rate profiles in realistic cloud fields
- Climatological properties of aerosols over the SGP site using ARM data
- Combining ground-based and satellite remote sensing data to provide improved characterization of the atmospheric column above and surrounding the ARM sites, particularly at the remote sites in the TWP and NSA

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE ESD, successful applicants are expected to participate as ARM Science Team members in the appropriate working group(s) relevant to their efforts. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two trips of 3 days each to Chicago, Illinois.

Program Funding

It is anticipated that approximately $2,000,000 will be available for awards in Fiscal Year 2003, contingent upon the availability of appropriated funds. Multiple year funding of awards is expected, with out-year funding also contingent upon the availability of appropriated funds, progress of the research, and programmatic needs. The allocation of funds within the research areas will depend upon the number and quality of applications received.

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Collaboration

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the ARM Program. Principal Investigator (PI) address, telephone number, fax number and e-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of a formal application generally will be communicated within 15 days of receipt. Use of e-mail for this communication will decrease the possibility of delay in responses to the preapplication.

The deadline for the submission of preapplications is March 15, 2002. Applicants should allow sufficient time so that the formal application deadline is met. SC's preapplication policy can be found on SC's Grants and Contracts Web Site at: *http://www.sc.doe.gov/production/grants/preapp.html.*

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both federal and non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The technical portion of the application should not exceed twenty-five double-spaced pages and should include detailed budgets for each year of support requested. Awards are expected to begin on or about November 1, 2002. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

In addition to the original and seven copies of the application that must be submitted, the applicants are asked to submit an electronic copy of the abstract in ASCII format to: *wanda.ferrell@science.doe.gov.* The abstract should include the following information: PI and co-PIs, their institutions, and a brief summary of research.

For researchers who do not have access to the World Wide Web (WWW), please contact Karen Carlson, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, phone: (301) 903–3338, fax: (301) 903–8519, e-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

Technical information on ARM is available on the WWW at the URL: http://www.arm.gov and the ARM Program Office at the Pacific Northwest National Laboratory, P.O. Box 999, Richland, Washington 99352, telephone: (509) 375–6964.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on December 28, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–500 Filed 1–8–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–12: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The focus of the NABIR program is on radionuclides and metals that 1) pose the greatest potential risk to humans and the environment at DOE sites, and 2) are tractable for immobilization by means of bioremediation. Applications are especially encouraged that address the radionuclides uranium and technetium. Applications should describe research projects in one of the following categories:

1. Projects that address the scientific aims of the Biomolecular Science and Engineering Element.
2. Projects to be performed at the NABIR Field Research Center (FRC) addressing field scale biostimulation of microbiological processes that immobilize uranium and/or technetium. Interdisciplinary teams must include, at a minimum, expertise in microbiology, geochemistry and hydrology.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 13, 2002, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2002, or in early Fiscal Year 2003. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preapplication, referencing Program Notice 02–12, it should be sent by e-mail to *anna.palmisano@science.doe.gov.*

Formal applications referencing Program Notice 02–12 on the cover page must be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–12. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, e-mail: *anna.palmisano@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice 02–12 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113 facilities for research, development, and testing of nuclear materials. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy (DOE) complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60% of DOE facilities have groundwater contaminated with metals or radionuclides. The only other type of contaminant that appears more often than metal and radionuclide contaminants in groundwater is chlorinated hydrocarbons. More than 50% of all soil and sediments at DOE facilities are contaminated with radionuclides and metals, the contaminants found with the highest frequency in soil at all DOE waste sites. Indeed, while virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and especially the radionuclides found on DOE sites are unique to those sites. The NABIR program aims: (1) To provide the fundamental knowledge to support the development of new remediation technologies for radionuclides and metals, and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of in situ immobilization as a means of long term stewardship.

While bioremediation of organic contaminants involves their transformation to benign products such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly transform radionuclides and metals by changing their oxidation state to a reduced form that leads to in situ immobilization. Or, microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long-term stability of these reduced contaminants is as yet unknown. Other mechanisms whereby microorganisms can influence mobility of contaminants include alteration of pH, oxidation/reduction reactions and complexation.

Currently, the fundamental knowledge that would allow cost-effective deployment of in situ subsurface bioremediation of radionuclides and metals is lacking. The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites, and (2) are tractable for immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium, and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). NABIR research is oriented toward application in areas that have low levels of widespread contamination because it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants, such as nitrate, complexing agents, such as Ethylenediaminetetraacetate and chlorinated solvents, such as trichloroethylene and carbon tetrachloride on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization of contaminants in place to reduce the risk to humans and the environment. The NABIR program encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of biostimulation (addition of inorganic or organic nutrients). NABIR will provide an improved, multidisciplinary understanding of the biogeochemical functioning of terrestrial subsurface systems. The NABIR Program supports hypothesis-driven research that is more fundamental in nature than demonstration projects.

Naturally occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. In situ immobilization of contaminants is one approach to long-term stewardship, which is the post-closure responsibility of DOE at its contaminated sites. Long-term stewardship involves long-term monitoring and other maintenance activities to ensure that residual in-ground contaminants do not spread

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further. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Immobilization is focused on contaminant capture from both vadose zone and groundwater plumes. As such, it may be a strategy applied to prevent the discharge of deep or widely distributed contaminants from the vadose zone to groundwater, or from groundwater to a receiving water body (e.g., the Columbia River at Hanford). Therefore, an important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase. Research on phytoremediation is not supported by NABIR.

The NABIR program consists of four interrelated scientific research elements (Biogeochemical Dynamics, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the four NABIR scientific research elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and social issues of bioremediation called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program encourages researchers to integrate laboratory and field research. DOE has a Field Research Center (FRC) at the Y–12 site near Oak Ridge National Laboratory (ORNL). Additional information about NABIR and the FRC can be accessed from the NABIR Homepage: *http://www.lbl.gov/NABIR/*

Current Request for Applications

Two kinds of projects are solicited in this request for applications:

1. Research projects that address the scientific aims of the NABIR Biomolecular Science and Engineering Element.

2. Research projects to be performed at the NABIR FRC addressing field scale biostimulation of microbiological processes that immobilize uranium and/or technetium. Research would be conducted at the FRC that is located near Oak Ridge National Laboratory, Oak Ridge, TN. Interdisciplinary teams must include, at a minimum, experts in the fields of microbiology, geochemistry, and hydrology.

Applications for research on other elements of the NABIR program will not be addressed at this time.

The NABIR Biomolecular Science and Engineering Element

Research in the Biomolecular Sciences and Engineering element provides a knowledge base, at the biomolecular level, of the processes leading to the in situ immobilization of radionuclides (U, Tc, and Pu) and metals (Cr and Hg) by indigenous subsurface microorganisms. Applications for this solicitation are especially encouraged that address the radionuclides uranium and technetium. The primary goal of this element is to understand the genetic, biochemical, and regulatory processes that mediate biotransformation of these specific radionuclides and metals, leading to their immobilization. Characterization of genes, gene products, and genetic regulatory networks associated with these biotransformations is key to this understanding. Secondary goals include: (1) Understanding molecular mechanisms of resistance of subsurface microorganisms to radionuclide and metal toxicity, (2) understanding, at a molecular level, the processes of lateral transfer between microbes of genes involved in biotransformation of these radionuclides and metals, (3) developing novel technologies to provide insights into biomolecular mechanisms of radionuclide and radionuclide biotransformation, and (4) developing approaches to manipulate pathways and enzyme systems that mediate these transformations to improve their ability to immobilize these radionuclides and metals.

DOE subsurface sites encompass a wide range of environments, with a diversity of microbial communities and contaminants. One of the challenges of the Biomolecular Science and Engineering Element is to select microbes for studies that are active members of subsurface microbial communities. A second challenge is to extrapolate laboratory findings on pure cultures under laboratory conditions to complex in situ environmental conditions. This extrapolation is especially critical in studying gene expression, which may be modified by changes in local cellular environments in the subsurface. A third challenge is to take advantage of genomic and other data derived from the DOE Microbial Genome Program on subsurface microorganisms to increase our understanding of how genes relevant to bioremediation are expressed in the environment.

Technical Areas of Interest for the Biomolecular Science and Engineering Element

Research projects are sought that focus on understanding the regulation of genes that have been identified to be important in: (1) The immobilization of radionuclides (U, Tc, and Pu) and metals (Cr and Hg) by naturally occurring microorganisms in contaminated subsurface environments, and (2) the growth and survival of microorganisms in the presence of these radionuclides and metals. Applications should primarily focus on indigenous subsurface microorganisms that can precipitate and immobilize these radionuclides and metals. Applications addressing immobilization of uranium and technetium are strongly encouraged. For mercury and plutonium, two other contaminants targeted by the NABIR program, strategies for immobilization are less clear, and may require the development of novel approaches. Detailed studies of the enzymatic mechanisms for radionuclide/metal reduction are needed to increase our understanding of in situ processes and to identify gene targets for better molecular assessment of radionuclide and metal reduction. Microorganisms selected for Biomolecular Science and Engineering research should be those that may play an important role in reducing these radionuclides and/or metals in subsurface environments. Exploring the effects of key environmental parameters on genetic regulation and expression of radionuclide and/or metal reduction is a critical need. The NABIR FRC provides an opportunity for Biomolecular Science and Engineering researchers to work at a DOE site in collaboration with scientists from the Biogeochemistry, Biotransformation, and Community Dynamics elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of these radionuclides and metals in this type of subsurface environment is of special interest. More information on the NABIR FRC and current research being conducted at the FRC can be found at the web site *http://www.esd.ornl.gov/nabirfrc*. The ultimate goal of this element is to improve our ability to predict and to manipulate the activities of microbes in situ, particularly in an in situ immobilization scenario.

New and creative scientific approaches are sought that address the following fundamental research

questions for the Biomolecular Science and Engineering Element:

What are the basic biomolecular mechanisms of uranium and technetium reduction and reoxidation in microorganisms, primarily those indigenous to the subsurface?

How do low pH and high nitrate concentrations impact the biochemistry and gene expression and regulation of uranium and technetium reduction?

How can biomolecular processes be manipulated to enhance the sustainability of immobilization of uranium and technetium?

Are there novel biomolecular mechanisms that can be used to immobilize mercury or plutonium?

For further information on the Biomolecular Science and Engineering Element, please contact Dr. Daniel Drell (*Daniel.Drell@science.doe.gov*), the Program Element Manager.

Field Scale Bioremediation Experiments

Although bioremediation of radionuclides and metals has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The NABIR FRC provides opportunities for such field-scale experiments. The focus of field experiments at the FRC is on in situ immobilization of radionuclides, such as uranium and technetium by microbiological processes. For more information on the NABIR FRC, access the FRC web site at *http://www.esd.ornl.gov/nabirfrc*. For this solicitation, applicants are especially encouraged to develop experiments for Area 2, a low nitrate, circumneutral site at the FRC. Applicants may also choose to propose research for Area 1, a high nitrate, low pH site. Both sites are described in the following sections; maps and additional information on the sites are available at the FRC web site.

Applicants must propose a testable hypothesis that is based on biologically-mediated mechanisms of immobilization for in situ field research, and they should describe a detailed technical approach that should include (1) establishing a defined (surface area and depth) experimental and control plot within the proposed contaminated field site, and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize uranium or technetium. The technical approach must be described in phases such that completion of each phase could result in publishable results. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research. Technology demonstration projects will not be funded by this solicitation.

The applicants should propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry, and hydrology. The Principal Investigator for the team must have prior experience in relevant field research, and the activities of each team member must be clearly defined. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The successful team must be willing to partner with other funded NABIR investigators who may wish to obtain samples in conjunction with the proposed field studies.

Although compliance with National Environmental Policy Act (NEPA) is the responsibility of DOE, successful applicants who propose to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. Successful applicants will also be expected to brief and to obtain approval of their written work plan from the FRC Advisory Panel prior to beginning their field work. For this solicitation, applicants should describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Applicants may wish to review the FRC Communication Plan, which can be found on the FRC web site. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*paul.bayer@ science.doe.gov*), the NABIR Field Activities Manager.

Characteristics of Area 2 at the NABIR FRC

The S–3 Ponds were the primary source of contamination detected at Area 2 of the NABIR FRC. The S–3 Ponds consisted of four unlined ponds constructed in 1951 on the west end of the Y–12 Plant. Liquid wastes, composed primarily of nitric acid plating wastes containing nitrate and various radionuclides and metals (e.g., uranium and technetium) were disposed of in the ponds until 1983. Waste disposal activities at the site have created a mixed waste plume of contamination in the underlying unconsolidated residuum (primarily saprolite and fill) and shale bedrock. Area 2 is located several hundred feet to the southwest of the former Ponds. Contaminants were probably transported to Area 2 through a historic stream channel of Bear Creek during operation of the Ponds. Some contaminated residuum and sediments in Area 2 were excavated and deposited in the S–3 Ponds, however, much contaminated residuum remains and contributes to the groundwater contamination currently detected in Area 2.

A typical geologic profile at Area 2 would consist of about 6 m of reworked fill and saprolite at the surface underlain by 2 m of intact saprolite with weathered bedrock below the saprolite. As much as 300–500 mg/kg of uranium may be associated with the solid phase material. The reworked fill tends to have a higher hydraulic conductivity than the native saprolite. Based on data from a tracer study test conducted in 1998, the rate of interstitial groundwater movement in the unconsolidated fill was calculated to range from 0.7 to 4.5 m/day, with an average rate of about 2.2 m/day. Hydraulic monitoring at the site indicates that the depth to groundwater is approximately 4.5 meters from the surface and the hydraulic gradient ranges between about 0.01 and 0.025 to the southwest towards the Creek. Vertical upward gradients between the shale bedrock and unconsolidated zone are as great as 0.25.

In Area 2, there is a shallow pathway (<10 m) for the migration of groundwater contaminated with uranium (1–2 mg/L) to seep in the upper reach of Bear Creek, which is adjacent to Area 2. Nitrate concentrations are generally <100 mg/L at Area 2, but have been detected above 1,000 mg/L in several of the wells. Technetium concentrations are generally less than 600 pCi/L, and total dissolved solids concentrations are approximately 1,000 mg/L. The pH of groundwater at Area 2 tends to be between 6 and 7 with dissolved oxygen content about 1–2 mg/L. Areas of higher and lower uranium and nitrate exist at Area 2. For example TPB–16 which is representative of an area with higher uranium and lower nitrate contains 28 mg/L nitrate, 98 mg/L sulfate, 310 mg/L chloride, 60 mg/L inorganic carbon, 2 mg/L dissolved

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organic carbon, and 1.3 mg/L uranium; well FW003 which is representative of an area with higher nitrate and lower uranium contains 1059 mg/L nitrate, 16 mg/L sulfate, 183 mg/L chloride, 89 mg/L inorganic carbon, 13 mg/L organic carbon, and 0.01 mg/L uranium.

An 8 to 9 m deep trench bisects Area 2 in an east to west direction. The trench was filled with gravel except for an 18 m long section in the middle, which was filled with zero-valent iron. Guar gum slurry was added during excavation to prevent the trench walls from collapsing. The trench is oriented nearly parallel to the direction of groundwater flow and is designed to use both the natural groundwater gradient and the permeability contrast between the gravel and iron in the trench and the native silt and clay outside the trench to direct flow through the iron treatment zone. Approximately 52 wells have been installed at the site. Two 20m X 20m plots (one located on either side of the trench) that are high in uranium are available for use by NABIR PIs for field research.

Characteristics of Area 1 at the NABIR FRC

The S–3 Ponds were also the primary source of contamination detected at Area 1 of the NABIR FRC. A small 7 m X 25 m field plot has been established in Area 1 just south of the S–3 Ponds. This field plot, along with other locations within Area 1, is available for NABIR research. Thirteen monitoring wells have been installed in the field plot. The wells are generally 3 cm in diameter, about 7 m deep and have a 1.5 m length of screened interval at the bottom of the well. The wells have been used in the past for conducting small-scale push-pull tests of various types. A brief description of these experiments can be found at the FRC web site. The impact of these push-pull tests probably does not extend beyond the 7 m X 25 m field plot. A typical geologic profile at the Area 1 field plot would consist of about 1.5 m of reworked fill and saprolite at the surface underlain by about 7 m of intact saprolite with weathered shale bedrock below the saprolite. Hydraulic conductivity of the saprolite is fairly low (about 0.26 m/day) with maximum pumping rates of < 1 liter/minute. Hydraulic monitoring at the site indicates that the depth to groundwater is approximately 3.5 m from the surface and the hydraulic gradient is fairly flat. Contaminants include all the contaminants generally associated with the S–3 Ponds groundwater plume (i.e., nitrate, technetium, uranium, volatile organic compounds and other common anions and cations).

Concentrations of contaminants in groundwater and soil from well to well are variable but tend to be fairly stable over time within individual wells. Nitrate concentrations at the Area 1 field plot in groundwater range from 48 to 10,400 mg/l, uranium ranges from 0.01 to 7.5 mg/l, and technetium-99 ranges from 66 to 31,000 pCi/l. Wells with high uranium (e.g., >1 mg/l) tend to have high to moderate nitrate (>1,000 mg/l) and high technetium concentrations (>12,000 pCi/l). The pH of groundwater at Area 1 tends to be more acidic than Area 2 but ranges between 3.25 and 6.5 with dissolved oxygen content about 1–2 mg/L. Sulfate concentrations range between 219 mg/l and 1 mg/l, and chloride concentrations range between 22 and 760 mg/l. Aluminum can be as high as 620 mg/l, and nickel concentrations average around 8.6 mg/l. Calcium, sodium, magnesium, and manganese are other metals detected at significant concentrations (>100 mg/l) at the site. Tetrachloroethylene (120 ug/l), acetone (230 ug/l), and some other volatile organic compounds (VOCs) are also detected at the Area 1 field plot. As much as 375 mg/kg of uranium is associated with the solid phase material.

Additional Information for Applications

It is anticipated that up to $2 million will be available for multiple awards to be made in late Fiscal Year 2002 and early Fiscal Year 2003, in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $2 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 02–12). Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for projects in the Biomolecular Science and Engineering are expected to range from $100,000 to $300,000 total costs. Annual budgets for interdisciplinary field research projects at the FRC are expected to range from $300,000–$1,000,000 for total costs. Costs for drilling at the FRC should not be included in the applicant's budget. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding. Attachments should include short (2 pages) curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9*.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following web site: *http://www.lbl.gov/NABIR/*. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC–74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 28, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–501 Filed 1–8–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–044]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of February 1, 2002:

Fifty-fifth Revised Sheet No. 25
Fifty-fifth Revised Sheet No. 26
Fifty-fifth Revised Sheet No. 27
Forty-eighth Revised Sheet No. 28
Sixth Revised Sheet No. 28B
Seventeenth Revised Sheet No. 29
Twenty-fifth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to an order issued September 15, 1999, by the Commission approving an uncontested settlement that resolves environmental cost recovery issues in the above-referenced proceeding. Columbia Gas Transmission Corporation, 88 FERC 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in Article VI of the settlement agreement filed April 5, 1999 (Phase II Settlement).

Columbia is required to file annually a limited NGA Section 4 filing to adjust its environmental unit components effective February 1 to recover its environmental costs covered by the Phase II Settlement, within agreed-upon ceilings and recovery percentages. For the annual period February 1, 2002 through January 31, 2003, the Phase II Settlement permits Columbia to collect "no more than $14 million annually in Main Program Costs", and "no more than $3 million annually in Storage Well Program Costs." per Article VI(B) of the Phase II Settlement. The instant filing satisfies that requirement. It provides for the February 1, 2002 effectiveness of revised unit components designed to collect $12 million in Main Program Costs and to flowback an overrecovery of $ 0.5 million of Storage Well Program Costs.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–465 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–39–002]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 3, 2002.

Take notice that on December 28, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective December 1, 2001:

Substitute Sixth Revised Sheet No. 19A
First Revised Sheet No. 83
Substitute Original Sheet No. 87
Original Sheet No. 88
Original Sheet No. 89
Second Revised Sheet No. 331
Original Sheet No. 334

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's November 30, 2001 order accepting its Rate Schedule PAL effective December 1, 2001.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP02–39–000. Copies also have been mailed by first class mail to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are

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available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–466 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–025–000]

Copiah County Storage Company; Notice of Route and Site Review

January 3, 2002.

On January 16, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Copiah Storage Project. The Copiah Storage Project facilities are proposed for construction by Copiah County Storage Company (Copiah). The proposed compressor site and natural gas storage cavern site, located in Copiah County, Mississippi, will be reviewed on January 16, 2002. Representatives of Copiah will accompany the OEP staff.

Anyone interested in attending the route and site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–463 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–517–000]

UtiliGroup, Inc.; Notice of Filing

January 3, 2002.

Take notice that on December 10, 2001, UtiliGroup, Inc. (UtiliGroup), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition For Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The Petition request acceptance of UtiliGroup Rate Schedule FERC No. 1, under which UtiliGroup will engage in wholesale electric power and energy transactions as a marketer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Comment Date: January 11, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–464 Filed 1–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–2]

Integrated Risk Information System (IRIS); Announcement of 2002 Program; Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of IRIS 2002 program and request for scientific information on health effects that may result from exposure to chemical substances.

SUMMARY: IRIS is an Environmental Protection Agency (EPA) data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On February 22, 2001, EPA announced the 2001 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances (66 FR 11165). Most of the health assessments listed in the notice are in progress or near completion. Today, EPA is adding some additional health assessments to the IRIS agenda. This notice describes the Agency's plans, and solicits scientific data and evaluations for consideration in EPA's new assessments. Additional new assessments may be announced in the **Federal Register** later this year.

DATES: Please submit any response to this notice in the form of an initial "submission inventory" in accordance with the instructions in this notice by March 11, 2002.

ADDRESSES: A "submission inventory" should be sent to the IRIS Submission Desk in accordance with the instructions provided under "Submission of Information" in this notice.

FOR FURTHER INFORMATION: For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment, (mail code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov*. For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (301) 345–2870 or send electronic mail inquiries to *hotline.iris@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for noncancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

The IRIS Program

EPA's process for developing IRIS consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS data base.

This notice provides: (1) A list of the IRIS assessments completed in FY 2001 and early FY 2002, (2) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2002 or FY 2003, (3) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2004 or FY 2005, (4) a list of the IRIS assessments announced in the previous IRIS agenda (66 FR 11165) that have been discontinued, (5) information about EPA's IRIS "needs assessment" report underway, (6) a list of the new assessments beginning in FY 2002, and (7) instructions to the public for submitting scientific information to EPA pertinent to the development of IRIS assessments.

Assessments Completed in FY 2001 and Early FY 2002

The following assessments were completed and entered into IRIS in FY 2001 and early FY 2002. These assessments were listed in the **Federal Register** of February 22, 2001. All health endpoints, cancer and noncancer, were assessed unless otherwise noted. Where information was available, both qualitative and quantitative assessments were developed.

Name	CAS No.
Bromate	7758–01–2
Chlorine dioxide	10049–04–4
Chlorite (sodium salts)	7758–19–2
Chloroform (oral route)	67–66–3
Hexachlorocyclopentadiene	77–47–4
Methylmercury (noncancer endpoints)	22967–92–6
Methyl chloride	74–87–3
Quinoline	91–22–5

Assessments in Progress—Completion Planned for FY 2002 or FY 2003

The following assessments are underway or generally complete, and are planned for entry into IRIS in FY 2002 or FY 2003. These assessments were announced in the February 22, 2001, **Federal Register**. All health endpoints, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available. Pesticides denoted with an asterisk (*) will have only oral reference dose and carcinogenicity endpoints assessed.

Name	CAS No.
Acetaldehyde	75–07–0
Acetone	67–64–1
Acrolein	107–02–8
Alachlor*	15972–60–8
Ammonium perchlorate (and other perchlorate salts)	7790–98–9
Antimony and compounds	7440–36–0
Azinphos Methyl*	86–50–0
Benzene (noncancer endpoints)	71–43–2
Benzo(a)pyrene	50–32–8
Bromoxynil*	1689–84–5
Boron	7440–42–8
1,3-Butadiene	106–99–0
Cadmium	7440–43–9
Carbon tetrachloride	56–23–5
Chloroethane	75–00–3
Chloroform (inhalation route)	67–66–3
Chloroprene	126–99–8
Chlorothalonil*	1897–45–6
Chlorpyrifos*	2921–88–2
Copper	7440–50–8
Cyclohexane	110–82–7
Diazinon*	333–41–5
Dichloroacetic acid	79–43–6
1,2-Dichlorobenzene	95–50–1
1,3-Dichlorobenzene	541–73–1
1,4-Dichlorobenzene	106–46–7
1,1-Dichloroethylene	75–35–4
Diesel exhaust	[N.A.]
Di(2-ethylhexyl)phthalate	117–81–7
Diflubenzuron	35367–38–5
Ethanol	64–17–5
Ethion*	563–12–2
Ethylbenzene	100–41–4
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Formaldehyde	50–00–0
Glyphosate*	1071–83–6
Hexachlorobutadiene	87–68–3
Hydrogen sulfide	7783–06–4
Isopropanol	67–63–0
Metolachlor*	51218–45–2
Methidathion*	950–37–8
Methyl isobutyl ketone (MIBK)	108–10–1
Methyl parathion*	298–00–0
Methyl tert-butyl ether (MTBE)	1634–04–4
Mirex	2385–85–5
Nickel (soluble salts)	[N.A.]
Nitrobenzene	98–95–3
Pendimethalin*	40487–42–1
Phenol	108–95–2
Pebulate*	1114–71–2
Pentachlorophenol	87–86–5
Phosgene	75–44–5
Polychlorinated biphenyls (PCBs-noncancer endpoints)	1336–36–3
Refractory ceramic fibers	[N.A.]
Styrene	100–42–5
2,3,7,8-TCDD (dioxin)	1746–01–6
Tetrachloroethylene (perchloroethylene)	127–18–4
Tetrahydrofuran	109–99–9
Toluene	108–88–3
Triallate*	2303–17–5
Trichlopyr*	55335–06–3
Trichloroethylene	79–01–6
Uranium (natural)	7440–61–1
Vinyl acetate	108–05–4
Xylenes	1330–20–7
Zinc and compounds	7440–66–6

Assessments in Progress—Completion Planned for FY 2004 or FY 2005

The following assessments in progress have been delayed and are now expected for completion in FY 2004 or FY 2005:

Name	CAS No.
Acrylamide	79–06–1
Asbestos	1332–21–4
Hexahydro-1,3,5-trinitro-triazine (RDX)	121–82–4
Methanol	67–56–1
Silica (crystalline)	14808–60–7

IRIS summaries and support documents for all substances listed above will be provided on the IRIS web site at *www.epa.gov/iris* as they are completed. This publicly available web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS documents can be found during their peer review periods via the "What's New" page of the IRIS web site. Interested parties should check the "What's New" page frequently for the availability of these drafts.

Assessments Discontinued

The following assessments have been removed from the IRIS agenda for FY 2002, but may be reconsidered at a later date:

Name	CAS No.
Arsenic, inorganic	7440–38–2
Bisphenol-A	80–05–7
Hexachlorobenzene	118–74–1
Methylene chloride	75–09–2
Toxaphene	8001–35–2

IRIS "Needs Assessment"

On July 20, 2001, EPA published a **Federal Register** notice (66 FR 37958) requesting public input to compile a "needs assessment" for planning the IRIS program. This notice requested that the public identify those chemical substances for which assessments either need to be added to IRIS or updated. The responses were considered along with EPA program priorities in the development of new starts for the FY 2002 agenda below. The notice also requested input on whether other types of evaluations are needed on IRIS, such

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as toxicological evaluations for health effects associated with less-than-lifetime (i.e., acute or subchronic) exposure durations. The notice also requested input on what priority any new type of evaluation should have compared to evaluation of health effects associated with chronic exposures.

Further, the notice asked whether or how EPA should work with external parties, such as other government agencies, industries, or other organizations to develop health assessments that may be used as supporting documents for IRIS. A pilot effort to provide dialogue and feedback to external parties developing health assessments for IRIS was described in the February 22, 2001 notice, and preceding IRIS **Federal Register** notices. Of the six pilot efforts discussed, four are still in progress and two are discontinued. In FY 2002, EPA will continue to evaluate its experience with the current efforts to determine process efficiency and quality of the documents produced.

A separate "IRIS Needs Assessment" report will be made available on the IRIS web site when it is completed.

Information Requested on New Assessments for FY 2002

EPA will continue building and updating the IRIS data base. The Agency recognizes that a number of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 2002. The following substances are priorities for IRIS due to one or more reasons: (1) Agency statutory, regulatory, or program implementation needs; (2) new scientific information or methodology is available that might significantly change current IRIS information; (3) interest to other levels of government or the public, including interest expressed via responses to 66 FR 37958; (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS.

The following IRIS health assessments have recently begun or will be started in FY 2002, with completion expected in FY 2003 or FY 2004, unless otherwise noted. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessments. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance. Pesticides denoted with an asterisk (*) will have only oral reference dose and carcinogenicity endpoints assessed. Substances denoted with a double asterisk (**) will be evaluated for effects from acute and subchronic exposure, in addition to chronic exposure. These substances constitute a pilot test to evaluate the application of methods, procedures, and resource needs for adding less-than-lifetime information to IRIS. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available.

Name	CAS No.
Atrazine*	1912–24–9
Captan*	133–06–2
Di(2-ethylhexyl)adipate (DEHA)	103–23–1
Dibutyl phthalate	84–74–2
Ethalfluralin*	55283–68–6
gamma-Hexachlorocyclohexane (Lindane)*	58–89–9
Hydrogen cyanide †	74–90–8
Methyl ethyl ketone	78–93–3
2-Methylnaphthalene	91–57–6
Methomyl*	16752–77–5
Naphthalene (cancer, inh. route)	91–20–3
PAH mixtures	N.A.
Perfluorooctanoic acid—ammonium salt**	3825–26–1
Perfluorooctane sulfonate—potassium salt**	2795–39–3
Propachlor*	1918–16–7
Thallium†	7440–28–0
1,1,1-Trichloroethane**	71–55–6

† = completion expected FY 2004/FY 2005.

Submission of Information

As in previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in new assessments starting in FY 2002. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. We would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of "new assessments" listed above. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note that if you have submitted certain information previously, then there is no need to resubmit that information. While EPA is primarily soliciting information on new assessments announced in this notice, the public may submit information on any chemical substance at any time.

Procedures for Submission

Similar to the process described in the February 22, 2001, **Federal Register**, submissions will be handled in a three-step process:

1. *Submission Inventory:* First, you should simply provide a list within 60 days of this notice briefly identifying all the information (studies, reports, articles, etc.) you wish to submit. The list should specify by name and CASRN (Chemical Abstract Service Registry Number) the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information to be submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should state that the correspondence is an IRIS submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of person(s) to contact for additional information. Mail two copies of the submission inventory to the IRIS Submission Desk, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770. Note that this is a new address for the Submission Desk.

Alternatively, you may submit the submission inventory and cover letter electronically to *IRIS.desk@epa.gov*. Electronic information must be submitted in WordPerfect format or as an ASCII file. Information also will be accepted on 3.5" floppy disks. All information in electronic form must be identified as an IRIS submission.

2. *EPA Replies to Submission Inventory:* In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification of whether full submission of the information is requested.

3. *Full Submission of Selected Material:* In the third step, you should send in the information indicated by EPA within 30 days of EPA's reply. Prompt response to EPA will ensure that your material can be considered in the assessment in a timely fashion. Submissions should include a cover letter addressing all of the points in Item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send two copies, at least one of which should be unbound, to the IRIS Submission Desk, as described in Item 1. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA Office via established procedures for submission of CBI (see 40 CFR, Part 2, Subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (see **FOR FURTHER INFORMATION**).

Dated: January 2, 2002.

Art Payne,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 02–511 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–1]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases. Facilities that are subject to the rule are required to implement a risk management program at their facility, and submit a summary of this information (the Risk Management Plan, RMP) to EPA. Approximately 15,000 RMPs have been submitted to EPA.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on January 24, 2002 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Ariel Rios North, Emergency Operations Center, Room B444, 1200 Pennsylvania Avenue, NW, Washington DC. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact William Finan, Designated Federal Official, U.S. EPA (5104A), 1200 Pennsylvania Avenue, NW, Washington DC 20460, via the Internet at: *finan.bill@epa.gov*, by telephone at (202) 564–7981 or FAX at (202) 564–8444.

SUPPLEMENTARY INFORMATION:

Agenda

Opening Remarks—Jim Makris (8:30–9:00)
Update on Risk Management Plans Submitted to Date (9:00–9:45)
Proposed Third-Party Audits for the RMP Program (9:45–10:45)
National Chemical Safety Assessment (10:45–11:30)
Options on improving site security at chemical facilities (e.g., inclusion in company safety, health, and environment programs; legislation, regulation, standards, voluntary programs) (12:30–1:30)
How we can use upcoming Organization for Economic Cooperation and Development (OECD) publications in the US (the OECD publications are: Guidance on Safety Performance Indicators; and Guiding Principles for Chemical Accident Prevention, Preparedness, and Response (1:30—2:30) Comments from the public (2:30–3:00)

Members of the public who wish to make a brief oral presentation in person in Washington DC to the Subcommittee at the January 24 meeting must contact William Finan in writing (by letter, fax, or email—see previously stated information) no later than January 21, 2002 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to William Finan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee is available on the Internet at: *http://www.epa.gov/swercepp/acc-pre.html*.

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, you can subscribe to the EPA–CEPPO Listserve by following directions at *www.epa.gov/ceppo*.

Dated: January 3, 2002.

William Finan,

Designated Federal Official.

[FR Doc. 02–510 Filed 1–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64062; FRL–6815–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on July 8, 2002, unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 232, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 12 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted:

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
000769–00229	Suregard 10% Sevin Dust	Carbaryl	Cotton
005905–00521	Trifluralin 60D	Trifluralin	Rapeseed, clover and flax
005905–00532	Trifluralin HFP	Trifluralin	Rapeseed, clover and flax
009779–00303	Trust 4EC	Trifluralin	Clover
009779–00326	Trific 10G	Trifluralin	Clover
033660–00003	Trifluralin Technical	Trifluralin	Mexican clover
033660–00031	Flutrix Five EC	Trifluralin	Mexican clover
033660–00032	Flutrix 4EC ATT	Trifluralin	Mexican clover
033660–00033	Flutrix 4EC	Trifluralin	Mexican clover
033660–00036	VLN Trifluralin Technical	Trifluralin	Mexican clover
042750–00032	Albaugh Trifluralin 4EC	Trifluralin	Rapeseed and flax
042750–00034	Albaugh Trifluralin 10G	Trifluralin	Rapeseed and flax

Note: EPA company numbers 005905 has requested a 30–day comment period for registrations listed.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 8, 2002 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period also permits interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000769 ...	Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502.
005905 ...	Helena Chemical Co, 225 Schilling Blvd., Suite 300, Collierville, TN 38017.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
009779 ...	Agriliance, LLC, Box 64089, St Paul, MN 55164.
033660 ...	Lewis & Harrison, Agent For: Industria Prodotti Chimici S., 122 C St NW, Ste. 740, Washington, DC 20001.
042750 ...	Pyxis Regulatory Consulting, Agent For: Albaugh Inc., 11324 17th Ave., Ct. NW, Gig Harbor, WA 98332.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail:* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked February 8, 2002.

2. *In person or by courier.* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: December 27, 2001.

Donald J. Huddleston,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–412 Filed 1–8–02; 8:45 a.m.]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 10, 2002, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
- December 13, 2001 (Open and Closed)

B. Reports
- Report on Corporate Approvals
- Bookletter " Guidance for Involvement by Employees, Agents, and Board Members in the Nominating Committee Process
- 2001 Financial Statement Audit Report

Dated: January 7, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–638 Filed 1–7–02; 1:44 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010786–013.

Title: Contship/Italia Space Charter and Sailing Agreement.

Parties: Contship Containerlines, Italia di Navagazione SpA.

Synopsis: The proposed modification: (1) Replaces Article 5.4 with new language concerning Italia's use of Contship terminals; (2) clarifies procedures in Article 5.7 concerning outside slot charters by Italia; (3) adds an Article 7.2, which provides for termination under conditions of insolvency; (4) restates the force majeure provisions of Article 10; (5) combines present Articles 11 and 12 into a new Article 11 concerning governing law and arbitration; and (6) adds a new Article 12 limiting assignment of rights and obligations under the agreement to related companies.

Agreement No.: 011671–005.

Title: Italia/CP Ships Space Charter and Sailing Agreement.

Parties: Italia di Navigazione, S.p.A., Contship Containerlines, TMM Lines Limited, LLC.

Synopsis: The proposed amendment: narrows the geographic scope of the agreement to the trade between U.S. Pacific ports and points and ports and points in Spain and Italy; provides for a future adjustment in slot allocations and the purchase/sale of slots on an ad hoc basis; adds language regarding exceptional costs; adds new provisions dealing with non-assignment and force majeure; and restates and combines certain existing agreement articles.

Dated: January 4, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–564 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below identified agreement modification provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the implications of the proposed modification. This action may prevent the agreement from becoming effective as originally scheduled.

Agreement No.: 011548–005.

Title: Hanjin/SinoTrans Cross Space Charter & Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd. Sinotrans Container Lines, Co., Ltd.

Dated: January 4, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–560 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 13064N.

Name : Archer International, Inc.

Address : 3340 A Greens Rd, Suite #300, Houston, TX 77032.

Date Revoked: November 8, 2001.

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Reason: Failed to maintain a valid bond.

License Number: 3647F.

Name: Frama Forwarding Corp.

Address: 1231 NW 87th Way, Pembroke Pines, FL 33024.

Date Revoked: November 10, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14323N

Name: Hefco International, Inc., dba Hefco International dba Sea Viper Shipping.

Address: 16725 Aldine Westfield, Houston, TX 77032.

Date Revoked: November 8, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14646N.

Name: Mar Shipping Corp.

Address: 8456 N.W. 72nd Street, Miami, FL 33166.

Date Revoked: November 10, 2001.

Reason: Failed to maintain a valid bond.

License Number: 16400N.

Name: North American (U.K.) Limited.

Address: 7–8 Borrowdale Rd., Wokingham, Berkshire RG41 5UX, United Kingdom.

Date Revoked: November 4, 2001.

Reason: Failed to maintain a valid bond.

License Number: 3927F.

Name: S & K 2000, Inc.

Address: One Madison Street, Rutherford, NJ 07073.

Date Revoked: November 11, 2001.

Reason: Failed to maintain a valid bond.

License Number: 14356N.

Name: Zoom Logistics Corp. dba Zoom Line.

Address: 17595 Almhurst Rd., Suite #203–8, City of Industry, CA 91748.

Date Revoked: November 15, 2001.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–563 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
4425F ...	Esprit International Shipping Combined Transport, Inc. dba Capital Freight Management, 701 S. Atlantic Blvd., #200, Monterey Park, CA 91754.	September 5, 2001.
3644N ..	Forward Logistics Group, Inc., 1902 Cypress Lake Drive, Suite 200, Orlando, FL 32837	September 30, 2001.
4513F ...	Kevin C. Ahn dba Baytop Container Co., 2800 Plaza Del Amo Blvd., Torrance, CA 90503	September 30, 2001.
16470F	South Beach Maritime Company, 8626 NW 55th Place, Coral Springs, FL 33067	November 6, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–562 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have been filed with the Federal Maritime Commission an application for license as Non–Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Grace Lines,Inc., 1521 Santa Fe Trail, Grand Prairie, TX 75052, Officers: Timothy Stephen Mansfield, Vice President, (Qualifying Individual), Glenda Marie Norman, President.

Hyun Dae Trucking Co., Inc., 3022 S. Western Avenue, Los Angeles, CA 90018, Officer: Hong Rul Kook, President, (Qualifying Individual).

International Services Freight Forwarding Co., 1000 Ponce de Leon Blvd., Suite 212, Coral Gables, FL 33034, Officers: Jose Nunez, Vice President, (Qualifying Individual), Haydee S. Teperman, President.

Jetlink Logistics Bangladesh Ltd., LLC, 2927 41st Avenue, Suite 502D, Long Island City, NY 11101, Officers: Mir A. Rob, President, (Qualifying Individual), Mir N. Haque, Managing Director.

Master Freight Transportes Internacionais Ltd, LLC, 7949 NW 21 Street, Miami, FL 33122, Officer: Oswaldo Santiago De Mesquita, President, (Qualifying Individual).

Seabreeze Logistics Inc., 890 Airport Park Road, Suite 118, Glen Burnie, MD 21061, Officers: Jean Hamilton, President, (Qualifying Individual), Charles Russell, CEO.

United Cargo International, Inc., 1916 NW 82 Avenue, Miami, FL 33126, Officers: Eduardo de Quesada, President, (Qualifying Individual), Michelangelo Lamorte, Vice President.

Unifield Parcel Express dba UPE X, Cargo Building 80, Room 223, Jamaica, NY 11430, Officers: Guido Derlly, President, (Qualifying Individual), Avedik Grigorian, Vice President.

Vankor Logistics Int'l (U.S.A.), Inc., 500 Carson Plaza Dr., Suite #118, Carson, CA 90746, Officers: Eun K. Han, Secretary, (Qualifying Individual).

Chul Heui Choi, President.

Worldtrans Co. dba Worldtrans Container Line, 2300 North Barrington Road, S–400, Hoffman Estates, IL 60195, Officer: Charles B. Ozburn, President, (Qualifying Individual).

Tomcar Investment USA, Inc., 2801 NW 74th Avenue, #170, Miami, FL 33122, Officers: Humberto A. Jimenez, Shipping Manager, (Qualifying Individual), Jose Tomas Duche Pina, Director/President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder, Transportation Intermediary Applicants

American Maritime Services and Supplies, Inc., 1922 Tigertail Blvd, Bldg. #12, Dania, FL 33004, Officer: Alberto Pacchioni, President, (Qualifying Individual).

Dolphin Shipping dba Dolphin USA, 5150 E. Pacific Coast Highway, 2nd Fl., Long Beach, CA 90804, Hans J. Dolnitzki, Sole Proprietor.

FMS Logistics, Ltd., 44190 Mercure Circle, Suite 195, Dulles, VA 20166, Officers: Gerard Trampler, Director, (Qualifying Individual), Michael Moore, President.

KCTC International (America), Inc., dba World Bridge Line, 11099 S. La Cienega Blvd., #153, Los Angeles, CA 90045, Officer: Byung Do Moon, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Rose Air, Inc., 181 Hudson Street, 2F, New York, NY 10013, Officers: Luis Garcia, Traffic Coordinator, (Qualifying Individual), Neal Rosenberg, President.

Dated: January 4, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–561 Filed 1–8–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for prevention grants under the Adolescent Family Life (AFL) Demonstration Projects Program, as authorized by Title XX of the Public Health Service Act. These grants are for community-based and community-supported demonstration projects to find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexuality and decision-making skills. Faith-based organizations are eligible to apply for these demonstration grants. These Title XX grants should clearly and consistently focus on promoting abstinence as the most effective way of preventing unintended pregnancy and sexually transmitted infections (STIs), including HIV. All adolescents under age 19 are eligible for services. Funds will be available for approximately 35 projects, which may be located in any State, the District of Columbia, and United States territories, commonwealths and possessions.

DATES: The closing date for this grant announcement is March 11, 2002. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5 pm on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following INTERNET address: *http://opa.osophs.dhhs.gov*. If you do not have access to the INTERNET, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.*

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004. OAPP staff members are available to answer questions and provide limited technical assistance in the preparation of grant applications. Questions may also be sent to OAPP staff via e-mail at *opa@osophs.dhhs.gov*. If contacting the OAPP by e-mail, please place the phrase "AFL Prevention Question" in the subject heading.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families (Catalog of Federal Domestic Assistance Number 93.995).

Under this program announcement, OAPP intends to make available approximately $6.5 million to support an estimated 35 new PREVENTION demonstration projects only. The awards will range from $150,000 to $250,000.

Please note, in Fiscal Year (FY) 1999, OAPP issued a similar Request for Applications (RFA) announcing approximately $3 million for new abstinence education prevention demonstration projects. In response to that FRA, OAPP received 142 grant applications and was able to fund only 17 new projects.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

Applications are encouraged from organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under the heading entitled "PREVENTION SERVICES."

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0198.

Technical Assistance

The OAPP has scheduled a series of technical assistance workshops to help prospective applicants. At each of the one-day workshops, the public will be able to learn more about the purposes and requirements of the Title XX program, how to apply for funds under this program announcement, program

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eligibility requirements, the application selection process, and considerations that might help to improve the quality of grant applications. These workshops are offered at no cost. However, all participants must preregister using the form at *http://opa.osophs.dhhs.gov* or you may obtain a registration form from the OAPP at (301) 594–4004. Written requests for registration forms may be faxed to (301) 594–5981. The address of workshop locations and logistical information will be faxed or e-mailed back to you upon receipt of your registration.

Workshop Dates and Locations: January 22, 2002—Omaha, NE; January 23, 2002—Billings, MT; January 24, 2002—Seattle, WA; January 25, 2002—Las Vegas, NV; January 28, 2002—Charleston, SC; January 29, 2002—Dallas, TX; January 29, 2002—Indianapolis, IN; January 30, 2002—Providence, RI; January 31, 2002—Newark, NJ; and February 1, 2002—Dulles, VA.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the statutory requirements are considered for grant awards.

Youth Development or Developmental Assets Approach

Holistic approaches to preventing teen pregnancy are often termed "youth development" or "developmental assets." It has been documented that successful holistic projects are those where adolescents themselves are an integral part of the design, implementation, and evaluation phases over the life of the project. Adolescents need to see hope for a future, acquire the skills necessary to turn hopes into reality, and be provided with an array of opportunities to get them to that reality.

The OAPP encourages applicants to take a holistic approach that addresses the societal disparities that contribute adolescent pregnancy, such as unequal access to enrichment programs, job opportunities, support groups, etc. In addition, the OAPP encourages applicants to provide opportunities for improving the adolescents' sense of self through cultural understanding, sports and recreation, visual and performing arts, and other activities that build an adolescent's sense of self-worth and self-efficacy, as long as these activities contain an educational component. All services provided by AFL grantees, however, including all activities that are part of a holistic approach, must be within the scope of the Title XX prevention services listed below and must not be inconsistent with "abstinence education" as defined in the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub. L. No. 104–193.

Prevention Services

Under this announcement, funds are available for abstinence education PREVENTION projects only. Community-based, community-supported, faith-based and school-based applicants are encouraged to apply. The project site must be identified in the application rather than selected after the grant is awarded.

Under the Title XX statute, the primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active in order to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection with STIs, including HIV. Accordingly, applicants must clearly and consistently focus on abstinence as the most effective way of preventing unintended pregnancy and STIs and must provide services that help pre-adolescents and adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support abstinence from sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the most effective choice and is what the project recommends.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services. OAPP encourages the submission of applications which focus on educational services relating to family life and which teach the social, psychological and health gains to be realized by abstaining from sexual activity. The legislation also permits a proposal to include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; and

(6) Nutrition information and counseling.

In addition to the Title XX statutory requirements, programs must not be inconsistent with abstinence education as defined in the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub. L. No. 104–193. Accordingly, under this announcement the term "abstinence education" means an educational or motivational program which:

A. Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

C. Teaches that abstinence from sexual activity is the only certain way to avid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

D. Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

G. Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Faith-based and community-based organizations are eligible to apply for AFL grants. Please note, however, that no funds provided through the AFL program may be expended for sectarian instruction, worship, prayer, or proselytization. If a religious organization offers such activities, they shall be voluntary for the individuals receiving services and offered separately from the program funded under the AFL program. An AFL program cannot discriminate in providing program services to an individual on the basis of religion, a religious belief, or refusal to hold a religious belief.

The grantee shall submit all curricula and educational materials for use in the AFL project, whether currently available or to be developed, to OAPP for review and approval prior to use in the AFL project, to ensure that these materials are medically accurate, do not violate the restrictions on sectarian activities, and comply with the statutory prohibition on advocating, promoting, encouraging or providing abortions.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at lease one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. Waivers of the five percent limit on evaluation may be granted by OAPP in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)). As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. *All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes.*

The OAPP encourages applications to include a proposed goal(s) statement and related outcome objectives. A goal is a general statement of what the project hopes to accomplish. It should reflect the long-term desired impact of the project on the target group(s) as well as reflect the program goals contained in this program announcement. An outcome objective is a statement which defines a measurable result the project expects to accomplish. Outcome objectives should be described in terms that measure the results the project will bring about (*e.g.*, decrease in premarital sexual activity among the treatment group, increase in intent to remain abstinent among the treatment group). Good applications should contain a few outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

Specific: An objective should specify one major result directly related to the program goal, state who is going to be doing what, to whom, by how much, and in what time-frame. It should specify what will be accomplished and how the accomplishment will be measured.

Measurable: An objective should be able to describe in realistic terms the expected results and specify how such results will be measured.

Achievable: The accomplishment specified in the objective should be achievable within the proposed time line and as a direct result of program activities.

Realistic: The objective should be reasonable in nature. The specified outcomes, expected results, should be described in realistic terms.

Time-framed: An outcome objective should specify a target date or time for its accomplishments. It should state who is going to be doing what, by when, etc. The Public Management Institute, *How to Get Grants* (1981).

Section 2006(b)(2) of Title XX requires that the evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the program goals and objectives of the intervention, identification of the variables to be measured, a clear and organized timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis strategies. Additionally, it is important to establish this collaborative relationship between the applicant organization and the proposed evaluator when preparing the application to ensure that the project's proposed goals and objectives and the evaluation are consistent with each other. The proposed evaluator should be included in the program planning meetings to ensure that there is uniformity in the intended outcomes of the program.

Application Requirements

Applications must be submitted on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative should not be longer than 50 double-spaced pages.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant. An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

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Application Assessment and Evaluation Criteria

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The applicant's provision of a clear statement of mission, goals, measurable (outcome) objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable, and clear statements of expected results. (25 points)

(2) The capacity of the applicant to implement the program, including personnel and other resources, and the applicant's experience and expertise in providing programs for adolescents. (15 points)

(3) The population the project proposes to serve, including ethnic composition, number of adolescent and pre-adolescent clients, family members and community members. [Healthy People 2010 is a set of health objectives for the Nation to achieve over the first decade of the new century. The two goals of Healthy People 2010 are to increase quality of years of healthy life and to eliminate health disparities. In evaluating this criterion, priority will be given to programs which serve minority populations in order to eliminate health disparities.] (15 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods, and reflecting a practical and technically sound approach to assessing the project's achievement of program objectives. (15 points)

(5) The applicant's presentation of the need for the project, including the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents within this geographic area. (10 points)

(6) The applicant's presentation of an organizational model for service delivery with appropriate design, consistent with the requirements of Title XX. (10 points)

(7) The community commitment to and involvement in planning and implementation of the project, as demonstrated by letters of commitment and willingness to participate in the project's implementation, acceptance of referrals, etc. (10 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which applications recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and other factors including:

(1) Recommendations and scores submitted by the review panels;

(2) The geographic area to be served, particularly the needs of rural areas;

(3) The reasonableness of the estimated cost of the project based on factors such as the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents in this geographic area; and

(4) The usefulness for policymakers and service providers of the proposed project and its potential for replication.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: January 4, 2002.

Mireille B. Kanda,

Acting Director, Office of Population Affairs.

[FR Doc. 02–517 Filed 1–8–02; 8:45 am]

BILLING CODE 4150–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

AGENCY: Office of Public Health and Science, Office for Human Research Protections, DHHS.

ACTION: Notice of January 28–29, 2002 Meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee (NHRPAC).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on January 28–29, 2002. The meeting will convene EST from 8:30 a.m. to its recess at approximately 5:30 p.m. on January 28 and resume at 8:30 a.m. to 5:00 p.m. on January 29.

ADDRESSES: Hyatt Regency Bethesda Hotel, One Bethesda Metro, Bethesda, MD, (301) 657–1234.

FOR FURTHER INFORMATION CONTACT: Ms. Kate-Louise Gottfried, Executive Director, National Human Research Protections Advisory Committee, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 435–4917. The electronic mail address is: *kogottfried@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000, to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Information about NHRPAC, and the draft agenda for the Committee's January 2002 meeting, will be posted on the NHRPAC website at: http://ohrp.osophs.dhhs.gov/nhrpac/nhrpac.htm.

Dated: January 4, 2002.

Greg Koski,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 02–516 Filed 1–8–02; 8:45 am]

BILLING CODE 4150–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0563]

Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License Nos. 1030, 1031, 1032, and 1033

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) issued to Beauregard Plasma, Inc.; Jackson Plasma, Inc.; Baton Rouge Plasma, Inc.; and Claiborne Plasma, Inc., respectively, for the manufacture of Source Plasma. The proposed revocations are based on the fact that authorized FDA employees have been unable to gain access to these establishments' locations for the purpose of carrying out required inspections of the facilities, which are no longer in operation, and manufacturing of products has been discontinued to an extent that meaningful inspections cannot be made.

DATES: The establishments may submit written or electronic requests for a hearing by February 8, 2002, and any data and information justifying a hearing by March 11, 2002. Other interested persons may submit written or electronic comments on the proposed revocations by March 11, 2002.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocations to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the biologics license (U.S. License No. 1030) issued to Beauregard Plasma, Inc., P.O. Box 96, Hwy. 27, DeQuincy, LA 70633; the biologics license (U.S. License No. 1031) issued to Jackson Plasma, Inc., P.O. Box 788, Hwy. 68, Jackson, LA 70748; the biologics license (U.S. License No. 1032) issued to Baton Rouge Plasma, Inc., P.O. Box 174, Hwy. 74, St. Gabriel, LA 70776; and the biologics license (U.S. License No. 1033) issued to Claiborne Plasma, Inc., Route 2, Box 75, Homer, LA 71040, for the manufacture of Source Plasma. FDA is initiating proceedings to revoke the licenses because authorized FDA employees have been unable to gain access to any of the establishments for the purpose of carrying out required inspections of the facilities, and manufacturing of products has been discontinued to an extent that meaningful inspections cannot be made.

In a certified return-receipt letter dated May 11, 2001, FDA notified the authorized official of the establishments that attempts to conduct inspections of the establishments were unsuccessful because the establishments were apparently no longer in operation, and the manufacture of Source Plasma had been discontinued. The letter advised the authorized official that, under 21 CFR 601.5(b)(1)(i) and (b)(1)(ii) (formerly codified as 21 CFR 601.5(b)(1) and (b)(2)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection under 21 CFR 600.21 or that manufacturing of a product has been discontinued to an extent that a meaningful inspection cannot be made, the Commissioner of Food and Drugs (the Commissioner) shall institute proceedings for license revocation. In the same letter, FDA notified the establishments of FDA's intent to revoke U.S. License Nos. 1030, 1031, 1032, and 1033 and its intent to offer an opportunity for a hearing.

Because FDA has notified the establishments of the proposed license revocations and has received no response from the establishments, FDA is proceeding under 21 CFR 12.21(b) and publishing an opportunity for a hearing on a proposal to revoke the licenses.

FDA has placed a copy of the May 11, 2001, letter to the establishments on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. The document is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Beauregard Plasma, Inc.; Jackson Plasma, Inc.; Baton Rouge Plasma, Inc.; and Claiborne Plasma, Inc., may submit a written or electronic request for a hearing to the Dockets Management Branch by February 8, 2002, and any data and information justifying a hearing must be submitted by March 11, 2002. Other interested persons may submit written or electronic comments on the proposed license revocations to the Dockets Management Branch by March 11, 2002. The failure of the licensees to file timely written requests for hearings constitutes an election by the licensees not to avail themselves of the opportunity for a hearing concerning the proposed license revocations.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must be set forth a genuine and substantial issue of fact. If the Commissioner determines upon review of any objections or requests for a hearing that a hearing is not justified, in whole or in part, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner will deny the hearing request, with an explanation for the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. or 4 p.m. Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: December 27, 2001.

Mark Elengold,

Deputy Director for Operations, Center for Biologics Evaluation and Research.

[FR Doc. 02–483 Filed 1–8–02; 8:45 am]

BILLING CODE 4160–02–S

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0583]

Food Security Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two guidance documents related to food security entitled "Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance" and "Importers and Filers: Food Security Preventive Measures Guidance." "Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance" is designed as an aid to operators of food establishments (i.e., firms that produce, process, store, repack, relabel, distribute, or transport food or food ingredients, or that prepare or distribute food at retail). It identifies the kinds of preventive measures that they can take to minimize the risk that food under their control will be subject to tampering or criminal or terrorist actions. "Importers and Filers: Food Security Preventive Measures Guidance" is designed as an aid to operators of food importing establishments, storage warehouses, and filers. It identifies the kinds of preventive measures that they can take to minimize the risk that food under their control will be subject to tampering or criminal or terrorist actions.

DATES: Submit written or electronic comments by March 11, 2002 to ensure their adequate consideration in the preparation of revised guidance, if warranted. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance" or "Importers and Filers: Food Security Preventive Measures Guidance" to John Kvenberg, Office of Field Programs (HFS–600), Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the guidance documents to Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Office of Field Programs (HFS–600), CFSAN, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–205–4187, e-mail:jkvenberg@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of food establishments, food importing establishments, and filers are encouraged to review their current procedures and controls in light of the potential for tampering or criminal or terrorist actions and make appropriate improvements. "Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance" aids operators of food establishments (i.e., firms that produce, process, store, repack, relabel, distribute, or transport food or food ingredients, or that prepare or distribute food at retail). It is relevant to all sectors of the food system (i.e., from farm-to-table), including farms, aquaculture facilities, fishing vessels, producers, transportation operations, processing facilities, packing facilities, warehouses, retail, and food-service establishments. "Importers and Filers: Food Security Preventive Measures Guidance" aids operators of food importing establishments, storage warehouses, and filers. Both guidance documents identify the kinds of preventive measures that operators can take to minimize the risk that food under their control will be subject to tampering or to criminal or terrorist actions. They take the operator through each segment of the farm-to-table system that is within their control, in order to minimize the risk of tampering or of criminal or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

The two guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (GGPs) (21 CFR 10.115). The agency is soliciting public comment, but is implementing these two guidance documents immediately in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed. FDA believes it is critical to our national interest and the public health to make guidance on food security available to the food industry quickly. Thus, the agency has determined that prior public participation is not feasible or appropriate.

FDA is also interested in comments on whether the guidance documents "Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance" and "Importers and Filers: Food Security Preventive Measures Guidance" should be revised to include the following additional preventive measures:

- The use of tamper-evident packaging. FDA is particularly interested in information on: the utility of the various methods of tamper-evident packaging in minimizing the risk that foods so packaged will be subject to tampering or criminal or terrorist actions; and, the practicality of applying tamper-evident packaging to the broad spectrum of foods presently in commerce;
- The use of procedures and/or records that enable shipments of food from a food establishment or food importing establishment to be traced to shipments of food received by the food establishment or food importing establishment and vise versa. FDA is particularly interested in information on the types of procedures and/or records that are both practical and effective in facilitating trace-back of incoming shipments, trace-forward of outgoing shipments, and linkages between the two.

These guidance documents represent the agency's current thinking on appropriate measures that can be taken by operators of food establishments, food importing establishments, storage warehouses, and filers to minimize the risk of food being subjected to tampering or criminal or terrorist actions. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the guidance documents at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these guidance documents also are available on the Internet at http://www.cfsan.fda.gov/~dms/guidance.html. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

Dated: January 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–542 Filed 1–4–02; 4:12 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0044]

Small Entity Compliance Guide: "Structure/Function Claims;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of January 6, 2000 (65 FR 1000), entitled "Regulations on Statements Made for Dietary Supplements Concerning the Effect on the Structure or Function of the Body." This SECG is intended to set forth the requirements of that final rule in plain language and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of the SECG to the Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605, FAX 202–205–4594.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 2000 (65 FR 1000), FDA issued a final rule defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body. The regulation also established criteria for determining when a statement about a dietary supplement is a claim to diagnose, cure, mitigate, treat, or prevent disease. The final rule clarified the types of claims that may be made for dietary supplements without prior review by FDA and the types of claims that require prior authorization as health claims or prior approval as drug claims. This final rule became effective February 7, 2000.

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602). The agency determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of this regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

I. Comments

Interested persons may, at any time, submit written or electronic comments on the SECG entitled "Structure/Function Claims; Small Entity Compliance Guide" to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the SECG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. Electronic Access

Copies of the SECG may also be viewed on a personal computer with access to the Internet. The Center for Food Safety and Applied Nutrition's home page includes the SECG, which can be found at http://www.cfsan.fda.gov/dms/guidance.html.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–451 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 7–8, 2002.

Open: February 7, 2002, 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 7, 2002, 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive,

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Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov.*

Information is also available on the Institutes's/Center's homepage: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 2, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–476 Filed 1–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SLEEP AND SLEEP DISORDERS IN CHILDREN.

Date: February 20, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–477 Filed 1–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Draft Environmental Impact Statement on Double-Crested Cormorant Management

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces the rescheduling of two of the public meetings associated with the comment period for a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS has been prepared under the authority of the National Environmental Policy Act and the Migratory Bird Treaty Act and analyzes the potential environmental impacts of several management alternatives to address conflicts associated with double-crested cormorants. This notice identifies the locations, dates, and times of public meetings and identifies the Service official to whom comments may be directed.

DATES: Written comments regarding the DEIS should be submitted by February 28, 2002, to the address below. Dates and times for ten public meetings are listed in the table under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203. Written comments on the DEIS can be sent by the following two methods:

(1) By mail to the above address; or

(2) by email to: cormorant_eis@fws.gov.

Please include your name and mailing address in all comments submitted; anonymous comments will not be considered. The public meetings will be held at the locations listed in the table under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On December 19, 2001, we published a notice of meetings in the **Federal Register** announcing ten public meetings associated with the comment period for a DEIS on double-crested cormorant management. Because of a conflict with the previously-scheduled meeting dates and the World Aquaculture Association annual meeting, we are rescheduling the Little Rock, Arkansas, and Jackson, Mississippi, meetings. These are listed in the table below.

Date	City	Location	Time
January 7, 2002	Green Bay, Wisconsin	Ramada Plaza Hotel 2750 Ramada Way	7:00 PM
January 8, 2002	Mackinaw City, Michigan	Hamilton Inn Select 701 S. Huron Avenue	7:00 PM
January 16, 2002 ..	Washington, DC	Main Interior Building Auditorium 1849 C Street, NW.	10:00 AM
February 4, 2001 ..	Athens, Texas	Texas Freshwater Fisheries Center 5550 Flat Creek Road (Farm Road 2495).	7:00 PM
February 5, 2002 ..	Jackson, Mississippi	Clarion Hotel and Convention Center 400 Greymont Avenue.	6:00 PM
February 6, 2002 ..	Little Rock, Arkansas	University of Arkansas Division of Agriculture Cooperative Extension Service 2301 S. University Avenue.	6:00 PM
February 11, 2002	South Burlington, Vermont	Clarion Hotel 1117 Williston Road	7:00 PM
February 12, 2002	Watertown, New York	Dulles State Office Building 317 Washington Street	7:00 PM
February 13, 2002	Syracuse, New York	Sheraton University Hotel 801 University Avenue	7:00 PM
February 19, 2002	Portland, Oregon	Doubletree Hotel—Lloyd Center 1000 NE Multnomah.	7:00 PM

Dated: December 26, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish & Wildlife Service.

[FR Doc. 02–531 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information under 30 CFR part 842 which allows the collection and processing of citizen complaints and requests for inspection.

DATES: Comments on the proposed information collection must be received by March 11, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in 30 CFR Part 842, Federal inspections and monitoring. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Federal inspections and monitoring—30 CFR part 842.

OMB Control Number: 1029–0118.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation that may exist at a surface coal mining operation. The information will be used to investigate potential violations of the Act or applicable State regulations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Citizens, State governments.

Total Annual Responses: 126.

Total Annual Burden Hours: 95 hours.

Dated: December 12, 2001.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–480 Filed 1–8–02; 8:45 am]

BILLING CODE 4310–05–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States. Advisory Committee on Rules of Evidence.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Evidence, scheduled for January 23, 2002, in Washington, DC, has been canceled. [Original notice of hearing appeared in the **Federal Register** of August 29, 2001.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 3, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–478 Filed 1–8–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: January 23, 2002.

TIME: 8:30 a.m to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 3, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–479 Filed 1–8–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No.—2178–01]

Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service Airport and Seaport Inspections User Fee Federal Advisory Committee.

Date and time: Wednesday, February 6, 2002, at 1 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. Twenty-third meeting of this Advisory Committee.

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Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Advisory Committee focuses its attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, NW., Washington, DC 20536; telephone: (202) 616–7498; fax: (202) 514–8345; E-mail: *charles.d.montgomery@usdoj.gov*.

Dated: December 28, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–508 Filed 1–8–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Availability of Funds and Solicitation for Grant Applications (SGA) for the Purpose of Training Child Care Providers

AGENCY: Employment and Training Administration, Department of Labor.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, invites proposals for up to ten (10) awards. These awards will be for the implementation of the Quality Child Care Initiative. It will assist with the initiation of building a national system for the education and training of professional child care providers and expand the National Apprenticeship System by incorporating diversification of occupational entities through development of new and innovative strategies for increasing the participation among the child care industry.

DATES: Applications will be accepted commencing January 9, 2002. The closing date for receipt of applications is March 11, 2002, at 4 P.M., (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie D. Williams, Reference: SGA/DFA 02–103, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D. Williams, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879. This is not a toll-free number. All inquiries should include the SGA number (SGA/DFA 02–103) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at *http://www.doleta.gov*. Award notifications will also be published on this Homepage.

Quality Child Care Initiative Solicitation

Part I. Purpose

To invite proposals for providing a credentialed career path for development of professional child care provider through the utilization of the National Registered Apprenticeship System; which will reduce turnover, increase wages for providers, provide a more stable environment for children and lower the concern of parents.

Part II. Background

The Child Care Industry is in trouble. A 1989 study by the national Center of Early Childhood Workforce found that the quality of services provided by most day care centers was rated as Abarely adequate," and a more recent four-State study by the University of Colorado at Denver found that only 14 percent of child care centers were rated as good quality. In addition, child care workers are faced with relatively low wages, inadequate benefit coverage, and high job turnover.

On October 23, 1997, former President and Mrs. Clinton hosted the White House Conference on child care—to focus the Nation's attention on the importance of addressing the need for safe affordable, available, quality child care. Integral to providing the "right" care is the quality of the child care worker.

Quality child care service goes hand in glove with having an adequate supply of competent, professional child care providers. This requires enhanced training opportunities and a redefinition of the basic concept of what constitutes a child care provider. A national focus on accreditation demands that practitioners have access to education and training that will promote professional development. As the field of early care and education becomes established as a profession, practitioners are required to master basic knowledge, skills and core competencies of early childhood development. As professionals, practitioners must develop practical knowledge that will enable them to apply new approaches and strategies for working effectively with young children.

Part III. Statement of Work

As our society continues to evolve and demands are placed on parents to secure full time job/careers, the need for safe, affordable, available, quality child care has been brought to the forefront. Utilization of the National Apprenticeship System can provide needed training for early care and education practitioners. High quality training has the potential to change the culture of the child care industry from one dominated by low pay and high turnover to one of respected professional service. No longer would child care be equated to baby-sitting.

The apprenticeship model validates the integral part that child care plays in the economy, as working families rely on dependable, accessible care for their children. As families move from welfare to work, additional sources of training child care providers are in demand.

Note: All successful applicants are expected to provide information relative to the projected number of participants (i.e., employers, apprentices and the diverse make-up of the participants) in order to assist the grantor in determining the amount of awards to be given.

The major tasks of this project will be, but not limited, to the following:

- System and capacity building by incorporating in a collaborative spirit organizations, agencies, employers, associations and higher education to develop a vision for implementation of an individual statewide sustainable infrastructure built upon successful registered apprenticeship and best practice models;
- From the above activity, establishment of an oversight body to provide direction and guidance to the vision, utilizing the services of an Apprenticeship and Training Representative;
- Utilization of an established curriculum or development of a curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult education teaching approach that is effective for adult learners;
- Adoption of or establishment of a train-the-trainer system that will ensure the availability of knowledge, experienced, skilled instructors for the related instruction course work;
- Development of a process to promote career lattice for those graduates of the registered apprenticeship system (i.e., articulation into an Associates Degree or higher);
- Ensuring the inclusion of those with other nationally recognized credentials such as the Child Development Associate (CDA) through previous credit for documented prior experience;
- Demonstration of in-kind support from institutions involved in the process (i.e., time spent to facilitate and foster the process and/or free facilities to conduct related instruction);

- Development and implementation of a strategy or strategies to ensure inclusion of practitioners representing diversity of culture, ethnicity, gender and ability;
- Development of policies, procedures and formulas to ensure the consistency and integrity of system implementation and beyond. The system will be sustainable and ownership established, if the process is followed throughout the state;

Part IV. Eligible Applicants

Eligible Applicants: Those eligible to apply are as follows: States that have a State Apprenticeship Agency (SAA) , State Agencies designated by the Governor, Governor's Early Childhood Initiative, other State Agencies with responsibility for child care regulations or funding. Only one proposal will be accepted per State and for States without a SAA a letter from the Governor designating the agency must accompany the proposal. Those States who received Child Care Initiative awards in Round 1 (1999) and Round 2 (2000), are not eligible to compete for this procurement action.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement prodedures must require thall all procurement transaction must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Note: Administrative Costs: Pursuant to 20 CFR 667.210(b), grantees are advised that there is a 10% limitation on administrative costs on funds administered under this grant. The Grant Officer may, however, approve additional administrative costs up to a maximum of 15% of the total award amount, if adequate justification is provided by the grantee at the time of the award. In no event, may administrative costs exceed 15% of the total award amount. The cost of administration shall include those disciplines enumerated in 20CFR 667.220(b) and (c).

Part V. Application Process

Application Submittal. Applicants must submit one (1) copy of their proposal with an A. original signature and two (2) additional copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains the Standard Form (SF) 424, "Application for Federal Assistance," (Appendix A) and "Budget Information Sheet," (Appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance number is 17.262. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this section. Applicants must describe their plan in light of each of the Evaluation Criteria. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on single-sided numbered pages with the exception of the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages. Note: The Executive Summary is not included in the 30 page limitation. A font size of at least twelve (12) pitch is required throughout on 8.5 × 11 inch paper with 1-inch margins. This includes any attachments. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits. Applications that fail to meet the page limitation requirement will not be considered.

Part VI. Late Applications.

Any application received after the exact date and time specified for receipt at the office designed in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and federal holidays. The term ""post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression)

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that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Part VII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, Hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date at the specified address. TELEGRAPHED AND/FAXED APPLICATIONS WILL NOT BE HONORED. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and MUST BE RECEIVED by the above specified date and time.

Part VIII. Funding Availability and Period of Performance

The Department expects to makeup to 10 awards with a maximum total investment for these projects of $3.3 million. Grants will be awarded up to $325,000. The period of performance will be for 18 months from the date the grant is awarded.

Part IX. Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

Evaluation Criteria

A. *System and Capacity Building*—The extent to which the offeror has delineated collaboration strategies to develop a vision and implementation plan for a statewide infrastructure utilizing the registered apprenticeship system of training and forecast of implementation. (25 points)

B. *Sustainability*—Plan for long term viability of the system after this funding ends. (15 points)

C. *Curriculum*—Delineation of utilization or development of curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult educational component for effective adult learners and a forecast of implementation. (15 points)

D. *Career Lattice*—Describe the process for inclusion of participants with documented prior experience linked with substantial increases in compensation and next steps for apprenticeship graduates in the process (awarding of college credit and articulation with higher education). (20 points)

E. *Diversity*—Outline the strategy or strategies developed to ensure inclusion of participants representing diversity of culture, ethnicity, gender and ability (i.e., projected number of employers and apprentices) and a forecast of implementation. (15 points)

F. *Consistency and Integrity*—Delineation of the policies, procedures, and formulas developed to ensure consistency and integrity of the statewide system. (10 points)

The grants will be awarded based on applicant response to the above mentioned criteria and what is otherwise most advantageous to the Department.

Part X. Reporting Requirements

- Attendance to a post award orientation briefing, is tentatively scheduled to take place in Atlanta, Georgia, where BAT will reiterate and delineate the overall desired outcomes of the project;
- Detailed work plan, budget, and schedule within 30 days of grant award;
- Quarterly Status Reports within 30 days of quarters' end;
- Monthly cost vouchers;
- Final report on completed tasks, and specific recommendations for future grants for Child Care Initiatives, no later than 45 days following the end of the grant.

Signed in Washington, DC, this 3rd day of January, 2002.

James W. Stockton,

Grant Officer.

Appendix A: (SF) 424—Application Form

Appendix B: Budget Information Form

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable
Authorized for Local Reproduction

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	*(B)*	*(C)*
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	*(B)*	*(C)*
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

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INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–495 Filed 1–8–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, Sections 127 and 167 Migrant and Seasonal Farmworker Youth Program

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker (MSFW) Youth Program under the Workforce Investment Act (WIA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (the Department), Employment and Training Administration (ETA), announces the availability of funds as authorized in section 127(b)(1)(A)(iii) of the Workforce Investment Act, to provide MSFW youth workforce investment activities.

It is anticipated that up to $10,000,000 will be available for the grant year (commencing April 1, 2002) for funding up to 15 projects covered by this Solicitation. It is the Department's intent to fund grants in the 12 agricultural geographic areas of the United States. Grantees will be selected for a two-year designation period. The Department intends to provide non-competitive funding for the succeeding one-year period for grantees that perform satisfactorily during the first year, subject to availability of federal funds.

DATES: Applications will be accepted commencing on the date of publication. The closing date for receipt of applications under this announcement is February 15, 2002, at 4:00 p.m. Eastern Standard Time (EST). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications shall be mailed or hand-carried to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mrs. Serena Boyd, SGA/DFA 02–104, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to (202) 693–2879 (this is not a toll-free number) to the attention of Mrs. Serena Boyd. All inquiries should include the SGA number 02–104, and a contact name, fax, and telephone numbers. This Solicitation is also being published on the Internet at ETA's homepage at *http://www.doleta.gov*. Award notifications will also be published on the ETA homepage.

Part I. General Information

A. Background

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk MSFW youth that lead to academic success, economic stability and development into productive members of society.

The MSFW Youth program is described at 20 CFR 669.600 through 669.680. It is designed:

(1) to strengthen the ability of eligible farmworker youth to obtain or retain unsubsidized employment, or

(2) to stabilize their unsubsidized employment by providing related assistance, integrated and coordinated with other appropriate services.

B. MSFW Youth Participant Eligibility

Eligible participants must be 14 to 21 years of age, and a farmworker or a dependent of farmworker parent(s) (or guardian(s)) as defined in section 167(h) of the Workforce Investment Act and at 20 CFR part 669.

Eligible farmworkers are those economically disadvantaged persons who, for 12 consecutive months out of the 24 months preceding their application for services, have been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment. Complete eligibility requirements will be provided upon request.

C. Eligible Entities

To be eligible for receipt of funds under this program, an organization must have:

(1) Documented experience in providing services to migrant and seasonal farmworker youth;

(2) a working familiarity with the geographic area to be served and be able to show its ability to work within the existing service environment;

(3) the capacity to administer the program of activities and services proposed for MSFW youth; and

(4) the appropriate legal status to enter into a grant agreement with the U.S. Department of Labor (e.g. a private non-profit corporation or a unit of State or local government).

D. Consultation With Governors and Local Boards

Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA section 167(e) concerning consultation with Governors and Local Boards. To strengthen the implementation of Executive Order No. 12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of applications;

2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;

3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and

4. The Department will implement that decision within 10 days after it has notified the SPOC.

E. Grant Duration and Period of Performance

The Department anticipates that grants will be funded for two one-year time periods—with funding in the second year contingent on satisfactory performance during the first year and the availability of funding in the second year. The period of performance for the first year is expected to commence April 1, 2002.

Part II. Application Process and Guidelines

A. Submission of the Grant Application Package

Applicants must submit an original and three (3) copies of the complete application package for review.

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Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Standard Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received by the specified time and closing date. Telegraphed, faxed and e-mailed proposals will not be honored. Applications that do not adhere to the above instructions will not be honored.

B. Late Applications

Any applications received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring a receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal will be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been applied or affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applications should request the postal clerk to place a legible hand cancellation "bulls eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next Day Service-Post Office to Addressee" is the date entered by the post office receiving clerk on the Express Mail Next Day Service-Post Office to Addressee label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

C. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before the award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and representative signs a receipt for the proposal.

D. Grant Application Package

The grant application package must consist of:

(1) A Standard Form 424 (Application for Federal Assistance) found in OMB Circular A–102 and as an attachment to this Solicitation.

(2) A Standard Form 424A (Budget) found in OMB Circular A–102 and as an attachment to this Solicitation. Costs in section B (Budget Categories), Item 6 (Object Cost Categories) should be budgeted by Administrative, Program, and Total. Administrative costs are to be included in column (1), program costs in column (2), and the total cost in column (5) of Form 424A. Budgets are required only for the first year of the two-year plan and designation period. Administrative costs are limited to 15 percent of the total grant award.

(3) A certification, prepared within the last six months prior to the submission of this application, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The required certification must be obtained as follows:

a. For incorporated organizations, from a Certified Public Accountant.

b. For public agencies, by its Chief Fiscal Officer.

(4) A statement describing the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(5) A copy of the current indirect cost rate agreement issued by the cognizant federal agency, if applicable.

(6) The completed grant application as described below.

E. Format of the Grant Application

The grant application is limited to 50 numbered pages, double-spaced, using type no smaller than 11 point. The page number limitation does not include letters of support or the required attachments. Proposals may be fastened using a binder clip. Please do not use 3-ring binders, or otherwise bind your proposal package. To ensure full consideration, the application must follow the numerical sequence of the sections 1 through 5 as presented in II E of this solicitation immediately below. The application must include a table of contents. To ensure your application is considered fully, be sure to respond completely to each section. All attachments should be included at the end under a section 6 heading.

F. Contents of the Grant Application

Specific Rating Criteria for section 1 [15 points]—This factor rates the applicant's understanding of the proposed service area and its experience within the service environment described. Ratings will be based on factors such as the reasonableness of matching the proposed service area to the scope of the program and the amount of funds sought and the applicant's ability to work within the service environment, as evidenced by the existence of appropriate and documented linkages—especially those related to other MSFW program activities.

Section 1—Knowledge of the Area To Be Served and Capacity To Operate Within the Existing Service Environment

(A) Geography:

(1) Identify the geographic boundary of the proposed service area (or areas). An explanation should be provided, wherever there are service areas that are not contiguous. Include a map.

(2) Describe your organization's capacity to operate in the proposed service area.

(B) Community Resources:

(1) Describe the communities where migrant and seasonal farmworker youth, who would be served by the proposed project, reside and where they travel for work purposes. The description must include a discussion of the educational, social, cultural, workforce, community programs and services and other relevant opportunities available for youth. Be sure to explain how these community services are responding to the needs of MSFW youth.

(2) Describe how your organization works with the community resources described above.

(C) NFJP Relationship: Describe the relationship between the grant applicant and the NFJP grantees operating the area under your proposal. Specifically, where the applicant is not the current NFJP grantee in the proposed service area, describe the arrangements that have been or will be made to coordinate the delivery of services and avoid duplication of services.

(D) One-Stop Coordination: Provide an itemization of Workforce program linkages. Specifically include the name of each entity with whom a linkage has been established, the relationship of each entity to the applicant, the specific service to be provided by the established linkage and an explanation of how the linkage will support the proposed program. Please indicate if documentary evidence of the linkage is provided as an attachment.

Specific Rating Criteria for section 2 [15 points]—This factor rates the applicant's knowledge and understanding of the needs, problems, and demographic characteristics of the target group. Ratings are based on the degree to which the narrative shows how the applicant organization has developed its capacity to understand the MSFW youth population within the proposed service area.

Section 2—The Problems of Migrant and Seasonal Farmworker Youth

Provide a socio-economic analysis of the migrant and seasonal farmworker youth in the area you propose to serve, made as follows:

(A) Describe the demographic and socio-economic characteristics of migrant and seasonal farmworker youth in the service area, and identify the sources (which may include experiences or knowledge developed by your agency) you rely upon;

(B) Describe the needs and problems of farmworker youth you have identified for serving, and show how you have made the identification; and

(C) Describe the farmworker youth that you propose to serve.

Specific Rating Criteria for section 3 [50 points]—Applications will be rated according to how well the proposed program of services is shown to respond to the identified MSFW Youth needs. You must show how your service delivery system will respond by offering services to the MSFW Youth in the area that are appropriate to the needs you have identified for them. Up to 15 points may be earned under part (C).

Section 3—Proposed Program Activities and Services

Noting any differences between the first and second years, provide a detailed description of the proposed program activities:

(A) State two or more goals for the proposed MSFW Youth program.

(B) Provide a detailed description of the proposed program of activities and services. The description must address each of the following program elements:

(1) Core services, including outreach, recruitment and eligibility determination;

(2) Intensive services (Preliminary information from two of the migrant youth demonstration grants is showing there are broad benefits to be gleaned from parental participation in the development of their child's individual service strategy. Include a description of your plans for parental participation);

(3) Training services;

(4) Life skill activities which may include self and interpersonal skills development;

(5) Community service projects;

(6) Small business development, technical assistance and training in conjunction with entrepreneurial training;

(7) Supportive services and other related assistance services, described in 20 CFR 669.430; and

(8) Other proposed activities and services, if any, that conform to the use of funds for youth activities described in 20 CFR part 664.

(C) Provide an analysis that shows how the proposed program of services and activities is responsive to the needs of MSFW Youth described in part (C) of section 2. Provide an explanation how the proposed program will lead to the fulfillment the goals proposed in part (A) of section 3.

Specific Rating Criteria for section 4 [10 points]—Based on the applicant's previous relevant program experience and performance, applicants will be rated according to their relative capacity to provide effectively workforce investment activities for MSFW youth.

Section 4—Capacity To Operate a Workforce Investment Program for MSFW Youth

(A) Provide the published mission or principal goals/objectives of the applicant organization and explain how service to MSFW youth promotes the organization's mission.

(B) Describe the applicant organization's experience providing services to youth, to MSFWs and to MSFW youth.

(C) Describe the programs operated by the applicant organization during the last two years, presented in tabular form. Each entry on the table must include:

(1) Funding source (Name of Agency/Organization, Address, Telephone, and Contact Person);

(2) Program Information (Type of Program, Grant/Contract/Agreement Number, Principle Activities, Period of Performance and Funding Amount);

(3) Customers (Number of participants served, percent of MSFW participant, percent of MSFW youth (age 14–21) served);

(4) Performance standards and outcomes achieved; and

(5) Outcomes achieved specifically for farmworker youth (ages 14–21).

(D) Provide a description of the proposed implementation schedule, which clearly shows exactly when the proposed program will be fully operational.

Specific Rating Criteria for section 5 [10 points]—This factor rates the applicant's managerial experience and the potential for efficient and effective administration of the proposed program and budget.

Section 5—Applicant's Administrative and Management Capability:

(A) Provide a chart depicting the applicant's overall organization structure, including the organizational design of the proposed youth program. The chart must clearly show how the proposed program will be supported by the organizational structure. It must include both staffing patterns and office locations. In addition, the chart must show which parts of the proposed MSFW youth program structure are in place and which parts would be established if the proposal were funded.

(B) Describe the applicant's administrative and program management processes which include the fiscal management systems and the program management systems (including management information system). Program management must describe the applicant's systems for participant tracking, follow-up, program monitoring and oversight, and the provision of training and technical assistance for those individuals who work directly with participants.

(C) Provide a proposed budget and describe in narrative form how the proposed cost categories and amounts were determined. The description should explain and justify the costs budgeted for the first year only. Be sure to include in your description how you believe the budgeted cost supports the proposed program of activities and services and the staffing pattern.

Section 6—Attachments

All attachments referenced in the proposal are to be included under a section 6 heading of your proposal. The first page should itemize the attachments.

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Part III—Review Process of Grant Application Panel Review

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer will give appropriate consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee (20 CFR 669.630). Further, the Grant Officer will make selections that promote a geographic distribution of funds where merited (20 CFR 669.650). The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

Responsibility Review

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review. The responsibility review is an analysis of available information and records to determine if an applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for designation as a grantee without respect to their standing in the competitive process. An applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are required by the WIA regulations at 20 CFR 667.170.

Notification of Non Selection

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

Notification of Selection

Applicants that are selected will be notified in writing by the Grant Officer. Formal designation as a grantee will be contingent on the successful negotiation of a grant agreement for the first year of operation.

Signed at Washington, DC, this 3rd day of January 2002.

Lorraine H. Saunders,

Grant Officer, Office of Grants and Contract, Management, Division of Federal Assistance.

Attachments

1. Appendix A—"Application for Federal Assistance" (Standard Form 424)
2. Appendix B—Budget Information Form

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: ☐ Application ☐ Construction ☐ Non-Construction / ☐ Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

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[FR Doc. 02–494 Filed 1–8–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10762, et al.]

Prohibited Transaction Exemption 2002–01; Grant of Individual Exemptions; Key Trust Company of Ohio, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Key Trust Company of Ohio (Key Trust), Located in Cleveland, OH

[Prohibited Transaction Exemption 2002–01; Exemption Application No. D–10762]

Exemption

I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the making of interest-free loans to a defined contribution plan (the Plan) by its respective sponsor (the Plan Sponsor) pursuant to the terms of a credit facility arrangement (the Credit Facility Arrangement), established by Key Trust and its affiliates (collectively, KeyBank), which enables daily transactions, such as participant investment transfers, distributions or participant loans, in connection with the Plan's unitized employer stock fund (the Unitized Employer Stock Fund or Fund) within KeyBank; and (2) the repayment, by the Plan to the Plan Sponsor, of any interest-free loan within 90 days with cash proceeds received from the sale of employer stock (Employer Stock) held in the Unitized Employer Stock Fund.

II. General Conditions

(a) Each loan made under the Credit Facility Arrangement provides short-term funds to the Plan for a period of no longer than 90 days for the purpose of facilitating Plan participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund.

(b) The maximum amount of short-term funds available to a Plan under the Credit Facility Arrangement, in the aggregate, does not exceed 25 percent of the fair market value of the Plan's Unitized Employer Stock Fund.

(c) Each loan made under the Credit Facility Arrangement is repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund.

(d) For purposes of repaying a loan under the Credit Facility Arrangement, the sales price for the Employer Stock is based upon its fair market value as determined on the New York Stock Exchange (the NYSE) or other applicable securities exchange where such Employer Stock is primarily traded on the date of the transaction, as calculated by an independent pricing service.

(e) Each loan made under the Credit Facility Arrangement is unsecured and no commitment fees, interest or commissions are paid by the Plan.

(f) In the event of a loan default or delinquency, the Plan Sponsor has no recourse against the Plan.

(g) Each loan is initiated, accounted for and administered by KeyBank, the independent fiduciary, which will monitor the terms and conditions of the exemption on behalf of the Plan, at all times.

(h) KeyBank maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (i) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of KeyBank, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than KeyBank, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h).

(i)(1) Except as provided in paragraph (h)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (h) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (i)(1)(B) or (C) shall be authorized to examine the trade secrets of KeyBank or commercial or financial information which is privileged or confidential.

[1] Unless otherwise noted, references to specific sections of the act refer also to the corresponding provisions of the Code.

III. Definitions

For purposes of this exemption,

(a) The term "KeyBank" refers to Key Trust Company of Ohio and its affiliates.

(b) An "affiliate" of KeyBank includes—

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with KeyBank;

(2) Any officer, director, employee, relative or partner in KeyBank; and

(3) Any corporation or partnership of which KeyBank is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "closing price" means the final price at which Employer Stock has traded on the NYSE (or such other exchange on which Employer Stock is primarily traded) on the date of the transaction as may be reported to KeyBank using an independent pricing service for the reporting of final prices.

(e) The term "Employer Stock" refers to common stock issued by a Plan Sponsor, an affiliate of the Plan Sponsor, a former Plan Sponsor, or an affiliate of the former Plan Sponsor.[2]

(f) The term "Plan Sponsor" refers to an employer (or an affiliate of the employer) sponsoring a defined contribution plan which has entered into a Unitized Employer Stock Fund Investment Policy Agreement with KeyBank in order to structure the investment by the Plan's Unitized Employer Stock Fund in Employer Stock.

(g) The term "Unitized Employer Stock Fund" refers to an investment fund established by KeyBank whose assets will consist primarily of shares of Employer Stock.

(h) The "trading day" refers to any day on which KeyBank and the NYSE are open for business and are able to transact trades involving Employer Stock as a Plan investment. The close of trading day will be the time of the close on the NYSE. In the event that either KeyBank or the NYSE (or any other exchange on which the Employer Stock is primarily traded) is incapable of processing trades involving Employer Stock, or in the event trading in Employer Stock is suspended, the close of the trading day will be the last time by which transactions involving Employer Stock are processed on any such day.

(i) The term "drift allowance" refers to the range of percentages, comprised of a maximum and minimum percentage, which is determined and established by the Plan Sponsor as being the proper percentages within which the liquidity component of the Unitized Employer Stock Fund should represent of the entire market value of such Fund on any given day.

(j) The term "liquidity component" means the short-term investment vehicle which is selected by the Plan Sponsor and used to invest any uninvested cash in the Plan's Unitized Employer Stock Fund.

(k) The term "target percentage" means the number, expressed as a percentage, which is determined and established by the Plan Sponsor, as being the proper percentage that the liquidity component of the Unitized Employer Stock Fund will represent of the entire market value of such Fund (including the liquidity component and the Employer Stock). The target percentage will take into consideration factors such as the daily market volume for trading in the Employer Stock and the average daily trading activity of such stock in the Unitized Employer Stock Fund.

(l) The term "transaction valuation date" refers to any day on which KeyBank and the NYSE (or any other national securities exchange on which Employer Stock is primarily traded) are open for business and are able to transact trades.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 7, 2001 at 66 FR 46830.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

The Golden Retirement Savings Program (the Savings Program); and The Golden Comprehensive Security Program (the Security Program), (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption No. 2002–02; Exemption Application Nos. D–10913; D–10914]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 27, 2000, to the past acquisition and holding by the Savings Program of 1,896.294 publicly traded warrants and by the Security Program of 2,073.554 publicly traded warrants (the Warrants) of Golden Books Family Entertainment, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions were or will be met:

(a) The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceeding pursuant to which all holders of the old common stock of the Employer were treated in the same manner;

(b) The Plans had little, if any, ability to affect the negotiation of the Employer's plan of reorganization with respect to the bankruptcy proceeding;

(c) The Warrants were acquired automatically and without any action on the part of the Plans; and

(d) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor did the Plans pay any fees or commissions in connection with the holding of the Warrants.

EFFECTIVE DATE: This exemption is effective as of January 27, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on September 7, 2001 at 66 FR 46839.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Metropolitan Life Insurance Company (MetLife Insurance Company) and Its Affiliates (collectively, MetLife) Located in New York, NY

[Prohibited Transaction Exemption 2002–03; Exemption Application No. D–10954]

Exemption

Section I. Retroactive Exemption for the Acquisition, Holding and Disposition of Metlife, Inc. Common Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code,[3] shall not apply, as of December 7, 2000 until (insert the date the final exemption is published in the **Federal Register**), to

[2] The Department notes that the term "Employer Stock," as defined in this final exemption, may not satisfy the definition of "employer security" contained in section 407(d)(1) of the Act.

[3] For purposes of this exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

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the acquisition, holding and disposition of the common stock of MetLife, Inc. (the MetLife, Inc. Stock), by Index and Model-Driven Funds (collectively, the Funds) that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife, Inc. Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife, Inc. Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed on any particular day the greater of—

(1) 15 percent of the average daily trading volume for the MetLife, Inc. Stock, occurring on the applicable exchange and automated trading system (as described in Section I(c) below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife, Inc. Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of MetLife, Inc. Stock occur (i) either on a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis; (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the Securities Exchange Act of 1934 (the 1934 Act) and thereby subject to regulation by the Securities and Exchange Commission (SEC), or an automated trading system operated by a recognized U.S. securities exchange, which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(d) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than 5 percent of the total amount of MetLife, Inc. Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(f) MetLife, Inc. Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A fiduciary of a plan, which is independent of MetLife, authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock, pursuant to the procedures described herein.

(h) A fiduciary independent of the MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

Section II. Prospective Exemption for the Acquisition, Holding and Disposition of Metlife, Inc. Stock and/or the Common Stock of a Metlife Affiliate

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of MetLife, Inc. Stock and/or common stock issued by a MetLife affiliate (together, the MetLife Stock), by Index and Model-Driven Funds that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) Whenever MetLife Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of MetLife Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized U.S. securities exchange (as defined in Section IV(j) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife appoints a fiduciary which is independent of MetLife to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model pursuant to the restrictions described in Section II(b) above, all aggregate daily purchases of MetLife Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in MetLife Stock not otherwise described above in Section II(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of MetLife Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(g) MetLife Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of MetLife authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the MetLife directs the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Section III. General Conditions

(a) MetLife maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MetLife, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than MetLife shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section III(b)(1) shall be authorized to examine trade secrets of MetLife or commercial or financial information which is considered confidential.

Section IV. Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which MetLife does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of MetLife, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit MetLife or any party in which MetLife may have an interest.

(c) The term "Index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information,

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evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of MetLife; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of MetLife.

(d) The term "opening date" means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term "Buy-up" means an acquisition of MetLife Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term "MetLife" refers to Metropolitan Life Insurance Company, its parent, MetLife, Inc. and their current or future affiliates, as defined below in paragraph (g).

(g) An "affiliate" of MetLife includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(h) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term "automated trading system" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 8c(a)(51)(A) (ii)].

(j) The term "recognized U.S. securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the 1934 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.*, 17 CFR part 240.3b–16).

EFFECTIVE DATE: This exemption is effective from December 7, 2000 until *(insert the date the final exemption is published in the* **Federal Register**) with respect to the transactions described in Section I above, and is effective as of *(insert the date the final exemption is published in the* **Federal Register**) for the transactions described in Section II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 27, 2001 at 66 FR 49400.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Kimball International, Inc. Retirement Plan (the Plan), Located in Jasper, Indiana

[Prohibited Transaction Exemption No. 2002–04; Exemption Application No. D–10949]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of SVB&T Corporation (Springs Valley) to Springs Valley, the Trustee of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) $40 per Share.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on October 23, 2001 at 66 FR 53635.

Written Comments

One written comment was received by the Department, which was submitted by the applicant, Kimball. The comment requested a change to the Notice as described below.

On page 53635 of the Notice, with respect to the operative language describing the transaction, the reference to Springs Valley Bank & Trust should be deleted and, in lieu thereof, SVB&T Corporation (Springs Valley) should be inserted.

The Department concurs in this change submitted by the applicant. Accordingly, after giving full consideration to the entire record, including the comments by the applicant, the Department has determined to grant the exemption as modified. In this regard, the comment submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue. NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Alaska United Food and Commercial Workers Health and Security Trust Fund (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 2002–05; Exemption Application No. L–10896]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase by Plan participants and beneficiaries of prescription drugs from Safeway, Inc. (Safeway), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and its wholly owned subsidiary, SMCrx; (c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving Safeway are unrelated to Safeway or any other party in interest with respect to the Plan; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit Safeway or any other party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 2001 at 66 FR 53637.

EFFECTIVE DATE: This exemption is effective as of August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–549 Filed 1–8–02; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Solicitation for Expressions of Interest in Participation in Design of a State Justice Community Evaluation Instrument

AGENCY: Legal Services Corporation.

ACTION: Solicitation of expressions of interest in participation in design of a State Justice Community Evaluation Instrument

DATE: Submit expressions of interest must be received by January 15, 2002.

SUMMARY: LSC is establishing a Design Team to advise its consultant group on the development and testing of a tool that will effectively evaluate state justice community efforts and outcomes. LSC hereby solicits expressions of interest in appointment to the Design Team from individuals with experience in the provision of civil legal services to low income people and in outcome evaluation protocols.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hanrahan, Special Assistant to the Vice President for Programs, Legal Services Corporation, 750 First St., NE., Tenth Floor, Washington, DC 20002–4250; (202) 336–8848; *phanrahan@lsc.gov*.

SUPPLEMENTARY INFORMATION: LSC has retained Greacen Associates to develop a state justice community evaluation instrument that allows LSC to make reasonable and comparative judgments about the effectiveness, efficiency and adequacy of state justice communities established through state planning. To assist with this process and ensure the effectiveness of the product, LSC is establishing a Design Team composed of twelve members; up to six will be solicited through the LSC Web site and **Federal Register**. LSC is seeking external members representing national legal services advocacy organizations; individual recipients (preferable reflecting large/small and/or urban/rural diversity); clients; national and local organized bar associations; and other interested stakeholders. While there are no specific "criteria" for membership, it is expected that applicants will have the support of their organizations in participating in the effort and be knowledgeable about the issues. Interested parties should have experience in evaluating outcomes, particularly in civil legal services organizations. Understanding the goals and purposes of state planning and related issues is also critical.

There will be three meetings: March 13 to 15, 2002 in Washington, DC; April 16 and 17 in Cleveland; May 16 and 17, 2002. Participation in conference calls and other communications such as e-mail is also expected. The project will take nine months.

LSC hereby solicits expressions of interest in appointment to the Design Team from the civil legal services community, clients, advocates, the organized bar and other interested parties. Expressions of interest must be submitted no later than 15 days from the date of publication of this notice. Expressions of interest must be submitted in writing (by regular mail, fax or e-mail) to LSC's Patricia M. Hanrahan at the addresses listed in this notice.

Once LSC has received expressions of interest, the President working in consultation with the Vice President for Programs, will make appointments of individuals and organizations to the Design Team. Groups or organizations asked to participate in the Design Team will be responsible for selecting and designating their own representatives.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–520 Filed 1–8–02; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–11; ASLBP No. 02–795–02–MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

International Uranium (USA) Corporation
White Mesa Uranium Mill

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(Source Material License Amendment)

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a December 15, 2001 hearing request submitted by William E. Love. The request was filed in response to an NRC staff proposal, following a staff environmental assessment and finding of no significant impact, to authorize an amendment to the International Uranium (USA) Corporation (IUSA) source material license for its Blanding, Utah White Mesa Uranium Mill that would permit IUSA to receive and process alternate feed materials from the Molycorp site located in Mountain Pass, California. The notice of final finding of no significant impact and opportunity for a hearing was published in the **Federal Register** on December 11, 2001 (66 FR 64,064).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 3rd day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–496 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation Notice of Docketing of Materials License SNM–2509 Amendment Application

By letter dated October 26, 2001, Portland General Electric Company (PGE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the Trojan independent spent fuel storage installation (ISFSI) license (SNM–2509) and the technical specifications for the ISFSI located in Columbia County, Oregon. PGE is seeking Commission approval to amend the materials license and the ISFSI technical specifications to reflect a change in supplier to Holtec International for portions of the Trojan ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of December, 2001.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–497 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–338]

Virginia Electric and Power Company; North Anna Power Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License (FOL) No. NPF–4, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit 1, located in Louisa County, Virginia. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the FOL and Technical Specifications (TS) to remove expired license conditions, make editorial changes, relocate license conditions, remove redundant license conditions that are covered elsewhere in the license, and remove license conditions and TS associated with completed modifications.

The proposed action is in accordance with the licensee's application dated January 9, 2001.

The Need for the Proposed Action

The proposed action is needed because some requirements in the North Anna, Unit 1, FOL have become obsolete. In addition, the need for editorial changes has been identified.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendment and associated changes to the TS are administrative in nature and have no effect on plant equipment or plant operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the North Anna Power Station, Unit 1, dated April 1973.

Agencies and Persons Consulted

On December 20, 2001, the staff consulted with the Virginia State official, Mr. Les Foldesi of the Virginia Department of Health, Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 9, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of January, 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–498 Filed 1–8–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice; change of meeting time.

SUMMARY: The U.S. Commission on Ocean Policy will hold its first regional meeting, the Commission's third public meeting, to hear and discuss issues of concern to the Southeastern Region of the United States, covering the coastal area from Delaware to Georgia. Notice of this meeting was originally published on December 20, 2001. The purpose of this second notice is to provide new meeting times.

DATES: Meetings will now be held Tuesday, January 15, 2002 from 8:30 a.m. to 6:20 p.m. and Wednesday, January 16, 2002 from 8:45 a.m. to 5:00 p.m.

ADDRESSES: The meeting location is the Physicians Memorial Auditorium, College of Charleston, 66 George Street, Charleston, SC, 29424.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW, Washington, DC 20036, 202–418–3442, *tschaff@nsf.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by January 10, 2002 to the meeting Point of Contact. Additional meeting information, including a draft agenda, will be posted as available on the Commission's web site at *http://www.oceancommission.gov*.

Dated: January 3, 2002.

Admiral James D. Watkins,

USN (ret.), Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 02–484 Filed 1–8–02; 8:45 am]

BILLING CODE 6820–WH–P

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions:

Rule 701—OMB Control No. 3235–0522, SEC File No. 270–306

Regulations 14D and 14E—OMB Control No. 3235–0102, SEC File No. 270–114

Schedule 14D–9

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Securities Act rule 701 requires when offerings in excess of $5 million are made under the employee benefit plan exemptive rule, the issuers must provide the employees with risk and financial statement disclosures among other things. The purpose of rule 701 is to ensure that the basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Approximately 300 companies annually rely on rule 701 exemption and it takes an estimated .5 hours to prepare and review. It is estimated that 25% of the 600 total annual burden hours (150 hours) is prepared by the company.

Regulations 14D and 14E and Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. Approximately 310 companies annually file Schedule 14D–9 and it takes 64.43 hours to prepare and review. It is estimated that 25% of the 79,803 total burden hours (19,973 burden hours) is prepared by the company.

Written comments are invited on: (a) Whether these collections of information are necessary for the proper

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performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 28, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–527 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions:

Rule 425—OMB Control No. 3235–0521, SEC File No. 270–462

Schedule TO—OMB Control No. 3235–0515, SEC File No. 270–456

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 425 requires the filing of certain prospectuses and communications under rule 135 in connection with business combinations. The purpose of the rule was to relax existing restrictions on oral and written communications with shareholders about tender offers, mergers and other business combination transactions by permitting the dissemination of more information on a timely basis as long as the written communications are filed on the date of first use. Approximately 5,739 issuers file communications under rule 425 for a total of 1,435 annual burden hours.

Schedule TO must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5 percent of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Approximately 3,038 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 132,153 annual burden hours. It is estimated that 50% of the 132,153 total burden hours (66,077 burden hours) is prepared by the company.

An agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 2, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–526 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549

Extension:

Form S–6—OMB Control No. 3235–0184, SEC File No. 270–181

Form N–8F—OMB Control No. 3235–0157, SEC File No. 270–136

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (OMB) a request for extension of the previously approved collections of information discussed below.

Form N–8F is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

Form N–8F takes approximately 3 hours on average to complete. It is estimated that approximately 200 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 600 hours. The collection of information on Form N–8F is not mandatory. The information provided on N–8F is not kept confidential.

Form S–6 is used for registration, under the Securities Act of 1933 (1933 Act), the securities of any unit investment trust registered under the Investment Company Act of 1940 (1940 Act) on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus, and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses. As a result, most unit investment trusts update their registration statements on Form S–6 on an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year investment companies file approximately 3,639 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 127,365 hours. The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–528 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2008; 803–142]

Longview Management Group LLC; Notice of Application

January 3, 2002.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: Longview Management Group LLC ("Longview").

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11) of the Advisers Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

FILING DATES: The application was filed on August 6, 1999 and amended on November 5, 2001 and December 19, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 30, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, Longview Management Group LLC, 222 North LaSalle Street, Suite 2000, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Don L. Evans, Staff Attorney, at (202) 942–0529 or Jennifer L. Sawin, Assistant Director, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. Applicant was organized in 1998 and is an investment adviser registered under the Advisers Act. Applicant is a "family office" for the members of the extended Crown family and was created to conduct the investment affairs and manage the assets of the Crown family. Applicant's sole equity holder is the Edward Memorial Trust, the ultimate beneficiaries of which solely are members of the Crown family.

2. Applicant represents that, although it employs a small number of non-Crown family members to assist in its day-to-day operations, most of its officers, employees and portfolio managers are Crown family members. Crown family members are solely responsible for key decisions, such as asset allocation and security selection, over Longview accounts.

3. Applicant performs advisory and portfolio management services for Crown family members and for individual accounts, trusts, corporations, partnerships and other entities that are beneficially owned by or for the benefit of the various members of the Crown Family and which are operated by members of the family ("Crown Family Investment Entities").

4. Applicant also provides portfolio management services to three types of charitable entities: (1) charitable entities created solely by the Crown family and administered under the sole discretion of the Crown family, (2) a charitable entity created by the Crown family but under the control of an independent board of directors, which includes members of the Crown family, and (3) a charitable entity which was formed and funded by friends of Henry Crown after his death and which is managed by Applicant.

5. Applicant also provides advisory and portfolio management services for the assets of a small number of individuals who are not members of the Crown family. Applicant provides advisory and portfolio management services to the families of two longtime Crown family employees. The two employees are now deceased and the assets were placed under Longview's management prior to their deaths. Applicant also manages the assets of two individuals that the Crown family has allowed to invest, along with family members, in a Crown Family Investment Entity that holds a diversified basket of marketable securities. These two individuals are a long-time former employee of Henry Crown & Company with over 40 years of service to the Crown family, and a long-time Crown family attorney with over 50 years of

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service to the family. Applicant states that the number of investments by these individuals has declined over time and is no longer permitted. In addition, Applicant manages certain investment vehicles (e.g., limited liability companies or limited partnerships) (each such entity an "Investment Vehicle") that the Crown family uses to purchase an asset such as an operating entity. On occasion, the Crown family has permitted a non-Crown family member to participate in the Investment Vehicle. The total amount of non-Crown family member assets to which Applicant provides services is less than 1.34% of the total assets managed by Applicant.

6. Applicant does not hold itself out to the public as an investment adviser and states that it is not listed in the phone book or any other directory as an investment adviser. Applicant does not engage in any advertising, attend investment management-related conferences as a vendor, or conduct any marketing activities.

7. Applicant states that it does provide, as a part of the comprehensive services it provides to Crown family members, a limited amount of certain administrative services to its clients, through a contract with Henry Crown & Company LLC ("HC&Co.").

8. Applicant represents that the fees charged for its investment advisory services are far below market prices for such services because they are intended to cover Applicant's costs for providing such services and not to serve as a profit center for the Crown family. Applicant states that it uses the fees it receives to pay for the administrative services HC&Co. provides through its contract with Applicant.

9. Applicant has no public clients in the sense of retail or institutional investors and has no plans, now or in the future, to solicit or accept clients from the retail public.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. . . ."

2. Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

3. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it has determined it does not qualify for any of the exemptions provided by section 203(b). Applicant states that it is not prohibited from registering with the SEC under section 203A(a) of the Advisers Act.

4. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the "family office" for the Crown family. Applicant represents that all of its clients have a close relationship with the Crown family in that they are all either immediate members of the Crown family, a Crown Family Investment Entity or a limited number of close, long-time family associates and their descendants, as well as the senior executives of Longview and certain operating companies. Applicant states that it was organized to provide a "family office" for the Crown family, and that is, and will be, the sole purpose for its existence.

5. Applicant requests exemptive relief from section 203(a) of the Advisers Act and requests that the SEC issue an order under section 202(a)(11)(F) declaring it to be a person not within the intent of section 202(a)(11).

Applicant's Conditions

1. Non-Crown family members to whom Longview provides investment advice, including through investments in Crown Family Investment Entities, are limited to their current investments.

2. No new non-Crown family member may make an investment in a Crown Family Investment Entity or in an Investment Vehicle to which Longview provides investment advice.

3. Longview will not enter into any new advisory relationships with a non-Crown family member.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–525 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25354; 812–12728]

American Balanced Fund, Inc., *et al.*

January 3, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for relief from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants request an order under section 6(c) of the Act declaring that a director on the boards of certain registered investment companies, who also is an outside director for the parent company of a registered broker-dealer, will not be deemed an "interested person" of the registered investment companies.

Applicants: American Balanced Fund, Inc. ("AMBAL"), Fundamental Investors, Inc. ("FI"), The New Economy Fund ("NEF"), SMALLCAP World Fund, Inc. ("SCWF"), The Growth Fund of America, Inc. ("GFA"), and The Income Fund of America, Inc. ("IFA") (collectively, the "Funds"); Capital Research and Management Company ("Capital Research"); and American Funds Distributors, Inc. ("AFD").

FILING DATES: The application was filed on December 20, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants: 333 South Hope Street, Los Angeles, CA 90071–1447.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. NEF is a Massachusetts business trust. AMBAL, FI, GFA, SCWF and IFA are Maryland corporations.

2. Capital Research, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Funds and certain other registered investment companies. The Funds and these investment companies, together with any future registered investment company advised by Capital Research, are referred to as the "American Funds." AFD, a wholly-owned subsidiary of Capital Research, is the principal underwriter of the Funds.

3. Each Fund has a board of directors ("Board"), a majority of whom are not "interested persons" within the meaning of section 2(a)(19) of the Act. ICA and NPF also have advisory boards, as defined in section 2(a)(1) of the Act, whose members consult with Capital Research and the Funds' Boards.

4. Patricia K. Woolf serves as a director of the Funds. The Funds, together with such other American Funds that in the future elect Ms. Woolf as a director or advisory board member who is not an "interested person" of the American Fund within the meaning of section 2(a)(19) of the Act, are referred to as the "Applicant Funds." Ms. Woolf's principal occupation is as a lecturer at Princeton University. Ms. Woolf also is a non-employee director of National Life Holding Company ("NLHC").[1] NLHC is a mutual insurance holding company that is primarily engaged in the life insurance business. One of NLHC's indirect wholly-owned subsidiaries is Equity Services, Inc. ("ESI"), a broker-dealer registered under the Securities Exchange Act of 1934. Approximately 3.2% of NLHC's consolidated revenues comes from ESI.[2]

5. ESI is a relatively small retail-oriented firm. It does not execute any portfolio transactions for the American Funds. ESI provides *de minimis* distribution services to the American Funds. The gross sales by ESI of shares of the American Funds during the period January 1, 1998 through December 31, 2000 was approximately $61.83 million, or 0.05% of the total gross sales of American Funds shares by all broker-dealers for the same period. The fees received by ESI from the sale of shares of the American Funds during 2000 represented approximately 0.07% of NLHC's total consolidated revenues. The American Funds have adopted plans pursuant to rule 12b–1 under the Act and make payments to their distributors, including ESI, pursuant to those plans.

Applicants' Legal Analysis

1. Section 2(a)(19)(A)(v) of the Act defines an "interested person" of an investment company to include any person or any affiliated person of a person that, at any time during the last six months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for (a) the investment company; (b) any other investment company having the same investment adviser or holding itself out to investors as a related company for purposes of investment or investor services; or (c) any account over which the investment company's investment adviser has brokerage placement discretion. Applicants state that Ms. Woolf may be deemed an affiliated person of ESI by virtue of her position as a director of NLHC, an entity that controls ESI within the meaning of section 2(a)(9) of the Act. Because Ms. Woolf may be deemed an affiliated person of ESI, Ms. Woolf currently is considered an interested person of the Funds.

2. Applicants believe that, because Ms. Woolf's affiliation with ESI is solely the result of her position as a non-employee director of NLHC, and because ESI provides only *de minimis* distribution services to the American Funds, it would be more appropriate to treat Ms. Woolf as an independent director. Applicants thus request an order under section 6(c) of the Act declaring that Ms. Woolf will not be deemed an interested person under section 2(a)(19) of the Act.[3]

4. Section 6(c) of the Act provides, in part, that the Commission may exempt any person from any provision of the Act or any rule under the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants contend that their request for relief from interested person status for Ms. Woolf meets this standard because Ms. Woolf's relationship with ESI is attenuated and poses no real or potential conflict of interest and because ESI's only business relationship with the Funds involves a *de minimis* amount of distribution services for the Funds.

5. Applicants state that, in her position as a non-employee director of NLHC, Ms. Woolf has no authority or responsibility for the operations of ESI and does not control or influence the day-to-day management of ESI. Applicants also represent that Ms. Woolf has no material business or professional relationship with NLHC, ESI, the American Funds, Capital Research, AFD or any affiliated person of these entities.

6. Applicants state that, as one of the conditions to the proposed relief, certain requirements will apply if the Commission has declared by order ("Status Order") the non-interested status of more than one director serving on the Board of a particular Applicant Fund, and the director is an affiliated person of, or an affiliated person of an affiliated person of, a broker or dealer doing a limited amount of business with one or more American Funds (a "B–D Director").[4] In such a case, the Applicant Fund would not rely on Status Orders relating to more than one B–D Director in complying with all applicable board composition requirements under the Act (including regulations under the Act) ("Board Composition Requirements"). In addition, for purposes of actions requiring the separate vote of a majority of the Applicant Fund's non-interested directors ("Special Voting Requirements"), only one of the B–D Directors would be counted as a non-interested director.

[1] In 2000, Ms. Woolf's aggregate compensation from NLHC (consisting of annual retainer and meeting fees, and term insurance) was $43,080. Ms. Woolf, as a policyowner of National Life Insurance Company, a subsidiary of NLHC, is entitled to one vote at meetings of the members of NLHC. During 2000 and 2001, Ms. Woolf received advice from an employee of ESI regarding certain estate planning issues. In addition, in the future Ms. Woolf may establish a brokerage or similar account with ESI (or an affiliate thereof). In each case, the transaction or relationship was, or would be, a routine, retail transaction or relationship under which Ms. Woolf was not, or will not be, accorded special treatment.

[2] This figure is based on NLHC's consolidated revenues in 2000.

[3] Applicants are not requesting relief from the provisions of rule 12b–1(b)(2) that require a rule 12b–1 plan to be approved by the directors of an investment company "who * * * have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan." Applicants state that they intend to treat Ms. Woolf as a director who meets these requirements, based on Ms. Woolf's lack of a material business or professional relationship with NLHC or ESI. Applicants represent that, should Ms. Woolf develop a direct or indirect financial interest in the operation of the American Funds' rule 12b–1 plans, she will no longer be treated as meeting the above requirements of rule 12b–1.

[4] In 1998, the Commission granted an order to Capital Research, AFD, and certain American Funds, permitting the applicants to treat William H. Kling as a non-interested director. EuroPacific Growth Fund, Investment Company Act Release Nos. 23307 (July 9, 1998) (notice) and 23374 (Aug. 4, 1998) (order).

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Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The American Funds will comply with all of the requirements of section 2(a)(19) of the Act (and any rules thereunder) except for the clauses concerning the distribution of investment company shares in subparagraphs (A)(v) and (B)(v) of section 2(a)(19), as those clauses relate to distribution of shares of the American Funds by ESI.

2. The amount of distribution business engaged in by ESI on behalf of any one Applicant Fund (other than a money market fund) may not exceed five percent of gross share sales (prior to payment of dealer and underwriter commissions) for such Applicant Fund.

3. The amount of distribution business engaged in by ESI on behalf of all American Funds in the aggregate may not exceed five percent of gross share sales (prior to payment of dealer and underwriter commissions and exclusive of money market fund share sales) for American Funds in the aggregate.

4. No more than one percent of NLHC's consolidated gross revenues may come from sales by ESI of shares on behalf of any one Applicant Fund.

5. No more than five percent of NLHC's consolidated gross revenues may come from sales by ESI of shares on behalf of all American Funds in the aggregate.

6. ESI may not serve as a regular broker or dealer, as defined in rule 10b–1 under the Act, for any American Fund.

7. To the extent Board Composition Requirements or Special Voting Requirements are applicable, each Applicant Fund will comply with such requirements without taking into account more than one B–D Director subject to a Status Order. For all other purposes under the Act, each Applicant Fund may treat as "non-interested" all B–D Directors subject to one or more Status Orders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–524 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45232; File No. SR–DTC–2001–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Deadline in Connection With the Direct Registration System Facility

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 3, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In File No. SR–DTC–2001–07, DTC established a deadline of November 1, 2001, by which (i) All securities issues eligible for DTC's Direct Registration System ("DRS") which do not participate in the Profile Modification System ("Profile"), which is part of DRS, were to move to Profile and (ii) a request by a broker for a withdrawal by transfer (W.T.) for a DRS-eligible security which W.T. does not specifically request a certificate was to automatically default to a DRS book-entry position (an "S" position) on the books of the issuer or its transfer agent.[2] The proposed rule change extends the November 1, 2001, deadline to December 14, 2001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow issuers and their transfer agents adequate time to move all DRS-eligible securities issues to Profile.[4] Due to the events of September 11, 2001, and ensuing communications problems, some issuers and their transfer agents found it difficult to meet the November 1, 2001 deadline.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because it will encourage more issuers to allow their securities to be included in Profile which is an integral part of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC Participants or others have not been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii)[5] of the Act and Rule 19b–4(f)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service because the proposed rule change consists of an interpretation of a prior DTC filing on Form 19b–4. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule chnage that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–18 and should be submitted by January 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–522 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44696 (August 14, 2001), 66 FR 43939.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For previous orders relating to Profile, refer to Securities Exchange Act Release Nos. 41862 (September 10, 1999), 64 FR 51162; 42366 (January 28, 2000), 65 FR 5714; 42704 (April 19, 2000), 65 FR 24242; 43586 (November 17, 2000), 65 FR 70745; 44696 (August 14, 2001), 66 FR 43939.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45229; File No. SR–NASD–2001–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Establishing Effective Date of Rules Requiring Debt Securities Reporting and Dissemination (TRACE Rules)

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 13, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is filing a proposed rule change to establish July 1, 2002 as the effective date for the new Rule 6200 Series ("TRACE Rules"). The TRACE Rules, when effective, will require NASD members to report secondary market transactions in eligible debt securities to the NASD and will subject certain transaction information to dissemination. The NASD also is proposing to replace the term, "Trade Reporting and Comparison Entry Service" with "Trade Reporting and Compliance Engine." This change preserves the "TRACE" acronym, by which the system is commonly known, while more accurately describing the functions of the TRACE system.[4]

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are [bracketed].

* * * * *

6200. *Trade Reporting and Compliance Engine (Trace)* [Trade Reporting and Comparison Entry Service (Trace)]

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) No change.

(b) The term *"Trade Reporting and Compliance Engine"* ["Trade Reporting And Comparison Entry Service"] or "TRACE" shall mean the automated system owned and operated by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities and which may submit "locked-in" trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a "locked-in" trading environment.

(c) through (i). No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD is filing the proposed rule change to establish July 1, 2002 as the effective date of the TRACE Rules and to substitute the term, "Trade Reporting and Compliance Engine," within the rules for the term, "Trade Reporting and Comparison Entry Service," as discussed in greater detail below.

a. *Effective Date.* The NASD is filing the proposed rule change to establish July 1, 2002 as the effective date of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] The SEC approved the Rule 6200 Series on January 23, 2001. *See* Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) (SR–NASD–99–65) ("TRACE Approval Order").

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TRACE Rules. The TRACE Rules, when effective, will require NASD members to report secondary market transactions in eligible debt securities to the NASD and will subject certain transaction information to dissemination.

In the TRACE Approval Order, the Commission stated that the effective date of the TRACE Rules should be 180 days after the date that the NASD provided technical specifications concerning TRACE to members to allow members to make the system changes necessary to comply with TRACE.[5] On June 1, 2001, the NASD published technical specifications.[6] Subsequently, the NASD targeted the first day of reporting under the TRACE system as February 4, 2002,[7] which was the time the NASD estimated was needed to complete development of the system, provide members and vendors time to implement the specifications published on June 1, 2001, and avoid the implementation of an industry-wide regulatory program during a major holiday.

The NASD represents that, since the September 11, 2001 terrorist attacks, it has worked with its members to help the securities industry recover from the attacks. As part of this process, the NASD is delaying the TRACE implementation date to allow its members the time they need to re-establish, to the extent possible, normal business operations. The NASD determined that the original February 2002 implementation date would have been a hardship on the industry in its efforts to recover from September 11. Accordingly, the NASD is proposing to implement the TRACE system, including the TRACE Rules, on July 1, 2002.

b. *Renaming the Initiative.* At the same time, the NASD proposes to substitute a new term, "Trade Reporting and Compliance Engine," for the term used for the TRACE system and related rules approved by the SEC on January 23, 2001. The current term, "Trading Reporting and Comparison Entry Service," was developed when the NASD proposed to provide comparison services as part of the TRACE initiative. In the TRACE Approval Order, the Commission noted that the NASD intended to rename the system and the related rules.[8] By substituting the new term, "Trade Reporting and Compliance Engine," the NASD is able to eliminate the reference to the comparison function, which will no longer be part of TRACE, while preserving the acronym, "TRACE," which is currently in widespread use.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD's proposed rule change, if approved, will implement existing rules for the reporting and dissemination of information on eligible debt securities transactions. NASD believes that the proposed rule change will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the debt securities markets to prevent fraudulent and manipulative acts and practices; and that the proposed rule change, by requiring reporting and dissemination of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the debt securities markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[9] It has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–91 and should be submitted by January 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–523 Filed 1–8–02; 8:45 am]

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[5] *See* Amendment No. 4 to SR–NASD–99–65, dated January 5, 2001, p. 4.

[6] *See* NASD Regulation web site at *http://www.nasdr.com/trace.htm.*

[7] The NASD clarified the timing of its targeting of the February 4, 2002 date in a telephone conversation between Sharon K. Zackula, Assistant General Counsel, NASD Regulation and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (January 3, 2002).

[8] TRACE Approval Order, 66 FR 8131, 8132, n. 11.

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30-(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45225; File No. SR–NASD–2001–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Service of Process for Arbitration

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change on December 7, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to add a new rule to the NASD Code of Arbitration Procedure to give claimants who are represented by counsel the option of serving initial arbitration claims on respondents directly, rather than having NASD Dispute Resolution staff serve those respondents. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

103xx.[4] Optional Direct Service by Claimant

(a) General

A Claimant who is represented by counsel may serve a Respondent directly instead of initiating the Claim in the manner provided by Rule 10314(a). Claimant shall serve the following documents upon any Respondent that Claimant chooses to serve directly: a Statement of Claim specifying the relevant facts and the remedies sought, together with the documents in support of the Claim, the Uniform Submission Agreement, and a copy of NASD Form XYZ.[5]

(b) Manner of Service

Service may be made under this Rule in the manner provided for service of demands for arbitration under the law of the jurisdiction in which the Respondent is being served.

(c) Additional Mailing

(1) No later than one business day following service on the first Respondent to be served under this Rule, Claimant shall mail a copy of the Statement of Claim to all Respondents together with information stating which Respondents were served in accordance with this Rule.

(2) If any Respondent is a member, the mailing shall be addressed "Attention Legal and Compliance Department" and sent to the main office of the member. The outside of the envelope shall state: "Important Legal Documents Enclosed."

(d) Filing with the Association

Within twenty (20) days of service on the last Respondent whom Claimant serves under this Rule, Claimant must file with the Director of Arbitration;

(1) An affidavit of service on each Respondent served;

(2) The names of any additional Respondents whom Claimant wants the Association to serve;

(3) An affidavit of mailing in accordance with paragraph (c);

(4) An executed Submission Agreement;

(5) A Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, in the form in which it was served on Respondent(s);

(6) The required deposit; and

(7) Sufficient additional copies of the Submission Agreement, the Statement of Claim and supporting documents for each party that has not been served directly and for each arbitrator.

(e) Time to Answer

When filing under paragraph (d) is complete and any deficiencies have been resolved, the Association shall acknowledge that fact in writing to all parties. All time periods that are measured from receipt of the Statement of Claim or service of a Claim under Rule 10314(b) shall commence upon receipt of such written notification from the Association.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Dispute Resolution proposes an optional procedure to allow arbitration claimants who are represented by counsel the choice of serving respondents directly. The proposed rule could be used to serve some respondents and not other respondents in a given case, as claimant chooses. NASD Dispute Resolution staff would serve any remaining respondents as usual. The National Arbitration and Mediation Committee of NASD Dispute Resolution recommended adoption of the proposed rule in response to suggestions from some frequent users of the NASD Dispute Resolution arbitration forum who normally represent claimants and requested an optional direct service process.

As background, the current procedure is for all initial claims to be served by NASD Dispute Resolution.[6] After resolving any deficiencies, such as missing or unsigned documents or improper fees, NASD Dispute Resolution serves all respondents at the same time. Respondents then have 45 calendar days from receipt of the claim in which to answer.

NASD Dispute Resolution believes that the proposed rule contains several safeguards to ensure that the direct service option would result in proper service. For the protection of claimants whose awards might later be challenged because of improper service, use of the proposed rule is limited to parties that are represented by counsel, who would be familiar with applicable law concerning service of demands for arbitration. To avoid any detriment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Jean I. Feeney, Chief Counsel, NASD Dispute Resolution, to Florence Harmon, Assistant Director, Division of Market Regulation, Commission, dated December 7, 2001 ("Amendment No. 1"). Amendment No. 1 makes certain technical changes to the proposed rule language. Amendment No. 1 also clarifies that the phrase "the law of the jurisdiction in which the Respondent is being served" in paragraph (b) of the proposed Rule 103xx refers to state rather than federal law, and could encompass the laws of the District of Columbia. Finally, Amendment No. 1 states that NASD Dispute Resolution will provide NASD Form XYZ to the Commission prior to the Commission's approval of the proposed rule change.

[4] A rule number will be assigned prior to implementation of the proposed rule change.

[5] This form will explain the direct service process. It will be drafted and assigned an official number prior to implementation of the proposed rule change.

[6] NASD 10314(a) sets forth the process for initiating a proceeding. Under NASD Rules 10314(b) and (c), and 10328(a), the parties already serve directly any counterclaims, cross-claims, third-party claims, or amended pleadings.

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where there is a delay in serving all respondents, the proposed rule requires a notice to all respondents immediately after the first respondent has been served directly. To forestall the possibility that a member firm may not be aware of service on a remote branch office, the proposed rule requires the claimant, no later than one business day following service on the first respondent to be served under the proposed rule, to provide all respondents with the Statement of Claim and information indicating which respondents were served in accordance with this rule. Such information is to be sent to the main office of a member firm, addressed to the Legal and Compliance Department, in an envelope marked on the outside to indicate its importance. Finally, to avoid having different or uncertain due dates for answers, the time to answer would not begin to run until NASD Dispute Resolution notified all parties of the due date, as described below.

Following direct service on all respondents to be served directly, claimants must file the claim and submission agreement, affidavits of service and mailing, other related documents, and the proper fees with NASD Dispute Resolution. If claimants wish NASD Dispute Resolution to serve any remaining respondents, they must provide that information as well. The NASD Dispute Resolution staff would review such submissions for any deficiencies, as at present. Once any deficiencies have been resolved, NASD Dispute Resolution would notify the parties and the time to answer would begin to run. Details of the proposed rule are set forth below.

Highlights of Proposed Rule

Proposed paragraph (a) states that claimants who are represented by counsel may elect to serve any respondent directly. Claimants are not required to use this rule, nor are they required to use the rule for all respondents in a particular case. For example, claimants may be willing to serve an active member firm respondent directly, but may be unsure of how to find and serve a particular associated person respondent. In such a case, NASD Dispute Resolution would serve the associated person as it does now.

Along with the Statement of Claim specifying the relevant facts and the remedies sought, claimants must serve any documents in support of the claim, the Uniform Submission Agreement, and a copy of a standard cover letter explaining the process in simple terms (temporarily referred to as "NASD Form XYZ" in the proposed rule). That cover letter would indicate to the respondent being directly that: (i) the respondent need to file an answer to the claim at this time, and (ii) the arbitration claim is not reportable to the Central Registration Depository (CRD) by respondents who are associated persons until NASD Dispute Resolution notifies the respondent in writing as provided in paragraph (e) of the proposed rule. The proposed cover letter would be made available to claimants and would be posted on the NASD Dispute Resolution Web site.

Proposed paragraph (b) provides that claimants exercising the option of directly serving respondents must serve the claim in the manner provided for service of demands for arbitration under the law of the state or other jurisdiction in which the respondent is being served. NASD Dispute Resolution would not be providing advice to claimants on such legal requirements; as noted above, this procedure is only available to parties who are represented by counsel.

Proposed paragraph (c)(1) requires the claimant to mail a copy of the Statement of Claim to all respondents together with information stating which respondents were served in accordance with the proposed rule, and to do this no later than one business day following service on the first respondent to be served under the rule.

Paragraph (c)(2) requires that mailings addressed to respondents who are members must be addressed to the Legal and Compliance Department of the firm, sent to the main office, and state on the envelope: "Important Legal Documents Enclosed." This would alert the member firm immediately, and will reduce the chance that service would be made on the wrong office.

Proposed paragraph (d) provides that claimant must file the enumerated documents, including affidavits of service, with the Director of Arbitration within 20 days of service on the last respondent whom claimant serves under the proposed rule. Proposed paragraph (e) provides that time periods measured from receipt of the Statement of Claim or service of a claim under Rule 10314(b) would commence upon receipt of written notification from the Association. The claim would not be considered officially filed until deficiencies have been resolved, as in the current procedure. When the filing is complete, the staff would acknowledge that fact in writing, and the time to answer would begin for all respondents. This prevents the confusion that would occur if the time to answer began to run when each respondent was served.

b. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by giving claimants the option of serving claims directly and by providing specific procedures to ensure that service is accomplished properly.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD Dispute Resolution consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent

[7] 15 U.S.C. 78o–3(b)(6).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–55 and should be submitted by January 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–530 Filed 1–8–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45227; File No. SR–SCCP–2001–11]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending Approval of Restructured and Limited Clearing Services

January 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 17, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to extend, for a one year period ending December 31, 2002, the ability to provide limited clearance and settlement services. Specifically, SCCP seeks to continue to provide trade confirmation and recording services for members of the Philadelphia Stock Exchange, Inc. ("Phlx") effecting transactions through Regional Interface Operations ("RIO") and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants cleared through an account established by SCCP at the National Securities Clearing Corporation ("NSCC").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue SCCP's restructured and limited clearance and settlement business for an additional one year period ending December 31, 2002. In an agreement dated as of June 18, 1997, ("Agreement") by and among the Phlx, SCCP, Philadelphia Depository Trust Company ("Philadep"), NSCC and The Depository Trust Company ("DTC"), Philadep and SCCP agreed to certain provisions, including that: (i) Philadep would cease providing securities depository services; (ii) SCCP would make available to its participants access to the facilities of one or more other organizations providing depository services; (iii) SCCP would make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services; and (iv) SCCP would transfer to the books of such other organizations the CNSS system open positions of SCCP participants on the books of SCCP.

In December, 1997, the Commission approved a proposed rule change which gave effect to this Agreement and which reflected Philadep's withdrawal from the depository business and SCCP's restructured and limited clearance and settlement business.[4] In that approving order, the Commission stated, "because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules and Procedures through December 31, 1998." In December 1998, December 1999, and December 2000, one-year extensions of such approval were granted by the Commission to continue SCCP's restructured and limited clearance and settlement services.[5]

SCCP is hereby requesting an additional one year extension of such approval noting that such extension is appropriate in order that SCCP may continue to provide services to its participants. SCCP believes that its restructured operations have functioned consistent with the original proposed rule change, and SCCP will continue to evaluate whether any adjustments are necessary.

In the original proposed rule change and order approving SCCP's restructured business, many SCCP rules were amended and discussed at length. No new rule changes are proposed at this time. Thus, the purpose of the proposed rule change is to extend the effectiveness of SCCP's restructured business.

SCCP believes that the extension of the Commission's temporary approval to permit SCCP's continued operation of its restructured and limited clearance and settlement services is consistent with the requirements of the Act and the rules and regulations thereunder applicable to SCCP and in particular with Section 17A(b)(3)(F) which requires that a clearing agency be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the extension of SCCP's restructured business should promote the prompt and accurate

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* SCCP Rule 1.

[3] The Commission has modified the text of the summaries prepared by SCCP.

[4] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 (December 19, 1997) (SR–SCCP–97–04).

[5] Securities Exchange Act Release Nos. 40872 (December 31, 1998), 64 1264 (January 8, 1999) (SR–SCCP–98–05); 42320 (January 6, 2000), 65 FR 2218 (January 13, 2000) (SR–SCCP–99–04); and 43781 (December 28, 2000), 66 FR 1167 (January 5, 2001) (SR–SCCP–00–05).

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clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that this extension should impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Based on the information the Commission has to date, the Commission believes that SCCP's restructured operations have functioned satisfactorily to provide prompt and accurate clearance and settlement. During the upcoming temporary approval period, the Commission expects to review with SCCP in detail the functioning of SCCP's restructured operations.

SCCP has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow SCCP to continue to offer its restructured clearing operations for another year without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–2001–11 and should be submitted by January 30, 2002.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–SCCP–2001–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–529 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–11237]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0596 and 2115–0597

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Claims Under the Oil Pollution Act of 1990, and (2) State Access to The Oil Spill Liability Trust Fund For Removal Costs Under the Oil Pollution Act of 1990. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before March 11, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2001–11237] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–11237], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Claims Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0596.

Summary: The Coast Guard will use the information collected to determine whether claims submitted to the Oil Spill Liability Trust Fund are compensable and, if they are, to ensure that the Fund reimburses them in the correct amounts.

Need: Coast Guard will ensure the making of fair and reasonable payments to claimants and will protect the interest of the Federal Government. Claims that are submitted must be fully substantiated, and the procedures for advertising and presentation of claims must be followed, as required by OPA 90 [33 U.S.C. 2708, 2713 and 2714].

Respondents: Claimants and responsible parties of oil spills.

Frequency: On occasion.

Burden Estimate: The estimated burden is 13,722 hours a year.

2. *Title:* State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0597.

Summary: The Coast Guard will use information provided by the State to the Coast Guard National Pollution Funds Center to determine whether expenditures submitted by the state to the Fund are compensable and, if they are, to ensure payment of the correct amount of funding from the Oil Spill Liability Trust Fund.

Need: Under the authority of 33 U.S.C. 2712, Coast Guard has promulgated regulations detailing the manner in which to obligate the Fund. To ensure fair and reasonable payments to States and to protect the interests of the Federal Government, States must fully substantiate all expenditures that they submit and must follow the procedures for presentation of those expenditures to the Fund.

Respondents: State Governments.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3 hours a year.

Dated: December 31, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 02–547 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10998]

National Coast Guard Museum; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice; extension of comment period.

SUMMARY: On November 21, 2001, the Coast Guard published a notice requesting comments on a draft Environmental Assessment (EA) regarding the National Coast Guard Museum in New London, Connecticut. During the review period, the potential threat from anthrax-contaminated mail caused considerable delay in the delivery of mail, the EA was not immediately available in the docket, and a comment was received regarding more time needed to review references in the EA. Because of these factors, the Coast Guard is extending the comment period through February 8, 2002.

DATES: Comments on the draft Environmental Assessment must reach the Docket Management Facility on or before February 8, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–10998), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public thus far as well as the draft Environmental Assessment (EA) are part of this docket, these and future comments received will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the draft EA, on the Internet at *http://dms.dot.gov.* (Once you enter the web site, click on "Search," enter the last five digits of the docket number ("10998") in the search box, and press the Enter key.)

FOR FURTHER INFORMATION CONTACT: If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number (USCG–2000–7514), indicate the specific proposed change to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail or hand delivery, submit them in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received on or before February 8, 2002.

SUPPLEMENTARY INFORMATION: On November 21, 2001, the Coast Guard published a notice in the **Federal Register** (66 FR 58547) requesting comments on a draft Environmental Assessment (EA). The EA reviewed the proposal to accept a gift of land for purposes of relocating the Coast Guard Museum to a site near the U.S. Coast Guard Academy in New London, Connecticut. During the initial comment period, the EA was not immediately available in the docket, a comment was received regarding more time needed to review references in the EA, and the potential threat from anthrax-contaminated mail caused considerable delay in the delivery of mail. Because of these factors, the Coast Guard is extending the comment period through February 8, 2002.

Dated: January 2, 2002.

K. J. Eldridge, RADM,

Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 02–548 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11236]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The License Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss and develop the performance criteria to be used with the Towing Officer Assessment Record (TOAR)

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required in Title 46, Code of Federal Regulations 10.304(h). The meetings are open to the public.

DATES: The Working Group will meet on Tuesday, February 12, 2002, from 1 p.m. to 5 p.m., and on Wednesday, February 13, 2002, from 8:30 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before February 5, 2002.

ADDRESSES: The Working Group will meet in the 7th Floor, All-Hands Conference Room at Coast Guard's National Pollution Fund Center, 4200 Wilson Blvd., Arlington, VA. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante; Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov. Security notice:* All non-military/government participants MUST first go to the 10th floor of the Pollution Fund Center's offices with a photo ID (driver's license) and sign in. You will then receive a 2-day pass for the meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The performance criteria to be discussed at this working group meeting, when developed, will be announced by a notice in the **Federal Register** and made available for review and comment. Sample Towing Officer Assessment Records (TOARs) were published on May 21, 2001, as part of the Navigation and Vessel Inspection Circular 4–01 (NVIC 4–01) entitled "Licensing and Manning for Officers of Towing Vessels." This NVIC provides guidance on the implementation of a recent interim rule, also titled Licensing and Manning for Officers of Towing Vessels (Docket Number USCG 1999–6224), published in the **Federal Register** on April 26, 2001 (66 FR 20931). The NVIC is available on the Internet at *http://www.uscg.mil/hq/g-m/nvic/4_01/n4_01.pdf*. The rulemaking history is also available on the Internet at *http://dms.dot.gov* under the same docket number (USCG 1999–6224).

Agenda of Meeting

The agenda includes the Working Group's review of the TOARs and the drafting of performance criteria proposals that will be presented to the full Committee for approval at a later date.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director on or before February 1, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: December 26, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–544 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Boca Raton, Airport Boca Raton, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Boca Raton Airport Authority for Boca Raton Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Boca Raton Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 30, 2002.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 31, 2001. The public comment period ends March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Boca Raton Airport are in compliance with applicable requirements of part 150, effective December 31, 2001. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 30, 2002. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Boca Raton Airport Authority submitted to the FAA on December 11, 2001, noise exposures maps, descriptions and other documentation which were produced during the Boca Raton Airport part 150 Noise Compatibility Study Update conducted between March 1999 and December 2001. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Boca Raton Airport Authority. The specific maps under consideration are "2001 Noise Exposure Map with Existing Noise Compatibility Program" and "2006 Noise Exposure Map with Recommended Noise Compatibility Program" in the submission. The FAA has determined that these maps for Boca Raton Airport are in compliance with applicable requirements. This determination is effective on December 31, 2001. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Boca Raton Airport, also effective on December 31, 2001. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 30, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, December 31, 2001.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02–491 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on January 23–25, 2002, starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- January 23:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Minutes of Previous Meeting)
- Review and Act on Comments received during the Final Review and Comment Period for the Document *Next Generation Air/Ground Communications (NEXCOM) Principles of Operations VHF Digital Link (VDL) Mode 3*
- Closing Plenary Session (Date and Place of Next Meeting)
- January 24–25:
- Working Group 3 Editorial and Final Changes to the VDL–3 Principles of Operation Document
- Working Group 4, NEXCOM Plan, US National Airspace System (NAS) Plan for Transition to Air/Ground ICAO VDL–3 based Integrated Voice and Data
- Working Group 5, NEXCOM Safety and Performance Requirements (SPR) Document

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–486 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

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SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held January 29–February 1, 2002 starting at 9 a.m. each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- January 29:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Form Working Group 2: Review and Schedule Minimum Aviation System Performance Standard (MASPS) work
- Form Working Group 3: VHF Data Link 2 Minimum Operational Performance Standard (MOPS) work
- January 30:
- Working Group 3: VHF Data Link 2 MOPS work continues
- January 31:
- Plenary Reconvenes (Report and Review Status of Working Groups 2 and 3)
- Review Relevant International Activities (ICAO Aeronautical Mobile Communications Panel WG status, EUROCAE WG 47 status and issues)
- Report on Digital Activities (NEXCOM, AEEC status)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting)
- February 1:
- Working Group 3 (or 2): Continues as required

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–487 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 181/ EUROCAE Working Group 13: Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 181/EUROCAE Working Group 13 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 181/ EUROCAE Working Group 13: Standards of Navigation Performance.

DATES: The meeting will be held January 22–25, 2002 starting at 9:00 am.

ADDRESSES: The meeting will be held at the Quality Suites Hotel Melbourne/ Oceanfront, 1665 North State Route A1A, Indialantic, FL, 32903, telephone (321) 723–4222.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Roger Burns, Rockwell Collins, Inc., telephone (319) 295–4563, E-mail *rdburns2@rockwellcollins.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 181/EUROCAE Working Group 13 meeting. **Note:** *Working Group 1 will meet separately January 22–24.* The plenary agenda will include:

- January 25:
- Opening Plenary Session (Chairman Remarks, Review/Approval of Previous Meeting Minutes)
- Working Group Reports
- Review of Required Navigation Performance (RNP) Minimum Operational Performance Standard (MOPS) and Minimum Aviation System Performance Standards (MASPS) Status
- Closing Plenary Session (New Business, Future Meeting Schedule, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–488 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on January 24, 2002 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- January 24:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting, Action Items from Last Meeting, Review of Previous Meeting's Industry Presentations)
- Workgroups and Discussions on New Standard Text and Comments From Members (sections 1–4)
- Biometric Access Control Standards
- New Access Control Systems Requirements and Standards Consequent on the Recent Legislation
- Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability.

With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–489 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for Transit Improvements in the Southeast-Universities-Hobby Corridor Extending from Downtown Houston, Harris County to the Vicinity of Hobby Airport in Southeast Harris County, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), to evaluate transportation improvements in the Houston metropolitan area (Harris County).

The EIS will evaluate the following transit alternatives: a No Build Alternative, consisting of already planned improvements to the corridor, and a Build Alternative, consisting of a wide range of transit improvements. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Investment Strategy (LPIS) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- *Scoping Process*—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- *Planning Studies*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS.
- *Conceptual Engineering and Draft Environmental Impact Statement (EIS)*—conceptual definition of the alternatives to be evaluated including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS, and public hearing(s).
- *Preliminary Engineering and Final EIS*—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS comment period, and preparation of the Final EIS.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** below.

Scoping Meetings: Public Scoping meetings for the Southeast-Universities-Hobby Corridor will be held on February 19th, February 21st and February 27th, 2002. See **ADDRESSES** below for meeting times and locations.

All of the scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Room 21034, PO Box 61429, Houston, Texas 77208–1429. E-mail: southeast-universities-hobby@ridemetro.org.

Scoping meetings will be held at the following locations:

1. February 19, 2002, Jesse H. Jones Senior High School, 7414 St. Lo, Houston, Texas 77033, 5:00–8:00 p.m. Open House, 6:30 p.m. Presentation.
2. February 21, 2002, Texas Southern University, School of Technology Atrium, 3100 Cleburne Avenue, Houston, Texas 77004, 5:00–8:00 p.m. Open House, 6:30 p.m. Presentation.
3. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, Houston, Texas 77027, 3:00–5:00 p.m. Agency Scoping Meeting, Conference Room A, 5:00–7:00 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI, 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and METRO invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less adverse environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process or during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS, planning studies will identify a LPIS that includes transit improvements. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station-capital facility locations; the environmental, social, and economic

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impacts to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS.

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS, to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Need

Planning studies for the Southeast-Universities-Hobby Corridor will be initiated in a broadly defined area in Harris County, Texas. The planning area is defined to include part of downtown Houston, extending eastward and then to the southeast, generally bounded by IH 45 on the east, and SH 288 and Almeda Road on the west. The Southeast-Universities-Hobby Corridor includes the Third Ward, the convention center, Enron Field (home of the Houston Astros), the Texas Southern University (TSU) and University of Houston (UH) campuses, communities to the south, and Hobby Airport. The southern boundary is inside Beltway 8.

The corridor is significantly more densely developed than the City of Houston as a whole. Southeast Houston has a large transit dependent population, with lower average household income and car ownership and higher percentages of elderly and disabled persons than citywide. Transit (bus) ridership in the corridor is strong, but there are no high capacity transit facilities in the corridor. "Super-stops" have been proposed at the University of Houston and Texas Southern University.

New development and redevelopment is occurring along this corridor and is expected to generate further increases in demand for transit services. The universities are growing in enrollment. Hobby Airport is a significant employment center, as are TSU and UH. Outside this corridor, Downtown and the Texas Medical Center are the nearest major activity centers. There is a recognized demand linkage between the corridor and Houston's Midtown area and the Uptown-West Loop area to the west.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of a LPIS and implementation program. The planning studies will consider a variety of transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Light Rail Transit (LRT);
- Bus Rapid Transit;
- Commuter Rail along existing railroad facilities in the corridor; and
- HOV system improvements.

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA and METRO will evaluate all social, economic and environmental impacts of the alternatives analyzed in the EIS. Impacts may include: land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–558 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement on Transit Improvements in the Uptown-West Loop Corridor Located in Uptown and Along the West Loop (IH–610 West) in Houston, Harris County, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), to evaluate transportation improvements in the Houston metropolitan area (Harris County).

The EIS will evaluate the following transit alternatives: a No Build Alternative, consisting of already planned improvements to the corridor, and a Build Alternative, consisting of a wide range of transit improvements. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. Scoping will be accomplished with a series of public meetings, and through correspondence with interested persons, organizations, and Federal, State and local agencies.

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Investment Strategy (LPIS) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- *Scoping Process*—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- *Planning Studies*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS.
- *Conceptual Engineering and Draft Environmental Impact Statement (EIS)*—conceptual definition of the alternatives including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS, and public hearing(s).
- *Preliminary Engineering and Final EIS*—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS comment period, and preparation of the Final EIS.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** below.

Scoping Meetings: Public Scoping meetings for the Uptown-West Loop Corridor will be held on February 12, 2002 and February 27, 2002. See **ADDRESSES** below for meeting times and locations.

All scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Room 21034, P.O. Box 61429, Houston, Texas 77208–1429. E-mail: uptown-*westloop@ridemetro.org*. Scoping meetings will be held at the following locations:

1. February 12, 2001, J.W. Marriott Hotel, Exhibition Room, 5150 Westheimer, Houston, Texas 77077, 11:30 a.m.–2:30 p.m. Open House, 6–8:30 p.m. Open House.
2. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, Houston, Texas 77027, 3–5 p.m. Agency Scoping Meeting, Conference Room A, 5–7 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI, 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and METRO invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process and during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS, planning studies will identify a LPIS that includes transit improvements. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program for throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station locations; the environmental, social, and economic impacts to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS.

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS, to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Need

The study area for the Uptown-West Loop Corridor is located on the near west side of the City of Houston. The study area extends approximately four miles on either side of the West Loop from the Katy Freeway (IH–10) on the north to the Southwest Freeway (U.S. 59) on the south. The West Loop is the primary north-south transportation facility in the corridor providing access to the Uptown/Galleria area, major employment, residential, retail and activity centers, and to the City of Bellaire. The freeway facility, with an average right-of-way width of 350 feet, connects with other portions of the IH–610 loop, such as the North Loop and the South Loop, that circle Houston. In addition, the West Loop provides a strategic connection to other regional freeway corridors including the Northwest Freeway (U.S. 290), the Katy Freeway, and the Southwest Freeway. The study area also includes METRO transit center facilities on the north and south ends of the corridor. There are a variety of travel markets in the study that include home-to-work trips, and non-home base trips such as business and visitor trips, and recreational-entertainment trips.

Substantial new development and redevelopment is occurring throughout the corridor. However, future development and potential redevelopment could be restricted due to limits on roadway and transit system capacity and parking facilities. Improved transit service, connectivity, access, and capacity are seen as essential to support and enhance economic development activity and help provide a framework for creating a livable and sustainable community.

In general, the following needs and problems have been identified as detrimental to the continued success of the Uptown-West Loop Corridor:

(1) Exclusive transit corridor to improve reliability and travel time;

(2) Pervasive congestion at key intersections;

(3) Service to distinct travel markets

a. Line-haul services on the Katy Freeway, West Loop, Westpark Toll Road, and Southwest Freeway

b. Collection and distribution services for Uptown Houston;

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(4) Poor pedestrian environment and linkages;
(5) Conservation of Memorial Park and other sensitive land uses;
(6) Air and noise pollution;
(7) Visual impacts of potential transportation improvements.

The growth in population and employment in the corridor is significantly large in both relative and absolute numbers. Previous study projections indicate that patronage to retail/entertainment venues in the corridor will increase as well. The projected consequence of this growth is higher traffic volumes throughout local streets and the West Loop throughout the study area. Traffic congestion in the study area will increase in both severity and duration as the peak period "spreads" to encompass earlier and later hours. Travel on parallel arterials will increase proportionately as congestion on the West Loop causes a higher fraction of travel to use alternative routes. Restricted ingress and egress to the Uptown-West Loop area and servicing arterials has contributed to the unreliability of transit services and will deteriorate if not effectively addressed.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of a LPIS and implementation program. The planning studies will consider a variety of transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Bus Rapid Transit;
- HOV system improvements; and
- Light Rail Transit (LRT).

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA and METRO will evaluate all social, economic and environmental impacts of the alternatives analyzed in the EIS. Impacts may include: Land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–557 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement(s) on Highway and Transit Improvements in the North-Hardy Corridor Extending Along and Between Interstate 45 (IH 45) and Hardy Toll Road From SH 242 in Southern Montgomery County, Texas to Spur 527 (Louisiana Street Exit From US 59 South), Harris County

AGENCY: Federal Transit Administration and Federal Highway Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement(s).

SUMMARY: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), in cooperation with the Metropolitan Transit Authority of Harris County (METRO), the Texas Department of Transportation (TxDOT), and the Houston-Galveston Area Council (H–GAC), intend to prepare one or more Environmental Policy Act (NEPA) to evaluate highway and transit improvements in the North-Hardy Corridor of the Houston metropolitan area.

The EIS(s) will be prepared following completion of studies of potential transportation improvements in the North-Hardy Corridor of the Houston metropolitan area. The planning studies will conclude with the selection of a Locally preferred Investment Strategy (LPIS) that may identify both transit and highway improvements to be implemented in the corridor. Transit and highway improvements selected for implementation will be evaluated in the EIS. If the selected investments are in proximity to each other (i.e. within the same right-of-way) it is likely that a single EIS will be prepared. If the selected investments are in different locations, two EIS will be prepared. If the selected investments are in different locations, two EIS documents may be prepared. The decision about the number of EIS documents to be prepared will be determined at the conclusion of the planning studies. The EIS(s) will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No Build Alternative.

The sequence of events for the planning and development for this project include the following major milestones:

- Scoping Process—early opportunity for public input to the study scope and project alternatives. Scoping will be accomplished with a series of public meetings and through correspondence with interested persons, organizations, and Federal, State and local agencies.
- Planning Studies—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a LPIS. A decision on the number of EIS documents to be prepared will occur at the conclusion of the planning studies.
- Conceptual Engineering and Draft Environmental Impact Statement (EIS)—conceptual definition of the alternatives to be evaluated including their physical features and potential impacts, consideration of mitigation measures, preparation and circulation of the Draft EIS(s) comment period, and preparation of the Final EIS(s).
- Preliminary Engineering and Final EIS—detailed definition of the proposed alternative's physical features, assessment of potential impacts, development of selected mitigation measures, responses to comments offered during the Draft EIS(s) comment period, and preparation of the Final EIS(s).

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts considered should be sent to the Metropolitan Transit Authority of Harris County by March 15, 2002. See **ADDRESSES** Below.

Scoping Meetings: Public Scoping meetings for the North-Hardy Corridor will be held on February 5th, February 6th, February 13th, February 20th and February 27th, 2002. See **ADDRESSES** below for meeting times and locations.

All scoping meetings will be held in wheelchair-accessible locations. Any person who requires language interpretation or special communication accommodations is encouraged to contact the project's public participation coordinator at 713–739–6049 at least 72 hours prior to the meeting. Every reasonable effort will be made to meet your needs. Scoping information material will be available at the meetings and may also be obtained in advance of the meetings by contacting the public participation coordination or by contacting METRO at the address or e-mail identified in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings. A court reporter will record all comments.

ADDRESSES: Written comments should be sent to METRO Mobility 2025, Rm 21034, PO Box 61429, Houston, Texas 77208–1429. E-mail: *north-hardy@ridemetro.org*. Scoping meetings will be held at the following locations:

1. February 5, 2002, Wesley Community Center—Social Hall, 1410 Lee Road, Houston, Texas 77009, 4:30–7:30 p.m.
2. February 6, 2002, Northline Mall—Community Room (316), Interstate–45 at Crosstimbers, Houston, Texas 77022, 4:30–7:30 p.m.
3. February 13, 2002, North-Harris Montgomery Community College, Student Center—South Dining Room, 2700 W. W. Thorne Blvd., 4:30–7:30 p.m.
4. February 20, 2002, Houston Community College System, Administration Auditorium, 3100 Main Street at Elgin, 4:30–7:30 p.m.
5. February 27, 2002, Houston-Galveston Area Council, 3555 Timmons Lane—2nd Floor, 3:00–5:00 p.m. Agency Scoping Meeting, Conference Room A, 5:00–7:00 p.m. Open House, Conference Room B.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, FTA, Region VI 819 Taylor Street, Fort Worth, Texas 76102, Telephone (817) 978–0550 or Mr. John Mack, District Engineer, FHWA, 300 East 8th Street, Suite 826, Austin, TX 78701, Telephone: 512–536–5960.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, FHWA, METRO, TxDOT, and the Houston-Galveston Area Council (H–GAC) invite all interested individuals and organizations, and Federal, State, regional, and local agencies to participate in defining the alternatives to be evaluated and identifying social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific, social, economic, or environmental impacts to be evaluated, and suggesting alternatives that may be less costly or have less environmental impacts, but achieve similar objectives. Comments during scoping should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated through the planning process and during the comment period for the Alternatives Analysis Report.

Prior to initiating the EIS(s), planning studies will identify a LPIS that is anticipated to include transit and highway components. Interested individuals, organizations, and Federal, State, and local agencies are invited to participate in refining the purpose, alternatives, schedule, and analysis approach, as well as participate in the active public involvement program throughout the planning process and project implementation. The public is invited to comment on corridor needs and alternatives to be addressed; modes and technologies to be evaluated; alignments and station locations; the environmental, social, and economic impact to be analyzed; and the evaluation approach to be used to select a LPIS. The scoping process will provide input to the process to be used for the evaluation of alternatives during the planning process and the early identification of environmental issues to be considered during the planning studies and in the EIS(s).

Scoping activities are being initiated at the outset of the planning studies, in advance of the EIS(s), to maximize the opportunity for public involvement in the consideration of alternatives and reaching decisions about the transportation investments that will be advanced into the EIS phase of project development.

II. Description of the Project Area and Needed

Planning studies for the North-Hardy Corridor will be initiated in a broadly defined study area in Harris and Montgomery counties, Texas, extending along and between IH 45 and the Hardy Toll Road from SH 242 on the north to Spur 527 (Louisiana Street exit from US 59 South). The North Hardy Corridor includes adjacent communities as well as the George Bush Intercontinental Airport and connects the rapidly growing northern suburbs and the re-developing northside neighborhoods to downtown and other significant activity centers in Houston.

Some areas of IH 45 do not meet accepted modern highway design criteria and congestion is a persistent problem throughout the corridor. A multi-modal approach to expanding transit and highway capacity within the corridor is to be considered.

III. Alternatives

In accordance with NEPA, a public scoping process will be initiated to identify corridor needs and alternatives. The scoping process will provide the basis for the evaluation of alternatives as part of the planning studies, and the selection of LPIS and implementation program. The planning studies will consider a variety of multi-modal highway and transit options in the corridor based on input received during the scoping process. It is expected that the LPIS will be a combination of one or more alternative options identified. Subsequent to the selection of the LPIS, the selected alternatives will be refined and documented in the EIS(s). It may be necessary to prepare more than one EIS for the North Hardy Corridor based on the outcome of the planning studies. At a minimum, the alternatives to be considered in the planning studies include:

- No Build Alternative;
- Extension of the Light Rail Transit line currently under construction in Downtown Houston;
- Commuter Rail along existing railroad facilities in the corridor;
- Highway upgrades or expansion; and
- HOV system improvements.

Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects and Potential Impacts for Analysis

FTA, FHWA, METRO, TxDOT, and H–GAC will evaluate all social, economic and environmental impacts of

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the alternatives analyzed in the EIS(s). Impacts may include: Land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems (threatened and endangered species); water resources; energy; construction impacts; safety and security; utilities; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA/FHWA Procedures

In accordance with FTA/FHWA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the Department of Transportation Act, will be addressed to the maximum extend practicable during the NEPA process.

Issued on: January 2, 2002.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Region VI, Fort Worth, Texas.

[FR Doc. 02–556 Filed 1–8–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–11041; Notice 1]

Toyota Motor Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

Toyota Motor Corporation (TMC) has determined that certain 2000–2001 Model Year (MY) Celicas are equipped with daytime running lamps (DRLs) which fail to meet the spacing requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices and Associated Equipment."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), TMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The DRLs on the Celica are provided by the upper beam headlamps operating at a lower intensity, with each lamp having a maximum luminous intensity of roughly 5,880 candelas at test point H–V (as described in FMVSS No. 108 test procedures). S5.5.11(a)(4) of FMVSS No. 108 requires that "* * * if not optically combined with a turn signal lamp, (the DRL) (shall be) located so that the distance from its lighted edge to the optical center of the nearest turn signal lamp is not less than 100 mm, unless * * * the luminous intensity of the DRL is not more than 2,600 candela any location in the beam. * * *" However, for the noncompliant Celicas the distance from the DRL's lighted edge to the optical center of the nearest turn signal lamp is only 45.6 mm and therefore, the DRLs exceed the maximum luminous intensity specified in section 5.5.11(a)(4)(i) of FMVSS 108.

Toyota believes that this noncompliance is inconsequential to motor vehicle safety, and therefore creates no unreasonable risk to highway safety for the following reasons:

S.5.5.11(a) permits an upper beam headlamp intended to operate as a DRL to have a maximum intensity of 7000 cd, and in conjunction, a turn signal lamp with a minimum intensity of 200 cd, as long as the spacing is 100 mm or greater. Toyota conducted subjective evaluations of turn signal visibility using 20 contractors for the subject vehicles under various conditions, and confirmed that visibility for the subject vehicles is substantially better than vehicles that were modified to meet the minimum turn signal/maximum DRL luminous intensity permitted by the standard. According to Toyota's evaluation, the flashing of the subject turn signals can be readily discerned by a driver in an oncoming vehicle at a distance of 300 feet, and much more so than vehicles with modified signals/DRLs. The assessment distance of 300 feet is the same used in NHTSA's own evaluation of turn signal masking, as described in the final rule published in the Monday, January 11, 1992 **Federal Register** (58 FR 3500).

In addition to the subjective measures, we also provide the following technical factors which contribute to good visibility of the turn signal lamps:

The turn signal lighted area is 45.1cm², two times larger than the 22cm² required by FMVSS 108;

The luminous intensity of the subject vehicle's turn signal lamps are 568 cd, or 2.8 times the minimum value of 200 cd;

The substantial distance from the turn signal optical center (bulb filament axes) to the DRL's lighted edge is 82 mm, exceeding 80% of the requirements. In this case, the "substantial" distance refers to the distance from the turn signal's optical center to the actual lighted edge "A" (as given by the Figure below), although the theoretical lighted edge is point "C" (45.6mm). In the Figure, the lighted range from A to C of the reflector emits only light which is parallel to the axis of the DRL, which can only be seen by drivers in oncoming vehicles that are looking along the optical axis of the DRL. However, as one moves off center, this light is no longer visible. Therefore, the perceptible DRL's lighted area, except for the unique case where the eye-point is on the optical axis of the DRL, is actually from A to B (as given in the Figure).

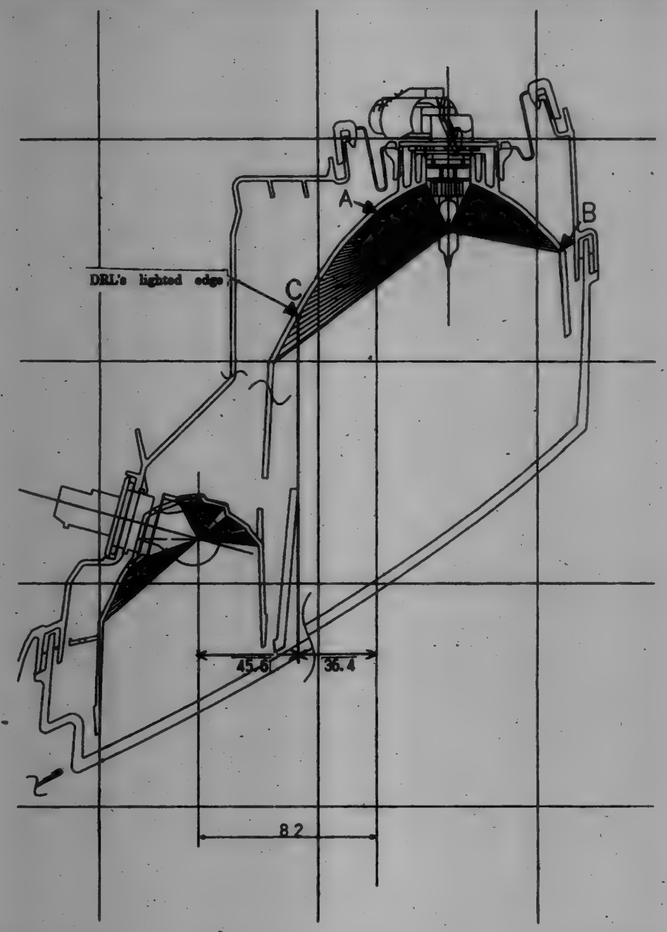

The subject vehicles meet all the requirements of CMVSS 108 and the identical DRL requirements which are found in FMVSS 108 prior to October 1, 1995;

Finally, although Toyota has sold approximately 100,000 of the subject vehicles since the summer of 1999 in USA and Canada, it has not received any customer complaints nor accident reports that alleged problems with turn signal visibility or masking.

Toyota believes that the noncompliance in the subject vehicles is inconsequential to motor vehicle safety for the reasons outlined above, and therefore should be exempted from the notification and remedy requirements of the Safety Act for this specific noncompliance.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket and notice number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: February 8, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 3, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–555 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34150]

The Belt Railway Company of Chicago—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company

Indiana Harbor Belt Railroad Company (IHB), a Class III rail carrier, has agreed to grant non-exclusive bridge trackage rights to The Belt Railway Company of Chicago (BRC), between the connection of BRC and IHB at Argo, IL, milepost 26.5 and the connection of IHB and Canadian National Railroad Company (CN) at Argo, milepost 27.5, a total distance of approximately 1 mile.

The transaction was scheduled to be consummated on or after December 27, 2001, the effective date of the exemption.

The purpose of the trackage rights is to provide BRC with a new direct connection with CN at Argo to facilitate a new interchange movement.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34150, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas J. Healy, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our web site at *"WWW.STB.DOT.GOV."*

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–413 Filed 1–8–02; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Wednesday,
January 9, 2002

Part II

National Indian Gaming Commission

25 CFR Part 513

Debt Collection; Interim Rule

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NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 513

RIN 3141–AA25

Debt Collection

AGENCY: National Indian Gaming Commission.

ACTION: Interim rule: reopening of comment period.

SUMMARY: On November 20, 2001, the National Indian Gaming Commission (Commission) issued an interim rule (66 FR 58056, November 20, 2001) promulgating regulations setting forth procedures for collecting debts, as required by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996. The 45-day period for filing comments is being reopened.

DATES: Comments shall be filed on or before January 14, 2002.

ADDRESSES: Comments may be: mailed to Cynthia Omberg, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday; or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cynthia Omberg at 202/632–7003; fax 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Public Law 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (Public Law 104–134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards (31 CFR Chapter IX). Under these regulations, the Commission may collect debts owed to it through various methods, including administrative offset, tax refund offset, or salary offset.

The initial comment period for the regulations closed January 4, 2002. In response to two requests for extensions of time, the Commission grants interested parties 10 additional days to determine and present their views. As an interim rule setting out agency procedure, the regulations continue to be effective during the comment period.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 02–676 Filed 1–8–02; 8:45 am]

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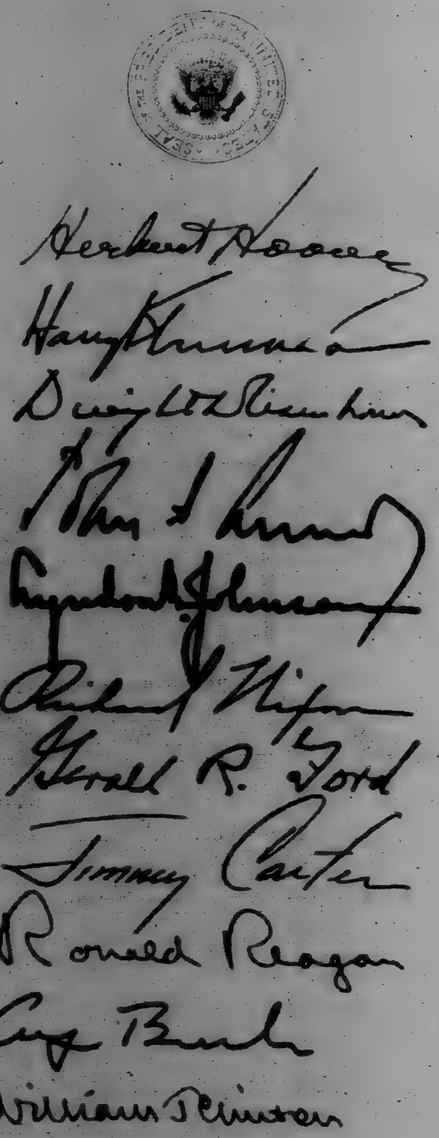

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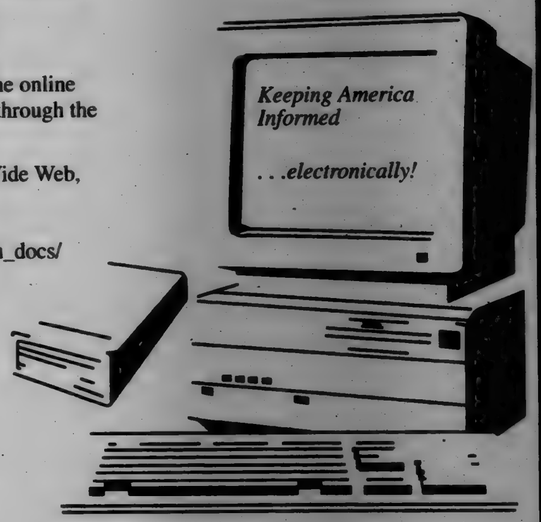

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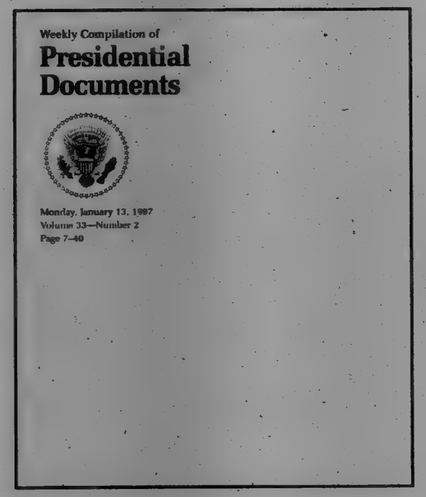

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV01–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Date Administrative Committee (Committee) for the 2001–02 and subsequent crops years from $0.10 to $0.25 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning on October 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2001–02 and subsequent crop years from $0.10 per hundredweight to $0.25 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Committee or other information available to the USDA.

The Committee met on August 16, 2001, and unanimously recommended 2001–02 expenditures of $90,800 and an assessment rate of $0.25 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $116,800. The recommended assessment rate of $0.25 is $0.15 higher than the rate currently in effect. The higher assessment rate is needed to offset a reduction in the Committee's reserve funds and a reduction in surplus funds available to the Committee from the sale of cull dates. Proceeds from the sales of cull dates are deposited into the surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied $15,000 of surplus account monies to cover surplus pool expenses. Based on

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a recent trend of declining sales of cull dates over the past few years, the Committee expects the surplus pool share of expenses during 2001–02 to be $5,000, or $10,000 less than expected during 2000–01. Hence, the revenue available from the surplus pool to cover Committee expenses during 2001–02 is expected to be less than last year. To offset this reduction in income, the Committee recommended increasing the assessment rate, using $20,550 from its administrative reserves, and $250 in interest income to fund the 2001–02 budget.

The major expenditures recommended by the Committee for the 2001–02 year include $54,700 in salaries and benefits, $3,900 in office administration, $30,200 in office expenses, and $2,000 for contingencies. Budgeted expenses for these items in 2000–01 were $54,100 in salaries and benefits, $18,000 in office administration, $39,700 in office expenses, and $5,000 for contingencies.

The assessment rate recommended by the Committee was derived from applying the following formula where:

A = 2001–02 surplus account ($5,000);
B = amount taken from administrative reserves ($20,550);
C = 2001–02 interest income ($250);
D = 2001–02 expenses ($90,800);
E = 2001–02 expected shipments (260,000 hundredweight);
(D − (A + B + C) ÷ E = $0.25 per hundredweight.

Estimated shipments should provide $65,000 in assessment income. Income derived from handler assessments, the surplus account (which contains money from cull date sales), and the administrative reserves should be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $20,800 by September 30, 2001, and therefore will be less than the maximum permitted by the order (not to exceed 50% of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts are less than $5,000,000. Five of the 10 handlers (50%) shipped over $5,000,000 of dates and could be considered large handlers by the Small Business Administration. Five of the 10 handlers shipped under $5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent crop years from $0.10 per hundredweight to $0.25 per hundredweight of assessable dates handled. The Committee unanimously recommended 2001–02 expenditures of $90,800 and an assessment rate of $0.25 per hundredweight. The assessment rate of $0.25 is $0.15 higher than the rate currently in effect. The quantity of assessable dates for the 2001–02 crop year is estimated at 260,000 hundredweight. Thus, the $0.25 per hundredweight rate should provide $65,000 in assessment income and, in conjunction with other funds available to the Committee, be adequate to meet this year's expenses. Funds available to the Committee include income derived from assessments, the surplus account (which contains money from cull date sales), and the administrative reserves.

The higher assessment rate is needed to offset a reduction in the Committee's reserve funds and an expected reduction in surplus funds available to the Committee from the sale of cull dates. Proceeds from the sales of cull dates are deposited into the surplus account for subsequent use by the Committee. Last year the Committee applied $15,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years, this year the Committee expects to apply $5,000 to the budget from the sale of cull dates.

The major expenditures recommended by the Committee for the 2001–02 year include $54,700 in salaries and benefits, $3,900 in office administration, $30,200 in office expenses, and $2,000 for contingencies. Budgeted expenses for these items in 2000–01 were $54,100 in salaries and benefits, $18,000 in office administration, $39,700 in office expenses, and $5,000 for contingencies.

The Committee reviewed and unanimously recommended 2001–02 expenditures of $90,800 which included increases in salaries and benefits and administrative expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not fund a compliance officer position, but determined that expenditures for the position were necessary to promote compliance with program requirements. The assessment rate of $0.25 per hundredweight of assessable dates was then determined by applying the following formula where:

A = 2001–02 surplus account ($5,000);
B = amount taken from administrative reserves ($20,550);
C = 2001–02 interest income ($250);
D = 2001–02 expenses ($90,800);
E = 2001–02 expected shipments (260,000 hundredweight);
(D − (A + B + C)) ÷ E = $0.25 per hundredweight.

Estimated shipments should provide $65,000 in assessment income.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2001–02 season could range between $30 and $75 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2001–02 crop year as a percentage of total grower revenue will be less than one percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 16, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on October 15, 2001 (66 FR 52363). Copies of the proposed rule were also mailed or sent via facsimile to all date handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending November 14, 2001, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2001–02 crop commodity from growers, the fiscal period began October 1, and the rate applies to all dates received during the 2001–02 and subsequent seasons. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2001, an assessment rate of $0.25 per hundredweight is established for California dates.

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–580 Filed 1–9–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 01–046N]

RIN 0583–AC87

Retained Water in Raw Meat and Poultry Products: Suspension of Regulation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final Rule; Suspension of regulation.

SUMMARY: The Food Safety and Inspection Service (FSIS) is suspending until January 9, 2003, regulations that limit water retained by raw meat and poultry products from post-evisceration processing to the amount that is unavoidable in meeting applicable food safety requirements and that require labeling for the amount of water retained. The original effective date of these final regulations was January 9, 2002. FSIS is taking this action in response to a petition from four trade associations representing the meat and poultry industries. The petitioners requested the effective date be extended until August, 2004. However, FSIS has decided that a one-year suspension of the regulation will allow the meat and poultry industry sufficient time to complete necessary experimentation, including microbial testing and chilling system trials under FSIS-accepted data collection protocols; to fine-tune and stabilize newly adjusted processes; and to conduct regular measurements of retained water at packaging. Suspension of the regulation also will provide members of the meat and poultry industry sufficient time to order new supplies of labels with statements reflecting the amount of retained water in their raw products.

The final rule promulgating the retained water regulations also made numerous technical amendments in the sections of the poultry products inspection regulations that concern poultry chilling practices. The effective date of these amendments will remain January 9, 2002.

DATES: The effective date of the amendments of 9 CFR 381.65 and 381.66 published January 9, 2001 (66 FR 1750), as corrected by the **Federal Register** notice published April 17, 2001, at 66 FR 19713–19714, is and remains January 9, 2002. 9 CFR part 441 is suspended from January 9, 2002, until January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, OPPDE, FSIS, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2001, FSIS published a final rule in the **Federal Register** (66 FR 1750) that, among other things, promulgated regulations limiting the amount of water that could be retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling. Under these regulations (codified at 9 CFR 441.10), raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected under a written protocol, that any water retained in the carcasses and parts is an inevitable consequence of the

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process used to meet applicable food safety requirements. The labels of products covered by the rule must bear statements indicating the maximum percentage of retained water in the products. On June 29, 2001, FSIS issued instructions to its personnel (FSIS Notice 22–01) on procedures, including those for review of data collection protocols, that are to be followed during the period before the new water retention regulations become effective.

In the **Federal Register** of October 17, 2001 (66 FR 52715), FSIS published a notice on a petition by the National Chicken Council, the National Turkey Federation, the National Food Processors Association, and the American Meat Institute requesting that FSIS postpone until August 1, 2004, the effective date of the water retention regulations.

The petitioners assert that postponement of the effective date is necessary because affected companies will not be able to comply with the regulations until they have completed several steps for which the Agency did not allow sufficient time. The petitioners maintain that some companies will not be able to begin data collection under FSIS-accepted data collection protocols until late 2001; that testing to determine the relationship between *Salmonella* and water retention levels and seasonal variation in the moisture content of poultry will not be completed until early 2003; and that, after such testing, changes in labels and the labeling of many products affected by the final rule cannot be completed until mid-2004.

Comments on the Industry Petition

In the October 17, 2001, **Federal Register** notice, FSIS posed five questions:

1. Did the Agency allow the regulated industry sufficient time—one year from publication of the final rule—to prepare for implementation? Explain why the time for implementation was adequate or inadequate.
2. Is available laboratory capacity sufficient or insufficient to enable the industry to comply with the new regulations by the effective date?
3. Is there additional information on the time necessary to produce new labels for retained-water products that the Agency should consider?
4. Would postponement of the effective date be fair or unfair to anyone and, if so, how?
5. Would postponement of the effective date of the new retained water regulations (9 CFR 441.10) affect consumers and, if so, how?

In posing these questions, FSIS was seeking additional information not already available to help the Agency decide the matter addressed by the petition.

Most of the commenters responded to some or all of the five questions that FSIS posed in the notice. The Agency received 41 comments in response to the **Federal Register** notice on the petition. Thirty-seven comments were from poultry processing establishment managers or other poultry company officials. All favored postponing the effective date of the retained water regulations. A meat and poultry industry association also filed a comment supporting postponement. Two cattle producer associations and an FSIS employee opposed postponement.

Comments Supporting the Petition

Commenters that supported postponement of the effective date of the final rule stated that the time allowed the industry to prepare for implementation—one year—was insufficient. They noted that adequate guidelines for developing a moisture data collection protocol were not available from FSIS until summer 2001 and waiting for the FSIS to review protocols voluntarily submitted to the Agency consumed additional time. After completion of experimentation under the protocol, the commenters claimed, additional time would be necessary to develop a process control program and make the necessary adjustments to ensure its effectiveness.

Comments asserted that companies would have to have 2-to-12 months to exhaust their supplies of labeled packaging materials already in stock. Also, once reliable data on the amount of retained water in raw products had been developed, 2 to 3 months would be necessary for label suppliers to prepare new plates and labels for the products. Commenters noted that the development of new pre-labeled packaging for poultry products is a two-stage process involving, first, the development of new plates and second, the printing of new labels. They stated that there is insufficient label-making capacity in the industry to meet the demands for new labels of all companies trying to comply with the new regulations by the existing effective date.

Several managers of one firm argued that the short, one-year implementation time provided by the final rule would effectively force companies to label parts with "up to X% retained moisture" with X = the whole-bird retention amount. The reason for this is that the amount of retained moisture in whole birds is easier to determine than that for parts. But that amount is also likely to be significantly higher than the retention amount for parts.

The commenters that favored postponement of the effective date of the final rule argued that laboratory capacity available to establishments was insufficient for them to be able to meet the effective date. Most commenting on this issue said that their establishments do not have on-premises capability to do *Salmonella* testing and that they had no drying oven to use in the oven-drying test for total moisture. They also stated that they needed to collect additional samples to determine whether they would be meeting generic *E. coli* process control criteria under the new rule.

Those supporting the petition tended to argue that postponement would be fair to both consumers and the industry. Not postponing could result in a virtual shutdown of the industry because product would suddenly be misbranded and could not be sold legally. As a result, with the amount of animal protein product available to consumers decreasing, such product would only be available to them at higher prices. Also, a shutdown in the industry would affect farmers, feed suppliers, truckers, warehouses, and many others. Unemployment would increase. Reduced tax revenues would adversely affect the Government.

Those supporting the petition argued that postponement of the effective date would be fair to consumers. Consumers would continue to have protein product choices in the marketplace. The effect of the postponement on their budgets would be minimal. They would still be able to make informed purchasing decisions based on past industry performance. And they would experience no change in the acceptability and safety of the products.

Some poultry company officials argued that postponement would allow time for industry and Government to develop "best practices," with the goal of providing more accurate information to consumers.

Some poultry company officials argued that non-poultry entity arguments, especially regarding the alleged unfairness to red meat of allowing retained water in poultry products, are political and not supportable without testing.

The association representing both meat and poultry companies suggested that precautions taken since the recent anthrax attacks through the mail may have resulted in delayed delivery of some draft protocols to FSIS, and thus their review.

Commenters Opposing Postponement

Those opposing postponement of the effective date of the final rule argued that the issue of allowing retained water in poultry products has been before FSIS for more than seven years. To delay implementation of the new regulations would be to perpetuate an inequity.

Moreover, these comments pointed out, the industry has known since at least September 1998 that changes in the regulations were imminent. These comments stated that some companies have prepared for the January 9, 2001, changes and will be ready, while other companies have deliberately avoided preparing in hopes that the effective date would be postponed and current practices continued.

These commenters said that the time frame for implementing the final rule was adequate and that the poultry products industry is only dragging its feet. The trade association representing cattle producers agreed with these commenters and added that since the poultry industry and FSIS had in July 2001 finally reached agreement on a protocol framework for determining retained water in products, the effective date for the entire poultry industry should be no later than July 2002.

Another opponent of the petition stated that available testing facilities are adequate. Many establishments are capable of performing necessary tests.

One opponent of the petition stated that simple labeling changes are often made at the establishment and can be effected in a few minutes. Elaborate labeling changes can be accomplished in just a few days.

Several opponents of the petition said that postponement of the effective date of the final rule would be unfair both to consumers and to the red meat industry. The poultry industry would benefit by continuing to be able to sell water to consumers at poultry prices.

One opponent of the petition stated that postponement of the effective date would certainly affect consumers. Since July 1997, there has been no regulatory limit on water retention in most raw poultry products; therefore, the consumer does not know how much water the product may retain from processing because the amount is not on the label. This commenter calculated that a postponement of 660 days would allow an average large poultry establishment to gain $30.2 million by in effect selling excess water without being held accountable for doing so.

One of the cattle producer associations stated that FSIS should acknowledge that the poultry industry has made dramatic progress in reducing *Salmonella* prevalence in the wake of the PR/HACCP rulemaking. Therefore FSIS should not force the poultry industry to perform a complicated analysis of the relationship between water retention levels and *Salmonella* prevalence at this time. Rather, the Agency should focus on requiring the poultry industry to minimize the amount of retained water in meeting the time/temperature chilling requirements for poultry and HACCP requirements.

This association said that, given the fact that the poultry industry and FSIS did not agree on a data-collection protocol framework until July 2001, labeling should be in place by January 2002 for those companies that are capable of meeting that deadline and by July 2002 for the whole industry.

FSIS' Response to the Petition and Comments

Having considered the petition and the comments received, the Agency differs somewhat with the industry on several matters addressed in the petition. Among these are: the effect of FSIS review of data collection protocols on poultry industry chilling system tests and data collection; the burden that testing associated with implementation of the new regulations will impose on industry laboratory capacity; the need for additional data collection to account for seasonal variation in naturally occurring moisture in poultry; and, moisture levels having been determined, the need for up to 14 additional months for labels to be prepared for all affected products.

Review of Protocols

Although FSIS has established a procedure for Agency review of protocols submitted by industry, the new retained water regulations merely require an establishment subject to the regulations to notify the Agency and make the protocol available for review and gives the Agency 30 days to object to or require the establishment to make changes in the protocol. The regulations do not literally preclude the establishment from undertaking data collection under a sound protocol as soon as the protocol is developed. An establishment's decision to wait until it receives a "no objection" letter from the Agency is not mandated.

On the point that the industry has had only since July 2001 to begin data collection under acceptable protocols, it is the case that questions about a "model" protocol were resolved by that time. However, the Agency's expectations respecting the necessary elements of such a protocol were known well before then. The Agency has encouraged the industry to undertake data collection since at least December 9, 1997, when FSIS published a **Federal Register** notice (62 FR 64767) detailing the elements of a data collection protocol for water retention in raw meat and poultry products.

In its petition, the industry asserts that because of the time needed for FSIS review of protocols, not all establishments will be able to begin data collection on retained water until December 2001. At present, FSIS has reviewed well over 200 protocols (238 by December 6, 2001) that were submitted for the most part by poultry slaughtering establishments. As the review of submitted protocols has proceeded, the review time per protocol has decreased and the review procedures have been perfected to the point that the Agency's Office of Policy, Program Development, and Evaluation will soon be able to turn over protocol review responsibilities to the Office of Field Operations.

FSIS understands that most establishments whose protocols have been reviewed are now well into the process of collecting retained water data and will soon have reliable information to support new product labels. This fact indicates to us that a typical poultry establishment may not need more than a few weeks to carry out trials of its chilling system using different sets of variables and obtain data that is sufficient to support retained water labeling.

Laboratory Capacity

Since the protocol review process is resulting in a phased beginning of data collection in the industry, the laboratories employed by the establishments can be expected to adjust to the gradually rising load on their analytical resources. Nor do the retained water regulations entail laboratory testing on a grandiose scale. Consequently, the scenario of an over burdened industry laboratory capacity as envisioned by the industry petition should not develop.

In their comments on the petition, many establishments expressed an interest in the oven drying method discussed in the final rule. These establishments noted that few of their laboratories were equipped with the apparatus necessary to apply the method. The need to send samples to an outside laboratory to obtain definitive total and retained water measurements would result in delaying results. Further, with many establishments requiring the same tests, the laboratory capacity available to the industry for

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these tests would quickly become overburdened.

FSIS observes that, although the Agency does not discourage them from doing so, FSIS is not requiring establishments to perform microbiological testing on the scale contemplated by the industry in its petition. Nor does FSIS specifically require the use of the oven-drying method to determine the moisture content of raw products. FSIS merely has presented the method as the one that the Agency plans to use in its in-distribution sampling of products subject to the new regulations. Establishments may use other procedures to which they may be more accustomed to determine retained water in their products. For example, they may weigh product before and after chilling or other processing to determine whether the product weight has increased, and use this difference as a basis for calculating water retention. But they are not restricted to using any one method.

Seasonal variation: Regarding the effect of seasonal variation in the naturally occurring moisture in poultry on the total amount of water in raw products, FSIS disagrees with the industry's contention. The industry states in its petition, and supplies a chart to illustrate, that in some months naturally occurring moisture levels in poultry are higher than the annual mean, while in other months the levels are below the mean. Therefore, according to the petition, it will be necessary for any given establishment to have a full year's worth of data to be able to know precisely, on an on-going basis, what the total amount of water, and hence the retained water level in its product, will be.

In FSIS Notice 22–01 discussed above, FSIS states that the Agency will enforce the labeling provisions of the regulations in a manner similar to its enforcement of the nutrition labeling regulations. That is, FSIS plans to allow the labeled amount of retained water to vary by as much as 20 percent of the actual amount of retained water in the product. Such a variation is typically allowed to account for such factors as seasonal fluctuations in the occurrence of specific nutrients in raw food ingredients. The industry has indicated in its petition that the seasonal variation in poultry carcass yield, which is partly affected by changes in the amount of naturally occurring moisture in poultry, is typically just a small percent of yield weight. Since retained water is computed as a percent of the product weight, a small percentage point change in the natural product weight should not lead to discrepancies between actual and labeled retained water amounts that would ordinarily exceed the 20 percent allowable variation. Thus, it is unlikely that the variability in raw product moisture content would be so great as to cause FSIS to take an enforcement action against the establishment. That being the case, while more precise data are desirable, the need to collect additional data on seasonal variation in naturally occurring water should not influence a decision on the effective date of the retained water regulations.

Label Changes

The industry says in its petition that not until early 2003 will all establishments know the amount of retained moisture in their products. Also, according to the petition, the label printing capacity available to the industry is limited by the fact that only a few hundred label changes a month can be made, while about 6,500 poultry labels will have to be changed. Therefore, argues the industry, not until summer 2004 can new labels be printed for all establishments.

FSIS believes that most establishments will know the minimized levels of retained water in their products well before 2003, and indeed, some establishments already are in a position to change their labels. FSIS does not think the industry will have to study seasonal variation in naturally occurring moisture in poultry for a full year before it will be in a position to include retained water statements on product labels. Further, as one commenter on the petition noted, labeling changes are often made at the establishment. Simple labeling changes can be made in a few minutes; elaborate labeling changes can be accomplished in a few days. Of course, where printing plates for labels must be retooled, the change may take longer. Extending the effective date for one year should allow all establishments ample time to have the necessary changes made in their labels.

FSIS therefore thinks that most necessary product label changes can be made in the course of a year. Thus, FSIS does not think it necessary to postpone the effective date of the regulation for an extended period to allow for the completion, first, of seasonal-variation studies and then of label changes.

FSIS' Response to Comments Opposing the Petition

FSIS agrees that postponement of the petition until August 2004 is not warranted. However, as discussed in the following section of this notice, FSIS believes that a one-year postponement is necessary and appropriate. In response to the comments concerning inequity between the meat and poultry industry and benefits to consumers resulting from the water retention regulations, FSIS does not believe that these comments are relevant to the date of enforcement of the regulations. With regard to the comments on labeling changes, FSIS agrees that an extension until August 2004 is not necessary. However, as discussed above, FSIS recognizes that if printing plates for labels must be retooled, the change may take longer than the opposing comments suggested. Finally, in response to the comment that FSIS should not force the poultry industry to perform a complicated analysis of the relationship between water retention levels and *Salmonella* prevalence at this time and that the Agency should focus instead on requiring the poultry industry to minimize the amount of retained water in meeting the time/temperature chilling requirements for poultry and HACCP requirements, FSIS believes the type of hazard most likely to be identified as susceptible of being controlled by the post-evisceration processes envisioned by the retained water regulations is a biological hazard. Similar arguments for postponement of the effective date of the regulations could be made on the basis of the need for microbial tests to verify HACCP controls as for microbial tests to verify that *Salmonella* performance targets are being met. Also, it should be noted that the Agency is developing a proposed rule to eliminate the time/temperature chilling requirements for poultry.

FSIS's Reasons for Granting a One-Year Suspension

FSIS is granting a one-year suspension of the water retention regulations in 9 CFR 441 because the Agency recognizes that some establishments in the poultry industry are not yet in a position to operate in compliance with the new regulations. Also, some small meat slaughtering and processing operations have yet to determine whether or not they are subject to the regulations and need some guidance respecting the kind of information they need to have to demonstrate that their raw products do not retain water. With additional time, if these establishments find that they are subject to the regulations, they will be able to take steps to ensure that they are in compliance with it.

A one-year suspension will allow the industry sufficient time to complete necessary experimentation, including microbial testing and chilling system trials, under FSIS-accepted data collection protocols; to fine-tune and stabilize newly adjusted processes; and to conduct regular measurements of retained water at packaging. Members of this industry would have sufficient time to order new supplies of labels with statements reflecting the amount of retained water in raw products.

FSIS did not agree that an extension of the effective date until August 1, 2004, would be necessary for the reasons explained above in FSIS' response to the petition and comments. First, FSIS does not believe that industry laboratory capacity would become overburdened as a result of this rule. Second, FSIS does not believe that establishments would need to have a full year's worth of data on seasonal variation in naturally occurring water to be able to comply with the labeling requirements in the rule. Finally, FSIS believes that most necessary product label changes can be made in the course of a year.

In summary, FSIS believes that a one-year suspension of the water retention provisions in 9 CFR part 441 is appropriate and necessary. However, FSIS does not believe a further suspension would be warranted and does not intend to suspend the regulation beyond January 9, 2003.

Technical Amendments

The final rule promulgating the retained water regulations made numerous technical amendments in the sections of the poultry products inspection regulations that concern poultry chilling practices to improve consistency with the Pathogen Reduction/Hazard Analysis and Critical Control Points regulations, eliminate "command- and control" features, and reflect current technological capabilities and good manufacturing practices. FSIS also revised the definition of "ready-to-cook" poultry to account for the elimination of the requirement to remove kidneys from mature birds and removed several redundant provisions from the poultry product inspection regulations. These technical amendments were not controversial, and the effective date of these amendments will remain January 9, 2002.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the meeting and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect, or would be of interest to, our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

For the reasons set out in the preamble, 9 CFR Part 441, added at 66 FR 1771, January 9, 2001, is suspended from January 9, 2002, until January 9, 2003.

Done at Washington, DC, on January 8, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–738 Filed 1–8–02; 3:58 pm]

BILLING CODE 3410–DM–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052–AB93

Loan Policies and Operations; Definitions; Loan Purchases and Sales

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we, or our) issues this final rule to amend our loan participation regulations. This final rule will enable Farm Credit System (FCS or System) institutions to better use existing statutory authority for loan participations by eliminating unnecessary regulatory restrictions that may have impeded effective participation relationships between System institutions and non-System lenders. We believe that these regulatory changes will improve the risk management capabilities of both System and non-System lenders and thereby, enhance the availability of reliable and competitive credit for agriculture and rural America.

EFFECTIVE DATE: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

Or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION

I. Objectives

Our objectives for this rule are to:

- Improve System institutions' ability to participate in today's loan participation market with both System and non-System lenders;
- Increase the flow of credit to agriculture and rural America; and
- Encourage improved working relationships between System institutions and non-System lenders.

The rule will help to achieve these objectives by:

- Removing two restrictive definitions of a "loan participation" which will permit System institutions to purchase or sell 100-percent loan participations;
- Removing the 10-percent retention requirement when loan servicing remains with a non-System lender; and
- Making technical and clarifying changes in the Federal Agricultural Mortgage Corporation's (Farmer Mac) participation authorities.

II. Background

Our existing rule limits the amount a System institution can participate in a non-System lender's loan to 90 percent of the outstanding principal when the non-System lender retains the servicing to the borrower. If the System institution acquires the servicing rights, it can participate in more of the loan, but is limited to an amount less than 100 percent of the outstanding principal due to the "fractional undivided" language contained in two regulatory definitions of "loan participation."

Our present regulations do not specifically refer to Farmer Mac as an "other System institution" for purposes of loan participation authorities because Farmer Mac's authority to buy, sell, hold, or assign loans was granted after the present regulations were written. These final regulations correct this omission.

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III. Comments

On July 26, 2000, we published a proposed rule in the **Federal Register** to amend parts 614 and 619 of our regulations. *See* 65 FR 45931. We received 61 comment letters in response to our proposal. The majority of the comment letters were from boards of directors, management, or customers of System associations. We also received comments from five Farm Credit banks, two banking trade groups, and one community bank.

All but four of the comment letters supported the proposed rule. The four comment letters expressing concerns were from the banking trade groups, the community bank, and one Farm Credit bank. Comments opposing the proposed rule ranged from questioning FCA's authority to adopt the rule to expressing concerns that the proposed rule moves the System away from its cooperative principles. We did not receive any comments opposing the removal of the 10-percent retention requirement or the proposed technical and clarifying changes concerning Farmer Mac. After carefully considering the comments received, we are adopting the proposed rule without substantive change.

A. FCA's Authority To Revise the Loan Purchases and Sales Regulation

1. Participation Authority

The final rule eliminates two overly restrictive regulatory definitions in order to give System institutions the authority to buy and sell loan participations up to 100 percent of the outstanding principal. Some comment letters contend that the Farm Credit Act of 1971, as amended (Act) does not permit us to authorize the purchase and sale of 100-percent participations. FCA has the authority to define the meaning of the terms used in the Act. We previously adopted more narrow regulatory definitions of loan participations than we now believe is required by statute. The Act does not provide a specific definition of a loan participation other than that contained in section 3.1(11)(b)(iv), which specifically applies only to "similar entity" participations and does not limit the percentage of interest in a participation. We now have determined that we should remove these regulatory definitions and allow purchases and sales of 100-percent loan participations.

We previously restricted a loan participation to a "fractional" undivided interest, something less than 100 percent.[1] Prior to issuing the proposed rule last year, we reviewed this restrictive language and concluded that the Act does not require such a narrow definition. Section 1.5 of the Act provides that Farm Credit Banks, "subject to regulation by the Farm Credit Administration, shall have power to * * * make, participate in, and discount loans" and may "participate with" other financial institutions in loans authorized under the Act.[2] There are no statutory limitations on the percentage of a loan in which a Farm Credit bank may participate.[3] Similarly, sections 2.2 and 3.1 of the Act provide, respectively, that a production credit association may "make and participate in loans" and a bank for cooperatives may "participate in loans," subject to regulation by the FCA. Nowhere does the Act provide that a participation interest must be less than 100 percent.

The present FCA regulatory definitions are overly restrictive and not consistent with current banking practices. In 1984, the Office of the Comptroller of the Currency (OCC) issued a banking circular[4] that provides that loan participations can include "all or a portion" of the loan. In addition, the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the OCC, and the Office of Thrift Supervision (OTS) issued an interagency statement on sales of 100-percent loan participations on April 10, 1997. The interagency statement provided guidance on the use of 100-percent loan participations in light of a 1992 court decision[5] that concluded that such participations did not involve the sale of securities under Federal securities laws. By recognizing 100-percent loan participations, the banking guidance effectively removed the fractional-interest characteristic as a defining feature of a loan participation.

Under the Act, System institutions have the authority to participate in loans. Because the Act does not limit the percentage of participations, we do not believe that this statutory authority should be interpreted to exclude 100-percent loan participations.

The final rule gives System institutions the freedom to exercise their statutory authority to acquire such participations by removing the regulatory definitions of "loan participation" from §§ 614.4325(a)(4) and 619.9195. By removing these restrictive definitions, we provide System institutions comparable flexibility afforded by the Federal Reserve, FDIC, OCC and OTS to commercial banks and thrift institutions. This will enable System institutions to make better use of their statutory authority, to cooperate and participate with non-System lenders, and to improve access to credit for agriculture and rural America.

Commenting on our proposed rule, a banking trade group argued that in the mid-1990's Congress explicitly denied a System attempt to increase its authority to purchase whole loans and to participate with non-System lenders in loans of up to 100 percent of the outstanding principal. At that time, the System's trade association, the Farm Credit Council (FCC), asked Congress to provide the System the authority to purchase "whole" loans from commercial banks. The document that the commenter cited referred to loan purchases, not loan participations. We found no evidence that the System's trade association included a request for 100-percent participation authority with their request for whole loan purchase authority.

2. Distinction Between Loan Participations and Loan Purchases

Several commenters apparently confused 100-percent loan participation authority with the authority to purchase and sell interests in "whole loans." The Act recognizes these as separate and distinct authorities and specifically authorizes System institutions to purchase or sell participations. The authorities are separate regardless of whether the interests are 100 percent or something less.

Loan participations are a type of funding arrangement separate and distinct from either partial or whole loan purchases. The distinction centers around who retains the legal relationship with the borrower. In a loan purchase, part or all of the lending relationship transfers to the purchasing institution. By definition, a whole loan purchase includes not only the purchase of the asset, but its cashflows, the legal relationship, and the servicing requirements. The relationship in a loan participation, regardless of the participation amount (100 percent or some amount less than 100 percent), consists only of cashflows from the loan and possibly the servicing rights for the loan. The legal lending relationship stays with the originating lender.

While 100-percent loan participations may resemble whole loan purchases in some respects, the financial markets recognize them as separate and distinct transactions. In addition, courts have recognized the legal distinction between participations and loan purchases and the separate legal effects of loan participation agreements.[6] Finally, other financial regulators recognize the legal distinctions between loan participations and selling whole loans, which involves the transfer of title.[7]

B. Participation Authority and Farmer Mac

The rule clarifies the authority of Farmer Mac and other System institutions to participate with each other. Some commenters argued that our proposal would duplicate Farmer Mac authorities and increase the risk to the System. Comment letters noted that selling loans to the secondary market through Farmer Mac provides liquidity and helps lending institutions manage portfolio concentrations. A banking trade group asserted that the ability of System institutions, acting as poolers, to purchase whole loans through the Farmer Mac I program provides the same benefit as this final rule would provide, but in a safer environment.

System institutions have several tools they can use to improve liquidity and manage their loan portfolios. Selling loans to the secondary market is one of these tools, but is not the answer to all of an institution's needs.

Pooling authorities and the ability to purchase or sell 100-percent loan participations serve different purposes. As a pooler, a System institution is a conduit between the originating lender and the secondary market through Farmer Mac. While the System institution, as pooler, would receive a fee for its services, it would not be able to use this activity as a risk mitigation tool, unless its loans were in the pool. On the other hand, if the institution purchased a loan participation, it would hold the participation interest in the loan on its books and be able to use the participation to mitigate risks in its portfolio.

More significantly, loan participations potentially involve more types of loans than are eligible under Farmer Mac authorities. Loans sold to Farmer Mac are restricted to first mortgage loans, but System institutions and non-System lenders can participate in other types of loans. This rule provides more options to the originating and participating lender. This will not only afford increased business opportunities but will also help lenders to mitigate portfolio and concentration risk and better manage liquidity. As a result, the authorities provided in this rule, along with the ability to sell mortgage loans through Farmer Mac, have the ability to increase the availability of credit to farmers, ranchers, agriculture, and rural America.

While we recognize System loan participation authorities may overlap with some of Farmer Mac's authorities, we do not believe our amended participation regulations will adversely impact Farmer Mac's operations. We note that Farmer Mac provided favorable comment on the proposed rule and did not indicate that provisions in the rule would be harmful.

C. Establishing Loan Participation Relationships

A Farm Credit Bank asserted that aggressive System institutions would retain independent contractors outside of their chartered territory to originate loans for them. The commenter stated that this rule along with the existing FCA regulation that permits System institutions to participate in loans outside their chartered territory without the concurrence of other FCS institutions (65 FR 24101, Apr. 25, 2000) would result in a *de facto* national charter in that a System institution could have lending relationships (in this case a participation relationship) outside its chartered territory.

This rule and the authority for System institutions to participate in loans outside their chartered territory without receiving consent does not result in a *de facto* national charter. FCA's removal of the concurrence requirement provided FCS institutions the ability to enter into less than 100-percent participation interests in loans originated outside of their chartered territory without receiving concurrence. The actual change that this rule adds is to our participation authorities and not to our loan origination authorities. Therefore, it does not result in a *de facto* national charter, as it does not provide System institutions the authority to make loans outside their chartered territory.

The FCC asked that System institutions be allowed to purchase participation interests in loans from private individuals. System institutions are authorized to purchase participation interests in loans from "* * * lenders that are not Farm Credit institutions." We have previously defined the term "other lenders" in a preamble to an earlier rulemaking (57 FR 38237, Aug. 24, 1992) to include commercial banks, savings associations, credit unions, insurance companies, trust companies, agricultural credit corporations, incorporated livestock loan companies, and other financial intermediaries that extend credit as a regular part of their business. We reiterate our previous interpretation here with respect to the meaning of the term "lender."

D. Loan Participations and Cooperative Principles

Several commenters observed that when a System institution buys a loan participation the borrower does not obtain stock in the institution and is not afforded borrower rights under the Act. Commenters stated that a System institution could have a portfolio in which the majority of its loans were participations. Commenters argued that these loans do not contribute capital, that borrowers holding these loans do not participate in System governance, and that these borrowers are not afforded the rights given to System borrowers by Congress. The comment letters argued that there would be a

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[1] We expressed this position in the preamble of the proposed Lending Authorities regulations (56 FR 2452, January 23, 1991).

[2] Section 1.5(16) of the Act authorizes FCS banks operating under title I to sell "interests in loans" to lenders that are not FCS institutions and expressly authorizes FCS banks to buy "interests in loans" from FCS institutions. Section 1.5(6) and section 1.5(12) separately grant express authority to "participate" in loans. Section 1.5(12) grants express authority to "participate" with "lenders that are not Farm Credit System institutions in loans that the bank is authorized to make under this title."

[3] We are not aware of any legislative history that limits the percentage of authorized "participations."

[4] OCC–BC–181 "Purchases of Loans in Whole or Part-Participations" (August 2, 1984).

[5] *Banco Espanol De Credito* v. *Security Pacific National Bank*, 973 F.2d 51 (2nd Cir. 1992).

[6] For example, in *McVay* v. *Western Plains Corp.*, 823 F.2d 1395 (10th Cir., 1987), the court stated: "In general, loan participations are a common and wholesome credit device . . . . In a typical loan participation . . . . the lead bank enters into participation agreements with the other banks but acts in relation to the loan and borrower . . . For example, the lead bank will appear as the only party on the note and mortgage. It generally also services the loan, which includes the right to make decisions concerning acceleration, foreclosure, redemption, and deficiencies." Additionally, *In re Okura & Co.*, 249 B. R. 596 (Bankr. S.D.N.Y. 2000), concluded that the participation agreement between the lead bank and another lender was a "true loan participation" that did not result in a partial assignment of the lead lender's right to payment from the debtor or otherwise give the participating bank lender any right to payment from the debtor. Therefore, the participant did not have a "claim" that would make it a "creditor" in the debtor's bankruptcy proceeding. In discussing the characteristics of loan participations, the court stated, "The most common multiple lending agreement is the loan participation agreement, which involves two independent, bilateral relationships; the first between the borrower and the lead bank and the second between the lead bank and the participant. As a general rule, the participants do not have privity of contract with the underlying borrower."

[7] For example, a National Credit Union Administration letter, dated September 18, 1996, refused to permit the use of participations to increase a credit union's lending to one member, stating: "A credit union may not circumvent this restriction by selling loan participations because title to the loan normally does not transfer to the purchasers. Since the credit union retains title, selling loan participations does not reduce the ratio between the loan to the member and the credit union's reserves."

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disparity between the System's treatment of those who borrow from the System and those in whose loans the System participated.

In response, we note that the System institutions may not exercise their participation authority in a manner that impedes service to their territory. Each institution's board of directors must establish limits on the amount of loan participations they can purchase.[8] The preamble that proposed the present § 614.4325(c)(4) stated that it "* * * would require that institution policies specify limits on the aggregate amount of interest on loans that may be purchased, including participation interests, sufficient to ensure that the primary mission of the institution to provide credit directly to agriculture is not compromised." (*See* 56 FR 2452, Jan. 23, 1991) In response to the issues raised in the comment letters, we reaffirm that each institution needs to establish these limits and that FCA will continue to evaluate the institution's participation programs as a part of our examination process.

In response to commenters' concerns about System governance and borrower rights, borrowers who obtain loans from another lender instead of a System institution are not, in fact, System "borrowers." This remains true even if a System institution later buys a 100-percent participation interest in a loan from a non-System lender. A loan participation is a lender-to-lender transaction and, thus, borrowers remain obligated to the loan originator. When a borrower receives a loan from a non-System lender, that borrower has no legal entitlement to System governance rights or System borrower rights. The purchaser of a participation interest does not have a legal relationship with the borrower.

E. Safety and Soundness

We view safety and soundness controls as a cornerstone to an effective loan participation program. Lenders should use loan participations primarily as a risk diversification tool. While this rule may increase the System's loan participation activity, we expect System institutions to maintain appropriate risk levels and to implement the provisions allowed by this rule in a safe and sound manner. Commenters also discussed this concern. Institutions should not use this authority in a manner that results in an unsafe and unsound increase in commodity or geographical risk. We expect a thorough due diligence effort at the outset of any participation relationship.

[8] *See* § 614.4325(c)(4) of our regulations.

A participation relationship is a direct relationship between the originating lender and the purchasing institution and not between the purchasing institution and the borrower. Therefore, prudent underwriting procedures dictate that the purchasing institution must complete a thorough due diligence analysis of the originating lender and the loan, or pool of loans, being participated. We outline specific requirements in § 614.4325(e) and provide additional guidance in FCA Bookletter (BL–027) which was sent to all Farm Credit institutions on March 27, 1996, to ensure the loan or pool of loans being participated in is of sound quality and that the originating lender has the capacity to manage the risk and exercise the responsibilities retained as the seller of a participation.

The responsibility of the System institution as purchaser does not end with the initial due diligence analysis. Following FCA guidance and sound lending practices, System institutions should complete a periodic analysis of the originating lender to ensure that the lender remains able to manage the risk and exercise its responsibilities. Failure to complete this due diligence prior to purchasing a loan participation and on a periodic basis may be considered an unsafe and unsound practice.

As in the preamble to the proposed rule, we again emphasize the importance of appropriate management of loan participations in ensuring safety and soundness as follows.

1. Controlling Risk of Participations

Risk control issues arise with loan participations. Some of these are typical of any credit arrangement. However, 100-percent participations can increase certain types of risks if not controlled and managed appropriately. Therefore, System institutions should take extra care in developing the policies and procedures for their participation programs, especially if they intend to buy 100-percent participations. An institution's policies and procedures and participation agreements should, at a minimum, address the following:

- *Credit risk*—The participant depends on the originating lender to obtain, develop, and evaluate the relevant information about the borrower and the structure of the credit.
- *Legal risk*—The originating lender typically prepares the documentation for the loan and perfects any security interests. The participant generally has a share of the rights of the originating lender. If deficiencies exist, the participant's rights may be limited.
- *Administrative risk*—Typically, the participant must rely on the originating lender to: (a) Service, monitor, and control the credit relationship with the borrower; (b) provide information about the borrower; and (c) remit payments received from the borrower. All of these administrative actions should be addressed in the participation agreement as well as the parties' duties and responsibilities.

A participant's administrative risk increases when the originating lender has no direct financial interest in the loan. Removing the 10-percent retention requirement as permitted by this rule could increase this risk. The participation agreement should specifically address whether the seller has the ability, and under what circumstances, to transfer or sell the note or agreement to a third party without concurrence by the participant.

2. Managing Portfolio Risk

Our current regulations (§ 614.4325(c)(4)) require each System institution involved in loan participation activities to develop and implement specific policies and procedures for such programs, including establishing appropriate portfolio limits to control risk.

While participations offer a number of advantages to managing an institution's portfolio (especially as risk diversification tools) they also carry additional risks not common to a normal borrower/lender relationship. We believe policy direction from a System institution's board of directors becomes even more important with these changes to the existing rule. Each institution board that plans to use loan participations should set portfolio limitations and review them periodically to ensure loan participations are appropriately integrated into the institution's overall business plan and risk management strategies.

IV. Conclusion

After carefully considering all comments received, we adopt the rule as proposed without change. We believe that the provisions of this final rule will give System institutions the needed flexibility to engage in loan participations with other System institutions, Farmer Mac, and non-System lenders. Benefits to System institutions include risk management and risk concentration alternatives as well as additional diversified interest income sources. In addition, to the extent this regulation enables System institutions to establish relationships with non-System lenders through loan participations, both parties should mutually benefit. Possible incidental benefits to non-System lenders include increases in fee income, immediate liquidity relief, and having access to alternative and reliable funding sources. Most importantly, we believe expanded lender-to-lender relationships will benefit farmers, ranchers, agriculture, and rural America by increasing access to available credit.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets in excess of $5 billion and annual income in excess of $400 million. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, we amend parts 614 and 619 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows: e

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

2. Amend § 614.4000 as follows:

a. Remove the word "and" at the end of paragraph (d)(1);

b. Remove the "." and add "; and" at the end of paragraph (d)(2); and

c. Add paragraph (d)(3) to read as follows:

§ 614.4000 Farm Credit Banks.

* * * * *

(d)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

3. Amend § 614.4010 as follows:

a. Remove the "." and add "; and" at the end of paragraph (e)(2); and

b. Add paragraph (e)(3) to read as follows:

§ 614.4010 Agricultural credit banks.

* * * * *

(e)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

4. Amend § 614.4020 as follows:

a. Remove the "." and add "; and" at the end of paragraph (b)(2); and

b. Add paragraph (b)(3) to read as follows:

§ 614.4020 Banks for cooperatives.

* * * * *

(b)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

5. Amend § 614.4030 as follows:

a. Remove the word "and" at the end of paragraph (b)(1);

b. Remove the "." and add "; and" at the end of paragraph (b)(2); and

c. Add paragraph (b)(3) to read as follows:

§ 614.4030 Federal land credit associations.

* * * * *

(b)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

6. Amend § 614.4040 as follows:

a. Remove the word "and" at the end of paragraph (b)(1);

b. Remove the "." and add "; and" at the end of paragraph (b)(2); and

c. Add paragraph (b)(3) to read as follows:

§ 614.4040 Production credit associations.

* * * * *

(b)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

7. Amend § 614.4050 as follows:

a. Remove the word "and" at the end of paragraph (c)(1);

b. Remove the "." and add "; and" at the end of paragraph (c)(2); and

c. Add paragraph (c)(3) to read as follows:

§ 614.4050 Agricultural credit associations.

* * * * *

(c)(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

* * * * *

8. Add a new § 614.4055 to read as follows:

§ 614.4055 Federal Agricultural Mortgage Corporation loan participations.

Subject to the requirements of subpart H of this part 614:

(a) Any Farm Credit System bank or direct lender association may buy from, and sell to, the Federal Agricultural Mortgage Corporation, participation interests in "qualified loans."

(b) The Federal Agricultural Mortgage Corporation may buy from, and sell to, any Farm Credit System bank or direct lender association, or lender that is not a Farm Credit System institution, participation interests in "qualified loans."

(c) For purposes of this section, "qualified loans" means qualified loans as defined in section 8.0(9) of the Act.

Subpart H—Loan Purchases and Sales

9. Amend § 614.4325 by:

a. Removing paragraph (a)(4);

b. Redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(4), (a)(5), and (a)(6), respectively; and revising newly designated paragraph (a)(4) to read as follows:

§ 614.4325 Purchase and sale of interests in loans.

* * * * *

(a)(4) *Participating institution* means an institution that purchases a participation interest in a loan originated by another lender.

* * * * *

§ 614.4330 [Amended]

10. Amend § 614.4330 as follows:

a. Remove the words "an undivided" and add in their place the words "a participation" in paragraph (a)(9); and

b. Remove paragraph (b) and redesignate existing paragraph (c) as paragraph (b).

Subpart J—Lending and Leasing Limits

§ 614.4358 [Amended]

11. Amend § 614.4358 as follows:

a. Remove paragraph (b)(4)(i); and

b. Redesignate paragraphs (b)(4)(ii) and (b)(4)(iii) as paragraphs (b)(4)(i) and (b)(4)(ii), respectively.

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PART 619—DEFINITIONS

12. The authority citation for part 619 continues to read as follows:

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

§ 619.9195 [Removed and Reserved]

13. Remove and reserve § 619.9195.

Dated: January 7, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–639 Filed 1–9–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–30–AD; Amendment 39–12579; AD 2001–26–13]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This AD requires you to inspect the landing-gear emergency-extension cable for damage and replace if necessary; verify the correct installation of the bowden-cable conduit clamp and correct if necessary; and modify the temperature-control lever mechanism. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent the malfunction of the emergency landing-gear extension system. Insufficient clearance between the temperature-control lever mechanism and the landing-gear emergency-extension cable could result in damage to the emergency landing gear extension cable, or the cable could get caught on the temperature control lever. Damage to, or interference with, the landing-gear emergency-extension cable could lead to a malfunction of the emergency landing-gear extension system.

DATES: This AD becomes effective on February 12, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 12, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–30–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports one occurrence of restricted movement of the temperature control lever. Investigation of the problem revealed that the landing-gear emergency-extension cable was caught on the temperature-control lever mechanism. Insufficient clearance between the landing-gear emergency-extension cable and the temperature-control lever caused the interference. This interference could also cause damage to the landing-gear emergency-extension cable.

What Is the Potential Impact if FAA Took No Action?

If not detected and corrected, damage to or interference with the landing-gear emergency-extension cable could lead to a malfunction of the emergency landing-gear extension system.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 10, 2001 (66 FR 51611). The NPRM proposed to require you to inspect the landing-gear emergency-extension cable for damage; replace any damaged landing-gear emergency-extension cable; verify the correct installation of the bowden-cable conduit clamp; correct improper installation of the clamp; and install a new bolt and a new nut on the temperature-control lever mechanism.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact

We estimate that this AD affects 13 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

The manufacturer has agreed to pay the costs for the inspection, replacement parts, and installation workhours.

The only impact this AD will have on the owners/operators of the affected airplanes is the time it will take to have the actions of this AD incorporated.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is "within the next 12 calendar months after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Although malfunction of the emergency landing gear extension system is unsafe during flight, the condition is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2001–26–13 Pilatus Aircraft Ltd.: Amendment 39–12579; Docket No. 2001–CE–30–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–7 airplanes, Manufacturer Serial Number (MSN) 001 through MSN 616, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the malfunction of the emergency landing-gear extension system. Insufficient clearance between the temperature-control lever mechanism and the landing-gear emergency-extension cable could result in damage to the emergency landing gear extension cable, or the cable could get caught on the temperature control lever. Damage to, or interference with, the landing-gear emergency-extension cable could lead to a malfunction of the emergency landing-gear extension system.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the landing-gear emergency-extension cable for damage and replace any damaged cable found.	Inspect within the next 12 calendar months after February 12, 2002 (the effective date of this AD). Replace prior to further flight.	In accordance with Pilatus PC–7 Service Bulletin No. 32–020, dated July 5, 2001.
(2) Verify the correct installation of the bowden-cable conduit clamp, correct if necessary, and install a new bolt and a new nut in the temperature-control lever mechanism.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Pilatus PC–7 Service Bulletin No. 32–020, dated July 5, 2001.
(3) Do not install any temperature-control lever mechanism (or FAA-approved equivalent part number), unless it has been modified as required in paragraph (d)(2) of this AD.	As of February 12, 2002 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 32–020, dated July 5, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–483, dated August 20, 2001.

(i) *When does this amendment become effective?* This amendment becomes effective on February 12, 2002.

Issued in Kansas City, Missouri, on December 21, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–149 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–13–U

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30288; Amdt. No. 2087]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 4, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
12/17/01	ME	Wiscasset	Wiscasset	1/3252	NDB RWY 25, AMDT 26A...
12/17/01	ME	Wiscasset	Wiscasset	1/3253	GPS RWY 25, AMDT 1...
12/17/01	ME	Wiscasset	Wiscasset	1/3254	GPS RWY 7, AMDT 1...
12/17/01	CA	Oakland	Metropolitan Oakland Intl	1/3273	VOR OR GPS RWY 9R, AMDT 7B...
12/27/01	MD	Indian Head	Maryland	1/3464	VOR–A, ORIG...
12/27/01	MD	Elkton	Cecil County	1/3543	RNAV (GPS) RWY 31, ORIG...

[FR Doc. 02–653 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30287; Amdt. No. 2086]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce,

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I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 4, 2002.

James J. Ballough,

Director, Flight Standards Services.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * *Effective February 21, 2002*

Morris, IL, Morris Muni-James R. Washburn Field, RNAV (GPS) RWY 18, Orig
Morris, IL, Morris Muni-James R. Washburn Field, RNAV (GPS) RWY 36, Orig
Davison, MI, Athelone Williams Memorial, VOR RWY 8, Orig
Davison, MI, Athelone Williams Memorial, VOR OR GPS RWY 8, Amdt 3A CANCELLED
Davison, MI, Athelone Williams Memorial, VOR RWY 8, Orig
Davison, MI, Athelone Williams Memorial, RNAV (GPS) RWY 8, Orig
Davison, MI, Athelone Williams Memorial, RNAV (GPS) RWY 26, Orig
Linden, MI, Prices, VOR–A, Orig
Linden, MI, Prices, VOR OR GPS–A, Amdt 4 CANCELLED
Linden, MI, Prices, RNAV (GPS) RWY 9, Orig
Linden, MI, Prices, RNAV (GPS) RWY 27, Orig
St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 6, Orig
St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 12L, Orig
St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 12R, Orig
St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 24, Orig
St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 30L, Orig
St. Louis, MO, Lambert-St. Louis Intl, RNAV (GPS) RWY 30R, Orig
Hillsboro, ND, Hillsboro Muni, RNAV (GPS) RWY 16, Orig
Hillsboro, ND, Hillsboro Muni, RNAV (GPS) RWY 34, Orig
Hillsboro, ND, Hillsboro Muni, GPS RWY 16, Orig-B CANCELLED
Hillsboro, ND, Hillsboro Muni, GPS RWY 34, Orig-B CANCELLED
Kenmare, ND, Kenmare Muni, RNAV (GPS) RWY 26, Orig
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 14, Orig
Beaufort, NC, Michael J. Smith Field, GPS RWY 14, Orig, CANCELLED
Chapel Hill, NC, Horace Williams, VOR/DME RWY 27, Amdt 1
Chapel Hill, NC, Horace Williams, GPS RWY 9, Orig, CANCELLED
Chapel Hill, NC, Horace Williams, GPS RWY 27, Orig, CANCELLED
Chapel Hill, NC, Horace Williams, RNAV (GPS) RWY 9, Orig
Chapel Hill, NC, Horace Williams, RNAV (GPS) RWY 27, Orig

[FR Doc. 02–652 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE28

Distribution of Fiscal Year 2002 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary rule and request for comments.

SUMMARY: We are issuing a temporary rule requiring that we distribute 75 percent of fiscal year 2002 Indian Reservation Roads (IRR) Program funds to projects on or near Indian reservations using the relative need formula. As we did in fiscal years 2000 and 2001, we are using the Federal Highway Administration (FHWA) Price Trends report for information to calculate the relative need formula, with appropriate modifications to address non-reporting states. We are reserving up to $19.53 million to allow federally recognized tribes to apply for $35,000 each for administrative capacity building and other eligible transportation activities for fiscal year 2002 and we will distribute the balance of the remaining 25 percent of fiscal year 2002 IRR Program funds according to the relative need formula.

DATES: This temporary rule is effective January 10, 2002, through September 30, 2002. We will accept comments on this temporary rule until February 11, 2002.

ADDRESSES: You may send comments on the formula for distribution of the Fiscal Year 2002 IRR funds to: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibility, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone), 202–208–4696 (fax), or leroygishi@bia.gov (electronic mail).

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone), 202–208–4696 (fax), or *leroygishi@bia.gov* (electronic mail).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads Program, the Relative Need Formula, the FHWA Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR Program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** Notice dated February 15, 2000 (65 FR 7431). You may obtain additional information on the IRR Program web site at *http://www.irr.bia.gov.*

What Was the Basis for Distribution of Fiscal Years 2000 and 2001 Funds?

For fiscal year 2000 IRR Program funds, the Secretary published two interim rules distributing one-half of the funds in February 2000 and the second half of the funds in June 2000. For fiscal year 2001 IRR Program funds, the Secretary published two interim rules distributing 75 percent of the funds in January 2001, and the remaining 25 percent of the funds in March 2001. These distributions followed the TEA–21 Negotiated Rulemaking Committee's recommendation to the Secretary in January 2000 and November 2000 to distribute fiscal years 2000 and 2001 IRR Program funds under the relative need formula used in 1998 and 1999, while continuing to develop a proposed formula to publish for comment. In addition, in fiscal years 2000 and 2001 we modified the Federal Highway Administration Price Trends Report indices to account for two non-reporting states.

What Is the Basis for Distribution of Fiscal Year 2002 IRR Program Funds?

The Transportation Equity Act for the 21st Century (TEA–21) provides that the Secretary develop rules and a funding formula for fiscal year 2000 and subsequent fiscal years to implement the Indian Reservation Roads program section of the Act. The Negotiated Rulemaking Committee created under Section 1115 of TEA–21 and comprised of representatives of tribal governments and the Federal Government has been diligently working to develop a funding formula that addresses the Congressionally identified criteria, Committee and tribal recommendations, and is consistent with overall Federal Indian Policy.

The Committee is developing a permanent funding formula that will be published during 2002 in the **Federal Register** for public comment. In the meantime, there are about 1400 ongoing road and bridge construction projects on or near Indian reservations which need fiscal year 2002 funding to continue or complete work. Partially constructed road and bridge projects could pose safety threats. Other road and bridge projects need to be planned or initiated in this fiscal year.

This rule is published as a temporary rule only for interim funding for fiscal year 2002 and sets no precedent for the final rule to be published as required by Section 1115 of TEA–21. The TEA–21 Negotiated Rulemaking Committee agrees that an interim funding formula for fiscal year 2002 is needed. The Committee expects to recommend the publication of a formula for public comment so that a permanent formula can be established for fiscal year 2003, which will begin October 1, 2002. The interim formula for the current fiscal year will also provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2003.

The Secretary is basing this distribution on the TEA–21 Negotiated Rulemaking Committee's tribal caucus recommendation for distribution of fiscal year 2001 IRR Program funds.

How Will the Secretary Distribute Fiscal Year 2002 IRR Program Funds?

Upon publication of this rule and upon enactment of the Department of Transportation Appropriations Act and receipt of contract authority from the Federal Highway Administration, the Secretary will distribute 75 percent of fiscal year 2002 IRR Program funds based on the current relative need formula used in fiscal years 2000 and 2001, and the indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process. We will distribute fiscal year 2002 IRR Program funds to the twelve BIA regions using this distribution process. From the remaining 25 percent of fiscal year 2002 IRR Program funds, we are reserving $19.53 million for federally recognized tribes who apply for and have negotiated contracts or agreements for up to $35,000 for administrative capacity building and other eligible transportation activities under the IRR Program. We are requesting comments on the appropriateness of $19.53 million for administrative capacity building and the use of the current relative need formula for distribution of the remaining 25 percent of fiscal year 2002 IRR Program funds.

What Formula Components Are We Using for Distribution of Fiscal Year 2002 IRR Program Funds and How Are They Related?

The following diagram shows the relationship between components for fiscal year 2002 IRR Program funds distribution:

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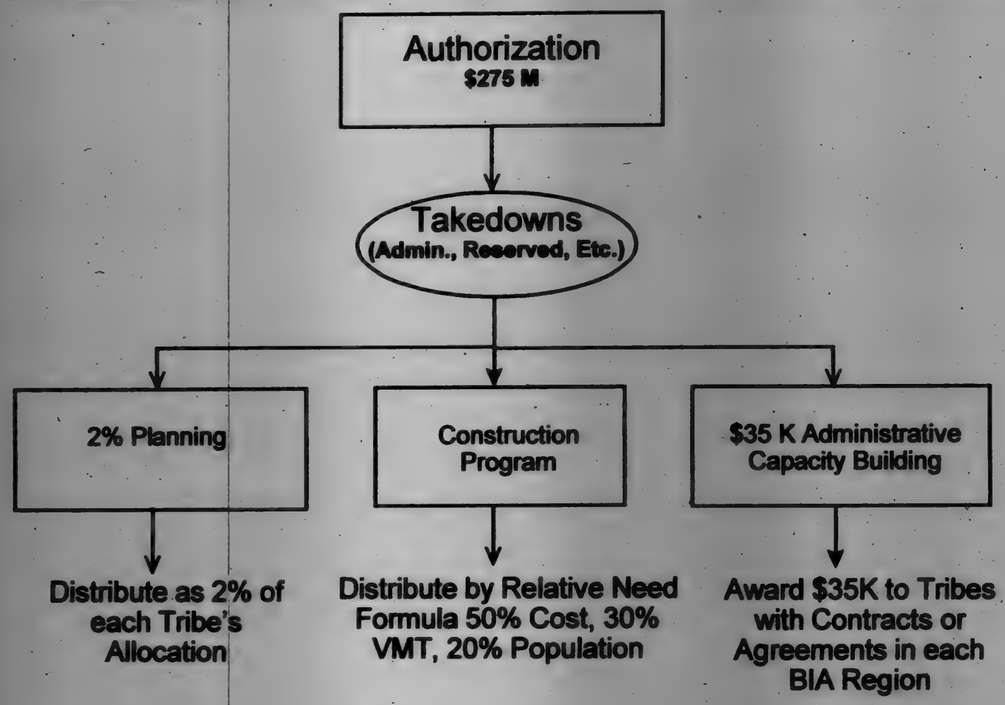

What Data Are We Using for the Interim Distribution Funding Formula?

We are using the most current road inventory data (September 2001) maintained by the Bureau of Indian Affairs.

What Is the Purpose of Administrative Capacity Building?

The primary purpose of administrative capacity building is to provide all tribes an opportunity to participate in the IRR Program by updating transportation needs inventories and performing other transportation planning activities.

How Are We Distributing the Reserved Administrative Capacity Building Funds to the Twelve BIA Regions?

The administrative capacity building funds are to be reserved at BIA until the application/award deadline is met. When we distribute the reserved administrative capacity building funds ($19.53 million) from the second distribution for 25 percent of fiscal year 2002 IRR Program funds, we will distribute to the twelve BIA regions based on the number of tribes in the region that request to participate by tribal resolution or other official action of the tribe.

How Will We Provide Administrative Capacity Building Funds to Tribes?

Any federally recognized tribe may apply to the appropriate BIA region for administrative capacity building funds under the Indian Self-Determination and Educational Assistance Act (Pub. L. 93–638) no later than April 15, 2002.

How Will BIA Provide Administrative Capacity Building Services to Direct Service Tribes?

The BIA regions will provide administrative capacity building services to tribes in their regions that request such services.

What Must a Self-Determination or Self-Governance Tribe Provide in Its Application to the BIA Region for Administrative Capacity Building Funds for Fiscal Year 2002?

A self-determination or self-governance tribe must make application to the appropriate BIA Region by April 15, 2002 and must include:

(a) Scope of work;

(b) Detailed budget not to exceed $35,000; and

(c) Official tribal resolution or other official action of the tribe requesting the funds.

What Will BIA Do With Any Reserved Funds That Have Not Been Awarded to Tribes for Administrative Capacity Building After August 15, 2002?

We will distribute the remaining funds to the twelve BIA regions based on the relative need formula discussed in this rule. It is important that each tribe submit its application for administrative capacity building within the established deadlines so that we can make a timely reallocation of any reserved funds that are not awarded by August 15, 2002.

Are There Any Differences in the Distribution of Fiscal Year 2002 IRR Program Funds as Compared to the Distributions of Fiscal Years 2000 and 2001 IRR Program Funds?

The distribution of fiscal year 2002 IRR Program funds is based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted fiscal years

2000 and 2001 distribution. In February 2000 the Secretary partially distributed fiscal year 2000 IRR Program funds using the relative need formula. In June 2000 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two non-reporting states, Washington and Alaska, that impact tribes in those non-reporting states. In January 2001 the Secretary partially distributed fiscal year 2001 IRR Program funds using the relative need formula. In June 2001 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two non-reporting states, Washington and Alaska, that impact tribes in those non-reporting states. We are using the same modification process for non-reporting states for distribution of fiscal year 2002 IRR Program funds. For fiscal year 2001 we distributed funds in the same manner as in fiscal year 2000, except that we reserved up to $19.53 million for administrative capacity building for federally recognized tribes. We are distributing fiscal year 2002 funds in the same way as fiscal year 2001 IRR Program funds.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2002 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on the first partial distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this temporary rule for distribution of 75 percent of fiscal year 2002 IRR Program funds effective immediately under 5 U.S.C. 553(d)(3). Notice and public procedure would be impracticable because of the urgent need to distribute 75 percent of fiscal year 2002 IRR Program funds. Approximately 1400 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 196 deficient bridges and the construction of approximately 600 miles of roads. Fiscal year 2002 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate partial distribution of fiscal year 2002 IRR Program funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Two-thirds of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 200 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This temporary rule is going into effect immediately because of the urgent need for partially distributing fiscal year 2002 IRR Program funds to continue these construction projects.

Distribution of the remaining 25 percent of fiscal year 2002 IRR Program funds will be distributed under the same relative need formula as the first 75 percent of the funds after we review and consider comments.

Clarity of This Temporary Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this temporary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the temporary rule clearly stated? (2) Does the temporary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the temporary rule (grouping and order of sections, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the temporary rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the temporary rule? What else could we do to make the temporary rule easier to understand?

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action requiring review by the Office of Management and Budget because it will have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2002 IRR Program funds is approximately $226 million and we are distributing approximately $169.5 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2002 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This temporary rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This temporary rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This temporary rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

This temporary rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the distribution of fiscal year 2001 IRR Program funds.

Approximately 1400 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq. is not required for this

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temporary rule because it applies only to tribal governments, which are not covered by the Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of $100 million or more. We are distributing approximately $169.5 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this temporary rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required.

This temporary rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this temporary rule is to immediately provide 75 percent of fiscal year 2002 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This temporary rule should not affect the relationship between State and Federal governments because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process to set up a permanent funding formula distributing IRR Program funds. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to 75 percent of fiscal year 2002 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Government-to-Government Relationship With Tribes

Under the President's memorandum of May 14, 1998, Consultation and Coordination with Indian Tribal Governments (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon federally recognized Indian tribes and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993. The only changes we are making from previous years (which we also made for fiscal years 2000 and 2001) IRR Program funds are to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process and this distribution uses the TEA–21 Negotiated Rulemaking Committee's tribal caucus recommendation.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians—lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Effective January 10, 2002, through September 30, 2002, add § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute 75 percent of fiscal year 2002 Indian Reservation Roads funds?

On January 10, 2002, we will distribute 75 percent of fiscal year 2002 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. We are modifying the formula to account for non-reporting States by inserting the latest data reported for those States for use in the relative need formula process.

Dated: December 19, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–268 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–LY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 63, 72, and 75

[FRL–7127–4]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and correction to November 15, 2001 Notice of Availability.

SUMMARY: This document announces the availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS)(40 CFR part 60), and the National Emission Standards for Hazardous Air Pollutants (NESHAP)(40 CFR parts 61 and 63). This document also corrects and clarifies the Notice of Availability published in the **Federal Register** on November 15, 2001 (66 FR 57453).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the ADI at: *http://es.epa.gov/oeca/eptdd/adi.html*. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this document, contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov*. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 42 such documents added to the ADI on October 19, 2001. The subject, author, recipient, and date (header) of each letter and memorandum is listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI at *http://es.epa.gov/oeca/eptdd/adi.html*.

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on October 19, 2001; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

Correction to November 15, 2001 Notice of Availability

The previous Notice of Availability was published at 66 FR 57453 under the heading "Recent Posting of Agency Regulatory Interpretations Pertaining to Applicability and Monitoring for Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants to the Applicability Determination Index (ADI) Database System." EPA mistakenly included in that notice the statement that "Comments on any of the documents posted on the ADI database system must be submitted on or before January 14, 2002." Please disregard that statement and all associated statements regarding the submission of comments. EPA is not seeking comments on the documents listed in that notice, nor is it seeking comments on any of the documents contained in the ADI database.

EPA notes further that although the November 15, 2001 notice, and this notice, are sufficient to satisfy the publication provisions of 5 U.S.C. 552(a) and 42 U.S.C. 7607(b), the references to those provisions were done by mistake, and were not intended to imply that all of the documents posted on the ADI database fall within the scope of those statutory provisions. Although some of the documents on the ADI database are within the scope of those provisions, others are not, and for this reason, EPA does not refer to those provisions when the Agency publishes a quarterly Notice of Availability of the ADI database.

ADI DETERMINATIONS UPLOADED ON OCTOBER 19, 2001

Control No.	Category	Subpart	Title
M010018	MACT	MMM	Subpart MMM Applicability to Creosote Production Facilities.

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ADI DETERMINATIONS UPLOADED ON OCTOBER 19, 2001—Continued

Control No.	Category	Subpart	Title
M010021	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010019	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M016020	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010022	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010023	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010024	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010025	MACT	I	NESHAP for Organic HAPs for Certain Processes.
M010026	MACT	LLL	Testing to Determine Area or Major Source Status.
M010027	MACT	A,RRR	Extension to Conduct Initial Performance Testing.
M010028	MACT	S	Alternative Closed Collection and Vent System Monitoring.
M010029	MACT	CC	Existing Refinery Storage Vessels Exempt from Refinery MACT.
M010030	MACT	CC,R	Operating Parameter Monitoring Request.
M010031	MACT	CC,R	Operating Parameter Monitoring Request.
M016032	MACT	S	Alternative Monitoring Protocol for Bleach Plant Scrubber.
M010033	MACT	G,H,VV	Waiver of Flare Performance Test.
M010034	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010035	MACT	S	Pulp and Paper MACT Alternative Monitoring.
M010036	MACT	S	Pulp and Paper MACT Alternative Monitoring.
0100053	NSPS	GG	Custom Fuel Monitoring Schedule.
0100054	NSPS	GG	Alternative Test Methods Under Subpart GG.
0100055	NSPS	Dc	Boiler Derate Proposal.
0100056	NSPS	J	7-Day Trial for Burning Refinery Fuel Gas in Boiler.
0100057	NSPS	Dc	Applicability to Process Heaters.
0100058	NSPS	QQQ	Definition of Oil-water Separator.
0100059	NSPS	OOO	Replacement Equipment Exemption—New Production Line.
0100060	NSPS	QQQ	Alternative Testing Procedure for Oil-water Separator.
0100061	NSPS	SS	Applicability to Clothing Press Production Line.
0100062	NSPS	OOO,A	Replacement of Equipment and Notification Requirements.
0100063	NSPS	CCCC	Applicability to Wood By-product Combustor.
0100065	NSPS	GG	Subpart GG Custom Fuel Monitoring Schedule.
0100066	NSPS	GG,A,Da	Alternate Emission Standard and Monitoring, and Initial Performance Test.
0100067	NSPS	GG	Use of Part 75 for Alternate Monitoring under Subpart GG.
0100068	NSPS	GG	Use of Part 75 for Alternate Monitoring under Subpart GG.
0100069	NSPS	GG	Alternate Test Method/Waiver of Initial Performance Test.
0100070	NSPS	GG	Proposal to Use New Monitor for Subpart GG.
0100071	NSPS	GG	Use of Part 75 for Alternate Monitoring under Subpart GG.
0100072	NSPS	GG	Subpart GG Alternate Test Method/Initial Performance Test.
0100073	NSPS	VV	Waiver of Flare Performance Test.
0100074	NSPS	GG	Custom Fuel Monitoring Schedule.
0100075	NSPS	GG	Custom Fuel Monitoring Schedule.
0100076	NSPS	NNN,RRR	Applicability of NSPS to Ethanol Manufacturing Plants.

Abstracts

Abstract for (M010018)

Q1: Are creosote blend tanks subject to the storage vessel standards or the process vent standards of subpart MMM?

A1: Based on our review of the rule as currently drafted, the creosote blend tanks are subject to process vent standards.

Q2: Are coal tar and naphthalene distillation processes upstream of the creosote blend tanks pesticide active ingredient process units subject to the rule?

A2: Upstream distillation units are not pesticide active ingredient process units and therefore not part of the affected source subject to the rule.

Abstract for (010019)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor bleach plant scrubber influent pH/ORP rather than the effluent pH/ORP?

A: Yes. The configuration of the scrubbing system is such that the scrubbing medium is taken from the bottom of the scrubber and recirculated back to the inlet spray nozzles at the top of the scrubber. Several years of emission test data has shown chlorine (CL_2) and chlorine dioxide (CLO_2) emissions to be less than 1.0 ppmv, far below the 10 ppmv or less specified in subpart S.

Abstract for (010020)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor fan amperage for the bleaching system gas scrubber vent gas fan in lieu of monitoring vent gas inlet flow rate?

A: Yes. EPA's document for subpart S, titled "Questions and Answers (Q&As) for the Pulp and Paper NESHAP (40 CFR part 63, subpart S)," dated September 22, 1999, discusses the alternative monitoring parameter issue. See pages 8–10. It allows the monitoring of fan operation instead of gas flow rate. Allowable monitoring parameters of fan operation include fan motor amperage, on/off status, or rotational speed of the fan.

Abstract for (010021)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor bleach plant scrubber influent pH/ORP rather than the effluent pH/ORP?

A: Yes. The configuration of the scrubbing system is such that the scrubbing medium is taken from the bottom of the scrubber and recirculated back to the inlet spray nozzles at the top of the scrubber. Several years of emission test data has shown chlorine (CL_2) and chlorine dioxide (CLO_2) emissions to be less than 1.0 ppmv, far below the 10 ppmv or less specified in subpart S.

Abstract for (010022)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor fan amperage for the bleaching system gas scrubber vent gas fan in lieu of monitoring vent gas inlet flow rate?

A: Yes. EPA's document for subpart S, titled "Questions and Answers (Q&As) for the Pulp and Paper NESHAP (40 CFR part 63, subpart S)," dated September 22, 1999, discusses the alternative monitoring parameter issue. See pages 8–10. It allows the monitoring of fan operation instead of gas flow rate. Allowable monitoring parameters of fan operation include fan motor amperage, on/off status, or rotational speed of the fan.

Abstract for (010023)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor bleach plant scrubber influent pH/ORP rather than the effluent pH/ORP?

A: Yes. The configuration of the scrubbing system is such that the scrubbing medium is taken from the bottom of the scrubber and recirculated back to the inlet spray nozzles at the top of the scrubber. Several years of emission test data has shown chlorine (CL_2) and chlorine dioxide (CLO_2) emissions to be less than 1.0 ppmv, far below the 10 ppmv or less specified in subpart S.

Abstract for (010024)

Q: May a facility which is subject to the monitoring and inspection procedures for closed collection and vent systems found at 40 CFR 63.443(c), 63.453(k) and (l) of the pulp and paper MACT, subpart S, request approval for alternative provisions for inspection, monitoring of closed collection and vent systems?

A: Yes. The requested alternatives are consistent with requirements in other existing standards, such as the Hazardous Organic National Emission Standards for Hazardous Air Pollutants.

Abstract for (010025)

Q: A facility operates a toner process in which a styrene-butadiene rubber copolymer is manufactured; however, the affected equipment has not operated in hazardous air pollutant (HAP) service for greater than 300 operating hours per year. Is the facility subject to subpart I?

A: No. EPA has determined that the toner process described meets the definition of styrene-butadiene rubber production. However, because the facility has not operated the affected equipment in HAP service greater than 300 operating hours per year, the equipment is not subject to subpart I.

Abstract for (010026)

Q: Does the portland cement MACT require the facility in question to conduct performance tests to determine its status as an area or major source?

A: No, testing is not required. With its current emission profile, the facility is an area source.

Abstract for (010027)

Q: May the deadline by which a performance test for a secondary aluminum processing unit is conducted be extended beyond 180 days of the initial startup?

A: No. The general provisions at 40 CFR 63.7 allow for the rescheduling of testing, but they do not allow testing to be scheduled beyond 180 days of the initial startup if the initial startup date is after the effective date of the relevant standard.

Abstract for (010028)

Q: May a facility conduct closed vent system inspections once a month, rather than once every 30 days as required by 40 CFR 63.453(k)?

A: Yes. The facility may conduct closed vent system inspections once during the calendar month as long as at least 21 days elapse between inspections.

Abstract for (010029)

Q: Are 45 existing storage vessels at the Koch refinery in Pine Bend, Minnesota subject to the refinery MACT?

A: No. The vessels must meet 40 CFR part 60, subpart Kb. The storage vessel provisions in the refinery MACT are very similar to those in subpart Kb. A 1992 Prevention of Significant Deterioration (PSD) permit required Koch to comply with subpart Kb, and the State issued the PSD permit before EPA proposed the refinery MACT.

Abstract for (010030)

Q: Will EPA approve the selected operating parameter and its value for continuous monitoring at the Track 8 rail loading rack at the Koch refinery in Pine Bend, Minnesota?

A: Yes. The flare demonstrated compliance with the standards in 40 CFR 63.11(b). The presence of a pilot light will adequately demonstrate compliance with the emission standard in 40 CFR 63.422(b).

Q: Will EPA approve the selected operating parameter and its value for continuous monitoring at the tank truck bottom loading rack at the Koch refinery?

A: No. Reporting on a single operating parameter, the total volatile organic compound (VOC) concentration at the vapor recovery unit outlet, does not account for the effects of temperature, barometric pressure, volumetric flow, and rate of gasoline loading.

Abstract for (010031)

Q: Will EPA approve the selected operating parameter for continuous monitoring and the parameter's value for the tank truck bottom loading rack at the Koch refinery in Pine Bend, Minnesota?

A: Yes. Additional data shows that a total VOC concentration of 2350 ppmv as a 6-hour average at the vapor recovery unit outlet will demonstrate compliance with the emission standard at 40 CFR 63.422(b).

Abstract for (010032)

Q: Will EPA approve an alternative monitoring method for the Mead, Chillicothe, Ohio paper mill that uses on/off status as an operational parameter indicating the operating status of the fan used to convey gases to the bleach plant scrubber?

A: Yes. Graphs indicating the operating status of the fan will be used to monitor and record the on/off status. The performance test must show compliance with the fan operating at maximum speed.

Abstract for (010033)

Q: May the BP Chemicals facility waive the requirement to conduct initial performance testing of the Butanediol Plant flare?

A: No. BP Chemicals cannot waive the requirement to conduct initial performance testing of the Butanediol Plant flare. Current methods for initial performance testing of flares are applicable to BP Chemicals.

Abstract for (010034)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor fan amperage for the bleaching system gas scrubber vent gas fan in lieu of monitoring vent gas inlet flow rate?

A: Yes. EPA's document for Subpart S, titled "Questions and Answers (Q&As) for the Pulp and Paper NESHAP,

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(40 CFR part 63, subpart S)," dated September 22, 1999, discusses the alternative monitoring parameter issue. See pages 8 through 10. It allows the monitoring of fan operation instead of gas flow rate. Allowable monitoring parameters of fan operation include fan motor amperage, on/off status, or rotational speed of the fan.

Abstract for (010035)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor bleach plant scrubber influent pH/ORP rather than the effluent pH/ORP?

A: Yes. The configuration of the scrubbing system is such that the scrubbing medium is taken from the bottom of the scrubber and recirculated back to the inlet spray nozzles at the top of the scrubber. Several years of emission test data has shown chlorine (CL_2) and chlorine dioxide (CLO2) emissions to be less than 1.0 ppmv, far below the 10 ppmv or less specified in subpart S.

Abstract for (010036)

Q: May a facility which is subject to the bleaching and monitoring standards found at 40 CFR 63.445(c) and 63.453(c) of the pulp and paper MACT, subpart S, monitor fan amperage for the bleaching system gas scrubber vent gas fan in lieu of monitoring vent gas inlet flow rate?

A: Yes. EPA's document for Subpart S, titled "Questions and Answers (Q&As) for the Pulp and Paper NESHAP 40 CFR part 63, subpart S," dated September 22, 1999, discusses the alternative monitoring parameter issue. See pages 8 through 10. It allows the monitoring of fan operation instead of gas flow rate. Allowable monitoring parameters of fan operation include fan motor amperage, on/off status, or rotational speed of the fan.

Abstract for (100053)

Q: Will EPA approve a custom fuel monitoring schedule under Subpart GG for a facility whose turbines combust only pipeline-quality natural gas?

A: Yes. Because the turbines combust only pipeline-quality natural gas fuel, EPA will approve the custom fuel monitoring schedule according to established EPA National Policy.

Abstract for (0100054)

Q: Will EPA approve alternative test methods under Subpart GG and the waiver of various other test requirements for the three new gas turbines to be installed at Conectiv's Hay Road Power Complex in Wilmington, Delaware?

A: EPA will approve some of the alternative testing methods but not all of them as the State of Delaware is requiring strict NSPS testing compliance through their own permitting authority.

Abstract for (100055)

Q: Will EPA approve a boiler deration proposal under Subpart Dc?

A: EPA will approve a boiler deration proposal that meets federal policy on being a permanent change to the steam output capacity of the boiler which cannot be easily reversed.

Abstract for (0100056)

Q: May a facility operate its new Wickes boiler on refinery fuel gas for a 7 day trial period prior to installing a continuous emission monitor (CEM) for sulfur dioxide?

A: Yes, EPA will allow this short trial period for selecting the correct CEM and ensuring proper boiler operation on the waste gas fuel. This is with the understanding that the facility will be sampling and analyzing the waste gas fuel for H_2S content every 4 hours during the trial period.

Abstract for (0100057)

Q: Two natural gas fired heaters are used to heat $TiCl_4$ and pure oxygen prior to being reacted. Are the two heaters subject to subpart Dc?

A: No. The subpart Dc affected facility is identified as a steam generating unit. Since the definition of a steam generating unit excludes process heaters, the two heaters are not subject to subpart Dc.

Abstract for (0100058)

Q: Two tanks which are subject to NSPS subpart Kb serve primarily as surge and equalization tanks and separate oil and water as an incidental function. Are the two tanks considered storage vessels or oil-water separator tanks, and are they exempt from 40 CFR 60.692 and 60.693?

A: The two tanks are considered storage vessels under subpart QQQ rather than oil-water separator tanks. Since the two tanks are subject to the standards specified at 40 CFR 60.112b, subpart Kb, they are not regulated by subpart QQQ due to the exemption provided in 40 CFR 60.692 through 60.693(d).

Abstract for (0100059)

Q: A new production line is being constructed at a nonmetallic mineral processing plant which will include affected facilities constructed after the subpart OOO applicability date and a crusher which was constructed prior to the applicability date. Will any of the affected facilities be subject to subpart OOO prior to the modification or reconstruction of the crusher?

A: Yes. All affected facilities in the production line would be subject to subpart OOO except for the crusher. The exemption provided in 40 CFR 60.670(d)(1) only applies to the replacement of an existing facility with equipment of equal or smaller size having the same function as the existing facility. The use of a crusher which was constructed prior to the applicability date would not cause all other affected facilities in the new production line to be exempt under 40 CFR 60.670(d).

Abstract for (0100060)

Q: A double seal, internal floating roof is being used on an oil-water separator to comply with the standard provided in 40 CFR 60.692 through 60.693. Is the subpart Ka testing (inspection) standard acceptable as an alternative to the subpart QQQ inspection procedures?

A: No. Since subpart Ka does not require any type of periodic inspections for internal floating roofs, the proposal is not appropriate. However, the use of subpart Kb inspection procedures for internal floating roofs provided in 40 CFR 60.113b(a) would be acceptable.

Abstract for (0100061)

Q: Does NSPS, subpart SS, apply to surface coating operations used to paint clothing press parts and the surface of the clothing presses?

A: No. The subpart SS affected facility is each surface coating operation in a large appliance surface coating line. Since a clothing press is not identified in subpart SS as a large appliance product, the surface coating of clothing presses is not regulated.

Abstract for (0100062)

Q: Is a piece of equipment which is covered by the exemption in 40 CFR 60.670(d)(1) considered an affected facility which is subject to the notification requirements of 40 CFR 60.7?

A: Yes. When a piece of equipment is replaced with equipment of equal or smaller size, the replacement equipment is an affected facility subject to subpart OOO, even though the exemption in 40 CFR 60.670(d) may apply.

Abstract for (0100063)

Q: Is a wood by-product combustor subject to the Commercial and Industrial Solid Waste Incineration NSPS, subpart CCCC?

A: No. Because the wood by-product combustor has heat recovery that is used to heat the ventilation make-up air, and the combustor is only operated during the cold winter months when this heat is needed, it is not subject NSPS, subpart CCCC.

Abstract for (0100064)

Q: May the El Paso Company obtain a relaxed sulfur-in-fuel monitoring schedule under 40 CFR part 60, subpart GG, for the operation of a 70 MMBtu/hr compressor station operating solely on natural gas?

A: Yes. EPA routinely grants custom monitoring schedules under NSPS, subpart GG, for facilities burning low sulfur fuels.

Abstract for (0100065)

Question: May the UAE Lowell LLC facility obtain a relaxed sulfur-in-fuel monitoring schedule under 40 CFR part 60, subpart GG for the operation of a 90 MW stationary gas turbine with a primary fuel of natural gas and a secondary fuel of very-low sulfur distillate oil?

Answer: Yes, EPA routinely grants custom monitoring schedules under NSPS, subpart GG for facilities burning low sulfur fuels.

Abstract for (0100066)

Q1: May the Ameren facility demonstrate compliance with 40 CFR part 60, subpart GG using the allowable NO_X emission rate in 40 CFR part 60, subpart Da (1.6 lb/MW-hr) as a limit on each entire combined cycle turbine?

A1: Yes. Ameren may use the more stringent emission limit of 1.6 lb/MW-hr NO_X at 40 CFR part 60, subpart Da on the entire combined cycle turbine in lieu of monitoring separately under 40 CFR part 60, subpart Da and 40 CFR part 60, subpart GG.

Q2: May the Ameren facility receive a waiver of the initial performance testing for NO_X at 40 CFR part 60, subpart GG?

A2: No. Ameren may not waive the initial performance testing required by 40 CFR part 60, subpart GG. However, U.S. EPA does waive the requirement to test at all four loads.

Q3: May the Ameren facility use NO_X CEMs for demonstrating compliance with 40 CFR part 60, subpart GG in lieu of fuel nitrogen monitoring?

A3. Yes. Ameren may use NO_X CEMs to demonstrate compliance with 40 CFR part 60, subpart GG in lieu of fuel nitrogen monitoring.

Abstract for (0100067)

Q1: May the Cascade Creek facility use 40 CFR part 75 NO_X CEMs in lieu of monitoring for NO_X as required at 40 CFR part 60, subpart GG?

A1: Yes. Cascade Creek may use 40 CFR part 75 NO_X CEMs in lieu of monitoring for NO_X as required at 40 CFR part 60, subpart GG. This approval is based on certain conditions outlined in the approval letter.

Q2: May the Cascade Creek facility use RATA test data obtained during CEM certification, as required by 40 CFR part 75, to demonstrate initial compliance with NO_X limits at 40 CFR part 60, subpart GG in lieu of fuel monitoring for nitrogen content?

A2: Yes. Cascade Creek may use RATA data to demonstrate initial compliance with 40 CFR part 60, subpart GG.

Q3: May the Cascade Creek facility use fuel monitoring requirements for natural gas and number 2 fuel oil at 40 CFR part 75, appendix D in lieu of fuel monitoring required by 40 CFR part 60, subpart GG?

A3: Yes. Cascade Creek may use fuel monitoring requirements for natural gas and number 2 fuel oil at 40 CFR part 75, appendix D in lieu of fuel monitoring required by 40 CFR part 60, subpart GG?

Abstract for (0100068)

Q1: May the City of Chaska use newer ASTM methods for fuel sulfur content monitoring at 40 CFR part 75 at the Minnesota Municipal Power Agency's Minnesota River Station when burning fuel oil, in lieu of methods ASTM at 40 CFR part 60, subpart GG?

A1: Yes. The City of Chaska may use newer ASTM methods given in 40 CFR part 75 for determining sulfur content of fuel when fuel oil is burned.

Q2: May the City of Chaska use a correlation graph developed in accordance with 40 CFR part 75, appendix E, to determine compliance with NO_X emission limits at the Minnesota Municipal Power Agency's Minnesota River Station when burning fuel oil, in lieu of methods at 40 CFR part 60, subpart GG?

A2: Yes. The City of Chaska may use a correlation graph developed in accordance with 40 CFR part 75, appendix E when burning either fuel oil or pipeline natural gas in lieu of methods at 40 CFR part 60, subpart GG. This approval is granted only if the turbines using the turbines are peaking units as defined at 40 CFR 72.2.

Q3: May the City of Chaska use the default value of 0.0006 pounds of sulfur per million BTU of heat input and monitor the amount of natural gas burned to determine sulfur emissions in accordance with 40 CFR part 75 at the Minnesota Municipal Power Agency's Minnesota River Station when burning pipeline natural gas, in lieu of sulfur monitoring at 40 CFR part 60, subpart GG?

A3: Yes. The City of Chaska may use the default value of 0.0006 pounds of sulfur per million BTU of heat input and monitor the amount of natural gas burned to determine sulfur emissions in accordance with 40 CFR part 75 in lieu of sulfur monitoring at 40 CFR part 60, subpart GG. This approval is acceptable only when pipeline natural gas is being burned as fuel in the turbines.

Abstract for (0100069)

Q1: May the Lakefield Junction facility use 40 CFR part 75 NO_X CEMs in lieu of monitoring for NO_X as required at 40 CFR part 60, subpart GG?

A1: Yes. Lakefield Junction may use 40 CFR part 75 NO_X CEMs in lieu of monitoring for NO_X as required at 40 CFR part 60, subpart GG. This approval is based on certain conditions outlined in the approval letter.

Q2: May the Lakefield Junction facility use the custom monitoring schedule for sulfur content in fuel as outlined in the August 14, 1987 memorandum from John Rasnic for the six turbines being installed and all future turbines installed?

A2: Yes. Lakefield Junction may use the custom monitoring schedule for sulfur content for the six turbines being installed. This approval is not extended to all future turbines which may be installed. Future turbine installation will require a new determination request be made by the facility.

Q3: May the Lakefield Junction facility use CEM certification data required by 40 CFR part 75 to demonstrate initial compliance in lieu of Reference Method 20?

A3: U.S. EPA Region 5 has not been delegated authority to approve alternative test methods as proposed by Lakefield Junction. The Regional Office is, however, delegated authority to waive initial performance tests when compliance has been demonstrated by other means. U.S. EPA Region 5 does, therefore, waive the initial performance test requirements for NO_X under 40 CFR part 60, subpart GG. This waiver is approved only if certain conditions are met.

Q4: Will U.S. EPA Region 5 rescind the determination made in a letter dated September 8, 1999 addressed to MPCA?

A4: Yes. U.S. EPA Region 5 rescinds the determination made for Lakefield Junction, through MPCA, on September 8, 1999.

Abstract for (0100070):

Q: May the Northern Natural Gas Company and Northern Border Pipeline Company use a new monitor for

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determining sulfur content in fuel for demonstrating compliance with 40 CFR part 60, subpart GG?

A: No determination was made. Additional information is necessary to clarify the facility's requests.

Abstract for (0100071):

Q1: May the DP&L facility use NO_X CEMs for in lieu of fuel monitoring requirements for nitrogen given at 40 CFR part 60, subpart GG?

A1: Yes. DP&L may use CEMs as required by the acid rain program to demonstrate compliance with NO_X limits in 40 CFR part 60, subpart GG. This approval is granted so long as listed conditions are met.

Q2: May the DP&L facility get a waiver of the requirements to correct NO_X CEM emission data to ISO conditions?

A2: Yes. DP&L may waive the requirement to convert results to ISO conditions, so long as all data necessary for the conversion is still maintained.

Q3: May the DP&L facility use RATA results obtained during certification of the NO_X CEMs to demonstrate initial compliance with 40 CFR part 60, subpart GG?

A3: Yes. DP&L may use RATA results to demonstrate initial compliance with NO_X limits for NSPS subpart GG so long as certain conditions are met.

Q4: May the DP&L facility use fuel monitoring provisions for sulfur at 40 CFR part 75, in lieu of fuel monitoring provisions for sulfur given at 40 CFR part 60, subpart GG?

A4: Yes. DP&L may use monitoring provisions at 40 CFR part 75 for sulfur content in fuel in lieu of fuel monitoring requirements given at 40 CFR part 60, subpart GG.

Abstract for (0100072)

Q1: May the DP&L facility conduct initial performance testing of all turbines identified at base load only?

A1: Yes. DP&L may conduct initial performance testing at base load if certain conditions are met.

Q2: May DP&L use Method 7E in lieu of Method 20 for demonstrating initial compliance with NOX for NSPS subpart GG?

A2: Yes. DP&L may use Method 7E to demonstrate initial compliance with NSPS subpart GG. This approval was granted by the Emissions, Monitoring and Analysis Division in the Office of Air Quality Planning and Standards, in a memorandum to George Czerniak.

Abstract for (0100073)

Q: May the BP Chemicals facility waive the requirement to conduct initial performance testing of the Butanediol Plant flare?

A: No. BP Chemicals cannot waive the requirement to conduct initial performance testing of the Butanediol Plant flare. Current methods for initial performance testing of flares are applicable to BP Chemicals.

Abstract for (0100074)

Q: Will EPA Region III approve a custom fuel monitoring schedule for sulfur content under 40 CFR part 60, subpart GG?

A: Yes. EPA has National Policy in regard to fuel sampling and analysis for sulfur content under subpart GG for stationary gas turbines that combust pipeline-quality natural gas fuel.

Abstract for (0100075)

Q: Will EPA Region III approve a custom fuel monitoring schedule for Wolf Hills Energy Under 40 CFR part 60, subpart GG?

A: Yes. Because the request meets the conditions of EPA's National Policy on such schedules, EPA Region III will approve the request.

Abstract for (0100076)

Q: Are ethanol manufacturing facilities exempt from the requirements of 40 CFR part 60, subparts RRR and NNN?

A: Yes. EPA has previously determined that ethanol manufacturing facilities may be exempt from NSPS, subparts RRR and NNN, on a case-by-case basis. In this instance, the ethanol facilities in question use a biological process to ferment the converted starches in corn into ethanol. These subparts did not envision unit operations for biological processes.

Dated: January 4, 2002.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. 02–624 Filed 1–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–1313–06; I.D. 092101B]

RIN 0648–AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on protective measures to benefit North Atlantic right whales. This final rule expands gear modifications required by the December 2000 interim final rule to the Mid-Atlantic and Offshore lobster waters and modifies requirements for gillnet gear in the mid-Atlantic.

DATES: This final rule is effective February 11, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard at the address above or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. Copies of the EA, the RIR, and the FRFA can be obtained from the ALWTRP website listed under the Electronic Access portion of this document.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this final rule and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/prot_res/mammals/sa_rep/sar.html*. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, *http://www.coastalstudies.org/*.

Background

This final rule implements approved modifications contained in the ALWTRP recommended by the ALWTRT, as well as other modifications deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). Details concerning the justification for and development of this rule were provided in the preamble to the proposed rule (66 FR 49896, October 1, 2001) and are not repeated here.

Changes to the ALWTRP for Lobster Trap Gear

Northern Inshore State Lobster Waters Area

This final rule removes the option for lobstermen to use line with a diameter of 7/16 in (1.11 cm) or less for all buoy line, effective January 1, 2003, from the Lobster Take Reduction Technology List applicable to fishing with lobster traps in this area, and it allows the use of neutrally buoyant line in all buoy lines and ground lines as an option to be chosen from that list.

Southern Nearshore Lobster Waters Area

This final rule replaces the Lobster Gear Technology List with the following mandatory gear modifications applicable year-round: (a) installation of a weak link with a maximum breaking strength of 600 lb (272.4 kg) on the buoy line, and (b) installation of weak links in such a way that produces knotless ends if the weak link breaks.

Offshore Lobster Waters Area

This final rule reduces the maximum breaking strength of weak links at all buoys from 3,780 lb (1,714.3 kg) to 2,000 lb (906.9 kg), and requires installation of weak links in such a way that produces knotless ends if the weak link breaks.

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Figure 1

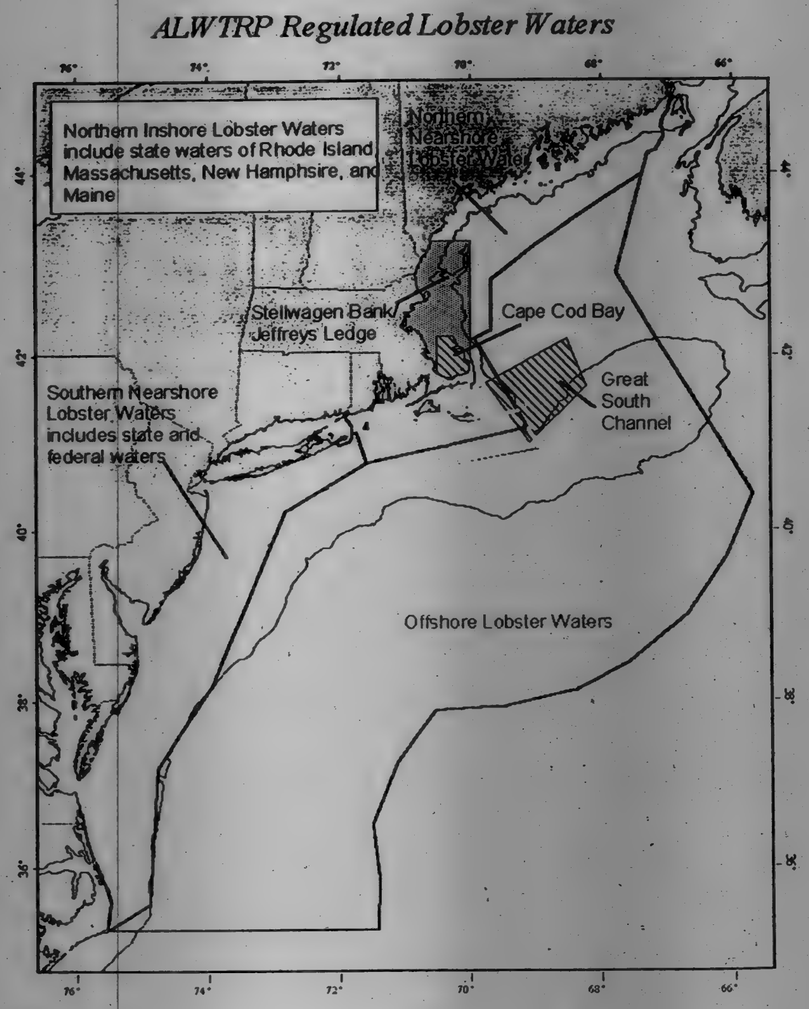

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Changes to the ALWTRP for Gillnet Gear

Gillnet Mid-Atlantic Coastal Waters Area

This final rule replaces the Gillnet Take Reduction Technology List with requirements to install buoy line weak links with a maximum breaking strength of 1,100 lb (498.8 kg) placed as close to each individual buoy as operationally feasible and net panel weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline section on each 50-fathom net panel or every 25 fathoms on the floatline for longer panels. It also requires fishers to return all gillnet gear to port with their vessels, or if the gillnets are left at sea to continue fishing, to secure the nets on each end with anchors that have the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor.

Figure 2

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Changes to the ALWTRP for Gillnet Gear

Gillnet Mid-Atlantic Coastal Waters Area

This final rule replaces the Gillnet Take Reduction Technology List with requirements to install buoy line weak links with a maximum breaking strength of 1,100 lb (498.8 kg) placed as close to each individual buoy as operationally feasible and net panel weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline section on each 50-fathom net panel or every 25 fathoms on the floatline for longer panels. It also requires fishers to return all gillnet gear to port with their vessels, or if the gillnets are left at sea to continue fishing, to secure the nets on each end with anchors that have the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor.

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Figure 2

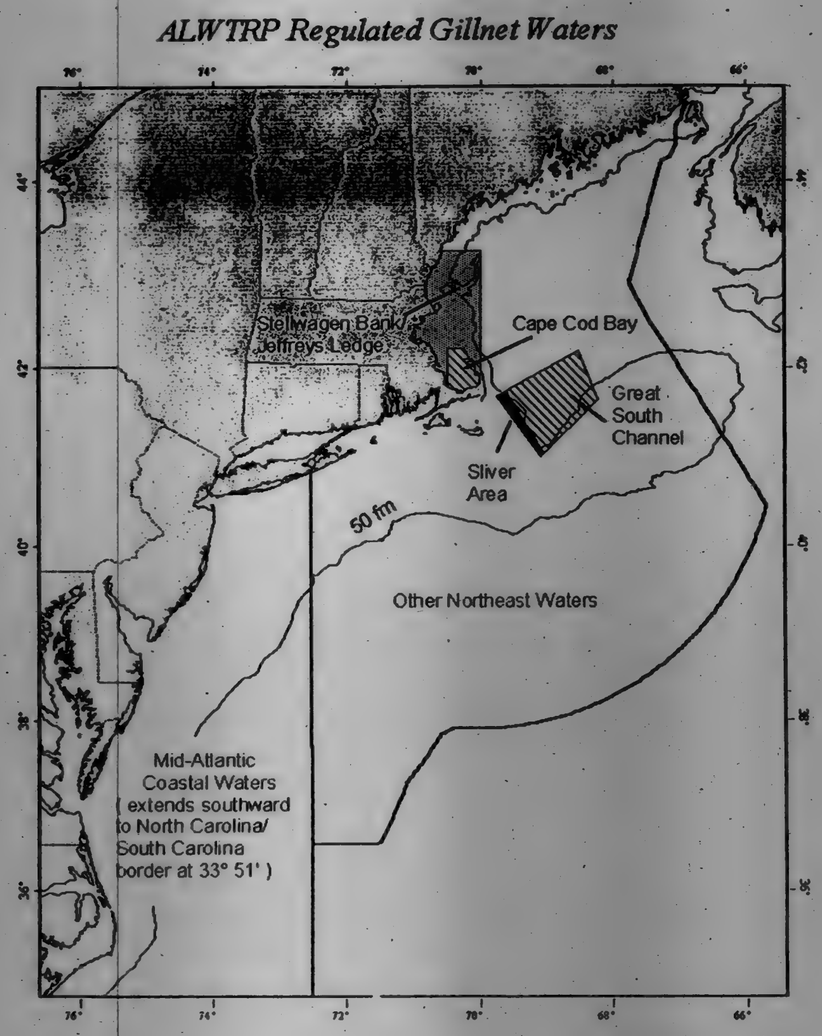

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Changes to the Take Reduction Technology Lists

Lobster Take Reduction Technology List

This final rule removes the option for fishers to use 7/16 in (1.11 cm) diameter line for all buoy lines, effective January 1, 2003, and amends the list to provide the option that all buoy lines and ground lines be composed entirely of sinking and/or neutrally buoyant line. For the Southern Nearshore Lobster Waters Area, this final rule replaces the requirement to choose options from the Lobster Take Reduction Technology List with a set of specific requirements.

Gillnet Take Reduction Technology List

This final rule removes the option for fishers to use line of 7/16 in (1.11 cm) in diameter or less for all buoy lines, requires installation of weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline of each net panel, and requires that all buoy lines be composed entirely of sinking and/or neutrally buoyant line.

Voluntary Measures

NMFS continues to encourage fishers to use and maintain knot-free buoy lines. As described in the preamble to the proposed rule, the ALWTRT initially recommended requiring knot-free buoy lines, but changed the recommendation from a mandatory measure to a voluntary measure because fishers need to repair and re-tie buoy lines frequently at sea. The knot-free buoy line concept is similar to the breakaway buoy concept, where the objective is to keep knots from becoming lodged in a whale's baleen or from contributing to the wrapping of line around an appendage.

In some cases, fishers prefer splices to knots, because splices are stronger. NMFS is recommending the use of splices wherever possible, because splices are not likely to increase entanglement threat. However, NMFS recognizes that connecting lines using a splice may not be practicable while gear is being hauled. NMFS encourages the splicing of line, as opposed to knot-tying, especially during seasonal gear overhauls or as new gear is added. Although concepts for devices to join lines quickly at sea have been proposed, none have been developed yet; therefore, there is currently no feasible way to join lines quickly other than knotting. NMFS will continue to investigate line connecting alternatives and may require further use of knotless lines in the future if a reasonable substitute for knots is developed.

Comments and Responses

NMFS received 23 sets of written comments on the proposed rule by the October 31, 2001 deadline. The comments were considered in developing this final rule to amend the regulations that implement the ALWTRP and are responded to here.

General Comments

Comment 1: Two commenters generally opposed the gear regulations, one of which noted that the regulations were too restrictive and costly. Four commenters generally believed that the regulations were not restrictive enough; all noted that other options exist that have a greater potential to reduce risk of serious injury and mortality to large whales. Seven commenters generally supported the new rule changes. One commenter expressed support because the proposed rule reflects the ALWTRT recommendations, and another because they were based on reasonable and tested gear modifications.

Response: NMFS is amending the regulations that implement the ALWTRP to provide further protection for large whales, with an emphasis on North Atlantic right whales due to their critical status. NMFS takes the economics of the fisheries into consideration, to the extent possible, when developing marine mammal protective measures that meet the standards of the MMPA and ESA. NMFS seeks recommendations from the ALWTRT, and considers these along with the best available information on gear and large whale entanglements when developing ALWTRP regulations.

Comment 2: Eight commenters noted other sources or potential sources of right whale mortality, such as recreational boaters, commercial shipping vessels, whale watch vessels, other fishing gear aside from lobster and gillnet gear that has vertical line in the water column or is configured in a way that poses a potential threat to right whales, and gear employed by foreign fishing vessels. Four commenters noted that NMFS was implementing significant modifications to fishing gear and practices of the lobster and gillnet fisheries without providing adequate protection to right whales from other sources of mortality. One of these commenters expressed concern that right whale mortality due to fishing is the smallest source of right whale mortality, but NMFS focuses on it because it is the easiest to manipulate.

Response: This final rule stems from a component of the Reasonable and Prudent Alternative (RPA) resulting from consultations required under section 7 of the ESA. NMFS issued four BOs on the monkfish, spiny dogfish, multispecies Fishery Management Plans (FMPs)and lobster Federal regulations on June 14, 2001. NMFS is issuing this final rule specifically to address commercial fishery impacts from these four fisheries. In addition, under the MMPA, NMFS must reduce incidental mortality and serious injury of marine mammals resulting from interaction with commercial fishing gear. NMFS appreciates the gillnet and lobster fishing industries' involvement in the ALWTRT and their efforts to reduce takes of marine mammals in their fisheries. NMFS realizes that other marine resource user groups, including other fisheries with gear with vertical lines, are affecting large whale populations, and NMFS will continue efforts to try to reduce these impacts.

NMFS is currently addressing other sources of right whale mortality through other rulemaking processes and policy discussions. NMFS issued a contract for the completion of a report that made recommendations to decrease ship strikes. The Northeast and Southeast Recovery Plan Implementation Teams, composed of members from various marine stakeholders, including the U.S. Navy and port authority representatives, have been advising NMFS on ways to address impacts from recreational and commercial vessels. NMFS is taking these recommendations under consideration and is working to minimize the potential for vessel collisions. NMFS is also working on a proposed rule to minimize the potential for future serious injury and mortality of whales from whale watch vessels. NMFS is continuing to work with Canadian biologists and to support efforts to expand disentanglement efforts in Canadian waters. NMFS will continue to work with the Government of Canada toward development of similar protective measures for right whales in Canadian waters.

Comment 3: One commenter noted that NMFS should include through the Take Reduction Team (TRT) process all other fishing gear types that pose a potential threat to the right whale because of the use of a vertical line in the water column or the configuration of the gear itself. This commenter urged NMFS to work with states and Fishery Management Councils (FMC) to obtain further information on these fisheries as well as other experimental fishery permits that might potentially use a vertical buoy line. Another commenter recommended that NMFS consider including other regulated fixed gears that use buoy lines, and gear types that have a configuration that poses a

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potential threat to right whales in these regulations because unidentified gear or line has been involved in whale entanglements. NMFS should give a rationale for gear determined to be exempt from such measures.

Response: At the next ALWTRT meeting, NMFS would like to discuss this with ALWTRT members and to obtain recommendations on which fisheries to bring into the take reduction team process and which fisheries to exempt. Currently, state representatives and council members have been invited to participate as members of the NMFS take reduction teams. Through its involvement, NMFS can utilize its expertise and obtain further information on additional fisheries and experiments that may potentially use a vertical buoy line. NMFS also participates in FMC and Atlantic States Marine Fisheries Commission's protected species committees/subcommittees to coordinate on protected species management issues. Also, through the ESA section 7 process, any Federal Experimental Fishery Permit would be reviewed to assess the impacts of that fishery on species protected under the ESA, such as right whales.

Comment 4: Two commenters opposed the preemption of state laws and/or regulations by Federal regulations issued by NMFS. One of these commenters noted that states should make their own rules as they are better able to adapt whale protection measures in response to new information, and to adjust those measures when necessary, than NMFS. This same commenter noted that enforcement could prove to be even more problematic than it currently is.

Response: Although the MMPA provides NMFS with authority to regulate in State waters, states can develop equally protective or more protective restrictions if they choose, and NMFS encourages such action. Further, NMFS has cooperative agreements in place with a number of Atlantic states, which enable states to enforce requirements of the MMPA and its implementing regulations.

NMFS tries to coordinate with states on other issues as well. For example, with regard to gear markings that yield individual vessel information, many of the state and Federal FMPs currently require marking of buoys and/or traps with individual vessel identification. NMFS plans to continue to work with state fisheries agencies to investigate gear marking coast-wide and identify gaps in marking of surface gear, gillnets, and traps. This information will be presented to the ALWTRT for future consideration.

Comment 5: NMFS must develop and implement plans for the conservation and survival of the right whale under the MMPA and ESA and the current plan has not met that mandate.

Response: NMFS is presently updating the ALWTRP with additional gear modifications in this final rule, as well as with measures proposed for Seasonal Area Management (66 FR 59394, November 28, 2001) and Dynamic Area Management (66 FR 50160, October 2, 2001). It is NMFS' Biological Opinion (BO) that if the agency modifies the ALWTRP according to the RPA, then the continued operation of the four fisheries will not jeopardize the continued existence of the western North Atlantic right whale. The ALWTRP is not a static plan, and NMFS continues to revise the ALWTRP to achieve its goals of reducing the serious injury and mortality of whales in commercial fishing gear. The ALWTRT continues to convene yearly as required to make recommendations to NMFS on any needed modifications to the plan to reach the Potential Biological Removal levels and Zero Mortality Rate Goal of right, humpback, fin and minke whales. Additionally, pursuant to the ESA, NMFS publishes recovery plans for endangered or threatened marine mammals to promote the recovery of the species. The first Right Whale Recovery Plan was published in 1991, and an updated draft was recently released for public comment (66 FR 36260, July 11, 2001). The comment period ended October 25, 2001, and NMFS is presently reviewing comments and modifying the plan. The plan includes an implementation schedule to direct and monitor the completion of recovery tasks.

Comment 6: One commenter noted that although progress has been made to identify gear modifications that hold potential for reducing entanglement risks, strong reliance on gear modification as a take reduction tool is warranted only if there is a solid reason to believe they will reduce entanglement risks (e.g., neutrally buoyant line). The commenter added that most gear modifications to date offer little certainty that they will actually reduce entanglement risk. Another commenter thought that NMFS should stop relying on current best fishing practices to reduce mortality and serious injury as these practices have been unsuccessful.

Response: NMFS believes that implementing the additional gear modifications in this final rule combined with the forthcoming final rules on Seasonal Area Management (SAM) and Dynamic Area Management (DAM) of lobster and gillnet fisheries will reduce interactions between right whales and fishing gear, and reduce serious injury and mortality of right whales due to entanglement in fishing gear. The RPAs in the June 14, 2001, BOs advised NMFS to, amongst other measures, expand additional gillnet and lobster pot gear modifications to avoid jeopardizing the continued existence of North Atlantic right whales (See preamble under Changes in the Final Rule from the Proposed Rule for discussion on the RPA and the southeast gillnet fishery). Since issuance of the BOs, NMFS has conducted additional analyses of available data including that on the seasonal movement and congregations of right whales, previous entanglements, and the nature and position of gear in the water. Based on these analyses and our knowledge of North Atlantic right whale behavior, NMFS has identified gear modifications that prevent serious injury or mortality. These additional gear modifications will be implemented with this final rule. NMFS considered multiple strategies to decrease gear interactions with large whales, including implementing gear modifications based on recent technological advances. Time/area closures have also been used under the ALWTRP to remove the potential for interaction between large whales and lobster and gillnet fisheries.

Comment 7: One commenter noted that NMFS must undertake an adequate program of research and development for the purpose of devising improved fishing methods and gear so as to reduce the incidental taking of right whales in commercial fishing. Two commenters noted that there should be aggressive gear research undertaken with promising innovations implemented in a timely manner.

Response: As part of the RPA in the BOs issued on June 14, 2001, NMFS noted the need for continued gear research and modification. NMFS is committed to gear research and development, and will expand this program as funding allows. NMFS has gear laboratories and research teams that specifically focus on gear development and testing. Additionally, NMFS contracts with researchers, individuals and companies to develop gear solutions. Much of the current take reduction plan measures are based on the outcome of such gear research (e.g., weak links) conducted and/or funded by NMFS. The gear modifications are important to reduce interactions between right whales (and other large whales) and fishing gear to further reduce serious injury and mortality of large whales due to entanglement in fishing gear. In addition, NMFS intends to continue to support the contributions made by the ALWTRT's Gear Advisory Group. NMFS is collaborating with other organizations to host a gear workshop, tentatively scheduled for February 2002, to investigate additional options and gear enhancements for gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration of future gear recommendations to NMFS. (Also see response to comment 34).

Comment 8: Two commenters objected to the language in the BO that NMFS would use an entanglement by unidentified gear or gear approved for use in multi-species fisheries to generate a conclusion that the measures in the RPA are not demonstrably effective at reducing right whale injuries or death. They mentioned the gear could possibly be Canadian or from other sources of line. The commenters also felt that scarification is a poor indicator of whether the RPA is effective as scars can occur for a number of reasons, including interactions with fishing gear and vessels that are not serious.

Response: Although this comment is not related to the proposed rule for gear modifications, NMFS will take the comments under consideration.

Comment 9: One commenter urged the ALWTRT to continue to work with the Gear Advisory Group to explore and develop additional gear options that do not pose a risk to the large whale population.

Response: NMFS intends to continue to support studies on gear modifications to reduce interactions, and eliminate serious injury and mortality. NMFS sees the value of the contributions that the Gear Advisory Group can bring to the ALWTRT. NMFS is collaborating with other organizations to host a gear workshop in 2002 to investigate options for gillnet and lobster trap gear modifications to prevent serious injury to right whales that may become entangled in gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration in making additional recommendations to NMFS. NMFS will also be reconvening the Gear Advisory Group in 2002 and distributing the results of the gear workshop to participants.

Comment 10: NMFS should immediately identify at-sea enforcement as a high priority and develop protected resources penalty schedules for the ALWTRP.

Response: NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and does conduct such enforcement. NMFS also relies on its partnership with the U.S. Coast Guard to monitor compliance with the ALWTRP. NMFS already has penalty schedules for violations of the MMPA, ESA, and regulations issued pursuant to those statutes.

Comment 11: The fishing industry was not notified of the publication of the proposed rule, and involving industry is crucial to the success or failure of these plans. A letter to permit holders, similar to what is done for fishery regulations, should have been sent to involve industry. Involving industry is crucial to the ALWTRP process.

Response: Given the current critical status of the right whale population and the aggregate effects of human-caused mortality that have led to the species' current status, the development of this final rule occurred during an accelerated rulemaking process. Time constraints prevented NMFS from holding public hearings on the current regulations; however, NMFS used other ways to let the public know that public comments were being sought on a proposed rule to address commercial fishery/large whale interactions. These efforts included distributing the information to ALWTRT members who represent various stakeholder groups and provide valuable links to distribute information to the public, issuing a NOAA press release and an announcement in NOAA's FishNews, providing notification through the **Federal Register**, and communicating with state managers. NMFS will consider other means of communicating with the public and welcomes recommendations on ways to disseminate such information, such as through letters to permit holders, as was suggested. NMFS agrees with the commenter that involving fishermen in the process is important to the success of the ALWTRP.

Comment 12: Three commenters noted that neutrally buoyant line holds promise as a measure to reduce risk of entanglements. Removing floating line from the water column is widely believed to be important to reducing risk to whales. Two of these commenters also made specific recommendations by management area for the lobster fishery: (1) Both commenters noted that the use of neutrally buoyant line should be required in the Northern Inshore Lobster Waters. One of these commenters thought this should be effective January 1, 2003, in the Cape Cod Bay Critical Habitat, and in the Northern Inshore State Lobster Waters Area effective January 1, 2004; (2) both commenters suggested NMFS require the use of neutrally buoyant line in offshore lobster trawl lines. One of these commenters suggested implementation by January 1, 2004; and (3) one commenter thought that NMFS must mandate the immediate use of neutrally buoyant line for all lobster ground lines, and another commenter suggested this requirement be mandated by 2004.

Response: Neutrally buoyant line is an important gear modification to reduce interactions between right whales and fishing gear by reducing the amount of line in the water column. NMFS has incorporated the option to use neutrally buoyant line into parts of the ALWTRP through this final rule.

NMFS will seek recommendations from the ALWTRT on whether to require neutrally buoyant line and how NMFS could implement such a requirement in the future. In addition, NMFS will continue to work with industry to incorporate neutrally buoyant or sinking line into their operation whenever possible.

NMFS is currently investigating issues such as the time to change over and other operational problems associated with the full utilization of neutrally buoyant line. For example, NMFS is working with a Gulf of Maine offshore lobster fisherman who is willing to change over all his buoy and ground lines to neutrally buoyant line for 1800 traps. This fisherman will provide monthly reports to the NMFS Gear Research Team on how the traps work with the line, how breaking strength holds up over time, and the life expectancy of the gear. NMFS is also beginning to investigate the manufacturing issues that may arise should this technology be used as a widespread risk reduction tool. These results will be presented to the ALWTRT for consideration. The NMFS' Gear Research Team has also supplied 90 miles (78.2 nm) of neutrally buoyant line to lobster and gillnet fishermen from Maine to Rhode Island to test the life expectancy of the line, how the breaking strength holds up over time, and other operational considerations. These results will also be provided to the ALWTRT for consideration. NMFS notes that the requirement to use neutrally buoyant line in a Seasonal Area Management (SAM) could mean benefits to whales if these same fishers use this gear in other areas. Fishermen and the NMFS Gear Research Team report that many fishermen from Maine through Rhode Island already use neutrally buoyant line as part of their fishing operation due to local tides and/or type of fishing bottom. NMFS appreciates the concern and effort

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fishers have shown by switching to neutrally buoyant or sinking line to reduce gear interactions with large whales.

Comment 13: One commenter stated that weak links at buoy lines may offer little meaningful protection against entanglement risks. As most entangled whales are found without buoys, a weak link at the buoy may not increase the likelihood that a line sliding through a whale's mouth will break away before the whale becomes more entangled. It is questionable that a weak link strong enough to maintain fishing gear in an operable condition would fall free before a whale begins thrashing and becomes entangled. The commenter also suggested that NMFS should assess the effectiveness of knotless lines by examining lines removed from whales, as well as photos of the entangled whales, to evaluate the extent to which knots tied by fishermen may have contributed to the entanglement. The relative proportion of entangled whales with and without potential troublesome knots could provide a measure of the overall effectiveness of eliminating knots.

Response: NMFS believes that implementing the additional gear modifications in this final rule combined with the forthcoming final rules on SAM and DAM of lobster and gillnet fisheries will reduce interactions between right whales and fishing gear, and reduce serious injury and mortality of right whales due to entanglement in fishing gear. NMFS feels that weak links and installation of these in such a way that produces knotless ends if the weak link breaks are important gear modifications. Of the 15 right whale entanglements from 1997 through 2001 where gear was either recovered or documented, buoys were present in eight cases. NMFS will be conducting a similar analysis with other whale species.

NMFS has investigated whether an analysis on rope recovered from entangled whales could help determine the effectiveness of eliminating knots. However, NMFS does not usually have information on how the whale became entangled and in which part of the retrieved gear it was entangled. NMFS will continue to investigate this and work with others to obtain information to better assess large whale interactions with fishing gear.

In regard to the question of a weak link being strong enough to break free and maintain gear in operable condition, see summary on page 49899 of the proposed rule on gear modifications (66 FR 49896, October 1, 2001) of the right whale entanglement and subsequent gear analysis indicating that the surface system was separated from the buoy line going to the trawl by a 3,780-lb (1,714.3-kg) weak link. It appears the whale was able to part the gear at the 3,780-lb weak (1,714.3-kg) link although the whale was still entangled in gear. However, NMFS believes that the lower breaking strengths for weak links required in this final rule will provide improved protection for right whales. NMFS will continue working with others to develop additional gear modifications and appreciates hearing ideas from the public.

Southern Nearshore Lobster Waters Area

Comment 14: One commenter supported NMFS' proposal to replace the Lobster Gear Technology List with the following year-round gear modifications: (a) Installation of a weak link with a maximum breaking strength of 600 lb (272.4 kg) on the buoy line, and (b) installation of weak links such that if the lines were to break, they would produce knotless ends on the line.

Response: Research will continue to investigate alternative methods to connect lines.

Comment 15: One commenter opposed the elimination of the gear technology list for the Southern Nearshore Lobster Waters Area. The commenter noted that they should have an option list just like northern inshore areas are offered one.

Response: NMFS proposed to replace the Lobster Take Reduction Technology List with mandatory gear modifications based upon the recommendation of the ALWTRT Mid-Atlantic subgroup. NMFS believes that these mandatory gear modifications are necessary to reduce entanglements in this area.

Comment 16: One commenter supported reducing the current 1,100 lb (498.8 kg) breaking strength at the buoy to 600-lb (272.4 kg) breakaway for nearshore lobster areas due to research results, except for the Outer Cape or offshore due to difficult sea and current conditions.

Response: Current gear research indicates that a 600 lb (272.4 kg) breaking strength weak link is sufficient to protect whales, as well as to keep gear feasible in the Southern Nearshore Lobster Waters Area and prevent ghost gear. The 600 lb (272.4 kg) weak link requirement has been in effect since February 21, 2001, in the Northern Nearshore Lobster Waters Area, and the NMFS Gear Research Team has had very few problems reported to them regarding weak links. The NMFS Gear Research Team has conducted research on how much strain there is on inshore buoy systems on the Outer Cape. Inshore lobster buoys were towed up to 20 knots and a 120 lb (54.432 kg) strain was recorded. Load cells were also attached to large buoy systems in Grand Manan Channel, known for its strong tides (approx. 18 to 20 ft (5.49 m to 6.09 m)), and a 140 lb (63.5 kg) strain was recorded in the spring. For comparison, NMFS notes that in over a year of testing the highest maximum strain the NMFS Gear Research Team recorded on load cells attached to offshore lobster surface buoy systems was 535 lb (243 kg). NMFS cautions that recorded strains can not dictate weak link breaking strengths, as breaking strengths must include reasonable measures of safety that would help prevent gear from being lost at sea during the worst conditions. NMFS appreciates the commenter's general support for changes to other nearshore lobster areas.

Comment 17: Two commenters noted that neutrally buoyant line should be a requirement in the Southern Nearshore Lobster Waters Area as the lowered breaking strength of the weak link may not provide adequate risk reduction.

Response: Past entanglements provide evidence that weak links are a critical measure to prevent serious injury or mortality of marine mammals. NMFS believes that the use of a 600-lb (272.4-kg) weak link on the buoy line and knotless weak links would reduce risk of serious injury and death if an entanglement were to occur. In response to the comment on neutrally buoyant line, see response to comment 12.

Comment 18: One commenter noted that there is not sufficient research on the proposed weak links on a buoy line (not the breakaway at the buoy) to mandate a year-round requirement for all buoy lines in the southern nearshore areas. This commenter supported research to develop a weak link in the main buoy line.

Response: The proposed rule did not clearly indicate where in the buoy line the weak link is required. NMFS has clarified this in the regulatory text in this final rule. Specifically where fishermen are required to utilize buoy weak links, they will also be required to place the weak link as close to each individual buoy as operationally feasible. The NMFS Gear Research Team has already begun investigating development of a weak link in the main buoy line.

Offshore Lobster Waters Area

Comment 19: Two commenters did not support the proposal to reduce breaking strength of weak links in offshore gear to 2,000 lb (906.9 kg). These commenters added that the breaking strength of 2,000 lb (906.9 kg) is approximately four times the maximum strain of 535 lb (243 kg), not three times as stated in the discussion of the proposed rule. Two commenters believed that the breaking strengths in both the offshore surface and buoy lines should be lowered. One of these commenters suggested that NMFS subdivide the offshore area to allow for the reduced breaking strengths of 600 lb (272.4 kg) at all buoys and the use of a weak link with a maximum breaking strength of 1500 lb (680.4 kg) between the surface system and the line to the trawl; and in offshore areas 1500 lb (680.4 kg) be required at all buoys and the line between the surface system and the trawl. All four of the commenters suggested NMFS should require breaking strengths to more closely reflect the maximum loads sustained by the gear as outlined in the final summary of the latest ALWTRT meeting in order to reduce entanglement risks.

Response: The breaking strength of 2,000 lb (906.9 kg) is more than three times the maximum strain of 535 pounds (243 kg) recorded on the buoy system of offshore lobster gear, not three times the maximum strain of 535 pounds (243 kg) as reported in the proposed rule. NMFS cautions that recorded strains can not dictate weak link breaking strengths, as breaking strengths must include reasonable measures of safety that would help prevent gear from being lost at sea during the worst conditions. NMFS believes that the required breaking strengths are both beneficial to whales and safe for the industry. The 2,000 lb (906.9 kg) breaking strength for year-round use in offshore lobster waters outside of SAM was arrived at through the TRT process. NMFS believes a reduction from the previously required 3,780-lb (1,714.3-kg) weak link to the 2,000 lb (906.9 kg) weak link required in this final rule is a substantial reduction and provides a conservation benefit to right whales. The NMFS Gear Research Team will continue load cell testing on offshore lobster gear and report their results to the ALWTRT. NMFS will continue to work with industry and others on this issue through the ALWTRT process, and will seek feedback from the ALWTRT, gear workshop participants, and the Gear Advisory Group on the most appropriate location(s) to conduct load cell testing on offshore lobster gear.

Comment 20: Two commenters noted that having two different breaking strengths in the gear is confusing to the industry and three commenters noted it is not protective of whales. These commenters believe that a 3,780-lb (1,714.3-kg) weak link at the surface buoy only helps if a whale becomes entangled above the weak link at the surface, and that this defeated the purpose of lowering the strength of the weak link at the buoys.

Response: NMFS has been conducting outreach to offshore lobster industry representatives on this issue and discussions with them and fishermen indicate that having different breaking strengths in their gear is not confusing. Rather, the industry understands why various breaking strengths may be needed and would rather make modifications based on what research indicates is needed to reduce interactions.

In response to comments questioning the conservation benefit of a 3,780-lb (1,714.3-kg) weak link at the line between the surface system and the buoy line leading down the trawl, NMFS has decided to withdraw this requirement at this time. NMFS proposed this requirement based on the analysis of offshore lobster gear recovered from an entangled right whale, as described in the proposed rule (66 FR 49896, October 1, 2001). As the results of the gear analysis seemed to indicate that the presence and location of the weak link in the gear may have prevented the animal from becoming further entangled in the buoy line below the weak link, NMFS proposed to require the installation of this weak link in offshore lobster traps. However, as there are concerns whether sufficient resistence would exist for a whale to part such a weak link given its position in the gear, NMFS has withdrawn this proposal. NMFS will discuss this analysis with the ALWTRT and continue load cell testing on offshore lobster gear as mentioned in the previous comment.

Comment 21: One commenter supported the weak link below the buoy on the offshore lobster gear. The commenter supported NMFS making this proposal based on detailed entanglement data.

Response: NMFS has decided not to implement this requirement at this time (see previous comment).

Comment 22: Two commenters generally agreed with the provisions in the proposed rule for the Offshore Lobster Waters Area, and one added that the breaking strengths noted in the proposed rule were a positive step toward further protection of right whales and other marine mammals. Both commenters noted that the 2,000-lb (906.9-kg) weak link was a compromise by the offshore industry, and stated that the offshore industry supported this recommendation contingent on the lack of lost or ghost gear produced by inclement weather.

Response: As described in the response to comment 19, NMFS will continue to conduct load cell testing on offshore lobster gear to investigate the operational forces experienced in this fishery under various conditions.

Comment 23: One commenter supported the installation of weak links so that if the lines were to break, they would produce knotless ends on the line.

Response: Broken weak links providing knotless ends on the line is important so that it will not become lodged in the whale's baleen or around an appendage of a whale.

Northeast and Mid-Atlantic Gillnet Waters Area

Comment 24: One commenter generally supported the extension of measures for gillnet gear from the northeast to mid-Atlantic waters. One commenter supported the proposal to require fishers in the mid-Atlantic to return all gillnet gear to port with their vessels or to anchor their gear.

Response: The need for additional gear modifications in these fisheries had been considered by the ALWTRT, but not implemented by the December 2000 interim final rule. The RPA developed in response to the Bos included additional gear modifications for the Mid-Atlantic gillnet and lobster trap fisheries that were necessary to avoid jeopardizing the continued existence of North Atlantic right whales.

Comment 25: One commenter opposed requiring weak links and Danforth anchors at both ends of the spot sink gillnet fishery in southeastern NC. As this fishery operates near or at the surf zone, the commenter was concerned that the weak links would cause the net to break when it is being dragged into calmer water, and a Danforth anchor would not enable the fishermen to drift with their nets to calmer water. The commenter thought these gear requirements should be exempted in the area due to this unique fishery.

Response: The gear requirements state that mid-Atlantic gillnet gear has to be anchored at each end of the net string with an anchor that has the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor, not necessarily a Danforth anchor. However, fishers do not have to use an anchor unless they return to port without their gear. NMFS recommends that spot gillnet fishers explore different ways to anchor their gear in this fishery. NMFS gear

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specialists are available to consult with on these types of issues, but some suggestions include using other anchors that do not become entangled on the ocean bottom and are retrieved successfully from the bottom, but have the same holding power of at least a 22-lb (10.0-kg) Danforth-style anchor. In response to the comment on weak links, gear research studies that involved pulling a string of nets in the Gulf of Maine in up to 45 knots of wind in 100 fathoms of water and utilizing 1,100 lb (272.4 kg) weak links resulted in no failures. Thus, it is unlikely that the weak links in the spot gillnets would break during fishing operations. The NMFS Gear Research Team will continue to investigate weak links and various anchoring systems.

Comment 26: One commenter opposed the 1,100-lb (272,4-kg) maximum breaking strengths for the weak links and said that NMFS incorrectly stated that the ALWTRT Mid-Atlantic recommended 1,100 lb (272.4 kg) rather than 600 lb (272.4 kg). The full ALWTRT did not reach consensus on this point as the New Jersey state representative and fishermen said their fisheries were prosecuted similarly to the northeast, whereas Virginia and North Carolina fishermen were willing to adopt a 600-lb (272.4-kg) breaking strength. Representatives from environmental organizations were concerned that humpback entanglements off North Carolina and Virginia have appeared to increase, and scientists with experience in whale disentanglement have indicated that humpback whales do not appear to exert the same degree of force as right whales do to break free of gear. The commenter recommended that in areas south of New Jersey, NMFS should require gillnetters to install weak links with a maximum breaking strength of 600 lb (272.4 kg) in buoy line and in the center of the floatline on each net panel.

Response: NMFS has decided to require a breaking strength in Mid-Atlantic gear similar to that required in northeast gillnet gear until the gear research studies using load cells currently planned for the mid-Atlantic are conducted. Such studies are scheduled to occur during the winter of 2002 and a report will be provided at the next ALWTRT meeting. The ALWTRT including its New Jersey representative, and its Mid-Atlantic subgroup can discuss these results and come up with new recommendations to NMFS, if deemed necessary. In response to concerns about humpback whale entanglements off of North Carolina and Virginia, NMFS will continue to work through the ALWTRT process to address humpback whale entanglements in these areas. The BOs found jeopardy to right whales, not humpbacks, and the recommended RPA is designed to avoid jeopardy to right whales.

Southeast U.S. Restricted Area

Comment 27: One commenter supported the proposal to prohibit straight sets of gillnet at night between November 15 and March 31 in the southeast US unless the exemption under 50 CFR 229.32(f)(3)(iii), which relates to shark gillnets, applies.

Response: NMFS will not be implementing regulations on straight sets of gillnet in the Southeast U.S. restricted area at this time. Although this requirement was contained in the proposed rule, NMFS inadvertently omitted the analysis of its expected impacts from the EA/RIR. As a result, NMFS did not provide adequate information for the public to provide comment on the proposed provision. NMFS will provide the public another opportunity to comment on this provision and the necessary analytical documents as soon as possible.

Northern Inshore Lobster Waters and Lobster Take Reduction Technology List

Comment 28: Four commenters opposed dropping the 7/16-in (1.11-cm) diameter line option, two mentioned that most or all line removed from whales has been larger than 7/16 in (1.11 cm). Three commenters believed that dropping this option puts animals at greater risk because the use of thicker rope will no longer be discouraged. One of these commenters noted that the 7/16-in (1.11-cm) line should be replaced with more specific breakaway features only after they are field tested and found to be practical. The commenter added that many fishermen in the Cape Cod area have reported that by using line that measures only 5/16 in (.79 cm) or 3/8 in (.95 cm) in diameter they are contributing to risk reduction. These lines are comparatively lighter with lower breaking strengths than lines used in the past. One of these commenters also noted that with the elimination of 7/16 in (1.11 cm) or less diameter line, fishers fishing single traps on the Outer Cape have less options available for reducing the risk to whales because they have no ground lines and a strong current makes 600-lb (272.4-kg) breakaway buoys impractical (a lost buoy on a single trap means the trap is lost). The commenter would like to encourage the members if the Massachusetts's Lobstermen's Association to continue to use single pots in state waters to avoid ground lines and continue to use thinner ropes.

Response: The option of using buoy line of a diameter of 7/16 in (1.11 cm) or less was previously adopted as part of the ALWTRP based upon the breaking strength of 7/16 in (1.11 cm) line. This strategy assumed that using a line with a consistent diameter would result in a consistent breaking strength. However, experience has demonstrated that the breaking strength of 7/16 in (1.11 cm) line can vary dramatically. Weak links, or alternative techniques such as swivels, are expected to provide a more reliable and consistent breaking strength rather than using line diameter to predict breaking strength. NMFS does not believe fishermen will go to larger line than what they are currently using due to the costs involved in purchasing and incorporating the new line. Also, removing this option from the Lobster Take Reduction Technology List does not prevent a fisherman from continuing to use buoy line with a diameter of 7/16 in (1.11 cm) or less.

Field testing conducted by the NMFS Gear Research Team indicates that a 600-lb (272.4-kg) weak link will be feasible in this area. For specifics and in regard to the comment on field tests, see response to comment 16. The NMFS Gear Research Team will assist fishers in determining whether alternative devices will work and provide them with feedback on whether the breaking strength is in compliance with current ALWTRP regulations. NMFS would like to reiterate that fishers can still use 7/16 in (1.11 cm) or less diameter buoy line.

Comment 29: Four commenters noted that the use of 7/16 in (1.11 cm) line should be immediately discontinued as an option on the Lobster Take Reduction Technology List. One of these comments noted that since February 2000 the ALWTRT has been questioning the conservation risk reduction value of this option. Another agreed with NMFS that line thickness is not an appropriate entanglement risk reduction tool because line thickness has little bearing on breaking strength. However, the commenter did not think that the unacceptable wear in weak links should be a reason to delay the requirement as weak links could be replaced as necessary, pending the development of longer-lived links if that proves necessary. In addition, the commenter noted that other options aside from weak links can be chosen from the list and NMFS did not provide enough information on the prevalence of an unacceptable wear in weak links.

Response: NMFS agrees that the 7/16-in (1.11-cm) or less diameter buoy line option should be removed from the Lobster Take Reduction Technology List. NMFS will be removing the option from the list effective January 1, 2003. NMFS believes that this is justified based on concerns expressed by some members of the ALWTRT Northeast subgroup that weak links may not be standing up well to inshore conditions and may be showing signs of abrasion and weakening with only a single season of use. An ALWTRT member brought a weak link showing this type of wear to the June 2001 ALWTRT meeting. NMFS believes that removing this option January 1, 2003, will enable fishermen and gear specialists to address this localized problem, and give fishermen time to incorporate an option into their fishing gear. The NMFS Gear Research Team will be available, if needed, to provide support in the development of alternative methods to achieve the purpose of the weak link requirement. NMFS will also conduct extensive outreach to fishing communities and industry associations throughout New England to inform inshore lobster fishermen of their ALWTRT requirements and encourage them to begin developing improved weak links or choosing a different option other than the 7/16 in (1.11 cm) or less diameter buoy line if they do not already meet the Lobster Take Reduction Technology List requirements. Those fishers who need to select another option will be encouraged to do so as soon as possible.

Comment 30: In the proposed rule, NMFS combined two options on the Lobster Take Reduction Technology List into one. The elimination of floating rope on ground line and the elimination of floating rope at the bottom of buoy lines are two options.

Response: NMFS agrees with the commenter that in the explanatory text of the proposed rule, NMFS incorrectly stated that comprising all buoy lines and ground lines with entirely sinking and/or neutrally buoyant line is one option. It was NMFS' intent that these be two options as indicated on page 49907 of the proposed rule (66 FR 49896, October 1, 2001) under the Lobster Take Reduction Technology List regulatory section where using entirely sinking and/or neutrally buoyant line on all buoy lines is one option and using entirely sinking and/or neutrally buoyant line on all ground lines is another option.

Comment 31: Three commenters supported the use of neutrally buoyant buoy and ground lines as an option to the Lobster Take Reduction Technology List, one noting that this should not be delayed until 2003.

Response: In response to the comment to not delay this option until 2003, NMFS notes that this option will go into effect in 2002 with this final rule.

Gillnet Take Reduction Technology List

Comment 32: The 7/16-in (1.11-cm) line should be replaced with more specific breakaway features only after they are field tested and found to be practical. If NMFS removed this option fishermen may opt for stronger lines. The commenter noted that many fishermen in the Cape Cod area have reported that by using lines that measure only 5/16 in or 3/8 in in diameter they are contributing to risk reduction. These lines are comparatively lighter with lower breaking strengths than lines used in the past.

Response: Fishermen can still use 7/16 in (1.11 cm) line; however, it can not be counted as an option from the Take Reduction Technology List. NMFS will continue its gear research to test the breaking strength of various lines and will continue to report these results to the ALWTRT for consideration. Also see response to comment 28.

Comment 33: Two commenters supported the removal of the 7/16-in (1.11-cm) or less line diameter from the technology list. However, one of these commenters noted that NMFS should ensure that the effective date for both gillnet and lobster fisheries is the same.

Response: Due to reported wear in the weak links in the Inshore Lobster Waters Area, NMFS has delayed requirements for this area (see response to comment 29).

Comment 34: Two commenters noted that the proposed rule indicated that the ALWTRT did not recommend changes to gillnet fisheries in the northeast. The ALWTRT did address such changes but was unable to reach consensus on them. NMFS has put little effort into developing innovative approaches to reducing risk from gillnet gear. If gillnet gear is to be used, risk reduction modifications must be implemented. These commenters also noted that there is a need to develop and implement new gillnet gear modifications in mid-Atlantic coastal and Northeast waters.

Response: NMFS is expanding gillnet gear modifications and restrictions in this final rule, as well as in the forthcoming final rules on SAM and DAM, which will reduce interactions between right whales and gillnet gear, and reduce serious injury and mortality of right whales due to entanglement in gillnet gear. The RPA in the June 14, 2001, BOs advised NMFS to, amongst other measures, expand additional gillnet and lobster pot gear modifications to avoid jeopardizing the continued existence of North Atlantic right whales. Since the issuance of the BOs, NMFS has conducted additional analysis of available data including that on the seasonal movement and congregations of right whales, previous entanglements, and the nature and position of gear in the water. Based on these analyses and our knowledge of North Atlantic right whale behavior, NMFS has identified gear modifications that prevent serious injury or mortality. These additional gear modifications will be implemented with this final rule.

NMFS continued gear research and modifications and these efforts include the RPA requirements to: (1) Host a workshop to investigate options for gillnet (and lobster) modifications to prevent serious injury from entangling right whales; (2) expanded research and testing on eliminating floating line in the anchor and buoy lines of gillnet gear (and lobster gear), and replacing it with neutrally buoyant line; (3) continued research on weak link float lines in gillnet gear to investigate the possibility of reducing the strength of gillnet float-lines, a known problem area in the entanglement of large whales; and (4) continued research on Mega-Float line in gillnets to eliminate external plastic floats combined with properly placed weak links. Additionally, NMFS will be conducting tests on how different types of weak links react to different types of anchoring systems; to do this NMFS will tow gillnets through the water to simulate a whale entanglement. NMFS has also contracted with a company to develop rope with uniform breaking strength to distribute to fishers for field testing. Additional efforts NMFS has conducted include hiring an outreach coordinator for the Southeast Region (similar to the position already in place in the Northeast) to conduct outreach on the various TRPs including the Atlantic Large Whale TRP, as well as to solicit gear modification ideas from fishers. NMFS will continue to work with the ALWTRT and seek input from the Gear Advisory Group (also see response to comment 9) to identify additional management measures in the gillnet fisheries.

Changes in the Final Rule From the Proposed Rule

NMFS proposed to require the installation of weak links with a maximum breaking strength of 3,780 lb (1,714.3 kg) in offshore lobster trap gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl. This proposed measure was the result of analysis conducted by NMFS from a successful disentanglement of a 7-year-old male

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North Atlantic right whale, catalog #2427, on July 20, 2001. NMFS' analysis concluded that the gear recovered during the disentanglement and the description of the owner's typical gear configuration indicated that the surface system was separated from the buoy line going to the trawl by a weak link with a breaking strength of 3,780 lb (1,714.3 kg). It was felt that the presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line.

However, since the publication of this proposed measure, NMFS technical experts have re-evaluated this proposed measure. Although in theory the proposed measure would add an extra level of protection to potentially prevent the risk of serious injury to North Atlantic right whales should they become entangled in the buoy line, this measure is not practical from a mechanical standpoint. Operationally, having any weak link below the float system will essentially be ineffective. In order to break, a link would need to have adequate resistance from the relevant end of the gear. Given that any whale that is caught below the link would be pulling against nothing more than the surface system and the buoy, one cannot reasonably conclude that the resistance involved would be sufficient to trigger the break of the weak link. NMFS has reconsidered this measure and is not requiring the use of weak links between the surface system and the buoy line for the offshore lobster trap fishery. Therefore, in § 229.32, paragraph (c)(5)(ii)(B) of the proposed rule is removed from the final rule.

NMFS also proposed that fishermen with gillnets in the Southeast U.S. Restricted Area be prohibited from setting gillnets in straight sets at night during the restricted period, unless they meet the criteria for an exemption for shark gillnets that currently exists in the regulations. Although this requirement was contained in the proposed rule, NMFS inadvertently omitted the analysis of its expected impacts from the EA/RIR. As a result, NMFS did not provide adequate information for the public to provide comment on the proposed provision. NMFS will provide the public another opportunity to comment on this provision and the necessary analytical documents as soon as possible. Consequently, NMFS is eliminating this measure from the final rule by eliminating paragraph (f)(3)(iv) in § 229.32 of the proposed rule.

NMFS believes this final rule, in combination with the forthcoming rules for SAM and DAM, are collectively sufficient to remove the likelihood of jeopardy to the continued existence of North Atlantic right whales from the Northeast multispecies, spiny dogfish and monkfish gillnet, and American lobster fisheries as the Northeast Multispecies, Spiny Dogfish, and Monkfish FMPs do not incorporate southern U.S. waters. NMFS recently elevated Southeast Atlantic gillnet fisheries to Category II in the Final List of Fisheries for 2001 (66 FR 42780, August 15, 2001) due to their occasional interaction with bottlenose dolphins. The Southeast Atlantic gillnet fishery is separate from the Category II Southeastern U.S. Atlantic shark gillnet fishery presently regulated by the ALWTRP.

NMFS intends to consider implementation of this measure, after public review of its environmental and economic impact analysis, as soon as possible in 2002, but no later than November 1 when the whales are expected to return to this area. This delay is not expected to adversely affect North Atlantic right whales. Unlike the Northeast, there is no direct evidence of interactions between right whales and gillnets in the southeast region. However, the ALWTRT developed the proposed modifications in Southeast waters as a precautionary measure to address the potential rare occurrence of interaction and to offer additional protection to right whales.

A technical change was also made to correct and clarify the intent of the regulations. As proposed, lobster trap gear in the Southern Nearshore Waters Area and Offshore Lobster Waters Area, and gillnet gear in the Mid-Atlantic Coastal Waters are required to install weak links at the buoy. However, the proposed regulations were not clear as to the location of the installation of the weak links at the buoy. Therefore, in § 229.32, paragraph (c)(8)(ii) is revised to clarify the location of the buoy line weak links within the Southern Nearshore Lobster Waters Area, Offshore Lobster Waters Area, and Mid-Atlantic Coastal Waters.

Classification

NMFS prepared a FRFA for this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). Four alternatives were evaluated, including a status quo or No Action alternative, the Preferred Alternative (PA), and two other alternatives. A summary of that analysis follows:

1. NMFS considered but rejected a No Action alternative that would result in no changes to the current measures under the Atlantic Large Whale Take Reduction Plan. The No Action alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this final rule may be necessary in the future to protect endangered right whales from the fisheries. The No Action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BO required under the ESA.

2. NMFS considered but rejected an alternative that would consist of the PA as well as the use of full weak links at the surface and bottom of the buoy line and the reduction of floating line. The operational impacts of the bottom weak link may be large for the fishermen and result in negative impacts on the North Atlantic right whale. The ability to haul back gear successfully while employing a bottom weak link has not been developed and the potential for gear loss is considered high at this point. Gear left on the bottom without surface representation, such as buoy or high flyer, is difficult to recover and becomes ghost gear which continues to fish and still presents an entanglement risk to the North Atlantic right whale.

3. NMFS considered but rejected an alternative that would consist of the PA as well as buoy line removal and the reduction of floating line. Complete removal of buoy line and reduction of floating line are recognized as the most risk averse technique for utilization of fixed gear. However, one of the major drawbacks of this alternative is that other fishermen will not know where gear has been set, and gear conflicts with both fixed and mobile gear are likely to result in lost and/or damaged gear possibly resulting in an increase in ghost gear. Ghost gear is a potential entanglement source and source of negative impacts on North Atlantic right whales. Thus, this option may only be feasible in areas where other gear cannot be set or can be strictly controlled.

4. The PA plan includes the expansion of gear modifications (e.g. weak links) to the Southern Nearshore Waters lobster trap and Mid-Atlantic Coastal Waters gillnet fisheries, and a reduction in the maximum breaking strength for buoy weak links used in the Offshore Lobster Waters Area. NMFS accepted this alternative as these gear modifications are necessary to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BOs.

This action implements additional gear modifications to remove the likelihood of jeopardy of North Atlantic right whales posed by the continued operation of the multispecies, spiny dogfish, monkfish and lobster fisheries as required in the RPA that resulted from the BOs issued by NMFS in accordance with section 7 of the ESA. The objective of the RPA is to eliminate mortality and serious injuries of right whales, eliminate serious and prolonged right whale entanglements, and significantly reduce the total number of right whale entanglements in the multispecies, spiny dogfish, monkfish and lobster fisheries.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA. The PA meets a portion of the RPA designed to remove jeopardy, consistent with the requirements of the ESA, while allowing fishing to continue and, therefore, reduce economic impacts compared to fishery closures.

The small entities affected by this final rule are gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the northern inshore area, southern nearshore area, offshore area, and the Mid-Atlantic waters area. The potential sizes of the fleets impacted are: the northern inshore fleet is potentially as large as 5,982 vessels, the southern nearshore fleet is potentially as large as 222 vessels, the offshore fleet is potentially as large as 172 vessels, and the Mid-Atlantic fleet is potentially as large as 625 vessels. This action contains no new reporting or record-keeping requirements. However, it does require modifications to lobster and sink gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with this final rule.

NMFS received only one public comment relating to the economic impacts of this final rule. This comment was considered by NMFS before it approved this final rule, and is characterized and responded to by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response number one. No changes to this final rule were made as a result of the comment received.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this final rule is consistent with the enforceable policies of the approved coastal management program for that state.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule refers to a collection-of-information requirement subject to the Paperwork Reduction Act, namely a gear marking requirement, which has been previously approved by OMB under control number 0648–0364. The public reporting burden for this requirement is estimated to average .6 minutes per line. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

This final rule implements a portion of the RPA, which resulted from ESA section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This final rule implements a component of the RPA contained in the BOs issued by NMFS on June 14, 2001. Therefore, no further section 7 consultation is required.

This final rule contains policies with federalism implications that were sufficient to warrant consultations and preparation of a federalism summary impact statement under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to the October 2001 letter.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and record keeping requirements.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1371 *et seq.*

2. In § 229.2, a definition of "Neutrally buoyant line" is added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Neutrally buoyant line means line with a specific gravity near that of sea water, so that the line neither sinks to the ocean floor nor floats at the surface, but remains close to the bottom.

* * * * *

3. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32(b)(2), (f)(1)(i), and (f)(1)(ii) unless the gear complies with the closures, marking requirements, modifications, and other restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (f)(2) through (f)(3)(iii).

* * * * *

4. Section 229.32 is amended by adding a note to the end of the section; revising the heading of the introductory text of paragraph (c)(5)(ii)(A); and revising paragraphs (c)(5)(ii)(A)(*2*), (c)(8)(ii), (c)(9)(i), (c)(9)(iii), (c)(9)(iv), (d)(7), and (d)(8) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(A) *Weak links on all buoy lines.*

* * *

* * * * * *

(*2*) The breaking strength of these weak links may not exceed 2,000 lb (906.9 kg).

* * * * * *

(8) * * *

(ii) *Area-specific gear requirements for the restricted period*— (A) *Restricted period.* The restricted period for Southern Nearshore Lobster Waters is year round unless the Assistant Administrator revises this period in accordance with paragraph (g) of this section.

(B) *Gear requirements.* No person may fish with lobster trap gear in the Southern Nearshore Lobster Waters Area during the restricted period unless

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that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal lobster trap gear requirements in paragraph (c)(1) of this section, and the following gear requirements for this area, which the Assistant Administrator may revise in accordance with paragraph (g) of this section:

(*1*) *Buoy Line Weak Links.* All buoy lines must be attached to the main buoy with a weak link placed as close to each individual buoy as operationally feasible that meets the following specifications:

(*i*) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*ii*) The breaking strength of this weak link may not exceed 600 lb (272.4 kg).

(*iii*) Weak links must be designed such that the bitter end of the buoy line is clean and free of knots when the link breaks. Splices are not considered to be knots for the purpose of this provision.

(*2*) [Reserved]

(9) * * *

(i) Through December 31, 2002, all buoy lines must be 7/16 inches (1.11 cm) or less in diameter.

* * * * *

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

(iv) All ground lines must be comprised entirely of sinking and/or neutrally buoyant line.

* * * * *

(d) * * *

(7) *Mid-Atlantic Coastal Waters Area*—(i) *Area.* The Mid-Atlantic Coastal Waters Area consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72° 30′ W. long., then due south to 33° 51′ N. lat., thence west to the North Carolina-South Carolina border, as defined in § 229.2.

(ii) *Area-specific gear requirements.* No person may fish with anchored gillnet gear in the Mid-Atlantic Coastal Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, which the Assistant Administrator may revise in accordance with paragraph (g) of this section:

(A) *Buoy line weak links.* All buoy lines must be attached to the main buoy with a weak link placed as close to each individual buoy as operationally feasible that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*2*) The breaking strength of these weak links may not exceed 1,100 lb (498.8 kg).

(*3*) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* All net panels must contain weak links that meet the following specifications:

(*1*) Weak links must be inserted in the center of the floatline of each 50-fathom (300-ft or 91.4-m) net panel in a net string or every 25 fathoms for longer panels.

(*2*) The breaking strength of these weak links may not exceed 1,100 lb (498.8 kg).

(C) *Tending/anchoring.* All gillnets must return to port with the vessel or be anchored at each end with an anchor capable of the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor.

(8) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are attached to the buoy line with a weak link having a maximum breaking strength of up to 1,100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(ii) Weak links with a breaking strength of up to 1,100 lb (498.8 kg) must be inserted in the center of the floatline (headrope) of each 50 fathom net panel or every 25 fathoms for longer panels.

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

* * * * *

Note to § 229.32: Additional regulations that affect fishing with lobster trap gear have also been issued under authority of the Atlantic Coastal Fisheries Cooperative Management Act in part 697 of this title.

[FR Doc. 02–273 Filed 1–9–02; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 67, No. 7
Thursday, January 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes handled. The Committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 11, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable grapes beginning on January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes.

The grape marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 5, 2001, and estimated a January 2002 beginning reserve of approximately $124,800, and unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. In comparison, last year's budgeted expenditures were $186,023. The assessment rate of $0.015 is $0.005 higher than the rate currently in effect. The higher assessment rate is needed to offset increases in salaries and to keep the operating reserve at an adequate level.

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The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

The assessment rate recommended by the Committee was chosen because it will provide $142,500 in assessment income (9.5 million lugs × $.015 per lug) and, when $2,000 in interest income and $50,715 of its reserves are used for approved expenses, allow the Committee to end the 2002 fiscal period with a $74,085 reserve. The current rate of $.01 per lug would only generate $95,000 in assessment income, and require the Committee to use the $2,000 in interest and $98,215 of its reserves to cover its anticipated expenses. This would result in an ending reserve of $26,585, which was not acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) with the new assessment rate would be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 925.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts less than $750,000. Therefore, the majority of handlers and producers of grapes may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. The proposed assessment rate of $0.015 is $0.005 higher than the 2001 rate. The volume of assessable grapes is estimated at 9.5 million 18-pound lugs. Thus, the $0.015 rate should provide $142,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserves should be adequate to cover budgeted expenses.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived using the following formula: Anticipated expenses ($195,215), plus the desired 2002 ending reserve ($74,085), minus the 2002 beginning reserve ($124,800), minus the anticipated interest income ($2,000), divided by the total estimated 2002 shipments (9.5 million 18-pound lugs). This calculation results in the $0.015 assessment rate. This rate would provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $195,215 and result in a December 2002 ending reserve of $74,085, which is acceptable to the Committee. The December 2002 ending reserve funds (estimated to be $74,085) would be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 925.41).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the on-vine grower price for the 2002 season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2002 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.3 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 5, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large production area grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002 fiscal period begins on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is proposed to be amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On and after January 1, 2002, an assessment rate of $0.015 per lug is established for grapes grown in a designated area of southeastern California.

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–576 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV02–959–1 PR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the South Texas Onion Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 11, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456; Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on August 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container or equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA,

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to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2001, and unanimously recommended 2001–02 expenses of $115,189.85 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 10, 2001, and recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent of onions. Ten of the 11 committee members present voted in support of the $0.02 per 50-pound container equivalent increase. One committee member abstained from voting. In comparison, last year's budgeted expenditures were $306,740. The assessment rate of $0.05 is $0.02 higher than the rate currently in effect. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498, $39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 7.5 million 50-pound equivalents, which should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $276,705) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2001–02 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 producers of onions in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2000–01 marketing year, the industry's 40 handlers shipped onions produced on 15,166 acres with the average and median volume handled being 208,700 and 177,377 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 40 handlers were estimated to be $73,879,800, with average and median revenues being $1,846,995 and $1,569,786, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 40 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 78 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.03 to $0.05 per 50-pound container equivalent of onions. The Committee recommended 2001–02 expenditures of $449,189 and an assessment rate of $0.05 per 50-pound container or equivalent. The proposed assessment rate of $0.05 is $0.02 higher than the 2000–01 rate. The quantity of assessable onions for the 2001–02 fiscal period is estimated at 7.5 million 50-pound equivalents. Thus, the $0.05 rate should provide $375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $75,190 for administrative expenses, $30,000 for compliance, $254,000 for promotion, and $90,000 for research projects. Budgeted expenses for these items in 2000–01 were $87,109, $27,498, $39,500, and $122,200, respectively. In addition, $30,435 was expended for a retirement package for the outgoing Committee manager.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $52,576. The Committee believes that a reserve that low is not adequate for its operations.

The Committee reviewed and recommended 2001–02 expenditures of $449,189, which included increases in research and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee, the Research Subcommittee, and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.05 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 7.5 million 50-pound equivalents for the 2001–02 fiscal period. This is approximately $74,190 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2001–02 fiscal period could range between $6 and $11 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.45 and 0.83 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 10, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large production area commodity handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001–02 fiscal period began on August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2001, an assessment rate of $0.05 per 50-pound container or equivalent is established for South Texas onions.

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–575 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV02–979–1 PR]

Melons Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the South Texas Melon Committee (Committee) for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 11, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

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will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable melons beginning on October 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons.

The South Texas melon marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee, met on September 25, 2001, and unanimously recommended 2001–02 expenses of $90,888 for personnel, office, compliance, and partial market development expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on November 8, 2001, and unanimously recommended 2001–02 expenditures of $314,388 and an assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The assessment rate of $0.06 is $0.01 higher than the rate currently in effect. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. This amount is derived by taking the current reserve ($327,200), adding the $166,875 in assessment income based on the old rate (3,337,500 cartons × $0.05 per carton) and anticipated interest totaling $15,000, and then subtracting the 2001–02 budget of $314,388. With the new rate, $200,250 in assessment income would be generated, and the reserve fund would only drop to $228,062.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, anticipated interest income, and the amount of funds in the Committee's operating reserve. Melon shipments for the fiscal period are estimated at 3,337,500 cartons, which should provide $200,250 in assessment income at the $0.06 per carton rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for the 2001–02 fiscal period. Funds in the reserve (currently $327,200) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 979.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2001–02 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 33 growers of melons in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2000–01 marketing year, the industry's 22 handlers shipped melons produced on 6,979 acres with the average and median volume handled being 192,450 and 84,532 cartons, respectively. In terms of production value, total revenue for the 22 handlers was estimated to be $37,478,447, with the average and median revenues being $1,703,566 and $748,273, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that half of the 22 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from $0.05 to $0.06 per carton of melons. The Committee unanimously recommended 2001–02 expenditures of $314,388 and the assessment rate of $0.06 per carton of melons. In comparison, last year's budgeted expenditures were $241,460. The proposed assessment rate of $0.06 is $0.01 higher than the rate currently in effect. At the rate of $0.06 per carton and an estimated 2001–02 melon production of 3,337,500 cartons, the projected income derived from handler assessments ($200,250), along with interest and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $60,888 for administrative expenses, $20,000 for compliance, $137,000 for market development, and $96,500 for research projects. Budgeted expenses for these items in 2000–01 were $70,351, $21,604, $25,000, and $96,500, respectively.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $194,687, which is lower than what the Committee needs for operations. With the increased rate, the reserve fund would drop to $228,062.

The Committee voted to increase its assessment rate because the current rate would reduce the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with interest and funds from the Committee's authorized reserve, would provide the Committee with adequate funds to meet its 2001–02 fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–02 expenditures of $314,388, which included an increase in its market development program. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and market development projects to the melon industry. The assessment rate of $0.06 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons estimated at 3,337,500 cartons for the 2001–02 fiscal period, anticipated interest income, and the funds in the Committee's operating reserve. The recommended rate will generate $200,250, which is $114,138 below the anticipated expenses. The Committee found this acceptable because interest and reserve funds will be used to make up the deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2001–02 marketing season could range between $7 and $11 per carton of cantaloupes and between $6 and $10 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.9 and 0.5 percent for cantaloupes and between 1.0 and 0.6 percent for honeydew melons.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 8, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001–02 fiscal period began on October 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is proposed to be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.219 is revised to read as follows:

§ 979.219 Assessment rate.

On and after October 1, 2001, an assessment rate of $0.06 per carton is established for South Texas melons.

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–577 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–27]

Proposed Establishment of Class E Airspace; Cecil County Airport (K58M), Elkton, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Cecil County Airport, (K58M), Elkton, MD. The development of Standard Instrument Approach Procedures (SIAP) at Cecil County Airport, Elkton, MD has made this proposal necessary. Sufficient controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing an instrument approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 01–AEA–27, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace specialist, Airspace Branch, AEA–520 Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AEA–27" The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at K58M airport. The development of Standard Instrument Approach Procedures (SIAP) at Cecil County Airport, Elkton, MD has made this proposal necessary. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J dated August 31 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71–[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD ES 5 Elkton, MD [NEW]

Cecil County Airport, MD
(Lat 39° 34′24″N.; long 75° 52′00″W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of the Cecil County Airport, Elkton, MD.

Issued in Jamaica, New York on November 13, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–490 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 121801H]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) intends to prepare a DSEIS to assess the impacts on the natural and human environment of the management measure proposed in its draft Amendment 2 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP). The purpose of this document is to solicit additional public comments on the scope of the issues to be addressed in the DSEIS, which will be submitted to NMFS for filing with the Environmental Protection Agency (EPA) for publication of a notice-of-availability for public comment.

DATES: Written comments on the scope of issues to be addressed in the DSEIS will be accepted through February 11, 2002.

ADDRESSES: Written comments should be sent to Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: 787–766–5926; fax: 787–766–6239; or you can send comments by e-mail to: *Miguel.A.Rolon@noaa.gov* or *Graciela.Garcia-Moliner@noaa.gov*. Copies of the draft Amendment 2 and the preliminary DSEIS may be obtained by contacting the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; phone: 787–766-5926.

FOR FURTHER INFORMATION CONTACT: Graciela Garcia-Moliner; phone: 787-766-5926; e-mail: *Graciela.Garcia-Moliner@noaa.gov* or Dr. Peter J. Eldridge; phone: 727-570-5305; fax: 727-570-5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the Council and approved and implemented by NMFS under procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP's management measures for queen conch apply in the Exclusive Economic Zone (EEZ) in the U.S. Caribbean. For the purposes of the FMP and its implementing regulations, the U.S. Caribbean consists of the Federal waters beyond the 9–nautical mile boundary in Puerto Rico and beyond the 3–nautical mile boundary in St. Thomas, St. John, and St. Croix, U.S. Virgin Islands. The FMP currently establishes the following management measures for queen conch: (1) A 9–inch overall minimum size limit, or a 3/8–inch shell-lip thickness limitation on the possession of queen conch; (2) a requirement that all species in the management unit be landed in the shell and that the sale of undersized queen conch and queen conch shells be prohibited; (3) a bag limit of three queen conch/day for recreational fishers, not to exceed 12 per boat, and of 150 queen conch/day for licensed commercial fishers; (4) the closure of the harvest season from July 1 through September 30 of each consecutive year; and (5) the prohibition of harvesting queen conch by HOOKAH gear (under-water breathing equipment composed of a compressor aboard the vessel and a long hose thus enabling a diver to work under water for long periods of time) in the EEZ.

The Council is preparing draft FMP Amendment 2. The objectives of Amendment 2 are to address NMFS' determination that queen conch is overfished and is undergoing overfishing and to establish rebuilding measures. Amendment 2, in addressing these issues, proposes to prohibit the harvest and possession of queen conch in the Caribbean EEZ. The Council is preparing a DSEIS as an integrated part of Amendment 2. The DSEIS will describe the amendment's alternative management measures and will assess the environmental impacts of them. The Council is requesting written comments on the scope of the issues to be addressed in the DSEIS. Based on input received during 10 public hearings held in July 2000 (see notice of these hearings at 65 FR 40600) and in November 2001 (see notice of these hearings at 66 FR 55910), the Council intends to revise draft Amendment 2, as appropriate, and to finalize the DSEIS. At the July 2000 hearings, the Council changed the number of the Amendment from Amendment 1 to Amendment 2.

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The proposed management measure has not been included in a previous FMP amendment. The Council invites the public to comment on the scope of the issues to be addressed by Amendment 2 and its DSEIS and on the types of environmental impacts associated with the various management measures, including the proposed measure discussed above.

Once the Council completes the DSEIS, it will submit it to NMFS for filing with EPA. EPA will publish a notice of availability of the DSEIS for public comment in the **Federal Register**. The DSEIS will have a 45–day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations. The Council will consider public comments received on the DSEIS before adopting final management measures for a final Amendment 2 and to prepare a final supplemental environmental impact statement (FSEIS) in support of its final Amendment 2. The Council would then submit the final Amendment 2 and supporting FSEIS to NMFS for Secretarial review, approval, and implementation under the Magnuson-Stevens Act. NMFS will announce availability of Amendment 2 for public review during the Secretarial review period through notice published in the Federal Register. During Secretarial review, NMFS will also file the FSEIS with EPA for a final 30-day public comment period on the FSEIS. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve Amendment 2. All public comment periods on Amendment 2, its proposed implementing regulations, and its associated FSEIS will be announced through notice published in the Federal Register. NMFS will consider all public comments received during the Secretarial review period for Amendment 2 (60-day period), whether they are on the amendment, the FSEIS, or the proposed regulations, prior to final agency action.

Dated: January 4, 2002.

Jonathan Kurland

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–645 Filed 1–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 010402A]

New England Fishery Management Council; Public Meeting Notification; Addendum

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Addendum to a public meeting notification.

SUMMARY: On December 28, 2001, NMFS published a **Federal Register** notification announcing that the New England Fishery Management Council (Council) will hold a 3–day Council meeting on January 15 through 17, 2002, to consider actions affecting New England fisheries in the exclusive economic zone. This notification serves as an addendum to that notification and announces that in addition to the agenda items announced in the December 28th **Federal Register** notification, there will be a closed session on January 16, 2002, to discuss the lawsuit concerning Framework 33 to the Northeast Multispecies Fishery Management Plan. In addition, certain agenda items have been rescheduled as identified in the **SUPPLEMENTARY INFORMATION** section of this notification.

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, January 15, 16, and 17, 2002. The meeting will begin at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday. The closed session will be held at approximately 5 p.m. on January 16, 2002.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, 1000 Market Street, Portsmouth, NH 03801; telephone (603) 436–2121. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: In addition to the agenda items announced in the meeting notification published in the **Federal Register** on December 28, 2001 (66 FR 67166), the Council intends to convene a closed session on January 16, 2002, following the scallop agenda item at approximately 5 p.m. During this portion of the meeting, the Council will discuss the *Conservation Law Foundation, et al.*, v. *Evans* lawsuit concerning Framework 33 to the Northeast Multispecies Fishery Management Plan and the Sustainable Fisheries Act requirements to address overfishing, stock rebuilding, and bycatch reduction.

Also, the Council announces that the briefing on the status of the U.S./Canada shared resources agreement originally scheduled for Tuesday, January 15th has been rescheduled for Thursday, January 17th. The Marine Protected Area Committee Report originally scheduled for Thursday, January 17th, will be given in place of the U.S. Canada Briefing on Tuesday, January 15th, following introductions.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notification and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 7, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–646 Filed 1–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 010302B]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, Scallop and Salmon Fisheries Off the Coast of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of preliminary alternative approaches for essential fish habitat (EFH) and habitat areas of particular concern (HAPC); request for written comments.

SUMMARY: NMFS announces preliminary alternative approaches for the designation of EFH and HAPC for the following fishery management plans (FMPs): Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Groundfish of the Gulf of Alaska; Bering Sea/Aleutian Islands King and Tanner Crabs; Scallop Fishery off Alaska; and Salmon Fisheries in the EEZ off the Coast of Alaska.

DATES: Written comments on the preliminary alternative approaches for EFH and HAPC must be received by close of business on January 22, 2002 (see **ADDRESSES**).

ADDRESSES: Written comments on the preliminary alternative approaches for identifying and describing EFH and HAPC should be submitted to Theodore F. Meyers, Assistant Regional Administrator, Habitat Conservation Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, Records Management Office. Comments may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann at (907) 586–7235.

SUPPLEMENTARY INFORMATION: On June 6, 2001, NMFS published a notice of intent to prepare an SEIS for the EFH components of the following management plans: Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Groundfish of the Gulf of Alaska; Bering Sea/Aleutian Islands King and Tanner Crabs; Scallop Fishery off Alaska; and Salmon Fisheries in the EEZ off the Coast of Alaska (66 FR 30396). NMFS requested written comments and gave notice of scoping meetings.

The proposed action to be addressed in the SEIS is the development of the mandatory EFH provisions of the affected FMPs as described in section 303 (a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and based on the guidance in the EFH regulations at 50 CFR 600 Subpart J. The following three types of actions will be specifically analyzed: (1) identify and describe EFH for managed species; (2) identify HAPCs within EFH; and (3) minimize, to the extent practicable, adverse effects on EFH caused by fishing. The scope of the new SEIS will cover all of the required EFH components of FMPs. The SEIS will supersede the environmental assessment (EA) previously prepared in support of the EFH amendments to the FMPs listed above.

In June 2001, NMFS held public scoping meetings in six communities. Written comments were accepted through July 21, 2001. A preliminary draft scoping report was available at the October 2001 Council meeting. NMFS held a technical workshop from November 6 through 8, 2001, to develop alternative approaches for the designation of EFH and HAPC. Alternative approaches for the designation of EFH and HAPC were developed based on significant issues raised during the scoping process. Recommendations for EFH and HAPC alternative approaches developed at the workshop were given to the Council's EFH Committee. NMFS, Council staff, and the EFH Committee presented potential draft alternative approaches for EFH and HAPC to the Council at its December 10, 2001, meeting. The Council adopted the EFH Committee's preliminary EFH and HAPC alternative approaches and will further develop EFH and HAPC alternative approaches and criteria at the February Council meeting. Other EFH and HAPC issues and questions will be discussed, such as HAPC site specific proposals and how to proceed with identifying fishing gear effects and possible measures to minimize those effects. The EFH and HAPC alternative approaches contained in the SEIS will then be analyzed further using the best available data to identify areas under the various approaches.

Alternative Approaches for Designation of EFH

The Magnuson-Stevens Act defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." For purpose of interpreting the definition of EFH: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species full life cycle. Four levels were identified to organize information necessary to describe and identify EFH. These four levels are: (1) Level 1: only distribution data are available to describe the geographic range of a species or life stage; (2) Level 2: quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species of life stage; (3) Level 3: data are available on habitat-related growth, reproduction, and/or survival by life stage; (4) Level 4: data are available that directly relate the production rates of a species of life stage to habitat type, quantity, quality, and location.

The Council is considering the following preliminary alternative approaches for the designation of EFH:

Alternative 1: no action, no EFH designation. The Council's action resulting from this alternative approach would be to change the FMPs from the current EFH amendment measures. This alternative approach is included to comply with the National Environmental Policy Act.

Alternative 2: status quo. EFH is defined on a species by species basis based on the general distribution of individual species and their life stages. Level 0 to 2 information levels are used in this alternative.

Alternative 3: species-based approach. EFH for each species or species group and life stage is separately designated. This alternative approach dictates that EFH be designated on the basis of the highest level of information available.

Alternative 4: ecosystem/habitat-based approach. This alternative approach specifies EFH designations relative to classification of habitat types occurring in the region and the assemblages of species and lifestages associated with them. Habitat types

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would be defined into stages by the relevant physical and biotic data, including depth, substrate, and structure forming biota.

Alternative 5: core area-based approach. Designation of EFH for this alternative approach is limited to those core areas known to be critical to the production of species or species groups.

Alternative 6: exclusive economic zone (EEZ) waters approach. Under this alternative approach, EFH for FMP species is not designated in freshwater, estuarine or nearshore marine waters, and is designated only in waters of the EEZ.

Alternative Approaches for Designation of HAPC

HAPC are subsets of EFH. HAPC are those areas of special importance that may require additional protection from adverse effects. HAPC are defined on the basis of the ecological importance, sensitivity to human-induced environmental degradation, stress to the habitat from development activities, and rarity of the habitat.

The EFH Steering Committee recommends the following nomenclature be used for HAPC's: HAPC Category - Classification of HAPC type or site using established criteria; HAPC Area - can refer to either habitat "type" or "site"; HAPC Type - general habitat description (e.g., corals, pinnacles); HAPC Site - can be stand-alone geographic location selected from HAPC criteria.

The Council is considering the following preliminary alternative approaches for the designation of HAPC:

Alternative 1: no action, no HAPC designation.

Alternative 2: status quo. The EFH amendments to the five Council FMPs listed above identified 3 types of habitat as HAPC (living substrates in shallow water, living substrates in deep waters, and freshwater areas used by anadromous fish) but did not map or designate specific areas as HAPC.

Alternative 3: species distribution, core-based approach. This alternative approach assumes that the distribution and abundance of species are indicators of critically important habitat types or sites that require special protection. As information between habitat and FMP species or ecosystem productivity becomes available, HAPC could be refined to a core habitat.

Alternative 4: habitat-eco-region/ ecological based approach. HAPC alternative approach 4 identifies habitat types or sites of ecological significance within eco-regions tiering down from EFH alternative approach 4. This alternative approach incorporates both habitat types and site specific designations and allows for different management actions among types and sites within regions.

Alternative 5: site-specific based approach. HAPC alternative approach 5 assumes that individual sites meeting one or more of the HAPC criteria may be designated as HAPC sites, which would require specific management objectives.

Alternative 6: type-site based approach. HAPC alternative approach 6 establishes HAPCs as individual sites selected from a sub-set of HAPC types.

More detailed information on these alternatives can be found on the Council and NMFS, Alaska Region, web sites. Links to these sites can be found at: *http://www.fakr.noaa.gov.*

Public Involvement

NMFS will work with the Council throughout the development of the SEIS. The Council has formed an EFH Committee to act as a steering committee for the EFH SEIS process and to facilitate public and Council input to the SEIS process. The public will be able to provide oral and written comments on EFH at Council meetings.

A principal objective of the public involvement process is to identify a reasonable range of management alternatives that, with adequate analysis, will sharply define critical issues and provide a clear basis for defining those alternatives and choosing the preferred alternative. NMFS invites specific public comment on the preliminary alternative approaches for the designation of EFH and HAPCs for Council-managed species, on possible combinations of EFH and HAPC alternative approaches, and on the scientific basis for EFH and HAPC designations. NMFS also solicits any new information related to the impacts of fishing and non-fishing activities on EFH and HAPCs for fishery resources managed under the Council's FMPs and possible management measures designed to minimize adverse effects of fishing and non-fishing activities on EFH.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: January 4, 2002.

John M. Kurland

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–644 Filed 1–9–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 7

Thursday, January 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–045N]

Codex Alimentarius Commission: 3rd Session, Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), are sponsoring two public meetings on Wednesday, January 9, 2002, and on Tuesday, February 12, 2002, to present and receive comment on draft United States positions on all issues coming before the *3rd* Session of the Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology, which will be held in Yokohama, Japan, March 4–8, 2002. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 3rd Session, Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology.

DATES: The public meetings are scheduled for Wednesday, January 9, 2002 from 1 p.m. to 4 p.m., and Thursday, February 12, 2002 from 1 p.m. to 4 p.m.

ADDRESSES: The public meetings will be held in Conference Room 1409, Federal Office Building 8, 200 C Street, SW., Washington, DC 20204. To review copies of the documents referenced in this notice, contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/ccfbt3/bt0201e.htm* Send comments, in triplicate, to the FSIS Docket Room and reference Docket #01–045N. Commenters should reference the document relevant to their comments. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760, Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Commission, at its 23rd Session, established the Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology to develop standards, guidelines, or recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices. The Task Force is chaired by the government of Japan.

Issues To Be Discussed at the Public Meeting

The provisional agenda items and the relevant documents to be discussed during the public meeting are:

1. Matters Referred to the Task Force by Other Codex Committees; Document CX/FBT 02/2

2. Matters of Interest from Other International Organizations with respect to the Evaluation of the Safety and Nutrition Aspects of Foods Derived from Biotechnology; Document CX/FBT 02/3

3. Consideration of Draft Principles for the Risk Analysis of Foods Derived from Modern Biotechnology, at Step 7; Document ALINORM 01/34A Appendix II; Government Comments at Step 6; Document CX/FBT 02/4

4. Draft Guidelines and Annex

(a) Consideration of Draft Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants at Step 7; Document ALINORM 01/34A Appendix III;

—Government Comments at Step 6; Document CX/FBT 02/5;

—Proposed Revised Text on the Section Entitled "Assessment of Possible Toxicity" from the Draft Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants; Document CL 2001/38–FBT, Annex II;

—Response to Questions from the Chair of the Task Force put forward for consideration by the Working Group; Document CL 2001/38–FBT, Annex II;

—Government Comments on the above two documents (CL 2001/38–FBT Annex II and Annex III) at Step 6; Document CX/FBT 02/5 Add.1;

(b) Consideration of Proposed Draft Annex on the Assessment of Possible Allergenicity of the Draft Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants at Step 4; Document CL 2001/38–FBT, Annex I

—Government Comments at Step 3; Document CX/FBT 02/6

5. Consideration of Proposed Draft Guideline for the Conduct of Food Safety Assessment of Recombinant-DNA Microorganisms in Food at Step 4; Document CX/FBT 02/7;

—Government Comments at Step 3; Document CX/FBT 02/7 Add.1

6. Discussion Papers on Traceability; Document CL 2001/27–FBT;

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—Government Comments; Document CX/FBT 02/8

7. Consideration of Analytical Methods; Document CX/FBT 02/9

8. Other Business, Future Work and Date and Place of Next Session

In advance of these meetings, the U.S. Delegate to the Task Force will have assigned responsibility for development of U.S. positions on these issues to members of government. The individuals assigned responsibility will be named at this meeting and will take comment on and develop draft U.S positions. All interested parties are invited to provide information and comments on the above issues, or on any other issues that may be brought before the Task Force.

Public Meeting

At the January 9th public meeting, the issues will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. At the February 12th public meeting, draft United States' positions on the issues will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may also be sent to the FSIS Docket Room (see **ADDRESSES**). Please state that your comments relate to Task Force activities and specify which issues your comments address.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 8, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–739 Filed 1–8–02; 1:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Moose Post Fire Project, Flathead National Forest, Flathead County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to manage forest resources within and adjacent to the Moose Fire affected area, which burned 70,000 acres in August–September of 2001 (approximately 35,000 acres burned on lands administrated by the Forest Service). The project area is on the Glacier View Ranger District, Flathead National Forest, and is bordered on the east by Glacier National Park and the North Fork of the Flathead River, on the north by the Coal Creek State Forest, and on the west by the Whitefish Divide. The city of Columbia Falls, Montana is located about 10 air miles to the southeast.

DATES: Comments concerning the scope of the analysis should be received in writing on or before 30 days after publication of this notice in the **Federal Register**. The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in May 2002. No date has yet been determined for filing the final EIS.

ADDRESSES: Send written comments to Jimmy DeHerrera, District Ranger, P.O. Box 190340, Hungry Horse, Montana 59919 or call (406) 387–3800.

FOR FURTHER INFORMATION CONTACT: Michele Draggoo, Planning Team Leader, (406) 387–3827.

SUPPLEMENTARY INFORMATION: The Moose Fire created a situation that is very favorable for the development of spruce beetle and Douglas-fir beetle epidemic conditions. The fire severely weakened or killed large numbers of spruce and Douglas-fir, and the beetles are well adapted to capitalize on such events. Spruce bark beetles were found in endemic levels prior to the fire and Douglas-fir bark beetles were building in several areas across the Flathead National Forest including in the vicinity of the Moose Fire area.

Beetle numbers can rapidly build when they are suddenly presented with abundant food and breeding habitat such as provided by the many acres of dead and stressed trees within the Moose Fire area. Once the adult beetles emerge from the fire stressed trees, they will search for the next nearest source of food. They are capable of flying about five miles in search of habitat, thus posing a very real threat to mature, larger diameter spruce and Douglas-fir trees outside the fire area.

Fire killed trees in the Moose Fire area have already started falling and will continue to come down over the next 15-20 years. This will result in extremely heavy fuel loads adjacent to private property and the administrative sites. If a fire does occur in these areas, the fuel accumulations, fuel continuity and profile would make the fire difficult to contain and control. A large high intensity fire would likely again threaten or burn private property, administrative sites and valuable forest resources.

Fire-killed trees also do not typically maintain their merchantability as wood products for more than 1 to 3 years, depending on their species and size. Sapwood staining, checking, woodborer damage, and decay will deleteriously affect volume after that time. Smaller diameter trees typically will not be merchantable within a year while larger diameter trees can retain their merchantability longer but will lose their value as wood products as time goes on. Removing an appropriate amount of fire-affected trees while considering ecological needs, before they lose their timber value and starting the reforestation process helps facilitate meeting desired conditions within the Moose Fire Project area.

The proposed action includes the following resource management activities: salvage trees that were burned on approximately 4300 to 5300 acres; use a combination of pheromone baiting, trap trees, and funnel trees to help address existing and future spruce bark beetle and Douglas-fir bark beetle concerns; and the reduce fuels in urban/interface and administrative site areas. Approximately 1000 acres are proposed for salvage in inventoried roadless lands. Planting conifer seedlings and making sure that best management practices would be maintained on roads used for the salvage would also be included in this project. Additionally, road access would be changed in two grizzly bear subunits to meet the Flathead Forest Plan's Amendment 19 ten-year goals and objectives, relative to grizzly bear security. Approximately 22 miles of open yearlong/seasonally open road would be restricted yearlong within the Werner Creek and Lower Big Creek grizzly bear subunits. Also, approximately 57 miles of road would be decommissioned in both grizzly bear subunits.

The purpose and need for the actions are to: decrease potential mortality cause by bark beetles to remaining live Douglas-fir and spruce trees within and outside the Moose fire are; recover merchantable wood fiber affected by the Moose Fire in timely manner to support local communities and contribute to the long-term yield of forest products; and to reduce future fire risk and hazard by reducing future fuel accumulations caused by the Moose Fire adjacent to private property or administrative sites.

This EIS will tier to the Flathead National Forest Land and Resource Management Plan and EIS of January 1986, and its subsequent amendments, which provide overall guidance for land management activities on the Flatheads National Forest.

Preliminary issues and concerns include effects of treatments on inventoried roadless lands, effects of treatments on riparian areas, effects of treatments on recreational motorized access, and effects of treatments on threatened/endangered species such as bull trout and grizzly bears.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Responsible Official is the Forest Supervisor of the Flathead National Forest, 1935 3rd Avenue East, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and response, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: January 4, 2002.

Cathy Barbouletos,

Forest Supervisor—Flathead National Forest.

[FR Doc. 02–612 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Notice of Availability of Observer Coverage Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Observer Coverage Plan for the Pacific Coast Groundfish Fishery.

SUMMARY: NMFS announces availability of the Observer Coverage Plan for the Pacific Coast Groundfish Fishery pursuant to Amendment 13 (bycatch provisions) to the Pacific Coast Groundfish Fishery Management Plan (FMP).

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and e-mail: *yvonne.dereynier@noaa.gov*, *becky.renko@noaa.gov*. Copies of the Observer Coverage Plan may also be obtained from these contacts.

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: *http://www.access.gpo.gov/su-docs/aces/aces140.html*. The Observer Coverage Plan is accessible at *http://www.nwfsc.noaa.gov/fram/Observer*.

SUPPLEMENTARY INFORMATION: NMFS approved Amendment 13 to the Pacific Coast Groundfish FMP on December 21, 2000. Amendment 13 implements the bycatch requirements of the Sustainable Fisheries Act Amendments of 1996. Among other things, Amendment 13 authorizes an at-sea observer program in fulfillment of the requirement that a standardized reporting methodology for bycatch be established. Federal funding was obtained, and the observer program was initiated in August 2001.

Amendment 13 states that details of how observer coverage will be distributed across the West Coast groundfish fleet will be described in an observer coverage plan and that NMFS will publish an announcement of the authorization of the observer program and description of the observer coverage plan in the **Federal Register**. To comply with this requirement, the Northwest Fisheries Science Center developed an initial Observer Coverage Plan (Sampling Plan and Logistics for the West Coast Groundfish Observer Program (WCGOP), Fall 2001), which may be obtained from the individuals listed under **FOR FURTHER INFORMATION CONTACT** section. The plan outlines the initial goals and methodology of the WCGOP, and describes the initial observer deployments. The program is expected to evolve as it progresses, and new information becomes available.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 7, 2002.

Jon Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–647 Filed 1–9–02; 8:45 am]

BILLING CODE 3510–22–S

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Short Supply Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA).

January 7, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain shirting fabrics, for use in blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On January 4, 2002 the Chairman of CITA received a petition from School Apparel, Inc. alleging that certain shirting fabrics, classified in subheadings 5210.21 and 5210.31 of the Harmonized Tariff Schedule of the United States (HTSUS), used in the production of women's and girls' blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that blouses of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 25, 2002 to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Contact: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the **Federal Register** that it will follow in considering requests. (66 FR 13502).

On January 4, 2002 the Chairman of CITA received a petition from School Apparel, Inc., alleging that certain shirting fabrics, specifically fabrics of subheadings 5210.21 and 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for women's and girls' blouses that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than January 25, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–691 Filed 1–8–02; 11:06 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Short Supply Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

January 7, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that yarns of combed cashmere, cashmere blends and camel hair cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On January 4, 2002 the Chairman of CITA received a petition from Warren Corporation, alleging that yarn of combed cashmere, cashmere blends, and camel hair, classified in subheading 5108.20.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. Warren Corporation requests that apparel articles of U.S. formed fabric of such yarn be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether yarn of combed cashmere, cashmere blends, or camel hair can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 25, 2002 to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Contact: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the **Federal Register** that it will follow in considering requests. (66 FR 13502).

On January 4, 2002 the Chairman of CITA received a petition from Warren Corporation, alleging that yarn of combed cashmere, cashmere blends, and camel hair, classified in HTSUS subheading 5108.20.60 cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from U.S. formed fabric of such yarn.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the yarn for purposes of the intended use. Comments must be received no later than January 25, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that yarn of combed cashmere, cashmere blends or camel hair can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–692 Filed 1–8–02; 11:06 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Request of the Chicago Board of Trade (CBOT) for Product Approval of CBOT X-Fund Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of terms and conditions of commodity futures contract.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has requested that the Commission approve a new product, CBOT X-fund futures, pursuant to the provisions of section 5c(c)(2)(A) of the Commodity Exchange Act as amended. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that public comment on the propose product is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before January 25, 2002.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CBOT X-Fund futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: *Manalysis@cftc.gov*

SUPPLEMENTARY INFORMATION: Copies of the terms and condition of the X-Fund futures contract, as well as additional information about the contract, are available on the CBOT Web site at: *http://www.CBOT.com/cbot/www/cont_modular/1,2291,14+56+13,00.html.*

Other materials submitted by the CBOT in support of the request for product approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBOT should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

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Issued in Washington, DC, on January 3, 2002.

Richard A. Shilts,

Acting Director.

[FR Doc. 02–590 Filed 1–9–02; 8:45 am]

BILLING CODE 8351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: the Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed session on January 23, 2002, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, materiel, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption; tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–613 Filed 1–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

President's Commission Excellence in Special Education

AGENCY: President's Commission on Excellence in Special Education, Department of Education.

ACTION: Notice of public meeting.

SUMMARY: This notice provides the location of the first meeting of the President's Commission on Excellence in Special Education (Commission). This is a subsequent notice about the Commission meeting first published on December 19, 2001, in the **Federal Register**, Vol. 66, No. 244 on page 65473. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. Members of the general public may observe and listen to Commission proceedings via live feed television at the Hotel Washington. The Commission will not receive comments from the general public at this meeting, but any member of the public is permitted to file a written statement with the Commission. Subsequent Commission meetings and hearings will be posted on the Commission's Web site.

DATES AND TIMES: Tuesday, January 15, 2002, from 7:30 a.m.–5 p.m. Please note this is a revised time.

ADDRESSES: The Commission meeting will be held in Washington, DC, at the Hotel Washington located at 515 15th Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: C. Todd Jones, Executive Director, at 202–208–1312 (telephone) or Troy R. Justesen, Deputy Executive Director, at 202–219–0704 (telephone), (202) 208–1953 (fax), *troy.justesen@ed.gov* (E-mail) or via the Commission's Web site address at: *http://www.ed.gov/inits/commissionsboards/whspecialeducation/sitemap.html*

SUPPLEMENTARY INFORMATION: The Commission was established under Executive Order 13227 (October 2, 2001) to collect information and study issues Related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

At the January meeting, the Commission will discuss current and future activities. Specifically, the Commission will focus on planning future Commission meetings and hearings to be held in locations across the nation.

Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative formats) should notify Troy R. Justesen, at (202) 219–0704, by no later than January 8, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site will be accessible to individuals with mobility impairments, including those who use wheelchairs.

Records of all Commission proceedings are available for public inspection at the President's Commission on Excellence in Special Education, 80 F Street, N.W., Suite 408; Washington, DC 20208 from 9 a.m. to 5 p.m. (EST).

Dated: January 4, 2002.

C. Todd Jones,

Executive Director & Delegated Functions of Assistant Secretary for Office for Civil Rights.

[FR Doc. 02–594 Filed 1–9–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–259–000]

ANR Pipeline Co.; Notice Shortening Comment Period

January 3, 2002.

On December 26, 2001, ANR Pipeline Company (ANR) filed an Offer of Settlement (Settlement) in the above-docketed proceeding. ANR's Settlement also included a request for a shortened comment period. The Settlement transmittal states that the request for a shortened comment period is supported by the only active participants to this proceeding.

Upon consideration, notice is hereby given that the time for filing initial comments on ANR's Settlement is hereby shortened to and including January 8, 2002. Reply comments shall be filed on or before January 15, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–572 Filed 1–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–000]

Enogex, Inc.; Notice of Petition for Rate Approval

January 4, 2002.

Take notice that on December 18, 2001, Enogex Inc. (Enogex) filed a petition for approval for a rate for interruptible Section 311 transportation service on expanded facilities, the Enogex System, the result of the merger of Enogex, Inc. and Transok, LLC, scheduled for January 1, 2002. The rate will become effective January 1, 2002. Enogex proposes a rate of $0.70 per MMBtu for interruptible service on the Enogex System, as well as a combined fuel tracker rate of 1.51% plus actual fuel for use of low pressure compression and dehydration facilities.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before the comment date. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: January 11, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–574 Filed 1–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–61–000, *et al.*]

Bayswater Peaking Facility, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

January 4, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Bayswater Peaking Facility, LLC

[Docket No. EG02–61–000]

On December 28, 2001 Bayswater Peaking Facility, LLC (the Applicant), with its principal offices at 700 Universe Boulevard, Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (Commission) an application for a determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it is a Delaware corporation and is the owner and operator of a nominal 46 megawatt natural gas-fired simple cycle peak electric generating facility ("Facility") to be located in Far Rockaway, Queens County, New York. The Facility will sell energy, capacity, and ancillary services into the wholesale generation market.

Comment Date: January 25, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. MAIN Wind I, LLC

[Docket No. EG02–62–000]

Take notice that on January 2, 2002, MAIN Wind I, LLC, 650 NE Holladay, Suite 700, Portland, Oregon 97232, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a limited liability company organized under the laws of the State of Oregon and a wholly owned subsidiary of PacifiCorp Power Marketing, Inc., an Oregon corporation (PPM). PPM is a wholly owned subsidiary of PacifiCorp Holdings, Inc., a Delaware corporation with general offices in Portland, Oregon (PHI). PHI is a wholly owned subsidiary of NA General Partnership, a Nevada general partnership (NAGP). NAGP's two partners are Scottish Power NA 1 Limited and Scottish Power NA 2 Limited. Scottish Power NA 1 Limited and Scottish Power NA 2 Limited are private limited companies incorporated in Scotland and are wholly owned subsidiaries of ScottishPower plc, a public limited corporation organized under the laws of Scotland.

The applicant will be engaged directly and exclusively in the business of owning and/or operating one or more eligible facilities (the Facilities) and selling at wholesale at market-based rates electric energy from the Facilities. Once constructed, the Facilities will consist of an approximately 50 MW wind-powered electric generation facility located near Mendota, Illinois, and may also include an additional approximately 50 MW wind-powered generation facility located near Mendota, Illinois. Copies of the application have been served upon the Oregon Public Utility Commission and the Illinois Public Utility Commission, as "affected state commissions" under 18 CFR § 365.2(b)(3), and the Securities and Exchange Commission.

Comment Date: January 25, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. MAPP Wind I, LLC

[Docket No. EG02–63–000]

Take notice that on January 2, 2002, MAPP Wind I, LLC, 650 NE Holladay, Suite 700, Portland, Oregon 97232, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a limited liability company organized under the laws of the State of Oregon and a wholly owned subsidiary of PacifiCorp Power Marketing, Inc., an Oregon corporation (PPM). PPM is a wholly owned subsidiary of PacifiCorp Holdings, Inc., a Delaware corporation with general offices in Portland, Oregon (PHI). PHI is a wholly owned subsidiary of NA General Partnership, a Nevada general partnership (NAGP). NAGP's two partners are Scottish Power NA 1 Limited and Scottish Power NA 2 Limited.

Scottish Power NA 1 Limited and Scottish Power NA 2 Limited are private limited companies incorporated in Scotland and are wholly owned subsidiaries of ScottishPower plc, a public limited corporation organized under the laws of Scotland.

The applicant will be engaged directly and exclusively in the business of owning and/or operating one or more eligible facilities (Facilities) and selling

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at wholesale at market-based rates electric energy from the Facilities. Once constructed, the Facilities will consist of an approximately 51 MW wind-powered electric generation facility located in southwestern Minnesota, and may also include an additional approximately 80 MW wind-powered generation facility located in southwestern Minnesota. Copies of the application have been served upon the Oregon Public Utility Commission and the Minnesota Public Utility Commission, as "affected state commissions" under 18 CFR § 365.2(b)(3), and the Securities and Exchange Commission.

Comment Date: January 25, 2002. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. West Georgia Generating Company, LLC

[Docket No. ER99–2186–001]

Take notice that on December 31, 2001, West Georgia Generating Company, LLC (West Georgia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a change in upstream ownership of West Georgia that may be relevant to West Georgia's market-based rate authority. West Georgia submits that this change does not affect West Georgia's market-based authority.

Comment Date: January 22, 2002.

5. Geysers Power Company, LLC

[Docket No. ER02–236–001]

Take notice that on December 31, 2001, Geysers Power Company, LLC (Geysers Power), tendered for filing with the Federal Energy Regulatory Commission (Commission) substitute rate sheets which replace certain of the rate sheets submitted by Geysers Power in the above-referenced docket on October 31, 2001, conditionally accepted and suspended by the Commission on December 19, 2001. Geysers Power, LLC, 97 FERC 61,295 (2001). Geysers Power requests waiver for Commission regulations to permit it to establish an effective date of January 1, 2002, for these substitute rate sheets, subject to the terms of the December 19, 2001 Order.

Comment Date: January 22, 2002.

6. PacifiCorp

[Docket No. ER02–653–000]

Take notice that PacifiCorp on December 31, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's rules and regulations, Fourth Revised Volume No. 11 (Tariff) incorporating proposed changes to its Open Access Transmission Tariff due to retail direct access in the state of Oregon and generation interconnection requirements. Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

PacifiCorp has requested an effective date of March 1, 2002.

Comment Date: January 22, 2002.

7. PacifiCorp

[Docket No. ER02–654–000]

Take notice that PacifiCorp on December 31, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Network Integration Transmission Service Agreement with Basin Electric Power Cooperative (Basin) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: January 22, 2002.

8. New England Power Pool

[Docket No. ER02–655–000]

Take notice that on December 31, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include J. Aron & Company (J. Aron), the Connecticut Office of Consumer Counsel (CT OCC), and Entergy Nuclear Vermont Yankee, LLC (ENVY). The Participants Committee requests effective dates of January 1, 2002, February 1, 2002, and March 1, 2002 for commencement of participation in NEPOOL by J. Aron, CT OCC, and ENVY, respectively.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: January 22, 2002.

9. New England Power Pool

[Docket No. ER02–656–000]

Take notice that on December 31, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted a filing requesting the approval of proposed changes to NEPOOL Market Rules & Procedures 5, 9, Appendix 11-D and 20, to modify NEPOOL's Load Response Program. The proposed modifications were developed to increase participation in the Program.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: January 22, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER02–657–000]

Take notice that on December 31, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA). PJM states that the proposed changes will expand membership in the RAA's Reliability Committee to include more market participants, as desired by the Commission. Copies of this filing were served upon all PJM members and the state electric utility regulatory commissions in PJM.

PJM proposes January 1, 2002 as the effective date for these changes and, to that end, requests waiver of the Commission's 60-day notice requirement.

Comment Date: January 22, 2002.

11. PJM Interconnection, L.L.C.

[Docket No. ER02–658–000]

Take notice that on December 31, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) revisions to the PJM West Reliability Assurance Agreement Among Load Serving Entities in the PJM West Region (West RAA). PJM states that the proposed revisions will better coordinate the capacity procedures and markets under the West RAA with those in effect for PJM's existing control area under the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area and also place a ceiling on the exposure of load-serving entities to capacity deficiency charges under the West RAA. PJM states that these changes also expand membership in the West RAA's Reliability Committee to include more market participants, as desired by the Commission.

PJM states that it has designated January 1, 2002 as the effective date for these changes, to be consistent with the effective date previously requested for the West RAA and other PJM West documents in Docket No. RT01–98–000. PJM requests, however, that the Commission, through suspension or otherwise, assign to the West RAA amendments in this docket the same effective date as is established for the West RAA in Docket No. RT01–98–000 and, to the extent necessary, grant waiver of the Commission's 60-day notice requirement.

Copies of this filing were served upon all PJM members, the state electric utility regulatory commissions in PJM,

and all parties listed on the official service list in Docket No. RT01–98–000.

Comment Date: January 22, 2002.

12. Xcel Energy Services Inc.

[Docket No. ER02–659–000]

Take notice that on December 31, 2001, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Transaction Agreement between Southwestern and El Paso Electric Company. XES requests that this agreement become effective on January 1, 2002.

Comment Date: January 22, 2002.

13. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–660–000]

Take notice that on December 31, 2001, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing amended and executed long-term firm point-to-point transmission service agreement with IDACORP Energy L.P. (IDACORP). A copy of this filing was served on IDACORP.

Deseret requests an effective date of January 1, 2002.

Comment Date: January 22, 2002.

14. Connexus Energy

[Docket No. ER02–661–000]

Take notice that on December 31, 2001, Connexus Energy submitted for filing with the Federal Energy Regulatory Commission (Commission) revised sheets to Connexus Energy's Electric Rate Schedule FERC No. 1. Connexus Energy states that the revised sheets effect minor rate changes under Connexus Energy's contract with Elk River Municipal Utilities. Connexus Energy requests waiver of the Commission's notice requirement to allow a January 1, 2002 effective date.

Comment Date: January 22, 2002.

15. Boston Edison Company

[Docket No. ER02–662–000]

Take notice that on December 31, 2001, Boston Edison Company (Boston Edison) tendered for filing an unexecuted interconnection Agreement between Boston Edison and IDC Bellingham, LLC (IDC Bellingham). Boston Edison requests an effective date of March 1, 2002.

Boston Edison states that it has served a copy of the filing on IDC Bellingham and the Massachusetts Department of Telecommunications and Energy.

Comment Date: January 22, 2002.

16. Public Service Company of New Hampshire

[Docket No. ER02–663–000]

Take notice that on December 31, 2001, Public Service Company of New Hampshire (PSNH) submitted for filing with the Federal Energy Regulatory Commission (Commission) an informational statement concerning PSNH's fuel and purchased power adjustment clause charges and credits for the periods of July 1, 2000 to March 31, 2001.

This informational statement is submitted pursuant to a settlement agreement approved by the Commission in Publ. Serv. Co of New Hampshire, 57 FERC ¶ 61,068 (1991), and a settlement stipulation approved by the Commission by Letter Order in Docket Nos. ER91–143–000, ER91–235–000 and EL91–15–000, dated July 22, 1992.

Copies of this filing were served upon the Town of Ashland Electric Company and the New Hampton Village Precinct.

Comment Date: January 22, 2002.

17. American Transmission Company LLC

[Docket No. ER02–664–000]

Take notice that on December 31, 2001, American Transmission Company LLC (ATCLLC) tendered for filing Firm and Non-Firm Point-to-Point Service Agreements for Maclaren Energy Inc.

ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 22, 2002.

18. Puget Sound Energy, Inc.

[Docket No. ER02–665–000]

Take notice that on December 31, 2001, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. A copy of the filing was served upon Bonneville.

Comment Date: January 22, 2002.

19. Cinergy Services, Inc.

[Docket No. ER02–666–000]

Take notice that on December 31, 2001, Cinergy Services, Inc., (Provider), tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed renewal of Cinergy Rate Schedule No. 292, by and between Provider and NewEnergy, Inc. (Customer). The successive annual term is in accordance with Cinergy Rate Schedule No. 292, which has been previously accepted by the Commission under FERC Docket No. ER01–882.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

20. Cinergy Services, Inc.

[Docket No. ER02–667–000]

Take notice that on December 31, 2001, Cinergy Services, Inc., (Provider), tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed renewal of Cinergy Rate Schedule No. 288, by and between Provider and FirstEnergy Services Corp. (Customer). The successive annual term is in accordance with Cinergy Rate Schedule No. 288, which has been previously accepted by the Commission under FERC Docket No. ER01–881.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

21. Cinergy Services, Inc.

[Docket No. ER02–668–000]

Take notice that on December 31, 2001, Cinergy Services, Inc. (Provider) tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed renewal of Cinergy Rate Schedule No. 286, by and between Provider and Strategic Energy, LLC (Customer). The successive annual term is in accordance with Cinergy Rate Schedule No. 286, which has been previously accepted by the Commission under FERC Docket No. ER01–880.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

22. Bayswater Peaking Facility, LLC

[Docket No. ER02–669–000]

Take notice that on December 28, 2001, Bayswater Peaking Facility, LLC (Bayswater) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for authorization to sell wholesale power at market-based rates, and certain ancillary services at market-based rates into the New York market. Bayswater also requested that the Commission accept for filing a long-term Power Purchase Agreement for the sale of the power from Bayswater to the Long Island Power Authority as a stand-alone rate schedule under its proposed market rate tariff. Bayswater has requested that this Market Rate Tariff become effective upon commencement of service.

Copies of this filing have been served on the New York State Public Service Commission and the Long Island Power Authority.

Comment Date: January 22, 2002.

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23. Delmarva Power & Light Company

[Docket No. ER02–670–000]

Take notice that on December 31, 2001, Delmarva Power & Light Company (Delmarva), tendered for filing revised rate schedule sheets between Delmarva and each of the Delaware Cities of Milford, Newark, and New Castle and the Delaware Towns of Middletown, Clayton, and Smryna (collectively, the Municipalities). Delmarva also tendered for filing a revised rate schedule between Delmarva and the Delaware Municipal Electric Corporation (DEMEC). Delmarva requests that the Commission waive its notice of filing requirements to allow all of the revised rate schedule sheets to become effective as of January 1, 2002.

Copies of the filing were served upon the Delmarva's jurisdictional customers and the Delaware Public Service Commission.

Comment Date: January 22, 2002.

24. ConAgra Trade Group, Inc.

[Docket No. ER02–672–000]

Take notice that on December 28, 2001, ConAgra Energy Services, Inc. changed its name to ConAgra Trade Group, Inc. All contractual agreements with ConAgra Energy Services, Inc. remain unaffected and will be performed by ConAgra Trade Group, Inc.

Comment Date: January 22, 2002.

25. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–673–000]

Take notice that on December 31, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed amendments to its Open Access Transmission Tariff (OATT) and Agreement of Transmission Facilities Owners to Organize the Midwest ISO (Midwest ISO Agreement) in compliance with the Commission's Order in Docket No. ER98–1438–000, et al., Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,033 (2001), which required the Midwest ISO to place and provide all load under the Midwest ISO OATT.

The Midwest ISO requests that its amendments become effective on the later of February 1, 2002 or the date the Midwest ISO begins providing service under its OATT.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2001) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 22, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–620 Filed 1–9–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3668–003, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

January 3, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Commonwealth Edison Company

[Docket No. ER00–3668–003]

Take notice that on December 10, 2001, Commonwealth Edison Company (ComEd), in compliance with the Commission's November 9, 2001 "Order Conditionally Accepting Compliance Filing," 97 FERC ¶ 61,171 (2001), submitted for filing with the Federal Energy Regulatory Commission (Commission) in the above-referenced proceeding a revised compliance filing. As required by the Commission, ComEd deleted modifications of the unexecuted Interconnection Agreement related to the additions to Section 7.1 and the modification to Appendix C of the Interconnection Agreement. Copies of this filing were served on University Park, on the Illinois Commerce Commission and on the parties designated on the official service list compiled by the Secretary.

Comment Date: January 14, 2002.

2. Duke Energy Corporation

[Docket No. ER01–1616–006]

Take notice that on December 28, 2001, Duke Energy Corporation filed a refund report in the above-captioned proceeding.

Comment Date: January 18, 2002.

3. PJM Interconnection, L.L.C.

[Docket No. ER02–563–000]

Take notice that on December 28, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing a notice of withdrawal of its proposed amendments to section 8.6 of the Appendix to Attachment K of PJM's Open Access Transmission Tariff and to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. filed in this docket. PJM proposed the amendments to conform the provisions of PJM's interregional congestion pilot program between PJM and the New York Independent System Operator, Inc. (NYISO) to the provisions filed by NYISO in Docket No. ER02–194–000. PJM seeks to withdraw the proposed conforming amendments because the Federal Energy Regulatory Commission rejected the corresponding NYISO provisions.

Copies of this filing have been served on all PJM Members, the NYISO, the state electric utility regulatory commissions in the PJM and NYISO control areas, and the parties on the official service lists in Docket Numbers ER01–2528, ER02–194–000, and ER02–563–000.

Comment Date: January 18, 2002.

4. Exelon Generation Company, LLC

[Docket No. ER02–615–000]

Take notice that on December 27, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and American Electric Power Services Corporation as agent for the AEP Companies under Exelon Generation's wholesale power sales, tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 17, 2002.

5. San Diego Gas & Electric Company

[Docket No. ER02–635–000]

Take notice that on December 28, 2001, San Diego Gas & Electric (SDG&E) tendered for filing a change in rates for the Transmission Revenue Balancing Account Adjustment and the Transmission Access Charge Balancing Account Adjustment set forth in its Transmission Owner Tariff (TO Tariff). The effect of this rate change is to increase rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-Controlled Grid owned by SDG&E. SDG&E requests that this rate change be made effective January 1, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator and other interested parties.

Comment Date: January 18, 2002.

6. Southern California Edison Company

[Docket No. ER02–636–000]

Take notice that on December 28, 2001, Southern California Edison Company (SCE) tendered for filing a revision to its Transmission Owner Tariff, FERC Electric Tariff, Substitute First Revised Original Volume No. 6, to reflect the annual update of the Transmission Revenue Balancing Account Adjustment and the Transmission Access Charge Balancing Account Adjustment to become effective January 1, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, and all interested parties.

Comment Date: January 18, 2002.

7. Pacific Gas and Electric Company

[Docket No. ER02–637–000]

Take notice that on December 28, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing changes in rates for the Transmission Revenue Balancing Account Adjustment (TRBAA) rate set forth in its Transmission Owner Tariff (TO Tariff), the Reliability Services (RS) rates set forth in both its TO Tariff and its Reliability Services Tariff (RS Tariff) (certain customers' RS rates are in the TO Tariff while other customers' RS rates are in the separate RS Tariff) and the Transmission Access Charge Balancing Account Adjustment (TACBAA) also set forth in its TO Tariff. With the exception of the TACBAA rate, these changes in rates are proposed to become effective January 1, 2002.

Copies of this filing have been served upon the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas &Electric Company, the California Public Utilities Commission and other parties to the official service lists in recent TO Tariff rate cases, FERC Docket Nos. ER00–2360–000 and ER01–66–000.

Comment Date: January 18, 2002.

8. New York Independent System Operator, Inc.

[Docket No. ER02–638–000]

Take notice that on December 28, 2001, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff and Open Access Transmission Tariff in order to implement a new program that will allow market participants to "pre-schedule" external transactions and wheels-through. The NYISO has requested an effective date of February 28, 2002.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned docket.

Comment Date: January 18, 2002.

9. New York Independent System Operator, Inc.

[Docket No. ER02–639–000]

Take notice that on December 28, 2001, the New York Independent System Operator, Inc. (NYISO) filed a revision to Schedule 1, Section 3A of its Open Access Transmission Tariff (OATT), to specifically enumerate "Regulatory fees" as a recoverable NYISO cost. The NYISO has requested a waiver of notice requirements and has proposed an effective date of January 1, 2002 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's OATT and Services Tariff.

Comment Date: January 18, 2002.

10. Western Resources, Inc.

[Docket No. ER02–640–000]

Take notice that on December 28, 2001, Western Resources, Inc. (WR) tendered for filing a Service Agreement between WR and Mississippi Delta Energy Agency (MDEA). WR states that the purpose of this agreement is to permit MDEA to take service under WR's Market Based Power Sales Tariff on file with the Commission. This agreement is proposed to be effective November 28, 2001.

Copies of the filing were served upon MDEA and the Kansas Corporation Commission.

Comment Date: January 18, 2002.

11. Ameren Services Company

[Docket No. ER02–641–000]

Take notice that on December 28, 2001, Ameren Services Company (ASC) tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 18, 2002.

12. Exelon Generation Company, LLC

[Docket No. ER02–642–000]

Take notice that on December 27, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a notice of cancellation of its service agreement for the purchase and sale of power and energy with Sempra Energy Trading Corp. f/k/a AIG Trading Corporation. Copies of the filing have been served on the parties to the affected service agreements.

Exelon Generation proposes that the cancellations be made effective on December 26, 2001, and therefore requests waiver of the Commission's notice requirement.

Comment Date: January 18, 2002.

13. Southern California Edison Company

[Docket No. ER02–643–000]

Take notice, that on December 28, 2001, Southern California Edison Company (SCE) tendered for filing the Amended and Restated District-Edison 1987 Service and Interchange Agreement (Agreement) between SCE and The Metropolitan Water District of Southern California (District), which provides the terms to redefine the methodology for valuing the return of exchange energy delivered by District to SCE after January 17, 2001, for the contract year beginning October 1, 2000.

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Copies of this filing were served upon the Public Utilities Commission of the State of California and District.

SCE requests the Commission to assign an effective date January 17, 2001 to the Agreement.

Comment Date: January 18, 2002.

14. Northeast Utilities Service Company, Holyoke Water Power Company, Holyoke Power and Electric Company

[Docket No. ER02–644–000]

Take notice that on December 28, 2001, Northeast Utilities Service Company (NUSCO), on behalf of Holyoke Water Power Company (HWP) and Holyoke Power and Electric Company (HP&E), tendered for filing (1) an amendment extending through December 31, 2002 the term of an agreement for the sale of 100 percent of the net output of the Mt. Tom Power Plant (Mt. Tom) from HWP to HP&E and (2) an amendment extending through December 31, 2002 the term of an agreement for the sale of 100 percent of HP&E's entitlement to Mt. Tom's net output from HP&E to Select Energy, Inc. NUSCO, HWP, and HP&E seek an effective date for the amendments of January 1, 2002.

Comment Date: January 18, 2002.

15. American Transmission Company LLC

[Docket No. ER02–645–000]

Take notice that on December 28, 2001, American Transmission Company LLC (ATCLLC) tendered for filing OATT revisions to accommodate retail access in Michigan. ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 18, 2002.

16. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–646–000]

Take notice that on December 28, 2001, Alliant Energy Corporate Services, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service Agreements with Dairyland Power Cooperative establishing Dairyland Power Cooperative as a Long-term Firm Point-to-Point Transmission Customer under the terms of the Alliant energy corporate Services, Inc. Open Access Transmission Tariff.

Alliant Energy Corporate Services, Inc. requests effective dates of May 1, 2001 for service agreement with OASIS request numbers 834751 and 834744; May 1, 2000 for service agreement with OASIS request numbers 584184 and 584180; May 1, 1999 for service agreement with OASIS request 407826 and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: January 18, 2002.

17. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–647–000]

Take notice that on December 28, 2001, Alliant Energy Corporate Services, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service Agreements with NRG Power Marketing Inc. establishing EnXco, Inc. as a Short-Term Firm and Non-Firm Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. Open Access Transmission Tariff.

Alliant Energy corporate Services, Inc. requests an effective date of November 27, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: January 18, 2002.

18. Sithe New Boston, LLC

[Docket No. ER02–648–000]

Take notice that on December 28, 2001 Sithe New Boston, LLC (Sithe New Boston) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Reliability Must Run Agreement with ISO New England Inc. Sithe New Boston requests an effective date of January 1, 2002. Sithe New Boston requests a waiver of all applicable Commission regulations to permit such effective date.

Sithe New Boston provided a copy of this filing to ISO–NE on the date of filing. Sithe New Boston also as a courtesy has mailed a copy of this filing to each affected state regulatory authority.

Comment Date: January 18, 2002.

19. New England Power Company

[Docket No. ER02–649–000]

Take notice that on December 28, 2001, New England Power Company (NEP) tendered for filing Original Service Agreement No. 17 for service under NEP's Wholesale Market Sales Tariff, FERC Electric Tariff, Original Volume No. 10 between NEP and Morgan Stanley Capital Group Inc.

Comment Date: January 18, 2002.

20. FirstEnergy Solutions Corp.

[Docket No. ER02–650–000]

Take notice that on December 28, 2001, FirstEnergy Solutions Corp. (FE Solutions) submitted for filing service agreements between FE Solutions and its affiliates, Metropolitan Edison Company and Pennsylvania Electric Company, under FE Solutions' market-based rate power sales tariff, FirstEnergy Solutions Corp., FERC Electric Tariff, Original Volume No.1.

Comment Date: January 18, 2002.

21. California Independent System Operator Corporation

[Docket No. ER02–651–000]

Take notice that on December 28, 2001, the California Independent System Operator Corporation (ISO) submitted for filing Amendment No. 41 to the ISO Tariff. Amendment No. 41 would modify the ISO Tariff and Protocols in four respects. First, the ISO proposes changes in the use of interest received by the ISO on payments in default to permit the use of such interest to pay unpaid creditors first and secondly to offset the Grid Management Charge. Second, the ISO proposes new provisions to create a "safe harbor" mechanism to permit the ISO to provide confidential information to governmental agencies that have established their own confidentiality provisions and procedures. Third, the ISO proposes changes to the definition of the Non-Emergency Clearing Price Limit to provide for a negative maximum. Fourth, the ISO proposes the correction of a typographical error in ISO Tariff Section 9.2.6. The ISO requests that the first proposal described above be made effective November 1, 2001, and that the other three proposals described above be made effective February 26, 2002.

The ISO has served copies of this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment Date: January 18, 2002.

22. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–652–000]

Take notice that on December 28, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which propose to provide the means for the Midwest ISO to bill Midwest ISO's Transmission Owners and International Transmission Company for Midwest ISO's monthly capital costs and the portion of its operating costs consistent with the services the Midwest ISO will be providing prior to the provision of Transmission Service under the Midwest ISO OATT.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2001) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 18, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–569 Filed 1–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–27–000]

Florida Gas Transmission Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Phase VI Expansion and Request for Comments on Environmental Issues

January 4, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Phase VI Expansion involving construction and operation of facilities by Florida Gas Transmission Company (FGT) in the States of Alabama, Florida, Louisiana, and Mississippi.[1] These facilities would consist of about 33.3 miles of various diameter pipeline and 18,600 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice FGT provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

FGT proposes to construct approximately 33.3 miles of pipeline, consisting of approximately 25.4 miles of additional mainline and 7.9 miles of various diameter (6-inch to 36-inch-diameter) new lateral and lateral loops, as well as 18,600 horsepower of additional compression at 10 compressor stations. FGT proposes to expand the capacity of its facilities in Alabama, Florida, Louisiana, and Mississippi to transport an additional 121,100 million British thermal units per day of natural gas to four separate parties, Orlando Utilities Commission, Reliant Energy Services, Inc., South Florida Natural Gas, and the City of Leesburg, Florida. FGT's proposed facilities are summarized below.

Looping of Existing Mainline

1. Loop A—approximately 2.3 miles of 36-inch-diameter pipeline in Mobile County, Alabama;

2. Loop B—approximately 3.0 miles of 36-inch-diameter pipeline in Baldwin County, Alabama;

3. Loop C—approximately 3.1 miles of 30-inch-diameter pipeline in Washington County, Florida. Construction of Loop C for the entire 3.1 miles would coincide with the removal of 3.1 miles of FGT's 24-inch-diameter pipe previously abandoned in place;

4. Loop D—approximately 3.0 miles of 30-inch-diameter pipeline in Suwannee County, Florida, and

5. Loop E—approximately 14.0 miles of 30-inch-diameter pipeline in Washington County, Florida.

New Laterals and Lateral Loops

6. Leesburg Lateral Loop—approximately 1.3 miles of 6-inch-diameter pipeline in Lake County, Florida;

7. Cape Kennedy Lateral Loop Extension—approximately 1.4 miles of 16-inch-diameter pipeline in Brevard County, Florida, and

8. Stanton Lateral—approximately 5.2 miles of 16-inch-diameter pipeline in Orange County, Florida.

Compressor Station Additions

9. Station No. 9—Up-rate Unit #905 by 400 hp to 2,800 hp in Washington Parish, Louisiana;

10. Station No. 10—Up-rate Unit #1005 by 200 hp to 2,600 hp in Perry County, Mississippi;

11. Station No. 11—Up-rate Unit #1106 by 300 hp to 2,700 hp in Mobile County, Alabama;

[1] FGT's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

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12. Station No. 12A—Add new 2,000 hp unit for a total of 15,000 hp in Santa Rosa County, Florida;

13. Station No. 13—Up-rate Unit #1306 by 300 hp to 2,700 hp in Washington County, Florida;

14. Station No. 14—Up-rate Unit #1406 by 300 hp to 2,700 hp in Gadsden County, Florida;

15. Station No. 15A—Add 2,000 hp by exchanging the 15,000 hp Unit #2401 at Station No. 24 with the 13,000 Hp Unit #1507 at Station No. 15A in Taylor County, Florida;

16. Station No. 18—Add a new reciprocating Unit #1806 of 7,200 hp and up-rate an Unit #1805 by 300 hp to 2,700 hp on the existing 24 and 30-inch-diameter mainlines in Orange County, Florida for a total increase of 7,500 hp;

17. Station No. 24—Add a single 7,200 hp Unit #2402 gas-driven centrifugal unit and exchange the 15,000 hp Unit #2401 at Station #24 for the 13,000 hp Unit #1507 at Station No.15A, resulting in an overall increase of 5,200 hp at Station No. 24 in Gilchrist County, Florida, and

18. Station No. 26—Up-rate Unit #2601 by 400 hp to 7,700 hp on the existing 30-inch West Leg in Citrus County, Florida.

The general location of the project facilities is shown in appendix 1.[2] *If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in appendix 3.*

Land Requirements for Construction

Construction of the proposed facilities would require about 399.3 acres of land. Following construction, about 190.9 acres would be maintained as new aboveground facility sites. The remaining 208.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

19. Geology and soils.

20. Land use

21. Water resources, fisheries, and wetlands.

22. Cultural resources.

23. Vegetation and wildlife.

24. Air quality and noise.

25. Endangered and threatened species.

26. Hazardous waste.

27. Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by FGT. This preliminary list of issues may be changed based on your comments and our analysis.

28. Eight residences are within 50 feet of the construction right-of-way.

29. 31 federally listed endangered or threatened species may occur in the proposed project area.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

30. Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

31. Label one copy of the comments for the attention of Gas Branch 2.

32. Reference Docket No. CP02–27–000.

33. Mail your comments so that they will be received in Washington, DC on or before February 8, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC Web site (*www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet Web site provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–570 Filed 1–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT02–2–000, RT01–2–000, RT01–98–000, RT01–95–000, and RT01–86–000]

Notice of State-Federal Northeast Regional Panel Discussion

January 3, 2002.

In the matter of: State-Federal Regional RTO Panels; PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, UGI Utilities Inc.; PJM Interconnection, L.L.C. and Allegheny Power; New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation; Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, ISO New England Inc.; Notice of State-Federal Northeast Regional Panel Discussion

Take notice that on January 9, 2002, a State-Federal Northeast Regional Panel discussion will be held, pursuant to the Commission's order issued November 9, 2001, in Docket No. RT02–2–000, *et al.*[1] A transcript of the panel discussion will be placed in the above listed dockets.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–571 Filed 1–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 4, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Exempt

1. CP01–438–000, 12–28–01, David Swearington
2. Project No. 1927–028, 12–28–01, Ellen D. Smith
3. Project No. 1927–028, 12–28–01, Ellen D. Smith.
4. Project No. 2342–000, 12–28–01, Loree Randall

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–573 Filed 1–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

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[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[1] Order Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607, 97 FERC ¶ 61,182 (2001).

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ACTION: Notice of final power allocations.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its Post-2004 Resource Pool Final Allocation of Power developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule. This notice also includes Western's responses to public comments on proposed allocations published May 11, 2001.

Final allocations are published to show Western's decisions prior to beginning the contractual phase of the process. Firm electric service contracts, negotiated between Western and allottees in this notice, will permit delivery of the allotted power from the October 2004 billing period, through the September 2024 billing period.

DATES: The Post-2004 Resource Pool Final Allocation of Power will become effective February 11, 2002 and will remain in effect until September 30, 2024.

ADDRESSES: All documents developed or retained by Western in developing the final allocations are available for inspection and copying at the Rocky Mountain Customer Service Region Office, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (65 FR 52419, August 29, 2000) to implement Subpart C—Power Marketing Initiative of the Program's Final Rule (10 CFR part 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers.

Western published its proposed allocations and initiated a public comment period in the **Federal Register** (66 FR 24133, May 11, 2001). Public information forums on the proposed allocations were held August 2, 7, and 9, 2001. The public comment period was extended from September 10, 2001, to October 12, 2001, in the **Federal Register** (66 FR 47652, September 13, 2001).

The Procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4012, January 31, 1986), establish the framework for allocating power from the Loveland Area Projects (LAP) resource pool.

I. Comments and Responses

Comment: Mni Sose asks that Western re-examine its understanding of government-to-government communications.

Response: Western supports DOE's American Indian policy that stresses the need for a government-to-government, trust-based relationship. Western intends to continue its practice of consultation with tribal governments so that tribal rights and concerns are considered prior to any actions being taken that affect the tribes.

The Post-1989 Marketing Plan, Program, and Procedures form the framework for allocating LAP power. The allocation process was conducted in a consistent manner with all LAP applicants. Prior to publishing proposed allocations, Western, recognizing the unique status of Native American tribes, consulted with tribes before their Applicant Profile Data (APD) submittal and during Western's review of data submitted on their APDs.

Once proposed allocations were published, Western sought to follow the public process and only allow formal comments, written and oral, to be submitted as input to the final allocation decision. Western provided written responses to questions that were not answered in the public forums and extended the comment period in conjunction with those answers to provide additional time for tribes to submit written comments on the proposed allocations. Western will not engage in discussions about the allocations with any parties outside of the formal process until final allocations are published. This procedural rule is applied consistently to tribes as well as non-tribal entities. Western does not believe that this procedural rule affects tribal self-governance rights nor creates an impact upon trust resources.

Western believes that the tribes were consulted about the process and Western considered the information gained from those consultations along with oral and written comments received during the public comment period to make the final allocations.

Comment: Western should not consider the benefits to tribes of Federal power from current service providers when making allocations to the tribes. In the event of the formation of a tribal utility, that power would be inaccessible to the tribes.

Response: The intent of the Program is to provide the benefits of Federal hydropower directly to individual tribes. Allocations listed in this notice will be made directly to the tribes. Any indirect Western hydroelectric benefits recognized in the calculation method were used by Western to determine a fair share for tribes at the time of allocation with no intent to create any commitment to transfer those benefits to the tribes. Any indirect Western hydroelectric benefits received by the tribes are contractual commitments between Western and the existing customers.

Comment: Western should consider the Wind River Reservation's Marathon and CamWest loads for allocation purposes.

Response: Western agrees that oil and gas resources on the reservation are tribally owned. However, as stated in Western's response to comments in the publication of the Procedures, "When submitting Native American load data as a non-utility, only load of tribal entities and their members will be considered for an allocation." Marathon and CamWest are neither tribal entities nor tribal members. Therefore, the loads submitted in the reservation's APD for these operations were not considered in determining allocations.

Comment: Total allocations to the Wind River Reservation from Salt Lake City Area Integrated Projects (SLCA/IP) and LAP fall short of the 65 percent allocation. LAP should make up any shortfall that occurs between the two projects. The reservation should receive no less of an allocation than if they were located solely within LAP.

Response: LAP took into consideration the amount of the proposed SLCA/IP allocation in determining the final LAP allocation. Western believes that the allocation ultimately provided to the reservation should be congruent with the allocations made to other tribes. Taking into account current serving utility benefit, proposed SLCA/IP allocation, and LAP allocation, Western made every effort possible to provide approximately 65 percent total benefit to the reservation.

Comment: The Kickapoo Tribe in Kansas is concerned about not having the future demand submitted in its APD considered in the allocation process. The tribe understood that proposed growth in the next 2 to 5 years would be considered in the process. The tribe would like Western to consider future growth in the allocation process.

Response: Western stated during the publication of the Procedures that limited projected load estimates would be considered. As Western moved through the process and received data, a determination of definable limitations had to be developed that would ensure fairness in the allocation process and make sure that the pool was used to promote widespread use of the resource among new preference entities. The results of the data evaluation led Western to decide that eligible future load submitted in the APD would be considered in the allocation process only if the load was for facilities that were completed, or substantially near completion, at the time of the APD due date.

Comment: Certain changes should be made to the General Power Contract Provisions that consider tribal sovereignty. Underlying reserve contracts should be offered to tribes to reserve the power allocation for each tribe and allow for changes to the method of implementation. Western's Integrated Resource Planning requirements should be useful but not burdensome to the tribes.

Response: Entering into contractual arrangements with the tribes is the next step in the resource pool allocation process. However, contractual arrangements will not begin until final allocations are completed. Contractual provisions will be consistent with Section IV of the Procedures.

Comment: Several comments were submitted concerning the source of LAP power for deliveries to allottees in Kansas. Additional comments expressed concern about delivery points, transmission access, transmission arrangements, and cost of delivery arrangements for the allottees in Kansas.

Response: Transmission issues will be appropriately addressed during the contractual phase of the LAP post-2004 resource pool process. Allottees are ultimately responsible for transmission and delivery arrangements, but Western will assist allottees to secure arrangements required to provide the benefits of LAP power to the allottees.

Comment: Kansas Electric Power Cooperative, Inc. (KEPCo) expressed concern about the financial impacts to KEPCo and its member cooperatives. Tribal allocations will reduce sales to KEPCo members. Additional concern was expressed that the lost sales to member cooperatives would make it more difficult to meet Rural Utilities Service commitments for loan repayment.

Response: Western will work with KEPCo, its member cooperatives, and tribes to minimize negative financial impacts of LAP allocations. Western will assist tribes to find the best method of receiving LAP allocations that will ensure equitable treatment for all affected parties. Western understands that the cooperation of KEPCo and its member cooperatives is essential to making allocations to tribes in northeastern Kansas a success. Western will work to satisfy the needs of the parties involved.

II. Amount of Pool Resources

Western will allocate up to 4 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2004, as firm power. Current hydrologic studies indicate that about 28 megawatts (MW) of capacity and 44 Gigawatthours (GWh) of energy will be available for the summer season. Approximately 24 MW of capacity and 35 GWh of energy will be available for the winter season. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long-term firm power electric service contracts.

III. Final Power Allocation

The following final power allocations are made in accordance with the Procedures. All of the allocations are subject to the execution of a contract in accordance with the Procedures.

Final allocations for Native American allottees are shown in this table.

Native American allottees	Final post-2004 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
Iowa Tribe of Kansas and Nebraska	1,986,640	1,722,043	1,232	1,180
Kickapoo Tribe in Kansas	2,760,701	2,323,337	1,713	1,592
Prairie Band Potawatomi Nation	5,536,170	4,458,846	3,435	3,056
Sac and Fox Nation of Missouri	2,690,754	2,289,904	1,669	1,570
Wind River Reservation (Eastern Shoshone and Northern Arapaho Tribes)	2,242,166	1,968,930	1,391	1,350

Native American allottees received LAP allocations, that when combined with existing and future Western hydropower benefits, total approximately 65 percent of their eligible load in both the summer and winter season based on the adjusted seasonal energy data submitted by each tribe. The allocation process considered the current Western hydroelectric benefits received through serving utilities and future Western hydroelectric benefits that will be received by serving utilities as a result of this allocation process.

Based on the applications submitted by the Northern Arapaho and the Eastern Shoshone tribes, Western could not differentiate between each tribe's load. The data from each tribe was used to arrive at a final allocation for the Wind River Reservation instead of each tribe. The final LAP allocation for the reservation considers, in addition to the hydroelectric benefit from Western through the reservation's serving utility, the proposed allocation from Western's SLCA/IP resource pool. The combination of all three factors, LAP, SLCA/IP proposed allocation, and current serving utility benefit, provides approximately a 65 percent benefit of Western hydroelectric power to the reservation. The reservation's LAP allocation was changed after considering the proposed SLCA/IP allocation published in the **Federal Register** (66 FR 31910, June 13, 2001). Because system plant factors are different for LAP and SLCA/IP, only SLCA/IP's proposed kilowatthours were used to determine the LAP allocation. The allocation change to the reservation had no effect on other tribal allocations.

Final allocations of power for non-Native American utility and nonutility allottees are listed here.

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Non-Native American utility and nonutility allottees	Final Post-2004 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
City of Chapman, KS	254,099	167,487	158	115
City of Elwood, KS	167,205	146,045	104	100
City of Eudora, KS	984,255	683,931	610	469
City of Fountain, CO	3,733,271	2,840,741	2,316	1,947
City of Garden City, KS	3,733,271	2,840,741	2,316	1,947
City of Goodland, KS	1,566,184	1,216,583	972	834
City of Horton, KS	434,979	313,926	270	215
City of Hugoton, KS	743,402	630,379	461	432
City of Johnson City, KS	440,463	336,772	273	231
City of Meade, KS	497,516	313,427	309	215
City of Minneapolis, KS	537,092	339,984	333	233
City of Troy, KS	192,401	150,826	119	103
Doniphan Electric Cooperative Association, Inc., KS	460,699	384,738	286	264
Fort Carson, CO	3,144,463	2,648,172	1,951	1,815
Kaw Valley Electric, KS	3,288,355	2,458,719	2,040	1,685
Midwest Energy, Inc., KS	3,733,271	2,840,741	2,316	1,947
Nemaha-Marshall Electric Cooperative Association, Inc., KS	1,129,867	973,099	701	667
Regional Transportation District, Denver, CO	327,209	287,994	203	198
Sunflower Electric Power Corporation, KS	3,733,271	2,840,741	2,316	1,947
Yellowstone National Park, WY	220,999	145,946	137	100

The allocation change to the Wind River Reservation caused a reduction in the total pool available to non-Native American utility and nonutility allottees. Therefore, the final allocation of power to non-Native American utility and nonutility allottees was changed accordingly.

The final allocations of power shown in the tables above are based on the LAP marketable resource available at this time. If the LAP marketable resource is reduced in the future, all allocations will be adjusted accordingly. Long-term firm energy with associated capacity made available for marketing because an allocation(s) has been reduced or withdrawn may be administratively reallocated by Western's Administrator without further public process.

IV. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

V. Review Under the National Environmental Policy Act

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to this process have been analyzed.

VI. Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866 (58 FR 51735). Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

VII. Determination Under the Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: December 18, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–618 Filed 1–9–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–5]

FY2002–2003 Great Lakes National Program Office Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of Proposals for GLNPO funding through the *"FY2002–2003 Great Lakes National Program Office Request for Proposals"* (RFP). The RFP solicits Proposals for assistance projects in the areas of Contaminated Sediments, Pollution Prevention and Reduction, Ecological (Habitat) Protection and Restoration, Invasive Species, Habitat Indicator Development, and Emerging or Strategic Issues.

DATES: The deadline for submission of Proposals is February 15, 2002.

Document Availability: The RFP is available on the Internet at *http://www.epa.gov/glnpo/fund/2002guid/*. It is also available from Lawrence Brail (312–886–7474/*brail.lawrence@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA-GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604 (312–886–4013/*russ.michael@epa.gov*).

SUPPLEMENTARY INFORMATION: USEPA's Great Lakes National Program Office is targeting a total of $2.9 million to award in the summer and fall of FY 2002 for Great Lakes projects pertaining to: Contaminated Sediments; Pollution Prevention and Reduction (Binational Toxics Strategy); Ecological (Habitat) Protection and Restoration; Invasive Species; Habitat Indicator Development; and Strategic or Emerging Issues. Assistance (through grants, cooperative agreements, and interagency agreements) is available pursuant to Clean Water Act section 104(b)(3) for activities in the Great Lakes Basin and in support of the Great Lakes Water Quality Agreement. State pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, and organizations are eligible to apply. Potential applicants can find the Request for Proposals, including evaluation criteria and the Proposal development and submittal program, on the Internet at http://www.epa.gov/glnpo/fund/2001guid/.

Dated: December 20, 2001.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 02–625 Filed 1–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34143C; FRL–6817–5]

Dimethoate; Receipt of Requests for Amendments and Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The companies that distribute technical dimethoate, O,O- dimethyl S-(*N*-methylcarbamoylmethyl) phosphorodithioate for formulation of pesticide products containing dimethoate have asked EPA to amend their manufacturing-use product registrations. In addition, the companies holding end-use registrations have asked EPA to cancel or amend their registrations for end-use products containing dimethoate to delete all uses with possible residential exposures. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary cancellation were submitted to EPA in April to December 2001. EPA intends to grant the requested cancellations and amendments to delete uses. EPA also plans to issue a cancellation order for the deleted uses and the canceled registrations at the close of the comment period for this announcement. Upon the issuance of the cancellation order, any distribution, sale, or use of dimethoate products listed in this Notice will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

DATES: Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided below and identified by docket control number OPP–34143C. Comments must be received on or before February 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34143C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8180; fax number: (703) 308–7042; e-mail address: dobak.pat@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stocks provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use dimethoate products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for dimethoate, go to the Home Page for the Office of Pesticide Programs or go directly http://www.epa.gov/pesticides/op/dimethoate.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34143C. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34143C in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection

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Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34143C. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses.

A. Background

In a letter dated August 3, 2001, Cheminova Agro F/S, the manufacturer of technical dimethoate, requested cancellation of all residential and certain agricultural uses from their dimethoate products. In addition, the other registrants holding pesticide registrations for manufacturing-use products containing dimethoate also requested label amendments in order to exclude these uses. The registrants holding pesticide registrations for end-use products containing dimethoate requested label amendments removing these uses from their products. Since several of these products were marketed solely for retail (residential) uses, several registrants requested that EPA cancel these registrations. EPA intends to grant the requested cancellations at the close of the comment period for this announcement. Pursuant to section 6(f)(1) of the FIFRA, EPA is announcing the Agency's receipt of these requests and EPA's intention to amend dimethoate registrations to delete all residential and certain agricultural uses which are identified in the following Table 1.

TABLE 1.—DIMETHOATE USES THAT ARE VOLUNTARILY CANCELLED OR DELETED BY THE REGISTRANTS

Residential and Public Area Uses	Agricultural Uses
Any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses). Any use in public or private building or structure (including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation, or in any other commercial, industrial, or institutional building), or on any articles or areas associated with such structures, including refuse areas, building contents, and landscaping and playgrounds.	Housefly treatments on farm buildings and structures, farm animal quarters, and manure piles.

The Agency recognizes that dimethoate use on outdoor commercial ornamental tree, shrub and annual plant production areas is being supported by the technical registrants. While use on ornamentals in other settings is no longer being supported, outdoor commercial ornamental production areas may remain on dimethoate labels.

B. Requests for Voluntary Cancellation of Manufacturing-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend the registrations of their pesticide end-use products containing diazinon to delete certain uses from certain products. The following Table 2 identifies the registrants and the product registrations that they wish to amend to remove the uses listed in Table 1.

TABLE 2.—MANUFACTURING-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration No.	Product
Cheminova Agro F/S	4787–7	Chemathoate Technical
BASF Corporation	7969–32	Perfekthion Manufactures' Technical
Gowan Company	10163–211	Gowan Dimethoate Technical
Drexel Chemical Company	19713–209	Drexel Dimethoate Technical
Platte Chemical Company Inc.	34704–788	Dimethoate Technical
Micro-Flo Company LLC	51036–279	Dimethoate Technical

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The aforementioned companies have requested to amend their registrations and have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses. EPA expects to grant the requested cancellations at the close of the comment period for this announcement.

C. Requests for Voluntary Cancellation of End-Use Products

In addition to requesting voluntary cancellation of manufacturing-use products, registrants holding registrations for dimethoate end-use products have requested voluntary cancellation of the following end-use product registrations containing dimethoate. The end-use products for which cancellation was requested are identified in Table 3.

TABLE 3.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration No.	Product
Bonide Products, Inc.	4–256	Bonide Systemic Insecticide
Value Garden Supply, LLC	70–113 192–134 5887–128	Kill-Ko Cygon 2–E Systemic Insecticide Drexol Cygon Systemic Insecticide Black Leaf Cygon 2–E
Rockland Corporation	572–224	Rockland Residual Fly Spray
Universal Cooperatives Inc.	1386–449	Cygon 2E Systemic Insecticide
AMVAC Chemical Corporation	5481–54	ALCO Cygon 2 E
Celaflor GMBH	69129–3	Celaflor Rose Patch

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. In this case, all of the registrants have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellations. EPA expects to grant the requested cancellations at the close of the comment period for this announcement.

D. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, Dragon Chemical Corporation, Value Gardens Supply, LLC, Uniroyal Chemical Company Inc., Southern Agricultural Insecticides Inc., Universal Cooperatives Inc., Helena Chemical Company, Voluntary Purchasing Group Inc., BASF Corporation, Agriliance, LLC, Platte Chemical Company, Inc., Haco, Inc., Micro-Flo Company LLC, and Cheminova Agro F/S have also submitted a request to amend their other end-use registrations of pesticide products containing dimethoate to delete the uses described in Table 1 from any product bearing registered for such use. The registrations for which amendments to delete uses were requested are identified in the following Table 4.

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TABLE 4.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration No.	Product
Dragon Chemical Corporation	16–160	Dragon Cygon 2–E Systemic Insecticide
Value Gardens Supply, LLC	769–948	Pratt Cygon 2–E Systemic Insecticide
Uniroyal Chemical Company Inc.	400–278	De-Fend E267 Dimethoate Systemic Insecticide
Southern Agricultural Insecticides, Inc.	829–251	SA–50 Brand Cygon 2–E Dimethoate Systemic Insecticide
Universal Cooperatives Inc.	1386–618 1386–625	Cygon 2–E Systemic Insecticide Dimethoate 267 EC Systemic Insecticide
Drexel Chemical Company	19717–232	Drexel Dimethoate 2.67
Helena Chemical Company	5905–493 5905–497	Dimethoate 4EC 5 lb. Dimethoate Systemic Insecticide
Voluntary Purchasing Group Inc.	7401–338	Hi-Yield Cygon
BASF Corporation	7969–38	Rebelate 2E Insecticide
Agriliance, LLC	9779–273	Dimate 4E
Platte Chemical Company, Inc.	34704–207 34704–489 34704–762 34704–762	Clean Crop Dimethoate 400 Dimethoate 2.67 EC Flygon 2–E Flygon 2–E
Haco, Inc.	2393–377	Cygon 2–E Systemic Insecticide
Micro-Flo Company LLC	51036–110 51036–198	Dimethoate 4E Cymate 267
Cheminova Agro F/S	67760–36 67760–44	Chemathoate 267 E.C. Systemic Insecticide Dimethoate 4W

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. These companies have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses. EPA expects to grant the requested amendments to delete the uses described in Table 1 at the close of the comment period for this announcement.

III. Existing Stocks

The registrants have requested voluntary cancellation of the dimethoate registrations identified in Tables 2 and 3, and submitted amendments to amend registrations identified in Table 4 to delete uses of dimethoate identified in Table 1. Pursuant to section 6(f) of FIFRA, EPA expects to grant these requests for voluntary cancellation and amendment upon the close of the comment period. EPA anticipates that the cancellation order would allow for 1–year use of existing stocks, defined in EPA's existing stocks policy (56 FR 29362, June 26, 1991) as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and/or released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks 1–year after the effective date of the amendment or cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

List of Subjects

Environmental protection, Pesticides and pests.

Dated:January 2, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–631 Filed 1–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34165C; FRL–6817–3]

Disulfoton and Naled Receipt of Requests for Voluntary Cancellation of Products and Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests from the registrants Bayer Corporation; Value Garden Supply, LLC; and Sergeant's Pet Products, Inc. to cancel some products and/or delete uses for products containing disulfoton, [O,O-diethyl S-(2-(ethylthio)ethyl) phosphorodithioate]; and naled, [1,2-dibromo-2,2-dichloro-ethyl dimethyl phosphate]. EPA received these requests for voluntary cancellation and use deletion in response to future reregistration eligibility decisions for these individual pesticides.

DATES: Comments on the requested registration cancellations and use deletions must be submitted to the address provided below and identified by docket control number OPP–34165C. Comments must be received on or before February 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided under **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, you must identify docket control number OPP–34165C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For information concerning disulfoton contact: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–2201; fax number: (703) 308–8041; e-mail address: scheltema.christina@epa.gov.

For information concerning naled contact: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stock provisions that will be set forth in the cancellation order the Agency intends to issue at the close of the comment period for this announcement, absent adverse comments.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute or use disulfoton or naled products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person or persons listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Obtain Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the **Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34165C. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Record Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and When Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify a docket control number OPP–34165C in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34165C. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of the information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

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4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses.

A. Background

EPA is publishing a single notice in response to registrants' requests to cancel products and/or delete product uses for disulfoton and naled from their labels. (See the table below for specific information regarding the cancellation or deletion requests).

Registration Eligibility Decision (RED) documents summarize the findings of EPA's reregistration process for individual chemical cases, and reflect the Agency's decisions on risk assessment and risk management for uses of individual pesticides. Naled and disulfoton belong to a group of pesticides known collectively as organophosphates (OPs). EPA will issue Interim Reregistration Eligibility Decisions assessing the risks of exposure from individual organophosphates in the near future. EPA will also consider the cumulative risks from all organophosphates, as they all share a common mechanism of toxicity affecting the nervous system by inhibiting *cholinesterase*.

Disulfoton is an insecticide first registered in 1961, to control a variety of pests affecting domestic indoor and outdoor potted plants and ornamentals, including herbaceous plants, flowers, woody shrubs and trees. Naled is an insecticide and acaricide first registered in the United States in 1959, primarily used to control mosquitos (70% of its use). As part of the reregistration process, Value Garden Supply, LLC and Bayer Corporation have elected to voluntarily cancel certain products and/or delete product uses from their product labels rather than develop the data necessary to support reregistration. Sergeant's Pet Products has requested voluntary cancellation of certain end-use product registrations.

EPA will consider any comments received within 30 days of publication of this notice in the **Federal Register** prior to cancelling affected uses.

B. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use and Technical Product Labels

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend some of their technical and/or end-use registrations of pesticide products containing disulfoton and naled, deleting the listed product(s) bearing such use. The registrations, for which amendments to delete products and/or uses were requested, are identified in the following table:

NOTICE FOR VOLUNTARY CANCELLATION OF REGISTERED USES

Chemical	PC Code	Company Address	Nature of Action	Products Affected (EPA Reg. #)	Uses Deleted
Disulfoton	032501	Bayer Corporation 8400 Hawthorn Road P.O. Box 4913 Kansas City, MO 64120–0013	Use deletions	Di-Syston Technical (3125–183) Di-Syston 68% Concentrate (3125–158) Di-Syston 15% (3125–172) Di-Syston 8 (3125–307)	Dry beans, peas and lentils, poplars grown for pulpwood, sorghum, soybeans, tobacco, triticale
Disulfoton	032501	Value Garden Supply, LLC Rt. 2 Box 956 New Castle, VA 24127	Product cancellations	Rigo Insyst-D (70–236) Pratt Noculate Systemic Insecticide Granule (769–850)	
Naled	034401	Sergeant's Pet Products, Inc. P.O. Box 18993 Memphis, TN 3818	Product cancellations	Sergeant's Sentry IV Flea and Tick Collar for Dogs (2517–43) Sergeant's Sentry IV for Cats (2517–44) Sergeant's Sentry V Flea and Tick Collar for Dogs (2517–45) Sergeant's Sentry V Tick Collar for Cats (2517–46)	

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses or request a voluntary cancellation of a product registration. The aforementioned companies have requested to amend their registrations and that EPA waive any applicable 180–day comment period that applies to cancellation and/or deletion of minor agricultural uses. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses or cancel product registrations. EPA intends to grant the requested amendments to delete uses or cancel product registrations at the close of the comment period for this announcement.

III. Proposed Existing Stocks Provisions

The registrants have requested voluntary cancellation for the disulfoton and naled registrations identified in the table. EPA intends to grant the requests for voluntary cancellations and use deletions. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently used in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. For disulfoton products, EPA intends to permit registrants of these products to distribute and sell existing stocks of cancelled products or products bearing deleted uses for 12 months from the effective date of cancellation. In the case of naled, the registrant has requested the effective date of cancellation to be March 1, 2002, as well as a provision for the sale or distribution of existing stocks until December 31, 2002. EPA intends to grant this request. The Agency also intends to permit all persons other than the registrant to sell, distribute, or use disulfoton or naled products until supplies are exhausted. Any distribution, sale, or use of existing stocks that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

List of Subjects

Environmental protection, disulfoton, naled, use terminations/deletions, administrative practice and procedure, agricultural commodities, pesticides and pests.

Dated: January 2, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–629 Filed 1–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30519; FRL–6816–3]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30519, must be received on or before February 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30519 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; and e-mail address: benmhend.driss@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30519. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30519 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30519. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File symbol number: 72994-E. Applicant: Gard Products, Inc., 250 Williams Road, Carpentersville, IL 60110. Product name: Silgard. Product type: Plant growth regulator. Active ingredient: Contains 0.35% of the new active ingredient sodium silver thiosulfate. Proposed classification/Use: For use as protector from ethylene effects on cut flowers.

2. File symbol number: 72994-R. Applicant: Same as above. Product name: Silgard Technical. Product type: Plant growth regulator. Active ingredient: Contains 0.35% of the new active ingredient sodium silver thiosulfate. Proposed classification/Use: For manufacturing use of end use products to be used to inhibit the effects of ethylene on cut flowers.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 26,2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–630 Filed 1–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7127–7]

Maryland State Prohibition on Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region III has affirmatively determined, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of Herring Bay, Anne Arundel County, and the northern Coastal Bays (Ocean City Inlet, Ocean City commercial fish harbor (Swordfish Basin), Isle of Wight Bay and Assawoman Bay), Worcester County, Maryland. Maryland will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Herring Bay and in the northern Coastal Bays.

FOR FURTHER INFORMATION CONTACT: Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814–2758. Fax: (215) 814–2782. E-mail: *ambrogio.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: These petitions were made jointly by the Maryland Department of the Environment (MDE) and the Maryland Department of Natural Resources (MDNR). Upon publication of this affirmative determination, Maryland will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Herring Bay and in the northern Coastal Bays (Ocean City Inlet, Ocean City commercial fish harbor (Swordfish Basin), Isle of Wight Bay and Assawoman Bay) in accordance with

section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on October 17, 2001 (66 FR 52763, Oct. 17, 2001). Comments on the tentative determination were accepted during the 30-day comment period which closed on November 16, 2001. No comments were received. The remainder of this Notice summarizes the location of the no discharge zone, the available pumpout facilities and related information.

Herring Bay

The Herring Bay no discharge zone (NDZ) is a 3,145-acre area of water located along the western shore of the Chesapeake Bay in southern Anne Arundel County. The area includes Rockhold, Tracy, and Parker Creeks on the north and Rose Haven Harbor on the south. The NDZ includes tidal waters west of the following: beginning on Holland Point at or near 38°43′34.9″N latitude/76°31′37.3″W longitude, then running in a northerly direction to Crab Pile A at or near 38°46′33.0″N latitude/76°32′10.1″ W longitude, then running to a point on the north shore of Parkers Creek at or near 38°46′39.1″N latitude/76°32′10.8″W longitude.

The Herring Bay watershed is approximately 25 square miles. Although traditionally a farming area, several residential communities are located within the watershed including some that are located along the shoreline. Herring Bay is also a very popular recreational boating area and is home to 16 marinas containing 2,090 slips.

Long-term pollution problems that have impacted Herring Bay include failing septic systems, discharge from a private sewage treatment plant, and runoff from farm and other lands. With the number of marinas in the area, recreational boating is also a concern. The potential for bacterial contamination from all sources of pollution, including boat sewage, has resulted in the on-going closure of the oyster beds, however, recent water quality data does not show consistent high levels of fecal coliform in the area.

Currently, there are no public or private sewage treatment plants that impact Herring Bay. Although the Broadwater Wastewater Treatment Plant is north of Herring Bay and the Chesapeake Beach Wastewater Treatment Plant is south of Herring Bay, neither plant's discharges affect Herring Bay. Until very recently, there had, however, been a private treatment plant at Rose Haven which discharged into Herring Bay. That plant is now closed and the sewage from Rose Haven currently goes to the Chesapeake Beach Wastewater Treatment Plant.

Information submitted in the application states that there are a total of nine pumpout facilities currently in Herring Bay, of which eight provide portable toilet disposal through the use of a wand attachment to the pumpout hose. Eight of the nine pumpout facilities currently available to the general public are located at six marinas. Each of the six marinas is a privately owned facility that used Clean Vessel Act (75%) and state funds (25%) to install their pumpouts. Each facility that is open to the general public is limited to charging no more than $5.00 per pumpout. One of the nine pumpouts is located at a 61-slip marina and is only available to slipholders. To provide a conservative estimate of pumpout availability, this private pumpout was not included in the application's calculations. Also not included were two additional marinas that have applied for grant funding to install pumpouts which should become operational during the 2001 boating season. For the purposes of this application, therefore, there are a total of eight pumpouts in Herring Bay, of which seven provide portable toilet disposal. Maryland's boating season is generally considered to be from April 15 to November 15, with very little recreational boating activity occurring in the winter. For the few boats in Herring Bay that may need to be pumped out in the off-season, both of Herrington Harbour North's pumpouts and one of Herrington Harbour South's pumpouts are open throughout the year. The other pumpouts are open during the boating season only. For those marinas with wand attachments (all facilities except Sherman's), portable toilets may be emptied whenever the pumpouts are open. Details of these facilities' location, availability and hours of operation are as follows:

Gates Marine Services is an 88-slip facility located on Rockhold Creek north of the Deale Road bridge. The marina has a trailer mounted pumpout installation located at the travel lift. A wand attachment is used to empty portable toilets. The marina's sewage disposal hours of operation are 8:00 am–4:30 pm Monday through Friday, 8:00 am–4 pm Saturday and Sunday.

Harbor Cove Marina is a 78-slip facility located on Rockhold Creek north of the Deale Road bridge. The marina has a fixed pumpout installation which is located at the gas dock ("C" dock). A wand attachment is used to empty portable toilets. The marina's sewage disposal hours of operation are 8:00 am–6:00 pm seven days per week.

Herrington Harbour North is a 670-slip marina located at the junction of Rockhold Creek and Tracy Creek in northern Herring Bay. The marina has a fixed pumpout installation which is located on the T head of "D" Dock and it also has a portable pumpout that is used for pumpouts throughout the marina. Both pumpouts utilize wand attachments to empty portable toilets. The marina's sewage disposal hours of operation are 9:00 am–5:00 pm seven days per week.

Herrington Harbour South is a 650-slip marina located on Rose Haven Harbor in southern Herring Bay. The marina has a fixed pumpout installation which is located on the fuel dock ("D" Dock) and it also has a pumpout boat that travels throughout the marina pumping out both slip holders and transient vessels. Both pumpouts utilize wand attachments to empty portable toilets. The marina's sewage disposal hours of operation are 24 hours daily (self-serve) seven days per week, staffed 8:00 am–6:00 pm seven days per week between May 31 and September 7.

Sherman's Marina is a 26-slip facility located on Rockhold Creek north of the Deale Road bridge. The marina has a fixed pumpout installation which is located on the "B" dock. The marina's sewage disposal hours of operation are during daylight hours seven days per week.

Shipwright Harbor is a 250-slip facility located at the mouth of Rockhold Creek in northern Herring Bay. The marina has a fixed pumpout installation which is located near the travel lift. A wand attachment is used to empty portable toilets. The marina's sewage disposal hours of operation are 9:00 am–5:00 pm seven days per week.

Under Maryland law (Natural Resources Article § 8–707), each grant funded pumpout project must be approved by MDE. The MDE, in turn, consults with the local health/permitting authority to ensure that the proposed pumpout and sewage disposal method is in compliance with all applicable Federal and state laws. All six of the marinas in Herring Bay that have pumpouts open to the public, used grant funding to obtain their pumpouts (a total of eight pumpout facilities). All of these projects were approved by MDE upon the recommendation of the Anne Arundel County Department of Utilities. All six marinas discharge to either the

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Chesapeake Beach Wastewater Treatment Plant, or to the Broadwater Wastewater Treatment Plant via either a direct connection, or by a licensed septage hauler.

The MDNR maintains records on the number and size of vessels registered and documented in Maryland's waters. In an attempt to estimate transient vessels in the area, a representative of the two largest marinas in Herring Bay was contacted and asked to estimate how many transient vessels, by size, are typically in Herring Bay on a typical high-volume day during the boating season. Included in the number of registered vessels are charter boats generally used for fishing. From this information, the vessel population of Herring Bay based on length is 638 vessels less than16 feet, 906 vessels between 16 and 26 feet, 1,111 vessels between 26 and 40 feet, and 158 vessels over 40 feet. Based on the number and size of boats, and using various methods to estimate the number of on-board holding tanks and portable toilets, it was determined that Herring Bay needs a total of five pumpouts and one dump station. As described above, Herring Bay is currently served by eight operational pumpouts, of which seven provide portable toilet disposal. Additionally, two other marinas (Paradise Marina and Rockhold Creek Marina) are actively participating in the pumpout grant program and should complete their installations by the start of the next boating season in early 2002.

Northern Coastal Bays

The proposed northern Coastal Bays no discharge zone (NDZ) was initially described to include all tidal waters north of the Ocean City Inlet, including Isle of Wight Bay and Assawoman Bay, defined by the points 38°19′23.83″N latitude/75°5′14.36″W longitude to 38°19′35.77″N la! tude/75°06′27.68″W longitude, to the Delaware state line. Based upon a reevaluation of the spacial coordinates by MDNR, this NDZ has been slightly expanded and now includes the waters of the Ocean City Inlet, Ocean City commercial fish harbor (Swordfish Basin), Isle of Wight Bay and Assawoman Bay, defined as follows: Ocean City Inlet—west of a line beginning at a point at or near the east end of the north Ocean City Inlet jetty, defined by 38°19′27.0″N latitude/75° 05′5.5″W longitude; then running approximately 248° (true) to a point at or near the east end of the south Ocean City Inlet jetty, defined by 38°19′20.7″N latitude/75°05′24.9″W longitude; and, Sinepuxent Bay—north of a line beginning at a point at or near the shore of the southeast entrance of the Ocean City commercial fish harbor (Swordfish Basin), defined by 38°19′37.0″N latitude/75°06′ 6.0″W longitude; then running approximately 110° (true) to a point at or near the shore at the northwest tip of Assateague Island, defined by 38°19′32.0″N latitude/ 75°05′49.0″W longitude; and, Maryland-Delaware Line—south of the Maryland-Delaware line beginning at a point at or near the east side of Assawoman Bay, defined by 38°27′4.5″N latitude/ 75°04′11.2″W longitude; then running approximately 270° (true) to a point at or near the west side of Assawoman Bay, defined by 38°27′4.4″N latitude/ 75°05′9.3″W longitude.

The Maryland Coastal Bays are comprised of five large tidal bays (Assawoman, Isle of Wight, Sinepuxent, Newport, and Chincoteague) that are bounded by two barrier islands (Fenwick and Assateague). The drainage basin feeding into the watershed is 117,939 acres and is characterized by poor flushing ability due to two narrow inlets. The land surrounding the northern Coastal Bays (Ocean City Inlet, Ocean City commercial fish harbor (Swordfish Basin), Isle of Wight Bay and Assawoman Bay) is primarily agriculture, forested or marsh but also includes the largest percentage of developed land surrounding all five Coastal Bays (Ocean Pines and Ocean City). The population of Worcester County is expected to increase significantly over the next 10 years and reach 50,000 before the year 2010. Currently, Worcester County is the second fastest growing county in the state.

In 1996 the MDE listed the northern Coastal Bays (specifically Assawoman and Isle of Wight) on the Clean Water Act Section 303(d) impaired waters list as a priority area for excessive nutrients, low dissolved oxygen, and elevated fecal coliform counts. MDE is currently in the process of having a Total Maximum Daily Load (TMDL) model calculated for the above listed substances. The St. Martin's River, a large freshwater tributary leading to the Isle of Wight Bay, along with Herring and Turville Creeks are currently listed as "restricted for shellfish harvest" by MDE as well.

There is one wastewater treatment plant, located within the residential community of Ocean Pines, that discharges treated effluent into the Isle of Wight Bay. The Ocean City Wastewater Treatment Plant in Ocean City discharges treated effluent several miles offshore into the Atlantic Ocean.

Information submitted in the application states that there are a total of nine pumpout facilities currently in the northern Coastal Bays, of which five provide portable toilet disposal through the use of a wand attachment to the pumpout hose or at dump stations. Eight of the nine pumpout facilities that are available to the general public, as well as all facilities that provide portable toilet disposal are located at six marinas. Each of the six marinas is a privately owned facility; four used Clean Vessel Act (75%) and state funds (25%) to install their pumpouts. These four marinas are limited to charging no more than $5.00 per pumpout. One of the nine pumpouts is located at a marina that is only available to slipholders. To provide a conservative estimate of pumpout availability, this private pumpout was not included in the application's calculations. Also not included was one additional marina that applied for grant funding to install a pumpout which should become operational during the 2002 boating season. For the purposes of this application, therefore, there are a total of eight pumpouts in the northern Coastal Bays, of which five provide portable toilet disposal via a wand attachment or a dump station. Maryland's boating season is generally considered to be from April 15 to November 15, with very little recreational boating activity occurring in the winter. For the few boats in the northern Coastal Bays that may need to be pumped out in the off-season, Advanced Marina's pumpout is open throughout the year. The other pumpouts are generally open during the boating season only. Details of these facilities' location, availability and hours of operation are as follows:

Advanced Marina is a 60-slip marina located at 66th St., Ocean City on Isle of Wight Bay. The marina has a portable pumpout unit and potty wand attachment for emptying portable toilets. The marina's sewage disposal hours of operation are 8:00am–8:00pm seven days per week, all year.

Harbour Island Marina is a 110-slip marina located at 14th St., Ocean City on Isle of Wight Bay. The marina has one fixed pumpout unit at the entrance to the marina and one potty wand attachment for emptying portable toilets. The marina's sewage disposal hours of operation are 6:00am–8:00pm seven days per week, from May through September.

Ocean City Fishing Center is a 240-slip marina located near the Route 50 bridge in West Ocean City on the Isle of Wight Bay. The marina has one fixed pumpout unit located next to the marina office. The marina's sewage disposal hours of operation are 5:00am–8:00pm seven days per week, from May through September.

Ocean Pines Marina is an 86-slip marina located near the Route 90 bridge in Ocean Pines on the St. Martins River. The marina has one fixed pumpout located at the end of pier A. The marina's sewage disposal hours of operation are 8:00am–6:00pm Monday through Friday, 7:00am–7:00pm Saturday and 7:00am–6:00pm Sunday, from May through October.

Sunset Marina is a 204-slip marina located at the Ocean City Inlet in West Ocean City on Isle of Wight Bay. The marina has one fixed pumpout with two remote stands, each at the end of successive piers, one portable unit with potty wand attachment for emptying portable toilets, and one dump station on the bulkhead. The marina's sewage disposal hours of operation are 9:00am–5:00pm seven days per week, from May through September.

Townes of Nantucket II is a 92-slip marina located at Nantucket Point near the Delaware state line in Ocean City on Assawoman Bay. The marina has one fixed pumpout and one dump station for portable toilets, both located at the "A" bulkhead. The marina's sewage disposal hours of operation are 24 hours a day, seven days per week, from April through October.

Marinas participating in the Maryland Pumpout Program are required by law (Natural Resources Article § 8–707) to have an approved method of sewage disposal as determined by MDE and local (county or municipal) health inspectors. Four of the six marinas participated in the Maryland Pumpout Program, and therefore are in compliance with state and Federal laws. Information about the removal of pumpout waste from the other two marinas was obtained through marina surveys. Of the six marinas described above, five discharge to the Ocean City Wastewater Treatment Plant; the remaining marina discharges to the Ocean Pines Wastewater Treatment Plant.

The MDNR maintains records of all documented and registered boats in the state. In order to estimate the number of transient boaters, several methods were employed. First a marina survey was conducted where marina owners were asked to estimate the percentage of transient boaters that utilize their facility and the northern Coastal Bays. Second, information collected from a 1999 aerial survey of the northern Coastal Bays, conducted by the MDNR Fisheries Department, was used to determine types and sizes of boats using the waters on a peak day in-season. Finally, a land survey was conducted where MDNR employees surveyed Coastal Bay vessel usage on a typical day during the season. All of these methods were employed to come up with a best estimate for transient usage. It was estimated, using the above techniques, that Ocean City/northern Coastal Bays have approximately 10,000 wet slips. It was also assumed that the transient boat population mirrored the resident population as far as relative percent of the size and numbers of boats. Based on this information the vessel population of the northern Coastal Bays based on length is 2,800 vessels less than 16 feet, 6,600 vessels between 16 and 26 feet, 600 vessels between 26 and 40 feet, and 100 vessels over 40 feet. Based on the number and size of boats, and using various methods to estimate the number of holding tanks and portable toilets, it was determined that the northern Coastal Bays need three pumpouts and five dump stations. There are currently eight operating pumpouts and one proposed pumpout in the northern Coastal Bays along with two dump stations and three pumpouts equipped to empty portable toilets making a total of five portable toilet waste facilities. There is also one proposed pumpout that would accept portable toilets by the start of the next boating season in early 2002.

Finding

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Herring Bay, Anne Arundel County, Maryland, and the northern Coastal Bays (Ocean City Inlet, Ocean City commercial fish harbor (Swordfish Basin), Isle of Wight Bay and Assawoman Bay), Worcester County, Maryland. This final determination will result in a Maryland state prohibition of any sewage discharges, whether treated or not, from vessels into Herring Bay and the northern Coastal Bays.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–627 Filed 1–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, January 15, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, January 17, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Revised Draft Advisory Opinion 2001–17: DNC Services Corporation/ Democratic National Committee by counsel, Neil Reiff.

Draft Advisory Opinion 2001–18: BellSouth Corporation by counsel, Jan Witold Baran.

Draft Advisory Opinion 2001–19: Oakland Democratic Campaign Committee by Gary Kohut, Chair.

Administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–776 Filed 1–8–02; 2:32 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Policy on Use of Potassium Iodide (KI)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of revised Federal policy.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) has revised the 1985 Federal policy regarding the use of potassium iodide (KI) as a thyroidal blocking agent by emergency workers, institutionalized persons and the general public in the vicinity of nuclear power plants. This policy is for use by State [1] and local

[1] Consistent with FEMA initiative 4.0–4.4, Include Native American Tribal Nations in the REP

Continued

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agencies responsible for radiological emergency planning and preparedness in the unlikely event of a major radiological emergency at a commercial nuclear power plant.

The Federal position is that KI should be stockpiled and distributed to emergency workers and institutionalized persons for radiological emergencies at a nuclear power plant and its use should be considered for the general public within the 10-mile emergency planning zone (EPZ) of a nuclear power plant. However, the decision on whether to use KI for the general public is left to the discretion of States and, in some cases, local governments.

EFFECTIVE DATE: The modifications to this policy are effective January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Russell Salter, Chair, Federal Radiological Preparedness Coordinating Committee; (202) 646–3030; *russ.salter@fema.gov*.

SUPPLEMENTARY INFORMATION:

Background

This revised Federal policy on the use of potassium iodide as a thyroidal blocking agent for the general public in the vicinity of nuclear power plant 10-mile emergency planning zones is part of a Federal interagency effort coordinated by FEMA for the FRPCC. FEMA chairs the FRPCC and assumes the responsibility for this publication. The FRPCC is an interagency organization, with membership from 17 Federal agencies, established to coordinate all Federal responsibilities for assisting State and local governments in emergency planning and preparedness for peacetime nuclear emergencies.

The issue is addressed in terms of two components of the population that might require or desire potassium iodide use: (a) Emergency workers and institutionalized individuals, and (b) general population. With respect to emergency workers and institutionalized individuals, the Nuclear Regulatory Commission (NRC) and FEMA have issued guidance to State and local authorities, as well as to licensees of operating commercial nuclear power plants, in NUREG–0654/FEMA–REP–1, Rev.1. The NUREG and FEMA guidance recommends the stockpiling and distribution of KI to emergency workers and to institutionalized individuals for thyroidal blocking during emergencies.

Preparedness Process, references to State governments include Tribal governments.

The guidance provides information regarding protective actions to be taken in the event of an incident at a commercial nuclear power plant. NUREG 0654 and the 1985 FRPCC KI policy recommend thyroidal blocking for emergency workers and institutionalized individuals because they are thought to be more likely than other members of the public to be exposed to the radioiodine in an airborne radioactive release.

The decision for using KI as a protective measure for the general public is left to the discretion of States, or in some cases, local governments, since these entities are ultimately responsible for the protection of their citizens. The policy guidance in this **Federal Register** notice is intended for State and local governments that, within the limits of their authority, should consider these recommendations in the review of their emergency plans and in determining appropriate actions to protect the general public. In making a decision whether to stockpile KI, the States should be aware that the Federal government believes that the use of KI is a reasonable and prudent measure as a supplemental protective action for the public.

Revision of the policy to include members of the public reflects lessons learned from the Chernobyl Nuclear Power Plant accident of 1986, both about the consequences of an accident and about the safety and efficacy of KI. The Chernobyl accident demonstrated that thyroid cancer can indeed be a major result of a large reactor accident. Based on the experiences from Chernobyl, young children are at greatest risk of thyroid cancer from radioactive iodine exposure. Moreover, although the Food and Drug Administration (FDA) declared KI "safe and effective" as long ago as 1978, the drug had never been deployed on a large scale until Chernobyl. The experience of Polish health authorities during the accident has provided confirmation that large-scale deployment of KI is safe.[2] The Chernobyl experiences also led to wide-scale changes in international practice, specifically 1989 World Health Organization recommendations (updated in 1995 and 1999) and 1996 and 1997 International Atomic Energy Agency standards and guidance, which have led to the use of KI as a supplementary protective measure in much of Europe, as well as in Canada and Japan.

[2] Nauman, J., and Wolff, J., Iodide Prophylaxis in Poland After the Chernobyl Reactor Accident: Benefits and Risks, American Journal of Medicine, Vol. 94, p. 524, May 1993.

The NRC published changes to its emergency planning regulations at 66 FR 5441–5443, January 19, 2001. For States within the 10-mile planning zone of a nuclear power plant(s), the NRC believes that the use of KI is a reasonable and prudent measure as a supplement to sheltering and evacuation and in response to specific local conditions. The NRC requires consideration in the formulation of emergency plans as to whether to include the use of KI as a supplemental protective measure.

The FDA has evaluated the medical and radiological risks of administering KI for emergency conditions, has concluded that it is safe and effective, and has approved over-the-counter sale of the drug for this purpose. FDA has concluded that "* * * the effectiveness of KI as a specific blocker of thyroid radioiodine uptake is well-established as are the doses necessary for blockage. As such, it is reasonable to conclude that KI will likewise be effective in reducing the risk of thyroid cancer in individuals or populations at risk for inhalation or ingestion of radioiodines." Since the FDA has authorized the nonprescription sale of KI, it may be available to individuals who, based on their own personal analysis, choose to have the drug immediately available. The FDA guidance is the definitive Federal guidance on medical aspects of KI prophylaxis.

Considerations

In making a decision whether to stockpile KI, States should be aware that the Federal government believes that the use of KI is a reasonable and prudent measure as a supplemental protective action for the public.

While there may be logistical difficulties in providing KI to the general public, any distribution scheme should take care to ensure that KI distribution does not impede or delay orderly evacuation. There also may be a few medical side effects in pre-distributing the drug to potentially affected individuals or in distributing the drug to the general public in a radiological emergency. Although the post-Chernobyl data from Poland revealed few serious medical side effects associated with this drug, this possibility cannot be discounted, especially in certain groups of people. For example, people who are allergic to iodine should not take KI.

Other considerations to be evaluated by the State and local authorities in deciding whether to institute a program for the use of KI by the general public include: (a) Whether KI should be distributed to the population before an accident occurs or as soon as possible after an accident occurs; (b) whether the risks of exposure to radioactivity will be lower if the evacuation of the general population is initiated—with or without the use of KI—or if the general population is sheltered and the administration of KI initiated; (c) how KI will be distributed during the emergency; (d) if KI is pre-distributed, what assumptions should be made about its actual availability and use in the event of an incident; (e) what medical assistance will be available for the individuals who may have some adverse reaction to KI; (f) how medical authorities will advise the population to take KI and under what circumstances this advice will be given, i.e., methods for public education, information and instruction; and (g) how the authorities will provide KI to transient populations.

In addition, there are some site-specific considerations to evaluate. Any decision by State and local authorities to use KI following a specific emergency should be based on the site environment and conditions for the specific operating commercial nuclear power plant and would include detailed plans for distribution, administration and medical assistance.

Revised Policy

In most cases, evacuation and in-place sheltering are considered adequate and effective protective actions for the general public in the event of a radiological emergency at a commercial nuclear facility. However, the inclusion of KI as a supplemental protective measure is beneficial in certain circumstances. It should be noted that the timely use of KI effectively reduces the radiation exposure of only the thyroid gland. While this is an important contribution to the health and safety of the individual, it is not as effective as measures that protect the total body of the individual from radioactivity. Both in-place sheltering and precautionary evacuations can reduce the exposure to the thyroid and total body. The use of KI for thyroidal blocking is not an effective means by itself for protecting individuals from the radioactivity in an airborne release resulting from a nuclear power plant accident and, therefore, should only be considered in conjunction with sheltering or evacuation, or a combination thereof.

While the use of KI can clearly provide additional protection in certain circumstances, the assessment of the effectiveness of KI and other protective actions and their implementation indicates that the decision to use KI (or other protective actions) should be made by the States and, when appropriate, local authorities on a site-specific basis. Thus, the decision on use of KI by the general public during an actual emergency is the responsibility of these authorities.

In summary, the Federal position is that KI should be stockpiled and distributed to emergency workers and institutionalized persons for radiological emergencies at a nuclear power plant, and its use should be considered for the general public within the 10-mile EPZ of a nuclear power plant. However, the decision on whether to use KI for the general public is left to the discretion of States and, in some cases, local governments.

This revised policy should not be taken to imply that the present generation of U.S. nuclear power plants is any less safe than previously thought. On the contrary, present indications are that nuclear power plant safety has steadily improved.

References

The following references are intended to assist State and local authorities in decisions related to use of KI:

1. Nuclear Regulatory Commission, final rule, Consideration of Potassium Iodide in Emergency Plans, 66 FR 5427, January 19, 2001.

2. World Health Organization, Guidelines for Iodine Prophylaxis Following Nuclear Accidents, 1999. Http://www.who.int/-environmental information/Information_resources/documents/Iodine/guide.pdf.

3. National Council on Radiation Protection and Measures (NCRP) Protection of the Thyroid Gland in the Event of Releases of Radioiodine. NCRP Report No. 55, August 1, 1977.

4. Food and Drug Administration (Health and Human Services), Potassium Iodide as a Thyroid-Blocking Agent in a Radiation Emergency, 43 FR 58798, December 15, 1978.

5. Food and Drug Administration, Notice, Guidance on Use of Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies; Availability, 66 FR 64046, December 11, 2001.

6. Report of the President's Commission on the Accident at Three Mile Island, National Technical Information Service, Springfield, VA 22161.

7. Federal Emergency Management Agency, Federal Policy on Distribution of Potassium Iodide Around Nuclear Power Sites for Use as a Thyroidal Blocking Agent, 50 FR 30258, July 24, 1985.

8. Nauman, J., and Wolff, J., Iodide Prophylaxis in Poland After the Chernobyl Reactor Accident: Benefits and Risks, American Journal of Medicine, Vol. 94, p. 524, May 1993.

9. International Atomic Energy Agency, International Basic Safety Standards for Protection Against Ionizing Radiation and for Safety of Radiation Sources. Safety Series No. 115, 1996.

Dated: January 2, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–637 Filed 1–8–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with Century Bancshares, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire 100 percent of the voting shares of Century Bank, Eden Prairie, Minnesota.

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2. Illini Corporation, Springfield, Illinois; to acquire 100 percent of the voting shares of Illinois Community Bancorp, Inc., Effingham, Illinois, and thereby indirectly acquire Illinois Community Bank, Effingham, Illinois.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Western Sierra Bancorp, Cameron Park, California; to acquire 100 percent of the voting shares of Central California Bank, Sonora, California.

Board of Governors of the Federal Reserve System, January 4, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–567 Filed 1–9–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EST), January 22, 2002.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the December 10, 2001, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit report: Executive Summary of the Fiduciary Oversight Program for the Thrift Savings Plan as of September 30, 2001.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 8, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–793 Filed 1–8–02; 3:23 pm]

BILLING CODE 6760–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Harry S. Truman Scholarship 2002 Competition

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice of closing for nominations from eligible institutions of higher education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Pub. L 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 2002 Truman Scholarships. Procedures are prescribed at 45 CFR 1801.

In order to be assured consideration, all documentation in support of nominations must be received by the Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006 no later than January 28, 2002 from participating institutions.

Dated: January 3, 2002.

Louis H. Blair,

Executive Secretary.

[FR Doc. 02–593 Filed 1–9–02; 8:45 am]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry; Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4 p.m., January 23, 2002.

Place: WestCoast Tri-Cities Hotel, 1101 North Columbia Center Blvd., Kennewick, WA. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, and agency updates.

Matters To Be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include presentations and discussions on each tribal members respective environmental health activities, and agency updates. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Alan Crawford, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–54 Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office.

[FR Doc. 02–609 Filed 1–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the President Advisory Council on HIV/AIDS

January 3, 2002.

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS (Council) scheduled for January 28–29, 2001, at the White House Conference Center at 726 Jackson Place NW. The Council will meet both days from 8:30 a.m. until 5 p.m. The meetings will be open to the public, however space is limited. Possible attendees are strongly encouraged to pre-register by calling Shellie Abramson at (202) 260–8863.

Patricia Ware, Executive Director, Presidential Advisory Council on HIV and AIDS, 200 Independence Avenue, SW., Room 733–E, Washington, DC, (Voice-mail: (202) 205–2982, Fax: (202) 690–7560) will furnish the meeting agenda and roster of Council members upon request. Once a draft agenda has been finalized, it may also be accessed through the Council's website: *www.pacha.gov*. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mike Starkweather at (301) 628–3141 no later than January 23, 2001.

Patricia Ware,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 02–641 Filed 1–9–02; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Chapter AC "Office of Public Health and Science" as last amended at 66 FR 40288, dated August 2, 2001; is being amended to rename the Office of International and Refugee Health (ACH) and to incorporate the functions for international affairs presently in the Immediate Office of the Secretary, including the Exchange Visitor Waiver Review Board (45 CFR part 50), into the renamed Office of Global Health Affairs. The changes are as follows:

I. Under Part A Chapter AC, "Office of Public Health and Science," make the following changes:

A. AC.10 Organization. Rename the "Office of International and Refugee Health" (ACH) as the "Office of Global Health Affairs" (ACH).

B. Under Paragraph AC.20 Functions, make the following changes:

1. Under Paragraph B, delete sentence (9) in its entirety and replace with the following: (9) Provides advice on international and refugee health policy and coordinates international health related activities and provides advice on a broad range of health activities that may be intra or interdepartmental in scope; coordinates and manages Departmental liaison with bilateral and multilateral health agencies; and on behalf of the Secretary, chairs and provides staff support for the Exchange Visitor Waiver Review Board;

2. Delete paragraph G. "Office of International and Refugee Health (ACH)" in its entirety and replace with the following:

G. Office of Global Health Affairs (ACH)—The Office of Global Health Affairs (OGHA) provides policy and staffing to the Assistant Secretary for Health, the Deputy Secretary and the Secretary for activities that are of a global nature, including international travel, meetings, and presentations. The Office of Global Health Affairs also has the following major functions: represents the Assistant Secretary for Health and the Secretary in international negotiations on health matters, coordinates and leads Departmental participation in the meetings of multilateral health organizations, including the World Health Organization, the Pan American Health Organization, UNICEF, UNAIDS and other international agencies; represents the Department in interagency working groups on international health issues; in consultation with appropriate OPDIV and STAFFDIV technical and political staff, clears all documents related to international health; reviews and approves international travel for all Departmental employees; promotes cooperative health programs with other countries; coordinates technical and policy-related federal input into refugee health issues; represents the Department on international health issues with other federal departments and agencies, international organizations, the private sector and foreign countries; carries out the Department's responsibilities under the U.S. Exchange Visitor Program; and, ensures protocol at all international functions/events.

Dated: December 10, 2001.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 02–640 Filed 1–9–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Advisory Committee on Regulatory Reform; Request for Public Input; Correction

In the Notice document beginning on page 599 in the issue of Friday, January 4, 2002, make the following correction:

On page 600, in the first column the electronic address of the Committee's web site was inadvertently stated as *www.regreform.hh.gov*. The correct web site address is *www.regreform.hhs.gov*.

Dated: January 7, 2002.

John Gallivan,

Policy Coordinator.

[FR Doc. 02–642 Filed 1–9–02; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8 a.m.–5:30 p.m., January 24, 2002; 8 a.m.–4:30 p.m., January 25, 2002.

Place: WestCoast Tri-Cities Hotel, 1101 North Columbia Center Blvd., Kennewick, WA 99336. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and

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DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on team building and consensus advise, ethics training video presentation, continued discussion of the Hanford Community Health Project, and agency updates. Agenda items are subject to change as priorities dictate.

For Further Information Contact: French Bell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/639–4699.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–605 Filed 1–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5:00 p.m., January 30, 2002; 8:30 a.m.–3:30 p.m., January 31, 2002.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be Discussed: The agenda will include updates from CDC, Food and Drug Administration and Centers for Medicare & Medicaid Services (formerly the Health Care Financing Administration), Unregulated Tests Workgroup report, waiver criteria, report on the Secretary's Advisory Committee on Genetic Testing, and manufacturer's pre-market clearance submission and good manufacturing practices.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F–11, Atlanta, Georgia 30341–3724, telephone 770/488–8042, fax 770/488–8279.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–606 Filed 1–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH), Identify and Assess Priorities, Strategies and Methods for Surveillance of Health and Safety Hazards in the Health Services Industry; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: National Institute for Occupational Safety and Health (NIOSH), Identify and Assess Priorities, Strategies and Methods for Surveillance of Health and Safety Hazards in the Health Services Industry.

Date and Time: 8 a.m.–5 p.m., February 12, 2002.

Place: Aljoya Conference Center of Laurelhurst, 3920 NE 41st Street, Seattle, WA, 98105–5428; Phone: 206–268–7000. Web address: *http://www.aljoya.com/2ndtier.html.*

Status: Open to the public, limited only by space available. Seating will be limited to approximately 60 people. Due to limited conference space, notification of intent to attend the meeting must be made with Karen Tucker by no later than January 18, 2002. Ms. Tucker can be reached by telephone: 1–800–444–5234, ext 103 or by e-mail: *tucker@battelle.org.* Requests to attend will be accommodated on a first come basis.

Purpose: To request public assistance in identifying occupational hazards in the Health Services industry which NIOSH should target in a nationally representative survey called the National Exposures at Work Survey (NEWS). In addition, there will be a request for information about the procedures that could be used to gather information on specific health and safety hazards and practices from management and workers during the survey.

NIOSH's Surveillance Strategic Plan [1] calls for the conduct of a comprehensive, nationally representative hazard survey. To this end, NIOSH is planning to conduct the NEWS in a nationally representative sample of workplaces across all industries, starting with the Health Services industry. The purpose of the survey will be to collect data about exposures to occupational hazards and associated occupational groups, use of exposure controls, and management and employee health and safety practices. Prior to conducting the NEWS, a limited number of feasibility or pilot surveys will be necessary for evaluating tools and methods to be used in the NEWS. At this meeting, NIOSH will ask the attendees for their views on what specific hazards and occupational groups should be targeted in the NEWS, and how best to collect information from management and workers without significantly impacting normal business operations. NIOSH is seeking individual input from academicians, researchers, practitioners, government agencies, and others on addressing these topic areas.

Tracking Occupational Injuries, Illnesses and Hazards: The NIOSH Surveillance Strategic Plan. Department of Health and Human Services (NIOSH) Publication No. 2001–118.

For Further Information Contact Persons: James M. Boiano, MS, CIH, NIOSH, CDC, M/S R19, 4676 Columbia Parkway, Cincinnati, Ohio 45226–1998, telephone 513–841–4246, fax 513–841–4489, e-mail *jboiano@cdc.gov.* Gregory M. Piacitelli, MS, CIH, NIOSH, CDC, M/S R19, 4676 Columbia Parkway, Cincinnati, OH 45226–1998, telephone 513–841–4456, fax 513–841–4489, e-mail *gpiacitelli@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–604 Filed 1–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Identify and Assess Priorities, Strategies and Methods for Surveillance of Health and Safety Hazards in the Health Services Industry; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: National Institute for Occupational Safety and Health, Identify and Assess Priorities, Strategies and Methods for Surveillance of Health and Safety Hazards in the Health Services Industry.

Date and Time: 8 a.m.–5 p.m., February 27, 2002.

Place: Mt. Washington Conference Center, 5801 Smith Avenue, Baltimore, MD, 21209; Phone: 410–578–7964. Web Address: *http://conference-center.stpaul.com.*

Status: Open to the public, limited only by space available. Seating will be limited to approximately 60 people. Due to limited conference space, notification of intent to attend the meeting must be made with Karen Tucker by no later than January 18, 2002. Ms. Tucker can be reached by telephone at 1–800–444–5234, ext 103 or by E-mail *tucker@battelle.org.* Requests to attend will be accommodated on a first come basis.

Purpose: To request public assistance in identifying occupational hazards in the Health Services industry which NIOSH should target in a nationally representative survey called the National Exposures at Work Survey (NEWS). In addition, there will be a request for information about the procedures that could be used to gather information on specific health and safety hazards and practices from management and workers during the survey.

NIOSH's Surveillance Strategic Plan calls for the conduct of a comprehensive, nationally representative hazard survey. To this end, NIOSH is planning to conduct the NEWS in a nationally representative sample of workplaces across all industries, starting with the Health Services industry. The purpose of the survey will be to collect data about exposures to occupational hazards and associated occupational groups, use of exposure controls, and management and employee health and safety practices. Prior to conducting the NEWS, a limited number of feasibility or pilot surveys will be necessary for evaluating tools and methods to be used in the NEWS. At this meeting, NIOSH will ask the attendees for their views on what specific hazards and occupational groups should be targeted in the NEWS, and how best to collect information from management and workers without significantly impacting normal business operations. NIOSH is seeking individual input from academicians, researchers, practitioners, government agencies, and others on addressing these topic areas.

Tracking Occupational Injuries, Illnesses and Hazards: The NIOSH Surveillance Strategic Plan. DHHS (NIOSH) Publication No. 2001–118.

For Further Information Contact: James M. Boiano, MS, CIH, NIOSH, CDC, M/S R19, 4676 Columbia Parkway, Cincinnati, OH 45226–1998, telephone 513–841–4246, fax 513–841–4489, E-mail: *jboiano@cdc.gov.* Gregory M. Piacitelli, MS, CIH, NIOSH, CDC, M/S R19, 4676 Columbia Parkway, Cincinnati, OH 45226–1998, telephone 513–841–4456, fax 513–841–4489, E-mail: *gpiacitelli@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

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Dated: January 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–608 Filed 1–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Toxicology Models for Drug Evaluation.

Date: March 5, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8049, Rockville, MD 20852, 301/594–9482.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 83.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–581 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Measurement of pO2 in Tissue In Vivo and In Vitro.

Date: January 25, 2002.

Time: 10 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Peter J. Wirth, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8021, Bethesda, MD 20892, 301/496–7565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–582 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 11, 2002.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–583 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–52, Review of R13 Grants.

Date: January 10, 2002.

Time: 12 pm. to 2 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–38 Review of R13 Grants.

Date: January 16, 2002.

Time: 3 pm. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Bldg., Conf. Rms. A&D, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–584 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Research Support and Animal Care Services".

Date: January 24, 2002.

Time: 9:30 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Hilton Towers Hotel, 20 West Baltimore Street, Baltimore, MD.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–585 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 22, 2002.

Time: 9 am. to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–586 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

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applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 8, 2002.

Time: 12 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, *levin@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 16, 2002.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–587 Filed 1–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of Availability, Draft Environmental Assessment (DEA), Water System Improvements, Federal Riverdell Property, Duchesne and Uintah Counties, Utah.

SUMMARY: The Central Utah Project Completion Act Office proposes to rehabilitate and improve the water deliver system serving the Federal Riverdell property near Myton, Utah, to maintain and improve existing wetland habitats for fish and wildlife mitigation purposes. Three alternative concepts are evaluated, along with the No Action Alternative, without indicating a Proposed Action or preferred alternative. Public comment is invited on all alternatives. A Proposed Action will be developed based on environmental impacts and benefits of each alternative, costs, available funding, and public comments received.

One alternative would abandon the existing river diversion and canal delivery system and relocate the irrigation diversion downstream on the Duchesne River to a point nearer the property. Irrigation water would be delivered to the property from the new location by means of an electrically-powered pump and buried irrigation pipeline. Other features of this alternative include installing perforated drain pipe in a portion of the abandoned delivery canal to collect and redirect agricultural drainwater (that accumulates in and near the Riverdell Canal) through the Riverdell property and back to the Duchesne River.

In addition, a pair of rock sills would be constructed at a strategic location across the Duchesne River to divert high river flows into a remnant oxbow on the property, thereby recharging degraded wetlands formerly sustained by river flows. A second alternative evaluates a minimal cost option that abandons the existing diversion dam and canal, and relocates the point of diversion as in the first alternative. Irrigation water would be delivered to the property from the new location by means of an electrically powered pump and buried irrigation pipe. The third alternative would relocate the diversion point to an upstream location. A new diversion dam and buried pipeline would deliver water to the property by gravity flow along the existing canal alignment. Pumping of water would not be included in this alternative.

The public is invited to submit comments on the adequacy of the DEA and the assessment of environmental impacts. Comments received in response to this solicitation will be part of the public record and available for public review pursuant to the Freedom of Information Act (5 U.S.C. 552) and may be released to the public upon request. This will normally include names, addresses, and any other personal information provided with comments. Reviewers may request that personal information be withheld from such releases by so indicating in their letter of comment or by means of separate written communication.

DATES: The DEA will be available for public review and comment for a minimum of thirty (30) calendar days following the publication of this notice, The deadline for submittal of written comments on the DEA will be stated on the cover sheet of the document and noted in the transmittal letter to all reviewers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained by contacting Mr. Ralph G. Swanson, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1254, E-mail address: *rswanson@uc.usbr.gov.*

Dated: January 4, 2002.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 02–607 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2003 or Calendar Year 2003

AGENCY: Office of Self-Governance, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2002, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2003 or calendar year 2003.

DATES: Completed application packages must be received by the Director, Office of Self-Governance by March 1, 2002.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, Mail Stop 2548, 1849 C Street NW., Washington DC 20240; Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208)

the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 fiscal year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 fiscal year need to be signed and submitted by October 1.

Purpose of Notice

25 CFR parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2003 and calendar year 2003. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2003 or calendar year 2003 must respond to this notice, except for those which are (1) currently involved in negotiations with the Department; (2) one of the 80 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 12, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–636 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–W6–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–051139

Applicant: Turner Endangered Species Fund, Cimarron, New Mexico.

The applicant requests a renewed permit to take black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Permit No. TE–051140

Applicant: St. Louis Zoological Park, St. Louis, Missouri 63110.

The applicant requests a renewed permit to take Wyoming toads (*Bufo hemiophrys baxteri*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Permit No. TE–049748

Applicant: Dr. Todd Crowl, Utah State University, Logan, Utah 84322.

The applicant requests a renewed permit to take razorback suckers (*Xyrauchen texanus*), Colorado pikeminnows (*Ptychocheilus lucius*), bonytail chub (*Gila elegans*), and June suckers (*Chasmistes liorus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Permit No. 047252

Applicant: Trent Miller, SWCA, Inc., Environmental Consultants, Westminister, Colorado 80031.

The applicant requests a renewed permit to take black-footed ferrets (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Permit No. TE–045150

Applicant: Dr. William W. Hoback, University of Nebraska at Kearney, Kearney, Nebraska 68849.

The applicant requests a renewed permit to take American burying beetles (*Nicrophorus americanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

DATES: Written comments on these requests for permits must be received February 11, 2002.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

Dated: December 20, 2001.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 02–603 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–5101–ER–B140; CACA–42662]

Notice of Availability of Final Environmental Impact Statement/ Environmental Impact Report and Proposed Amendments to the California Desert Conservation Area Plan and the Yuma District Resource Management Plan in Conjunction With the Proposed North Baja Pipeline Project

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement/ Environmental Impact Report and proposed amendments to the California Desert Conservation Area Plan (CDCA Plan) and the Yuma District Resource Management Plan in conjunction with the proposed North Baja Pipeline Project.

SUMMARY: This notice announces the availability of Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and proposed amendments to the California Desert Conservation Area Plan (CDCA Plan) and the Yuma District Resource Management Plan (Yuma RMP) in conjuction with the proposed North Baja Pipeline project. The proposed North Baja Pipeline project would provide natural gas supplies for new gas-fired electric power generation

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serving the power grids in Baja California, Mexico and southern California, where there has been strong documented demand. The proposed North Baja Pipeline project extends from Ehrenberg, Arizona, through Riverside and Imperial Counties in California, south to the Mexican border. All federal lands affected by the proposed plan amendments are located in eastern Imperial County, California.

DATES: The Final EIS/EIR and proposed plan amendments will be available for public review and protest until February 10, 2002. Protests must be filed in accordance with the instructions described in the Supplemental Information section of this notice.

ADDRESSES: Director, Bureau of Land Management (WO–210, ms 1075LS), Attention: Brenda Hudgens-Williams, Protest Coordinator, 1620 L Street, NW, Washington, DC, 20236. Please send a copy of any protest along with all backup documentation to Lynda Kastoll, El Centro Field Office, 1661 South 4th St., El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: For general information contact Lynda Kastoll, Project Manager, Bureau of Land Management El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243 (760) 337–4421.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission is the lead Federal agency on this project; BLM is a cooperating agency. The proposed amendment to the CDCA Plan would allow placement of pipeline outside of a designated utility corridor. The proposed Yuma RMP amendment would allow the placement of pipeline across portions of the Milpitas Wash Natural Area in which the RMP currently does not allow new utilities to be sited. A limited number of individual copies of the Final EIS/EIR and Plan Amendments may be obtained from BLM's El Centro Field Office. Copies are also available for inspection at the following locations:

(a). Public libraries in Blythe, Riverside and El Centro, California and in Yuma and Parker, Arizona

(b). Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825

(c). Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243;

(d). Bureau of Land Management, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365.

(e). Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507.

(f). Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426.

(g). California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825–8202

In accordance with 43 CFR 1610.5–2, any person who participated in the planning process and believes they will be adversely affected by this plan amendment may protest the proposed amendment. The protest may raise only those issues which were submitted for the record during the planning process. The protest must be in writing and filed, on or before February 10, 2002, with the Director, Bureau of Land Management (WO–210, ms 1075LS), Attention: Brenda Hudgens-Williams, Protest Coordinator, 1620 L Street NW., Washington, DC, 20236. Please send a copy of any protest along with all backup documentation to Lynda Kastoll, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243. In order to be considered complete, your protest must contain, at a minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the proposed plan amendment being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.

4. A copy of all documents addressing the issue or issues that you submitted during the planning process or a reference to the date the issue or issues were addressed by you for the record.

5. A concise statement explaining why you believe the proposed plan amendment is wrong.

Dated: December 20, 2001.

J. Anthony Danna,

Acting State Director, California.

[FR Doc. 02–601 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–02–1510–DO–083A]

Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announce a meeting of the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as "National Monument"). The meeting will be held on Monday, January 28, in the Hoover Room of the Education Center at the Living Desert, 47900 Portola Avenue, Palm Desert, California 92260. Meeting hours will be 8:30 a.m. until 4 p.m. The proposed agenda for the meeting will include a welcome and introductions followed by (1) an overview of the National Monument, (2) review of the National Monument advisory committee charter, (3) discussion of the guidelines and processes under which the advisory committee members will advise the BLM and USFS in the management and planning of the Monument, (4) election of committee chair and committee vice chairperson, (5) establishment of subsequent meeting schedule, and (6) a public question and answer period scheduled for 3 p.m.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements should register with the BLM by noon at the meeting location. Speakers should address specific issues listed on the agenda and provide a written copy of their statement.

DATES: January 28, 2002; 8:30 a.m. to 4 p.m with public comment period beginning at 3 p.m.

ADDRESSES: The meeting will be held in the Hoover Room of the Education Center at the Living Desert, 47900 Portola Avenue, Palm Desert, California 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Mr. James G. Kenna—Field Manager, Palm Springs-South Coast Field Office, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by email at *cdunning@ca.blm.gov*. Information can be found on our webpage: *http://www.ca.blm.gov/palmsprings/*. Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require that presentations be reduced to writing and that copies be filed with the committee. Pursuant to the Federal Advisory Committee Act, meetings of the committee may be called only by the designated federal official, or his or her designee, after consultation with the committee chairperson. The Designated Federal Official required by the Federal Advisory Committee Act will be the Field Manager or District Ranger, or their designees, who will attend all meetings of the committee and any subcommittee thereof. Early and ongoing participation is encouraged and will help determine the future management of Federally managed public lands within the Santa Rosa and San Jacinto Mountains National Monument. Written comments will be accepted and considered throughout the entire planning process.

Dated: November 14, 2001.

Danella George,

Assistant Field Manager, Palm Springs-South Coast Field Office.

Douglas Pumphery,

District Ranger, Idyllwild Ranger District.

[FR Doc. 02–589 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 010084]

Public Land Order No. 7504; Partial Revocation of Public Land Order No. 1775; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects 200 acres of National Forest System lands withdrawn for Panguitch Lake Administrative Site and Panguitch Lake Recreation Area. The withdrawal is no longer needed on the 200 acres. The lands will be opened to mining and to such forms of disposition as may by law be made of National Forest System lands.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Lori Blickfeldt, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5163.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1775 is hereby revoked insofar as it affects the following described lands:

Dixie National Forest

Salt Lake Meridian

T. 36 S., R. 7 W.,
Sec. 4, NW¼SW¼;
Sec. 5, SW¼SE¼SE¼SW¼,
N½SE¼SE¼SW¼, NE¼SE¼SW¼,
N½NW¼SW¼SE¼,
NW¼NE¼SW¼SE¼, and NE¼SE¼;
Sec. 8, S½S½NW¼NE¼,
S½SE¼NE¼NW¼, W½NE¼NW¼,
E½NW¼NW¼, and SW¼NW¼.

The areas described aggregate 200 acres in Garfield County.

2. At 10 a.m. on February 11, 2002, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 15, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–591 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–11–P

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–1430; UTU 52740 and AZA 18464]

Public Land Order No. 7503; Revocation of Public Land Order Nos. 3469 and 4277, and the Bureau of Reclamation Order Dated March 14, 1957; Utah and Arizona

AGENCY: Bureau of land management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Public Land Orders, and one Bureau of Reclamation Order in their entirety as to the remaining 23,296 acres of lands withdrawn for the Bureau of Reclamation's Marble Canyon and Paria River Reservoir Projects. The projects have not been developed and the Bureau of Reclamation has requested the withdrawals be revoked. The lands are located within either the Paria Canyon-Vermilion Cliffs Wilderness or the Grand Staircase-Escalante National Monument and will be managed in accordance to the laws and regulations pertaining to the Wilderness and the Monument.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office (UT–942), 324 South State Street, Salt Lake City, Utah 84111–2303, 801–539–4132. A copy of the orders being revoked is available from this location.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3469, Public Land Order No. 4277, and Bureau of Reclamation Order dated March 14, 1957, are hereby revoked in their entirety as to the remaining lands withdrawn for the Marble Canyon and Paria River Reservoir Projects. The areas within the three orders aggregate approximately 23,296 acres in Kane and Coconino Counties.

2. The lands will be managed in accordance with the laws and regulations pertaining to the Paria Canyon-Vermilion Cliffs Wilderness and the Grand Staircase-Escalante National Monument.

Dated: October 2, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–592 Filed 1–9–02; 8:45 am]

BILLING CODE 4310–88–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Application (SGA) H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on December 14, 2001, concerning availability of grant funds for skills training programs for unemployed and employed workers. These grants are to be financed by user fees paid by employers to bring foreign workers into the U.S. under a new H–1B nonimmigrant visa or at visa renewal. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Ella Freeman, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879.

Correction

The **Federal Register** of December 14, 2001, in FR Doc. 01–30922, on page 64859, at the bottom of the second column and top of the third column, correct the **DATES** caption to read:

DATES: Applications for grant awards will be accepted commencing immediately. The closing date for receipt of applications shall be February 19, 2002 at 4 p.m. (Eastern Time) at the address listed.

Signed at Washington, DC, this 7th day of January, 2002.

James W. Stockton,

Grant Officer.

[FR Doc. 02–621 Filed 1–9–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Aracoma Coal Company

[Docket No. M–2001–106–C]

Aracoma Coal Company, P.O. Box 470, Stollings, West Virginia 25646 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Aracoma Alma Mine No. 1 (I.D. No. 46–08801) located in Logan County, West Virginia. The petitioner proposes to use a properly rated vacuum contactor for undervoltage circuit protection; to use a properly rated vacuum contactor for grounded phase circuit protection; to use a neutral grounding resister not more than 15 amperes for 480-volt circuit ground-fault current; to use a properly rated circuit breaker for a short circuit and/or over-current circuit protection; and conduct monthly examinations on each circuit to check for proper operation of the vacuum contactor and actuated undervoltage and grounded phase trip devices to ensure proper circuit operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Ohio Coal Company

[Docket No. M–2001–107–C]

Ohio County Coal Company, 19050 Highway 1078 South, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Freedom Mine (I.D. No. 15–17587) located in Henderson County, Kentucky. The petitioner proposes to mine through oil and gas well bores located within an approved mining area using the specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Addington, Inc.

[Docket No. M–2001–108–C]

Addington, Inc., 8616 Long Branch Road, Hatfield, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its Pond Creek Mine No. 1 (I.D. No. 15–17287) located in Pike County, Kentucky. The petitioner proposes to use a spring-loaded locking device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "*comments@msha.gov*," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 11, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 31st day of December 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–619 Filed 1–9–02; 8:45 am]

BILLING CODE 4510–43–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25355, 812–12102]

The Charles Schwab Family of Funds, et. al; Notice of Application

January 4, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility. The requested order also would amend a condition of a prior order ("Order").[1]

APPLICANTS: The Charles Schwab Family of Funds, Schwab Investments, Schwab Capital Trust, Schwab Annuity Portfolios (each a "Trust" and together the "Trusts") for and on behalf of each of their series now or hereafter existing (the "Schwab Funds"), Charles Schwab Investment Management, Inc. ("CSIM"), and any other existing or future registered open-end management investment company or series thereof that is advised or sub-advised by CSIM or a person controlling, controlled by, or under common control with CSIM and that is part of the "same group of investment companies" as the Schwab Funds (together with the Schwab Funds, the "Funds").

FILING DATES: The application was filed on May 17, 2000 and amended on January 3, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 29, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Applicants, 101 Montgomery Street, 101KNY–14, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Trusts is registered under the Act as an open-end management investment company and organized as a Massachusetts business trust.[2] CSIM is registered under the Investment Advisers Act of 1940 and serves as investment adviser for each of the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term investments. Under a prior order, the Funds can pool their uninvested daily cash balances into joint accounts ("Joint Accounts") that invest in repurchase agreements and other money market instruments.[3] Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail," in which cash payment for a security a Fund has sold has been delayed.

3. If a Fund were to draw down on its line of credit or incur an overdraft with its custodian bank, the Fund would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that other non-borrowing Funds would earn on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into interfund lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants state that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher rates of interest on investment of their short-term cash balances. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain any overdraft protection currently provided by the custodian bank and their uncommitted lines of credit with various banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed expected volumes and the Fund has insufficient

[1] *The Charles Schwab Family of Funds, et al.*, Investment Company Act Release Nos. 24067 (October 1, 1999) (notice) and 24113 (October 27, 1999) (order).

[2] Each existing Fund that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the requested relief in the future will do so only in compliance with the terms and conditions of the application.

[3] The Charles Schwab Family of Funds, et al., Investment Company Act Release No. 23679 (February 4, 1999) (notice) and 23723 (March 3, 1999) (order).

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cash to satisfy redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities "fails" due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. "Sales fails" may present a cash shortfall if the Fund has purchased securities using the proceeds from the securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan ("Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available to the Funds from investing in overnight repurchase agreements, either directly or through a Joint Account ("Repo Rate"). The Bank Loan Rate for any day would be calculated by CSIM each day an interfund loan is made according to a formula established by the Board of Trustees of each Trust ("Board") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The credit facility would be administered by employees of CSIM, including representatives of the Fund Administration and Financial Analysis Department and/or representatives of the Portfolio Management and Research Department, who are not portfolio managers ("Interfund Lending Team"). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Interfund Lending Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Applicants expect far more available uninvested cash each day than borrowing demand. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Team would allocate loans among borrowing Funds without any further communication from portfolio managers. After allocating cash for Interfund Loans, CSIM would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts for investment to the Funds. Any money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Interfund Lending Team would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of Funds necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure both borrowing and lending Funds participate on an equitable basis.

11. CSIM would (i) monitor the interest rates charged and other terms and conditions of the Interfund Loans, (ii) ensure compliance with each Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the Interfund Loan Rates.

12. CSIM would administer the credit facility as part of its duties under its existing advisory contract with each Fund and would receive no additional fee as compensation for its services. CSIM may, however, collect reimbursement for standard pricing, recordkeeping, bookkeeping and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents. The statement of additional information of each Fund discloses the individual borrowing and lending limitations of the Fund. Each Fund will notify shareholders of its intended participation in the proposed credit facility prior to relying on any relief granted pursuant to the application. The statement of additional information of each Fund participating in the interfund lending arrangements will disclose all material information about the credit facility.

14. In connection with the credit facility, applicants request an order under section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and under section 17(d) and rule 17d–1 under the Act to permit certain joint arrangements.

15. Applicants state that certain Funds and other registered open-end investment companies operate in reliance on the Order. Applicants state that one of the conditions of the Order is that Underlying Funds, as defined in the Order, cannot acquire securities of any other investment company in excess

of the limits contained in section 12(d)(1) of the Act. Applicants request that if the requested relief is granted, this condition be amended to permit the Underlying Funds to engage in interfund borrowing and lending transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having CSIM as their common investment advisor.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) CSIM would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Joint Account; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Funds would receive interest at a rate higher than they could obtain through such other investments; and (e) the borrowing Funds would pay interest at a rate lower than otherwise available to them under their bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to any Fund or its shareholders, and that CSIM will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for relief under section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to the insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

10. Applicants also request relief under section 12(d)(1)(J) of the Act for

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an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to the extent necessary to amend the Order. Applicants submit that the Order should be modified solely to the extent necessary to allow an Underlying Fund to engage in interfund borrowing and lending transactions. Applicants believe that the proposed relief satisfies the standards of sections 12(d)(1)(J), 6(c) and 17(b). Applicants state that there will be no duplicative costs or fees to any of the Funds or their shareholders, and that such participation will not create any of the abuses to which section 12(d)(1)(A) is addressed.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, CSIM will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to collateral, if any) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowing from all sources immediately after the interfund borrowing total less than 10% its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be 10% or greater of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total borrowings immediately after the interfund borrowing would exceed the limits in section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to equal or exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans equals or exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to less than 10% of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings equal or exceed 10% is repaid, or the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Interfund Lending Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Interfund Lending Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. CSIM will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the Funds.

13. CSIM will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will report to the Boards quarterly concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Trust's Board, including a majority of the Independent Trustees: (a) will review no less frequently than quarterly each Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, approve any modifications thereto, and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of each Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand of payment under the provisions of the Interfund Lending Agreement, CSIM will promptly refer the loan for arbitration to an independent arbitrator selected by the Boards of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[4] The arbitrator will resolve any problems promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and other information presented to the Boards in connection with the review required by conditions 13 and 14.

17. CSIM will prepare and submit to the Boards for review, an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, CSIM will report on the operations of the credit facility at each Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates CSIM's assertions that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the Application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

Applicants also agree that condition number 12 to the Order will be modified to read as follows:

No Underlying Fund will acquire securities of any other investment company in excess of the limits set forth in Section 12(d)(1)(A) of the 1940 Act, except to the extent that the Underlying Fund has obtained exemptive relief from the Commission permitting it to (a) purchase shares of an affiliated money market fund for short-term cash management purposes; or (b) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–600 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–P

[4] If the dispute involves Funds with separate Boards, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45235; File No. SR–Amex–2001–100]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Initial and Annual Listing Fees, Fees for Listing Additional Shares and the One-Time Charge for Listing Shares Issued in Connection With Acquisition of a Listed Company by an Unlisted Company

January 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.[3] The Exchange filed Amendment No. 2 to the proposed rule change on December 26, 2001.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* relating to the Exchange issuer initial listing fee,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 13, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex requested that Commission grant accelerated approval to the proposed rule change.

[4] *See* letter from Michael J. Ryan, Executive Vice President and General Counsel, Amex, to Marc McKayle, Special Counsel, Division, Commission, dated December 20, 2001 ("Amendment No. 2"). In Amendment No. 2, the Amex stated that it seeks to implement the revised Annual Fee schedule under Section 141 as of January 1, 2002 and the revisions to Sections 140, 142, 144 and 341 upon Commission approval. In addition, the Amex made a minor correction to the proposed rule change, clarified that it will not reimburse part of the annual fee paid under Section 141 to issuers whose securities are removed from listing and registration for the portion of the year remaining after the date of removal, and added additional reasons for amending the Refund of Listing Fees under Section 144.

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annual fee, the fee for listing additional shares.

The text of the proposed rule change appears below. New text is in *italics;* deleted text is in [brackets].

Sec. 140. Original Listing Fees

STOCK ISSUES

Less than 5,000,000 shares	*$30,000*
5,000, 000 to 10,000,000 shares	*40,000*
10,000,001 to 15,000,000 shares	*50,000*
In excess of 15,000,000 shares	*60,000*

ISSUES LISTED UNDER § 106 (CURRENCY AND INDEX WARRANTS) AND § 107 (OTHER SECURITIES)

Less than 1,000,000 shares	$5,000
1,000,000 to 2,000,000 shares	10,000
2,000,001 to 3,000,000 shares	15,000
3,000,001 to 4,000,000 shares	17,500
4,000,001 to 5,000,000 shares	20,000
5,000,001 to 6,000,000 shares	22,500
6,000,001 to 7,000,000 shares	25,000
7,000,001 to 8,000,000 shares	27,500
8,000,001 to 9,000,000 shares	30,000
9,000,001 to 10,000,000 shares	32,500
10,000,001 to 15,000,000 shares	37,500
In excess of 15,000,000 shares	45,000

In addition to the above per-share fee, there is one-time *application processing fee* [charge] of $5,000 for companies that do not have a stock or warrant issue listed on the Exchange. (The one-time [charge] *application processing fee* of $5,000 does not apply to any company which previously paid the one-time [charge] *fee* in connection with the listing of a debt issue.)

In the case of non-U.S. companies listed on foreign stock exchanges, the fee, including the one-time charge, will be 50% of the rates set forth above, with a maximum fee of $[25,000] *32,500*. Where the original listing of more than one class of stock is included in the same application, the fee is based on the aggregate number of shares of all such classes.

Warrants—The original (as well as the annual and additional) listing fees for warrant issues are the same as those for stock issues.

Bonds—$100 per $1 million principal amount (or fraction thereof) with a minimum fee of $5,000 and a maximum fee of $10,000. In the case of an issuer listing more than one outstanding publicly traded debt security, the fee will be based on the aggregate principal amount of all of such issues provided they are included within a single application.

In addition, there is one-time *application processing fee* [charge] of $5,000 for companies that do not have an issue of securities listed on the Exchange.

Index Fund Shares and Trust Issued Receipts—The original listing fee for Index Fund Shares listed under Rule 1000A and Trust Issued Receipts listed under Rule 1200 is $5,000 for each series, with no application processing fee.

Special Shareholders Rights Plans—Upon the shareholder rights becoming exercisable and tradable separately.

- An original fee will be charged based on the number of shareholder rights then outstanding and on additional issuance of rights;
- Shareholder rights will be subject to the Exchange's continuing annual fee schedule.

Sec. 141. Annual Fees

STOCK ISSUES AND ISSUES LISTED UNDER § 106 AND § 197 AND RULE 1200 (TRUST ISSUED RECEIPTS)

Shares outstanding	Fee
5,000,000 shares or less (minimum)	*$15,000*
5,000,001 to 10,000,000 shares	*17,500*
10,000,001 to 25,000,000 shares	*20,000*
25,000,001 to 50,000,000 shares	*22,500*
In excess of 50,000,000 shares (maximum)	*30,000*

ISSUED LISTED UNDER RULE 1000A (INDEX FUND SHARES)

Shares outstanding	Fee
1,000,000 shares or less shares (minimum)	$6,500
1,000,001 to 2,000,000 shares	7,000
2,000,001 to 3,000,000 shares	7,500
3,000,001 to 4,000,000 shares	8,000
4,000,001 to 5,000,000 shares	8,500
5,000,001 to 6,000,000 shares	9,000
6,000,001 to 7,000,000 shares	9,500
7,000,001 to 8,000,000 shares	10,000
8,000,001 to 9,000,000 shares	10,500
9,000,001 to 10,000,000 shares	11,000
10,000,001 to 11,000,000 shares	11,500
11,000,001 to 12,000,000 shares	12,000
12,000,001 to 13,000,000 shares	12,500
13,000,001 to 14,000,000[5] shares	13,000
14,000,001 to 15,000,000 shares	13,500
15,000,001 to 16,000,000 shares	14,000
In excess of 16,000,000 shares (maximum)	14,500

[5] The Commission notes that in the Exchange's initial proposal, it stated "13,000,001 to 14,000,001." In fact, the Exchange intended to state "13,000,000 to 14,000,000" shares. The Commission has made this technical change in anticipation of the Exchange filing an amendment with the Commission that makes this correction. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, Commission, on January 3, 2002.

The annual fee is payable in January of each year and is based on the total number of all classes of shares (excluding treasury shares) and warrants according to information available on Exchange records as of December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable within 30 days of the date the company receives the invoice, based on the total number of outstanding shares of all classes of stock at the time of original listing.

The annual fee for issues listed under Rule 1000A (Index Fund Shares) and Rule 1200 (Trust Issued Receipts) is based upon the number of shares of a series of Index Fund Shares or Trust Issued Receipts outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an open-end management investment company, or for multiple series of Trust Issued Receipts, the annual listing fee is based on the aggregate number of shares in all series outstanding at the end of each calendar year.

Bond Issues—There is an annual fee of $3,500 for listed bonds and debentures of companies whose equity securities are not listed on the Exchange. The annual fee is payable in January of each year. In the year in which a company lists, the fee will be prorated to reflect only that portion of the year during which the security was admitted to dealings and will be payable in December.

Note: In all cases, if after payment on full of the annual fee for any year, all of the issuer's securities are removed from listing and registration, the Exchange will *not* reimburse that part of the annual fee applicable to the portion of the year remaining after the date of suspension from dealings.

Sec. 142. Additional Listing Fees

(a) Previously Listed Equity Issues—Listing of additional shares subsequent to original listing—2¢ per share subject to a minimum fee of $2,000 (100,000 shares or less) and a maximum fee of [$17,500 (875,000 shares or more)] *$22,500 (1,125,000 shares or more)* per application.

The annual maximum fee per company for listing additional shares shall be $45,000. (The above fees for listing of additional shares also apply to companies whose securities are admitted to unlisted trading privileges.)

(b) Previously Listed Debt Issues—Listing of additional bonds subsequent to original listing—$150 per $1 million principal amount (or fraction thereof) with a minimum fee of $1,000 and a maximum fee of $12,000.

(c) Different Class—The schedule for original listing (§ 140) is applicable to the listing of securities of an issue, class or series not previously listed.

(d) Substitution Listing—In cases where, after original listing, a change is effected by charter amendment or otherwise, under which shares listed upon the Exchange are reclassified or changed into or exchanged for another security, either with or without a change in par value, the fee for the listing of such number of "new" substituted shares (to the extent not in excess of the amount previously listed) is [$2,500] *$5,000*. The full additional listing fee is charged (see paragraph (a) above) for all shares included in the application in excess of the amount previously listed. The maximum fee for the aggregate of all such "new" substituted shares and excess shares is [$20,000] *$27,500*. In the case of an application for the substitution listing of bonds or warrants upon their assumption by a new obligor or issuer, the listing fee will be $500.

(e) Reincorporation, Merger or Consolidation—If a listed company reincorporates, or merges with or consolidates into one or more corporations, the substitution listing fee (paragraph (d) above) may be applicable. (See also § 341 for the appropriate fee to be paid in connection with the acquisition of a listed company by an unlisted company.)

Sec. 144. Refunds of Listing Fees

(a) Applications Withdrawn or Not Approved—If a listing application is not approved by the Exchange or is withdrawn by the applicant, a service charge of [$1,000] *$1,500* is deducted by the Exchange from the [listing] *application processing* fee previously paid by the applicant, and the balance is refunded to it.

(b) Credits After Approval—No cash refund of a listing fee is made where an application has been finally approved by the Exchange. If additional unissued shares are authorized for addition to the list "upon official notice of issuance" and all of such shares are not issued for the purpose specified in the application, a credit is allowed. The credit may be applied in full or partial payment of fees payable for future listing applications of the same company. The amount of the credit is the difference between the fee paid for the listing of such authorized shares and the fee which would have applied had the application been initially submitted for the number of shares, which were actually issued and added to the list under the same listing authorization. If a company cancels all listing authorization pursuant to any single application (see section 350), without the issuance of any such shares, the Exchange makes a minimum charge of [$1,000] *$1,500*.

Sec. 341. Acquisition of a Listed Company by an Unlisted Company

The policy set forth below relates to any plan of acquisition, merger or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the listed company is the nominal survivor. In applying this policy, consideration will be given to all relevant factors, including the proportionate amount of the securities of the resulting company to be issued to each of the combining companies, changes in ownership or management of the listed company, whether the unlisted company is larger than the listed company, and the nature of the businesses being combined. In evaluating the listing eligibility of the surviving company, the Exchange will apply its original listing guidelines. See section 713(b).

The Exchange recommends that any proposed plan of the above nature, including particularly any plan under which shareholders of the listed company would own less than 50% of the shares or voting power of the resulting company, be submitted for an informal opinion before its promulgation.

In addition to the applicable per share fee for additional listings, there is a one-time charge of [$7,500] *$10,000* for such listings.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

(1) Purpose

The Exchange proposes to amend Sections 140, 141, 142, 144 and 341 of the Amex *Company Guide* to modify initial and annual listing fees, fees for listing additional shares and the one-time charge for listing shares issued in connection with acquisition of a listed company by an unlisted company, as discussed below. The Exchange believes these fees changes are necessary to adequately fund the Exchange listed equities business and development of value-added services for Amex listed issuers.

a. Original Listing Fees (Section 140)

Currently, original listing fees range from $5,000 to $45,000 depending on the number of shares to be listed. The Exchange proposes to increase the original listing fees for stock issues, excluding securities listed under Sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the *Company Guide*, and to reduce the number of tiers from twelve to four tiers as follows:

Less than 5,000,000 shares	$30,000
5,000,000 to 10,000,000 shares	40,000
10,000,001 to 15,000,000 shares	50,000
In excess of 15,000,000 shares	60,000

The Exchange states that in order to continue to foster listing of structured equity derivative securities (*e.g.*, MITTs, SUNs, Equity Linked Notes), the listing fee for issues listed under Section 106 (Currency and Index Warrants) and section 107 (Other Securities) will remain unchanged from the current original listing fee schedule.

Currently, according to the Exchange, issuers also pay a one time-charge of $5,000 if they do not already have a stock or warrant issue listed on the Exchange. The one time $5,000 fee would be designated as an application processing fee, reflecting its true nature and purpose. For non-U.S. companies, the original listing fee would continue to be 50% of the above rates, with a maximum of $32,500 (including a $2,500 processing fee).

The original listing fee for Index Fund Shares (*e.g.*, iShares, VIPERs) listed under Rule 1000A and Trust Issued Receipts (*e.g.*, HOLDRs) listed under Rule 1200 is $5000 for each series, with no application processing fee.

b. Annual Fees (Section 141)

According to the Exchange, annual fees under Section 141 currently range from $6,500 to $14,500. The Exchange

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proposes to increase annual fees for stock issues and for issues listed under sections 106 and 107 as described below, with the number of tiers reduced from 17 to 5:

5,000,000 shares or less (minimum)	$15,000
5,000,001 to 10,000,000 shares	17,500
10,000,001 to 25,000,000 shares	20,000
25,000,001 to 50,000,000 shares	22,500
In excess of 50,000,000 shares maximum	30,000

The Exchange states that Index Fund Shares would continue to be subject to current annual fee schedule. In addition, the Exchange proposes to codify an existing procedure in section 141 to provide that the annual fee for Index Fund Shares and Trust Issued Receipts is based on the number of shares of a series outstanding at year-end, with multiple series aggregated for purposes of the fee calculation.[6]

If an issuer's securities are removed from Exchange listing, the Exchange currently reimburses the issuer for part of any previously paid annual fee applicable to the portion of the year remaining after the date of suspension from dealings. The Exchange proposes that it would no longer make such reimbursement.

c. Additional Listing Fees (Section 142)

According to the Exchange, the fee for listing additional shares is 2 cents per share subject to a minimum of $2,000 (for 100,000 shares or less) and a maximum of $17,500 (for 875,000 shares or more) per application. The minimum fee would continue to be $2,000 for issues of up to 100,000 shares. For issues over 100,000 shares, the Exchange proposes to increase the maximum fee per company to $22,500 for issues of 1,125,000 shares or more. In addition, the Exchange proposes a maximum fee per company in any one year for listing additional shares of $45,000.

The Exchange states that section 142(a) would also be amended to make clear that Section 142 fees apply to Amex securities admitted to unlisted trading privileges (*i.e.* the relatively few Amex-traded issues grandfathered under section 12 of the Act[7] and not required to execute a listing agreement with the Exchange), comparable to the provision in section 141 for annual fees.

The Exchange proposes to amend section 142(d) ("Substitution Listing") by raising the fee for listing of new substituted shares from $2,500 to $5,000, and raising the maximum fee for substituted shares and excess shares from $20,000 to $27,500 per quarter, (corresponding to the sum of the proposed $5,000 increase in maximum fees for listing additional shares under section 142(a) and the $2,500 fee increase for listing new substituted shares).

d. Refund of Listing Fees (Section 144)

Currently, under section 144, if an applicant withdraws its application or the application is not approved, the Exchange deducts a $1,000 service charge and refunds $4,000 from the application processing fee to the applicant. The Exchange proposes to increase this service charge to $1,500. In addition the Exchange proposes to increase the minimum charge if an issuer cancels a listing authorization without issuing such authorized shares from $1,000 to $1,500. As with the other proposed fee changes in this filing, the Exchange states that it is increasing these charges to better reflect increased Exchange costs associated with reviewing and processing such applications.

e. Acquisition of a Listed Company by an Unlisted Company (Section 341)

The Exchange proposes to amend section 341 to increase the one-time charge imposed in connection with acquisition of a listed company by an unlisted company from $7,500 to $10,000.

(2) Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[8] in general and furthers the objectives of section 6(b)(4) of the Act,[9] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–100 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–632 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–M

[6] Portfolio Depository Receipts (*i.e.*, SPDRs, MidCap SPDRs, DIAMONDS, Nasdaq 100 Index Tracking Stock) are not subject to annual or additional listing fees.

[7] 15 U.S.C. 78*l*.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45234; File No. SR–AMEX–2001–109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Pilot Program Eliminating Position and Exercise Limits for Certain Broad Based Index Options

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act),"[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the American Stock Exchange LLC ("Amex" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act[3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a six-month extension of the pilot program that provides for the elimination of position and exercise limits for the Major Market ("XMI") and Institutional ("XII") broad-based index options, as well as FLEX Options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 1, 1999, The Commission approved the elimination of position and exercise limits for the XMI and XII index options, as well as FLEX options on these indexes on a two-year basis (the "Pilot Program").[5] The Pilot Program originally ended on February 1, 2001 with an extension for six months approved on July 3, 2001.[6] The purpose of this proposed rule change is to request a six-month extension of the Pilot Program.[7]

The Original Approval Order required the Exchange to submit a report to the Commission regarding the status of the Pilot Program so that the Commission could use this information to evaluate any effects of the program.[8] The Exchange submitted the required report to the Commission on May 22, 2001 in connection with the first six-month extension of the Pilot Program. The report indicated that from February 1, 1999 through March 30, 2001, no customer and/or firm accounts reached a level of 100,000 or more options contracts in XMI or XII options. The Amex during the review period and the extended pilot program did not discover any instances where an account maintained an unusually large unhedged position. Accordingly, because the Exchange has not experienced any aberrations due to the large unhedged positions during the operation of the Pilot Program, it requests that the effectiveness of the Pilot Program be extended for an additional six months until July 3, 2002.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act[9] in general and furthers the objects of section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not, by its terms, become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with notice of its intent to file the proposed rule change, along with a brief description and text of the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4 under the Act. *id.*

[5] *See* Securities Exchange Act Release No. 41011, 64 FR 6405 (February 9, 1999) ("Original Approval Order").

[6] *See* Securities Exchange Act Release No. 44507, 66 FR 36348 (July 11, 2001).

[7] By separate filing, the Exchange intends to seek permanent approval by the Commission of the Pilot Program.

[8] The Commission requests that the Amex update the Commission on any problems that have developed with the pilot since the last extension, including any compliance issues, and whether there have been any large unhedged positions that have raised concerns for the Amex. In addition, the Commission expects that the Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. *See also* Original Approval Order.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

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rule change, more than five business days prior to the date of the filing of the proposed rule change.

The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative on January 4, 2002.[13] Acceleration of the operative date will allow the Exchange to continue its Pilot Program without interruption. Further the Commission has approved a similar pilot program proposed by another options exchange.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all, written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–2001–109 and should be submitted by January 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–633 Filed 1–9–02; 8:45 am]

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[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] See Securities Exchanges Act Release No. 44335 (May 22, 2001), 66 FR 29369 (May 30, 2001) (SR–CBOE–2001–26).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45236; File No. SR–Amex–2001–42]

Self-Regulatory Organizations; Notice of Proposed Rule Change by American Stock Exchange LLC To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2001, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 26, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposed to increase position and exercise limits for Nasdaq-100 Index Tracking Stock ("QQQ") options to 300,000 contracts on the same side of the market. In order to codify the financial requirements imposed by the Exchange and the Commission, the Amex also proposes to add Commentary .11 to Exchange Rule 904.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original 19b–4 filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 906. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The Amex believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[4] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Manipulation

Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission by imposing these limits on exchange-traded options has sought to: (1) Minimize the potential for mini-manipulations,[5] as well as other forms of market manipulations; (2) impose a ceiling on the position that investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[6] The Amex believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and option market for QQQs should allay regulatory concerns of potential manipulation. The Amex further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidity and

[4] Although the current position limit is 75,000 contracts, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000.

[5] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[6] See Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Synthetics* (1994), Probus Publishing Company and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the Amex and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ options is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdq-100 index.[7] Therefore, we believe that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broad-based index options.[8]

The Amex believes in connection with QQQ options that the restrictive position and exercise limits no longer serve their stated purpose. The Commission has stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member of customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for concerns or squeezes of the underlying market. In addition such limits such to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. the QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[10] Accordingly, the Exchange believes that the tremendous liquidity of the QQQ option and the underlying cash market for QQQs severly minimizes the potential for manipulations in both the options and underlying cash market.

To date, there has not been a single disciplinary action involving manipulation or potential manipulation in the QQQ or the QQQ option on the Exchange. We further believe that our extensive experience conducting surveillance of derivative products and program trading activity is sufficient to identify improper activity. Routine oversight inspections of Amex's regulatory programs by the Commission have not uncovered any inconsistencies or shortcomings in the manner in which derivative and options surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying cash markets.

Competition

The Commission has stated that "limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market." [11] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the Amex's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Amex may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[12] Member firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions which engage in trading strategies differing from those covered under the current index hedge exemption policy (*e.g.*, delta hedges; OTC vs. listed hedges).[13]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the

[7] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at 1/40th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 2994) (order approving trading of Nasdaq-100 options by CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented is technology amounting to 68.91%. The top QQQ holding is Microsoft accounting for 11.97% while the top ten holdings constitute 43.22%.

[8] See Securities Exchange Act Release Nos. (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis).

[9] Securities Exchange Act Release No. 39489 (December 24, 1997), (63 FR 276 (January 5, 1998).

[10] For the period of January 2, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 million shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[11] See H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[12] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. See NASD Rule 2860.

[13] The current limit for QQQ options is 150,000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001. At the time of approval of QQQ options, position and exercise limits were set at 25,000 (250,000 QQQ shares) equating to an aggregate value of $2,500,000 as of March 9, 1999 (commencement of trading). When QQQs commenced trading, the volume was 10.4 million shares with an opening price of $100.00 per share. The average daily trading volumes for the QQQ during 1999, 2000 and year-to-date 2001 were 13.9 million, 30.9 million and 71.21 million shares respectively, while for the same periods the average daily trading contract volume for the QQQ option were 9,206, 91,656, and 148,181. As of November 30, 2001, the price of a single QQQ was $39.65.

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authority under paragraph (d)(2)(k) of Rule 462 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted. Proposed Commentary .11 to Exchange Rule 904 codifies these financial requirements imposed by the Exchange and the Commission.

Reporting Requirements

Consistent with Amex Rule 906(b), the Amex will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-markers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, the Amex requires members and member organizations to similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to Rule 906(a), the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Amex believes that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. According to the Amex, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [14] in general and furthers the objectives of section 6(b)(5) [15] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer File No. SR–AMEX–2001–42 and should be submitted by January 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–635 Filed 1–9–02; 8:45 am]

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[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45230; File No. SR–CBOE–2001–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Extend for a Six-Month Period the Pilot Program for the Exchange's 100 Spoke RAES Wheel

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE filed the proposal pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE hereby proposes to extend, for an additional six-month period, the pilot program that permits the appropriate Floor Procedure Committee ("FPC") to allocate orders on the Exchange's Retail Automatic Execution System ("RAES") under the allocation system known as the 100 Spoke RAES Wheel. CBOE has designated this proposal as non-controversial and requests that the Commission waive the 30-day pre-operative waiting period set forth in Rule 19b–4(f)(6)(iii) under the Act [5] to allow the proposal to be effective and operative immediately upon filing with the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 25, 2000, the Commission approved, on a nine-month pilot basis, the Exchange's proposal to amend CBOE Rule 6.8, which governs the operation of RAES,[6] to provide the appropriate FPC with another choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.[7] The pilot program has been extended twice and will expire on December 28, 2001.[8] CBOE now proposes to extend the pilot program for an additional six-month period ending June 28, 2002.

CBOE states that it believes that the 100 Spoke RAES Wheel pilot program is used as anticipated. CBOE represents that use of the 100 Spoke RAES Wheel has expanded since its implementation; it is currently used in approximately three-fourths of the equity options trading stations. CBOE has represented that an extension of the pilot program is necessary to further study the pilot program. CBOE believes that an extension of the pilot program will continue to provide the appropriate FPC with flexibility in determining the appropriate allocation system for a given class of options on RAES. CBOE also believes that the continuation of the pilot program will continue to reward those market makers who are most active in providing liquidity to agency business in the assigned option class.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.[9] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE has asserted that, because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period, which would allow the Exchange to continue the pilot program without interruption. CBOE contends that, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE argues that, given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue use of the 100 Spoke RAES Wheel as of December 29, 2001, would cause disruption to those trading stations and, thus, be disruptive to investors and the public interest. In light of these considerations, the Commission, consistent with the protection of investors and the public interest, has determined to designate the proposed rule change as operative immediately.[13]

In addition, Rule 19b–4(f)(6) requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. CBOE has requested that the Commission waive the five-day pre-filing requirement. Consistent with CBOE's request, the Commission has determined to waive the pre-filing requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[7] *See* Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000). In those classes where the 100 Spoke RAES Wheel is employed, the percentage of RAES contracts assigned to a participating market maker is essentially identical to the percentage of non-RAES in-person agency contracts traded by that market maker in that class.

[8] *See* Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (six-month extension to August 28, 2001; Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (four-month extension to December 28, 2001).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* 15 U.S.C. 78s(b)(3)(C).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–68 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–596 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45231; File No. SR–CBOE–2001–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Delete a Previously Proposed Fee for Excessive RFQs on its New Screen-Based Trading System

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 27, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to modify the fee schedule for the Exchange's new screen-based trading platform by deleting a previously proposed fee for excessive requests for quote ("RFQs"). The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to delete a previously proposed fee for excessive RFQs applicable to the Exchange's new screen-based trading system, CBOE*direct*.

CBO*direct* is CBOE's new options trading engine. A component of trading on CBOE*direct* is the RFQ process (although CBOE market-makers may be required to provide continuous two-sided markets in products traded on the system). RFQs generally provide a mechanism for gauging the marketing in a particular option series in connection with effecting a trade in such series. Because the RFQ process is not meant to serve exclusively as an unlimited price discovery mechanism, CBOE intends to adopt an excessive RFQ fee to help protect the CBOE*direct* system.

CBOE originally submitted an excessive RFQ fee in SR–CBOE–2001–57.[3] CBOE now seeks to delete that excess RFQ fee from its fee schedule in order to reevaluate how it intends to structure the fee. CBOE has represented that it expects to submit a new fee that will assist in addressing the costs associated with excessive RFQs in the near future.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general and section 6(b)(4)[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

[3] *See* Securities Exchange Act Release No. 45075 (November 19, 2001), 66 FR 59038 (November 26, 2001).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments ere solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE represents that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–73 and should be submitted by January 31, 2002.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–597 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45226; File No. SR–CBOE–2001–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trade Information Submitted to the Exchange

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2001, the Chicago Board of Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.[3] The Exchange filed Amendment No. 2 to the proposed rule change on January 2, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the provisions of Interpretation and Policies .02 of CBOE Rule 6.51 to provide that members include the required trade information on orders that they submit to the Exchange. The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Chapter VI—Doing business on the Exchange Floor

Section C: Trading Practices and Procedures

* * * * *

Reporting Duties

RULE 6.51.(a) No change.
(b) No change.
(c) No change.
(d) No change.

Interpretations and Policies

.01 No change.

.02 *When entering orders on the Exchange, each Member shall submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Clearing Corporation.* [For purposes of Rule 6.51(d), trade information shall include the proper account origin codes, which are as follows: "c" for a customer account, "f" for a firm proprietary account, "m" for a member market-maker account, "j" for a non-member joint venture participant transaction in Exchange options contracts, "y" for any options account of a stock specialist relating to his assignment as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker-dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist.]

.03 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange states that the proposed rule change mimics the International Securities Exchange LLC ("ISE") Rule 712[5] and amends Interpretations and Policies .02 of CBOE Rule 6.51 ("CBOE Rule 6.51.02") to mandate that each Member must submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Options Clearing Corporation ("OCC").[6] CBOE Rule 6.51(d) requires members to file with the Exchange trade information in such form as may be prescribed by the Exchange. CBOE Rule 6.51.02 states that "trade information" for purposes of Rule 6.51(d) shall include account origin codes. The purpose of this marking requirement is primarily twofold. First, origin codes ensure that orders route to the proper location (*e.g.*, PAR, RAES, Booth) and they provide the Exchange with a mechanism by which to surveil whether members are in fact marking orders correctly. Second, the marking requirement assists the OCC in the clearance of trades.

The Exchange currently lists seven origin codes in CBOE Rule 6.51.02,[7] and it has the systems capacity to accommodate 26 origin codes (one for each letter of the alphabet). Because the Exchange's origin codes are specifically listed in its rules, each time the Exchange determines to add, delete, or change an origin code, it must submit a rule filing to the Commission. This could require the submission of 19 separate rule filings if the Exchange were to add 19 new origin codes at different times.[8]

[8] 17 CFR 200.20–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Madge M. Hamilton, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE made certain technical amendments to the proposal, amended the purpose section of the proposal and provided an enhanced statutory basis for the proposal. In addition, the CBOE requested that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[4] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated December 28, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE again amended the purpose section of the proposal, enhanced the statutory basis of the proposal and reiterated its request that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[5] Securities Exchange Act Release No. 43795 (January 3, 2001), 66 FR 2468 (January 11, 2001).

[6] Currently, Interpretations .02 states that trade information submitted under CBOE Rule 6.51(d) includes certain specific origin codes.

[7] The Exchange currently uses the following origin codes: "c" for a customer account, "f" for a firm proprietary account, "m" for a member market-maker account, "j" for a non-member joint venture participant transaction in Exchange options contracts, "y" for any options account of a stock specialist relating to his assignments as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist. *See* CBOE Rule 6.51.02.

[8] Over the next several months, the Exchange anticipates listing several new origin codes to

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Accordingly, the Exchange proposes to delete the language from CBOE Rule 6.51.02 that specifically references the seven specific origin codes and instead, replace it with language stating that members must "submit trade information in such form as may be prescribed by the Exchange." This change will have two primary effects. First, it would eliminate the need for the Exchange to submit a rule filing each time it adds, deletes, or changes an origin code. Second, and more importantly, it would allow the Exchange to continue to ensure that members submit requisite trade information, including origin codes, in an Exchange-dictated manner.

The Exchange notes that the proposed change to CBOE Rule 6.51.02 would not eliminate the requirement that members submit tickets with origin codes. Rather, this change simply eliminates the specific origin codes from CBOE Rule 6.51.02. Members would still be required to submit orders with origin codes. Upon approval of this filing, the Exchange will notify members of the current order marking requirements (*i.e.*, valid origin codes) by regulatory circular. As such, each time the Exchange adds, deletes, or changes an origin code, it will distribute a regulatory circular to the membership apprising it of the change. The Exchange believes that this will ensure that the Exchange's membership is aware of the applicable origin codes with which it must mark order tickets.

(2) Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, in that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would enhance the Exchange's ability to surveil for and investigate potential fraudulent and manipulative conduct. Since the proposed rule change would enhance the Exchange's ability to conduct investigations and surveillance for misconduct, it would protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4[12] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

The Commission notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date.[14] The Exchange contends that acceleration of the operative date is consistent with the protection of investors and the public interest because the language of this proposed rule is substantially similar to rule language that was put out for notice and comment when ISE submitted its proposed rule change. For this reason, consistent with Section 19(b)(2) of the Act,[15] the Commission finds good cause to waive the 30-day operative period.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–69 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–599 Filed 1–9–02; 8:45 am]

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accommodate linkage orders. This could require the submission of several rule filings if all origin codes are not added at the same time. For example, "Principal Account" orders will require a separate origin code, "Principal Acting as Agent" orders will require a separate origin code, and "Principal Account Satisfaction Order" will require another separate code.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on January 2, 2002, the date the CBOE filed Amendment No. 2.

[14] *See* Amendment No. 2, *supra* note 4.

[15] 15 U.S.C. 78s(b)(2).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45237; File No. SR–CHX–2001–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Listing and Trading of Trust Issued Receipts

January 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add an Interpretation and Policy relating to Article XXVIII, Rule 27 of the CHX Rules, which governs the listing of Trust Issued Receipts ("TIRs") on the CHX. The new Interpretation and Policy will confirm the eligibility requirements for Component Securities represented by a series of TIRs that became part of such TIR when the security was either: (a) Distributed by a company whose securities were already included as a Component Security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a Component Security that are no longer outstanding due to a merger, consolidation, corporate combination or other event. The text of the proposed rule filing is below. Additions are in italics; deletions are in brackets.

Chicago Stock Exchange Rules

Article XXVIII

* * * * *

Trust Issued Receipts

Rule 27 No change to text

Interpretations and Policies[y]

.01 No change in text.

.02 The eligibility requirements for Component Securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) Distributed by a company already included as a Component Security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a Component Security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(i) the Component Security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;

(ii) the Component Security must be registered under section 12 of the Exchange Act; and

(iii) the Component Security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by Component Securities included in the Trust Issued Receipt at the time of the distribution or exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add an Interpretation and Policy relating to Article XXVIII, Rule 27 of the CHX Rules, which governs the listing of TIRS on the CHX. The new Interpretation and Policy will confirm the eligibility requirements for Component Securities represented by a series of TIRs that became part of such TIR when the security was either: (a) Distributed by a company whose securities were already included as a Component Security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a Component Security that are no longer outstanding due to a merger, consolidation, corporate combination or other event.

Article XXVIII, Rule 27 of the CHX Rules set forth the eligibility criteria for Component Securities represented by a series of TIRs. The current version of the rule does not contain eligibility criteria for Component Securities that are automatically deposited into a TIR as a result of a distribution or corporate event. Accordingly, the CHX proposes the following eligibility requirements for such Component Securities: (i) The Component Security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (ii) the Component security must be registered under section 12 of the Act; and (iii) the Component Security & Poor's Sector Classification represented by Component Securities included in the TIR at the time of the distribution or exchange.

The CHX believes that it is appropriate in these limited situations to provide alternate eligibility criteria for Component Securities. To reduce the number of distributions of securities from the TIR which cause inconvenience and increased transaction and administrative costs for investors, it is useful to allow certain securities that are received as part of a distribution from a company or as the result of a merger, consolidation, corporate combination or other event to remain in the TIR. The proposed eligibility requirements ensure that Component Securities included in a TIR as a result of a distribution or exchange event are widely held (having been distributed to all of the shareholders holding the original Component Security), traded through the facilities of an exchange or Nasdaq and registered under section 12 of the Act.

Notably, the Exchange believes that the proposed rule change is substantially similar to rule filings previously approved on an accelerated basis by the Commission.[3]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (File No. SR–Amex–2001–04); 44928 (October 12, 2001), 66 FR 53457 (October 22, 2001) (File No. SR–BSE–2001–05); and 44826 (September 20, 2001, 66 FR 49990 (October 1, 2001) (File No. SR–Phlx–2001–75).

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6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5)[5] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR–CHX–2001–29 and should be submitted by January 31, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.[6] Specifically, the Commission finds that the proposal to provide an alternate eligibility criteria for Component Securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the trust will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers issuers, brokers, or dealers.[7]

The CHX has requested that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** pursuant to section 19(b)(2).[9] As noted above, the Commission has previously approved proposed rule changes by other exchanges that provided similar eligibility requirement.[10] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that it is consistent with section 6(b)(5) of the Act[11] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–2001–29) is hereby approved on an accelerated basis.

For the Commission, by the Divsiion of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–634 Filed 1– 9–02; 8:45 am]

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 3.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 45192; File No. SR–Phlx–2001–106]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until May 30, 2002

December 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot program period for Rule 98, Emergency Committee until May 30, 2002. No changes to the existing rule language are being proposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Exchange filed the pre-filing notice required by Rule 19b–4(f)(6) by filing a written description of the proposed rule change and the text of the proposed rule change on November 16, 2001.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 1999, the Commission approved amendments to Rule 98, Emergency Committee (the "Committee"), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.[5] The pilot has been extended five times, most recently to November 30, 2001.[6] The pilot program is being extended again to May 30, 2002 as the Exchange and the Commission consider other changes to the composition of the Committee.

The Exchange originally proposed to amend Rule 98, Emergency Committee, by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,[7] and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system which is no longer used on the Exchange Equity Floor.

The Committee was formed in 1989[8] prior to the aforementioned changes to the Exchange's governance structure. The original proposed rule change, approved by the Commission, deleted the word "President" from the rule, as the Exchange no longer has a "President," and included the Exchange's On-Floor Vice Chairman[9] as a member of the Committee.

Thus, Rule 98 specifies the composition of the Emergency Committee to include the following individuals: The Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee.

Extension of the pilot program through May 30, 2002 permits the Committee to reflect the current governance structure of the Exchange and ensures that the Committee will be in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.[10] The extension of the pilot program will also allow the Exchange and the Commission the necessary time to propose changes to the Committee's structure to meet the Commission's concerns about whether the Committee ensures that all interests of the Exchange (*e.g.*, On-Floor and Off-Floor) are adequately represented by the Committee, particularly in light of the events of September 11, 2001.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6[11] of the Act in general, and with Section 6(b)(5)[12] of the Act in specific, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by updating the composition of the Emergency Committee to reflect the current governance structure of the Exchange, and by continuing to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or their public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds that it is appropriate to accelerate the operative date of the proposed rule change and to permit the proposed rule change to become immediately operative because the proposal simply extends a previously approved pilot program until May 30, 2002. No changes to Rule 98 are being proposed at this time and the Commission has not received any comments on the pilot program. In addition, the Exchange appropriately filed a pre-filing notice as required by Rule 19b–4(f)(6).[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR–Phlx–99–42). In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (*e.g.*, On-Floor or Off-Floor interest). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.

[6] Securities Exchange Act Release No. 42896 (June 5, 2000), 65 FR 36879 (June 12, 2000) (SR–Phlx–00–41), extending the pilot program until August 21, 2000; Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000) (SR–Phlx–00–76), extending the pilot program until November 17, 2000. On July 14, 2000, the Exchange filed a proposed rule change to effect the amendments on a permanent basis. SR–Phlx–00–63 (filed July 14, 2000). In SR–Phlx–00–63 the Exchange also enclosed the Exchange's views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. Because the Exchange was considering further changes to the Committee, SR–Phlx–00–63 was withdrawn on June 15, 2001. The pilot program was extended again until April 30, 2001, Securities Exchange Act Release No. 43614 (November 22, 2000), 65 FR 75332 (December 1, 2000) (SR–Phlx–00–101); and again until July 31, 2001, Securities Exchange Act Release No. 44245 (May 1, 2001), 66 FR 23961 (May 10, 2001) (SR–Phlx–2001–44). The last extension of the pilot program was until November 30, 2001. Securities Exchange Act Release No. 44653 (August 3, 2001), 66 FR 43289 (August 17, 2001) (SR–Phlx–2001–70).

[7] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (SR–Phlx–97–31).

[8] *See* Securities Exchange Act Release No. 26658 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR–Phlx–88–36).

[9] *See also* Exchange By-Law, Article IV, Section 4–2.

[10] Previously, the Exchange has described "extraordinary market or emergency conditions" as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter dated March 15, 1989, from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Esquire, Commission, Division of Market Regulation.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

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Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–2001–106 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–595 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45233; File No. SR–Phlx–2001–116]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Schedule of Dues, Fees and Charges To Increase the Equity Floor Brokerage Assessment

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to increase the equity floor brokerage assessment from 1.25% of net floor brokerage income to 5%. The increased equity floor brokerage assessment fee will be implemented on transactions settling on or after January 2, 2002. Previously, the Exchange charged a 5% equity floor brokerage assessment fee but offered equity specialist units that also conducted floor brokerage business on the Exchange a discounted rate on the assessment at 1.25%. That discounted rate was subsequently extended to all equity floor brokerage.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Currently, the Exchange assesses a monthly fee on the amount of money a floor broker bills to its customers each month for floor brokerage services with respect to equity securities. The current rate is 1.25% of net floor brokerage income and has been in effect for over four years. Given the costs of operating the Exchange's equities trading floor, the Exchange believes that it is now necessary to increase the equity floor brokerage assessment fee to 5%. The Exchange notes that prior to reducing the equity floor brokerage assessment fee to 1.25% in November 1997,[4] the rate was 5% for floor brokerage units only and specialist units that conducted a floor brokerage business were charged a discounted rate of 1.25%. Furthermore, the Exchange notes that the increased rate of 5% is the same rate that is currently charged on equity and index options floor brokerage.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[5] of the Act in general and, in particular, with section 6(b)(4)[6] of the Act, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any perso.., other than

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39325 (November 13, 1997), 62 FR 62395 (November 21, 1997).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–116 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–598 Filed 1–9–02; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Individual Law Enforcement Agencies)—Match Number 5001

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with individual law enforcement agencies.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Acting Associate Commissioner for Program Support, 2–Q–18 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: January 4, 2002.

Frederick G. Streckewald,

Acting Assistant Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With Individual Law Enforcement Agencies

A. PARTICIPATING AGENCIES

SSA and Source Jurisdiction.

B. PURPOSE OF THE MATCHING PROGRAM

This agreement establishes conditions under 5 U.S.C. 552a, as amended, for a matching operation that will identify individuals who are both fugitive felons or parole or probation violators from the Source Jurisdiction and are also Supplemental Security Income (SSI) recipients. Such individuals may be receiving benefits or payments improperly. The disclosure will provide SSA and the Office of the Inspector General for SSA with information about fugitive felons or parole or probation violators who are also SSI recipients. The SSI program was created under title XVI of the Social Security Act ("Act") to provide benefits to individuals with income and resources below levels established by law and regulations.

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

Sections 1106, 1611(e)(4) and (5) of the Act (42 U.S.C. 1306, 1382 (e)(4)and (5)).

D. CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCHING PROGRAM

The Source Jurisdiction will provide SSA with electronic files/records compiled from various databases. These records will identify individuals for SSA who come under the definition of fugitive felons or the definition of probation or parole violators set out in the matching agreement. The incoming Source Jurisdiction records will be matched against the following systems of records to identify individuals potentially subject to termination of benefit or payment eligibility under applicable requirements of the above-described benefit program: SSA's Supplemental Security Income Record and Special Veterans Benefits (SSA 60–0103) and Master Files of Social Security Number (SSN) Holders and SSN Applications (SSA 60–0058).

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The matching program will become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by SSA's Data Integrity Board, but no sooner than 30 days after notice of this matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 02–666 Filed 1–9–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3842]

Office of Recruitment, Examination, and Employment; 60-Day Notice of Proposed Information Collection: Thomas R. Pickering Foreign Affairs Fellowship Program

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and

[9] 17 CFR 200.30–3(a)(12).

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Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New.

Originating Office: HR/REE.

Title of Information Collection: Thomas R. Pickering Foreign Affairs Fellowship Program.

Frequency: Annual.

Form Number: None.

Respondents: University Graduate and Undergraduate Students.

Estimated Number of Respondents: 250.

Average Hours Per Response: 40.

Total Estimated Burden: 3,750.

Average Cost Per Applicant: $50.

Total Estimated Cost Burden: $12,500.

• Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to LeAnn Bullin, Department of State, 2401 E Street, NW., 5H, Washington, DC 20522, who may be reached on 202–261–8927.

Dated: November 2, 2001.

Ruth Whiteside,

Principal Deputy Assistant Secretary, Bureau of Human Resources, Department of State.

[FR Doc. 02–663 Filed 1–9–02; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

Office of Foreign Missions

[Public Notice 3874]

30-Day Notice of Proposed Information Collection: Form DS–1504, Request for Customs Clearance of Merchandise (OMB Control #1405–0104)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Re-instatement of an expired information collection.

Originating Office: Bureau of Diplomatic Security, Office of Foreign Missions, DS/OFM/VTC/TC.

Title of Information Collection: Request for Customs Clearance of Merchandise.

Frequency: On occasion.

Form Number: DS–1504.

Respondents: Eligible members of foreign diplomatic or consular missions, certain foreign government organizations, designated international organizations and certain categories of foreign military personnel assigned to a foreign mission in the United States. The White House also uses this form when it requests duty-free entry of a shipment.

Estimated Number of Respondents: Approximately 7,000 individual respondents, 1,034 organizational respondents, and the White House.

Average Hours per Response: The average time per response is approx. 15 minutes.

Total Estimated Burden: 3,072 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection form and supporting documents may be obtained from Mr. Edmond McGill, DS/OFM/VTC/TC, 3507 International Place, NW., U.S. Department of State, Washington, DC 20008, tel.: 202–895–3618. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: November 27, 2001.

Theodore Strickler,

Deputy Assistant Secretary of State and Deputy Director, Office of Foreign Missions, Bureau of Diplomatic Security, U.S. Department of State.

[FR Doc. 02–662 Filed 1–9–02; 8:45 am]

BILLING CODE 4710–43–U

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Submission for OMB review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523. Comments should be sent to the OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for the Tennessee Valley Authority by February 11, 2002.

Type of Request: Regular submission.

Title of Information Collection: TVA Aquatic Plant Management.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 800.

Estimated Total Annual Burden Hours: 160.

Estimated Average Burden Hours Per Response: .2 (12 minutes).

Need for and Use of Information: TVA is committed to involving the public in developing plans for managing aquatic plants in individual TVA lakes under a Supplemental Environmental Impact Statement completed in August 1993. This proposed survey will provide a mechanism for obtaining input into this planning process from a representative sample of people living near each lake. The information obtained from the survey will be factored into the development of aquatic plant management plans for mainstream Tennessee River lakes.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations Information Services.

[FR Doc. 02–610 Filed 1–9–02; 8:45 am]

BILLING CODE 8120–08–U

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following briefings:

1. Feedback from TVA on the Recommendations Submitted to the TVA Board of Directors
2. Recommendation on Appropriations Funding of TVA Nonpower Programs
3. Recommendation from the Water Quality Subcommittee on Water Use Management
4. Public Comments
5. Progress Report on the Reservoir Operations Study
6. Discussion of Recommendations
7. Status of the Council Report from TVA

It is the Regional Council's practice to provide an opportunity for members of the public to make oral public comments at its meetings. Public comment session is scheduled from 1 to 2 p.m. Central time. Members of the public who wish to make oral public comments may do so during the Public comment portion of the agenda. Up to one hour will be allotted for the Public comments with participation available on a first-come, first-served basis. Speakers addressing the Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, January 31, 2002, from 8 a.m. to 4:30 p.m. Central Standard Time. Public comments are scheduled to begin at 1 p.m., ending by 2 p.m. Central Time.

ADDRESSES: The meeting will be held at the Huntsville Marriott, 5 Tranquility Base, Huntsville, Alabama 35805, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: January 3, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment, Tennessee Valley Authority.

[FR Doc. 02–611 Filed 1–9–02; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

New Mail Delivery/Document Filing Information Relating to Department of Transportation Informal Rulemaking Proceedings and Certain Preemption Determination Proceedings

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: The Department of Transportation now is receiving all United States Postal Service (USPS) deliveries. However, actions taken over the last three months in response to the September 11 terrorist attacks and to contain the anthrax threat have significantly delayed or prevented our receipt of mail sent to DOT. These actions may have caused filings related to DOT informal rulemaking and certain preemption determination proceedings to arrive after the close of the comment period or not at all. We are providing notice of alternative methods for ensuring that your filings come to us. We also want to assure you that we will do everything that we can to consider comments that we otherwise would have received before the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–9319. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: After the September 11, 2001, terrorist attacks, overnight shippers, e.g., FEDEX, advised the U.S. Department of Transportation (DOT) offices that they faced delivery delays because the airlines had been grounded. In addition, DOT requested that, beginning October 16, 2001, the United States Postal Service (USPS) halt most mail deliveries until it could put in place appropriate safety measures to address the potential threat from anthrax-contaminated mail. Mail caught in transit between October 13 and October 22 at DC's Brentwood Facility, where testers found traces of anthrax, may be part of quarantined mail that we might never receive (although we did get one delivery on October 22, 2001). Mail sent to DOT from mid-October to November 27 has been significantly delayed. DOT began receiving mail again on November 28. Even now, the USPS continues to irradiate first class and express mail bound for DOT. This means that we will receive mail after delays of a week or more. We do not know the full extent of the impact delayed or blocked mail delivery will have on our informal rulemaking proceedings and preemption determination proceedings for the Research and Special Programs Administration and Federal Motor Carrier Safety Administration.

We wish to advise the public that we will take this interruption of mail service into account, with respect to DOT rulemakings or preemption determination proceedings with comment periods that closed before mail delivery resumed on November 28, 2001. In some cases, where feasible, our agencies are extending or reopening comment periods. In other cases, we will do everything possible to ensure that we consider comments that we otherwise would have received before the close of the comment period. For example, we generally have the authority to consider late-filed

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comments and will do so to the extent practicable. We will also take note of the date of the USPS postmark for late-filed comments. Please note that Docket Office time stamps all items as they receive them.

Because we cannot be sure if we received filings sent just before October 13 or when, if ever, we will receive filings and comments caught in Brentwood between October 13 and November 27, please check our Dockets Web page (*http://dms.dot.gov*) to see if we received and processed your document(s). If your document is not in the electronic docket, we may not have received it. Please bear in mind that processing a document into the electronic system after receipt may take up to eight business days, especially since the DOT Mail Room must x-ray and screen all package deliveries prior to their acceptance into the DOT Docket Management System. If you do not have the electronic capability to check the docket, many public libraries have computers that you can use to electronically search the DOT dockets. Also, you can come to DOT and use the reading room computers in our Dockets Office, which is located on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, and is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

If your check of the docket reveals that we have not received your document, please fax us a copy at 202–493–2251 or resubmit your document with a notation that you are resending it. Please send it to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Please make sure the docket number is noted on the first page. We ask you to take these steps as soon as possible so that we will be able to consider your comments if we still can.

This notice addresses only preemption determination proceedings of the Research and Special Programs Administration and the Federal Motor Carrier Safety Administration and informal rulemaking proceedings conducted by any of the Department's agencies: the Bureau of Transportation Statistics, the Federal Aviation Administration, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the Federal Transit Administration, the Maritime Administration, the National Highway Traffic Safety Administration, the Office of the Secretary, the Research and Special Programs Administration, the St. Lawrence Seaway Development Corporation, and the U.S. Coast Guard.

We currently are accepting U.S. mail delivery by the USPS and deliveries from alternate delivery carriers. We also are accepting hand-delivered packages in the Docket Office, which is located on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. In addition, where possible, we encourage filers to use our Electronic Submission System on the DOT Dockets Web page (*http://dms.dot.gov*) by clicking on ES Submit and following the online instructions.

Issued in Washington, DC, on December 31, 2001.

Kirk K. Van Tine,

General Counsel.

[FR Doc. 02–657 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity To Participate, Criteria Requirements and Change of Application Procedure for Participation in the Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of criteria and application procedure for designation or re-designation, for the fiscal year 2002 MAP.

SUMMARY: This notice announces the criteria, application procedures and schedule to be applied by the Secretary of Transportation in designating or re-designating, and funding capital development annually for 15 current (joint-use) or former military airports seeking designation or re-designation to participate in the MAP. This Notice reflects and incorporates changes made to MAP in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

The MAP allows the Secretary to designate current (joint-use) or former military airports for which grants may be made under the Airport Improvement Program (AIP). The Secretary is authorized to designate an airport (other than an airport so designated before August 24, 1994) if: (1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. 2687, announcement of closures of large Department of Defense installations after September 30, 1977, or under section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or (2) the airport is a military installation with both military and civil aircraft operations. The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Airport sponsors should address written applications for new designation and re-designation in the MAP to the FAA Regional Airports Division or Airports District Office that serves the airport. That office of the FAA must receive applications on or before February 14, 2002.

ADDRESSES: Submit an original and two copies of Standard Form (SF) 424, "Application for Federal Assistance," prescribed by the Office of Management and Budget Circular A–102, available at *http://www.whitehouse.gov/OMB/grants/index.html*, along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or re-designation to participate in the fiscal year 2002 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.faa.gov/arp/arphome.htm* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Murdock (*oliver.murdock@faa.gov*) or Leonard C. Sandelli (*len.sandelli@faa.gov*), Military Airport Program Branch (APP–420), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8244, or (202) 267–8785, respectively.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated under the program may obtain funds from a set-aside (currently four-percent) of AIP discretionary funds to undertake eligible airport development, including

certain types of projects not otherwise eligible for AIP assistance. Such airports may also be eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year may participate in the MAP at any time. There are 5 slots available for designation or re-designation in FY 2002.

Term of Designation

The maximum period of eligibility for any airport to participate in the MAP is five fiscal years following designation. An airport sponsor having previously been in the program may apply for re-designation and, if found to satisfy the designation criteria upon reapplication, may have the opportunity to participate for subsequent periods, each not to exceed five fiscal years. The FAA can designate airports for a period less than five years. The FAA will evaluate the conversion needs of the airport in its five-year capital development plan to determine the appropriate length of designation.

Re-designation

Title 49 of the United States Code section 47118(d), permits previously designated airports to apply for re-designation. Applicants reapplying need to meet current eligibility criteria set forth at 49 U.S.C. 47118(a). Re-designation will be considered largely in terms of warranted projects fundable under AIP solely through the MAP. The airport must have MAP eligible projects and the airport must continue to satisfy the designation criteria for the MAP. The FAA will carefully evaluate applications for re-designation, as new candidates tend to have the greatest conversion needs.

Eligible Projects

In addition to other eligible AIP projects, passenger terminal facilities, fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet of floor space are all eligible to be funded from the MAP. Designated or re-designated military airports can receive not more than $7,000,000 each fiscal year for projects to construct, improve, or repair terminal building facilities. Also, designated or re-designated military airports can receive not more than a total of $7,000,000 for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(I)(1) The airport is a former military installation closed or realigned under—

(A) Section 2687 of title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations.

(II) The airport is classified as a commercial service or reliever airport in the NPIAS. One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 14 CFR 152.3) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (49 U.S.C. 47118(g)). There is no general aviation slot available this fiscal year because the slot was assigned to Oscoda-Wurtsmith for two years. FY 2002 is that airport's second year.

(III) In designating new candidate airports, the Secretary shall consider if a grant would:

(1) Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed airport and associated projects would contribute to congestion relief and/or how the airport would enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently approved Base Closure and Realignment Acts or Title 10 U.S.C. 2678 military airports as well as active military airfields with new joint use agreements will be in the greatest need of funding to convert to or to incorporate civil airport operations successfully. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five year Airport Capital Improvement Plan (ACIP). Of particular concern is whether these projects are related to development of that airport and/or the air traffic control system. It is the intent of the Secretary of Transportation to fund those airport projects where the benefits to the capacity of the air traffic control or airport systems can be maximized, and/or where the contribution to reducing congestion can be maximized.

1. The FAA will evaluate the candidate airports and/or the airports such candidate airports would relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of air carrier service anticipated, i.e., scheduled and/or charter air carrier service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs, which if funded, would make the airport a viable civil airport that will enhance system capacity or reduce delays. Newly closed installations or airport sponsors with new joint-use agreements with existing military aviation facilities will be strongly considered for designation since they tend to have the greatest conversion needs.

Application Procedures and Required Documentation

Airport sponsors applying for designation or re-designation must complete and submit an SF 424,

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"Application for Federal Assistance," and supporting documentation to the appropriate FAA office serving that airport. The SF 424 must indicate whether it is an initial application or reapplication for the MAP, and must be accompanied by the documentation and justification listed below:

(A) Identification as Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by DOD pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date of the deed to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations.

(B) Qualifications for MAP:

For (1) through (7) below the applicant does not need to resubmit any unchanged documentation that has been previously submitted to the Regional Airports Division or Airports District Office.

(1) Documentation that the airport meets the definition of a "public airport" as defined in 49 U.S.C. 47102(16).

(2) Documentation indicating that the required environmental review process for civil reuse or joint-use of the military airfield has been completed. This environmental review would not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or sign a joint use agreement has been completed. The military department conveying or leasing the property, or entering into a joint use agreement, generally has the lead responsibility for this environmental review. The environmental review and approvals must indicate that the operator or owner of the airport has good title; satisfactory to the Secretary, or gives assurance that good title will be acquired, to meet AIP requirements.

(3) In the case of a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or more, to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Government is sufficient to indicate the eligible airport sponsor holds or will hold adequate title or a long-term lease.

(4) In the case of a current military airport documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. This is necessary so the FAA can legally issue grants to the sponsor.

(5) Documentation that the service level of the airport is expected to be classified as a "commercial service airport" or a "reliever airport" as defined in 49 U.S.C. 47102(7) and 47102(18).

(6) Documentation that the airport owner is an eligible airport "sponsor" as defined in 49 U.S.C. 47102(19).

(7) Documentation that the airport has an unconditionally approved airport layout plan (ALP) and a five-year Airport Capital Improvement Program (ACIP) indicating all eligible grant projects seeking to be funded either from the MAP or other portions of the AIP.

(8) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(9) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport, including how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays by commercial passenger aircraft takeoffs and landings or enhance capacity in a metropolitan area.

(10) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near which a current or former military airport is located. Include a discussion of the level to which operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(11) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(12) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected; i.e., safety-related, conversion-related, and/or capacity-related, must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside:

- Modification of airport or military airfield for safety purposes, including airport pavements modifications (i.e. widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in 14 CFR part 77.
- Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.
- Modifications which will permit the airfield to accommodate general aviation users.

Landside:

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(13) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(14) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(15) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Also, other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should be included. These maps and ALP's should be cross-referenced with the project costs and project descriptions.

Re-designation of Airports Previously Designated and Applying for Up to an Additional Five Years in the Program

Airports applying for re-designation to the Military Airport Program need to submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports must indicate their application is for re-designation to the MAP. In addition to the above information, they must explain:

(1) Why a re-designation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for re-designation;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport;

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals; and

(4) The term of the re-designation, not to exceed five years, for which the airport is applying.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on January 4, 2002.

Benito DeLeon,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 02–651 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–02–U–00–HGR) To Use a Passenger Facility Charge (PFC) at Hagerstown Regional Airport—Richard A. Henson Field, Hagerstown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a passenger facility charge (PFC) at Hagerstown Regional Airport—Richard A. Henson Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 22016.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Carolyn S. Motz, Airport Manager, Board of County Commissioners of Washington County, Maryland at the following address: Hagerstown Regional Airport—Richard A. Henson Field, 18434 Showalter Road, Hagerstown, Maryland 21742–1347.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Board of County Commissioners of Washington County, Maryland under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Project Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 22016, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Hagerstown Regional Airport—Richard A. Henson Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 28, 1999, the FAA determined that the application to impose and use a PFC submitted by the Board of County Commissioners of Washington County, Maryland was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1999.

The following is a brief overview of the application.

PFC Application No.: 02–02–U–00–HGR..

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2002.

Proposed charge expiration date: July 8, 2003.

Total estimated PFC revenue: $206,000.

Brief description of proposed project(s):

—Construct Snow and Equipment Maintenance Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carrier filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports Office located at: Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hagerstown Regional Airport—Richard A. Henson Field.

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Issued in Dulles, VA 22016, January 3, 2002.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 02–654 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9688]

Agency Information Collection Activities Under OMB Review: OMB Control No. 2126–0001 (Driver's Record of Duty Status)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. The FMCSA is requesting approval of the information that is required for the Record of Duty Status (RODS) of drivers of commercial motor vehicles (CMVs). This information collection is necessary to ensure that motor carriers and CMV drivers comply with the limitations on maximum driving and duty time prescribed in the Federal Motor Carrier Safety Regulations (FMCSRs). The ICR describes the information collection and its expected burden. FMCSA is sending the ICR to OMB in accordance with the terms of the Paperwork Reduction Act of 1995. The FMCSA published the required **Federal Register** notice offering a 60-day comment period on this information collection on May 21, 2001 (66 FR 28017). Two comments were received during this comment period and are addressed below.

DATES: Please submit comments by February 11, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including: whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. OMB wants to receive comments within 30 days of publication of this notice in order to act on the ICR quickly.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr. (202) 366–2718, Driver and Carrier Operations (MC–PSD), Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Driver's Record of Duty Status

OMB Approval Number: 2126–0001

Background: The record of duty status (RODS) is the primary tool used by the FMCSA to determine the compliance of motor carriers and CMV drivers with the maximum driving and duty time limitations prescribed in the FMCSRs. States that receive Motor Carrier Safety Assistance Program (MCSAP) grants from the FMCSA employ these tools to determine the regulatory compliance of CMV drivers during safety inspections. The information contained in the RODS determines whether a driver can drive a CMV on any given day, based upon the duty hours and driving time recorded by the driver over the previous 7 to 8 days. The RODS is an important tool to help ensure the safety of the general public by reducing the number of tired drivers on the nation's highways.

On May 21, 2001, the FMCSA gave notice that the agency intended to seek OMB approval of the renewal of this information collection (66 FR 28017). The Notice solicited public comment; two comments were received. Both comments indicated that both drivers and carriers, in complying with the paperwork associated with the RODS, consume more time than FMCSA had estimated. The American Trucking Association (ATA) reported the results of a survey of its members. Member drivers estimated that it takes 10 to 15 minutes per day to properly complete a log sheet. Member motor carriers estimated that it takes 9 minutes per day to "review, check for accuracy, and file" each record of duty status. The Owner-Operators Independent Drivers Association (OOIDA) also provided estimates from its members. Member drivers estimated that it takes "approximately 15 minutes" per day to properly complete a log sheet. Member motor carriers estimated that it takes 9 to 10 minutes daily, per RODS, to receive, process and store the information.

In light of the comments received FMCSA has reconsidered the assumptions we applied in developing our previous estimates. In addition, the agency conducted a small number of "time trials" to examine the process of completing a RODS more closely. The agency separated the standard RODS into three parts: the basic information at the top of the log, the large area for tracking the actual duty status through the day, and the summary portion. The agency determined that the industry average for each part of the RODS were as follows:

Date, name and address of the motor carrier, vehicle number and total miles—1 minute.

30 to 45 seconds per change of duty status (each individual grid entry) with 6 to 8 changes of duty status per day for most drivers—4 minutes and 30 seconds.

Addition of the total hours for each status line, and for the 24-hour period—1 minute.

FMCSA has previously estimated that 2 minutes daily are required for a driver to complete a RODS. We now estimate that 6.5 minutes daily are required to complete minimally compliant RODS. The agency does not doubt that for some drivers in some segments of the trucking industry the daily times are as great as the comments suggest. However, we feel that 6.5 minutes provides a more reasonable industry-wide average of the amount of time a driver requires to complete a RODS.

FMCSA has previously estimated that a motor carrier requires 30 seconds daily per driver to file a RODS. In light of the comments received from these two organizations, we have reconsidered the assumptions we applied in developing our estimate. We now estimate that 3 minutes daily per driver are required for a motor carrier to file each RODS. We are also guided by the fact that the regulations do not require the motor carrier to review each and every RODS of its drivers; it is sufficient if the carrier develops some form of systemic review of these records, such as periodic random spot checks, to assure that they are being completed properly.

On May 2, 2000, FMCSA proposed a comprehensive revision of the HOS Rules (65 FR 25539). The agency is continuing its review of more than 50,000 comments to these proposed rules. The agency also held eight public hearings and three roundtables, and is reviewing the transcripts of these proceedings. The review is continuing.

Earlier, on April 20, 1998, FMCSA published an NPRM (63 FR 19457) in response to a statutory mandate to amend the HOS regulations by defining and describing the supporting documents necessary to substantiate the RODS. FMCSA incorporated this NPRM, and the comments received to it, into the proposed HOS Rules.

FMCSA is proposing changes to the HOS rules because the transportation system of the United States has changed significantly over the 65 years since the current rules were promulgated. Research today indicates that under the current HOS rules, drivers do not have sufficient opportunities to get restorative sleep. There is strong evidence that new rules could substantially reduce the fatalities and injuries that occur each year because of drowsy, tired, or fatigued CMV drivers. Legislation prohibited the Department from issuing a final rule in FY 2001, but allowed all other stages of the rulemaking to proceed. The new FMCSA Administrator, recently confirmed by the Congress, will review and direct the future of this effort.

Respondents: The respondents are CMV drivers and motor carriers. The burden is imposed on both. Drivers must complete an RODS, under the Hours-of–Service rules or compatible State regulations, and submit it to the motor carrier. Motor carriers must collect and store the RODS, and review it for accuracy.

Number of Drivers

FMCSA estimates that 6,436,430 CMV drivers are required to complete RODS, whether paper or timecard. FMCSA assumes no reduction in burden for the use of EOBRs. FMCSA believes that only motor carriers with large numbers of drivers employ this technology because it is not economically feasible for medium and small sized carriers. FMCSA believes that approximately five per cent of motor carriers currently use EOBRs, and that this number is not likely to rise significantly in the absence of a regulation mandating their use. The agency feels that the EOBRs play such a minor role that no adjustments to the estimates are necessary to account for their use; all subject motor carriers and drivers will be assumed to employ either paper or timecard RODS.

The estimate of 6,436,430 drivers includes interstate drivers and intrastate drivers. This estimate is currently being used by FMCSA for estimating other pertinent information collection burdens. Intrastate drivers are included because states electing to accept Federal grants under MCSAP must enact state laws which parallel the FMCSRs. Most states have such parallel laws mandating the completion and maintenance of RODS. The collection burden imposed by those state laws is included in the Federal burden for purposes of this calculation.

The estimate of 6,436,430 drivers includes both commercial driver's license (CDL) and non-CDL drivers subject to FMCSA regulations. Data and sampling weights from the 1999 Controlled Substances and Alcohol Testing Survey were used to generate an estimate of the number of CDL drivers. An estimate of non-CDL drivers was obtained by calculating the ratio of CDL to non-CDL drivers in FMCSA's Motor Carrier Management Information System (MCMIS). FMCSA also employed figures derived from the Truck Inventory and Use Survey compiled by the Bureau of the Census, U.S. Department of Commerce. FMCSA is making other efforts to determine the number of CMV drivers, and these efforts will help the agency to define this population.

CMV drivers engage in four categories of operation, as follows:

Type of operation	Number of drivers
Long-haul	424,804
Regional	823,863
Local delivery	3,997,023
Local, services	1,190,740
Total	6,436,430

FMCSA does not report the burden hours associated with the collection of time card information because DOL reports this burden under OMB No. 1215–0017, titled, "Records To Be Kept By Employers—FLSA." FMCSA believes that all "Local, Services" CMV drivers are eligible for, and employ, time cards. In addition, FMCSA believes that twenty-five per cent (25%) of the "Local, delivery" CMV drivers are eligible to use time cards. Thus the number of CMV drivers who are pertinent to these calculations is 4,246,434, as follows:

Type of operation	Number of drivers
Long-haul	424,804
Regional	823,863
Local delivery: 3,997,023 × .75 =	2,997,767
Local, services	0
Total	4,246,434

Number of Burden Hours: CMV Driver

The amount of time required to fill out a RODS varies with the number of stops and with changes in a driver's status (*e.g.*from "on-duty driving" to "on-duty not driving"). FMCSA estimates that CMV drivers take an average of six minutes and thirty seconds daily to complete the RODS. FMCSA believes that CMV drivers subject to these regulations work 240 workdays per year. Six and a half minutes for each of 240 days creates a total time burden of 26 hours per year for the average CMV driver. Thus the total burden hours for CMV drivers is 110,407,284, as follows:

Number of drivers	Hours per year	Total burden hours
4,246,434	26	110,407,284

Number of Burden Hours: Motor Carrier

Motor carriers are required to retain RODS for a period of six months (49 CFR 395.8(k)). The motor carrier must also systematically review the RODS of its drivers to ensure that they are complete and accurate (49 CFR 395.8(e)). FMCSA estimates a motor carrier spends an average of three minutes per driver per day complying with these requirements. Three minutes for each of 240 days creates a total time burden for motor carriers of 12 hours per year for each CMV driver. Thus the total burden hours for motor carriers is 50,957,208, as follows:

Number of drivers	Hours per year	Total burden hours
4,246,434	12	50,957,208

Total Burden Hours

The estimated annual burden of this information collection, for both the CMV driver and the motor carrier, is 161,364,492 burden hours, as follows:

Total burden hours: driver	Total burden hours: carrier	Total burden hours
110,407,284	50,957,208	161,364,492

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Issued on: December 20, 2001.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–664 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–EX–P

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–11055]

Motor Carrier Safety Research and Technology: Second Annual Workshop

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public meeting; workshop participation; request for comments.

SUMMARY: This notice invites participation in a workshop addressing issues related to safety and security in Motor Carrier Safety Research and Technology Development Program and requests comment from those unable to attend the workshop. The workshop is being sponsored by FMCSA's Office of Research and Technology. It will be held at the close of the Transportation Research Board's Annual Meeting on January 17, 2002, in Washington, DC. The workshop will promote discussion of the accomplishments of the Office of Research and Technology since the Transportation Research Board's annual meeting of 2001; facilitate the sharing of information regarding specific research and technology projects completed during the 2001 calendar year; and provide a forum for interested parties to discuss their views regarding the planned or proposed projects in the area of research and technology.

DATES: The meeting and workshop will be held on Thursday, January 17, 2002, from 8:30 a.m. to 5:00 p.m. If you would like your comments to be available by the date of the meeting, submit the comments to the DOT Docket Clerk as described below by January 13, 2002. If you are unable to attend the meeting, comments should be submitted to the DOT Docket Clerk before January 31, 2002.

ADDRESSES: The meeting and workshop will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008. Mail comments to Docket Clerk, U.S. DOT Dockets Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Alvarez, Office of Research and Technology, (202) 358–5684, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access or Filing

Internet users can submit or review comments online through the Document Management System (DMS) website at: *http://dmses.dotgov*. Detailed information on the workshop and Program areas is available at *www.volpe.dot.gov/outreach/fmcsatrb*. Participants can pre-register for the workshop at the Transportation Research Board website: *www.trb.org/trb/meeting*.

The Federal Motor Carrier Research and Technology Development Program supports FMCSA safety activities and initiatives through the discovery, application, and dissemination of new knowledge (research); and the assessment, development, deployment, and promotion of new devices and systems (technology).

The Workshop Agenda will include:

1. Plenary Session
2. Accomplishment reports on the five program areas
3. Box Lunch
4. Breakout Sessions in the five program areas regarding planned or proposed future projects
5. Wrap-up and Evaluations

Meeting and workshop attendance is open to the public, but is limited in space. For the morning Workshop Plenary Session there is no limit on space. Seating for the afternoon Breakout Sessions will be on a first-come basis. The registration for an entire day includes a lunch fee.

For information on facilities or services for individuals with disabilities, or to request special assistance or meals at the meetings, contact Delores Hilton, Transportation Research Board (202) 334–2960.

Comments from those who attend the meeting and workshop will be transcribed. A copy of the transcript will be placed in the public docket. Feedback from all parties will be used as the basis for a final Workshop Report. The report will also be available to the public at the Volpe website which has information on the workshop.

If you wish to submit written comments or statements concerning the meeting and this notice, submit the information to the public docket listed at the top of this notice.

Issued on: January 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–658 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–11283]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, MAR–250, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0284 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Waiver of Service Obligation; Request for Deferment of Service Obligation; Application for Review of Waiver/Deferment Decisions.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0510.

Form Numbers: MA–935; MA–936; MA–937.

Expiration Date of Approval: June 30, 2002.

Summary of Collection of Information: In accordance with U.S.C. 12959, MARAD requires approved maritime training institutions seeking excess or surplus property to provide a statement of need/justification prior to acquiring the property.

Need and Use of the Information: This information collection is used by the requestor to provide a justification of the intended use of the surplus property, and is needed by MARAD to determine compliance with applicable statutory requirements.

Description of Respondents: Maritime training institutions.

Annual Responses: 61.

Annual Burden: 20½ hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator.

Dated: January 7, 2002.

Joel C. Richard,

Secretary.

[FR Doc. 02–648 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11282]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FELLOWSHIP.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11282. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FELLOWSHIP. *Owner:* Nels Erik & Tina Marie Jensen.

(2) Size, capacity and tonnage of vessel. According to the applicant: "75' in length. Tonnage per document is 113 gross and 90 net."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Naturalist guided, day only, eco-excursion for groups of 12 passengers to San Juan Islands National Wildlife Reserve, San Juan Islands, Washington State."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* Unknown. Place of construction: Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I do not feel we would impact any existing commercial sightseeing, whale watching, or tourist operator whatsoever. These are larger commercial ventures that appeal to an entirely different clientelle."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "* * * I used Seattle and Northwest shipyards to restore this vessel and I plan to continue to use the same for yearly haulouts and repairs.* * * I can only see a benefit and therefore a positive impact on our local shipyards and respective local economy* * *"

Dated: January 7, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–649 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10312; Notice 2]

Michelin North America, Inc.; Grant of Application for Decision That Noncompliance is Inconsequential to Motor Vehicle Safety

Michelin North America, Inc., (Michelin), determined that approximately 173,800 205/55R16 Michelin Energy MXV4+ tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." FMVSS No. 109 requires that each tire shall have permanently molded into or onto both sidewalls the generic name of each cord material used in the plies of the tire (S4.3 (d)).

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on August 9, 2001, in the **Federal Register** (66 FR 41931). NHTSA received no comments on this application. During the period of the 4th week of 2000 through the 9th week of 2001, the subject tires were produced and cured with the erroneous marking. Instead of the required marking of:

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Tread Plies — 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies — 2 polyester, the tires were marked: Tread Plies — 2 Rayon + 2 Steel + 1 Polyamide, Sidewall Plies — 2 Rayon. Of the total, approximately 162,500 tires may have been delivered to customers. The remaining tires have been identified in Michelin's warehouse.

Michelin stated that these tires meet or exceed all FMVSS No. 109 performance requirements and, therefore, this noncompliance is inconsequential as it relates to motor vehicle safety.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act of November 2000 required, among other things, that the agency initiate rulemaking to improve tire label information. In response to Section 11 of the TREAD Act, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments addressing the ANPRM, which sought comments on the tire labeling information required by 49 CFR 571.109 and 571.119, part 567, part 574, and part 575. Most of the comments were from motor vehicle and tire manufacturers, although several private citizens and consumer interest organizations responded to the ANPRM. With regard to the tire construction (number of plies and type of ply cord material in the tread and sidewall) labeling requirements of FMVSS 109, paragraphs S4.3 (d) and (e), most comments indicated that the information was of little or no safety value to consumers. However, the tire construction information is valuable to the tire re-treading, repair, and recycling industries, according to several trade groups representing tire manufacturing. The International Tire and Rubber Association, Inc., (ITRA) indicated that the tire construction information is used by tire technicians to determine the steel content of a tire so that proper retread, repair, and recycling procedures can be selected.

In addition to the written comments solicited by the ANPRM, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perception and understanding of tire labeling. Few of the focus group participants had knowledge of tire label information beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we believe that it is likely that few consumers are influenced by the tire construction information (i.e., the number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire. However, the tire repair, retread, and recycling industries use the tire construction information.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, specifying rayon instead of polyester for tire construction will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on tire construction information. The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries, according to ITRA. In this case, the fact that steel is used in the tread construction of the tires appears on the sidewalls. In consideration of the foregoing, NHTSA has decided that the applicant has met the burden of persuasion and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Michelin's application is granted and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 4, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–656 Filed 1–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34142]

Bethlehem Steel Corporation—Corporate Family Transaction Exemption

Bethlehem Steel Corporation (BSC), a noncarrier holding company, has filed a verified notice of exemption. As part of an overall corporate restructuring, BSC is forming six new limited liability company subsidiaries (LLCs) to merge with and succeed to the rights of six of BSC's existing subsidiary Class III rail carriers. BSC will continue to control the LLCs.[1]

The transaction was to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed.) The corporate restructuring will provide tax benefits to BSC, eliminate the filing of certain tax returns, and provide other administrative benefits.

BSC's control of the LLCs and the conversion of the six existing BSC rail carriers to LLCs through mergers are transactions within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). BSC states that the transaction will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family.

[1] The six BSC subsidiary railroads are as follows: Brandywine Valley Railroad Company, operating in the States of Pennsylvania and Delaware; Upper Merion and Plymouth Railroad Company, operating in the State of Pennsylvania; Conemaugh & Black Lick Railroad Company, operating in the State of Pennsylvania; Keystone Railroad, Inc., operating in the State of Pennsylvania; Steelton & Highspire Railroad Company, operating in the State of Pennsylvania; and Patapsco & Back Rivers Railroad Company, operating in the State of Maryland. The instant corporate family transaction is related to six concurrently filed verified notices of exemption: STB Finance Docket No. 34154, *Brandywine Valley Railroad Company LLC—Acquisition and Operation Exemption-Brandywine Valley Railroad Company*; STB Finance Docket No. 34155, *Upper Merion and Plymouth Railroad Company LLC—Acquisition and Operation Exemption-Upper Merion and Plymouth Railroad Company*; STB Finance Docket No. 34156, *Conemaugh & Black Lick Railroad Company LLC—Acquisition and Operation Exemption-Conemaugh & Black Lick Railroad Company*; STB Finance Docket No. 34157, *Keystone Railroad LLC—Acquisition and Operation Exemption-Keystone Railroad, Inc.*; STB Finance Docket No. 34158, *Steelton & Highspire Railroad Company LLC—Acquisition and Operation Exemption-Steelton & Highspire Railroad Company*; and STB Finance Docket No. 34159, *Patapsco & Back Rivers Railroad Company LLC—Acquisition and Operation Exemption-Patapsco & Back Rivers Railroad Company.*

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34142, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–537 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34154]

Brandywine Valley Railroad Company LLC—Acquisition and Operation Exemption—Brandywine Valley Railroad Company

Brandywine Valley Railroad Company LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from its corporate affiliate Brandywine Valley Railroad Company (Brandywine)[1] and operate the following rail lines: (1) Between milepost 12.7, at the Delaware/Pennsylvania state line and milepost 30.29, at Modena, PA, a distance of 17.59 miles;[2] (2) Between milepost 18.0, at Wawa, PA, and milepost 54.50, at the Pennsylvania/Maryland state line near Sylmar, MD, a distance of 36.50 miles;[3] and (3) between milepost 12.7, at the Delaware/Pennsylvania border and milepost 2.9, at Elsmere Jct., DE, a distance of 9.8 miles.[4]

The transaction was expected to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which Brandywine is to be merged into Applicant. The separate existence of Brandywine will cease and Applicant will be the surviving entity and continue the operations formerly provided by Brandywine.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34154, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, PO Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–540 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34156]

Conemaugh & Black Lick Railroad Company LLC—Acquisition and Operation Exemption—Conemaugh & Black Lick Railroad Company

Conemaugh & Black Lick Railroad Company LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from its corporate affiliate Conemaugh & Black Lick Railroad Company (CBL)[1] and operate a 32-mile rail line in Cambria County, PA.[2]

The transaction was expected to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which CBL is to be merged into Applicant. The separate existence of CBL will cease and Applicant will be the surviving entity and continue the operations formerly provided by CBL.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34156, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

[1] Both Applicant and Brandywine are wholly owned subsidiaries of Bethlehem Steel Corporation.

[2] *See Brandywine Valley Railroad Company-Acquisition Exemption-Pennsylvania Department of Transportation*, STB Finance Docket No. 34141 (STB served Jan. 8, 2002).

[3] *See Brandywine Valley Railroad Company-Modified Rail Certificate*, STB Finance Docket No. 33722 (STB served Apr. 16, 1999).

[4] *See Certificate of Designated Operator, Brandywine Valley Railroad Company*, STB D-OP No. 100 (STB served June 10, 1999).

[1] Both Applicant and CBL are wholly owned subsidiaries of Bethlehem Steel Corporation.

[2] Applicant states that the rail line is composed of yard and switching tracks and does not have assigned mileposts.

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–532 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34157]

Keystone Railroad LLC—Acquisition and Operation Exemption—Keystone Railroad, Inc

Keystone Railroad LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 132-mile rail line in Northampton County, PA,[1] owned by its corporate affiliate Keystone Railroad, Inc. (Keystone).[2]

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which Keystone is to be merged into Applicant. The separate existence of Keystone will cease and Applicant will be the surviving entity and continue the operations formerly provided by Keystone.[3]

The transaction was expected to be consummated as of January 1, 2002. Applicant states that its revenues are expected to exceed $5,000,000 per year. Under 49 CFR 1150.32(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so." When Applicant filed its verified notice of exemption in STB Finance Docket No. 34157, it simultaneously filed a request for a waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption to become effective without providing the 60-day advance notice. Finding no adverse impact on the personnel of Keystone, by decision served on December 27, 2001, the Board granted Applicant's request and waived the requirements of 49 CFR 1150.32(e). That decision had the effect of making the exemption in this proceeding effective on December 27, 2001.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34157, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, PO Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–533 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34140]

Lake Michigan & Indiana Railroad Company LLC—Acquisition and Operation Exemption—Keystone Railroad, Inc.

Lake Michigan & Indiana Railroad Company LLC (LMIC), a noncarrier at the time of the transaction described in this notice, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 66-mile rail line in Burns Harbor, Porter County, IN,[1] previously leased by its corporate affiliate Keystone Railroad, Inc. (Keystone).[2]

LMIC states that it took over the lease from Keystone and commenced operations on the rail line in October 2001, pursuant to an exemption it received in *Bethlehem Steel Corporation, Keystone Railroad, Inc., and Lake Michigan & Indiana Railroad Company LLC—Corporate Family Transaction Exemption*, STB Finance Docket No. 34101 (STB served Oct. 25, 2001). LMIC notes that it filed its notice of exemption in STB Finance Docket No. 34140 after the Board's staff informed LMIC that, as a newly formed noncarrier, an exemption from the requirements of 49 U.S.C. 10901 was needed as well.

LMIC states that its revenues are expected to exceed $5,000,000 per year. Under 49 CFR 1150.32(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so." When LMIC filed its verified notice of exemption in STB Finance Docket No. 34140, it simultaneously requested a waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption to become effective without providing the 60-day advance notice. Finding no adverse impact on the personnel of Keystone, by decision served on December 27, 2001, the Board granted LMIC's request and waived the requirements of 49 CFR 1150.32(e). That decision had the effect of making the exemption in this proceeding effective on December 27, 2001.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34140 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, PO Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–538 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicant states that the rail line is composed of yard and switching tracks and does not have assigned mileposts.

[2] Both Applicant and Keystone are wholly owned subsidiaries of Bethlehem Steel Corporation.

[3] The verified notice of exemption indicates that Keystone currently conducts operations under its historic trade name of Philadelphia Bethlehem and New England Railroad and that Applicant will continue to use the same trade name.

[1] LMIC states that the rail line is composed of former yard and switching tracks and does not have assigned mileposts.

[2] Both Keystone and LMIC are wholly owned subsidiaries of Bethlehem Steel Corporation.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34137]

Chicago SouthShore & South Bend Railroad—Trackage Rights Exemption—National Railroad Passenger Corporation (AMTRAK)

National Railroad Passenger Corporation (AMTRAK), has agreed to grant local trackage rights to Chicago SouthShore & South Bend Railroad (CSS&SB). The trackage rights extend over approximately 2.7 miles of track from the turnout at approximately milepost 226.1 to the industrial lead at approximately milepost 228.8, all in or near Michigan City, IN.[1]

The transaction was scheduled to be consummated on or after December 28, 2001, the effective date of the exemption.

The purpose of the trackage rights is to enhance competition and to enable CSS&SB to provide service to two current customers on the line and other customers who locate on the line in the future.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34137, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Troy W. Garris, Weiner Brodsky Sidman Kider PC, Fifth Floor, 1300 19th Street, NW., Washington, DC 20036–1609.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–659 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

[1] A redacted version of the Trackage Rights Agreement between AMTRAK, and CSS&SB (agreement) was filed with the verified notice of exemption. An unredacted version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with the motion for a protective order. This motion was granted in a separate decision served in this proceeding on January 7, 2002.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34159]

Patapsco & Back Rivers Railroad LLC—Acquisition and Operation Exemption—Patapsco & Back Rivers Railroad Company

Patapsco & Back Rivers Railroad LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 183-mile rail line in Baltimore County, MD,[1] owned by its corporate affiliate Patapsco & Back River Railroad Company (Patapsco).[2]

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which Patapsco is to be merged into Applicant. The separate existence of Patapsco will cease and Applicant will be the surviving entity and continue the operations formerly provided by Patapsco.

The transaction was expected to be consummated as of January 1, 2002. Applicant states that its revenues are expected to exceed $5,000,000 per year. Under 49 CFR 1150.32(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so." When Applicant filed its verified notice of exemption in STB Finance Docket No. 34159, it simultaneously filed a request for a waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption to become effective without providing the 60-day advance notice. Finding no adverse impact on the personnel of Patapsco, by decision served on December 27, 2001, the Board granted Applicant's request and waived the requirements of 49 CFR 1150.32(e). That decision had the effect of making the exemption in this proceeding effective on December 27, 2001.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34159, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, PO Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–536 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicant states that the rail line is composed of yard and switching tracks and does not have assigned mileposts.

[2] Both Applicant and Patapsco are wholly owned subsidiaries of Bethlehem Steel Corporation.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34158]

Steelton & Highspire Railroad Company LLC—Acquisition and Operation Exemption—Steelton & Highspire Railroad Company

Steelton & Highspire Railroad Company LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from its corporate affiliate Steelton & Highspire Company (SH)[1] and operate a 47-mile rail line in Dauphin County, PA.[2]

The transaction was expected to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which SH is to be merged into Applicant. The separate existence of SH will cease and Applicant will be the surviving entity and continue the operations formerly provided by SH.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34158, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

[1] Both Applicant and SH are wholly owned subsidiaries of Bethlehem Steel Corporation.

[2] Applicant states that the rail line is composed of yard and switching tracks and does not have assigned mileposts.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–535 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34155]

Upper Merion and Plymouth Railroad Company LLC—Acquisition and Operation Exemption—Upper Merion and Plymouth Railroad Company

Upper Merion and Plymouth Railroad Company LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from its corporate affiliate Upper Merion and Plymouth Railroad Company (UMP)[1] and operate an 11-mile rail line in Montgomery County, PA.[2]

The transaction was expected to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which UMP is to be merged into Applicant. The separate existence of UMP will cease and Applicant will be the surviving entity and continue the operations formerly provided by UMP.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34155, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

[1] Both Applicant and UMP are wholly owned subsidiaries of Bethlehem Steel Corporation.

[2] Applicant states that the rail line is composed of yard and switching tracks and does not have assigned mileposts.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–541 Filed 1–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 2, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 11, 2002, to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0008.

Regulation Parts: 31 CFR 103.33.

Type of Review: Extension.

Title: Conditional Exception to the Application of 31 CFR 103.33(g).

Description: FinCEN Notice 1998–1 provides two conditional exceptions to the information requirements of 31 CFR 103.33(g) (the "Travel Rule"). Banks and brokers and dealers in securities would use the exceptions.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Reporting—3 minutes

Recordkeeping—15 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,500 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–7860.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–566 Filed 1–9–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the quarterly meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC), and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, January 25, 2002, starting at 8:45 a.m., 740 15th Street, Suite 700, Washington, DC. The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION CONTACT: Gordana S. Earp, Deputy Director, Tariff and Trade Affairs (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622–0336.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

Agenda:

(1) Report on the work of the COAC sub-committee on Border Security and COAC recommendations.

(2) Status of proposed re-design of the Office of Rules & Regulations.

(3) Merchandise Processing Fee.

(4) Review of issues and priorities for 2002.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622–0220 or Helen Belt at (202) 622–0230.

Dated: January 4, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary, Regulatory, Tariff, and Trade (Enforcement).

[FR Doc. 02–602 Filed 1–9–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Proposed Revision of Information Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on proposed revisions to a continuing information collection, as required by the Paperwork Reduction Act of 1995. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are soliciting comments on proposed revisions to the information collection titled: "Interagency Bank Merger Act Application." Additionally, the OCC is making other clarifying changes to the Comptroller's Corporate Manual.

DATES: You should submit written comments by March 11, 2002.

ADDRESSES: Interested parties are invited to submit comments to any or all of the Agencies. All comments, which should refer to the OMB control number, will be shared among the Agencies:

OCC: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW, Mail Stop 1–5, Attention: 1557–0014 (BMA), Washington, DC 20219. You may make an appointment to inspect and photocopy comments at the same location by calling (202) 874–5043. In addition, you may fax your comments to (202) 874–4448 or e-mail them to *regs.comments@occ.treas.gov*.

Board: Written comments may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by electronic mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room M–P–500 between 9 a.m. and 5 p.m., on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), Office of Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. All comments should refer to "Interagency Bank Merger Act Application." Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: 1550–0016, FAX Number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW, by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

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FOR FURTHER INFORMATION CONTACT: You may request additional information from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Cheryl Martin at (202) 874–4614, Licensing, Policy, and Systems, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Sally W. Watts, OTS Clearance Officer, (202) 906–7380; Frances C. Augello, Senior Counsel, Business Transactions Division, (202) 906–6151; Patricia D. Goings, Regulatory Analyst, Examination Policy, (202) 906–5668; or Damon C. Zaylor, Regulatory Analyst, Examination Policy, (202) 906–6787, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Proposal to extend for three years, with revision, the following currently approved collection of information:

Report Title: Interagency Bank Merger Act Application.

OCC's Title: Comptroller's Corporate Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to the Business Combinations booklet of the Manual and various portions to which the OCC is making technical and clarifying changes.

OMB Numbers:
OCC: 1557–0014.
Board: 7100–0171.
FDIC: 3064–0015.
OTS: 1550–0016.

Form Numbers:
OCC: None.
Board: FR 2070.
FDIC: 6220/01 and 6220/07.
OTS: 1639.

Affected Public: Individuals or households; Businesses or other for-profit.

Type of Review: Review of a currently approved collection.

Estimated Number of Respondents:
OCC: Nonaffiliate—120; Affiliate—260.
Board: Nonaffiliate—57; Affiliate—79.
FDIC: Nonaffiliate—200; Affiliate—150.
OTS: Nonaffiliate—16; Affiliate—0.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response:
OCC: Nonaffiliate—30; Affiliate—18.
Board: Nonaffiliate—30; Affiliate—18.
FDIC: Nonaffiliate—30; Affiliate—18.
OTS: Nonaffiliate—30; Affiliate—18.

Estimated Total Annual Burden Hours:
OCC: Nonaffiliate—3,600; Affiliate—4,680. Total: 8,280 burden hours.
Board: Nonaffiliate—1,710; Affiliate—1,422. Total: 3,132 burden hours.
FDIC: Nonaffiliate—6,000; Affiliate—2,700. Total: 8,700 burden hours.
OTS: Nonaffiliate—480; Affiliate—0. Total: 480 burden hours.

General Description of Report: This information collection is mandatory. 12 U.S.C. 1828(c) (OCC, FDIC, and OTS), and 12 U.S.C. 321, 1828(c), and 4804 (Board). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses, that is, small institutions, are affected.

Abstract: This submission covers a revision to the Agencies' merger application form for both affiliated and nonaffiliated institutions. The form's title is the Interagency Bank Merger Act Application. The Agencies need the information to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Agencies are required, under the Bank Merger Act, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, and competition.

Some agencies collect limited supplemental information in certain cases. For example, the OCC and OTS collect information regarding CRA commitments, the Federal Reserve collects information on debt servicing from certain institutions, and the FDIC requires additional information on the competitive impact of proposed mergers.

Current Actions: Section 307(c) of the Gramm-Leach-Bliley Act (GLBA) requires the appropriate Agency to consult with the appropriate state insurance regulator prior to making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities. As a result, the Agencies propose to add an item to the form to collect information on the name of the affiliated insurance company; a description of its insurance activities; each state and the lines of business in each state in which the company holds, or will hold, an insurance license; and the state where the company holds a resident license or charter, as applicable. Additionally, the General Instructions contain technical corrections to make them uniform with the proposed revisions to the "Interagency Charter and Federal Deposit Insurance Application" form.

Further, the OCC is making a change to its Business Combinations booklet of the Manual by adding the interagency application form and providing updated information about filing for a merger. These changes are not material and are technical in nature. These changes are an administrative adjustment, and do not change, in any way, the requirements on national banks.

Comments: Comments submitted in response to this notice will be summarized in each Agency's request for OMB approval, and analyzed to determine the extent to which the collection should be modified. All comments will become a matter of public record.

Written comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, January 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 1st day of November, 2001.

Robert E. Feldman,

Executive Secretary.

Dated: October 4, 2001.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 02–643 Filed 1–9–02; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

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Federal Register

Thursday,
January 10, 2002

Part II

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Disabilities and Reauthorization of the Individuals With Disabilities Education Act; Proposed Rule and Notice

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DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820–AB53

Early Intervention Program for Infants and Toddlers with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Secretary withdraws the Notice of Proposed Rulemaking (NPRM) for the Early Intervention Program for Infants and Toddlers with Disabilities under Part C of the Individuals with Disabilities Education Act (IDEA) that was published on September 5, 2000. This action is taken because of the pending reauthorization of Part C of IDEA. All relevant comments received under the NPRM will be considered in developing the Administration's legislative proposal on IDEA, along with new comments submitted as part of the reauthorization process.

DATES: The NPRM published on September 5, 2000 at 65 FR 53808 is withdrawn as of January 10, 2002.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Thomas Irvin (202) 205–5507. If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain the document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: On September 5, 2000, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 53808) to amend the regulations governing the Early Intervention Program for Infants and Toddlers with Disabilities (34 CFR part 303). In the NPRM, we requested comments and recommendations on a number of provisions, including those related to the provision of early intervention services in "natural environments," State financing of early intervention services, and proposed new provisions to address the use of public and private insurance by States.

The number and quality of comments received on the NPRM demonstrated an intense interest in these and other provisions in the Part C regulations. However, because Part C of IDEA expires on September 30, 2002 and must be reauthorized, we believe that any changes to the existing regulations before the statute is reauthorized—especially given the relatively brief period that these regulations would remain in effect—would be counterproductive.

We believe that it would be more efficient and effective to delay the issuance of any new regulations for the Part C program until after the IDEA is reauthorized. This will add stability to the implementation of Part C, and ensure the development of more comprehensive and complete regulations for the early intervention program that should remain in effect, without change, for an extended period of time.

For the reasons we have described in the preceding paragraphs, the Secretary withdraws the NPRM for the Early Intervention Program for Infants and Toddlers with Disabilities that was published on September 5, 2000.

In developing the Administration's proposal regarding the reauthorization of IDEA, we will consider all relevant comments received in response to the NPRM published on September 5, 2000, together with new comments submitted as part of the reauthorization process.

The Secretary is publishing in this issue of the **Federal Register** a Notice of request for public comment on the Individuals with Disabilities Education Act and its implementation. We encourage you to submit additional comments regarding the Early Intervention Program under Part C and to address any of the questions raised in the accompanying Notice.

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(Catalog of Federal Domestic Assistance Number: 84.181 Early Intervention Program for Infants and Toddlers with Disabilities)

List of Subjects in 34 CFR Part 303

Education of individuals with disabilities, Grant programs—education, Infants and toddlers, Reporting and recordkeeping requirements.

Dated: December 28, 2001.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–622 Filed 1–9–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Reauthorization of the Individuals With Disabilities Education Act

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of request for public comment on the Individuals with Disabilities Education Act and its implementation.

SUMMARY: The Secretary of Education invites written comments from the public on the Individuals with Disabilities Education Act (IDEA) to assist the Department in preparing for reauthorization of the Act in 2002.

DATES: In order to ensure that your comments are considered by the Department in preparing its legislative proposal on IDEA, we encourage you to submit the comments before February 25, 2002.

ADDRESSES: All comments concerning the reauthorization of IDEA should be addressed to Thomas Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, and submitted by one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet at the following address: *Comments@ed.gov.*

You must use the term IDEA Reauthorization in the subject line of your electronic message.

2. *Surface Mail.* Alternatively, you may submit your comments via surface mail to: Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 3086, Washington DC 20202–2570.

To ensure that we do not receive duplicate copies of comments, please submit your comments only one time—using one of the two methods described in the preceding paragraphs (Internet or surface mail).

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Thomas Irvin (202) 205–5507. If you use a telecommunication device for the deaf (TTD) you may call the TDD number at (202) 205–5465.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

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SUPPLEMENTARY INFORMATION:

Background and Description of the Act

On June 4, 1997, the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 were enacted into law as Pub. L. 105–17. These Amendments reauthorized and made significant changes to IDEA to accomplish the following: (1) Ensure better results for children with disabilities, while retaining (and expanding upon) the rights and protections under prior law; (2) revise the discretionary programs to strengthen the capacity of States to effectively serve children with disabilities, including infants and toddlers with disabilities; and (3) make other improvements to IDEA, including simplifying the structure and organization of the Act.

As authorized by the 1997 Amendments, IDEA is divided into four major parts:

Part A (General Provisions) includes the findings and purposes of the Act; definitions; authority for the Office of Special Education Programs; abrogation of State sovereign immunity; authority for the acquisition of equipment and construction of facilities; provisions regarding the employment of individuals with disabilities; and requirements for prescribing regulations.

Part B (Assistance for Education of All Children with Disabilities) authorizes a State formula grant program for the education of children with disabilities aged 3 through 21. The Act includes provisions regarding—(1) conditions for State and local eligibility (e.g., ensuring a free appropriate public education for all eligible children); (2) evaluations, child eligibility, and individualized education programs (IEPs); and (3) procedural safeguards (e.g., mediation, due process procedures, and pendency or stay-put requirements, including discipline procedures). In addition, Part B includes other provisions, including data collection requirements.

Part B also authorizes a Preschool Grants program that provides additional funds to help States provide special education and related services to children with disabilities aged three through five.

Part C authorizes the early intervention program for infants and toddlers with disabilities, which provides Federal assistance to help States maintain and implement a statewide system of early intervention services for young children with disabilities, aged birth through two, and their families. The Act sets out eligibility conditions for State participation in the program, including—(1) a policy that ensures appropriate early intervention services for all eligible children, including, at State discretion, children who are at risk of experiencing substantial developmental delays; and (2) other requirements (e.g., provisions regarding individualized family service plans (IFSPs), natural environments, procedural safeguards, and financing of early intervention services).

Part D authorizes a series of discretionary programs to support National activities to improve the education of children with disabilities, including State Improvement Grants, coordinated research and personnel preparation, parent training and information centers, technical assistance and dissemination, technology development, demonstration, and utilization, and media services.

Need for Reauthorization

Two major parts of IDEA will expire on September 30, 2002: Part C (Infants and Toddlers with Disabilities); and Part D (National Activities to Improve Education of Children with Disabilities). Thus, we are seeking broad public input regarding changes needed to improve implementation of the early intervention program for infants and toddlers with disabilities under Part C, and the effectiveness of the National Activities under Part D.

We also will consider all relevant comments received on the Notice of Proposed Rulemaking (NPRM) for the Part C program that was published on September 5, 2000 (65 FR 53808). (The Secretary is publishing a Notice withdrawing the Part C NPRM in this issue of the **Federal Register**.)

Although Part B of IDEA is permanent legislation with no requirement for reauthorization, the reauthorization

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process for Parts C and D provides an opportunity to carefully examine Part B as well.

The President has laid out four principles of education reform to ensure that no child is left behind. These principles are: accountability for results, local control and flexibility, empowering parents to participate more meaningfully in their children's education, and employing research-based practices that we know work to improve student performance. Using this underlying framework, the Secretary solicits public comment regarding the reauthorization of IDEA.

We are particularly interested in identifying opportunities for increasing flexibility and reducing unnecessary paperwork and burden while maintaining the important rights and protections of children with disabilities and their families.

Invitation To Comment

We encourage your comments on the broad areas identified in the preceding paragraphs (under Need for Reauthorization). Because we believe that reforms to IDEA should be based, to the greatest degree possible, on evidence that demonstrates the need for reform and that can guide those reforms, we are also particularly interested in receiving factual information and research in these broad areas. We also seek comment on the following specific areas:

(1) *Accountability.* How, and to what degree, are children with disabilities being included in State and local accountability systems? What barriers exist to inclusion of these children in the accountability systems? What recommendations do you have to eliminate these barriers?

(2) *Personnel Issues.* In what areas of special education and related services (or early intervention services) are States and school districts (or lead agencies) experiencing problems in finding and retaining qualified personnel? Are funds that are available at the Federal, State, and local levels being used effectively to address personnel shortages? For teachers, administrators, and others responding to these questions, what recommendations do you have to alleviate personnel shortages?

Are the pre-service and in-service training programs offered by State and local educational agencies based on research-derived methods that are proven to improve results for children? Do regular and special education teachers believe their college preparation programs prepared them to teach students with disabilities? Do local administrators believe the regular and special education teachers they are hiring are qualified to teach students with disabilities?

(3) *Parent Involvement.* For parents of children with disabilities, what barriers to meaningful participation in your child's education have you experienced? For school districts, what barriers have you faced in ensuring meaningful parent involvement? For parents and professionals involved in the early intervention program under Part C, what barriers have you experienced? In each of these cases, have you experienced any efforts to increase parent involvement that you believe are successful? If so, please describe them.

(4) *Transition to Post-School Endeavors.* To what extent are school aged students with disabilities routinely participating in their IEP meetings? What barriers exist to full implementation of the IDEA's current transition requirements? What recommendations do you have to eliminate these barriers?

(5) *Excessive Paperwork.* For administrators, teachers, or other personnel, describe any burdens you are experiencing in implementing the Part B (or Part C) requirements. What specific requirements are problematic, and what kinds of problems are you having? What recommendations do you have to resolve these problems? What paperwork requirements do little to further educational goals of children with disabilities and/or provide appropriate protections to the children and their families? What paperwork is completed by clerical staff, administrators, special education teachers, and regular education teachers? What paperwork now completed by teachers and administrators could be completed by clerical staff, if they were available? What steps have you taken in order to try to reduce IDEA paperwork burden?

(6) *Local School Districts—20 Percent Funds.* Under section 613(a)(2)(C), a school district may treat as local funds up to 20 percent of the amount it receives under Part B that exceeds the amount it received during the prior fiscal year. To what extent are school districts using this authority? How are school districts using the local funds that become available?

(7) *Use of Insurance under Part C.* To what extent are private and public insurance used in paying for early intervention services under Part C in your State? Have parents suffered any financial or other difficulties resulting from the use of their insurance? What difficulties do lead agencies have in accessing public or private insurance?

In submitting your comments, please identify the area of your involvement in special education, regular education or early intervention, as well as your role, if any, in that area (e.g., parent, teacher, student, service provider, administrator, or researcher). In addition, if appropriate to your comments, please identify the specific Part and section of IDEA that is the subject of your comments, and specify why the statute needs to be amended.

Program Authority: 20 U.S.C. 1400 *et seq.*

Dated: December 28, 2001.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–623 Filed 1–9–02; 8:45 am]

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S. 1789/P.L. 107–109
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1C IFR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to interim final rule.

SUMMARY: This document contains a correction to the interim final rule published on October 29, 2001 (66 FR 54411), concerning kiwifruit grown in California. The correction is made in the amendatory instruction section of the interim final rule.

EFFECTIVE DATE: October 24, 2001.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–8938 or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. The rule was issued under Marketing Order No. 920, as amended (7 CFR part 920). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Need for Correction

The interim final rule as published contains an error in the amendatory instructions affecting 7 CFR part 920. The amendatory instructions incorrectly indicate that the revised table in § 920.302 appears at the end of paragraph (a)(4)(iv). The revised table actually appears at the end of paragraph (a)(4)(iii) of that section.

Correction of Publication

Accordingly, in FR Doc. 01–27205, published October 29, 2001, page 54411, make the following corrections:

§ 920.302 [Corrected]

1. On page 54414, in column 1, the amendatory instructions in number 2, are corrected to read as follows:

2. In § 920.302 the table in paragraph (a)(4)(iii) is revised to read as follows:

2. On page 54414, in column 1, in § 920.302, the paragraph designation (a)(4)(iv) is corrected to read (a)(4)(iii).

Dated: January 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–578 Filed 1–10–02; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 3858]

Documentation of Nonimmigrants Under the Immigration and NationalityAct, as Amended—Additional International Organization

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adds INTELSAT (following privatization) as an "international organization" to the current definition which includes within that term only organizations so designated by the President.

DATES: Effective January 11, 2002. Written comments may be submitted on or before March 12, 2002.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Harper, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1221, e-mail harperbj@*state.gov*, or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION: Section 301 of Public Law 106–396 (47 U.S.C. 763, October 30, 2000) provides that certain aliens who were officers or employees of INTELSAT before its privatization and who had had and had maintained the status of "international organization alien" under the terms of section 101(a)(15)(G) of the Immigration and Nationality Act will continue to be eligible for such classification as long as they are officers or employees of INTELSAT or any successor or separated entity of INTELSAT. The current regulation (22 CFR 41.24) defines an "international organization" as one designated by the President as entitled to the privileges and immunities provided under the International Organizations Immunities Act (22 U.S.C. 288). Although INTELSAT was and is so designated (while not yet privatized), it would appear that its status (and that of separated or successor entities) as an international organization for non-immigrant visa purposes after privatization would be contingent upon this legislation. It is believed, therefore, that the regulation should so specify in the interest of clarity.

No other changes are effected by this regulation.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 60-day

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provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The rule makes no substantive changes in visa operations. It simply acknowledges that a different statute conferred the designation of "international organization" in this instance.

Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994, from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

Accordingly, the Department of State amends 22 CFR Chapter I as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

2. Amend § 41.24 by revising paragraph (a) to read as follows:

§ 41.24 International organization aliens.

(a) *Definition of international organization.* "International organization" means: (1) Any public international organization which has been designated by the President by Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288) and

(2) INTELSAT, following privatization, and any successor or separated entity thereof, as so designated by section 301 of Public Law 106–396.

* * * * *

Dated: November 28, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–271 Filed 1–10–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3857]

Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—Immediate Relatives

AGENCY: Department of State.

ACTION: Interim rule.

SUMMARY: The Department is adding to the definition of immediate relatives the widows and children whose spouses/parents were the victims of the terrorist acts of September 11, 2001.

DATES: This interim rule is effective on January 11, 2002. Written comments must be received on or before 60 days from January 11, 2002.

ADDRESSES: Written comments may be submitted, in duplicate, to the Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, or by e-mail to *visaregs@state.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Harper, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1221, e-mail (*harperbj@state.gov*) or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION:

How Does This Differ From the Present Provision for Widows/Widowers?

INA 201(b)(2)(A)(1) grants the right to self-petition for status as an immediate relative to widows/widowers (and any children thereof) who had been married to a U.S. citizen for at least two years prior to the citizen's death. Section 423 of Pub. Law 107–56 (the "USA Patriot Act") expanded that entitlement for those widowed as a direct result of the terrorist acts of September 11, 2001, without any regard to the length of the marriage. As in INA 201(b), the widow(er) must have not been legally separated from the spouse at the time of the citizen's death, and must file a petition for immediate relative status within two years of the death, having not remarried in the interim.

Were Any Other Such Changes Made?

Children also benefitted from Sec. 423. Any child of a U.S. citizen who was killed in one of the terrorist acts of September 11, 2001, may file a petition for status as an immediate relative child within two years of the death of the parent, regardless of changes in age or marital status. Both of these provisions are being added to 22 CFR 42.21, the regulation governing immigration by immediate relatives.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5U.S.C. 553(b)(3)(B) and 553(d)(3). The provision of law being incorporated has been in effect since the date of enactment, October 26, 2001, and the prompt implementation thereof is for the benefit of victims of a national disaster.

Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Passports and visas.

Accordingly, the Department of State amends 22 CFR, part 42 as set forth below.

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read:

Authority: 8 U.S.C. 1104.

2. Amend § 42.21 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 42.21 Immediate relatives.

* * * * *

(b) *Spouse of a deceased U.S. citizen.* The spouse of a deceased U.S. citizen, and each child of the spouse, will be entitled to immediate relative status after the date of the citizen's death provided the spouse or child meets the criteria of INA 201(b)(2)(A)(i) or of section 423(a)(1) of Public Law 107–56 (USA Patriot Act) and the Consular Officer has received an approved petition from the INS which accords such status, or official notification of such approval, and the Consular Officer is satisfied that the alien meets those criteria.

(c) *Child of a U.S. citizen victim of terrorism.* The child of a U.S. citizen slain in the terrorist actions of September 11, 2001, shall retain the status of an immediate relative child (regardless of changes in age or marital status) if the child files a petition for such status within two years of the citizen's death pursuant to section 423(a)(2) of Public Law 107–56, and the consular officer has received an approved petition according such status or official notification of such approval.

Dated: November 29, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–270 Filed 1–10–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3856]

Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—Issuance of New or Replacement Visas

AGENCY: Department of State.

ACTION: Interim rule.

SUMMARY: The Department is updating and clarifying the regulation pertaining to the issuance of replacement visas by deleting a citation which is no longer in force and making some editorial changes.

DATES: This interim rule is effective January 11, 2002. Written comments are invited and must be received on or before March 12, 2002.

ADDRESSES: Written comments may be submitted, in duplicate, to the Legislation and Regulations Division, Visa Services, Department of State,Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Harper, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1221, e-mail Harper (*harperbj@state.gov*) or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION: The current regulation relating to the issuance of replacement visas at 22 CFR 42.74(b) includes a citation to "INA 124" This is an incorrect citation; it is being deleted, rather than corrected, because the provisions of the section intended are no longer in effect. In addition to the deletion of this citation, subsection (b) has been editorially changed to include descriptions of the classes of aliens referred to, rather than just a succession of statutory citations. Some typographical errors have also been corrected.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). This rule does not make substantive changes. Delay of this rule for the benefit of public notice and comments is unnecessary inasmuch as its substance results from elimination of an incorrect and out-dated citation and editorial clarifications only.

Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal

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governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets

Executive Order 12866

The Department of State does not consider this rule, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994, from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

Accordingly, the Department of State amends 22 CFR as set forth below.

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read:

Authority: 8 U.S.C. 1104.

2. Amend § 42.74 by revising paragraph (b)(1) to read as follows:

§ 42.74 Issuance of new or replacement visas.

* * * * *

(b) *Replacement immigrant visa for an immediate relative or for an alien subject to numerical limitation.*

(1) A consular officer may issue a replacement visa under the original number of a qualified alien entitled to status as an immediate relative (INA 201(b)(2)), a family or employment preference immigrant (INA 203(a) or (b)), or a diversity immigrant (INA 203(c)), if—

(i) The alien is unable to use the visa during the period of its validity due to reasons beyond the alien's control;

(ii) The visa is issued during the same fiscal year in which the original visa was issued, or in the following year, in the case of an immediate relative only, if the original number had been reported as recaptured;

(iii) The number has not been returned to the Department as a "recaptured visa number" in the case of a preference or diversity immigrant;

(iv) The alien pays anew the statutory application and issuance fees; and

(v) The consular officer ascertains whether the original issuing office knows of any reason why a new visa should not be issued.

* * * * *

Dated: November 27, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–269 Filed 1–10–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8969]

RIN 1545–AW37

Payment by Credit Card and Debit Card; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains corrections to final regulations (TD 8969) which were published in the **Federal Register** on Friday, December 14, 2001 (66 FR 64740). These regulations relate to the payment by credit card and debit card.

DATES: These corrections are effective December 14, 2001.

FOR FURTHER INFORMATION CONTACT: Brinton Warren, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations and removal of temporary regulations that are the subject of this correction is under sections 6103 through 6311 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8969) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations and removal of temporary regulations (TD 8969), which are the subject of FR Doc. 01–30934, is corrected as follows:

§ 301.6311–2 [Corrected]

1. On page 64743, column 3, § 301.6311–2(d)(2)(i)(D), line 4, the language "Action (15 U.S.C. 1666), section 908 of" is corrected to read "Act (15 U.S.C. 1666), section 908 of".

2. On page 64743, column 3, § 301.6311–2(d)(2)(i)(D), line 6, the language "U.S.C. 1693f; or similar provisions of" is corrected to read "U.S.C. 1693f), or similar provisions of".

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–661 Filed 1–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–051]

Drawbridge Operating Regulation; Falgout Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.444 governing the operation of the SR 315 drawbridge across the Falgout Canal, mile 3.1, in Terrebonne Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to maintain the bridge in the closed-to-navigation position from 8 a.m. until 4 p.m. each day from January 7 through January 18, 2002, to allow for maintenance to the bridge. During the scheduled closure, the bridge will open for the passage of vessels at 10 a.m., 12 noon and 2 p.m. and the bridge owner will open the draw as soon as practicable for an emergency aboard a vessel.

Dated: December 31, 2001.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 02–724 Filed 1–10–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–053]

Drawbridge Operating Regulation; Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.467 governing the operation of the bascule spans of the Greater New Orleans Expressway Commission Causeway across Lake Pontchartrain between Metairie, Jefferson Parish and Mandeville, St. Tammany Parish, Louisiana. This deviation allows the draws of the bridge to remain closed to navigation from 6 a.m. on Monday, January 14, 2002 until 6 a.m. on Wednesday, January 16, 2002, to allow for the connection of new submarine control cables to operate the draw spans of the bridge. If inclement weather does not allow the work to proceed on these dates the work will be rescheduled and the draws of the bridge will be allowed to remain closed to navigation for the backup dates from 6 a.m. on Wednesday, January 16, 2002 until 6 a.m. on Friday, January 18, 2002.

DATES: This deviation is effective from 6 a.m. on Monday, January 14, 2002 until 6 a.m. on Friday, January 18, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Presently, the draw is required to open on signal if at least three hours notice is given; except that, from 15 August to 5 June, the draw need not be opened from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

During the closure period, the bridge will open at two-hour intervals to allow for the passage of traffic. In case of an emergency, the bridge owner will be able to open the draw as soon as practicable. Navigation on the waterway consists of small tugs with tows, fishing vessels, sailing vessels, and other recreational craft.

The Louisiana Department of Transportation and Development requested this temporary deviation from the normal operation of the drawbridge in order to allow for the removal and replacement of the main pivot pier drive cylinder anchor frames and the bolts connecting the drive cylinders to the anchor frames and overhead pivot girder for the connection of new submarine cables to operate the draw spans of the bridge.

This deviation allows the draw of the SR 315 bridge across the Falgout Canal, mile 3.1, in Terrebonne Parish, Louisiana to remain closed to navigation from 8 a.m. until 4 p.m. each day from January 7 through January 18, 2002. During the scheduled closure, the bridge will open for the passage of vessels at 10 a.m., 12 noon and 2 p.m. The bridge owner will open the draw as soon as practicable for an emergency aboard a vessel.

Dated: December 31, 2001.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 02–725 Filed 1–10–02; 8:45 am]

BILLING CODE 4910–15–U

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Proposed Rules

Federal Register
Vol. 67, No. 8
Friday, January 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–023–1]

Microchip Implants as an Official Form of Identification for Pet Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the UnitedStates. The regulations currently provide for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This proposed change would provide for the use of an additional means of identifying certain U.S. origin pet birds while continuing to provide protection against the introduction of communicable poultry diseases into the United States.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 12, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–023–1, Regulatory Analysis and Development, PPD,APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–023–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No.01–023–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) regulate the importation of certain animals and birds, including pet birds, to prevent the introduction of communicable diseases of livestock and poultry.

The regulations in § 93.101(c)(2)(i) currently require that pet birds of U.S. origin returning to the United States must have been identified prior to departure from the United States with a leg band or tattoo identification number. The leg band or tattoo number must be listed on the veterinary health certificate that was issued prior to the bird's departure from the United States. This health certificate must accompany the bird upon its return to the United States.

However, it is increasingly difficult for pet bird owners to obtain a leg band or tattoo, since most private avian veterinarians no longer utilize these forms of identification. Although some psittacine birds may be banded by the breeder as hatchlings, microchip implants are the preferred form of identification for most private avian veterinarians because some birds do not adapt well to wearing a leg band (they chew the band or catch it on objects, potentially injuring themselves), and because the thin skin of birds makes it difficult to read a tattoo.

Therefore, we are proposing to allow owners of birds of U.S. origin the option of identifying their pet birds with a microchip implant. We would amend the regulations in this respect to state that the veterinary health certificate accompanying the bird must show the leg band, tattoo, or microchip identification number that was affixed to the bird prior to the departure of the bird from the United States. This proposed change would provide for the use of an additional means of identifying certain U.S. origin pet birds while continuing to provide protection against the introduction of communicable poultry diseases into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. The regulations currently provide for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This proposed change would provide for the use of an additional means of identifying certain U.S. origin pet birds while continuing to provide protection against the introduction of communicable poultry diseases into the United States.

The groups affected by this proposed rule would be pet bird owners who travel with their birds outside the United States and microchip manufacturers. According to the port of entry records of the Animal and Plant Health Inspection Service (APHIS), approximately 400 bird owners traveled outside of the United States with their pet birds in calendar year 2000. Under this proposed rule, those bird owners would be allowed to use microchip identification instead of the leg bands or tattoos currently provided for by the regulations. Bird owners would benefit from this proposed change because it is becoming more difficult to find a veterinarian who carries leg bands for pet bird identification, and tattoos are rarely used to identify birds any more. Microchips will thus make the task of identifying a pet bird before leaving the United States more convenient. In most cases, an APHIS inspector at the port of entry would be able to use a microchip scanner to confirm the identity of the bird without handling the bird or removing it from the cage, thus avoiding additional stress on the bird.

Bird owners who choose to identify their birds with a microchip would have to pay $25 to $40 per microchip plus the cost of the veterinarian office visit to insert the microchip. The cost of the microchips is projected to be slightly higher than the conventional leg band, although current costs for leg bands and tattoos are not available due to the lack of veterinarians who will perform these services.

Microchip manufacturers could potentially benefit from a slight increase in microchip sales generated by this proposed rule. It appears that all potentially affected microchip manufacturers (NAICS code 334111) are small entities, according to Small Business Administration criteria (i.e., 1,000 or fewer employees).

In summary, this proposed rule would provide pet bird owners with an additional means of identifying their pet birds while allowing APHIS to maintain the high level of security required in order to keep avian diseases, such as exotic Newcastle disease and highly pathogenic avian influenza, from entering the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

2. In § 93.101, paragraph (c)(2)(i) would be amended by removing the words "leg band or tattoo number" and adding the words "number from the leg band, tattoo, or microchip" in their place and by removing the words "leg band or tattoo on" and adding the words "number from the leg band, tattoo, or microchip on" in their place.

Done in Washington, DC, this 7th day of January 2002 .

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–740 Filed 1–10–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); Extension of the comment period.

SUMMARY: This document extends the period for public comment on the above-referenced NPRM that proposes the supersedure of two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes. The NPRM proposes to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. This proposal is prompted by FAA determinations that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. Additionally, the current rudder operational procedure is not effective throughout the entire flight envelope. This extension of the comment period is necessary to assure that all interested persons have ample opportunity to present their views on the proposed requirements of the NPRM.

DATES: Comments must be received by February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–251–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–251–AD." The postcard will be date stamped and returned to the commenter.

Events Leading to This Extension of the Comment Period

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Boeing Model 737 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 6, 2001(66 FR 56783). The NPRM proposed to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system.

The FAA has received a request from the manufacturer, Boeing, to extend the comment period of the NPRM by 30 days. Boeing requests the extension because the NPRM would encompass holidays during November and December, which would significantly decrease the number of working days necessary to develop responses to the comments. Further, during a Boeing Critical Design Review (CDR), held on December 4, 2001, the CDR team provided information to the operators to enable them to assess the impact of the NPRM on their operations. Because the CDR was held after the NPRM was issued, operators have less time to assess the requirements of the proposed rule. In addition, Boeing states that the proposed action of the NPRM is a complex retrofit requirement with many aspects to consider.

The FAA's Determination

The FAA has considered Boeing's request and finds it appropriate to extend the comment period to give all interested persons additional time to examine the proposed requirements of the NPRM and submit comments. After evaluating the comments provided in Boeing Letter B–H210–01–0400, dated November 30, 2001, we have determined that extending the comment period by 30 days will not compromise the safety of these airplanes.

The Extension

The comment period for Docket No. 2001–NM–251–AD is hereby extended to February 14, 2002.

Since no portion of the NPRM or other regulatory information has been changed, the entire NPRM is not being republished.

Issued in Renton, Washington, on January 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–842 Filed 1–10–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Part 196

[Public Notice 3847]

The Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program and Grants to Post-Secondary Institutions

ACTION: Proposed rule.

SUMMARY: This document proposes the rule by which the Department of State's Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship program will be administered. The State Department Basic Authorities Act (22 U.S.C. 2719) states that the Department shall establish regulations which will provide for a limit on the size of any specific grant and, regarding any grant to individuals, shall ensure no grant recipient receives grants from one or more Federal programs which in the aggregate would exceed the cost of his or her educational expenses and shall require satisfactory educational progress by grantees as a condition of eligibility for continued participation in the program.

DATES: Comments are due on or before March 12, 2002.

ADDRESSES: Send comments to the Chief of Student Programs, Office of Recruitment, Bureau of Human Resources, Department of State, 2401 E Street, NW., Room H–518, Washington, DC 20522.

FOR FURTHER INFORMATION CONTACT: Richard Esper, Office of Recruitment/Student Programs at (202) 261–8924.

SUPPLEMENTARY INFORMATION: The Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program was established to recruit a talented and diverse group of students into the Foreign Service. The State Department Basic Authorities Act (22 U.S.C. 2719) authorizes the Secretary of State to make grants to post-secondary education institutions or students for the purpose of increasing the level of knowledge and awareness of and interest in employment with the Foreign Service. The program provides scholarships to undergraduate and graduate students in academic programs relevant to international affairs, political and economic analysis, administration, management and science policy. While in school, Fellows participate in one domestic and one overseas internship within the U.S. Department of State. After completing their academic training, and successfully passing the Foreign Service entry requirements, Fellows will enter the U.S. Department of State Foreign Service as Foreign Service Officers. Consideration is given to all qualified applicants who, in addition to outstanding leadership skills and academic achievement, demonstrate financial need. The number of fellowships awarded is determined by available funding.

List of Subjects in 22 CFR Part 196

Education, Educational study programs, Federal aid programs, Grant programs, Scholarships and fellowships, and Students.

For the reasons discussed in the preamble, the U.S. Department of State amends 22 CFR chapter I by adding Part 196 to read as follows:

PART 196—THOMAS R. PICKERING FOREIGN AFFAIRS/GRADUATE FOREIGN AFFAIRS FELLOWSHIP PROGRAM

Sec.

196.1 What is the Fellowship Program?
196.2 How is the Fellowship Program administered?
196.3 Grants to post-secondary education institutions.
196.4 Administering Office.

Authority: 22 U.S.C. 2719.

§ 196.1 What is the Fellowship Program?

The Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program is designed to attract outstanding men and women at the undergraduate and graduate educational levels for the purpose of increasing the level of knowledge and awareness of and employment with the Foreign Service, consistent with 22 U.S.C. 3905. The Program develops a source of trained men and women, from academic disciplines representing the skill needs of the Department, who are dedicated to representing the United States' interests abroad.

§ 196.2 How is the Fellowship Program administered?

(a) Eligibility. Eligibility will be determined annually by the Department of State and publicized nationwide. Fellows must be United States citizens.

(b) Provisions. The grant awarded to each individual student shall not exceed $250,000 for the total amount of time the student is in the program. Fellows are prohibited from receiving grants from one or more Federal programs, which in the aggregate would exceed the cost of his or her educational expenses. Continued eligibility for participation is contingent upon the Fellow's ability to meet the educational requirements set forth below.

(c) Program requirements. Eligibility for participation in the program is conditional upon successful completion of pre-employment processing specified by the Department of State, including background investigation, medical examination, and drug testing. As a condition of eligibility for continued receipt of grant funds, fellows are required to complete prescribed coursework and maintain a satisfactory grade point average as determined by the Department of State. Fellows are also required to accept employment with the Department of State's Foreign Service upon successful completion of the program, and Foreign Service entry requirements. Fellows must continue employment for a period of one and one-half years for each year of education funded by the Department of State.

§ 196.3 Grants to post-secondary education institutions.

The Department of State may make a grant to a post-secondary education institution for the purpose of increasing the level of knowledge and awareness of and interest in employment with the Foreign Service, consistent with 22 U.S.C. 3905, not to exceed$1,000,000, unless otherwise authorized by law.

§ 196.4 Administering Office.

The Department of State's Bureau of Human Resources, Office of Recruitment is responsible for administering the Thomas R. Pickering Foreign Affairs/Graduate Foreign Affairs Fellowship Program and grants to post-secondary institutions and may be contacted for more detailed information.

Dated: January 4, 2002.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 02–711 Filed 1–10–02; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301 and 602

[REG–105344–01]

RIN 1545–AY77

Disclosure of Returns and Return Information by Other Agencies; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to proposed regulations (REG–105344–01) which were published in the **Federal Register** on Thursday, December 13, 2001 (66 FR 64386). These regulations relate to the disclosure of returns and return information by other agencies.

DATES: These corrections are effective December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Julie C. Schwartz, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed rulemaking by cross-reference to temporary regulations that are the subject of this correction is under section 6103 of the Internal Revenue Code.

Need for Correction

As published, proposed rulemaking by cross-reference to temporary regulations (REG–105344–01) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of notice of proposed rulemaking by cross-reference to temporary regulations (REG–105344–01), which are the subject of FR Doc. 01–30620, is corrected as follows:

1. On page 64386, column 2, in the preamble, under the paragraph heading "Paperwork Reduction Act," paragraph 3, line 4, the language "Internal revenue Service, including" is corrected to read "Internal Revenue Service, including".

2. On page 64386, column 3, in the preamble, under the paragraph heading "Paperwork Reduction Act," line 11, the language "recordkeepers are federal agencies and" is corrected to read "recordkeepers are Federal agencies and".

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–660 Filed 1–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to exempt one Privacy Act system of records. The system of records is A0020–1 SAIG, entitled 'Inspector General Records'. The exemptions are intended to increase the value of the system of records for law enforcement purposes and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before March 12, 2002 to be considered by this agency.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the

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economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, it is proposed that 32 CFR part 505 be amended as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5 is proposed to be amended by revising paragraph (e)(1)(i) through (iv), and removing paragraphs (e)(2)(i) through (iv), and reserving paragraph (e)(2) as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records. * * *

(1) A0020–1 SAIG

(i) *System name:* Inspector General Records.

(ii) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (k)(2) of the Privacy Act of 1974.

(E) From subsection (e)(4)(I) because of the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(2) [Reserved]

* * * * *

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–680 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to add a (j)(2) exemption to an already existing exemption rule for the Privacy Act system of records notice F090 AF IG B, Inspector General Records. The (j)(2) exemption will increase the value of the system of records for law enforcement purposes.

DATES: Comments must be received on or before March 12, 2002 to be considered by this agency.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, CIO–BIM/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In Appendix C to Part 806b, add paragraph (a)(6) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions. * * *

(a) *General exemptions.* * * *

(6) *System identifier and name:* F090 AF IG B, Inspector General Records.

(i) *Exemption:* (A) Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Air Force IG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages.

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It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(iv) *Authority:* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(v) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the AF will grant access to nonexempt material in the records being maintained. Disclosure will be governed by AF's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

3. Appendix C to section 806b, is amended to remove and reserve paragraph (b)(12).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–681 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 2 and 7

RIN 1024–AD03

Pet Management in Golden Gate National Recreation Area, San Francisco, California

AGENCY: National Park Service, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The National Park Service seeks public comment on a range of potential management options for addressing appropriate pet management within Golden Gate National Recreation Area, consistent with protecting national park resources and assuring visitor safety.

DATES: Written comments and submissions in response to this advanced notice of proposed rulemaking must be received on or before March 12, 2002.

ADDRESSES: Comments on this advanced notice of proposed rulemaking should be mailed to: Superintendent, Attention: ANPR, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

FOR FURTHER INFORMATION CONTACT: Brian O'Neill, Superintendent, Golden Gate National Recreation Area, on 415–561–4720.

SUPPLEMENTARY INFORMATION:

Background

NPS Pet Regulation

Title 36 of the Code of Federal Regulations (CFR) governs the use and management of all national park areas. One regulation, 36 CFR 2.15 (a)(2), requires that all pets, where allowed in national park sites, are to be crated, caged or restrained at all times. All areas within Golden Gate National Recreation Area (GGNRA), where pets are allowed, are subject to the requirement to have pets on leash. Pets currently are not allowed in some areas of the park, including: Alcatraz, China Beach, Crissy Beach tidal marsh and wildlife protection area, East Fort Baker Pier, Kirby Cove, Muir Woods, Stinson Beach, Tennessee Valley, trails and areas not designated for pets, and all areas fenced and/or posted as closed to the public. The latter includes two habitat closure areas at Fort Funston, and mission blue butterfly habitat areas in the Marin Headlands. Pets are not allowed in these areas to reduce possible conflict between users, protect the natural and cultural resources, ensure public safety, and address public health concerns.

Past Pet Management at GGNRA

In 1972, the GGNRA Citizens Advisory Commission (the Commission) was established by the Secretary of the Interior. As outlined in its charter,

> The purpose of the Commission is to meet with and advise the Secretary of the Interior, or the Secretary's designee, on general policies and specific matters related to planning, administration, and development affecting the recreation area * * * the duties of the Commission are solely advisory.

In 1979, the Commission developed and recommended a pet policy to GGNRA that established guidance for locations and criteria for "voice control" of pets within certain areas of the park. The Commission's policy identified the following "voice control" areas (meaning off leash areas): In the San Francisco area—Fort Funston, Lands End, Fort Miley, North Baker Beach, Crissy Field, Ocean Beach; in Marin County + Rodeo Beach, Muir Beach, 4 Corners tract above Mill Valley, Coast Trail from Golden Gate Bridge to the junction of Wolf Ridge Trail, Loop Trail at Battery Townsley, Wolf Ridge Trail between Coast Trail and Miwok Trail, Miwok Trail between Wolf Ridge Trail and Coast Trail, Oakwood Valley Road to Alta Avenue, and Alta Avenue between Marin City and Oakwood Valley. (February 24, 1979, GGNRA Advisory Commission's Approved Guidelines for a Pet Policy—San Francisco and Marin County).

The Commission's "voice control" policy did not and can not override NPS regulations prohibiting pets off leash. As stated in the charter, the Commission may make recommendations, but these recommendations are advisory in nature. Any recommendation by the Commission must comply with NPS regulations. Nevertheless, the park, in error, implemented the "voice control" policy, in contradiction to Service-wide regulations. For more than 20 years, this unofficial "voice control" policy was in place within GGNRA.

Current Pet Management at GGNRA

Several recent events have underscored the need for undertaking a public process concerning dog management in the Golden Gate National Recreation Area, including increased visitation to GGNRA, litigation concerning the Fort Funston area of the park, public concern about visitor and pet safety, park resource management issues involving wildlife and vegetation protection, and the review of dog-walking issues by the Golden Gate National Recreation Area Advisory Commission.

Since 1972, visitation to the park and the population of the Bay Area have both increased. The park has experienced increased use of the area for off leash dogs, and, as a result, there is increased conflict and potential for conflict between other user groups and dogs and their owners, as well as heightened sensitivity on the part of the visiting public.

Underscoring the conflict over the off leash dog use, in March 2000, a lawsuit was filed in federal court by dog walking groups, seeking to prevent a 10-acre habitat closure for threatened and native species at Fort Funston. Prior to March 2000, GGNRA staff had consulted with interested groups, including both environmental and off leash interests, to discuss a slightly larger 12-acre proposed closure and its purposes. The goals and objectives of the closure were to: (1) Provide protection to the new nesting locations of the state-listed (threatened) bank swallow colony at Fort Funston; (2) increase biological diversity by restoring coastal native dune scrub habitat; (3) increase public safety by keeping visitors and their pets away from cliff areas; and (4) protect geologic resources, including bluff top and interior dunes subject to accelerated erosion by humans and pets.

Based on that consultation with the interested groups, the 12-acre closure was reduced to 10 acres, with approximately half of it to be open seasonally. Upon initiation of the 10-acre project, the lawsuit was filed. The Golden Gate Audubon Society intervened in the lawsuit to defend the proposed closure. On February 13, 2001, the Federal District Court held that,

> Defendants (NPS) have held public hearings after notice and comment and allowed public input and debate, all before issuing a new and final closure plan for Fort Funston in January 2001 * * * the defendants have now fully complied with 36 CFR Section 1.5 (and) that the need for prompt protective action is genuine * * *

Accordingly, GGNRA took prompt action to close the originally proposed 12 acre area, which was effected February 14, 2001.

On January 23, 2001, the GGNRA Citizen's Advisory Commission acknowledged publicly the 1979 "voice control" policy was null and void since it was contrary to NPS regulation. Hundreds of people in favor of off leash dog use attended this meeting and the park has received significant comment in support of off leash dog walking in the park. Also in January 2001, a 32-year-old woman was mauled to death by a dog in San Francisco. Although this incident occurred outside the park boundaries, it underscored the danger of dogs in the local community to local users. Comments to the park opposing off leash dogs have increased significantly since that time.

The park has received complaints by park visitors, including minorities, seniors and families with small children, alleging that off leash dogs have precluded them from visiting the park for fear of being knocked over, attacked by dogs, or verbally abused by dog owners. Several recent letters involve visitors requesting permission or authorization to carry weapons (stun guns, pepper spray) for personal protection from dog attacks.

These recent events—from increased visitor use to the highly publicized litigation to the potential effects of off leash pets on the public and the park resources—have dramatically changed the climate in which the park had previously allowed off leash pets in certain areas of the park. The GGNRA has no authority to avoid or ignore the regulation disallowing pets off leash, and education efforts are underway to clarify this issue to the public. This regulation has always applied to GGNRA and failure to apply it consistently at GGNRA does not in any way limit its applicability today. In the interest of public safety, and as required by existing regulations, it is essential that the NPS enforce the pet restraint regulations during the ANPR process. Since January 2001, the park has installed additional signs regarding the regulation throughout the park, has continued educational outreach to visitors regarding the regulation, and is working toward consistent enforcement of the leash regulation parkwide.

Pet Management in Other Jurisdictions

The GGNRA is adjacent to other publicly owned places, including state parks, open space areas, and city parks, each having various rules regarding dog walking. While these agencies are governed by differing agencies with varying mandates, this section provides a regional context to this issue. Several jurisdictions in the Bay Area are moving toward more stringent leash requirements and enforcement, due to the volume of use and negative impacts associated with off-leash use. As of June 2001, the following regulations were in place and/or being considered:

—The California Department of Parks and Recreation requires pets to be on a leash and under the immediate control of a person or confined in a vehicle; in most park units, pets are permitted only in parking lots, picnic areas, some campgrounds, and other

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developed areas. Pets are not permitted on state park trails.

—The Marin Municipal Water District requires pets to be leashed.

—The Marin County Open Space District requires dogs on leash, with the exception of fire roads; they are currently reviewing their policy restricting the number of off leash dogs where off leash is permitted, along with limits on commercial dog walking.

—The Midpeninsula Regional Open Space District permits dogs on leash in seven of 24 preserves. Of the seven, there is one preserve that has a 16-acre off leash area. Dogs are not permitted in the remaining 17 preserves.

—San Mateo County Parks prohibits pets to enter or go at large in any County Park or Recreation area, either with or without a keeper.

—East Bay Regional Park District requires pets on leash in developed areas, which are defined as public road, lawn or play field, parking lot, picnic area, campground, concession area, equestrian center, archery facility, gun ranges, paved multi-use Regional Trail, or any other areas designated by the Board; the number of dogs is limited to three. Dogs are prohibited at swimming beaches, pools, wetlands, marshes or designated nature study areas, wildlife protection areas (for listed species at risk), golf courses, public buildings, major fishing piers, stream protection areas, and district lakes.

—The City of San Francisco issued a draft policy on June 12, 2001 that specifies more consistent enforcement of their existing leash law. Off leash use is permitted within 19 designated off-leash parks. The draft policy also identifies areas where dogs are not permitted, which includes significant natural resource areas. The City of San Francisco's Board of Supervisors has passed a resolution expressing interest in having certain lands within GGNRA, formerly owned by the City of San Francisco, returned to the city. Such lands include a portion of Fort Funston, Ocean Beach, Sutro Heights, Lands End and Municipal Pier. Transfer of the lands from NPS to the city would require federal legislation.

Because many of these leash restrictions have occurred over the last ten years, it is suspected that local dog owners who prefer off leash recreational use have moved to GGNRA areas, increasing pressure and impacts on the resources and visitor use conflicts.

NPS Law, Policy and Other Guidance

Management of the national park system is guided by the Constitution, public laws, proclamations, executive orders, rules, National Park Service regulations, management policies, and the directives of the Secretary of the Interior, Assistant Secretary for Fish, and Wildlife and Parks, and Director of the National Park Service (NPS). The Act of August 25, 1916, otherwise known as the NPS Organic Act, established the NPS and serves as the touchstone for National Park System management, philosophy and policy. The Act created the NPS to promote and regulate national park sites in accordance with the fundamental purpose of said parks, which is:

To conserve the scenery and the natural and historic objects and wild life therein and to provide for enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.
(16 U.S.C. sec. 1)

Congress supplemented and clarified the NPS mandate through enactment of the General Authorities Act in 1970, and again through enactment of a 1978 amendment to that law, which states in pertinent part:

Congress declares that the national park system, which began with the establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the System. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title [16 U.S.C. sec. 1], to all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.
(16 U.S.C. sec. 1–a)

Park Legislation

Golden Gate National Recreation Area (GGNRA) was established on Oct. 27, 1972, for the purpose of preserving:

* * * for public use and enjoyment certain areas of Marin and San Francisco [and San Mateo] Counties, California, possessing outstanding natural, historic, scenic, and recreational values, and in order to provide for the maintenance of needed recreational open space necessary to urban environment and planning * * * In the management of the recreation area, the Secretary of the Interior * * * shall utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management. In carrying out the provisions of the Act, the Secretary shall preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area.
(Pub. L. 92–589,16 U.S.C sec. 460bb)

The park includes nearly 75,000 acres located in three counties. The regional population of the San Francisco Bay Area is approximately seven million, and the park-including Fort Point and Muir Woods—supports approximately 17 million visitors annually. Popular Golden Gate National Recreation Area sites include, from north to south: Olema Valley, Stinson Beach, Muir Beach, Marin Headlands, Alcatraz, the Presidio of San Francisco, Fort Mason, Baker Beach, China Beach, Lands End, Cliff House, Ocean Beach, Fort Funston, Sweeney Ridge, Milagra Ridge, and the Phleger Estate. Muir Woods National Monument and Fort Point National Historic Site are separate units of the National Park System that are within the boundaries of and administered by GGNRA.

NPS 2001 Management Policies

The new 2001 NPS Management Policies provide policy direction for making management decisions in the administration of the National Park System and provide interpretation of the laws governing management the National Park System, including the NPS Organic Act. Adherence to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary, or the Director. Of primary importance is the NPS obligation to conserve and provide for enjoyment of park resources and values. The 2001 NPS Management Policies explain:

The "fundamental purpose" of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with the mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment, and so applies all the time, with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values. However, the laws do give the Service management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of affected resources and values.
(2001 NPS Management Policies, Section 1.4.3)

The fact that a park use may have an impact does not necessarily mean that it will impair park resources or values for the enjoyment of future generations. Impacts may affect park resources and still be within the limits of the discretionary authority conferred by the Organic Act. However, negative or adverse environmental impacts are never welcome in national parks, even when they fall far short of causing impairment. For this reason, the Service will not knowingly authorize park uses that would cause negative or adverse impacts unless it has been fully evaluated, appropriate public involvement has been obtained, and a compelling management need is present. In those situations, the Service will ensure that any negative or adverse impacts are the minimum necessary, unavoidable, cannot be further mitigated, and do not constitute impairment of park resources and values.
(2001 NPS Management Policies, Section 8.1)

The Management Policies emphasize the Park Service mandate to prevent impairment of natural and cultural resources, to preserve park resources and to limit recreational activities that degrade resources. The policies distinguish that:

Congress, recognizing that the enjoyment of future generations of the national parks can only be ensured if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act, in decisions that variously describe it as making "resource protection the primary goal" or "resource protection the overarching concern," or as establishing a "primary mission of resource conservation," a "conservation mandate," "an overriding preservation mandate," "an overarching goal of resource protection," or "but a single purpose, namely, conservation."
(2001 NPS Management Policies, Section 1.4.3)

The impairment of resources and values may not be allowed by the Service unless directly provided for by legislation or by the proclamation establishing the park. The relevant legislation or proclamation must provide explicitly (not by implication or reference) for the activity, in terms that keep the Service from having authority to manage the activity so as to avoid impairment.
(2001 NPS Management Policies, Section 1.4.4)

GGNRA's enabling legislation does not directly or specifically allow impairment of resources. Therefore, in assessing options for accommodating dog walking in GGNRA, each option must meet NPS mandates as outlined in the 2001 NPS Management Policies.

The 2001 NPS Management Policies also explain that "enjoyment" in the Organic Act has broad meaning:

The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States. The "enjoyment" that is contemplated by the statute is broad; it is the enjoyment of all the people of the United States, not just those who visit parks, and so includes enjoyment both by people who directly experience parks and by those who appreciate them from afar. It also includes deriving benefit (including scientific knowledge) and inspiration from parks, as well as other forms of enjoyment.
(2001 NPS Management Policies, Section 1.4.3)

Accordingly, NPS seeks broad input in order to consider the wide range of interests of those who appreciate—from both near and afar—the resources of GGNRA.

The 2001 NPS Management Policies also define suitable visitor uses, noting that:

Enjoyment of park resources and values by the people of the United States is part of the fundamental purpose of all parks. The Service is committed to providing appropriate, high quality opportunities for visitors to enjoy the parks, and will maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society. However, many forms of recreation enjoyed by the public do not require a national park setting, and are more appropriate to other venues. The Service will therefore:

—Provide opportunities for forms of enjoyment that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks.

—Defer to local, state, and other federal agencies; private industry; and non-governmental organizations to meet the broader spectrum of recreational needs and demands.

To provide for the enjoyment of the parks, the National Park Service will encourage visitor activities that:

—Are appropriate to the purpose for which the park was established; and

—Are inspirational, educational, healthful, and otherwise appropriate to the park environment; and

—Will foster an understanding of, and appreciation for, park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and

—Can be sustained without causing unacceptable impacts to park resources or values.

Unless mandated by statute, the Service will not allow visitors to conduct activities that:

—Would impair park resources or values;

—Create an unsafe or unhealthful environment for other visitors or employees;

—Are contrary to the purposes for which the park was established; or

—Unreasonably interfere with:

—The atmosphere of peace and tranquillity, or the natural soundscape maintained in the wilderness and natural, historic, or commemorative locations within the park;

—NPS interpretive, visitor service, administrative, or other activities;

—NPS concessioner or contractor operations or services; or

—Other existing, appropriate park uses
(2001 NPS Management Policies, Section 8.2)

Finally, the Management Policies address the importance of visitor safety,

The saving of all human life will take precedence over all other management actions as the Park Service strives to protect human life and provide for injury-free visits * * * When practicable, and consistent with congressionally designated purposes and mandates, the Service will reduce or remove known hazards and apply other appropriate measures, including closures, guarding, signing, or other forms of education. In doing so, the Service's preferred actions will be those that have the least impact on park resources and values.
(2001 NPS Management Policies, Section 8.2.5.1)

Other NPS Policies and Guidelines

There are a number of NPS System wide guidelines that address park management requirements and use limitations, and are available at *www.nps.gov/refdesk/DOrders/*. These include Natural Resource Management Guidelines (NPS 77), and NPS Director's Orders (DO) on Wetland Protection (DO 77–1), Public Health (DO 83), Soundscape Preservation and Noise Management (DO 47), and Conservation Planning, Environmental Impact Analysis, and Decision-Making (DO 12).

Natural Resources

The lands encompassing GGNRA provide critical habitat for many of the country's and the state's most rare and threatened species. The central coast including the San Francisco Bay Area and GGNRA, is considered one of North America's biodiversity hot spots (*Precious Heritage: the Status of Biodiversity in the United States,* Nature Conservancy). The California Floristic Province is identified as the 8th global

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biodiversity hotspot in a list of 25 (*Nature's Place: Population and the Future of Diversity,* 2000 Report by Population Action International). GGNRA was designated a Biosphere Reserve in 1989. The unique Golden Gate Biosphere Reserve, including marine, coastal and upland areas adjacent to a major metropolitan area, is designated as an international biosphere reserve in recognition of its importance to conservation of biodiversity, sustainable development, research and education.

Wildlife: There are currently 75 rare or special status wildlife species currently identified as permanent or seasonal residents of the park, or dependent upon parklands for migration. Of these, eleven are listed as federally endangered, thirteen are federally threatened, two are state endangered, three are state threatened, and 32 are state-designated species of special concern. Nearly all of the native birds documented in the park are protected by the Migratory Bird Treaty Act (16 U.S.C. secs. 528–531).

Vegetation: Approximately 36 rare or special status plant species are currently identified within GGNRA. Of those species, nine are federally endangered, one is federally threatened, and one is state threatened. The remaining 25 species are plants listed by the California Native Plant Society as rare, threatened, endangered, or of limited distribution.

The NPS has a heightened responsibility to preserve and protect those species and their habitat everywhere they occur within GGNRA, in accordance with its own mandate as well as other laws.

Impacts to Natural Resources

Scientific studies attribute disturbance, harassment, displacement, injury and direct mortality of wildlife to domestic dogs that accompany recreationists ("Effects of Recreation on Rocky Mountain Wildlife: a Review for Montana." Committee on Effects of Recreation on Wildlife, Montana Chapter of the Wildlife Society, September 1999, Joslin and Youman coordinators). This study indicates that domestic dogs retain their instincts to hunt or chase. Further, the study indicates that even without chasing, the mere presence of a dog can frighten wildlife away. A dog's urine and fecal deposits serve as strong territorial markings that are equally alarming to native species long after the dog has departed. Native vegetation may also be destroyed by digging and by chasing behavior.

In recent years, the park has increased its knowledge of park resources, potential wildlife impacts and public safety risks. During the last 10 years, there have been increasing impacts to natural resources related to unrestrained dogs, including digging and trampling of native vegetation including the habitat for the endangered mission blue butterfly as well as endangered plant habitat; bird habitat disturbance; and harassment of wildlife including both birds and marine mammals. Off leash dogs harassing beached sea lions occurs periodically during May/June along the waterline at Ocean Beach, Fort Funston and Rodeo Beach. At Rodeo Lagoon, off leash dogs at the edge of the lagoon and in shallow waters potentially crush tidewater goby burrows; the tidewater goby is an endangered species. Some problems with off leash dogs have also arisen with disturbance of steelhead trout and coho salmon populations at the mouth of Redwood Creek at Muir Beach; behavioral disturbance to the resident fish includes dogs wading and running through the creek mouth and lagoon.

Within GGNRA, Ocean Beach is the longest stretch of sandy beach between Point Reyes National Seashore and Half Moon Bay. The entire length of this beach provides critically important feeding and resting habitat for wintering and migrating shorebirds, gulls and terns. The species found in the highest numbers (hundreds to low thousands depending on time of year) include sanderlings, willets, marbled godwits, elegant and Caspian terns, and various gull species. The gulls and terns roost in large numbers on the beach with their newly fledged young during portions of the year. The federally threatened snowy plover also resides on portions of the beach for 10 months of the year. According to park biologists and protection rangers, shorebirds, gulls and terns are chased by off leash dogs, interrupting feeding and resting that help to build fat reserves for long migrations and breeding. Off leash dogs can also be a threat to sick and injured birds and marine mammals that may beach themselves. During the last several years, fencing has been erected in areas of Fort Funston, Crissy Field and other GGNRA locations, an effort limited to keep off leash dogs out of these most sensitive habitat areas. These closures have negative visual impacts and do not completely protect natural resources from off leash dog use.

According to Dr. Elliot Katz, founder and president of In Defense of Animals:

> If a dog has shown a propensity to run after deer or other wildlife in the open spaces, then that dog should be on a leash. There should be a substantial penalty for chasing wildlife. I don't think that anyone can control more than three dogs off leash at one time. I know it will anger the dog handlers if I say so, but in numbers dogs do have a pack mentality.
>
> (In the Doghouse, by Michael McCarthy, "Pacific Sun," June 13 + 19, 2001)

The NPS Management Policies and Director's Orders require that the park prevent impairment to part resources and minimize adverse impacts, while providing appropriate recreational opportunities.

Impacts to Public Safety

Dogs biting visitors, aggressive behavior toward other dogs and/or people, dogs falling off cliffs, people going after their dogs that have fallen off cliffs, and visitors being knocked down are the public safety concerns related to off leash dog walking. Public controversy continues to grow over dog issues, increasing the demand by some for stronger enforcement of the leash law by the park.

The GGNRA's tracking of dog-related incidents during a 3-year period (1998 + 2000) reveals a total of 54 reported dog bites. Between January 1, 2001, and June 16, 2001, there have been 13 reported dog bites. According to protection rangers, these numbers reflect a small fraction of the total occurrences, reported and non-reported. From 1998 + 2000, there have been 890 leash law reports, and another 105 reports of dogs in closed areas. Between 1998 and 2000, protection rangers performed 58 technical rescues of dogs or their owners that had fallen over the side of the cliffs at Fort Funston, a popular off leash area. In calendar year 2000, this resulted in three ranger injuries. Cliff rescues at Fort Funston are a serious threat to public safety and employ a large number of park personnel and equipment, leaving major areas of GGNRA unprotected. In 1998, the number of cliff rescues at Fort Funston was 25; in contrast, there were a total of 11 rescues along the remaining nine miles of San Francisco shoreline from Fort Point to the Cliff House.

A review of animal organizations and web sites show that there are possible impacts to public safety. According to the American Dog Owners Association:

> * * * unleashed dogs intimidate * * * unleashed dogs harass, injure and sometimes kills wildlife.
>
> (*www.adoa.org*)

And, according to the American Veterinary Medical Foundation Task Force on Canine Aggression:

> Although most dog bites occur on the property where the dog lives, unrestrained or free-roaming dogs do pose a substantial threat to the public. Enforcement of restraint laws is, therefore, essential if the incidence of dog bites is to be reduced.
>
> ("JAVMA," Vol. 218, No. 11, June 1, 2001, *www.avma.org*)

Any alternative to the leash regulation must address these safety concerns, and be consistent with NPS policies and mandates.

Recreational Benefits of Off Leash Dog Walking

There are recreational benefits to both humans and dogs related to off leash dog use. A review of animal organizations' publications and web sites show that many organizations support the recreational benefits—for both the dog and the human—of off leash dog walking. According to the San Francisco chapter of the Society for the Prevention of Cruelty to Animals (S.F. SPCA), dogs require daily exercise and contact with other dogs in order to remain healthy and well socialized. The S.F. SPCA considers off-leash areas as essential for the health and well being of dogs, and further, that:

> * * * dogs socialize with each other through subtle displays of posture and behavior that can only occur when they are not impeded by a leash. A leash limits a dog's natural movement and can even cause some dogs to become territorial, protecting the area to which the leash confines them.
>
> (*www.sfspca.org*)

According to the San Francisco Dog Owners Group, known as SF Dog:

> * * * the creation of off-leash recreation space encourages the development of well-socialized dog populations as well as owners who are responsible.
>
> ("Managing Off-Leash Recreation in Urban Parks," April 19, 1999, *www.sfdog.org*)

The SF Dog group also underscores the benefits of dog ownership:

> * * * daily exercise routines that dogs demand reduces crimes in parks for the simple reason that people involved in criminal activity do not like to be observed.
>
> (*www.sfdog.org*)

The California Dog Owners Group supports increased understanding of

> * * * the natural relationship of open space to humans with dogs and to be vigilant in promoting appropriate rules for shared and continued use.
>
> (*www.caldog.org*)

In articles written by dog walkers on the Fort Funston web site (*www.fortfunstonforum.com*), off leash dog use is alleged to be beneficial to the bank swallows, specifically:

> It really looked like the birds were using the dogs to flush out insects for them to eat.
>
> (Linda Shore, July 21, 2000)
>
> I had first thought they were playing with Scout and then it became clear that they were circling around and flying low to ground to hunt for insects. It seemed to me that they were following Scout and looking for food where he was walking, as though he might be making the insects scurry around so that the swallows could see them.
>
> (Christy Cameron, July 19, 2000)

In an interview with Dr. Nicholas Dodman, of the Tufts University Veterinary Center, "Bark Magazine" quoted him as follows:

> The vast majority of dogs do benefit greatly from having exercise periods. And walking dogs on a leash is not sufficient exercise. It's not that they die if they walk on a leash, just as it's not that a human being dies in solitary confinement either. It's just that it is not optimal for their physiological and psychological well-being. * * * It is important for a dog to be provided with natural outlets—to be able to run and exercise and chase things and do as a dog was bred to do
>
> (*www.thebark.com/ezine*)

The benefit to both the dog and human were also noted:

> * * * walking with a canine "best friend" increases physical and mental fitness for both the human and the dog, a community of other dog walkers offers positive social interactions, the high density of park users and the presence of dogs offers a level of personal safety.
>
> ("Survey of Fort Funston Recreational Use," Karin Hu, Ph.D., September 2000, *www.fortfunstondog.org*)

Options for Evaluation

This Notice is intended to solicit public comment on a range of potential management options for addressing appropriate pet management within Golden Gate National Recreation Area, consistent with protecting national park resources and assuring visitor safety. This procedure could result in a range of outcomes, from enforcement of the existing regulation, to revisions of the existing regulation that would permit off leash pets within portions of Golden Gate National Recreation Area under specific conditions.

All interested persons are invited to submit to the National Park Service their comments on any aspect of the alternatives described below, including responses regarding:

- Should the leash law regulation remain intact parkwide?
- Should additional areas currently closed to dogs be open to on leash use?
- Should additional areas be closed to dogs?
- Should analysis of any alternatives be measured from the current baseline of no off-leash dog walking, or the long-standing former policy that allowed off-leash dog walking in certain areas?
- Should the regulation be changed to designate former "voice control" areas for off leash dog walking? If so,
- Which geographical areas should/should not be considered for off leash?
- Should there be a limit on the number of dogs?
- Should areas be open to off leash use at certain times of the day or days of the week?
- Should there be a bond required to cover liability?
- Should people be required to sign waivers of liability?
- What are potential environmental impacts of any of the alternatives?
- What additional mitigating factors should be imposed?
- What conditions could be required of owners?
- Should areas be fenced?
- Should voice control be employed?
- How should the numbers of dogs be limited?
- Who should pay for facilities, improvements, and operations?

Specific Options

In summary, in considering changes to existing regulation, any change must comply with the NPS Organic Act, GGNRA's enabling legislation and Systemwide policies and directives. In order to comply with NPS rules and regulations, including the obligation to minimize adverse impacts on park resources and values and the prohibition on resource impairment, the following areas of the park, in which pets have never been allowed (e.g. there is no history of dog walking use, and/or it has not been an issue) or have been restricted due to sensitivity of resources, are precluded from consideration for off leash uses: Alcatraz, China Beach, Crissy Beach tidal marsh and wildlife protection area, East Fort Baker Pier, coastal dunes and cliff areas of Fort Funston, Kirby Cove, Muir Woods, Phleger Estate, Fort Point historic structure, the beach at Stinson Beach, Tennessee Valley, Rodeo Lagoon, Redwood Creek, all freshwater bodies in the park, and other threatened or endangered species habitat areas in the park. The latter includes areas of endangered mission blue butterfly habitat at Milagra Ridge, Marin Headlands and East Fort Baker, as well as the threatened snowy plover management area at Ocean Beach.

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A. Enforce existing regulation/dogs on leash and on trail: Enforcement of the existing regulation park wide would reduce visitor conflicts, improve visitor and employee safety, and reduce impacts on natural resources. Continued visitor education would be required to increase understanding of the regulation and reasons for it. On leash dog use in the park could result in removal of fences in some locations at Fort Funston and Crissy Field, and possibly other locations where exclosures have been created in order to protect sensitive species and habitat areas. The following additional areas, where dogs currently are prohibited, could be opened to on leash dogs under appropriate circumstances: East Fort Baker Pier, Phleger Estate, Stinson Beach, and portions of Tennessee Valley. Enforcement of the existing regulation may displace off leash dog use into other jurisdictions within the counties of San Francisco, San Mateo and Marin. This option would not require rulemaking because the leash regulation is already in place. The GGNRA must enforce the leash law unless a regulation is promulgated and adopted allowing off leash dog use; Option B discusses that option. The agency seeks comment on the merit of enforcement of the existing regulation, including specific suggestions on implementation and education regarding its enforcement, as well as suggestions regarding the opening of additional on leash dog areas as described above.

B. Identify specific locations/ways to address off leash use within the park: Off leash dog use could be allowed in specific locations within the park, with the remainder of the park subject to enforcement of the existing regulation requiring pets to be leashed where permitted. Any location selected for off leash would carry the requirement that any negative or adverse impacts are the minimum necessary, unavoidable, cannot be further mitigated, and do not constitute impairment of park resources and values. To that end, appropriate environmental compliance would be required to evaluate all potential effects within GGNRA, in accordance with federal laws including National Environmental Policy Act and the National Historic Preservation Act. This option would require rulemaking. Negative effects could include additional park operating financial requirements to remove pet excrement, develop capital improvements and additional enforcement staff to assure conformance with the restrictions related to off leash areas. Off leash dog use, where it does not conflict with protection of natural resources, can promote exercise and enjoyment of park areas. The agency seeks comment on the merit of permitting off leash use and identification of specific locations and measures to minimize any impacts on visitors and resources.

Request for Comments

The National Park Service solicits comment and information from all segments of the public interested in GGNRA and appropriate pet management. All comments received by the Park Service at the address and by the date listed above will be reviewed and analyzed. If rulemaking is determined necessary as a result of this process, such proposed rulemaking would involve additional extensive public review and comment. If rulemaking is not an option chosen by NPS, then the public will be appropriately notified.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments.

The GGNRA will hold two public meetings where public comment on this Advanced Notice of Proposed Rulemaking will be invited. Additional opportunities for public involvement will be announced locally and in the **Federal Register**.

Dated: January 3, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–568 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–7128–3]

National Ambient Air Quality Standards for Ozone: Proposed Response to Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing a 30-day extension of the public comment period on the proposed response to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remand of the national ambient air quality standards (NAAQS) for ozone (O_3) that was published on November 14, 2001 (66 FR 57268). The proposal responded to the D.C. Circuit remand of the O_3 NAAQS to EPA to consider any beneficial health effects of O_3 pollution in shielding the public from the "harmful effects of the sun's ultraviolet rays." 175 F. 3d 1027 (D.C. Cir. 1999).

DATES: Comments on the proposed response to the remand must be received by February 13, 2002.

ADDRESSES: Submit written comments (in duplicate if possible) on this proposed response to: Air and Radiation Docket and Information Center (6102), Attn: Docket No. A–95–58, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Electronic comments are encouraged and can be sent directly to EPA at: *A-and-R-Docket@epa.gov*. Comments will also be accepted on disks in WordPerfect in 8.0/9.0 file format. All comments in electronic form must be identified by the docket number, Docket No. A–95–58.

FOR FURTHER INFORMATION CONTACT: Susan Lyon Stone, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711; e-mail stone.susan@epa.gov; telephone (919) 541–1146.

SUPPLEMENTARY INFORMATION: The EPA received a request for an extension of the original 60 day comment period. The commenter requested additional time to prepare comments because part of the comment period overlapped with the seasonal holidays. In response to this request, EPA is extending the comment period by 30 days to allow additional time for the public to prepare comments.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: January 7, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–700 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 0146–1146; FRL–7128–5]

Approval of Operating Permit Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve amendments to the Iowa Title V operating permit program. EPA granted full approval of Iowa's Title V program on July 14, 1997. These amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Written comments should be mailed to Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permit program?
What is the Federal approval process for an operating permit program?
What does Federal approval of a state operating permit program mean to me?
What is being addressed in this document?
Have the requirements for approval of an operating permit program revision been met?
What action is EPA taking?

What Is the Part 70 Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the Part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter that is 10 micrometers in size (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval.

What Is the Federal Approval Process for an Operating Permit Program?

In order for state regulations to be incorporated into the Federally enforceable Title V operating permit program, states must formally adopt the regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the operating permit program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally approved operating permit program. Records of such actions are maintained in the CFR at Title 40, Part 70, Appendix A, entitled "Approval Status of State and Local Operating Permits Program."

What Does Federal Approval of an Operating Permit Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved operating permit program is primarily a state responsibility. However, after the state program is Federally approved, we oversee the program and review proposed permits submitted by the state in accordance with 40 CFR part 70. We are also authorized to enforce the permit program and individual permits issued under the program. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has adopted amendments to 567 Iowa Administrative Code (IAC) 22.108(3). The purpose of the amendments is to incorporate IDNR's existing Title V Periodic Monitoring Guidance into its rules. Periodic monitoring is required by 40 CFR 70.6 and 71.6 where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Also, the amendments to 567 IAC 22.108(3) adopt by reference Compliance Assurance Monitoring (CAM) that is required to be included in 40 CFR part 70 or 71 operating permits for major stationary sources of air pollution that are required to obtain operating permits under Title V of the CAA. Periodic monitoring and CAM are needed to provide reasonable assurance of compliance with applicable requirements under the CAA. The amendments were adopted and filed by the Environmental Protection Commission on June 21, 2001; published on July 11, 2001; and became effective on August 15, 2001.

As a part of our review of these amendments, EPA requested clarification from IDNR regarding the list of factors to be considered in evaluating the type of periodic monitoring appropriate for an applicable requirement, as set forth in the narrative of the June 18, 2001, Periodic Monitoring Guidance. This narrative lists numerous factors to be considered, while Attachment 1 to that guidance contains a decision matrix considering only type of source and whether the source is controlled or uncontrolled. In response to EPA's request, IDNR sent EPA a November 7, 2001, letter in which the state clarified that it has flexibility in deciding to

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follow the matrix which is found in Appendix A to that guidance or to make a case-by-case determination that differs from the periodic monitoring guidance and the matrixes.

EPA believes that the state's ability to deviate from the guidance on a case-by-case basis is essential to implementation of this program, and our proposed approval of the state program revisions is based, in part, on the state's assurance that it retains authority to establish appropriate periodic monitoring on a case-by-case basis. In proposing to approve this rule revision, EPA reserves its authority to object to permit provisions regarding periodic monitoring if they do not meet the requirements of the CAA or 40 CFR 70.6(a)(3).

Have the Requirements for Approval of a Revision to the Operating Permit Program Been Met?

Our review of the material submitted indicates the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

EPA is proposing to approve amendments to Iowa rule, 567 IAC 22.108(3), effective August 15, 2001, as supplemented on November 7, 2001, as a revision to the Iowa Title V operating permit program.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule would approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposal also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposal would merely approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposal also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposal would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects In 40 CFR Part 70

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 2, 2002.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–757 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 8
Friday, January 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–071–1]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection in support of the State-Federal Brucellosis Eradication Program.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 12, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–071–1, Regulatory Analysis and Development, PPD,APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No.01–071–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the State-FederalBrucellosis Eradication Program, contact Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Brucellosis Eradication Program.

OMB Number: 0579–0047.

Type of Request: Reinstatement of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is responsible for, among other things, administering regulations intended to prevent the spread of brucellosis and other animal diseases within the United States.

Brucellosis is a contagious disease that primarily affects cattle, bison, and swine. It causes the loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. The continued presence of brucellosis in a herd seriously threatens the health of other animals. Brucellosis has caused devastating losses to farmers in the UnitedStates over the last century.

The State-Federal Brucellosis Eradication Program, which is a national program, is working toward eliminating this serious disease of livestock. The program is conducted under the various States' authorities supplemented by Federal authorities regulating interstate movement of affected animals. Effective screening programs and extensive epidemiologic investigations are required to locate infection and to eradicate the disease.

Conducting effective brucellosis screening programs and epidemiologic investigations requires the use of many information collection activities, such as applications for tags or tattoos, epidemiology report forms, permits for movement of restricted animals, monthly reports of brucellosis eradication and program surveillance activities, reports of brucellosis reactors slaughtered, and permits for shipping exposed herds. The information obtained from these activities is used to continue the search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. These information collection activities are essential in determining the status of a brucellosis area and helping herd owners by speeding up the detection and elimination of serious disease conditions in their herds.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments form the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary fo the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0076513 hours per response.

Respondents: Veterinarians, livestock inspectors, and herd owners.

Estimated annual number of respondents: 7,382.

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Estimated annual number of responses per respondent: 71.455703.

Estimated annual number of responses: 527,486.

Estimated total annual burden on respondents: 4,036 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–742 Filed 1–10–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–024–2]

Availability of Environmental Assessment and Finding of No Significant Impact for Confined Field Test of Genetically Engineered Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared relative to the issuance of a permit to allow the field testing of pink bollworm genetically engineered to express green fluorescence as a marker. The environmental assessment provides a basis for our conclusion that the confined field testing of the genetically engineered pink bollworm will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for this field test.

EFFECTIVE DATE: October 1, 2001.

ADDRESSES: You may read a copy of the environmental assessment and the finding of no significant impact and comments received on an earlier notice of the availability of the environment assessment at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Robert I. Rose, Biotechnology Assessments Section, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8723. To obtain a copy of the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *kay.peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On January 29, 2001, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 01–029–01r) from APHIS' Plant Protection Center in Phoenix, AZ, for a permit to field test the plant pest pink bollworm (PBW), *Pectinophora gossypiella* (Lepidoptera: Gelechiidae).

APHIS published a notice in the **Federal Register** on June 21, 2001 (66 FR 33226, Docket No. 01–024–1), announcing the availability for public comment of an environmental assessment (EA) for the proposed confined field test of the genetically engineered PBW. Comments were to have been received by APHIS on or before July 23, 2001. APHIS received nine comments on the EA during the designated comment period. The comments were from universities, environmental and consumer groups, a university medical research center, a crop protection association, a cotton industry organization, and a cotton growers group. Four comments were in favor of the proposed field test, while three were opposed. (We counted as a single comment three separate comments critical of the proposed field test that were written by the same commenter and were identical in content.) The commenters favoring the field test stressed the thoroughness of the control and containment measures proposed, the negligible risks of the experiment because of the planned safeguards, the adequacy of the EA, and the need for gathering data on PBW control. The commenters who opposed the proposed field test expressed concern about the need for additional data on transgene stability, the need for an independent assessment of the permit application, the adequacy of the proposed containment procedures, potential human health risks, and alleged deficiencies in APHIS' compliance with the requirements of the Endangered Species Act and the National Environmental Policy Act (NEPA), including the need for an Environmental Impact Statement (EIS) for a transgenic PBW sterile insect technique program. APHIS identified and addressed the majority of these issues in the EA prepared for the subject field trial, and we have provided a response to comments as an attachment to our finding of no significant impact (FONSI), which is available from the person listed under **FOR FURTHER INFORMATION CONTACT.** With regard to the comment concerning the need for an EIS, APHIS is committed to considering the long-term issues associated with the release of certain transgenic arthropods through the NEPA EIS process.

The subject PBW has been genetically engineered to express an enhanced green fluorescent protein (EGFP) derived from a jellyfish, *Aequora victoria*. The PBW expresses EGFP fluoresces when viewed under an ultraviolet light source. A *piggyBac* transposable element derived from the plant pest cabbage looper (*Trichoplusia ni*) was used to transform the subject PBW, and expression of the EGFP is controlled through use of the *Drosophila melanogaster* hsp70 and *Bombyx mori* actin A3 promoters. The subject transgenic PBW is considered a regulated article under the regulations in 7 CFR part 340 because the recipient organism is a plant pest and because it contains gene sequences from a plant pest. The field test will be conducted under carefully controlled and confined conditions.

The transgenic PBW with EGFP as a marker has been developed for use in confined, on-site experimentation and field performance studies in the PBW sterile insect program, which is designed to depress PBW populations. The transgenic PBW will be reared in the Phoenix PBW insect-rearing facility, sterilized with radiation, and placed in escape-proof screen field cages near the facility, where they will undergo a series of fitness and related tests.

An EA was prepared to examine any potential environmental impacts and plant pest risk associated with the confined field testing of the transgenic EGFP PBW. Based on that EA, APHIS has reached a FONSI relative to the issuance of a permit for the confined field testing of the subject PBW with EGFP. In summary, we have based our FONSI on the following conclusions: (1) The possibility of the genetically engineered organism reverting to or undergoing unanticipated genetic transformation is exceedingly low; (2) it is highly unlikely that the EGFP gene would persist in the environment because it provides no fitness advantage to the PBW; (3) multiple levels of physical and biological confinement in the proposed research are designed to contain the transgenic PBW; (4) the PBW is not native to the United States and there are no known sexually compatible species in North America; (5) there is no current evidence that this gene can be transferred through predation, natural decay, or parasitism; (6) the confined research would not result in an additional pesticide load on the environment; (7) the research will not disproportionately affect minority or low income populations, or disproportionately affect children, or result in any environmental health risks or safety risks to children; and (8) APHIS has determined that, based on the location of the test field and the measures designed to contain the transgenic PBW, the proposed test will have no effect on listed, threatened, endangered, or candidate species.

The EA and FONSI were prepared in accordance with: (1) NEPA, as amended(42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 7th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–741 Filed 1–10–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–117–1]

Procedures for Importing Cattle into the United States; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are informing the public that Veterinary Services of the Animal and Plant Health Inspection Service is holding a public meeting to provide a forum to discuss the process and science used to establish and verify compliance with protocols for importing cattle into the United States.

DATES: The meeting will be held on Wednesday, February 6, 2002, from 9 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held in the Columbine Room at the Lincoln Center, 417 West Magnolia, Fort Collins, CO.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea M. Morgan, Acting Director, Animal Health Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 2073–1231; (301) 734–8093.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for administering regulations to prevent the introduction of communicable diseases of livestock and poultry into the United States. In administering the regulations, we follow an import process that includes, among other things, developing an import protocol between the exporting and importing countries or regions, monitoring the disease status of countries or regions, quarantining and testing imported animals, and evaluating the risk of introducing disease into the United States through the importation of animals.

APHIS seeks to establish the import protocols between the exporting and importing countries or regions based upon the best available technical and scientific information. The protocols establish health requirements, including the disease status of the region or country of origin and diagnostic test requirements for specific diseases, under which importation of animals is allowed.

To provide a forum to discuss the process and science used to establish and verify compliance with protocols for importing cattle into the United States, APHIS' Veterinary Services program is holding a public meeting on Wednesday, February 6, 2002, in the Columbine Room at the Lincoln Center, 417 West Magnolia, Fort Collins, CO. Topics discussed at the meeting will include, but are not limited to, the disease status of exporting regions or countries, transportation issues, quarantine issues, and the risk of the introduction of disease into the United States from the importation of cattle.

The public meeting will begin at 9 a.m. and is scheduled to end at 5 p.m., with registration from 8:30 a.m. to 9 a.m. However, the meeting may end earlier if all persons desiring to speak have been heard.

If you require special accommodations, such as a sign language interpreter, please send us an e-mail to *regulations@aphis.usda.gov*.

If you are interested in making a presentation at the meeting, please register in advance by calling the Regulatory Analysis and Development voice mail at (301) 734–4339 or by sending an e-mail to *regulations@aphis.usda.gov*. The message should include your name, telephone number, organization, if any, and the topic of your presentation. On the day of the meeting, you may also register from 8:30 to 9 a.m. at the meeting site.

To allow everyone wishing to speak an opportunity to be heard, participants should limit their presentations to 10 minutes. Depending upon the number of speakers, we may further limit the time for presentations so that everyone wishing to speak has the opportunity. Starting with the advance registrants, we will call speakers in the order in which they registered.

If you plan to present a written statement, we ask that you provide a copy of your statement to the chairperson of the meeting.

The meeting will be recorded. The complete record, including the transcript and any written statements, will be available to the public.

Done in Washington, DC, this 7th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–743 Filed 1–10–02; 8:45 am]

BILLING CODE 3410–34–P

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DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Friday, February 1, 2002 in Orofino, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on February 1 begins at 10 AM, in the Clearwater National Forest Headquarters Office Building, 12730 Highway 12, Orofino, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 PM (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: January 3, 2002.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 02–683 Filed 1–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Meeting.

SUMMARY: The Siskiyou Resource Advisory Committee (RAC) will meet on Monday, February 4, and Tuesday, February 5, 2002. Monday's meeting is scheduled to begin at 1 p.m. and conclude at approximately 4:30 p.m. Tuesday's meeting will begin at 9:30 a.m. and will conclude at approximately 4:30 p.m. The meeting will be held at the Chetco Community Public Library, 405 Alder Street, Brookings, Oregon. The tentative agenda for February 4 includes: (1) FACA overview; (2) Roles and responsibilities for Advisory Committees; (3) Timelines for projects related to the Secure Rural Schools and Community Self-Determination Act of 2000; (4) Election of the RAC chairperson; and (5) Public Forum. The public forum is tentatively scheduled to begin at 3:20 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. The tentative agenda for February 5 includes: (1) Presentation of projects proposed by the Forest Service; (2) Public forum. The public forum is tentatively scheduled to begin at 2 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the public forum. Written comments may be submitted prior to the February 4 and 5 meetings by sending them to the Designated Federal Official Jack E. Williams at the address given below.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Jack E. Williams; Rogue and Siskiyou national forests; P.O. Box 520, Medford, Oregon 97501; (541) 858–2200.

Dated: January 7, 2002.

Jack E. Williams,

Forest Supervisor, Rogue River and Siskiyou National Forests.

[FR Doc. 02–693 Filed 1–10–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 11, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Eyewear Prescription Service, Department of Veterans Affairs, Veteran Integrated Service Network 7, (Alabama, Georgia and South Carolina)

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Government Agency: Department of Veteran Affairs, Litigation Support Services, USDA Food and Nutrition Service, Alexandria, Virginia

NPA: Federal Dispute Resolution Center, Alexandria, Virginia

Government Agency: USDA Food and Nutrition Service, Mailroom Support Services, Internal Revenue Service, Milwaukee, Wisconsin

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Government Agency: Internal Revenue Service

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–726 Filed 1–10–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and a service previously furnished by such agencies.

EFFECTIVE DATE: February 11, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740

SUPPLEMENTARY INFORMATION: On November 2 and November 30, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 55635 and 59778) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Accordingly, the following commodity and services are added to the Procurement List:

Commodity

Stand, Office Machine
7110–00–601–9849
7110–00–601–9835
7110–01–136–1563
GSA/National Furniture Center for Zones 2 and 3

Services

Mailroom Operation, Federal Deposit Insurance Corporation, 1910 Pacific Avenue, Dallas, Texas

Photocopying, James E. Van Zandt, Veterans Affairs Medical Center, Altoona, Pennsylvania

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and the service.

3. The action will result in authorizing small entities to furnish the commodity and the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and the service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity and the service listed below are no longer suitable for procurement by the FederalGovernment under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodity and service are deleted from the Procurement List:

Commodity

Hood, Radioactive Contaminant Protective
8415–00–NSH–0027

Service

Janitorial/Custodial, U.S. Air Force
Recruiting Station, Wasilla, Alaska

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–727 Filed 1–10–02; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Supplemental Hearing on Environmental Justice

AGENCY: Commission on Civil Rights.

ACTION: Notice of supplemental hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, section 3, Public Law 103–419, 108 Stat. 4338, as amended, and 45 CFR 702.3., that a public hearing before the U.S. Commission on Civil Rights will take place on Friday, February 8, 2002, at the U.S. Commission on Civil Rights, in the Fifth Floor Conference Room 540, 624 Ninth Street, NW., Washington, DC 20425, beginning at approximately 10:00 a.m., immediately following the Commission's regularly-scheduled monthly meeting. This is a continuation of the Commission's first environmental justice hearing, which was held on January 11, 2002, and first published in the **Federal Register** on December 13, 2001, at 66 FR 64397. The purpose of this supplemental hearing is to collect information within the jurisdiction of the Commission, under Public Law 98–183, section 5(a)(1) and section 5(a)(5), related particularly to the effect of environmental hazards, including hazardous waste sites and industries located in, or near, low-income communities and communities of color, and the question of whether the civil rights of those communities in question are being violated. The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2. The Commission is an independent bipartisan, fact finding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Pamela Dunston, Administrative Services and

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Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Les Jin, Office of the Staff Director (202) 376–7700.

Dated: January 8, 2002.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–773 Filed 1–10–02; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1–2002]

Foreign-Trade Zone 3, San Francisco, California Proposed Foreign-Trade Subzone Ultramar, Inc. (Oil Refinery Complex) Martinez, California, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the San Francisco Port Commission, grantee of FTZ 3, requesting special-purpose subzone status for the oil refinery complex of Ultramar, Inc. (Ultramar), a subsidiary of Ultramar Diamond Shamrock Corporation, located in the Martinez, California, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 3, 2002.

The Ultramar refinery complex is located at 3 sites in the Martinez, California, area (Contra Costa County), some 30 miles northeast of San Francisco: *Site 1* (168,000 BPD capacity, 2,690,000 barrel storage capacity, 2038.65 acres)—main refinery complex, located at 150 Solano Road; *Site 2* (87.9 acres, 522,000 barrel storage capacity)—Amorco crude oil storage facility located on the Carquinez Strait and west of Interstate 680, some 2.5 miles west of the refinery; and, *Site 3* (13.2 acres)—Pittsburg Marine Terminal for the storage and shipment of petroleum coke, 595 East Third Street, Pittsburg, some 11.5 miles east of the refinery on the Carquinez Strait. The refinery complex is within the San Francisco Customs port of entry.

The "Golden Eagle" refinery (636 full-time and 434 contract employees) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include propane, butane, petroleum coke and sulfur. Some 20 percent of the crude oil (90–95 percent of inputs) is sourced abroad. The company is also requesting to import certain intermediate inputs (naphthas and gas oils) under FTZ procedures.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign inputs (crude oil, natural gas condensate, gas oil, naphtha) in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 12, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period until March 27, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 530 Water Street, Suite 740, Oakland, California 94607.

Dated: January 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–768 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–839]

Five-Year (Sunset) Reviews; Termination of Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of five-year ("Sunset") review, termination of suspended antidumping duty investigation on sodium azide from Japan.

SUMMARY: On December 3, 2001, the Department of Commerce ("the Department") initiated a sunset review of the suspended antidumping duty investigation on sodium azide from Japan. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is terminating this suspended investigation.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2001).

Background

On January 7, 1997, the Department suspended the antidumping duty investigation on sodium azide from Japan (62 FR 973). Pursuant to section 751(c), the Department initiated a sunset review of the suspended investigation by publishing notice of the initiation in the **Federal Register**, December 3, 2001 (66 FR 60184). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review of this suspended investigation.

No domestic interested party in the sunset review of this suspended investigation responded to the notice of initiation by the December 18, 2001, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Terminate

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department will issue a final determination, within 90 days after the initiation of the review, terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, December 18, 2001, we are terminating the suspended antidumping investigation of sodium azide from Japan.

Effective Date of Termination

The termination of the suspended investigation is effective as to all entries, or withdrawals from warehouse, of the subject merchandise on or after January 7, 2002.

Dated: January 4, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–767 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010802A]

Proposed Information Collection; Comment Request; Fishing Capacity Reduction Program Buyback Requests

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 12, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael A. Sturtevant, National Marine Fisheries Service, Financial Services Division, Room 13334, 1315 East West Highway, Silver Spring, MD 20910 (301–713–2390).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA has established a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits or (2) both, surrender their permits and either scrap their vessels or restrict vessel titles to prevent fishing. Buybacks can be funded by a Federal loan to the industry or by direct Federal or other funding. Depending upon the type of buyback involved, the program can entail the submission of buyback requests by industry, the submission of bids, referenda if fishery participants, and reporting of the collection of fees to repay a Federal loan. For buybacks involving State-managed fisheries, the State may need to develop the buyback plan and comply with other information requirements.

In its request for renewed Paperwork Reduction Act approval NOAA will also request the merger of referenda requirements currently approved under 0648–0413 and the addition of a provision that would allow the public 30 days to advise of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

II. Method of Collection

Paper forms or submission are primarily used.

III. Data

OMB Number: 0648–0376.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 1,272.

Estimated Time Per Response: 6,634 hours for a business plan, 4 hours for a referenda vote, 4 hours for an invitation to bid, 10 minutes to submit a fish ticket, 2 hours for a monthly buyer report, 4 hours for an annual buyer report, 2 hours for a seller/buyer report, 270 hours for a state approval of plans and amendments to state fishery management plan, and 1 hour for advising of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

Estimated Total Annual Burden Hours: 37,119.

Estimated Total Annual Cost to Public: $6,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–777 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010702A]

Proposed Information Collection; Comment Request; Highly Migratory Species Observer Notification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

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collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 12, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers at the National Marine Fisheries Service (NMFS), Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910, or by e-mail at christopher.rogers@noaa.gov or phone at 301–713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under current regulations NMFS may select for observer coverage any fishing trip by a vessel that has a permit for Atlantic Highly Migratory Species (HMS). NMFS will advise vessel owners in writing when their vessels have been selected. The owners of those vessels are then required to notify NMFS before commencing any fishing trip for Atlantic HMS. Such notification allows NMFS to arrange for observer placements and assignments. The estimated number of responses exceeds the number of respondents due to multiple trips taken within a particular season.

II. Method of Collection

Notification can be made by phone, fax, or letter.

III. Data

OMB Number: 0648–0374.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; individuals or households.
Estimated Number of Respondents: 212.
Estimated Time Per Response: 2 minutes.
Estimated Total Annual Burden Hours: 295.
Estimated Total Annual Cost to Public: $4,468.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–781 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010702B]

Proposed Information Collection; Comment Request; NMFS Alaska Region Vessel Monitoring System (VMS) Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 12, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AKR2, P.O. Box 21668, Juneau, AK 99802–1668 (telephone 907–586–7008).

SUPPLEMENTARY INFORMATION:

I. Abstract

As required in the reasonable and prudent measures in the Endangered Species Act, Section 7 biological opinion on the effects of the Bering Sea and Aleutian Islands and Gulf of Alaska pollock, Atka mackerel, and Pacific cod fisheries on the endangered Steller sea lions, National Marine Fisheries Service (NMFS) has implemented changes to information collected from fishery participants. Any vessel that is registered for directed fishing for Pacific cod, pollock, and Atka mackerel in the exclusive economic zone off Alaska must install a vessel monitoring system (VMS) unit and operate the VMS while directed fishing for each of the species. The VMS unit automatically transmits location information every 20 minutes. NOAA uses the information for determining vessel locations and enforcing the closure of areas of critical habitat. Participants must also fax NOAA a check-in report when a VMS unit has been installed.

II. Method of Collection

The position reports are electronic and automatic. Check-in reports must be faxed.

III. Data

OMB Number: 0648–0445.
Form Number: None.
Type of Review: Regular submission.
Estimated Number of Respondents: 539.
Affected Public: Business or other for-profit organizations.
Estimated Time Per Response: 6 hours to install a VMS, 4 hours per year to maintain a VMS, 5 seconds for an automated position report, and 12 minutes to fax a check-in report.
Estimated Total Annual Burden Hours: 13,044.
Estimated Total Annual Cost to Public: $811,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–782 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Hearing on the Supplement to the Draft Environmental Impact Statement and Draft Management Plan for the Proposed San Francisco Bay National Estuarine Research Reserve in California

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Public hearing notice.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Supplement to the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared on the proposed designation of the San Francisco Bay National Estuarine Research Reserve in California. The Supplement to the DEIS/DMP addresses research, monitoring, education and resource protection needs for the proposed reserve.

The Estuarine Reserves Division will hold a public hearing at 7:00 p.m. on February 13th, at Pittsburg, California City Hall, 65 Civic Avenue, Pittsburg, CA 94565.

The views of interested persons and organizations on the adequacy of the Supplement to the DEIS/DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Final Management Plan.

The comment period for the Supplement to the DEIS/DMP will end on February 26, 2002. All written comments received by this deadline will be considered in the preparation of the FEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray (301) 713–3155 extension 158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM2, Silver Spring, MD 20910. Copies of the Supplement to the Draft Environmental Impact Statement/Draft Management Plan are available upon request to the Estuarine Reserves Division.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: January 4, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone, Management.

[FR Doc. 02–588 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010802B]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Ecosystem Management Committee, Squid, Mackerel, Butterfish Committee, Protected Resources Committee, and Executive Committee will hold a public meeting.

DATES: The meetings will be held on Monday, January 28 through Thursday, January 31, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Radisson Suite Hotel, 350 Rt. 3 West, Secaucus, NJ 07094, telephone 201–863–8700.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: *Monday, January 28, 2002, from 1 p.m. to 4 p.m.*—the Ecosystem Planning Committee will meet.

Tuesday, January 29, 2002, from 8 a.m. until noon the Ecosystem Planning Committee will continue its meeting.

Tuesday, January 29, 2002, from 1 p.m. to 4 p.m.—the Squid, Mackerel, Butterfish Committee will meet.

Tuesday, January 29, 2002, from 4 p.m. to 5 p.m.—the Protected Resources Committee will meet.

Wednesday, January 30, 2002, from 9 a.m. to 10. a.m.—the Executive Committee will meet.

Wednesday, January 30, 2002—the Council will convene at 10 a.m. and adjourn at 5 p.m.

Thursday, January 31, 2002, 8 a.m. until 4 p.m.—Council will meet.

Agenda items for the committees and Council meeting(s), as appropriate, are: Discussion of alternative recreational and commercial management approaches for MAFMC species; review scoping comments for Amendment 9 to the Squid, Mackerel, Butterfish FMP, review Amendment 9 issues paper, finalize management measures for Amendment 9 public hearing draft, and develop timeline for Amendment 9 completion; review update to recent bottlenose dolphin take reduction team's report; receive and discuss the advisory report on the status of monkfish, Georges Bank winter flounder, and Loligo squid developed at the 34th Stock Assessment Workshop; discuss approval of Framework Adjustment1 to the Monkfish FMP (options include: 1) no action and allowing the FMP Year 4 default measures to take effect eliminating the directed fishery, 2) the preferred alternative of postponing the Year 4 default measures for one year and adjusting trip limits and days at sea allocations to achieve fishing year 2000 landing levels after accounting for the court-ordered adjustment to the gillnet trip limits, 3) adjusting management measures to reduce catches to the Years 2 and 3 total allowable catch targets); convene public scoping meeting for Amendment 2 to the Monkfish FMP; receive and discuss organizational and committee reports including the New England Council's report regarding

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possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting.

On Wednesday, January 30, there will be a scoping meeting for Amendment 2 to the Monkfish Fishery Management Plan (FMP). The New England and Mid-Atlantic Fishery Management Councils propose to amend the Monkfish FMP. The amendment process will serve two purposes: it will enable the Councils to modify the FMP rules as needed and to update the analysis of the cumulative impact of the FMP on the human environment. In the process, the Councils will prepare a Supplemental Environmental Impact Statement (SEIS) as described in the National Environmental Policy Act for the amendment. This notice is to inform you that the Councils will gather information for the preparation of the SEIS and to ask for your input on the range of issues to be addressed and alternatives to be considered. The Councils are taking this action for the following reasons: (1) to address updated scientific information on the status of the stocks, (2) to address problems with the implementation and enforcement of the current management program, (3) to evaluate the impact of the rebuilding program on the human environment, (4) to consider proposals for providing controlled access to the monkfish resource south of the North Carolina/Virginia border to vessels from that area that are currently excluded, and (5) to comply with a federal Court Order to update the Essential Fish Habitat (EFH) elements of the FMP. You may comment at any of the public Council or committee meetings where Amendment 2 is on the agenda, or you may submit written comments by February 11, 2002 to:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: 978–465–0492, fax: 978–465–3116.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) least 5 days prior to the meeting date.

Dated: January 8, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–778 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010302F]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting to plan the annual management cycle and strategize on 2002 Council initiatives. This meeting is open to the public.

DATES: The GMT working meeting will convene on Monday, February 4, 2002 at 1 p.m. and may go into the evening until business for the day is completed. The GMT meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, February 5 through Thursday, February 7 until business for the day is completed.

ADDRESSES: The GMT working meeting will be held at the Pacific Fishery Management Council office, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; 503–326–6352.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, 503–326–6352.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Fishery Management Staff Officer for Groundfish, 503–326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to plan the GMT's annual schedule and strategies to effectively aid the Council in managing 2002 West Coast groundfish fisheries and Council initiatives expected to arise in 2002. Additionally, the GMT will discuss groundfish management measures in place for the winter and spring months, respond to assignments relating to implementation of the Council's groundfish strategic plan, consider technical aspects of draft stock rebuilding plans and analyses, review new groundfish stock assessments and survey results, and address other assignments relating to groundfish management.

Although nonemergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: January 4, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–779 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121901A]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing and Scientific Research Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of 2002 Exempted Fishing and Scientific Research Permits; request for comments.

SUMMARY: NMFS announces the intent to issue Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for the collection of Atlantic highly migratory species (HMS). These EFPs/SRPs would authorize collections of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display. Generally, the EFPs will be valid through December 31, 2002. NMFS also announces the intent to issue EFPs upon receiving applications from U.S. fishermen whose vessels fish for Atlantic HMS while operating under contract within the Exclusive Economic Zone of other nations. These EFPs would allow a U.S. fishing vessel to fish so as to be consistent with another country's regulations without violating U.S. regulations, and would ensure that such vessels report to the proper authorities.

DATES: Written comments on these collection, research and fishing activities will be considered by NMFS in issuing such EFPs/SRPs if received on or before January 28, 2002.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The EFP/SRP applications and copies of the regulations under which EFPs/SRPs are issued may also be requested from this address. Comments also may be sent via facsimile (fax) to (301) 713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

Issuance of EFPs and/or SRPs may be necessary because possession of certain shark species is prohibited, possession of billfishes on board commercial fishing vessels is prohibited, and because the commercial fisheries for bluefin tuna, swordfish and large coastal sharks may be closed for extended periods, during which collection of live animals and/or biological samples would otherwise be prohibited. In addition, NMFS regulations at 50 CFR 635.32 regarding implantation or attachment of archival tags in Atlantic HMS require prior authorization and a report on implantation activities.

NMFS also seeks public comment on its intention to issue EFPs for the purpose of collecting biological samples under at-sea fisheries observer programs. NMFS intends to issue EFPs to any NMFS or NMFS-approved observer to bring onboard and possess, for scientific research purposes, biological sampling, measurement, etc., any Atlantic swordfish, Atlantic shark, or Atlantic billfish, provided the fish is a recaptured tagged fish, a dead fish prior to being brought onboard, or specifically authorized for sampling by the Director of the Office of Sustainable Fisheries at the request of the Southeast Fisheries Science Center or Northeast Fisheries Science Center. On average, several humdred swordfish and sharks are collected by at-sea observers under such EFPs any given year.

Collection of bluefin tuna would be authorized for scientific research age and growth, genetic, and spawning studies. In 2001, five permits for bluefin tuna archival tagging and research were issued. In 2002, pursuant to the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations calling for research that addresses bluefin tuna spawning locations, NMFS intends to issue SRPs and/or EFPs for U.S. participation in an international program that could involve the landing of up to 15 metric tons of bluefin tuna and other regulated HMS for scientific sampling. This would be in addition to SRPs and EFPs issued for other tuna research.

In 2001 NMFS issued one EFP allowing commercial fishing vessels to assist NOAA scientists, and one SRP involving NOAA research vessels, in order that experiments in the Northeast Distant Waters of Grand Banks and in the DeSoto Canyon area of the Gulf of Mexico, respectively, could be conducted. These experiments addressed gear modifications to reduce bycatch in the Atlantic HMS pelagic longline fisheries.

NMFS also intends to continue to issue EFPs to vessel operators requesting offloading windows in the Atlantic Swordfish fishery, in the event the swordfish fishery is closed and a vessel is not equipped with a vessel monitoring system that would enable it to remain at sea after the announced closure date. NMFS anticipates that commercial EFP applicants would be captains of larger vessels out on extended trips at the time of a closure announcement. These applicants would benefit from delayed offloading by avoiding market gluts and cold storage problems.

NMFS also seeks public comment on its intention to issue EFPs for distant water pelagic longline vessels for the purpose of expanding access of U.S. vessels into other markets while continuing to collect information about U.S. fishing effort and landings. NMFS would consider applications from any U.S. Atlantic pelagic longline vessel. NMFS intends to issue such EFPs to any U.S. vessel fishing under contract to another nation, provided its landings and discards are consistent with ICCAT recommendations and, due to the requirements of the contract, those landings are being reported to ICCAT by that other nation or otherwise appropriately accounted for.

NMFS is also seeking public comment on its intention to issue EFPs for the collection of restricted species of sharks for the purpose of public display. In the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), NMFS established a public display quota of 60 metric tons wet weight for this purpose. NMFS has preliminarily determined that up to 3,000 sharks could be taken with this current quota and such harvest would be consistent with the most recent environmental impact statement prepared for this fishery. NMFS believes that harvesting this amount for public display will have a minimal impact on the stock. In 2001, nine EFPs were issued for the collection of sharks for display purposes.

Generally, the authorized collections or exemptions would involve activities otherwise prohibited by regulations implementing the HMS FMP and Amendment 1 to the Atlantic Billfish Fishery Management Plan. The EFPs, if issued, may authorize recipients to fish for and possess tunas, billfishes, swordfish and sharks outside the applicable Federal commercial seasons, size limits and retention limits, or to fish for and possess prohibited species.

NMFS intends to undertake rulemaking to revise certain aspects of the procedures for issuing EFPs and complying with EFP requirements for Atlantic HMS. Permits may be issued under the current regulations and be valid until new regulations become effective, at which time revised permits may be issued. A final decision on issuance of any EFPs/SRPs will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, conclusions in the Final Environmental Impact Statement (EIS) and any subsequent Environmental Assessments (EAs) or EISs contained in the Final HMS FMP (64 FR 13575; March 19, 1999) and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any environmental impacts from the issuance of these EFPs other than impacts already assessed in the Final HMS FMP and subsequent EAs.

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Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: January 7, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–780 Filed 1–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, January 8, 2002, 0800 to 1700; and Wednesday, January 9, 2002, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC, 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 02–669 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration will expand the category of individuals covered, and add a (j)(2) exemption to the system of records. The exemption is intended to increase the value of the system of records for law enforcement purposes.

DATES: This proposed action will be effective without further notice on February 11, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, CIO–BIM/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F090 AF IG B

SYSTEM NAME:

Inspector General Records (June 8, 1999, 64 FR 30492).

CHANGES:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete last sentence and replace with 'All individuals who are or have been subjects of reviews, inquiries, or investigations.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Add to entry 'Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.'

* * * * *

F090 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector on matters related to the Department of the Air Force. All individuals who are or have been subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and E.O. 9397 (SSN).

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries involving matters concerning the Department of the Air Force and in some instances the Department of Defense. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in Automated Complaints Tracking System (ACTS) database.

RETRIEVABILITY:

Retrieved by Complainant's name, subject of investigation's name and case number.

SAFEGUARDS:

Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained in the ACTS database is protected by computer system software and password.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principal function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 02–670 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974, System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 11, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, CIO–BIM/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF CIC A

SYSTEM NAME:

Biographical Data and Automated Personnel Management System (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "F036 AF A".

* * * * *

SYSTEM LOCATION:

Replace "unified and specified commands" with "combatant commands".

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CATEGORIES OF INDIVIDUALS COVERED:

Replace "unified and specified commands" with "combatant commands".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000. Local system managers".

* * * * *

F036 AF A

SYSTEM NAME:

Biographical Data and Automated Personnel Management System.

SYSTEM LOCATION:

Headquarters United States Air Force; headquarters of major commands; field operating agencies; direct reporting units; headquarters of combatant commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors may be included when records are created which are identical to those on military members. Army, Navy, and Marine Corps Active duty military and civilian personnel may be included when assigned to combatant commands for which Air Force is the Executive Agent. Records may be maintained in this system on personnel in a Temporary Duty (TDY) status for the duration of the TDY.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information which may include name, rank, Social Security Number, service dates, date of birth, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, and names of family members, religion, professional expertise and appointments, membership in professional societies, civic activities and state of license.

Limited locator type information which may include home address, home phone, home of record and name and address of next of kin. Records relating to assignment to include unit of assignment, authorized and assigned grade, duty title, duty Air Force Specialty Code and Military Occupation Code, position number, date assigned to organization, estimated date of departure, control tour code, assignment availability date, overseas tour start date, short tour return date, supervisor's name and date supervision began.

Performance data, i.e. date of last report and date next report due.

May also contain limited routine administrative training information consisting of application for training, name and date of course completion, and educational level, when not filed in a separate system.

Limited routine correspondence on promotions, military honors and awards, security and letters of appreciation, when not filed in a separate system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

PURPOSE(S):

This system is established as a management tool to provide commanders and supervisors with ready reference information file for managing their personnel, manpower and resources.

To assist in determining and scheduling workload requirements in support of their organization's assigned mission.

This system serves a ready reference locator and can be used to produce manpower reports.

Used to determine eligibility/suitability for assignment/reassignment; determine eligibility for retirement related action, to make determinations on discharges or mobilization, deferments, and fulfillment of local or statutory requirements.

Records maintained as a historical file while individual is assigned to the unit.

Used to answers correspondence/telephone inquiries; updating and/or changing information in computer and/or individual record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retain in office files until superseded, obsolete, no longer needed for reference, reassignment, separation or retirement of the individual or inactivation of the organization. Records on TDY personnel will be destroyed upon completion of the individual's TDY. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commanders/supervisors at the installation, base, unit, organization, office or function to which the individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to or visit the respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, personnel or training records and records created by commander/supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–678 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add and delete systems of records.

SUMMARY: The Department of the Army is proposing to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The proposed new system of records is a product of consolidating two similar existing Army Inspector General systems of records (A0020–1a SAIG and A0020–1b SAIG). As a result of the consolidation, A0020–1a SAIG and A0020–1b SAIG are being deleted.

DATES: This proposed action will be effective without further notice on February 11, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

A0020–1a SAIG

SYSTEM NAME:

Inspector General Investigation Files (December 8, 2000, 65 FR 77008).

REASON:

Records are now covered under the Army system of records A0020–1 SAIG, entitled 'Inspector General Records'.

* * * * *

A0020–1b SAIG

SYSTEM NAME:

Inspector General Action Request/Assistance Files (August 3, 1993, 58 FR 41250).

REASON:

Records are now covered under the Army system of records A0020–1 SAIG, entitled 'Inspector General Records'.

* * * * *

A0020–1 SAIG

SYSTEM NAME:

Inspector General Records

SYSTEM LOCATION:

Office of the Inspector General, U.S. Army Inspector General Agency, Department of the Army, 1700 Army Pentagon, Washington, DC 20320–1700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian (including contractors), who have made allegations or against whom allegations of wrongdoing/misconduct have been made related to, violations of laws, rules, or regulations or mismanagement, gross waste of funds, abuse of authority, or whistleblower reprisals that have reviewed or upon which inquiries or investigation have been conducted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative case files containing investigative reports, such as preliminary inquiries, preliminary analyses, reports of investigation (ROIs), administrative documents, and computer indices. ROIs include the authority for the inquiry/investigation, matters investigated, narrative, summaries/excerpts of testimony given by witnesses, and appended exhibits that may include supporting documents, documentary evidence, summaries of interviews or transcripts of verbatim testimony, or other investigative information from outside sources.

Computerized indices contain the names/subjects of the inquiry/investigation, opening and closing dates, function codes reflecting the type of allegations and codes designating their status and determination, brief synopsis of allegations and their disposition, case notes, locations of the inquiries/investigations and the assigned case numbers.

Whistleblower Reprisal, Defense Hotline Complaint and Inspector General Action Request (IGAR) case files, administrative documents; and computer indices: Whistleblower Reprisal case files contain allegations accepted and investigated or decline through preliminary analysis by Army Inspectors General or referred by the DoD Inspector General (DODIG) for action.

Defense Hotline Complaint files contain allegations/complaints referred by the DODIG for inquiry/investigation, Hotline Completion Reports forwarded to the DODIG providing the results of inquiry/investigations, and any backup documentation. IGAR case files contain Report of Inquiry/Investigation, requests for assistance or complaints, summaries documents, summaries of actions taken, interviews or verbatim testimony, other related investigative information from Federal, State, and local investigative agencies and departments.

IG inspections conducted and information accumulated by Headquarters Department of the Army (HQDA). Included are inspection reports and related information pertaining to annual general inspections (overall economy, efficiency, discipline, morale or readiness of a unit, organization or activity), procurement, special nuclear surety, intelligence oversight, and Federal recognition inspections conducted by HQDA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Inspector General Act of 1978 (Pub.L. 95–452), as amended; 42 U.S.C. 1061 *et seq.*, Victims Rights; DoD Directive 1030.1, Victim and Witness Assistance; Army Regulation 20–1, Inspector General Activities and Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To review and conduct law enforcement inquiries/investigations into allegations of wrongdoing/misconduct contained Defense Hotline

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Complaints, allegations contained in Inspector General Action Request of wrongdoing by Army personnel related to violations of laws, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, and allegations of whistleblower reprisals.

To report the results to the Office of the Secretary of Defense and Army officials so that they may discharge their responsibilities and take corrective action, if needed.

To provide facts and evidence upon which to base prosecution.

To provide information upon which determinations may be made for individuals' suitability for various personnel action including but not limited to retention, promotion, assignment, and retirement in grade or selection for sensitive or critical positions in the Armed Forces or Federal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To Federal, state, and local agencies having jurisdiction over the substance of the allegations or a related investigative interest.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's full name, Social Security Number and/or other descriptive information cross-referenced to the case number.

SAFEGUARDS:

Access is limited to authorized individuals having need for the records in the performance of their official duties. Paper files and CD–ROMs are stored in containers with locks, located in a locked room, in a secured building with controlled access.

Computer indices are secured in locked rooms with limited/controlled access. Access to computerized information is controlled by a system of assigned passwords and available only to personnel responsible for system operation and maintenance.

Recipients of information for official use purposes are responsible for safeguarding the information within guidelines.

RETENTION AND DISPOSAL:

Disposition pending (until NARA approves a disposition and retention schedule, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, ATTN: Chief, Information Management Division, 2511 Jefferson Davis Highway, Arlington, VA 22002–3912.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of The Inspector General, ATTN: Records Release Office, 2511 Jefferson Davis Highway, Arlington, VA 22202–3912.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a fee statement.

Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of The Inspector General, ATTN: Records Release Office, 2511 Jefferson Davis Highway, Arlington, VA 22202–3912.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a fee statement.

Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 02–672 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice to delete and amend records systems.

SUMMARY: The Defense Contract Audit Agency is deleting a system of records notice and amending two notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on February 11, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Senior Advisor, Defense Contract Audit Agency, Information and Privacy, CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767–1005.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the

Federal Register and are available from the address above.

The proposed action is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system.

January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion
RDCAA 152.17

SYSTEM NAME:

Security Status Master List (November 20, 1997, 62 FR 62003).

REASON:

These records are no longer being collected or maintained by the Defense Contract Audit Agency.

Amendments
RDCAA 152.1

SYSTEM NAME:

Security Information System (SIS) (May 18, 1999, 64 FR 26947).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'The Enhanced Access Management System (TEAMS)'.

* * * * *

RDCAA 152.1

SYSTEM NAME:

The Enhanced Access Management System (TEAMS).

SYSTEM LOCATION:

Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, Social Security Number, date and place of birth, citizenship, position sensitivity, accession date, type and number of DCAA identification, position number, organizational assignment, security adjudication, clearance, eligibility, and investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employees, as amended; E.O. 12958, Classified National Security Information; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the DCAA Security Office with a ready reference of security information on DCAA personnel.

To submit data on a regular basis to the Defense Clearance and Investigations Index (DCII).

To provide the DCAA Drug Program Coordinator with a listing of individuals who hold security clearances for the purpose of creating the drug testing pool, from which individuals are randomly chosen for drug testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by Social Security Number or name of employee.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records are retained in the active file until an employee separates from the agency. At that time, records are moved to the inactive file, retained for five years, and then deleted from the system. Hard copy listings and tapes produced by this system are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish name, Social Security Number, and approximate date of their association with DCAA.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish name, Social Security Number, and approximate date of their association with DCAA.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information, other than data obtained directly from individual employees, is obtained by DCAA Headquarters Security and Regional Office Personnel Divisions, and Federal Agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS) (August 3, 2000, 65 FR 48221).

CHANGES:

* * * * *

SYSTEM NAME:

Delete "(FMIS/AMIS)" from entry.

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (DMIS).

SYSTEM LOCATION:

Defense Contract Audit Agency, Information Technology Division, 4075 Park Avenue, Memphis, TN 38111–7492.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported,

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and net savings to the government as a result of those exceptions; records containing contractor information; records containing reimbursable billing information; name, Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an on-line database and on magnetic tape at secure offsite storage.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111–7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–671 Filed 1–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the San Clemente Shoreline Feasibility Study, San Clemente, CA

AGENCY: Army Corps of Engineers (Corps), DoD.

ACTION: Notice of intent.

SUMMARY: The Corps and the city of San Clemente propose to study alternatives to provide shoreline protection to the San Clemente Shoreline. The study is for that portion of the shoreline that runs from Shorecliff Beach to San Mateo Point, approximately eight kilometers (five miles).

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Mr. Paul Rose, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Provide shoreline protection against wave attack from coastal storms to the San Clemente shoreline. Running along the entire length of the San Clemente shoreline is a portion of the Los Angeles to San Diego (Lossan) railroad corridor. The Lossan is a major passenger rail line linking San Diego to the rest of the United States. The Lossan is owned by the Orange County Transportation Authority (OCTA). This commuter rail corridor is among the busiest in the country and separates the beach from the bluff. Loss of shoreline protection and recreational beach width is a continuous problem for the city of San Clemente. Damages to coastal residential and commercial properties from storm-induced waves have become a serious threat over the past several years. The study will investigate alternatives to provide shoreline protection.

2. Alternatives

Alternatives that may be considered include non-structural and/or structural measures to provide protection against wave attack from coastal storms. Non-structural measures include beach and near-shore nourishment with dredged sand.

3. Scoping Process

The Corps and the city of San Clemente are preparing a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with NEPA for the project, and the city of San Clemente is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft EIS/EIR (DEIS/EIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/EIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/EIR (FEIS/EIR) will address the comments received on the DEIS/EIR during public review, and will be furnished to all who commented on the DEIS/EIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the Federal EIS, preparing a Record of Decision (ROD) and, for the state EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FEIS/EIR. The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA. A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on January 10, 2002 at 7 p.m.; in the Multipurpose Room (1 & 2) in the San Clemente Senior Center, 242 Avenue Del Mar, San Clemente, California.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–771 Filed 1–10–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Matilija Dam Ecosystem Restoration Feasibility Study, Ventura County, CA

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District of the U.S. Army Corps of Engineers will prepare a DEIS to support the Matilija Dam Ecosystem Restoration Feasibility Study, Ventura County, California. The study area is the Matilija Dam area and downstream to the Venture River Estuary. This study will investigate feasible alternatives to restore the Matilija Creek riverine ecosystem, primarily by removing Matilija Dam. Also, feasible alternatives for the removal of sediment behind the dam and the beneficial use of that sediment will be investigated.

The DEIS will analyze the potential impacts (beneficial and adverse) on the environment of a range of alternatives, including the proposed action and the no action alternative. The Los Angeles District and the Ventura County Flood Control District will cooperate in conducting this feasibility study.

ADDRESSES: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ (R. Farve), P.O. Box 532711, Los Angeles, California 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Rey Farve, Environmental Coordinator, telephone (213) 452–3864, or Mr. Jonathan Vivanti, Study Manager, telephone (213) 452–3809.

SUPPLEMENTARY INFORMATION:

1. Authorization

This feasibility study was authorized by U.S. House of Representatives Committee Resolution on Transportation and Infrastructure (Docket 2593), dated April 15, 1999, which states, in part: "that the Secretary of the Army is requested to review the report of the Chief of Engineers on the Ventura River, Ventura County, California, published as House Document 323, 77th Congress, 1st Session, and other pertinent reports, with a view to determining whether any modifications of the recommendations contained therein are advisable at this time, in the interest of environmental restoration and protection, and related purposes, with particular attention to restoring anadromous fish populations on Matilija Creek and returning natural sand replenishment to Ventura and other Southern California beaches."

2. Background

Matilija Dam is located on Matilija Creek, a tributary of the Ventura River, approximately 16 miles upstream from the Pacific Ocean. The dam is located in Ventura County California, approximately 7 miles and 25 miles from the Cities of Ojai and Ventura, California, respectively. The feasibility study area currently includes the Matilija Dam and the area immediately upstream, and downstream of the dam to the Ventura River Estuary. The non-federal sponsor of the feasibility study is the Ventura County Flood Control District.

Matilija Dam was constructed in the late 1940's by Ventura County Flood Control to provide water storage for agricultural needs. Matilija Dam is a concrete arch structure 190 feet in height with an arc length of 620 feet at its crest. Sediment carried by Matilija Creek has deposited behind the dam and filled the reservoir, rendering the structure useless as a water storage facility. It is estimated that 6,000,000 cubic yards of sediment lies trapped behind the dam.

The dam no longer provides any flood control protection due to sedimentation behind the dam. There is some continued water supply use. The Casitas Municipal Water District currently operates the dam under a lease agreement from the County of Ventura, which expires in 2009. The operation is an integral part of the Robles/Casitas Reservoir water supply facilities and is estimated to currently contribute approximately 400 acre-feet of water per year. This water function, however, is projected to diminish rapidly as the reservoir continues to fill with sediments, and is expected to effectively cease by 2010 after the reservoir fills completely with sediment.

Presently, the dam is considered to be a major contributor to the declining numbers of steelhead trout in Matilija Creek. If no action is taken to secure passage for the steelhead trout to reach the upper watershed and its tributaries, the dam will continue to obstruct this endangered species, thereby limiting the amount of spawning and rearing habitat. In addition, the dam would continue to act as a barrier for wildlife movement for other terrestrial and aquatic species.

3. Alternatives

The feasibility study will focus on addressing the problems and needs caused by Matilija Dam with the primary objective of the feasibility study being to restore the Matilija Creek riverine ecosystem. Other objectives that are considered appropriate may involve possible beneficial use of the sediment behind the dam for beach nourishment or other environmental restoration.

In general, alternative plans will investigate reasonable alternatives to restore Matilija Creek, primarily by removing Matilija Dam. Feasible alternatives for the removal of sediment behind the dam and the beneficial use of that sediment will also be investigated. Significant beneficial impacts to the riverine ecosystem (especially to steelhead trout) are expected from restoration alternatives identified in the feasibility study.

4. Scoping Process

Participation of all interested Federal, State, and County agencies, groups with environmental interests, and any interested individuals are encouraged. Public involvement will be most beneficial and worthwhile in identifying the scope of pertinent, significant environmental issues to be addressed, identifying and eliminating from detailed study issues that are not significant, offering useful information such as published or unpublished data, providing direct personal experience or knowledge which informs decision making, and recommending suitable mitigation measures to offset potential impacts from the proposed action or alternatives.

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A public scoping meeting is scheduled at the Ventura County Hall of Administration, County Board of Supervisors Meeting Room, 800 South Victoria Avenue, Ventura, CA 93009 at 7 pm on January 31, 2002. The purpose of the scoping meeting will be to gather information from the general public or interested organizations about issues and concerns that they would like to see addressed in the DEIS. Comments may be delivered in writing or verbally at the meeting or sent in writing to the Los Angeles District at the address given above. The scoping period will conclude March 12, 2002.

5. Availability of the DEIS

The DEIS is expected to be available to the public for review and comment beginning in the winter of 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–772 Filed 1–10–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Ventura Harbor Sand Bypass System and Regional Beneficial Reuse Feasibility Study, Ventura, CA

AGENCY: U.S. Army Corps of Engineers (Corps), DoD.

ACTION: Notice of intent.

SUMMARY: The Corps and the Ventura Port District propose to evaluate a sand bypassing system and other measures to improve maintenance of Federal harbors in the Ventura/Santa Barbara County area for more efficient operations and beneficial uses of the dredged material for storm damage protection and environmental restoration and enhancement.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Mr. Paul Rose, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

For the Sand Bypassing component of the study, the purpose of the report shall focus on the alternatives for the sand bypassing system needed for accommodating the annual required dredge volume.

For the Regional Beneficial Use component, the purpose is to provide beneficial uses of the material for the Ventura County region for a proposed sand bypassing system at Ventura Harbor, California. The report shall be based on the Ventura Harbor Sand Bypass Regional Beneficial Uses Reconnaissance Report (Los Angeles District, 1997), to modify the existing federal navigation project for the purpose of providing regional uses of the dredged material for storm damage protection, environmental restoration and enhancement, and other beneficial uses.

Ventura Harbor is a small craft commercial and recreational harbor located approximately one hundred (100) kilometers northwest of the City of Los Angeles. The Los Angeles District currently maintains navigable channels by dredging an entrance channel and several sand traps outside of the harbor. The two (2) primary sand traps have a total capacity of approximately 640,000 m^3 and are located at the seaward end of the entrance channel and adjacent to the upcoast side of the North Jetty. Presently the Los Angeles District maintenance project is designed to dredge every two (2) years at an estimated dredge quantity of 615,000 m^3 per episode. Due to annual budgetary constraints, the Los Angeles District, in practice, maintains the entrance channel and sand traps on a yearly basis, removing on the average approximately 535,000 m^3 of sand per dredging episode. Fiscal year 2000 dredging resulted in the removal of approximately 140,000 m^3 from the navigation channel and channel trap, and approximately 320,000 m^3 from sand trap adjacent to the North Jetty. The dredged sands have historically been placed directly onto McGrath State Beach, in the nearshore environment adjacent to McGrath State Beach, directly onto South Beach, or, on a few occasions, onto the upcoast groin field cell.

2. Alternatives

Alternatives that may be considered include selection of various disposal sites as well as various sites and dredging methodologies for the dredging side of the bypass system, continued use of periodic dredging with beach/nearshore disposal, and no-project.

3. Scoping Process

The Corps and the Ventura Port District are preparing a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with NEPA for the project, and the Ventura Port District is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft EIS/EIR (DEIS/EIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/EIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/EIR (FEIS/EIR) will address the comments received on the DEIS/EIR during public review, and will be furnished to all who commented on the DEIS/EIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal EIS, preparing a Record of Decision (ROD) and, for the state EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FEIS/EIR. The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA. A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on January 8, 2002, at 6:00 P.M., in the Channel Islands National Park Visitor Center, 1901 Spinnaker Drive, Ventura, California.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–770 Filed 1–10–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Open Meeting

AGENCY: Office of The Surgeon General, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Pub. L. 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB meeting. This Board will meet from 0730–1630 on Tuesday, 19 February 2002, and 0730–1300 on Wednesday, 20 February 2002. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session. The meeting location will be at the Island Club North Island Naval Air Station, 3629 Tulagi Road, Building 4, San Diego, California 92155–5000.

This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Lt Col. James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–769 Filed 1–10–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula, instruction, physical equipment, administration, state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent. This meeting will be open to the public.

DATES: The meetings will be held on Monday, February 4, 2002 from 8:30 a.m. to 4 p.m. and on Tuesday, February 5, 2002 from 8 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the National Defense University, Fort McNair, Hill Conference Room, Roosevelt Hall, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA, 93943–5000, telephone number (831) 656–2514.

Dated: January 7, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–696 Filed 1–10–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Tracey A. Dodenhoff

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Tracey A. Dodenhoff, a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent No. 5,769,084, issued June 23, 1998, entitled "Method and Apparatus For Diagnosing Sleep Breathing Disorders" and U.S. Patent Application Serial No. 09/724,402, filed on November 28, 2000, entitled "Method and Apparatus For diagnosing Sleep Breathing Disorders While A Patient Is Awake" in the field of underwater acoustic systems.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg. 112T, Code 00OC, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Mr. M.J. McGowan, Deputy Counsel—Patents, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg. 112T, Code 00OC, Newport, RI 02841, telephone (401) 832–4736.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 7, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–695 Filed 1–10–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 11, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 7, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Revision.

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Title: Child Care Provider Loan Forgiveness Application and Forgiveness Forbearance Form.
Frequency: Annually.
Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; Federal Government; state, local, or tribal gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 2,790. Burden Hours: 618.
Abstract: The Child Care Provider Loan Forgiveness Application is used to determine whether borrowers meet the eligibility requirements for Child Care Provider Loan Forgiveness Program which is a demonstration program administered on a first-come, first-serve basis (subject to the availability of funds) and is intended to bring more highly trained individuals into the early child care field for longer periods. Under this program, individuals who work full-time in certain child care facilities that serve low-income families and meet other qualifications may be eligible to have up to 100% of their Direct Loan and/or Federal Family Education Loan (FFEL) program loan forgiven. The Child Care Provider Loan Forgiveness Forbearance Form is required to fulfill program guidance that provides forbearance for child care providers and to determine the child care providers eligibility for forbearance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–682 Filed 1–10–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 11, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 7, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New.
Title: Descriptive Study of the Emergency Immigrant Education Program.
Frequency: Semi-Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden: Responses: 555. Burden Hours: 317.
Abstract: The goals of the Descriptive Study of Immigrant Education are to provide information about: (1) The types of programs and services for immigrant children and youth and best practices for serving this population; (2) the degree to which immigrant students are meeting state standards; and (3) the way in which services are paid for and provided. This study will include case studies of 15 districts that represent diverse circumstances and populations, and a range of approaches to serving recent immigrant children and youth.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her Internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–720 Filed 1–10–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116J]

Fund for the Improvement of Postsecondary Education—Special Focus Competition: European Community—United States of America Cooperation Program in Higher Education and Vocational Education and Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.
Eligible Applicants: Institutions of higher education and vocational education and training or combinations of institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: April 1, 2002.
Deadline for Intergovernmental Review: May 15, 2002.
Applications Available: January 14, 2002.
Available Funds: $840,000 in fiscal year 2002; $2,370,000 over three years.
Estimated Range of Awards: $25,000–$200,000 total for up to three years.
Estimated Average Size of Awards: $25,000 for one-year preparatory projects; $35,000 for one-year complementary activities projects; $75,000 for two-year complementary activities projects; $50,000 for year one of a three-year consortia implementation project with a $200,000 three-year total.
Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.
Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: Under the Special Focus Competition, we will award grants or enter into cooperative agreements that focus on problem areas or improvement approaches in postsecondary education. We have included an invitational priority to encourage proposals designed to support the formation of educational consortia of institutions and organizations in the United States and the European Union to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities between the United States and the European Union. The invitational priority is issued in cooperation with the European Union. European institutions participating in any consortium proposal responding to the invitational priority may apply to the European Commission's Directorate General for Education and Culture for additional funding under a separate European competition.

Priority

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and the Member States of the European Union.

Methods for Applying Selection Criteria

The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses selection criteria chosen from those listed in 34 CFR 75.210.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398, Telephone (toll free) 1–877–433–7827, fax (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734. You may also contact ED Pubs at its web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116J. You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to *FIPSE@ed.gov* (e-mail).

Applications are also listed on the FIPSE Web Site: *http://www.ed.gov/FIPSE* e-APPLICATIONS are available at: *http://e-grants.ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. For additional program information call the FIPSE office (202–502–7500) between the hours of 8 a.m. and 5 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed under *For Applications Contact*.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that number. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002 the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional grant programs and additional discretionary grant competitions. The European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training CFDA 84.116J is included in the pilot project. If you are an applicant under the European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Title Page, (substitutes for the ED Form 424), Budget Information-Non-Construction Programs (substitutes for the ED Form 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Title Page to the Application Control Center after following these steps:

1. Print the Title Page from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

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4. Place the PR/Award number in the upper right hand corner of the Title Page.

5. Fax the Title Page to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training at: *http://e-grants.ed.gov.*

Due to software upgrades, it is anticipated that the e-Application software will be unavailable for several days in mid-January. The tentative dates for this system down time are January 11–21, 2002. Please check this site for future updates on system availability.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1138–1138d.

Dated: January 8, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–728 Filed 1–10–02; 8:45 am]

BILLING CODE 4001–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Institutional Cooperation and Student Mobility in Postsecondary Education Among the United States, Canada and Mexico); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit institutions and agencies.

Applications Available: January 18, 2002.

Deadline for Transmittal of Applications: March 29, 2002.

Deadline for Intergovernmental Review: July 15, 2002.

Available Funds: $300,000 for FY 2002.

Estimated Range of Awards: $30,000 for FY 2002.$200,000–$215,000 for four-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2002. $210,000 for four-year duration of grant.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your narrative to the equivalent of no more than twenty (20) double-spaced pages using the following standards:

• A "page" is 8.5″ × 11″ on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the title page, the budget section, including the narrative budget justification, the assurances and certifications, the resumes, the bibliography, or the letters of support.

Our reviewers will not read any pages of your application narrative that—

• Exceed the page limit if you apply these standards; or

• Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Supplementary Information: This program is a Special Focus Competition to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American, Canadian and Mexican institutions to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities throughout North America. The invitational priority is issued in cooperation with Canada and Mexico. Canadian and Mexican institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to Human Resources Development Canada and the Mexican Department of Public Education for additional funding under separate Canadian and Mexican competitions.

Priority

We are particularly interested in applications that meet the following invitational priority.

Under 34 CFR 75.105(C)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility among the United States, Canada, and Mexico.

Methods for Applying Selection Criteria

We give equal weight to the listed criteria. Within each of the criteria, we give equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, we use selection criteria chosen from those listed in 34 CFR 75.210 of EDGAR.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW, 8th Floor, Washington, DC 20006–8544. You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by

calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to *FIPSE@ED.GOV* (e-mail).

Applications are also listed on the FIPSE Web Site: *http://www.ed.gov.FIPSE*

e–APPLICATIONS are available at: *http://e-grants.ed.gov*

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. For additional program information call the FIPSE office (202–502–7500) between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed under **For Applications or Information Contact.**

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that number. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Application Procedures

Note: Some of the procedures in these instructions for transmitting electronic applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Program for North American Mobility in Higher Education (CFDA No. 84.116N) is one of the programs included in this project. If you are an applicant under the Program for North American Mobility in Higher Education, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e–APPLICATION, formerly e–GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

• If you participate in this e-APPLICATION pilot, please note the following:

• Your participation is voluntary.

• You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can submit all documents electronically, including the Title Page, (substitutes for the ED Form 424), Budget Summary Form (substitutes for the ED Form 524), and all necessary assurances and certifications.

• Within three working days of submitting your electronic application fax a signed copy of the Title Page (replaces ED 424) to the ApplicationQ Control Center after the following these steps:

1. Print the Title Page from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of the Title page.

5. Fax the Title page to the Application Control Center at (202) 260–1349 within three working days of submitting your electronic application.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Program for North American Mobility in Higher Education at: *http://e-grants.ed.gov.*

Due to software upgrades, it is anticipated that the e-Application software will be unavailable for several days in mid-January. The tentative dates for this system down time are January 11–21, 2002. Please check this site for future updates on system availability.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington DC, area at (202)'512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1138–1138d.

Dated: January 8, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary, Policy Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–729 Filed 1–10–02; 8:45 am]

BILLING CODE 4001–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4512–002, et al.]

Consolidated Water Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 7, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Consolidated Water Power Company

[Docket No. ER98–4512–002]

Take notice that on December 27, 2001, Consolidated Water Power Company (CWPCo) tendered for filing with the Federal Energy Regulatory Commission (Commission) an updated market analysis pursuant to Commission Order.

Comment Date: January 17, 2002.

2. Cinergy Services, Inc.

[Docket No. ER02–677–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69637578).This service agreement has a yearly firm transmission service with American

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Electric Power via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

3. Cinergy Services, Inc.

[Docket No. ER02–678–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69637579). This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

4. Cinergy Services, Inc.

[Docket No. ER02–679–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Allegheny Energy Supply Company, LLC (Customer) (OASIS# 69630559). This service agreement has a yearly firm transmission service with American Electric Power via Enron Wheatland Control Area.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

5. Cinergy Services, Inc.

[Docket No. ER02–680–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69634099). This service agreement has a yearly firm transmission service with Ameren via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

6. Cinergy Services, Inc.

[Docket No. ER02–681–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Allegheny Energy Supply Company, LLC (Customer) (OASIS# 69630557). This service agreement has a yearly firm transmission service with American Electric Power via Enron Wheatland Control Area.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

7. Cinergy Services, Inc.

[Docket No. ER02–682–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69637581). This service agreement has a yearly firm transmission service with Dayton Power & Light via the Miami Fort Generating Station.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

8. Cinergy Services, Inc.

[Docket No. ER02–683–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69652525).This service agreement has a yearly firm transmission service with Louisville Operating Companies via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

9. Cinergy Services, Inc.

[Docket No. ER02–684–000]

Take notice that on January 2, 2002, Cinergy Services, Inc. (Provider) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69637945). This service agreement has a yearly firm transmission service with Louisville Operating Companies via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of January 1, 2002.

Comment Date: January 22, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–685–000]

Take notice that on January 2, 2002, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) revised interconnection agreements between ComEd and its affiliate, Exelon Generation Company. ComEd requests an effective date for the revised interconnection agreements of January 3, 2002, and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of the filing was served on Exelon Generation Company and the Illinois Commerce Commission.

Comment Date: January 22, 2002.

11. American Transmission Company LLC

[Docket No. ER02–558–001]

Take notice that on January 2, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a revised Exhibit 1 to the Generation-Transmission Interconnection Agreement (Substitute Revised Service Agreement No. 79) between ATCLLC and Wisconsin Electric Power Company.

ATCLLC requests an effective date of January 1, 2001.

Comment Date: January 22, 2002.

12. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–674–000]

Take notice that on January 2, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with DTE Energy Trading, Inc. Ameren Energy seeks Commission acceptance of these service agreements effective November 21, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counterparty.

Comment Date: January 22, 2002.

13. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–675–000]

Take notice that on December 28, 2001, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreement under the Ameren Parties' market rate authorizations entered into with *TXU Energy Trading Company.* Ameren Energy seeks Commission acceptance of these service agreements effective November 8, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counterparty.

Comment Date: January 22, 2002.

14. Consolidated Water Power Company

[Docket No.ER02–676–000]

Take notice that on January 2, 2002, Consolidated Water Power Company (CWP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an umbrella service agreement with WPS Energy Services (WPS) under CWP's market-based rates tariff, FERC Electric Rate Schedule No. 1. CWP states that it has served the Customer with a copy of this filing.

CWP requests that the umbrella service agreement be made effective on January 1, 2002.

Comment Date: January 22, 2002.

15. Dresden Energy, LLC, Fairless Energy, LLC (formerly S.W.E.C., LLC), Armstrong Energy Limited Partnership, LLLP, Troy Energy, LLC

[Docket Nos. ER02–22–001, ER02–23–001, ER02–24–001, ER02–25–001]

Take notice that on January 3, 2002, Dresden Energy, LLC, Fairless Energy, LLC, Armstrong Energy Limited Partnership, LLLP, and Troy Energy, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1 (Revised Tariff) to comply with a letter order issued by the Commission on December 19, 2001, in the above-captioned proceedings (Letter Order). Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP, and Troy Energy, LLC, 97 FERC ¶ 61,277 (2001). S.W.E.C., LLC changed its name to Fairless Energy, LLC and the company filing reflects the name change.

Copies of the filing were served upon the Ohio Public Service Commission, The Public Service Commission of West Virginia, The Pennsylvania Public Service Commission, and the Virginia State Corporation Commission.

Comment Date: January 24, 2002.

16. GNE, LLC

[Docket No. ER02–159–001]

Take notice that on January 3, 2002, GNE, LLC (GNE) tendered its compliance filing with the Federal Energy Regulatory Commission (Commission) to the Commission's letter order issued December 19, 2001 herein granting its application for authorization to sell electric power at market based rates.

Comment Date: January 24, 2002.

17. Mirant Delta, LLC, Mirant Potrero, LLC

[Docket No. ER02–198–001]

Take notice that on January 2, 2002, Mirant Delta, LLC and Mirant Potrero, LLC (collectively, Mirant) submitted with the Federal Energy Regulatory Commission (Commission) a filing in compliance with the Commission's directives in Mirant Delta, LLC and Mirant Potrero, LLC, 97 FERC ¶ 61,284 (2001).

Comment Date: January 23, 2002.

18. Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company

[Docket No. ER02–246–001]

Take notice that on January 3, 2002, Boston Edison Company (BECo), Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) (collectively, the NSTAR Companies), tendered for filing revised Market-Based Rate Tariffs, FERC Electric Tariffs, Original Volume Nos. 10, 10 and 8 respectively to comply with a letter order issued by the Commission on December 19, 2001 in the above-captioned proceedings. NSTAR Companies, 97 FERC ¶ 61,288 (2001).

The NSTAR Companies state that they served copies of the filing on the Massachusetts Department of Telecommunications and Energy.

Comment Date: January 23, 2002.

19. American Transmission Company LLC

[Docket No. ER02–285–001]

Take notice that on January 3, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Compliance Filing in association with ATCLLC's earlier filing (dated November 7, 2001) of its proposed revisions its Open Access Transmission Tariff to provide for ATCLLC's collection of must run generation costs from network customers on a phase-in basis. ATCLLC's Compliance Filing incorporates certain modifications identified in the Commission's Order conditionally accepting tariff changes proposed by ATCLLC, to be effective December 1, 2001, Wisconsin Electric Power Company, 97 FERC ¶ 61,337 (2001).

Comment Date: January 23, 2002.

20. Delmarva Power & Light Company

[Docket No. ER02–634–001]

Take notice that on January 2, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing a cover sheet and a revised page 44 to supplement its December 28, 2001 filing of an executed Interconnection Agreement between Delmarva and the Delaware Municipal Electric Corporation (DEMEC).

Delmarva respectfully requests that the Interconnection Agreement with the cover sheet and revised page 44 to become effective on December 31, 2001, the date on which Delmarva originally requested the Interconnection Agreement to become effective.

Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: January 22, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–697 Filed 1–10–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting

January 8, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 16, 2002 (30 Minutes Following Regular Commission Meeting).

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. RM02–4–000, Critical Energy Infrastructure Information, Docket No. PL02–1–000, Treatment of Previously Public Documents.

CONTACT PERSON FOR MORE INFORMATION: C.B. Spencer, Acting Secretary, Telephone (202) 208–0400.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–840 Filed 1–9–02; 10:00 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act: Notice of Meeting

January 9, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No: 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 16, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda,

* Note— Items Listed on the Agenda May Be Deleted Without Further Notice.

CONTACT PERSON FOR MORE INFORMATION: C.B. Spencer, Acting Secretary, Telephone (202) 208–0400, for a Recording Listing Items Stricken From or Added to the Meeting, Call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

781st—Meeting January 16, 2002, Regular Meeting, 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# AD02–6, 000, Infrastructure Discussion in the Northeast

E–2.
Omitted

E–3.
Docket# ER02–407, 000, Geysers Power Company, LLC

E–4.
Omitted

E–5.
Docket# QF87–492, 003, American Ref-Fuel Company of Delaware Valley, L.P.

E–6.
Docket# ER00–1379, 000, Ameren Services Company
Other#s ER00–1386, 000, Ameren Services Company
ER00–2068, 000, Ameren Services Company
ER00–2361, 000, Ameren Services Company
ER00–2365, 000, Ameren Services Company
ER00–2365, 001, Ameren Services Company
ER01–1969, 000, Ameren Services Company

E–7.
Docket# ER02–371, 000, American Electric Power Service Corporation

E–8.
Omitted

E–9.
Docket# TX02–1, 000, Pinnacle West Capital Corporation

E–10.
Docket# TX97–8, 000, PECO Energy Company

E–11.
Docket# TX98–2, 000, Public Service Company of Colorado

E–12.
Docket# ER99–4392, 001, Southwest Power Pool, Inc.

E–13.
Omitted

E–14.
Docket# ER02–146, 000, CalPeak Power-Panoche LLC
Other#s ER02–147, 000, CalPeak Power-Vaca Dixon LLC
ER02–148, 000, CalPeak Power-Enterprise LLC
ER02–149, 000, CalPeak Power-Border LLC

E–15.
Docket# ER02–381, 000, Southwestern Electric Power Company

E–16.
Omitted

E–17.
Docket# ER02–394, 000, International Transmission Company

E–18.
Omitted

E–19.
Docket# EL00–62, 037, ISO New England, Inc.

E–20.
Docket# EL01–89, 001, Morgan Stanley Capital Group Inc. v. California Independent System Operator Corporation

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP99–301, 035, ANR Pipeline Company

G–2.
Docket# RP01–190, 000, Kern River Gas Transmission Company

G–3.
Omitted

G–4.
Docket# RP02–85, 000, Tennessee Gas Pipeline Company
Other#s RP02–114, 000, Tennessee Gas Pipeline Company

G–5.
Docket# RP01–292, 000, Mississippi River Transmission Corporation
Other#s TM00–1–25, 000, Mississippi River Transmission Corporation
TM00–1–25, 001, Mississippi River Transmission Corporation
TM00–1–25, 002, Mississippi River Transmission Corporation
TM00–1–25, 003, Mississippi River Transmission Corporation
TM00–1–25, 004, Mississippi River Transmission Corporation
TM00–1–25, 005, Mississippi River Transmission Corporation
TM00–1–25, 006, Mississippi River Transmission Corporation
TM00–1–25, 007, Mississippi River Transmission Corporation
TM00–1–25, 008, Mississippi River Transmission Corporation
RP01–292, 001, Mississippi River Transmission Corporation
RP01–292, 002, Mississippi River Transmission Corporation
RP01–292, 003, Mississippi River Transmission Corporation
RP01–292, 004, Mississippi River Transmission Corporation
RP01–292, 005, Mississippi River Transmission Corporation

G–6.
Omitted

G–7.
Omitted

G–8.
Docket# RP00–325, 006, Colorado Interstate Gas Company
Other#s RP01–38, 003, Colorado Interstate Gas Company

G–9.
Omitted

G–10.
Docket# RM01–9, 000, Reporting of Natural Gas Sales to the California Market

G–11.
Docket# PR01–15, 001, Green Canyon Pipe Line Company, L.P.

G–12.
Docket# RP00–390, 003, Granite State Gas Transmission, Inc.
Other#s RP00–390, 002, Granite State Gas Transmission, Inc.

Energy Projects—Hydro

H–1.
Omitted

H–2.
Docket# AD02–8, 000, Third Report to Congress on Appropriateness of Statutory Limit on Government Dam Annual Charges under Section 10(e) of the Federal Power Act

H–3.
Omitted

H–4.
Docket# P–2216, 056, New York Power Authority

H–5.
Docket# P–2107, 011, Pacific Gas and Electric Company

Energy Projects—Certificates

C–1.
Docket# CP01–94, 000, Nornew Energy Supply, Inc. and Norse Pipeline, L.L.C.
Other#s CP01–95, 000, Nornew Energy Supply, Inc.
CP01–96, 000, Nornew Energy Supply, Inc.
CP01–97, 000, Nornew Energy Supply, Inc. and Norse Pipeline, L.L.C.

C–2.
Docket# CP02–10, 000, Transcontinental Gas Pipe Line Corporation

C–3.
Docket# CP01–442, 000, Black Marlin Pipeline Company, MCNIC Black Marlin Offshore Company and WBI Offshore Pipeline, Inc.
Other#s CP00–140, 000, Black Marlin Pipeline Company, MCNIC Black Marlin Offshore Company and WBI Offshore Pipeline, Inc.

C–4.
Docket# CP01–22, 002, North Baja Pipeline LLC
Other#s CP01–23, 000, North Baja Pipeline LLC
CP01–24, 000, North Baja Pipeline LLC
CP01–25, 000, North Baja Pipeline LLC
CP01–22, 000, North Baja Pipeline LLC

C–5.
Omitted

C–6.
Docket# CP01–80, 001, East Tennessee Natural Gas Company

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–844 Filed 1–9–02; 11:00 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[NV068–NOA; FRL–7128–1]

Adequacy Status of the Clark County, Nevada Submitted PM10 Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy Determination.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the submitted Clark County (Las Vegas, NV) serious area fine particulate matter (PM10) attainment plan are adequate for transportation conformity purposes. As a result of our finding, the Clark County Regional Transportation Commission and the Federal Highway Administration must use the PM10 motor vehicle emissions budgets from the submitted plan for future conformity determinations.

DATES: This determination is effective January 28, 2002.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity web site: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Karina O'Connor, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (775) 687–4670 ext. 3112 or *oconnor.karina@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This notice announces our finding that the emissions budgets contained in the *PM10 State Implementation Plan for Clark County*, submitted by the State of Nevada on July 23, 2001, are adequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the Nevada Division of Environmental Protection on November 9, 2001. We are also announcing this finding on our conformity web site: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the plan provide for attainment of the relevant ambient air quality standard by the applicable Clean Air Act attainment date. We have preliminarily determined that the Clark County PM10 plan does provide for attainment of the PM10 standards and, therefore, can be found adequate.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination on the emissions budgets contained in the Clark County PM10 plan.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 16, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–704 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of FederalActivities, General Information (202)564–7167 *www.epa.gov/oeca/ofa*.

Weekly receipt of Environmental Impact Statements

Filed December 31, 2001 Through January 04, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020000, FINAL EIS, AFS, ID, MT, LemhiPass National Historic Landmark Management Plan, Implementation, Beaverhead-Deerlodge National Forest, Beaverhead County, MT and Salmon-Challis National Forest, Lemhi County, ID, Wait Period Ends: February 11, 2002, Contact: Katie R. Bump (406) 683–3955.

EIS No. 020001, FINAL EIS, BLM, NV, Phoenix Project, Current Mining Operations and Processing Activities Expansion, Battle Mountain, Plan of Operations Approval, Lander County,

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NV, Wait Period Ends: February 11, 2002, Contact: Pam Jarnecke (775) 635–4144. This document is available on the Internet at: *http://www.nv.blm.gov/battlemountain.*

EIS No. 020002, DRAFT EIS, FHW, TN, Route 475 (Knoxville Beltway) Construction, I–75 south of Knoxville to I–75 north of Knoxville, Funding, US Army COE Section 10 and 404 Permits and NPDES Permit Issuance, Loudon, Roane, Knox and Anderson Counties, TN , Comment Period Ends: February 25, 2002, Contact: Charles S. Boyd (615) 781–5770.

EIS No. 020003, FINAL EIS, FHW, MO, US 65 Improvements, County Road 65–122 South to Route EE Intersection south of Buffalo, Funding and US Army COE Section 404 Permit Issuance, Dallas County, MO , Wait Period Ends: February 11, 2002, Contact: Don Neumann (573) 636–7104.

EIS No. 020004, DRAFT SUPPLEMENT, NOA, Pelagic Sargassum Habitat Fishery Management Plan, Implementation, Updated Information concerning the Public's Opportunity to Comment on Proposed Actions South Atlantic Region, Comment Period Ends: February 25, 2002, Contact: Joseph E. Powers (727) 570–5301.

EIS No. 020005, FINAL EIS, AFS, ID, Little Weiser Landscape Vegetation Management Project, Implementation, Council Ranger District, Payette National Forest, Adams County, ID, Wait Period Ends: February 11, 2002, Contact: Faye Krueger (208) 253–0100. This document is available on the Internet at: http://fs.fed.us/r4/payette/main.html.

EIS No. 020006, DRAFT SUPPLEMENT, NOA, CA, San Francisco Bay National Estuarine Research Reserve, Proposed Designation of Three Sites: China, Camp State Park, Brown's Island Regional Parks District and Rush Ranch Open Space Preserve, Additional Information regarding Commercial Navigation and Socioeconomic Issues, Contra Costa, Marin, and Solano Counties, CA, Comment Period Ends: February 25, 2002, Contact: Nina Garfield (301) 713–3132.

EIS No. 020007, DRAFT EIS, BOR, AZ, NV, CA, Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP), and Related Federal Actions, Implementation, Quantification Settlement Agreement (QSA), Lower Colorado River, In the States of AZ, CA and NV, Comment Period Ends: March 12, 2002, Contact: Bruce D. Ellis (602) 216–3854.

EIS No. 020008, FINAL EIS, FRC, AZ, CA, North Baja Pipeline Project, Docket Nos. CP01–22–000 and CP01–23–000, Construction and Operation A New Natural Gas Transmission Pipeline, Land Use Plan Amendment, Right-of-Way Grant, NPDES, COE Section 10 and 404 Permits, La Praz and Yuma Counties, AZ and Imperial, Kern, Riverside, Palo Verde, San Bernardino and San Diego Counties, Wait Period Ends: February 11, 2002, Contact: Lynda Kastoll (760) 337–4421.

EIS No. 020009, FINAL EIS, AFS, MT, Threemile Stewardship Project, Proposed Short-Term and Long-Term Vegetation and Road Management Activities, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT, Wait Period Ends: February 11, 2002, Contact: Nancy T. Curriden (406) 657–6200.

Amended Notices

EIS No. 010531, DRAFT EIS, UAF, CA, EL Rancho Road Bridge Project, To Provide a Flood-Free Crossing at San Antonia Creek to Access North Vandenberg Air Force Base, Santa Barbara County, CA , Comment Period Ends: February 25, 2002, Contact: Jack Bush (703) 604–0553. Revision of FR Notice Published on 12/21/2001: CEQ Comment Period Ending 02/04/2002 has been extended to 02/25/2002.

Dated: January 8, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–721 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D–AFS–J65009–00 Rating LO, Programmatic EIS—Kootena, Idaho Panhandle, and Lolo National Forests, Forest Plan Amendments for Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones, ID, WA and MT.

Summary: EPA generally supports the Forest Service's preferred alternative for grizzly bear management based on site-specific conditions and projects. EPA questions whether resources are sufficient to implement the preferred alternatives and road management for water quality.

ERP No. D–NPS–K65080–AZ Rating LO, Sunset Crater Volcano National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ.

Summary: EPA has no objections to the Park Service's preferred management plans for three National Monuments in the Flagstaff area.

ERP No. D–NPS–K65081–AZ Rating LO, Wupatki National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ.

Summary: EPA has no objections to the Park Services's preferred management plans for three National Monuments in the Flagstaff area.

ERP No. D–NPS–K65082–AZ Rating LO, Walnut Canyon National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ.

Summary: EPA has no objections to the Park Service's preferred management plans for three National Monuments in the Flagstaff area.

ERP No. DS–COE–E34030–FL Rating LO, Central and Southern Florida Project, Indian River Lagoon-South Feasibility Study, Additional Information, Restoration, Protection and Preservation, Canals denoted; C–23, C–24, C–25 and C–44, Comprehensive Everglades Restoration Plan, (CERP), Martin and St. Lucie Counties, FL.

Summary: EPA supports the positive water quality and habitat benefits which should result from the proposed IRLS plan.

ERP No. DS–GSA–K81011–CA Rating EC2, Los Angeles Federal Building—U.S. Courthouse, Construction of a New Courthouse in the Civic Center, Additional Information, City of Los Angeles, Los Angeles County, CA.

Summary: EPA expressed continued environmental concerns with the lack of information regarding comments GSA received on the DEIS, building space requirements, and traffic and air quality impacts.

Final EISs

ERP No. F–FHW–G40163–TX IH–10 West from Taylor Street to FM–1489, Construction and Reconstruction, Central Business District (CBD), Funding, Right-of-Way Permit and US Army COE Section 404 Permit Issuance, Harris, Fort Bend and Waller Counties, TX.

Summary: EPA had no further comments to offer on the FinalEnvironmental Impact Statement.

Dated: January 8, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–722 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–2]

National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy and management issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

NACEPT has identified emerging environmental issues and trends facing the Agency and will present a draft report and recommendations to the EPA. In addition, NACEPT will report on the work and status of subcommittees and workgroups. NACEPT will also determine next steps in continuing its role as a strategic and visionary advisory group. The meeting will be preceded by a new member administrative orientation session on January 28, 2002.

DATES: NACEPT will hold a two-day public meeting on Tuesday, January 29, 2002, from 8:30 a.m. to 5:00 p.m., and Wednesday, January 30, 2002, from 8:30 a.m. to 1:00 p.m. A pre-meeting orientation for newly appointed NACEPT members will take place from 2:00–5:00 p.m. on Monday, January 28, 2002.

ADDRESSES: The meeting will be held at the Hilton Alexandria Old Town located at 1767 King Street, Alexandria, VA. The hotel is conveniently located across from the King Street Metro.

SUPPLEMENTARY INFORMATION: Materials or written comments to the Council can be sent to Peter Redmond, Designated Federal Officer/NACEPT, using the contact information below (e-mail is preferred). Also, contact Mr. Redmond for copies of the draft report on emerging trends and issues. The public is welcome to attend all portions of the meeting; members of the public expecting to submit written comments and/or make brief oral statements (suggested 5-minute limit) during the public comment session are encouraged to contact Mr. Redmond by January 22, 2002.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Mr. Redmond at least five business days prior to the meeting so that appropriate arrangements can be made.

FOR FURTHER INFORMATION CONTACT: Peter G. Redmond, Designated Federal Officer/NACEPT, *redmond.peter@epa.gov,* (ph) 202–564–1292, (fax) 202–501–0661, U.S. EPA, Office of Cooperative Environmental Management (1601A), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.

Dated: January 7, 2002.

Peter G. Redmond,

Designated Federal Officer/NACEPT,Office of Cooperative Environmental Management.

[FR Doc. 02–705 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7127–9]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Ecological Reporting Panel of the US EPA Science Advisory Board's (SAB) Ecological Processes and Effects Committee (EPEC) will conduct a public teleconference on February 8, 2002 from 12:00 noon to 3:00 pm Eastern Standard Time.

Purpose of the Meeting—The purpose of the meeting will be to finalize the Panel's report, A Framework for Reporting on Ecological Condition. The report is a result of a strategic project begun by the Ecological Processes and Effects Committee several years ago to assist the Agency to more systematically assess and report on the condition of ecological resources for decision-makers and the public. The strategic project arose from the Committee's experience reviewing a number of Agency programs and projects such as those designed to assess ecological risks, define biological criteria, monitor and report on watershed condition. Given the time frame of the strategic project, and the need to set it aside from time to time to conduct priority peer reviews for the Agency, new members were appointed to EPEC over the course of the project and the terms of other members ended. For this reason, the current Ecological Reporting Panel is composed of a subset of both past and present members of EPEC and is reporting directly to the SAB Executive Committee.

Availability of Review Materials—Because the Panel is not conducting a review, there are no Agency materials associated with the meeting. When the Panel reaches agreement on the draft report, it will be forwarded to the SAB Executive Committee for their consideration. At that time, the draft report will be posted to the SAB Website (*http://www.epa.gov/sab*).

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Ms. Stephanie Sanzone, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4561; FAX (202) 501–0582; or via e-mail at *sanzone.stephanie@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Sanzone no later than noon Eastern Time on February 5, 2002. Additional instructions on how to participate in the conference call may be obtained by contacting Mary Winston at (202) 564–4538, or via e-mail at winston.mary@epa.gov.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting

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will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Ms. Sanzone at least five business days prior to the meeting so that appropriate arrangements can be made.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–703 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CA069–EMF, FRL–7128–4]

Official Release of EMFAC2000 Motor Vehicle Emission Factor Model for Use in the San Francisco Bay Area; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is approving and announcing the availability of the latest version of the California EMFAC model for use in ozone State Implementation Plan (SIP) development in the San Francisco Bay Area. EPA is approving the model for use in the Bay Area with certain conditions due to technical limitations of the model. The model is only approved for use in development of ozone motor vehicle emission factors for SIP development and future conformity determinations in the San Francisco Bay Area.

DATES: This determination is effective Jnauary 11, 2002.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor (775) 687–4670, x3112, Air Planning Office (AIR–2), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the EMFAC Model?

The EMFAC model is part of the California Air Resources Board's (CARB's) Motor Vehicle Emission Inventory (MVEI) modeling system. The first three models in the system are the CALIMFAC, the WEIGHT and the EMFAC models. The CALIMFAC model estimates emission rates for California on-road vehicles when the vehicle is new and as it ages. The WEIGHT model determines each vehicle model year's accumulated mileage and the relative weight each vehicle model year should be given in the California statewide emission inventory. The EMFAC model combines the results from these two models, along with correction factors and other data, to produce emission factors for the entire California vehicle fleet.

B. Why Are We Announcing Our Approval of the EMFAC Model?

Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1) require that SIP inventories be based on the most current and applicable emission estimation models that are available at the time the SIP is developed. Clean Air Act section 176(c)(1) requires that the latest emission estimates be used in transportation conformity analyses. Transportation conformity is a Clean Air Act requirement to ensure that federally supported highway and transit activities are consistent with ("conform to") the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new violations of ambient air quality standards; worsen existing violations; or delay timely attainment of such standards.

Under 40 CFR 93.111(a), EPA must approve new versions of EMFAC for SIP development before they can be used in conformity analyses. In its November 30, 2001 letter, CARB requested that EPA approve EMFAC2000 for use in Bay Area ozone SIP development and transportation conformity determinations. EPA notes that EMFAC2000 would normally be considered the latest emissions model for statewide use in California SIP development (rather than an interim update to the EMFAC model as EMFAC7G was an interim update to EMFAC7F). EMFAC2000 is a significant change from previous EMFAC models and is capable of calculating motor vehicle emissions for all California areas. However, EMFAC2000 is now known to contain technical limitations. It would be inappropriate to approve EMFAC statewide for all SIPs and conformity determinations.

C. Why Is EPA Approving This Version of EMFAC for Only Ozone Emission Analyses in the Bay Area?

EPA is approving EMFAC2000 for ozone SIP development for only the Bay Area at this time. EPA is proceeding with this approval because: (1) EMFAC2000 is an improvement on existing available models despite certain technical limitations; and (2) CARB has committed to revise the Bay Area ozone attainment SIP's motor vehicle emissions budgets with EMFAC2001 or a successor model as part of its mid-course review SIP revision in April 2004. Additionally, we understand that the next EMFAC model will correct EMFAC2000's technical limitations and be available for use in all future California SIPs. Therefore, CARB does not currently intend to develop other SIPs with EMFAC2000.

II. EPA Action

A. What Version of EMFAC Is EPA Approving?

In this notice, EPA is approving and announcing that EMFAC 2000, as developed by CARB and submitted for approval to EPA on November 30, 2001, is available to use in the development of ozone motor vehicle emission estimates in the Bay Area, as described above. Note that CARB refers to EMFAC in its request for approval as the SF Bay Area-EMFAC 2000.

B. When Will the Technical Limitations in EMFAC 2000 Be Corrected?

CARB will fix the technical errors in EMFAC 2000 in its next version of EMFAC. At this time EPA understands that EMFAC2001 or its successor will be released by CARB before any additional California SIPs are submitted to EPA. EMFAC2001 or its successor will also include a user interface so local agencies can examine alternative scenarios and update local data (e.g., vehicle miles traveled (VMT), fleet characteristics). The future model will allow transportation agencies to complete their own conformity determinations. Note that the Bay Area SIP includes CARB's commitment to revise the SIP with the latest technical information as part of its mid-course review in April 2004, which was subject to the state public comment process. EPA understands that California will not be submitting EMFAC2001 or its successor for EPA approval until early 2003, so that CARB's submission of the mid-course review using the newly available model will occur within one year of EPA's approval of EMFAC2001 or its successor. This is consistent with EPA's past practice where older versions of models such as the national MOBILE model have been used prior to release of newer versions of the model that make certain corrections in emission estimation.

C. What Pollutants Can EMFAC2000 Be Used To Estimate?

EPA is approving the model only for use to estimate ozone emissions. Since this approval is specific to ozone for the Bay Area, carbon monoxide microscale analyses in the Bay Area should continue to be based on EMFAC7F.

D. Will a Conformity Grace Period for the Entire State of California Be Started by This Approval of EMFAC2000?

No. The transportation conformity rule (40 CFR part 93.111) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA for SIP purposes for a state or area. When EPA approves a new emissions model like EMFAC2000, we normally establish a grace period before the model is required for new conformity analyses (40 CFR 93.111(b)). However, as explained above, EMFAC2000 is known to contain a few technical problems. Due to the limitations of EMFAC2000, it would be inappropriate to approve EMFAC2000 statewide for all SIP planning, and thus to require its use for conformity determinations in all areas, particularly those without a SIP and budgets based on EMFAC2000. Based on discussions with CARB, EPA understands that EMFAC2001 or its successor will correct the limitations and include additional improvements. Therefore, EPA is not approving EMFAC2000 for statewide SIP planning, and a conformity grace period for the entire state will not be established for EMFAC2000.

Although EPA's potential approval of EMFAC2001 or its successor will not occur until farther into the future, EPA currently intends to establish a grace period before EMFAC2001 or its successor would be required for new transportation conformity analyses across the state of California. From now until the end of such a grace period, nonattainment and maintenance areas outside the Bay Area can continue to use EMFAC7F and EMFAC7G as appropriate for new conformity analyses. For more information about the use of EMFAC7F and EMFAC7G, please see the April 16, 1998, EPA Region IX letter to CARB describing the applicability of these models for conformity analyses.

EMFAC2000 will apply for all future ozone conformity analyses in the Bay Area until one of the following two scenarios occurs (1) a revised attainment SIP and budgets with EMFAC2001 or its successor are submitted and EPA has found these revised budgets adequate or (2) the grace period for EMFAC2001 or its successor has expired. Since EPA is approving EMFAC2000 for use in the Bay Area based on CARB's commitment to revise the Bay Area ozone SIP once an improved model is available, EPA intends to approve the motor vehicle emission budgets in any Bay Area ozone SIP only until new budgets developed with the new model are submitted and found adequate for conformity purposes.

E. Will any Special Requirements Apply to Bay Area Conformity Analyses Using EMFAC2000?

Since EMFAC2000 contains VMT estimates developed by CARB, CARB has committed in its November 30, 2001 letter requesting approval of EMFAC2000, to work with the Metropolitan Transportation Commission (MTC) to complete future conformity analyses in the Bay Area. Once EMFAC2001 or its successor is approved generally for use in California, MTC, like other MPOs, should be able to use the EMFAC model to examine alternative scenarios with its own VMT estimates for future conformity analyses.

III. Summary of EPA Actions

EPA is approving EMFAC2000 as submitted by CARB on November 30, 2001 with the following limitations and conditions.

(1) The approval is limited to the Bay Area.

(2) The approval is limited to ozone.

(3) No statewide conformity grace period will be triggered.

(4) CARB will correct the technical limitations in EMFAC2001 or its successor, and EPA understands that the new model will be released by CARB for EPA approval before any additional California SIPs are submitted to EPA.

(5) CARB will revise the Bay Area ozone SIP with EMFAC2001 or its successor in its mid-course review of the Bay Area SIP by April 2004.

Dated: January 4, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–756 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–IL; FRL–6815–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Illinois Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 12, 2001, the State of Illinois submitted an application for EPA final approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act. This notice announces the receipt of Illinois' application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Illinois has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which

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time a notice will be issued in the **Federal Register** and the federal program will take effect in Illinois.

DATES: Comments, identified by docket control number PB–402404–IL, must be received on or before February 25, 2002. In addition, a public hearing request may be submitted on or before February 25, 2002.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–IL in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Larisa Leonova, State of Illinois Project Officer, Pesticides and Toxics Branch (DT-8J), Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, IL 60604; telephone: (312) 353–5838; e-mail address: leonova.larisa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in Illinois. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this **Federal Register** notice document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents". You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PB–402404–IL. The official record consists of the documents specifically referenced in this action, this notice, the State of Illinois's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region V Office, Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, Toxics Program Section, (DT-8J), 77 West Jackson Blvd, Chicago, IL 60604.

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–IL in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, (DT-8J), 77 West Jackson Blvd, Chicago, IL 60604.

2. *In person or by courier.* Deliver your comments and hearing requests to: Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, (DT-8J), 77 West Jackson Blvd, Chicago, IL 60604. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: leonova.larisa@epamail.epa.gov or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–IL. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FURTHER INFORMATION CONTACT.**

II. Background

A. What Action is the Agency Taking?

The State of Illinois has provided a certification letter stating that its lead-based paint training and certification self-certified program meets the requirements for authorization of a State program under section 404 of TSCA and has requested final approval of the Illinois lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., October 12, 2001). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA, 15 U.S.C. 2684(b), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the Illinois application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA,15 U.S.C. 2601 *et seq.*, by adding Title IV (15 U.S.C. 2681–2692), titled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities. Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Illinois proposed program has been provided by the applicant.

EPA issued correspondence to the Illinois Department of Public Health ("the Department") dated May 6, 1999, which granted a 3–year interim approval of the Illinois Lead Poisoning Prevention Program. The interim approval authorized the Department to enforce the Illinois Lead Poisoning Prevention Act (LPPA), 410 ILCS 45, and Lead Poisoning Prevention Code (LPPC), 77 Ill Adm. Code 845, in lieu of the Federal program. The effective date of the interim approval was April 16, 1999 (published by EPA in the **Federal Register** of February 29, 2000 (65 FR 10787) (FRL–6399–4). As a condition of the interim approval, the Department was required to submit a request for full (final) approval of the Illinois Program at least 180 days prior to the expiration of the 3–year interim approval.

Illinois is hereby applying for final approval and authorization to enforce its Lead Poisoning Prevention Program (LPPA). The Department provided amended copies of the LPPA, and Lead Poisoning Prevention Act Code (LPPC), and the Program Policies that govern the administration of the program. Copies of the correspondence from the Illinois Attorney General's office indicating the inapplicability of the Illinois Environmental Audit Privilege Law to the Illinois Lead Poisoning Prevention Act and the U.S. EPA response accepting the opinion offered by the Illinois Attorney General's office were also included with this application. These materials resolve the only remaining issue dealing with the applicability of the Illinois Environmental Audit Privilege Law to the enforcement of the LPPA and LPPC. Some materials submitted with the original application have been updated and revised and are submitted with this application. They are described below and will augment parts of the Department's original application for authorization.

Illinois Lead Abatement Program

The Department implements the LPPA and Code in order to carry out lead abatement programs that are designed to diminish the incidence of lead intoxication. The primary goal of the Department's Lead Abatement Program is to protect the public's health, safety and environment by identifying lead-bearing substances which may be the source of exposure to lead in children and to ensure that lead hazards are managed, mitigated or abated through the administration and enforcement of the LPPA and the LPPC, promulgated pursuant to the LPPA. The LPPA and LPPC, originally passed in 1973, were last amended in August 2001. This enabled the Department to pursue expanded enforcement for violations of the LPPA and LPPC, including administrative fines against licensed professionals and firms for violations of the LPPA and LPPC.

Individuals seeking licensure by the State of Illinois in the abatement industry as a worker, supervisor, inspector and risk assessor must first make application to the Department. The application requires proof the individual has successfully completed an appropriate lead training course. The course and the course provider chosen by the applicant must be one that is approved by the Department and provides training comparable to 40 CFR 745.225 as provided in section 845.28 of the LPPC. All lead licenses expire annually. Application for renewal includes the successful completion of an approved refresher course that is specific to the lead field of interest every 3 years. Individuals or firms can also apply for a lead contractor's license. This requires proof that the applicant holds a certificate of financial responsibility in the form of liability insurance that specifically covers lead work. The applicant has a written standard operation procedure that includes medical monitoring and a respirator protection program as specified in the Occupational Safety and Health Administration (OSHA) regulations; (incorporated by reference in section 845.12 of the LPPC), the applicant provides a detailed description of all legal proceedings or claims filed against them concerning any lead mitigation or lead abatement activities; the applicant signs a statement that only licensed lead workers and lead supervisors will be used to conduct lead mitigation and lead abatement activities; and, that the applicant agrees to notify the Department before beginning any lead mitigation or lead abatement project.

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Although the contractor applicant is not required to successfully complete a lead abatement training course, the applicant needs to employ a licensed lead supervisor and must assure that all lead abatement workers will have a valid Illinois lead worker license and that a licensed lead supervisor will oversee the project and be on-site during lead mitigation or lead abatement activities. A contractor's license must be renewed annually. Reciprocal requests for any lead license may be submitted for review and will be considered on a case by-case-basis. If, upon review of the applicant's application, it is determined that the licensing state's lead program is at least as protective as the Illinois program, the Department will issue an appropriate license. Lists of all people conducting lead activities are maintained by the Department and are available to the public upon request.

Training course providers seeking approval from the State of Illinois for initial and refresher courses for lead worker, lead supervisor, lead inspector and lead risk assessor disciplines must first make application to the Department. The application packet includes a checklist of materials submitted along with other requirements that must be satisfied before approval can be granted. All approvals are renewed annually. Audits of courses are completed by Department staff and the training course provider is notified as to the results of the audit, the deficiencies observed, and whether the course was determined to be satisfactory or not satisfactory. Training courses found not to be satisfactory are issued a notice to correct the deficiencies together with a written explanation of the items that the Department expects the provider to correct before the next training course is scheduled. A list of approved training course providers is maintained by the Department and is made available to the public upon request. Illinois does not require the certification and licensure of the project designer discipline at this time. However, additional requirements have been established to prepare licensed lead supervisors for large-scale lead abatement projects as cited in 40 CFR 745.225(d)(4). The Department has statutory authority to adopt rules for lead-based paint activities in public and commercial buildings. Where EPA provides guidance under 40 CFR 745.230, the Department will establish rules which will govern such activities as necessary to maintain authorization.

Work practice standards are established in the Illinois LPPC and in the policies and procedures of the Department. The Department has incorporated in section 845.12 of the LPPC, the U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995 and 1997) to enhance the work and performance standards throughout the LPPC. All inspections and risk assessments are completed by individuals holding an appropriate inspector or risk assessor license issued by the Department. Inspections and risk assessments are to be performed per incorporated HUD Guidelines. Lead mitigation and lead abatement activities are performed only by individuals or firms who hold the appropriate lead contractor license issued by the Department. The lead contractor has the responsibility to utilize documented methodologies to ensure that work is performed effectively and in a manner that protects building occupants and workers, and complies with the requirements outlined in the HUD Guidelines and the LPPC requirements.

Complaint investigations, inspections, course audits and enforcement activities are accomplished by Department staff located in the central and regional offices and through delegate agency agreements with local health departments. Central office staff provides for the licensing of individuals that conduct all lead-based activities in the state. One administrative assistant, one office administrator and three office associates process all licensure application submitted to the Department. One office associate is dedicated to support the Department's third party examination process. The third party examination is administered by an environmental health specialist III. Compliance and enforcement activities are conducted by an environmental health specialist I. A public service administrator is directly responsible for the day-to-day lead program activities, overall management of all program activities, and maintaining and revising the LPPA, LPPC and program policies to ensure compliance with more stringent requirements and documented methodologies. The public service administrator also serves as the Department Radiation Safety Officer responsible for all radioactive material utilized by the Department for lead investigations. Eight regional program staff conduct inspections on a daily basis as well as approximately 90 licensed lead risk assessors that work within our lead program as delegate agents under contract to perform the required investigations in their respective counties or municipalities. Overall program direction is provided by a senior public service administrator in the central office. Funding is established through a mandate that provides a dedicated state fund for the lead program. Revenue from licensing and training course approval fees are also directed to that fund. Departmental policy and procedure manuals provide protocol to achieve all necessary aspects of the Illinois Lead Poisoning Prevention Program. In those policies, details of activities to be implemented, standard enforcement procedures and examples of required letters may be found. Enforcement is accomplished through administrative procedures that have been referenced in the LPPA and LPPC. Violations of the LPPA and LPPC are subject to enforcement by the State's Attorney in the respective county where the violation occurred, enforcement by the Illinois Attorney General's office, and enforcement through administrative fines and penalties by the Department.

The Department participates in Environmental Justice grants from EPA to provide education and information to people who would not normally receive information about the hazards of lead through normal media. Not-for-profit associations are provided grant funds to seek out parents of children who are likely to be exposed to lead and may not be aware of the hazards associated with lead or about how to prevent lead poisoning. Additionally, the Department or its agents provide consultative services and screening to high risk target populations within Illinois for lead poisoning.

Program Description

The Illinois lead program administration and enforcement is the responsibility of the Illinois Department of Public Health.

The Illinois Environmental Protection Agency (IEPA) is responsible for administration and enforcement of hazardous waste disposal including the provisions of RCRA.

Responsible Primary Agency:

Illinois Department of Public Health, G. Michael Brandt, Chief Asbestos and Lead Section, Division of Environmental Health, 525 West Jefferson Street, Springfield, IL 62761, (217) 782–3517.

Other Participating Departments and Agencies:

Illinois Department of Public Health, Ronald Brown, Chief, Division of Health Assessment and Screening, 535 West Jefferson Street, Springfield, IL 62761, (217) 782–1227.

Illinois Environmental Protection Agency, Connie Sullinger, Office of Chemical Safety, P.O. Box 19276, Springfield, IL 62794–9276, (217) 785–0830.

EPA is only responsible for environmental pollution control in those cases where contaminants cross the property line of the address where lead abatement or mitigation is taking place. This includes waste disposal as well as air and water pollution that may leave the property. Such issues involving waste disposal or pollutants are investigated jointly, or are referred to IEPA.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 13, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

[FR Doc. 02–698 Filed 1–10–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2523]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 8, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by January 28, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendments of FM Table of Allotment (MM Docket No. 98–112).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–784 Filed 1–10–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Flood Insurance."

DATES: Comments must be submitted on or before March 12, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES,Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, DC 20429. All comments should refer to "Flood Insurance." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments@ fdic.gov*]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Flood Insurance.

OMB Number: 3064–0120.

Frequency of Response: On occasion.

Affected Public: Any depository institution whose borrower's loan requests were secured by a building located on property in a special flood hazard area.

Estimated Number of Respondents/ Recordkeepers: 5,700.

Estimated Number of Transactions: 180,000.

Estimated Reporting Hours: .05 hours × 180,000 = 9,000.

Estimated Recordkeeping Hours: 5,700 hours.

Estimated Total Annual Reporting and Recordkeeping Burden Hours: 5,700 + 9,000 = 14,700 hours.

General Description of Collection: Each supervised lending institution is currently required to provide a notice of special flood hazards to a borrower acquiring a loan secured by a building on real property located in an area identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

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collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 3rd day of January, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–677 Filed 1–10–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–14]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 eighth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–01 eighth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before February 28, 2002.

ADDRESSES: Bank members selected for the 2000–01 eighth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV*.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the February 28, 2002 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before January 28, 2002, each Bank will notify the members in its district that have been selected for the 2000–01 eighth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 eighth quarter community support review cycle:

Member	City	State
Federal Home Loan Bank of Boston—District 1		
Savings Bank of Danbury	Danbury	Connecticut.
American Eagle Federal Credit Union	East Hartford	Connecticut.
InsurBanc, FSB	Farmington	Connecticut.
Savings Bank Life Insurance	Hartford	Connecticut.
Dime Savings Bank of Norwich	Norwich	Connecticut.
Stafford Savings Bank	Stafford Springs	Connecticut.
Sikorsky Federal Credit Union	Stratford	Connecticut.
Torrington Savings Bank	Torrington	Connecticut.
Constitution State Corporate Credit Union Inc	Wallingford	Connecticut.
North American Bank & Trust Company	Waterbury	Connecticut.
Webster Bank	Waterbury	Connecticut.
Maine State Employee's Credit Union	Augusta	Maine.

Member	City	State
Biddeford Savings Bank	Biddeford	Maine.
Atlantic Regional Federal Credit Union	Brunswick	Maine.
Ocean National Bank of Kennebunk	Kennebunk	Maine.
Community Credit Union	Lewiston	Maine.
Rainbow Federal Credit Union	Lewiston	Maine.
Ste. Croix Regional Federal Credit Union	Lewiston	Maine.
Portland Regional Federal Credit Union	Portland	Maine.
Evergreen Credit Union	Westbrook	Maine.
The Provident Bank	Amesbury	Massachusetts.
Athol-Clinton Co-operative Bank	Athol	Massachusetts.
Citizens Bank of Massachusetts	Boston	Massachusetts.
Member Plus Credit Union	Boston	Massachusetts.
Postal Community Credit Union	Boston	Massachusetts.
TELECOM Cooperative Bank	Boston	Massachusetts.
Bridgewater Savings Bank	Bridgewater	Massachusetts.
Metropolitan Credit Union	Chelsea	Massachusetts.
Pilgrim Co-operative Bank	Cohasset	Massachusetts.
Everett Co-operative Bank	Everett	Massachusetts.
St. Anne's Credit Union of Fall River	Fall River	Massachusetts.
I–C Federal Credit Union	Fitchburg	Massachusetts.
Community National Bank	Hudson	Massachusetts.
Jeanne D'Arc Credit Union	Lowell	Massachusetts.
Washington Savings Bank	Lowell	Massachusetts.
St. Mary's Credit Union	Marlborough	Massachusetts.
Medway Co-operative Bank	Medway	Massachusetts.
Auburndale Co-operative Bank	Newton	Massachusetts.
North Easton Savings Bank	North Easton	Massachusetts.
City Savings Bank	Pittsfield	Massachusetts.
Greylock Federal Credit Union	Pittsfield	Massachusetts.
Winter Hill Federal Savings Bank	Somerville	Massachusetts.
Mt. Washington Cooperative Bank	South Boston	Massachusetts.
Webster Five Cents Savings Bank	Webster	Massachusetts.
Mutual Federal Savings Bank	Whitman	Massachusetts.
Winchester Savings Bank	Winchester	Massachusetts.
Ledyard National Bank	Hanover	New Hampshire.
Monadnock Community Bank	Peterborough	New Hampshire.
Pemigewasset National Bank	Plymouth	New Hampshire.
Northeast Credit Union	Portsmouth	New Hampshire.
Southern New Hampshire Bank & Trust	Windham	New Hampshire.
Woodsville Guaranty Savings Bank	Woodsville	New Hampshire.
The People's Credit Union	Middleton	Rhode Island.
Pawtucket Credit Union	Pawtucket	Rhode Island.
Coastway Credit Union	Providence	Rhode Island.
Fleet National Bank	Providence	Rhode Island.
Vermont Development Credit Union	Burlington	Vermont.
Community National Bank	Derby	Vermont.
The First National Bank of Orwell	Orwell	Vermont.
Wells River Savings Bank	Wells River	Vermont.
Federal Home Loan Bank of New York—District 2		
Sterling Bank	Mt. Laurel	New Jersey.
Roselle Savings Bank	Roselle	New Jersey.
Summit Federal Savings and Loan Association	Summit	New Jersey.
Great Falls Bank	Totowa	New Jersey.
Sun National Bank	Vineland	New Jersey.
Valley National Bank	Wayne	New Jersey.
Marathon National Bank of New York	Astoria	New York.
Seneca Federal Savings and Loan Association	Baldwinsville	New York.
Ballston Spa National Bank	Ballston Spa	New York.
Bath National Bank	Bath	New York.
New York National Bank	Bronx	New York.
Dime Savings Bank of Williamsburg	Brooklyn	New York.
Community Bank, N.A	Canton	New York.
The North Country Savings Bank	Canton	New York.
Carthage Federal Savings and Loan Association	Carthage	New York.
Lake Shore Savings & Loan Association	Dunkirk	New York.
Ellenville National Bank	Ellenville	New York.
Savings Bank of the Finger Lakes	Geneva	New York.
Evergreen Bank, N.A	Glens Falls	New York.
City National Bank and Trust Company	Gloversville	New York.
The First National Bank of Jeffersonville	Jeffersonville	New York.
Sound Federal Savings and Loan Association	Mamaroneck	New York.
Bank Audi (USA)	New York	New York.

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Member	City	State
North Fork Bank	New York	New York.
Ridgewood Savings Bank	New York	New York.
Alliance Bank, NA	Oneida	New York.
ESL Federal Credit Union	Rochester	New York.
Geddes Federal Savings and Loan Association	Syracuse	New York.
National Bank of Delaware County	Walton	New York.
EuroBank	Hato Rey	Puerto Rico.
R & G Premier Bank of Puerto Rico	Hato Rey	Puerto Rico.
Federal Home Loan Bank of Pittsburgh—District 3		
The First National Bank of Berwick	Berwick	Pennsylvania.
American Eagle Savings Bank, PaSA	Boothwyn	Pennsylvania.
Commerce Bank/Harrisburg, N.A	Camp Hill	Pennsylvania.
Croydon Savings Bank	Croydon	Pennsylvania.
FNB Bank, N.A	Danville	Pennsylvania.
Bank of Lancaster County, N.A	East Petersburg	Pennsylvania.
Marquette Savings Bank	Erie	Pennsylvania.
First United National Bank	Fryburg	Pennsylvania.
Adams County National Bank	Gettysburg	Pennsylvania.
First National Bank of Greencastle	Greencastle	Pennsylvania.
Huntingdon Savings Bank	Huntingdon	Pennsylvania.
Huntingdon Valley Bank	Huntingdon Valley	Pennsylvania.
First Commonwealth Bank	Indiana	Pennsylvania.
Abington Bank	Jenkintown	Pennsylvania.
Merchants National Bank of Kittanning	Kittanning	Pennsylvania.
Fulton Bank	Lancaster	Pennsylvania.
Citizens National Bank	Lansford	Pennsylvania.
The First National Bank of Lilly	Lilly	Pennsylvania.
Savings and Loan Association of Milton, Pa	Milton	Pennsylvania.
The First National Bank of Newport	Newport	Pennsylvania.
The Northumberland National Bank	Northumberland	Pennsylvania.
Berean Federal Savings Bank	Philadelphia	Pennsylvania.
First Republic Bank	Philadelphia	Pennsylvania.
Tioga-Franklin Savings Association	Philadelphia	Pennsylvania.
United Savings Bank	Philadelphia	Pennsylvania.
Fidelity Bank PaSb	Pittsburgh	Pennsylvania.
Prestige Bank	Pittsburgh	Pennsylvania.
Progress Federal Savings Bank	Plymouth Meeting	Pennsylvania.
West Milton State Bank	West Milton	Pennsylvania.
Bank of Charles Town	Charles Town	West Virginia.
Potomac Valley Bank	Petersburg	West Virginia.
Capon Valley Bank	Wardensville	West Virginia.
The Citizens Bank of Weston, Inc	Weston	West Virginia.
Federal Home Loan Bank of Atlanta—District 4		
First National Bank of Central Alabama	Aliceville	Alabama.
Farmers and Merchants Bank	Centre	Alabama.
Regions Bank	Birmingham	Alabama.
First Metro Bank	Muscle Shoals	Alabama.
West Alabama Bank and Trust	Reform	Alabama.
Bank Independent	Sheffield	Alabama.
First Southern National Bank	Stevenson	Alabama.
The Bank	Warrior	Alabama.
Treasury Bank, NA	Washington	DC.
Turnberry Bank	Aventura	Florida.
EuroBank	Boca Raton	Florida.
Destin Bank	Destin	Florida.
Englewood Bank	Englewood	Florida.
First Community Bank of Southwest Florida	Fort Myers	Florida.
Jacksonville Fireman's Credit Union	Jacksonville	Florida.
CNB National Bank	Lake City	Florida.
Peoples Community Bank	Malone	Florida.
BAC Florida Bank	Miami	Florida.
Executive National Bank	Miami	Florida.
Gulf Bank	Miami	Florida.
Fifth Third Bank, Florida	Naples	Florida.
Florida Citizens Bank	Ocala	Florida.
Bank of Central Florida	Orlando	Florida.
Madison Bank	Palm Harbor	Florida.
First American Bank of Pensacola, N.A	Pensacola	Florida.
Sunshine State FS&L Association	Plant City	Florida.
Colony Bank Ashburn	Ashburn	Georgia.

Member	City	State
Community National Bank	Ashburn	Georgia.
Cornerstone Bank	Atlanta	Georgia.
Atlantic National Bank	Brunswick	Georgia.
Bartow County Bank	Cartersville	Georgia.
Columbus Bank and Trust Company	Columbus	Georgia.
Lumpkin County Bank	Dahlonega	Georgia.
Farmers State Bank	Dublin	Georgia.
Towns County Bank	Hiawasee	Georgia.
Heritage Bank	Jonesboro	Georgia.
Charter Bank and Trust Company	Marietta	Georgia.
First Capital Bank	Norcross	Georgia.
Waycross Bank and Trust	Waycross	Georgia.
United Bank	Zebulon	Georgia.
Colombo Bank	Baltimore	Maryland.
The Harbor Bank of Maryland	Baltimore	Maryland.
Sequoia Bank	Bethesda	Maryland.
The Peoples Bank of Maryland	Denton	Maryland.
Farmers and Merchants Bank	Upperco	Maryland.
High Country Bank	Boone	North Carolina.
Four Oaks Bank & Trust Company	Four Oaks	North Carolina.
KS Bank	Kenly	North Carolina.
Bank of Davie	Mocksville	North Carolina.
Bank of Currituck	Moyock	North Carolina.
Carolina Community Bank	Murphy	North Carolina.
Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	North Carolina.
Jackson Savings Bank, S.S.B	Sylva	North Carolina.
Tarboro Savings Bank, S.S.B	Tarboro	North Carolina.
Security Federal Bank	Aiken	South Carolina.
Bank of Anderson	Anderson	South Carolina.
BB & T of SC	Greenville	South Carolina.
Summit National Bank	Greenville	South Carolina.
CapitalBank	Greenwood	South Carolina.
Palmetto State Bank	Hampton	South Carolina.
Beach First National Bank	Myrtle Beach	South Carolina.
Newberry Federal Savings Bank	Newberry	South Carolina.
Highlands Union Bank	Abingdon	Virginia.
The First Bank and Trust Company	Abingdon	Virginia.
First National Bank of Altavista	Altavista	Virginia.
Bank of Clarke County	Berryville	Virginia.
Guaranty Bank	Charlottesville	Virginia.
Capital One, F.S.B	Falls Church	Virginia.
The Bank of Floyd	Floyd	Virginia.
Miners and Merchants Bank & Trust Company	Grundy	Virginia.
Rockingham Heritage Bank	Harrisonburg	Virginia.
Bank of Marion	Marion	Virginia.
Heritage Bank and Trust	Norfolk	Virginia.
Central Virginia Bank	Powhatan	Virginia.
Bank of Essex	Tappahannock	Virginia.
Resource Bank	Virginia Beach	Virginia.
The Fauquier Bank	Warrenton	Virginia.
F & M Bank—Winchester	Winchester	Virginia.
Federal Home Loan Bank of Cincinnati—District 5		
Auburn Banking Company	Auburn	Kentucky.
The Peoples Exchange Bk of Beattyville	Beattyville	Kentucky.
Central Appalachian Peoples FCU	Berea	Kentucky.
Farmers State Bank	Booneville	Kentucky.
The First National Bank of Brooksville	Brooksville	Kentucky.
Heritage Bank, Inc	Burlington	Kentucky.
Community Trust Bank, F.S.B	Campbellsville	Kentucky.
First National Bank of Clinton	Clinton	Kentucky.
Bank of Ohio County	Dundee	Kentucky.
Elkton Bank and Trust Company	Elkton	Kentucky.
Farmers Deposit Bank	Eminence	Kentucky.
Pendleton Federal Savings Bank	Falmouth	Kentucky.
The Bank of Kentucky	Florence	Kentucky.
First Federal Savings Bank of Frankfort	Frankfort	Kentucky.
The Commercial Bank of Grayson	Grayson	Kentucky.
The First National Bank of Grayson	Grayson	Kentucky.
Hebron Deposit Bank	Hebron	Kentucky.
Ohio Valley National Bank	Henderson	Kentucky.
Hyden Citizens Bank	Hyden	Kentucky.
Citizens Guaranty Bank	Irvine	Kentucky.

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Member	City	State
Citizens B&T Company of Jackson	Jackson	Kentucky.
Peoples Bank	Lebanon	Kentucky.
Lewisburg Banking Company	Lewisburg	Kentucky.
The Vine Street Trust Company	Lexington	Kentucky.
First National Bank and Trust	London	Kentucky.
Bank of Louisville	Louisville	Kentucky.
Stock Yards Bank & Trust Company	Louisville	Kentucky.
Security Bank and Trust Company	Maysville	Kentucky.
Citizens Bank	Morehead	Kentucky.
Citizens Bank of Campbell County, Inc	Newport	Kentucky.
First Farmers Bank and Trust Company	Owenton	Kentucky.
Paducah Bank and Trust Company	Paducah	Kentucky.
Kentucky Bank	Paris	Kentucky.
Farmers Bank and Trust Company, Inc	Princeton	Kentucky.
Kentucky Bank and Trust of Greenup County	Russell	Kentucky.
Salyersville National Bank	Salyersville	Kentucky.
Citizens Union Bank of Shelbyville	Shelbyville	Kentucky.
Peoples Bank of Kentucky, Inc	Stanford	Kentucky.
Bank of the Mountains	West Liberty	Kentucky.
Winchester Federal Savings Bank	Winchester	Kentucky.
North Akron Savings Bank	Akron	Ohio.
The Andover Bank	Andover	Ohio.
The Sutton Bank	Attica	Ohio.
Farmers National Bank	Canfield	Ohio.
The Cincinnatus Savings and Loan Company	Cheviot	Ohio.
Foundation Savings Bank	Cincinnati	Ohio.
The Provident Bank	Cincinnati	Ohio.
The Union Bank Company	Columbus Grove	Ohio.
Heartland Federal Credit Union	Dayton	Ohio.
The State Bank and Trust Company	Defiance	Ohio.
Potters Bank	East Liverpool	Ohio.
Fremont Federal Credit Union	Fremont	Ohio.
The Ohio Valley Bank Company	Gallipolis	Ohio.
The Sycamore National Bank	Groesbeck	Ohio.
The Harrison Building and Loan Association	Harrison	Ohio.
Oak Hill Banks	Jackson	Ohio.
The Bank of Leipsic Company	Leipsic	Ohio.
The Lorain National Bank	Lorain	Ohio.
The Marion Bank	Marion	Ohio.
Minster Bank	Minster	Ohio.
First National Bank of New Bremen	New Bremen	Ohio.
Farmers State Bank	New Madison	Ohio.
The Sherwood State Bank	Sherwood	Ohio.
First Bank of Ohio	Tiffin	Ohio.
The Citizens National Bank of Urbana	Urbana	Ohio.
The Waverly Building and Loan Company	Waverly	Ohio.
National Bank and Trust Company	Wilmington	Ohio.
Woodsfield Savings Bank	Woodsfield	Ohio.
The Wayne County National Bank of Wooster	Wooster	Ohio.
First South Bank	Bolivar	Tennessee.
Union Planters Bank, National Association	Cordova	Tennessee.
The Weakley County Bank	Dresden	Tennessee.
Franklin National Bank	Franklin	Tennessee.
Bank of Friendship	Friendship	Tennessee.
The First National Bank of LaFollette	LaFollette	Tennessee.
McKenzie Banking Company	McKenzie	Tennessee.
Security Federal Savings Bank	McMinnville	Tennessee.
Financial Federal Savings Bank	Memphis	Tennessee.
First Tennessee Bank National Association	Memphis	Tennessee.
Nashoba Bank	Memphis	Tennessee.
Munford Union Bank	Munford	Tennessee.
Bank of Ripley	Ripley	Tennessee.
First Community Bank of East Tennessee	Rogersville	Tennessee.
The Citizens Bank of East Tennessee	Rogersville	Tennessee.
Hardin County Bank	Savannah	Tennessee.
Bank of Commerce	Trenton	Tennessee.
Wayne County Bank	Waynesboro	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Central National Bank & Trust Company	Attica	Indiana.
Hoosier Hills Credit Union	Bedford	Indiana.
Bloomfield State Bank	Bloomfield	Indiana.
IU Employees Federal Credit Union	Bloomington	Indiana.

Member	City	State
Wayne Bank and Trust Company	Cambridge City	Indiana.
Heritage Community Bank	Columbus	Indiana.
Chiphone Federal Credit Union	Elkhart	Indiana.
Old National Bank in Evansville	Evansville	Indiana.
Fire Police City County Federal Credit Union	Fort Wayne	Indiana.
Midwest American Federal Credit Union	Fort Wayne	Indiana.
Peoples State Bank of Francesville	Francesville	Indiana.
The Friendship State Bank	Friendship	Indiana.
Sand Ridge Bank	Highland	Indiana.
First Bank of Huntingburg	Huntingburg	Indiana.
German American Bank	Jasper	Indiana.
Lafayette Bank and Trust Company	Lafayette	Indiana.
Union County National Bank	Liberty	Indiana.
Lynnville National Bank	Lynnville	Indiana.
Citizens State Bank	New Castle	Indiana.
Union Bank & Trust Company	North Vernon	Indiana.
Notre Dame Federal Credit Union	Notre Dame	Indiana.
State Bank of Oxford	Oxford	Indiana.
First Federal Savings Bank	Rochester	Indiana.
First Source Bank	South Bend	Indiana.
First National Bank of Valparaiso	Valparaiso	Indiana.
CentreBank	Veedersburg	Indiana.
The Merchants Bank & Trust Company	West Harrison	Indiana.
Centier Bank	Whiting	Indiana.
Chemical Bank—Shoreline	Benton Harbor	Michigan.
State Bank of Caledonia	Caledonia	Michigan.
Southern Michigan Bank and Trust	Coldwater	Michigan.
Century Bank and Trust	Coldwater	Michigan.
First State Bank	Decatur	Michigan.
Baybank	Gladstone	Michigan.
Founders Trust Personal Bank	Grand Rapids	Michigan.
West Michigan Community Bank	Hudsonville	Michigan.
Independent Bank	Ionia	Michigan.
The Miners State Bank of Iron River	Iron River	Michigan.
Peninsula Bank of Ishpeming	Ishpeming	Michigan.
The Dart Bank	Mason	Michigan.
Oxford Bank	Oxford	Michigan.
Independent Bank	Rockford	Michigan.
West Shore Bank	Scottville	Michigan.

Federal Home Loan Bank of Chicago—District 7

Midwest Bank of McHenry County	Algonquin	Illinois.
Old Second National Bank of Aurora	Aurora	Illinois.
State Bank of Aviston	Aviston	Illinois.
Beardstown Savings s.b	Beardstown	Illinois.
First Bank, bc	Belvidere	Illinois.
Busey Bank fsb	Bloomington	Illinois.
Great Lakes Bank, National Association	Blue Island	Illinois.
Marine Trust Company	Carthage	Illinois.
Buena Vista National Bank	Chester	Illinois.
Chester National Bank	Chester	Illinois.
The Northern Trust Company	Chicago	Illinois.
Amicus FSB	Cicero	Illinois.
American Savings Bank of Danville	Danville	Illinois.
Republic Bank of Chicago	Darien	Illinois.
The First National Bank of Decatur	Decatur	Illinois.
The First National Bank of Dietrich	Dietrich	Illinois.
East Dubuque Savings Bank	East Dubuque	Illinois.
Citizens Bank of Edinburg	Edinburg	Illinois.
The Bank of Edwardsville	Edwardsville	Illinois.
C.P. Burnett & Sons, Bankers	Eldorado	Illinois.
First State Bank of Eldorado	Eldorado	Illinois.
First Bank & Trust	Evanston	Illinois.
The Fairfield National Bank	Fairfield	Illinois.
Flora Savings Bank	Flora	Illinois.
Marquette Bank Illinois	Galesburg	Illinois.
Glasford State Bank	Glasford	Illinois.
Heritage Community Bank	Glenwood	Illinois.
Golden State Bank	Golden	Illinois.
The Greenup National Bank	Greenup	Illinois.
Clay County State Bank	Louisville	Illinois.
Peoples State Bank	Mansfield	Illinois.
HomeStar Bank	Manteno	Illinois.

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Member	City	State
First FSB of Mascoutah	Mascoutah	Illinois.
First Federal Savings & Loan Association	Mattoon	Illinois.
Morton Community Bank	Morton	Illinois.
Mt. Morris Savings & Loan Association	Mt. Morris	Illinois.
The First National Bank of Mt. Pulaski	Mt. Pulaski	Illinois.
First State Bank of Newman	Newman	Illinois.
Oak Brook Bank	Oak Brook	Illinois.
TrustBank	Olney	Illinois.
First Federal Savings Bank	Ottawa	Illinois.
First Bank and Trust, SB	Paris	Illinois.
Corn Belt Bank & Trust Company	Pittsfield	Illinois.
Bank of Rantoul	Rantoul	Illinois.
The First National Bank & Trust Co. of Rochelle	Rochelle	Illinois.
Northwest Bank of Rockford	Rockford	Illinois.
First Community Bank	Sherrard	Illinois.
South Holland Trust and Savings Bank	South Holland	Illinois.
Independent Bankers' Bank	Springfield	Illinois.
Sterling Federal Bank, F.S.B	Sterling	Illinois.
Streator Home Building & Loan Association	Streator	Illinois.
The First National Bank of Sullivan	Sullivan	Illinois.
Thomson State Bank	Thomson	Illinois.
Tempo Bank, A Federal Savings Bank	Trenton	Illinois.
Heritage Bank of Central Illinois	Trivoli	Illinois.
Capstone Bank	Watseka	Illinois.
Iroquois Federal Savings and Loan Association	Watseka	Illinois.
Bank of Waukegan	Waukegan	Illinois.
Wemple State Bank	Waverly	Illinois.
State Bank of Illinois	West Chicago	Illinois.
Abottsford State Bank	Abbottsford	Wisconsin.
First Banking Center Burlington	Burlington	Wisconsin.
Cambridge State Bank	Cambridge	Wisconsin.
Community Bank of Central Wisconsin	Colby	Wisconsin.
DMB Community Bank	DeForest	Wisconsin.
Charter Bank Eau Claire	Eau Claire	Wisconsin.
Royal Credit Union	Eau Claire	Wisconsin.
Grafton State Bank	Grafton	Wisconsin.
Hartford Savings Bank	Hartford	Wisconsin.
The Bank of Kaukauna	Kaukauna	Wisconsin.
First National Bank in Manitowoc	Manitowoc	Wisconsin.
The Stephenson National Bank & Trust	Marinette	Wisconsin.
Marshfield Savings Bank	Marshfield	Wisconsin.
Mayville Savings Bank	Mayville	Wisconsin.
McFarland State Bank	McFarland	Wisconsin.
North Milwaukee State Bank	Milwaukee	Wisconsin.
Wells Fargo Bank Wisconsin, N.A	Milwaukee	Wisconsin.
Monona State Bank	Monona	Wisconsin.
Oostburg State Bank	Oostburg	Wisconsin.
United Bank	Osseo	Wisconsin.
The Port Washington State Bank	Port Washington	Wisconsin.
Peoples State Bank	Prairie du Chien	Wisconsin.
F & M Bank—Wisconsin	Pulaski	Wisconsin.
Community First Bank	Rosholt	Wisconsin.
The First National Bank of Stoughton	Stoughton	Wisconsin.
Stratford State Bank	Stratford	Wisconsin.
Bank of Turtle Lake	Turtle Lake	Wisconsin.
First National Bank	Waupaca	Wisconsin.
Peoples State Bank	Wausau	Wisconsin.
State Bank of Withee	Withee	Wisconsin.
Citizens State Bank	Woodville	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

The First National Bank of Akron	Akron	Iowa.
Farmers State Bank	Algona	Iowa.
Iowa State Bank	Algona	Iowa.
Rolling Hills Bank & Trust	Atlantic	Iowa.
Benton County State Bank	Blairstown	Iowa.
First State Bank	Britt	Iowa.
Poweshiek County Savings Bank	Brooklyn	Iowa.
Tri-County Bank and Trust	Cascade	Iowa.
Center Point Bank and Trust Company	Center Point	Iowa.
Clinton National Bank	Clinton	Iowa.
Northwest Bank and Trust Company	Davenport	Iowa.
Bankers Trust Company, N.A	Des Moines	Iowa.

Member	City	State
First Central State Bank	DeWitt	Iowa.
American Trust & Savings Bank	Dubuque	Iowa.
First Security State Bank	Evansdale	Iowa.
Manufacturers Bank & Trust Company	Forest City	Iowa.
Garnavillo Savings Bank	Garnavillo	Iowa.
Hancock County Bank & Trust	Garner	Iowa.
Heritage Bank, N.A	Holstein	Iowa
United Bank of Iowa	Ida Grove	Iowa.
Iowa State Bank & Trust Company	Iowa City	Iowa.
University of Iowa Community Credit Union	Iowa City	Iowa.
Community Choice Credit Union	Johnston	Iowa.
Le Mars Bank & Trust Company	Le Mars	Iowa.
First Community National Bank	Lenox	Iowa.
Luana Savings Bank	Luana	Iowa.
Central State Bank	Muscatine	Iowa.
Bank Iowa	Oskaloosa	Iowa.
Mahaska State Bank	Oskaloosa	Iowa.
Central Valley Bank	Ottumwa	Iowa.
Farmers State Bank	Schleswig	Iowa.
Pioneer Bank	Sergeant Bluff	Iowa.
Iowa State Bank	Sheldon	Iowa.
Bank Iowa	Shenandoah	Iowa.
The Commercial Trust & Savings Bank	Storm Lake	Iowa.
First State Bank	Stuart	Iowa.
American Savings Bank	Tripoli	Iowa.
West Des Moines State Bank	West Des Moines	Iowa.
Farmers Trust & Savings Bank	Williamsburg	Iowa.
Security State Bank of Aitkin, Inc	Aitkin	Minnesota.
Americana National Bank	Albert Lea	Minnesota.
First Federal Bank	Bemidji	Minnesota.
Security Bank USA	Bemidji	Minnesota.
Excel Bank	Edina	Minnesota.
First National Bank of Elk River	Elk River	Minnesota.
First State Bank of Emmons	Emmons	Minnesota.
Security State Bank of Fergus Falls	Fergus Falls	Minnesota.
First State Bank of Finlayson, Inc	Finlayson	Minnesota.
First National Bank	Hawley	Minnesota.
Stearns Bank Holdingford, N.A	Holdingford	Minnesota.
American Bank Lake City	Lake City	Minnesota.
Farmers State Bank of Madelia, Inc	Madelia	Minnesota.
Security State Bank of Mankato	Mankato	Minnesota.
Pioneer Bank	Mapleton	Minnesota.
State Bank of McGregor	McGregor	Minnesota.
Signal Bank N.A	Mendota Heights	Minnesota.
Marquette Capital Bank, N.A	Minneapolis	Minnesota.
Kanabec State Bank	Mora	Minnesota.
Alliance Bank	New Ulm	Minnesota.
Farmers and Merchants State Bank of New York Mills, Inc	New York Mills	Minnesota.
Valley Bank	North Mankato	Minnesota.
HomeTown Bank	Redwood Falls	Minnesota.
Eastwood Bank	Rochester	Minnesota.
First National Bank of the North	Sandstone	Minnesota.
First National Bank of Sauk Centre	Sauk Centre	Minnesota.
Stearns Bank, N.A	St. Cloud	Minnesota.
The Midway National Bank of St. Paul	St. Paul	Minnesota.
The Lake Bank, N.A	Two Harbors	Minnesota.
Stearns Bank Upsala, N.A	Upsala	Minnesota.
Mid-Central Federal Savings Bank	Wadena	Minnesota.
First National Bank of Waseca	Waseca	Minnesota.
Bank 10	Belton	Missouri.
Farmers State Bank	Cameron	Missouri.
Hometown Bank, N.A	Carthage	Missouri.
First State Bank & Trust Company, Inc	Caruthersville	Missouri.
Citizens Bank & Trust	Chillicothe	Missouri.
First National Bank of Clinton	Clinton	Missouri.
Community Bank of Excelsior Springs	Excelsior Springs	Missouri.
Hume Bank	Hume	Missouri.
Home Savings Bank	Jefferson City	Missouri.
First State Bank of Joplin	Joplin	Missouri.
Bank of Lee's Summit	Lee's Summit	Missouri.
The Farmers Bank of Lincoln	Lincoln	Missouri.
First National Bank of Mt. Vernon	Mt. Vernon	Missouri.
Community Bank and Trust	Neosho	Missouri.
Citizens Bank	New Haven	Missouri.

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Member	City	State
Bank Star	Pacific	Missouri.
The Paris National Bank	Paris	Missouri.
Bank of the LeadBelt	Park Hills	Missouri.
Unico Bank	Potosi	Missouri.
Phelps County Bank	Rolla	Missouri.
Systematic Savings and Loan Association	Springfield	Missouri.
Farmers and Merchants Bank	St. Clair	Missouri.
Allegiant Bank	St. Louis	Missouri.
Heartland Bank	St. Louis	Missouri.
Osage Valley Bank	Warsaw	Missouri.
First Security Bank-West	Beulah	North Dakota.
Dakota Western Bank	Bowman	North Dakota.
Western State Bank	Devils Lake	North Dakota.
First State Bank of LaMoure	LaMoure	North Dakota.
Federal Home Loan Bank of Dallas—District 9		
The First National Bank	Ashdown	Arkansas.
Bank of Bentonville	Bentonville	Arkansas.
Citizens Bank	Booneville	Arkansas.
First Bank of South Arkansas	Camden	Arkansas.
Danville State Bank	Danville	Arkansas.
First State Bank of DeQueen	DeQueen	Arkansas.
First Service Bank	Dermott	Arkansas.
Superior Federal Bank	Fort Smith	Arkansas.
Farmers Bank	Hamburg	Arkansas.
Heritage Bank	Jonesboro	Arkansas.
Eagle Bank & Trust Company	Little Rock	Arkansas.
McGehee Bank	McGehee	Arkansas.
First National Bank in Mena	Mena	Arkansas.
Peoples Bank and Trust Company	Mountain Home	Arkansas.
TrustBanc	Mountain Home	Arkansas.
Bank of Paragould	Paragould	Arkansas.
First State Bank of Pineville	Plainview	Arkansas.
Portland Bank	Portland	Arkansas.
Arkansas State Bank	Siloam Springs	Arkansas.
First National Bank Of Wynne	Wynne	Arkansas.
Peoples Bank of Louisiana	Amite	Louisiana.
Caldwell Bank & Trust Company	Columbia	Louisiana.
Tri-Parish Bank	Eunice	Louisiana.
Louisiana Central Bank	Ferriday	Louisiana.
MidSouth National Bank	Lafayette	Louisiana.
Louisiana Delta Bank	Lake Providence	Louisiana.
Resource Bank	Mandeville	Louisiana.
Omni Bank	Metairie	Louisiana.
Gulf Coast Bank & Trust Company	New Orleans	Louisiana.
United Bank and Trust	New Orleans	Louisiana.
First FS&LA of Allen Parish	Oakdale	Louisiana.
St. Landry Homestead Federal Savings Bank	Opelousas	Louisiana.
Community Bank	Raceland	Louisiana.
First American Bank	Vacherie	Louisiana.
First Federal Savings & Loan	Aberdeen	Mississippi.
Farmers and Merchants Bank	Baldwyn	Mississippi.
Copiah Bank, N.A	Hazlehurst	Mississippi.
Planters Bank & Trust Company	Indianola	Mississippi.
First American National Bank	Iuka	Mississippi.
Citizens Bank and Trust Company	Marks	Mississippi.
Pike County National Bank	McComb	Mississippi.
United Mississippi Bank	Natchez	Mississippi.
Mississippi Telco Federal Credit Union	Pearl	Mississippi.
Western Bank	Alamogordo	New Mexico.
Bank of Albuquerque	Albuquerque	New Mexico.
Western Bank	Artesia	New Mexico.
Western Commerce Bank	Carlsbad	New Mexico.
Citizens Bank	Farmington	New Mexico.
Los Alamos National Bank	Los Alamos	New Mexico.
Portales National Bank	Portales	New Mexico.
Citizens Bank, N.A	Abilene	Texas.
Northwest National Bank of Arlington	Arlington	Texas.
First Bank	Azle	Texas.
First National Bank of Baird	Baird	Texas.
Western American National Bank	Bedford	Texas.
Blanco National Bank	Blanco	Texas.
Legend Bank, N.A	Bowie	Texas.

Member	City	State
First State Bank	Bremond	Texas.
First National Bank in Bronte	Bronte	Texas.
First National Bank of Bullard	Bullard	Texas.
First Bank	Burkburnett	Texas.
First Federal Savings Bank	College Station	Texas.
Corsicana National Bank and Trust	Corsicana	Texas.
First Mercantile Bank, N.A	Dallas	Texas.
U.S. Trust Company of Texas, N.A	Dallas	Texas.
The First National Bank of Eagle Lake	Eagle Lake	Texas.
State National Bank	El Paso	Texas.
The First National Bank of Emory	Emory	Texas.
Landmark Bank	Euless	Texas.
Greater South Texas Bank, FSB	Falfurrias	Texas.
Central Bank of Flatonia	Flatonia	Texas.
Pecos County State Bank	Fort Stockton	Texas.
Security State Bank & Trust	Fredericksburg	Texas.
Heritage National Bank	Granbury	Texas.
Preferred Bank	Houston	Texas.
Sterling Bank	Houston	Texas.
Stewart Title Guaranty Company	Houston	Texas.
TIB The Independent BankersBank	Irving	Texas.
State Bank of Texas	Irving	Texas.
The Jacksboro National Bank	Jacksboro	Texas.
Community Bank	Katy	Texas.
Worth National Bank	Lake Worth	Texas.
South Texas National Bank	Laredo	Texas.
NBC Bank, Laredo, NA	Laredo	Texas.
Huntington State Bank	Lufkin	Texas.
Bank of Commerce	McLean	Texas.
USAA Federal Savings Bank	San Antonio	Texas.
Sanderson State Bank	Sanderson	Texas.
First Bank of Snook	Snook	Texas.
City National Bank of Taylor	Taylor	Texas.
First National Bank of Trenton	Trenton	Texas.
Claritybank.com	Uvalde	Texas.
Van Horn State Bank	Van Horn	Texas.
Central National Bank	Waco	Texas.
Wallis State Bank	Wallis	Texas.
Federal Home Loan Bank of Topeka—District 10		
FirstBank North	Arvada	Colorado.
Colonial Bank	Aurora	Colorado.
FirstBank of Boulder	Boulder	Colorado.
FirstBank of Breckenridge	Breckenridge	Colorado.
American Business Bank	Denver	Colorado.
First Community Industrial Bank	Denver	Colorado.
Centennial Bank of the West	Eaton	Colorado.
Farmers Bank	Eaton	Colorado.
First National Bank of Estes Park	Estes Park	Colorado.
FirstBank of Northern Colorado	Fort Collins	Colorado.
First National Bank—Colorado	Fowler	Colorado.
Union Colony Bank	Greeley	Colorado.
FirstBank of Tech Center	Greenwood Village	Colorado.
The Gunnison Bank and Trust Company	Gunnison	Colorado.
Red Rocks Federal Credit Union	Highlands Ranch	Colorado.
First State Bank	Idaho Springs	Colorado.
Valley State Bank	Lamar	Colorado.
FirstBank of Longmont	Longmont	Colorado.
Heritage Bank	Louisville	Colorado.
Equitable Savings & Loan Association	Sterling	Colorado.
State Bank of Wiley	Wiley	Colorado.
American Bank	Baxter Springs	Kansas.
Commercial State Bank	Bonner Springs	Kansas.
The Citizens National Bank	Concordia	Kansas.
First Kansas Bank	Gardner	Kansas.
First National Bank	Goodland	Kansas.
The Morrill & Janes Bank and Trust Company	Hiawatha	Kansas.
Hoisington National Bank	Hoisington	Kansas.
First National Bank of Holcomb	Holcomb	Kansas.
Denison State Bank	Holton	Kansas.
First State Bank & Trust Company	Larned	Kansas.
Lyons Federal Savings	Lyons	Kansas.
Morrill State Bank & Trust Company	Sabetha	Kansas.

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Member	City	State
Sunflower Bank, N.A	Salina	Kansas.
St. Marys State Bank	St. Marys	Kansas.
The First National Bank of Clifton	St. Marys	Kansas.
Emprise Bank	Wichita	Kansas.
First National Bank of Albion	Albion	Nebraska.
Valley Bank and Trust Company	Gering	Nebraska.
Hastings State Bank	Hastings	Nebraska.
Great Western Bank	Omaha	Nebraska.
American National Bank	Omaha	Nebraska.
Security First Bank	Sidney	Nebraska.
Iowa-Nebraska SB	South Sioux City	Nebraska.
Wahoo State Bank	Wahoo	Nebraska.
Citizens Bank & Trust Company	Ardmore	Oklahoma.
Peoples State Bank	Blair	Oklahoma.
Union Bank of Chandler	Chandler	Oklahoma.
The First National Bank of Coweta	Coweta	Oklahoma.
The First National Bank of Davis	Davis	Oklahoma.
Great Plains National Bank	Elk City	Oklahoma.
The Idabel National Bank	Idabel	Oklahoma.
First National Bank	Midwest City	Oklahoma.
All America Bank	Mustang	Oklahoma.
Americrest Bank	Oklahoma City	Oklahoma.
Bridgeview Bank, NA	Oklahoma City	Oklahoma.
Frontier State Bank	Oklahoma City	Oklahoma.
Quail Creek Bank, N.A	Oklahoma City	Oklahoma.
The Community State Bank	Poteau	Oklahoma.
The Exchange Bank	Skiatook	Oklahoma.
First National Bank of Stigler	Stigler	Oklahoma.
Stroud National Bank	Stroud	Oklahoma.
Bank of Oklahoma	Tulsa	Oklahoma.
Tulsa National Bank	Tulsa	Oklahoma.
Waurika National Bank	Waurika	Oklahoma.
Federal Home Loan Bank of San Francisco—District 11		
National Bank of Arizona	Phoenix	Arizona.
First National Bank of Nevada	Scottsdale	Arizona.
Jackson Federal Bank	Brea	California.
Tri Counties Bank	Chico	California.
First Northern Bank of Dixon	Dixon	California.
Cedars Bank	Los Angeles	California.
Manufacturers Bank	Los Angeles	California.
United California Bank	Los Angeles	California.
Kaiperm Federal Credit Union	Oakland	California.
World Savings Bank, FSB	Oakland	California.
Citizens Business Bank	Ontario	California.
Cupertino National Bank & Trust	Palo Alto	California.
Courts & Records Federal Credit Union	Pasadena	California.
Bank of the Sierra	Porterville	California.
American River Bank	Sacramento	California.
Mission Federal Credit Union	San Diego	California.
North Island Federal Credit Union	San Diego	California.
University and State Employees Credit Union	San Diego	California.
America California Bank	San Francisco	California.
First Republic Bank	San Francisco	California.
National American Bank	San Francisco	California.
North Coast Bank	Santa Rosa	California.
First Western Bank	Simi Valley	California.
Union Safe Deposit Bank	Stockton	California.
Kaweah National Bank	Visalia	California.
Federal Home Loan Bank of Seattle—District 12		
Alaska USA Federal Credit Union	Anchorage	Alaska.
Alaska Pacific Bank	Juneau	Alaska.
First Hawaiian Bank	Honolulu	Hawaii.
Hawaii National Bank	Honolulu	Hawaii.
West Oahu Community Federal Credit Union	Kapolei	Hawaii.
Idaho Independent Bank	Hayden Lake	Idaho.
Bank of Idaho	Idaho Falls	Idaho.
Wells Fargo Bank Montana, N.A	Minneapolis	Minnesota.
Flathead Bank of Bigfork	Bigfork	Montana.
Yellowstone Bank	Billings	Montana.
The United States N.B. of Red Lodge	Red Lodge	Montana.

Member	City	State
Valley Bank of Ronan	Ronan	Montana.
Citizens Bank	Corvallis	Oregon.
U-Lane-O Credit Union	Eugene	Oregon.
Oregon Pacific Banking Company	Florence	Oregon.
Southern Oregon Federal Credit Union	Grants Pass	Oregon.
Pacific State Bank	Reedsport	Oregon.
St. Helens Community Federal Credit Union	St. Helens	Oregon.
State Bank of Southern Utah	Cedar City	Utah.
Central Bank	Provo	Utah.
Far West Bank	Provo	Utah.
Liberty Bank	Salt Lake City	Utah.
First Mutual Bank	Bellevue	Washington.
Frontier Bank	Everett	Washington.
City Bank	Lynnwood	Washington.
Redmond National Bank	Redmond	Washington.
Washington School Employees Credit Union	Seattle	Washington.
American West Bank	Spokane	Washington.
Numerica Credit Union	Spokane	Washington.
Washington Trust Bank	Spokane	Washington.
Columbia State Bank	Tacoma	Washington.
Harborstone Credit Union	Tacoma	Washington.
Westside Community Bank	University Place	Washington.
Baker Boyer National Bank	Walla Walla	Washington.
Mid State Bank	Waterville	Washington.
First National Bank of Buffalo	Buffalo	Wyoming.
Wyoming Bank and Trust	Cheyenne	Wyoming.
The Jackson State Bank	Jackson	Wyoming.
First Interstate Bank	Sheridan	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before January 28, 2002, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 eighth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 eighth quarter review cycle must be delivered to the Finance Board on or before the February 28, 2002 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

Dated: December 21, 2001.

Arnold Intrater,

Acting General Counsel.

[FR Doc. 02–153 Filed 1–10–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. John K. Kingsbury and Myra A. Kingsbury, Ponca, Nebraska; and Lovice M. Sprugel, Liberty, Missouri, trustee of Lovice M. Sprugel Trust and John E. Sprugel, Liberty, Missouri, trustee of John E. Sprugel Trust; to acquire voting shares of Kingsbury BDC Financial Services, Inc., Ponca, Nebraska, and thereby indirectly acquire voting shares of The Bank of Dixon County, Ponca, Nebraska.

Board of Governors of the Federal Reserve System, January 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–685 Filed 1–10–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

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proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, Omaha, Nebraska; to acquire 1.54 percent, for a total of 23.03 percent, of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire additional interest in First National Bank of Omaha, Omaha, Nebraska; First National Bank, North Platte, Nebraska; Platte Valley State Bank & Trust Co., Kearney, Nebraska; Fremont National Bank & Trust Co., Fremont, Nebraska; First National Bank & Trust Company, Columbus, Nebraska; First National Bank, Overland Park, Kansas; First National Bank South Dakota, Yankton, South Dakota; First National of Colorado, Inc., Fort Collins, Colorado, First National Bank, Fort Collins, Colorado; Union Colony Bank, Greeley, Colorado; First National Bank of Colorado, Boulder, Colorado; First National of Illinois, Inc., Omaha, Nebraska, and Castle Bank, N.A., DeKalb, Illinois.

Board of Governors of the Federal Reserve System, January 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–686 Filed 1–10–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0282]

Medical Devices: General Principles of Software Validation; Final Guidance for Industry and FDA Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "General Principles of Software Validation." This document provides guidance to medical device manufacturers and FDA staff concerning requirements for validating software used within medical devices, in device production, or in implementing the manufacturer's quality system.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "General Principles of Software Validation" to the Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John F. Murray, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4659.

SUPPLEMENTARY INFORMATION:

I. Background

This final guidance document entitled "General Principles of Software Validation" provides guidance to medical device manufacturers and FDA staff concerning requirements for validating software used within medical devices, in device production, or in implementing the manufacturer's quality system. It replaces the draft guidance that FDA issued for comment on June 9, 1997, and published in the **Federal Register** of July 25, 1997 (62 FR 40099).

We received responses from 36 organizations and individuals, with more than 650 questions, comments, and specific recommendations for changes to the guidance. However, further work on the guidance was interrupted by other high priority activities, including implementation of the Food and Drug Administration Modernization Act of 1997, FDA's response to year 2000 software concerns, and two rounds of implementation of our first medical device performance standard. Because of the delay in issuing this final guidance, we have chosen to summarize our response to the comments received. As with any guidance, we will continue to accept comments and may update this document in the future.

The following summarizes the comments we received, and significant changes we made to the guidance in response to those comments:

A. Intended Scope

From a few of the comments received, it appears that some parties may not have realized the full breadth of the quality system regulation. The software validation requirement in 21 CFR 820.70(i) of the quality system regulation also applies to automated tools used to design medical devices and tools used to develop software. Since the first medical device good manufacturing practice regulation was published in 1978, there has always been an explicit validation requirement for software used in device production or used to implement the quality system. When design controls were introduced into the quality system regulation in 1997, that software validation requirement was extended to software used to design devices, such as computer-aided design and software development tools. FDA clearly addressed this issue at the end of its response to comment 136 in the preamble to the quality system regulation (61 FR 52602 at 52630, October 7, 1996). A copy of the text is included at the end of this section.

Some comments objected to the discussion of validation activities during the predesign "concept" phase of software development, both because the quality system regulation does not apply to research activities, and because there is too little information available at that point to make any validation related activity worthwhile. In response to these concerns, we have removed all reference to validation activities during the "concept" phase.

Other comments noted that the guidance covered more than just validation issues, and suggested changing the title to broaden the scope of the guidance. We acknowledge that the scope of the guidance is somewhat broader than the scope of validation in the strictest definition of that term. However, we have chosen not to change the title of the guidance. Planning, verification, testing, traceability, configuration management, and many other activities discussed in the guidance are important activities that together help to support a final conclusion that software is validated.

Some comments expressed concerns that the guidance might be applied too rigorously by FDA investigators, and some pharmaceutical manufacturers raised questions about how the guidance would be applied to their drug manufacturing operations. The agency's good guidance practices (GGPs) clearly state the role of FDA guidance. Alternative approaches that accomplish full compliance with the quality system regulation are acceptable. While it is clearly intended for medical device manufacturers, the guidance may also be useful to the pharmaceutical industry and other industries regulated by FDA.

Many comments suggested that we move all discussions regarding use of off-the-shelf (OTS) software to the agency's guidance entitled "Off-the-Shelf Software Use in Medical Devices." In response to these comments, specific cross references to that document have been added within the text of this guidance. However, the OTS guidance document deals specifically with premarket submissions for OTS software contained in medical devices. It is not the appropriate guidance for OTS software used in manufacturing and quality systems applications.

B. Flexibility

Numerous comments cited overly restrictive language and lack of sufficient implementation flexibility in the draft guidance. For example, many comments noted that the guidance implies use of a "waterfall" as the preferred life cycle development methodology. Several comments suggested that more discussion was needed regarding "rapid application development" and "component-based methodologies," as well as "build a little/test a little" as an acceptable methodology. Other comments asked for specific examples of available life cycle models that could be used. In response to these comments, and in accordance with our own GGPs, we have carefully rewritten the text to remove any direct or implied use of the words "shall" or "must," except where we describe or reference a regulation. We also have added language to specifically state that incremental development methodologies may be used, and that activities and tasks can be performed in a different order, if called for by the chosen life cycle model. However, for ease of description, we have retained an organization of activities based on "requirements," "design," "coding (or construction)," and "testing." Regardless of the order in which tasks are accomplished, these four categories of activities are common to most life cycle models. We have not included examples of the dozens of life cycle models that are available. To do so could imply agency endorsement of certain life cycle models that are included over those models that are not included. Instead, you are referred to many of the textbooks and other references listed at the end of the guidance, which provide details of many of these life cycle models.

One group of comments objected to any use of the word "all" when describing items to be included in specification documents, noting that "all" is not a quantifiable term. Other comments suggested use of the word "may" rather than "should." On the other hand, a few comments asked for a specific compliance matrix, so that manufacturers would know exactly how to comply with FDA expectations. We have not adopted these suggested changes. We believe that agency guidance should identify and encourage use of approaches known to have been used effectively, while the manufacturer retains the prerogative to choose alternative approaches that are equally effective. Based on variables such as firm size and structure, device risk, project size, and complexity, manufacturers have the flexibility to choose different approaches for different projects, and to select effective approaches that best fit their specific needs.

C. Format

Several comments suggested use of the framework and format in international guidelines such as ISO 9000–3, GAMP, IEEE Software Standards and ISO/IEC 12207. We have drawn information from each of these sources and many other listed references, but unfortunately, there is no single format available. We have rewritten the guidance to address specific suggestions for wording changes and simpler language. Some comments asked for extensive use of charts, analogies, and examples for the concepts presented in the document. While valuable, such an approach could easily triple the size of the guidance. Instead, we suggest referring to any of the extensive list of references included at the end of the guidance for more details on specific implementation approaches.

D. Differences Between Hardware and Software

Regarding the discussion of differences between hardware and software, the comments were somewhat divided. Some comments applauded the agency for recognizing the legitimate differences between hardware engineering and software engineering. Other comments argued that "software is not different" and suggested deletion of all or most of this section, either because it was unnecessary, or because it could be misinterpreted by software developers who lack sufficient engineering discipline. One comment suggested emphasizing the similarities of the engineering discipline needed to build both hardware and software. We have chosen to keep this section because we believe it explains part of the rationale for why software must be thoroughly validated, and why the software development process needs to be carefully controlled and managed. We have also added additional information regarding the impact of mobility of software professionals on the long-term maintenance of software and the need for thorough documentation.

Some comments objected to the discussion of standardization and reuse of software components and asked for more recognition of the trend toward increased use of OTS and component-based development methods. Other comments objected to the statement that "repairs made to correct software defects establish a new design." We have revised the text to address both of these concerns.

E. Principles of Software Validation

We reorganized and rewrote the section regarding "Principles of Software Validation" to address the comments received. For example, we moved the subsection dealing with documenting software "Requirements" to the front of the section to reflect the importance of requirements in the validation process. We clarified language regarding "predetermined" requirements to allow for incremental or evolutionary development of requirements during the development project. However, we have retained the concept that documented requirements should be established prior to formal testing or other verification activities to provide "objective" evidence that those requirements were met.

The subsection previously entitled "Testing" is retitled "Defect Prevention" and is revised to emphasize the importance of preventing software

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defects, as opposed to trying to "test quality into" software.

We have renamed the subsection on "Timing." In response to several comments concerning validation continuing "for the entire life cycle," we have rewritten the text, but have retained the concept. At each stage of the software life cycle, there is information available that can contribute to a conclusion that the software meets user needs and intended uses. Therefore, the validation process does not end when the device is shipped.

We replaced the subsection on "Management" with a new subsection dealing with the "Software Life Cycle."

We have clarified the subsections dealing with "Plans" and "Procedures" to distinguish between plans that define what to do, and procedures that describe how to do it.

The subsection entitled "Partial Validation" is substantially rewritten and retitled "Software Validation After a Change." Many readers misinterpreted the statement that "software cannot be partially validated" and thought we intended all validation testing to be repeated every time any change is made. That is not what we meant. Based on the comments received, we have rewritten the discussion to emphasize the need for regression analysis after a change, followed by an appropriate level of regression testing to reestablish the validation status of the software. We have deleted specific discussion of retrospective validation and reverse engineering of nonvalidated software, but these issues should be covered during the regression analysis.

We have retitled and rewritten the subsection on "Amount of Effort." Now titled "Validation Coverage," it still describes an approach that ties the level of validation and verification effort to the safety risk and complexity of the software.

We revised the subsection on "Independence of Review" to provide greater flexibility and a better explanation of its intent.

The subsection previously entitled "Real World" is now entitled "Flexibility and Responsibility," and reemphasizes that device manufacturers/software developers have a lot of flexibility in how they implement their software validation process, but the device manufacturer is ultimately responsible for the adequacy and effectiveness of the selected approach.

F. Terminology

Some of the most significant comments we received had to do with our basic definition of software validation. In the previous draft guidance, we relied upon technical definitions used by the National Institute of Standards and Technology and by the Institute of Electrical and Electronic Engineers. These technical definitions created some confusion with other definitions in our quality system regulation. Numerous comments objected to our use of "validation" as an umbrella term to cover "design review" and "verification" as well as validation. They stated that both design review and verification are distinctly separable quality concepts and are not a part of validation. In response to these concerns, we have changed the definition of software validation to be more consistent with the quality system regulation and other international quality standards. Our revised definition of software validation is derived directly from the definitions of "validation" and "design validation" in the quality system regulation.

Comments also objected to the title "Typical Validation Tasks" at the end of each subsection in the section V of the guidance and suggested that they are really verification tasks. Other comments objected to possible interpretation of these as mandatory tasks. In response to these comments, we have also added text to explain that there are typical verification and testing tasks that support an overall conclusion that software is validated. Thereafter, when we discuss "Typical Tasks Supporting Validation," we do not try to differentiate between verification tasks versus validation tasks. Instead, we have revised the text to list "Typical Tasks." While we want to avoid any inference that the tasks are mandatory in every case, the guidance makes the point that these are "typical" approaches that are recommended by software engineering standards and textbooks, and widely used by many software engineering professionals.

Several comments noted inconsistencies in terminology from that contained in the quality system regulation, in two software guidances issued by the Office of Device Evaluation, and in the FDA glossary of computerized system and software development terminology. These comments also suggested use of the term "risk analysis" instead of "hazard analysis" throughout the software validation guidance. We have revised the guidance to incorporate the term "risk analysis" throughout. However, we continue to emphasize that while there are many different risks (e.g., economic or time to market), FDA is concerned about safety risk (hazard). At their next revision, we expect to update other software guidance documents and the FDA glossary with consistent definitions of validation, verification, and risk analysis. In addition, we now use the term "user site testing" rather than "installation testing" to describe testing performed at the user site and outside the control of the software manufacturer.

Some comments questioned whether OTS software could be validated because the device manufacturer frequently does not have access to the source code. These comments suggested that OTS software should be "qualified" rather than "validated." However, we believe that the evidence developed by a device manufacturer concerning OTS software is a true validation because it directly supports a conclusion that the software meets user needs and intended uses. Where the source code is not available, it is incumbent upon the device manufacturer to use other means (such as audits, or more extensive black box testing) to infer the structural integrity of the OTS software. This issue is clearly addressed in comment 136 of the preamble to the quality system regulation (61 FR 52602 at 52630).

Other comments from the pharmaceutical industry suggested incorporation of widely understood process validation terminology (i.e., installation qualification (IQ), operational qualification (OQ), and performance qualification (PQ)) to describe software validation. Another comment suggested use of "product performance qualification" rather than "design validation." We have added a section that refers to the various types of qualification, but we have chosen not to adopt "qualification" terminology in explaining software validation requirements. Of course, manufacturers may continue to organize their validation efforts using IQ/OQ/PQ terminology, if they wish.

In response to comments, a new subsection has been added to explain the differences between "requirements," which may be general in nature, versus "specifications," which are developed to an engineering level of detail.

Several comments objected to use of undefined terms such as "microcode" and "assertions." We reiterate that these and many other terms used throughout the guidance are specifically defined in the FDA glossary of computerized system and software development terminology, which is available at http://www.fda.gov/ora/inspect_ref/igs/gloss.html.

G. Design Review

As noted above, design reviews are not a part of validation. In fact, several comments noted that results of verification and validation are inputs to design reviews—not the other way around. To emphasize this point, we moved the subsection on "Design Reviews" outside the section on "Typical Tasks Supporting Validation." We also added information about the difference between formal design reviews that are mandated by the quality system regulation versus less formal technical reviews.

H. Traceability

A few comments objected to the guidance regarding "traceability analysis," especially the discussion at the end of the subsection on "Coding." Two comments noted that for very complex programs with thousands of lines of code or thousands of modules, the traceability analysis would be extremely complex and of little value. One suggested that design review was an adequate substitute for traceability analysis. We disagree. Traceability is an essential aspect of verification, and it is an important input into design reviews. We therefore do not believe that design review could be an adequate substitute for traceability analysis.

One comment stated that requirements are not always neatly structured, and it is very difficult to trace exactly how they are implemented in the design. There are numerous many-to-one and one-to-many relationships to be mapped from requirements to design to code. We agree with this observation; however, it actually further supports the need for traceability. The larger and more complex the project, the more important the traceability analysis becomes. Therefore, we have retained the discussions regarding traceability, and in response to several other comments, we have added traceability of software requirements to the safety risk analysis.

Another comment noted that inherent traceability can be built into documentation and code without having to have a separate traceability document. We agree and for that reason have avoided use of the most commonly used term—"traceability matrix." Three common approaches are traceability matrix, using computer databases to evaluate traceability, or building inherent traceability into the structure of the documentation and code. There may be many other approaches to traceability. Software developers have flexibility in how they want to implement traceability.

I. Risk Analysis

Many comments questioned the concept of a software failure modes and effects analysis (FMEA). They stated that given the difficulty of predicting specific software failure modes, FMEA is better used as a system level risk analysis tool. We have revised the guidance to discuss software risk analysis within the context of system safety. However, while we acknowledge some limitations in its use, we also believe that software FMEA can be a useful tool, especially for safety critical aspects of software applications. It may also be useful early in the development process for analyzing safety critical software requirements.

One comment objected to the suggestion that risk analysis begin at the stage where requirements are defined. However, to be useful and have an impact on the software development process, we believe that risk analysis needs to begin early and needs to be updated as the project progresses. In addition, we have revised various portions of the guidance to emphasize that the level of safety risk is a major factor in determining the level of effort to be applied in testing and other verification and validation tasks.

J. Planning

In response to comments, we have changed the subsection on "Management" to be entitled "Quality Planning." It now provides a more general discussion of the software validation and verification concerns to consider during quality planning.

Several comments questioned the idea of early test planning, which was recommended in the draft guidance. For example, they argued that there is insufficient information available during requirements development to be able to develop a system test plan or an acceptance test plan. We disagree and have retained the recommendations for early test planning, but we have specified that test plans and test cases should be created as early in the software development process "as feasible." One of the important criteria, both for requirements and for design, is that they be testable. The fact that there is insufficient information for a particular test plan is valuable feedback to the development process that perhaps the requirements or design processes are not yet sufficiently complete. Planning is a dynamic activity that should be reexamined and updated as the project progresses.

K. Requirements

Many comments objected to use of the word "all" in describing what is typically specified in software requirements. We agree that requirements frequently do not specify "all" that they should. However, that is widely recognized as one the major flaws in software development, and its correction is one of the most important messages intended by this guidance. In order to be complete, a software requirements specification should cover all the pertinent issues—not just a selected few.

One comment noted that requirements may not always be measurable. We have changed the text to state that requirements should be "measurable or objectively verifiable."

A few comments noted that "internal interfaces" and "all ranges of values the software will accept" are a part of design—not requirements. We agree regarding internal interfaces and have changed the text accordingly. However, since software requirements are derived from system requirements, there may be some internal system interfaces prescribed from the high level system design that would impact software requirements. Regarding "ranges of values," we note that there is rarely a bright line of demarcation between requirements and design. Software developers have flexibility as to where in their life cycle they wish to cover particular issues. We rejected most comments requesting even greater levels of detail and specificity regarding static verification techniques. For example, several comments asked for more detail regarding "requirements evaluation" and "interface analysis." Details on these techniques are available in many of the references listed at the end of the guidance. FDA investigators will expect to see a verification procedure that includes a means for identifying and resolving incomplete, ambiguous, and conflicting requirements, as required by the regulation. They will also expect to see objective documented evidence that the verification procedure was implemented.

L. Design

We have retained wording about the need for design specifications to be complete enough for programmers not to have to make ad hoc decisions. The intent is to ensure that the code created is consistent with the design specification. When programmers or engineers decide to add new functionality not identified previously in the requirements or design, those specifications need to be updated to reflect the actual code created. The project manager, design team, and any future maintainers of the software need

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to have accurate documentation in order to do their work.

We have dropped the listing of specific approaches to software design, and we have included a more general description of what should be included in a software design specification. Some comments considered the previous list to be too prescriptive as well as incomplete.

We recognize that portions of the software are completed and released incrementally, and life cycle processes are repeated iteratively. The intent is that those portions of the software have design documentation that is consistent with the software application that is implemented. One comment noted that in a rapid application development (RAD) environment, there is typically no formal design document in place during coding. We recognize that RAD is valuable as a prototyping tool, but its use does not preclude the need to document the specific design, once it is agreed upon.

M. Coding

We have changed the title of this subsection to reflect that the creation of a software application can be either through coding, or through combining existing software components, such as OTS software products or functional components from existing code libraries.

Comments objected to the idea of having to keep results of all compilations of the code. In response, we have revised the discussion of compiler error checking to state that the results of the "final" compilation of the code should be retained to document any errors that remain uncorrected in the final software product.

N. Testing by the Software Developer

We renamed and revised this subsection to provide a better explanation of the purpose of testing, and to avoid prescriptive language concerning use of specific testing techniques. We have added language regarding use of incremental development and testing methodologies. We expanded the discussion of testing coverage to explain how different degrees of coverage should be considered for varying levels of risk, and that the manufacturer has flexibility to choose the right level of coverage.

One comment noted that the intent of testing is to find errors, and suggested a better explanation of this and other tenets of a software testing strategy. We have added such an explanation.

Other comments argued that statistical testing based on usage profiles is more effective than extensive structural testing in finding software defects. We agree that statistical testing is one of many valuable testing methodologies, and we have added information about its use. However, it is important to note that statistical testing is an adjunctive approach, rather than an outright replacement for other types of testing.

O. User Site Testing

Based on several comments, we have renamed the subsection formerly entitled "Installation Testing" and moved it into the section on life cycle activities. User site testing can be any one of several types of testing performed by the user or by others at the user site. System level testing performed by the software developer under conditions that simulate the user's environment is an important part of validation for some products, and it may substitute for some aspects of user site testing. However, for certain products such as blood establishment software, there are specific FDA requirements for additional testing to be performed at the user site. For manufacturing and quality system software, user site testing is frequently performed by the device manufacturer.

P. Maintenance and Software Changes

Several comments objected to the statement that "all modifications are design changes," noting that some changes, such as a correction of coding errors, do not change the intended design. We have made appropriate changes to the text. However, we continue to emphasize that the validation of all software changes needs to include a regression analysis and, as appropriate, regression testing to show that the change has not negatively impacted the software.

In response to other comments, we have added information regarding anomaly evaluation, problem identification and resolution tracking, and the need to update documentation.

Q. Process and Quality System Software

We have added a new section to the document dealing with validation of automated process equipment and quality system software. This change was in response to the many comments that raised issues and asked for more detailed information about validating such software, especially OTS automated equipment and OTS software.

Many comments discussed the difficulties encountered in trying to validate OTS software, and suggested a different approach for validation of manufacturing and quality system software. Source code and life cycle documentation are frequently unavailable for review, so structural testing is usually not possible. Auditing the vendor's software development activities is one possibility, but some software vendors will not agree to being audited. One comment suggested that risk analysis, design, coding, and unit testing should not apply to quality system software, especially if it is purchased, and further suggested that functional testing is the most that can be expected. Several comments suggested that for widely used applications, there can be a reasonable assumption that the vendor validated the software at the time it was developed, and that installation qualification by the user should be sufficient. Many of these issues are addressed in the response to comment 136 in the preamble of the quality system regulation (61 FR 52602 at 52630).

It is not the agency's intent to discourage use of OTS computer products. The activities described in the guidance can be shared between the vendor and device manufacturer (the user). However, we believe that the principles and activities described in the guidance are important for an overall conclusion that software is validated for its intended use. Device manufacturers are required to have purchasing controls for the products and services they receive. Such controls are an important part of decision making regarding OTS software. Our experience is that "assumptions" regarding validation by the vendor are not always well founded. Each OTS software product needs to be individually evaluated based on the intended use of the software, available life cycle documentation, available verification and validation evidence, and most importantly the device safety risk posed by the automated process. Device manufacturers can use multiple sources of information, but are ultimately responsible for documenting the basis for their conclusion that the software is validated for its intended use.

Several comments suggested alternative approaches for certain types of software, such as operating systems and certain tools used in software development, such as compilers and robust "middleware" such as Oracle, Documentum, or Lotus Notes. We have added suggestions for alternative approaches, while still retaining the basic requirement that the software must be validated for its intended use.

A few comments questioned who is responsible for validation of OTS software. One questioned FDA's authority to regulate software vendors, but argued that device manufacturers cannot be responsible because they lack access to source code and life cycle documentation. Another noted that vendors frequently change their hardware and software, resulting in unreasonable FDA expectations for revalidation of each change. One comment asked for more details regarding the impact of the supplier's quality system on purchasing decisions. In response to these comments, we reaffirm that FDA holds the device manufacturer responsible for the software validation requirement. This responsibility can be further delegated in part through contracting and purchasing controls, and monitored through supplier audits or other means, but the device manufacturer is ultimately responsible for its decision to choose a particular software product. The fact that a vendor refuses to provide access to its development process or documentation does not relieve the device manufacturer of this responsibility. Likewise, we note that the device manufacturer is not obligated to install every software upgrade offered by a vendor. Validation of those upgrades and support from the vendor, including access to the necessary vendor documentation, need to play an important role in the upgrade decision.

Some comments argued that software validation should be treated more like process validation, which is only required if the output of the process cannot be fully verified by subsequent inspection and testing. Other comments asked for clarification of the term "verification by output" and asked whether it negated the requirement for software validation. One comment argued that output of software driven systems can never be fully verified. Another comment suggested the consideration of intended use and dependence upon software for proper operation of the process to determine whether verification could be substituted for software validation.

In response to these comments, we believe there are very few examples where "verification" in lieu of software validation could be justified, and even in those cases, most manufacturers would choose to validate the software rather than go through repeated verifications of output. For example, while every aspect of a drawing from a computer-aided design (CAD) system can be independently verified, no user of a CAD system is likely to go to that trouble or expense for every aspect of every drawing. Likewise, because software itself cannot be fully verified, automated software development tools used to create medical device software must be validated for their intended use.

Requirements are needed to establish intended use, the degree of dependence on the software, and therefore the degree of validation needed. The device manufacturer decides whether or not to use OTS software. The ability to validate for intended use and vendor support for the effort should be a part of that decision. Static analysis and structural testing are techniques to be used in evaluating source code and life cycle documentation, when these items are available. Otherwise, the device manufacturer is dependent upon functional testing alone. This issue is discussed in response to comment 136 in the preamble to the quality system regulation (61 FR 52602 at 52630). The impact on the safety and quality of the medical device is an important determining factor in the approach and level of effort to be applied for validating automated manufacturing and quality system software, just as it is for software in a medical device.

R. References

There were numerous recommendations for additional references. Those and many other reference books, international standards, and FDA guidance documents have been added to the appendix at the end of the validation guidance.

For ease of cross reference, the text of comment 136 from the preamble of the quality system regulation is included below:

136. One comment on § 820.70(h), "Automated processes," (now § 820.70(i)), stated that the section should be revised to reflect that software used in such systems must be validated for "its intended use," not simply validated. Another comment stated that most companies buy software currently available on the market and do not make changes to the software. It was recommended that § 820.70(h) allow for use of outside personnel for validation runs and not necessarily require the development of a software validation procedure. One comment suggested that the section should allow verification rather than validation of off-the-shelf software. Several comments on "automated processes'" stated that the term "data processing systems" was unclear and its inclusion rendered the requirement too broad. Others asked for clarification of "automated data processing systems."

FDA has modified the requirement to mandate validation for the intended use of the software. In addition, the requirement that the software be validated by individuals designated by the manufacturer has also been deleted to make clear that validation may be performed by those other than the manufacturer. However, whether the manufacturer designates its own personnel or relies on outside assistance to validate software, there must be an established procedure to ensure validation is carried out properly.

FDA has maintained the requirement for validation because the agency believes that it is necessary that software be validated to the extent possible to adequately ensure performance. Where source code and design specifications cannot be obtained, "black box testing" must be performed to confirm that the software meets the user's needs and its intended uses.

FDA emphasizes that manufacturers are responsible for the adequacy of the software used in their devices, and activities used to produce devices. When manufacturers purchase "off-the-shelf" software, they must ensure that it will perform as intended in its chosen application.

FDA has amended the requirement to state "When computers or automated data processing systems are used as part of production or the quality system," for clarification. Software used in production or the quality system, whether it be in the designing, manufacturing, distributing, or tracing, must be validated.

II. Significance of Guidance

This guidance document represents the agency's current thinking on software validation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

The agency has adopted GGPs, and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115). This guidance document is issued as a level 1 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive "General Principles of Software Validation" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (938) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers'

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addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available on the Dockets Management Branch Internet site at http:/www.fda.gov/ohrms/dockets/default.htm.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this guidance at any time. Submit two copies of any comments,except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 11, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–690 Filed 1–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Expression, Purification and Efficacy Testing of Synthetic Plasmodium Falciparum Apical Membrane Antigen 1 Expressed in Pichia Pastoris

Stowers et al. (NIAID)
DHHS Reference No. E–025–02/0 filed 09 Nov 2001
Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov.*

A challenge facing the biotechnology industry involves finding robust systems for the expression of large amounts of recombinant protein. Extra technological hurdles are faced when these proteins are required for therapeutic usages.

Malaria remains one of the leading causes of both morbidity and mortality in the tropical and sub-tropical world. Currently, there is no malaria vaccine. This invention relates to both of these issues.

Two recombinant forms of the malaria asexual blood stage antigen Apical Membrane Antigen 1 (AMA1) were produced in Pichia pastoris using totally defined, synthetic medias and a fermentation methodology that has been reproducibly scaled over a 10-fold range to 60L. High levels of secreted recombinant protein were obtained (300mg/L secreted protein in the supernatant, and >50mg/L final purified bulk protein), and a purification strategy developed to remove Host cell-derived lipids. Highly purified forms of both types of AMA1 produced appear to produce antibodies in vivo in rabbits that block homologous parasites from invading red blood cells in vitro. The combination of the two allelic forms made appears potent at inducing antibodies capable of blocking the invasion of many heterologous parasite strains in vitro, suggesting that the combination of these two alleles of AMA1 will provide sufficient coverage from the diverse field populations of parasites. One of the two AMA1's, based on the FVO allelic variant of AMA1, was emulsified with complete and incomplete Freund's adjuvant.

Vaccination of highly susceptible Aotus vociferans monkeys with this formulation conferred significant protection from a subsequent lethal challenge with the virulent FVO Plasmodium falciparum parasite. Five of eight animals whose primary immune response was directed against AMA1 were completely protected. These two recombinant form of AMA1 may be an effective malaria vaccine. The production and purification methodologies may be suitable to other therapeutic proteins where large-scale, inexpensive production methodologies are required.

Two cDNA Clones of Hepatitis E Virus (HEV) That Are Infectious for Primates and Encode a Virulent and an Attenuated Virus Respectively

Suzanne U. Emerson, Robert H. Purcell, Mingdong Zhang, and Xiang-Jin Meng (NIAID)
DHHS Reference No. E–278–01/0 filed 09 Nov 2001
Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov*

Hepatitis E virus (HEV) is a human pathogen that is the most important cause of acute hepatitis in areas where the virus in endemic (Southeast and Central Asia, and parts of Africa). This invention relates to transcripts from the two cDNA clones that produced virus following intrahepatic transfection of chimpanzees. The virus encoded by cDNA with the consensus sequence of the wild-type Sar 55 Pakistani strain of HEV caused liver enzyme elevations (i.e. acute hepatitis) in the chimpanzee and resulted in seroconversion to anti-HEV at five weeks following inoculation. The second cDNA differed from the first by a two nucleotides, one of which was located in the coding region. The nucleotide at this position and the 18–20 nucleotides surrounding it are highly conserved in all strains sequenced thus far. Two chimpanzees inoculated with transcripts from this clone seroconverted to anti-HEV but seroconversion was delayed until week 14 and liver enzyme levels did not rise, indicating the virus was attenuated. Viral sequences could be recovered from the serum of only one chimp and at only one time point by reverse-transcription polymerase chain reaction, indicating viral replication was inefficient. An attenuated vaccine would be more cost effective than a recombinant protein vaccine.

Suppression of CCR5 but Not CXCR4-Tropic HIV–1 Replication in Lymphoid Tissue by Human Herpes Virus 6

Margolis et al. (NICHD)
DHHS Reference No. E–089–01/0 filed 28 Mar 2001
Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: *salatac@od.nih.gov.*

HIV–1 infects cells via a receptor complex formed by CD4 and a coreceptor, such as CCR5 or CXCR4. The early stages of HIV–1 infection are dominated by CCR5-tropic viral variants. CXCR4-tropic variants frequently emerge at later stages followed by a rapid decline in CD4+ T cells and progression to AIDS.

This invention describes the mechanism of the coreceptor switch from CCR5 to CXCR4 as HIV infection progresses. The study of the interaction between human herpes virus 6 (HHV–6) and HIV has shed light on this coreceptor switch. The inventors observed that HHV–6 affects HIV replication by suppressing CCR5-tropic but not CXCR4-tropic HIV–1. The inventors demonstrate that HHV–6 upregulates the production of RANTES, a CC chemokine that is known to inhibit infection by CCR5-tropic HIV–1. RANTES interferes with the interaction of the CCR5-tropic HIV–1 thereby allowing the CXCR4-tropic HIV–1 variants to emerge.

This observation may lead to new HIV–1 therapies and vaccines. For example, an attenuated HHV–6 or the use of other compounds to stimulate RANTES production could be used as an HIV vaccine while a drug effective against HHV–6 could be used as an HIV therapeutic. Once HHV–6 is eradicated from the body or rendered nonfunctional the conversion from CCR5-tropic HIV–1 to CXCR4-tropic HIV–1 cannot take place.

Human Papilloma Virus Immunoreactive Peptides

Samir N. Khleif , David Contois, and Jay Berzofsky (NCI)
DHHS Reference No. E–126–01/0 filed 23 Mar 2001
Licensing Contact: Sally Hu; 301/496–7056 ext. 265; *e-mail: hus@od.nih.gov.*

This invention provides immunogenic peptides from the HPV–18E6 protein that comprise class I restricted T cell epitopes and discloses methods of administering these peptides to individuals, and a method for monitoring or evaluating an immune response to HPV with these peptides. The HPV–18E6 peptide cross-reacts immunologically with both HPV type 16 and HPV type 18. HPV 16 and HPV 18 are the most common HPV types involved in cervical cancer, which is the second most common cause of cancer deaths in women worldwide. This invention demonstrates that the HPV–18E6 peptide has a higher affinity for the most common human lymphocyte antigen (HLA), HLA–A2 than the homologous peptide from HPV 16. Thus, this invention provides a potential prophylactic or therapeutic vaccine against cervical cancer caused by HPV16 and 18, and a targeted therapy for cervical cancer and other diseases that are caused by HPV including other genital cancers, head and neck cancers, and upper digestive tract cancers. It could also be potentially used in the treatment of patients presenting with pre-malignant cervical disease, especially in underdeveloped countries with no access to surgical treatment or to completely avoid surgical treatment.

Parallel Measurements of Multiple Macromolecules Using a Cryoarray

Robert Star (NIDDK), Takehiko Miyaji (NIDDK), Stephen Hewitt (NCI), and Lance Liotta (NCI)
DHHS Reference No. E–064–01/0 filed 31 Aug 2001
Licensing Contact: Cristina Thalhammer-Reyero; 301/496–7056 ext. 263; e-mail: *ThalhamC@od.nih.gov.*

Available for license is a new improved technique for the creation of biological arrays of 25–100 biological samples per slide, for use in parallel molecular screening in medical research and clinical diagnostics. Recent advances in genomics, including serial analysis of gene expression, and DNA microarrays have allowed researchers to perform high throughput analysis of gene expression. These experiments generate large amounts of information that must be validated independently, one gene at a time. In particular, there is an increasing demand for protein arrays in order to measure changes in protein expression or post-translational modification of proteins. Current techniques to create protein arrays are deficient because the proteins stick to the arraying pins, and array fabrication at room temperature may destroy the protein structure and function. The CryoArray technology, based on the creation of the arrays at subzero temperature, preserves the stability and functionality of the biological samples, including proteins, and is flexible with respect to the molecular probes it can accommodate. Wells made in a frozen block of embedding material are filled with biological samples, which freeze and bond to the surrounding block. The loaded block is cut in a cryostat to produce up to 800 replicate 4–10 microns thin sections. The samples can include DNA, RNA, and proteins such as antibodies or receptors. Recombinant or native tissue proteins are detected using antibodies; however, the system can be extended for other types of biological assays.

The ability to make multiple (i.e., up to 800) cryosections from one cryoblock enables parallel analysis of many identical arrays. Unlike other proteomic techniques, cryoarrays are easy to use, economical, efficiently use samples with little waste, require only a small volume of sample, and are protein friendly because samples are kept frozen during production. The cryoarray method allows small laboratories without access to expensive arraying equipment to produce many identical arrays with moderate numbers of precious samples. Proteins can be detected in their native configuration, without SDS or formalin. Cryoarrays may be useful for screening small samples of precious biological fluids or tissues for new biomarkers or for rapid screening of monoclonal antibodies. It may be possible to use cryoarrays to also measure protein function and protein-protein interactions.

Method for Non-Invasive Identification of Individuals at Risk for Diabetes

Anthony J. Durkin, Marwood N. Ediger, Michelle V. Chenault (FDA)
DHHS Reference No. E–091–98/2 filed 17 May 2001
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*

The invention is a non-invasive technique for the detection of ocular pathologies, including molecular changes associated with diabetes. Raman spectra emitted from an eye that is subject to a laser probe provides information regarding early markers of diabetes or diabetes-induced ocular pathologies. The invention compares spectra taken from the subject under study to spectra from a normal subject. Multivariate statistical methods are used to obtain predictive information based on the detected spectra, and to diagnose or predict the onset or stage of progression of diabetes-induced ocular pathology.

Dated: January 4, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–744 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

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as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Signal Transduction in Oscogenesis.

Date: January 11, 2002.

Time: 10:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Blvd., Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Virginia P. Wray, PhD, Scientific Review Administrator, National Cancer Institute, DEA GRB, 6116 Executive Boulevard, Room 8125, Rockville, MD 20895–7405, 301–496–9236, *vw8z@nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–746 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: February 14, 2002.

Closed: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Open: 1:15 p.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, 301–496–9110.

Information is also available on the Institute's/Center's homepage: *www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–753 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 11–12, 2002.

Open: February 11, 2002, 8:30 AM to 1 PM.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: February 11, 2002, 1 PM to Adjournment on 02/12/2002.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elke Jordan, PhD, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS, DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 7, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–754 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology and Infectious Diseases Research Committee.

Date: February 6–8, 2002.

Open: February 6, 2002, 9 AM to 10 AM.

Agenda: Report on Division activities.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Closed: February 6, 2002, 10 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–745 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: February 14, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: L Tony Beck, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003, 301–443–0913, lbeck@mail.nih.gov

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Health Services Research Review Subcommittee.

Date: February 14, 2002.

Time: 12 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Clinical and Treatment Subcommittee–

Date: February 28-March 1, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Elsie Taylor, MS, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.272, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–747 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: January 24, 2002.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *yli@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–748 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available.

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Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: January 29–31, 2002.

Open: January 29, 2002, 2:00 PM to 2:30 PM.

Agenda: Report on Division activities.

Place: Best Western, Monterey Beach Hotel, 2600 Sand Dunes Drive, Monterey, CA 93940.

Closed: January 29, 2002, 2:30 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Best Western, Monterey Beach Hotel, 2600 Sand Dunes Drive, Monterey, CA 93940.

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2223, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–749 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 31–February 1, 2002.

Open: January 31, 2002, 8:30 AM to 5 PM.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 1, 2002, 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, PhD, Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350, (301) 594–2463.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–750 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 28, 2002.

Open: 8:30 a.m. to 11 a.m.

Agenda: Director's Report, Budget Report.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director, National Institute of Dental and Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *www.nidcr.nih.gov/discover/nadrc/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–751 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training Subcommittee.

Date: February 13, 2002.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

Date: February 14, 2002.

Time: 8 a.m. to 10 a.m.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: 31 Center Drive, Building 31, Room 8A52, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–752 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: February 14, 2002.

Open: 8 AM to 8:30 AM.

Agenda: To discuss clinical trials policy.

Place: 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Closed: 8:30 AM to 10 AM.

Agenda: To review and evaluate grant applications.

Place: 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PHD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 14–15, 2002.

Open: February 14, 2001, 10:30 AM to 4:30 PM.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 14, 2002, 4:30 PM to 5:30 PM.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 15, 2002, 8:30 AM to 12 PM.

Agenda: To review and evalute grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PHD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 4, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–755 Filed 1–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitably for possible use to assist the homeless.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the*

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Homeless v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 4, 2002.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–565 Filed 1–10–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request permit amendment.

SUMMARY: The following applicant requests a permit amendment to conduct gray wolf (*Canis lupis*) take activities throughout Minnesota. This notice is provided pursuant to section 10(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

DATES: Written comments must be received by February 11, 2002.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Mr. Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612) 713–5343; Fax: (612) 713–5292; e-mail: *peter_fasbender@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION: The gray wolf is listed as an endangered species throughout the conterminous United States and Mexico, except in Minnesota where it is classified as a threatened species, and in three areas of the western United States where experimental populations have been designated under separate regulations. In areas where the gray wolf is listed as endangered, 50 CFR 17.21(c)(2) allows them to be taken by a person "in defense of his own life or the lives of others." Furthermore, § 17.21(c)(3)(iv) allows any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes to "remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area." 50 CFR 17.31 applies the provisions of § 17.21(c)(2) and (c)(3) to threatened wildlife, except in cases where a special rule developed under section 4(d) of the Act applies to a threatened species.

50 CFR 17.40 (d) contains the special rules for wolves in Minnesota and allows designated persons to take gray wolves in Wolf Management Zones 2–5 in response to depredations upon domestic animals. Although all the other provisions of § 17.21(c)(2) and (c)(3), including the provision that allows gray wolves to be taken in defense of human life, are carried over into § 17.40(d), the provision allowing the Service, or its designees, to "remove specimens which constitute a demonstrable but nonimmediate threat to human safety" is absent from this section.

Due to increasing populations of the gray wolf in Minnesota, there are concerns over human and wolf interactions and the potential threat gray wolves pose to human safety. This concern is especially great where wolves increasingly have become habituated to humans, are frequently encountered around residential buildings, have become difficult to scare away, and may have learned to associate humans with the availability of food.

Under the current regulations discussed above there is no clear provision allowing take of a threatened Minnesota wolf that is a demonstrable but nonimmediate threat to human safety. However, the regulations noted above for endangered wildlife specifically allow the taking, by either lethal or non-lethal means, of endangered wolves in all states adjacent to Minnesota if an identical threat to human safety occurs. The Service believes it is reasonable and logical to be able to provide relief in similar situations in Minnesota where wolves are much more numerous than in adjacent states. The gray wolf was reclassified from endangered to threatened in 1978 in Minnesota.

Because current regulations do not provide clear authority to carry out such activities without a permit, the Applicant is pursuing authorization to conduct such take activities via an amendment to the Endangered and Threatened Species Permit issued to the Assistant Regional Director, Ecological Services, Ft. Snelling, Minnesota. The applicant requests an amendment to allow the take (trapping, removing, humanely euthanizing, and/or relocating) of gray wolves throughout Minnesota in accordance with 50 CFR 17.32, if the wolf or wolves are determined to constitute a demonstrable but nonimmediate threat to human safety.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Mr. Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612) 713–5343; Fax: (612) 713–5292; e-mail: *peter_fasbender@fws.gov*.

Dated: December 28, 2001.

Marvin E. Moriarty,

Acting Regional Director, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–684 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

PRT–049772

Applicant: Henry Doorly Zoo, Omaha, Nebraska

The applicant requests a permit to import three female and three male Parma wallabies (*Macropus parma*) from a non-native population on an island in New Zealand, where it is considered to be a pest species, for the purpose of enhancement of the survival of the species.

PRT–051207

Applicant: Gail A. Sanders, Prescott, WI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–051210

Applicant: Donald G. Sebesta, Othello, WA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–051213

Applicant: Thomas L. Martinetto, Shorewood, MN

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–045459

Applicant: Center for Environmental Research and Conservation, Columbia Univ., New York, NY

The applicant requests a permit to import biological tissue samples from Javan rhinoceros (*Rhinoceros sondaicus*), great Indian one-horned rhinoceros (*Rhinoceros unicornis*) and Sumatran rhinoceros (*Dicerorhinus sumatrensis*) from several countries in Asia for the purpose of scientific research on genetic markers for use in population analysis to enhance the survival of the species. This notification covers activities conducted by the applicant over a five-year period.

Marine Mammals and Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and the regulations governing marine mammals (50 CFR part 18) and endangered species (50 CFR part 17).

PRT–049136

Applicant: Xavier University, Cincinnati, OH

Permit Type: Take for Scientific Research.

Name and Number of Animals: West Indian Manatee, *Trichechus manatus*, 2.

Summary of Activity To Be Authorized: The applicant requests a permit to conduct research associated with sound recognition on one captive-held animal and one captive-born animal, currently housed at the Cincinnati Zoo, Cincinnati, for the purpose of scientific research.

Source of Marine Mammals: Captive held and captive born.

Period of Activity: Up to 5 years if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

PRT–051276

Applicant: Trevor Davis, Rye, NY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal use.

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: December 21, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–706 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

PRT–051416

Applicant: James L. Baker, Wichita, KS

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

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PRT–051421

Applicant: Ronald L. Nunnery, Fairfax Station, VA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–051423

Applicant: Jo Dean Peters, Graham, WA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–037810

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to re-export and re-import Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: December 28, 2001.

Michael S. Moore,

Senior Permit Biologist; Branch of Permits, Division of Management Authority.

[FR Doc. 02–707 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mission View Estates Habitat Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Kennedy Development of California, LLC has applied to Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed 10-year permit would authorize incidental take of the federally threatened coastal California gnatcatcher (*Polioptila californica californica*) in connection with the construction of the 65-unit Mission View Estates residential development on 28.9 acres in the City of Oceanside, San Diego County, California. The permit application includes a Habitat Conservation Plan (HCP) and an Implementation Agreement that serves as a legal contract. The Service has prepared an Environmental Assessment for our proposed action of issuing a permit to Kennedy Development. These documents are available for public review and comment.

DATES: We must receive your written comments on or before March 12, 2002.

ADDRESSES: Send comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may submit comments by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Stuckrath, Fish and Wildlife Biologist, at the above address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may request copies of the documents by contacting the office above. You may view the documents, by appointment, during normal business hours (8 a.m. to 5 p.m.), Monday through Friday at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies are also available for viewing at two public libraries: Civic Center Library, 330 North Coast Highway, Oceanside, California; or Mission Branch Library, 3861–B Mission Avenue, Oceanside, California.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). "Harm" is defined by regulation to include significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Under certain circumstances, the Service may issue permits to authorize "incidental" take of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 17.32 and 17.22.

Kennedy Development has submitted an application for a 10-year incidental take permit to the Service, proposing the take of coastal California gnatcatchers during the construction of a residential development on the 28.9-acre site. One threatened plant, thread-leaved brodiaea (*Brodiaea filifolia*), would be named on the permit. The taking prohibitions of the Act do not apply to listed plants on private land unless their destruction on private land is in violation of State law. Nevertheless, Kennedy Development has considered the plant in its HCP and requests a permit for this species to the extent that State law applies.

The proposed project is located in the City of Oceanside south of Mission Avenue, at the terminus of Mission Gate Drive. The proposed project consists of: (1) The construction of 65 single-family homes; (2) extension of Mission Gate Drive, and (3) implementation of the HCP over a 10-year period. The HCP would establish and provide for management of a 7.88-acre conservation area on the project site, containing 4.24 acres of coastal sage scrub habitat occupied by 2 pairs of gnatcatchers. In addition, the applicant will purchase 11.82 acres of an off-site habitat parcel within the City of Oceanside's "Wildlife Corridor Planning Zone" as described in the draft "Oceanside Subarea Habitat Conservation Plan/Natural Communities Conservation Plan" (Ogden Environmental and Conservation Biology Institute, 2000) and 3.94 acres of off-site habitat within an approved conservation bank, for a total of 15.76 acres of off-site preservation.

The HCP and Environmental Assessment consider two alternatives to the proposed project: a reduced project alternative; and a no action alternative. Under the proposed project alternative, a permit would be issued for incidental take of the coastal California gnatcatcher. This alternative would result in the permanent loss of 5.91 acres of habitat that currently supports 2 pairs of gnatcatchers within the 28.9-acre project site. This alternative would permanently preserve 20.0 acres of habitat for the gnatcatcher.

Under the reduced project alternative, on-site open space (lot A) would increase from 7.8 acres to approximately 13.8 acres through the elimination of 25 residential lots. Although this alternative reduces the impacts to occupied coastal sage scrub, the applicant has determined it to be financially infeasible.

Under the no project alternative, the Service would not issue an incidental take permit to Kennedy Development. Kennedy Development would not construct the proposed residential development on the site and would not establish and manage preserves for the coastal California gnatcatcher. The extension of Mission Gate Drive would likely still occur due to proposed development on the adjacent property. Present disturbance of the project area would continue in the form of trespassing in gnatcatcher-occupied habitat, illegal dumping, erosion, and periodic fire. Considering that the area is zoned for residential use, it is likely that the area would eventually be developed for another residential development.

We provide this notice pursuant to section 10(a) of the Endangered Species Act and regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the administrative record and may be made available to the public. We will evaluate the permit application, Environmental Assessment, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the gnatcatcher and the thread-leaved brodiaea. We will make a decision on permit issuance no sooner than 60 days from the date of this notice.

Dated: January 7, 2002.

Miel R. Corbett,

Acting Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–710 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On October 13, 2000, a notice was published in the **Federal Register** (65 FR 60971), that an application had been filed with the Fish and Wildlife Service by Monterey Bay Aquarium for a permit (PRT–032027) to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of rehabilitation and release, enhancement, and scientific research.

Notice is hereby given that on December 18, 2001, a Letter of Authorization (LOA–032027) and a permit (MA032027–0) were issued by the Fish and Wildlife Service, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: December 21, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–708 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–070–1310–EJ]

Notice of Availability of Draft Environmental Impact Statement (DEIS) and Draft Planning Amendments on the Powder River Basin Oil and Gas Project

AGENCY: Bureau of Land Management, Cooperating Agencies—United States Forest Service, Agriculture; State of Wyoming, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS) and Draft Plan Amendments on the Powder River Basin Oil and Gas Project in Johnson, Sheridan, Campbell and Converse Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Powder River Basin Oil and Gas Project DEIS which evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts from continued development of oil and gas resources in the Project Area in Sheridan, Campbell, Johnson, and Converse Counties, Wyoming. The DEIS also considers amendments to the BLM's Buffalo Resource Management Plan (RMP) and Platte River RMP and the Forest Services' Thunder Basin National Grassland (TBNG) Land and Resource Management Plan (LRMP) as a result of the impacts of this development. The Forest Service and the State of Wyoming are Cooperating Agencies.

The DEIS analyzes a proposal by companies to drill and develop wells on their leased acreage within the Powder River Basin Project Area (approximately 8 million acres) in northeastern Wyoming. The lands analyzed include all of the BLM Buffalo Field Office, the northern portion of Converse County of the Casper Field Office, and the TBNG within the four counties.

DATES: Comments on the DEIS will be accepted for 90 days following the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The BLM will notify all parties on the project mailing list of the dates when comments will be accepted. The BLM asks that those submitting comments on the DEIS make them as specific as possible and should refer to page numbers and chapters in the document. Comments are more helpful if they include suggested changes, sources, or methodologies. Comments that contain only opinions or preferences will not receive a formal response, however, they will be considered and included as part of the BLM decisionmaking process.

Future notification of public meetings (anticipated during March 2002) or other public involvement activities concerning the proposed project and resource management plan amendment, will be provided through public notices, news media releases, the Wyoming BLM homepage at www.wy.blm.gov and/or mailings. These notifications will provide at least 15 days notice of public meetings or gatherings and 30 days notice of written comment requests.

ADDRESSES: Comments on the DEIS should be sent to the Bureau of Land Management, Paul Beels (Project Manager), 1425 Fort Street, Buffalo, Wyoming 82834. A copy of the DEIS has been sent to affected Federal, State, and local government agencies and to those persons who responded to the BLM that they wished to receive a copy of the DEIS. Copies of the DEIS are available

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for public inspection at the following BLM office locations:

Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009

Bureau of Land Management, Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834

Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604–2968

SUPPLEMENTARY INFORMATION: The DEIS analyzes a proposal by companies to drill and develop coalbed methane (CBM) wells in their leased acreage within the Powder River Basin Project Area (approximately 7,911,000 acres) in northeastern Wyoming. The area encompasses all of Johnson and Sheridan Counties except the Bighorn National Forest, all of Campbell County, and the northern portion of Converse County from township 37 north to the Campbell County line. The area is accessed by Interstates 25 and 90.

The DEIS describes the physical, biological, cultural, historic, and socioeconomic resources in and surrounding the project area. The focus for impact analysis was based upon resource issues and concerns identified during an extensive public scoping process. Potential impacts of concern from development (not in priority order), are Buffalo, Sheridan, Gillette, and surrounding communities economic, social, health and safety effects, crucial elk winter range, sage grouse and raptor breeding and nesting, soil erosion, groundwater draw down and contamination, Historic Bozeman Trail condition and viewshed, and cumulative effects. The primary issues driving alternative development are water and air quality.

Three alternatives were analyzed in detail: (1) Proposed Action, (2) Proposed Action with Reduced Emission Levels and Expanded Produced Water Handling Scenarios, and (3) No Action.

Alternative 1—The companies' proposed action has been combined with the BLM's Reasonable Foreseeable Development (RFD) scenario. A RFD scenario is a model or projection of anticipated oil and gas exploration and/or development activity (leasing, exploration, development, production, and abandonment) in a defined area for a specified period of time. The RFD scenario is based primarily on geology (potential for oil and gas resource occurrence) past and present oil and gas activity, with consideration of other significant factors, such as economics, technology, and physical limitations on access, existing or anticipated infrastructure and transportation. Along with industry's Proposed Action, which relates only to CBM activity, the BLM's RFD scenario forecasts the continued drilling of an estimated 3,200 oil wells. The RFD scenario also forecasts there could be an estimated 51,000 CBM wells in the EIS area over the next 10 years.

The companies' projections of CBM well drilling and production include various ancillary facilities within the Project Area. The ancillary facilities include access roads, pipelines for gathering gas and produced water, electrical utilities, facilities for treating and compressing gas and disposing of produced water, and pipelines for delivering gas under high pressure to transmission pipelines. Although the Companies would develop new wells throughout the 10-year period beginning in 2002, most of the drilling would occur during the first 8 years. All 51,000 wells would not be drilled into a single coal seam. Wells drilled into different coal seams can be collocated on common well pads. The projected number of well pads is 35,589. The total numbers of wells and well pads is based on an 80 acre well spacing pattern (eight pads per square mile). The 51,000 proposed CBM wells include an estimated 12,000 existing wells.

Under the Proposed Action, the Companies would construct, operate, and maintain wells and ancillary facilities in 10 of the 18 sub-watersheds that comprise the Project Area. However, most of the new wells (63 percent) and facilities would be constructed in two sub-watersheds: The Upper Powder River and Upper Belle Fourche River sub-watersheds. Sub-watersheds with relatively high numbers of wells and facilities include Clear Creek, Crazy Woman Creek, Tongue River, and Little Powder River.

Overall, implementation of the Proposed Action could disturb as many as 212,000 acres. This short-term disturbance would encompass about 3 percent of the Project Area. Most of this would be associated with the construction of pipelines and roads. Long-term disturbance is projected to be approximately 109,000 acres. Compressor stations would account for the smallest amount of the overall disturbance.

Construction of the Powder River Basin wells would begin during 2002. Generally, construction of most wells would be completed over the first 8 years (by the end of 2010). The production lifetime of the wells is expected to be about 7 years and final reclamation is expected to be completed during the 2 to 3 years following the end of production.

Emphasis for water handling for Alternative 1 is untreated surface discharge. All compression would be CBM powered.

Alternative 2 proposes the same number of CBM and conventional wells as the proposed action. There are two additional water-handling methods analyzed: A—Emphasis on infiltration and B—emphasis on treatment for beneficial use.

There are also two air quality options: A—Fifty percent of the booster compression would be electrically powered and B—One hundred percent of the booster compression would be electrically powered.

Alternative 3—No Action. This alternative would consist of no new Federal wells. Wells would only be developed on State and private mineral ownership.

Agency-Preferred Alternative: The BLM's preferred alternative is Alternative 1-Proposed Action. This alternative provides for the best balance of effects to costs and development of the CBM. Most of the Federal minerals in the project area have already been leased. The pattern of Federal and non-Federal mineral ownership coupled with the BLM's responsibilities under 43 CFR 3162.2 to prevent drainage of Federal CBM preclude the BLM from choosing Alternative 3 as the preferred alternative.

Alternatives 2A and 2B offer some advantages over Alternative 1, however, the advantages are insufficient to justify the additional costs and disturbance. Both alternatives 2A and 2B would increase short- and long-term disturbance over Alternative 1 by at least 10 percent. However, as documented in the analysis they would not substantially decrease effects to air quality, visibility, water quality, the primary issues for which the alternatives were developed. The amount of CBM water produced by alternatives 1, 2A, and 2B would be the same. The costs of implementing the water handling procedures of alternatives 2A and 2B would be substantially higher than those associated with Alternative 1, but the difference between the effects of these two alternatives and Alternative 1 does not reflect or justify these additional costs. The analysis documents that the benefits to air quality and visibility from electrifying half or all of the booster compressors would be insufficient to justify the additional costs of requiring the Companies to use electric booster compressors. It is estimated that few booster compressors would be built on surface that is Federally owned. The BLM does not have the ability to require electrification of compressors constructed off Federal surface. The permitting of the compressors is the responsibility of the State of Wyoming.

Draft RMP/ LRMP Amendments: The Forest Service is using the analysis documented in this DEIS to make a decision on authorization of leases on those portions of the TBNG that have potential for CBM development. The Forest Service has released a Final EIS and Proposed LRMP for the TBNG. In that analysis, they deferred the lease authorization decision for this analysis. The lease availability decision will be made in the Record of Decision (ROD) for the LRMP EIS.

The outcome of the impact analysis has shown no need for changes to areas open and closed to oil and gas leasing or stipulations proposed in the Final LRMP EIS. Several new mitigation measures would be required for lease authorization.

The BLM has also reviewed the existing RMP's decisions relative to this EIS impact analysis. The Agency Preferred Alternative would result in amendments to the Buffalo and Platte River RMPs. The RMP decisions with this alternative would be to continue oil and gas exploration and development including coalbed methane at the higher level of intensity evaluated in this alternative and including new mitigation measures.

Draft Amendments for the Buffalo RMP:

(1) No changes to current designations of areas open or closed to leasing.

(2) No changes to current, or addition of any new, lease stipulations.

(3) No changes to current resource objectives or decisions.

(4) Several new mitigation measures would be implemented.

(5) Impact analysis of the new RFD scenario for oil and gas.

Draft Amendments for the Platte River RMP:

(1) No changes to current designations of areas open or closed to leasing.

(2) No changes to current, or addition of any new, lease stipulations.

(3) No changes to current resource objectives or decisions.

(4) New mitigation measures.

The Final EIS and ROD would serve as an amendment to the Buffalo and Platte River RMPs. The Forest Service would need a ROD for their authorization decision.

This DEIS, in compliance with section 7(c) of the Endangered Species Act (as amended), includes the Biological Assessment for the purpose of identifying any endangered or threatened species likely to be affected by the proposed action.

Two Technical Report Documents have also been prepared in conjunction with the DEIS. They contain detailed technical information regarding air quality modeling, and groundwater modeling. A limited number of the technical report documents are available upon request or they may be reviewed at the BLM offices listed above.

The DEIS was prepared pursuant to the National Environmental Policy Act, and other regulations and statutes, to address possible environmental and socioeconomic impacts which could result from the project and to solicit public comments and concerns. This DEIS is not a decision document. Its purpose is to inform the public of the impacts associated with implementing the companies' drilling proposal and to evaluate alternatives to the proposal. This DEIS is also intended to provide information to other regulatory agencies for use in their decisionmaking process for other permits required for implementation of the project.

Comments, including the names and street addresses of respondents, will be made available for review by the public at the addresses listed below during regular business hours (8:00 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and will be published as part of the Final EIS. However, individual respondents may request confidentiality. If you wish to withhold your name and/or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 18, 2001.

Alan R. Pierson,

State Director.

[FR Doc. 02–2 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Reopen Public Comment Period for Environmental Assessment for Proposed Improvements Within Jones Point Park Under the Woodrow Wilson Bridge Project

AGENCY: National Park Service, Interior.

ACTION: Reopen the availability of the Environmental Assessment (EA) for the proposed mitigation to Jones Point Park (JPP), associated with the Woodrow Wilson Bridge project which was originally published in the **Federal Register** (cite 66 FR 58517) on Wednesday, November 21, 2001.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the reopening of the availability of an EA for the proposed mitigation to JPP, associated with the Woodrow Wilson Bridge project within the George Washington Memorial Parkway (Parkway). The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act (NEPA).

DATES: The EA will remain available for public comment on or before February 11, 2002. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The EA will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at Parkway Headquarters, Turkey Run Park, McLean, VA, at several libraries in Alexandria, Fairfax and Arlington, Virginia and on the Woodrow Wilson Bridge Project Website at www.wilsonbridge.com.

SUPPLEMENTARY INFORMATION: All interested individuals, agencies, and organizations are urged to provide comments on the EA during this comment extension period. The NPS in making a final decision regarding this matter will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Sealy (703) 289–2531.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 02–737 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–P

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DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Land Exchange Between the National Park Service (NPS) and the Eastern Band of Cherokee Indians (Eastern Band) at the Great Smoky Mountains National Park, Tennessee

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the NPS intends to prepare a DEIS for a proposed Land Exchange. NPS intends to gather information necessary for the preparation of a proposed Land Exchange DEIS and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed. Alternatives currently under consideration include (1) no action, (2) a land exchange as proposed by the Eastern Band, and (3) a land exchange subject to development restrictions to protect natural and cultural resources. The NPS requests other suggested alternatives from the public through the scoping process.

DATES: Three public scoping meetings are being planned. The first will be held in Cherokee, North Carolina in February 2002. Exact locations, dates, and times of this and future public scoping meetings will be announced in local and NPS media. The proposal would involve the exchange of lands within Great Smoky Mountains National Park for an equivalent amount of land offered by the Eastern Band adjacent to the Blue Ridge Parkway.

ADDRESSES: Requests for information concerning dates, times of public meetings, written comments, information concerning the scope of the proposed Land Exchange DEIS and other matters should be sent to the following address: Attention Anita Jackson, National Park Service, Southeast Regional Office, Planning and Compliance Division, 100 Alabama St. SW, Atlanta, Georgia 30303. Requests to be added to the project mailing list should be directed to the same address.

FOR FURTHER INFORMATION CONTACT: Anita Jackson, Environmental Compliance Specialist, National Park Service, Southeast Regional Office, 404–562–3124 ext. 705. Information on the dates and times of public scoping meetings may also be found on the Great Smoky Mountains National Park Web site, *www.nps.gov/grsm*.

SUPPLEMENTARY INFORMATION: Great Smoky Mountains National Park, a unit of the National Park System, is bordered on the south by the Reservation of the Eastern Band known as the Qualla Boundary. The Eastern Band operates the primary and secondary schools within the Qualla Boundary under a contract with the U.S. Department of the Interior. The Interior Department several decades ago constructed the existing school buildings. The buildings are aging, overcrowded, and inadequate to meet the current and future educational needs of the Eastern Band. In the mountainous lands of western North Carolina, suitable lands for the location and construction of new schools are limited. The Eastern Band has requested that up to 200 acres of land within Great Smoky Mountains National Park be made available to them for the purpose of new school construction. The Eastern Band also seeks the same parcel of land to reestablish a land corridor between two parts of the Qualla Boundary that are separated by NPS land. The Eastern Band has offered in exchange 218 acres of land, identified as a priority for acquisition by the Blue Ridge Parkway, adjacent to the Waterrock Knob Visitor Center. The NPS has agreed to explore the possibility of a land exchange.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: December 21, 2001.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 02–674 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundred Thirty-Sixth Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, February 1, 2002.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda.
2. Approval of minutes of previous meeting (December 7, 2001).
3. Reports of Officers.
4. Reports of Subcommittees, Dune Shacks, Nickerson Fellowship.
5. Superintendent's Report.News from Washington,Horseshoe crab study,Penniman House status,East Harbor,ORV report status,Marconi bust and exhibit, commemorative plans,Pilgrim Lake.
6. Old Business.
7. New Business, Pheasant hunting.
8. Date and agenda for next meeting.
9. Public comment and.
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: December 13, 2001.

Maria Burks,

Superintendent.

[FR Doc. 02–675 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 22, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service,1849 C St. NW., NC400, Washington, DC 20240. Written

comments should be submitted by January 28, 2002.

Erika Martin Seibert,

Acting, Keeper of the National Register.

Arkansas

Clark County

Arkadelphia Boy Scout Hut, 8th St.,Arkadelphia, 01001526

Hot Spring County

Rockport Cemetery,US 270,Rockport, 01001527

Perry County

Hawks Schoolhouse, Co. Rd. 7,Ava, 01001528

Connecticut

New London County

Slater Library and Fanning Annex,26 Main St.,Griswold, 01001529

Tolland County

Captain Nathan Hale Monument,120 Lake St.,Coventry, 01001531

Florida

Hillsborough County

SS AMERICAN VICTORY (Victory ship), 705 Channelside Dr, Berth 271,Tampa, 01001533

Miami-Dade County

Bricknell Point Site,401 Brickell Ave,Miami, 01001534

Nassau County

American Beach Historic District,Roughly bounded by Gregg, Lewis, Leonard, Main and James Sts., and OceanBlvd.,American Beach, 01001532

GEORGIA

Decatur County

First African Missionary Baptist Church,515 Webster St.,Bainbridge, 01001535

Meriwether County

Lone Oak Academy,4945 Lone Oak Rd.,Lone Oak, 01001536

Manchester Community Building,105 E 2nd Ave.,Manchester, 01001537

ILLINOIS

Cook County

Crane Company Building,836 S Michigan Ave.,Chicago, 01001538

IOWA

Clayton County

Lakeside Ballroom,1202 N. 4th St.,Guttenberg, 01001539

Des Moines County

Chicago, Burlington and Quincy Station,300 S Main St.,Burlington, 01001540

Dubuque County

Dubuque YMCA Building,125 W 9th St.,Dubuque, 01001541

Fremont County

Rector, Jason and Elizabeth Baylor, House,2174 Bluff Rd.,Thurman, 01001542

KANSAS

Atchison County

Earhart, Amelia, Historic District,115–125,200–227,302–315,318,324 2nd St, 203–305 North Ter, 124,200,300 3rdSt, and 205,112 and 224 Santa Fe St.,Atchison, 01001543

Cowley County

St. John's Lutheran College Girls Dormitory,6th Ave and Gary St.,Winfield, 01001544

NEVADA

Churchill County

Churchill County Jail,10 W Williams Ave.,Fallon, 01001546

Hazen Store,00 Reno Highway,Hazen, 01001547

SOUTH CAROLINA

Aiken County

Zubly Cemetery,Forrest Dr.,Beech Island, 01001548

Dillon County

Dillon Downtown Historic District,Roughly bounded by E and W Main St, N and S Railroad Ave, N MacArthur Ave, and E Harrison St.,Dillon, 01001549

Florence County

Gregg—Wallace Farm Tenant House,310 Price Rd.,Mars Bluff, 01001550

Lake City Downtown Historic District,

Main St and Acline Ave.,Lake City, 01001551

TENNESSEE

Davidson County

East Nashville High and Junior High Schools,110, 112 Gallatin Rd.,Nashville, 01001552

WISCONSIN

Dane County

Wisconsin Heights Battlefield,.4 mi SE of Jcto of Co. Rd. Y and WI 78.,Sauk City, 01001553

[FR Doc. 02–730 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 29,2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St.NW, Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by January 28, 2002.

Carol D. Shull,

Keeper of the National Registerof Historic Places.

CONNECTICUT

Hartford County

Clark Farm Tenant House Site,Address Restricted,East Granby, 01001554.

GEORGIA

Fulton County

Spotswood Hall,(West Paces Ferry Road MRA)555 Argonne Dr., NW,Atlanta, 01001556.

Meriwether County

Greenville Presbyterian Church and Cemetery, Greenville Rocky Mount Rd, off GA41/US27 Alt.,Greenville, 01001555.

MASSACHUSETTS

Middlesex County

Old Burying Ground, King St., near jct. with White St.,Littleton, 01001560.

Suffolk County

Boston Consumptives Hospital, 249 River St., Boston, 01001557.

Immaculate Conception Rectory, 108 Beach St., Revere, 01001559.

Worcester County

Blackstone Viaduct, Canal, Farnum and Mill Sts., Blackstone, 01001558.

MISSISSIPPI

Chickasaw County

Okolona Historic District, Roughly bounded by Fleming, Monroe, Buchanan, and Washington Sts.,Okolona, 01001561.

NEW YORK

Monroe County

Immanuel Baptist Church, 815 Park Ave., Rochester, 01001566.

Pulaski Library, 1151 Hudson Ave., Rochester, 01001562.

Ontario County

Cronkite, Jeremiah, House, 1095 Lynaugh Rd., Victor, 01001563.

Howe, Dr. John Quincy, House, 66 Main St., Phelps, 01001564.

Orleans County

Tousley—Church House, 249 N. Main St., Albion, 01001565.

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TENNESSEE

Putnam County

Broad Street Church of Christ, 157 W. Broad St.,Cookeville, 01001567.

VIRGINIA

Botetourt County

Greyledge, 1066 Greyledge Rd., Buchanan, 01001571.Galax (Independent City)
Eelts, Gordon C., House, 404 N. Main St., Galax (Independent City), 01001572.

Prince George County

Aberdeen, 15301 James River Dr., Disputanta, 01001569.

Richmond Independent City

Laburnum Park Historic District, Westwood, Palmyra, Confederate, Wilmington, W. Laburnum Aves., Chatham,Gloucester and Lamont Sts.,Richmond (Independent City), 01001573.

Rockbridge County

Cedar Hill Church and Cemeteries, Cedar Hill Church Rd. and Kygers Hill Rd.,Lexington, 01001570.

Shenandoah County

Beydler, Abraham, House, 2748 Zion Church Rd., Maurertown, 01001568.

[FR Doc. 02–731 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 15, 2001. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington, DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by January 28, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Santa Clara County

Donner—Houghton House, 156 E. St. John, San Jose, 01001483

IDAHO

Power County

American Falls Reservoir Flooded Townsite, American Falls Reservoir,American Falls, 01001480

IOWA

Cerro Gordo County

St. John Baptist Church, 715 6th St. SW, Mason City, 01001484

Dubuque County

Four Mounds Estate Historic District, 4900 Peru Rd., Dubuque, 01001487
Town Clock Building, 823–25 Main St., Dubuque, 01001488

Hardin County

Union Cemetery Gardener's Cottage, (Iowa Falls MPS) Union Cemetery,Iowa Falls, 01001486

Lucas County

First United Methodist Church, 923 Roland, Chariton, 01001485

LOUISIANA

Avoyelles Parish

Ponthieu, Adam, Store—Big Bend Post Office,8554 LA 451, Big Bend, 01001490

Vernon Parish

Booker—Lewis House, 102 East North St., Leesville, 01001489
First United Methodist Church, 202 N. Fifth St., Leesville, 01001491

NEW JERSEY

Morris County

New York Susquehanna & Western Railroad Station, Main St.,Butler Borough, 01001492

NEW YORK

Cayuga County

East Genoa Methodist Episcopal Church, 558 E. Genoa Rd., Genoa, 01001500
St. Peter's Episcopal Church Complex, (Historic Churches of the Episcopal Diocese of Central New York MPS) 169 Genesee St., Auburn, 01001506
Sterling Grist Mill Complex, 1332 NY 104A, Sterling, 01001498

Columbia County

Emmanuel Lutheran Church of Harlemville and Cemetery, Cty. 21 and Pheasant Ln., Harlemville Rd. at Ten Broeck Rd., Harlemville, 01001505

Cortland County

First Presbyterian Church, Courtland Cty Rd. 108B, Preble, 01001502

Erie County

East Main—Mechanic Streets Historic District, Approx. jct. of East Main and Mechanic Sts., Springville, 01001506

Jefferson County

Swathout Site—A04507.000038, Address Restricted, Clayton, 01001504

Madison County

Fenner Baptist Church, 3122 Bingley Rd., Fenner, 01001501

Montgomery County

Ames Academy Building, 611 Latimer Hill Rd., Ames, 01001496

Niagara County

Former Niagara Falls High School, 1201 Pine Ave., Niagara Falls, 01001507

Onondaga County

Elbridge Village Historic District, Roughly along NY 5 bet. Skaneatetes Creek and Carpenter's Brook, Elbridge, 01001494
Mills, Harriet May, House, 1074 W. Genesee St., Syracuse, 01001495
Oran Community Church, NY 92, Pompey, 01001503
Simmons, Alton, House, (Architecture of Ward Wellington Ward in Syracuse MPS) 309 Van Rensselaer St., Syracuse, 01001493

Oswego County

Lacona Railroad Station and Depot, 11 Park Ave., Lacona, 01001499

Sullivan County

Levitz Family Farm, 395 Beaver Dam Rd., Grahamsville, 01001497

OHIO

Cuyahoga County

Black, H., and Company Building, 1900–2000 or 2010 Superior Ave.,Cleveland, 01001523

Geauga County

Fowler's Mills Historic District, 10743–10779, 10750 Mayfield Rd.; 12426–12533 Fowlers Mill Rd., Chardon, 01001522

Highland County

Highland Egg and Poultry Company Building, 135 North West St., Hillsboro, 01001524

Virginia

Albemarle County
West Cote, Off VA 602 and VA 626, Howardsville, 01001510

Charlotte County

Woodfork, 3704 Woodfork Rd., Charlotte Court House, 01001509

Covington Independent City

First Baptist Church of Covington, Virginia, 337 S. Lexington Ave.,Covington (Independent City), 01001518

Hanover County

Sharp's Oakland, 12308 Verdon Rd., Doswell, 01001514

Lexington Independent City

Blandome, 101 Tucker St., Lexington (Independent City), 01001520

Lynchburg Independent City

Fort Early and Jubal Early Monument, 3511 Memorial Ave.,Lynchburg (Independent City), 01001517
Johnson, Dr. Robert Walker, House and Tennis Court, 1422 Pierce St., Lynchburg (Independent City), 01001519

Page County

Ruffner House, 440 Ruffner House Ln., Luray, 01001515

Patrick County

Stuart Uptown Historic District, Main St. and Blue Ridge St.,Stuart, 01001512

Powhatan County

Red Lane Tavern, 3009 Lower Hill Rd., Powhatan, 01001516

Roanoke County

Black Horse Tavern—Bellvue Hotel and Office, 7223–7229 Old Mountain Rd., Roanoke, 01001521
Starkey School, 6426 Merriman Rd., SW, Roanoke County, 01001513

Waynesboro Independent City

Waynesboro Downtown Historic District, Federal St., Main St., Wayne Ave., Waynesboro (Independent City), 01001511

WYOMING

Sublette County

Church of St. Hubert the Hunter and Library, US 191/189, Bondurant, 01001525

The fifteen day comment period has been reduced to three (3) days to aid in the preservation fo the following resources:

OHIO

Licking County

Newark Downtown Historic District, Roughly bounded by Church St., Second St., Fifth St., and Canal St., Newark, 01001482

Wayne County

Ault—Weygandt Farm, 15090 Back Massillon Rd., Orrville, 01001481

[FR Doc. 02–732 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Death Valley National Park, Death Valley, CA and NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Death Valley National Park, Death Valley, CA and NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Manager of the National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada. A representative of the Kawaiisu, a nonfederally recognized Indian group, was also consulted.

The National Park Service contracted with LSA Associates, Inc., of Irvine, CA, to assist in compliance with NAGPRA. The LSA study, Death Valley National Park Cultural Affiliation Study (1998), evaluated all collections from the area previously administered as U.S. Department of the Interior, Death Valley National Monument. In 1995, additional lands formerly under the control of the U.S. Department of the Interior, Bureau of Land Management were transferred to Death Valley National Park. Collections from these new lands have not been fully evaluated by the National Park Service at this time.

In 1953, human remains representing one individual were recovered during legally authorized excavations by William Wallace at site CA-INY-1034 near Mesquite Flat, Inyo County, CA. This individual had been cremated. No known individual was identified. The one associated funerary object is a chert projectile point. The associated funerary objects indicates that these human remains probably were cremated during the Death Valley III or IV period (A.D. 1-1870).

In 1953, human remains representing one individual were recovered during legally authorized excavations by William Wallace at site CA-INY-1137 near Mesquite Flat, Inyo County, CA. This individual had been cremated. No known individual was identified. The five associated funerary objects are three manos, one chert drill, and one bag of glass beads. The associated funerary objects indicate that these human remains probably were cremated during the Death Valley IV period (A.D. 1000-1870).

In 1954, human remains representing one individual were recovered during legally authorized excavations by William Wallace at a site (no trinomial) near Wingate Wash, in either Inyo or San Bernardino County, CA. This individual was found in a previously disturbed site. No known individual was identified. The two associated funerary objects are two lithic quarry blanks. Mr. Wallace noted that an archaic type projectile was found in association with the burial and thus assigned this burial to the Death Valley II period (3000 B.C.-A.D. 1). This projectile point has not been found in the park's collections.

In 1954, human remains representing one individual were recovered during legally authorized excavations by William Wallace at site CA-INY-1239, Inyo County, CA. This individual had been cremated and was found at the base of a sand dune. No known individual was identified. The three associated funerary objects are two ceramic potsherds and one bag of glass beads. The associated objects indicate that these human remains probably were cremated during the Death Valley IV period (A.D. 1000-1870).

In 1954, human remains representing one individual were recovered during legally authorized excavations by William Wallace at site CA-INY-1215 near Mesquite Flat, Inyo County, CA. This individual had been cremated. No known individual was identified. The one associated funerary object is a lithic uniface fragment. The associated funerary object indicates that these human remains probably were cremated during the Death Valley III or IV Period (A.D. 1-1870).

In 1954, human remains representing one individual were recovered during legally authorized excavations by William Wallace at site CA-INY-1234 near Mesquite Flat, Inyo County, CA. This individual had been cremated. No known individual was identified. The 144 associated funerary objects are 10 shell beads, 3 stone pestle fragments, 6

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manos, 1 pecking stone, 1 stone hammer, 1 stone pendant, 1 arrow shaft smoother, 1 smoothing stone, 2 corner notched chert projectile points (1 rosespring type and 1 possible elko type), 1 obsidian drill, 48 ceramic potsherds, 1 iron angle brace, 2 metal overall buttons, 2 pieces of window glass, 2 glass bottle fragments, 60 whole and fragmented glass beads, and 2 clay coils. The associated funerary objects indicate that these human remains probably were cremated during the Death Valley III or IV period (A.D. 1-1870).

In 1955, human remains representing one individual were recovered during legally authorized excavations by William Wallace and Edith Taylor at Hole-in-the-Rock rockshelter (no trinomial), Inyo County, CA. This individual was found wrapped in a rabbit-skin blanket and buried in the rockshelter. No known individual was identified. The nine associated funerary objects are five shell beads, one ceramic sherd scraper, one chopper, one hammerstone, and one fragmented rabbit-skin blanket or cloak. Mr. Wallace suggests that the site dates to the Death Valley III period. The associated funerary objects indicate that these human remains probably were buried sometime during the Death Valley III or IV period (A.D. 1-1870).

In 1955, human remains representing one individual were recovered during legally authorized excavations by William Wallace at site CA-INY-3328 near Mesquite Flat, Inyo County, CA. This individual had been cremated. No known individual was identified. The 23 associated funerary objects are 1 jar of glass beads, 7 rivets, 9 buttons, 3 overall clips, 1 projectile point, 1 mano, and 1 bag of glass beads. The associated funerary objects indicate that these human remains probably were cremated during the Death Valley IV period (A.D. 1000-1870).

In 1956, human remains representing four individuals were recovered during legally authorized excavations by William Wallace, Alice Hunt, and Edith Taylor at site CA-INY-522 near Tule Spring, Inyo County, CA. These individuals were found buried in a stone mound. No known individuals were identified. The 12 associated funerary objects are 3 projectile points (2 rosespring type and 1 unknown leaf-shaped point), 2 fragments of bone pendants, 1 bone awl, 4 fragments of a bone awl, 1 shell bead, and 1 lithic uniface. The associated funerary objects indicate that these human remains probably were buried during the Death Valley III period (A.D. 1-1000).

In 1956, human remains representing four individuals were recovered during legally authorized excavations by William Wallace, Alice Hunt, and Edith Taylor at site CA-INY-525 near Bennetts Well, Inyo County, CA. All four individuals were found buried in a rock mound. No known individuals were identified. The 45 associated funerary objects are 43 shell beads and 2 shells. The associated funerary objects indicate that these human remains probably were buried sometime during the Death Valley III period (A.D. 1-1000).

In 1956, human remains representing one individual were recovered during legally authorized excavations by William Wallace and Roger Desautels at site CA-SBR-90 near Saratoga Springs, San Bernardino County, CA. This individual was found buried in a bell-shaped pit. No known individual was identified. The seven associated funerary objects are three projectile point fragments (one rosespring or desert side-notched type and two of unknown type), three chert blade fragments, and one chert graver. The associated funerary objects indicate that these human remains probably were buried during the Death Valley III period (A.D. 1-1000).

In 1956, human remains representing one individual were recovered during legally authorized excavations by William Wallace at Old Crump rockshelter (site CA-INY-3044), Inyo County, CA. This individual was found buried in the rockshelter. No known individual was identified. The 42 associated funerary objects are 6 fragmented or complete stone blades, 8 fragmented or complete projectile points (including 2 cottonwood type, 1 rosespring type, and 5 of unknown type), 5 ceramic sherds, 3 bead fragments, 3 pendants, 2 awls, 3 mammal bone artifacts, 2 scrapers, 1 pipe fragment, 4 pine nut shells, 1 wood stick, 3 glass fragments, and 1 tin can fragment. The associated funerary objects indicate that these human remains probably were buried sometime during the Death Valley III or IV period (A.D. 1-1870).

In 1956, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-793 near Tule Spring, Inyo County, CA. This individual was found buried in a stone mound. No known individual was identified. The two associated funerary objects are lithic bifaces. Similar Death Valley III and Death Valley IV burial sites located in this area and recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

In 1956, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-582 near Tule Spring, Inyo County, CA. This individual was found buried in a stone mound. No known individual was identified. The one associated funerary object is a metal overall button. The associated funerary object indicates that these human remains probably were buried during the Death Valley IV period (A.D. 1000-1870).

In 1957, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-896 near Gravel Well, Inyo County, CA. This individual was found buried in a stone mound. No known individual was identified. No funerary objects are present. Similar Death Valley III and Death Valley IV burial sites located in this area and recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

In 1957, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-884 near Eagle Borax, Inyo County, CA. The individual was found buried in a stone mound. No known individual was identified. No funerary objects are present. Similar Death Valley III and Death Valley IV burial sites located in this area recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

In 1958, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-3136 near Tule Spring, Inyo County, CA. This individual was found buried in a stone mound. No known individual was identified. No funerary objects are present. Similar Death Valley III and Death Valley IV burial sites located in this area and recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

In 1958, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site Mound E (no trinomial) near Tule Spring, Inyo County, CA. The individual was found buried in a stone mound. No known individual was identified. No funerary objects are present. Similar Death Valley III and Death Valley IV burial sites located in this area and recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

In 1958, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-3142 near Bennetts Well, Inyo County, CA. This individual was found buried in a stone mound. No known individual was identified. No funerary objects are present. Similar Death Valley III and Death Valley IV burial sites located in this area and recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

In 1958, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site CA-INY-3137 near Tule Spring, Inyo County, CA. This individual had been cremated and was found buried in a stone mound. No known individual was identified. The four associated funerary objects are blue glass trade beads. The associated funerary objects indicate that these human remains probably were cremated during the Death Valley IV period (A.D. 1000-1870).

In 1959, human remains representing one individual were recovered during legally authorized excavations by Alice Hunt at site Mound C (no trinomial) near Tule Spring, Inyo County, CA. This individual was found buried in a stone mound. No known individual was identified. The two associated funerary objects are bird bones. Similar Death Valley III and Death Valley IV burial sites located in this area recorded by Ms. Hunt indicate that these human remains probably were buried during the Death Valley III or IV period (A.D. 1-1870).

Around 1960, human remains representing one individual were recovered during unauthorized excavations by Ken Robinson at an unspecified location within Death Valley National Monument. No known individual was identified. The 45 associated funerary objects are 6 worked sticks, 1 small animal trap, 1 rawhide strip, 2 basketry fragments, 1 ceramic potsherd, 1 nut shell, 2 metal buttons, 1 .36-caliber lead ball, 1 wooden fire drill platform, 13 pieces of cordage, 15 projectile points (11 cottonwood type, 1 desert side-notch type, 1 rosespring type, 1 that is either a rosespring type or a drill, and 1 unknown type), and 1 bifacial blade. Mr. Robinson transferred the human remains and associated funerary objects to the Maturango Museum in Ridgecrest, CA. The museum contacted the monument when they learned the origin of the human remains and associated funerary objects, and returned them to the monument in 1992. The associated funerary objects indicate that these human remains probably were buried sometime during the Death Valley III or IV Period (A.D. 1-1870).

The above-mentioned human remains were dated based on projectile point cross-dating, changes in burial practices, the presence of ceramics or trade beads, and other archeological evidence. The remains of one individual were dated to the Death Valley II period (3000 B.C.-A.D. 1) based on the presence of an archaic style projectile point. The remains of the other 27 individuals were dated to the Death Valley III or Death Valley IV periods (A.D. 1-1870). Alice Hunt suggests in Archeology of the Death Valley Salt Pan, California (1960) that during the early Death Valley II period, human remains were typically buried in pits in a flexed position, along with arrow points, bone tools, and shell beads, and covered with mounds of rock. This pattern continues into the Death Valley III period. William Wallace documented a shift to cremation during the Death Valley III and Death Valley IV periods in Death Valley National Monument's Prehistoric Past: An Archeological Overview (1977). Rock burial mounds also are a trait of the Death Valley IV occupation. Mr. Wallace interprets the shift in burial practices to reflect the arrival of a new population in the area that ultimately absorbed the original population and incorporated much of their culture. Mr. Wallace concludes that the resulting new population is the ancestors of the Panamint (Shoshone) Indians of historic times.

Relevant ethnographic research and oral traditions pertaining to language, social and political organization, subsistence strategies, resources and settlement patterns, trade and exchange, religion, ritualism, and ceremonialism further supports the archeological record. The LSA study concludes that ≥all of the archaeological sites located within Death Valley [National Park] and including human remains appear to be part of an unbroken archaeological tradition beginning circa 3000 B.C. and continuing through historic contact. Hence, without specific evidence to the contrary, all the archaeological material have probable affiliation with the Timbi-Sha Shoshone people who currently live in Death Valley.≥

Based on the above-mentioned information, the superintendent of Death Valley National Park has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 28 individuals of Native American ancestry. The superintendent of Death Valley National Park also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 348 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, the superintendent of Death Valley National Park has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Death Valley Timbi-Sha Shoshone Band of California.

This notice has been sent to officials of the Death Valley Timbi-Sha Shoshone Band of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James T. Reynolds, Superintendent, Death Valley National Park, P.O. Box 579, Death Valley, CA 92328, telephone (760) 786-2331, before February 11, 2002. Repatriation of the human remains and associated funerary objects to the Death Valley Timbi-Sha Shoshone Band of California may begin after that date if no additional claimants come forward.

Dated: November 20, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 02–733 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(1) (2), of the intent to repatriate cultural items in the possession of the Milwaukee Public Museum that meet the definition of "cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not

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responsible for the determinations within this notice.

The cultural items are a set of five Dilzini Gaan masks and a medicine staff. The cultural items were collected by Otto Schoenberg in April 1903 and were purchased by the Milwaukee Public Museum in January 1904. Correspondence accompanying the purchase specifically describes the use of these cultural items in ceremonies performed at Fort Apache, AZ, in 1903.

Authorized representatives of the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, have identified these cultural items as having ongoing historical, traditional, and cultural importance central to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, and as communal property of the people of the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, which could not have been legally alienated, appropriated, or conveyed by any individual.

This notice has been sent to officials of the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona. Representatives of any other Indian Tribe that believes itself to be culturally affiliated with this object should contact Alex W. Barker, Ph.D., Curator of North American Archaeology and Section Head, Anthropology, Milwaukee Public Museum, 800 West Wells Street, Milwaukee WI 53233, telephone (414) 278-2786, facsimile (414) 278-6100, before February 11, 2002. Repatriation of these items of cultural patrimony to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, can begin after that date if no additional claimants come forward.

Dated: December 13, 2001.

Robert Stearns,

Program Manager, National NAGPRA Program.

[FR Doc. 02–736 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains and catalogue records and associated documents relevant to the human remains was made by Phoebe A. Hearst Museum professional staff in consultation with representatives of Big Lagoon Rancheria, California; Resighini Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; and the Yurok Tribe of the Yurok Reservation, California.

In 1924, human remains representing at least one individual were recovered from site CA-Hum-NL-2, Humboldt County, CA, and donated to the Phoebe A. Hearst Museum of Anthropology the same year by A. L. Kroeber. No known individual was identified. The one associated funerary object is a grooved stone sinker.

Based on consultation and geographic, linguistic, and archaeological evidence, including the presence of site-specific artifacts site CA-Hum-NL-2 has been identified as a Yurok site.

During the 1920s, human remains representing at least two individuals were removed from site CA-Hum-NL-4, Trinidad, Humboldt County, CA, and donated to the Phoebe A. Hearst Museum of Anthropology in 1931 by Dr. Herbert H. Stuart. No known individuals were identified. No associated funerary objects are present in the Phoebe A. Hearst Museum of Anthropology collections.

Based on consultation and geographic, linguistic, archaeological, and ethnographic evidence site CA-Hum-NL-4 has been identified as a Yurok site.

During the 1920s, human remains representing at least three individuals were recovered from site CA-Hum-NL-9, Big Lagoon, Humboldt County, CA, and donated to the Phoebe A. Hearst Museum of Anthropology in 1931 by Dr. Herbert H. Stuart. No known individuals were identified. No associated funerary objects are present in the Phoebe A. Hearst Museum of Anthropology collections.

Based on consultation and geographic, linguistic, archaeological, historic, and ethnographic evidence site CA-Hum-NL-9 has been identified as a Yurok site.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least six individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Big Lagoon Rancheria, California; Resighini Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; and the Yurok Tribe of the Yurok Reservation, California.

This notice has been sent to officials of the Big Lagoon Rancheria, California; Resighini Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; and the Yurok Tribe of the Yurok Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and the associated funerary object should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA 94720, telephone (510) 643-7884, before February 11, 2002. Repatriation of the human remains and associated funerary objects to the Big Lagoon Rancheria, California; Resighini Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; and the Yurok Tribe of the Yurok Reservation, California may begin after that date if no additional claimants come forward.

Dated: December 13, 2001.

Robert Stearns,

Program Manager, National NAGPRA Program.

[FR Doc. 02–735 Filed 01–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the State University of West Georgia, Carrollton, GA, and in the Control of the Georgia Department of Transportation, Atlanta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the State University of West Georgia, Carrollton, GA, and in the control of the Georgia Department of Transportation, Atlanta, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Georgia Department of Transportation in consultation with representatives of the Alabama-Quassarte Tribal Town, Oklahoma; Catawba Indian Nation (also known as Catawba Tribe of South Carolina); Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Absentee-Shawnee Tribe of Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians of Oklahoma.

In 1988, human remains representing one individual were excavated from the Rae's Creek site (9Ri327), Richmond County, GA, by Dr. Morgan R. Crook, Jr., of Georgia State University, Atlanta, GA. The work was conducted as part of a highway construction project under Georgia Department of Transportation/Federal Highway Administration contract M-750 (4). The remains are curated at the Antonio J. Waring,, Jr., Archaeology Laboratory, State University of West Georgia, Carrollton, GA. No known individual was identified. The six associated funerary objects are two columella shell ear pins, two faceted glass beads, one partial shell-tempered plain globular jar with flaring rim, and one chert biface.

The Rae's Creek site is located near the confluence of Rae's Creek and the Savannah River. The human remains and associated funerary objects date to the 1600s through the early 1700s based on artifacts recovered from the site. The ceramic vessel (a globular, flaring rim, shell-tempered vessel) form is consistent with late Mouse Creek and/or Dallas phase occupations (A.D. 1450-1625) in eastern Tennessee, while the faceted glass beads indicate an early 1700s date. These artifacts suggest a Creek Indian affiliation. Consultation evidence presented by representatives of the Creek tribal governments indicates this area was within the traditional occupation territory of the Creeks during this time period.

Based on the above-mentioned information, officials of the Georgia Department of Transportation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Georgia Department of Transportation also have determined that, pursuant to 43 CFR 10.2 (d)(2), the six objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Georgia Department of Transportation also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

This notice has been sent to officials of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Catawba Indian Nation (also known as Catawba Tribe of South Carolina); Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Coushatta Tribe of Louisiana; Absentee-Shawnee Tribe of Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Miccosukee Tribe of Indians of Florida; Poarch Band of Creek Indians of Alabama; Seminole Nation of Florida; Seminole Nation of Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Eric Anthony Duff, NAGPRA Coordinator, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, GA 30336-1593, e-mail eric.duff@dot.state.ga.us, telephone (404) 699-4437, facsimile (404) 699-4440, before February 11, 2002. Repatriation of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma may begin after that date if no additional claimants come forward.

Dated: December 13, 2001.

Robert Stearns,

Program Manager, National NAGPRA Program.

[FR Doc. 02–734 Filed 1–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–224N]

RIN 1117–AA60

Notice of Intent To Conduct Performance Verification Testing of Public Key Infrastructure Enabled Controlled Substance Orders

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice.

SUMMARY: As part of its Electronic Commerce Initiatives, DEA, in partnership with the Health Care Distribution Management Association (HDMA) and the National Association of Chain Drug Stores (NACDS), announces its intent to conduct a pilot project to test PKI-enabled controlled substances orders.

DATES: Persons interested in participating in this pilot project must notify DEA of participation no later than January 25, 2002.

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ADDRESSES: Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C., 20537, Attention: Vickie Seeger, R.Ph., ODLP; fax: (202) 307–8570; *http://www.deadiversion.usdoj.gov*

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297. The Business Contact is Mike Patnode, PEC Solutions Inc., (703) 679–4900, the Administrative Contact is: Steve Bruck, PEC Solutions Inc., (703) 679–4900, the Technical contact is: Trung Tran, PEC Solutions Inc., (703) 679–4900, the Testing contact is: Margaret Leary, PEC Solutions Inc., (703) 679–4900.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Controlled Substances Act of 1970 (CSA), DEA, regulates the manufacture and distribution of controlled substances in the United States. This regulatory control is designed to ensure there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes while preventing the diversion of legitimate controlled substances into illegal channels. To do this, the CSA creates a closed system of distribution. For Schedules I and II controlled substances, the CSA requires that distributions be made only in response to a DEA FORM 222, "U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms)". Currently, this is a paper-based system using a triplicate form issued by DEA. DEA is working to modify its regulations to allow for a secure electronic system for the transmission of controlled substances orders without the supporting paper DEA Form 222. The Controlled Substances Ordering System (CSOS) is expected to bring numerous benefits to the manufacturing, distribution, and pharmacy community by allowing more efficient and cost effective means of ordering and distributing Schedule I and II controlled substances.

The Pilot Project

As a first step, DEA is establishing a pilot project, which will allow industry participants to test their internal order systems using proposed DEA PKI standards, and identify and resolve technical and operational issues. DEA is working with PEC Solutions, Inc. (PEC) which will operate the pilot project and act as a technical point of contact for Industry participants.

DEA believes that the development of these new standards and regulations must be based on a clear understanding of industry practices, health care delivery issues, and legal/regulatory requirements at both the state and Federal levels. As a result, the pilot project is designed to allow interested parties to evaluate the use of DEA's planned controlled substances Public Key Infrastructure for digitally signed controlled substances orders. Participants will be expected to operate their system in accordance with DEA's proposed standards, which can be found on the Diversion Control Program web site (*http://www.deadiversion.usdoj.gov*). The pilot project is expected to be conducted in multiple phases over a 6-month period during 2002: Phase I, online registration; Phase II, application; Phase III, order processing; Phase IV, reporting; Phase V, DEA auditing.

How To Participate

During the course of the pilot project, DEA will be coordinating with Industry representatives to identify and resolve technological and policy issues. This input will be used to refine the system standards. Any organization that supports registrants in the supply chain business category wishing to participate in the pilot project should notify DEA in writing. The letter should contain the following information, and should be provided to DEA at the address listed in the Addresses section of this notice: (1) company/organization name; (2) company/organization address; (3) DEA registration number, if applicable; (4) the name, address, phone number, and e-mail address of the primary and secondary points of contact coordinating the company's/organization's pilot project participation.

Note: Due to current delays in receiving mail, DEA recommends that interested participants submit notice of participation via facsimile at (202) 307–8570 and submit the original participation notification to follow via mail. The deadline for notification of participation in the pilot project is January 25, 2002. Periodic announcements will be made to coordinate follow-on phases of the pilot project. Such announcements will be made on the Diversion Control Program web site at *http://www.deadiversion.usdoj.gov*,and will also be made directly to identified participants. Pilot project participants will be expected to secure the resources to support their participation in the project. A conference call will be held in January, 2002 to explain the pilot process to potential participants.

Dated: January 4, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 02–796 Filed 1–10–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,813; Blount, Inc., Prentice, WI
TA–W–39,398; Boss Industries, Inc., Erie, PA
TA–W–39,578; McLaughlin Co., A Div. Of Michigan Rivet Corp., Petoskey, MI
TA–W–39,983; Edgewater Steel Ltd, Oakmont, PA
TA–W–39,831 and A; Chipman Union, Inc., Union Point, GA and Bryan Scott Plant, Greensboro, GA

TA–W–40,073; Micro Tool and Manufacturing, Inc., Meadville, PA
TA–W–40,124; Krones, Inc., Franklin, WI
TA–W–40,321; Fibermark, Inc., Rochester, MI
TA–W–39,541; Signature Software, Inc., Hood River, OR
TA–W–39,091; Heraeus Electro-Nite, Philadelphia, PA
TA–W–39,760; Kingfield Wood Products, Kingfield, ME
TA–W–39,802; Superior Dye, Passaic, NJ
TA–W–39,835B; Dyersburg Fabrics, Trenton Mills, Trenton, TN
TA–W–39,872; De-Sta-Co Manufacturing, Arden, NC
TA–W–40,153; Burkart Foam, Inc., Cairo, IL
TA–W–39,835B; Trenton Mills, Trenton, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,987; GSI Lumonics, Inc., Maple Grove, MN
TA–W–40,087; Spicer Axle, Inc., Columbia, MO
TA–W–40,136; Emerson Process Management, Regulator Div., McKinney, TX
TA–W–40,246; Incoe Corp., North Plant, Frankfort, MI
TA–W–40,167A; Axiohm Transation Solutions, Inc., IPB Div., Ithaca, NY
TA–W–39,686; J and K Sales Co., Inc., Pawtucket, RI
TA–W–40,117; Drake Extrusion, Spartanburg, SC
TA–W–40,151; Sara Lee Hosiery, Hanes Hosiery Div., Yadkinville, NC
TA–W–40,342; Stinson Seafood 2001, Inc., Formerly Stinson Seafood 2000, Inc., Belfast, ME

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,861; Swimwear Anywhere, Inc., Farmingdale, NY
TA–W–39,518G; Spartan International, Inc., Spartan International Retail Business, Charlotte, NC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,280 and A; Munro and Company, Inc., Dewitt Footwear, Dewitt, AR and Munro and Company, Inc., Clarendon Footwear, Clarendon, AR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,167; Axiohm Transaction Solutions, Inc., American Magnetics Div., Cypress, CA: September 20, 2000.
TA–W–40,484; Bristol Compressor Sparta, Inc., Sparta, NC: October 22, 2000.
TA–W–39,208; RMG Foundry, LLC, Mishawaka, IN: April 23, 2000.
TA–W–39,202; ECK Industries, Inc., Manitowoc, WI: April 26, 2001.
TA–W–39,307; Creative Embroidery Corp., Bloomfield, NJ: May 7, 2000.
TA–W–39,497; Superior Electric, Bristol, CT: June 7, 2000.
All workers engaged in employment related to the production of VR motors and stators and;
All workers engaged in employment related to the production of motors (except VR motors and stators), stepper drives, adjustment speed drives and voltage control flash regulator equipment are denied.
TA–W–39,737; Rebel Screeners, Inc., Sharon, TN: July 17, 2000.
TA–W–39,828; GSC Management Co., Enterprise, AL: July 27, 2000.
TA–W–39,835 & A; Dyersburg Fabrics, Main Plant, Dyersburg, TN and Knitting Plant, Dyersburg, TN: July 19, 2000.
TA–W–39,860; Sheftex, Sheftex USA, Inc., St. Johnsbury, VT: August 3, 2000.
TA–W–39,918; Beloit Corp., Rockton, IL: August 18, 2000.
TA–W–39,984; Hollander Home Fashions, Tignall, GA: August 23, 2000.
TA–W–40,031; Laclede Steel Co., Vandalia, IL: August 28, 2000.
TA–W–40,209; Laclede Steel Co., Fairless Hills, PA: September 26, 2000.
TA–W–40,224; Munsey Products, Inc., Little Rock, AR: October 1, 2000.
TA–W–40,233; Garan Manufacturing, Adamsville, TN: October 14, 2001.
TA–W–40,322; The Santee Co., LLC, Eden, NC: October 9, 2000.
TA–W–40,336; Plaid Clothing Co, Inc., Erlanger, KY: June 4, 2001.
TA–W–40,344; Bradford Electronics, Inc., Bradford, PA: November 2, 2000.
TA–W–40,346; Freeman Products, A Div. Of Trophy Holdings, Inc., Knox, IN: November 1, 2000.
TA–W–39,518; Spartan International, Inc., Cherokee Finishing Plant, Gaffney, SC and A; Sparton Plant, Spartanburg, SC, B; Rosemont Plant, Jonesville, SC, C; King Finishing Plant, Dover, GA, D; King Mill, August, GA, E; Cleveland Mills, Lawndale, NC, F; Cleveland-Caroknit, Jefferson, SC, H; Spartan International Sales Office, New York, NY and I: Corporate Office, Spartansburg, SC: June 2, 2000.
TA–W–40,067; Stanly Knitting Mills, Inc., Headwear Div., Oakboro, NC: September 11, 2000.
TA–W–40,095; Galina Bouquet, Inc., New York, NY: August 31, 2000.
TA–W–40,137; American Trouser, Inc., Cutting Department, Columbus, MS: September 12, 2000.
TA–W–40,167; Fujikura Composite America, Inc., Vista, CA: September 26, 2000.
TA–W–40,193; Wilson Sporting Goods, Racquet Sports, Fountain Inn, SC: September 24, 2000.
TA–W–40,215; Armstrong-Hunt, Inc., Milton, FL: September 26, 2000.
TA–W–40,351; Libro Shirt Corp., Lykens, PA: November 1, 2000.
TA–W–40,061; Parker Hannifin Corp., Brass Department, Otsego, MI: September 4, 2000.
TA–W–39,901; Providence Metallizing Co., Inc., Pawtucket, RI: January 30, 2001.
TA–W–39,570; Tyrolit North America, Westboro, MA: February 2, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

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and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05440; Munro and Company, Inc., Clarendon Footwear, Clarendon, AR
NAFTA–TAA–05119; Rebel Screener, Inc., Sharon, TN
NAFTA–TAA–05441; Munro and Company, Inc., Dewitt Footwear, Dewitt, AR
NAFTA–TAA–05065; Taylor Wharton, Harsco Gas and Fluid Control, Harrisburg, PA
NAFTA–TAA–05310; Laclede Steel, Vandalia, IL
NAFTA–TAA–05330; Micro Tool and Manufacturing, Inc., Meadville, PA
NAFTA–TAA–05344; Drake Extrusion, Spartanburg, SC
NAFTA–TAA–05368; Burkart Foam, Inc., Cairo, IL
NAFTA–TAA–05384; Sara Lee Hosiery, Hanes Hosiery Div., Yadkinville, NC
NAFTA–TAA–05400; Incoe Corp., North Plant, Frankfort, MI
NAFTA–TAA–05403; Garan Manufacturing, Adamsville, TN
NAFTA–TAA–05467; Commercial Warehouse and Cartage, Inc., El Paso, TX
NAFTA–TAA–05526; Haskell Senator International, Haskell Div., Verona, PA
NAFTA–TAA–05536; Libro Shirt Corp., Lykens, PA
NAFTA–TAA–04832; ECK Industries, Inc., Manitowoc, WI

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05490; Johnson Controls, Inc., Reynoldsburg, OH: October 17, 2000.
NAFTA–TAA–05341; Miller Bag, Freeman Plant, Freeman, SD: September 24, 2000.
NAFTA–TAA–05509 & A; HMG Intermark Worldwide Manufacturing, Inc., Site R–1, Reading, PA and Site R–5, Reading, PA: October 26, 2000.
NAFTA–TAA–05517; Armstrong-Hunt, Inc., Milton, FL: October 14, 2000.
NAFTA–TAA–05533 & A; Port Townsend Paper Corp., Port Townsend, WA and Portland, OR
NAFTA–TAA–05539; Indiana Knitwear Corp., Willacy Apparel, Lyford, TX: November 9, 2000.
NAFTA–TAA–05540; Plaid Clothing Co., Inc., Erlanger, KY: June 4, 2001.
NAFTA–TAA–05469 & A, B, C; Aalfs Manufacturing, Inc., Mena, AR, Arkadelphia, AR, Malvern, AR, Glenwood, AR: October 22, 2000. TX: August 17, 2000.
NAFTA–TAA–05469D; Aalfs Manufacturing, Sioux City, IA: November 11, 2001.
NAFTA–TAA–05140 & A; Dyersburg Fabrics, Main Plant, Dyersburg, TN and Knitting Plant, Dyersburg, TN: July 20, 2000.
NAFTA–TAA–05198; Sheftex, Sheftex USA, Inc., St. Johnsbury, VT: August 13, 2000.
NAFTA–TAA–05415; The Santee Co., LLC, Eden, NC: October 9, 2000.
NAFTA–TAA–05456; Apparel Finishers, Inc., Athens, GA: October 19, 2000.

I hereby certify that the aforementioned determinations were issued during the month of December, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 27, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–714 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2001 and January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,324; Maverick Tube Corp., Beaver Falls, PA
TA–W–40,004; Baldor Drives and Motors, Plymouth, MN
TA–W–40,035; Eagle Veneer, Inc., Harrisburg, OR
TA–W–40,147 & A; Guilford Mills, Inc., Cobleskill, NY and Sales Division, New York, NY
TA–W–40,223 & A; Supreme Machine Products, Spring Lake, MI and Anderson, SC
TA–W–40,251; Pratt and Austin Co., Inc., Holyoke, MA
TA–W–40,295; TNS Mills, Spartanburg, SC
TA–W–40,326; Jones and Vining of Maine, Lewiston, ME
TA–W–40,331; Georgia-Pacific West, Camas, WA
TA–W–40,355 & A; R.L. Stowe Mills, Inc., Mebane, NC and Belmont, NC
TA–W–40,195; Warwood Tool Co., Wheeling, WV
TA–W–40,152; Butech, Inc., Salem, OH
TA–W–39,863; Lynn Ann Fashions, Brooklyn, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,188; GFC Foam LLC, West Hazleton, PA
TA–W–40,230; Garlock Sealing Technologies, A Div. of B.F. Goodrich, Sodus, NY
TA–W–40,266; Modern Engineering, Troy, MI

TA–W–40,368; SEH-America, Vancouver, WA
TA–W–40,129; Tyco International, A Div. of Tyco Electronic Power Systems, Formerly Lucent Technologies, Mesquite, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,388; X-Fab Texas, Inc, Lubbock, TX
TA–W–40,131; Levcort International, Paradoy Fabrics Div and Andrew Knits Div., New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–40,412; Alcatel USA Marketing, Inc., Andover, MA
TA–W–39,614; Trinity Industries, Inc., Railcar Repair Group, Paris, TN
TA–W–40,488; Sunbrand, A Div. Of Willcox and Gibbs, Inc., Norcross, GA

Affirmative Determination for Workers Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,466; & A; Value Line Textiles, Inc., Pilot Mountain, NC and Lenoir City, TN: November 17, 2000.
TA–W–40,380; HLS Fashions Corp., New York, NY: October 31, 2000.
TA–W–39,931; Minister Machine Co., Minister, OH: August 16, 2000.
TA–W–40,375; EGS Electrical Group/ Sola Hevi-Duty, Lake Geneva, WI: November 20, 2000.
TA–W–40,281; Rezyal Ltd, New York, NY: September 15, 2000.
TA–W–40,228; Omaha Fixture Manufacturing, Inc., Omaha, NE: August 1, 2000.
TA–W–40,126; Miller Bag, Freeman Plant, Freeman, SD: September 17, 2000.
TA–W–40,006 & A; Planar Systems, Inc., Highway V, Lake Mills, WI and Jefferson Street, Lake Mills, WI: August 23, 2000.
TA–W–40,892; A and M Apparel, Hamilton, AL: August 7, 2000.
TA–W–39,891; CMS North America, A Div. Of The CMS Group, Caledonia, MI: August 6, 2000.
TA–W–40,010; Seville Dyeing Co., Inc., Woodsocket, RI: September 17, 2000.
TA–W–40,142; Mercury Marine, Brunswick Corp., Fond Du Lac, WI: September 10, 2000.
TA–W–39,700; Priority Finishing Corp., Fall River, MS: June 26, 2000.
TA–W–39,733; Raltron Electronics, Miami, FL: July 18, 2000.
TA–W–40,204; Fisher-Rosemount, Austin, TX: September 28, 2000.
TA–W–40,208; Joseph L. Ertl. Inc., d/b/a Scale Models, Dyersville, IA: September 24, 2000.
TA–W–39,931; Minister Machine Co., Minister, OH: August 16, 2000.
TA–W–40, 229; Eastwood Industrial, Inc., Albermarle, NC: October 4, 2000.
TA–W–40,394 & A; N and H Corp., Mohnton, PA and Reading, PA: November 6, 2000.
TA–W–40,359; Nocona Leather Goods Co Ltd, Nocona Athletic Goods, Nocona, TX: October 16, 2000.
TA–W–40,323; Summitville Tiles, Inc., Summitville Carolina Div., Morganton, NC: October 16, 2000.
TA–W–40,299; Gilbert Paper, Div. Of Mead Corp., Menasha, WI: October 11, 2000.
TA–W–40,297 & A; Controls, Inc., Logansport, IN and Charlotte, NC: October 11, 2000.
TA–W–40,253; Mauney Hosiery Mills, Inc., Kings Mountain, NC: October 10, 2000.
TA–W–39,804 & A,B,C; Kemet Electronics Corp., Greenville, SC, Mauldin Plant, Simpsonville, SC, Simpsonville Plant, Simpsonville, SC, Fountain Inn Plant, Fountain Inn, SC: July 23, 2000.
TA–W–40.227; Delphi Harrison Thermal Systems, Moraine, OH: September 21, 2000.
TA–W–39,743; DuPont Corp., Polyester Enterprise, Dacron Polyester Fiber, Cape Fear Plant, Wilmington, NC, A; Kinston Plant, Kinston, NC, B; Cooper River Plant, Charleston, SC, C; Sales and Marketing Offices, Charlotte, NC, D; Administrative Offices, Wilmington, DE: August 24, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05237; Versatile Mold and Design, Inc., Rutledge, GA
NAFTA–TAA–05466; Nocona Leather Goods Co. Ltd., Nocona Athletic Goods, Nocona, TX
NAFTA–TAA–05613; Hibbing Taconite Co., Cliffs Mining Co., Hibbing, MN
NAFTA–TAA–05624; AXV Corp., Vancouver, WA
NAFTA–TAA–05386; GFC Foam, LLC, West Hazleton, PA
NAFTA–TAA–05416; Gilbert Paper, Div. of Mead Corp., Menasha, WI
NAFTA–TAA–05525 & A; R.L. Stowe Mills, Inc., Mebane, NC and Belmont, NC
NAFTA–TAA–05537; Chemwest Systems, Inc., Portland, OR
NAFTA–TAA–05576; Von Hoffman Press, Inc., Owensville, MO
NAFTA–TAA–04879; Maverick Tube Corp., Beaver Falls, PA
NAFTA–TAA–05273; Raltron Electronics, Miami, FL
NAFTA–TAA–05304; Eagle Veneer, Inc., Harrisburg, OR

The workers firm does not produce an article as required for certification under Section 250(a), Subchapter D, Chapter 2, Title II, the Trade Act of 1974, as amended.

NAFTA–TAA–05625; Alcatel USA Marketing, Inc., Andover, MA
NAFTA–TAA–05462; Modern Engineering, Troy, MI

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Affirmative Determinations NAFTA–TAA

NAFTA–TAA–5351; Davis Wire Corp., Hayward, CA: August 28, 2000.

NAFTA–TAA–04823; Brillcast, Inc., Grand Rapids, MI: April 30, 2000.

NAFTA–TAA–05470; Tyco International, Ltd., A Div. of Tyco Electronic Power Systems, Formerly Lucent Technologies, Mesquite, TX: October 22, 2000.

NAFTA–TAA–05388 & A; Mexican Industries, Detroit, MI and Dearborn, MI: October 3, 2000.

NAFTA–TAA–5423; Eastwood Industrial, Inc., Albemarle, NC: October 1, 2000.

NAFTA–TAA–05428; Controls, Inc., Logansport, IN and Charlotte, NC: October 10, 2000.

NAFTA–TAA–05451; Mauney Hosiery Mills, Inc., Kings Mountain, NC: October 10, 2000.

NAFTA–TAA–05521; Value Line Textiles, Inc., Pilot Mountain, NC: November 1, 2000.

NAFTA–TAA–05522; Value Line Textiles, Inc., Lenoir City, TN: November 1, 2000.

NAFTA–TAA–05529; Safeway, Inc., Juice and Dressings Div., Grandview, WA: October 29, 2000.

NAFTA–TAA–05535; Rich Products Manufacturing Corp., Appleton Div., Appleton, WI: November 1, 2000.

NAFTA–TAA–05571; Wesley Industries, Inc., Bloomfield Hills, MI: November 20, 2000.

NAFTA–TAA–5351; Davis Wire Corp., Hayward, CA: August 28, 2000.

NAFTA–TAA–5599; Artex International, Boiling Springs, NC: December 4, 2000.

I hereby certify that the aforementioned determinations were issued during the month of December, 2001 and January, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 7, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–712 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,239; W.G. Benjey, Inc., Alpena, MI

TA–W–39,739; MEMC Southwest, Sherman, TX

TA–W–40,245; 3M Co., Guin, AL

TA–W–39,640; ABC–NACO, Inc., Superior, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,033; Kraft Foods North America, Inc., Lehigh Valley, PA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,345; Bombardier Transportation, 1200 Lebanon Road, Pittsburgh, PA, A; Bombardier Transportation, 1501 Lebanon Church Road, Pittsburgh, B; 2001 Lebanon Road, Pittsburgh, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,194; Miami Richard Grading, Inc., Medley, FL: April 25, 2000.

TA–W–39,217; Brillcast, Inc., Grand Rapids, MI: April 25, 2000.

TA–W–39,484; Cooper Wood Products, Rocky Mount, VA: May 1, 2000.

TA–W–39,643; Precision Mold, Inc., Kent, WA: June 26, 2000.

TA–W–40,057; Virginia Glove, Glade Spring, VA: August 31, 2000.

TA–W–39,721; Parker Hannifin Corp., Engineered Seals Div., Goshen, IN: July 13, 2000.

TA–W–39,812; Acro Industries, Inc., Elmgrove Road, Rochester, NY: July 29, 2000.

TA–W–40,083; Hooker Furniture Corp., Martinsville, VA: September 7, 2000.

TA–W–40,226; Columbian Rope Co., Guntown, MS: September 25, 2000.

TA–W–40,225; Thermatex Corp., Newton Falls, OH: October 3, 2000.

TA–W–40,298; Aventis Crop Science, USA, Mt. Pleasant, TN: October 22, 2000.

TA–W–40,430; Vesuvius USA, Employed at LTV Steel Co., Cleveland, OH: November 5, 2000.

TA–W–40,440; Cardinal Brands, Inc., Hazel Promotional Products, Washington, MO: October 22, 2000.

TA–W–40,199; Washington Group International, Mining Unit, Boise, ID, Employed at Equatorial Tonopah, Inc., Tonapah, NV: September 26, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 2001.

In order for an affirmative determination to be made and certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05332; Mercury Marine, Brunswick Corp., Fond du Lac, WI

NAFTA–TAA–05501; Huhtamaki, Food Services Div., Formerly Known as Packaging Resources, Mt. Carmel, PA

NAFTA–TAA–05481; Texfi Industries, Jefferson, GA

NAFTA–TAA–05405; W.G. Benjey, Inc., Alpena, MI

NAFTA–TAA–05471; Syst-A-Matic Tool and Design, Inc., Meadville, PA

NAFTA–TAA–05514; Pennsylvania Tool and Gages, Inc., Meadville, PA

NAFTA–TAA–05605; Hershey Foods Corp., Pennsburg, PA

NAFTA–TAA–05291; Kraft Foods North America, Inc., Lehigh Valley, PA

NAFTA–TAA–05060; ABC–NACO, Inc., Superior, WI

NAFTA–TAA–05037; Precision Mold, Inc., Kent, WA

NAFTA–TAA–05218; Chipman Union, Inc., Union Point, GA

NAFTA–TAA–05327; Parker Hannifin Corp., Brass Department, Otsego, MI

NAFTA–TAA–04569; Blount, Inc., Prentice, WI

NAFTA–TAA–05298; Craftsman Fabrics, Phoenix Mills, Concord, NC

NAFTA–TAA–04914; Boss Industries, Inc., Erie, PA

NAFTA–TAA–05453; Fibermark, Inc., Rochester, MI

The workers firm does not produce an article as required for certification under Section 250(a), Subchapter D, Chapter 2, Title II, the Trade Act of 1974, as amended.

NAFTA–TAA–05512; Sunbrand, A Div. Of Wilcox and Gibbs, Inc., Norcross, GA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05136; Federal Mogul Corp., Powertrain Systems, St. Johns, MI: July 26, 2000.

NAFTA–TAA–05473; Madill Corp., Kalama, WA: October 25, 2000.

NAFTA–TAA–05419; Thermatex Corp., Newton Falls, OH: August 28, 2000.

NAFTA–TAA–05028; Parker Hannifin Corp., Engineered Seals Div., Goshen, IN: June 29, 2000.

NAFTA–TAA–05497; Cardinal Brands, Inc., Hazel Promotional Products, Washington, MO: October 23, 2000.

NAFTA–TAA–05538; Leased Workers of Employment Group at St. Clair Technologies, Charlotte, MI: November 2, 2000.

NAFTA–TAA–05569; NACCO Materials Handling Group, Inc., Americas Div., Greenville, NC: November 15, 2000.

NAFTA–TAA–04932; Kentucky Electric Steel, Ashland, KY: April 25, 2000.

NAFTA–TAA–05425; Solectron Corp., Durham, NC: October 9, 2000.

I hereby certify that the aforementioned determinations were issued during the month of December, 2001. Copies of these determinations are available for inspection in room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 2, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–719 Filed 1–11–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–40,096]

Crenlo, Inc. Rochester, Minnesota; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 24, 2001, in response to a petition filed on behalf of workers at CRENLO, Inc., Rochester, Minnesota.

Further examination of the Trade Adjustment Assistance petition form shows that the filing does not meet the Trade Act requirements for a valid petition. The petition is invalid because it contains the signature of only one worker, not the required three. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 3rd day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–718 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,452]

N & H Corporation, Mohnton, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 17, 2001, in response to a worker petition which was filed on behalf of workers at N & H Corporation, Mohnton, Pennsylvania.

A petition for this worker group is currently under investigation (TA–W–40,394). Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 27th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–715 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40, 202]

Renaissance Woodworking, Inc. Brooklyn, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 15, 2001, in response to a petition that was filed on behalf of workers at Renaissance Woodworking, Inc., Brooklyn, New York.

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The Department was unable to locate an official of the company to obtain the information necessary to conduct the investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–717 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,385]

Steag Hamatech, Inc., Saco, Maine; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 3, 2001, in response to a worker petition, which was filed on behalf of workers at Steag Hamatech, Inc., Saco, Maine.

An active certification covering the petitioning group of workers remains in effect (TA–W–38,953). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 31st day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–713 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA) Standardized Record Data (WIASRD), Quarterly Summary Report, and Annual Report; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Workforce Investment Act Management Information and Reporting System.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 12, 2002.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC, 20210. Attention: William Rabung, Telephone: (202) 693–3031 (not a toll-free number), Facsimile number: (202) 693–3229, E-mail address: *wrabung@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In implementing the performance accountability and reporting provisions of the Workforce Investment Act of 1998 (WIA), all state jurisdictions and territories operating programs under WIA Title I–B are required to submit three types of participation and performance reports electronically to DOL on a periodic basis that allow the Department to manage its responsibilities under: (1) WIA section 136(d); (2) WIA section 185(a)(2), (c)(2), and (d); and (3) WIA section 189(d). These responsibilities include reporting the progress of States in achieving negotiated levels of performance on the required core and customer satisfaction measures, reports and recordkeeping, and responsibilities under the Government Performance and Results Act (GPRA). The Department seeks to extend these data collection and reporting requirements without change. The Department originally received approval of this reporting package on March 1 of this year with an expiration date of October 31 of this year. This very limited approval period made it impossible for the Department to receive required information from states or to perform any analyses of the data for purposes of program administration. The Department has requested and received a 90 day extension of this reporting package in order for the Department to at least receive the next quarterly report and the first annual report and WIASRD data from states. In order to meet the requirements of the Paperwork Reduction Act, the Department is submitting this package as approved on March 1, 2000 with only minor clarification and grammatical corrections for extension of data collection and reporting requirements.

There are two basic report systems—financial and program. The financial reports are required quarterly, as provided for in WIA sec. 185(e). To avoid unnecessary reporting, the quarterly financial report looks at expenditures and records related to WIA sec. 185(f) and (g). The quarterly financial report was addressed in a separate **Federal Register** notice (65 FR 5897–5898, Feb. 7, 2000). Turning to the program report system, there are three types of reports submitted by states: individual records, quarterly summary reports, and annual reports.

A. Individual Records

The Department established a standard set of core data elements that must be maintained for each individual who receives WIA Title I–B services beyond self-service and informational activities. The number of data elements collected for each individual is driven by the level of service. States submit individual record-level electronic records for program exiters annually. The Workforce Investment Act Standardized Record Data (WIASRD) contains:

—Relevant demographic characteristics including race, ethnicity, sex and age and other related information on the participants (WIA sec. 185(d)(1)(A));

—WIA Title I–B and partner program activities in which the participants are enrolled (WIA sec. 185(d)(1)(B)); and

—Outcomes for the participants, including occupations and placement in non-traditional employment (WIA sec. 185(d)(1)(C)).

The WIASRD and related documents can be viewed at the Department's Internet Web site, *http://www.usworkforce.org.*

B. Quarterly Summary Reports

The quarterly summary reports reflect statewide activity for negotiated performance and actual performance levels as well as the number of current participants and those participants who exited during the program period.These reports provide DOL with key information necessary for program oversight purposes. This information

facilitates the Department's efforts in assessing its own performance against established GPRA goals. States electronically submit the quarterly summary reports within 45 days following the end of each quarter.

The Quarterly Summary Report format and instructions for completing this report can be viewed at the Department's Internet Web site, *http://www.usworkforce.org.*

C. Annual Reports

On an annual basis, each state publishes and submits to the Secretary an Annual Report which explains the outcomes of WIA Title I-B programs to employers, taxpayers, participants and Congress and meets the provisions at WIA sec.136(d) and WIA sec. 185(d). This report emulates the private sector's "report to stockholders" and affords considerable flexibility to states to represent their qualities in the most advantageous manner to all stakeholders, including Congress, Governors, state legislators, workforce investment boards, and the public. This report is submitted electronically to DOL.

The state's Annual Report includes state performance as well as local performance. Copies of each state's Annual Report are sent to Congress. The performance outcomes detailed in the report will serve as the basis for awarding incentives or administering sanctions to states for performance which exceeds or falls below the negotiated levels of performance.

The instructions for completing an annual report can be accessed and viewed at the Department's Internet Web site, *http://www. usworkforce.org.* In order to report on the two required customer satisfaction measures (one for employers and one for participants) in the annual and quarterly summary reports, states must conduct surveys of both groups following the directions contained in Attachment V posted on the Department's Internet Web site, *http://www.usworkforce.org.*

II. Current Actions

The proposed extension of the data collection and reporting system will assist the Department in meeting its mandated responsibilities by providing standardized information regarding demographics, activities and outcomes for all registrants receiving more than informational or self-service in all states and workforce investment areas. Information will also be used for general oversight, continuous improvement and research purposes.

Type of Review: Extension.

Agency: Employment and Training Administration.

Titles: Workforce Investment Act Standardized Record Data, (WIASRD), Annual Report, Quarterly Summary Reports.

OMB Number: 1205–0420.

Affected Public: State governments, local workforce investment areas, and local workforce investment boards.

Cite/Reference: Authority to collect this information is provided by the Workforce Investment Act of 1998 in secs. 136, 185, and 189.

Form/etc: See the documents posted on the Department's Internet Web site, *http://www.usworkforce.org.*

Total Respondents: 53 (50 States, District of Columbia, Puerto Rico, and Virgin Islands).

Frequency: Annual Report—Yearly by December 1; Quarterly Summary Report—submitted within 45 days following each quarter; Individual Record—Annually by December 1.

Total Responses: One Annual Report for each respondent. States must submit three hard copies and one electronic copy of the annual report to the Secretary of Labor. One electronic submission of the Quarterly Summary Report from each respondent. One electronic data set from each of the respondents containing individual records for each registrant served.

Average Time: 2,384 hours.

Per Response: The actual response time varies by number of local workforce investment boards and individual records of individuals served in the state.

Estimated Total Burden Hours:

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (total nat. hrs.)
Individual Records.	53 entities are required to submit individual records 6 entities may submit individual records [1].	Annually	53 (One set of records per respondent. Set will vary in size depending on the number of individuals served in the jurisdiction.).	13,272 hours	703,416 hours
Annual Report	See above	Annually	53	45 hours	2,385 hours
Customer Satisfaction Survey.	53 States*	Quarterly/Annually.	(Results to be included in the Annual and Quarterly Reports).	5 min. (1/12 hr.)**	4,417 hours
	Agency Administration 53			688 hours	36,464 hours
	Overhead 53			154 hours	8,162 hours
Quarterly Summary Report.	53	Quarterly	212 (53×4)	16 hours	3,392 hours.
Totals	53	Quarterly/Annually.	318	2,384 hours	758,236 hours.

*Each State will submit one index score for the employer responses and one for the participant responses.

**Assumes only 3 ASCI questions are administered.

[1] All 50 States, the District of Columbia, Puerto Rico and The U.S. Virgin Islands are required to submit individual records, quarterly reports and annual reports using the instructions and formats provided.

The Secretary may reserve up to ¼ of 1 percent of the WIA Title I–B funds for Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States (The Marshall Islands, Palau and the Federated States of Micronesia). Notwithstanding any other provision of law, the Freely Associated States shall not receive any assistance for any program year that begins after September 30, 2001 (WIA section 127(b)(1)(B)(ii)(IV)). These areas have limited access to technology, wage records and unique economies that result in barriers to implementing some of the indicators of performance and to collecting and reporting data. Given these unique circumstances, regional staff will work with these entities to develop suitable reporting requirements. These areas are not eligible to receive incentive grants for exceeding negotiated levels of performance.

Explanation of Burden Hours:

A. Individual Record—703,416 hrs. Baseline: 8,768 hrs./reporting unit in the Paperwork Reduction Package regarding the JTPA reporting system (SPIR = 56 State reporting units).

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Factor: 51% higher due to (1) increase in size of record, and (2) increase in number of program participants. Increases were not cumulative; some allowance made for economies of scale and learning curve.

B. Annual Report—2,385 hrs.

Estimate based on 45 hrs./reporting unit to produce one report per year (includes program run, checking, report formatting for transmission).

C. Quarterly Report—3,392 hrs.

Estimate based on 64 hrs./reporting unit to produce four reports per year (includes program run, checking, report formatting for transmission)—16 hrs./report.

D. Customer Satisfaction Survey.

Respondents—4,417 hrs.

Estimate based on 1,000 responses per reporting unit (500 WIA participants and 500 employers) and 5 min. (1/12 hr.) per survey. This assumes the three ACSI questions are asked. States may incur increased costs in the event additional questions are asked on the surveys.

Survey Administration—36,464 hrs.

Estimate based on 41 minutes to obtain a completed survey (telephone contacts, call-backs, data entry). This estimate assumes 50% of the respondents for each State will take an average of 30 minutes each, 25% will require an average of 45 minutes, and 25% will require an average of 60 minutes to obtain each completed survey.

Survey Preparation and Overhead—8,162 hrs.

Estimate based on:

Survey development (preparation of questionnaire and telephone script for interviewer)—40 hrs./reporting unit;

Sample selection—24 hrs./reporting unit;

Survey set-up (setting up survey for telephone administration and creation of a database)—40 hrs./reporting unit;

Compilation of results (includes generation of descriptive statistics and calculation of index for participants and employers)—50 hrs./reporting unit.

Total Burden Cost (Capital/Start-up Costs): $0. All respondents are currently operating production-status reporting systems.

Total Burden Cost (Operation and Maintenance Costs): $18,986,229.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

III. Documents for Review and Comment

The following documents cited in this notice can be viewed at the Department's Internet Web site, *http://www.usworkforce.org;*

—The Workforce Investment Act Title I–B Standardized Record Data (WIASRD) layout;

—The Workforce Investment Act Quarterly Summary Report Format;

—The Instructions for Submission of WIA Quarterly Summary Report;

—The instructions for submission of the WIA Annual Report; and

—The instructions for capturing, computing and recording outcomes on the Customer Satisfaction Measures.

Dated: December 13, 2001.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 02–667 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than January 21, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than January 21, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, N.W. Washington, DC 20210.

Signed at Washington, DC, this 2nd day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
A.O. Smith Electrical Products (Co.)	Scottsville, KY	12/11/2001	NAFTA–5, 634	Stator & coil electric motor.
Sumitomo Electric Wiring (Co.)	Morgantown, KY	12/11/2001	NAFTA–5, 635	Electric wiring harnesses.
Bayer Clothing Group (UNITE)	Clearfield, PA	12/10/2001	NAFTA–5, 636	Men's tailored suits and sportscoats.
Daisbowa America (Wkrs)	Port Angeles, WA	12/10/2001	NAFTA–5, 637	Woods clips.
Scientific Molding (Wkrs)	Brownsville, TX	12/12/2001	NAFTA–5, 638	Assembled tools and molding.
Acme Steel (Wkrs)	Riverdale, IL	12/07/2001	NAFTA–5, 639	Hot rolled steel.
VF Jeanswear (Co.)	Russellville, AL	12/12/2001	NAFTA–5, 640	Jeans.
VDO North America LLC (Co.)	Winchester, VA	12/18/2001	NAFTA–5, 641	Fuel systems for cars.
Imperial Home Decor Group (UAW)	Adams, MA	12/11/2001	NAFTA–5, 642	Wallpaper.
A.O. Smith Electrical Products (Co.)	Lexington, TN	12/10/2001	NAFTA–5, 643	Electric motors.
Bose Corporation (Wkrs)	Hillsdale, MI	12/14/2001	NAFTA–5, 644	Automotive loudspeaker.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Eurotherm Action (Co.)	San Diego, CA	10/17/2001	NAFTA–5, 645	Signal conditioners.
Smiley Hats (Co.)	Sparks, NV	11/09/2001	NAFTA–5, 646	Hats, mittens, scarfs, blankets.
Active Transportation (IBT)	Portland, OR	12/13/2001	NAFTA–5, 647	Heavy duty trucks.
Harper Wyman (Wkrs)	Princeton, IL	12/14/2001	NAFTA–5, 648	Engineering services.
IEC Electronics (Wkrs)	Newark, NY	10/25/2001	NAFTA–5, 649	Communications equipment.
Holland Binkley (Co.)	Dayton, OH	12/17/2001	NAFTA–5, 650	Semi trailer axles.
Bourns (Co.)	Logan, UT	12/17/2001	NAFTA–5, 651	Electronic components.
Magnequench International (UAW)	Anderson, ID	12/13/2001	NAFTA–5, 652	Permanent magnets & magnetic powders.
Empire Iron Mining Partnership—Tilden (Co.).	Cleveland, OH	12/12/2001	NAFTA–5, 653	Steel.
Hayes Lemmerz International (Wkrs)	Petersburg, MI	11/17/2001	NAFTA–5, 654	Plastic intake manfolds.
Kennametal (Co.)	Pine Bluff, AR	12/12/2001	NAFTA–5, 655	Drill.
Eaton Corporation—Actuator Esensor (Wkrs).	Sanford, NC	12/17/2001	NAFTA–5, 656	Right angle thermal expansion valve.
USNR (Wkrs)	Woodland, WA	12/17/2001	NAFTA–5, 657	Saw mill equipment and spare parts.
Perceptron (Co.)	Lake Oswego, OR	12/11/2001	NAFTA–5, 658	Sensor and robotic equipment.
Liz Claiborne (UNITE)	Mt. Pocono, PA	12/19/2001	NAFTA–5, 659	Men's and women's apparel.
Vanity Fair Intimates (Co.)	Monroeville, AL	12/20/2001	NAFTA–5, 660	Women's intimate apparel.
Tree Machine Tools (IAMAW)	Franklin, WI	12/19/2001	NAFTA–5, 661	Computer controlled machining centers.
Robert Mitchell—Douglas Brothers (Co.).	Portland, ME	12/19/2001	NAFTA–5, 662	Stainless steel pipe and fitting.
Exide Technologies (UAW)	Shreveport, LA	12/19/2001	NAFTA–5, 663	12 volt automotive batteries.
Neville Chemical (USWA)	Pittsburgh, PA	12/19/2001	NAFTA–5, 664	Hydro carbon resins for printing ink.
JBI, LP (Co.)	Osseo, WI	12/19/2001	NAFTA–5, 665	Parts washers and ovens.
Dana Corporation—Spicer Mfg. (Wkrs)	Pottstown, PA	12/19/2001	NAFTA–5, 666	Slip yokes, flange yokes etc.
Accuride International (Co.)	South Bend, IN	12/18/2001	NAFTA–5, 667	Ball bearing linear slides.
Parker Hannifin (Wkrs)	Eaton, OH	12/17/2001	NAFTA–5, 668	Tube fittings.
Midcom, Inc. (Co.)	Watertown, SD	12/18/2001	NAFTA–5, 669	Transformer for telecommunications.
Greenwood Mills (Co.)	Greenwood, SC	12/20/2001	NAFTA–5, 670	Textiles.
Beta Steel (Co.)	Portage, IN	12/26/2001	NAFTA–5, 671	Steel, hot rolled coils.
Pacific Scientific Instruments (Wkrs)	Crants Pass, OR	12/19/2001	NAFTA–5, 672	Particle counters and software.
Phoenix Gold International (Wkrs)	Portland, OR	12/19/2001	NAFTA–5, 673	Circuit board.
Loren Casting (Wkrs)	Hollywood, FL	12/20/2001	NAFTA–5, 674	Wax carving and wax stone setting.
STS Apparel (Wkrs)	Hialeah, FL	12/18/2001	NAFTA–5, 675	Embroidery for garments.
Nortel Networks (Wkrs)	Boca Raton, FL	12/19/2001	NAFTA–5, 676	Optical networking systems.
Swift Spinning Mills (Co.)	Columbus, GA	12/19/2001	NAFTA–5, 677	Denim.
Swift Spinning Mills (Co.)	Columbus, GA	12/19/2001	NAFTA–5, 678	Spun cotton yarn.
Biokyowa (Co.)	Cape Girardeau, MO	12/21/2001	NAFTA–5, 679	Lysine amino acid feed supplement.
F.C. Mayer Packaging (Wkrs)	St. Louis, MO	12/21/2001	NAFTA–5, 680	Shoe cartons.
VF Jeanswear (Wkrs)	Springfield, MO	12/21/2001	NAFTA–5, 681	Jeans and casual wear.
Parallax Power Components (Co.)	Goodland, IN	12/20/2001	NAFTA–5, 682	Transformers.
Multi Products (Wkrs)	Erie, PA	12/27/2001	NAFTA–5, 683	Custom plastic injection molds.
Kraft Foods North America (Wkrs)	Allentown, PA	12/27/2001	NAFTA–5, 684	Barbecue sauce and salad dressing.

[FR Doc. 02–716 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue

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current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms from the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determination issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When Ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–482 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Consumer Price Index Commodities and Services Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 12, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the direction of the Secretary of Labor, the Bureau of Labor Statistics (BLS) is directed by law to collect, collate, and report full and complete statistics on the conditions of labor and the products and distribution of the products of the same; the Consumer Price Index (CPI) is one of these statistics. The collection of data from a wide spectrum of retail establishments and government agencies is essential for the timely and accurate calculation of the Commodities and Services (C&S) component of the CPI.

The CPI is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is a measure of the average change in prices over time paid by urban consumers for a market basket of goods and services.

The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of government economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars. A third major use of the CPI is to adjust income payments. Over two million workers are covered by collective bargaining contracts which provide for increases in wage rates based on increases in the CPI.

The continuation of the collection of prices for the CPI is essential since the CPI is the nation's chief source of information on retail price changes. If the information on C&S prices were not collected, Federal fiscal and monetary policies would be hampered due to the lack of information on price changes in a major sector of the U.S. economy, and estimates of the real value of the Gross National Product could not be made. The consequences to both the Federal and private sectors would be far-reaching and would have serious repercussions on Federal government policy and institutions.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

A new outlet rotation model introduced during the 1998 revision is now fully deployed. This model results in rotating the full C&S sample every four years.

A new initiative to reinitiate a subset of the currently priced item sample in existing outlets to account for new goods is under development. This initiative is referred to as Item Rotation. Item rotation is a process that allows for the inclusion of new goods when reinitiating existing quotes within currently priced outlets and enables the item sample to be refreshed without the expense and delay of a full Telephone Point of Purchase Survey (TPOPS) rotation. Under this initiative at currently priced outlets for selected item categories the items priced will be reinitiated two years after the original initiation, thus offering the chance that new goods will be selected for pricing. An example is prescription drugs, where under this initiative based on current sales data priced drugs will be reinitiated. Since this reinitiation will include all currently dispensed drugs those that have been introduced since the previous initiation will have a chance to be selected. Over a four year period up to half our priced outlets will be subject to item rotation.

Currently, data for the CPI are recorded on collection schedules by CPI field staff in assigned retail outlets and are mailed to the National Office for processing. A key element nearing completion is to convert all ongoing data collection and transmission to electronic systems. The gradual introduction of a Computer-Assisted Data Collection (CADC) system for the C&S portion of the CPI will begin in the fall of 2002. The use of CADC will result in significant advantages by increasing productivity and improving the overall quality of the CPI. Electronic data collection and transmission will provide long-term savings through a major reduction of mail, paper, and printing costs. Electronic systems will provide an opportunity to reduce data capture and review time, and to improve survey logistics management.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Affected Public: Business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Form number	Total number of respondents	Frequency	Total annual responses	Minutes per response (average)	Estimated total burden hours
BLS 3400	14,178	Annual	14,178	4	993
BLS 3400A.2	19,105	Annual	19,105	29.76	9,486
BLS 3400B	19,105	Annual	19,105	25.50	8,124
BLS 3400C	1,375	Annual	1,375	6	138
BLS 3401	39,415	Monthly/Bimonthly	343,699	13.8	79,051
Totals	[1]58,520		[2]362,804	[3]15	97,792

[1] The total number of respondents, 58,520, does not reflect the sum of the number of respondents for the five listed forms because the first form only applies to all of our activities that involve initiation, while the second and third forms involves all initiations plus item rotation. The fourth form is only used in a sub set of outlets being initiated. The fifth form is used only for the regular pricing of sampled outlets. Thus the total individual respondents impacted by the five forms is 39,415 + 19,105 = 58,520 respondents.

[2] The total annual responses does not reflect the sum of all of the listed responses because, as noted in footnote 1, some forms are used at the same respondent when they are initiated or are part of item rotation. Thus the total annual responses associated with the five forms is 343,699 + 19,105 = 362,804.

[3] The sum of minutes represents a weighted average of the minutes per respondent, using annual responses as a weight.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

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Signed at Washington, DC, this 19th day of December, 2001.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–668 Filed 1–10–02; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee (1172).

Date/Time: Wednesday, March 6, 2000, 9 a.m.–3 p.m., room 340.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230. Telephone: 703/292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reasons for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under (4) and (6) of 5 U.S.C. 552b(c) of the Government in the Sunshine Act.

Dated: January 8, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–758 Filed 1–10–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel on Research, Evaluation and Communication (1210).

Dates/Time: January 29, 2002 (8:00 a.m.–5:00 p.m.), January 30, 2002 (8:00 a.m. to–5:00 p.m.).

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Kenneth Whang, Program Director, Division of Research, Evaluation and Communication (REC), Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: 703/292–8650.

Purpose of Meeting: To discuss trends and implications of brain research and education.

Agenda (Tentative):

January 29, 2002

2:15 pm
Overview and welcome
Introductions
2:30 pm
The ROLE portfolio: brain and cognitive components
3:00 pm
Discussion
3:30 pm
The ROLE program: guidelines, review, and management
4:00 pm
Discussion
4:30 pm
The ROLE community: outreach and development
5:00 pm
Discussion
5:30 pm
Break
6:00 pm
Dinner

January 30, 2002

8:30 pm
Synthesis and outstanding issues
Discussion a
10:00 am
Complete panel write-ups of recommendations
12:00 pm
Adjourn

Dated: January 8, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–774 Filed 1–10–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC and MidAmerican Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant HazardsConsideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DAR–29 and DAR–30 issued to Exelon Generation Company, LLC, and MidAmerican Energy Company (the licensee) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would revise technical specification section 3.3.1.1, "Reactor Protection System Instrumentation," to modify the description for Reactor Protection System (RPS) Function 7.a, "Scram Discharge Volume Water Level—High." This change supports a planned upgrade to the scram discharge volume level instrumentation from Fluid Components International thermal switches to Magnetrol float switches. These float switches are more reliable than the existing thermal switches, which are highly sensitive to a steam environment, since they respond to actual water level increases within the scram discharge volume. These types of Magnetrol float switches are used successfully in various applications at Quad Cities.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

During the upcoming refueling outages at Quad Cities Nuclear Power Station (QCNPS), a design change will be implemented that upgrades the existing Scram Discharge Water Level—High instrumentation from thermal switches to float switches. Float switches are a proven technology that provide a more reliable measurement than existing equipment. Float switches are used in various applications at QCNPS, including the Emergency Core Cooling Systems instrumentation for Suppression Pool Water Level High function.

TS requirements that govern operability or routine testing of plant instruments are not initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, this proposed change will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, the proposed change will not increase the consequences of an accident previously evaluated because the proposed change does not adversely impact structures, systems, or components (SSCs). The planned instrument upgrade results in a more reliable design than existing equipment. The proposed change maintains existing requirements that ensure components are operable when necessary for the prevention or mitigation of accidents or transients. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change supports a planned instrumentation upgrade and does not alter surveillance requirements required to ensure operability. The proposed change does not adversely impact the manner in which the SDV will operate under normal, abnormal, and accident conditions. There is no change being made to the parameters within which QCNPS is operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed change. This proposed change will not alter the manner in which equipment operation is initiated nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure QCNPS remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. Therefore, this proposed change provides an equivalent level of safety. The proposed change in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed change supports a planned instrumentation upgrade. The proposed change does not affect the probability of failure or availability of the affected instrumentation. The change to float switches for the Scram Discharge Volume Water Level—High RPS Sub-Function 7.a provides for increased reliability that aligns with that of similar instrumentation. Therefore, it is concluded that the proposed changes will not result in a significant reduction in the margin of safety.

Therefore, based upon the above evaluation, EGC has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 10, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the

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contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Edward J. Cullen Jr., Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated [date], which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–694 Filed 1–10–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; January 24, 2002 Public Hearing; Meeting

TIME AND DATE: 2 PM, Thursday, January 24, 2002.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 PM.

PURPOSE: Annual Public Hearing and Hearing in conjunction with the quarterly meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 PM, Friday, January 18, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM, Friday, January 18, 2002. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(c)(1) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year; and by section 231A(c)(2) to hold a public hearing in conjunction with the quarterly meeting of the Board of Directors.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights * * * to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences ("GSP"). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Public Law 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

Dated: January 8, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–843 Filed 1–9–02; 11:00 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25357; 812–12746]

Capital One Financial Corporation, et al.; Notice of Application

January 7, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain finance subsidiaries of Capital One Financial Corporation ("COFC") to sell securities and use the proceeds to finance the business activities of COFC, and certain companies controlled by COFC ("Controlled Companies").

APPLICANTS: COFC; Capital One Capital II, Capital One Capital III and Capital One Capital IV (collectively, the "COC Trusts"); and Capital One Capital II, LLC, Capital One Capital III, LLC and Capital One Capital IV, LLC (collectively, the "COC LLCs") (the COC Trusts and COC LLCs, collectively, the "Finance Subsidiaries").

FILING DATES: The application was filed on January 7, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 1, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, John G. Finneran, Jr., Capital One Financial Corporation, Suite 1300, 2980 Fairview Park Drive, Falls Church, Virginia 22042–4525.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel (202) 942–0614, or Janet M. Grossnickle, Branch Chief (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. COFC, a Delaware corporation, is a company whose subsidiaries provide a variety of financial products and services to consumers. COFC's principal subsidiary, Capital One Bank ("Bank"), is a limited-purpose Virginia state-chartered credit card bank offering credit card products. COFC also owns Capital One, F.S.B. ("Savings Bank"), a federally chartered savings bank, which is a member of the Federal Home Loan Bank System. The Bank has filed applications with the Board of Governors of the Federal Reserve System and the Bureau of Financial Institutions of the Virginia State Corporation Commission seeking to merge the Savings Bank with and into the Bank and to effect the conversion of the Bank into a Virginia state-chartered savings bank (the "Merger and Conversion").

2. COFC will establish the COC Trusts as Delaware business trusts and will own all of the outstanding voting beneficial interests to be issued by the COC Trusts. The Bank will establish the COC LLCs as Delaware limited liability companies and will own all of the outstanding voting beneficial interests to be issued by the COC LLCs. Because the Bank is a wholly owned direct subsidiary of COFC, the COC LLCs will be indirect subsidiaries of COFC.

3. The Finance Subsidiaries will be organized to engage in financing activities that will provide funds for use in the operations of COFC, the Bank, and other Controlled Companies. The Finance Subsidiaries' primary function will be to obtain funds through the offer and sale of their preferred beneficial interests (the "Preferred Interests") in U.S., European, and other overseas markets, and to apply the proceeds exclusively to finance the operations of COFC, the Bank and other Controlled Companies. Each COC Trust will hold the Preferred Interests of the related COC LLC which will be contributed to the COC Trust by COFC. Any issuance of a Finance Subsidiary's Preferred Interests will be guaranteed unconditionally (on a subordinated basis) by COFC with a guarantee that meets the requirements of rule 3a-5(a)(2) under the Act (the "Guarantees"). The Guarantees provide each holder of Preferred Interests a direct right of action against COFC to enforce COFC's obligations under the applicable Guarantee without first proceeding against the applicable Finance Subsidiary. In accordance with rule 3a-5(a)(5) under the Act, at least 85% of any cash or cash equivalents raised by each Finance Subsidiary will be invested in or loaned to COFC or Controlled Companies as soon as practicable, but in no event later than six months after such Finance Subsidiary's receipt of such cash or cash equivalents. Additionally, after giving effect to the requested exemption, each Finance Subsidiary will meet the requirements of rule 3a-5(a)(6) under the Act.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act exempting each Finance Subsidiary from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the Act for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

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2. Rule 3a–5(b)(3)(i) under the Act, in relevant part, defines a "company controlled by the parent company" to mean any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a) of the Act. The Bank does not fit, and after the proposed Merger and Conversion still will not fit, within the definition of "company controlled by the parent company" because it derives its non-investment company status from section 3(c)(3) of the Act. Consequently, the outstanding securities of a COC LLC would be owned by a company that does not meet the requirements of rule 3a–5(b)(1)(i) under the Act. In addition, to the extent a Finance Subsidiary makes loans to or makes or holds investments in the Bank, that Finance Subsidiary would not meet the definition of a "finance subsidiary" under rule 3a–5 because it would be financing an entity that does not meet the definition of a company controlled by the parent company as required by rule 3a–5(b)(1)(ii) under the Act. The COC LLCs also do not fit within the definition of "company controlled by the parent company" because they would, after giving effect to requested relief, be exempted by order under section 6(c) of Act rather than by the rules or regulations under section 3(a) of the Act. Consequently, a COC Trust that holds or makes investments in securities of a COC LLC would not meet the requirement in rule 3a–5(a)(6) under the Act.

3. Applicants request exemptive relief to permit the Finance Subsidiaries to finance the operations of the Bank, which is excluded from the definition of investment company by virtue of section 3(c)(3), and to permit the Bank to own all outstanding voting ownership interests of each COC LLC. In addition, Applicants request exemptive relief to permit each Finance Subsidiary to make loans to or make or hold investments in a COC LLC that relies on an order issued under section 6(c) of the Act. Applicants state that neither the Bank nor the Finance Subsidiaries will engage primarily in investment company activities, and that each Finance Subsidiary's primary business purpose will be to engage in financing activities that will provide funds for COFC and the Bank.

4. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that its exemptive request meets the standards set out in section 6(c) of the Act.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Each Finance Subsidiary will comply with all of the provisions of rule 3a-5 under the Act, except: (1) the Bank will not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) under the Act solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (2) each Finance Subsidiary will be permitted to make loans to or make or hold investments in corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a(b)(3)(i) under the Act solely because (i) they are excluded from the definition of investment company under section 3(c)(3) of the Act or (ii) they are a COC LLC that does not meet the definition of "company controlled by the parent company" in rule 3a-5(b)(3)(i) under the Act solely because it is relying on an order issued under section 6(c) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–806 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 14, 2002:

A closed meeting will be held on Tuesday, January 15, 2002, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, January 15, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 8, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–805 Filed 1–8–02; 4:37 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45241; File No. SR–Amex–2002–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days its Pilot Program Relating to Facilitation Cross Transactions

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2002, the American Stock Exchange LLC ("Amex" of "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended in October 2001, and is due to expire on January 7, 2002.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the year and a half since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, and extended again in October 2001. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001) 66 FR 37507 (July 18, 2001); and 44924 (October 11, 2001), 66FR 53456 (October 22, 2001).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2002–01 and should be submitted by February 1, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register.** The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through April 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–759 Filed 1–10–02; 8:45 am]

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[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45244; File No. SR–CBOE–00–56]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change, To Allow Certain Orders Entered Through the Exchange's Order Routing System To Automatically Trade Against Orders in the Exchange's Customer Limit Order Book

January 7, 2002.

I. Introduction

On November 13, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow certain orders entered through the Exchange's Order Routing System ("ORS") to automatically trade against orders in the Exchange's customer limit order book. The proposed rule change was published in the **Federal Register** on June 4, 2001.[3] The Commission received one letter and one e-mail, submitted by the same commenter, regarding the proposed rule change.[4] On October 1, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[5]

This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on the amendment.

II. Description of the Proposed Rule Change

The CBOE's Automated Book Priority System ("ABP") allows an order entered into the Exchange's Retail Automatic Execution System ("RAES") to trade directly with an order on the Exchange's customer limit order book when the best bid (offer) on the Exchange's book is equal to the prevailing market bid (offer).[6] However, orders entered into the RAES system are subject to size limitations. The Exchange now proposes to expand the application of the ABP system to allow booked orders to trade directly with incoming marketable public customer orders routed through ORS which, because of their larger size, are ineligible for RAES.[7]

Currently, when a non-RAES eligible order is entered into the Exchange's ORS and the best bid (offer on the Exchange's book is equal to the prevailing market bid (offer), the order is routed to a Floor Broker's terminal, a work station in the crowd, or the order-sending firm's booth. CBOE submits that this helps ensure that such orders are handled and executed in a manner consistent with CBOE Rule 6.45, which provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. However, CBOE states that once an order is so routed, it becomes subject to market risk, as there may be some delay between the time the order is rerouted and the time it is actually filled in open outcry. CBOE believes that in times of extreme market volatility this delay could have a significant effect on the price at which the order is executed.

Under the proposal, an incoming marketable public customer ORS order would be automatically executed against a customer limit order in the book that represents or equals the prevailing best bid (offer) up to the size of that booked order. Any remaining balance of the ORS order would then be instantly rerouted through the ORS as if it were a new order, which could, among other things, include handling under CBOE's RAES Rule (Rule 6.8). The proposed rule change also provides that no automatic execution would take place at a price inferior to the current best bid (offer) in any other market.

The proposed change would be contained in proposed new Rule 6.8.B. The new rule would further provide that the appropriate Floor Procedure Committee ("FPC") could determine which option classes would be subject to the rule. Furthermore, the proposed rule would allow two Floor Officials, the FPC Chairman, or the Chairman's designee to exempt an option class or classes from the proposed rule's requirements if warranted by unusual market conditions.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44356 (May 25, 2001), 66 FR 30033 (June 4, 2001) ("Notice").

[4] *See* Letter to the Secretary, Commission, dated June 3, 2001, and e-mail submitted to the Division of Market Regulation, Commission, dated June 4, 2001, from Mike Ianni ("Ianni Comments")

[5] *See* Letter from Angelo Evangelou, Attorney, CBOE, to Andrew Shipe, Attorney, Division of Market Regulation, Commission, dated September 28, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE clarified that the authority to exempt an option class from the provisions of the proposed rule change during unusual market conditions could be delegated by the Chairman of the appropriate Floor Procedure Committee only to another member of that Committee.

[6] *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[7] CBOE represents that the term "marketable public customer order" means a market or marketable limit order that is not for an account in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including foreign broker-dealer) has an interest. E-mail from Angelo Evangelou, Attorney, CBOE, to Andrew Shipe, Attorney, Division, Commission, dated December 26, 2001.

[8] According to the Exchange, unusual market conditions may include drastic movement in the security underlying an option or new pending about the issuer of the underlying security. Telephone conversation between Angelo Evangelou, Counsel, CBOE, and Andrew Shipe, Attorney, Division, Commission, on September 5, 2001. *See also* Securities Exchange Act Release No. 43829 (January 10, 2001), 66 FR 4877, 4878, n.8 (January 18, 2001).

[9] *See* Ianni Comments.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

III. Summary of Comments

The one commenter who expressed views on the proposed rule change generally supported the proposal. However, the commenter expressed concern that the proposal would not be implemented in all classes of CBOE-listed options, but only as determined by the appropriate FPC. The commenter submitted that ABP should be engaged for all classes of options, rather than implemented on a selective basis.[9]

IV. Discussion

The proposal would extend CBOE's ABP system to marketable public customer orders entered into the Exchange's ORS, on a class-by-class basis. The Commission believes that this expansion of the ABP system should benefit customers using the ORS system, as well as customer whose orders are residing in the Exchange's book, because these orders would be subject to quicker executions. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

V. Amendment No. 1

The Commission further finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** In Amendment No. 1, the Exchange clarified that the Chairman of the appropriate FPC may designate his authority to exempt an option class from the provisions of paragraph (a) of the proposed rule during unusual market condition only to another member of the FPC. The Commission notes that Amendment No. 1 merely clarified who is eligible to be the "Chairman's designee" for purposes of the proposed rule. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[12] to approve Amendment No. 1 on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–56 and should be submitted by February 1, 2002.

VII. Conclusion

For the foregoing reasons, the Commission finds that CBOE's proposal to amend its rules to allow for certain orders entered through the Exchange's Order Routing System to automatically trade against orders in the Exchange's customer limit order book, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–00–56), as amended, is approved.

[12] 15 U.S.C. 78f(b)(5) and 78s(b).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–761 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45246; File No. SR–NYSE–2001–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2001, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 123. The proposed rule text follows: Additions are *italicized*, deletions are [bracketed].

Rule 123—Records of Orders

Paragraphs headed "Given Out", "Receipt of Orders", "Cancelled or Executed", and "By Accounts", to be numbered (a), (b), (c) and (d), respectively.

(e) System Entry Required

Except as provided in paragraphs .21 and .22 below, no Floor member may represent or execute an order on the Floor of the Exchange unless the details of the order have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe. The details of each order required to be recorded shall include the following data elements,

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

1. Symbol;
2. Clearing member organization;
3. Order identifier that uniquely identifies the order;
4. Identification of member or member organization recording order details;
5. Number of shares or quantity of security;
6. Side of market;
7. Designation as market, limit, stop, stop limit;
8. Any limit price and/or stop price;
9. Time in force;
10. Designation as held or not held;
11. Any special conditions;
12. System-generated time of recording order details, modification of terms of order or cancellation of order;
13. Such other information as the Exchange may from time to time require.

* * * * *

.20 Orders—For purposes of paragraph (e), an order shall be any written, oral or electronic instruction to effect a transaction.

.21 Orders not subject to paragraph (e) recording requirements—Any order executed by a specialist, Competitive Trader or Registered Competitive Market Maker for his or her own account and any orders which by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with this Rule shall be exempt from the order entry requirements of paragraph (e) above.

.22 With respect to a bona fide arbitrage order, a member may execute such order before entering the order into an electronic system as required by paragraph (e) above, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order. With respect to an order to offset a transaction made in error, a member may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into an electronic system, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order.

.23 With respect to any order in an Investment Company Unit (including a bona fide arbitrage order or an order to offset a transaction made in error), a member may execute such order before entering the order into an electronic system as required by paragraph (e) above, but such member must enter such order into such electronic system no later than 90 seconds after the execution of such order.

.24[3] Time standards—Any member organization proprietary system used to record the details of an order for purposes of this rule must be synchronized to a commonly used time standard and format acceptable to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statuary Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C, below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is being filed as a one-year pilot.

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")[3] and at the point of receipt (order tracking system, or "OTS"). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. These requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing.

The Exchange's FESC rule (Rule 123) requires that all orders in any security traded on the Exchange be entered into an electronic database before they can be represented in the Exchange's auction market. These are certain exceptions, such as orders to offset an error, or for bona fide arbitrage, that may be entered within the 60 seconds after a trade is executed.[4]

In December 2000, the Exchange began trading an Exchange-Traded Fund ("ETF") on the S&P Global 100 (symbol IOO). In addition, in July 2001, the Exchange began trading on an unlisted trading privileges basis ("UTP"), certain ETFs currently listed and trading on other markets. These ETF's include the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depository Receipts (symbol SPY) and the Dow Industrials DIAMONDS (symbol DIA).

ETF products have unique trading characteristics. They are derivatively priced, and trade very rapidly in response to changes in the underlying value of fund components, and changes in prices of options and futures contracts on the funds. The Exchange is not the primary market for the most active ETF's which its trades, and must compete for order flow with other markets that do not have a FESC requirement.

Some market participants believe that the FESC requirement may be a disincentive to sending order flow to the Exchange as it may unduly slow down the trading process and interfere with trading strategies dependent upon speed of execution. Accordingly, the Exchange is proposing to amend its FESC rule to provide that orders in ETFs may be entered within 90 seconds of execution. The Exchange believes that this proposal will facilitate trading in ETFs on the Exchange, while still ensuring that the Exchange maintains its electronic order database with orders being entered in reasonable proximity to order executions. The Exchange notes that requirements that members record the time of receipt of an order on the Floor remain in full effect and not affected by this proposal.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000).

[4] See SR–NYSE–2001–36 (a one-month pilot), Securities Exchange Act Release No. 44783 (September 10, 2001), 66 FR 48304 (September 19, 2001), permanently approved (SR–NYSE–2001–39) by Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3(A) of the Act[5] and subparagraph (f)(6) of thereunder.[6] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

The Commission notes that under Rule 19–4(f)(6)(iii),[8] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the implementation of this exception to NYSE Rule 123(e) without inconvenience or delay to the public, which the NYSE believe is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute ETF-related orders quickly without having to immediately enter the order into an electronic system (FESC). The proposed rule change will still require that such orders be entered into an electronic system (FESC) within 90 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing required and designate the proposal immediately operative.[9] Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to implement the exception to NYSE Rule 123(e) without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

IV. Solicitation of Comments

Interest persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should filed six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–52 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–807 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] The Commission notes, however, this proposed rule change has been filed as a one-year pilot. During the pilot, the NYSE will surveil the application of the exception to NYSE Rule 123(e) and submit date to the Commission for the purpose of evaluating the Rule's efficacy.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45249; File No. SR–NYSE–2001–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 51 Relating to Suspension of Trading

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2001, the New York Stock Exchange, Inc. ("NYSE or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 51, Hours for Business, to make emergency procedures more flexible and more responsive to the Exchange's current organizational structure and to the kinds of challenges that the Exchange may face. The text of the proposed rule change is below. Proposed new language is in italics; deletions are in brackets.

Rule 51. Hours for Business

Except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for the transaction of business on every business day, excluding Saturdays,

(a) for a 9:30 a.m. to 4:00 p.m. trading session, and

(b) for the purposes of "Off-Hours Trading" (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), during such hours as the Exchange may from time to time specify.

[The Chairman, Vice-Chairman and the Senior Floor Director or in the absence from the Floor of any of them, the next senior Floor Director present on the Floor acting by a majority shall have the power to suspend trading in all securities whenever in their opinion such suspension would be in the public interest. A special meeting of the Board

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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of Directors to consider the continuation or termination of such suspension or closing the market shall be held as soon thereafter as a quorum of Directors can be assembled.]

Except as may be otherwise determined by the Board of Directors, the Chairman of the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. In considering such action, the Chairman of the Board shall consult with the Vice Chairmen, if available, and such available Floor Directors as he deems appropriate under the circumstances. The Chairman of the Board shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined that the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposed to amend NYSE Rule 51 to make emergency procedures more flexible and more responsive to the Exchange's current organizational structure and to the kinds of challenges that the Exchange may face.

NYSE Rule 51 sets forth the Exchange's trading hours, provides for "off-hours" trading hours and provides procedures for the suspension of trading. (NYSE Rule 80B provides for trading halts due to extraordinary market volatility.)

While NYSE Rule 51 has been modified from time to time, *e.g.*, to adjust trading hours and to change holidays, the procedures for suspension of trading have not been substantially revised since the Exchange's incorporation in 1971 or since the development and implementation of its numerous computerized systems. These procedures are provided in the second paragraph of the Rule

NYSE Rule 51's current procedure to suspend trading requires (1) action by a majority of the Chairman, Vice Chairman and most senior Floor Director available and (2) a meeting of the Board to consider continuation or termination or the suspension or closing the market. The current procedures provide only for suspension of trading of all securities traded on the Exchange.

The existing procedures under NYSE Rule 51 contemplate a Board that is in a position to meet quickly and, perhaps, more often in emergency situations. The Rule does not explicitly permit a suspension of some, but not all, securities, which partial suspension might be the most appropriate response in a future emergency. The current suspension procedures also do not adequately deal with situations involving the kind of unexpected, quick and devastating actions that the nation, and particularly the securities industry, faced on September 11, 2001, and days following. Nor are the current procedures effective in the face of the kind of system outages the Exchange experienced on June 8, 2001.

The NYSE proposes that the Chairman, in consultation with the Vice Chairmen of available and with such available Floor Directors as he deems appropriate under the circumstances, be authorized under amended NYSE Rule 51 to respond to future extraordinary circumstances by halting or suspending trading in some or all securities traded on the Exchange or by closing some or all Exchange facilities, and to determine the duration of any such halt or suspension or closing. The Chairman would be required to notify the Board of actions taken, other than for a period of mourning or recognition for a person or event, as soon as feasible after the actions.

Under the proposed rule change, action would be taken only as a result or extraordinary circumstances and only as the Chairman deems it necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors or otherwise in the public interest. Examples of possible extraordinary circumstances include action or threatened physical danger, severe climatic conditions, civil unrest, terrorism, and act of war, or loss or interruption of facilities utilized by the Exchange. The Chairman would also be able to take action in the event of a request by a governmental agency or official, and for a period of mourning or recognition of a person or event.

The Board continues to have the power to take action it deems necessary or appropriate in particular situations and special Board meetings can be convened.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act [3] that an Exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to respond appropriately and in a timely fashion to future extraordinary circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or,

[3] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2001–55 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–809 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45240; File No. SR–PCX–2001–53)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Ceiling on Marketing Charges

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to establish a ceiling on marketing charges of $200 per trade. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX charges the marketing fees as set forth in the Schedule of Rates that it periodically files with the Commission.[4]

The PCX is proposing to establish a ceiling of $200 per trade for the marketing fee. The PCX believes that the proposed rule change is reasonable and equitable because, in its view, capping each trade at $200 would provide sufficient money for LLMs to maintain the marketing program while lessening the economic burden on Market Makers. By its terms, the proposed ceiling would become effective beginning with the January 2002 trade month.

2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

[3] *See* Securities Exchange Act Release 44830 (September 21, 2001), 66 FR 49728 (September 29, 2001) (SR–PCX–2001–37).

[4] *See* Securities Exchange Act Release No. 45167 (December 18, 2001), 66 FR 67346 (December 28, 2001) (SR–PCX–2001–49).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX has designated the foregoing as a fee change pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f) thereunder,[8] it has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

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SR–PCX–2001–53 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–760 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45250; File No. SR–Phlx–2001–119]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Trading Hours of Options on Exchange-Traded Fund Shares

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .01 to Phlx Rule 101, Hours of Business, to eliminate the requirement that options on Nasdaq-100 Index Tracking Stock[6] will end at 4:04 PM. on the last trading day of each calendar month, and to add language regarding the trading hours of options on Exchange-Traded Fund Shares ("ETF Options").[7] As amended, Phlx Rule 101, Supplementary material .01 would provide that the hours of trading of ETF Options designated by the Exchange may continue until 4:15 P.M. However, the revised rule would also provide that the Exchange may close trading in such options at an early time to coincide with the close of trading in a related futures contract when trading in a related futures contract closes earlier than 4:15 P.M. The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

Hours of Business

Rule 101.

* * * * *

Supplementary Material:

.01 Options Trading after 4:02 P.M. A trading rotation in any class of option contracts may be effected even though employment of the rotation will result in the transaction on the Exchange after 4:02 P.M. provided such rotation is conducted pursuant to Rule 1047 or Rule 1047A. [The hours of trading for Options on Nasdaq–100 Index Tracking Stock shall commence at 9:30 AM and end at 4:15 PM, each business day, except the last trading day of each calendar month, when trading in Options on Nasdaq–100 Index Tracking Stock will end at 4:04 PM.] *Options on any series of Exchange-Traded Fund Shares so designated by the Exchange may be traded on the Exchange until 4:15 P.M. each business day. The Exchange may close trading at an early time to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when a related futures contract closes earlier than 4:15 P.M.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to eliminate the requirement that trading in options on Nasdaq–100 Index Tracking Stock shall close at 4:05 P.M. on the last trading day of the calendar month, and to add new language to the rule regarding trading hours for ETF Options generally. Currently, Phlx Rule 101, Hours of Business, Supplementary Material .01 provides that options on Nasdaq-100 Index Tracking Stock shall commence at 9:30 A.M. and end at 4:15 P.M., each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 4:05 P.M.[8]

The Exchange proposes to extend trading in all ETF Options so designated by the Exchange at 4:15 P.M.[9] The proposed new language would also permit the Exchange to close trading before 4:15 P.M. to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when trading in a related futures contract closes earlier than 4:15 P.M. ETF Options not designated by the Exchange as eligible for trading until 4:15 P.M. would continue to trade until 4:02 P.M. The Exchange expects that it would designate ETF Options for trading until 4:15 P.M. only where the underlying ETF is based on an index on which futures contracts trade.

The Phlx believes that the proposed rule change will bring its practices in line with current practice on the Chicago Board Options Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and in particular, with Section 6(b)(5),[11] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By adopting the proposed rule change, the Exchange should facilitate competition in the trading of ETF Options across markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to be effective on filing with the Commission because such designation is consistent with the protection of investors and the public interest. The Commission believes that the proposal should be effective and operative immediately upon filing to help facilitate competition in the trading of ETF Options across markets. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invit4ed to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2001–119, and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–808 Filed 1–10–02; 8:45 am]

BILLING CODE 8010–01–M

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Phlx asked the Commission to waive the five-day pre-filing notice requirement and the 30–day operative delay. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[6] Nasdaq–100 Nasdaq–100 Index, and Nasdaq are trade or service marks of The Nasdaq Stock Market, Inc. (with its affiliates, the "Corporations") and are licensed for use by the Exchange. Options on Nasdaq–100 Index Tracking Stock (the "Products") have not been passed on by the Corporations as to their legality or suitability. The Products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the Products. The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq–100 Index or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by Licensee, owners of the Products, or any other person or entity from the use of the Nasdaq–100 Index or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq–100 Index or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

[7] Phlx Rule 1000(b)(42) defines "Exchange-Traded Fund Shares" as including Exchange-listed securities representing interests in open end unit investment trusts or pen-end management investment companies that hold securities based on an index or a portfolio of securities. The Exchange received approval by the Commission to trade options on Exchange-Traded Fund Shares on February 2, 2001. *See* Securities Exchange Act Release No. 43921 (February 2, 2001), 66 FR 9739 (February 9, 2001) (order approving SR-Phlx–00–107).

[8] *See* Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (SR–Phlx–2001–32).

[9] An ETF Option would be so designated by the Vice President of the Regulatory Services Department or his or her designee. The Exchange would notify members by issuance of a memorandum.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Environmental Impact Statement: City of Fairfax and Fairfax and Prince William Counties, Virginia

AGENCY: Federal Transit Administration and Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) are jointly issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) in cooperation with the Virginia Department of Rail and Public Transportation (VDRPT) and Virginia Department of Transportation (VDOT) for potential transportation improvements in the Interstate 66 corridor in Fairfax and Prince William Counties to address projected increases in travel demand over the next twenty years. Three public scoping meetings have been scheduled and will be held from January 22–24, 2002, at 7 p.m. at the following locations as part of the preparation of the EIS:

January 22, 2002—Centreville High School, 6001 Union Mill Road, Clifton, Virginia 20124 (snow date: January 29);

January 23, 2002—Old Town Hall, 3999 University Drive, Fairfax, Virginia 22030 (snow date: January 30);

January 24, 2002—Stonewall Jackson Middle School, 10100 Lomond Drive, Manassas, Virginia 20109 (snow date: January 31);

One agency scoping meeting will be held on January 24, 2001, at 10:30 a.m. at the VDOT Northern Virginia District Office in Chantilly.

FOR FURTHER INFORMATION CONTACT: Edward Sundra, Senior Environmental Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone 804–775–3338; Patricia Mampf, Transportation Program Specialist, Federal Transit Administration, 1760 Market Street, Suite 500, Philadelphia, Pennsylvania 19103–4124, Telephone 215–656–7071; or Steve Suder, Senior Transportation Engineer, Virginia Department of Transportation—Northern Virginia District, 14685 Avion Parkway, Suite 345, Chantilly, Virginia 20151, Telephone 703–383–2217.

SUPPLEMENTARY INFORMATION: In late-1995 in accordance with 23 CFR

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450.318, a Major Investment Study (MIS) was initiated for the Interstate 66 Corridor from Interstate 495 to Route 15 in Prince William County. The purpose of the MIS was to study this 24 mile-long section of the corridor to assess the need for the benefits and impacts of potential transportation improvements to accommodate projected travel demand growth over the next twenty years. The MIS, completed in 1999, identified a locally preferred investment strategy for the corridor which included adding general purpose lanes, and HOV lanes, extending Metrorail, adding transit centers/park and ride facilities, and increasing bus service in the study area. The recommendations included in the MIS were the result of a multi-level screening process in which numerous multi-modal transportation strategies were considered.

With this notice of intent, FTA and FHWA in cooperation with the VDRPT and VDOT are initiating the National Environmental Policy Act (NEPA) process to prepare an EIS for proposed improvements in the Interstate 66 corridor to address the need to improve transportation and to respond to projected growth and travel congestion. FTA and FHWA will serve as co-lead agencies in the development of the EIS. Section 4(f) of the Department of Transportation Act of 1966 may also be invoked as a result of the proposed transportation improvements. If this is the case, a Section 4(f) Evaluation will be prepared and included as part of the EIS.

The EIS will build upon the MIS by revisiting the purpose and need for the project and revising it, as necessary, to account for changes in regional needs or goals. Likewise, the development of strategies and the screening process from the MIS will be used as a starting point for the NEPA process. Recognizing the NEPA requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will include a range of alternatives for detailed study consisting of a no-build alternative as well as alternatives consisting of transportation system management strategies (including but not limited to increased bus service, development of transit centers and park and ride lots, and increased peak period Metrorail service), mass transit, and improvements to existing roadways (including the use of HOV lanes). These alternatives will be developed, screened, and carried forward for detailed analysis in the draft EIS based on their ability to address the purpose and need while avoiding, minimizing, and mitigating impacts to known and sensitive resources to the extent practical.

Letters describing the NEPA study and soliciting input will be sent to the appropriate Federal, State and local agencies and to organizations and citizens who have expressed or are known to have an interest or legal role in this proposal. A series of scoping meeting will be held as part of the NEPA process to facilitate, local, state, and federal agency involvement and input into the project in an effort to identify all of the issues that need to be addressed in the EIS.

Private organizations, citizens, and interest groups will also have multiple opportunities to provide input into the development of the EIS and identify issues that should be addressed. A comprehensive public participation program will be developed to involve them in the project development process. This program will use the following outreach efforts to provide information and solicit input: the Internet, kiosks, a telephone hotline, e-mail, informal meetings, public information meetings, public hearings and other efforts, as necessary and appropriate. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and considered, comments and suggestions in response to this Notice of Intent are invited from all interested parties. Comments and questions concerning the proposed action and draft EIS should be directed to FHWA, FTA-or VDOT at the addresses provided above. There will be several opportunities to provide comments throughout the scoping process, but all comments in response to this notice should be submitted within 30 days of its publication.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction; 20.500, Federal Transit Administration Capital Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: January 4, 2002.

Susan E. Schruth,

Regional Administrator, Federal Transit Administration.

Edward S. Sundra,

Senior Environmental Specialist, Federal Highway Administration.

[FR Doc. 02–709 Filed 1–10–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following information collection was published on November 2, 2001. No comments were received.

DATES: Comments must be submitted on or before February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Krusa, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: 202 366–2648 or Fax: 202 493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title: Supplementary Training Course Application.

OMB Control Number: 2133–0030.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. merchant seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Form(s): MA–823.

Abstract: Section 1305(a) of the Maritime Education and Training Act of 1980 indicates that the Secretary of Transportation may provide maritime-related training to merchant mariners of the United States and to individuals preparing for a career in the merchant marine of the United States. Also, the U.S. Coast Guard requires a fire-fighting certificate for U.S. merchant marine officers. This information collection provides the information necessary for the maritime schools to plan their course offerings and for applicants to complete their certificate requirements.

Annual Burden Hours: 100 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on January 8, 2002.

Joel C. Richard,

Secretary.

[FR Doc. 02–810 Filed 1–10–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34139]

Butler County, Kansas—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Butler County, Kansas (County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by donation) approximately 10.6 miles of rail line from The Burlington Northern and Santa Fe Railway Company (BNSF).[1] The line is located between milepost 483.62, at Augusta, KS, and milepost 494.22 near Andover, KS. The County certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier. The County further certifies that its annual freight revenues as a result of this transaction will not exceed $5 million.

The transaction was expected to be consummated on or shortly after December 19, 2001, the effective date of the exemption.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34139, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our website at "*WWW.STB.DOT.GOV.*"

Decided: January 3, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–534 Filed 1–10–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The County states that the line is currently out of service and will be rehabilitated after the acquisition is consummated. The County further states that it is its intent to have the above line operated by a yet-to-be determined third party rail operator. Anticipated rail operations by a third party over BNSF's trackage are subject to the Board's approval or exemption.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34160]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 129 miles of BNSF's Ft. Worth Subdivision between BNSF milepost 6.1, near Ft. Worth, TX, and BNSF milepost 218.1, near Temple, TX.[1]

The transaction was scheduled to be consummated on or after January 3, 2002. The temporary trackage rights will facilitate maintenance work on UP's lines.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34160, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 3, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–765 Filed 1–10–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 27, 2001, UP concurrently filed a petition for exemption in STB Finance Docket No. 34160 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP requests that the Board permit the proposed temporary overhead trackage rights arrangement described in the present proceeding to expire on or about February 23, 2002. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34143]

Keokuk Junction Railway Co.—Acquisition and Operation Exemption—West End of the Toledo, Peoria and Western Railway Corporation

Keokuk Junction Railway Co. (KJRY), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 12.1 miles of rail line owned by Toledo, Peoria and Western Railway Corporation (TP&W), plus 15.5 miles of incidental trackage rights over The Burlington Northern and Santa Fe Railway Company (BNSF) between Lomax, IL, and Fort Madison, IA.[1] The

[1] The County of McDonough, City of Macomb, and Joseph C. Szabo filed a petition on December 18, 2001, to stay the effectiveness of this exemption and to stay the operation of the exemptions in *SF&L*

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line to be acquired extends from milepost 194.5 near La Harpe, IL, to milepost 206.6 near Lomax, IL. The incidental trackage rights extend over BNSF's line between milepost 218.5 near Lomax and milepost 234.0 near Fort Madison, and tracks numbered 66, 37, 65, 125, 84, 81, 70, 38, 233, 185, 251, 181, 182, 259, 90, 91, 151, 366, 260, 261, and 344 or portions thereof in BNSF's Fort Madison Yard (formerly Atchison Topeka and Santa Fe Railway Yard), plus North and South main line tracks between milepost 234.0 and milepost 236.5. KJRY states that it has entered into an agreement to buy certain assets, rights and obligations of TP&W referenced in this proceeding. KJRY certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

The transaction was scheduled to be consummated on or after December 19, 2001, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34143, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William A. Mullins, 401 Ninth Street, N.W., Suite 1000, Washington, DC 20004.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: January 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–414 Filed 1–10–02; 8:45 am]

BILLING CODE 4915–00–P

Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, STB Finance Docket No. 33995, and *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc.*, STB Finance Docket No. 33996. The petition to stay was denied in *Keokuk Junction Railway Company—Acquisition and Operation Exemption—West End of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34143, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe And Peoria, IL*, STB Finance Docket No. 33995, and *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc.*, STB Finance Docket No. 33996 (STB served Dec. 26, 2001).

Corrections

Federal Register
Vol. 67, No. 8
Friday, January 11, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 3]

RIN 2137–AD64

Pipeline Safety; High Consequence Areas for Gas Transmission Pipelines

Correction

Proposed Rule document 02-543 was inadvertently published in the Rules and Regulations section in the issue of Wednesday, January 9, 2002, appearing on page 1108. It should have appeared in the Proposed Rules section.

[FR Doc. C2–543 Filed 1–10–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

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January 11, 2002

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Ground fish Fishery Management Measures; Emergency Rule and Proposed Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309–1309–01; I.D. 121301B]

RIN 0648–AO69

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; groundfish fishery management measures for January through February 2002; request for comments.

SUMMARY: NMFS announces the January through February 2002 management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California. Management measures for January through February 2002 are intended to prevent overfishing; rebuild overfished species; minimize incidental catch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, allow achievement of harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Effective January 1, 2002, through February 28, 2002. Comments must be received no later than 5 p.m., local time (l.t.) on February 11, 2002.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070, or fax to 206–526–6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or fax to 562–980–4047. Comments will not be accepted if submitted via E-mail or Internet. Information relevant to this emergency rule and the proposed rule for the annual specifications and management measures published elsewhere in this issue of the **Federal Register**, which includes an environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), is available for public review during business hours at the offices of the NMFS Northwest Regional Administrator and the NMFS Southwest Regional Administrator, or may be obtained from the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–326–6352. Additional reports referred to in this document may also be obtained from the Council. This emergency rule also is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's Web site at *http://www.pcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; E-mail: *yvonne.dereynier@noaa.gov*, *becky.renko@noaa.gov*, or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; E-mail: *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast groundfish fishery management plan (FMP) requires that fishery specifications for groundfish be annually evaluated and revised as necessary, that OYs be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Since 1990, the Council has developed annual specifications and management measures in a two-meeting process (usually its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction. Each year specifications and management measures are effective until the specifications and management measures for the following year are published and effective. In 2001, the agency was challenged on this process in *Natural Resources Defense Council, Inc.* v. *Evans*, 2001 WL 1246622 (N.D.Cal. 2001) and the court ordered NMFS to provide prior public notice and allow public comment on the annual specifications. NMFS is publishing the 2002 specifications and management measures initially as a proposed rule available for a 30-day public comment elsewhere in this issue of the **Federal Register**, to be followed by a final rule.

Given the timing of the court order, it was not possible to adjust the Council process so that the Council could recommend management measures earlier in the year. The Council finalized its 2002 specifications and management measures recommendations at its October 28 through November 2, 2001, meeting in Millbrae, CA. Given the complexity of the annual specifications and management measures package, NMFS did not have enough time to publish a proposed rule on the Council's recommendations, receive public comments, and implement a final rule by January 1, 2002. Thus, NMFS is publishing this emergency rule under the Magnuson-Stevens Act emergency authority at section 305(c), which finalizes and makes effective the groundfish management measures for January 1 through February 28, 2002.

Absent a final rule by January 1, 2002, management measures for January and February 2002 would revert to those that were in place for January–February 2001. There are several species for which reverting to higher 2001 limits at the beginning of the year could result in either exceeding the annual commercial OYs or very early attainment of OYs during the year. This would also run counter to the Council's goal of having a year round fishery. While these circumstances could jeopardize the ability to stay within rebuilding targets for some species, they could also lead to significant foregone revenue from other target species whose fisheries might also have to be closed prematurely.

Proposed trawl management for widow rockfish in 2002 allows no midwater fishing above the small-footrope trawl limit. The 2001 midwater trawl limit of 20,000 lb (9,072 kg) per 2 months produced landings of over 800 mt during the first 4 months of 2001. The landed catch OY for limited entry in 2002 is only 575 mt. Assuming the same catch rates as in 2001, not only would the rebuilding target be exceeded through use of the 2001 limits, but other fisheries which take widow rockfish incidentally, such as the $16 million whiting fishery, would likely have to be foregone. Similarly, the 65,000 lb (29,484 kg) limit for Dover sole north of Cape Mendocino in 2001 produced 3,800 mt of landings during the first four months. Were this to be repeated in 2002, less than half of the Dover sole OY would remain for the remaining 8 months of the year. Early attainment of Dover sole would likely result in closures or severe cutbacks in opportunities for other DTS complex (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) species and flatfish species during much of 2002. To address bycatch concerns for rebuilding species, proposed 2002 flatfish limits were also lowered during the first four months of the year relative to 2001. Failure to implement these reductions could jeopardize the ability to stay within rebuilding targets for some species.

Within the fixed gear fisheries, several drastic reductions in shelf rockfish limits are being proposed to reduce mortality of yelloweye rockfish, which will be declared overfished in the Proposed Rules section of this issue of the **Federal Register**. Line gears will land at least 8 mt of yelloweye rockfish in 2001, and landed over 7 mt in 2000. Less than 5 mt of yelloweye rockfish mortality will be allocated to the commercial fishery for 2002, with an expectation that 1–2 mt will be caught as bycatch in trawl fisheries on the continental shelf. A new yelloweye rockfish bag limit and other yelloweye rockfish restrictions are imposed in the recreational fisheries to protect this species. Failure to implement the more restrictive fixed-gear landing limits proposed for shelf rockfish species in 2002 could lead to early attainment of yelloweye rockfish. This could jeopardize not only other longline fisheries, such as the $4 million primary sablefish season, but also trawl fisheries on the continental shelf. In a few cases, trip limits in January and February 2002 are higher than in 2001 because the proposed OYs have increased or because they provide an opportunity to harvest healthy stocks when they are segregated from the overfished stocks in the winter.

Specifications and management measures proposed for March–December 2002 in the Proposed Rules section of this issue of the **Federal Register**, combined with this emergency rule, are a balance intended to protect overfished groundfish species while allowing harvesters some access to healthy groundfish stocks. The proposed specifications and management measures are designed to rebuild overfished stocks through constraining direct and incidental mortality to prevent overfishing, and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP. The proposed specifications and management measures describe the rationale for the 2002 groundfish management measures and include trip, bag and size limits, time/area closures, and gear-and area-specific regulations, including the management measures implemented in this emergency rule.

During 2002, NMFS and the Council will consider how to incorporate a NMFS proposed and final rulemaking process into the Council's annual specifications and management measures process without using an emergency rule to implement management measures for 2003.

NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator or AA), concurs with the Council's recommendations and announces the following management actions for January 1 through February 28, 2002.

A. General Definitions and Provisions

The following definitions and provisions apply to the 2002 management measures, unless otherwise specified in a subsequent **Federal Register** document:

(1) *Trip limits.* Trips limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish maybe made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.s on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The first 2-month period of 2002 is January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(2) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next period. As stated at 50 CFR 660.302 (in the definition of "landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing. Fishing ahead is not allowed during or before a closed period (see paragraph A.(7)). See paragraph A.(9) for information on inseason changes to limits.

(3) *Weights.* All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages.* Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish.* "Legal fish" means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed.

(a) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

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(b) *"Headed" fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsel surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph D.(1)). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions.* The following conversions apply to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish, the conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

(e) *Lingcod size and weight conversions.* The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion.* For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight Conversion.* The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted, the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on.* The conversion factor for lingcod that has only been gutted is 1.1

(7) *Closure.* "Closure," when referring to closure of fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. The provisions at paragraph A.(2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with the prohibited species on board, no matter where that species was caught, except as provided for in the Cowcod Conservation Areas at A.(20).

(8) *Fishery management area.* The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures.* Most trip, bag, and size limits in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. (See 50 CFR 660.323(b).) Council meetings in 2002 will be held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register**. Information concerning changes to routine management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits.* It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open gear, but the open access limit is smaller than the limited entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and use open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits.* Trip limits for a species or a species group may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2002, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph A(1)(d), but may be changed during the year if announced in the **Federal Register**.

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat.,, that vessel is also permitted to take and retain, possess, or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.

(iii) If a vessel takes and retains minor shelf rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land chilipepper rockfish and bocaccio up to their respective cumulative limits south of 40°10′ N. lat., even if either species is part of the landings from minor shelf rockfish taken and retained north of 40°10′ N. lat.

Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.

(iv) If a vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its respective cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat.

Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.

(d) *"DTS complex."* For 2002, there are differential trip limits for the "DTS complex" (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph A.(12) when making landings that include any one of the four species in the "DTS complex."

(13) *Sorting.* It is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied." This provision applies to both the limited entry and open access fisheries. (See 50 CFR 660.306(h)). The following species must be sorted in 2002:

(a) For vessels with a limited entry permit:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, other flatfish, lingcod, sabelfish, and Pacific whiting;

Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.

(ii) North of 40°10′ N. lat.—Pacific ocean perch, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10′ N. lat.—chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, arrowtooth flounder, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat.—black rockfish, blue rockfish, Pacific ocean perch, yellowtail rockfish;

(iii) South of 40°10′ N. lat.—chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception—thornyheads.

(14) *Limited Entry Trawl Gear Restrictions.* Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large-footrope, small-footrope, or midwater trawl gear.

(a) *Types of trawl gear.* (i) Large-footrope trawl gear is bottom trawl gear, as specified at 50 CFR 660.302 and 660.322(b), with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(ii) Small-footrope trawl gear is bottom trawl gear, as specified at 50 CFR 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope), except chafing gear may be used only on the last 50 meshes of a small-footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions.

(iii) Midwater trawl gear is pelagic trawl gear, as specified at 50 CFR 660.302 and 660.322(b)(2). The footrope of midwater trawl gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or other materials.

(b) *Cumulative trip limits and prohibitions by trawl gear type*—(i) *Large-footrope trawl.* It is unlawful to take and retain, possess or land any species of shelf or nearshore rockfish (defined at A.(21) and Table 1) except chilipepper rockfish south of 40°10′ N. lat. (as specified in Table 2) from a fishing trip if large-footrope gear is on board; this restriction applies coastwide from January 1 to December 31. It is unlawful to take and retain, possess or land petrale sole, rex sole, or arrowtooth flounder from a fishing trip if large-footrope gear is onboard and the trip is conducted at least in part between May 1 and October 31; cumulative limits for "all other flatfish" (all flatfish except those with cumulative trip limits in Table 2) are lower for vessels with large-footrope gear on board throughout the year. (See Table 2.) It is unlawful for any vessel using large-footrope gear to exceed large-footrope gear limits for any species or to use large-footrope gear to exceed small-footrope gear or midwater trawl gear limits for any species. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large-footrope trawl is on board. Dates are adjusted for the "B" platoon (See A.(16)).

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(ii) *Small-footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, widow rockfish, yellowtail rockfish, bocaccio, minor shelf rockfish, minor nearshore rockfish, and lingcod, and higher cumulative trip limits for chilipepper rockfish and flatfish, as indicated in Table 2, are allowed only if small-footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs A.(14).

(iii) *Midwater trawl gear.* Higher cumulative trip limits are available for limited entry vessels using midwater trawl gear to harvest widow or chilipepper rockfish. Each landing that contains widow or chilipepper rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small-footrope trawl must not exceed the small-footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawl during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(v) *More than one type of trawl gear on board.* The cumulative trip limits in Table 2 must not be exceeded. A fishing vessel may have more than one type of limited entry trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear.

Example: If a vessel has large-footrope gear on board, it cannot land yellowtail rockfish, even if the yellowtail rockfish is caught with a small-footrope trawl. If a vessel has both small-footrope trawl and midwater trawl gear on board, the landing is attributed to the most restrictive gear-specific limit, regardless of which gear type was used.

(c) *Measurement.* The footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(d) *State landing receipts.* Washington, Oregon, and California will require the type of trawl gear on board with the most restrictive limit to be recorded on the State landing receipt(s) for each trip or an attachment to the State landing receipt.

(e) *Gear inspection.* All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Permit transfers.* Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2002 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the "B" platoon.

(16) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the "A" platoon, unless the "B"platoon is indicated on the limited entry permit. If a vessel is in the "A" platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. If a limited entry trawl permit is authorized for the "B" platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the "A" platoon), unless otherwise specified.

(a) For a vessel in the "B" platoon, cumulative trip limit periods begin on the 16th of the month at 001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2002, for the "A" platoon will be effective on January 16, 2002, for the "B" platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon, unless otherwise specified.

(b) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 2002, through January 15, 2002.

(c) A vessel authorized to operate in the "B" platoon will have the same cumulative trip limits for the November 16, 2002, through December 31, 2002, period as a vessel operating in the "A" platoon has for the November 1, 2002, through December 31, 2002 period.

(17) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit.

(18) *Application of requirements.* Paragraphs B. and C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in the section on Washington Coastal Tribal Fisheries in this document. The provisions in paragraphs B. and C. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph D. pertains to the recreational fishery.

(19) *Commonly used geographic coordinates.*

(a) Cape Falcon, OR—45°46′ N. lat.

(b) Cape Lookout, OR—45°20′15″ N. lat.

(c) Cape Blanco, OR—42°50′ N. lat.

(d) Cape Mendocino, CA—40°30′ N. lat.

(e) North/South management line—40°10′ N. lat.

(f) Point Arena, CA—38°57′30″ N. lat.

(g) Point Conception, CA—34°27′ N. lat.

(h) International North Pacific Fisheries Commission (INPFC) subareas (for more precise coordinates for the Canadian and Mexican boundaries, see 50 CFR 660.304):

(i) Vancouver—U.S. Canada border to 47°30′ N. lat.

(ii) Columbia—47°30′ N. lat.

(iii) Eureka—43°00′ to 40°30′ N. lat.

(iv) Monterey—40°30′ to 36°00′ N. lat.

(v) Conception—36°00′ N. lat. to the U.S.-Mexico border.

(20) *Cowcod Conservation Areas (CCAs).* Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20-fathom (36.9 m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30″ N. lat., and bounded on the south by the latitude line at 32°59′30″ N. lat.

(i) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°30′ W. long.;
33°00′ N. lat., 119°30′ W. long.;
33°00′ N. lat., 119°50′ W. long.;
33°30′ N. lat.,,119°50′ W. long.;
33°30′ N. lat., 119°30′ W. long.;

and connecting back to 33°50′ N. lat., 119°30′ W. long.

(ii) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°40′ N. lat., 118°00′ W. long.;
32°40′ N. lat., 117°50′ W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;

32°30′ N. lat., 118°00′ W. long.;

and connecting back to 32°40′ N. lat., 118°00′ W. long.;

(21) *Rockfish categories.* Rockfish (except thornyheads) are divided into categories north and south of 40°10′ N. lat., depending on the depth where they most often are caught: Nearshore, shelf, or slope. (Scientific names appear in Table 1.) Trip limits are established for "minor rockfish" species according to these categories (see Tables 1–4).

(a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 1.

(b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 1.

(c) Slope rockfish consists of Pacific ocean perch, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 1.

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Table 1 – Minor Rockfish Species (excludes thornyheads)

North of 40°10' N. lat.	South of 40°10' N. lat.
NEARSHORE	
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysolmelas	black and yellow, S. chrysolmelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, Sebastes nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufianus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufianus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redstriped, S. proriger
pinkrose, S. simulator	rosethorn, S. helvomaculatus
pygmy, S. wilsoni	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinus
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S, hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigorcinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigorcinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
redbanded, S. babcocki	Pacific ocean perch (POP), S. alutus
rougheye, S. aleutianus	redbanded, S. babcocki
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph A.(1)(d)), size limits (see paragraph A.(6)), and seasons (see paragraph A.(7)). The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph A.(14)). Cowcod retention is prohibition in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph A.(20)). Yelloweye rockfish retention is prohibjted in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in Tables 2 and 3, and may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Tables 2 and 3.

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Table 2. Trip Limits [1] and Gear Requirements [2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections A. and B. before using this table

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		Management measures for March through December 2002 are proposed in the Proposed Rules section of this edition of the Federal Register.
2	North	1,800 lb/ 2 months	
3	South	50,000 lb/ 2 months	
4	Splitnose - South	25,000 lb/ 2 months	
5	Pacific ocean perch - North[3]	2,000 lb/ month	
6	Chilipepper - South[3]		
7	mid-water trawl	25,000 lb/ 2 months	
8	small footrope trawl	7,500 lb/ 2 months	
9	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year.	
10	DTS complex - North		
11	Sablefish	6,000 lb/ 2 months	
12	Longspine thornyhead	10,000 lb/ 2 months	
13	Shortspine thornyhead	2,600 lb/ 2 months	
14	Dover sole	30,000 lb/ 2 months	
15	DTS complex - South		
16	Sablefish	4,500 lb/ 2 months	
17	Longspine thornyhead	10,000 lb/ 2 months	
18	Shortspine thornyhead	2,600 lb/ 2 months	
19	Dover sole	22,000 lb/ 2 months	
20	Flatfish - North		
21	All other flatfish [3]	Small footrope required:15,000 lb/ month	
22	Petrale sole	Not limited	
23	Rex sole	Not limited	
24	Arrowtooth flounder	30,000 lb/ trip	
25	Flatfish - South		
26	All other flatfish [3]	Small footrope: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs	
27	Petrale sole	Not limited	
28	Rex sole	Not limited	
29	Arrowtooth flounder	30,000 lb/ trip	
30	All other flatfish [3], including petrale sole - North and South	Large footrope: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits at any time during the year.	
31	Whiting shoreside [4]	20,000 lb/ trip	
32	USE OF SMALL FOOTROPE BOTTOM TRAWL[2] OR MIDWATER TRAWL REQUIRED FOR LANDING ALL OF THE FOLLOWING SPECIES:		
33	Minor shelf rockfish		
34	North	300 lb/ month	
35	South	500 lb/ month	
36	Canary rockfish	200 lb/ 2 months	
37	Widow rockfish		
38	mid-water trawl	CLOSED[7]	
39	small footrope trawl	1,000 lb/ month	
40	Yellowtail - North[3]		
41	mid-water trawl	CLOSED[7]	
42	small footrope trawl	Without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 30,000 lb/ 2 months.	
43	Bocaccio - South[3]	600 lb/ 2 months	
44	Cowcod	CLOSED7/	
45	Minor nearshore rockfish		
46	North	300 lb/ month	
47	South	300 lb/ month	
48	Lingcod[6]	800 lb/ 2 months	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained above.
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. Midwater gear also may be used; the footrope must be bare. See above.
6/ Yellowtail rockfish and POP in the south, and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area.
7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3. Trip Limits [1] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections A. and B. before using this table

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		Management measures for March through December 2002 are proposed in the Proposed Rules section of this edition of the Federal Register
2	North	1,000 lb/ month	
3	South	25,000 lb/ 2 months	
4	Splitnose - South	25,000 lb/ 2 months	
5	Pacific ocean perch - North 5/	2,000 lb/ month	
6	Sablefish		
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb	
9	Longspine thornyhead	9,000 lb/ 2 months	
10	Shortspine thornyhead	2,000 lb/ 2 months	
11	Dover sole	5,000 lb/ month (all flatfish)	
12	Arrowtooth flounder		
13	Petrale sole		
14	Rex sole		
15	All other flatfish 2/		
16	Whiting 3/	20,000 lb/ trip	
17	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[6]		
18	North	200 lb/ month	
19	South		
20	40°10' - 34°27' N. lat.	200 lb/ month	
21	South of 34°27' N. lat.	CLOSED 4/	
22	Canary rockfish	CLOSED 4/	
23	Yelloweye rockfish	CLOSED 4/	
24	Cowcod	CLOSED 4/	
25	Bocaccio - South 5/		
26	40°10' - 34°27' N. lat.	200 lb/ month	
27	South of 34°27' N. lat.	CLOSED 4/	
28	Chilipepper - South 5/		
29	40°10' - 34°27' N. lat.	500 lb/ month	
30	South of 34°27' N. lat.	CLOSED 4/	
31	Minor nearshore rockfish		
32	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish 6/	
33	South		
34	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	
35	South of 34°27' N. lat.	CLOSED 4/	
36	Lingcod 7/		
37	North	CLOSED 4/	
38	South		
39	40°10' - 34°27' N. lat.	CLOSED 4/	
40	South of 34°27' N. lat.	CLOSED 4/	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
5/ Yellowtail rockfish and widow rockfish coastwide, POP in the south, and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area.
6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Sablefish.* The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear.

(a) *Trawl trip and size limits.* Management measures for the limited entry trawl fishery for sablefish are listed in Table 2.

(b) *Nontrawl (fixed gear) trip and size limits.* To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 663.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season.* The primary season begins at 12 noon l.t. on April 1, 2002, and ends at 12 noon l.t. on October 31, 2002. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2002, the following limits would be in effect: Tier 1, 36,000 lb (16,329 kg); Tier 2, 16,500 lb (7,484 kg); Tier 3, 9,500 lb (4,309 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2002, count against the cumulative limits associated with the permit(s) registered for use with that vessel. A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2002, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t.

(ii) *Daily trip limit.* Daily and/or weekly sablefish trip limits listed in Table 3 apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 3 apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(3) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4). All allocations described in this section and the section on Washington Coastal Tribal Fisheries in this document will not be finalized until the Council finalizes the 2002 whiting ABC and OY at its March 2002 meeting.

(a) *Allocations.* Whiting allocations will be based on the percentages detailed in 50 CFR 660.323(a)(4)(i), and will be announced inseason when the final OY is announced.

(b) *Seasons.* The 2002 primary seasons for the whiting fishery start on the same dates as in 2001, as follows (see 50 CFR 660.323(a)(3)):

(i) *Catcher/processor sector*—May 15;

(ii) *Mothership sector*—May 15;

(iii) *Shore-based sector*—June 15 north of 42° N. lat.; April 1 between 42°–40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits.* (i) *Before and after the regular season.* The "per trip" limit for whiting before and after the regular season for the shore-based sector is announced in Table 2, as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) *Inside the Eureka 100 fm (183 m) contour.* No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish.* The regulations at 50 CFR 660.323(a)(1) state: "The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." These "per trip" limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 3 and 4. The crossover provisions at paragraphs A.(12) do no apply to the black rockfish per-trip limits.

C. Trip Limits in the Open Access Fishery

(1) *General.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), set net and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: Pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph A.(1)(d)), size limits (see paragraph A.(6)), and seasons (see paragraph A.(7)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph A.(20)). Yelloweye rockfish retention is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, except exempted trawl gear, are listed in Table 4. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph B.(4).)

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Table 4. Trip Limits 1/ for Open Access Gears

Other Limits and Requirements Apply – Read Sections A. and C. before using this table

Exceptions for exempted gears at Section C.

line	Species/groups	JAN-FEB	MARCH - DECEMBER
1	Minor slope rockfish		Management measures for March through December 2002 are proposed in the Proposed Rules section of this edition of the Federal Register
2	North	Per trip, no more than 25% of weight of the sablefish landed	
3	South	10,000 lb/ 2 months	
4	Splitnose - South	200 lb/ month	
5	Pacific ocean perch - North 5/	100 lb/ month	
6	Sablefish		
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb	
9	Thornyheads		
10	North of 34° 27′ N. lat.	CLOSED 3/	
11	South of 34° 27′ N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months	
12	Dover sole	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs	
13	Arrowtooth flounder		
14	Petrale sole		
15	Rex sole		
16	All other flatfish 2/		
17	Whiting	300 lb/ month	
18	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish 4/		
19	North	200 lb/ month	
20	South		
21	40°10′ - 34°27′ N. lat.	200 lb/ month	
22	South of 34°27′ N. lat.	CLOSED 3/	
23	Canary rockfish	CLOSED 3/	
24	Yelloweye rockfish	CLOSED 3/	
25	Cowcod	CLOSED 3/	
26	Bocaccio - South 5/		
27	40°10′ - 34°27′ N. lat.	200 lb/ month	
	South of 34°27′ N. lat.	CLOSED 3/	
28	Chilipepper - South 5/		
29	40°10′ - 34°27′ N. lat.	500 lb/ month	
30	South of 34°27′ N. lat.	CLOSED 3/	
31	Minor nearshore rockfish		
32	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 5/	
33	South		
34	40°10′ - 34°27′ N. lat.	1,200 lb/ 2 months	
35	South of 34°27′ N. lat.	CLOSED 3/	
36	Lingcod 7/		
37	North	CLOSED 3/	
38	South		
39	40°10′ - 34°27′ N. lat.	CLOSED 3/	
40	South of 34°27′ N. lat.	CLOSED 3/	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10′ N. lat. To the U.S.-Canada border. "South" means 40°10′ N. lat. To the U.S.-Mexico border. 40°10′ N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with a trip limit.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

4/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09′30″ N.lat.), and between Destruction Island (47°40′00″ N.lat.) and Leadbetter Point (46°38′10″ N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers.*

(a) *Trip limits.* The trip limit is 300 lb (136 kg) of groundfish per fishing trip. Limits in Table 4 also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by a vessel engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (Squalas acanthias) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb (136 kg) per trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the fishing trip. The closures listed in Table 4 also apply, except for the species listed below in subparagraphs (i) through (v). The following sublimits also apply and are counted toward the overall 300 lb (136 kg) per trip groundfish limit:

(i) Shelf rockfish (including minor shelf rockfish, widow and yellowtail)—

(A) Between 40°10′ N. lat. and 34°27′ N. lat: 200 lb (91 kg) per month.

(B) South of 34°27′ N. lat.: 500 lb (227 kg) per month.

(ii) Bocaccio south of 40 deg. 10′ N. lat.—200 lb (91 kg) per month.

(iii) Chilipepper rockfish—

(A) Between 40°10′ N. lat. and 34°27′ N. lat.: 500 lb (227 kg) per month.

(B) South of 34°27′ N. lat.: 2,500 lb (1,134 kg) per month.

(iv) Minor nearshore rockfish south of 40 deg. 10′ N. Lat.—1,200 lb (544 kg) per 2 months.

(v) Lingcod south of 40 deg. 10′ N. lat.—May 1 through October 31, 2002: 300 lb (136 kg) per month, otherwise closed.

(b) *State law.* These trip limits are not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(c) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 inches (56 cm) in total length, unless it weighs 4 lbs (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means "the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8396, which requires a permit issued by the State of California.

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.*

(a) The trip limit is 500 lb (227 kg) of groundfish per day, multiplied by the number of days of the fishing trip, but not to exceed 1,500 lb (680 kg) of groundfish per trip. The following sublimits also apply and are counted toward the overall 500 lb (227 kg) per day and 1,500 lb (680 kg) per trip groundfish limits:

(i) Canary rockfish—

(A) April 1 through 30, 2002; 50 lb (23 kg) per month

(B) Starting May 1, 2002 through October 31, 2002: 200 lb (91 kg) per month

(ii) Lingcod—April 1 through October 31, 2002: 400 lb (181 kg) per month, with a minimum size limit (total length) of 24 inches (61 cm)

(iii) Sablefish—April 1, 2002 through October 31, 2002: 2,000 lb (907 kg) per month.

(iv) Thornyheads—Closed north of Pt. Conception (34°27′ N. lat.)

(b) All other groundfish species taken with exempted trawl gear by vessels engaged in fishing for pink shrimp are managed under the overall 500 lb (227 kg) per day and 1,500 lb (680 kg) per trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits.

(c) In any trip in which pink shrimp trawl gear is used, the amount of groundfish landed may not exceed the amount of pink shrimp landed.

(d) Operating in pink shrimp and other fisheries during the same cumulative trip limit period. Notwithstanding section A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

D. Recreational Fishery

(1) *California.* (Note: California law provides that, in times and area when the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person.) For each person engaged in recreational fishing seaward of California, the following seasons and bag limits apply:

(a) *Rockfish*—(i) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, as described above at A.(20), except that fishing for rockfish is permitted in waters inside the 20-fathom (37 m) depth contour within the CCAs from March 1 through October 31, 2002, subject to the bag limits in paragraph (iii) of this section.

(ii) *Seasons.* North of 40°10′ N. lat., recreational fishing for rockfish is open from January 1 through December 31. South of 40°10′ N. lat. and north of Point Conception (34°27′ N. lat.), recreational fishing for rockfish is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational rockfish fishing from May 1 through June 30 and from September 1 through October 31, except that fishing for rockfish is permitted inside the 20 fathom (37 m) depth contour, subject to the bag limits in paragraph (iii) of this section, except that bocaccio, canary rockfish and yelloweye rockfish retention is prohibited. South of Point Conception (34°27′ N. lat.), recreational fishing for rockfish is closed from January 1 through February 28 and from November 1 through December 31. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits, boat limits, hook limits.* In times and areas when the recreational season for rockfish is open, there is a 2-hook limit per fishing line, and the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, no more than 1 may be canary rockfish, and no more than 1 may be yelloweye rockfish. No more than 2 yelloweye rockfish may be retained per vessel. Cowcod may not be retained. Bocaccio, canary rockfish, and yelloweye rockfish may not be retained, and no more than 2 shelf rockfish may be retained, in the area between 40°10′ N. lat. and Point Conception (34°27′ N. lat.) from May 1 through June 30, or September 1 through October 31. (Note: California scorpionfish are subject to California's 10 fish bag limit per species, but are not counted toward the 10 rockfish bag limit.) Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(iv) *Size limits.* The following rockfish size limits apply: bocaccio may be no smaller than 10 inches (25 cm); and California scorpionfish may be no smaller than 10 inches (25 cm).

(v) *Dressing/Fileting.* Rockfish skin may not be removed when fileting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: bocaccio filets may be no smaller than 5 inches (12.8 cm); California scorpionfish filets may be no smaller than 5 inches (12.8 cm); and brown-skinned rockfish filets may be no smaller than 6.5 inches (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(b) *Roundfish* (Lingcod, cabezon, kelp greenling)—(i) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, as described above at A.(20), except that fishing for lingcod is permitted in waters inside the 20 fathom (37 m) depth contour within the CCAs from March 1 through October 31, 2002, subject to the bag limits in paragraph (iii) of this section. Fishing for cabezon and kelp greenling is allowed in waters inside the 20 fathom (37 m) depth contour within the CCAs year round.

(ii) *Seasons.* South of 40°10′ N. lat. and north of Point Conception (34°27′ N. lat.), recreational fishing for lingcod is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational lingcod fishing from May 1 through June 30 and from September 1 through October 31, except that fishing for lingcod is permitted inside the 20 fathom (37 m) depth contour, subject to the bag limits in paragraph (iii) of this section. South of Point Conception (34°27′ N. lat.), recreational fishing for lingcod is closed from January 1 through February 28 and from November 1 through December 31.

(iii) *Bag limits, boat limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a 2-hook limit per fishing line, and the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(iv) *Size limits.* The following roundfish size limits apply: lingcod may be no smaller than 24 inches (61 cm) total length, cabezon may be no smaller than 15 inches (38 cm); and kelp greenling may be no smaller than 12 inches (30 cm).

(v) *Dressing/Fileting.* Cabezon and kelp greenling taken in the recreational fishery may not be filleted at sea. Lingcod filets may be no smaller than 15 inches (38.1 cm).

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon are 1 lingcod per day, which may be no smaller than 24 inches (61 cm) total length; and 10 rockfish per day, of which no more than 1 may be canary rockfish and no more than 1 may be yelloweye rockfish. During the all-depth recreational fisheries for Pacific halibut (*Hippoglossus stenolopis*), vessels with halibut on board may not take, retain, possess or land yelloweye rockfish.

(3) *Washington.* For each person engaged in recreational fishing seaward of Washington, the following seasons and bag limits apply:

(a) *Rockfish.* There is a rockfish bag limit of no more than 10 rockfish per day, of which no more than 2 may be canary rockfish, or no more than 1 may be canary rockfish and 1 may be yelloweye rockfish. Taking and retaining yelloweye rockfish is prohibited from a vessel with Pacific halibut retained on board.

(b) *Lingcod.* Recreational fishing for lingcod is closed between January 1 and April 15, and between October 16 and December 21. When the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 24 inches (61 cm) total length.

Washington Coastal Tribal Fisheries

The basis for and background information on groundfish allocations harvest by the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) with treaty rights to groundfish is described in the proposed rule to implement the 2002 groundfish specifications and management measures in the Proposed Rules section of the January 11, 2002 issue of the **Federal Register**.

The Assistant Administrator (AA) announces the following tribal allocations for 2002, including those that are the same as in 2001. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 424 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(2) Thornyheads are subject to a 300 lb (136 kg) trip limit.

(3) Canary rockfish are subject to a 300 lb (136 kg) trip limit.

(4) Yelloweye rockfish are subject to a 100 lb (45 kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per two-month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300 lb (136 kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300 lb (136 kg) daily trip limit and a 900 lb (408 kg) weekly limit.

D. Pacific whiting

Whiting allocations will be announced when the final OY is announced.

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Classification

These final management measures for January 1 through February 28, 2002 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

The January-February management measures are intended to protect overfished and other depressed stocks and meet the Council's overfished stock rebuilding goals while also allowing as much harvest of healthy stocks as possible. As previously explained, delay in implementation of these regulatory measures could cause harm to some stocks, as fishing will continue using 2001 management measures until the implementation of these regulations, possibly allowing the overfishing of some stocks. Delay in publishing these measures could require unnecessarily restrictive measures later in the year to make up for the late implementation, leading to higher fish prices and fewer fish available for sale to the public as well as further reduced employment of the groundfish fleet. Much of the data necessary for these specifications and management measures came from the 2001 fisheries year. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these management measures in effect January 1, 2002 (the beginning of the 2002 fishing year), the AA finds, under 5 U.S.C. 553(b)(B), that prior notice and the opportunity for public comment are impracticable and contrary to the public interest for the January 1 through February 28, 2002, management measures.

Amendment 4 to the FMP, implemented on January 1, 1991, recognized that there is a very short time between when fisheries data become available and when annual management measures must be in place. The amendment set up a system by which the interested public is notified, through **Federal Register** publication and Council mailings, of meetings and of the development of these measures and is provided the opportunity to comment during the Council process. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in September and November 2001 where these recommendations were formulated. Additional public comments on this emergency rule and on the proposed 2002 specifications and management measures will be accepted for 30 days after publication of these documents in this **Federal Register**.

As previously described, the interested public has participated in the Council process to formulate these regulations. The Council has provided information to the industry on the above management measures and specifications through the newsletters that it sends to fishery participants, and NMFS has provided notice through the U.S. Coast Guard's Notice to Mariners, and the States of Washington, Oregon, and California also disseminate information. As previously explained, there is a need to implement these management measures on January 1, 2002. Therefore, the AA finds, under 5 U.S.C. 553(d)(3), good cause not to delay the effective date of these management measures.

This action has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. However, as previously described, the January-February 2002 management measures are based on the overall analysis underlying the 2002 specifications and March-December 2002 management measures, which are proposed in the Proposed Rules section of this issue of the **Federal Register**. The Council's initial regulatory flexibility analysis prepared for the 2002 specifications and management measures considers the effects of the January and February management measures on the fisheries.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 01–32261 Filed 12–31–01; 4:46 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309–1309–01; I.D. 121301A]

RIN 0648–AO69

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, announcement of the overfished status of yelloweye rockfish; announcement of the receipt of exempted fishing permit application; request for comments.

SUMMARY: NMFS proposes a rule to implement the 2002 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California. The proposed specifications include the levels of the acceptable biological catch (ABC) and optimum yields (OYs). The commercial OYs (the total catch OYs reduced by tribal allocations and by amounts expected to be taken in recreational and compensation fisheries) proposed herein would be allocated between the limited entry and open access fisheries. Proposed management measures for 2002 are intended to prevent overfishing; rebuild overfished species; minimize incidental catch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations to the extent practicable. This **Federal Register** document also announces that the yelloweye rockfish resource is considered overfished, and announces the receipt of an application for an exempted fishing permit (EFP) for 2002.

DATES: Comments must be received no later than 5 p.m., local time (l.t.) on February 11, 2002.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, or fax to 206–526–6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or fax to (562) 980–4047. Comments will not be accepted if submitted via E-mail or the internet. Information relevant to this proposed rule, which includes an environmental asssessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), is available for public review during business hours at the offices of the NMFS Northwest Regional Administrator and the NMFS Southwest Regional Administrator, or may be obtained from the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–326–6352. Additional reports referred to in this document may also be obtained from the Council. Copies of EFP applications are available from NMFS Northwest Region.

Send comments regarding the reporting district estimate or any other aspect of the collection-of-information requirements in the announcement of EFPs, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washington, DC 20503, (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; E-mail: *yvonne.dereynier@noaa.gov, becky.renko@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; E-mail: *svein.fougner@noaa.gov*.

Electronic Access

This proposed rule also is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gov/su— docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov.1sustfsh/gdfsh01.htm* and at the Council's Web site at *http://www.pcouncil.org*.

SUPPLEMENTARY INFORMATION:

Background

The FMP requires that fishery specifications for groundfish be annually evaluated, and revised as necessary, that OYs be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Since 1990, the Council has developed annual specifications and management measures in a two-meeting process (usually its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction after the effective date of the action. Each year, specifications and management measures are effective until the specifications and management measures for the following year are published and effective. In 2001, NMFS was challenged on this process in *Natural Resources Defense Council, Inc. v. Evans*, 2001 WL 1246622 (N.D.Cal. 2001) and the court ordered NMFS to provide prior public notice and allow public comment on the annual specifications. NMFS is publishing the 2002 specifications and management measures initially as a proposed rule available for a 30-day public comment, to be followed by a final rule.

The Council finalized its 2002 specifications and management measures recommendations at its October 28 through November 2, 2001 meeting in Millbrae, CA. Because NMFS did not have enough time to publish a proposed rule on the Council's recommendations, receive public comments, and publish all of a final rule by the scheduled start of the fishery on January 1, 2002, NMFS also publishes a final emergency rule today's **Federal Register** that finalizes and makes effective the groundfish management measures for January 1 through February 28, 2002. As a result, this proposed rule addresses the 2002 specifications (ABCs and OYs) and the management measures for March through December 2002. Specifications and management measures proposed for 2002 are designed to constrain direct and incidental mortality in order to rebuild overfished stocks and to prevent overfishing and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP.

During 2002, NMFS and the Council will develop a means to incorporated the Council's development of annual specifications and management measures into the proposed and final rulemaking process required by the Court's order.

1. Proposed Specifications

Proposed fishery specifications include ABCs, the designation of OYs, which may be represented by harvest guidelines (HGs) or quotas for species that need individual management, and the allocation of commercial OYs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

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Table 1a. 2002 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total catch)	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	745					745	577	251	203	81.0	48	19.0
Pacific Cod	3,200		c/			3,200	na	3,200	--	--	--	--
Pacific Whiting d/									--	--	--	--
Sablefish e/ (north of 36°)	4,644				--	4,644	4,367	3,906	3,539	90.6	367	9.4
Sablefish f/ (south of 36°)	--				333	333	229	229	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,368	--	--	--	--
English sole	2,000		1,100			3,100	na	-	-	-	-	-
Petrale sole h/	1,262		500	800	200	2,762	na	-	-	-	-	-
Arrowtooth flounder	5,800					5,800	na	-	-	-	-	-
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	-	-	-	-	-

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Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total catch	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	640			--		640	350	350	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,727					3,727	856	853	827	97.0	26	3.0
Canary m/	228					228	93	44	39	87.7	5	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			122		122	100	44	25	55.7	19	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	3,146			c/		3,146	3,146	3,131	2,871	91.7	260	8.3
Shortspine thornyhead r/	1,004					1,004	955	948	945	99.73	3	0.27
Longspine thornyhead s/ (north of 36°)	2,461				--	2,461	2,461	2,455	--	--	--	--
Longspine thornyhead t/ (south of 36°)	--				390	390	195	195	--	--	--	--
Cowcod u/	c/			19	--	19	2.4	0	--	--	--	--
	c/			--	5	5	2.4	0	--	--	--	--
Darkblotched v/	187					187	168	168	163	--	5	-
Yelloweye w/	22			5	--	27	13.5	3.69	--	--	--	--

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish North x/	4,795			--		4,795	3,115	2,442	2,239	91.7	203	8.3
Minor Rockfish South y/	--			3,506		3,506	2,015	1,283	714	55.7	569	44.3
Remaining Rockfish	2,727			854		--	--	--	--	--	--	--
bank z/	c/			350		350	--	--	--	--	--	--
black aa/	615		500			1,115	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--
bocaccio - (north)	318					318	--	--	--	--	--	--
chilipepper- (north)	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99						
yellowtail- (south)				116		116						
Other rockfish cc/	2,068			2,652		--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	na	-	-	-	-	-

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Table 1b. 2002 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total catch)			Harvest Guidelines (Total catch)			
					Limited Entry		Open Access	
		Total Catch OY	Recreational Estimate	Commercial OY	Mt	%	Mt	%
Minor Rockfish North x/	4,795	3,115	673	2,442	2,239	91.7	203	8.3
Nearshore		987	663	324	161	na	163	na
Shelf		968	10	958	928	na	30	na
Slope		1,160	0	1,160	1,150	na	10	na
Minor Rockfish South y/	3,506	2,015	732	1,283	714	55.7	569	44.3
Nearshore		662	532	130	23	na	107	na
Shelf		714	200	514	194	na	320	na
Slope		639		639	497	na	142	na

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was designated as overfished in 1999. Coastwide, lingcod is estimated to be at 15 percent of its unfished biomass. An assessment was conducted in 2000 and updated for 2001. The stock assessment included parts of Canadian waters, therefore the U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total for that area. The ABC of 745 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 577 mt is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2009. The total catch OY is reduced by 326 mt, the amount that is estimated to be taken by the recreational fishery, resulting in a commercial OY of 251 mt. The open access total catch allocation is 48 mt (19 percent of the commercial OY) and the open access landed catch value is 38 mt. The limited entry total catch allocation is 203 mt and the landed catch value is 163 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are expected to land a small amount of lingcod (4-5 mt), but do not have a specific allocation at this time.

c/ "Other species" - These species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted only.

d/ A new Pacific whiting assessment is expected in early 2002. Therefore, final adoption of the ABC and OY is being deferred until early 2002, when the results of the new assessment become available.

e/ Sablefish north of 36° N lat. - A new sablefish assessment was done in 2001 for the area north of Point Conception (34°27'N lat.). Sablefish north of 34°27'N lat. is estimated to be between 27 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (4,786 mt) is based on an environmentally driven model with an Fmsy proxy of F45%. The ABC for the management area north of 36° N lat. is 4,644 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N lat is 4,367 mt, which is based on the application of the 40-10 harvest rate policy, and is 97.04 percent of the OY from the surveyed area. The total catch OY is reduced by 10 percent for the tribal set aside (437 mt) and by 24.7 mt for

compensation to vessels that conducted resource surveys. The remainder (3,906 mt) is the commercial total catch OY. The open access allocation of 9.4 percent of the commercial OY, results in an open access total catch OY of 367 mt. The limited entry total catch OY is 3,539 mt, 90.6 percent of the commercial OY. The limited entry total catch OY is further divided with 58 percent (2,052 mt) allocated to the trawl fishery and 42 percent (1,486 mt) allocated to the non-trawl fishery. Discard rates will be applied as follows: 22 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. The resulting landed catch values are: 1,601 mt for limited entry trawl, 1,367 mt for limited entry fixed gear, 338 mt for open access, and 424 mt for the tribal fisheries.

f/ Sablefish south of 36° N lat. - The ABC of 333 mt is the sum of 142 mt (2.96 percent of the ABC from the new 2001 survey based assessment) and 191 mt (based on historical landings). The total catch OY (229 mt) is the sum of 133 mt (2.96 percent of the OY from the new 2001 survey based assessment with the application of the 40-10 harvest rate policy) and 96 mt (that portion of the ABC based on historical landings south of Pt. Conception that was reduced by 50 percent to address uncertainty due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 211 mt.

g/ Dover sole north of 34°27'N lat. was assessed as a unit in 2001 and is estimated to be at 29% of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 71.6 mt for compensation to vessels that conducted resource surveys, resulting in a commercial OY of 7,368 mt. Discards are assumed to be 5 percent, resulting in a landed catch value of 7,000 mt.

h/ Petrale sole was estimated to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the final ABC for the Vancouver-Columbia area (1,262 mt) is based on an F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ "Other flatfish" are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was designated as overfished in 1999. The ABC (640 mt) is based on the 2000 assessment which was updated for 2001. The total catch OY (350 mt) is based on a 70 percent probability of rebuilding the stock to Bmsy by the year 2042. The landed catch value is 294 mt. The landed catch value is based on a discard rate of 16 percent. Tribal vessels are expected to land only trace amounts of POP in 2002 and do not have a specific allocation at this time.

k/ Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and is estimated to be at 24 percent of its unfished biomass. Therefore, it was declared overfished in 2001. The ABC (3,727 mt) is based on an F50% Fmsy proxy. The OY (856 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy within 37 years. The OY is reduced by 3 mt for the amount estimated to be taken as recreational catch, resulting in a commercial OY of 853 mt. The commercial OY is divided with open access receiving 3 percent (26 mt) and limited entry receiving 97 percent (827 mt). The landed catch equivalent for the open access fishery is 21 mt. The limited entry allocation is reduced by 150 mt for anticipated bycatch in the at-sea whiting fishery and an additional 40 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 575 mt. Tribal vessels are expected to land about 27 mt of widow rockfish in 2002, but do not have a specific allocation at this time.

m/ Canary rockfish is estimated to be at 22 percent of its unfished biomass in the north (north of Cape Blanco) and 8 percent of its unfished biomass in the south (south of Cape Blanco). Canary rockfish was declared overfished in 2000. The coastwide ABC (228 mt) is based on an Fmsy proxy of F50%. The coastwide OY of 93 mt (the sum of 73 mt for the northern area, plus 20 mt for the southern area) is based on a 52 percent

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probability of rebuilding the stock to Bmsy by the year 2056. The OY is reduced by 5 mt for research surveys and 44 mt for the estimated recreational catch, resulting in a commercial OY of 44 mt. The commercial OY is divided with open access receiving 12.3 percent (5 mt) and limited entry receiving 87.7 percent (39 mt). The landed catch value for the open access fishery is 4.5 mt. The 39 mt limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 30 mt. The landed catch value is based on a discard rate of 16 percent. However, the specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are expected to land about 2.5 mt of canary rockfish in 2002, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - The ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of an F50% Fmsy proxy. Because the unfished biomass is estimated to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt, near the recent average landed catch, to discourage effort on chilipepper, which is known to have bycatch of overfished bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Of the commercial OY, open access is allocated 44.3 percent (879 mt) and limited entry is allocated 55.7 percent (1,106 mt). The assumed discard is 16 percent, resulting in a open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt.

o/ Bocaccio rockfish is estimated to be at 2 percent of its unfished biomass and was designated as overfished in 1999. The ABC of 122 mt is based on an F50% Fmsy proxy. The OY (100 mt) is based on the rebuilding plan, which has a 67% probability of rebuilding the stock to Bmsy by the year 2033. The OY is reduced by 56 mt for the amount estimated to be taken as recreational harvest, resulting in a 44 mt commercial OY. Open access is allocated 44.3 percent (19 mt) of the commercial OY and limited entry is allocated 55.7 percent (25 mt) of the commercial OY. The open access landed catch value is 16 mt and the limited entry landed catch value is 21 mt. The landed catch value is based on a discard rate of 16 percent.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt total catch OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish is estimated to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with an Fmsy proxy of F50%. The OY (3,146 mt) was set equal to the ABC. To derive the commercial OY (3,131 mt) the total catch OY is reduced by 15 mt, the amount estimated to be taken in the recreational fishery. The open access allocation (260 mt) is 8.3 percent the commercial OY. The limited entry allocation (2,871 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 400 mt is subtracted from the limited entry allocation. An additional 150 mt is deducted for the shore-based whiting fishery. The remainder (2,471 mt) is further reduced by 20 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 2,007 mt. The open access landed catch equivalent is 218 mt, given the assumed discard of 16 percent. Tribal vessels are expected to land about 300 mt of yellowtail rockfish outside their directed whiting fishery in 2002, but do not have a specific allocation at this time.

r/ Shortspine thornyhead - A new assessment was done for shortspine thornyhead in 2001 and the stock is estimated to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34°27'N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy, resulting in a commercial OY of 948 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (945 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value of 757 mt. There is no ABC or OY for the southern Conception area. Tribal vessels are expected to land about 1 mt of shortspine thornyheads in, but do not have a specific allocation at this time.

s/ Longspine thornyhead is estimated to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at an F50% Fmsy proxy. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 6 mt for compensation to vessels that conducted resource surveys, resulting in a commercial OY of 2,455 mt. To derive the landed catch equivalent of 2,037 mt, the limited entry

allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the northern Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). The ABC was reduced by 50 percent to obtain the OY (195 mt), this reduction addresses uncertainty in the stock assessment due to limited information. There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and is estimated to be at less than 10 percent of its unfished biomass. Therefore cowcod was declared overfished in 2000. The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on a 55 percent probability of rebuilding the stock to Bmsy by the year 2094. Cowcod retention will not be permitted in 2002.

v/ Darkblotched rockfish was assessed in 2000 and estimated to be at 22 percent of its unfished biomass. The stock was declared overfished in 2001. An update to the assessment which incorporated new data indicates that the stock may be at 12 percent of the unfished biomass. The ABC of 187 mt is based on the updated assessment with an Fmsy proxy of F50%. The OY of 168 mt is based on a 70 percent probability of rebuilding the stock to Bmsy by 2034. For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry allocation. The landed catch value for the remaining limited entry fisheries is 130 mt. The landed catch value is based on a discard rate of 20 percent. Specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are expected to land minimal amounts of darkblotched rockfish in 2002, but do not have a specific allocation at this time.

w/ Yelloweye rockfish was assessed in 2001 and is estimated to be at 7 percent of its unfished biomass off northern California and at 13 percent of its unfished biomass off Oregon, indicating that it is overfished at this time. The 27 mt coastwide ABC (5 mt for the Monterey area and 22 mt for the areas north of 40°10'N lat.) is based on an Fmsy proxy of F50%. As a precautionary measure, until rebuilding measures can be adopted, the coastwide ABC has been reduced by 50 percent to obtain the OY of 13.5 mt (2.5 mt for the Monterey area and 11 mt for the areas north of 40°10'N lat.) The OY is reduced by 8.81 mt for the amount estimated to be taken as recreational harvest, and 1 mt for the amount expected to be taken in the tribal fishery, resulting in a commercial OY of 3.69 mt. Specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC (4,795 mt) is the sum of the individual "remaining rockfish" ABCs (2,727 mt) plus the "other rockfish" ABCs (2,068 mt). The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY (3,115 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish (see footnote aa/), and other rockfish ABCs are reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 673 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,442 mt. Open access is allocated 8.3 percent (203 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,239 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish, resulting in a an open access landed catch value of 188 mt and a limited entry landed catch value of 1,852 mt. Tribal vessels are expected to land about 10 mt of minor rockfish (2 mt of minor nearshore rockfish, 4 mt of shelf rockfish, and 4 mt of slope rockfish) in 2002, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC (3,506 mt) is the sum of the individual "remaining rockfish" ABCs (854 mt) plus the "other rockfish" ABCs (2,652). The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish

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ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote bb/), and the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 732 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,283 mt. Open access is allocated 44.3 percent (569 mt) of the commercial OY and limited entry is allocated 55.7 percent (714 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish, resulting in an open access landed catch value of 484 mt and a limited entry landed catch value of 582 mt.

z/ Bank rockfish - The ABC of 350 mt is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish - The ABC (1,115 mt) which is based on a 2000 assessment, is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards the minor rockfish OY in the north.

bb/ Blackgill rockfish is estimated to be at 51 percent of its unfished biomass. The ABC (343 mt) is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been quantifiably assessed. Beginning in 2002, an ABC and OY have been specified for yelloweye rockfish, in the Monterey and Conception areas. Therefore, it has been removed from the "other rockfish" category.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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ABC Policy and Overfishing

Each fishing year, the Council assesses the biological condition of the Pacific Coast groundfish fishery, develops estimates of the ABC for major groundfish stocks, and identifies harvest levels or OYs for the species or species groups that it proposes to manage.

The Magnuson-Stevens Act requires an FMP to prevent overfishing. Overfishing is defined in the National Standard Guidelines (50 CFR part 600, subpart D) as exceeding the fishing mortality rate (F) needed to produce the maximum sustainable yield (MSY). When setting the 2002 ABCs, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate (Fmsy) that is expected to achieve the MSY. The OYs were then set at levels that are expected to prevent overfishing, equal to or less than the ABCs.

The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the current estimated biomass. In 2002, the Council continued to use default harvest rate proxies recommended by the Council's Scientific and Statistical Committee (SSC) for 2001. See the final rule for the 2001 annual specifications and management measures published on January 11, 2001 (66 FR 2338). These recommended harvest rate proxies are: F40% for flatfish and whiting, F50% for rockfish (including thornyheads), and F45% for other groundfish such as sablefish and lingcod. The FMP allows default harvest rate proxies to be modified as scientific knowledge improves for a particular species.

A harvest or fishing mortality rate can mean very different things for different stocks because that rate is dependent on the productivity of a particular species. For fast growing stocks, those with a strong ability to maintain moderate recruitment levels even when the spawning biomass is reduced, a higher fishing mortality rate may be used, such as F40%. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing), and is therefore a more aggressive rate than F45% or F50%. Harvest rate policies must account for several complicating factors, including the relative fecundity of mature individuals over time, and the optimal stock size for the highest level of productivity within that stock.

For some groundfish species, there may be little or no detailed biological data available on which to base ABCs, and only rudimentary assessments were prepared; for other species, the ABC levels may be established only on the basis of historical landings. As in 2001, precautionary measures continue to be taken when setting ABCs and OYs for species with no assessments or only rudimentary ones.

The 2002 ABCs are based on the best scientific information available to the Council at its November 2001 meeting. The ABCs in Table 1 represent total fishing mortality (landed catch plus discards). Where the assessments included Canadian waters, the ABCs apply only to U.S. waters. Stock assessment information considered in determining the ABCs is available from the Council and was made available to the public before the Council's November 2001 meeting. Additional information can be found in the EA/RIR/IRFA prepared by the Council for this action and in documents from the September and November 2001 Council meetings (see **ADDRESSES**).

OY Policy

In 1999, the Council adopted the "40–10 precautionary policy" for setting OYs. The 40–10 policy is intended to prevent species from becoming overfished. According to the Council's OY policy, if a stock biomass is larger than the biomass needed to produce MSY (Bmsy), the OY may be set equal to or less than ABC. The Council uses 40 percent as a default proxy for the Bmsy, also referred to as B40%. See the final rule for the 1999 annual specifications and management measures published on January 8, 1999 (64 FR 1316). A stock with a current biomass between 25 percent of the unfished level and Bmsy (the precautionary threshold) is said to be in the "precautionary zone." The Council's default OY harvest policy reduces the fishing mortality rate when a stock is at or below its precautionary threshold. The further the stock is below the precautionary threshold, the greater the reduction in OY will be relative to the ABC, until, at B10%, the OY would be set at zero. This is, in effect, a default rebuilding policy that will foster quicker return to the Bmsy level than would fishing at the ABC level.

The Council may recommend setting the OY higher than what the default OY harvest policy specifies, if justified, as long as the OY does not exceed the ABC (Fmsy harvest rate) and it is consistent with the requirements of the Magnuson-Stevens Act and the National Standard Guidelines. Additional precaution may be added on a case-by-case basis regardless of the stock's current biomass level, if warranted by uncertainty in the data or by higher risks of being overfished.

If a stock falls below 25 percent of its unfished biomass (B25%), it is considered overfished, and the Magnuson-Stevens Act requires the Council to develop a rebuilding plan within 1 year. Rebuilding plans for overfished species have stock-specific allowable harvest rates, which are intended to rebuild the stock within a specified time period.

Precautionary measures continue to be taken when setting the OYs for species that have no or only rudimentary assessments. Since implementation of the 2000 specifications, ABCs have been reduced by 25 percent to set OYs for those species with less rigorous stock assessments, and by 50 percent to set OYs for those species with no stock assessment.

2002 ABCs and OYs

Species with ABCs and OYs in 2001 continue to have ABCs and OYs in 2002. New assessments were completed and new ABCs and OYs were developed for sablefish, Dover sole, and shortspine thornyhead north of Point Conception (34°27′ N. lat.;) and for yelloweye rockfish in the Monterey, Eureka and Columbia (waters off Oregon only) areas. A new assessment was also prepared for black rockfish off southern Oregon to 40°10′ N. lat.; however, it was not available in time to complete the required review process and was therefore not available for setting 2002 ABCs.

A new stock assessment was prepared for sablefish in 2001. The assessment incorporated new survey and fishery data and extended the assessment area south from 36°N. lat. to 34°27′ N. lat. (Point Conception). Two different assessment models indicated a normal decline in biomass since the late 1970s due to the fishing down of the virgin stock and an unexpected decline in recruitment during the early 1990s. The sablefish stock is currently estimated to be between 27 and 38 percent of the unfished biomass, depending on the assessment scenario and the basis for estimating unfished biomass.

A change in environmental conditions may have been responsible for the abrupt decline in recruitment in the 1990s, or this low recruitment may have been the natural consequence of the gradual decline in spawning biomass. Because of this uncertainty, two ABC estimates were produced and reviewed by the Council: an ABC of 4,786 mt based upon the current Fmsy proxy of F45%, and an ABC of 4,062 mt based upon a reduced harvest rate of F50%. Although sablefish have experienced a decline due to poor recruitment in the 1990's, continuation of the F45% harvest rate is expected to prevent overfishing if this recruitment decline is primarily due to random environmental factors. However, reduction in harvest rate of F50%, or lower, will be necessary in the long-term if reduced spawner abundance has been the dominant factor in causing the lower recruitment (density-dependence). Both represent a substantial reduction from the current ABC. If further analysis during 2002 indicates that the lower level is more appropriate, then the one year delay in implementing the change from F45% to F50% will cause the spawning stock at the beginning of 2003 to be only slightly smaller (47,341 mt versus 47,704 mt).

It is likely that both environmental factors and reduced spawning biomass affect sablefish recruitment, although the relative contribution of each is unknown. Large numbers of juvenile sablefish in the 2001 shelf survey (conducted after the 2001 assessment was completed) suggest that the fishable biomass and spawning biomass will increase in coming years. The survival of these juvenile sablefish may also be improved through the reduced trawl opportunities for continental shelf species because juvenile sablefish are commonly found in shelf areas. The recent large year classes are physical evidence that a recruitment scenario based solely on low spawning biomass (density-dependent scenario) does not fully described the status of the sablefish biomass. Thus, the environmental scenario may have merit as an explanation for the low recruitment during the 1990s. The ABCs considered by the Council and its advisory panels were based on assessments that did not include projections of the juvenile fish (animals that have not yet entered the fishery) from 1999 and 2000. Therefore, both ABC options considered by the Council were prudent reductions from the 2001 ABC level (7,661 mt) and until new information validates the recent recruitment level.

Three OY options were considered for sablefish by the Council: 4,500 mt derived from the environmentally driven model, 4,000 mt a ramp down approach to start moving toward a lower OY strategy, and 3,200 mt derived from the density-dependent model. At the Council's September meeting, the SSC stated a preference for the lowest OY option (3,200 mt), because it was the option most likely to prevent the biomass from falling below the rebuilding threshold (B25%) within the next five years. The SSC also recommended that the Council consider moving towards a more conservative Fmsy proxy. At the Council's November meeting, NMFS scientists presented preliminary data from the 2001 shelf survey that suggests that the fishable biomass and spawning biomass will increase in coming years. In addition, public testimony indicated that more smaller sablefish have been seen in catches during the 2001 fishing year. The SSC did not revise its OY recommendation to the Council after receiving this new information.

The Council majority agreed that information on juvenile sablefish occurrence in the shelf survey and in commercial landings is so strong that it supported the environmental-recruitment scenario while still being

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precautionary. Therefore, the Council recommended adopting a 4,500 mt OY, based on the environmentally driven recruitment scenario with the application of the 40–10 harvest policy to reduce the risk of overfishing. The Council asked that NMFS prepare a revised assessment that incorporates the 2001 survey data in time for the Council's 2003 ABCs and OYs setting process. If the revised assessment does not show an increase in recruitment for 2001, the Council expressed interest in considering a ramp down strategy beginning with 2003.

Because the OY options before the Council were substantial reductions from the 2001 total catch OY of 6,895 mt, the Council expressed concern about the adverse economic effect on the fishing industry. In the short-term the 4,500 mt OY option is expected to have less of an adverse economic impact on the fishery than the other OY options.

The sablefish spawning biomass is expected to slowly decline until the large 1999 and 2000 year classes mature. The abundance of these year classes will be monitored with surveys planned for summer 2002, and subsequent stock assessments will provide biological guidance for future adjustments to allowable harvest levels. If the future recruitment of juvenile sablefish from 1999 and 2000 is not as large as estimated and are followed by low recruitments as in the 1990s, then future spawning biomass and OYs will decline further. If the recruitment returns to the long-term average level or is above average, as may be the case in 2001, the stock is expected to increase its spawning biomass and the OY will also increase.

A new stock assessment for Dover sole was prepared by scientists from Oregon State University in 2001. This assessment incorporated new survey and fishery data and extended the assessment area south from 36° N. lat. to Point Conception. The new assessment indicates that the Dover sole stock is at about 29 percent of its unfished biomass. Recent biomass estimates appear to be without trend, but follow a steady decline since the late 1950s. The 5-year projection is for a relatively stable stock abundance. However, lower recruitment during the 1990s indicates a possible future stock decline and provides the reason for consideration of a lower harvest rate.

For the 2001 fishery, the Council adopted a Fmsy proxy of F40% for Dover sole following an SSC recommendation based on a harvest rate analysis specific to Dover sole. With the new Dover sole assessment in 2001, the SSC expressed concerns that the F40% harvest rate was too aggressive given the reduced recruitment levels seen in the 1990s. Three ABCs based on alternative Fmsy proxies of F40%, F45%, and F50% were considered by the Council. The Council determined that a change from the harvest rate policy introduced in 2001 would require a new and equally thorough evaluation of the long term harvest strategy. For 2002, the Council recommended adopting the ABC and OY values (8,510 mt/7,440 mt) that are consistent with the current F40% proxy for Fmsy with the 40–10 precautionary policy adjustments. The Council expressed support for the SSC recommendation for further evaluation of the Fmsy proxy used for Dover sole, but indicated that the process for preparing and reviewing such recommendations should be maintained.

NMFS prepared a new stock assessment for shortspine thornyhead in 2001. The assessment incorporated new survey and fishery data and extended the assessment area south from 36° N. lat. to Point Conception (34°27′ N. lat.) The stock is estimated to be at 25 to 50 percent of its unfished biomass. The assessment concluded that the shortspine thornyhead population shows an increasing biomass trend and has not declined since the last assessment. The Council considered two OYs: 955 mt, the OY from the new assessment, and 751 mt, the 2001 OY that was based on the assessments prepared in the late 1990s. Both OY options reflected an Fmsy proxy of F50% with the application of the 40–10 harvest policy.

The SSC recognized that the analysis and data in the new assessment were an improvement over the previous assessment. However, the SSC also noted the high degree of uncertainty in the 2002 stock projections and they considered the lower OY (751 mt) to be the most risk-adverse option before the Council. The uncertainty associated with an incomplete understanding of biological parameters and survey effectiveness led to the calculation of an alternative shortspine thornyhead OY using standard precautionary measures typically used for species with less rigorous stock assessments. The OY based on standard precautionary measures was similar to the OY from the new assessment. The Council recognized the uncertainty associated with the new assessment, but noted that the new assessment was more adequate than those available in previous years. Because the assessment-based OY was comparable to an OY calculated using standard precautionary measures, the Council recommended adopting 955 mt at the 2002 OY for shortspine thornyhead.

A yelloweye rockfish assessment, which integrated fishery and survey data from northern California and Oregon, was completed by Washington Department of Fish and Wildlife. This was the first time an assessment was done on yelloweye rockfish. The assessment indicated that there has been a declining biomass trend in both areas for about 30 years, with the last above average recruitment occurring in the late 1980s. The assessment concluded that yelloweye rockfish is at about 7 percent of its unfished biomass in waters off northern California and at 13 percent of its unfished biomass in waters off Oregon.

Although a rebuilding analysis has not yet been completed for yelloweye rockfish, the assessment author and the Groundfish Management Team (GMT) analyzed the recruitment data and projected ABCs and OYs for 2002 fisheries. They recommended a coastwide ABC of 27 mt (5 mt for the Monterey area and 22 mt for the areas north of 40°10′ N. lat.) which is based on an Fmsy proxy of F50%.

In September, the Council adopted a preliminary coastwide total catch OY of 11 mt for yelloweye (2 mt for Monterey, 1 for Eureka, and 8 for Columbia and Vancouver areas) based on an initial rebuilding analysis and the application of the 40+10 harvest policy. As an interim measure prior to the development of a rebuilding plan, the Council recommended reducing the 27 mt ABC by 50 percent as a precautionary measure, resulting in an OY of 13.5 mt. The 2.5 mt difference between the two OY options represents approximately 0.3 percent of the stock biomass and is therefore not expected to have an appreciative effect on the stock abundance while a rebuilding analysis is prepared. The recommended OY of 13.5 is not expected to result in further overfishing because both of these options are below the 27 mt ABC.

Seven groundfish stocks have been designated as "overfished" Pacific ocean perch (POP), bocaccio, lingcod, canary rockfish, cowcod, darblotched rockfish, and widow rockfish. With the publication of this document, yelloweye rockfish is being designated as overfished. As noted above, the OY for yelloweye rockfish is set at extremely low levels in anticipation of rebuilding plan requirements in 2003.

The OYs for 3 overfished species, POP, widow rockfish and darkblotched rockfish were revised to be consistent with the rebuilding measures for those species. For 2002: the POP OY would be set at 350 mt, which reflects a 70 percent probability of rebuilding by the year 2042; the widow rockfish OY would be set at 856 mt, which reflects a 60 percent probability of rebuilding the stock by the year 2039; and the darkblotched rockfish OY would be set at 168 mt, which reflects a 70 percent probability of rebuilding the stock by the year 2034. The revised rebuilding analysis for darkblotched rockfish indicates that the stock cannot be rebuilt within a 10 year period; therefore, the OY reflects an extended rebuilding trajectory.

To protect depleted stocks and minimize the chance of overfishing, changes were made in 2000 that eliminated the "Sebastes complex" and created the "minor rockfish" categories. The same categories will continue to be used for 2002. Minor rockfish, species which have had no or only rudimentary assessments, are divided into nearshore, continental shelf, and continental slope categories that represent where they are predominantly caught. This strategy is intended to keep harvest levels more closely in line with the allowable biological catches for individual species and the various rockfish groups. Grouping the minor rockfish species into nearshore, shelf, and slope categories, allows fishing opportunities to be maintained for abundant stocks while improving protection for depleted stocks.

Management measures designed to rebuild overfished species, to prevent overfishing, or to prevent species from becoming overfished may restrict the harvest of relatively healthy stocks that co-occur with overfished species. As a result of the constraining management measures imposed to protect and rebuild overfished species, a number of the OYs may not be achieved in 2002, particularly for those shelf rockfish species that are not overfished, but which are caught with species that are overfished. Derivations of the ABCs and OYs for the individual groundfish species are explained in detail in Council documents from their September and November 2001 meetings and in the most recent stock assessments, and are summarized in this document in Table 1a. Derivations of commercial harvest guidelines, limited entry and open access allocations, and landed catch equivalents appear in the footnotes to table 1a, which are listed at the end of Table 1b.

Determinations of Overfished Stocks and Rebuilding Plans

The status of the resource is evaluated against the requirements of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP. A species is considered by NMFS to be overfished if its current biomass is less than 25 percent of the unfished biomass. The Magnuson-Stevens Act requires that a rebuilding plan be prepared within 1 year after the Council is notified by NMFS that a particular species is overfished.

Requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which NMFS approved on December 7, 2000 (65 FR 82947, December 29, 2000). Before Amendment 12 was approved, NMFS had approved the first 3 rebuilding plans for lingcod, bocaccio, and POP (65 FR 53646, September 5, 2000). During NMFS review of Amendment 12, the agency considered whether these 3 rebuilding plans met the requirements of Amendment 12 and concluded that they did not. The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, bocaccio, and POP rebuilding plans, as these plans did not meet the rebuilding plan content requirements described in Amendment 12 (65 FR 82947, December 29, 2000). The groundfish fishery has continued to operate under measures implementing these preliminary rebuilding plans for lingcod, bocaccio, and POP. NMFS instructed the Council to re-submit rebuilding plans for these species by January 1, 2002.

On January 4, 2000 (65 FR 221), NMFS notified the Council that cowcod and canary rockfish were overfished and that the Council must submit rebuilding plans for these species to NMFS by January 4, 2001. On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that the Council must submit rebuilding plans for these species to NMFS by January 11, 2002.

On August 20, 2001, the Federal magistrate ruled in *National Resources Defense Council*, v. *Evans*, 2001 WL 1246622 (N.D. Cal. 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854(e)(3). Accordingly, the magistrate issued an order setting aside those portions of Amendment 12 to the FMP dealing with rebuilding plans. Amendment 12 had provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations. As a result of the magistrate's decision, the Council must now revise Amendment 12 and all rebuilding plans to be consistent with the Court Order. NMFS has notified the Council that draft FMP amendment(s) that meet the statutory rebuilding requirements for POP, bocaccio, lingcod, canary rockfish, cowcod, darkblotched rockfish and widow rockfish should be available for review at the April 2002 meeting, with the intention of presenting final amendment(s) for adoption at the Council's June 2002 meeting.

NMFS also notifies the Council, via this **Federal Register** document, and that yelloweye rockfish is considered overfished at this time and the Council must submit a rebuilding plan FMP amendment to NMFS within 1 year of this notification. While rebuilding plans have not been approved by NMFS, the Council has prepared rebuilding analyses, and the OYs and management measures proposed for 2002 are consistent with these. The draft rebuilding plans initially endorsed by the Council are summarized as follows (maximum allowable rebuilding years refers to the maximum time allowed under the Magnuson-Stevens Act and the National Standard Guidelines):

Canary Rockfish

Areas: Coastwide
Status of stock: 8 to 22 percent of its unfished biomass.
Maximum allowable years to rebuild to MSY: 58 years
Expected median time to rebuild: 57 years (2056)
Probability of rebuilding to MSY biomass by 2056: 52 percent
Fmsy proxy: F50%
ABC in 2002: 228 mt
OY in 2002: 93 mt

Management Measures for 2002

Historically, canary rockfish have been caught directly or incidentally in both recreational and commercial groundfish fisheries. Commercial fisheries for groundfish and for non-groundfish species that co-occur with canary rockfish have been restricted to minimize the incidental catch of canary rockfish. Management measures have also been taken to divert effort off the seafloor of the continental shelf where canary rockfish are typically found. Fishing opportunities with large footrope bottom trawl gear have been severely restricted to reduce incidental interception of canary rockfish. Only small amounts of canary rockfish may be landed with small footrope or midwater trawl gear. Summer flatfish and midwater yellowtail rockfish harvests are constrained to protect canary rockfish and the Dover sole, sablefish, thornyhead (DTS) northern limits are structured to minimize canary interception. California hook-and-line

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commercial fisheries are closed during the same periods and in the same areas as the recreational fisheries (below). The shrimp trawl industry will continue to use fish excluder devices to reduce incidental harvest of canary rockfish and other groundfish in that fishery.

The recreational fisheries have been constrained to protect overfished species including canary rockfish. In California and Oregon, the rockfish bag limit is 10 fish, no more than 1 of which may be canary rockfish; off Washington the bag limit is 10 fish, no more than 2 of which may be canary rockfish or no more than 1 canary rockfish and 1 yelloweye rockfish. California recreational fisheries closures are twice the duration they were in 2001. The recreational season for the area between Point Conception and Cape Mendocino, California would be just 4 months duration for all depths, January–February and July–August, plus 4 months inside 20 fathoms (36.9 m) in May–June and September–October. When the fishery is open inside 20 fathoms (36.9 m), canary rockfish retention is prohibited, and there is a 2-shelf rockfish bag limit. South of Point Conception, the recreational fishery would be 8 months (March–October). Historically, the bulk of the recreational canary rockfish landings have been made in California.

POP

Areas: Vancouver and Columbia
Status of stock: 13 percent of its unfished biomass (1998)
Maximum allowable years to rebuild to MSY: 47 years
Expected median time to rebuild: 43 years (2042)
Probability of rebuilding to MSY biomass by 2042: 70 percent
Fmsy proxy: F50%
ABC in 2002: 640 mt
OY in 2002: 350 mt

Management Measures for 2002

Because POP primarily inhabit waters of the upper continental slope and are found along the edge of the shelf, they benefit from the trawl gear restrictions adopted to protect shelf rockfish species. Relatively small cumulative trip limits are intended to accommodate incidental bycatch without encouraging targeting. Higher POP limits are provided in the summer months, when they are more likely to be incidentally taken in the flatfish fisheries.

Bocaccio

Areas: Monterey and Conception
Status of stock: 2.1 percent of its unfished biomass
Maximum allowable years to rebuild to MSY: 38 years
Expected median time to rebuild: 34 years (2033)
Probability of rebuilding to MSY biomass by 2033: 67 percent
Fmsy proxy: F50%
ABC in 2002: 122 mt
OY in 2002: 100 mt

Management Measures for 2002

Bottom trawl opportunities for shelf rockfish continue to be extremely limited. No landings of bocaccio rockfish are allowed with large footrope trawl gear. Small amounts of bocaccio, an unavoidable bycatch, taken with small footrope or midwater trawl gear may be landed in fisheries for healthy stocks. The chilipepper rockfish OY continues to be reduced to limit the incidental take of bocaccio. California hook-and-line commercial fisheries are closed during the same periods and in the same areas as the recreational fisheries (below).

The recreational fisheries in California maintain a rockfish bag limit of 10 fish, no more than 2 of which may be bocaccio rockfish. In addition, California recreational fisheries closures described above under the canary rockfish rebuilding section also protects bocaccio.

Darkblotched Rockfish

Areas: Coastwide
Status of stock: 22 percent of its unfished biomass
Maximum allowable years to rebuild to MSY: 47 years
Expected median time to rebuild: 34 years (2034)
Probability of rebuilding to MSY biomass by 2034: 70 percent
Fmsy proxy: F50%
ABC in 2002 187 mt
OY in 2002: 168 mt

Management Measures in 2002

Relatively small cumulative trip limits for slope rockfish north are intended to accommodate incidental bycatch without encouraging targeting. In addition, the northern DTS trawl fisheries limits are constrained during the November–December period to reduce the incidental catch of darkblotched rockfish, as are the flatfish fisheries during the summer months when participation is greatest and darkblotched are most likely to be encountered. Lower sablefish and Dover sole OYs are also expected to reduce the incidental take of darkblotched rockfish.

Lingcod

Areas: Coastwide
Status of stock: 15 percent of its unfished biomass
Maximum allowable years to rebuild to MSY: 10 years
Expected median time to rebuild: 10 years (2009)
Probability of rebuilding to MSY biomass by 2009: 60 percent
Fmsy proxy: F45%
ABC in 2002: 745 mt
OY in 2002: 577 mt

Management Measures for 2002

Commercial limits for lingcod are intended to accommodate incidental catch and do not provide an incentive for directed fishing. Bottom trawl opportunities for shelf rockfish continue to be extremely limited. Because lingcod are predominately found on the shelf, gear restrictions imposed to protect shelf rockfish will also benefit lingcod. Trawl caught lingcod retention will be permitted during the winter months so as not to increase the overall discard mortality. Commercial nontrawl landings will continue to be prohibited during the winter months. This is to protect lingcod, which are more available to nontrawl gears in rocky habitats, during their spawning and nesting seasons. Nontrawl commercial fishing for lingcod south of 40°10′ N. lat. will be closed during the same periods and in the same areas as the recreational fisheries (below).

The recreational fisheries have been constrained to protect overfished species, including lingcod. Off Washington, the bag limit is 1 lingcod and fishing is not allowed during a 5 month period in the winter. The Oregon lingcod bag limit is 1 fish and the fishery operates year-round. California has a 2 lingcod bag limit. Beginning in 2002, California will lower the minimum size limit to 24 inches (61 cm), which is the same Oregon and Washington. California lingcod closures south of 40°10′ N. lat. are more stringent than in 2001. From 40°10′ N. lat. to 34°27′ N. lat., the area is closed March through April and November through December in all waters, and open only inside 20 fathoms (36.9 m) in May through June and September through October. The area south of 34°27′ N. lat., is closed January through February and November through December.

Cowcod

Areas: Point Conception to the U.S. Areas: Point Conception to the U.S.-Mexico boundary
Status of stock: 4–11 percent of its unfished biomass
Maximum allowable years to rebuild to MSY: 98 years
Expected median time to rebuild: 95 years (2094)
Probability of rebuilding to MSY biomass by 2094: 55 percent
Fmsy proxy: F50%
ABC in 2002: 24 mt
OY in 2002: 4.8 mt

Management Measures in 2002

As in 2001, retention of cowcod is not allowed for any commercial and recreational fisheries. To further protect cowcod from incidental harvest, 2 Cowcod Conservation Areas (CCAs), delineated to encompass key cowcod habitat areas and known areas of high catches, were established in the Southern California Bight in 2001. Fishing for groundfish is prohibited within the CCAs, except that minor nearshore rockfish, cabezon, and greenlining may be taken from waters where the bottom depth is less than 20 fathoms (36.9 m).

Widow Rockfish

Areas Coastwide
Status of Stock: 24 percent of its unfished biomass
Maximum allowable years to rebuild to MSY: 38 years
Expected median time to rebuild: 37 years (2039)
Probability of rebuilding to MSY biomass by 2039 60 percent
Fmsy proxy: F50%
ABC in 2002: 3, 727 mt
OY in 2002: 856 mt

Management Measures in 2002

Commercial limits for widow rockfish are intended to accommodate incidental catch and do not provide an incentive for direct fishing. In addition, the midwater trawl fisheries for yellowtail rockfish have been constrained with an incidental catch allowance during the primary season for Pacific whiting. Bottom trawl opportunities for shelf rockfish continue to be extremely limited, which is expected to benefit widow rockfish.

Overfishing

None of the 2002 ABCs are knowingly set higher than Fmsy or its proxy, none of the OYs are set higher than the corresponding ABCs, and the management measures herein are designed to keep harvest levels within specified OYs. After the 2000 fishing season, NMFS determined that overfishing did not occur on any of the groundfish species. Changes to the rockfish management structure in 2002 that divided minor rockfish into 3 species groups (nearshore, shelf, slope) were partially intended to ensure that those species would not be subject to overfishing harvest rates. The Council also adopted a policy for the 2000 specifications that reduced ABCs by 25 percent to determine OYs for those species with less rigorous stock assessments, and by 50 percent to determine OYs for those species with no stock assessment. These policies are continued in 2002. Overfishing is difficult to detect inseason for many rockfish, particularly on these minor rockfish species, because most are not individually identified on landing. Species compositions, based on proportions encountered in samples of landings, are applied during the year. However, final results are not available until after the end of the year.

Bycatch and Discard Accounting

The Magnuson-Stevens Act defines bycatch as "fish which are harvested in a fishery, which are not sold or kept for personal use, and include economic discards and regulatory discards." By contrast, Pacific Coast groundfish fishery management and many other fishery management regimes commonly use the term bycatch to describe non-targeted species that are caught in common with (co-occur with) target species, some of which are landed and sold or otherwise used and some of which are discarded. The term "discard" is used to describe those fish harvested that are neither landed nor used. For the purposes of this rule, the term "bycatch" is used to describe a species' co-occurrence with a target species, regardless of that first species' disposition.

With the exception of the mid-water trawl fishery for Pacific whiting, most groundfish vessels sort their catch at sea and discard species that are: in excess of cumulative trip limits, unmarketable, in excess of annual allocations, or incidentally caught non-groundfish species. Landed or retained catch has been monitored by the three state-run fish ticket programs in Washington, Oregon, and California.

Groundfish management measures include provisions to reduce trip limit-induced discards and to account for those discards when monitoring harvest levels (OYs). Historically, NMFS and the Council have accounted for dead discards by estimating the amounts of certain species OYs that would be discarded dead, and then subtracting those amounts from the total catch OYs to get landed catch levels for those species. These discard rates have been expressed as a percent of total catch OY, so that a 16 percent discard rate for a species meant that 16 percent of that species' total catch OY would be deducted to derive that species' landed catch OY. Then, management measures were set to achieve the landed catch OY for that species. Using discard rates was intended to account for dead fish either as dead discard or in landed catch. For all species except lingcod, sablefish, and nearshore rockfish species, it is assumed that discarded fish are generally dead upon discard or die soon after being discarded. Rockfish, particularly deepwater species, are severely stressed by decompression and temperature shock; however, lingcod discard mortality studies show about a 50 percent discard survival rate. There is no exact measure of discard amounts in most fisheries. Assumed amounts are taken into account to determine the true fishing mortality level and to prevent overall harvest from exceeding the OYs.

In setting past management measures, the Council would consider how each species or species group was taken, as targeted or incidental catch, in each of the various West Coast fisheries. A single species could be taken by many different gear types using different fishing strategies. Sablefish, for example, could be taken in trawl fisheries directly targeting the DTS complex, by pot gear directly targeting just sablefish, or by hook-and-line gear catching sablefish incidentally while targeting slope rockfish. West coast groundfish species are rarely found in isolation, and form associations with other groundfish that vary by geographic location, position in the water column, and season. Fisheries management recognizes this mix by setting management measures that discourage targeting of healthy stocks in times and areas when depleted stocks may co-occur with those healthy stocks. Conversely, fisheries management also recognizes this mix by structuring retention allowances for the harvestable amounts of depleted stocks so that fisheries do have access to healthy fish stocks.

During 2001, the annual specifications and management measures were challenged in court under *Natural Resources Defense Council, Inc* v. *Evans*, 2001 WL 1246622 (N.D.Cal. 2001). One result of that challenge was a court order to review the Council's historic bycatch rates and discard assumptions for bocaccio and lingcod, two overfished species. NMFS and the Council therefore reviewed and revised their overall approach to managing co-occurring healthy and depleted stocks. In September 2001, the Council's GMT and its SSC met to consider a new approach for determining discard rates for five overfished species for the 2002 fishery: bocaccio, lingcod, POP, canary rockfish, and darkbotched rockfish. During the September-October 2001 period, the GMT also considered discard rates for other rockfish and rockfish complexes. This analysis of discard rates for 2002

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is the same analysis that the court had ordered NMFS to conduct for the 2001 annual specifications and management measures, and is intended to fulfill that obligation and to serve as the basis for determining 2002 management measures. The analysis for the 2002 discard rates is in "Evaluation of Bycatch and Discard in the West Coast Groundfish Fishery," Council's Exhibit C3, Supplemental Attachment 3, November 2001.

This new bycatch and discard analysis calculated the co-occurrence of healthy stocks with each of the five overfished species. To make these co-occurrence calculations, the analysis evaluated data on a suite of trawl fishery target strategies (targeting the deepwater DTS complex, targeting arrowtooth flounder, etc.) Each target strategy was separated into six two–month periods to set a baseline of co-occurrence rates of overfished stocks throughout an entire calendar year. Not surprisingly, the analysis found seasonal variations in the co-occurrence rates between healthy and overfished stocks.

The bycatch and discard analysis evaluated information from several sources: (1) A 1985–1987 observed trawl study, commonly referred to as "the Pikitch study," for its principal investigator; (2) the 1995–1998 EDCP observer and logbook study; (3) the 1999 state trawl logbook data; and (4) a 1998 Washington Department of Fish and Wildlife (WDFW) study on lingcod discard mortality. The Pikitch study, Experimental Data Collection Program (EDCP) study, and the trawl logbook data were used to derive co-occurrence rates of bycatch species within numerous defined target fishing strategies. Because logbooks only report retained catch, only tows where trip limits had not yet been achieved were included in the calculation of the rates. Logbooks represented the only available source of co-occurrence information for the fishery south of Cape Mendocino. The WDFW study addressed only lingcod discard survival and was not used in analyzing the effects of different fishing strategies on rockfish species.

Once the report's authors had described the relationship between healthy and overfished stocks by calculating co-occurrence rates, they then calculated a range (low-mid-high) of bycatch rates for each of the five overfished species in the analysis. In this report, the bycatch rate referred to the caught amount (by weight) of an overfished bycatch species, divided by the caught-and-retained amount (by weight) of target species for various target fishery scenarios, areas, and months.

Logbook and EDCP data were also used in developing a supplemental analysis of the effects of bycatch distribution on discard for the area north of Cape Mendocino for canary rockfish, POP, and lingcod. The report's authors used the findings from these three species in developing the upper end of the ranges for darkblotched rockfish and bocaccio. The results of this supplemental analysis were used in developing the upper bounds of the expected discard ranges identified for individual species, below. In all cases, the discard ranges developed are lower than the discard assumptions that have been used in recent years. Because of the newness of the analysis and the uncertainty regarding much of the data included in the analysis, NMFS determined it would be prudent to wait to use the new lower discard estimates in calculating landed catch OYs until they can be confirmed by data to be obtained in the new NMFS observer program in the current management regime. Therefore, for canary rockfish, POP, bocaccio, and lingcod the assumed discard rate has been conservatively adjusted up to the rate used in the recent past. For darkblotched rockfish, as explained below, the rate has been conservatively adjusted up to 20 percent.

At its November 2001 meeting, the Council reviewed the bycatch and discard analysis and the possible range of bycatch rates for each of the five overfished species. The Council determined which bycatch level (low, mid, or high) was likely most accurate for each of the five species, based on the analysis in the report. The Council's GMT then crafted trip limit scenarios for target and bycatch species calculated to keep the total catch (landed + discard) of healthy target species and the five overfished species below their respective OYs. The Council's ultimate trip limit recommendations were shaped largely by this bycatch and discard analysis and are proposed in section IV.

After the Council had set management measures according to the bycatch rate ranges for those species and designed to keep the total catch of overfished species below their OYs, the analysis authors were then able to provide NMFS with estimates of the percent of each overfished species OY that would be discarded. Thus, although the analysis of healthy/overfished stock co-occurrence rates and overfished species bycatch rates is new, the practice of deducting expected discard from a species total catch OY to derive landed catch OY has not changed. At the November 2001 Council meeting, the SSC reviewed the new bycatch and discard analysis and stated in its report to the Council that "the SSC considers the GMT analysis to be the best way to proceed for the coming year."

As the fishing year progresses, the GMT and the Council will have to periodically evaluate target species catch patterns and effort in season and revise trip limits for the remainder of the year to keep overfished species catch (landed + discard) below the appropriate limits. For example, if flatfish trawl fishery participation in winter months is higher than expected from past participation, assumed winter discard levels might increase and summer trip limits for target and bycatch species may then have to be adjusted to ensure that the overall 2002 fisheries do not exceed the OYs for overfished species. This approach addresses a recommendation from Amendment 13 to the FMP, which called for a re-examination and improvement in accuracy of species-to-species landings limit ratios.

The Council recommended addressing bycatch rates of the five overfished species analyzed in the report as follows:

Canary rockfish. Within the low-mid-high range of possible bycatch rates, the Council recommended the low bycatch rate range for canary rockfish. The Council chose the low range because both the Pikitch study and the EDCP study occurred during years when canary rockfish was considered one of the primary target species in the West Coast rockfish complex fisheries. Coincident catch of canary rockfish should be lower in a fishery management regime designed to avoid canary rockfish, through gear and target species restrictions, than in one designed to target canary rockfish. Data from a 2001 EFP at-sea observation program managed by WDFW supported this assumption, indicating canary rockfish interception rates in the trawl arrowtooth fishery off Washington were about one-tenth the rates assumed in even the low bycatch range scenario. The low bycatch rate range and the management measures proposed in this rule are expected to result in a discard rate of 5–10 percent of the total catch, which has been conservatively adjusted to 16 percent. This bycatch rate range and discard deduction would result in a landed catch OY of 30 mt for the limited entry fisheries and 4.5 mt for the open access fisheries.

Pacific ocean perch. Within the low-mid-high range of possible bycatch rates, the Council recommended the mid bycatch rate range for POP. POP has been managed to allow only incidental

retention for many years, thus the Pikitch and EDCP studies may more accurately represent current POP co-occurrence rates in the fisher than they do for canary rockfish. Bycatch levels assumed under the high bycatch rate scenario were so high that accepting it would have meant assuming that vessels would discard POP without achieving their trip limits. Conversely, the low bycatch rate scenario was implausible because it projected harvest levels lower than actual recorded landings in recent years. These unlikely assumptions related to the high and low bycatch scenarios for POP illustrate some of the difficulties in using varied historical data in a mathematical probability model for determining current bycatch rates. The mid bycatch rate range and the management measures proposed in section IV are expected to result in a discard rate of 0–7 percent of the total catch, which has been conservatively adjusted to 16 percent. This bycatch rate range and discard deduction would result in a landed catch OY of 294 mt.

Bocaccio. Within the low-mid-high range of possible bycatch rates, the Council recommended the high bycatch rate range for bocaccio. Similar to the POP low and high ranges, the low and mid bocacio bycatch range scenarios that came out of the model were unlikely when examined against actual landings data. Both the low and mid bycatch range scenarios for bocaccio projected harvest levels lower than actual recorded landings. Thus, the high bycatch range was the only plausible range for bocaccio. The high bycatch rate range and the management measures proposed in of this rule are expected to result in a discard rate of 4–8 percent of the total catch, which has been conservatively adjusted to 16 percent. This bycatch rate range and discard deduction would result in a landed catch OY of 21 mt for the limited entry fisheries and 16 mt for the open access fisheries.

Darkblotched rockfish. Within the low-mid-high range of possible bycatch rates, the Council recommended the mid bycatch rate range for darkblotched rockfish. Setting a bycatch rate for darkblotched rockfish was more difficult than for the other four species because darkblotched rockfish has not historically been separated from other minor slope rockfish in landings tickets, logbooks, and in data gathered in the EDCP study. The Council indicated that the high range was not as probable as the mid range because darkblotched rockfish tend to be of a larger size than other minor slope rockfish, thus less likely to be discarded for size and market reasons. The mid bycatch rate range and the management measures proposed in section IV are expected to result in a discard rate of 4–16 percent of the total catch, which has been conservatively adjusted to 20 percent due to generally higher rates of slope rockfish discard in EDCP observations. The mid bycatch range was also more probable than the low bycatch range because it was more compatible with results from the EDCP study, which NMFS has determined to be a fair illustration of slope trawling acetifies. This bycatch rate range and discard deduction would result in a landed catch OY of 130 mt.

Lingcod. Within the low-mid-high range of possible bycatch rates, the Council recommended the mid bycatch range for lingcod. The Council indicated that the high bycatch rate range was unlikely because the Pikitch and EDCP studies were conducted during periods when large footrope trawling (which can operate in rocky areas where lingcod are found) was permitted for rocky habitat species. The low bycatch range was unlikely for reasons similar to those for the low range for bocaccio and the low and mid ranges for POP, all of which projected harvest levels lower than actual recorded landings in recent years. The bycatch/discard analysis also indicated that if trawlers were allowed to retain incidentally caught lingcod during the winter months, the overall level of dead and discarded lingcod in 2002 could be reduced because it would be landed as retained catch during those months. Trawl footrope restrictions prevent trawlers from targeting lingcod. Thus, allowing winter trawl retention of lingcod is not expected to increase overall lingcod harvest and the effect on nest guarding males in rocky areas is expected to be neutral. Lingcod discard mortality is estimated to be 50 percent of the number of lingcod discarded (WDFW, 1997). The mid bycatch rate range and the management measures proposed in of this rule are expected to result in a discard mortality rate of 6–10 percent of the total catch, which has been conservatively adjusted to 20 percent. This bycatch rate range and discard deduction would result in a landed catch OY of 163 mt for the limited entry fisheries and 38 mt for the open access fisheries.

In addition to establishing the amount and percentage of discard that would occur for each of these five species (bocaccio, lingcod, darkblotched rockfish, canary rockfish, and POP), target fishery limits were adjusted so that the expected total catch of the five species was less than their total catch OYs. This provides an additional layer of protection for the five species, in that even if realized discard rates are somewhat higher than estimated, the total mortalities of these species should not exceed their OYs.

DTS complex species. For the 2001 specifications and management measures process, NMFS analyzed the results of the 1995 through 1998 EDCP, in which trawl vessels voluntarily fished for groundfish and either carried observers or completed detailed catch and discard logbooks. In 2000, NMFS determined that EDCP data could be used to update discard estimates applied to the DTS complex. New discard rates for the DTS complex resulted from this analysis and were implemented in 2001 as follows: 5 percent of the total catch OY for Dover sole, 17 percent of the total catch OY for longspine thornyhead, and 20 percent of the total catch OY for shortspine thornyhead. For sablefish, the new analysis resulted in discard rates separated by fishery: 22 percent of the limited entry trawl allocation, 8 percent of the limited entry fixed gear and open access allocations, and 3 percent of the tribal fisheries allocation. These discard rate estimates would again be used in 2002 as deductions from the total catch OYs for Dover sole and the two thornyhead species, and as deductions from the various fishery-specific sablefish allocations.

Rockfish species not included in bycatch/discard analysis. For widow rockfish, an overfished shelf rockfish species, the Council recommended continuing use of the historic discard rate estimation of 16 percent, which was originally derived for widow rockfish from the Pikitch study. The Council also recommended using this 16 percent placeholder discard rate for minor shelf rockfish and chilipepper rockfish. The origin of this rate is explained in the GMT's bycatch and discard analysis, along with an evaluation of its current use. Yellowtail rockfish would have a 20 percent placeholder discard rate, which is the 16 percent historic rate adjusted conservatively to reflect moderately higher discard values for yellowtail in the EDCP study. As in past years, widow, yellowtail, canary and darkblotched rockfish discard in the at-sea whiting fisheries will be monitored inseason and actual discard numbers will be deducted from the OY. The Council recommended a 20 percent discard rate for minor slope rockfish, as a conservative adjustment to the 16 percent discard rate that the EDCP study showed for slope rockfish taken in the DTS complex fisheries. The 20 percent discard rate for minor slope rockfish also mirrors the more thoroughly analyzed discard rate for darkblotched

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rockfish, a slope rockfish. The minor nearshore rockfish discard rate was set at 5 percent of the total catch OY, based on the assumption that most minor nearshore rockfish survive the discard process because they are shallow water species and are not as affected by depth changes during capture as shelf and slope rockfish. This is supported by the fact that a significant percentage of these species are landed as live fish.

Cowcod and yelloweye rockfish are the other two overfished species not analyzed in the bycatch and discard analysis. Cowcod rebuilding measures include a coastwide retention prohibition. Thus, there is no landed catch OY for cowcod and any incidentally caught cowcod will be discarded. Prohibiting fishing for all groundfish with the CCAs, except that which is allowed seasonally inside 20 fathoms (37 m) along with other seasonal closures off California, is expected to reduce opportunities for intercepting cowcod.

Yelloweye rockfish is not often interecepted in the trawl fisheries. Thus, yelloweye rockfish management focuses on eliminating commercial hook-and-line interception and reducing recreational fisheries opportunities for interception. Modest amounts of yelloweye rockfish retention would be permitted in the trawl fisheries to ensure that if it is encountered, it will be available for scientific sampling.

Future Bycatch and Discard Analyses. During 2002, the Council's SSC will convene a workshop or a series of workshops to discuss the future of the Council's bycatch and discard rate policies. NMFS initiated an observer program for the vessels delivering groundfish to shorebased processing plants in August 2001. Future Council bycatch and discard rate policies will have to evolve over time, first accommodating management needs with little current observer data, and then maturing as the observer program data accumulates to a level where it can be used to better define total catch levels. Data from the observer program will provide information about co-occurrence and discard rates, and will affect discard calculations for all groundfish species, not just those included in the November 2001 bycatch and discard analysis. By the fall of 2002, the observer program will have been in operation for one year and will have observations from all seasons. Preliminary examination of the observer data will occur prior to that time, but the first complete analysis requires accumulation of data from all seasons. This analysis may not be completed in time, or have sufficient observations, to be fully incorporated in the annual specifications fro 2003.

II. Limited Entry and Open Access Fisheries

Since 1994, the non-tribal commercial groundfish fishery has been divided into limited entry and open access sectors, each with its own set of allocations and management measures. Species or species group allocations between the two sectors are based on the relative amounts of a species or species group taken by each component of the fishery during the 1984–1988 limited entry permit qualification period (50 CFR 660.332). The FMP allows suspension of this allocation formula for overfished species when changes to the traditional allocation formula are needed to better protect overfished species (Section 5.3.2).

Ground fish species or species group allocations between the limited entry and open access sectors are detailed in Tables 1a and 1b. All OYs, and all limited entry and open access allocations are expressed in terms of total catch. The limited entry/open access allocations for canary, darkblotched, and yelloweye rockfish would be suspended to allow the Council to better develop management measures that provide harvest of healthy stocks while protecting overfished stocks. Estimates of trip-limit induced discards are taken "off the top" before setting the limited entry and open access allocations, except for estimates of sablefish discards as explained in the footnotes to Table 1a. Landed catch equivalents are the harvest goals used when adjusting trip limits and other management measures during the season. Estimated bycatch of yellowtail, widow, canary, and darkblotched rockfish in the offshore whiting fishery is also deducted from the limited entry allocations before determining the landed catch equivalents for the target fisheries for widow and yellowtail rockfish.

Open Access Allocations

The open access fishery is composed of vessels that operate under the OYs, quotas, and other management measures governing the open access fishery, using (1) exempt gear or (2) longline or pot (trap) gear fished from vessels that do not have limited entry permits endorsed for that gear. Exempt gear includes all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp, spot, or ridgeback prawns (shrimp trawls) and, halibut or sea cucumbers south of Pt. Arena, CA (38°57′30″N. lat.))

Open access allocations are derived by applying the open access allocation percentages to the commercial OY. The commercial OY is the total catch OY after subtracting any tribal allocations and set-asides for recreational or compensation fishing for conducting resource surveys. For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected.

Limited Entry Allocations

The limited entry fishery is the fishery composed of vessels using limited entry gear fished pursuant to the OYs, quotas, and other management measures governing the limited entry fishery. Limited entry gear includes longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. (Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot prawns, or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Pt. Arena, CA.) A sablefish endorsement is also required for a vessel to operate in the limited entry primary fixed gear season for sablefish.

The limited entry allocation (in total catch) is the OY reduced by (1) set-asides, if any, for treaty tribal fisheries, recreational fisheries, or compensation fishing for participation in resource surveys (which results in the commercial OY or quota); and (2) the open access allocation. (Allocations for Washington coastal tribal fisheries are discussed in section V and, for whiting, at paragraph IV.B.(3).)

Following these procedures, the Regional Administrator calculated the amounts of allocations that are presented in Table 1a of this document. Unless otherwise specified, the limited entry and open access allocations would be treated as OYs or harvest guidelines in 2002. There may be slight discrepancies from the Council's recommendations due to rounding.

III. 2002 Management Measures

Before 2000, the major goals of groundfish management were to prevent overfishing while achieving the OYs and to provide year-round fisheries for the major species or species groups. Over time, however, it became apparent to NMFS that a number of species could not continue to be harvested year-round at a constant harvest rate. New legislative mandates under the Magnuson-Stevens Act (as amended by the Sustainable Fisheries Act in 1996)

gave highest priority to preventing overfishing and rebuilding overfished stocks to their MSY levels. The National Standard guidelines at 50 CFR 600.310 interpreted this as "weak stock management," which means that harvest of healthier stocks may need to be curtailed to prevent overfishing or to rebuild overfished stocks.

Seven FMP species were declared overfished as of January 2001 (lingcod, bocaccio, POP, canary rockfish, cowcod, widow rockfish, and darkblotched rockfish), and one more species is being declared overfished concurrent with publication of this document (yelloweye rockfish). Of these species, canary rockfish is the most constraining, because it is found coastwide on the continental shelf and is caught directly or incidentally in most West coast fisheries (groundfish and non-groundfish.) In order to rebuild these overfished species while allowing harvest of healthy stocks, the Council chose management measures to divert fishing effort off the sea floor of the continental shelf, where lincod, bocaccio, canary rockfish, cowcod, widow rockfish, yelloweye rockfish, and, to a lesser extent, POP and darkblotched rockfish occur. Continental slope fisheries have also been curtailed by lower Dover sole and sablefish ABCs and OYs, which provides additional protection to POP and darkblotched rockfish. Management measures for 2002 have been crafted to maximize fishing opportunity for healthy stocks in periods when bycatch and discard of overfished and depleted stocks is estimated to be lowest.

Management priorities for 2002 were guided by the following goals: (1) Prevent overfishing; (2) manage consistent with rebuilding plans for overfished species; (3) craft management measures and target species seasons to minimize incidental catch and discard of overfished and depleted stocks; (4) provide equitable harvest opportunity for both recreational and commercial sectors; and (5) within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations, to the extent practicable.

A number of assumptions and considerations were involved in developing the management recommendations for 2002. As discussed earlier, the November 2001 bycatch and discard analysis evaluated the target fisheries for healthy stocks to determine periods in the fishing year when those fisheries could be constrained to best reduce the incidental catch of overfished species. Trip limits in the commercial fisheries have been crafted to reduce incidental interception of overfished species so that total mortality for a species does not exceed its OY, and different sectors of the commercial fisheries are constrained at different times of the year in accordance with their specific effects on overfished species. For example, the bycatch and discard analysis of EDCP data indicated that incidental catch of darkblotched rockfish in the DTS complex fisheries is significantly higher during November-December than during other times of the year. Thus, DTS complex cumulative limits are at their lowest in November-December. Similarly, trawl flatfish limits are the most constrained in May through September, when canary rockfish interception is higher. Fisheries for many target species are unlikely to achieve the OYs of those target species so that overfished species may be protected. Fisheries for yellowtail rockfish, for example, will not achieve the yellowtail OYs because yellowtail harvest is constrained to protect co-occurring canary and widow rockfish. Similarly, chilipepper harvest will be significantly below its OY to protect co-occurring bocaccio.

Management measures for the limited entry fishery are found in section IV. Most cumulative trip limits, size limits, and seasons for the limited entry fishery are set out in Tables 3 and 4. However, the limited entry nontrawl sablefish fishery, the midwater trawl fishery for whiting, and the hook-and-line fishery for black rockfish off Washington are managed separately from the majority of the groundfish species and are not fully addressed in the tables. The management structure for these fisheries has not changed since 2001, except for the level of trip limits for sablefish and whiting, and is described in paragraphs IV.B.(2)–(4) of section IV. Other provisions for the 2001 fisheries not explicitly addressed above would remain in effect for 2002 and are repeated in section IV of this document.

After hearing proposals and advice from its advisory entities and public testimony at its November 2001 meeting, the Council recommended the following actions for management in 2002.

Limited Entry Trawl

For the limited entry trawl fishery, the Council recommended a suite of gear and cumulative trip limits designed to allow fishing with gear in times and areas where incidental catch of overfished or depleted species will be minimized. As discussed earlier, the primary force shaping the structure of trawl fisheries limits were the coincident catch rates for overfished species taken in fisheries targeting healthy stocks. Many of the healthy groundfish stocks, such as the suite of flatfish species, are harvested almost exclusively with trawl gear, rather than with hook-and-line gear. Season structuring and gear requirements are intended to reduce incidental catch of overfished species as much as possible in every period of the year.

Flatfish fisheries are managed with more restrictions on gear use and trip limit levels during the summer months, when participation is greater and trawl tows for flatfish are more likely to encounter overfished species. More restrictive landings limits are imposed on all flatfish species in the north in May–October to minimize canary and/or darkblotched rockfish bycatch. Higher POP trip limits are provided in the summer months, when the flatfish fisheries are more likely to encounter POP. Northern DTS complex limits are different for each two-month period of the year to minimize interception of canary rockfish or darkblotched rockfish, depending on which species is more available to the DTS complex fisheries during a particular period. For both the DTS complex and flatfish fisheries, landings limits are less tightly structured south of 40°10′ N. lat. because fisheries in that area are less likely to encounter POP, canary, and darkblotched rockfish. South of 40°10′ N. lat., the Council has also introduced a new trip limit for Pacific sanddabs, an abundant species with relatively low bycatch rates of other species.

In 2000 and 2001, lingcod retention was prohibited in all fisheries for the months of November through April. These winter closures were intended to both reduce overall lingcod harvest and to reduce capture of male lingcod during the spawning/nesting season. Male lingcod guard nests of fertilized eggs from predators, so reducing male lingcod catch during nest guarding season is an effective way of protecting both adults and eggs. Nest guarding males are mainly caught by gear that can be used in the rocky areas where they nest. Under current gear restrictions, this gear is hook-and-line gear. Small footrope trawl and mid-water trawl gear are not used in rocky areas because they can too easily become entangled and torn in rocky habitat. In 2002, trawl-caught lingcod retention would be permitted throughout the year because the Council believes that trawling is less likely than hook-and-line fishing to disturb male lingcod guarding nests in rocky areas. Lingcod caught incidentally during winter trawl fisheries would otherwise be discarded and thereby increase the overall lingcod discard

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level in the trawl fisheries. The lingcod landings limit of 800 lb (363 kg) per 2-month period is not high enough to give trawlers an incentive to target lingcod.

For 2002, the Council recommended continuing the use of differential trip limits for limited entry trawlers operating with different trawl gear configurations: bottom trawl with footropes greater than 8 inches (20.5 cm) in diameter; bottom trawl with footropes smaller than 8 inches (20.5 cm) in diameter; and midwater or pelagic trawl. Trawling with footropes that have roller gear or other large gear designed to bounce over tough rockpiles tends to allow those vessels greater access to rocky areas where several of the overfished species congregate. Therefore, landings of shelf rockfish (except chilipepper) are prohibited if large footrope trawls (such as roller gear) are used (or on board the vessel); small amounts of shelf rockfish bycatch may be landed if small footrope trawls are used; and, targeting healthy shelf rockfish stocks is encouraged only if midwater trawls are used. This tends to greatly reduce harvest in the areas where the overfished species are presumably found, while allowing retention of small amounts incidentally caught in areas of lower abundance of these species. This strategy of differential trip limits for different trawl gear types was used in 2000 and 2001. Initial Oregon Department of Fish and Wildlife trawl logbook data indicate a significant decrease in trawl activity in rocky areas of the continental shelf since the adoption of this strategy. Cowcod prohibitions and closures apply to limited entry trawl vessels, although there are few limited entry trawl vessels operating south of Point Conception in CCA waters.

Chafing gear will continue to be prohibited on the body of small footrope trawls. Chafing gear protects the net from excess wear when it drags against rock piles or the sea floor. The prohibition against chafing gear makes the net more vulnerable to damage, and so encourages fishers to operate in less rocky areas.

Trawl vessels using large footrope gear (with footrope greater than 8 inches (20 cm) in diameter) are prohibited from landing nearshore and shelf rockfish (except chilipepper) and most flatfish species because their ability to fish in rocky areas would result in high incidental catch of species that cannot withstand additional fishing effort. Although vessels are not prohibited from using large footropes in nearshore and continental shelf areas, they are not allowed to retain and sell most of the species they would catch from those areas. Therefore, NMFS expects little, if any, use of large footrope gear in areas of high concentration of overfished species. Large footrope trawls may still be used for target deepwater fisheries when fewer overfished species are encountered, primarily Dover and rex soles, thornyheads, sablefish, and deepwater rockfish. During part of the year, predominately winter months, large footrope trawls may also be used to harvest arrowtooth flounder and petrale sole. However, small footrope trawls are required for the rest of the year when these species are more likely to aggregate with overfished species (See Table 3).

For chilipepper rockfish, trip limits are more liberal when it is taken with midwater trawl gear. This gear is effective at harvesting chilipepper above the ocean floor with little or no bycatch of bottom-dwelling species such as canary rockfish. In past years, higher midwater trawl limits were also available for yellowtail rockfish because of reduced canary rockfish availability in the midwater yellowtail fisheries. In 2002, however, midwater yellowtail retention is restricted to an incidental catch allowance in the midwater whiting trawl fisheries. Midwater fisheries for yellowtail rockfish tend to also harvest widow rockfish. Thus, this increased protection for yellowtail rockfish taken with midwater gear is intended to reduce the opportunity for incidental widow rockfish harvest. If a fisher chooses to carry more than one type of trawl gear on board, any landing will be attributed to the gear on board with the most restrictive landing limit. To land the maximum amounts of chilipepper rockfish, vessels will be required to have only midwater trawl gear on board.

Limited Entry Fixed Gear

Similar to the limited entry trawl fisheries, trip limit opportunities in the limited entry fixed gear fisheries are arranged to minimize opportunities for intercepting overfished species. One of the most significant changes expected for limited entry fixed gear management in 2002 is an April-October primary sablefish season. In 2001, NMFS approved Amendment 14 to the FMP, which implemented a permit stacking program for sablefish-endorsed limited entry permits and a longer primary sablefish season. NMFS expects to shortly publish a proposed rule to, among other things, implement the April-October season for 2002 and beyond.

The larger-sized sablefish most desired in the market are available farther offshore in continental slope waters. For 2002, minor slope rockfish limits are higher in the May-October period to allow vessels targeting primary season sablefish to take advantage of the minor slope rockfish OY when they are most likely to encounter those rockfish. Darkblotched rockfish are part of the minor slope rockfish complex, so overall minor slope rockfish limits are set at levels intended to constrain darkblotched rockfish catch.

Yelloweye rockfish is also caught incidentally in hook-and-line sablefish fisheries. Because yelloweye rockfish tend to sell for a higher price per pound than other co-occurring rockfish species, there is a good chance that yelloweye taken in prior years have been targeted, rather than caught incidentally. Thus, yelloweye rockfish retention has been prohibited entirely in the limited entry fixed gear fisheries. To give vessels targeting sablefish in the daily trip limit fisheries an opportunity to move out to the continental slope fishing grounds, the Council has again recommended a weekly sablefish landing option. With weekly limits, vessels are more likely to travel to the continental slope for the larger and more valuable sablefish, thereby reducing opportunities for incidental catch of continental shelf species (yelloweye, canary, and widow rockfish, bocaccio, cowcod, and lingcod.) Cowcod prohibitions and closures apply to limited entry, fixed gear vessels. Similar to 2001, fisheries for minor nearshore rockfish north of 40°10′ N. lat. are managed with sublimits for species other than black and blue rockfish, to encourage targeting on these more abundant nearshore rockfish species.

As in 2000 and 2001, limited entry fixed gear fishing for lingcod will be prohibited during January through April and during November through December. These closures are intended to protect nest-guarding lingcod during the spawning and nesting season. Nest-guarding lingcod are more available to fixed gear than to trawl gear, because lingcod nest in rocky habitat that tears trawl gear while line gear can be used successfully in rocky areas. Thus, winter closures for fixed gear are intended to eliminate fixed gear lingcod targeting.

For commercial fisheries, directed fishing for and opportunities to take overfished species as bycatch are severely curtailed. Fixed gear generally has greater access than trawl gear to rockfish living on and around high relief rockpiles as explained above. The Council recommended closing commercial fixed gear fishing for nearshore rockfish, shelf rockfish, and lingcod during periods when the recreational fisheries for those species are closed to reduce overall hook-and-line gear (commercial and recreational) targeting on rockfish. All limited entry fixed gear (pot and longline) vessels south of 40°10′ N. lat. are prohibited from fishing for nearshore rockfish, shelf rockfish, and lingcod during the closed periods detailed in Table 4, with allowances for vessels fishing inside of the 20-fathom (36.9 m) depth contour. Concurrent commercial and recreational closures are expected to achieve conservation goals while reducing the conflict that sometimes occurs when one fishing sector is allowed to fish while another is not.

Open Access (Hook-and-Line, Troll, Pot, Setnet, Trammel Net)

The open access nontrawl fishery is managed separately from the limited entry fixed-gear fishery, but bycatch reduction measures are similar for both sectors. As in the past, open access cumulative trip limits continue to be applied mostly to 1-month periods, and thornyheads may not be taken and retained north of 37°27′ N. lat. Time and area closures are used south of 40°10′ N. lat., similar to the limited entry fixed gear fisheries and for the same reasons. Vessels participating in the open access fisheries with nontrawl gear (hook-and-line, troll, pot, setnet and trammel net) south of 40°10′ N. lat. are prohibited from fishing for nearshore rockfish, shelf rockfish, and lingcod, during the closed periods described in Table 5 with allowances for vessels fishing inside of the 20-fathom (36.9 m) depth contour. The lingcod fishery for all open access nontrawl gears is also subject to the same closure, size limits, and cumulative trip limits as the limited fixed gear fisheries. Similar to 2001, fisheries for minor nearshore rockfish north of 40°10′ N. lat. are managed with sublimits for black and blue rockfish, to encourage targeting on these more abundant nearshore rockfish species. Cowcod prohibitions and closures apply to all open access vessels.

Open access cumulative limits may exceed those for limited entry. If a vessel with a limited entry permit uses open access gear (including exempted trawl gear) and the open access cumulative limit is larger, the vessel will be constrained by the smaller, limited entry cumulative limit for the entire cumulative period.

Open Access Exempted Trawl Gear

Open access exempted trawl gear (used to harvest spot and ridgeback prawns, California halibut, sea cucumbers, or pink shrimp) is managed with both "per trip" limits and cumulative trip limits. These trip limits are similar to those in 2001, and the species-specific open access limits apply but may not exceed the overall groundfish limits. The limits are 500 lb (227 kg) of groundfish per day, not to exceed 1,500 lb (680 kg) per trip in the pink shrimp fishery. For other exempted trawl gears, there is a 300 lb (136 kg) per trip limit. The pink shrimp fishery is subject to species-specific limits that are different from other open access limits for lingcod, canary rockfish, and sablefish. As with open access nontrawl gears, thornyheads may not be taken and retained north of 34°27′ N. lat. Cowcod prohibitions and closures apply to all open access vessels.

Recreational Fishery

Recreational fisheries effort has also been constrained to protect overfished species, particularly for lingcod, canary rockfish, bocaccio, and yelloweye rockfish, which have significant recreational catches. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, and size limits to best fit the needs of their recreational fisheries, while also meeting conservation goals.

For lingcod, Washington closed the recreational fishery for 5 months (January 1—March 15, October 15—December 31) and maintained its 2 fish bag limit and its 24 inch (61 cm) minimum size limit. Oregon's lingcod measures are also the same as in 2001, a 1 fish bag limit, 24 inch (61 cm) minimum size limit and a year-round fishery. California maintained its 2 lingcod bag limit, but lowered its minimum size limit to match the 24 inch (61 cm) limit used in the other two states. California lingcod closures south of 40°10′ N. lat. are more stringent than in 2001: from 40°10′ N. lat. 34°27′ N. lat., closed March through April and November through December in all waters, and open only inside 20 fathoms (36.9 m) in May through June and September through October. South of 34°27′ N. lat., closed January through February and November through December.

Recreational fisheries off Washington and Oregon will be challenged this year by a need to maintain low yelloweye rockfish catch. Some measures taken in 2000 and 2001 to protect other northern overfished rockfish species should also protect yelloweye rockfish, but the states also recommended several new yelloweye-specific measures. Washington maintained its 10 rockfish bag limit, with sublimits of no more than 2 canary rockfish, or no more than 1 canary rockfish and 1 yelloweye rockfish. Oregon also maintained its 10 rockfish bag limit, of which no more than 1 may be canary rockfish and no more than one may be yelloweye rockfish. In reviewing the take of yelloweye rockfish in their recreational fisheries, the states of Washington and Oregon found that yelloweye rockfish is most frequently taken by vessels that travel offshore to target Pacific halibut. However, yelloweye rockfish are not taken while the vessel is fishing for halibut, but rather after the vessel has completed its halibut fishing it moves to another location and fishes for yelloweye rockfish before heading to port. Therefore, prohibiting the retention of yelloweye rockfish when halibut are on the vessel should eliminate the directed harvest of yelloweye during halibut fishing trips, without causing discard of incidentally-caught yelloweye rockfish. Thus, Washington is prohibiting the retention of yelloweye rockfish when halibut is on board, and Oregon is prohibiting the same during its all-depth halibut fisheries.

Recreational fishing restrictions proposed for California are intended to ensure that fishing mortality will not exceed limits associated with rebuilding plans for bocaccio, canary rockfish, cowcod, and lingcod. California maintained its rockfish size limits, its 2-hook per fishing line limit and its 10 rockfish bag limit, with a 1 canary rockfish sublimit, 2 bocaccio sublimit, and a 1 yelloweye rockfish sublimit with no more than 2 yelloweye rockfish per vessel. As with all commercial fisheries, cowcod retention is prohibited. In the southern California area, the CCAs first implemented in 2001 would remain closed to both recreational and commercial fishing for groundfish outside of the 20 fathom (36.9 m) depth contour. Inside the 20 fathom (36.9 m) depth contour, recreational and commercial fishing for rockfish and lingcod is permitted from March through October.

Recreational fisheries data indicate that California fisheries may have exceeded the amounts of bocaccio and canary rockfish that the Council had estimated pre-season would be taken in those fisheries in 2001. To prevent these overages from reoccurring in 2002, recreational fisheries closures off California are twice the duration they were in 2001. The recreational fishing season for rockfish and lingcod between 40°27′ N. lat.) and Point Conception (34°27′ N. lat.) would be just 4 months duration for all depths, January–February and July–August, plus 4 months inside 20 fathoms (36.9 m) in

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May–June and September–October. When the fishery is open inside 20 fathoms (36.9 m), bocaccio, canary, and yelloweye rockfish retention is prohibited, and there is a 2 shelf rockfish bag limit. The recreational fishing season for rockfish and lingcod in that same area would be open for all depths in January–February and July–August, and in waters shoreward of 20 fathoms (36.9 m) in May–June and September–October. South of Point Conception (34°27′ N. lat.) the recreational fishing season would be 8 months duration, March through October. Different season closures were chosen north and south of Point Conception (34°27′ N. lat.) in order to correspond with the periods of greatest benefit statewide for bocaccio and canary rockfish. Taken together with the proposed restrictions on commercial fisheries, the recreational fishery season closures and limits are expected to keep total fishing mortality under the established OYs.

The season closures allow for modestly higher commercial trip and recreational bag limits than would otherwise be possible under year-round fishing. Season closures are also expected to result in fewer discards than would otherwise occur. Concurrent seasons for recreational and commercial nontrawl fisheries are more cost effective to enforce than staggered seasons and minimize conflicts between commercial nontrawl and recreational fishers who fish for nearshore and self rockfish.

Fishing Communities and Impacts

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with the 10 national standards, one of which requires that conservation and management measures shall be consistent with the conservation requirements of the Act, "take into account the importance of fishery resources to fishing communities in order to (A) provide for sustained participation of such communities and (B), to the extent practicable, minimize adverse economic impacts on such communities." Commercial and recreational fisheries for Pacific Coast groundfish contribute to the economies and shape the cultures of numerous fishing communities in Washington, Oregon, and California. Meeting the needs of fishing communities has become increasingly difficult because the Council manages a fishery that is overcapitalized and contains stocks that are overfished. In recommending this year's specifications and management measures, the Council tried to accommodate some of the needs of those communities within the constraints of Magnuson-Stevens Act requirements to rebuild overfished stocks, prevent overfishing, and minimize bycatch. In general, the Council allows the largest harvest possible, consistent with conservation needs of the fish stocks.

West Coast groundfish intermix by species, which means that interception and incidental mortality of overfished species is inevitable even if retention of a particular species is prohibited. As discussed earlier in the section on bycatch and discards, the Council's primary goal for 2002 was to minimize the incidental interception of overfished species. To achieve this, the fisheries seasons are structured both to maximize target species catch while minimizing overfished species incidental take and to allow minimal retention of overfished species where incidental take will inevitably occur. Minimal retention levels will discourage targeting while allowing fishers to land already dead, incidentally caught fish. The retention levels allowed (along with the estimated discard levels) for each of the overfished species are below their OYs and allow rebuilding.

For 2002, the Council continued the year-round fishery opportunity that is important to the fishing and processing sectors for maintaining continuous employment opportunities and maintaining consistent groundfish marketing opportunities. The Council modified the cumulative trip limit system that has been used in recent years to extend the fishing season throughout the year by providing opportunities for at least some groundfish species and by maintaining trawl gear restrictions initially adopted for 2000. These gear restrictions use operational and economic incentives to prevent bottom trawl fishing with roller gear for some species and encourage use of midwater trawl and small footrope trawls on the continental shelf where most overfished species occur. Trawl gear restrictions are intended to reduce directed fishing for species that commonly co-occur with overfished species. These strategies were first developed for the 2000 fishery by a group of industry participants who met with the GMT about achieving conservation goals while minimizing effects on the industry and coastal communities. Offering higher limits to fishermen who use gear with lower bycatch rates reduces bycatch and enhances economic opportunities by providing access to healthy stocks.

Some commercial fishers have commented that they are being unfairly constrained relative to recreational fisheries, while some recreational fishers have commented that the commercial fisheries are being favored. In developing 2002 management measures, the Council sought a fair and equitable balance for the two sectors, and also sought to achieve needed reductions in total fishing mortality. California hook-and-line commercial fisheries will be subject to the same season restrictions as the recreational fisheries. The Council was concerned that further restrictions on recreational fishing (*e.g.*, longer closures or lower bag limits) would prevent charter vessels operators from running charter fishing trips for a long enough period that they could go out of business. Under further restrictions, passengers may refuse to pay the price to fish or may not make enough trips in open seasons to allow operators to cover their costs. Not only would charter vessel operators be affected by changes to recreational fishery management, but supporting businesses such as bait shops and tackle suppliers, hotels, restaurants, and charter company agents, etc. would also likely suffer. The closed seasons generally cover the months that have historically accounted for the largest seasonal catches of bocaccio and other rockfishes.

Allowable commercial catches of many groundfish are even lower than in 2001, but the Council has tried to restructure the timing of differential trip limits to provide commercial fisheries with greater flexibility in their fishing patterns while not increasing the overall catches. Again, this restructuring is intended to limit the extent to which businesses such as tackle suppliers and bait shops that supply and support the fishing industry would suffer. Many commercial groundfish fishers have other fishing opportunities during the year, and these opportunities were taken into account. For example, the small-scale commercial fishers (and recreational fishers) in southern California would (under state regulations) still be able to fish for certain species in nearshore waters while the shelf is closed to protect overfished species.

Nonetheless, the effects of these 2002 management measures on some fishers and communities will be severe, particularly for those without other opportunities. For the 2002 fishery, the Council proposed stringent harvest levels intended to protect and rebuild overfished and depleted stocks. In addition to reducing OYs for overfished stocks, the Council also severely constrained harvest on healthy stocks associated with overfished stocks. These measures were needed to ensure that rebuilding of overfished and depleted stocks could occur. However, they will cause serious socio-economic repercussions as a result of these lower harvest levels and the consequent lower landings limits.

Distribution of the economic effect of the 2002 management measures will depend on how well the fishers can adapt to the restrictions. Some user groups, particularly those able to use midwater trawl gear, will have a greater opportunity to harvest than they would have had without gear restrictions, because proposed restrictions allow fishers to use gear that reduces incidental catch of the depleted rockfish. Other fishers will not be able to maintain a viable operation at the reduced harvest levels. The Council prepared an EA/RIR/IRFA for this action, which includes a discussion of the economic and social effects of these management measures on coastal communities (see **ADDRESSES**).

Trip Limit Tables and Management Measures

Cumulative trip limits are set into tables, with explanations in section IV. However, the industry is cautioned not to rely on the tables alone. The text in section IV provides cumulative trip limit definitions and periods, size limit definitions and conversions, and other information that cannot be readily included in a table but must be understood in order to correctly use the tables. The sablefish allocations and nontrawl sablefish management, Pacific whiting allocations and seasons, and "per trip" limits for black rockfish off Washington State are still presented in text in paragraphs IV.B. Trip limits for exempted trawl gear in the open access fishery (paragraphs IV.B. Trip limits for exempted trawl gear in the open access fishery (paragraph IV.C.), recreational management measures (paragraph IV.D.), and tribal allocations and management measures (paragraph V.) still remain in the text.

Cumulative trip limits are applied during the time periods and in the areas indicated in Tables 3–5 of section IV. The cumulative trip limit may be taken at any time within the applicable cumulative trip limit period. All cumulative trip limit periods start at 0001 hours, local time, on the specified beginning date, except for "B" platoon trawl vessels whose limits start on the 16th of the month (see paragraph IV.A.(16).

Example 1: Line 2 of Table 3 for the limited entry trawl fishery means: North of 40°10′ N. lat., the cumulative trip limit for minor slope rockfish is 1,800 lb (816 kg) per 2-month period; the 2-month periods are January 1–February 28 and March 1–April 30, etc.

Example 2: The trip limits for bocaccio on Table 4 for limited entry fixed gear mean: From January 1 through February 28, the trip limit for bocaccio between 40°10′ N. lat and 34°27′ N. lat. is 200 lb (91 kg) each month. However, the fishery for bocaccio is closed from March 1 to June 30, which means bocaccio may not be taken, retained, possessed or landed between 40°10′ N. lat. and 34°27′ N. lat. during that time period. The cumulative trip limit returns at 200 lb (91 kg) per month on July 1, but a fisher may not fish ahead on that amount (see paragraph IV.A(2)). Bocaccio taken and retained north of 40°10′ N. lat. are not explicitly mentioned in the table, however they are included in the trip limit for "minor shelf rockfish-north" (see footnote 5 of Table 4).

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 2002, including measures that are unchanged from 2001 and new measures.

A. General Definitions and Provisions

The following definitions and provisions apply to the 2002 management measures, unless otherwise specified in a subsequent **Federal Register** document:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months, a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The 2-month periods are: January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(2) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next period. As stated at 50 CFR 660.302 (in the definition of "landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing. Fishing ahead is not allowed during or before a closed period (see paragraph IV.A. (7)). See paragraph IV.A.(9) for information on inseason changes to limits.

(3) *Weights.* All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages.* Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish. Legal fish* means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundwater fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed.

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(a) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) *"Headed" fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph IV. D.(1)). A filet is measured along the length of the longest part of the filet, in a relaxed position; stretching or other wise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions.* The following conversions apply to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish, the conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

(e) *Lingcod size and weight conversions.* The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion.* For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight conversion.* The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted; the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on.* The conversion factor for lingcod that has only been gutted is 1.1.

(7) *Closure.* "Closure," when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. The provisions at paragraph IV.A. (2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with the prohibited species on board, no matter where that species was caught, except as provided for in the CCA at IV.A. (20).

(8) *Fishery management area.* The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures.* Most trip, bag, and size limits in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. (See 50 CFR 660.323(b).) Council meetings in 2002 will be held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register**. Information concerning changes to routine management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits.* It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits.* Trip limits for a species or a species group may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2002, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph IV.A(1)(d), but may be changed during the year if announced in the **Federal Register**.

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Minor rockfish.* Several rockfish species are designed with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.

(iii) If a vessel takes and retains minor shelf rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land chilipepper rockfish and bocaccio up to their respective cumulative limits south of 40°10′ N. lat., even if either species is part of the landings from minor shelf rockfish taken and retained north of 40°10′ N. lat.

Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.

(iv) If a vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its respective cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat.

Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.

(d) *"DTS complex."* For 2002, there are differential trip limits for the "DTS complex" (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A. (12) when making landings that include any one of the four species in the "DTS complex."

(13) *Sorting.* It is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied." This provision applies to both the limited entry and open access fisheries. (See 50 CFR 660.306(h).) The following species must be sorted in 2002:

(a) For vessels with a limited entry permit:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, other flatfish, lingcod, sablefish, and Pacific whiting.

Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10′ N. lat.—chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, arrowtooth flounder, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat.—black rockfish, blue rockfish, POP, yellowtail rockfish;

(iii) South of 40°10′ N. lat.—chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception—thornyheads.

(14) *Limited Entry Trawl Gear Restrictions.* Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large footrope, small footrope, or midwater trawl gear.

(a) *Types of trawl gear*—(i) Large footrope trawl gear is bottom trawl gear, as specified at 50 CFR 660.302 and 660.322(b), with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(ii) Small footrope trawl gear is bottom trawl gear, as specified at 50 CFR 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope), except chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions.

(iii) Midwater trawl gear is pelagic trawl gear, as specified at 50 CFR 660.302 and 660.322(b)(2). The footrope of midwater trawl gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or other materials.

(b) *Cumulative trip limits and prohibitions by trawl gear type*—(i) *Large footrope trawl.* It is unlawful to take and retain, possess or land any species of shelf or nearshore rockfish (defined at IV.A. (21) and Table 2 to section IV) except chilipepper rockfish south of 40°10′ N. Lat. (as specified in Table 3) from a fishing trip if large footrope gear is on board; this restriction applies coastwide from January 1 to December 31. It is unlawful to take and retain, possess or land petrale sole, rex sole, or arrowtooth flounder from a fishing trip if large footrope gear is onboard and the trip is conducted at least in part between May 1 and October 31; cumulative limits for "all other flatfish" (all flatfish except those with cumulative trip limits in Table 3 to section IV) are lower for vessels with large footrope gear on board throughout the year. (See Table 3.) It is unlawful for any vessel using large footrope gear to exceed large footrope gear limits for any species or to use large footrope gear to exceed small footrope gear or midwater trawl gear limits for any species. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large footrope trawl is on board. Dates are adjusted for the "B" platoon (See IV.A. (16)).

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(ii) *Small footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, widow rockfish, yellowtail rockfish, bocaccio, minor shelf rockfish, minor nearshore rockfish, and lingcod, and higher cumulative trip limits for chilipepper rockfish and flatfish, as indicated in Table 3 to section IV, are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs IV.A (14).

(iii) *Midwater trawl gear.* Higher cumulative trip limits are available for limited entry vessels using midwater trawl gear to harvest widow or chilipepper rockfish. Each landing that contains widow or chilipepper rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawls during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(iv) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 of section IV must not be exceeded. A fisher may have more than one type of limited entry trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for the trip and will count toward the cumulative trip limit for that gear.

Example: If a vessel has large footrope gear on board, it cannot land yellowtail rockfish, even if the yellowtail rockfish is caught with a small footrope trawl. If a vessel has both small footrope trawl and midwater trawl gear on board, the landing is attributed to the most restrictive gear-specific limit, regardless of which gear type was used.

(c) *Measurement.* The footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(d) *State landing receipts.* Washington, Oregon, and California will require the type of trawl gear on board with the most restrictive limit to be recorded on the State landing receipt(s) for each trip or an attachment to the State landing receipt.

(e) *Gear inspection.* All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Permit transfers.* Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2002 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the "B" platoon.

(16) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the "A" platoon, unless the "B" platoon is indicated on the limited entry permit. If a vessel is in the "A" platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. If a limited entry trawl permit is authorized for the "B" platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the "A" platoon), unless otherwise specified.

(a) For a vessel in the "B" platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2002, for the "A" platoon will be effective on January 16, 2002, for the "B" platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon, unless otherwise specified.

(b) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 2002, through January 15, 2002.

(c) A vessel authorized to operate in the "B" platoon will have the same cumulative trip limits for the November 16, 2002, through December 31, 2002, period as a vessel operating in the "A" platoon has for the November 1, 2002, through December 31, 2002 period.

(17) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit.

(18) *Application of requirements.* Paragraphs IV.B. and IV.C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in section V. The provisions in paragraphs IV.B. and IV.C. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.D. pertains to the recreation fishery.

(19) *Commonly used geographic coordinates.*

(a) Cape Falcon, OR—45°46′ N. lat.

(b) Cape Lookout, OR—45°20′15″ N. lat.

(c) Cape Blanco, OR—42°50′ N. lat.

(d) Cape Mendocino, CA—40°30′ N. lat.

(e) North/South management line—40°10′ N. lat.

(f) Point Arena, CA—38°57′30″ N. lat.

(g) Point Conception, CA—34°27′ N. lat.

(h) International North Pacific Fisheries Commission (INPFC) subareas (for more precise coordinates for the Canadian and Mexican boundaries, see 50 CFR 660.304):

(i) Vancouver—U.S.-Canada border to 47°30′ N. lat.

(ii) Columbia—47°30′ to 43°00′ N. lat.

(iii) Eureka—43°00′ to 40°00′ N. lat. N. lat.

(iv) Monterey—40°30′ 36°00′ N. lat. N. lat.

(v) Conception—36°00′ N. lat. to the U.S.-Mexico border.

(20) *Cowcod Conservation Areas.* Recreational and commercial fishing for groundfish is prohibited within the Cowcod Conservation Areas (CCAs), except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20-fathom (36.9 m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30″ N. lat., and bounded on the south by the latitude line at 32°59′30″ N. lat.

(i) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°30′ W. long.;
33°00′ N. lat., 119°30′ W. long.;
33°00′ N. lat., 119°50′ W. long.;
33°30′ N. lat., 119°50′ W. long.;
33°30′ N. lat., 119°30′ W. long.; and connecting back to 33°50′ N. lat., 119°30′ W. long.

(ii) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°40′ N. lat., 118°00′ W. long.;

32°40′ N. lat., 117°50′ W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°00′ W. long.; and connecting back to 32°40′ N. lat., 118°00′ W. long.;

(21) *Rockfish categories.* Rockfish (except thornyheads) are divided into categories north and south of 40°10′ N. lat., depending on the depth where they most often are caught: nearshore, shelf, or slope. (Scientific names appear in Table 2.) Trip limits are established for "minor rockfish" species according to these categories (see Tables 2–5).

(a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 2.

(b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2.

(c) Slope rockfish consists of POP, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 2.

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Table 2 – Minor Rockfish Species (excludes thornyheads)

North of 40°10′ N. lat.	South of 40°10′ N. lat.
NEARSHORE	
black, Sebastes melanops	black, Sebastes melanops
black and yellow, S. chrysomelas	black and yellow, S. chrysomelas
blue, S. mystinus	blue, S. mystinus
brown, S. auriculatus	brown, S. auriculatus
calico, S. dalli	calico, S. dalli
China, S. nebulosus	California scorpionfish, Scorpaena guttata
copper, S. caurinus	China, Sebastes nebulosus
gopher, S. carnatus	copper, S. caurinus
grass, S. rastrelliger	gopher, S. carnatus
kelp, S. atrovirens	grass, S. rastrelliger
olive, S. serranoides	kelp, S. atrovirens
quillback, S. maliger	olive, S. serranoides
treefish, S. serriceps	quillback, S. maliger
	treefish, S. serriceps
SHELF	
bronzespotted, S. gilli	bronzespotted, S. gilli
bocaccio, S. paucispinis	chameleon, S. phillipsi
chameleon, S. phillipsi	dwarf-red, S. rufianus
chilipepper, S. goodei	flag, S. rubrivinctus
cowcod, S. levis	freckled, S. lentiginosus
dwarf-red, S. rufianus	greenblotched, S. rosenblatti
flag, S. rubrivinctus	greenspotted, S. chlorostictus
freckled, S. lentiginosus	greenstriped, S. elongatus
greenblotched, S. rosenblatti	halfbanded, S. semicinctus
greenspotted, S. chlorostictus	honeycomb, S. umbrosus
greenstriped, S. elongatus	Mexican, S. macdonaldi
halfbanded, S. semicinctus	pink, S. eos
honeycomb, S. umbrosus	pinkrose, S. simulator
Mexican, S. macdonaldi	pygmy, S. wilsoni
pink, S. eos	redstriped, S. proriger
pinkrose, S. simulator	rosethorn, S. helvomaculatus
pygmy, S. wilsoni	rosy, S. rosaceus
redstriped, S. proriger	silvergrey, S. brevispinus
rosethorn, S. helvomaculatus	speckled, S. ovalis
rosy, S. rosaceus	squarespot, S. hopkinsi
silvergrey, S. brevispinis	starry, S. constellatus
speckled, S. ovalis	stripetail, S. saxicola
squarespot, S. hopkinsi	swordspine, S. ensifer
starry, S. constellatus	tiger, S. nigorcinctus
stripetail, S. saxicola	vermilion, S. miniatus
swordspine, S. ensifer	yelloweye, S. ruberrimus
tiger, S. nigorcinctus	yellowtail, S. flavidus
vermilion, S. miniatus	
yelloweye, S. ruberrimus	
SLOPE	
aurora, S. aurora	aurora, S. aurora
bank, S. rufus	bank, S. rufus
blackgill, S. melanostomus	blackgill, S. melanostomus
darkblotched, S. crameri	darkblotched, S. crameri
redbanded, S. babcocki	Pacific ocean perch (POP), S. alutus
rougheye, S. aleutianus	redbanded, S. babcocki
sharpchin, S. zacentrus	rougheye, S. aleutianus
shortraker, S. borealis	sharpchin, S. zacentrus
splitnose, S. diploproa	shortraker, S. borealis
yellowmouth, S. reedi	yellowmouth, S. reedi

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d),) size limits (see paragraph IV.A(6)), and seasons (see paragraph IV.A.(7)). The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph (IV.A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(20)). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in Tables 3 and 4, and may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following 3 and 4.

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Table 3. Trip Limits [1] and Gear Requirements [2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North	1,800 lb/ 2 months					
3	South	50,000 lb/ 2 months					
4	Splitnose - South	25,000 lb/ 2 months					
5	Pacific ocean perch - North [4]	2,000 lb/ month		4,000 lb/ month			2,000 lb/ month
6	Chilipepper - South [4]	25,000 lb/ 2 months					
7	mid-water trawl	25,000 lb/ 2 months					
8	small footrope trawl	7,500 lb/ 2 months					
9	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year.					
10	DTS complex - North						
11	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months	6,000 lb/ 2 months	3,500 lb/ 2 months	2,500 lb/ 2 months
12	Longspine thornyhead	10,000 lb/ 2 months		6,000 lb/ 2 months	3,000 lb/ 2 months	10,000 lb/ 2 months	2,000 lb/ 2 months
13	Shortspine thornyhead	2,600 lb/ 2 months		2,000 lb/ 2 months	2,600 lb/ 2 months	2,600 lb/ 2 months	1,500 lb/ 2 months
14	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months	28,000 lb/ 2 months	20,000 lb/ 2 months	14,000 lb/ 2 months
15	DTS complex - South						
16	Sablefish	4,500 lb/ 2 months					
17	Longspine thornyhead	10,000 lb/ 2 months					
18	Shortspine thornyhead	2,600 lb/ 2 months					
19	Dover sole	22,000 lb/ 2 months					
20	Flatfish - North						
21	All other flatfish [3]	Small footrope required: 15,000 lb/ month	Small footrope required: 35,000 lb/ month	Small footrope required: 30,000 lb/ month, no more than 10,000 of which may be petrale sole	Small footrope required: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	Small footrope required: 50,000 lb/ month, no more than 20,000 of which may be petrale sole	Small footrope required: 50,000 lb/ month
22	Petrale sole	Not limited					Not limited
23	Rex sole	Not limited					Not limited
24	Arrowtooth flounder	30,000 lb/ trip		Small footrope required: 7,500 lb/ trip, no more than 30,000 lb/ month			30,000 lb/ trip
25	Flatfish - South						
26	All other flatfish [3]	Small footrops: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs		Small footrops: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.			Small footrops: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs
27	Petrale sole	Not limited					Not limited
28	Rex sole	Not limited					Not limited
29	Arrowtooth flounder	30,000 lb/ trip		Small footrope required: 7,500 lb/ trip, no more than 30,000 lb/ month			30,000 lb/ trip
30	All other flatfish [3], including petrale sole - North and South	Large footrops: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits at any time during the year.					
31	Whiting shoreside [4]	20,000 lb/ trip		Primary Season			20,000 lb/ trip
32	USE OF SMALL FOOTROPE BOTTOM TRAWL [5] OR MIDWATER TRAWL REQUIRED FOR LANDING ALL OF THE FOLLOWING SPECIES:						
33	Minor shelf rockfish						
34	North	300 lb/ month		1,000 lb/ month			300 lb/ month
35	South	500 lb/ month		1,000 lb/ month			500 lb/ month
36	Canary rockfish	200 lb/ 2 months		600 lb/ 2 months			200 lb/ 2 months
37	Widow rockfish						
38	mid-water trawl	CLOSED [7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month			CLOSED [7]
39	small footrope trawl	1,000 lb/ month					
40	Yellowtail - North [6]						
41	mid-water trawl	CLOSED [7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			CLOSED [7]
42	small footrope trawl	Without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 30,000 lb/ 2 months.					
43	Bocaccio - South [6]	600 lb/ 2 months		1,000 lb/ 2 months			600 lb/ 2 months
44	Cowcod	CLOSED [7]					
45	Minor nearshore rockfish						
46	North	300 lb/ month		1,000 lb/ month			300 lb/ month
47	South	300 lb/ month		1,000 lb/ month			300 lb/ month
48	Lingcod [8]	600 lb/ 2 months					

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border.
"South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained above.
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.
Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
Midwater gear also may be used; the footrope must be here. See above.
6/ Yellowtail rockfish and POP in the south, and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area.
7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. Trip Limits [1] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 months
3	South	25,000 lb/ 2 months					
4	Splitnose - South	25,000 lb/ 2 months					
5	Pacific ocean perch - North 5/	2,000 lb/ month		4,000 lb/ month			2,000 lb/ month
6	Sablefish						
7	North of 35° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
8	South of 35° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
9	Longspine thornyhead	9,000 lb/ 2 months					
10	Shortspine thornyhead	2,000 lb/ 2 months					
11	Dover sole	5,000 lb/ month (all flatfish)					
12	Arrowtooth flounder						
13	Petrale sole						
14	Rex sole						
15	All other flatfish 2/						
16	Whiting 3/	20,000 lb/ trip					
17	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish [6]						
18	North	200 lb/ month					
19	South						
20	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 4/		200 lb/ month	CLOSED 4/	
21	South of 34°27' N. lat.	CLOSED 4/	1,000 lb/ month				CLOSED 4/
22	Canary rockfish	CLOSED 4/					
23	Yelloweye rockfish	CLOSED 4/					
24	Cowcod	CLOSED 4/					
25	Bocaccio - South 5/						
26	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 4/		200 lb/ month	CLOSED 4/	
27	South of 34°27' N. lat.	CLOSED 4/	200 lb/ month				CLOSED 4/
28	Chilipepper - South 5/						
29	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED 4/		500 lb/ month	CLOSED 4/	
30	South of 34°27' N. lat.	CLOSED 4/	2,500 lb/ month				CLOSED 4/
31	Minor nearshore rockfish						
32	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish 6/					
33	South						
34	40°10' - 34°27' N. lat.	1,800 lb/ 2 months	CLOSED 4/	Shoreward of 20 fm depth, 1,800 lb/ 2 months, otherwise CLOSED 4/	1,800 lb/ 2 months	Shoreward of 20 fm depth, 1,800 lb/ 2 months, otherwise CLOSED 4/	CLOSED 4/
35	South of 34°27' N. lat.	CLOSED 4/	2,000 lb/ 2 months				CLOSED 4/
36	Lingcod 7/						
37	North	CLOSED 4/	400 lb/ month				CLOSED 4/
38	South						
39	40°10' - 34°27' N. lat.	CLOSED 4/	Shoreward of 20 fm depth, 400 lb/ month, otherwise CLOSED 4/		400 lb/ month	Shoreward of 20 fm depth, 400 lb/ month, otherwise CLOSED 4/	CLOSED 4/
40	South of 34°27' N. lat.	CLOSED 4/	400 lb/ month				CLOSED 4/

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border.
"South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year.
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
5/ Yellowtail rockfish and widow rockfish coastwide, POP in the south, and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area.
6/ For black rockfish north of Cape Alava (48°0930" N.lat.), and between Destruction Island (47°4000" N.lat.) and Leadbetter Point (46°3810" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Sablefish.* The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear. See footnote e/ of Table 1a.

(a) *Trawl trip and size limits.* Management measures for the limited entry trawl fishery for sablefish are listed in Table 3.

(b) *Nontrawl (fixed gear) trip and size limits.* To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 663.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season.* The primary season begins at 12 noon l.t. on April 1, 2002, and ends at 12 noon l.t. on October 31, 2002. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2002, the following limits would be in effect: Tier 1, 36,000 lb. (16,329 kg); Tier 2, 16,500 lb (7,484 kg); Tier 3, 9,500 lb (4,309 kg). All limits are in round weight. If a Vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2002, count against the cumulative limits associated with the permit(s) registered for use with that vessel. A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2001, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t.

(ii) *Daily trip limit.* Daily and/or weekly sablefish trip limits listed in Table 4 apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 4 apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(3) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4). All allocations described in this section and in the tribal fisheries allocation description at paragraph V. will not be finalized until the Council finalizes the 2002 whiting ABC and OY at its March 2002 meeting.

(a) *Allocations.* Whiting allocations will be based on the percentages detailed in 50 CFR 660.323(a)(4)(i), and will be announced inseason when the final OY is announced.

(b) *Seasons.* The 2002 primary seasons for the whiting fishery start on the same dates as in 2001, as follows (see 50 CFR 660.323(a)(3)):

(i) *Catcher/processor sector*—May 15;

(ii) *Mothership sector*—May 15;

(iii) *Shore-based sector*—June 15 north of 42° N. lat.; April 1 between 42°–40°30′ N. lat.; April 15 south of 40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits*—(i) *Before and after the regular season.* The "per trip" limit for whiting before and after the regular season for the shore-based sector is announced in Table 3, as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) *Inside the Eureka 100 fm (183 m) contour.* No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish.* The regulations at 50 CFR 660.323(a)(1) state: "The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." These "per trip" limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 4 and 5 of section IV. The crossover provisions at paragraphs IV.A. (12) do not apply to the black rockfish per-trip limits.

C. Trip Limits in the Open Access Fishery

(1) *General.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), set net trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d) size limits (see paragraph IV.A.(6)), and seasons (see paragraph IV.A.(7)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(201)). Yelloweye rockfish retention is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, except exempted trawl gear, are listed in Table 5. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.4.)

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Table 5. Trip Limits 1/ for Open Access Gears

Other Limits and Requirements Apply – Read Sections IV. A. and C. NMFS Actions before using this table

Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North	Per trip, no more than 25% of weight of the sablefish landed					
3	South	10,000 lb/ 2 months					
4	Splitnose - South	200 lb/ month					
5	Pacific ocean perch - North 5/	100 lb/ month					
6	Sablefish						
7	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
8	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
9	Thornyheads						
10	North of 34° 27′ N. lat.	CLOSED 3/					
11	South of 34° 27′ N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
12	Dover sole	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs					
13	Arrowtooth flounder						
14	Petrale sole						
15	Rex sole						
16	All other flatfish 2/						
17	Whiting	300 lb/ month					
18	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish 4/						
19	North	200 lb/ month					
20	South						
21	40°10′ - 34°27′ N. lat.	200 lb/ month	CLOSED 3/	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED 3/	200 lb/ month	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED 3/	CLOSED 3/
22	South of 34°27′ N. lat.	CLOSED 3/	500 lb/ month				CLOSED 3/
23	Canary rockfish	CLOSED 3/					
24	Yelloweye rockfish	CLOSED 3/					
25	Cowcod	CLOSED 3/					
26	Bocaccio - South 5/						
27	40°10′ - 34°27′ N. lat.	200 lb/ month	CLOSED 3/		200 lb/ month	CLOSED 3/	
	South of 34°27′ N. lat.	CLOSED 3/	200 lb/ month				CLOSED 3/
28	Chilipepper - South 5/						
29	40°10′ - 34°27′ N. lat.	500 lb/ month	CLOSED 3/		500 lb/ month	CLOSED 3/	
30	South of 34°27′ N. lat.	CLOSED 3/	2,500 lb/ month				CLOSED 3/
31	Minor nearshore rockfish						
32	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 5/		4,000 lb/ 2 months, no more than 1,600 lb of which may be species other than black or blue rockfish 5/			3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 5/
33	South						
34	40°10′ - 34°27′ N. lat.	1,200 lb/ 2 months	CLOSED 3/	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED 3/	1,200 lb/ 2 months	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED 3/	CLOSED 3/
35	South of 34°27′ N. lat.	CLOSED 3/	1,200 lb/ 2 months				CLOSED 3/
36	Lingcod 7/						
37	North	CLOSED 3/	300 lb/ month				CLOSED 3/
38	South						
39	40°10′ - 34°27′ N. lat.	CLOSED 3/		Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED 3/	300 lb/ month	Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED 3/	CLOSED 3/
40	South of 34°27′ N. lat.	CLOSED 3/	300 lb/ month				CLOSED 3/

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10′ N. lat. To the U.S.-Canada border.
"South" means 40°10′ N. lat. To the U.S.-Mexico border. 40°10′ N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with a trip limit.
3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7). in the time or area indicated.
4/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area.
5/ For black rockfish north of Cape Alava (48°09′30″ N.lat.), and between Destruction Island (47°40′00″ N.lat.) and Leadbetter Point (46°38′10″ N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
6/ The size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers*—(a) *Trip limits.* The trip limit is 300 lb (136 kg) of groundfish per fishing trip. Limits in Table 5 also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by a vessel engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (Squalas acanthias) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb (136 kg) per trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the fishing trip. The closures listed in Table 5 also apply, except for the species listed below in subparagraphs (i) through (v). The following sublimits also apply and are counted toward the overall 300 lb (136 kg) per trip groundfish limit:

(i) Shelf rockfish (including minor shelf rockfish, widow and yellowtail)—

(A) Between 40°10′ N. lat. and 34°27′ N. lat.: 200 lb (91 kg) per month.

(B) South of 34°27′ N. lat.: 500 lb (227 kg) per month.

(ii) Bocaccio south of 40 deg. 10′ N. lat.—200 lb (91 kg) per month.

(iii) Chilipepper—

(A) Between 40°10′ N. lat. and 34°27′ N. lat.: 500 lb (227 kg) per month.

(B) South of 34°27′ N. lat.: 2,500 lb (1,134 kg) per month.

(iv) Minor nearshore rockfish south of 40 deg. 10′ N. lat.—1,200 lb (544 kg) per 2 months.

(v) Lingcod south of 40 deg. 10′ N. lat.—May 1 through October 31, 2002: 300 lb (136 kg) per month, otherwise closed.

(b) *State law.* These trip limits are not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(c) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 inches (56 cm) in total length, unless it weighs 4 lbs (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means "the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8396, which requires a permit issued by the State of California.

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* (a) The trip limit is 500 lb (227 kg) of groundfish per day, multiplied by the number of days of the fishing trip, but not to exceed 1,500 lb (680 kg) of groundfish per trip. The following sublimits also apply and are counted toward the overall 500 lb (227 kg) per day and 1,500 lb (680 kg) per trip groundfish limits:

(i) Canary rockfish—

(A) April 1 through 30, 2002: 50 lb (23 kg) per month

(B) Starting May 1, 2002 through October 31, 2002: 200 lb (91 kg) per month

(ii) Lingcod—April 1 through October 31, 2002: 400 lb (181 kg) per month, with a minimum size limit (total length) of 24 inches (61 cm).

(iii) Sablefish—April 1, 2002 through October 31, 2002: 2,000 lb (907 kg) per month.

(iv) Thornyheads—Closed north of Pt. Conception (34°27′ N. lat.)

(b) All other groundfish species taken with exempted trawl gear by vessels engaged in fishing for pink shrimp are managed under the overall 500 lb (227 kg) per day and 1,500 lb (680 kg) per trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits.

(c) In any trip in which pink shrimp trawl gear is used, the amount of groundfish landed may not exceed the amount of pink shrimp landed.

(d) Operating in pink shrimp and other fisheries during the same cumulative trip limit period. Notwithstanding section IV.A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

D. Recreational Fishery

(a) *California.*

Note: California law provides that, in times and areas when the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person.

For each person engaged in recreational fishing seaward of California, the following seasons and bag limits apply:

(a) *Rockfish*—(i) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, as described above at IV.A.(20), except that fishing for rockfish is permitted in waters inside the 20-fathom (37 m) depth contour within the CCAs from March 1 through October 31, 2002, subject to the bag limits in paragraph (iii) of this section.

(ii) *Seasons.* North of 40°10′ N. lat., recreational fishing for rockfish is open from January 1 through December 31. South of 40°10′ N. lat. and north of Point Conception (34°27′ N. lat.), recreational fishing for rockfish is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational rockfish fishing from May 1 through June 30 and from September 1 through October 31, except that fishing for rockfish is permitted inside the 20 fathom (37 m) depth contour, subject to the bag limits and retention prohibitions of paragraph (iii) of this section. South of Point Conception (34°27′ N. lat.), recreational fishing for rockfish is closed from January 1 through February 28 and from November 1 through December 31. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits, boat limits, hook limits.* In times and areas when the recreational season for rockfish is open, there is a 2-hood limit per fishing line, and the bag limit is 10 rockfish per day, of which not more than 2 may be bocaccio, no more than 1 may be canary rockfish, and no more than 1 may be yelloweye rockfish. No more than 2 yelloweye may be retained per vessel. Cowcod may not be retained. Bocaccio, canary rockfish, and yelloweye may not be retained, and no more than 2 shelf rockfish may be retained, in the area between 40°10′ N. lat. and Point Conception (34°27′ N. lat.) from May 1 through June 30, or September 1 through October 31.

Note: California scorpionfish, are subject to California's 10 fish bag limit per species, but are not counted toward the 10 rockfish bag limit.

Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(iv) *Size limits.* The following rockfish size limits apply: bacaccio may be no smaller than 10 inches (25 cm), and California scorpionfish may be no smaller than 10 inches (25 cm).

(v) *Dressing/Fileting.* Rockfish skin may not be removed when fileting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: bocaccio filets may be no smaller than 5 inches (12.8 cm); California scorpionfish filets may be no smaller than 5 inches (12.8 cm); and brown-skinned rockfish filets may be no smaller than 6.5 inches (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(b) *Roundfish* (Lingcod, cabezon, kelp greenling) (i) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, as described above at IV.A. (20), except that fishing for lingcod is permitted in waters inside the 20 fathom (37 m) depth contour within the CCAs from March 1 through October 31, 2002, subject to the bag limits in paragraph (ii) of this section. Fishing for cabezon and kelp greenling is allowed in waters inside the 20 fathom (37 m) depth contour within the CCAs year round.

(ii) *Seasons.* South of 40°10′ N. lat. and north of Point Conception (34°27′ N. lat.), recreational fishing for lingcod is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational lingcod fishing from May 1 through June 30 and from September 1 though October 31, except that fishing for lingcod is permitted inside the 20 fathom (36.9 m) depth contour, subject to the bag limits in paragraph (iii) of this section. South of Point Conception (34°27′ N. lat.), recreational fishing for lingcod is closed from January 1 though February 28 and from November 1 through December 31.

(iii) *Bag limits, boat limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a 2-hook limit per fishing line, and the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(iv) *Size limits.* The following roundfish size limits apply: lingcod may be no smaller than 24 inches (61 cm) total length, cabezon may be no smaller than 15 inches (38 cm); and kelp greenling may be no smaller than 12 inches (30 cm).

(v) *Dressing/Fileting.* Cabezon and kelp greenling taken in the recreational fishery may not be fileted at sea. Lingcod filets may be no smaller than 15 inches (38.1 cm).

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon are 1 lingcod per day, which may be no smaller than 24 inches (61 cm) total length; and 10 rockfish per day, of which no more than 1 may be canary rockfish and no more than 1 may be yelloweye rockfish. During the all-depth recreational fisheries for Pacific halibut (*Hippoglossus stenolopis*), vessels with halibut on board may not take, retain, possess or land yelloweye rockfish.

(3) *Washington.* For each person engaged in recreational fishing seaward of Washington, the following seasons and bag limits apply:

(a) *Rockfish.* There is a rockfish bag limit of no more than 10 rockfish per day, of which no more than 2 may be canary rockfish, or no more than 1 may be canary rockfish and 1 may be yelloweye rockfish. Taking and retaining yelloweye rockfish is prohibited from a vessel with Pacific halibut retained on board.

(b) *Lingcod.* Recreational fishing for lingcod is closed between January 1 and April 15, and between October 16 and December 31. When the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 24 inches (61 cm) total length.

V. Washington Coastal Tribal Fisheries

In 1994, the U.S. government formally recognized that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Qinault) have treaty rights to fish for groundfish, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed (U and A) fishing areas (described at 60 CFR 660.324).

A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived for areas that coincide with U and As. The treaty tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries and are not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as not to exceed their allocations.

The tribal allocation for black rockfish is the same in 2002 as in 2001. Also similar to 2001, the tribal sablefish allocation is 10 percent of the total catch OY (437 mt), less 3 percent for estimated discard mortality, or 424 mt. In 1999 through 2001, the tribal whiting allocation was based on a 5-year sliding scale proposal presented by the Makah Tribe in 1998 (for the years 1999–2003) that determines the tribal allocation based on the level of the overall U.S. OY, up to 17.5 percent tribal harvest ceiling. Although the 2002 whiting ABC and OY have not yet been set, the tribes proposed using the same sliding scale allocation for 2002. As discussed earlier in footnote d/ to Table 1a, the Council will recommend the whiting ABC and OY at its March 2002 meeting, based on the results of a new whiting stock assessment. In 2001, applying the Makah sliding scale allocation to a 190,400 mt overall OY resulted in a 27,500 mt tribal whiting allocation. No other tribes proposed to harvest whiting in 2001.

The right of the Washington coastal treaty tribes to harvest Pacific whiting in accordance with the legal principles established in the ongoing case of *U.S.* v. *Washington*, No. 9213, Phase I (W.D. Wash), was sustained in Subproceeding 96–2, Order Granting Makah's Motion for Summary Judgment (Nov. 5, 1996), and also in *Midwater Trawlers Cooperative* v. *Daley*, 139 F.Supp.2d 1136 (W.D. Wash. 2000). In the latter case, the court held that the tribes have a treaty right to harvest Pacific whiting; that the Federal defendants did not act arbitrarily and capriciously in recognizing the tribes' right; that the Secretary of Commerce (Secretary) did not act arbitrarily and capriciously in extending the tribes' usual and accustomed fishing areas into the United States EEZ; that the Secretary appropriately recognized the tribes as co-managers of the shared resources in the final rule providing for tribal groundfish allocations (see 50 CFR 660.324(d)); and that the 1999 tribal allocation, which was based on the

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sliding scale proposal first presented by the Makah Tribe in 1998, was not arbitrary and capricious. Non-treaty fishers and the State of Oregon have appealed this decision to the Ninth Circuit Court of Appeals, where it awaits oral argument.

The issue of the appropriate quantifications of the treaty right to Pacific whiting was recently adjudicated in *U.S.* v. *Washington,* 143 F.Supp.2d 1218 (W.D. Wash., Order on Summary Judgment Motions, April 5, 2001), which approved the Makah Tribe's 1998 sliding scale proposal as within the tribal treaty right and consistent with the Magnuson-Stevens Act.

For some species on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate modest tribal fisheries. For lingcod, all tribal fisheries are restricted to 300 lb (136 kg) per day and 900 lb (408 kg) per week cumulative limits. Tribal fisheries are expected to take about 4–5 mt of lingcod in 2002. For rockfish species, the 2002 tribal longline and trawl fisheries will operate under trip and cumulative limits. Tribal fisheries will operate under 300 lb (136 kg) per trip limits each for canary rockfish, thornyheads, and the minor rockfish species groups (nearshore, shelf, and slope), and under a 100 lb (45 kg) trip limit for yelloweye rockfish. A 300 lb (136 kg) canary rockfish trip limit is expected to result in landings of 2.5 mt in 2002. A 300 lb (136 kg) thornyheads trip limit is expected to result in landings of 1 mt in 2002. Other rockfish limits are expected to result in the following landings levels: widow rockfish, 27 mt; yelloweye rockfish, 1–1.5 mt; yelloweye rockfish, 300 mt; minor nearshore rockfish, 2 mt; minor shelf rockfish excluding yelloweye, 4 mt; minor slope rockfish, 4 mt. Trace amounts (<1 mt) of POP and darkblotched rockfish may also be landed in tribal commercial fisheries.

The Assistant Administrator announces the following tribal allocations for 2002, including those that are the same as in 2001. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 424 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(2) Thornyheads are subject to a 300 lb (136 kg) trip limit.

(3) Canary rockfish are subject to a 300 lb (136 kg) trip limit.

(4) Yelloweye rockfish are subject to a 100 lb (45 kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per two-month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300 lb (136 kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300 lb (136 kg) daily trip limit and a 900 lb (408 kg) weekly limit.

D. Pacific Whiting

Whiting allocations will be announced when the final OY is announced.

VI. Receipt of an Application for EFPs

At the Council's November 2001 meeting, NMFS received an application requesting renewal of EFPs for the 2002 shore-based Pacific whiting fishery from the States of Washington, Oregon, and California. Issuance of these EFPs would allow unsorted whiting harvests to be delivered to shore-based processing facilities where state-sponsored biologists can collect information on the incidental catch of salmon and groundfish. These EFPs are intended to promote the objectives of the Pacific Coast Groundfish FMP by providing catch data that is otherwise not available for managing the fishery.

Because whiting deteriorates rapidly, it must be handled quickly and immediately chilled to maintain its quality. As a result, many vessels prefer to dump catch directly, or near directly, into the hold and are unable to effectively sort their catch at sea. Delaying sorting until offloading allows whiting quality to be maintained while providing an opportunity for state biologists to collect much needed fishery data. If issued, approximately 20 vessels would be permitted to delay the sorting of prohibited species and groundfish species caught in excess of cumulative trip limits until offloading. Without an EFP, vessels are required to sort prohibited species and return them to sea as soon as practicable with minimum injury (50 CFR 660.306(b)), and they are prohibited from exceeding the groundfish trip limits for individual species or groups (50 CFR 660.306(h)).

Following the opportunity for public comment at the Council's November meeting, the Council recommended that NMFS issue the EFPs requested by the States. A copy of the application is available for review from NMFS (see **ADDRESSES**).

Classification

These proposed specifications and management measures for 2002 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the FMP, and 50 CFR parts 600 and 660 subpart G (the regulations implementing FMP).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities.

NMFS is proposing the 2002 annual specifications and management measures to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of healthy groundfish stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks. The form of the specifications, in ABCs and OYs, follows the guidance of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP for protecting and conserving fish stocks. Annual management measures include trip and bag limits, size limits, season restrictions, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits

issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the Small Business Administration. There are also about 700 groundfish buyers on the West Coast, approximately 250 of which annually purchased at least $33,000 of groundfish in 2000. In the 2001 recreational fisheries, there were 106 charter vessels engaged in salt water fishing outside the Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

Revenues for many groundfish fishery participants are expected to decline in 2002. Harvest levels for some key species, such as sablefish, Dover sole, and widow rockfish are set significantly lower in 2002 than in 2001 and will affect coastwide groundfish revenues. For example, the proposed 2002 sablefish commercial OY is 37 percent lower than in 2001. Comparing 2000 sablefish revenue data (2001 data is not yet complete) with the available sablefish commercial OY in 2002, 2002 coastwide sablefish revenue could be 39–48 percent lower than in 2000. Overall, groundfish revenues in 2002 are expected to the $31 million, which is a 22.5 percent decrease from estimated 2001 revenues ($40 million) and a 39 percent decrease from 2000 revenues ($51 million).

It is difficult to estimate exactly how this overall decline in landings and revenue will affect individual members of the groundfish fleet. However, the overall decline is significant enough to suggest that small businesses with a substantial portion of their incomes dependent on groundfish will be negatively affected by implementation of the 2002 proposed harvest levels. Limited entry vessels generally harvest in excess of $50,000 of West Coast fish per year and tend to depend on the catch of groundfish for over 35 percent of their gross West Coast revenue. Open access vessels tend to harvest less than $50,000 of West Coast fish per year and those harvesting in excess of $50,000 of West Coast fish per year generally rely on groundfish for less than 5 percent of their exvessel revenue. Thus limited entry vessels and the people relying on these vessels for income are likely to be more adversely affected from the decline in groundfish revenue opportunity than open access vessels. Of the approximately 700 groundfish buyers, about 300 have groundfish as at least 35 percent of their fish products purchase from fishing vessels. If those groundfish buyers are unable to purchase alternative fish species, they will likely also suffer declines in income and employment.

For the recreational fishery, the only significant catch and effort reductions would occur in California. Little change in overall recreational effort is expected in Washington or Oregon. Reduction in effort in California is expected to result in a reduction in revenue for businesses that cater to recreational fishers. In northern and southern California, $10.8 million and $9.5 million, respectively, of community level personal income were associated with the recreational groundfish fishery. These personal income values are a measure of the contribution of recreational fishing to businesses and local communities. Under the proposed action effort is expected to decline by about 15 percent. The decline in effort would be expected to reduce associated community level personal income by similar amounts. Gross receipts for recreational groundfish activities will likely decline in proportion with the decline in number of angler trips, however, net profits may decline more given that certain costs will be fixed on an annual and per trip basis. Revenue declines from groundfish may be offset to the degree that charter vessels operate in other fisheries.

This rule does not propose any new reporting and recordkeeping requirements; however, it does announce EFPs for 2002, which include reporting and recordkeeping requirements. Reporting and recordkeeping requirements associated with EFPs are described in this section, under the Paperwork Reduction Act.

The Council considered three issues, each with several alternatives and sub-options, and ultimately chose alternative that balanced the conservation and socioeconomic risks and benefits associated with all aspects of the 2002 Pacific Coast groundfish fishery. The relevant issues were alternative harvest levels, alternative bycatch and discard rate assumptions, and alternative season options. Each issue had several alternatives with varying degrees of potential risks and benefits to the groundfish fishery that are described in the EA/RIR/IRFA. Less restrictive alternatives tend to buffer, but not necessarily ameliorate, the continued downward trend in economic benefits and fishing opportunities. However, the short term benefits of less restrictive alternatives were weighed against longer term stock conservation risks. The Council adopted alternatives modeled in the EA/RIR/IRFA that are believed to adequately bracket a reasonable range of options for the 2002 groundfish fishery, given anticipated short and long term risks and benefits.

The alternative harvest levels apply to seven stocks that are subject to new stock assessments or rebuilding strategies, sablefish, Pacific ocean perch (POP), widow rockfish, shortspine thornyhead, darkblotched rockfish, yelloweye rockfish, and Dover sole. Four alternatives were considered, the status quo, a low level of acceptable biological catch (ABC) and OY, high levels of ABC/OY, and the proposed action. The proposed action sets ABCs/OYs between the high and low levels, with the ABCs/OYs of the seven stocks at lower levels than the status quo alternative except for shortspine thornyheads and darkblotched rockfish, and represents a 21-percent reduction in commercial exvessel value from the status quo and a commensurate reduction in recreational catch. While the status quo alternative would provide the highest ABCs/OYs, except for shortspine thornyhead, this alternative was not adopted because these levels are higher than those supported by the new stock assessments and rebuilding strategies. Similarly, the high level alternative, which represents a 19-percent reduction in commercial exvessel value, was not considered to sufficiently consider the effects of incidental catches of these species in other fisheries or to be sufficiently risk averse in rebuilding these stocks. The low level alternative would reduce commercial exvessel value by 34 percent of the value of the status quo fishery, with a commensurate reduction in recreational catch. While this alternative would be risk averse from the standpoint of the stocks, it was rejected because its effects on the fishery would likely cause even more severe economic disruptions, particularly in the trawl and fixed gear limited fisheries.

The bycatch and discard rate estimation issue arose by the need to accurately track total mortality of groundfish stocks and by recent legal challenges of past bycatch and discard rate assumptions. The Council recommended bycatch rates and discard mortality for lingcod, bocaccio, canary rockfish, darkblotched rockfish, and POP for the limited entry trawl fishery. The Council used a synthesis of several scientific studies to provide a low-to-high range of bycatch rates. The methodology of this analysis and how the Council arrived at the species-specific bycatch rates and discard mortality is described previously in this

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document. Four alternatives were considered, the status quo, a low end range of bycatch rates, a high end range of bycatch rates, and the mid-range proposed action, which represents the Council consensus of the most scientifically reasonable bycatch rates for each of the five stocks considered to apply to the fishery in 2002. In choosing the preferred alternative the Council considered the legal requirements and the biological and economic consequences of over- or underestimating the bycatch rates. The Council rejected using the status quo bycatch and discard rate assumptions of 2001 as not legally defensible. Applying the low end alternative would not be as constraining on the fishery, but represents a greater risk of overfishing the constraining stocks if bycatch rates and total mortality are underestimated. Applying the high end alternative would entail less risk of overfishing, but would be the most constraining on the fishery and incur excess economic losses if the total mortality is overestimated.

The alternative season options resulted from a desire to consider area and time manipulations of the fishery to potentially realize higher trip limits and lessen regulatory discard of groundfish. Six alternatives were considered for the commercial seasons, the status quo, a year-round Groundfish Management Team (GMT) recommended season, a coastwide 6-month season, a year-round Groundfish Advisory Panel (GAP) recommended season based on the preferred OYs, a year-round GAP recommended season based on the high end OYs, and the proposed action, which provides seasons considering the preferred OYs with consideration of bycatch. The status quo alternative was rejected because the best available science (*i.e.*, new stock assessments) was not considered and it violates the legal mandate to consider bycatch and discard mortality rate assumptions. The year-round GMT recommended season was rejected because it did not consider the restrictions needed for managing overfished species. The coastwide 6-month season was rejected because of the potential of processors and vessels to lose skilled workers, loss of markets, and weather constraints leading to inequitable fishing opportunities among the areas. The two year-round GAP recommended seasons were rejected because the landing limits for these seasons implied a higher bycatch of constraining stocks than would be allowed under the range of harvest levels considered.

The fisheries agencies of the states of Oregon, Washington, and California presented several options for recreational fisheries off their respective states. In each case the Council adopted a preferred alternative that considered the preferred ABC/OY level and the bycatch constraints for their fisheries.

Other regulations affecting the West Coast groundfish fisheries are primarily found at 50 CFR 660.301–360. A copy of this analysis is available from the Council (see **ADDRESSES**).

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two fall groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the tribal management measures, which was passed by the Council, and those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California). NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any Endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. NMFS has re-initiated consultation on the Pacific whiting fishery associated with the (whiting BO) issued on December 15, 1999. During the 2000 whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the BO's incidental take statement's incidental take estimates, 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was well below the 11,000 fish incidental take estimates. The re-initiation will focus primarily on additional actions that the whiting fisheries would take to reduce chinook interception, such as time/area management. NMFS is gathering data from the 2001 whiting fisheries and expects that the re-initiated whiting BO will be complete by February 2002. During the reinitiation, fishing under the FMP is within the scope of the December 15, 1999, BO, so long as the annual incidental take of chinook stays under the 11,000 fish bycatch limit. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

This action refers to a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Permit requirements have been approved by OMB under control number 0648–203 for Federal fisheries permits. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; the burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 01–32262 Filed 12–31–01; 4:46 pm]

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Part III

The President

Executive Order 13250—Providing an Order of Succession Within the Department of Health and Human Services

Executive Order 13251—Providing an Order of Succession Within the Department of State

Executive Order 13252—Exclusions From the Federal Labor-Management Relations Program

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Presidential Documents

Title 3—

The President

Executive Order 13250 of December 28, 2001

Providing an Order of Succession Within the Department of Health and Human Services

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the Office of the Secretary of Health and Human Services (Secretary) during any period when both the Secretary and the Deputy Secretary of Health and Human Services (Deputy Secretary) have died, resigned, or become otherwise unable to perform the functions and duties of the office of Secretary.

Sec. 2. *Order of Succession.*

(a) The Assistant Secretaries of Health and Human Services appointed by the President and confirmed by the Senate, in the order in which they shall have taken the oath of office as such;

(b) The General Counsel of the Department of Health and Human Services; and

(c) Other officers within the Department of Health and Human Services who have been appointed by the President by and with the consent of the Senate, in the order in which they shall have taken the oath of office as such.

Sec. 3. *Exceptions.*

(a) No individual who is serving in an office listed in section 2(a)–(c) of this order in an acting capacity shall act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Secretary.

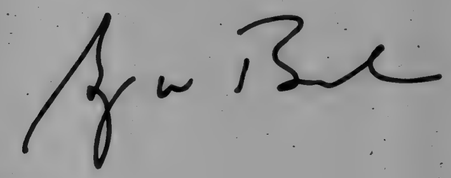

THE WHITE HOUSE,
December 28, 2001.

[FR Doc. 02–917
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Presidential Documents

Executive Order 13251 of December 28, 2001

Providing an Order of Succession Within the Department of State

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as, and perform the duties of, the office of Secretary of State (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

Sec. 2. *Order of Succession.*

(a) Deputy Secretary of State;

(b) Deputy Secretary of State for Management and Resources;

(c) Under Secretary of State designated for political affairs pursuant to section 2651a(b) of title 22, United States Code;

(d) Under Secretary of State designated for management affairs pursuant to section 2651a(b) of title 22, United States Code;

(e) The remaining Under Secretaries of State, in the order in which they shall have taken the oath of office as such;

(f) Assistant Secretaries of State designated for regional bureaus pursuant to section 2651a(c) of title 22, United States Code, in the order in which they shall have taken the oath of office as such;

(g) The following officers, in the order in which they shall have taken the oath of office as such:

(1) Remaining Assistant Secretaries of State;

(2) Coordinator for Counterterrorism;

(3) Director General of the Foreign Service; and

(4) Legal Adviser;

(h) United States Representative to the United Nations (New York);

(i) Deputy United States Representative to the United Nations (New York);

(j) The following other United States Representatives to the United Nations (New York), in the order in which they shall have taken the oath of office as such:

(1) United States Representative to the United Nations for United Nations Management and Reform;

(2) United States Representative to the United Nations on the Economic and Social Council of the United Nations; and

(3) Alternate United States Representative to the United Nations for Special Political Affairs in the United Nations;

(k) The following Chiefs of Mission, in the order listed:

(1) United States Ambassador to the United Kingdom;

(2) United States Ambassador to Canada;

(3) United States Ambassador to Australia;

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(4) United States Ambassador to Mexico;

(5) United States Ambassador to Japan; and

(6) United States Ambassador to India;

(l) The following officers, in the order in which they shall have taken the oath of office as such:

(1) United States Ambassadors at Large;

(2) Counselor; and

(3) Special Representatives of the President; and

(m) The remaining Chiefs of Mission, in the order in which they shall have taken the oath of office as such.

Sec. 3. *Exceptions.*

(a) No individual who has not been appointed by the President by and with the consent of the Senate shall act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 2(a)-(m) in an acting capacity shall act as Secretary pursuant to this order.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Secretary.

(d) A successor office, intended to be the equivalent of an office identified in section 2 of this order, shall be deemed to be the position identified in section 2 for purposes of this order.

Sec. 4. Executive Order 12343 of January 27, 1982, is hereby revoked.

THE WHITE HOUSE,
December 28, 2001.

[FR Doc. 02–916
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Billing code 3195–01–P

Presidential Documents

Executive Order 13252 of January 7, 2002

Exclusions From the Federal Labor-Management Relations Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7103(b)(1) of title 5, United States Code, and in order to exempt certain subdivisions of the Department of Justice from coverage under the Federal Labor-Management Relations Program, it is hereby ordered as follows:

Section 1. *Determinations.* The subdivisions of the Department of Justice set forth in section 2 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to these subdivisions in a manner consistent with national security requirements and considerations.

Sec. 2. *Amendment of Executive Order 12171.* Executive Order 12171 of November 19, 1979, as amended, is further amended by adding to the end of section 1–209 the following new subsections:

"(c) United States Attorneys' Offices.

(d) Criminal Division.

(e) INTERPOL—U.S. National Central Bureau.

(f) National Drug Intelligence Center.

(g) Office of Intelligence Policy and Review."

THE WHITE HOUSE,
January 7, 2002.

[FR Doc. 02–919
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H.R. 1/P.L. 107–110

No Child Left Behind Act of 2001 (Jan. 8, 2002; 115 Stat. 1425)

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African Elephant Conservation Reauthorization Act of 2001 (Jan. 8, 2002; 115 Stat. 2095)

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H.R. 2657/P.L. 107–114

District of Columbia Family Court Act of 2001 (Jan. 8, 2002; 115 Stat. 2100)

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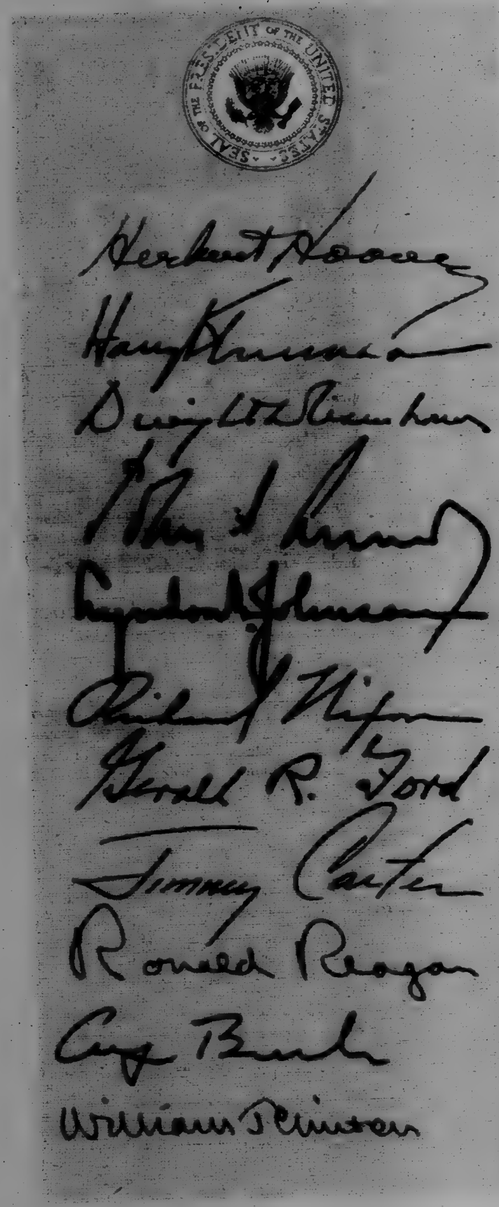

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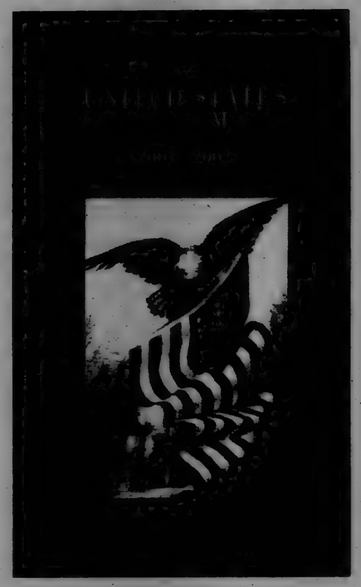

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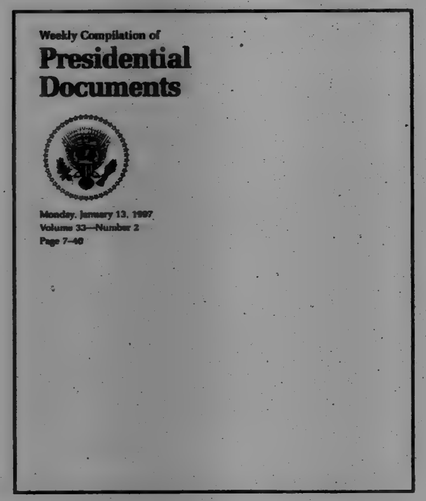

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–44–AD; Amendment 39–12592; AD 2002–01–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions, if necessary. The actions specified by this AD are intended to prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published in the **Federal Register** on May 31, 2001 (66 FR 29514). That action proposed to require initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter has no objection to the proposed rule.

Clarify Repetitive Inspection Intervals

Two commenters ask for clarification of the repetitive inspection interval for Work Packages II and III, as specified in paragraph (a) of the proposed rule. One commenter states that it is unclear which interval the operator should use for the repetitive inspections: the interval in paragraph (a) or (b) of the proposed rule. The commenter adds that if the operator adheres to Work Package III using the more restrictive repetitive inspection intervals specified in paragraph (a), the requirement in paragraph (b) of the proposed rule is being met by the more frequent inspections; therefore, there is no need to track paragraph (b). The second commenter states that it interprets Note 2 of the proposed rule as referring to the requirements of the initial inspection only, and not to the repetitive inspection intervals specified in paragraphs (a) and (b) of the proposed rule. The commenter adds that its interpretation is that the repetitive inspections are still required at the intervals specified in paragraphs (a) and (b) of the proposed rule, but an inspection done per Work Package III can be used to take credit for the inspection specified in Work Package II.

The FAA concurs that clarification of the correct repetitive inspection interval for substitution of Work Package III for Work Package II, as specified in paragraph (a) of the final rule, is necessary. If the repetitive inspections in paragraph (a) are being done per Work Package III, it is not necessary to track paragraph (b), as noted by the first commenter. Note 2 of this final rule has been changed for clarification.

Clarify Reporting Requirement

One commenter asks that the FAA add a note to the proposed rule stating that the FAA is not requiring the reporting requirement that is specified in Boeing Service Bulletin 737–55A1070, Revision 1. The commenter adds that a section should be added to the proposed rule stating that operators should submit their findings to Boeing after each inspection.

The FAA agrees that some clarification is necessary. Although the referenced service bulletin specifies that a report of inspection results should be submitted to the airplane manufacturer (Boeing) after each inspection, and provides the information to be included in that report, we are not mandating the reporting requirement in this final rule. We have added this clarification to paragraphs (a) and (b) of the final rule.

Referenced Service Information

One commenter notes several issues with the service bulletin:

- Page 25 of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001, specifies concurrent accomplishment of certain service bulletins. The commenter would like clarification as to whether the referenced service bulletins are required to be accomplished concurrently with accomplishment of Boeing Service Bulletin 737–55A1070.
- Page 76 of the service bulletin has a typographical error in Item (g). That item specifies VMM 55–30–16, which should be CMM 55–30–16.
- Figures 3 and 4 of the service bulletin will be difficult to break into the three work packages, as these figures have combined all three packages into each figure, and have separated the Model 737–200 and –400 series airplanes. The commenter would like the figures broken out to have one figure

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for each work package and airplane model.

The commenter has notified the airplane manufacturer of the above issues.

The FAA will inform the airplane manufacturer of the changes requested by the commenter, and we can clarify some of the issues noted by the commenter:

- The service bulletins referenced on page 25 of Boeing Service Bulletin 737–55A1070 are not required to be accomplished concurrently with the bulletin referenced in this final rule. The manufacturer merely recommends concurrent accomplishment because the actions are similar to those in this final rule.
- We agree that Item (g) on page 76 of the bulletin references an incorrect acronym (VMM); the bulletin should refer to the Component Maintenance Manual, so the correct acronym is CMM.
- Only the airplane manufacturer can make revisions or corrections to the figures illustrated in the service bulletin.

No changes to the final rule are necessary in this regard.

Change Paragraph (a)

One commenter asks that the initial detailed visual/free play inspections specified in paragraph (a) of the proposed rule limit the inspections for Work Package I to the ones for elevator tab free play, elevator tab hinge free play, and tab axial free play only. The commenter notes that the detailed visual inspections are not necessary. The commenter also asks that a check be included to ensure that self-locking castellated nuts with cotter pins are installed at each hinge location. The commenter states that the elevator tab and attachment hardware are inspected during the elevator tab hinge free play inspection, so another inspection is redundant. The commenter adds that the detailed visual inspection procedure for the elevator tab attachment hardware cannot be completed because, although the bolt can be wiggled or moved to check for unusual looseness, the spacers and bushings cannot be checked without removing the tab from the elevator. Additionally, the commenter notes that the attachment hardware of the elevator tab control push rod was already addressed in AD 2000–19–05, amendment 39–11906 (65 FR 65258, November 1, 2000), which requires replacement of all existing bolts and attachment nuts at the forward and aft end attachment of each elevator tab push rod with new bolts and self-locking castellated nuts.

The FAA does not agree with the commenter. Although a partial visual inspection may be done during the free play inspection, no minimum level of inspection is defined by the service bulletin. Figures 3 and 4 of Work Package I of the service bulletin describe procedures for doing the free play inspections, but do not describe procedures for a visual inspection. Contrary to the commenter's statement that a visual inspection cannot be completed unless the tab is removed, the spacers and bushings can indeed be visually inspected for unusual looseness without removing the tab, either by inspecting manually or using a probe. We also disagree that the free play inspections are a substitute for the detailed visual inspections. Additionally, AD 2000–19–05 requires a one-time visual inspection of the attachment nuts at the forward- and aft-end attachment of each elevator push rod only, and, therefore, is not a substitute for the repetitive inspections of the tab, hinges, and control mechanism required by this AD. No change to the final rule is necessary in this regard.

Add Paragraph or Note

One commenter asks that a paragraph or note be added to the proposed rule stating that installation of a new or overhauled elevator and tab assembly during a maintenance visit meets the intent of Work Packages II and III, and, therefore, paragraph (a) of the proposed rule does not need to be done during that maintenance visit.

The FAA does not agree. A complete definition of configuration and installation procedures that meet all the requirements of this AD for a new or overhauled elevator and tab assembly, is currently not available. However, once those procedures are defined, the FAA may approve requests for alternative methods of compliance under the provisions of paragraph (d) of the final rule, if data are submitted to substantiate that adequate installation procedures have been developed and an acceptable level of safety can be maintained.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,790 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,080 airplanes of U.S. registry will be affected by this AD, as follows:

Work package	Work hours @ $60/WH	Cost per airplane	Fleet cost
I	18	$1,080	$1,166,400
II	9	540	583,200
III	14	840	907,200

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–01–01 Boeing: Amendment 39–12592. Docket 2000–NM–44–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, line numbers 1 through 3132 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane, accomplish the following:

Initial/Repetitive Inspections

(a) Do the applicable initial detailed visual/free play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package I of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001; at the times specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the free-play inspections after that at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever comes first, per either Work Package II or Work Package III of the service bulletin. Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Note 2: There is a one-way interchangeability between the free-play inspections specified in Work Packages II and III. The repetitive free-play inspections specified in Work Package II can be replaced by the repetitive free-play inspections specified in Work Package III at the repetitive inspection intervals specified in paragraph (a) of this AD. But the repetitive free-play inspections specified in Work Package III cannot be replaced by the repetitive free-play inspections specified in Work Package II.

(1) For airplanes having less than 4,500 total flight cycles: Before the accumulation of 4,500 total flight cycles or within 120 days after the effective date of this AD, whichever comes later.

(2) For airplanes having 4,500 or more total flight cycles: Do the inspections at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Within 120 days after the effective date of this AD.

(ii) If the initial inspections were done before the effective date of this AD per Boeing All Operator Telex M–7200–00–00034, dated February 15, 2000: Within 1,500 flight cycles or 2,000 flight hours after the effective date of this AD, whichever comes later.

Note 3: Initial inspections done before the effective date of this AD per Boeing Alert Service Bulletin 737–55A1070, dated January 13, 2000, are considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to find damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 4,500 flight cycles or 6,000 flight hours, whichever comes first, after doing the initial inspections required by paragraph (a) of this AD: Do the free-play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package III of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001. Repeat the inspections after that at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever comes first. Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Corrective Actions

(c) If any damage or discrepancy is found after doing any inspection required by paragraph (a) or (b) of this AD, before further flight, do the applicable corrective action per the Accomplishment Instructions of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–55A1070, Revision 1, including appendices A, B, and C, dated May 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 19, 2002.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–200 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 95P–0315]

Hematology and Pathology Devices; Reclassification of the Automated Differential Cell Counter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the automated differential cell counter (ADCC) from class III (premarket approval) into class II (special controls). FDA is also identifying the guidance document entitled "Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA" as the special control that the agency believes will reasonably ensure the safety and effectiveness of the device. This reclassification is being undertaken based on new information submitted in a reclassification petition from the International Society for Laboratory Hematology (ISLH), under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 and the FDA Modernization Act of 1997.

DATES: This rule is effective February 13, 2002.

ADDRESSES: Comments and the guidance may be seen at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 9, 2001 (66 FR 23634), FDA published a proposed rule to reclassify the automated differential cell counter from class III (premarket approval) into class II (special controls) based on new information regarding this device and on the recommendation of the Hematology and Pathology Devices Panel. FDA also identified the document "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells" as the special control capable of providing reasonable assurance of safety and effectiveness for this device. The agency has since revised the guidance to provide the option of submitting an abbreviated 510(k), thereby reducing the burden. At the same time, FDA is revising the title of the document to "Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA." which may be accessed at http://www.fda.gov/cdrh/ode/guidance/1184.html. A search capability for all guidance documents may be found at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

Interested persons were invited to comment on the proposed rule by August 7, 2001. FDA received one comment. That comment commended FDA's proposal to reclassify ADCCs into class II and agreed that the guidance proposed as the special control was adequate to provide reasonable assurance of the safety and effectiveness of the device.

II. FDA's Conclusion

Based on a review of the available information, referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device.

III. Electronic Access

In order to receive "Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA" via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMICA Facts, at second voice prompt press 2, and then enter the document number (1184) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains a Web site at http://www.fda.gov/cdrh on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH Web site includes device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other medical device-oriented information. The CDRH Web site also includes the document "Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA" which may be accessed at http://www.fda.gov/cdrh/ode/guidance/1184.html. A search capability for all guidance documents may be found at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of ADCCs from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e).

Moreover, compliance with special controls proposed for this device will not impose significant new costs on affected manufacturers because most of these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to ADCCs, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.5220 is revised to read as follows:

§ 864.5220 Automated differential cell counter.

(a) *Identification.* An automated differential cell counter is a device used to identify one or more of the formed elements of the blood. The device may also have the capability to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids. These devices may combine an electronic particle counting method, optical method, or a flow cytometric method utilizing monoclonal CD (cluster designation) markers. The device includes accessory CD markers.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA document entitled "Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA."

Dated: January 3, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–792 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–001]

Drawbridge Operation Regulations; 63rd Street Bridge, Indian Creek, Mile 4.0, Miami Beach, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the 63rd Street Bridge across Indian Creek, mile 4.0, Miami Beach, Miami-Dade County, Florida. This deviation allows the drawbridge owner or operator to not open the Bridge from January 15, 2002 to January 19, 2002. This temporary deviation is required to allow the bridge owner to safely complete repairs to the Bridge.

DATES: This deviation is effective from 12:01 a.m. on January 15, 2002 until 11:59 p.m. on January 19, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The 63rd Street Bridge across Indian Creek, Miami Beach, Miami-Dade County, Florida is a double leaf bridge with a vertical clearance of 11.0 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 50 feet. On December 21, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR part 117 which requires the draw of the 63rd Street Bridge, mile 4.04 at Miami Beach, to open on signal. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR part 117 to complete repairs to the drawbridge. Under this deviation, the 63rd Street Bridge need not open either span from 12:01 a.m. on January 15, 2002 until 11:59 p.m. on January 19, 2002.

Dated: January 7, 2002.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–859 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD01–01–211

RIN 2115–AA97

Safety and Security Zone; Pilgrim Nuclear Power Plant, Plymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones around the Pilgrim Nuclear Power Plant in Cape Cod Bay, Plymouth, MA from November 15, 2001 until June 15, 2002. The safety and security zones will temporarily close all waters within an approximate 1000-yard distance from the plant, and will also close shore areas adjacent to the plant. The safety and security zones prohibit entry into or movement within a portion of Cape Cod Bay and adjacent shore

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areas and are needed to ensure public safety and prevent sabotage or terrorist acts.

DATES: This rule is effective from November 15, 2001 until June 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History-

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553, the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated.

The Pilgrim Nuclear Power Plant is bordered on one side by water, exposing it to possible attack initiated from waters surrounding the power plant. Due to the potential catastrophic effect an exposure of radiation from the nuclear processes at the plant would have on the surrounding area, this rulemaking is urgently required to prevent potential future terrorist strikes against the Pilgrim Nuclear Power Plant. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render people and facilities within and adjacent to the Pilgrim Nuclear Power Plant property vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures implemented in this rule are intended to prevent possible terrorist attacks against the Pilgrim Nuclear Power Plant. They are needed to protect the facility, persons at the facility, the public and the surrounding community from potential sabotage or other subversive activity, and terrorist attacks, either from the water or by land through access to public trust lands between the low water and high water tide lines adjacent to the facility. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest. These zones should have minimal impact on the users of Cape Cod Bay as vessels are able to pass safely outside the zones. Public notifications will be made to the maritime community via notice to mariners and marine information broadcasts informing them of boundaries of the zones.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC, on September 11, 2001, safety and security zones are being established to safeguard the Pilgrim Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Pilgrim Nuclear Power Plant presents a possible target of terrorist attack, due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. These safety and security zones prohibit entry into or movement within the specified areas.

This rulemaking establishes security and safety zones having identical boundaries in all waters of Cape Cod Bay and land adjacent to those waters enclosed by a line as follows: beginning at position 41°57′30″ N, 070°34′36″ W; then running southeast to position 41°56′36″ N, 070°33′30″ W; then running southwest to position 41°56′28″ N, 070°34′38″ W; then running northwest to position 41°56′50″ N, 070°34′58″ W; then running northeast back to position 41°57′30″ N, 070°34′36″ W. This rulemaking also removes safety and security zones established on September 24, 2001 under temporary rulemaking 33 CFR 165.T01–171(a)(4) (66 FR 49280, Sept. 27, 2001). That rulemaking established safety and security zones with identical boundaries in the following area: All waters of Plymouth Bay within a five hundred (500) yard radius of the cooling water discharge canal at the Pilgrim Nuclear Power Plant, Plymouth, MA. Those safety and security zones did not extend to the full boundaries of the facility. This rulemaking is necessary to provide complete protection of the waterfront areas of the Pilgrim Nuclear Power Plant. The increase of the boundaries of the zones seaward is necessary to ensure enforcement authorities enforcing the zone ample area to adequately prevent any incursions of the zone allowing access to the plant. The safety and security zones established in this rulemaking extend the safety and security zones established in section 165.T01–171(a)(4) to an area roughly 1000-yards from the shoreline of the facility. That section, 165.T01–171 (a)(4), was also temporarily removed by temporary rulemaking 33 CFR 165.T01–201 effective November 5 to November 15, 2001. The safety and security zones also close shore areas immediately adjacent to the facility to prevent access to the facility from the shore area.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zones in Cape Cod Bay, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Cape Cod Bay. For the reasons enumerated in the Regulatory Evaluation section above, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, at (617) 223–3000. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Remove temporary § 165.T01–171(a)(4).

3. From November 15, 2001 until June 15, 2002, add temporary § 165.T01–211 to read as follows:

§ 165.T01–211 Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, Massachusetts.

(a) *Location.* All waters and land enclosed by a line beginning at position 41°57′30″ N, 070°34′36″ W; then running southeast to position 41°56′36″ N, 070°33′30″ W; then running southwest to position 41°56′28″ N, 070°34′38″ W; then running northwest to position 41°56′50″ N, 070°34′58″ W; then running northeast back to position 41°57′30″ N, 070°34′36″ W.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

(3) No person may enter the waters or land area within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

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Dated: November 15, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–860 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (E-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the final determinations of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator, Federal Insurance and Mitigation Administration, has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4. *National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana:					
Howard (FEMA Docket No. 7606.	Unincorporated Areas	July 20, 2001, July 27, 2001, *Kokomo Tribune.*	Mr. John Harbaugh, President, Howard County Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	June 27, 2001	180414
Hendricks (FEMA Docket No. 7604).	Town of Plainfield	June 7, 2001, June 14, 2001, *Hendricks County Flyer.*	Mr. Richard A. Carlucci, Town Manager, Town of Plainfield, 206 West Main Street, Plainfield, Indiana 46268–0065.	Sept. 14, 2001	180089

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Marion (FEMA Docket No. 7604).	City of Indianapolis	June 14, 2001, June 21, 2001, *Indianapolis Star.*	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, Indiana 46204.	Sept. 21, 2001	180159
Kansas:					
Johnson (FEMA Docket No. 7604).	City of Lenexa	June 19, 2001, June 26, 2001, *Legal Record.*	The Honorable Joan Bouman, Mayor, City of Lenexa, 12350 W. 87th Street Parkway, Lenexa, Kansas 66215.	May 31, 2001	200168
Johnson (FEMA Docket No. 7604).	City of Shawnee	June 21, 2001, June 28, 2001, *Journal Herald.*	The Honorable Jim Allen, Mayor, City of Shawnee, 11110 Johnson Drive, Shawnee, Kansas 66203.	May 31, 2001	200177
Nebraska: Lancaster (FEMA Docket No. 7606).	City of Lincoln	April 19, 2001, April 26, 2001 *Lincoln Journal Star.*	The Honorable Don Wesely, Mayor, City of Lincoln, 555 South 10th Street, Room 208, Lincoln, Nebraska 68508.	March 13, 2001	315273
Ohio: Summit (FEMA Docket No. 7606).	City of Twinsburg	August 9, 2001, August 16, 2001, *Twinsburg Bulletin.*	The Honorable K. A. Procop, Mayor, City of Twinsburg, 10075 Ravenna Road, Twinsburg, Ohio 44087.	November 15, 2001 ...	390534
Oklahoma: Jefferson (FEMA Docket No. 7606).	City of Waurika	July 5, 2001, July 12, 2001, *Waurika News-Democrat.*	The Honorable Biff Eck, Mayor, City of Waurika, 122 South Main, Waurika, Oklahoma 73573.	October 11, 2001	400076
Texas:					
Hidalgo (FEMA Docket No. 7604).	City of Edinburg	May 24, 2001, May 31, 2001, *Edinburg Daily Review.*	The Honorable Joe Ochoa, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540.	May 14, 2001	480338
Hidalgo (FEMA Docket No. 7604).	Unincorporated Areas	May 24, 2001, May 31, 2001, *Monitor.*	The Honorable Jose E. Pulido, Hidalgo County Judge, P.O. Box 1356, Edinburg, Texas 78540.	May 17, 2001	480334
Denton (FEMA Docket No. 7606).	Town of Little Elm	July 12, 2001, July 19, 2001, *Denton Record-Chronicle.*	The Honorable Jim Pelley, Mayor, Town of Little Elm, P.O. Box 129, Little Elm, Texas 75068.	October 18, 2001	481152

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 8, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–802 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7606]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (E-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

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The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Craighead.	City of Jonesboro	Sept. 4, 2001, Sept. 11, 2001, *Jonesboro Sun.*	The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845.	Aug. 15, 2001	050048
Indiana:					
Howard	Unincorporated Areas	Oct. 23, 2001, Oct. 30, 2001, *Kokomo Tribune.*	Mr. John Harbaugh, President, Howard County Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	Oct. 12, 2001	180414
Howard	City of Kokomo	Oct. 23, 2001, Oct. 30, 2001, *Kokomo Tribune.*	The Honorable James Trobaugh, Mayor, City of Kokomo, 100 South Union Street, Kokomo, Indiana 46901.	Oct. 12, 2001	180093
Minnesota: Winona.	Unincorporated Areas	Dec. 21, 2001, Dec. 28, 2001 *Winona Daily News.*	Mr. David Stoltman, Chairperson, Winona County, Board of Commissioners, 177 Main Street, Winona, Minnesota 55987.	Mar. 29, 2002	270525
Missouri:					
St. Charles	City of Cottleville	Oct. 5, 2001, Oct. 12, 2001, *St. Charles Journal.*	The Honorable Robert Powers, Mayor, City of Cottleville, P.O. Box 387, Cottleville, Missouri 63338.	Jan. 11, 2002	290898
St. Charles	Unincorporated Areas	Oct. 5, 2001, Oct. 12, 2001, *St. Charles Journal.*	Mr. Joe Ortwerth, County Executive, St. Charles County, 201 North Second Street, St. Charles, Missouri 63301.	Jan. 11, 2002	290315
Ohio: Lorain	City of Avon Lake	Oct. 24, 2001, Oct. 31, 2001, *Morning Journal.*	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon Belden Road,Avon Lake, Ohio 44012–1699.	Jan. 30, 2002	390602
Oklahoma:					
Tulsa	City of Broken Arrow	Oct. 18, 2001, Oct. 25, 2001, *Broken Arrow Ledger.*	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610Broken Arrow, Oklahoma 74013.	Jan. 24, 2002	400236
Tulsa	City of Broken Arrow	Nov. 1, 2001, Nov. 8, 2001, *Broken Arrow Ledger.*	The Honorable James Reynolds, Mayor, City of Broken Arrow, 220 South First Street, Broken Arrow, Oklahoma 74012.	Feb. 7, 2002	400236

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma	City of Edmond	Nov. 1, 2001, Nov. 8, 2001, *Edmond Sun.*	The Honorable Saundra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73080.	Oct. 15, 2001	400252
Oklahoma	City of Oklahoma City	Dec. 5, 2001, Dec. 12, 2001, *Daily Oklahoman.*	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Mar. 13, 2002	405378
Texas:					
Dallas and Ellis.	City of Cedar Hill	Oct. 19, 2001, Oct. 26, 2001, *Southwest Morning News.*	The Honorable Robert L. Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, Texas 75106.	Jan. 24, 2002	480168
Comal	Unincorporated Areas	Nov. 16, 2001, Nov. 23, 2001, New Braunfels Herald-Zeitung.	The Honorable Danny Scheel, Judge, Comal County, 150 North Seguin Street, New Braunfels, Texas 78130.	Feb. 22, 2002	485463
Denton	City of Denton	Nov. 14, 2001, Nov. 21, 2001, *Denton Record Chronicle.*	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	Feb. 20, 2002	480194
Collin	City of Frisco	Dec. 12, 2001, Dec. 19, 2001, *Plano Star Courier.*	The Honorable Kathy Seei, Mayor, City of Frisco, 6891 Main Street, Frisco, Texas 75034.	Mar. 20, 2002	480134
Dallas	City of Garland	Dec. 21, 2001, Dec. 28, 2001, *Garland Morning News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	Nov. 9, 2001	485471
Dallas and Ellis.	City of Grand Prairie	Oct. 19, 2001, Oct. 26, 2001, *Arlington Morning News.*	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	Jan. 24, 2002	485472
Ellis, Tarrant, and Dallas.	City of Grand Prairie	Nov. 14, 2001, Nov. 21, 2001, *Arlington Morning News.*	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	Oct. 17, 2001	485472
Harris	Unincorporated Areas	Nov. 8, 2001, Nov. 15, 2001, *Houston Chronicle.*	The Honorable Robert Eckels, Judge, Harris County, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Feb. 14, 2002	480287
Dallas	City of Irving	Dec. 20, 2001, Dec. 27, 2001, *Irving Morning News.*	The Honorable Joe H. Putnam, Mayor, City of Irving, P.O. Box 152288, 825 West Irving Boulevard, Irving, Texas 75015–2288.	Mar. 28, 2002	480180
Galveston	City of League City	Dec. 13, 2001, Dec. 20, 2001, *Galveston County Daily News.*	The Honorable A.T. Frankovich, Mayor, City of League City, City Hall, Suite 216, 200 West Walker, League City, Texas 77573.	Mar. 21, 2002	485488
Ellis	City of Midlothian	Nov. 8, 2001, Nov. 15, 2001, *Midlothian Mirror.*	The Honorable David Setzer, Mayor, City of Midlothian, 104 West Avenue E, Midlothian, Texas 76065–0000.	Feb. 14, 2002	480801
Parker	Unincorporated Areas	Sept. 12, 2001, Sept. 19, 2001, *Weatherford Democrat.*	The Honorable Mark Riley, Judge, Parker County, 1 Court House Square, Weatherford, Texas 76086.	Aug. 9, 2001	480520
Collin and Dallas.	City of Richardson	Nov. 20, 2001, Nov. 27, 2001, *Dallas Morning News.*	The Honorable Gary A. Slagel, Mayor, City of Richardson, P.O. Box 830309, Richardson, Texas 75083–0309.	Feb. 26, 2002	480184
Bexar	City of San Antonio	Dec. 21, 2001, Dec. 28, 2001, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Mar. 29, 2002	480045

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(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 8, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–803 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) (Modified)
AR	Patterson (City), Woodruff County (FEMA Docket No. 7601).	Cache River	U.S. Highway 64 Bridge (COE) (Gage)	*197
Maps are available for inspection at City Hall, 123 South Main, Patterson, Arkansas.				
IA	Council Bluffs (City), Pottawattamie County (FEMA Docket No. 7601).	Indian Creek	At approximately 1600 feet downstream of U.S. Highway 275.	*977
			At approximately 100 feet downstream of Frank Street.	*1023
Maps are available for inspection at the Building Division, City Hall, 209 Pearl Street, Room 207, Council Bluffs, Iowa.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 8, 2002.

Robert F. Shea, Jr.,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–801 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[IB Docket No. 00–106, FCC 01–332]

Review of Commission Consideration of Applications Under the Cable Landing License Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts streamlining procedures for processing applications for submarine cable landing licenses. The Commission initiated this proceeding to consider measures to facilitate the expansion of capacity and facilities-based competition in the submarine cable market. The Commission adopted measures designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.

DATES: Effective March 15, 2002 except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2) and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Public comments on the information collection requirements are due on or before February 13, 2002. OMB must submit written comments on the information collection requirements on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1499. For additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 01–332, adopted on November 8, 2001, and released on December 14, 2001. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://www.fcc.gov/bureaus/international/Orders/2001/fcc01332/txt.*The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893. Fax: 202–863–2898, e-mail *qualexint@aol.com.*

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in which it proposed streamlining procedures for applications seeking submarine cable landing licenses (65 FR 41613, July 6, 2000). This proceeding was one of a series of such efforts the Commission has undertaken to benefit U.S. consumers by expediting regulatory processing and enhancing the competitiveness of service providers in the global communications marketplace.

2. On November 8, 2001, the Commission adopted a Report and Order (Order) in this proceeding that focused on the objectives set out in the NPRM: (1) To institute an expedited licensing process to speed the deployment of cable capacity to the market; (2) to ensure careful Commission review of certain applications to guard against anti-competitive behavior, and (3) to adopt a pro-competitive model that could be used around the world.

3. The NPRM contained streamlining options that commenters found to be too complex and burdensome. In response to the comments, the Commission adopted a streamlining approach that tracks the streamlining procedures currently used for section 214 authorizations of international telecommunications services.

4. The Commission developed an approach under which most applications should be streamlined. An application will qualify for streamlined processing if the applicants have no affiliation with a carrier that possesses market power in the cable's destination markets. If an applicant has an affiliation with a carrier with market power in any of the cable's World Trade Organization (WTO) Member destination markets, the application will be eligible for streamlined processing if each applicant with such foreign carrier affiliation certifies that it will accept standard competitive safeguards. An application that includes an applicant that is, or is affiliated with, a carrier that has market power in a cable's non-WTO Member destination market will not be eligible for streamlining. To determine affiliation, the Order applies the twenty-five percent (25%) ownership affiliation standard that is currently applied to international section 214 and cable landing license applications.

5. The standard competitive safeguards are designed to detect and deter harm to competition in the United States that may result from a foreign carrier's market power. The safeguards include a requirement to file quarterly provisioning and maintenance reports and quarterly circuit status reports. Licensees concerned about public disclosure of the reports will be able to request a standard protective order for confidential treatment of the information.

6. The Order's competitive safeguards also include a "no special concessions" rule that prohibits all licensees from directly or indirectly agreeing to accept a "special concession" from a foreign carrier with market power in one or more of the cable's destination markets. The Order defines a special concession as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and

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interconnection to the public switched telecommunications network. The rule will apply to all licenses issued after the effective date of the Order. In addition, existing licensees may seek to modify their licenses to substitute this targeted safeguard for the current prohibition against any exclusive arrangements.

7. The Order also adopted a requirement that all cable landing licensees, like international section 214 carriers, must notify the Commission of any foreign carrier affiliations acquired after the issuance of a license where the affiliation is with a carrier in a market at the foreign end of the cable. This rule will be applied to all licensees of all submarine cables, whether authorized by the Commission prior to or after the effective date of the rules adopted herein. The Commission concluded that this rule would provide additional protection against possible anti-competitive conduct.

8. Streamlined processing is optional, and thus applicants may elect to file under the traditional procedures. Moreover, although the Order did not mandate electronic filing of applications, applicants are encouraged to file electronically. Applications that meet the criteria for streamlined processing will be acted upon in a period of forty-five (45) days following the public notice announcing the application as acceptable for filing and eligible for streamlining. Applications acceptable for filing but ineligible for streamlining will be acted upon within ninety (90) days unless the Commission notifies the applicant that the application presents issues that require additional scrutiny, in which case the Commission will extend the review for another ninety (90) days. The Commission delegated to the International Bureau the authority to identify particular applications that, although otherwise eligible for streamlining, may warrant additional public comment and require consideration on a case-by-case basis.

9. The Commission declined to adopt a specific timeframe by which it will issue public notices of applications accepted for filing. Rather, it will continue its practice of issuing public notices of applications accepted for filing in an expeditious manner. The Commission adopted the procedure used for section 214 applications of not routinely removing applications from streamlining based on the filing of comments on competitive or other issues that a party might seek to raise. In addition, the Commission adopted its proposal to grant applications by public notice unless a formal written order is deemed necessary.

10. The Commission adopted a new rule that will require fewer entities to become applicants/licensees. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a landing station in the United States; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In addition, the Commission established a process for an existing licensee that is not a U.S. landing party and owns or controls less than five percent (5%) of the cable system to seek removal from a submarine cable landing license. The Commission also clarified its rule that once an entity is a licensee, it is subject to the Commission's rules for modifications, assignments and transfers of control of interests in cable landing licenses, even where these interests are less than five percent (5%). The Commission will continue to require applicants for a cable landing license to identify all original owners, including those with less than five percent (5%) interest.

11. The Commission reminded applicants seeking common carrier landing licenses that, in addition to the cable landing license application, they must file an application for section 214 authority for the construction of new lines under § 63.18(e)(4) of the Commission's rules.

12. The Commission adopted a new process designed to replace prior review of *pro forma* transactions with a post-transaction notification procedure, thereby allowing entities to proceed with their *pro forma* transactions without delay. In addition, the Commission provided that an existing licensee may file an application to modify its license to take advantage of this post-transaction notification procedure.

13. To provide clear and publicly available conditions for licenses, the Commission codified routine conditions that traditionally have been attached to all cable landing licenses. In addition, the Commission codified the new streamlining procedures, the no special concessions rule for all licensees, the reporting requirements, the *pro forma* procedures, and the applicant-licensee rule.

14. The Order also addressed other issues raised in the NPRM or by commenters. The Commission declined to eliminate the distinction between cables operated on a common carrier and private carrier basis. The Commission suggested that parties seeking modifications to existing fee structures pursue these requests through the annual rulemaking process specifically designated for this purpose. The Commission declined to adopt suggestions to reduce the ownership information required in cable landing license and section 214 applications, deferring this issue to its 2002 biennial review of all of its rules. The Commission clarified its rule regarding the type of information an applicant must provide in its specific description of cable landing stations.

Procedural Matters

15. *Paperwork Reduction Act.* The Order contained modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 13, 2002. OMB notification of action is due March 15, 2002. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0944.

Title: Applications under the Cable Landing License Act.

Form Number: N/A.

Type of Review: Revised collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 25.

Number of Responses: 271.

Estimated Time Per Response: An average of 4 hours per response.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 995 hours.

Total Annual Costs: $352,425.

Needs and Uses: The information will be used by the Commission to determine the qualifications of applicants to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

16. *Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Review of Commission Consideration of Applications under the Cable Landing License Act, Notice of Proposed Rulemaking (NPRM). The Commission sought written public comment on the proposals of the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. (5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need for, and Objectives of, the Report and Order

17. In recent years, there has been growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic. Because of this increased demand for capacity, the rapid pace of technological development, and the emergence of non-traditional ownership and financing structures in the submarine cable marketplace, the International Bureau reviewed its policies for licensing submarine cables. As a result of the review, the Commission initiated this proceeding.

18. The Order adopts streamlining procedures for processing applications for submarine cable landing licenses. The streamlining procedures are designed to promote the expansion of capacity and facilities-based competition in the submarine cable market, which should increase innovation and lower prices for U.S. consumers of international communications services. The measures also are designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and the government, while preserving the Commission's ability to guard against anti-competitive behavior.

19. The measures adopted in the Order are part of the Commission's continuing streamlining efforts. We recognize the importance of reducing regulatory costs, providing regulatory certainty, and facilitating the planning of financial transactions. The procedures contained in the Order should allow participants in the submarine cable market to make business decisions more readily.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

20. There were no comments in response to the IRFA. In general, commenters were very supportive of the agency's proposal to streamline the submarine cable landing license process. However, some commenters were concerned that the options proposed in the NPRM could be burdensome and time-consuming for both applicants and Commission staff, and, instead of expediting the licensing process, could slow the licensing process. Thus, commenters proposed alternatives that more closely resembled the streamlining process currently used by the agency for processing international section 214 authorizations. The Order adopts an approach to streamlining that reflects the concerns raised by commenters.

21. Commenters in this proceeding presented a number of approaches and/or criteria for determining whether an application would be eligible for streamlined processing. The Order adopts an eligibility test for cables to World Trade Organization (WTO) Member countries that focuses on whether the applicants are, or are affiliated with, carriers with market power in the cable's destination market. Cables without such affiliations will be eligible for streamlining. Cables with such affiliations will be eligible if the applicants/licensees with such affiliations comply with reporting requirements that are similar to existing dominant carrier reporting requirements applicable to section 214 carriers that have affiliations with market power carriers in foreign markets. (*See* 47 CFR 63.10). In addition, all licensees will be subject to the prohibition against entering into special arrangements with foreign market-power carriers. The Commission believes that the rules and regulations adopted herein both will respond to the commenters' proposals and preserve the Commission's ability to guard against anti-competitive behavior that could result in harm to consumers in the U.S. market.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

22. The RFA directs agencies to provide a description of, and, where feasible, estimate of, the number of small entities that may be affected by the proposals, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

23. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. Some of these telephone communications companies may have ownership interests in submarine cables or use such cables to provide international service. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer of these wireline companies are small entities that might be affected by these proposals.

24. The streamlining measures contained in the Order are available to entities applying for a license to land or operate submarine cables under the Cable Landing License Act (or entities applying to assign or transfer control of interests in existing submarine cable landing licenses). The measures, however, may indirectly affect other entities as well, including users of submarine cable service such as Internet

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service providers (ISPs) that lease capacity or purchase indefeasible rights of use (IRUs) on cable systems. The policies and rules adopted in the Order will reduce the burden on all applicants regardless of size, by permitting applicants to seek to have their applications granted in a more expeditious manner. We do not have precise numbers for the small entities that will be affected by the policies and rules. Agency data indicates there have been approximately 50 cable landing applications filed with the Commission since 1992, but the total number of licensees at any particular time is difficult to determine, because many licenses are jointly held by several licensees and assignments and transfers of control of interests occur on a regular basis. Based on this information, we would estimate that, over the next five years, the streamlining procedures may benefit as many as 50 applicants meeting the SBA definition of a small entity.

25. In addition to expediting the processing of applications, the Order will require fewer entities to become applicants/licensees. This change will further reduce the number of small entities subject to the rules and regulations. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a U.S. landing station; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In order to afford existing cable landing licensees this same opportunity, small entities that meet the criteria may request to be removed from the cable landing license.

26. We note that it is difficult to determine with precision the number of small entities that will be affected by this Order. For example, some small entities with less than five percent (5%) ownership may elect to become licensees. We will be able to compile more specific data only after small entities file applications seeking removal from existing cable landing licenses. However, the following example of cable ownership interests will provide a good illustration of the potential number of small entities that could be exempt from the requirements of the Order. According to agency data at the time of application, the percentage of ownership interests for an existing submarine cable system, the TAT–14 cable, were as follows: four U.S. carriers owned five percent (5%) or greater (these four carriers owned a total of 32.57 percent); fifteen U.S. carriers owned less than five percent (5%) (these fifteen carriers owned a total of 16.93 percent); and thirty-two foreign carriers owned the remaining 50.50 percent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. Any reporting or recordkeeping requirements imposed on small entities will be insignificant. Generally, applicants seeking a cable landing license will submit the same information that is currently required by the rules. Applicants may continue to file for a license under the existing procedures, and some applicants will not meet the eligibility criteria for streamlined processing. Applicants may file electronic or paper applications.

28. We believe that many small entities below the five percent (5%) ownership criteria may decide not to be cable landing license applicants, and therefore, such entities will not be subject to the reporting, recordkeeping, or compliance requirements applicable to licensees. Small entities that are currently licensees, and meet these criteria, may file an application requesting that they be removed from the license. The application would demonstrate that the entity: (1) Does not own or control a U.S. cable landing station; and (2) holds less than five percent (5%) interest in the cable system. The application would be filed with the Commission and copies would be served on each other licensee of the cable system. This burden should be minimal because the information would be readily available from the information that the entity provided at the time of becoming an initial applicant or from other business records showing an increase or decrease of ownership interest. As an existing licensee of a cable landing license, the entity would have ready access to the names and addresses of other licensees. Thus, the service burden also would be minimal.

29. The Order also adopts standard competitive safeguards that will impose additional reporting burdens on certain entities. We believe, however, that very few small entities will be burdened with this requirement. Reporting requirements will be imposed only on those applicants that have an affiliation with a carrier with market power in any of the cable's destination markets. These applicants will be required to provide provisioning and maintenance reports that include: (a) Identification of each facility or service provisioned and/or maintained; (b) for provisioned facilities and services, the volume or quantity provisioned and the order-to-delivery intervals; and (c) for each facility and service, the number of outages and intervals to restoration. Also, applicants will be required to provide quarterly circuit status reports, on a facility-specific basis, in the format set out by the Commission's annual circuit status manual. If applicants have a concern over the public disclosure of their reports, they may seek confidential treatment of the information and request a standard protective order.

30. The Order also adopts a rule that requires licensees to notify the Commission of new affiliations that they acquire with foreign carriers in a cable's destination market. If the Commission deems it necessary, it will impose on the newly affiliated licensee the reporting requirements discussed above. This rule is similar to the notification rule that applies in the context of international section 214 carriers, *see* 47 CFR 63.11. We believe this reporting requirement will have minimal applicability to small entities because it will apply only to licensees, and it is likely, under our rules, that few small entities (that is, those independently owned and operated companies with no more than 1500 employees) will be required to become licensees.

31. The Order also adopts a new process designed to remove prior Commission review of pro forma assignments or transfers of control of interests in submarine cable landing licenses. Again, this process will have minimal applicability to small entities to the extent they are not cable licensees. Pro forma transactions do not result in a change in the ultimate control of the interest in the cable landing license or in changes to the cable system itself as previously evaluated at the time of the initial license application. Under the Order, a pro forma assignee or a person or company that is the subject of a pro forma transfer of control of an interest in a cable landing license will no longer be required to seek prior approval, but if electing post-transaction notification, must: (1) Notify the Commission no later than thirty (30) days after the pro forma transaction is consummated; (2) certify that the assignment or transfer of control is pro forma, and together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control; and (3) provide an update to any ownership information required by our rules. Under this new rule, the burden of seeking prior approval would be eliminated for most entities, thus allowing them to proceed with their pro forma transaction without delay. Entities would file the same information after the transaction instead of prior to the transaction. The Order provides that existing licenses could be modified, at a licensee's request, to be subject to this post-transaction process. The licensee would be required to file an application with the Commission seeking a modification of its license to incorporate this limited exception to the prior approval requirement currently set forth in the applicable license condition. This new process will impose a slight burden on applicants that have been granted a cable landing license and wish to take advantage of this new process. Presumably licensees will only subject themselves to this burden if they believe the benefit of expedited post-transaction processing of pro forma assignments or transfers of control will offset any burden. Similarly, the Order states that licensees of previously authorized cables may file applications to modify their licenses to substitute the new, more narrowly tailored "no special concessions" rule for the "no exclusive arrangements" condition contained in existing licenses.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

33. In the NPRM, we requested comment on whether small entities would be adversely affected by the proposals and whether the proposals would enable small entities to respond to the demands of the market with minimum regulatory oversight, delays, and expenses. Commenters did not specifically address the impact on small entities. Rather, commenters expressed concerns that the NPRM proposals could be burdensome and time-consuming on all entities. Commenters proposed alternative measures more aligned with the existing section 214 streamlining procedures. As a result, the Order adopts measures that are closely modeled on the streamlining process for international section 214 authorizations which has been successful and not burdensome.

34. The procedures adopted in the Order are designed to provide more certainty and flexibility for applicants, encourage investment and infrastructure development by multiple providers, expand available submarine cable capacity, and decrease application processing time. This decision extends the benefits of streamlined processing to as many applicants as possible, including small entities. It reduces the regulatory and procedural burdens while preserving the Commission's ability to guard against anti-competitive behavior. This streamlined processing may benefit small entities especially because the procedures should facilitate entry by such entities into the submarine cable market and expand international services available to such entities. In addition, we have developed a definition of "licensee" that should permit a large number of small entities to be exempt from the requirements contained in the Order.

35. Finally, the reporting requirements and other measures adopted in the Order will minimize any economic impact on small entities. The reporting requirements, which apply only to certain licensees, will allow the Commission to monitor and detect anti-competitive behavior without imposing unnecessarily burdensome regulations on a U.S. licensee due to its affiliation with a foreign carrier.

36. To simplify compliance with the rules and requirements, the Order codifies the submarine cable landing license conditions. This step will provide clear and publicly available standard conditions for all entities. Also, applicants will no longer be required to submit a letter affirmatively accepting the terms and conditions of the cable landing license.

Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

37. Accordingly, it is ordered that, pursuant to sections 1, 4(i) and (j), 201–255 303(r) of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), and the Cable Landing License Act, 47 U.S.C. 34–39 and Executive Order No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. 301, this Report and Order *is hereby adopted* and the Commission's rules, 47 CFR part 1, *are amended* as set forth in the Rule Changes.

38. *It is further ordered* that the policies, rules and requirements established in this decision *shall take effect* March 15, 2002, except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2), and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

39. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications miscellaneous rules relating to common carriers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(7), and (a)(8); redesignating paragraph (a)(9) as (a)(10); adding new paragraphs (a)(9), (a)(11), (g) through (m) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those

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coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

* * * * *

(7) A list of the proposed owners of the cable system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable;

(8) For each applicant of the cable system, a certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a foreign cable landing station in any of the cable's destination markets. Include the citizenship of each applicant and information and certifications required in § 63.18(h) through (k), and in § 63.18(o), of this chapter;

(9) A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and

* * * * *

(11) (i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to § 1.768, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. *See § 1.768. See also* paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).

(iii) An assignee or transferee shall notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

* * * * *

(g) *Routine conditions.* Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002:

(1) Grant of the cable landing license is subject to:

(i) All rules and regulations of the Federal Communications Commission;

(ii) Any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and

(iii) Any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;

(2) The location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes;

(3) The licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;

(4) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended;

(5)(i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and from agreeing to accept special concessions in the future.

(ii) For purposes of this section, a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

Note to paragraph (g)(5): Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib*.

(6) Except as provided in paragraph (g)(7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Commission gives prior consent in writing;

(7) A pro forma assignee or a person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro forma transfer of control must notify the Secretary, Federal Communications Commission,

Washington, DC 20554, with a copy to the Chief, International Bureau, Federal Communications Commission, no later than thirty (30) days after the assignment or transfer of control is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment or transfer of control was pro forma, as defined in § 63.24(a) of this chapter, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. A single letter may be filed for an assignment or transfer of control of more than one license issued in the name of a licensee if each license is identified by the file number under which it was granted;

(8) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. *See* paragraph (a)(5) of this section;

(9) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of § 1.1307 implementing the National Environmental Policy Act of 1969. *See* § 1.1307(a) and (b). The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. *See also* § 1.1306 note 1 and § 1.1307(c) and (d);

(10) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order No. 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(12) The licensee shall comply with the requirements of § 1.768;

(13) The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules; and

(14) The licensee shall notify the Secretary, Federal Commissions Commission, Washington, DC 20554, in writing, within thirty (30) days of the date the cable is placed into service, of the date the cable was placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

(h) *Applicants/Licensees.* Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:

(1) Any entity that owns or controls a cable landing station in the United States; and

(2) All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.

(i) *Processing of cable landing license applications.* The Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Commission deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an applicant does not seek streamlined processing, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

(j) *Applications for streamlining.* Each applicant seeking to use the streamlined grant procedure specified in paragraph (i) of this section shall caption its application and any cover letter with "Application for Cable Landing License—Streamlined Processing Requested." Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230; and Defense Information Systems Agency, Code RGC, 701 S. Courthouse Road, Arlington, Va. 22204, and shall certify such service on a service list attached to the application or other filing.

(k) *Eligibility for streamlining.* Each applicant must demonstrate eligibility for streamlining by:

(1) Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;

(2) Demonstrating pursuant to § 63.12(c)(1)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or

(3) Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in paragraph (l) of this section. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

(l) *Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's WTO Destination Market.* Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j) and (k) of this section, must comply with the following requirements:

(1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:

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(i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);

(ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and

(iii) The number of outages and intervals between fault report and facility or service restoration; and

(2) File quarterly circuit status reports, within ninety (90) days from the end of each calendar quarter and in the format set out by the § 43.82 of this chapter annual circuit status manual with the exception that activated or idle circuits must be reported on a facility-by-facility basis and derived circuits need not be specified. *See* § 63.10(c)(5) of this chapter.

(m) (1) Except as specified in paragraph (m)(2) of this section, amendments to pending applications, and applications to modify a license, including amendments or applications to add a new applicant or licensee, shall be signed by each initial applicant or licensee, respectively. Joint applicants or licensees may appoint one party to act as proxy for purposes of complying with this requirement.

(2) Any licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license. Such application must include a demonstration that the applicant is not required to be a licensee under paragraph (h) of this section and that the remaining licensee(s) will retain collectively de jure and de facto control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license, and must be served on each other licensee of the cable system.

Note to § 1.767: The terms "affiliated" and "foreign carrier," as used in this section, are defined as in § 63.09 of this chapter except that the term "foreign carrier" also shall include any entity that owns or controls a cable landing station in a foreign market.

3. Add § 1.768 to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

Any entity that is licensed by the Commission ("licensee") to land or operate a submarine cable landing in a particular foreign destination market that becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, including an entity that owns or controls a cable landing station in that market, shall notify the Commission of that affiliation.

(a) *Affiliations requiring prior notification:* Except as provided in paragraph (b) of this section, the licensee must notify the Commission, pursuant to this section, forty-five (45) days before consummation of either of the following types of transactions:

(1) Acquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.

(b) *Exceptions:* (1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier, regardless of whether the destination market where the cable lands is a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an international section 214 application or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in a cable landing station or in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the licensee certifies that the destination market where the cable lands is a WTO Member and provides certification to satisfy either of the following:

(i) The licensee demonstrates that its foreign carrier affiliate lacks market power in the cable's destination market pursuant to § 63.10(a)(3) of this chapter (*see* § 63.10(a)(3) of this chapter); or

(ii) The licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation. *See* § 1.767(l).

(c) *Notification after consummation:* Any licensee that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.

Example 1 to paragraph (c). Acquisition by a licensee (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the licensee) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent (25%) but not controlling is subject to paragraph (c) of this section but not to paragraph (a) of this section.

Example 2 to paragraph (c). Notification of an acquisition by a licensee of a hundred percent (100%) interest in a foreign carrier may be made after consummation, pursuant to paragraph (c) of this section, if the foreign carrier operates only as a resale carrier.

Example 3 to paragraph (c). Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent (25%) interest in the capital stock of the licensee may be made after consummation, pursuant to paragraph (c) of this section, if the licensee demonstrates in the post-notification that the foreign carrier lacks market power in the cable's destination market or the licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation.

(d) *Cross-reference:* In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to the requirements of the license granted under § 1.767 or § 1.767(g), the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. *See* § 1.767(g).

(e) *Contents of notification:* The notification shall certify the following information:

(1) The name of the newly affiliated foreign carrier and the country or countries at the foreign end of the cable in which it is authorized to provide telecommunications services to the public or where it owns or controls a cable landing station;

(2) Which, if any, of those countries is a Member of the World Trade Organization;

(3) The name of the cable system that is the subject of the notification, and the FCC file number(s) under which the license was granted;

(4) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent (10%) of the equity of the licensee, and the percentage of equity owned by each of those entities (to the nearest one percent (1%));

(5) Interlocking directorates. The name of any interlocking directorates, as defined in § 63.09(g) of this chapter, with each foreign carrier named in the notification. *See* § 63.09(g) of this chapter.

(6) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the licensee shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the licensee shall include the actual date of closing.

(7) If a licensee relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the licensee is relying. Licensees relying upon the exceptions in paragraph (b)(2) of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with the reporting requirements in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) If the licensee seeks to be excepted from the reporting requirements contained in § 1.767(l), the licensee should demonstrate that each foreign carrier affiliate named in the notification lacks market power pursuant to § 63.10(a)(3) of this chapter. *See* § 63.10(a)(3) of this chapter.

(g) *Procedure.* After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within fourteen (14) days of the public notice.

(1) If the Commission deems it necessary at any time before or after the deadline for submission of public comments, the Commission may impose reporting requirements on the licensee based on the provisions of § 1.767(l). *See* § 1.767(l).

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section in which the foreign carrier is authorized to operate in, or own a cable landing station in, a non-WTO Member, the licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market by demonstrating either that the foreign carrier lacks market power in that destination market pursuant to § 63.10(a)(3) of this chapter or the market offers effective opportunities for U.S. companies to land and operate a submarine cable in that country. If the licensee is unable to make either required showing or is notified that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to paragraph (g)(2): The assessment of whether a destination market offers effective opportunities for U.S. companies to land and operate a submarine cable will be made under the standard established in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97–142 and 95–22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23946 at paragraph 130, 62 FR 64741, December 9, 1997.

(h) All licensees are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five (45) days after filing. During this period if the information furnished is no longer accurate, the licensee shall as promptly as possible, and in any event within ten (10) days, unless good cause is shown, file with the Secretary in duplicate a corrected notification referencing the FCC file numbers under which the original notification was provided.

(i) A licensee that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty (20) days after filing. Such a request must be made prominently in a cover letter accompanying the filing.

Note to § 1.768: The terms "affiliated" and "foreign carrier," as used in this section, are defined as in § 63.09 of this chapter except that the term "foreign carrier" also shall include an entity that owns or controls a cable landing station in a foreign market.

[FR Doc. 02–789 Filed 1–11–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 98–156; FCC 01–357]

Certification of Equipment in the 24.05–24.25 GHz Band at Field Strengths up to 2500 mV/m

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to allow the operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths of up to 2500 mV/m. Devices operating at these higher levels will be required to use highly directional antennas to minimize the possibility of creating harmful interference to other services in the band. This action will facilitate the introduction of a variety of new, innovative products and services in the band, such as managing the network traffic on a high-speed wireless internet service or connecting a multiple building intra-office network.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *nmcneil@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 98–156, FCC 01–357, adopted December 11, 2001 and released December 14, 2001. The full text of this document is available on the Commission's internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* e-mail, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. In the *NPRM* in this proceeding, the Commission proposed to modify § 15.249 to allow operation of fixed point-to-point devices in the 24.05–24.25 GHz band segment of the 24 GHz spectrum in accordance with the field strength limit and antenna gain requirements requested by Sierra Digital Communications, Inc., 63 FR 50185, September 21, 1998. This *Report and Order* amends § 15.249 to permit the

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operation of unlicensed point-to-point transmitters in the 24.05–24.25 GHz band with field strengths up to 2500 mV/m measured at 3 meters, provided that such devices use directional antennas with gains of at least 33 dBi or a main lobe beamwidth not exceeding 3.5 degrees. Using a directional antenna with either the specified minimum gain or maximum main lobe beamwidth will produce a narrow radiation pattern thereby minimizing the area over which interference to other devices may occur. We find that it is in the public interest to allow such operations on an unlicensed basis to supplement the growing demand for licensed point-to-point facilities to satisfy important communications needs. As Sierra observes, increasing the field strength limit will promote greater use of part 15 unlicensed devices for purposes such as emergency restoration of communications in disaster situations, low-cost telecommunications delivery in rural areas, and other beneficial applications.

2. ARRL argues that the amateur service in the 24.05–24.25 GHz band uses sensitive receivers that will be threatened by part 15 devices operating pursuant to the proposed rules. We do not agree that there will be an increased risk of interference to amateur operations in the 24.05–24.25 GHz band segment. The use of a directional antenna will change the shape of the radiated radio frequency field but not the amount of geographic area contained in that field. While signals will travel further in the intended direction of communication, they will be limited in all other directions. As Sierra demonstrated in response to ARRL's concerns, the total area encompassed by the radiated field of the directional antenna will be equal to or less than the area encompassed by the radiated field of a lower-powered omni-directional antenna. We also note that § 15.245 of the rules allows field disturbance sensors to operate in the same band at 2500 mV/m. These devices have been authorized to operate for years with no adverse affects to other users in the band, including amateur operations. We thus find that, devices operating with field strengths up to 2500 mV/m with a directional antenna as prescribed herein will have the same or less interference potential as other devices currently authorized under part 15. Our decision here is also consistent with our earlier ruling in the *Report and Order* in ET Docket No. 96–8 wherein the Commission stated that the directional antenna requirement adopted for spread spectrum transmitters would ensure that the area over which harmful interference can occur is equivalent to what would be caused by a transmitter using an omni-directional antenna operating at a lower output power.

3. In an effort to ensure, to the greatest extent possible, that devices operating in accordance with these regulations will not create unwanted adjacent band interference, we are imposing more stringent operating conditions than proposed in the *NPRM*. Although the *NPRM* proposed a frequency stability requirement of only 0.003%, we will require these devices to maintain their transmitting frequency within 0.001% of nominal. Requiring 0.001% frequency stability in lieu of 0.003% will ensure that emissions remain within the authorized transmission bandwidth and minimize drift into the adjacent bands which are allocated on a primary basis to the amateur satellite service (24.00 24.05 GHz) and the DEMS (24.25–24.45 GHz) both of which are susceptible to interference from relatively low-level signals. Additionally, we are requiring, under § 15.249, that the field strength of emissions outside of the 24.05–24.25 GHz band, except for harmonics, be attenuated by at least 50 dB below the fundamental or to the general emissions limits contained in § 15.209 of the Commission's rules, whichever is the lesser attenuation.

4. Finally, we will address harmonic emissions. Section 15.209 set the limit for out-of-band emissions of part 15 devices, which is 500 uV/m at 3 meters. Harmonic emissions from transmitters operating under § 15.249 are permitted at different levels, generally higher, than other out-of-band emissions, and those limits are specified in that section. Section 15.205(b), however, provides that the § 15.209 limits shall not be exceeded in the restricted bands. All of the harmonics of the 24 GHz transmitters at issue here fall into the restricted band above 38.6 GHz, and thus must observe the 15.209 limits, rather than the less restrictive 15.249 limits. The Commission is considering in a separate proceeding, the possibility of removing the § 15.209 limits for some bands above 38.6 GHz, among other issues. For more information see *Notice of Proposed Rulemaking* in ET Docket 01–278, released October 15, 2001, 66 FR 59209, November 27, 2001.

5. In conclusion, we find that the public interest is served by permitting unlicensed point-to-point devices to operate at 2500 mV/m, under the conditions discussed, in the 24.05–24.25 GHz band. The band has accommodated unlicensed transmissions, government radar, and amateur facilities with no major conflicts. By allowing a greater variety of systems to occupy the band, we will provide the opportunity for innovative products and services to be made available to the American public as quickly as demand dictates.

Final Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (NPRM).[2] The Commission sought written public comment on the proposal in the NPRM, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in the Report and Order conforms to the RFA.[3]

A. Need for and Objective of the Rules

7. The rule changes adopted in this *Report and Order* will help satisfy the growing demand for readily available unlicensed systems in the 24 GHz band.[4] The rules will allow fixed point-to-point transmitters to operate in the 24.05–24.25 GHz band at field strengths of up to 2500 mV/m. This action will facilitate the introduction of a variety of new services to the band. The requirement to use directional antennas will minimize the possibility of creating harmful interference to existing services while, at the same time, providing for communication links of greater distances.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

8. No comments were filed in direct response to the IRFA. Moreover, no comments in response the *NPRM* discussed small business-related issues.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[8]

10. The Commission has not developed a definition of small entities applicable to unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees on order to qualify as a small business concern.[9] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[10]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The changes adopted in this proceeding do not change any of the current reporting or recordkeeping requirements. Further, the regulations add permissible methods of operation and do not require the modification of any existing products.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The rule changes adopted in this *Report and Order* will permit manufacturers, including small entities, to market more diverse products in the 24 GHz band. The American Radio Relay League filed comments suggesting that the Commission also require manufacturers to maintain detailed records of their customers' installations of these devices. This information would be given to ARRL periodically to aid in coordination. The Commission believes that compliance with this additional regulation would create an undue economic burden for device manufacturers, especially smaller entities. The Commission noted that instituting such a rule could lead to more expensive part 15 equipment and slower speed to market. Therefore, the Commission declined to adopt such a requirement.

F. Report to Congress

13. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[11] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

14. It is Further Ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Amend § 15.249 as follows:

(a) Revise paragraph (a) introductory text;

(b) Redesignate paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f);

(c) Add new paragraph (b); and

(d) Revise newly designated paragraph (e).

§ 15.249 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, 5725–5875 MHz, and 24.0–24.25 GHz.

(a) Except as provided in paragraph (b) of this section, the field strength of emissions from intentional radiators operated within these frequency bands shall comply with the following:

* * * * *

(b) Fixed, point-to-point operation as referred to in this paragraph shall be limited to systems employing a fixed transmitter transmitting to a fixed remote location. Point-to-multipoint systems, omnidirectional applications, and multiple co-located intentional radiators transmitting the same information are not allowed. Fixed, point-to-point operation is permitted in the 24.05–24.25 GHz band subject to the following conditions:

(1) The field strength of emissions in this band shall not exceed 2500 millivolts/meter.

(2) The frequency tolerance of the carrier signal shall be maintained within ±0.001% of the operating frequency over a temperature variation of -20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(3) Antenna gain must be at least 33 dBi. Alternatively, the main lobe beamwidth must not exceed 3.5 degrees. The beamwidth limit shall apply to both the azimuth and elevation planes. At antenna gains over 33 dBi or beamwidths narrower than 3.5 degrees, power must be reduced to ensure that the field strength does not exceed 2500 millivolts/meter.

* * * * *

(e) As shown in § 15.35(b), for frequencies above 1000 MHz, the field strength limits in paragraphs (a) and (b) of this section are based on average limits. However, the peak field strength of any emission shall not exceed the maximum permitted average limits specified above by more than 20 dB under any condition of modulation. For point-to-point operation under paragraph (b) of this section, the peak field strength shall not exceed 2500 millivolts/meter at 3 meters along the antenna azimuth.

* * * * *

[FR Doc. 02–871 Filed 1–11–02; 8:45 am]

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[1] 5 U.S.C. 603.

[2] *See* ET Docket 98–156, 63 FR 50185 (1998).

[3] *See* 5 U.S.C. 604.

[4] Unlicensed transmitters are permitted to operate in the 24 GHz band pursuant to certain conditions. *See Report and Order* at paragraph 2. *See also* 47 CFR 15.249.

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[8] 15 U.S.C. 632.

[9] *See* 13 CFR 121.201, NAICS Code 334220 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

[10] *See* U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663 (NAICS Code 334220).

[11] *See* 5 U.S.C. 801(a)(1)(A).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket No. 01–14; FCC 01–328]

2000 Biennial Regulatory Review—Spectrum Aggregation Limits for Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's reexamination of the need for the Commercial Mobile Radio Service (CMRS) spectrum aggregation limit, or "spectrum cap," and cellular cross-interest rules as part of its 2000 biennial review of the Commission's regulations, pursuant to section 11 of the Communications Act of 1934, as amended (Communications Act). The intended effects of this action are to "sunset" the spectrum cap rule effective January 1, 2003; permit the Commission to consider, in conjunction with the United States Department of Justice (DOJ), substantive and processing guidelines for the Commission's case-by-case review of transactions that would raise concerns similar to those that the spectrum cap was designed to address; raise the spectrum cap to 55 MHz in all markets during the transition period; and eliminate the cellular cross-interest rule in Metropolitan Statistical Areas (MSAs), while retaining it in Rural Service Areas (RSAs).

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Lauren Kravetz Patrich or John Branscome, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order* ("*R&O*") in WT Docket No. 01–14, FCC 01–328, adopted November 8, 2001, and released December 18, 2001, is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 Twelfth Street, S.W., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 Twelfth Street, S.W., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text is also available under the file name fcc01328.doc on the Commission's Internet site at *www.fcc.gov*.

Synopsis of Order

I. Background

A. CMRS Spectrum Cap

1. *CMRS Spectrum Aggregation Limit.* The CMRS spectrum cap provides that "[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS * * * shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area, except that in Rural Service Areas (RSAs), * * * no licensee shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any RSA." 47 CFR 20.6(a). Determining whether a "significant overlap" exists is necessary because of the use of different licensing and service areas for cellular, broadband Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) spectrum. When a PCS license and a cellular or SMR license are involved, a significant overlap exists when ten percent or more of the population of the designated PCS licensed service area is within the Cellular Geographic Service Area (CGSA) or SMR service area(s) in question.

2. *History of the CMRS Spectrum Cap.* The CMRS spectrum cap was established in 1994, in anticipation of PCS licensing, and in recognition that direct competition was likely to develop among cellular, broadband PCS, and SMR. Previously, the Commission had imposed service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership. In adopting the CMRS spectrum cap to complement these latter two rules, the Commission found that an overall cap applicable to cellular, broadband PCS, and SMR spectrum would add certainty to the marketplace without sacrificing the benefits of pro-competitive and efficiency-enhancing aggregation. The Commission explained that, if licensees were to aggregate sufficient amounts of CMRS spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers. The Commission determined that the imposition of a cap on the amount of covered spectrum that a single entity could control in any one geographic area would limit the ability of any entity to increase prices artificially. The Commission also found that a cap on broadband PCS, SMR, and cellular spectrum holdings would prevent licensees from artificially withholding capacity from the marketplace. The Commission concluded that a 45 MHz cap provided a "minimally intrusive means" for ensuring that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation. *Third Report and Order* (59 FR 59945, November 21, 1994).

3. In 1996, in light of the U.S. Court of Appeals for the Sixth *Circuit's ruling in Cincinnati Bell Telephone Co.* v. *FCC* (69 F.3d 752 (6th Cir. 1995)) remanding the cellular/PCS cross-ownership restriction, the Commission eliminated the service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership, and decided to rely solely on the 45 MHz CMRS spectrum cap to ensure that multiple service providers would be able to obtain broadband PCS spectrum and thereby facilitate the development of competitive markets for wireless services. The Commission analyzed potential market concentration and again found that a 45 MHz spectrum cap was sufficient "to avoid excessive concentration of licenses and promote and preserve competition" while "maintaining incentives for innovation and efficiency."

4. In the *First Biennial Review Order* ("*First Biennial Review Order*") (64 FR 54564, October 7, 1999), the Commission decided substantially to retain the CMRS spectrum cap, together with the cellular cross-interest rule, but ordered modifications to reflect circumstances in rural areas and to permit passive institutional investors to acquire greater non-attributable interests in CMRS carriers. The Commission concluded that the spectrum cap remained a simple and effective means of mitigating the competitive consequences of the spectrum-related barriers to entry in CMRS markets, and found that the 45 MHz limit struck the proper balance (in non-rural areas) between preserving opportunities for competitive entry and permitting carriers to achieve economies of scope and scale. The Commission did, however, raise the cap to 55 MHz in RSAs. This decision was based on findings that the potential consumer benefits in rural areas from competitive, facilities-based entry were likely to be limited by the economics of offering service to lower-density populations. The Commission also amended the spectrum cap rule to provide that equity interests of up to forty percent held by

passive institutional investors are not attributable. At the same time, the Commission adopted a waiver process to meet the spectrum requirements for third-generation (3G) and other advanced wireless services until additional spectrum for next generation applications could be allocated.

B. Cellular Cross-Interest Rule

5. *Cellular Cross-Interest Rule.* Section 22.942 of the Commission's rules limits the ability of parties to have interests in cellular carriers on different channel blocks in a single geographic area. 47 CFR 22.942. To the extent licensees on different channel blocks have any degree of overlap between their respective CGSAs, the rule prohibits any entity with an attributable interest in one licensee from having a direct or indirect ownership interest of more than five percent in the other licensee. An attributable interest is defined generally to include an ownership interest of twenty percent or more, as well as any controlling interest. However, an entity may have non-controlling and otherwise non-attributable direct or indirect ownership interests of less than twenty percent in licensees for different channel blocks in overlapping CGSAs. Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

6. *History of the Cellular Cross-Interest Rule.* The cellular cross-interest rule was adopted in 1991, when cellular licensees were the predominant providers of mobile voice services. In adopting this rule, the Commission stated that "in a service area where only two cellular carriers are licensed per market, the licensee on one frequency block in a market should not own an interest in the other frequency block licensee in the same market." Thus, the Commission adopted restrictions on a party's ability to hold ownership interests in both cellular licensees in the same geographic area "[i]n order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems." In the *First Biennial Review Order*, the Commission determined that the cellular cross-interest rule was still required to protect against substantial anticompetitive threats from common ownership between the two cellular carriers in any given geographic area. The Commission found that cellular carriers served approximately eighty-six percent of nationwide mobile telephone subscribers at the end of 1998, and determined that the percentage was less than seventy in only a few major metropolitan markets. However, because competition from other services had increased on the whole since the rule's inception in 1991, the Commission relaxed the rule's attribution standards to the current limits described above.

C. Notice of Proposed Rulemaking

7. In the *Notice of Proposed Rulemaking* ("*NPRM*") (66 FR 9798, February 12, 2001) (*corrected* at 66 FR 10567, February 15, 2001) in this proceeding, the Commission initiated a reexamination of the need for CMRS spectrum aggregation limits as part of its 2000 biennial regulatory review of the Commission's telecommunications regulations. Section 11 of the Communications Act requires the Commission, every two years, to review all regulations that apply to "the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." The *NPRM* initiated the Commission's second comprehensive review of the CMRS spectrum cap and cellular cross-interest rules, the two regulations that currently limit the aggregation of broadband CMRS spectrum.

8. The *NPRM* requested public comment, including the submission of specific market data and studies, to assist the Commission's determination of whether the CMRS spectrum aggregation rules are no longer necessary in the public interest and, if they are necessary, whether the Commission's existing spectrum limits should be modified. First, comment was requested on whether spectrum aggregation limits, including the cellular cross-interest rule, continue to enhance meaningful competition in today's CMRS marketplace. In this regard, comment was sought on the development of meaningful economic competition, as well as the potential competitive consequences of consolidation that may occur without spectrum aggregation limits. Next, comment was requested on spectrum management and other regulatory considerations, particularly in the context of spectrum suitable for broadband CMRS. Under this inquiry, the Commission sought to examine any costs that the spectrum aggregation limits may impose on the development of advanced wireless services, the possible benefits of prophylactic standards, and whether these standards promote efficiency. In addition, comment was sought on how recent international developments should affect the Commission's public interest determination.

9. The Commission also sought comment on the implications for its processes of DOJ's antitrust law enforcement responsibilities. The Commission asked whether it should defer to DOJ in CMRS license transfers, and, if so, what form such deference should take. Specifically, the Commission asked whether all transfers resulting in consolidation of spectrum below a certain threshold should be exempt from competitive analysis under section 310(d) of the Communications Act. The Commission acknowledged that antitrust laws may place adequate focus on mergers that threaten to curtail actual competition. Therefore, the Commission asked whether it may, and should, refrain from independent review of the competitive effects of a transaction that is subject to some specified level of DOJ review, and if so, what that level should be.

10. The *NPRM* also requested comment on whether specific attributes of the CMRS spectrum cap and cellular cross-interest rules should be modified, if those rules are generally retained, to allow some of the benefits that may arise from additional cross-ownership interests. To the extent that certain revisions would reduce any costs of the rules or promote public interest objectives, the Commission sought comment on how to implement them without significantly increasing barriers to entry for new competitors or reducing benefits to wireless consumers.

II. Discussion

A. Standard for Decision

1. Section 11 of the Communications Act

11. The Telecommunications Act of 1996 (1996 Act) (Public Law No. 104–104, 110 Stat. 56 (1996)) significantly amended the Communications Act to permit and encourage competition in various communications markets. Congress anticipated that the development of competition would lead market forces to reduce the need for regulation. Section 11 of the Communications Act, which was added by the 1996 Act, provides that every two years the Commission shall review all regulations that apply to "the operations or activities of any provider of telecommunications service" and "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." Section 11 further provides that in carrying out this review, the Commission "shall repeal or

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modify any regulation it determines to be no longer necessary in the public interest."

12. Consistent with section 11, the Commission stated in the *NPRM* that its fundamental inquiry is whether, as a result of meaningful economic competition among providers of telecommunications services, spectrum aggregation limits are no longer necessary in the public interest. The Commission sought comment on what constitutes "meaningful economic competition" under section 11, and to what degree the relevant competitive conditions have changed since the Commission's last biennial review of these rules. If meaningful economic competition were found to exist, the Commission asked whether this would mean that spectrum aggregation limits have served their purpose and are no longer in the public interest, or whether public interest considerations nevertheless would warrant continued use of spectrum aggregation limits.

13. Commenters differ on how section 11 should be applied and whether there might be public interest reasons to retain spectrum aggregation limits if meaningful economic competition exists. The Commission, however, concludes that it need not, for purposes of this proceeding, go beyond the plain meaning of the text of section 11 of the Communications Act. The language places an obligation on the Commission to "determine" if the regulation in question "is no longer necessary in the public interest as the result of meaningful economic competition." Section 11 requires the Commission to determine "whether any of these regulations are no longer in the public interest because competition between providers renders the regulation no longer meaningful." The Communications Act then explicitly provides that "the Commission *shall* repeal or modify" any regulation that it determines is no longer necessary in the public interest as the result of meaningful economic competition. The statutory language does not impose any particular burdens on the opponents or proponents of a particular rule, but rather places the burden on the Commission to make the requisite determinations. In exercising its obligation under section 11, the language suggests that the Commission must examine why the rule was "necessary" in the first place and whether it is necessary any longer. Thus, in making the determination whether a rule remains "necessary" in the public interest once meaningful economic competition exists, the Commission must consider whether the concerns that led to the rule or the rule's original purposes may be achieved without the rule or with a modified rule.

14. The primary public interest purpose underlying the original adoption of the spectrum aggregation limits was to promote pro-competitive ends in CMRS markets. In initially setting the spectrum cap in 1994, the Commission's goal was to "discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency." The Commission found that its "goal of preventing anticompetitive outcomes" could be accomplished by creating a cap on broadband PCS, cellular, and SMR licensees, which would "prevent licensees from artificially withholding capacity from the market." Consistent with this goal, the Commission stated that the spectrum cap sought "to promote diversity and competition in mobile services, by recognizing the possibility that mobile service licensees might exert undue market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum" Furthermore, the absence of a spectrum cap could undermine other statutory goals related to the promotion of competition, "such as the avoidance of excessive concentration of licenses and the dissemination of licenses among a wide variety of applicants." In addition, the Commission found that the cap not only promoted competition, but also benefited the public interest by allowing review of CMRS acquisitions in an administratively simple manner and lending certainty to the marketplace. In 1996 and 1999, the Commission reaffirmed the primary public interest purpose of promoting pro-competition ends in the CMRS markets. In 1996, the Commission also found that the spectrum cap, in addition to other tools at its disposal, furthered the goals of section 309(j) of the Communications Act. *CMRS Spectrum Cap Report and Order* (61 FR 33859, July 1, 1996) (*corrected* at 61 FR 51233, October 1, 1996). (The Commission notes that there are other tools to achieve goals other than competition, including case-by-case review, as well as prescribing license area designations and bandwidth assignments, and using bidding credits to create opportunities for new entrants.) In adopting the cellular cross-interest rule, the Commission acted "[i]n order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems."

2. Meaningful Economic Competition

15. In the case of the spectrum cap and cellular cross-interest rules, the Commission's inquiry focuses on the state of competition in the consumer markets for CMRS. At the same time, the Commission recognizes that spectrum is an input in CMRS markets. Indeed, this recognition prompted adoption of the spectrum cap as a means of ensuring CMRS competition in the first place. Although participants in the mobile telephony and CMRS spectrum markets are largely the same entities under current conditions, this could change if leasing arrangements become more common. *Secondary Markets Policy Statement* (65 FR 80367, December 21, 2000). Again, the Commission emphasizes that the markets with which it is principally concerned are the output markets for services, and that conditions in the input markets provide only a partial proxy measure of competition in the output markets. Nonetheless, in the context of the output market, the state of control over the spectrum input is a relevant factor.

16. In evaluating CMRS markets, the Commission considers both actual and potential competition. In general, potential competition can be as important as actual competition in promoting desirable outcomes. In the case of CMRS, however, it appears that actual competition among those firms already providing service has been the most significant factor in the gains that have been achieved in recent years. There remains relatively little potential for additional entry into urban markets in the near term, because most licenses for currently allocated spectrum have been constructed and put into service. In rural markets, a significant number of licenses have not yet been put into service, but demographic and geographic conditions generally appear to render additional large-scale entry economically difficult to support. As additional CMRS-suitable spectrum becomes available, the overall effect on the CMRS marketplace of potential competition could change.

3. Necessity for Rules in the Public Interest

17. In determining whether its spectrum aggregation limits remain necessary in the public interest, the Commission considers the original purposes for which the rules were promulgated. The purpose underlying the spectrum aggregation limits was to promote competition in CMRS markets. An important consideration in determining the necessity for regulation is the availability of other, less burdensome tools to achieve these ends. In the case of the CMRS spectrum aggregation limits, these tools include case-by-case review of transactions by the Commission and DOJ, as well as the Commission's ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. In addition, the Commission is also obligated, pursuant to section 332(c)(1)(C) of the Communications Act, to continue to review (as it has done six times already) the state of competition among CMRS providers. Specifically, this provision states:

> The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. 47 U.S.C. 332(c)(1)(C).

The Commission's most recent report, issued this year, has guided its decision in this proceeding, and future reports will continue to provide a useful tool for oyerseeing the changes, if any, in competitive market conditions. *Sixth Annual CMRS Competition Report* ("*Sixth Annual CMRS Competition Report*") (16 FCC Rcd 13350 (2001)). Moreover, the Commission also has at its disposal various enforcement tools to ensure that CMRS carriers, which are common carriers under section 332(c) and key provisions of Title II of the Communications Act, 47 U.S.C. 332(c), 201, 202, 208, do not engage in conduct that is anti-competitive or otherwise harm consumers due to excess concentration of spectrum.

B. Analysis of Competition in the Mobile Telephony Markets

18. The Commission begins its analysis by considering the state of economic competition. Various indicators confirm the presence of meaningful economic competition in markets for CMRS. As the Commission described in the *Sixth Annual CMRS Competition Report*, and as commenters generally agree, mobile telephony markets have experienced and continue to experience strong growth, increased competition, and active innovation. (Although the Commission noted that it could not warranty the accuracy or completeness of the individual data in the *Sixth Annual CMRS Competition Report*, all of which were taken from publicly available sources, the Commission finds that, cumulatively, these data are more than adequate to inform its evaluation of meaningful economic competition.) The Commission also finds it important that competition in these markets has progressed dramatically, not only since 1994, but since its last biennial review.

19. *Number of Competitors and Concentration.* One basic indicator of meaningful economic competition is that most Americans have a choice of obtaining CMRS from several different providers of service. As of the end of 2000, about ninety-one percent of U.S. residents lived in a county that was served, at least in part, by three or more different mobile telephony providers, and seventy-five percent of the U.S. population lived in a county where five or more providers offered service. (Because the Commission's analysis was limited to publicly available sources of information, this coverage percentage is based on the number of operators serving any portion of a particular county. Consequently, some counties included in this analysis may have only a small amount of coverage from a particular provider.) Furthermore, over 133 million people lived in counties with six or more mobile telephony providers, an increase of thirty-five percent over the previous year, and thirty-four million people lived in counties served by seven or more providers, a one-year increase of 170 percent. By contrast, when the spectrum cap was first promulgated in 1994, in all but the few markets where Nextel had then launched service, consumer choice was limited to two cellular providers.

20. Measures of market concentration in the record show a substantial continuing decline in concentration in most local CMRS markets. The Commission finds that considerable entry has occurred and that meaningful competition is present, particularly given the presence of such earmarks of competition as falling prices, increasing output, and improving service quality and options. Specifically, concentration in CMRS markets, as measured by subscriber share, is falling. Calculations submitted by economist John Hayes in both this record and the previous biennial review proceeding show that Herfindahl-Hirschman Indices (HHIs) in the twenty-five largest markets, calculated based on estimated subscribed customers, have fallen by an average of fifteen to twenty-five percent over the last two years. This downward trend in concentration may be attributed in part to the continued construction of new entrants' networks, which has made these mobile telephony providers more viable competitors.

21. On the other hand, other measures of market concentration reveal moderate to high concentration levels. Using CMRS spectrum share as the capacity measure, the Commission has calculated HHIs of 1,270 to 1,801 for the fifty most populous MSAs, and 1,246 to 2,405 for a sampling of eighty counties in RSAs. These figures are generally consistent with the capacity based HHI calculations submitted by various commenters. The Commission emphasizes, however, that caution is appropriate in employing such measures, whether they reveal a positive or negative indication of concentration. Although more concentrated markets can be less competitive and more vulnerable to anticompetitive activity than less concentrated markets, moderate to high concentration is not necessarily a threat to competition. For example, the Commission has previously found that "an HHI analysis alone is not determinative and does not substitute for its more detailed examination of competitive considerations." In the case of CMRS markets, for example, limits to economies of scale, technological compatibility issues, difficulties in finding a willing seller at a reasonable price, and capital market constraints limit consolidation. Moreover, antitrust review by the DOJ and section 310(d) review by the Commission continue to serve as protection against levels of consolidation that would impair competition. Furthermore, HHI measures function as indicators of the likely competitive situation—guidelines to which other information is added, as under the DOJ/Federal Trade Commission (FTC) approach—rather than as the single factor upon which to make competitive judgments, including the judgment of whether to retain the spectrum cap rule. As the *DOJ/FTC Merger Guidelines* state, "[b]ecause the specific standards set forth in the guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under antitrust laws."

22. Based on the record before the Commission and publicly available evidence, however, there appears to be a disparity in the amount of actual competition existing in MSAs versus RSAs. In MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers serving some portion of the county, while in RSAs, twenty-four percent of counties have four or more facilities-based CMRS

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providers. Further, in over half of RSA counties, two or fewer licensed mobile telephony carriers are currently providing service. Because these numbers include carriers that may be offering service in only a small portion of a county, they may overstate the amount of actual facilities-based competition, especially in RSAs. Moreover, the Commission's licensing records show that gaps in the footprints of the nationwide carriers tend to be greater in RSAs than in MSAs. Of the fifty most populous MSAs, forty have five licensed nationwide carriers, not counting Nextel, and the other ten have four. In a sampling of fifty average population RSA counties, by contrast, sixteen have five nationwide carriers, sixteen have four, and eighteen have fewer than four. In a sampling of thirty less populated RSA counties, eight have five nationwide carriers, nine have four, and thirteen have fewer than four. Therefore, consumers in rural areas appear to have fewer choices in terms of providers, pricing plans, and service offerings than consumers in MSAs. Commenters generally agree that rural markets have significantly less competition than metropolitan areas in large part due to population density and economics.

23. *Benefits to Consumers of Competition.* As the CMRS marketplace has developed, consumers in both MSAs and RSAs have realized the benefits of competition in the form of increased output, lower prices, and increased diversity of service offerings. For example, from 1993 to 2000, the number of subscribers using mobile phones jumped 584 percent, the amount of revenue the sector generated climbed 384 percent, and the number of people employed in the industry grew 364 percent. In addition, as the Commission described in the *Sixth Annual CMRS Competition Report*, and as commenters generally agree, prices in mobile telephony markets are falling at an accelerating rate. During 2000, the cellular telephone component of the Consumer Price Index (CPI) produced by the United States Department of Labor decreased by 12.3 percent, while the overall CPI increased by 3.4 percent. In comparison, the cellular telephone component of the CPI from December 1997 to January 1999 decreased by 9.1 percent (8.4 percent annualized), while the overall CPI increased by 1.9 percent. Several studies indicate that the entrance of new competitors into mobile telephony markets continues to reduce prices. Furthermore, mobile telephony service providers are offering new and innovative pricing plans. Most of the major carriers offer nationwide flat-rate, digital pricing plans, and several large carriers now offer regional flat-rate, digital pricing plans as well. Further, several carriers provide international roaming services to their customers. Mobile telephony providers are also offering technologically innovative services including Short Message Service (SMS), e-mail, and web-based applications. In addition, "churn * * * and continued expansion of mobile networks into new and existing markets demonstrate a high level of competition for mobile telephony customers."

24. To a certain degree, mobile telephony services have begun to compete with wireline services. For some, wireless service is no longer a complement to wireline service but has become the preferred method of communication. According to a recent survey by the Yankee Group, about three percent of mobile telephony subscribers rely on their wireless phone as their only phone. In another survey conducted in January 2000, twelve percent of respondents said they purchased a mobile phone instead of installing an additional wireline phone. In a survey performed for the Consumer Electronics Association, three in ten mobile phone users, and forty-five percent of mobile phone users aged eighteen to thirty-four years old, stated they would rather give up their home telephone than their mobile phone. In some areas, mobile phone use has begun to erode wireline revenue due to "technology substitution," that is, the substitution of new technologies for existing ones. BellSouth, for example, stated in February 2001 that it was exiting the payphone business in part due to business lost to mobile phones.

25. A few mobile carriers have begun offering service plans designed to compete directly with wireline local telephone service. For example, Leap, through its Cricket subsidiary, now offers its Comfortable Wireless mobile telephone service in over a dozen markets. Leap's service allows subscribers to make unlimited local calls and receive calls from anywhere in the world for a flat rate of approximately $30 per month. In November 2000, Leap also claimed that sixty percent of its customers use their wireless phones as their primary phone. US Cellular, ALLTEL, and Rural Cellular Corporation similarly offer flat-rate or nearly flat-rate service plans in select markets. Several CMRS providers have received Eligible Telecommunications Carrier status, enabling them to receive universal service funding in certain states, and some carriers are using cellular or broadband PCS spectrum to offer fixed wireless services.

26. Consumers have also derived benefits in recent years from combinations as some operators have expanded their licensed service areas through acquisitions and swaps to create nationwide service providers. There are currently six nationwide mobile telephony operators: AT&T, Cingular, Nextel, Sprint, Verizon, and VoiceStream. The Commission has concluded previously that mobile telephony service providers with nationwide service areas can achieve certain economies of scale and increased efficiencies compared to operators with smaller service areas.

27. *Barriers to Entry.* One potential threat to the continued existence of meaningful economic competition in CMRS markets is the barrier to entry posed by the limited availability of spectrum. Ease of entry is an important factor when determining if firms in a given product and geographic market will be able to exercise market power. "[E]ntry is * * * easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern." In particular, we note that antitrust authorities "will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact." Unfettered market competition forces prices to the level of production costs. Markets function optimally only if one or more firms are able to enter a market or expand current production swiftly and effectively in response to the elevation of prices (or degradation of service) by one or more firms attempting to exercise market power. Therefore, in evaluating the state of the market the Commission considers whether barriers to entry exist and, if so, how pronounced these barriers to entry are, with the ultimate goal of determining whether potential entry would be timely, likely, and sufficient to discipline the market.

28. The requirement to obtain access to spectrum constitutes a barrier to facilities-based entry into the CMRS marketplace because the supply of suitable spectrum is limited. Facilities-based mobile telephony service cannot be offered without access to suitable spectrum, and a government license is required to use spectrum to provide CMRS. Some commenters argue that, because CMRS spectrum allocations have been made, this barrier to entry has been reduced. Other commenters, however, argue that it is typically difficult to acquire the spectrum necessary to enter a CMRS market. One commenter, in particular, emphasizes that the finite amount of spectrum suitable for CMRS is an "insurmountable barrier to entry." The Commission finds that the limited amount of spectrum suitable for CMRS available today creates a significant barrier to entry, at least in MSAs. Most of the spectrum currently subject to the cap either has been assigned or is being considered for assignment to the high bidder at auction. In most cases, the high bidder is either an existing market participant or its affiliate. Although some of this spectrum is currently unused or underused, the total pool of such spectrum is finite, and the amount that is not controlled by a provider that has launched service, particularly in MSAs, is small.

29. Some commenters argue that availability of spectrum is not a significant barrier to entry because other spectrum, not covered by the cap, is a viable substitute for the provision of mobile telephony services. Specifically, commenters identify spectrum allocated for Mobile Satellite Service (MSS), big Low Earth Orbit (LEO) satellite service, Multipoint Multichannel Distribution Service and Instructional Television Fixed Service (MDS/ITFS), Wireless Communications Service (WCS), and CMRS other than cellular, broadband PCS, and SMR, as well as spectrum that has been (or is soon likely to be) reallocated from television Channels 52–59 and 60–69. Much of this spectrum, however, either is not currently allocated for mobile terrestrial use, is subject to technical and use restrictions that prevent offering of full mobile telephony services, or has insufficient capacity to support significant mobile telephony competition. The Commission believes the spectrum bands that are most likely to support additional competition to the services offered over cellular, broadband PCS, and SMR spectrum in the reasonably near future are the 1.7 and 2.1 GHz bands that are being considered for mobile allocation in the Commission's so-called 3G proceeding, and the bands reallocated from television Channels 60–69. However, this spectrum is still at least several months away from being assigned, and after assignment it will take time for incumbent users to be relocated and following that for licensees to build out their networks. Thus, although the Commission expects that 3G and Channels 60–69 spectrum will offer some potential for near-term entry over the next few years, the availability of spectrum suitable for CMRS remains a barrier to entry in the near term.

30. Nonetheless, there are factors that moderate concern regarding the spectrum access barrier to entry. In particular, the need for direct access to spectrum is not absolute because carriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (MVNO) arrangement. However, it is not clear that these options have more than a limited role today. The transition period the Commission adopts today also helps to minimize the problem of spectrum access because, while future allocations do not respond to the needs of the marketplace today, the Commission expects that additional spectrum will be available at the end of the transition period, or shortly thereafter.

31. Although access to spectrum does not appear to be a substantial barrier to entry in RSAs, as in these areas there is typically a significant amount of unused spectrum, the other costs of serving high-cost and low-density areas may make it unlikely that competition in RSAs will increase to a level rivaling that of MSAs. Specifically, the cost of building out a network with pervasive coverage is likely to be higher in rural than in urban areas (especially for digital networks on 1.9 GHz PCS spectrum with lower power handsets), and revenue potential is lower. Thus, the potential revenue from initiating or expanding service in an RSA may not be sufficient to cover the costs of building out the network, including any opportunity costs associated with directing resources to rural buildout instead of enhancing the carrier's network in urban areas. In addition, it would likely be time-consuming for a new entrant to access sufficient capital, build out its network to a sufficient degree to effectively market its services, and attract a sufficient subscriber base to discipline the market. Although the Commission does not have sufficient record evidence to evaluate the likely development of the market in RSAs, the underlying economics appear to make it unlikely that competition in RSAs will evolve in the near term to rival that in MSAs.

32. *Other Issues.* Various commenters discuss the potential for CMRS providers to foreclose entry by anticompetitive warehousing of spectrum. Some commenters argue that it is unlikely that carriers have an incentive to warehouse spectrum because the cost of acquiring spectrum and meeting the Commission's buildout requirements is high. Other commenters, however, argue that CMRS providers have an incentive to warehouse spectrum either by purchasing more spectrum than can be used or by investing in inefficient technologies. Even if a carrier did not deliberately set out to foreclose competition, one commenter contends that the profits from doing so may be an attractive side effect of spectrum aggregation. The Commission does not have evidence that firms are currently holding excess spectrum in order to deter entry or that the benefits of excluding competitors would exceed the cost of acquiring spectrum and the free-rider problem of several incumbents benefiting from one incumbent's expenditure. However, it is at least a threshold possibility that because the supply of suitable spectrum is limited, firms in CMRS markets might choose to overinvest in spectrum in order to deter entry, depending on the costs of doing so.

33. One commenter also suggests that collusion among CMRS providers may warrant ongoing consideration. It notes that pricing plans for CMRS offerings are similar among the national carriers, and price comparisons of these plans can easily be performed, facilitating price coordination. Further, the commenter argues that experience in the marketplace shows carriers behaving in a largely oligopolistic fashion by offering largely identical products at prices far above their marginal costs. However, another commenter argues that anticompetitive collusion is unlikely in CMRS markets because these markets have well-capitalized actual and potential competitors, and demand is increasing. Further, according to this commenter, it is relatively easy for existing competitors to add capacity in response to any price increase, and therefore firms cannot profitably reduce output and sustain a high price for a significant period of time. Other commenters argue that the large number of competitors and the complexities of the various pricing plans make coordination unlikely. Although the record does not indicate that tacit collusion is occurring or is likely to occur, CMRS markets do meet many of the criteria that make tacit collusion sustainable. Moreover, tacit collusion becomes more likely as the number of competitors is reduced.

34. *Conclusion.* In light of all the factors discussed above, the Commission finds that there is meaningful economic competition in CMRS mobile telephony generally. Evidence in MSAs regarding the current state of these markets clearly shows that the presence of multiple competitors is effectively restraining prices, promoting innovation and diversity, and increasing output. Based on the information

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available, competition in RSAs appears to be less robust than in MSAs. Finally, to the extent that competitive concerns are raised in a particular proposed assignment or transfer of control application, as discussed below, the Commission believes they can be addressed through means other than the spectrum cap.

C. Repeal and Interim Modification of the Spectrum Cap

35. Currently, the Commission evaluates the competitive effects of the acquisition of CMRS spectrum primarily through the general application of numerical thresholds such as the spectrum cap. The Commission could, however, fulfill its duties under section 310(d) and other statutory provisions through case-by-case review of individual transactions. In light of its finding of meaningful economic competition above, the Commission concludes that long-term retention of the spectrum cap rule is no longer necessary in the public interest, and it therefore moves to repeal that rule. At the same time, it concludes that it is necessary in the public interest to retain the rule for a limited transition period to allow the market to adjust and enable the Commission to consider guidelines for case-by-case review of CMRS spectrum aggregation transactions. Finally, during the transition period, the Commission modifies the rule by increasing the spectrum cap to 55 MHz in all areas.

1. Move From Prophylactic Rule to Case-by-Case Review

36. *Background.* With respect to the appropriate regulatory tool for reviewing potential effects on competition in CMRS markets, proponents of the current spectrum cap generally favor a bright-line approach, arguing that a bright line promotes regulatory certainty and significantly reduces the processing time of transfer and assignment applications. One proponent argues that determining how to apply the rule in a particular case is easier than gathering the information that transacting parties may be required to submit under a case-by-case approach, such as potentially sensitive customer and market share information. Generally, opponents of the current spectrum cap argue that case-by-case review is preferable to a prophylactic approach because the case-by-case approach is more flexible and reduces the possibility of blocking transactions that are actually in the public interest or, alternatively, permitting transactions that are not in the public interest.

37. *Discussion.* The Commission concludes that it is appropriate to move in the very near future from reliance on a prophylactic rule of general application to pure case-by-case review. In assessing the choice of an appropriate tool, the Commission recognizes that different costs and benefits can be associated with bright-line rules and case-by-case review with respect to degree of flexibility, predictability of outcome, likelihood of rejecting beneficial (or approving harmful) transactions, ability to account for the particular attributes of a transaction or market, speed of decision-making, and resource demands on the Commission and carriers.

38. On balance, and in light of the growth of both competition and consumer demand in CMRS markets, the Commission concludes that case-by-case review, accompanied by enforcement of sanctions in cases of misconduct, is now preferable to the spectrum cap rule because it gives the Commission flexibility to reach the appropriate decision in each case, on the basis of the particular circumstances of that case. The development of competition among CMRS carriers since the 1999 biennial review is an important factor underlying this conclusion. The Commission is persuaded that competition is now robust enough in CMRS markets that it is no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest. As discussed below, the Commission commits itself to increasing Commission resources available to review spectrum aggregation transactions and to considering appropriate guidelines for review of future transactions, in order to continue to provide parties with a reasonable degree of certainty and transparency as well as to minimize the administrative costs of case-by-case review.

39. The Commission does not agree with commenters who suggest that the spectrum cap rule should be retained to promote technologically efficient use of spectrum. As discussed above, the Commission's purpose in adopting the spectrum cap was to promote competition in CMRS markets. The Commission is not persuaded that it is in the public interest to interfere with the competitive market's creation of incentives regarding choice of technology. Similarly, the Commission does not agree with commenters who argue that the spectrum cap rule should be retained to further opportunities for resale or roaming arrangements. The Commission's case-by-case review will allow it the flexibility to consider any such concerns raised with respect to specific applications.

40. The Commission also is not persuaded by arguments that the spectrum cap rule should be retained to preserve opportunities for entrepreneurs and providers of niche services. As other commenters point out, the spectrum cap rule does nothing in and of itself to create opportunities for entrepreneurs, and may actually harm small businesses by limiting their access to existing carriers as sources of capital and management expertise. Furthermore, to the extent the spectrum cap does create some potential opportunities for entrepreneurs, the Commission finds this benefit is insufficient to outweigh the benefits of moving away from a bright-line rule approach, particularly in light of the other tools it has to help preserve opportunities for small businesses—its ability to carry out case-by-case review of transactions and its ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. Moreover, the Commission intends to take into account the special needs of small businesses as it considers processing guidelines, and the Commission believes that individualized review will benefit small businesses as well as large.

41. Finally, the Commission notes the arguments of several parties that, if it eliminates or increases the spectrum cap, it should take certain other actions to ensure competition in all segments of the CMRS marketplace. The merits of these proposals are beyond the scope of this proceeding, irrespective of the Commission's decisions today with regard to the spectrum cap; however, the Commission notes that a flexible case-by-case approach will allow it to consider specific circumstances and impacts of individual applications.

2. Case-by-Case Review

42. The public policy objectives that the Commission first articulated in 1994 with respect to review of CMRS spectrum acquisitions remain applicable today. The spectrum cap rule was originally designed to "discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency." The Commission has also stated that the spectrum cap promotes competition in CMRS markets, allows efficient administration of CMRS spectrum acquisitions, and provides regulatory certainty to the marketplace. Although the Commission decides today that the spectrum cap rule is no longer necessary in the public interest, it must still

achieve the objectives that the spectrum cap was intended to promote. The Commission believes that these objectives can now be better achieved in the context of secondary market transactions through case-by-case review, properly performed. Furthermore, to the extent that the initial distribution of spectrum through auction is an issue in the future, that is also amenable to case-by-case review, in the sense that the Commission can shape the initial distribution through the service rules adopted with respect to specific auctions.

43. With or without the spectrum cap rule, the Commission has an obligation to ensure that acquisitions of CMRS spectrum do not have anticompetitive effects that render them contrary to the public interest. Specifically, section 310(d) of the Communications Act requires the Commission not to approve any transfer, assignment, or disposal of a license, or attendant rights unless it finds that the public interest, convenience, and necessity will be served thereby. Moreover, although strong competitive forces are evident in today's CMRS industry, the Commission recognizes the possibility that significant additional consolidation of control over spectrum could have serious anticompetitive effects. Thus, the Commission intends to perform case-by-case review of CMRS spectrum aggregation transactions in order to fulfill its statutory mandates to promote competition, ensure diversity of license holdings, and manage the spectrum in the public interest. 47 U.S.C. 301, 303, 309(j), 310(d). The Commission determines that, in order to ensure that this review is performed in a manner that serves the public interest, it is necessary to retain the spectrum cap rule until January 1, 2003, to enable the Commission and the market to prepare for case-by-case review, including the Commission's consideration of processing and/or substantive guidelines for this process.

44. *Performing Case-by-Case Review.* Although, the Commission determines that long-term retention of the spectrum cap rule is no longer necessary to serve the procompetitive purposes for which it was adopted, it recognizes that application of this prophylactic rule has conferred certain advantages. In particular, the spectrum cap rule has provided parties with guidance regarding what transactions the Commission would likely consider to be in the public interest, enabled parties to structure their transactions to fall within the rule, and provided processing guidance for Commission staff. From August 2000 to August 2001, the Wireless Telecommunications Bureau disposed of assignments and transfers of control involving approximately 1,305 licenses (other than pro forma applications) currently covered by the CMRS spectrum cap. The overwhelming majority of these transfers and assignments were processed within ninety days.

45. If it were to repeal the spectrum cap immediately, without anything further, the Commission would have neither objective guidelines nor a body of precedent to guide the review process. Therefore, the Commission would run the risks both that its review would fail to produce accurate and consistent results, and that, without benefit of either objective standards or directly applicable precedent, applications would not be decided on a timely basis. To perform meaningful and timely review of spectrum aggregation transactions without the spectrum cap, the Commission may need to develop effective guidelines for this process, as well as ensure that sufficient resources are devoted to the task. One commenter emphasized the importance of regulatory certainty and speed of review to enable them to plan efficiently, invest with confidence, and reassure providers of capital. A transition period is necessary so that the Commission can continue to meet these needs.

46. As it develops the contours of its case-by-case regime during the transition period, the Commission will consider what form of guidelines might best balance the virtues of certainty and flexibility in this review process. For example, procedural guidelines could specify timing benchmarks and the types of information that applicants will be expected to provide. It may also be useful to applicants and Commission staff to identify substantive factors and benchmarks that would make the Commission more or less likely to take a closer look at a proposed transaction. For example, some of these factors could track those in the *DOJ/FTC Merger Guidelines*, such as measures of concentration in a market. One commenter argues that, to the extent the Commission develops internal processing guidelines for evaluating wireless transactions, "it should look to the same criteria used by [DOJ] in its antitrust analysis—the Merger Guidelines, and rely on the kind of information and methodologies utilized by DOJ in conducting its competition analyses." The Commission also will consider the most appropriate process for developing potential guidelines, including whether notice and comment procedures are necessary or helpful. The Commission emphasizes, however, that it does not intend to adopt guidelines to reinstate a bright-line rule.

47. *Relationship of Commission's and DOJ's Processes.* With respect to competitive issues, applicants may currently be required to satisfy both the Commission's review process and that of DOJ. (DOJ investigates proposed mergers and acquisitions to determine whether they may substantially affect competition under sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. 1–2) and section 7 of the Clayton Act (15 U.S.C. 18)). In the *NPRM*, the Commission asked whether, and under what circumstances, in its review of transfer/assignment applications it should defer to DOJ's review of competitive issues in a transaction. A number of parties, generally those that favor retaining the spectrum cap, argue that the Commission cannot leave all competitive review of CMRS markets to DOJ. One commenter argues that the Commission bears a special responsibility under the Communications Act for CMRS markets, different from the antitrust authority of DOJ under the antitrust statutes. Unlike DOJ or FTC, the commenter asserts, the Commission is under explicit statutory mandates to promote economic opportunity; avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants; foster rapid deployment of new technologies, products, and services that benefit the public; and promote the efficient use of the spectrum. Further, the commenter argues that the Communications Act obligates the Commission to promote competition, while DOJ is authorized only to stop proposed transactions that would substantially lessen competition. Therefore, the commenter argues, the Commission has an independent role in competitive review and is not duplicating the work of the antitrust agencies by performing competitive analysis.

48. Another commenter argues that the Commission has authority to prevent certain anticompetitive acquisitions that DOJ does not, such as the acquisition of licenses at auction, license swaps, and spectrum leases. Further, the commenter argues that the Commission has an independent responsibility to review competitive effects of transactions because DOJ's review standard does not encompass overall public interest considerations. Another commenter argues that the Commission should continue to analyze the competitive effects of license transfers and assignments because many transactions fall below the reporting

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threshold of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR) (15 U.S.C. 18(a)) and, in light of the recent increase in these thresholds, fewer transactions are now reportable than before. Pursuant to 15 U.S.C. 18(a), premerger notification is required if a transaction meets either of two thresholds: (1) one of the parties to the transaction has annual sales or assets of more than $100 million and the other party $10 million, and as a result of the acquisition, the acquiring person will hold voting securities or assets worth in the aggregate more than $50 million; or (2) the total value of the transaction exceeds $200 million. Further, the commenter argues that DOJ has limited resources, resulting in review of only a subset of the transactions reported under HSR and virtually none of the transactions that need not be reported.

49. Some parties that favor eliminating the spectrum cap argue that the Commission's competitive analysis duplicates review by DOJ and, therefore, is unnecessary and creates delay and uncertainty. These parties generally believe that the Commission should review transfers and assignments only pursuant to specific obligations imposed by the Communications Act, e.g., the public interest standard of section 310(d) and for compliance with Commission rules, and that competitive review of CMRS transactions should be performed exclusively by the antitrust agencies. Another commenter argues that DOJ is better equipped than the Commission to investigate competitive harm, but that section 310(d) of the Communications Act provides the means for the Commission also to investigate competitive issues as a supplement to DOJ's responsibilities.

50. *Discussion.* The Commission finds that, under the statutory regime set out by Congress, the Commission has an obligation, distinct from that of DOJ, to consider as part of the Commission's public interest review the anticompetitive effects of acquisitions of CMRS spectrum, including those that occur in the secondary market. The U.S. Court of Appeals for the District of Columbia Circuit has found that the Commission must consider antitrust and competition effects in making its public interest determinations under the Communications Act. *United States* v. *FCC* (652 F.2d 72 (D.C. Cir. 1980)).

51. Further, the Commission's independent statutory obligations in this area are sufficiently different from those of DOJ that it would be difficult for the Commission to fulfill them were it to defer generally to competitive assessments made by DOJ. For example, the Commission's unique spectrum management responsibilities, including those under 47 U.S.C. 151, 301, 303, and 309(j), are affected by the level of competition that exists in CMRS markets. In addition, while the Commission has never chosen to exercise it, the Commission has independent authority under sections 7 and 11 of Clayton Act (15 U.S.C. 18, 21(a)) to disapprove the acquisition of common carriers engaged in wire or radio communications or radio transmissions of energy in any line of commerce in any section of the country where the effects of such an acquisition may substantially lessen competition, or tend to create a monopoly.

52. There are also significant differences between the two agencies' procedural responsibilities. Unlike DOJ, the Commission has an independent statutory obligation to make a public interest determination that is judicially reviewable, on the record, pursuant to the APA, with regard to all applications for transfer or assignment of licenses. By contrast, DOJ does not review all CMRS-related transactions, is permitted to exercise prosecutorial discretion in choosing which cases to pursue, and is not required to state the reasons that underlie its decision to abandon individual cases. Were the Commission to defer all competitive review to DOJ, it would sometimes be compelled to defer to DOJ's silence on particular matters, providing no basis for judicial review.

53. It may, however, be appropriate for the Commission to rely, at least in part, on DOJ's analysis in certain cases where DOJ has fully examined the competitive effects of a particular acquisition and determined its effect on the relevant market(s)—for example, cases where DOJ and the transacting parties have entered into a Consent Decree. The Commission intends during its transition period to case-by-case review to explore appropriate circumstances in which it might either rely on DOJ's conclusions or engage in greater coordination with DOJ with respect to these issues so as to minimize duplication of effort between the agencies, process applications as efficiently as possible, and minimize the burden on applicants for Commission approval of transfers and assignments.

54. *Transition Period.* The Commission concludes that a transition period, pursuant to which a modified spectrum cap will remain in effect until January 1, 2003, is in the public interest so that applicants and the Commission can prepare for case-by-case review of all transactions. In addition to giving the Commission the opportunity to consider guidelines, a transition period will also help carriers prepare for the additional burdens that case-by-case review could impose on their resources. In particular, the Commission believes this preparation may be especially important for small businesses. While the Commission believes that opportunities for small businesses can be fully protected through a case-by-case approach, the Commission recognizes that advancing one's positions in a case-by-case regime could require the preparation of more detailed applications, which could require resources that small businesses may not be immediately prepared to commit. In addition, regulatory certainty and speed of processing are likely to be particularly important to small businesses, which typically are less able to withstand extended or costly administrative processes. This demand for resources would be especially great if the Commission were to change immediately to a case-by-case process without first considering effective standards and procedures. The Commission intends to take the special needs of small businesses into account in considering its guidelines for the review of CMRS spectrum acquisitions.

55. At the same time, the Commission finds that in the interim, continued application of the spectrum cap, modified as discussed below, will not result in significant distortions in the market or delay in the introduction of beneficial services. In fact, in only relatively few instances is any party at the spectrum cap. (In the fifty most populous MSAs, Commission records indicate that in only four instances is a carrier currently at the spectrum cap, and in a survey of eighty sample RSAs the Commission found only seven instances of a party reaching the cap.) The Commission believes increasing the spectrum cap to 55 MHz will provide a meaningful margin to relieve capacity constraints that some carriers may face now or are likely to encounter within the next fourteen months. Thus, the Commission will generally presume that transactions complying with the 55 MHz spectrum cap will not cause undue risk of market concentration. At the same time, while it anticipates that most transactions that are within the cap will not raise competitive concerns, the Commission retains the discretion to review the competitive effects of transactions that are within the spectrum cap if an interested party provides specific evidence that such a transaction will create an undue risk of market concentration, or if the Commission staff independently finds such evidence. In any instance in which permitting a carrier to exceed 55 MHz would be in the public interest due to capacity constraints or otherwise, the waiver process remains available.

56. The Commission concludes that sunsetting the cap on January 1, 2003, will provide a sufficient period of time for the Commission and industry to prepare for reliance solely on case-by-case review of CMRS spectrum aggregation transactions. Moreover, two blocks of spectrum that will be usable for CMRS are likely to be allocated and assigned within this approximate timeframe or soon thereafter. First, the Commission currently has pending a proceeding in which it has proposed to allocate additional spectrum for the provision of 3G and other advanced services. *3G Notice of Proposed Rulemaking* (66 FR 7483, January 23, 2001), *3G Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (*"M&O"*) (66 FR 47591, September 13, 2001) and (*"FNPRM"*) (66 FR 47618, September 13, 2001), *3G First Report and Order and Memorandum Opinion and Order* (*"First R&O"*) (66 FR 53960, October 25, 2001) and (*"MO&O"*) (66 FR 53973, October 25, 2001). Second, 30 MHz of spectrum being vacated by television Channels 60–69 is scheduled to be auctioned beginning June 19, 2002. Accordingly, the spectrum cap rule will cease to be effective on January 1, 2003. The Commission believes that setting a date certain for repeal of this rule provides stability to the market, and that this period gives all parties sufficient time to prepare for the change.

3. Modification to the Spectrum Cap During the Transition Period

57. Having determined that the CMRS spectrum cap should be eliminated, but that a transition period is necessary before it switches to a pure case-by-case approach to analyzing CMRS assignments and transfers of control, the Commission next considers whether to make changes to the existing rule during the transition period. The Commission concludes that an increase in the spectrum cap to 55 MHz in MSAs is appropriate at this time. This modification will provide carriers in MSAs some additional freedom to acquire spectrum during the transition at relatively minimal competitive risk. The Commission also concludes that because the spectrum cap in RSAs is already at 55 MHz, no modification in RSAs is appropriate during the sunset period.

a. MSAs: 58. The current CMRS spectrum cap restricts parties to attributable interests in 45 MHz of covered spectrum in MSAs. In the *NPRM*, the Commission requested comment on whether this threshold should be modified. The Commission first addresses the efficiency effects of the rule and then addresses the competitive effects.

59. *Efficiency Effects of the Spectrum Cap.* Advocates of raising the spectrum cap generally make two types of efficiency arguments. The first is a long-run argument that the 45 MHz ceiling prevents service providers from achieving minimum efficient scale, *i.e.*, that level of output at which long-run average costs reach a minimum. This means that non-trivial economies of scale are going unrealized. The second argument is that in the short run under the current ceilings, the quantity of service demanded exceeds, or will soon exceed, the quantity that firms can supply efficiently. That is, demand for service is, or will be, such that firms will be forced either not to offer certain services at all, or to distort their input choices in order to satisfy demand. This input distortion, for example, might consist of over-investing in cell-splitting and smart antennas because additional spectrum input cannot be acquired.

60. The Commission agrees that both the short-run and long-run efficiency problems, to the extent they are present, would constitute harms imposed by the current rule, and easing them would be a benefit of raising the CMRS cap. Based on the specific information and data in the record, however, the Commission finds that most providers are not constrained today by the current cap in most markets, and that it is unlikely that total demand for voice and data services will grow so rapidly over the next year or two that capacity constraints will become a serious, across-the-board problem during that time. The Commission also believes that less than 45 MHz is required to achieve minimum efficient scale in the provision of service today.

61. The Commission does agree, however, that it may be the case that some carriers are capacity-constrained in certain urban markets with high population density. And the Commission agrees that it is possible—if not likely—that demand for voice and data services will grow so rapidly over the next fourteen months that the current 45 MHz cap would cause significant efficiency costs. Such costs, of course, while initially imposed on the operators, would eventually be passed on at least in part to consumers of mobile telephony services in the form of higher prices, poorer service, or lack of innovation. An increase in the cap to 55 MHz, where it is now for rural areas, can help to prevent such potential efficiency losses.

62. *Competitive Effects of Relaxing the Spectrum Cap.* There are several reasons that an increase in the cap in MSAs to 55 MHz does not pose undue risk of anticompetitive consequences during the transition period, but that any greater increase would run an unacceptable risk of significantly reducing competition. First, a 10 MHz increase in the cap means that, as with the 45 MHz cap, there must in principle be at least four competitors in each geographic market. While the current cap permits four competitors with equal (45 MHz) spectrum holdings, the 55 MHz cap will permit three firms holding 55 MHz and a fourth holding 15 MHz. Although a firm with 15 MHz may be capacity-constrained in some geographic areas, it will often be able to help discipline its larger competitors. Second, the Commission notes that raising the cap to 55 MHz increases the maximum possible input-based HHI by only 350 points, from 2,500 to 2,850. While not insignificant, this increase appears unlikely to foster unilateral pricing power in the current marketplace. Third, mobile telephony operators typically experience high fixed costs and low marginal costs of production. Low marginal costs mean that producers can potentially achieve high profits by reducing their prices, and therefore can render tacit agreements to charge high prices difficult to sustain.

63. The Commission also notes that, as is the case today, it reserves the right to subject transactions involving significant geographic overlap but resulting in consolidation below the new ceiling to further scrutiny. There may be circumstances under which a transfer or assignment could raise competitive concerns notwithstanding compliance with the spectrum cap, for example, elimination of significant actual competition. The Commission will generally presume that transactions complying with the 55 MHz cap do not cause undue risk of market concentration unless specific evidence to the contrary is presented by either interested parties or through review by Commission staff.

64. Furthermore, any concern about the possible competitive impact of moderately increased concentration is also materially reduced by the possibility of additional allocations of spectrum over the next two years that will greatly increase the amount of spectrum available for CMRS applications. In particular, the Commission's Advanced Wireless Services proceeding is considering

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options for substantial new allocations of spectrum for terrestrial, fixed, and mobile services. These options include the 1710–1755 MHz band, which has already been transferred from federal government use, and the 2110–2150, 2160–2165 MHz Emerging Technologies band. Licensing of these bands is likely within the next two years. Clearance of incumbent users in each case is unlikely to be difficult, since they are primarily fixed operators and thus multiple options for relocation are available. Although provision of service on these bands is not imminent, the Commission believes this quantity of spectrum and the relative certainty that it will become available shortly after the end of the transition period should meaningfully discourage anticompetitive behavior during the period.

65. *Balancing of Efficiency and Competitive Effects of the Spectrum Cap.* On balance, the Commission finds that it should increase the CMRS spectrum cap to 55 MHz in MSAs. The potential harm from increasing the cap to 55 MHz appears to be outweighed by the corresponding potential benefits, which include facilitating improved operations, network design, and innovation. The Commission believes any increase of less than 10 MHz might not provide significant relief to firms that may be capacity-constrained, because there may be indivisibilities in the secondary market for spectrum that make acquisition in increments smaller than 10 MHz unlikely. (For example, carriers at 40 MHz may in effect be constrained by the 45 MHz cap because they can acquire, at most, 5 MHz of additional spectrum and such a small block of spectrum may not be available.) Regarding the effect of mergers or acquisitions up to the new cap, the Commission notes that many of these may not be acquisitions of ongoing businesses, but rather of bare licenses or licenses with only certain physical assets. In the 50 largest MSAs, for example, there is an average of roughly 40 MHz of unlaunched spectrum licenses. In the ten largest MSAs, there is an average of roughly 30 MHz. Consolidation of this unused spectrum into an existing business would not reduce actual competition, although it might have an effect on potential competition.

66. If a firm is capacity-constrained even at the 55 MHz limit, it may submit a waiver request. We find that waivers provide a reasonable solution for carriers that may need spectrum above the relaxed spectrum aggregation limit during the period until the rule sunsets. Therefore, to the extent that a carrier can demonstrate that in a particular geographic area the spectrum cap is currently having a significant adverse effect on its ability to provide CMRS, the Commission will consider granting a waiver of the cap for that geographic area. We urge carriers requesting waivers to clearly identify what additional services they would provide if the spectrum cap rule were waived, and why such services cannot be provided without exceeding the cap. In evaluating a waiver request, the Commission will also take into account any potential adverse effects of granting the waiver, such as diminution of competition, as well as the potential benefits from the provision of additional services.

*b. RSAs.*67. CMRS markets in rural areas are significantly different from the markets in urban areas. In particular, RSAs typically have many fewer competitors offering two-way mobile service, and many fewer nationwide service providers, than do MSAs. Indeed, in seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. In the *First Biennial Review Order*, the Commission increased the spectrum cap to 55 MHz in RSAs on the ground that allowing rural cellular and broadband PCS carriers to form partnerships in certain overlapping areas would allow these carriers to achieve economies of scope that might facilitate deployment, while entailing little opportunity cost because the economics of serving rural areas made it unlikely that a large number of independent competitors would emerge in any event. In the *NPRM*, the Commission asked whether, in light of the continued lagging development of competition in rural areas, it should consider further changes to the spectrum aggregation limits in these markets. In particular, the Commission asked commenters to describe any benefits to rural customers that had accrued from the previous increase in the spectrum cap in terms of lower prices, availability of digital services, or otherwise.

68. Some commenters argue that the spectrum cap inhibits competition in rural areas due to the high cost of providing service across large geographic areas, and that the most cost-effective means of bringing broadband PCS and SMR services to rural subscribers is to provide existing rural cellular providers the ability to acquire additional spectrum to offer such services. Another commenter, on the other hand, argues that removal of the spectrum cap in rural markets is likely to reduce competition and increase costs of mobile wireless service in those areas, given the smaller number of competitors in rural areas. Others argue that spectrum in rural areas is currently going unused, and that if the spectrum cap and cellular cross-interest rules are eliminated, the Commission should take other actions to ensure that small rural companies have the ability to obtain spectrum and that consumers in rural areas have access to advanced services.

69. Based on the record before it, the Commission concludes that, given the market conditions prevailing in rural areas during the transition period, 55 MHz remains the appropriate level for the spectrum cap in these areas until the cap is eliminated in favor of case-by-case review. Given the smaller population and demand for service in RSAs, it is highly unlikely that the current spectrum cap is causing any capacity constraint or similar inefficiency. The Commission therefore concludes that during the sunset period it should continue to keep the spectrum cap at 55 MHz in RSAs.

D. Partial Repeal of the Cellular Cross-Interest Rule

70. In the *NPRM*, the Commission sought comment on the possible repeal of the cellular cross-interest rule. Alternatively, it asked whether the rule could be modified so that it would not apply in certain circumstances in which other regulations would provide adequate safeguards. The Commission suggested the possibility of continuing to apply the rule only in markets where there are a limited number of competitors to the existing cellular providers. Accordingly, the Commission sought comment on whether there was a need to maintain any cellular-specific restrictions in more urban areas, where there are generally a larger number of competitive choices for consumers. While noting that cellular providers maintained large market shares in MSAs, the Commission asked whether cellular/cellular combinations remain more anticompetitive than cellular/PCS or PCS/PCS combinations in MSAs. Commenters were asked to provide empirical evidence and/or studies on the relative competitive and buildout status of cellular, SMR, and broadband PCS carriers on a market-by-market as well as comprehensive basis.

71. The majority of commenters who address the issue recommend elimination of the cellular cross-interest rule, particularly in MSAs. Some argue that the rule should be eliminated in its entirety. These commenters argue that the rule is unnecessary, outdated, and inequitable, noting that PCS licensees are not subject to a similar rule. Moreover, they argue that meaningful competition now exists and the rule is not necessary to prevent harmful consolidation. Another commenter argues that, if the spectrum cap rule is retained, the cellular cross-interest rule should be eliminated in MSAs, though retained in RSAs, because in most MSAs, consumers have numerous choices. One commenter argues that the cross-interest rule remains a valuable competitive safeguard, particularly because there are still cellular markets in rural areas in which no broadband PCS provider has initiated service. Others argue that in the event that the spectrum cap or cellular cross-interest rules are modified or eliminated, the Commission must take other actions to ensure opportunities for small businesses and provision of service to underserved areas.

1. Elimination of Cellular Cross-Interest Restriction in MSAs

72. The Commission concludes that the cellular cross-interest rule is no longer necessary in urban markets, given the presence of numerous competitive choices for consumers in such markets. The Commission therefore repeals the rule in MSAs in order to provide relief from capacity constraints and in recognition of the fact that the cellular incumbents in MSAs no longer enjoy significant first-mover advantages. Unlike the case of the spectrum cap, the Commission finds that no transition period is necessary to eliminate the cellular cross-interest restriction in MSAs.

73. In the *First Biennial Review Order*, the Commission concluded that the cellular cross-interest rule was still necessary, given the strong market position held by the two cellular carriers in virtually all markets. The two cellular carriers held the vast majority of subscribers in all markets and were the only providers of mobile telephony service in many markets. The Commission therefore found that the rule was still needed to prevent these incumbents from merging or having significant cross-ownership interests. The Commission recognized, however, that the cellular carriers' relative market position was diminishing in certain markets as broadband PCS and digital SMR service providers attracted more subscribers and began service in more areas of the country, particularly urban markets. The Commission then noted that it would reassess the need for a separate cellular cross-interest rule as part of its year 2000 biennial review, by which time it expected that the market positions of the two cellular carriers and broadband PCS and digital SMR service providers would have narrowed further.

74. The Commission finds today that cellular carriers no longer possess market power in MSAs, and that the services offered by cellular and broadband PCS providers in these markets are indistinguishable to consumers. In MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers that are offering service in some part of the county. Forty of the fifty most populous MSAs have six nationwide carriers, counting Nextel, with the remaining ten MSAs having five nationwide carriers. The significant drop in HHI calculations based on estimated subscribers in the top twenty-five MSAs from January 1999 to January 2001 is further indication that any market power that cellular carriers may have been able to exercise in the past has diminished in these urban markets. Moreover, the cellular providers' share of mobile telephony nationwide had declined to seventy percent by the end of 2000. In addition, most cellular carriers in MSAs have deployed digital technology extensively throughout their networks, and from a customer's perspective, digital service in the cellular band is virtually identical to digital service in the PCS band.

75. Accordingly, the Commission finds no reason to view the combination of cellular licensees in these markets less favorably than combinations of other CMRS licensees. Moreover, because the Commission finds that combinations of cellular carriers in MSAs are not presumptively anticompetitive today, and because restrictions on such combinations may be contributing to capacity constraints, it would be inappropriate to continue applying this rule on a transitional basis.

2. Retention of Cellular Cross-Interest Restriction in RSAs

76. The Commission concludes, however, based on the record before it, that it would not be appropriate at this time to eliminate the cellular cross-interest rule in rural markets. The Commision therefore retains the rule in RSAs, subject to waiver of the prohibition where it is shown that the proposed cross-interest would not create a significant likelihood of substantial competitive harm. The Commission will, however, reassess the need for a cellular cross-interest restriction in RSAs as part of its next biennial review in 2002, by which time the Commission may have more comprehensive information regarding the state of competition in rural markets.

77. CMRS markets in rural areas are different from the markets in urban areas, in that, generally, the cellular providers seem to enjoy first-mover advantages and to dominate the marketplace. In seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. Indeed, fifty-six percent of RSA counties have two or fewer facilities-based providers of mobile telephony offering service, presumably in most instances the two cellular licensees. In addition, it is the Commission's understanding that, in some areas, any competitors to the cellular incumbents are serving only a small portion of the county, particularly in the western United States, where many states have large rural counties. It is also significant that cellular carriers still control 70 percent of mobile telephony markets nationwide as of year-end 2000, and this share is likely to be smaller in MSAs and larger in RSAs. In the absence of a record to the contrary, these facts suggest that the cellular carriers generally dominate the rural markets. Moreover, due to the economics of serving rural areas, potential entry by new competitors is likely to be difficult. Thus, based on the record in this proceeding, it appears that a combination of interests in cellular licensees in rural areas would more likely result in a significant reduction in competition. In this regard, the Commission notes that unlike the spectrum cap rule, the cellular cross-interest rule addresses not the aggregation of spectrum, but the competitive position of the two cellular licensees. Without more comprehensive information in the record, however, the Commission is unable to conclude that repeal of the cellular cross-interest rule in RSAs is appropriate at this time.

78. In addition, the cellular cross-interest rule in RSAs is well tailored to the harm that it seeks to prevent. Because the rule places cellular carriers in RSAs under no special constraints in obtaining PCS spectrum, and in most RSAs there is ample unused PCS spectrum available, the rule does not prevent cellular carriers from increasing their capacity or offering advanced services. The ability of cellular carriers in rural areas to obtain PCS spectrum may provide an additional opportunity to consumers in RSAs to have access to the same advanced services offered to consumers in MSAs. The Commission therefore concludes that it should continue to forbid a cellular licensee in an RSA from holding an attributable interest in the cellular licensee on the

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other channel block in an overlapping CGSA. To the extent that it can be shown that an RSA exhibits market conditions under which a specific cellular cross-interest would not create a significant likelihood of substantial competitive harm, such a situation can be addressed through waiver of the cross-interest prohibition.

79. Further, the Commission rejects one commenter's arguments that the benchmark for attributable ownership interests under the cellular cross-interest rule should be increased from five to 20 percent, as under the spectrum cap rule, and that the Commission should include a provision for waiver in the case of a passive minority investor in a licensee that has a single majority shareholder. The commenter, which supports retention of the spectrum cap and the cellular cross-interest rule (in both MSAs and RSAs), argues that because of the evolution of mobile telephony since the inception of the cellular cross-interest rule, there currently may be situations in which attributable ownership interests of greater than five percent would pose "no actual threat to competition." In the *First Biennial Review Order*, the Commission found that given the continued dominance of the cellular incumbents in CMRS markets, allowing a party with a controlling interest in one cellular licensee to hold up to twenty percent ownership of the other licensee in the same market would pose a substantial threat to competition. Specifically, significant cross-interests between the two largest service providers in RSAs generally would create a significant incentive for the two not to compete with one another as vigorously as otherwise. For the reasons discussed above, the Commission concludes that market conditions in RSAs have not changed sufficiently to generally permit such cross-holdings of cellular interests today. The Commission will, however, entertain requests for waiver in appropriate circumstances. Thus, it declines to make the above-suggested revisions to the cellular cross-interest rule.

80. In the *NPRM*, the Commission sought comment on whether the cellular cross-interest rule should be modified to account for the possible disaggregation of cellular spectrum. For example, it asked whether the cellular cross-interest rule should be replaced by a cellular spectrum cap of 35 MHz so as to permit combination of a 25 MHz cellular license with up to 10 MHz of cellular spectrum on the other channel block in the same geographic area. The Commission did not receive any comment on this issue. In light of the absence of comment to guide it deliberations, and in light of the lack of applications for disaggregation of cellular spectrum, the Commission declines to modify the rule at this time. Given the lack of record evidence regarding this issue, the Commission believes it is more appropriate at this time to address any such requests on a case-by-case basis.

E. Clarification and Streamlining of Divestiture Provisions

81. The current spectrum cap and cellular cross-interest rules impose different time frames for divestiture of interests. The cellular cross-interest rule requires that a divestiture transaction be consummated prior to consummating the transaction that gives rise to the need to divest. The spectrum cap rule, however, considers parties to be in compliance with the divestiture provisions if, prior to consummating the primary transaction, an application is filed to transfer control of or assign any interest that would conflict with the rule. Based on its experience over the past two years, particularly in reviewing applications that combined cellular and PCS divestitures in one transaction, the Commission believes that the required timing of divestiture under these two rules should be harmonized.

82. Rather than tighten the divestiture provision in § 20.6, the Commission concludes that the better approach is to afford parties more leeway in the timing of divestiture transactions by revising § 22.942 of its rules to permit a transaction that causes a conflict with this rule to close as long as an application (or other request for Commission approval) has been filed that, if granted and the transaction is consummated, would remove the conflict. In choosing this more lenient course, however, the Commission notes that there may be circumstances in which a party that must divest an interest to comply with the spectrum cap and/or cellular cross-interest restriction should not be allowed a full 180 days to consummate a divestiture transaction. Divestiture transactions, by definition, occur to relieve potential anti-competitive effects of additional concentration. Therefore, because of specific competitive consequences of individual transactions, the Commission may decide on a case-by-case basis that it would serve the public interest to shorten the consummation and notification period to minimize the amount of time that such overlap occurs.

83. The Commission also takes this opportunity to clarify certain issues with respect to placing licenses (or interests in licenses) into a divestiture trust. As a preliminary matter, the Commission will revise § 22.942 of its rules to state explicitly that divestiture of licenses or interests pursuant to this rule is permitted via divestiture trust. In the *First Biennial Review Order*, the Commission stated that a licensee may divest to a trust if the trust will be of limited duration (six months or less) and the terms of the trust are approved by the Commission prior to the transfer of the assets to the trust. Further, the Commission stated that: (1) The divesting party must not have any interest in or control of the trustee; (2) the trust agreement must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities; and (3) the trustee must have the authority to dispose of the license(s) as he or she sees fit.

84. Based on its experience over the past two years reviewing such trust arrangements, the Commission believes that certain clarifications are appropriate to its policy on divestiture trusts. First, with respect to communications between the trustee and the beneficiary (*i.e.*, the divesting party), the Commission recognizes that the nature of communication required between the trustee and the beneficiary will differ depending on the nature of the trust property. For example, if the trust property is merely equity in a licensee that the beneficiary formerly held, very little communication between the trustee and the beneficiary will be necessary. If, however, the trustee is holding an entire business and managing operations, the beneficiary must have the freedom, and the responsibility, to respond to inquiries from the trustee, but must not be given additional knowledge about the operations of the divested property that could be used to influence the operations that the beneficiary retained in the affected market(s). Second, to enable the Commission to keep track of the progress toward ultimate divestiture, the Commission clarifies that its policy is to require, in individual transactions, trustees to report to the Commission every sixty days on the status of attempts to transfer the trust property to a third party. Third, the Commission clarifies that material revisions to an approved trust agreement that relate to the types of provisions it has identified herein or in the *First Biennial Review Order* require prior Commission approval. Fourth, the Commission clarifies that, in the case of an approved divestiture trust, the trust property will be attributed during the period held in trust to the trustee, and because of the protections that are required of such trusts, not to the beneficiary.

Final Regulatory Flexibility Analysis

85. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the R&O

86. In the *NPRM* in this proceeding, as part of its biennial regulatory review pursuant to section 11 of the Communications Act, the Commission solicited comment on whether it should retain, modify, or eliminate the CMRS spectrum cap and the cellular cross-interest rule. In asking these questions, the *NPRM* looked at recent competitive changes in CMRS markets, reexamined the public interest objectives that the spectrum aggregation limits were designed to achieve, and asked whether there were alternatives to the existing rules that would avoid any potential public interest costs.

87. This *R&O* concludes that the CMRS spectrum cap is no longer necessary in the public interest as the result of meaningful economic competition in CMRS markets. Accordingly, the Commission provides for the elimination or "sunset" of the spectrum cap rule effective January 1, 2003. The Commission will no longer rely on this prophylactic rule in its approach to the aggregation of CMRS spectrum, but instead it will examine spectrum aggregation on a case-by-case basis, along with enforcement of safeguards in cases of misconduct. During the transition period, the Commission will consider substantive and processing guidelines to guide its case-by-case review of transactions that would raise concerns similar to those that the spectrum cap was designed to address. The Commission further decides, on the basis of the current state of competition in CMRS markets, to raise the spectrum cap to 55 MHz in all markets during the transition period. The Commission believes that this change should address certain carriers' concerns about near term capacity constraints in the most constrained urban areas during the period until the rule is eliminated and reliance solely on case-by-case review of CMRS spectrum aggregation is initiated, while not posing an undue risk of anti-competitive consequences during the transition period.

88. The Commission also eliminates the cellular cross-interest rule in MSAs without a transition period, in recognition that the cellular carriers in these areas no longer enjoy significant first-mover advantages. However, based on the current record, the Commission retains the cellular cross-interest rule in RSAs, where it appears that the cellular incumbents continue generally to dominate the market. The Commission will reassess the continued need for the cellular cross-interest rule in RSAs during the 2002 biennial review.

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

89. The Office of Advocacy of the U.S. Small Business Administration (SBA) and the National Telephone Cooperative Association (NTCA) filed comments in response to the IRFA. The SBA asserts that the Commission failed to (1) clearly state its regulatory objectives, (2) describe the impact its proposed rules would have on small businesses, and (3) propose alternatives designed to minimize this impact. The Commission disagrees.

90. First, the deregulatory goal of this biennial regulatory review proceeding is clear. The Communications Act requires the Commission to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. Subsequent to making those determinations; the Commission is directed to "repeal or modify any regulation it determines to be no longer in the public interest." Pursuant to that mandate, the Commission has reviewed whether competitive or other developments in CMRS markets warrant elimination or modification of any Commission regulations. In particular, in this proceeding, the Commission reviewed whether to retain, modify or eliminate two regulations that currently limit the aggregation of broadband CMRS spectrum: (1) the CMRS spectrum cap and (2) the cellular cross-interest rule. The *NPRM* addressed possible modifications to the spectrum cap and cellular cross-interest rules, including, among other things: (1) Increasing the amount of spectrum that a single entity may hold in a given geographic area beyond 45/55 MHz; (2) modifying the spectrum cap's ten percent population overlap threshold and/or attribution rules; (3) eliminating or modifying the rule that limits attributable SMR spectrum to 10 MHz; (4) altering the cellular cross-interest rule's provisions as they relate to disaggregation of spectrum and/or post-licensing divestiture; and (5) modifying the ownership attribution standards under both rules. Finally, the Commission notes that by its nature, the Commission's statutory biennial regulatory review obligation contemplates a somewhat open-ended review of the Commission's rules with an eye toward deregulation.

91. Second, the *NPRM* sufficiently described the impact the Commission's proposed rules would have on small businesses, as required by the RFA. SBA states, "the Commission should explain whether lifting the spectrum cap would tend to discourage small business new entry or drive existing small businesses from the marketplace." Again, the Commission notes that its statutory biennial regulatory review requires it to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. In the *NPRM*, the Commission stated:

> Since [September 1999], there have been international and economic developments that have significantly affected CMRS markets. For example, consolidation within the CMRS industry in an effort to create national service footprints has tended to reduce the number of smaller entities providing broadband CMRS on a purely local level. As part of this 2000 biennial review, we seek to develop a record regarding whether the CMRS spectrum cap and cellular cross-interest rule continue to make regulatory and economic sense in CMRS markets in the current-, mid-, and long-term. In doing so, we generally request comment on whether retention, modification, or elimination of the CMRS spectrum cap and/or cellular cross-interest rule is appropriate with respect to small businesses that are licensees in the cellular, broadband PCS and/or SMR services. We seek comment on whether there continues to be a need for these rules to ensure that new entrants, including small businesses, have access to spectrum licenses both at auction and in the secondary market. We inquire whether these bright-line rules continue to create efficiencies and reduce transaction costs for small business. We consider the impact on small businesses if we were to adopt alternative approaches that rely more heavily on case-by-case review. We also seek specific comment on various aspects of these rules that particularly affect small business, such as the [sic] whether our September 1999 decision to increase attribution standards to 40 percent has benefited small businesses.

92. The above-quoted language demonstrates that the Commission raised and addressed the very issues SBA claims were absent in the *NPRM*. The Commission believes it sufficiently raised questions to obtain comment on these issues. For instance, the

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Commission notes that the above language asks whether "there continues to be a need for these rules to ensure that new entrants, including small businesses, have access to the spectrum licenses both at auction and in the secondary market." Accordingly, the *NPRM* met the RFA's requirements.

93. Finally, SBA states that "the Commission should raise and explore alternative ways to encourage nationwide networks, alleviate spectrum shortages, or safeguard competition, and analyze how these alternatives would affect entities with varied resources." As noted in the above-quoted language, the *NPRM* raised a series of issues concerning small entities, affording such entities adequate opportunity to comment on these issues. In addition, as previously noted, biennial regulatory review by its nature contemplates a somewhat open-ended review of the Commission's rules with an eye toward deregulation, as opposed to a more targeted rulemaking. The deregulatory nature of the *NPRM* focuses on whether to retain, modify or eliminate two rules—the CMRS spectrum cap and the cellular cross-interest rule—because they may no longer be necessary in the public interest as a result of meaningful economic competition. Therefore, within the context of its biennial regulatory review, the Commission believes the *NPRM* raised and explored the possible alternatives (*i.e.*, whether to retain, modify or eliminate the two rules). In addition, the *NPRM* sought comment on alternative courses of action if the Commission does eliminate the spectrum cap.

94. NTCA argues that "[t]he unconditional raising or lifting of the spectrum cap will likely result in further consolidation within the CMRS industry and diminish the opportunities for smaller entities to provide broadband CMRS service." Notably, NTCA does not, in its comments on either the body of the *NPRM* or the IRFA, oppose modifying or eliminating either the spectrum cap or the cellular cross-interest rule. Nor does NTCA identify any specific inadequacy in the IRFA. Rather, as an "alternative to its proposed rule changes," NTCA urges the Commission to take several actions unrelated to its spectrum aggregation limits: (1) license spectrum according to smaller geographic service territories, (2) take actions to increase the availability of spectrum to small carriers on the secondary market, and (3) enforce strict construction requirements against CMRS licensees.

95. The alternatives that NTCA advocates are beyond the scope of this proceeding. Specifically, the Commission considers the size of geographic licensing areas in the context of establishing licensing rules for particular bands of spectrum. The Commission is considering in another proceeding potential measures to facilitate the availability of spectrum in secondary markets. *Notice of Proposed Rulemaking* (65 FR 81475, December 26, 2000). Any potential changes in the Commission's construction requirements, or establishment of construction requirements for newly assigned spectrum, are also best considered separately from spectrum aggregation limits. The Commission has considered in this *R&O* alternatives to eliminating the spectrum cap rule, and has adopted measures to minimize the impact of its decision on small entities.

96. No other comments were submitted specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

97. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by their rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (ninety-one percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

98. The rule changes adopted in this *R&O* will affect small businesses that currently are or may become licensees in the cellular, broadband PCS and/or SMR services. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

99. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 808 small cellular service carriers that may be affected by the policies adopted in this *R&O*.

100. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity"' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. Subsequently, the Commission defined an additional classification—"very small business"—for blocks C and F for entities that, together with their affiliates, have had average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity"' in the context of broadband PCS auctions and licensing have been approved by the SBA.

101. The Commission has held six auctions of broadband PCS licenses to date. No small businesses within the SBA-approved definition bid successfully for licenses in the first of these auctions, Auction No. 4, in which the Commission made available licenses in blocks A and B. In Auction No. 5, the initial C block auction, eighty-nine (89) winning bidders qualified as small entities, winning 493 licenses. In the next C block auction, Auction No. 10, seven (7) winning bidders qualified as small entities, winning eighteen (18) licenses. A total of ninety-three (93) small and very small business bidders won approximately forty percent of the 1,479 licenses for blocks D, E, and F in the next broadband PCS auction, Auction No. 11. In Auction No. 22, forty-eight (48) bidders claiming small or very small business status won 277 of the 347 licenses offered. In Auction No. 35, the most recent broadband PCS auction, twenty-nine (29) of the thirty-five (35) winning bidders qualified as small or very small businesses and won 247 licenses. Accordingly, a maximum of 266 small entities have been awarded or placed high bids on licenses in broadband PCS block auctions to date.

102. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. The auction of the 1,020 geographic area licenses for the 900 MHz SMR band began on December 5, 1995, and was completed on April 15, 1996. Sixty (60) winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

103. The lower 230 channels in the 800 MHz SMR band are divided between General Category channels (the upper 150 channels) and the lower 80 channels. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels (plus three (3) 800 MHz licenses for the upper 200 channels from a previous auction) began on August 16, 2000, and was completed on September 1, 2000. At the close of the auction, 1,030 licenses were won by bidders. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 2,800 geographic area licenses for the lower 80 channels of the 800 MHz SMR service began on November 1, 2000, and was completed on December 5, 2000. Nineteen (19) winning bidders for geographic area licenses for the lower 80 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission, therefore, estimates that there are up to 100 geographic area licensees that are small entities in the 800 MHz and 900 MHz SMR bands. In addition, there are 1,144 incumbent site-by-site SMR licensees on the 800 and 900 MHz bands.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

104. The rules in this *R&O* do not impose any additional reporting, recordkeeping or other compliance measures.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

105. In this proceeding, the Commission considered whether to retain, modify, or, alternatively, to eliminate the CMRS spectrum cap and cellular cross-interest rules. The Commission also asked whether there were alternatives to these rules that could avoid any potential public interest costs. The Commission has weighed the benefits of such alternative means of reviewing CMRS spectrum aggregation, specifically considering whether to continue using prophylactic rules or to review spectrum aggregation issues on a case-by-case basis.

106. As an alternative to eliminating the spectrum cap rule, the Commission considered continuing to apply a prophylactic approach to the potential anti-competitive effects of CMRS spectrum aggregation. The Commission recognized that different costs and benefits can be associated with bright-line rules and case-by-case review with respect to degree of flexibility, predictability of outcome, likelihood of rejecting beneficial (or approving harmful) transactions, ability to account for the particular attributes of a transaction or market, speed of decision-making, and resource demands on the Commission and carriers. On balance, and in light of the growth of both competition and consumer demand in the CMRS market, the Commission concludes that case-by-case review, accompanied by enforcement of sanctions in cases of misconduct, is now preferable to the spectrum cap rule because it gives the Commission flexibility to reach the appropriate decision in each case, on the basis of the particular circumstances of that case. The Commission is persuaded that competition is now robust enough in CMRS markets that it is no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest.

107. The Commission believes its provision for a transition period prior to January 1, 2003, for eliminating the spectrum cap will minimize the impact of its decision on small businesses. The Commission notes that several commenters argue against eliminating or increasing the spectrum cap on the ground that the cap preserves opportunities for entrepreneurs and providers of niche services. As other commenters point out, however, the spectrum cap rule does nothing in and of itself to create opportunities for entrepreneurs, and may actually harm small businesses by limiting their access to existing carriers as sources of capital and management expertise. To the extent the spectrum cap does create some potential opportunities for entrepreneurs, the Commission finds this benefit is insufficient to outweigh the benefits of moving away from a bright-line rule approach, particularly in light of the other tools the Commission has to help preserve opportunities for small businesses—its ability to carry out case-by-case review of transactions and its ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. Nevertheless, although it believes that opportunities for small businesses can be fully protected through a case-by-case approach, the Commission recognizes that advancing one's positions in a case-by-case regime could require resources that small businesses may not be immediately prepared to commit. Furthermore, regulatory certainty and speed of processing are likely to be particularly important to small businesses, which typically are less able

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to withstand extended or costly administrative processes. Therefore, in considering the adoption of guidelines and procedures, the Commission will take account of the needs of small businesses. The Commission fully expects that case-by-case review, properly performed, will offer large and small businesses alike the benefits of flexibility and attention to the specific details of a particular transaction. The Commission also commits itself to vigorous enforcement of safeguards against anti-competitive activity.

108. During the transition period, the Commission raises the spectrum cap to 55 MHz in all geographic areas. The Commission considered and rejected the alternative of leaving the spectrum cap at 45 MHz in MSAs because it determined that a 45 MHz cap may over the next fourteen months impose capacity constraints, and ensuing costs to consumers, on carriers in certain urban markets. The Commission also determined that a moderate increase in the spectrum cap, under current market conditions, does not pose an undue risk of anti-competitive conduct during the transition period. Finally, the Commission notes that it will continue to review the competitive consequences of transactions that are at or below the spectrum cap if specific evidence of competitive concerns is presented either by interested parties or through review by Commission staff.

109. With respect to the cellular cross-interest rule, the Commission determines that the rule is no longer necessary or appropriate in MSAs because the cellular duopoly conditions that prompted the rule's adoption no longer exist. Thus, under current market conditions in MSAs, there is no reason to treat the aggregation of cellular spectrum any differently than other aggregation of CMRS spectrum. In RSAs, by contrast, the record, though limited on this point, indicates that competition to the incumbent cellular licensees is not as developed as in MSAs. Thus, based on the record in this proceeding, it appears that a combination of interests in cellular licensees would more likely result in a significant reduction in competition. The Commission, therefore, retains the cellular cross-interest rule in RSAs, subject to waiver of the rule for those RSAs that are shown to exhibit market conditions under which cellular cross-interests may be permissible without a significant likelihood of substantial competitive harm.

110. *Report to Congress:* The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. 5 U.S.C. 604(b).

Paperwork Reduction Act Analysis

111. This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and does not contain any new or modified information collections subject to Office of Management and Budget Review.

Procedural Matters and Ordering Clauses

112. Pursuant to the authority of sections 1, 4(i), 11, 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), and 309(j), this *R&O* is adopted, and §§ 20.6 and 22.942 of the Commission's Rules, 47 CFR 20.6, 22.942, are amended as set forth in the *R&O*, effective February 13, 2002.

113. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 47 CFR Parts 20 and 22

Communications common carrier.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 20 and 22 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–54, 303, and 332 unless otherwise noted.

2. Section 20.6 is amended by revising paragraphs (a) and (e)(4)(i) and adding a new paragraph (f) to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *Spectrum limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (*see* 47 CFR 20.9) shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.

* * * * *

(e) * * *

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(4)(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (*see* § 1.948 of this chapter; *see also* § 24.839 of this chapter (PCS)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit. Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

* * * * *

(f) *Sunset.* This rule section shall cease to be effective January 1, 2003.

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PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.942 is amended by revising paragraphs (a) and (c) to read as follows:

§ 22.942 Limitations on interests in licensees for both channel blocks in RSAs.

(a) *Controlling Interests.* A licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for one channel block in a CGSA may not have a direct or indirect ownership interest of more than 5 percent in the licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for the other channel block in an overlapping CGSA, if the overlap is located in whole or in part in a Rural Service Area (RSA), as defined in 47 CFR 22.909.

* * * * *

(c) *Divestiture.* Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

(1) Parties needing to divest controlling or otherwise attributable interests set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting interest (*see* § 1.948 of this chapter) or other request for Commission approval by which, if granted, such parties no longer would have an attributable interest in the conflicting interest. Divestiture may be to an interim trustee if a buyer or acquirer of the interest has not been secured in the required period of time, as long as the buyer or acquirer of the interest has no interest in or control of the trustee, and the trustee may dispose of the interest as it sees fit. Where parties to such applications or requests for Commission approval hold less than controlling (but still attributable) interests, they shall submit a certification that the applicant or acquirer of the interest and all parties to the application or request for Commission approval have come into compliance with the limitations on interests in licensees for both channel blocks set forth in this section.

(2) [Reserved]

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[FR Doc. 02–868 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 64

[CC Docket No. 92–105, WT Docket No. 00–110; FCC 01–351]

The Use of N11 Codes and Other Abbreviated Emergency Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this document, takes several steps towards implementation of 911 as the universal emergency assistance number for both wireline and wireless telephones. Specifically, the Commission adopts a maximum period for all carriers, serving areas with a designated public safety answering point (PSAP) or serving areas where a PSAP has not yet been designated, to transition to routing 911 calls to a PSAP, an existing statewide established default point, or an appropriate local emergency authority. The decision also addresses steps the Commission will take to encourage and support States in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public. Finally, the decision clarifies that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services. The action is taken to satisfy the Commission's legislative mandate and to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services.

EFFECTIVE DATE: February 13, 2002, except for § 64.3002, which contains modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for this section. Public comment on the information collections are due March 15, 2002, and comments by the Office of Management and Budget are due May 14, 2002.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Kimmel or David Siehl,202–418–1310, or Cheryl Callahan, 202–418–1806. For further information concerning the information collection contained in this Order, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110 (Order), and Memorandum Opinion and Order in CC Docket No. 92–105 and WT Docket No. 00–110, FCC No. 01–351 (cited collectively as Order), adopted November 29, 2001, and released December 11, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov*.

Synopsis of the Order

1. The Commission, in the Order, takes further steps to implement the provisions in the Wireless Communications and Public Safety Act of 1999 (911 Act), enacted by Congress to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services and to implement 911 as the universal emergency assistance number. (A summary of the Third Notice of Proposed Rulemaking in CC Docket No. 92–105 may be found at 65 FR 56752, September 19, 2000. The First Notice of Proposed Rulemaking in WT Docket No. 00–110 was summarized at 65 FR 56757, September 19, 2000.)

2. The Commission first adopts a flexible transition approach to implementation of 911 as the emergency assistance number. This approach reflects the different technical and operational measures that carriers need to undertake and provides carriers the flexibility necessary for them to effectuate transition to 911 expeditiously. The Commission notes that the transition period adopted in the Order does not apply to those carriers who currently route 911 calls to PSAPs in their service area.

3. As an initial matter, paragraph 14 of the Order discusses the use of the term "appropriate authorities" as used in the 911 Act, and finds it reasonable to interpret this term to include emergency answering points such as county sheriff offices, volunteer fire departments, or other similar points that are effectively functioning as PSAPs for purposes of receiving emergency calls, and, if necessary, relaying the calls to other emergency service providers, for the purpose of responding to emergencies.

4. As discussed in paragraphs 15 through 31 of the full text of the Order, the Commission establishes a flexible transition approach to 911 implementation. First, where carriers do not currently route 911 calls to officially designated PSAPs, the Commission

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adopts a nine-month transition period for each of the particular circumstances carriers will face. Where a PSAP has been designated, the Commission adopts a maximum period, running from the release of this Order and expiring nine months later, for carriers to deliver all 911 calls to that PSAP. Similarly, in areas where no PSAP has been designated, the Commission adopts a requirement that within nine months of the release of this Order, carriers must begin delivering 911 calls: (a) statewide-established default point; (b) if none exists, to an appropriate local emergency authority, such as the police or county sheriff, selected by an authorized State or local entity; or (c) as a matter of last resort and to avoid the blocking of 911 calls, if no PSAP has been designated and neither a statewide default answering point nor an appropriate local emergency authority has been selected, to an appropriate local emergency authority, based on the exercise of the carrier's reasonable judgment, following initiation of contact with the State Governor's designated entity under section 3(b) of the 911 Act.

5. In this regard, the Commission strongly encourages State and local authorities to designate the appropriate emergency response points. The Commission believes that these government agencies, as the primary safety and security agencies should decide the routing of 911 calls. For these reasons, once a carrier has been made aware that no appropriate local emergency authority has been selected, the carrier should notify the Governor's designated entity as soon as practicable of that matter and allow at least 15 days for a response from that entity before proceeding to select an answering point on its own initiative.

6. Further, as discussed in paragraphs 16, 33, and 34 of the Order, in transitioning to the use of 911, carriers must implement a permissive dialing period, during which emergency calls will be routed to the appropriate emergency response point using either 911 or the seven or ten-digit number to allow time for the education of consumers as to the transition to the use of 911. The Commission requires carriers to continue to deliver both 911 calls and emergency calls made using a seven or ten-digit number under a permissive dialing scheme until the State or local jurisdiction determines to phase out the use of the seven or ten-digit number entirely. Once a determination has been made to end a permissive dialing period, as described in paragraphs 16 and 37 of the Order, the Commission requires carriers to furnish a standard intercept message, in accordance with accepted industry practices and guidelines to further educate callers about the dialing code change.

7. Additionally, as indicated in paragraphs 42 through 45 of the Order, the Commission adopts a limited transition report requirement. Specifically, the Commission requires carriers to file two transition reports covering the following geographic areas: (1) Those counties where there is no 911 service; (2) those counties in the process of implementing 911; and (3) those counties that have basic 911 service only in some parts. The first transition report must be filed three months following the release of the Order. The second transition report must be filed 15 calendar days following the end of the transition. Carrier transition reports must be filed, as appropriate depending upon whether the carrier's service is wireline or wireless, with the Chief of the Common Carrier Bureau or the Chief of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The Commission encourages carriers to file their transition reports electronically to the appropriate electronic mailbox that has been established by each Bureau. For ease of accessibility, a link to these reports will be placed on the Commission's E911 website. Depending upon whether the carrier's service is wireline or wireless, please email the report to either *911transitionreport-ccb@fcc.gov* or *911transitionreport-wtb@fcc.gov*. In addition to the information included in the reports as described in paragraphs 44 and 45 of the Order, the Commission delegates authority to the Chiefs of the Common Carrier Bureau and the Wireless Telecommunications Bureau to require additional information, as necessary to evaluate the carriers' progress in achieving the transition and their compliance with the transition requirements adopted in the Order.

8. Paragraphs 46 through 52 of the Order address steps the Commission will take to encourage and support States in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public. The Commission assumes a leadership role to encourage and support States' efforts to deploy comprehensive emergency communications networks by pursuing an informal approach rather than the adoption of specific rules. To carry out its role, the Commission will maintain an ongoing dialog with State and local officials, through interactions with various associated groups such as the National Governors' Association, the National Conference of State Legislatures, and the National Association of Regulatory Utility Commissioners. The Commission also will make presentations on 911-related issues at conferences of various associations, hold roundtable discussions, and provide an information clearinghouse function with links from its E911 website. The Commission will also explore participation in the National Emergency Number Association's (NENA) "critical issues forums," providing a website link for NENA's Report Card to the Nation and updates to that report and assisting in the establishment of State-level clearinghouses.

9. Finally, paragraphs 55 through 62 of the Order clarify that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis

10. This Order contains a modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 15, 2002, and comments from the Office of Management and Budget are due May 14, 2002. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested OMB emergency approval of these modified burdens and will place a document in the **Federal Register** once this approval is received.

OMB Control Number: 3060–0954.

Title: Implementation of the 911 Act, The Use of N11 Codes and Other Abbreviated Dialing Arrangements.

Form No. N.A.

Type of Review: Revision of an existing information collection.

Respondents: Business or other for profit; not for profit institutions, State or local government.

Number of Respondents: 800 respondents, 400 responses.

Estimated Time Per Response: 4.5 hours.

Frequency of Response: Third-party Disclosure, on occasion; Reporting, twice.

Total Annual Burden: 3,100 hours.

Cost to Respondents: 0.

Needs and Uses: The burdens contained in this Order are all needed to ensure prompt and smooth transition to universal 911 emergency calling services.

Final Regulatory Flexibility Act Analysis

11. This is a summary of the Commission's Final Regulatory Flexibility Analysis. The full text of the Analysis may be found in Appendix C of the Order.

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the Notice of Proposed Rulemaking (NPRM) and the Third NPRM (Third NPRM) in this proceeding. The Commission sought written public comment on the proposals in the NPRM and the Third NPRM, including comment on both IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of the Memorandum Opinion and Order on Reconsideration and Fifth Report and Order

13. In this and Fifth Report and Order (Fifth R&O) in CC Docket No. 92–105, First Report and Order (First R&O) in WT Docket No. 00–110, and Memorandum Opinion and Order on Reconsideration in both dockets (collectively referred to as the Order) the Commission takes further steps to implement the provisions in the Wireless Communications and Public Safety Act of 1999 (911 Act) enacted to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. The actions adopted in the Order are intended to ensure that these Congressional goals are implemented effectively and efficiently.

Summary of Significant Issues Raised by Public Comments in Response to the IFRAs

14. No comments were filed in direct response to the IRFAs. However, the Commission received comments regarding several issues affecting small entities. For example, as discussed in paragraphs 4 through 9 of the Order, commenters questioned whether the Commission is the appropriate entity to establish transition periods for implementation of universal 911 dialing. The Commission disagrees, finding that to delegate the responsibility to States and localities for establishing transition periods for carriers could result in multiple, conflicting transition periods. Also, as indicated in paragraphs 42 through 45 of the Order, commenters opposed a requirement that carriers file transition reports for Commission use as a tool to monitor carrier progress in converting to universal 911. However, the Commission adopts a limited transition report requirement which is less burdensome than that proposed in the Third NPRM. As adopted, carriers are required to file only two reports and these reports will focus only on carriers serving those areas of country in which 911 is not currently in use. This requirement is discussed in more depth in the FRFA section, *infra*, considering steps taken to minimize the significant economic impact on small entities and alternatives considered.

15. Paragraphs 48 through 52 of the Order discusses ways in which the Commission can comply with its obligation to offer support of comprehensive state emergency plans. Although the Commission received only nine comments on this issue, one comment, for American Samoa License, Inc., in particular, provided significant input on, among other things, the unique circumstances of its situation and the way a "one-size-fits-all" model plan would not address its particular needs. In response to such comment, the Commission adopts an informal leadership approach to its responsibilities in this regard, for example, by participating in organizational meetings setup by interested parties, and placing details of information-sharing measures by means of the FCC's website and public notice, which the Commission hopes will encourage increased participation to which we can add our support.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules adopted in this action. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The definition of "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000." There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules.

18. This list includes categories that at present may not be subject to the 911 Act rules. At present, covered carriers include all cellular licensees, broadband PCS licensees, and certain carriers of Specialized Mobile Radio (SMR) licensees. The SMR providers that are presently covered include "only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services." For those carriers that presently do not need to comply with the 911 requirements, such

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as Mobile Satellite Service (MSS) carriers, the Commission acknowledges that, at some point in the future, they may be required to provide appropriate access to emergency services.

19. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for "Cellular and Other Wireless Telecommunications" and "Wired Telecommunications Carriers." According to these standards, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the effected services fit into the SBA definition of small business, the Commission has consistently referred to Table 5.3 in *Trends in Telephone Service (Trends)* a report published annually by the Commission's Common Carrier Bureau.

20. *Local Exchange Carriers.* According to the most recent *Trends* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, or are not independently owned. However *Trends* indicates that 1,037 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS.

21. We have included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

22. Also included in the number of Local Exchange Carriers is the rural radio telephone service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the NAICS definition.

23. *Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends* indicates that 349 CAPs and CLECs, 87 local resellers, and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, *Trends* states that 297 CAPs and CLECs, 86 local resellers, and 56 other local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees for a total of 439 such entities qualified as small entities.

24. *Fixed Local Service Providers and Payphone Providers. Trends* reports that there are 1,831 fixed local service providers and 758 payphone providers. Using the NAICS standard for small entity of fewer than 1,500 employees, *Trends* estimates that 1,476 fixed local service providers, in combination with affiliates have 1,500 or few employees and thus qualify as small entities. In addition, 755 payphone providers report that, in combination with their affiliates, they employ 1,500 or fewer individuals.

25. *Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers.* There are 806 entities in this category as estimated in *Trends*, and 323 such licensees in combination with their affiliates have 1,500 or fewer employees and thus qualify using the NAICS guide, as small businesses.

26. *Other Mobile Service Providers. Trends* estimates that there are 44 providers of other mobile services, and again using the NAICS standard, 43 providers of other mobile services in combination with their affiliates hire 1,500 or fewer employees and thus may be considered small entities.

27. *Toll Service Providers. Trends* calculates that there are 738 toll service providers, including 204 interexchange carriers, 21 operator service providers, 21 pre-paid calling card providers, 21 satellite service carriers, 454 toll resellers, and 17 carriers providing other toll services. *Trends* further estimates that 656 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS. This figure includes 163 interexchange carriers, 20 operator service providers, 20 pre-paid calling card providers, 16 satellite service carriers, 423 toll resellers, and 15 carriers providing other toll services.

28. *Offshore Radiotelephone Service.* This service operates on several TV broadcast channels that are not otherwise used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Commission adopts a flexible approach of basic requirements based on maximum periods for certain technical and operational aspects of a transition and recommends steps to ensure the prompt delivery of emergency calls across the nation. Paragraphs 18 through 21 of the Order consider transition periods for areas where there is a designated public safety answering point (PSAP) or once a PSAP is designated. For areas in which State or local authorities have established a PSAP, the Commission adopts a maximum nine-month transition period that runs from December 11, 2001, for carriers to deliver all 911 calls to that PSAP. Subsequent to the transition period, the Commission establishes a permissive dialing period in order for carriers to educate consumers on the transition to 911-dialing. The Commission also encourages such carriers, following the permissive dialing period, to furnish a standard intercept message. (*See* paragraphs 16 and 37 of the Order).

30. Also, as detailed in paragraphs 22 through 31 of the Order, in areas where there is no PSAP, the Commission adopts the following requirements: within nine months of the effective date of this Order, carriers must begin delivering 911 calls to either a statewide established default point or, if none exists, to an appropriate local emergency authority, such as the police or country sheriff. If a State or local authority prefers that carriers deliver 911 calls to some other local default point, the Commission provides that carriers must begin delivering 911 calls to such a default point no later than nine months from the date of the request by the local authority or appropriate State entity. Once a State or local authority has formally designated a PSAP for an area, a carrier will have a nine-month period to deliver 911 calls to that PSAP. Paragraph 27 of the Order establishes that, where no appropriate local emergency authority has been selected, that carriers contact, as soon as practicable, the entity designated by that State's Governor to assist in implementation of 911, and to allow 15 days for a response. If none is forthcoming, then carriers should exercise reasonable judgment in determining where to deliver 911 calls.

31. Paragraphs 42 through 45 of the Order consider implementation and enforcement of transition period deadlines. In this regard, the Commission adopts a limited transition report requirement which requires that carriers serving areas where 911 is not in use as the emergency number on the date of enactment of the law file two reports as detailed in paragraphs 43–45 of the Fifth R&O.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include, among others, the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

33. The Commission is limited in establishing less stringent requirements for small entities in this proceeding by the critical public safety issues of concern and by legislative mandate. The results of delayed or insufficient response to wireless 911 calls can be equally fatal whether the carrier involved is a large or small entity. When given alternatives which do not compromise the public safety goals of this proceeding but offer all entities the flexibility to carry out their responsibilities in a way that is tailored to their individual locality and its needs, the Commission has chosen the more flexible option. For example, in areas where there is neither a PSAP nor a statewide default answering point, many of which are served by small carriers or are governed by small entities, an existing local law enforcement agency such as a country sheriff could serve as the local emergency authority.

34. On the other hand, several carrier-commenters recommend that the Commission allow carriers and States and localities to establish transition periods for implementation of 911 dialing. As discussed in paragraphs 5 through 9 of the Fifth R&O, the Commission declines to adopt this alternative, finding that to delegate such authority to carriers and PSAPs could result in multiple, conflicting transition periods and create confusion in critical emergency situations as travelers move from one locality to another. Further, the Commission finds that delegating the authority to establish 911 transition periods to carriers and PSAPS could hinder the Commission's ability to ensure that the transition to 911 dialing occurs on a timely basis and could hinder the Commission's overall ability to monitor the transition to 911 as the nationwide emergency number. If the Commission had authorized States and localities to establish 911 transition periods, it would place the responsibility and burden for this administrative work on the entities themselves, many of whom are small. It should be noted, however, that the Commission recognized the need for a transition period, noting the fluid nature of technology, and provided the flexible transition period adopted in the Fifth R&O. The transition period will allow both large and small carriers time, not only to complete the technological updates and coordination which may be necessary to provide 911 service, but also time to educate the public regarding 911 service. Also, in establishing flexible transition periods, the Commission recognizes that individual service areas face different technical and operational measures.

35. In this regard, as discussed in paragraphs 32 through 39 of the Order, the Commission elects not to promulgate rules for carriers to educate the public about 911 transition, but simply encourages carriers to plan and provide time in the transition period for planning and executing a public education program. Several commenters suggest additional requirements regarding educating the public, which the Commission found to be unnecessary and burdensome, particularly on small entities. One commenter, for example, proposed a requirement that carriers service areas that currently use non-911 abbreviated numbers for emergency purposes notify the agency using such numbers that they will not be available after the transition period. The same commenter recommended requirements for carriers to provide billing inserts apprising customers of the conversion to 911 as the universal emergency assistance number. The Commission encourages such public education efforts to enable the permissive dialing period to be discontinued. Nonetheless, once discontinued, the Rules require the carriers to intercept calls made via non-911 emergency numbers with an announcement to alert the caller to the change to 911 for emergency calls. This offers all carriers, including small carriers, the flexibility to design the appropriate public education program that best satisfies the need for 911 education within the individual service area, while offering the carrier some control over expenditures in this area.

36. In one area, however, the Commission, faced with its legislative mandate to monitor the progress of carriers in the transition to 911, adopted a requirement that may particularly impact rural and small carriers. As indicated in paragraphs 42 through 45 of the Order, the Commission adopts a limited requirement for transition reports. In the NPRM, the Commission proposed a broader approach to transition reports that would have affected all carriers and would be filed on a more regular basis than the requirement adopted in the Fifth R&O. The adopted requirement states that only those carriers providing service in areas where 911 is not in use as the emergency number on the date of enactment of the law must file two reports. The filing of the reports will be limited to those counties where there is no 911 service; those counties that are in the process of implementing 911; and those counties that have basic 911 service only in some parts. The first report is to be filed March 11, 2002 and the second report 15 calendar days after the end of the transition period. Although the actual regulation is less burdensome overall on all carriers, it is likely that carriers that do not yet offer 911 service would be small entities as defined by the SBA. In addition, as described in paragraph 27 of the Order, the Commission adopts a requirement that carriers serving areas where no PSAP or appropriate local emergency authority has been established must initiate contact with the entity designated by the Governor before exercising reasonable judgment as to where to deliver 911 calls.

37. The Commission recognizes that the burden for making progress towards 911 implementation may fall, during the transition period, on small and rural entities because they are most likely to require the most effort in implementing 911. They may cover larger, less populated areas who may face funding

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problems and who may have farther to go in achieving the expensive technological advances which facilities serving more urban areas have access to. By the same token, however, these same disadvantages that many such small carriers and State or local governments face also dictate a need for optimum 911 emergency service as quickly as possible. The Commission has tried to make compliance with 911 rules and implementation dates as fair as possible to small entities by, for example, establishing flexible transition periods. In establishing the limited transition report requirement, the Commission provides that carriers might, at their option, consolidate reporting and eliminate redundant reports by filing the transition reports either collectively with those carriers similarly situated or combining reports for several counties facing similar problems, thus saving the affected carriers time and costs. It is intended that the transition reports will provide the Commission with information leading to solutions to the unique problems faced by small entities in the implementation of 911 service. In addition, the Commission hopes the reporting process will generate a cooperative dialogue regarding how entities with similar problems can resolve such issues.

38. The Commission, instead of establishing a proposed program that would require carriers and PSAPS, large and small, to provide information to each other or to the Commission regarding problems exclusive to their locality, establishes an informal program in which the Commission would serve as a clearinghouse for such information. Further, instead of establishing a coordination requirement forcing PSAPs and carriers to meet to discuss intra-locality issues, the Commission emphasizes the importance of assuming a leadership role in providing coordination and technical assistance and endorses the joint leadership of the Commission and State Governors in this area to assist parties involved with integrated comprehensive emergency communications systems. (*See* paragraphs 46 through 52 of the Order)

39. *Report to Congress:* The Commission will send a copy of this decision, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(a). In addition, the Commission will send a copy of the Order, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

40. Pursuant to §§ 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310, the Fifth Report and Order in CC Docket No. 92–105 is adopted.

41. Part 64, new Subpart AA, of the Commission's rules is adopted to require wireline and wireless licensees to complete the transition to 911 as the universal emergency assistance number, as set forth in Appendix B of the Order and will become effective February 13, 2002, except for § 64.3002, which contains modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a notice in the **Federal Register** announcing the effective date for this section.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this, Fifth Report and Order, First Report and Order, and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. Pursuant to §§ 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310, the First Report and Order in WT Docket No. 00–110 is adopted.

44. The Petition for Reconsideration or Clarification of the Fourth Report and Order, in CC Docket No. 92–105, filed by Maritel, Inc. on September 28, 2000, IS GRANTED to the extent described in the Order.

45. Authority is hereby delegated to the Chiefs of the Common Carrier Bureau and the Wireless Telecommunications Bureau to require additional information, as necessary, to evaluate carriers progress in achieving the transition to the use of 911 and their compliance with the transition requirements set forth in the Order.

List of Subjects

47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

47 CFR Part 64

Communications common carrier, Radio, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications amends 47 CFR Parts 20 and 64 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.3 is amended by adding definitions of "appropriate local emergency authority" and "statewide default answering point" in alphabetical order to read as follows:

§ 20.3 Definitions.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited, to an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

* * * * *

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

3. Section 20.18(b) is revised to read as follows:

§ 20.18 911 Service.

* * * * *

(b) *Basic 911 Service.* Licensees subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 64.3001 of this chapter, provided that "all wireless 911 calls" is defined as "any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier."

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

5. Add subpart AA to part 64 to read as follows:

Subpart AA—Universal Emergency Telephone Number

Sec.
Sec. 64.3000. Definitions.
Sec. 64.3001. Obligation to transmit 911 calls.
Sec. 64.3002. Transition to 911 as the universal emergency telephone number.
Sec. 64.3003 Obligation for providing a permissive dialing period.
Sec. 64.3004 Obligation for providing an intercept message.

Subpart AA—Universal Emergency Telephone Number

Authority: 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310.

§ 64.3000 Definitions.

(a) *911 calls.* Any call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider. For wireless carriers, all 911 calls include those they are required to transmit pursuant to § 20.18 of the Commission's rules.

(b) *Appropriate local emergency authority.* An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

(c) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive 911 calls and route them to emergency services personnel.

(d) *Statewide default answering point.* An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

§ 64.3001 Obligation to transmit 911 calls.

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 64.3002.

§ 64.3002 Transition to 911 as the universal emergency telephone number.

As of December 11, 2001, except where 911 is already established as the exclusive emergency number to reach a PSAP within a given jurisdiction, telecommunications carriers shall comply with the following transition periods:

(a) Where a PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to a PSAP no later than September 11, 2002.

(b) Where no PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to the statewide default answering point no later than September 11, 2002.

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 64.3003 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven-or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction determines to phase out the use of such seven-or ten-digit number entirely and use 911 exclusively.

§ 64.3004 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 64.3003, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven-or ten-digit emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

[FR Doc. 02–869 Filed 1–11–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–132; FCC 01–314]

1998 Biennial Review—Multichannel Video and Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a number of minor corrections to various part 76 rules pertaining to the public file, notice, recordkeeping, and reporting requirements which were published in the **Federal Register** of Tuesday, September 5, 2000 (65 FR 53610). This action completes the Commission's 1998 biennial review of the public file and notice requirements concerning cable television.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Sonia Greenaway-Mickle, Cable Services Bureau, (202) 418–1419.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order ("Second Order"), FCC 01–314, adopted October 22, 2001; released October 31, 2001. The full text of the Commission's Order is available for inspection and copying during

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normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/*.

In this document we make non-substantive rule changes to correct errors in the publication of part 76 of the Commission's rules. With this action, we complete the Commission's biennial review of the public file, notice, recordkeeping, and notice requirements applicable to cable operators under part 76 of the Commission's rules.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 76

Multichannel video and cable television service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Accordingly, 47 CFR part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

§ 76.305 [Removed]

2. Remove § 76.305.

3. Add Note to § 76.309 to read as follows:

§ 76.309 Customer service obligations.

* * * * *

Note to § 76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

4. Add Note 4 to § 76.630 to read as follows:

§ 76.630 Compatibility with consumer electronic equipment.

* * * * *

Note 4 to § 76.630: Cable operators must comply with the notification requirements pertaining to the waiver of the prohibition against scrambling and encryption, and comply with the public file requirement in connection with such waiver.

5. Section 76.1510 is revised to read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

§ 76.1700 [Amended]

6. Section 76.1700 is amended by removing and reserving paragraph (a)(1).

§ 76.1702 [Amended]

7. Section 76.1702 is amended the first time it appears by removing the editorial note. Section 76.1702 is further amended by removing it the second time it appears in its entirety.

§ 76.1802 [Amended]

8. Section 76.1802 is amended the first time it appears by removing the editorial note. Section 76.1802 is further amended by removing it the second time it appears in its entirety.

[FR Doc. 02–788 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 195

[Docket No. RSPA–99–6355; Amendment 195–74]

RIN 2137–AD61

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Repair Criteria)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule finalizes repair provisions for hazardous liquid pipelines. These provisions were initially proposed in the previous rulemaking action which addressed requirements for pipeline integrity management programs in high consequence areas for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline (Integrity Management rule.) In the Integrity Management rule, we requested comment on the repair and mitigation provisions, because the provisions were substantially modified from those originally proposed in the notice of proposed rulemaking. This final rule also makes several non-substantive corrections and clarifications to other provisions of the Integrity Management rule.

DATES: This rule is effective May 29, 2001, except for paragraph (h) of § 195.452 which takes effect February 13, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or by e-mail: *mike.israni@rspa.dot.gov*, regarding the remediation provisions in paragraph (h) or any other provisions of the integrity management rule; or the Dockets Facility (202) 366–9329, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov*. General information about the RSPA/Office of Pipeline Safety (OPS) programs may be obtained by accessing OPS's Internet homepage at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2000, RSPA published a final rule (65 FR 75378) that prescribed integrity management program requirements for pipeline operators who own or operate 500 or more miles of pipeline transporting hazardous liquids or carbon dioxide. Under the Integrity Management rule, operators are required to develop and implement integrity management programs that focus on hazardous liquid and carbon dioxide pipelines that could affect high consequence areas. High consequence areas are defined as: populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways.

As part of the Integrity Management final rule, we requested comment on repair and mitigation provisions (§ 195.452(h).) We made this request because we substantially changed the initial provisions proposed in the notice of proposed rulemaking. We noted at that time that, at the end of the comment period (March 31, 2001), we would either publish a final rule modifying these repair provisions or stating that the provisions would remain unchanged. We received comments from six sources. Based on our analysis of the comments received, we modified paragraph (h). We discussed the comments, our responses, and changes made to these provisions below, in greater detail.

This document also makes several corrections and language clarifications to other provisions in § 195.452 and the Appendix C guidance. These changes do not affect the substance of any of the Integrity Management rule requirements. Rather, these revisions either correct the rule because of mistakes found since the rule was issued, or they clarify some of the language.

Corrections

The reference in paragraph (j)(4)(i) that the external monitoring technology provide an understanding of the line pipe equivalent to that obtained under paragraph (j)(2), was incorrect. The reference should be to the assessment methods listed in paragraph (j)(5), not to the evaluation described in paragraph (j)(2).

We deleted the sentence in paragraph (j)(4)(ii) requiring an operator to complete an integrity assessment within 180 days, after providing 180-days advance notice that it could not complete the five-year continual integrity assessment because of unavailable technology. If we did not remove this requirement, an operator would have to complete the re-assessment within the five-year period. Thus, the exception for a longer assessment period would be illusory.

We corrected the notification period in paragraph (j)(5)(iii), which required using alternative technology in the continual integrity assessment, from 60 days to 90 days. 90 days is consistent with the advance notice required for a baseline assessment that uses technology other than a hydrostatic test or an internal inspection tool.

We added paragraph number 1 to precede the first sentence in paragraph (l).

We corrected the grammar in several places in Appendix C.

Clarifications and Non-Substantive Revisions

We added carbon dioxide pipelines to § 195.452(a) to clarify that the integrity management program requirements for hazardous liquid pipelines to also apply to carbon dioxide pipelines regulated under Part 195.

We clarified in paragraphs (c)(1)(i) and (j)(5) that the three allowable assessment methods for the baseline and continual integrity assessments are to be applied to lap welded pipe and to low frequency ERW pipe.

We clarified that the periodic evaluation (paragraph (j)(2)) is to consider the results from the integrity assessments required by § 195.452, i.e., the baseline and continual integrity assessments.

We clarified the language in paragraph (j)(4)(i) regarding the justification and notice required for a variance based on engineering reasons.

We added the requirement that an address and facsimile number must be included for notifications required by the Integrity Management rule, rather than referencing these in other pipeline safety regulations. Due to the confusion of some operators about where to send a notification required by § 195.452 versus notifications required for other purposes, we added a new paragraph (paragraph (m)), which provides this information.

We revised several paragraphs in § 195.452 and Appendix C to make the terminology consistent with changes made to the terms used in paragraph (h).

We added another section to the guidance in Appendix C, which lists conditions an operator should include in its schedule for evaluation and remediation.

Advisory Committee Consideration

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) is the Federal advisory committee charged with the responsibility of advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed hazardous liquid pipeline safety standards. The committee is composed of members with the requisite statutory expertise who represent industry, government, and the general public.

We discussed the repair provisions in paragraph (h) and comments received on those provisions by teleconference with the THLPSSC at its meeting on August 13, 2001. Before the discussion, the committee members were mailed a summary of comments on the repair provisions, and a supplement to the cost-benefit analysis that addressed these provisions.

At the August 13 meeting, seven of the twelve current members participated in the teleconference. These seven THLPSSC members voted unanimously to accept the repair provisions, provided OPS consider the changes and comments discussed during the teleconference.

The following is a list of the changes and comments that the THLPSSC asked OPS to consider:

- Reevaluate and relax the 60-day repair schedule for dents on the top of the pipe.
- Allow mitigative measures, other than repair.
- The provisions assume the use of in-line-inspection technology to identify defects although the rule allows both hydrostatic testing and other technologies for the integrity assessments.
- Provide that discovery of a defect occurs when an engineering analysis of the assessment results is completed.
- Let the section reflect that some internal inspection assessment results cannot be analyzed as quickly as others. For example, it typically takes a year following completion of the assessment to receive final results from a crack detection tool.
- Delete the section on other conditions requiring repair or move it to Appendix C as guidance material.

We discuss below all changes made to § 195.452(h) in response to the THLPSSC and other commenters.

Comments on Section 195.452(h)

On December 1, 2000, OPS issued a final rule addressing pipeline integrity management in high consequence areas for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline (65 FR 75378) (The Integrity Management Rule.) This rule included provisions addressing the repair of conditions found during an integrity assessment. The provisions were found in paragraph (h) of section 195.452, under the title "What actions must be taken to address integrity

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issues." However, because the repair provisions in the Integrity Management rule were substantially different from what we initially proposed in the notice of proposed rulemaking, we requested comment on the provisions. All other provisions of the Integrity Management rule were final and became effective May 29, 2001.

We received comments from the following six sources:

—One trade association with members affected by this rulemaking:
American Petroleum Association (API)
—Three individual liquid pipeline operators:
Tosco Corporation
Chevron Pipe Line Company
Colonial Pipeline Company
—One operator not directly affected by this rulemaking:
Enron Transportation Services Company (natural gas transmission)
—One Engineering company:
SEFBO Pipeline Bridge, Inc.

SEFBO did not comment directly on the repair provisions but expressed its support for pipeline integrity management programs and stressed the importance of considering safety issues relating to the support structures used by pipelines to cross high consequence and other sensitive areas.

Some of the comments we received about the repair provisions also addressed other portions of the final rule. As we only requested comment on the repair provisions in paragraph (h), this document will focus on those comments. If at some point we determine that substantive revisions to the final rule are necessary and we propose changes, we will then consider those comments.

Comments on Section 195.452(h)—"What actions must be taken to address integrity issues?"

1. General comments about paragraph (h):

API objected to use of the word repair throughout paragraph (h). API contended the exclusive focus of the rule on repairs undermined the holistic approach of the rule. API commented that a key principle throughout the rule is the integration of information, so appropriate mitigative actions can be taken based on a comprehensive assessment. API explained that although actions may consist of repair, other actions such as further testing and evaluation, environmental changes, operational changes, or administrative changes could be appropriate. API advised that the goal should be to ensure operators differentiate defects injurious to a pipeline's integrity from those that are not.

Tosco also commented that requiring repair in all instances was too inflexible, and operators must have the flexibility to address a wide range of conditions.

Response:

To assure the integrity of pipeline segments that could affect high consequence areas, Section 195.452 requires an operator to conduct a variety of assessments. The assessments include baseline and continual integrity assessments of the line pipe and periodic evaluations of entire pipeline systems, to assure the integrity of pipeline segments that could affect high consequence areas. This is accomplished through the continual identification and remediation of potential problems. We agree the word "repair" in paragraph (h) might be too narrow to encompass the range of actions an operator could take to address a problem. We intended paragraph (h) to reflect the broader actions an operator must take to address integrity issues that are identified. We further agree that all anomalies identified by an integrity assessment or information analysis might not require repair. Therefore, we replaced the word repair with remediate throughout paragraph (h). Remediate can encompass a broad range of actions, which include mitigative measures as well as repair, that an operator can take to resolve a potential integrity concern. Although we firmly believe repair is necessary to address many anomalies, we recognize repair may not be necessary in all instances. The rule provides the operator flexibility to determine the most appropriate action to take. However, we added language to ensure that whatever action is taken by an operator, it must be adequate to resolve the integrity concern on the pipeline for the long term. We also added a requirement that when an operator chooses to remediate a condition through a reduction in operating pressure, the pressure reduction is not to extend beyond 365 days without the operator taking further action to ensure the safety of the pipeline.

2. Section 195.452(h)(1)—General Requirements: In this paragraph we required an operator to take prompt action to address all pipeline integrity issues raised by the integrity assessment and information analysis, and evaluate all anomalies and repair those that could reduce a pipeline's integrity. An operator was further required to follow § 195.422 in making a repair.

API objected to the words "prompt" and "all" because these words could be interpreted in their absolute sense; could cause confusion because of the required time frames for addressing certain conditions; and could lead inspectors to require operators to take costly actions to address insignificant anomalies. API recommended deleting these terms.

Tosco suggested the rule only require an operator to comply with § 195.22 when a repair is necessary.

Response:

As explained in the previous section, we replaced "repair" with "remediate" throughout paragraph (h), allowing for actions other than repair, in order to address integrity threatening pipeline conditions. This will allow an operator flexibility in how to address anomalous conditions on its pipeline.

We did not delete the terms "prompt" and "all." The pipeline safety regulations have long incorporated the term "prompt," with consistent enforcement; there is little disagreement between operators and inspectors about its meaning. For the listed conditions, we determined what a prompt time frame should be (viz., immediate, 60 days, 180 days), but leave it to the operator to determine appropriate time frames for other conditions. We kept the word "all" because it is a reasonable requirement for an operator to evaluate all conditions indicated by an integrity assessment or the information analysis, in order to determine the significance of each concern. Upon evaluation of the condition, the operator can then determine the appropriate further action to take, if any. We revised the language to clarify that an operator must evaluate all anomalous conditions (i.e., any condition that is irregular, abnormal, deviates from the norm, etc.) and remediate those conditions that could reduce the integrity of a pipeline.

The word "address" is used in the introductory paragraph to encompass the process an operator should go through to find and remedy anomalous conditions, i.e., discovery, evaluation, and remediation of the condition through repair or other mitigative action. Using language to capture the process, is consistent with API's comment about the intended goal of the rule. By having an operator address all anomalous conditions raised by the integrity assessment or the information analysis, we envision a process that begins with discovery of a condition or anomaly that poses an integrity concern to the pipeline; continues with an evaluation that includes the analysis of other relevant data about the pipeline (this analysis could also be part of the discovery); and concludes with fixing the problem.

We did not add "if necessary," to the requirement about complying with

§ 195.422, as suggested by Tosco. The rule now uses the word remediate, which should alleviate any confusion about when compliance with § 195.422 is necessary. Section 195.422 applies only to repairs. If actions other than repair are taken, the requirements in the section do not apply.

3. Section 195.452(h)(2)—Discovery of a condition.

The discovery of a condition triggers the time frames (either required by the rule or the operator's schedule) for remediating the condition. We defined discovery as occurring when an operator has adequate information to determine the need for a repair, and we provided examples of when such information might be available, depending on the circumstances. The examples included the receipt of the preliminary internal inspection report, the gathering and integrating of other inspection information, and the receipt of the final internal inspection report. The date of discovery could be no later than the date of the integrity assessment results or the final report.

API objected to tying discovery to a specific point in time because discovery is not usually a single event but occurs over time as information is analyzed. API commented that other provisions of the Integrity Management rule require operators to integrate information from various sources, and tying the date of discovery to the date of the integrity results or receipt of the final report is inconsistent with the concept of integrating data. API maintained that too much emphasis is put on the use of internal inspection tools and the data collected from running these tools through a pipeline. API also commented that the emphasis on the results of in-line inspections in determining what action must be taken, is inappropriate and inconsistent with the rule's intent for information from multiple sources to be integrated in the assessment process. API suggested that rather than tying discovery to the integrity assessment results or final report, discovery should occur when an operator has integrated other inspections, tests, surveillance, controls, or pipeline integrity data with the final inspection report from an in-line inspection vendor or hydrostatic test. API believes this integration should be completed within 90 days from the receipt of the final inspection report.

Tosco expressed similar concerns and suggested the word "discovery" not be used, since it has the common meaning of when something is first found and might cause confusion with how the term is used in § 195.56. Instead, Tosco would tie the repair schedules to the determination that a condition requires mitigation, which would be an outcome of the ongoing assessment process.

Chevron also believed it is inappropriate to tie discovery to a specific event because discovery is a process that is subject to change with new information. Chevron suggested language changes identical to those recommended by API.

Response:

We contend that discovery triggers an operator's process to address a condition that could affect the integrity of a pipeline. Therefore, discovery has to occur at a specific point in time to start the period for evaluation and remediation of the condition. The use of the word "discovery" here is consistent with how the word has been used in other pipeline safety regulation. However, to allow flexibility the rule provides that the time of discovery can vary depending on circumstances, and does not define discovery to occur at the same time for every operator and every pipeline.

Discovery will depend on circumstances. We revised the rule to provide that discovery occurs when an operator has adequate information about a condition to determine the condition presents a potential threat to the integrity of the pipeline. The "when" for an operator to have sufficient information to make a determination will not be the same for every operator and every pipeline. Although the examples in paragraph (h) provide circumstances when discovery might occur, they were intended only as examples. We decided to eliminate the list as it is not exhaustive and may cause confusion. We did keep the performance-based standard to give an operator flexibility when deciding there is adequate information to determine a condition presents a potential threat to its pipeline. However, we put an upper limit on the length of the discovery process. An operator must promptly obtain the information from an assessment to ensure that remediation of a condition which could threaten a pipeline's integrity occurs soon after an integrity assessment. The discovery process (the process for obtaining the adequate information) will end 180 days after an integrity assessment unless an operator can demonstrate that the 180-day period is impracticable.

4. Section 195.452(h)(3)—Review of integrity assessment:

This paragraph, as proposed, required an operator to include in its schedule for evaluation and repair a schedule for promptly reviewing and analyzing integrity assessment results. After March 31, 2004, an operator's schedule had to provide for this review within 120 days of conducting each assessment. The operator also had to obtain and assess a final report within an additional 90 days.

API objected to setting a fixed period for the review of integrity assessment results. API commented that the language confused the role of the vendor who conducts a specific test or provides interpretive results, with the operator who conducts the integrity assessment and uses information from sources other than in-line inspections in performing those assessments. API explained that an operator contracts with the vendor for a specific service that is part of an overall integrity assessment.

API also expressed concern that increased demand for inspection services would likely affect the time in which tool vendors deliver the reports. API stated that it is unlikely that operators will be able to meet the deadlines for every tool run and for every type of tool, as many types of tools are on the leading edge of development. API suggested that the rule: require review of integrity tests and inspections (rather than assessments); provide for integrating other appropriate data with the inspection/test results; and allow for a delay in schedule beyond the specified deadlines as long as an operator provides a reasonable explanation for the delay.

Tosco commented that the two separate time periods is confusing; that if assessment of inspection results must be accomplished within 120 days, it is not clear what additional evaluation is required within 90 days of obtaining the report of an inspection.

Response: We wish to note: an integrity assessment should not be confused with an integrity management program. Integrity management applies to the entire pipeline. It is a process that uses the information from an integrity assessment, in conjunction with the periodic evaluation and information analysis, to better manage the risks posed to each pipeline segment that could affect a high consequence area. Assessment is only one part of an operator's integrity management program and applies only to the line pipe. In the integrity management rule an assessment is required as a baseline and then required, periodically, every five years to ascertain the condition of the line pipe in each pipeline segment that could affect a high consequence area. To perform this assessment an operator has a choice of technologies: hydrostatic testing; internal inspection devices; or other technology. The rule clearly states that it is the operator's

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responsibility to perform the required baseline and periodic assessments.

Integration of information is a critical part of an operator's integrity management program. An operator must conduct periodic evaluations, which are to include evaluating data from the information analysis. The evaluations must be conducted as frequently as needed to assure pipeline integrity, not just when an assessment is done. Thus, the rule leaves it to each operator to best determine the frequency for evaluating its pipelines. We further expect an operator to structure its program to bring the necessary information together at the appropriate time.

The requirement that an operator obtain and analyze an integrity assessment report by a specified time was intended to prompt an operator to obtain a timely report so that it could begin the repair of pipeline integrity-threatening conditions. However, after further analysis of this requirement we believe its implementation would be confusing and likely result in endless disagreements between operators and enforcement personnel. For example, an operator might have a condition on its pipeline that falls into the 60-day category. It could be argued that discovery occurred when the operator received a preliminary report of its integrity assessment, and that the operator was required to remediate the condition within 60 days after it received the report. However, the operator is supposed to have 120 days to review and analyze a preliminary report. Thus, there could be disagreement over whether the 60-day requirement negated the period for review and analysis, or whether the period for initial review and analysis gave the operator an additional 120 days before it was required to remediate the condition.

Furthermore, we realized that the intent of this provision is to ensure an operator promptly addresses anomalous conditions on its pipeline, not to create disagreements about when an operator receives a report, reviews the report, and whether the report was a preliminary or final report.

Rather than create a potential compliance and enforcement nightmare, we eliminated this provision from paragraph (h). Instead, we rewrote the provision (see discussion on discovery above) to give the operator flexibility in what information it uses, and what analysis it needs to discover a condition. Now an operator must promptly obtain sufficient information about a condition to make the determination that the condition presents a potential threat to the integrity of the pipeline. However, the obtaining of this information can take no longer than 180 days after an integrity assessment. 180 days after an integrity assessment, is considered sufficient time for an operator to obtain a report and any other information the operator needs to determine that a condition may present a threat. In limited instances, an operator may be able to demonstrate that the 180-day period is impracticable.

By having a performance-based requirement, yet establishing an upper limit on when discovery can occur, it should be clearer to an operator on how to comply. It should also be clearer to determine when there is a violation, for enforcement purposes.

The revised provisions ensure that an operator takes prompt action following an integrity assessment to remediate anomalous conditions and encourage operators to use sophisticated and developing technologies, because the operator will not be dependent on the report from the vendor.

5. Section 195.452(h)(4)—Schedule for repairs: This paragraph required an operator to complete repairs according to a schedule that prioritizes conditions for evaluation and repair. The schedule was based on risk factors used for establishing the baseline and continual integrity assessment schedules. An operator would be allowed to notify RSPA/OPS when it could not meet the schedule and provide a justification for the delay. Notice was to be sent to the address in § 195.58 or to the facsimile number in § 195.56.

API recommended the reference to the risk factors be deleted because the factors are appropriate for establishing re-inspection intervals but not for prioritizing mitigative actions.

Tosco questioned, in the event an operator could not meet its schedule, whether the notification required should also be sent to the appropriate State agency in those States that are certified under Section 60105 of the Federal Pipeline Safety Statute. Tosco also noted that because § 195.58 applies to subpart B and § 195.56 applies to Safety Related Condition reports, we should reference the integrity management notification in these sections.

Response:

It is likely the results of an integrity assessment will be the principal basis for scheduling a condition for remediation. These results will generally indicate the significance of anomalies so operators can establish their relative importance for remediation. However, RSPA recognizes that there may be other factors an operator needs to consider in prioritizing the conditions for remediation, and agrees that requiring an operator to base its schedule on risk factors is unnecessary. We deleted this requirement from the rule and will leave it to the operator to determine how best to set up a schedule for evaluation and remediation of conditions identified from the assessment. Of course, an operator must document the basis for how it prioritizes conditions in its schedule.

As for where an operator is to send a notification when it is unable to meet its schedule, the language clearly provides the address and facsimile numbers for sending the notification. Although we see no reason for confusion about where to send a notification, we added a new paragraph (m) to the integrity management rule that contains the address and facsimile number for sending notification. This paragraph now contains the current room number and facsimile number for sending any notification required by § 195.452.

The rule continues to require operator notification to RSPA/OPS. We will then ensure that the relevant Regional office receives the notification for forwarding to a certified State. Having the notification come to RSPA is consistent with the filing of other reports, such as the safety-related condition report and accident report. As RSPA plans to keep a data base of notifications, it is most practicable for it to be the notified agency rather than State safety agencies. It also prevents a burden to operators of trying to determine which agencies should be notified. Requiring all notifications under the Integrity Management rule first come to RSPA/OPS, eliminates any potential confusion about where a notification should be sent.

When a certified State adopts the integrity management regulations, it may also add a requirement for notification by intrastate hazardous liquid operators.

6. Section 195.452(h)(5)—Special requirements for scheduling repairs: This paragraph provided a list of certain conditions that require either immediate repair, repair within 60 days, or repair within six months. This paragraph also listed other conditions an operator would be required to evaluate and repair, but did not specify the time frame.

Although not directly affected by this rulemaking, Enron maintained that the prescriptive time frames for certain conditions were not appropriate for the conditions, forcing operators to seek extensions. Enron further commented

that the descriptions of the conditions were open to interpretation.

Immediate repair conditions: This subparagraph provided a list of conditions that require immediate repair. An operator is further required to temporarily reduce operating pressure or shut down the pipeline until the operator could complete the repair, basing the temporary operating pressure reduction on remaining wall thickness.

API acknowledged that the conditions we listed as immediate repair conditions are those where the indicated anomaly may suggest the potential for imminent failure. However, API objected to limiting an operator's actions to address these conditions to repair of the condition. API recommended renaming these immediate concern conditions, and allowing an operator to take actions other than repair. API gave the example of a pipeline over-designed for wall thickness, as able to remain in service at very low pressure and not subject to imminent failure, even with metal loss greater than 80 percent of nominal wall thickness.

API further stated that limiting an operator's discretion on reducing operating pressure to remaining wall thickness may be inappropriate in many situations (e.g., dents with indicated metal loss) and supported by engineering calculations. API suggested that the original wall thickness in some pipelines may have been above that needed to contain current maximum operating pressure, and recommended basing pressure reduction on an engineering assessment that includes all the potential factors that may contribute to pressure containment.

Chevron recommended we remove the condition of "dents on the top of the pipeline with any indicated metal loss" from the immediate repair category. Chevron agreed such dents may be serious, but contended there is insufficient data to prove that these types of anomalies are of immediate concern. Chevron also believed an immediate repair requirement related to such anomalies would be difficult to meet because corrosion internal inspection tools do not always identify such dents, and those vendors that claim the tools can identify such dents cannot correctly size and identify them. Chevron recommended we place these types of anomalies in the 60-day category, and reword the anomaly description to include known topside dents that exceed 6 percent of the nominal pipe diameter with any (emphasis in the original comments) indicated metal wall loss. In addition, Chevron recommended RSPA work with industry to develop a pressure calculation that will determine the level of pressure reduction required (dependent on the size of the dent) to operate the pipeline safely.

Response:

We allowed an operator latitude in how it addresses most conditions, by changing the word repair to remediate throughout paragraph (h). However, we firmly believe that certain conditions, due to the immediate threat they pose to a pipeline's integrity and to a high consequence area, are best addressed by repair. We continue to list these conditions as "Immediate repair conditions." An operator must repair these conditions; and until the repair is completed, either reduce operating pressure or shut down the pipeline.

We agree that a situation might exist where an over designed pipe segment operating at a lower pressure could withstand maximum operating pressure, even with 80% wall loss. However, we find it unacceptable for an operator not to immediately repair a segment of pipeline where less than 20 percent of original wall thickness remains. Wall loss exceeding 80% indicates something significant is occurring on the pipeline.

We also do not agree with Chevron's suggestion that "dents on top of the pipeline with indicated metal loss" do not require immediate repair because they are hard to identify. We acknowledge current inspection techniques may not readily identify dents with metal loss. The rule does not require an operator to identify such conditions. The rule simply specifies that when such conditions are identified, an operator must repair them immediately. This type of dent is also classified as an immediate concern in the most recent draft of API–1160, "Managing System Integrity for Hazardous Liquid Pipelines." Therefore, we are not removing this condition from the list of immediate repair conditions.

The reduction in operating pressure, or the shutdown of the pipeline, provides an additional margin of safety. This requirement is consistent with § 195.401(b). This established regulation requires an operator to correct conditions that could adversely affect safe operations in a reasonable time and not operate the affected part of the system until the condition is corrected, if it is of such a nature that it presents an immediate hazard to persons or property.

We agree that pressure reductions should be based on an engineering evaluation, and changed the final rule accordingly. Although it is appropriate to base the pressure reduction on the remaining wall thickness for corrosion, this may not be the best method on which to base a pressure reduction for dents and gouges. We modified the requirement so that an operator must calculate the temporary reduction in the operating pressure using the formula in section 451.7 of ASME/ANSI B31.4.

In response to concerns about the rule confusing the role of vendors with that of operators, we clarified the language in one of the listed conditions concerning the person responsible for making certain determinations about a condition. We revised the language so that now it is the person designated by the operator to evaluate assessment results, who is to determine whether an anomaly requires immediate action.

60-day conditions:

As proposed, this paragraph required an operator to schedule for evaluation and repair all dents (other than those listed as immediate repair conditions), regardless of size, located on the top of the pipeline (above the 4 and 8 o'clock position) within 60 days of discovery of the condition.

API agreed with placing special emphasis on investigating anomalies that represent potential excavation damage on the top of the pipe. However, API contended that requiring repair of any topside dent, regardless of size, would preclude operators from making appropriate engineering judgments about anomalies that differ in character and risk profile from one pipeline to another.

API contended that increasing sensitivities of inspection tools could result in "hundreds or even thousands" of topside line indications, only some of which will be a result of third-party damage. (Colonial and Chevron made the same comment). To better focus resources on areas of highest risk, API recommended we specify dents that are in excess of three percent of pipeline diameter and are located in a high population or other populated area, as 60-day conditions and include remaining dent-type defects as 6-month conditions. API believes this conservatively reduces by half the ASME B31.4 provisions, which require removal or repair of dents exceeding a depth of six percent of nominal diameter. API explained that the focus on high population areas and populated areas is appropriate because third-party activity is more likely to occur in these areas. (Chevron recommended these same changes). API further recommended excluding dents less than 0.25 inches for small diameter pipe (less than NPS 12) to recognize mill imperfections that fall within manufacturing tolerances. API maintained that operators have

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conducted verification digs on many such small defects identified by past in-line inspections to demonstrate that these indications do not threaten pipeline integrity.

Colonial reported in its experience, in-line inspection identified hundreds of bending shoe marks, smooth dents, and minor mill imperfections that fall within manufacturing tolerances. However, Colonial found these indications to be neither injurious to the pipeline nor the result of third-party damage. Colonial suggested that increased focus on these indications would result in dilution of resources and diversion of attention from higher risks. Colonial recommended we exclude "smooth dents, bending anomalies, and mill defects that may be identified through engineering analysis and data integration including data gathered from previous excavations and inspections."

Chevron recommended we limit the 60-day conditions to known topside dents in excess of six percent of the nominal pipe diameter with any indicated metal loss, and that occur within a high population area or other populated area.

Tosco would not limit the 60-day conditions to topside dents. Tosco explained that an operator must also evaluate dents located at the bottom of the pipe because they may indicate that the pipe has been damaged by lifting the line with excavation equipment.

Response:

Although commenters expressed concern about internal inspection tools not being able to detect immediate repair conditions, they also expressed concern about the tools finding too many of the 60-day conditions. We reconsidered what conditions an operator should address within 60 days from discovery. We decided to limit those conditions to large dents (i.e., those dents in excess of three percent of pipeline diameter) on the top of the pipeline and to dents on the bottom of the pipeline that contain stress concentrators because these types of dents are more likely to impair the integrity of the pipeline. We want the rule to encourage the use of more sophisticated inspection tools, as these tools become available. By modifying the list of 60-day conditions so that operators can better focus resources on remediating those conditions most likely to pose a threat to the integrity of a pipeline and to a high consequence area, operators will be encouraged to use more sensitive tools.

We do not agree that the 60-day conditions should be limited to conditions found in high-population and populated areas. While it may be possible that third-party damage is more likely to occur in these areas, such damage can also occur in other areas. There is no reason why third party damage to a pipeline in an unusually sensitive environmental area should not be addressed as promptly as third party damage to a pipeline in another high consequence area. We make no distinction in the final rule between dents identified in populated areas and dents identified in other areas defined as high consequence.

We did not make the change suggested by Tosco to include all dents located on the bottom of the pipe. We recognize that excavation damage limited to the bottom of pipe can occur, but understands it to be much less prevalent. However, we included under the 60-day conditions dents located on the bottom of the pipeline that have other indicators of damage, such as evidence of cracks or stress risers within the dent that would indicate a need for more immediate action. Significant dents (i.e., those dents with a depth greater than six percent of the pipe's diameter) on the bottom of pipe would require remediation within 180 days of discovery. An operator must also evaluate and remediate any other dents on the bottom of the pipeline within a reasonable time.

Six-month conditions: This paragraph listed several conditions an operator would have to schedule for evaluation and repair within six months following discovery.

API recommended the list of 6-month conditions be completely rewritten and offered changes it believes use technically sound descriptions of the potential anomalies. API's revisions include the concept of minimum detection limits, particularly with respect to dent-type anomalies. API claimed this would prevent the inappropriate diversion of safety resources that could result from a requirement to address "all dents, regardless of size" as detection capabilities increase. API echoed the comments of Colonial, discussed above, that in-line inspection companies have identified imperfections that fall within manufacturing tolerances and operators have conducted many verifying digs to demonstrate that these anomalies do not affect pipeline integrity. Colonial's comments in that regard are applicable also.

Chevron also recommended a complete rewrite of the six-month conditions for the same reasons as API, and proposed language substantially the same as API's. Differences exist in addressing situations in which "predicted burst pressure" is less than established maximum operating pressure (API uses the term "safe operating pressure"). API would limit the need to evaluate metal loss located at foreign pipeline crossings, to instances with greater than 50 percent wall loss, while Chevron would address those with greater than 30 percent wall loss.

Enron also commented that several of the listed conditions could require an expensive, time consuming, and non-productive diversion of safety resources. Enron believed evaluating dents with metal loss or dents affecting pipe curvature at a girth or seam weld, could result in numerous excavations. Many in-line inspection devices cannot identify such seams and having to investigate such dents, regardless of their depth, could require significant resources for little safety benefit. Enron raised the same concern regarding the need for unnecessary physical inspections to evaluate and repair corrosion of or along seam welds. Enron suggested that the six-month conditions only specify narrow axial external corrosion. Enron commented that the rule did not appear to allow pressure reduction as an option for addressing areas of general corrosion with predicted metal loss of greater than 50 percent of wall thickness.

Response:

To be consistent in language throughout paragraph (h), we now list the six-month conditions as 180-day conditions. We re-categorized some of the dents listed as 60-day conditions into the 180-day category because they are less severe. To avoid including minor and non integrity-threatening dents that fall within manufacturing tolerance limits, we revised the list of conditions to include dents greater than two percent of pipe diameter. The 180-day conditions category is consistent with the most recent draft of API–1160, "Managing System Integrity for Hazardous Liquid Pipelines," except for minor differences, We included gouges and grooves greater than 12.5 percent of wall thickness, which are not in the API–1160 draft.

Enron's concern regarding potential diversion of resources to address dents affecting seam welds was based on the perception that an operator would need to excavate most, or all dents to determine if they impacted a seam weld (similar logic underlies Enron's concern about the need to investigate corrosion along seam welds). We do not intend to require an excavation in order to identify the location of welds. We clarified the final rule to eliminate

confusion by setting de-minimus values for certain dents.

We also clarified an apparent inconsistency in which we listed weld anomalies with predicted metal loss greater than 50 percent of wall thickness and corrosion of or along seam welds as 6-month conditions. We deleted from the list weld anomalies with a predicted metal loss greater than 50% of nominal wall. The rule now lists as 180-day conditions corrosion of and along a longitudinal seam weld, and metal loss greater than 50% that can affect a girth weld.

Other conditions: Paragraph (h) also listed examples of other conditions an operator would need to schedule for evaluation and repair. API recommended we eliminate this paragraph as they contended it is unworkable and unenforceable. Many of the listed conditions, according to API, are not pipeline conditions but describe characteristics of the conditions as they might appear in raw inspection data. API argued that this paragraph oversimplifies the task of using past data in evaluations.

Tosco also commented that the listed conditions seem to relate to an assessment using internal inspection tools, and conditions identified by other means of assessment (e.g., direct assessment) might not be addressed if this list were considered exhaustive.

Enron commented that because the list of other conditions contain vague descriptions (e.g., over a large area, abrupt in nature, reflect a change, near casings), compliance with and enforcement of these requirements will be arbitrary, inconsistent and result in numerous disagreements between operators and regulators. As an example, Enron explained that a strict interpretation of the requirement requiring an operator to evaluate data that reflect changes since the last internal inspection, could include any change, no matter how small, or even one indicating an improvement. Enron argued for us to allow operators a reasonable degree of latitude in making decisions regarding what conditions must be evaluated, and requested we provide guidance in the rule on this latitude and not develop it through enforcement and interpretation. Finally, Enron maintained the repair requirements are likely to result in differing interpretations by different regulatory agencies.

Response:

The paragraph listing other conditions is not intended as an exhaustive list, but simply a list of some of the conditions an operator was to address in its schedule. We wrote paragraph (h), as well as other provisions of section 195.452, to include performance-based and, when necessary, prescriptive language. The rule tries to balance the need of an operator for flexibility with the need for clear and enforceable regulations.

Although we strive for clarity in a regulation, language is an imprecise instrument and is invariably subject to different interpretations. We face this challenge in every rulemaking, yet we enforce the regulations with a modicum of difficulty. Nonetheless, in response to the comments, we modified the list of other conditions to give better descriptions of certain conditions an operator should address, and we relocated the list to Appendix C. This list will now offer guidance to operators on conditions they should be prepared to evaluate and remediate. An operator will now be required to evaluate and remediate conditions other than those listed as immediate repair, 60-day, and 180-day conditions, and in so doing to consider the guidance provided in Appendix C.

Again, we want to emphasize that the conditions listed as immediate repair, 60 day, and 180-day are not an exclusive list of conditions an operator will be required to evaluate and remediate. These are simply some of the conditions that may show up. The argument that because a condition was not listed in paragraph (h) or in the Appendix C guidance and so an operator did not know it was required to evaluate and remediate the condition, will never be accepted.

Comments on other provisions in the final rule:

The Integrity Management Rule issued on December 1, 2000, was a final rule. We only sought comment on the repair provisions in paragraph (h) due to the substantive changes made from those initially proposed. All other provisions of the rule were previously subject to notice and comment. Therefore, we will not address comments aimed at other provisions in the rule, in this document.

Paragraph (h) Requirements

Paragraph (h) of § 195.452 requires an operator to take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis. Addressing all conditions means an operator must evaluate all anomalous conditions and remediate those which could reduce a pipeline's integrity. The actions an operator may take to remediate a condition include a range of mitigative and other actions, including repair. However, the action taken must be adequate to ensure the condition is unlikely to present a long-term threat to the integrity of the pipeline.

The time frames for evaluating and remediating certain conditions begin when the condition is discovered. Discovery of a condition occurs when an operator has adequate information to determine a condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make the determination that a condition presents a potential threat to the integrity of the pipeline. Thus, an operator has flexibility determining when it has sufficient information for discovery. However, the discovery process will end 180 days after an integrity assessment, unless the operator can demonstrate that the 180-day period is impracticable.

Discovery triggers the time frames for remediating a condition. An operator must have a schedule providing time frames for evaluating and completing remedial action on a condition.

For most conditions, it is left to each operator to determine how to prioritize the conditions for evaluation and remediation. An operator must be able to justify its prioritization. The rule provides the time frames in which an operator must complete repair or remediation of certain conditions. These are listed as immediate repair conditions, 60-day conditions and 180-day conditions. Of course, the rule cannot identify all conditions an operator will have to evaluate and remediate. A condition an operator discovers may qualify as an immediate repair, 60-day or 180-day condition, even though it is not listed in the rule. The rule simply provides common examples of such conditions.

The rule further provides that an operator is to include in its schedule, conditions other than those listed. Example of some conditions that could show up during an integrity assessment are provided in the Appendix C guidance. The list in the Appendix is not an exhaustive list.

An operator may deviate from the scheduled time frames for remediation of a condition, if the operator justifies the reasons why it cannot meet the schedule and the changed schedule will not jeopardize public safety or environmental protection. An operator's justification for a deviation would be one of the records the operator is required to maintain for inspection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary

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reduction in operating pressure. The operator would be required to provide RSPA/OPS notice by mail or facsimile.

Corrections to Section 195.452

The rule allowed two limited exceptions for when an operator could seek a variance from the five-year re-assessment intervals. One exception (paragraph (j)(4)(i)) is if an operator can justify, on an engineering basis, for a longer assessment interval. Among other requirements, an operator is to support the justification with the use of other technology that provides an understanding of the line pipe equivalent to that provided by the other allowable assessment methods. However, instead of referencing the assessment methods listed in paragraph (j)(5), the rule incorrectly referenced (j)(2), the paragraph addressing the periodic evaluation. We corrected the reference.

The second exception (paragraph (j)(4)(ii)) allows a variance because of unavailable sophisticated technology. For this exception an operator is to notify OPS 180 days before the end of the five-year interval. However, the rule further provided that an operator would then have to complete the assessment within 180 days. This requirement was incorrectly included and we deleted it. If an operator has to complete the re-assessment within 180 days of its 180-day notice, the operator would be completing the re-assessment within the five-year period. Therefore, with this requirement the exception allowing an extension is illusory. We deleted the requirement and instead, now specify that with its notice, an operator is to provide an estimate of when it will complete the re-assessment.

Advance notice to OPS is required before an operator conducts a continual integrity assessment using alternative technology. Paragraph (j) (5) (iii) of the final rule gave this period as 60 days. This was incorrect. The advance notification period should be 90 days, to be consistent with the advance notification period required when an operator uses alternative technology for the baseline assessment. We corrected the time period.

In paragraph (l), we inadvertently left out the number (1) before the first paragraph. We corrected this oversight.

We also corrected the grammar in several places in the Appendix C guidance.

Clarifications and Non-Substantive Revisions to Section 195.452

In paragraph (a) we clarified that the rule applies to any operator who owns or operates 500 or more miles of hazardous liquid or carbon dioxide pipeline. When we wrote the paragraph describing which operators need comply with the rule, we intended for the phrase "hazardous liquid" to include carbon dioxide pipelines. However, we have since realized that because of how hazardous liquid and carbon dioxide are used in other pipeline safety regulations, there may be confusion about whether carbon dioxide lines are included. By changing the language to "hazardous liquid or carbon dioxide," we eliminate any confusion about which operators are to comply.

In paragraphs (c)(1)(i) and (j)(5), questions were raised about the listed methods an operator is allowed to use for an integrity assessment. The questions concerned the application of the methods to low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure. We revised these paragraphs to make clear that the listed assessment methods apply to these types of pipe. Although for these types of pipe, an operator must choose methods that have certain capabilities, and the methods are to be from those listed in the rule.

In paragraph (j)(2) we clarified that the evaluation of assessment results include results from the baseline or periodic integrity assessments. Although an operator may have performed a previous internal inspection, unless the operator uses that as its baseline assessment the operator would not have had to maintain those records because the pipeline safety regulations did not require an internal inspection. This clarification should avoid any disagreement about which integrity assessment records an operator will need for its periodic evaluations.

In paragraph (j)(4)(i), we clarified the language about the requirements for the justification for a variance from the 5-year re-assessment interval for engineering reasons and the requirements for notification to OPS.

Due to changes we made to the terminology in paragraph (h), we revised several other paragraphs of the rule and Appendix C to be consistent with those changes. Affected paragraphs in § 195.452 are (f)(4) and (j)(2), and in Appendix C, VI (16) and VI(18).

We added a new paragraph (paragraph m) to the rule to clarify that the required notification must be sent to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington DC 20590, or to the facsimile number (202) 366–7128. Notification is required when an operator cannot meet its schedule for evaluating and remediating anomalous conditions; uses alternative technology for an integrity assessment; or seeks a variance from the five-year continual assessment interval.

In Appendix C, which contains guidance material for § 195.452, we added a section on conditions other than those listed in paragraph (h), which an operator could find from an integrity assessment and an operator should consider in its schedule for evaluation and remediation. We initially listed these conditions in paragraph (h) but decided they more appropriately fit into the Appendix C guidance. This guidance does not list every possible condition that could arise on a pipeline and an operator should evaluate. We also revised the introductory paragraph to reference the new section.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is not considered a significant regulatory action under section 3(f) of Executive Order (58 FR 51735: October 4, 1993). Therefore, the Office of Management and Budget did not review this rulemaking document.

We sought public comment on any additional financial burden that the repair requirements would have on the hazardous liquid pipeline industry. A supplemental report to the regulatory evaluation to address this issue is placed in the docket. The seven members present at the August 13, 2001, Technical Hazardous Pipeline Safety Standards committee meeting voted unanimously to accept the supplement to the regulatory evaluation. Below is a summary of their supplemental report.

Treatment of Repairs in Cost-Benefit Analysis for the Integrity Management Rule

The final regulatory evaluation supporting the integrity management rule did not estimate the costs associated with repairs to pipe that may occur as a result of the rule. The evaluation instead focused on the costs associated with the planning and integrity assessments required by the rule. The reasons for not evaluating repair costs were:

1. The pipeline safety regulations have always required an operator to repair problems found on its hazardous liquid or carbon dioxide pipelines. (49 CFR 195.401(b)). The primary changes made by the Integrity Management rule were to establish a systematized assessment and evaluation process that would cause operators to better identify conditions on their pipelines requiring repair. Thus, the additional effort required of operators by the rule is in the planning and assessment process, the costs of which were considered in the regulatory evaluation. Repair of a problem, once it is known, was not a new requirement and was not evaluated because of the assumption that additional costs would not be incurred.

2. The repair criteria in paragraph (h) of the final rule (65 FR 75378; December 1, 2000) were changed from those published with the proposed rule. Accordingly, public comments were solicited regarding the repair criteria. RSPA received comments from six organizations (one trade association, one engineering company, three operators directly affected by the rule, and one operator not directly affected by the rulemaking). None commented on the lack of specific reference to repair costs in the regulatory evaluation.

3. Some commenters identified criteria they believed would require unnecessary excavation and evaluation of minor pipeline anomalies that would not affect a pipeline's integrity. We made changes to the provisions in paragraph (h) in response to these comments. These changes clarify the types of conditions an operator must evaluate and remediate so the focus will be on those conditions that are most likely to affect pipeline integrity. Moreover, the remediation requirements allow an operator flexibility in the action it takes to address a condition that poses a threat to the integrity of its pipeline. These provisions are consistent with the existing requirements in section 195.401(b), and add no additional costs.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This rulemaking was designed to impact only those operators that own or operate 500 or more miles of hazardous liquid or carbon dioxide pipeline. Because of this limitation on pipeline mileage, only 66 hazardous liquid pipeline operators (large national energy companies) covering 86.7% of regulated liquid transmission lines are impacted by this final rule. Based on this, and the evidence discussed above, I certify that paragraph (h) in the final rule addressing the remedial actions an operator is required to take to address integrity concerns on its pipeline will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The pipeline integrity management rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department of Transportation submitted a copy of the Paperwork Reduction Act Analysis to the Office of Management and Budget for its review. The information collection was reviewed and approved by the Office of Management and Budget. The name of the information collection is "Pipeline Integrity Management in High Consequence Areas." The remediation requirements in paragraph (h) of the rule will not add any additional paperwork on hazardous liquid or carbon dioxide pipeline operators as repair requirements must already comply with 49 CFR 195.401(b). This was discussed above in the Regulatory Evaluation section. Therefore, no additional paperwork reduction analysis is necessary.

Executive Order 13084

The remediation provisions of the integrity management final rule were analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments.") Because these provisions, as well as the other provisions of the final rule, do not significantly or uniquely affect the communities of the Indian tribal governments and do not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

The final rule provisions in paragraph (h) were analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that:

(1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) imposes substantial direct compliance costs on States and local governments; or

(3) preempts state law.

Nonetheless, State public safety representatives were involved throughout the development of the hazardous liquid integrity management rule.

Executive Order 13211

This rulemaking is not a "significant energy action" within the meaning of Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

In accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and DOT Order 5610.1D, we prepared an Environmental Assessment (EA) that analyzed the environmental impacts of the rulemaking addressing integrity management programs for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline. In the EA we determined that the rule would not significantly affect the quality of the human environment. The EA and the Finding of No Significant Impact are available in Docket No. RSPA–00–6355. That EA considered the requirements in section 195.452 (h) concerning repairs an operator would have to make to its pipeline following an integrity assessment.

We reviewed the EA in light of the changes we have made to § 195.452 (h), and did not find that any of the changes affected our finding about the environmental impacts of the rule.

List of Subjects in 49 CFR Part 195

Carbon dioxide, High consequence areas, Incorporation by reference, Integrity assurance, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, RSPA is amending part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

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Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart F—Operation and Maintenance

* * * * *

Pipeline Integrity Management

2. Section 195.452(a) is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) *Which operators must comply?* This section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid or carbon dioxide pipeline subject to this part.

* * * * *

3. Section 195.452 is amended by revising paragraph (c)(1)(i) introductory text and paragraph (c)(1)(i)(C) to read as follows:

(c) * * *

(1) * * *

(i) The methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

* * * * *

(C) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

* * * * *

4. Section 195.452(f) (4) is revised to read as follows:

(f) * * *

(4) Criteria for remedial actions to address integrity issues raised by the assessment methods and information analysis (see paragraph (h) of this section);

* * * * *

5. Section 195.452 (h) is revised to read as follows:

(h) *What actions must an operator take to address integrity issues?*

(1) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. A reduction in operating pressure cannot exceed 365 days without an operator taking further remedial action to ensure the safety of the pipeline. An operator must comply with § 195.422 when making a repair.

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure. An operator must send the notice to the address specified in paragraph (m) of this section.

(4) *Special requirements for scheduling remediation.*(i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in section 451.7 of ASME/ANSI B31.4 (incorportaed by reference, see § 195.3). An operator must treat the following conditions as immediate repair conditions:

(A) Metal loss greater than 80% of nominal wall regardless of dimensions.

(B) A calculation of the remaining strength of the pipe shows a predicted burst pressure less than the established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991) or AGA Pipeline Research Committee Project PR–3–805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or a stress riser.

(D) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 6% of the nominal pipe diameter.

(E) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(ii) *60-day conditions.* Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent located on the bottom of the pipeline that has any indication of metal loss, cracking or a stress riser.

(iii) *180-day conditions.* Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:

(A) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.

(B) A dent located on the top of the pipeline (above 4 and 8 o'clock position) with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12).

(C) A dent located on the bottom of the pipeline with a depth greater than 6% of the pipeline's diameter.

(D) A calculation of the remaining strength of the pipe shows an operating pressure that is less than the current established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR–3–805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(E) An area of general corrosion with a predicted metal loss greater than 50% of nominal wall.

(F) Predicted metal loss greater than 50% of nominal wall that is located at a crossing of another pipeline, or is in an area with widespread circumferential corrosion, or is in an area that could affect a girth weld.

(G) A potential crack indication that when excavated is determined to be a crack.

(H) Corrosion of or along a longitudinal seam weld.

(I) A gouge or groove greater than 12.5% of nominal wall.

(iv) *Other conditions.* In addition to the conditions listed in paragraphs (h)(4)(i) through (iii) of this section, an operator must evaluate any condition identified by an integrity assessment or information analysis that could impair the integrity of the pipeline, and as appropriate, schedule the condition for remediation. Appendix C of this part contains guidance concerning other conditions that an operator should evaluate.

* * * * *

6. § 195.452 is amended by revising the last sentence of paragraph (j)(2), revising paragraphs (j)(4), (j)(5) introductory text and (j)(5)(iii), and removing paragraph (j)(6)to read as follows:

(j) * * *

(2) *Evaluation.* * * *. The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

(3) * * *

(4) *Variance from the 5-year intervals in limited situations.*(i) *Engineering basis.* An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which can be obtained from the assessment methods allowed in paragraph (j)(5) of this section. An operator must notify OPS 270 days before the end of the five-year (or less) interval of the justification for a longer interval, and propose an alternative interval. An operator must send the notice to the address specified in paragraph (m) of this section.

(ii) *Unavailable technology.* An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the five-year (or less) interval that the operator may require a longer assessment interval, and provide an estimate of when the assessment can be completed. An operator must send a notice to the address specified in paragraph (m) of this section.

(5) *Assessment methods.* An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

(i) * * *

(ii) * * *

(iii) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

7. Paragraph (k)(1) is redesignated as paragraph (l); paragraph designation "(1)" is added after the heading; and paragraph (k)(2) is redesignated as paragraph (l)(2).

* * * * *

8. A new paragraph (m) is added to § 195.452 to read as follows:

(m) *Where does an operator send a notification?* An operator must send any notification required by this section to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW, Washington DC 20590, or to the facsimile number (202) 366–7128.

9. Appendix C is amended by revising the title, adding paragraph (7) in the introductory text, revising paragraphs (7), (8), and (9) of section I.B., removing paragraph (18) from section VI and renumbering paragraphs (19) through (23) as (18) through (22), revising paragraphs (16) and newly designated (18) of section VI, and adding a new Section VII to read as follows:

APPENDIX C TO PART 195—GUIDANCE FOR IMPLEMENTATION OF AN INTEGRITY MANAGEMENT PROGRAM

* * * * *

(7) Types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. * * *

B. * * *

(7) Operating conditions of the pipeline (pressure, flow rate, etc.). Exposure of the pipeline to an operating pressure exceeding the established maximum operating pressure.

(8) The hydraulic gradient of the pipeline.

(9) The diameter of the pipeline, the potential release volume, and the distance between the isolation points.

* * * * *

VI. * * *

(16) integrity assessment results and anomalies found, process for evaluating and remediating anomalies, criteria for remedial actions and actions taken to evaluate and remediate the anomalies;

* * * * *

(18) schedule for evaluation and remediation of anomalies, justification to support deviation from required remediation times;

* * * * *

VII. Conditions that may impair a pipeline's integrity.

Section 195.452(h) requires an operator to evaluate and remediate all pipeline integrity issues raised by the integrity assessment or information analysis. An operator must develop a schedule that prioritizes conditions discovered on the pipeline for evaluation and remediation. The following are some examples of conditions that an operator should schedule for evaluation and remediation.

A. Any change since the previous assessment.

B. Mechanical damage that is located on the top side of the pipe.

C. An anomaly abrupt in nature.

D. An anomaly longitudinal in orientation.

E. An anomaly over a large area.

F. An anomaly located in or near a casing, a crossing of another pipeline, or an area with suspect cathodic protection.

Issued in Washington, DC, on December 21, 2001.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–267 Filed 1–11–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG07

Endangered and Threatened Wildlife and Plants; Reclassification of *Scutellaria montana* (Large-Flowered Skullcap) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This reclassification is based on the substantial improvement in the species' status. Since listing, when 10 occurrences (10 populations) were known, 74 additional occurrences (for a total of 48 populations) have been discovered, and the total known number of individual plants has increased from about 6,700 to more than 50,000. This final rule implements the Federal protection and recovery provisions for threatened plants, as provided by the Act, to large-flowered skullcap.

EFFECTIVE DATE: This final rule is effective on February 13, 2002.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258–3939 or e-mail at *Allen_Ratzlaff@fws.gov*, or contact Ms. Tyler Sykes at the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee, by phone at 931/528–6481 or e-mail at *Tyler__Sykes@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems that are usually from 30.0 to 50.0 centimeters (cm) (11.7 to 19.5 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1.0 to 2.0 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5.0 to 8.0 cm (2.0 to 3.1 in) long and 3.0 to 5.0 cm (1.2 to 2.0 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a "modified" leaf) raceme (simple flowering stalk), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a "cap" just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1.0 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near the top of the calyx. Flowering occurs from mid-May to early June, and fruits mature in June and early July.

Bridges (1984) stated, "The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe." *Scutellaria montana* could be confused with other species of Scutellaria. Bridges (1984) also listed some important characters of *Scutellaria montana:* (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart-shaped); (4) a midstem with at least some stipitate (short stemmed) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface; (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman (1878) described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata*. Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins, unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana*.

Cruzan and Vege (in preparation [prep.]) determined that populations southeast of Taylor Ridge in northwest Georgia are genetically distinct and lacked a number of alleles present in populations northwest of Taylor Ridge. This division is supported by analysis of chloroplast DNA variation, which indicates that populations of *Scutellaria montana* are divided into two geographically distinct groups of populations that are probably derived from separate Pleistocene refugia (Cruzan and Ferguson, in prep.).

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata*. The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, Scutellaria pseudoserrata has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular "velvety" pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata*, both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate (heart-shaped) leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (*in* Shea and Hogan 1998) observed bees (Apiodea) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and hummingbirds occasionally visiting the plants. The long floral tube (3.0 to 4.0 cm or 1.2 to 1.6 in) and a sucrose-hexose (sugar) ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993).

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Walker, and Whitfield Counties in Georgia; and the Cumberland Plateau Province in Sequatchie, Marion, and Hamilton Counties in Tennessee.

According to Bridges (1984), the geological strata underlying the occurrences of *Scutellaria montana* include most of the major slope-forming formations of the region—shale, chert, limestone, and sandstone from Cambrian to Pennsylvanian in age. Most occurrences in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstone and shale. Most of the occurrences in the Lookout Mountain portion of the Chickamauga-Chattanooga National Military Park are found on Fort Payne, St. Lewis, Warsaw, Monteagle, and Bangor Formations that underlie the Pennington Formations (McKerrow and Pyne 1993). The Georgia portion of the Ridge and Valley is underlain by Paleozoic rock such as sandstone, shale, and limestone (Lipps and DeSelm 1969). The Georgia occurrences are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins, unpublished). Occurrence elevations range from 189 meters (620 feet) to 562 m (1,844 ft) above sea level.

Most populations occur on colluvial soils (loose deposit of soils accumulated at the base of cliff or slope) over bedrock composed of shale, chert, or limestone. The soils are generally rocky, shallow, well-drained, and slightly acidic. Soil depth ranges from deep to a thin layer, no more than 3.0 cm (1.2 in) deep, over bedrock. In Georgia, the soil is generally stony, shaley, or cherty silt loam or silty clay loam ranging in depth from 0.2 m (8.0 in) to 1.4 m (55.0 in). The average pH is 5.6 and ranges from 4.5 to 6.3 (Collins, unpublished).

Bridges (1984) described the habitat of *Scutellaria montana* as "* * * rocky, submesic to xeric, well-drained, slightly acidic slope, ravine and stream bottom forests in the Ridge and Valley and Cumberland Plateau provinces of Northwestern Georgia, and adjacent southeastern Tennessee (and probably Alabama)." Bridges (1984) also listed distinguishing characteristics of the forests where *Scutellaria montana* is found as: (1) A history of some natural pine occurrence; (2) a canopy dominated by oaks and hickories; (3) a mostly deciduous shrub layer with some evergreen *Vaccinium*; (4) a moderately dense herb layer with mesic and xeric species; and (5) occurring on well-consolidated Paleozoic to Precambrian strata, often with some exposed rock.

Forest composition data have been collected on sites in the Marshall Forest and Marion County, Tennessee, populations (Faulkner 1993; Collins, unpublished; Lipps 1966). Data from the sites where *Scutellaria montana* was first studied indicated that it occurred in late-successional forests. Studies of other sites suggest that it is more of a mid-to late-successional species (Bridges 1984; Collins, unpublished; Lipps 1966). At a Marion County, Tennessee, site, Faulkner (1993) observed *Scutellaria montana* persisting in an area where timbering activities had occurred and where the plants had been subjected to low-intensity ground fires. He concluded that, while individual plants established before the disturbance may survive, recruitment into disturbed sites is not likely. Fail and Sommers (1993) conducted a study on the Marshall Forest that suggests the associated species *Quercus prinus* (Chestnut oak) and *Oxydendrum arboreum* (Sourwood) may be producing allelopathic agents (toxic compounds) that may be inhibiting the growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially rhizomatous colonial plants, and is not found in thick herbaceous cover (Bridges 1984). While optimal light conditions are not yet known, plants grow in areas that receive a relatively greater amount of light at ground level, generally due to canopy disturbance (Sutter, *in litt.*, 1993). Nix (1993) states that "canopy coverage is probably the most important environmental factor that influences growth and survival." However, disturbances to the canopy accompanied by disturbances to the soil can lead to increases in other herbaceous species that could be detrimental to *Scutellaria montana*.

When we listed *Scutellaria montana* in 1986, 10 populations were known—7 in Georgia (4 in Floyd County, 2 in Walker County, and 1 in Gordon County) and 3 in Tennessee (2 in Hamilton County and 1 in Marion County). Currently, 48 populations (some made up of more than one subpopulation) are known. We have defined a population as an "occurrence" that is generally at least 0.5 mile from other occurrences, but site-specific determinations take into account physical barriers (ridges, highways, etc.), contiguous habitat (2 or more occurrences deemed part of a single population could be 1 mile apart on the same ridge or slope), and richness or diversity of the occurrence. Based on criteria in the Large-flowered Skullcap Recovery Plan, a population is considered self-sustaining, or viable, if it has a minimum of 100 individuals.

Georgia is now known to have 29 populations. In Floyd County, there are now 9 known populations (15 occurrences), 5 of which are self-sustaining, ranging in size from a few plants to about 1,300 plants. All of one self-sustaining population and 90 percent of another self-sustaining population are protected (owned by The Nature Conservancy [TNC]), including the largest of the nine populations in the county. The remaining populations are all on private land.

Catoosa County, Georgia, is currently known to have 6 populations (10 occurrences). Three of the populations are self-sustaining, ranging in size from about 140 to more than 300 plants. The largest population receives some protection as it is within Catoosa County Park. The other populations are all on private land or land of unknown ownership. There is also evidence of a site with *Scutellaria montana* on Chickamauga Park (owned by the National Park Service [NPS]) in Catoosa County, but the site has not been surveyed and its status is considered ambiguous according to the Georgia Natural Heritage Program.

Five new populations (8 occurrences) have been discovered in Gordon County, Georgia, though none appear to be self-sustaining (all have less than 100 plants). One population known from Gordon County, Georgia, was extirpated when the area was clearcut early in 1986, prior to the listing of the species.

Walker County, Georgia, has three nonself-sustaining populations (5, 16, and 60 plants, respectively). The population of 16 plants is found on NPS land, and the other 2 are privately owned. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included among populations counted towards attainment of criteria for downlisting).

Murray County has two nonself-sustaining populations, all on private land, and there are currently two nonviable populations (three occurrences) known from Chattooga County, Georgia. One population has only three plants (on U.S. Forest Service [USFS] land), and the other two occurrences that make up the other population are described as having only four plants and "dozens" of plants. A single, nonviable population (10 plants) occurs on NPS land in Dade County, Georgia, near the Lookout Mountain population in Tennessee, and a single nonviable population (~60 plants) of unknown ownership has been found in Whitfield County.

Tennessee is now known to have 19 populations. Hamilton County has 14 known populations, 7 of which are considered self-sustaining. These populations range in size from a few plants to more than 2,600 plants. Several Hamilton County populations are made up of multiple subpopulations, some of which are large enough to constitute self-sustaining populations by themselves, but they do not meet the necessary criteria set forth in the recovery plan to be considered separate populations.

Marion County, Tennessee, now has 2 populations ranging in size from about 50 plants to more than 40,000 plants at

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the Tennessee River Gorge. The Tennessee River Gorge population is made up of 8 subpopulations, 2 of which contain more than 20,000 plants. All of the smaller Marion County site (55 plants) is protected, and 6 of the 8 subpopulations in the Tennessee River Gorge are protected (less than 1 percent of the plants are not protected).

Three populations (2, 50, and "several hundred" plants, respectively) are known from Sequatchie County, Tennessee, with only the latter being self-sustaining. The landowner of the largest population is willing to protect the plant through a donated conservation easement, but the agreement has yet to be formalized.

Previous Federal Actions

Federal Government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on plants considered endangered, threatened, or extinct. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Scutellaria montana* was included in the Smithsonian report and the July 1, 1975, Notice of Review.

We published a revised Notice of Review for Native Plants on December 15, 1980 (45 FR 82480); *Scutellaria montana* was included as a category 1 species. Category 1 species were those for which we had information on file to support proposing them as endangered or threatened. On November 28, 1983, we published a supplement to the Notice of Review for native plants in the **Federal Register** (48 FR 53640). *Scutellaria montana* was changed to a category 2 species in this supplement. Category 2 species were those for which we had information suggesting that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats were not currently known or on file to support the preparation of proposed listing rules. Subsequent to this notice, we received a draft status report on *Scutellaria montana* (Collins, unpublished). This report and other available information indicated that the addition of *Scutellaria montana* to the *Federal List of Endangered and Threatened Wildlife and Plants* was appropriate.

All plants included in the comprehensive plant notices were treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This situation was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, we found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. On September 27, 1985, *Scutellaria montana* was again included as a category 1 species in the revised Notice of Review (50 FR 39526), and on November 13, 1985, we published in the **Federal Register** (50 FR 46797) a proposal to list *Scutellaria montana* as an endangered species. That proposal constituted the next 1-year finding as required by the 1982 amendments to the Act. A final rule placing *Scutellaria montana* on the *Federal List of Endangered and Threatened Wildlife and Plants* as an endangered species was published in the **Federal Register** on June 20, 1986 (51 FR 22521).

Since listing, Federal actions have included a variety of recovery actions funded or carried out by the Tennessee Valley Authority (TVA), NPS, USFS, and the Service, including searches for additional populations, habitat studies, translocations, and land management.

We have conducted numerous consultations under section 7 of the Act involving *Scutellaria montana*. More than 50 consultations have taken place in Tennessee, principally concerning road and bridge construction or maintenance. Most potential conflicts have been resolved early in the informal portion of the consultation process, resulting in our concurrence with "not likely to adversely affect" determinations. One formal consultation was conducted that resulted in a "no jeopardy" biological opinion. Three informal section 7 consultations regarding this species have taken place in Georgia.

A recovery plan was completed for *Scutellaria montana* in 1996 (Service 1996). The recovery plan provides the following criteria for downlisting: "If numbers of discrete populations increase to 25 (because of the discovery or establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range), the species will be considered for downlisting to threatened status." The recovery plan also provides a description of protected and managed self-sustaining populations as follows: "A population will be considered adequately protected when it is legally protected and all needed active management is provided. A population will be considered 'self-sustaining' if monitoring data support the conclusion that it is reproducing successfully and is stable or increasing in size. The minimum number of individuals necessary for a self-sustaining population should be considered at least 100 until otherwise determined by demographic studies."

The criteria for downlisting have been met through both the number of known populations (48) and the number of self-sustaining (viable), protected populations (11) distributed throughout the species' range. Though no formal written agreements have been developed with the principal landowners where protected, self-sustaining populations occur (TNC, the States of Georgia and Tennessee, TVA, and the NPS), managers of this land are committed to the conservation of these populations and are actively involved as part of the recovery effort.

On February 8, 1998, we mailed letters to 94 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering a proposal to reclassify *Scutellaria montana* as a threatened species. We received three written responses (TVA, Tennessee Department of Environment and Conservation, and the Wildlife Resources Division of the Georgia Department of Natural Resources), all in support of downlisting.

Summary of Comments and Recommendations

On July 12, 2000, we published the proposed rule to reclassify *Scutellaria montana* from endangered to threatened status in the **Federal Register** (65 FR 42973), under the authority of the Act. Additionally, we announced this proposal in letters (110) dated July 17, 2000, and in legal notices published in the *Rome News Tribune*, Rome, Georgia, on July 23, 2000; the *Walker County Messenger*, LaFayette, Georgia, and the *Catoosa County News*, Ringgold, Georgia, on July 26, 2000; the *Jasper Journal*, Jasper, Tennessee, on July 27, 2000; and the *Chattanooga Times*, Chattanooga, Tennessee, on July 28, 2000. Those documents notified affected congressional offices, the governors of Tennessee and Georgia, Federal and State agencies, local governments, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination. We also announced the proposed downlisting through a press release on July 18, 2000, that was also made available on the Service's Southeast Regional home page on the Internet (*southeast.fws.gov*).

Changes in the Final Rule as a Result of the Public Comments

We received four responses during the public comment period (one from a Federal agency, two from State agencies, and one from a conservation organization), all in support of the proposed reclassification. These comments did not result in any significant changes to the final rule. Population data received from the Georgia Department of Natural Resources' Natural Heritage Program are incorporated in this final rule. Key issues raised in the comments are presented below.

Issue 1: One commenter raised concerns that "* * * the qualifications for protected populations be published [as part of consensus opinions] during the downlisting procedure or in a revised Recovery Plan * * * to ensure such populations are viable, have feasible stewardship provisions to ensure the survival of the population, and represent the total range of the species * * *"

Our Response: We agree that further definition of what constitutes a protected population will be valuable for this species and this issue will be considered through the recovery plan revision process.

Issue 2: In the proposed rule we stated that "* * * *Scutellaria montana* was not a significant component of the commercial trade in native plants. Significant commercial trade in *Scutellaria montana* is not currently known to occur or expected in the future, and no significant import or export is expected." One comment letter pointed out that at least one named cultivar of this species is ready to be placed in commercial trade. They also stated that *Scutellaria montana* is unlikely to be collected in the wild and that both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed in all in-State commerce.

Our Response: We have changed this final rule to reflect this information.

Issue 3: Under 50 CFR, subpart G, § 17.71(a) "Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of § 17.61, provided that a statement that the seeds are of 'cultivated origin' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations." One comment letter stated that "cuttings" as well as seeds should be included in this exemption, as this is a common way plants enter the horticultural trade.

Our Response: Cuttings are a common way plants enter the horticultural trade, and plants grown from legally obtained cuttings might logically be allowed under this same exemption. Unfortunately, this oversight can only be corrected by amending the Act or its implementing regulations. If necessary and consistent with species conservation, it is possible to exempt cuttings of threatened species in a manner similar to seeds of cultivated specimens by preparing a special rule under section 4(d) of the Act.

Issue 4: One comment letter stated that "* * * because many of the populations occur on public land in late successional forests, which are still subject to industrial extraction and other development that could impact the species * * * and many of the private-land populations may be subject to projects with Federal implications * * * critical habitat is surely prudent and determinable at this time."

Our Response: In the more than 14 years since this species was listed, no Federal project or federally permitted project has had a significant impact on this species. The NPS, through its own regulations and in accordance with the Act, is unlikely to have a project ever result in significant impacts to *Scutellaria montana*. Similarly, the TVA has been a leader in the recovery of this plant, having implemented various protective measures, management techniques, and surveys for additional populations. The TVA is currently discussing with the Service, in both Tennessee and Georgia, and other stakeholders the possibility of entering into a cooperative agreement to promote the further recovery of this species. Further, more than half of the known plants and most of the largest population are on land owned by the Tennessee River Gorge Trust, a conservation organization that has also been instrumental in protecting this species. Although timber-harvesting activities continue to threaten the species, since listing, no population of large-flowered skullcap has been lost to timber-harvesting. Because (1) critical habitat designation would not result in substantial benefits to the species, (2) there is currently a large backlog of listed species without critical habitat designation—many of which would benefit more from critical habitat designation than this species, and (3) the status of this species is currently improving, we believe our limited funding available for critical habitat designation should be spent on critical habitat designations for species for which such designation would provide more benefit. Furthermore, we expect that all of the appropriation to be made available for critical habitat designation in the near future will be used to comply with existing court orders and settlement agreements. Therefore, we are not proposing to designate critical habitat for *Scutellaria montana* at this time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the *Federal List of Endangered and Threatened Wildlife and Plants*. These factors and their application to *Scutellaria montana* (large-flowered skullcap) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

In 1986, when *Scutellaria montana* was listed as endangered, 7 populations were known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only 2 sites, neither of which was completely protected. At the time of listing, the most significant threats were logging, wildfires, livestock grazing, and residential development. In 1986, 80 percent of the site with the largest known population had been subdivided and was being offered for sale. A large portion of the second largest population at that time was on land owned by TNC and was therefore afforded protection. The third largest population occurred on privately owned land and had no protection from potential land-use changes. All remaining 1986 populations were extremely small, consisting of 4 to 60 plants.

Though this species is under less threat than when listed, largely due to

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the discovery of additional populations, and 22 (46 percent) of the 48 known populations are currently being afforded protection through ownership by conservation organizations, county parks, historic sites, or Federal land (11 of these protected populations are considered self-sustaining), threats to the species' habitat and future security still exist. Further, nearly 80 percent of the known plants continue to occur at only two sites in the Tennessee River Gorge population.

Habitat destruction caused by logging, residential development, clearing of wooded areas for pasture, grazing, and wildfire all continue to pose some degree of threat to the species. Prior to listing, one population of *Scutellaria montana* was lost due to clearcutting activities (prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property). Damage caused by off-road vehicles and hikers (trampling) has been noted at several sites, and the maintenance (widening) or rerouting of hiking trails is also a potential threat. Rapid urbanization in and around the Chattanooga area also poses a threat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

When *Scutellaria montana* was listed as an endangered species (1986), it was not a significant component of the commercial trade in native plants. During the comment period for this rule, the Georgia Department of Natural Resources informed us that "there is at least one named cultivar of this species ready to be placed in commercial trade." However, both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed for all in-State commerce. Except for seeds of cultivated origin, inter-State commerce, import, and export are prohibited for threatened species. We know of no reason to believe that trade in accordance with the provisions for protection of threatened species or any other type of current or future utilization pose an appreciable risk to wild populations of *Scutellaria montana*.

C. Disease or Predation

While herbivory by animals, especially deer, has been observed at several sites, herbivory does not appear to be a factor affecting the continued existence of the species at this time. Some individual plants have been affected by disease, but this factor appears to affect only a few individuals and is not a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Though there is less protection afforded to threatened plants than to endangered plants under section 9 of the Act, most of the legal protections conferred under the ESA will remain in place following final reclassification of *Scutellaria montana*. Both Georgia (Ga. Code Ann. §§ 27–3–130 *et seq.*) and Tennessee (Tenn. Code Ann. §§ 70–8–301 *et seq.*) have rare plant protection laws that also protect this species. Georgia has separate laws covering endangered plant and animal species. (Ga. Code Ann. §§ 27–3–130 *et seq.*; §§ 12–6–171 *et seq.*) Listing under both acts is limited to scientific and commercial criteria. Habitat acquisition is authorized but not required. The acts do not require recovery plans or agency consultation. Violations constitute a misdemeanor. In addition, the Georgia Environmental Policy Act requires the assessment of major proposed agency impacts on biological resources. (Ga. Code Ann. § 12–16–1 *et seq.*)

In Tennessee, the Rare Plant Protection and Conservation Act authorizes investigation, listing, and education efforts. (Tenn. Code Ann. §§ 70 8–301 *et seq.*) Listing is based on scientific and commercial data only. The act cannot be used to interfere with, delay, or impede any public works project. Penalties include fines up to $1,000 and/or imprisonment of up to six months. Tennessee does not have an "environmental protection act." However, by statute, any person or agency planning an energy project must submit an analysis of the environmental impacts of the project. (Tenn. Code Ann. § 13–18–103) In addition, any person conducting oil and gas activities must prevent or mitigate adverse environmental impacts. (Tenn. Code Ann. § 60–1–202) Tennessee has private land conservation programs. For example, conservation easements are authorized by statute. (Tenn. Code Ann. §§ 66–9–301 *et seq.*) Owners of land subject to a conservation easement are not liable for injury to a third person using the land. (Tenn. Code Ann. § 11–10103) A Forest Stewardship Program assists private landowners with conservation issues. In addition, the Tennessee Biodiversity Program encourages private landowners to protect critical areas. While considerable progress has been made towards recovery of *Scutellaria montana* under these regimes, some threats, such as habitat modification, remain sufficiently serious that the species still requires protection under the Act until the number of total and protected populations can be further increased. Such additional increases in the total number of populations, particularly those under protection, may sufficiently reduce the risk of extinction, even under these current State laws, that concerns under Factor D are no longer an obstacle to delisting *Scutellaria montana*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Scutellaria montana appears to be quite sensitive to the amount of light available. To the extent that human activities facilitate the growth of non-native, invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), competition with these species for light currently remains a problem for some populations of *Scutellaria montana*. These nonnative species are likely to continue to be a problem where disturbance allows these species to become established in close proximity to *Scutellaria montana*.

Several investigators have noted a low reproductive capacity for *Scutellaria montana*. The percentage of flowers that form fruit has been recorded at 30 and 44 percent in the Marshall Forest (Kemp and Knauss 1990), and in another study, 91.5 percent of the plants did not form fruits (Kemp 1987). This reproductive rate is extremely low compared with other *Scutellaria* species that have 75 to 93 percent of the flowers producing mature nutlets (Collins 1976).

Scutellaria montana also produces fewer seeds per fruit compared with other members of the genus. Kemp and Knauss (1990) found that the fruit averaged 2.2 to 2.3 seeds rather than the 4 seeds that are possible. Similarly, Cruzan (*in* Shea and Hogan 1998) found pollen present on 60 percent of the styles, but only 15 percent of these flowers set fruit, with an average of two seeds per fruit. As mentioned previously, the long floral tube and a sucrose-hexose ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993). However, after several hundred hours of observations over 4 years, Cruzan and Hopkins (in prep.) found these pollinators appeared to be rare or lacking and believed that the low seed production is largely because of the lack of pollen deposition on stigmas (Cruzan and Hopkins, in prep.), indicating a possible loss of, or decline in, an associated pollinator(s). The loss/decline of an associated pollinator, particularly one able to travel relatively long distances, could also explain the apparent inbreeding noted at smaller and more isolated populations of this self-compatible species (Cruzan and Vege, in prep.).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria montana* in determining this final rule. Based on this evaluation, the preferred action is to reclassify *Scutellaria montana* from an endangered species to a threatened species. The recovery plan for *Scutellaria montana* states that the species is qualified for downlisting to threatened: "* * * If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range) * * *" The criteria for downlisting have been met through both the number of known populations (48) and the number of viable (self-sustaining), protected populations (11) distributed between both States in the species' range.

Available Conservation Measures

All of 23 populations of *Scutellaria montana* and a portion of 9 others are privately owned (all of 1 population and a portion of 2 others are owned by conservation groups, accounting for nearly 43 current page percent of all plants), 1 is County-owned, a portion of 1 is City-owned, and 1 entire population and a portion of 5 others are State-owned. State-owned land harbors more than 40 percent of the known plants, second only to the number owned by conservation organizations. In addition, 10 entire populations and portions of 3 others are on Federal land (TVA, NPS, and Department of Defense [U.S. Army]).

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. However, unlike endangered plants, not all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.67, apply. However, section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Those prohibitions that do apply to threatened plants, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions (50 CFR 17.71) provided their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought or issued because the species is not a common cultivar or common in the wild.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Athens Field Office, U.S. Fish and Wildlife Service, 247 South Milledge Avenue, Athens, Georgia 30605 (Phone 706/613–9493), or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (Phone 931/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–4176; Fax 404/679–7081).

This rule changes the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Reclassification maintains most of the protections for this species under the Act. Anyone importing or exporting, transporting in interstate or foreign commerce in the course of a commercial activity, selling or offering for sale in interstate or foreign commerce, or removing and reducing the species to possession from areas under Federal jurisdiction will be subject to a penalty under section 11 of the Act. Although less than those for endangered species, substantial penalties apply to illegal take of threatened species. Federal agencies will continue to be responsible for ensuring that their activities are not likely to jeopardize the continued existence of *Scutellaria montana*, as prescribed by section 7 of the Act.

This final rule is not an irreversible action on the part of the Service. Reclassifying *Scutellaria montana* back to endangered status is possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Paperwork Reduction Act

This final rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond, to a collection of information, unless it displays a currently valid control number. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by revising the entries for *Scutellaria montana* under "FLOWERING PLANTS" in the "Status" column to read "T" instead of "E" and in the "When Listed" column to read "234, 720".

Dated: November 15, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–665 Filed 1–11–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010710169–1169–01; I.D. 060401B]

RIN 0648–AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of expiration date and technical amendments.

SUMMARY: NMFS amends the emergency rule extension regulations governing the Atlantic highly migratory species (HMS) fisheries that closed the Northeast Distant Statistical Reporting (NED) area, required modifications in deploying pelagic longline fishing gear, and requiring sea turtle handling and release guidelines for bottom and pelagic longline fisheries to be posted in the wheelhouse. This revision is needed to make the regulations consistent with the June 14, 2001, Biological Opinion (BiOp) on the Atlantic HMS Fishery Management Plan and its associated fisheries. The intent of this revision is to adjust the effective dates listed in the July 13, 2001, emergency rule and in the September 24, 2001, emergency rule revision.

DATES: The expiration date of the rule published September 24, 2001 at 66 FR 48812 is extended from January 9, 2002 to July 8, 2002. The amendments in this rule are effective January 10, 2002, to July 8, 2002. Comments must be received by February 28, 2002.

ADDRESSES: Written comments may be sent to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the documents mentioned in this emergency rule revision may also be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301–713–2347 or via fax at 301–713–1917.

SUPPLEMENTARY INFORMATION: On June 14, NMFS issued a BiOp that found that the Atlantic pelagic longline fishery is jeopardizing the continued existence of loggerhead and leatherback sea turtles. The BiOp estimated that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. To achieve the necessary reduction, the BiOp required the implementation of a reasonable and prudent alternative that was composed of several elements including an area closure and gear modifications.

On July 13, 2001, NMFS issued an emergency rule (66 FR 36711) to implement the BiOp. Specifically, the regulation closed the NED area, required specific gear deployment modifications, and required that the safe handling and release guidelines for sea turtles caught in pelagic longline gear be posted aboard all vessels permitted for HMS fisheries. The emergency rule is effective until January 9, 2002.

On September 24, 2001 (66 FR 48812), the July 13, 2001, emergency rule was revised to adjust the requirement to post the sea turtle handling and release guidelines in the wheelhouse of all HMS permitted vessels. The safe handling guidelines are specific to longline interactions and would not be applicable to vessels using other gear such as seines or gillnets. Accordingly, NMFS revised the regulation to apply only to HMS permitted vessels having pelagic and bottom longline on board.

On December 13, 2001 (66 FR 64378), NMFS published a regulation that extended the July 13, 2001, emergency rule for 180 days. This measure insures that the regulations do not lapse as NMFS prepares a proposed rule and environmental impact statement to implement the required measures of the BiOp. The emergency rule extension maintains the sea turtle protection measures through July 8, 2002.

In extending the July 13, 2001, emergency rule, NMFS inadvertently omitted the September 24, 2001, revisions and the necessary references to the new effective dates. This emergency rule revision adjusts the effective dates established in the July 13, 2001, emergency rule and the September 24, 2001, emergency rule adjustment to make the effective dates consistent with the intent of the December 13, 2001, emergency rule extension.

Classification

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(3), finds that providing prior notice and opportunity for public comment on this revision would be contrary to the public interest. This revision is necessary to maintain the intended effective dates of the December 13, 2001, emergency rule extension. An opportunity was provided for public comment on the extension of the emergency rule and on the BiOp that was the basis of the emergency rule. The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of these regulatory amendments. As the previously implemented regulations will expire on January 9, 2002, delaying the effectiveness of these amendments would create a lapse in the protection measures for the threatened and endangered sea turtles.

Because prior notice and opportunity for public comment are not required for this emergency rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This action is not significant under the meaning of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: January 7, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

§ 635.21 [Amended]

2. In § 635.21, paragraph (a)(4), added at 66 FR 48812, September 24, 2001, and extended by this rule is amended by removing "effective September 15, 2001, through January 9, 2002" and adding "effective January 10, 2002, to July 8, 2002" in its place.

3. In § 635.21, paragraph (c)(5)(iii), added at 66 FR 36711, July 13, 2001, and extended at 66 FR 64378, December 13, 2001, is amended by removing "effective August 1, 2001, through January 9, 2002" and adding "effective January 10, 2002, to July 8, 2002" in its place.

4. In § 635.21, paragraph (c)(6)(v), added at 66 FR 36711, July 13, 2001, and extended at 66 FR 64378, December 13, 2001, is amended by removing "effective July 15, 2001, through January 9, 2002" and adding "effective January 10, 2002, to July 8, 2002" in its place.

* * * * *

[FR Doc. 02–775 Filed 1–19–02; 11:30 am]

BILLING CODE 3510–22–S

VOL 67 ISS 9 JA 14 2002 UMI

Proposed Rules

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 236

[INS Order No. 1906–98]

RIN 1115–AF05

Processing, Detention, and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On July 24, 1998, at 64 FR 39759, the Immigration and Naturalization Service (Service) published a proposed rule in the Federal Register proposing to establish procedures for processing juveniles in Service custody. Specifically, the proposed rule set forth proposed service policy for the release of juveniles from custody, as well as standards regarding the placement of juveniles in Service custody into state-licensed programs and detention facilities. The rule also proposed amendments concerning the transportation and transfer of juveniles in Service custody. The original comment period for the proposed rule closed on September 22, 1998. This document reopens the comment period to March 15, 2002. The Service is reopening the comment period to hear from the public on the following issues: determinations of who speaks for the child with respect to immigration matters, circumstances under which detention in a secure juvenile facility is necessary, and any additional ideas that may be helpful to minimize the number of juveniles who must be placed in Service custody.

DATES: Written comments must be submitted on or before March 15, 2002.

ADDRESSES: Please submit written comments to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 1906–98 on your correspondence. You may also submit comments to the Service electronically at *insregs@usdoj.gov*. When submitting comments electronically please include INS No. 1906–98 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Mark A. Matese, Director, Juvenile Affairs Division, Headquarters Office of Detention and Removal, Immigration and Naturalization, 425 I Street, NW., Washington, DC 20536, 202–305–2734 or 202–353–8228.

SUPPLEMENTARY INFORMATION:

Why is the Service Reopening the Comment Period?

The Service is currently examining the appropriate infrastructure and policies for managing and developing its programs relating to unaccompanied minors. As part of that process, the Service has decided to offer the public an additional opportunity to comment on the proposed rule, and particularly invites comments that relate to issues that have come to the public's attention since the close of the original comment period in 1998. The Service is reopening the comment period to hear from the public on the following issues: determinations of who speaks for the child with respect to immigration matters, circumstances under which detention in a secure juvenile facility is necessary, and any additional ideas that may be helpful to minimize the number of juveniles who must be placed in Service custody.

Where Can the Public View the July 24, 1998 Proposed Rule?

The July 24, 1998, proposed rule can be viewed on the Government Printing Office Web site at: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1998register&docid=98–19712–filed*

Dated: November 19, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–811 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 58P, 60, A60, B60, and 65–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 58P, 60, A60, B60, and 65–88 airplanes. This proposed AD would require you to install new exterior operating instruction placards for the exit doors. The proposed AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by the proposed AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible or understandable, this could result in the inability to open the exit door during an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 12, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–32–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA believes that the instructions for opening the exit doors are either not visible or not easy to understand on Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes. This is based on an accident that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What are the consequences if the condition is not corrected? If the exterior door operating instruction placards are not visible or understandable, this could result in the inability to open the exit doors during an emergency situation.

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

What are the provisions of this service information? The service bulletin includes procedures for installing new exterior placards with improved operating instructions for the exit doors on the affected airplanes.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to install new exterior operating instruction placards for the exit doors.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 850 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours X $60 per hour = $120	$40	$160	$136,000

The manufacturer will provide warranty credit for parts to the extent noted under MATERIAL INFORMATION in Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is "within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first".

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of the proposed AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2001–CE–32–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
58P	TJ–3 through TJ–497.
60	P–4 through P–122 and P–124 through P–126.
A60	P–123 and P–127 through P–246.
B60	P–247 through P–596.
65–88	LP–1 through LP–26, LP–28, and LP–30 through LP–47.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible or understandable, this could result in the inability to open the exit doors during an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the exterior door operating procedures by installing the applicable placard as specified in the service bulletin.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 4, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–798 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–33–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142299–01 and REG–209135–88]

RINS 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a notice of public hearing on proposed rulemaking by cross-reference to temporary regulations relating to certain transfers of property to regulated investment companies and real estate investment trusts.

DATES: The public hearing is being held on May 1, 2002, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by April 10, 2002.

ADDRESSES: The public hearing is being held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Main entrance, located on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:IT&A:RU (REG–142299–01), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington; DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–142299–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lisa Fuller, (202) 622–7750; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking by cross-reference to temporary regulations (REG–142299–01) that was published in the **Federal Register** on Wednesday, January 2, 2002 (67 FR 48).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by April 10, 2002.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–894 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking that proposed adding a new procedural rule setting forth settlement procedures for cases that come before the Federal Mine Safety and Health Review Commission. The new procedures were to be instituted as a pilot program for a two-year trial period. Since the issuance of the notice of proposed rulemaking, the Commission has reelvaluated the pilot program and has determined that withdrawal of the notice is appropriate at this time.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006; telephone 202–653–5610 (202–653–2673 for TDD relay). Telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: On November 10, 1999, the Commission issued a notice of proposed rulemaking, which proposed amending its procedural rules, 29 CFR part 2700, by adding a new procedural rule setting forth settlement procedures which were intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission (64 FR 61236–39). The Commission's procedural rules are currently silent regarding procedures to be utilized by administrative law judges ("ALJs") to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of disputes have been determined informally by the individual ALJ assigned to the case. The proposed rule, 29 CFR 2700.85, was intended to provide a structured and formal system for settlement, which would be initiated by the appointing of a settlement judge on the motion of any party or on the chief administrative law judge's own initiative.

In response to a request by the Department of Labor's Office of the Solicitor, the Commission extended the comment period on the proposed rule for 30 days. 64 FR 68649 (Dec. 8, 1999). The Commission subsequently received comments suggesting, in part, that the settlement procedures should be initiated with the consent of all parties. In considering those comments, the Commission further examined the percentage of cases that settled and the length of time it took to reach settlement under the current informal system. Based upon that examination, the Commission has reconsidered the utility of a formal settlement system at the present time, and shall further evaluate the best means of effectuating the consensual resolution of disputes.

Withdrawal of the notice of proposed rulemaking constitutes only such action, and does not preclude the Commission from issuing another notice in the future, nor does it commit the Commission to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, or the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 29 CFR Part 2700

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published by the Commission in the **Federal Register** on November 10, 1999 (64 FR 61236–39) is withdrawn.

Dated: January 7, 2002.

Theodore F. Verheggen,

Chairman.

[FR Doc. 02–800 Filed 1–11–02; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office

32 CFR Part 326

NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DoD.

ACTION: Proposed rule.

SUMMARY: The National Reconnaissance Office (NRO) is proposing to exempt one Privacy Act system of records. The system of records is QNRO–21, Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes and to protect the privacy of individuals identified in the systems of records. The National Reconnaissance Office is proposing to exempt those records contained in this Privacy Act system of records when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The NRO is also proposing to exempt one Privacy Act system of records. The system of records is QNRO–19, Customer Security Services Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records. The NRO is moving part 326 from subchapter P to subchapter O—Privacy Program.

DATES: Comments must be received by March 15, 2002, to be considered by the agency.

ADDRESSES: National Reconnaissance Office, Information Access and Release

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Center, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Chapter I, subchapters O and P are proposed to be amended by removing 32 CFR part 326 from subchapter P and adding it to subchapter O.

3. Section 326.17 is proposed to be amended by adding paragraphs (h), (i) and (j) to read as follows:

§ 326.17 Exemptions.

* * * * *

(h) NRO–19

(1) *System name:* Customer Security Services Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigatory records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigatory purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(i) NRO–21

(1) *System name:* Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(j) QNRO–4, Freedom of Information Act and Privacy Act Files.

(1) *Exemption:* During the processing of a Freedom of Information Act/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the NRO hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(3) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

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Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–679 Filed 1–11–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AZ, CA, HI, NV, GU–067–NSPS; FRL–7127–3]

Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for Guam and the States of Arizona, California, Hawaii, and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has routinely approved most requests from state and local agencies in Region IX for delegation of New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs). This document is addressing general authorities mentioned in the regulations for NSPS and NESHAPs, proposing to update the delegations tables and clarifying those authorities that are retained by EPA. We are taking comments on this proposal and intend to follow with a final action.

DATES: Any comments must be received by February 13, 2002.

ADDRESSES: Mail comments to Andy Steckel, Chief, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of supporting information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR–4), San Francisco, California, 94105.

Please contact Cynthia G. Allen at (415) 947–4120 to arrange a time if inspection of the supporting information is desired.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen at (415) 947–4120 or Mae Wang at (415) 947–4124, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), 75 Hawthorne Street, San Francisco, California, 94105.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What is the purpose of this document?
Who is authorized to delegate these authorities?
What does delegation accomplish?
What authorities are not delegated by EPA?
Does EPA keep some authority?
Administrative Requirements

What Is the Purpose of This Document?

Through this document, EPA is proposing to accomplish the following objectives:

(1) Update the delegations tables in the Code of Federal Regulations, Title 40 (40 CFR), parts 60 and 61, to provide an accurate listing of the delegated standards; and

(2) Clarify those authorities that are retained by EPA and not granted to state or local agencies as part of delegation. These actions are described below.

Update of Tables in the CFR

Today's action proposes to update the delegation tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables would include the delegations approved in response to recent requests, as well as those previously granted. The proposed tables are shown at the end of this document. EPA is also proposing to update the addresses for state and local agencies within the jurisdiction of EPA Region IX.

Recent requests for delegation that will be incorporated into the updated CFR tables are identified below. Each individual submittal identifies the specific NSPS and NESHAPs for which delegation was requested. Some of these requests have already been approved and simply need to be included in the CFR. For requests listed below that have not yet been approved, EPA will consider these delegation requests as approved on the effective date of the final rulemaking that will follow today's action.

Agency	Date of request
Arizona Department of Environmental Quality	May 29, 1998, and October 6, 1999.
Kern County Air Pollution Control District	February 8, 1995, January 20, 2000, and May 18, 2001.
Lake County Air Quality Management District	February 24, 1997.
Mendocino County Air Quality Management District	May 21, 1999.
Sacramento Metropolitan Air Quality Management District	August 7, 1995, April 24, 1997, and July 7, 1998.
San Diego Air Pollution Control District	June 23 and December 24, 1999.
San Joaquin Valley Unified Air Pollution Control District	May 27, 1999, and June 26, 2000.
Santa Barbara County Air Pollution Control District	August 6, 1996.
Ventura County Air Pollution Control District	February 9, 1995.
Yolo-Solano Air Quality Management District	October 20, 1998.

In the future, EPA Region IX may establish a new procedural option for state and local agencies to receive delegation of 40 CFR part 60 and 61 standards. If an agency has delegation of a standard, then the new procedure may allow that agency to receive delegation of any amendments to that standard as they are adopted by reference. The details of any new procedure will be described in a future rulemaking action before it is implemented. It is being mentioned here for informational purposes only.

Clarification of Non-Delegable Authorities

In February 1999, EPA released a guidance document entitled, "How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring—NSPS & NESHAPS, (EPA 305–B–99–004)." In accordance with this guidance, today's action clarifies the NSPS and NESHAP authorities that are not delegated to state and local agencies under Clean Air Act sections 111 and 112. These clarifications will be codified at 40 CFR 60.4(d) and 61.04(c)(9). Today's action also requests that state and local agencies exclude the non-delegable subsections from future delegation requests, and informs the public of our intention to appropriately revise future delegation letter approvals and Federal Register announcements.

Who Is Authorized To Delegate These Authorities?

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorize the Administrator to delegate

his or her authority for implementing and enforcing standards in 40 CFR Parts 60 and 61.

What Does Delegation Accomplish?

Delegation grants a state or local agency the primary authority to implement and enforce federal standards. All required notifications and reports should be sent to the delegated state or local agency, as appropriate, with a copy to EPA Region IX. Acceptance of delegation constitutes agreement by the state or local agency to follow 40 CFR parts 60 and 61, and EPA's test methods and continuous monitoring procedures.

What Authorities Are Not Delegated by EPA?

In general, EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant, or alter the stringency of the underlying standards. The following describes in more detail the authorities in 40 CFR Parts 60 and 61 that are retained by EPA.

1. Provisions that address EPA's authority to delegate to states are not being delegated because it is inappropriate to imply that states have authority to delegate to themselves. These provisions include 40 CFR 60.4(b), 61.04(b), and 61.04(c); part 60, subpart B; and part 60, subpart C.

2. Provisions that require federal oversight to ensure national consistency and EPA's ability to enforce the standards are not being delegated. These provisions include 40 CFR 61.05(c) and 61.11.

3. Provisions that grant EPA discretion to approve modifications to test methods or protocols are not being delegated in order to ensure uniformity and technical quality in enforcement of national standards. These provisions include 40 CFR 60.8(b); 60.11(b); 60.13(a),(d)(2), and (g); 60.13(i); 61.13(h)(1)(ii); and 61.14(d) and (g)(1)(ii).

4. Provisions that require rulemaking cannot be delegated because states cannot perform federal rulemaking. These provisions include 40 CFR 60.11(e) and 61.12(d).

5. Provisions that address EPA's obligation to make certain information available to the public does not apply to states under federal law and is not appropriate for delegation. These provisions include 40 CFR 60.9 and 61.16.

6. Appendices to 40 CFR parts 60 and 61 are not performance standards and are not delegable under Clean Air Act Section 111(c)(1) or 112(l)(1). However, all applicable test methods and other requirements in the Appendices must be followed for the delegated subparts.

As additional assurance of national consistency, state and local agencies must send to EPA Region IX Air Division's Enforcement Office Chief a copy of any written decisions made pursuant to the following delegated authorities:

- Applicability determinations that state a source is not subject to a rule or requirement;
- Approvals or determination of construction, reconstruction or modification;
- Minor or intermediate site-specific changes to test methods or monitoring requirements; or
- Site-specific changes or waivers of performance testing requirements.

For decisions that require EPA review and approval (for example, major changes to monitoring requirements), EPA intends to make determinations in a timely manner.

In some cases, the standards themselves specify that specific provisions cannot be delegated. State and local agencies should review each individual standard for this information.

Does EPA Keep Some Authority?

EPA retains independent authority to enforce the standards and regulations of 40 CFR parts 60 and 61.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it would merely approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation requests, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for delegation, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 60 and 61

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 101, 110, 112, and 301

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of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: December 18, 2001.

Jack P. Broadbent,

Director, Air Division, Region IX.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 60.4 is amended:

a. In paragraph (a) by revising the address for "Region IX".

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By revising paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (d).

The revisions and additions read as follows:

§ 60.4 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County Air Pollution Control District (Southeast Desert), 2700 M Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, DeWitt Center, 11464 "B" Avenue, Auburn, CA 95603–2603

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117–3027

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(M) Hawaii:

Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI 96814

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

Note: Tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(d) The following tables list the specific Part 60 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 60.4(b), 60.8(b), 60.9, 60.11(b), 60.11(e), 60.13(a), 60.13(d)(2), 60.13(g), 60.13(i).

(1) Arizona. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency		Pima County	Pinal County
		Arizona DEQ	Maricopa County		
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X		X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial Steam Generating Units	X	X	X	X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors	X	X		X
Eb	Portland Cement Plants	X			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X	X	X	X
G	Nitric Acid Plants	X	X	X	X
H	Sulfuric Acid Plants	X	X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X		X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	X	X	X
Q	Primary Zinc Smelters	X	X	X	X
R	Primary Lead Smelters	X	X	X	X
S	Primary Aluminum Reduction Plants	X	X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X	X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X	X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X	X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X	X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y	Coal Preparation Plants	X	X	X	X
Z	Ferroalloy Production Facilities	X	X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB	Kraft pulp Mills	X	X	X	X
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants	X	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X	X
NN	Phosphate Rock Plants	X	X	X	X
PP	Ammonium Sulfate Manufacture	X	X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X	X	X	X
SS	Industrial Surface Coating: Large Appliances	X	X	X	X

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
TT	Metal Coil Surface Coating	X	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X	X	X	X
WW	Beverage Can Surface Coating Industry	X	X	X	X
XX	Bulk Gasoline Terminals	X	X	X	X
AAA	New Residential Wool Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	X	X	X
HHH	Synthetic Fiber Production Facilities	X	X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X	X	X
JJJ	Petroleum Dry Cleaners	X	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X	X		X
MMM	(Reserved)	X	X	X	X
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X	X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities	X	X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU	Calciners and Dryers in Mineral Industries	X			
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X			

(2) California. The following tables identify delegations for each of the local air pollution control agencies of California.

(i) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
A	General Provisions			X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.			X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators			X	
Ea	Municipal Waste Combustors			X	
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants			X	
G	Nitric Acid Plants			X	
H	Sulfuric Acid Plants			X	
I	Hot Mix Asphalt Facilities			X	
J	Petroleum Refineries			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.			X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters			X	
M	Secondary Brass and Bronze Production Plants			X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants			X	
P	Primary Copper Smelters			X	
Q	Primary Zinc Smelters			X	
R	Primary Lead Smelters			X	
S	Primary Aluminum Reduction Plants			X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants			X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants			X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants			X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants			X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.			X	
Y	Coal Preparation Plants			X	
Z	Ferroalloy Production Facilities			X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.			X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills			X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators			X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants			X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters			X	
BBB	Rubber Tire Manufacturing Industry			X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.				
JJJ	Petroleum Dry Cleaners			X	

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions				
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities			X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.			X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills.				

(ii) [Reserved]

(iii) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions		X		X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.		X		X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.		X		X
Db	Industrial-Commercial-Institutional Steam Generating Units		X		X
Dc	Small Industrial Steam Generating Units		X		X
E	Incinerators		X		X
Ea	Municipal Waste Combustors		X		
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants		X		X
G	Nitric Acid Plants		X		X
H	Sulfuric Acid Plants		X		
I	Hot Mix Asphalt Facilities		X		X
J	Petroleum Refineries		X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X		X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X		X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X		X
L	Secondary Lead Smelters		X		X
M	Secondary Brass and Bronze Production Plants		X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X		X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X		X
O	Sewage Treatment Plants		X		X
P	Primary Copper Smelters		X		X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
Q	Primary Zinc Smelters		X		X
R	Primary Lead Smelters		X		X
S	Primary Aluminum Reduction Plants		X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X		X
Y	Coal Preparation Plants		X		X
Z	Ferroalloy Production Facilities		X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X		X
BB	Kraft pulp Mills		X		X
CC	Glass Manufacturing Plants		X		X
DD	Grain Elevators		X		X
EE	Surface Coating of Metal Furniture		X		X
FF	(Reserved)				
GG	Stationary Gas Turbines		X		X
HH	Lime Manufacturing Plants		X		X
KK	Lead-Acid Battery Manufacturing Plants		X		X
LL	Metallic Mineral Processing Plants		X		X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X		X
NN	Phosphate Rock Plants		X		X
PP	Ammonium Sulfate Manufacture		X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X		X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X		X
SS	Industrial Surface Coating: Large Appliances		X		X
TT	Metal Coil Surface Coating		X		X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X		X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X		X
WW	Beverage Can Surface Coating Industry		X		X
XX	Bulk Gasoline Terminals		X		X
AAA	New Residential Wool Heaters		X		X
BBB	Rubber Tire Manufacturing Industry				
CCC	(Reserved)		X		X
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.				
EEE	(Reserved)		X		X
FFF	Flexible Vinyl and Urethane Coating and Printing		X		X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X		X
HHH	Synthetic Fiber Production Facilities		X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.				
JJJ	Petroleum Dry Cleaners		X		X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X		X
LLL	Onshore Natural Gas Processing: SO2 Emissions				
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X		X
OOO	Nonmetallic Mineral Processing Plants		X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X		X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.				
SSS	Magnetic Tape Coating Facilities		X		X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X		X
UUU	Calciners and Dryers in Mineral Industries		X		X
VVV	Polymeric Coating of Supporting Substrates Facilities		X		X
WWW	Municipal Solid Waste Landfills				

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(iv) Delegations for Lake County Air Quality Management District, Lassen County Air Pollution Control District, Mariposa County Air Pollution Control District, and Mendocino County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Lake County AQMD	Lassen County APCD	Mariposa County AQMD	Mendocino County AQMD
A	General Provisions	X			X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X			X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X			X
Db	Industrial-Commercial-Institutional Steam Generating Units	X			
Dc	Small Industrial Steam Generating Units	X			X
E	Incinerators	X			X
Ea	Municipal Waste Combustors	X			X
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X			X
G	Nitric Acid Plants	X			X
H	Sulfuric Acid Plants	X			X
I	Hot Mix Asphalt Facilities	X			X
J	Petroleum Refineries	X			X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X			X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X			X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X			X
L	Secondary Lead Smelters	X			X
M	Secondary Brass and Bronze Production Plants	X			X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X			X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X			X
O	Sewage Treatment Plants	X			X
P	Primary Copper Smelters	X			X
Q	Primary Zinc Smelters	X			X
R	Primary Lead Smelters	X			X
S	Primary Aluminum Reduction Plants	X			X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X			X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X			X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X			X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X			
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X			X
Y	Coal Preparation Plants	X			X
Z	Ferroalloy Production Facilities	X			X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X			X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X			X
BB	Kraft pulp Mills	X			X
CC	Glass Manufacturing Plants	X			X
DD	Grain Elevators	X			X
EE	Surface Coating of Metal Furniture	X			X
FF	(Reserved)				
GG	Stationary Gas Turbines	X			X
HH	Lime Manufacturing Plants	X			X
KK	Lead-Acid Battery Manufacturing Plants	X			X
LL	Metallic Mineral Processing Plants	X			X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X			X
NN	Phosphate Rock Plants	X			X
PP	Ammonium Sulfate Manufacture	X			X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Lake County AQMD	Lassen County APCD	Mariposa County AQMD	Mendocino County AQMD
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X			X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X			X
SS	Industrial Surface Coating: Large Appliances	X			X
TT	Metal Coil Surface Coating	X			X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X			X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X			X
WW	Beverage Can Surface Coating Industry	X			X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X			X
BBB	Rubber Tire Manufacturing Industry	X			X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X			X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X			X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X			X
HHH	Synthetic Fiber Production Facilities	X			X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X			X
JJJ	Petroleum Dry Cleaners	X			X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X			X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X			X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations	X			X
OOO	Nonmetallic Mineral Processing Plants	X			X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X			X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X			X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	X			
SSS	Magnetic Tape Coating Facilities	X			X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X			X
UUU	Calciners and Dryers in Mineral Industries	X			X
VVV	Polymeric Coating of Supporting Substrates Facilities	X			X
WWW	Municipal Solid Waste Landfills	X			

(v) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A	General Provisions	X		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X		X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X		X	X
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators	X		X	X
Ea	Municipal Waste Combustors				
Eb	Portland Cement Plants				

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X		X	X
G	Nitric Acid Plants	X		X	X
H	Sulfuric Acid Plants	X		X	X
I	Hot Mix Asphalt Facilities	X		X	X
J	Petroleum Refineries	X		X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X		X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X		X	X
L	Secondary Lead Smelters	X		X	X
M	Secondary Brass and Bronze Production Plants	X		X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		X	X
O	Sewage Treatment Plants	X		X	X
P	Primary Copper Smelters	X		X	X
Q	Primary Zinc Smelters	X		X	X
R	Primary Lead Smelters	X		X	X
S	Primary Aluminum Reduction Plants	X		X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X		X	X
Y	Coal Preparation Plants	X		X	X
Z	Ferroalloy Production Facilities	X		X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		X	X
BB	Kraft pulp Mills	X		X	X
CC	Glass Manufacturing Plants	X		X	X
DD	Grain Elevators	X		X	X
EE	Surface Coating of Metal Furniture	X		X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X		X	X
HH	Lime Manufacturing Plants	X		X	X
KK	Lead-Acid Battery Manufacturing Plants	X		X	X
LL	Metallic Mineral Processing Plants	X		X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X		X	X
NN	Phosphate Rock Plants	X		X	X
PP	Ammonium Sulfate Manufacture	X		X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X		X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X	X
SS	Industrial Surface Coating: Large Appliances	X		X	X
TT	Metal Coil Surface Coating	X		X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X		X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X		X	X
WW	Beverage Can Surface Coating Industry	X		X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X		X	X
BBB	Rubber Tire Manufacturing Industry	X		X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X		X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X	X
HHH	Synthetic Fiber Production Facilities	X		X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes				
JJJ	Petroleum Dry Cleaners	X		X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X		X	X
LLL	Onshore Natural Gas Processing: SO2 Emissions	X		X	X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations:	X		X	
OOO	Nonmetallic Mineral Processing Plants	X		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X		X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities	X		X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X		X	X
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	X
WWW	Municipal Solid Waste Landfills				

(vi) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
A	General Provisions		X		X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.				X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.				X
Db	Industrial-Commercial-Institutional Steam Generating Units				X
Dc	Small Industrial Steam Generating Units				X
E	Incinerators				X
Ea	Municipal Waste Combustors				X
Eb	Portland Cement Plants				X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				X
F	Portland Cement Plants				X
G	Nitric Acid Plants				X
H	Sulfuric Acid Plants				X
I	Hot Mix Asphalt Facilities				X
J	Petroleum Refineries				X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.				X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.				

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.				X
L	Secondary Lead Smelters				X
M	Secondary Brass and Bronze Production Plants				X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.				X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.				
O	Sewage Treatment Plants				X
P	Primary Copper Smelters				X
Q	Primary Zinc Smelters				X
R	Primary Lead Smelters				X
S	Primary Aluminum Reduction Plants				X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants				X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants				X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants				X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants				X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.				X
Y	Coal Preparation Plants				X
Z	Ferroalloy Production Facilities				X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.				X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.				X
BB	Kraft Pulp Mills				X
CC	Glass Manufacturing Plants				X
DD	Grain Elevators				X
EE	Surface Coating of Metal Furniture				X
FF	(Reserved)				
GG	Stationary Glass Turbines				X
HH	Lime Manufacturing Plants				X
KK	Lead-Acid Battery Manufacturing Plants				X
LL	Metallic Mineral Processing Plants				X
MM	Automobile and Light Duty Trucks Surface Coating Operations				X
NN	Phosphate Rock Plants				X
PP	Ammonium Sulfate Manufacture				X
QQ	Graphic Arts Industry: Publication Rotogravure Printing				X
RR	Pressure Sensitive Tape and Label Surface Coating Operations				X
SS	Industrial Surface Coating: Large Appliances				X
TT	Metal Coil Surface Coating				X
UU	Asphalt Processing and Asphalt Roofing Manufacture				X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.				X
WW	Beverage Can Surface Coating Industry				X
XX	Bulk Gasoline Terminals.				
AAA	New Residential Wood Heaters				X
BBB	Rubber Tire Manufacturing Industry				X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.				X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing				X
GGG	Equipment Leaks of VOC in Petroleum Refineries				X
HHH	Synthetic Fiber Production Facilities				X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.				X
JJJ	Petroleum Dry Cleaners				X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.				X
LLL	Onshore Natural Gas Processing: SO_2 Emissions				X
MMM	(Reserved)				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.				X
OOO	Nonmetallic Mineral Processing Plants				X
PPP	Wood Fiberglass Insulation Manufacturing Plants				X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems				X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.				X
SSS	Magnetic Tape Coating Facilities				X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.				X
UUU	Calciners and Dryers in Mineral Industries				X
VVV	Polymeric Coating of Supporting Substrates Facilities				X
WWW	Municipal Solid Waste Landfills				X

(vii) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.		X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.		X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X	X
Dc	Small Industrial Steam Generating Units	X	X		X
E	Incinerators		X	X	X
Ea	Municipal Waste Combustors			X	X
Eb	Portland Cement Plants				X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants		X	X	X
G	Nitric Acid Plants		X	X	X
H	Sulfuric Acid Plants		X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries		X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters		X	X	X
M	Secondary Brass and Bronze Production Plants		X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.				
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters		X	X	X
Q	Primary Zinc Smelters		X	X	X

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
R	Primary Lead Smelters		X	X	X
S	Primary Aluminum Reduction Plants		X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X	X	X
Y	Coal Preparation Plants		X	X	X
Z	Ferroalloy Production Facilities		X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	X	X
BB	Kraft pulp Mills		X	X	X
CC	Glass Manufacturing Plants		X	X	X
DD	Grain Elevators		X	X	X
EE	Surface Coating of Metal Furniture		X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines		X	X	X
HH	Lime Manufacturing Plants		X	X	X
KK	Lead-Acid Battery Manufacturing Plants		X	X	X
LL	Metallic Mineral Processing Plants		X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	X	X
NN	Phosphate Rock Plants		X	X	X
PP	Ammonium Sulfate Manufacture		X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	X	X
SS	Industrial Surface Coating: Large Appliances		X	X	X
TT	Metal Coil Surface Coating		X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X	X	X
WW	Beverage Can Surface Coating Industry		X	X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X	X	X
BBB	Rubber Tire Manufacturing Industry		X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	X	X
HHH	Synthetic Fiber Production Facilities		X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	X	X
JJJ	Petroleum Dry Cleaners		X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions		X	X	X
MMM	(Reserved).				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	X	X
SSS	Magnetic Tape Coating Facilities		X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	X
VVV	Polymeric Coating of Supporting Substrates Facilities		X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	X

(viii) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions	X	X	X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.			X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators			X	
Ea	Municipal Waste Combustors			X	
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants			X	
G	Nitric Acid Plants			X	
H	Sulfuric Acid Plants			X	
I	Hot Mix Asphalt Facilities			X	
J	Petroleum Refineries			X	
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.			X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters			X	
M	Secondary Brass and Bronze Production Plants			X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants			X	
P	Primary Copper Smelters			X	
Q	Primary Zinc Smelters			X	
R	Primary Lead Smelters			X	
S	Primary Aluminum Reduction Plants			X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants			X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants			X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants			X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants			X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.			X	
Y	Coal Preparation Plants			X	
Z	Ferroalloy Production Facilities			X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.			X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills			X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators			X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants			X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters			X	
BBB	Rubber Tire Manufacturing Industry			X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.			X	
JJJ	Petroleum Dry Cleaners			X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions			X	
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities			X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.			X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills				

(ix) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978		X	
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X
Dc	Small Industrial Steam Generating Units		X	
E	Incinerators		X	
Ea	Municipal Waste Combustors		X	
Eb	Portland Cement Plants			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996			
F	Portland Cement Plants		X	
G	Nitric Acid Plants		X	
H	Sulfuric Acid Plants		X	
I	Hot Mix Asphalt Facilities		X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
J	Petroleum Refineries		X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X	
L	Secondary Lead Smelters		X	
M	Secondary Brass and Bronze Production Plants		X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	
O	Sewage Treatment Plants		X	
P	Primary Copper Smelters		X	
Q	Primary Zinc Smelters		X	
R	Primary Lead Smelters		X	
S	Primary Aluminum Reduction Plants		X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities		X	
Y	Coal Preparation Plants		X	
Z	Ferroalloy Production Facilities		X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	
BB	Kraft pulp Mills		X	
CC	Glass Manufacturing Plants		X	
DD	Grain Elevators		X	
EE	Surface Coating of Metal Furniture		X	
FF	(Reserved)			
GG	Stationary Gas Turbines		X	
HH	Lime Manufacturing Plants		X	
KK	Lead-Acid Battery Manufacturing Plants		X	
LL	Metallic Mineral Processing Plants		X	
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	
NN	Phosphate Rock Plants		X	
PP	Ammonium Sulfate Manufacture		X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	
SS	Industrial Surface Coating: Large Appliances		X	
TT	Metal Coil Surface Coating		X	
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry		X	
WW	Beverage Can Surface Coating Industry		X	
XX	Bulk Gasoline Terminals			
AAA	New Residential Wool Heaters		X	
BBB	Rubber Tire Manufacturing Industry		X	
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing		X	
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	
HHH	Synthetic Fiber Production Facilities		X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	
JJJ	Petroleum Dry Cleaners		X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants		X	
LLL	Onshore Natural Gas Processing: SO2 Emissions		X	
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	

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	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
OOO	Nonmetallic Mineral Processing Plants		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	
SSS	Magnetic Tape Coating Facilities		X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines		X	
UUU	Calciners and Dryers in Mineral Industries		X	
VVV	Polymeric Coating of Supporting Substrates Facilities		X	
WWW	Municipal Solid Waste Landfills		X	X

(3) Hawaii. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X
Dc	Small Industrial Steam Generating Units	X
E	Incinerators	X
Ea	Municipal Waste Combustors	X
Eb	Portland Cement Plants	X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996	
F	Portland Cement Plants	X
G	Nitric Acid Plants	
H	Sulfuric Acid Plants	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X
L	Secondary Lead Smelters	
M	Secondary Brass and Bronze Production Plants	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983	
O	Sewage Treatment Plants	X
P	Primary Copper Smelters	
Q	Primary Zinc Smelters	
R	Primary Lead Smelters	
S	Primary Aluminum Reduction Plants	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	
Y	Coal Preparation Plants	X
Z	Ferroalloy Production Facilities	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983	X
BB	Kraft pulp Mills	
CC	Glass Manufacturing Plants	
DD	Grain Elevators	
EE	Surface Coating of Metal Furniture	
FF	(Reserved)	
GG	Stationary Gas Turbines	X
HH	Lime Manufacturing Plants	
KK	Lead-Acid Battery Manufacturing Plants	
LL	Metallic Mineral Processing Plants	
MM	Automobile and Light Duty Trucks Surface Coating Operations	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
NN	Phosphate Rock Plants	
PP	Ammonium Sulfate Manufacture	
QQ	Graphic Arts Industry: Publication Rotogravure Printing	
RR	Pressure Sensitive Tape and Label Surface Coating Operations	
SS	Industrial Surface Coating: Large Appliances	
TT	Metal Coil Surface Coating	
UU	Asphalt Processing and Asphalt Roofing Manufacture	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X
WW	Beverage Can Surface Coating Industry	X
XX	Bulk Gasoline Terminals	X
AAA	New Residential Wool Heaters	
BBB	Rubber Tire Manufacturing Industry	
CCC	(Reserved)	
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry	
EEE	(Reserved)	
FFF	Flexible Vinyl and Urethane Coating and Printing	
GGG	Equipment Leaks of VOC in Petroleum Refineries	X
HHH	Synthetic Fiber Production Facilities	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes	X
JJJ	Petroleum Dry Cleaners	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	
LLL	Onshore Natural Gas Processing: SO_2 Emissions	
MMM	(Reserved)	
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X
OOO	Nonmetallic Mineral Processing Plants	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes	
SSS	Magnetic Tape Coating Facilities	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	X
UUU	Calciners and Dryers in Mineral Industries	X
VVV	Polymeric Coating of Supporting Substrates Facilities	
WWW	Municipal Solid Waste Landfills	

(4) Nevada. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
A	General Provisions	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X		
Db	Industrial-Commercial-Institutional Steam Generating Units			
Dc	Small Industrial Steam Generating Units			
E	Incinerators	X	X	X
Ea	Municipal Waste Combustors			
Eb	Portland Cement Plants			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996			
F	Portland Cement Plants	X	X	X
G	Nitric Acid Plants	X		X
H	Sulfuric Acid Plants	X		X
I	Hot Mix Asphalt Facilities	X	X	X
J	Petroleum Refineries	X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X		
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X
L	Secondary Lead Smelters	X		X
M	Secondary Brass and Bronze Production Plants	X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		
O	Sewage Treatment Plants	X	X	X
P	Primary Copper Smelters	X	X	X
Q	Primary Zinc Smelters	X	X	X
R	Primary Lead Smelters	X	X	X
S	Primary Aluminum Reduction Plants	X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	X		X
Y	Coal Preparation Plants	X	X	X
Z	Ferroalloy Production Facilities	X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		
BB	Kraft pulp Mills	X		X
CC	Glass Manufacturing Plants	X		X
DD	Grain Elevators	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X
FF	(Reserved)			
GG	Stationary Gas Turbines	X	X	X
HH	Lime Manufacturing Plants	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X
NN	Phosphate Rock Plants	X	X	X
PP	Ammonium Sulfate Manufacture	X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X
SS	Industrial Surface Coating: Large Appliances	X	X	X
TT	Metal Coil Surface Coating	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X	X	X
WW	Beverage Can Surface Coating Industry	X		X
XX	Bulk Gasoline Terminals	X		X
AAA	New Residential Wool Heaters			
BBB	Rubber Tire Manufacturing Industry			
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry			
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X
HHH	Synthetic Fiber Production Facilities	X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes			
JJJ	Petroleum Dry Cleaners	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	X		
LLL	Onshore Natural Gas Processing: SO2 Emissions	X		
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations			
OOO	Nonmetallic Mineral Processing Plants	X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes			
SSS	Magnetic Tape Coating Facilities			
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines			
UUU	Calciners and Dryers in Mineral Industries			
VVV	Polymeric Coating of Supporting Substrates Facilities			
WWW	Municipal Solid Waste Landfills			

(5) Guam. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GUAM

	Subpart	Guam
A	General Provisions	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	
Db	Industrial-Commercial-Institutional Steam Generating Units.	
Dc	Small Industrial Steam Generating Units.	
E	Incinerators.	
Ea	Municipal Waste Combustors.	
Eb	Portland Cement Plants.	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	
F	Portland Cement Plants.	
G	Nitric Acid Plants.	
H	Sulfuric Acid Plants.	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X

PART 61 —[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 61.04 is amended:

a. In paragraph (a) by revising the address for "Region IX".

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By adding paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (c)(9).

The revisions and additions read as follows:

§ 61.04 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County Air Pollution Control District (Southeast Desert), 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, DeWitt Center, 11464 "B" Avenue, Auburn, CA 95603–2603

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian, Drive, B–23, Goleta, CA 93117–3027

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(M) Hawaii:

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Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI, 96811

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(c) * * *

(9) The following tables list the specific Part 61 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 61.04(b), 61.04(c), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16.

(i) Arizona. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR PART 61 STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency			
		Arizona DEO	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium	X	X	X	X
D	Beryllium Rocket Motor Firing	X	X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride	X	X	X	X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X	X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants				
L	Benzene Emissions from Coke By-Product Recovery Plants	X	X	X	X
M	Asbestos	X	X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X	X		X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X	X		X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X	X		
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)	X	X	X	X
W	Radon Emissions From Operating Mill Tailings				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels	X	X	X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations	X	X	X	X
CC–EE	(Reserved).				
FF	Benzene Waste Operations	X	X	X	X

(ii) California. The following tables identify delegations for each of the local air pollution control agencies of California.

(A) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County AQMD
A	General Provisions.				
B	Radon Emissions From Underground Uranium.				
C	Beryllium.				
D	Beryllium Rocket Motor Firing.				
E	Mercury.				
F	Vinyl Chloride.				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants			X	
M	Asbestos			X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.				
O	Inorganic Arsenic Emissions From Primary Copper Smelters.				
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources).				
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(B) [Reserved]

(C) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions				X
B	Radon Emissions From Underground Uranium				X
C	Beryllium				X
D	Beryllium Rocket Motor Firing				X
E	Mercury				X
F	Vinyl Chloride				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				X
J	Equipment Leaks (Fugitive Emission Sources) of Benzene				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				X
L	Benzene Emissions From Coke By-Product Recovery Plants.				X
M	Asbestos				X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants				X
O	Inorganic Arsenic Emissions From Primary Copper Smelters				X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				

(D) [Reserved]

(E) Delegations for Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, North Coast Unified Air Quality Management District, Northern Sierra Air Quality Management District, Sacramento Metropolitan Air Quality Management District, San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR MOJAVE DESERT AQMD, MONTEREY BAY UNIFIED APCD, NORTH COAST UNIFIED AQMD, NORTHERN SIERRA AQMD, SACRAMENTO METROPOLITAN AQMD, SAN DIEGO COUNTY APCD, SAN JOAQUIN VALLEY UNIFIED APCD, AND SANTA BARBARA COUNTY APCD

	Subpart	Air pollution control agency							
		Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD	Northern Sierra AQMD	Sacramento Metropolitan AQMD	San Diego County APCD	San Joaquin Valley Unified APCD	Santa Barbara County APCD
A	General Provisions								
B	Radon Emissions From Underground Uranium.								
C	Beryllium.								
D	Beryllium Rocket Motor Firing.								
E	Mercury.								
F	Vinyl Chloride.								
G	(Reserved).								
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.								
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.								
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.								
K	Radionuclide Emissions From Elemental Phosphorus Plants.								
L	Benzene Emissions from Coke By-Product Recovery Plants								
M	Asbestos								
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.								
O	Inorganic Arsenic Emissions From Primary Copper Smelters.								
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.								
Q	Radon Emissions From Department of Energy Facilities.								
R	Radon Emissions From Phosphogypsum Stacks.								
S	(Reserved).								
T	Radon Emissions From the Disposal of Uranium Mill Tailings.								
U	(Reserved).								
V	Equipment Leaks (Fugitive Emission Sources).								
W	Radon Emissions From Operating Mill Tailings.								
X	(Reserved).								
Y	Benzene Emissions From Benzene Storage Vessels								
Z–AA	(Reserved).								
BB	Benzene Emissions From Benzene Transfer Operations.								
CC–EE	(Reserved).								
FF	Benzene Waste Operations								

(F) [Reserved]

(G) Delegations for Placer County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, Shasta County Air Quality Management District, Tehama County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR PLACER COUNTY APCD, SACRAMENTO METROPOLITAN AQMD, SAN JOAQUIN VALLEY UNIFIED APCD, SANTA BARBARA COUNTY APCD, SHASTA COUNTY AQMD, TEHAMA COUNTY APCD, VENTURA COUNTY APCD, AND YOLO-SOLANO AQMD

	Subpart	Air pollution control agency							
		Placer County APCD	Sacramento Metropolitan AQMD	San Joaquin Valley Unified APCD	Santa Barbara County APCD	Shasta County AQMD	Tehama County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions								
B	Radon Emissions From Underground Uranium.								
C	Beryllium.								
D	Beryllium Rocket Motor Firing.								
E	Mercury.								
F	Vinyl Chloride.								
G	(Reserved).								
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.								
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.								
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.								
K	Radionuclide Emissions From Elemental Phosphorus Plants.								
L	Benzene Emissions from Coke By-Product Recovery Plants								
M	Asbestos								
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.								
O	Inorganic Arsenic Emissions From Primary Copper Smelters.								
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.								
Q	Radon Emissions From Department of Energy Facilities.								
R	Radon Emissions From Phosphogypsum Stacks.								
S	(Reserved).								
T	Radon Emissions From the Disposal of Uranium Mill Tailings.								
U	(Reserved).								
V	Equipment Leaks (Fugitive Emission Sources).								
W	Radon Emissions From Operating Mill Tailings.								
X	(Reserved).								
Y	Benzene Emissions From Benzene Storage Vessels								
Z–AA	(Reserved).								
BB	Benzene Emissions From Benzene Transfer Operations.								
CC–EE	(Reserved).								
FF	Benzene Waste Operations								

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
S	(Reserved)				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)				X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels				X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations				X
CC–EE	(Reserved).				
FF	Benzene Waste Operations				X

(D) [Reserved]

(E) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A	General Provisions	X		X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium	X		X	X
D	Beryllium Rocket Motor Firing	X		X	X
E	Mercury	X		X	X
F	Vinyl Chloride	X	X	X	
G	(Reserved)				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Rugulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X		X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions From Coke By-Product Recovery Plants			X	X
M	Asbestos	X		X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants			X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X		X	
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)	X		X	X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(F) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metro AQMD
A	General Provisions.				
B	Radon Emissions From Underground Uranium.				
C	Beryllium.				
D	Beryllium Rocket Motor Firing.				
E	Mercury.				
F	Vinyl Chloride.				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants.				
M	Asbestos				
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.				
O	Inorganic Arsenic Emissions From Primary Copper Smelters.				
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources).				
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels.				
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.				
CC–EE	(Reserved).				
FF	Benzene Waste Operations.				

(G) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium		X	X	X
D	Beryllium Rocket Motor Firing		X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride		X	X	X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants.			X	X
M	Asbestos		X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	X	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters				

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	X	X
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)		X	X	X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations			X	X
CC–EE	(Reserved).				
FF	Benzene Waste Operations		X	X	X

(H) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions			X	
B	Radon Emissions From Underground Uranium.				
C	Beryllium			X	
D	Beryllium Rocket Motor Firing			X	
E	Mercury			X	
F	Vinyl Chloride			X	
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene			X	
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants			X	
M	Asbestos			X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants			X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters			X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.			X	
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)			X	
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(I) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	
B	Radon Emissions From Underground Uranium.			
C	Beryllium		X	
D	Beryllium Rocket Motor Firing		X	
E	Mercury		X	
F	Vinyl Chloride		X	
G	(Reserved).			
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities			
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.			
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	
K	Radionuclide Emissions From Elemental Phosphorus Plants.			
L	Benzene Emissions from Coke By-Product Recovery Plants		X	
M	Asbestos		X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	
Q	Radon Emissions From Department of Energy Facilities.			
R	Radon Emissions From Phosphogypsum Stacks.			
S	(Reserved).			
T	Radon Emissions From the Disposal of Uranium Mill Tailings.			
U	(Reserved).			
V	Equipment Leaks (Fugitive Emission Sources)		X	
W	Radon Emissions From Operating Mill Tailings.			
X	(Reserved).			
Y	Benzene Emissions From Benzene Storage Vessels.		X	
Z–AA	(Reserved).			
BB	Benzene Emissions From Benzene Transfer Operations.		X	
CC–EE	(Reserved).			
FF	Benzene Waste Operations.		X	

(iii) Hawaii. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X
B	Radon Emissions From Underground Uranium.	
C	Beryllium.	
D	Beryllium Rocket Motor Firing.	
E	Mercury	X
F	Vinyl Chloride.	
G	(Reserved).	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.	
L	Benzene Emissions from Coke By-Product Recovery Plants.	
M	Asbestos.	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.	
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	
Q	Radon Emissions From Department of Energy Facilities.	
R	Radon Emissions From Phosphogypsum Stacks.	
S	(Reserved).	
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	
U	(Reserved).	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings.	
X	(Reserved).	
Y	Benzene Emissions From Benzene Storage Vessels.	
Z–AA	(Reserved).	
BB	Benzene Emissions From Benzene Transfer Operations	X

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DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
CC–EE	(Reserved).	
FF	Benzene Waste Operations	X

* * * * *

[FR Doc. 02–702 Filed 1–11–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–3021, MM Docket No. 01–349, RM–10350]

Radio Broadcasting Services; Boscobel, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Starboard Broadcasting, Inc. proposing the allotment of Channel 244C3 at Boscobel, Wisconsin, as the community's first local transmission service. The coordinates for Channel 244C3 at Boscobel are 43–08–04 and 90–42–19. The channel can be allotted to Boscobel without a site restriction.

DATES: Comments must be filed on or before February 19, 2002, and reply comments on or before March 6, 2002.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Stephen Gajdosik, Vice President, Starboard Broadcasting, Inc., 2470 Crooks Avenue, Kaukauna, Wisconsin 54130.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–349, adopted December 19, 2001, and released December 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint @aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Boscobel, Channel 244C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–786 Filed 1–11–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98–204, FCC 01–363]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The document proposes to retain the Commission's ban on discrimination and to require broadcasters and cable entities to maintain an EEO program that would achieve broad and inclusive outreach in recruitment to ensure a fair opportunity for all job seekers; and provide administrative relief to small entities. The intended effect is to invite comments on all aspects of the Commission's proposals.

DATES: Comments are due March 15, 2002 and reply comments are due April 15, 2002. Written comments by the public on the proposed information collections are due March 15, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington DC 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: EEO Staff, Mass Media Bureau, (202) 418–1450. For additional information concerning the information collection(s), contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Notice of Proposed Rule Making (Second NPRM) in MM Docket No. 98–204, FCC 01–363. This Second NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Synopsis of Second Notice of Proposed Rule Making

1. This Second NPRM adopts new broadcast and cable EEO rules and policies consistent with the decision of the Court in *MD/DC/DE Broadcasters Association* v. *FCC*, 236 F.3d 13, rehearing denied, 253 F.3d 732 (D.C. Cir. 2001), petition for cert. filed, *MMTC* v. *MD/DC/DE Broadcasters Association*, No. 01–639 (October 17, 2001) (Association), which held that the EEO program requirements of the Commission's broadcast EEO rule were, in part, unconstitutional and therefore vacated the entire rule because the Court found that portions of the rule that it did not find unconstitutional could not be severed from the unconstitutional portion. The broadcast EEO rule was adopted by the *Report and Order* in MM Docket Nos. 98–204 and 96–16, 15 FCC Rcd 2329 (2000) (*Report and Order*), recon. denied, 15 FCC Rcd 22548 (2000), 47 CFR 73.2080. The *Report and Order* also adopted EEO rules for cable entities.

2. The program initiatives of the EEO rule adopted by the Report and Order required that broadcasters widely disseminate information about job openings to ensure that all qualified applicants, including minorities and women, would be able to compete for jobs in the broadcast industry. The EEO rule did not specify the number or type of recruitment sources to be utilized in recruitment efforts. Rather, the rule afforded broadcasters two options from which they could choose, referred to as Option A and Option B.

3. Option A required broadcasters to comply with two supplemental recruitment measures, in addition to the general requirement to recruit for all vacancies so as to achieve broad outreach. First, they were required to provide notice of openings to recruitment organizations that requested such notice. Second, they were required to engage in a certain number of outreach efforts beyond the traditional recruitment that occurs in response to individual vacancies, such as job fairs, internship programs, training programs, mentoring programs, and interaction with educational and community groups. Broadcasters who chose Option A were required to retain records sufficient to document their recruitment efforts and to document that they performed the supplemental recruitment measures. In addition, in order to permit an assessment of their program, they were required to track the recruitment sources of their interviewees and hires.

4. Option B also included the general requirement to recruit for all vacancies but afforded broadcasters the opportunity to design their own program for achieving broad outreach without utilizing the supplemental recruitment measures specified under Option A. Broadcasters electing Option B were required to maintain records documenting their recruitment efforts. In order to permit a meaningful assessment of the success of the program in achieving broad outreach, broadcasters using Option B were required to track the recruitment source, racial/ethnic status, and gender of applicants.

5. The Court in *Association* found that Option B violated the constitutional requirement of equal protection because it created pressure on broadcasters to make greater efforts to recruit for minorities with the result that some nonminority prospective applicants would be deprived of notice. The Court did not find any constitutional infirmity with Option A. However, it concluded that it was unable to sever the invalid Option B from the EEO rule, leaving a rule based only on Option A. Nonetheless, the Court indicated that the Commission could conduct a renewed rulemaking. Thus, this Second NPRM develops EEO requirements for broadcasters and cable entities that are consistent with the Court's decision in *Association* by requesting comments on proposals that generally follow those previously adopted under the former Option A.

Paperwork Reduction Act

This Second NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Second NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Second NPRM; OMB notification of action is due March 15, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Second NPRM—Review of the Commission's Broadcast and Cable EEO Rules and Policies.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 251—16,425.

Estimated Time Per Response: 10 minutes—42.0 hours.

Total Annual Burden: 394—528,238.

Total Annual Costs: $0—$100,000.

Needs and Uses: This Second NPRM seeks comments on a new broadcast EEO rule and policy consistent with the decision in *Association* wherein the court found unconstitutional one of two options for achieving broad outreach. Adoption of any revised EEO rule or policy would likely require changes to the following information collections: 3060–0095 Annual Employment Report—Cable Television (FCC 395–A); 3060–0113 Broadcast EEO Program Report (FCC 396); 3060–0120 Broadcast EEO Model Program Report (FCC 396–A); 3060–0212 § 73.2080 EEO Program; 3060–0349 Cable EEO Requirements (§§ 76.73, 76.75, 73.79, 76.1702; 3060–0390 Broadcast Station Annual Employment Report (FCC 395–B); 3060–0574 MVPD Annual Employment Report (FCC 395–M); and 3060–0922 Broadcast Statement of Compliance (FCC 397). Any revisions to these collections would be subject to OMB review and approval at the final rule stage.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second NPRM. *See* 5 U.S.C. 603. [The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second NPRM. The Commission will send a copy of the Second NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Second NPRM and IRFA (or summaries thereof) will be

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published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rule Changes

This Second NPRM requests comments concerning a new broadcast equal employment opportunity rule and policies consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Association*. The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *Report and Order*, 47 CFR 73.2080. The Court found the option invalid because nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the EEO rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire rule. The outreach provisions adopted by the *Report and Order* were designed to ensure that all persons have the opportunity to participate in the broadcasting industry by requiring that broadcasters engage in broad and inclusive outreach in connection with their hiring efforts.

Because the Commission continues to believe in the importance of achieving broad and inclusive outreach and that this can be achieved in a manner consistent with the Court's decision, we are issuing this Second NPRM for the purpose of developing EEO rules to replace those found unlawful by the Court. In addition to considering a new broadcast EEO rule, we will also consider new rules applicable to cable entities, including multichannel video program distributors (MVPDs). Thus, in the *Report and Order*, we adopted EEO requirements applicable to cable entities which were generally the same as the requirements applicable to broadcasters, except where necessary to comply with statutory requirements applicable only to cable entities. The Court in *Association* did not address our requirements applicable to cable entities. However, it remains our belief that the EEO requirements for cable entities should, to the extent possible, conform to the requirements applicable to broadcasters. The Court in *Association* did not address those aspects of our broadcast and cable EEO rules that prohibit discrimination in hiring practices and we do not believe the Court intended to invalidate such requirements. The Second NPRM accordingly proposes to readopt our antidiscrimination requirements.

Hence, the Second NPRM seeks comment on proposed EEO rules and policies for broadcast and cable entities, including multichannel video programming distributors. The rules are designed to replace existing requirements that were found to be unconstitutional in part by the Court in *Association*, or are, in light of the Court's decision, constitutionally suspect in part. Specifically, we request comment on our proposal to retain the anti-discrimination prong of our EEO rules. In addition, we request comment on proposals to require broadcasters and cable entities to establish and maintain an EEO program that would emphasize recruitment outreach; discourage entities from preferring members of any racial, ethnic, or gender group in hiring or recruitment practices; and provide administrative relief to small entities that meet proposed qualifying factors.

B. Legal Basis

Authority for the actions proposed in this Second NPRM may be found in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

C. Recording, Recordkeeping, and Other Compliance Requirements

As noted, the purpose of this rule making is to replace our prior EEO rule that was found to be unconstitutional in part by eliminating that portion determined to be unconstitutional. Hence, this Second NPRM anticipates that any recording, recordkeeping and compliance requirements of the new rule will not exceed those provided for in the former rule.

Specifically, the Second NPRM proposes that some EEO materials be kept in the public inspection file, that all broadcasters and cable entities adhere to the EEO rules' general anti-discrimination provisions, and that broadcasters and cable entities widely disseminate information concerning job vacancies.

The Second NPRM also proposes that broadcasters and cable entities undertake two supplemental recruitment measures described herein. As proposed, the first supplemental recruitment measure would require broadcasters and cable entities to provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of a station's staff, the second supplemental recruitment measure would require broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues (including conventions, career days, workshops, and similar activities); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; establishment of a mentoring program for station personnel; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting; listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. Cable employment units with more than ten full-time employees would engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees would engage in at least one option every year.

In addition, the Second NPRM proposes that broadcasters and cable entities retain records to demonstrate that they have recruited for all full-time permanent positions. Under the proposal, such recordkeeping would include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date of each hire, and proof of participation in menu options. The Second NPRM notes that our former rule required licensees and cable entities to keep track of the referral source of all interviewees and hirees. The Second NPRM requests comments as to whether this information is necessary in order to validate that outreach is actually effective, or if other information should be required. The Second NPRM further proposes that broadcasters' records be maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities would retain their records for a minimum of seven years.

The Second NPRM also proposes that stations and cable employment units place annually the following EEO records in their local public inspection file; listings of full-time vacancies filled, recruitment sources used for each vacancy during the preceding year, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, and a brief description of the menu option items undertaken during the preceding year. The Second NPRM asks if stations and cable employment units should track the recruitment source of all full-time hirees and/or interviewees referred by each recruitment source for a vacancy. Such information would also be updated in the local public inspection file on an annual basis. Further, under the proposal, station units are to retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities are to retain their materials for a period of five years.

Further, the Second NPRM proposes that most broadcasters submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and that cable entities with six or more full-time employees submit copies of their EEO public inspection file to the Commission every five years. However, broadcasters would limit their submissions to cover only the last 12 months of EEO activity.

Also, the Second NPRM proposes that broadcasters file a Broadcast Mid-Term Report (Form 397) and place a copy of the Report in the public inspection file. Broadcasters would also continue placing a copy of Form 396 (Broadcast EEO Program Report) in the public inspection file. However, broadcasters would no longer be required to place a copy of their station's Form 395–B (Broadcast Station Annual Employment Report) in the public file. Cable employment units would continue placing a copy of Forms 395–A (Cable Television Annual Employment Report) or 395–M (Multi-Channel Video Program Distributor Annual Employment Report) in their public file.

The Second NPRM proposes that all broadcasters and cable entities, with the exception of small entities, comply with these recordkeeping and recording requirements. The proposed exception for small businesses would provide them with some relief of any disparate recordkeeping and reporting costs.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. Definition of a "Small Business"

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 603(b)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). The new rules would apply to broadcast stations and cable entities, including MVPDs.

2. Issues in Applying the Definition of a "Small Business"

We could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the

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power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

The rules to be adopted pursuant to this Second NPRM will apply to television and radio stations. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513120. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995). Included in this industry are commercial, religious, educational, and other television stations. *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as: "Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials." Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. 1992 Census, Series UC92-S-1, at Appendix A-9. Separate establishments primarily engaged in producing taped television program materials are classified under other NAICS numbers. *Id.*; formerly SIC code 7812 (Motion Picture and Video Tape Production) (NAICS code 512110); formerly SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs) (NAICS codes 512110, 512191, 512290).

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. That number has remained fairly constant as indicated by the approximately 1,686 operating full-service television broadcasting stations in the nation as of September 2001. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001). For 1992[1] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. (The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the proposed rules will affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. (We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 2001 total of 1,686 TV stations to arrive at stations categorized as small businesses.) These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In August 1998, minorities owned and controlled 32 (2.6%) of 1,209 commercial television stations in the United States. *Minority Commercial Broadcast Ownership in the United States*, U.S. Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (August 1998). (MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. The minority groups included in this report are Black, Hispanic, Asian, and Native American.) According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States. *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, the Commission recently amended its Annual Ownership Report Form 323 to require information on the gender and race of broadcast license owners in future filings. *See 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, Report and Order*, MM Docket No. 98-43, 13 FCC Rcd 23,056 (1998).

The proposed rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. 13 CFR 121.201, NAICS codes 513111 and 513112. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. *Id.* The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. (The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.) Official Commission records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of September 2001, official Commission records indicate that 13,012 radio stations are currently operating. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001).

[1] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III.

The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201 (NAICS codes 513210 and 513220). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), local multipoint distribution service (LMDS), satellite master antenna systems, and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities.

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000." 47 U.S.C. 543(m)(2). The Commission has determined that there are 67,700,000 subscribers in the United States. *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01-158 (January 24, 2001). Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: MDS involves a variety of transmitters, which are used to relay programming to the home or office. For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDA) and the Multichannel Multipoint Distibution Service (MMDS). The Commission has defined "small entity" for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 1.2110(a)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995). These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $11 million or less). *See* 13 CFR 121.201. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. *Id.* A BTA is the geographic area by which the MDS is licensed. *See* Rand McNally, *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36-39. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

LMDS: The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Local Multipoint Distribution Service, Second Report and Order*, 12 FCC Rcd 12545 (1997). An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (January 6, 1998). There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

DBS: Because DBS provides subscription services, it falls within the SBA-recognized definition of "Cable

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and Other Pay Television Services." 13 CFR 121.201, NAICS codes 513210 and 513220. This definition provides that a small entity is one with $11.0 million or less in annual receipts. *Id.* Currently, there are four DBS providers, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. We base these estimates on a compilation performed by the Equal Employment Opportunity Staff, Mass Media Bureau, FCC. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 MVPD employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

One of the alternatives that this Second NPRM proposes is that broadcasters with station employment units of five to ten full-time employees be provided some relief from EEO program requirements, and that station employment units of fewer than five full-time employees be exempt altogether, with the exception that all broadcasters be subject to the nondiscrimination requirement and report any employment discrimination complaints filed against them. In addition, cable employment units, including MVPD employment units, employing six to ten full-time employees would be provided some relief from the proposed EEO program requirements, and cable employment units with fewer than six full-time employees would not be required to demonstrate compliance with the proposed EEO program requirements. We consider this alternative because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. Furthermore, these proposed rules streamline and clarify recordkeeping requirements, thereby benefiting all entities, including those with fewer employees. It is our belief that the proposed alternative balances the importance of deterring discrimination and achieving broad outreach in broadcast and cable employment practices against the need to maintain minimal regulatory burdens and the ease and clarity of administration.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

The proposed rules do not overlap, duplicate or conflict with any other rules.

List of Subjects

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–870 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 95

[WT Docket No. 01–339; FCC 01–366]

Garmin International, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Notice of Proposed Rule Making (NPRM)*, the FCC proposes to amend Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. These rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons.

DATES: Written comments by the public on the proposed are due on or before February 13, 2002 and reply comments are due on or before February 28, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room TW–B204, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Cross, Wireless Telecommunications Bureau, at (202) 418–0691.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 01–366, adopted on December 12, 2001 and released on December 20, 2001. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. This *NPRM* seeks comment on a proposal to amend §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. In its Petition, Garmin International, Inc. (Garmin) proposes to allow FRS units to transmit Global Positioning System (GPS) location information using emission type F2D in a digital data burst of not more than one second. Prior to the submission of the Petition, Garmin sought a waiver (Waiver Request) of §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to allow it to manufacture and market inexpensive handheld FRS transceivers capable of transmitting GPS location information on FRS channels. The Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted a one-year waiver of the

FRS Rules on September 29, 2000. On reconsideration, the Division extended the term of the waiver grant to two years, subject to the resolution of the Petition. We believe that these rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons. Therefore, we are initiating this rulemaking proceeding to propose a modification of the authorized emission types and permissible communications rules.

Procedural Matters

2. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

3. In this *NPRM*, we propose to authorize an individual to use a FRS unit to satisfy his or her need for non-voice communications for the purpose of providing information about the location of the FRS unit to other FRS units. The proposed rules apply exclusively to individuals who use FRS units. Such modification would be in the public interest because it would allow the public to take advantage of technological developments in equipment and service that have occurred since the authorization of the FRS, availability of equipment at reasonable prices, and the removal of Selective Availability from the GPS signal.

4. In addition, the rules proposed in this *NPRM*, potentially could affect manufactures of FRS units. Based on requests from manufactures for certification of FRS units, we believe that there are between 5 and 10 manufactures of FRS units and that none of these manufactures are small entities. The proposed rule change, if adopted, applies to individuals who use FRS units and does not result in a mandatory change in manufactured FRS units. Rather, the proposed rule change is permissive and would allow a manufacture, if it so chose, to include additional features in the FRS units it manufactured. Therefore, we certify that the proposals in this *NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

5. *Paperwork Reduction Analysis.* This *NPRM* does not contain either a proposed or modified information collection requirement.

6. *Ex Parte Rules Presentations.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

7. *Alternative formats.* Alternative formats (computer diskette, large print, audiocassette, and Braille) are available from Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*. This NPRM can also be downloaded at *http://www.fcc.gov/dtf*.

8. *Comment Dates.* pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments are due on or before February 13, 2002, and reply comments are due on or before February 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

10. Parties who chose to file by paper must file an original and four copies of each filing. The docket number appearing in the caption of this proceeding must appear in each comment or filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

11. For further information, contact the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233, or via e-mail at *fccinfo@fcc.gov*.

A. Ordering Clauses

12. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), notice is hereby given of proposed amendment to §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's Rules, 47 CFR 95.193(a), 95.193(b), and 95.631(d), as described above.

13. The Petition for Rulemaking, RM–10070, submitted by Garmin International, Inc., on December 26, 2000, is granted to the extent indicated herein.

14. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 95 as follows:

1. The authority citation for Part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 95.193 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use an FRS unit to transmit one-way voice or non-voice communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide

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location information, make a voice page, or to conduct a brief test.

(b) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must be transmitted continuously no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking. The FRS unit may transmit digital data containing location information. Digital data transmissions shall not exceed one second, must be initiated by a manual key press, and shall be limited to no more than one digital transmission within a ten-second period.

* * * * *

3. Section 95.631 is amended by revising paragraph (d) to read as follows:

§ 95.631 Emission types.

* * * * *

(d) An FRS unit may transmit only emission type F3E or F2D. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications or digital data transmission of location information.

* * * * *

[FR Doc. 02–787 Filed 1–11–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF84

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Endangered Status of Two Plants, *Lomatium Cookii* (Cook's Lomatium) and *Limnanthes Floccosa* ssp. *Grandiflora* (Large-Flowered Wooly Meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) as endangered species under the Endangered Species Act of 1973, as amended (Act). We are re-opening the comment period to provide the public an opportunity to review additional information on the status, abundance, and distribution of these plants, and to request additional information and comments from the public regarding the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period; all comments will be fully considered in the final rule.

DATES: We will accept public comments until March 15, 2002.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs or Rollie White at the above address, phone: 503/231–6179, facsimile: 503/231–6195.

SUPPLEMENTARY INFORMATION:

Background

Lomatium cookii (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) are two plants that inhabit seasonally wet habitats known as vernal pools in the Agate Desert, an area of approximately 83 square kilometers (32 square miles) north of Medford, Jackson County, Oregon. Cook's lomatium also occurs on seasonally wet soils in the adjacent county to the west, Josephine County, Oregon. The continued existence of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* is endangered primarily by destruction of their specialized vernal pool habitat by competition with non-native plants and industrial and residential development, including road and powerline construction and maintenance. Agricultural conversion and off-road vehicle (ORV) use also contribute to destruction of the habitat required by these plants. *Lomatium cookii* sites in Josephine County are additionally threatened by habitat alteration associated with gold mining, certain proposed timber projects, and woody species encroachment resulting from fire suppression.

On May 15, 2000, the Service published a proposed rule to list *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as endangered species and requested public comment for 60 days (65 FR 30941). On August 28, 2001, Siskiyou Regional Educational Project filed a citizen suit alleging that the Service had failed to make a timely final determination on the listing and critical habitat designation of these two plants, consistent with the time frames set forth in section 4 of the Act (*Siskiyou Regional Educational Project* v. *Norton*, Civil No. 01–1208–KI (D. Ore). We entered into a settlement agreement with the plaintiff and agreed to submit a final listing decision for publication in the **Federal Register** on or before October 31, 2002. By this notice, the Service is seeking updated information regarding the status, abundance, and distribution of these plants, as well as providing updated information now in the possession of the Service regarding the status of these two plants.

Current Status

The proposed rule published in May of 2000 did not contain data from surveys for these plants that had been conducted one month prior to publication of the proposed rule, during April of 2000 (David Evans and Associates 2000). Additional survey work was also conducted for both species in April of 2001. These data are provided below.

Each year, plant populations exhibit some natural variation in numbers, related primarily to temperature and rainfall conditions for that year. In general, numbers of annual plants, such as *Limnanthes floccosa* ssp. *grandiflora* may fluctuate more widely than those of perennial plants, such as *Lomatium cookii*. The year 2000 was a banner year for *Limnanthes floccosa* ssp. *grandiflora* populations due to the wet conditions that prevailed that year, but in 2001, a dry year, population numbers of this plant plummeted in many areas. For example, on a protected site owned by The Nature Conservancy (TNC), one *Limnanthes floccosa* ssp. *grandiflora* occurrence declined from 68,000 in 2000 to 39,000 in 2001. A site owned by the City of Medford, contained some 10,000 *Limnanthes floccosa* ssp. *grandiflora* individuals in the year 2000, while only 112 individuals were noted at this site in 2001 (D. Borgias, TNC, pers. comm. 2001). Year-to-year changes of this magnitude may be within the normal range of variation for this annual plant. However, it is possible that a number of consecutive drought years could eliminate some populations of *Limnanthes floccosa* ssp. *grandiflora*. In contrast, numbers of *Lomatium cookii* in the Agate Desert were generally stable or slightly increased from the year 2000 to 2001 (D. Borgias, TNC, pers. comm. 2001).

The Service now possesses information on three status changes that would be considered outside the natural range of year-to-year variation for these plants and that was not available to us during development of the proposed rule for these plants. Two of these involve increased population sizes at historical *Lomatium cookii* sites. One of these sites, on private land, was believed to contain some 6,000 plants historically. Surveys in 2000 and 2001 revealed an estimated 500,000 flowering individuals. Another population, located on Medford airport property, that was previously estimated at some 1,000 plants, was found in 1999 to contain over 5,000 flowering *Lomatium cookii* plants. However, this larger population was cut in two last year by development of a new taxiway at this airport (K. O'Hara, David Evans & Associates, pers. comm. 2001). The third status change is that in the year 2000, *Limnanthes floccosa* ssp. *grandiflora* was discovered at a new location. This occurrence, on private land, comprised approximately 1,000 flowering individuals.

The 2000–2001 observations of these two vernal pool plant species must be considered within the context of the status and trends of their habitat overall. Recent studies of the Agate Desert vernal pool hydrology and vegetation indicate that no intact vernal pool habitat remains (ONHP 1997, 1999). The latter study (ORNP 1999) indicates that the highest quality remaining Agate Desert vernal pool habitat, that with intact hydrology and altered vegetation, is now present on an approximately 17.6 percent of the area. This is a decrease from the earlier study (ONHP 1997), cited in the May, 2000, **Federal Register** proposal, which estimated that this highest quality remaining habitat occurred on 23.1 percent of the area. This reported decrease in the amount of best available habitat is partially due to better-refined mapping techniques, but there is evidence that additional land leveling also occurred between the two studies (ONHP 1999). Both reported and unreported fills of Agate Desert vernal pool wetlands are occurring continually (C. Tuss USFWS biologist, pers. comm. 2001). ONHP (1999) reports that over 19 percent of Agate Desert vernal pool habitat has been leveled, and development (structures, roads, and other impermeable surfaces) has occurred on an additional 41 percent of this area (ONHP 1999). Thus, over 60 percent of the habitat of these plants in the Agate Desert has been destroyed, and none of the remaining habitat has escaped the invasion of weedy competitors. This compares with just under 60 percent habitat destruction reported in ONHP 1997 and in the proposed rule (65 FR 30941).

Recent evidence also indicates that non-native annual grasses are a greater problem than previously believed for *Lomatium cookii*, particularly in the Agate Desert. Unlike native perennial bunchgrasses that originally occupied the area, annual grasses die back each year, creating a buildup of thatch from the dead leaves that interferes with germination of *Lomatium cookii* seeds. Current observations indicate that without control of annual grasses through mowing, grazing or prescribed burns, *Lomatium cookii* populations tend to decrease over time, and could be extirpated within a relatively short time frame, due to this competition with non-native grasses (D. Borgias, TNC, pers. comm. 2001). In many cases, non-native plants have been purposefully planted, for livestock and other reasons, in the Agate Desert. For example, the Ken Denman Wildlife Reserve, encompassing some 720 hectares (1,780 acres) of Agate Desert land, is managed by the State primarily for waterfowl production. Much of this Reserve has been covered with log deck debris, plowed in strips and planted with non-native wildlife food plants (Brock 1987; J. Jacobs, pers. obs. 2000).

Populations of *Lomatium cookii* in Josephine County are becoming even more highly threatened by ORV use than they were at the time of the proposal. Over the past 2 years, gates erected by the Bureau of Land Management (BLM) to direct ORV traffic away from *Lomatium cookii* habitat have been repeatedly vandalized, and the intrusion into these areas continues. Particularly in the springtime, when the ground is wet and muddy (and *Lomatium cookii* plants are flowering), ORVs cause major rutting and disruption of *Lomatium cookii* habitat (L. Mazzu, BLM botanist, pers. comm. 2001).

Considering the above-noted population changes of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in the Agate Desert over the past 2 years in light of historic loss of habitat (65 FR 30941) and ongoing threats to these plants and their habitat, we conclude that the best available information still indicates both are in danger of extinction throughout all or a significant portion of their range, fitting the definition of endangered under the Act.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods: (1) You may submit written comments and information to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. (2) You may hand-deliver comments to our Oregon Fish and Wildlife Office at the address given above. Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the proposed rule is available on the Internet at our Web site *www.fws.gov* or by writing to the State Supervisor at the address under (1) above.

References Cited

David Evans and Associates. 2001. Agate Desert vernal pool surveys. (prepared for: Rogue Valley Council of Governments, Jackson County, Oregon), 16+ pp.

Oregon Natural Heritage Program. 1997. Agate Desert vernal pool habitat: Preliminary mapping and Assessment. Report to Oregon Division of State Lands, Contract No. 10738–369, 23+pp.

Oregon Natural Heritage Program. 1999. Assessment and map of the Agate Desert vernal pool ecosystem in Jackson County, Oregon: March 1998 imagery revision. Report to U.S. Fish and Wildlife Service, December 6, 1999, 15+pp.

Author

The primary author of this notice is Judy Jacobs, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 2001.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–812 Filed 1–11–02; 8:45 am]
BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–01–006]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's view, based on a review by the Agricultural Marketing Service (AMS), that it is not necessary to conduct a referendum among producers and importers on continuation of the 1990 amendments to the Cotton Research and Promotion Act (Act). The 1990 amendments require the Secretary of Agriculture, once every five years, to conduct a review to determine whether to hold a referendum. The two major changes to the Cotton Research and Promotion Program made by the 1990 amendments were the elimination of assessment refunds to producers and a new assessment levied on imported cotton and the cotton content of imported products. Although USDA is of the view that a referendum is not needed, it will initiate a sign-up period as required by the Act, to allow cotton producers and importers to request a referendum.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Cotton Research and Promotion Staff, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224, Telephone (202) 720–2259, Facsimile (202) 690–1718 or e-mail *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION: In July 1991, the Agricultural Marketing Service (AMS) implemented the 1990 amendments to the Cotton Research and Promotion Act (Act). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons to be determined by the Secretary who import cotton or cotton products into the United States (U.S.) and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary of Agriculture; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

Results of the July 1991 referendum showed that of the 46,220 valid ballots received; 27,879 or 60 percent of the persons voting, favored the amendments to the Cotton Research and Promotion Order (Order), and 18,341 or 40 percent opposed the amendments. AMS developed implementing regulations for the import assessment effective August 1, 1992, the elimination of the producer refund effective September 1, 1991, and provided for importer representation on the Cotton Board effective January 1, 1993. The addition of these new members brought the Cotton Board's membership to 25 (21 producer members and 4 importer members).

On October 8, 1996, USDA issued the results of the first five-year review of the Cotton Research and Promotion Program. USDA announced its view not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772). During the period of January 15 through April 14, 1997, the Department conducted a sign-up period for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of the sign-up period did not meet the criteria as established by the Act for a continuance and therefore, a referendum was not conducted.

The Department has prepared a second report that describes the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those receiving its benefits. The report is based on a review conducted by AMS to determine whether to hold a referendum of producers and importers on the continuation of the 1990 Act amendments. The review report is available upon written request to the Chief of the Cotton Research and Promotion Staff at the address provided above. Comments were solicited from all interested parties including from persons who pay the assessments as well as from organizations representing cotton producers and importers (66 FR 16440; March 26, 2001). Economic data was also reviewed in order to report on the general climate of the cotton industry. Finally, a number of independent sources of information were reviewed to help identify perspectives from outside the program including the results of independent program evaluations assessing the effects of the Cotton Research and Promotion Program activities on demand for Upland cotton, return-on-investment to cotton producers, the net value to companies who import cotton products and raw cotton, and the overall rate-of-return and qualitative benefits and returns associated with the Cotton Research and Promotion Program.

The review report cited that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a general consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from two independent evaluations support this conclusion. Industry comments cited examples of how the additional funding has yielded benefits by increasing the demand and consumption for cotton.

USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Cotton Research and Promotion Order although some program participants support a referendum. Therefore, USDA will allow all eligible persons to request the conduct of a continuance referendum on the 1990 amendments through a sign-up period. Eligible producers and importers may sign-up to request such a referendum at the county office of the Farm Service Agency (FSA), or by mailing such a request to FSA. The Secretary will conduct a referendum if requested by 10 percent (4,622) or more of the number of cotton producers and importers voting in the most recent referendum (July 1991), with not more than 20 percent of such request from producers in one state or importers of cotton.

Currently, procedures for the conduct of a sign-up period appear at 7 CFR 1205.10–1205.30. These procedures will be updated as appropriate prior to the beginning of the sign-up period.

Authority: 7 U.S.C. 2101–2118.

Dated: January 9, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–910 Filed 1–10–02; 8:54 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Publication of Depreciation Rates

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the depreciation rates for telecommunications plant for the period ending December 31, 2000.

DATES: These rates are effective for the period beginning January 1, 1999 and ending December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: Section 206(a)(3) of the Rural Electrification Act of 1936 requires RUS to annually determine and publish average depreciation rates used by its borrowers for the purposes of depreciating telecommunications plant. The following chart provides those rates, compiled by RUS, for the reporting period ended December 31, 2000:

AVERAGE DEPRECIATION RATES OF RUS BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDED DECEMBER 31, 2000

Telecommunications plant category	Depreciation rate (percent)
1. Land and Support Assets	
a. Motor vehicles	15.00
b. Aircraft	10.00
c. Special purpose vehicles	12.00
d. Garage and other work equipment	10.00
e. Buildings	3.01
f. Furniture and office equipment	10.00
g. General purpose computers	18.57
2. Central Office Switching	
a. Digital (a)	8.33
b. Analog & electro-mechanical	10.00
c. Operator systems	8.61
d. Radio systems	9.40
e. Circuit equipment (b)	10.00
3. Information Origination/Termination	
a. Station apparatus	11.90
b. Customer premises equipment	10.00
c. Large private branch exchanges	12.50
d. Public telephone terminal equipment	11.00
e. Other terminal equipment	10.00
4. Cable and Wire Facilities	
a. Aerial cable-Poles	6.50
a. Aerial cable-metal	6.00
b. Aerial cable-fiber	5.00
c. Underground cable-metal	4.96
d. Underground cable-fiber	5.00
e. Buried cable-metal	5.00
f. Buried cable-fiber	5.00
g. Conduit systems	3.00
h. Other	7.12

Dated: January 8, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–878 Filed 1–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: On August 8, 2001, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy (66 FR 41517). This review covers one manufacturer/exporter of the subject merchandise (Acciai Speciali Terni, S.p.A. ("AST")). The period of review ("POR") is January 4, 1999, through June 30, 2000. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0165.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On August 8, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 41517 (August 8, 2001). In response to the Department's invitation to comment on the preliminary results of this review, AST and petitioners filed their case briefs on September 17, 2001, and their rebuttal briefs on October 1, 2001. AST and petitioners, Allegheny Ludlum Corporation, AK Steel Corporation, J&L Speciality Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc., submitted requests for a hearing on September 17, 2001. On October 4,

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2001, AST and petitioners withdrew their request for a hearing. On November 29, 2001, the Department extended the final results of review by 30 days. *See Notice of Extension of the Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 66 FR 59568 (November 29, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Period of Review

The POR is January 4, 1999 to June 30, 2000.

Scope of Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils ("SSSS"). Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."[6] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5"[7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 7, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation:

- We recalculated home market imputed credit expenses based on the weighted average of the revised short-term interest rate (*i.e.*, exclusive of foreign currency borrowings) as of September 30, 2000, and the short-term interest rate as of September 30, 1999.

This change is discussed in the relevant section of the *Decision Memorandum*. We have made no other changes to the margin calculation.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer/exporter/reseller	Margin (percent)
AST	0.66

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 11.23 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo" is the proprietary grade of Hitachi Metals America, Ltd.

[7] "GIN5" is the proprietary grade of Hitachi Metals America, Ltd.

[8] "GIN6" is the proprietary grade of Hitachi Metals America, Ltd.

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responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Classification of U.S. Sales
Comment 2: CEP Offset
Comment 3: Major Inputs from Affiliated Suppliers
Comment 4: Home Market Short-Term Interest Rate
Comment 5: U.S. Insurance Revenue

[FR Doc. 02–887 Filed 1–11–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan: Notice of Revocation of Antidumping Duty Order and Termination of Antidumping Duty Administrative Reviews and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on the finding of the U.S. International Trade Commission, the Department of Commerce is revoking the antidumping duty order covering static random access memory semiconductors from Taiwan and terminating the antidumping duty administrative and the new shipper reviews.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the notice of its final less-than-fair-value determination on static random access memory semiconductors (SRAMs) from Taiwan on February 23, 1998. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (Feb. 23, 1998). On April 9, 1998, the U.S. International Trade Commission (ITC) made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of the subject merchandise. The Department published the notice of its amended final affirmative less-than-fair-value determination on SRAMs from Taiwan on April 16, 1998. See *Notice of Amended Final Determination and Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 18883 (April 16, 1998). Finally, the Department published the amended antidumping order covering the subject merchandise on April 22, 1998. *See Notice of Amended Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 19898 (April 22, 1998).

Following publication of the amended antidumping duty order, the Taiwan Semiconductor Industry Association, an interested party, challenged the ITC's final affirmative determination of material injury in an action in the U.S. Court of International Trade (CIT). In two subsequent decisions, the CIT remanded the case to the ITC. *See Taiwan Semiconductor Industry Association, et al.* v. *United States*, 59 F. Supp. 2d 1324, 1336 (CIT 1999); *see also Taiwan Semiconductor Industry Association* v. *United States*, 93 F. Supp. 2d 1283 (CIT 2000). On the second remand, the ITC determined that an industry in the United States is not being materially injured, nor is it threatened with material injury, by reason of imports of the subject merchandise. The CIT affirmed the ITC's second remand determination on August 29, 2000. *See Taiwan Semiconductor Industry Association et al.* v. *United States*, 118 F. Supp. 2d 1250 (CIT 2000).

The domestic industry (Micron Technology) appealed the CIT decision to the CAFC. The CAFC issued a decision on September 21, 2001, affirming the CIT's decision upholding the ITC's second remand determination. *See Taiwan Semiconductor Industry Association*, 266 F. 3d 1339 (CAFC 2001). On November 5, 2001, the ITC filed a petition for rehearing at the CAFC. The CAFC denied this petition and issued its mandate on December 11, 2001.

Because this decision is now final, the ITC issued its final negative injury determination on December 28, 2001. *See Static Random Access Memory Semiconductors From Taiwan; Notice of Final Decision Affirming Remand Determination*, 67 FR 345 (January 3, 2002). Accordingly, we are revoking the order with respect to SRAMs from Taiwan. In addition, we are terminating the antidumping duty administrative reviews and the new shipper review of this order.

Scope of the Order

The products covered by this order are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this order includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this order does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). The SRAMs within the scope of this order are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Determination To Revoke and Termination of Reviews

Because the ITC has issued a negative injury determination in the case of SRAMs from Taiwan, we are revoking the antidumping duty order on SRAMs from Taiwan. In addition, we are terminating the administrative reviews on SRAMs from Taiwan for the periods April 1, 1999, through March 31, 2000, and April 1, 2000, through March 31, 2001, and the new shipper review for the period April 1, 2000, through March 31, 2001. Accordingly, we will instruct the Customs Service to terminate suspension of liquidation on all entries of SRAMs from Taiwan from October 1, 1997, to the present and refund all duties deposited by importers plus interest where applicable pursuant to section 778 of the Act.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–888 Filed 1–11–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–2002–04]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002

AGENCY: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for applications.

SUMMARY: This notice serves the following purpose: To announce an opportunity for FY 2002 funding for the Global Carbon Cycle program area. Details of program emphases and topic areas can be found below in supplementary information, and in the GCC program information sheet at: *http://www.ogp.noaa.gov/mpe/gcc/index/html*.

Potential applicants should look at the specific wording of the initial **Federal Register** notice (cited below in **SUPPLEMENTARY INFORMATION**).

DATES: Letters of intent must be received at the Office of Global Programs (OGP) no later than February 15, 2002. Applicants who have not received a response to their letter of intent within two weeks should contact the Program Manager. Full proposals must be received at OGP no later than March 29, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under supplementary information. We anticipate that review of full proposals will occur during April and May 2002. September 1, 2002, should be used as the proposed start date on proposals.

ADDRESSES: Applications should be sent to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1210, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address, phone: (301) 427–2089 ext. 107, e-mail: *irma.dupree@noaa.gov*.

SUPPLEMENTARY INFORMATION: The notice describing the Program and funding area descriptions for FY 2002 was published on May 16, 2001 (66 FR 27070–75) in a notice entitled NOAA Climate and Global Change Program. The program description, background and requirements, as well as guidelines for applications are included in that notice and are not repeated here.

Global Carbon Cycle (GCC): The U.S. Interagency Carbon Cycle Science Program (CCSP) seeks to answer two overarching questions: (1) How large and variable are the dynamic reservoirs and fluxes of carbon within the Earth system, and how might carbon cycling change and be changed in future years, decades and centuries?, and (2) What are our options for managing carbon sources and sinks to achieve an appropriate balance of risk, costs, and benefits to society? For more detailed information on interagency priorities, science planning and agency roles, please consult the Internet at: *http://www.carboncyclescience.gov*.

NOAA's participation in the CCSP focuses on three main goals: (1) Quantifying spatial patterns and variability of carbon sources and sinks at global to regional scales; (2) Documenting the fate of anthropogenic CO_2 in the atmosphere and oceans; and (3) Improving future climate predictions by incorporating a dynamic understanding of the carbon cycle into models. To achieve these goals, the GCC program focuses on oceanic and atmospheric observations, process-oriented field studies and modeling. Information and current project abstracts can be found on the Internet at: *http://www.ogp.noaa.gov/mpe/gcc/index/html*

For FY 2002, GCC is soliciting projects in support of these goals in the following topic areas: (A) Global Distribution and Dynamics of Carbon Sources and Sinks; (B) Carbon budgets over North America and adjacent ocean basins; and (C) Synthesis, Modeling and Interpretative studies.

Global Distribution and Dynamics of Carbon Sources and Sinks: A variety of atmospheric, oceanic and terrestrial data has shown that the ocean and the terrestrial biosphere currently take up and store a significant portion of the carbon released to the atmosphere as a result of human activities. Preliminary progress has been made on locating sources and sinks of carbon on a regional basis and characterizing their magnitude and behavior over time. The results obtained thus far are at the limit of detection, however, and cannot be extended to many regions of the world due to lack of data.

In FY2002, GCC is seeking to augment the observational network in the ocean and atmosphere to fill in critical spatial and temporal gaps, as well as supporting research in network design, parameterization improvement, and data management.

Carbon Budgets over North America and Adjacent Ocean Basins: One region of uncertainty in the global carbon cycle budget is North America and the adjacent ocean basins. Recent studies indicate that the region may be currently taking up carbon at a significant level, however data and models needed to monitor budgets at the required spatial and temporal resolution are insufficient. Research advances now offer the opportunity to resolve the regional pattern of and mechanisms responsible for carbon dioxide uptake. In FY 2002, GCC is seeking to participate in a coordinated, interagency effort to conduct pilot observations, data assimilation, and network design in North America, and the North Atlantic and Pacific oceans.

Synthesis, Modeling and Interpretive Studies: In FY 2002, GCC is seeking

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studies using empirical data and synthesized datasets, existing models, data assimilation techniques, and theory to advance the ability to quantify spatial patterns and variability of carbon sources and sinks at global to regional scales; document the fate of anthropogenic CO_2 in the atmosphere and oceans; and/or improve future climate predictions by incorporating a dynamic understanding of the carbon cycle into models.

For detailed information on the types of projects encouraged, please consult the GCC information sheet, posted on the Internet at: *http://www.ogp.noaa.gov/mpe/gcc/index.htm*. Contingent on available funding, projects awarded under this program announcement will be jointly supported by NOAA's Climate and Global Change and Climate Observations and Services Programs.

Contingent on available funding, this announcement serves as notice that NOAA and NSF will jointly consider proposals in FY 2002 to conduct a repeat hydrographic survey in support of the U.S. Carbon Cycle Science and CLIVAR Programs. Proposals for that topic should be submitted to NSF under Program Announcement NSF 02–016 via fastlane no later than March 5, 2002. Three paper copies should also be sent to NOAA/OGP by the same date.

For further technical information contact: Lisa Dilling at the above address, phone: (301) 427–2089 ext. 106, e-mail: *dilling@gp.noaa.gov*, or Krisa Arzayus, (301) 427–2089 ext. 183 e-mail: *Krisa.arzayus@noaa.gov* or see the web at: *http://www.lgp.noaa.gov/mpe/gcc/index/html*.

Other Requirements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreement contained in the Federal Register notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation.

Classification: It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) control number. This notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046.

Authority: 49 U.S.C. 44720; 33 U.S.C. 883d, 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–898 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011102267–1267–01; I.D. No. 102301B]

Financial Assistance for Marine Mammal Stranding Networks Through the John H. Prescott Marine Mammal Rescue Assistance Grant Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS) (hereinafter "we" or "us") issues this document to solicit applications for Federal assistance under the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Stranding Grant Program). This document describes how you can apply for funding under the Program, and how we will determine which applications will be funded.

Under the Prescott Stranding Grant Program, we will provide financial assistance (up to $100,000 in Federal funds, with a 25 percent non-federal cost-sharing requirement) to eligible marine mammal stranding network participants for (1) the recovery or treatment of stranded marine mammals and (2) the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health. Financial assistance will also be given for facility operation costs that are directly related to (1) and (2), above. Proposals will be reviewed, ranked within Regional or National priority pools based on technical merit, and final selections will take into account other policy factors including level of priority, stranding needs, and equitable distribution of funds nationally.

DATES: We must receive your application by 5 p.m. (local time) March 15, 2002 in one of the offices listed in section I.I. (Applications Addresses) of this document. You must submit one signed original and two copies of the completed application (including supporting information). We will not accept facsimile or electronic applications.

ADDRESSES: You can obtain an application package from, and send your completed application(s) to, the NMFS Regional Administrator or the Protected Resources Office Director located at any of the offices listed in section I.I. Application Addresses of this document. You may also obtain the application package from the NMFS Protected Resources Home Page (*see* Section I.J. Electronic Access Addresses). However, we cannot accept completed applications electronically at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Coogan or Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program 301–713–2322 ext 144, or 178 or via e-mail: *PrescottGrantFR.comments@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

We are soliciting applications for Federal assistance pursuant to The Marine Mammal Rescue Assistance Act of 2000 which amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1) (hereafter referred to as the Prescott Stranding Grant Program). This document describes how you can apply for funding appropriated in fiscal years (FY) 2001 and 2002 under the Prescott Stranding Grant Program and how we will determine which applications will be funded.

A. Background

The Prescott Stranding Grant Program is conducted by the Secretary of Commerce to provide grants or cooperative agreements for eligible stranding network participants (see section I.E. of this document) for (1) recovery or treatment of marine mammals, (2) collection of data from living or dead stranded marine mammals [1] for scientific research regarding marine mammal health and (3) for facilities operations costs that are directly related to these purposes. The Prescott Stranding Grant Program will be administered through the NMFS Marine Mammal Health and Stranding Response Program.

The Marine Mammal Health and Stranding Response Program (MMHSRP) was formalized in 1992 to fulfill the mandates of the Marine Mammal Health and Stranding Response Act, which amended the MMPA in 1992 (16 U.S.C. 1421). The MMHSRP was established to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events. Steps to achieve these goals, as well as the goals of the Prescott Stranding Grant Program, include the enhancement of rescue, care and treatment of stranded marine mammals; collection of life history data and other biomedical data that would allow comparison of the causes of illness or deaths in stranded marine mammals with physical, chemical, and biological environmental parameters; development of baselines of "normal" stranding causes and rates for rapid detection of unusual mortality events; collection of samples for archival for future retrospective studies on causes of mortality or illness; collection of tissues for archival in the National Marine Mammal Tissue (and Serum) Bank; and guidance for rescuing and rehabilitation of stranded marine mammals, collection of specimens, quality assurance, and analysis of tissue samples. Grant proposals based on the priorities specified in Section II of this document, will facilitate achievement of MMHSRP goals while fulfilling the purposes and requirements of the Prescott Stranding Grant Program.

It is NMFS's intent to also reserve a portion of funds to make emergency assistance available for catastrophic stranding events throughout the year on an as-needed basis. Responders to such stranding events should immediately contact their Regional Office (*see* section I.I. Application Addresses). Proposals will be required to follow the same application, merit review and selection process established under this notice.

B. Objectives

For the 2001/2002 Prescott Stranding Grant Program announced in this document, we have focused on the most important needs of the Marine Mammal Health and Stranding Response Program and the stranding network. These needs are reflected in the funding priorities listed in section II of this document. Successful applications will be those aimed at helping to support and increase the quality of care (recovery or treatment) for stranded marine mammals or to increase our understanding of the health of marine mammal populations in the wild, of trends in strandings, or of the causes of marine mammal mortalities, anomalies, and strandings in the wild. For data collection funding, efforts to increase our understanding of the correlation between physical, chemical, and environmental parameters and marine mammal health and strandings will be considered priorities.

C. Changes in the Implementation of the Prescott Stranding Grant Program Since the Posting of the Draft Implementation Plan

On June 7, 2001, a draft of our plan to implement the Prescott Stranding Grant Program was posted on our website, and comments were solicited from stranding network participants. As a result of comments received, a number of changes have been made that are reflected in this document. Therefore, we encourage you to read the entire document before preparing your application.

We have changed the maximum size of the Federal share of the grant to $100,000. We have clarified the eligibility criteria, and expanded the list of eligible applicants to include qualified Federal employees that work for agencies other than the Departments of Commerce or Interior, if those agencies have the authority to accept Federal assistance. We have reformatted the priority lists, and edited and added some priorities in response to public comments.

D. Funding

We expect to have approximately $7.1 million available for grant awards for grants under this solicitation. These funds include approximately $3.7 million appropriated for the 2001 fiscal year, and approximately $4 million appropriated for FY 2002 (Pub. L. 107–77). We will withhold $600,000 to make available for catastrophic stranding events that occur before the next grant cycle. The maximum Federal award for each project will be $100,000. For this solicitation, stranding network members may receive (as Principal Investigators) up to two grants for clearly separate projects. Researchers associated with the Network that are not authorized network participants (through a Letter of Agreement (LOA), MMPA section 109(h), or Northwest Contingency Plan designation) may receive only one grant (as Principal Investigator) under this solicitation if a network participant is a co-Investigator. However, we cannot guarantee that sufficient funds will be available to make awards for all proposals deserving funding.

Publication of this document does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

E. Eligibility

For this solicitation, you are eligible to apply for a grant or a cooperative agreement under the Prescott Stranding Grant Program if you are a U.S. "stranding network participant" that is not a Department of Commerce or Department of Interior employee. Specifically, you are eligible if:

1. You are an eligible stranding network participant that has been active over the past 3 years and are in good standing.[2] A network participant in

[1] For purposes of this document, a stranded marine mammal is a marine mammal in the wild that is (1) dead and on a beach, shore, or in waters under the jurisdiction of the United States or (2) is live and on a beach or shore of the United States and unable to return to the water, is in apparent need of medical attention, or is in waters under the jurisdiction of the United States but is unable to return to its natural habitat under its own power or without assistance.

[2] In good standing status will be determined by the Regional Stranding Coordinators during the initial screening for applicants' eligibility, and means:

a. All the Principal Investigators who hold or have held permits for scientific research, enhancement, or public display under the Marine Mammal Protection Act or Endangered Species Act must have fulfilled all permit requirements, including but not limited to reports and publications and must have fulfilled the terms of any enforcement actions. Adverse permit actions will be considered on a case by case basis in terms of meeting this requirement.

b. The stranding participant has complied with the terms and responsibilities of the Letter of Agreement listed below, or, for a participant authorized under MMPA section 109(h) or Northwest Region Contingency Plan participant, has met the following responsibilities consistently. These responsibilities include: timely response to reports of strandings, cooperation with state, local, and Federal officials, assisting local officials in the clean-up of beach areas resulting from collection or necropsy activities, collecting information or samples as requested by NMFS whenever possible, timely submission of reports to the Regional

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good standing is an organization that has a current Letter of Agreement (LOA) for stranding response (either live or dead animal response) from a NMFS Regional Administrator; that has a current letter of designation from a NMFS LOA holder (designee); or you are a researcher collaborating with a network participant that is listed as a co-investigator on your application, you have remained active in network projects during the past 3 years, and you are holding a current letter from a Regional Administrator or the NMFS Office of Protected Resources authorizing you pursuant to 50 CFR 216.22 to collect materials from stranded marine mammals for research purposes.

2. You are a state, local, or eligible federal government employee participating pursuant to MMPA section 109(h) (16 U.S.C. 1379(h)), and working in good standing [2] with a Regional Administrator during the past 3 years in an area of geographic need (municipality or larger region with no existing responder).

3. You are in the Northwest Region (Washington and Oregon), are an active stranding network participant in good standing [2], and are (1) an individual or organization named in the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events (Wilkinson, 1996) that has been actively involved in stranding response, data collection and submission of data as directed by the NMFS Regional Stranding Coordinator during the past 3 years or (2) an individual or organization in the 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality Events.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from eligible individuals, government entities, and businesses in U.S. insular areas as defined by the Marine Mammal Protection Act (16 U.S.C. 1362, section 3(14)). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and Northern Mariana Islands.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

You are not eligible to submit an application under this program if you are an employee of NMFS or any other organizations within the Department of Commerce or the Department of Interior. NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help you prepare your application, except that the Marine Mammal Health and Stranding Response Program staff (at the regional or national level) may provide you with information regarding statistics on strandings, MMHSRP program goals and needs, ongoing programs, funding priorities, and, along with Federal Program Officers, can provide information on application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for any proposal. For activities that involve participation of NOAA employees, for example in the National Marine Mammal Tissue Bank (NMMTB) or analyses of tissues for contaminants, employees of NOAA or the National Institute of Standards and Technology may write a letter stating that they are collaborating with the project, or that the person or organization is trained to participate in the NMMTB or is currently participating in the National Marine Analytical Quality Assurance Program.

Unsatisfactory performance under prior or current Federal awards may result in your application not being considered for funding for this fiscal year in this program.

Note for proposed work beyond the normal scope of stranding network activities, the applicant is responsible for obtaining all the Federal, state, and local government permits and approvals including scientific research permits under the Endangered Species Act or Marine Mammal Protection Act if needed and permits or letters of agreement for work in National Marine Sanctuaries, National Parks, or National Seashores for activities that would be conducted on such sites. For information on permit requirements and applications procedures, contact the NMFS Office of Protected Resources (*see CONTACTS*) or see the following Web site: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html*.

For research on live stranded marine mammals, if the applicant stranding network or research participant works for a facility (University, Aquarium, live animal research facility) with an Institutional Animal Care and Use Committee, that applicant must have approval prior to obligation of funds (as required by the regulations under the Animal Welfare Act, 9 CFR 2.30–2.31) and a Marine Mammal Protection Act/Endangered Species Act permit if the research is intrusive (50 CFR 216.27(c)(6)) or if animals must be held after rehabilitation has been completed.

Intrusive research means a procedure conducted for bona fide scientific research involving: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animals' immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (*i.e.*, chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (*i.e.*, audio broadcasts directed at animals that may affect behavior or brainstem auditory evoked responses). Activities directly related to the individual animal's health assessment, accepted diagnostics, treatment, or monitoring are authorized under the stranding authorization and do not require an additional research permit.

F. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum award period of 3 years; however the total Federal share of each award is fixed at a maximum of $100,000 regardless of the funding period requested. We will not accept proposals requesting incrementally funded projects under the Prescott Stranding Grant Program during this grant cycle. If you have received an award and have not expended all the awarded funds by the end of the grant period and wish to continue work on the project beyond the funding period with money already obligated, you may notify the grants officer 30 days prior to the end of the grant to determine if you are eligible for a no-cost extension. If, however, the money is expended and you want funds to continue the project, you must submit another proposal during the next grant cycle subject to the competitive process for consideration.

If we select your application for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding up to the maximum of $100,000 in the Federal share, or extend the period of performance, is totally at our discretion.

G. Cost Sharing

The Prescott Stranding Grant Program legislation requires cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. You must provide a minimum cost share of 25 percent of total project costs (Federal share of project costs cannot exceed $100,000 and 75 percent of the total). For example, if the total project costs were $133,334, then the federal cost share would be 75 percent of $133,334 or $100,000 and your cost share would be $33,334 (25 percent of $133,334); similarly if the proposed total budget for your project is $100,000, the government portion would be $75,000 and your 25 percent contribution would be $25,000. If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding for this funding cycle. You may include cost share for more than 25 percent of the total costs, but this obligation will be binding.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, according to the regulations codified at 15 CFR 14.23 and 24.41, posted on our webpage. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated, or to obtain such services or property for the period of the loan. You must document the in-kind services or property you will use to fulfill your cost share. If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document.

H. Catalog of Federal Domestic Assistance

The Prescott Stranding Grant Program will be listed in the "Catalog of Federal Domestic Assistance" under number 11.439, entitled Marine Mammal Data Program. This information should be included on the Application Form, 424, space 10 (*see* How to Apply, Section III, below).

I. Application Addresses

a. For proposals for activities that will take place in the NMFS Northeast Stranding Region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia) contact: Northeast Fisheries Science Center, NMFS, Dana Hartley, 166 Water St., Woods Hole, MA 02543, (508) 495–2090 or *dana.hartley@noaa.gov*.

b. For proposals for activities that will take place in the NMFS Southeast Stranding Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, U.S. Virgin Islands) contact: Southeast Region, NMFS, Kyle Baker, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432, (727) 570–5312 or *Kyle.Baker@noaa.gov*.

c. For proposals for activities that will take place in the NMFS Southwest Stranding Region (California, Hawaii, Guam, U.S. Somoa, Northern Mariana Islands) contact: Southwest Region, NMFS, Joe Cordaro, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA: 90802–4213, (562) 980–4017 or *joe.cordaro@noaa.gov*.

d. For proposals for activities that will take place in the NMFS Northwest Stranding Region (Washington and Oregon) contact: Northwest Region, NMFS, Brent Norberg, 7600 Sand Point Way, N.E., Building 1, Seattle, WA 98115, (206) 526–6733 or *brent.norberg@noaa.gov*.

e. For proposals for activities that will take place in the NMFS Alaska stranding region (Alaska) contact: Alaska Region, NMFS, Kaja Brix, Federal Building, 709 West 9th Street, 14th Floor, Juneau, AK 99802–1668, (907) 586–7824 or *kaja.brix@noaa.gov*.

f. For proposals for activities that will take place in more than one region or are national in scope contact: Office of Protected Resources, NMFS, Teri Rowles, 1315 East West Highway, Silver Spring, MD, 20910, 301–713–2322 ext 178 or *teri.rowles@noaa.gov*.

J. Electronic Access Addresses

This solicitation, the application package, and supplementary documents are available on the NMFS Office of Protected Resources Home Page at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html*. Title IV of the Marine Mammal Health and Stranding Response Program is available at: *www.nmfs.noaa.gov/prot_res/laws/MMPA/MMPA.html*. Information on MMPA and ESA research and enhancement permits can be found at: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html*.

II. Funding Priorities

Your proposal must address and identify one of the priorities listed here as it pertains to species that the MMPA provides under the authority of the Department of Commerce (cetaceans and pinnipeds, except walrus). If you identify more than one priority, you must list first on your application the priority that most closely reflects the objectives of your proposal.

The priorities are not listed in any particular order and each is of equal importance. These priorities include projects that generally increase the quality of care (recovery or treatment) for stranded marine mammals or increase our understanding of the health of marine mammal populations in the wild, of trends in strandings, or of the causes of marine mammal mortalities, anomalies, and strandings in the wild. Also, efforts to increase our understanding of the correlation between physical, chemical, and environmental parameters and marine mammal health and strandings will be considered a priority for data collection funding. Projects involving any new construction will not be considered, however, projects that involve construction for build-outs, alterations, upgrades and renovations would address a number of the listed priorities.

Note that the purpose of the priority lists is to guide applicants in proposal development by identifying those proposals that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. To this

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Coordinator (basic or Level A data reporting which includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports), cooperation with state and local officials in the disposition of stranded marine mammals, cooperation with other stranding network participants.

c. The network participant cooperates with NMFS regarding the timely submission of Level B (supplementary information regarding sample collection related to life history and to the stranding event) and C (necropsy results) data and materials collected, when collected and requested.

d. Is not under current enforcement investigation for activities involving the take of marine mammals contrary to the MMPA/ESA regulations and does not have a notice of violation by NMFS pending resolution with regards to policies governing the goals and operations of the Stranding Network.

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end, Regional and National priorities are identified here, and represent the projects that will best ensure that the Prescott Stranding Grant Program is successfully implemented (by providing grants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes) in the manner that best helps the regions achieve the goals of the Marine Mammal Health and Stranding Response Program. To ensure that the goals of the Prescott Stranding Grant Program are met, including equitable distribution of funds, proposals will be pooled by regional or national aspect according to the priority addressed by the applicant. If a proposal unclearly identifies a priority, or addresses a different priority than the one indicated by the applicant, NMFS may assign the most appropriate priority. Proposals will then compete for funds within the appropriate regional/national priority pool.

Specifically the following items are the national or specific regional priorities for this solicitation:

A. Recovery or Treatment of Marine Mammals (and associated operational costs)

National

1. Operational costs to enhance and support rehabilitation facilities.

2. Operational costs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment of medical condition or monitoring of treatment response.

3. Post release monitoring to monitor the success of animals released from rehabilitation or beach release from mass strandings.

4. Equipment costs to increase the safety of transport for marine mammals, especially for cetaceans.

Northeast Region

1. Enhanced preparedness for mass stranding events through, for example, establishment of reference baseline laboratories, through training, or improvement of equipment and resource availability.

2. Enhanced preparedness for "out of habitat" (marine mammals observed outside of their range or normal environment and in apparent distress) rescues.

3. Enhancing transport safety for live strandings, including, for example, contracts for air transport, rescue ambulances.

4. Improvement of identification and tracking of offshore, floating, dead large whales or unusual species or numbers of dead marine mammals.

5. Increased outreach efforts in areas of heavy human and protected species use, such as rookeries, to reduce harassment and injuries or illnesses caused by other human impacts (e.g. boat strikes on seals) to reduce the need for rehabilitation.

6. Enhanced capability to respond to stranded marine mammals impacted by oil spills including treatment and investigations.

7. Collaborative efforts to improve assessment of seal strandings, for example seal assessment training for collaborating network participants, equipment, and supplies.

8. Outreach projects to educate the public about normal seal behavior vs stranded seal situation.

9. Renovating rehabilitation space for marine mammals in anticipation of rehabilitation facility guidelines, including expansion of holding capabilities within existing facilities.

10. Increase the number of needed personnel resources at certain facilities, including veterinary care. Note, salaries must be for work specific to the project.

Northwest Region

1. Upgrading and enhancing network operations and facilities to handle and treat stranded sick or injured marine mammals including threatened, endangered and depleted pinnipeds and small cetaceans (porpoises, dolphins, killer whales).

2. Enhancing facilities for handling, stabilization and/or treatment of stranded odontocetes (killer whales, dolphins, porpoises).

3. Enhancement of operations and facilities in anticipation of NMFS Rehabilitation Facilities Guidelines.

Southeast Region

1. Enhanced preparedness for live and mass stranded cetacean response, including training, response planning, outreach, and equipment.

2. Enhanced capability to respond to stranded marine mammals impacted by oil spills including response planning, training, and equipment.

3. Enhancing live marine mammal transport safety e.g., contract for air transport, rescue ambulances.

4. Upgrading current rehabilitation facilities. Putting priority on facilities that frequently receive animals (based on historic statistics) and for upgrades in anticipation of rehabilitation guidelines.

Southwest Region

1. Operational costs for stranding response and live animal treatment. For this Region, priority will be given to smaller facilities.

2. Enhancing response capabilities (including operational costs) during El Nino years.

3. Enhanced capability to respond to stranded marine mammals impacted by oil spills including response planning, training, and equipment.

4. Enhancing the response to live stranded cetaceans and pinnipeds in Hawaii.

5. Operations costs for increasing quality of care during normal live stranding events throughout the region.

6. Upgrading facilities in anticipation of rehabilitation facility guidelines.

7. In Hawaii, conduct outreach projects to educate the public about normal seal behavior vs stranded seal situation.

8. Enhancing live cetacean response and transport safety through operational or equipment costs.

Alaska Region

1. Enhanced stranding response throughout the state. Particular need for improved stranding response coverage in remote or rural areas.

2. Enhanced capability for care and treatment of live animals.

3. Enhancing disentanglement response capabilities, particularly with Northern fur seals on the Pribilofs.

4. Enhancing the assessment of rehabilitation and release success.

B. Collection of Data From Living or Dead Stranded Marine Mammals (including operational costs)

National

1. Enhancing consistent response to large whale strandings (except North Atlantic right whales, which have separate funding source) on the East Coast.

2. Enhancing post "unusual mortality event" stranding response for 1–2 years after an event is over.

3. Operational costs to improve in-house sample tracking and archiving and for participation in the National Marine Mammal Tissue Bank.

4. Collecting specimens and data to assess the overall health trends in wild marine mammal populations including the frequency or incidence of diseases and anomalies, the cause and effects of abnormal lesions, and baselines on health. Species of concern for 2001–2002 include bottlenose dolphin, harbor porpoise, California sea lion, Steller sea lion, Hawaiian monk seal, ice seals in the Northeast, pygmy sperm whale, beaked whale, humpback whale, and harbor seal.

5. Collection of health reference data on species that have been subject to unusual mortality events (bottlenose dolphins, California sea lions, harbor seals, gray whales) in the last 5 years.

6. Collection of health reference data on species that are subject to mass strandings (white sided dolphins, beaked whales, pilot whales, common dolphins, rough tooth dolphins).

7. Collection of health data to examine successful rehabilitation including, for example, shifts in microbial flora during rehabilitation.

8. Collection of data on the incidence, pathogenesis, and impacts of marine mammal diseases and conditions that affect survival and releasability. The diseases of particular interest for 2001–2002 are: Brucella, morbillivirus (particularly on West Coast pinnipeds and in bottlenose dolphins of the mid-Atlantic), herpes virus in monk seals and steller sea lions, arborviruses in cetaceans and pinnipeds. However other disease studies will be considered.

9. Enhancement and consistency of data collection and collaborative efforts through the use of protocols and training manuals, in either electronic format or in book format. Electronic formats can include video, imagery, and search capabilities.

10. Enhancing the ability to assess health in stranded marine mammals through the development of new assessment tools and techniques.

11. Enhancing the assessment of the causes of single and mass stranded marine mammals through biological, physiological, or medical diagnostic studies. Animals of particular interest include beaked whales.

12. Necropsy equipment and carcass transport equipment especially for large cetaceans.

13. Upgrading information management systems and capabilities to improve or allow access to National databases.

14. Enhance efforts to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible along all U.S. coasts.

Northeast Region

1. Cooperative projects, through partnerships with a variety of marine mammal experts, to conduct studies supporting Marine Mammal Health and Stranding Response Program objectives.

2. Monitoring of survival of beach released, and rehabilitated and released cetaceans (satellite tags and ARGOS support).

3. Support for stranding network staff and capabilities to provide near real time strandings data and information management.

4. Collection of samples for genetic analyses and archival of samples for future retrospective studies.

5. Serological and histopathological analyses of samples collected from stranded marine mammals, using NMFS recognized laboratories.

6. Characterization of ice seal movements from stocks in Canada and relationship to strandings on the U.S. East Coast.

7. Performing quality assurance review and editing of historical stranding data for regional strandings. Particular emphasis to ensure data consistency with existing databases through collaboration with letterholders in the region, and with the Cetacean Distribution Database, compiled by the Marine Mammal Program, National Museum of Natural History, Smithsonian Institution

8. Enhanced evaluation and collection of human interaction evidence from stranded marine mammals, including costs for training collaborating Network Members to detect and document this evidence.

9. Enhance necropsy facilities and other improvements to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible.

Northwest Region

1. Investigations of (a) the incidence of human interactions; (b) diseases affecting; and (c) comparative studies of contaminant loading on marine mammals.

2. Investigations of health factors of stranded marine mammals with emphasis on southern resident killer whales.

3. Improve stranded marine mammal data collection and management.

4. Post unusual mortality event monitoring to enhance data collection after an event has ended.

Southeast Region

1. Enhanced collection and evaluation of human interaction evidence from stranded marine mammals.

2. Cooperative investigations using in-depth sample collection for marine mammal health research projects.

3. Serological and histopathologic analyses of samples collected from stranded marine mammals, using quality control techniques.

4. Developing the baselines and health reference data for comparisons with mortalities and disease observed during die-offs.

5. Equipment and facility enhancements for scientific health research *e.g.*, necropsy facilities.

6. Enhance efforts to achieve accurate, consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible throughout the Region.

Southwest Region

1. Gray whale stranding investigations.

2. Cooperative projects in Hawaii through partnerships with a variety of marine mammal experts, to respond to and conduct studies supporting Marine Mammal Health and Stranding Response Program objectives.

3. Investigations of the prevalence of such diseases as morbillivirus in live stranded odontocetes.

4. Enhancing the ability to detect gun shot wounds and injuries in stranded California sea lions, for example, through conduct of thorough necropsies.

Alaska Region

1. Achieve consistent Level A data collection throughout the state, including remote areas.

2. Collect Level B and Level C data collection for dead strandings whenever possible.

3. Tissue sampling for genetic analyses.

4. Gray whale stranding response for post unusual mortality event.

III. How To Apply

You must follow the instructions in this document in order to apply for a grant or cooperative agreement under the Prescott Stranding Grant Program. Your application must be complete and must follow the format described here. Your application should not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your application. These unbound applications must be sent to the Application Addresses listed in Section I.I. of this document by the application deadline (*see* **DATES**). We strongly recommend early submission of applications to allow some time for review and resubmission with corrections for minor omissions, if necessary. However, time and resource constraints may limit our ability to conduct early reviews, and we are not required to screen applications before the submission deadline, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected.

A complete application package with detailed instructions and supplementary information can be found at our Web

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site: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html*. Essentially, the complete application must include a number of completed forms described in this section: SF–424 "Application for Federal Assistance", SF–424B "Assurances—Non-Construction Programs", and SF 424A "Budget Information—Non-Construction Programs" (with separate sheet for details). Additionally, the application must include a Title Page, Project Narrative, and supporting documentation, as described in this section. Lastly, applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." In addition, any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR part 28.

A. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Forms 424 and 424B (4–92) as the cover sheets for each project. You will need the "Catalog of Federal Domestic Assistance" number and Title to complete item 10 of Standard Form 424 (see section I in this document above, the number is 11.439, and the title is "Marine Mammal Data Program"). In order to complete item 16 of Standard Form 424 (may be required for state applicants), see directions in section V.A.5. of this document.

B. Title Page

You must complete a Title Page for each project. You should list on the Title Page the project title, duration, name, affiliation, address and phone number of the Principal Investigator, the project objective, the specific priority to which the application responds (see section II. of this document), and a statement regarding the Federal, non-Federal, and total costs of the project.

C. Project Budget

You must submit a budget for each project, using OMB standard form 424A, Budget Information—Non Construction Programs and associated instructions. On a separate sheet if necessary, you must provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, also describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (*e.g.*, lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25-percent level up to the negotiated rate as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application.

We will not consider fees or profits as allowable costs in your application. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

D. Narrative Project Description

You must provide a narrative description of your project that may be up to 10 pages long. You should use Courier size 12 font, and can single space the narrative. The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

1. Project goals and objectives. Identify the specific priority, listed earlier in this document, to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the marine mammal health and stranding response community. State what you expect the project to accomplish.

2. Project impacts. Describe the anticipated impacts of the project on the recovery or treatment of stranded marine mammals or assessment of marine mammal health. Describe how you will make the results of the project available to the marine mammal health and stranding community.

3. Evaluation of project. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

4. Need for government financial assistance. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

5. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect.

6. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(b) Who will be responsible for carrying out the various activities? Highlight work that will be conducted by co-Investigators. Also, highlight work that will be subcontracted and provisions for competitive subcontracting. The lead organization and person listed as the technical contact, responsible for all technical oversight and implementation of the approved work plan as delineated in the Statement of Work, should be identified as the Principal Investigator. One Principal Investigator must be listed on each project. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or materials, should be referred to as Cooperators or Collaborators.

(c) What are the major products and how will project results be disseminated? Describe products of the project, such as anticipated number of live animals that will be treated, preparation of a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(d) What are the project milestones? List milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities. Although actual stranding events cannot be predicted, historic stranding data can be used to assess season, species, and likelihood of strandings. This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

7. Participation by persons or groups other than the applicant. Describe how government and non-government entities, particularly other members of the marine mammal health and stranding response community, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the marine mammal health and stranding response community in determining which applications to fund.

8. Project management. Describe how the project will be organized and managed. Identify the Principal Investigator and other participants in the project. If you do not identify the Principal Investigator, we will return your application without further consideration. Include a description and copies of Principle Investigator's current LOAs, letter of designation, or letter of research authorization, and any necessary scientific research permits. List the Principle Investigator's and participant's prior or current Federal awards and describe resultant products. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Include copies of any endorsements that you have received from other marine mammal health and stranding response participants related to this project. Provide a statement no more than two pages long of the qualifications and experience (e.g., resume or curriculum vitae) for the Principal Investigator, co-investigators, and any Collaborators, Cooperators, or Consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through Consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations."

E. Supporting Documentation

You should include any relevant documents and additional information (i.e., maps, background documents, historic stranding statistics) that will help us to understand the project and the problem/opportunity you seek to address. This will not count as a part of the 10 page limit.

IV. Screening, Evaluation, and Selection Procedures

Screening, Evaluation, and Selection Procedures will take place in 4 steps, described in detail in this section: initial screening, technical panel review, merit review, and the final selection by the Selecting Official. The initial review will compile all complete applications submitted by eligible network participants. These applications will be divided for consideration by two technical review panels; one panel to review all west coast applications, one to review all east coast applications. Applications for national priorities will be forwarded to the panel with fewer applications. The technical review panel results will be used to rank the applications within regional (Alaska, Northwest, Southwest, Northeast, Southeast, and National) pools. The merit review will consider the panel comments for the 6 pools of ranked applications and will make recommendations regarding equitable distribution of funds. The Selecting Official will receive the recommendations of the reviewers and will make the final decision regarding which applications will be funded.

A. Initial Screening of Applications

Applications received at any of the NMFS Regional Offices or the Headquarter's Office of Protected Resources, will be screened to ensure that they: were received by the deadline date (*see* **DATES**); include OMB form 424, 424 A., and 424 B. signed and dated by an authorized representative (*see* section III of this document); were submitted by an eligible applicant; provide for at least a 25-percent cost share (*see* section I.G. of this document); involve an eligible activity; address one of the funding priorities for species under Federal jurisdiction (*see* section II.A.–B. of this document); and include a budget and a statement of work including milestones (*see* sections III.C. and III.D.6 of this document); and identify the Principal Investigator (*see* section III.D.8. of this document). If your application does not conform to these requirements and the deadline for submission has passed, we will return it to you without further consideration. If possible, applications should be submitted as early as possible prior to the end of the application period to provide time for us to return incomplete applications to you for correction or completion prior to the deadline. However, we do not have to screen applications before the submission deadline and may not be able to depending upon time and available resources, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected. Only those proposals satisfying all of the basic requirements above will enter the full evaluation phase of the review process, described in here in Section B.

B. Technical Evaluation of Proposed Projects

After the initial screening, we will convene a panel of appropriate private and public sector marine mammal health and stranding response experts to determine the technical merit of each proposal. Proposals submitted to headquarters and regional offices will be evaluated using the same criteria, as defined here in this section. The panel will provide individual evaluations of each proposal, and no consensus scores will be made. Each proposal will be reviewed by at least three technical reviewers. These reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing and will present their reviews to the panel. They will assign scores to applications based on the criteria below, with weights shown in parentheses. Resultant scores will be used to rank proposals in regional (and national) pools.

a. Soundness of project design/conceptual approach/response capabilities. Applications will be evaluated on the conceptual approach; enhancement of stranding response or treatment; the need for such efforts; the applicability of the project to the objectives of the Prescott Stranding Grant Program in implementing the goals of the MMHSRP and addressing one of the listed priorities; the scientific merit of the data collection to enhance the understanding of the health of marine mammal populations in the wild; the likelihood of project results in the time frame specified in the application; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results; whether proposed analyses

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include quality assurance considerations. (50 percent)

b. Project management and experience and qualifications of personnel. The organization and management of the project will be evaluated. The project's Principal Investigator and other personnel, including Co-investigators, Consultants and Contractors participating in the project, will be evaluated in terms of related experience and qualifications. The amount of collaboration with other network participants reflected by the proposal will be considered. Applications that include Consultants and Contractors will be reviewed to determine if your involvement, as the primary applicant, is necessary to the conduct of the project and the accomplishment of its objectives. Applications from Principal Investigators that are researchers that do not hold LOAs, are not MMPA Section 109(h) participants, and are not on the Northwest Region's contingency plan list must include copies of the applicant's letter of designation, researcher letter of authorization, research permit and any Co-investigator's letters of authorization. (50 percent)

c. Project evaluation. The effectiveness of your proposed methods to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be examined closely and scores may be marked down accordingly. Budget questions will be flagged by reviewers and may become points of negotiation if the proposal is recommended for funding based on technical merit. The appropriateness of the matching funds to the project will be evaluated and the overall use of the facilities operations costs in support of data collection or response and treatment of marine mammals. (15 percent)

Following the technical review, we will determine the score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will list the applications by region or national pool, rank the lists according to the final technical score, and eliminate from further consideration those applications that do not meet the minimum "passing" score of 60 points.

C. Selection Procedures and Project Funding

After projects have been evaluated and ranked, the Marine Mammal Health and Stranding Response Program staff, the NMFS Regional Administrators (RAs) and Office Directors (ODs) will conduct a merit review in consultation with the Marine Mammal Commission and U.S. Fish and Wildlife Service, to consider the results of the scientific technical panel review and develop recommendations for program funding including recommendations for equitable distribution among the NMFS stranding regions. This merit review team may consider any episodic stranding, any anomalous mortality event, or unusual mortality event that occurred in any region in the preceding year; data regarding average annual strandings and mortality events per year per region; and the size of the marine mammal populations inhabiting a geographic area within such a region. They will also consider the actual stranding statistics per region for the previous 5 non-El Nino years and for the last El Nino year. The review team will prepare a written justification for any recommendations for funding that fall outside the ranking or equitable distribution order, or for any cost adjustments.

The Assistant Administrator for Fisheries (AA) is the Selecting Official, and will review the funding recommendations and comments of the review team and determine the projects to be funded. In making the final selections, the AA may consider costs, geographical distribution, financial need, duplication with other federally funded projects, and equitable distribution of funds among the designated stranding regions. As a result, awards are not necessarily made to the highest technically ranked applications.

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between you and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants Management Division. If the proposed work entails substantial involvement between the applicant and NMFS, a cooperative agreement will be utilized. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. The notice advises you of your responsibilities as an applicant for Federal assistance. Contact the Office of Protected Resources for a copy of this notice, or obtain it from the Government Printing Office Web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html* or the Prescott Stranding Grants Program Web site: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html*.

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that you may have received, the Department of Commerce has no obligation to cover pre-award costs.

A. Your Obligations as a Recipient (Successful Applicant)

If you are awarded a grant or cooperative agreement for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we request that you submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS Protected Resources homepage. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. We will consider requests for exemption from electronic submission of final reports on a case-by-case basis.

4. In addition to the final report in section V.A.4. of this document, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

VI. Comments and Responses

The Draft Implementation Plan for the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Draft Implementation Plan) was posted on our website. Stranding network participants were contacted and asked to review the Draft Implementation Plan and provide comment directly to NMFS prior to publication of the Solicitation for Applications in the **Federal Register**. Specifically, we requested comments on several areas of the plan including: eligibility criteria for grant applicants, the grant review and selection process, and priorities for funding.

We received 20 separate comment letters from 12 stranding network participants, the Marine Mammal Commission, three organizations representing constituents that include stranding network participants, two new network members, one advocacy organization, and one researcher interested in network activities. Combining similar comments, we received 78 comments in total. The comments and responses are presented below and are grouped topically. Some purely editorial comments have been incorporated into this document and are not listed here.

General Comments

Comment 1: A number of commenters asked whether multiple applications could be submitted by, or multiple grants awarded to, the same network member. Particularly, commenters asked whether multiple grants could be awarded for clearly separate projects, whether a Principal Investigator on a grant could also apply for funding on another grant (as co-PI), and whether a network member that had already received a grant could apply during the year for funds for a catastrophic strandings.

Response: To clarify the terminology used in this document: A Principal Investigator is the lead organization and person listed as the technical contact, responsible for all technical oversight and implementation of the approved work plan as delineated in the Statement of Work. One Principal Investigator must be listed on each project. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or materials, should be referred to as Cooperators or Collaborators.

There is no limit on the number of applications that can be submitted by the same network member. However, there are insufficient funds to award a grant to every member of the network, and we cannot estimate how many qualified applicants will apply for funds. In an attempt to ensure that the greatest number of network participants receive assistance this year, during this funding cycle we intend to award no more than two grants responding to this solicitation to any network member and their organization as a Principal Investigator. Researchers associated with the network that are not independently authorized (through an LOA, 109(h), or identified in the Northwest Contingency Plan) will only be eligible for one grant under this solicitation. Multiple proposals submitted by any individual or organization must identify clearly different projects; (e.g. one for facility operations to support rehabilitation efforts, one for data collection), and must be successful in the competitive process. Network members and researchers may also be identified as Co-investigators or Cooperators on additional proposals, and may receive reimbursement from other successful applicants for activities such as the conduct of analyses for the project, or the collection of samples. Reimbursement to a cooperating lab or researcher that does work for multiple network members may be identified on multiple proposals.

We intend to withhold up to $600,000 of the 2001/2002 Prescott Stranding Grant Program funds from this grant cycle for use for unexpected events such as mass strandings or oil spill events, that may occur throughout the year. In areas where mass strandings occur frequently, or where events such as El Nino can be anticipated, an application in advance of the event can be submitted to cover known costs involved in preparing for a response if consistent with our listed priorities. Network members that have received 2 grants under the competitive process described in this document will also be eligible for these in-year funds for a catastrophic event.

Note that, as described in 15 CFR 24.24(a)(3), contributions from the applicant counted towards the 25 percent matching requirement must be different for each grant application submitted by an applicant; and funds from one Federal grant cannot be offered as matching funds for another Federal grant.

Comment 2: Grants should be made available for catastrophic events as they occur, or before or after they occur. Since they cannot be predicted, this situation should be explicitly addressed within the Grants Program to maximize the opportunities for funding or reimbursement

Response: We will accept applications for unexpected, large, stranding events, including mass strandings or strandings caused by catastrophic events such as oil spills, throughout the year and will fund successful unsolicited applications from retained FY 2002 funds, if appropriated. Upon the occurrence of a catastrophic event, network participants should immediately contact their NMFS Regional Coordinator regarding their intent to submit an unsolicited application. The same application materials listed in this document (see Section III) must be submitted. The application can be considered outside the competitive process if it meets the MMHSRP objectives, outside of the goals listed in the priorities identified in this document (Section II), if justification for a non-competitive (sole-source) award is established.

Comment 3: One network participant asked whether cooperative applications with a federal agency could be submitted.

Response: Federal agencies are generally barred from accepting funds from another source to pay transportation, travel, or other expenses for any Federal employee unless specifically authorized by law. The Prescott Stranding Grant Program does not specifically authorize the transfer of funds to other Federal agencies for grant projects. The statute also requires a non-Federal matching requirement of 25 percent of the grant. Thus, for this first funding cycle, we have made an administrative decision based on guidance from the statute and associated legislative history regarding the intended purpose of these funds that the agencies and employees within the Department of Commerce (DOC) and the Department of Interior (DOI) are not

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eligible to apply as Principal or Co Investigators and cannot receive compensation from this program beyond costs for analyses conducted as a Cooperator on a project. Eligible network members employed by other Federal agencies (with the appropriate authority to receive Federal Assistance) outside of DOI and DOC will need prior approval from their agency to receive compensation and/or expenses from a Federal grant. Additionally, network participants can submit applications with federal agencies listed as Cooperators on the project, and applications can include reimbursement to federal laboratories conducting analyses for the proposed project.

Comment 4: Two commenters expressed concerns regarding the apparent non-cooperative, competitive nature of the Implementation Plan for the Prescott Stranding Grant Program. Requiring that individual researchers apply for funds with a stranding organization as a sponsoring organization was recommended to encourage cooperation. Additionally, one commenter suggests giving extra weighting to proposals from multiple LOA holders.

Response: Because funds are limited and the needs of the program are not, the Prescott Grant Program is competitive. However, although we have limited the number of awards that can be granted to particular applicants as Principal Investigators during this grant cycle, network members and collaborating scientists can participate on additional projects as Co-investigators or Cooperators, and can receive reimbursement from other successful grant applicants. Additionally, Principal Investigators that are not traditional network participants are required to include network members as Co-investigators on their projects. All applicants are encouraged to reimburse LOA holders and other qualified Network participants for tissue collection, data collection, or any other efforts that will be required for the success of the project.

Comment 5: One commenter stated that a mechanism should be developed to ensure accountability for funded projects through review of completed projects or consideration of past performance for applicants awarded previous funding.

Response: All NMFS grant programs must be administered according to procedures identified through a Departmental Administrative Order (DAO 203–26, *see http://www.osec.doc.gov/bmi/daos/203–26.htm*). Final reports are required, and internal checklists and procedures for monitoring grants including site visits, will be followed. Although audits are only required if an applicant gets more than $300,000 in Federal funds per year, all grant recipients must make records available for review or audit if requested. Additionally, unsatisfactory performance in prior or current Federal awards will be considered in determining whether or not an application is eligible for funding this year under the Prescott Stranding Grant Program.

Comment 6: A number of individuals and groups that commented indicated that the constituent groups including the organizations involved in existing stranding programs should have been afforded a greater consultative role in the development of the Prescott Stranding Grant Program. They were concerned that there would be no formal public review and comment period for the Draft Implementation Plan.

Response: The statute directed NMFS to consult with the Marine Mammal Commission, US Fish and Wildlife Service (USFWS) and "a representative from each of the designated stranding regions, and other individuals who represent public and private organizations that are actively involved in rescue, rehabilitation, release, scientific research, marine conservation, and forensic science regarding stranded marine mammals"; which includes primarily stranding network participants. Given the broad characteristics of the marine mammal stranding network and further directives to administer this program in a timely manner, the selection of a small group of participants to adequately represent the entire network and associated community was deemed insufficient. The Draft Implementation Plan was, therefore, posted on our website, and Network participants were asked for their input. Over 20 commenters responded with extensive comments; including the Marine Mammal Commission, Network members, interested constituents, and constituent groups. All comments were considered, resulting in many revisions to the Program. Experience and feedback resulting from this solicitation may further modify this program in future years.

Comment 7: Two constituent groups commented that constituents should be consulted, per Congressional intent, regarding the development of criteria for and award of grant money.

Response: The criteria for awarding grant money were included in the Draft Implementation Plan section on Screening, Evaluation and Selection Procedures; therefore, constituents have had an opportunity to comment on these criteria and some modifications have been made. Further, technical reviews will be conducted on all complete and qualified applications. Reviewers will include network participants and other constituents. Network participants and constituent groups will therefore have an active role in the award process under the Prescott Stranding Grant Program.

Comment 8: One commenter asked for clarification regarding whether oceanaria that do not have an Institutional Animal Care and Use Committee (IACUC) need to form one if they are going to conduct live animal research. References on the formation of IACUCs were requested.

Response: Facilities and Universities involved in live animal research are required to have an IACUC, per Animal Plant and Health Inspection Service (APHIS) IACUC requirements. Institutions that do not have an IACUC do not have to form one for this grant cycle. However, those institutions or researchers affiliated with Universities that have a standing Committee have to have their Committee's approval before funds will be obligated for projects that require research on live stranded marine mammals. The language relative to this issue has been clarified in this document.

Note that, within the next few years, NMFS intends to require IACUC reviews for live research conducted on stranded marine mammals. Guidance will be developed at that time for the formation of IACUCs for this specific purpose on an institutional or regional level. For general information on IACUCs, see 9 CFR 2.31 for the APHIS IACUC requirements, as well as *The IACUC Handbook* edited by Jerald Sivlerman, Mark A. Suckow, and Sreekant Murthy and published by CRC Press in 2000, or *The Care and Feeding of an IACUC* edited by M. Lawrence Podolsky and Victor S. Lukas and published by CRC Press in 1999.

Any study that requires collection of animals from the wild, invasive procedures beyond those generally used to rehabilitate and release marine mammals, or retention of marine mammals after rehabilitation is complete, may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits have been obtained. For information on permit requirements and applications procedures, contact the NMFS Office of Protected Resources (see **CONTACTS**) or see the following Web site: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html*.

Comment 9: One commenter requested a listing of the MMHSRP goals to provide guidance to prospective applicants.

Response: These statutory goals are listed in the description of the Prescott Stranding Grant Program (Section I.A. of this document), and are repeated here: to facilitate collection and dissemination of data, to assess health trends in marine mammals, to correlate health with available data on physical, chemical, environmental, and biological parameters, and to coordinate effective responses to unusual mortality event. Further information regarding the MMHSRP can be found on our Web page, at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/mmhsrp.html*.

Comment 10: A commenter suggested that special terms of reference used throughout the Draft Implementation Plan (out of habitat, level A data) should be defined.

Response: We have included in this Notice clarification of such terms when those terms first appear in context within the document.

Comment 11: Two commenters noted that the plan does not provide funds for species under the jurisdiction of the USFWS, such as sea otters, walrus, polar bears, and manatees, and suggested that there should be increased coordination of the stranding programs under the two agencies' jurisdictions.

Response: NMFS and USFWS were given separate authorizing language in the Marine Mammal Rescue Assistance Act of 2000 (Act) which established the Prescott Stranding Grant Program. NMFS received no comments from the USFWS during the comment period, however, NMFS consulted with USFWS on the implementation of this program prior to finalizing this **Federal Register** notice.

The MMHSRP has been a collaborative effort between USFWS and NMFS, and we will continue that collaboration with the implementation of the Prescott Stranding Grant Program.

Comment 12: One commenter was concerned that the short time allotted for review and incorporation of comments in our initial timeline precluded meaningful revisions based on comments received from stranding network organizations.

Response: This document reflects many changes resulting from the large number of comments received. Indeed review of the comments, revisions, and preparation of responses were partially responsible for the delay in publication of this document. All comments were considered and we made revisions that we determined were appropriate based on consideration of the comments.

Eligibility

Comment 13: A number of commenters indicated that the listed eligibility criteria are too broad and will invite applications from people only remotely associated with the Stranding Network, diluting the intention of the Grant Program to assist or reimburse the active network participants that have been volunteering without Federal support. Some suggested limiting eligibility to Letter of Agreement (LOA) holders, to LOA holders with established records in the recovery and rehabilitation of marine mammals, or to independent researchers sponsored by LOA holders.

Response: Limiting the Prescott Stranding Grant Program only to organizations and individuals holding Letters of Agreement will exclude a large number of active Network participants. In the Northwest Region particularly, there are numerous participants that conduct significant stranding response activities for state or local authorities, or as requested by the NMFS Regional Administrator. Some of these participants are authorized through section 109(h) of the Marine Mammal Protection Act. Additionally, the Network in most regions includes participants designated by LOA holders to respond to strandings and in some cases assist in rehabilitation. These participants include cooperating scientific investigators, institutions, and volunteer organizations. In some areas, designated participants may play a more active role in day-to-day response to strandings than the LOA holders.

LOA holders retain the ultimate responsibility for activities conducted under their authority. Therefore, generally, they restrict designation to individuals that meet appropriate qualifications. Additionally, a list of these designees must be submitted to NMFS. By granting designation, the LOA holders are responsible for ensuring that volunteers and cooperating investigators under their authority are Network participants in good standing. However, we recognize that the list may include new volunteers that require training, or participants that are restricted in response capabilities and authority.

The eligibility criteria have been amended to some extent; however, to include the "in good standing" criteria for network participants operating under MMPA section 109(h) (109(h) responders) or other authority, as well as to LOA holders. Additionally, 109(h) participants must be active participants, that have been involved in network activities over the past 3 years.

Another amendment to the eligibility criteria adds a requirement for applicant scientists holding letters from Regional Administrators to collect specimens from stranded animals to conduct research. These scientists may not be LOA holders, 109(h) responders, or on the Northwest Region's contingency list. These applicants must be able to demonstrate participation in network activities during the past 3 years, and must include a network member as a Co-investigator on the project.

Generally, the NMFS Regional Coordinators are familiar with the active network participants within their region, and their screening will provide some assurance that only applications from active and qualified network participants and Collaborators compete for these limited grants.

Comment 14: Allowances should be made for applications from inexperienced applicants if they seek and receive the appropriate permits or letters of authorization before receiving grant awards.

Response: Applications from new network members, such as individuals or groups that have gotten authorization recently, will likely not qualify for eligibility during this first funding cycle unless those applicants have experience as an active Network participant (for example as a designee or 109(h) responder) in good standing for the past 3 years. During the development of the Act, the intent to provide financial assistance to the active volunteer stranding network was clear. The Act's stated intent is to "provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes * * *", and further notes that preference should be given to "* * * those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals". However, newcomers that become active participants in the Network will have opportunities to apply for funds in future years if funds are appropriated.

Comment 15: One commenter suggested that the explanation of "in good standing" referring to permit holders was redundant, since permit holders should be authorized under LOAs or other listed mechanisms for Network involvement.

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Response: There are long term, active Network members that receive verbal requests from their Regional Office to respond to strandings and may hold research permits but do not hold LOAs (although NMFS is developing procedures to issue standardized written LOAs nationally). Additionally, this footnote applies to researchers or Principal Investigators that are authorized network participants but also hold research or public display permits. These applicants may not be eligible if they are not in compliance with their permit conditions since lack of compliance implies a potential inability to responsibly fulfill grant requirements.

Comment 16: Two commenters expressed concerns about criteria listed for "in good standing". Since LOAs have not yet been standardized, all participants may not be complying with the specific responsibilities listed. That commenter also felt that the phrase "in a timely manner" in the first sentence is subjective. Another commenter took special exception to the criteria for timely reporting of Level B and C data upon request by NMFS. Such reporting is not a requirement of most LOAs, and in some cases cannot be done due to conflicting priorities.

Response: The LOAs are currently being redrafted and standardized, in part because many of the existing agreements were prepared before the passage of the Marine Mammal Health and Stranding Response Act. Many of the new reporting and cooperation standards associated with implementation of the MMHSRP have been passed on to Network members as written requests, but as the commenters have noted, may not be reflected in all existing LOAs. We have modified these requirements to note that, while collection of Levels B and C data are not mandatory, timely reporting of these data when they are collected is considered to be an important indicator of cooperation with NMFS and the Network. We believe that network participants that are unresponsive or habitually do not cooperate with NMFS or other network members are not operating "in good standing", therefore these criteria remain in the modified description.

Comment 17: Two commenters asked why the Northwest Region appeared to apply more restrictive criteria for eligibility than other regions.

Response: The Northwest Region Stranding Network is composed of cooperating scientific investigators and institutions, volunteer individuals and organizations, wildlife and fisheries agencies, and enforcement agencies. The documentation of their participation as members of the Network was initially provided in the Northwest Region Marine Mammal Stranding Network Handbook in the early 1980s. After approximately 15 years of cooperative effort, the participants that remained active were included in the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events in 1996. To date, no LOAs have been issued in the Northwest Region for Network participants that are not otherwise authorized directly, pursuant to Section 109(h) of the MMPA (Federal, state, and local authorities), and the most recent formal documentation of participation, as a cooperating organization, is the 1996 Contingency Plan. However, since 1996, several organizations named in the contingency plan have resigned or otherwise become inactive. Therefore, to identify those participants that are continuing to provide response and data collection services for the Network, it became necessary to include recent participation as performance criterion. The 2001/2002 Contingency Plan is under review internally and will be available shortly. The new Plan identifies participants active since 1996, while removing participants that are no longer active. Once completed and available, the updated Contingency Plan will be used to identify the Northwest Region's active Network participants.

Comment 18: One commenter asked whether all applicants have to be participants in the MMHSRP to be eligible for the Prescott Stranding Grant Program.

Response: Yes, LOA holders and other Network participants described as "in good standing" and, therefore, qualified as applicants for the Stranding Grant Program are participating in the MMHSRP. The Marine Mammal Health and Stranding Response Program, described in the Background section of this document, was established under the 1992 Amendments to the MMPA. The legislative history of the MMHSRP indicates it was developed to direct and supplement the existing stranding network to improve the Network's ability to determine the reasons for marine mammal stranding events, particularly unusual events. Although prior to the 1992 Amendment, the Secretary of Commerce was responsible for authorizing people to respond to marine mammal strandings, the MMHSRP provided the Secretary with more explicit guidance on administration of the Stranding Network.

Comment 19: Two commenters questioned the restriction of the eligibility criteria relating to state and local government response to cetacean strandings without justification for excluding pinnipeds.

Response: This restriction was originally intended to reduce the potential for local governments that rarely or inconsistently participate in the stranding network from applying for funds under the Prescott Stranding Grant Program, while allowing those local agencies that are vital network members to participate. The criteria has now been modified to require MMPA 109(h) applicants to be "in good standing" and active in recent years, allowing pinniped response groups to participate, if they qualify.

Comment 20: One commenter asked whether researchers and organizations outside of the US would be eligible for Prescott Stranding Grant Program funds, particularly for response to mortality events that may have been caused by US activities.

Response: No. The Marine Mammal Rescue Assistance Act and its legislative history clearly indicate that the purpose of this program is to provide some financial relief to active, volunteer, US stranding network participants that have been absorbing the costs of response to marine mammal strandings. There is no provision in the Act nor intention apparent in the legislative history, to provide funds to individuals or organizations that are not part of the U.S. stranding network.

Comment 21: One commenter suggested that, while there is some merit to discouraging the development of new facilities that may be capitalizing on this new granting opportunity, the Prescott Stranding Grant Program may discourage the construction of new facilities where they are needed.

Response: Explicit authorization would be required in the Prescott Stranding Grant Program to fund major new construction projects. Additionally, Congressional intent expressed in the Act, its legislative history, and subsequent clarification from authors of the statute, indicate that the funds are not for new construction or new participation. The purpose of the Prescott Stranding Grant Program is to provide funds for existing facilities and active stranding network participants. A new member of the Network, therefore, may not be eligible to apply for these funds during this grant cycle. However, once they have become active network participants, they may become eligible in future grant cycles.

Comment 22: One commenter indicated that the Alaska Native exemptions under the MMPA allowed marine mammal takes for subsistence and for creating and selling authentic handicrafts or clothing, and allowed the Secretary of Commerce to enter into a cooperative agreement with Alaska Native organizations to conserve marine mammals and to provide co-management of subsistence use by Alaska Natives. Therefore, the commenter suggested that there might be active, trained Alaskan Native participants of the marine mammal stranding program that do not work under an LOA. If an LOA will be necessary to qualify for funding opportunities under the Prescott Stranding Grant Program, applicants should be allowed to obtain authority after the award is granted.

Response: The Alaskan Native exemptions do not include authorization to respond to and collect materials from stranded animals as part of a specific stranding response; e.g. to fulfill Level B and C data collection protocols. Rather, under this exemption they can take marine mammals for subsistence or handicrafts. Currently, all Alaskan Natives that are responding to strandings and providing reports to the Regional Administrator are authorized under an LOA and are eligible for funding under this Program. The intent of the Program is to provide funds to the existing volunteer network. Therefore, individuals or organizations cannot apply for the funds before they are participating in the stranding network.

Priorities

Many comments were received that suggested concerns regarding the intent of the priority lists. To clarify: the purpose of the priority list is to guide applicants in proposal development by identifying those proposals that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. To this end, each region identified those priorities that will best ensure that the Prescott Stranding Grant Program is successfully implemented (by providing grants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes) in the manner that best helps the regions achieve the goals of the Marine Mammal Health and Stranding Response Program. To ensure that the goals of the Prescott Stranding Grant Program are met, including equitable distribution of funds, proposals will be pooled by regional or national aspect according to which priorities are addressed by the applicant. Proposals will then compete for funds within these pools. Technical reviewers that are applicants in one pool may be among the reviewers for applications from another pool.

Comment 23: Commenters indicated that the most critical funding areas are for equipment, supplies, and travel. They suggested that the agency appeared to be supplanting these critical needs with agency policy preferences, and indicated that each of these sets of interests should be addressed within this program.

Response: The priorities identified in the Draft Implementation Plan were developed under the categories designated in the Act establishing the Prescott Stranding Grant Program. We agree that they were selected to successfully implement the Program through the MMHSRP, which was established by Congress in the 1992 Amendments to the Marine Mammal Protection Act, in part, to guide the Agency on administration of the stranding network. The priorities have been reordered in this document to incorporate the operational cost projects into the two project categories identified in the Act: rescue and rehabilitation, and data collection. This reordering may reduce concerns expressed by the commenters that applicants for a grant for operational costs will receive low ranking. Actually, in this first funding cycle, we anticipate that 60 to 70 percent of the funds (depending on the number of eligible and complete applications and their federal costs) may be awarded for proposals for operational costs. Operational costs can include, for example; salaries, equipment for rehabilitation efforts, food for rehabilitating animals, water testing, water filtration upgrades, necropsy equipment, gasoline, computer equipment to track materials collected from stranded marine mammals, etc.

Comment 24: Three commenters indicated that the priorities appear to be geared more towards live marine mammal strandings, however the majority of stranding activities relate to dead marine mammals. One of the commenters specifically expressed concern about this apparent bias in the National and Southeast data collection priorities, and pointed out that since fewer than 15 percent of all Southeast marine mammal strandings are live, improved data collection efforts on all dead stranded marine mammals would be more cost effective than increasing efforts on the live strandings.

Response: Priorities are listed for both live and dead marine mammal strandings. No indication of an Agency preference exists or was intended. For the Southeast Region in particular, most of the data collection priorities listed apply to improved data collection from dead stranded marine mammals.

Comment 25: One commenter suggested that the funding priority list provided in the Draft Implementation Plan should be narrowed considerably to allow applicants to compete successfully for funds for ongoing activities to help defray the enormous cost of recovery and rehabilitation of stranded marine mammals rather than focus on the new or unmet research needs of NMFS.

Response: The priority list was developed to provide guidance to applicants on priorities that would successfully compete for funds by achieving the stated objectives of the Prescott Stranding Grant Program: "the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes." We have revised the priority lists to fold the priorities related to operational costs into the two categories of recovery or treatment, and data collection, to illustrate the integral need for funds for operational costs that support these two objectives.

Comment 26: One commenter suggested that priorities should include the recovery and collection of tissues (including equipment costs) from individual stranding events to establish a database of baseline information to compare against anomalous events.

Response: This recommendation is consistent with listed National Priorities, including participation in the National Marine Mammal Tissue/Serum Bank and establishing health reference data on species subject to unusual and mass strandings.

Comment 27: One commenter suggested that long-term (5–15 years) archival of tissues already takes place in a few stranding organizations and those should receive priority for data analyses.

Response: A proposal to conduct a collaborative, retrospective effort to analyze archived samples held by network participants would be consistent with a number of the listed priorities. Anyone interested in using tissues archived in the National Marine Mammal Tissue Bank should follow the tissue access policy published in the 1994 Marine Mammal Health and Stranding Response Program: Program Development Plan. This report can be found on NMFS Office of Protected Resources Reading Room Web page, at: *www.nmfs.noaa.gov/prot_res/*

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readingrm/MMHealth/mmhealth.pdf, and the access policy can be found on pages 33 to 35. Alternatively, please contact the Office of Protected Resources (see CONTACT information) for a hard copy. Note that a new access policy is currently under review in NOAA and is anticipated some time in the next year, after grants have been awarded in this grant cycle.

Comment 28: In addition to the several health-related priorities outlined in the Draft Implementation Plan, one commenter believes it would be appropriate to also consider research projects dealing with basic aspects of life history (*e.g.*, age, growth and reproduction) and ecology (*e.g.*, feeding) of marine mammals, particularly those of the special concern (listed in B.2).

Response: Both the Act establishing the Prescott Stranding Grant Program, and the MMHSRP, prioritize research related to the health of marine mammal populations. Projects that collect life history information could be consistent with these statutory priorities if they are conducted to identify health trends or establish and interpret health reference data.

Comment 29: For species of concern, pooling of samples and research efforts should be encouraged to enable investigators to properly address ecological questions and health issues with an appropriate number of samples. Data and samples from Kogia, for example, exist in various locations which, if properly analyzed could provide information on diet, reproductive biology, and aging that would be crucial for successful rehabilitation and release of live-stranded animals.

Response: A collaborative project such as the one proposed could be competitive, and addresses the national priorities to identify health trends and establish health reference data.

Comment 30: Priority should be given also to rescue and rehabilitation of endangered and threatened species.

Response: Although strandings of listed species are relatively rare, these strandings usually do receive elevated response efforts. Because it is impractical to plan and maintain preparedness for rare events, we believe that establishment of a Network that effectively responds to all events may be the best way to ensure adequate response to a listed species stranding.

Comment 31: NOAA fisheries is already preparing a web-based national stranding database, and already has funding for right whale response, and the Unusual Mortalities Working Group, therefore these should not be listed as priorities for a grant.

Response: The right whale and Unusual Mortalities efforts are existing funded programs, and related priorities have been removed from the priority list. However, the priority related to a national stranding database has been modified to reflect its intent to encourage proposals to improve network members' data collection and input capabilities—for example to fund salary for a data management person for data entry for a network member, to upgrade computers, etc. The priority has been reworded to better identify this intent.

Comment 32: A commenter suggested that the National priority related to "upgrading equipment for electronic access to the national stranding database * * *" should be repeated as a Southwest Regional priority.

Response: This is not a regional priority for the funding year. However, an applicant from the Southwest can submit a proposal to upgrade equipment for this reason under the National Priority. That application would then compete for funds within the National pool rather than the Regional pool.

Comment 33: Priorities that are listed in multiple regions might be combined as national priorities, i.e., public education and the development of oil-spill responses.

Response: Because proposals will compete within regional or national "pools", depending on the priorities addressed, we have elected to keep overlapping priorities separated. The scope of the project, along with the applicant's statement regarding the priority addressed, will then determine which pool a proposal will compete within.

Comment 34: The impetus for the Program was to provide funds to those facilities that for years have been absorbing the rising costs of stranding response and rehabilitation. This should be listed in the National Priority sections, as the number one priority.

Response: We agree that recognition of the volunteer stranding network was the impetus for the development of the Prescott Stranding Grant Program. However, the Marine Mammal Rescue Assistance Act's objectives do not include awards for historical participation, nor are federal grants the appropriate mechanism for reimbursement of funds for prior year efforts. While reimbursing Network participants for past efforts is not listed as a priority for implementation of this Program, eligibility to compete for funds under this Program is based in large measure on past and continuing participation as an active Network member.

Comment 35: Priorities seem to impose the specter of additional work (research proposal to obtain grant funds) on long-time volunteer stranding network participants struggling to fund current operations related to their already significant responsibilities.

Response: The Prescott Stranding Grant Program is obviously not mandatory and is not intended to place additional requirements on network participants. The competitive application process is required by the Department of Commerce Federal Assistance funding policies. Note, though, that operations costs will be funded with a successful grant application, therefore network participants can receive funds for operational costs for the upcoming year.

Comment 36: There are no regional priorities to fund people and equipment to help network participants. The 1-year term precludes continued help in offsetting additional staff costs. Applicants and reviewers should have broader discretion and more flexibility regarding how to apply the priorities.

Response: Operational costs are a national priority and all of the regions list priorities that encompass equipment and salaries, though these may be identified by phrases such as "enhance operations". The Prescott Stranding Grant Program relies on annual appropriations, therefore we cannot provide assurances during this first funding cycle regarding the availability of funds in the future. We have revised and reordered these priorities to provide applicants with specific guidance, while allowing reviewers some discretion in assessing competitive applications.

Comment 37: A commenter suggested that priorities for methods or equipment should identify the conservation or management purpose.

Response: In this Request For Proposals, we have folded operational cost priorities into the two categories of "Recovery, Treatment and Release", and "Data Collection". Applicants for operational costs are directed to identify how those costs meet the needs identified under these priorities. For example, a proposal for funds to cover veterinary costs, animal food, pool filtration devices, and water quality tests should be justified by identifying how these costs relate to needs for treatment and recovery of the types and numbers of strandings anticipated for a particular facility. Alternatively, a proposal for necropsy equipment, vehicle costs, salary for a stranding technician, costs of serological analyses; and equipment upgrades to allow access and data entry capabilities for the national stranding database would be justified under the Data Collection objective.

Comment 38: A commenter suggested that, in addition to the basic needs that should be funded by the Prescott Stranding Grant Program, substantial funds should also be provided to study the survival rates and ecological role of rehabilitated individuals once they are released.

Response: Monitoring the survival of released animals is listed as a National, Northeast (under their data collection priorities in the Draft Implementation Plan) and Alaska Region priority. While important, this is not considered a high priority for the upcoming year by the other regions.

Comment 39: One commenter asked for clarification regarding the lack of Northwest Regional priorities for recovery and treatment of marine mammals.

Response: Although the Northwest Region did not list priorities under the "Recovery and Treatment" category in the Draft Implementation Plan, their "Facility Operations Costs" priority list included enhancement of facilities and network operations related to handling and treating sick and injured marine mammals. In this document these priorities have now been folded into the "Recovery, and Treatment" category.

Comment 40: Under the "recovery and treatment" priorities list, one commenter suggests that the Northeast Region should add the formation of a committee or working group to review and recommend response to out of habitat situations.

Response: Currently, the NMFS National Coordinator consults with existing working groups, such as the Unusual Mortalities Working Group, the Pinniped or Cetacean Release Criteria consultants, or ad hoc groups that include experts on the species of concern, to develop proper response to out-of-habitat events. Funds for response, when necessary, have generally come from existing sources of money. Rather than requesting a proposal through the Prescott Stranding Grant Program for the formation of a regional committee, the National Coordinator will take the lead in formalizing this process if it becomes necessary.

Comment 41: A commenter suggested that the NMFS Northeast Regional priority related to outreach efforts in areas where humans and protected species overlap should not identify specific areas since there are many areas of concern, and should focus primarily on reducing effects on the population, versus reducing the subsequent need for rehabilitation.

Response: The Region intended that this priority invite proposals to reduce injuries currently caused by the effects of human interactions with marine mammals on or near breeding grounds, and particularly at rookeries. Reducing the need for rehabilitation is an appropriate primary goal under the priority category of "Recovery, Treatment or Release", but since the priority is not intended to be site-specific, rookery names are no longer listed. We agree that the overall goal should include reduction of the effects of human interactions on the health of marine mammal populations due to, for example, habitat loss or transmission of disease and nuisance behaviors from facilities to the wild.

Comment 42: One commenter suggested that we add *Erysipelothrix rhusiopathiae* to the list of priority diseases to be investigated in 2001–2002.

Response: The FY 2002 Conference Report (House Report 107–278) provides $150,000 for *Erysipelothrix rhusiopathiae* this fiscal year. Due to this special appropriation, we believe *E. rhusiopathiae* does not have to be included in the priorities for the Prescott Stranding Grant Program this year.

Comment 43: One commenter asked that priority be given to applications for data collection grants from smaller facilities in all regions, and another one asked that priority be given to smaller facilities for stranding response and live animal treatment.

Response: There is no indication of Congressional intent to constrict the ability for all network participants to compete equally for these funds, nor was it identified as a priority by all regions. However, the Southwest Region has determined that for their Region, applicants from smaller facilities will receive priority for stranding response and live animal treatment.

Comment 44: A commenter suggested that the Southwest Region's priority identified as "conducting complete necropsies on dead California sea lions to determine the incidence of human interactions such as gunshot" be changed to "conducting complete necropsies, including histopathology on all marine mammals that die or are euthanized in marine mammal rehabilitation centers to determine cause of death or euthanasia'.

Response: The suggested modification is actually quite different from the stated priority. During this funding cycle, providing funds for necropsies on animals that die during rehabilitation efforts is not a regional priority; therefore, this priority has not been added to the Southwest Region's list. However, a request for funds to conduct ongoing procedures such as this one could be included in a proposal for operational costs under the Southwest's rescue and rehabilitation priority to enhance stranding response and live animal treatment in smaller facilities, if necropsies are conducted to provide information necessary to monitor and improve the effectiveness of treatment practices.

Comment 45: One commenter suggested that network participants that collect tissues and data be compensated for their efforts, rather than restricting compensation to those that are conducting analyses or research with the data or tissues.

Response: Applicants for projects that require input from other network participants are asked to include reimbursement costs to the LOA holder or Network member collecting materials from stranded marine mammals, and to include those network participants as Cooperators on their proposal.

Comment 46: A number of commenters stated that this program should not fund a national stranding workshop.

Response: This priority has been removed from the list because it was too similar to a procurement, which is an inappropriate application of this grant program.

Comment 47: A commenter suggested that protocol for response to individual live strandings and criteria for rehabilitation candidates should be developed to provide facilities with guidance regarding basic indicators of animals that can be successfully rehabilitated.

Response: Rehabilitation and release criteria, currently under development by the MMHSRP National Program staff, will address this need to some extent. In the interim, the NMFS National and Regional coordinators often call on an ad-hoc group of experts for advice on live stranding response. If further guidance is deemed necessary after release criteria are finalized, NMFS will establish another group of consultants to further develop a beach-triage protocol, such as that identified by the commenter. Funds from the Prescott Stranding Grant Program will not be needed to support this effort.

Comment 48: One commenter suggested that a priority to "achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible along all U.S. coasts" be added to the list of priorities in each region.

Response: This priority was added to the National Data Collection priorities,

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and related regional priorities have been amended, to reflect this goal of the MMHSRP.

Comment 49: The Northeast Region priorities should include one similar to the first priority on the Southeast Regional list regarding enhanced collection and evaluation of human interaction evidence from stranded marine mammals.

Response: This priority has been added to the list of the priorities for the Northeast Region. Costs for training network members to detect and document human interaction evidence are requested for inclusion in the proposed budget.

Comment 50: One commenter suggested that expansion of this grant program to include sea turtles would be useful.

Response: The Prescott Stranding Grant Program was instituted as an amendment to the MMPA, and does not cover sea turtle stranding response.

Comment 51: One commenter asked for an explanation of "cooperative projects * * * to achieve Marine Mammal Health and Stranding Response objectives" as listed in the Northeast Regional priority 1.

Response: Marine mammal strandings are a valuable source of information and material for studies that support the MMHSRP goals, particularly when response includes in-depth necropsies and data or tissue collection. The value of each stranding event, particularly of fresh dead animals, can be maximized by reaching out to experts from a variety of backgrounds. With this priority, the Northeast Region is encouraging network members to submit proposals to conduct studies supporting MMHSRP goals through partnerships with a variety of experts, including some that may not be within the current network.

Comment 52: One commenter asked that we mention something directly related to necropsy sample archive/storage in the priority regarding archival of samples.

Response: Numerous published protocols exist regarding appropriate sampling methods for real-time analyses or for archival of samples for specific research purposes (genetic studies, development of health reference data, health trend monitoring, etc.). For example, sampling protocols are included in two publications posted on the NMFS Protected Resources Web site, at: *http://www.nmfs.noaa.gov/prot_res/readingrm/Protocols/pinnipednecro.pdf* and, *http://www.nmfs.noaa.gov/prot_res/readingrm/NIST4529.pdf.*

Comment 53: One commenter suggested that the development of greater capacity in existing rehabilitation facilities should be added to the priority for facility renovations in the Northeast Region.

Response: The priority for the Northeast Region has been broadened to "Renovating rehabilitation space for marine mammals, to include expansion of holding capabilities within existing facilities." This priority includes facility improvements, as well as renovations that result in greater capacity, such as the addition, repair, or replacement of pools. The intent of the Prescott Stranding Grant Program, however, is not to fund the construction of entirely new facilities.

Comment 54: One commenter identified a study of the pox virus in seals and its effect on both survivability and releasability of these animals as a priority for the Northeast Region.

Response: Seal pox is an emerging problem in the Northeast Region, particularly with the recent increase in ice seal strandings. Although this is not one of the priority diseases for this funding cycle, a proposal to study this problem could be submitted under the national priority to evaluate the incidence and impacts of marine mammals diseases, which has been expanded to include diseases that effect survival of marine mammals. Note that a study that requires collection of animals from the wild or invasive procedures beyond those generally used to rehabilitate and release marine mammals may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits are in place. Information on permit requirements and applications procedures can be found at: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.*

Comment 55: One commenter indicated that priorities in the Northeast Region, and perhaps nationally, should include a study on the survivability of marine mammals that have been released after treatment for severe lung worm infections.

Response: Monitoring of released animals to evaluate success is a National, Northeast, and Alaska priority. Additionally, although a study of the effects of lungworm infections on survival of released marine mammals has not been listed as a specific priority disease for this funding cycle, a proposal to study this problem could be submitted under the expanded National priority to evaluate the incidence and impacts of diseases and conditions that affect survival of marine mammals. Note that a study that requires procedures beyond those generally used to rehabilitate and release marine mammals, such as measurements of dive profiles of recovering or rehabilitated animals, may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits are in place. For information on permit requirements and applications procedures, call the NMFS Office of Protected Resources (*see* **CONTACTS**) or view the following Web site: *http://www.nmfs.noaa.gov/_res/PR1/Permits/pr1permits_types.html.*

Comment 56: One commenter suggested that establishing a native liaison in Alaska should be a priority to effectively bridge and conduct outreach between the stranding network and the many different cultures found along coastal Alaska, and to conduct outreach and increase awareness of and response to strandings.

Response: A proposal from a network member, or a group of network members, to establish this type of position could address the Alaska Region's priority to enhance stranding response throughout the state.

Comment 57: One commenter suggested that funds are needed to facilitate response to strandings in remote areas in Alaska due to the high cost for gasoline and other commodities in these areas.

Response: The priorities have been revised and re-grouped in this Request For Proposals. Under these revisions, a successful proposal for these funds could be submitted as operational costs under Alaska's priority to enhance stranding response in rural areas.

Comment 58: One commenter suggested that, if possible, samples should be collected from stranded marine mammals along the Alaska coastline for potential genetic analysis, contaminant analysis, parasite, pathology, and other studies.

Response: The Alaska Region's priority to improve level A data collection has been amended to encourage Level B and C data collection. A successful proposal that would result in increased sample collection following appropriate protocols would address this priority.

Comment 59: One commenter strongly supported the need to expand and support an "infrastructure" for a better stranding response in Hawaii, and suggested that this should be among the highest priorities for the Region.

Response: The priorities are not ranked, rather all of those listed for this grant cycle are high priority for each of the Regions. Note that this priority has been revised to reflect the need to promote collaboration among network members in Hawaii.

Comment 60: Two commenters supported an addition to the Northeast Region's priority to enhance necropsy facilities, as well as other equipment and enhancements to improve level B and C data collection and scientific research.

Response: A priority has been added to the Northeast Region's list to "Enhance necropsy facilities and other improvements to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible."

Comment 61: One commenter suggested that it was very important to improve the necropsy techniques of the stranding program in the Northeast Region.

Response: An application to develop training materials, acquire, or conduct necropsy training throughout the Northeast Region could be successfully submitted under the priority to encourage level B and C data collection. Travel funds for network participants should be included in the application, if possible.

Comment 62: One commenter indicated that the Southwest Region's priorities did not include facility operations costs, which should be explained.

Response: The Southwest and Southeast Regional operational priorities were mistakenly combined in the Draft Implementation Plan. The Southwest included 5 operational priorities, now folded into their Rescue and Rehabilitate priority list in this document.

Funding

Comment 63: One commenter asked whether NOAA/NMFS will consider partial funding for acceptable projects if more proposals meet funding criteria than money is available.

Response: Following the NOAA Grants process, after a project has successfully competed and been selected for funding, pre-award negotiations occur between the applicant and NOAA/NMFS representatives. This process can include agreements to partially fund projects that otherwise fall below the available funding level.

Comment 64: A number of commenters indicated that the Federal share of the grant is supposed to be $100,000, with an additional 25 percent for non-federal matching funds.

Response: We originally interpreted the Marine Mammal Rescue Assistance Act's language limiting the grant to $100,000 to be consistent with general grant principles that define a grant as including both the Federal and non-Federal share. However, after soliciting further clarification and reviewing the legislative history of the Act, we have determined that there is sufficient information to reveal Congressional intent to limit the Federal portion of the award, not the amount of the grant itself, to $100,000. We have changed the guidance in this document to reflect this new interpretation; the Federal (75 percent) portion of the grant will be up to $100,000 and the non-Federal match will be a minimum of 25 percent of the total grant amount. For a project for which 75 percent of the grant is the maximum $100,000 in Federal funds, a minimum of $33,334 in matching funds (25 percent of $133,334) would be required. Note that proposals can be submitted for projects costing more than $133,334, however the Federal share can be no more than $100,000.

Comment 65: One commenter asked that NMFS clarify that the non-Federal match can consist of in-kind services.

Response: The cost sharing discussion in the Draft Implementation Plan specifically stated that cost share requirements could be met with in-kind contributions and included a long discussion regarding in-kind contributions. This discussion has been repeated in this document, and it cites the Federal regulations regarding cost sharing requirements.

Comment 66: One commenter asked that NMFS explain the phrase " * * * not required to award any specific grant or cooperative agreement, nor are we required to obligate the entire amount of funds provided."

Response: This language is standard for Notices soliciting applications for discretionary Federal assistance funds. The language makes clear that the Notice does not infer entitlement rights to the funds to any applicant. The final selection decisions, funding amounts and project descriptions will be decided by NOAA.

Comment 67: Three commenters requested clarification or justification for the agency's decision not to fund any multi-year projects this year, despite the fact that many scientific research projects, particularly those relating to trends in marine mammal health, yield more beneficial results over time.

Response: Based on the guidance we have received regarding Congressional intent, we have decided to implement the Prescott Stranding Grant Program during this first funding cycle in a manner that broadly distributes the funds and that does not foreclose future options by obligating future funds that may be appropriated. Additionally, there is no guarantee that future funds will be available, since they depend upon annual appropriations from Congress. Therefore, for this grant cycle, we have decided not to fund projects that require funding obligations in future years. As noted in the Draft Implementation Plan and in this document, we will fund a project for up to 3 years if the Federal share of the project does not exceed $100,000 for the entire duration of the project. Additionally, if work will continue for some period after the money is obligated, the grantee may notify the grants manager and request a no-cost extension for the grant. We will revisit this policy for upcoming grant cycles, and foresee the possibility that multi-year proposals may be accepted in the future.

Comment 68: Two commenters suggested that recognition should be afforded for the applicant's efforts to value cost sharing portion of items, including in kind contributions.

Response: NMFS will follow the Federal guidelines regarding consideration of the valuation of cost sharing proposals, including in-kind contributions. These guidelines are summarized in the Draft Implementation Plan and in this Notice, and are detailed in the regulations found at 15 CFR 14.23 and 24.24. For successful applications, lingering questions regarding cost sharing can be resolved during the negotiations that follow selection of applications.

Selection/Review Process

Comment 69: A number of commenters asked how the funds will be equitably distributed among the Regions.

Response: Applications will compete regionally; that is, they will be reviewed, evaluated, and ranked on a regional or national basis depending on the priority addressed by the applicant. As discussed in the implementation plan, once an evaluation has been conducted, MMHSRP staff, with input from the NMFS Regional Administrators and Office Directors, the Marine Mammal Commission, and the USFWS, will develop recommendations for equitable distribution of the Prescott Stranding Grant Program funds among the NMFS stranding regions. Justification for distribution will consider recent strandings statistics, including the occurrence of episodic events such as El Nino, as well as anomalous stranding events and recent unusual mortality events. The Assistant Administrator for Fisheries will review the recommendations and comments of the review team and ultimately determine the projects to be funded.

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The distribution formula chosen this year may be revised in future funding cycles. Qualified applications during the year to address unanticipated catastrophic events, such as mass strandings, will be funded non-competitively, likely on a first-come first-serve basis.

Comment 70: One commenter indicated that the success of the proposal at addressing listed priorities did not appear to be considered in the ranking and scoring criteria.

Response: The initial screening process will ensure that only applications that are qualified, which include those that address the listed priorities, receive further review by technical reviewers. Additionally, the guidance to technical reviewers includes consideration of soundness of project design, which as described include consideration of how the project achieves the goals of the MMHSRP and the Prescott Stranding Grant Program.

Comment 71: One commenter suggested that a 10 percent criteria be added to consider how well the proposed study builds collaboration and/or extends the capabilities of the program or project.

Response: We recognize and encourage collaborative efforts, particularly for data collection projects, and have included collaboration as a factor to be considered by technical reviewers when weighting experience and qualifications of personnel. In future years, we will consider adding a weighting criteria for collaboration such as the one suggested

Comment 72: One commenter requested clarification regarding two aspects of scoring, ranking, and selection guidance in the draft implementation plan; noting that the "acceptable technical score" appeared to be arbitrary and unspecified; and questioning the meaning of the statement that awards may not be made to all of the highest technically ranked applications. The commenter suggested that the applications should be ranked, redundant applications with lower scores should be removed from the list, and then all funds should be distributed down the ranks until funds are depleted.

Response: To ensure that Federal funds administered through grants programs are distributed responsibly, we have established a minimum standard that must be met for an application to be considered for funding. Commonly, only applications for Federal funds that receive excellent or very good scores from peer reviewers are further considered for funding, or alternatively, numerical standards are established based upon the historical scores and rankings of applications received during previous grant cycles for a particular program. Because the Prescott Stranding Grant Program has no previous grant cycle to draw upon, we have selected a minimum standard of 60 percent, similar to that used academically to denote a failing grade. This 60 percent cut-off is identified in the first paragraph of the Technical Evaluation section in the Draft Implementation Plan. Applications that cannot achieve a minimum score of 60 percent will not be considered for funding during this funding cycle, and applicants will receive a summary of comments from the panel and review teams.

The statement that not all of the highest technically ranked applications may be awarded grants reflects standard NMFS grants language when a selecting official reserves the discretion to use policy factors to make final agency funding decisions. The Assistant Administrator is the Selecting Official for the Prescott Stranding Grant Program, and final selections are essentially at his discretion, within the constraints identified in this document. In this case, the Selecting Official can deviate from panel ranking recommendations, even if an application has received a high ranking, if he has policy concerns about costs, need, geographical distribution of projects, duplication with other federally funded projects, or equitable distribution of funds among the regions. However, any deviations from panel recommendations must be justified in writing and based on the policy factors that are identified in the notice.

Comment 73: One commenter suggested that we include a participant from the Working Group for Marine Mammal Unusual Mortality Events in the grant review and selection process to ensure the working group's concerns are represented.

Response: Past and present members of the Working Group will be among those asked to participate on the technical review panel.

Comment 74: One commenter suggested that at least one member of the panel should be an individual from a marine mammal rehabilitation center in a managerial position and intimately involved in the day-to-day activities of animal care and treatment, and suggested this should be noted in our discussion of the review panel process.

Response: We will be contacting dozens of individuals from varied organizations, including network participants, rehabilitation facilities, government managers and scientists, academics, and constituent groups, to ask them to volunteer to participate as technical reviewers of Prescott Grants proposals. The total number of reviewers that will be selected depends on the number of volunteers, the number of applications that come in, and the priorities addressed on those applications. At least two panels will be necessary, to divide west coast, east coast, and headquarters proposals into 2 review pools. Reviewers will be assigned to each panel in a manner that prevents conflict of interest (for example, applicants will not be able to review other applications within their competitive pool), and that applies reviewers' areas of expertise appropriately. Given these goals, while it is likely that panelists will include reviewers that are senior staff at rehabilitation facilities, we cannot require nor ensure that this will be the case.

Comment 75: One commenter expressed concern that the initial "regional review of proposals", rather than the simultaneous coordinated review indicated in the law, could unfairly or inconsistently preclude meritorious proposals from the review mandated by Congress.

Response: NMFS grant procedures require an initial review of proposals for completeness of applications, and to determine whether the minimum program and eligibility requirements are met. The initial review will not include determinations regarding the merits of the proposals beyond whether or not the proposal addresses one of the priorities established for this grant cycle. Note that in this document, we have increased the period allowed for application preparation beyond that forecasted in our original timeline. We encourage applicants to apply early so that problems found during these initial reviews, such as incomplete forms, can be resolved prior to the end of the application period. Note that we are under no obligation to do these early reviews, however, and insufficient time and resources may preclude our ability to return early proposals for completion.

Comment 76: One commenter indicated that the screening and evaluation process should closely track the three important activity areas identified by Congress so as not to discourage applications for less lofty but much needed existing stranding efforts.

Response: In the Draft Implementation Plan, the priorities listed for the Prescott Stranding Grant Program were listed under the three categories identified by Congress. The priorities have been revised in this document by folding the operational priorities into the rehabilitation and release, and data collection categories. This reordering, as well as many of the responses to comments in this section, should more explicitly illustrate our interest in receiving proposals for operational costs that support ongoing stranding network efforts. Our guidance to technical reviewers includes weighting factors that favor proposals that are consistent with these listed priorities.

Comment 77: One commenter suggested that reviewers should be made familiar with the specific exemptions under the MMPA for coastal Alaska Natives.

Response: We will ask all technical reviewers to read this document completely prior to reviewing applications. The discussion of the Alaska Native exemptions in the comments and responses will provide them with important background for reviewing Alaskan proposals.

Application

Comment 78: One commenter indicated that the grant application forms are not well designed for this program, and included irrelevant fields and insufficient space to describe the proposed project. A template would be useful.

Response: The Federal grants process requires submission of a number of forms, that are currently generic. Very few specialized forms exist for specific grants programs, however, one can be developed for the Prescott Stranding Grant Program. Once developed, the form must be reviewed and approved by the Office of Management and Budget to be consistent with the Paperwork Reduction Act. The development, public review, and approval of a specialized form may take up to 2 years. Depending on the administrative demands of implementation of the Prescott Stranding Grant Program, we will look into modifying these forms in the upcoming year.

Section III D. of this document provides an outline for the project description, which can be up to 10 pages long and is an attachment to the application form, not a section of the form.

Some assistance in filling out the required forms and in avoiding common problems can be found at the NOAA Grants homepage, specifically, at: *http://www.rdc.noaa.gov/grants/index.html*. We have also posted an application package, as well as a mock application, and questions and answers related to applications for the Prescott Stranding Grant Program on our Web site at: *http://www.nmfs.noaa.gov/prot__res/PR2/Health__and__Stranding__Response__Program/Prescott.html*.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Furthermore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Dated: January 4, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–783 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123101A]

Marine Mammals; File No. 482–1653

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that James Gilbert, Ph.D., University of Maine, Department of Wildlife Ecology, 210 Nutting Hall, Orono, Maine 04469 has been issued a permit to take harbor seals (*Phoca vitulina*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On November 14, 2001, notice was published in the **Federal Register** (66 FR 57041) that a request for a scientific research permit to take harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 4, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–886 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

National Reconnaissance Office

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

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The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–4

SYSTEM NAME:

Freedom of Information Act and Privacy Act Files.

SYSTEM LOCATION:

Management Services and Operations, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit Freedom of Information Act (FOIA), Privacy Act, and Mandatory Declassification Review Requests and administrative appeals to the National Reconnaissance Office; individuals whose requests and/or records have been referred to the NRO by other agencies; and in some instances includes attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the NRO personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of records created or compiled in response to FOIA, Privacy Act, and Mandatory Declassification Review requests and administrative appeals and includes: The original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal; and documents submitted for pre-publication review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations to implement the provisions of 5 U.S.C. 552, The Freedom of Information Act and 5 U.S.C. 552a, as amended, The Privacy Act of 1974; National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; E.O. 12333; E.O. 12958; E.O. 12968.

PURPOSE(S):

This system is maintained for the purpose of processing access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act, and requests and administrative appeals for Mandatory Declassification Review under the applicable executive order(s) governing classified national security information; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the NRO in carrying out any other responsibilities under the FOIA, the Privacy Act, and applicable executive orders; and to process requests for pre-publication review case processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system maintained in computers and computer output products.

RETRIEVABILITY:

Requester's name, request case number and subject keywords.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to the Information Access and Release Center staff whose official duties require such access. The electronic database files are password protected; hardcopy records are stored in a locked file room with restricted access.

RETENTION AND DISPOSAL:

Records are temporary, to be destroyed when two years old or sooner if no longer needed for administrative use. Records pertaining to FOIA and PA appeals are to be destroyed six years after final determination or six years after the time at which a requester could file suit, or three years after final adjudication by courts, whichever is later. Computer files will be deleted; hardcopy files will be shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Management Services and Operations, Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, and any aliases or nicknames, address, Social Security Number, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the FOIA, the Privacy Act, or the applicable executive orders governing classified national security information; the agency records searched in the process of responding to such requests and appeals; NRO staff assigned to handle such requests and appeals; other agencies or entities that have referred to the NRO requests concerning NRO records, or that have consulted with the NRO regarding the handling of particular subjects; and submitters or subjects of records or information that have provided assistance to the NRO in making access or amendment determination.
Pre-publication materials submitted by the authors or offices sponsoring the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the processing of a FOIA/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the National Reconnaissance Office hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–614 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–21

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Office of Security, Personnel Security Division, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military and contractor personnel who have been nominated or investigated for security clearances and program accesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, agency identification number, employee's geographic work location, employer, work telephone number, date and place of birth, home address and home telephone number, dependents' names, individual's background investigation and polygraph data, interview and adjudication information, all other information such as that found on standard government forms SF 86 and 1879, appeal and referral data, program access status, classification number, security file location, and administrative and investigatory comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301 Departmental Regulations; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

PURPOSE(S):

The information is used for granting security program accesses to NRO personnel; to maintain, support, and track personnel security administrative processing; to provide data for day-to-day security functions; and to conduct security investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To contractors and other Federal agencies for purposes of protecting the security of NRO installations, activities, property, and employees; to facilitate and verify an individual's eligibility to access classified information; and to protect the interests of National Security. Disclosure must be approved in writing by the NRO Director of Security or his/her designee.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, Social Security Number, agency identification number, employer.

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employee's geographic work location, date and place of birth, and administrative comments.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, retained for 15 years after inactivation; noteworthy files are retained for 25 years after inactivation. Audio and video tapes of polygraph examinations and interview are temporary and are re-used or destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security Division, Office of Security, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–615 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–19

SYSTEM NAME:

Customer Security Services Personnel Security Files.

SYSTEM LOCATION:

Management Services and Operations, Customer Security Services, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractor candidates nominated for security clearances and program accesses but do not have an organizational security infrastructure to support their applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employer, work telephone number, date and place of birth, home address, home telephone number, foreign travel and foreign contacts as well as the other categories on the Standard Form 86 and the signed non-disclosure agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to nominate candidates for security clearances and program accesses; to record agreements to protect classified information; and to report foreign travel and foreign contacts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To corporate sponsors and other Federal agencies for purposes of facilitating and verifying an individual's eligibility for access to classified information.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Individual's name and Social Security Number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, retained for 15 years after the last action in the file. Noteworthy records are temporary, but must be retained for 25 years after the last action in the file. The non-disclosure agreements are temporary records retained for 70 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Customer Security Services, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature.

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by other security documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–673 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office

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of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 9, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Infants and Toddlers with Disabilities Program (Part C) of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 168.

Abstract: States are required to submit an application to receive funds. An approved application remains in effect until modifications are needed resulting from a change in policy, procedures, or assurances.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her Internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–851 Filed 1–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America, and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the joint determination by the Government of the United States of America, and the Government of the Republic of Korea pursuant to Article VIII(C) of the Agreement for Cooperation that the provisions in Article XI of that Agreement may be effectively applied for the alteration in form or content of U.S.-origin nuclear material contained in irradiated nuclear fuels from pressurized water reactors, CANDU reactors, and research reactors at the Post Irradiation Examination Facility (PIEF), the Irradiated Material Examination Facility (IMEF), and the DUPIC Fuel Fabrication Facility (DFDF) at the Headquarters of the Korea Atomic Energy Research Institute, in accordance with the plan contained in KAERI/AR–606/01 (KAERI/AR–583/00-rev.1) and KAERI/AR–607/01 (KAERI/AR–584/00-rev.1), with appendices, dated September 3, 2001. Any activities additional to the plan or changes in the equipment in the PIEF, IMEF, or DFDF will be reviewed by both parties to ensure the general consistency with the scope and objectives of this Joint Determination. Reference is made to the Joint Determinations signed by the Government of the United States of America and the Government of the Republic of Korea on March 29, 1996, and April 8, 1999, covering the same facilities and similar activities. These facilities continue to be acceptable to both parties pursuant to Article VIII(C) of the Agreement for the sole purpose of alteration in form or content of irradiated fuel elements for post-irradiation examination and for research, development, and manufacture of DUPIC fuel powders, pellets, and elements for the period ending March 31, 2007.

In accordance with section 131, of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than January 29, 2002.

Dated: January 8, 2002.

Trisha Dedik,

Director, Office of Nonproliferation Policy, National Nuclear Security Administration.

[FR Doc. 02–856 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 01–84–NG, 01–76–NG, 01–83–NG, 01–88–NG, 93–34–NG, 01–73–NG, 01–85–NG, 01–90–NG, 01–86–NG, 99–106–NG, 00–71–NG, 01–87–NG, 01–86–NG, 00–71–NG, and 01–89–LNG]

Office of Fossil Energy; Phibro Inc., Enron Canada Corp., Puget Sound Energy, Inc., Suncor Energy Inc., Wisconsin Public Service Corporation (Successor of Wisconsin Fuel & Light Company), Crestar Energy Marketing Corporation, Jonan Energy LTD. (Formerly Jonan Gas Marketing, Inc.), Energyusa-TPC Corp., The Consumer's Gas Company LTD., Sunoco Inc., The Consumer's Gas Company LTD., Boston Gas Company d/b/a KeySpan Energy Delivery New England; Orders Granting, Amending, Transferring and Vacating Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2001, it issued Orders granting, amending, transferring and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 7, 2002.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1744	12–5–01	Phibro Inc. 01–84–NG	400 Bcf	400 Bcf	Import and export natural gas, including LNG from and to Canada and Mexico, beginning on January 1, 2002, and extending through December 31, 2003.
1745	12–5–01	Enron Canada Corp. 01–76–NG	1,800 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2003.
1746	12–5–01	Puget Sound Energy, Inc. 01–83–NG	50 Bcf		Import natural gas from Canada, beginning on December 6, 2001, and extending through December 5, 2003.
1747	12–11–01	Suncor Energy Inc. 01–88–NG	127.66 Bcf		Import natural gas from Canada, beginning on January 1, 2002, and extending through December 31, 2003.
856–A	12–11–01	Wisconsin Public Service Corporation (Successor of Wisconsin Fuel & Light Company) 93–94–NG.			Transfer of long-term authority.
1736	12–12–01	Crestar Energy Marketing Corporation 01–73–NG.			Errata Notice: Correction of the term of authority to July 12, 2001, and extending through July 11, 2003.
1748	12–13–01	Jonan Energy Ltd. (Formerly Jonan Gas Marketing, Inc.) 01–85–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1749	12–17–01	EnergyUSA–TPC Corp. 01–90–NG	73 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2003.
1750	12–17–01	The Consumer's Gas Company Ltd. 01–86–NG, 99–106–NG, 00–71–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2002.
1751	12–19–01	Sunoco Inc. 01–87–NG	200 Bcf	400 Bcf	Import and export natural gas from and to Canada, beginning on February 2, 2002, and extending through January 31, 2004.
1637–A	12–26–01	The Consumer's Gas Company Ltd. 00–71–NG, 01–86–NG.			Order vacating blanket import authority.

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ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1752	12–27–01	Boston Gas Company d/b/a/KeySpan Energy Delivery New England 01–89–LNG.	600,000 Mcf.	.....	Import of LNG from Canada, over a two-year term beginning on the date of first delivery.

[FR Doc. 02–857 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

(Eastern Washington Reinforcement)

Grand Coulee-Bell 500-kV Transmission Line Project

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: Bonneville intends to prepare an EIS on the proposed construction, operation, and maintenance of an 84-mile-long 500-kilovolt (kV) transmission line in Douglas, Grant, Lincoln, and Spokane Counties, Washington. The new line would start at Bonneville's Bell Substation in Spokane, and proceed west along an existing right-of-way for about 84 miles, terminating at the Bureau of Reclamation's existing Grand Coulee Switchyard at Grand Coulee Dam. The new line would be built mostly on existing right-of-way, and would replace an existing 115-kV wood pole line.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, Bonneville will prepare a floodplain and wetlands assessment as necessary to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

DATES: Written comments on the NEPA scoping process are due to the address below no later than February 11, 2002. Comments may also be made at EIS scoping meetings to be held on January 28, 29, and 30, 2002, at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS to Communications, Bonneville Power Administration—KC–7, PO Box 12999, Portland, Oregon, 97212. You may also call Bonneville's toll-free comment line at 1–800–622–4519; name this project, and record your complete name, address, and comments. Comments may also be sent to the Bonneville Internet address at *comment@bpa.gov*. To be placed on the project mail list, call 1–800–622–4520.

Comments may also be made at EIS scoping meetings to be held on Monday, January 28, 2002, 4 to 8 p.m., at Inland Northwest Wildlife Council Auditorium, 6116 N. Market Street, Spokane, Washington; Tuesday, January 29, 2002, 4 to 8 p.m., at Old Center School Building (Big Bend Community College), 317 Spokane Way, Grand Coulee, Washington; and Wednesday, January 30, 2002, 4 to 8 p.m., at Davenport Elementary School, 1101 7th Street, Davenport, Washington. At these informal open-house meetings, we will provide information, including maps about the project, and have several members of the project team available to answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Mark Korsness, Project Manager, Bonneville Power Administration—TNP–TPP–3, PO Box 61409, Vancouver, Washington, 98666–1409; toll-free telephone 1–800–282–3713; direct telephone 360–619–6326; or e-mail *makorsness@bpa.gov*. You may also contact Inez Graetzer, Environmental Coordinator, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon 97208–3621; telephone 503–230–3786; fax 503–230–5699; or e-mail *isgraetzer@bpa.gov*.

SUPPLEMENTARY INFORMATION: The proposed 84-mile-long 500-kV transmission line would replace an existing 115-kV wood pole transmission line that runs between Bonneville's Bell Substation in Spokane, Washington, and the Bureau of Reclamation's Grand Coulee Switchyard at Grand Coulee Dam. The new line would be located primarily in Bonneville's existing right-of-way corridor. It would be a single-circuit line for the first 75 miles out of Grand Coulee Switchyard and a double-circuit line for the last 9 miles into Bell Substation. The project is needed to increase reliability and to support current and future demand for electricity in Washington State and the Pacific Northwest. The transmission line corridor between Grand Coulee Switchyard and Bell Substation currently contains two 115-kV transmission lines on wood pole structures and three 230-kV transmission lines on two steel lattice structures. Together, these transmission lines can no longer efficiently move power from generation sources east of Spokane to load centers west of Spokane. Replacing one of the 115-kV lines with a 500-kV line would relieve the restricted ability to transmit electrical power along this corridor, provide for future growth, and enhance service reliability to the community and the Pacific Northwest.

This proposed project was originally considered in 1993–1994 and was known as the Eastern Washington Main Grid Support Project. The proposal at that time was to build a double-circuit line between Bell Substation and Grand Coulee Switchyard, with the alternative being to build a single-circuit line. The project was scoped with the public, comments were incorporated into the proposal, environmental analysis was done, and a draft EIS was prepared to be released to the public when the project was cancelled for fiscal reasons.

Alternatives Proposed for Consideration. At this point the alternatives we are considering for evaluation in the EIS is the proposed action and the alternative of not building the line (an alternative we always consider). Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Issues. Bonneville has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help Bonneville ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

The potential environmental issues identified for most transmission projects include: land use, cultural resources, visual resources, sensitive plants and animals, erosion/soils, and fish and water resources. The scoping process will help identify the range of environmental issues that should be addressed in this EIS. When completed, the Draft EIS will be circulated for review and comment, and Bonneville will hold several public meetings to receive comments on the Draft EIS. Bonneville will consider and respond in the Final EIS to comments received on the Draft EIS. Bonneville's decision will be documented in a Record of Decision. The EIS will satisfy the requirements of NEPA.

Issued in Portland, Oregon, on January 4, 2002.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–893 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–328–002]

Algonquin LNG, Inc.; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 3, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, with an effective date of December 19, 2001:

Sub First Revised Sheet No. 42A

ALNG states that the purpose of this filing is to comply with the Commission's December 19, 2001 letter order in ALNG's Order No. 637 proceeding. Specifically, ALNG is establishing a mechanism that credits to its firm and interruptible customers the value of gas retained by ALNG in accordance with section 6.2 of the General Terms and Conditions of the FERC Gas Tariff.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–825 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–040]

ANR Pipeline Company; Notice Negotiated Rates

January 8, 2002.

Take notice that on January 3, 2002, ANR Pipeline Company (ANR) tendered for filing amendments to fourteen (14) service agreements that have previously been accepted as negotiated rate agreements.

ANR states that the amendments reflect (1) the inclusion of provisions allowing for maximum daily quantity changes associated with fuel use changes; and (2) revised exhibits effectuating a change in shippers' storage quantities under Rate Schedule FSS. ANR also notes that certain agreements have been amended and are no longer negotiated rate agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–823 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–127–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on December 20, 2001, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 21, 2002:

Fifth Revised Sheet No. 331
Original Sheet No. 331A

CIG states that the proposed tariff provision limits, under certain circumstances, the liability of a municipality in the event its utility defaults on its payment obligations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the

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instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–827 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–136–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on January 3, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective February 1, 2002:

Tenth Revised Sheet No. 7
Fourteenth Revised Sheet No. 8
Eighth Revised Sheet No. 8A
Third Revised Sheet No. 8B
Third Revised Sheet No. 8C
Sixteenth Revised Sheet No. 9
Second Revised Sheet No. 13C
Second Revised Sheet No. 13D

CIG states the proposed tariff sheets are being tendered to include a volumetric tolerance level of 100 Dth on Hourly Unauthorized Overrun transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–830 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–70–004]

Columbia Gas Transmission Corporation; Notice of Filing

January 7, 2002.

Take notice that on December 21, 2001, Columbia Gas Transmission Corporation (Columbia) tendered its filing in compliance with the Commission's November 21, 2001 Order (November 21 Order) in the above referenced docket. In the November 21 Order, the Commission accepted for filing 159 service agreements filed pursuant to section 154.1(d) of the Commission's regulations. The Commission also approved the FirstEnergy contracts subject to certain conditions. In particular, the November 21 Order directed Columbia to make a compliance filing consistent with the terms of the November 21 Order within 30 days of the date of issuance of the order.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 10 G Street NE., Suite 580, Washington, DC; and has been sent by first-class mail, postage prepaid, by Columbia to Columbia's firm customers, interruptible customers, affected state commissions, and to each of the parties on the official service list in Docket No. CP01–70–001 and 002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–834 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–61–000]

Dominion Transmission, Inc.; Notice of Application

January 8, 2002.

Take notice that on December 28, 2001, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed an abbreviated application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity to abandon storage Well No. AW–3697 in the Fink-Kennedy/Lost Creek Storage Complex in Lewis County, West Virginia. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Storage Well AW–3697 is currently leaking a small amount of oil around the wellhead. DTI intends to plug the well to stop the leakage; thereby preventing the oil from being released and possibly increasing in the future. DTI claims the abandonment of the proposed facilities will have no significant impact on the environment. DTI will be using existing right-of-ways and access roads, and the appropriate erosion control and site restoration procedures.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or *sean_r_sleigh@dom.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–817 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–006]

East Tennessee Natural Gas Company; Notice of Negotiated Rates

January 8, 2002.

Take notice that on December 31, 2001, East Tennessee Natural Gas Company (East Tennessee), tendered for filing a Firm Transportation Service Agreement and a Firm Transportation Rate Adjustment Agreement, attached as Appendices A and B to the filing, respectively, under Rate Schedule FT–A.

East Tennessee requests that the Commission grant all necessary waivers and accept for filing the Firm Transportation Service Agreement and Firm Transportation Rate Adjustment Agreement to be effective February 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–821 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–130–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on December 27, 2001, Eastern Shore Natural Gas Company, (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2002.

ESNG states that the purpose of the filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation under its Rate Schedules FSS and SST. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. ESNG states that the tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

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888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–828 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–19–000]

El Paso Electric Company; Notice of Application

January 8, 2002.

Take notice that on December 26, 2001, El Paso Electric Company submitted an application pursuant to section 204 of the Federal Power Act to make borrowing under a replacement revolving credit facility in an amount not to exceed $100 million, and to extend the maturity date of the first mortgage bonds relating to the revolving credit facility, and to engage in related transactions for the purpose of refinancing a revolving credit facility that provides up to $70 million for nuclear fuel purchases and up to $50 million (depending on the amount of borrowings outstanding for nuclear fuel purchases) for working capital needs.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 18, 2002. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–819 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–003]

Gulfstream Natural Gas System, L.L.C.; Notice of Amendment to Certificate of Public Convenience and Necessity

January 7, 2002.

Take notice that on December 28, 2001, Gulfstream Natural Gas System, L.L.C. (Gulfstream), 2701 North Rocky Point Drive, Tampa, Florida 33607, filed in Docket No. CP00–6–003, an application pursuant to section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Gulfstream on February 22, 2001 in Docket Nos. CP00–6–000, 001, CP00–7–000, 001 and CP00–8–000, 001, to amend the certificate and to request certain other authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance

Gulfstream states that it filed the original application for authorization to construct and operate 753 miles of new interstate gas transmission pipeline from various sources in Alabama and Mississippi to electric power generators and local utilities in the State of Florida (the Project) in the captioned docket on October 15, 1999.

Gulfstream states that the amendment requests authorization to (i) phase construction of its certificated pipeline facilities such that a portion of such facilities will be placed into service on June 1, 2002 (Phase I), with the remainder of such certificated facilities being placed into service on or about June 1, 2003, but not later than February 21, 2004, one year following the deadline for completion of the facilities set forth in the February 22 Order; (ii) modify its initial recourse rates to reflect such phasing of construction and to reflect changes in construction costs; and (iii) obtain related approvals. Gulfstream states that the amendment will facilitate construction of Gulfstream's pipeline system to meet growing demand for natural gas in central and eastern Florida.

Gulfstream states that it is requesting the Commission to grant the requested authorizations by March 31, 2002, so Gulfstream can complete its construciton of the Phase I facilities by June 1, 2002, to meet the in-service date requested by its Phase I shippers.

Any questions concerning this application may be directed to P. Martin Teague, Gulfstream Natural Gas System, L.L.C., 2701 North Rocky Point Drive, Tampa, Florida 33607, call (813) 282–6609.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 28, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition

to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–833 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–137–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on January 3, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective February 3, 2002.

Kern River states that the purpose of this filing is (1) to revise Kern River's pooling provisions to add new supply area and market area pools and to set forth a condition on deliveries from market area pools, and (2) to make other minor revisions in the Rate Schedules and General Terms and Conditions of Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–831 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–134–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

January 7, 2002.

Take notice that on December 27, 2001, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing a cost and revenue study.

Maritimes states that the purpose of the filing is to comply with: (1) Ordering Paragraph (M) of the Federal Energy Regulatory Commission's (Commission) certificate order dated July 31, 1998 in Docket No. CP96–178, *et al.* and (2) Ordering Paragraph (H) of the Commission's certificate order dated July 13, 2001, in Docket No. CP01–154–000. Maritimes & Northeast Pipeline, L.L.C., 84 FERC ¶ 61,130 (1998), and Maritimes & Northeast Pipeline, L.L.C., 96 FERC ¶ 61,077 (2001).

Maritimes states that copies of its filing have been mailed to all customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–838 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–17–001]

Pacific Gas & Electric Company and PG&E Corporation on Behalf of its Subsidiaries ETrans LLC and Electric Generation LLC; Notice of Application

January 8, 2002.

Take notice that on December 21, Pacific Gas and Electric (PG&E) and PG&E Corporation, on behalf of its subsidiaries. ETrans LLC and Electric Generation LLC, submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment replaces PG&E's Statement of Cash Flows which contained an error.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 29, 2002. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web

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at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–818 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–011]

Questar Pipeline Company; Notice of Negotiated Rates

January 8, 2002.

Take notice that on January 2, 2002, Questar Pipeline Company's (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 7, with an effective date of January 1, 2002.

Questar states that the filing tariff filing is being made to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–824 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–000, Docket No. CP02–58–000, and Docket No. CP02–59–000]

SCG Pipeline, Inc.; Notice of Application

January 7, 2002.

Take notice that on December 26, 2001, SCG Pipeline, Inc. (SCG), P.O. Box 102407, Columbia, South Carolina 29224–2407, filed an application for a certificate of public convenience and necessity and related authorizations pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's rules and regulations thereunder. SCG requests authorization for the following:

(i) A certificate of public convenience and necessity authorizing SCG to construct, install, and operate natural gas pipeline facilities in Georgia and South Carolina and to acquire capacity in certain facilities owned by Southern Natural Gas Company (Southern) also located in Georgia and South Carolina;

(ii) A blanket certificate of public convenience and necessity pursuant to part 284, subpart G of the Commission regulations authorizing the transportation of gas for others;

(iii) A blanket certificate of public convenience and necessity under part 157, subpart F of the Commission's regulations authorizing the construction, acquisition, and operation of certain facilities,

all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

SCG asks the Commission to issue a preliminary determination on non-environmental issues by April 1, 2002 and a final certificate order by October 1, 2002 so that SCG will be able to commence transportation services on November 1, 2003.

Any questions regarding SCG's application should be directed to Robert M. Apple, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South Carolina 29223 at (803) 217–1819 or by fax at (803) 217–2104.

SCG proposes to construct and operate approximately 18.14 miles of 20-inch diameter pipeline and appurtenant facilities extending from an interconnect with the Twin 30s pipeline system of Southern in Chatham County, Georgia and traversing through Effingham County, Georgia to a terminus in Jasper County, South Carolina.

In addition, SCG seeks authority to acquire from Southern an undivided ownership interest in 190,000 Mcf per day of capacity on Southern's Twin 30s pipeline system which consists of a two parallel 13.25 mile, 30-inch diameter pipelines extending from an existing interconnection with the liquefied natural gas (LNG) facility on Elba Island, Georgia owned by Southern LNG, Inc. to a proposed interconnect with SCG at Port Wentworth, Georgia. SCG states that it will acquire its undivided interest at a price determined by dividing 190,000 Mcf per day of capacity in the Twin 30s system by the total capacity of the Twin 30s system and multiplying by the net book value of the Twin 30s system as calculated at the time of the transfer. Southern has filed an abandonment application in Docket No. CP02–56–000.

SCG states that its project will have an initial capacity of 190,000 Mcf per day and that the capacity is fully subscribed under a precedent agreement with SCANA Energy Marketing, Inc. (SEMI). SCG states that SEMI will use most of the capacity to provide fuel for a proposed electric generating facility to be constructed by South Carolina Electric & Gas Company (SCE&G) in Jasper County, South Carolina. SCG states that SEMI will use the remainder of the capacity to serve various other firm and interruptible markets in the Southeast. SCG estimates that its proposed project will cost approximately $36.4 million.

SCG proposes to provide open access firm and interruptible transportation services under Rate Schedules FT and IT, respectively. SCG proposes to offer both negotiated and recourse rates and states that it has designed its proposed recourse rates using the straight-fixed variable method. SCG has submitted a pro forma FERC Gas Tariff for Commission review.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 28, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–832 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–56–000]

Southern Natural Gas Company; Notice of Application

January 7, 2002.

Take notice that on December 26, 2001, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.14 of the Commission regulations for approval of Southern's abandonment of capacity by sale to SCG Pipeline, Inc. (SCG), all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

Southern proposes to abandon by sale to SCG an undivided interest in two parallel 30-inch diameter pipelines owned and operated by Southern equal to 190,000 Mcf per day of capacity from the tailgate of the liquefied natural gas facility of Southern LNG, Inc., on Elba Island in Chatham County, Georgia (LNG Facility) to an interconnection to be constructed with the pipeline facilities of SCG at Southern's meter station near Port Wentworth in Chatham County, Georgia (Twin 30s). Southern states that this sale of capacity in the Twin 30s is being proposed in conjunction with an overall project by SCG to construct a pipeline system from the LNG Facility to Jasper County, South Carolina, pursuant to an application SCG filed concurrently with the Commission in Docket Nos. CP02–57–000, CP02–58–000, and CP02–59–000.

Southern states that the capacity of the Twin 30s is approximately 1,250,000 Mcf per day and greatly exceeds the maximum daily vaporization rate of the LNG Facility. Further, Southern states that this demonstrates that even after the sale of 190,000 Mcf per day of capacity to SCG, Southern will still retain more than enough capacity on the Twin 30s for Southern to take the entire deliverability from the LNG Facility that its downstream facilities are capable of accepting. Southern states that it will continue to operate the Twin 30s.

Southern states that it intends to sell the capacity to SCG for the percentage equivalent represented by the amount of capacity being sold multiplied by the depreciated book value of the Twin 30s as of the first day of the month in which the closing occurs. Southern states that the current capacity of the Twin 30s is 1,250,000 Mcf per day and 190,000 Mcf per day or 15.2 percent of that capacity is being sold, so that is the percentage that will be multiplied by the book value to determine the purchase price. Southern proposes to reduce its net plant by the amount of capital received from its sale of capacity in the Twin 30s and that the reduction will be reflected in Southern's next Section 4 rate case.

Any questions regarding the application should be directed to Patrick B. Pope, General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7126.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

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to the proceedings for this project should, on or before January 28, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–835 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–83–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 3, 2002, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Twelfth Revised Sheet No. 23A and Substitute Second Revised Sheet No. 23G, with an effective date of January 1, 2002.

Tennessee states that the filing is being made in compliance with the Commission's December 19, 2001 Letter Order, relating to the revised Gas Research Institute surcharges for 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–826 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–040]

TransColorado Gas Transmission Company; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 2, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fortieth Revised Sheet No. 21 and Thirteenth Revised Sheet No. 22A, to be effective January 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect negotiated-rate contract revisions.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–822 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–133–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 8, 2002.

Take notice that on December 31, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 the following revised tariff sheets to become effective February 1, 2002:

Second Revised Volume No. 1

Forty-Fifth Revised Sheet No. 15
Twenty-Third Revised Sheet No. 15A
Forty-Sixth Revised Sheet No. 16
Twenty-Third Revised Sheet No. 16A
Forty-Fourth Revised Sheet No. 18
Twenty-Third Revised Sheet No. 18A
Twenty-Third Revised Sheet No. 19
Twenty-Third Revised Sheet No. 20
Fortieth Revised Sheet No. 21

Original Volume No. 2

Eighty-Ninth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 15, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–829 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–41–000, et al.]

PG&E Dispersed Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 8, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Power Corporation and RAMCO, Inc.

[Docket No. EC02–41–000]

Take notice that on January 4, 2001 PG&E Dispersed Power Corporation (PG&E Dispersed Power) and RAMCO, Inc. (RAMCO) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to consolidate certain jurisdictional facilities. PG&E Dispersed Power proposes to purchase 100% of the ownership shares of RAMCO. The jurisdictional facilities involved consist of RAMCO's market-based rate tariff, contracts, and books and records associated with the sale of wholesale power. RAMCO makes sales at wholesale of capacity, energy, and ancillary services from two 44 MW peaking generating plants interconnected with the transmission system subject to the operational control of the California ISO. Applicants have requested privileged treatment for the Stock Purchase and Sale Agreement between PG&E Dispersed Power and RAMCO.

A copy of this Application was served upon the California Public Utilities Commission and the Governor of California.

Comment Date: January 28, 2002.

2. ATCO Power Canada Ltd.

[Docket No. ER99–3282–004]

Take notice that on December 28, 2001, ATCO Power Canada Ltd, submitted for filing with the Federal Energy Regulatory Commission (Commission) a new market analysis and report of changes in status for ATCO Power Canada Ltd., formerly CU Power Canada Limited.

Comment Date: January 18, 2002.

3. Cleco Power LLC

[Docket No. ER02–686–000]

Take notice that on January 3, 2002 Cleco Power LLC (Cleco) filed a First Revised Service Agreement No. 50 under Cleco Power FERC Electric Tariff, Original Volume No. 1.

Comment Date: January 24, 2002.

4. FMF Energy, Inc.

[Docket No. ER02–687–000]

Take notice that on January 3, 2002, FMF Energy, Inc. (FMF) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of FMF Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

FMF intends to engage in wholesale electric power and energy purchases and sales as a marketer. FMF is not in the business of generating or transmitting electric power. FMF is closely held corporation with no affiliates.

Comment Date: January 24, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–688–000]

Take notice that on January 3, 2002, the California Independent System Operator Corporation, (ISO), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and King City Energy Center, LLC for acceptance by the Commission. The ISO states that this filing has been served on

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King City Energy Center, LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective December 19, 2001.

Comment Date: January 24, 2002.

6. California Independent System Operator Corporation

[Docket No. ER02–689–000]

Take notice that on January 3, 2002, the California Independent System Operator Corporation, (ISO) , tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and King City Energy Center, LLC for acceptance by the Commission. The ISO states that this filing has been served on King City Energy Center, LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective December 19, 2001.

Comment Date: January 24, 2002.

7. Virginia Electric and Power Company

[Docket No. ER02–690–000]

Take notice that on January 3, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement by Virginia Electric and Power Company to Conectiv Energy Supply, Inc., designated as Service Agreement No. 9, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001. Copies of the filing were served upon Conectiv Energy Supply, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of December 12, 2001, as requested by the customer.

Comment Date: January 24, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02–691–000]

Take notice that on January 3, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement for Short-Term Market Rate Electric Power Sales and the Resale of Transmission Rights with The New Power Company.

Under the Service Agreement, the Company will provide services to the customer under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Third Revised Volume No. 4), which was accepted by order of the Commission dated August 30, 2000 in Docket No. ER00–1737–001. The Company requests an effective date of January 1, 2002, as requested by the customer.

Copies of the filing were served upon The New Power Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: January 24, 2002.

9. Southern California Edison Company

[Docket No. ER02–692–000]

Take notice that on January 3, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and the City of Industry Public Utilities Commission (Industry).

The Letter Agreement provides for pre-interconnection activities including engineering, design, procurement and preparation of specifications. Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: January 24, 2002.

10. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–693–000]

Take notice that on January 3, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing an Amended and Restated Confirmation Agreement between Deseret and Utah Associated Municipal Power Systems (UAMPS) for a unit commitment service without reserves pursuant to Schedule B of the Western Systems Power Pool Agreement. Deseret requests an effective date of October 1, 2001. A copy of this filing has been served on UAMPS and counsel to the WSPP.

Comment Date: January 24, 2002.

11. Duke Energy Hot Spring, LLC

[Docket No. ER02–694–000]

Take notice that on January 3, 2002, Duke Energy Hot Spring, LLC (Duke Hot Spring) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hot Spring seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Hot Spring also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Hot Spring seeks an effective date of March 1, 2002, the date on which Duke Hot Spring anticipates commencing the sale of test energy.

Comment Date: January 24, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–841 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 8, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 2210–073.

c. *Date Filed*: December 13, 2001.

d. *Applicant*: Appalachian Power Company (APC).

e. *Name of Project*: Smith Mountain.

f. *Location*: The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a) 825(r) and 799 and 801.

h. *Applicant Contact*: Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.fed.us.*

j. *Deadline for filing comments and or motions*: (February 16, 2002).

All documents (original and eight copies) should be filed with: Mr. Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–073) on any comments or motions filed.

k. *Description of Request*: APC is requesting Commission approval to permit to Windstar Properties, L.L.C. (permittee) to install and operate within the project boundaries: (a) One stationary dock with thirty-four covered boat slips; (b) one stationary dock with nineteen covered boat slips; (c) a 10,000 square foot sand beach; and (d) associated shoreline protection facilities. The work would also include the dredging and disposal of approximately 200 cubic yards of lakebed material. The facilities would be located at the Land's End subdivision located along the Blackwater River portion of Smith Mountain Lake.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–820 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, Conditions, and Prescriptions

January 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License 5 Megawatts or Less.

b. *Project No.:* P–2835–005.

c. *Date filed:* October 27, 2000.

d. *Applicant:* New York State Electric & Gas Corporation.

e. *Name of Project:* Rainbow Falls Hydroelectric Project.

f. *Location:* On the Ausable River, within the townships of Ausable and Chesterfield, in Clinton and Essex counties, New York. This project does not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mrs. Carol Howland, Project Environmental Specialist, New York State Electric & Gas Corporation, Corporate Drive—Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224, or call (607) 762–8881.

i. *FERC Contact:* Jarrad Kosa at (202) 219–2831 or via e-mail at *jarrad.kosa@ferc.fed.us.*

j. *Deadline for filing comments, recommendations, terms, conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms, conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing Rainbow Falls Hydroelectric Project consists of: (1) A 19-acre reservoir having a gross storage capacity of 234 acre-feet at 310 m.s.l.; (2) a 19-foot-high by 435-foot-long concrete gravity dam having (i) 3-foot-high flashboards and (ii) a concrete 345-foot-long spillway between the dam abutments with an average height of 16 feet and an average width of 21 feet; (3) a 77-foot-long by 22-foot to 49-foot-wide forebay intake structure, and (4) a 20-foot-long by 16-foot-wide sluiceway section containing a gate well located at the west end of the spillway section; (5) a 260-foot-long by 25.5-foot-deep concrete power canal leading to (6) a stone rack house containing trash racks and rakes; (7) two 6-foot-in-diameter steel riveted penstocks extending 401 feet and 411 feet, respectively, from the rack house to a (8) 67-foot-long by 40-foot-wide reinforced concrete powerhouse, housing two 1,320-kW generating units for a total installed capacity of 2,640-kW; (9) a 200-foot-long, 2.3-kV transmission line; and (10) appurtenant facilities. The project has an annual average generation of

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13,991,000 kilowatt-hour (kWh). The purpose of the project is to produce electric power generation for distribution on the licensee's transmission and distribution facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–836 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2516–026]

Allegheny Energy Supply Company, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2516–026.

c. *Date Filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Shepherdstown, in Berkeley and Jefferson Counties, West Virginia. The project dam and reservoir are owned by the United States and operated by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803 or *peter.leitzke@ferc.fed.us.*

j. *Deadline for filing additional study requests:* February 15, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Dam No. 4 Hydro Station Project consists of: (1) a 200-foot-long, 80-foot-wide headrace; (2) a stone and concrete powerhouse containing three generating units with a total installed capacity of 1,900 kilowatts; (3) a 350-foot-long, 90-foot-wide tailrace; (4) a substation; (5) a 4.5-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,886 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *MARYLAND STATE HISTORIC PRESERVATION OFFICER* and the *WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

- Notice of application has been accepted for filing
- Notice of NEPA Scoping
- Notice of application is ready for environmental analysis
- Notice of the availability of the draft NEPA document
- Notice of the availability of the final NEPA document
- Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–837 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–100–000, RT01–77–000, and RT01–75–000]

Regional Transmission Organizations, Southern Company Services, Inc., Entergy Services, Inc., et al.; Notice of Meeting on SeTrans RTO

January 7, 2002.

The SeTrans Sponsors [1] have invited the Commission to participate in a meeting that will be held on January 14, 2002 from 1 p.m. to 5 p.m. and January 15, 2002, from 8:30 a.m. to 4 p.m. The meeting will be held at the Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337. The purpose of the meeting is to form a Stakeholder Advisory Committee to assist the development of the SeTrans RTO. Representatives of the Commission's staff will attend the meeting. Members of the public may attend. Further information about the meeting and a copy of the registration form is available at *www.setransgrid.com.*

During the course of the meeting, it is possible that discussions may overlap with issues pending in the above-captioned dockets. A summary of any such discussion will be placed in each of the listed dockets, if appropriate.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–839 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

[1] "SeTrans Sponsors" consists of Georgia Transmission Corporation, MEAG Power, Dalton Utilities, Entergy Corporation, South Mississippi Electric Power Association, City of Tallahassee, Jacksonville Electric Authority, South Carolina Public Service Authority, and Southern Companies.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–6]

Peer Review of EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction to Notice of Peer Review Workshop and public comment period.

SUMMARY: On January 2, 2002, the U.S. Environmental Protection Agency (EPA), Office of Research and Development (ORD) announced an external peer review workshop to review the revised draft document entitled, "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization" (NCEA–I–0503) and a public comment period for this draft document (67 FR 75). The peer review workshop will take place on March 5 and 6, 2002, in Sacramento, California. The public comment period is January 9, 2002, to February 11, 2002. The deadline for registration is February 25, 2002. This notice corrects the address for electronic registration and electronic submission of comments provided in the January 2 **Federal Register** notice.

Correction to Addresses

To attend the meeting as an observer, please register with the Eastern Research Group (ERG), an EPA contractor. Please note that the registration Internet site provided in the January 2, 2002, **Federal Register** notice is incorrect. To register, send an e-mail request to ERG at *meetings@erg.com* (include name, affiliation, full address, phone/fax number, and e-mail address) or by calling the conference registration line at 781–674–7374 between the hours of 9 a.m. and 5 p.m. EST or via fax at 781–674–2906. You may also mail a registration request to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Please indicate when registering whether you plan to make observer comments.

Correction for Comment Submission

Please note that the e-mail address provided in the January 2, 2002, **Federal Register** notice is incorrect. Written comments should be submitted to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *meetings@erg.com.*

Dated: January 4, 2002.

Arthur Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–877 Filed 1–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–16]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fifteenth meeting of the Public Safety National Coordination Committee.

DATES: February 1, 2002 at 9:30 a.m.—12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov.* Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov.*

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fifteenth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: February 1, 2002.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Address: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Report from the Technology Subcommittee.
5. Report from the Implementation Subcommittee.
6. Public Discussion.
7. Other Business.
8. Upcoming Meeting Dates and Locations.
9. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively,

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the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fifteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at *jalford@fcc.gov*. Please provide your name, the organization you represent, your phone number, fax number and E-mail address. This RSVP is for the purpose of determining the number of people who will attend this fifteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov*. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://www.fcc.gov/wtb/publicsafety/ncc.html*.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 02–785 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–82–C (Auction No. 82); DA 01–2882]

Auction No. 82 Construction Permits for New Analog Television Stations Scheduled for February 5, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the Construction Permits for New Analog Television Stations scheduled for February 5, 2002.

DATES: Auction No. 82 is scheduled for February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Linda Sanderson, Auctions Operations Branch at (717) 338–2888. Media Contact: Meribeth McCarrick at (202) 418–0654. Video Services Division: Shaun Maher at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 82 Procedures Public Notice* released on December 13, 2001. The complete text of the *Auction No. 82 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 82 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of construction permits for new analog television stations ("Auction No. 82"). On November 9, 2001, in accordance with the Balanced Budget Act of 1997, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released the *Auction No. 82 Comment Public Notice*, 66 FR 58735 (November 23, 2001). This document sought comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 82. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 82. The Bureaus received four comments and no reply comments in response to the *Auction No. 82 Comment Public Notice*.

i. Construction Permits To Be Auctioned

2. The construction permits available in Auction No. 82 include four new analog television stations. These construction permits are the subject of pending, mutually exclusive short-form applications (FCC Form 175) and participation in this auction is limited to the applicants identified in Attachment A of the *Auction No. 82 Comment Public Notice*. The minimum opening bids and upfront payments for these construction permits are also included on Attachment A of the *Auction No. 82 Comment Public Notice*.

B. Rules and Disclaimers

i. Relevant Authority

3. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction No. 82 Procedures Public Notice*, the *Auction No. 82 Comment Public Notice*, the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with part 1, subpart Q of the Commission's rules concerning competitive bidding proceedings.

4. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all

prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

ii. Prohibition of Collusion

5. Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits short-form applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For further details regarding the anti-collusion rule, refer to the *Auction Filing Window Public Notice*, 66 FR 33699 (June 25, 2001), released May 25, 2001. For Auction No. 82, this prohibition became effective at the short-form application deadline (June 29, 2001) and will end on the down payment due date after the auction (to be announced in a future public notice). Applicants certified compliance with § 1.2105(c) when they signed their short-form applications. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

6. Bidders in Auction No. 82 are encouraged not to use the same individual acting as an authorized bidder for any other applicant. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm).

7. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

8. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment E of the *Auction No. 82 Procedures Public Notice*.

iii. Due Diligence

9. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the television facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

10. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 82 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 82 are strongly encouraged to continue such research during the auction.

11. Potential bidders should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the *Class A Report and Order*, the winning bidders in Auction No. 82, upon submission of their long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television stations proposed in this auction. Information about the identity and location of Class A television stations is available from the Mass Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mmb*) and on the Mass Media Bureau's Class A television Web page: *http://www.fcc.gov/mmb/vsd/files/classa.html*.

12. Potential bidders are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

13. Bidders for the Columbia, South Carolina, station on Channel 47 should note that there is pending a petition for rulemaking to change the DTV channel for WCSC–TV, Charleston, South Carolina, from Channel 52 to Channel 47. Pending the outcome of the Channel 47 Charleston DTV rulemaking proceeding, bidders for Channel 47 at Columbia are advised that the construction permit for their facility will be conditioned on acceptance of interference from WCSC–DT, Channel 47, Charleston, South Carolina.

iv. Bidder Alerts

14. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary

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forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

15. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 82 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

16. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act (NEPA) Requirements

17. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

18. Auction No. 82 will begin on Tuesday, February 5, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

19. Auction No. 82—New Analog Television

iii. Bidding Methodology

20. The bidding methodology for Auction No. 82 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

21. These are important dates relating to Auction No. 82:

Auction Seminar—January 8, 2002
Upfront Payments (via wire transfer)—January 14, 2002; 6:00 p.m. ET
Mock Auction—January 31, 2002
Auction Begins—February 5, 2002

v. Requirements for Participation

22. Those wishing to participate in the auction must:

- Be listed on Attachment A of the *Auction No. 82 Procedures Public Notice.*
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. EST, January 14, 2002.
- Comply with all provisions outlined in the *Auction No. 82 Procedures Public Notice.*

vi. General Contact Information

23. The following is a list of general contact information relating to Auction No. 82:

General Auction Information

General Auction Questions, Seminar Registration, FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. EST.

Auction Legal Information

Auction Rules, Policies, Regulations, Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information

Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues, Video Services Division, (202) 418–1600.

Technical Support

Electronic Filing, Automated Auction System, FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10 p.m. EST, Saturday, 8 a.m. to 7 p.m., Sunday, 12 noon to 6 p.m.

Payment Information

Wire Transfers, Refunds, FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding

Will be furnished only to qualified bidders.

FCC Copy Contractor

Additional Copies of Commission Documents, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (e-mail).

Press Information

Meribeth McCarrick (202) 418–0654.

FCC Forms

(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html.*

FCC Internet Sites

http://www.fcc.gov, http://wireless.fcc.gov/auctions, http://wireless.fcc.gov/uls.

II. Short-Form (FCC Form 175) Application Requirements

A. Maintaining Current Information in Short-Form Applications (FCC Form 175)

24. As noted in the *Auction No. 82 Comment Public Notice*, and under 47 CFR 1.65, applicants have an obligation to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in short-form applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the short-form application. Auction No. 82 applicants may file changes to their FCC Form 175 applications by electronic mail sent to the following address: *auction82@fcc.gov.* The Bureau prefers that any attachments be in a Word or pdf format. Documents filed by electronic mail must include a subject or caption referring to Auction No. 82. Filers must also submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

25. A separate copy of the letter should faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

26. In addition, applicants should make these changes to their FCC Form 175 applications on-line after release of the public notice explaining the status of the applications.

B. Electronic Review of Short "Form Applications (FCC Form 175)

27. As noted in the *Auction Filing Window Public Notice*, applicants may review their own and other applicants' completed FCC Form 175s after the FCC has issued a public notice concerning the status of the applications. The FCC Form 175 electronic review system will be available at that time, and may be used to locate and print applicants' FCC Form 175 information. Applicants will also be able to view other applicants' completed FCC Form 175 applications. There is no fee for accessing this system. Instructions for electronic review of FCC Form 175 applications will be discussed in a future public notice.

C. Installment Payments

28. Installment payment plans will not be available in Auction No. 82.

III. Pre-Auction Procedures

A. Application Processing and Minor Corrections

29. Before the auction seminar, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

30. As described more fully in the Commission's rules, after the short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

B. Auction Seminar

31. On January 8, 2002, the FCC will sponsor a free seminar for Auction No. 82 at the Federal Communications Commission, located at 445 12th Street, SW. (Room 3–B516), Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the broadcast service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

32. To register, complete Attachment B of the *Auction No. 82 Procedures Public Notice* and submit it by Friday, January 4, 2002. Registrations are accepted on a first-come, first-served basis.

Upfront Payments—Due January 14, 2002

33. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After the FCC Form 175 becomes available electronically, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. EST on January 14, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 82 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the January 14, 2002 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

34. Wire transfer payments must be received by 6 p.m. EST on January 14, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.
Receiving Bank: Mellon Pittsburgh.
BNF: FCC/Account # 910–0180.
OBI Field: (Skip one space between each information item).
"AUCTIONPAY".
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 12).
PAYMENT TYPE CODE (same as FCC Form 159, Block 24A; A82U).
FCC CODE 1 (same as FCC Form 159, block 28A: "82").
PAYER NAME (same as FCC Form 159, block 2).
LOCKBOX NO. # 358420.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

35. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 82." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

36. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction No. 82 Procedures Public Notice.* An electronic version of the FCC Form 159 will be accessible after the FCC Form 175 becomes available

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electronically. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

37. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), the Commission ordered that "former defaulters," i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters."

38. In the *Auction No. 82 Comment Public Notice*, we proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a construction permit, otherwise qualified bidders who applied for that construction permit on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time.

39. WyoMedia contends that the upfront payment for Scottsbluff, Nebraska should be reduced to between $41,000 and $46,000. WyoMedia provides community of license information for each permit in the auction and contends that parties interested in the Scottsbluff permit would be paying an upfront payment that is three times as much for other permits. WyoMedia urges the Bureaus to adopt an upfront payment that is consistent with those set for other permits. Based upon the information WyoMedia provides, we conclude that the upfront payment for Scottsbluff, Nebraska should be reduced to $50,000.

40. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 82 Procedures Public Notice*.

41. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

42. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, in conjunction with the selections made on the FCC Form 175.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

43. The Commission will use wire transfers for all Auction No. 82 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically after the FCC Form 175 becomes available for review. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by January 14, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank.
ABA Number.
Contact and Phone Number.
Account Number to Credit.
Name of Account Holder.
Taxpayer Identification Number (see below).
Correspondent Bank (if applicable).
ABA Number.
Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D.

C. Auction Registration

44. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

45. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

46. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Tuesday, January 29, 2002, should contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

47. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

D. Electronic Bidding

48. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, i.e., over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 82. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—can be specified on the FCC Form 175 during the resubmit window.

49. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

E. Mock Auction

50. All qualified bidders will be eligible to participate in a mock auction on Thursday, January 31, 2002. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

51. The first round of bidding for Auction No. 82 will begin on Tuesday, February 5, 2002. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

52. In the *Auction No. 82 Comment Public Notice*, we proposed to award all construction permits in a single, simultaneous multiple round auction. We received no comments on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the new analog television station construction permits through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on the construction permits in each round of the auction.

ii. Maximum Eligibility and Activity Rules

53. In the *Auction No. 82 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

54. For Auction No. 82, we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given construction permit.

55. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. A bidder is required to be active on 100 percent of their bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility.

iii. Activity Rule Waivers and Reducing Eligibility

56. In the *Auction No. 82 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers that may be used in any round during the course of the auction. We received no comments on this issue.

57. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

58. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating them from the auction.

59. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules (*see* Part IV.A.ii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

60. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open. Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

61. For Auction No. 82, the Bureaus proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when

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one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all construction permits.

62. The Bureaus also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

63. The Bureaus further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if any remain).

64. In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the construction permits.

65. We received no comments on the subject, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 82 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 82, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

66. In the *Auction No. 82 Comment Public Notice,* we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

67. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

68. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the qualified bidders public notice referenced.

69. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

70. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.,* because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.

71. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of construction permits.

72. In the *Auction No. 82 Comment Public Notice,* the Bureaus proposed to establish minimum opening bids for Auction No. 82 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 82, the Bureaus proposed calculating the minimum opening bid based on the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. Three commenters challenged the minimum opening bids proposed for this auction. WyoMedia Corp. challenged the minimum opening bid for Scottsbluff, Nebraska, asking that it be reduced to between $41,000 and $46,000. WyoMedia contends that those parties interested in the Scottsbluff permit would be paying a minimum opening bid that is three times as much for other permits. WyoMedia urges the Bureaus to adopt a minimum opening bid that is consistent with those set for other permit. Hubbard contends that $250,000 is a more reasonable value for the minimum opening bid for Pittsfied, Massachusetts. Powell Meredith requests that all, of the minimum opening bids be reduced since the costs of constructing new television stations have increased. We agree that minimum opening bids for Scottsbluff, Nebraska should be reduced to $50,000. However, we do not find that the commenters have justified reducing the minimum opening bids for other permits. Therefore only the minimum opening bids for Scottsbluff, Nebraska will be reduced.

iii. Bid Increments and Minimum Accepted Bids

73. In the *Auction No. 82 Comment Public Notice,* we proposed to use a smoothing methodology to calculate minimum acceptable bids. We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. We received no comment on this issue. We adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given construction permit between a maximum and minimum value based on the bidding activity on that construction permit. This methodology allows the increments to be tailored to the activity level of a construction permit, decreasing the time it takes for active construction permits to reach their final value. The formula used to calculate this increment is included as Attachment D of the *Auction No. 82 Procedures Public Notice.*

74. We adopt our proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureaus retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureaus will do so by announcement in the Automated Auction System. Under its discretion, the Bureaus may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureaus may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureaus also retains the discretion to use alternate methodologies, such as a flat percentage increment for all construction permits, for Auction No. 82 if circumstances warrant.

iv. High Bids

75. At the end of each round, the Automated Auction System determines the standing high bid for each construction permit based on the gross dollar amounts of the bids received for each construction permit.

76. In the case of tied high bids, a pseudo-random generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

77. During a bidding round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round.

78. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 82.

79. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

80. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

81. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

82. Once there is a standing high bid on a construction permit, the Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the *bid increment.* The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

83. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts for construction permits that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

vi. Bid Removal and Bid Withdrawal

84. In the *Auction No. 82 Comment Public Notice,* we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The one round in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comments on this issue.

85. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid"

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function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we adopt these procedures for Auction No. 82.

86. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

87. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 82, adoption of a limit on their use to one round is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

88. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in this round. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a permit. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a "place holder" on the construction permit until a new acceptable bid is submitted on that construction permit

89. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

90. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

91. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 82 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

92. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

viii. Maintaining the Accuracy of Short-Form (FCC Form 175) Information

93. As noted in Part II.A., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

94. A separate copy of the letter should be faxed to Kenneth Burnley, Auctions and Industry Analysis Division, (202) 418–2923. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

I. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

95. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, down payments and any withdrawn payments due.

96. Within ten business days after release of the auction closing notice, each winning bidder must submit

sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credit). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

97. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each construction permit won through Auction No. 82. Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to the auction winners at the close of the auction.

C. Default and Disqualification

98. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

99. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 82 may be entitled to a refund of their upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

100. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Michelle Bennett, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

101. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Leora Hochstein,

Deputy Chief, Legal Branch, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–872 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting, Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:03 p.m. on Wednesday, January 9, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), and concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: January 10, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–1019 Filed 1–10–02; 3:26 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001: Holmes and Sharkey Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression

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Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–804 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011742–001.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd/Zim Mediterranean Space Charter Agreement.

Parties: Farrell Lines, Inc. Hapag-Lloyd Container Linie GmbH. P&O Nedlloyd Limited. P&O Nedlloyd B.V. Zim Israel Navigation Co., Ltd.

Synopsis: The proposed agreement modification adds authority for the parties to discuss and agree on the phasing-in and phasing-out of vessels for maintenance and to discuss and agree on criteria to measure adherence to any agreed-upon schedule, as well as any remedial action in the event of non-adherence. The modification also clarifies the parties' authority to use common terminals and adds provisions dealing with force majeure situations, notices, and enforceability. The parties request expedited review.

Dated: January 9, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–845 Filed 1–11–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Edward T. Christian, trustee of Edward T. Christian Revocable Trust, Albert Lea, Minnesota; to acquire voting shares of Kiester Investments, Inc., Kiester, Minnesota, and thereby indirectly acquire voting shares of First National Bank of Kiester, Kiester, Minnesota.

Board of Governors of the Federal Reserve System, January 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–795 Filed 1–11–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0402]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement (OMB Control No. 0910–0378)—Extension

The third-party program under the United States/European (U.S./EC) Community/Mutual Recognition Agreement (MRA) is intended to implement that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices. Under the MRA, firms may apply to become designated as a U.S. Conformity Assessment Body (CAB). Firms who are designated will be qualified to conduct quality system evaluations for all classes of devices and product type examinations and verifications for selected devices based on EC requirements under the voluntary third-party program authorized by MRA. Firms designated as European Union (EU) CABs could conduct quality system evaluations for all classes of devices and premarket 510(k) evaluations for selected devices based on FDA requirements. Under the voluntary third-party program, reports of these evaluations would be submitted by the EU CABs to FDA. The EU CABs would also be required to maintain copies of their evaluation reports.

FDA requests approval of the following collection of information:

Requests for Designation as U.S. CABs—Under this program, U.S. companies were allowed to apply for designation as a U.S. CAB. Such designation enabled the company to perform third-party reviews of U.S. products for export to the EU and third-party audits of quality systems established by manufacturers of medical devices manufactured for export to the EU. Third-party review of U.S. products for export and third-party audit of quality systems was elective and at the discretion of the manufacturer of the product. At the present time, only eight U.S. CABs are active. The agency is not accepting applications for U.S. CAB designation at this time and in the foreseeable future.

Premarket Reports by EU CABs—Under this program, EU CABs will be able to perform third-party evaluations for certain products manufactured in Europe for export to the United States. Third-party evaluation is elective and at the discretion of the manufacturer of the product.

Quality System Reports by EU CABs—Under this program, EU CABs will be able to perform third-party audits of the quality systems established by EU manufacturers of products manufactured for export to the United States. Third-party audit of quality systems is elective and at the discretion of the manufacturer of the product.

EU CABs must maintain records of their third-party evaluations of quality systems and premarket submissions for certain products manufactured for export to the United States for a period of no less than 3 years.

The program implements that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

In the **Federal Register** of October 5, 2001 (66 FR 51050), the agency requested comments on the proposed collection of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of Respondents	Annual Frequency perResponse	Total Annual Responses	Hours per Response	Total Hours
Premarket Reports by EC CABs	11	5	55	40	2,200
Quality System Reports by EC Cabs	11	15	165	32	5,280
Total					7,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Item	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Premarket Reports by EC CABs	11	5	55	10	550
Quality System Reports by EC Cabs	11	15	165	10	1,650
Total					2,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The following is an explanation of the burden estimate.

I. Reporting Burden

A. Requests for Designation as U.S. CAB

U.S. firms who have applied and have been accepted for designation as a U.S. CAB will be able to perform third-party evaluations of U.S. products for export to the EU. Likewise, European firms who have applied and been designated as EC CABs, will be able to perform third- party reviews of products to be exported to the United States. The application for nomination as an EU CAB does not represent a paperwork burden subject to the PRA because the designation procedure is an internal process that is required by, and administered by, European authorities. Only the application for designation as a U.S. CAB represents a paperwork burden under the PRA. However, the agency has received 10 applications for designation as U.S. CABs, 8 of whom are still active. The agency is not accepting any applications at this time, and does not anticipate accepting any applications in the near future. Thus burden for U.S. CAB designation is nonexistent at this time.

B. Premarket Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party review for approximately 55 to 100 medical device products annually. The agency expects that interest and participation in the program will increase with time. The agency further estimates based on dialogue with EC officials, that 11 firms will be designated to act as EC CABs.

C. Quality System Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party audits for approximately 165 medical device products annually. The agency estimates that 11 EU CABs will perform these evaluations.

II. Recordkeeping

FDA requires the reviewers to keep in their records a copy of the report that they submit to FDA for each review. The agency anticipates that 55 premarket reports and 165 quality system reports will be generated and required to be maintained by EU CABs annually. The agency further estimates that each reviewer will require no more than 10 hours (2 hours per recordkeeping per report) for each to maintain such records annually.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–854 Filed 1–11–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0437]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Use—21 CFR Part 511 (OMB Control No. 0910–0017)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act) for approval of new animal drugs. Section 512(j) of the act (21 U.S.C. 360b(j)) authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). A sponsor must submit to FDA a notice of claimed investigational exemption (INAD) before shipping the new animal drug for clinical tests in animals. The INAD must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. The regulations in part 511 also require that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that distribution is controlled to prevent potential abuse. The agency utilizes these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are the persons who use new animal drugs investigationally.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	6	1,147	8	9,176
511.1(b)(5)	190	1.5	287	140	40,180
511.1(b)(6)	190	.005	1	250	250
511.1(b)(8)(ii)	190	.005	1	20	20
511.1(b)(9)	190	.16	30	8	240
Total					49,866

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record-keeper	Total Hours
511.1(a)(3)	190	7.5	1,434	9	12,906
511.1 (b)(3)	190	10	1,912	1	1,912
511.1(b)(7)(ii)	190	2	956	3.5	3,346
511.1(b)(8)(i)	190	4	956	3.5	3,346
Total					21,510

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e., the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–855 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0309, 01M–0342, 01M–0329, 01M–0381, 01M–0371, 01M–0412, 01M–0305, 01M–0337, 01M–0296, 01M–0310, 01M–0306, 01M–0307, 01M–0360, 01M–0380, 01M–0373, 01M–0392, 01M–0413, 01M–0414, 01M–0439]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on the Internet at http://www.fda.gov; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2001, through September 30, 2001, in accordance with the procedure explained previously. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2001, THROUGH SEPTEMBER 30, 2001

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P970056/01M–0309	Bausch & Lomb Surgical	KERACOR 116 Ophthalmic Excimer Laser System	September 28, 1999
P980044/01M–0342	Quintiles, Inc.	SUPARTZ Dispo	January 24, 2001
P000016/01M–0329	GE Medical Systems Information Technologies	Corometrics Model 120 F-Series Maternal/Fetal Monitor with Integrated Fetal Oxygen Saturation Monitoring, Corometrics Fetal Patient Module, and the Nellcor OXIFIRST FS14 Sensor	February 9, 2001
P000007/01M–0381	Edwards Lifesciences, LLC	EDWARDS PRIMA Plus Bioprosthesis Model 2500P	February 27, 2001
P990026/01M–0371	Cygnus, Inc.	GLUCOWATCH Automatic Glucose Biographer	March 22, 2001
P000032/01M–0412	CryoGen, Inc.	HEROPTION UTERINE CRYOBLATION THERAPY System	April 20, 2001
P930016(S12)/01M–0305	VISX, Inc.	STAR Excimer Laser System Models S2 and S3	April 27, 2001
P000005/01M–0337	MediTeam AB	CARISOLV Non-Invasive Dental Caries Removal System	June 27, 2001
P000043/01M–0296	TherMatrx, Inc.	TMx2000 BPH Thermotherapy System	June 29, 2001
P000021/01M–0310	Dade Behring, Inc.	DIMENSION RxL PSA Reagent Cartridge	July 5, 2001
P000041/01M–0306	Deus Technologies, LLC	RAPIDSCREEN RS–2000	July 12, 2001
P000026/01M–0307	STAAR Surgical Co.	AQUAFLOW Collegen Glaucoma Drainage Device, Model CGDD–20	July 12, 2001
P000055/01M–0360	Diagnostic Medical Systems	UBIS 5000	July 17, 2001
P830039(S7)/01M–0380	Medical CV, Inc.	OMNICARBON Cardiac Valve Prosthesis	July 26, 2001
P010015/01M–0373	Medtronic, Inc.	INSYNC Biventricular Pacing System including INSYNC Model 8040 Pulse Generator, ATTAIN LV Model 2187 and ATTAIN CS Model 2188 Leads	August 28, 2001
H010001/01M–0392	Avanta Orthopaedics, Inc.	Avanta Metacarpophalangeal (MCP) Joint Implant Finger Prosthesis	August 28, 2001
P010016/01M–0413	Ortec International, Inc.	ORCEL (Bilayered Cellular Matrix)	August 31, 2001

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TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2001, THROUGH SEPTEMBER 30, 2001—Continued

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P010023/01M–0414 P000029/01M–0439	SOUNDTEC, Inc. Q-Med AB	SOUNDTEC Direct System DEFLUX Injectable Gel	September 7, 2001 September 24, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 31, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–853 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0545]

"Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax" dated October 2001. The guidance document provides the current recommendations for assessment of donor suitability and product safety for donors potentially exposed to anthrax. The guidance document applies to Whole Blood, blood components (including recovered plasma) and Source Plasma collections intended for use in transfusion or for further manufacturing into injectable products.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax" dated October 2001. The guidance document provides the current recommendations for assessment of donor suitability and product safety for donors potentially exposed to *Bacillus anthracis*, the agent of anthrax. The guidance document applies to Whole Blood, blood components (including recovered plasma) and Source Plasma collections intended for use in transfusion or for further manufacturing into injectable products. FDA developed the recommendations in the guidance document in consultation with other Public Health Service agencies and with the Blood Safety Committee of the Department of Health and Human Services. Recommendations addressed in the guidance include: Donor deferral, product quarantine and retrieval, and notification of prior transfusion recipients.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on recommendations for assessment of donor suitability and product safety for donors potentially exposed to anthrax. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, but is implementing this guidance document immediately because of public health concerns. Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–791 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA will recognize for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled "Modifications to the List of Recognized Standards, Recognition List Number: 006" (Recognition List Number: 006) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written comments concerning this document at any time. See section VI of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of "Modification to the List of Recognized Standards, Recognition List Number: 006" to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the contact person (address below). Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed on FDA's Internet site at http://www.fda.gov/cdrh/fedregin.html. See section V of this document for electronic access to the searchable data base for the current list of "FDA Recognized Consensus Standards," including Recognition List Number: 006 modifications, and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 156.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** ofFebruary 25, 1998 (63 FR 9561), FDA announced the availability of guidance entitled "Recognition and Use of Consensus Standards." This notice described how FDA will implement its standards program recognizing the use of certain standards and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617); July 12, 1999 (64 FR 37546); November 15, 2000 (65 FR 69022); and May 7, 2001 (66 FR 23032), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. When these notices were published, the agency maintained "html" and "pdf" versions of the list of "FDA Recognized Consensus Standards." Both versions were publicly accessible at the agency's Internet site. The agency maintains the current list in a searchable data base accessible to the public. See section V of this document for electronic access information.

II. Discussion of Modifications to the List of Recognized Standards, Recognition List Number: 006

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews for devices. FDA will incorporate these modifications in the list of "FDA Recognized Consensus Standards" in the agency's searchable data base. FDA will use the term "Recognition List Number: 006" to identify: (1) Supplementary information sheets for standards added to the list for the first time, (2) standards added to replace withdrawn standards, (3) still recognized standards for which minor revisions are made to clarify the application of the standards, and (4) standards withdrawn with no replacement.

At the end of this notice, FDA lists modifications the agency is making that involve: (1) The initial addition of standards not previously recognized by FDA and (2) the addition of standards in conjunction with the withdrawal of other standards that are replaced by these later, amended, or different standards.

In this section, FDA describes: (1) Modifications that involve the withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the addition of certain recognized standards with revisions to the supplementary information sheets involving changes in significant applications of the standards.

A. Anesthesia

1. In the supplementary information sheet for IEC 60601–3–1:1996–08, identified under previous item 11, a minor change is made to the contact person. This standard remains recognized and identified under current item 11.

2. In the supplementary information sheet for ASTM F1456–92, identified under previous item 24, a minor change is made to the contact person. This standard remains recognized and identified under current item 24.

3. In the supplementary information sheet for ASTM F1462–93, identified under previous item 25, a minor change is made to the contact person. This standard remains recognized and identified under current item 25.

4. In the supplementary information sheet for ISO 7767:1997, identified under previous item 32, a minor change is made to the contact person. This standard remains recognized and identified under current item 32.

5. In the supplementary information sheet for ISO 9918:1993, identified under previous item 33, a minor change is made to the contact person. This standard remains recognized and identified under current item 33.

B. Biocompatibility

1. ASTM F1904–98 is withdrawn under previous item 44. ASTM F1904–98e1 is added under current item 52.

2. ASTM E1372–95 is withdrawn under previous item 33. ASTM E1372–95 (1999) is added under current item 53.

3. ISO/AAMI/ANSI 10993–5:1998 is withdrawn under previous item 29. ANSI/AAMI/ISO 10993–5:1999 is added under current item 54.

4. ISO/AAMI/ANSI 10993–6:1995 is withdrawn under previous item 18. ANSI/AAMI/ISO 10993–6:1994 is added under current item 55.

C. Cardiovascular/Neurology

1. ASTM F138–97 is withdrawn under previous item 9. ASTM F138–00 is added under current item 34.

2. ASTM F562–95 is withdrawn under previous item 11. ASTM F562–00 is added under current item 35.

3. ASTM F136–98 is withdrawn under previous item 23. ASTM F136–98e1 is added under current item 36.

4. IEC 60601–2–23:1993 is withdrawn under previous item 26. IEC 60601–2–

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23 (1999–12) is added under current item 37.

5. IEC 60601–2–34 (1994–12) is withdrawn under previous item 27. IEC 60601–2–34 (2000–10) is added under current item 38.

6. ASTM F647–94 is withdrawn under previous item 31. ASTM F647–94 (2000) is added under current item 39.

D. Dental/ENT

1. In the supplementary information sheet for ISO 7494:1996, identified under previous item 74, a minor change is made to the contact person. This standard remains recognized and identified under current item 74.

2. In the supplementary information sheet for ISO 7785–1:1997, part 1, identified under previous item 75, a minor change is made to the contact person. This standard remains recognized and identified under current item 75.

3. In the supplementary information sheet for ISO 7785–2:1995, part 2, identified under previous item 76, a minor change is made to the contact person. This standard remains recognized and identified under current item 76.

4. In the supplementary information sheet for ISO 9168:1991, identified under previous item 78, a minor change is made to the contact person. This standard remains recognized and identified under current item 78.

5. In the supplementary information sheet for ISO 13294:1997, identified under previous item 84, a minor change is made to the contact person. This standard remains recognized and identified under current item 84.

E. General

1. IEC 60601–1–1:1992–06 amendment 1, 1995–11 is withdrawn under previous item 5. IEC 60601–1–1:2000 is added under current item 27.

2. IEC 60601–1–2, First Edition 1993–04, is withdrawn under previous item 6. IEC 60601–1–2, Second Edition 2001, is added under current item 28.

3. ASTM D–4169/1993 is withdrawn under previous item 17. ASTM D–4169:1999 was recognized by "Sterility" in the November 15, 2001, recognition list 004.

F. General Hospital/General Plastic Surgery

1. In the supplementary information sheet for IEC 60601–2–21, identified under previous item 09, a minor change is made to the contact person. This standard remains recognized and identified under current item 09.

2. In the supplementary information sheet for IEC 60601–2–38, identified under previous item 10, a minor change is made to the contact person. This standard remains recognized and identified under current item 10.

3. In the supplementary information sheet for IEC 60601–2–19/1996–10, identified under previous item 29, the a minor change is made to contact person. This standard remains recognized and identified under current item 29.

4. In the supplementary information sheet for IEC 60601–2–20/1996–10, identified under previous item 32, the a minor change is made to contact person. This standard remains recognized and identified under current item 32.

5. ISO 8536–4, First Edition 1987–11–01, is withdrawn under previous item 17. ISO 8536–4, Second Edition 1998–02–15, is added under current item 75.

6. ISO 1135–4, First Edition 1987–12–01, is withdrawn under previous item 19. ISO 1135–4, Second Edition 1998–03–15, is added under current item 76.

7. ASTM F1862–98 is withdrawn under previous item 36. ASTM F1862–00a is added under current item 77.

8. ASTM F1670–97 is withdrawn under previous item 39. ASTM F1670–98 is added under current item 78.

9. ISO 594/2, First Edition 1991–05–01, is withdrawn under previous item 12. ISO 594–2:1998 is added under current item 79.

10. ASTM E1112–86 (reapproved 1991) is withdrawn under previous item 02. ASTM E1112–00 (reapproved 1991) is added under current item 80.

G. ObGyn/Gastroenterology

1. ASTM F1518–94 is withdrawn under previous item 22. ASTM F1518–00 is added under current item 23.

2. ASTM F623–89 is withdrawn under previous item 3. ASTM F623–99 is added under current item 24.

3. AAMI HF18–93 is withdrawn under previous item 18. ANSI/AAMI HF18–2001 is added under current item 25.

H. Orthopaedic

1. ASTM F67–95 is withdrawn under previous item 1. ASTM F67–00 is added under current item 123.

2. ASTM F86–91 is withdrawn under previous item 3. ASTM F86–01 is added under current item 124.

3. ASTM F139–96 is withdrawn under previous item 7. ASTM F139–00 is added under current item 125.

4. ASTM F366–82 (R1993) is withdrawn under previous item 8. ASTM F366–82 (2000) is added under current item 126.

5. ASTM F562–95 is withdrawn under previous item 11. ASTM F562–00 is added under current item 127.

6. ASTM F604–94 is withdrawn under previous item 15 with no replacement. ASTM discontinued it in 2001.

7. ASTM F688–95 is withdrawn under previous item 20. ASTM F688–00 is added under current item 128.

8. ASTM F745–95 is withdrawn under previous item 21. ASTM F745–00 is added under current item 129.

9. ASTM F799–96 is withdrawn under previous item 25. ASTM F799–99 is added under current item 130.

10. ASTM F1044–95 is withdrawn under previous item 30. ASTM F1044–99 is added under current item 131.

11. ASTM F1088–87 (1992) is withdrawn under previous item 31. ASTM F1088–87 (1992) e1 is added under current item 132.

12. ASTM F1108–97 is withdrawn under previous item 34. ASTM F1108–97a is added under current item 133.

13. ASTM F1295–97 is withdrawn under previous item 39. ASTM F1295–97a is added under current item 134.

14. ASTM F1341–92 is withdrawn under previous item 41. ASTM F1341–99 is added under current item 135.

15. ASTM F1472–93 is withdrawn under previous item 44. ASTM F1472–00 is added under current item 136.

16. ASTM F1501–95 is withdrawn under previous item 45. ASTM discontinued it in 2000. It was replaced with ASTM F1147–99 item 107.

17. ASTM F1537–94 is withdrawn under previous item 46. ASTM F1537–00 is added under current item 137.

18. ASTM F1541–94 is withdrawn under previous item 47. ASTM F1541–00 is added under current 138.

19. ASTM F1580–95 is withdrawn under previous item 48. ASTM F1580–95e1 is added under current item 139.

20. ASTM F1582–95 is withdrawn under previous item 49. ASTM F1582–98 is added under current item 140.

21. ASTM F1612–95 is withdrawn under previous item 52. ASTM F1612–95 (2000) is added under current item 141.

22. ASTM F1658–95 is withdrawn under previous item 53. ASTM discontinued it in 2000. It was replaced with ASTM F1044–99, item 131.

23. ASTM F1672–95e1 is withdrawn under previous item 55. ASTM F1672–95 (2000) is added under current item 142.

24. ISO 7153–1:1991 is withdrawn under previous item 77. ISO 7153–1:1991/amended 1:1999 is added under current item 143.

25. ASTM F138–97 is withdrawn under previous item 89. ASTM F138–00 is added under current item 144.

26. ASTM F565–85 (1996) e1 is withdrawn under previous item 92. ASTM F565–00 is added under current item 145.

27. ASTM F603–83 (1995) is withdrawn under previous item 94. ASTM F603–00 is added under current item 146.

28. ASTM F1539–95 is withdrawn under previous item 95. ASTM discontinued it in 2000. It was replaced with ASTM F564–00, item 156.

29. ASTM F620–97 is withdrawn under previous item 96. ASTM F620–00 is added under current item 147.

30. ASTM F648–98 is withdrawn under previous item 99. ASTM F648–00 is added under current item 148.

31. ASTM F746–87 (1994) is withdrawn under previous item 100. ASTM F746–87 (1999) is added under current item 149.

32. ASTM F983–86 (1996) is withdrawn under previous item 102. ASTM F983–86 (2000) is added under current item 150.

33. ASTM F1540–95 is withdrawn under previous item 103. ASTM discontinued it in 2000. It was replaced with ASTM F564–00, item 156.

34. ASTM F1091–91 (1996) is withdrawn under previous item 105. ASTM F1091–91 (2000) is added under current item 151.

35. ASTM F1691–96 is withdrawn under previous item 106. ASTM discontinued it in 2001. It was replaced with ASTM F543–01, item 157.

36. ASTM F1160–98 is withdrawn under previous item 108. ASTM F1160–00 is added under current item 152.

37. ASTM F1264–99 is withdrawn under previous item 110. ASTM F1264–00 is added under current item 153.

38. ASTM F1350–91 (1996) is withdrawn previous item 112. ASTM F1350–91 (2001) is added under current item 154.

39. ISO 7207–2:1994 is withdrawn under previous item 122. ISO 7207–2:1998 is added under current item 155.

I. Physical Medicine

1. ISO 7176–1:1986 is withdrawn under previous item 16. ISO 7176–1:1999 is added under current item 158.

2. ISO 7176–2:1990 is withdrawn under previous item 17. ISO 7176–2:2001 is added under current item 159.

3. ANSI/RESNA WC/Vol. 2–1998, section 21: Requirements and Test Methods for Electromagnetic Compatibility—new item #160.

J. Radiology

1. AIUM—1994 is withdrawn under previous item 4. AIUM—Medical Ultrasound Safety (R1999) is added under current item 66.

2. In the supplementary information sheet for IEC 60806, identified under previous item 6, the title has been changed. This standard remains recognized and identified under current item 6.

3. NEMA MS–1–1988 is withdrawn under previous item 10. NEMA MS–1–1998 (R2000) is added under current item 67.

4. NEMA MS–4–1989 is withdrawn under previous item 13. NEMA MS–4 (R1998) is added under current item 68.

5. NEMA MS6–2000 is withdrawn under previous item 15. NEMA MS6–2000 is added under current item 69.

6. NEMA PS3 (set), DICOM Set is withdrawn under previous item 19. NEMA PS3 (set), DICOM Set is added under current item 70.

7. NEMA UD 2–2998, revision 2 is withdrawn under previous item 20. NEMA UD 2–1998 revision 2 is added under current item 71.

8. NEMA UD 3–1998, revision 1 is withdrawn under previous item 21. NEMA UD 3–1998 revision 1 is added under current item 72.

9. In the supplementary information sheet(s) for IEC 60601–2–19, identified under previous item 36, the date has been changed. This standard remains recognized and identified under current item 36.

10. In the supplementary information sheet(s) for AIUM–AOMS, identified under previous item 44, the title has been changed. This standard remains recognized and identified under current item 44.

11. In the supplementary information sheet(s) for IEC 61303, identified under previous item 49, a minor change is made to the Standard Development Organization. This standard remains recognized and identified under current item 49.

12. In the supplementary information sheet(s) for IEC 61145, identified under previous item 51, the name of the Standards Development Organization has been changed. This standard remains recognized and identified under current item 51.

13. In the supplementary information sheet(s) for UL–544, identified under previous item 52, the date has been changed. This standard remains recognized and identified under current item 52.

14. UL–122 is withdrawn under previous item 61. UL–122 (2001) is added under current item 73.

15. NEMA MS–7–1998 is withdrawn under previous item 16. NEMA MS–7–1998 is added under current item 74.

K. Sterility

1. AAMI/ANSI ST34:1991 is withdrawn under previous item 15. ANSI/AAMI/ISO 14161:2000 is added under current item 70.

2. In the supplementary information sheet for ANSI/AAMI ST24:1999, identified under previous item 38, the title and the contact person have been changed. This standard remains recognized and identified under current item 38.

3. In the supplementary information sheet for ANSI/AAMI ST37:1996, identified under previous item 47, the title and the contact person have been changed. This standard remains recognized and identified under current item 47.

4. In the supplementary information sheet for ANSI/AAMI ST41:1999, identified under previous item 49, the title and the contact person have been changed. This standard remains recognized and identified under current item 49.

III. List of Recognized Standards

FDA maintains the agency's current list of "FDA Recognized Consensus Standards" in a searchable data base that may be accessed directly at FDA's Internet site at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm. FDA will incorporate the modifications and minor revisions described in this notice into the data base and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective.

FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive "Guidance on the Recognition and Use of Consensus Standards" via your fax machine, call the CDRH Facts-On-Demand system at

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800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of "Guidance onthe Recognition and Use of Consensus Standards" may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modifications to the List of Recognized Standards, Recognition List Number: 006" will be available on the CDRH home page. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "Guidance on the Recognition and Use of Consensus Standards," and the searchable data base for "FDA Recognized Consensus Standards," may be accessed through hyper links at http://www.fda.gov/cdrh/stdsprog.html. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at http://www.fda.gov/cdrh/fedregin.html.

VI. Submission of Comments and Effective Date

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current listing of "Modifications to the List of Recognized Standards, Recognition list: 006."

The recognition of standards announced in this notice of modifications will become effective on January 14, 2002.

VII. Listing of New Entries

The listing of new entries and consensus standards added as "Modifications to the List of Recognized Standards," under Recognition List Number: 006, is as follows:

Item Number	Title of Standards	Reference Number and Date
	Biocompatibility	
52	Standard Practice for Testing for Biological Responses to Particles In Vivo	ASTM F1904–98e1
53	Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	ASTM E1372–95 (1999)
54	Biological Evaluation of Medical Devices—Part 5: Tests for Cytotoxicity: In Vitro Methods	ANSI/AAMI/ISO 10993–5:1999
55	Biological Evaluation of Medical Device—Part 6: Test for Local Effects After Implantation	ANSI/AAMI/ISO 10993–6:1994
	Cardiovascular/Neurology	
34	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants	ASTM F138–00
35	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications	ASTM F562–00
36	Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstital) Alloy (UNS R56401) for Surgical Implant Applications	ASTM F136–98e1
37	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Transcutaneous Partial Pressure Monitoring Equipment	IEC 60601–2–23 (1999–12)
38	Medical Electrical Equipment-Part 2: Partial Requirements for the Safety of Direct Blood Pressure Monitoring Equipment	IEC 60601–2–34 (2000–10)
39	Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Application	ASTM F647–94 (2000)
40	Nonautomated Sphygmomanometers	ANSI/AAMI SP9:1994
41	Diagnostic Electrocardiographic Devices	ANSI/AAMI EC11:1991
42	Cardiac Monitors, Heart Rate Meters, and Alarms	ANSI/AAMI EC13:1992
43	Ambulatory Electrocardiographs	ANSI/AAMI EC38:1998
44	Blood Pressure Transducers	ANSI/AAMI BP22:1994
	General	
27	Medical Electrical Equipment—Part 1: General Requirements for Safety; Safety Requirements for Medical Electrical Systems	IEC 60601–1–1:2000
28	Medical Electrical Equipment—Part 1: General Requirements for Safety; Electromagnetic Compatibility—Requirements and Tests	IEC 60601–1–2, Second Edition, 2001
29	Human Factors Design Process for Medical Devices	ANSI/AAMI HE74–2001
	General Hospital/ General Plastic Surgery	
62	Infusion Equipment for Medical Use—Part 6: Freeze Drying Closures for Infusion Bottles	ISO 8536–6, First Edition, 1996–04–01
63	Infusion Equipment, Caps Made of Aluminum-Plastic Combinations for Infusion Bottles	ISO 8536–7, Second Edition, 1999–09–01
64	Infusion Equipment for Medical Use—Part 3: Aluminum Caps for Infusion Bottles	ISO 8536–3, Second Edition, 1999–09–01
65	Infusion Equipment for Medical Use—Part 2: Closures for Infusion Bottles	ISO 8536–2, First Edition, 1992–09–15
66	Infusion Equipment for Medical Use—Part 1: Infusion Glass Bottles	ISO 8536–1, Second Edition, 2000–06–01
67	Infusion Equipment for Medical Use—Part 5: Burette Type Infusion Sets	ISO 8536–5, First Edition, 1992–01–15

Item Number	Title of Standards	Reference Number and Date
68	Sterile Hypodermic Syringes for Single Use—Part 2: Syringes for Use With Powder-Driven Syringes Pumps	ISO 7886–2, First Edition, 1996–05–15
69	Stainless Steel Needle Tubing for Manufacture of Medical Devices	ISO 9626, First Edition, 1991–09–11
70	Standard Specification of Phase Change—Type Disposable Thermometer for Intermittent Determination of Human Temperature	ASTM E825–87
71	Standard Specification of Clinical Thermometers (Maximum Self-Registering, Mercury-In-Glass)	ASTM E667–86
72	Sterile, Single-Use Intravascular Catheters—Part 5: Over-Needle Peripheral Catheters, Amendment 1	ISO 10555–5, First Edition, 1996–06–15
73	Standard Specification for Clinical Thermometers Probe Covers and Sheaths	ASTM E1104–86
74	Standard Specification for Clinical Thermometers for Intermittent Determination of Patient Temperature	ASTM E1965–98
75	Infusion Equipment for Medical Use—Part 4: Infusion Sets for Single Use, Gravity Feed	ISO 8536–4, Second Edition, 1998–02–15
76	Transfusion Equipment for Medical Use—Part 4: Transfusion Sets for Single Use	ISO 1135–4, Second Edition, 1998–03–15
77	Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	ASTM F1862–00a
78	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	ASTM F1670–98
79	Conical Fittings With a 6 Percent (Luer) Taper for Syringes, Needles and Certain Other Medical Equipment—Part 2: Lock Fittings	ISO 594–2:1998
80	Standards Specification for Electronic Thermometers for Intermittent Determination of Patient Temperature	ASTM E1112–00 (reapproved 1991)
81	Standard Specification for Direct-Reading Liquid Crystal Forehead Thermometers	ASTM E1601–85
	In Vitro Devices	
54	Immunoprecipitin Analyses: Procedures for Evaluating the Performance of Materials Second Edition; Approved Guideline	NCCLS: D12–A2
55	Procedures for the Handling and Processing of Blood Specimens; Approved Guideline; Second Edition	NCCLS: H18–A2
56	Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobiacally; Approved Standard; Fifth Edition	NCCLS: M7–A5
57	Performance Standards for Antimicrobial Disk Susceptibility Tests; Approved Standard; Seventh Edition	NCCLS: M2–A7
58	Procedures for the Collection of Arterial Blood Specimens; Approved Standard	NCCLS: H1–A3
59	Laboratory Automation: Bar Codes for Specimen Container Identification; Approved Standard	NCCLS: AUTO2–A
60	Laboratory Automation: Specimen Container/Specimen Carrier; Approved Standard	NCCLS: AUTO1–A
61	Laboratory Automation: Communications With Automated Clinical Laboratory Systems, Instruments, Devices, and Information Systems; Approved Standard	NCCLS: AUTO3–A
	Obstetrics–Gynecology/Gastroenterology	
23	Standard Practice For Cleaning and Disinfection of Flexible Fiberoptic and Video Endoscopes Used in the Examination of Hollow Viscera	ASTM F1518–00
24	Standard Performance Specifications for Foley Catheters	ASTM F623–99
25	Electrosurgical Devices	ANSI/AAMI HF18–2001
	Ophthalmic	
27	Ophthalmic Implants—Intraocular Lenses—Part 7: Clinical Investigations	ISO 11979–7:2001
28	Ophthalmic Optics—Contact Lens Care Products—Microbiological Requirements and Test Methods for Products and Regimens for Hygienic Management of Contact Lenses	ISO 14729:2001
29	Ophthalmic Optics—Contact Lens Care Products—Antimicrobial Preservative Efficacy Testing and Guidance on Determining Discard Date	ISO 14730:2000
	Orthopaedic	
123	Standard Specification for Unalloyed Titanium for Surgical Implant Applications (UNS R50250, UNS R50400, UNS R50550, UNS R50700)	ASTM F67–00
124	Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants	ASTM F86–01
125	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants	ASTM F139–00
125	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants	ASTM F139–00
126	Standard Specification for Fixation Pins and Wires	ASTM F366–82 (2000)
127	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications	ASTM F562–00
128	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035)	ASTM F688–00
129	Standard Specification for 18 Chromium-12.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications	ASTM F745–00
130	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539)	ASTM F799–99
131	Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings	ASTM F1044–99
132	Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation	ASTM F1088–87 (1992) e1
133	Standard Specification for Ti6A14V Alloy Castings for Surgical Implants (UNS R56406)	ASTM F1108–97a
134	Standard Specification for Wrought Titanium-6 Aluminum-7 Niobium Alloy for Surgical Implant Applications (UNS R56700)	ASTM F1295–97a
135	Standard Specification for Unalloyed Titanium Wire UNS R50250, UNS R50400, UNS R50550, UNS R50700 for Surgical Implant Applications	ASTM F1341–99
136	Standard Specification for Wrought Titanium-6Aluminum-4Vanadium Alloy for Surgical Implant Applications	ASTM F1472–00

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Item Number	Title of Standards	Reference Number and Date
137	Standard Specification for Wrought Cobalt-28-Chromium-6-Molybdenum Alloy for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539)	ASTM F1537–000
138	Standard Specification and Test Methods for External Skeletal Fixation Devices	ASTM F1541–00
139	Standard Specification for Titanium and Titanium-6 Percent Aluminum-4 Percent Vanadium Alloy Powders for Coatings of Surgical Implants	ASTM F1580–95e1
140	Standard Terminology Relating to Spinal Implants	ASTM F1582–98
141	Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components with Torsion	ASTM F1612–95 (2000)
142	Standard Specification for Resurfacing Patellar Prosthesis	ASTM F1672–95 (2000)
143	Surgical Instruments—Metallic Materials—Part 1: Stainless Steel	ISO 7153–1:1991/ Amd.1:1999
144	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673)	ASTM F138–00
145	Standard Practice for Care and Handling of Orthopedic Implants and Instruments	ASTM F565–00
146	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application	ASTM F603–00
147	Standard Specification for Alpha Plus Beta Titanium Alloy Forgings for Surgical Implants.	ASTM F620–00
148	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	ASTM F648–00
149	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	ASTM F746–87 (1999)
150	Standard Practice for Permanent Marking of Orthopaedic Implant Components	ASTM F983–86 (2000)
151	Standard Specification for Wrought Cobalt-Chromium Alloy Surgical Fixation Wire	ASTM F1091–91 (2000)
152	Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings	ASTM F1160–00
153	Standard Specification and Test Methods for Intramedullary Fixation Devices	ASTM F1264–00
154	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673)	ASTM F1350–91 (2000)
155	Implants for Surgery—Components for Partial and Total Knee Joint Prostheses—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastics	ISO 7207–2:1998
156	Standard Specification and Test Methods for Metallic Bone Staples	ASTM F564–00
157	Standard Specification and Test Methods for Metallic Medical Bone Screws	ASTM F543–01
	Physical Medicine	
158	Wheelchairs—Part 1: Determination of Static Stability	ISO 7176–1:1999
159	Wheelchairs—Part 2: Determination of Dynamic Stability of Electric Wheelchairs	ISO 7176–2:2001
160	Requirements and Test Methods for Electromagnetic Compatibility	ANSI/RESNA WC/Vol.2–1998, Section 21
	Radiology	
63	Medical Electrical Equipment—Part 2–43: Particular Requirements for the Safety of X-ray Equipment for Interventional Procedures	IEC 60601–2–43–Ed. 1.0
64	Medical Electrical Equipment—Part 2–45: Particular Requirements for the Safety of Mammographic X-ray Equipment and Mammographic Stereotatic Devices	IEC 60601–2–45–Ed. 20
65	Standard Test Method for Measurement of Magnetically Induced Displacment Force on Passive Implants in the Magnetic Resonance Environment	ASTM F2052–00
66	Medical Ultrasound Safety (R1999)	AIUM
67	Determination of Signal to Noise Ratio (SNR) in Diagnostic Magnetic Resonance Images	NEMA MS–1 (R–2000)
68	Acoustic Noise Measurement Procedure for Diagnostic Magnetic Resonance Imaging Device	NEMA MS–4 (R1998)
69	Characterization of Special Purpose Coils for Diagnostic Magnetic Resonance Images	NEMA MS6–2000
70	Digital Imaging and Communications in Medicine-Set Includes PS3.1 Through PS3.14	NEMA PS3 (Set), DICOM Set
71	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	NEMA UD 2–1998 (revision 2)
72	Standard for Real Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment	NEMA UD 3–1998 (revision 1)
73	Medical Electrical Equipment: Radionuclide Calibrators—Particular Methods for Describing Performance Calibration and Usage of Ionization	IEC 61303 (1994–10)
74	Calibration and Usage of Ionization Chamber Systems for Assay of Radionuclides	IEC 61145 (1992-05)
75	Standard for Safety of Photographic Equipment—Fourth Edition	UL–122 (2001)
76	Measurement Procedure for Time-Varying Gradient Fields (dB/dt) for Magnetic Resonance Imaging Systems	NEMA MS7–1998
	Software	
7	Medical Device Software—Software Life Cycle Processes	ANSI/AAMI SW68:2001
	Sterility	
70	Sterilization of Health Care Products—Biological Indicators—Guidance for the Selection, Use and Interpretation of Results, Second Edition	ANSI/AAMI/ISO 14161–2000

Dated: December 18, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–852 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public that the U.S. Fish and Wildlife Service (Service), in cooperation with the Oregon Department of Fish and Wildlife (ODFW), The Nature Conservancy (TNC), and Portland General Electric (PGE), intends to gather information necessary to prepare an environmental document (environmental assessment or environmental impact statement) regarding the proposed Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (MSCCAA) and issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). Threemile Canyon Farms is the potential permit applicant.

The Service is furnishing this notice in order to: (1) Advise other Federal and State agencies, affected tribes, and the public of our intentions; (2) announce the initiation of a 30-day public scoping period; and (3) to obtain suggestions and information on the scope of issues to be included in the environmental document.

DATES: Written comments from all interested parties must be received on or before February 13, 2002.

ADDRESSES: Comments should be addressed to Kemper McMaster, State Supervisor, USFWS, 2600 SE 98th Ave., Suite 100, Portland, OR 97266, telephone (503) 231–6179, facsimile (503) 231–6195.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, (503) 231–6179.

SUPPLEMENTARY INFORMATION: Candidate Conservation Agreements with Assurances contain a strategy for covered lands and activities that demonstrate an applicant's contribution to preclude or remove the need to list a covered species as threatened or endangered under the Act. In return, the applicant is provided with regulatory certainty that they will not be required to provide additional conservation measures should any of the covered species become listed under the ESA in the future. The MSCCAA will cover approximately 93,000 acres near Boardman, Oregon, including a 23,000-acre wildlife conservation area managed by TNC and property owned by PGE located within the plan boundaries. The primary goal of the MSCCAA is to implement a variety of habitat conservation measures for the following covered species: the Washington ground squirrel (*Spermophilus washington*), ferruginous hawk (*Buteo regalis*), loggerhead shrike (*Lanius ludovicianus*), grasshopper sparrow (*Ammodramus savannarum*), and the sage sparrow (*Amphispiza belli*). Conservation measures will focus on restoration and re-establishment of native plant communities including sagebrush and bitterbrush steppe along with grassland species such as needle and thread (*Stipa spp.*). Other measures include control of exotic species and implementation monitoring. Potential covered activities include: mechanized farming and dairy operations; product transportation; road construction, use and maintenance; site preparation; fertilizer application; fire suppression; prescribed burning and other agricultural or habitat restoration activities.

The Service will conduct an environmental review of the Plan and prepare an environmental document. The review will analyze the proposal, as well as a full range of reasonable alternatives, and the associated impacts of each. Should information become available during the scoping process that indicates the likelihood of significant impacts from the proposed project, an Environmental Impact Statement will be prepared. Otherwise, an Environmental Assessment will be prepared. Comments and suggestions are invited from all interested parties to ensure the full range of issues related to this proposed action are identified. Comments, or questions should be addressed to the Service at the address or telephone number provided above.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations 40 CFR (1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Service for compliance with those regulations.

Dated: January 8, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–849 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0122).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Filing Sureties."

DATES: Submit written comments on or before March 15, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION:

Title: Filing Sureties.

OMB Control Number: 1010–0122.

Bureau Form Number: Forms MMS–4435 and 4436.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in

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carrying out DOI's Indian trust responsibility.

Regulations in 30 CFR part 243 allow lessees, designees, or payors who can demonstrate that they are financially solvent to stay the effectiveness of an MMS order or decision without posting a surety instrument (Federal leases only). For those who are not financially solvent or for appeals involving Indian leases, MMS requires that a surety instrument be posted to secure the financial interests of the public and Indian lessors during the entire administrative or judicial appeal process. MMS accepts the following types of surety instruments:

- Form MMS–4435, Administrative Appeal Bond;
- Form MMS–4436, Letter of Credit;
- Certificates of Deposit; and
- U.S. Treasury Securities.

This information collection covers the hour burden associated with submitting annual audited financial statements or the surety instruments listed above. Submission of the information in this collection is necessary to stay the effectiveness of an MMS order or decision issued for a Federal and Indian property. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 300 Federal or Indian lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 300 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon.

Public Comment Policy. We will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 16, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–881 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings for Calendar Year 2002

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 2002 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 22—San Francisco, CA
Saturday, February 2—Point Reyes, CA
Tuesday, February 26—San Francisco, CA
Tuesday, March 26—San Francisco, CA
Tuesday, April 23—San Francisco, CA
Saturday, May 4—Point Reyes, CA
Tuesday, May 28—San Francisco, CA
Tuesday, June 25—San Francisco, CA
Tuesday, July 23—San Francisco, CA
Tuesday, August 27—San Francisco, CA
Tuesday, September 24—San Francisco, CA
Saturday, October 19—Point Reyes, CA
Tuesday, October 22—San Francisco, CA
Tuesday, November 26—San Francisco, CA

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service areas in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Lennie Roberts
Dr. Edgar Wayburn
Mr. Michael Alexander
Mr. Gordon Bennett
Ms. Anna-Marie Booth
Ms. Yvonne Lee
Ms. Susan Giacomini Allan
Mr. Trent Orr
Mr. Redmond Kernan
Mr. Doug Nadeau
Ms. Betsey Cutler
Mr. Trent Orr
Mr. Dennis Rodoni
Mr. John J. Spring
Mr. Fred Rodriguez
Mr. Paul Jones

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, February 2, Saturday, May 4 and Saturday, October 19 meetings, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California. However, some meetings may be held at other locations in Marin County or at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancellations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

Anticipated possible agenda items at meetings during calendar year 2002 may include:

- Updates on Advanced Notice of Proposed Rulemaking (ANPR)
- Updates on Planning Issues for Fort Baker
- Doyle Drive Scoping Overview and Public Comment
- Updates on Presidio Vegetation Management Plan
- Updates on Marin Comprehensive Transportation Planning
- Reports on Park Site Ferry Planning
- Updates on Park 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Update reports on Crissy Field Education Center
- Reports on GGNRA education programs
- Update on Plans for Crissy Field projects
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan, including the Merrie Way Visitor Center
- Update Reports on Fort Mason Center Pier One and Pier 2 Seismic Work
- Reports on park equestrian permits
- GGNPA annual briefing
- Redwood Creek Watershed Planning
- Reports on Alcatraz Historic Preservation and Safety Construction
- Update on park expansion legislation
- Update on transfer of properties in GGNRA boundary to NPS
- Issues affecting San Mateo County national park lands
- Update on Caltrans Highway 92 and Devils Slide tunnel projects
- Update reports on "Park Partner" programs, including Bay Area Discovery Museum plans, Marine Mammal Center planning, and Slide Ranch site improvements
- Updates on Fort Mason Reuse projects and Upper Fort Mason planning
- Updates on Presidio Trails Master Plan and Presidio Mountain Lake projects
- Updates on issues concerning areas managed by the Presidio Trust, and
- Updates on issues concerning management and planning at Point Reyes NS, including Point Reyes NS General Management Plan updates.

These meetings will also contain Superintendent's Report and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site nps.gov/goga under the section "Advisory Commission".

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 13. 2001.

Mary Gibson Scott,

Acting General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 02–865 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–929–931 (Final)]

Silicomanganese From India, Kazakhstan, and Venezuela

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On November 9, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigations (66 FR 59596, November 29, 2001). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from January 22, 2002, to March 25, 2002 (66 FR 63522, December 7, 2001, and 66 FR 67185, December 28, 2001). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 21, 2002; the prehearing conference, if needed, will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 25, 2002; the prehearing staff report will be placed in the nonpublic record on March 15, 2002; the deadline for filing prehearing briefs is March 22, 2002; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 2, 2002; the deadline for filing posthearing briefs is April 8, 2002; the Commission will make its final release of information on

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April 22, 2002; and final party comments are due on April 24, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–891 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: Notice of second annual report, scheduling of public hearing, and request for public comments.

EFFECTIVE DATE: January 7, 2002.

SUMMARY: The Commission has announced the schedule for its second annual report in investigation No. 332–427, U.S. Market Conditions for Certain Wool Articles, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on February 12, 2001, at the request of the United States Trade Representative (USTR).

FOR FURTHER INFORMATION CONTACT: For general information, contact Lisa Ferens (202–205–3486; *lferens@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background:

As requested by the USTR, the Commission will provide information for 2001 and year-to-date 2001–02 on U.S. market conditions, including domestic demand, domestic supply, and domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabrics and yarn used in the manufacture of such clothing; and wool fibers used in the manufacture of such fabrics and yarn. Also, as requested by the USTR, the Commission will provide, to the extent possible, data on:

(1) Increases or decreases in sales and production of the subject domestically-produced worsted wool fabrics;

(2) Increases or decreases in domestic production and consumption of the subject apparel items;

(3) The ability of domestic producers of the subject worsted wool fabrics to meet the needs of domestic manufacturers of the subject apparel items in terms of quantity and ability to meet market demands for the apparel items;

(4) Sales of the subject worsted wool fabrics lost by domestic manufacturers to imports benefiting from the temporary duty reductions on certain worsted wool fabrics under the tariff-rate quotas (TRQs) provided for in headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTS);

(5) Loss of sales by domestic manufacturers of the subject apparel items related to the inability to purchase adequate supplies of the subject worsted wool fabrics on a cost competitive basis; and

(6) The price per square meter of imports and domestic sales of the subject worsted wool fabrics. The USTR requested that the Commission submit its second (and final) annual report under this investigation by September 16, 2002. The USTR has stated that it will provide copies of the Commission's confidential reports to the U.S. Department of Commerce. The USTR requested that the Commission issue a public version of the annual report, as soon as possible thereafter, with any business confidential information deleted. The Commission submitted its first annual report to the USTR on September 17, 2001.

Public Hearing:

A public hearing in connection with preparation of the second annual report will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 18, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 2, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 4, 2002. The deadline for filing post-hearing briefs or statements is 5:15 p.m., April 29, 2002. In the event that, as of the close of business on April 2, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 2, 2002, to determine whether the hearing will be held.

Written Submissions:

In connection with preparation of the second annual report for the USTR, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission. In lieu of or in addition to participating in the above-referenced hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission by no later than the close of business on April 29, 2002. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in its reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that would reveal the individual operations of the firm supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects:

Tariffs, Imports, Wool, Fabric, and Suits.

Issued: January 8, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–889 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by COB March 11, 2002.

EFFECTIVE DATE: January 7, 2002.

Purpose of Information Collection

The forms are for use by the Commission in connection with its second, and final, annual report for investigation No. 332–427, U.S. Market Conditions for Certain Wool Articles, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR), which asked that the Commission submit its second annual report by September 16, 2002.

Summary of Proposal

(1) *Number of forms submitted:* 3.

(2) *Title of forms:* Questionnaire for U.S. Producers of Worsted Wool Fabrics; Questionnaire for U.S. Purchasers of Worsted Wool Fabrics; Questionnaire for U.S. Importers of Worsted Wool Fabrics.

(3) *Type of request:* reinstatement with change.

(4) *Frequency of use:* one-time use.

(5) *Description of respondents:* U.S. producers, purchasers, and importers of worsted wool fabrics.

(6) *Estimated number of respondents:* 56 (producers, purchasers, and importers).

(7) *Estimated total number of hours to complete the forms:* 1,245 hours.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the forms and supporting documents may be obtained from Lisa Ferens (202–205–3486; *lferens@usitc.gov*) of the Office of Industries, U.S. International Trade Commission. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals may obtain information on this matter by contacting the Commission's TTD terminal (telephone No. 202–205–1810). General information about the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: January 8, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–890 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ) Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until March 15, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact George Schneider, Special Counsel in the Voting Section of the Civil Rights Division, 1800 G Street, NW., Washington, DC 20008.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. *Applicable Component:* Civil Rights Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, local or tribal governments. *Other:* None. Jurisdictions specifically covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that proposed voting changes are not racially discriminatory.

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The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 10,103 respondents with the average response at 10.021 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 47,365 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: January 8, 2002

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–867 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Medical Certification for Disability Exception.

The Department of Justice (DOJ), Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 66, Number 176, page 47240) on September 11, 2001, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 13, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N–648, Immigration and Naturalization Service, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Affected Public:* Individuals or households. The Immigration and Naturalization Service uses the Form N–648 medical certification issued by the licensed medical professional to substantiate a claim for an exception to the requirements of section 312(a) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 20,000 respondents. The amount of estimated time required for the average respondent to respond is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Robert Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 8, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–892 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: National Survey of Public Participation in the Arts. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before March 20, 2002. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Tom Bradshaw, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 617, Washington, DC 20506–0001, telephone (202) 682–5432 (this is not a toll-free number), fax (202) 682–5677.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 02–879 Filed 1–11–02; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility ad clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form.

OMB Approval Number: 3145–0001.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

Abstract: The North Atlantic Treaty Organization (NATO) initiated its Advanced Study Institutes Program in 1958 modeled after a small number of very successful summer science "courses" that were held in Europe and that sought to rebuild Europe's science strength following World War II. The goal was to bring together both students and researchers from the leading centers of research in highly targeted fields of science and engineering to promote the "American" approach to advanced learning, spirited give-and-take between students and teachers, that was clearly driving the rapid growth of U.S. research strength. Today the goal remains the same; but due to the expansion of NATO, each year an increasing number of ASIs are held in NATO Partner Countries along with those held in the original NATO Member countries. In the spirit of cooperation with this important activity, the Foundation inaugurated in 1959 a small program of travel grants for advanced graduate students and young postdoctorals to assist with the major cost of such participation, that of transatlantic travel. It remains today a significant means for young scientists and engineers to develop contact with their peers throughout the world in their respective fields of specialization.

The Advanced Study Institutes (ASI) travel awards are offered primarily to advanced graduate students, but include recent postdoctoral students and new science faculty members, to attend one of the NATO's ASIs held in the NATO-member and partner countries of Europe. The NATO ASI program is targeted to those individuals nearing the completion of their doctoral studies in science, mathematics, and engineering who can take advantage of opportunities to become familiar with progress in their respective fields of specialization in other countries.

The following describes the procedures for the administration of the Foundation's NATO Advanced Study Institute (ASI) Travel Awards, which provide travel support for a number of U.S. graduate students and postdoctoral participants to attend the ASIs scheduled for Europe.

- Advanced Study Institute Determination

Once NATO has notified us that the schedule of institutes is final, and we have received the descriptions of each institute, we determine which institutes NSF will support. The ASI travel award program supports those institutes that offer instruction in the fields of science traditionally supported by NSF as published in *Guide to Programs*.

The program will not support institutes that deal with clinical topics, biomedical topics, or topics that have disease-related goals. Examples of areas of research that will not be considered are epidemiology; toxicology; the development or testing of drugs or procedures for their use; diagnosis or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals; and animal models of such conditions. However, the program does support institutes that involve research in bioengineering, with diagnosis or treatment-related goals that apply engineering principles to problems in biology and medicine while advancing engineering knowledge. The program also supports bioengineering topics that aid persons with disabilities. Program officers from other Divisions in NSF will be contacted should scientific expertise beyond our own be required in the determination process.

- Solicitation for Nominations

Following the final determination as to which Advanced Study Institutes

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NSF will support, we contact each institute director to ask for a list of up to 5 nominations to be considered for NSF travel support.

• EHR Contact with the Individuals Nominated

Each individual who is nominated by a director will be sent the rules of eligibility, information about the amount of funding available, and the forms (NSF Form 1379, giving our Finance Office electronic banking information; NSF Form 1310 (already cleared), and NSF Form 192 (Application for International Travel Grant)) necessary for our application process.

• The Funding Process

Once an applicant has been selected to receive NSF travel award support, his or her application is sent to our Finance office for funding. They electronically transfer the amount of $1000 into the bank or other financial institution account identified by the awardee.

Our plan is to have the $1000 directly deposited into the awardee's account prior to the purchase of their airline ticket. An electronic message to the awardee states the NSF is providing support in the amount of $1000 for transportation and miscellaneous expenses. The letter also states that the award is subject to the condition in F.L. 27, *Attachment to International Travel Grant*, which states the U.S. flag-carrier policy.

As a follow-up, each ASI director may be asked to verify whether all NSF awardees attended the institute. If an awardee is identified as not utilizing the funds as prescribed, we contact the awardee to retrieve the funds. However, if our efforts are not successful, we will forward the awardee's name to DGA, which has procedures to deal with that situation.

We also ask the awardee to submit a final report on an NSF Form 250, which we provide as an attachment to the electronic award message.

• Selection of Awardees

The criteria used to select NSF Advanced Study Institute travel awardees are as follows:

1. The priority of selection is by the status level of the applicant:

(a) Advanced graduate student, or

(b) Recent post-doc (Ph.D. received no earlier than three years before the ASI).

(c) New faculty with Ph.D.'s received no earlier than three years before the ASI).

2. We shall generally follow the order of the nominations, listed by the director of the institute, within priority level.

3. Those who have not attended an ASI in the past will have a higher priority than those who have.

4. Nominees from different institutions and research groups have higher priority than those from the same institution or research group. (Typically, no more than one person is invited from a school or from a research group.)

Use of the Information: For NSF Form 192, information will be used in order to verify eligibility and qualifications for the award.

For NSF Form 250, information will be used to verify attendance at Advanced Study Institute and will be included in Division annual report.

Estimate of Burden: Form 192—1.5 hours; Form 250—2 hours.

Respondents: Individuals.

Estimated Number of Responses per Award: 150 responses, broken down as follows: For NSF Form 250, 75 respondents; for NSF Form 192, 75 respondents.

Estimated Total Annual Burden on Respondents: 262.5 hours, broken down by 150 hours for NSF Form 250 (2 hours per 75 respondents) and 112.5 hours for NSF Form 192 (1.5 hours per 75 respondents).

Dated: January 8, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 02–790 Filed 1–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its February 14, 2001, application for proposed amendment to Facility Operating License No. DPR–64 for the Indian Point Nuclear Generating Unit No. 3 (IP3), located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications to extend the allowed outage time for the emergency diesel generators and the associated fuel oil storage tanks from 72 hours to 14 days on a one-time basis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 21, 2001 (66 FR 15922). However, by letter dated December 5, 2001, the licensee withdrew the proposed change.

Further details with respect to this action, see the application for amendment dated February 14, 2001, as supplemented on July 25, 2001, and the licensee's letter dated December 5, 2001, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm./adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Sr. Project Manager, Section 1, Project Directorate, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–847 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Amergen Energy Company, LLC; Three Mile Island Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR), section 50.44; 10 CFR part 50, appendix A, General Design Criterion 41; and 10 CFR part 50, appendix E, section VI, for Facility Operating License No. DPR–50 issued to AmerGen Energy Company, LLC, (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt TMI–1 from certain requirements of 10 CFR 50.44; 10 CFR part 50, appendix A, General Design Criterion 41; and part 10 CFR 50, appendix E, section VI, pertaining to the hydrogen control system requirements (i.e., containment post-accident hydrogen monitors, recombiners, and hydrogen purge system); and remove these requirements from the TMI–1 design basis. The licensee's request for an exemption from the functional requirement for hydrogen monitoring is not being approved. The NRC staff's position, with respect to each of the licensee's specific exemption requests, will be documented in the exemption. Consequently, this environmental assessment addresses only the exemption from the requirements related to the recombiners and the hydrogen purge system and the removal of these requirements from the TMI–1 design basis.

The proposed action is in accordance with the licensee's letter dated September 20, 2000, as supplemented by letters dated August 2 and September 28, 2001.

The Need for the Proposed Action

The proposed exemption from the requirements pertaining to recombiners and the hydrogen purge system, and their associated removal from the design basis, would improve the safety focus at TMI–1 during an accident, and provide for a more effective and efficient method of maintaining adequate protection of public health and safety by simplifying the Emergency Plan and Emergency Plan Implementing Procedures. This would reduce the operators' post-accident burden and allow them to give higher priority to more important safety functions following postulated plant accidents.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no environmental impacts associated with the removal of the recombiners and hydrogen purge system from the TMI–1 design basis.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any resources not previously considered in the Final Environmental Statement for TMI–1, dated December 1972.

Agencies and Persons Consulted

On December 11, 2001, the staff consulted with the Pennsylvania State official, Mr. Michael Murphy of the Pennsylvania Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 20, 2000, as supplemented by letters dated August 2 and September 28, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–848 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 24–26, 2002, Hawthorn Suites, 6435 Westwood Blvd., Orlando, Florida, in Conference Room Magnolia A.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, January 24, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss matters related to future plant designs, including: regulatory challenges associated with the licensing of future plant designs (e.g., Pebble Bed Modular Reactor and Gas Turbine Modular Helium Reactor); use of PRA and defense-in-depth concept for advanced reactor designs; and issues related to Westinghouse AP1000 design. Also, it will discuss the NRC Safety Research Program, including proposed advanced reactor research plan, new areas of research, and draft ACRS report to the Commission on the NRC Safety Research Program.

Friday, January 25, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the use of formal decision analysis and the role of SAPHIRE Code in the risk-informed regulatory structure. Also, it will discuss matters associated with core power uprates, including: use of risk information in evaluating power

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uprate applications; criteria to be used by the ACRS in endorsing power uprates including PWR power uprates expected in the future; and lessons learned from the review of power uprate applications.

Saturday, January 26, 2002—8:30 a.m.—12:30 p.m.

The Subcommittee will discuss the significance determination process (SDP), including: need for an SDP based on low-power and shutdown operations PRAs or other shutdown management tools; peer review of SPAR models and SDP worksheets; and thresholds for performance indicators. Also, the Subcommittee will discuss adequacy of the process for conducting ACRS business.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee.

Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designed Federal Official, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 8, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–846 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45239; File No. SR–NASD–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Material Regarding Interfering With the Transfer of Customer Accounts

January 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to interpret NASD Rule 2110 to prohibit members from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

The text of the proposed rule change appears below. New text is in italic.

* * * * *

IM 2110–7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation represents that, as a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, NASD Regulation asserts that the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, NASD Regulation represent when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may request that the registered representative's former firm transfer their accounts to the registered representative's new firm so that the clients may continue their relationship with the registered representative. NASD Regulation asserts that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new employer, or soliciting clients to transfer their accounts to the registered representative's new firm, sometimes seeks a court order to prevent the transfer of accounts to the registered representative's new firm.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending before the SEC. NASD Regulation represents that the (instant) proposed rule change would not conflict with or affect the operation of Rule 10335 (i.e., the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes), but rather would address the substantive problem of customer harm resulting from firms obtaining temporary injunctive relief that prevents customers from transferring their accounts.

NASD Regulation asserts that in some cases members have obtained relief in the form of court orders requiring the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. NASD Regulation asserts that members also have obtained court orders requiring the registered representative's new firm to send letters to customers that may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

NASD Regulation believes that it is inconsistent with the high standards of commercial honor and just and equitable principles of trade mandated by NASD Rule 2110 for a member, in the context of an employment dispute with a former registered representative, to seek to override a customer's request to transfer his or her account by obtaining a court order stopping the transfer. NASD Regulation believes that customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts. Moreover, NASD Regulation believes that customers whose account transfer requests have been delayed in this manner could be deprived of brokerage services and access to their accounts while their registered representative and his or her former firm attempt to resolve an employment dispute.

In NASD Notice to Members 79–7 (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. NASD Regulation believes that obtaining court orders to prevent customers from following a registered representative to a different firm are similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this practice, the NASD submits this proposed rule change to adopt Interpretive Material 2110–7, which would state that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. The proposed rule change would not affect the operation of Rule 11870 (governing customer account transfers). NASD Regulation represents that members would continue to have the ability to delay or take exception to account transfers in situations where, for example, the account contains nontransferable assets or the transfer request provides information that is inadequate to identify the account to be transferred.[4]

NASD Regulation represents that the proposed rule change does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Similarly, NASD Regulation believes that the proposal would not prevent a firm from enforcing employment agreements with former representatives. For example, NASD Regulation represents that a member could seek an injunction against a former registered representative and/or his or her new firm to prohibit solicitation of the member's customers if the registered representative had signed an employment contract agreeing not to solicit those customers. Rather, NASD Regulation represents that the proposed rule change is limited to restricting a member from interfering with a customer's right to transfer his or her account in the context of an employment dispute, once the customer has requested the transfer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that member firms that seek to override a customer's request to transfer his or her account to a new firm in the context of an employment dispute with a former registered representative violate NASD Rule 2110. NASD Regulation believes that this proposed rule change is necessary to protect investors and the public interest with respect to transfers of customers accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On May 22, 2001, NASD Regulation published Notice to Members 01–36 ("NTM 01–36") seeking comment on a proposed interpretive material to NASD Rule 2110 that would state:

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to take any action that, directly or indirectly, interferes with a customer's ability to transfer his or her account, including seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

The comment period expired on July 5, 2001. Eighty-five comments were received in response to the notice. Of the 85 comments received, 67 agreed that customers should have the ability to move their accounts to new firms without interference from the member firm holding the account. These commenters expressed the view that a firm should not be able to override a customer's decision to move his or her account to a new firm.

Other commenters, while generally supportive of a customer's right to transfer an account to his or her brokerage firm of choice, raised concerns that the language of the proposed interpretative material could impede a member's ability to collect debts and enforce liens against a customer's account. These commenters suggested that the proposed interpretative material should not prevent a member from interfering with a customer's ability to transfer his or her account to avoid paying debts accrued in the account or to evade a lien on assets held in the account. Because

[4] The SEC recently approved amendments to NASD Rule 11870 that facilitate the transfer of customer accounts containing third party proprietary products by allowing a firm receiving a customer account from another firm to assess whether the account contains assets that the receiving firm is unable to support, and to inform the customer of his or her available options concerning those assets. *See* Exchange Act Release No. 44787 (September 12, 2001), 66 FR 48301 (September 19, 2001).

[5] 15 U.S.C. 78o–3(b)(6).

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NASD Regulation did not intend to interpret rule 2110 in a manner that would affect the ability of members to collect debts or enforce liens against customers, the language contained in NTM 01–36 has been modified for this proposed rule change to clarify the inapplicability of the proposed rule change in these contexts.

Numerous commenters described other situations in which they thought a member should be able to take action to stop a customer from transferring his or her account. NASD Regulation represents that existing NASD rules address many of these situations. In certain other situations described by commenters, NASD Regulation believes that the right of a customer to transfer his or her account, once the customer has requested the transfer, should take precedence. For example, some commenters believed that a member should be able to interfere with a customer's ability to transfer his or her account to follow the member's registered representative to a new firm if the registered representative did not disclose to customers the consequences of the transfer (e.g., transfer fees and manner of disposition of any non-transferable assets).

While this scenario raises concerns, NASD Regulation believes that the current regulatory scheme addresses these concerns. NASD Regulation represents that firms are required to deliver to customers information regarding the applicable fees for opening, maintaining and closing an account. In addition, NASD Rule 11870 requires that customers requesting transfer of an account be notified of non-transferable assets in an account. NASD Regulation notes that anti-fraud provisions, as well as NASD Rule 2110, are available to address false or misleading statements a registered representative may have made to a customer to induce the customer to transfer his or her account.

Some commenters suggested that a member should be able to interfere with the customer's ability to transfer his or her account to follow one of the member's registered representatives to a new firm if the customer was the client of one of the member's other registered representatives, or if the customer opened the account to form a relationship with the member, and not with a particular registered representative. NASD Regulation believes that the customer's decision should be controlling, even under these circumstances.

Sixteen commenters objected to the adoption of an interpretative material that would prohibit members from interfering with a customer's request to transfer his or her account to a new firm when the customer sought to follow a registered representative to a new firm. Among the objections raised were concerns that such an interpretation would encourage registered representatives to breach employment contracts. NASD Regulation, however, represents that nothing in NTM 01–36 or this proposed rule change gives registered representatives the right to breach employment contracts or disclose personal nonpublic information in violation of law. Further, NASD Regulation notes that member firms may seek redress against a registered representative who acts in this manner by, for example, seeking from the registered representative monetary damages or an injunction from further misconduct.

Other commenters asserted that the proposal was inconsistent with the Gramm-Leach-Bliley Act of 1999 ("GLBA"), which requires companies to safeguard the confidentiality of customer information, because a company pursuing legal action against a registered representative pursuant to the member's obligations to protect customer information under GLBA could be in violation of the interpretation. NASD Regulation, however, believes that the proposed rule change does not prohibit a member from taking action against a registered representative as necessary to safeguard confidential customer information. NASD Regulation believes that the proposed rule change prevents a member from taking action to restrict a customer's ability to transfer his or her account to a new firm once the customer has requested the transfer. NASD Regulation believes that, to the extent that any improper sharing of confidential customer information occurred before the customer's decision to transfer, the firm could seek legal redress without interfering with the customer's decision to move his or her account.

Commenters objecting to the proposal also expressed concern that the interpretation deprived members of access to legal remedies available to resolve employment disputes. NASD Regulation represents that the proposed rule change does not deny to members remedies that assist in resolving employment disputes between members and their former registered representatives; the proposed rule change articulates the view of the Association that it is inconsistent with just and equitable principles of trade for a member to harm customers as a means of resolving employment disputes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f)(1) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2001–95 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–883 Filed 1–11–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(1).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45251; File No. SR–NYSE–2001–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 902 To Permit the Submission of Member to Member Coupled Orders in Crossing Session I in Order To Close Out Error Positions

January 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend NYSE Rule 902, Off-Hours Trading Orders, to permit the submission of member to member coupled orders in Crossing Session I in order to close out error positions. The text of the proposed rule change is below. Proposed new language is in italic.

Rule 902. Off-Hours Trading Orders

(a) Entry of Orders

(i) Closing-Price Orders

Subject to Rule 906 (Impact of Trading Halts on Off-Hours Trading), a member or member organization may enter into the Off-Hours Trading Facility a closing-price order at such times as the Exchange may specify.

(ii) Closing-Price Coupled Orders

(A) Subject to Rule 906, a member or member organization may enter into the Off-Hours Trading Facility a closing-price order to buy coupled with a closing-price order to sell the same quantity of the same security for execution against each other. However, except for those orders defined in paragraphs (ii)(B) *and (C)* of this rule, a member or member organization may not so enter such coupled orders if both such orders are for an account in which any member or member organization, or any "associated party" (as paragraph (b)(ii) of Rule 800 (Basket Trading: Applicability and Definitions) defines that term), has a direct or indirect interest.

(B) A member or member organization may enter a closing-price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization which has agreed to offset all or part of any market-on-close imbalance that existed in the stock prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session.

(C) A member or member organization may enter a closing price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization where such member or member organization is acting to offset a transaction made in error. Both parties to the closing price transaction must maintain a specific written record that the purpose of the coupled order was to close out an error.

(iii) Aggregate-Price Coupled Orders

A member or member organization may only enter into the Off Hours Trading Facility an aggregate-price order to buy (sell) that is coupled with an aggregate-price order to sell (buy) the same quantities of the same securities.

(b)–(g) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–NYSE–99–25,[3] the Commission approved initiatives to strengthen the regulation of activities of members on the Exchange Floor ("Floor"). The initiatives consisted of amendments to NYSE Rule 134, Differences and Omissions—Cleared Transactions ("QTs"), and a new rule, NYSE Rule 407A, Disclosure of All Members Accounts. The Exchange is now proposing an amendment to its after-hours crossing session procedures to facilitate the handling of error transactions on the Floor.

In 1991, the Exchange established its "Off-Hours Trading Facility."[4] One of its stated purposes was to recapture order flow in NYSE listed securities that was being executed offshore. The Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4 p.m. trading session. "Crossing Session I" is the session from 4:15 p.m. to 5 p.m. during which orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a trading halt under NYSE Rule 80B, Trading Halt Due to Extraordinary Market Volatility) or is halted after 4 p.m.[5] During Crossing Session I, orders may be entered via SuperDOT and may be canceled up to 5 p.m. Eligible orders on the specialist's book will automatically participate in Crossing Session I.

NYSE Rule 902, Off-Hours Trading Orders, currently allows coupled orders to buy and sell the same amount of the same security to be entered into Crossing Session I. Moreover, NYSE Rule 902 provides that coupled orders cannot be entered into Crossing Session I if each side of the coupled order is for the account of a member or member organization. The only exception currently provided for in NYSE Rule 902 is a situation in which a member or member organization and a specialist member organization enter a coupled order in a stock, which has the effect of offsetting all or a part of any market-on-close imbalance that existed in such stock prior to the official closing of the 9:30 a.m. to 4 p.m. trading session.

The Exchange believes it is appropriate to add an additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 44769 (September 8, 2001), 66 FR 47710 (September 13, 2001); 44427 (June 14, 2001), 66 FR 33282 (June 21, 2001); and 42381 (February 3, 2000), 65 FR 6673 (February 10, 2000).

[4] *See* Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994).

[5] The NYSE confirmed that the new exception to NYSE Rule 902(a)(ii) (embodied in proposed NYSE Rule 902(a)(ii)(C)) is subject to NYSE Rule 906, Impact of Trading Halts on Off-Hours Trading, and, therefore, the proposed exception does not permit trading of a security that is subject to a trading halt under NYSE Rule 906(a) or (b). Telephone discussion between Donald Siemer, Director Rule Development, Market Surveillance Division, NYSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (January 7, 2002).

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exception in NYSE Rule 902 to permit a coupled order to be submitted in Crossing Session I to address situations where a member or member organization wishes to close out an error at the closing price on the Exchange, and the specialist has agreed to take the other side of the trade. Both parties to the coupled order would be required to maintain a specific written record that the purpose of the coupled order was to close out an error.

An error discovered at or around the close can be closed out promptly at the closing price, ensuring that the error is closed out in a timely manner. Such a procedure is also a benefit to members in that it ensures that the member does not have to bear any overnight market risk with respect to the error. Thus, the proposed procedure is timely, efficient, and reduces market risk to members.

This proposed procedure is a limited exception available only to facilitate timely resolution of errors and is not intended for any other purpose. Therefore, it is not a means whereby professional traders in the normal course of trading may step ahead of retail or any other investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–49 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–884 Filed 1–11–02; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular on Internet Communications of Aviation Weather and NOTAMs

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed advisory circular.

SUMMARY: The Department of Transportation, in accordance with 49 CFR 1.47, delegated responsibility for aviation safety oversight to the Federal Aviation Administration (FAA). The FAA has proposed the development of Advisory Circular (AC) 00-xx, Internet Communications of Aviation Weather and NOTAMs, that describes the process for any person or organization providing access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become and remain a Qualified Internet Communications Provider (QICP).

DATES: Comments must be received on or before February 13, 2002.

ADDRESSES: Written comments are invited on all aspects of the proposed AC. Commenters must identify draft AC 00-xx, Internet Communications of Aviation Weather and NOTAMs. Send or deliver all comments on the proposed AC to the following location: Federal Aviation Administration, Aerospace Weather Policy Staff, ARS–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Albersheim, FAA, Aerospace Weather Policy Staff, ARS–100, 800 Independence Ave., SW., Washington, DC 20591, 202–385–7704, Steven.Albersheim@faa.gov.

SUPPLEMENTARY INFORMATION: Aviation weather information is available on the Internet from a variety of government and vendor sources with minimal quality control. Users of the National Airspace System, dispatchers, pilots and air traffic controllers/specialists have expressed interest in the ability to utilize the Internet to retrieve aviation weather text and graphic products for operational decision-making. The FAA proposes to establish the process in an AC for providers who disseminate aviation weather data and NOTAMs via the Internet to become QICPs for the purpose of ensuring the reliability, accessibility and security of the data and encouraging the identification of the approval status of products. The proposed AC will provide information on the QICP process and recommended practices as well as the procedures for a provider to maintain QICP status. The FAA Aerospace Weather Standards Staff (ARS–200) proposes to maintain a current list of all QICPs on a designated Web page accessible by the general public.

[7] 17 CFR 200.30–3(a)(12).

Issued in Washington, DC, on January 8, 2002.

David Whatley,

Director, Aerospace Weather Policy & Standards, Air Traffic System Requirements Service.

BILLING CODE 4910–13–P

Advisory Circular

U.S. Department of Transportation
Federal Aviation Administration

Subject: INTERNET COMMUNICATIONS OF AVIATION WEATHER AND NOTAMS
Date: xxxxx **AC No.:** 00-xx
Initiated by: ARS-100

1. PURPOSE. This Advisory Circular (AC) describes the process for any person or organization that provides access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become a Qualified Internet Communications Provider (QICP).

The FAA Aerospace Weather Standards Staff (ARS-200) is responsible for establishing and maintaining a current list of all QICPs on a designated Web page accessible by the general public.

This AC pertains only to Internet communications between a civil aviation user and a QICP. This AC addresses data quality only to the extent of considering QICP security practices to protect data from unauthorized modification and encouraging the identification of the operational or experimental status of QICP products. The FAA Web page containing the current list of all QICPs contains a notice that being listed as a QICP does not mean that the quality of the QICP data (e.g., accuracy, timeliness or content) is certified or otherwise approved by the FAA.

Like all advisory material, this AC is not mandatory and does not constitute a regulation. Definitions used in this AC are contained in Appendix 1.

2. GENERAL. A person or organization that accomplishes and maintains the following as they pertain to the provider's facility (i.e., all hardware, software and Internet connectivity under the applicant's direct control) may become an approved QICP:

a. **Reliability** means users are able to retrieve requested data from the provider with no outage lasting longer than 10 minutes, and no more than 30 minutes of total outages (including outages due to maintenance) in any continuous 3-month period.

b. **Accessibility** means turnaround time within the provider's facility. The provider should be capable of initiating transmission of requested data during transactions with 100% of its users within 2 minutes.

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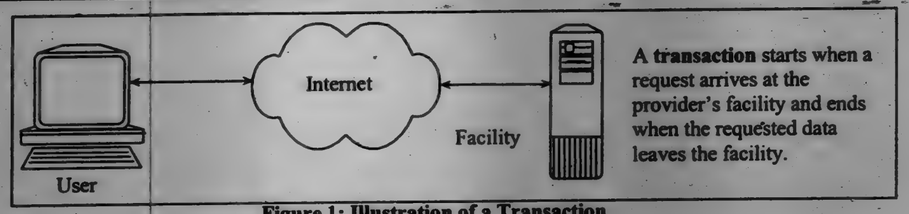

Figure 1: Illustration of a Transaction

c. **Security** means providing Web site authentication and maintaining data integrity. The provider should implement server digital certificate technology consistent with the X.509 certificate standard and Secure Sockets Layer protocol. In addition, the provider should establish and implement security practices to prevent unauthorized access to or modification of provider data, software and hardware.

1) Use of the Public Internet carries certain risks to both QICPs and users. Below are some of the more common risks:

a) The user receives intentionally corrupted data from an invalid source instead of original data from a legitimate source, not detecting the difference. The invalid source captured the original data en route and replaced it with intentionally corrupted data.
b) The user receives forged or fake data that purports to be from a legitimate source but is actually generated by an invalid source.
c) The user gets original data from a legitimate source, but it is inaccurate; it causes a problem in the user's operation and, subsequently, the source denies sending it in order to avoid culpability for the user's loss.

2) A server digital certificate mitigates these risks by providing Web site authentication and two-way data integrity during the transaction between the QICP and the user.

3. RECOMMENDED PRACTICES.

QICPs should consider user authentication (via browser digital certificate or username/password) as needed to determine the identity of the requester. In addition, QICPs should maintain a retrievable archive of Web server log files as well as data received and provided in each transaction for a period of no less than 15 calendar days after the date of that transaction. In the event of receipt of notification of an accident, incident or overdue aircraft, or upon the request of the FAA or the National Transportation Safety Board (NTSB), the provider should retain the data related to that aircraft indefinitely, or until such time that the destruction of the data is authorized by law. The QICP should make this data available in the form of a readable certified true copy upon request of the FAA, the NTSB or a Federal, state or local law enforcement agency.

With the increasing availability of developmental weather products, QICPs are encouraged to clearly identify the operational or experimental status of each product. This may be done by partitioning the Web site, by grouping products or by labeling each individual product. Users are encouraged to require such identification by QICPs.

4. PROCESS FOR QUALIFICATION. To become a QICP, applicants should follow the qualification process described herein.

a. **Steps to Becoming a QICP.**

1) Submit an application certified by a responsible official to ARS-200 containing the following:
   a) Service Description
   b) Security Plan
   c) Capability Demonstration Plan
   d) Ongoing Maintenance Plan

2) Satisfactorily complete the Capability Demonstration.

b. **Attachments to the Letter of Application**

1) **Service Description**: Describes how the applicant intends to accomplish the items in paragraph 2 and (optionally) the recommended practices in paragraph 3. The Service Description should include, but is not limited to, the following items:

   a) Intended user(s) or user class(es), estimated number of users in each user class
   b) Server architecture (i.e., hardware, software)
   c) Network management software
   d) Server digital certificate technology
   e) User authentication (optional)
   f) Archival of Web server log files and transaction data (optional)
   g) Identification of product status as either operational or experimental (optional)

2) **Security Plan**: Describe how the applicant plans to prevent unauthorized access to or modification of applicant's data or facility (e.g., software, hardware, networks, etc.). These practices should include, but are not limited to, the following:

   a) Vulnerability assessments
   b) Risk assessments
   c) Security tests
   d) Disaster recovery and contingency measures

3) **Capability Demonstration Plan:** Describes how the applicant plans to demonstrate that it can or has accomplished the items in paragraph 2 ["General"] and (optionally) the Recommended Practices, usually through a trial period of operations. An alternate demonstration method may be accepted by ARS-200 upon request of the applicant (e.g., documentation of prior Internet site performance). The Demonstration Plan should contain the following:

   a) Primary points of contact for the demonstration
   b) Period of time, including starting and completion dates
   c) Performance statistics to be collected during the demonstration. (Note: These statistics could be collected using the same process as in paragraph 4.b.4)c) below.)
   d) Proposed reporting format

4) **Ongoing Maintenance Plan:** Describes how the applicant plans to adequately maintain its Internet service and operation. This plan should include at least the following:

   a) The names, titles and resumes of responsible personnel, with descriptions of their duties and responsibilities
   b) System maintenance procedures

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c) Quality Assurance Plan describing the process to collect and maintain performance statistics for the items in paragraph 2 ["General"] and to provide them to ARS-200 semiannually or upon request
d) Quality of Service (QOS) agreement(s) with each user or user class, specifying the items in paragraph 2 and providing user complaint procedures in the event QICP service and operation are not adequate

c. **Application Review.** Upon receipt of the application, ARS-200 acknowledges receipt, reviews the submission and requests additional information if needed. ARS-200 plans to advise the applicant in writing of its findings within 60 calendar days from receipt. If unable to complete the review within this period, ARS-200 provides the applicant with a revised completion date. If the application package is lacking in some way, ARS-200 returns the submission to the applicant with recommendations for revision. If the application package is sufficient, ARS-200 notifies the applicant to proceed with its capability demonstration.

d. **Capability Demonstration.** Upon receiving notification to proceed, the applicant may demonstrate its Internet performance capability, usually by means of a trial period. During the trial period, the provider's Web site should be fully operational. During and after the trial period, the applicant should report demonstration results to ARS-200 to document satisfactory accomplishment of the items contained in this AC.

e. **Application Disposition**

1) Upon successful completion of the capability demonstration, ARS-200 issues a letter approving the applicant as a QICP for a period of 6 months and adds the applicant's name to the QICP list maintained by ARS-200 on a designated Web page.

2) Should the FAA find the capability demonstration to be insufficient, ARS-200 issues a Letter of Denial, indicating the reasons for the denial. The form and content of any subsequent re-application are defined in the Letter of Denial.

5. ONGOING MAINTENANCE

QICPs should demonstrate ongoing maintenance of QICP status by collecting facility performance statistics and providing them to ARS-200 semiannually or upon request (e.g., following ARS-200 receipt of a user QOS complaint). ARS-200 reviews QICP statistics to verify continued performance maintenance; if verified, ARS-200 retains the provider's name on the QICP list for an additional period of 6 months. If a QICP does not adequately maintain its service and operation, ARS-200 notifies the provider in writing that QICP status may be rescinded unless the provider provides documentation within 30 calendar days that the deficiency has been corrected. If such documentation is not received or is unsatisfactory, ARS-200 may rescind QICP status and remove the provider's name from the QICP list.

QICPs should acknowledge and address user QOS complaints within 14 calendar days of receipt, and forward user QOS complaints to ARS-200 within 30 calendar days of receipt with an explanation of actions taken. ARS-200 and QICPs may collaborate to resolve any identified performance deficiencies. QICP failure to properly process or resolve QOS complaints may result in ARS-200 taking action as described in the preceding paragraph.

6. PAPERWORK REDUCTION ACT STATEMENT. As described in this AC, the FAA collects information contained in initial QICP applications and subsequent QICP reports of semi-annual facility performance statistics, archived data and user complaint corrective actions. The information is collected to enable ARS-200 to process initial QICP applications and determine continued QICP maintenance of its

service and operation for the transmission of aviation weather and NOTAMs via the Internet; collected information may also be used by the FAA, the NTSB or law enforcement agencies following an accident, incident or overdue aircraft. The reporting burden for each QICP is estimated to average 568 hours during the initial year and 274 hours each subsequent year. Information submission is totally voluntary; however, failure to provide the information may result in the denial or loss of QICP status. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for AC XX is 2120-0672.

7. ADDITIONAL INFORMATION

Questions or comments concerning this AC should be directed to:
FAA, Aerospace Weather Policy Staff (ARS-100)
800 Independence Avenue, SW
Washington, DC 20591
(202) 385-7704

APPENDIX 1. DEFINITIONS OF TERMS

This appendix contains definitions of terms used throughout this AC.

Browser Digital Certificate	Electronic equivalent of an ID card obtained employing digital certificate technology and installed on a user's browser—used in conjunction with a public key encryption system to automatically authenticate the user's identity.
Facility	All hardware, software and Internet connectivity under the provider's direct control.
Log File	A Web server file containing access information regarding the activity on that server.
NOTAM	Aeronautical information that could affect a pilot's decision to make a flight. It includes such information as airport or primary runway closures, changes in the status of navigational aids, radar service availability, and other information essential to planned en route, terminal or landing operations. It can also contain mandatory emergency air traffic rules issued pursuant to the Code of Federal Regulations, Title 14, Section 91.139.
Provider	A person or organization (including a government agency) which supplies aviation weather and NOTAMs to a civil aviation user.
Public Internet	Any and/or all of the Internet sites that are accessible by any Internet connection. A distinguishing feature is its use of a set of protocols called TCP/IP (Transmission Control Protocol/Internet Protocol).
Secure Sockets Layer Protocol	A security protocol that provides Web site authentication, message integrity and message privacy over the Internet—allows provider/user applications to communicate while preventing message forgery, tampering and eavesdropping.
Server Digital Certificate	Electronic equivalent of an ID card obtained employing digital certificate technology and installed on a Web site server—used in conjunction with a public key encryption system to automatically authenticate the Web site's identity and ensure two-way data integrity during a transaction.
Transaction	All data exchanged between the user and provider beginning when the user's request arrives at the provider's facility and ending when the requested data leaves the facility.
User	A person or organization that requests and receives aviation weather and NOTAMs from a provider.
User Authentication	Technique by which access to Web site resources requires a user to have a browser digital certificate or to enter a username and password as identification.
Web Site Authentication	Technique by which access to Web site resources requires a server digital certificate as identification.
X.509 Certificate Standard	An Internet industry standard that defines what information can go into a digital certificate and describes the information format.

[FR Doc. 02–861 Filed 1–11–02; 8:45 am]
BILLING CODE 4910–13–C

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2002, Through December 31, 2002

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2002, through December 31, 2002, will remain at 25 percent of covered aviation employees for random drug testing and 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold N. Schwartz, Office of Aerospace Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5970.

Discussion: The FAA Administrator set the minimum random drug testing rate for 2002 at 25 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. The FAA Administrator set the minimum alcohol testing rate for 2002 at 10 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 0.5 percent.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random drug and alcohol percentage testing rates are determined please refer to the Code of Federal Regulations Title 14: part 121, Appendices I and J.

Dated: January 8, 2002.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 02–864 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pilot Program To Permit Cost-Sharing of Air Traffic Modernization Projects

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of program guidance for air traffic modernization cost-sharing pilot program for fiscal years 2002 and 2003.

SUMMARY: On December 6, 2000, the FAA issued proposed program guidance on Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21), which authorizes a pilot program for cost-sharing of air traffic modernization projects. The initial program was for fiscal years 2001, 2002, and 2003. The FAA is now issuing updated program guidance based upon the lessons learned from the first year of program implementation and is requesting sponsors' expressions of interest for cost-sharing projects for fiscal years 2002 and 2003. The purpose of section 304 is to improve aviation safety and enhance mobility by encouraging non-Federal investment on a pilot-program basis in air traffic control facilities and equipment. Under the pilot program, the Secretary of Transportation may make grants to eligible project sponsors for not more than ten eligible projects. Each eligible project is limited to Federal funding as highlighted in section 2.3.1 with the Federal cost share not to exceed 33 percent of the project's facilities and equipment (excluding operations and maintenance) cost. A project sponsor may be a public-use airport (or a group of public-use airports), or a joint venture between a public-use airport (or a group of public-use airports) and one or more U.S. air carriers.

DATES: The FAA's Air Traffic System Requirements Service should receive initial sponsors' expressions of interest on/or before February 8, 2002. Failure to meet the proposal submission deadline will not result in automatic disqualification, but may cause disapproval due to decisions made by the FAA on proposals in hand when Phase 1 deliberations are made. Potential sponsors are encouraged to submit proposals as soon as possible.

ADDRESSES: Sponsors' expressions of interest/proposal should be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of Aviation Policy and Plans (Attention: APO–200), 800 Independence Ave SW., Washington, DC 20590. Electronic submissions will be accepted for Phase 1 expression of interest/proposal, but must be followed up with a signed paper copy within five working days, to the address listed above. The Phase 1 electronic submissions should be mailed to *Debra.Griffith@faa.gov*. Electronic submissions for Phase 2 formal application will not be accepted. Deliveries may be made between 8:30 am and 5 pm weekdays, except Federal holidays.

An electronic copy of this notice may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

FOR FURTHER INFORMATION CONTACT: Debra Griffith or Joann Kansier (202–385–7600), Research and Requirements Development Directorate (ARQ), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

1. Background

In performing its mission of providing a safe and efficient air transportation system, the FAA operates and maintains a complex air traffic control system infrastructure. Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21) authorizes a pilot program to permit cost-sharing of air traffic modernization projects, under which airports and airport/airline joint ventures may procure and install facilities and equipment in cooperation with the FAA. The purpose of Section 304 is to establish a pilot program, to improve aviation safety and enhance mobility in the air transportation system by encouraging non-Federal investment in air traffic control facilities and equipment. The pilot program is intended to allow project sponsors to achieve accelerated deployment of eligible facilities or equipment, and to help expand aviation infrastructure.

1.1 Program Participants in Selection Cycle—Round One

The following airport/Projects were selected to participate in round one of the AIR–21 Cost Share Pilot Program:

- Tampa International Airport—upgrade RW18L ILS to Cat II/III
- Minneapolis-St Paul International Airport—ALSFs on RW12L and 12R
- Chicago O'Hare International Airport—develop surface movement management system based on multilateration technology
- John F. Kennedy Airport—feasibility study and environmental issues analysis for RW22R and La Guardia Airport RW22/RW 13 ILS upgrades; La Guardia RW31 Glideslope
- Olive Branch Airport, Mississippi—construct Air Traffic Control Tower

The average FAA share for a round one project is $1.5 million. The FAA is authorized to approve five more projects under Section 304 of AIR–21. Those

sponsors whose projects were approved in the first round may submit additional proposals expanding upon their initial projects. All proposals that were not accepted during the FY 01 consideration will be reconsidered upon a written request from the sponsor. All sponsors who anticipate resubmitting last year's request should review the updated criteria in sections 2.1 and 2.2 before submission and modify the proposal as appropriate. Sponsors may submit additional proposals if they desire or update their original proposal.

2. Final Program Guidance

This section restates, in part, the statutory language of AIR–21 Section 304 and outlines FAA's supplementary criteria for the pilot program. The sponsor eligibility, project eligibility, and evaluation and screening criteria are outlined in Sections 2.1, 2.2 and 2.6 respectively of this notice.

2.1 Eligible Project Sponsors

2.1.1 Statutory Provisions for Sponsor Eligibility

The term 'project sponsor' means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

2.1.2 Supplementary FAA Criteria for Sponsor Eligibility

An eligible project sponsor is a public-use airport (or group of airports), either publicly or privately owned, action on its own or in a joint venture with one or more U.S. air carriers. All landing facilities meeting these criteria are eligible, including but not limited to commercial service airports, reliever airports, general aviation airports, heliports, etc. All eligible sponsors are encouraged to participate. If selected for the pilot program, the sponsor must be willing to enter into a Memorandum of Agreement with the FAA outlining the specific goals to be accomplished, the roles and responsibilities of each party, schedule milestones, and funding contributions of the parties. An eligible sponsor must have an available source of funds to execute the pilot program.

2.2 Eligible Projects

2.2.1 Statutory Provisions for Project Eligibility

The term 'eligible project' means a project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include:

a. Airport-specific air traffic facilities and equipment, including local area augmentation systems,* instrument landing systems, weather and wind shear detection equipment, lighting improvements, and control towers

b. Automation tools to effect improvements in airport capacity, including passive final approach spacing tools* and traffic management advisory equipment; and

c. Facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

* Note these projects will be eligible, assuming availability and viability of the equipment with the time limitation highlighted in 2.2.2.b.

2.2.2 Supplementary FAA Criteria for Project Eligibility

a. The project should be consistent with FAA's air traffic equipment/systems infrastructure and architecture and should be a validated project of a FAA program. The project, when commissioned, should provide measurable benefits that benefit regional or local objectives/interests and the FAA NAS.

b. The project shall be initiated within two years of project approval and completed/commissioned within five years of project approval (allowing for an environmental impact study (if necessary), acquisition, supply support, training programs, etc.).

c. Equipment and facilities should meet applicable FAA advisory circulars and specifications.

d. The project should serve the general welfare of the flying public; it should not be used for the exclusive interest of a for-profit entity.

e. Any facility/equipment acquired under the project should be a new asset, not an asset that the sponsor has already acquired or committed to acquiring.

f. The project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life.

g. The cost-share program is not the correct forum for requesting development of RNAV procedures.

h. A sponsor may submit a multiple component project (as outlined in paragraph 2.5) where each component forms part or all of an integrated system. The FAA reserves the option to accept one or multiple components of a proposal.

i. A project may not be co-mingled with other FAA cost-sharing programs (e.g., the provisions of AIR–21 Section 131 that authorize cost-sharing programs for airport traffic control tower operations and construction).

j. All equipment and structures should meet appropriate OSHA standards for employee safety and fire protection. Where land is involved, the property should meet all environmental compliance requirements, including noise, hazardous material, property access, and zoning rights.

k. A project should not increase the controller or airways facility workforces during the pre-transfer period (see section 2.4 below titled "Transfer of Facility or Equipment to FAA").

2.3 Funding

2.3.1 Statutory Provisions for Funding

The Federal share of the cost of an eligible project carried out under the pilot program shall not exceed 33 percent. No project may receive more than $15,000,000 in Federal funding under Section 48101(a) of Title 49, United State Code (FAA's Facilities and Equipment appropriation). The Secretary shall use amounts appropriated under Section 48101(a) for fiscal years 2001 through 2003 to carry out the program.

The sponsor's non-Federal share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to Section 40117 of Title 49, United States Code (passenger facility charges).

2.3.2 Supplementary FAA Criteria for Funding

FAA is not obligated to fund one-third of the total project costs; rather, FAA's share may not exceed this threshold. The project sponsor must provide two-thirds or more of the total project cost. The Federal and non-Federal shares of project cost may take the form of in-kind contributions. Equipment in FAA's inventory that has not been previously deployed qualifies as eligible equipment. If selected for the pilot program, a sponsor may use passenger facility charge (PFC) revenues to acquire and install eligible facilities and equipment, but not to fund their operation or maintenance. Normal PFC processing procedures under Federal Aviation Regulation 14 CFR Part 158 will be used to approve the imposition of a PFC or the use of PFC revenue as the non-Federal share of a pilot program project.

Project funding may be effected through a grant, a cooperative agreement, or other applicable instrument. Federal contributions applied to any other Federal project or grant may not be used to satisfy the sponsor's cost share under this pilot program.

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The following criteria apply to the calculation of the cost-sharing ratio:

a. Project are limited to those costs that the FAA would normally incur in conventional facilities and equipment funding (e.g., if land/right-of-way must be acquired or leased for a project, its cost can be included in the cost-sharing ratio only if FAA would otherwise incur it in conventional program funding).

b. Operations and maintenance costs of the project, both before and after any sponsor-elected project transfer to the FAA, will not be considered as part of the cost-share contribution.

c. Non-federal funding may include cash, substantial equipment contributions that are wholly utilized as an integral part of the project, and personnel services dedicated to the proposed project prior to commissioning, as long as such personnel are not otherwise supported with Federal funds. The non-federal cost may include in-kind contributions (e.g., buildings). In-kind contributions will be evaluated as to whether they present a cost that FAA would otherwise incur in conventional facilities and equipment funding.

d. Aside from in-kind contributions, only funds expended by the sponsor after the project approval date will be eligible for inclusion in the cost-sharing ratio.

e. Unless otherwise specified by these criteria, the principles and standards for determining costs should be conducted in accordance with OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments.*

f. As with other U.S. DOT cost-sharing grants, it is inappropriate for a management/administrative fee to be included as part of the sponsor's contribution. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to support the project.

By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. FAA funding decisions will be made in concert with the project evaluation and project selection processes discussed later in this notice. FAA may choose to use specifically appropriated funds, to re-program funds from within existing facilities and equipment project appropriations, or to fund from within existing budget line items.

Unless otherwise stipulated in the agreement executed between the sponsor and the FAA, liability for cost over-runs will be shared between the FAA and the sponsor in accordance with their project cost shares.

The U.S. Department of Transportation and the Comptroller General of the United States have the right to obtain and assess all documents pertaining to the use of Federal and non-Federal contributions for selected projects. Sponsors should maintain sufficient documentation during negotiations and during the life of the project to substantiate costs.

2.4 Transfer of Facility or Equipment to FAA

2.4.1 Statutory Provisions for Facility or Equipment Transfer

Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the FAA, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The FAA shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the FAA in accordance with criteria of the FAA.

2.4.2 Supplementary FAA Criteria for Facility or Equipment Transfer

Project transfers to the FAA will be at the sponsor's election and in accordance with the criteria listed below.

a. At the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect.

b. In the event of transfer, software code, data rights, and support tools should be provided to the FAA at no cost to the FAA.

If the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

2.5 Application Procedures

The following application procedures will be used when applying for the cost-share:

a. Application to the pilot program consists of two phases, as described below. The purpose of Phase 1 is to allow the FAA to gauge the level of interest, to provide preliminary responses to potential sponsors to avoid causing applicant sponsors to expend excessive resources on project applications that have very limited changes of acceptance because of need or cost, and to plan for subsequent program implementation. In Phase 1 the FAA will review the application based upon its individual merit.

b. The purpose of Phase 2 project review is to conduct comparative analysis of the individual applications accepted during Phase 1. In Phase 2, sponsors will provide more detailed applications, and final FAA evaluations/project selections will be completed.

c. Airport sponsors may submit multiple projects and projects with multiple components, but each piece of equipment/activity must be identified and costed separately and should be listed in priority order. An example of a multiple component project would be an instrument landing system (ILS) project that may include in addition to the ILS equipment, middle markers and runway lighting for a complete package. The FAA reserves the option to accept one or multiple pieces of each proposal.

d. Projects that would be good candidates for this program may include equipment and systems that monitor weather, support runway incursion reduction, and support regional interest.

e. Under this pilot program, either the FAA or the sponsor may acquire and/or install facilities or equipment. In the case where the FAA manages the procurement, existing FAA contracts will be used where possible.

f. Proposals for new air traffic control towers will only be considered if they enhance the National Airspace System. Per FAA Order 6030.1, FAA Policy on Relocation, movement of an existing air traffic control tower for the convenience/benefit of only the airport will not be considered. Requests for towers will be considered utilizing the criteria in Order 7031.2C, Airway Planning Standards Number One (APS–1).

2.5.1 Phase 1: Sponsor's Submission of Proposal and Initial Project Review

Proposal packages should be no more than 20 pages in length. Although not binding the Phase 1 submission should reflect accurate estimates of project cost and sponsor contributions. The FAA may verify with the sponsor the cost estimate if it does not appear to be consistent with the FAA's estimate, and thus provide the sponsor time to revalidate its proposal before Phase 2. Sponsors should submit written expressions of interest in accordance with the sections captioned **DATES** and **ADDRESSES** provided earlier in this notice. A sponsor's initial proposal should include the following:

a. Identity of sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures.

b. Description and location of the proposed project.

c. Statement of need for the project, including an assessment of the projected benefits—site-specific, regional, and the national airspace systems. Preferred project schedule, including start date, completion date, and any significant interim milestone dates.

d. Statement of intent to transfer the project to the FAA, including envisioned date, or intent not to transfer the project to the FAA.

e. Schedule of estimated project costs, including: (1) Up-front costs divided into proposed shares between the sponsor and the FAA, and (2) annual and life-cycle operations and maintenance costs (both before and after transfer if the sponsor elects to transfer the project to the FAA). Cost should be outlined separately for each major activity (e.g., each ILS).

f. Self-assessment of the ability to acquire and commit the non-Federal share of funding.

g. Brief description of sponsor's internal approval/coordination process for establishing a formal cost-sharing agreement with the FAA and the estimated time-frame for completion.

h. If requesting establishment of an air traffic control tower, sponsor must indicate how the facility is to be staffed. Acceptance for the Cost Share Pilot Program does not automatically qualify an airport for the FAA contract tower program to staff the tower with contract air traffic controllers.

The FAA will review and evaluate the expressions of interest submitted during Phase 1, using a panel of technical experts and senior managers. The panel will review the submission considering the technical feasibility, program feasibility, schedule, projected operational benefits, and cost. The FAA will contact the sponsor if it has questions or has suggestions on how the sponsor may improve its proposal. Following its evaluations and preliminary selections, the review panel will recommend to the Director of FAA's Airway Facilities Service and the Director of FAA's Office of System Architecture and Investment Analysis those applicant sponsors who should be invited to participate in Phase 2, as described below. These officials will notify and invite selected sponsors to participate in Phase 2. Following Phase 1, the FAA may conduct on-site visits to work with the sponsor in order to have a dialogue on the proposal before Phase 2 submission.

2.5.2 Phase 2: Formal Application and Selection of Projects

Only proposals that have been reviewed in Phase 1 will be considered during Phase 2. Phase 2 proposals should not be more than twenty pages in length. During Phase 2 each sponsor that has been invited to participate should submit an expanded application with the following elements needed by the FAA to evaluate the merits of each application.

a. *Project Description:* The project description should contain: (1) The identity of the submitting sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures; (2) project name and location; (3) a detailed project description.

b. *Projected Benefits:* All applications should describe the need for the project and demonstrate its safety, efficiency, capacity, productivity, and other benefits, as applicable, at the airport, regional, and system-wide levels. The sponsor may conduct its own analysis, may opt to summarize existing analyses from FAA's acquisition management system, and/or may use the investment criteria in FAA Order 7031.2C, Airway Planning Standard Number One.

c. *Economic Analysis:* Supporting the projected benefits review the applicant should conduct an economic analysis. The analysis should include a schedule of project costs, including: (1) Up-front costs broken down into proposed shares between the sponsor and the FAA; and (2) annual and life-cycle operations and maintenance costs before and after transfer to the FAA (if the sponsor elects to transfer). The level of effort devoted to the analyses should be tailored to the scope and cost of the project. For complex programs FAA guidance can be found in Report FAA–APO–98–4, *Economic Analysis of Investment and Regulatory Programs—Revised Guide,* and Report FAA–APO–98–8, *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*

d. *Schedule:* The Schedule should list all significant proposed project dates, including the start date, completion date, date of project transfer of the FAA (if applicable), and key interim milestone dates.

e. *Financial Plan:* The Financial Plan should contain: (1) The proposed local and Federal cost shares, (2) evidence of the sponsor's ability to provide funds for its cost share (e.g., approved local appropriation or Memorandum of Agreement); and (3) any commitment the sponsor might choose to offer for the assumption and liability of cost overruns aside from the liability criterion provided earlier in this notice.

f. *Letter of Commitment:* Sponsors should demonstrate a commitment to the project, as evidenced by a Letter of Commitment signed by all project participants (including any participating air carriers). The letter should, at a minimum, include a list of the participating agencies and organizations in the proposed project; the roles, responsibilities and relationship of each participant; and the name, address, and telephone number of the individual representing the sponsor.

g. *Letter of Acknowledgment/Support:* The application will include a letter of acknowledgment/support from the applicable State Department of Transportation and/or other appropriate jurisdiction (to avoid circumventing State and metropolitan planning processes). It is the intent of FAA Headquarters for the appropriate projects to include the FAA's Regional Office in the project review cycle. It would be in the best interest of the applicant to pre-coordinate the projects with the appropriate FAA Regional Office.

The FAA will review and evaluate the Phase 2 applications using a panel of technical program experts and senior managers based on the criteria outlined below in Section 2.6. Following its evaluations, the review panel will prioritize and recommend to the FAA's Associate Administrator for Air Traffic Services and the Associate Administrator for Research and Acquisition those applications that it believes should be accepted. If the FAA selects a project for inclusion in the pilot program, an agreement will be executed between the sponsor and the FAA.

2.5.3 Subsequent Application and Selection Cycles

If fewer than the statutorily-limited ten projects have been approved following the second round of Phase 1 and 2 applications, FAA will repeat the Phase 1 and 2 application processes, until the earlier of: May 15, 2003, or that point in time when the ten project limit is reached (see Schedule Summary in Section 2.7 below). The May 15, 2002, cutoff date is based on an allowance of time for FAA to process Phase 2 applications and make selections prior to the statutory authorization expiring at the end of fiscal year 2003. FAA cannot and does not extend any assurance or implication that any residual authority will remain following the first round of Phase 1 and 2 applications.

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2.6 Application Evaluation and Screening Criteria

During Phase 1 the FAA will review each of the applications based upon the individual merit of the application. The FAA will consider the following elements in evaluating Phase 1 applications:

a. Compliance with statutory criteria, FAA's supplemental criteria, and application procedures.

b. Degree to which the project provides benefits to support the FAA's strategic goals for safety, efficiency, and mobility, as well as the national airspace system architecture.

c. Likelihood of project success.

d. Ability of sponsor to provide its cost share.

The Phase II review involves a comparative analysis of the individual applications to each other. Phase II application evaluation will include the following additional elements in evaluating the applications.

a. Benefit to the airport, region, and national airspace system.

b. Ease of administration (acquisition, installation, etc.).

c. Evidence that the project can be implemented in accordance with the proposed schedule.

d. Availability of FAA resources.

e. Degree of Federal leveraging (degree to which the proposal minimizes the ratio of Federal costs to total project costs).

f. Cost to the FAA: (1) up-front cost-share (a sponsor's willingness to pay a higher percentage of the project will increase its competitiveness when compared to other projects; and, if applicable, (2) post-transfer life-cycle operating and maintenance costs.

g. Equity and diversity with respect to project type, geography, and population served.

2.7 Schedule Summary

Milestone	Date
Second-Round of Applications	
Phase 1 Applications due to FAA	2/21/02
FAA Responses to Sponsors' Phase 1 Applications	4/22/02
Phase 2 Applications due to FAA	6/3/02
FAA Announcement of Second-Round Approvals	9/3/02
Third-Round of Applications (if needed)	
Phase 1 Applications due to FAA	12/13/2002
FAA Responses to Sponsors' Phase 1 Applications	2/14/2003
Phase 2 Applications due to FAA	5/15/2003
FAA Announcement of Third-Round Approvals	7/15/2003

2.8 Project Implementation Information

During the life of the project, the FAA may collect data from the sponsor and conduct (with non-project funds) independent evaluations of the project's impact on safety, efficiency, and mobility objectives. This will allow the FAA to ascertain the success of the pilot program. The selection of projects is currently limited by AIR–21 to the end of the fiscal year 2003.

3. Impact of Revised Guidelines

Potential costs and benefits of the final guidelines have been reviewed consistent with the intent of Executive Order 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act of 1980, Executive Order 13132 (Federalism), Office of the Secretary of Transportation direction on evaluation of international trade impacts, and the Unfunded Mandates Reform Act of 1995. The rationale for compliance with these guidelines was provided in the **Federal Register** notice dated December 6, 2000 which remains unchanged and can be found in that **Federal Register** or is available from the FAA office listed in the **ADDRESSES** section of this announcement.

4. References

The following list outlines references cited above:

OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments*, revised August 29, 1997.

Report FAA–APO–98–4, *Economic Analysis of Investment and Regulatory Programs—Revised Guide*. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm*.

Report FAA–APO–98–8, *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm*.

FAA Order 6030.1, *FAA Policy on Relocation*. Available upon request from the FAA, telephone 202–646–2310.

FAA Order 7031.2C, *Airway Planning Standard Number One*, through Change.

12. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308.

FAA Order 6700.20, *Non-Federal Navigational Aids and Air Traffic Control Facilities*. Available upon request from the FAA's NAS Operations Program Office, telephone 202–267–3034.

Issued in Washington, DC, on January 9, 2002.

Joann Kansier,

Program Director for Research and Requirements Development, ARQ–1.

[FR Doc. 02–863 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Trinity County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA), as lead agency, in cooperation with the Trinity County Department of Transportation (TCDOT) and the California Department of Transportation (CALTRANS), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA). This is based on a proposal by TCDOT to construct a local connector roadway project providing residents with local connections to existing County roads and minimizing the travel dependency on SR–299 through Weaverville. FHWA intends to process an EIS for this project.

DATES AND ADDRESSES: To ensure that the full range of issues related to the proposed improvements are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. *Written comments* or *questions* concerning the proposed action and the EIS should be directed to FHWA and/or TCDOT at the addresses provided below. Written comments on the scope of alternatives and impacts to be considered should be submitted not later than thirty (30) calendar days from the date of this publication. *Scoping Meeting:* A public scoping meeting was held November 14, 2001 and a subsequent scoping meeting may be offered to *agencies* on request. The public has been notified through local newspapers, postings in public places, and through other public notification methods.

FOR FURTHER INFORMATION CONTACT: R.C. Slovensky, Federal Highway Administration (FHWA), 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724, (916) 498–5774, or fax (916) 498–5008 and/or Jan Smith, TCDOT, PO. Box 2490, Weaverville, CA 96093–2490 (530) 623–1365, or fax (530) 623–5312.

SUPPLEMENTARY INFORMATION: The proposed new roadway, beginning at or near the intersection of Industrial Park Road and State Route (SR)–299, southeast of the community of Weaverville, and intersecting with SR–299 approximately 2 miles northwest of the community of Weaverville, is intended to provide residents with local connections to existing County roads, minimizing the travel dependency on SR–299 and providing an alternative means of travelling in and around Weaverville. Accordingly, the project will reduce traffic congestion and delays along SR–299 through the historic district in downtown Weaverville and at key intersections with SR–3 and Washington Street. The project involves construction of a new two-lane undivided arterial roadway with 12-foot lanes (3.6m) and 4-foot (1.2m) paved shoulders on both sides that will accommodate bicycle traffic. The project will have a 55 mph design speed for Design Hourly (traffic) Volume projected for Year 2030. Up to six existing residential County roads may be connected to the proposed West Connector. A total of three alternative alignments will be examined initially, although other alignments or alignment configurations may be considered. Depending on the ultimate project alignment and configuration, the total project length will vary from 3.1 miles (5.0k) to 4.0 miles (6.4k), including up to 4 stream crossings. Alternative connecting designs for the western project terminus include a grade-separated interchange, and an at-grade "T" intersection.

Issues to be addressed in the EIS include socioeconomic issues related to noise and safety, impacts on the rural character of affected neighborhoods, and effects on downtown business. Cultural resources associated with historic mining activities are present in the project area. Elements of a proposed trail system follow the same alignments as the West Connector, and coordination with the Weaverville Basin Trails Committee will be required to resolve any conflicts. The east end of the alignment will traverse a Natural Resources Conservation Service Wetland Reserve Easement through a corridor dedicated for the West Connector. The project will involve construction activities within and adjacent to West Weaver Creek, which is potential habitat for State and Federally listed fish, amphibians, birds, and other wildlife species.

Issued on January 8, 2002.

R.C. Slovensky,

Senior Transportation Engineer, District Operations-North—California Division, Federal Highway Administration.

[FR Doc. 02–850 Filed 1–11–02; 8:45 am]

BILLING CODE 34910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 7, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Departmental Offices/Office of Procurement

OMB Number: 1505–0080.
Form Number: None.
Type of Review: Extension.
Title: Post-Contract Award Information.
Description: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protect the Government's interest.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 5,023.
Estimated Burden Hours Per Respondent: 14 hours, 46 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 70,493 hours.

OMB Number: 1505–0081.
Form Number: None.
Type of Review: Extension.
Title: Solicitation of Proposal Information for Award of Public Contracts.
Description: Information requested of offerors is specific to each procurement solicitation, and is required to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 26,338.
Estimated Burden Hours Per Respondent: 31 hours, 2 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 776,561 hours.

OMB Number: 1505–0107.
Form Number: None.
Type of Review: Extension.
Title: Regulation on Agency Protests.
Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 17.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 34 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management

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and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–874 Filed 1–11–02; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 4, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0004.
Form Number: FMS 285–A.
Type of Review: Extension.
Title: Schedule of Excess Risks.
Description: Listing of Excess Risks written or assumed by Treasury Certified Companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of Certified companies for the benefit of writing Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 296.
Estimated Burden Hours Per Respondent: 20 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 5,920 hours.

OMB Number: 1510–0027.
Form Number: POD 1681.
Type of Review: Extension.
Title: Application for Payment of a Deceased Depositor's Postal Savings Certificate.
Description: This form is used when an application is submitted for payment of a deceased Postal Savings depositor's account. Information furnished on the form is used to determine if the applicant is entitled to the proceeds of the account.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25 hours.

OMB Number: 1510–0035.
Form Number: None.
Type of Review: Extension.
Title: Assignment Form.
Description: This form is used when an awardholder wants to assign or transfer all or part of his/her award to another person. When this occurs, the awardholder forfeits all future rights to the portion assigned.
Respondents: Individuals or households.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 75 hours.

OMB Number: 1510–0047.
Form Number: TFS 2211.
Type of Review: Extension.
Title: List of Data (A) and List of Data (B).
Description: Information collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or recognition as an Admitted Reinsurer (except or excess risks running to the United States).
Respondents: Business or other for-profit.
Estimated Number of Respondents: 30.
Estimated Burden Hours Per Respondent: 18 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 540 hours.

OMB Number: 1510–0052.
Form Number: FMS 458 and FMS 459.
Type of Review: Extension.
Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary and Resolution.
Description: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury and Loan Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 450.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (Once for duration of the authorization).
Estimated Total Reporting Burden: 225 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–875 Filed 1–11–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 31, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1634.
Regulation Project Number: REG–106902–98 Final.
Type of Review: Extension.
Title: Consolidated Returns—Consolidated Over Foreign Losses and Separate Limitation Losses.
Description: The regulations provide guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.
Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1640.
Regulation Project Number: REG–104924–98 NPRM.
Type of Review: Extension.
Title: Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.
Description: The collection of information in this proposed regulation by the Internal Revenue Service to determine whether an exemption from market-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are business or other-for-profit institution.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Other (once).
Estimated Total Reporting Recordkeeping Burden: 1,000 hour.
Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–876 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–10, Procedures for IRAs, SEPs, and SIMPLEs IRA Plans.

DATES: Written comments should be received on or before March 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedures for IRAs, SEPs, and SIMPLEs IRA Plans.
OMB Number: 1545–1769.
Revenue Procedure Number: Revenue Procedure 2002–10.
Abstract: The Economic Growth and Tax Relief Reconciliation Act of 2001 made numerous changes affecting IRAs, SEPs, and simples IRA plans. These changes are effective beginning January 1, 2002, and to take advantage off the new law, these retirement plans must be amended and participants notified of the amendments. Revenue Procedure 2002–10 provides guidance on this process and provides an extended period for making the amendments.
Current Actions: There are no changes being made to the revenue procedure at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions and farms.
Estimated Number of Respondents: 378,000.
Estimated Average Time Per Respondent: 20 hours.
Estimated Total Annual Burden Hours: 7,371,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–895 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 601.201]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, 26 CFR 601.201, Instructions for Requesting Rulings and Determination Letters.

DATES: Written comments should be received on or before March 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue

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Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Instructions for Requesting Rulings and Determination Letters.

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Abstract: The IRS issues rulings letters and determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The procedural regulations set forth the instructions for requesting ruling and determination letters.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: All taxpayers.

Estimated Number of Respondents: 271,914.

Estimated Time Per Respondent: The estimated annual burden per respondent various from 15 minutes to 1 hour, depending on individual circumstances, with an estimated of 55 minutes.

Estimated Total Annual Burden Hours: 248,496.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–897 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 9

Monday, January 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44908; File No. SR–CBOE–2001–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Adopt Generic Listing Standards for Trust Issued Receipts, to Provide Alternate Eligibility Requirements for Component Securities of Trust Issued Receipts in Certain Limited Situations and to Increase the Permissible Weight of the Most Heavily Weighted Component Stock of Index Portfolio Shares and Index Portfolio Receipts

Correction

In notice document 01–25700 beginning on page 52161 in the issue of Friday, October 12, 2001, make the following correction:

On page 52161, in the third column, under paragraph *.01 (ii)*, in the third line, "$50 million" should read "$150 million".

[FR Doc. C1–25700 Filed 1–11–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45220; File No. SR–ISE–2001–33]

Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Revising the Original Listing Criteria for Underlying Securities in ISE Rule 502

December 31, 2001.

Correction

In notice document 02–286 beginning on page 760 in the issue of Monday, January 7, 2002, make the following correction:

On page 760, in the first column, the heading is corrected as set forth above.

[FR Doc. C2–286 Filed 1–11–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Import Restrictions Imposed on Archaeological and Ethnological Materials from Bolivia

Correction

In correction document C1–30417 beginning on page 953 in the issue of Tuesday, January 8, 2002, make the following correction:

On page 953, in the first column, the heading is set forth as above.

[FR Doc. C1–30417 Filed 1–11–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

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Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[WH–FRL–7124–2]

RIN 2040–AD18

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is finalizing the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). The purposes of the LT1ESWTR are to improve control of microbial pathogens, specifically the protozoan *Cryptosporidium*, in drinking water and address risk trade-offs with disinfection byproducts. The rule will require systems to meet strengthened filtration requirements as well as to calculate levels of microbial inactivation to ensure that microbial protection is not jeopardized if systems make changes to comply with disinfection requirements of the Stage 1 Disinfection and Disinfection Byproducts Rule (DBPR). The LT1ESWTR applies to public water systems that use surface water or ground water under the direct influence of surface water and serve fewer than 10,000 persons. The LT1ESWTR builds upon the framework established for systems serving a population of 10,000 or more in the Interim Enhanced Surface Water Treatment Rule (IESWTR). This rule was proposed in combination with the Filter Backwash Recycling Rule (FBRR) in April 2000.

DATES: This regulation is effective February 13, 2002. As discussed in the supplementary information section and consistent with sections 1412(b)(10) and 1445 of SDWA, regulated entities must comply with this rule starting March 15, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. eastern time on January 14, 2002.

ADDRESSES: Public comments, the comment/response document, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket for this rulemaking (W–99–10, Final Long Term 1 Enhanced Surface Water Treatment Rule) are available for review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460 from 9 a.m. to 4 p.m., Eastern Time, Monday through Friday, excluding legal holidays. For access to docket materials or to schedule an appointment please call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact Tom Grubbs at 1200 Pennsylvania Avenue, NW., MC4607, Washington, DC 20460, (202) 564–5262. For general information contact the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the LT1ESWTR are public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI) and serve fewer than 10,000 persons. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	PWSs that use surface water or GWUDI.
State, Local, Tribal or Federal Governments.	PWSs that use surface water or GWUDI.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the LT1ESWTR. This table lists the types of entities that EPA is now aware could potentially be regulated by this rule. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of title 40 of the Code of Federal Regulations and applicability criteria in § 141.501 of today's final rule. If you have questions regarding the applicability of the LT1ESWTR to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

List of Abbreviations Used in This Document:

AWWA American Water Works Association
AWWSCo American Water Works Service Company
°C Degrees Celsius
CCP Composite Correction Program
CCR Consumer Confidence Report
CDC Centers for Disease Control
CFR Code of Federal Regulations
CFSII Continuing Survey of Food Intakes by Individuals
COI Cost of Illness
CPE Comprehensive Performance Evaluation
CTA Comprehensive Technical Assistance
DAF Dissolved Air Flotation
DBP Disinfection Byproducts
DBPR Disinfectants and Disinfection Byproduct Rule
EPA Environmental Protection Agency
ESWTR Enhanced Surface Water Treatment Rule
FACA Federal Advisory Committee Act
FBRR Filter Backwash Recycle Rule
FR Federal Register
gpm Gallons per Minute
GWUDI Ground Water Under Direct Influence of Surface Water
HAA5 Haloacetic Acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HRRCA Health Risk Reduction and Cost Analysis
ICR Information Collection Request
IESWTR Interim Enhanced Surface Water Treatment Rule
LT1ESWTR Long Term 1 Enhanced Surface Water Treatment Rule
MCLG Maximum Contaminant Level Goal
M-DBP Microbial and Disinfectants/Disinfection Byproducts
NDWAC National Drinking Water Advisory Council
NPDWR National Primary Drinking Water Regulation
NODA Notice of Data Availability
NTTAA National Technology Transfer and Advancement Act
NTU Nephelometric Turbidity Units
O&M Operation and Maintenance
OMB Office of Management and Budget
PBMS Performance-based Measurement System
PRA Paperwork Reduction Act
PWS Public Water System
PWSS Public Water Supply Supervision
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SAB Science Advisory Board
SBA Small Business Administration
SBAR Small Business Advocacy Review
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDWA Safe Drinking Water Act
SDWIS Safe Drinking Water Information System
SWTR Surface Water Treatment Rule
TTHM Total Trihalomethanes
UMRA Unfunded Mandates Reform Act
WTP Willingness to Pay

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I. Summary

A. Why Is EPA Promulgating the LT1ESWTR?

The Safe Drinking Water Act (SDWA) requires EPA to set enforceable standards to protect public health from contaminants that may occur in drinking water. As explained in more detail in the April 10, 2000 proposal for today's rule (65 FR 19046), EPA has determined that the presence of microbiological contaminants is a substantial health concern. If finished water supplies contain microbiological contaminants, disease outbreaks may result. Disease symptoms may include diarrhea, cramps, nausea, jaundice, headaches, and fatigue. EPA has set enforceable drinking water treatment techniques to reduce the risk of waterborne disease outbreaks. Treatment technologies such as filtration and disinfection can remove or inactivate microbiological contaminants.

Physical removal is critical to the control of *Cryptosporidium* because it is highly resistant to standard disinfection practices. Cryptosporidiosis, the infection caused by *Cryptosporidium*, may manifest itself as a severe infection that can last several weeks and may cause the death of individuals with compromised immune systems. In 1993, *Cryptosporidium* caused over 400,000 people in Milwaukee, WI to experience intestinal illness. More than 4,000 were hospitalized and at least 50 deaths were attributed to the cryptosporidiosis outbreak. There have also been cryptosporidiosis outbreaks in Nevada, Oregon, and Georgia over the past several years.

In 1990, the EPA Science Advisory Board (SAB) cited drinking water contamination as one of the most important environmental risks and indicated that disease causing microbial contaminants (i.e., bacteria, protozoa, and viruses) are probably the greatest remaining health risk management challenge for drinking water suppliers (USEPA/SAB, 1990). The LT1ESWTR addresses this challenge by improving the control of a wide range of microbial pathogens in public drinking water systems and, specifically addressing *Cryptosporidium* for the first time in systems serving fewer than 10,000 people.

B. What Is Cryptosporidium?

Cryptosporidium is a protozoan parasite found in humans, other mammals, birds, fish, and reptiles. It is common in the environment and widely found in surface water supplies (Rose, 1998; LeChevallier and Norton, 1995; Atherholt *et al.*, 1998; EPA, 2000a). In the infected animal, the parasite multiplies in the gastrointestinal tract. The animal then excretes oocysts of the parasite in its feces. These oocysts are tiny spore-like organisms 4 to 6 microns in diameter (too small to be seen without a microscope), which carry within them the infective sporozoites. The oocysts of *Cryptosporidium* are very resistant to adverse factors in the environment and can survive dormant for months in cool, dark conditions such as moist soil, or for up to a year in clean water. When ingested by another animal they can transmit the cryptosporidiosis disease and start a new cycle of infection. Cryptosporidiosis is primarily a waterborne disease, but has also been transmitted by consumption of contaminated food, unhygienic diaper changing practices (and other person-to-person contact), and contact with young farm animals.

Cryptosporidium oocysts are not easily killed by commonly-used disinfectants. They are relatively unaffected by chlorine and chloramines in the concentrations that are used for drinking water treatment. Oocyst infectivity appears to persist under normal temperatures, although oocysts may lose infectivity if sufficiently cooled or heated (USEPA, 2000a). Research indicates that oocysts may remain viable even after freezing (Fayer and Nerad, 1996).

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C. What Are the Health Concerns Associated With Cryptosporidium?

When someone is infected with *Cryptosporidium*, they may contract cryptosporidiosis, a disease which can cause diarrhea, stomach cramps, nausea, loss of appetite, and a mild fever. *Cryptosporidium* has become recognized as one of the most common causes of waterborne disease (drinking and recreational) in humans in the United States. The parasite is found in every region of the United States and throughout the world (*www.cdc.gov/ncidod/dpd/parasites/cryptosporidiosis/factsht_cryptosporidiosis.htm*). The symptoms of cryptosporidiosis begin an average of seven days after infection. Persons with a normal, healthy immune system can expect their illness to last for two weeks or less, with constant or intermittent diarrhea. However, even after symptoms cease, an individual can still pass *Cryptosporidium* in the stool for up to two months, and may be a source of infection for others.

Cryptosporidiosis is not treatable with antibiotics, so prevention of infection is critical. People with weakened immune systems (those with HIV/AIDS, on cancer chemotherapy, or who have received organ transplants) will have cryptosporidiosis for a longer period of time, and it could become life-threatening. Young children, pregnant women, or the elderly infected with cryptosporidiosis can quickly become severely dehydrated.

Twelve waterborne cryptosporidiosis outbreaks have occurred at drinking water systems since 1984 [Craun, 1998; USEPA, 2000a). The largest of the known outbreaks occurred in Milwaukee and was responsible for over 400,000 illnesses and at least 50 deaths (Hoxie, *et al.*, 1997; MacKenzie *et al.*, 1994); other known outbreaks have occurred in smaller communities and have involved many fewer people. An incident such as a rainstorm that flushes many oocysts into the source water or causes a sanitary sewer overflow combined with a water treatment plant upset could allow a large pulse of oocysts to move past the multiple barriers of a water treatment plant.

D. Does This Regulation Apply to My Water System?

Today's final regulation applies to all small (serving less than 10,000 people) public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI).

E. How Is the EPA Regulating Cryptosporidium in the LT1ESWTR?

In the IESWTR (63 FR 69478), EPA established a maximum contaminant level goal (MCLG) of zero for *Cryptosporidium*. When establishing an MCLG, EPA must also establish either a corresponding Maximum Contaminant Level (MCL) or a treatment technique. In the IESWTR and in today's LT1ESWTR, the Agency chose to establish a treatment technique that relies on strengthening water treatment processes already in place. For filtered systems this means achieving at least 2-log (99 percent) removal of *Cryptosporidium* by meeting strengthened combined filter effluent turbidity limits as established by today's rule. For unfiltered systems it means maintaining and improving *Cryptosporidium* control under existing watershed control plans.

F. What Other Requirements Are Included in This Rule?

Today's final regulation includes several requirements.

—All surface water and GWUDI systems serving fewer than 10,000 people must meet the requirements for achieving a 2-log removal or control of *Cryptosporidium*;
—Conventional and direct filtration systems must comply with specific combined filter effluent turbidity requirements while alternative filtration systems (systems using filtration other than conventional filtration, direct filtration, slow sand filtration, or diatomaceous earth filtration), must demonstrate the ability to achieve 2-log removal of *Cryptosporidium* and comply with specific State-established combined filter effluent turbidity requirements;
—Conventional and direct filtration systems must continuously monitor the turbidity of individual filters and perform follow-up activities if this monitoring indicates a potential problem;
—Systems must develop a disinfection profile unless they can demonstrate that their TTHM and HAA5 disinfection byproduct (DBP) levels are less than 0.064 mg/L and 0.048 mg/L respectively;
—Systems considering a significant change to their disinfection practice must develop a disinfection inactivation benchmark of their existing level of microbial protection and consult with the State for approval prior to implementing the disinfection change;
—Finished water reservoirs for which construction begins after the effective date of today's rule must be covered; and
—Unfiltered systems must comply with updated watershed control requirements that add *Cryptosporidium* as a pathogen of concern.

G. How Will This Regulation Protect Public Health?

Today's rule for the first time establishes *Cryptosporidium* control requirements for small systems by requiring a minimum 2-log removal for *Cryptosporidium*. The rule also strengthens filter performance requirements to ensure 2-log *Cryptosporidium* removal, establishes individual filter monitoring to minimize contaminant pass-through and support improved performance, includes *Cryptosporidium* in the definition of GWUDI, and explicitly considers unfiltered system watershed control provisions. Today's rule also reflects a commitment to the importance of maintaining existing levels of microbial protection in public water systems as plants take steps to comply with newly applicable DBP standards. Systems considering significant changes to their disinfection practices must first evaluate current levels of *Giardia* inactivation (and virus inactivation if applicable) and consult with their State Primacy Agency for approval before implementing those changes to assure that current microbial protection is not significantly reduced. Thus, compliance with the provisions of today's rule will improve public health protection by reducing the risk of exposure to *Cryptosporidium* in small systems serving fewer than 10,000 people even as those systems begin to take steps to comply with related DBP standards.

II. Background

A. What Is the Statutory Authority for the LT1ESWTR?

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986, requires EPA to publish a maximum contaminant level goal (MCLG) for each contaminant which in the judgement of the EPA Administrator, may have an adverse effect on the health of persons, occurs in public water systems with a frequency and at a level of public health concern, and whose regulation would represent a meaningful public health risk reduction (Section 1412(b)(1)(A)). MCLGs are non-enforceable health goals to be set at a level at which no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety (Section 1412(b)(4)). The Act was again amended in August 1996 (Public Law 104–83), resulting in the renumbering and augmentation of certain sections with additional statutory language. New sections were added establishing new drinking water requirements.

The 1986 Amendments to SDWA requires EPA to publish an enforceable National Primary Drinking Water Regulation (NPDWR) that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1) and 1412(7)(a)) at the same time it publishes an MCLG. EPA is authorized to promulgate a NPDWR that requires the use of a treatment technique in lieu of establishing an MCL, if the Agency finds that it is not economically or technologically feasible to ascertain the level of the contaminant. Today's rule relies upon the treatment technique of improved filter performance based on strengthened turbidity limits to control for Cryptosporidium because an analytical method suitable for finished water compliance purposes is currently not economically or technologically feasible. In accordance with a schedule established by Section 1412(b)(2)(C) of SDWA as added by the 1996 Amendments to SDWA, EPA is required to promulgate today's rule by November 2000.

B. What Is the Regulatory History for the LT1ESWTR?

In 1989, EPA promulgated the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989 (USEPA, 1989)) that set MCLGs of zero for *Giardia lamblia*, viruses, and *Legionella* and promulgated regulatory requirements for all PWSs using surface water or GWUDI. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses, and *Legionella*, as well as many other pathogenic organisms. Briefly, those requirements include (1) requirements for maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3-log (99.9 percent) for *Giardia* and 4-log (99.99 percent) for viruses; (3) combined filter effluent turbidity performance standard of 5 nephelometric turbidity units (NTU) as a maximum and 0.5 NTU at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems. Systems seeking to avoid filtration were required to meet avoidance criteria and obtain avoidance determinations from States by December 30, 1991, otherwise filtration must have been provided by June 29,1993. For systems properly avoiding filtration, later failures to meet avoidance criteria triggered a requirement that filtration be provided within 18 months.

The intention of the SWTR was to provide appropriate multiple barriers of treatment to control pathogen occurrence in finished drinking water. *Cryptosporidium*, however, was not addressed under the SWTR, because EPA lacked sufficient health, occurrence, and water treatment control data regarding this organism at the time of the rule's development. The IESWTR and today's final rule address these gaps in microbial protection.

In 1992, EPA initiated a negotiated rulemaking (Reg-Neg) to develop a disinfectants and disinfection byproducts rule. The Reg-Neg Committee consisting of a variety of stakeholder groups met from November 1992 through June 1993. As part of this effort, the Committee concluded that the SWTR needed to be revised to address the health risk of high densities of pathogens in poorer quality source waters than the SWTR addressed as well as the health risks of *Cryptosporidium*. The Committee recommended the development of three sets of rules: a two-staged Disinfectants/Disinfection Byproducts Rule (DBPR), an "interim" Enhanced Surface Water Treatment Rule (IESWTR), a "long term" Enhanced Surface Water Treatment Rule (LT1ESWTR), and an Information Collection Rule. The IESWTR was only to apply to those systems serving 10,000 or more persons. The Committee agreed that the "long term" Enhanced Surface Water Treatment Rule would be needed for systems serving fewer than 10,000 persons.

Congress legislatively affirmed this Microbial/Disinfection Byproduct (M-DBP) strategy as part of the 1996 SDWA Amendments. As part of those new Amendments, Congress also established a new schedule for EPA promulgation of these rules (which is the basis for the November 2000 schedule for today's rule). EPA established the M-DBP Advisory Committee under the Federal Advisory Committee Act (FACA) in 1997 to seek advice on how to proceed towards these deadlines in light of new information available since the 1993 negotiated rulemaking discussions. The Committee met five times in March through July 1997 to discuss issues related to the IESWTR and the Stage 1 DBPR. The Committee reached agreement in July of 1997 and its recommendations are embodied in an Agreement in Principle document dated July 15, 1997, which is also found in two Notices of Data Availability (NODA) (USEPA1997a,b). The major issues addressed in the Agreement in Principle were discussed in the NODA for the IESWTR (62 FR 59486, November 3, 1997) and Stage 1 DBPR (62 FR 59388, November 3, 1997).

On December 16, 1998, EPA promulgated the IESWTR (63 FR 69478), which applies to surface water and GWUDI systems serving 10,000 or more persons. The purposes of the IESWTR are to improve control of microbial pathogens (specifically Cryptosporidium) and to address risk trade-offs with DBPs. Key provisions established in the IESWTR include: (1) An MCLG of zero for *Cryptosporidium;* (2) a 2-log *Cryptosporidium* removal requirements for systems that filter; (3) strengthened combined filter effluent turbidity performance standards and individual filter turbidity provisions; (4) disinfection benchmarking provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new DBP standards; (5) inclusion of *Cryptosporidium* in the definition of GWUDI, as another pathogen that would indicate the presence of GWUDI, and in the watershed control requirements for unfiltered public water systems; (6) requirements for covers on new finished water reservoirs; and (7) sanitary surveys for all surface water and GWUDI systems regardless of size.

Today's rule is based in large part upon the data, research, and technical analysis that supported the major components included in the 1998 IESWTR. To that degree, it reflects the national interim microbial protection control strategy ratified by a wide range of experts and stakeholders as part of the 1997 M/DBP Agreement in Principle. However, as was discussed in the April 10, 2000 proposal, today's rule also is based on new small system information that became available since 1998 and, equally important, it also reflects a major commitment to significantly reduce small system compliance burdens wherever possible, while maintaining public health protection.

C. How Were Stakeholders Involved in the Development of the LT1ESWTR?

EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998 with two public meetings: one in Denver, Colorado and the other in Dallas, Texas (USEPA, 1999a,b). Building on these two public meetings, EPA has also held a number of additional meetings with stakeholders,

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trade associations, environmental groups, and representatives of State and local elected officials. Of particular importance for this rule, given its focus on small systems, EPA received valuable input from small entity representatives as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel. The panel was initiated in April of 1998 and officially convened in August of 1998. Many of the panel's recommendations are reflected in today's rule.

EPA provided numerous opportunities for stakeholder and public involvement. In early June 1999, EPA mailed an informal draft of the LT1ESWTR preamble to the approximately 100 stakeholders who attended either of the public stakeholder meetings. Members of trade associations and the SBREFA panel also received the draft preamble. EPA received valuable suggestions and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. EPA proposed the LT1ESWTR on April 10, 2000. During the comment period, the Agency held a public meeting in Washington D.C. on April 14, 2000. Additionally, the proposed rule was presented to industry, State representatives, and the public in nearly 50 meetings across the US, including a May 30, 2000 meeting in Washington, D.C. with ten representatives of elected State and local officials (USEPA 2000g,h). Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders.

D. What Did the April 10, 2000 Proposal Contain?

The proposed rulemaking package, which is the basis for today's final rule, was entitled The Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Proposed Rule (USEPA, 2000b).

The proposed rule included two distinct sets of provisions: LT1ESWTR provisions and Filter Backwash Recycling Rule (FBRR) provisions. The Agency promulgated the final FBRR in a **Federal Register** announcement on June 8, 2001 (66 FR 31086), separate from today's final rule. The LT1ESWTR proposed rule provisions applied to surface and GWUDI systems serving fewer than 10,000 persons and included the following provisions:

—2-log removal of *Cryptosporidium*;
—Compliance with specific combined filter effluent turbidity requirements;
—Continuous turbidity monitoring for individual filters with follow-up activities if monitoring results indicated a potential problem;
—Development of a disinfection profile unless optional monitoring at a particular plant demonstrated TTHM and HAA5 levels less than 0.064 mg/L and 0.048 mg/L respectively;
—Development of a *Giardia* inactivation disinfection benchmark and consultation with the State for approval before making a significant change in disinfection practices;
—Mandatory covers for all newly constructed finished water reservoirs; and
—Unfiltered system compliance with updated watershed control requirements that add *Cryptosporidium* as a pathogen of concern.

III. Discussion of the Final Rule

A. What Level of Cryptosporidium Removal Does the LT1ESWTR Require?

1. What Does Today's Rule Require?

Today's final rule establishes a treatment technique requirement for 2-log removal of *Cryptosporidium* for surface water and GWUDI systems serving fewer than 10,000 persons. This requirement applies between a point where the raw water is not subject to contamination by surface water runoff and a point downstream before or at the first customer.

2. How Was This Requirement Developed?

As discussed previously in today's rule, *Cryptosporidium* is a microbiological contaminant that has caused several outbreaks of cryptosporidiosis and poses serious health risks. For these reasons, the Agency set forth to develop requirements to minimize risks associated with *Cryptosporidium* in drinking water. In the IESWTR, EPA established a MCLG of zero for *Cryptosporidium*. EPA decided to establish 2-log removal of *Cryptosporidium* as the accompanying treatment technique for this MCLG. This requirement is based on a number of treatment effectiveness studies that demonstrate the ability of well-operated conventional and direct filtration plants to achieve at least a 2-log removal of *Cryptosporidium* (Patania *et al.*, 1995; Nieminski and Ongerth, 1995; Ongerth and Pecoraro, 1995; LeChevallier and Norton, 1992; LeChevallier *et al.*, 1991; Foundation for Water Research, 1994; Kelly *et al.*, 1995; and West *et al.*, 1994). The information and data in these eight studies provide convincing evidence that conventional and direct filtration plants that employ coagulation, flocculation, sedimentation (in conventional filtration only), and filtration steps, have the ability to achieve a minimum of 2-log removal of *Cryptosporidium* when meeting specific turbidity limits. EPA has also provided data in the proposal for today's final rule that indicate the ability of slow sand filtration, diatomaceous earth filtration, and alternative filtration (membrane filtration, cartridge filtration, etc.) to achieve at least 2-log removal of *Cryptosporidium* (Jacangelo *et al.*, 1995; Drozd & Schartzbrod, 1997; Hirata & Hashimoto, 1998; Goodrich *et al.*, 1995; Collins *et al.*, 1996; Lykins *et al.*, 1994; Adham *et al.*, 1998; Shuler & Ghosh, 1991; Timms *et al.*, 1995; Shuler *et al.*, 1990; and Ongerth & Hutton, 1997). The Agency believes that the technological feasibility for 2-log removal is demonstrated for both large and small systems and therefore today's rule extends the 2-log *Cryptosporidium* removal requirement established for large and medium systems in the 1998 IESTWR to small systems serving fewer than 10,000 persons.

3. What Major Comments Were Received?

The majority of the commenters on the proposed rule agreed with the appropriateness of establishing a 2-log removal requirement for *Cryptosporidium*. A few commenters noted that small systems should not be required to meet the same *Cryptosporidium* log removal requirements as large systems. EPA disagrees. The technological feasibility of 2-log removal is well demonstrated (as shown in the studies discussed in the proposal for today's final rule) and the Agency believes that persons served by all sized systems should be afforded comparable levels of public health protection (i.e., the small systems subject to the LT1ESWTR should have the same MCLG, and the 2-log *Cryptosporidium* removal treatment technique as large systems subject to the IESWTR).

B. What Combined Filter Effluent Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule requires strengthened combined filter effluent performance for conventional filtration, direct filtration, and alternative filtration systems (systems using filtration technologies other than conventional filtration, direct filtration, diatomaceous earth filtration, or slow sand filtration) as the treatment technique for achieving a 2-log removal of *Cryptosporidium*. For conventional and direct filtration systems, the turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU. Under today's rule, conventional and direct filtration plants meeting these filter performance requirements are presumed to achieve at least a 2-log removal of *Cryptosporidium*. Slow sand and diatomaceous earth filtration plants are presumed to achieve at least 2-log removal of *Cryptosporidium* if they continue to meet the existing filter performance requirements established in the SWTR. Systems using alternative filtration (i.e., membrane filtration, cartridge filtration, etc.) must demonstrate to the State that their system achieves 2-log removal of *Cryptosporidium*. The State will then establish appropriate turbidity limits to reflect this performance. At the end of each month, systems must report the total number of combined filter effluent turbidity measurements taken each month, as well as the number and percentage of turbidity measurements that exceeded their 95th percentile turbidity limit and the number of measurements that exceeded their maximum turbidity limit. Combined filter effluent turbidity measurements must be kept for at least three years.

2. How Was This Requirement Developed?

In establishing the 2-log removal as a treatment technique for *Cryptosporidium*, the Agency relied on the aforementioned studies to demonstrate the technological feasibility of establishing the 2-log removal. These studies demonstrated that specific treatment would achieve 2-log removal of *Cryptosporidium* when operated to achieve specific turbidity performance limits. For conventional and direct filtration systems, studies demonstrated that achieving a turbidity of 0.3 NTU 95 percent of the time and never exceeding 1 NTU would ensure at least 2-log removal of *Cryptosporidium*. For slow sand and diatomaceous earth filtration systems, the studies demonstrated that meeting existing SWTR turbidity limits would ensure at least 2-log removal of *Cryptosporidium*. Alternative filtration systems were shown to achieve at least 2-log removal of *Cryptosporidium* at a variety of turbidities based on the type of filtration and other site-specific characteristics. The requirements of today's final rule reflect the recommendations of the 1997 M-DBP Committee.

As part of the LT1ESWTR development process, EPA analyzed performance data from 211 small systems in 15 different States. That data indicated that a substantial number of small systems are presently meeting the tighter performance standards of today's rule. For example, 50 percent of the 211 systems are currently meeting 0.3 NTU 12 months out of the year. In addition, 93 percent of the 211 systems never exceeded the 1 NTU maximum 12 months out of the year. Therefore, EPA believes that the strengthened filter performance standards established for small systems in today's final rule are feasible and achievable.

3. What Major Comments Were Received?

The majority of the commenters on the proposal agreed with the appropriateness of the combined filter effluent requirements. Many commenters raised concerns with the proposal's reliance on turbidity as an indicator for demonstrating that membrane filtration meets the same *Cryptosporidium* removal requirements as conventional and direct filtration systems. Commenters indicated that although turbidity is the most prevalent form of water quality monitoring, establishing a 0.3 NTU 95th percentile limit and 1 NTU maximum limit would not be as appropriate an indicator of the performance of membranes than other parameters such as flux or membrane integrity. They noted that using turbidity was appropriate if site specific turbidity limits were utilized. At most facilities these limits would typically be much lower than 0.3 NTU. Additionally, commenters asserted that since the typical operational turbidities of membranes (< 0.05 NTU) were so much lower than those of conventional filtration, it would be inappropriate to require membranes to meet turbidity limits that were significantly higher than standard operating practices. In response, EPA notes that in the proposed rule, EPA allowed membrane systems to meet either conventional filtration or alternative filtration combined filter effluent requirements. After further evaluating existing studies and information provided by commenters, EPA agrees that other appropriate indicators may be used to determine the treatment efficiency of membrane filtration, and that given the different operational turbidities of conventional filtration and membrane filtration, different turbidity limits are appropriate. Therefore, today's final rule treats membrane filtration as an available alternative filtration technology, instead of requiring membranes to meet the same turbidity limits as conventional and direct filtration.

C. What Individual Filter Monitoring Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule establishes a requirement that all systems using surface water or GWUDI, serving fewer than 10,000 persons, and utilizing conventional or direct filtration must continuously monitor the individual filter turbidity for each filter used at the system. For purposes of this rule, continuous monitoring means at least every 15 minutes. Systems must keep the results of this monitoring for at least three years. Each month systems must report to the State that they have conducted individual filter turbidity monitoring, and are required to indicate the dates, filter number, and turbidities of any measurements that exceeded 1.0 NTU. Today's rule provides that systems with two or fewer filters may monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity monitoring. Based on this monitoring, if a system exceeds 1.0 NTU in two consecutive measurements the system must include the filter number, date, time and reason for the exceedance at the end of the month in its monthly filter performance report to the State. If this occurs three months in a row for the same filter, a system is required to conduct a self-assessment of the filter. If a self-assessment is required, it must take place within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month. The system must report to the State that the self-assessment was completed. A self-assessment must include at least the following components:

—Assessment of filter performance;
—Development of a filter profile;
—Identification and prioritization of factors limiting filter performance;
—Assessment of the applicability of corrections; and
—Preparation of a self-assessment report.

If a system exceeds 2.0 NTU (in two consecutive measurements 15 minutes apart) for two months in a row, the system must contact the State to arrange for the State or an approved third party to conduct a Comprehensive Performance Evaluation (CPE) not later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. The CPE must be completed and

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submitted to the State no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

2. How Was This Requirement Developed?

Performance of individual filters within a plant is of paramount importance in preventing pathogen breakthrough. Two important concepts regarding individual filters underlie today's individual filter monitoring requirement. First, as discussed in more detail in the April 10, 2000 proposal, poor performance (and potential pathogen breakthrough) of one filter can be masked by optimal performance of the remaining filters, without exceeding combined filter effluent turbidity performance standards. Second, recent filter performance research demonstrates that individual filters are susceptible to turbidity spikes of short duration that may not be captured by four-hour combined filter effluent measurements. Several studies (Amirthatajah, 1988; Bucklin *et al.*, 1988; Cleasby 1990; Hall and Croll 1996; and McTigue *et al.*, 1998) have confirmed the frequency and magnitude of individual filter turbidity spikes. To address these spikes and the potential for masking, and provide system operators with information and advanced warning with regards to individual filter performance problems before they lead to treatment technique violations, the Agency proposed individual filter turbidity monitoring. EPA proposed one option and requested comment on two alternative approaches. The alternatives consisted of an approach identical to the IESWTR that entailed significantly more burden, and an approach that included 95th percentile and maximum triggers instead of a trigger based on two consecutive measurements. The proposed option has been revised in three minor ways. In today's rule:

—Systems with two or fewer filters may monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity (the proposal required all filters be monitored);

—Systems must schedule CPEs within 60 days and complete them within 120 days (the proposal required 30 and 90 days);

—A system has 14 days following a turbidimeter malfunction to resume continuous individual filter monitoring before a violation occurs (the proposal required 5 days).

3. What Major Comments Were Received?

The majority of the commenters on the proposal agreed with the appropriateness of the individual filter monitoring requirements. The Agency requested comment on a variety of issues to which commenters responded. Most commenters supported the modification that States be provided the opportunity to allow systems with two or fewer filters to monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity indicating that poor performance of one filter could not simply be masked by optimal performance of an additional filter. The Agency has included this modification in today's final rule because it reduces the burden on small systems while still providing continuous monitoring that can be used to indicate whether filters are performing poorly.

Several commenters supported a modification to lengthen CPE schedules by 30 days. The Agency has included this modification in today's final rule in order to provide States added flexibility in performing these activities. The extra 30 days will provide States the opportunity to marshal unique resources (specifically, employees trained in conducting CPEs) and prioritize the conduct of CPEs, when several systems trigger them during the same time period.

Several commenters indicated that allowing only five working days for an on-line turbidimeter to be off-line before a violation resulted would be inappropriate for small systems. Commenters indicated that smaller systems often do not have back-up units onsite and would be required to contact manufacturers and await shipping and installation which could easily exceed the five days. EPA agrees and has modified the requirement to allow systems serving fewer than 10,000 persons, 14 days to resume online monitoring prior to incurring a violation.

Several commenters noted that systems serving fewer than 10,000 persons should be subject to less frequent monitoring of individual filter effluent. EPA believes that continuous individual filter monitoring is feasible and assures improved performance of filtration systems. As explained in the proposal, continuous filter monitoring is necessary to identify short duration turbidity spikes which are likely to be missed with less frequent monitoring. This is true for systems of all sizes. Less frequent monitoring would not identify many turbidity spikes and accordingly would not provide a comparable level of public health protection as that of continuous monitoring required for large systems under the IESWTR. In fact, the actual frequency of individual filter monitoring has little effect on burden as much of the costs associated with monitoring are derived from the purchase of the necessary equipment and would be incurred regardless of the frequency. Reduced monitoring would represent reduced public health protection and the Agency firmly believes that the consumers of these small systems should be afforded a comparable level of public health protection as larger systems.

D. What Disinfection Profiling and Benchmarking Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule requires community and non-transient non-community systems that use surface water or GWUDI and serve fewer than 10,000 persons to develop a disinfection profile based on a 52 week period. Systems serving between 500 and 9,999 must begin profiling and notify the State to this effect by July 1, 2003. Systems serving fewer than 500 must begin profiling and notify the State to this effect by January 1, 2004. To conduct the profile, systems must:

—Monitor disinfectant residual concentration, water temperature in degrees Celsius, pH, and contact time during peak hourly flow once a week (on the same calendar day) during all months that the system is operational;

—Calculate Giardia lamblia inactivation for each of the 52 weeks; and

—Plot graphically, the 52 weekly inactivations.

Results of the profile must be kept indefinitely. EPA is developing guidance materials that provide detailed information on this procedure. A State may determine that a system's profile is unnecessary where a system submits TTHM and HAA5 data that:

—Is taken during the month of warmest water temperature (beginning no earlier than 1998);

—Is taken at the point of maximum residence time; and

—Reports levels of TTHM and HAA5 of less than 0.064 mg/L and 0.048 mg/L respectively.

Today's final rule also requires any system which developed a profile and which decides to make a significant change to their disinfection practice to determine their disinfection benchmark (the average microbial inactivation during the month with the lowest

inactivation), consult with the State for approval, and provide the following information during consultation:

—Description of the proposed change;

—Disinfection profile (and data used to develop profile); and

—Analysis of how the proposed change will affect the current levels of disinfection.

Results of the disinfection benchmark (including the raw data and analysis) must be kept indefinitely.

2. How Was This Requirement Developed?

The disinfection benchmarking requirements provide the necessary link between simultaneous compliance with microbial protection requirements of the IESWTR and LT1ESWTR and disinfection byproduct requirements of the DBPR. The requirements were established pursuant to the authority of Section 1445 of SDWA to ensure that systems would not jeopardize microbial protection when making changes in disinfection practices to comply with the DBPR.

During the 1997 M/DBP FACA deliberations, all participants agreed to the fundamental premise that new standards for control of DBPs must not lead to significant reductions in existing levels of microbial protection. This premise is reflected in the 1997 M–DBP Advisory Committee Agreement in Principle document. The Advisory Committee reached agreement on the use of a microbial profiling and benchmarking process, whereby a system and State, working together, could assure that there would not be a significant increase in microbial risk as a result of modifying disinfection practices to meet MCLs for TTHM and HAA5. The final IESWTR established the disinfection benchmark procedure to require large systems (serving 10,000 or more persons) that might be considering a significant change to their disinfection practice (defined as systems with TTHM or HAA5 concentrations at or above 80 percent of the respective MCLs (e.g., 0.064 mg/L TTHM or 0.048 mg/L HAA5)) to evaluate the impact on microbial risk. Under the IESWTR, large systems whose TTHM and/or HAA5 average levels exceeded the aforementioned values were required to develop a disinfection profile of microbial inactivation over the course of a year by calculating the daily level of *Giardia* inactivation. Those large systems required to develop a disinfection profile that also plan to make a significant change to disinfection practices were required to develop a "benchmark" of existing levels of *Giardia* microbial protection and to consult with the State prior to implementing the change.

In developing the disinfection benchmarking requirements of the LT1ESWTR, EPA used the IESWTR requirements as a starting point and, using significant input from stakeholders, modified the requirements to significantly reduce burden yet maintain a comparable level of public health protection. The April 10, 2000 proposal included several alternatives for establishing the microbial profiling and benchmarking process.

Of the four TTHM and HAA5 monitoring alternatives, the first was identical to the IESWTR, and included four quarters of monitoring at four points in the distribution system. The second alternative matched DBP compliance monitoring, requiring systems serving fewer than 500 to monitor once per year, and systems serving 500 or greater to monitor quarterly. A third alternative required only one sample taken at the point of maximum residence time for all systems. The fourth alternative (which was proposed) made TTHM and HAA5 monitoring optional. This alternative was chosen over the others, because it significantly reduces burden and the concern about "early implementation," that is, the need for systems to comply with requirements of a rule before primacy states have adopted new conforming regulations, while still retaining the ability for systems and States to utilize monitoring data to demonstrate low TTHM and HAA5 levels, and therefore avoid profiling. Since this monitoring is no longer required to determine the applicability of systems to conduct profiles, the final LT1ESWTR refers to this monitoring as "optional monitoring." The associated TTHM and HAA5 samples that must be conducted under this optional monitoring, are described in section 141.531. Of the four profiling alternatives, the first was identical to the IESWTR, requiring daily profiling for a year. The second alternative did not require profiling. The third alternative, which was proposed, required weekly profiling for a year. The fourth alternative required daily profiling during a single month. The Agency proposed weekly profiling over the course of a full year because it significantly reduces burden associated with conducting profiling (as compared to the first alternative), but still provides information on the seasonal variation associated with microbial inactivation, and develops an accurate microbial benchmark as systems moved to comply with the Stage 1 DBPR. The second and fourth profiling alternatives would not provide such information. The Agency has revised the proposed option in one minor way. In today's rule:

—Systems serving between 500 and 9,999 persons must begin weekly profiling no later than July 1, 2003, and systems serving fewer than 500 persons must begin weekly profiling no later than January 1, 2004 (the proposal required all systems to begin profiling no later than January 7, 2003).

3. What Major Comments Were Received?

The Agency received significant comment on the disinfection benchmarking provisions of the proposed rule. Commenters both supported and opposed the proposed "optional" TTHM and HAA5 monitoring. Several commenters argued that EPA should not require systems or states to undertake activities, even optional monitoring, before three years from the date a rule is promulgated because it would result in early implementation of the rule. While the Agency agrees that to the extent possible, implementation should be minimized in the first three years after the promulgation of a national primary drinking water regulation, as required by Section 1412(b)(10) of SDWA, the Agency continues to believe that allowing systems to conduct optional monitoring prior to three years after promulgation is appropriate and authorized under section 1445 of SDWA.

Several commenters raised "early implementation" concerns with profiling as well, and suggested profiling should take place only after using the first round of DBP monitoring in 2004 as optional monitoring for profiling activities. The Agency does agree, that to the extent possible, early implementation should be minimized in the first two years after the promulgation of the rule. However, the Agency believes that developing a microbial profile and benchmark prior to compliance monitoring under the Stage 1 DBPR is key to ensuring that systems do not jeopardize existing microbial protection when making changes to their disinfection practices to comply with the Stage 1 DBPR. Consequently, today's final rule requires systems serving fewer than 500 persons to begin profiling in January 2004, while systems serving greater than 500 to 9,999 persons are required to begin profiling in July 2003.

Other commenters believed that the proposed requirement represented burden reduction for small systems and

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States while still achieving the goals of optional monitoring and profiling as developed by the 1997 FACA and EPA. Additionally, commenters noted that EPA should provide States and systems the ability to use more representative data if available (i.e., allowing systems to average over several quarters of data similar to the IESWTR requirements). EPA agrees that systems and States should be allowed the opportunity to use more representative samples, and today's final rule affords States the opportunity to allow more representative data for optional monitoring and profiling.

E. How Does the Definition of Ground Water Under the Direct Influence of Surface Water Change?

1. What Does Today's Rule Require?

Today's final rule modifies the definition of ground water under the direct influence of surface water (GWUDI) to include *Cryptosporidium*, as another pathogen that would indicate the presence of GWUDI, for all PWSs.

2. How Was This Requirement Developed?

Although ground water is typically protected from microbial contaminants that are characteristic of surface water supplies, some ground water systems are susceptible to microbial contamination from surface water. Ground water that exhibits physical water quality indicators that closely correlate with nearby surface water and which contain surface water indicator organisms is "under the influence," of that surface water. In order to protect customers of such systems from illnesses resulting from exposure to Giardia and other microbial pathogens, the Agency addressed this issue during development of the 1989 SWTR. The final SWTR requires that systems with source water found to be GWUDI are subject to the filtration and disinfection requirements of Section 141 subpart H.

During development of today's final rule, the Agency proposed to modify the definition of GWUDI to include *Cryptosporidium*, as another pathogen that would indicate the presence of GWUDI. This is consistent with the approach taken by the Agency in the IESWTR and is further supported by recently available data indicating *Cryptosporidium* occurrence in 21 public water system wells (Hancock et al., 1998). As a result, EPA believes it appropriate and necessary to include *Cryptosporidium* in the definition of GWUDI for systems serving fewer than 10,000 persons in today's rule.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of modifying the definition of GWUDI to include *Cryptosporidium* for all PWSs. Today's final rule reflects the GWUDI definition as proposed.

F. What Additional Requirements Does the LT1ESWTR Contain for Unfiltered Systems?

1. What Does Today's Rule Require?

Today's rule modifies the requirements for surface water or GWUDI systems serving fewer than 10,000 persons that do not provide filtration by including *Cryptosporidium* in the watershed control provisions everywhere *Giardia lamblia* is mentioned.

2. How Was This Requirement Developed?

Watershed control requirements were initially established in 1989 as part of the SWTR. The SWTR contains specific conditions that a system must meet in order to avoid filtration. These conditions include good source water quality disinfection requirements, periodic on-site inspections, the absence of waterborne disease outbreaks, compliance with the Total Coliform Rule, and a watershed control program. The SWTR requires that the watershed control program must be maintained specifically to minimize the potential for contamination by *Giardia lamblia* cysts and viruses in the source water.

During development of today's rule, the Agency proposed that *Cryptosporidium* should also be included as a focus in watershed program for unfiltered systems. For the same public health reasons explained in detail as part of the April 10, 2000 proposal and outlined earlier regarding the risks associated with exposure to *Cryptosporidium*, the Agency believes it is important that watershed control requirements for unfiltered systems be revised to include *Cryptosporidium*. This is particularly important since such systems do not have the additional treatment barrier provided by filtration to protect against possible pass-through of *Cryptosporidium* into the distribution system.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of including *Cryptosporidium* in the watershed control program requirements for unfiltered systems. No substantive changes were made to this provision between proposal and today's final rule.

G. What Does the LT1ESWTR Require for Finished Water Reservoirs

1. What Does Today's Rule Require?

Today's final rule requires that all finished water reservoirs, holding tanks, or storage water facilities for finished water at systems serving fewer than 10,000 persons, for which construction begins after March 15, 2002 must be covered.

2. How Was This Requirement Developed?

Open finished water reservoirs, holding tanks, and storage tanks are utilized by PWSs throughout the country. Because these reservoirs are open to the environment and outside influences, they can be subject to the reintroduction of contaminants that the treatment plant was designed to remove. Existing EPA guidelines recommend that all finished water reservoirs and storage tanks be covered (USEPA, 1991). Additionally, many States currently require that finished water storage be covered, and the American Water Works Association (AWWA) has issued a policy statement strongly supporting the covering of reservoirs that store potable water (AWWA, 1983). In the July 29, 1994 IESWTR proposal (59 FR 38832), the Agency requested comment on whether to issue regulations requiring systems to cover finished water storage. Most commenters supported either Federal or State requirements, with some suggesting requirements should only apply to newly constructed reservoirs. In the final IESWTR, the Agency required systems using surface water and GWUDI and serving 10,000 persons or more to cover any newly constructed finished water reservoirs, holding tanks, or storage tanks. Through discussions with stakeholders and evaluations of available information, the Agency is unaware of any newly constructed uncovered finished water reservoirs at small systems since discussions with stakeholders regarding the LT1ESWTR began in 1998. The Agency is furthermore unaware of any future plans of small systems to construct uncovered finished water reservoirs. In fact the drinking water industry (regulators, consultants, and industry groups) have discouraged the construction of new uncovered reservoirs for many years. Furthermore, creating a prohibition on newly constructed uncovered finished water reservoirs would not affect current unfinished water reservoirs or even any system, which, despite the industry

standard of constructing only covered finished water reservoirs, may have already commenced construction on an uncovered finished water reservoir unbeknownst to the Agency or stakeholders which provided input on the rule. Therefore, in accordance with Section 1412(b)(10) of SDWA, the Agency has determined it is practicable to require as part of today's rule that systems serving fewer than 10,000 people provide covers for all finished water reservoirs, holding tanks, or storage reservoirs constructed after March 15, 2002.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of requiring that newly constructed finished water storage be covered. Several States noted that they currently require that all finished water reservoirs be covered. No substantive changes were made to this provision between proposal and today's final rule.

H. What Is the Compliance Schedule for the LT1ESWTR?

1. When Must My System Comply With Each of the Requirements of the Rule?

Each of the components of the final LT1ESWTR has a specific compliance date. The following table lists each requirement, along with the appropriate **Federal Register** citation and the compliance date:

Rule requirements	FR citation	Compliance date
Cover new finished water reservoirs	§ 141.511	March 15, 2002.
Comply with updated watershed control requirements (unfiltered PWSs).	§§ 141.520, 141.521 & 141.522	January 14, 2005.
Begin Developing Disinfection Profile	§§ 141.530–141.536	July 1, 2003 for systems serving between 500 and 9,999 persons and January 1, 2004 for systems serving fewer than 500 persons.
Complete the Disinfection Profile	§§ 141.530–141.536	July 1, 2004 for systems serving between 500 and 9,999 persons and January 1, 2005 for systems serving fewer than 500 persons.
Combined Filter Effluent Turbidity Limits	§§ 141.550, 141.551, 141.552, & 141.553.	January 11, 2005.
Individual Filter Turbidity Monitoring	§§ 141.560, 141.561, 141.562, 141.563, 141.564.	January 11, 2005.

2. What Major Comments Were Received?

Many commenters noted that they would not support requirements that would take place prior to two years after the promulgation of today's final rule. Several others recommended requiring that no portions of the rule should take effect until three years after the date of promulgation. The Agency does agree that to the extent possible, implementation should be minimized in the first two years after the promulgation of the rule. However, today's final rule requires systems serving fewer than 500 persons to begin profiling in January 2004, while systems serving greater than 500 to 9,999 persons are required to begin profiling in July 2003. This would allow time for States to work with systems, yet still provide profiling data prior to compliance sampling under the Stage 1 DBPR.

I. What Public Notification and Consumer Confidence Report Requirements Are Contained in the LT1ESWTR?

Today's final rule modifies the Public Notification (PN) requirements found in Appendix A and B of subpart Q of Part 141 to include public notification requirements for systems subject to the LT1ESWTR that are consistent with those for systems subject to the IESWTR.

Today's rule does not specifically modify the Consumer Confidence Report (CCR) Requirements found in subpart O of Part 141. However, consumer confidence reports must contain any violations of treatment techniques or requirements of NPDWRs as specified in § 141.153(d)(6) and § 141.153(f). This includes any such violations of the LT1ESWTR.

Updated CCR and PN appendices can be found on the Agency's Web site at *http://www/epa.gov/safewater/tables.html*.

IV. State Implementation

A. What Special State Primacy Requirements does the LT1ESWTR Contain?

In addition to adopting drinking water regulations at least as stringent as the Federal regulations of the LT1ESWTR, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA. This information advises the regulated community of State requirements and assists EPA in its oversight of State programs.

Under the final LT1ESWTR, there are several special primacy requirements that a State's application must include:

—Description of how the State will consult with the system and approve modifications to disinfection practices;

—Description of how the State will approve a more representative data set for optional monitoring and profiling under §§ 141.530–141.536.

—Description of how existing rules, adoption of appropriate rules or other authority under § 142.16(i)(1) require systems to participate in a Comprehensive Technical Assistance (CTA) activity, and the performance improvement phase of the Composite Correction Program (CCP);

—Description of how the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, chlorine dioxide, or ozone for primary disinfection; and

—For alternative filtration technologies (filtration other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration), a description of how the State will determine under § 142.16(i)(2)(iv), that a PWS may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with the disinfection treatment that meets the requirements of subpart T of this title, consistently achieves 3-log (99.9 percent) removal and/or inactivation of *Giardia lamblia* cysts and 4-log (99.99 percent) removal and/or inactivation of viruses, and 2-log (99 percent) removal of *Cryptosporidium* oocysts; and a description of how, for the

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system that makes this demonstration, the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time.

B. What State Recordkeeping Requirements Does the LT1ESWTR Contain?

Today's rule includes changes to the existing recordkeeping provisions to implement the requirements in today's final rule. States must maintain records of the following:

(1) Records of turbidity measurements;

(2) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness;

(3) Decisions made on a system-by-system basis and case-by-case basis under provisions of section 141, subpart H or subpart P or subpart T;

(4) Records of systems consulting with the State concerning a significant modification to their disinfection practice (including the status of the consultation);

(5) Records of decisions that a system using alternative filtration technologies can consistently achieve a 2-log (99 percent) removal of *Cryptosporidium* oocysts, as well as the required levels of removal and/or inactivation of Giardia and viruses for systems using alternative filtration technologies, including State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised and the State must provide a copy of the decision to the system, and;

(6) Records of those systems required to perform filter self-assessments, CPE or CCP.

C. What State Reporting Requirements Does the LT1ESWTR Contain?

Currently States must report information to EPA under section 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. There are no additional requirements under this rule, but States are required to report violations, variances and exemptions, and enforcement actions related to this rule.

D. How Must a State Obtain Interim Primacy for the LT1ESWTR?

To maintain primacy for the Public Water Supply Supervision (PWSS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's final rule. A State must submit a request for approval of program revisions that adopt the revised MCL or treatment technique and implement regulations within two years of promulgation, unless EPA approves an extension per § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

V. Economic Analysis (Health Risk Reduction and Cost Analysis)

This section summarizes the Health Risk Reduction and Cost Analysis (HRRCA) in support of the LT1ESWTR as required by section1412(b)(3)(C) of the 1996 SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the LT1ESWTR. EPA has prepared an economic analysis to comply with the requirements of this order and the SDWA Health Risk Reduction and Cost Analysis (USEPA, 2001a). The final economic analysis has been published on the Agency's Web site, and can be found at *http://www.epa.gov/safewater/lt1eswtr*. The analysis can also be found in the docket for this rulemaking.

EPA has estimated the total annualized cost for implementing the LT1ESWTR and analyzed the total benefits that result from the rule. Total annual costs for the rule are $39.5 million, in 1999 dollars, using three percent discount rate [$44.8 million using a seven percent discount rate]. The cost estimate includes capital costs for treatment changes and start-up and annual labor costs for monitoring and reporting activities. More detailed information, including the basis for these estimates and alternate cost estimates using different cost of capital assumptions are described in the LT1ESWTR economic analysis (USEPA, 2001a). Combining the value of illness and mortalities avoided, the estimate of the total quantified annual benefits of the LT1ESWTR range from $18.9 million to $90.9 million. However, this range does not incorporate many of the sources of uncertainty related to quantifying benefits, including many benefits the Agency was unable to evaluate. Accordingly, incorporating additional uncertainties would necessarily increase the size of the range. For example, the number of avoided cases of cryptosporidiosis might be higher or lower than the number reflected in this range. More detailed information, including the basis for these estimates, are described in the LT1ESWTR economic analysis (USEPA, 2001a).

A. What Are the Costs of the LT1ESWTR?

In estimating the costs of today's final rule, the Agency considered impacts on PWSs and on States (including territories and EPA implementation in non-primacy States). The LT1ESWTR will result in increased costs to public water systems for implementing the components of today's final rule. States will also incur implementation costs. EPA estimates that the annualized cost of today's final rule will be $39.5 million using a three percent discount rate ($44.8 million using a seven percent discount rate).

Approximately 84 percent ($33.1 million using a 3 percent discount rate and $38.2 million using a 7 percent discount rate) of the rule's total annual costs are imposed on drinking water utilities. States incur the remaining 16 percent ($6.4 million using 3 percent and $6.6 million using 7 percent) of the LT1ESWTR's total annual cost. The turbidity provisions, which include treatment changes, monitoring, and reporting, account for the largest portion of the total rule costs ($37.7 million using 3 percent and $42.7 million using 7 percent). Systems will incur most of the turbidity provision costs and this is discussed in more detail in the next section. The national estimate of annual system costs is based on estimates of system-level costs for the rule and estimates of the number of systems expected to incur each type of cost. Total capital costs for the LT1ESWTR (non-annualized) is $173.6 million.

Turbidity Provision Costs—The turbidity provisions are estimated to cost both public drinking water systems and States approximately $37.7 million annually using a three percent discount rate ($42.7 million using 7 percent). However, the majority of these costs will be borne by the systems and are the result of treatment changes to meet the 0.3 NTU turbidity standard as well as the cost for some systems to purchase turbidimeters in order to meet the monitoring requirements of this rule. The Agency estimates that 2,207 systems will modify their water treatment in response to this rule provision while 2,327 conventional and direct filtration systems will need to install turbidimeters. In addition to the capital costs associated with this rule provision there will also be increases in operation and maintenance (O&M) costs. These combined capital and O&M costs have an estimated cost to systems of $27.1 million annually using a 3 percent discount rate ($31.8 million using a 7 percent discount rate). The O&M expenditures account for 59 percent of the $27.1 million using a 3 percent discount rate ($31.8 million using a 7 percent discount rate) while the remaining 41 percent represents annualized capital costs. In addition to the turbidity treatment costs, turbidity monitoring costs apply to all small surface water or GWUDI systems using conventional or direct filtration methods. There are an estimated 5,817 systems that fall under this criterion. The annualized individual filter turbidity monitoring cost to PWSs is approximately $4.5 million using a 3 percent discount rate ($4.7 million using 7 percent). In addition to the turbidity treatment and monitoring costs, individual filter turbidity exceedance reporting is estimated to cost systems $0.6 million annually (using either a 3 percent or 7 percent discount rate).

The Agency estimated that the total State cost for the turbidity provision (monitoring and exceptions) is $6.1 million annually (using either a 3 percent or 7 percent discount rate), with start-up and monitoring comprising of 81 percent of these annual costs ($4.9 million annually using either a 3 percent or 7 percent discount rate). The remaining $1.2 million (using either a 3 percent or 7 percent discount rate) in annual costs includes the costs for States to review the individual filter turbidity exceedance reports and individual filter self-assessment costs.

Disinfection Benchmarking Costs—The disinfection benchmarking provision involves three components: benchmarking, profiling, and optional monitoring. The start-up costs for this provision are estimated to cost systems $2.9 million ($0.2 million annualized using a three percent discount rate and $0.3 million using a seven percent discount rate). Disinfection benchmarking and profiling are estimated to cost systems approximately $0.4 million annually using a 3 percent discount rate ($0.5 million using 7 percent). TTHM and HAA5 monitoring is optional and estimated to cost $0.3 million annually using a 3 percent discount rate ($0.4 million using a 7 percent discount rate). State disinfection benchmarking annualized costs are estimated to be $0.4 million using a 3 percent discount rate ($0.5 million using a 7 percent discount rate). This estimate includes start-up, compliance tracking/recordkeeping, and consultation costs.

Covered Finished Water Reservoir Provision Costs—The LT1ESWTR requires that small systems cover all newly constructed finished water reservoirs, holding tanks, or other storage facilities for finished water. Total annual costs, including annualized capital costs and one year of O&M costs are expected to be $0.8 million (using either a 3 percent or 7 percent discount rate) for this provision. This estimate is calculated from a projected construction rate of new reservoirs and unit cost assumptions for covering new finished water reservoirs. Also, the Agency believes that this is an overestimate since there may be additional States that currently require finished water requirement.

Although EPA has estimated the cost of all the rule's components on drinking water systems and States, there are some costs that the Agency did not quantify. These non-quantifiable costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA did not estimate a cost for systems to acquire land if they needed to build a treatment facility or significantly expand their current facility because the need for and cost of land is highly system specific. Additionally, if the cost for land was prohibitive, an alternative compliance option may be available (such as connecting to another source). Once again, the Agency has not quantified costs for this scenario due to the high degree of site specificity. However, based on evaluations of Comprehensive Performance Evaluations (CPEs), EPA believes that most systems possess more than adequate property to construct new facilities.

In addition, other LT1ESWTR provisions may affect some systems but the Agency was not able to quantify these costs. These non-quantified costs include those for systems that incur incremental costs increases as a result of including *Cryptosporidium* in the definition of GWUDI and also by including *Cryptosporidium* in the watershed control requirements for unfiltered systems. The Agency lacked data on the number of systems potentially affected by these two provisions and was therefore, unable to estimate their costs. By including *Cryptosporidium* in the definition, more ground water systems may be determined to be under the direct influence of surface water resulting in additional cost because these systems must comply with the 1989 Surface Water Treatment Rule and today's rule. EPA also did not estimate the costs for unfiltered systems to control *Cryptosporidium* in their watersheds. These systems already control for other pathogens from similar sources as *Cryptosporidium* so it is likely that this provision will have a relatively minor impact.

B. What Are the Household Costs of the LT1ESWTR?

The mean annual cost per household is $6.24 and the cost per household is less than $15 for 90 percent of 6.3 million households potentially affected by today's final rule. Of the remaining households, nine percent will experience a range of annual costs from $15 to $120 ($10/month), while only one percent of households are estimated to experience annual costs exceeding $120.

As indicated in the economic analysis supporting today's final rule, per-household costs exceed $240/year for approximately 5,600 households out of the 6.3 million households potentially impacted by the LT1ESWTR. However, this analysis likely overestimates costs for most of these households, allowing that systems might choose to incur costs with up to 28 separate treatment changes when in fact it is likely to be more cost-effective to install a new treatment system. (This can be thought of as building an automobile piece by piece from an auto parts store compared to buying one at a dealership.) The aforementioned 5,600 households are associated with the end of the cost distribution where systems undertake an unrealistically large number of treatment changes.

C. What Are the Benefits of the LT1ESWTR?

The primary benefits of today's final rule come from reductions in the risks of microbial illness from drinking water. In particular, LT1ESWTR focuses on reducing the risk associated with disinfection resistant pathogens, such as *Cryptosporidium*. Exposure to other pathogenic protozoa, such as *Giardia*, or other waterborne bacteria, viral pathogens, and other emerging pathogens are likely to be reduced by the provisions of this rule as well, but are not quantified. In addition, LT1ESWTR produces non-quantifiable benefits associated with the risk reductions that result from the uncovered reservoir provision, including *Cryptosporidium* in GWUDI definition, and including *Cryptosporidium* in watershed requirements for unfiltered systems. Non-quantifiable benefits also include reducing the risks to sensitive subpopulations and the likelihood of

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incurring costs associated with outbreaks.

1. Quantifiable Health Benefits

The quantified benefits from this rule are based solely on the reductions in the risk of cryptosporidiosis that result from the turbidity provision. As a result of data limitation, this analysis only addresses endemic illness and not illness that results from epidemic disease outbreaks. *Cryptosporidiosis* is an infection caused by *Cryptosporidium* which is an acute, self-limiting illness lasting 7 to 14 days, with symptoms that include diarrhea, abdominal cramping, nausea, vomiting and fever (Juranek, 1995). The monetized value of an avoided case of cryptosporidiosis is estimated to range from $796 to $1,411 per case based on a cost-of-illness methodology (Harrington et al., 1985; USEPA 2001a). The high end of the range includes losses for medical costs, work time, productivity, and leisure time. However, the low end of the range only values medical costs and work time. The medical costs may be overestimated as they are assumed to be the same as medical costs for a case of Giardiasis which has a significantly longer duration. However, the Agency believes it is appropriate not to prorate medical costs for the shorter duration of Cryptosporidiosis because (1) available data suggests that the median length of hospital stays is essentially the same for Cryptosporidiosis compared to Giardiasis; (2) the Harrington et al. study was conducted in the mid-1980's, and consequently, the higher direct medical costs associated with treating individuals with HIV/AIDS, who are more severely impacted by Cryptosporidiosis, was not included; and (3) Cryptosporidiosis has no known medical treatment and available data indicates that the range of the length of hospital stays for immunocompromised individuals is larger for cases of Cryptosporidiosis compared to Giardiasis. The Agency also recognizes however, that many individuals with Cryptosporidiosis do not seek medical treatment and thus have little or no associated medical cost, and that the percentage of such cases may be higher for Cryptosporidiosis than Giardiasis given its shorter duration.

The benefits of the turbidity provisions of LT1ESWTR come from improvements in filtration performance at water systems. The benefits analysis accounts for some of the variability and uncertainty in the analysis by estimating benefits under two different current treatment and three improved removal assumptions. In addition, EPA used Monte Carlo simulations to derive a distribution of estimates to address uncertainty.

In order to quantify the benefits of this rule, the Agency estimated changes in the incidence of cryptosporidiosis that would result from the rule. The analysis included estimating the baseline (pre-LT1ESWTR) level of exposure and risk from *Cryptosporidium* in drinking water and the reductions in such exposure and risk resulting from the turbidity provisions of the LT1ESWTR. Baseline levels of *Cryptosporidium* in finished water were estimated by assuming national source water occurrence distribution (based on data by LeChevallier and Norton, 1995) and a national distribution of *Cryptosporidium* removal by treatment.

In the LT1ESWTR economic analysis, the following two assumptions were made regarding the current *Cryptosporidium* oocyst removal performance to estimate finished water *Cryptosporidium* concentrations. First, based on treatment removal efficiency data presented in the proposal, EPA assumed a national distribution of physical removal efficiencies with a mean of 2.0 logs and a standard deviation of 0.63 logs. Because the finished water concentrations of oocysts represent the baseline against which improved removal from the LT1ESWTR is compared, variations in the log removal assumption could have considerable impact on the risk assessment. Second, to evaluate the impact of the removal assumptions on the baseline and resulting improvements, an alternative mean log removal/inactivation assumption of 2.5 logs and a standard deviation of 0.63 logs were also used to calculate finished water concentrations of *Cryptosporidium*.

For each of the two baseline assumptions, EPA assumed that a certain number of plants would show low, mid, or high improved removal as a result of the turbidity provisions. The amount of improved removal depends upon factors such as water matrix conditions, filtered water turbidity effluent levels, and coagulant treatment conditions. The low, mid, and high improved removals were derived from Patania et al., (1995). This study demonstrated that an incremental decrease in turbidity from 0.3 NTU to 0.1 NTU (or a 0.2 NTU reduction overall) resulted in increased oocyst removals of up to one-log. The Agency used this data to construct low, mid, and high removal assumptions that would capture uncertainty associated with improved removal. The Agency also utilized different low, mid, and high removal assumptions for distinct categories of current turbidity performance (<.2NTU, 0.2–0.3 NTU, 0.3–0.4 NTU, and > 0.4 NTU). For instance, systems currently operating at greater than 0.4 NTU would need to target 0.2 NTU to ensure compliance with the 0.3 NTU limit and EPA accordingly assumed a low improved removal of 0.5-log, a mid improved removal of 0.75-log and a high improved removal of 0.9-log. However, systems currently operating between 0.2 NTU and 0.3 NTU were only expected to minimally improve turbidity performance and would therefore only expect improved log removals of 0.15, 0.25, and 0.3 (low, mid, and high). As a result, the economic analysis considers various baseline and with-rule scenarios to develop a range of endemic health damages avoided. Additional information is found in the Benefits chapter of the Economic Analysis supporting today's final rule.

The finished water *Cryptosporidium* distributions that would result from additional log removal with the turbidity provisions were derived assuming that additional log removal was dependent on current removal, i.e., that systems currently operating at the highest filtered water turbidity levels would show the largest improvements or high improved removal assumption. For example, plants now failing to meet a 0.4 NTU limit would show greater removal improvements than plants now meeting a 0.3 NTU limit.

In addition to assuming the more conservative baseline and removal assumptions, the lower-end of the LT1ESWTR's benefit estimate does not include valuations for leisure time, productivity losses (returning to work but still experiencing symptoms), and other loss categories that the authors discuss but do not quantify (e.g., "high valued" leisure). The authors (Harrington *et al.*) were highly confident in the estimates for direct medical expenditures and work losses which comprise the lower benefit estimate; and less confident in the values for leisure time losses and productivity losses which are included in the upper benefit estimate only. The decreased level of confidence was based on the data and methods used to estimate only these losses. The authors also conclude that: "* * * nonetheless, the loss categories in this group–[productivity, leisure time, etc.] are unquestionably present and therefore, raise losses above those reported in [the lower-end benefit estimate]". The Agency believes that these categories have positive value as stated in Harrington *et al.* consequently the lower-end estimate for the

LT1ESWTR understates the true value of these loss categories.

The Agency further notes that the medical expense component of the valuation may be overstated because it is not prorated for the shorter duration of Cryptosporidiosis relative to Giardiasis (mean duration of 11.5 v. 41.6 days). The Agency believes this is appropriate however, because (1) available data suggests that the median length of hospital stays is essentially the same for Cryptosporidiosis compared to Giardiasis; (2) the Harrington et al. study was conducted in the mid-1980's, and consequently, the higher direct medical costs associated with treating individuals with HIV/AIDS, who are more severely impacted by Cryptosporidiosis, was not included; and (3) Cryptosporidiosis has no known medical treatment and available data indicates that the range of the length of hospital stays for immunocompromised individuals is larger for cases of Cryptosporidiosis compared to Giardiasis. The Agency also recognizes however, that many individuals with Cryptosporidiosis do not seek medical treatment and thus have little or no associated medical cost, and that the percentage of such cases may be higher for Cryptosporidiosis than Giardiasis given its shorter duration.

Table V.1 indicates estimated annual quantified benefits associated with implementing the LT1ESWTR. The benefits analysis examines only the endemic health damages avoided based on the LT1ESWTR for each of the turbidity provision scenarios discussed previously. For each of these scenarios, EPA calculated the mean of the distribution of the number of illnesses avoided. The 10th and 90th percentiles imply that there is a 10 percent chance that the estimated value could be lower than the 10th percentile and there is a 10 percent chance that the estimated value could be higher than the 90th percentile. The modeling assumptions used to obtain the distribution of illness and mortality avoided for each baseline and the removal scenarios considers both variability and uncertainty. Specifically, the Agency used a 2-dimensional Monte Carlo simulation to include both uncertainty and variability inputs. The components that EPA considered uncertain include the probability of illness given an infection, the variability of *Cryptosporidium* to cause either an infection or illness, and the infectivity dose-response factor. The variability components include: *Cryptosporidium* occurrence in the finished water, individual daily drinking water consumption, and the number of days per year of exposure.

In the 2-dimensional simulation structure, a set of values for the uncertainty parameters is chosen from their respective distributions. This set of values is then "frozen" and a specified number of iterations are run where different values are chosen for the variability factors. This process is repeated for some specified number of sets of uncertainty parameters. For this analysis, 250 sets of uncertainty parameters were used, with 1,000 variability iterations performed on each of the 250 uncertainty sets.

This modeling exercise provides the Agency with 250 sets of statistics for individual annual risk of illness (e.g., mean, standard deviation) that each reflect different possible combinations of uncertainty factors. The 250 estimates for each set of statistics (i.e., mean, confidence intervals) were then used to compute an overall population average annual risk of illness.

Next, the Agency estimates cases of illness and mortality from the average annual risk of illness estimates. In order to do this, the average annual probability of illness is multiplied by the number of exposed individuals. In a separate Monte Carlo simulation for this calculation, the average annual probability of illness is treated as an uncertainty variable. As a result, the Agency has mean estimates with confidence intervals for various baseline and post LT1ESWTR assumptions regarding *Cryptosporidium* removal from source water. The 90th percentile confidence bounds on the expected values largely reflect the following uncertainty variables: the probability of illness given infection, the variability of *Cryptosporidium* to cause either an infection or illness, and the infectivity dose-response factor.

The Agency has done its best to represent a reasonable range of quantifiable uncertainty using standard modeling techniques. However, the Agency recognizes that additional sources of uncertainty exist which could not be quantified. To the extent that these are significant, the true range of uncertainty may be greater than that reflected in the quantified analysis.

EPA has evaluated drinking water consumption data from USDA's 1994–1996 Continuing Survey of Food Intakes by Individuals (CSFII) Study. EPA's analysis of the CSFII Study using the "all sources, consumer only" information resulted in a daily water ingestion lognormally distributed with a mean of 1.2 liters per person per day (USEPA, 2000j). Results of alternative model calculations based on USDA consumption data for "community water supplies, all respondents" (mean of 0.93 liters per person per day) are presented in the appendix to the economic analysis as a lower bound estimate.

TABLE V.1.—QUANTIFIED BENEFITS FROM ILLNESSES AND MORTALITIES AVOIDED ANNUALLY FROM TURBIDITY PROVISIONS

[$Millions]*

Quantified benefits	Daily drinking water ingestion and baseline Cryptosporidium log-removal assumptions, $Millions, 1999					
	2.0 log			2.5 log		
	Low	Mild	High	Low	Mid	High
Mean Benefit from Avoided Illnesses	$23.9–$42.4	$31.6–$56.0	$32.9–$58.3	$9.5–$16.8	$11.2–$19.8	$12.7–$22.6
10th Percentile	11.4–20.3	15.2–27.0	14.1–24.9	2.2–3.9	2.8–5.0	4.2–7.5
90th Percentile	50.1–88.8	58.8–104.2	56.5–100.2	26.6–47.2	27.6–48.9	33.6–59.5
Mean Benefits from Avoided Mortalities	23.7	31.3	32.5	9.4	11.1	12.6
10th Percentile	11.3	15.0	13.9	2.2	2.8	4.2
90th Percentile	49.6	58.2	55.9	26.3	27.3	33.2
Total Mean Quantified Benefits	47.6–66.1	62.9–87.3	65.4–90.9	18.9–26.2	22.2–30.9	25.4–35.2

*Totals may not equal due to rounding.

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According to the economic analysis performed for the LT1ESWTR published today, the rule is estimated to reduce the mean annual number of illnesses caused by *Cryptosporidium* in water systems with improved filtration performance by 12,000 to 41,000 cases per year depending upon which of the six baseline and improved *Cryptosporidium* removal assumptions was used, and assuming the 1.2 liter drinking water consumption distribution. Based on these values, the mean estimated annual benefits of reducing the illnesses ranges from $9.5 million to $58.3 million per year. The economic analysis also indicated that the rule could result in a mean reduction of 1 to 5 fatalities each year, depending upon the varied baseline and improved removal assumptions. Using a mean value of $6.3 million per statistical life saved, reducing these fatalities could produce benefits in the range of $9.4 million to $32.5 million. Combining the value of illness and mortalities avoided, the estimate of the total quantified annual benefits of the LT1ESWTR range from $18.9 million to $90.9 million. However, this range does not incorporate many of the sources of uncertainty related to quantifying benefits, including many benefits the Agency was unable to evaluate. Accordingly, incorporating additional uncertainties would necessarily increase the size of the range.

New occurrence data and infectivity data is currently being evaluated by the Agency in the context of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR). The analysis is currently ongoing and peer review has not been completed. EPA conducted a sensitivity analysis in the economic analysis supporting today's final rule to predict the effect that new data may have on the benefits presented earlier. Table V.2 provides a summary of this sensitivity analysis and depicts the cumulative change to the benefits range that each of the four new changes (new occurrence data, new infectivity data, new morbidity data, and new viability data) could have on benefits. The economic analysis includes a more detailed analysis using this data.

TABLE V.2.—SUMMARY OF RESULTS OF SENSITIVITY ANALYSIS TO PREDICT EFFECTS OF NEW DATA AND INFORMATION ON RANGE OF BENEFITS

	Current EA	New occurence data	New infectivity data	New morbidity data	New viability data
Change	No Changes	Occurrence changes from 4.7 oocyst/L to 1.06 oocyst/L.	Rate of infection from .00424 to .02317.	Morbidity changes from 0.39 to 0.5.	Viability changes from 16.4 percent to 55.2 percent.
Benefits Range	$18.9–$90.9	$5.4–$25.2	$17.3–$74.4	$22.5–$88.0	$51.2–$195.8

2. Non-Quantified Health and Non-Health Related Benefits

The quantified benefits from filter performance improvements do not fully capture all the benefits of the turbidity provision. Even the upper bound estimates, which are based on a cost-of-illness (COI) methodology (expanded to incorporate lost leisure time and lost productivity while working), may not fully capture the willingness-to-pay to avoid a case of Cryptosporidiosis. In addition, the Harrington, et al. study was conducted in the mid-1980's in a rural community and may not be fully representative of the current national population including individuals with HIV/AIDS and chemotherapy patients that are more severely impacted by Cryptosporidiosis. If this population was more accurately represented, it may be that the average per-case valuation would be higher than the range presented in this analysis. Further, the turbidity provisions are also expected to decrease the risk of waterborne disease outbreaks. However, the quantified benefits reflect only the reduction in endemic Cryptosporidiosis and not any outbreak-related illness or mortalities.

Other disinfection resistant pathogens may also be removed more efficiently due to implementation of the LT1ESWTR. Exposure to other pathogenic protozoa, such as *Giardia*, or other waterborne bacterial or viral pathogens are likely to be reduced by the provisions of this rule as well.

In addition to preventing illnesses, this rule is expected to have other non-health related benefits. During an outbreak, local governments and water systems must issue warnings and alerts and may need to provide an alternative source of water. Systems also face negative publicity and possibly legal costs. Businesses have to supply their customers and employees with alternative sources of water and some, especially restaurants, may even have to temporarily close. Households also have to boil their water, purchase water, or obtain water from another source. A study of a Giardia outbreak in Luzerne County, Pennsylvania showed that these non-health related outbreak costs can be quite significant (Harrington *et al.*, 1985). This outbreak resulted in an estimated loss to individuals of $31 million to $92 million. Additional losses were also calculated for restaurants and bars ($2 million to $7 million), government agencies ($0.4 million) and the water supply utility ($3 million).

The remaining rule provisions (disinfection benchmarking, covered finished water reservoirs, inclusion of *Cryptosporidium* in the GWUDI definition, and inclusion of *Cryptosporidium* in watershed control requirements for unfiltered systems) provide additional benefits. However, EPA is only able to discuss the benefits of these rule provisions qualitatively because of data limitations. The disinfection benchmark provision will ensure that adequate microbial protection is in place if a system must make changes to its disinfection practices as a result of the Stage 1 DBP rule. Covering finished water reservoirs will protect the finished water from becoming re-contaminated from such things as animal or bird droppings, surface water runoff, and algae. If *Cryptosporidium* is found in ground water supplies, they will be required to change treatment practice to prevent illness. Finally, by requiring *Cryptosporidium* control in watersheds of unfiltered systems, this will minimize the potential for illness and may also lower the overall costs of drinking water treatment.

D. What Are the Incremental Costs and Benefits?

EPA evaluated the incremental or marginal costs of today's final rule turbidity provision by analyzing various turbidity limits, 0.3 NTU, 0.2 NTU, and 0.1 NTU. For each turbidity limit, EPA developed assumptions about which process changes systems might implement to meet the turbidity level and how many systems would adopt each change. The comparison of total compliance cost estimates shows that costs are expected to increase significantly across other turbidity limits considered by the Agency. The total cost of a 0.2 NTU limit is 346 percent higher than the final rule limit of 0.3 NTU, and a 0.1 NTU limit would be 1,192 percent higher.

E. Are There Benefits From the Reduction of Co-Occurring Contaminants?

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. For example, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants including arsenic.

The technologies used to reduce individual filter turbidities have the potential to reduce concentrations of other pollutants as well. Reductions in turbidity that result from today's proposed rule are aimed at reducing *Cryptosporidium* by physical removal. However, health risks from *Giardia lamblia* and emerging disinfection resistant pathogens, such as microsporidia, *Toxoplasma*, and *Cyclospora*, are also likely to be reduced as a result of improvements in turbidity removal. The frequency and extent that LT1ESWTR would reduce risk from other contaminants has not been quantitatively evaluated because of the Agency's lack of data on the removal efficiencies of various technologies for emerging pathogens and the lack of co-occurrence data for microbial pathogens and other contaminants from drinking water systems.

F. Is There Increased Risk From Other Contaminants?

It is unlikely that LT1ESWTR will result in any increased risk from other contaminants. Improvements in plant turbidity performance will not result in any increases in risk. In fact the disinfection benchmarking component of today's final LT1ESWTR will provide information to systems so they can minimize the increased risk from microbial contaminants as they take steps to address risks associated with DBPs under the Stage 1 DBPR.

G. What Are the Uncertainties in the Risk, Benefit and Cost Estimates for the LT1ESWTR?

EPA has included in the economic analysis, a detailed discussion of the possible sources of uncertainty in risk, benefit and cost estimates. Some sources of possible uncertainty associated with calculation of risk and benefits include occurrence of *Cryptosporidium* oocysts in source waters and finished waters, reduction of *Cryptosporidium* oocysts due to improved treatment, viability and infectivity of *Cryptosporidium* oocysts, characterization of risk, and willingness to reduce risk and avoid costs. Uncertainty associated with costs includes assumptions with respect to treatment a system might choose to employ to comply with the rule, assumptions about costs of labor, maintenance, and capital, and the number of systems expected to undertake certain activities. The Agency believes that the risks, benefits, and costs have been accurately portrayed. Discussions and analyses of risks, benefits, and costs in the economic analysis indicate where uncertainty may be introduced and to the extent possible, the effect uncertainty may have on analysis (USEPA, 2001a).

H. What Is the Benefit/Cost Determination for the LT1ESWTR?

The Agency has determined that the benefits of the LT1ESWTR justify the costs. As shown in Table V.3, the quantified net benefits of this rule based on the Agency's estimate range from $20.6 million to $51.4 million using the 3 percent discount rate ($25.9 million to $46.1 million at the 7 percent discount rate). Additionally, EPA believes that quantified net benefits would be larger if both unquantified benefits and costs were able to be monetized.

TABLE V.3.—ANNUALIZED NET BENEFITS OF THE LT1ESWTR, MILLIONS, 1999 DOLLARS

	Benefit range	Costs using a 3 percent discount rate	Costs using a 7 percent discount rate	Net benefits (3 percent)	Net benefits (7 percent)
Estimate of Benefits	$18.9–$90.9	$39.5	$44.8	$-20.6–$51.4	$-25.9–$46.1

VI. Other Requirements

A. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 603 of the RFA, EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from representatives of small entities that would potentially be regulated by the rule in accordance with section 609(b) of the RFA. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report found in the docket for today's final rule (USEPA, 1998k). The Panel recommendations emphasized the need to provide small systems flexibility. The Agency has structured today's final

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LT1ESWTR with an emphasis on providing flexibility and reducing burden for small systems. For example, the Agency originally contemplated requiring four quarters of TTHM and HAA5 monitoring and disinfection profiling based on daily measurements. Today's final rule requires profiling based on weekly measurements and allows systems the option of using one quarter of TTHM and HAA5 monitoring to opt-out of profiling. Today's rule also provides systems with two or fewer filters the flexibility to monitor combined filter effluent in lieu of individual filter turbidity monitoring, effectively allowing these systems to reduce their recordkeeping burden. A complete summary of the Panel's recommendations is presented in the proposal (65 FR 19046, 19127–19130).

While EPA could have certified the proposed rule based on the proposed rule requirements, the Agency originally developed an IRFA (see 65 FR 19046, 19126–19127) and convened an SBAR Panel because several of the additional alternatives EPA was requesting comment on would have resulted in substantial costs for small systems thereby preventing the Agency from certifying. While EPA included these additional alternatives in the proposal and estimated costs in the economic analysis for the proposal, the Agency re-evaluated the economic effects on small entities after publication of the April 10, 2000 LT1ESWTR proposal using the rule requirements of today's final rule and was able to certify that today's final rule will not have a significant economic impact on a substantial number of small entities.

EPA's analysis showed that of the approximately 11,000 small entities potentially affected by the LT1ESWTR, over 5,000 are expected to incur average annualized costs of less than $70 dollars (0.003 percent of average annual revenue) while slightly more than 3,000 are expected to incur average annualized costs of less than $850 dollars (0.03 percent of average annual revenue). Of the remaining systems, approximately 500 systems are expected to incur average annualized costs of approximately $2,500 dollars (0.1 percent of average annual revenue), approximately 2,000 systems are expected to incur average annualized costs of approximately $13,000 dollars (0.6 percent of average annual revenue). Less than 100 systems are expected to incur average annualized costs of approximately $15,700 dollars (0.7 percent of average annual revenue). The Agency has included a detailed description of this analysis in the Regulatory Flexibility Screening Analysis prepared for the rule (USEPA, 2000e).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, and has assigned OMB control number 2040–0229. The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, in some cases, and to evaluate compliance with the rule. For the first three years after February 13, 2002, the major information requirements are related to disinfection profiling activities. The information collection requirements in §§ 141.530–141.536, 141.540–141.544, 141.550–141.553, 141.560–141.564, and 141.570–141.571, for systems, and §§ 142.14 and 142.16, for States, are mandatory. The information collected is not confidential. The final estimate of aggregate annual average burden hours for LT1ESWTR is 330,329. Annual average aggregate cost estimate is $1,583,538 for capital (expenditures for monitoring equipment), and $1,919,563 for operation and maintenance including lab costs (which is a purchase of service). The burden hours per response is 21.8. The frequency of response (average responses per respondent) is 2.8 annually. The estimated number of likely respondents is 5,404 (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year. The estimated annual cost of this rule is $39.5 million. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Of the approximately 6,500 small government entities potentially affected by the LT1ESWTR, approximately 3,000 are expected to incur average annualized costs of less than $70 dollars (0.003 percent of average annual revenue) while approximately 2,000 are expected to incur average annualized costs of less than $850 dollars (0.03 percent of average annual revenue). Of the remaining systems, less than 300 are expected to incur average annualized costs of approximately $2,500 dollars (0.1 percent of average annual revenue), approximately 1,200 systems are expected to incur average annualized costs of approximately $13,000 dollars (0.6 percent of average annual revenue). Less than 100 systems are expected to incur average annualized costs of approximately $15,700 dollars (0.7 percent of average annual revenue). While today's final rule only applies to systems serving fewer than 10,000, it is not unique as it provides a comparable level of health protection to individuals served by small systems as the IESWTR provided to individuals served by large systems. While there are small differences between the LT1ESWTR and IESWTR, these differences reflect an effort to reduce burden for small systems while still maintaining a comparable level of health protection. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

Nevertheless, EPA has tried to ensure that State, local, and Tribal governments had opportunities to provide comment. EPA consulted with small governments to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. As discussed next, a variety of stakeholders, including small governments, were provided the opportunity for timely and meaningful participation in the regulatory development process. EPA used these opportunities to notify potentially affected small governments of regulatory requirements being considered.

EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998. Two public stakeholder meetings, which were announced in the **Federal Register**, were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. Stakeholders include representatives of State, local and Tribal governments, environmental groups and publicly owned and privately owned public water systems. In addition to these meetings, EPA has held several formal and informal meetings with stakeholders including the Association of State Drinking Water Administrators and representatives of State and local elected officials. A summary of each meeting and attendees is available in the public docket for this rule. EPA also convened a Small Business Advocacy Review (SBAR) Panel in accordance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns including those of small local governments. The SBAR Panel allows small regulated entities to provide input to EPA early in the regulatory development process. In early June 1999, EPA mailed an informal draft of the LT1ESWTR preamble to the approximately 100 stakeholders who attended one of the public stakeholder meetings. Members of trade associations and the SBREFA Panel also received the draft preamble. EPA received valuable suggestions and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. The majority of concerns dealt with reducing burden on small systems and maintaining flexibility.

To inform and involve Tribal governments in the rulemaking process, EPA presented the LT1ESWTR at three venues: the 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the EPA/Inter Tribal Council of Arizona, Inc. Tribal consultation meeting. Over 900 attendees representing Tribes from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At the first two conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1ESWTR.

At the EPA/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. The presentation materials and meeting summary were sent to over 500 Tribes and Tribal organizations. Additionally, EPA contacted each of the 12 Native American Drinking Water State Revolving Fund Advisors to invite them, and representatives of their organizations to the stakeholder meetings described previously.

During the comment period for today's final rule, the Agency held a public meeting in Washington D.C. on April 14, 2000. Additionally, the proposed rule was either presented or discussed in nearly 50 meetings across the U.S. Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders requesting comment. EPA received 67 comments from a variety of stakeholders including 24 States, 21 municipalities, one Tribe, one elected official, two consultants, eight trade groups, and four private industries.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about the LT1ESWTR requirements. The Agency is developing plain-English guidance that will explain what actions a small entity must take to comply with the rule. Also, the Agency has developed a fact sheet that concisely describes various aspects and requirements of the LT1ESWTR. This fact sheet is available by calling the Safe Drinking Water Hotline at 800–426–4791.

D. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that systems complying with this rule need to use one of three previously approved technical standards already included in § 141.74 (a). Method 2130B (APHA, 1995), is published in Standard Methods for the Examination of Water and Wastewater (19th ed.) and is a voluntary consensus standard. The Great Lakes Instrument Method 2, has been approved by USEPA as an alternate test procedure (Great Lakes Instruments, 1992). EPA Method 180.1 for turbidity measurement was published in August 1993 in Methods for the Determination of Inorganic

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Substances in Environmental Samples (EPA–600/R–93–100) (USEPA, 1993).

Today's final rule also requires calibration of the individual turbidimeter to be conducted using procedures specified by the manufacturer. EPA encouraged comments on this aspect of the rulemaking and specifically invited the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation. EPA received no comments on this issue.

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

This preamble has discussed how the IESWTR served as a template for the development of the LT1ESWTR. As such, the Agency also built on the efforts conducted during the IESWTRs development to comply with Executive Order 12898. On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, Tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between 11 cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 meeting were to:

—Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;
—Identify key issues of concern to stakeholders, and;
—Receive suggestions from stakeholders concerning ways to increase representation of communities in EPA's Office of Water drinking water regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

The LT1ESWTR applies to community water systems, non-transient non-community water systems, and transient non-community water systems that use surface water or GWUDI as their source water for PWSs serving less than 10,000 people. These requirements will also be consistent with the protection already afforded to people being served by systems serving 10,000 or more persons.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and; (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we therefore have assessed the environmental health effects of *Cryptosporidium* on children. The results of this assessment are contained in the LT1ESWTR economic analysis (USEPA, 2001a). A copy of the analysis and supporting documents are found in the public docket for today's final rule (W–99–10, Final Long Term 1 Enhanced Surface Water Treatment Rule. The docket is available for public review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460.

The risk of illness and death due to cryptosporidiosis depends on several factors, including age, nutrition, exposure, genetic variability, disease and immune status of the individual. Mortality resulting from diarrhea shows the greatest risk of mortality occurring among the very young and elderly (Gerba *et al.*, 1996). For *Cryptosporidium*, young children are a vulnerable population subject to infectious diarrhea (CDC 1994). Cryptosporidiosis is prevalent worldwide, and its occurrence is higher in children than in adults (Fayer and Ungar, 1986).

Cryptosporidiosis appears to be more prevalent in populations, such as infants, that may not have established immunity against the disease and may be in greater contact with environmentally contaminated surfaces (DuPont, *et al.*, 1995). An infected child may spread the disease to other children or family members. Evidence of such secondary transmission of cryptosporidiosis from children to household and other close contacts has been found in a number of outbreak investigations (Casemore, 1990; Cordell *et al.*, 1997; Frost *et al.*, 1997). Chapelle et al., (1999) found that prior exposure to *Cryptosporidium* through the ingestion of a low oocyst dose provides protection from infection and illness. However, it is not known whether this immunity is life-long or temporary. Data also indicate that either mothers confer short term immunity to their children or that babies have reduced exposure to *Cryptosporidium*, resulting in a decreased incidence of infection during the first year of life. For example, in a survey of over 30,000 stool sample analyses from different patients in the United Kingdom, the one to five year age group suffered a much higher infection rate than individuals less than one year of age. For children under one year of age, those older than six months of age showed a higher rate of infection than individuals aged fewer than six months (Casemore, 1990).

EPA has not been able to quantify the health effects for children as a result of Cryptosporidium-contaminated drinking water. However, the result of the LT1ESWTR will be a reduction in the risk of illness for the entire population, including children. Because available evidence indicates that children may be more vulnerable to Cryptosporidiosis than the rest of the population, the LT1ESWTR would, therefore, result in greater risk reduction for children than for the general population.

H. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the SDWA, the Agency consulted with the National Drinking Water Advisory Council (NDWAC), the Secretary of Health and Human Services, and the EPA Science Advisory Board (SAB) on the proposed LT1ESWTR. None of the three consultations resulted in substantive comments on the LT1ESWTR.

On March 13 and 14, 2000 in Washington, DC, the Agency met with SAB during meetings open to the public where several of the Agency's drinking water rules were discussed. A copy of the SAB's comments are found in the docket (USEPA, 2000l). Comments on the LT1ESWTR were generally supportive.

On May 10, 2000 in San Francisco, California, the Agency met with NDWAC. A copy of the materials presented to the NDWAC, as well as the charge presented to the council are found in the docket (USEPA, 2000f, NDWAC, 2000).

EPA invited the Secretary of Health and Human Services to the April 14th, 2000 informational meeting regarding the proposed Long Term 1 Enhanced Surface Water Treatment Rule and consulted with the Centers for Disease Control (CDC) during a June 20, 2000 conference call with the Centers' Working Group on Waterborne Cryptosporidiosis. The meeting notes for that call are found in the docket (CDC, 2000). CDC's role as an Agency of the Department of Health and Human Services is to provide a system of health surveillance to monitor and prevent the outbreak of diseases. With the assistance of States and other partners, CDC guards against international disease transmission, maintains national health statistics, and provides for immunization services and supports research into disease and injury prevention.

I. Executive Order 13132: Executive Orders on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rule does not have a substantial direct effect on local and State governments because it is not expected to impose substantial direct compliance costs. The rule imposes annualized compliance costs on State and local governments of approximately $30.6 million. $6.4 million of these costs are attributable to States, while $24.2 million is attributable to local governments serving fewer than 10,000 persons. As described in Section V1.A of the preamble for today's final rule, this rule will not have a significant economic impact on a substantial number of small entities, including small governments. Furthermore, the rule does not have a substantial direct effect on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 because the rule does not change the current roles and relationships of the Federal government, State governments and local governments in implementing drinking water programs. Thus Executive Order 13132 does not apply to this rule. Although the Executive Order does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition to our outreach efforts described earlier, on May 30, 2000, the Agency held a meeting in Washington, DC with ten representatives of elected State and local officials to discuss how new Federal drinking water regulations (LT1ESWTR, FBRR, Ground Water Rule, Radon Rule, Radionuclides Rule, and Arsenic Rule) may affect State, county, and local governments. Throughout the consultation, stakeholders asked EPA for clarification of basic concepts and rule elements. EPA addressed these issues throughout the consultation and provided background and clarification to promote better understanding of the issues. For example, stakeholders asked EPA to describe what *Cryptosporidium* is and how individuals are diagnosed with cryptosporidiosis. A detailed summary of this consultation meeting and the concerns raised is found in the docket (USEPA, 2000g). No significant concerns were raised regarding the LT1ESWTR.

J. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revoked Executive Order 13084 (also entitled Consultation and Coordination with Indian Tribal Governments.") as of that date. However, EPA developed and proposed this final rule when Executive Order 13084 was in effect, and before the effective date of the consultation requirements of Executive Order 13175. Therefore, the consultation requirements of Executive Order 13084 apply to this rule.

Under Executive Order 13084, EPA could not issue a regulation that was not required by statute, that significantly or uniquely affected the communities of Indian Tribal governments, and that imposed substantial direct compliance costs on those communities, unless the Federal government provided the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consulted with those governments.

Executive Order 13084 required EPA to provide to the Office of Management and Budget, in a separately identified

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section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 required EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

EPA has concluded that this rule will not significantly or uniquely affect communities of Indian Tribal governments, and will not impose substantial direct compliance costs on such communities. This rule will affect approximately 70 of the 700 total Tribal drinking water systems. Of these 70 systems, half are estimated to incur annualized compliance costs of less than $70 per year (0.003 percent of average annual revenue) and approximately 20 systems are estimated to incur annualized compliance costs of less than $850 per year (0.03 percent of average annual revenue). The remaining systems would incur an estimated annualized compliance costs of less than $13,000, or 0.6 percent of average annual revenue.

Nonetheless, EPA provided representatives of Tribal governments with several opportunities to become knowledgeable of the proposed rule and to provide meaningful and timely input in its development. EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998 as discussed in detail above in the UMRA and Federalism sections. To inform and involve the representatives of Tribal governments specifically, EPA presented the LT1ESWTR at three venues: The 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the EPA/Inter Tribal Council of Arizona, Inc. Tribal consultation meeting. Summaries of the meetings have been included in the public docket for this rulemaking. EPA's consultation, the nature of the Tribal concerns, and the position supporting the need for this rule are discussed in Section VI.C., which addresses compliance with UMRA.

Over 900 Tribal representatives from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At the first two conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1ESWTR. At the EPA/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. The presentation materials and meeting summary were sent to over 500 Tribes and Tribal organizations. Additionally, EPA contacted and invited each of the 12 Native American Drinking Water State Revolving Fund Advisors to attend the meetings described above.

During the comment period for today's final rule, the Agency held a public meeting in Washington, DC on April 14, 2000 which was announced in the **Federal Register**. Additionally, the proposed rule was either presented or discussed in nearly 50 meetings across the country. Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders, including Tribal representatives, requesting comment. EPA received 67 comments, one of which was from a Tribe. The Tribe indicated that they operated one surface water treatment plant and asked several clarifying questions with respect to optional monitoring and turbidity monitoring.

K. Likely Effect of Compliance With the LT1ESWTR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. This analysis can be found in the LT1ESWTR economic analysis (USEPA, 2001a). Overall water system capacity is defined in EPA guidance (USEPA, 1998j) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: Technical, managerial, and financial. Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements. Technical, managerial, and financial capacity can be assessed through key issues and questions, including:

Technical Capacity	
Source water adequacy	Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
Infrastructure adequacy	Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
Technical knowledge and implementation.	Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?
Managerial Capacity	
Ownership accountability	Are the system owner(s) clearly identified? Can they be held accountable for the system?
Staffing and organization	Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?
Effective external linkages	Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?
Financial Capacity	
Revenue sufficiency	Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
Credit worthiness	Is the system financially healthy? Does it have access to capital through public or private sources?
Fiscal management and controls	Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

Systems not making significant modifications to the treatment process to meet LT1ESWTR requirements are not expected to require significantly increased technical, financial, or managerial capacity. As noted previously, less than 1 percent of affected systems are expected to incur annual costs exceeding 1 percent of their annual revenue as described in Section VI.A. Accordingly, most systems are not expected to require significantly increased technical, financial, or managerial capacity. EPA does recognize that a very small number of facilities may realize some technical, managerial, or financial capacity concerns as a result of the rule. EPA works closely with organizations such as the National Rural Water Association and the American Water Works Association to develop technical and managerial tools, materials, and assistance to aid small systems. Additionally, the Safe Drinking Water Act, as amended in 1996, established the Drinking Water State Revolving Fund (DWSRF) to make funds available to drinking water systems to finance infrastructure improvements. The program emphasizes providing funds to small and disadvantaged communities and to programs that encourage pollution prevention as a tool for ensuring safe drinking water.

L. Plain Language

Executive Order 12866 requires each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. Of the several techniques typically utilized for writing readably, using a question and answer format, and using the word 'you' for whoever must comply, do the most to improve the look and sound of a regulation. Today's preamble and final rule use both of these principles and was developed using a plain language format, except in the case of modifications or additions to existing subparts of parts 141 and 142, where such a format would not fit into existing rule language. The Agency requested comment on this approach and several commenter's indicated that the proposal was clear and easy to understand.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 13, 2002.

N. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" 66 FR 28355, (May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The requirements in this rule would have a negligible impact upon the energy demands of some public water supply systems. Therefore, there is not a significant adverse effect on energy supply, distribution, or use.

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List of Subjects

40 CFR Parts 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding under the indicated heading:

a. By adding entries 141.530–141.536, 141.540–141.544, 141.550–141.553, 141.560–141.564 and 141.570–141.571 in numerical order.

b. By removing the entry 142.14(a)–(d)(7) and adding in its place a new entry § 142.14(b)–(d)(7).

c. By adding a new entry for 142.14(a) in numerical order.

d. By adding new entries for 142.16(g) and 142.16(j) in numerical order.

The additions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
National Primary Drinking Water Regulations	
141.530–141.536	2040–0229
141.540–141.544	2040–0229
141.550–141.553	2040–0229
141.560–141.564	2040–0229
141.570–141.571	2040–0229

40 CFR citation	OMB control No.
National Primary Drinking Water Regulations Implementation	
142.14(a)	2040–0229 2040–0090
142.14(b)–(d)(7)	2040–0090
142.16(g)	2040–0229
142.16(j)	2040–0229

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by revising the definitions of "Comprehensive performance evaluation" (CPE), "Ground water under the direct influence of surface water" and "Disinfection profile" to read as follows:

§ 141.2 Definitions.

* * * * *

Comprehensive performance evaluation (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purpose of compliance with subparts P and T of this part, the comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

* * * * *

Disinfection profile is a summary of *Giardia lamblia* inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in § 141.172 (Disinfection profiling and benchmarking) in subpart P and §§ 141.530–141.536 (Disinfection profile) in subpart T of this part.

* * * * *

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Ground water under the direct influence of surface water (GWUDI) means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

5. Section 141.70 is amended by adding paragraph (e) to read as follows:

§ 141.70 General requirements.

* * * * *

(e) *Additional requirements for systems serving fewer than 10,000 people.* In addition to complying with requirements in this subpart, systems serving fewer than 10,000 people must also comply with the requirements in subpart T of this part.

6. Section 141.73 is amended by adding paragraph (a)(4) and revising paragraph (d) to read as follows:

§ 141.73 Filtration.

* * * * *

(a) * * *

(4) Beginning January 14, 2005, systems serving fewer than 10,000 people must meet the turbidity requirements in §§ 141.550 through 141.553.

* * * * *

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a) through (c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply. Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in § 141.173(b). Beginning January 14, 2005, systems serving fewer than 10,000 people must meet the requirements for other filtration technologies in § 141.550 through 141.553.

7. Section 141.153 is amended by revising the first sentence of paragraph (d)(4)(v)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(v) * * *

(C) When it is reported pursuant to § 141.73 or § 141.173 or § 141.551: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173, or § 141.551 for the filtration technology being used.

* * *

* * * * *

8. The heading to Subpart P is revised to read as follows:

Subpart P—Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People

* * * * *

9. Section 141.170 is amended by adding paragraph (d) to read as follows:

§ 141.170 General requirements.

* * * * *

(d) Subpart H systems that did not conduct optional monitoring under § 141.172 because they served fewer than 10,000 persons when such monitoring was required, but serve more than 10,000 persons prior to January 14, 2005 must comply with §§ 141.170, 141.171, 141.173, 141.174, and 141.175. These systems must also consult with the State to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice, as described in § 141.172(c)(1)(i) through (iv) must consult with the State prior to making such change.

10. Section 141.202 is amended in Table 1 by revising entry 6 to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

* * * * *

(a) * * *

TABLE 1 TO SEC. 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

(6) Violation of the Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR) or Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;	

* * * * *

11. Section 141.203 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

* * * * *

(b) * * *

(3) * * *

(ii) Violation of the SWTR, IESWTR or LT1ESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.

* * * * *

12. Appendix A to subpart Q is amended:

a. Under I.A. by revising entry 5.

b. Under I.A. by revising entry 7.

c. Adding a new entry 9.

d. Under I.G. by revising entry 10.

e. Revising endnote 6.

The additions and revisions read as follows:

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR): [3]				
* * *	* * *	* * *	* * *	* * *
A. Microbiological Contaminants				
* * *	* * *	* * *	* * *	* * *
5. Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level).	[6] 2,1	141.71(a)(2),141.71(c)(2)(i), 141.73(a)(2), 141.73 (b)(2), 141.73 (c)(2), 141.73(d), 141.173(a)(2), 141.173(b), 141.551(b).	3	141.74(a)(1), 141.74(b)(2), 141.74(c)(1), 141.174, 141.560(a)–(c), 141.561.
* * *	* * *	* * *	* * *	* * *
7. Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. turbidity level (TT).	[7] 2	141.170–141.173, 141.500–141.553.	3	141.172, 141.174, 141.530–141.544, 141.560–141.564.
* * *	* * *	* * *	* * *	* * *
9. Long Term 1 Enhanced Surface Water Treatment Rule violations.	2	141.500–141.553	3	141.530–141.544, 141.560–141.564.
* * *	* * *	* * *	* * *	* * *
G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals. Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs). [9]				
* * *	* * *	* * *	* * *	* * *
10. Bench marking and disinfection profiling.	N/A	N/A	3	141.172 141.530–141.544.
* * *	* * *	* * *	* * *	* * *

Appendix A–Endnotes:

[1] Violations and other situations not listed in this table (e.g., reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

[2] MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique

[3] The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

* * * * *

[6] Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under the Surface Water Treatment Rule (SWTR), the Interim Enhanced Surface Water Treatment Rule (IESWTR), or the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) are required to consult with the primacy agency within 24 hours after learning of the violation. Based on this consultation, the primacy agency may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the primacy agency in the 24-hour period, the violation is automatically elevated to Tier 1.

[7] Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63 FR 69477) (§§ 141.170—141.171, 141.173—141.174) become effective January 1, 2002 for the Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving at least 10,000 persons. However, § 141.172 has some requirements that become effective as early as April 16, 1999. The Surface Water Treatment Rule remains in effect for systems serving at least 10,000 persons even after 2002; the Interim Enhanced Surface Water Treatment Rule adds additional requirements and does not in many cases supercede the SWTR.

* * * * *

[9] Subpart H community and non-transient non-community systems serving ≥10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning January 1, 2002. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL begining January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

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Appendix B—[Amended]

13. Appendix B to subpart Q is amended by:

a. Revising entry A.2c.
b. Revising heading B.
c. Revising entries B.3., B.4, B.5, B.6., and B.7.
d. Revising endnotes 4, 6 and 10.
e. Revising endnote 8.

The revisions read as follows:

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG [1], mg/L	MCL [2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR):			
A. Microbiological Contaminants			
. . .	. . .	. . .	. . .
2c. Turbidity (IESWTR TT and LT1ESWTR TT) [8].	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
. . .	. . .	. . .	. . .
B. Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) and the Filter Backwash Recycling Rule (FBRR) violations:			
. . .	. . .	. . .	. . .
3. Giardia lamblia (SWTR/IESWTR/LT1ESWTR)	Zero	TT [10]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
4. Viruses (SWTR/IESWTR/LT1ESWTR)			
5. Heterotrophic plate count (HPC) bacteria [9] (SWTR/IESWTR/LT1ESWTR)			
6. Legionella (SWTR/IESWTR/LT1ESWTR)			
7. Cryptosporidium (IESWTR/FBRR/LT1ESWTR)			
. . .	. . .	. . .	. . .

[1] MCLG—Maximum contaminant level goal.
[2] MCL—Maximum contaminant level.
[4] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 CFR 141.13).
[6] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. Systems subject to the Surface Water Treatment Rule (both filtered and unfiltered) may not exceed 5 NTU. In addition, in filtered systems, 95 percent of samples each month must not exceed 0.5 NTU in systems using conventional or direct filtration and must not exceed 1 NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the primacy agency.
[8] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR) and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency. For systems subject to the LT1ESWTR (systems serving fewer than 10,000 people, using surface water or ground water under the direct influence of surface water) that use conventional filtration or direct filtration, after January 14, 2005 the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the LT1ESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency.
[9] The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.
[10] SWTR, IESWTR, and LT1ESWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

14. Part 141 is amended by adding a new subpart T to read as follows:

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

141.500 General requirements
141.501 Who is subject to the requirements of subpart T?
141.502 When must my system comply with these requirements?
141.503 What does subpart T require?

Finished Water Reservoirs

141.510 Is my system subject to the new finished water reservoir requirements?
141.511 What is required of new finished water reservoirs?

Additional Watershed Control Requirements for Unfiltered Systems

141.520 Is my system subject to the updated watershed control requirements?
141.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?
141.522 How does the State determine whether my system's watershed control requirements are adequate?

Disinfection Profile

141.530 What is a Disinfection Profile and who must develop one?
141.531 What criteria must a State use to determine that a profile is unnecessary?
141.532 How does my system develop a Disinfection Profile and when must it begin?
141.533 What data must my system collect to calculate a Disinfection Profile?
141.534 How does my system use this data to calculate an inactivation ratio?
141.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?
141.536 My system has developed an inactivation ratio; what must we do now?

Disinfection Benchmark

141.540 Who has to develop a Disinfection Benchmark?
141.541 What are significant changes to disinfection practice?
141.542 What must my system do if we are considering a significant change to disinfection practices?
141.543 How is the Disinfection Benchmark calculated?
141.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

Combined Filter Effluent Requirements

141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?
141.551 What strengthened combined filter effluent turbidity limits must my system meet?
141.552 My system consists of "alternative filtration" and is required to conduct a demonstration. What is required of my system and how does the State establish my turbidity limits?
141.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

Individual Filter Turbidity Requirements

141.560 Is my system subject to individual filter turbidity requirements?
141.561 What happens if my system's turbidity monitoring equipment fails?
141.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?
141.563 What follow-up action is my system required to take based on continuous turbidity monitoring?
141.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

Reporting and Recordkeeping Requirements

141.570 What does subpart T require that my system report to the State?
141.571 What records does subpart T require my system to keep?

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

§ 141.500 General requirements.

The requirements of this subpart constitute national primary drinking water regulations. These regulations establish requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under subpart H of this part. The regulations in this subpart establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, *Cryptosporidium* and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) At least 99 percent (2 log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems; and

(b) Compliance with the profiling and benchmark requirements in §§ 141.530 through 141.544.

§ 141.501 Who is subject to the requirements of subpart T?

You are subject to these requirements if your system:

(a) Is a public water system;

(b) Uses surface water or GWUDI as a source; and

(c) Serves fewer than 10,000 persons.

§ 141.502 When must my system comply with these requirements?

You must comply with these requirements in this subpart beginning January 14, 2005 except where otherwise noted.

§ 141.503 What does subpart T require?

There are seven requirements of this subpart, and you must comply with all requirements that are applicable to your system. These requirements are:

(a) You must cover any finished water reservoir that you began to construct on or after March 15, 2002 as described in §§ 141.510 and 141.511;

(b) If your system is an unfiltered system, you must comply with the updated watershed control requirements described in §§ 141.520–141.522;

(c) If your system is a community or non-transient non-community water systems you must develop a disinfection profile as described in §§ 141.530–141.536;

(d) If your system is considering making a significant change to its disinfection practices, you must develop a disinfection benchmark and consult with the State for approval of the change as described in §§ 141.540–141.544;

(e) If your system is a filtered system, you must comply with the combined filter effluent requirements as described in §§ 141.550–141.553;

(f) If your system is a filtered system that uses conventional or direct filtration, you must comply with the individual filter turbidity requirements as described in §§ 141.560–141.564; and

(g) You must comply with the applicable reporting and recordkeeping requirements as described in §§ 141.570 and 141.571.

Finished Water Reservoirs

§ 141.510 Is my system subject to the new finished water reservoir requirements?

All subpart H systems which serve fewer than 10,000 are subject to this requirement.

§ 141.511 What is required of new finished water reservoirs?

If your system begins construction of a finished water reservoir on or after March 15, 2002 the reservoir must be covered. Finished water reservoirs for which your system began construction prior to March 15, 2002 are not subject to this requirement.

Additional Watershed Control Requirements for Unfiltered Systems

§ 141.520 Is my system subject to the updated watershed control requirements?

If you are a subpart H system serving fewer than 10,000 persons which does

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not provide filtration, you must continue to comply with all of the filtration avoidance criteria in § 141.71, as well as the additional watershed control requirements in § 141.521.

§ 141.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?

Your system must take any additional steps necessary to minimize the potential for contamination by *Cryptosporidium* oocysts in the source water. Your system's watershed control program must, for *Cryptosporidium*:

(a) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(b) Monitor the occurrence of activities which may have an adverse effect on source water quality.

§ 141.522 How does the State determine whether my system's watershed control requirements are adequate?

During an onsite inspection conducted under the provisions of § 141.71(b)(3), the State must determine whether your watershed control program is adequate to limit potential contamination by *Cryptosporidium* oocysts. The adequacy of the program must be based on the comprehensiveness of the watershed review; the effectiveness of your program to monitor and control detrimental activities occurring in the watershed; and the extent to which your system has maximized land ownership and/or controlled land use within the watershed.

Disinfection Profile

§ 141.530 What is a Disinfection Profile and who must develop one?

A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. If you are a subpart H community or non-transient non-community water systems which serves fewer than 10,000 persons, your system must develop a disinfection profile unless your State determines that your system's profile is unnecessary. Your State may approve the use of a more representative data set for disinfection profiling than the data set required under §§ 141.532–141.536.

§ 141.531 What criteria must a State use to determine that a profile is unnecessary?

States may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system.

§ 141.532 How does my system develop a Disinfection Profile and when must it begin?

A disinfection profile consists of three steps:

(a) First, your system must collect data for several parameters from the plant as discussed in § 141.533 over the course of 12 months. If your system serves between 500 and 9,999 persons you must begin to collect data no later than July 1, 2003. If your system serves fewer than 500 persons you must begin to collect data no later than January 1, 2004.

(b) Second, your system must use this data to calculate weekly log inactivation as discussed in §§ 141.534 and 141.535; and

(c) Third, your system must use these weekly log inactivations to develop a disinfection profile as specified in § 141.536.

§ 141.533 What data must my system collect to calculate a Disinfection Profile?

Your system must monitor the following parameters to determine the total log inactivation using the analytical methods in § 141.74 (a), once per week on the same calendar day, over 12 consecutive months:

(a) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(b) If your system uses chlorine, the pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(c) The disinfectant contact time(s) ("T") during peak hourly flow; and

(d) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

§ 141.534 How does my system use this data to calculate an inactivation ratio?

Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

If your system * * *	Your system must determine * * *
(a) Uses only one point of disinfectant application.	(1) One inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow or (2) Successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, your system must calculate the total inactivation ratio by determining $(CTcalc/CT_{99.9})$ for each sequence and then adding the $(CTcalc/CT_{99.9})$ values together to determine $(3CTcalc/CT_{99.9})$.
(b) Uses more than one point of disinfectant application before the first customer.	The $(CTcalc/CT_{99.9})$ value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow using the procedure specified in paragraph (a)(2) of this section.

§ 141.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses chloramines, ozone, or chlorine dioxide for primary disinfection, you must also calculate the logs of inactivation for viruses and develop an additional disinfection profile for viruses using methods approved by the State.

§ 141.536 My system has developed an inactivation ratio; what must we do now?

Each log inactivation serves as a data point in your disinfection profile. Your system will have obtained 52 measurements (one for every week of the year). This will allow your system and the State the opportunity to evaluate how microbial inactivation varied over the course of the year by looking at all 52 measurements (your Disinfection Profile). Your system must retain the Disinfection Profile data in graphic form, such as a spreadsheet, which must be available for review by the State as part of a sanitary survey. Your system must use this data to calculate a benchmark if you are considering changes to disinfection practices.

Disinfection Benchmark

§ 141.540 Who has to develop a Disinfection Benchmark?

If you are a subpart H system required to develop a disinfection profile under §§ 141.530 through 141.536, your system must develop a Disinfection Benchmark if you decide to make a significant change to your disinfection practice. Your system must consult with the State for approval before you can implement a significant disinfection practice change.

§ 141.541 What are significant changes to disinfection practice?

Significant changes to disinfection practice include:

(a) Changes to the point of disinfection;

(b) Changes to the disinfectant(s) used in the treatment plant;

(c) Changes to the disinfection process; or

(d) Any other modification identified by the State.

§ 141.542 What must my system do if we are considering a significant change to disinfection practices?

If your system is considering a significant change to its disinfection practice, your system must calculate a disinfection benchmark(s) as described in §§ 141.543 and 141.544 and provide the benchmark(s) to your State. Your system may only make a significant disinfection practice change after consulting with the State for approval. Your system must submit the following information to the State as part of the consultation and approval process:

(a) A description of the proposed change;

(b) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark;

(c) An analysis of how the proposed change will affect the current levels of disinfection; and

(d) Any additional information requested by the State.

§ 141.543 How is the Disinfection Benchmark calculated?

If your system is making a significant change to its disinfection practice, it must calculate a disinfection benchmark using the procedure specified in the following table.

To calculate a disinfection benchmark your system must perform the following steps
Step 1: Using the data your system collected to develop the Disinfection Profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.
Step 2: Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

§ 141.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses chloramines, ozone or chlorine dioxide for primary disinfection your system must calculate the disinfection benchmark from the data your system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under § 141.543. This viral benchmark must be calculated in the same manner used to calculate the *Giardia lamblia* disinfection benchmark in § 141.543.

Combined Filter Effluent Requirements

§ 141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?

All subpart H systems which serve populations fewer than 10,000, are required to filter, and utilize filtration other than slow sand filtration or diatomaceous earth filtration must meet the combined filter effluent turbidity requirements of §§ 141.551–141.553 . If your system uses slow sand or diatomaceous earth filtration you are not required to meet the combined filter effluent turbidity limits of subpart T, but you must continue to meet the combined filter effluent turbidity limits in § 141.73.

§ 141.551 What strengthened combined filter effluent turbidity limits must my system meet?

Your system must meet two strengthened combined filter effluent turbidity limits.

(a) The first combined filter effluent turbidity limit is a "95th percentile" turbidity limit that your system must meet in at least 95 percent of the turbidity measurements taken each month. Measurements must continue to be taken as described in § 141.74(a) and (c). Monthly reporting must be completed according to § 141.570. The following table describes the required limits for specific filtration technologies.

If your system consists of * * *	Your 95th percentile turbidity value is * * *
(1) Conventional Filtration or Direct Filtration	0.3 NTU.
(2) All other "Alternative" Filtration	A value determined by the State (no to exceed 1 NTU) based on the demonstration described in § 141.552.

(b) The second combined filter effluent turbidity limit is a "maximum" turbidity limit which your system may at no time exceed during the month. Measurements must continue to be taken as described in § 141.74(a) and (c). Monthly reporting must be completed according to § 141.570. The following table describes the required limits for specific filtration technologies.

If your system consists of * * *	Your maximum turbidity value is * * *
(1) Conventional Filtration or Direct Filtration	1 NTU.
(2) All other "Alternative"	A value determined by the State (not to exceed 5 NTU) based on the demonstration as described in § 141.552.

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§ 141.552 My system consists of "alternative filtration" and is required to conduct a demonstration—what is required of my system and how does the State establish my turbidity limits?

(a) If your system consists of alternative filtration(filtration other than slow sand filtration, diatomaceous earth filtration, conventional filtration, or direct filtration) you are required to conduct a demonstration (see tables in § 141.551). Your system must demonstrate to the State, using pilot plant studies or other means, that your system's filtration, in combination with disinfection treatment, consistently achieves:

(1) 99 percent removal of *Cryptosporidium* oocysts;

(2) 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts; and

(3) 99.99 percent removal and/or inactivation of viruses.

(b) [Reserved]

§ 141.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

If your system practices lime softening, you may acidify representative combined filter effluent turbidity samples prior to analysis using a protocol approved by the State.

Individual Filter Turbidity Requirements

§ 141.560 Is my system subject to individual filter turbidity requirements?

If your system is a subpart H system serving fewer than 10,000 people and utilizing conventional filtration or direct filtration, you must conduct continuous monitoring of turbidity for each individual filter at your system. The following requirements apply to continuous turbidity monitoring:

(a) Monitoring must be conducted using an approved method in § 141.74(a);

(b) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer;

(c) Results of turbidity monitoring must be recorded at least every 15 minutes;

(d) Monthly reporting must be completed according to § 141.570; and

(e) Records must be maintained according to § 141.571.

§ 141.561 What happens if my system's turbidity monitoring equipment fails?

If there is a failure in the continuous turbidity monitoring equipment, your system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. Your system has 14 days to resume continuous monitoring before a violation is incurred.

§ 141.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?

Yes, if your system only consists of two or fewer filters, you may conduct continuous monitoring of combined filter effluent turbidity in lieu of individual filter effluent turbidity monitoring. Continuous monitoring must meet the same requirements set forth in § 141.560(a) through (d) and § 141.561.

§ 141.563 What follow-up action is my system required to take based on continuous turbidity monitoring?

Follow-up action is required according to the following tables:

If * * *	Your system must * * *
(a) The turbidity of an individual filter (or the turbidity of combined filter effluent (CFE) for systems with 2 filters that monitor CFE in lieu of individual filters) exceeds 1.0 NTU in two consecutive recordings 15 minutes apart.	Report to the State by the 10th of the following month and include the filter number(s), corresponding date(s), turbidity value(s) which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s).

If a system was required to report to the State * * *	Your system must * * *
(b) For three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters).	Conduct a self-assessment of the filter(s) within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (c) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessmerit of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.
(c) For two months in a row and turbidity exceeded 2.0 BTU in 2 consecutive recordings 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters).	Arrange to have a comprehensive performance evaluation (CPE) conducted by the State or a third party approved by the State not later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE has been completed by the State or a third party approved by the State within the 12 prior months or the system and State are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the State no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

§ 141.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

If your system utilizes lime softening, you may apply to the State for alternative turbidity exceedance levels for the levels specified in the table in § 141.563. You must be able to demonstrate to the State that higher turbidity levels are due to lime carryover only, and not due to degraded filter performance.

Reporting and Recordkeeping Requirements

§ 141.570 What does subpart T require that my system report to the State?

This subpart T requires your system to report several items to the State. The following table describes the items which must be reported and the frequency of reporting. Your system is required to report the information described in the following table, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of information to report	Frequency
(a) Combined Filter Effluent Requirements. (§§ 141.550–141.553)	(1) The total number of filtered water turbidity measurements taken during the month.	By the 10th of the following month.
	(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to your system's required 95th percentile limit.	By the 10th of the following month.
	(3) The date and value of any turbidity measurements taken during the month which exceed the maximum turbidity value for your filtration system.	By the 10th of the following month.
(b) Individual Turbidity Requirements. (§§ 141.560–141.564)	(1) That your system conducted individual filter turbidity monitoring during the month.	By the 10th of the following month.
	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, but only if 2 consecutive measurements exceeded 1.0 NTU.	By the 10th of the following month.
	(3) If a self-assessment is required, the date that it was triggered and the date that it was completed.	By the 10th of the following month (or 14 days after the self-assessment was triggered only if the self-assessment was triggered during the last four days of the month)
	(4) If a CPE is required, that the CPE is required and the date that it was triggered.	By the 10th of the following month.
	(5) Copy of completed CPE report	Within 120 days after the CPE was triggered.
(c) Disinfection Profiling (§§ 141.530–141.536)	(1) Results of optional monitoring which show TTHM levels <0.064 mg/l and HAA5 levels <0.048 mg/l (Only if your system wishes to forgo profiling) or that your system has begun disinfection profiling.	(i) For systems serving 500–9,999 by July 1, 2003; (ii) For systems serving fewer than 500 by January 1, 2004.
(d) Disinfection Benchmarking (§§ 141.540–141.544)	(1) A description of the proposed change in disinfection, your system's disinfection profile for Giardia lamblia (and, if necessary, viruses) and disinfection benchmark, and an analysis of how the proposed change will affect the current levels of disinfection.	Anytime your system is considering a significant change to its disinfection practice.

§ 141.571 What records does subpart T require my system to keep?

Your system must keep several types of records based on the requirements of subpart T, in addition to recordkeeping requirements under § 141.75. The following table describes the necessary records, the length of time these records must be kept, and for which requirement the records pertain. Your system is required to maintain records described in this table, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of necessary records	Duration of time records must be kept
(a) Individual Filter Turbidity Requirements (§§ 141.560–141.564)	Results of individual filter monitoring	At least 3 years.
(b) Disinfection Profiling (§§ 141.530–141.536)	Results of Profile (including raw data and analysis)	Indefinitely.
(c) Disinfection Benchmarking (§§ 141.540–141.544)	Benchmark (including raw data and analysis)	Indefinitely.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

15. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

16. Section 142.14 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(ii) introductory text, and (a)(7) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(3) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71, 141.73, 141.173 and 141.175, 141.550–141.553 and 141.560–141.564 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13 of this chapter.

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of §§ 141.75, 141.175, and 141.570, of this chapter must be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis

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under provisions of part 141, subpart H, subpart P, or subpart T of this chapter, must be made in writing and kept by the State.

* * * * *

(7) Any decisions made pursuant to the provisions of part 141, subpart P or subpart T of this chapter.

(i) Records of systems consulting with the State concerning a modification to disinfection practice under §§ 141.170(d), 141.172(c), and 141.542 of this chapter, including the status of the consultation.

(ii) Records of decisions that a system using alternative filtration technologies, as allowed under §§ 141.173(b) and § 141.552 of this chapter, can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised. The State must provide a copy of the decision to the system.

(iii) Records of systems required to do filter self-assessment, CPE, or CCP under the requirements of §§ 141.175 and 141.563 of this chapter.

* * * * *

17. Section 142.16 is amended by revising paragraph (g) introductory text and adding paragraph (j) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(g) Requirements for States to adopt 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People, must contain the information specified in this paragraph:

* * * * *

(j) Requirements for States to adopt 40 CFR part 141, Subpart T Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart T Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have rules or other authority to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, the performance improvement phase of the Composite Correction Program (CCP). The State must determine whether a CTA must be conducted based on results of a CPE which indicate the potential for improved performance, and a finding by the State that the system is able to receive and implement technical assistance provided through the CTA. A CPE is a thorough review and analysis of a system's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. During the CTA phase, the system must identify and systematically address factors limiting performance. The CTA is a combination of utilizing CPE results as a basis for follow-up, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.*

(i) Section 141.530–141.536—How the State will approve a more representative data set for optional TTHM and HAA5 monitoring and profiling.

(ii) Section 141.536 of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, ozone, or chlorine dioxide for primary disinfection.

(iii) Section 141.542 of this chapter—How the State will consult with the system and approve significant changes to disinfection practices.

(iv) Section 141.552 of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

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Monday,
January 14, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Miscellaneous Flight Requirements; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11271; Notice No. 02–01]

RIN 2120–AH39

Miscellaneous Flight Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning miscellaneous flight requirements. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before March 15, 2002.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number *FAA–2002–11271*, at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. *FAA–2002–11271*." We will date-stamp the postcard and mail it back to you. You also may submit comments electronically to the following Internet address: *http://dms.dot.gov*.

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–1129; facsimile 425–227–1320, e-mail *don.stimson@faa.gov*.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's Web page at *http://www.access.gpo.gov/nara*.

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the "Fast Track Harmonization Program"?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled "The Fast Track Harmonization Program," is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be "enveloped" into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be "enveloped" (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC accepted the draft NPRM as proposed.

Discussion of the Proposal

How Does This Proposed Regulation Relate to "Fast Track"?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this notice, the FAA proposes to amend five sections of the regulations concerning transport category airplane miscellaneous flight requirements to harmonize the associated standards with those of JAR–25. The standards addressed in this proposal are all classified as Category 1 under the fast track harmonization program. Since the FAA agrees with the recommendations received from ARAC, this proposal is consistent with the ARAC recommendations. The five proposed changes are described separately below.

Change 1: Section 25.111(c)(4), "Takeoff Path"

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement only allows certain routine crew actions to be made before the airplane reaches a height of 400 feet above the takeoff surface. Simulation studies and accident investigations have shown that during periods of high

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workload, such as after an engine failure during takeoff, the crew might not take actions necessary to maintain the safe flight of the airplane. This revision would require that certain actions be automatic before the airplane reaches a height of 400 feet in order to receive credit for the effect of the action on the flight path.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR Section 25.111(c)(4) is:

Section 25.111 Takeoff path.

* * * (c)(4) Except for gear retraction and propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

• The current text of JAR–25.111(c)(4), Change 15, Amendment 25/96/1, is:

JAR–25.111 Take-Off Path

* * * (c)(4) Except for gear retraction and automatic propeller feathering, the aeroplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the aeroplane is 400 ft above the takeoff surface.

What Are the Differences In the Standards and What Do Those Differences Result In?

Although both part 25 and the JAR address the effect of propeller feathering on the flight path before the airplane is 400 feet above the takeoff surface, the JAR standard does not allow manual propeller feathering until the airplane is at least 400 feet above the takeoff surface. Although current FAA policy has been in accordance with the JAR standard, the rule language was not clear. Only automatic propeller feathering has been accepted as complying with the intent of § 25.111(c)(4).

What, If Any, Are the Differences In the Means of Compliance?

There are no differences between part 25 and JAR–25 in the means of compliance.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising part 25 to adopt the text of JAR–25.111(c)(4) as new § 25.111(c)(4). The proposed action would codify current FAA policy by incorporating the text of the JAR standard.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by codifying current FAA policy to the JAR.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety relative to the current regulations, considering the application of FAA policy concerning propeller feathering below a height of 400 feet.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to the current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed enveloping action to be the most appropriate way to maintain safety.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. The proposed change, however, would not have an effect because it codifies current practices and policy.

Is Existing FAA Advisory Material Adequate?

The FAA plans to issue a revision to Advisory Circular (AC) 25–7A, "Flight Test Guide for Certification of Transport Category Airplanes." The proposed revision would add the means of compliance currently accepted by the JAA as an acceptable means of showing compliance with § 25.111(c)(4). Public comments concerning the proposed revision to AC 25–7A are invited by separate notice, following this NPRM.

Change 2: Section 25.147(c)(2), "Directional and Lateral Control"

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement addresses controllability in the one-engine-inoperative condition. It requires that transport category airplanes be controllable and maneuverable with the critical engine inoperative.

What Are the Current 14 CFR and JAR Standards?

• There is no comparable part 25 section.

• The current text of JAR–25.147(c)(2), Change 15, Amendment 25/96/1, is:

JAR–25.147 Directional and Lateral Control

* * * (c)(2) With the critical engine inoperative, roll response must allow normal manoeuvres. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative for climb, cruise, descent and landing approach, to provide a peak roll rate necessary for safety without excessive control forces or travel. (See ACJ 25.147(c)(2).)

What Are the Differences in the Standards and What Do Those Differences Result In?

Section 25.147 of part 25 does not address roll rate response. The JAR 25.147(c)(2), however, addresses roll rate response. Additional flight testing is needed to show compliance with the JAR requirement. Since industry practice is to comply with both standards, it is difficult to determine whether there are any resulting design differences. It is not known if the differences in the standards would have resulted in any design differences had current industry practice not been to comply with both standards.

What, If Any, Are the Differences in the Means of Compliance?

Section 25.147 of part 25 does not prescribe any roll rate requirements. Any evaluation of roll rate would be only of a general qualitative nature relative to the ease of performing the banked turns required by § 25.147(c). Also, the part 25 evaluation is only performed at 1.4 V_S.

What Is the Proposed Action?

The proposed action would add the additional JAR–25 requirement to part 25 as a new § 25.147(d). However, the word "peak," as used in JAR 25.147(c)(2), would not be included in this proposal in reference to the roll rate that must be available. The FAA considers the use of the word "peak" too constraining and unclear. For example, demonstrating an "average" roll rate capability may not be acceptable for showing compliance with a requirement for a "peak" roll rate. Also, it is difficult to determine if a peak roll rate is the maximum sustainable roll rate, or is merely a short transient condition that could result from unique or unusual piloting techniques.

Also, the reference to the climb, cruise, descent, and landing approach flight phases currently contained in JAR 25.147(c)(2) would be removed. The FAA considers this proposed requirement applicable to all flight phases with one engine inoperative, including takeoff and initial climb, which are not referenced in the current JAR 25.147(c)(2). By removing the reference to specific flight phases, the proposed requirement would be applicable to all flight phases with one engine inoperative.

Additionally, § 25.147(d) and (e) would be redesignated as § 25.147(e) and (f), respectively. The JAA plans to harmonize the JAR accordingly to correspond to these proposals.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue for all phases of flight with one engine inoperative in the same manner, but would add a requirement specifically addressing roll rate response.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety since it adds a requirement that is not currently in § 25.147.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety since current industry practice is to comply with both standards.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed enveloping action to be the most appropriate way to maintain safety.

Who Would Be Affected by the Proposed Change?

The proposed standard would affect manufacturers of transport category airplanes. This change would not affect operators since it would have no effect on the operating limitations or procedures.

Is Existing FAA Advisory Material Adequate?

The FAA considers that adding the existing JAA ACJ material to AC 25–7A would be necessary to address the means of compliance for the proposed addition to part 25. The FAA plans to issue a revision to AC 25–7A to add this material. Public comments concerning this proposed revision are invited by separate notice, following this NPRM.

Change 3: Section 25.161(c)(2), "Trim (Longitudinal)"

What Is the Underlying Safety Issue Addressed by the Current Standards?

Transport category airplanes are required to maintain longitudinal, lateral, and directional trim under certain conditions of flight. This requirement specifies conditions under which longitudinal trim must be maintained. The capability to trim out control forces is both a pilot workload and a flight path precision issue. An out-of-trim airplane can be fatiguing to fly and can make maintaining the desired flight path more difficult.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR Section 25.161(c)(2) is:

Section 25.161 Trim.

(c) Longitudinal trim. The airplane must maintain longitudinal trim during—

* * * * *

* * * (c)(2) A glide with power off at a speed not more than 1.4 V_{S1}, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight; and * * *

• The current text of JAR 25.161(c)(2), Change 14, is:

JAR–25.161 Trim

(c) Longitudinal trim. The aeroplane must maintain longitudinal trim during—

* * * * *

* * * (c)(2) Either a glide with power off at a speed not more than 1.4 V_{S1}, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3° glidepath, whichever is the most severe, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, the most unfavourable centre of gravity position approved for landing with the maximum landing weight, and the most unfavourable centre of gravity position approved for landing regardless of weight; and * * *

What Are the Differences in the Standards and What Do Those Differences Result In?

In addition to the power-off glide condition specified by part 25, the JAR requires longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath. For airplanes where this condition is more stringent than the power-off glide condition, a design difference may result. Also, additional flight testing must be performed to demonstrate compliance with the JAR.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance.

What Is the Proposed Action?

The proposed action would revise § 25.161(c)(2) to adopt the more stringent JAR standard. The requirement to demonstrate compliance at "the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight" would be simplified to refer to "the most unfavorable combination of center of gravity position and weight approved for landing." This proposed change would not affect the safety intent of the requirement. The longitudinal trim requirement would continue to apply to the most critical combination of landing weight and center of gravity position. If, due to the characteristics of the approved center of gravity envelope, the most critical combination of landing weight and center of gravity position does not coincide with the maximum landing weight, there would not be any need to demonstrate compliance at the maximum landing weight condition.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner, but would add a requirement to ensure that transport category airplanes maintain longitudinal trim in a power-on approach condition.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety for those transport category airplanes for which the power-on approach condition is more critical for maintaining longitudinal trim than the power-off glide condition.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and JAR–25.

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What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practice.

Who Would Be Affected by the Proposed Change?

The proposed change would affect manufacturers and operators of transport category airplanes. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

There is no specific advisory material for either part 25 or the JAR. The FAA considers developing new advisory material to be unnecessary.

Change 4: Section § 25.161(e), "Trim (Four or More Engines)"

What Is the Underlying Safety Issue Addressed by the Current Standards?

Transport category airplanes are required to maintain longitudinal, lateral, and directional trim under certain conditions of flight. This requirement specifies additional conditions applicable to airplanes with four or more engines under which longitudinal, directional, and lateral trim must be maintained. The capability to trim out control forces is both a pilot workload and capability to maintain a desired flight path issue. An out-of-trim airplane can be fatiguing to fly and can make maintaining the desired flight path more difficult.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR 25.161(e) is:

Section 25.161 Trim.

* * * (e) Airplanes with four or more engines. Each airplane with four or more engines must maintain trim in rectilinear flight—

(1) At the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the rate of climb;

(2) With the most unfavorable center of gravity position; and

(3) At the weight at which the two-engine-inoperative climb is equal to at least 0.013 $V_{so}2$ at an altitude of 5,000 feet.

• The current text of JAR–25.161(e), Change 15, Amendment 25/96/1, is:

JAR–25.161 Trim

* * *(e) Aeroplanes with four or more engines. Each aeroplane with four or more engines must maintain trim in rectilinear flight—

(1) At the climb speed, configuration, and power required by JAR 25.123(a) for the purpose of establishing gradient of climb; and

(2) With the most unfavourable centre of gravity position.

(3) Not required for JAR–25.

What Are the Differences in the Standards and What Do Those Differences Result in?

Part 25 specifies a single weight at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. The JAR–25 standard, which does not contain this provision, applies at all weights. Therefore, the JAR–25 standard is more stringent.

The weight requirement in part 25 originated in the U.S. Civil Air Regulations (CAR) part 4b, which specified climb rates proportional to the square of the stall speed. Climb rates were specified in this manner because it was assumed that the level of safety associated with an emergency landing would depend on the kinetic energy of the airplane, which in turn is proportional to the mass times the velocity squared. For equivalent safety, it was reasoned that excess power, expressed in terms of rate of climb, should be proportional to the stall speed squared. Since the climb requirements of part 25 are now expressed in terms of climb gradient rather than rates of climb, the manner in which the weight for compliance is defined in § 25.161(e)(3) is an historical artifact and out of step with the rest of part 25.

What, if Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance.

What Is the Proposed Action?

The proposed action would reformat this section into one paragraph with no sub-paragraphs. The wording currently in § 25.161(e)(1) and JAR 25.161(e)(1) would be moved to § 25.161(e) and updated to reflect current industry practice in reference to the en route flight path configurations of § 25.123(a) and JAR 25.123(a). The part 25 wording originated in CAR part 4b when the equivalent requirement to § 25.123(a) for two-engine-inoperative climb performance specified a minimum rate of climb that an airplane must be capable of achieving. In the current part 25 and JAR–25 standards, § 25.123(a) and JAR 25.123(a) require the determination of the en route flight paths, rather than a minimum rate of climb or climb gradient. To be consistent with the current § 25.123(a) and JAR 25.123(a), the proposed § 25.161(e) would refer to en route flight paths rather than either rate of climb (as in current part 25) or gradient of climb (as in current JAR–25).

In addition, the word "also" has been added to the lead-in sentence of the proposed standard to clarify that this is an additional requirement for airplanes with four or more engines. The requirements of § 25.161(d) and JAR 25.161(d) remain applicable for these airplanes.

The wording of § 25.161(e)(2) would be incorporated into the proposed § 25.161(e). Section 25.161(e)(3) would be removed. Its removal would result in the proposed § 25.161(e) requirements being applicable at all weights as in the current JAR 25.161(e).

How Does This Proposed Standard Address the Underlying Safety Issue?

This proposed standard would continue to address the underlying safety issue in the same manner. However, it also would expand the conditions under which airplanes with four or more engines must be able to maintain longitudinal, lateral, and directional trim by making the current standard applicable at all relevant gross weight conditions.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety relative to the current part 25. It expands the conditions under which an airplane with four or more engines must be able to maintain longitudinal, lateral, and directional trim.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practice.

Who Would Be Affected by the Proposed Change?

The proposed change would affect manufacturers and operators of transport category airplanes. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

There is no specific advisory material for either part 25 or JAR–25. The FAA considers developing new advisory material unnecessary.

Change 5: Section 25.175(d), "Static Longitudinal Stability"

What Is the Underlying Safety Issue Addressed by the Current Standards?

Section 25.175 and JAR 25.175 contain the conditions under which static longitudinal stability must be demonstrated for transport category airplanes. Static longitudinal stability is required by part 25 for the following reasons:

1. To provide additional speed change cues to the pilot through control force changes.
2. To ensure that short periods of unattended operation do not result in any significant changes in attitude, airspeed, or load factor.
3. To provide predictable pitch response.
4. To provide acceptable level of pilot attention (workload) to attain and maintain trim speed and altitude.
5. To provide gust stability.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR 25.175(d) is:

Section 25.175 Demonstration of Static Longitudinal Stability.

* * * (d) Landing. The stick force curve must have a stable slope, and the stick force may not exceed 80 pounds, at speeds between 1.1 VS0 and 1.8 VS0 with—

(1) Wing flaps in the landing position;
(2) Landing gear extended;
(3) Maximum landing weight;
(4) Power or thrust off on the engines; and
(5) The airplane trimmed at 1.4 V_{so} with power or thrust off.

• The current text of JAR–25.175(d), Change 14, is:

JAR 25.175 Demonstration of Static Longitudinal stability

* * * (d) Landing. The stick force curve must have a stable slope and the stick force may not exceed 80 pounds at speeds between 1.1 V_{so} and 1.8 V_{so} with—

(1) Wing flaps in the landing position;
(2) Landing gear extended;
(3) Maximum landing weight;
(4) The aeroplane trimmed at 1.4 VS0 with
(i) Power or thrust off, and
(ii) Power or thrust for level flight.

What Are the Differences in the Standards and What Do Those Differences Result in?

In addition to the part 25 condition of power—or thrust-off, JAR–25 requires the stick force criteria to be met at the power or thrust for level flight. This additional condition requires additional flight test demonstrations to show compliance, and may influence the design of airplanes for which the application of power has a significant destabilizing effect.

What, If Any, Are the Differences in the Means of Compliance?

Except for the additional power-on condition required by the JAR, there are no differences in the means of compliance for part 25 and JAR–25.

What Is the Proposed Action?

The proposed action would revise part 25 by adopting the more stringent text of JAR 25.175(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner, but would add a requirement to ensure that transport category airplanes have adequate static longitudinal stability in a power-on approach condition.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety for those transport category airplanes for which the power-on condition is more critical in terms of static longitudinal stability than the power-off condition.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and the JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practices. Using the less stringent part 25 standard was also considered; however, there are normally occurring situations for which level flight in the landing configuration may be relevant. These situations include stepdown fixes on nonprecision approaches and extending the flaps and landing gear to the landing configuration when the glide slope becomes active on a precision approach, but before the glide slope intercept point.

Who Would Be Affected by the Proposed Change?

The proposed change would affect manufacturers and operators of transport category airplanes. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA has not considered another option. The FAA considers that current advisory material is adequate.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no substantial costs, and that it is not "a significant regulatory action" as defined in Executive Order

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12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on State, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. The FAA provides the basis for this minimal impact determination below.

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane, often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as "harmonization."

Change 1: Section 25.111(c)(4), "Takeoff Path":

Current industry practice covering aircraft crew actions concerning the takeoff path already complies with the more stringent JAR requirements. The JAR 25.111(c)(4) requirement allows only certain routine crew actions to be made before the airplane reaches a height 400 feet above the takeoff surface.

This proposal would revise the FAA requirements for propeller feathering before the airplane is at least 400 feet above the takeoff surface by adding the following "more stringent" requirements of the JAR standards to include:

Section 25.111 Take-off path.

* * * (c)(4) Except for gear retraction and *automatic* propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

Concerning the impact of complying with the proposed standard, the ARAC working group states there is no additional cost associated with complying with the proposed standard as it represents current practices and policy.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for this specific proposal, beyond noting that, while they may be minimal, they contribute to a large potential harmonization savings.

The agency concludes that, since there is consensus among potentially affected airplane manufacturers that the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 2: Section 25.147(c)(2), "Directional and Lateral Control":

Current industry practice covering pilot techniques concerning controllability in the one-engine inoperative condition already complies with the more stringent JAR requirements. The JAR 25.147(c)(2) standard is more stringent than § 25.147(c)(2) since part 25 does not prescribe any roll rate requirements when one engine is inoperative.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.147(c)(2). The new § 25.147(c)(2) would require roll rate response to be evaluated and found adequate for all speeds likely to be used with one engine inoperative. The word "peak," as used in JAR 25.147(c)(2), would not be included in this proposal in reference to the roll rate since the FAA considers its use too constraining and unclear. The ARAC working group recommends the words "for climb, cruise, descent and landing approach" be removed so that this requirement would apply to all flight conditions. The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for this specific proposal, beyond noting that, while they may be minimal, they contribute to a large potential harmonization savings.

The agency concludes that, since there is consensus among potentially affected airplane manufacturers that the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 3: Section 25.161(c)(2), "Trim (Longitudinal)":

Current industry practice covering pilot techniques concerning conditions under which longitudinal trim must be maintained already complies with the more stringent JAR requirements. The JAR 25.161(c)(2) standard is more stringent than § 25.161(c)(2) since part 25 does not require longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.161(c)(2). The new § 25.161(c)(2) would require longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath. In addition, the requirement to demonstrate compliance at "the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight" would be simplified to refer to "the most unfavorable combination of center of gravity position and weight approved for landing." The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for this specific proposal, beyond noting that, while they may be minimal, they contribute to a large potential harmonization savings.

The agency concludes that, since there is consensus among potentially affected airplane manufacturers that the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 4: Section 25.161(e), "Trim (Four or More Engines)":

Current industry practice covering pilot techniques concerning conditions under which longitudinal, directional, and lateral trim on airplanes with four or more engines must be maintained is already complying with the more stringent JAR requirements. The § 25.161(c)(2) standard specifies a single weight at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. The JAR 25.161(c)(2) standard, which does not contain this provision, applies at all weights.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.161(e). The new § 25.161(e) would apply to all weights at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. In addition, the ARAC working group states that to be consistent with § 25.123(a) and JAR 25.123(a), the proposed harmonized § 25.161(e)(1) and JAR 25.161(e)(1) should refer to en route flight paths rather that either rate of climb (as in the current part 25) or gradient of climb (as in the current JAR). The ARAC and FAA consider that since the climb requirements of part 25 are now expressed in terms of climb gradient rather that rates of climb, the manner in which the weight for compliance is defined in § 25.161(e)(3) is an historical artifact and out of step with the rest of part 25. Lastly, ARAC finds that the word "also" should be added to the lead-in sentence of the proposed standard to clarify that this is an additional requirement for airplanes with four or more engines.

Concerning the impact of complying with the proposed standard, the ARAC working group states the cost of complying with the proposed standard is none as it codifies current practices and policy.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for this specific proposal, beyond noting that, while they may be minimal, they contribute to a large potential harmonization savings.

The agency concludes that, since there is consensus among potentially affected airplane manufacturers that the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 5: Section 25.175(d), "Static Longitudinal Stability":

Current industry practice covering pilot techniques concerning conditions under which static longitudinal stability must be demonstrated for transport category airplanes already complies with the more stringent JAR requirements. The JAR 25.175(d) would require the stick force criteria to be met at the power or thrust for level flight in addition to the part 25 condition of power or thrust off.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.175(d). The new § 25.175(d) would add a requirement to ensure that transport category airplanes have adequate static longitudinal stability in a power-on approach condition. The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for this specific proposal, beyond noting that, while they may be minimal, they contribute to a large potential harmonization savings.

The agency concludes that, since there is consensus among potentially affected airplane manufacturers that the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category aircraft manufacturers meet just the "more stringent" European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from

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engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the proposed rule and has determined that it supports the Administration's free trade policy because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], the FAA has determined there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Amend § 25.111 by revising paragraph (c)(4) to read as follows:

§ 25.111 Takeoff path.

* * * * *

(c) * * *

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

* * * * *

3. Amend § 25.147 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding new paragraph (d) to read as follows:

§ 25.147 Directional and lateral control.

* * * * *

(d) *Lateral control; roll capability.* With the critical engine inoperative, roll response must allow normal maneuvers. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative, to provide a roll rate necessary for safety without excessive control forces or travel.

* * * * *

4. Amend § 25.161 by revising paragraph (c)(2), and by revising paragraph (e) as follows:

§ 25.161 Trim.

* * * * *

(c) * * *

(2) Either a glide with power off at a speed not more than 1.4VS1, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3 degree glidepath, whichever is the most severe, with the landing gear extended, the wing flaps retracted and extended, and with the most unfavorable combination of center of gravity position and weight approved for landing; and

* * * * *

(e) *Airplanes with four or more engines.* Each airplane with four or more engines must also maintain trim in rectilinear flight with the most unfavorable center of gravity and at the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the en route flight paths with two engines inoperative.

5. Amend § 25.175 by revising the text of paragraph (d)(4) to read as follows:

§ 25.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(4) The airplane trimmed at 1.4V_{SO} with—

(i) Power or thrust off, and

(ii) Power or thrust for level flight.

* * * * *

Issued in Renton, Washington, on December 18, 2001.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification.

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Federal Register

Monday,
January 14, 2002

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 19 and 52
Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999; Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2001–01; FAR Case 2000–302; Correction]

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correcting amendments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing amendments to FAC 2001–01, FAR Case 2000–302, Veterans Entrepreneurship and Small Business Development Act of 1999 published in the **Federal Register** at 66 FR 53492, October 22, 2001, to correct the language concerning the separate goal for service-disabled veteran-owned small business concerns. Language was added in FAC 97–20 that service-disabled veteran-owned small business concerns were to be included in the goal for veteran-owned small businesses. This was based on a statutory change. A further statutory change established a goal for service-disabled veteran-owned small business concerns that is separate from the goal for veteran-owned small business concerns. This statute was implemented in FAC 2001–01 but, inadvertently, some of the FAC 97–20 language intended for deletion did not appear in the published case.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff at (202) 501–0044 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2001–01, FAR case 2000–302, Correction.

Dated: January 10, 2002.

Gloria M. Sochon,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c) as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

2. Amend section 19.704 in paragraph (a)(1) by removing the period after the first sentence and adding a semicolon in its place; and by removing the last two sentences. The revised paragraph reads as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors;

* * * * *

3. Amend section 19.705–4 in paragraph (d)(6) by removing the last sentence. The revised paragraph reads as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.219–9 by revising the date of the clause to read "(JAN 2002)"; and in paragraph (d)(1) of the clause by removing the second and third sentences. The revised paragraph reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Jan 2002)

* * * * *

(d) * * *

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

* * * * *

[FR Doc. 02–937 Filed 1–10–02; 3:07 pm]

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CFR Index and Findings Aids	(869-044-00047-4)	56.00	Jan. 1, 2001
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..

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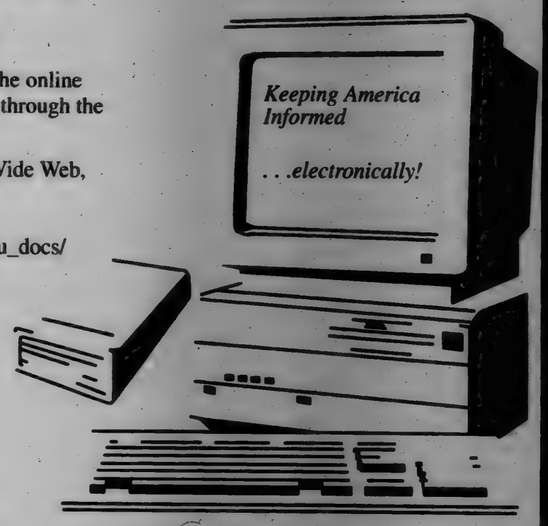

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–388–AD; Amendment 39–12599; AD 2002–01–06]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. This action requires disabling the baggage compartment heating blanket system. This action is necessary to prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–388–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–388–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. The CAAI advises that the excessive length of the electrical connector backshell hardware and the proximity of the connectors to the baggage compartment heating blankets could result in chafing. This condition, if not corrected, could result in short circuiting between the baggage compartment heating blankets and the electrical connectors, and consequent fire and smoke in the baggage compartment.

Explanation of Certain Service Information

The manufacturer has issued Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–25A–109, dated December 18, 2001, which describes procedures for disabling the heating blankets by opening five circuit breakers and installing tie wrap around their necks, and labeling the switch "INOP." The CAAI has approved this alert service bulletin and issued Israeli emergency airworthiness directive 25–01–12–17, dated December 18, 2001, as an interim action to address the continued airworthiness of these airplanes in Israel. The actions specified by the alert service bulletin parallel the requirements of the Israeli airworthiness directive.

FAA's Conclusions

This airplane model is manufactured in Israel and is type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the compartment. This AD requires disabling the baggage compartment heating blanket system. In addition, as recommended by the CAAI, this AD prohibits issuance of a special flight permit to operate the airplane to a location where the requirements of this AD can be accomplished.

Difference Between This AD and Israeli Airworthiness Directive/Service Bulletin

The Israeli emergency airworthiness directive mandates the immediate disabling of the heating blanket system. This AD allows operators 3 days to complete the required actions. The FAA recognizes the severity of the unsafe condition presented by this situation, but finds a 3-day compliance time appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of planning and scheduling maintenance to accomplish the required actions on the fleet. The FAA has considered all these factors and determined that a 3-day compliance time is practicable and will not adversely affect the continued operational safety of the fleet.

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Interim Action

This is considered to be interim action. The manufacturer has advised that it is currently developing procedures for inspecting the heating blankets and modifying the electrical connectors. These actions are intended to enable reactivation of the heating blanket system and positively address the unsafe condition addressed by this AD. Once these actions are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–388–AD." The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–01–08 Israel Aircraft Industries, Ltd.: Amendment 39–12599. Docket 2001–NM–388–AD.

Applicability: Model Galaxy airplanes, certificated in any category, serial numbers 004 through 051 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the baggage compartment, accomplish the following:

Disabling the Baggage Compartment Heating Blanket System

(a) Within 3 days after the effective date of this AD, disable the baggage compartment heating blanket system by performing the actions in the remaining subparagraphs of paragraph (a) of this AD.

(1) Gain access to the left and right aft contactor boxes via access panels 151CL on the central fuselage and 162BR on the aft fuselage.

Note 2: The exact location of the access panels is identified in the GALAXY Maintenance Manual, Chapter 12–00–00.

(2) Open circuit breakers 17H and 19H (left box) and 16H, 18H, and 372H (right box). Secure the circuit breakers in the open position by installing tie wraps around their necks.

(3) Verify that the HEAT—BAGGAGE COMPRT switch on the right side of the overhead panel does not activate the blankets (ammeter check).

(4) Label the switch "INOP."

Note 3: Disabling the baggage compartment heating blanket system in accordance with Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–25A–109, dated December 18, 2001, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permit Prohibition

(c) Special flight permits may NOT be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Israeli emergency airworthiness directive 25–01–12–17, dated December 18, 2001.

Effective Date

(d) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on January 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–799 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–13–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2002, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2002, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.80 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions are unchanged from those in effect for January 2002.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for January 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 100, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

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Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
100	2–1–02	3–1–02	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 100, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
100	2–1–02	3–1–02	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
February 2002	.0580	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 10th day of January, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–1136 Filed 1–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC71

Relief or Reduction in Royalty Rates—Deep Water Royalty Relief for OCS Oil and Gas Leases Issued After 2000

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule revises regulations on royalty relief for oil and gas producers on the Outer Continental Shelf (OCS). It provides for suspension or reduction of royalty on a case-by-case basis for certain additional categories of OCS leases under part 203 of this title. Also, it identifies circumstances when we may consider royalty relief apart from our end-of-life and deepwater royalty relief (DWRR) programs.

DATES: This final rule is effective February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: On November 16, 2000, we published a proposed rule in the **Federal Register** (65 FR 69259). For leases that lie in water 200 meters or deeper in the Gulf of Mexico (GOM) wholly west of 87 degrees, 30 minutes West longitude and issued after November 2000, it provided a process to apply for supplemental royalty relief. Also, it proposed to modify the relief qualification process. Some proposed modifications apply only to leases issued after November 2000 (newly issued leases) while others apply both to leases issued before the DWRR Act (pre-Act leases) and to newly issued leases. These proposed modifications sought to combine more opportunity, certainty, and flexibility for applicants with a royalty relief determination process more focused on future costs and benefits. We requested comments on these proposed changes.

We also finalized in the **Federal Register** on February 23, 2001 (66 FR 11512) regulations on the way we implement OCS leasing incentives on newly issued leases. The opportunity for newly issued leases to qualify for royalty relief that supplements lease-term incentives when we issued them is an important part of the change in these incentives.

Several comments on the proposed rulemaking addressed the changed leasing incentives and the modifications to the royalty relief qualification process. This final rule makes changes from the proposed rule in response to

comments we received. The most significant changes relate to sunk costs and the timing of our evaluations.

As sunk costs, which we use to determine only qualification, not the volume suspension amount, we proposed to count only the cost of the project's first discovery well. Comments convinced us that a more expansive definition was appropriate. This final rule allows the costs of the first project discovery well on each lease. We believe this provides the proper balance between the need to encourage exploration of marginal future prospects and the lack of any role sunk costs have in determining economic viability after a discovery.

With respect to timing, we proposed to retain the 180-day period for our review of royalty relief requests for projects. Comments indicated a strong desire for a shorter period. Efficiencies from evaluating expansion or development projects, instead of fields (as required for applications involving pre-Act leases), can reduce our average evaluation time by 1 month. Hence, this final rule lowers our timeframe for evaluating development or expansion projects, but not for fields, from 180 to 150 days.

Response to Comments

We received a joint comment from six oil and gas industry associations, and separate comments from one of those associations and from five oil and gas companies in response to our request for written comments on our proposed rulemaking. Also, two public workshops raised questions on the proposed rule. Copies of all the written comments we received are available on our Web site at *http://www.mms.gov/federalregister/PublicComments/rulecomm.htm*.

We analyzed all comments and workshop questions and revised the final language based on many of them. The main changes from the proposed rule involve a more expansive definition of allowable sunk cost, a shorter evaluation period, and more specificity on several subjective terms (significant expansion, most likely resource size, most efficient development system).

Two changes from the proposed version of this rule make the final version consistent with changes made in the companion rule on OCS leasing incentives. Finally, we note provisions where we adjusted the language to clarify but not change the meaning from the proposed rule.

Supplementary Relief

One general comment objected to reliance on discretionary royalty relief because of administrative burdens and increased costs to industry.

Response: We agree that the discretionary royalty relief program will become more important when leases issued after 2000 represent significant amounts of acreage and discoveries in the deep water GOM. But it will be many years before post-2000 leases play a significant role in deepwater development. As we explained in earlier **Federal Register** notices on continuing royalty relief in deep water, most of the prospective deepwater tracts now have access to the royalty suspension volumes prescribed by the DWRR Act. Some 3,400 eligible leases already have the potential to receive royalty suspension automatically. Another nearly 1,700 pre-Act leases may qualify for royalty relief under discretionary relief regulations that have been in place for several years. The currently leased acreage—eligible and pre-Act leases—represents almost half of the deep water GOM acreage. These handpicked opportunities, which industry believes have the best hydrocarbon prospects, will occupy the available exploration and delineation capability in the GOM for many years. Much of the new production in deep water over the next decade or so may be royalty-free. Hence, we anticipate that the overall royalty expenses for deepwater oil and gas production will decrease for some time completely independent of future terms and conditions on newly offered tracts.

We expect to process applications more quickly and efficiently as we become more experienced in handling them, These final discretionary relief regulations follow the directive in the DWRR Act to consider granting royalty suspension only in those circumstances when otherwise developable production would be uneconomic because of normal royalty obligations. Thus only some, not all, leases should be concerned with or have a need for the discretionary royalty relief program. Further, to encourage development, we make the uneconomic determination not after production occurs, but before, using forecasts of many variables. The determination unavoidably involves the collection, analysis, and evaluation of detailed information. Questions about possible inconsistencies or options in a specific development proposal often only become apparent during the review process. Evaluation then sometimes requires additional information. Computing and documenting forecasts tied to the circumstances of a specific project proposal may appear cumbersome at times, but a sound determination requires that we understand the key assumptions and risks in the applicant's proposed project.

The comment most relevant to our request for paperwork reduction suggestions was the acknowledgment that "the majority of the information requested by MMS is necessary * * * for a comprehensive review of a proposed project." We have added language to encourage potential applicants to meet with MMS prior to filing an application to identify unusual elements in the project and for guidance on application format, content, and our evaluation perspective. *See* § 203.62(c).

Several proposed changes we finalized expedite the evaluation process by making it less burdensome. We designate the applicant's project and the reservoirs targeted by the proposed project as the application unit rather than the entire field, as in the current DWRR program. Thus the applicant no longer must involve adjacent lessees in the application, and we no longer need to speculate about additional resources that may affect field economics. Also, this change reduces the need for us to evaluate alternative field development scenarios. Other changes should reduce the burden on both pre-Act lease applicants and new lease applicants by giving them more flexibility to adjust to changing conditions. We extend the time period for successful applicants to commit to development and allow reapplication in a wider range of circumstances. Potential applicants will become more comfortable with our application and evaluation process by the time the burden for DWRR shifts more to the discretionary royalty relief program.

Sunk Costs

A number of comments expressed concerns about the limited allowance of sunk costs to evaluate the economics of a proposed project.

Response: Our proposed change in allowable sunk costs—from all costs of and after discovery to only those of the discovery well—received the most comments from industry. That reaction may indicate that limiting allowable sunk costs is perceived as the most important proposed change to the discretionary royalty relief rules. The size of sunk costs has been the main reason for royalty relief qualification in our determinations to date. We proposed no change to the treatment of sunk costs in applications from non-producing pre-Act leases to keep within the DWRR Act. Also, we proposed to add for the first time some sunk costs to our evaluation of expansion projects. Nonetheless, in light of its perceived and past importance, we expand our

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definition of allowable sunk costs for applications from leases issued after 2000 and for expansion projects on pre-Act leases.

One workshop comment suggested that the definition of allowable sunk costs include the cost of the first well on each lease that discovers hydrocarbons in the reservoirs included in the application. We adopt this new definition because it includes the most important and readily identifiable delineation costs on a project.

This more expansive definition of sunk costs may encourage more development and more exploration than otherwise. Historic costs theoretically do not affect the expected profitability of a particular project, as measured from the perspective of its application date. But, their treatment can influence decisions on the timing and magnitude of pre-application exploration, drilling, and appraisal. Using sunk costs in an evaluation makes qualification for discretionary royalty relief more likely. The more likely that a prospect of a given size will qualify for relief, the larger the expected value of that prospect. And, the higher the expected payoff from drilling, the more and sooner drilling will take place.

We choose to rely on supplemental discretionary royalty relief to concentrate royalty savings on prospects that show a need for it. General lease sale incentives disperse royalty relief over all lease prospects regardless of whether they need development assistance. In a system where supplemental royalty relief plays a large role in the incentive program, it may not be appropriate to narrowly define qualification for the supplemental relief based on theoretical rather than practical considerations.

While an expansive consideration of sunk costs is in order, we believe the broad definition applicable to pre-Act leases is not appropriate for newer leases. The object of the new supplemental royalty relief program is a specific and fully identified project, rather than a whole, often incompletely identified, field. A royalty relief determination on a field with pre-Act leases requires evaluation of all resources that may ultimately be assigned to that field and of associated development options. The broad field determination provides a basis for considering all possible resources and thus the sunk costs for a wide range of appraisal activities. Project royalty relief determination, on the other hand, is confined to the reservoirs identified in the application. Relief qualification need not consider alternative development options or potential production from other reservoirs. So, fewer post-discovery expenditures are relevant to a project application. Therefore, we will count the costs of only the discovery well for the project on each lease participating in an application for other than an authorized field. To clarify the revision as well as the distinction, we separate the definition of sunk costs for authorized fields from the definition of sunk costs for development and expansion projects and move identification of the critical elements to the definitions from the cost report description in § 203.89 (a). *See* changes in §§ 203.0 and 203.68.

We continue to count allowable sunk costs on an after-tax, nominal basis. A company recoups part of exploratory drilling costs through a deduction from taxable income. Crediting all the pre-tax costs to royalty relief qualification would substantially raise the benefit accorded sunk costs. Adjusting sunk costs for inflation could reward applicants that delay applying for royalty relief.

Other Comments

The written comments and workshop questions raised a number of specific or technical issues. The following table summarizes and responds to each of those issues. We arranged the table according to the section in the rule to which the comment relates. The last part of the table addresses comments on information collection under the Paperwork Reduction Act.

CFR section	Industry comments and questions	MMS response
203.0, 203.2, and 203.4	Delete the word "significant" from the definitions of an expansion project and of new production because it is too subjective when left to the discretion of the application process.	Accommodating change. The DWRR Act used the word "significant" to direct relief to projects that add new resources, not those that simply extend recovery of reservoirs already in production. We delete "significant" from the definition of "new production" and clarify in the definition of "expansion project," that it refers to one or more new wells drilled into a reservoir that has not previously produced. Also, we modify the definition of "new production" accordingly.
203.0 and 203.60	Don't limit development projects that can apply for deepwater royalty suspension to those on leases west of 87 degrees 30 minutes West longitude in the GOM.	No change. The DWRR Act gives authority to grant royalty relief to existing non-producing leases, but only those in this part of the GOM. We may issue new leases with a variety of terms, including royalty suspension, in other parts of the OCS.
203.0, 203.4, 203.70, and 203.81.	Eliminate from the definition of fabrication a requirement for a requirement for a letter from the fabricator certifying start of continuous construction because it is an unnecessary and redundant burden.	No change. The legitimacy of the royalty relief qualification determination depends on prompt development. We see value in having a third party witness an event that has such important to an applicant. The down payment and contract alone may not ensue that the operator has actually committed to construction that will not be interrupted after it has started. The notice could be just a copy of whatever normal notification the applicant gets from the fabricator that construction has started on its system, with the intent to continued without interruption.

CFR section	Industry comments and questions	MMS response
203.0, 203.68, and 203.89	Redefine sunk costs as all of the inflation adjusted before-tax costs of, and after, discovery up until the application.	Accommodating change. We have enlarged the scope of sun costs from the proposed rule. But historic costs have questionable relevance to proceeding with development of the project in the application. Also, many such costs have already been recovered through tax deductions and subsequent savings. The expansion in the definition is limited to discovery well costs for one eligible well per lease.
203.0, 203.68, and 203.89	Does MMS want to receive applications before delineation wells are drilled which help in the decision on the development approach.	We want a reliable application. The applicant is the only one in a position to balance the costs and benefits of incremental delineation. Performance conditions help encourage a proper balance—enough data in hand for the applicant to commit to a few key decisions but not to detailed development plans.
203.2 and 203.80	Delete the word "significantly" word from the characterization of how much production must increase as a result of royalty relief because it is too subjective.	Accommodating change. We delete the word from the end-of-life relief cell in the table in § 203.2, but as with deepwater expansion projects, we look for a minimum production increase for consideration of royalty relief apart from our formal programs. Relief generally must make production for an extra year profitable.
203.4, 203.69 and 203.76	Clarify the resource number used as a basis for determining the minimum royalty suspension volume.	Change. By "most likely resource size" we mean the median value of the estimated distribution of known recoverable resources from reservoirs included in the application for the project. The final rule adopts this more precise terminology.
203.4	Indicate that price thresholds will be specified in the Notice of Sale as well as in the lease document.	Change. We make clear in subsections (e) and (f) that price thresholds and minimum suspension volumes may be set in the Notice of Sale or the regulations or in the lease.
203.62	Encourage pre-application meetings between the MMS regional office and a prospective applicant.	Change. Such a meeting can save time both in preparing an application and in avoiding omissions that delay the evaluation process.
203.63	Clarify that neither a development nor expansion project must include all leases in its field.	Change. We also make the same clarification that "project" means development either expansion project or development project in §§ 203.64, 203.65, 203.67, 203.68, and 203.69.
203.65	Change the evaluation deadline from 180 to 120 days for a first application and from 120 to 90 for a redetermination.	Accommodating change. We reduce the evaluation period for development projects and expansion projects to no more than 150 days after certifying an application and application complete. For field evaluations involving pre-Act leases, the 180-day deadline continues because we must consider potential development of all resources on the field, whether or not they are identified in the application.
203.69	If a participating lease doesn't have or propose, a well into the reservoirs included in the application, does MMS include in the minimum suspension volume calculation the royalty suspension volume with which the lease was originally issued?	A lessee can join the application with evidence that the reservoir(s) targeted by the project occur on its lease. However, a lease without enough of the project's resources to justify a well cannot include its automatic royalty suspension volume in the minimum set for the project. Nevertheless, we will count its estimated resources in the project evaluation and in the increment to the minimum royalty suspension volume based on the median of the distribution of resources.
203.69 and 203.76	Does a lease retain the royalty suspension volume with which it was originally issued if it applies and qualifies for project relief but then violates a performance condition.	Since the application qualification included consideration of the pre-existing royalty suspension on the lease, it retains that relief if we withdraw approval of its application. We don't want to discourage early-stage applications when some development decisions have not yet been made.
203.71	If a lease is added to a project after approval of an application, does the added lease have to give up its automatic relief to be part of the project.	If the reservoir(s) targeted by the development project extend to a post-2000 lease, that lessee has an option. The lessee may file a short form to share the project's remaining royalty suspension volume or simply retain its automatic royalty suspension volume for use with this or other reservoirs on its lease. If it files the short form to share in the project relief, it gives up its automatic relief volume.
203.74	A phrase is missing in the description of the new event that enables a redetermination.	Accommodating change. We rewrote to clarify that the new technology must improve the profitability, under equivalent market conditions, of the field or specified set of reservoirs relative to the development system proposed in the prior application.

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CFR section	Industry comments and questions	MMS response
203.76	Allow retention of half of the royalty suspension volume, not the smaller of that or the most likely resource size, when costs are overestimated in the application.	No change. We made the modification in the proposed rule because otherwise small fields face no disadvantage for overestimating their costs in a royalty relief application.
203.78	If the price threshold suspends relief when prices rise too much above expected levels, why not augment initial royalty suspension volume if prices fall too much below expected levels.	We provide a reasonable inducement to make a project economic under expected market conditions. This is the focus of our program. Subsequent deviations in these conditions during periods of production and potential relief from royalties may change profitability, but are not likely to affect project viability. Should prices decline once production begins, the lessee can pursue our other royalty relief programs. These programs serve as a proxy for predetermined increases in royalty suspension volume for a price decline.
203.80	Allow the costs of pre-existing facilities that help justify a royalty relief application to be off lease.	Change. Off-lease facilities tied back to the lease may help justify a relief application to the extent that preservation of these pre-existing facilities depends on continued application to be production from the lease applying for royalty relief. We will include only a logically allocable share of costs from the off-lease facilities.
Information Collection Questions.	(a) Under the current evaluation process, acknowledgement that the majority of the information requested in an application is necessary.	(a)We have not identified an alternative evaluation process suitable for use with an irrevocable determination such as royalty relief. Past applicants and industry committees have not yet identified any unnecessary information elements.
	(b) Contact past applicants to very estimates of the time it takes to fill out an application.	(b) We welcomed comments from past applicants to help develop our current estimates of the burden.
	(c) Standardize the various application reports that must be submitted or generate a set of generic example reports as guides for future applicants.	(c) We have standardized reports as much as we can, and we do invite pre-application consultation on format and content. We do not share past applications even in generalized form so as to avoid possibly exposing proprietary information. We already offer an example with the model that combines the information in these reports. That should clarify many questions about technical details such as units of measure.
	(d) MMS mail server limits make it impractical to submit the original application electronically, but subsequent information could usually be submitted by e-mail.	(d) We are implementing the Government Paperwork Elimination Act (GPEA). The Act calls for providing an electronic processing option when practical for information we collect. Royalty relief applications are under review in our GPEA implementation information program. We do currently accept extra copies and additional information by electronic or fax means.

Changes for Consistency and Clarity

We make two changes in this rule on discretionary royalty relief to make it consistent with our rule on OCS leasing incentives published on February 23, 2001 (66 FR 11512). Also, we use definitions for "eligible," "pre-Act," and "royalty suspension" leases in this rule that are identical to those in the leasing incentive rule.

The leasing incentive rule includes the option to offer royalty incentives for a value of production or for a time period as well as for a volume of production. The definition of Royalty Suspension (RS) leases in § 203.0 now indicates that the royalty suspension for an RS lease need not be in the form of a volume. So, one or more leases on a project applying for additional royalty relief may have automatic suspensions in a form other than volume. Section 203.69(b) now indicates that should this situation arise, we will use the data in your application, after any adjustments we make during our evaluation, to convert royalty relief already available to a common basis expressed in volume, and carry out the evaluation accordingly. Any approval would be expressed solely in terms of volume.

The leasing incentive rule also includes a provision in § 260.122(b)(2) for paying royalties, due as a result of the price threshold being exceeded, no later than 90 days after the end of the period for which royalty is owed. That deadline is shorter than the 120-day interval to April 30 now specified in § 203.78(a)(1) and (b)(1). To avoid confusion, we changed § 203.78 to be consistent with § 260.122. The 90-day time lag is longer than the 30-day time lag for payment of normal royalty under § 218.50 because we must calculate inflation adjustments in the case of price thresholds. The actual NYMEX price can be calculated immediately after the end of the period specified, but the final value for the implicit price deflator for the gross domestic product is not generally available for several months after the end of the period.

In several places, we modified the language in the proposed rule to make its meaning clearer to the reader.

CFR section	Clarification
203.0	We enhance definitions to: (1) State that development or expansion projects must be in water at least 200 meters deep, (2) Declare that redetermination is a procedure we conduct under certain conditions at your request, and (3) Illustrate some elements of eligible sunk costs incurred before a discovery.
203.2	We replace "when" with "how" in the title question. Unlike "expansion project" "authorized field" and "development project," "end-of-life lease" is a term defined here but not in § 203.0. We drop reference to significant capital investment by an expansion project because that is not a separate requirement for an expansion project on a lease issued after 2000. The flexibility of royalty relief apart from our formal programs may involve changes in the form of the royalty as well as in its size or duration.
203.4	We more carefully explain how to interpret the tables summarizing our royalty relief programs. End-of-Life relief is now withdrawn only when the effective royalty rate has prevailed for 12 consecutive months. We drop reference to charging more than the original lease royalty rate after the suspension volume has been produced.
203.4 and 203.69	The various forms of royalty relief we grant are subject to certain conditions set out in regulations or approval letters.
	We rephrase the way one determines cumulative production.
203.60	We reversed the phrases in the lead sentence. We stipulate that pre-Act leases, but not leases issued after 2000, must have been assigned to a field as well as have a discovery prior to applying for royalty suspension.
203.63	You must, rather than may, submit data you have on leases that you believe may become part of your authorized field in the future.
203.64	Only one application may be filed on a development project designed to produce a specific set of reservoirs.
203.66	We make explicit that prescribed evaluation deadlines may be extended and rephrase the table lead-in sentence. We clarify that a penalty suspension for our late determination applies to the first production from a development project.
203.68	We do not consider sunk costs when we determine whether a project is economic should it never have to pay royalties.
203.69	We substitute the new name for the publication that gives the water depth of each lease.
203.71	Eligible leases as well as RS leases retain the royalty suspension volumes with which they start an application process, even if we reject an application that requests more relief on a field or development project. Applying leases are ones that participate in the application for royalty relief. Leases issued without a royalty suspension volume do not share the relief for a field with an automatic royalty suspension volume. We drop reference to the impossible situation of adding a lease before you submit an application from the paragraph (a) that describes the effect of adding a lease to an authorized field after we have approved royalty relief.
203.74	The discussion in the sub-elements of (c) explains a procedure for calculating prices, not determining eligibility for a reconsideration of a royalty relief determination.
203.78	Different price thresholds may apply to different leases on the same field, development project, or expansion project. Different price thresholds could occur if the leases were issued at different times. And, only the base oil and gas price thresholds for pre-Act leases are adjusted from 1994 forward. Post-2000 lease price thresholds are adjusted forward from other periods as specified in their Notice of Sale or lease documents.
203.80	We no longer formally refer to royalty relief apart from our end-of-life or deepwater programs as "special".
203.83	We require a well number and status as part of the Administrative Information Report.
203.89	We drop restatement of the definition of sunk costs. We stick to identifying the measurement rather than the concept of sunk costs by, for example, stating that nominal dollars mean dollars not adjusted for inflation.

Summary of Changes

The following table summarizes the changes this rule makes to the existing structure of our DWRR program.

MODIFICATIONS TO DWRR APPLICATIONS

Element	Current and continuing program (applies to pre-act leases)	Changes (applies to post-2000 deep water leases only)
Eligibility (Central, Western, and western part of Eastern Gulf of Mexico).	Leases in 200m or more water depth issued before 1996.	Leases in 200m or more water depth issued after 2000.
Royalty-free production can come from	Any production from the field until cumulative recovery volume equals the suspension volume.	Only production from resources identified in the application until cumulative production equals the suspension volume.

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MODIFICATIONS TO DWRR APPLICATIONS—Continued

Element	Current and continuing program (applies to pre-act leases)	Changes (applies to post-2000 deep water leases only)
Minimum suspension volume for non-producing leases.	For fields that did not produce before the Act, matches eligible lease suspension volumes (17.5, 52.5, 87.5 MMBOE) in equivalent water depths.	For development projects, matches volumes designated in sale and lease documents for various water depths of 200m or greater plus 10 percent of the median value of the distribution of resources.
Credit for sunk costs in application	For fields with pre-Act leases that did not produce before the application, after-tax costs of and after discovery well used in qualification.	For development projects, after-tax eligible costs of the discovery well for the project on each participating lease.
Evaluation deadline for non-producing leases	180 days for first determination, 120 days for a redetermination.	150 days for first determination, 120 days for a redetermination.
Threshold oil and gas price levels for lifting relief.	Statute sets threshold price for light sweet crude oil and natural gas.	Original lease terms or Notice of Sale set threshold price for light sweet crude oil and natural gas.

Element	Current and discontinuing program (applies to pre-act leases)	Changes (applies to pre-act and post-2000 deep water leases)
Discount rate used in evaluation	Same rate used on viability and profitability tests, applicant chooses between 10% and 15%.	Use 10% on viability test, applicant chooses rate between 10% and 15% for profitability test.
Redetermination of field qualification or volume by MMS.	Available for new well or seismic data, 25% lower prices, or 20% higher cost.	Available anytime after relief relinquished or withdrawn. Otherwise, for new well or seismic data, 25% lower prices, 20% higher cost, or more efficient development system.
Deadline for starting fabrication	Within 1 year of approval, extendable for up to 1 year.	Within 18 months of approval, extendable for up to 6 months.
Correction for overestimating cost by 20% or more.	Retain only half of suspension volume granted.	Retain only half of smaller of the granted suspension volume or the median of the distribution of resources.
Minimum suspension volume for expansion project.	None	10 percent of median of the distribution of resources.
Evaluation deadline for expansion project	180 days for first determination, 120 days for a redetermination.	150 days for first determination, 120 days for a redetermination.
Credit for sunk costs in application for expansion project.	None	After-tax eligible costs of the discovery well for the project on each participating lease.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

The rule is a significant regulatory action under Executive Order 12866, and subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This action describes how new deepwater leases may qualify for royalty suspensions and the circumstances under which we might grant royalty relief. Historically, we have received only a limited number of applications for royalty relief. Based upon our experience, only a small number of leases will qualify for royalty relief in any one year. The only field that has gone into production after royalty relief approval would have avoided about $7 million in royalty payments in its first year of production, had prices not exceeded the price threshold for discontinuing royalty relief. The royalty suspension options in this proposal will encourage new production from a few marginal leases, because they will sustain profitability at lower prices than they would without the relief. Royalty suspension volumes act as an incentive to production, and likely will have a beneficial effect on the offshore oil industry, domestic oil and gas supplies, and jobs. This program should increase OCS production by making production from marginal fields more profitable.

b. This rule does not create inconsistencies with other agencies' actions because it preserves the concepts and requirements from the existing rule.

c. This rule is an administrative change that will not affect current entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule does not raise any novel legal issues, but does raise policy issues. The rule extends and supplements the existing DWRR rule. It describes conditions under which lessees have the opportunity to apply for and acquire royalty relief on post-2000 deepwater leases. Also, it eases some conditions under which lessees of pre-Act leases may seek to obtain royalty relief. In addition, the rule describes circumstances not specified in our previous regulations under which lessees may apply for royalty relief. All of these changes are consistent with the basic philosophy in the current rule of granting relief only when applicants show it is economically necessary for development.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant adverse economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule extends the benefit of

discretionary royalty relief to certain OCS leases issued after November 2000 that qualify as marginally uneconomic. In any single year, we are likely to receive only a small number of royalty relief applications, which limits the number of entities the rule may affect. Based on past experience, we expect to receive between one and two applications a year for DWRR. Also, because firms initiate applications, they have the ability to avoid any adverse effects they foresee. As suggested below, the new provisions should actually lower the cost to those who choose to take advantage of the benefit offered by this regulation. An RF analysis is not required. A Small Entity Compliance Guide is not required.

Companies that extract oil, gas, or natural gas liquids or are otherwise in oil and gas exploration and development activities acquire the vast majority of leases offered at OCS lease sales and will be most affected by this rule. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the North American Industry Classification System Code 211111, Crude Petroleum and Natural Gas Extraction, we estimate that a total of 1,380 firms drill oil and gas wells either onshore and/or offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. Publicly available data indicate that 39 companies qualify as large firms according to SBA criteria. Many or all of the other 91 companies may qualify as small firms with fewer than 500 employees. We cannot determine the exact number because the criteria data are not readily available. However, because of the extremely high cost and technical complexity involved in exploration and development in deep water, the vast majority of lessees/operators affected by this rule will be large companies. Of the 211 leases in deep water with a discovery or production by mid-2000, 19 large firms are the lessee/operator of 193, while 7 small firms are lessee/operator of the other 18. While that ratio suggests a 1-in-12 chance that a small operator may apply for relief, 4 of the 8 past applications we received have been from small operators. This rule continues the same basic application system we now use. Small operators do not appear to be at a disadvantage in our application process.

Provisions of the rule, in comparison with existing rules for discretionary DWRR for pre-Act leases, may reduce applicant costs in three areas:

- First, new applications for DWRR will be based on a fully identified project rather than a whole, often incompletely identified, field. Consequently, applicants may need to provide less extensive geological and geophysical data. For instance, we will not require them to submit data on reservoirs that may be in the field but clearly are not part of the project. There is no sound basis for estimating the size of any savings associated with this reduced data burden because only some applications would involve potential extra reservoirs. For those that do, however, this change can reduce the amount of follow-up data we typically must request from applicants and can expedite our evaluation.
- Second, applicants may no longer have to incur the cost of additional drilling or acquisition of new seismic data to request a redetermination. While significant new geologic information or price or cost changes still enable a redetermination, applicants may now also seek a redetermination upon identification of a more efficient development system. That new reason could save drilling a new deep water well at a cost of $20 million or more, or acquiring additional seismic data at a cost of about $100,000 per tract. We have received no redetermination requests. We attribute this to the fact that the DWRR program has not been active long enough to reach the redetermination stage for most of the applications we have processed.
- Third, under this rule, we give successful applicants more time to initiate development than under existing rules. This added time gives operators more time to arrange financing and to negotiate contracts with suppliers. Again, there is no sound basis for estimating the size of any savings associated with this greater applicant flexibility. It is clear, however, that this change, too, cannot be considered to impose a significant adverse economic effect on a substantial number of small business entities. If anything, all three changes lessen the existing applicant cost burden.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule: a. Does not have an annual effect on the economy of $100 million or more. This rule modifies some procedures used under the current rule, specifies how certain new deep water leases may qualify for royalty suspensions in the future, and describes circumstances not covered in the current regulations that may cause us to grant royalty relief. In general, the effect of qualifying for a royalty suspension increases production from a few marginal fields but does not change royalty collections—since without relief, no production or royalty payments would occur or be expected, so suspending them forfeits no revenue. To the extent that royalty relief encourages new production, it benefits applicants, one-half of which in the past have been small businesses. But only one of the five fields for which we have approved relief has gone into production.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While natural gas prices are more localized, they correlate to oil prices. The rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to citizens or residents of the United States, their associations, states, municipalities, or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA) of 1995

We examined the information collection requirements in the final rule and determined they remain unchanged from those currently approved by OMB under OMB control number 1010–0071, with a current expiration date of September 30, 2003. An 83–I submission to OMB is not required for review and approval under § 3507(d) of the PRA. The PRA provides that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The title of the collection of information is "30 CFR part 203, Relief or Reduction in Royalty Rates." Respondents include approximately 130 Federal OCS oil and gas lessees. The

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frequency of response is on occasion. Responses to this collection of information are required to obtain or retain a benefit. MMS will protect proprietary information under applicable law and 30 CFR 203.63(b) and 250.196.

MMS uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have substantial monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and tax revenues for the Government that they might not otherwise receive.

We estimate the total annual paperwork burden is 8,650 burden hours and $345,600 for the application and audit fee "non-hour" cost burdens authorized under § 203.3. The following chart provides a breakdown of the components of the estimated paperwork burden of part 203 final regulations.

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
OCS Lands Act Reporting			
Application—leases that generate earnings that cannot sustain continued production (end-of-life lease)	2 applications	100 hours	200
	Application 2 × $12,000 = $24,000* Audit 1 × $10,000 = $10,000		
Application—apart from formal programs for royalty relief for marginal producing lease (expect less than 1 per year—new category).	1 Application	250 hours	250
	Application 1 × $15,000 = $15,000* Audit 1 × $10,000 = $10,000		
§ 203.55 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter)	1 Letter	1 hour	1
§ 203.81, 203.83 through 203.89 required reports	Burden included with applications.		
OCS Lands Act Reporting Subtotal	4 responses	N/A	451
	Processing Fees = $59,000		
DWRAA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	1 Application	2,000 hours	2,000
	Application 1 × $39,000 = $39,000 Audit		
Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-Act or post-2000 deep water leases).	1 Application	2,000 hours	2,000
	Application 1 × $49,000 = $49,000* Audit 1 × $25,000 = $25,000		
Application—short form to add or assign pre-Act lease	1 Application	40 hours	40
	Application 1 × $1,000 = $1,000 No Audit		
Application—preview assessment (seldom if ever will be used because applicants generally opt for binding determination by MMS instead).	1 Application	900 hours	900*
	Application 1 × $46,600 = $46,600 No Audit		
Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (expect less than 1 per year—new category).	Application	1,000 hours	1,000
	Application 1 × $49,000 = $49,000 Audit 1 × $20,000 = $20,000		
Redetermination.	1 Redetermination	500 hours	500
	Application 1 × $32,000 = $32,000* Audit 1 × $25,000 = $25,000		
§ 203.70, 203.81, 203.90, 203.91 Submit fabricator's confirmation report	2 Reports	20 hours	40
§ 203.70, 203.81, 203.90, 203.92 2 Submit post-production development report	2 Reports*	50 hours	100
§ 203.77 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter)	1 Letter	1 hour	1

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
§ 203.79(a) Request reconsideration of MMS field designation	4 Requests	400 hours	1,600
§ 203.79(c) Request extension of deadline to start construction	1 Request	2 hours	2
§ 203.81, 203.83 through 230.89 Required reports	Burden included with applications		0
DWRR Act Reporting Subtotal	16 Responses	N/A	8,183
	Processing Fees = $286,600		
Recordkeeping Burden			
§ 203.91 Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	2 Record-keepers	8 hours	16

* In addition, under § 203.81, a report prepared by an independent CPA must accompany the application and post-production report (except expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRR Act applications will require this report at two stages—with the application and with the post-production development report for successful applicants. We estimate an average cost for a report is $45,000, and that seven CPA certifications per year will be necessary if the applications are approved. The total estimated annual "non-hour" cost burden for this requirement is $315,000 ($45,000 per certification × 7 CPA certifications = $315,000).

Federalism (Executive Order 13132)

Under Executive Order 13132, this rule does not have Federalism implications. The rule neither substantially nor directly affects the relationship between the Federal and State Governments. This rule affects the collection of royalty revenues from deepwater lessees in the GOM, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the DWRR program.

Takings Implications Assessment (Executive Order 12630)

Under Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidder's right to acquire or develop OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because its promotes, rather than adversely affects, the production of additional oil and gas from the OCS. It promotes energy supply from marginal domestic sources by broadening applicability of the process by which we may lower costs for those producers.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The rule modifies some procedures in the existing regulation, describes how certain new leases may qualify for royalty suspensions, and specifies circumstances that might cause us to grant royalty relief outside our formal programs. None of these changes involve state, local, or tribal mandates. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

Pursuant to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects in 30 CFR Part 203

Continental shelf, Government contracts, Indians-lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur.

Dated: December 18, 2001.

James E. Cason,

Acting Deputy Secretary.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C.

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9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 203.0 is amended by removing the definition of "Sunk costs," adding definitions for "Development project," "Royalty suspension (RS) lease," "Sunk costs for an authorized field," and "Sunk costs for an expansion or development project" in alphabetical order, and revising the definitions for "Authorized field," "Eligible lease," "Expansion project," "Fabrication (or start of construction)," "New production," "Pre-Act lease," and "Redetermination," to read as follows:

§ 203.0 What definitions apply to this part?

Authorized field means a field:

(1) Located in a water depth of at least 200 meters and in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude;

(2) That includes one or more pre-Act leases; and

(3) From which no current pre-Act lease produced, other than test production, before November 28, 1995;

* * * * *

Development project means a project to develop one or more oil or gas reservoirs located on one or more contiguous leases that:

(1) Were issued in a sale held after November 28, 2000;

(2) Are located in a water depth of at least 200 meters and in the GOM wholly west of 87 degrees, 30 minutes West longitude; and

(3) Have had no production (other than test production) before the current application for royalty relief.

* * * * *

Eligible lease means a lease that:

(1) Is issued as part of an OCS lease sale held after November 28, 1995, and before November 28, 2000;

(2) Is located in the Gulf of Mexico in water depths of 200 meters or deeper;

(3) Lies wholly west of 87 degrees, 30 minutes West longitude; and

(4) Is offered subject to a royalty suspension volume.

Expansion project means a project you propose in a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November 28, 1995, that will significantly increase the ultimate recovery of resources from one or more reservoirs that have not produced on a pre-Act lease or a lease issued in a sale held after November 28, 2000. A significant increase does not simply extend recovery from reservoirs already in production. For a pre-Act lease, the expansion project must also involve a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.). For a lease issued after November 28, 2000, the expansion project must involve a new well drilled into a reservoir that has not previously produced. In all cases, all leases in an expansion project must be wholly located in a water depth of at least 200 meters and in the GOM wholly west of 87 degrees, 30 minutes West longitude.

Fabrication (or start of construction) means evidence of an irreversible commitment to a concept and scale of development. Evidence includes copies of a binding contract between you (as applicant) and a fabrication yard, a letter from a fabricator certifying that continuous construction has begun, and a receipt for the customary down payment.

* * * * *

New production means any production from a current pre-Act lease from which no royalties are due on production, other than test production, before November 28, 1995. Also, it means any additional production resulting from new lease-development activities on a lease issued in a sale after November 28, 2000, or a current pre-Act lease under a DOCD or a Supplement approved by the Secretary of the Interior after November, 28, 1995.

* * * * *

Pre-Act lease means a lease that:

(1) Results from a sale held before November 28, 1995;

(2) Is located in the GOM in water depths of 200 meters or deeper; and

(3) Lies wholly west of 87 degrees, 30 minutes West longitude.

* * * * *

Redetermination means our reconsideration of our determination on royalty relief because you request it after:

(1) We have rejected your application;

(2) We have granted relief but you want a larger suspension volume;

(3) We withdraw approval; or

(4) You renounce royalty relief.

* * * * *

Royalty suspension (RS) lease means a lease that:

(1) Is issued as part of an OCS lease sale held after November 28, 2000;

(2) Is in locations or planning areas specified in a particular Notice of OCS Lease Sale offering that lease; and

(3) Is offered subject to a royalty suspension specified in a Notice of OCS Lease Sale published in the **Federal Register**.

Sunk costs for an authorized field means the after-tax eligible costs that you (not third parties) incur for exploration, development, and production from the spud date of the first discovery on the field to the date we receive your complete application for royalty relief. The discovery well must be qualified as producible under part 250, subpart A of this title. Sunk costs include the rig mobilization and material costs for the discovery well that you incurred before its spud date.

Sunk costs for an expansion or development project means the after-tax eligible costs that you (not third parties) incur for only the first well that encounters hydrocarbons in the reservoir(s) included in the application and that meets the producibility requirements under part 250, subpart A of this chapter on each lease participating in the application. Sunk costs include rig mobilization and material costs for the discovery wells that you incurred before their spud dates.

* * * * *

3. Section 203.2 is revised to read as follows:

§ 203.2 How can I get royalty relief?

We may reduce or suspend royalties for Outer Continental Shelf (OCS) leases or projects that meet the criteria in the following table.

If you have a lease . . .	And if you . . .	Then we may grant you . . .
(a) With earnings that cannot sustain production (i.e., *End-of-life lease*).	Would abandon otherwise potentially recoverable resources but seek to increase production by operating beyond the point at which the lease is economic under the existing royalty rate.	A reduced royalty rate on current monthly production and a higher royalty rate on additional monthly production. (See §§ 203.50 through 203.56.)
(b) Located in a designated GOM deep water area, and acquired in a lease sale before November 28, 1995, or after November 28, 2000, and you propose in a DOCD or supplement to expand production significantly.	Are producing and seek to increase ultimate resource recovery from one or more reservoirs not previously or currently producing on the field or lease, not simply extend recovery of reservoirs that already produced. (*Expansion project*).	A royalty suspension for additional production large enough to make the project economic. (See §§ 203.60 through 203.79.)
(c) Located in a designated GOM deep water area and acquired in a lease sale held before November 28, 1995 (*Pre-Act lease*).	Are on a field from which no current pre-Act lease produced (other than test production) before November 28, 1995 (*Authorized field*).	A royalty suspension for a minimum production volume plus any additional volume needed to make the field economic. (See §§ 203.60 through 203.79.)
(d) Located in a designated GOM deep water area and acquired in a lease sale held after November 28, 2000.	Have not produced and can demonstrate that the suspension volume, if any, in your lease is not enough to make development economic (*Development project*).	A royalty suspension for a minimum production volume plus any additional volume needed to make your project economic. (See §§ 203.60 through 203.79.)
(e) Where royalty relief would recover significant additional resources or, in certain areas of the GOM, would enable development.	Are not eligible to apply for end-of-life or deep water royalty relief, but show us you meet certain elligibility conditions.	A royalty modification in size, duration, or form that makes your lease or project economic. (See § 203.80.)

4. Section 203.4 is revised to read as follows:

§ 203.4 How do the provisions in this part apply to different types of leases and projects?

The tables in this section summarize how similar provisions of this part apply in different situations.

(a) We require the information elements indicated by an X in the following table and described in §§ 203.51, 203.62, and 203.81 through 203.89 for applications for royalty relief.

Information elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information report	X	X	X	X
(2) Net revenue and relief justification report (prescribed format)	X			
(3) Economic viability and relief justification report (Royalty Suspension Viability Program (RSVP) model inputs justified with Geological and Geophysical (G&G), Engineering, Production, & Cost reports)		X	X	X
(4) G&G report		X	X	X
(5) Engineering report		X	X	X
(6) Production report		X	X	X
(7) Deep water cost report		X	X	X

(b) We require the confirmation elements indicated by an X in the following table and described in §§ 203.70, 203.81 and 203.90 through 203.91 to retain royalty relief.

Confirmation elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Fabricator's confirmation report		X	X	X
(2) Post-production development report approved by an independent certified public accountant (CPA)		X	X	X

(c) The following table indicates by an X, and §§ 203.50, 203.52, 203.60 and 203.67 describe, the prerequisites for our approval of your royalty relief application.

Approval conditions	End-of-life lease	Deep water		
		Expansion	Pre-act lease	Development project
(1) At least 12 of the last 15 months have the required level of production	X			
(2) Already producing	X			
(3)A producible well into a reservoir that has not produced before		X	X	X
(4) Royalties for qualifying months exceed 75% of net revenue (NR)	X			
(5) Substantial investment on a pre-Act lease (e.g., platform, subsea template)		X		

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Approval conditions	End-of-life lease	Deep water		
		Expansion	Pre-act lease	Development project
(6) Determined to be economic only with relief		X	X	X

(d) The following table indicates by an X, and §§ 203.52 and 203.74 through 203.75 describe, the prerequisites for a redetermination of our royalty relief decision.

Redetermination conditions	End-of-Life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) After 12 months under current rate, criteria same as for approval	X			
(2) For material change in geologic data, prices, costs, or available technology		X	X	X

(e) The following table indicates by an X, and §§ 203.53 and 203.69 describe, the characteristics of approved royalty relief.

Relief rate and volume, subject to certain conditions	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) One-half pre-application effective lease rate on the qualifying amount, 1.5 times pre-application effective lease rate on additional production up to twice the qualifying amount, and the pre-application effective lease rate for any larger volumes	X			
(2) Qualifying amount is the average monthly production for 12 qualifying months	X			
(3) Zero royalty rate on the suspension volume and the original lease rate on additional production		X	X	X
(4) Suspension volume is at least 17.5, 52.5 or 87.5 million barrels of oil equivalent (MMBOE)			X	
(5) Suspension volume is at least the minimum set in the Notice of Sale, the lease, or the regulations		X		X
(6) Amount needed to become economic		X	X	X

(f) The following table indicates by an X, and §§ 203.54 and 203.78 describe, circumstances under which we discontinue your royalty relief.

Full royalty resumes when	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Average NYMEX price for last 12 months is at least 25 percent above the average for the qualifying months	X			
(2) Average NYMEX price for last calendar year exceeds $28/bbl or $3.50/mcf, escalated by the gross domestic product (GDP) deflator since 1994		X	X	
(3) Average prices for designated periods exceed levels we specify in the Notice of Sale or the lease		X		X

(g) The following table indicates by an X, and §§ 203.55 and 203.76 through 203.77 describe, circumstances under which we end or reduce royalty relief.

Relief withdrawn or reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) If recipient requests	X	X	X	X
(2) Lease royalty rate is at the effective rate for 12 consecutive months	X			
(3) Conditions occur that we specified in the approval letter in individual cases	X			
(4) Recipient does not submit post-production report that compares expected to actual costs		X	X	X

Relief withdrawn or reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(5) Recipient changes development system		X	X	X
(6) Recipient excessively delays starting fabrication		X	X	X
(7) Recipient spends less than 80 percent of proposed pre-production costs prior to start of production		X	X	X
(8) Amount of relief volume is produced		X	X	X

5. Section 203.60 is revised to read as follows:

§ 203.60 Who may apply for deep water royalty relief?

You may apply for royalty relief under §§ 203.61(b) and 203.62 if:

(a) You are a lessee of a lease in water at least 200 meters deep in the GOM and lying wholly west of 87 degrees, 30 minutes West longitude;

(b) We have assigned your pre-Act lease to a field (as defined in § 203.0); and

(c) You either:

(1) Hold a pre-Act lease on an authorized field (as defined in § 203.0) or

(2) Propose an expansion project (as defined in § 203.0) or

(3) Propose a development project (as defined in § 203.0).

6. In § 203.62, the introductory sentence and paragraph (c) are revised to read as follows:

§ 203.62 How do I apply for relief?

You must send a complete application and the required fee to the MMS Regional Director for the GOM.

* * * * *

(c) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS regional office for the GOM will guide you on the format for the required reports, and we encourage you to contact this office prior to preparing your application for this guidance.

7. In § 203.63, the following changes are made:

A. Paragraphs (a), (b), and (c) following the introductory paragraph are redesignated paragraphs (a)(1), (a)(2), and (a)(3).

B. The introductory paragraph is redesignated (a) and is revised to read as set forth below.

C. A new paragraph (b) is added as set forth below.

§ 203.63 Does my application have to include all leases in the field?

(a) For authorized fields, we will accept only one joint application for all leases that are part of the designated field on the date of application, except as provided in paragraph (a)(3) of this section and § 203.64. However, we will evaluate all acreage that may eventually become part of the authorized field. Therefore, if you have any other leases that you believe may eventually be part of the authorized field, you must submit data for these leases according to § 203.81.

* * * * * *

(b) If your application seeks only relief for a development project or an expansion project, your application does not have to include all leases in the field.

8. In § 203.64, the section heading and the first sentence in the introductory paragraph are revised to read as follows:

§ 203.64 How many applications may I file on a field or a development project?

You may file one complete application for royalty relief during the life of the field or for a development project or an expansion project designed to produce a reservoir or set of reservoirs. * * *

* * * * * *

9. In § 203.65, paragraph (b) is revised to read as follows:

§ 203.65 How long will MMS take to evaluate my application?

* * * * * *

(b) We will evaluate your first application on a field within 180 days, evaluate your first application on a development project or an expansion project within 150 days and evaluate a redetermination under § 203.75 within 120 days after we determine that it is complete.

* * * * * *

10. Section 203.66 revised to read as follows:

§ 203.66 What happens if MMS does not act in the time allowed?

If we do not act within the timeframes established under § 203.65, you get royalty relief according to the following table.

If you apply for royalty relief for	And we do not decide within the time specified	As long as you
(a) An authorized field	You get the minimum suspension volumes specified in § 203.69.	Abide by §§ 203.70 and 203.76.
(b) An expansion project	You get a royalty suspension for the first year of production.	Abide by §§ 203.70 and 203.76.
(c) A development project	You get a royalty suspension for initial production for the number of months that a decision is delayed beyond the stipulated timeframes set by § 203.65, plus all the royalty suspension volume for which you qualify.	Abide by §§ 203.70 and 203.76.

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11. Section 203.67 is revised to read as follows:

§ 203.67 What economic criteria must I meet to get royalty relief on an authorized field or project?

We will not approve applications if we determine that royalty relief cannot make the field, development project, or expansion project economically viable. Your field or project must be uneconomic while you are paying royalties and must become economic with royalty relief.

12. In § 203.68, paragraph (b) is revised to read as follows:

§ 203.68 What pre-application costs will MMS consider in determining economic viability?

* * * * *

(b) We will consider sunk costs according to the following table.

We will	When determining
(1) Include sunk costs	Whether a field that includes a pre-Act lease which has not produced, other than test production, before the application or redetermination submission date needs relief to become economic.
(2) Not include sunk costs	Whether an authorized field, a development project, or an expansion project can become economic with full relief (see § 203.67).
(3) Not include sunk costs	How much suspension volume is necessary to make the field, a development project, or an expansion project economic (see § 203.69(c)).
(4) Include sunk costs for the project discovery well on each lease.	Whether a development project or an expansion project needs relief to become economic.

13. In § 203.69, the introductory paragraph and paragraphs (b) through (e) are revised, and paragraph (f) is added to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

If we approve your application, subject to certain conditions, we will not collect royalties on a specified suspension volume for your field, development project, or expansion project. Suspension volumes include volumes allocated to a lease under an approved unit agreement, but exclude any volumes of production that are not normally royalty-bearing under the lease or the regulations of this chapter (e.g., fuel gas).

* * * * *

(b) For development projects, any relief we grant applies only to project wells and replaces the royalty suspension volume with which we issued your lease. If your project is economic given the royalty suspension volume with which we issued your lease, we will reject the application. Otherwise, the *minimum* royalty suspension volumes are as shown in the following table:

For	The minimum royalty suspension volume is	Plus
(1) RS leases	A volume equal to the combined royalty suspension volumes (or the volume equivalent based on the data in your approved application for other forms of royalty suspension) with which we issued the leases participating in the application that have or plan a well into a reservoir identified in the application.	10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in the project.
(2) Other deep water leases issued in sales after November 28, 2000.	A volume equal to 10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in the project.	

(c) If your application includes pre-Act or eligible leases in different categories of water depth, we apply the minimum royalty suspension volume for the deepest such lease then assigned to the field. We base the water depth and makeup of a field on the water-depth delineations in the "Lease Terms and Economic Conditions" map and the "Field Names Master List" documents and updates in effect at the time your application is deemed complete. These publications are available from the MMS Regional Office for the GOM.

(d) You will get a royalty suspension volume above the minimum if we determine that you need more to make the field or development project economic.

(e) For expansion projects, the minimum royalty suspension volume equals 10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in your project plus any suspension volumes required under § 203.66. If we determine that your expansion project may be economic only with more relief, we will determine and grant you the royalty suspension volume necessary to make the project economic.

(f) The royalty suspension volume applicable to specific leases will continue through the end of the month in which cumulative production reaches that volume. You must calculate cumulative production from all the leases in the authorized field or project that are entitled to share the royalty suspension volume.

14. Section 203.70 is revised to read as follows:

§ 203.70 What information must I provide after MMS approves relief?

You must submit reports to us as indicated in the following table. Sections 203.81, 203.90, and 203.91 describe what these reports must include. The MMS regional office for the GOM will prescribe the formats.

Required report	When due to MMS	Due date extensions
(a) Fabricator's confirmation report	Within 18 months after approval of relief	MMS Director may grant you an extension under § 203.79(c) for up to 6 months.
(b) Post-production report	Within 120 days after the start of production that is subject to the approved royalty suspension volume.	With acceptable justification from you, MMS Regional Director for the GOM may extend due date up to 30 days.

15. In § 203.71, the introductory paragraph and paragraphs (a) through (c) are revised to read as follows:

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

The allocation depends on when production occurs, when we issued the lease, when we assigned it to the field, and whether we award the volume suspension by an approved application or establish it in the lease terms, as prescribed in this section.

(a) If your authorized field has an approved royalty suspension volume under §§ 203.67 and 203.69, we will suspend payment of royalties on production from all leases in the field that participate in the application until their cumulative production equals the approved volume. The following conditions also apply:

If . . .	Then . . .	And . . .
(1) We assign an eligible lease to your field after we approve relief.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief.
(2) We assign a pre-Act or post-November 2000 deep water lease to your field after we approve your application.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief by filing the short-form application specified in § 203.83 and authorized in § 203.82. An assigned RS lease also gets any portion of its royalty suspension volume remaining even after the field has produced the approved relief volume.
(3) We assign another lease(s) that you operate to your field while we are evaluating your application.	We will change your field's minimum suspension volume if the assigned lease is a pre-Act or eligible lease entitled to a larger minimum or automatic suspension volume.	(i) You toll the time period for evaluation until you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned lease(s) shares the royalty suspension we grant to the new field. If you do not agree to toll, we will have to reject your application due to incomplete information. But, an eligible lease we assigned to the field kept its automatic suspension volume.
(4) We assign another operator's lease to your field while we are evaluating your application.	We will change your field's minimum suspension volume provided the assigned lease joins the application and is entitled to a larger minimum suspension volume.	(i) You both toll the time period for evaluation until both of you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned lease(s) shares the royalty suspension we grant to the new field. If you (the original applicant) do not agree to toll, the other operator's lease retains any suspension volume it has or may share in any relief that we grant by filing the short form application specified in § 203.83 and authorized in § 203.82.
(5) We reassign a well on a pre-Act, eligible, or post-November 2000 deep water lease to another field.	The past production from the well counts toward the royalty suspension volume of the field to which we assigned the well.	The past production from that well will not count toward any royalty suspension volume granted to the field from which we reassigned it.

(b) If your authorized field has a royalty suspension volume established under § 260.111 of this title (i.e., a field with a pre-Act lease where an eligible lease starts production first), we will suspend payment of royalties on production from all eligible leases in the field until their cumulative production equals the established volume. The following conditions also apply:

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If . . .	Then . . .	And . . .
(1) We assign another eligible lease to your field.	Your field's royalty suspension volume does not change.	The assigned lease may share in any remaining royalty relief.
(2) We assign an RS lease to your field	Your field's royalty suspension volume does not change.	The assigned lease gets only the volume suspension with which we issued it, and its production volume counts against the field's royalty suspension volume.
(3) We assign a pre-Act lease or a lease issued after November 2000 without royalty suspension to your field.	Your field's royalty suspension volume does not change.	We assign lease shares none of the volume suspension, and its production does not count as part of the suspension volume.
(4) A pre-Act or post-November 2000 deep water lease applies (along with the other leases in the field) and qualifies (subject to any pre-existing suspension volumes) for royalty relief under §§ 203.67 and 203.69.	Your field's royalty suspension volume may increase or stay the same, but will not diminish.	(i) All leases in the field share the royalty suspension volume if we approve the application; or (ii) The eligible or RS leases in the field keep their respective volumes if we reject the application.

(c) When a project has more than one lease, the royalty suspension volume for each lease equals that lease's actual production from the project (or production allocated under an approved unit agreement) until total production for all leases in the project equals the project's approved royalty suspension volume.

* * * * *

16. In § 203.74, the introductory paragraph is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) and revised, and a new paragraph (b) is added to read as follows:

§ 203.74 When will MMS reconsider its determination?

You may request a redetermination after we withdraw approval or after you renounce royalty relief, unless we withdraw approval due to your providing false or intentionally inaccurate information. Under certain conditions you may also request a redetermination if we deny your application or if you want your approved royalty suspension volume to change. In these instances, to be eligible for a redetermination, at least one of the following four conditions must occur.

* * * * *

(b) You demonstrate in your new application that the technology that most efficiently develops this field or lease was not considered or deemed feasible in the original application. Your newly proposed technology must improve the profitability, under equivalent market conditions, of the field or lease relative to the development system proposed in the prior application.

(c) Your current reference price decreases by more than 25 percent from your base reference price as calculated under this paragraph.

(1) Your current reference price is a weighted-average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12 calendar months;

(2) Your base reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas for the full 12 calendar months preceding the date of your most recently approved application for this royalty relief; and

(3) The weighting factors are the proportions of the total production volume (in BOE) for oil and gas associated with the most likely scenario (identified in §§ 203.85 and 203.88) from your most recently approved application for this royalty relief.

(d) Before starting to build your development and production system, you have revised your estimated development costs, and they are more than 120 percent of the eligible development costs associated with the most likely scenario from your most recently approved application for this royalty relief.

17. In § 203.76, paragraphs (a), (b), and (c) are revised to read as follows:

§ 203.76 When might MMS withdraw or reduce the approved size of my relief?

* * * * *

(a) You change the type of development system proposed in your application (e.g., change from a fixed platform to floating production system, or from an independent development and production system to one with subsea wells tied back to a host production facility, etc.).

(b) You do not start building the proposed development and production system within18 months of the date we approved your application, unless the MMS Director grants you an extension under § 203.79(c). If you start building the proposed system and then suspend its construction before completion, and you do not restart continuous building of the proposed system within 18 months of our approval, we will withdraw the relief we granted.

(c) Your actual development costs are less than 80 percent of the eligible development costs estimated in your application's most likely scenario, and you do not report that fact in your post-production development report (§ 203.70). Development costs are those expenditures defined in § 203.89(b) incurred between the application submission date and start of production. If you report this fact in the post-production development report, you may retain the lesser of 50 percent of the original royalty suspension volume or 50 percent of the median of the distribution of the potentially recoverable resources anticipated in your application.

* * * * *

18. Section 203.77 is revised to read as follows:

§ 203.77 May I voluntarily give up relief if conditions change?

Yes, by sending a letter to that effect to the MMS Regional Director for the GOM.

19. In § 203.78, the introductory paragraph, and paragraphs (a)(1), (b)(1) and (f) are revised to read as follows:

§ 203.78 Do I keep relief if prices rise significantly?

If prices rise above a base price for light sweet crude oil or natural gas, set by statute for pre-Act leases, indicated in your original lease agreement or Notice of Sale for post-November 2000 deep water leases, you must pay full royalties as prescribed in this section. For post-November 2000 deepwater leases, price thresholds apply on a lease basis, so different leases on the same field, development project, or expansion project may have different price thresholds.

(a) * * *

(1) Pay royalties on all oil production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

* * * * *

(b) * * *

(1) Pay royalties on all natural gas production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

* * * * *

(f) We change the prices referred to in paragraphs (a), (b), and (d) of this section periodically. For pre-Act leases, these prices change during each calendar year after 1994 by the percentage that the implicit price deflator for the gross domestic product changed during the preceding calendar year. For post-November 2000 deepwater leases, these prices change as indicated in the lease instrument or in the Notice of Sale under which we issued the lease.

20. Section 203.80 is added to read as follows:

§ 203.80 When can I get royalty relief if I am not eligible for end-of-life or deep water royalty relief?

We may grant royalty relief when it serves the statutory purposes summarized in § 203.1, and our formal relief programs provide inadequate encouragement to increase production or development. Unless your lease lies wholly west of 87 degrees, 30 minutes West longitude in the Gulf of Mexico, your lease must be producing to qualify for relief. Before you may apply for royalty relief apart from our end-of-life or deepwater programs, we must agree that your lease or project has two or more of the following characteristics:

(a) The lease has produced for a substantial period and the lessee can recover significant additional resources. Significant additional resources means enough to allow production for at least a year more than would be profitable without royalty relief.

(b) Valuable facilities (e.g., a platform or pipeline that would be removed upon lease relinquishment) exist that we do not expect a successor lessee to use. If the facilities are located off the lease, their preservation must depend on continued production from the lease applying for royalty relief. We will only consider an allocable share of costs for off-lease facilities in the relief application.

(c) A substantial risk exists that no new lessee will recover the resources.

(d) The lessee made major efforts to reduce operating costs too recently to use the formal program for royalty relief (e.g., recent significant change in operations).

(e) Circumstances beyond the lessee's control, other than water depth, preclude reliance on one of the existing royalty relief programs.

21. In § 203.81, paragraphs (a) and (c) are revised to read as follows:

§ 203.81 What supplemental reports do royalty relief applications require?

(a) You must send us the supplemental reports, indicated in the following table by an X, that apply to your field. Sections 203.83 through 203.91 describe these reports in detail.

Required reports	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information Report	X	X	X	X
(2) Net revenue & relief justification report	X			
(3) Economic viability & relief justification report (RSVP model imputs justified by other required reports).		X	X	X
(4) G&G report.		X	X	X
(5) Engineering report.		X	X	X
(6) Production report.		X	X	X
(7) Deep water cost report		X	X	X
(8) Fabricator's confirmation report.		X	X	X
(9) Post-production development report.		X	X	X

* * * * *

(c) With your application and post-production development report, you must submit an additional report prepared by an independent CPA that:

(1) Assesses the accuracy of the historical financial information in your report; and

(2) Certifies that the content and presentation of the financial data and information conform to our most recent guidelines on royalty relief. This means the data and information must—

(i) Include only eligible costs that are incurred during the qualification months; and

(ii) Be shown in the proper format.

* * * * *

22. In § 203.83, paragraph (c) is revised to read as follows:

§ 203.83 What is in an administrative information report?

* * * * *

(c) Well number, API number, location, and status of each well that has been drilled on the field or lease or project (not required for non-oil and gas leases);

* * * * *

23. In § 203.86, the following changes are made:

A. The word "and" is removed at the end of paragraph (b)(6).

B. The "." is removed and "; and" is added at the end of paragraph (b)(7).

C. Paragraph (b)(8) is added.

D. Paragraph (c)(4) is revised.

E. The word "and" is removed at the end of paragraph (d)(6).

F. The "." is removed and "; and" is added at the end of paragraph (d)(7)

G. Paragraph (d)(8) is added.

The revisions and additions read as follows:

§ 203.86 What is in a G&G report?

* * * * *

(b) * * *

(8) A table listing the wells and completions, and indicating which sands and fault blocks will be targeted for completion or recompletion.

(c) * * *

(4) An explanation for excluding the reservoirs you are not planning to develop.

(d) * * *

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(8) Reserve or resource distribution by reservoir.

* * * * *

24. In § 203.87, paragraphs (a)(1) and (d) are revised to read as follows:

§ 203.87 What is in an engineering report?

* * * * *

(a) * * *

(1) Its size along with basic design specifications and drawings; and

* * * * *

(d) A discussion of any plans for multi-phase development which includes the conceptual basis for developing in phases and goals or milestones required for starting later phases.

* * * * *

25. In § 203.89, paragraph (a) is revised to read as follows:

§ 203.89 What is in a deep water cost report?

* * * * *

(a) Sunk costs. Report sunk costs in dollars not adjusted for inflation and only if you have documentation.

* * * * *

26. In § 203.91, a new last sentence is added to read as follows:

§ 203.91 What is in a post-production development report?

* * * Also, you must have this report certified by an independent CPA according to § 203.81(c).

[FR Doc. 02–438 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301199; FRL–6816–4]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on the stone fruit (except plums and prunes) crop group at 2.0 parts per million (ppm), pecans at 0.1 ppm, and bananas at 0.3 ppm until December 31, 2004, at which time they will expire and be revoked. Dow AgroSciences LLC (then Rohm and Haas Company) requested that these temporary tolerances be made permanent under the provisions of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective January 15, 2002. Objections and requests for hearings, identified by docket control number OPP–301199, must be received by EPA on or before March 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301199 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301199. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 23, 2001 (66 FR 16226) (FRL–6767–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 1F3989, 1F3995, and 2F4154) to make temporary tolerances permanent by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This notice included a summary of the petitions prepared by Rohm and Haas Company, now a part of Dow AgroSciences LLC, whose name and address are provided herein. There were no comments received in response to the notice of filing. The existing time-limited tolerances will expire on December 31, 2001.

The petitions requested that 40 CFR 180.480 be amended by making time-limited tolerances for combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole in or on the stone fruit (except plums and prunes) crop group at 2.0 parts per million (ppm), pecans at 0.1 ppm, and bananas at 0.3 ppm permanent. However, the Agency has determined that it is more appropriate to extend them until December 31, 2004, while the Agency completes its review of data submitted to support the continued registration of fenbuconazole.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for extension of time-limited tolerances for combined residues of fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole in or on the stone fruit (except plums and prunes) crop group at 2.0 ppm, pecans at 0.1 ppm, and bananas at 0.3 ppm until December 31, 2004. EPA's assessment of exposures and risks associated with extending the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects, and the no observed adverse effect levels (NOAEL) and the lowest observed adverse effect levels (LOAEL) from the fenbuconazole toxicity studies are discussed below.

1. The acute toxicological tests of the technical product produced the following results. In the acute oral toxicity study the lethal dose 50% (LD_{50}) was greater than 2 grams per kilogram (g/kg) body weight. The acute dermal toxicity study produced an LD_{50} of greater than 5 g/kg body weight. The acute inhalation lethal concentration 50% (LC_{50}) was greater than 2.1 milligrams per liter (mg/L). In both the primary eye irritation and primary skin irritation studies technical fenbuconazole was classified as non-irritating, and also tested negative for dermal sensitization.

2. A 13–week rat feeding study produced a NOAEL of 20 ppm (1.3 milligrams per kilogram per day (mg/kg/day) for males and 1.5 mg/kg/day for females) and a LOAEL of 80 ppm (5.1 mg/kg/day for males and 6.3 mg/kg/day for females), the endpoint effect being liver histopathology changes.

3. In a 3–month mouse feeding study there was a NOAEL of 20 ppm (3.8 mg/kg/day for males and 5.7 mg/kg/day for females) and a LOAEL of 60 ppm (11.1 mg/kg/day for males and 17.6 mg/kg/day for females), based on liver histopathology changes.

4. A 3–month dog feeding study produced a NOAEL of 100 ppm (3.3 mg/kg/day for males and 3.5 mg/kg/day for females) and a LOAEL of 400 ppm (13.3 mg/kg/day for males and 14.0 mg/kg/day for females), the end point effect being liver histopathology changes.

5. A 21–day rat dermal study produced a NOAEL of 1,000 mg/kg/day (the limit dose) and therefore a LOAEL greater than 1,000 mg/kg/day. Poor dermal absorption was indicated.

6. In a 78–week dietary carcinogenicity study in mice, the NOAEL was 10 ppm (1.43 mg/kg/day); males had a LOAEL of 200 ppm (28.6 mg/kg/day) and females had a LOAEL of 650 ppm (92.9 mg/kg/day), based on hepatocellular enlargement and a greater incidence and severity of hepatocellular vacuolation. There was also evidence of carcinogenicity based on the occurrence of an increased trend for malignant liver tumors in males and an increase in benign and malignant liver tumors in females.

7. A 24–month rat chronic feeding/carcinogenicity study with a systemic NOAEL of 80 ppm (3.03 mg/kg/day for females and 4.02 mg/kg/day for males) and a systemic LOAEL of 800 ppm (30.62 mg/kg/day for males and 43.07 mg/kg/day for females), based on decreases in body weight gains in females, hepatocellular enlargement and vacuolization in females, increases in thyroid weight in both males and females, and histopathological lesions in the thyroid glands in both sexes. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males.

8. A 24–month male rat chronic feeding/carcinogenicity study that had a NOAEL of less than 800 ppm and a LOAEL of 800 ppm (30.41 mg/kg/day), based on decreased body weight gain and increased liver and thyroid/parathyroid weights and lesions. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males.

9. A 1–year dog chronic feeding study with a NOAEL of 15 ppm (0.38 mg/kg/day) for females and 150 ppm (3.75 mg/kg/day) for males. The LOAEL, 150 ppm for females and 1,200 ppm (30 mg/kg/day) for males, was based on decreases in body weight gain and on adaptive changes in the liver which reflected increased metabolic activity.

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10. A 2–generation rat reproduction study with a parental NOAEL of 4 mg/kg/day (80 ppm) and LOAEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid/parathyroid weights. The reproductive NOAEL was 40 mg/kg/day (800 ppm; the highest dose tested).

11. A developmental toxicity study in rabbits produced a maternal NOAEL of 10 mg/kg/day, a developmental NOAEL of 30 mg/kg/day, an undeterminable developmental LOAEL and a maternal LOAEL of 30 mg/kg/day.

12. A developmental rat toxicity study with a maternal and developmental NOAEL of 30 mg/kg/day, a maternal LOAEL of 75 mg/kg/day due to a decrease in maternal body weight compared to controls, and a developmental LOAEL of 75 mg/kg/day due to an increase in post-implantation loss and a decreased number of live fetuses per dam.

13. Mutation studies showed the following. There was no evidence of gene mutation in a test for induction of gene mutation at the HGPRT locus in Chinese hamster ovary cells, no increase in the number of cells with aberrations or observations per cell in an *in vivo* cytogenetics assay using bone marrow from treated rats, and no increase in unscheduled DNA synthesis in a rat primary hepatocyte study.

14. In a rat metabolism study radiolabeled fenbuconazole was rapidly absorbed, distributed, and excreted following oral administration in rats. Biliary excretion data indicted that systemic absorption of fenbuconazole was high for all dosing groups. The feces were the major route of excretion. Tissue distribution and bioaccumulation of fenbuconazole appeared to be minimal.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences multiplied by 10X to account for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology ($Q1^*$) is the primary method currently used by the Agency to quantify carcinogenic risk. The $Q1^*$ approach assumes that any amount of exposure will lead to some degree of cancer risk. A $Q1^*$ is calculated and used to estimate risk, which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" (threshold) is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenbuconazole used for human risk assessment follows.

1. *Acute exposure.* For acute dietary risk assessments a reference dose (acute RfD) of 0.3 mg/kg/day was established for females 13+ years old, the population subgroup of concern, based on the developmental toxicity study in the rat, which had a NOAEL of 30 mg/kg/day based on an increase in post-implantation loss and a significant decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day. A UF of 100 was used. No appropriate endpoint was available for analyzing the acute exposure of the overall U.S. population.

2. *Short- and Intermediate-term Exposure.* Short- and intermediate-term endpoints were not identified. Fenbuconazole also has no residential uses. Therefore, an aggregate risk assessment was not done for these endpoints.

3. *Chronic exposure.* The reference dose (chronic RfD) of 0.03 mg/kg/day was based on the chronic toxicity study in the rat, which had a NOAEL of 3.03 and 4.02 mg/kg/day in males and females, respectively, based on decreased body weight gains (females), hepatocellular enlargement and vacuolation (females), increases in thyroid weight (both sexes), and histopathological lesions in the liver and thyroid glands (both sexes) at the LOAEL of 30.62/43.04 mg/kg/day in males and females, respectively. A UF of 100 was used.

4. *Cancer.* The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** (51 FR 33992, September 24, 1986), and recommended that for the purpose of risk characterization a low-dose extrapolation model applied to the experimental animal tumor data should be used for quantification of human risk ($Q1^*$). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the $Q1^*$ of 3.59×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.480) for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on several agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fenbuconazole in food as follows. In addition to the agricultural commodities that are the

subjects of this final rule, the dietary risk analysis included published FIFRA section 18 temporary tolerances on blueberry; grapefruit; the fat, kidney, liver, meat, meat byproducts, and other organ meats of cattle, goats, hogs, and sheep; and horses, meat. The need for and, if so, results of these analyses follow.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity consumed. The following assumptions were made for the acute exposure assessments: An acute RfD of 0.3 mg/kg/day was used for the females 13+ years old, the population subgroup of concern, based on the developmental rat toxicity study. This study had a NOAEL of 30 mg/kg/day, based on a decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day and an uncertainty factor of 100. Neither percent crop treated (PCT) nor anticipated residue data were used in the acute exposure/risk analysis.

ii. *Short- and intermediate-term exposure.* Short- and intermediate-term endpoints were not identified. Fenbuconazole also has no residential uses. Therefore, an aggregate risk assessment was not performed for these endpoints.

iii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity consumed. The following assumptions were made for the chronic exposure assessments: A chronic RfD of 0.03 mg/kg/day was used and was based on the rat chronic toxicity study. This study had NOAELs of 3.03 and 4.02 mg/kg/day in males and females, respectively, based on decreased body weight gains (females), hepatocellular enlargement and vacuolation (females), increases in thyroid weight (both sexes), and histopathological lesions in the liver and thyroid glands (males) at the LOAELs of 30.62 and 43.04 mg/kg/day in males and females, respectively. An UF of 100 was again used. Anticipated residues were not used in the exposure/risk analysis; the only adjusted PCT datum used was 12.8% for the stone fruit (except plums and prunes) crop group. This percentage was derived from an annual production cap for fenbuconazole for use on the stone fruit (except plums and prunes) crop group of 38,000 lb of the Indar 75 WSP product (EPA Registration Number 62719–421; the only fenbuconazole product registered for use on stone fruits), equal to 28,500 lb of active ingredient. This amount was calculated by the Agency in 1995 as being equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole and was made a condition of the registration of this product. The identical production cap is still in place and no additional fenbuconazole products have been registered for use on stone fruits.

iv. *Cancer.* The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals). A low-dose extrapolation model was applied to the experimental animal tumor data used for quantification of human risk ($Q1^*$). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the $Q1^*$ of 3.59×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents. Anticipated residues were not used in the exposure/risk analysis; the only adjusted PCT datum used was 12.8% for the stone fruit (except plums and prunes) crop group. This percentage was derived from an annual production cap for fenbuconazole for use on the stone fruit (except plums and prunes) crop group of 38,000 lb of the Indar 75 WSP product (EPA Registration Number 62719–421; the only fenbuconazole product registered for use on stone fruits), equal to 28,500 lb of active ingredient. This amount was calculated by the Agency in 1995 as being equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole and was made a condition of the registration of this product. The identical production cap is still in place and no additional fenbuconazole products have been registered for use on stone fruits.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. For chronic toxicity and carcinogenicity a PCT value of 12.8% was used for the stone fruit (except plums and prunes) crop group. No other PCT data were used for fenbuconazole exposure/risk analysis.

When fenbuconazole was first registered, a condition of the registration of the fenbuconazole-containing product Indar 75 WSP (EPA Registration Number 62719–421), the only such product being registered for use on the stone fruit (except plums and prunes) crop group, was that only 38,000 lb of it (28,500 lb of the active ingredient) could be manufactured for this use annually. The Agency calculated, in 1995, that this was equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole. That value has been directly applied to the analysis of dietary exposure and risk as the PCT for fenbuconazole on the stone fruit (except plums and prunes) crop group. Since then, this production cap has remained continuously in place at that same value, and no additional fenbuconazole products have been registered or labeled for use on this crop group.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described above for fenbuconazole used on the stone fruit (except plums and prunes) crop group is reliable and has a valid basis. Fenbuconazole's use on this crop group is unlikely to exceed the calculated PCT because of the rigid production cap and restriction of this use to the one product with the production cap. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into

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account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which fenbuconazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenbuconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenbuconazole.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and the Screening Concentration in Ground Water (SCI-GROW) model to predict pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/ EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporates an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to fenbuconazole, they are further discussed in the aggregate risk sections below.

Based on the GENEEC model, the maximum EEC of fenbuconazole in surface water, based on aerial application of the highest labeled annual use rate of 0.75 lb of active ingredient per acre (ai/A), is 6.7 parts per billion (ppb) for acute exposures and 3.6 ppb for chronic exposures. Based on the SCI-GROW model, the maximum EEC of fenbuconazole in ground water, for both acute and chronic exposure, is 0.03 ppb. Since the ground water EECs for fenbuconazole are so much lower than the surface water EECs, only the surface water EECs were used for the purpose of comparisons with the calculated DWLOCs.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenbuconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not, at this time, have available data to determine whether fenbuconazole has a common mechanism of toxicity with other substances or to determine how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based upon common mechanism of toxicity, fenbuconazole does not appear to produce a toxic metabolite produced by other substances. For purposes of this tolerance action, EPA has not assumed that fenbuconazole has a common mechanism of toxicity with other substances. For further information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity, and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. The applicable studies are as follows.

2. *Prenatal and postnatal sensitivity.* A 2-generation rat reproduction study with a parental NOAEL of 4 mg/kg/day (80 ppm) and LOAEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights.The reproductive NOAEL was 40 mg/kg/day HDT.

A developmental toxicity study in rabbits produced a maternal NOAEL of 10 mg/kg/day, a developmental NOAEL of 30 mg/kg/day, an undeterminable developmental LOAEL of 60 mg/kg/day (due to increased resorptions), and a maternal LOAEL of 30 mg/kg/day.

A developmental rat toxicity study resulted in a maternal and developmental NOAEL of 30 mg/kg/day, a maternal LOAEL of 75 mg/kg/day due to a decrease in maternal body weight compared to controls, and a developmental LOAEL of 75 mg/kg/day due to an increase in post-implantation loss and a decreased number of live fetuses per dam.

3. *Conclusion.* Therefore, a complete toxicity data base for fenbuconazole exists and exposure data are complete or

are estimated based on data that reasonably account for potential exposures. Based on the developmental and reproductive toxicity studies there is no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fenbuconazole. In the developmental toxicity studies in rats and rabbits, as well as the 2–generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses and was not judged to be more severe than in the maternal/parental animals. EPA therefore determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. The toxicology data base is complete.

ii. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* or and/or postnatal exposure in the developmental and reproductive toxicity studies.

iii. Dietary (food) exposure estimates are slightly refined (using limited PCT data for the stone fruit (except plum and prune) crop group) but likely result in overestimates of the actual dietary exposure.

iv. Models are used for ground and surface source drinking water exposure assessments, resulting in estimates that are upper-bound concentrations.

v. There are currently no registered residential uses for fenbuconazole and, as a result, this type of infant and children exposure is not expected.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as points of comparison with the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values, as used by the USEPA Office of Water, are used to calculate DWLOCs: 2L per 70 kg body weight (adult male), 2L per 60 kg body weight (adult female), and 1L per 10 kg body weight (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* For the population subgroup of concern, females 13 years old and older, the acute RfD is 0.3 mg/ kg/day, the estimated acute food exposure is 0.015 mg/kg/day, the maximum estimated acute water exposure is 0.29 mg/kg/day, the acute DWLOC is 8.6×10^3 microgram/liter (µg/ L), and the acute EEC is 6.7 µg/L. Therefore, the Agency concludes with reasonable certainty that residues of fenbuconazole in drinking water (when considered along with other sources of acute exposure for which reliable data exist) will not result in unacceptable levels of acute aggregate human health risk estimates for the population subgroup females 13 years old and older.

The Agency generally has no concern for exposures below 100% of the acute RfD (when the FQPA Safety Factor has been removed, as is the case for fenbuconazole) because the acute RfD represents the level at or below which a single daily exposure will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the acute aggregate exposure to exceed 100% of the acute RfD for the subpopulation of cencern (females 13 years old and older). The Agency concludes that there is a reasonable certainty that no harm will result to females 13 years old and older from chronic aggregate exposure to fenbuconazole residues.

2. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short-term endpoints were not identified. Fenbuconazole is also not registered for use on any sites that would result in residential exposure. Therefore, the short-term aggregate risk assessment was not performed.

3. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term endpoints were not identified. Fenbuconazole is also not registered for use on any sites that would result in residential exposure. Therefore, the intermediate-term aggregate risk assessment was not performed.

4. *Chronic risk.* The following values were used or derived in calculations of chronic exposure and risk. The percentages of the chronic RfD that food exposure to fenbuconazole represented were <1.0% for the overall U.S. population, 2.5% for all infants (<1 year old), 1.1% for nursing infants (<1 year old), 3.1% for non-nursing infants (<1 year old), 1.5% for children (1-6 years old), <1.0% for non-Hispanic (other than Black or White), and 1.0% for seniors (55 years old or older). The adult population subgroup with the highest food exposure, non-Hispanic (other than black or white), was the subgroup used in the full analysis. For males the chronic RfD is 0.03, the estimated chronic food exposure is 0.00030 mg/ kg/day, the maximum estimated water exposure is 0.030 mg/kg/day, DWLOC is 1.0×10^3 µg/L, and the chronic EEC is 3.6 µg/L. For females the chronic RfD is 0.03, the estimated chronic food exposure is 0.00030 mg/kg/day, the maximum estimated water exposure is 0.030 mg/kg/day, DWLOC is 8.9×10^2 µg/L, and the chronic EEC is 3.6 µg/L.

The estimated 56–day concentration of fenbuconazole in surface water (3.6 µg/L) is less than the Agency's levels of comparison for fenbuconazole in drinking water as a contribution to chronic aggregate exposure (1.0×10^3 µg/L and 8.9×10^2 µg/L for males and females respectively). Therefore, taking into account the registered uses, the Agency concludes with reasonable certainty that residues of fenbuconazole in drinking water (when considered along with other sources of chronic exposure for which the Agency has reliable data) would not result in unacceptable levels of chronic aggregate

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human health risk estimates for adult population subgroups.

The Agency generally has no concern for exposures below 100% of the chronic RfD (when the FQPA Safety Factor has been removed, as is the case for fenbuconazole) because the chronic RfD represents the level at or below which average daily lifetime exposure will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the chronic aggregate exposure to exceed 100% of the chronic RfD for population subgroups which include adults. The Agency concludes that there is a reasonable certainty that no harm will result to adults from chronic aggregate exposure to fenbuconazole residues.

5. *Aggregate cancer risk for U.S. population.* Fenbuconazole has been classified as a Group C carcinogen with a Q1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$. The group used in this analysis was U.S. population (48 contiguous states), the U.S. population as a whole. The cancer analysis, using all of the existing fenbuconazole tolerances (including section 18 tolerances), results in a cancer risk estimate of 8.3×10^{-7} for food consumption for the U.S. population as a whole. This analysis used 100% crop treatment values except for the stone fruit (except plum and prune) crop group, where a value of 12.8% crop treated was used. Based on the cancer dietary (food only) exposure and using default body weights and water consumption figures, a cancer DWLOC was calculated. The values used or calculated as part of the calculation of the DWLOC are the Q 1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$, a food exposure of 0.00023 mg/kg/day, a maximum water exposure of 4.6×10^{-5} mg/kg/day, a DWLOC of 1.6 µg/L, and a chronic EEC of 3.6 µg/L.

Agency policy states that a factor of three will be applied to GENEEC model values when determining whether or not a level of comparison has been exceeded. If the GENEEC model value is less than or equal to three times the DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed. The estimated 56–day (chronic) concentration of fenbuconazole in surface water (3.6 µg/L) is less than three times the level of comparison ($3 \times 1.6 = 4.8$ µg/L) for fenbuconazole in drinking water as a contribution to chronic (cancer) aggregate exposure. Therefore, it is concluded with reasonable certainty that residues of fenbuconazole in drinking water, when considered along with other sources of chronic (cancer) exposure for which there is reliable data, would not result in unacceptable levels of cancer aggregate human health risk estimates for the overall U.S. population. The chronic food exposure estimate is partially refined. Further refinement would lower the food exposure estimate and result in a higher DWLOC.

The Agency generally has no concern for exposures that result in a cancer risk estimate below 1×10^{-6}. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the chronic (cancer) aggregate exposure to exceed 1×10^{-6} for the U.S. population as a whole. The Agency concludes that there is a reasonable certainty that no harm will result to the overall U.S. population from chronic (cancer) aggregate exposure to fenbucanazole residues.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenbuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. This method involves extraction of parent and metabolites into solvent followed by concentration, clean up, separation by gas chromatography, and detection with a nitrogen phosphorus detector. This method was submitted for inclusion in PAM II. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for fenbuconazole in or on pecans, bananas, and the stone fruit (except plums and prunes) crop group.

C. Conditions

Discuss conditions for registration (i.e., additional residue field trials required), regional registration, etc.

The conditions of registration for fenbuconazole were submissions of the following items. Five additional studies had to be submitted: (1) Fish life cycle, (2) growth and reproduction of aquatic plants, (3) droplet size spectrum, (4) drift field evaluation, and (5) 49–month storage stability study. Several corrections to the labels were required. Mitigation measures to address chronic non-target organism toxicity concerns had to be identified and submitted. Production of the Indar 75 WSP product could not exceed 38,000 lb (28,500 lb ai) for each year of conditional registration and information on its production had to be submitted for the first federal fiscal year during which fenbuconazole was registered for use on stone fruits and pecans. Production information had to be submitted for the Enable 2F product (EPA Registration Number 62719–416) for the first federal fiscal year during which this product was registered for use on pecans. The company has subsequently submitted studies, information, and corrected labels, and participated in task forces, intended to satisfy all these condition-of-registration requirements. All such submissions that have been reviewed have been found to satisfy the appropriate registration condition.

V. Conclusion

Therefore, the tolerances are extended until December 31, 2004 for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on the stone fruit (except plums and prunes) crop group at 2.0 ppm, pecans at 0.1 ppm, and bananas at 0.3 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301199 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 18, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301199, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule extends tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national

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government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 26, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.480 [Amended]

2. In § 180.480(a)(1) is amended by revising the "Expiration/Revocation Date" in the table "12/31/01" to read "12/31/04." for the entries "bananas (whole fruit)"; "pecans"; and "stone fruit crop group (except plums and prunes)".

[FR Doc. 02–962 Filed 1–14–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7125–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a delisting to Heritage Environmental Services, LLC (Heritage) to exclude treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
  A. What Is a Delisting Petition?
  B. What Regulations Allow a Waste to Be Delisted?
II. Heritage's Delisting Petition
  A. What Waste Did Heritage Petition EPA to Delist?
  B. What Information Must the Petitioner Supply?
  C. What Information Did Heritage Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
  A. Comments and Responses from EPA
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A petitioner remains obligated under RCRA to confirm that the waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, a person may petition the EPA to remove

waste at a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the EPA to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides a person the opportunity to petition the EPA to exclude a waste on a "generator specific" basis from the hazardous waste lists.

II. Heritage's Delisting Petition

A. What Waste Did Heritage Petition EPA to Delist?

On August 3, 1999, Heritage petitioned EPA to exclude an annual volume of 30,000 cubic yards of K061 EAFD generated at Nucor Steel Corporation located in Crawfordsville, Indiana from the list of hazardous wastes contained in 40 CFR 261.32. K061 is defined as "emission control dust/sludge from the primary production of steel in electric arc furnaces."

B. What Information Must the Petitioner Supply?

Petitioners must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the EPA must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did Heritage Submit To Support This Petition?

To support its petition, Heritage submitted descriptions and schematic diagrams of the EAFD treatment system; and detailed chemical and physical analyses of the treated EAFD.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to Heritage for a 30,000 cubic yards annual volume of K061 EAFD generated at the Nucor Steel facility in Crawfordsville, Indiana and treated by Heritage from the list of hazardous wastes.

Heritage petitioned EPA to exclude, or delist, the treated EAFD because Heritage believes that the petitioned waste does not meet the RCRA criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On December 5, 2000, EPA proposed to exclude or delist Heritage's treated EAFD from the list of hazardous wastes in 40 CFR 261.32 and accepted public comment on the proposed rule (65 FR 75897). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the treated waste generated at the Nucor facility should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

Heritage must dispose of the treated EAFD in a Subtitle D landfill which has groundwater monitoring and which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion is valid for a maximum annual rate of 30,000 cubic yards per year. Any amount exceeding this volume is not delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Heritage transports the petitioned waste to or manages the waste in any state with delisting authorization, Heritage must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Public Comments Received on the Proposed Exclusion

A. Comments and Responses From EPA

Comment: The DRAS is a more realistic model than any of its predecessors.

Response: EPA agrees with the comment.

Comment: EPA has stated that it believes the CML model is appropriate when evaluating whether to delist a waste, and has used the CML model as recently as the proposed delisting of August 8, 2000 and the final delisting of May 16, 2000.

Response: Region 5 believes that the delisting risk assessment software (DRAS) is a more sophisticated and more appropriate model and is now applying this model to all petitions currently under review.

Comment: The September 27, 2000 and December 5, 2000 **Federal Registers** did not indicate that the DRAS has been adopted by all EPA Regions, nor that it would be used in the future.

Response: At this time all Regions are using the DRAS model.

Comment: The model should be peer reviewed and the public should have the opportunity to provide adequate and meaningful comment.

Response: The model has been peer reviewed. The public has the opportunity to submit comments on the DRAS model during the comment period each time a delisting is proposed which is based on the DRAS model.

Comment: EPA is continuing to use the model before completing its own review of comments received. The DRAS may not be appropriate since if is currently being commented upon & revised.

Response: The Agency is continually striving to improve the tools available

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for assessing risk. The Agency believes that at this time the DRAS model is the best available tool for estimating risk. Revisions and improvements to the model are always possible in the future.

Comment: The DRAS model assumes that the landfill is unlined and that leaching occurs from the beginning, which is counter to the use of liners, covers & slurry walls. The assumption of no liner is not consistent with CMTP which assumes a liner. The DRAS model should allow for the option of including a liner and should use Subtitle D landfill characteristics.

Response: There are existing solid waste landfills which have no liner. Over time, liners may fail and delistings currently have no expiration date. Therefore it is reasonable to consider scenarios for liner failure or to assume that no liner exists.

Comment: The DRAS model assumption of minimal cover increases estimates of volatilization and particulate emissions, which may not be reasonable.

Response: We must consider the worst case scenario of minimal requirements for daily cover. Regulations requiring daily cover on municipal landfills do not necessarily apply to industrial solid waste landfills.

Comment: The DRAS model is inflexible because site specific factors like hydrogeology, climate, ecology, and population density cannot be incorporated. The model should be modified to allow for the input of site and contaminant specific criteria. State or regional modeling criteria may be more stringent than the CMTP and have been ignored.

Response: At this time the Agency is not able to consider such site specific factors. The DRAS model is based on national averages of these factors and is intended to model a reasonable worst case. A State may always impose more stringent requirements based on site-specific factors.

Comment: DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits including the assumptions, methodologies, pathways and variables used in the DRAS model.

Response: The DRAS Technical Support Document (DTSD) explains the risk algorithms used in the model including the methodologies, variables, pathways and assumptions. The DTSD is available on line at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm.*

Comment: Several assumptions used in the DRAS model are unlikely and unreasonable: (1) A receptor lives and works at a single location 100 m downgradient and is exposed 350 days/yr; (2) individuals are exposed to the 90th percentile level for all paths; (3) all media flow toward the receptor; (4) the landfill volume and conditions from 1987 are still valid; (5) the waste is placed uniformly at great depth over the whole landfill; (6) only the most sensitive pathway for each constituent is selected which is an unlikely scenario; (7) first order decay applies although processes of oxidation, hydrolysis and biodegredation are not considered separately; (8) transformation rate may not be reasonable for biological processes; (9) fate and leaching estimates should include parameter estimates including Kow, pKa, Henry's Law and potential for biological transformation; (10) all streams are fishable and representative; and (11) nickel has a fish BCF of 307 which is unsupported by peer review publications and EPA's own documents.

Response: (1,2) The DRAS employs standard risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure 350 days/yr, and selection of the 90th percentile). The Agency has no way of knowing that this situation will not occur and therefore deems it prudent to protect for this condition by adding risks. (3) The Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. (4) The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report are not valid. When updated data are available, they will be incorporated into the analyses. (5) To maximize the impact of the waste, the model assumes uniform placement of the waste. (6) The DRAS does employ a conservative approach to exposure assessment by assuming the receptor may be exposed to both the most sensitive groundwater pathway and the most sensitive surface exposure pathway and selects the most sensitive pathway for each constituent. (7,8) The groundwater fate and transport model used by the Agency to determine first order decay is EPA's Composite Model for Leachate Migration with Transformation Products (CMTP). The information used to develop the first order decay rate for different chemicals in CMTP is based on studies in which the separate processes of oxidation, biodegradation and hydrolysis could not be further isolated. The transformation rates cannot be easily adjusted because they are based on these empirical studies rather than on theoretical modeling in which variables can be altered at will. This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). The Agency will continue to support the use of EPACMTP until a better assessment tool becomes available. (9) The Kow and pKa (octonal water partition coefficient and ionization constant) are not used in the development of leaching estimates because the DRAS relies on test data from leach testing to estimate the leaching potential of the waste. The Henry's law constant, although used in other aspects of the DRAS, is not used in the estimate of leaching and fate in groundwater. At this time, the CMTP does not account for volatilization of constituents from the groundwater as it moves through the subsurface.

(10) EPA assumed that all streams of sufficient size are fishable. This assumption is conservative, but not unreasonable as the final landfill location is not known. (11) The bioconcentration factor (BCF) for nickel has been revised from 307 to 78. The revised nickel BCF will be incorporated into the upcoming DRAS version 2.0.

Comment: Current science suggests that the skin and respiratory tract are targets for soluble nickel salts, yet the model literature states that the critical effects are decreased organ and/or body weights.

Response: The oral Reference Dose (RfD) is based on the assumption that thresholds exist for certain toxic effects such as cellular necrosis. It is expressed in units of mg/kg/day. Ambrose et al. (1976) reported the results of a 2-year feeding study using rats given 0, 100, 1000 or 2500 ppm nickel (estimated as 0, 5, 50 and 125 mg Ni/kg/day) in the diet. Clinical signs of toxicity, such as lethargy, ataxia, irregular breathing, cool body temperature, salivation and discolored extremities, were seen primarily in the 100 mg/kg/day group; these signs were less severe in the 35 mg/kg/day group. Based on the results obtained in this study, the 5 mg/kg/day nickel dose was a no observable adverse effects level (NOAEL), whereas 35 mg/kg/day was a lowest observable adverse effects level (LOAEL) for decreased body and organ weights. For further information, please refer to the Agency's IRIS database.

Comment: The bioconcentration factor (BCF) of 307 for nickel in fish is unsupported in EPA's own documents. Literature values are much less. BCF should not be used for predicting chronic toxicity. Some organs can regulate internal concentrations. Nickel has a low order of toxicity. Nickel does not bioaccumulate due to incomplete adsorption and rapid excretion. It is Ni^{+2}, not the parent, that is persistent and bioavailable and determines toxicity.

Response: The BCF for nickel has been revised to 78 and will be incorporated into DRAS version 2.0. This value is based on the geometric mean of 3 laboratory values (100, 100, 47). The studies used to derive the BCF for nickel are based on soluble nickel, which is present as the Ni^{+2} ion. The nickel concentration in the waste was assumed to be present as the Ni^{+2}. The assumption is conservative, but not unreasonable since the nickel from the waste could be present as the Ni^{+2} ion at the point of exposure.

Comment: In aquatic environs, much of the nickel is present as both ionic and stable organic complexes. Hence much of the nickel is insoluble with minimal bioavailability. Also, soil which contains high organic matter will adsorb nickel and limit its mobility.

Response: The Agency agrees that some nickel may be insoluble, and have minimal bioavailability, since its mobility is dependent on the organic content of the soil. However, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk analyses including the organic content of fishable waters. The Agency has no way of knowing what streams may be impacted and, therefore, has established a conservative estimate of pertinent variables.

Comment: MINTEQA2 has been reported to contain outdated and inaccurate thermodynamic estimates (e.g., for complexation of metals like cadmium that are dependent on disolved oxygen content (DOC and pH). Hence the model may not reasonably estimate speciation and mobility. EPA should confirm stoichiometry, speciation charge, formula weight, equilibrium and enthalpy estimates with regard to metal and organic ligands as risks from metal ion concentrations may be overestimated.

Response: The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses.

Comment: The model may estimate fate and transport concentrations that exceed water solubility.

Response: If waste concentration exceeds soil saturation, free form conditions may occur and the assumptions of the EPACMTP may be compromised. Therefore, soil saturation values have been incorporated into DRAS and the program will notify the user if waste concentrations exceed soil saturation concentrations. Ambient water concentrations may be influenced by more than chemical solubility (e.g., organic content).

Comment: The use of the NOAEL in Rfd calculations has been challenged by the SAB. The dose response relationship and the consistency in response level are not identified. Use of the NOAEL for regulatory limits is based more on experimental exposure design than on biological relevance.

Response: The EPA still uses the NOAEL in Rfd. The SAB did not review the entire DRAS. The EPA risk assessors who peer reviewed the DRAS did not question the use of the NOAEL in Rfd. Until such time that the Agency redefines RfD methodology, the delisting program will continue to determine hazards based on RfDs recommended by EPA's IRIS database. The Agency continues to use RfDs in delisting determinations in a manner consistent with EPA risk assessment methodology. The EPA risk assessors and EPA ORD scientists who have peer reviewed the DRAS have not questioned the method in which RfDs are employed in the DRAS analyses.

Comment: Terms should be more clearly defined. Does the term Cw for waste contamination account for the total mass of contamination in the waste or only that portion that may enter the aqueous phase and be transported into the unsaturated zone and/or the leachable portion?

Response: No occurrences of Cw could be found in the DTSD or in the proposed exclusion. The term Cwaste is used twice in Chapter 4 of the DTSD to refer both to the total constituent concentration in a solid matrix in a landfill and to the total constituent concentration in a liquid in a surface impoundment.

Comment: USEPA cited various regulatory and statutory sections such as §§ 261.11(a)(3)(i) thru (xi) describing factors to consider in listing/delisting waste, but there was very little analysis of those factors. This prompts the conclusion that the USEPA is arbitrarily proposing to grant the HES petition.

Response: All criteria in 40 CFR 261.11(a)(3) were considered in accordance with § 260.22(d). The DRAS program was developed in consideration of all of the factors presented in 40 CFR 261.11(a)(3). Consitituent specific toxicology, chemical, and physical data are in the database used in the DRAS software as are appropriate models for evaluating migration and exposure. The DRAS is not currently capable of evaluating degradation products as described in 40 CFR 261.11(a)(3)(iii) through (vi) and the risk posed by degradation products would typically be evaluated independently. The petitioned waste, however, did not contain any chemicals which have known degradation products and therefore this additional analysis was not necessary. EPA considered plausible types of improper management in accordance with § 261.11(a)(3)(vii) when it assumed that contaminants will migrate from the landfill to a receptor well, uncontrolled erosion of exposed wastes will migrate into a stream, and long-term absence of daily cover will expose the waste to the atmosphere. Operating a facility in this manner is considered improper management as it violates the proper management standards and requirements promulgated for licensed Subtitle D landfills set forth in 40 CFR parts 257 and 258.

Comment: DRAS does not evaluate important ecological receptors which may significantly impact the back calculated maximum permissible waste concentrations derived from DRAS.

Response: The DRAS model does include consideration of ecological impacts. A complete description of the screening for ecological impact is in Chapter 4 of the DTSD available on the internet at *<http://www.epa.gov/earth1r6/6pd/ rcra—c/pd-o/dtsd.htm.>* The maximum observed lead and zinc in the petitioned waste exceeded the surface water screening values, indicating the need to examine the possible ecological impact more closely. The DRAS model does not account for the fact that some of the constituents in the eroded waste will not be dissolved. Since water quality criteria used for lead and zinc are based on dissolved concentrations, the total water concentration predicted by DRAS was conservative. Using conservative values published by EPA's Office of Water to convert total water concentrations to dissolved concentrations (30% for zinc and 20 % for lead), the surface water quality criteria were not exceeded.

Comment: How does the model distinguish metals that are important for some animals?

Response: If the commenter is referring to metals as micronutrients, delisting levels for metals far exceed any micronutrient levels.

Comment: What criteria determine whether the allowable leachate concentration is set by the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL), DRAS calculation, treatment technology or toxicity characteristic level?

Response: The allowable level is the most conservative of the DRAS

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calculations, a calculation based on the SDWA MCL or the toxicity characteristic level. The exception to this is the level for arsenic which is frequently calculated based on the concentration allowed by the MCL.

Comment: Does EPA policy require that MCL or surface water criteria be met? Does this policy apply at all downgradient distances or just those corresponding to the DAF?

Response: Groundwater must meet MCL criteria but not surface water criteria. The DAF is used to calculate the concentration in the groundwater at a well a set distance downgradient. This distance was based on the results of a survey which identified the distance to the closest drinking water wells located near solid waste landfills throughout the country.

Comment: Are maximum permissible levels set below background? Background levels for nickel are approximately 3.3 ppb freshwater; 2.1 ppb groundwater; 4 to 30 mg/kg soil.

Response: The Agency does not usually consider background levels when establishing delisting levels. The maximum allowable levels of nickel in the waste and in the TCLP leachate are not less than the values mentioned in the comment.

Comment: The pH of landfill leachate is generally higher than the pH of the extraction fluid used in the TCLP which affects the leachability of the metals.

Response: The leachability of this waste was measured using three different extraction fluids with pH values of 2.88, 6.5, and 12.0 to evaluate whether the waste leachability will be affected by the pH of various environments.

Comment: The duration of leaching 18 minutes or 18 hours may over or underestimate the leachability of some constituents. TCLP does not account for variations in time to equilibrium for different species. The TCLP under predicts the maximum concentation of some anions and does not account for a variety of processes that can affect leachate quality, quantity and migration.

Response: It is impossible to determine the optimum time or other factors necessary to maximize the leaching of each constituent in every matrix in any environmental condition. A considerable amount of time and effort went into the development of the TCLP and the Agency believes that it is a reasonable laboratory test and that the TCLP results generally correlate well with environmental measurements.

Comment: Does the TCLP account for DOC? DOC in the leachate affects the mobility of metals in the aquifer.

Response: The TCLP does not account for DOC. However, in performing the TCLP procedure using alternative extraction fluids, Heritage took steps to remove dissolved oxygen from the neutral and basic extraction fluids. See proposed rule, 65 FR 75900, December 5, 2000.

Comment: It may be appropriate for the Agency to consider data from the SPLP.

Response: The Agency would consider any additional data that the petitioner chooses to submit. At this time the Agency requires leach testing for stabilized waste using the TCLP procedure at three different pHs. The Agency also evaluates data from the multiple extraction procedure. During the development of the sampling and analysis plan for a delisting petition, the Agency and petitioner discuss which analytical methods are appropriate for characterizing the waste.

Comment: For chemicals not previously modeled with the EPACMTP, what is the effect of assuming a DAF of 18?

Response: The Dilution Attenuation Factor (DAF) of 18 is a conservative value determined by the EPACMTP fate and transport model for the landfill waste management scenario. The DAF of 18 represents the class of organic chemicals with non-degrading, non-sorbing, characteristics. When creating a chemical to add to the DRAS chemical library for use in DRAS analyses, we recommend using a conservative value.

Comment: What is the effect of using one half detection level or zero for non detects?

Response: The use of one half the detection level is a compromise between the use of zero and the use of the detection limit. Using one half of the detection level protects against inappropriately high detection levels.

Comment: The model does not account for the uncertainty or sensitivity estimate. Without a sensitivity analysis it is impossible to determine if a single pathway or a small number of pathways dominate the risk estimate. If data for most sensitive parameter is uncertain or limited, confidence in the result will be poor.

Response: The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway. The user is thereby able to determine which pathway or pathways dominate the estimate of risk for each chemical. These analyses are currently provided on the Chemical-Specific Results screen.

Comment: The model determines that ground concentrations and a theoretical drinking water well that is 90th percentile of all predicted concentrations from Monte Carlo analysis. What is the sensitivity of using the 50th percentile on release and risk estimates?

Response: The DRAS assessment always defaults to high-end values from the 90th percentile. The model was not run using the 50th percentile, so it is not possible to determine the sensitivity at the 50th percentile.

Comment: Does a hazard index (HI) of greater than one mean that the waste cannot be delisted, or does it indicate that the model is overly conservative?

Response: An HI of one does not mean that the waste cannot be delisted, but a more thorough evaluation of the waste will be necessary. In cases where the HI of the waste exceeds one, the Agency will evaluate the target organ for the critical effect of those chemicals contributing to the total HI. In some cases, the hazards associated with various chemicals in the waste result from effects to the same target organ, and are indeed additive. In other cases, the hazards of different chemicals impact different target organs, and are not additive, in which case the HI is lowered accordingly. The DRAS automatically assumes the conservative approach, summing all hazards to calculate the HI.

Comment: EPA has rationalized the exceedance of its own delisting program target risk level of 1×10^{-6} by reference to the cancer risk range of 1×10^{-4} to 1×10^{-6} acceptable in other programs. Although this risk range may be appropriate in the context of corrective action, it may not be warranted in the delisting program where the waste is yet to be generated and placed into the environment.

Response: This risk is within the target risk range in the delisting program of 1×10^{-4} to 1×10^{-6}. The commentor is referred to chapter 4 of the DRAS DTSD which states that the target risk range is 1×10^{-4} to 1×10^{-6}. Attachment A of the RCRA Delisting Program Guidance Manual for the Petitioner also states that the target risk range is 1×10^{-4} to 1×10^{-6}.

Comment: Definition of the criteria used to determine de minimis risk levels and risk estimates should be provided. De minimis risk is usually considered to be a risk of less than 10^{-6} or 1 in a million.

Response: The term de minimis risk is used to refer to a risk that is sufficiently low that it need not be considered. The commentor is correct that a de minimis risk is usually considered by regulatory agencies to be a risk at or below 10^{-6} over a 70 year life time.

Comment: Long term variation, waste characterization procedures used by Heritage, and specific information used in the fate & transport model are lacking.

Response: Temporal variability and waste characterization procedures used by Heritage were evaluated. The fate and transport data used by the delisting risk assessment model is based on national averages for a reasonable worst case scenario, not on site specific information.

Comment: It may be more appropriate to set standards using statistical procedures from empirical data from TCLP analyses rather than generic risk assessment and fate and transport.

Response: Empirical data is not a reliable predictor of future risk. We believe that the DRAS model is a more appropriate tool than empirical data for determining acceptable levels based on risk.

Comment: Is 30,000 cubic yards the untreated or the treated K061? Will any amount over 30,000 cubic yards be regulated as K061? What information was provided to determine annual volume?

Response: The proposed delisting is for 30,000 cubic yards of treated waste. Any treated K061 in excess of 30,000 yds is not delisted. The Agency accepts the facility's assessment and certification of data submitted.

Comment: What is a mixing device?

Response: A mixing device is a unit in which mixing occurs.

Comment: Much of the relevant information was confidential business information, such as what treatment reagents were used or specifications of a mixing device.

Response: Heritage has claimed information which it submitted on equipment, reagents, and process as confidential. Heritage believes that such information in the public domain could be injurious.

Comment: No details were given on and what dust characteristics were evaluated.

Response: Information on dust characteristics of the treated dust is provided in section 3.0 of the petition.

Comment: Are the larger particles that are removed in the dropout chamber ever reintroduced into the EAFD for treatment? Would these larger particles meet the definition of K061? Are the silos in which EAFD is accumulated considered accumulation tanks since the exclusion is only for EAFD that has been treated.

Response: The material in the dropout box is not K061 and is not reintroduced into the EAFD for treatment. The silos are part of the production unit and not RCRA regulated tanks. Baghouse silos that are directly connected via piping to the baghouse are an integral part of the EAFD emission control system. Furthermore, the waste is accumulated in the silos for less than 90 days, and the silos are part of the treatment equipment. The point of generation does not occur until the treatment is complete and the waste exits the unit. Therefore, the silos are not accumulation tanks and are not subject to RCRA.

Comment: US EPA should re-evaluate the waste treatment process and QA criteria to assure variations in the treated EAFD are minimized.

Response: If future verification samples indicate excessive variations, the waste will be re-evaluated.

Comment: There are no details on the fingerprinting procedures or the quality control measures used to assure proper and consistent treatment of the waste.

Response: The sampling strategy addressed the waste exiting the unit. Fingerprinting would not be appropriate since the waste does not undergo further treatment after it exits. The quality control measures are set forth in the sampling and analysis plan. The required verification sampling is intended to assure that the treated waste remains within acceptable limits. Verification samples which exceed the delisting levels set forth in this rule may invalidate this delisting.

Comment: The composite sampling procedure in the initial month may not be sufficient to describe the variation of metals from different mixes of scrap steel. No comparison of the variability of the metals is given. EPA should adopt statistical sampling and analytical procedures from process and quality control engineering methodology. The limited amount of sampling does not provide for waste variability.

Response: A statistical approach based on extensive data would be welcomed in future petitions. Since the K061 dust is generated at a single facility, the Agency believes that the samples taken represent a reasonable range of both spacial and temporal varibility. Some confidential data was submitted demonstrating waste variability at this site.

Comment: The presence of VOCs, SVOCs and PCBs is considered unlikely. However, one sample is insufficient to determine the presence or absence of these compounds. Verification should require that a limited number of samples be analyzed for these constituents.

Response: Based on an understanding of the process, the Agency believes that these constituents are not likely to be present in the waste. Generator knowledge also supports the absence of these constituents in the waste. In this case, a single sample is considered sufficient to verify the absence of these compounds.

Comment: The commenter recommends that split samples should be taken by EPA.

Response: EPA does not sample wastes in support of delisting petitions. The signed certification is accepted as proof that all analyses were done properly and the results are reported correctly.

Comment: Listed waste needs to meet technology based LDRs prior to disposal. The delisting level for lead has been set at 2.4 mg/L TCLP which is above the LDR standard of .75 mg/L TCLP. Why weren't LDRs considered in setting the delisting standard?

Response: The proposed exclusion for this waste would be effective at the point of generation. Since LDRs attach at the point of generation this waste would not be considered hazardous and therefore is not subject to LDRs.

Comment: There are no criteria listed for what constitutes a significant change to the treatment process or a change in the chemicals used.

Response: A change either to the treatment process or in the chemicals used is significant if it results in a change in the composition of the waste.

Comment: In most cases where samples are required to support decision-making under RCRA, grab samples are required. Samples taken in support of this petition were composite samples. EPA should explain why results based on composite sampling were allowed and accepted and why these samples do not render the decision to grant the HES petition inappropriate due to inconsistent information.

Response: In the delisting program, composite samples are preferred, except in the case of volatile constituents. Multiple composite samples provide a better profile of the waste.

Comment: There should be recognition that a single grab sample taken by a regulating authority would be sufficient for a determination of legitimacy of the exclusion. The proposed delisting seems to indicate that only the monthly sampling done by Heritage could cause the exclusion to be suspended.

Response: The Agency always has the right to take samples to verify compliance. Such samples taken by the Agency could provide a basis for revoking a delisting.

Comment: A more rigorous initial sample was used to characterize the

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variability for EAFD at USX Steel Corporation in Gary Indiana. Is it appropriate to have two different standards for USX and Heritage?

Response: All delisting decisions, including the initial sampling for delisting proposals are site specific. There will be variations.

Comment: In the ANPRM, 65 FR 37932, June 19, 2000, EPA has reservations about the effectiveness of using stabilization to immobilize metal wastes. Stabilization has not been scientifically proven to be reliable over the long term for disposal of such wastes. Allowing this waste to be placed in general purpose landfills which have fewer engineered features to prevent leaching and migration of heavy metals into groundwater ignores sound science. EPA needs to explain why disposing of a hazardous waste in this less protective manner should be allowed, absent any evidence confirming that it will work.

Response: At this time, stabilization is considered to be the best available treatment for metal bearing wastes. We have no evidence that constituents of concern have ever leached from this stabilized waste. To assure that the waste continues to meet the levels established here, we are requiring periodic testing of the waste and placement of the waste in a solid waste landfill which has ground water monitoring.

Comment: A similar process used in Ohio has caused concern because of possible leaching of substances which were supposedly stabilized. EPA cited Envirosafe Services in Ohio as having high leachate levels of various metals.

Response: Envirosafe Services in Ohio was not cited by US EPA for high levels of metals in the leachate. The facility was cited by Ohio EPA for excessive volume of leachate, although this citation may be attributed to be an error in measurement. Although the commentor did not define what constitutes high levels of metals in the leachate, the leachate must be treated as necessary to meet regulated standards before disposal. In addition, the concentrations of metals in the groundwater are monitored and regulated. While EPA may consider the experiences at other locations, petitioned wastes are evaluated on a site specific basis. The petitioned waste meets the criteria for delisting when the levels set forth in the notice are met.

Comment: EPA has concluded that over the long term, the actual leachate concentrations suggest that significant groundwater contamination may result after the eventual failure of liner and other contaminant controls.

Response: The DRAS model calculates risk assuming a worst case scenario of no liner at all. Under this scenario, the waste can be delisted.

Comment: An independent engineering expert has warned that the massive weight of stabilized K061 on the liner could produce hundreds of high pressure points which will burst and result in leakage of the liner and seepage of groundwater into and through the cell. The problem of groundwater leaching out the heavy metals in a Class C landfill cannot be ignored, but EPA did not analyze it.

Response: Currently a liner is the best available technology for landfills, regardless of whether it is a hazardous waste landfill (Subtitle C) or a solid waste landfill (Subtitle D). However, the model used to assess the risk of a delisted waste assumes that no liner is present.

Comment: It is scientifically established that lead can actively affect hydration of the concrete ingredients of the stabilization process. Lead tends to locate near the surface of cement-like materials and is easily leached into water. This is a concern in a less-secure Class C landfill which is not built to withstand the immense weight of stabilized K061.

Response: There is no evidence that lead has leached from this waste in the past and therefore we cannot assume that it will do so in the future. Since the model assumes no liner, the weight of the stabilized K061 and its possible effect on a liner is not relevant. It is assumed that the commentor is concerned about disposal in a Subtitle D landfill, since a Subtitle C landfill which the commentor referred to is more secure, not less secure as stated in the comment.

Comment: Arsenic and cadmium have been most frequently found in hazardous concentrations on both a total and dissolved constituent basis.

Response: Only very low concentrations of these constituents leach from the petitioned waste in a TCLP analysis. EPA believes that at these low concentrations, these constituents do not pose a risk.

Comment: EPA has expressed concern over migration of metals from stabilized waste to groundwater, yet EPA proposed to grant the Heritage petition without reviewing any groundwater monitoring information. In fact, Heritage submitted no groundwater monitoring information.

Response: HES has submitted groundwater monitoring data for their Subtitle C landfill where the waste is currently being disposed. The data does not indicate the presence of any constituent above health based levels.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's final rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 12, 2001.

Gerald Phillips,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Heritage Environmental Services, LLC., at the Nucor Steel facility.	Crawfordsville, Indiana.	Electric arc furnace dust (EAFD) that has been generated by Nucor Steel at its Crawfordsville, Indiana facility and treated on site by Heritage Environmental Services, LLC (Heritage) at a maximum annual rate of 30,000 cubic yards per year and disposed of in a Subtitle D landfill which has groundwater monitoring, after January 15, 2002. (1) *Delisting Levels:* (A) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony—0.206; Arsenic—0.0936; Barium—55.7; Beryllium—0.416; Cadmium—0.15; Chromium (total)—1.55; Lead—5.0; Mercury—0.149; Nickel—28.30; Selenium—0.58; Silver—3.84; Thallium—0.088; Vanadium—21.1; Zinc—280.0. (B) Total mercury may not exceed 1 mg/kg. (2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP method, the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and SW–846 Method 7470 for mercury. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). (3) *Changes in Operating Conditions:* If Nucor significantly changes the manufacturing process or chemicals used in the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage or Nucor must notify the EPA of the changes in writing. Heritage and Nucor must handle wastes generated after the process change as hazardous until Heritage or Nucor has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Heritage and Nucor have received written approval from EPA. (4) *Data Submittals:* Heritage must submit the data obtained through monthly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Heritage or Nucor must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage or Nucor must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (5) *Reopener Language*—(A) If, anytime after disposal of the delisted waste, Heritage or Nucor possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in Paragraph (1) is at a level in the leachate higher than the delisting level established in Paragraph (1), or is at a level in the groundwater higher than the maximum allowable point of exposure concentration predicted by the CMTP model, then Heritage or Nucor must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (5)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Heritage and Nucor in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Heritage and Nucor with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Heritage and Nucor shall have 30 days from the date of the Regional Administrator's notice to present the information.

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

[FR Doc. 02–953 Filed 1–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7124–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition submitted by USG Corporation (USG), Chicago, Illinois, to exclude (or "delist"), on a one-time basis, certain solid wastes that are interred at an on-site landfill at its American Metals Corporation (AMC) facility in Westlake, Ohio from the lists of hazardous wastes. This landfill was used exclusively by Donn Corporation, the original site owner, for disposal of its wastewater treatment plant (WWTP) sludge from 1968 to 1978.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What Is a Delisting Petition?
B. What Regulations Allow a Waste To Be Delisted?
II. USG's Delisting Petition
A. What Waste Did USG Petition EPA to Delist?
B. What Information Must the Petitioner Supply?
C. What Information Did USG Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
IV. Response to Public Comments Received on the Proposed Exclusion
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a petitioner to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Petitioners remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides any person with the opportunity to petition the Administrator to exclude a waste at a particular generating facility from the hazardous waste lists.

II. USG's Delisting Petition

A. What Waste Did USG Petition EPA To Delist?

On May 22,1997, USG petitioned EPA to exclude 12,400 cubic yards of previously disposed WWTP sludge from the list of hazardous wastes contained in 40 CFR 261.31. The WWTP sludge is a mixture of EPA Hazardous Waste Number F019 wastewater treatment sludge from the conversion coating of aluminum and other nonhazardous wastes.

B. What Information Must the Petitioner Supply?

A petitioner must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did USG Submit To Support This Petition?

To support its petition, USG submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past waste generation and management practices; (2) detailed chemical and physical analysis of the landfilled sludge; and (3) environmental monitoring data from recent studies of the facility, including groundwater data from wells located in and around the on-site landfill.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to USG for 12,400 cubic yards of WWTP sludge interred at the AMC facility in Westlake, Ohio.

USG petitioned EPA to exclude, or delist, the WWTP sludge because USG believes that the petitioned waste does not meet the RCRA criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On September 27, 2000, EPA proposed to exclude or delist USG's WWTP sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that USG's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

USG must dispose of the estimated total landfill volume of the WWTP sludge, 12,400 cubic yards, in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding this volume is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied. This rule does not change the regulatory status of the landfill in Westlake, Ohio where the waste currently resides.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received EPA authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, EPA urges the petitioner to contact the state regulatory authority to establish the status of its wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If USG transports the petitioned waste to or manages the waste in any state with delisting authorization, USG must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Response to Public Comments Received on the Proposed Exclusion

Comment: The commenter stated that although the Agency reviewed and commented on the DRAS model, the public has not had the opportunity to do so.

Response: The proposed rule of September 27, 2000 discussed the DRAS model. The comment period provided an opportunity to comment on the DRAS model itself as well as its use in this proposed delisting. Each proposed delisting must explicitly reference the risk model used. Therefore, comments on the DRAS may always be submitted during the comment period for any future delisting for which the DRAS was used. Also, for comments on future delistings which used the DRAS model, the technical support document for the DRAS model may be accessed on-line at <*http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm*>.

Comment: It is not clear the Agency intends to use this model and that all Regions will be using this methodology to evaluate all delisting petitions in the future.

Response: At this time the Agency anticipates that the DRAS model will become the standard tool for evaluating future delisting petitions although there is no regulation requiring the use of this model. For each petition, each Region will select the risk model it considers to be the most appropriate.

Comment: It is inappropriate for the DRAS model to incorporate elements of the not yet finalized Hazardous Waste Identification Rule (HWIR) model.

Response: The risk assessment procedure performed by the DRAS model has been reviewed by the Science Advisory Board as well as by EPA's Office of Research and Development. Finalizing HWIR will not impact the use of this model in delisting decisions.

Comment: Why were several additional exposure pathways added to the delisting evaluation?

Response: Most of the exposure pathways used in this delisting evaluation have been used in previous delisting evaluations. The expanded list of exposure pathways is consistent with the exposure pathways used by the Agency in recent listing determinations as well as in the proposed HWIR.

Comment: The detection level for 2,3,4,7,8-PeCDF in Table 1 is higher than the target risk level for this compound although detection levels in the most recent analysis are much lower.

Response: The highest detection level in any sample is displayed in the table, however EPA relied on the actual quantitative results from the more recent and more sensitive analysis in evaluating the petitioned waste.

Comment: The petitioner requested that the calculation of the risk factor for 2,3,4,7,8-PeCDF be verified because it was comparable to 2,3,7,8-TCDD which is known to be more toxic.

Response: Although, 2,3,4,7,8-PeCDF is less toxic, it is more bioaccumulative in fish tissue so that its lower toxicity is offset by increased exposure.

Comment: The petitioner requested clarification on how non-detects are treated when determining delistable levels for dioxins and furans.

Response: Non-detects are not evaluated or included if the sample was analyzed by a method sufficiently sensitive to detect the constituent at the level of concern.

Comment: The commenter expressed concern that DAF scaling factors were

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not linearly related to waste volumes at annual waste volumes less than 20,000 cubic yards, while the proposed exclusion implied the relationship was linear.

Response: The commenter is correct in that the DAF scaling factors are not linearly related to annual waste volume for volumes less than 20,000 cubic yards. The relationship is approximated by EPA as an exponential function. References to linearity and DAF scaling factors in the proposed rule were misleading. The DAF scaling factors of one constituent are assumed to be directly proportional to DAF scaling factors of other constituents, not linearly related to volume.

Additional corrections to the proposed exclusion:

The delisting factors for dioxin and furan congeners in the proposed rule have been corrected to reflect the increased rate of fish ingestion attributed to high-risk subpopulations in Region 5, as intended in the proposed exclusion. The correct congener-specific factors are as follows: 2,3,7,8-TCDD − 7.46×10^{-2}; 1,2,3,7,8-PeCDD − 7.18×10^{-2}; 1,2,3,4,7,8-HxCDD − 2.41×10^{-3}; 1,2,3,6,7,8-HxCDD − 9.82×10^{-4}; 1,2,3,7,8,9-HxCDD − 1.09×10^{-3}; 1,2,3,4,6,7,8-HpCDD − 4.20×10^{-5}; OCDD − 1.01×10^{-7}; 2,3,7,8-TCDF − 5.08×10^{-3}; 1,2,3,7,8-PeCDF − 8.17×10^{-4}; 2,3,4,7,8-PeCDF − 5.97×10^{-2}; 1,2,3,4,7,8-HxCDF − 5.97×10^{-4}; 1,2,3,6,7,8-HxCDF − 1.46×10^{-3}; 2,3,4,6,7,8-HxCDF − 4.90×10^{-3}; 1,2,3,7,8,9-HxCDF − 5.30×10^{-3}; 1,2,3,4,6,7,8-HpCDF − 8.78×10^{-6}; 1,2,3,4,7,8,9-HpCDF − 3.11×10^{-4}; and OCDF − 1.35×10^{-7}.

The congener specific factors multiplied by the congener concentration in the waste provide the individual risk posed by each congener. The sum of these risks must not exceed the target risk level of 1×10^{-6}.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 26, 2001.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
American Metals Corporation.	Westlake, Ohio	Wastewater treatment plant (WWTP) sludges from the chemical conversion coating (phosphating) of aluminum (EPA Hazardous Waste No. F019) and other solid wastes previously disposed in an on-site landfill. This is a one-time exclusion for 12,400 cubic yards of landfilled WWTP sludge. This exclusion is effective on January 15, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—1.52; arsenic—0.691; barium—100; beryllium—3.07; cadmium—1; chromium—5; cobalt—166; copper—67,300; lead—5; mercury—0.2; nickel—209; selenium—1; silver—5; thallium—0.65; tin—1,660; vanadium—156; and zinc—2,070. (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—9,280; mercury—94; and polychlorinated biphenyls—0.265. (C) Concentrations of dioxin and furan congeners cannot exceed values which would result in a cancer risk greater than or equal to 10^{-6} as predicted by the model. 2. *Verification Sampling*—USG shall collect six additional vertically composited samples of sludge from locations that compliment historical data and shall analyze the samples by TCLP for metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. If the samples exceed the levels in Condition (1)(a), USG must notify EPA. The corresponding sludge and all sludge yet to be disposed remains hazardous until USG has demonstrated by additional sampling that all constituents of concern are below the levels set forth in condition 1. 3. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater exceeding maximum allowable point of exposure concentration referenced by the model, then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information. (d) If after 10 days USG presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 4. *Notifications*—USG must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

* * * * *

[FR Doc. 02–955 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 100]

RIN 3090–AH52

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process.

An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of New York, city (borough) of Manhattan, should be increased and the maximum per diem rate for the State of New York, city (boroughs) of The Bronx, Brooklyn, and Queens, should be decreased to provide for the

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reimbursement of Federal employees' lodging expenses covered by per diem rates. This final rule adjusts the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at 202–501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts are being changed in the State of New York, cities (boroughs) of Manhattan, The Bronx, Brooklyn, and Queens.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Appendix A to chapter 301 is amended as follows:

a. On the page that includes entries for the State of New York, under the State of New York, city of The Bronx/Brooklyn/Queens, column three (maximum lodging amount) is revised to read "168".

b. On the page that includes entries for the State of New York, under the State of New York, city of Manhattan, column three (maximum lodging amount) is revised to read "208".

The revised page containing the amendments to the table set forth above reads as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality:		Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
Princeton/Trenton	Mercer	139		42		181
Tom's River	Ocean					
(May 15-September 15)		89		38		127
(September 16-May 14)		79		38		117
Union County	Union	107		38		145
NEW MEXICO						
Albuquerque	Bernalillo	65		38		103
Cloudcroft	Otero					
(June 1-October 31)		74		30		104
(November 1-May 31)		65		30		95
Los Alamos	Los Alamos	71		34		105
Santa Fe	Santa Fe	99		46		145
Taos	Taos	75		34		109
NEW YORK						
Albany	Albany	96		42		138
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn and Queens	168		46		214
Buffalo	Erie	78		42		120
Glens Falls	Warren					
(June 1-September 30)		74		34		108
(October 1-May 31)		55		34		89
Ithaca	Tompkins	69		34		103
Kingston	Ulster	79		38		117
Lake Placid	Essex					
(June 15-October 15)		86		38		124
(October 16-June 14)		59		38		97
Manhattan	The borough of Manhattan	208		46		254
Nassau County/Great Neck	Nassau	190		42		232
Niagara Falls	Niagara					
(May 1-October 31)		89		34		123
(November 1-April 30)		55		34		89
Nyack/Palisades	Rockland					
(April 1-September 30)		67		38		105
(October 1-March 31)		57		38		95
Owego	Tioga	73		30		103
Poughkeepsie	Dutchess	74		38		112
Rochester	Monroe	83		42		125
Saratoga Springs	Saratoga					
(July 1-October 31)		95		38		133
(November 1-June 30)		75		38		113
Staten Island	Richmond	120		42		162
Suffolk County	Suffolk	149		38		187
Syracuse	Onondaga	70		34		104
Tarrytown	Westchester (except White Plains)	114		42		156
Waterloo/Romulus	Seneca					
(June 15-September 15)		89		34		123
(September 16-June 14)		69		34		103
Watkins Glen	Schuyler	59		34		93
West Point	Orange	121		34		155

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Dated: December 27, 2001.
Stephen A. Perry,
Administrator of General Services.
[FR Doc. 02–926 Filed 1–14–02; 8:45 am]
BILLING CODE 6820–14–C

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 101]

RIN 3090–AH54

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.
ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 96.5 to 97.5 cents per mile, the cost of operating a privately owned automobile from 34.5 to 36.5 cents per mile, and the cost of operating a privately owned motorcycle from 27.5 to 28.0 cents per mile.

EFFECTIVE DATE: This final rule is effective January 21, 2002.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, Program Analyst, telephone 202–501–3781.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress and a copy of the report appears as an attachment to this document. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 97.5 cents for airplanes, 36.5 cents for automobiles, and 28.0 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.5 cents effective January 1, 2002.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–10 is amended to read as follows:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Section 301–10.303 is amended by revising the entries Privately owned airplane, Privately owned automobile, and Privately owned motorcycle in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
. . . . .	.
Privately owned airplane	[1] 97.5
Privately owned automobile	[1] 36.5
Privately owned motorcycle	[1] 28.0

[1] Cents per mile.

Dated: January 8, 2002.
Stephen A. Perry,
Administrator of General Services.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while on official business, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report is being published to comply with the requirements of the law.

Dated: January 8, 2002.
Stephen A. Perry,
Administrator of General Services.

Report to Congress

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.5 cents effective January 1, 2002.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 97.5 cents for airplanes, 36.5 cents for automobiles, and 28.0 cents for motorcycles.

I will issue a regulation to increase the current 96.5 to 97.5 cents for privately owned airplanes, 34.5 to 36.5 cents for privately owned automobiles, and 27.5 to 28.0 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

Stephen A. Perry,
Administrator of General Services.
[FR Doc. 02–927 Filed 1–14–02; 8:45 am]
BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 01–2885]

Petitions for Reconsideration Concerning PSAP Requests for Phase II Enhanced 911, Comments Invited

AGENCY: Federal Communications Commission.
ACTION: Final rule, petitions for reconsideration.

SUMMARY: The Commission seeks comment on petitions for reconsideration of its recent decision in this proceeding regarding universal Enhanced 911(E911) service. In that decision, the Commission amended its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for E911 service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. The current action is taken to establish a record from which the Commission can evaluate the merits of the petitions for reconsideration.

DATES: Comments are due on or before January 18, 2002, and reply comments are due on or before January 28, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document in CC Docket No. 94–102, DA 01–2885, released on December 12, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov*.

Synopsis of the Commission's Decision

1. The Commission solicits comment on petitions for reconsideration of its decision in this proceeding (66 FR 55618, November 2, 2001, and 66 FR 63093, December 4, 2001) filed by Sprint PCS (Sprint) on November 30, 2001, and by Cingular Wireless LLC (Cingular) on December 3, 2001. In that decision, the Commission amended its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for enhanced 911 (E911) service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. If challenged by the wireless carrier, the request will be deemed valid if the PSAP making the request demonstrates E911 readiness as provided in the amended rule, 47 CFR 20.18(j).

2. Sprint requests several amendments to the Commission's documentation requirements, and Cingular contends that the language of amended § 20.18(j) is internally inconsistent and contradicts previous Commission's statements and that the decision violates the notice and comment requirement of the Administrative Procedure Act and is arbitrary and capricious.

3. The petitions are available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, NW., Washington, DC 20554. Petitions and comments may also be viewed electronically by accessing the Commission Internet site at *www.fcc.gov* or purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

4. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a "permit but disclose" proceeding and subject to § 1.1206 of the Commission's rules. Presentations to or from Commission decision-making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant to 47 CFR 1.1206.

5. Interested parties may file comments or oppositions responding to the petitions on or before January 18, 2002, and reply comments on or before January 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent via the Internet to *http://www.fcc/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number.

6. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form<your e-mail address>. A sample form and directions will be sent.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jane Phillips, Room 3A–200.

Federal Communications Commission.
Kris Anne Monteith,
Chief, Policy Division, Wireless Telecommunications Bureau.
[FR Doc. 02–1165 Filed 1–14–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety

AGENCY: Federal Railroad Administration (FRA),(DOT).
ACTION: Interim final rule.

SUMMARY: FRA is amending regulations on Railroad Workplace Safety to eliminate a provision which could present undue hazards to persons, and to eliminate possible confusion regarding the use of various terms in the rule text. In particular, FRA is prohibiting the use of body belts as permissible components of personal fall arrest systems, and is revising references to railroad bridge workers as

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"employees" to eliminate potential confusion in determining the group of people to which the Bridge Worker Safety Standards apply.

DATES: *Effective Date:* This rule becomes effective on March 18, 2002. Written comments must be received no later than March 1, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Requests for formal extension of the comment period must be made by February 14, 2002.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket Management System, U.S. Department of Transportation Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number and this proceeding (Docket No. FRA–2001). If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard.

The docket management system is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov*.

You may submit comments electronically by accessing the Docket Management System web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, at 57 FR 28127, FRA issued the first of two parts of the Railroad Workplace Safety Regulations, 49 CFR part 214. That rulemaking included the original Subpart A, General, with the first definitions, and Subpart B, Bridge Worker Safety Standards. Those standards were based upon the best information available at that time on personal fall protection systems. Since that time, knowledge of the interaction between persons and fall arrest equipment has advanced, and it is now obvious that a formerly permitted use of body belts in fall arrest systems presents an undue hazard to the user.

FRA substantially amended part 214 on December 16, 1996, by adding Subpart C, Roadway Worker Protection Standards, and by adding and amending definitions to accommodate the new Subpart C. In particular, the definition of "employee" was expanded to include all railroad employees affected by Part 214 in its entirety, where before the term had applied only to railroad bridge workers. Although a definition of "railroad bridge worker" was added, the term "employee" remained in the rule text of Subpart B. Of course, Subpart B specifically stated that it applied to railroad employees "performing work on railroad bridges" (see original § 214.101(b)), so its intended scope was clear. Nevertheless, to avoid any mistaken conclusion that the use of "employee" in Subpart B was intended to somehow expand the coverage of the Subpart, we have decided to simply make use of the existing definition of "railroad bridge worker" where appropriate in Subpart B.

Public Participation

The Administrative Procedure Act (5 U.S.C. 551–559) permits an agency to dispense with notice of rulemaking when the agency "for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). FRA finds that notice and public procedure are, in this case, unnecessary and contrary to the public interest for the reasons set forth below.

FRA received a petition for this rulemaking from the Brotherhood of Maintenance of Way Employes (BMWE). Also, the Brotherhood of Railroad Signalmen (BRS), the Association of American Railroads (AAR), and the American Short Line and Regional Railroad Association (ASLRRA) submitted letters of support and agreement with BMWE's position on eliminating the use of body belts in fall arrest systems. These four organizations represent an overwhelming majority of both the railroad employees (BMWE and BRS) and railroad employers (AAR and ASLRRA) who would be affected by this rulemaking. FRA is not aware of any opposition to BMWE's petition regarding the use of body belts. In addition, the U.S. Occupational Safety and Health Administration now prohibits the use of safety belts in the workplaces it regulates. Further, the remaining provisions of this rulemaking involve minor technical amendments to achieve clear and consistent terminology throughout part 214. These amendments do not expand the scope of the rule, nor do they impose additional burdens on those covered by the rule. Finally, FRA finds that any further delay in issuance of this rule could expose bridge workers to unnecessary hazard from the use of body belts in fall arrest systems.

FRA believes that safety and the non-controversial nature of these changes justify the issuance of an interim final rule. FRA will consider, however, any comments received during the post-publication comment period before it issues a final rule in this proceeding.

Section-by-Section Analysis

1. Editorial Corrections to the Regulation.

With the amendment of December 16, 1996, the term "employee" continued in use in Subpart B, despite having added the definition of "railroad bridge worker" or "bridge worker" to Subpart A. Although the purpose and scope provision of Section 214.101 limits applicability of the Subpart, the rule provisions using the term "employee" are themselves potentially confusing. In addition, there are other provisions where the term "employee" is used when the employment relationship is not relevant to the intent of the rule. In those instances, the term employee has been changed to the word "person." For example, a reference to anchorages capable of supporting 5,000 pounds "per employee" has been revised to 5,000 pounds "per person," as the employment relationship is not truly relevant to the intent of that particular provision. The affected provisions of the rule are Section 214.7, "Definitions"; Section 214.103, "Fall protection generally"; Section 214.105, "Fall protection system standards and practices"; Section 214.107, "Working over or adjacent to water"; Section 214.111, "Personal protective equipment, generally"; Section 214.113, "Head protection"; Section 214.115, "Foot protection"; and Section 214.117, "Eye and face protection". Changes in the definition section involve changing the word "employee" to the word "person" in five definitions. These definitions are body harness, deceleration device, free fall distance, lanyard, and personal fall arrest system. Changes in the other cited sections involve changing the word "employee" to the term "bridge worker" to avoid any possible confusion as to the appropriate group to which these standards apply. As previously noted, these revisions are for clarification only. The changes do not expand the scope of the rule to include railroad or contractor employees previously not covered, nor do they impose new or additional burdens on those covered by the rule. An additional minor correction involves correcting a reference to "Information and collection" in Section 214.302, to read "Information collection."

2. Use of Body Belt as a Component of Personal Fall Arrest System

The section analysis of the final rule of June 24, 1992, for section 214.7, "Definitions," included the following language related to body belts:

> Many commenters urged FRA to update this definition to reflect current terminology, including the addition of a deceleration device following lanyard and lifeline. Also, most commenters stated that use of body harnesses, rather than body belts, is now preferred practice. The body belt does not absorb stress forces in a fall as well as a harness can, and therefore, may cause serious internal injury to the wearer. According to commenters, many companies no longer manufacture belts because of this risk, and the construction industry will phase out their use in the near future. However, there are limited situations, climbing poles for instance, in which belts can be utilized safely. 57 FR 28116 at 28118

In this Interim Final Rule, FRA adopts the definition used by OSHA that reflects current trade language. Although the final rule permitted the use of safety belts, use of harnesses was obviously preferred even then.

FRA has monitored the development and use of fall arrest systems in the railroad industry since this regulation was published, and has determined that body belts are seldom, if ever, used for fall protection in the railroad industry. Full body harnesses have become the universally accepted device for attaching persons to fall arrest systems. They are no more costly than are body belts, and there are no known disadvantages to their use as compared to body belts.

FRA's concern over the use of body belts for fall arrest has been strengthened over the past several years. That concern is shared by railroad management, railroad employees, contractors, and suppliers of fall protection equipment. Testing and demonstrations have shown that a person who is suspended by a body belt for only a minute or two will suffer extreme discomfort, and for any longer period, will begin to suffer disarrangement of internal organs. Add to that the 900-pound impact of an arrested fall, and severe injury is almost inevitable. The effect of impact load on a live person using a body belt has not been tested due to the lack of willing subjects for the test, but the probability of injury can still be predicted with confidence.

Owing to this shared concern, as explained above, the BMWE has petitioned FRA to prohibit the use of body belts for this purpose, and FRA agrees. The BRS has written in support of the BMWE petition, together with the ASLRRA and the AAR.

3. Use of Ring Buoys for Protection of Persons Working Over Water

BMWE also petitioned FRA to amend the regulation to provide either 110 feet of line on life buoys, or to prescribe a spacing closer than 200 feet between them. The current Section 214.107 states:

> **§ 214.107 Working over or adjacent to water.**
>
> (a) Employees working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR sections 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to employees using personal fall arrest systems or safety nets that comply with this subpart.
>
> * * * * *
>
> (d) Where life vests are required by paragraph (a) of this section, ring buoys with at least 90 feet of line shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed 200 feet.

The apparent discrepancy which BMWE wishes to see addressed is the difference between twice the length of 90 feet of line, or 180 feet, and the 200-foot spacing of the ring buoys. There would appear to be a 20-foot gap in coverage in the middle of the space between two ring buoys, where the lines would not reach. This concern also prevailed among FRA staff, BRS, and several railroad officials who were involved in the discussions on this matter over the past several years.

Upon further investigation, however, it was found that in actual practice, free ends of the buoy lines are seldom attached to fixed objects on the bridge. In practice, the line is normally coiled with the buoy, so that the entire buoy and line can be lifted from their hanger and carried to the location from which the buoy is to be thrown to a person in the water. The person throwing the buoy either secures the free end of the buoy line at that point, or holds it in the free hand. Most people are not capable of throwing a buoy 90 feet, so there is little chance of the buoy line being jerked from the user's hand. The spacing of the ring buoys, therefore, is not related to their length. The maximum of 200 feet between the buoys is simply intended to make sure that people can get to them quickly and get them where they are needed.

Leaving the free end of the buoy line unattached while the buoy is in its holder is preferred because the buoy might be needed several hundred feet away, as would be the case if several persons were in the water. That being the case, several buoys could be quickly obtained and thrown by several persons, without having to first untie the buoy lines. FRA has therefore decided not to amend § 214.107 concerning the positioning and use of ring buoys.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This correction and amendment of the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This amendment to the final rule clarifies existing requirements. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The amendment meets the criteria establishing this as a nonmajor action for environmental purposes.

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Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad employees, Railroad safety.

The Interim Final Rule

In consideration of the foregoing, Part 214, Title 49, Code of Federal Regulations is amended as follows:

PART 214—[AMENDED]

1. The authority for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; and 49 CFR 1.49.

2. By revising the following definitions in § 214.7 to read as follows:

§ 214.7 Definitions.

* * * * *

Body harness means a device with straps that is secured about the person in a manner so as to distribute the fall arrest forces over (at least) the thighs, shoulders, pelvis, waist, and chest and that can be attached to a lanyard, lifeline, or deceleration device.

* * * * *

Deceleration device means any mechanism, including, but not limited to, rope grabs, ripstitch lanyards, specially woven lanyards, tearing or deforming lanyards, and automatic self-retracting lifelines/lanyards that serve to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy on a person during fall arrest.

* * * * *

Free fall distance means the vertical displacement of the fall arrest attachment point on a person's body harness between onset of the fall and the point at which the system begins to apply force to arrest the fall. This distance excludes deceleration distance and lifeline and lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

* * * * *

Lanyard means a flexible line of rope, wire rope, or strap that is used to secure a body harness to a deceleration device, lifeline, or anchorage.

* * * * *

Personal fall arrest system means a system used to arrest the fall of a person from a working level. It consists of an anchorage, connectors, body harness, lanyard, deceleration device, lifeline, or combination of these.

* * * * *

3. By revising § 214.103 to read as follows:

§ 214.103 Fall protection, generally.

(a) Except as provided in paragraphs (b) through (d) of this section, when bridge workers work twelve feet or more above the ground or water surface, they shall be provided and shall use a personal fall arrest system or safety net system. All fall protection systems required by this section shall conform to the standards set forth in § 214.105 of this subpart.

(b)(1) This section shall not apply if the installation of the fall arrest system poses a greater risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(2) This section shall not apply to bridge workers engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) The railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) The bridge worker to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provision of that program, and has accepted the designation;

(iii) The bridge worker to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the bridge worker is responsible for inspecting;

(iv) The bridge worker to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring and recording the dimensions and condition of the bridge and its components; and

(v) The bridge worker to whom this section applies is provided all equipment necessary to meet the needs of safety, including any specialized alternative systems required.

(c) This section shall not apply where bridge workers are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, so long as bridge workers do not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in § 214.105, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that bridge workers on the roadway deck work or move at a distance six feet or more from the edge of the roadway deck, or from an opening through which a person could fall.

(d) This section shall not apply where bridge workers are performing repairs or inspections of a minor nature that are completed by working exclusively between the outside rails, including but not limited to, routine welding, spiking, anchoring, spot surfacing, and joint bolt replacement.

4. By revising § 214.105 to read as follows:

§ 214.105 Fall protection systems standards and practices.

(a) *General requirements.* All fall protection systems required by this subpart shall conform to the following:

(1) Fall protection systems shall be used only for personal fall protection.

(2) Any fall protection system subjected to impact loading shall be immediately and permanently removed from service unless fully inspected and determined by a competent person to be undamaged and suitable for reuse.

(3) All fall protection system components shall be protected from abrasions, corrosion, or any other form of deterioration.

(4) All fall protection system components shall be inspected prior to each use for wear, damage, corrosion, mildew, and other deterioration. Defective components shall be permanently removed from service.

(5) Prior to use and after any component or system is changed, bridge workers shall be trained in the application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(6) The railroad or railroad contractor shall provide for prompt rescue of bridge workers in the event of a fall.

(7) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(8) Connectors shall be drop forged, pressed or formed steel, or made of equivalent-strength materials.

(9) Anchorages, including single- and double-head anchors, shall be capable of supporting at least 5,000 pounds per bridge worker attached, or shall be designed, installed, and used under supervision of a qualified person as part of a complete personal fall protection system that maintains a safety factor of at least two.

(b) *Personal fall arrest systems.* All components of a personal fall arrest system shall conform to the following standards:

(1) Lanyards and vertical lifelines that tie off one bridge worker shall have a minimum breaking strength of 5,000 pounds.

(2) Self-retracting lifelines and lanyards that automatically limit free fall distance to two feet or less shall have components capable of sustaining a minimum static tensile load of 3,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(3) Self-retracting lifelines and lanyards that do not limit free fall distance to two feet or less, ripstitch, and tearing and deformed lanyards shall be capable of withstanding 5,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(4) Horizontal lifelines shall be designed, installed, and used under the supervision of a competent person, as part of a complete personal fall arrest system that maintains a safety factor of at least two.

(5) Lifelines shall not be made of natural fiber rope.

(6) Body belts shall not be used as components of personal fall arrest systems.

(7) The personal fall arrest system shall limit the maximum arresting force on a bridge worker to 1,800 pounds when used with a body harness.

(8) The personal fall arrest system shall bring a bridge worker to a complete stop and limit maximum deceleration distance a bridge worker travels to 3.5 feet.

(9) The personal fall arrest system shall have sufficient strength to withstand twice the potential impact energy of a bridge worker free falling a distance of six feet, or the free fall distance permitted by the system, whichever is less.

(10) The personal fall arrest system shall be arranged so that a bridge worker cannot free fall more than six feet and cannot contact the ground or any lower horizontal surface of the bridge.

(11) Personal fall arrest systems shall be worn with the attachment point of the body harness located in the center of the wearer's back near shoulder level, or above the wearer's head.

(12) When vertical lifelines are used, each bridge worker shall be provided with a separate lifeline.

(13) Devices used to connect to a horizontal lifeline that may become a vertical lifeline shall be capable of locking in either direction.

(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 3,699 pounds without cracking, breaking, or taking permanent deformation.

(15) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds.

(16) Snap-hooks shall not be connected to each other.

(17) Snap-hooks shall be dimensionally compatible with the member to which they are connected to prevent unintentional disengagement, or shall be a locking snap-hook designed to prevent unintentional disengagement.

(18) Unless of a locking type, snap-hooks shall not be engaged:

(i) Directly, next to a webbing, rope, or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object that is incompatibly shaped or dimensioned in relation to the snap-hook so that unintentional disengagement could occur.

(c) *Safety net systems.* Use of safety net systems shall conform to the following standards and practices:

(1) Safety nets shall be installed as close as practicable under the walking/working surface on which bridge workers are working, but shall not be installed more than 30 feet below such surface.

(2) If the distance from the working surface to the net exceeds 30 feet, bridge workers shall be protected by personal fall arrest systems.

(3) The safety net shall be installed such that any fall from the working surface to the net is unobstructed.

(4) Except as provided in this section, safety nets and net installations shall be drop-tested at the jobsite after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at six-month intervals if left in one place. The drop-test shall consist of a 400-pound bag of sand 30 inches, plus or minus two inches, in diameter dropped into the net from the highest (but not less than 3½ feet) working surface on which bridge workers are to be protected.

(i) When the railroad or railroad contractor demonstrates that a drop-test is not feasible and, as a result, the test is not performed, the railroad or railroad contractor, or designated competent person, shall certify that the net and its installation are in compliance with the provisions of this section by preparing a certification record prior to use of the net.

(ii) The certification shall include an identification of the net, the date it was determined that the net was in compliance with this section, and the signature of the person making this determination. Such person's signature shall certify that the net and its installation are in compliance with this section. The most recent certification for each net installation shall be available at the jobsite where the subject net is located.

(5) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in this section.

(6) The safety net shall be installed such that there is no contact with surfaces or structures below the net when subjected to an impact force equal to the drop test specified in this section.

(7) Safety nets shall extend outward from the outermost projection of the work surface as follows:

(i) When the vertical distance from the working level to the horizontal plane of the net is 5 feet or less, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 8 feet.

(ii) When the vertical distance from the working level to the horizontal plane of the net is 5 feet, but less than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 10 feet.

(iii) When the vertical distance from the working level to the horizontal plane of the net is more than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 13 feet.

(8) Defective nets shall not be used. Safety nets shall be inspected at least once a week for mildew, wear, damage, and other deterioration. Defective components shall be removed permanently from service.

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(9) Safety nets shall be inspected after any occurrence that could affect the integrity of the safety net system.

(10) Tools, scraps, or other materials that have fallen into the safety net shall be removed as soon as possible, and at least before the next work shift.

(11) Each safety net shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds.

(12) The maximum size of each safety net mesh opening shall not exceed 36 square inches and shall not be longer than 6 inches on any side measured center-to-center of mesh ropes or webbing. All mesh crossing shall be secured to prevent enlargement of the mesh opening.

(13) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than 6 inches apart.

5. By revising § 214.107 paragraphs (a) and (b) to read as follows:

§ 214.107 Working over or adjacent to water.

(a) Bridge workers working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to bridge workers using personal fall arrest systems or safety nets that comply with this subpart.

(b) Life vests or buoyant work vests shall not be required when bridge workers are conducting inspections that involve climbing structures above or below the bridge deck.

* * * * * *

6. By revising §§ 214.111, 214.113, 214.115 and 214.117 to read as follows:

§ 214.111 Personal protective equipment, generally.

With the exception of foot protection, the railroad or railroad contractor shall provide and the bridge worker shall use appropriate personal protective equipment described in this subpart in all operations where there is exposure to hazardous conditions, or where this subpart indicates the need for using such equipment to reduce the hazards to railroad bridge workers. The railroad or railroad contractor shall require the use of foot protection when the potential for foot injury exists.

§ 214.113 Head protection.

(a) Railroad bridge workers working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be provided and shall wear protective helmets.

(b) Helmets for the protection of railroad bridge workers against impact and penetration of falling and flying objects, or from high voltage electrical shock and burns shall conform to the national consensus standards for industrial head protection (American National Standards Institute, Z89.1–1986, Protective Headwear for Industrial Workers). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 214.115 Foot protection.

(a) The railroad or railroad contractor shall require railroad bridge workers to wear foot protection equipment when potential foot injury may result from impact, falling or flying objects, electrical shock or burns, or other hazardous condition.

(b) Safety-toe footwear for railroad bridge workers shall conform to the national consensus standards for safety-toe footwear (American National Standards Institute, American National Standard Z41–1991, Standard for Personal Protection-Protective Footwear). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

§ 214.117 Eye and face protection.

(a) Railroad Bridge workers shall wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

(b) Eye and face protection equipment required by this section shall conform to the national consensus standards for occupational and educational eye and face protection (American National Standards Institute, Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) Face and eye protection equipment required by this section shall be kept clean and in good repair. Use of equipment with structural or optical defects is prohibited.

(d) Railroad bridge workers whose vision requires the use of corrective lenses, when required by this section to wear eye protection, shall be protected by goggles or spectacles of one of the following types:

(i) Spectacles whose protective lenses provide optical correction the, frame of which includes shielding against objects reaching the wearer's eyes around the lenses;

(ii) Goggles that can be worn over corrective lenses without disturbing the adjustment of the lenses; or

(iii) Goggles that incorporate corrective lenses mounted behind the protective lenses.

7. By correcting the heading of § 214.302 to read as follows:

§ 214.302 Information collection requirements.

Issued in Washington, DC on January 7, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–723 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1094–01; I.D. 010902A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that, effective 0001 hours (l.t.), January 18, 2002, through May 14, 2002, notwithstanding any other regulations implemented for the Atlantic deep-sea red crab fishery, vessels may not fish for, possess, or land red crab in or from the U.S. exclusive economic zone (EEZ) in waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, in excess of 100 lb (45.4 kg) per trip. This action is based on a determination that the red crab total allowable catch (TAC) is projected to be reached as of January 18, 2002, and is necessary to prevent the fishery from exceeding the TAC established by the emergency rule that was published November 13, 2001.

DATES: Effective 0001 hours (l.t.), January 18, 2002, through 2400 hours, May 14, 2002.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135, e-mail *martin.jaffe@noaa.gov* .

SUPPLEMENTARY INFORMATION: On May 8, 2001, NMFS published a red crab emergency interim rule (66 FR 23182) to address concerns that overfishing of the red crab resource may be occurring within the EEZ from Cape Hatteras Light, NC, northward to the U.S.-Canada border. This action contained measures that included a TAC of 2.5 million lb (1,134 mt) of red crab for the 180-day period of effectiveness for the rule. To help ensure that the TAC was not exceeded, this rule also contained regulations that required the closure of the directed red crab fishery as of the date NMFS determined that the total landings of red crab would reach or exceed the TAC. NMFS subsequently determined that the TAC was projected to be harvested prior to completion of the 180–day emergency action (through November 14, 2001) and on August 8, 2001, NMFS published notification of closure of the fishery effective August 17, 2001, through November 14, 2001, in the **Federal Register** (66 FR 41454).

On November 13, 2001, NMFS extended the expiration date of the emergency rule for an additional 180 days (through May 14, 2002) to continue protection of red crab while permanent measures are being developed by the New England Fishery Management Council (Council) (66 FR 56781). The extension adjusted the TAC for its 180–day duration to 2.16 million lb (979.8 mt). This TAC is based on one-half of an annual TAC of 5.0 million lb (2,268 mt), reduced by the overage caught during the initial emergency period (which was approximately 340,000 lb (154.22 mt)). The extension also contained regulations that require the closure of the directed red crab fishery as of the date NMFS determines that the total landings of red crab will reach or exceed the TAC.

NMFS has determined, based on landings and other available information, that 100 percent of the TAC for red crab will be harvested by January 18, 2002. Therefore, effective 0001 hours (l.t.), January 18, 2002, through May 14, 2002, notwithstanding any other regulations of subpart M of 50 CFR part 648, vessels may not fish for, possess, or land red crab from the U.S. EEZ in waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, in excess of 100 lb (45.4 kg) per trip.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 9, 2002.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–866 Filed 1–9–02; 4:35 pm]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 10
Tuesday, January 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 116

[Docket No. 00–071–1]

Viruses, Serums, Toxins, and Analogous Products; Records and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations concerning records and reports. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to the Animal and Plant Health Inspection Service concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to the Animal and Plant Health Inspection Service the number of doses of each licensed product that they distribute. Third, we are proposing to provide definitions for *adverse event* and *adverse event report*. These actions would assist the Animal and Plant Health Inspection Service in providing complete and accurate information to consumers regarding adverse reactions or other problems associated with the use of licensed biological products.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 18, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–071–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 116 contain requirements for maintaining detailed records of information necessary to give a complete accounting of all the activities within a veterinary biologics establishment.

In this document, we are proposing amendments to that part. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to the Animal and Plant Health Inspection Service (APHIS) concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to APHIS the number of doses of each licensed product that they distribute. Third, we are proposing definitions for *adverse event* and *adverse event report*.

Definitions

The regulations at 9 CFR part 101 contain definitions of terms used in the regulations concerning veterinary biologics. The proposed changes to part 116 of the regulations would make it necessary for us to add definitions in § 101.2 for two terms used in the proposed regulations: *Adverse event* and *adverse event report*. We would define *adverse event* as "any undesirable and unintended occurrence after the use of a biological product, whether or not the cause of the event is known. For products administered to animals, adverse events are those involving the health of the treated animal, including the apparent failure to protect against disease. For products intended to diagnose disease, adverse events refer to anything that hinders discovery of the correct diagnosis." We would define *adverse event report* as "a communication concerning the occurrence of one or more adverse events which identifies the product(s), animal(s), and person making the report." The receipt of an adverse event report does not necessarily imply that the product caused the adverse event.

Adverse Event Records and Reports

Currently, § 116.1(a) requires each licensee, permittee, and foreign manufacturer of biological products imported into the United States to maintain, at the licensed or foreign establishment in which the products are prepared, detailed records of information necessary to give a complete accounting of all the activities within each establishment. Section 116.1, paragraph (a), further states that such records must include, but are not limited to, the items listed in part 116, which are inventory and disposition records (§ 116.2), label records (§ 116.3), sterilization and pasteurization records (§ 116.4), product development and preparation and market suspensions and recalls (§ 116.5), animal records (§ 116.6), and test records (§ 116.7).

In addition, §§ 116.1(b) and 116.5(b) state that if at any time there are indications that raise questions regarding the purity, safety, potency, or efficacy of a product, or if it appears that there may be a problem regarding the preparation, testing, or distribution of a product, the licensee, permittee, or foreign manufacturer must immediately notify APHIS concerning the circumstances and the action taken, if any.

However, the regulations in § 116.1(a) and (b) and § 116.5(b) do not explicitly require licensees and permittees to maintain records of reports of adverse events associated with the use of veterinary biologics, nor do the regulations provide specific guidance in determining when an adverse event report may raise questions regarding the purity, safety, potency, efficacy, preparation, testing, or distribution (PSPEPTD) of such product. Consequently, each veterinary biologics manufacturer makes independent determination concerning (1) whether an adverse event report raises PSPEPTD questions and (2) when and in what manner such report of the adverse event will be provided to APHIS.

To limit the harm to animals posed by unsatisfactory veterinary biologics, APHIS currently must rely primarily on adverse event reports provided by the manufacturer. Unexpected or unexplained adverse events associated with the use of veterinary biologics in animals are reported to the veterinary biologics manufacturer either by the consumer or in the form of a report from a technical service veterinarian employed by the manufacturer to monitor the performance of their products in the field.

Currently, licensees and permittees are using nonstandardized methods to record and submit reports regarding adverse events to APHIS. In addition, adverse event reports that may signal problems concerning the use of veterinary biologics products are not all being submitted to APHIS in a timely manner. Unless we have complete and timely reports, we may not be able to take expeditious action to limit the harm in animals caused by veterinary biological products that may be harmful or dangerous to animals. Therefore, we are proposing to add to the regulations a new § 116.9 for adverse event records. New § 116.9 would require licensees and permittees to record reports of all adverse events that they receive concerning the use of biological products that they produce or distribute and submit a summary of such reports to APHIS on an annual basis. Licensees and permittees would be required to record information concerning adverse events that includes: (1) The date of the report; (2) identification of the person initiating the report; (3) the true name of the product involved and product trade name; (4) the product serial number, if available; (5) a description of the adverse event; (6) the animal(s) involved; and (7) any other pertinent identifying information regarding the product.

In addition, in new § 116.9, we would propose that licensees and permittees prepare summaries of the adverse event report records for submission to APHIS. Beginning with the date the product is licensed, such summaries would have to include intervals of 6 months during the first year and intervals of 1 year thereafter. We would also require summaries to be received by APHIS within 30 days after the end of the interval.

We would require records for each 6-month interval after the product is licensed because little is known about newly licensed products, except for observations made during the immunogenicity studies, safety tests, and field trials for these products. We believe that more frequent reporting requirements for newly licensed products would ensure that we have adequate data to support a decision to take regulatory action against products that are associated with an unusual number of adverse event reports.

We are also proposing to revise §§ 116.1(a)(3) and 116.8 of the regulations to allow adverse event records to be excluded from the list of records to be completed before serials may be marketed because adverse event records cannot be completed before a product has been distributed and used in animals.

The proposed amendments would standardize the adverse event reporting system and the information that should be included when making records of adverse event reports.

Number of Doses Distributed

In order to provide an objective measure of when it may be necessary to take action against a veterinary biologic to limit the harm in animals, and as a component of the adverse event reporting system, we would use the number of doses of product distributed instead of the number of doses of product administered to animals to calculate the incidence of adverse events associated with a particular product. Typically, the number of doses of product administered to animals would be used to calculate incidence. Because we must take timely action and may not know precisely how many animals have been treated with a product, we believe that the number of marketed doses of a product should be representative of the number of doses that were administered to animals.

Currently, the regulations in part 116 do not require veterinary biologics manufacturers to report to APHIS the number of doses of each licensed product that are distributed. Therefore, we are proposing to add this requirement in new § 116.5(c). In addition, we are proposing that the records include the number of doses for each 6-month interval after the product is licensed during the first year and each yearly interval thereafter. We would also require the reports to be received within 30 days after the end of the interval.

We would require records for each 6-month interval after the product is licensed based on the reasons provided previously in this document under "Adverse Event Reports."

Miscellaneous

We are also proposing to make minor, nonsubstantive, editorial changes to the regulations, as set out in the rule portion of this document, for clarity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Virus-Serum-Toxin Act regulations for records and reports. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to APHIS concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to APHIS the number of doses of each licensed product that they distribute. Third, we are proposing to provide definitions for *adverse event* and *adverse event report*. These actions would assist us in providing complete and accurate information to consumers regarding adverse reactions or other problems associated with the use of licensed biological products.

This proposed rule would affect most, if not all, licensed manufacturers of veterinary biologics. Currently, there are approximately 150 veterinary biologics manufacturers, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

We believe that this proposed rule would not have a significant effect on small entities because most veterinary biologics manufacturers currently maintain recordkeeping systems for adverse event reports, and this proposed rule does not restrict manufacturers from using their discretion to choose the most appropriate recordkeeping system

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for maintaining records of these reports. However, one of the purposes of this proposed rule is to provide veterinary biologics manufacturers with criteria that should be included in the reports so that the reports are standardized from manufacturer to manufacturer and submitted to APHIS in a timely manner.

In addition, the proposed requirement that veterinary biologics manufacturers report the number of doses of each licensed or permitted product that has been distributed would not have a significant effect on small entities. Veterinary biologics manufacturers currently maintain records of the number of doses of a product produced and distributed. This proposed rule would only require veterinary biologics manufacturers to report the number of doses to APHIS as required by the proposed regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–071–1. Please send a copy of your comments to: (1) Docket No. 00–071–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require manufacturers of veterinary biological products to maintain records of adverse event reports that they receive concerning the use of veterinary biological products that they produce or distribute for 2 years or longer and submit a summary of such reports to APHIS. The reports would have to be submitted at 6-month intervals during the first year the product is licensed and at 1-year intervals thereafter. In addition, licensees and permittees would have to report to APHIS the number of doses of each licensed product distributed every 6 months during the first year the product is licensed or permitted and at 1-year intervals thereafter. These information collection and recordkeeping requirements would allow us to monitor and provide the appropriate level of regulatory oversight.

We are soliciting comments from the public (as well as affected agencies) concerning this proposed amendment to the records and reports requirements in the regulations. We need this outside input to help us:

(1) Evaluate whether the proposed information collection in the form of records and reports is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Veterinary biologics licensees and permittees.

Estimated annual number of respondents: 125.

Estimated annual number of responses per respondent: 8.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 1,000 hours.

Copies of this information collection can be obtained from: Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 101 and 116 as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 101.2, definitions of *adverse event* and *adverse event report* would be added in alphabetical order to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Adverse event. Any undesirable and unintended occurrence after the use of a biological product, whether or not the cause of the event is known. For products administered to animals, adverse events are those involving the health of the treated animal, including the apparent failure to protect against disease. For products intended to diagnose disease, adverse events refer to anything that hinders discovery of the correct diagnosis.

Adverse event report. A communication concerning the occurrence of one or more adverse events which identifies the product(s), animal(s), and person making the report.

* * * * *

PART 116—RECORDS AND REPORTS

3. The authority citation for part 116 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

4. In § 116.1, paragraph (a)(3) would be revised to read as follows:

§ 116.1 Applicability and general considerations.

(a) * * *

(3) Records (other than disposition records and adverse event records) required by this part must be completed by the licensee, permittee, or foreign manufacturer, as the case may be, before any portion of a serial of any product may be marketed in the United States or exported.

* * * * *

5. Section 116.5 would be amended by adding a new paragraph (c) to read as follows:

§ 116.5 Reports.

* * * * *

(c) The licensee and/or permittee must report to APHIS the number of doses of each licensed or permitted product that has been distributed. Reports must include the number of doses for each 6 month interval during the first year the product is licensed and at yearly intervals thereafter. Reports must be received by APHIS within 30 days after the end of the interval.

* * * * *

6. Section 116.8 would be revised to read as follows:

§ 116.8 Completion and retention of records.

All records (other than disposition records and adverse event records) required by this part must be completed by the licensee, permittee, or foreign manufacturer before any portion of a serial of any product may be marketed in the United States or exported. All records must be retained at the place of business for the licensee, permittee, or foreign manufacturer for a period of 2 years after the expiration date of a product or longer as may be required by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0013)

7. A new § 116.9 would be added to read as follows:

§ 116.9 Adverse event records.

(a) A detailed record must be maintained for every adverse event report the licensee or permittee receives for any biological product it produces or distributes. Each record must include:

(1) The date of the report;

(2) The identification of the person initiating the report;

(3) The true name of the product involved and product trade name;

(4) The serial number(s) of the product(s), if available;

(5) A description of the adverse event;

(6) The animal(s) involved; and

(7) Any other pertinent identifying information regarding the product.

(b) For each product, summaries of adverse event report records must be compiled and submitted to APHIS. Beginning with the date the product is licensed, such summary compilations must cover intervals of 6 months during the first year the product is licensed and yearly intervals thereafter. Summaries must be received within 30 days after the end of the interval.

Done in Washington, DC, this 10th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–938 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–49–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt & Whitney PW4000 series turbofan engines. That AD currently requires operators to perform initial and repetitive inspections for cracking of high pressure compressor (HPC) front drum rotors based on cycle usage. That AD also requires the removal from service of any cracked HPC front drum rotors. This proposal clarifies inspection requirements for cracking of high pressure compressor (HPC) front drum rotors that have fewer than 1,000 cycles-since-new (CSN). This proposal is prompted by comments from operators seeking more clarity about the inspection requirements of paragraph (a)(1) of the current AD. The actions specified in the proposed AD are intended to prevent HPC drum rotor failure from cracks that could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington MA 01803–5299; telephone: 781–238–7130, fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 12, 2001, the FAA issued AD 2001–20–13, Amendment 39–12461

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(66 FR 52023, October 12, 2001), to require operators to perform initial and repetitive inspections for cracking of HPC front drum rotors based on cycle usage. That amendment also requires the removal from service of any cracked HPC front drum rotors. That action was prompted by reports that 11 HPC front drum rotors have been found cracked on the spacer surface between the sixth and seventh stage disks. That condition, if not corrected, could result in HPC front drum rotor failure that could result in an uncontained engine failure and damage to the airplane.

Since that AD was issued, the FAA received three comments from operators stating that the inspection requirements stated in paragraph (a)(1) are inconsistent with the alert service bulletin. The FAA agreed with these comments and paragraph (a)(1) has been changed to clarify inspection requirements for cracking of HPC front drum rotors that have fewer than 1,000 CSN.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Pratt & Whitney Alert Service Bulletin (ASB) PW4ENG A72–722, dated September 29, 2000 and (ASB) PW4ENG A72–722, Revision 1, dated June 7, 2001 that describe procedures for initial and repetitive inspections for cracking of HPC front drum rotors based on cycle usage and the removal from service of any cracked HPC front drum rotors.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney PW4000 series turbofan engines, products of this same type design, the proposed AD would supersede AD 2001–20–13 to clarify inspection requirements for front drum rotors that have fewer than 1,000 cycles-since-new. The actions are required to be done in accordance with the service bulletins described previously.

Economic Analysis

The FAA estimates that there will be no additional costs attributable to this proposed supersedure.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12461, (66 FR 52023, October 12, 2001), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000–NE–49–AD. Supersedes AD 2001–20–13, Amendment 39–12461.

Applicability

This airworthiness directive (AD) applies to Pratt & Whitney (PW) models PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, and A310 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the high pressure compressor (HPC) front drum rotor from cracks, that could result in an uncontained engine failure and damage to the airplane, do the following:

Initial Inspection

(a) Perform an initial borescope inspection for cracks in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. PW4ENG A72–722, dated September 29, 2000 or Revision 1, dated June 7, 2001, as follows:

(1) For HPC front drum rotors with fewer than 1,000 cycles-since-new (CSN) on the effective date of this AD, perform an initial inspection within 500 cycles-in-service (CIS) after accumulating 1,000 CSN.

(2) For HPC front drum rotors with 1,000 CSN or more after the effective date of this AD, perform an initial inspection within 500 CIS after the effective date of this AD.

(3) If the presence of a crack needs to be confirmed, perform an eddy current inspection (ECI) within five flight cycles of the on-wing borescope inspection.

(4) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(5) If the presence of a crack is confirmed, remove and replace the HPC front drum rotor with a serviceable part before further flight.

(6) HPC front drum rotors fluorescent penetrant inspected at the last shop visit, as cited in the compliance section of the ASB, within 500 cycles of the effective date of this AD, satisfy the initial inspection requirement.

Repetitive Inspections

(b) Thereafter, perform borescope inspections within 2,200 cycles-since-last-inspection, in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001.

(1) If the presence of a crack needs to be confirmed, perform an ECI within five flight cycles.

(2) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(3) If the presence of a crack is confirmed, remove and replace with a serviceable HPC front drum rotor before further flight.

Definition of Suspect Crack Indication

(c) For the purposes of this AD, a suspect crack indication is defined as a response from the visual borescope inspection procedure that denotes the possible presence of a material discontinuity and requires interpretation to determine its significance.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate Federal Aviation Administration (FAA) Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–905 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Notice deferring action on proposed rule.

SUMMARY: On December 22, 2000, the Federal Trade Commission (the "Commission") commenced a rulemaking proceeding and requested public comments on a supplemental notice of proposed rulemaking to amend its Rule relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the "Amplifier Rule" or the "Rule"). The Commission solicited comments until March 30, 2001. In response to a request from an industry trade association, the Commission has determined to defer action on the proposed rule, but keep open the rulemaking record in this proceeding.

DATES: The Federal Trade Commission's decision to defer action on the proposed rule is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, (202) 326–3524, or Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3038, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On December 22, 2000, the Commission published in the **Federal Register** a request for public comments on a supplemental notice of proposed rulemaking ("SNPR") to amend its Amplifier Rule, 16 CFR part 432 (65 FR 80798). The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. Specifically, the **Federal Register** notice solicited public comments on Commission proposals to amend the Amplifier Rule's testing procedures to provide appropriate power output ratings for the recently introduced class of multichannel audio/video receivers and amplifiers, such as those used in "home theater" installations.[1] These receivers and amplifiers, which incorporate five or more discrete channels of amplification, are designed to decode and/or amplify digitally encoded multichannel movie soundtracks, or music program material recorded on video cassette tapes, laser discs, or digital video disks.

Audio/video receivers with digital decoding circuitry and five or more discrete channels of amplification were not available to consumers when the Amplifier Rule originally was promulgated, or when the Commission initiated its review of the Amplifier Rule in 1997 to determine the Rule's current effectiveness and impact.[2] The Commission tentatively concluded in the SNPR that such components raise unique interpretational issues under the Rule that have not heretofore been addressed. The Commission determined, therefore, to publish an SNPR commencing a supplementary rulemaking proceeding, and inviting interested persons to submit written comments addressing the issues raised in that notice.

Section 432.2(a) of the Rule requires that an amplifier's rated continuous power output per channel be "[m]easured with all associated channels fully driven to rated per channel power." [Emphasis added.] This continuous measurement represents the maximum per-channel power an amplifier can deliver over a sustained period of time, which the Rule defines as five minutes. By requiring uniform power output disclosures in the advertising of audio amplifier equipment, the Rule enables consumers to easily make power output comparisons among the types and brands of audio equipment, and assess the products in conjunction with price. When the Rule was promulgated in 1974, virtually all amplifiers available to consumers incorporated either one channel of amplification ("monophonic" amplifiers), or two channels in a left and right "stereophonic" configuration. For such amplifiers, interpretation of the term "all associated channels" in § 432.2(a) is self evident. By definition, a monophonic amplifier can be measured only with its single channel driven to full rated power. For stereophonic amplifiers, the left and right channels clearly are associated presentations of the same musical performance and, in any event, are the only channels that could be considered "associated" under the Rule.

In recent years, multichannel audio/video receivers and power amplifiers with five or more channels of amplification have accounted for an increasingly large share of consumer audio equipment sales. Current digital audio/video receivers and amplifiers typically incorporate a pair of front left and right stereophonic amplification channels, a center channel designed to reproduce the dialog portion of cinema soundtracks, and two discrete rear amplification channels that may reproduce special sound effects or ambient sound information encoded in cinema soundtracks or music program material. Some home theater amplifiers may also provide one or more "subwoofer" amplification channels that are dedicated to reproducing only deep bass frequencies (below approximately 100 Hertz). Future developments may include additional surround or special effects channels placed around the listening room.

[1] On the same day, the Commission published separately in the **Federal Register** a final rule streamlining the Amplifier Rule's advertising disclosure requirements with respect to total rated harmonic distortion and the associated power bandwidth and impedance ratings, and clarifying the testing procedure for self-powered speakers (65 FR 81232).

[2] 62 FR 16500 (April 7, 1997).

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Manufacturers of multichannel audio/video receivers and amplifiers who wish to rate power output under § 432.2 of the Rule must decide which of the five or more discrete channels of amplification are to be considered "associated" and, therefore, subject to simultaneous operation at full rated power. Under the strictest interpretation of § 432.2(a), all available channels would be considered associated and all channels would be driven to full rated power simultaneously during testing. Such a regimen might severely tax the common power supply utilized in many home theater receivers, and the resulting per channel power ratings might be considerably below those that would be obtained if, for example, only the specific set of channels being rated (e.g., surround channels) were driven to full power simultaneously. The controlling consideration in determining the proper interpretation of "associated channels" is whether audio/video receivers and amplifiers would, when operated by consumers in the home at high playback volume, be required to deliver full rated power output in all channels simultaneously, or whether such maximum stress conditions would more likely be restricted at any given moment of time to certain sub-groupings of available channels.

The Commission already has reached a determination relevant to the appropriate treatment of any subwoofer channels of amplification that might be provided in audio/video receivers. This determination, which the Commission announced on December 22, 2000 (65 FR 81232), applies to self-powered combination subwoofer-satellite loudspeaker systems, such as those used with personal computers and in home theater installations. Specifically, the Commission amended § 432.2 of the Rule to specify that:

* * * when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, such as those incorporated into combination subwoofer-satellite speaker systems, only those channels dedicated to the same audio frequency should be considered associated channels that need be fully driven simultaneously to rated per channel power.

In reaching this determination, the Commission concluded that, under actual in-home use of such combination systems, maximum power demands typically would not occur precisely in the crossover region of frequencies that would be reproduced both by the subwoofer and satellite amplifiers. Rather, simultaneous demands would more likely occur in portions of the audio spectrum that would be assigned primarily either to the subwoofer amplifier or the satellite amplifier.[3] A similar conclusion would appear to hold for home theater receivers that incorporate a separate amplified subwoofer channel(s) and an internal crossover network.

The Commission tentatively concluded, therefore, that subwoofer amplifiers in combination self-powered subwoofer-satellite speaker systems and subwoofer amplifiers in audio/video receivers should be treated consistently under § 432.2(a) of the Rule. That is, the amplified subwoofer channel(s) of digital home theater receivers and the remaining amplified channels need not be considered "associated" channels that must be fully driven to rated per channel power when rating the power output of the subwoofer channel(s).

The Commission was unable, however, to make any tentative determination concerning the appropriate designation of associated channels for the remaining amplified channels in multichannel audio/video receivers and amplifiers, since the rulemaking record contained no evidence relevant to this issue. The Commission, therefore, solicited public comment on three alternative methods of grouping associated channels for multichannel audio/video receivers. The Commission stated that these alternatives would govern power ratings applicable when an audio/video receiver is used in full multichannel mode, but would not affect power ratings for the main left and right front channels that apply when the receiver's intended use is restricted to conventional stereo mode. For such conventional stereo ratings, only the two front stereo channels need be driven simultaneously to full rated power.

In the SNPR, the Commission proposed to amend § 432.2 of the Rule to define the term "associated channels" for multichannel audio/video receivers such as those used in home theater systems.[4] The Commission solicited public comment on the following three alternative designations of "associated channels" for such audio equipment:

Alternative A: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels, the center channel(s), and the surround channels should be considered associated channels that need be fully driven simultaneous to rated per channel power. The subwoofer channels should be considered as a second group of associated channels.

Alternative B: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels and the center channel(s) should be considered one group of associated channels; the surround channels should be considered a second group of associated channels; and the subwoofer channels should be considered a third group of associated channels.

Alternative C: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels should be considered one group of associated channels; the center channel(s) should be considered a second group of associated channels; the surround channels should be considered a third group of associated channels; and the subwoofer channels should be considered a fourth group of associated channels.

The SNPR elicited one comment, which was received from the Consumer Electronics Association ("CEA").[5] CEA noted that presently there is no industry consensus on testing, measuring and specifying the power output of multichannel amplifier products. In the absence of a voluntary industry standard that adequately addresses multichannel amplifiers, CEA stated that the industry is divided on the complex issue of testing and measuring multichannel receivers and amplifiers. CEA commented that while some manufacturers are testing and measuring the power output of their amplifiers with all channels driven simultaneously, other manufacturers are interpreting the term "associated" to mean the simultaneous testing and measuring of only those channels that are "naturally" associated. For example, manufacturers are testing and measuring the power output of amplifier channels grouped as follows: a "2–1–2" approach (front left and right, center, rear left and right); or a "3–2" approach (front left, right and center, rear left and right). In both examples, front left and right channels, and rear left and right channels are considered "natural" groupings in audio systems. Pending clarification, CEA stated that any of these approaches might be acceptable, provided that only one is agreed upon by the industry. With the expectation of future developments in multichannel audio technology, CEA has suggested that the Commission apply a flexible interpretation of the term "associated" to the testing and measuring of the power output for any "associated" audio channels that may be added in the future. CEA stated that this complex situation demands that the audio industry now take an active leadership role in reviewing and revising existing industry standards to apply them to multichannel receivers and amplifiers.

CEA, therefore, has formed an industry working group, the purpose of which is to establish a voluntary industry consensus standard for measuring the power output of multichannel receivers and amplifiers. CEA has encouraged the Commission to continue its cooperative approach to revising the Amplifier Rule, and consider incorporating its final rule any new voluntary standard developed by CEA for testing, measuring, and specifying the power output of all amplifiers within the scope of the Rule.

The Commission is aware that the issues raised by the SNPR **Federal Register** notice are complex and technical. In the Commission's view, therefore, the public interest would best be served at this time by allowing the industry the opportunity to develop a voluntary standard for testing, measuring, and specifying the power output of multichannel amplifiers and receivers. If the industry is successful in establishing a consensus standard in a reasonable period of time, the Commission will evaluate the technical merits of the standard and consider whether it can function satisfactorily as a voluntary standard, or whether it, or an alternative standard, should be incorporated into the Rule's requirements.

Accordingly, in light of CEA's comment, the Commission has decided to defer action on the proposed rule, but keep open the rulemaking record in this proceeding to allow sufficient time for CEA to address the issues raised in the SNPR, and encourage the exchange of ideas between the Commission and the industry.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–920 Filed 1–14–02; 8:45 am]

BILLING CODE 6750–01–M

[3] *See, e.g.*, 64 FR 38610, 38613 (July 19, 1999).

[4] The public comment period on the SNPR concluded on March 30, 2001 (66 FR 12915 (March 1, 2001)).

[5] CEA represents more than 625 U.S. companies involved in the design, development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services that are sold through consumer channels. Combined, these companies account for more than $70 billion in annual sales. CEA's comment appears on the public record in this proceeding and is available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday, except federal holidays.

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Public Hearing To Receive Testimony on Proposed Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Notice of public hearing.

SUMMARY: On Wednesday, December 26, 2001, the National Indian Gaming Commission published a Proposed Rule in the **Federal Register** updating its existing Minimum Internal Control Standards (MICS). This Proposed Rule is the product of a consultative process that began more than one year ago, including an initial comment period and the extensive participation of a ten-member Tribal Advisory Committee. Comments on the Proposed Rule are due on or before February 25, 2002.

In further keeping with the Commission's policy of consultation with tribal governments, we will host a public hearing on the proposed rule Tuesday, February 5, 2002. This hearing provides an excellent opportunity for individuals to provide comment about the regulation to both the Commission and members of the Tribal Advisory Committee.

DATES: The hearing will be held on Tuesday, February 5, 2002, 9 a.m. to 5 p.m., Arlington, VA.

ADDRESSES: Crystal City Courtyard by Marriott (Club Room), 2899 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Denise Desiderio, 202–632–7003.

Dated: January 10, 2002.

Montie R. Deer,

Chairman.

[FR Doc. 02–930 Filed 1–14–02; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301201; FRL–6818–6]

RIN 2070–AB78

Benomyl; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke all tolerances for residues of the fungicide benomyl because this pesticide is no longer registered for use in the United States. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of all tolerances for benomyl of which 100 would be counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301201, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301201 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301201. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall#2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301201 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301201. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke all tolerances in 40 CFR 180.294 because benomyl is no longer registered under FIFRA for use on those commodities. The registration for benomyl was canceled because the registrant requested voluntary cancellation of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless the Agency receives comments on this proposal which indicate a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. One hundred of these tolerances were in existence when FQPA was enacted and therefore count toward the FQPA tolerance reassessment goals.

On April 18, 2001 the registrant, E. I. du Pont de Nemours and Company (DuPont), requested voluntary cancellation of all of their benomyl technical, end use, and special local need product registrations. On May 1, 2001 DuPont announced that it had already ceased the production of technical benomyl for use in products sold and distributed in the United States. DuPont also requested that EPA waive the 180–day waiting period contained in FIFRA section 6(f)(1)(C)(ii). On May 23, 2001 a FIFRA 6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (66 FR 28466) (FRL–6784–3). A cancellation order was published on August 8, 2001 (66 FR 41589) (FRL–6794–9). Receipt of other requests for cancellation of registrations were published on September 26, 2001 (66 FR 49184) (FRL–6802–1) and on October 12, 2001 (66 FR 52132) (FRL–6805–3). EPA allowed DuPont to sell and distribute benomyl stocks until June 30, 2001 and is allowing those other than the registrant to sell and distribute benomyl stocks until December 31, 2002. The Agency expects existing stocks to be exhausted by December 31, 2003.

The time frame for passage of raw agricultural commodities through trade channels, including storage, processing, post-processing, storage/distribution, and retail, varies and depends on the food commodity. The longest time periods are generally associated with food commodities that are stored for extended periods before processing or are in the form of a processed ingredient such as fruit or vegetable concentrates or pastes. Therefore, for all other benomyl tolerances, EPA is proposing expiration/revocation dates from 2 to 5 years beyond the date of exhaustion of benomyl product through passage of benomyl-treated food in channels of trade using available Agency data, U.S. Food and Drug Administration (FDA) data, and food industry data on a basis as follows:

Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Proposed expiration/revocation date
Bulb Vegetables	Garlic	2	1/1/06
Brassica (Cole) Leafy Vegetables	Broccoli; Brussels sprouts; Cabbage; Cabbage, Chinese, bok choy; Cabbage, Chinese, napa; Cauliflower; Collards; Kale; Kohlrabi; Mustard greens	2	1/1/06
Root and Tuber Vegetables	Beet, sugar, roots; Beet, sugar, tops; Carrot; Rutabaga; Sweet potato; Turnip, roots; Turnip greens	3	1/1/07
Leafy Vegetables (exc. Brassica)	Celery; Spinach; Dandelion, leaves; Watercress	3	1/1/07
Legume Vegetables	Bean, dry; Bean, succulent; Soybean, seed	3	1/1/07
Cucurbit Vegetables	Cucumber; Melon; Pumpkin; Squash, summer; Squash, winter	3	1/1/07
Tree Nuts	Almond, hulls; Nut, tree, group; Pistachio (in § 180.294(a) and (c))[a]	3	1/1/07
Citrus Fruits	Citrus, dried pulp; Fruit, citrus (PRE- and POST-H)	4	1/1/08
Pome Fruits	Apple (PRE- and POST-H); Pear (PRE- and POST-H)	4	1/1/08
Stone Fruits	Apricot; Cherry, sweet; Cherry, tart; Nectarine (PRE- and POST-H); Peach (PRE- and POST-H); Plum, prune, dried; Plum, prune, fresh;	4	1/1/08

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Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Proposed expiration/revocation date
Berries	Blackberry; Blueberry; Boysenberry; Currant; Dewberry; Loganberry; Raspberry	4	1/1/08
Cereal Grains and Forage, Fodder and Straw of Cereal Grains.	Barley, grain; Barley, straw; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, forage; Corn, sweet, stover; Oat, grain; Oat, straw; Rice, grain; Rice, hulls; Rice, straw; Rye, grain; Rye, straw; Wheat, grain; Wheat, straw	4	1/1/08
No group association- Plant commodities.	Avocado; Banana (PRE- and POST- H) (not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded); Grape;. Grape, raisin; Mango; Mushroom (PRE- and POST-H); Papaya; Peanut; Peanut forage; Peanut, hay; Pineapple (POST-H); Strawberry	4	1/1/08
No group association- Animal commodities.	Cattle, fat; Cattle, meat; Cattle, meat byproducts; Egg; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, fat; Poultry, liver; Poultry, meat; Poultry, meat byproducts, except liver; Sheep, fat; Sheep, meat; Sheep, meat byproducts	4	1/1/08
Fruiting Vegetables	Eggplant; Pepper; Tomato; Tomato, concentrated products	5	1/1/09

*Please note that for FQPA reassessment purposes, EPA is counting the pistachio tolerance once; therefore, a total of 100 tolerances would be counted as reassessed for benomyl in a final rule.

Because "bean vine forage" is no longer a significant livestock feed item and the tolerance is no longer needed, EPA is proposing to revoke the tolerance for "bean vine forage" 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions.

In the interim period of time before the tolerance expires and to conform to current Agency practice, EPA is proposing to revise tolerance commodity terminology names in 180.294(a) as follows:

Old terminology	New terminology
almond hulls	almond, hulls;
apples (PRE- and POST-H).	apple (PRE- and POST-H)
apricots (PRE- and POST-H).	apricot (PRE- and POST-H)
bananas (PRE- and POST-H) (NMT 0.2 ppm shall be present in the pulp after peel is removed and discarded).	banana (PRE- and POST-H) (not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded)
beans	bean, succulent and bean, dry
beets, sugar, roots	beet, sugar, roots
beets, sugar, tops	beet, sugar, tops
blackberries	blackberry
blueberries	blueberry
boysenberries	boysenberry
carrots	carrot
cattle, mbyp	cattle, meat byproducts
cherries (PRE- and POST-H).	cherry, sweet and cherry, tart
Chinese cabbage	cabbage, Chinese, napa and cabbage, Chinese, bok choy
citrus fruit (PRE- and POST-H).	fruit, citrus (PRE- and POST-H)
corn, fresh (inc. sweet K +CWHR).	corn, sweet, kernel plus cob with husks removed
corn, sweet, fodder and forage.	corn, sweet, forage and corn, sweet, stover
cucumbers	cucumber
currants	currant
dewberries	dewberry
eggplants	eggplant
eggs	egg;
goats, fat	goat, fat
goats, meat	goat, meat
goats, mbyp	goat, meat byproducts

Old terminology	New terminology
grapes	grape
hogs, fat	hog, fat
hogs, meat	hog, meat
hogs, mbyp	hog, meat byproducts
horses, fat	horse, fat
horses, meat	horse, meat
horses, mbyp	horse, meat byproducts
loganberries	loganberry
mangoes	mango
melons	melon
mushrooms (PRE- and POST-H).	mushroom (PRE- and POST-H)
nectarines (PRE- and POST-H).	nectarine (PRE- and POST-H)
nuts	nut, tree, group
oats, grain	oat, grain
oats, straw	oat, straw
peaches (PRE- and POST-H).	peach (PRE- and POST-H)
peanuts	peanut
peanut hay	peanut, hay
pears (PRE- and POST-H).	pear (PRE- and POST-H)
peppers	pepper
pineapples (POST-H).	pineapple (POST-H)
pistachios	pistachio
plums (including fresh prunes) (PRE- and POST-H).	plum, prune, dried and plum, prune, fresh
poultry, mbyp	poultry, meat byproducts, except liver
pumpkins	pumpkin
raisins	grape, raisin
raspberries	raspberry
rice	rice, grain
rice straw	rice, straw
rutabagas	rutabaga
sheep, mbyp	sheep, meat byproducts
soybeans	soybean, seed
strawberries	strawberry
sweet potatoes	sweet potato
tomatoes	tomato
tomato products, concentrated.	tomato, concentrated products
turnips, roots	turnip, roots
In 40 CFR 180.294(c). avocados	avocado
dandelions	dandelion, leaves
papayas	papaya
pistachios	pistachio.

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

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C. When do These Actions Become Effective?

EPA is delaying the effective date of the revocation for "bean vine forage" for 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. With the exception of "bean vine forage," EPA is proposing that all tolerances for benomyl expire and are revoked on dates which range from January 1, 2006 to January 1, 2009 as previously detailed. For most tolerances, EPA is proposing an effective revocation/expiration date because EPA believes that by December 31, 2003 all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted, giving ample time, from 2 to 5 years, for any treated fresh and processed food to clear trade channels. Therefore, EPA believes the effective dates proposed in this document are reasonable. However, if EPA is presented with information that existing stocks would still be available for use after the expiration date and that information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodity listed in this proposal treated with the pesticide subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residues of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August, 2006. As of January 4, 2002, EPA has reassessed over 3,830 tolerances. This document proposes to revoke all tolerances in 40 CFR 180.294. Therefore, 100 tolerance reassessments would be counted when the final rule is published toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under **Federal Register**—Environmental Documents. You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis.

Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.294 is amended by revising the tables to paragraphs (a) and (c) to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
Almond, hulls	1.0	1/1/07
Apple (PRE- and POST-H)	7.0	1/1/08
Apricot	15.0	1/1/08
Banana (PRE- and POST-H)(not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded)	1.0	1/1/08
Barley, grain	0.2	1/1/08
Barley, straw	0.2	1/1/08
Bean, dry	2.0	1/1/07
Bean, succulent	2.0	1/1/07
Beet, sugar, roots	0.2	1/1/07
Beet, sugar, tops	15.0	1/1/07
Blackberry	7.0	1/1/08
Blueberry	7.0	1/1/08
Boysenberry	7.0	1/1/08
Broccoli	0.2	1/1/06
Brussels sprouts	15.0	1/1/06
Cabbage	0.2	1/1/06
Cabbage, Chinese, bok choy	10.0	1/1/06
Cabbage, Chinese, napa	10.0	1/1/06
Carrot	0.2	1/1/07
Cattle, fat	0.1	1/1/08
Cattle, meat	0.1	1/1/08
Cattle, meat byproducts	0.1	1/1/08
Cauliflower	0.2	1/1/06
Celery	3.0	1/1/07
Cherry, sweet	15.0	1/1/08
Cherry, tart	15.0	1/1/08
Citrus, dried pulp	50.0	1/1/06
Collards	0.2	1/1/06
Corn, sweet, kernel plus cob with husks removed	0.2	1/1/08
Corn, sweet, forage	0.2	1/1/08
Corn, sweet, stover	0.2	1/1/08
Cucumber	1.0	1/1/07
Currant	7.0	1/1/08
Dewberry	7.0	1/1/08
Egg	0.1	1/1/08

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Commodity	Parts per million	Expiration/Revocation Date
Eggplant	0.2	1/1/09
Fruit, citrus (PRE- and POST-H)	10.0	1/1/08
Garlic	0.2	1/1/06
Goat, fat	0.1	1/1/08
Goat, meat	0.1	1/1/08
Goat, meat byproducts	0.1	1/1/08
Grape	10.0	1/1/08
Grape, raisin	50.0	1/1/08
Hog, fat	0.1	1/1/08
Hog, meat	0.1	1/1/08
Hog, meat byproducts	0.1	1/1/08
Horse, fat	0.1	1/1/08
Horse, meat	0.1	1/1/08
Horse, meat byproducts	0.1	1/1/08
Kale	0.2	1/1/06
Kohlrabi	0.2	1/1/06
Loganberry	7.0	1/1/08
Mango	3.0	1/1/08
Melon	1.0	1/1/07
Milk	0.1	1/1/08
Mushroom (PRE- and POST-H)	10.0	1/1/08
Mustard greens	0.2	1/1/06
Nectarine (PRE- and POST-H)	15.0	1/1/08
Nut, tree, group	0.2	1/1/07
Oat, grain	0.2	1/1/08
Oat, straw	0.2	1/1/08
Peach (PRE- and POST-H)	15.0	1/1/08
Peanut	0.2	1/1/08
Peanut forage	15.0	1/1/08
Peanut, hay	15.0	1/1/08
Pear (PRE- and POST-H)	7.0	1/1/08
Pepper	0.2	1/1/09
Pineapple (POST-H)	35.0	1/1/08
Pistachio	0.2	1/1/07
Plum, prune, dried	15.0	1/1/08
Plum, prune, fresh	15.0	1/1/08
Poultry, fat	0.1	1/1/08
Poultry, liver	0.2	1/1/08
Poultry, meat	0.1	1/1/08
Poultry, meat byproducts, except liver	0.1	1/1/08
Pumpkin	1.0	1/1/07
Raspberry	7.0	1/1/08
Rice, grain	5.0	1/1/08
Rice, hulls	20.0	1/1/08
Rice, straw	15.0	1/1/08
Rutabaga	0.2	1/1/07
Rye, grain	0.2	1/1/08
Rye, straw	0.2	1/1/08
Sheep, fat	0.1	1/1/08
Sheep, meat	0.1	1/1/08
Sheep, meat byproducts	0.1	1/1/08
Soybean, seed	0.2	1/1/07
Spinach	0.2	1/1/07
Squash, summer	1.0	1/1/07
Squash, winter	1.0	1/1/07
Strawberry	5.0	1/1/08
Sweet potato	0.2	1/1/07
Tomato	5.0	1/1/09
Tomato, concentrated products	50.0	1/1/09
Turnip, roots	0.2	1/1/07
Wheat, grain	0.2	1/1/08
Wheat, straw	15.0	1/1/08

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(c) * * *

Commodity	Parts per million	Expiration/Revocation Date
Avocado	3.0	1/1/08
Dandelion, leaves	10.0	1/1/07
Papaya	3.0	1/1/08
Pistachio	0.2	1/1/07
Turnip greens	6.0	1/1/07
Watercress	10.0	1/1/07

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[FR Doc. 02–964 Filed 1–14–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301189; FRL–6807–8]

RIN 2070–AC18

Pesticides; Tolerance Exemptions for Minimal Risk Active and Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to list in 40 CFR part 180 the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of "minimal risk." The pesticide chemicals to be listed in 40 CFR 180.1001(g) include both active and inert ingredients and will be accomplished in several steps. As a first step, the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils will be recodified in the newly created paragraph (g) in a different format. Restructuring to this new format will provide greater clarification in defining a minimal risk pesticide chemical as well as increasing the number of substances that are currently considered to be minimal risk. In the future, EPA will propose other minimal risk pesticide chemicals for inclusion in paragraph (g). These regulatory actions are part of the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. The regulatory actions proposed in this document, the proposed revocation of 39 tolerance exemptions, would be counted toward the August 2002 deadline.

DATES: Comments, identified by docket control number OPP–301189, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301189 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; fax number: 703–305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301189. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

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imperative that you identify docket control number OPP–301189 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301189. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is proposing to create a new paragraph (g) in 40 CFR 180.1001, that specifies the pesticide chemicals that are exempt from the requirement of a tolerance under section 408 of Federal Food, Drug, and Cosmetic Act ("FFDCA"). This paragraph will contain a listing of pesticide chemicals that are considered to be of minimal risk. The tolerance exemption in 40 CFR 180.1164(d) (which was established post-FQPA) as well as existing tolerance exemptions in 40 CFR 180.1001(c), (d) and (e) will be recodified in the newly established 40 CFR 180.1001(g), albeit in a different format that will include additional clarification. The effect of these changes will be that all commonly consumed food items (as a reference, there is the Food and Feed Commodity Vocabulary on the Agency's website: see http://www.epa.gov/pesticides/foodfeed/), with the exception of the exclusions noted below, will be exempt from the requirement of a tolerance under the newly established 40 CFR 180.1001(g).

The Agency is also proposing to establish in 40 CFR 180.1001(g) an exemption from the requirement of a tolerance for various animal feed items. The Agency is proposing that 40 CFR 180.1001 be amended by deleting the existing exemptions for various feed items, such as pomaces, corn cobs, peanuts shells, and oat hulls in 40 CFR 180.1001(c) and (d). These will be recodified in 40 CFR 180.1001(g) albeit in a different format that will include additional clarification. All feed items whether or not previously exempted from the requirement of a tolerance with the exception of the exclusions noted below, will be exempt from the requirement of a tolerance under the newly established 40 CFR 180.1001(g).

The Agency is proposing to place expiration dates on seven existing tolerance exemptions for known allergen-containing food commodities. At this time, the Agency cannot consolidate the overlapping and duplicative tolerance exemptions for allergen-containing commodities that currently exist in 40 CFR part 180.

This proposed rule begins the process of harmonizing the regulation of certain pesticide chemicals whether used as inert or active ingredients. At the completion of this process there will be a single consistent approach for all food and feed commodities used as pesticide chemicals.

III. What is the Agency's Authority for Taking these Actions?

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

IV. Why is the Agency Proposing These Actions?

A. Why is a "Minimal Risk" Paragraph Being Created?

The term "minimal risk" has been used by EPA for over 10 years, and has generally meant List 4A inert ingredient chemicals. On April 22, 1987 (52 FR 13305), EPA created a series of four lists as part of an initiative to address the risks potentially posed by inert ingredients in pesticides. List 1 inert ingredients are "inerts of toxicological concern". List 1 inert ingredients are classified on the basis of peer reviewed studies which demonstrated carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, developmental toxicity (birth defects), ecological effects and the potential for bioaccumulation. List 2 inert ingredients are "potentially toxic inerts/high priority for testing." Many of these inert ingredients are structurally similar to chemicals known to be toxic; some have data suggesting a concern. List 3 inert ingredients are "unknown toxicity." An inert ingredient was placed on List 3 if there was no basis for listing it on any of the other lists. At that time all List 4 inert ingredients were classified as "inerts of minimal concern".

The 4A Inert Ingredient List was created on November 22, 1989 (54 FR 48314) by subdividing List 4 into Lists 4A and 4B. List 4B inert ingredients are "inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment." List 4A inert ingredients are "minimal risk inert ingredients." Examples of List 4A inert ingredients are salt, and sugar.

The September 28, 1994, **Federal Register** Notice (FRL 4872–5) was the last time that the Agency added new substances to and issued the 4A List. Classification as a List 4A inert ingredient is critical to those products that are exempted from Federal regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 25(b). The substances on List 4A are the only inert ingredients that can be used in 25(b) deregulated products (see 40 CFR 152.25(g)(2)).

Minimal risk does not imply no risk under any circumstances. Every substance, even for example water, presents some risk in certain circumstances. Minimal risk is used to indicate a substance for which there is no information to indicate that there is a basis for concern. Minimal risk or List 4A substances are mostly naturally occurring substances to which some refinement has occurred, such as beeswax, salt, sugar, limestone, and red cedar chips. The determination that a chemical is minimal risk would be based on a recognition of the overall safety of the chemical (such as very low toxicity or practically non-toxic) considering the widely available information on the chemical's known properties, and a history of safe use under reasonable circumstances. Minimal risk (List 4A) substances are recognized as safe for use in all pesticide products subject only to good agricultural practices or good manufacturing practices. Classification as a List 4A, minimal risk, substance is a high standard to meet. As an example, substances of high acute toxicity are usually not considered for classification to List 4A. The critical distinction between List 4A minimal risk substances and other substances, is that the Agency does not define how, where, when or in what manner the substance can be used. Any reasonably foreseeable use of these substances is not expected to present a risk to humans. Accordingly, there should not be any unreasonable adverse effects from the inclusion of a List 4A substance in a pesticide product to the person applying a pesticide product in and around their home, to a child in a day-care center, or when ingesting a food commodity that has been treated. A List 4A substance used as an inert ingredient, incorporated into a 25(b) product (meeting all the appropriate exemption criteria) is subject to no Federal regulation. Therefore, unless a substance can meet and continues to meet this high standard, it will not be classified as minimal risk.

B. Why Are Uses as Both an Inert or Active Ingredient Being Included?

Active ingredients are defined in 40 CFR 153.125 as having the capability at the proposed use dilution to function as a pesticide, that is to kill, repel, or mitigate the pest. Inert ingredients are defined as all ingredients that are not active ingredients. However, it is possible for a chemical to be an active ingredient in one pesticide product and an inert ingredient in another pesticide product. Determining whether an ingredient in a pesticide product is inert or active requires information on the purpose of the ingredient in the formulation. As an example, citric acid can be used as a disinfectant, sanitizer, and fungicide (an active ingredient). However, citric acid can also perform as a sequestration agent or to lower the pH, thus functioning as an inert ingredient. To determine whether an ingredient is inert or active requires an understanding of the purpose of the ingredient in the formulation.

Thus, the toxicity of a chemical does not depend on whether it is used as either an inert ingredient or active ingredient, but on its impact to human health and the environment. Establishment of a tolerance exemption under 40 CFR 180.1001(g) indicates that the substance may be used as either an inert or an active ingredient (as appropriate, based on its use in the formulation) in pesticide formulations applied to food crops.

C. Why Are Commonly Consumed Foods Being Included in this New Paragraph?

It is unlikely that a commonly consumed food commodity could be used to control a pest via a toxic mode of action. Generally, when used as an active ingredient, food commodities have been used to either attract or repel pests. Canola oil is a refined vegetable oil that can be used as an active ingredient to control insects in a wide variety of crops. Scientists believe that canola oil repels insects by altering the outer layer of the leaf surface or by acting as an insect irritant. Oils such as canola, however, can also be used as a surfactant in pesticide formulations. Surfactants are used to modify the nature of a surface, such as reducing the surface tension of water. Surfactants can be used as wetting agents, detergents, penetrants, and emulsifiers. When used in this capacity, canola oil would be an inert, rather than an active, ingredient. Other food commodities also are used as inert ingredients. For example, oats can be used as a carrier, i.e., the active ingredient is coated onto the oats, which is then consumed by the pest.

In the September 28, 1994, **Federal Register** Notice titled "Inert Ingredients in Pesticide Products; List of Minimal Risk Inerts" the Agency established a policy of considering all commonly consumed foods as acceptable for use in all pesticide products. The Notice specifically stated that a specific exemption from tolerance would not be required for foods used as inert ingredients because foods were generally recognized as safe (GRAS). However, the above GRAS determination was superceded, on December 4, 1998, in the **Federal Register** (63 FR 37307) (FRL 6039–5) by EPA's establishment of a tolerance exemption for all edible food commodities. That exemption excepted certain foods known to have allergenic properties.

D. Why Are the Tolerance Exemptions for Known Food Allergens Being Time-Limited?

As noted above, EPA has previously established an exemption from tolerance for all edible food commodities with the exception of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat due to the allergenic properties of these foods. (40 CFR 180.1164(d)). The comment received by EPA in this 1998 rulemaking proceeding indicated a concern that the proposed exclusions for allergen-containing food commodities were not sufficient, given that tolerance exemptions existed for some of the same commodities when used as inert ingredients.

The following tolerance exemptions are currently listed in 40 CFR 180.1071 and 40 CFR 180.1001(c), (d), and (e), for the eight known allergen food or food groups and their processed commodities:

40 CFR	Tolerance Exemption
180.1001(c)	casein
180.1001(c)	fish meal
180.1001(c)	soy protein, isolated

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40 CFR	Tolerance Exemption
180.1001(c)	soybean flour
180.1001(c)	starch (potato, tapioca, wheat)
180.1001(c)	wheat bran
180.1001(d)	sodium caseinate
180.1001(d)	wheat
180.1001(d)	wheat flour
180.1001(e)	soy protein, isolated
180.1001(e)	wheat shorts
180.1071	egg solids (whole)

The Agency has investigated the post-harvest uses of these eight allergen food or food groups, and has determined that such uses do exist. An example would be a formulation, that contains wheat as a carrier, which is then applied to stored grain other than wheat. Thus, some of the above tolerance exemptions are necessary to cover the use of these existing products. The 12 tolerance exemptions overlap to some degree and therefore EPA is proposing to amend them to reduce duplication. The result will be that the 12 tolerances will be reduced to 8.

More importantly, the Agency is proposing to place 3–year expiration dates on the eight tolerance exemptions that will remain. This will give the Agency a period of 3 years to continue its examination of the uses of these food commodities, and discuss product re-formulation with affected registrants. The Agency recognizes that various factors such as restrictions on post-harvest applications or information on the environmental degradation/metabolism of the allergen may enable the Agency, at a future date, to (1) make a determination of safety, (2) reassess these tolerances, and (3) establish tolerance exemptions with limitations on the use pattern, that would not be time-limited.

E. Why Are Animal Feed Exemptions Being Included in this New Paragraph?

Like commonly-consumed human food, animal feed items are of minimal risk to humans who consume animal products (such as meat, milk, poultry or eggs), or to the animals. They are therefore being included in proposed 40 CFR 180.1001(g). Feed items are occasionally used as pesticides. For example, a feed item, such as corn cobs, can be used as a carrier. For such a use, the corn cobs would be ground, and then an active ingredient coated onto the ground feed item, is then consumed by the pest. Or a feed item could be used as a carrier for a lawn and garden product, with the added advantage of degrading over a period of time in the natural environment. Again, there is a long history of safe use of animals consuming these feed items, and then producing meat, milk, poultry, and eggs that are in turn consumed by humans.

Feed items can also include items derived from known allergen-containing foods, such as almond hulls and peanut shells. These by-products of allergen-containing foods are not likely to cause an allergic reaction due to the separation of the hull or shell from the protein allergen.

There are a large variety of feed items. Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. Due to differences in their metabolisms, animals can obtain nutrition from parts of plants that are not digested by humans such as hays, forages, seeds, leaves, hulls and shells, and stovers. Animals also consume plants, such as sorghum, that are not consumed by humans. As a reference, the significant feed items consumed by animals are contained in Table 1 ("Raw Agricultural and Processed Commodities and Feedstuffs Derived From Crops"), OPPTS Test Guidelines, *Residue Chemistry*, Guideline 860.1000, Background. (see http://www.epa.gov/docs/OPPTS—Harmonized/860—Residue—Chemistry—Test—Guidelines/Series/). There are also other feed items not listed in Table 1 such as pineapple forage and fodder, or sugarcane forage and fodder that are consumed by animals, but not in amounts considered to be significant feed items on a national basis.

F. Why Are Edible Fats and Oils Being Included in the New Paragraph?

As previously explained on December 4, 1998, EPA established an exemption from tolerance for all edible food commodities with the exception of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat due to the allergenic properties of these foods. (40 CFR 180.1164(d)) The exception included all processed forms of the allergen-containing food commodities including oils. EPA is proposing to no longer exclude highly refined edible oils derived from peanuts, tree nuts, soybeans, fish, crustacea, and wheat. Most oils are highly refined. The information available to the Agency does not indicate the presence of the protein allergens in the oils. The production process is generally believed to remove or destroy the allergen, which would cause the allergic reaction.

G. Why is Lactose Being Included?

It is also proposed to include lactose (milk sugar) in the to-be-established 40 CFR 180.1001(g) tolerance exemptions. Lactose intolerance occurs when the body does not produce a sufficient amount of lactase, the enzyme that digests lactose. The presence of undigested lactose in the large intestine can cause gas or diarrhea; however, this is not life-threatening, as allergic reactions can be. Many lactose-intolerant individuals are capable of consuming small amounts of lactose with few or no symptoms. EPA can only regulate the use of lactose in pesticide formulations. Given the wide-spread nature of lactose in the food supply, the amount of lactose that can be applied to food as a result of its use in a pesticide product should not significantly increase the existing amounts in the food supply. Additionally, given the nature of plant metabolism it is unlikely that lactose would be directly absorbed or actually present in plant tissues. Lactose can be hydrolyzed to glucose, which is a natural plant compound and is, in fact, the sugar produced by photosynthesis. In plants, glucose is converted into starch or sucrose.

H. Conclusions

All of the substances considered in this proposed rule for inclusion in 40 CFR 180.1001(g) can be grouped into and included in three major categories. These are: (1) Commonly consumed food commodities; (2) animal feed items; and (3) edible fats and oils. All of the revoked tolerances will be recodifed in 40 CFR 180.1001(g), albeit in a different format. In fact, the amendments and revisions to the tolerance exemptions will be beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

EPA believes that the proposed tolerance exemptions in 40 CFR 180.1001(g) will be safe for humans including infants and children. EPA also is not aware of any data submitted pursuant to Section 6(a)2 of FIFRA showing significant adverse effects to humans from use of commonly consumed food commodities, animal feed items, or fats and oils. Because of the above, EPA has not assessed the risk of these substances using a safety factor approach. Accordingly, application of an additional 10X safety factor analysis or quantitative risk assessment is not necessary to protect infants and children.

V. What is the Contribution to Tolerance Reassessment

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. This proposed rule proposes to revoke 39 tolerance exemptions which will be counted toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

VI. Future Issues

As previously stated, this proposed rule only considers commonly consumed foods, animal feed commodities, and refined, edible oils and fats. The Agency intends (in future proposed and final rules) to expand beyond these three categories and propose additional minimal risk chemicals for inclusion in 40 CFR 180.1001(g). Possible categories could include naturally occurring organic chemicals (such as fatty acids), common substances derived from weathered rocks and minerals, or some animal feed components.

The eight allergen food or food groups tolerance exemptions mentioned earlier in this preamble cannot be reassessed at this time. The Agency will examine the use patterns of these eight and determine the appropriate actions that would allow the Agency to make the safety finding. As explained earlier, restrictions on post-harvest applications or information on the environmental degradation/metabolism of the allergen could enable the Agency, at a future date, to make a determination of safety. Since use restrictions will be necessary, these allergens will no longer meet the criteria of List 4A classification and therefore these eight food or food groups will be transferred from the Agency's 4A list to the 4B list.

VII. Regulatory Assessment Requirements

The Agency is acting on its own initiative under FFDCA section 408(e) in establishing new tolerance exemptions that will consolidate the existing, overlapping and duplicative tolerance exemptions. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). Because the proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforcesable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations as required by Executive Order 12898 entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This proposed rule would establish a new paragraph in 40 CFR 180.1001. Creating a new paragraph does not have a substantive effect and hence causes no impact. This proposed rule would place expiration dates on seven existing tolerance exemptions for various known allergen-containing food commodities. Currently, the Agency's regulatory approach as written in various CFR paragraphs and sections is inconsistent. This 3–year transition period will allow sufficient time to examine the uses of these food commodities, and discuss product re-formulation with affected registrants. At the completion of this process there will be a single consistent approach for all food commodities used as pesticide chemicals.

This proposed rule would also revoke 39 tolerance exemptions, thus (1) revoking duplicative and overlapping tolerance exemptions for commonly consumed (non-allergen) food commodities, (2) revoking and consolidating the existing tolerance exemptions for animal feed items and allowing additional minimal risk animal feed items not previously exempted for use in pesticide products, and (3) establishing the use of edible oils derived from allergens since the available information indicates that the use of these oils is not of concern.

Pursuant to the section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that these proposed actions will not have significant negative economic impact on a substantial number of small entities. By contrast, the amendments and revisions to the tolerance exemptions will be beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

Pursuant to the RFA the Agency previously assessed whether revocations of tolerances or tolerance exemptions might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, the available information concerning the pesticide chemicals listed in this rule, the transition time for the known allergen containing commodities and considering that all of the to-be-revoked tolerance exemptions will be covered in the to-be-established 40 CFR 180.1001(g), the Agency knows of no extraordinary circumstances that exist as to the present revocation that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule does not affect States directly, but does directly regulate growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

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regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practices and procedures, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1001 [Amended]

2. Section 180.1001 is amended as follows:

A. In paragraph (c) remove the entries for: almond shells; apple pomace; citrus meal; cocoa shells; coconut oil; corn cobs; corn meal; corn oil; cornstarch; corn syrup; cottonseed oil; dextrose; fish oil; grape pomace, dried; lactose; lard; molasses; oatmeal; oats; orange pomace; peanut shells; rice bran; soybean, oil; starch (potato, tapioca, wheat); and sucrose.

B. In paragraph (d) remove the entries for: cinnamon; clove; coffee; corn; corn gluten meal, hydrolized; fenugreek; low erucic acid rapeseed oil, conforming to 21 CFR 184.1555(c) (CAS Reg. No. none); oat hulls; wheat; and wheat flour.

C. In paragraph (e) remove the entries for: corn syrup; dextrose; and sucrose.

3. Section 180.1001 is further amended by revising the following entries in the tables to paragraphs (c), (d), and (e), by adding the entry "wheat, including flour, bran, and starch" to the table in paragraph (c), by adding and reserving paragraph (f) and by adding paragraph (g) to read as follows.

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Casein	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Surfactant, emulsifier, wetting agent
* * * * * * *		
Fish meal	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent, carrier
* * * * * * *		
Soy protein, isolated	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Adhesive
Soybean flour	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Surfactant
* * * * * * *		
Wheat, including flour, bran, and starch.	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent, carrier, attractant
* * * * * * *		

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Sodium caseinate	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Suspending agent and binder
* * * * * * *		

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Soy protein, isolated	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Adhesive
* * * * * * *		
Wheat shorts	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent
* * * * * * *		

(f) [Reserved]

(g) *Minimal risk substances.* Unless specifically excluded, residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemicals, are exempted from the requirement of a tolerance under section 408 of the FFDCA if such use is in accordance with good agricultural or manufacturing practices.

(1) *Commonly-consumed food commodities.* "Commonly-consumed food commodities" means foods that are commonly consumed for their nutrient properties. The term "commonly-consumed food commodities" shall only apply to food commodities, whether a raw agricultural commodity or a processed commodity, in the form the commodity is sold or distributed to the public for consumption.

(i) Included within the term "commonly-consumed food commodities" are:

(A) Sugars such as sucrose, lactose, dextrose and fructose, and invert sugar and syrup.

(B) Spices such as cinnamon, cloves, and red pepper.

(C) Herbs such as basil, anise, or fenugreek.

(ii) Excluded from the term "commonly-consumed food commodities" are:

(A) Any food commodity that is adulterated under 21 U.S.C. 342.

(B) Both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(C) Alcoholic beverages.

(D) Dietary supplements.

(2) *Animal feed items.* "Animal feed items" means all items derived from field crops that are fed to livestock, and meat meal. Meat meal is an animal feed composed of dried animal fat and protein that has been sterilized. Other than meat meal, the term "animal feed item" does not extend to any item designed to be fed to animals that contains, to any extent, components of animals.

(i) Included within the term "animal feed items" are:

(A) The hulls and shells of the commodities specified in paragraph (g)(1)(ii)(B) of this section, and cocoa beans.

(B) Bird feed such as canary seed.

(C) Any feed component of a medicated feed meeting the definition of an animal feed item.

(ii) Excluded from the term animal feed item are both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(3) *Edible fats and oils.* Edible fats and oils means all edible (food or feed) fats and oils, derived from either plants or animals, whether or not commonly consumed, including products derived from hydrogenating (food or feed) oils, or liquefying (food or feed) fats. Excluded from the term edible fats and oils are plant oils used in the pesticide chemical formulation for their characteristic smell and/or taste and oils derived from the commodities specified in paragraph (g)(1)(ii)(B) of this section except to the extent such oils are highly refined.

4. Section 180.1071 is revised to read as follows:

§ 180.1071 Egg solids (whole); exemption from the requirement of a tolerance.

A time-limited tolerance exemption expiring [*insert date 3 years from date of publication of the final rule in the* **Federal Register**] is established for residues of whole egg solids (of at least feed grade quality) when used as an animal repellent in or on almonds and applied to the growing crop in accordance with good agricultural practices.

§ 180.1164 [Removed]

5. Section 180.1164 is removed.

§ 180.1194 [Removed]

6. Section 180.1194 is removed.

[FR Doc. 02–699 Filed 1–14–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7127–6]

Washington: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Washington has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Washington's application and made the preliminary decision that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: EPA will accept written comments on the Agency's preliminary decision to authorize changes to the State of Washington's hazardous waste management program which are received at the address below on or before February 14, 2002.

ADDRESSES: Send written comments to Nina Kocourek, U.S. EPA, Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA 98101, phone, (206) 553–6502. You can examine copies of the materials submitted by Washington during normal business hours at the following locations: EPA Region 10 Library, 1200 Sixth Avenue, Seattle WA 98101, phone, (206) 553–1289; and at the Washington Department of Ecology, 300 Desmond Drive, WA 98503; Ecology contact is Patricia Hervieux at (360) 407–6756.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA, 98101; (206) 553–6502. For general information available on the authorization process, see EPA's website at: *http://www.epa.gov/epaoswer/hazwaste/state/rcra.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA has made the preliminary determination that Washington's program, as revised, meets the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Washington final authorization to operate its hazardous waste program with the changes described in the authorization application and as described in this proposed rule. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

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Washington's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the limitation of this authorization. Washington's authorized program does not extend to Indian country, except that Washington does have jurisdiction over non-trust lands within the 1873 Survey Area of the Puyallup Reservation as defined in the Settlement Agreement between the Puyallup Tribe, Federal, State and local governments dated August 27, 1988. EPA retains jurisdiction and authority to implement RCRA over Indian country and over trust lands, Indians and Indian activities within the 1873 Survey Area.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implementable by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Washington, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Washington Is Authorized for These Changes?

If Washington is authorized for these changes, a facility in Washington subject to RCRA will have to comply with the authorized State program requirements and with the federal HSWA provisions for which the State is not authorized in order to comply with RCRA. Washington has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this proposed rule once a final rulemaking becomes effective. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Washington's program will be authorized are already effective under State law.

D. What Happens if EPA Receives Comments That Oppose This Action?

If the EPA receives significant written comments on this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Washington Previously Been Authorized for?

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531) and on October 12, 1999 effective January 11, 2000 (64 FR 55142).

F. What Changes Are We Proposing to Washington's Authorized Program?

EPA is proposing to authorize revisions to Washington's authorized program described in Washington's official program revision application, submitted to EPA on August 2, 2001, and deemed complete by EPA on September 19, 2001. We have made a preliminary determination that Washington's hazardous waste program revisions, as described in this proposed rule, satisfy the requirements necessary to qualify for final authorization. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

The following table, Table 1, identifies equivalent and more stringent analogues to the Federal regulations for those regulatory revisions Washington is seeking authorization for. All of the referenced analogous state authorities were legally adopted and effective as of June 10, 2000.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173-303-* * *)
17P [2]	Interim Status	50 FR 28702, 7/15/85	803(1), 803(2); 806(2)(a) 806(2)(b); 806(8); 803(2)(a), 803(2)(b); 810(11)(c), 810(11)(e); 805(1)(b), 805(1)(c), 805(8)(f)(i), 805(8)(f)(ii), 805(8)(g), 805(8)(h), 805(8)(i), 805(8)(j).
144	Removal of Legally Obsolete Rules.	60 FR 33912, 06/29/95	803(2)(b), 803(4)(b), 803(5)(a)(i), 803(5)(a)(i)(A), 803(5)(a)(i)(B), 803(5)(a)(i)(C).
148 [2]	RCRA Expanded Public Participation.	60 FR 63417, 12/11/95	281(4) and 281(4)(a), 281(4)(b), 281(4)(c), 281(4)(d), 281(4)(d)(i), 281(4)(d)(i)(A), 281(4)(d)(i)(B), 281(4)(d)(i)(C), 281(4)(d)(i)(D), 281(4)(d)(ii), 281(4)(d)(ii)(A), 281(4)(d)(ii)(B), 281(4)(d)(ii)(C), 281(4)(d)(ii)(D), 281(4)(d)(ii)(E); 281(5), 281(5)(a), 281(5)(b), 281(5)(b)(i), 281(5)(b)(ii), 281(5)(b)(ii)(A), 281(5)(b)(ii)(B), 281(5)(b)(ii)(C), 281(5)(b)(ii)(D), 281(5)(b)(ii)(E), 281(5)(b)(ii)(F), 281(5)(b)(iii), 281(6) and 281(6)(a), 281(6)(b), 281(6)(c), 281(6)(d), 281(6)(e), 281(6)(f); 040; 806(4)(a)(xxv); 810(16); 804(6)(a); 807(6), 807(6)(a), 807(6)(b), 807(6)(b)(i), 807(6)(b)(ii), 807(6)(b)(iii), 807(6)(b)(iv), 807(7), 807(8)-(11), 807 (14).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173-303-* * *)
151	Land Disposal Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	61 FR 15566, 04/08/96; 61 FR 15660,04/08/96; 61 FR 19117, 04/30/96; 61 FR 33680, 06/28/96; 61 FR 36421, 07/10/96; 61 FR 43924, 08/26/96; 62 FR 7502, 02/19/97.	140 (2)(a).
153	Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D.	61 FR 34252, 07/01/96	070(8)(b), 070(8)(b)(iii), 070(8)(b)(iii)(A), 070(8)(b)(iii)(B), 070(8)(b)(iii)(E), 070(8)(b)(iii)(F), 070(8)(b)(iii)(D), 070(8)(b)(iii)(H).
154 [2]	Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: (Includes CC and the 300 hour BB exemption).	59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426, 09/29/95; 60 FR 56952, 11/13/95; 61 FR 4903, 02/09/96; 61 FR 28508, 06/05/96; 61 FR 59932, 11/25/96.	692(3); 110(3)(g)(ix),110(3)(g)(x); 120(4)(d), 120(4)(e); 200(1)(b)(i), 200(1)(b)(ii); 201(e); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f), 390(3)(d); 630(11); 640(11); 650(12); 680(2); 690(1)(b), 690(1)(b)(i), 690(1)(b)(ii), 690(1)(b)(iii), 690(1)(c), 690(2); 691(1)(b), 691(1)(b)(i), 691(1)(b)(ii), 691(1)(b)(iii), 691(1)(f), 691/note at end of (1), 691(2); 692(1)(a), 692(1)(b), 692(1)(b)(i), 692(1)(b)(ii), 692(1)(b)(iii), 692(1)(b)(iv), 692(1)(b)(v), 692(1)(b)(vi), 692(1)(b)(vii), 692(1)(b)(viii), 692(1)(c), 692(1)(d), 692(1)(d)(i), 692(1)(d)(ii), 692(1)(d)(iii); 692(2); 400(2)(a); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f); 390(3)(d); 400(3)(a); 810(8)(a)(ii), 810(8)(a)(iii), 810(8)(a)(iv); 806(4)(a)(v), 806(4)(b)(vi), 806(4)(c)(xiii), 806(4)(d)(xi), 806(4)(m).
156 [2]	Military Munitions Rule Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.	62 FR 6622, 02/12/97	040; 016(3)(b)(iii), 016(3)(b)(iv); 170(5); 180(6); 240(10); 600(3)(p), 600(3)(p)(i)(D), 600(3)(p)(iv), 600(3)(q); 693(l), 693(2)(a), 693(2)(a)(i), 693(2)(a)(ii), 693(2)(a)(iii), 693(2)(a)(iv), 693(2)(a)(v), 693(2)(b), 693(2)(b)(i), 693(2)(b)(i)(A), 693(2)(b)(i)(B), 693(2)(b)(i)(B)(I)-(III), 693(2)(b)(i)(C), 693(2)(b)(ii), 693(2)(b)(iii), 693(2)(c), 693(2)(d), 693(2)(e), 693(2)(f); 693(3)(a , 693(3)(b); 400(2)(c)(xiii)(A)(IV), 400(2)(c)(xiii)(D), 400(2)(c))(xii), 400(3)(b); 400(3)(c)(xii); 578(1)(a), 578(1)(b), 578(2)(a), 578(2)(a)(i), 578(2)(a)(i)(A), 578(2)(a)(i)(B), 578(2)(a)(i)(C), 578(2)(a)(ii), 578(2)(b), 578(2)(b)(i), 578(2)(b)(ii), 578(2)(b)(iii), 578(2)(b)(iv), 578(2)(c), 578(2)(c)(i), 578(2)(c)(ii), 578(2)(d), 578(3), 578(4)(a), 578(4)(a)(i), 578(4)(a)(i)(A), 578(4)(a)(i)(B), 578(4)(a)(i)(C), 578(4)(a)(i)(D), 578(4)(a)(i)(E), 578(4)(a)(i)(F), 578(4)(a)(i)(G), 578(4)(a)(ii), 578(4)(a)(iii), 578(4)(b), 578(4)(c); 578(5); 800(7)(c)(i)(D), 800(7)(c)(i)(E); 830(4)(h), 830(4)(h)(i), 830(4)(h)(ii), 830(4)(h)(iii), 830(4)(i).
157	Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.	62 FR 25998, 05/12/97	040; 016(2)(l), 016(2)(m), 016(2)(n), 016(2)(o); 016(5) Table 1; 071(3)(ff), 071(3)(gg), 071(3)(gg)(i), 071(3)(gg)(ii); 120(2)(a)(iv); 140(2)(a).
158	Testing Monitoring Activities Amendment III.	62 FR 32452, 06/13/97	110(1); 110(3)(h)(v), 110(3)(h)(vi), 110(3)(g)(i), 110(3)(g) (ii), 110(3)(g)(iii), 110(3)(g)(iv), 110(3)(g)(v), 110(3)(g)(vi), 110(3)(g)(viii), 110(3)(h)(i), 110(3)(a), 110(3)(h)(ii), 110(3)(h)(iii), 110(3)(h)(vii), 110(3)(g)(x); 690(2); 691(2); 645(4)(a); 400(3)(a).
162	Clarification of Standards for Hazardous Waste LDR Treatment Variances.	62 FR 64504, 12/05/97	140 (2)(a).

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TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–° ° °)
163	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment: (AA, BB, CC).	62 FR 64636, 12/08/97	320(2)(c); 380(1)(f); 690(1)(b)(iii), 690(1)(c), 690(1)(d); 690(2); 691(1)(b)(iii), 691(1)(c), 691(1)(f), 691(2); 692(1)(b)(i), 692(1)(c), 692(2); 320(2)(c); 400(3)(a); 806(4)(a)(v).
164	Kraft Mill Steam Stripper Condensate Exclusion.	62 FR 18504, 04/15/98	071(3)(mm).
167A	Land Disposal Restriction Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes.	63 FR 28556, 05/26/98	140(2)(a).
167B	Land Disposal Restriction Phase IV—Hazardous Soils Treatment Standards and Exclusions.	63 FR 28556, 05/28/98	140(2)(a).
167C	Land Disposal Restrictions Phase IV—Corrections.	63 FR 28556, 05/26/98	140(2)(a).
167F	Exclusion of Recycled Wood Preserving Wastewater.	63 FR 28556, 05/26/98	071(3)(w)(iii), 071(3)(w)(iii)(A), 071(3)(w)(iii)(B), 071(3)(w)(iii)(C), 071(3)(w)(iii)(D), 071(3)(w)(iii)(E).
169 [2]	Petroleum Refining Process Wastes.	63 FR 42110, 08/06/98	071(3)(p), 071(3)(jj); 071(3)(cc)(i), 071(3)(cc)(ii), 071(3)(hh), 071(3)(hh)(i), 071(3)(hh)(ii), 071(3)(ii); 016(5)(d)(ii); 120 (2)(a)(viii)(c); 9904; 082(4); 140(2)(a).
170	Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment.	63 FR 46332, 08/31/98	140(2)(a).
171	Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from carbamate Production.	63 FR 47410, 09/04/98	140(2)(a).
172	Land Disposal Restriction Phase IV—Extension of Compliance Date for Characteristic Slags.	63 FR 48124, 09/09/98	140(2)(a).
173	Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088); Final Rule.	63 FR 51254, 09/24/98	140(2)(a).
174 [3]	Post Closure Permit Requirement and Closure Process: Requirements for alternative groundwater monitoring requirements for regulated units colocated with SWMU's where both types of units have released to the environment..	63 FR 56710, 10/22/98	645(1)(e), 645(1)(e)(i), 645(1)(e)(ii); 610(1)(d), 610(1)(d)(i), 610(1)(d)(ii); 610(3)(a)(ix), 610(3)(b)(ii)(D); 610(8)(b)(iv), 610(8)(d)(ii)(D); 620(1)(d), 620(1)(d)(i), 620(1)(d)(ii); 400(3)(a).
175 [2]	HWIR-Media	63 FR 65874, 11/30/98	040; 071(3)(11) first line, 071(3)(11)(i) through (iii); 280(5); 280(6), 280(6)(a), 280(6)(b), 280(6)(c), 280(6)(d), 280(6)(e), 280(6)(f), 280(6)(g), 280(6)(h), 280(6)(i), 280(6)(j), 280(6)(k); 646(1)(c); 646(4)(a), 646(7)(a), 646(8); 400(2)(a); 140(2)(a); 810(13)(a); 830 Appendix 1, D.3.g.; 830, Appendix 1, N.3.
176	Universal Waste Rule—Technical Amendments.	63 FR 71225, 12/24/98	520(1), 520(2), 520(2)(a), 520(2)(b), 520(2)(c); 040.
177	Organic Air Emission Standards Clarification and Technical Amendments: (AA, BB, CC).	64 FR 3382, 01/21/99	200(1)(b)(i), 200(1)(b)(ii); 690(2); 692(1)(v), 692(2); 400(3), 400(3)(a).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–° ° °)
178	Petroleum Refining Process Wastes—Leachate Exemption.	64 FR 6806, 02/11/99	071(3)(kk), 071(3)(kk)(i), 071(3)(kk)(ii), 071(3)(kk)(iii), 071(3)(kk)(vi), 071(3)(kk)(v).
179 [2]	Land Disposal Phase IV—Technical Corrections and Clarifications to Treatment Standards.	64 FR 25408, 05/11/99	016(5)(c); 016 Table 1; 017(2)(a)(iii); 201(2); 140(2)(a).
180	Test Procedures for Analysis of Oil and Grease and Non-Polar Material.	64 FR 26315, 05/14/99	110(3)(a), 110(3)(h)(iv).
181 [2]	Universal Waste Rule Specific Provisions for Hazardous Waste Lamps.	64 FR 36466, 07/09/99	040; 077(2), 077(3); 600(3)(o)(ii), 600(3)(o)(iii); 400(2)(c)(xi)(B), 400(2)(c)(xi)(C); 140(2)(a); 800(7)(c)(iii)(B), 800(7)(c)(iii)(C); 573(1)(a)(ii), 573(1)(a)(iii), 573(2)(a)(i), 573(2)(b)(ii), 573(2)(b)(iii), 573(3)(a); 573(5)(a), 573(5)(b), 573(5)(b)(i), 573(5)(b)(ii), 573(5)(c), 573(5)(c)(i), 573(5)(c)(ii), 573(4)(a), 573(4)(a)(i), 573(4)(a)(ii), 573(4)(b), 573(6), 573(9)(c), 573(9)(c)(i), 573(9)(c)(ii), 573(9)(c)(iii), 573(10)(c), 573(17), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(c), 573(20)(c)(i), 573(20)(c)(ii), 573(20)(c)(iii), 573(21)c), 573(28), 573(35)(a), 573(40)(a).
112, 122, 130, 166 (Special Consolidated Checklist [2]).	Recycled Used Oil Management Standards as of June 30, 1999.	57 FR 41566, 09/10/92; 58 FR 26420, 05/03/93; 58 FR 33341, 06/17/93; 59 FR 10550, 03/04/94; 63 FR 24963, 05/06/98; 63 FR 37780, 07/1–/98.	040; 515(4); 071(3)(z), 071(3)(kk); 120(3); 120(3)(g), 120(3)(f); 120(2)(v), 120(2)(a)(viii)(A), 120(2)(a)(viii)(B), 120(2)(a)(viii)(C), 120(5); 600(5); 510(1)(b)(i); 515(2), 515(3), 515(4), 515(5), 515(6), 515(6)(c), 515(7), 515(8), 515(9), 515(9)(a), 515(9)(b), 515(10), 515(11), 515(12).

[1] For further discussion on where the revised state rules differ from the Federal rules refer to Section G. below, the authorization revision application, and the administrative record for this proposed rule.

[2] State rule contains some more stringent provisions. For identification of more stringent state provisions refer to the authorization revision application and the administrative record for this decision.

[3] State does not seek authorization for enforceable mechanisms in lieu of post-closure permits.

G. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses some of the differences between the revisions Washington proposed to its authorized program and the Federal regulations. Not all program differences are discussed in this section because Washington writes its own version of the federal hazardous waste rules. This section discusses certain rules where EPA is making a finding that the state program is more stringent and will be authorized, rules where the state program is broader in scope and will not be authorized, and rules where the state program is less stringent than the federal requirements. The state will not be authorized for the less stringent rules. Less stringent state rules do not supplant federal regulations. Persons must consult the table referenced above for the specific state regulations which EPA proposes to authorize.

Certain portions of the federal program are not delegable to the states because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. EPA does not delegate import/export functions. Under the RCRA regulations found in 40 CFR part 262 EPA will continue to implement requirements for import/export functions. EPA does not delegate sections of 40 CFR part 268 because of the national concerns that must be examined when decisions are made under the following Federal Land Disposal Restriction requirements: 40 CFR 268.5—Procedures for case-by-case effective date extensions; 40 CFR 268.6—"No migration" petitions; 40 CFR 268.42(b)—applications for alternate treatment methods; and 40 CFR 268.44(a)-(g)—general treatment standard variances. Washington's program has excluded these requirements from its state regulations and EPA will continue to implement these requirements. EPA will continue to implement these requirements under EPA's HSWA authority. The State is seeking authorization for 40 CFR 268.44(h) through (m), which are provisions for which states may receive authorization.

States are allowed to seek authorization for state requirements that are more stringent than federal requirements. EPA has authority to authorize and enforce those parts of a state's program EPA finds to be more stringent than the federal program. This section does not discuss each more stringent finding made by EPA, but persons can locate such sections by consulting the Table, referenced above, as well as by reviewing the docket for this rule.

The State program does not provide generators with an exemption from the manifest requirements as found in the federal regulations at 40 CFR 262.20(f) or transporters as found at 40 CFR 263.10(f). Generators and transporters in Washington will have to comply with the more stringent state paperwork requirements. The State program is more stringent than the federal program because the State regulations do not allow Remedial Action Plans as found in the federal requirements at 40 CFR part 270, subpart H. The State's program is more stringent than the federal program at 40 CFR 261.5(j) because the State has not adopted this provision. Conditionally exempt small quantity generator hazardous waste mixed with used oil is subject to full regulation as a hazardous waste mixture. The State program is also more stringent than the federal requirements at 40 CFR 273.9 because the State's definition of universal waste does not allow

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pesticides to be managed as universal waste.

The State program is more stringent in certain places than the federal military munitions rule. The State did not adopt the alternative requirements for transportation of waste military munitions between military installations as is found in the federal program at 40 CFR 266.203(a)-(c) and is therefore more stringent than the federal program. With respect to chemical agents and chemical munitions slated for destruction pursuant to international treaties or agreements, the State identifies such chemical agents and chemical munitions as characteristic and/or listed hazardous waste. In the Military Munitions Rule, at 62 FR 6633, EPA said that states could be more stringent than the federal program for chemical munitions. EPA finds the State program to be more stringent than the federal program in this area because the State rules do not contain a provision that differentiates between wastes that must be designated and waste chemical munitions or chemical munitions that are not considered wastes because they are scheduled for destruction pursuant to treaty or agreement. The State's regulations at WAC 173–303–693(3)(a) are found to be more stringent than the federal regulation at 40 CFR 264.1202(a) and WAC 173–303–400(3)(b), (c)(xii) is found to be more stringent than the federal regulation at 40 CFR 265.1202(a). EPA also said, at 62 FR 6649 in the Military Munitions Rule, that states did not have to include a conditional exemption for waste munitions storage in their programs. EPA also finds that the State's lack of a conditional exemption for waste munition storage, which is found in the federal regulations at 40 CFR 266.205(d), (d)(2), is more stringent than the federal program. Neither the federal regulations, nor the State program conditionally exempt chemical munitions and chemical agents from storage requirements.

The State is not seeking authorization for the Standards for the Management of Waste Fuel and Used Oil for the Burning of these Materials in Boilers and Industrial Furnaces, 40 CFR 266.102 through 40 CFR 266.111. The State did not adopt these federal provisions as state law. EPA is implementing these BIF requirements in Washington State under EPA's HSWA authority.

States are not allowed to seek authorization for state requirements that are broader in scope than federal requirements. EPA does not have authority to authorize and enforce those parts of a state's program EPA finds to be broader in scope than the federal program. Because the State has not adopted an analog to 40 CFR 261.4(b)(7)—exclusions for solid waste from the extraction, beneficiation, and processing of ores and minerals, the State's lack of an analog for the federal exclusion of mixtures of solid waste and hazardous waste which are hazardous based solely on a hazardous characteristic imparted to the waste as a result of a Bevill characteristic, 40 CFR 261.3(a)(2)(iii), is broader in scope than the federal program. EPA also finds the State's regulation at WAC 173–303–578(2)(e) to be broader in scope than the federal regulation at 40 CFR 266.202(a) because the State added a requirement for when munitions at closed and transferred ranges are considered solid wastes. EPA's final Military Munitions Rule did not include this requirement. This requirement in the State program is found to be broader in scope than the federal program.

Although State programs can be authorized where they are more stringent than the federal program, state programs cannot be authorized where they are less stringent. EPA finds the State's additional regulation at WAC 173–303–515(6) for generators of used oil who self-transport greater than 55 gallons per vehicle trip to a used oil collection center, without also designating as a used oil transporter, are less stringent than the federal provisions which limit generator self-transport of used oil to less than or equal to 55 gallons of used oil per vehicle trip. EPA also finds the State's additional regulation at WAC 171–303–515(7) for used oil collection centers to be less stringent because the regulation allows used oil collection centers to accept greater than 55 gallons of used oil from a generator who self-transports used oil to a used oil collection center. The direct impact of EPA's finding to generators and used oil collection centers in Washington is that generators and used oil collection centers will not be exempted from the State's federally authorized requirements which limit self-transport by generators to less than or equal to 55 gallons and used oil collection from a self-transporting generator to less than or equal to 55 gallons.

States sometimes make changes to their previously authorized programs for which they need to seek reauthorization. In Washington, the Permit by Rule provision at WAC 173–303–802(5) is broader in scope than the federal permit by rule regulations where it applies to state-only wastes. However, the state program is more stringent where the rule applies to federally regulated hazardous wastes generated on-site. The federal regulations at 40 CFR 270.1(c)(2)(iv) and (v) exempt owners and operators of totally enclosed treatment facilities, elementary neutralization units or wastewater treatment units, as defined at 40 CFR 260.10, from RCRA permitting requirements. The State is seeking reauthorization for these changes and will be authorized for the more stringent portion of the rule. The State will not be authorized for the broader in scope provision.

The State is not seeking authorization for the entire Post-Closure rule. While the state will be authorized for the portions of the rule that concern alternative requirements for colocated regulated units and solid waste management units which have commingled releases, the State is not seeking, and will not be authorized for the portions of the rule that allow for the use of alternate authorities in lieu of post closure permits. Although the state did incorporate 40 CFR 265.118(c)(4) by reference into its regulations, the state is not seeking authorization for this provision.

H. Who Handles Permits After This Authorization Takes Effect?

Washington will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit. EPA will continue to issue permits for HSWA requirements for which Washington is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Washington?

EPA's decision to authorize the Washington hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the "1873 Survey Area" or "Survey Area") located in Tacoma, Washington. EPA retains jurisdiction over "Indian Country" as defined in 18 U.S.C. 1151.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The proposed rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–626 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50640; FRL–6745–7]

RIN 2070–AB27

Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing this significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the following six chemical substances: C.I. Pigment Orange 20 (CAS No. 12656–57–4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758–97–6); Chromium Lead Molybdenum Oxide (CAS No. 12709–98–7); Lead Molybdenum Oxide (CAS No. 10190–55–3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446–14–2); and C.I. Pigment Red 104 (CAS No. 12656–85–8). This action proposes to require persons who intend to manufacture, import, or process any of these chemical substances for use in aerosol spray paint for non-industrial, indoor spray application to notify EPA at least 90 days before commencing such activities. The required notification would provide EPA with the opportunity to evaluate the intended use, and if necessary, prohibit or limit that activity before it occurs.

DATES: Comments, identified by the docket control number OPPTS–50640, must be received by EPA on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50640 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Joe B. Boyd, Chemical Control Division, (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3563 or (540) 778–4609; e-mail address: boyd.joe@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action, if finalized, if you manufacture, import, or process the chemical substances addressed in this proposed rule. In addition, these are

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reporting requirements for exporters of these substances. Potentially affected categories and entities may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers, importers, or processors	325	Persons who manufacture, defined by statute to include import or process, one or more of the subject chemical substances
Chemical exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business could be affected by this action, you should carefully examine the proposed rule and the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access these documents, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50640. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50640 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50640. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control numberassigned to this action in the subject line on the first page of your response. You mayalso provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacturing, importing, or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. for use in aerosol spray paint for non-industrial, indoor spray application.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit notification to EPA at least 90 days before they manufacture, import, or process the substance for that use.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, reporting and recordkeeping requirements, and exemptions. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to a SNUR must comply with the same notification requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once the Agency receives notification under a SNUR, EPA may, if warranted, take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notification. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)). The regulations that implement TSCA section 12(b) appear at 40 CFR part 707, subpart D. Additionally, persons who intend to import any chemical substance are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the United States Customs Service regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Importers would need to certify that their import shipments are in compliance with the final SNUR requirements among any other TSCA requirements. The EPA policy in support of import certification appears at 40 CFR 707.20.

III. Summary of this Proposed Rule

The chemical substances which are the subjects of this proposed SNUR are listed in Table 2 of this unit. EPA is proposing to designate as a significant new use the use of any of these six chemical substances in aerosol spray paints for non-industrial, indoor spray application. EPA is proposing that "aerosol spray paint" be defined as "a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers the contents of which are applied without the aid of an air compressor or other external aspirating device." EPA is also proposing a definition for "indoor spray application" as "any application of a liquid from a pressurized container within a confined space, including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application." "Non-industrial use" is already defined in the regulations governing SNURs at 40 CFR 721.3 as a "use other than at a facility (also defined in § 721.3) where chemical substances or mixtures are manufactured, imported or processed," and EPA is not proposing to change the definition for this action. This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of any of these chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

TABLE 2.—CHEMICAL SUBSTANCES CONTAINING LEAD, CHROMIUM, AND/OR CADMIUM WHICH ARE COVERED BY THIS PROPOSED RULE

Chemical substance	CAS No.
C.I. Pigment Orange 20 (*)	12656–57–4
Chromic Acid, Lead(2+) Salt (1:1) (**) (***)	7758–97–6
Chromium Lead Molybdenum Oxide (**) (***)	12709–98–7
C.I. Pigment Red 104 (**) (***)	12656–85–8
Lead Molybdenum Oxide (***)	10190–55–3
Sulfuric Acid, Lead(2+) Salt (1:1) (***)	7446–14–2

(*) Contains cadmium
(**) Contains chromium
(***) Contains lead

IV. Objectives and Rationale for this Proposed SNUR

EPA is concerned about the potential risks related to the toxicity and potential exposures which could result from non-industrial, indoor spray application of aerosol spray paints containing one of more of the chemical substances listed in Table 2 of this unit. The Agency is proposing definitions for indoor spray application and aerosol spray paint. The terms of these definitions convey the technical framework for what is included in the significant new use. In addition, EPA believes that use of the subject substances for the proposed significant new use has a high potential to increase both the magnitude and

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duration of exposure to these substances beyond existing levels.

At this time, the six chemical substances covered by this proposed rule are the only specific compounds containing lead, chromium, and/or cadmium that are known to have been formulated in aerosol spray paints with the potential for non-industrial, indoor spray application. If EPA identifies other chemical substances of concern with similar potential uses, it may propose SNURs to cover such additional chemical substances.

EPA believes that there is no ongoing manufacture, import, or processing of these chemical substances for use in aerosol spray paints except for those intended for industrial and/or outdoor uses. If EPA receives information through comments on this proposed rule or otherwise that indicates that indoor non-industrial uses are ongoing, EPA would consider modifying the proposed significant new use accordingly, to exclude particular ongoing uses, in developing a final rule. The Agency would assess whether separate regulatory or voluntary action may be appropriate for any such ongoing uses.

In determining what would constitute a significant new use for the six chemical substances that are subjects of this proposed SNUR, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with potential uses, information provided by industry sources (Ref. 5), and the four factors listed in TSCA section 5(a)(2).

Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed SNUR. EPA wants to ensure that:

1. The Agency would receive notification of any company's intent to manufacture, import, or process the subject chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

2. The Agency would have an opportunity to review and evaluate data submitted in a Significant New Use Notice (SNUN) before the notice submitter begins manufacturing, importing, or processing the subject chemical substances for use in aerosol spray paints for non-industrial, indoor spray application.

3. The Agency would be able to regulate prospective manufacturers, importers, or processors of the subject chemical substances before a significant new use occurs provided that the degree of potential risk, or uncertainty about the risks, is sufficient to warrant such regulation.

V. Information on the Subject Lead, Chromium, and/or Cadmium Containing Compounds

A. Health Effects

EPA reviewed health hazard data associated with a wide range of chemical components of aerosol spray paints including the six chemical substances listed in Table 2 of Unit III. (Ref. 1). When inhaled, the six chemical substances covered under this proposed rule may be absorbed through the lungs or retained in the lungs and cause a variety of chronic toxicities. In particular, hexavalent chromium compounds, including chromate pigments such as those listed in Table 2 of Unit III., are recognized human carcinogens (Refs. 9, 13). In addition, dermal exposure to hexavalent chromium compounds has been associated with irritant and allergic contact dermatitis (Ref. 9). There is adequate evidence that cadmium compounds are carcinogenic in animals and some epidemiologic evidence suggests that they may also be carcinogenic in humans. These data caused EPA to list cadmium compounds as probable human carcinogens following inhalation exposure (Ref. 10), while the International Agency for Research on Cancer listed cadmium compounds as carcinogenic in humans (Ref. 14). Also, long-term human exposure to low levels of cadmium compounds has been associated with a variety of toxic effects such as osteomalacia, osteoporosis, obstructive lung diseases, and kidney dysfunction (Refs. 8, 16). In addition, there is adequate evidence that some lead compounds are carcinogenic in animals but inadequate evidence to assess their carcinogenic potential in humans. EPA has listed lead compounds as probable human carcinogens (Ref. 11) while the International Agency for Research on Cancer has considered lead compounds as possibly carcinogenic in humans (Ref. 12). Finally, exposure of developing fetuses and young children to lead containing substances can result in damage to the brain and central nervous system, slow growth, hyperactivity, and learning problems. Adults exposed to lead may develop symptoms indicative of nervous disorders and anemia as well as memory and concentration problems (Refs. 14, 15).

B. Exposure Data

Assessments for consumer exposures to components of aerosol spray paints are described in the "Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint" (Ref. 2). Those analyses include estimates of amounts of nonvolatile pigments in the spray paint and the amounts of aerosolized spray paint not deposited on the target and available for inhalation and inadvertent ingestion. Consumer exposure assessments using a multi chamber exposure assessment model were performed in order to estimate user exposures from indoor spray applications in a residential kitchen, basement and garage. One assessment indicated that the exposure to an adult spraying paint in a kitchen (e.g., spray painting metal cabinets, air plane models, etc.) a couple times a year could be toxicologically significant. This and other exposure scenarios showed that nonvolatile pigments, as components of paint sprayed indoors, were both respirable and ingestible. These routes of exposure were the basis of risk screening concerns (Ref. 3). Based on data from a usage survey and the Census Bureau EPA believes that 68.2 million U.S. consumers have potential annual exposure to components of aerosol spray paints (Ref. 3). Specific exposure to individual consumers who spray paint indoors is dependent on many factors, especially on the amount of air that flows through the building and into and out of the immediate vicinity of application. People who spray paint indoors with windows and doors open and use a fan to direct contaminated air out-of-doors are less likely to have significant exposures than those who spray paint without increasing their work area ventilation.

EPA believes that, generally, indoor spray application of aerosol paints containing lead, chromium or cadmium in industrial settings, where protective measures are required should not result in exposure levels as high as those of consumers or other non-industrial indoor users. Industrial workers who use aerosol spray paints in industrial settings are protected by applicable safeguards and controls under the Occupational Health and Safety Administration's hazard communication standard (29 CFR 1910.1200). For example, carcinogenic chemical substances in the workplace must be addressed in a hazard communication program and listed on the material safety data sheet (MSDS).

Exposures from outdoor spray applications of aerosol spray paint products by consumers, e.g., painting lawn furniture out-of-doors, are usually much lower. This is due to the large volume of air available for dilution out-of-doors and removal of over spray away from the user's breathing zone by natural air circulation.

C. Consumer Product Safety Commission's Related Action on Lead Paint

Effective February 27, 1978, the Consumer Product Safety Commission (CPSC) banned most paint and similar surface coating materials with 0.06% or more of lead content by weight from consumer use (42 FR 44199, September 1, 1977) (codified at 16 CFR part 1303). This action was taken under the hazardous products provisions of sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). The determination was based on a two-part finding:

1. There was an unreasonable risk of lead poisoning in children associated with lead content of more than 0.06% in paints and coatings to which children have access.

2. No feasible consumer product safety standard under the CPSA would adequately protect the public from this risk, 16 CFR 1303.1(c).

The lead containing chemical substances addressed in this proposed SNUR were once associated with several commercial automotive uses (Table 3 of this Unit). Such uses of lead containing products were excluded from CPSC's ban because the ban was issued under the CPSA, and the CPSA specifically excludes "motor vehicles and motor vehicle equipment" from the scope of the Act (15 U.S.C. 2052(a)(1)(c)).

Certain lead paint products are exempted from the CPSC ban, with the provision that certain cautionary labeling requirements be followed (16 CFR 1303.3(b)) including:

1. Agricultural and industrial equipment refinish coatings.

2. Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

3. Graphic art coatings (i.e., products marketed solely for applications on billboards, road signs, and similar uses and for identification marking in industrial buildings).

4. Touch up coatings for agricultural equipment, lawn and garden equipment, and appliances.

5. Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

In addition, three product categories are exempted from CPSC's ban with no cautionary labeling requirements (16 CFR 1303.3(c)):

1. Mirrors with lead containing backing paint when part of furniture articles.

2. Artist paint and related materials.[1]

3. Metal furniture articles (but not metal children's furniture) bearing factory applied coatings that contain lead.

Altogether in 1978, the CPSC determined that the eight product categories of exemption met public needs, and although some industrial products contained more than 0.06% lead, there were no effective substitutes, and such products were unlikely to be accessed by children. Activities associated with certain of the use categories exempted under the CPSC rule may be covered by this proposed SNUR. For example, touch up by consumers of appliances in the home.

D. Applicable OSHA Standards and Recommendations from the ACGIH

Under the OSHA Hazard Communication Standard (29 CFR 1910.1200), employees who engage in industrial, indoor spray application of aerosol spray paints containing lead, cadmium, or chromium must be informed of the hazards of exposure to these compounds. This standard requires a written hazard communication program, appropriate hazard labeling and warnings, employee training, and the availability of material safety data sheets. In addition to the Hazard Communication Standard, OSHA has established Permissible Exposure Limits (PELs) for lead, chromium, and cadmium. These values are listed in 29 CFR 1910.1000 in Tables Z-1 (http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-1.html) and Z-2 (http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-2.html). Lead and cadmium are found in Table Z-1 of 29 CFR 1910.1000, which lists applicable PELs in workplace air of 0.05 mg/cubic meter for lead and 0.005 mg/cubic meter for cadmium (each averaged over an 8-hour, time-weighted average (TWA)). Chromium can have a PEL ranging from 0.1 to 0.5 mg/cubic meter (also determined over an 8-hour TWA), depending upon the specific type of chromium compound. The lower value of 0.1 mg/cubic applies to hexavalent chromium compounds, while 0.5 mg/cubic meter applies to other chromium compounds. Hexavalent chromium compounds are listed in Table Z-2 of 29 CFR 1910.1000, while other chromium compounds are listed in Table Z-1 of 29 CFR 1910.1000. Lead and cadmium are also covered under substance-specific standards found in 29 CFR part 1910, Subpart Z—Toxic and Hazardous Substances, at 29 CFR 1910.1025 and 29 CFR 1910.1027, respectively, which contain particular guidance and requirements on exposure limits, workplace sampling, and medical monitoring requirements.

Recommended occupational exposure guidelines have also been published for lead, cadmium, and chromium by the American Conference of Governmental Industrial Hygienists (ACGIH) (Ref.17). These exposure guidelines for airborne contaminants are known as threshold limit values (TLVs). These values are often based on very recent data, and can provide information that is supplementary to that provided by PELs so reliance on TLVs may further limit workplace exposure to certain hazardous substances. The TLVs include 0.01 mg/cubic meter for cadmium metal, 0.002 mg/cubic meter for all cadmium compounds, 0.05 mg/cubic meter for lead, 0.5 mg/cubic meter for all non-hexavalent chromium compounds, 0.05 mg/cubic meter for water-soluble hexavalent chromium compounds, and 0.01 for insoluble hexavalent chromium compounds.

The protections available in occupational settings are not available for non-industrial, indoor spray applicators of the substances covered by this proposed rule.

E. Available Use Data (Ref. 4)

Table 3 of this unit shows what were once aerosol spray applications of the pigments of concern. No production volume data for paints containing these pigments are available; however, an industry survey (Ref. 5) found that most uses were discontinued by 1994. The only exceptions were products intended for high temperature applications with pigments of cadmium or chromium and as a chromate component in primer of a specialized market. In addition, the survey provider, the National Paint and Coatings Association (NPCA), reported a lengthy history of manufacturing phase-outs for aerosol products containing lead, chromium, and cadmium. The overwhelming majority of NPCA member manufacturers responded that products containing the heavy metal pigments were no longer produced. As previously stated and based on the available data, EPA has tentatively

[1] More recently, following enactment of the Labeling of Hazardous Art Materials Act (LHAMA), 15 U.S.C. 1277 (Public Law 100–695, enacted November 18, 1988), the CPSC has issued regulations in the **Federal Register** of October 9 1992 (57 FR 46626) regarding the labeling of craft materials that present a chronic hazard. These products include solvents, spray paints, silk-screen inks, adhesives, and any other substance marketed or represented as suitable for use in the creation of any work of visual or graphic art of any medium. CPSC's regulatory enforcement policy for these regulations was set forth in the **Federal Register** of February 13, 1995 (60 FR 8188).

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concluded that no non-industrial, indoor spray applications of these paints are ongoing (Ref. 4). The Agency seeks comment on this tentative conclusion.

TABLE 3.—AEROSOL SPRAY PAINTS CONTAINING PIGMENTS OF LEAD, CHROMIUM, OR CADMIUM WHICH WERE ONCE IN COMMERCIAL USE AS NON-INDUSTRIAL, INDOOR APPLICATIONS

Chemical name	CAS No.	Use in aerosol spray paints
C.I. Pigment Orange 20	12656–57–4	Retouching auto finishes, and for engine enamels, high temperature applications*
Chromic Acid, Lead(2+) Salt (1:1)	7758–97–6	Retouching auto finishes, rust-inhibitive primers, traffic marking, engine enamels, and high-temperature applications *
Chromium Lead Molybdenum Oxide	12709–98–7	Retouching auto finishes, engine enamels, and high-temperature applications applications*
C.I. Pigment Red 104 (Also known as Molybdate Orange)	12656–85–8	Retouching machinery equipment and automotive finishes, engine enamels, and high-temperature applications*
Lead Molybdenum Oxide	10190–55–3	Retouching auto finishes, engine enamels and high temperature applications*
Sulfuric-Acid, Lead (2+) Salt	7446–14–2	Component of molybdate orange and used as a white pigment

* *High temperature applications*, are applications of paint on automotive parts (such as exhaust manifolds or machinery equipment) while hot due to normal operation conditions.

VI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to, or reasonably ascertainable by them (15 U.S.C. 2604(d)). However, a SNUN submitted without accompanying test data may increase the likelihood that EPA will take action under TSCA section 5(e).

Should EPA finalize this proposed rule, the Agency would encourage persons to consult with it before submitting a SNUN or before selecting a protocol for testing of any of the chemical substances listed in Table 2 of Unit III. As part of this optional pre-notification consultation, EPA would discuss specific test data it believes are necessary to evaluate a significant new use of these chemical substances and advise the submitter on the selection of test protocols. The Agency would request that all test data be developed according to TSCA Good Laboratory Practice Standards set forth in 40 CFR part 792. Failure to do so could result in EPA's finding that submitted data are insufficient to reasonably evaluate the health effects of these chemical substances.

Should EPA finalize this proposed rule, it would urge SNUN submitters to provide detailed information on human exposure that may result from the significant new use of the chemical substances listed in Table 2 of Unit III. and at § 721.4583 of the proposed regulation. In addition, EPA would encourage persons to submit information on potential benefits of these chemical substances and information on risks posed by the chemical substances compared to risks posed by possible substitutes.

VII. Applicability to Uses Occurring After the Date of Publication of this Proposed SNUR

EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use if it occurs after the date of the proposed SNUR rather than after the effective date of the final rule. Otherwise, uses commenced during the proposed SNUR period would be considered ongoing, rather than new, and it would be difficult for EPA to establish final SNUR notification requirements, because any person could defeat the SNUR rulemaking by initiating the proposed significant new use before the rule became final and then argue that such a use was ongoing.

Persons who begin commercial manufacture, import, or processing of the six compounds listed in Table 2 of Unit III. for the significant new use listed in this proposed SNUR after the date of publication of the proposed SNUR must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to meet all final SNUR notification requirements and wait until the end of the notification review period, including all extensions, before recommencing their activities. If, however, persons who begin commercial manufacture, import, or processing of these chemical substances between the date of publication of the proposed SNUR and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

VIII. Alternatives

A. Promulgate a Chemical Specific TSCA Section 8(a) Reporting Rule for the Chemical Substances Listed in Table 2 of Unit III.

Under TSCA section 8(a), EPA could require persons to report information to the Agency when they intend to manufacture, import, or process the chemical substances listed in Table 2 of Unit III. for non-industrial, indoor spray application. However, the use of TSCA section 8(a) rather than SNUR authority would not provide the opportunity for EPA to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about these chemical substances and its interest in having the opportunity to regulate these substances further as needed, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for those chemical substances would not meet all of EPA's regulatory objectives.

B. Regulate the Chemical Substances Listed in Table 2 of Unit III. Under TSCA Section 6

EPA may regulate under TSCA section 6 (15 U.S.C. 2605) if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or

mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacture, import, or processing operations at this time to enable EPA to make a reasoned determination of risk. Therefore, EPA is not able to take action under TSCA section 6 to regulate the subject compounds at this time. The final SNUR would facilitate the Agency's consideration of potential risks associated with any intended significant new use of these chemical substances.

IX. Economic Analysis

EPA evaluated the potential costs of establishing a final SNUR on the substances listed in Table 2 of Unit III. If this proposal becomes final, the manufacture, import or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. in aerosol spray paint for non-industrial, indoor spray application would be reportable. While there is no precise way to calculate the total annual cost of compliance with this proposed SNUR, EPA estimates that the reporting cost for submission of a SNUN ranges from $8,457 to $9,692 which includes a $2,500 user fee. The corresponding time burden to complete a SNUN would average 119.92 hours. EPA believes that there would be few, if any, SNUNs submitted. Furthermore, while the expense of a notification and the uncertainty of possible EPA regulation may discourage certain innovations, the impact would be limited because those factors are unlikely to deter an innovation that has high potential value. The Agency's economic analysis is available in the public record for this proposed SNUR (Ref. 6).

X. References

These references have been placed in the official record that was established under docket control number OPPTS–50640 for this rulemaking as indicated in Unit I.B.2. Reference documents identified with an administrative record number (AR) are cross-indexed to non-regulatory, publically accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of the documents can be obtained as described in Unit I.B.2.

1. (AR098–07) OPPT Structure Activity Team (SAT) Health Assessment of the Aerosol Spray Paint Cluster. pp. 48, 51, 56, 58, 59, and 60. April 16, 1992.

2. (AR098–06) Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint." November 10, 1992.

3. (AR098–02) OPPT RM1 Dossier: Aerosol Spray Paints Indoor Air Screen Cluster. December 28, 1992.

4. (AR098–029) RM2 Use Cluster for Aerosol Spray Paints Draft Final Report Preliminary Screening, Sherry Wise, USEPA/OPPT/EETD/RIB. November 1994.

5. (AR098–026) Letter and attachment from Stephen R. Sides, Director, Health and Safety Affairs National Paint and Coatings Association, to Christina Cinalli. EPA. June 7, 1994.

6. (AR098–032) Memorandum and attachment of Economic Assessment for the Proposed SNUR on Certain Chemical Substances Used in Aerosol Spray Paint Intended for Non-industrial, Indoor Spray Application from Timothy S. Lehman. EPA. February 27, 2001.

7. (AR098–033) Toxicological Profile for Lead (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1993.

8. (AR098–034)Toxicological Profile for Cadmium (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1999. Available in EPA Headquarters Library.

9. (AR098–035) Integrated Risk Information System Toxicological Review on Chromium (VI). EPA. Washington, DC, 1998.

10. (AR098–036) Integrated Risk Information System Toxicological Review on Cadmium, EPA. Washington, DC, 1998.

11. (AR098–037) Integrated Risk Information System Toxicological Review on Lead and Compounds (inorganic). EPA. Washington, DC, 1998.

12. (AR098–038) Monographs on the Evaluation of Carcinogenic Risk to Humans. Supplement 7. International Agency for Research on Cancer. Lyon, France, 1986.

13. (AR098–039) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 49. International Agency for Research on Cancer. Lyon, France, 1990.

14. (AR098–040) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 58. International Agency for Research on Cancer. Lyon, France, 1993.

15. (AR098–041) Tsuchiya, R., 1986. Lead. *Handbook on the Toxicology of Metals*. Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 14, p. 298.

16. (AR098–042) Friberg, L., Kjellstrom, T., and Nordberg, G.F., 1986. Cadmium. *Handbook on the Toxicology of Metals*. Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 7, p. 130.

17.(AR098–043) ACGIH Worldwide. 2001 TLVs and BEIs: Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices. Cincinnati, OH. http://www.acgih.org.

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not significant regulatory actions subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Similarly, this action is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule, if finalized, would not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

However, in the spirit of Executive Orders 13132 and 13175, and consistent with EPA policy to promote communications among EPA, State and Tribal governments, EPA specifically solicits additional comment on this proposed rule from State and Tribal officials.

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), and the "Attorney General's Supplemental Guidelines for the

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Evaluation of Risk and Avoidance of Unanticipated Takings" in the preparation of this proposed rule.

This action does not involve special considerations of environmental justice related issues which would be addressed under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined and hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no significant economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that was published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.06). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 119.92 hours per response and to cost ranged from $8,457 to $9,692 including the $2,500 EPA user fee (set at $100 for businesses with annual sales of less than $40 million). This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice, and maintain the required records.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, as instructed in Unit I.C. or to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any information collection forms to this address.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 21, 2001), because this action is not a significant regulatory action under Executive Order 12866, nor is it expected to adversely affect energy supply, distribution, or use.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding two new definitions in alphabetical order in § 721.3 to read as follows:

§ 721.3 Definitions.

* * * * *

Aerosol spray paint means a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers whose contents are applied without aid of an air compressor or other external aspirating device.

* * * * *

Indoor spray application means any application as a liquid from a pressurized container within a confined space including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., spray painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application.

* * * * *

3. By adding a new § 721.4583 to read as follows:

§ 721.4583 Certain compounds of lead, chromium, and cadmium.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances, C.I. Pigment Orange 20 (CAS No. 12656–57–4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758–97–6); Chromium Lead Molybdenum Oxide (CAS No. 12709–98–7); Lead Molybdenum Oxide (CAS No. 10190–55–3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446–14–2); and C.I. Pigment Red 104 (CAS No. 12656–85–8) are subject to reporting under this section for the significant new uses described in the paragraph (a)(2) of this section.

(2) The significant new use is use of any of the six chemical substances listed in paragraph (a)(1) of this section in aerosol spray paint for non-industrial, indoor spray application.

(b) [Reserved]

[FR Doc. 02–963 Filed 1–14–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–337, FCC 01–360]

Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on changes, if any, the Commission should make to its traditional regulatory requirements for incumbent local exchange carriers' (LECs) broadband service. In particular, it asks: What the relevant product and geographic markets should be for broadband services; whether incumbent LECs possess market power in any relevant market; and whether dominant carrier safeguards or other regulatory requirements should govern incumbent LECs provision of broadband service.

DATES: Comments are due March 1, 2002 and Reply Comments are due April 1, 2002.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–337, FCC 01–360, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this proceeding, the Commission initiates an examination of appropriate regulatory requirements for incumbent LECs' provision of domestic broadband telecommunications services (broadband services). The NPRM focuses on traditional Title II common carrier regulation, arising largely out of sections 201 and 202 of the Communications Act of 1934, as amended, as applied to incumbent LEC provision of broadband services. In particular, the Commission seeks comment on what regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service.

2. The Commission asks for comments on the nature and scope of the market for domestic broadband services. It also seeks comment on the relevant market dynamics—including intermodal competition and the nascent stage of market development for residential broadband services—affecting the provision of domestic broadband services. The Commission requests comment on the appropriate regulatory requirements under Title II of the Act for the provision of broadband services by incumbent LECs given current market conditions.

3. In particular, the Commission asks interested parties to address how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. As part of this proceeding, the Commission also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of broadband services, and asking the Commission to forbear from dominant carrier regulation of those services.

4. Background. The NPRM summarizes the various regulatory requirements the Commission has developed in the past, which involve streamlining regulation of firms in increasingly competitive markets, and competitive safeguards to ensure competition in related markets.

5. Identification of Incumbent LEC-Provided Broadband Services Markets. The Commission asks for comment aimed at defining and analyzing the relevant markets in which incumbent LECs provide these broadband services. Consistent with Commission precedent, our regulatory response should be guided by a full understanding of the existing market dynamics for broadband services. The Commission begins its analysis by asking questions about the relevant product and geographic markets for incumbent LEC-provided broadband services. It then analyzes what, if any, market power the incumbent LECs may possess in the relevant markets for broadband services.

6. Appropriate Regulatory Requirements. Once the Commission has defined the relevant product and geographic markets for broadband services, it can use this information to determine what regulatory requirements, if any, should govern the provision of broadband services. The Commission begins by briefly describing relevant portions of the existing regulatory structure for broadband services provided by incumbent LECs. Then it invites interested parties to propose alternative requirements for these broadband services in light of existing market and technological developments. The Commission encourages interested parties to develop proposals for new or modified regulatory requirements for broadband services.

I. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section V.B. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

II. Need for, and Objectives of, the Proposed Rules

8. In this proceeding, the Commission seeks comment on: (1) The nature and scope of the market for domestic broadband services; (2) the relevant market dynamics affecting the provision of domestic broadband services; and (3) the appropriate regulatory requirements for the provision of broadband services by incumbent LECs, given current market conditions. The basic elements of the existing regulatory requirements for incumbent LEC-provided broadband services were initially developed in an era of circuit-switched, analog voice services, and may no longer serve the public interest. Thus, the Commission asks interested parties to address how it can best balance the goals of

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encouraging advanced telecommunications investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. This proceeding also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of advanced services, and asking the Commission to forebear from dominant carrier regulation of those services.

III. Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 10, 201–202, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 160, 201–204, 214, 303, and 403, section 706 of the Telecommunications Act of 1996, and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

IV. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small local exchange carriers. The closest applicable definitions for this type of carrier under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide appears To be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,335 incumbent LECs. Although some of these carriers may not be independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 1,335 small entity incumbent LECs that may be affected by the proposals in the NPRM.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. The Commission expects that any proposal we may adopt pursuant this NPRM will decrease existing reporting, recordkeeping or other compliance requirements. As noted above, dominant carriers are currently subject to a broad range of regulatory requirements that are generally intended to protect consumers from unjust and unreasonable rates, terms, and conditions and unreasonable discrimination in the provision of communications services. The Commission's dominant carrier regulation includes rate regulation and tariff filing requirements, and also requires supporting information, which in some cases includes detailed cost data, to be filed by dominant carriers with their tariff filings. Incumbent LECs are subject to rate level regulation in the provision of their interstate access services. The BOCs and GTE are subject to mandatory price cap regulation, and several other incumbent LECs have entered price caps on an elective basis, while smaller incumbent LECs are regulated under rate-of-return regulation. In addition, in markets where carriers may have the incentive and ability to leverage control over bottleneck facilities to disadvantage competitors in related markets, the Commission has developed various safeguards to neutralize that ability. This NPRM seeks comment on what relevance, if any, these types of regulations have for broadband services provided by incumbent LECs, and asks whether it would be appropriate to streamline the traditional dominant carrier regulations of incumbent LECs' provision of broadband services.

VI. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The overall objective of this proceeding is to reduce existing regulatory burdens on incumbent LECs to the extent consistent with the public interest. The NPRM seeks specific proposals as to which existing regulations might be removed or streamlined in their application to broadband services, and asks parties to comment on whether incumbent LECs should be reclassified as non-dominant in the provision of broadband services. The NPRM further asks parties to discuss the extent to which different categories of broadband services face different levels of competition, warranting different regulatory treatment, and to address the extent to which the markets for different broadband services are at different stages in their development and thus should be treated differently for regulatory purposes. It asks what forms of regulation or de-regulation would best spur deployment of alternative technologies and facilities by existing and potential competitors, and seeks comment on whether existing regulation inhibits or stimulates the deployment of broadband services.

VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

16. None.

Ordering Clauses

17. Accordingly, pursuant to the authority contained in sections 2, 4(i)–4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this NPRM is adopted.

18. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–903 Filed 1–14–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338, CC Docket No. 96–98, CC Docket No. 98–147, FCC 01–361]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether the Commission should adopt a more granular approach to its unbundling analysis under section 251 of the Communications Act of 1934 (the Act) and on the identification of specific unbundling requirements for incumbent local exchange carriers (LECs). In particular, the Commission seeks comment on whether it should consider application of its unbundling requirements on the basis of service, geographic, facility, customer or other factors. In addition, the Commission seeks comment on whether to retain, modify or eliminate its existing definitions and requirements for network elements. The Commission also seeks comment on the role of state commissions and whether to retain or modify the existing triennial review process for examination of its unbundling requirements.

DATES: Comments are due March 18, 2002 and Reply Comments are due April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, telephone (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–338, FCC 01–361, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

Synopsis of the Notice of Proposed Rulemaking

1. Background. In the Third Local Competition Report and Order, (65 FR 19334, April 11, 2000) the Commission stated that it would reexamine its network element unbundling requirements every three years. In addition, the Commission intends to address a number of outstanding issues concerning the unbundling obligations of incumbent LECs raised by parties in the last several years.

2. The Commission seeks comment on how it should apply section 251(d)(2). In particular, the Commission seeks comment on how to align more directly its unbundling requirements with the multiple stated goals of the Act, such as the directive to encourage the deployment of advanced telecommunications capability. The Commission also seeks comment on whether and how to apply a more granular approach to its existing unbundling analysis by incorporating such refinements as considering for each network element the specific service to be provided, the geographic location, the facility to be unbundled, or the customer to be served. The Commission also seeks comment on what triggers might be adopted to limit or sunset unbundling requirements over time.

3. The Commission seeks comment on its existing rules for network elements. The Commission seeks comment on how to apply a more refined unbundling analysis to its existing unbundling requirements and whether it should retain, modify or eliminate any of these requirements. In addition, the Commission seeks comment on parties' practical experience with the current unbundling requirements. The Commission also seeks comment on a number of general issues including (1) application of the "just, reasonable and nondiscriminatory" standard of section 251(c)(3); (2) the relationship between services as governed by sections 251(c)(4) and 251(b)(1) and network elements as governed by sections 251(d)(2) and 251(c)(3); (3) the Commission's existing co-mingling restrictions; (4) the Commission's safe harbor provisions for "significant local usage;" (5) the relationship between section 271(c)(2)(B) and sections 251(d)(2) and 251(c)(3); (6) the applicability of sections 201, 202 or other sections of the Act to incumbent LEC wholesale services in the absence of a section 251 unbundling obligation; and (7) clarification of the term "superior" as used in the now invalidated rule 47 CFR 51.311(c).

4. State Role. The Commission seeks comment on the role of states in adoption and implementation of unbundling requirements. Among other alternatives, the Commission offers for comment a proposal to adopt national standards for unbundling that would leave specific implementatien to the states.

5. Procedural Issues. The Commission seeks comment on whether to retain or modify the existing triennial review process for the examination of its unbundling requirements. The Commission also seeks comment on the use of a sunset period for unbundling obligations and whether it needs to consider transitional mechanisms to address the potential financial impact that would be created by changes to unbundling obligations.

I. Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document provided above. The Commission will send a copy of the document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this document will be published in the **Federal Register**.

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II. Need for, and Objectives of, the Proposed Rules

7. In the Third Local Competition Report and Order, the Commission stated that it would reexamine its network element requirements within a three-year period. In this document, the Commission seeks comment on its unbundling analysis under sections 251(d)(2) and 251(c)(3) and whether it should retain, modify or eliminate any of the current unbundling requirements for network elements. Moreover, the Commission seeks comment on the role of the states and whether, in the future, it should retain a triennial review process.

III. Legal Basis

8. The legal basis for any action that may be taken pursuant to this document is contained in sections 1–4, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332.

IV. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. In a news release, the Commission indicated that there are 4,822 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

11. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories, and the number of small businesses in each. The Commission then attempts to further refine those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by the new rules.

14. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (*i.e.*, wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by rules adopted pursuant to this NPRM.

15. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,335 or fewer providers of local exchange service are small entities or small incumbent LECs that may be affected by the new rules.

16. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 204 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 204 or fewer small-entity IXCs that may be affected by rules adopted pursuant to this NPRM.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 349 CAP/CLEC carriers and 60 other LECs reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small-entity CAPs and 60 or fewer other LECs that may be affected by rules adopted pursuant to this NPRM.

18. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were engaged in the provision of operator services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 21 or fewer small-entity operator service providers that may be affected by rules adopted pursuant to this NPRM.

19. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 758 carriers reported that they were engaged in the provision of pay telephone services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 758 or fewer small-entity pay telephone operators that may be affected by rules adopted pursuant to this NPRM.

20. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 454 toll and 87 local entities reported that they were engaged in the resale of telephone service. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 454 or fewer small-toll-entity resellers and 87 or fewer small-local-entity resellers that may be affected by rules adopted pursuant to this NPRM.

21. *Toll-Free 800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to the Commission's most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 7,692,955 or fewer small-entity 800 subscribers, 7,706,393 or fewer small-entity 888 subscribers, and 1,946,538 or fewer small-entity 877 subscribers that may be affected by rules adopted pursuant to this NPRM.

22. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (*i.e.*, wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, it does not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to recent data, 808 carriers reported that they were engaged in the provision of either cellular or PCS services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than

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1,500 employees, and thus it is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 808 small cellular service carriers.

23. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to radiotelephone communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to a 1995 estimate by the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, assuming that this general ratio has not changed significantly in recent years in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

24. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order* (63 FR 2976, January 20, 1998), the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in three different-sized geographic areas: 3 nationwide licenses, 30 Regional Economic Area Group (REAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: 1 of the Nationwide licenses, 67% of the Regional licenses, 47% of the REAG licenses and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A second 220 MHz Radio Service auction began on June 8, 1999 and closed on June 30, 1999. This auction offered 225 licenses in 87 EAs and 4 REAGs. (A total of 9 REAG licenses and 216 EA licenses. No nationwide licenses were available in this auction.) Of the 215 EA licenses won, 153 EA licenses (71%) were won by bidders claiming small business status. Of the 7 REAG licenses won, 5 REAG licenses (71%) were won by bidders claiming small business status.

25. *Private and Common Carrier Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to recent data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 172 small paging carriers. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

26. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (*i.e.*, wireless) companies, and recent data show that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. Consequently, the Commission estimates that there are no more than 172 small mobile service carriers.

27. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in blocks A and B. There were 90 winning bidders that qualified as small entities in the C block auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for blocks D, E and F. On March 23, 1999, the Commission held another auction (Auction No. 22) of C, D, E and F block licenses for PCS spectrum returned to the Commission by previous license holders. In that auction, 48 bidders claiming small business, very small business or entrepreneurial status won 272 of the 341 licenses (80%) offered. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 winning C block bidders, the 93 qualifying bidders in the D, E and F blocks, and the 48 winning bidders from Auction No. 22, for a total of 231 small-entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have no more than 1,500 employees, and no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for our purposes here, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

29. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

30. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

31. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) "Small entities," those with revenues of no more than $15 million in each of the three previous calendar years; and (2) "very small entities," those with revenues of no more than $3 million in each of the three previous calendar years. The regulations defining "small entity" and "very small entity" in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities.

32. *Marine Coast Service.* Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, and for future public coast auctions, the Commission defines a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. A "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the Commission's definition, which has been approved by the SBA.

33. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For the Commission's purposes here, it will utilize the SBA's definition applicable to radiotelephone companies'*i.e.*, an entity with no more than 1,500 persons. Under this definition, the Commission estimates that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities.

34. *Local Multipoint Distribution Service.* The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a small business as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $15 million. Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87%) were small or very small businesses.

35. *24 GHz—Incumbent 24 GHz Licensees.* The rules that the Commission may later adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry, providing that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. Both Teligent and TRW, Inc. appear to have more than 1,500 employees. Therefore, it appears that no incumbent licensee in the 24 GHz band is a small business entity.

36. *Future 24 GHz Licensees.* The rules that the Commission may later adopt could also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined "small business" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small business" in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of "small business" and apply it to the 24 GHz band under the name "entrepreneur." With regard to "small business," we shall adopt the definition of "very small business" used for 39 GHz licenses and

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PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million. Finally, "very small business" in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed $3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

37. *39 GHz.* The Commission held an auction [Auction No. 30] for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band). For this auction, the Commission defined a small business as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than $40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these definitions. Of the 29 winning bidders in Auction No. 30, 18 bidders (62%) were small business participants.

38. *Multipoint Distribution Service (MDS).* This service involves a variety of transmitters, which are used to relay data and programming to the home or office, similar to that provided by cable television systems. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business.

39. MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this analysis, the Commission finds there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

40. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

41. *Wireless Communications Services (WCS).* This service can be used for fixed, mobile, radio-location and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one winning bidder that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

42. *General Wireless Communication Service (GWCS).* This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS in this band. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million. By letter dated March 30, 1999, NTIA reclaimed the spectrum allocated to GWCS and identified alternative spectrum at 4940–4990 MHz. On February 23, 2000, the Commission released its *Notice of Proposed Rulemaking* (65 FR 14230) in WT Docket No. 00–32 proposing to allocate and establish licensing and service rules for the 4.9 GHz band.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

43. In this NPRM, we seek comment on crafting unbundling rules that promote the goals of the Act and on a more granular approach to unbundling. In addition, the Commission asks for comment on how to involve the experience and expertise of state commissions. As a result, our unbundling regulations may require incumbent LECs to unbundle their networks by facility, service, or geography, rather than on a national basis for an entire element as they currently do. However, to identify which factors advancing the goals of the Act are relevant to an unbundling analysis, the Commission asks about the weight to assign to reducing regulatory obligations as alternatives to the incumbent's network becomes available, and whether the unbundling obligations are administratively practical.

VI. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. The RFA requires an agency to describe any significant small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

45. In this NPRM, we seek comment on refining our unbundling rules by examining whether we should consider the type of customer that a requesting carrier seeks to serve. In particular, the Commission asks whether the availability of UNEs should differ on the basis of whether the requesting carrier serves business or residential customers, and whether to have different rules for facilities serving larger business customers. The Commission asks questions in considerable depth with regard to the carve-out for the residential market for local switching, and seek comment on the practical experience of the carve-out has worked in practice and whether a substantially revised approach is warranted. The size of the entity as a subscriber to telecommunications services is therefore an important component of our unbundling analysis.

46. In addition to examining the economic impact on customers, the Commission also examines the economic impact on carriers. It especially seeks comment from small entities on these issues. As the Commission considers undertaking a more granular approach, it recognizes that the resulting rules could be more administratively burdensome on carriers because it would be more difficult to keep track of where and under what circumstances certain elements must be unbundled. Accordingly, the Commission asks for comment about balancing any administrative burden against the benefits of a refined approach to unbundling. Particularly with regard to definitions of different network elements, the Commission asks whether there are less burdensome alternatives available to achieve the goals of the Act.

VII. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

Ordering Clauses

48. Pursuant to the authority contained in sections 1–4, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332, this NPRM *Is adopted.*

49. The Commission's Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this document, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–902 Filed 1–14–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 10
Tuesday, January 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Metolius Basin Forest Management Project, Deschutes National Forest, Jefferson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to evaluate options for addressing forest health concerns in the southern half of the Metolius Basin. The main objectives of the project will be to reduce the risk of losing important forest habitats to catastrophic wildfire, insects and disease; reduce the risk of impacts from wildfire on residents, visitors and tribal resources; enhance late-successional habitats; protect and restore riparian areas; to evaluate the road network. The project area is located approximately 15 miles northwest of Sisters, Oregon.

The Forest Service Proposed Action would include combinations of thinning forest stands, mowing brush, and controlled burning of forest fuels on approximately 10,000 acres of the 17,000-acre project area. Approximately, 1,400 acres of thinning would occur within pre-existing tree plantations. Of the 1,800 acres of riparian reserves, an estimated 25% (450 acres) may be treated through thinning or prescribed burning using low impact methods (primarily implemented by hand crews). In addition, the Proposed Action would evaluate the current road network in the project area to identify a more efficient and environmentally sensitive road system. Options for managing the road system may include closing roads that are in excess of public needs, and improving maintenance on remaining roads to reduce resource impacts. No construction of permanent roads is proposed.

DATES: Issues and comments concerning the Proposed Action should be received by February 21, 2002.

ADDRESSES: Submit written comments regarding the Proposed Action to Kris Martinson, Project Team Leader, P.O. Box 249, Sisters, Oregon 97759.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Kris Martinson, Attention: Metolius Basin Forest Management Project, P.O. Box 249, Sisters, Oregon 97759, phone 541–549–7730.

SUPPLEMENTARY INFORMATION: The Metolius Basin is an important place for the many people who reside in, or visit the area. The community of Camp Sherman, 5 tracts of summer homes, and 9 popular recreation sites are located in the project area. The Metolius Basin also has important values for the Confederated Tribes of Warm Springs, whose reservation lies just north of the Sisters Ranger District, and through which a portion of the Metolius River flows. The Metolius Basin is also a place of very high ecological significance. It is a Late-Successional Reserve, and provides habitat for many rare plants and animals, including northern spotted owl, goshawk, white-headed woodpecker, bull trout, and Peck's penstemon.

Alternatives to be considered will include deferring any actions at this time (No Action) and several action alternatives that would include different methods for meeting the main objectives of the project. The selected alternative may result in an amendment to the LRMP (Forest Plan) standards and guidelines on visual quality due to the potential visibility of management activities (harvest debris, and scorched and blackened trees) beyond the one-year limit.

Preliminary issues that relate to the Proposed Action include: (1) The upper diameter limit of the trees that should be removed to meet project objectives, (2) potential effects on water quality in the Metolius Wild and Scenic River and its tributaries from thinning, (3) potential effects of the proposed action on late-successional species that are associated with dense, interior forests (the proposed actions will open up portions of the forest), (4) debate about the best actions to help reduce the risk of catastrophic wildfire, and (5) concern about changes in road access within the project area (some roads may be closed).

A scoping notice was sent out locally on October 10, 2001 indicating the Forest's intent to plan and implement actions in the Metolius Basin to address forest health and risk concerns. The scoping letter and additional information about this project is posted on the Deschutes National Forest website (www.fs.fed.us/r6/centraloregon). Future public participation opportunities will be available throughout the planning process.

The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be completed in October 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by February 2003. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Metolius Basin Forest Management Project.

The Forest Service is the lead agency. Leslie Weldon, Forest Supervisor, is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need for this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: January 3, 2002.

Leslie Weldon,

Forest Supervisor.

[FR Doc. 02–922 Filed 1–14–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Palmer Quarry Expansion, Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to expand an existing rock quarry. The Proposed Action will be in compliance with the 1990 Mt. Hood National Forest Land and Resource Management Plan (Forest Plan) as amended by the Northwest Forest Plan, which provides the overall guidance for management of this area. The Proposed Action is within the Salmon River watershed on the Zigzag Ranger District and scheduled for implementation in fiscal year 2003. The Mt. Hood National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by March 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the Proposed Action in this area to Jim Tierney, Project Coordinator, 595 NW Industrial Ways, Estacada, Oregon 97023 (phone: 503–630–8751). Comments may also be sent by FAX (503–630–2299). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Jim Tierney (address and phone number listed above), or to Mike Redmond, Environmental Coordination, 16400 Champion Way, Sandy, Oregon 97055–7248 (phone: 503–668–1776).

SUPPLEMENTARY INFORMATION: The Proposed Action includes expansion of the existing Palmer rock quarry on approximately 60 acres of National Forest system land. The proposal may also include road improvements on the access to the quarry. The excavated material from the quarry would be used by the Forest Service and the Oregon Department of Transportation of maintenance and reconstruction of roads, including State Highways 26 and 35.

The project area is located approximately 4 miles south of Government Camp, in Section 2, T.4S., R.8–½E., Willamette Meridian, Clackamas County, Oregon. This analysis will evaluate a range of alternatives for implementation of the project activities including a no-action alternative. The project area does not include any wilderness, roadless areas, wild and scenic rivers, late successional reserves, or riparian reserves.

Some of the preliminary issues that have been identified include: Visual quality as seen from key view points on the Forest, and traffic management conflict between commercial use and recreation.

The scoping process will include the following: Identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives.

The draft EIS is planned to be filed with the Environmental Protection Agency (EPA) and available for public review by September 2002. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the NOA appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. It is important that those interested in this proposal on the Mt. Hood National Forest participate at that time.

Comments received in response to this Proposed Action, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality,

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and where the request is denied, the agency will return the submission and notify the requestor that the comments may be resubmitted with or without names and addresses within thirty days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by March 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The responsible official is Gary Larsen, Mt. Hood National Forest Supervisor. The responsible official will decide which, if any, of the alternatives will be implemented. The Palmer Quarry Expansion decision and rationale will be documented in a Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 28, 2001.

Kathryn J. Silverman,

Acting Forest Supervisor.

[FR Doc. 02–921 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Red Knight Restoration Project, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On August 16, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the Red Knight Restoration Project was published in the **Federal Register** (64 FR 44477). Since the project proposed action has been postponed and the date for any further environmental analysis is unknown, the 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Jayne Goodwin, Red Knight Project Leader, Chemult Ranger District, P.O. Box 150, Chemult, Oregon 97731, telephone 541–365–7072 or e-mail at: *jgoodwin/r6pnw_winema@fs.fed.us.*

Dated: December 28, 2001.

Jack B. Sheehan,

Acting Forest Supervisor.

[FR Doc. 02–923 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Winema and Fremont National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Winema and Fremont Resource Advisory Committee will hold its first meeting on January 31–February 1, 2002. The meeting will be held in Room 20 at the Klamath County Courthouse, 316 Main Street, in Klamath Falls, Oregon. The meeting will begin at 9:30 AM and end at approximately 4:30 PM. both days. Day 1 agenda topics are: (1) Introductions; (2) Federal Advisory Committee Act (FACA) overview; (3) Resource Advisory Committee (RAC) Roles and Responsibilities; (4) RAC Rules and Bylaws; (5) RAC Guidebook Review; (6) RAC Communication; (7) Future meetings and agendas; (8) Project Process for submission; (9) County Update on Title III Projects; (10) Election of RAC Chairperson; and (11) Public comments. Day 2 will be devoted to a review of Title II projects submitted by the National Forests and making funding recommendations to the Secretary of Agriculture for fiscal year 2002 projects.

All Winema and Fremont Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Bill Aney, Designated Federal Official, USDA, Paisley Ranger District, Fremont National Forest, PO Box 67, Paisley OR 97636 (541) 943–4401 or Chuck Graham, Forest Supervisor at (541) 947–2151 or 883–6714.

Dated: January 3, 2002.

Charles Graham,

Forest Supervisor, Winema and Fremont National Forests.

[FR Doc. 02–949 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Central Closed/Estancia Basin (Torrance, Lincoln, and Socorro Counties, *et al*), EQIP for GPAs, New Mexico

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the U.S. Department of Agriculture, Natural Resources Conservation Service, in New Mexico, gives notice that an environmental impact statement is not being prepared for:

Central Closed/Estancia Basin (Torrance, Lincoln and Socorro Counties)
Lower Rio Grande (Sierra and Socorro Counties)
Irrigated Cropland of the Southwest Closed Basins (Dona Ana and Luna Counties)
Lesser Prairie Chicken (Roosevelt, Lea, Chaves and Curry Counties)
Macho/Gallo Watershed (Lincoln County)
Tramperos Creek Watershed (Union and Harding Counties)

Upper Tularosa Basin Watershed Treatment (Lincoln and Socorro Counties)
Zuni River Watershed (Cibola and McKinley Counties)
Eastern NM Conservation Buffer Initiative (Union, Mora, Harding, San Miguel, Quay, Curry, Roosevelt and Lea Counties)
Cougar/Torrance Watershed (Torrance County)
Estancia Closed Underground Watershed (Torrance, Santa Fe and Bernallilo Counties)
Black River/Delaware River (Eddy County)
Abo Arroyo Watershed (Torrance, Socorro and Valencia Counties)
Rio Hondo Watershed Treatment (Lincoln and Otero Counties)
Yellow Dog Canyon (Socorro County)
Irrigated Cropland of Hidalgo (Hidalgo County)
Upper Canadian River Watershed (Union, Colfax, Harding, Mora and San Miguel Counties)
Pecos River Watershed Aquifer Brush Control (Chaves County)
Eastern Sangre De Cristo Mountain Watershed (Mora, San Miguel and Taos Counties)

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino III, State Conservationist, Natural Resources Conservation Service, 6200 Jefferson, NE, Albuquerque, NM 87109–3734, Telephone (505)761–4400.

Copies of these environmental assessements are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: *http://www.nm.nrfcs.usda.gov/techserv/ea.htm.*

SUPPLEMENTARY INFORMATION: The environmental assessments of these federally assisted actions indicate that the projects will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Rosendo Trevino III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for these projects. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Rosendo Trevino III.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: December 20, 2001.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 02–913 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservaiton Service

TV–13a Oaks/Avery Canal Hydrologic Restoration Project, Iberia and Vermilion Parishes, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oaks/Avery Canal Hydrologic Restoration Project, Iberia and Vermilion Parishes, Louisiana.

FOR FURTHER INFORMATION, CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

TV–13a Oaks/Avery Canal Hydrologic Restoration Project Notice of Finding of No Significant Impact

The project will minimize marsh loss which is attributed to saltwater intrusion, shoreline deterioration, and bankline erosion within the project area. This will be accomplished by the installation of 800 linear feet of bankline stabilization on Oaks Canal, 6,500 linear feet of bankline stabilization along the Gulf Intracoastal Waterway (GIWW), one (1) low sill weir structure at the "cowpath" and approximately 900 linear feet of bankline stabilization in a manmade channel east of Oaks Canal and north of GIWW, one (1) armored plug in a breach in the north bank of the Union Oil Canal, and 1,100 linear feet of spoilbank refurbishment on the Union Oil Canal.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–911 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue two revised conservation practice standards in Section IV of the FOTG. The revised standards are: Land Smoothing (466); and Wetland Wildlife Habitat Management (644). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

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FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 10, 2001.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–912 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on February 12, 2002, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Committee Annual Report for 2001.
3. Goals for 2002.
4. Status on Wassenaar Arrangement proposals.
5. Update on implementation of regulations.
6. Committee's proposed change to 6A002 (Optical sensors).
7. Update on Wassenaar Arrangement negotiating cycle.
8. Review of status on Uncooled IR licensing.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 9, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–1016 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 010412092–1296–04]

Report on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Publication of Executive Summary of Report from the Secretary of Commerce to the President on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security/ Notice of availability of full report.

SUMMARY: On October 29, 2001, the Secretary of Commerce ("Secretary") submitted a report to the President summarizing the findings of an investigation conducted by the Department pursuant to Section 232 of the Trade Expansion Act of 1962, into the effect of imports of iron ore and semi-finished steel on the national security of the United States. Based on the evidence gathered in that investigation, the Secretary was unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports of these items. Included herein is the Executive Summary of the Secretary's report to the President.

ADDRESSES: Copies of the Secretary's report and certain records related to this investigation (with any business confidential information redacted) are accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the above documents are maintained on the Bureau of Export Administration's Web page, which can be found at *http://www.bxa.doc.gov* (*see* Freedom of Information Act ("FOIA") heading). Alternatively, any person may request that a copy of the Secretary's report be sent to him by calling (202) 482–0500.

FOR FURTHER INFORMATION CONTACT: Daniel O. Hill, Director, Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4506.

SUPPLEMENTARY INFORMATION:

On February 1, 2001, the Secretary initiated an investigation under Section 232 to determine the effects on the national security of imports of iron ore and semi-finished steel. This investigation was conducted at the request of Representative James Oberstar of Minnesota and Representative Bart Stupak of Michigan. For further details on this investigation, see the **Federal Register** notices of February 6, 2001 (66 FR 9067), April 18, 2001 (66 FR 19917), June 14, 2001 (66 FR 32315), and July 10, 2001 (66 FR 35927).

On October 29, 2001, the Secretary concluded his investigation and submitted a report to the President. Based on the evidence gathered in that investigation, the Secretary was unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports of these items. The Executive Summary of the Secretary's October 2001 report to the President, titled "The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security," is reproduced below in accordance with 15 CFR 705.10.

Dated: January 10, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

I. Executive Summary

This report summarizes the findings of an investigation conducted by the Secretary of Commerce ("Secretary") pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. 1862 ("Section 232"), into the effects of imports of iron ore and semi-finished steel on the national security of the United States. The conclusions of this report are as follows:

(1) Iron ore and semi-finished steel are important to U.S. national security. Specifically, iron ore and semi-finished steel— as raw and semi-finished materials consumed by certain segments of the steel industry in the production of finished steel products—are needed to satisfy the requirements for finished steel products of (i) the U.S. Department of Defense ("DoD"), and (ii) certain industries that are critical to the minimum operations of the U.S. economy and government.

(2) Imports of iron ore and semi-finished steel could threaten to impair U.S. national security in either of two ways: (i) through excessive domestic dependency on unreliable foreign suppliers, or (ii) if such imports fundamentally threaten to impair the capability of the U.S. iron ore and semi-finished steel industries to satisfy national security requirements.

(3) In fact, however, there is no probative evidence that imports of iron ore or semi-finished steel threaten to impair U.S. national security. There is neither evidence showing that the United States is dependent on imports of iron ore or semi-finished steel, nor evidence showing that such imports fundamentally threaten the ability of domestic producers to satisfy national security requirements. Specific findings supporting this conclusion include the following:

- National defense requirements, as communicated to the Department of Commerce ("Department") by DoD, for finished steel—and thus for iron ore and semi-finished steel as inputs—are very low and likely to remain flat over the next five years. DoD's current and projected demand for iron ore and steel can be readily satisfied by domestic production. Moreover, DoD already has established domestic preferences that apply to essentially all of the steel used in weapons systems; accordingly, no weapons system is dependent upon foreign steel. DoD has concluded that "imports of iron ore and semi-finished steel do not currently affect the national security when assessed in terms of the ability to meet defense demands."
- The demand of critical industries for iron ore and semi-finished steel can be readily satisfied by domestic production, even assuming that all such demand were necessary to preserve the national security (which is not the case).
- Consideration of other relevant factors, as dictated by Section 232, does not demonstrate that imports of iron ore or semi-finished steel threaten to impair U.S. national security. U.S. industry currently has, and anticipates continuing to have in the future, sufficient human resources, products, raw materials, and other supplies and services needed for the production of iron ore and semi-finished steel.
- Imports of iron ore and semi-finished steel are from diverse and "safe" foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil).
- Although domestic manufacturers of iron ore and semi-finished steel clearly are enduring substantial economic hardship, there is no evidence that imports of these items (which account for approximately 20 and 7 percent of U.S. iron ore and semi-finished steel consumption, respectively) fundamentally threaten to impair the capability of U.S. industry to produce the quantities of iron ore and semi-finished steel needed to satisfy national security requirements, a modest proportion of total U.S. consumption.
- These conclusions take into account the campaign against terrorism resulting from the events of September 11, 2001, and the requirements of related military operations.

Accordingly, the Department is unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports.

[FR Doc. 02–977 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2002]

Foreign-Trade Zone 143—Sacramento, California, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, requesting authority to expand its zone to include an additional site in the Sacramento, California, area, adjacent to the San Francisco Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 7, 2002.

FTZ 143 was approved on August 6, 1987 (Board Order 360, 52 FR 30698, 8/17/87) and expanded on December 15, 1997 (Board Order 944, 62 FR 67043, 12/23/97) and January 18, 2000 (Board Order 1074, 65 FR 5495, 2/4/00). The general-purpose zone project currently consists of the following sites: *Site 1* (686 acres)—within the Port of Sacramento, Industrial Blvd. and Boatman Ave., W. Sacramento; *Site 2* (1,280 acres)—Lincoln Airport Business Park, Aviation Blvd, Lincoln, some 25 miles northeast of Sacramento; and, *Site 3* (1,574 acres)—Chico Municipal Airport complex and adjacent industrial development area, Chico.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (Proposed Site 4) in Sacramento County. *Proposed Site 4* (976 acres)—McClellan Park (the former site of the McClellan Air Force Base), 3140 Peacekeeper Way, McClellan, California. The site is located in an unincorporated area of the County of Sacramento. The County of Sacramento selected McClellan Business Park, LLC to redevelop and manage the former 2,856-acre McClellan Air Force Base. The area to be included in the proposed zone is currently owned by the U.S. Air Force, but ownership is in the process of being conveyed to the County of Sacramento and McClellan Business Park LLC. (The property is currently leased to the County of Sacramento and McClellan Business Park, LLC as part of the conveyance process.) A variety of businesses are already established on the site performing activities including services, manufacturing and processing, and warehousing and distribution. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis. The site contains certain historic properties which will be managed in accordance with the agreement between the United States Air Force and the California State Historic Preservation Officer.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to

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investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW, Washington, DC 20230.

The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Port Director, Sacramento-Yolo Port District, 3251 Beacon Boulevard, Suite 210, W. Sacramento, CA 95798.

Dated: January 7, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–974 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2002]

Foreign-Trade Zone 124—LaPlace, Louisiana, Application for Expansion—Subzone 124H; Bollinger Shipyards Lockport, LLC; (Shipbuilding), LaFourche, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting authority to expand Subzone 124H, at the Bollinger Shipyards Lockport, LLC (Bollinger) shipbuilding facility located in Lockport, Louisiana, to include six new sites in Lafourche, Jefferson and Orleans Parishes. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 8, 2002.

Subzone 124H was approved on July 10, 1998 (Board Order 993, 63 FR 39069, 7–21–98). The subzone currently consists of five sites: *Site 1* (250 acres)—Bollinger Lockport, 8365 LA Hwy. 308, Lockport; *Site 2* (168 acres)—Bollinger Larose, LLC, 1515 Highway 24, Larose; *Site 3* (67 acres)—Bollinger Marine Fabricators, LLC, 816 Bollinger Lane, Amelia; *Site 4* (101 acres)—Bollinger Morgan City, LLC, 806 Bollinger Lane, Amelia; and, *Site 5* (50 acres)—Bollinger Amelia Repair, LLC, 606 Ford Industrial Road, Amelia. The applicant is now requesting authority to expand the subzone to include six additional sites: proposed *Site 6* (3 acres)—Bollinger Algiers, LLC, 434 Powder St., New Orleans; proposed *Site 7* (40 acres)—Bollinger Gretna, 4640 Peters Rd., Harvey; proposed *Site 8* (58 acres)—Bollinger Gulf Repair, 3900 Jourdan Road W, New Orleans; proposed *Site 9* (30 acres) Bollinger Quick Repair, 615 Destrehan Ave., Harvey; proposed *Site 10* (4 acres) Bollinger Fourchon, LLC, 106 Norman Doucet Dr., Golden Meadow; and, proposed *Site 11* (21 acres)—Chand, LLC, 157 Highway 654, Matthews. The Bollinger facilities are used for the construction and repair of commercial and government vessels for domestic and international customers.

This proposal does not request any new authority under FTZ procedures in terms of products or components, but it does involve a potential increase in the facility's level of production under FTZ procedures. Bollinger will operate the proposed sites as an integral part of Subzone 124H.

The proposed expanded manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, One Canal Place, 365 Canal Street, Suite 1170, New Orleans, LA 70130.

Dated: January 8, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–975 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its twelfth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene Resin from Italy. The review covers one producer/exporter of the subject merchandise, Ausimont SpA, and its U.S. affiliate, Ausimont USA (Ausimont). The period of review (POR) is August 1, 1999, through July 31, 2000. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Amber Musser, at (202) 482–1756 or (202) 482–1777, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2001).

Background

On September 10, 2001, the Department published in the **Federal Register** the preliminary results of the twelfth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene Resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 66 FR 46996 (September 10, 2001) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On October 10, 2001, we received a case brief from the petitioner, E.I. Dupont de Nemours & Company (Dupont). We did not receive a case brief from the respondent, Ausimont. On October 17, 2001, we received a rebuttal brief from Ausimont. No other interested parties filed case or rebuttal briefs.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and U.S. Customs purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 8, 2002, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the public version of this memorandum, which is on file in Room B–099 of the main Commerce building. In addition, a complete version of the public version of the *Decision Memorandum* can be accessed directly on the Web at *ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made an adjustment to the calculation methodology in determining the final dumping margins in the proceeding. For the final determination, we disallowed gains on the sale of securities as an offset to financial expense and recalculated the respondent's interest expense ratio. This adjustment is discussed in the *Decision Memorandum*.

As a result of our review, we determine that the following weighted-average margin exists for the period of August 1, 1999, through July 31, 2000:

Exporter/Manufacturer	Weighted-Average
Ausimont SpA	2.15

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. Where the assessment rate is above *de minimis*, we will instruct the Customs Service to assess duties on all entries of subject merchandise by that importer. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the "All Others" rate established in the less-than-fair-value investigation (53 FR 26096, July 11, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

1. Financial Expense Calculation.
2. Application of the Special Rule.
3. Calculation of Constructed Export Price Profit Ratio.
4. Scope of the Review.

[FR Doc. 02–970 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V, and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 1999, through July 31, 2000.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3477.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Extension of Time Limit for Final Results

The Department of Commerce (the Department) published the preliminary results of this administrative review on September 13, 2001 (66 FR 47632). The deadline for completing the final results of the review is January 11, 2002. Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Due to the complexity of the issues, such as product matching and whether certain sales are outside the ordinary course of trade, the Department determines that it is not practicable to complete the final results of this review within the statutory time limit. Therefore, the Department is extending the time limit for the final results in this review to March 12, 2002.

Dated: January 9, 2002.

Susan Kuhbach,

Acting, Deputy Assistant Secretary, for AD/CVD Enforcement I.

[FR Doc. 02–973 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 15, 2002.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1999, through July 31, 2000, and three firms: Zhenxing Chemical Industry Company (Zhenxing), Yude Chemical Industry Company (Yude), and Baoding Chemical Industry Import and Export Corporation (Baoding). The final results of this review indicate that there are dumping margins only for Zhenxing and the "PRC enterprise."

We find that Baoding acted as Zhenxing's shipping agent in preparing Zhenxing's export documents and coordinating its shipments of subject merchandise to the United States during the POR. Therefore, we are rescinding the review of Baoding since we did not find Baoding to be involved in any sales of sulfanilic acid to the United States other than those reported by Zhenxing. In addition, we are rescinding the review with respect to Yude because Yude did not export the subject merchandise to the United States during the period of review (POR). We have made changes in the margin calculations for these final results which are listed below in the "Final Results of the Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 at (202) 482–3964 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On September 10, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid. *See Sulfanilic Acid from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (Preliminary Results)*, 66 FR 47003 (September 10, 2001). Petitioner filed a supplemental submission on September 28, 2001, of additional publicly available information (PAI) to value factors of production. On October 1, 2001, respondents also submitted, on a timely basis, PAI for the Department's consideration in the instant administrative review. Petitioner filed additional factual information in rebuttal to respondents PAI on October 10, 2001. On November 2, 2001, the Department issued the verification report discussing our on-site inspection of relevant sales and financial records. Respondents filed a case brief with the Department on November 16, 2001, and petitioner submitted a rebuttal brief to the Department on November 21, 2001. Finally, at respondents' request, a hearing was held at the Department on November 29, 2001. The hearing was attended by both respondents and petitioner.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review period is August 1, 1999 through July 31, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturer's facilities, and the examination of relevant sales and financial records. The results of our verification are discussed in the verification report, a public version of which is on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building.

Final Rescission of Review with Respect to Yude

In the last administrative review, the Department did not reach the issue of whether to collapse Zhenxing and Yude due to our determination to assign the PRC-wide rate to Yude and Zhenxing as adverse facts available. *See Sulfanilic Acid from the People's Republic of China; Final Results of Administrative Review*, 66 FR 15837 (March 21, 2001) and accompanying Decision Memo at Comment 10, on file in the CRU. For purposes of this review, the Department did not analyze the issue of whether to collapse Yude and Zhenxing because we are rescinding the review with respect to Yude, as Yude did not export the subject merchandise to the United States during the POR.

Separate Rate Analysis for Zhenxing

It is the Department's standard policy to assign to all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Mitsubishi Heavy Industries, Ltd.*, v. *U.S.*, 54 F.Supp 2d 1183, (CIT 1999). Based on our findings at verification and our analysis of comments received from the interested parties, we continue to find an absence of government control, both in law and in fact, over Zhenxing's export activities, and determine that a separate rate should be applied to Zhenxing. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 2001. A public version of this memorandum is on file in the CRU.

Analysis of Comments Received

As noted above, specific issues and comments raised in the respondents' case brief and petitioner's rebuttal brief are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov*.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. For a discussion of the issues and changes in the margin calculation for Zhenxing, refer to the Decision Memorandum and the Department's Final Results Analysis Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated January 8, 2002. A public version of these memoranda are on file in the CRU.

Final Results of Review

We determine the weighted average dumping margin for Zhenxing for the period August 1, 1999 through July 31, 2000 to be 54.40 percent. Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these final results within five days after the date of publication of this notice.

Duty Assessments and Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

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Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I: Issues Discussed in Decision Memorandum

(*See* Web address *http://ia.ita.doc.gov*)

Comments and Responses

1. Surrogate Value for Aniline.
2. Calculation of Indirect Selling Expenses.
3. Calculation of Packing Expenses.
4. Calculation of Overhead used for the Constructed Export Price.
5. Deduction of Duties from U.S. Sales Price.

[FR Doc. 02–971 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results and partial rescission of administrative review of the countervailing duty order on stainless steel sheet and strip from the Republic of Korea for the period November 17, 1998 through December 31, 1999 (66 FR 47008). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the preliminary results and our analysis of the comments received, the Department has revised the net subsidy rate for Inchon Iron and Steel Co. (Inchon). Therefore, the final results differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Darla Brown, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department conducted this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (2001) (CVD Regulations), unless otherwise indicated.

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers the Inchon. This review covers the period November 17, 1998 through December 31, 1999 and fourteen (14) programs.

On August 6, 1999, the Department published in the **Federal Register** the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999).

We published the preliminary results of the instant administrative review in the **Federal Resister** on September 10, 2001 (66 FR 47008). We invited interested parties to comment on the results. On October 17, 2001, we received case briefs from petitioners and respondents. On October 22, 2001, we received rebuttal briefs from petitioners and respondents.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 HI–C." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) dated January 8, 2002, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading "**Federal Register** notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for Inchon. For the period November 17, 1998 through December 31, 1999, we determine the net subsidy for Inchon to be 4.21 percent *ad valorem*:

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We will instruct the Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period November 17, 1998 through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of duties prior to liquidation of the relevant entries during this review period.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Summary

Methodology and Background Information

I. Subsidies Valuation Information
  1. Benchmarks for Loans and Discount Rate
  2. Allocation Period
  3. Attribution (Treatment of Subsidies Received by Trading Companies)
II. Analysis of Programs
  A. Programs Conferring Subsidies From the Government of Germany
  1. The GOK's Direction of Credit
  2. Article 17 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Overseas Market Development
  3. Electricity Discounts under the Requested Loan Adjustment Program (RLA)
  4. POSCO's Provision of Steel Inputs for Less than Adequate Remuneration
  B. Programs Determined to Be Not Used
  1. Article 16 of the TERCL: Reserve for Export Loss
  2. Investment Tax Credits under Article 10, 18, 25, 26, 27 and 71 of TERCL
  3. Loans from the National Agricultural Cooperation Federation
  4. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act
  5. Reserve for Investment under Article 43–5 of TERCL
  6. Export Insurance Rates Provided by the Korean Export Insurance Corporation
  7. Special Depreciation of Assets on Foreign Exchange Earnings
  8. Excessive Duty Drawback
  9. Short-Term Export Financing
  10. Export Industry Facility Loans
III. Analysis of Comments
  Comment 1: Ministerial Errors
  Comment 2: Program-wide Change
  Comment 3: U.S. Dollar Interest Rate Benchmark for Inchon's Loans

[FR Doc. 02–972 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government owned inventions available for licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 99–039US.
Title: Fiber Optic Tomographic Plasma Uniformity Monitor.

Abstract: The tomographic plasma uniformity monitor simultaneously measures the optical emissions of a plasma from many different directions through two small windows in order to determine the plasma distribution within a vacuum chamber. This accomplished with two lens arrays coupling the light from the plasma into fiber optic cables. The light transmitted through each fiber optic cable is simultaneously recorded with a CCD camera. An appropriate tomographic inversion program can then be used to convert the measured intensities into a two dimensional map of the plasma density. This technology is available only for non-exclusive licensing.

NIST Docket Number: 99–002US.
Title: Three Degree-Of-Freedom Telescoping Geometry Scanner.

Abstract: The invention relates to a three-dimensional measuring device, comprising a rotating 360 degree sensor head, a laser scanner and an extendable mast system. The sensor head contains a 360 degree rotating multi-faceted mirror, which determines total path distance from the laser scanner to a particular target. Angular orientations on both the scanner and the faceted mirrors are calculated by a precision encoding system. The measured total path distance, mast system extension, scanner head rotation, mirror rotation angles, and mast deflection are all used to calculate the location of a target point in 3–D space relative to the scanner. The sensing device can be utilized in the construction and nuclear power areas. In the nuclear power area, the mast system can be extended into a contaminated area which the sensor remains outside the contaminated area, thereby avoiding contamination problems.

NIST Docket Number: 98–001US.
Title: Electrophoresis Gels.

Abstract: The present invention provides electrophoresis apparatus and electroporesis methods employing the present invention provides electrophoresis apparatus and electrophoresis methods employing gellan gum based gels employing divalent metal cation and diamine cross-linking agents. The gels are reversible under conditions that do not damage the biomolecules separated using the gels. The present invention also provides novel gellan gum-based gels which are cross-linked which employ a diamine cross-linking agent.

NIST Docket Number: 00–002US.
Title: Crosslinked Micellar Gel Composition.

Abstract: A crosslinked micellar gel composition is comprised of a polymer formed by a reaction between (a) ionic surfactant units which include ionic surfactant molecules, each of which includes a counterion which has a first polymerizable functional group, (b) crosslinking agent molecules, each of which includes two second polymerizable functional groups, and (c) a reaction initiator selected from the group consisting of reaction initiator molecules and ultraviolet light radiation, wherein the reaction initiator initiates a reaction between a plurality of the ionic surfactant units with each other and a plurality of the ionic surfactant units with the second polymerizable functional groups. The ionic surfactant molecules are rodlike in shape. The ionic surfactant units can consist essentially of ionic surfactant molecules or, alternatively, can also include co-monomer molecules. The polymer compositions formed from the reactions are crosslinked micellar gels which include a network structure of rodlike micelles forming a soft gel material which retains features and utility of rodlike micelles and benefits from the structural stability of a crosslinked ploymer matrix. Dilute hydrophobic solutes can be solubilized and concentrated in the micellar gel, removing the containants from solution. The gel which contains the absorbed solute can then be physically separated from the solution. The crosslinked micellar gel composition is not limited to aqueous solutions and can also be used as a delivery vehicle for solutes.

Dated: January 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–997 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Wednesday, January 30, 2002, from 8:45 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of seven members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on the ATP competition, an overview of the NIST Industrial Liaison Office, a presentation from the National Governors Association on efforts to assist states develop innovative strategies for science and technology, a presentation from Harvard University on the funding gap as it relates to states and universities, and a presentation from the State Science and Technology Institute on existing state S&T strategies. Discussions scheduled to begin at 8:45 a.m. and to end at 9:50 a.m. and to begin at 3:00 p.m. and to end at 3:45 p.m. on January 30, 2002 on the ATP budget issues and staffing of positions will be closed.

DATES: The meeting will convene January 30, 2002, at 8:45 a.m. and will adjourn at 3:45 p.m. on January 30, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 3, 2002 that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 9, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–929 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–13–P

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DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice; solicitation of applications for NTIS Advisory Board membership.

SUMMARY: The National Technical Information Service (NTIS) is seeking qualified Candidates to serve as members of the NTIS Advisory Board (Board). The Board will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

DATES: Applications must be received no later than February 14, 2002.

ADDRESSES: Applications should be submitted to Ronald E. Lawson, Director, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Walter L. Finch, (703) 605–6507.

SUPPLEMENTARY INFORMATION: The National Technical Information Service (NTIS) is seeking five qualified candidates to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to section 3704b(c) of Title 15, United States Code. It will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates should submit a resume and a statement explaining their interest in serving on the Board.

Dated: January 3, 2002.

Ronald E. Lawson,

Director.

[FR Doc. 02–998 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–04–M

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Trademark Processing (proposed rulemaking, Electronic Submission of Applications for Registration and Other Documents).

Form Number(s): PTO Form 4.8/4.9/4.16/1478/1478(a)/1553/1581/1583/1963/2000, PTO/TM/4.16/1583.

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 137,030 hours annually.

Number of Respondents: 677,151 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 3 to 30 minutes. It is estimated that the time needed to complete the electronic forms ranges from 4 to 21 minutes, and the time needed to complete the paper forms with the declaration ranges from 6 to 24 minutes. The information collection also includes four items, namely, powers of attorney, designations of domestic representatives, trademark amendments/corrections/surrenders, and petitions to revive abandoned applications, for which forms have not been created and which are not subject to the proposed mandatory electronic filing rule. The USPTO estimates that completing these items ranges from 3 to 30 minutes. The time estimates include time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection is being submitted as a proposed addition in support of a proposed rulemaking, RIN 0651–AB31, "Electronic Submission of Applications for Registration and Other Documents." The USPTO proposes to amend the Rules of Practice in Trademark Cases (37 CFR) to require electronic filing of all documents for which forms are currently available through the Trademark Electronic Application System (TEAS). Subject to certain exceptions for parties who lack access to TEAS or the technical capability to use TEAS, and for certain other parties, all documents for which an electronic form is available in TEAS must be filed through TEAS.

The USPTO proposes to amend §§ 1.4, 1.10, 2.21, 2.56, 2.76, 2.88, 2.89, 2.161, 2.166, 2.167 and 2.168 of 37 CFR parts 1 and 2 to make electronic filing through the TEAS system mandatory.

This rulemaking would add an additional requirement to this collection, namely an affidavit or declaration, if appropriate, that verifies that the applicant or registrant or the attorney, if any, for that applicant or registrant, lacks access to TEAS or the technical capability to use TEAS. Under the proposed rule, submissions that are made on paper but that could be made by TEAS and that are not accompanied by such an affidavit or declaration will be returned unless the party who made the submission is within the exception provided for certain foreign applicants and registrants.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed collection should be sent on or before February 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 9, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–950 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–16–P

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Disclosure Document Program.

Form Number(s): PTO/SB/95.

Agency Approval Number: 0651–0030.

Type of Request: Extension of a currently approved collection.

Burden: 4,050 hours annually.

Number of Respondents: 20,250 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take 12 minutes to submit a Disclosure Document Deposit Request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: An applicant files a disclosure document to establish a date of conception for an invention. When the USPTO receives a request for disclosure document deposit, an identifying number is assigned and stamped on the document. The document is then filed. The information is used by the USPTO to establish the date of conception for an invention. The USPTO keeps a disclosure document for only two years, unless it is referred to in a related provisional or nonprovisional patent application filed within the two-year period. The disclosure document is not a patent application, and the date of its receipt in the USPTO will not become the effective filing date of any patent application subsequently filed.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and the Federal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before February 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 2, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–951 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; National Ignition Facility

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice.

SUMMARY: On March 13, 1998, the Office of Defense Programs within the Department of Energy ("DOE" or "the Department"), issued a Supplement Analysis (SA) for the National Ignition Facility (NIF) to assist the Department in determining whether or not to prepare a Supplemental Programmatic Environmental Impact Statement for the Stockpile Stewardship and Management Program (SSM PEIS). The preparation of an SA for this purpose is provided for in DOE's regulations implementing the National Environmental Policy Act (NEPA), 10 CFR 1021.314. The SA was prepared to address certain allegations made by the plaintiffs in *NRDC* v. *Pena*, Civ. No. 97–936 (SS) (D.D.C.), a lawsuit challenging the adequacy of the SSM PEIS. The SA specifically addressed the issue of using hazardous materials in NIF experiments. In the SA the Department concluded: (1) That the only proposed use of fissile or fissionable materials in the NIF experiments is subgram quantities of uranium-238 in non-fusion yield experiments, and (2) that the impacts from using uranium-238 for this purpose are bounded by the analysis in the SSM PEIS. DOE therefore concluded that a supplement to the existing SSM PEIS was not required. However, DOE was aware that circumstances could change, and committed in the SA to prepare further NEPA analysis if the Department decides to propose experiments outside the bounds of the SSM PEIS. The SA indicated that this review would be conducted within 5 years after the SSM PEIS Record of Decision, and would be conducted in the form of an SA. The Record of Decision was issued on December 19, 1996.

DOE has reviewed the current status of planned activities for the NIF and has determined that the circumstances with regard for the proposed use of hazardous materials in NIF experiments remain unchanged from those at the time of the preparation of the 1998 SA. Therefore, the Department has concluded that there are no substantial changes or significant new circumstances or information that would justify preparing a new SA at this time. However, DOE is continuing to examine the question of use of certain materials in NIF experiments, consistent with the requirements of the court decision resolving *NRDC* v. *Pena*. Pursuant to Paragraph 6 of the District Court's Memorandum Opinion and Order, dated August 19, 1998, in *NRDC* v. *Pena*, DOE, no later than January 1, 2004, will (1) determine that experiments using materials listed in the Order will not be conducted in the NIF, or (2) prepare a Supplemental SSM PEIS analyzing the reasonably foreseeable environmental impacts of such experiments. DOE has in place a process to make that determination. However, at the present time there are no DOE proposals to use any of these materials in experiments in the NIF.

FOR FURTHER INFORMATION CONTACT: Jay Rose, Office of Defense Programs, National Nuclear Security Administration, (202) 586–5484.

Issued in Washington, DC, on January 8, 2002.

John Gordon,

Administrator.

[FR Doc. 02–936 Filed 1–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–55–000]

CMS Trunkline Gas Company, LLC; Notice of Application

January 9, 2002.

Take notice that on December 26, 2001, CMS Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing it to increase the maximum capacity of its LNG metering facilities in Calcasieu Parish, Louisiana. Also, Trunkline Gas requests permission and approval to operate its pipeline system downstream of the LNG metering facilities to accommodate the increased LNG receipt. This proceeding is in conjunction with a filing by CMS Trunkline LNG Company, LLC (Trunkline LNG) in Docket No. CP02–60–000. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (please call (202) 208–2222 for assistance).

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In order to meet the contractual obligations with BG LNG Services, Inc. (BG LNG), Trunkline LNG has requested Trunkline Gas to perform modifications to its metering facilities located at the tailgate of the Trunkline LNG Terminal. The requested facility modification will increase the maximum capacity of the LNG metering facilities from 1.0 Bcf/d to 1.3 Bcf/d and allow Trunkline Gas to operate its 30-inch pipeline, along with other paralleling pipelines, to transport up to 1.3 Bcf/d of LNG on its South Louisiana pipeline system. In order to accommodate Trunkline LNG's request, Trunkline Gas is proposing to increase the maximum capacity of its metering facilities at the tailgate of LNG's terminal to 1.3 Bcf/d by replacing two existing 16-inch orifice meter runs with two 16-inch ultrasonic meter runs and associated facilities. This replacement will allow increased deliverability from the LNG Terminal to Trunkline Gas. The remaining three 16-inch orifice meter runs will remain in place.

By modifying the existing metering facilities, the maximum LNG receipt capability of the Trunkline Gas system in Louisiana will increase from 0.7 Bcf/d to 1.2 Bcf/d on a sustained basis and from 1.0 Bcf/d to 1.3 Bcf/d on a peak day basis. All construction will be performed aboveground solely within Trunkline Gas' existing right-of-way easement at the LNG plant. No ground will be disturbed as a result of this replacement, nor will there be an increase in noise or air emissions from the proposed metering facilities. The cost of the proposed project is estimated at $275,000.

Any questions regarding the application be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, CMS Trunkline LNG Company, LLC, P. O. Box 4967, Houston, Texas 77210–4967 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR part 385.214 or 385.211) and the Regulations under the NGA (18 CFR part 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–907 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–000]

CMS Trunkline LNG Company, LLC; Notice of Application

January 9, 2002.

Take notice that on December 26, 2001, and supplemented on January 7, 2002, CMS Trunkline LNG Company, LLC (Trunkline LNG), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction, operation and maintenance of additional facilities at its LNG Terminal located in Calcasieu Parish, Louisiana. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (please call (202) 208–2222 for assistance).

Trunkline LNG proposes (1) to expand the storage capacity of its terminal by constructing and operating a fourth cryogenic storage tank with a capacity of 140,000 cubic meters; (2) to increase its sustainable daily sendout capability from 630 MMcf per day to 1,200 MMcf per day by constructing and operating additional LNG pumps and LNG vaporizers; (3) to construct and operate a second marine unloading dock; and (4) appurtenant supporting facilities. Currently, all re-gasified LNG is transported from Trunkline LNG's terminal by CMS Trunkline Gas Company, LLC's pipeline facilities (Trunkline Gas) which have a certificated capacity of 1.0 Bcf per day. Concurrently, Trunkline Gas is filing an application, Docket No. CP02–55–000, requesting a certificate of public convenience and necessity authorizing Trunkline Gas to modify its existing metering facilities to accommodate the proposed increased LNG deliveries.

Trunkline LNG conducted an open season for the future use and potential expansion of its terminal, from December 15, 2000 to February 15, 2001. As a consequence, Trunkline LNG entered into the contracts with BG LNG Services, Inc. (BG LNG). In May 2001, Trunkline LNG and BG LNG entered into a firm service agreement (Base Agreement) for all the current uncommitted capacity at the Terminal. The 22-year contract, which begins in January 2002, gives BG LNG the firm service rights to all of the Terminal's current uncommitted vaporization and storage capacity of approximately 5.1 Bcf at the currently effective maximum tariff rate under Rate Schedule FTS. The contract storage capacity will increase to 6.3 Bcf after the existing contract with Trunkline LNG's existing customer, Duke Energy LNG, expires in August 2005. In addition to the Base Agreement, Trunkline LNG and BG LNG entered into an agreement (Precedent Agreement) that sets the parameters for a second firm service agreement (Expansion Agreement) utilizing the capacity associated with the Expansion Project. In essence, the Precedent Agreement provides for BG LNG to obtain additional firm storage capacity of 2.7 MMDt and daily sendout capability of 570,000 Dt per day at the Terminal from January 1, 2005 until December 31, 2023.

The proposed construction will take place entirely on Trunkline LNG's property already dedicated to its terminal. No new land or rights-of-way are required for the proposed expansion.

Trunkline LNG estimates that the total capital cost of constructing its proposed expansion will be approximately $149.1 million, excluding AFUDC. Trunkline LNG estimates that AFUDC will total $28.1 million. The total capital cost including AFUDC will be approximately $177.2 million. The total Cost of Service associated with the expansion project will be approximately $54.2 million. The initial incremental recourse rates proposed by Trunkline LNG for service utilizing the expansion facilities are traditional cost-of-service based rates, using the straight-fixed variable rate design methodology. The incremental recourse rates have been designed on 100% of the costs associated with the Expansion Project. The incremental recourse reservation rate will be $0.5208 per Dt for service under proposed Rate Schedule FTS–2, using design units based on the incremental storage capacity associated with the Expansion Project.

Any questions regarding the application be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, CMS Trunkline LNG Company, LLC, P.O. Box 4967, Houston, Texas 77210–4967 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR parts 385.214 or 385.211) and the Regulations under the NGA (18 CFR part 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–908 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–6–000]

Northeast Energy Infrastructure Conference; Notice of Technical Conference and Agenda

January 8, 2002.

As announced in the Notice of Conference issued on December 11,

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2001, the Federal Energy Regulatory Commission will hold a conference on January 31, 2002 to discuss issues regarding energy infrastructure in the northeastern states. This one-day conference will begin at 8:30 a.m.[1] and end approximately at 4 p.m., and will be held at the Helmsley Park Lane Hotel, 36 Central Park South, New York, New York. All interested persons are invited to attend.

The conference will discuss the adequacy of the electric, gas and hydropower infrastructure in the Northeast, and related matters. The FERC Commissioners will attend and the Governors of the northeastern states have been invited to participate. The goal of this conference is to identify present infrastructure conditions, needs, investment and other barriers to expansion, and environmental and landowner concerns. We look forward to an informative discussion of the issues to clarify how the FERC can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for the northeastern states. It is our firm belief that an adequate, well-functioning energy infrastructure is a keystone of workable, competitive energy markets.

The conference Agenda is appended to this Notice. As the attached Agenda and this Notice indicate, the purpose of the conference is to discuss regional infrastructure issues. The conference is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations (RTOs). Therefore, all participants are requested to focus on the agenda topics and avoid discussing the merits of individual cases.

Opportunities for Listening to and Obtaining Transcripts of the Conference

The Capitol Connection will offer this meeting live via telephone coverage for a fee. There will not be live video coverage or videotapes of the conference. To find out more about the Capitol Connection's phone bridge, contact David Reininger or Julia Morelli (703–993–3100), or go to *www.capitolconnection.gmu.edu*.

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

[1] This reflects a change in starting time from the December 11, 2001 notice.

Additionally, transcripts of the conference will be available from Ace Reporting Company (202–347–3700), for a fee. The transcript will be available on the Commission's RIMS system two weeks after the conference.

As indicated in the December 11, 2001 notice, hotel rooms have been blocked at the Helmsley Park Lane Hotel (212–371–4000) under the name of the Federal Energy Regulatory Commission for any attending guests to reserve a one- or two-night stay, but unreserved rooms will be released by January 15, 2002.

Questions about the conference program should be directed to: Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0870, *carol.connors@ferc.gov*.

C.B. Spencer,

Acting Secretary.

Agenda for FERC's Northeast Energy Infrastructure Conference

Helmsley Park Lane Hotel, New York, NY.

January 31, 2002.

I. Opening Remarks and Introductions—8:30 a.m. to 9 a.m.

Chairman Pat Wood, Commissioner Nora Mead Brownell, Commissioner William Massey and Commissioner Linda Breathitt

II. Overview of Current Energy Infrastructure—9 a.m. to 9:30 a.m.

- Jeff Wright, Office of Energy Projects, FERC

III. Forecasts for Future Energy Use and Economic Impacts of Energy—9:30 to 10 a.m.

What is the Northeast region's economic and demographic outlook over the coming decade?

What is the forecasted growth in energy needs?

How much energy is available and at what prices?

Where is additional energy needed?

- Mary Novak, Managing Director-Energy Consulting, DRI–WEFA
- Scott Sitzer, Acting Director, EIA

Break—10 a.m. to 10:15 a.m.

IV. Near-term Energy Infrastructure Needs and Adequacy of Supplies—10:15 a.m. to 12 p.m.

What are the high priority infrastructure needs for today?

What happens if these are not built?

Roundtable discussion on infrastructure improvements needed in electric, hydroelectric, and natural gas facilities.

- Steve Whitley, Senior V.P., New England ISO
- Craig Frew, President, New England Gas Association
- Andre Caille, President/CEO, Hydro Quebec
- Eric Gustafson, V.P.—Transportation & Technology, Buckeye Pipeline
- Douglas M. Logan, Principal, Platt's RDI Consulting
- Representative from U.S. EPA

Lunch Break—12 p.m. to 1 p.m.

V. Identifying Factors Affecting Adequate Energy Infrastructure, Investment, and Alternative Actions—1:15 p.m. to 3 p.m.

Why is needed infrastructure delayed or not being built?

What barriers have to be overcome?

What can state and federal governments do to overcome these barriers?

Do alternatives exist to new infrastructure projects?

Roundtable discussion of energy infrastructure barriers (e.g., to siting, construction, or investment) and alternatives to construction.

- Pete Dunbar, Director, Maryland Power Plant Research Program
- Richard Kruse, Senior V.P., Duke Energy Gas Transmission
- Ron Erd, Mirant Corp.
- Richard Cowart, Director, Regulatory Assistance Project
- Eugene R. McGrath, Chairman/CEO/Pres., Consolidated Edison Co. NY
- Ashok Gupta, Director—Air/Energy, Natural Resources Defense Council
- Sonny Popowsky, Pennsylvania Consumer Advocate
- Debra Coy, V.P. & Utilities Analyst, Charles Schwab & Co.

VI. Discussion by State and Federal Officials of Next Steps and Closing Remarks by FERC Commissioners—3 p.m. to 4 p.m.

- Glenn Booth, Chief Economist, Canadian National Energy Board
- Maureen Helmer, Chairwoman, NY Public Service Commission
- Invited Governors and State Commissioners

[FR Doc. 02–909 Filed 1–14–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00329; FRL–6814–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The charter for EPA's National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is renewed for an additional 2-year period. EPA has determined that the NAC/AEGL Committee is necessary and finds that it is in the public's interest that the NAC/AEGL Committee be continued.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00329. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

EPA is renewing the charter for the NAC/AEGL Committee for an additional 2-year period.

The NAC/AEGL Committee provides advice and recommendations to the Administrator of EPA on issues associated with the development of acute exposure guideline levels for hazardous substances. Acute exposure guideline levels for hazardous substances are used by other Federal agencies, State and local governments, and private organizations for exposure limits in chemical emergency programs.

It is determined that the NAC/AEGL Committee is in the public's interest and is related to the performance of duties imposed on the Agency by law.

B. What is the Agency's Authority for Taking this Action?

The charter for the NAC/AEGL Committee is in accordance with the provisions of FACA, 5 U.S.C. App., section 9(c).

List of Subjects

Environmental protection, Acute exposure guideline levels, Hazardous substances, Public health, Safety, Worker protection.

Dated: January 3, 2002.

Stephen L. Johnson,

Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 02–961 Filed 1–14–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP;–00756;FRL–6820–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to methods used to conduct a preliminary cumulative risk assessment for organophosphorous pesticides. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on February 5th–8th, 2002 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION:** To ensure proper receipt by EPA, your request must identify docket control number

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OPP–00756 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy, (7201M), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and background documents relevant to this meeting are now available. The EPA's position paper and questions to the FIFRA SAP, and Panel composition (i.e. SAP members and consultants) will be available as soon as possible, but no later than mid January. In addition, the Agency may provide additional background documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00756. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00756 in the subject line on the first page of your request. Public statements presented at the meetings should not be repetitive of previously submitted oral or written statements.

Oral comments: Although requests for oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. Each individual or group wishing to make a brief oral presentation to the SAP is strongly advised to submit their request to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon Eastern Standard Time, Thursday, January 31, 2002 in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral statements before the Panel are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of their comments and presentation slides for distribution to the Panel at the meeting.

Written comments: Although requests for written comment are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written statements be submitted no later than noon Eastern Standard Time, Thursday, January 31, 2002 to provide Panel members the time necessary to consider and review the comments. There is no limit on the extent of written comments for consideration by the Panel. Persons wishing to submit written comments at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00756. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The Food Quality Protection Act of 1996 amended the FIFRA and the FFDCA. One of the major changes is the requirement that EPA consider risk posed by pesticides acting by common mechanism of toxicity. For such groups of pesticides, EPA's Office of Pesticide Programs (OPP) has treated cumulative risk, under FQPA, as the risk of a common toxic effect associated with concurrent exposure by all relevant pathways and routes.

Organophosphorous pesticides were assigned priority for tolerance reassessment early during the process of FQPA implementation. OPP considered whether this group of pesticides caused common toxic effects by a common mechanism of toxicity using EPA's "guidance for identifying pesticide chemicals and other substances that have a common mechanism of toxicity." The inhibition of acetylcholinesterase was a focal point given that most organophosphorous pesticides cause this response as their critical and common effect. When acetylcholinesterase is inhibited, acetylcholine accumulates and cholinergic toxicity results due to continuous stimulation of cholinergic receptors throughout the central and peripheral nervous systems which innervate virtually every organ in the body. Cholinergic effects associated with exposures to OP pesticides have been found in both humans and animals.

OPP proceeded with the methodology and risk assessment development in a step by step process. The approach to the risk assessment was evaluated using a case study of 3 organophosphorous pesticides. That assessment was reviewed by the SAP (September and December, 1999), who recommended that OPP proceed with a more comprehensive case study. OPP developed the hazard, dose-response and exposure assessment for twenty four OP pesticides and brought it to the SAP for comment in September and December of 2000. Based on the comments, the hazard and dose-response assessment was revised and again reviewed by the SAP in September, 2001.

The exposure assessment of the OP pesticides presented here incorporates probabilistic approaches in all pathways considered: Food, drinking water, and residential/non-occupational. The methodology for conducting a preliminary cumulative risk assessment for the organophosphorous pesticides presented here is a first time that the Agency has assessed risk combining multiple sources of exposure for multiple chemicals acting via a common mechanism of toxicity. The general methodology and the specific approach have been under development for 5 years and have been subject to extensive peer review and public comment.

B. Panel Report

The Panel will prepare a report of its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: January 8, 2002.

Vanessa Vu,

Director, Office of Science Coordination and Policy

[FR Doc. 02–960 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–9]

Notice of the Eighth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement meeting.

SUMMARY: This notice announces the Eighth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of federal, state, and tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is the implementation of the Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico. The Plan was developed in fulfillment of a requirement of section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Pub. L. 105–383—Coast Guard Authorization Act of 1998) and was submitted as a Report to Congress on January 18, 2001. The public will be afforded an opportunity to provide input to the Task Force during open discussion periods. The meeting coincides with a meeting of the Ohio River Valley Water Sanitation Commission in the vicinity, and will afford opportunities for exchange between the participants of both meetings. The meeting room accommodates approximately 125 people.

DATES: The two-day meeting will be held from 2 p.m.–5:30 p.m., February 7, 2002 and from 8 a.m.–3:30 p.m., February 8, 2002.

ADDRESSES: The meeting will be held at the Radisson Hotel and Suites Downtown, 200 North Fourth Street, St. Louis, MO 63102. A block of rooms has been reserved at the hotel. For reservations, call (314) 621–8200 or 1–800–925–1395. When making room reservations, use the group name "EPA Mississippi River/Gulf of Mexico Meeting." (Internet: *http://www.radisson.com/stlouismo*)

FOR FURTHER INFORMATION CONTACT: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503F, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202)–260–7061; E-mail: *belefski.mary@epa.gov*. For additional information on logistics and accommodations, contact Ansu John, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030; Phone: (703) 385–6000; E-mail: *ansu.john@tetratech-ffx.com*.

Dated: January 8, 2002.

Robert Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–956 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENT PROTECTION AGENCY

[FRL–7129–1]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on January 31 and February 01, 2002. The meeting will take place at the Four Seasons Hotel, 411 University Street, Seattle, WA, 98101 from 9 am to 5 pm on Thursday, January 31st and Friday, February 1st. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call (202) 564–0453.

Dated: January 8, 2002.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 02–957 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–M

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–66295A; FRL–6817–7]

Benomyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order for product cancellations requested by the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc. for their registrations of pesticide products containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl, and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up an October 12, 2001, notice of receipt of request for the above-mentioned voluntary registration cancellations. In that notice, EPA requested comments on the proposed cancellations and indicated that it would issue an order confirming the cancellations. Any distribution, sale, or use of canceled benomyl products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use benomyl products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66295A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Request to Cancel Registrations

A. Background

Benomyl is a benzimidazole carbamate and systemic foliar fungicide registered for use on a variety of fruit and vegetable crops.

The technical registrant, E.I. duPont de Nemours and Company (DuPont), met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl. DuPont stated that this decision was based on business reasons. Following a public comment period on the proposed cancellations and consideration of comments received, the cancellation order was published in the **Federal Register** and became effective on August 8, 2001.

The Agency also received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc.

In their letters, Pursell and Amvac stated that they no longer manufacture or distribute end use products that contain benomyl and therefore, no end use products should be in the channels of trade. Likewise, in their letter, Value Garden Supply noted that their benomyl products are no longer being sold and they are not aware of any stocks of the products in the channels of trade. The American Mushroom Institute requested cancellation of its 24(c) registration due to the cancellation of DuPont's registrations. The Scotts Company and Voluntary Purchasing Groups, Inc. had end-use products that were suspended on April 13, 1994, and May 20, 1998, respectively. Both registrants failed to comply with a Data Call-In that was issued on June 16, 1992. The Agency contacted both The Scotts Company and Voluntary Purchasing Groups, Inc. to notify them that DuPont canceled all its benomyl registrations, and both registrants subsequently submitted letters requesting voluntary cancellations.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of these requests from the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., The Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., in a **Federal Register** Notice published on October 12, 2001 (66 FR 52132) (FRL–6805–3). In that Notice, EPA provided a 30–day comment period. All of the registrants requested the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted this request. No public comments were received during the 30–day comment period.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), American Mushroom Institute, Amvac Chemical Corp., Pursell Industries Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., have submitted requests for voluntary cancellation of registrations for their products containing benomyl. The registrations for which cancellations were requested are identified in the following table.

PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration No.	Product
American Mushroom Institute	PA–97000200	Dupont Benlate® SP Fungicide
Amvac Chemical Corp.	5481–138	ALCO® Systemic Fungicide
Pursell Industries Inc.	8660–75	VertaGreen Systemic Disease Control
The Scotts Company	538–66 538–132	Scotts Proturf 28 – 0 – 7 Fertilizer Plus Fungicide DSB Scotts Proturf DSB Fungicide
Value Garden Supply LLC	769–874 769–921	Pratt Benomyl 50W Systemic Fungicide Science Benomyl 50W Systemic Fungicide
Voluntary Purchasing Groups, Inc.	7401–225 7401–407	Fertilome® Systemic Fungicide with Benomyl American Brand® Benomyl Systemic Fungicide

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA is approving the requested cancellations. Accordingly, EPA orders that the registrations identified in Table 1, are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table above in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy June 26, 1991 (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Distribution or Sale by the Registrant

Cancellation orders generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. However, the registrants have stated that they no longer manufacture or distribute end use products that contain benomyl. Therefore, the distribution or sale of existing stocks by registrants will not be lawful under FIFRA after January 15, 2002 except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution and Sale by Other Persons

Sale or distribution by any person of existing stocks of any products identified in the table above will not be lawful under FIFRA after December 31, 2002.

V. Notification of Intent to Revoke Tolerances

This Notice also serves as an advance notification that the Agency intends to revoke the related tolerances for the canceled registrations listed in this Notice unless there is a request from the public to support the tolerances for import purposes. EPA believes that production of technical benomyl ended in April 2001, and use of any remaining existing stocks of these products will likely end in 2003 given that the sale and distribution of benomyl products will end on December 31, 2002. EPA will determine how long treated food containing residues of benomyl could remain in the channels of trade assuming that the last treatment occurred on December 31, 2003, and will set the expiration date accordingly.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist, to protect the food supply of the U.S. and to discourage the misuse of pesticides within the United States. In many cases the cancellation of a food use in the U.S. indicates that there are insufficient domestic residue data or other information to support the continuation of the tolerance and an uncertain amount of relevant data concerning residues on imported food. In the absence of relevant data, EPA is unable to make a safety finding regarding the treated food entering the U.S. Upon request, EPA will provide interested parties with its import tolerance policy and data requirements, explaining how an interested party should go about seeking to retain a tolerance for import purposes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–958 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–8]

Workshop Report on the Application of 2,3,7,8-TCDD Toxicity Equivalence Factors to Fish and Wildlife

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum (RAF) announces the availability of a final report, *Workshop Report on the Application of 2,3,7,8-TCDD Toxicity Equivalence Factors to Fish and Wildlife* (EPA/630/R–01/002, August 2001). It is the report of a January 20–22, 1998, workshop sponsored by EPA and the U.S. Department of the Interior (DOI). The Eastern Research Group, Inc. (ERG), an EPA contractor, organized, convened, and conducted the workshop on EPA's behalf. Workshop participants concluded that the toxicity equivalence methodology is appropriate for

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evaluating risks to fish, birds, and mammals from mixtures of dioxins, furans, and PCBs.

ADDRESSES: The document will be made available electronically through the Risk Assessment Forum's Web site (*www.epa.gov/ncea/raf/rafpub.htm*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: Scott Schwenk, Risk Assessment Forum Staff (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; telephone: 202–564–6667; facsimile: 202–565–0062; e-mail: *schwenk.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: In January 1998, a planning committee of EPA and the U.S. Department of the Interior (DOI) sponsored a workshop on the application of 2,3,7,8–TCDD toxicity equivalence factors (TEFs) to fish and wildlife. TEFs are tools for estimating the combined risks from exposure to complex mixtures of polychlorinated dioxins (PCDDs), furans (PCDFs), and biphenyls (PCBs). The primary objective of the workshop was to identify, document, and compare uncertainties in TEF development and their impact in ecological risk assessments. The 20 invited workshop participants, seven of whom were from other countries, came from academia, industry, public interest groups, and government. In addition, eight EPA and four DOI planning committee members participated. Major conclusions included:

—The toxicity equivalence methodology is technically appropriate for evaluating risks to fish, birds, and mammals.

—The toxicity equivalence methodology reduces uncertainties and is less likely to underestimate risks than are methods based on a single compound (e.g., 2,3,7,8–TCDD) or a class of compounds (e.g., total PCBs).

—The uncertainties associated with using relative potencies (RePs) or TEFs are not thought to be larger than other uncertainties within the risk assessment process, but they should be better quantified.

The planning committee concluded that the results of the workshop support the use of the toxicity equivalence methodology in ecological risk assessment. The committee also suggested the development of additional tools and data to improve the methodology's implementation.

The final workshop report consists of (1) an overview and set of conclusions prepared by EPA and DOI and (2) a complete set of workshop materials, including case studies discussed at the workshop, workshop proceedings, pre-meeting comments from the invited experts, and written observer comments.

Dated: December 20, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–954 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 9, 2002 (67 FR 1217) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 10, 2002. This notice is to amend the agenda by moving an item from the open session to the closed session of that meeting.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for January 10, 2002, is amended by moving an item to the closed session to read as follows:

Closed Session*

- 2001 Financial Statement Audit Report

Dated: January 10, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–1067 Filed 1–11–02; 10:58 am]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting

January 10, 2002.

The Federal Communications Commission will hold in Open Meeting on Thursday, January 17, 2002, at 9:30 a.m. in Room TW–C305; at 445 12th Street, SW., Washington, DC. The meeting will focus on a comprehensive review of FCC policies and procedures by the Commissioners and senior agency officials.

Presentations will be made in three panels:

Panel One consisting of the Chiefs of the Mass Media Bureau, the Cable Service Bureau and the Common Carrier Bureau.

Panel Two consisting of the Chiefs of the Consumer Information Bureau and the Enforcement Bureau.

Panel Three consisting of the Chiefs of the Office of Engineering and Technology, the International Bureau, and the Wireless Telecommunications Bureau.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials presented at this meeting can be purchased from the FCC's duplicating contractor, Qualex International at (202) 863–2893; fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type, digital disk, and audio tape. Qualex International may be reached by e-mail at *qualexint@aol.com*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/*. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–1470, Ext. 10; fax number (703) 834–0111.

Federal Communication Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1091 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Dorothy M. Mawn, Woburn, Massachusetts; James Lawrence Mawn, Malden, Massachusetts; Russell A. Mawn, Vestavia Hills, Alabama; the Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts; and Mary Elizabeth Mawn-Ferullo, Woburn, Massachusetts; acting in concert; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire Northern Bank and Trust Company, Woburn, Massachusetts.

2. James J. Mawn, Gloucester, Massachusetts; Rita M. Mawn, Naples, Florida; Rita M. Barger, Manlius, New York; Sheila E. Carpenter, San Antonio, Texas; James J. Mawn, Jr., Charlestown, Massachusetts; Alicia J. Mawn-Mahlau, and Sam A. Mawn-Mahlau, both of Winchester, Massachusetts; Louise S. McDonough, Woburn, Massachusetts; Mary E. Negri, Woburn, Massachusetts; Mary Catherine Riley, Princeton, New Jersey; and the Mawn Family Limited Partnership, Woburn, Massachusetts; acting in concert; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire Northern Bank and Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–915 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Charter One Financial, Inc., and Charter-Michigan Bancorp, Inc., both of Cleveland, Ohio; to acquire 100 percent of the voting shares of Charter One Bank, National Association, Cleveland, Ohio (in formation). In connection with this application, Charter-Michigan has applied to become a bank holding company.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Central Bancshares, Inc., Muscatine, Iowa; to acquire 100 percent of the voting shares of Marquette Bank Illinois, Galesburg, Illinois.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–914 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. National Bancshares Corporation, Orrville, Ohio; to acquire Peoples Financial Corporation, Massillon, Ohio, and thereby indirectly acquire Peoples Federal Savings and Loan Assocation, Massillon, Ohio, and engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than February 8, 2002.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

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1. Concord EFS, Inc., Memphis, Tennessee; to acquire Logix Companies, LLC, Longmont, Colorado, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–916 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, as last amended at 44 FR 31045, May 30, 1979. This reorganization is to establish a new Chapter AAB, "Office of Public Health Preparedness (OPHP)" to direct activities of the Department of Health and Human Services relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The changes are as follows: Under Part A, Office of the Secretary, Chapter AA, make the following changes:

A. Under Section AA.10 "Organization," add the following new component: Office of Public Health Preparedness.

B. Establish a new chapter AAB, "Office of Public Preparedness (OPHP)" to read as follows:

Office of Public Health Preparedness

AAB.00 MISSION
AAB.10 ORGANIZATION
AAB.20 FUNCTIONS

Section AAB.00 Mission. The Office of Public Health Preparedness (OPHP) shall direct the Department of Health and Human Services' efforts to prepare for, protect against, respond to, and recover from all acts of bioterrorism and other public health emergencies that affect the civilian population; and shall serve as the focal point within HHS for these activities.

Section AAB.10 Organization: The Office of Public Health Preparedness (OPHP) is headed by a Director, who reports directly to the Secretary, and serves as the Secretary's principal advisor on HHS activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies.

Section AAB.20 Functions: The Office of Public Health Preparedness (OPHP) includes the following responsibilities:

1. Serves as the Secretary's principal advisor on matters relating to bioterrorism and public health emergencies.
2. Acts as the Department's liaison with the Office of Homeland Security.
3. Serves as the principal representative of the Department to other Federal agencies and the private sector in all matters related to bioterrorism, and other public health emergencies.
4. Directs HHS Operating and Staff Division implementation of a comprehensive HHS strategy to protect the civilian population from acts of bioterrorism and other public health emergencies. The OPHP will work with the OPDIVS and STAFFDIVs to ensure the adequacy of HHS strategy for preparing, preventing, responding to, and recovering from acts of bioterrorism and other public health emergencies.

Dated: December 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–900 Filed 1–14–02; 8:45 am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0271, 01M–0255, 01M–0210, 01M–0173, 01M–0254, 01M–0227, 01M–0226, and 01M–0270]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from April 1, 2001, through June 30, 2001. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE APRIL 1, 2001, THROUGH JUNE 30, 2001

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P990086/01M–0271	HealthTronics, Inc.	HealthTronics OssaTron®	October 12, 2000
P000023/01M–0255	TMJ Implants, Inc.	TMJ Fossa-Eminence/Condylar Prosthesis System™	January 5, 2001
P000035/01M–0210	TMJ Implants, Inc.	TMJ Fossa-Eminence Prosthesis™	February 27, 2001
P990080/01M–0173	Pharmacia & Upjohn Co.	CeeOn™ Edge Foldable Ultraviolet Light-Absorbing Posterior Chamber Intraocular Lens, Model 911A	April 5, 2001
P980050(S1)/01M–0254	Medtronic, Inc.	Medtronic® Model 7350 Jewel® AF Implantable Cardioverter Defibrillator System, Medtronic Model 9465 InCheck™ Patient Assistant, and Medtronic Transvene® CS/SVC Model 6937A Lead	April 6, 2001
P000046/01M–0227	Anika Therapeutics, Inc.	Staar Surgical Co. STAARVISC™ II Sodium Hyaluronate	April 18, 2001
P000044/01M–0226	Ortho-Clinical Diagnostics, Inc.	Vitros Immunodiagnostic Products HBsAg Reagent Pack, HBsAg Confirmatory Kit, and HBsAg Calibrator	April 27, 2001
P000037/01M–0270	Medical Carbon Research Institute, LLC.	ON–X® Prosthetic Heart Valve, Model ONXA	May 30, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 31, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–901 Filed 1–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish & Wildlife Service

Hanford Reach National Monument Federal Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service.

ACTION: Notice; FACA meeting.

SUMMARY: The Hanford Reach National Monument Federal Advisory Committee will conduct a meeting on Wednesday, February 6, 2002 from 8:30 am to 12:30 pm in the Consolidated Information Center (CIC)/Library, rooms 120 and 120A on the Washington State University, Tri-Cities campus, 2770 University Dr., Richland, WA. The meeting is open to the public and media.

DATES: Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Officer for the Hanford Reach National Monument (HRNM) Federal Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) FAC; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: The Hanford Reach National Monument Federal Advisory Committee will review and augment their issues grouping topics as well as identify subcommittees and formulate rules to focus on specific areas.

Dated: January 8, 2002.

Greg Hughes,

Project Leader, Hanford Reach National Monument.

[FR Doc. 02–952 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Jicarilla Apache Nation and the State of New Mexico, which was executed on November 7, 2001.

DATES: This action is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 21, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–904 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–4N–M

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Extension of Due Date for Nomination on Utah Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Extension of Due Date for Nomination on Utah Resource Advisory Council (RAC).

SUMMARY: The purpose of this notice is to extend the due date for nominations, due to a vacancy on Utah's Resource Advisory Council, from January 4, 2002 to February 15, 2002.

Utah residents with an interest and background in commercial recreation or oil and gas development are being sought to fill this vacancy on the 15-person Council, which has occurred due to the resignation of one of its members. The person selected will serve out the remaining balance of a 3-year term that will continue through September 2003.

FOR FURTHER INFORMATION: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195. Nominations must be received no later than close of business February 15, 2002.

Dated: December 17, 2001.

Sally Wisely,

State Director.

[FR Doc. 02–983 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–07–1310–AG]

Extension of Scoping Period on an Integrated Activity Plan (IAP)/ Environmental Impact Statement (EIS) for the Northwest Area of the National Petroleum Reserve-Alaska (NPR–A)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping period.

SUMMARY: The Bureau of Land Management (BLM) is announcing the extension of the scoping period for planning its future management of approximately 9.4 million acres in northwestern NPR–A. A Notice of Intent published in the **Federal Register** on November 15, 2001, indicates scoping information and comments are to be received by December 15, 2001 or 45 days after publication of the original notice. The BLM is extending the time for receiving these comments until February 15, 2002. The closing date for nominations of areas of interest to oil and gas companies remains December 31, 2001.

FOR MORE INFORMATION CONTACT: For further information, contact Curtis Wilson (907) 271–5546 at BLM's Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513.

Francis R. Cherry, Jr.,

State Director.

[FR Doc. 02–982 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

The Bureau of Land Management

[NM–910–01–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on February 28 and March 1, 2002, with an optional Field Trip preceding on Wednesday, February 27. The meeting will begin at 8 a.m. and end by 5 p.m. both days.

ADDRESSES: The meeting will take place at the Crowne Plaza Pyramid, 5151 San Francisco Road NE, Albuquerque, NM.

Agenda: The draft agenda for the RAC meeting on Thursday, February 28, includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting which was held on December 13 and 14, 2001, in Las Cruces, New Mexico, and a check-in from the RAC members.

Main topics will be to finalize draft Recommendations for Off-Highway Vehicle (OHV) Use on public lands, discussions on NEPA 101 and implementation of the Standards and Guidelines for Grazing, and an overview of Otero Mesa oil and gas leasing issues.

Reports from the seven Field Offices and from the three established subcommittees will be presented at various times throughout the two day meeting. The three established RAC subcommittees may have late afternoon or evening meetings on Wednesday, February 27 or on Thursday, February 28. The exact time and location of possible subcommittee meetings will be established by the chairperson of each subcommittee and be available to the public at the front desk of the hotel on those two days. The subcommittee meetings may be attended by the public. The Energy Subcommittee has established that they will meet after the Field Trip, at the hotel, on Wednesday, February 27. If there is unfinished business, they will continue at breakfast Thursday morning, before the meeting. The meeting is open to the public, and starting at 2:45 p.m. on Thursday, February 28, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present to address the RAC during the regular two hour Public Comment Period on Friday, March 1, from 10 a.m to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC.

A RAC assessment of the current meeting and development of draft agenda items and selection of a location for the next RAC meeting will take place Friday afternoon. On Friday, March 1, the ending time of the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: December 17, 2001.

Carsten F. Goff,

Acting State Director.

[FR Doc. 02–980 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council (RAC). On February 28, 2002, the RAC and BLM staff will tour the Ironwood Forest National Monument and Asarco Mine site outside of the Tucson Metropolitan Area and discuss resource issues facing the Monument's management. The tour will depart from the Radisson Inn (Downtown) located at 181 W. Broadway at 8 a.m., and conclude approximately at 5 p.m.

On March 1, the business meeting will also be held at the Radisson Inn and will begin at 9 a.m. and conclude at approximately 4 p.m. The agenda items to be covered include: review of the December 6, 2001 meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Updates on the BLM National Mountain Biking Strategy and 3809 Surface Management Regulations for Locatable Mineral Operations; and Presentations on the Arizona Supreme Court Ruling on State Land Grazing Leases and BLM's International Programs; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 1, 2002, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 02–981 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–02–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on January 30, 2002. The meeting will be held at 10:00 a.m. and is not expected to be more than two hours in duration. Some members will be calling in to the meeting via conference phone.

ADDRESSES: The meeting will take place at the Bureau of Land Management State Office, State Director's Conference Room, located at 1474 Rodeo Road, Santa Fe, NM 87505.

Agenda: Members will draft, review and approve a letter to the Secretary of the Interior regarding implementation of the Standards and Guidelines for Grazing. Members of the public are invited and may address the RAC during the meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–01115, Telephone: (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: January 9, 2002.

Richard A. Whitley,

Associate State Director.

[FR Doc. 02–1093 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–17320]

Public Land Order No. 7506; Partial Revocation of the Executive Order Which Created Public Water Reserve No. 107; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 45.77 acres of public land withdrawn for Bureau of Land Management Public Water Reserve No. 107. This action will open 45.77 acres to surface entry under the public land laws and to nonmetalliferous location and entry under the United States mining laws. The land has been and will remain open to mineral leasing and to metalliferous mining.

EFFECTIVE DATE: February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 5 N., R. 81 W.,
sec. 9, lot 13.

The area described contains 45.77 acres in Jackson County.

2. At 9 a.m. on February 14, 2002, the land described in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid

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existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 14, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on, February 14, 2002, the land described in Paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 13, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–978 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–ET; COC–28585; COC–28650; COC–0123825]

Public Land Order No. 7507; Partial Revocation of Waterpower Withdrawals and Opening of Public Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order and a Secretarial Order insofar as they affect 439.24 acres of public lands withdrawn for two Bureau of Land Management waterpower withdrawals. This action will open the lands to surface entry. These lands have been open to mineral leasing, and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining. These provisions are no longer required. This order opens 412.40 acres of public lands to disposal, subject to section 24 of the Federal Power Act. This order also opens 42.62 acres of lands withdrawn by Power Project 2035, subject to section 24 of the Federal Power Act to allow for disposal to the Power Project licensee. This action will allow for consummation of pending land disposals.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–557–000, it is ordered as follows:

1(a). Executive Order dated July 2, 1910, which established Powersite Reserve No. 78, and Secretarial Order dated October 31, 1944, which established Powersite Classification No. 372, are hereby revoked insofar as they affect the following described public lands:

Sixth Principal Meridian

T. 1 S., R. 71 W., Tracts 53, 56, 57, 58, 59, 60, 61, 65, 139, 148, and 150.

The areas described aggregate 439.24 acres in Boulder County.

(b). At 9 a.m. on April 15, 2002, the lands described in paragraph 1(a), will be opened to operation of the public land laws generally subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received on or prior to 9 a.m on April 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

(c). The lands described in paragraph 1(a) have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994), and these provisions are no longer required.

2. By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–557–000, it is ordered as follows:

(a) At 9 a.m. on April 15, 2002, the following described public lands withdrawn by Executive Order dated July 2, 1910, which established Powersite Reserve No. 78, and Secretarial Order dated October 31, 1944, which established Power Site Classification No. 372, will be opened to disposal, subject to the provisions of section 24 of the Federal Power Act. The opening is subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

T. 1 S., R. 71 W., Tracts 54, 127, 142, 143, 144, 145, 146, 147, 149, and 154.

The area described contains 412.40 acres of public lands in Boulder County.

(b). At 9 a.m. on April 15, 2002, Tract 49, T. 1 S., R.71 W., Sixth Principal Meridian, in Power Project No. 2035 is hereby open to disposal to the Power Project licensee only. The Commission imposed annual charges shall continue and any use not authorized by the License is prohibited without the consent of the Federal Energy Regulatory Commission. This parcel contains 42.62 acres in Boulder County.

3. The State of Colorado, with respect to the lands described in paragraph 1(a) and 2(a), has a preference right for public highway rights-of-way or material sites until April 15, 2002 and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994).

Dated: December 13, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–979 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents. Prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares an SEA and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA examines the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Murphy Exploration & Production Company, Supplemental Development Operations, SEA Nos. S–05676, P–13457 and P–13458.	South Timbalier Area, Block 86, Lease OCS–G 00605, 18 miles south of Lafourche Parish, Louisiana.	09/10/01
TotalFinaElf, Inc., Williams Field Services-Gulf Coast Company, L.P., Right-of-Use and Easement and Pipeline Activity, SEA Nos. P–13233–13260, 13355–13358 and RUE–1.	Canyon Express and Canyon Station Projects, Camden Hill, Aconcagua and King's Peak Field Development from Mississippi Canyon and DeSoto Canyon, through Viosca Knoll and Main Pass to Main Pass 261, 89 miles south of Mobile County Alabama, and 68 to 93 miles east and southeast of Plaquemines Parish, Louisiana.	09/13/01
Marathon Oil Company, Initial Exploration Plan, SEA No. N6974	Desoto Canyon Area, Block 927, Lease OCS–G 10480, 104 miles off the coast of Plaquemines Parish, Louisiana.	10/18/01
El Paso Production Oil & Gas Company, Pipeline Activity, SEA No. P–13114.	High Island Area, Block A–368, Lease OCS–G 02433, 118 miles off the coast of Texas, and 123 miles from Cameron, Louisiana.	12/06/01
Forest Oil Company, Structure Removal Activity, SEA No. ES/SR 00–038A.	West Cameron Area, Block 212, Lease OCS–G 04758, 39 miles south of Cameron, Louisiana, and 37 miles south of Cameron Parish, Louisiana.	09/07/01
RME Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–049A.	Ship Shoal Area, Block 204, Lease OCS–G 01520, 81 miles south of Morgan City, Louisiana, and 38 miles south-southwest of Terrebonne Parish, Louisiana.	09/05/01
Callon Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–070A.	Main Pass (South and East Addition) Area, Block 165, Lease OCS–G 05705, 26 miles southeast of Chandeleur Islands, Louisiana, and 66 miles south-southwest of Theodore, Alabama.	09/17/01
Hall-Houston Oil Company, Structure Removal Activity, SEA No. ES/SR 01–072.	West Delta Area, Block 94, Lease OCS–G 00839, 29 miles southeast of Fourchon, Louisiana, and 25 miles southeast of LaFourche Parish, Louisiana.	08/27/01
Agip Petroleum, Structure Removal Activity, SEA No. ES/SR 01–073A.	Grand Isle Area, Block 102, Lease OCS–G 05662, 46 miles south-southeast of LaFourche Parish, Louisiana, and 48 miles south-southeast of Fourchon, Louisiana.	08/29/01
Amerada Hess Corporation, Structure Removal Activity, SEA No. ES/SR 01–074.	East Cameron Area, Block 188, Lease OCS–G 13586, 73 miles south-southeast of Cameron, Louisiana, and 57 miles south-southwest of Cameron Parish, Louisiana.	08/24/01
Callon Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–071A.	Main Pass (South and East Addition) Area, Block 165, Lease OCS–G 05705, 26 miles east-southeast of Chandeleur Islands, Louisiana, and 64 miles south-southwest of Theodore, Alabama.	09/04/01
Energy Resource Technology, Inc., Structure Removal Activity, SEA No. ES/SR 01–077.	Eugene Island Area, Block 128A, Lease OCS–G 00442, 30 miles southwest of Terrebonne Parish, Louisiana, and 58 miles south-southwest of Morgan City, Louisiana.	09/17/01
El Paso Production GOM, Inc., Structure Removal Activity, SEA No. ES/SR 01–078.	West Cameron (South Addition) Area, Block 509, Lease OCS–G 15101, 95 miles south-southeast of Cameron, Louisiana, and 83 miles south-southwest of Cameron Parish, Louisiana.	09/26/01
Kelley Oil Company, Structure Removal Activity, SEA Nos. ES/SR 01–079 and 01—080.	Mobile Area, Blocks 822 and 865, Leases OCS–G 05056 and 06847, Platform B lies 7 miles south of Dauphin Island, Alabama, and 41 miles south-southwest of Mobile, Alabama. Platform A lies 6 miles south of Dauphin Island, Alabama, and 39 miles south-southwest of Mobile, Alabama.	10/04/01
Amerada Hess Corporation, Structure Removal Activity, SEA No. ES/SR 01–081.	Breton South Area, Block 55, Lease OCS–G 04492, 6 miles southeast of Breton Island, and 23 miles northeast of Venice, Louisiana.	10/04/01
Forest Oil Corporation, Structure Removal Activity, SEA No. ES/SR 01–082.	High Island Area, Block A20, Lease OCS–G 06178, 34 miles southeast of Galveston, Texas, and 76 miles southwest of Cameron, Louisiana.	10/17/01

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Activity/Operator	Location	Date
Louis Dreyfus Natural Gas, Structure Removal Activity, SEA No. ES/SR 01–083.	West Cameron (West Addition) Area, Block 408, Lease OCS–G 10508, 64 miles south-southwest of Cameron Parish, Louisiana, and 83 miles southeast of Sabine Pass, Texas.	10/17/01
Texaco Exploration and Production, Inc., Structure Removal Activity, SEA Nos. ES/SR 01–084, 01–085, 01–086, 01–087 and 01–088.	South March Island (North Addition) Area, Blocks 217, 218, 238 and 239, Lease OCS 00310, between 8 to 11 miles southwest and 6 miles south-southwest of Iberia Parish, Louisiana, and 23 to 36 miles southeast of Intracoastal City, Louisiana.	11/14/01
Texaco Exploration and Production, Inc., Structure Removal Activity, SEA No. ES/SR 01–089.	Vermilion Area, Block 30, Lease OCS–G 04785, 7 miles south-southeast of Vermilion Parish, Louisiana, and 21 miles south of Intracoastal City, Louisiana.	11/27/01
Vastar Offshore, Inc., Structure Removal Activity, SEA No. ES/SR 01–090.	South Pelto Area, Block 11, Lease OCS–G 00071, 8 miles south of Terrebonne Parish, Louisiana, and 33 miles south-southwest of Fourchon, Louisiana.	11/08/01
Denbury Resources Inc., Structure Removal Activity, SEA No. ES/SR 01–091.	High Island (East Addition South Extension) Area, Block A–286, Lease OCS–G 03486, 91 miles south-southeast of Galveston County, Texas, and 105 miles south-southwest of Cameron, Louisiana.	11/15/01
Maritech Resources, Inc., Structure Removal Activity, SEA Nos. ES/SR 01–092, 01–093, 01–094, 01–095, 01–096, 01–097, 01–098, 01–099 and 01–100.	West Delta Area, Block 32, Leases OCS–G 00367 and 01332, 19 miles east-southeast of Grand Isle, Louisiana, and 10 miles south-southwest of Plaquemines Parish, Louisiana.	11/28/01
Seneca Resources Corporation, Structure Removal Activity, SEA No. ES/SR 01–101.	Vermilion Area (South Addition), Block 296, Lease OCS–G 09511, 114 miles southwest of Morgan City, Louisiana, and 78 miles south-southwest of Iberia Parish, Louisiana.	11/27/01
BP America, Inc., Structure Removal Activity, SEA No. ES/SR 01–102.	South Pelto Area, Block 11, Lease OCS–G 00071, 8 miles south of Terrebonne Parish, Louisiana, and 33 miles south-southwest of Fourchon, Louisiana.	11/16/01
Apex Oil & Gas, Inc., Structure Removal Activity, SEA No. ES/SR 01–103.	East Cameron Area, Block 24, Lease OCS–G 04098, 5 miles south-southwest of Cameron Parish, Louisiana, and 35 miles east-southeast of Cameron, Louisiana.	12/10/01

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: December 18, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 02–976 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinate Long Range Operating Criteria for Colorado River Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Operating Criteria for Colorado River Reservoirs (Operating Criteria), promulgated pursuant to Public Law 90–537, were published in the **Federal Register** on June 10, 1970. The Operating Criteria state that the Secretary will sponsor a formal review of the Operation Criteria at least every 5 years. As part of that 5-year review process, the Bureau of Reclamation invites written comments regarding whether the Operating Criteria should be modified, and if so, how they should be modified. The existing Operating Criteria are included at the end of this notice.

DATES: Written comments must be received on or before March 18, 2002.

ADDRESSES: Written comments may be mailed to: Regional Director, Attn: BCOO–4600, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: Jayne Harkins at (702) 293–8190 or in writing at Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470 or by faxogram at (702) 293–8042 or Tom Ryan at (801) 524–3732 or in writing at Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Salt Lake City, Utah 84138–1102. E-mail can be sent to *LROC_Review@lc.usbr.gov*.

SUPPLEMENTARY INFORMATION: The Operating Criteria provided for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

The Operating Criteria provide for a review at least every 5 years with participation by Colorado River Basin state representatives as each Governor may designate and other parties and agencies as the Secretary of the Interior may deem appropriate. As provided in Public Law 102–575 (The Grand Canyon Protection Act of 1992), the Secretary also consults in this review process with the general public including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam. This will be the sixth 5-year review of the Operating Criteria since their initial promulgation in 1970. The Commissioner of the Bureau of Reclamation shall be the authorized agent of the Secretary of the Interior for the purposes of conducting and coordinating this review.

The Record of Decision, Colorado River Interim Surplus Guidelines Final Environmental Impact Statement (Interim Surplus Guidelines) states that 5-year reviews of the Interim Surplus Guidelines may be conducted and if so, such reviews would be coordinated with the Operating Criteria review. The Interim Surplus Guidelines were signed by former Secretary Bruce Babbit on January 16, 2001, became effective in February 2001, and are to be applied in 2002. Accordingly, at this time, there is no need for a review of the Interim Surplus Guidelines.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

In addition to written comments, open public meetings will be conducted during calendar year 2002. Notification of dates, times, and locations for public meetings will be made through the **Federal Register**, media outlets, and to all respondents to this notice.

Dated: December 20, 2001.

John W. Keys, III,

Commissioner, Bureau of Reclamation.

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 90–537)

These Operating Criteria are promulgated in compliance with Section 602 of Public Law 90–537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Act (hereinafter "Upper Basin Storage Reservoirs") and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the "Secretary") may modify the Operating Criteria from time to time in accordance with Section 602(b) of Pub. L. 90–537. The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. Annual Report

(1) On January 1, 1972, and on January 1 of each year thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States be advised of any changes by June of each year.

II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of each year to be in storage as required by Section 602(a) of Pub. L. 90–537 (hereinafter "602(a) Storage"). The quantity of 602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

(b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions of the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The "Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River," dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basing consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under Section 602(a)(1) and (2) of Pub. L. 90.537.

(2) If, in the plan of operation, either:

(a) The Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or

(b) The Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date:

the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.

(3) If, the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,

(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) to avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;

(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;

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(c) Net river losses;
(d) Net reservoir losses;
(e) Regulatory wastes.

(2) Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500 acre-feet of annual consumptive use in accordance with the decree in *Arizona* v. *California*, 376 U.S. 340 (1964).

Surplus: The Secretary shall determine from time to time when water in quantities greater than "Normal" is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona* v. *California* after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;

(ii) requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in *Arizona* v. *California*;

(iii) actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and

(iv) estimated net inflow to Lake Mead.

(c) Shortage: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:

(i) The requirements stated in Article III(1) of these Operating Criteria;

(ii) actual and forecast quantities of active storage in Lake Mead;

(iii) estimated of net inflow to Lake Mead for the current year;

(iv) historic streamflows, including the most critical period of record;

(v) priorities set forth in Article II(A) of the decree in *Arizona* v. *California*; and

(vi) the purposes stated in Article I(2) of these Operating Criteria.

The shortage provisions of Article II(B)(3) of the decree in *Arizona* v. *California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required Section 301(b) of Public Law 90–537.

IV. Definitions

(1) In addition to the definitions in Section 606 of Pub. L. 90–537, the following shall also apply:

(a) "Spills," as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the general of power and energy.

(b) "Surplus," as used in Article III(3)(b) herein, is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term "surplus" as used in these Operating Criteria is not be construed as applied to, being interpretive of, or in any manner having reference to the term "surplus" in the Colorado River Compact.

(c) "Net inflow to Lake Mead," as used in Article III(3) (b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.

(d) "Available capability," used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physically available for generation.

[FR Doc. 02–688 Filed 1–14–02; 8:45 am]
BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Nevada, INT–DES 01–43]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of and public hearing for a draft environmental impact statement (DEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued a DEIS on the proposed execution of an Implementation Agreement (IA) that would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies to implement the proposed Quantification Settlement Agreement (QSA). (The QSA is an agreement in principle among several southern California water agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. It provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.) The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species. Information on public hearings may be found below in the **DATES** section.

DATES: A 60-day public review and comment period begins with the filing of the draft EIS with the Environmental Protection Agency. Written comments must be received no later than March 12, 2002 [*see* **ADDRESSES**, below].

Public hearings are scheduled to be held to receive written or verbal comments about the DEIS from interested organizations and individuals, on the adequacy with which the EIS identifies and describes the potential impacts associated with approving and implementing the proposed Federal action. The hearings will be held at the following times and locations:

- February 5, 2002, VFW Hall, 148 N. First St., Blythe, California, 6:30–9:30 p.m.
- February 6, 2002, Henderson Convention Center, 200 S. Water St., Henderson, Nevada, 2:00–5:00 p.m.
- February 7, 2002, Marriott Hotel (Downtown), 333 S. Figueroa St., Los Angeles, California, 2:00–5:00 p.m.

ADDRESSES: Send written comments to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006.

A copy of the draft EIS is available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Mr. Ellis, at the address provided above, telephone (602) 216–3854.

SUPPLEMENTARY INFORMATION: The Secretary, pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support the implementation of the QSA. The purpose of the Federal action is to facilitate implementation of the QSA, which incorporates contractual agreements necessary for California to reduce its use of Colorado River water. The need for the Federal action is to assist California's efforts to reduce its use of Colorado River water to its 4.4 million acre-feet apportionment in a normal year. This reduction in California's use of Colorado River water would benefit the entire Colorado River Basin.

The IA, IOP, and Related Federal Actions DEIS describes the potential environmental impacts of the three components that make up the proposed Federal action. Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the California parties, no other action alternatives to the IA are considered in the DEIS. Similarly, the biological conservation measures proposed to be implemented under the proposed action relate specifically to the water transfers specified in the IA and QSA. These measures were developed and agreed to by Reclamation and the U.S. Fish and Wildlife Service (FWS) in response to an August 2000 Reclamation Biological Assessment, and were incorporated into a FWS January 2001 Biological Opinion; no alternatives to the biological conservation measures are considered in the DEIS. With regard to the IOP, in response to scoping comments received, Reclamation developed an alternative that would eliminate the forgiveness of payment aspect of the proposed policy. This alternative has been evaluated and is described in the DEIS.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071
- Palo Verde Valley Library, 125 W. Canslor Way, Blythe, CA 92225
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363
- San Diego Central Library, 820 E St., San Diego, CA 92101
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 28, 2001.
Kenneth D. Naser,
Director, Office of Environmental, Policy and Compliance.
[FR Doc. 02–689 Filed 1–14–02; 8:45 am]
BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2002 is 6.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2001, through and including September 30, 2002.

FOR FURTHER INFORMATION CONTACT: James Handlon, Economist, Office of Policy, Washington, DC 20240; telephone: (202) 513–0603.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.125 percent for fiscal year 2002.

This rate has been computed in accordance with section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) Provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 5.654 percent. Rounding this average yield to the nearest one-eighth percent is 5.625 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 2001 to 2002. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.125 percent shall be used by all Federal agencies in the formulation and evaluation of water and

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related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 13, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–925 Filed 1–15–02; 8:45 am]

BILLING CODE 4310–RH–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 22, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meeting:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–409–412 and 731–TA–909 (Final) (Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on January 28, 2002.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: January 10, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1108 Filed 1–11–02; 1:19 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001 (66 FR 38323), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Abbott Laboratories to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 4, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–935 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1340]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the Alameda County Government Center, Including a New Juvenile Justice Facility in the City of Dublin, Alameda County, California

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of intent (NOI).

SUMMARY: Alameda County (California) proposes to approve a master plan and develop a government center in the East County area, specifically in the City of Dublin, California. The government center is proposed to include a courthouse (15 adult courts), 250,000 square feet of County offices, parking facilities, related site improvements, and a new Juvenile Justice facility with 420 beds, juvenile courts, administration, and associated support facilities (approximately 400,000 square feet total). The Juvenile Justice Facility component of the government center is proposed in response to serious shortcomings in the capability of the existing facility located in San Leandro, California to serve existing and future needs of children in the County. The government center would be developed on a 40-acre County-owned site located at the northern terminus of Hacienda Drive, bounded by Gleason Drive on the south, Arnold Road on the west, Broder Blvd. on the north, and Madigan Avenue on the east. The proposed Alameda County Juvenile Justice project would be funded in part by federal grant monies disbursed by the California Board of Corrections. These funds total $33,165,000, and are part of the State's allocation from the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program. The County would provide additional funding from bonds, certificates of participation, and the general fund. The total cost for the Juvenile Justice Facility is estimated to be approximately $177,000,000.

The Department of Justice, the California Board of Corrections and Alameda County are preparing a joint Environmental Impact Statement and Environmental Impact Review (EIS/EIR) document in order to satisfy the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) concurrently. The U.S. Department of Justice is the lead federal agency under NEPA for the preparation of the EIS/EIR and the California Board of Corrections will be preparing the EIS/EIR under a provision of NEPA that allows an agency of statewide jurisdiction with responsibility for the proposed action (pursuant to the VOI/TIS grant) to prepare an EIS. Alameda County will be the lead agency under CEQA for the preparation of the EIS/EIR for the master plan for the government center as well as the Juvenile Justice Facility.

DATES: Public scoping meetings will be held in the City of Dublin, County of Alameda, California, within thirty days of the date of this publication. In accordance with the U.S. Department of Justice, Office of Justice Programs, Corrections Programs Office, Program Guidance on Environmental Protection Requirements, a notice will be published in a non-legal section of at least two editions of a newspaper of general circulation in the area of the proposed action announcing the date, time, and location of the meeting as well as briefly summarizing its purpose.

The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping meetings. Comments may also be submitted in writing, identifying relevant environmental and socioeconomic issues to be addressed in this environmental analysis. Comments and information should be mailed to Ms. Jill Young of the Department of Justice or Mr. Michael Houghtby of the California Board of Corrections at the addresses listed below. Requests to be placed on the mailing list for announcements and the Draft EIS/EIR should also be sent to Ms. Jill Young or Mr. Michael Houghtby.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Young, Environmental Coordinator, Department of Justice, Office of Justice Programs, Corrections Programs Office, 810 7th Street, NW, Washington, DC 20531, Telephone (202) 353–7302, Fax (202) 307–2019, or contact Mr. Michael Houghtby, Field Representative; State of California Board of Corrections, Corrections Planning and Programs Division, 600 Bercut Dr, Sacramento, CA 95814, Telephone (916) 322–7085; Fax (916) 445–5796.

SUPPLEMENTARY INFORMATION: The proposed Juvenile Justice Facility is intended to replace the existing Alameda County Juvenile Hall, which is located in the hills of San Leandro, Alameda County, California. The existing facility was constructed in various phases with most structures dating from the 1950s to 1970s. It includes secure detention at the Juvenile Hall facility for 299 detainees, camps for low security detention, and the Chabot Community Day Center. The detention facility is constructed on a steep hillside in close proximity to the Hayward fault, an active earthquake fault with a potential for causing severe ground shaking with an estimated 32% chance of a major seismic event during the next 30 years. In addition, these facilities, which routinely are overcrowded, have or will soon exceed their useful, economic life and are in need of replacement, based on operational and architectural/engineering evaluations. Therefore, the facility does not meet the present or future needs of the residents, staff or community and must be replaced.

A juvenile justice system master plan completed in 1998 determined that the County needed to construct a new juvenile detention facility that would house up to 540 youth at any given time. The facility would respond to the approximately 10,000 annual referrals for intake, of which 6,000 are admitted for detention in a given year. The estimated total number of beds required for a new detention facility was based on historical trends and projections, multiplied by a factor of 1.2 to account for peaking, classification and operational needs, so that the County could house youth in a facility that reflects the detainees' gender, age, and security risk, to avoid crowding, and to provide for long-term planning. The County Board of Supervisors has since revised the project to include 420 beds, with a possible capacity of 450 beds. The environmental effects of this project and several alternatives will be evaluated in the EIS/EIR.

Alternatives: The EIS/EIR will consider the No Project/No Action Alternative, as required by CEQA and NEPA. Under such a scenario, the existing Juvenile Hall facility, courts, and County offices would remain in their present locations and no Master Plan would be approved for the Dublin site.

The EIS/EIR will also discuss and evaluate certain other alternatives, which may include: an alternative location for the Juvenile Justice Facility, including development of a replacement facility at the existing site in San Leandro; development of a split campus with part of the project in Dublin and part in San Leandro; or other locations to be determined during the environmental review process.

The EIS/EIR will also consider variations in the project size, such as a reduced or increased number of beds at the Juvenile Justice facility, or a reduced or increased number of courts at the East County Hall of Justice.

The EIS/EIR will also discuss policy alternatives that are under consideration, such as increased community placement and monitoring of youth offenders.

Dated: January 10, 2002.

Deborah Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–999 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1341]

Notice of Intent To Prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Construction and Operation of a Juvenile Justice Campus in Fresno County, California

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Intent (NOI).

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA), codified at 42 U.S.C. 4321 *et seq.*, the U.S. Department of Justice, Office of Justice Programs, Corrections Program Office (OJP/CPO) announces the Notice of Intent (NOI) for the preparation of an EIS/EIR for the Construction and Operation of a Juvenile Justice Campus (JJC) in Fresno County, California. The construction and operation of the JJC is being proposed by Fresno County which is applying for OJP/CPO grants funds obtained by the California Board of Corrections (BOC) through the Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Incentive Grants Program. This project is subject to NEPA review because it may be funded in part with federal funding available under the VOI/TIS Grant Program. The EIS/EIR is being prepared as a joint document so as to satisfy the requirements of the California Environmental Quality Act (CEQA) in addition to NEPA.

DATES: During the preparation of the draft EIS/EIR, there will be opportunities for public involvement in order to determine the issues to be examined. Public scoping meetings will be held at the Fresno County Plaza, 8th floor, Conference Room "A", 2220 Tulare Street, Fresno, CA 93721, within thirty days of the date of this publication, to solicit input on the scope of the EIS/EIR to be conducted, and to identify significant issues related to the proposed action. Although the purpose of the agency Scoping Meeting will be to gather comments from interested and affected agencies, the public is invited to attend. Maps and information on the proposed action will be available beginning at 6:00 PM immediately prior to the formal portion of the meeting. The meeting location, date, and time will be well publicized and arranged to allow for the public as well as interested agencies and organizations to attend. The scoping meeting is being held for individuals to formally express their views on the proposed action and to

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identify those environmental issues or concerns with respect to the implementation of the proposed action and its alternatives so that these issues can be analyzed in depth in the draft EIS/EIR. Community input will be solicited throughout this process, and community comments will be incorporated into the decision-making process.

FOR FURTHER INFORMATION CONTACT: Public notice will be given concerning the availability of the draft EIS/EIR for public review and comment. Questions concerning the proposed action and the draft EIS/EIR may be directed to: Jill Young, Environmental Coordinator, Corrections Program Office, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531, Telephone: 202.307–3914, Telefacsimile: 202.307–2019, or Michael A. Houghtby, Field Representative, State of California Board of Correction, Corrections Planning and Programs Division, 600 Bercut Drive, Sacramento, CA 95814, Telephone: 916.322.7085, Telefacsimile: 916.445.5796.

SUPPLEMENTARY INFORMATION:

Proposed Action

Fresno County is proposing to build and operate the JJC to better serve the community and the existing and future juvenile justice populations. The need for this action is based on the conditions of existing juvenile justice facilities, additional space requirements needed to accommodate projected growth rates in the youth population that will enter the juvenile justice system, and the County's desire to increase efficiency by concentrating all main functions of the juvenile justice system at a site close to downtown Fresno. The Proposed Action would include the acquisition of an approximately 210-acre site that would be capable of accommodating up to 1,400 beds in addition to the related functions that would be located on the campus. Related functions would include courts, offices, medical and mental health facilities, probation department offices, group homes, and related schooling, recreational, and community based programs. The Proposed Action would also include amending the Fresno County General Plan by redesignating the preferred site to Public Facility and rezoning to the AL–20 Zoning District.

Alternatives

The draft EIS/EIR will address the potential impacts of the "no action" alternative and the construction and operation of the JJC at alternative sites. Practicable alternative sites have been identified by Fresno County that include: Site #1b located at the northeast corner of W. Jensen and S. Grantland Avenues; Site #3 located at the northwest corner of the intersection of E. Jensen and S. Fowler Avenues; and Site #6 (the preferred site) located at the southwest quadrant of Highway 99 and E. American Avenue.

Dated: January 10, 2002.

Deborah J. Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–1000 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on January 19, 2002. The meeting will begin at 10:15 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of November 17, 2001.
3. Approval of the minutes of the Executive Session of the Board's meeting of November 17, 2001.
4. Chairman's Report.
5. Members' Reports.
6. Acting Inspector General's Report.
7. President's Report.
8. Consider and act on the report of the Board's Performance Review Committee.
9. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
11. Consider and act on the report of the Board's Finance Committee.
12. Panel presentation by the African American Project Directors discussing diversity issues within the LSC community and recognizing LSC for its diversity initiative.
13. Consider and act on changes to the Board's 2002 meeting schedule.

Closed Session

14. Briefing [1] by the Acting Inspector General on the activities of the Office of Inspector General.
15. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

16. Consider and act on other business.
17. Public Comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1179 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

Time and Date: The Finance Committee of the Legal Services Corporation Board of Directors will meet on January 19, 2002 The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 C.F.R. 1622.2 & 1622.3.

2. Approval of the minutes of the Committee's meeting of September 8, 2001.
3. Office of Inspector General's presentation of the Corporation's FY '01 annual audit.
4. Review and adoption of FY '02 operating budget for the Corporation.
5. Review of expenses through November 30, 2001.
6. Consider and act on conforming amendments to LSC's 403(b) plan.
7. Consider and act on other business.
8. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel, & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, & Corporate Secretary.

[FR Doc. 02–1180 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

Time and Date: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on January 18, 2002. The meeting will begin at 2 p.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 16, 2001.
3. Staff report on the status of Current Rulemaking: 45 CFR Part 1626 (Restrictions on Legal Assistance to Aliens); 45 CFR Part 1611 (Eligibility); and 45 CFR Part 1639 (Welfare Reform).
4. Staff report on the status of the activities of the Regulations Review Task Force.
5. A report by David de la Tour on the Office of Compliance & Enforcement's planned activities in 2002.
6. Consider and act on other business.
7. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1181 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on the Performance Review of the Acting Inspector General

Time and Date: The Ad Hoc Committee on Performance Review of the Acting Inspector General of the Legal Services Corporation's Board of Directors will meet on January 18, 2002. The meeting will begin at 9 a.m. and continue until conclusion of the committee's agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Open Session:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 17, 2001.

Closed Session:

3. Consider and act on recommendation to the Board of Directors on the annual evaluation of the Acting Inspector General for FY '01.

Open Session:

4. Consider and act on other business.
5. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1182 Filed 1–11–02; 3:54 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

Time and Date: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on January 18, 2002. The meeting will begin at 10 a.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 7, 2001.
3. A Panel Presentation by Anh Tu, Michelle DeBord (Executive Director, Mid-Pennsylvania Legal Services), Larry Harley (Executive Director, Southwest Virginia Legal Aid Society), Martin Wegbreit (Managing Attorney, Southwest Virginia Legal Aid Society), Alma Jones (Executive Director, Legal Services of North Louisiana), and Ramon Arias (Executive Director, Bay Area Legal Aid) on the Problems Experienced by Programs and Executive Directors Once the Technical Aspects of "Merger" are Completed and the Real Work of Developing and Sustaining a High-Quality Legal Services Program Begins.
4. A report by Michael Genz and Robert Gross on the progress of the Programs Office's performance in terms of the goals outlined in the "Strategic Directions."

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5. A report by Reginald Haley and Barbara Donnelly on the action agenda that LSC will pursue in 2002 as an outgrowth of the Hershey Client Conference.

6. A report by Patricia Hanrahan on the action agenda that LSC will pursue in 2002 as an outgrowth of our 2001 conversations on Diversity and Leadership.

7. Consider and act on other business.

8. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1183 Filed 1–11–02; 3:54 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, January 17, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.

2. Requests from three (3) Federal Credit Unions to Convert to Community Charters.

3. Wisconsin Member Business Loan Rule.

4. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1059 Filed 1–10–02; 4:43 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Large Irradiators.

2. *Current OMB approval number:* 3150–0158.

3. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 8 Agreement State reports submitted annually.

4. *Who is required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

5. *The number of annual respondents:* 77 (22 NRC licensees and 55 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 35,975 (10,277 hours for NRC licensees [10,087 recordkeeping + 190 reporting] and 25,698 hours for Agreement State licensees [25,218 recordkeeping + 480 reporting]) or 467 hours per licensee.

7. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

Submit, by March 18, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site, *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at-(301) 415–7233, or by Internet electronic mail at *infocollects@NRC.GOV*.

Dated at Rockville, Maryland, this 8th day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NFR Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–928 Filed 1–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of January 14, 21, 28, February 4, 11, 18, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 14, 2002

Tuesday, January 15, 2002

9:30 a.m.
Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, January 16, 2002

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Week of January 21, 2002—Tentative

Wednesday, January 23, 2002

9:30 a.m.
Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.
Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, January 30, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov*.
2 p.m.
Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

2 p.m.
Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, February 20, 2002

2:55 p.m.
Affirmation Session (Public Meeting) (If needed)
3 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

*–The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information:

By a vote of 5–0 on January 7 and 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental and Security Issues (Closed—Ex. 1 & 9)," be held on January 9, 2002, and on less than one week's notice to the public.

By a vote of 5–0 on January 8 and 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)," be held on January 16, 2002, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 10, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–1069 Filed 1–11–02; 10:58 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Extension of the Public Comment Period for the Draft Supplement to the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has extended the public comment period for draft Supplement 1 to NUREG–0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities [GEIS]," dealing with decommissioning of nuclear power reactors. The public comment period is extended to January 30, 2002.

The draft supplement to the GEIS is available electronically through the NRC's Public Electronic Reading Room (PERR) found on the Internet at the following web address: *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain access to the NRC's Agencywide Document Access and Management Systems (ADAMS), which provides text and image files of NRC's public documents. The draft report can also be examined, or copied for a fee, at the NRC's Public Document Room found at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 30, 2002. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T 6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically to the NRC to the e-mail address *dgeis@nrc.gov*. All comments received by the NRC, including those made by Federal, State, and local agencies; Indian tribes; or other interested persons, will be accessible electronically through NRC's PERR link listed above, and can be examined, or copied for a fee, at the NRC's Public Document Room in Rockville, Maryland.

To ensure timely receipt of comments, electronic submittal of comments is preferred because of the extended times now being routinely encountered for the

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safe processing and delivery of first class mail to the NRC. If comments are sent via first class mail, commenters are requested to contact Dr. Michael T. Masnik by telephone at (301) 415–1191, or through the NRC operator at (800) 368–5642, to inform him that comments have been submitted by mail.

FOR FURTHER INFORMATION, CONTACT: Dr. Michael T. Masnik, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dr. Masnik may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 11th day of January, 2002.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Acting Chief, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1070 Filed 1–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site *(http://www.pbgc.gov)*.

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2002 is 4.66 percent (*i.e.*, 85 percent of the 5.48 percent yield figure for December 2001).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2001 and January 2002.

For premium payment years beginning in:	The required interest rate is:
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80
June 2001	4.91
July 2001	4.82
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	4.66

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2002, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	3/31/02	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the first quarter (January through March) of 2002 (*i.e.*, the rate reported for December 17, 2001) is 4.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	3/31/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of January 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–1137 Filed 1–14–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27489]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 9, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the declaration for complete statements of the proposed transaction summarized below. The declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by February 4, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 4, 2002, the declaration, as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–10021)

American Electric Power Company, Inc. ("AEP"), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed a declaration under sections 6(a), 7, 32, and 33 of the Act and rules 53 and 54 under the Act. The Commission issued a notice of the declaration on January 2, 2002 (HCAR No. 27488) ("Prior Notice"). This supplemental notice replaces in its entirety the Prior Notice.

AEP proposes to organize and acquire all of the common stock or other equity interests of one or more subsidiaries ("Financing Subsidiary" or "Financing Subsidiaries") for the purpose of effecting various financing transactions from time to time through June 30, 2004 involving the issuance and sale of up to an aggregate of $3.0 billion (cash proceeds to AEP) in any combination of common stock, preferred securities, debt securities, stock purchase contracts and stock purchase units, as well as its common stock issuable under the stock purchase contracts and stock purchase units. AEP further proposes that it may effect directly (i.e., without Financing Subsidiary) any transaction involving common stock, preferred securities, debt securities, stock purchase contracts or stock purchase units described here, provided that AEP shall not issue any secured indebtedness. AEP will not publicly issue unsecured indebtedness or preferred securities in this file unless it has maintained at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency. No Financing Subsidiary or Special Purpose Subsidiary, as defined below, shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act. Additionally, AEP's forecasted cash flow analysis and capitalization forecast for the next two years, which forecasts assume the issuance of $1 billion of common stock out of the $3.0 billion total financing authority requested herein, indicate that it is expected that AEP's common equity will remain above 30% of its consolidated capitalization for each of the next three years.

I. Financing Subsidiaries

AEP will acquire all of the outstanding shares of common stock or other equity interests of the Financing Subsidiary for amounts (inclusive of capital contributions that may be made from time to time to the Financing Subsidiary by AEP) aggregating up to 35% of the total capitalization of the Financing Subsidiary (i.e., the aggregate of the equity accounts and indebtedness of the Financing Subsidiary). An investment by AEP will not in any event be less than the minimum required by any applicable law. The business of the Financing Subsidiary will be limited to effecting financing transactions for AEP and its affiliates. In connection with these financing transactions, AEP will enter into one or more guarantee or other credit support agreements in favor of the Financing Subsidiary.

II. Preferred Securities

In connection with the issuance of preferred securities, AEP or the Financing Subsidiary proposes to organize one or more separate special purpose subsidiaries ("Special Purpose Subsidiary" or "Special Purpose Subsidiaries") as any one or any combination of (a) a limited liability company under the Limited Liability Company Act (the "LLC Act") of the State of Delaware or other jurisdiction considered advantageous by AEP, (b) a limited partnership under the Revised Uniform Limited Partnership Act of the State of Delaware or other jurisdiction considered advantageous by AEP, (c) a business trust under the laws of the State of Delaware or other jurisdiction considered advantageous by AEP, or (d) any other entity or structure, foreign or domestic, that is considered advantageous by AEP. In the event that any Special Purpose Subsidiary is organized as a limited liability company, AEP or the Financing Subsidiary may also organize a second special purpose wholly-owned subsidiary under the General Corporation Law of the State of Delaware or other jurisdiction ("Investment Sub") for the purpose of acquiring and holding Special Purpose

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Subsidiary membership interests so as to comply with any requirement under the applicable LLC Act that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, AEP or the Financing Subsidiary also may organize an Investment Sub for the purpose of acting as the general partner of the Special Purpose Subsidiary and may acquire, either directly or indirectly through the Investment Sub, a limited partnership interest in the Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will at all times have a limited partner to the extent required by applicable law.

The respective Special Purpose Subsidiaries then will issue and sell to public or private investors at any time or from time to time unsecured preferred securities described below ("Preferred Securities"), with a specified par or stated value or liquidation preference per security.

AEP, the Financing Subsidiary and/or an Investment Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law and not exceeding 21% of the total equity capitalization from time to time of the Special Purpose Subsidiary (i.e., the aggregate of the equity accounts of the Special Purpose Subsidiary) (the aggregate of the investment by AEP, the Financing Subsidiary and/or an Investment Sub is referred to as the "Equity Contribution"). The Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments ("Note" or "Notes") governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the equity contribution made to it and the proceeds from the sale of Preferred Securities by it from time to time to purchase Notes. Alternatively, the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to the Financing Subsidiary ("Loan" or "Loans") both the equity contribution to the Special Purpose Subsidiary and the proceeds from the sale of the Preferred Securities by the Special Purpose Subsidiary from time to time, and the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing the borrowings.

AEP or the Financing Subsidiary also proposes to guarantee ("Guaranty" or "Guaranties") (a) payment of dividends or distributions on the Preferred Securities of any Special Purpose Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available, (b) payments to the Preferred Securities holders of amounts due upon liquidation of the Special Purpose Subsidiary or redemption of the Preferred Securities of the Special Purpose Subsidiary, and (c) certain additional amounts that may be payable in respect of the Preferred Securities. AEP's credit would support any Guaranty by the Financing Subsidiary.

Each Note will have a term of up to 50 years. Prior to maturity, the Financing Subsidiary will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either a fixed rate or an adjustable rate which may be reset by auction, remarketing, put or call features, a formula or formulae based upon certain reference rates and/or by other predetermined methods. Interest payments will constitute each respective Special Purpose Subsidiary's only income and will be used by it to pay dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership or other common equity interests of the Special Purpose Subsidiary. Dividend payments or distributions on the Preferred Securities will be made on a monthly or other periodic basis and must be made to the extent that the Special Purpose Subsidiary issuing the Preferred Securities has legally available funds and cash sufficient for these purposes. However, the Financing Subsidiary may have the right to defer payment of interest on any issue of Notes for up to five or more years. Each Special Purpose Subsidiary will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five or more years, provided that if dividends or distributions on the Preferred Securities of any series are not paid for up to 18 or more consecutive months, then the holders of the Preferred Securities of the series may have the right to appoint a trustee, special general partner or other special representative to enforce the Special Purpose Subsidiary's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Note issued by the Financing Subsidiary with respect thereto. The Preferred Securities may be convertible or exchangeable into common stock of AEP.

The Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of the Financing Subsidiary or AEP, as the case may be, and may have no cross-default provisions with respect to other indebtedness of the Financing Subsidiary or AEP. A default under any other outstanding indebtedness of the Financing Subsidiary or AEP would not result in a default under any Note or Guaranty. However, AEP and/or the Financing Subsidiary may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of pari passu debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

It is expected that the Financing Subsidiary's interest payments on the Notes will be deductible for federal income tax purposes and that each Special Purpose Subsidiary will be treated as either a partnership or a passive grantor trust for federal income tax purposes. Consequently, holders of the Preferred Securities and AEP (and any Investment Sub) will be deemed to have received distributions in respect of their ownership interests in the respective Special Purpose Subsidiary and will not be entitled to any "dividends received deduction" under the Internal Revenue Code. The Preferred Securities of any series, however, may be redeemable at the option of the Special Purpose Subsidiary issuing the series (with the consent or at the direction of AEP) at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, (a) at any time after a specified date not later than approximately 10 years from their date of issuance, or (b) upon the occurrence of certain events, among them that (c) the Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Special Purpose Subsidiary, or (d) it is determined that the interest payments by the Financing Subsidiary on the related Notes are not deductible for income tax purposes, or (e) the Special Purpose Subsidiary becomes subject to regulation as an "investment company" under the Investment Company Act of 1940. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. The Financing Subsidiary also may have the right in certain cases or in its discretion to exchange the Preferred Securities of any Special Purpose Subsidiary for the Notes or other junior subordinated debt issued to the Special Purpose Subsidiary.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, the Special Purpose Subsidiary may also have the obligation to "gross up" payments so that the holders of the Preferred Securities issued by the Special Purpose Subsidiary will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In this event, the Financing Subsidiary's obligations under its related Note and Guaranty may also cover the "gross up" obligation. In addition, if any Special Purpose Subsidiary is required to pay taxes with respect to income derived from interest payments on the Notes issued to it, the Financing Subsidiary may be required to pay the additional interest on the related Notes as shall be necessary in order that net amounts received and retained by the Special Purpose Subsidiary, after the payment of taxes, shall result in the Special Purpose Subsidiary's having funds as it would have had in the absence of payment of taxes.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of the Preferred Securities of the Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners, as the case may be, an amount equal to the par or stated value or liquidation preference of the Preferred Securities plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary, including its Limited Liability Company Agreement, Limited Partnership Agreement or Trust Agreement, as the case may be, will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Preferred Securities from time to time and the lending to the Financing Subsidiary or Investment Sub of (a) the proceeds thereof and (b) the Equity Contribution to the Special Purpose Subsidiary, and certain other related activities. Accordingly, it is proposed that no Special Purpose Subsidiary's constituent instruments include any interest or dividend coverage or capitalization ratio restrictions on its ability to issue and sell Preferred Securities as each issuance will be supported by a Note and Guaranty and the restrictions would therefore not be relevant or necessary for any Special Purpose Subsidiary to maintain an appropriate capital structure.

Each Special Purpose Subsidiary's constituent instruments will further state that its common stock or general partnership or other common equity interests are not transferable (except to certain permitted successors), that its business and affairs will be managed and controlled by AEP, the Financing Subsidiary and/or its Investment Sub (or permitted successor), and that AEP or the Financing Subsidiary (or permitted successor) will pay all expenses of the Special Purpose Subsidiary.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes will not exceed the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies. Current market conditions suggest the costs for issuing long-term indebtedness with a three to five year maturity are less than or equal to the costs for issuing short-term indebtedness over the same time period.

III. Debt Securities

AEP proposes that, in addition to, or as an alternative to, any Preferred Securities financing as described above, AEP and/or the Financing Subsidiary may issue and sell notes directly to public or private investors without an intervening Special Purpose Subsidiary ("Debt Securities"). Any notes so issued will be unsecured, may be either senior or subordinated obligations of AEP or the Financing Subsidiary, as the case may be, may be convertible or exchangeable into common stock of AEP or Preferred Securities, may have the benefit of a sinking fund, may have a term of up to 50 years, may have fixed or adjustable rates of interest which may be reset by predetermined methods such as auction, remarketing, put or call features and/or a formula or formulae based upon certain reference rates and otherwise will have terms and provisions substantially as described here. Debt Securities of the Financing Subsidiary will have the benefit of a guarantee or other credit support by AEP. AEP will not issue the Debt Securities, either directly or through the Financing Subsidiary, unless it has evaluated all relevant financial considerations (including, without limitation, the cost of equity capital) and has determined that to do so is preferable to issuing common stock or short-term debt. Current market conditions suggest the costs for issuing long-term indebtedness with a three to five year maturity are less than or equal to the costs for issuing short-term indebtedness over the same time period.

The interest rate on the Debt Securities will not exceed the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies.

IV. Stock Purchase Contracts, Stock Purchase Units and Common Stock

AEP or the Financing Subsidiary may issue and sell from time to time stock purchase contracts ("Stock Purchase Contracts"), including contracts obligating holders to purchase from AEP and/or AEP to sell to the holders, a specified number of shares or aggregate offering price of AEP common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units ("Stock Purchase Units") consisting of a Stock Purchase Contract and Debt Securities, Preferred Securities of AEP, or debt obligations of third parties, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of AEP under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

AEP may issue and sell its common stock other than as a component or in satisfaction of a Stock Purchase Contract or Stock Purchase Unit ("Direct Sales") (a) through solicitations of proposals from underwriters or dealers; (b) through negotiated transactions with underwriters or dealers; (c) directly to a limited number of purchasers or to a single purchaser; and/or (d) through agents. The price applicable to shares

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sold in any transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions. AEP is authorized under its restated articles of incorporation to issue 600,000,000 shares of common stock ($6.50 par value), of which 322,024,714 were issued and outstanding as of February 1, 2001. As of September 30, 2001, AEP's consolidated capitalization consisted of 63.0% indebtedness, 0.7% preferred stock, 1.3% mandatorily redeemable preferred securities and 35.0% common equity.

V. Interest Rate Hedges

AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate-hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or whose parent companies" senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (i.e., a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. AEP and/or the Financing Subsidiary will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

VI. Anticipatory Hedges

In addition, AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (a) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap ("Forward Sale"); (b) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"); (c) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations ("Zero Cost Collar"); (d) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. AEP and/or the Financing Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. AEP may decide to lock in interest rates and/or limit its exposure to interest rate increases. AEP represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. AEP will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.[1]

VII. Use of Proceeds

The proceeds of any financing by the Financing Subsidiary or any Special Purpose Subsidiary will be remitted, paid as a dividend, loaned or otherwise transferred to AEP or its designee. The proceeds of the Preferred Securities, Debt Securities, Stock Purchase Contracts and Stock Purchase Units will be used to acquire the securities of associate companies and interests in other businesses, including interests in exempt wholesale generators ("EWGs") and foreign utility holding companies ("FUCOs"), or in any transactions permitted under the Act and for other general corporate purposes, including the reduction of short-term indebtedness. AEP had approximately $3.6 billion outstanding short-term indebtedness as of September 30, 2001. No proceeds will be used to purchase generation assets currently owned by AEP or any affiliate unless the purchase has been approved by order of this Commission in File No. 70–9785 or other similar applications. AEP represents that no financing proceeds will be used to acquire the equity securities of any company or any interest in other businesses unless the acquisition has been approved by the Commission in this proceeding or in File No. 70–9353 or is in accordance with an available exemption under sections 32, 33 and 34 of the Act or rule 58 under the Act. AEP does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–942 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The proposed terms and conditions of the Interest Rate Hedges and Anticipatory Hedges are substantially the same as the Commission has approved in other cases. See Entergy Corporation, HCAR No. 27371 (April 3, 2001); New Century Energies, Inc., et al., HCAR No. 27000 (April 7, 1999); and Ameren Corp., et al., HCAR No. 27053 (July 23, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25359; 812–12468]

Conseco Fund Group, *et al.*; Notice of Application

January 9, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 ("Act") from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Conseco Fund Group ("CFG"), Conseco Series Trust ("CST" together with CFG, the "Trusts"), and Conseco Capital Management, Inc. (the "Adviser").

Filing Dates: The application was filed on March 6, 2001, and amended on December 26, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 11825 North Pennsylvania Street, Carmel, IN 46032.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts, each a Massachusetts business trust, are registered under the Act as open-end management investment companies. Each Trust is organized as a series investment company and offers shares of multiple series (each series, a "Fund," and together, the "Funds"), each with its own investment objectives, policies, and restrictions.[1] The Adviser serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between each Trust and the Adviser that was approved by the respective Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholders ("Advisory Agreement"). The Advisory Agreement permits the Adviser to enter into separate investment advisory agreements ("Subadvisory Agreements") with subadvisers ("Subadvisers") to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Subadviser is an investment adviser registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. The Adviser compensates the Subadvisers out of the fees paid to the Adviser by the Fund.

3. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by the vote of a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight of the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of each Trust's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board of the corresponding Trust, including a majority of the Independent Trustees,

[1] The applicants also request that any relief granted pursuant to the application also apply to future series of the Trusts and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application ("Future Funds," included in the term "Funds"). The Trusts are the only existing investment companies that currently intend to rely on the requested order. No Fund will contain in its name the name of a Subadviser (as defined below).

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will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadviser(s) to manage all or a part of the Fund's assets; (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that Subadvisers comply with each Subadvised Fund's investment objectives, restrictions, and policies by, among other things, implementing procedures reasonably designed to ensure compliance; and (e) allocate and, when appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–941 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [66 FR 1524, January 11, 2002]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, January 15, 2002 at 10:00 a.m.

Change in the Meeting: Time Change.

The closed meeting scheduled for Tuesday, January 15, 2002 at 10:00 a.m. has been changed to Tuesday, January 15, 2002 at 9:00 a.m.

Dated: January 11, 2002.

Jonathan G. Katz,

Secretary,

[FR Doc. 02–1094 Filed 1–11–02; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45252; File No. SR–Amex–2001–26]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Increase in the Exchange Regulatory Fee

January 8, 2002.

On May 7, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Amex Equity Fee Schedule to increase the regulatory fee from .00005 x Total Value to .000075 x Total Value for certain orders in Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, the "Products") entered electronically into the Amex Order File from off the Floor ("System Orders") by a member or member organization trading as an agent for the account of a non-member competing market maker.

The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.[3] The Commission received no comments on the proposal. On December 12, 2001, the Amex filed an amendment to the proposed rule change.[4] In Amendment No. 1, the Amex made a technical amendment to the proposed rule change by further clarifying its purpose for increasing the Exchange's regulatory fee that does not need to be published for comment. In Amendment No. 1, the Exchange states that the regulatory fee increase has been put in place to ensure that the Amex has the appropriate resources to provide the regulatory, operational, and business development function necessary to meet the increasing demands of a complex and competitive marketplace.[5]

The Commission notes that the proposed rule change allows for disparate treatment of competing market makers in that it increases the regulatory fee for System Orders in the Products by a member or member organization trading as an agent for the account of a non-member.[6] However, the Commission notes that under the Amex's current fee schedule, orders in the Products by a member or member organization trading as an agent for the account of a non-member were not entitled to the same treatment as other orders in the fee schedule in that they were not exempt from the regulatory fee. This proposed rule change does not alter this result. Furthermore, the Commission believes that the Intermarket Trading System ("ITS") will continue to provide an alternative means by which non-member competing market makers can access the Amex. ITS provides an avenue for non-member competing market makers to interact with trading interests on the Amex, fee-free.

For these reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44410 (June 12, 2001), 66 FR 32852.

[4] *See* letter from Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 11, 2001 ("Amendment No. 1").

[5] Specifically, the Amex states that the Exchange continues to make heavy investments in: technologies to support the efficient trading of Exchange Traded Funds ("ETFs") and HOLDRS on the Exchange; product development to bring new products to market; and the regulation of the EFT and HOLDRs markets. The Exchange believes that non-member competing market markers receive the most benefit from trading ETFs and HOLDRs on the Amex, with associated Amex technological enhancements and regulatory structure. The Exchange believes that the fee increase will support the infrastructure relied upon by the broader marketplace including competitive exchanges and market participants. *Id.*

[6] The Commission does not intend this proposal to establish a precedent to permit a primary market to make distinctions in the treatment of orders on its Floor as a means to discriminate unfairly against its competitors.

applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using its facilities.

It is therefore ordered, pursuant to section 19 (b)(2) of the Act[9], that the proposed rule change (File No. SR–Amex–2001–26) and Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–943 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45253; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Customer's Contrary Exercise Advices

January 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex amended its proposal on December 17, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 980 to: (i) Simplify the manner in which a Contrary Exercise Advice is submitted to the Exchange; and (ii) to extend by one hour the cut-off time by which members must submit to the Exchange Contrary Exercise Advice notices for customer accounts.

The text of the proposed rule change is available at the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OCC, the issuer of all Amex traded options contracts, has an established procedure for options holders wishing to exercise in-the-money options before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity options contract that is ¾ of a point or more in-the-money for customer accounts or ¼ point or more in-the-money for any other accounts. All options holders who wish to have their options contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Options holders who do not wish to have their options automatically exercised, or do wish options to be exercised that do not fit within the parameters of the Ex-by-Ex procedure, must file with the Exchange a Contrary Exercise Advice pursuant to Exchange Rule 980, and instruct OCC of their contrary intention. Members and member organizations satisfy the filing requirement by manually submitting a Contrary Exercise Advice Form or by electronically submitting the Advice Form through OCC's Clearing Management and Control System (C/MACS). Exchange Rule 980 is designed to deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a Contrary Exercise Advice.

On occasion, OCC has had to suspend use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted, or if there is no accurate price available to be used in the determination of the closing price. When this occurs and there is no automatic exercise, all options contract holders must send exercise instructions to OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. When OCC suspends its Ex-by-Ex procedure for an option class, Exchange Rule 980 currently requires the submission of a Contrary Exercise Advice. Thus, when OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price OCC did not feel comfortable using). They then must determine whether a Contrary Exercise Advice needs to be submitted to the Exchange, evidencing the option holder's intention to exercise or not exercise.

The Amex has long viewed this process as cumbersome and confusing to options holders. Therefore, the Amex now proposes to amend Exchange Rule 980 to eliminate the requirement that a Contrary Exercise Advice be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when Ex-by-Ex has been waived, submission of instructions to exercise is only required when the options holder wants to exercise the option contract. The Amex clarifies that the applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation, Commission, dated December 14, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex clarified its purpose to modify the Exchange's Contrary Exercise Advice procedure set forth in proposed paragraph (g) of Amex Rule 980. In addition, the Amex revised proposed paragraph (d) of Amex Rule 980 to clarify that in cases where the Exercise-by-Exception or "Ex-by-Ex" procedure has been waived and members and member organizations submit an affirmative Exercise Notice to the Options Clearing Corporation ("OCC") to exercise the options, the applicable underlying security price in such instances will be as described in OCC Rule 805(l), which is normally the last sale price in the primary market for the underlying security.

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last sale price in the primary market for the underlying security.[4]

In addition, the Exchange proposes to extend the cut-off time for members to deliver Contrary Exercise Advices for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. EST). Currently, members are required to submit Contrary Exercise Advices to the Exchange and OCC no later than 5:30 p.m. (EST). However, because determination of final settlement prices is sometimes delayed and members need to confirm exercise instructions with customers, it is sometimes difficult for firms to deliver customer Contrary Exercise Advices in satisfaction of the 5:30 p.m. (EST) cut-off time. Accordingly, members must immediately process customer Contrary Exercise Advices to submit them to the Exchange simultaneously upon receipt of the instructions from customers in order to meet the Contrary Exercise Advice cut-off time. Accordingly, to provide members with sufficient time to process Contrary Exercise Advices for customers accounts, the Exchange proposes to extend the cut-off time for members to deliver Contrary Exercise Advices for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. EST). The Exchange believes it is appropriate to extend the cut-off time for member submission of customer Contrary Exercise Advices, and any cancellation thereof, to the Exchange as all decisions to exercise (or not exercise) must still be made by 5:30 p.m. (EST) in accordance with Exchange Rule 980.

Furthermore, the Amex believes that customers and member firms should have added flexibility in connection with the delivery of a Contrary Exercise Advice cancel[5] when the Exchange announces a modified time for the close of trading in equity options.[6] Currently, the delivery of a Contrary Exercise Advice or Advice cancel is required on the business day preceding the expiration date for the expiring option. Instead of a final cut-off time of 5:30 p.m., the Exchange proposes to allow a time period of 1 hour and 28 minutes after the announced close of trading for accounts of members and member firms to make a final decision whether to exercise or not exercise an expiring option and to deliver the Contrary Exercise Advice or Advice cancel. In addition, the Exchange proposes that customers be able to make a final decision on whether to exercise or not exercise an expiring option within 1 hour and 28 minutes following the time announced for the close of trading rather than an established time of 5:30 p.m., and that members and member firms acting as an agent for customer accounts have a time period of 2 hours and 28 minutes after the close of trading instead of the current 6:30 p.m. to deliver a Contrary Exercise Advice or Advice cancel to the Exchange. The Exchange believes that the extension of time to deliver a Contrary Exercise Advice for customer accounts will benefit customers and make the process easier to administer. Moreover, the Amex feels that the proposed time periods for the delivery of a Contrary Exercise Advice or Advice cancel to the Exchange rather than a designated time when there is a modified time for the close of trading for expiring options will permit customers and member firms to better deliver their intentions whether to exercise the option. To address unusual circumstances, the proposed rule would give the Exchange the ability to establish different exercise cut-off times on a case-by-case basis.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–92 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–946 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

[4] Id.

[5] An Advice cancel refers to a cancellation of the Contrary Exercise Advice. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Jennifer L. Colihan, Special Counsel and Cyndi N. Nguyen, Attorney, Commission on December 21, 2001.

[6] *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45248; File No. SR–GSCC–2001–13]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Governance Structure

January 7, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934("Act"),[1] notice is hereby given that on October 11, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend GSCC's rules to reflect GSCC's new ownership and governance structure that will result from the integration of GSCC, MBS Clearing Corporation ("MBSCC"), and Emerging Markets Clearing Corporation ("EMCC") with The Depository Trust & Clearing Corporation ("DTCC") whereby GSCC, MBSCC, and EMCC will become operating subsidiaries of DTCC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001); and 44987 (Oct. 25, 2001), 66 FR 55216 (Nov. 1, 2001). The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC") are currently operating subsidiaries of DTCC.

[3] The Commission has modified the text of the summaries prepared by GSCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to amend its rules to reflect its new ownership and governance structure that will result from the integration of GSCC, MBSCC, and EMCC with DTCC. In order for GSCC to maintain orderly and efficient operations, GSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of GSCC that will be identical in composition to the Board of Directors of MBSCC, EMCC, DTC, NSCC, and DTCC. GSCC's business will be managed under the direction of the GSCC Board, which will set the basic policy direction for GSCC. The second tier will consist of committees of or established by the DTCC Board, including a Fixed Income Operations and Planning Committee to be established by the DTCC Board, and committees of or established by the GSCC Board, including GSCC/MBSCC Membership and Risk Management Committee to be established by the GSCC Board and the MBSCC Board acting jointly. The third tier will be GSCC management, which will oversee the daily routine operations of GSCC.

The proposed changes to GSCC's rules will reassign various management responsibilities to the GSCC Board, the new committees, or GSCC management in light of the revised management structure summarized above. GSCC believes that these proposed rule changes will permit the GSCC Board, the various DTCC or GSCC committees, or GSCC management to appropriately handle functions so that GSCC may continue to maintain orderly and efficient operations.

GSCC believes that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because it will ensure that GSCC's operations will continue to be conducted in an efficient and orderly manner once it is integrated into the DTCC organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition. GSCC notes that it, as well as each of the other operating subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–2001–13 and should be submitted by January 30, 2002.

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–944 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45247; File No. SR–MBSCC–2001–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Governance Structure

January 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 11, 2001, the MBS Securities Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MBSCC's rules to reflect MBSCC's new ownership and governance structure that will result from the integration of MBSCC, Government Securities Clearing Corporation ("GSCC"), and Emerging Markets Clearing Corporation ("EMCC") with The Depository Trust & Clearing Corporation ("DTCC") whereby MBSCC, GSCC, and EMCC will become operating subsidiaries of DTCC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC proposes to amend its rules to reflect its new ownership and governance structure that will result from the integration of MBSCC, GSCC, and EMCC with DTCC. In order for MBSCC to maintain orderly and efficient operations, MBSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of MBSCC that will be identical in composition to the Board of Directors of GSCC, EMCC, DTC, NSCC, and DTCC. MBSCC's business will be managed under the direction of the MBSCC Board, which will set the basic policy direction for MBSCC. The second tier will consist of committees of or established by the DTCC Board, including a Fixed Income Operations and Planning Committee to be established by the DTCC Board, and committees of or established by the MBSCC Board, including a MBSCC/GSCC Membership and Risk Management Committee to be established by the MBSCC Board and the GSCC Board acting jointly. The third tier will be MBSCC management, which will oversee the daily routine operations of MBSCC.

The proposed changes to MBSCC's rules will reassign various management responsibilities to the MBSCC Board, the new committees, or MBSCC management in light of the revised management structure summarized above. MBSCC believes that these proposed rule changes will permit the MBSCC Board, the various DTCC or MBSCC committees, or MBSCC management to appropriately handle functions so that MBSCC may continue to maintain orderly and efficient operations.

MBSCC believes that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because it will ensure that MBSCC's operations will continue to be conducted in an efficient orderly manner once it is integrated into the DTCC organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact or impose a burden on competition. MBSCC notes that it, as well as each of the other operating subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the business in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at MBSCC's principal office. All submissions should refer to File No. SR–MBSCC–2001–05 and should be submitted by January 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–945 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001). The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC") are currently operating subsidiaries of DTCC.

[3] The Commission has modified the text of the summaries prepared by MBSCC.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364, Amdt. #3]

State of New York

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to March 11, 2002.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 4, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–933 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

ACTION: Notice of extension of application deadline.

FOR FURTHER INFORMATION CONTACT: George Camp, Supervisory Program Analyst, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the widespread economic impact caused by the terrorist attacks and the related Federal actions taken directly thereafter, the SBA revised its disaster loan regulations on October 22, 2001. Under the revised regulations, SBA can make economic injury loans to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001. As provided in 13 CFR 123.605, SBA extends the application deadline for good cause. A large number of applications were issued and have not been returned to the SBA. With this Notice, the SBA extends the filing deadline for economic injury disaster loans under this disaster program from January 22, 2002 to April 22, 2002.

Applications for economic injury disaster loans may be obtained and filed at the SBA disaster office servicing the applicant's state.

The disaster numbers assigned are:

Area 1

Connecticut 9TCT, District of Columbia 9TDC, Delaware 9TDE, Maryland 9TMD, Maine 9TME, Massachusetts 9TMA, New Hampshire 9TNH, New Jersey 9TNJ, New York 9TNY, Pennsylvania 9TPA, Rhode Island 9TRI, Virginia 9TVA, Vermont 9TVT, West Virginia 9TWV, Puerto Rico 9TPR, Virgin Islands 9TVI

Area 2

Alabama 9TAL, Florida 9TFL, Georgia 9TGA, Illinois 9TIL, Indiana 9TIN, Kentucky 9TKY, Michigan 9TMI, Minnesota 9TMN, Mississippi 9TMS, North Carolina 9TNC, Ohio 9TOH, South Carolina 9TSC, Tennessee 9TTN, Wisconsin 9TWI

Area 3

Arkansas 9TAR, Colorado 9TCO, Iowa 9TIA, Kansas 9TKS, Louisiana 9TLA, Missouri 9TMO, Montana 9TMT, North Dakota 9TND, Nebraska 9TNE, New Mexico 9TNM, South Dakota 9TSD, Oklahoma 9TOK, Texas 9TTX, Utah 9TUT, Wyoming 9TWY

Area 4

Alaska 9TAK, Arizona 9TAZ, California 9TCA, Hawaii 9THI, Idaho 9TID, Nevada 9TNV, Oregon 9TOR, Washington 9TWA, American Samoa 9TAS, Federated States of Micronesia 9TFM, Guam 9TGU, Republic of the Marshall Islands 9TMH, Commonwealth of Northern Mariana Islands 9TMP

The interest rate for eligible small businesses is 4 percent.

Authority: 13 CFR part 123, subpart G.

Dated: January 9, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–934 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Hearing on Monday, January 28, 2002 at 8:30 AM at the Radisson Plaza Hotel—Downtown Orlando, 60 South Ivanhoe Boulevard, Orlando, FL 32804, Phone (407) 425–4455, Fax (407) 313–6043, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning the regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Ms. Lola Kress in writing or by fax, in order to be put on the agenda. Lola Kress, SBA North Florida District Office, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256–7504, Phone (904) 443–1933, fax (202) 481–4188, E-mail: *Lola.Kress@sba.gov.*

For more information see our web site at *http://www.sba.gov/ombudsman/dsp_hearings.html.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–932 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V—Wisconsin District Advisory Council; Public Meeting

The Small Business Administration Region V Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12:00 a.m. central time on Wednesday, January 16, 2002, at the Metro Milwaukee Area Chamber 756 North Milwaukee Street Fourth floor, Milwaukee Wisconsin, 53202 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples. Lassiter Economic Development Assistant, in writing by letter or fax no later than January 14, 2002, in order to be put on the agenda. Yolanda Staples Lassiter, Economic Development Assistant, Small Business Administration 310 West Wisconsin Ave, Suite 400, Milwaukee, Wisconsin

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53203 (414) 297–1090 phone (414) 297–3928 fax.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–931 Filed 1–14–02; 8:45 am]

BILLING CODE 8825–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct several inadvertent errors and omissions in Presidential Proclamation 7515 of December 18, 2001 (66 FR 66,549), so that the intended tariff treatment is provided.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Moore, Director for Market Access, Office of the United States Trade Representative, (202) 395–5097, or David W. Oliver, Associate General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Every five years the World Customs Organization (WCO), to which the United States belongs, reviews and updates the tariff nomenclature annexed to the International Convention on the Harmonized Commodity and Coding System (HS Convention) that member countries apply. Proclamation 7515 modifies the HTS, which incorporates the HS Convention tariff nomenclature, to conform it to the most recent changes to the HS Convention tariff nomenclature that the WCO has adopted. The annex to this notice makes technical corrections to the HTS to remedy several technical errors and omissions introduced through the annexes to Proclamation 7515, so that the intended tariff treatment is provided. In particular, the annex to this notice corrects (1) errors regarding the eligibility of products classified in certain subheadings for duty-free treatment under the Generalized System of Preferences program, (2) the omission of a tariff subheading that implements a change in the HS Convention annex, and (3) an omission in the description of a tariff subheading that implements a change in the HS Convention annex.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under the authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 10, 2002.

Robert B. Zoellick,

United States Trade Representative.

Annex

The HTS is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS. The new subheading and superior text thereto being inserted by this notice are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 10, 2002, the HTS is modified as follows:

(1). General note 4(d) is modified by:

(a). deleting the following subheadings and the country set out opposite such subheading:

1403.00.94 India—4107.19.40 India
4106.21.10 India; Pakistan—4107.99.40 India

(b). deleting the country set opposite the following subheadings:

4103.10.30 India—4107.99.60 India
4106.21.90 India—4113.10.30 India
4106.22.00 India—4113.10.60 India
4107.19.60 India—

(2). The article description of subheading 0305.20 is modified to read:

"Livers and roes of fish, dried, smoked, salted or in brine:"

(3). The following subheading is inserted in numerical sequence:

:[Residual products of the chemical or allied...] : : :
"3825.30.00: Clinical waste.....: Free:: Free"

(4). For subheadings 1403.00.94 and 4106.21.10, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

[FR Doc. 02–948 Filed 1–14–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11298]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel J&B I.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 14, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11298. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* J&B I. *Owner:* Fredrick Gatchell.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The vessel measures 46.6′ in length × 15′ beam. Gross tonnage is 28.84."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The intended use of vessel is to carry passengers on sailing tours (Jacksonville, Fla. to Ft. Lauderdale, Fla. Not more than 5 miles coastwise."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Trinity, Newfoundland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "This waiver will have no impact on other commercial passenger operators as there are no other passenger day or evening tour sail boats in the area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have no impact on any U.S. Shipyards."

Dated: January 10, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–940 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11299]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHIBUMI.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 14, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11299. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SHIBUMI. *Owner:* Christian J. Lambertsen and Jacqueline J. Lambertsen.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "65 foot pilot house ketch. 15 foot beam, 7 foot draft. Pleasure craft. 50 gross tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Small group charter for training in offshore large vessel handling and cruising." "Near coastal waters of the East coast of the United States from Maine to Key West."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1973. *Place of construction:* Auckland, New Zealand.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "I know of no other local group offering the same services covering the same region."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "None."

Dated: January 10, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–939 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–81–P

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34147]

Paula J. Mudge-Gibson and Don L. Gibson—Continuance in Control Exemption—Chicago Heights Switching Company

Paula J. Mudge-Gibson and Don L. Gibson, noncarrier individuals (applicants), have filed a verified notice of exemption to continue in control of Chicago Heights Switching Company (CHSC), upon CHSC's becoming a carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34146, *Chicago Heights Switching Company—Operation Exemption—Bulkmatic Railroad Corporation*, wherein CHSC seeks to operate a line of railroad subleased by Bulkmatic Railroad Corporation.[1]

The transaction was expected to be consummated on or shortly after December 28, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

Applicants own and control the Central Illinois Railroad Company (CIRY), which operates in the State of Illinois. Applicants state that: (i) The properties of CIRY and CHSC will not connect with each other or any railroads in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines of CIRY and CHSC with each other or any railroads in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34147, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–764 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Bulkmatic Railroad Corporation-Acquisition Exemption-Bulkmatic Transport Company*, STB Finance Docket No. 34145 (STB served Jan. 15, 2002).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34145]

Bulkmatic Railroad Corporation—Acquisition Exemption—Bulkmatic Transport Company

Bulkmatic Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by sublease from Bulkmatic Transport Company approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated on January 1, 2002.[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34145, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Esq., Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–763 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Chicago Heights Switching Company will be the operator of the line. *See Chicago Heights Switching Company-Operation Exemption-Bulkmatic Railroad Corporation*, STB Finance Docket No. 34146 (STB served Jan. 15, 2002).

[2] On December 26, 2001, a petition to stay the effective dates of the exemptions in both STB Finance Docket No. 34145 and STB Finance Docket No. 34146 was filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board. By decision served December 27, 2001, the petition for stay was denied.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34146]

Chicago Heights Switching Company—Operation Exemption—Bulkmatic Railroad Corporation

Chicago Heights Switching Company (CHSC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an operating agreement with Bulkmatic Railroad Corporation (BRC), approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated on January 1, 2002.[2] This transaction is related to STB Finance Docket No. 34147, *Paula J. Mudge-Gibson and Don L. Gibson—Continuance in Control Exemption—Chicago Heights Switching Company*, wherein Paula J. Mudge-Gibson and Don L. Gibson have filed a verified notice of exemption to continue in control of CHSC upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34146, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Esq., Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–762 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] BRC has subleased the line from Bulkmatic Transport Company. *See Bulkmatic Railroad Corporation—Acquisition Exemption—Bulkmatic Transport Company*, STB Finance Docket No. 34145 (STB served Jan. 15, 2002).

[2] On December 26, 2001, a petition to stay the effective dates of the exemptions in both STB Finance Docket No. 34146 and STB Finance Docket No. 34145 was filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board. By decision served December 27, 2001, the petition for stay was denied.

DEPARTMENT OF THE TREASURY

Departmental Offices/Federal Consulting Group; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Treasury is soliciting comments concerning the Government Web Site Customer Satisfaction Survey.

DATES: Written comments should be received on or before March 18, 2002 to be assured of consideration.

ADDRESSEES: Direct all written comments to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington, DC 20552, (202) 906–5642, *bernie.lubran@ots.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington, DC 20552, (202) 906–5642, *bernie.lubran@ots.treas.gov*.

SUPPLEMENTARY INFORMATION:

Title: Government Web Site Customer Satisfaction Survey.

OMB Number: New.

Abstract: The following summary of the proposed new information collection activity is designed to establish a means to consistently measure and compare customer satisfaction with federal government agency web sites within the Executive Branch. The Federal Consulting Group of the Department of the Treasury has partnered with ForeSeeResults, a joint venture between Compuware Corporation and the CFI Group, to offer this survey instrument to federal government agencies (the "partnership").

ForeSeeResults is a leader in customer satisfaction and customer experience management on the web. It utilizes the methodology of the most respected, credible, and well-known measure of customer satisfaction in the country, the American Customer Satisfaction Index (ACSI). This methodology utilizes an econometric model and provides for a very precise measurement of customer satisfaction of web site users, identifies specific areas for improvement, and determines the impact of those improvements on customer satisfaction and future customer behaviors. The ACSI is a cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction. Along with other economic objectives, the quality of output of goods and services is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to the American people.

The Government Web Site Customer Satisfaction surveys will be completed subject to the Privacy Act 1074, Public Law 93–579, December 31,1974 (5 U.S.C. 522a). The agency information collection will be used solely for the purpose of the survey. The partnership will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Newly proposed collection of information.

Type of Review: New collection.

Affected Public: Individuals or households/Business or other for-profit/Not-for-profit institutions/Farms/Federal Government/State, Local or Tribal Government.

Estimated Number of Respondents: Usage by federal agencies of the Government Web Site Customer Satisfaction Survey is expected to vary as new agency web sites are added or deleted. However, projected estimates for fiscal years 2002 through 2004 are as follows:

Fiscal Year 2002—10 Customer Satisfaction Surveys

Respondents: 50,000; *annual responses:* 50,000; *average minutes per response:* 2.0; *burden hours:* 1,666.

Fiscal Year 2003—20 Customer Satisfaction Surveys

Respondents: 100,000; *annual responses:* 100,000; *average minutes per response:* 2.0; *burden hours:* 3,333

Fiscal Year 2004—30 Customer Satisfaction Surveys

Respondents: 150,000; *annual responses:* 150,000; *average minutes per response:* 2.0; *burden hours:* 5,000

Requst for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 2002.

Bernard A. Lubran,

Project Manager, Federal Consulting Group.

[FR Doc. 02–906 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–P

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 8, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 14, 2002 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0061.

Form Number: None.

Type of Review: Extension.

Title: Cash Management Improvement Act (CMIA) Annual Report and Direct Cost Claims.

Description: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims to assess State and Federal cash management practices and to exchange amounts of interest owed.

Respondents: State, Local or Tribal Government, Federal Government,

Estimated Number of Respondents/Recordkeepers: 56.

Estimated Burden Hours Per Respondent/Recordkeeper: 350 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 19,600 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–947 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Odyssey America Reinsurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 Revision, on page 35063 to reflect this addition:

Odyssey America Reinsurance Corporation. *Business Address:* 300 First Stamford Place, Stamford, Connecticut, 06902. *Phone:* (203) 977–8000. *Underwriting Limitation b/:* $47,483,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 31, 2001.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–969 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8609

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8609, Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

DATES: Written comments should be received on or before March 18, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

OMB Number: 1545–0988.

Form Number: Form 8609 and Schedule A (Form 8609).

Abstract: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to obtain a housing credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Current Actions: There are no changes being made to Form 8609 or Schedule A at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations, individuals, and state, local or tribal governments.

Estimated Number of Respondents: 120,000.

Estimated Time Per Respondent: 23 hours, 5 minutes.

Estimated Total Annual Burden Hours: 2,770,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–986 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday February 27, 2002, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9:00 p.m. to 9:20 p.m. on Wednesday February 27, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 9, 2002.

Cathy VanHorn,

Director, CAP, Communication and Liaison.

[FR Doc. 02–987 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, NY.

DATES: The meeting will be held Wednesday March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday March 20, 2002, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9:00 p.m. to 9:20 p.m. on Wednesday March 20, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. **Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 9, 2002.

Cathy VanHorn,

Director, CAP, Communication and Liaison.

[FR Doc. 02–988 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information to authorize VA to bill "reasonable charges" instead of "reasonable costs" for medical care or services provided or furnished to a veteran for a non-service-connected condition.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs,

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810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to "OMB Control No. 2900–0606" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Submission of Evidence—Title 38 CFR 17.101(a)(2).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: A third-party payer that is liable for reimbursing VA for health care VA provided to veterans with non-service connected conditions continues to have the option of paying either the billed charges or the amount the health plan demonstrates it would pay to providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion. VA may request the third-party payer to submit evidence or information to substantiate the appropriateness of the payment amount (e.g., health plan policies, provider agreements, medical evidence, proof of payment to other providers demonstrating the amount paid for the same care and services VA provided). The information is needed to determine whether the third-party payer has met the test of properly demonstrating its equivalent private sector provider payment amount for the same care or services and within the same geographic area as provided by VA.

Affected Public: Business or other for-profit, Individuals or households, Not for Profit Institutions, Farms, and State, Local or Tribal Government.

Estimated Total Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: December 27, 2001.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–989 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from penal institutions about incarcerated VA beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0116" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4193 is used by penal institutions to furnish information about incarcerated VA beneficiaries. The information is used to determine reduction or termination of a beneficiary's VA compensation or pension rate when the beneficiary is incarcerated in a penal institution in excess of 60 days after conviction.

Affected Public: Individuals or households, and State, Local or Tribal Government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,664.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–991 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Multifamily Transitional Housing Loan Guaranty Application, VA Form 10–0365.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA is authorized to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans. Loans may include amounts to acquire land, refinance existing loans, finance acquisition of furniture, equipment, supplies and materials and to supply working capital for the organization. The information collected is used to determine financial and program service provider eligibility and apply criteria to rate each application; and to obtain information necessary to ensure minimal defaults and delinquencies, interest subsidies, or other payments.

Affected Public: Not for Profit Institutions, and State, Local or Tribal Government.

Estimated Total Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 40 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–992 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0620."

SUPPLEMENTAL INFORMATION:

Title: Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: VA has established provisions regarding payment of or reimbursement for reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. VA will make payment or reimbursement only for emergency services provided in a hospital emergency department or a similar facility held out as providing emergency care to the public. Health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment should contact VA within 48 hours after the veteran begins receiving emergency treatment for emergency services other than emergency transportation. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the condition for payment and assist the provider in planning for transfer of the veteran after stabilization. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at pages 54340–54341.

Affected Public: Individuals or households, business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 120,729 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 241,457.

Send comments and recommendations concerning any aspect of the information collection to

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VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0620" in any correspondence.

Dated: December 27, 2001.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–990 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0103]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0103."

SUPPLEMENTAL INFORMATION:

Title: Application for Dependency and Indemnity Compensation by Child, VA Form 21–4183.

OMB Control Number: 2900–0103.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4183 is used by a child under age 18 to apply for dependency and indemnity compensation where the surviving spouse was not entitled or is no longer entitled to receive benefits or by a child age 18 or over regardless of the surviving spouse's entitlement. The form is used in lieu of VA Form 21–534, Application for Dependency and Indemnity Compensation or Death Pension by Widow(er) or Child, in order to help reduce the reporting burden of a child under 18 when information about the deceased veteran's spouse is not required.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at pages 35700–35701.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,900.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0103" in any correspondence.

Dated: December 17, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–993 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0590]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0590" in any correspondence.

SUPPLEMENTAL INFORMATION:

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities.

OMB Control Number: 2900–0590.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Veterans Affairs Acquisition Regulation Clause 852.237–7, Indemnification and Medical Liability Insurance is used in lieu of Federal Acquisition Regulation clause 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for the acquisition of non-personal health care services. VAAR 852.237–7 clause requires the apparent successful bidder/offeror, upon the request of the contracting officer, prior to contract award, to furnish evidence of insurability of the offeror and/or all health-care providers who will perform under the contract. Failure to collect the information would have a negative impact on VA's ability to ensure that VA will not be held liable for any negligent acts of the contractor or its employees and ensure that VA and VA beneficiaries are protected by adequate insurance coverage.

b. Veterans Affairs Acquisition Regulation Clause 852.237–71, Indemnification and Insurance, is used in solicitations for vehicle or aircraft services. To protect VA, VAAR 852.237–71 clause requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. The information will ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities, is used in solicitations for commercial items and services where the work is currently being performed by VA employees and where those employees might be displaced as a result of an award to a commercial firm. VAAR 852.207–70 clause requires contractors awarded such contracts to provide, within 5 days of contract award, a list of employment openings, including salaries and benefits, and blank job applications forms. The clause requires the contractor, during the first 90 days of the contract performance, to report the names of all person hired or terminated under the contract.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2001, at pages 49744–49745.

Affected Public: Business or Other for Profit, Individuals or Households, Not-for-Profit Institutions and State, Local or Tribal Government.

Estimated Annual Burden: 1,300 hours.

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—750 hours.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—250 hours.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—300 hours.

Estimated Average Burden Per Respondent:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—30 minutes.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—30 minutes.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,600.

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—1,500.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—500.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—200 (three reports per contract awarded).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0590" in any correspondence.

Dated: December 18, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–994 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0149."

SUPPLEMENTAL INFORMATION:

Title: Application for Conversion (Government Life Insurance), VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to convert to a permanent plan of insurance. VA uses the information to initiate the processing of the insured's request to convert his/her term insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2001, at page 50502.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0149" in any correspondence.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–995 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0255]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

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FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0255."

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation or Death Pension (Including Accrued Benefits and Death Compensation Where Applicable) From the Department of Veterans Affairs (Supplement to Social Security Administration Forms SSA–4, 5, 7 and 10), VA Form 21–4182.

OMB Control Number: 2900–0255.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine the applicant's eligibility for accrued, dependency and indemnity compensation, death compensation and/or death pension benefits when applying for Social Security benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 5, 2001, at pages 35515–35516.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0255" in any correspondence.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–996 Filed 1–15–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
January 15, 2002

Part II

Department of Defense

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: The Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

DATES: All NWPs and general conditions will become effective on March 18, 2002. All NWPs have an expiration date of March 19, 2007.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 441 "G" Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, at (703) 428–7570, Mr. Rich White, at (202) 761–4599, or Mr. Kirk Stark, at (202) 761–4664 or access the U.S. Army Corps of Engineers Regulatory Home Page at: *http//:www.usace.army.mil/inet/functions/cw/cecwo/reg/.*

SUPPLEMENTARY INFORMATION:

Background

In the August 9, 2001 (66 FR 42070), **Federal Register** the Corps proposed to reissue all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. We proposed to modify NWPs 14, 21, 27, 31, 37, 39, 40, 42, and 43, General Conditions 4, 9, 13, 19, 21, 26, and add a new General Condition 27.

The proposal intended to simplify and clarify permits that have no more than minimal effect on the environment, add additional requirements that will enhance protection of the aquatic environment, increase flexibility for the Corps field staff to target resources where most needed to protect the aquatic environment, reduce unnecessary burdens on the regulated public, and retain the key protections for the aquatic environment that were added last year (e.g. acreage limit of ½ acre of impact per project, the requirement for the Corps to be notified of any impacts over ⅒ acre, and important limits on impacts within mapped floodplains).

As a result of the comments received in response to the August 9, 2001, **Federal Register** notices and the public hearing on September 26, 2001, the Corps has made a number of changes to the proposed NWPs and General Conditions that are designed to further clarify the permits and strengthen environmental protection. These changes are discussed in the preamble.

In the December 13, 1996, issue of the **Federal Register**, the Corps announced its intention to replace NWP 26 with activity-specific NWPs before the expiration date of NWP 26. In the March 9, 2000, **Federal Register** notice (65 FR 12818—12899), the Corps published five new NWPs, modified six existing NWPs, modified six General Conditions, and added two new General Conditions to replace NWP 26. The five new NWPs (i.e., 39, 41, 42, 43, 44) and six modified NWPs (i.e., NWPs 3, 7, 12, 14, 27, and 40) would have expired five years from their effective date of June 7, 2000.

Today the Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

Grandfather Provision for Expiring NWPs at 33 CFR 330.6

Activities authorized by the current NWPs issued on December 13, 1996, (except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44), that have commenced or are under contract to commence by February 11, 2002, will have until February 11, 2003 to complete the activity. Activities authorized by NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44, that were issued on March 9, 2000, that are commenced or under contract to commence by March 18, 2002, will have until March 18, 2003 to complete the activity.

Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) Consistency Agreement

In the August 9, 2001, **Federal Register** notice and concurrent with letters from Corps Districts to the appropriate state agencies, the Corps requested 401 certification and CZM consistency agreement. This began the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. Today's **Federal Register** notice provides a 60-day period for the states to complete the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. On August 9, 2001, we proposed to increase the normal 60-day period to complete the WQC and CZMA processes to 90 days. However, due to a majority of the NWPs expiring February 11, 2001, and schedule delays, we have had to keep the WQC and CZMA processes to 60 days. Also during this 60-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWPs.

Discussion of Public Comments

I. Overview

In response to the August 9, 2001, **Federal Register** notice, we received more than 2,100 comments. We reviewed and fully considered all comments received in response to that notice.

Many commenters expressed opposition to the proposed NWPs, but a few commenters indicated support for these NWPs. Most of the comments in opposition of the NWPs were two versions of identical post cards and a form letter that objected to proposed changes to general conditions 19 and 26, opposed the removal of linear limits for NWPs 21, 39, 40, 42, 43, and 44, and requested the withdrawal of NWP 21. Other commenters said that the NWPs were too difficult for the public to use, the NWPs exceeded the Corps jurisdiction, and the acreage and linear limits were too low for the NWPs to be useful. One commenter indicated that few changes proposed in the August 9, 2001, **Federal Register** notice will result in decreased workload for the Corps.

After considering the comments received in response to the August 9, 2001, **Federal Register** notice, we made several changes to the NWPs, general conditions, and definitions. These changes are discussed in detail in the preamble discussion for each NWP, general condition, and definition. We do not agree that the NWPs are too difficult for the regulated public to use. We have retained the ½ acre limit for many of the NWPs, to ensure that those NWPs authorize only activities with minimal adverse effects on the aquatic environment, individually and cumulatively. We have not adopted the proposed waiver process for the 300 linear foot limit for perennial streams in NWPs 39, 40, 42, and 43. We did adopt the waiver for intermittent streams in NWPs 39, 40, 42, and 43. NWPs 21 and 44 do not currently have a linear foot limitation, so the waiver does not apply. We believe that the changes to the NWPs will allow the Corps to more effectively authorize activities with minimal adverse effects on the aquatic environment.

II. General Comments

Many commenters objected to the NWP proposal, stating that it will place citizens at risk from flooding, promote wetland and stream destruction, degrade water quality, and result in the loss of critical habitat. Another commenter indicated that the NWPs need to be strengthened to ensure that marine, riparian, and riverine habitats, and the fish species that depend on those habitats, are adequately protected under the NWP process. One commenter said that the NWPs should authorize only those activities that have minimal impacts on water quality. This commenter said that the NWPs will lead to piecemealing and result in cumulative impacts detrimental to particular waterbodies. A commenter objected to the NWPs, stating that the NWPs authorize activities that expand existing developments. Another commenter said that the proposed NWPs will only benefit the development community and the Corps, while exposing the public and environment to unnecessary harm. One commenter stated that the Corps proposal to modify the NWPs would significantly weaken wetlands protection and severely hamper the ability of State fish and wildlife agencies to conserve wetlands and watersheds.

The terms and conditions of the NWPs, including the general conditions, ensure that the activities authorized by NWPs result in no more than minimal adverse effects on the aquatic environment, including wetlands and streams. General Condition 26, Fills Within 100-year Floodplains, addresses the use of certain NWPs to authorize activities in 100-year floodplains and ensures that such activities comply with FEMA-approved State and local floodplain management requirements. General Condition 11, Endangered Species, ensures that activities authorized by NWPs comply with the Endangered Species Act. Water quality certification is required for NWP activities authorized under section 404 of the Clean Water Act. In addition, district engineers can require water quality management measures to ensure that NWP activities result in no more than minimal adverse effects on water quality. NWPs authorize single and complete projects, and do not result in piecemealing of projects. District engineers consider cumulative adverse effects when reviewing requests for NWP verifications, including activities that result in the expansion of existing developments. The NWPs do not impede the efforts of State fish and wildlife agencies to conserve wetlands and watersheds.

Several commenters asserted that the NWP program contradicts the clear intent of Congress to establish a streamlined general permit process for activities with minimal adverse effects on the aquatic environment. A couple of commenters said that the NWPs regulate activities that are exempt from the Clean Water Act and its implementing regulations. These commenters requested more consistency between the NWPs and these statutory exemptions. One commenter stated that drainage districts are generally exempt from permit requirements, including pre-construction notification (PCN) requirements. This commenter said that the NWP conditions and notification requirements are too costly and could impair the ability of drainage districts to meet their obligations to protect citizens from flooding, and that the drainage ditches should be exempt from these regulations. One commenter stated that the Corps should recognize the important differences between wetland landscapes and the protection of non-aquatic areas that are dominated by ephemeral drainage systems in the desert regions of the southwest United States.

The NWPs provide an expedited review process for activities in waters of the United States that result in no more than minimal individual and cumulative adverse effects on the aquatic environment. Although the NWP program has undergone substantial changes in recent years, we believe those changes were necessary to ensure compliance with section 404(e) of the Clean Water Act. Section 404(e) authorizes the Corps to issue general permits, including NWPs. General permits authorize activities that are similar in nature and result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The lower acreage limits and more restrictive terms and conditions of the NWPs are necessary to comply with section 404(e).

The NWPs do not regulate activities that are exempt from the permit requirements of the Clean Water Act. Certain activities that are conducted by drainage districts, such as the maintenance of drainage ditches, may be eligible for section 404(f) exemptions and therefore may not require authorization from the Corps. The construction of new drainage ditches may require a Department of the Army (DA) permit, if the proposed work involves discharges of dredged or fill material into waters of the United States and/or work in Section 10 waters. The NWPs do not change the section 404(f) exemptions. The NWPs authorize certain activities that require a DA permit pursuant to section 10 of the Rivers and Harbors Act and/or section 404 of the Clean Water Act. Some NWPs, such as NWPs 3 and 14, contain references to the section 404(f) exemptions. Project proponents can contact district engineers to determine whether specific activities qualify for the section 404(f) exemptions.

The NWPs allow district engineers flexibility when reviewing activities that involve discharges of dredged or fill material into ephemeral streams. Division engineers can regionally condition the NWPs to restrict or prohibit specific activities that result in the loss of ephemeral stream beds, or require project proponents to notify district engineers prior to construction for case-by-case review. The waiver process for the 300 linear foot limit for NWPs 39, 40, 42, and 43 allows district engineers to issue NWP verifications for activities that result in the loss of greater than 300 linear feet of intermittent (but not perennial) stream bed and have no more than minimal adverse effects on the aquatic environment.

Several commenters indicated that the proposed changes to the NWP program fails to address the significant problems with the new and modified NWPs that were published in the March 9, 2000, **Federal Register** (65 FR 12818). Two commenters stated that the restrictions in those NWPs have resulted in large burdens on the transportation construction industry and planning

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officials. One commenter said that the elimination of the NWP 26 has resulted in large increases in delays associated with obtaining individual permits for transportation activities that were authorized by NWP 26. One commenter stated that these NWPs will result in longer delays and greater expenses for simple projects. This commenter said that NWP 26 should be reinstated to replace these cumbersome NWPs. One commenter asserted that the NWPs result in substantial burdens on the regulated public. Two commenters recommended that the Corps improve the NWP program by increasing acreage limits, increasing PCN thresholds, and reducing PCN information requirements.

The replacement of NWP 26 with activity-specific NWPs was necessary to ensure compliance with section 404(e) of the Clean Water Act. The terms and conditions of the NWPs published in the March 9, 2000, **Federal Register** notice were intended to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment. We recognize that certain activities that were previously authorized by NWPs now require individual permits, and that it takes more time to authorize those activities, including some transportation projects. We do not agree that the acreage limits and PCN thresholds of the NWPs should be increased, because the lower limits and thresholds ensure that the NWPs authorize only activities with no more than minimal adverse environmental effects.

One commenter stated that the Corps data shows that the number of acres of wetlands created under the mitigation requirements of the NWP program exceeds the number of acres permitted under the program. This commenter asked why the Corps has failed to do more to carry out the policies established in section 101(f) of the Clean Water Act to minimize paperwork, seek the best uses of manpower and funds, and to prevent needless delays at all levels of government.

The NWP program complies with the requirements of section 101(f) of the Clean Water Act, by providing an effective means of authorizing activities with no more than minimal individual and cumulative adverse effects on the aquatic environment.

Implementation

One commenter objected to the NWPs, stating that these permits remove the public, resource agencies, and the Corps from the permit review process. Another commenter said that NWP activities should be coordinated with natural resource agencies and the public. One commenter said that it is not appropriate for the Corps to rely on discretionary authority, regional conditions, and the PCN process to reduce the adverse impacts to the aquatic environment to a minimal level. This commenter stated that regional conditions are not consistently implemented across the country or to the degree necessary to ensure minimal effects.

The NWPs authorize minor activities that are usually not controversial and would result in little or no public or resource agency comment if they were reviewed through the standard permit process. Conducting full public interest reviews for NWP activities would substantially increase the Corps workload without substantial added value for the aquatic environment. NWP activities that require notification to the district engineer and result in the loss of greater than ½ acre of waters of the United States are coordinated with the appropriate Federal and state agencies (see paragraph (e) of General Condition 13). Discretionary authority, regional conditions, and the PCN process are essential elements of the NWP program, to ensure that NWP activities result in no more than minimal adverse effects on the aquatic environment. In response to a PCN, a district engineer can add special conditions to the NWP authorization to ensure that the activity will result in no more than minimal adverse effects on the aquatic environment. If the proposed work will result in more than minimal adverse effects on the aquatic environment, district engineers can exercise discretionary authority to require an individual permit. Regional conditions are not consistent throughout the country, because they address differences in aquatic resource functions and values in watersheds or other types of geographic regions.

One commenter stated that in order to ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment, the NWPs should include a new general condition. This general condition would require public notices in all cases where notification is required and the submission of surveys of terrestrial and aquatic species and cultural and historic resources that may be affected by the NWP activity.

We do not agree that the general condition proposed in the previous paragraph is practical or necessary. General Condition 11, Endangered Species, addresses compliance with the Endangered Species Act. General Condition 12, Historic Properties, addresses compliance with the requirements of the National Historic Preservation Act. Project proponents may be required to provide surveys of endangered species or cultural resources to ensure compliance with these general conditions.

One commenter asserted that there is an unsubstantiated presumption that compensatory mitigation in any form effectively offsets the individual or cumulative adverse effects of NWP activities. One commenter indicated that, due to the small NWP acreage limits, the Corps has lost the ability to direct mitigation toward areas that would provide the most benefits on a watershed basis. One commenter said that mitigation should not be used to ensure that NWP activities result in minimal adverse effects on the aquatic environment. This commenter suggested that avoidance and practicable alternatives should be emphasized.

Compensatory mitigation is an important mechanism to ensure that the activities authorized by NWPs result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Compensatory mitigation can be provided through individual aquatic resource restoration, creation, enhancement, or in exceptional circumstances, preservation projects, as well as mitigation banks, in lieu fee programs, and other types of consolidated mitigation efforts. General Condition 19 discusses mitigation for NWP activities, including the requirement for project proponents to avoid and minimize adverse effects on waters of the United States to the maximum extent practicable on the project site.

One commenter objected to the NWPs, stating that conditions imposed on the NWPs are rarely monitored for compliance. This commenter suggested that the Corps commit to an aggressive monitoring and enforcement program for activities authorized by NWPs. Another commenter said that the lack of compliance inspections has resulted in numerous instances where activities authorized by NWPs have resulted, through implementation failures and intentional violations, in substantial adverse effects. This commenter suggested that each NWP should be subject to a statistically sufficient number of compliance inspections to determine whether compliance is being achieved, and whether the NWP activities are resulting in more than minimal individual or cumulative adverse effects. One commenter said that enforcement efforts should not be weakened. One commenter stated that the Corps needs to monitor and enforce the national and regional conditions of the NWPs.

We are committed to strong enforcement and compliance efforts for activities authorized by DA permits, including NWPs, but the amount of time dedicated to enforcement and compliance is dependent upon the value of the impacted resource and the available amount of district resources. The Corps is increasing its compliance efforts to further improve compliance. In consultation with other Federal agencies, the Corps is currently finalizing guidance that will address the need for improved compliance.

One commenter asserted that Corps personnel rarely verify the information provided in NWP verification requests, and speculated that project proponents may under-report the amount of impacts to waters of the United States to qualify for NWP authorization. This commenter suggested that the Corps commit to independent verification of the information submitted in NWP verification requests or verify the information for randomly selected subsets of verification requests. One commenter suggested that Corps produce educational brochures and web pages that describe the basic information that must be submitted in order to ensure that a NWP request is considered complete.

District personnel review requests for NWP verifications to determine if the information provided by the project proponents is accurate. The level of review is dependent on the amount of impacts proposed by the applicant and the resources available to Corps personnel. Site visits cannot be conducted for all NWP verification requests. District personnel utilize their knowledge of local conditions when reviewing NWP verification requests to assess whether the information provided in the NWP verification request is accurate. The Corps Headquarters homepage, see address above, and Corps district homepages contain information on the NWPs, including the NWPs, general conditions, regional conditions, state 401 and CZM conditions, and decision documents. The text of General Condition 13, Notification, lists the information necessary for a complete PCN. Several districts also provide brochures to assist project proponents who are preparing permit applications or NWP verification requests. District home pages on the Internet also have other information that is useful for permit applicants.

Acreage Limits

Three commenters suggested that higher acreage limits should be adopted for impacts to non-wetland waters and that district engineers should have the authority to issue project-specific waivers to NWP acreage limits. One commenter said that there should be higher acreage limits for master planned communities or similar planned development projects. One commenter said that a 500 linear foot limit for stream impacts should be added to the NWPs.

We do not agree that higher acreage limits should be implemented for NWP activities that result in the loss of non-wetland waters, or for master planned development projects. Open waters, such as streams, ponds, lakes, estuaries, and the oceans, are important components of the overall aquatic environment and provide valuable functions and environmental benefits. We also do not agree that a waiver process should be implemented for the acreage limits of NWPs. We do not believe it is necessary to impose a 500 linear foot limit on all losses of stream bed authorized by NWPs. The 300 linear foot limit for NWPs 39, 40, 42, and 43, and the waiver process for intermittent streams will ensure that those NWPs authorize no more than minimal impacts to stream beds. And such a limit is not necessary for the other NWPs. In addition, these acreage limit suggestions would require notice and comment, before they could be adopted.

One commenter stated that the standard permit process does not necessarily result in additional avoidance, minimization, or compensatory mitigation, but causes substantial project delays, higher costs, and increased risks to public safety. Two commenters suggested that the Corps implement an NWP program that imposes the acreage limits of the 1996 NWPs (*i.e.*, 3 acres) on the activity-specific NWPs published in the March 9, 2000, **Federal Register**. A number of commenters recommended reissuing NWP 26. One commenter said that the NWPs are too restrictive and they add unnecessary administrative burdens while providing questionable environmental benefits. Two commenters said that there is nothing in the administrative record that indicates the need for the ½ acre limit. Three commenters stated that the acreage limits and PCN thresholds are arbitrary and capricious and unsupported by sound science.

The standard permit process can result in additional avoidance and minimization because of the Section 404(b)(1) guidelines analysis required for those standard permit activities that involve discharges of dredged or fill material into waters of the United States. The terms and conditions of the NWPs, including the ½ acre limit for many of the NWPs, are necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that NWP 26 should be reinstated, because the replacement of NWP 26 was necessary to ensure compliance with section 404(e) of the Clean Water Act.

One commenter stated that the ½ acre limit for certain NWPs has dramatically expanded the scope of the regulatory program, leading to increased costs and delays with few demonstrated environmental benefits. One commenter asserted that the acreage limits of the NWPs do not decrease losses of wetlands because projects are designed to impact the maximum amount to avoid the individual permit process. Several commenters said that the NWP program is no longer useful to industry and other regulated entities because the strict terms and conditions of the NWPs provide no incentives for project proponents to design projects to qualify for NWP authorization. This commenter said that there should be more reliance on regional conditions to ensure that there is no more than minimal adverse environmental effects, instead of unnecessarily restrictive national conditions. A number of commenters indicated that impacts on the environment will increase since few projects qualify for NWP authorization.

The ½ acre limit for certain NWPs has not increased the scope of the regulatory program, although it may result in more activities requiring individual permits. The terms and conditions of the NWPs are necessary to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can add regional conditions to the NWPs to address important aquatic resource functions and values in particular geographic areas, but the terms and national general conditions of the NWPs are necessary to address national concerns for the aquatic environment. The NWP program encourages avoidance and minimization of impacts to wetlands, and most project proponents do not request NWP authorization to fill the maximum amount of wetlands under the NWP acreage limits. General Condition 29 requires project proponents to avoid and minimize impacts to waters of the

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United States to the maximum extent practicable on the project site. We believe that many project proponents will continue to design their projects to qualify for authorization under the NWPs, including avoiding and minimizing impacts to aquatic resources on the project site.

Pre-construction Notification Process

One commenter requested that the Corps reinstate the ⅓ acre PCN threshold, or demonstrate that a lower notification threshold is necessary to ensure that adverse effects on the aquatic environment are minimal.

The ⅒ acre PCN threshold for several of the NWPs is necessary so that district engineers can review those activities to ensure that they result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore, we have retained the ⅒ acre PCN threshold for certain NWPs. Additionally, the Corps does not believe the PCN requirements impose a significant burden on most project proponents.

A few commenters stated that NWPs are complex and the PCN process requires too much time. One commenter said that the time limit for determining if a PCN is complete is longer than the 15 day period for determining if a standard permit application is complete. This commenter recommended that the Corps delete the 30 day completeness review for PCNs. This commenter said that increasing the PCN review period to 45 days does not comply with the goal for an expedited permit process, and makes the NWP process resemble the standard permit process. One commenter said that the PCN review process provides disincentives for project proponents to design their projects to qualify for NWP authorization.

The 45 day PCN review period is necessary to allow district engineers to adequately review those activities that require PCNs. However, most NWP verifications do not take the full 45 days. The average time to verify a NWP activity is 19 days. Although the 30 day completeness review period for PCNs is less than the 15 day completeness review period for standard permit applications, the PCN process allows more effective authorization of activities with no more than minimal adverse effects on the aquatic environment. An individual activity authorized by an NWP does not require a public notice or the same level of review required for a standard permit activity. Project proponents requesting NWP verifications generally receive their authorizations more quickly than they would receive standard permits. The 45 day PCN review period includes the 30 day completeness review, and we do not agree that the 30 day completeness review period should be deleted. The completeness review period makes the PCN process more efficient by requiring district engineers to request additional information early in the PCN process. If a district engineer receives a complete PCN, then the decision to verify that the activity is authorized by NWP or exercise discretionary authority must be made within 45 days. We do not agree that the PCN process discourages project proponents from designing their projects to qualify for NWP authorization, because the NWP process is faster than the standard permit process.

Compliance With Section 404(e) of the Clean Water Act and the National Environmental Policy Act

Several commenters said that the NWPs do not comply with section 404(e) of the Clean Water Act because they authorize activities with more than minimal adverse effects on the aquatic environment. One commenter asserted that the NWPs should be limited to specific uses. Numerous commenters stated that the NWPs do not comply with the "similar in nature" requirement of section 404(e) of the Clean Water Act.

The terms and conditions of the NWPs, including the acreage limits and PCN review process, ensure that the NWPs authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. The NWPs undergo a thorough review process every five years to ensure compliance with the requirements of section 404(e) of the Clean Water Act. Each of the NWPs complies with the requirement for general permits to authorize activities that are "similar in nature."

One commenter indicated that the database may not be adequate enough to warrant the proposed changes to the NWPs and said that the Corps cannot assure the public that the proposed changes will not result in greater impacts to waters of the United States. Another commenter said that the database to justify the proposed changes is small compared to the overall age of the permit program. A few commenters suggested that the regulations should be modified to require each Corps district office to furnish quarterly reports to each state agency in the district that would summarize the number, type, and impacts of activities in waters of the United States for all NWP verifications issued. Several commenters said that the Corps needs to improve its database for the regulatory program.

The proposed changes to the NWPs published in the August 9, 2001, **Federal Register** will not result in more than minimal adverse effects on the aquatic environment. The proposed modifications are intended to improve the efficiency of the NWP program, and enhance protection of important aquatic resources. We do not agree that it is necessary to change the Corps regulations to require districts to provide states with quarterly reports concerning the impacts authorized by all NWP verifications. Corps headquarters is developing a new data collection and reporting system to replace the current system. The new system will improve data collection for the regulatory program, and will help the Corps compile summary data and evaluate trends. The new data collection system will improve the reliability of regulatory program data.

One commenter said that the Corps has not adequately assessed cumulative impacts and that virtually no mitigation has been required because of the smaller individual impacts of these NWPs. Another commenter objected to the NWPs, stating that district engineers cannot determine the magnitude of individual and cumulative environmental impacts. One commenter said that the NWPs should not be reissued because cumulative impacts have not been addressed at a regional or national level.

We maintain our position that assessing cumulative impacts across the nation is not possible or appropriate. We believe that no assessment of individual and cumulative impacts can be made a national level, because the functions and values of aquatic resources vary considerably across the country. Assessment of cumulative impacts is more appropriately conducted by Corps districts on a watershed basis, because they have better understanding of local conditions and processes. However, the NWP program is designed programmatically to ensure no more than minimal adverse effects, individually and cumulatively. This is accomplished through acreage limits, the PCN process, regional conditioning, and the exercise of discretionary authority to require individual permits. Each district generally tracks losses of waters of the United States authorized by Department of the Army permits, including verified NWPs, as well as required compensatory mitigation achieved through aquatic resource restoration, creation, and enhancement. The regional conditioning process, including the preparation of supplemental Environmental Assessments by division engineers, also helps ensure that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter stated that National Environmental Policy Act (NEPA) requires the Corps to evaluate the environmental impacts of every major Federal action, such as the issuance of section 404 permits, that significantly affects the quality of the human environment. Several commenters said that Environmental Impact Statements (EISs) are required for the NWPs, at both the national and district levels. One of these commenters asserted that these EISs should examine all reasonable alternatives to the NWPs, general conditions, and regional conditions. One commenter said that EISs should be completed for NWPs 13, 29, 39, 40, 42, and 44. Two commenters said that regional conditions for the NWPs should not be finalized until an EIS on the NWPs is completed. One commenter expressed disagreement with the Finding of No Significant Impact (FONSI) for the NWP program that was issued on June 23, 1998, which stated that the Corps is not required to do an EIS for the NWPs. One commenter said that an EIS is required to demonstrate compliance with section 404(e) of the Clean Water Act.

We maintain our position that the NWPs do not require an EIS, even though we are in the process of preparing a voluntary programmatic EIS for the NWP program. Since the NWPs authorize only those activities that have no more than minimal adverse effects on the aquatic environment, the NWP program does not reach the significance threshold required for the preparation of an EIS. The NWPs are subjected to a reissuance process every five years. This reissuance process involves a public notice and comment period, which provides the Corps with information to ensure that the NWPs continue to authorize only those activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Again, the NWP program does not reach the level of significant impacts that requires the preparation of an EIS. To comply with NEPA, Corps headquarters issues an Environmental Assessment (EA) for each NWP when it is issued, reissued, or modified. These EAs consider the environmental effects of each NWP from a national perspective. Each Corps division and district engineer will supplement these EAs to evaluate regional environmental effects of the NWPs. For the reasons above, the NWP program and the NWPs do not reach the level of significant impacts that requires the preparation of an EIS, and in fact are far below that level.

We do not agree that regional conditions for the NWPs should not be finalized until an EIS on the NWPs is completed. We also believe that the FONSI for the NWP program that was issued on June 23, 1998, is still valid despite the changes to the NWPs that have occurred since the FONSI was issued. There have been no substantial changes to the NWP regulations at 33 CFR part 330 or to the implementation of the NWP program since the FONSI was issued. The FONSI discussed, in general terms, the implementation of the NWP program, including the procedures used by the Corps to ensure that the NWPs authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. The Corps is not required to do an EIS to demonstrate compliance with section 404(e) of the Clean Water Act. The decision documents issued for each NWP address compliance with the section 404(b)(1) guidelines, which require an analysis for the issuance of general permits (see 40 CFR 230.7). Finally, although not required to prepare an EIS, the Corps is preparing a voluntary Programmatic EIS to assess the NWP Program to see if there are changes to the NWP program that would further ensure that there are no more than minimal adverse effects to the aquatic environment, individually and cumulatively. The Programmatic EIS is discussed below.

One commenter said that the Corps can not limit its analyses to only those effects of the NWPs that occur in jurisdictional waters at the location of the permitted activity. Another commenter said that an EIS is required each time an NWP is used to authorize a private development project.

For the purposes of NEPA and the Corps regulatory program, the scope of analysis is limited to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review (see 33 CFR part 325, Appendix B, paragraph 7(b)). We do not agree that an EIS is warranted whenever an NWP is used to authorize a private development project, because the NWPs authorize only those activities that occur within the Clean Water Act section 404 limited scope of review and that have no more than minimal adverse effects on the aquatic environment.

One commenter stated that the EAs for the NWPs must contain current data. Two commenters asserted that the decision documents, including the EAs and Statements of Finding, for the NWPs should be subjected to an agency coordination and public comment period before they are finalized. Another commenter said that the EAs fail to consider alternatives to the proposed NWPs. One commenter stated that the EAs prepared for the NWPs do not adequately describe or assess the significant cumulative effects the NWP program has on the environment. One commenter recommended that the Corps issue new EAs for each nationwide permit to demonstrate compliance with NEPA. One commenter objected to the preliminary EAs, stating that those documents do not demonstrate an ecological rationale for the proposed acreage limits of the NWPs. One commenter stated that the EAs do not adequately assess potentially significant environmental impacts of the NWPs.

We believe it was unnecessary to make the revised EAs for the NWPs proposed in the August 9, 2001, **Federal Register** available for agency review and public comment. The EAs for the new and modified NWPs issued today discuss, in general terms, the acreage limits for these NWPs, the types of waters subject to the new and modified NWPs, and the functions of those waters. The EAs also address projected impacts to waters of the United States that will occur through the use of these NWPs. These projected impacts are based on recent data. The EAs also contain discussions of alternatives analyses. Since aquatic resource functions and values vary considerably across the country, we cannot include detailed ecological analyses to support the acreage limits for these NWPs. In addition, due to NEPA requirements concerning the length of environmental documentation, the EAs for the new and modified NWPs must be limited to general discussions of potential impacts. Division engineers will be issuing supplemental EAs that will address regional issues at the district level. The "Forty Most Frequently Asked Questions" concerning NEPA developed by the Council on Environmental Quality (i.e., Question 36) and the Corps regulations at 33 CFR part 325, Appendix B, discuss the recommended length of EAs. Finally, the changes in the new NWPs, relative to the existing NWPs, are minimal and generally designed to simplify the permits and increase protection of the aquatic environment. EAs for the existing

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permits have been publicly available since these permits were issued.

A few commenters said that the Corps must finalize the Programmatic Environmental Impact Statement (PEIS) for the NWPs before finalizing the NWP proposal published in the August 9, 2001, **Federal Register**. One commenter stated that the current NWPs should be extended until the PEIS is completed. One commenter stated that the draft PEIS for the NWP program does not address the specific effects of the NWPs on listed species, critical habitat or any other natural resources. Another commenter said that the draft PEIS lacks available data to assess the impacts of the NWP program because the Corps database is faulty. This commenter asserted that there should be no permitting until the Corps can adequately assess the success or failure of the regulatory program. One commenter said that the NWP PEIS does not provide sound scientific data that demonstrates that the NWPs have only minimal impacts on the environment.

In March 1999 the Corps began preparation of a voluntary PEIS to evaluate procedures and processes for the NWP program. The PEIS will not address the impacts of any specific NWPs. The PEIS is not a legally required EIS. The Council of Environmental Quality's regulations at 50 CFR 1506.1(c) do not prohibit the Corps from issuing the NWPs prior to completing the voluntary PEIS. The issuance of the NWPs will not preclude the ability of the Corps to modify the NWP program or modify individual NWPs in accordance with any need for changes identified in the PEIS. The Corps is in compliance with NEPA because a FONSI for the NWP program was issued on June 23, 1998, and the Corps issues decision documents, including EAs, for each NWP when the NWP is issued, reissued, or modified. Specific comments concerning the PEIS will be addressed through the PEIS process.

Jurisdictional Issues

In response to the August 9, 2001, **Federal Register** notice, we received numerous comments concerning the scope of the Corps regulatory authority. These comments addressed issues such as excavation activities in waters of the United States, isolated waters, and ephemeral streams as waters of the United States.

One commenter stated that the Corps should develop regulations that accurately reflect the regulatory exemptions for excavation because all maintenance activities associated with any existing structures or fill are exempt from Section 404 permit requirements. One commenter stated that the definition of "loss of waters of the United States" in the NWPs should be clarified to exclude excavation. As an example, this commenter said that if an activity involves non-jurisdictional excavation and temporary stockpiling of excavated material, those activities should not be included in the measurement of "loss of waters of the United States".

In the January 17, 2001, issue of the **Federal Register** (66 FR 4550), we promulgated a final rule that revised the Clean Water Act regulatory definition of the term "discharge of dredged material" to address recent Court decisions. It is important to note that not all excavation activities in waters of the United States result only in incidental fallback into waters of the United States. Excavation activities that result in the redeposit of dredged material into waters of the United States, other than incidental fallback, require a Section 404 permit. Excavated material that is temporarily stockpiled in waters of the United States before it is removed to a permanent deposit area requires a Section 404 permit. We have retained the excavation language in the new and modified NWPs and the definition of "loss of waters of the United States" because some of these activities may be authorized by NWPs. All excavation activities in navigable waters of the United States require Section 10 permits, even if those excavation activities result only in incidental fallback into Section 10 waters. NWPs issued under Section 10 of the Rivers and Harbors Act may authorize excavation activities in navigable waters of the United States.

Two commenters indicated that the NWPs should be modified to ensure compliance with the recent *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* decision (U.S. Supreme Court No. 99–1178).

The *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al.* decision related to the scope of CWA jurisdiction over non-navigable isolated intrastate waters. The NWPs do not establish jurisdiction that does not otherwise exist. They only authorize activities that require a permit. If an activity does not require a permit, the NWPs do not create a requirement for a permit. If an activity does require a permit and complies with the terms and conditions of an NWP, that activity may be authorized by the NWP.

A couple of commenters suggested that the Corps needs to improve its definition of ordinary high water mark (OHWM) because the current definition, which is based on physical evidence, does not provide any criteria regarding the frequency of flow necessary to establish an OHWM. These commenters stated that Corps personnel use the outermost banks to identify OHWMs, regardless of how frequently flows actually inundate the area between banks. Another commenter stated that Congress did not intend to extend Federal jurisdiction to discharges of dredge or fill material into areas that are ordinarily dry. This commenter indicated that a Corps district is asserting jurisdiction up to the limits of the 25-year floodplain. This commenter also suggested that the Corps limit its jurisdiction to areas with an OHWM within a less frequently flooded floodplain and that areas outside of the 1 to 5 year floodplain should not be considered to be within the OHWMs.

The Corps agrees that we should look at improving the definition of the OHWM. This will be the subject of a separate review. However, no schedule has been developed for this review. The frequency and duration at which water must be present to develop an OHWM has not been established for the Corps regulatory program. District engineers will use their judgment on a case-by-case basis to determine whether an OHWM is present. The criteria used to identify an OHWM are listed in 33 CFR 328.3(e).

Procedural Comments

One commenter said that it was unreasonable to: (1) Expect the public to travel to a public hearing to provide comments on the August 9, 2001, proposal in a government building in Washington DC; (2) schedule only one public hearing; (3) expect public comments to reach the Corps in a timely manner when the **Federal Register** notice had only a physical address for receiving public comments; and (4) expect the public to receive updated information regarding the rescheduling of the public hearing because of computer viruses and the absence of phone numbers or e-mail addresses in the **Federal Register** notice. This commenter also stated that it was not reasonable to expect public comments on proposed NWP regional conditions to be submitted in a timely manner because the physical addresses published in the August 9, 2001, **Federal Register** notice contained errors, the deadline for public comment on the regional conditions was not published in the **Federal Register**, and the comment period for proposed regional conditions preceded the deadline for public comment published in the **Federal Register** notice. This commenter said that future public notices by the Corps should include an electronic mail address, a physical address, and a telephone number for submitting of non-electronic comments. This commenter also asserted that additional public hearings should be conducted throughout the country to provide adequate opportunities for the general public to provide public comment prior to the reissuance and modification of the NWPs.

In response to the August 9, 2001, **Federal Register** notice announcing the proposed changes to the NWPs, we received over 2,100 comments and had 19 people attend the public hearing in Washington, DC. We believe that the level of participation is consistent with other proposals. We understand that the events on September 11, 2001, has affected the general public and we have made reasonable efforts to accommodate the public. In response to these events, we postponed and rescheduled the September 12, 2001, public hearing and extended the 45-day comment period by 15 days. The new date of the public hearing and the extension of the comment period were announced on our web page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg* and published in the September 18, 2001 (66 FR 48121), and September 21, 2001 (66 FR 48665), issues of the **Federal Register**, respectively. We believe that sufficient time and notice was given to the public to either participate in the public hearing or submit written comments. A physical address, web address that allowed electronic submittal of comments, and a telephone number with a point of contact were included in the August 9, 2001, September 18, 2001, and September 21, 2001, issues of the **Federal Register**. While some addresses within the notice may have contained zip code errors, we continue to provide the best information possible. We disagree that additional public hearings need to be conducted and maintain our position that we have fully complied with the public hearing requirements of the Clean Water Act.

One commenter said that the August 9, 2001, **Federal Register** notice contained several significant changes to the NWPs that were not discussed in the preamble. This commenter cited the addition and removal of a particular word or clauses that may narrow the protection provided by the terms and conditions of an NWP, the general conditions, and the definitions. One commenter said that NWPs should be coordinated with state agencies and the public and that any permit conditions requested by state agencies should be incorporated into the NWPs.

The preamble to the August 9, 2001, **Federal Register** notice discussed the substantive changes that we proposed for the NWPs and general conditions. We do not believe it was necessary to explain all minor editing changes to the NWPs, general conditions, and definitions in the preamble. However, there were a few errors in the proposal that contained some substantive changes that we did not intend to propose as changes. These were not discussed in the proposal and have been changed back to the original March 9, 2000 language. These errors are discussed in the discussion of the NWP, general condition or definition where they occurred. Each Corps district issued public notices announcing the publication of the August 9, 2001, **Federal Register** notice for the proposal to reissue and modify the NWPs. The district public notice process included coordination with state agencies and the public, to solicit their comments on regional issues related to the reissuance and modification of the NWPs, including any proposed regional conditions. We do not agree that all conditions requested by state agencies should be incorporated into regional conditions. Division engineers approve only those regional conditions that are necessary to ensure that the NWPs authorize activities with minimal adverse effects on the aquatic environment, individually and cumulatively. However, state and Tribal Section 401 water Quality Certification and state Coastal Zone Consistency conditions are included as conditions to the NWPs

One commenter said that the August 9, 2001, proposal to reissue and modify NWPs should have had information concerning the cost of administering the NWP program. This commenter stated that costs of administering the NWP program can be reduced by requiring individual permits for all NWP activities that result in more than minimal adverse effects on the aquatic environment and require mitigation. Another commenter asserted that the August 9, 2001, **Federal Register** notice should have included statistics on the current NWP program, such as the number of activities authorized by NWP, the amount of staff time expended to process NWP verification requests, and the amount of staff time used for compliance and enforcement.

We did not believe it was necessary to discuss the costs of administering the NWP program in the August 9, 2001, **Federal Register** notice. Requiring individual permits for all NWP activities that may result in more than minimal adverse environmental effects before consideration of mitigation would not reduce costs. The individual permit process is more costly to implement than the NWP process. Increasing the number of individual permits processed by the Corps would increase the costs to implement the Corps regulatory program. We do not agree that it was necessary to include statistics on the NWP program or the amount of staff time expended to implement the NWP program in the August 9, 2001, notice.

Discretionary Authority

A few commenters objected to the NWPs because they place a large part of the responsibility on discretionary authority at the district and division levels to reduce the adverse individual and cumulative effects to the aquatic environment to a minimal level. One commenter suggested that more restrictive national standards on the NWPs should be imposed instead of relying upon the discretionary authority process. One commenter stated that the use of discretionary authority needs further guidance. Another commenter requested clear criteria district engineers should use to incorporate safeguards as a result of discretionary authority.

We disagree with these commenters because the PCN and discretionary authority processes provide substantial protection for the aquatic environment. The PCN requirements of the NWPs allows case-by-case review of activities that have the potential to result in more than minimal adverse effects to the aquatic environment. If the adverse effects on the aquatic environment are more than minimal, then a district engineer can either add special conditions to the NWP authorization to ensure that the activity results in no more than minimal adverse environmental effects or exercise discretionary authority to require an individual permit. We believe that district engineers are the best qualified to identify projects or activities at the local level that may result in more than minimal adverse effects to the aquatic environment. In addition, division engineers can add regional conditions to the NWPs to lower the PCN threshold or otherwise further restrict the use of the NWPs to ensure that the NWPs authorize only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. The functions and values of aquatic resources differ greatly across the

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country. Therefore, minimal effects determinations for proposed NWP activities should be made at the local level by district engineers. We do not agree that guidance concerning the use of discretionary authority needs to be developed and implemented at the national level.

Compliance With the Endangered Species Act

A couple of commenters said that the Corps should initiate formal Endangered Species Act (ESA) consultation for the NWP program. One commenter suggested that NWPs be subject to national and district-level ESA assessments and formal consultation. One commenter indicated that the Corps is violation of section 7 of the ESA for failing to complete the mandatory formal consultation process with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) prior to reissuing and implementing the NWPs.

The Corps has initiated formal programmatic ESA consultation with the U.S. FWS and NMFS for the NWP program in 1999. A draft Biological Opinion has been prepared, but a final Biological Opinion has not been issued to date. A section 7(d) determination that the NWP reissuance will not foreclose any options has been prepared. Further, we believe that the NWPs, through the requirements of General Condition 11, comply with ESA. Further where necessary for specific cases we use the interagency ESA section 7 consultation regulations at 50 CFR part 402 when determining compliance with ESA. General Condition 11 requires a non-federal permittee to notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the proposed activity, or if the proposed work is located in designated critical habitat. General Condition 11 also states that the permittee shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized by NWP. General Condition 11 further indicates that the NWP does not authorize the taking of any endangered species.

A few commenters indicated that NWPs create cumulative impacts that affect endangered species. One commenter suggested that the Corps prohibit the use of NWPs in proximity to areas containing habitat that may be used by threatened or endangered species. A couple of commenters objected to General Condition 11, stating that it places the responsibility of determining whether a proposed activity may affect a threatened or endangered species in the hands of the prospective permittee.

To address cumulative impacts that affect endangered species, division engineers can impose regional conditions on the NWPs and district engineers can add case-specific special conditions to NWP authorizations to address impacts to endangered or threatened species or designated critical habitat. For example, regional conditions can prohibit the use of NWPs in certain geographic areas or require PCNs for all activities in areas inhabited by endangered or threatened species. Some Corps districts have conducted programmatic ESA consultation to address activities regulated by the Corps that may affect Federally-listed endangered or threatened species. General Condition 11 requires non-federal permittees to notify the Corps if any Federally-listed endangered or threatened species or designated critical habitat might be affected by the proposed work. Those activities that will not affect any Federally-listed endangered or threatened species or designated critical habitat do not require notification to the district engineer. The regulations at 50 CFR part 402 do not require ESA consultation for those activities that will not affect endangered or threatened species or destroy or adversely modify designated critical habitat. The implementation of General Condition 11, regional conditions, and case-specific special conditions will ensure that the NWP program complies with the ESA.

Regional Conditioning of the Nationwide Permits

One commenter stated that the preamble of the August 9, 2001, **Federal Register** notice makes it clear that in taking into account these regional differences, district engineers can change notification thresholds or require notification for all activities within a particular watershed or waterbody. This commenter indicated that district engineers should also have the discretion to eliminate notification requirements, increase acreage limits, add permits, and authorize activities where the impacts to the environment will be minimal based upon the regional conditions.

Division engineers cannot modify the NWPs by adding regional conditioning to make the NWPs less restrictive. Only the Chief of Engineers can modify an NWP to make it less restrictive, if it is in the national public interest to do so. Such a modification must go through a public notice and comment process. However, if a Corps district determines that regional general permits are necessary for activities not authorized by NWPs, then that district can develop and implement regional general permits to authorize those activities, as long as those regional general permits comply with section 404(e) of the Clean Water Act.

One commenter stated that regional conditions are not uniformly applied by district engineers throughout the country and in some cases can potentially result in less protection for the aquatic resources. This commenter suggested that Corps districts adopt stronger regional conditions or institute stronger national conditions. One commenter agreed that regional conditions are an essential tool for protecting valuable aquatic resources and accounting for differences in aquatic resource functions and values across the country. One commenter stated that regional conditions have broadened the applicability of NWPs to make them less protective.

We believe that imposing more restrictive national terms and limitations on the NWPs is unnecessary. The terms and conditions of the NWPs published in this **Federal Register** notice, the PCN process, and the regional conditioning process will ensure that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. It is far more efficient to develop NWPs that authorize most activities that have no more than minimal adverse effects on the aquatic environment and provide division and district engineers with the authority to limit the use of these NWPs through discretionary authority or by adding conditions to the NWPs.

For particular regions of the country or specific waterbodies where additional safeguards are necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse effects, regional conditions are the appropriate mechanism to address those concerns. For example, regional conditions can restrict the use of NWPs in high value waters for those activities that do not require submission of a PCN. Division and district engineers are much more knowledgeable about local aquatic resource functions and values and can prohibit or limit the use of the NWPs in these waters. We believe that regional conditioning of the NWPs provides effective protection for high value wetlands and other aquatic habitats.

One commenter stated that NWPs could affect treaty and other Indian rights and would like to consult with the Corps on a government to government basis to develop regional or national conditions that will address the concerns. One commenter recommended regional conditions that would require notification of Tribes and provide appropriate Tribes with the opportunity to comment on particular NWP activities.

We believe that General Condition 8, Tribal Rights, addresses the issue of tribal rights and the use of NWPs. Division and district engineers can consult with Tribes to develop regional conditions that will ensure that tribal rights are adequately addressed by the NWP process. Division engineers can regionally condition the NWPs to require coordination with Tribes when proposed NWP activities may affect Tribal lands or trust resources.

One commenter said that regional conditions should be developed for all NWPs to conserve Essential Fish Habitat. A couple of commenters indicated that NWPs should not be used in any areas that have been ranked as high value wetlands or critical resource waters. One commenter indicated that NWPs should not be used to authorize Section 10 and Section 404 activities in the Lower Hudson River. One commenter indicated that regional conditions are troubling because there are no central, definitive sources for information concerning those conditions.

We agree that regional conditions are an effective mechanism to help ensure that the NWPs comply with the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act. We require division and district engineers to coordinate with regional offices of the National Marine Fisheries Service to develop and implement regional conditions to conserve Essential Fish Habitat. Areas with high value wetlands or critical resource waters can be subjected to regional conditions, to ensure that activities authorized by NWPs do not result in more than minimal adverse effects to those waters. General Condition 25 addresses the use of certain NWPs in designated critical resource waters. This general condition states that district engineers can designate additional critical resource waters after notice and opportunity for public comment. The Corps has a general map of Corps division and district boundaries that is available on the Internet at *http://www.usace.army.mil/where.html#Divisions*. This interactive map also provides links to the home pages of Corps districts. Due to the scale of this map and since some Corps district boundaries are based on watershed boundaries, prospective permittees should contact the nearest Corps district office to determine which Corps district will review their PCN, permit application. Most Corps districts post their regional conditions on their Internet home pages.

One commenter stated that the last paragraph on page 42070 of the August 9, 2001, **Federal Register** notice contains an incorrect statement. This paragraph states that: "In addition to the "notification" provision, regional conditions may be developed by District Engineers to take into account regional differences in aquatic resource functions and values across the country and to put mechanisms into place to protect them. After identifying the geographic extent of "higher" quality aquatic systems, District Engineers can either change "notification" thresholds, or require "notification" for all activities within a particular watershed or waterbody to ensure that NWP use and authorization only occurs for activities with minimal adverse effects, individually and cumulatively." This commenter said that district engineers can only recommend regional conditions and that regional conditions must be approved by division engineers.

This commenter is correct, because regional conditions must be approved by division engineers after a public notice and comment period. District engineers can propose regional conditions at any time, but the division engineer must approve those regional conditions before they become effective.

Water Quality Certification/Coastal Zone Management Act Consistency Determination Issues

One commenter suggested that agencies should work together to make early agreements on certification conditions or denials of certification by states and tribes under section 401 of the Clean Water Act and section 307 of the Coastal Zone Management Act (CZMA). This would improve protection of the aquatic resources, benefit the regulated community, and reduce duplication of workload. Some commenters indicated that NWPs should be conditioned to prohibit construction by an applicant until all state and local permits are issued. A few commenters stated that the Corps should not issue a provisional NWP verification letter if the state denies Water Quality Certification because local regulators are easily persuaded to issue their permit.

We encourage States and Tribes to coordinate with Corps districts to complete and expedite water quality certification (WQC) and coastal zone certification for the NWPs. The proposed changes to the NWPs that were announced in the August 9, 2001, **Federal Register** notice are minor, and we believe that the proposed changes will not substantially affect the water quality certification and coastal zone consistency determination processes. Concurrent with the publication of the August 9, 2001, **Federal Register** notice, Corps districts and divisions were required to issue public notices to solicit comments on proposed regional conditions and initiate coordination with states and Tribes for the purposes of WQC and CZMA consistency determinations. The NWPs published in today's **Federal Register** notice have not been extensively modified from the proposal published in the August 9, 2001, **Federal Register**. These NWPs will become effective in 60 days. Since there have been few changes to the proposed NWPs, we believe that 60 days is sufficient time for states and Tribes to complete their WQC and CZMA consistency determinations. We believe that it is incumbent upon the Corps to let the applicant know when we have completed the Corps review and what the Corps decision is. It is up to the applicant to get the required individual State 401 water quality certification from the state, where the state has denied a water quality certification for the NWP as a whole.

Discussion of Comments and Final Permit Decisions

Nationwide Permits

The following is a discussion of the public comments received on the proposed nationwide permits and our final decisions regarding the NWPs, the general conditions, and the definitions. The Corps prepared decision documents on each of the NWPs, which are available on the Corps web site, indicated above. Following the discussion of the public comments are the final NWPs, the final general conditions, and the final definitions.

1. *Aids to Navigation.* There were no changes proposed to this nationwide permit. Since there were no comments on this nationwide permit. The nationwide permit is reissued without change.

2. *Structures in Artificial Canals.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

3. *Maintenance.* We did not propose any change to this nationwide permit.

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However, there were several comments on this NWP. One commenter suggested that 'terms' should be applied to maintenance of all flood protection works that the Corps built in partnership with the State, and that are now maintained by local entities or by ourselves.

We presume that this comment refers to "term limits" on the time that may elapse between maintenance events in flood protection projects. Although this idea may have merit in the context of the original project authorization, or with respect to maintenance agreements with local sponsors, we do not believe that such limits can or should be imposed through NWP 3. We do not intend this NWP to encourage or compel maintenance activities to be conducted more frequently than is necessary. However, the eligibility requirements of NWP 3(i) do encourage maintenance to be conducted before the structure or fill falls into such a state of disrepair that it can no longer be considered "serviceable."

Another commenter expressed the opinion that NWP 3 addressed activities that are exempt from regulations under section 404(f)(1) of the Clean Water Act

This is not correct. NWP 3 does not, in any way, extend Clean Water Act or River and Harbor Act jurisdiction to any area or activity that is not subject to these laws. Any activity that is exempt does not require a permit for the Corps including NWP 3.

One commenter suggested that while bioengineered projects are less environmentally damaging than riprap and offer benefits to salmon, the presence of wood in some bank protection structures has the potential to interfere with treaty fishing access by preventing the use of nets in areas. Another commenter stated that Tribes should be informed of all requests for this NWP that involve in-water work and granted 30 days to provide comments.

General Condition 8, Tribal Rights, does not allow an activity or its operation to impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights. Compliance with the general condition for NWP 3 regarding interference with treaty fishing rights, or other tribal rights, and the determination of any relevant and necessary modification of this NWP is the responsibility of our Division and District offices.

One commenter suggested that riprap should not be allowed in any waterbody where habitat-forming processes are limited, as identified by a state or federal watershed analysis for salmon and/or their habitat, and where the riprap would interfere with these processes. This commenter also suggested that the placement of riprap should be the minimum necessary to protect the structure.

We believe that NWP 3, as proposed, will limit the placement of riprap to the minimum necessary to provide adequate erosion protection. However, applicable law does not impose any restriction related to the habitat-forming processes mentioned by this commenter. In light of this, we believe that it would be inappropriate to impose such a policy under any Corps permit process. Although the consideration of such concerns may be proper in the context of authorizations for new work, we do not agree that it should be a compelling consideration in the context of the kinds of maintenance activities that are eligible for authorization under this NWP.

One commenter suggested that the Corps prohibit the addition of new riprap or, at a minimum, require "Notification" if new riprap is proposed, and that the Corps prohibit the placement of riprap or any other bank stabilization material in any special aquatic site, including wetlands. Another commenter stated the permit should prohibit "removal of accumulated sediments" in special aquatic sites.

Since this NWP only authorizes activities that restore an area to its previous condition, we do not believe it is appropriate to prohibit the maintenance of structures or fills simply because a special aquatic site may have formed in areas that require such repair. Similarly, with respect to the discharge of riprap or other bank stabilization materials, we do not believe that restoration of banks or of stabilization projects, within the limits of NWP 3, should be precluded by the presence of a special aquatic site.

One commenter suggested that this NWP should not be issued for maintenance work on culverts that fail to meet appropriate standards for the upstream and downstream passage of fish, or issued for culverts that do not allow for the downstream passage of substrate and wood. This commenter also suggested that if the proposed action is to remove the build-up of substrate at the upstream end of the culvert, or from the culvert itself, a condition of the permit should be that all substrate of spawning size and all wood of any size should be placed at the downstream end of the culvert.

We do not believe there are any national standards that we can apply to NWP 3 to assure that an adequate passage for fish and substrate materials is provided in the maintenance situations that can be authorized under this NWP. However, we agree that, to the extent that actions to enhance such fish and substrate passage can be incorporated into individual NWP 3 authorizations, they should be included as best management practices. We will encourage Corps districts to consider this issue when approving maintenance of culverts. Any redeposit of excavated spawning-size substrate may be authorized under NWP 18, but is subject to the limitations of that NWP

Several commenters indicated the Corps should withdraw section (iii) as the dredging and discharge allowed is double that authorized by NWPs 18 and 19 and, as such, will result in greater than minimal adverse effects. Several commenters also offered the opinion that restoring upland areas damaged by a storm, etc., has nothing to do with maintaining currently serviceable structures. Furthermore, some commenters suggested that it may be difficult to determine if the "damage" is due to a discreet event after a two-year period. Additionally, there is no acreage limit for this section and placement of "upland protection structures" will result in changes in the upstream and downstream hydromorphology of a stream.

We do not agree that the mere fact that the amount of the dredging or discharge authorized under this NWP, as compared to the authorization of similar activities under other NWPs, in any way indicates that the effects are more than minimal. The question of whether or not restoring upland areas has anything to do with maintaining currently serviceable structures is not relevant to the consideration of this NWP since no such relationship is required by the permit itself, or by the regulations governing the issuance of such permits. We do agree that, in some cases, it may be difficult to determine whether any damage is due to a discrete event. For this reason, the NWP prescribes only limited criteria in this regard, and it affords considerable discretion to the District Engineer to determine when there is a reasonable indication that the damage being repaired qualifies for authorization under NWP 3.

Two commenters indicated the permit can be used to expand the scope of other NWPs, including 13, 18, 19 and 31 which could result in more than minimal impact to the environment.

General condition 15 addresses the use of multiple NWPs for a project. This condition provides that more than one NWP can only be used if the acreage lost

does not exceed the acreage limit of the NWP with the highest specified acreage limit. Normally, when NWPs are combined for a project, the combined impacts are no more than minimal. We rely on our District offices to provide reasonable final assurance that the use of one or more NWPs, as they are applied in actual situations, do not result in more than minimal impacts. Districts have discretionary authority to require individual permits in situations where there is reason to believe that any NWP, individually or in combination with other NWPs, will result in more than minimal impacts.

One commenter suggested that the permit (inappropriately) encourages reconstruction in floodplains without questioning the need or desirability of doing so.

We believe that, inherent in the authorization of a structure or fill, is the reasonable right to maintain those structures or fills. With respect to the kinds of activities that are eligible for authorization under NWP 3, we do not agree that an assessment of need or desirability, is appropriate or necessary to ensure that the relevant effects are no more than minimal, including the effects on the floodplain.

Several commenters stated the lack of a definition of "discreet event" ignores the natural, hydrological processes at work in stream systems and allows landowners to prevent natural meandering processes within a waterway caused by normal storm events.

On the contrary, NWP 3 clearly recognizes that maintenance may be required either as a result of a discrete event such as a storm, or as a result of non-discrete forces. However, we do not agree that landowners should be prevented or unduly constrained from maintaining legitimately constructed structures or fills that are subject to the effects of natural hydrologic processes of adjoining waters.

A couple of commenters stated allowing riprap and gabions will result in the permanent channelization of natural streams by inhibiting their natural movement within the floodplain with major direct and secondary effects to the aquatic environment, as well as adverse hydrologic affects to downstream properties.

Since NWP 3 only authorizes activities that repair or return a project to previously existing conditions, we do not believe that it will result in any effects that did not previously accrue from the existence of the original structure or fill, and we believe that the maintenance activities authorized under this NWP will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter stated that NWP 3(i) should be modified to also allow for the maintenance of existing structures or fill that did not require a permit at the time they were constructed.

NWP 31 does authorize regulated activities related to the repair, rehabilitation, or replacement of structures or fills that did not require authorization at the time they were constructed. As referenced in NWP 3(i), the regulations at 33 CFR 330.3 provide an elaboration on this point.

One commenter suggested that NWP 3(ii) should be modified to allow the Corps District Engineer to waive the 200' limitation in any direction from the structure when the aquatic resource impacts would remain minimal. It should also specify that areas that are only excavated with only incidental fallback, temporary stockpile areas, and temporary redeposits should not be included in the 200' limitation since such impacts would not cause a loss of waters of the US.

It is entirely reasonable to conclude that regulated discharges associated with the removal of accumulated sediments that occur more than 200 feet from a certain structure may have no more than minimal effects. However, our intent in qualifying such removal for eligibility under NWP was to authorize them as part of the maintenance of a specific structure, and not simply because the effects were no more than minimal. Although we cannot certify that 200 feet is, in any way, an absolute distance within which removals are clearly associated with the maintenance of the structure, we believe that it is a reasonable distance for asserting such association for the purposes of this NWP. Incidental fallback associated with otherwise unregulated activities is not regulated under section 404 of the Clean Water Act or under section 10 of the Rivers and Harbors Act. Temporary stockpiles and other temporary discharges of dredged or fill materials in waters of the US are regulated, but we believe that they can and should be avoided in most maintenance situations. Although they may not result in a permanent or net loss of waters of the US, and they may have no more than minimal adverse effects on the aquatic environment, we do not believe that they are necessary in most cases. They can also lead to discharges of pollutants into waters of the US that may or may not have minimal adverse effects, depending on the circumstances. For these reasons, we are not including such activities among those eligible for authorization under NWP 3.

One commenter suggested that NWP 3(iii) should be modified to allow the Corps District Engineer to waive the limitation which states that dredging may not be done primarily to obtain fill for restorative purposes when the aquatic resource impacts would remain minimal or when it is environmentally advantageous to allow some modification of pre-existing contours or discharges of additional fill material to prevent recurring damage and the associated repeated disturbance to continually repair the damage. This commenter further suggested that the District Engineer could then exercise more discretion in terms of requiring watershed based mitigation banks and in-lieu fee programs for additional impacts while requiring mitigation at a site of superior watershed importance.

This NWP focuses on the repair and restoration of currently serviceable structures and not on the source of such material. We are not convinced that allowing dredging to obtain the fill material would normally have no more than minimal impacts unless there were also detailed listing of dredging limitations and conditions. Further, to establish such limitations we would need to provide opportunity for public review and comment. In light of this, we do not agree that the suggested expansion of this NWP is appropriate. This NWP does allow some minor deviation, but modifications that are more than minor deviations cannot be considered to be "maintenance" as it is envisioned in this NWP and, depending on the nature and location of such prospective changes, separate authorization may be required.

One commenter stated that individuals should not be able to use this Nationwide Permit to increase the area impacted by bank stabilization structures.

NWP 3 does not authorize any significant increase in the original structure or fill. Only minor deviations that are necessary to effect repairs are eligible for authorization under this NWP.

One commenter insisted the notification requirement should be removed from NWP 3(ii) and NWP 3(iii) as these requirements create additional administrative burden with no increase in environmental protection or added value to the process. For NWP 3(iii), the commenter suggested that the requirement should be changed to a post-construction notification in order to expedite repairs necessary to public infrastructure.

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We believe that these PCN requirements, as proposed, are a prudent means of assuring that the proposed maintenance activities are limited to those eligible for authorization under this NWP. We recognize that the PCN requirement imposes an additional burden on the project proponent, but we do not believe that it is inequitable or, in most circumstances, substantial. Emergency permit procedures are available to authorize such maintenance activities more quickly in emergency situations.

One commenter suggested that NWP 3 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also felt that its limitations are arbitrary and capricious and potentially could result in the exposure of highly toxic compounds.

We believe that NWP 3, as proposed, describes activities that are sufficiently similar in nature for the purposes of the NWP Program. Since this NWP only authorizes activities needed to return a project to a previously existing condition that either was authorized or that was implemented prior to the need for authorization, we do not agree that the effects will be more than minimal.

One commenter stated the Corps is unlikely to obtain adequate information on whether or not a change in use is contemplated, what the practicable alternatives are, or what materials are used unless an Individual Permit is required. In light of this, the commenter suggested that NWP 3 should be rewritten to prevent serious and widespread abuses.

We acknowledge that under this NWP we rely on the applicant's information on the intended use and on other aspects of the regulated activity. Since this NWP only authorizes activities that would return a project to previously existing conditions, we believe that the likelihood of serious or widespread abuses is exceedingly low. Further, we have the authority and use our authority to enforce compliance with permits, where necessary. The nationwide permit is reissued without change.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

5. *Scientific Measurement Devices.* There were no changes proposed to this nationwide permit. One commenter stated the word "primarily" should be replaced with the word "solely". We believe that this change would unnecessarily restrict the NWP and require an individual permit in a few cases, simply because there was a secondary use or benefit of the scientific devise. Further, we do not believe that the requirement for an individual permit, for that reason, would result in any added value for the environmental. The nationwide permit is reissued without change.

6. *Survey Activities.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

7. *Outfall Structures and Maintenance.* There were no changes proposed to this nationwide permit. One commenter suggested that notification should be limited to impacts greater than one acre, and that the District Engineer should have the authority to quickly issue this permit, without agency notification, by placing conditions limiting construction activities to periods of low-flow or no-flow in unvegetated ephemeral watercourses. Another commenter indicated the Corps should withdraw NWP 7(ii) since NWP 19 already provides for minor dredging, or limit the amount of material to be excavated to 25 cubic yards in order to be consistent with NWP 19.

The Corps believes that the limitations on the amount of fill that can be placed per linear foot is normally sufficient to ensure that the adverse effects on the aquatic environment will be minimal, individually and cumulatively. We agree that some impacts can be reduced by conducting certain activities in waters of the United Sates during low-flow or no-flow conditions. However, we also believe that a prohibition is not necessary or not practicable in many cases. We believe that this practice should be encouraged to further minimize any adverse effects on the aquatic environment. Therefore, we have modified general condition 3 to encourage this practice. We agree that there is some redundancy between NWP 7(ii) and NWP 19. However, we believe that NWP 7(ii) should not be eliminated since it is related to other activities authorized by NWP 7. Furthermore, the terms of NWP 7 are specific to that type of activity.

One commenter said this permit should prohibit the removal of accumulated sediments from small impoundments and special aquatic sites as these locally support rare, threatened or endangered water-dependent organisms.

The Corps does not believe that these areas normally support rare, threatened or endangered water dependent organisms, but this NWP does not authorize any regulated activity unless it complies with the Endangered Species Act. This NWP only allows the removal of accumulated sediments to maintain a preexisting depth, to facilitate water withdrawal at the location of the water intake.

One commenter insisted that NW7 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also suggested that its limitations are arbitrary and capricious. The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that these activities normally will have no more than minimal adverse effects on the aquatic environment, individually or cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The nationwide permit is reissued without change, however condition 3 was modified based on a comment on this NWP as indicated above.

8. *Oil and Gas Structures.* There were no changes proposed to this nationwide permit. However, one commenter recommended that NWP 8 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter indicated that this permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

The Corps believes that this NWP is sufficiently restrictive to protect the environment. The only structures that can be authorized under this NWP are those within areas leased by the Department of the Interior, Minerals Management Service. The general environmental concerns are addressed in the required NEPA documentation that the Service must prepare prior to issuing a lease. Further, Corps involvement is only to review impacts on navigation and national security as stated in 33 CFR 322.5(f). The

nationwide permit is reissued without change.

9. *Structures in Fleeting and Anchorage Areas.* There were no changes proposed to this nationwide permit. However, one commenter suggested changing the permit to read: "Buoys, floats and similar non-structural devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose."

The Corps believes that this change is not needed. The current language is sufficient to ensure that the category of activities will be similar in nature. We believe that the suggested language would not allow certain structures that are necessary for moorage of vessels to be authorized within anchorage and fleeting areas. The types of structures permitted by this NWP within USCG established anchorage or fleeting areas are only those for the purpose moorage of vessels. We believe that this limits the type of structure sufficiently to be considered similar in nature. The nationwide permit is reissued without change.

10. *Mooring Buoys.* There were no changes proposed to this nationwide permit, and there were no comments on this nationwide permit. The nationwide permit is reissued without change.

11. *Temporary Recreational Structures.* There were no changes proposed to this nationwide permit. However, one commenter recommended withdrawing NWP 11 as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to Federally listed threatened or endangered species. Another commenter suggested that temporary buoys, markers, small floating docks, and similar structures can interfere with the exercise of treaty fishing access and, therefore, in an area subject to treaty fishing, notification to affected tribes is required. The commenter further stated the regional conditions should be added, to require that such structures shall be removed from salmon spawning areas prior to commencement of the spawning season.

We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We agree that this NWP, as with all NWPs, should not authorize any activity that may impair reserved tribal rights, including, but not limited to, those reserved water rights, and treaty fishing and hunting rights, as stated in general condition 8. District and division engineers will consider the need to add regional conditions or case-specific conditions where necessary to protect such tribal rights. The nationwide permit is reissued without change.

12. *Utility Line Activities.* No changes to this nationwide permit were proposed. Several commenters raised issues and suggested changes related to size and threshold limits and construction practices. One commenter said that the permit should contain height and depth requirements for utility line installation. Another commenter suggested that a strict cap limit on the size of the utility line should be established. One commenter suggested that the Corps should require revegetation, as well as restoration, of the landscape's original contours for all NWP12 projects. One commenter suggested that sidecasting of material into wetlands should be prohibited, as should the construction of permanent access roads. One commenter suggested that the Corps should limit temporary sidecasting to 30 days, rather than 90 to 180 days as currently written. The commenter also suggested that, because temporary impacts can have more than minimal adverse effects, they should be limited to ½-acre, and total impacts should be limited to 0.3 acres. One commenter recommended raising the acreage limit from ½ acre to one acre. Another commenter said that the ½ acre limit is arbitrary and capricious.

Based on our experience, the Corps believes that the current thresholds and construction limitations are adequate to protect the aquatic environment while allowing needed projects to proceed, with restrictions. Furthermore, district engineers can further restrict specific activities, such as limiting sidecasting to 30 days where necessary. At this time, we do not believe that it is necessary or appropriate to increase or reduce the thresholds.

Several commenters suggest changes to the preconstruction notification (PCN) requirement. One commenter recommended requiring a PCN for all lines greater than 6" in diameter. Two commenters indicated that the absence of a clear definition of "mechanized land clearing" and a reasonable threshold for requiring PCNs creates regulatory uncertainty and an unnecessary burden on gas utility and pipeline construction projects. They further indicated that the notification requirement would be more reasonable and consistent with other NWP criteria if it only applied when mechanized land clearing affects more than a reasonable acreage of forested wetland. Another commenter recommended removing the PCN requirements for any mechanized land clearing that occurs in forested wetlands for utility rights-of-way. One commenter stated the Corps should exempt all utility projects other than sewer lines from the notification criteria because it is an unnecessary burden on non-sewer, energy-related utility projects, which typically will cross a water at right angles as opposed to running parallel to a stream bed that is within a jurisdictional area. Also, one commenter suggested we substitute a Corps-only PCN for activities resulting in the loss of between ½ and one acre of waters of the U.S. and a broader PCN for activities resulting in the loss of more than one acre. One commenter recommended reducing the PCN time period for a Corps response from 45 to 30 days.

The Corps believes that the current PCN requirements continue to be the appropriate criteria for determining when a PCN is required. We do not believe that an additional PCN requirement related to the size of the utility line is appropriate since the impacts of the utility line are temporary, and since restoration to preconstruction contours is required. We believe that projects involving mechanized land clearing require a PCN so that the Corps can ensure that the effect are no more than minimal. We also believe that the requirement for agency coordination of PCNs for activities that affect more than ½ acre for all NWPs, including this one, should remain in place to avoid confusion and to be consistent for all other NWPs. We believe that the 45 day response time for PCN is appropriate. It provides adequate time for those NWP activities that need some extra time to review. Corps Districts do not routinely use the 45 day period. Currently the average review time for NWP verifications is 18 days.

One commenter stated that natural gas distribution and pipeline projects typically only result in incidental fallback and, as such, should not require a 404 permit.

The Corps disagrees that such projects exclusively result in only incidental fallback. The Corps recognizes that

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some excavation activities are likely to result in only incidental fallback that does not require a Corps permit under section 404 of the Clean Water Act. However, the Corps regards the use of mechanized earth moving equipment in waters of the US as resulting in a discharge of dredged material unless project specific evidence shows that the activity results in only incidental fallback. (See 33 CFR 323.2(d)(2)(i)). The determination whether a permit is required will be made on a case-by-case basis. In addition, the backfill for the pipeline is a regulated discharge which requires authorization under section 404 of the Clean Water Act.

A few commenters suggested that the NWP, as proposed, would eliminate the ½ acre threshold for several activities. They indicated that the proposed NWP states that "activities authorized by paragraph (i) *and* (iv) may not exceed a total of ½-acre loss of waters of the U.S." whereas the existing NWP states that "activities authorized by paragraphs (i) *through* (iv) may not exceed a total of ½-acre loss of waters of the United States." Since the current NWP language more clearly indicates that the total loss may not exceed ½-acre, they recommended that the current language should be retained.

The Corps agrees with this comment. The change was an error and the Corps did not intend to change this NWP. The current language will be retained.

Several commenters indicated that the discharge of dredged or fill material under this NWP could adversely affect a number of species listed under the Endangered Species Act.

The Corps believes that General Condition 11 is adequate to protect endangered species. No NWP authorizes any activity that does not comply with the Endangered Species Act.

One commenter recommended that the Corps prohibit "stacking" NWP 12 authorizations to allow multiple crossings, or to allow the use of NWP 12 in combination with any other NWP.

This NWP can only be used once for a pipeline crossing of a water of the United States. A pipeline project may cross more than one stream. However, each of these separate and distinct crossings is considered a single and complete crossing in accordance with Corps regulations at 33 CFR 330.2(i).

A few commenters recommended that the use of NWP12 for water intakes should not be approved because the low head dams typically associated with such structures can violate general condition 4. Some commenters also indicated that water withdrawal projects have different requirements than standard utility line crossings resulting in alterations to natural flow regimes that cannot be considered under this NWP.

NWP 12 specifies that all activities authorized by this NWP must comply with General Condition 4. Furthermore, NWP 12 cannot be used to authorize low head dams. Such structures would require an individual permit or some other general permit.

Two commenters requested the Corps revoke NWP12(ii) since they believed that it is unnecessary to construct such facilities in wetlands. They believe that providing an easily attainable authorization for such construction will actually encourage the placement of utility lines in wetland areas, resulting in an increase in the loss of wetlands.

We agree that any unnecessary construction of utility line substations in wetlands should be avoided. However, where such construction cannot be avoided as a practical matter, we believe that the limitations we have imposed in the NWP will ensure that any adverse effects on the aquatic environment will be no more than minimal, individually and cumulatively.

One commenter suggested that NWP 12 should be conditioned to require BMP's on private lands only, since federal and state land managers are more likely to impose conditions on properties under their control.

We believe that the term and conditions are adequate to ensure that any adverse effects on the aquatic environment will be no more than minimal, individually or cumulatively. The Corps districts will add regional or case specific conditions where they determine a need for such conditions.

One commenter said that NWP 12 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

We believe that the minor nature of these types and categories of activities are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed based on years of experience and were developed to consider most effects that could occur in many areas of the country. However, Division and District Engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Activities authorized by this NWP must comply with general condition 11 to ensure that the activity is in compliance with the Endangered Species Act.

One commenter suggested we remove the sentence "waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of water of the United States."

The Corps has established the threshold limits for all NWPs to be for permanent loss of waters of the US. Further we have establish the thresholds to provide for the Corps to be able to look at those projects to ensure that there will be no more minimal adverse effects on the aquatic environment, individually or cumulatively. Because the temporary discharges do not result in long lasting impacts and any short term impacts are less per acre than permanent, adding those temporary impacted acreage to permanent acreage would not provide an accurate measure of the potential impacts that may result in more than minimal effects.

One commenter recommended that a threshold of ½-acre should be used below which no compensatory mitigation should be required, unless a District Engineer determines otherwise. Another commenter suggested the changes in values and functions associated with the permanent conversion of maintaining gas line rights-of-way are more likely to be beneficial than detrimental. Because of the benefits, as well as the very limited extent of vegetation change, a mitigation ratio of 1:1 should be adopted for wetland disturbances above ½-acre. One commenter suggested we remove the paragraph that characterizes the conversion of a forested wetland to an herbaceous wetland as a "permanent adverse effect" that requires mitigation. Compensatory mitigation should not be required as well-maintained herbaceous wetlands are of significant value and often provide greater ecological functions. Additionally, many utility construction and maintenance activities result in only temporary effects on wetlands.

The Corps believes that mitigation should be required to ensure that any adverse effects on the aquatic environment will be no more than minimal, individually or cumulatively. We have proposed to modify General Condition 19 concerning mitigation requirements for the NWPs. See the preamble discussion on General Condition 19 for our response to mitigation comments. The nationwide permit is reissued without change.

13. *Bank Stabilization.* The Corps proposed no changes to this NWP. One commenter said that this NWP should be withdrawn because it is too broad to meet the "similar in nature" requirement of general permits and it authorizes activities that may result in more than minimal adverse environmental effects. This commenter also stated that this NWP has the potential for substantial secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species and environmental damage at riprap extraction sites. Another commenter stated that the Corps needs to develop a method to document, analyze, and minimize environmental impacts from all bank stabilization activities. One commenter stated that this NWP authorizes activities that adversely affect natural stream processes, is contrary to current practices and philosophies of natural stream rehabilitation, and impedes future restoration work. A couple of commenters suggested that the Corps adopt a "no net loss in natural stream banks" policy, requiring the removal of one linear foot of bank stabilization for every linear foot of new bank stabilization. Two commenters stated that the Corps should direct its bank stabilization and bank restoration programs toward the goal of maintaining and restoring natural stream processes to the Nation's rivers and streams.

This NWP complies with the "similar in nature" requirement of general permits, including nationwide permits, even though there are numerous methods of bank stabilization that can be authorized by this NWP. The terms and conditions, including the notification requirements and the ability of division and district engineers to impose regional and case-specific conditions on this NWP, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment. For those NWP 13 activities that require notification, district engineers will review the proposed work to ensure that those activities result in no more than minimal adverse effects to the aquatic environment. We do not agree that it would be appropriate to adopt a "no net loss" goal for stream banks. Stream bank stabilization activities are necessary to protect property and ensure public safety. Stream restoration is not always feasible in developed areas and other types of bank stabilization may be more appropriate in those areas.

One commenter said the NWP should encourage consideration of more environmentally acceptable methods of bank stabilization first, and if those methods are not appropriate, then hard erosion control measures such as riprap or bulkheads could be authorized. A commenter recommended that this NWP authorize techniques that employ more natural methods of bank protection channelward of the ordinary high water mark, which may or may not include the use of hard armoring materials.

We do not agree that it is necessary to establish preferences for bank stabilization methods in the terms and conditions of this NWP. In certain situations, riprap or bulkheads may be the only practicable methods of bank stabilization. This NWP can be used to authorize bank stabilization activities channelward of the ordinary high water mark, as long as the terms and conditions of the NWP are met.

One commenter stated that the 500 linear foot limit of this NWP should be reduced to 100 linear feet, to prevent significant degradation of salmon habitat. Two commenters said that NWP 13 should not authorize bank stabilization activities in excess of 300 linear feet. One commenter indicated that NWP 13 should be modified to allow district engineers to waive the 500 linear foot limit when impacts to aquatic resource are minimal or when it is environmentally advantageous to allow additional bank stabilization to prevent recurring damage. Such a waiver would reduce repeated disturbances associated with continuously repairing damaged bank stabilization measures that were shortened to meet the limit. This commenter also said that this waiver would allow district engineers to exercise more discretion in terms of requiring watershed based mitigation banks and in-lieu fee programs for additional impacts and requiring mitigation at a site of greater watershed importance.

Based on our experience of using this limit for over 25 years, we believe that 500 linear feet is the appropriate limit. However, this limit can be waived as indicated in the first sentence of the last paragraph of NWP 13 which states that bank stabilization activities in excess of 500 feet in length may be authorized if the project proponent notifies the district engineer in accordance with General Condition 13 and the district engineer determines that the proposed work results in minimal individual and cumulative adverse environmental effects. Division engineers can regionally condition this NWP to prohibit or restrict its use in streams inhabited by salmon. For those activities that require notification, district engineers will review the proposed work to ensure that the adverse environmental effects are no more than minimal.

One commenter said that projects proposing bank stabilization structures of more than 300 feet should be elevated to the Individual Permit level.

Past experience with the limits of this NWP leads us to believe that the currently proposed 500-foot limit generally will not result in more than minimal impacts.

Two commenters recommended the Corps prohibit stacking of NWP 13 with itself or any other NWP. Two commenters stated the Corps should prohibit the use of waste concrete for bank stabilization material due to the environmental problems, such as toxic paints from sidewalks, rebar from construction, and petroleum products from automobiles. One commenter indicated that the placement of wood in bank stabilization projects has the potential to interfere with treaty fishing access and affected tribes should be notified of activities authorized by this NWP.

This NWP authorizes single and complete bank stabilization activities. We do not agree that it would be appropriate to prohibit the use of NWP 13 with other NWPs, but we do prohibit using a NWP more than once for a single and complete project. General Condition 15 addresses the use of more than one NWP for a single and complete project. General Condition 18 addresses the use of suitable material for discharges of dredged or fill material into waters of the United States. This general condition prohibits the use of materials that contain toxic pollutants in toxic amounts. General Condition 8, Tribal Rights, indicates that no activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. This NWP can further be regionally conditioned by division engineers to ensure that bank stabilization activities do not interfere with specific treaty fishing access. This nationwide permit is reissued without change.

14. *Linear Transportation Projects.* In the August 9, 2001, **Federal Register** notice, we proposed to modify NWP 14

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to authorize private transportation projects in non-tidal waters to have a maximum acreage of ½-acre instead of the current ⅓-acre, and to eliminate the 200 linear-feet prohibition.

Numerous commenters agreed with the proposal to treat both public and private transportation projects the same for tidal and non-tidal waters and increase the impact limit to ½-acre in non-tidal areas. Most agreed that the Corps was unjust in differentiating between private and public projects in the past. Two commenters recommended that the ½ acre threshold be increased to assist the applicant with projects that may still have minimal impacts however will go over the allowed threshold and stated this will decrease the amount of individual permits. Several commenters disagreed with the proposal to treat both public and private transportation projects the same and indicated that private individuals are less likely to have access to critical resource and ecological information to assist them in designing their project with minimal impacts to the aquatic environment. Some commenters recommended that the ½-acre threshold be changed to ½-acre overall. One commenter stated that the change in the acreage threshold conflicts with the general requirement of the Nationwide Permits to have minimal adverse impacts on the aquatic environment. One commenter stated that this NWP supports a non-water dependant activity and therefore activities proposed under this NWP should be reviewed as an Individual Permit. One commenter recommended that the Corps withdraw all proposed changes.

We have determined that the impacts to the aquatic environment for transportation projects will be essentially the same whether the project is public or private and on the average we would expect the private transportation projects to be smaller. We believe that private projects go through local, state, and other permitting processes and have the same access to resource and ecological information as public projects. Furthermore, the terms and conditions will ensure that NWP 14 will have no more than a minimal adverse effect on the aquatic environment. We believe that a distinction needs to be made for transportation crossings based on whether they cross tidal or non-tidal waters. We are not changing the maximum acreage of NWP 14, but are applying the maximum acreage to non-tidal waters rather than public projects. We have determined that the maximum loss of waters of the US for this NWP should be ½ acre in non-tidal waters of the US and ⅓ acre in tidal waters of the US. Both limits along with the terms and conditions of the NWP will ensure that this NWP does not authorize activities with more than minimal adverse effects on the aquatic environment.

Many commenters objected to the removal of the 200 linear-foot restriction because this type of impact could not be considered minimal. The commenters stated that streams have no adjacent wetlands therefore allowing several hundred feet of stream to be impacted before the ½ acre threshold is reached, that requiring a linear measure ensures that impacts will be minimal, and no justification was provided in the **Federal Register** for proposing this change. Numerous commenters agree with the removal of the 200 linear-foot restriction and have stated that the PCN threshold, as well as the acreage limit, will continue to provide protection to the environment. One commenter recommended that a 100 linear-foot restriction be adopted.

We proposed to remove the 200 linear-feet prohibition from NWP 14 to eliminate varied interpretations and to simplify the basis for use of the permit. We have determined that the removal of this prohibition will have little practical effect as the limiting factor contained in the terms and conditions of NWP 14 is most often the acreage limitation. We believe that very few projects exceeding the 200 linear-feet would remain below the ⅒-acre "notification" threshold. For example, a 200' by 22' wide transportation crossing would impact 4,400 sq. ft. (i.e., ⅒-acre). We have determined that the "notification" threshold (i.e. ⅒-acre for areas without special aquatic sites, and all proposed projects that would involve fill in special aquatic sites) allows the Corps to do a case-by-case review. Therefore, we have concluded that these measures, along with the other terms and conditions of the NWPs and other mechanisms such as regional conditions and the discretionary authority, will ensure that any NWP 14 activity that complies with the acreage threshold will have no more than a minimal adverse effect on the aquatic environment.

Two commenters recommend that all proposed changes be implemented and individual Corps Districts not be allowed the use of discretionary authority to restrict these changes nor require an individual permit for multiple stream crossings. One commenter recommended that mitigation always be required for impacts under NWP 14.

We believe that the use of discretionary authority by District Engineers is necessary to ensure that impacts to the aquatic environmental that are more than minimal receive the proper review. The requirement for a compensatory mitigation proposal applies to those activities that require notification. Further, for projects not requiring a PCN, District Engineers may determine, on a case-by-case basis, that compensatory mitigation is necessary to offset losses of waters of the United States because the work, without compensatory mitigation, will result in more than minimal adverse effects on the aquatic environment. This could occur if the project proponent submits a voluntary verification request to the Corps or if a concern is raised to the Corps by a third party.

Numerous commenters agreed with the preamble clarification that features integral to linear transportation projects are covered under NWP 14 and stated this clarification will reduce confusion without adversely affecting environmental values. One commenter objected to the clarification of features integral to linear transportation projects and stated that the addition of these activities expands the possibility of impacts, which often could be avoided. One commenter recommended that the term "stormwater detention basin" (as used in the preamble to the proposed NWPs) be changed to read "stormwater management basin" and "water quality enhancement measure" be changed to read "water quality/wetland enhancement measures". The commenter stated that this change would allow additional stormwater best management practices to be authorized by this permit.

We do not believe that the features described in preamble of the August 9, 2001, issue of the **Federal Register**, expanded the activities that can be authorized by NWP 14. We have maintained that NWP 14 may not be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or hangars. We believe the examples listed in the preamble are dependent integral components of typical linear projects and were added for clarification. We maintain the authority to assert discretionary authority when evaluating the magnitude of adverse effects on the aquatic environment (33 CFR 330.1(d), 330.4(e) & 330.5). These examples and other integral features not listed could be authorized. We agree that stormwater management features and wetlands features integrally related to the linear transportation project could be authorized by this NWP. In addition, other NWPs may be combined with this NWP to authorize related activities subject to general condition 15.

Several commenters addressed the Corps definition of single and complete project under NWP 14. One commenter recommends that any proposed roadway fill in special aquatic sites, including wetlands require a PCN with agency coordination. One commenter recommended that the definition of "single and complete project" be amended to include all portions of the linear project that do not have independent utility. One commenter recommended that multiple stream crossings should be deemed to be part of a single road project. One commenter recommended that additions to previously permitted projects be reviewed under the individual permit to avoid piece-mealing.

Notification is required for all discharges of dredged or fill material into special aquatic sites and discharges resulting in the loss of greater than ⅒ acre of waters of the United States. We believe most activities authorized by this NWP will require notification to the district engineer and the determination as to whether to require an individual permit should be made on a case-by-case basis. For example, if NWP 14 is used more than once by different project proponents to cross a single waterbody, the district engineer will assess the adverse effects on the aquatic environment and determine if those adverse effects are minimal. As with any NWP, the district engineer can exercise discretionary authority and require an individual permit if the adverse effects on the aquatic environment will be more than minimal. The definition of the term "single and complete project" for linear projects can be found in Corps regulation at 33 CFR 330.2(i).

Many commenters recommend that NWP 14 not be authorized within tidal wetlands or waters and wetlands adjacent to tidal waters as these areas have great ecological importance and already suffer from development pressures. One commenter recommended an individual permit be required for activities within tidal wetlands and wetlands adjacent to tidal waters. One commenter recommended the language in section a. (2) be changed to read "linear transportation projects in tidal waters and non-tidal wetlands adjacent to tidal waters".

We agree that tidal waters or water and wetlands adjacent to tidal water can have great ecological importance and have suffered from development pressures. However, the current language is sufficient to protect such areas. We have developed terms and conditions to keep adverse impacts at a minimal level. Further, in many cases a PCN is required and Districts will add case specific conditions and mitigation when needed to ensure that adverse impacts will be minimal. Some projects will need to be processed as an individual permit. The district offices will make that determination when necessary to ensure that the adverse effects to the aquatic environment will be no more than minimal.

One commenter recommends that the Corps prohibit the construction of new transportation or spur projects under this NWP. Due to the development potential associated with road projects, a thorough alternative analysis, along with agency and public review should be required.

The main purpose of this NWP is to authorize new linear transportation crossing of waters of the US. It may also authorize new crossings involved in relocating of existing linear transportation projects. This NWP does not authorize a transportation project as a whole, which does not require authorization by the Corps of Engineers. However, we will address alternatives to crossings to avoid and minimize adverse effects in accordance with General Condition 19, to ensure that adverse effects on the aquatic environment are no more than minimal.

One commenter recommends, condition "f" be clarified to ensure less than minimal effects on the environment. The clarification should state "all stream crossings be engineered to transport flows and sediment during both bank full and flood flows". Furthermore the clarification should state the permit does not authorize crossings that block flows in or restrict the stream's access to the floodplain. The commenter further recommended that the condition require equalization culverts be installed as part of crossings that affect flood plains.

We agree that activities authorized by this NWP can have adverse effects related to flow and movement of water through and under the crossings. For that reason, the term f. of the NWP was added to emphasize the need for projects authorized by this permit to adequately address water movement impacts. This provision refers to General Conditions 9 & 21. We believe that along with these two conditions, the effects of crossings on the movement of water will be no more than minimal.

15. *U.S. Coast Guard Approved Bridges.* There were no changes proposed to this nationwide permit. However, one commenter recommended that NWP 15 be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

We believe that the listing of the type of activities and that they are related to bridge construction only will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The nationwide permit is reissued without change.

16. *Return Water From Upland Contained Disposal Areas.* There were no changes proposed to this nationwide permit. A few commenters suggested that, in order to assure that the lands and waters draining the disposal areas are not contaminated from pollutants entrained in the dredged material, the NWP should be tightened to require individual permit review unless the discharge/leachate from the dredged material is controlled through a NPDES permit. Another commenter stated that NWP 16 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

Consistent with 33 CFR 323.2(d)(1)(ii), this NWP authorizes the return water as the discharge of dredged material. As such, an NPDES permit is not required. However, a 401 certification is required and we believe will adequately control the quality of the return flow. We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than

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minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

17. *Hydropower Projects.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

18. *Minor Discharges.* There were no changes proposed to this nationwide permit. One commenter said that NWP 18 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species. Also, the thresholds of 25 cubic yards and 1/10th acre are arbitrary and capricious. Another commenter stated that NWP 18 should be modified to allow the Corps District Engineer to waive the 25 cubic yard limitation when the aquatic resource impacts would remain minimal or when it is environmentally advantageous and efficient to allow the discharge of additional material as a single project and direct mitigation to a watershed based mitigation bank.

We believe that the minor nature of these types of small discharge activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. While we believe that the small quantity limits are necessary to ensure that on a national basis that the adverse effect on the aquatic environment will be no more than minimal individually and cumulatively, we also recognize that in some areas and in some situations that larger quantities would also have no more than minimal individually and cumulatively. In these situations the Corps Divisions and districts may issue, after notice and comment, regional general permits for larger quantity limits. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

19. *Minor Dredging.* There were no changes proposed to this nationwide permit. One commenter said that NWP 19 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species. Also, the thresholds of 25 cubic yards is arbitrary and capricious.

We believe that the minor nature of these types of small dredging activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Also these activities do not require a permit under section 404 of the Clean Water Act if they result in only incidental fallback (see 33 CFR 323.2 (d)). While we believe that the small quantity limits are necessary to ensure on a national basis that the adverse effects on the aquatic environment will be no more than minimal individually and cumulatively, we also recognize that in some areas and in some situations that larger quantities would also have no more than minimal adverse effects, individually and cumulatively. In these situations the Corps Divisions and districts may issue, after notice and comment, regional general permits for larger quantity limits. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

20. *Oil Spill Cleanup.* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 20 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category is a prime example of the secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species in locations beyond the location of the spill which could result from activities authorized under NWP 8.

We believe that the minor nature of these types of small discharge activities authorized by this NWP will ensure that they are similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This NWP only addresses the need to clean up oil spills regardless of the source of the spill and only when the clean up involves a discharge of dredged or fill material. The effects of the oil spill itself will be considered by the lead Federal or state agency involved in the clean up exercise. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

21. *Surface Coal Mining Activities.* The Corps proposed two changes to this NWP to ensure the proper focus of the NWP and to make certain adequate mitigation will be required resulting in no more than minimal adverse effects on the aquatic environment. Both of these changes will increase protection of the aquatic environment. First, the Corps proposed to require a specific determination by the District Engineer on a case-by-case basis that the proposed activity complies with the terms and conditions of this NWP and that adverse effects to the aquatic environment are minimal both individually and cumulatively after consideration of any required mitigation before any project can be authorized. Second, the Corps proposed to add clarification to NWP 21 that the Corps will require mitigation when evaluating surface coal mining activities in accordance with General Condition 19. In addition, the Corps Section 404 review will address the direct and indirect effects to the aquatic environment from the regulated discharge of fill material.

Definition of Fill and Waste

Two commenters stated that the Corps issuance of NWP 21 to authorize valley fills is illegal in that the Corps current definition of fill specifically precludes pollutants discharged into the water primarily to dispose of waste, as that activity is regulated by EPA under section 402 of the Clean Water Act. (33 CFR section 323.2(e)). One of these commenters quoted from the Bragg v. Robertson decision where the 4th District Court, in ruling upon certain claims against the State under SMCRA, stated in dicta that the overburden or excess spoil was a pollutant and waste material and not fill material subject to Corps authority under section 404 of the CWA when it is discharged into waters of the U.S. for the primary purpose of waste disposal. The other commenter added that even if the Corps had jurisdiction to issue permits for valley fills composed of mining spoils under the April 2000 proposed rule, to amend the definition of "fill material", it would not have jurisdiction to authorize the discharge of coal processing waste into refuse impoundments under Section 404. In addition, the commenter asserted that even if the Corps finalizes the proposed rule regarding the definition of fill, it must, under NEPA, perform an EIS before implementing the rule. Because this has not been done and the current rule prohibits fills composed of waste material, the commenter claimed NWP 21 is inapplicable to authorize the placement of mining spoil or coal refuse in waters of the U.S.

Another commenter added that the final notice reissuing NWPs must clearly and unambiguously prohibit placement of coal processing wastes and underground development wastes in "coal waste dams" or "tailings piles" into waters of the U.S., and must further prohibit the placement of coal mine "spoil" material in such waters as "waste disposal" unless the final design of the valley fill structure is demonstrated to be necessary to support the approved post-mining land use and is thus placed for a beneficial purpose.

Definition of Fill Rule: On April 20, 2000, the Corps and EPA issued a joint proposal to revise the definition of fill found at 33 CFR 323.2(e) and 40 CFR 232.2 (65 FR 21292, April 20, 2001). The proposed revision would clarify that fill material means material (including, but not limited to rock, sand and earth) that has the effect of: (i) Replacing any portion of water of the US with dry land; or (ii) Changing the bottom elevation of any portion of a water of the US.

Among other things the proposed rule would clarify that placement of excess coal mining overburden, resulting from mountaintop mining/reclamation activities, in waters of the U.S. (valley fills) is considered a discharge of fill material. The agencies are reviewing approximately seventeen thousand comments received in response to the proposed rule and are in the process of drafting the final rule. NWP 21 is available to authorize discharges of fill material meeting the terms of the permit. Issues related to the applicability of Clean Water Act section 404 to "coal waste dams," "tailings piles"' coal mine "spoil" and coal slurry impoundments turn on the jurisdictional question of what constitutes fill material, an issue that will be clarified in that rulemaking. Because the proposed nationwide permits do not seek to resolve those questions, these comments are outside the scope of this proceeding. With regard to valley fills, in a memorandum dated September 26, 2001, the Corps directed all involved field elements to inform the public and initiate regulating valley fills in all states, pursuant to section 404 of the CWA. The memorandum attaches a legal analysis that concludes that Corps regulation of valley fills may be pursued under the current regulations. The Corps decided to regulate valley fills because of the need for consistent administration of the Regulatory Program, assuring equity for the public. In addition, the Corps will require appropriate compensatory mitigation, as necessary, for the loss of aquatic resources.

Bragg Settlement Agreement: On December 23, 1998, a settlement agreement was signed to end litigation against the federal government that challenged whether applicable federal programs were being appropriately applied to regulate valley fills in West Virginia (*Bragg* v. *Robertson*, Civil Action No. 2:98–0636 (S.D. W.Va)). The Court approved the agreement on June 17, 1999 (54F.Supp. 2d 653). The settlement agreement was facilitated, in part, by the Army establishing that the Corps would regulate valley fills in West Virginia pursuant to section 404 of the CWA. While on appeal, the Fourth Circuit Court of Appeals vacated a subsequent decision issued by the District Court addressing Surface Mining Control and Reclamation Act (SMCRA) claims in the case (see 248 F.3d 275); that Fourth Circuit decision left intact the 1998 settlement agreement. See 248 F.3d at 288, n.1 (noting District Court's approval of the settlement agreement). A portion of the settlement agreement stated that excess rock resulting from a surface coal mining and reclamation operation which would bury a stream segment draining a watershed of 250 acres or more would generally be considered to have more than minimal adverse effects on waters of the U.S. Consistent with the terms of this agreement, to which the Corps is a party, the Corps will generally use its discretionary authority to require standard permits for coal mining activities in West Virginia where the material would bury a stream segment draining a watershed of 250 acres or more. The Corps notes that this agreement was negotiated among various Federal agencies and the state of West Virginia and relates to certain types of coal mining operations in that state. The Corps believes there are many different types of coal mining operations in other parts of the country and that the conditions of the settlement agreement may not be applicable to many of these other operations. For this reason, the terms of the agreement have not been incorporated into the permit, which by definition is nationwide in applicability.

Further, we are gathering data and, in conjunction with other federal agencies, are preparing a programmatic mountaintop mining/valley fill (MTM/VF) EIS to better understand the environmental effects of mountaintop mining and valley fills, as well as programmatic changes that may be necessary to address those impacts. The Corps will reevaluate NWP21 when the mountain top mining EIS is completed. The Corps intends to use the results of this EIS and all other information that may be available at that time, including information resulting from individual verification of all NWP 21 projects as required under the revised terms and conditions, to make sure that NWP 21 results in no more than minimal impacts (site-specifically and cumulatively) on the aquatic environment. Therefore, at this time we are not adding additional conditions from the Bragg agreement to the NWP itself. Thus, we do not believe that we should add specific conditions from the settlement agreement to this NWP, which has a term of five years. However, the Corps wishes to reiterate that it will abide by all terms of the settlement agreement in West Virginia as long as it remains in effect.

It is important to the Corps that surface coal mining activities authorized by this NWP do not cause more than minimal adverse effects to the aquatic environment after considering mitigation. As such, the District Engineer will ensure that the discharge of fill material in waters of the US associated with coal mining activities will have no more than minimal adverse effects on the aquatic environment.

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EIS/EA for NWP

A few commenters stated that the Corps 1996 EA did not adequately account for the increasing size and scale of valley fills and their impacts. One of these commenters suggested that this NWP should not be reauthorized until the new EA or EIS is completed which may find that impacts due to this nationwide are more than minimal.

Three commenters stated that reissuance of NWP 21 was inconsistent with the Corps obligation under NEPA, since the Draft Nationwide Permit Program Programmatic EIS (PEIS) dated July, 2001, does not adequately address the effects of eliminating NWP 21 and other NWPs which have been controversial due to their substantial environmental effects.

The PEIS addressed the effects of different permit processing scenarios (standard, regional general and nationwide general permits) on the Corps permit program in terms of workload, cost and protection for the environment. It did not include alternatives changing only some nationwide permits to standard permits or regional general permits or any other combination of specific NWPs permits. This combining of different scenarios would have resulted in a very large number of alternatives to analyze.

One commenter stated that the PEIS fails to fully incorporate and analyze the substantial body of scientific knowledge and information that has been amassed as part of the aforementioned MTM/VF EIS relative to the effects of mountain removal mining and valley fill construction on Appalachian streams and rivers. This commenter requests that all available technical and scientific studies, and the draft MTM/VF EIS be incorporated into the DPEIS and that a supplemental PEIS be prepared concerning the proposal to reissue NWP 21, which includes the alternative of reissuance of other nationwide permits with the exception of NWP 21 and other controversial NWPs.

The MTM/VF EIS will not be completed for some time. However, the Corps fully intends to use all relevant information, including the results of this EIS, to make sure that NWP 21 results in no more than minimal impacts (site-specifically and cumulatively) on the aquatic environment.

One commenter noted that the Corps is currently involved in an EIS limited to two states, Kentucky and West Virginia, for a subset of the activities authorized under NWP 21 and which will not determine the effects of all activities associated with this permit. This commenter states that the Corps must perform an EIS on all impacts associated with NWP 21 including, but not limited to, mountaintop removal valley fills, contour mining valley fills, and coal refuse discharges. They also state that particularly, given the concentrated use of NWP 21 in only a few districts, it is clear that the Corps permitting decisions have had impacts exceeding both the "significant" standard under NEPA and the "minimal adverse effects" standard under Section 404(e).

As previously stated, the Corps is committed to ensuring that NWP 21 does not result in more than minimal adverse effects to the aquatic environment. We believe that the changes proposed and adopted will ensure minimal adverse effects on the aquatic environment. We will review the additional information provided within the MTM/VF EIS, upon its completion, to be sure that this continues to be the case.

Scope of Analysis

One commenter opposed reissuance of NWP 21 based on this activity's non-water dependency and associated secondary/cumulative impacts such as acid rain from burning of coal and its affect on the human environment. This commenter is concerned over the adverse impacts of acid deposition on the human environment. Another commenter claims that coalfield communities near these operations are dwindling as large out of state coal corporations employ fewer and fewer workers and severe flooding in the area caused by the mining activities makes it extremely difficult to live near these mining operations.

These impacts are outside of the Corps scope of analysis pursuant to the National Environmental Policy Act. The Corps evaluation of valley fills is focused on impacts to aquatic resources. Overall mining is permitted under separate Federal laws, SMCRA.

Another commenter, also concerned with secondary and indirect impacts of coal mining activities, objected to the statement in the preamble that the "Corps review is limited to the direct and indirect, and cumulative effects of fills in waters of the U.S". This commenter states that the scope of analysis should extend beyond the effects of fills in waters of the U.S. However, another commenter not only agreed that the scope of analysis should be limited to the direct and indirect and cumulative effects of only the fills in waters of the U.S. but also that wording should be included in the permit language to inform all interested parties that the Corps would not be considering the impacts of the actual coal mining operation itself, especially one occurring on a mountain top.

Impacts associated with surface coal mining and reclamation operations are appropriately addressed by the U.S. Department of the Interior Office of Surface Mining or the applicable state agency, if program delegation has occurred, pursuant to the Surface Mining Control and Reclamation Act. Under these circumstances, the Corps NEPA implementing regulations clearly restrict the Corps scope of analysis to impacts to aquatic resources. We concur with the commenter that the scope of analysis should be limited to only impacts to the aquatic environment.

Duplication/ Executive Order 13212

One commenter was opposed to any change to NWP 21 because of possible duplication of the intensive review performed by the Office of Surface Mining in coordination with the Corps and other state and Federal agencies related to approval of reclamation plans for surface coal mining activities. This commenter is concerned that such duplication now proposed will complicate the approval process for mine operations and make approval more cumbersome and bureaucratic resulting in unnecessary duplication and delays for approval of energy related projects which would be in direct conflict with Executive Order 13212 Actions to Expedite Energy Related Projects. One commenter discussed at great lengths the implication of EO 13212 which was signed on May 18, 2001. The commenter asserted coal reserves serve an indispensable role in the nation's energy equation and are used primarily for generating the nation's electricity, and that a reliable general permit program is vital to a coal producer's ability to meet the nation's growing coal needs. This commenter is concerned that the proposed changes to this NWP will cause delays and unnecessary duplication. One commenter suggested that all proposed projects falling under this NWP be coordinated with the SMCRA and should consider any required SMCRA mitigation when making its determinations regarding appropriate mitigation under Section 404. One commenter suggested that the Corps utilize the SMCRA environmental protection, mitigation and findings standards as a general basis for determining that surface coal mining operations regulated by SMCRA will have minimal impact and meet NWP 21 applicability standards. By using SMCRA standards when making determinations of applicability to NWP 21, the commenter indicated the Corps review can be expedited consistent with EO 13212. Further, the commenter indicated that under SMCRA, the DMME is prohibited from issuing a coal surface mining permit unless the agency first finds, in writing, that the proposed mining operation will minimize impacts to the hydrologic balance within the permit area and will not result in material damage to the hydrologic balance outside the permit area.

As stated above, the Corps has determined that the SMCRA process does not currently adequately address impacts to the aquatic environment as required under Section 404, therefore this NWP does not duplicate the mining permit process but does rely on it for help in the analysis. We encourage Corps Districts to work with state and Federal mining agencies to coordinate early in the process so that the SMCRA permit includes adequate mitigation to offset impacts to the aquatic environment.

Two commenters agreed with the proposed changes in this NWP because of the differing goals of the SMCRA/DMME and the CWA, specifically concerning compensatory mitigation. The commenters indicated that while most NPDES permits include conditions to protect against stream impacts, they do not often address wetland impacts. In addition, according to one commenter, there are no clear standards for stream replacement, leading to poor reconstruction techniques with little or no restoration of habitat function.

The Corps is working on stream functional assessment protocols to help in identifying the functions lost through impacts and the functions gained or enhanced through mitigation.

Two commenters suggested that NWP 21 should be significantly restricted or eliminated, since it wrongfully assumes the state or federal regulatory agency under SMCRA is engaging in a process comparable to section 404 of the CWA and the 404(b)(1) Guidelines of assuring avoidance and minimization of impacts on special aquatic sites and other waters of the US, when in fact no other agency engages in such review.

The Corps has not assumed that other state or Federal agencies are engaging in a comparable Section 404 type process. In accordance with the Section 404(b)(1) Guidelines, analysis of offsite alternatives is not required in conjunction with general permits.

A few commenters were opposed to the requirement for a written determination of compliance without a time clock, i.e. 45 days, for the Corps to respond or the applicant can begin work. One of these commenters is concerned that under the proposed NWP, the applicant could wait weeks or months until he receives express authorization from the district to begin which would result in delays and additional paper exercise for a project deemed to be of minimal impact. Another scenario a commenter provided would be to wait months just to be told the project does not qualify for NWP 21 and that a standard permit would be required. This commenter suggests that the Corps could abuse the lack of time constraints when it cannot meet its own deadlines. A few commenters suggested that the Corps rely solely on the notification requirement for determining whether or not any specific activity complies with the terms and conditions of the NWP within the 45 day time limit.

Under the current regulatory program, all coal mine operators must notify the Corps which may involve agency coordination subject to a 45 day time clock to submit comments to the Corps. Under the proposed NWP, the applicant must wait before initiating construction until he receives express authorization from the District Engineer. Corps districts will make decisions in a timely matter. We believe that a careful case specific minimal impacts determination is necessary for this NWP, but it may sometimes take more than 45 days. Because of the potential for more than minimal adverse effects with these projects this approach is necessary.

Impacts from NWP 21

A majority of the commenters opposed the reissuance of NWP 21 because of potential impacts. Specifically, the major concern stated by most commenters was that the mountaintop removal mining and disposing of the overburden in valleys (valley fills) would result in the burying of streams thereby disturbing the natural processes and water quality in the entire watershed and result in the permanent loss of habitat. One commenter stated concern that this NWP activity will displace Federally protected threatened and endangered species. Another commenter raised concerns about impacts to water supplies used for drinking and recreation from the valley fills.

This NWP requires compliance with all of the general conditions for the nationwide permits. One commenter pointed out that in one state alone 15–25% of the mountains have been leveled, that the overburden from these mines placed in "valley fills" have destroyed more than 1,000 miles of streams, and that one mine can destroy 10 square miles of mountain and fill as many as 12 stream valleys. This commenter concludes that these kinds of impacts cannot be considered "minimal in effect" to qualify for a NWP. One commenter stated that the "field assessment" of the nationwide permit program provided an inadequate analytical basis for documenting the extent and severity of aquatic and terrestrial impacts of the implementation of NWP 21.

One commenter contends that the Corps has admitted to its inability to assess direct, indirect, and cumulative impacts associated with specific coal mining projects. Therefore, the Corps cannot be in a position to state whether any application for an authorization under NWP 21 would or would not have more than minimal adverse impacts, either individually or cumulatively.

Another commenter stated that a draft EPA finding indicates that the "impacts of mountaintop mining and valley fill activities in eastern Kentucky were evident based on stream biological and habitat indicators. Mining related sites generally had higher conductivity, greater sediment deposition, smaller particle sizes, and a decrease in pollution sensitive macoinvertebrates * * * in turn, these streams and rivers may support fewer fish and other taxa which are recreationally or commercially important."

These studies are draft documents and have not been finalized or the conclusions agreed upon by the cooperating agencies.

One commenter stated that the Corps has ignored OSM studies and are not considering effect of valley fills on flooding. However, another comment challenged the Corps statement under notification that the Corps is "discouraging extensive channelizing or relocation of stream beds because of potential adverse effects on the stream and the potential to intensify downstream flooding". This commenter contended that the Corps does not have an adequate basis for this statement concerning downstream flooding and requests that it be taken out.

The basis for this conclusion is that whether increased downstream flooding will occur is a site specific circumstance based on downstream channel capacity and geometry coupled with the influence of man induced alternations to channels and flood plains. These issues will be evaluated during the case specific minimal effects determination.

This commenter added that available studies document lower flood rates in areas of surface mining activities than in similar unmined watersheds and that some mining activities result in alteration to landscape that can provide

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significant runoff retention. And, for example, the commenter added, open pits and drainage control structures can provide runoff retention and longer travel times for overland flow and increased infiltration provided by backfills can also retard or lessen peak flows.

The preliminary draft MMEIS, which includes an assessment of scientific studies related to providing a better understanding of flooding potential related to mountaintop mining, concluded that no corroborating evidence exists to support the allegations that surface mining operations increased flooding potential downstream.

Two commenters questioned the Corps proposal of this NWP and the determination that it meets the requirement that the adverse environmental impacts are individually and cumulatively minimal while admitting (in the proposed regulation) that it is still gathering data to better understand the effects of valley fills on the aquatic environment.

The Corps is continually gathering data on all its nationwide general permits to ensure that the effects of the program on the aquatic environment are minimal, both individually and cumulatively. The changes in procedures proposed and adopted here will ensure minimal effects through case specific review and mitigation.

Thresholds for NWP 21

A few of these commenters suggested reissuing this NWP but precluding its use for mining operations involving mountain-top removal.

We disagree, this permit is designed for use by mountaintop mining operations as well as other surface coal mining activities.

Several commenters added that since this nationwide has no size/acreage limits, extensive linear feet of streams could be impacted. Two commenters recommended using the same stream threshold limitations as stated in NWP 39, 40, 42, and 43 (300-foot limitation) for consistency purposes and since stream impacts from filling should be evaluated the same regardless of the activity involved.

The 300 linear foot limit is retained for NWPs 39, 40, 42, and 43, however justification, on a case-by-case basis, can be made to allow additional linear impacts for intermittent streams. The Corps believes that coal mining is different from activities authorized under NWPs 39, 40, 42 and 43 in that coal mining projects are reviewed for environmental impacts under several other authorities (SMCRA, CWA section 402). For this reason, the determination of whether a project will result in more than minimal adverse effects is best made on a case-by case basis.

Two commenters cite from the Draft PEIS that in 2000 alone, 13,907 acres of impacts to streams and wetlands were authorized under NWP 21 making up 72% of all NWP impacts for that year and one of these commenters recommends protective measures and/or environmental thresholds due to the potential losses. One of these applications resulted in the direct filling of over six miles of streams and indirect impacts to an additional three miles with no data to suggest that these impacts were minimal. For this reason, this commenter and others have suggested including the provisions adopted in the Bragg v. Robertson settlement of a 250-acre watershed threshold while waiting the findings of the EIS process to determine the appropriateness of that threshold limit. They believe the 250 acre standard would provide better protection than no threshold at all, as is currently the case. Two commenters suggested that if NWP 21 must be reissued, it should be conditioned such that valley fill projects affecting intermittent and/or perennial streams will be ineligible for authorization and would be evaluated as standard permits. They state that this would be consistent with the Corps July 2000 guidance to the field, which provides that the 250 acre standard should be used in evaluating all PCN for NWP 21. However, two commenters support the Corps decision not to include the 250 acre threshold because it is temporary in nature and limited only to West Virginia. Further, they asserted that limit was not based upon any scientific analysis but rather a product of an agreement arrived at in an arbitrary way, having no correlation with environmental protection. These commenters also cited projects with a 500 acre watershed, which improved the pre-mining conditions. One commenter suggested that if NWP 21 must be reissued, it should be conditioned such that valley fill projects affecting intermittent and/or perennial streams will be ineligible for authorization and be evaluated as standard permits.

The Corps believes that a scientific basis for the 250 acre limit designated in the Bragg v. Robertson settlement has not been adequately established and the limit may not be appropriate for all situations. High quality streams exist above this point on the landscape and lower quality streams exist below this point. We believe it is better for the environment to look at specific sites and watersheds and make quality determinations than to try and fit all watersheds into a rigid pre-determined categorization that may or may not reflect the site specific aquatic conditions. The Corps is further concerned that universal use of the 250 acre limit could encourage a proliferation of smaller valley fills in lieu of fewer larger fills, and that this may not be the best outcome for the aquatic environment. The Corps has identified a data error in the PEIS. The 13,907 acres of impact actually were less that 50 acres.

One commenter suggested that environmental thresholds be established if not with this authorization, definitely with the next and that these thresholds be determined through a public review process.

Thresholds may be added by individual Districts as regional conditions for this permit through the public review process. In addition, we will review this NWP when the MTM/VF EIS is complete along with all other relevant information and will develop criteria or propose any changes that may be needed.

Mitigation

Many of those commenters objecting to the reissuance of NWP 21 stated that the mitigation, even with Corps review and approval, could not sufficiently compensate for these impacts and therefore this NWP would be a violation of the Clean Water Act requirements that general permits result in only minimal adverse impacts to the aquatic environment. One of these commenters stated that stream restoration experts have concluded that it is not possible to recreate streams on most mined areas, therefore, the loss of these stream miles and the functions they provide to the aquatic ecosystems downstream is a permanent loss and, for the purposes of a Section 404 impact assessment, the stream losses cannot be adequately compensated. One commenter, although supporting the requirement of mitigation beyond what the State requires under the project's coal mining permit, still opposes NWP 21 because it illegally jumps from avoidance and past minimization directly to mitigation. This commenter also voiced concern over a lack of alternative analysis for placement of fill into waters of U.S. by any state or Federal agency for these proposed valley fills. Another commenter recommended that any mitigation plan be coordinated and approved by all involved regulatory and commenting resource agencies prior to the NWP approval.

We feel we are avoiding and minimizing impacts to the extent practicable and that adequate mitigation, especially in the form of enhancement or rehabilitation of existing streams through activities such as stabilizing old mined sites to reduce stream sedimentation and reduction in acidic water releases, can be used to determine that a project has minimal impacts, both individually and cumulatively, on the aquatic environment. These activities can result in a substantial improvement in downstream water quality and aquatic habitat within a watershed.

A few commenters agreed with the proposed changes to NWP 21 because of the varying goals of the SMCRA and the CWA program and the wetland mitigation plan requirement. One commenter stated that the review proposed would be valuable in ensuring the requirement of equity between coal mining activities and other wetland impacting activities, and indicated that while most NPDES permits include conditions to protect against stream impacts, they do not usually address wetland impacts. In addition, there are no clear standards for stream replacement, leading to poor reconstruction techniques with little or no restoration of habitat functions.

As stated above, the Corps is in the process of designing stream function protocols to aid in evaluating mitigation projects.

This commenter recommends that the following language be included into the permit language: "Compensatory mitigation will be required to offset losses of waters of the U.S., consistent with General Condition 19".

We do not agree this is necessary, as General Condition 19 applies to all nationwide permits and does not need to be specifically repeated in this NWP, however, we agree with the intent of this statement.

Two commenters suggested that at the very least, bonding of mitigation measures should be required in all cases. One of these commenters argued that performance bonds under 30 U.S.C. 1269 should not be used by the Section 404 program because of the limitations imposed on these bonds. For instance, neither state regulatory authorities nor OSM have authority to impose bond liabilities on regulated mines beyond those specified in the mining law which are established by law as that amount needed to assure completion of the reclamation plan required under 30 U.S.C. 1268 and not section 404 of the CWA. Also, if there was a violation of the Corps mitigation conditions, the Corps would not have authority to direct the expenditure of those funds.

Requiring a bond by the Corps in certain cases is consistent with existing policy and the Corps will continue to do so as it deems appropriate.

General Condition 4

One commenter stated that the purpose of valley fills is not to impound water but rather to dispose of overburden or waste material. Furthermore, the commenter asserted that a valley fill is an activity that completely eliminates the possibility of movement and survival of aquatic life. The commenter asserted the Bragg Settlement contains nothing that even remotely purports to modify any Corps regulation * * *. The Corps must still comply with these and all other statutory and regulatory requirements". The commenter indicated that completely filling streams by valley filling affects the necessary life movements of all aquatic life that must move within or between those streams. Furthermore, the commenter asserted, valley filling violates the General Condition because not only does it preclude movement of species, but destroys the species themselves.

Generally, proposed projects are located at the upper limits of the watersheds and are not interfering with aquatic species migration.

It is our position that this NWP is useful in expediting the processing of permits for some surface coal mining operations provided that adequate compensatory mitigation accompanies the activity so that there is an overall net improvement in functions of the aquatic environment. Our scope of analysis will continue to be limited to the impacts to the aquatic environment. The locations of the mines are dependent on location of the coal seams.

The existing permit relies primarily on any state-required mitigation under SMCRA to address impacts to the aquatic environment. The Corps has determined that this is not appropriate, as the requirements of SMCRA differ from those of the CWA and reliance on SMCRA authorization may not result in adequate mitigation for adverse impacts to the aquatic environment. Therefore, the reissued permit provides for Corps determination of appropriate mitigation in accordance with General Condition 19. Corps review is limited to the direct, indirect, and cumulative effects of fills in waters of the U.S. In order to ensure that appropriate mitigation is performed, and that no activities are authorized that result in greater than minimal adverse impacts, either individually or cumulatively, the revised permit also requires not only notification, but also explicit authorization by the Corps before the activity can proceed. The Corps believes that both of these changes will strengthen environmental protection for projects authorized by this permit. This permit will be reissued as proposed.

22. *Removal of Vessels.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

23. *Approved Categorical Exclusions.* There were no changes proposed to this nationwide permit. One commenter indicated that although the Office of the Chief of Engineers may have been furnished notice of a list of activities, and concurred, a list of activities did not appear to have been included in the referenced August 9, 2001, **Federal Register** notice on which the reissuance of the NWP Program will be based. The commenter further stated that the absence of this critical information mirrors the Corps piece-mealing approach to Regulatory implementation of the CWA that is found in the issuance of Corps permits in the southeastern U.S. The commenter also stated that because of the lack of this information, the public is unable to determine whether new information supporting reversal may have become available since the decisions that these activities do not have a significant effect on the human environment. Another commenter stated that this permit illegally delegates to other federal agencies the ability to decide whether their projects will result in more than minimal impacts. The permit effectively has no ceiling on individual or cumulative impacts and covers a broad range of activities. An additional commenter suggested that the NWP 23 activities listed are extremely dissimilar in nature and impact. It is not possible for the agencies to have made a reasonable evaluation of the cumulative impacts of all of the activities in this permit.

When the Corps considers whether an agency's categorical exclusions have no more than minimal adverse effects on the aquatic environment and whether they could be authorized by this NWP, the Corps first seeks public comment and publishes the proposal in the **Federal Register**. The Corps then determines whether the agencies categorical exclusions have no more than minimal adverse effects on the aquatic environment. The Corps has not approved all agency categorical exclusions, has added further conditions and has required pre-

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construction notifications to ensure that there are no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Furthermore, Corps districts and divisions have the discretionary authority to require regional conditions, case-specific conditions or individual permits where the adverse effects may be more than minimal.

One commenter indicated that all projects requiring stream channelization should be evaluated through the Individual Permit process. Another commenter suggested projects affecting more than 1/10th acre of wetland should require a pre-construction notification to the Corps and those affecting 1/3 acre should require an Individual Permit. A commenter recommended all bridge projects that are not longer than 1.5 times bankfull width should be elevated to an individual permit process.

General condition 21 contains provisions to minimize adverse impacts related to water movement, including channelization and passage of high water flows. When reviewing an agency's categorical exclusion for approval under this NWP, the Corps considers the need for a pre-construction notification. We have required a pre-construction notification where we believe that it was necessary to ensure that the adverse effects would be no more than minimal, and we have required the individual permit process, where needed. The nationwide permit is reissued without change.

24. *State Administered Section 404 Programs.* There were no changes proposed to this nationwide permit. One commenter stated that applicants will find it difficult to keep up with a complex matrix of non-uniform approaches to regulating water bodies if states across the country run their section 404 programs differently.

The Corps recognizes that nationally there may be different approaches by the states toward regulating section 404 discharges into those waters. However, the Corps will not change the way the states regulate in those waters by requiring a Corps individual permit process. Currently, this NWP is only applicable in the States of Michigan and New Jersey, which have assumed the Clean Water Act section 404 authority in Navigable Waters of the United States based on historic use only. In those waters, which are subject to section 10 of the Rivers and Harbors Act based solely on the historic use for interstate waterborne commerce, the state administers the Section 404 program while the Corps has a permit role under Section 10. Those waters do not have current nor are they susceptible to use for water borne commerce. The Corps believes that the states are considering and adequately addressing the environmental impacts of these projects. The Corps further believes that there are no impacts affecting waterborne commerce needing Section 10 review. Therefore, there is no need to process an individual permit for these activities. The nationwide permit is reissued without change.

25. *Structural Discharges.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

26. [*Reserved*] One commenter indicated that, if reissued, NWP 26 must be modified to significantly lower the threshold of activities not requiring an individual permit.

There are no plans to reissue NWP 26. This NWP expired on June 7, 2000. The number 26 is being reserved to avoid the need to renumber all of the subsequent NWPs. We believe that renumbering NWPs 27 through 44 would be confusing and unnecessary.

27. *Wetland and Riparian Restoration and Creation Activities:* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by combining two categories of land ("any Federal land" and "any private or public land") into a single category: "any other public, private, or tribal lands". Therefore, there would be three categories of land that would be eligible for NWP 27 activities, instead of four categories. This change will not affect how or if any activities will be authorized by this NWP.

Many commenters supported the Corps proposal to combine the four categories of lands into three categories. A commenter recommended limiting the use of this NWP to activities conducted or sponsored by Federal or state agencies. One commenter suggested adding the National Marine Fisheries Service and the National Ocean Service to paragraph (a)(1). This commenter also recommended adding "the construction of oyster habitat over unvegetated bottom in tidal waters" to the list of examples of activities authorized by this permit. This commenter said that these changes would result in a reduction in Corps workload, and authorize activities conducted under National Marine Fisheries Service and National Ocean Service restoration grant programs.

To simplify the descriptions of the types of lands eligible for this NWP, we are combining paragraphs (a)(2) and (a)(4) of NWP 27 to read as "any other public, private, or tribal land" in paragraph (a)(3). The previous text of paragraph (a)(3) has been moved to paragraph (a)(2).

We do not agree that this NWP should be limited to activities conducted or sponsored by Federal or state agencies, because such a restriction would affect the ability of the Corps to effectively authorize aquatic habitat restoration or creation (establishment) activities conducted by individuals, non-government organizations, or local governments. We have added "the construction of oyster habitat over unvegetated bottom in tidal waters" to the list of examples of activities authorized by this NWP. Since the construction of oyster habitat in tidal waters could potentially affect navigation, it is important to consider General Condition 1. The construction of oyster habitat in tidal waters cannot have a more than minimal adverse effect on navigation.

We have modified paragraph (a)(1) to include restoration activities undertaken through the programs of the National Marine Fisheries Service and the National Ocean Service. In addition, we have modified the text of this NWP by adding the phrase "* * *, to the extent that a Corps permit is required, * * *" after the phrase "Activities authorized by this NWP include * * *".

One commenter stated that, even though activities authorized by permit would result in an increase of wetland habitat, NWP 27 should have an upper limit to require more detailed review of restoration and creation projects that involve larger impacts to wetlands. Another commenter said that an acreage limit is needed for this NWP because there are inadequate assurances that it authorizes only activities with minimal adverse environmental effects. This commenter suggested imposing a 250 linear foot limit and a 1/4 acre limit on wetland impacts for restoration activities and a five acre limit for wetland enhancement projects. This commenter also recommended requiring notification and agency coordination for all activities undertaken by private individuals that impact wetlands or more than 100 linear feet of stream, with the notification including documentation of the hydrologic analyses used to design the project. Another commenter said that the "wetland enhancement, restoration or creation agreement" described in paragraph (a)(1) should be reviewed and approved by the Corps and other resource agencies and each agreement should have enforceable conditions.

We do not agree that acreage or linear limits are necessary for this NWP, since it authorizes activities that restore, enhance, or create aquatic habitats. The terms of this NWP, as well as the notification requirements described in paragraph (b), will ensure that the activities authorized by this NWP result only in minimal adverse effects on the aquatic environment. District engineers will review pre-construction notifications for activities on public and private land not conducted under the terms of paragraphs (a)(1) or (a)(2) and determine whether those activities will result in minimal adverse effects on the aquatic environment. Agency coordination is not necessary for NWP 27 activities undertaken by private individuals because Corps personnel have the expertise necessary to evaluate proposed NWP 27 activities. We do not believe that it is necessary for the Corps and other resource agencies to review agreements between landowners and the U.S. Fish and Wildlife Service or Natural Resources Conservation Service. We concur that these agreements should have enforceable conditions.

One commenter suggested adding the phrase "* * * and the planting of appropriate wetland species" after the phrase "* * * activities needed to reestablish vegetation * * *" and changing "* * * mechanized land clearing to remove undesirable vegetation * * *" to "* * * mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation * * *".

We concur with these recommendations and have made these changes to the text of the NWP.

One commenter objected to the reissuance of this NWP, stating that it lacks effective oversight, especially for activities on public and private lands, its use has not been effectively monitored in the Corps regulatory database, and the terms "restoration" and "enhancement" are inadequately defined. To address these concerns, this commenter suggested that all projects must be subjected to strict, enforceable success criteria; all failed projects must be corrected to offset any adverse impacts to waters of the United States; all permitted projects must be overseen by a qualified restoration specialist; only those activities with high likelihood of success should be approved; include a more extensive list of activities not authorized by NWP 27; prohibit the use of NWP 27 to construct compensatory mitigation projects; and limit NWP 27 to one use per applicant per stream. One commenter said that this NWP should not authorize the construction of mitigation banks.

As with all NWPs, the use of this NWP is monitored by each of the Corps districts, to ensure that it authorizes only those activities with individual and cumulative adverse effects on the aquatic environment.

Since the publication of five new and six modified NWPs in the March 9, 2000, issue of the **Federal Register** (65 FR 12818), the terms "restoration" and "enhancement" have been defined in the "Definitions" section of the NWPs. Since that time, the Federal government has adopted new definitions for purposes of tracking losses and gains of wetlands under the previous Administration's Clean Water ActionPlan. The new definitions also apply to mitigation activities for other types of aquatic habitats. Under the new definition for restoration, there are two types activities: re-establishment and rehabilitation. Re-establishment involves the rebuilding of a former wetland, resulting in a net gain in wetland acres. Rehabilitation involves the manipulation of a degraded wetland to repair natural or historic functions, but does not result in a net gain in wetland acres. Enhancement is the manipulation of a wetland for a specific purpose, resulting in increases in some wetland functions and declines in other wetland functions, with no gain in wetland acres.

Where strict criteria are necessary to ensure the success of stream or wetland restoration projects, district engineers can add special conditions to NWP 27 authorizations to specify success criteria. If those success criteria are not met, district engineers can use their enforcement authority to require the permittee to identify the reasons for failure and implement necessary remedial measures. We do not agree that it is necessary for activities authorized by this NWP to be overseen by qualified restoration specialists. The text of NWP 27 clearly states what is not authorized by the NWP; we do not believe any additional clarification is necessary. Since NWP 27 authorizes activities that provide benefits for the aquatic environment, it would not be appropriate to limit the use of this NWP to one time per project proponent per stream channel.

We maintain our position that NWP 27 should authorize the construction of compensatory mitigation sites, including mitigation banks, provided those sites result in net increases in aquatic resource functions and values. NWP 27 requires compensatory mitigation for impacts to waters of the United States caused by the authorized work, as well as notification to the district engineer in accordance with General Condition 13. A mitigation bank can also be authorized by NWP 27, as long as the mitigation bank has been approved under the 1995 Interagency Mitigation Banking Guidelines.

One commenter recommended that the use of this permit should be limited to restoring streams to their historic, undegraded states to prevent their use as a flood control projects. Another commenter said that district engineers should have the authority to waive the prohibition against conversions of certain types of streams or natural wetlands to other aquatic habitat types that could provide more environmental benefits for local watersheds.

NWP 27 does not authorize flood control projects. This NWP authorizes stream restoration activities, which may include grading stream banks and riparian areas so that those riparian areas are flooded more frequently by the streams. In other words, flood storage capacity may be increased by a stream restoration project, but the increase in flood storage capacity is not the main goal of the project. We do not agree that this NWP should allow flexibility to waive prohibitions against certain conversion activities, since conversions of streams, wetlands, and other waters may result in more than minimal adverse effects to the aquatic environment. If such conversions would provide net benefits for watersheds, then those activities could be authorized by other types of permits, including standard permits.

A commenter suggested that NWP 27 should be modified to prohibit the creation of open water areas in existing wetlands and the relocation of existing wetlands. One commenter supported the provision that states this NWP does not authorize the conversion of natural wetlands into another aquatic use, but recommended prohibiting the "relocation of aquatic habitat types on the project site" and prohibiting the use of riprap or other armoring material. One commenter said that activities authorized by this NWP should not be allowed to alter the basic functions and habitat of "high quality wetlands" and that all projects should have a long-term management plan with a binding contract between the landowner and the Federal and state fish and wildlife agencies, not the Natural Resources Conservation Service.

We maintain our position that the relocation of non-tidal waters, including non-tidal wetlands, on the project site should be authorized by this NWP, provided there are net gains in aquatic resource functions and values. We do not agree that this NWP should prohibit the use of riprap because riprap contains crevices and other habitat features for small organisms. Other armoring materials can provide habitat

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for aquatic organisms. The use of armoring materials for stream and wetland restoration activities is at the discretion of the district engineer. We do not agree that it is necessary to have a long-term management plan with a binding agreement between landowners and the Federal and state fish and wildlife agencies for all activities authorized by this NWP.

One commenter said that some activities authorized by this NWP do not comply with the Clean Water Act. One example offered by this commenter is the conversion of waters of the United States to storm water treatment facilities and sewage treatment facilities, under the guise of restoration and mitigation. This commenter states that NWP 27 should be revoked because the activities authorized by this NWP are not similar in nature and it is unreasonable to conclude that all of the cumulative adverse impacts on the human environment could be considered for such a category of dissimilar activities.

This NWP does not authorize the construction of storm water management facilities or sewage treatment facilities. Storm water management facilities and sewage treatment facilities may be authorized by NWP 43 or individual permits. The activities authorized by NWP 27 comply with the similar in nature requirement for general permits. This NWP authorizes aquatic habitat restoration, creation, and enhancement activities that provide benefits for the aquatic and human environments. NWP 27 is reissued with the modification discussed above.

28. *Modifications of Existing Marinas.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

29. *Single-family Housing.* There were no changes proposed to this nationwide permit. One commenter stated that the Corps has failed to demonstrate with substantial evidence that the acreage limits applicable to this and many other NWPs is sufficiently protective of the environment. The commenter also stated that the Corps must validate, with evidence and an environmental impact analysis, the acreage limits it sets for all NWPs. Another commenter said that single-family housing is not a water dependent activity, and therefore it is presumed that alternative locations are available for these activities. That commenter also stated that activities authorized by this permit are not similar and result in more than minimal adverse environmental effects, even individually, much less cumulatively and, that the acreage limits are arbitrary and capricious. Another commenter recommended a full environmental impact statement and, at a minimum, only use the permit to authorize homes, without attendant features, with a 1/10 acre limit and that the Corps establish a process to monitor cumulative impacts over time. The commenter also recommended the Corps prohibit use of this permit in high growth counties and that it not be used to authorize placement of septic tanks or leach fields in wetlands.

The Corps believe that the listing of the type of activities authorized by this NWP will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore we find that the NWPs do not require an EIS. However, we do prepare environmental assessments to assess potential impacts. NWP 29 was originally issued with a ½ acre maximum limit. We reviewed this threshold in 1999 and decided to reduce the maximum acreage limit for NWP 29 to ¼ acres. We continue to believe that this is the appropriate maximum acreage limit. The environmental assessment for this NWP is published on our webpage for review. It is true that the activities authorized by the NWP are not water dependent as defined in the Section 404(b)(1) guidelines. However, the alternatives test does not apply to NWPs as stated in the 404(b)(1) guidelines. Therefore, it is not presumed that alternative locations are available for these activities. Furthermore, the EPA and the Corps issued additional guidance on March 6, 1995 regarding compliance with the Section 404(b)(1) guidelines for small landowners. These activities comply with this guidance. This guidance is also available on the Corps webpage. The nationwide permit is reissued without change.

30. *Moist Soil Management for Wildlife.* There were no changes proposed to this nationwide permit. One commenter suggested that this permit be revised to allow local public agencies to conduct these activities, especially when they would result in environmentally useful activities. Another commenter stated that, because the activities authorized by this permit are not similar, the permit should be withdrawn. They go on to say that since the general public cannot determine what activities are authorized by this permit, direct, indirect, or secondary impacts cannot be determined to result in minimal adverse environmental impacts.

We agree that this NWP should also allow local agencies to conduct these activities on public property. Therefore we have modified the NWP to allow activities on local government agency owned or managed property to also be authorized by this NWP. We believe that the terms and conditions will ensure that the adverse effect on the aquatic environment will be minimal. Further we believe this change will provide for additional opportunities for activities to provide needed environmental benefits. Also should some of these activities have the possibility to have adverse environmental effects, the Corps districts or divisions have the discretionary authority to require activity specific conditions or regional conditions. We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The nationwide permit is reissued with the change described above.

31. *Maintenance of Existing Flood Control Facilities.* The Corps proposed to modify NWP 31 to clarify Corps policy and requirements regarding mitigation for maintenance activities. We also proposed to clarify documentation requirements for the baseline determination, and allow maintenance of areas that are a part of the flood control facility without constructed channels provided that the Corps approves Best Management Practices to ensure that adverse environmental effects are no more than minimal.

Two commenters insisted that the language of this NWP must be clear that exempt facilities are not now regulated and they suggested that facilities built prior to, or that were not subject to mitigation as part of the CWA, should not now be subject to mitigation requirements for routine maintenance. They suggested that the language of the currently proposed NWP conflicts with the Corps policy indicating that routine maintenance impacts are temporary and generally not worthy of mitigation. They

questioned how one mitigates for "unspecified discharges". They also agree with the Corps Civil Works policy that one-time mitigation should be required as part of the project and should address all permanent and temporary impacts, and that this should be required at the time the project is initially constructed. Most commenters agreed that a one time mitigation requirement for these maintenance projects may be appropriate.

We do not agree that discharges of dredged or fill material in waters of the United States that are part of a pre-Clean Water Act flood control facility are exempt from permit or mitigation requirements. Although discharges associated with the construction of facilities that pre-date the Clean Water Act are not subject to any retroactive authorization requirement, waters of the U.S. flowing through such facilities are not excluded from jurisdiction under the Act. As such, discharges of dredged or fill materials into these waters remain subject to section 404 requirements. NWP 31 conveys the section 404 authorization for discharges associated with flood control facility maintenance activities, provided (1) That a maintenance baseline is established, (2) that the adverse effects of discharges associated with establishing that baseline are adequately mitigated, and (3) that discharges associated with subsequent maintenance activities do not alter the maintenance baseline. We believe that mitigation need only be imposed once, as part of the establishment of the maintenance baseline, to ensure that the loss of waters of the U.S. that are attributable to discharges associated with the establishment of that baseline are no more than minimal. Once this is accomplished, regulated discharges that are associated with maintaining the established baseline, and that do not incur losses beyond those addressed in conjunction with the establishment of that baseline, are authorized under NWP 31 without the need for further mitigation.

We believe that the utilization of the "maintenance baseline" procedure is consistent with Corps policy to the effect that "routine maintenance impacts are temporary and generally not worthy of mitigation." The maintenance baseline establishes the limits within which regulated maintenance-related discharges are authorized by NWP 31, and excluded from additional mitigation requirements. We agree that, ideally, all mitigation for permanent and temporary impacts resulting from the construction of flood control facilities, and from the inevitable maintenance, should be imposed only once, at the time of initial construction. The Clean Water Act does not provide an exemption for discharges into the waters of the U.S. specifically for maintenance of flood control facilities. Unless section 404 authorization for discharges associated with regulated construction and maintenance activities has been conveyed through some other means, such as through the Federal Project authorization process, authorization through the Corps permit process is required. As previously indicated, although section 404 authorization is not required for discharges associated with flood control facility construction that pre-dates the Clean Water Act, the Act does not exempt discharges in waters of the U.S. that may accompany the maintenance of these facilities. We believe that NWP 31, with the inclusion of the maintenance baseline provision, is a reasonable and appropriate procedure for conveying the section 404 authorization required for maintenance-related discharges that have not been previously authorized through other means. Finally, the question as to how one mitigates for "unspecified discharges" is, we believe, based on a misprint in the original **Federal Register** notice. The preamble, at page 42077 of this notice indicates that we intended to "* * * proactively *prescribe* mitigation for * * * unspecified discharges * * *" (emphasis added). This sentence should have read "* * * proactively *proscribe* mitigation for * * * unspecified discharges * * *"

One commenter suggested that the mitigation requirement should consider future, cumulative impacts as these impacts would likely result in more than minimal adverse impacts to aquatic resources.

We believe that mitigation requirements associated with NWP 31, as proposed, are sufficient to account for future, cumulative impacts. As envisioned, mitigation will be required for adverse effects on the aquatic environment that are attributable to regulated discharges associated with the establishment of the baseline physical parameters (i.e., the maintenance baseline) of the flood control facility. Maintenance-related discharges that do not exceed the established maintenance baseline will not result in losses of aquatic resources beyond those addressed at the time the maintenance baseline is established. Discharges that exceed the established maintenance baseline are not eligible for authorization under NWP 31.

One commenter stated that baseline criteria are often difficult to produce, especially for much smaller drainage/utility districts which may not have nor maintain such records. Two other commenters indicated their support for revisions to this permit which recognize that cyclic maintenance is inherent in the continued operation of flood control facilities, and that regulated discharges will inevitably occur as a result of this activity. They also support the revisions allowing discharges in emergency situations. They suggested that the Corps should clarify that, in situations where baseline information is unavailable due to the age of the facility, lack of construction drawings will not preclude use of this NWP.

We acknowledge that producing records of baseline parameters may not be possible in all cases, but we can not waive this requirement. In these cases, a new maintenance baseline must be established before the maintenance-related discharges in the subject facility are eligible for authorization under NWP 31.

One commenter suggested that the proposal to authorize maintenance activities on natural features is a departure from previous practice and creates the greatest risk for more than minimal adverse environmental impacts. Also, they state that they believe it is critical that the Corps articulate its basis for extending authorization into areas that previously have been prohibited under this NWP, as well as an explanation as to why it believes that adequate protection will be provided through the use of BMPs. They want the Corps to clarify under what circumstances it considers a natural segment to be "incorporated" into a flood control facility, as the term may be interpreted broadly to the detriment of aquatic resources. Lastly, they also believe that the open ended nature of the provision may lead to greater than minimal impacts and confusion after the activities are completed, when mitigation is required, and urge the Corps to make clear that this provision only applies to situations satisfying the minimal effects test in light of existing regulatory provisions that already provide for emergency permitting.

The incorporation of natural areas into an overall flood control facility is accomplished through the establishment of a maintenance baseline that includes these areas. Although the current NWP 31 differs from its predecessor with respect to the treatment of these natural areas, this NWP does not authorize discharges that exceed this baseline. As such, NWP 31 does not authorize any regulated discharge that results in the further loss of jurisdictional aquatic areas in the flood control facility, including those in the subject natural

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areas. Upon incorporation in the maintenance baseline, the physical parameters of the natural area can be maintained, but not exceeded, through maintenance activities that may involve regulated discharges that are authorized by NWP 31. For example, scoured banks in a natural area may be restored to the baseline condition (but *only* restored, not exceeded) through a discharge of fill material that is authorized under NWP 31. Beyond this, the application of Best Management Practices (such as a time-of-year restriction on the discharge) may further minimize adverse effects on the aquatic environment. As with all NWPs, Corps Districts may "override" the use of this NWP by requiring individual permits in situations where the District believes that adverse effects are likely to exceed the minimal level. In light of these factors, we do not agree that the concerns presented in this comment warrant further modification of NWP 31.

One commenter objects to the "one-time mitigation requirement" as the Corps has not satisfactorily demonstrated that compensatory mitigation is successful in replacing the lost functions and values destroyed through the original construction of the flood control facility. They also state that it is impossible to pre-determine the magnitude of potential adverse impacts when there are no limits on the acreage of impacts or cubic yardage of excavation authorized under this permit.

Excavation in waters of the U.S. that results in only incidental fallback is not regulated under section 404 of the Clean Water Act, and such activities are not subject to mitigation requirements imposed under that law. Regardless, in the context of the NWPs, the mitigation of the adverse effects of regulated activities need only offset those effects such that "no more than minimal" adverse effects remain, and not necessarily to guarantee that losses are exhaustively compensated. NWP 31 authorizes maintenance-related discharges that are subject to regulation under section 404. The establishment of the maintenance baseline, in effect, identifies the location and physical dimensions of waters of the U.S. that have been incorporated in the flood control facility. Discharges that result in losses of these waters (i.e., that exceed the maintenance baseline) are not eligible for authorization under NWP 31. In light of this, we believe that the "one time mitigation requirement" imposed in conjunction with the establishment of the maintenance baseline is sufficient for the purpose of this NWP.

One commenter indicated that there are far too many unclear considerations in this permit for it to protect water quality and critical aquatic habitat. They recommend the Corps (1) Process emergency activities through individual permits, (2) maintain and strengthen existing mitigation requirements for unavoidable impacts and amend as needed to comport with aquatic habitat changes, (3) develop a clear definition of acceptable maintenance baselines and a clear explanation of what constitutes suitable documentation, and (4) include adequate conditions that further protect water quality and aquatic habitat and must allow comment from the public prior to adoption and implementation.

Although we respect the concerns that are implicit in this comment, we do not agree that further modification or elaboration of NWP 31 (or of our emergency permit procedures) is a necessary or appropriate way to address them. In adopting generic permits such as NWP 31, and in designing emergency procedures for nationwide application, we try to avoid being unnecessarily prescriptive or restrictive. Our intent is to afford Corps Division and District offices with significant discretion and latitude as to the final application of the NWP program and the emergency procedures, in order to allow them to tailor the actual application of the NWPs to the nuances of local situations that we can not anticipate. Toward this end, we strive to make the generic NWPs as broad as possible within the constraints imposed by the law and related regulations, in order to maximize the potential applicability of these permits. At the same time, we provide our Division and District offices with the authority to further condition, modify, suspend, or revoke these permits in response to regional or local conditions that demand such actions to ensure that effects remain at or below the "minimal" level. The corollary to that authority is the Division and District responsibility to ensure that the "no more than minimal" threshold is not exceeded by individual activities authorized under a NWP.

One commenter recommended that the Corps consider a review of potential cost to the applicant in establishing a maintenance baseline on a given project. They also opined that any review of whether a project has been abandoned should consider more than just time in that decision-making process due to the fact that the financial resources to perform that maintenance in what might be considered a timely manner are not always available.

Although we are aware of the importance of cost considerations to all applicants for Corps permits, we have no authority to waive requirements under the law because of these considerations. The establishment of a maintenance baseline is the key component of NWP 31 because it delineates parameters of waters of the U.S. that are incorporated into the flood control facility, within which regulated discharges are eligible for authorization under the NWP. As such, we can not factor cost considerations into the requirements for establishing a maintenance baseline. We believe that NWP 31, as proposed, does not compel an abandonment determination to be based exclusively on the time that elapses between maintenance events. This provision of NWP 31 takes into account whether the capacity has been significantly reduced, and whether maintenance was needed but not performed, in addition to consideration of the length of time during which the capacity has been significantly reduced, and during which needed maintenance was not performed. The non-specific nature of the facets of this provision is deliberate, as is the absence of a consideration of environmentally beneficial features, such as wetlands, that may have developed between maintenance events. Our awareness of some of the practical realities of operating and maintaining flood control facilities encourages us to believe that the bar should be set fairly high for determining that such a facility has been abandoned for the purposed of NWP 31.

One commenter suggested that the development of the "maintenance baseline" to be employed at these facilities should account for channel and habitat characteristics associated with a hydrogeomorphic approach.

The establishment of the maintenance baseline is related to ensuring that losses of waters of the United States, beyond those addressed in conjunction with such establishment, do not occur as a result of regulated discharges that are authorized by the NWP. We do not believe that formalized assessment methodologies are necessary to accomplish this. The implication of this suggestion is that NWP 31 procedures should be used to determine baseline channel and habitat characteristics, which could then be maintained through subsequent authorizations under the NWP. We do not believe that this is practical or appropriate. Many maintenance activities that are not subject to regulation under section 404 of the Clean Water Act, such as excavation that results in only incidental fallback, are likely to affect channel and habitat characteristics as much as, or more than, the kinds of discharges that are regulated under NWP 31. We do not believe that it is appropriate to use this NWP to regulate effects that are not attributable to regulated activities.

Two commenters stated that the periodic maintenance of flood control facilities is required for the operation of those facilities and will not have a significant adverse impact on the environment when conducted within the maintenance baselines for such facilities. They support the clarification proposed for NWP 31 that maintenance of these facilities do not require compensatory mitigation when approved BMPs are utilized.

We believe that the maintenance baseline procedure, in combination with the imposition of BMPs, will preclude the need for mitigation for regulated discharges associated with routine and recurrent maintenance activities in most cases. However, in designing nationwide generic permits such as NWP 31, we ultimately rely on our Division and District offices to provide the final surety that the specific regulated activities that are authorized under the NWPs do not result in more than minimal effects. To ensure that the "minimal effect" threshold is not exceeded in individual cases, we believe that the Divisions and Districts must continue to have the authority to impose mitigation requirements in addition to BMPs as a means of achieving this.

Three commenters stated that the Corps should not regulate temporary discharges associated with maintenance activities within the flood control facilities since there is not a permanent impact. They state that NWP 31 should make it clear that temporary stockpiles and redeposits associated with otherwise unregulated excavation is not a loss of a water of the U.S. that requires compensatory mitigation. They also state this holds true for other maintenance activities associated with the flood control facility that are not within Corps jurisdiction, i.e., mowing or brush hogging. In addition, they assert, if the flood control facility was constructed by the Corps and turned over to a local or state agency for maintenance, and did not mitigate for the maintenance of its project, the receiving agency should not be burdened with the Corps omission. They also suggest that ensuring that mitigation and/or ESA surveys would not be required if the maintainer reduced the frequency of routine maintenance might be a valuable mitigation tool in and of itself. Lastly, the Corps should provide a means that minimal impact NWP 31 activities could be authorized without a PCN.

We agree that, in situations where there is no permanent loss of waters of the U.S., no mitigation for such temporary effects is required. However, this does not exempt temporary discharges from the need for section 404 authorization, even when those discharges are only incidental to otherwise unregulated activities. Generally, we believe that it is not appropriate to impose mitigation for effects attributable to unregulated activities, such as excavation that results in only incidental fallback, but to the extent that significant regulated discharges may accompany some unregulated maintenance activity, mitigation may be required to ensure that there are no more than minimal adverse effects. We believe that such determinations must be made on a case-by-case basis, as individual NWP authorizations are confirmed.

We do not intend to impose any restriction on the frequency of routine maintenance. We believe that such decisions should be left to those responsible for the operation and maintenance of flood control facilities, since they must often must balance budget limitations against the projected need for maintenance.

We do not intend to impose, on local sponsors, any requirement to mitigate for impacts attributable to the construction of a Corps-constructed flood control facility. However, many such facilities were constructed prior to the implementation of the Clean Water Act, so no section 404-related mitigation was required. Although Clean Water Act requirements are not retroactively imposed on the construction of these facilities, the Corps has no authority to exempt current discharges of dredged or fill material that occur in conjunction with the maintenance of the facility, or to waive any requirement for necessary mitigation.

Reiterating the concern of the previous comment, another commenter stated that, absent sufficient reasoning for requiring a PCN, the Corps should delete the PCN requirement from this permit as it is costly to the applicant both from a time and money standpoint.

We are not currently confident that we could prescribe conditions and limitations on potential NWP 31-authorized discharges sufficient to ensure that their adverse effects can reasonably be determined to be no more than minimal in most cases, in the absence of site-specific verification through the PCN process. Conversely, we are not certain that the PCN requirement for this NWP could not be relaxed at some point in the future, as we gain greater experience with use of the NWP. In light of this uncertainty, we believe that the inclusion of the PCN requirement is prudent, for the current issuance of this NWP, but the Corps will continue to evaluate its appropriateness for future reissuances.

One commenter supported the concept of maintenance baseline, however, to assure the impacts are minimal, suggests that the state regulatory agencies and state and federal resource agencies be involved in the review and approval of the maintenance baseline, as well as mitigation for the projects.

The Corps believes that establishment of the maintenance baseline is essentially a technical exercise. Since the maintenance baseline for NWP 31 purposes, as proposed, is a description of the physical characteristics of the flood control project that has been or is being constructed through some independent authorization, we do not agree that coordination with state or Federal agencies is necessary or warranted for the establishment of the baseline. Coordination may be necessary or appropriate for authorization of the project itself, depending on the terms and conditions of the legal authority under which project authorization occurs.

Two commenters indicated the need to define "best management practices" and "maintenance baselines" so that a true assessment of impacts resulting from the proposed changes to the NWP can be made. They also suggested that the Corps should work with local communities to restore floodplain functions, where possible, and maintain existing wetlands to help moderate peak flows.

We believe that the concepts of "best management practices" and of the "maintenance baseline" do not need further definition in order to adequately understand the impacts of this NWP. Through the Regulatory Program, and through other Civil Works and Military Programs, the Corps does work with local communities to restore floodplain functions and to maintain and restore wetlands, but these comments are outside the scope of NWP considerations.

One commenter indicated the changes to this permit could allow any stream that has been deemed incorporated into a "flood control facility" to be routinely maintained with little or no mitigation required. He suggested that mitigation should be required for all maintenance activities.

In issuing this NWP, it is our intent to provide for identification of the

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extent of waters of the U.S. that exist within the flood control facility, and to authorize maintenance-related, regulated discharges in a manner that does not result in a net loss of these waters. We believe that it is appropriate to include streams that have been incorporated into flood control facilities through the establishment of a maintenance baseline. As long as the maintenance baseline is not exceeded, we believe that the authorization of maintenance-related discharges, with little or no mitigation, is adequate and appropriate, both in areas that include structural features and in those that do not. In light of the fact that only the discharge associated with maintenance activities requires a CWA section 404 permit and other maintenance activities may not be regulated even if conducted in section 404-only waters, we do not believe that mitigation for all maintenance activities is necessary or appropriate. It is not our intent to use this or any NWP to require mitigation for unregulated activities. Despite this, Corps Division and District offices are authorized to impose mitigation requirements that they determine are necessary to keep effects at a minimal level.

One commenter suggested that maintenance baselines be re-evaluated periodically to determine if it still reflects existing conditions. Two other commenters opposed the specifications for one-time mitigation stating that habitat and species composition changes over time, warranting additional mitigation. Also, a separate and new permit should be created through coordination with the US Fish and Wildlife Service for emergency flood control work.

The maintenance baseline is intended to be a fixed description of physical parameters that cannot be exceeded by regulated discharges authorized under NWP 31. Changes in conditions in the flood control facility are expected to occur, and NWP 31 is intended to authorized regulated discharges associated with maintenance activities that can return the facility to the maintenance baseline condition, but not exceed them. As such, we believe that the maintenance baseline must remain fixed, and that it would be inappropriate to raise or lower the bar in connection with periodic reviews. If the operator of the facility wished to change the baseline, however, they could apply to the Corps to do so and appropriate mitigation would be required at the time a new baseline is established. We believe that the current emergency procedures, along with the revisions to NWP 31 related to emergency maintenance, are sufficient to provide necessary and appropriate environmental consideration in emergency situations. In light of this, we do not agree that a new permit should be created.

One commenter who opposed NWP 31 stated that they were concerned with the requirement for mitigation stating that if adverse impacts truly were minimal, then mitigation should not be needed.

After the establishment of the maintenance baseline, we believe that the adverse impacts attributable to regulated discharges associated with maintenance activities will, indeed, be minimal, and mitigation will not be required. However, if the loss of waters of the U.S. in a particular reach of a flood control facility has not previously been mitigated, and a regulated discharge associated with a needed maintenance activity will result in such loss, we believe that "once only" mitigation may be required as a prerequisite to NWP 31 eligibility, and that it should be imposed in conjunction with the establishment of the maintenance baseline.

One commenter questioned whether BMPs would adequately protect areas covered under this NWP from environmental degradation and loss of fish and wildlife habitat values.

BMPs are intended to minimize the adverse effects of regulated activities. With respect to NWP 31, the application of BMPs in conjunction with the maintenance baseline provisions is expected to ensure that the effects of activities authorized under this NWP are no more than minimal. They are not necessarily intended to prevent environmental degradation and the loss of habitat values that may be attributable to factors that are not caused by maintenance activities.

One commenter suggested redrafting NWP 31 to clarify what is already exempt under statute and regulation and to narrow its application to debris basins and retention/detention basins, to the portion of constructed soft bottom channels beyond the limits reasonably related to maintenance of the sides of the channel, to natural watercourses that are part of a flood control facility, and to any other part of an existing flood control facility that is not a structure or a constructed fill.

Since our intent in issuing this NWP is to assure that its applicability is as broad as possible within the constraints of the NWP program, we do not agree that is necessary to impose further limitations that are not supported by any clear indication that such limitations are necessary to ensure that the effects will be no more than minimal.

One commenter contends that it should not be mandated that the baseline, with supporting mitigation, be required after-the-fact whenever emergency maintenance has occurred, but instead, the actual facts associated with the emergency related activities should be considered. If no impacts, or only minor impacts, occurred there should be no need to undertake the burdensome task of establishing a baseline. He also suggests that the imposition of administrative burdens to address minor maintenance activities essential to keeping flood control structures in safe operating conditions, cannot be justified and is not required under Section 404.

Regardless of the circumstances, the requirement to establish a maintenance baseline is only imposed in conjunction with the prospective use of NWP 31. If the applicant is not willing or able to establish a maintenance baseline, other Corps permit processes can be applied to consider authorizations for discharges associated with maintenance activities, but necessary mitigation would be required in any case. Since neither emergency circumstances nor the minor nature of a particular activity is exempted from regulation under the law, we can not exempt them through the NWP process. We believe that NWP 31, as proposed, is a reasonable and prudent way to minimize the burdens imposed on applicants, within the constraints of applicable law and regulation.

One commenter requested clarification of terms such as "reasonably foreseeable discharges" and "routine maintenance" and "cyclic maintenance", as well as a clarification of the intent of this rule. He suggested that the rules should provide for permitting authorization for structures constructed by agencies other than the Corps, with maintenance activities focused on restoration to a specific baseline.

We believe that the intent of this NWP, which is to authorize discharges associated with maintenance activities in flood control facilities, is adequately indicated in the NWP, as written. We do not believe that the terms "reasonably foreseeable discharges," "routine maintenance" or "cyclic maintenance" need to be further defined, since the applicability of NWP 31 does not depend on any precise definition of these terms. As designed, NWP 31 does focus on the maintenance of a predetermined baseline. However, we believe that the inclusion, in this NWP, of provisions to authorize the construction of structures in jurisdictional areas is not warranted. The authorization of structures is limited to that provided by other applicable NWPs and standard permits. NWP 31 authorizes regulated discharges associated with maintenance activities for the purposes of section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.

One commenter stated that riverine systems that do not have constructed channels cannot be considered flood control structures and the activities proposed by this NWP would result in more than minimal impacts to the environment. He suggests, if the NWP is issued that, at least regionally, use of this NWP should be prohibited in areas that are not constructed channels.

As proposed, NWP 31 addresses the maintenance of flood control facilities, and not just structures. This NWP authorizes discharges associated with maintenance activities, but it does not subject otherwise unregulated activities or non-jurisdictional areas to the requirements of applicable law. The effects being addressed in connection with this NWP are those that result from regulated discharges in jurisdictional areas. Upon the establishment of the maintenance baseline, the effects of subsequent maintenance-related discharges that do not exceed that baseline will, generally, be no more than minimal.

One commenter indicated that the NWP would result in a significant workload increase for the Corps as most projects did not have a baseline prepared and as a result, a significant quantity of one-time-only mitigation might be identified when these first baselines are determined. This mitigation would have to be reviewed and approved by the Corps. This mitigation preparation and execution would also put a financial and manpower hardship on local sponsors. He suggests a grandfather clause so that the projects would qualify for NWP 31 with no requirement for baseline determinations and/or supplemental mitigation.

Since the Corps has no authority to exempt discharges associated with maintenance activities from regulation under the law, or from corresponding mitigation requirements, we can not adopt a grandfather clause to waive these requirements. Although we recognize that the establishment of a maintenance baseline, and the imposition of related mitigation requirements, will impose a significant burden in some cases, we believe that this one-time procedure is a viable way of generally assuring that the effects of subsequent maintenance-related discharges are no more than minimal.

One commenter suggested that the proposed NWP does not address provisions of, and possible conflict with, a recent proposed policy guidance document for authorization of maintenance activities through the USACE Civil Works Department. He suggests specific language providing that revised as-builts and updated environmental surveys be submitted rather than an EIS to authorize maintenance activities under the Civil Works Program. The commenter would like to see the processes for modification of existing manuals to NEPA and CWA standards be more standardized and expedited.

This comment is apparently more concerned with the specifics of prospective policy guidance on the maintenance of Corps flood control facilities, than with NWP 31 as proposed. We believe that any consideration of issues related to the effects of such policy guidance must be deferred until such time as the policy guidance is actually issued.

One commenter objected that the requirements of the proposed NWP 31 extend jurisdiction to areas outside of those regulated by the CWA, *i.e.*, areas which are the upland portions of detention facilities and areas above the normal high water level in stream channels. If this approach is adopted, the commenter suggests the extent of information required is so detailed and extensive as to make it unruly.

NWP 31 does not extend Clean Water Act jurisdiction to areas or activities that are not subject to that law. Unregulated activities, and work in non-jurisdictional areas, do not require section 404 authorization under NWP 31 or any other Corps permit process. The maintenance baseline provision of NWP 31 does, by necessity, include considerations of non-jurisdictional areas, but this prerequisite only applies in the context of NWP 31. Other permit avenues, such as individual permit procedures, remain available to consider maintenance activities that require section 404 authorization in circumstances in which the maintenance baseline information requirements can not be accommodated by the applicant.

One commenter requested that the Corps revise the NWPs to eliminate the use of the term "incidental fallback," to avoid any requirement for the case-by-case demonstration of proposed equipment use, and to avoid reliance on the "rebuttable presumption" approach to defining "discharge of dredged material."

We do not believe that this change is necessary. Like all NWPs, NWP 31 authorizes only regulated discharges and does not alter or enlarge program jurisdiction. For example, incidental discharges are addressed in the regulations themselves at 33 CFR 323.2(d), and not the NWPs.

The nationwide permit is reissued as proposed.

32. *Completed Enforcement Actions* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 32 should be withdrawn as it is too broad for projects to be considered "similar in nature", or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects, and that it's limitations are arbitrary and capricious (*e.g.*, 5 acres, 1 acre).

The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Another commenter recommended changes to NWP 32 which would allow restoration-based settlements for natural resource injuries by adding the following text: (iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. 19jj. For (i), (ii), and (iii) above, the compliance is a condition of the NWP itself.

The Corps agrees with the commenter. These are Federal environmental legal resolutions that we believe should proceed without the delays caused by processing individual permits that would have no added value to resolutions under these laws. However, we have added a clarification that this

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NWP only applies to the extent that a Corps permit is required.

The nationwide permit is reissued with the change discussed above.

33. *Temporary Construction, Access and Dewatering* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 33 should be withdrawn as activities authorized under this permit cannot be considered "similar in nature" and do not result in temporary or minimal adverse environmental effects to waters of the U.S.

The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The nationwide permit is reissued without change.

34. *Cranberry Production Activities* There were no changes proposed to this nationwide permit. One commenter recommended that the Corps not reissue this permit as it violates section 404(e) of the CWA and the section 404(b)(1) Guidelines. The commenter stated that cranberry growers are allowed to "buy down" impacts of conversion with compensatory mitigation and that compensatory mitigation is allowed to take the form of preservation. The commenter further stated that some have indicated that cranberry production can degrade water quality, harm fisheries, and reduce water quantity, each of which can significantly, adversely affect the aquatic environment.

The Corps believes that this NWP is fully in compliance with section 404(e) of the Clean Water Act. Further the Corps believes that it is appropriate to require mitigation for adverse effects of a project and that the mitigation can be considered when determining that the adverse effects of a project are minimal.

The nationwide permit is reissued without change.

35. *Maintenance Dredging of Existing Basins* There were no changes proposed to this nationwide permit. Two commenters pointed out that there was a change in the proposed NWP 35 which was not mentioned in the Preamble. Another commenter recommended withdrawing this permit as it is not reasonable to conclude that the cumulative impacts of all of the activities authorized under this category would not result in greater than minimal adverse environmental effects. The commenter stated it is reasonable to conclude that this category of activities would be incapable of being in compliance with CZM programs.

The Corps agrees that there were differences in the NWP from the 1996 NWP. However, the Corps did not intend to propose a change to this NWP. This was an error. This NWP will be adopted as it has existed since 1996. We continue to believe that the cumulative effects of activities authorized by this NWP will be no more than minimal individually and cumulatively. Furthermore, Corps districts or divisions may add case-specific or regional conditions where necessary to further ensure that the adverse effects to the aquatic environment are no more than minimal, individually and cumulatively. The states will review the activities authorized by this NWP and will agree or disagree that these activities comply with their State CZM programs. If the States disagree, then activities that otherwise qualify for the NWP will need to get an individual State CZM concurrence before they can proceed. If the state conditions its CZM agreement, then those state CZM condition will become conditions of the NWP.

The nationwide permit is reissued without change from the 1996 NWP.

36. *Boat Ramps* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 36 should be withdrawn as it is unreasonable to conclude that the cumulative impacts of all of the activities authorized under this category would not result in greater than minimal adverse environmental effects. The commenter expressed is doubt that the adverse indirect/secondary impacts of extracting the source materials and subsequent degradation of water quality associated with the use of the construction of boat ramps has been considered by the COE.

We continue to believe that the cumulative effects of activities authorized by this NWP will be no more than minimal, individually and cumulatively. Furthermore, Corps districts or divisions may add case-specific or regional conditions where they believe necessary to further ensure that the adverse effects to the aquatic environment are no more than minimal, individually and cumulatively. The Corps will also consider adverse effects at borrow areas where appropriate. It should be noted that normally the materials for the small boat ramps are obtained from existing borrow areas or sources that exist independently of the small projects. Any individual water quality issues will be addressed by the states through water quality certifications, NPDES permits or other programs. In some cases the Corps may directly address water quality issues when appropriate.

The nationwide permit is reissued without change.

37. *Emergency Watershed Protection and Rehabilitation* The Corps proposed to modify this NWP to include the Department of the Interior (DOI), Wildland Fire Management Burned Area Emergency Stabilization and Rehabilitation Program (DOI Manual, part 620, Ch. 3) to this NWP. The existing NWP only included the Natural Resource Conservation Service (NRCS) and U.S. Forest Service (USFS) Programs for emergency watershed protection and rehabilitation. The Department of the Interior has similar responsibilities as the Forest Service, such as suppression of wildland fires and the rehabilitation of the burned land.

Several commenters suggested additional changes to this NWP, including limiting the time that the NWP can be used after an emergency situation, such as 2 years, and broadening the NWP to cover State and local emergency activities. One commenter suggested that there were abuses, such as converting waters of the U.S. in the guise of restoration. Another commenter recommended retaining the word "exigency" in the permit language until such time that NRCS completes their final PEIS and modifies their regulations accordingly to ensure that the impacts from this category of NWP will not exceed the minimal impact threshold.

The Corps believes that the time constraint and the expansion to include State and local emergency activities would need to be proposed before a change could be adopted. Furthermore, we believe that the suggested time constraint is not needed and we are not aware of any such abuses. The Corps will monitor the use of this NWP and will propose any changes that may be necessary to ensure that any adverse effects on the aquatic environment are no more than minimal, individually or cumulatively. The Corps believes that the terminology used to describe the NRCS emergency situations will not result in materially different activities that are now covered by the NWP. Should there be a change the Corps can modify the NWP accordingly.

One commenter suggested a grammatical change, removing the "Work done or funded by" from the beginning of subsections "b" and "c" in order to be consistent with subsection "a". We concur with this comment and have accordingly changed the NWP.

The nationwide permit is reissued as proposed and with the change described above.

38. *Cleanup of Hazardous and Toxic Waste* There were no changes proposed to this nationwide permit. One commenter indicated that this NWP covers many different activities that are not similar activities. The commenter added that the NWP also lacks any indication of a time constraint that would constitute an "emergency" response, which may have occurred up to five years later in some cases. The commenter also stated that there have been adverse effects that occur under the guise of so-called "Restoration".

The Corps believes that the description of the type of activities will ensure that those categories of activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. In addition, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The addition of a time constraint would need to be proposed before a change could be adopted. Furthermore, we believe that a time constraint is not needed and we are not aware of any such abuses. The Corps will monitor the use of this NWP and will propose any changes that may be necessary to ensure that any adverse effects on the aquatic environment are no more than minimal, individually or cumulatively. The nationwide permit is reissued without change.

39. *Residential, Commercial, and Institutional Developments* The Corps proposed these changes to this NWP: (1) Simplify the subdivision provision, without substantively changing its effects, (2) delete the one-cfs restriction on stream impacts, and (3) allow a project specific waiver of the 300 linear-feet prohibition following a written determination by the Corps that any adverse environmental effects would be no more than minimal.

Simplify the Subdivision Provision

Several commenters supported simplifying the subdivision provision while several others indicated that the existing subdivision provision should remain. Several commenters expressed concerns about repeated use of the NWP within a subdivision and supported applying the aggregate of all fills in waters of the U.S. to the ½ acre threshold. Some commenters did not want the restriction to apply to future individual lot owners while others wanted to ensure that it did. One commenter asked whether the new subdivision language would apply to all subdivisions or would some be grandfathered. Another expressed concern about Corps workload and record keeping impacts due to grandfathered subdivision dates. One commenter requested that individual lot owners within a subdivision be exempted from the subdivision provision. Another commenter indicated that the 1/10 acre notification requirement should be retained in the subdivision provision.

The Corps continues to believe that to make the subdivision provision effective, it needs to be simplified. The subdivision provision will apply to all, but only to, residential subdivisions, regardless of when they were built. This will create some additional workload in older residential subdivisions not yet completed. However, in appropriate cases Corps divisions and districts may consider regional general permits or abbreviated permit processes. Also Corps divisions and districts may add regional conditions to require notification or other restrictions when appropriate. The subdivision provision will apply to all lots within a residential subdivision. Furthermore, when authorizing future residential subdivisions the Corps will consider the status of lots that maybe filled in the future and add them to the total for determining compliance with the aggregate ½ acre threshold. The simplified subdivision provision will simplify Corps record keeping and workload. But more importantly it will further compliance with this condition and thus provide additional environmental protection while allowing those subdivisions with minimal impact to proceed without unnecessary costs and delays.

Delete the One-cfs Restriction on Stream Impacts: Many commenters objected to the removal of the one cfs restriction on stream impacts and requested that it be restored to ensure that developments are not located on flood prone property without full individual permit review, including public notice and comment. One commenter recommended a preferred modification involving retaining the provision and proposed specific conditions under which this provision might be waived e.g. severe degradation. Another commenter was concerned that removal of this provision could jeopardize streams considered degraded by the Corps when that degradation might be eliminated or reduced through simple changes in management practices. Two commenters supported the elimination of the one cfs restriction agreeing that it was inconsistent with the intent of the NWP, but one of them further went on to say that the prohibition is unnecessary, confusing and results in many minimal impact projects having to undergo the individual permit process, and that the condition is arbitrary as there is no data to support the application of this condition. One commenter stated that removing the one cfs prohibition would allow a developer to completely remove most functions provided by a stream, however, this much impact should not be authorized by the Corps.

The Corps agrees with those commenters that the one cfs restriction is unnecessarily prohibitive. There is a need on occasion to have some unavoidable elements of relocation and channelization below the one cfs point on a stream for a project covered by NWP 39. In these cases there would be no value added to the environment by processing an individual permit. Further, the added complication and costs of making a determination of another point on a stream in addition to the five cfs point, unnecessarily adds a burden to the Corps and the applicant. We further believe that there are several other general conditions that protect important stream values; such as General Condition 21 Management of Waters Flows, General Condition 20 Spawning Areas, General Condition 17 Shellfish beds and General Condition 9 Water Quality to name a few.

300 Linear Foot Prohibition with a Waiver: This issue is discussed elsewhere in this preamble.

Compliance with 404(e): Several commenters indicated that the NWP was not in compliance with Section 404(e). One commenter said that since a residential development is not a water dependent activity, it is presumed that alternative locations are available for these activities.

We believe that the minor nature of these types and categories of activities will ensure that they are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed and greatly reduce from 10 acres in 1984 down to ½ acre in 2000, based on years of experience and were developed to consider most effects

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that could occurs in many areas of the country. However, Division and District Engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. A case specific off-site alternatives analysis is not required for activities with minimal adverse effects that are authorized by NWPs, as provided for the Clean Water Act section 404(b)(1) Guidelines. However, on-site avoidance and minimization is required by General Condition 19.

Other Comments

Many commenters opposed the preamble discussion regarding the phasing of subdivisions. The Corps has defined the concept of single and complete projects for the purpose of authorizing activities by nationwide permits. This term is defined in Corps regulations at 33 CFR 330.2(i). The preamble discussion states how the Corps is implementing the regulations. The Corps is not proposing to change the nationwide permit regulations at this time.

Two commenters requested conditions requiring a pre-construction notification for all wetland impacts to allow the Corps to determine the appropriateness of using the NWP for wetlands impacts. One of those commenters recommended that permittees be required to verify compliance with the NWP general conditions. A pre-construction notification is a requirement for impacts to greater than 1/10 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters. This NWP can not authorize activities in tidal waters of the U.S. and not in non-tidal wetlands adjacent to tidal waters and not for permanent above grade fills below the headwaters in the 100 year flood plain as provided for in general condition 26. We believe that this will ensure that the impacts will be no more than minimal. Furthermore, Corps divisions and districts will add regional conditions as appropriate to further ensure that cumulative effects will be no more than minimal. The Corps believes that it would be an unnecessary and unreasonable burden on an applicant to demonstrate compliance with all conditions. The Corps districts will request verification of compliance for those conditions that the Corps believes are applicable to a project but for which the applicant did not supply sufficient information.

This NWP is reissued as proposed except with the modified 300 linear foot waiver discussed below.

40. *Agricultural Activities.* The Corps proposed to modify this NWP by providing a waiver for the 300 linear foot limit on relocating existing serviceable drainage ditches constructed in non-tidal streams. Several commenters opposed this NWP, with some suggesting that it be withdrawn. Some commenters suggested additional restrictions to the NWP. These restrictions included changing the maximum acreage threshold (e.g. 1% of the farm tract, .3 acres, 1/2 acre for the entire farm holding or all the tracts under one ownership, 1/4 acres, and 1/10 acre); prohibiting conversion of waters of the US. to agricultural production; requiring that all impacts must be fully mitigated; and requiring that the Corps must review and approve all mitigation. Additional suggestions included requiring a pre-construction notification to include a hydrologist report documenting the extent of both primary and secondary impacts; limiting the linear footage of fill in all streams to 250 feet; prohibiting the discharge of fill into playas, prairie potholes, and vernal pools, withdrawing the provision that states that "discharges of dredged or fill materials into waters of the US. associated with the construction of compensatory mitigation are authorized by the NWP, but are not calculated in the acreage loss of waters of the US'; and requiring that the Corps make its own minimal effects determination consistent with section 404 of the Clean Water Act.

Many of these suggestions would require that the Corps publish proposed changes to this NWP for public comments. The Corps can consider and propose any such appropriate changes after this NWP is reissued. However, at this time we believe that the threshold that we established in 1996 continues to be appropriate for this NWP. The Corps will review appropriate activities for compliance with this NWP including requiring appropriate mitigation and ensuring that the authorized activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, we also believe that the PCN requirements are adequate to allow the Corps to make such determinations. We also believe that the PCN requirements will ensure that any jurisdictional activities in playas, prairie potholes, and vernal pools will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, for activities authorized by paragraph a. of this NWP, we will rely on NRCS to make those decisions. We believe that this is adequate and appropriate considering NRCS's responsibilities under the Swampbuster provisions of the Farm Bill. The threshold limits for all NWPs are based on the amount of impacts to waters of the US of the proposed activity. We do not allow that limitation to be modified by considering mitigation to decrease that number. However, we do consider the net effects including the project effects, mitigation and impacts caused by the mitigation in deciding whether the activity will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Most commenters stated that the activities authorized under this permit would pose a serious threat of contamination to wetlands and nearby streams from animal waste and should be withdrawn.

We understand these concerns. However, these issues are normally considered and will be addressed as part of the states' Section 401 water quality certification or by a Section 402 permit.

Most commenters stated that the scope of this permit violates the minimal impact standards as it unnecessarily exceeds the 1/4 acre limit for filling wetlands under the "minimal effects" provisions of the Farm Bill, and, as such, should be withdrawn.

The Corps disagrees. Nothing in this NWP will override the provisions of the Farm Bill. Where an activity is covered by the Farm Bill, it must meet the requirements of the Farm Bill as well as the requirements of the Corps NWPs. The NRCS is responsible for determining compliance with the Farm Bill, while the Corps is responsible for determining compliance with the NWP.

One commenter recommended withdrawing this NWP as the activities authorized by it are not water dependent activities, are very dissimilar in nature and result in major adverse impacts to the human environment. Additionally, the impact thresholds are arbitrary and capricious.

We believe that the minor nature of these types and categories of activities will ensure that they are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed based on years of experience and were developed to consider most effects that could occurs in many areas of the country. However, Division and District engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

41. *Reshaping Existing Drainage Ditches.* There were no changes proposed to this nationwide permit. Three commenters said that this NWP should not be reissued. One commenter stated that there is no demonstrated need for this NWP. Three commenters objected to the reissuance of the NWP because there are no acreage or linear foot limits. One of these commenters suggested adding a 500 linear foot limit and a 250 linear foot pre-construction notification threshold. One commenter said that the sidecasting of drainage ditch soils may have significant adverse impacts on the hydrologic regimes of adjacent wetlands. Another commenter indicated that impacts due to temporary sidecasting of excavated material result in more than minimal adverse effects on the human environment.

This NWP authorizes the reshaping of existing, serviceable drainage ditches in a manner that benefits the aquatic environment. Without this NWP, project proponents would likely have to obtain an individual permit to reshape drainage ditches in a manner that helps improve water quality in a watershed. Requiring an individual permit for this activity would discourage landowners from conducting this activity. We do not agree that acreage or linear limits are necessary because of the nature of the authorized activity. The pre-construction notification threshold of 500 linear feet will allow district engineers to review ditch reshaping activities that may result in more than minimal adverse effects to the aquatic environment. In response to a pre-construction notification, a district engineer can require special conditions to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

One commenter asserted that this NWP will encourage the drainage, degradation, and further loss of waters and wetlands. One commenter recommended revocation of this NWP within "Tulloch" ditches because the permit provides additional opportunities for developers to fill wetlands with little oversight by the Federal government. This commenter also suggested modifying NWP 41 to require planting of native trees and shrubs on ditch banks after construction to reduce the potential for water quality degradation.

This NWP authorizes only temporary sidecasting of excavated material into waters of the United States. Therefore, activities authorized by this NWP will not have significant, permanent impacts on the hydrology of adjacent wetlands or the human environment. This NWP does not encourage the loss of waters and wetlands because it is limited to activities in existing, serviceable drainage ditches and reshaping activities cannot increase the area drained by the ditches. We do not agree that it is necessary to require planting of native trees and shrubs after construction. Drainage ditches require periodic maintenance to remove accumulated sediments and any trees and shrubs planted next to drainage ditches would have to be removed during maintenance activities.

One commenter said that if this NWP is used to authorize activities in waters that support salmonids, then a regional condition should be added to the NWP. The recommended regional condition would require delineations of pools and riffles and require that the reshaping activity be conducted in a manner that does not reduce the volume and surface area of pools or other suitable habitat.

Division engineers can add regional conditions to this NWP to address concerns for salmonid species.

One commenter objected to the reissuance of this NWP, stating that it does not define the term "drainage ditch" narrowly, it does not require an applicant to prove that the proposed ditch reshaping activity will not increase the area drained by the ditch, it does not require mitigation when work is designed to improve water quality. This commenter said that the NWP should clarify that pre-existing waterways are not drainage ditches, even if they have been channelized. This commenter recommended adding the following text to NWP 41: "This general permit is limited to reshaping that would restore more natural stream characteristics by activities similar to increasing the area of riparian vegetation through re-grading or by recreating stream meanders." Other suggestions by this commenter include requiring applicants to obtain NRCS minimal effects determinations and best management practices certifications and requiring mitigation for adverse impacts to aquatic resources authorized by this NWP.

This NWP does not define the term "drainage ditch". District engineers can determine, on a case-by-case basis, what constitutes a "drainage ditch". The Corps has modified the language of this permit slightly to clarify that drainage ditches constructed in uplands are generally not waters of the US, consistent with earlier guidance on this issue (FR 51:219, p 41217). We do not believe that it is necessary to require compensatory mitigation for activities authorized by this NWP, since the activities authorized by NWP 41 are designed to improve water quality. We do not agree that the recommended text in the previous paragraph should be added to NWP 41 because this NWP authorizes the reshaping of existing drainage ditches, not stream restoration activities. Requiring applicants to obtain minimal effects determinations and best management practices certifications from NRCS is unnecessary, since this NWP is limited to the reshaping of existing, currently serviceable drainage ditches that have minimal individual and cumulative adverse effects on the aquatic environment. This nationwide permit is reissued without change.

42. *Recreational Facilities* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by allowing on a case-by-case basis, a waiver of the prohibition on impacts exceeding 300 linear feet of stream bed. In addition, we requested suggestions regarding criteria, standards, and best management practices that should be applied to this NWP for recreational facilities to ensure that adverse effects on the aquatic environment are minimal.

One commenter requested that the Corps broaden the applicability of this NWP to include improvements to ski facilities, because ski area expansion is too narrow. This commenter also expressed support for expanding the scope of this NWP to include the construction of hotels and restaurants, because these facilities are important components of skiing facilities. One commenter supported the use of this NWP to authorize the construction of hiking, biking, and horse trails.

This NWP can be used to authorize the construction of certain improvements to ski facilities, provided those improvements comply with the terms and conditions of the NWP. We do not agree that NWP 42 should be expanded to include the construction of hotels and restaurants. These facilities may be authorized by other NWPs, such as NWP 39, which authorizes discharges of dredged or fill material into non-tidal waters of the United States to construct commercial buildings and attendant features, or other types of Corps permits.

Two commenters said that this NWP should be withdrawn. One of these commenters said that the NWP authorizes activities that are not similar in nature that result in more than minimal adverse impacts to the aquatic

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environment. Six commenters asserted that this NWP should not authorize the construction of golf courses or ski areas. One commenter objected to the authorization of these facilities under NWP 42 because they are unlikely to substantially deviate from natural landscape contours. Another commenter said that the authorization of golf courses and ski areas discourages developers from looking for alternatives that have less impact on the aquatic environment. One commenter objected to the inclusion of campgrounds in the list of activities that may be authorized by this NWP. Four commenters stated that support facilities, such as buildings, stables, parking lots, and roads should not be authorized by this NWP. One commenter asked if this NWP can be used to authorize the construction of recreational ponds.

This NWP authorizes activities that are similar in nature because it is limited to discharges of dredged or fill material into waters of the United States to construct recreation facilities. The terms and conditions of the NWP, with the case-by-case review of those activities that require pre-construction notification to district engineers, will ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment. Pre-construction notification is required for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre on non-tidal waters of the United States or the loss of greater than 300 linear feet of perennial and intermittent streams. The pre-construction notification process allows district engineers to review those activities that may result in more than minimal adverse effects to the aquatic environment. In response to a pre-construction notification, a district engineer can require special conditions to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

Golf courses and expanded ski facilities can be constructed so that they are integrated into the natural landscape, without substantial amounts of grading and filling. This NWP authorizes only the expansion of existing ski areas. Paragraph (a) of General Condition 19 requires permittees to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable. We do not agree that campgrounds should be excluded from this NWP. We believe that the construction of small support facilities, such as storage buildings and stables, are necessary attendant features for the operation of the recreational facilities authorized by this NWP. This NWP may authorize the construction of small recreational ponds, provided the construction of those impoundments does not substantially change natural landscape contours.

One commenter said that this NWP should have a 1/3 acre limit, including a 250 linear foot limit for stream impacts. Another commenter said that the 1/2 acre limit was too high. One commenter stated that the pre-construction notification threshold should be 1/3 acre or 1/4 acre, instead of 1/10 acre. A commenter said that all activities authorized by this NWP should require pre-construction notification, and that this NWP should not authorize activities in special aquatic sites. One commenter recommended replacing the word "loss" in the text of the NWP with the phrase "fill or impact (including temporary and permanent impacts)".

We do not agree that the acreage limit should be reduced to 1/3 acre, or that there should be a 250 linear foot limit for stream impacts. In addition, we believe that the 1/10 acre pre-construction notification threshold adequately ensures that all activities that could result in more than minimal adverse effects on the aquatic environment are reviewed by district engineers on a case-by-case basis. We do not agree that it is necessary to require pre-construction notification for all activities authorized by this NWP or to prohibit use of this NWP in special aquatic sites. Where there are concerns that this NWP may authorize activities with more than minimal adverse effects on the aquatic environment, division engineers can regionally condition this NWP to reduce the acreage limit or require notification for all activities. It is not necessary to replace the word "loss" with the phrase "fill or impact (including temporary and permanent impacts)" because the word "loss" addresses waters of the United States adversely affected by filling, flooding, excavation, or drainage.

Several commenters objected to allowing case-by-case waivers to the 300 linear foot limit for losses of stream beds. One of these commenters said that small and ephemeral streams are important for protecting water quality, preventing flooding, and providing habitat for many species. Another commenter said that the waiver should not be granted until the district engineer solicits comments from the other Federal and state resource and regulatory agencies. This waiver is discussed in more detail below in this **Federal Register** notice.

One commenter stated that the definition of "recreational facilities" is too broad and the NWP does not adequately address impacts at the project site and downstream. One commenter said that the Corps should not attempt to establish criteria, standards, or best management practices because the Corps has already determined that the NWP authorizes only activities with minimal adverse environmental effects. A commenter suggested that the Corps require best management practices for storm water management, limits on the clearing of vegetation for project construction, the establishment and maintenance of 100 foot wide forested buffers adjacent to aquatic resources, and limits on the use of impervious surfaces for trails and walkways. One commenter requested that the NWP contain more flexibility to allow limited use of impervious surfaces to accomplish complete accessibility for the physically challenged on multi-use trails.

We believe that the definition of "recreational facilities" used in this NWP, in addition to the terms and conditions of NWP 42 and the NWP general conditions, are sufficient to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. The August 9, 2001, **Federal Register** notice sought public input on ways to continue to ensure that this NWP authorizes minimal impact recreational facilities. Compliance with General Condition 9, Water Quality, may require storm water management for a particular recreational facility. The maintenance and establishment of vegetated buffers may be required by district engineers as compensatory mitigation. Specific limits on the use of impervious surfaces are determined by district engineers on a case-by-case basis in response to a pre-construction notification. The construction of multi-use trails that provide accessibility for physically challenged individuals can be authorized by this NWP.

One commenter said that regional conditions should be adopted to prevent the cumulative adverse impacts to wood recruitment in waters inhabited by salmon. This commenter also suggested that regional conditions should be adopted to prohibit the construction of trails or paths along the tops of banks unless the facility is constructed so that there is no loss of riparian vegetation and any removed vegetation is allowed to grow back. This commenter also said that this NWP should not be stacked with NWP 13 because these two NWPs exert synergistic significant adverse impacts on wood recruitment.

Division engineers can impose regional conditions on this NWP to address cumulative impacts, including impacts to salmon habitat. We do not agree that there should be a restriction prohibiting the use of NWP 13 with this NWP for a single and complete project. Bank stabilization may be required to maintain the integrity and safety of a recreational facility.

The nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

43. *Stormwater Management Facilities* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by allowing on a case-by-case basis, a waiver of the prohibition on impacts exceeding 300 linear feet of stream bed. There were no other changes proposed to this nationwide permit.

Three commenters stated that this NWP should be withdrawn. One of these commenters said that NWP 43 was unnecessary because the construction of stormwater management (SWM) facilities is authorized by other NWPs. Two commenters stated that new SWM facilities should not be constructed in streams, including ephemeral and intermittent streams. Another commenter said that SWM facilities are not water dependent, SWM facilities should not be constructed in waters of the United States, and the activities authorized by this NWP result in more than minimal adverse effects on the human environment. One commenter said that this NWP should not authorize activities in special aquatic sites.

Although other NWPs, such as NWP 39, can authorize the construction of SWM facilities, certain types of SWM facilities, such as regional SWM ponds that are not associated with a particular development, may not be authorized by other NWPs. In some cases, the construction of SWM facilities in waters of the United States may be necessary and may provide more protection to the aquatic environment. Division engineers can regionally condition this NWP to prohibit its use in high value waters. For those activities that require notification, district engineers can add case-specific conditions to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority and require individual permits for activities with more than minimal adverse effects.

One commenter said that the acreage limit for this NWP should be 3 acres and another commenter suggested a 1/4 acre limit for the construction of new facilities. One commenter requested a higher acreage limit for activities in non-perennial streams, stating that the pre-construction notification process would provide the Corps the opportunity to ensure that project impacts are not more than minimal.

We believe that the 1/2 acre limit for the construction of new SWM facilities will ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment. We do not agree that there should be a higher acreage limit for discharges of dredged or fill material into intermittent and ephemeral streams.

One commenter stated that coordination with Federal and state resource and regulatory agencies should be conducted before the district engineer issues a waiver of the 300 linear foot limit. Another commenter supported waiving the 300 foot limit, but recommended that the Corps clarify that the presence of an ordinary high water mark is required when determining that a waterbody is a water of the United States.

We have adopted a modified condition allowing district engineers to issue case-by-case waivers to the 300 linear foot limit for losses of intermittent stream beds, for activities that result in no more than minimal adverse effects on the aquatic environment. This modified waiver is discussed in more detail in another section of this **Federal Register** notice.

One commenter recommended that the NWP authorize normal operations and maintenance activities so that the multi-objective aspects, including flood mitigation, of the project can be met and the community can realize project benefits. A commenter recommended adding a condition that restricts this NWP to the maintenance of existing SWM facilities. Another commenter said that the NWP should include a condition requiring maintenance of base flows during periods of low flow, to protect the downstream environment. This commenter also said that the NWP should be conditioned to prohibit the construction of concrete or stone-lined channels. One commenter asserted that the text of NWP 43 should clearly state that non-jurisdictional activities are not included in the acreage loss of waters of the United States.

NWP 43 authorizes the maintenance of existing, currently serviceable SWM facilities. Regular maintenance of SWM facilities is an important mechanism for ensuring effective stormwater management, including flood control. We do not agree that this NWP should be limited to maintenance activities. Paragraph (g) of NWP 43 refers to General Condition 21, Management of Water Flows, which requires the maintenance of pre-construction downstream flows. We do not agree that it is necessary to condition the NWP to prohibit the construction of concrete or stone-lined channels. Division engineers can regionally condition this NWP to prohibit these types of activities. During the review of a pre-construction notification, district engineers can exercise discretionary authority if the proposed work involves the construction of a concrete or stone-lined channel and the proposed work will result in more than minimal adverse effects on the aquatic environment. We do not believe it is necessary to explicitly state in the text of the NWP that non-jurisdictional activities are not included in the acreage loss of waters of the United States, although this is true for all NWPs generally.

One commenter said that areas within SWM facilities should not be considered as compensatory mitigation if regular maintenance is required. Another commenter said that this NWP should not authorize the use of SWM facilities as compensatory mitigation sites.

Areas of a SWM facility that are not subject to regular maintenance can be used as compensatory mitigation sites (see paragraph (e)(3)).

The nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

44. *Mining Activities.* There were no changes proposed to this nationwide permit. Many commenters said that this NWP should be withdrawn. Several of these commenters believe that the activities authorized by this NWP result in more than minimal adverse effects on the aquatic environment, including water quality, navigation, and aquatic habitat. Some commenters said that these activities should be reviewed under the standard permit process.

This NWP authorizes mining activities that have no more than minimal individual and cumulative adverse effects on the aquatic environment. The terms and conditions of this NWP, including the NWP general conditions, will ensure that these mining activities will have no more than minimal adverse environmental effects. For example, mining activities in navigable waters must comply with General Condition 1, Navigation. All activities authorized by this NWP require notification to the district engineer prior to commencement of mining activities. The pre-construction notification process allows district engineers to review mining activities on a case-by-case basis, to ensure that the proposed work has no more than

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minimal adverse effects on the aquatic environment. In response to a pre-construction notification, the district engineer can add special conditions to the NWP authorization to ensure that the adverse effects on the aquatic environment are no more than minimal or exercise discretionary authority to require an individual permit for the work.

One commenter stated that this NWP does not satisfy the "similar in nature" requirement for general permits, including NWPs. Another commenter asserted that the activities authorized by this NWP are not water dependent and that alternatives are available.

This NWP complies with the "similar in nature" requirement of general permits because it is limited to aggregate and hard rock/mineral mining activities. The water dependency test in the Section 404(b)(1) guidelines does not require each activity in waters of the United States to be water dependent to fulfill its basic project purpose. General Condition 19, Mitigation, requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site. The NWPs do not require an analysis of off-site alternatives. As long as the mining activity results in no more than minimal adverse effects to the aquatic environment and complies with all terms and conditions, the activity can be authorized by NWP.

One commenter said that this NWP should be withdrawn because it is of limited use to the aggregate mining industry. A commenter objected to this NWP, stating that the Corps has not demonstrated why the NWP should be limited to activities in isolated waters and wetlands adjacent to headwaters. One commenter asserted that the ½ acre limit for this NWP is too restrictive because of the extensive pre-construction notification and mitigation requirements. This commenter also said that the Corps cannot condition this NWP to prohibit beneficiation and mineral processing within 200 feet of an open waterbody. Another commenter recommended increasing the acreage limit to three acres for impacts to non-wetland waters and allowing district engineers to waive the 1 cubic foot per second limit on a case-by-case basis.

The terms and conditions of this NWP, including the ½ acre limit and the scope of applicable waters, are intended to ensure that activities authorized by this NWP result in no more than minimal adverse effects to the aquatic environment, individually and cumulatively. We have the authority to condition this NWP to prohibit beneficiation and mineral processing within 200 feet of an open waterbody, if such a restriction is necessary to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment. We do not agree that a waiver for the 1 cubic foot per second limit for aggregate mining in headwater streams would be appropriate. That restriction is necessary to ensure that the NWP does not authorize aggregate mining activities with more than minimal adverse effects to headwater streams. Aggregate and hard rock/mineral mining activities that do not qualify for authorization under this NWP can be authorized by individual permits.

Two commenters stated that this NWP must be reevaluated in light of the *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* (U.S. Supreme Court No. 99–1178) (SWANCC). One commenter said that many mining operations do not involve discharges of dredged or fill material into waters of the United States and the Corps should reassess areas where it has exceeded its statutory authority. One commenter recommended modifying this NWP to clarify that non-jurisdictional excavation activities channelward of the ordinary high water mark and activities outside of the ordinary high water mark and adjacent wetlands do not require a Section 404 permit.

The *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* decision related to the scope of CWA jurisdiction over nonnavigable isolated intrastate waters. Aggregate and hard rock/mineral mining activities may occur in jurisdictional waters and thus could be authorized by this NWP. Activities that occur in non-jurisdictional waters, as determined by applicable regulations and case law (including SWANCC) do not require a section 404 permit. The nationwide permit is reissued without change.

Project Specific Wavier of 300-Linear Feet Prohibition in NWPs 39, 40, 42, and 43

In the August 9, 2001, **Federal Register** notice, the Corps proposed to allow a waiver, on a case-by-case basis, of the prohibitions in NWPs 39, 40, 42, and 43 against discharges resulting in the loss of greater than 300 linear feet of stream bed. The waiver could be issued only after the district engineer reviewed a pre-construction notification for the proposed work and determined that the activity would result in no more than minimal adverse effects on the aquatic environment.

Several commenters stated that the absolute 300 linear foot limit on the amount of stream that can be filled under these NWPs should be retained. They were concerned that the proposed waiver would lead to severe stream destruction from the construction of developments, agricultural activities, and other activities and said that the existing, strong linear limits on stream bed impacts should be retained. Some of these commenters added that the 300 linear foot limit provides predictability and certainty to the regulated community and state permitting agencies as well as reducing workload for Corps staff. A few commenters stated that the proposed waiver would lead to many variations in the way permit decisions are made between Corps districts and even between Corps project managers within the same district who use their own definitions of minimal impacts. One of these commenters indicated that NWP verification requests should be simple to review and approve, with clear thresholds and consistency in the review process. Another commenter stated that the waiver would require the Corps to rely on the expertise of applicants to provide information and allow developers to excavate or fill as much as one mile of a stream under a general permit when the intent of NWP program is to authorize only those activities with minimal adverse impacts. Numerous commenters supported the proposed waiver. Some of these commenters said that the waiver would allow greater flexibility and efficiency in permit processing and would eliminate the need for individual permits to fill more than 300 linear feet of stream bed where the impacts are minimal.

The waiver adds flexibility to the Corps permit process, by allowing district engineers to efficiently authorize activities that have minimal adverse effects on the aquatic environment. Requiring individual permits for minimal impact activities that would otherwise qualify for authorization under NWPs 39, 40, 42, and 43 because they involve the loss of greater than 300 linear feet of stream bed would increase the Corps workload, with no added environmental benefits. Since aquatic resource functions and values vary across the United States, we recognize that there will be differences in the implementation of the waiver. However, we do not agree that the waiver makes the protection provided by the NWP process less consistent. District engineers will use their knowledge of the local aquatic environment, as well as the information submitted in pre-construction notifications, to make their case-by-case determinations whether the waiver is applicable for a particular activity.

Some commenters emphasized the functions and values of the small headwater streams in the overall health of the aquatic environment and stated that filling these streams will result in significant impacts. These commenters stated that the cumulative loss of intermittent streams and the downstream impacts of piping these streams can cause significant irreversible environmental and ecological losses. Another commenter added that small streams usually exist within extensive riparian corridors and are incorrectly called drainage ditches to devalue their worth. This commenter is concerned that the waiver would result in the degradation of headwater streams, allow channelization of more streams, and result in more losses of wetlands. One commenter stated that allowing filling of streams could impact the States' efforts to restore wetlands, streams, and watershed functions.

We recognize that headwater streams often provide important functions and values, but there are situations where the loss of these streams will result only in minimal adverse effects on the aquatic environment. We believe that such situations would not likely occur in intermittent streams, but rather in perennial streams. We have thus decided not to adopt the waiver of the 300 linear foot limit for perennial streams. The absolute prohibition on the use of these permits where more than 300 linear feet are impacted remains in place for perennial streams. We have decided to adopt the waiver process for intermittent streams, thereby allowing district engineers to waive, on a case-by-case basis, the 300 linear foot limit for the loss of intermittent stream beds under NWPs 39, 40, 42, and 43. It is important to note that, in order for the waiver to occur, the district engineer must make a written determination that the proposed work will result in no more than minimal adverse effects on the aquatic environment. If the district engineer does not provide written confirmation of the waiver, then the 300 linear foot limit for the loss of intermittent stream beds remains in place and the project proponent must obtain another type of Corps permit for the proposed activity.

Further, if the proposed work will result in more than minimal adverse effects on the aquatic environment, the district engineer will determine that the waiver is not applicable and require the project proponent to obtain an individual permit. As an added level of protection to valuable headwater streams, division engineers can regionally condition the NWPs to further restrict or prohibit their use in high value waters. The waiver will not impact States' efforts to restore waters and watersheds, since the waiver can only be issued after case-by-case review.

Some commenters asked how the Corps would determine whether an activity resulted in minimal environmental impacts to justify waiving the 300 linear foot limit. One commenter asked if the cumulative effects of the waiver would be evaluated each time the waiver was used. A few commenters said that the Corps cannot justify eliminating and waiving the 300 linear foot limit until the Corps can demonstrate that there are no cumulative adverse impacts resulting from activities authorized by NWPs.

District engineers will use their knowledge of local aquatic environments and case-specific circumstances to determine when proposed activities will result in minimal adverse effects on the aquatic environment. District engineers monitor the use of NWPs on a watershed or regional basis to determine whether the cumulative adverse effects of these activities are more than minimal.

One commenter said that the 300 linear foot limit for the NWPs should be reduced to 200 linear feet. This commenter also recommended that mitigation should be required for all projects that result in a net loss of aquatic habitat, acreage, or function.

We do not agree that the 300 linear foot limit should be reduced to 200 linear feet. The mitigation requirements for the NWPs are addressed in General Condition 19, Mitigation. For activities authorized by NWPs, project proponents are required to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable. District engineers will determine, on a case-by-case basis whether compensatory mitigation is required to offset losses of waters of the United States and ensure that the adverse effects on the aquatic environment are minimal.

Several commenters discussed the example provided in the August 9, 2001, **Federal Register** notice (page 42079) which described a 6-inch wide by 1-inch deep ephemeral stream running for several thousand feet. One commenter inferred that the Corps was devaluing all such streams and that the loss of these streams would result in more than minimal impacts. This commenter said that relatively intact ephemeral streams perform a diversity range of hydrologic, biogeochemical, and habitat support functions that directly affect down-gradient streams. Another commenter stated that these small headwater tributaries provide important habitat for aquatic life, including fish spawning areas. This commenter also said that these streams are important habitat for amphibians and reptiles during those short periods when water is flowing or ponded, and that the continued loss of this habitat is cumulatively damaging. Another commenter stated that headwater streams should be protected, and added that continued permitting of these activities under the NWP program must include careful individual site review by qualified aquatic biologists. Two commenters said that minimal impact determinations for the waiver of the 300 linear foot limit should require on-site inspections.

The example provided in the August 9, 2001, **Federal Register** notice was intended as an illustrative example to show that some impacts exceeding 300 linear feet may still be minimal. It was not intended to suggest that all ephemeral streams are of low value, or that all impacts to ephemeral streams are by definition minimal. As a practical matter, ephemeral streams are not covered by the 300 linear feet limitation, so a formal waiver is not needed for ephemeral streams. However, even a project that impacts only an ephemeral stream could be required to obtain an individual permit if the District Engineer determined that individual or cumulative adverse effects were more than minimal. Under the waiver process, the district engineer would have to make a written determination that the loss of an intermittent stream segment exceeding 300 linear feet would result in minimal adverse effects on the aquatic environment. We do not agree that it is necessary to require on-site determinations in all cases by district engineers prior to issuing a waiver. District engineers can utilize their experience, information provided in pre-construction notifications, and other sources of information before determining the applicability of the waiver.

Three commenters suggested allowing the resource agencies to review all waiver applications. One of these commenters said that the public should be allowed to comment on these minimal effect determinations. Several commenters were opposed to the requirement for a written determination of a waiver without a time clock.

We do not agree that it is necessary to conduct agency coordination or a public comment process for requests to

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waive the 300 linear foot limit for intermittent streams for NWPs 39, 40, 42, and 43. District engineers have the expertise to determine on a case-by-case basis whether these activities will result in more than minimal adverse effects on the aquatic environment. We do not believe it is necessary to adopt a separate time clock for waiver requests. If a project proponent submits a complete pre-construction notification for a NWP 39, 40, 42, and 43 activity, and the proposed work involves filling or excavating more than 300 linear feet of intermittent stream bed, the project proponent cannot assume that the proposed work is authorized by these NWPs unless a written waiver is obtained from the district engineer. District engineers should respond to requests for the 300 linear foot waivers for intermittent streams within the 45 day pre-construction notification period.

NWPs 39, 40, 42 and 43 are issued with a waiver for the 300 linear foot limit for intermittent stream beds. These NWPs cannot be used to authorize the loss of more than 300 linear feet of a perennial stream bed. As a clarification, there are no absolute quantitative limitations on linear impacts to ephemeral streams, as long as the adverse effects on the aquatic environment are no more than minimal.

Nationwide Permits General Conditions

1. *Navigation.* There were no changes proposed to this General Condition. There were no comments on this General condition. The General Condition is adopted without change.

2. *Proper Maintenance.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

3. *Soil Erosion and Sediment Controls.* There were no changes proposed to this General Condition. There were no comments on this General Condition. However, there was a comment on NWP 7 that the Corps determined was related to this condition. The change is discussed in the Preamble discussion of NWP 7. We agreed with the comment.

The General Condition is adopted with a change to encourage permittees to perform work in waters during low-flow or no-flow conditions.

4. *Aquatic Life Movements.* In the August 9, 2001, **Federal Register** notice, the Corps proposed to modify this General Condition to clarify the intent of the condition was to protect aquatic life cycle movements.

One commenter stated that the current General Condition 4 was difficult to understand. Numerous commenters supported the clarification of this General Condition. Several commenters suggested that the statement "substantially disrupt life cycle movements" be replaced with "prevent life cycle movements", because substantial gives the impression that the impacts may be more than minimal. One commenter suggested that General Condition 4 should be revised to read, "No activity conducted under a NWP may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, culverts placed in streams must be installed to maintain low flow conditions". One commenter recommended that General Condition 4 should restrict any activity that could impact or impair aquatic life stages or movement of organisms dependent upon waters or wetlands. One commenter stated that there is no need to change the wording of General Condition 4, if the Corps would consider that all movements by an organism are related to its life cycle. One commenter requested clarification of this condition concerning the application of the condition to other organisms, which do not have all of their life cycles within the aquatic environment (amphibians).

We have retained the word "substantially" in the text of this General Condition, which is related to the movement of the species not to the impact on the species. Removal of this word would change the standard to any movement no matter how minimal or inconsequential the movement would be. We believe that most work in waters of the United States will result in some disruption in the movement of some aquatic organisms through those waters. District Engineers will determine, for those activities that require notification, if the disruption of aquatic life-cycle movements is more than minimal and either add conditions to the NWP to ensure that the adverse effects are no more than minimal or exercise discretionary authority and require an individual permit.

A few commenters stated that culverts must be installed in streams to maintain low and high flow conditions to allow fish passage. One commenter added that the hydraulic analysis to determine that range of high flows through the culvert shall be based upon anticipated flows in the basin at build-out.

The Corps believes that it is important to maintain low flow conditions, but that it is not reasonable or necessary to require hydraulic analysis for every culvert that would be authorized by NWPs. Corps district can enforce this condition where necessary.

One commenter stated that activities for which the primary purpose is to impound water should be evaluated as individual permits and not authorized under NWPs since ponds significantly disrupt the necessary life cycle of aquatic life.

We believe there are impoundment projects which would substantially disrupt the movement of specific individuals of aquatic life, but which would not adversely affect the populations of the species nor have more than minimal impacts on the aquatic environment. Such activities would need to be processed as individual permits.

This General Condition is adopted as proposed.

5. *Equipment.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

6. *Regional and Case-by-Case Conditions.* There were no changes proposed to this General Condition. One commenter stated that the public was not given adequate time to evaluate the regional conditions as they were not published in the **Federal Register**. Furthermore, the comment period for the regional conditions did not coincide with the comment period of the proposal to modify and reauthorize the NWP program. Therefore, the public was not provided an opportunity to evaluate and provide comment on the comprehensive and cumulative impacts of the NWPs.

Regional conditions are proposed and evaluated by the individual Corps division offices by a public notice and comment process. Case-by-case conditions are developed by Corps District or Division offices, to ensure that specific activities meet the NWP conditions and have no more than minimal adverse effect on the aquatic environment, individually and cumulatively. Division offices need to know what the final NWPs are before they can develop final regional conditions. Therefore, the review of any proposed regional conditions can not occur simultaneously with the review of the NWPs. Finally, this condition is to reinforce that those regional and case-by-case conditions are legally binding conditions of the NWPs.

The General Condition is adopted without change.

7. *Wild and Scenic Rivers.* There were no changes proposed to this General condition. There were no comments on this General condition. The General Condition is adopted without change.

8. *Tribal Rights.* There were no changes proposed to this General condition. One commenter stated that tribal rights have been impaired due to cumulative impacts by the NWP program and suggested that a regional condition should be implemented to prohibit use of NWPs in south Florida until a regional EIS has been completed. The comments have been forwarded to the appropriate Corps District. The General Condition is adopted without change.

9. *Water Quality.* The Corps proposed to clarify this condition as it relates to detailed studies and documentation requirements. We also proposed to add language that clarifies that permittees may meet the requirement of this condition by complying with state or local water quality practices.

Numerous commenters agreed with the proposed change to General Condition 9. Many commenters stated the current more burdensome requirements, detailed studies, and design plans, only serve to expend the time and resources of the applicant. Several commenters indicated concern that the Corps may infringe upon the water quality authority of the State. One commenter recommended that General Condition 9 be revised to mandate compliance with the most stringent applicable standards whether they are federal, state, or local. One commenter stated that the Corps should not defer authority by making state or local permits a contingency of an NWP. Several commenters disagree with the proposed changes to this condition stating that many local jurisdictions lack the skilled personnel to develop and/or enforce adequate water quality standards and without evaluation of the state or local practices, the Corps cannot insure that impacts to the aquatic environment are minimal. One commenter stated that the proposed clarification should be withdrawn because the General Condition is less stringent than the existing condition and will result in poorer water quality. One commenter suggested that this condition should be expanded to specifically exclude the use of any NWP for a project adjacent to or in any water of the U.S. designated on a State 303(d) list.

We believe the changes will not reduce protection of the aquatic environment. Although the language of this condition could be interpreted to require detailed studies and design to develop water quality plans for every permit action, that was never our intent. While we do believe that inclusion of water quality management measures in project design is very important, we do not believe that comprehensive water quality planning should be a requirement of Corps NWPs, except in a few cases. In most cases, the Corps relies on state or local water quality programs. Where such programs do exist, the Corps will normally review the project to ensure that appropriate water quality features, such as stormwater retention ponds, are designed into the project. In some cases, the Corps may require more extensive design features to ensure that open water and downstream water quality are not substantially degraded. Normally, we believe that the permittee will comply with the requirements of this condition by obtaining state or local water quality approval or complying with state or local water quality practices, where such practices exist. The Corps proposed a condition in 1998 to restrict NWPs in State 303(d) (impaired) waters. We decided not to adopt that condition as explained in the March 9, 2000 preamble. We could not now adopt such a condition without proposing it for public review and comment.

The General Condition is adopted as proposed.

10. *Coastal Zone Management.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

11. *Endangered Species.* There were no changes proposed to this General Condition. One commenter stated that a sentence has been omitted from this condition in the proposed preamble with no notification of the change. The omitted sentence, the last line of 11(a), states that, "As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs". The commenter stated that omitting this statement shifts the burden of identifying and protecting potentially impacted endangered and threatened species and their critical habitat onto the permit applicant. The commenter requested that this change be dropped because the Corps has not met the legal requirements to adopt it.

The commenter is correct. This sentence is included in the currently in force June 6, 2000, version of this General Condition, but not in the August 9, 2001, proposed version. The Corps did not intend to propose any changes to this General Condition. The omission was in error. The omitted sentence has been reinserted in this condition.

One commenter stated that this condition may lead to compliance with the ESA however, is not likely to fully minimize or substantially reduce the significance of harm to listed species and their critical habitat. One commenter suggested this condition be re-titled to read "Threatened and Endangered Species", the condition be simplified and clarified. and the U.S. Fish & Wildlife Service and the National Marine Fisheries Service web sites be placed in this condition.

We believe this condition as stated provides not only the legal protection but also the actual protection required under the ESA. The "Endangered Species Act" covers both threatened and endangered species as does the General Condition title "Endangered Species". We do not believe that it is necessary to include other agency websites here. These are readily accessible on the internet.

The General Condition is adopted without change (but with the inadvertently omitted sentence restored).

12. *Historic Properties.* There were no changes proposed to this General Condition. Two commenters recommended that the Corps coordinate with the SHPOs in accordance with the National Historic Preservation Act (NHPA) and requested that a FONSI should not be issued until consultation under NHPA has been completed.

Division and districts will coordinate with SHPOs and Tribal Historic Preservation Officers where appropriate and add any regional conditions or case specific conditions that may be necessary to satisfy the NHPA in specified areas. There is no requirement to coordinate with SHPO in developing a FONSI and we do not believe that such coordination is necessary.

The General Condition is adopted without change.

13. *Notification.* In the August 9, 2001 issue of the **Federal Register**, we proposed under Contents of Notification, to provide applicants the option to provide drawings, sketches or plans sufficient for Corps review of the project to determine if the project meets the terms of an NWP, to allow a waiver of the 300 linear-foot prohibition [following written verification from the Corps], and to delete for NWPs 12, 14, 29, 39, 40, 42, 43, and 44 the requirement to provide "notification" to the Corps for permanent above grade fills in waters of the U.S. These latter two changes were to make notification requirements consistent with changes discussed elsewhere in this notice.

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Several commenters supported the proposed clarification for the submittal of drawings. Few commenters disagreed with the clarification but some said that drawings or sketches should be a mandatory requirement for notification and requiring this information would reduce Corps workload while insuring that impacts to the aquatic environment are minimal. One commenter recommended that photographs be required with notification.

It was not the intent of this proposed clarification to modify the required contents of notification or to make submittal of non required information mandatory but rather to encourage applicants to provide us as complete a submittal as possible to expedite our review of their application. We did state that the Corps has the discretion on a case-by-case basis to require additional information as necessary to determine if the activity complies with the terms and conditions of the NWP.

Several commenters agreed with the proposal to delete the notification requirements for above grade fill in waters of the United States. One commenter recommended expanding notification requirements to include above grade fills in NWPs 3, 12, 14, 21, 31, 39, 40, 42, and 44 and stated that the applicant should submit documentation as to why there is no practicable alternative to the proposed discharge and provide a copy to EPA, F&WS, and NMFS. One commenter stated that a statement of avoidance and minimization should be submitted with NWPs 12, 14, 40, 41, and 42.

The Corps believes it is not necessary for permittees to routinely notify the Corps for above grade fills in waters of the US as long as they are complying with general condition 26. Comments on this issue are further discussed under general condition 26.

One commenter recommended that the review period for NWPs 3, 12, and 33 be amended to 30 days instead of 45 to expedite energy-related projects. One commenter supported the 45-day time frame for review of notification but believed 60 days is more realistic. A couple of commenters requested this condition be amended to require the Corps to issue or deny the NWP within 45 days of receipt of a complete notification and the 45-day timeframe should also apply to the 300-foot stream waiver provision.

The Corps normally does not take the full 45 day time period to verify NWPs. For energy related activities Corps districts will expedite the decision as to whether to verify the activity under an NWP. It is not necessary to make that a permit condition. Corps districts are required to make a decision to verify or deny the NWP within 45 days, or the applicant may proceed. However, this does not apply to waiving the 300 linear foot prohibition for intermittent streams or the verification of NWP 21 or the 500 linear foot limit for NWP 13. In these cases, the applicant may not proceed before receiving written verification. This is to ensure that the district has adequate time to make a satisfactory evaluation before deciding whether to authorize use of an NWP.

One commenter stated that the Corps has amended the language in condition 13(a) without providing notification in the preamble. The March 9, 2000 **Federal Register** stated "where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a pre-construction notification (PCN) as early as possible". The August 9, 2001 notice stated "The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary for the evaluation of the PCN only once". The commenter indicated this change will increase the incentive of permit applicants to withhold relevant information necessary for full evaluation of a PCN and the change must be withdrawn.

The Corps did not intend to propose this change. It was an error. The general condition will be issued with the existing language adopted on March 9, 2000.

One commenter disagreed with the agency coordination threshold of ½ acre and stated that all PCNs should require a 30-day agency coordination to ensure minimal impacts. One commenter stated that simply noting in the record that an agency concern has been considered, without a response to the agency, is not agency coordination and is not full consideration of their comments. Furthermore, the commenter stated that any recommendations that are not adopted, after coordinating a decision with the agency, should be fully documented and become part of the administrative record.

We disagree. The requirement for agency coordination is to fully consider agency comment with no specification to document or respond to the commenting agency, though normally the Corps does respond to commenting agencies when significant concerns are raised. Further, it has been determined in coordination with the other Federal agencies that ½ acre is a satisfactory threshold for required coordination. Coordination does occur with other Federal agencies on a case specific as needed basis.

One commenter recommended that the Corps consider removing the mandatory delineation of special aquatic sites, including wetlands, or at the least adding a reasonable threshold for such documentation to all PCNs. One commenter recommended the addition of NWPs 3, 11, 13, 19, 27, 31, and 36 to the requirement for submittal of delineation of special aquatic sites with the PCN.

We do not believe that we should either increase or decrease the specific activities for which a mandatory delineation is required. We do not believe it is necessary for many NWPs, for example; requiring a delineation for NWPs 3 and 31 would be unnecessary for maintenance activities authorized by these NWPs. Also districts may require a delineation of wetlands (or any other appropriate documentation) in cases where they determine it is necessary to evaluate the impacts of the project or to determine the mitigation requirements.

One commenter disagreed with the requirement to submit information regarding the original design capacities and configurations where maintenance excavation is proposed under NWP 7, (b)(5) because if the maintenance excavation is non-jurisdictional, the applicant should not be required to submit such information, and the Corps should not review non-regulated activities. One commenter recommended that the Corps clarify (b)(16) to state that activities that consist of non-jurisdictional excavation or temporary stockpiling during the excavation process are not included in the compensatory mitigation requirements or in the calculation of acreage of waters lost.

Maintenance excavation activities in section 404-only waters do not require a CWA section 404 permit unless they result in more than incidental fallback. If there are regulated excavation activities that can be authorized under NWP 7, then the applicant will need to provide information necessary for the Corps to evaluate the PCN for compliance with the terms and conditions of the NWP. Non jurisdictional activities should not be considered in mitigation requirements. However, related impacts of the project will be considered when determining if the adverse effects are more than minimal. Also the acreage impacts for directly related excavation activities will be included in calculating the acreage limits for the NWP. The concern addressed by the acreage limit is with the direct effects of the activity. Temporary stockpiling is a regulated activity and is considered for possible mitigation requirements where the impacts are measurable. However, the acreage is not included in calculating the acreage limit because the impacts are temporary.

One commenter recommended that the Corps revise the notification requirement in (b)(10) for NWP 31 to require the applicant to obtain the Corps approval prior to construction for any disposal site within waters of the United States. The commenter stated that the proposed condition requires location of disposal site at time of notification, which is not always an option for long-term maintenance activities.

NWP 31 does not authorize the disposal of the excavated material into waters of the US unless the disposal site is submitted with the PCN. The District Engineer can review a disposal site to assure that it is not in waters of the US or, if it is in a water of the US, to determine if the adverse effects are more than minimal and, if so, disapprove the disposal site.

One commenter recommended that the Corps accept the use of established state agency coordination documents concerning annual work plans as sufficient notification for maintenance activities.

Once a maintenance baseline has been approved, the applicant must then notify the Corps of maintenance activities, either case-specific or generically. The state agency documents you describe may be sufficient, but such a decision would need to be made on a case-by-case basis by the appropriate Corps District Engineer.

One commenter recommended that NWPs 3, and 31 also be added to (b)(5) and a delineation of affected special aquatic sites including wetlands, along with the location of dredge material disposal site, should be provided.

NWP 3 allows for the maintenance of currently serviceable structures and fills, consequently wetlands and other special aquatic site should not be affected by the maintenance activity. However, while this is also true for most NWP 31 activities, NWP 31 also allows the maintenance of unconfined channels that have wetlands in them from time to time. Therefore, (b)(10) does require delineation of special aquatic sites, including wetlands to be included in PCNs for NWP 31. The location of disposal sites for NWP 31 PCNs is required by (b)(10). NWP 3 does not provide for authorization of disposal sites in waters of the US, except for part (ii), which requires that the District Engineer specifically approve any such disposal site under a separate authorization.

One commenter disagreed with the restoration plan requirement in (b)(11) for NWP 33 because excavation is not regulated. The commenter added that the regulated discharge is temporary and the only required restoration should be the removal of the temporary deposit.

The restoration plan must address temporary activities including both filled and excavated areas. If a Corps permit is required for some of the temporary work and the permittee seeks authorization by NWP 33, then the affected waters of the U.S. must be restored by the permittee and a restoration plan submitted to the Corps.

One commenter recommended that the requirement for the submittal of a maintenance plan under (b)(15) be deleted. Excavation in Sec. 404 waters does not required authorization from the Corps. The maintenance plan is to ensure that cyclical maintenance does not cause more than a minimal effect and that cyclical activities only be mitigated for once.

The Corps believes that it is necessary to maintain stormwater management facilities. The Corps also believes that to ensure that the adverse effects are minimal it is necessary that an adequate mitigation plan be developed by the permittee. This requirement provides the necessary assurances that such a necessary maintenance plan is developed.

In the preamble to the August 9, 2001, **Federal Register** notice, the Corps proposed for NWPs 21, 39, 40, 42, and 43, to add language to the notification General Condition 13 from the permit. For all projects using NWP 21 and for projects using NWPs 39, 40, 42, and 43 that propose impacting intermittent stream beds in excess of 300 linear feet, the Corps must be notified and explicit authorization in writing obtained from the Corps before the project can proceed. There were no comments on this proposal. The Corps has added language to General Condition 13 as proposed. This added language does not change any requirement of the NWPs.

The General Condition is adopted as proposed.

14. *Compliance Certification.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change

15. *Use of Multiple Nationwide Permits.* There were no changes proposed to this General Condition. One commenter stated that the use of more than one NWP for a single and complete project is prohibited. One commenter stated that the Corps should include a General NWP condition that precludes the use of multiple NWPs and NWPs in combination with individual permits for multiple Section 10 or 404 activities located in close proximity to one another. The commenter asserted the Corps is in noncompliance with Section 404(e) and NEPA when stacking of NWPs is allowed. One commenter suggested that the District Engineer be authorized to waive the highest specified acreage limit when stacking NWPs, not to exceed the overall minimal impact threshold in order to avoid an individual permit.

We will continue to allow use of multiple NWPs to authorize a single and complete project provided it will result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that allowing use of multiple NWPs is in violation of Section 404(e) or NEPA. We continue to believe that in order to allow the use of multiple NWPs for a single and complete project, it is necessary to not exceed the highest acreage limit of any of the NWPs.

The General Condition is adopted without change.

16. *Water Supply Intakes.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change

17. *Shellfish Beds.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

18. *Suitable Material.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

19. *Mitigation.* The following discussion does not alter or supersede requirements under the section 404(b)(1) Guidelines or guidance applicable to individual permits, such as the 1990 EPA/Department of the Army MOA concerning the determination of mitigation under the Guidelines. The Corps proposed to revise this General Condition to allow a case-by-case waiver of the requirement for one-for-one mitigation of adverse impacts to wetlands. This change is intended to allow Corps Districts to require the mitigation for project impacts that best protects the aquatic environment. In the case of wetland destruction, one-for-one replacement or restoration is often the most environmentally appropriate form of mitigation, and the Corps will continue to require this form of mitigation in the majority of cases. However, the Corps believes the one-for-one acreage requirement as currently written is too restrictive in that it does not allow the Corps to mitigate aquatic impacts to

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streams and other non-wetland aquatic resources.

Proposed Waiver of One-for-One Mitigation Requirement

Numerous commenters opposed the case-by-case waiver of the requirement for one-for-one mitigation of adverse impacts to wetlands. Instead they requested that the Corps maintain one-for-one and/or strengthen existing mitigation requirements. Several commenters stated that wetland loss continues to occur despite the regulatory programs efforts and "no net loss" policy, and that the proposed waiver would allow extreme flexibility in implementing mitigation policy which would be counter to current Federal mitigation guidance and "no net loss". Rather the proposal would further invite net losses of wetlands. As such, many commenters recommended that the Corps require compensation for impacts to wetlands at higher than a one-for-one ratio, or at a minimum, clearly outline the Corps discretion to require greater than one-for-one ratios.

The Corps is committed to the no overall net loss of wetlands goal, and will continue to require more than one for one mitigation for wetland loss in its nationwide permit program. The underlying policy of the Corps, since 1990, has been to offset impacts to wetlands at a one for one ratio on a functional basis. Based on the possibility of failure of mitigation, as pointed out in the recent NRC/NAS Report on the Corps Regulatory Program, the Corps has for many years required more than one for one mitigation on an acreage basis. The proposed change to condition 19 is intended to result in a more ecologically and watershed based approach to mitigation. Wetlands remain one of the most critical ecological assets in most watersheds in the Country, but other vital aquatic ecosystems, such as free-flowing streams, are subject to impacts that must also be offset. The changes to Condition 19 will allow the Corps biologists to make the right decision on mitigation for each project within the watershed context. However, to reinforce its commitment to the no net loss policy, the Corps will also direct its District Offices to ensure that their verified NWPs achieve at least one-for-one mitigation of all wetlands impacts, on an acreage basis for the District as a whole. In documenting compliance with this requirement, districts should not include preservation of existing wetlands in their district-level tally of compensating wetlands mitigation. Preservation, while it may be important for the aquatic environment and may be appropriate in some cases as mitigation, does not compensate for lost wetlands.

The Corps has also slightly modified the wording of paragraph (f) of this general condition from what was proposed to clarify that the requirement to mitigate wetland impacts is not waived only the requirement to provide wetland mitigation. The stream buffers themselves may provide mitigation for wetland impacts. The wording is also revised to clarify that the District Engineer may reduce as well as completely waive the requirement for wetland mitigation for wetland impacts.

One commenter stated that the waiver would conflict with the Corps policy that nationwide permits have only minimal adverse effects on the aquatic environment. Another commenter stated that wetlands offer too many important services to be sacrificed by implementing this waiver. One commenter suggested that guidelines should first be developed that identify the circumstances which warrant the use of a waiver mechanism and outline its proper implementation.

The waiver will not sacrifice wetlands; it will ensure the best mitigation for each permit decision that is made. The Corps cannot establish specific guidelines beyond what we have for waiver of the one for one acreage requirement. The Corps has exceptional biological and ecological expertise in the districts and we trust those professionals to make the proper judgments in each case.

One commenter suggested that the Corps coordinate with regulatory natural resource agencies for out-of-kind mitigation when the one-for-one mitigation requirement is waived.

The Corps 1,150 district employees in the Regulatory Program are predominantly biologists and ecologists. These exceptional professionals have the capability to make the ecological mitigation judgments, and with 40,000 nationwide permit decisions made every year the other agencies do not have the capability to substantively comment on every project.

Many commenters agreed with the proposed waiver of the one-for-one-mitigation requirement, stating it would provide the Corps with increased flexibility when determining appropriate mitigation. One commenter, while agreeing with the proposal, suggested the applicant should be required to justify why a less than one-for-one mitigation is appropriate by clearly articulating why a mitigation area's functions and values are greater than what was lost.

We agree that proper mitigation decisions will be made under the revisions to Condition 19. The Corps will make a decision in writing when the one for one acreage ratio for mitigation will not be met. In most cases, that decision will be based on the applicant's information, however, we do not believe we should require a process that may not in some cases be needed. Applicants should note however that providing sound justification with a waiver request will increase the chances of the waiver being granted.

Vegetated Buffers

Many commenters were opposed to the use of vegetated buffers to mitigate wetland losses. Several stated that allowing vegetated buffers to count as mitigation would be counter to current Federal mitigation guidance and the goal of "no net loss". One commenter suggested the proposal constitutes a major change in mitigation policy by establishing a sort of "ecological trading", allowing the offsetting of impacts to wetlands with compensation through non-wetland environmental improvements. Other commenters stated that this proposal was against Corps policy that nationwide permits have minimal adverse effects on the aquatic environment.

The Corps believes that vegetated buffers are a critical element of the overall aquatic ecosystem in virtually all watersheds. Of course, some arid areas do not have vegetated buffers even in a natural state and the Corps will not require vegetated buffers where they would not naturally occur. However, nationwide this is uncommon. The Corps believes we need to protect open waters better than we have in the past, and vegetated buffers are a critical element of that protection. Many vegetated buffers to open waters are in fact wetlands. Some vegetated buffers are uplands, but are critical to open water protection. The Corps believes in a watershed approach, with the ability of the Corps districts to make the best decision for the aquatic ecosystem and watershed where the permitted impacts will occur. Mitigation, including vegetated buffers is used to ensure that no more than minimal adverse effects on the aquatic environment will occur.

Several commenters indicated that it was inappropriate to suggest that vegetated buffers in uplands could act as compensatory mitigation for the placement of fill in waters of the U.S. A few commenters stated that, as a means of increasing value of mitigation, vegetated buffers are beneficial and are often incorporated into compensatory mitigation plans to offset the adverse effect of an individual permit authorization. However vegetated buffers alone will not fully compensate for wetland loss, do not replace wetland/aquatic environment value and function, and should not be regarded as compensatory mitigation for the placement of fill in waters of the U.S., but instead should be added to the one-for-one mitigation requirement.

The Corps takes a holistic watershed approach to mitigation of impacts to waters of the U.S., which includes impacts to non-wetlands. Vegetated buffers, both upland and wetland are a critical part of that watershed approach. The Corps needs the flexibility to make the best mitigation decision for each watershed.

A few commenters were concerned that vegetated buffers may be used more often than one-for-one wetland mitigation (e.g. restoration, enhancement, and/or creation), supporting a continual loss of wetland habitats. Concerned for cases in which less than one-for-one mitigation of lost wetlands incorporates the establishment and/or preservation of vegetative buffers as part of that mitigation, commenters suggested a careful analysis of the functions and values of the vegetated buffers as compared to the impacted wetlands be performed.

The Corps will use the modified Condition 19 to make the best decision for the watershed where the permitted effects occur. The Corps will continue to require more than one for one mitigation for wetlands, it is just not required for every permit decision, because that does not always make sense for the aquatic environment.

One commenter suggests that functional assessments of mitigation with the purpose of justifying ratios less than one-for-one based on a projected functional boost provided by the buffer is inappropriate. Rather, the Corps should also address functional impacts to wetlands under the permit process and require mitigation for loss of functional value from permitted impacts to vegetated buffers.

The Corps does use a functional basis when requiring mitigation, but since models to assess aquatic ecosystem functions, including but not limited to wetlands, are not yet comprehensive, the decision requires professional judgment. The Corps 1,150 Regulatory Program employees are predominantly biologists and ecologists, so we have the capability to make sound ecological decisions.

One commenter stated the proposed regulations do not require proof that vegetated buffers or other methods of mitigation would replace lost functions and values of an impacted wetland. This commenter added that they were not convinced the Corps would be able to assess lost functions resulting from impacts to particular wetlands or those functions gained by incorporating vegetated buffers.

The Corps makes its mitigation decisions on an aquatic ecological function basis using professional judgment. With thousands of decisions each year many involving less than 0.1 acre of impact, it is not practical, nor a responsible expenditure of resources to require absolute proof that the mitigation will offset the impacts. Programmatically, the Corps will improve its enforcement, and mitigation banks and in lieu fees are an important part of that improved mitigation performance.

One commenter disagreed with the Corps statement regarding the greater effectiveness of vegetated buffers at protecting open waters due to their relative proximity to open waters over those wetland distant to open waters. Instead, the commenter suggests that the relative effectiveness of vegetated buffers and wetlands at protecting open waters depends more on the nature of water flow through an area than on the proximity of the buffer or wetland to the water body.

There is no doubt that vegetated buffers protect open waters in terms of removing non point source water pollution. Vegetated buffers also stabilize the shoreline of open waters and in most cases provide important aquatic habitat such as shading or providing hiding places during high water. The Corps believes that establishing or maintaining existing vegetated buffers to open waters is critical to overall protection of the nations aquatic ecosystems. The Corps agrees, however, that the relative importance of wetlands and vegetated buffers at any particular site is dependent on site-specific factors. This is why Corps field staff must have flexibility to determine appropriate mitigation on a site-specific basis.

One commenter stated that vegetative buffers must not be used in lieu of wetlands mitigation, but there must be a preference for restoring, enhancing, or creating buffers as a component of appropriate mitigation. The commenter further stated that the Corps must require a minimum 100-foot-wide riparian or wetland buffer (instead of the proposed 25 to 50 feet), to be increased as necessary in proportion to the size and shape of waters they surround to obtain the desired performance.

The Corps will take a watershed approach with mitigation, which will include vegetated buffers as a critical element of mitigation. The Corps must be reasonable in the width of the vegetated buffer required. While a wider buffer clearly provides more protection, even a narrow vegetated buffer provides important protection for the aquatic environment. In determining appropriate buffer widths, the Corps must balance environmental protection with what is reasonable given the scope of the project and the level of impacts that need to be mitigated.

One commenter stated that the Corps proposal is counter to Federal policy and Corps guidance that favors mitigation banks in the context of general permitting.

The Corps believes the proposed changes to Condition 19 are consistent with Corps policy. Mitigation banks are one important form of mitigation, but there are many others. The proposed changes will enhance, not limit, the opportunity to use mitigation banks by providing greater flexibility to Corps field staff to determine the most environmentally beneficial mitigation.

One commenter expressed concern that vegetated buffer areas, especially non-jurisdictional habitats, used as mitigation, would not be afforded the same protection by existing laws as mitigation sites in which jurisdictional areas are created, enhanced, restored, or preserved.

Vegetated buffers established or preserved in uplands are subject to the same protection as aquatic areas are through permit conditions. The Corps will generally require that all mitigation, including upland areas that are parts of vegetated buffers, are placed in conservation easements or protected in some other manner.

One commenter recommended that the Corps only consider other forms of mitigation as part of an overall compensatory mitigation requirement once no net loss of function and acreage is obtained, and that a conservation easement or deed restriction be required for all such mitigation.

The Corps will take a holistic watershed approach to mitigation without arbitrarily favoring any type of mitigation. The Corps biological and ecological capability in the districts will be used to make the best mitigation decisions.

A few commenters disputed the appropriateness of the "normal" requirement of upland buffers as compensatory mitigation to open waters since it exceeds the Corps statutory authority to regulate these areas. A few commenters expressed concern that requiring vegetated buffers as mitigation may be invalid where the condition

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bears no relationship to the impacts of the discharge on a particular site.

Vegetated buffers required by the Corps as mitigation on open waters is within the Corps authority because they are providing water quality benefits to the open water areas and often the vegetated buffer provides aquatic habitat such as shading to maintain cool water stream. All mitigation, whether vegetated buffers or wetland mitigation, must be related to the impacts authorized. The Corps views that relationship in the context of the overall aquatic environment on a watershed basis.

One commenter suggested that the Corps' advocacy of the use of vegetated buffers for mitigation of impacts to waters of the U.S. is an abandonment of a long-standing policy of "no net loss" and requirement of in-kind wetlands mitigation, and called for an adequate basis for this change in policy.

The proposed modification to Condition 19 does not change the Corps commitment to no overall net loss of wetlands. The Corps has required no overall net loss of wetlands since the early 1990s and will continue to do so under the revised condition. The changes to Condition 19 simply allow the Corps to make the best mitigation decision on a case-by-case basis from a watershed perspective. Requiring one-for-one mitigation in every single permit does not support a watershed approach to mitigation because it focuses excessively on one type of mitigation. Although the Corps believes that flexibility is needed on a project specific basis to determine the appropriate mitigation, we will continue to ensure that the NWP Program results in no overall net loss of wetlands. On an individual permit basis, the Corps often requires greater than one-for-one mitigation on an acreage basis, due to the value of the replacement acreage, temporal effects and risk factors. As noted above, to further ensure that no net loss is achieved, we are establishing a requirement that all Corps districts must meet an annual goal of at least one-for-one wetlands mitigation on an acreage basis for verified nationwide permit activities within each district for each fiscal year. The Corps will collect information documenting compliance with this requirement and make it available on the internet.

Numerous commenters agreed with eliminating the mandatory one-for-one mitigation requirement to qualify for an NWP, stating that it would provide Corps with increased flexibility in determining mitigation requirements that may be more appropriate and environmentally beneficial. A couple of commenters also favored the proposed waiver because they believe the very low PCN thresholds for the NWPs creates situations where many small projects become subject to review for which one-to-one mitigation would be overly burdensome and impracticable.

The Corps agrees with these comments.

One commenter supported the proposed use of buffers as mitigation, but cautioned the Corps to avoid suggesting any minimum width prescriptions or specific replacement ratios. Another commenter cautioned that, in situations where less than one-for-one mitigation of permanent impacts to wetlands is allowed, and the establishment and/or preservation of vegetative buffers as mitigation is proposed, then a careful analysis must be conducted and include a determination of the function and value of the proposed vegetated buffers as compared to the impacted wetlands. The commenter indicated that determining the width of vegetated buffers is extremely subjective, and that mitigation containing these features should be scrutinized to ensure the vegetated buffers have sufficient width and length to provide habitat in and of themselves, not just for the waters of the U.S. they border. Another commenter stated that alternative mitigation measures, such as vegetated buffers, should be valued and compared to permitted losses only to the degree that they enhance or create wetland functions beyond what would exist without them (*e.g.* a 10-acre buffer placed around a 5-acre wetland would not necessarily offset 10, or even 5 acres, of wetland impacts; rather, if the 5-acre wetland were improved 20 percent in habitat value the buffer would receive credit for mitigating only 1 acre of wetlands impact.)

The Corps must make its mitigation decisions based on the information available and based on the significant knowledge and understanding of the aquatic environment that the district staff of biologists and ecologists possess. The Corps can not always quantify precise offset determinations, and it would not make sense to do so in the nationwide permit program because project specific impacts are generally limited to less than one half acre, and are often one tenth of an acre or less.

A few commenters agreed with using vegetated buffers as mitigation, but opposed using upland buffers as additional compensatory mitigation, suggesting that they are neither a wetland nor aquatic resource, and therefore it is not justifiable to include a requirement of upland vegetated buffers as additional compensatory mitigation. The commenters suggested that if the Corps normally includes a requirement for establishment, maintenance, and legal protection of vegetated buffers, then the total mitigation requirement shall not exceed that necessary for wetland impacts. (*i.e.* if total proposed wetland impacts are ½ acre and one-for-one mitigation is required, then the total amount of mitigation that should be required, inclusive of any upland buffers, should not exceed ½ acre). One commenter suggested that the Corps establish a maximum percentage of overall compensation that "alternative forms" of compensation (such as vegetated buffers) may comprise.

As stated above, the Corps is committed to a holistic watershed approach to mitigation and that cannot be accomplished with rigid quantitative requirements. The Corps regulates the entire aquatic environment, not just wetlands. Mitigation must consider the entire aquatic ecosystem as well. The Corps has and will continue to programmatically require greater than one-for-one acreage of wetland mitigation to account for differences in function and values, temporal losses and potential failure of mitigation. The Corps will continue to require greater than one-for-one acreage mitigation for wetlands programmatically, but some projects should not and will not require such mitigation, because it is not what is best for the aquatic environment.

One commenter stated that upland (riparian) buffers could be used as mitigation for stream or other non-wetland impacts, but should not be allowed to compensate for wetlands. Another commenter stated that the use of upland buffers as compensatory mitigation is acceptable, provided that it is at the option of the permittee and that the amount of land required for mitigation is proportionate to the impacts.

The Corps will require mitigation for permitted impacts based on a watershed approach and what is best for the aquatic ecosystem in that watershed. This approach will often involve a mix of vegetated buffers and other wetland mitigation. In some cases it will involve only one type of mitigation. In all cases, mitigation will be based on what is best for the overall aquatic environment in the particular watershed involved. The Corps always tries to ensure that mitigation requirements are proportionate to impacts, though the areas affected may be greater or less depending on site-specific circumstances.

One commenter cautioned that incorporating vegetated buffers as mitigation measures may prove problematic, especially if a particular organism relies on vegetated buffer habitat that is injurious to another organism using the same aquatic system.

The Corps recognizes this concern. It is one example of why the Corps must use its professional judgment based on a holistic watershed approach to determine appropriate mitigation.

One commenter warned that, vegetated buffers present a promising tool with real benefits to water quality and public resource, but are not always compatible with existing functioning federally authorized flood protection systems. In some instances, they may reduce channel capacities and conflict with maintenance activities; in others, they may improve flow.

The Corps will consider the aquatic environment and the practicability of requiring vegetative buffers. The Corps will not require vegetative buffers where it would have adverse effects on projects such as flood control projects.

Several commenters stated that guidelines and clarification on the appropriate use of non-wetland vegetated buffers as mitigation for impacts to wetlands should be developed—perhaps by the Corps and other appropriate natural resource agencies, or through some form or rulemaking—prior to extending them credit as compensatory mitigation. A few commenters stated that the Corps should develop guidelines to support the need to establish buffers and standards and criteria for determining appropriate buffer types and widths based on intended benefit, adjacent land use, density of vegetative cover, etc., and that this documentation should be put forth for public comment. One commenter stated that the current guidance regarding upland vegetated buffers is lax, suggesting little other than prohibition of using mowed lawns and encouraging use of native vegetation. As such, golf course roughs, where the height of vegetation is actively managed, and areas subject to human disturbance could be proposed as compensatory mitigation for the loss of wetlands. Similarly, landscaped areas of development projects could be proposed as compensatory mitigation as well.

The Corps can not establish detailed guidelines for vegetated buffers on a nationwide basis. No such guidance exists for wetland mitigation either. Such detailed guidance for wetland mitigation would not be sensible just as detailed guidance for vegetated buffers would not make sense. The Corps has adequate protections in the condition to ensure that vegetated buffer mitigation will be properly used by the districts. As stated many times above, the Corps is taking a holistic watershed approach to mitigation which relies on the exceptional expertise of our 1,150 district employees, who are predominantly biologists and ecologists.

Corps Preference for Restoration Over Preservation

Many commenters stated that the preference for restoration of wetland impacts over preservation must be maintained. Several commenters indicated that restoration should be the preferred option, since, for certain, a net loss of wetlands will always occur when preservation is chosen as mitigation. One commenter stated that preservation does not necessarily ensure replacement of functions and values of lost wetlands. A couple of commenters stated that many of the existing wetlands that are appropriate for preservation are already protected by law. Therefore, preservation should only be used in extreme situations, such as when the wetlands are under threat or not afforded protection (isolated wetlands), or when the wetlands to be preserved are large or are of high significance. One commenter suggested that if and when preservation of high quality wetlands is preferred, it should force the project to be reviewed under an individual permit instead of a nationwide permit, allowing the state, the public and other resource agencies to review the proposed project.

The Corps is increasingly taking a holistic watershed approach to mitigation of impacts in our Regulatory Program, including the nationwide permit program. The Corps district experts must have the flexibility in policy to make decisions that support a holistic watershed approach. Preservation is often a very important component of a watershed approach. Some of the most important and high functioning wetlands are potentially subject to many activities that are not regulated by the Corps or any other governmental body. Therefore, absent the protection by preservation of these high value areas through mitigation they will be degraded over time. Restoration is the main method of mitigating impacts to the aquatic environment permitted by the Corps and it will continue to be the primary mitigation approach. The Corps has slightly modified the wording in paragraph (c) of this general condition from what was proposed to clarify that this preference for restoration applies regardless of what wetlands mitigation ratio is required at a specific site.

However, preservation is also a very important tool in the Corps ability to mitigate impacts on a holistic watershed basis. Protection of the aquatic environment through preservation of high value aquatic areas is critical to protecting the nation's aquatic ecosystems. The view that preservation is not appropriate because the areas are not "new" is shortsighted and has proven to be mistaken because of the significant impacts to wetlands that are not protected through preservation, particularly when the preservation includes adjacent uplands and open waters as a preserved matrix of environmental assets that work together to produce high value habitat. However, the Corps recognizes that preservation does not provide new acres and thus cannot compensate for wetlands loss on an acreage basis. As noted above, the Corps will instruct district offices not to include preservation in their documentation of compliance with the minimum one-for-one district level mitigation requirement.

A few commenters stated that preservation of wetlands is preferable to restoration. The evolving emphasis on watershed assessment and protection underscores the need and importance of preserving aquatic ecosystems. One commenter pointed out that if sites are established, and functioning well, it would appear that preserving them should be critical in attempts to maintain the present and future value of wetlands. If vegetated buffers, or the enhancement of uplands, adjoining wetlands are important enough to be considered as mitigation credit, then preservation of existing wetlands adjacent to a mitigation site should be at least similarly credited.

We agree with these commenters to the extent that they identify the importance of a holistic approach to mitigation. However, as noted above, restoration will continue to be the primary mitigation approach, and preservation will not be counted in the district-level one-for-one mitigation requirement.

One commenter opposed the use of preservation of onsite avoided wetlands or wetland buffers as compensatory mitigation since it credits the avoidance of impacts, which is the first step in mitigation sequencing, a second time in the form of compensation for unavoidable impacts. The commenter did state that off-site preservation was acceptable, however, since it did not conflict with the on-site mitigation sequencing process.

Whether the Corps requires preservation and gives project-level mitigation credit for onsite or offsite

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preservation depends on the size, functional value and relationship of the area to other aquatic areas. For example, preservation of an extremely high value wetland on the border of a permitted development site where that high value wetland is part of a larger high value wetland system is a very positive mitigation approach in terms of holistic watershed protection of the aquatic environment, particularly if it increases the chances that the entire system will be preserved. On the other hand, preservation of a small moderate value wetland that will be surrounded by paved parking areas and may lose its hydrology because of overall site development may not make environmental sense, on-site or off-site.

Several commenters stated that there should be no established Federal preference of either restoration or preservation, and both are equally appropriate. One commenter suggested that a preference for restoration over preservation could result in an opportunity to preserve a highly functioning wetland being overlooked. Other commenters urged greater acceptance of preservation when the area to be preserved is of high value, subject to significant impacts, and included in a wider planning framework, and restoration/creation are not feasible and wetlands are in abundance, locally, compared to other important resources. Several of the commenters stated that the decision to use either preservation or restoration (or a combination of the two) should be flexible and left up to the individual Corps Districts to decide on a case-by-case, local or watershed basis, depending on which type would be most appropriate.

We agree with these commenters.

One commenter stated that there should be guidance showing the need for preservation before it is used over any other type of mitigation for wetland losses.

This does not support the holistic watershed approach the Corps is working to establish, and would not be a good use of Corps resources. We want Corps districts to focus their limited resources on what makes sense for the aquatic environment in a particular watershed.

One commenter stated that the use of either preservation or restoration is contrary to the "no net loss" policy and the goal of the CWA to restore and maintain the physical, chemical and biological integrity of the Nations waters. The General Condition should require that project impacts be fully offset unless the applicant demonstrates that full offset is impracticable. At a minimum, mitigation must offset all impacts that are more than minimal, both individually and cumulatively.

The Corps has and will continue to require mitigation that is necessary to reduce project impacts to the minimal adverse effect level. The Corps will continue to meet the no overall net loss goal for wetlands because most wetland mitigation is at a greater than one for one acreage basis to ensure that the functional impacts authorized are offset by the mitigation. In addition, districts will be required to document at least one-for-one mitigation at the district level.

One commenter stated that the preference for restoration over preservation affects the entire Section 404 program and the preamble of the NWPs is not the appropriate forum to discuss and change that policy.

The Corps does not agree that it is inappropriate to discuss this policy, as it relates to the implementation of the NWP program. The Corps is not proposing to change this policy. The preference for restoration over preservation is preserved in the language of paragraph (c) of GC 19.

Mitigation Bonding

Several commenters stated that unless a comparable bonding program exists within the Districts, bonding of mitigation measures under NWPs should be established that obligate a permittee to complete the mitigation, bond the mitigation activity and success period, and allow the Corps to execute the bond in the event of forfeiture.

The Corps is currently reviewing guidance which addresses bonding and otherwise protecting mitigation sites and ensuring they will be successful. The principles in that guidance will apply to the nationwide permit program. Bonding is just one tool available to the Corps in its efforts to ensure that required mitigation is established and is successful.

Other Comments on General Condition 19

Several commenters suggested the Corps should require natural resource agency review of all mitigation plans, especially mitigation proposing the use of vegetated buffers. One commenter requested rewording of General Condition19c to read* * *" unless the District Engineer determines [in consultation with the appropriate natural resource agencies through a PCN coordination process such as that described in General Condition 13,] that some other form of mitigation* * *"

The Corps does not agree. We believe that such a change would result in excessive review that would not result in benefits for the aquatic environment. The commenting agencies do not have the staff necessary to evaluate all such projects either. The Corps has the technical expertise and capability to make these determinations. Where appropriate, the Corps does and will continue to consult with other agencies.

Many commenters stated that numerous studies from around the country, including recent studies conducted by the National Academy of Science and General Accounting Office, showed that mitigation is not fully successful, and does not compensate for wetlands lost to permitted fills. Therefore, reducing mitigation requirements that already aren't working is unsupportable.

The Corps is not reducing the mitigation requirements necessary in the nationwide permit program. The requirement remains that mitigation adequate to ensure no more than minimal adverse effects on the aquatic environment will be required. The Corps agrees with the NRC/NAS report that we must improve the success of mitigation. One method the Corps has used, and will continue to use, to deal with the failure of some mitigation is higher ratios of mitigation for most impacts. Consolidating mitigation into larger sites through mitigation banks, in lieu fees, and other large mitigation areas as well as protecting a matrix of environmental assets in mitigation areas including wetlands, open waters and uplands will also serve to improve mitigation in the long term.

Several commenters indicated that the Corps must improve data collection from mitigated projects and reporting cumulative wetland losses to evaluate and ensure that impacts to waters of the US have been minimized and the goals of the program achieved.

We agree that we need to improve our data collection and tracking of mitigation and will soon bring a new data system on line to facilitate such tracking. By better documenting the mitigation requirements included in NWPs and tracking the fulfillment of these requirements, the Corps will better ensure that the impacts authorized are offset to the level that no more than minimal adverse effects will result.

One commenter stated that the proposal continues to elevate one form of mitigation—compensation—above all others by automatically requiring that type of mitigation in every instance. Thus, the program fails to consider whether avoidance and/or minimization has been sufficiently incorporated into a project to the maximum extent necessary to ensure that adverse effects

to the aquatic environment are minimal. Then, in a gesture toward easing the burden of compensatory mitigation, the Corps allows different types of compensation, such as vegetated buffers, to be used in lieu of providing one-for-one wetlands compensation. The Corps should treat ALL forms of mitigation uniformly, not just all forms of compensation, especially those such as the use of upland buffers which are not subject to regulation or jurisdiction. This omission removed any incentive to incorporate avoidance and minimization efforts. The Corps is urged to remove preferential treatment given to compensatory mitigation, over avoidance and minimization, by deleting all mandatory compensation requirements.

We disagree with these comments because deleting all compensatory mitigation requirements would substantially reduce protection of the aquatic environment by reducing mitigation, much of which is very successful. The Corps will instead take a watershed approach to mitigation, as discussed above.

One commenter stated the acreage of fill placed in waters of the U.S. to construct compensatory mitigation must be included in the calculation of acreage and impacts. These fills should not be discounted, because compensatory mitigation does not always succeed, and can result in the conversion of one type of water of the U.S. to another.

The Corps considers the overall impacts of a proposed project. Fill in waters of the US involved with mitigation projects is very small in volume in essentially all cases. If there were a case where potentially substantial impacts would be involved in the mitigation project the Corps will consider that impact. However, the acreage used to construct compensatory mitigation projects is not counted in the acreage limit of the NWPs.

A few commenters stated that in-kind mitigation must be mandatory for all unavoidable impacts to wetlands, non-wetland aquatic habitats, and terrestrial habitats.

We disagree. The Corps will take a watershed and holistic approach when requiring mitigation.

A few commenters stated that mitigation ratios recommended by EPA Region 4 must be adopted as the absolute minimum ratios for wetland mitigation.

The Corps disagrees with nationwide mandatory ratios on a permit-specific basis although, as noted above, ratios exceeding one-for-one are often required. The underlying requirement for mitigation in the nationwide permit program is that the mitigation reduces the permitted adverse effects on the aquatic environment to the minimal adverse effect level.

A few commenters stated that there should be a requirement for detailed mitigation plans as part of each PCN, which at a minimum identify specific mitigation sites, detailed mitigation development/management plans, assurances against mitigation failure; success criteria, detailed monitoring plans, details of protection afforded to guarantee functions replaced by the mitigation will be protected and maintained in accordance with objectives, and identification of the party responsible for the mitigation.

We believe we have required the proper level of documentation for PCNs submitted to the Corps. If the Corps determines on a case by case basis that additional information is necessary to ensure that any permitted impacts will be offset by mitigation the district can require such information.

Several commenters stated that mitigation buy downs to meet the 404(e)(1) minimal effects requirement should be prohibited in the context of NWPs. A couple of commenters questioned the capability of any type of mitigation to compensate for the complete loss of an aquatic environments. One commenter pointed out that there is significant scientific evidence, the validity of which is recognized by the Corps and other federal agencies,which shows that wetlands mitigation often fails, meets mixed success, or does not replace lost functions/values. Thus, mitigation cannot assure minimal effects. The commenter adds that if minimal effects are not achieved through the use of NWPs, then their use should be prohibited since they cannot satisfy the CWA's requirement of minimal cumulative adverse effects. One commenter suggested that any activities having adverse impacts sufficient to warrant compensatory mitigation be converted to an individual permit. However, another commenter stated that some compensatory mitigation plans which have been reviewed under individual permit public notice were inappropriate for the resources lost, and would not adequately replace lost functions and values, and therefore they see no reason to believe that compensatory mitigation proposed for NWPs—which lacks public review and agency comment—would be any better.

The Corps understands that some mitigation projects fail. We are working to improve the success of mitigation we require. The test for mitigation for adverse effects on the aquatic environment under the nationwide permit program is to ensure no more than minimal adverse effects after considering the required mitigation. For general permits, by regulation, impacts to the aquatic environment are to be avoided to the extent practicable on the project site. These regulations are not being changed. General Condition 19 deals with mitigation when it is required, after impacts to aquatic areas have been avoided to the extent practicable.

One commenter suggested that language regarding compensatory mitigation be narrowed to prevent its use in open water habitats in navigable public waterways. The commenter states that there is an unwarranted assumption that compensatory mitigation can be relied on to compensate for alteration or destruction of naturally occurring aquatic ecosystems, including open waters. The commenter adds that habitats should not be tradeable; each is unique and artificial habitats are not as good as the real thing. Eliminating open water by constructing wetlands or altering the habitat as mitigation can destroy species which are dependent upon open water.

These comments identify one of the many reasons that the Corps is changing its approach in Condition 19 to more effectively allow the Corps expert biologists and ecologists to make project specific decisions on impacts to be authorized and mitigation that will be required.

One commenter suggested that NWPs should require mandatory mitigation for all unavoidable impacts to non-wetland aquatic habitats and to terrestrial habitats since these areas have significant ecological value as do wetlands.

The Corps regulates the aquatic environment not uplands. We may require upland vegetated buffers as mitigation to the extent the vegetated upland buffers to open waters protect or enhance aquatic functions and habitat. The Corps agrees we need to more effectively mitigate impacts permitted to waters other than wetlands. That is precisely why the Corps is modifying Condition 19 to allow flexibility in mitigation decisions that are holistic and take a watershed approach.

One commenter stated that the Corps should emphasize the importance of accurate assessments and expressly indicate whether it has taken into account new data on mitigation methods.

The Corps continually works to improve its mitigation approaches at the Corps district level. The Corps districts are where the local technical expertise

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resides and they continually adjust the program based on new information.

One commenter stated that the Corps should reassert its policy and preference of utilizing mitigation banking versus in-lieu-fee or other types of compensation for mitigation in the context of General permits.

The Corps needs to use all mitigation options in its tool box, including mitigation banks and in lieu fees. These methods are extensively used and will continue to be extensively used because they are effective and simple for the applicant.

One commenter stated that mitigation bankers acknowledge financial considerations and not always ecological considerations in locating mitigation banks. This does not ensure that functions and values lost within a local watershed will be replaced, a fact acknowledged by the Corps in the last version of the NWPs—mitigation banks are usually constructed and maintained by entrepreneurs, who locate mitigation banks in areas where they believe the established credits will sell quickly".

The Corps requires mitigation that will offset the permitted adverse effects on the aquatic environment. The Corps identifies service areas for mitigation banks based on reasonably focusing mitigation in watersheds where impacts are permitted. We will continue to approve mitigation bank service areas in a manner that recognizes the need to offset impacts in the same watershed to the extent practicable. The fact that mitigation banks are designed to be financially successful does not mean that they will not also be ecologically successful. On the contrary, ecological success is a prerequisite for financial success.

One commenter stated that the Corps should prohibit the use of in-lieu-fee mitigation since it does not ensure no net loss of wetlands, and at best may provide some protection for existing wetlands. The time constraints of the review and approval process for NWP's limits adequate analysis of this type of mitigation. In the absence of meaningful resource agency and public review, in-lieu-fee mitigation is not consistent with the goals of the CWA of "restoring/maintaining the chemical, biological * * *"

This commenter appears not to understand in lieu fee programs approved by the Corps. The majority of in lieu fee mitigation involves some type of restoration, creation or enhancement of aquatic areas. Some of the mitigation is preservation, but not all mitigation under in lieu fees involves only preservation. In lieu fee arrangements are getting better as time goes forward. The GAO report that raised concerns about the Corps use of in lieu fees was incomplete in that it limited its in lieu fee program analysis to in lieu fees programs that were in place as of 1997, when the approach was still very new. Substantial improvement has occurred since 1997 in the Corps use of in lieu fees.

One commenter objected to any changes and additions to mitigation requirements after the environmental documents have been completed and a Record of Decision issued, stating that it is a violation of Congress' mandate for streamlining as well as a violation of NEPA and should be prohibited in the permitting process.

The environmental documentation will be finalized as we issue the nationwide permits in final form. No changes to the new permits will occur after that, unless they are revised or reissued following opportunity for public comment.

One commenter indicated that offsite mitigation greatly reduces overall aquatic habitat quality and natural functioning. Mitigated wetlands have been demonstrated time after time to "show a decrease in native plant species diversity", and are "not functionally equivalent to reference sites" in terms of "flood retention, water quality improvement and habitat provision."

The Corps will take a holistic watershed approach to mitigating impacts permitted. Onsite mitigation is typically best for water quality measures including vegetated buffers and stormwater management. However, onsite mitigation for loss of habitat, such as wetlands is usually less preferable to offsite. Moreover, consolidated mitigation such as that in mitigation banks and in lieu fee operations is generally more successful than project specific mitigation. All of these principles are consistent with the findings of the recently issued NRC/NAS report. In fact, the changes to General Condition 19, are intended to facilitate the adoption of some of the report's recommendations, by moving toward a watershed approach.

One commenter objected to the use of in-lieu-fee agreements for compensatory mitigation, especially in areas where land prices are high and in-lieu fees low. Money must sit in an account for many years before any use can be made of it, while the nation suffers temporal loss of wetlands and the in-lieu-fee cannot provide adequate compensation.

The Corps is improving its in lieu fee arrangements to ensure that ecological mitigation will occur within 2 years of accepting funds from permittees.

A commenter stated that mitigation should be required for any length of piping or filling of streams covered by NWP. The US has lost thousands of miles of headwater and streams from the landscape. It is time to recognize the ecological services provided by these ecosystems [in addition to wetland].

The proposed changes to General Condition 19 are specifically designed to improve our ability to consider and properly mitigate impacts to streams. We agree that too often in the past stream impacts may have been overlooked. Decisions on the level of mitigation required by the Corps will be made on a case-by-case basis by the Corps districts.

The General Condition is adopted with the wording clarifications discussed above.

20. *Spawning Areas.* There were no changes proposed to this General Condition. However, one commenter recommended that the statement "important spawning area" should be rewritten to say "spawning areas that support federally-listed or special status fish". Another commenter agreed that this General Condition 20 is acceptable but stated that it would not sufficiently protect the areas intended. This commenter suggested that discharges into spawning areas should be prohibited year round and not just during spawning season. The commenter requested that the second paragraph, which states "Activities that result in the physical destruction of an important spawning area are not authorized" be changed to "Activities that could result in the physical destruction of an important spawning area, up or downstream, are not authorized".

We disagree with these comments. It is not appropriate to narrow this condition to cover only Federally-listed or special status fish. General Condition 20 prohibits the physical destruction of important spawning areas. However, it does allow temporary effects provided they occur outside of the spawning season. We believe this adequately protects such spawning areas and ensures that there will be no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The General Condition is adopted without change.

21. *Management of Water Flows.* The Corps proposed to revise the wording of this General Condition to clarify that normally detailed studies and monitoring would not be required, but may be required in appropriate cases. Several commenters agreed with the proposed clarification. One commenter supported the clarification but believed the Corps is exceeding its authority by regulating water flow and suggested the Corps delete the requirement to maintain preconstruction flow or clarify how compliance with this requirement will be judged. A few commenters opposed the proposed clarification because without flow information it will be hard to determine if the impacts are only minimal to the aquatic environment, including indirect impacts. One commenter recommended that each applicant be required to submit a written description of how the requirements of General Condition 21 will be met. One commenter suggested that General Condition 21 should state that the Corps defers to state and local authorities when local regulations are in place.

Authorized activities or improvements to aquatic systems typically will cause deviation from pre-construction flow conditions. NWPs authorize only those activities that will have no more than minimal adverse effect on the aquatic system including water flows. Typically, well-established design features are included as part of projects without a need for detailed engineering studies. State or local agencies often require these design features. Consequently, we believe that detailed studies and monitoring would not normally be required by this condition. Where appropriate, the Corps will review projects to ensure that design features that address flows are included, such as limited channelization, proper design for culverts, and retention ponds, but generally will not require detailed studies of post-project flow. However, in some cases, detailed studies may be required where there is a potential for substantial impacts. Compliance with state and local flow management requirements, where these exist, is usually sufficient to satisfy this General Condition.

The General Condition is adopted as proposed.

22. *Adverse Effects from Impoundments.* There were no changes proposed to this General Condition. One commenter stated that impacts associated with impoundments result in more than minimal impacts, should be evaluated as an individual permit, and General Condition 22 should be deleted.

We disagree. Some small impoundments do not result in more than minimal impacts. However, where they do result in more than minimal adverse effects to the aquatic environment, individually or cumulatively, an individual permit will be required.

The General Condition is adopted without change.

23. *Waterfowl Breeding Areas.* There were no changes proposed to this General Condition. Two commenters suggested this condition be amended to prohibit discharges into breeding areas for migratory waterfowl as well as other migratory birds.

The Corps believes this would place an unreasonable and overly restrictive limitation on this NWP and that the condition, as worded, provides sufficient protection of aquatic resources.

The General Condition is adopted without change.

24. *Removal of Temporary Fills.* There were no changes proposed to this General Condition. One commenter suggested this condition be amended to require any temporary fills be removed in their entirety and affected areas returned to their preexisting elevations immediately upon removal of the fill.

The condition as stated requires that the affected area be returned to preexisting elevation concurrent with the removal of the fill. We do not agree that this condition should require immediate restoration in all cases. Corps districts can add a time period for when the restoration to preexisting elevations should take place, when necessary.

The General Condition is adopted without change.

25. *Designated Critical Resource Waters.* There were no changes proposed to this General Condition. One commenter in favor of General Condition 25 suggested it be amended to include "source waters used for drinking water or ground water recharge" in the definition of "critical resource waters". The commenter added that there should be no provision for discretionary authority for discharges of dredged or fill material into designated critical resource waters or wetlands within the NWP program.

Concerns regarding impacts to sources for drinking water and ground water recharge are more appropriately addressed through regional conditioning of the NWPs or case-specific review of PCNs for specific and identified waters. Division engineers can regionally condition the NWPs to prohibit or limit their use in such high value waters. District engineers should continue to exercise discretionary authority and require individual permits for activities proposed in such valuable waters when they will result in more than minimal adverse effects on the aquatic environment.

One commenter recommended that the Corps exempt utility activities within designated critical resource waters affecting ½ acre or less from the prohibition in General Condition 25 because utility projects have only minimal impacts and should be allowed under NWP 12 without requirement of notification or consultation.

While utility line activities that comply with NWP 12 normally do have no more than minimal adverse effect on the aquatic environment, individually and cumulatively, we remain concerned that this will often not be the case in designated critical resource waters. Therefore, unless there is evidence to the contrary, we believe that the restriction on NWP 12 should remain.

One commenter recommended the title of General Condition 25 be changed to "Critical Resource Waters". The commenter also recommended that the condition be changed to read "Discharges within or affecting Critical Resource Waters, including wetlands adjacent to those waters, are not authorized under the NWP program except as specified in National Wild and Scenic Rivers, provided that the activity complies with General Condition 7".

The Corps does not agree with the suggested title change. In order to apply this condition to critical waters those waters need to be designated so the Corps and the public know where the condition is applicable. The Corps continues to believe that an activity can occur in designated critical habitat if it is compliance with the Endangered Species Act.

The General Condition is adopted without change.

26. *Fills Within the 100-year Floodplain.*

The Corps proposed to delete the "notification" requirement, to delete the requirement to document that the project meets Federal Emergency Management Agency (FEMA) approved requirements and to modify the condition to require that all projects authorized by the NWPs must comply with any applicable FEMA approved state or local floodplain management requirements. In addition, we proposed to remove the prohibitions in paragraphs 26(a) and 26(b) for NWPs 12, 14, and 29, and the prohibition in 26(b) for NWP 43. We also requested comment on allowing projects to proceed under this condition below the headwaters where the project provides additional flood storage.

Many commenters supported the Corps proposal to remove the notification requirement and the requirement to document that the project meets FEMA approved requirements for fills within the 100-year floodplain. One commenter stated that this revision would reduce

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redundancy since they must comply with E.O. 11988 for all structures associated with roadway construction and routinely provide documentation to federal and state agencies for review. A few commenters stated that the Corps is beyond its statutory authority and the existing documentation requirements have done nothing to affect compliance with FEMA approved floodplain management requirements. One commenter recommended that the Corps delete the notification requirement for NWP 12.

The Corps continues to believe that the notification should be removed from this condition. We agree that this change would reduce some paper work redundancy at various levels of government while retaining the restrictions on floodplain development. We agree that the notification requirement for NWPs under this condition, including NWP 12, should be removed.

Many commenters objected to the change. One commenter stated that documenting compliance with FEMA approved requirements is very important and strong motivation for ensuring that projects meet local floodplain regulations.

The Corps has found that requiring applicants to document that they have met FEMA approved requirements has done little to change or enhance compliance with these requirements. We believe that a General Condition clearly requiring that ALL permittees comply with FEMA approved requirements will be just as effective.

One commenter stated that the Corps added additional wording without providing proper notice in the preamble of the notice and failed to provide the legally required explanation for their action. Specifically, the first sentence of the current General Condition 26 states that, "For purposes of this General Condition, 100-year floodplains will be identified through Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps", and the first sentence of proposed General Condition 26 states that, "For purposes of this General Condition, 100-year floodplains will be identified through the *existing* Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

The word "existing" was addressed and discussed in the preamble of the March 9, 2000, NWPs. The word "existing" was placed in the proposed NWPs to clarify questions raised by Corps personnel and the public.

One commenter stated that the Corps should not rely on often out-of-date and inaccurate floodplain maps and suggested that General Condition 26 should apply to all 100-year floodplains, including those not mapped by FEMA. One commenter requested clarification where no FEMA floodplain maps exist. One commenter suggested that where no FEMA maps exist, permits should require applicants to obtain a determination from a registered hydrologist that their project is not within the 100-year floodplain.

To effectively implement the requirements of this General Condition and to be consistent with other Federal programs, 100-year floodplains will be identified through the latest Flood Insurance Rate Maps (FIRMs) published by FEMA or FEMA-approved local floodplain maps. We believe that these maps are adequate for the purposes of this General Condition. Further, utilizing existing FIRMs and FEMA-approved local floodplain maps eliminates the additional burdens on local governments or landowners that existed in the proposed condition. If there are no FIRMs or FEMA-approved local floodplain maps available for the area where the proposed work is located, then the requirements of this General Condition do not apply. In such cases, the Corps will still consider the impacts of proposed projects through the PCN review process. In addition, we believe that the prospective permittee should not routinely be required to incur the cost of having a licensed professional engineer or hydrologist certify whether or not the proposed work is within a 100-year floodplain, particularly considering the very small scale of many permitted projects. Where appropriate, the District Engineer can require additional documentation on a case-by-case basis.

Several commenters agreed with the Corps proposal allowing DE's the discretion to approve projects in the floodplain below the headwaters where the project could improve flood storage. One commenter agreed provided the project complies with FEMA approved requirements. One commenter stated that floodplains are the best sites for creating stormwater management facilities. One commenter agreed and stated that these types of activities and facilities authorized under NWP 43 increase floodplain capacity. One commenter suggested that if NWP 43 is not removed from part (b) of General Condition 26, the DE should be authorized to waive this restriction on a project specific basis. One commenter requested that the Corps define increased flood storage. One commenter agreed with the Corps observation that some activities authorized by NWP 39, 40, and 42–44 provide additional flood storage capacity and recommends that such projects below the head waters should be allowed to proceed even if they result in permanent above grade fills.

The Corps has decided not to make this change at this time. We need to consider the specific language that would be needed to effectively implement this option. If we can develop acceptable language, we will consider proposing such a provision for public notice and comment.

A dozen or so commenters objected to the Corps proposal to remove NWP43 from part (b) of General Condition 26. A couple of commenters stated that the proposal could result in unacceptable threats to life and property. One commenter stated additional case-by-case review will increase workload. The commenter requested our rationale for considering that NWP 43 projects such as golf courses could provide additional flood storage. One commenter cited that other public interest factors should be evaluated, which highlights the need for completing a comprehensive PEIS. One commenter stated that the change was made without discussing it in the preamble and with no explanation supported by substantial evidence. This commenter requested that the Corps place NWP 43 back into part b of General Condition 26. One commenter stated that while providing additional flood storage is generally beneficial, there may be situations where such actions could cause adverse hydraulic or other impacts on the floodplain and increase risk of damage to existing floodplain properties. The commenter suggests that the Corps allow discretion on these projects only if the action is in furtherance of a local stormwater or watershed plan that has already assessed the hydrologic and hydraulic and other impacts of the action. One commenter stated the prohibitions of General Condition 26(a) and (b) do not allow for NWP 43 to be authorized in a floodplain but does allow projects to be authorized in a floodway. The commenter requested further clarification and explanation.

We are keeping the prohibition on the of NWP 43 in the floodplain below the headwaters. However, allowing NWP 43 to be used for projects above the headwaters but keeping them out of the floodway would be counterproductive. We believe that above the headwaters the only feasible alternative will often be to place them in the floodway. General Condition requires that the project avoid and minimize impacts to

waters. For stormwater management facilities this means keeping them out of the waters and the floodway, if practicable. Since the purpose of stormwater management facilities is to minimize flooding impacts, when they must be located in the floodway, there is no value added to the aquatic environment by requiring a more costly and lengthy individual permit process.

One commenter suggested that parts (a) and (b) of General Condition 26 should be removed because the requirements in pact (c) that the applicant must comply would be a sufficient safeguard. A few commenters stated that General Condition 26 should be removed because it is a duplication of activities regulated by local floodplain administrators. One commenter stated that the 100-year floodplain restrictions have increased the time required for reviewing small projects and leave the Corps less time and resources to focus on projects that may have significant impacts.

We continue to believe that the NWPs listed in General Condition 26(a) and (b) need to be restricted in the flood plain. This provides an added measure of protection of floodplains beyond that in paragraph 26(c). There has been some increase in workload due to the general condition. We believe that the adopted modifications to this General Condition will reduce that workload somewhat, which will allow the Corps to focus those resources on areas where the Corps can provide added protection to the aquatic environment.

One commenter stated that General Condition 26 is unnecessary and duplicative of existing FEMA requirements and would like the Corps to provide any data to show any correlation between wetlands loss and flooding. One commenter suggested that the Corps delete General Condition 26 for all permits and retain the flexibility to authorize all projects resulting in minimal adverse effects to proceed under NWPs, regardless of where those waters are located within the landscape. The same commenter recommended that any project located within a floodplain that meets FEMA requirements and the minimal impact test should be allowed to proceed under a NWP. One commenter stated that General Condition 26 is redundant and believes that the ban on permanent fills should not extend to all waters, specifically ephemeral streams above headwaters.

We agree that we are using the FEMA requirements that are applied to flood insurance programs for projects that occur in the flood plain. To this extent General Condition 26 is somewhat duplicative with that program. However, we believe that General Condition 26 plays an important role in reinforcing the FEMA program to minimize impacts to flood plains.

Several commenters objected to the changes to General Condition 26 and some commenters requested that the Corps retain General Condition 26 without any changes. A couple of commenters stated that the Corps must consider other aspects of flood plains such as water quality, ground water recharge, fish, wildlife, plant resources, and open space. Several commenters objected to development within 100-year flood plain. A couple of commenters objected to development within the floodplain. One commenter stated that the proposal would no longer discourage above grade fills with the floodplain. One commenter suggested that NWPs should not be used in counties designated as federal flood hazard areas at least once in the past 10 years. One commenter objected to the use of NWP 39, 40, 42, 43, and 44 within the 100-year floodplain. One commenter suggested that NWPs located within a floodplain should be required to demonstrate that the project is essential and has no alternative, the public should be able to comment on these types of projects, and they should be reviewed as an individual permit. One commenter stated that FEMA approved requirements are inadequate in many locations. A hand full of commenters suggested that the Corps should not allow the use of expedited permits for any filling activities in the entire 100-year floodplain.

We are very concerned with the loss of life and property resulting from unwise development in the floodplain. The Corps has recently advocated the strengthening of floodplain policy and the use of non-structural measures to reduce flood damages. We believe that the changes to the NWP program published today and two years ago will play an important role in reducing damages associated with development in the floodplain. Specifically, we are now requiring that ALL projects comply with FEMA approved state and local floodplain management requirements. We will monitor carefully the effectiveness of the new floodplain condition to ensure that it has the intended impact on reducing floodplain development.

A couple of commenters agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12, 14, and 29. One commenter suggested that part (b) of General Condition 26 should be changed to allow the use of NWP 39, 40, 42, or 43 with a PCN requirement. A few commenters suggested that the Corps retain prohibitions of General Condition 26 (a) and (b) for NWPs 12, 14, 29. One commenter objected to removing the prohibitions because it will increase damage and destruction of aquatic habitat and should not be permitted. A few commenters agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12 and 14. One commenter recommended that the prohibitions of General Condition 26 (a) and (b) should be retained for NWP 29 because local FEMA authorizes can come under tremendous pressure to stretch the regulations for certain projects. One commenter agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12 but wants to keep the prohibitions for NWP 14 & 29. The commenter stated that homes and other structures create a potential for increased downstream flooding due to floodplain storage capacity and transmission line projects occupy very little volume of the 100-year floodplain and would have only a minimal effect on floodplain storage capacity. One commenter suggested reducing the PCN requirements and raising the acreage thresholds for NWP 12. Numerous commenters objected to the removal of the prohibitions of General Condition 26(a) and 26(b) from NWP 29. A couple of commenters objected because it could result in unacceptable threats to life and property. A couple of commenters objected because it will have long-term negative consequences, including the potential to heighten downstream flooding. One commenter stated that the removal will make it easier to build homes and developments in floodplains, will place families at greater risk, and cost taxpayers for the inevitable cycle of flooding and rebuilding. A couple of commenters suggested that NWP 12 and 29, in light of the requirements of General Condition 21, continue to be subject to all of the limitations in General Condition 26. Given that these permits are subject to General Condition 21, the commenters stated concerns that improper use of these permits could adversely impact flooding, because linear projects are likely to obstruct flood flows while single-family housing can result in cumulative losses of flood storage. Both commenters stated that if the Corps removes the prohibition of General Condition 26(a) and (b) from NWP 12 and 29, the Corps should closely monitor activities authorized under these permits over time to ensure

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that cumulative impacts on flooding are in fact minimal.

The Corps believes that it is appropriate to remove NWPs 12, 14 and 29 from the prohibition below headwaters and retain the prohibition for NWPs 39, 40, 42, 43, and 44. The permanent above grade fill authorized by these NWPs are small and do not occur very often especially in the same watershed. Furthermore, these activities must comply with the applicable FEMA approved requirements. We believe that activities authorized by these NWPs that are in full compliance with FEMA approved requirements will have no more than minimal impacts on the flood plain.

The General Condition is adopted as proposed.

27. *Construction Period.*

We proposed a new General Condition for activities for which the Corps has received notification and a construction schedule has been reviewed, and verification issued by the Corps. The condition will allow the Corps to establish project completion dates beyond the expiration of the NWPs.

Several commenters stated that they are in favor of this new condition. Some commenters suggested that this condition be applicable to all permit authorizations that are currently in effect including activities, which were authorized under NWP 26 and are still under the grandfather rule, and the District Engineer should be urged to authorize extensions providing conditions have not changed substantially. One commenter in favor of General Condition 27 requested that the Corps revise the condition to have a definite extension period and remove the language "reasonable period". One commenter in favor of General Condition 27 suggested that it be amended specifically to include an extension of the completion date for multi-phase linear transportation projects that have been verified and the extension request should be submitted 30 days prior to the previously approved completion date. One commenter suggested that the life of the permit be extended instead of adopting General Condition 27. One commenter stated that General Condition 27 will reduce protection for listed species and critical habitat. Two commenters suggested that there is no need to extend an NWP beyond the current expiration date because the permittee is offered sufficient time within the current time parameters to complete an authorized project. Two commenters stated that General Condition 27 violates the terms and conditions of the Clean Water Act and this condition would establish National policy on what is considered a reasonable timeframe to complete a minimal impact activity. One commenter recommended that the permit be modified to change the extension date of those activities not verified by the Corps from 12 months to 3 months and that all future projects be verified by the Corps.

The NWPs authorize many activities that have no more than minimal adverse effects on the aquatic environment and generally involve projects that need a relatively short period for construction. For some projects, obtaining a Corps permit is one of the many steps necessary to complete that project. It may be two, three or more years after obtaining the Corps permit before the work can be completed. Under the existing NWPs, if such projects obtain a Corps NWP verification near the expiration date of the NWP, the permittee can not necessarily rely on that permit to continue in effect through the lengthy and costly process of developing and planning the project. This causes uncertainty regarding the NWP authorization for the project because the construction phase was not completed before the NWP authorization expired. Many logistical issues may delay construction projects sometimes for considerable periods. We believe that the district office that is reviewing the project is best able to determine a reasonable time to complete the work. Projects will vary in the amount of time it takes to complete the activity. We believe that general condition 11 will ensure that NWP authorized activities will comply with the Endangered Species Act. The Crops is not proposing to change the completion period for unverified NWP activities.

The General Condition is adopted as proposed.

Definitions

There were no comments on the definitions not listed below. There were no changes proposed to those definitions. Those definitions are adopted without change.

Floodway. There were no changes proposed to this definition. One commenter believes that the definition of floodways is very broad.

The Corps is using the definition of flood way as it is determined by the Federal Emergency Management Agency for the purposes of the national flood insurance program. This is the standard that is most used by Federal agencies for compliance with Executive Order 11988, Floodplain Management. It is the definition of the term that is used in general condition 26 of the NWPs. The definition is adopted without change.

Independent Utility. There were no changes proposed to this definition. One commenter said that the definition of the term "independent utility" should exclude highway projects, because a single project within the limits of the particular logical termini may need to be reviewed and authorized under the same NWP multiple times.

We do not agree that the definition of this term should exclude highway projects. The Corps issues permits for a highway to cross a waterbody not for the highway itself. Normally the separate crossings will have independent utility. Only in rare circumstances would a highway project be considered a single and complete project as discussed in Corps regulations at 33 CFR 330. The terms and conditions of the NWPs, as well as the PCN process and the ability of district engineers to exercise discretionary authority, will ensure that highway projects authorized by NWPs, such as NWP 14, result in minimal adverse effects on the aquatic environment. The definition is adopted without change.

Loss of waters of the US. The Corps proposed to clarify this definition, consistent with the explanation provided in the preamble to the March 9, 2000, NWPs **Federal Register** notice, which reflects the current practice for measuring the acreage and linear foot impacts for determining compliance with the threshold limits of the NWPs. In other words, this clarification does not change the current application of this term.

One commenter noted that the Corps proposed to change the definition of "loss of waters of the US" without discussing the proposed change in preamble of the August 9, 2001, **Federal Register** notice. The commenter suggested that the definition remain as defined in the March 9, 2000, **Federal Register** notice that announced the issuance of new and modified NWPs to replace NWP 26. The definition in the March 9, 2000, notice stated that "* * * the loss of stream bed includes the linear feet of stream bed that is filled or excavated." The commenter suggested explicitly including perennial, intermittent, and ephemeral reaches in this definition. One commenter stated that the proposed change to limit the definition of "loss of waters of the US" to perennial or intermittent stream could weaken protection for ephemeral streams.

The Corps believes that it is necessary to clarify, that for determining the acreage and linear thresholds for the NWPs, ephemeral waters and streams

are not included in the measurement. This was previously explained on page 12881 of the March 9, 2000, preamble of the NWPs, but not included in the permit language. We now believe that it is important to include this language in the formal definition to avoid the confusion that was created by having this information in a Preamble discussion only and not in the definition itself. However, the Corps had proposed modifying language that we now believe did not fully and clearly address the issue. Therefore we are retaining the current language of this definition, but adding a new sentence at the end of the definition. The new sentence will clearly state that for measuring the threshold limitation only will we not include impacts to ephemeral waters. As with the proposed change, the new sentence will not change the current application of this term.

Note that in excluding ephemeral streams from the definition of "Loss of Waters of the US" for the purposes of determining compliance with NWP acreage and linear foot limitations, we are not suggesting that ephemeral streams are not jurisdictional waters under the Clean Water Act.

One commenter requested clarification concerning the placement of box culverts and the definition of "loss of the water of the US". This commenter said that if the placement of a culvert in waters of the US does not change the bottom elevation, then the activity should not be considered to result in a loss of waters of the US.

The placement of a culvert in waters of the United States would be considered a loss of waters of the United States, even if the activity would not result in a change in the bottom elevation. The definition of the term "loss of waters of the US" includes activities that change the use of the waterbody. The placement of a culvert in a stream or other water of the United States changes the use of that waterbody, and therefore the area changed by the installation of the culvert would be considered when determining whether the proposed work exceeded the acreage limit of an NWP.

The definition is adopted with the change discussed above.

Minimal effects. The Corps did not propose to define this term. Several commenters said that the term "minimal effects" should be defined. One commenter requested that the Corps develop an evaluation criteria for determining when an activity results in more than minimal impacts.

We maintain our position that the term "minimal effects", as used in the context of the NWP program, cannot be simply defined. Aquatic resource functions and values vary considerably across the country, and the minimal adverse effects criterion for general permit must be subjectively applied by district engineers. Site-specific factors, such as the quality of waters that may be impacted by the proposed work, the functions and values of those waters, the geographic setting, and other factors must be considered when determining whether a particular activity results in minimal adverse effects on the aquatic environment. Further, in order to adopt such a term the Corps would have to publish a proposed definition for public notice and comment. A definition of this term is not being adopted.

Open water. There were no changes proposed to this definition. One commenter stated that the definition of the term "open water" should be refined. This commenter said that sparsely vegetated areas of obligate emergent vegetation still meet the definition of a wetland and that vegetated shallows are special aquatic sites, such as seagrass beds. Sparsely vegetated waters inhabited by emergent vegetation may be identified as wetlands, provided the area meets the criteria required by the *1987 Corps of Engineers Wetlands Delineation Manual* (Technical Report Y–87–1) and associated guidance. Vegetated waters inhabited by non-emergent vegetation, such as beds of submersed aquatic vegetation often found in estuaries, lakes, and ponds, are considered open waters for the purpose of the NWP program.

The definition is adopted without change.

Mechanized Land Clearing. The Corps did not propose to define this term. One commenter stated that the term "mechanized land clearing" is not defined in the "Definitions" section of the NWPs and recommends that the Corps adds a definition for this term.

We do not agree that it is necessary to include a definition of the term "mechanized land clearing" in the NWPs. Matters related to mechanized landclearing have been most recently addressed in the changes to 33 CFR 323.2 that were published in the January 17, 2001, issue of the **Federal Register** (66 FR 4550). A definition of this term is not being adopted.

Stream Definitions. There were no changes proposed to these definitions. One commenter said that the definitions of ephemeral and intermittent streams do not address streams that may flow for longer periods due to snowmelt, artificial discharges, or other water sources beside groundwater and precipitation. This commenter also suggested that artificial water discharges should not be used for the definitions of ephemeral and intermittent streams and if a water course is naturally ephemeral and a water treatment plant outfall is constructed, the watercourse should continue to be defined as ephemeral for Section 404 purposes.

When determining whether a particular stream segment is perennial, intermittent, or ephemeral, district engineers should consider the source of hydrology and the normal circumstance of that hydrology. They will make these determinations on a case-by-case basis. We believe that these definitions are sufficient for the Corps Regulatory Program. The stream definitions are adopted without change.

Executive Order 13212—Energy-related Projects Issues

One commenter indicated that NWPs have already been designed to expedite permit processing and any new energy related projects (i.e. drilling oil in the Arctic National Wildlife Refuge, construction of new nuclear power plants, or electric power generation dams) not covered by existing NWPs should receive full consideration under the National Environmental Policy Act (Act) and not be authorized by NWPs. One commenter said that states have provisions similar to Executive Order 13212 and this commenter believes that the current coordination process and the expedited review process provided by the NWPs are sufficient. One commenter asserted that the expiration of NWP 26 reduced the ability of the Corps to efficiently authorize energy-related projects. This commenter suggested that other NWPs be amended to expedite energy-related projects or revisit the development of a regional permit for such activities.

President George W. Bush signed Executive Order 13212 (66 FR 28357–28358, May 22, 2001) on May 18, 2001, directing new policy actions to expedite the increased supply and availability of energy to our Nation. This Executive Order directs all agencies to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase energy production, transmission, or conservation, while maintaining protection of the environment. We believe that the NWP program provides an opportunity to expeditiously authorize energy-related activities that have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Energy related projects that have more than minimal individual and cumulative

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adverse effects on the aquatic environment cannot be authorized by NWPs and will be expeditiously reviewed under the individual permit process.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Statement of Energy Effects)

The NWP Program is designed to regulate certain activities having no more than minimal adverse effects with little, if any, delay or paperwork. NWPs allow smaller, repetitive, low impact projects with no more than minimal adverse effects on the aquatic environment, to be reviewed and authorized in a shorter period than larger complex projects that require an Individual Permit review. Many energy related projects, such as petroleum pipelines and electric utility lines, are expeditiously authorized by Nationwide Permits. The Corps is adopting changes to the Nationwide Permits that will maintain the expedited process for these energy related projects. Therefore, the Corps concludes that the proposed NWPs will not significantly affect the supply, distribution, and use of energy and fully complies with Executive Order 13211.

Regional Conditioning of Nationwide Permits

Concurrent with this **Federal Register** notice, District Engineers are issuing local public notices. In addition to the changes to some NWPs and NWP conditions required by the Chief of Engineers, the Division and District Engineers may propose regional conditions or propose revocation of NWP authorization for all, some, or portions of the NWPs. Regional conditions may also be required by state Section 401 water quality certification or for state coastal zone consistency. District engineers will announce regional conditions or revocations by issuing local public notices. Information on regional conditions and revocation can be obtained from the appropriate District Engineer, as indicated below. Furthermore, this and additional information can be obtained on the internet at *http://www.usace.army.mil/where.html#State* by clicking on the appropriate District office.

Alabama

Mobile District Engineer, ATTN: CESAM–OP–S, 109 St. Joseph Street, Mobile, AL 36602–3630

Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 532711, Los Angeles, CA 90053–2325

Arkansas

Little Rock District Engineer, ATTN: CESWL–PR–R, P.O. Box 867, Little Rock, AR 72203–0867

California

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922

Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435

Connecticut

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Delaware

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390

Florida

Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Georgia

Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889

Hawaii

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Idaho

Walla Walla District Engineer, ATTN: CENWW–OD–RF, 210 N. Third Avenue, Walla Walla, WA 99362–1876

Illinois

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004

Indiana

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059

Iowa

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004

Kansas

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Kentucky

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059

Louisiana

New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267

Maine

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Maryland

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Massachusetts

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Michigan

Detroit District Engineer, ATTN: CELRE–RG, P.O. Box 1027, Detroit, MI 48231–1027

Minnesota

St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Mississippi

Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435

Missouri

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Montana

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Nebraska

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Nevada

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922

New Hampshire

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

New Jersey

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390

New Mexico

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435

New York

New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–0090

North Carolina

Wilmington District Engineer, ATTN: CESAW–RG, P.O. Box 1890, Wilmington, NC 28402–1890

North Dakota

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Ohio

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Oklahoma

Tulsa District Engineer, ATTN: CESWT—PE–R, 1645 S. 101st East Ave, Tulsa, OK 74128–4609

Oregon

Portland District Engineer, ATTN: CENWP–PE–G, P.O. Box 2946, Portland, OR 97208–2946

Pennsylvania

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Rhode Island

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

South Carolina

Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919

South Dakota

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Tennessee

Nashville District Engineer, ATTN: CELRN–OP–F, P.O. Box 1070, Nashville, TN 37202–1070

Texas

Ft. Worth District Engineer, ATTN: CESWF–PER–R, P.O. Box 17300, Ft. Worth, TX 76102–0300

Utah

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, CA 95814–2922

Vermont

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Virginia

Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096

Washington

Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–2255

West Virginia

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Wisconsin

St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Wyoming

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

District of Columbia

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Pacific Territories (American Samoa, Guam, & Commonwealth of the Northern Mariana Islands)

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Puerto Rico & Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Dated: January 4, 2002.

Approved:

Robert H. Griffin,

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Nationwide Permits, Conditions, Further Information, and Definitions

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B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and Regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (USCG) (See 33 CFR, chapter I, subchapter C part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to navigable water of the US has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes.

This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. (Sections 10 and 404)

6. *Survey Activities.* Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the CWA. (Sections 10 and 404)

7. *Outfall Structures and Maintenance.* Activities related to:

(i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and

(ii) Maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

8. *Oil and Gas Structures.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the DOI, Minerals Management Service (MMS). Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the US as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the US, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the US, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½-acre of non-tidal waters of the US.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than ½-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and

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elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the US, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph (i) through (iv) may not exceed a total of ½-acre loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US even if there is no associated discharge of dredged or fill material (See 33 CFR part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than ⅒-acre of waters of the US; or

(f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet.

(g) Permanent access roads constructed in waters of the US with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the USCG pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the US (*i.e.*, Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

a. No material is placed more than the minimum needed for erosion protection;

b. The bank stabilization activity is less than 500 feet in length;

c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;

d. No material is placed in any special aquatic site, including wetlands;

e. No material is of the type, or in placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;

f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "*Notification*" General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than ½-acre of waters of the US;

(2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than ⅓-acre of waters of the US.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than ⅒-acre of waters of the US; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The *notification* must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the *notification* must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (*i.e.*, the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the USCG as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer in accordance with the "Notification" General Condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

a. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

b. The discharge, including any excavated area, will not cause the loss of more than ⅒-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;

c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the US (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)). (Sections 10 and 404)

20. *Oil Spill Cleanup.* Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the DOI, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404. (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-

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made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" General Condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 *et seq.*), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

24. *State Administered Section 404 Program.* Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by section 154 of Pub. L. 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)). (Section 10)

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a Section 10 permit if located in navigable waters of the US. (Section 404)

26. [Reserved]

27. *Stream and Wetland Restoration Activities.* Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) *The activity is conducted on:*

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) *Notification:* For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the US is authorized by this NWP. (Section 10)

29. *Single-family Housing.* Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than ¼-acre of non-tidal waters of the US, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of ¼-acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14 or NWP 18, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership." (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

31. *Maintenance of Existing Flood Control Facilities.* Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that

(i) were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed, or

(ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)).

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification may be for activity-specific

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maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP can not be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This permit does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate. (Sections 10 and 404)

32. *Completed Enforcement Actions.* Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the CWA, provided that:

a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;

b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the U.S. under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

For either (i), (ii) or (iii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6 (d)(2) and (e). (Sections 10 and 404)

33. *Temporary Construction, Access and Dewatering.* Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources.

Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable.). (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the U.S., including wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,

c. The activity does not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid. (Section 404)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps provided:

a. The discharge into waters of the U.S. does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);

b. The boat ramp does not exceed 20 feet in width;

c. The base material is crushed stone, gravel or other suitable material;

d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

e. No material is placed in special aquatic sites, including wetlands.

Another NWP, Regional General Permit, or Individual Permit may authorize dredging to provide access to the boat ramp after obtaining a Section 10 if located in navigable waters of the U.S. (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or

b. The USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or

c. The DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under section 404 of the CWA or section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

39. *Residential, Commercial, and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than ½-acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than ⅒-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or

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(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or

(3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10-acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of 1/10-acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., 1/12-acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., 1/12-acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (i) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities. This is more than the acreage limit for NWP 39 impacts to waters of the US (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2-acre, see General Condition 15).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed 1/2-acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs).

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;

(3) The permittee must have NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3-acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g. 1/3-acre of emergent wetland on a farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10-acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the US; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; and

d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer in accordance with the "Notification" General Condition 13; and

e. The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the 1/2-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of 1/2-acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed 1/2-acre (see General Condition 15). (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity. Nor can it expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the US). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13 if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the US, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. In general, this NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are generally not waters of the US, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the US; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 for discharges exceeding 300 linear feet of impact of intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. For discharges causing the loss of greater than 1/10-acre of non-tidal waters of the US, the permittee notifies the District Engineer in accordance with General Condition 13;

e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

f. The discharge is part of a single and complete project; and

g. Compensatory mitigation will normally be required to offset the losses of waters of the US. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the US.

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For the purposes of this NWP, the term "recreational facility" is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This NWP may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the US and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. For discharges causing the loss of greater than 300 linear feet of intermittent stream beds, the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

i. The discharge is part of a single and complete project. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into:

(i) Isolated waters; streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;

(ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or

(iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the US, plus the acreage loss of waters of the US resulting from support activities, cannot exceed ½-acre;

b. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the US;

f. The permittee must use measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a CWA section 402 permit may be required;

i. All activities authorized must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the US within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the US for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the ½-acre limit is not exceeded; and

l. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the US adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the US within 100 feet of the ordinary high water mark of headwater streams. The term's "headwaters" and "isolated waters" are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term "lower perennial stream" is defined as follows: "A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud." (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper Maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)). Additionally, any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water Quality.* (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater

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management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. *Coastal Zone Management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at *http://www.fws.gov/r9endspp/endspp.html* and *http://www.nfms.gov/prot_res/esahome.html* respectively.

12. *Historic Properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. *Notification.*

(a) *Timing;* where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Notification:* The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Crossings), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Projects), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) *Form of Notification:* The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)–(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to

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be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) *Agency Coordination:* The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) *Wetland Delineations:* Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than (¼-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. *Compliance Certification.* Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

(a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

15. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed ⅓-acre).

16. *Water Supply Intakes.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. *Shellfish Beds.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. *Suitable Material.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

19. *Mitigation.* The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, ¼-acre of wetlands cannot be created to change a ¾-acre loss of wetlands to a ½-acre loss associated with NWP 39 verification. However, ½-acre of created wetlands can be used to reduce the impacts of a ½-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. *Spawning Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. *Management of Water Flows.* To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. *Waterfowl Breeding Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. *Removal of Temporary Fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. *Fills Within 100-Year Floodplains.* For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) *Discharges in Floodplain; Below Headwaters.* Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below

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headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

(b) *Discharges in Floodway; Above Headwaters.* Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. *Construction Period.* For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best Management Practices (BMPs): BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream: An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe").

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent Utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of Waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and Pool Complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Single and Complete Project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43 and 45
Safe Disposition of Life-Limited Aircraft Parts; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 45

[Docket No.: FAA–2000–8017; Amendment No. 43–38 and 45–23]

RIN 2120–AH11

Safe Disposition of Life-Limited Aircraft Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action responds to the Wendell H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part safely control that pat. The disposition must deter the installation of that part after it has reached its life limit. The rule will reduce the risk of life-limited parts being used beyond their life limits. This rule also requires that type certificate and design approval holders of life-limited parts provide instructions on how to mark a part indicating its current status, when requested by persons removing such a part.

EFFECTIVE DATE: Effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Al Michaels, Flight Standards Service, AFS–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7501, facsimile (202) 267–5115, or e-mail: *albert.michaels@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov.su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

The FAA has found life-limited parts that exceeded their life-limits installed on type-certificated products during accident investigations and in routine surveillance. Although such installation of life-limited parts violates existing FAA regulations, concerns have arisen regarding the disposition of these life-limited parts when they have reached their life limits.

Concerns over the use of life-limited aircraft parts led Congress to pass a law requiring the safe disposition of these parts. The Wendell H. Ford Investment and Reform Act for the 21st Century (Public Law 106–181), added section 44725 to Title 49, United States Code, as follows:

Sec. 44725. Life-limited Aircraft Parts

IN GENERAL—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

(b) SAFE DISPOSITION—For the purposes of this section, safe disposition includes any of the following methods:

(1) The part may be segregated under circumstances that preclude its installation on an aircraft.

(2) The part may be permanently marked to indicate its used life status.

(3) The part may be destroyed in any manner calculated to prevent reinstallation in an aircraft.

(4) The part may be marked, if practicable, to include the recordation of hours, cycles, or other airworthiness information. If the parts are marked with cycles or hours of usage, that information must be updated every time the part is removed from service or when the part is retired from service.

(5) Any other method approved by the Administrator.

(c) * * *

(d) PRIOR-REMOVED LIFE-LIMITED PARTS—No rule issued under subsection (a) shall require the marking of parts removed from aircraft before the effective date of the rules issued under subsection (a), nor shall any such rule forbid the installation of an otherwise airworthy life-limited part.

This rule carries out the requirements of section 44725.

Current Requirements

The type design of an aircraft, aircraft engine, or propeller includes the Instructions for Continued Airworthiness (ICA), which includes the Airworthiness Limitations that describe life limits for parts installed on the product. See, for instance, 14 CFR 21.3(c) and 21.50.

In order for an aviation product to comply with its type design, the life-limited parts installed on it must fall within the acceptable ranges described in the Airworthiness Limitations section of the Instructions for Continued Airworthiness. For this reason, installation of a life-limited part after the mandatory replacement time has been reached would be a violation of the maintenance regulations. Section 43.13(b) requires that maintenance work be completed so that the product worked on "will be at least equal to its original or properly altered condition.* * *" The product is not at least equal to its original or properly altered condition if a life-limited part has reached or exceeded its life limit.

Existing regulations require that specific markings be placed on all life-limited parts at the time of manufacture. This includes permanently marking the part with a part number (or equivalent) and a serial number (or equivalent). See 14 CFR 45.14.

Persons who install parts must have adequate information to determine a part's current life status. In particular, documentation problems may mislead an installer concerning the life remaining for a life-limited part. This rule further provides for the data needs of subsequent installers to ensure they know the life remaining on a part and prevent the part being used beyond its life limit.

Existing regulations provide for records on life-limited parts that are installed on aircraft. The regulations require that each owner or operator under § 91.417(a)(2)(ii) and each certificate holder under

§ 121.380(a)(2)(iii) or § 135.439(a)(2)(ii), maintain records showing "the current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance." These regulations do not govern the disposition of the part when it is removed from the aircraft. If the part is intended to be reinstalled, however, a record of the life status of the part will be needed at the time of reinstallation to show that the part is within its life limit and to create the required record under §§ 91.417(a)(2)(ii), 121.380(a)(2)(iii), or 135.439(a)(2)(ii), as applicable. Therefore, when a life-limited part is removed from an aircraft and that part is intended to be reinstalled in an aircraft, industry practice is to make a record of the part's current status at the time of removal. Repair stations, air carriers, and fixed base operators (FBO's) have systems in place to keep accurate records of such parts to ensure that they can reinstall the parts and have the required records to show that the part is airworthy.

If the part is not intended to be reinstalled, however, under existing regulations and practice there is no record required or routinely made when a part is removed from an aircraft. The part may be at the end of its life limit and not eligible for installation. Or, the part may not have reached the end of its life limit, but is so close that reinstallation would not be practicable. In these cases industry practices vary. For instance, the part might be put in a bin and later sold as scrap metal, it might be used as a training aid, or it might be mutilated.

The Notice of Proposed Rulemaking, Notice No. 00–11, proposed procedures for carrying out the statute. 65 FR 58878 (October 2, 2000).

Discussion of Comments and Section by Section Analysis

Thirty-nine commenters provided comments on the proposed rule. The commenters included industry associations, air carriers, manufacturers, repair stations, representatives of employees, a foreign civil air authority, and individuals.

The FAA has made changes to the final rule in response to the comments. The comments are discussed below along with the provisions of the final rule. First we discuss comments not specific to one section, then we discuss more specific comments organized by section. The final rule as adopted is described below.

General Comments

Comment: Some commenters urge that the statute "requires the safe disposition of life-limited parts *that have reached or exceeded their life limits*." Comment 33 at 4,[1] emphasis in original. Some commenters state that the statute was intended to apply only when the part has reached or exceeded its life limit, not each time during the life of the part that it is removed from an aircraft.

FAA Response: The FAA disagrees with the commenters' interpretation of the statute. In paraphrasing the statute the commenters omitted the end of the first sentence and the beginning of the second sentence of section 44725(a). Those portions have meaning, however. Section 44725(a) provides:

> The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemaking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

The first sentence does not apply only to parts that have reached or exceeded their life limit. It requires safe disposition of all life-limited parts that are removed from aircraft. Note that one method of safe disposition permitted in section 44725(b)(4) is updating the marking on a part "every time the part is removed form service or when the part is retired from service." This shows that the safe disposition of parts must occur every time the part is removed, not just when the part has reached the end of its life limit or is retired from service.

The second sentence in section 44725(a) requires that the rule deter use of parts beyond their life limits. This does not mean that safe disposition is only required when parts reach their life limits. Indeed, no one can determine whether a part has reached the end of its life unless it has been properly disposed of each time it is removed from an aircraft during its life, ensuring that its current life status is accurately reflected in marking or other records. The NPRM, and the final rule, deter the use of parts beyond their life limits by requiring accurate records each time the part is removed from a type certificated product.

Further, it is FAA's experience that most parts that are retired from service have not reached or exceeded their life limits. They may have a few hours or cycles left, and are not considered to have enough life left to make it practical to reinstall them. These parts now often are treated as scrap or discarded. If the FAA were to agree with the commenters that the statute does not apply to such parts, these parts could continue to be placed in the scrap bin with no accurate life status on their markings or other records. The FAA has seen instances in which parts sent for scrap have been reinstalled on aircraft. However, if the part were returned to service, it soon would reach or exceed its life limit. The rule deters use of such parts beyond their life limits by ensuring that the current life status accompanies the part and informs the next user about the life status of that part.

We note also if FAA were to agree with the commenters that the statute does not apply to parts that are retired from service before they have reached their life limits, the statute would apply to very few parts. The FAA does not believe Congress intended the statute to be almost a nullity.

Comment: One commenter suggested that FAA add to § 43.5, Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration, a new paragraph (d) stating, "The records for life-limited parts show that any such part is serviceable and the remaining life is identified."

FAA Response: The FAA does not concur with this recommendation as this is covered in other portions of the Code of Federal Regulations, which require that records contain "the current status of life-limited parts of each airframe, engine, propeller, rotor, and applicant." See §§ 91.417(a)(2)(ii), 121.380(a)(2)(iii), and 135.439(a)(2)(ii).

Comment: One commenter states that air carriers will have to change their existing record keeping system. Another states that FAA form 8130–3, Airworthiness, Approval Tag, should be used rather than creating a new system.

FAA Response: FAA has added new § 43.10(c)(1) that permits the part to be controlled using any record keeping system that substantiates the part number, serial number, and current status. The FAA recognizes that many current systems already meet the requirements of the rule.

Comment: One commenter states that the rule should apply to "all life-limited parts at the time of return to service after the effective date." Another commenter states that the rule should state clearly that it is the installer's responsibility to ensure the part is serviceable before it is installed.

FAA Response: Section 44725 of the statute specifically requires the safe disposition of life-limited parts at the time of removal. The FAA agrees that it is the installer's responsibility to determine airworthiness before returning a part to service. This rule assists the installer by ensuring that an

[1] The documents in the electronic docket are numbered in the order in which they were posted.

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accurate record is made at the time of removal.

Comment: One commenter states that the rule does not define responsible persons as certificated persons. Two commenters expressed concerns that non-certificated persons and owners/operators are subject to the proposed rule.

FAA Response: The rule does not apply only to certificated persons that remove parts; it applies to all persons that remove parts. The same safety considerations apply whether the remover is a certificated person or not.

Section by Section Comments

§ 43.1(c) Applicability

Proposal: We proposed a new paragraph (c) in the applicability section of part 43 to include persons who remove, store, and disposition life-limited parts from a type-certificated product.

Comment: Some commenters state that currently the FAA rules do not consider removal of parts as maintenance. They state that including proposed § 43.10 in part 43 will make these activities maintenance and will require that persons who remove, segregate, and disposition life-limited parts be certificated by the FAA. Another commenter states that removal, segregation, and disposing of parts are already standard maintenance practices. Another commenter feels that § 43.1, Applicability, is not needed because proper management of parts is already a part of maintenance.

FAA Response: The NPRM did not address under what circumstances removal, segregation, and disposition of life-limited parts is part of maintenance. The NPRM did not propose that all removal, segregation, and dispositioning must be done by a certificated person. Indeed, the NPRM proposed to expand the applicability of part 43 to clearly cover these tasks in all cases, by adding § 43.1(c).

We note that removal, segregation, and dispositioning of parts is closely related to maintenance, and often is considered to be maintenance. See *In the Matter of Stambaugh's Air Service, Inc.*, FAA Order No. 2001–7 (2001), in which the removal of an engine from a Boeing 737, not for the purpose of performing other maintenance on the aircraft or engine, was itself considered to be maintenance. Proper removal procedures must be used in order to ensure the continued airworthiness of not only the parts removed but also adjacent parts or assemblies. Maintenance manuals have maintenance instructions for proper disassembly and removal procedures to be used in maintaining the aircraft. To maintain the current status of a life-limited part required by regulation, parts must be controlled from the time they are originally installed new through subsequent installations. These controls include maintaining accurate records, proper storage, and approved procedures used for installation and/or removal of the parts.

In any event, this rulemaking does not address under what circumstances removal of a part is considered to be maintenance and must be done by a certificated person, and when removal is not maintenance. This rulemaking does provide that whenever a life-limited part is removed from a type certificated product, the remover must control the part in accordance with this rule.

New § 43.1(c): We changed the wording to be parallel with other § 43.1 paragraphs.

§ 43.10 Disposition of Life-Limited Aircraft Parts

Proposal: We proposed adding a new section (§ 43.10) to part 43 to incorporate the new legislation.

Comment: No comments were received on creating a new § 43.10.

New § 43.10: This section carries out section 44725.

§ 43.10(a) Definitions Used in This Section

Proposal: Paragraph (a) proposed definitions for "life-limited part" and "life status."

Comment: Seven commenters either oppose placing the definition of life-limited part in part 43, or suggest it be moved to part 1, Definitions and abbreviations.

FAA Response: The definition was placed in part 43 as part of this rulemaking to better enhance the understanding of the requirements for life-limited parts.

Comment: Two comments state that the rule applies to type certificated products not used in civil aviation and any civil aircraft with an airworthiness certificate.

FAA Response: The FAA has no jurisdiction over products used for non-aviation purposes. If a product is used for a non-aviation purpose, removal of a part from that product is not governed by part 43 regardless of whether the product also is type certificated for aviation purposes.

Comment: One commenter states that the reference to the "type certificate holder" in the definition of "life-limited part" is not appropriate because some limitations are not included in the type certificate holder's maintenance manual or Instructions for Continued Airworthiness.

FAA Response: Under § 21.31 life limits are considered to be part of the type design; specifically, they are part of the Airworthiness Limitations in the Instructions for Continued Airworthiness in the type design. However, they may actually be published on the type data sheet, in the maintenance manual, or elsewhere, so it might not be obvious that they are part of the ICA. The FAA agrees with the commenter that this could create confusion. The new definition for life-limited part includes the reference to the type design, the Instructions for Continued Airworthiness, and the maintenance manual.

Comment: One commenter asks for an explanation of what could be a mandatory replacement interval other than hours or cycles. Another commenter wants to add such terms as number of landings and flight cycles to the definition of "life status."

FAA Response: The ICA may place limits on the part in such terms as calendar time, number of lifts on a heavy-lift helicopter, or number of allowed overhauls.

Comment: One commenter states that the definition of life-limited part includes non-critical parts and asks whether this was intended.

FAA Response: Yes, both the statute and the rule do not differentiate between critical and non-critical life-limited parts.

New § 43.10(a): This paragraph defines "life-limited part" to mean any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual. The ICA contains the airworthiness limitations, including life limits. It is considered to be part of the type design. See § 21.31(c). The ICA may be published as part of the maintenance manual, however, or may appear on the type certificate data sheet or elsewhere. Thus the rule refers to the type design, the Instructions for Continued Airworthiness, and the maintenance manual. The rule also defines "life status" to mean the accumulated cycles, hours, or any other mandatory replacement limit of a life-limited part.

New § 43.10(b) Temporary Removal of Parts From Type-Certificated Products

Proposal: This paragraph was not proposed in the NPRM.

Comment: Some commenters appear to believe that the rule would apply when a life-limited part was temporarily removed and then reinstalled. This would greatly increase the work of mechanics and others while they removed and reinstalled parts during maintenance.

FAA Response: The FAA did not intend the rule to apply during temporary removal. The final rule provides an exception.

New § 43.10(b): This paragraph provides that when a life-limited part is temporarily removed and reinstalled for the purpose of performing maintenance, no disposition under this section is required under specified circumstances. Those circumstances include that the life status of the part has not changed; the removal and reinstallation is performed on the same serial numbered product; and that product does not accumulate time in service while the part is removed.

This situation may occur, for instance, when a life-limited helicopter rotor blade is removed in order to maintain the hub and then reinstalled. The life status of the helicopter and the rotor blade have not changed. There is no purpose served by marking, tagging, or otherwise carrying out paragraph (c) of this section while the rotor blade is temporarily removed.

New § 43.10(c) Disposition of Parts Removed From Type-Certificated Products (Proposed § 43.10(b)) Temporary Text

Proposal: This paragraph proposed requirements for the safe disposition of any life-limited part removed from a type-certificated product and provided methods to control these parts.

Comment: A commenter states that covering both airworthy and unairworthy parts in this rule may restrict the use of airworthy parts. This would be inconsistent with section 44725(d), which provides that the rule may not forbid the installation of an airworthy part. The commenter believes this would be solved by permitting the use of component history cards rather than marking the parts.

FAA Response: The FAA does not agree that the statute requires safe disposition only of unairworthy parts. As previously discussed, the statute applies to all life-limited parts that are removed from aircraft. The FAA agrees that the safety objective can be achieved by use of a record keeping system rather than marking each part, and the final rule provides for use of a record system.

Comment: Two commenters feel that the new rule seems to mix airworthy parts with unairworthy parts. One commenter states § 43.10 is unclear in distinguishing between when a part fails, when it is removed and returned for service, and when it reaches its life limit.

FAA Response: The intent of this rule is to control life-limited parts when removed from a type certificated product. The FAA added a section that specifically addresses parts being removed for maintenance purposes and reinstalled on the same product. If the removal is not temporary under paragraph (b), the person who removes the part has several options for disposing of the part, and will decide which option to use based on such factors as whether the part failed, was removed for service, or has reached its life limit.

Comment: One commenter states that some aircraft may use the same part but have different life-limits, or the part may be life-limited in one application and not in another.

FAA Response: The FAA agrees. Manufacturers' instructions for certain parts require that the maintenance records include the type of aircraft on which the parts have been used. One example of this is when a particular helicopter manufacturer produces an identical tail rotor blade used on two different model helicopters. When the blades are used on the model with the lower life-limit, that becomes the retirement limit for the blade. This section requires that such a blade must be controlled under this section, regardless of how it has been used. If a person wishes to reinstall it later, they will need the history in sufficient detail to show that the part is eligible for installation.

Comment: One commenter states that "[a]lthough the maintenance provider will be required to mark the "life status," there is no corresponding requirement for the owner/operator to provide 'life status'."

FAA Response: Maintenance providers cannot return an aircraft to service without the appropriate records. Therefore, owner/operators routinely provide the necessary records to the maintenance providers. There is no need to add a rule to require that owner/operators provide the life status to the maintenance provider.

Comment: Some commenters state that the rule should apply to owners/operators and not to removers.

FAA Response: The FAA disagrees. The rule applies to persons removing parts because they are the persons who have the part physically available and have direct access to records that show the life that the part has accumulated. Also, in industry practice, persons who remove the parts generally have control over the disposition of the part, though they may consult with the owner/operator before deciding which method to use to control the part.

Comment: Some commenters state that maintenance providers have "no legal ownership rights, interest or authority in the life-limited part to take 'possession' of that article."

FAA Response: The FAA agrees that the maintenance provider may need to consult with the owner/operator before determining which method to use to control the part. Maintenance providers do in fact have possession of the part, while they may not have title to the part. It is current industry practice for maintenance providers to mark, tag, or make record entries regarding the life status of a life-limited part when they remove it.

Comment: Some commenters are concerned that the remover would be liable if the part were ever installed past its life limit.

FAA Response: The FAA does not agree. If the remover controls the part and transfers the records with the part in accordance with this rule, the remover has met his/her responsibilities under this rule. It is incumbent upon any person subsequently installing the part to determine its airworthiness prior to installation. For clarity, the proposed wording "must prevent the part from being installed after it has reached its life limit" has been changed to "must deter the installation of the part after it has reached its life limit."

Comment: A number of commenters question the use of one disposition method over another in various situations. Some object to the requirement to mutilate or segregate parts; some state that industry practice is to have or use record keeping systems.

FAA Response: The rule does not require any particular method in any particular situation as long as one of the methods is used. Each of these methods in this paragraph are part of current industry practice.

New § 43.10(c) introductory text: Paragraph (c) contains the requirements for controlling life-limited parts that are removed from type certification products. The six methods in the proposal to control the parts have been expanded to seven and subsequent paragraphs were resequenced for clarity.

In accordance with the statute, this rule applies only to life-limited aircraft parts removed after the effective date of this rule. Existing recordkeeping and storage regulations will continue to apply to the control of life-limited parts removed before the effective date of this rule.

This paragraph provides that each person removing a life-limited part from

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a type-certificated product must ensure that the part is controlling using one of the methods in this paragraph.

The rule applies at the time of removal because that is when the statue requires the safe disposition to occur. Further, at the time of removal the records for the part's life status in its current installation are most readily available. For instance, the life status may have to be determined by referring to the aircraft records, determining when the part was first installed, and determining how many hours or cycles the aircraft was flown since the part was installed. If the part was stored after removal without its records being immediately updated, there would be more chance of confusion as to its current life status and less chance to determine at a later date what life had accumulated during its prior service. We note that current industry practice is to update the record for the part or to create a new record for the part at the time the part is removed.

The rule applies to persons removing parts because they are the persons who have the part physically available and have direct access to the records that show the life the part has accumulated in its installation. Also, in industry practice the persons who remove parts generally have control over the disposition of the part, thought they may consult with the owner or operator before dispositioning the part.

As discussed under the comments, the FAA considers this to be consistent with current industry practice. Often the owner or operator of an aircraft has no interest in parts that were removed, which the maintenance facility controls as it sees fit. At times, the owner may be given credit for a part that can be repaired, in exchange for a new part that can be installed immediately. The owner also may request that all parts that were removed be returned to the owner. The remover, in any event, is intimately involved in determining the disposition. The remover will determine, for instance, whether the part has useful life remaining, appears to be eligible for reinstallation as is, can be repaired to make it eligible, or is not capable of being repaired. This information is shared with the owner to inform the owner's decision on how to control the part. The new rule will simply take this current relationship to the next logical step of requiring the remover to use one of the disposition methods under this rule.

The definition of "person" in part 1 includes both individuals and entities such as corporations. Repair stations and air carriers are "persons" under part 1. Both the repair station or the air carrier, and the individual employed by the repair station or air carrier, are considered to be the remover of the part, and both are required to carry out the rule. This is similar to the case when maintenance is performed on aircraft. Both the air carrier and the mechanic working for the air carrier are considered to be conducting the maintenance, and both must comply with the maintenance regulations.

The individual who removes the part need not be the same individual who implements the requirements of paragraphs (c)(1) through (7). For example, an air carrier mechanic removing a part might not personally control the part in accordance with one of the methods described in paragraph (c)(1) through (7), but may give the part to the air carrier's material control department to disposition in accordance with the air carrier's procedures manual. The air carrier's procedures must ensure that the part is controlled using one of the methods in this section. The individual remover has carried out his/her duty under the rule by complying with his/her part of the air carrier's procedures.

The rule applies each time a life-limited part is removed from a type certificated product. This is based on the FAA's interpretation of the statute, as discussed in the General Comments. It is also consistent with the need to maintain accurate records at each step in the part's life so that it can be determined whether a part has reached the end of its life.

Because it is industry practice to maintain accurate records on parts the remover believes may be reinstalled, we expect that the impact of this rule will be mostly as to parts that they do not believe will be reinstalled. The remover may not believe the parts will be reinstalled because they have reached the end of their life limits. Or, the parts may not have technically reached their life limits and have a few hours or cycles left, but are not considered to have enough life left to make it practical to reinstall them. These parts now often are treated as scrap or discarded. The FAA has seen instances in which parts sent for scrap have been reinstalled on aircraft. If the part were returned to service, however, it soon would reach or exceed its life limit.

This rule deters use of such parts beyond their life limits by ensuring that the current life status accompanies the part and informs the next user about the life status of that part.

Note that the FAA did consider the implications of applying the rule only when the part has reached the end of its life limit. This would have excluded from safe disposition under the rule all those parts that are not at the end of their life limit but have so little time left that neither the remover nor the owner intend to reinstall them. The FAA's experience is that most parts are discarded at this stage, not at the exact end of their life limit. Under current regulations, such parts may be sold as scrap or otherwise not controlled. Without this rule the current situation would continue, in which such parts may be in the system without accurate records and subject to reuse.

The FAA also considered the implications of applying the rule only to parts that are not intended for reinstallation. However, it is very difficult, sometimes impossible, to determine intent. Further, the remover's intent not to reinstall the part would not be relevant if the part were sold as scrap without updated records to show its current life status. A subsequent owner could be misled as to the current status of the part. Such a rule would be difficult to enforce and difficult to ensure that its safety benefits are realized.

We note that we have expanded the list of acceptable methods of controlling a part to include recordkeeping systems. Under this rule, all methods that are not used to control life limited parts that are intended for reinstallation also acceptable for compliance with this rule. Therefore, the actual impact of the rule is minimal.

The statute refers to safe disposition when a life-limited part is removed from an aircraft. However, many life-limited parts are not removed directly from the aircraft. Rather, the type certificated product is removed from the aircraft, and the life-limited part is then removed from the product. For instance, an engine may be removed from the aircraft and taken to a repair station for service. The repair station removes life-limited parts form the engine and determines how to control the parts, such as to reinstall them, to repair them, or to discard them. To carry out the full safety benefits of the statute and avoid confusion, the rule applies to parts removed from type certificated products. "Product" is defined in § 21.1(b) to mean an aircraft, an aircraft engine, or a propeller.

New § 43.10(c)(1) Record Keeping System

Proposal: This paragraph was not proposed in the NPRM.

Comment: Some commenters state that record keeping systems that currently are used to control life-limited parts should be acceptable for compliance with this section.

FAA Response: The FAA agrees. Such systems are used by repair stations, air carriers, and fixed base operators to maintain accurate records of life-limited parts to ensure the airworthiness of the aircraft on which they are installed. When properly carried out these systems comply with the intent of the statute.

New § 43.10(c)(1): This paragraph expressly permits the use of record keeping systems to control life-limited parts. The record keeping system must substantiate the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, the record must be updated with the current life status. Many repair stations, air carriers, and fixed base operators have such systems in place now, and use them to control life-limited parts. Some systems are electronic and others use paper.

Note that the current life status of the part does not necessarily include the entire history of the part. While some record systems do contain the entire history, this rule requires only that the current status be in the record system. This will allow persons to determine what life is remaining on the part.

§ 43.10(c)(2) Tag or Record Attached to Part (Proposed § 43.10(b)(5)

Proposal: This paragraph proposed that if it is impractical to mark the life-limited part, a tag may be attached to the part to record the life status.

Comment: Two commenters request clarification of procedures to be used to issue a replacement tag. First, the commenters ask whether a new tag can be issued if a tag is lost and time in service cannot be determined. Second, the commenters suggest we require the tag have sufficient information to provide traceability back to the part if separated.

FAA Response: In response to the first situation, if current status of the life-limited part cannot be established, the part is unairworthy and cannot be returned to service. In response to the second concern, the final rule specifies that the tag have the part number and serial number, which will allow the tag to be traced to the part. Further, the final rule provides for either updating the tag or making a new tag each time the part is removed. An Advisory Circular will be published when the rule is issued to highlight specific sections from the new rule and explain their intent in greater detail.

Comment: Two commenters state that tagging has been used for years and is a standard industry practice. In addition, they state that the rule should not require that the same tag be updated each time the part is removed, because industry practice is to issue a new tag.

FAA Response: The FAA agrees that the use of tags has been an accepted industry practice for years. The final rule provides that either the tag can be updated or a new tag issued.

New § 43.10(c)(2): This paragraph provides that a tag or other record may be attached to the part when it is removed. While the proposal only referred to a tag, many in the industry attach another record to the part (known by such names as a "hard card" or "historical record"). To avoid confusion the rule refers to a tag or other record attached to the part.

The proposal called for use of a tag only when it is not practical to mark the part. However, after further evaluation the FAA has decided not to include this limitation. Tags and other attached records are widely used and accepted in the industry and provide the required level of safety. This rule will permit the continued use of such systems.

The proposal called for the tag to be updated every time the part is removed. Some commenters point out that many people in industry do not save the tag for reuse, but issue a new tag. Further, such tags get damaged during use and new ones are created. Accordingly, the final rule provides for either updating the tag or creating a new one.

The final rule provides that the current status, as well as the part number and serial number, must be on the tag or record.

§ 43.10(c)(3) Non-Permanent Marking (Proposed § 43.10(b)(4))

Proposal: This paragraph proposed that the part may be marked, if practical, to include the life status. This marking was to be accomplished in accordance with the manufacturer's marking instructions, as required under proposed § 45.14, to maintain the integrity of the part.

Comment: Eight commenters suggest that proposed § 43.10(b)(2) and (b)(4), regarding permanent and non-permanent marking, are similar and should be combined into one paragraph.

FAA Response: The FAA agrees that the proposed paragraphs are similar. The FAA, however, wants to emphasize that the options are different and likely to be used in different situations. Further, the paragraph on non-permanent marking now provides instructions for using another method if the mark is removed.

Comment: Several commenters question where the procedures will be published to comply with proposed § 43.10(b)(2), what tools would be required for marking of the part, and whether the manufacturer could charge for the part marking information.

FAA Response: New § 43.16 requires that the instructions may be provided to the requester or in a readily available document. The manufacturer will determine the type of marking device to be used for marking the part. The FAA has no regulatory authority to control whether a manufacturer chooses to charge for the information.

Comment: One commenter has a concern that many products are no longer supported by the manufacturer and marking information would not be available.

FAA Response: The rule provides alternate methods to be used for controlling a life-limited part. Tagging the part in accordance with new § 34.10(c)(2) or using a record keeping system under new § 43.10(c)(1) are acceptable means of compliance with the rule.

Comment: One commenter states that the proposal contains a loophole in that a scrap dealer could remove a tag or non-permanent mark.

FAA Response: The FAA agrees that if a part is transferred for the purpose of scrap without permanent markings or mutilation, the tag or other record could be removed from the part. The FAA recommends that before parts are transferred for the purpose of scrap, the part be mutilated or permanently marked, to deter subsequent installation.

New § 43.10(c)(3): This paragraph provides for non-permanent marking of the part. The mark must be updated each time the part is removed from service. Further, if the mark is removed, another method may be used to control the part. For instance, the remover could then use a record keeping system to control the part.

§ 43.10(c)(4) Permanent Marking (Proposed § 43.10(b)(2))

Proposal: This paragraph proposed that the part may be permanently and legibly marked, when practical, to indicate its life status.

Comment: Several commenters have concerns that permanent marks could destroy the part's integrity.

FAA Response: The FAA agrees. There are parts that cannot be marked for reasons such as the part's size, type of material, or specific application of the part. The FAA recognized that there are cases when marking is impractical or could destroy the part's integrity. Therefore tagging of the part, as well as other methods such as a record keeping system, is permitted under the rule.

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Comment: One commenter states that the proposed rule is not clear when a part should be permanently marked.

FAA Response: The proposed rule did not mandate when a part should be permanently marked, only that parts be controlled in accordance with one of the options in the rule.

Comment: One commenter asks whether a part can be tagged, if it was permanently marked multiple times and no space remains for additional marks? Another commenter has concerns with the proposed rule permitting different methods of marking each time the part was removed.

FAA Response: The rule allows for various methods of permanent and non-permanent controls for life-limited parts. If the control method is changed, there must be a means to clearly identify the current life status of the part.

New § 43.10(c)(4): This paragraph provides for permanently marking the part. The mark must be updated each time the part is removed from service. Unless the part is permanently removed from use on type certificated products, this permanent mark must be accomplished in accordance with the instructions under § 45.16 in order to maintain the integrity of the part.

§ 43.10(c)(5) Segregation (Proposed § 43.10(b)(1))

Proposal: This paragraph proposed that the part may be segregated from serviceable parts under circumstances to preclude its installation on a type certificated product, including maintaining a record of the serial number and current life status of the part.

Comment: Some commenters state that the word "serviceable" is not appropriate, in that serviceable has no regulatory meaning.

FAA Response: The FAA agrees. "Serviceable" may be used in different ways in the industry. The final rule does not use this term, it uses the term "eligible for installation" to avoid confusion.

Comment: A commenter states that the rule should require the record also contain the part number.

FAA Response: The FAA agrees. To fully identify the part, both the part number and the serial number are needed.

New § 43.10(c)(5): This paragraph provides that the part may be segregated using methods that deter its installation on a type-certificated product. These methods must include, at least, maintaining a record of the part number, serial number, and current life status, and ensuring the part is physically stored separately from parts that are currently eligible for installation.

The rule uses the term "physically stored separately" instead of "stored separately" for clarity. It is common industry practice, for instance, to have a separate bin for parts that have reached their current life limits, but whose life limits may be extended in the future. This may occur with a new design for a blade, for instance. Initially a lower life limit may be assigned, but experience may allow the FAA to approve a higher life limit for the blade. In the meantime, the repair station may segregate a blade that has reached the lower life limit in anticipation that the life limit will be extended. The blade is segregated to prevent it from being confused with another blade and being installed.

§ 43.10(c)(6) Mutilation (Proposed § 43.10(b)(3))

Proposal: This paragraph proposed that the part may be destroyed in any manner that prevents installation in a type-certificated product.

Comment: Some commenters state that the rule does not go far enough and it should be mandatory that parts are mutilated when they reach their life limit. There were also concerns that if the remover was not the owner of the part they could be sued for destroying personal property.

FAA Response: The FAA has no regulatory authority to require a person to destroy their personal property. When Congress passed section 44725, it provided other options for controlling the parts, such as segregation or marking parts. The remover of the part likely will consult the owner of the part to determine whether mutilation of the part is acceptable, or whether another of the acceptable methods should be used.

The FAA considers this to be consistent with current industry practice. Often the owner or operator of an aircraft has no interest in parts that were removed, which the maintenance facility disposes of as it sees fit. Or, the owner may be involved in the decision as to how to control the parts. This rule does not change these scenarios. The person removing the part is responsible for controlling the part under this section, but may consult with the owner regarding which method to use.

Comment: Several commenters express concerns that if parts were mutilated they would be usable for non-aviation purposes such as training aids or other commercial applications.

FAA Response: The rule allows for persons dispositioning the parts to use other acceptable methods such as marking the part using a permanent or non-permanent method or tagging the part.

Comment: Some commenters point out that the term used in the industry is "mutilate" rather than "destroy." They indicate that "mutilate" implies only rendering not repairable, but "destroy" implies a more extensive and expensive effort such as melting down the part.

FAA Response: The FAA agrees, and the final rule uses "mutilate."

New § 43.10(c)(6): This paragraph provides that the part may be mutilated to deter its installation in a type certificated product. The rule provides that the mutilation must render the part beyond repair and incapable of being reworked to provide the appearance of being airworthy.

§ 43.10(c)(7) Other Methods (Proposed § 43.10(b)(6))

Proposal: This paragraph provided that any other method approved by the Administrator could be used.

Comment: Two commenters have difficulty determining what other methods would be approved by the Administrator under proposed § 43.10(b)(6).

FAA Response: The final rule includes the additional method of using a record keeping system. The remover may request an alternate method of compliance. This permits the remover to develop another method of compliance not considered in this rulemaking.

New § 43.10(c)(7): This paragraph provides that the part may be controlled using any other method approved or accepted by the Administrator. The FAA cannot anticipate all possible methods of controlling parts, and will consider any methods that provide at least the same level of safety as those in this rule.

§ 43.10(d) Transfer of Life-Limited Parts (Proposed § 43.10(c))

Proposal: This section proposed that each person removing a life-limited part from segregation, other than for immediate installation, had to ensure the part was controlled using one of the methods in paragraph (b).

The NPRM did not expressly state that records must be transferred with the part. However, the disposition methods that were proposed all inherently involved the record remaining with the part (except for destruction, in which case the record is no longer needed). Marking and tagging involves the record being physically attached to the part, which remains with the part. The NPRM permitted the part to be segregated without the record attached to the part, but provided in

proposed § 43.10(c) that when the part is removed from segregation another dispositioning method must be used.

Comment: Two commenters oppose the position that the person removing the part should be responsible even though they may not be the person that controls it, as in the case of a person working for a part 121 or 145 operator.

FAA Response: The FAA recognized in the preamble that the individual removing the part may not necessarily be the individual who controls it. The FAA understands that individuals working for certificated operators have responsibilities for performing specific functions, in which case the individual who removes the part would not necessarily be the individual who controls the part. The repair station or air carrier is also a person under part 1, and under the regulations is also considered the person who removes the part. The repair station or air carrier will have overall responsibility to ensure that the part is controlled properly under the rule. The individual who removes the part will be in compliance with this rule if the individual carries out his/her portion of the procedures of the repair station or air carrier.

New § 43.10(d): Paragraph (d) provides that each person who removes a life-limited part from a type certificated product and later sells or otherwise transfers that part must transfer with the part the mark, tag, or other record used to comply with this section, unless the part is mutilated before it is sold or transferred. This will ensure that the next user has an accurate record on which to base any decision to use the part.

Note that this applies to all transfers, whether by sale or otherwise. thus, when a repair station returns the part to the owner, the repair station must also transfer the record.

New § 45.16 Marking of Life-Limited Parts (Proposed § 45.14)

Proposal: The NPRM proposed to add to § 43.14, Identification and disposition of critical components, requiring producers of life-limited parts to provide marking instructions upon request.

Comment: One commenter states that the producers of parts should be required to provide marking information, not just on request. Some commenters state that the information should be in the Instructions for Continued Airworthiness.

FAA Response: The FAA partially agrees. The final rule gives the option of making the information available in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness. We anticipate that many type certificate holders and design approval holders will find this to be the most efficient way of providing the information.

To require that all design approval holders of all life-limited parts provide marking information for each part without request may be excessive. There may be no interest in the industry to mark certain parts, given the other options for controlling the parts, and given that some parts may be out of production or not widely used. If the design approval holder never receives a request for marking information it need not develop such information.

Comment: Some commenters state that, while the proposal was for the producer of a part to provide marking instructions, the producer may not be the person responsible for the design or production of the part. The manufacturer may have no ability to provide information on marking the parts.

FAA Response: The FAA agrees. The final rule provides that the holder of a type certificate or design approval must provide the marking instructions. Such persons have responsibility for the design and are in a position to determine whether and how a part can be marked without compromising its integrity.

Comment: Some commenters state that the rule should make clear that marking a part is maintenance and must be done in accordance with part 43.

FAA Response: It does not appear that marking a part its maintenance within the definition in part 1. However, depending on the techniques used, marking may be an alteration of the part. If so, it must be conducted in accordance with part 43.

Comment: Some commenters state that the mix of "critical component" in the title to § 45.14 and "life-limited part" in the rule could cause confusion.

FAA Response: The FAA agrees. The final rule adds § 45.16 to cover marking instructions for life-limited parts rather than amending § 45.14.

Comment: Several commenters point out technical problems with safely marking certain kinds of parts, such as certain metal parts or composite parts.

FAA Response: The FAA agrees that not all parts can be marked without compromising the part's integrity. In that case the type certificate holder or design approval holder should state that the part should not be marked. The remover must then use another method to control the part.

New § 45.16: The FAA determined that the subject matter of § 43.14 was sufficiently different than the current rule to warrant adding a new section.

New § 45.16 provides that when requested by a person required to comply with § 43.10 of this chapter, each holder of a type certificate and each holder of a design approval for a life-limited part must provide marking instructions, or must state that the part cannot be practicably marked without compromising its integrity. This information may be provided by providing marking instructions in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness.

While the proposed rule directed the producer of the part to provide the instructions, the final rule states that the holder of the type certificate or design approval must provide the instructions. Often the producer is the same person as the holder of the type certificate or the design approval. However, it is the holder of the type certificate or design approval that has the most direct knowledge of the engineering considerations involved in whether, and how, a part can be marked without compromising its integrity. Marking instructions will include such things as where on the part to locate the mark and what materials or methods to use.

A type certificate under part 21 is a design approval. There are other design approvals issued by FAA, such as a Parts Manufacturing Approval (PMA) under § 21.303 and a Technical Standard Order Authorization (TSOA) under part 21, subpart O. New § 45.16 refers to both type certificate holders and design approval holders for emphasis.

Comments With Economic Implications

Comment: One commenter extrapolated an industry-wide cost estimate of this rule based on its experience with its own numerous repair stations. As did a number of other commenters, this commenter interpreted the language of the NPRM to incorporate temporary removal of life-limited parts, which would require much more frequent application of the rule than the agency intended.

FAA Response: The FAA asked this commenter to clarify his comment because it included an industry-wide cost estimate that used the same methodological approach the agency used, but which resulted in a much larger estimate. The commenter explained that his estimate was based on each removal of each life-limited part done in his repair stations, including temporary removals followed by reinstallation. Because removals to this extent were not intended by the agency,

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the commenter was asked to revisit his estimate and to exclude temporary removals. When the commenter based his estimate on this clarification, he reduced his original estimate greatly, such that it approximated the FAA's NPRM estimate. The FAA clarified its NPRM language by adding a new § 43.10(b) that excludes application of the rule from temporary removals of parts from type certificated products. The FAA believes that if its clarified language had been available to the commenter for his NPRM estimate, that estimate would have approximated the agency's NPRM estimate.

Comment: One commenter suggested that 15 minutes, rather than the five minutes the FAA estimated, better approximates the actual average time required to comply with the new rule.

FAA Response: While the agency cannot reject the commenter's estimate of his own average compliance time, the agency cannot agree that the commenter's extrapolation of that estimate to an industry-wide average better approximates the agency's estimate. The FAA's reasons for disagreeing are as follow:

(a) The agency's industry-wide estimate was approximately replicated as noted in the response to the proceeding comment; and

(b) The agency notes that appropriate use of record keeping systems—cited elsewhere in these comments and responses as enabling compliance and being in wide use—is very likely to result in nearly instantaneous compliance. This observation is particularly apt for automated systems.

Comment: One commenter proposed the FAA's approach to estimation of benefits and costs be based on the total of, and the life statuses of, the life-limited parts in all aircraft affected by this rule.

FAA Response: While the FAA appreciates the suggestion, for the following reasons, the suggested approach will not support useful estimation:

Within the fleet of aircraft affected by this rule are many and various life-limited parts. Within its limited life, each such part will have reached some life status specific to itself. Each such part will have been installed at some time specific to its aircraft's requirements. There is no uniform, benchmark installation date for life-limited parts across the fleet of affected aircraft, and there is no uniform life status across the variety of life-limited parts. No useful estimate could be based on so many different moving targets.

However, there is one characteristic all life-limited parts have in common: Each will be removed in a manner subject to this rule. Thus, FAA bases its analysis on its estimate of the frequency of annual industry-wide removals subject to this rule.

Comment: One commenter addresses three distinct areas, as follows:

(a) He—and other commenters—challenge the FAA's assumption that about 625,000 annual removals subject to this rule are most likely to be performed by about 5,000 certificated repair stations. The commenter asserts that each datum is an underestimate, and the agency's industry-wide cost estimate is thus flawed.

(b) He—and other commenters—challenge the FAA estimate of "potentially affected parties" (as required by the Paperwork Reduction Act) and state that it should be raised from about 5,000 repair stations to about 900,000 individuals who have the potential to remove life-limited parts. The commenter's total specifically includes "about 720,000" pilots and "about 150,000" aviation mechanics.

(c) This commenter also challenges the FAA's characterization of this rule in terms of the Regulatory Flexibility Act; a response to that comment is provided separately below.

FAA Response:

(a) The FAA disagrees with the commenter's statement that 625,000 annual removals are an underestimate that distorts the agency's industry-wide cost estimate. As did other commenters noted above, this commenter read the NPRM to mean that temporary removals are subject to this rule. As noted above, for this final rule, the FAA clarified the NPRM language on which the commenter's statement was based.

(b) The FAA disagrees with the commenter's estimate that 900,000 parties will be "potentially affected" by this rule. The FAA understands the term "potentially" to have dimensions of duration and likelihood, in contrast to the commenter's apparent application of the term to all time and any likelihood. The FAA agrees with the commenter that entities other than repair stations may remove life-limited parts subject to this rule. However, the agency stands by its NPRM assertion that most removals will be carried out by employees of repair stations. The FAA's reasons for disagreeing with this comment are as follows:

The commenter notes that there are about 150,000 FAA-certified mechanics in the United States. A clearer statement is that up to about as many as 150,000 individuals are actively employed as aviation mechanics.[2] Of these individuals, few (according to the U.S. Department of Labor) are self-employed.[3] Thus, the commenter's estimate of 150,000 individual mechanics subject to this rule reduces to a much smaller number of employers with Paperwork Reduction Act responsibility.

While the FAA stands by its NPRM assertion that most removals will be carried out by repair stations, for this final rule, the agency departs from its NPRM estimate of about 5,000 and adopts its most recent actual count of 4,489 repair stations.[4]

Although some aviation mechanics identify themselves as employees of air carriers or of fixed base operators instead of as employees of the repair stations that these entities operate, the FAA believes that the majority of all aviation mechanics are employed by certificated repair stations.[5] However, the agency agrees with the commenter that entities other than certificated repair stations may perform removals. These other entities include air carriers, fixed base operators, aviation salvagers, and individual pilots. Each entity will be considered in turn below.

Air Carriers: The FAA believes that certificated air carriers either themselves are operators of certificated repair stations or have their removals of life-limited parts performed by certificated repair stations. Thus, the agency believes that the addition of air carriers to its count of repair stations results in no change in its assumption that most removals are performed by certificated repair stations.[6]

Fixed Base Operators: The FAA notes that some fixed base operators also are certificated repair stations. The agency believes that such fixed base operators are those most likely to remove life-limited parts. The agency believes that there may be a small net addition of non-repair station FBO's to the agency's count of repair stations. The agency is not able to estimate the size of this increment.

Aircraft Salvagers: The FAA notes that salvagers remove life-limited parts from aircraft that are sent for salvage.

[2] Interview with the Professional Aviation Maintenance Association, June 2001.

[3] Occupational Outlook Handbook, 2000–2001 Edition, U.S. Department of Labor, Aircraft Mechanics and Service Technicians, at http://stats.bls.gov/oco/ocos179.htm.

[4] Gellman Research Associates, "Active Part 145 Certificate Holders," as of September 2000.

[5] Aviation Maintenance, 1999 and 2000 Annual Salary Surveys, at http://www.aviationtoday.com/reports/amsalary99.htm, and follow-up interviews with Aviation Maintenance management, June 2001.

[6] Ibid.

The FAA believes that, as common business practice, most such salvagers are well aware of the maintenance status of most aircraft they buy to be salvaged. Further, the agency believes that while salvagers generally find it in their economic interest to bear the costs of removing and selling only those life-limited parts that have sufficient life demonstrably remaining to be eligible for immediate installation, salvagers also remove some life-limited parts that are not eligible for immediate installation but are deemed suitable for refurbishing.[7]

While the commenter cites FAA Advisory Circular (AC) 00–56 as his basis for his noting that 2,500 aviation broker/dealers are potentially affected parties, this AC provides for the development and maintenance of a list of that subset of these broker/dealers who agree voluntarily to conform to part 43. This list currently has 205 members. The agency believes that most of the parts removals by aircraft salvagers are most likely to be performed by members of this subset. Thus, the agency's final cost estimate adds this subset of 205 to its count of 4,489 repair stations.

Pilots: The commenter notes the existence of the large general aviation community and cites an estimate of about 720,000 pilots in the United States. The FAA notes that pilots who are not also aviation mechanics are permitted to perform preventive maintenance, but not maintenance. The FAA believes that very few, if any, life-limited parts are likely to be removed for any reason in the course of preventive maintenance. Thus, few pilots who are not also aviation mechanics are likely to perform removals that are subject to this rule.

The FAA agrees with the commenter that pilots who are not also certificated mechanics may remove life-limited parts for subsequent re-installation by an aviation mechanic. However, as noted above, temporary removals are not subject to this rule.

To to commenter's remark about the large size of the general aviation community, the FAA responds that there are about 220,000[8] active general aviation aircraft in the United States. Of these, about 150,000[9] are single engine piston airplanes. The FAA believes that most of these 150,000 airplanes have few life-limited parts. Further, in most cases, those life-limited parts are removed by a certificated mechanic, not the pilot. Thus. the likelihood that each of these 720,000 individual pilots would remove a life-limited part from a general aviation aircraft during any one year is very small.

The FAA stands by its NPRM estimate of 5,000 removers subject to this rule. The FAA is adding the 205 broker/dealers to the agency's most recent count of 4,489 repair stations, as well as adding some FBO's that are not certificated repair stations, and some self-employed certificated mechanics. The estimate of 5,000 stands as a ceiling estimate.

Comment: The above commenter asserts that the FAA may not forbear from performing a Regulatory Flexibility Act analysis on the grounds that the costs are owing to the law that prompts the rulemaking, and not to the rule by which the law is implemented.

FAA Response: The NPRM analysis proposed that the average annual costs of compliance with this rule would be about $1,250 for the 1,500 most involved repair stations and about $200 for the 3,500 least involved. Continuing analysis in support of this final rule, as its requirements have been clarified, suggests these costs are overestimates. For example, of the compliance options available, two are likely to require little or no additional cost. These are: (1) Controlling the part of means of a record keeping system that is updated at each removal and which substantiates the part number, serial number, and current life-status of the part; and (2) physical segregation of removed parts. Further, the option of mutilation may include sale of the mutilated part as scrap metal. Such a sale would offset some or all of any additional cost of this option. The agency has not attempted to rework its NPRM estimate in light of this further analysis and clarification.

As the summary Regulatory Evaluation describes, the practice of most removers already approaches the requirements of this rule through the exercise of good shop practice, good business practice, following the guidance of AC's, and complying with those existing CFR's that indirectly constrain the disposition of life-limited parts. Thus, the FAA believes that no entity of any size subject to this rule will incur a significant cost burden.

[7] "Salvaging Jetsam * * *" The Wall Street Journal, September 6, 2000, and interviews with cognizant officers of Air Salvage of Dallas and of The Memphis Group, June 2000.

[8] 2000 GAMA Databook, General Aviation Fleet and Flight Activity. General Aviation Manufacturers' Association, at http://www.generalaviation.org/datasbook/2000/index.html.

[9] ibid.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0665. This final rule requires that each person who removes any life-limited aircraft part must safely control that part to deter its installation after it has reached its life limit. This rule also requires that type certificate and design approval holders of life-limited parts provide instructions on how to mark a part indicated its current status, when requested by persons removing such a part.

Comments on the proposal have been addressed previously. In general, comments that dealt with the Paperwork Reduction Act also dealt with estimation of the cost burden.

The likely respondents to this proposed information requirement are persons responsible for removing and dispositioning life-limited parts. The FAA stands by its NPRM estimate of 5,000 total responding entities. However, the agency has revised the composition of this total. In the proposal our estimate included 5,000 certificated repair stations as respondents. For the final rule, the 5,000 responding entities include 4,489 certificated repair stations, 205 salvagers, an indeterminate number of fixed base operators that are not certificated repair stations, and an indeterminate number of self-employed certificated aviation mechanics will carry out the requirements of this rule.

The FAA estimates each of 1,500 of the 5,000 entities noted above will perform 300 such procedures as an annual average. Each of the remaining 3,500 will average 50 procedures annually. Thus, the annual frequency of information requirements is 625,000 procedures.

The FAA refined its NPRM estimate of annual burden, and has determined that there is no more than a minimal paperwork burden on any respondent. Both the proposal and the final rule estimate are based on 625,000 annual removals subject to the rule. In the NPRM each removal was estimated to require record keeping and reporting requirements of five minutes duration, at $50 per hour. Thus for the NPRM, the total annual estimated burden of Public Law 106–181 was about $2,600,000, borne by a total of 5,000 respondents. In the final rule this estimate is decreased by an indeterminate amount because the rule is satisfied by the—

(a) Control for safe-disposition of life limited parts through the appropriate use of record keeping systems that are known in wide use; and

(b) Physical segregation of life-limited parts that have little or no remaining

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capacity as airworthy parts. Many certificated operators and air agencies are known to make use of this method of control.

While a respondent may find it useful to satisfy the rule by one or more of the remaining options, the FAA believes that neither case above is likely to result in an additional Paperwork Reduction Act burden.

Further, the option of mutilation is likely to reduce the NPRM estimate. This option may include the sale of the mutilated part as scrap metal. Such a sale would offset some of all of any additional cost of this option.

Because FAA has not attempted to determine the preference ranking by respondents of the options permitted under this rule, it has no basis by which to estimate the amount the choice of these options will decrease the NPRM estimate. Thus, the NPRM estimate should be considered to be a ceiling cost.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determined that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles of the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the evaluation.

Consistent with Department of Transportation policies and procedures for simplification, analysis, and review of regulations, this rule is deemed to have a minimal impact, and does not warrant a full evaluation. The FAA has reviewed the comments generated by the NPRM regarding this rule, and has refined its NPRM analysis, and finds no justification to change its determination of minimal impact.

Expected Benefits

This rule will increase safety benefits by decreasing the possibility of installation into a type-certificated product of life-limited parts that have reached their life-limits. While no existing FAA rule specifies the safe disposition of a life-limited part that is not intended, permissibly, to be re-installed, in general, current industry shop and business practices already inhibit such installation. These practices generally reflect the direction and guidance of numerous, distinct current FAA regulatory and advisory publications. The agency has not attempted to quantify the incremental safety benefits of this rule.

Expected Costs

It is the FAA's intent that this rulemaking would specify only the requirements necessary to bring industry into compliance with Public Law 106–181. Thus, the FAA expects that additional compliance costs will be attributable to the regulation and not to the rule.

The implementation of the legislation that directs this rule adds to existing requirements, and consequently to costs, by requiring that each person removing a life-limited part from a type-certificated product must control the disposition of that part by record keeping, marking, tagging, segregating, mutilating, or any other approved or accepted method that deters the installation of that life-limited part that has reached its life limit. However, as above, although no existing FAA rule specifies the safe disposition of a life-limited part that is not intended, permissibly, to be re-installed, in general, current industry shop and business practices already inhibit such installation. Also as above, these practices generally reflect the direction and guidance of numerous, distinct current FAA regulatory and advisory publications.

The cost estimate for this final rule refines the NPRM estimate and revises it downward by an indeterminate amount. The NPRM estimate assumed that about 5,000 business entities would perform almost all of the activities subject to this rule. Of these entities, about 1,500 would perform about 300 rule-subject removals annually, while the remaining 3,500 would perform about 50. Each removal was assumed to require an additional 5 minutes at $50 per hour. Thus, each larger remover would incur an additional annual cost of about $1,250. Annual costs for each smaller remover would be about $200. Each amount was given in 2001 dollars.

This final rule estimate departs from those assumptions and estimates for two reasons, as follow:

(a) The rule is satisfied by the safe-disposition of life limited parts through the use of record keeping systems that are known to be in wide use.

(b) The rule is satisfied by the physical segregation of life-limited parts that have little or no remaining capacity as airworthy parts. Many certificated operators and air agencies are known to make use of this method of control.

While a remover may find it useful to satisfy the rule by one or more of its other options, the FAA believes that neither case above is likely to result in additional cost. In fact, a respondent may well have a record keeping system in place and also physically segregate parts as appropriate. Further, the option of mutilation may include the sale of the mutilated part as scrap metal. Such a sale would offset some or all of any additional cost of this option.

Because FAA has not attempted to determine the preference ranking by respondents of the options permitted under this rule, it has no basis by which to estimate the amount the choice of these options will decrease the NPRM estimate. Thus, the NPRM estimate should be considered to be a ceiling cost.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule estimate was refined and reduced from the NPRM estimate. The earlier estimate resulted in 1,500 larger removers each incurring an additional annual cost of about $1,250. Additional annual costs for each of the 3,500 smaller removers were estimated about $200. Each amount was given in 2001 dollars.

As noted previously, these NPRM estimates must be taken as ceiling estimates because of the—

(a) Existing use of compliant record keeping systems,

(b) Existing practice of physically segregating life-limited parts that have little or no remaining capacity as airworthy parts, and

(c) Likelihood that some or all of the costs of the option of mutilation will be offset by the sale of the mutilated part as scrap metal.

As stated previously, the agency has made no attempt to estimate the amount by which these factors reduce the NPRM estimates.

Because this rule imposes no more than minimal economic effects on removers of any size, whether small or large, the FAA certifies that it will not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The FAA has determined the potential effect of this rule will be minimal and, in accordance with the above statute and policy, holds that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. Therefore, the analytical requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA received no comments on whether there is justification for applying the rule differently in interstate operations in Alaska. Because this rule has a minor impact on current operations, including that it applies only to the subsequent use of these life-limited aircraft parts, it will not affect interstate aviation in Alaska. Accordingly, FAA has determined that there is no need to apply the rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1 It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 43

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. Revise the authority citation for part 43 to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Add § 43.1(c) to read as follows:

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§ 43.1 Applicability.

* * * * *

(c) This part applies to all life-limited parts that are removed from a type certificated product, segregated, or controlled as provided in § 43.10.

3. Add § 43.10 to read as follows:

§ 43.10 Disposition of life-limited aircraft parts.

(a) *Definitions used in this section.* For the purposes of this section the following definitions apply.

Life-limited part means any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual.

Life status means the accumulated cycles, hours, or any other mandatory replacement limit of a life-limited part.

(b) *Temporary removal of parts from type-certificated products.* When a life-limited part is temporarily removed and reinstalled for the purpose of performing maintenance, no disposition under paragraph (c) of this section is required if—

(1) The life status of the part has not changed;

(2) The removal and reinstallation is performed on the same serial numbered product; and

(3) That product does not accumulate time in service while the part is removed.

(c) *Disposition of parts removed from type-certificated products.* Except as provided in paragraph (b) of this section, after April 15, 2002 each person who removes a life-limited part from a type-certificated product must ensure that the part is controlled using one of the methods in this paragraph. The method must deter the installation of the part after it has reached its life limit. Acceptable methods include:

(1) *Record keeping system.* The part may be controlled using a record keeping system that substantiates the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, the record must be updated with the current life status. This system may include electronic, paper, or other means of record keeping.

(2) *Tag or record attached to part.* A tag or other record may be attached to the part. The tag or record must include the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, either a new tag or record must be created, or the existing tag or record must be updated with the current life status.

(3) *Non-permanent marking.* The part may be legibly marked using a non-permanent method showing its current life status. The life status must be updated each time the part is removed from a type certificated product, or if the mark is removed, another method in this section may be used. The mark must be accomplished in accordance with the instructions under § 45.16 of this chapter in order to maintain the integrity of the part.

(4) *Permanent marking.* The part may be legibly marked using a permanent method showing its current life status. The life status must be updated each time the part is removed from a type certificated product. Unless the part is permanently removed from use on type certificated products, this permanent mark must be accomplished in accordance with the instructions under § 45.16 of this chapter in order to maintain the integrity of the part.

(5) *Segregation.* The part may be segregated using methods that deter its installation on a type-certificated product. These methods must include, at least—

(i) Maintaining a record of the part number, serial number, and current life status, and

(ii) Ensuring the part is physically stored separately from parts that are currently eligible for installation.

(6) *Mutilation.* The part may be mutilated to deter its installation in a type certificated produce. The mutilation must render the part beyond repair and incapable of being reworked to appear to be airworthy.

(7) *Other methods.* Any other method approved or accepted by the FAA.

(d) *Transfer of life-limited parts.* Each person who removes a life-limited part from a type certificated product and later sells or otherwise transfers that part must transfer with the part the mark, tag, or other record used to comply with this section, unless the part is mutilated before it is sold or transferred.

4. The authority citation for part 45 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

5. Add § 45.16 to read as follows:

§ 45.16 Marking of life-limited parts.

When requested by a person required to comply with § 43.10 of this chapter, the holder of a type certificate or design approval for a life-limited part must provide marking instructions, or must state that the part cannot be practicably marked without compromising its integrity. Compliance with this paragraph may be made by providing marking instructions in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness.

Issued in Washington, DC, on January 3, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–492 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Tuesday,
January 15, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–3]

RIN 2120–AH55

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes SFAR 92–2, which was published on November 21, 2001 to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action also mandates these modifications on aircraft in certain passenger and cargo carrying operations and extends the January 15, 2002, reporting date. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective January 15, 2002 and shall remain in effect until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Smith, Technical Programs Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7242; e-mail address: *9-awa-avr-design@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

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Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http:www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

On November 16, 2001, Congress enacted the Aviation and Transportation Security Act, Public Law 107–71. Section 104(a)(1)(B) of the Act requires the FAA to issue an order requiring the strengthening of the flight deck door and locks on certain passenger carrying aircraft.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and

flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made.

In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alterations (§ 121.379(b)). Besides the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that date must be in accordance with approved data, and whatever the operator installs in the short term must ultimately be brought into full regulatory compliance.

The Original SFAR 92 Provisions

Original SFAR 92 was published on October 9, 2001, and allowed all part 121 passenger carrying operators to install flightcrew compartment door improvements as well as prohibiting possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It was very broad to allow maximum short-term flexibility in crafting enhanced door security measures. It allowed the doors to be modified and airplanes to be operated with modified doors.

The FAA established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expected this would give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR required operators to submit a report to the FAA that details the specific modifications they make to the flightcrew compartment door. This will allow the FAA to monitor what has been installed and take action if the installation creates an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR required a report by April 22, 2002 that describes how the operator will meet regulatory compliance for egress and venting.

We also expected that airframe manufacturers and modifiers would produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents would not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by the SFAR also applied to manufacturers and other persons applying for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understood that some operators might rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers would be subject to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR part 21.303. However, to facilitate reinforcement of these doors, the SFAR included a provision overriding the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, the SFAR temporarily relieved the operator of having to obtain prior approval of the data. This part of the SFAR terminates on April 22, 2002. As soon as the design data is submitted, the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under the SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flightcrew compartment doors against intruders, the FAA also believed it was prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, the SFAR temporarily changed the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, would have flight crew compartment keys during flight. This would lessen the opportunity for gaining unauthorized access and reduce the likelihood of attacks on cabin crewmembers to obtain keys on airplanes where the flightdeck door does not have an internal locking device.

First Revision to SFAR 92–SFAR 92–1

SFAR 92 has remained substantially as originally written. However, modifications have been issued to change the scope of the rule and to clarify specific provisions. SFAR 92 originally authorized only part 121 passenger carrying operators to make the quick modifications to the flightdeck doors. Because of the risk posed by having other than flightcrew members onboard the aircraft as allowed in § 121.583, FedEx petitioned the FAA to allow it to install additional door security measures in accordance with the provisions of SFAR 92. The FAA determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes. SFAR 92–1 was published on October 17, 2001, to expand the modification authority to all part 121 operators.

Second Revision to SFAR 92–SFAR 92–2

As originally published, SFAR 92 temporarily changed section 121.313(g) to prohibit the possession of flightdeck keys by non-flightdeck crewmembers. Since initial issuance of the SFAR, internal locking devices that render the key useless for flightdeck access have been installed on many air carrier airplanes. Since the keys have multiple uses in the airplane beyond the flightdeck door, prohibiting possession of the flightdeck door keys by non-flight crewmembers on these airplanes is only an inconvenience to the crew and not a deterrent to terrorist activity.

Allowing non-flight crewmembers access to the keys is acceptable when the internal locking device is in use on the airplane. "In use" contemplates that the device is locked from the inside by the flightdeck crew. If a flightdeck crewmember must exit the flightdeck for some reason, either the remaining

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flightdeck crewmember, or a cabin crewmember that enters the flightdeck, will immediately lock the internal device behind the exiting flightdeck crewmember. This provision may also reduce the opportunity for coercion, since the flight attendant can safely hand over the key.

As a result, SFAR 92–2 was published on November 21, 2001, to add a phrase to the end of § 121.313(a)(ii) to allow possession of the key under certain circumstances. The limitations on keys do not apply to cargo operators because flight attendants are only required on passenger airplanes nor do they apply to part 129 operators because part 121 regulation do not apply to them. This change to 121.313(g) will expire with this SFAR.

SFAR 92–2 also replaced the 90 day and 180 day reporting and termination time frames with specific dates, January 15, 2002, and April 22, 2002 respectively. Since SFAR 92 was republished more than once, insertion of specific dates will eliminate confusion in calculating these dates.

This Revision to SFAR 92–SFAR 92–3

When SFAR 92 was originally issued, and subsequently revised, it was the expectation of the FAA that flightdeck modifications would be made as soon as possible. While this has been the case for the substantial majority of operators, not all have accomplished the short-term modifications. Because of the FAAs original expectation, SFAR 92 did not contain a provision mandating the internal door modifications. Now, the FAA has determined that a mandate is necessary to assure that all part 121 passenger-carrying aircraft required to have flightdeck doors are modified. The FAA has also considered the issue of airplanes that carry only cargo, but are permitted to also carry certain persons as defined in § 121.583 as discussed in SFAR 92–1. Current provisions of the regulations do not ensure that a person who is intent on using an airplane as a weapon would be unable to board an all-cargo airplane in accordance with § 121.583. Therefore, in cases where these airplanes already have flightdeck doors, the FAA has determined that the door should also be modified to improve security.

Pub. L. 107–71 directs the Administrator of the FAA to issue an order requiring the strengthening of flightdeck doors and locks. Revision 92–3 is being issued to require installation of internal locking devises on flightdeck doors within 45 days of publication of this revision. The aircraft covered by this provision are passenger-carrying aircraft operated under part 121 that are required to have flightdeck doors and all-cargo airplanes that have flightdeck doors installed. Given the large number of modifications already made on a large variety of aircraft within the fleet, the FAA believes that 45 days should provide operators who have not yet made the relevant modifications with sufficient time to do so.

This revision to the SFAR will also expand the modification authority to U.S. registered, transport category aircraft that are operated under part 129, foreign operations. Because these aircraft are U.S. registered, the FAA must issue any authorization to modify the aircraft. The FAA has received several inquires from such operators requesting authorization to make modifications as authorized in SFAR 92. SFAR 92–3 will provide such authorization.

The FAA recognizes that mandating the reinforcing modifications for part 121 operators and authorizing part 129 operators to make modifications may not enable some to make the January 15, 2002, reporting requirements in SFAR 92–2. As a result, this revision extends the reporting date to February 15, 2002. The FAA expects that those who have already made modifications will still meet the January 15, 2002, reporting date.

Other Rulemaking

In parallel with this SFAR 92–3, the FAA is issuing an immediately adopted rule (IAR) which will adopt new design standards for flight deck doors in part 25 of the Federal Aviation Regulations. Generally speaking, these new standards will enhance resistance to blunt force and ballistic intrusion. Also, the IAR will require all aircraft required to have a door under section 121.313(f), as well as all-cargo airplanes that have flightdeck doors installed, to have a door meeting the new design standard. The stronger doors must be installed not later than April 9, 2003, the expiration date of this SFAR. In essence, the doors meeting the new design standards will replace the doors reinforced under this SFAR.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C 553(d) for making this rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

Additionally, with respect to the provisions requiring modifications to strengthen the flight deck doors and locks, PL 107–71 authorizes the Administrator to issue an order without regard to the provisions of chapter 5 of Title 5 of the United States Code. The modification to section 121.313 contained in this SFAR is within the scope of this authority and is adopted without public notice and a prior opportunity to comment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 USC 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package. OMB granted an emergency clearance and assigned OMB control number 2120–1674. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Following is a description of the information collection burden associated.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA by February 15, 2002 that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002 that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121 and 129.

Burden: The burden associated with this SFAR is 6480 hours.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. At this time, the FAA is not able to assess whether this rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory analysis of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92–2 [Removed]

2. Remove Special Federal Aviation Regulation No. 92–2.

3. Add Special Federal Aviation Regulation (SFAR) 92–3 to read as follows:

SPECIAL FEDERAL AVIATION REGULATION NO. 92–3—FLIGHTCREW COMPARTMENT ACCESS AND DOOR DESIGNS

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under part 119 and that conduct operations under part 121 and to operators of U.S. registered transport category aircraft operated under part 129, except paragraph 4 of this SFAR does not apply to cargo operations and part 129 operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modifications.

2. *Regulatory Relief.* Contrary provisions of part 21, and §§ 121.153(a)(2), 121.379(b), and 129.13 notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Not later than February 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) Not later than April 22, 2002, submit to the Director, Aircraft Certification Service, a schedule for accomplishment of the changes necessary to restore compliance with all applicable airworthiness requirements, as well as a listing of the regulations not currently complied with. The schedule may not extend beyond the termination date of this SFAR.

(iii) If, upon reviewing the data submitted in paragraph 2 (a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

4. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit must be identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

5. *Door Modification Requirement* After [45 days after publication] for each airplane required under paragraph 121.313(f) to have a door between the passenger and pilot compartments, and for transport category all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on [the effective date of this amendment] such door must be equipped with an internal locking device installed, operative, and in use. Such internal locking device has to be designed so that it can only be unlocked from inside the flightdeck.

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6. *Termination.* With respect to the ability to approve airplanes for return to service without data previously approved by the Administrator in the case of major alterations, this SFAR terminates on April 22, 2002. All other provisions of this SFAR terminate on April 9, 2003.

Issued in Washington, DC, on January 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–967 Filed 1–10–02; 4:15 pm]

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Federal Register

Tuesday,
January 15, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Security Considerations in the Design of the Flightdeck on Transport Category Airplanes; Final Rule

Advisory Circulars (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. FAA–2001–11032; Amendment No. 25–106 and 121–288]

RIN 2120–AH56

Security Considerations in the Design of the Flightdeck on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment implements two security design requirements governing transport category airplanes. This amendment requires a means to protect the flightdeck from unauthorized intrusion and small arms fire or fragmentation devices. The FAA is also requiring that certain airplanes operating in part 121 service comply with this amendment to prevent unauthorized access to the flightdeck. These amendments are being adopted to further enhance air carrier security in response to the heightened threat to U.S. civil aviation.

DATES: This amendment is effective January 15, 2002. Comments must be received on or before March 18, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–11032 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to this final rule in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provides that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule; and request for comments, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2001–11032." The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

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You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

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Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requirements for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9-awa-sbrefa@faa.gov*.

Background

On September 11, 2001, the United States experienced terrorist attacks when airplanes were commandeered and used as weapons. These actions demonstrated the need to improve the security of the flightdeck. On November 19, 2001, Congress enacted Public Law 107–71, the Aviation and Transportation Security Act (the Act). Section 104 (a) of the Act, Improved Flight Deck Integrity Measures, states:

(a) IN GENERAL.—As soon as possible after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall—

(1) Issue an order (without regard to the provisions of chapter 5 of title 5, United States Code)—

(A) Prohibiting access to the flightdeck of aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations, except to authorized persons;

(B) Requiring the strengthening of the flightdeck door and locks on any such aircraft operating in air transportation or intrastate air transportation that has a rigid door in a bulkhead between the flightdeck and the passenger area to ensure that the door cannot be forced open from the passenger compartment;

(C) Requiring that such flightdeck doors remain locked while any such aircraft is in flight except when necessary to permit access and egress by authorized persons; and

(D) Prohibiting the possession of a key to any such flightdeck door by any member of the flightcrew who is not assigned to the flightdeck;

(2) Take such other action, including modification of safety and security procedures and flightdeck redesign, as may be necessary to ensure the safety and security of the aircraft.

The Act directs that the FAA issue an order fulfilling the requirements of paragraph (a)(1) of Section 104 as a final rule, without seeking public comment prior to adoption. The Act specifies that improved flightdeck security must be applied to airplanes operating in air transportation that are currently required to have flightdeck doors.

This final rule is intended to implement Section 104(a) of the Act. Thus, as explained more fully below, it prohibits access to the flightdeck, requires strengthening of the flightdeck doors, requires flightdeck doors to remain locked, and prohibits possession of keys to the flightdeck door by those members of the crew not assigned to the flightdeck. While the Act and the deadlines established in the Act provide both the impetus and the authority for issuance of this rule as a final rule without notice and comment, both the FAA and the broader aviation community have for some time been engaged in efforts to address the issue of flightdeck security. In addition, since the events of September 11, the FAA has issued a series of Special Federal Aviation Regulations (SFAR 92, 92–1, and 92–2) which are also pertinent to the issues addressed in this final rule. Before describing the terms of the final rule, therefore, we summarize below for context the various regulatory efforts that have considered flightdeck security and which further support the issuance of this final rule.

FAA/Industry/International Design Efforts

Because of the work on flight deck security that had been initiated by the FAA and the aviation community through the International Civil Aviation Organization (ICAO) and the Aviation Rulemaking Advisory Committee (ARAC), the objectives of this amendment already have broad acceptance. The ICAO is an international body consisting of 187 member countries which has adopted standards under Amendment 97 to ICAO Annex 8 relating to the incorporation of security into the design of airplanes including the following subjects:

(1) Survivability of systems,

(2) Fire suppression,

(3) Smoke and fumes protection (cabin and flightdeck),

(4) Least risk bomb location and design,

(5) Pilot compartment small arms and shrapnel penetration, and

(6) Interior design to deter hiding of dangerous articles and enhance searching.

This rule only addresses ICAO requirements regarding protecting the pilot compartment. The remainder of the ICAO requirements will be addressed in subsequent rulemaking action.

In addition to participating in the development of international standards through the ICAO, the FAA considers maintaining harmonized standards between the United States and Europe to be a high priority. The FAA has found that carrying out this harmonization task is best achieved by a joint activity with its European counterpart, the Joint Aviation Authorities (JAA) and through ARAC, the FAA developed protection for the pilot compartment beyond the ICAO standard.

The ARAC is composed of 76 member organizations with a wide range of interests in the aviation community and provides the FAA with firsthand information and insight regarding proposed new or revised rules. In 1999, ARAC established a Working Group of airplane design specialists and aviation security specialists from the aviation industry and the governments of Europe, the United States, Brazil and Canada. The Working Group was tasked to develop harmonized security related design provisions based on Amendment 97 to Annex 8 of the Convention on International Civil Aviation. One of the requirements covered by the tasking is protection of the flightdeck. The Working Group was also tasked to consider improving the resistance to flightdeck intrusions while still ensuring compliance with the other requirements.

The Working Group developed specific recommendations for implementing security provisions into the design of transport category airplanes. The ARAC has approved those recommendations with respect to protection of the flightdeck and recommended them to the FAA for rulemaking. The FAA has accepted ARAC's recommendations, and the rulemaking contained in this amendment follows from those recommendations and the activity of the Working Group.

The FAA is expediting rulemaking action with regard to protection of the flightdeck based on the events of September 11, 2001, and the requirements of the Act. The remainder of the tasks assigned to the working group will be completed and forwarded to the FAA in the near future. The FAA intends to go forward with additional rulemaking after those recommendations are received.

Other Rulemaking To Protect the Flightdeck

Following the events of September 11, 2001, the FAA issued a series of Special Federal Aviation Regulations (SFAR 92, 92–1 and 92–2) to enable passenger air carriers to make short-term modifications to their flightdeck doors to enhance security. These modifications can be made quickly and will significantly improve the intrusion resistance of the flightdeck, even though they might not meet all regulatory requirements. The SFARs provided temporary regulatory relief from certain airworthiness standards so that security enhancements could be made as quickly as possible. In contrast, this amendment establishes the long-term standards for doors. This amendment will supersede the short-term SFAR requirements before the SFAR expires.

To date the SFAR 92 series rules have authorized, but not required, the short-term modifications. Concurrent with this amendment the FAA is issuing an SFAR 92–3 that will require the short-term modifications. The level of security enhancement mandated by SFAR 92–3 is intended to mirror those changes already made voluntarily by operators.

Discussion of the Final Rule

Part 25 Requirements

Applicability

As directed by Section 104 of the Act, this amendment applies to "aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations."

The only regulation currently addressing this issue is 14 CFR

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121.313(f), which, for airplanes operated under that part, requires installation of a "door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph." The exception for nontransport category airplanes certificated after December 31, 1964, generally covers smaller commuter category airplanes. This amendment applies to the airplanes subject to the 14 CFR 121.313(f) requirement. In addition, as discussed under the heading "Operating Requirements," we are amending § 121.313 to apply these requirements to transport category all-cargo airplanes that have flightdeck doors installed on the effective date of this amendment. As discussed under the heading, "Future Rulemaking," the FAA may consider imposing similar requirements for other airplanes in the future.

Section 104(a)(1)(B) of the Act provides that this new requirement must apply to affected aircraft that have a "rigid" door. Neither the Act nor 14 CFR 121.313(f) distinguishes between rigid doors and non-rigid doors, and the FAA is not aware of a practicable distinction between such doors that could be used in this rulemaking or in the implementation of the new regulation. Therefore, this amendment applies to all affected doors between pilot and passenger compartments, without distinction based on rigidity. To the extent that such application may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. As explained, it is impracticable to define a distinction based on rigidity that would enable the FAA to comply with the Act's requirement to issue this regulation for "rigid" doors, while excluding "non-rigid" doors. In addition, we find that, even if such a distinction could be drawn, it would be contrary to the intent of the Act, and the purpose of this rulemaking, which is to enhance the security of flightdeck doors for airplanes that are required to have them.

Accordingly, this amendment adds a new § 25.795 addressing the incorporation of security into transport category airplane flightdeck design. This rule applies whenever the airplane is required to have a flightdeck door. Some airplanes are equipped with crew rest areas that have doors that lead from the passenger cabin into the crew rest area, as well as a door from the crew rest area into the flightdeck. For the purposes of compliance with this amendment, the door leading into the crew rest area from the passenger cabin is the affected door.

The FAA invites comments on the applicability of this regulation. Commenters should clearly delineate their rationale for a different applicability in terms of how the security and safety issues are addressed. Because such discussions are also sensitive from a security standpoint, the FAA may screen such comments before placing them in the public docket. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591.

Flightdeck Security Intrusion by Persons

Section 25.795(a)(1) requires that the flightdeck door installation be designed to resist intrusion by any person who attempts to enter the flightdeck by physically forcing his or her way through the door. In this context, the door installation includes the door, its means of attachment to the surrounding structure, and the attachment structure on the bulkhead itself. The integrity of the locking/latching/hinge mechanism, as well as the door panel itself, can be improved so that intrusion resistance is significantly enhanced.

There are numerous data concerning the forces a person can exert on a door. *National Institute of Law Enforcement and Criminal Justice (NILECJ) standard 0306.00* released in May 1976, for the Physical Security of Door Assemblies and Components, provides standards and guidance to assess a door's resistance to intrusion. The highest level of intrusion resistance in the NILECJ standard uses impacts of 200 Joules. In conjunction with industry, the FAA determined that a higher standard was necessary and achievable. This final regulation requires that the door resist impacts with energies equal to 300 Joules (221.3 foot-pounds), which is fifty percent higher than the highest level of intrusion resistance in the NILECJ standard. In order to address resistance to pulling on the doorknob or handle, the regulation also includes a requirement for application of a 250 pound tensile load. This value was selected to provide intrusion resistance from pulling comparable to the 300 Joules impact resistance requirement. The requirement is not intended to prevent entry by a person using extraordinary means or with a large amount of time to work on opening the door. It is intended to deter attempts at entry and delay attempts until other actions can be taken to prevent entry.

The FAA has captured applicable reference data and test methods in Advisory Circular (AC) 25.795–1, "Flightdeck Intrusion Resistance," and considers these acceptable for demonstrating compliance. The methods of compliance described in the AC consist of impact tests at critical points on the door, as well as resistance to pulling. Critical locations are expected to be the door latch and hinge, as well as the panel itself, but will depend on the design. The FAA will also consider other valid compliance methods if proposed by an applicant.

An additional aspect of intrusion resistance is the interior configuration in the vicinity of the door. Small changes to the interior can make it difficult for an intruder to have direct access to the door, and therefore difficult to exert much force. Changes to the interior should also be included as part of the design considerations to meet this requirement.

Ballistic Penetration

Section 25.795(a)(2) requires design precautions to be taken to minimize the penetration of shrapnel from a fragmentation device and small arms projectiles (i.e., ballistics) which might be fired through the flightdeck doors from occupied compartments. While not explicitly mentioned in the Act, these protections are key elements of protecting the flightdeck from intrusion as required by § 104(a)(1)(B) of the Act because any compromise to the integrity of the flightdeck door from a ballistic threat could enable an intruder to gain access to the flightdeck. It would be impracticable to protect the door without including a ballistic protection component. To the extent that this may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures.

Ballistic resistance will also protect the pilot from trauma from ballistics entering the flightdeck. Further, the potential loss of critical flight instrumentation and control is also acute if ballistics penetrate the flightdeck. The disabling of critical systems from a single ballistic penetration is achievable with the concentration of most systems controls within a small sector of the flightdeck. Electronic displays of basic flight information are similarly unprotected and vulnerable. It is not the intent of this requirement to make the flightdeck

"impenetrable," but to provide a high level of protection.

This final rule requires protection for all features of the flightdeck door to the extent necessary to prevent penetration of likely projectiles. We have determined protection equivalent to Level IIIA of the National Institute of Justice Standard (NIJ) standard 0101.04 is sufficient to protect against the most powerful handgun projectiles and grenade shrapnel that could be encountered on civil airplanes, and have adapted the relevant portions of this standard for this application in AC 25.795–2, Flightdeck Penetration Resistance. Protection would be required at all points where penetration of small arms fire could cause a hazard. This would include design details such as hinges, grills, and latches.

The FAA has reviewed several material concepts to address this requirement, including metallic alloys, ceramics, cermets, polymers, strong fibers and composites, and determined that the proposal is both practical and cost-effective. Advisory Circular 25.795–2 includes a detailed discussion of both material types and methods of compliance. A notice of issuance of AC 25.795–1 and AC 25.795–2 is published in this same part of the **Federal Register**. However, it is the FAA's intention to accept certain material types and installation approaches without the need for actual test if it can be shown that the material and its installation would meet the intent of the rule. If an applicant elected to use other means, the AC would also provide for use of alternative materials and installations in compliance with performance standards specified in the rule.

Existing Requirements

The flightdeck door is subject to several requirements that affect its structural integrity. These include protection during decompression where the door may incorporate venting features to prevent a large pressure differential build up; egress considerations to permit the flightcrew to enter the passenger cabin in the event the door becomes jammed during an accident; and provisions to enable rescue personnel to enter the flightdeck in the event members of the flightcrew are unable to exit on their own. The door may also be integral in meeting ventilation requirements. There is, of course, the potential for designs that meet this new rule to conflict with existing requirements, but the FAA has determined that all the requirements can be accommodated by proper design of the door installation.

The balance between providing access to rescue personnel while providing intrusion resistance may be the most difficult element. On some airplanes, there are exits inside the flightdeck that can be opened from the outside and in such cases, there is no requirement for the flightdeck door to have provision for entry by rescue personnel. For future airplanes, this is the most direct way to address the potential conflicts in the requirements. On airplanes where the flightdeck exits cannot be opened from the outside, rescue personnel must gain access to the flightdeck via the flightdeck door. As stated earlier, the objective of this amendment is to either directly prevent the entry of a person or sufficiently delay them until other actions could be taken to prevent them from being able to continue their attempted entry. In that regard, to meet the intent of this amendment, the size and location of any removable panels should be sufficiently awkward to inhibit that person's entry. The FAA expects that rescue personnel would have additional equipment at their disposal to gain access through the flightdeck door and be able to exert more force than would an individual acting in flight. Therefore, there should be no inherent reason that the two requirements cannot both be met.

Inflight Access by Cabin Crew

While not explicitly a current requirement, the FAA has long recognized a need to provide for in-flight flightdeck entry by the cabin crew should a flightcrew member become incapacitated; because the consequences of not providing such access could be catastrophic. Since § 121.313(g) resulted in flight attendants having access to a key to the flightdeck door, this issue has been addressed fairly simply in the past. As required by Section 104(a)(1)(D) of the Act, however this rule will prohibit the possession of flightdeck door keys by the cabin crew during flight, as discussed under "Operating Requirements."

The FAA expects that other means to enable a flight attendant to enter the flightdeck, without the use of force, will be available through more sophisticated systems that do not require forcible entry, and that these means will be available only to the cabin crew and only in an emergency situation. Various approaches are possible and do not require detailed discussion here. This capability is considered necessary, however, and it would be impractical to impose the requirement for intrusion resistant flightdeck doors without addressing this issue at the same time. Indeed, Congress recognized in § 104(a)(1)(c) of the Act that there would be times when it would be necessary for authorized persons to enter the flightdeck.

Therefore, § 25.772 is being amended to require that there be a means to allow the flight attendants to enter the flightdeck should the flightcrew become incapacitated. Such means are only intended to be used in an emergency situation, and would require complementary operational procedures to facilitate their use. As discussed below, § 121.313(j) permits a combination of procedures and hardware to provide access by flight attendants in light of this aggressive compliance schedule specified in this amendment.

We have concluded that this requirement is comfortably within the scope of those provisions authorized by Section 104 of the Act as with other provisions discussed previously, however, to the extent that this provision may be seen as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that strengthening the flightdeck door, as required by the Act, without providing for access to the flightdeck by authorized personnel in case of flightcrew incapacitation, would create a serious safety problem that was not intended by Congress. Therefore, providing notice and prior opportunity to comment on this provision is impracticable and contrary to the public interest.

Operating Requirements

Flightdeck Door Requirements

As required by the Act, the FAA is revising § 121.313 to impose new flightdeck door requirements on existing airplanes that are required to have such doors. The FAA has also considered the issue of airplanes that carry cargo, but are permitted to also carry certain persons as defined in § 121.583 who are not flightcrew members. On many of these airplanes, there is a door between the flightdeck and the occupied compartment. Current regulations do not ensure that a person intent on using an airplane as a weapon would be unable to board all-cargo airplanes. Therefore, in cases where these airplanes already have a flightdeck door, the FAA has determined that the door should meet the new standards adopted here. As already noted for other provisions, this requirement is not specifically addressed in the Act. To the extent that this provision may be seen

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as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that addressing only passenger carrying airplanes with flightdeck doors would omit a significant number of airplanes that are similarly situated.

Section 121.313(f) does not require such all-cargo airplanes to have a door between the flightcrew compartment and other occupied compartments. In order to preclude removal of flightdeck doors as a means to avoid compliance with this requirement, the rule applies to all-cargo airplanes that have flightdeck doors installed on the effective date of this amendment.

In addition, as discussed under the heading "Future Rulemaking," the FAA is considering the need to require a flightdeck door on all-cargo airplanes. Such action will be considered in light of comments received and would be an expansion of the requirements of § 121.313(f).

A new § 121.313(j) is added to reference the new part 25 standard for the door separating the flightdeck from the passenger compartment. With respect to the requirements of § 25.772(c), which would require systems that would permit entry by flight attendants but not permit entry by other persons, these systems must have a high degree of reliability, and the FAA considers that it may not be practical to develop and install such systems within the compliance time of this rule. However, operational procedures coupled with simpler, more robust systems could be readily implemented. Procedures could include having a flight attendant occupy a flightdeck seat whenever one pilot must leave the flightdeck. Any system that must be activated by a flightcrew member (either to permit or deny entry) must be operable from the crewmember's duty station. Therefore, § 121.313(j) will require each operator to establish methods to enable a flight attendant to enter the flightdeck in the event that a flightcrew member becomes incapacitated. As with § 25.772(c), these methods are intended to be used under emergency conditions and not for routine access to the flightdeck.

As noted previously, some airplanes are equipped with a crew rest area that is accessible from both the flightdeck and the passenger compartment. Current practice in the application of section 121.313(f) is that the entry to such areas from the passenger compartment is required to have a locked door. Section 121.313(f) is revised to clarify this requirement, and the new requirement of section 121.313(j) for strengthened doors also applies to these doors.

The rule will require that doors meeting this standard be installed no later than April 9, 2003. The FAA evaluated several factors in establishing this compliance time. Before enactment of the Act, multiple industry groups had developed a proposal for the performance of flightdeck doors that addresses intrusion and ballistic protection. The industry proposal closely parallels the changes to part 25 adopted by this rule. Therefore, the FAA does not anticipate significant problems in complying with this requirement. The FAA is requiring that all airplanes affected by § 121.313(f) incorporate flightdeck doors meeting the requirements of § 25.795 (a)(1) and (2) by April 9, 2003. This date corresponds to the termination date of the previously issued SFAR 92 (and its successors), and is the date by which all airplanes modified under the provisions of the SFAR must be in full compliance with their respective airworthiness requirements. This is an aggressive schedule; given events of September 11, 2001, however, the nature of the issue demands aggressive action.

Flightdeck Access Provisions

This amendment also changes the requirements governing access to the flightdeck in flight. Section 104(a)(1)(D) of the Act requires the Administrator to issue an order prohibiting possession of flightdeck door keys by other than flightdeck crewmembers. The FAA has determined that this limitation is intended to address operations in flight, rather than possession of keys at all times. Section 121.313(g) currently requires that non-flightdeck crewmembers have keys in flight and this rule amends (g) to meet Section 104(a)(1)(D) of the Act. Section 121.313(g) is revised to achieve three important safety goals. In the first sentence, the requirement is to have keys available that will unlock doors that lead from a passenger compartment to an emergency exit. The second regulatory requirement is that each crewmember has a key to doors specified in the first sentence, unless that door is a flightdeck door.

The last regulatory requirement is that before April 9, 2003, other crewmembers, (*e.g.* flight attendants) may have a key but only if the flightdeck door has an internal locking device installed, operative, and in use. This exception is a result of SFAR 92–2. The SFAR authorizes short-term flightdeck door reinforcement efforts, which include internal locks. When those locks are installed and in use, the key to the door will no longer open the door so it is ineffective as a key. As noted in the SFAR, such internal flightdeck locking devices have to be designed so that they can only be unlocked from inside the flightdeck (*e.g.* deadbolt locks or bars). The keys themselves have multiple uses in the passenger cabin such as opening medical supplies, defibrillators and cabin crew rest areas. Denying access to the keys when they will not open the flightdeck door only inconveniences the cabincrew with no benefit of safety. The exception, which expires with the SFAR in April 9, 2003, will satisfy the requirement of the Act to prohibit possession by flight attendants of keys that can be used to gain entry to the flightdeck.

Section 121.547 addresses who may be admitted to the flightdeck and in some cases the conditions for admission to the flightdeck. Section 121.547(a)(1) and (a)(2) remain unchanged and thus crewmembers, FAA inspectors, and NTSB representatives who are performing official duties may be admitted to the flightdeck.

Several changes have been made to § 121.547(a)(3). In the current § 121.547(a)(3), only the pilot in command (PIC) had to give permission for the people listed in paragraph (a)(3) to be admitted to the flightdeck. Because of the demands of aviation safety and security, in the amended section, admission to the flightdeck is also conditioned on the permission of the part 119 certificate holder and the Administrator. To the extent this provision may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. The Act requires limitations on those authorized access to the flightdeck. Inherent in issuing such a rule is a basis for determining authorization and it would be impracticable to issue a rule without such procedures. This amendment is being made pursuant to 5 USC 553(b)(3)(B), 49 USC Section 44701(a)(5), and Section 104(a)(2) of the Act.

In complying with §§ 121.547(a)(3) and 121.547(c)(4), the air carrier must keep security directives in mind when deciding whether to issue authorization to enter the flightdeck for purposes of riding in the jumpseat. The changes to the regulatory text in § 121.547(a)(4) are clarifying in nature and need not undergo normal notice and comment procedures. As the discussion in this preamble indicates, the discretion the FAA had with the current § 121.547(a)(4) to issue authorization to enter the flightdeck will now be systemically overseen and controlled.

Existing § 121.547(a)(4) is modified slightly in the new rule for clarification purposes only. In the current rule in order for a person to gain entry to the flightdeck that person must have permission of three people including the "certificate holder." In the revised language the agency adds the phrase "an appropriate management official of part 119" certificate holder to make clear which certificate holder the agency is referring to. Similar changes have been made to § 121.547(c)(4), (c)(5) and (c)(6). Because these changes are clarifying in nature, notice and comment procedures are not required.

In current § 121.581(c), the regulations allowed on certain aircraft, that did not have an observer seat on the flightdeck, that the cockpit door could remain open when an FAA inspector is conducting an inspection. Under the current rule the FAA inspector would conduct the inspection in a forward passenger seat. The last section of current § 121.581(c) is being deleted because allowing cockpit doors to remain open during flight is inconsistent with Section 104(a)(1)(C) of the Act. This amendment is being adopted without following APA notice and comment procedures pursuant to Section 104(a)(1) of the Act.

Section 121.587 is being revised to require that the flightcrew compartment door be closed and locked at all times when the aircraft is being operated. Previously, the rules only required the door to be closed and locked during flight. With this amendment, the door will also have to be closed and locked during taxi, takeoff, and landing roll. The "good cause" justification for not using the normal APA notice and comment procedures is that the recent terrorist attacks make clear that security and safety dictate that—except as provided in § 121.587(b)— the door shall be closed and locked at all times when the aircraft is being operated. As has been discussed regarding other provisions of this amendment, to the extent this provision may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. Prohibiting access, as required by the Act, without addressing all phases of operation, would leave a potentially serious loophole in the requirement that was not intended by Congress. Therefore, providing notice and prior opportunity to comment on this provision is impracticable and contrary to the public interest.

Current § 121.587(b)(1) allows the flightdeck door to remain opened during takeoff and landing if the crew compartment door is the means of access to a required passenger emergency exit or floor level exit. This section is being deleted for the same reasons that § 121.587(a) is being amended.

Section 121.587(b)(3) currently permits the flightdeck door to be open if the use of the observer seat (jumpseat) will not permit the door to be closed. This section is deleted because Section 104(a)(1)(C) of the Act does not allow for such a provision. Thus, the flightdeck door may not be ajar to accommodate a jumpseat occupant for the duration of the flight. The legislative history for Section 104(a) of the Act indicates that on the rare occasions when a flightdeck door will be opened during flight, Congress expected the opening of that door to be brief and that the door will be closed and locked quickly.

Future Rulemaking

As noted previously, the regulations currently only require the installation of a flightdeck door for passenger-carrying transport category airplanes operating under part 121. In light of the events of September 11, 2001, and in accordance with Sections 104(a)(1)(c) and 104(a)(2) of the Act, the FAA is reviewing the need for flightdeck doors on all air carrier airplanes, including US cargo operations. In addition, as the events of September 11, 2001, make clear, additional security measures will also be required for aircraft operated by foreign operators. The 33rd ICAO Assembly unanimously passed a resolution that calls on all States to implement additional security measures and directs the ICAO Council to strengthen ICAO security standards. The FAA is working with civil aviation authorities and with ICAO to rapidly develop and implement measures that will improve flightdeck security.

The FAA expects that ICAO will adopt requirements for intrusion resistant flightdeck doors to complement the existing Annex 8 requirements, and make those requirements a condition of operation under Annex 6. The FAA is aware of efforts underway in ICAO to do this, and will support those efforts. The FAA also expects that the CAA of those countries overseeing operators with part 129 operations specifications approvals will adopt their own standards for improved flightdeck security, similar to what the FAA is adopting here, and make those requirements applicable to their existing fleets. Given the urgency of the situation, such requirements and modifications necessary to meet these requirements should be established by April 2002, such that airplanes operating in the United States, whether foreign or domestic, will have improved flightdeck security by April 9, 2003.

To facilitate and promote a global effort such as this, the FAA intends to consult and work with other regulatory authorities over the next several months. On the basis of these consultations, the FAA will determine whether specific rulemaking in part 129 is required. Such a rule, if necessary, would likely require compliance with the same standards imposed by this amendment, or with an equivalent standard imposed by the State of Registry or the equivalent ICAO requirement, at the discretion of the Administrator.

As discussed earlier, the FAA issued the SFAR 92 series of rules to authorize, and now mandate, installation of internal locking devices on flight deck doors on part 121 aircraft. These modifications provide immediate flightdeck security improvements until the installation of permanent solutions as outlined in this amendment. The SFAR 92 authority was first issued on October 9, 2001, and operators immediately began modifying doors. The FAA expects part 129 operators to install and use similar locking devices and that their States of Registry would issue waivers similar to SFAR 92 to allow these modifications. The FAA views these modifications as essential to near-term security of aircraft, whether they are operated in part 121, or part 129 operations to and from the US. The FAA has the continued expectation that part 129 operators and their States of Registry will take the necessary actions to install internal locking devices and that those modifications will be made on or before the date set for full part 121 installation in February 2002 by SFAR 92–3. The FAA will closely monitor the activities of part 129 operators to determine if the locking devices are installed and used in the time frame provided by SFAR 92–3 and will initiate rulemaking if they are not.

In addition, Section 104(c) of the Act states the following:

"The Administrator shall investigate means of securing the flightdeck of scheduled passenger aircraft operating in air transportation or intrastate air transportation that do not have a rigid fixed door with a lock between the passenger compartment and the

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flightdeck and issue such an order as the Administrator deems appropriate to ensure the inaccessibility, to the greatest extent feasible, of the flightdeck while the aircraft is so operating, taking into consideration such aircraft operating in regions where there is minimal threat to aviation security or national security." This section addresses both airplane type and mode of operation.

The FAA will consider whether other types of airplanes should be equipped with flightdeck doors meeting the standards of this amendment, and solicits comments on this issue. Commuter category airplanes will be a focus of the FAA's deliberations on potential future applicability. Other changes, as outlined in Section 104(a)(2) of the Act, may also be proposed.

The FAA solicits comments on the need to expand the requirement for installation of a flightdeck door to other domestic operations. The FAA intends to propose further rulemaking if it determines that the current requirements of § 121.313(f) need to be expanded to other operations. For example, during cargo operations under part 121, operators are allowed to transport certain persons that are identified in § 121.583. The FAA is considering whether it is necessary to require improved flightdeck security on all cargo airplanes. The FAA is also considering whether to require strengthening flightdeck doors on transport category aircraft operated under parts 91, 125 and 135. We solicit comments on this issue.

As noted, this amendment only addresses the flightdeck door, as required by the Act. However, the FAA considers that a comprehensive assessment of flightdeck security must include all barriers between the flightdeck and occupied areas. Therefore, the FAA intends to propose further rulemaking that would apply the requirements adopted here to flightdeck bulkheads, floors and ceilings that separate the pilot and passenger compartments for new type designs under part 25. At that time, the need to consider the ballistic protection capability of the door after it has been tested for intrusion resistance would also become a requirement.

The FAA also expects to further amend new § 25.795 to add the remainder of the ARAC recommendations concerning survivability of systems, cargo fire suppression, smoke and fumes protection (cabin and flightdeck), least risk bomb location and design, and interior design to deter hiding of dangerous articles and enhance searching. Therefore other paragraphs in § 25.795 of this amendment are identified and marked as "reserved."

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this rule.

International Compatibility

In keeping with US obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. As discussed earlier, this rule is partially responsive to Amendment 97 to ICAO Annex 8, and the FAA plans further action to address the remainder of the Amendment 97 requirements.

Good Cause for Immediate Adoption

As discussed previously, the Act requires that this regulation be issued without prior public notice and opportunity to comment.

For those provisions that are arguably not required to be adopted by the Act, Section 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. §§ 553(b)(3)(B) and 553(d)(3) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under § 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delay effective date requirement in § 553.

For the reasons discussed previously, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, or contrary to the public interest. The provisions of this final rule require implementation of two security design requirements related to protection of the flightdeck. It provides means to protect the flightdeck from small arms fire or fragmentation devices, as well as means to protect against intrusion into the flightdeck by unauthorized persons.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing US standards, this act requires agencies to consider international standards, and use them where appropriate as the basis for US standards. Fourth, the Unfunded Mandates Act of 1995 requires agencies to prepare a written assessment of the costs and benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on state, local, or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined that this rule has benefits that justify the costs; will not have a significant impact on a substantial number of small entities; has no effect on trade-sensitive activity; and does not impose an unfunded mandate on state, local, or tribal government, or on the private sector.

Benefits and Costs

This rule is the first of a series of FAA rules to improve flightdeck integrity, as directed by the Aviation and Transportation Security Act. This rule establishes the requirements for flightdeck door enhancements. As such, the benefits of this rule are to ensure the safety and security of the flying public. Since this rule is one of several being introduced to avoid a reoccurrence of an event like that of September 11, 2001, the benefits will be shared by the entire set of rules designed to prevent such a reoccurrence.

Once the terrorist attacks of September 11, 2001, demonstrated the potential damage from using an aircraft as a weapon of mass destruction, flightdeck security was catapulted as an issue of very high public interest. Only days after the September 11, 2001, attacks, President Bush identified flightdeck security as an issue requiring immediate action, and improvements to flightdeck security is one of several recommendations set forth by the Secretary of Transportation's Rapid Response Team on Aircraft Security. Congress followed with the introduction of the Aviation and Transportation Security Act, and many carriers have voluntarily retrofitted their fleets with improved flightdeck doors.

The cost of the September 11, 2001, catastrophic terrorist act cannot be measured easily in dollars. While those losses are estimated to be potentially in the tens of billions of dollars, the costs of another incident could possibly be even higher. Based on changes in the aviation security risk, and the Aviation and Transportation Security Act, the FAA believes that the benefit of this regulation is warranted to prevent flightdeck access by unauthorized persons.

Applicants for new, amended, or supplemental type certificates under part 25 will be affected by this rule. These applicants typically include manufacturers and modifiers. The additional cost to an airplane manufacturer is the additional cost of the door, because the flightdeck door installation costs in a new airplane are roughly equal. The increased purchase cost of a $9,000 hardened flightdeck door over that of a $6,000 current door is $3,000. Based on this incremental cost of $3,000, and the expected manufacturing of 360 airplanes under a new type certificate, the cost of this rule to part 25 manufacturers is expected to be $1.1 million ($0.7 million, discounted). Additionally, some certification costs will be incurred to prove compliance of the new door, but these costs are expected to be relatively small, at approximately $0.1 million.

For the analysis affecting part 121 operators, the aviation industry provided estimated purchase and installation costs of future compliant flightdeck doors to range from a base case of $12,000 ($9,000 for the door and $3,000 for installation) to an upper bound of $17,000, which includes the certification costs. Our current information indicates that $12,000 will provide a door that meets the standards set forth in this rule. Alaska Airlines removed and installed doors thought to meet the new specifications for $12,000 per airplane, and jetBlue was able to do so for $10,000 per aircraft. Even though multiple sources have lent support to the base case cost of $12,000, no flightdeck door has been approved to the new specification. Given the uncertainty as to the actual cost of purchasing and installing approved flightdeck doors, the FAA has provided an upper-bound estimate of $17,000. The FAA solicits comments with supporting documentation with respect to projected costs of upgrading flightdeck doors.

The FAA expects that, now that the specifications are published, many carriers will initiate steps toward compliance even before the rule takes effect. Approximately 340 aircraft are expected to already be compliant with this rule. Operators beyond those that are affected by this rule may also choose to voluntarily comply. The FAA estimates that 6,631 transport category airplanes flown in scheduled commercial service will still need to have their flightdeck doors hardened. The base case cost of purchase and installation of these doors results in a $79.6 million expense to the operators with the upper bound costs reaching $112.7 million.

In addition, the FAA estimates that the additional 50 pounds resulting from a heavier door will result in additional fuel requirement costs of $27.5 million ($20.7 million, discounted) over ten years. Without exception, every flightdeck door manufacturer claimed that their version of a secure flightdeck door could be installed by airline technicians overnight, or during an extended overnight. Several carriers have already begun, and in some cases completed, the retrofit. These carriers were able to perform the retrofit during overnight maintenance on 340 aircraft in less than two months. Based on this information, the FAA believes that all carriers will have an opportunity to have the doors installed overnight or during a maintenance check, thereby eliminating the need to take the aircraft out of service for any amount of time.

The total cost of this rule to part 121 operators is, therefore, expected to range from the base case of $107.1 million ($98.5 million, discounted) to $140.2 million ($131.0 million, discounted) over the 10-year period. The FAA requests comments as to how many aircraft are already compliant with the rule, the costs incurred in retrofitting such aircraft (including down-time costs), and how many carriers are expected to be compliant prior to the implementation of the rule. Since the FAA may extend the flightdeck door requirements in the future, the FAA requests similar comments from part 91, 125, and 135 operators.

This rule is part of a series of FAA rules intended to prevent another attack similar to the one of September 11, 2001. The FAA cannot provide a reasonable quantitative estimate of benefits because the extremely high benefits that are involved in avoiding another similar attack, both in terms of averted loss of life and property, and avoided damage to the economy, will most likely be in the tens of billions of dollars, a figure that overshadows any cost associated with this series of rules. The purpose of this particular rule concerning flightdeck security is to expedite an important element of the Aviation Transportation Security Act. Accordingly, the FAA believes that the rule is cost-beneficial and is necessary to ensure a high level of aviation safety by providing compliance specification for hardened flightdeck door standards to the industry.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In response to the Aviation and Transportation Security Act, this rule requires the strengthening of the flightdeck doors for part 25 manufacturers, and all aircraft with cockpit doors that operate under part 121. A full Regulatory Flexibility Analysis is not necessary for the reasons presented below.

The Small Business Administration classifies aircraft manufacturers with less than 1,500 employees as small entities. All part 25 US transport-aircraft category manufacturers have more than 1,500 employees. The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Thus, no part 25

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manufacturer is considered a small entity.

To determine the potential economic impact on small entities conducting business as part 121 operators, the FAA performed the following analysis. First, the FAA estimated the number of small entities affected by this final rule. Next, the FAA estimated the compliance cost, and then the economic impact.

This final rule requires enhanced cockpit doors and other improvements to be made by part 121 operators who operate transport category, passenger and cargo aircraft which have a door between the cockpit and passenger compartments. Using the criterion from the North American Industry Classification System of the SBA, the affected entities that had less than 1,500 employees were estimated. This procedure resulted in a list of 43 US operators with less than 1,500 employees, operating under part 121 that would be affected by this rule.

The estimated compliance cost and economic impact for each small entity involved several analytical steps. First, the fleet of aircraft operated by part 121 small entities was determined. The FAA obtained the small entities' fleets using data from the BACK Associates Fleet Database. The BACK Associates Fleet Database provided US operator and airplane detail by FAR part number and operator. Second, the purchase and installation cost of the hardened flightdeck doors was then estimated for the fleet of each small entity. Third, an annual reoccurring cost was estimated for the additional fuel required as a result of the increased weight of the hardened doors.

The estimated total compliance cost of each small entity equals the sum of the costs of the enhanced cockpit door plus the additional annual cost attributable to the increased fuel consumption. The purchase and installation cost of the enhanced cockpit doors was estimated to be in the range between $12,000 and $17,000 per airplane. Additional fuel cost was calculated using data from the FAA's Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs, the December 7, 2001 update of Energy Information Administration's Weekly Petroleum Status Report, and the FAA Aerospace Forecasts.

The increase cost in fuel consumption was based on the projected aircraft Utilization and rate of fuel burn increase. This cost was obtained by multiplying the fifty pounds of additional weight times the carrier hours flown times the fuel burn rate in gallons/pound/hour times the cost of fuel per gallon. This calculation was performed for each of the next ten years using the projected cost of fuel discounted to the present value.

The degree to which small entities can "afford" the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the final rule may be financed from a variety of sources. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total present value cost of the rule as a percentage of annual revenue. (The FAA obtained annual operator revenue from current public filings, the 2000 winter edition of the World Aviation Directory, and US DOT Form 41 schedules). Using this methodology, it was found that of the 43 small entities potentially affected by this final rule, the total present value cost of the rule exceeded 2 percent of only two entities' total revenue.

In the interest of fully assessing the impact of this final rule on small entities, the FAA explored the potential competitive impact. The route structures and specific markets of five firms were examined. The affected firms sometimes compete with large carriers. These large carriers will incur the same fixed and marginal cost per airplane. Many routes served by the five small entities could be considered local monopolies in which the affected carrier is the only provider of service. As a result of operating in these "niche" markets, a carrier would be able to pass some of the cost to its passengers. Thus, as a result of this rule there is expected to be little change in competition, and little change in market share within the industry.

The FAA has determined that:

(1) No part 25 manufacturers are small entities.

(2) A substantial number of small operators will not be significantly impacted by this rule.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for US standards.

In accordance with the above statute, the FAA has assessed the potential effect of this rule and has determined that the objective of this rule is the safety and security of the United States, and therefore not considered an unnecessary obstacle to international trade.

Unfunded Mandates Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of state, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This final rule does not contain any Federal intergovernmental or private sector mandate because Congress has authorized money for the purpose of implementing aircraft security initiatives, including the fortification of cockpit doors. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this rule applies to the certification of transport category airplanes and their operation, it could affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rulemaking action is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends parts 25 and 121 of Title 14 Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for parts 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 4794.

2. Section 25.772 is amended by revising the introductory language and paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 25.772 Pilot compartment doors.

For an airplane that has a lockable door installed between the pilot compartment and the passenger compartment:

(a) For airplanes with a maximum passenger seating configuration of more than 20 seats, the emergency exit configuration must be designed so that neither crewmembers nor passengers require use of the flightdeck door in order to reach the emergency exits provided for them; and

* * * * *

(c) There must be an emergency means to enable a flight attendant to enter the pilot compartment in the event that the flightcrew becomes incapacitated.

3. Part 25 is amended by adding a new § 25.795 to read as follows:

§ 25.795 Security considerations.

(a) *Protection of flightdeck.* If a flightdeck door is required by operating rules, the door installation must be designed to:

(1) Resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 Joules (221.3 foot-pounds) at the critical locations on the door, as well as a 250 pound (1113 Newtons) constant tensile load on the knob or handle, and

(2) Resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

(b) [Reserved]

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

5. Section 121.313 is amended by revising paragraphs (f) and (g) and adding paragraph (j) to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments (i.e., flightdeck door), with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph. For airplanes equipped with a crew rest area having separate entries from the flightdeck and the passenger compartment, a door with such a locking means must be provided between the crew rest area and the passenger compartment.

(g) A key for each door that separates a passenger compartment from another compartment that has emergency exit provisions. Except for flightdeck doors, a key must be readily available for each crewmember. Except as provided below, no person other than a person who is assigned to perform duty on the flightdeck may have a key to the flightdeck door. Before April 22, 2003, any crewmember may have a key to the flightdeck door but only if the flightdeck door has an internal flightdeck locking device installed, operative, and in use. Such "internal flightdeck locking device" has to be designed so that it can only be unlocked from inside the flightdeck.

* * * * *

(j) After April 9, 2003, for airplanes required by paragraph (f) of this section to have a door between the passenger and pilot or crew rest compartments, and for transport category, all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on January 15, 2002:

(1) Each such door must meet the requirements of §§ 25.795 (a)(1) and (2) in effect on January 15, 2002; and

(2) Each operator must establish methods to enable a flight attendant to enter the pilot compartment in the event that a flightcrew member becomes incapacitated. Any associated signal or confirmation system must be operable by each flightcrew member from that flightcrew member's duty station.

6. Section 121.547 is amended by revising paragraphs (a) (3) and (4) and paragraphs (c)(4) through (6) to read as follow:

§ 121.547 Admission to flight deck.

(a) * * *

(3) Any person who—

(i) Has permission of the pilot in command, an appropriate management official of the part 119 certificate holder, and the Administrator; and

(ii) Is an employee of—

(A) The United States, or

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(B) A part 119 certificate holder and whose duties are such that admission to the flightdeck is necessary or advantageous for safe operation; or

(C) An aeronautical enterprise certificated by the Administrator and whose duties are such that admission to the flightdeck is necessary or advantageous for safe operation.

(4) Any person who has the permission of the pilot in command, an appropriate management official of the part 119 certificate holder and the Administrator. Paragraph (a)(2) of this section does not limit the emergency authority of the pilot in command to exclude any person from the flightdeck in the interests of safety.

* * * * *

(c) * * *

(4) A certificated airman employed by another part 119 certificate holder whose duties with that part 119 certificate holder require an airman certificate and who is authorized by the part 119 certificate holder operating the aircraft to make specific trips over a route;

(5) An employee of the part 119 certificate holder operating the aircraft whose duty is directly related to the conduct or planning of flight operations or the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flightdeck is necessary to perform his duties and he has been authorized in writing by a responsible supervisor, listed in the Operations Manual as having that authority; and

(6) A technical representative of the manufacturer of the aircraft or its components whose duties are directly related to the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flightdeck is necessary to perform his duties and he has been authorized in writing by the Administrator and by a responsible supervisor of the operations department of the part 119 certificate holder, listed in the Operations Manual as having that authority.

7. Section 121.581 is amended by revising paragraph (c) to read as follows:

§ 121.581 Observer's seat; en route inspections.

* * * * *

(c) For any airplane type certificated before December 20, 1995, for not more than 30 passengers that does not have an observer seat on the flightdeck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections.

8. Section 121.587 is revised to read as follows:

§ 121.587 Closing and locking of flightcrew compartment door.

(a) Except as provided in paragraph (b) of this section, a pilot in command of an airplane that has a lockable flightcrew compartment door in accordance with § 121.313 and that is carrying passengers shall ensure that the door separating the flightcrew compartment from the passenger compartment is closed and locked at all times when the aircraft is being operated.

(b) The provisions of paragraph (a) of this section do not apply at any time when it is necessary to permit access and egress by persons authorized in accordance with § 121.547 and provided the part 119 operator complies with FAA approved procedures regarding the opening, closing and locking of the flightdeck doors.

Issued in Washington, DC, on January 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–965 Filed 1–10–02; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The FAA announces the issuance of Advisory Circular (AC) 25.795–1, "Flightdeck Intrusion Resistance," and 25.795–2 "Flightdeck Penetration Resistance." These advisory circulars provide information and guidance for compliance with a recently issued amendment concerning security considerations in the design of the flightdeck on transport category airplanes.

HOW TO OBTAIN COPIES: Copies of both AC's can be found and downloaded from the Internet at *http://www.faa.gov/avr/air/acs/achome.htm*, at the link titled "Advisory Circulars," or at the Regulatory and Guidance Library Web site at *http:www.airweb.faa.gov/rgl*, at the link titled "Advisory Circulars." Paper copies of the AC's will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

FURTHER INFORMATION CONTACT: Jan Thor, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2127.

Issued in Renton, Washington, on January 10, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 02–966 Filed 1–10–02; 4:15 pm]

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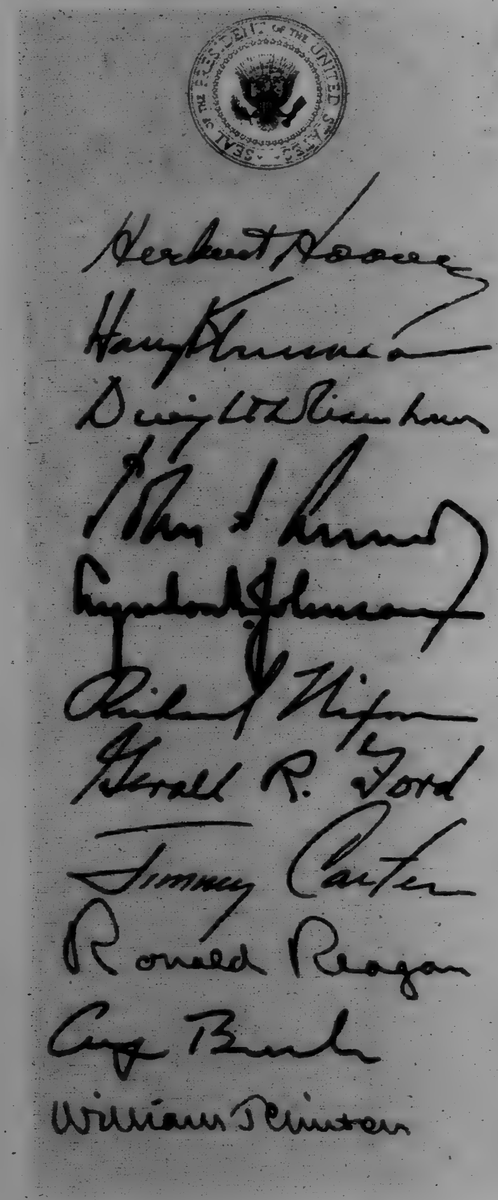

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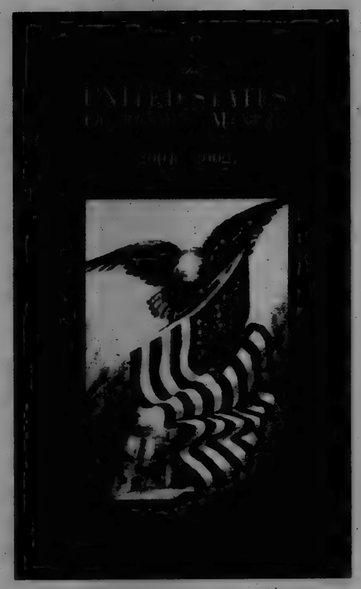

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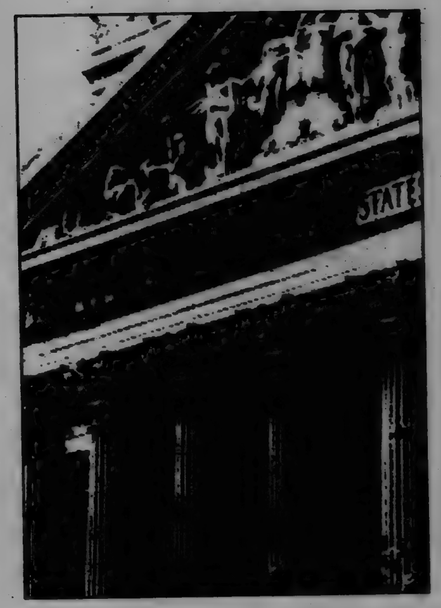

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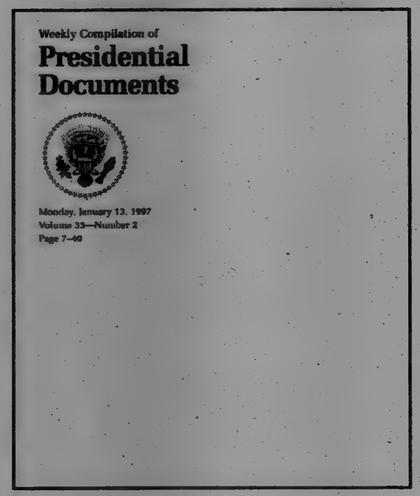

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Rules and Regulations

Federal Register
Vol. 67, No. 11
Wednesday, January 16, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AG37

Conservation Reserve Program—Good Faith Reliance and Excessive Rainfall

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Conservation Reserve Program (CRP) regulations to provide, under certain conditions, for equitable relief to producers who violated their contract based on a good faith reliance on the action or advice of certain USDA representatives. It also provides that CRP contracts will not be terminated for failure to plant cover when that failure was due to excess rainfall or flooding.

DATES: This regulation is effective January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. James Michaels, (202) 720–8774, or via e-mail at: *crprule@wdc.usda.gov* or on the FSA web page at *http://www.fsa/usda/gov/*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant and, therefore, was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

In accordance with 7 CFR part 799, an environmental assessment was conducted to determine whether the actions included in this final rule would significantly affect the quality of the human environment. A determination was made that the actions of this final rule would have no significant impact on the human environment and the preparation of an Environmental Impact Statement is not necessary.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This final rule is not retroactive and does not pre-empt State laws. Before any judicial action may be taken with respect to the provisions of the final rule, administrative remedies at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements contained in the current regulations at 7 CFR part 1410 under provisions of 44 U.S.C. chapter 33 and OMB control number 0560–0125 was assigned. This rule will have no impact on the burden approved under that control number.

Discussion of Final Rule

The purpose of the Conservation Reserve Program (CRP) is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enter into contracts for 10 to 15 years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible cropland to participate in the CRP. Offers are submitted in such a manner as the Secretary prescribes. Acreage is accepted into the CRP based on the eligibility requirements contained in 7 CFR part 1410.

On March 15, 2001, the Agency published a proposed rule, at 66 FR 15048. First, the rule proposed to implement section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) (Pub. L. 106–387). The comment period ended on May 14, 2001. This law requires the Secretary to provide equitable relief to someone who violates a CRP contract if they took actions in good faith reliance on the action or advice of an authorized representative of the Secretary. If the Secretary determines that a CRP participant has been injured by such good faith reliance, the Secretary may allow that person some relief from the contract breach, as long as action is taken to correct the violation, and subject to other limitations promulgated in this rule.

The second change that CCC proposed allows the Secretary to not terminate a CRP contract for failure to establish approved vegetative cover or water cover if the failure to establish that cover was due to excessive rainfall or

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flooding. Conditions for this waiver were discussed in the proposed rule.

This rule implements these two new statutory amendments by revising the CRP regulations contained in 7 CFR part 1410. These changes will help ensure that the CRP is implemented in a fair and reasonable manner, and that participants are not penalized unjustly.

Summary of Comments

CCC did not receive any comments from the public concerning the proposed rule. Three comments came from one individual who is an FSA employee in Kansas. These comments were of an administrative nature and can be addressed in internal agency procedure.

Substantive Changes From the Proposed Rule

There were no substantive changes compared to the proposed rule.

List of Subjects in 7 CFR Part 1410

Conservation Reserve Program: administrative practices and procedures, agriculture, conservation plan, grazing lands, and natural resources.

For reasons set out in the preamble, 7 CFR part 1410 is amended as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

1. The authority citation for 7 CFR part 1410 continues to reads as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

2. In § 1410.2, the definition of "violation" is added to read as follows:

§ 1410.2 Definitions.

* * * * *

Violation means an act by the participant, either intentional or unintentional, which would cause the participant to no longer be eligible for cost-share or annual contract payments.

* * * * *

3. Section 1410.20(a) is revised to read as follows:

§ 1410.20 Obligations of participant.

* * * * *

(a) * * *

(a)(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control and CCC agrees to a modified plan. However, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if as determined by the Deputy Administrator:

(i) The failure to plant or establish such cover was due to excessive rainfall or flooding;

(ii) The land subject to the contract on which the participant could practicably plant or establish to such cover is planted or established to such cover; and

(iii) The land on which the participant was unable to plant or establish such cover is planted or established to such cover after the wet conditions that prevented the planting or establishment subside.

* * * * *

4. Section 1410.54 is revised to read as follows:

§ 1410.54 Performance based upon advice or action of the Department.

(a) The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is not mandated by the other provisions of this section.

(b) Further, except as provided in paragraph (b) (3) of this section, and notwithstanding any other provision of this chapter, the Deputy Administrator may provide equitable relief to a participant who has entered into a contract under this chapter, and who is subsequently determined to be in violation of the contract, if the participant, in attempting to comply with the terms of the contract and enrollment requirements, took actions in good faith reliance upon the action or advice of an authorized USDA representative, as determined by the Deputy Administrator, provided:

(1) The Deputy Administrator determines that a participant has been injured by such good faith reliance, in which case, the participant may be authorized, as determined appropriate by the Deputy Administrator, to do any one or more of the following;

(i) Retain payments received under the contract;

(ii) Continue to receive payments under the contract;

(iii) Keep all or part of the land covered by the contract enrolled in the applicable program under this chapter;

(iv) Re-enroll all or part of the land covered by the contract in the applicable program under this chapter; or

(v) Any other equitable relief the Deputy Administrator deems appropriate.

(2) If relief under this section is authorized by the Deputy Administrator, the participant must take such actions as are determined by the Deputy Administrator to remedy any failure to comply with the contract.

(3) This section shall not apply to a pattern of conduct, as determined by the Deputy Administrator, in which an authorized USDA representative takes actions or provides advice with respect to a participant that the representative and the participant both know, or should have known, are inconsistent with applicable law (including regulations).

(4) Relief under this paragraph shall be available only for contracts in effect on January 1, 2000, or thereafter.

Signed at Washington, DC, on January 9, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–1052 Filed 1–15–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–11–AD; Amendment 39–12597; AD 2002–01–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France Model AS332L2 helicopters. This action requires inspecting the main frame for a crack and repairing any unairworthy frame before further flight. This amendment is prompted by a report of cracks on the right-hand (RH) side of a main frame. This condition, if not corrected, could result in failure of the main frame and subsequent loss of control of the helicopter.

DATES: Effective January 31, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified us that an unsafe condition may exist on Eurocopter France Model AS332L2 helicopters. The DGAC advises of cracks on the right-hand (RH) side of main frame 5295.

Eurocopter France has issued Alert Telex No. 53.01.28 R4, dated July 11, 2001 (Telex). This Telex specifies checking main frame 5295 and repairing any unairworthy main frame. The DGAC classified this Telex as mandatory and issued AD No. 2000–463–016(A), R4, dated September 5, 2001, to ensure the continued airworthiness of these helicopters in France.

We have identified an unsafe condition that is likely to exist or develop on other helicopters of the same type design should they become registered in the United States. This AD is being issued to prevent failure of the main frame and subsequent loss of control of the helicopter. This AD requires inspecting main frame 5295 within specified intervals and, before further flight, repairing any unairworthy main frame.

None of the helicopters affected by this action are on the U.S. Register. Non-U.S. operators under foreign registry currently operate all helicopters included in the applicability of this rule and, therefore, are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to inspect main frame 5295 at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $480 to inspect each helicopter, assuming no crack was found.

Since this AD action does not affect any helicopter that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. The FAA has also determined that this regulation is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–01–06 Eurocopter France: Amendment 39–12597. Docket No. 2001–SW–11–AD.

Applicability: Model AS332L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of main frame 5295 and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) for helicopters with 5000 or more hours TIS and before accumulating 5050 hours TIS for helicopters with less than 5000 hours TIS,

(1) At main frame 5295, remove the trim from the horizontal members at Z1350 on both sides of the helicopter.

(2) Visually inspect for a crack:

(i) Above the horizontal members at Z1350.

(ii) At the blending radii of the attachment ribs of the horizontal members below Z1350.

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(b) After accomplishing paragraph (a) of this AD, thereafter, at intervals not to exceed 200 hours TIS, repeat the visual inspection required by paragraph (a) of this AD.

(c) Repair any unairworthy main frame 5295 before further flight.

Note 2: Eurocopter France Alert Telex No. 53.01.28 R4, dated July 11, 2001, pertains to the subject of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on January 31, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2000–463–016(A), R4, dated September 5, 2001.

Issued in Fort Worth, Texas, on January 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1056 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–23FR]

Establishment of Class E Airspace; Peninsula Regional Medical Center Heliport, Fruitland, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Peninsula Regional Medical Center Heliport, Fruitland, MD. Development of an Area Navigation (RNAV), Helicopter RNAV331 approach, for the Peninsula Regional Medical Center Heliport, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Peninsula Regional Medical Center Heliport.

EFFECTIVE DATE: 0901 UTC December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On August 28, 2001 a notice proposing to amend part 71 of the Federal Aviation Regulation (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter RNAV331 approach to the Peninsula Regional Medical Center Heliport, MD, was published in the **Federal Register** (66 FR 45199–45200).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before September 27, 2001. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000 and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Peninsula Regional Medical Center Heliport, Fruitland, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated September 1, 2001 and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5, Peninsula Regional Medical Center, Fruitland, MD [NEW]

Peninsula Regional Medical Center Heliport
(Lat 38°21′26″ N., long. 75°35′34″ W.)
Point in Space Coordinates
(Lat 38°19′22″ N., long. 75°33′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6 miles radius of the point in space for the SIAP to the Peninsula Regional Medical Center Heliport, Fruitland, MD.

* * * * *

Issued in Jamaica, New York on November 7, 2001.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–1159 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4a

[Docket No. 990723201–1208–02]

RIN: 0605–AA14

Public Information, Freedom of Information and Privacy; Correction

AGENCY: Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: The Department of Commerce ("Department") published in the **Federal Register** of December 20, 2001, a final rule concerning revisions of the Department's regulations regarding the Freedom of Information Act, Privacy Act, and declassification and public availability of national security information. A typographical error misidentified Part 4a of the regulations. This document corrects that error.

DATES: Effective December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew W. McCready, 202–482–8044

SUPPLEMENTARY INFORMATION: The Department of Commerce ("Department") published in the **Federal Register** of December 20, 2001 (66 FR 65631), a final rule concerning revisions of the Department's regulations regarding the Freedom of Information Act, Privacy Act, and declassification and public availability of national security information. The revisions implemented the Electronic Freedom of Information Act Amendments of 1996 and Executive Order 12958, included an updated duplication fee, and streamlined, clarified and updated the regulations. At the top of the first column of page 65650 of that **Federal Register** document, it mistakenly reads "Part 2 is revised to read as follows:" That language is a typographical error. The revisions of the regulations referred to in that line are to Part 4a. Accordingly, change that language to read "2. Part 4a is revised to read as follows:"

Dated: January 10, 2002.

Robert F. Kugelman,

Director, Office of Executive Budgeting and Assistance Management.

[FR Doc. 02–1074 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–BW–P

POSTAL SERVICE

39 CFR Part 3

Amendments to Bylaws of the Board of Governors Concerning Establishment of the Price of Semipostal Stamps

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved an amendment to its bylaws. The amendment reserves to the Governors responsibility to set prices for semipostal stamps. A conforming amendment in wording has also been made to the bylaws.

DATES: Effective January 8, 2002.

FOR FURTHER INFORMATION CONTACT: David Hunter, (202) 268–4800.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Postal Service consists of nine Presidentially appointed Governors, the Postmaster General, and the Deputy Postmaster General. 39 U.S.C. 202. The bylaws of the Board list certain matters reserved for action by the Governors alone. 39 CFR 3.4. At its meeting on January 8, 2002, the Board approved an amendment to this bylaw.

The amendment gives effect to 39 U.S.C. 416, as enacted by the Semipostal Authorization Act, Pub. L. 106–253, 114 Stat. 634 (2000). The amendment also applies to the 9/11 Heroes Stamp Act of 2001, Pub. L. 107–67, section 652, 115 Stat. 514 (2001) and the Stamp Out Domestic Violence Act of 2001, Pub. L. 107–67, section 653, 115 Stat. 514 (2001). Section 416 authorizes the Postal Service to sell semipostal stamps. The differential between the price of a semipostal stamp and the First-Class Mail single-piece first-ounce rate, less an offset for the Postal Service's costs, consists of an amount to fund causes that the "Postal Service determines to be in the national public interest and appropriate." Funds are to be transferred to executive agencies as defined in 5 U.S.C. 105. Section 416 vests the Governors of the Postal Service with authority to establish the price for semipostal stamps "in accordance with such procedures as (the Governors) shall by regulation prescribe." The Act prescribes that the price of a semipostal stamp is the "rate of postage that would otherwise regularly apply," presumably, the First-Class single-piece first ounce rate, plus a differential. The differential associated with each semipostal stamp must exceed the postage value by at least 15 percent, and the price of each semipostal must be a multiple of 5. This is modeled on the formula prescribed by the Stamp Out Breast Cancer Act, Pub. L. No. 105–41, 111 Stat. 1119 (1997), as amended by Pub. L. 107–67, section 650, 115 Stat. 514 (2001).

In accordance with section 416, the Board amended § 3.4 of the bylaws to insert a new paragraph (j), reserving to the Governors authority to establish the price of semipostal stamps. Paragraph (i) of § 3.4, which authorizes the Governors to set the price of the breast cancer research stamp under 39 U.S.C. 414, was also amended to conform to the wording of new paragraph (j).

List of Subjects in 39 CFR Part 3

Administrative practice and procedure, Organization and functions (Government agencies), Postal service.

Accordingly, 39 CFR Part 3 is amended as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 is revised to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401 (2), (10), 402, 414, 416, 1003, 2802–2804, 3013; 5 U.S.C. 552b (g), (j); Inspector General Act, 5 U.S.C. app.; Pub. L. 107–67, 115 Stat. 514 (2001).

2. Section 3.4 is amended by republishing the introductory text, revising paragraph (i), and adding new paragraph (j) to read as follows:

§ 3.4 Matters reserved for decision by the Governors.

The following matters are reserved for decision by the Governors:

* * * * *

(i) Establishment of the price of the breast cancer research semipostal stamp under 39 U.S.C. 414.

(j) Establishment of the price of semipostal stamps under 39 U.S.C. 416.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–1017 Filed 1–15–02; 8:45 am]

BILLING CODE 7710–12–P

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–00–7408; Amdt. No. 195–76]

RIN 2137–AD49

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With Less Than 500 Miles of Pipelines)

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Our regulations for the transportation of hazardous liquids by pipeline require operators with 500 or more miles of regulated pipelines to establish a program for managing the integrity of pipelines that affect high consequence areas. The regulations require continual assessment and evaluation of pipeline integrity through inspection or testing, data integration and analysis, and follow-up remedial, preventive, and mitigative actions. This Final Rule extends those regulations to operators with less than 500 miles of regulated pipelines. We are taking this action because safety recommendations, statutory mandates, and accident analyses indicate that coordinated risk control measures are needed for public safety and environmental protection in addition to compliance with traditional safety standards. Broadening the coverage of the existing regulations will further enhance the protection of high consequence areas against the risk of pipeline failures.

DATES: This Final Rule takes effect February 15, 2002.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Last year we amended the regulations in 49 CFR part 195 to require each operator who owns or operates 500 or more miles of pipelines subject to part 195 to establish a program for managing the integrity of pipelines that could affect a high consequence area if a leak or rupture occurs (Docket No. RSPA–99–6355; 65 FR 75377; Dec. 1, 2000). High consequence areas include highly populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways (§ 195.450). Program standards require continual assessment, evaluation, correction, and validation of pipeline integrity (§ 195.452 and appendix C to part 195). The new standards took effect May 29, 2001 (66 FR 9532; Feb. 8, 2001). In addition, in a further rulemaking action (Docket No. RSPA–99–6355), we are revising the repair provisions of § 195.452(h) and clarifying that § 195.452 applies to carbon dioxide pipelines as well as hazardous liquid pipelines.

We did not apply the new program standards to pipelines of operators with less than 500 miles of regulated pipelines primarily because we needed more information about the potential impact of the standards on these operators. We subsequently learned that these operators include, to a large extent, companies with ample resources and capabilities to carry out the standards.

A wide range of persons who submitted comments to Docket No. RSPA–99–6355 supported the need to apply the new program standards to all operators of regulated pipelines that could affect high consequence areas. Based on these comments and the impact information we had collected, we published a Notice of Proposed Rulemaking (NPRM) to extend the program standards to pipelines of operators with less than 500 miles of regulated pipelines (66 FR 15821; March 21, 2001).

The NPRM did not propose any substantive change to the existing program standards. It merely proposed to establish later deadlines for developing programs under § 195.452(b)(1), identifying pipelines under § 195.452(b)(1)(i), completing baseline assessments under § 195.452(d)(1), accepting prior assessments under § 195.452(b)(2), and applying certain time limits on reviewing assessment results under § 195.452(h)(3). We invited interested persons to submit written comments on the proposed rules until May 21, 2001.

Although the NPRM proposed no substantive change to the program standards, in the earlier proceeding (Docket No. RSPA–99–6355), we invited comments until March 31, 2001, on the substance of the standard for remedial action (§ 195.452(h)). As indicated in the NPRM, if § 195.452(h) is changed in that proceeding, the changes will apply to all operators of pipelines to which the program standards apply, including operators covered by the present Final Rule.

Disposition of Comments

This section of the preamble summarizes written comments we received in response to the NPRM. It also describes how we treated those comments in developing the final rules. However, comments related to costs and benefits and the impact of the proposed rules on small entities are addressed in the "Regulatory Analyses and Notices" section of this preamble. If a proposed rule is not mentioned, no significant comments were received on the proposal, and we are adopting the proposed rule as final.

Eight persons submitted comments: a professional organization, the American Society of Safety Engineers (ASSE); a state pipeline safety agency, the Washington Utilities and Transportation Commission (WUTC); a Washington State advisory committee, the Citizens Advisory Committee on Pipeline Safety (CAC); the Small Business Administration (SBA); the Department of Energy (DOE); an engineering firm, Wink, Incorporated (Wink); and two pipeline operators, the Laclede Pipeline Company (Laclede) and the Tosco Corporation (Tosco). ASSE did not comment on specific proposals in the NPRM, but strongly supported our goal of assuring the integrity of pipeline systems. ASSE also said improving pipeline safety would improve the United States' competitive position in the world economy. WUTC, CAC, Tosco, and DOE expressed general support for the NPRM but, along with Wink, suggested changes. DOE also commented on the costs of the proposed rules in their impact on small entities. Laclede opposed the integrity assessment proposal and took issue with our estimate of compliance costs. SBA's comments were limited to the impact of the proposed rules on small entities.

Under proposed §§ 195.452(b)(1) and (b)(1)(i), operators with less than 500 miles of pipelines would have 9 months after the effective date of the final rules to identify all pipeline segments that could affect high consequence areas. They would have 1 year after the effective date to develop a written integrity management program that addresses the risks of those segments. Tosco said the identification of pipeline segments should occur after, not before, integrity management programs are completed, and suggested we allow operators 1 year to complete the identifications. In considering this comment, we noted that operators with 500 or more miles of pipelines have not indicated they expect any significant difficulties in meeting the 9-month identification rule. Tosco's comment does not give us reason to believe the 9-month rule might be too burdensome for operators with less than 500 miles of pipelines. While Tosco is correct that operators will need to have relevant program elements in place to guide them in identifying pipeline segments, we believe 9 months is enough time to complete those elements and to carry out the identifications. The additional 3 months the existing rule provides for program development gives operators enough time to complete program elements other than those concerning identification. We do not think this additional time is also needed to identify pipeline segments.

CAC suggested we require operators to seek input from potentially affected communities in identifying high consequence areas. CAC believed the input would help operators identify areas of population at risk and areas of economic importance. Although we recognize community input is valuable in many situations involving pipelines, particularly in site selection and emergency response, we do not feel it is necessary to mandate that operators seek the input CAC envisioned for two reasons. First, the definition of "high consequence area" in § 195.450 covers CAC's concern about the population-at-risk. That definition refers to areas of high or concentrated population that the U.S. Census Bureau has defined and delineated. Operators should be able to identify these areas quite easily using Census Bureau data. If additional information is needed from community records to complete the identifications, the proposed rule would implicitly obligate operators to seek this information, making an explicit requirement unnecessary. Secondly, the NPRM did not propose to require integrity management of pipelines that could affect areas of economic significance other than commercially navigable waterways. These waterways, which operators also can readily identify without community input, arguably are the nation's foremost economic resources potentially at risk from pipeline spills. Other significant economic resources that may be affected by pipelines are less certain, and we feel the present regulations in Part 195 provide those resources adequate protection against the risk of pipeline spills. Similarly, in directing DOT to require additional inspection of certain pipelines, Congress did not include pipelines that affect economic resources other than commercially navigable waterways (49 U.S.C. 60102(f)(2) and 60109). If in the future there is a need to apply the integrity management rules to pipelines affecting other significant economic resources, we will consider whether operators should seek community input in identifying those resources.

Although we did not adopt CAC's recommendations, it is important to note that in a separate proceeding we are considering the need for regulations on better communication of pipeline information by operators to local officials and the public. We have formed a communications work team, consisting of representatives from environmental and public safety organizations, pipeline companies, and government to aid our own hazardous liquid pipeline safety advisory committee in examining communications issues. Notices of meetings of the work group are published in the **Federal Register**, and minutes of the meetings are posted on this Web site: *http://ops.dot.gov*.

WUTC suggested we require baseline integrity assessments of new pipelines as soon after they are constructed as possible, and for existing pipelines as soon as practicable after the final rules take effect. WUTC stated that early baseline assessment would provide the best basis for comparing subsequent assessment results. The NPRM proposed, in § 195.452(d), that operators with less than 500 miles of pipeline complete baseline assessments within 7 years after the effective date of the final rule, with half the line pipe, selected by risk, assessed within 42 months after the effective date. Alternatively, operators could use as a baseline assessment any qualified integrity assessment completed within the 5 years prior to the effective date. For newly constructed pipelines, hydrostatic testing completed as required by other regulations in Part 195 will fulfill the baseline assessment requirement. Since this testing is normally part of the construction process, it should meet WUTC's objective of early assessment. For existing pipelines, we proposed 7 years to complete baseline assessments because of the volume of assessments, the limited availability of in-line inspection tools, and the time needed to schedule pressure testing to minimize service disruptions. Although we agree with WUTC that earlier baseline assessment would be beneficial, we do not think requiring earlier baseline assessments would be reasonable under present circumstances.

To assure that only qualified persons develop integrity management programs and make program decisions, Wink suggested we require operators to use registered professional engineers with demonstrated technical pipeline expertise and experience. Wink further suggested we require operators to submit their integrity management programs for review by RSPA certified entities. We did not adopt either suggestion because to do so would go beyond the scope of the NPRM. While § 195.452(f)(8) requires operators to use persons qualified to evaluate assessment results and analyze information, the NPRM did not address specific qualifications or program review by certified entities. Based on our experience in other areas of pipeline regulation, we believe operators will use qualified engineers with pipeline experience to assist in developing integrity management programs and recommend critical decisions under the programs. Moreover, persons carrying out regulated assessment and mitigation activities on pipelines are subject to the existing qualification requirements in Subpart G of Part 195. To assure that operators carry out their programs in accordance with the rules, we will use our own engineers and technical specialists to evaluate operators' programs and require changes that may be needed for safety. This type of evaluative process has been satisfactory for other programs and plans required by Part 195. We prefer to continue this approach to assure the quality of integrity management programs rather than establish additional personnel qualifications or a new federal certification program.

Wink asked to what extent operators would have to consider potential terrorist activities in their ongoing assessments of pipeline integrity. Under one of the integrity management program requirements (§ 195.452(e)(1)), operators must schedule integrity assessments based on "all risk factors that reflect the risk conditions on the pipeline." Therefore, if an operator knows or it is reasonable to anticipate that there is a threat to the integrity of the pipeline from terrorist activity, the operator must consider that risk in developing its integrity program. Since the events of September 11, 2001, we are working with DOT, the Department of Energy, the Federal Energy Regulatory Commission, and State agencies, to consider the need for minimum security standards for critical facilities.

Wink postulated that construction permit timing could interfere with an operator's ability to meet remediation deadlines. Section 195.452(h) deals with this potential problem. Under this rule, if justifiable circumstances preclude an operator from meeting specified repair deadlines, the operator may reasonably extend the repair schedule if it

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temporarily reduces operating pressure to a safe level or notifies us of the delay in making a permanent repair.

Finally, Wink suggested we establish a program review process in which operators would meet with our technical specialists to examine whether the program meets applicable requirements. In response to Wink's first comment, we mentioned we will use our own engineers and technical specialists to evaluate operators' programs and require changes that may be needed for safety. We expect this review process will involve meeting with operators' representatives.

Laclede, who operates a 28-mile propane pipeline serving a gas distribution system, believed it would be unreasonable to apply the proposed integrity assessment requirement (§ 195.452(c)) to its pipeline. Laclede said the design of 70 percent of its pipeline cannot accommodate internal inspection tools, and difficulties in de-watering the line after hydrostatic testing would cause control valve and instrument freeze-ups during critical cold weather periods. Laclede suggested we exempt from internal inspection or hydrostatic testing requirements all pipelines directly serving gas distribution systems if the pipeline is cathodically protected and inspected according to our standards or is equipped with emergency flow restricting or shutdown devices. We did not adopt this comment because providing adequate cathodic protection and meeting current inspection requirements cannot assure a pipeline is free from all potentially harmful defects that internal inspection or hydrostatic testing can disclose, such as mechanical damage or fatigue cracks. Also, while emergency flow restricting or shutdown devices are useful in mitigating the consequences of a pipeline rupture, these devices do nothing to prevent ruptures, which is the purpose of periodic internal inspection or hydrostatic testing. Laclede's comment did not fully explain the particular difficulties in de-watering, or drying, its pipeline after hydrostatic testing. Drying pipelines is not an uncommon problem in the industry and not one we believe makes the proposed testing rule unreasonable. Many companies are available to provide expert drying services, using techniques that depend on operating conditions. However, if an operator's circumstances are so unusual that hydrostatic testing would result in unavoidable damage to pipeline facilities and internal inspection is not a viable alternative, the operator may apply for a waiver of the testing requirement as permitted by 49 U.S.C. 60118.

DOE was concerned that construction of new pipelines within the next few years to meet the growing demand for fossil fuels could tax available technical expertise and equipment needed to meet various assessment deadlines in the existing and proposed rules. DOE said available resources could be stretched to a point where meeting the deadlines would not be possible, or at least not possible without significantly increased costs. Therefore, DOE suggested we expand the present provisions for extending deadlines (*e.g.*, § 195.452(j)(4)) to include situations in which meeting a deadline would result in supply disruptions. We agree that by shifting resources away from new construction or shutting down vital pipelines for hydrostatic testing or repair, supply disruptions could occur. However, at this stage we believe the impact of such an eventuality is too speculative to warrant changing the rules to add supply disruption as an acceptable reason for extending deadlines. Also, over the next few years new technologies might become available that would enable acceptable integrity assessments with no effect on supply. If in the future a supply problem appears more likely, the operator involved may petition us for necessary relief or latitude under the rules.

DOE also commented on our plan to identify high consequence areas on it's National Pipeline Mapping System (NPMS) and to make the information available to the public via the Internet. DOE recommended that before implementing this plan, we fully evaluate issues of critical infrastructure protection. Indeed, we designed the NPMS with infrastructure protection issues in mind. For example, to avoid creating a tool for intentional misuse of information with tragic results, critical pipeline components and operating data would not be shown on the NPMS. However, the events of September 11, 2001, have caused even greater concern about the security of critical infrastructure systems. As a result, the NPMS no longer provides open access to pipeline-related data. These data are only available to pipeline operators and local, state, and federal government officials. More information on the availability of data and how operators and officials can access it is on the NPMS home page: http://www.npms.rspa.dot.gov.

Editing Changes

In a further rulemaking action (Docket No. RSPA–99–6355), we are revising § 195.452(h)(3) to eliminate the possibility that periods specified for reviewing integrity assessment results could cause confusion. This change to § 195.452(h)(3) eliminates the need to revise that section to cover operators with less than 500 miles of regulated pipelines. Therefore, this Final Rule does not include the NPRM's proposed change to § 195.452(h)(3).

Because this Final Rule extends the coverage of existing § 195.452 to all operators subject to part 195, there is no need to state in final § 195.452 which operators are subject to § 195.452. Therefore, we edited § 195.452(a) to describe which pipelines are covered by § 195.452 by moving relevant provisions in § 195.452(b)(1) to § 195.452(a). Section 195.452(a) now provides that § 195.452 applies to hazardous liquid and carbon dioxide pipelines that could affect a high consequence area, including pipelines located in a high consequence area unless a risk assessment effectively shows the pipeline could not affect the area.

The NPRM proposed certain compliance dates for covered pipelines that depend on whether the operator of the pipeline owns or operates 500 or more miles of regulated pipelines. Although no one commented on this approach to determining compliance dates, we now recognize the approach could have unintended results. Under the proposed approach, if the miles of regulated pipelines an operator owns or operates changes during the compliance period (through transfer, construction, or abandonment of pipelines), the compliance dates applicable to that operator's covered pipelines could also change. For example, if an operator currently subject to § 195.452 were to reduce its miles of regulated pipelines below 500 during a compliance period for covered pipelines, the operator's covered pipelines would then fall under the later compliance date applicable to operators with less than 500 miles of regulated pipelines. Likewise, covered pipelines of operators who increase their miles of regulated pipelines to 500 or more during a compliance period would become subject to earlier compliance dates. The purpose of the proposed approach to determining compliance dates was merely to establish compliance dates for pipelines covered by the NPRM that are later than the existing compliance dates in § 195.452. We did not intend that the existing or proposed compliance dates change with changes in an operator's regulated pipeline mileage. Rather, we intended to apply the existing and proposed compliance dates to covered pipelines existing on May 29, 2001 (the effective date of existing § 195.452), depending on whether, on that date, the operator owned or operated 500 or more miles of regulated pipelines.

To clarify the application of compliance dates and to eliminate repetitive wording, final § 195.452(a) divides covered pipelines into three categories. The first category includes pipelines existing on May 29, 2001, that were owned or operated by an operator who owned or operated a total of 500 or more miles of pipeline subject to part 195. This category of pipelines is subject to the existing compliance dates in § 195.452, and will remain subject to those dates regardless of how many miles of regulated pipelines the present or future operator of the pipelines owns or operates after May 29, 2001. The second category includes pipelines existing on May 29, 2001, that were owned or operated on that date by an operator who owned or operated less than 500 miles of pipeline subject to part 195. This category of pipelines is subject to the later compliance dates proposed in the NPRM for operators with less than 500 miles of regulated pipelines. Like the first category, the compliance dates applicable to the second category of pipelines do not depend on how many miles of regulated pipelines the present or future operator of the pipelines owns or operates after May 29, 2001. The third category of covered pipelines includes pipelines constructed or converted after May 29, 2001. Because these pipelines are not subject to the existing or proposed compliance dates, we have added appropriate dates to §§ 195.452(b)(1), (b)(2)(i), (d)(1), and (h)(3). The dates in paragraphs (b)(1) and (h)(3) provide compliance periods equivalent to periods allowed for Category 1 or 2 pipelines. In paragraph (b)(2)(i), we set the date as the date the pipeline begins operation, because operators should not need any longer time to identify a new or converted pipeline as a covered pipeline. The date the pipeline begins operation is also the compliance date in paragraph (d)(1), because the hydrostatic test part 195 requires on new and converted pipelines before operation will serve as the baseline assessment.

Advisory Committee Consideration

We presented the NPRM for consideration by the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) at a meeting in Washington, DC on August 13, 2001 (66 FR 35505; July 5, 2001). The THLPSSC is RSPA's statutory advisory committee for hazardous liquid pipeline safety. The committee has 15 members, representing industry, government, and the public. Each member is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. The committee voted unanimously to approve the rules proposed in the NPRM and the associated evaluation of costs and benefits. A transcript of the August 13 meeting is available in Docket No. RSPA–98–4470.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We consider this Final Rule to be a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. We do not consider this rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034; Feb. 26, 1979).

This section of the preamble summarizes the findings of the Regulatory Evaluation we prepared for this Final Rule. A copy of the Regulatory Evaluation is in the docket.

Pipeline spills can adversely affect human health and the environment. However, the magnitude of this impact differs from area to area. There are some areas in which the impact of a spill will be more significant than it would be in others due to concentrations of people who could be affected or to the presence of environmental resources that are unusually sensitive to damage. Because of the potential for dire consequences of pipeline failures in certain areas, these areas merit a higher level of protection. We are promulgating this Final Rule to afford the necessary additional protection to these high consequence areas.

Last year we established 49 CFR 195.450 and 195.452, which are new requirements for additional protection of populated areas, commercially navigable waterways, and areas unusually sensitive to environmental damage from pipeline spills (65 FR 75377; Dec.1, 2000). The new requirements apply to pipeline operators who own or operate 500 or more miles of pipeline. This Final Rule extends the same requirements, with modified compliance deadlines, to the remaining operators of regulated pipelines—those that own or operate less than 500 miles of regulated pipeline.

RSPA and the National Transportation Safety Board (NTSB) have conducted many investigations that have highlighted the importance of protecting the public and environmentally sensitive areas from pipeline failures. NTSB has made several recommendations to ensure the integrity of pipelines near populated and environmentally sensitive areas. These recommendations include requiring periodic testing and inspection to identify corrosion and other damage, establishing criteria to determine appropriate intervals for inspections and tests, determining hazards to public safety from electric resistance welded pipe, and requiring installation of automatic or remotely-operated mainline valves on high-pressure lines to provide for rapid shutdown of failed pipelines.

Congress also directed DOT to undertake additional pipeline safety measures in areas of potentially high consequence. These statutory requirements call for new regulations on identifying pipelines in high density population areas, unusually sensitive environmental areas, and commercially navigable waters. They also call for new regulations on periodic inspections of pipelines in these areas with internal inspection devices, and on emergency flow restricting devices.

This Final Rule requires operators to systematically manage pipeline integrity to reduce the potential for failures that could affect high consequence areas (populated areas, unusually sensitive areas, and commercially navigable waterways). Operators must develop and follow an integrity management program to identify pipeline segments that could affect high consequence areas, and continually assess, through internal inspection, pressure testing, or equivalent alternative technology, the integrity of those segments. The program must also evaluate the segments through comprehensive information analysis, remediate integrity problems, and provide additional protection through preventive and mitigative measures, including the use of emergency flow restricting devices.

Existing §§ 195.450 and 195.452 cover an estimated 86.7 percent of the 157,000 miles of regulated hazardous liquid pipeline in the U.S. This Final Rule covers the remaining 13.3 percent. Of this percentage, we estimate this Final Rule will impact approximately 5,440 miles of pipeline. We estimate the cost to operators to develop the necessary programs at approximately $9.94 million, with an additional annual cost for program upkeep and reporting of $1.32 million. An operator's program begins with a baseline assessment plan and a framework that addresses each

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required program element. The framework indicates how decisions will be made to implement each element. As decisions are made and operators evaluate the effectiveness of the program in protecting high consequence areas, the program will be updated and improved, as needed.

This Final Rule requires a baseline assessment of covered pipeline segments through internal inspection, pressure test, or use of other technology capable of equivalent performance. The baseline assessment must be completed within 7 years after this Final Rule goes into effect. After this baseline assessment, the rule further requires that operators periodically reassess and evaluate pipeline segments to ensure their integrity within a 5-year interval. We estimate the cost of periodic reassessment will generally not occur until the sixth year, unless the baseline assessment indicates significant defects that would require earlier reassessment. Integrating information related to the pipeline's integrity is a key element of the integrity management program. Costs will be incurred in realigning existing data systems to permit integration and in analysis of the integrated data by knowledgeable pipeline safety professionals. The total costs for the information integration requirements in this Final Rule are $6.6 million in the first year and $3.3 million annually thereafter.

This Final Rule requires operators to identify and take preventive or mitigative actions that would enhance public safety or environmental protection, based on a risk analysis of the pipeline segment. One preventive or mitigative action involves installing an emergency flow restricting device on the pipeline segment, if determined necessary. We could not estimate the total cost of installing emergency flow restricting devices because we do not know how many operators will install them. Another action involves evaluating leak detection capability and modifying that capability, if necessary. We do not know how many operators currently have leak detection systems or how many systems will be installed or upgraded as a result of this Final Rule. Therefore, we are unable to estimate the total costs of the leak detection requirements.

As a result of this Final Rule, we expect operators will assess more line pipe than they otherwise would assess. Integrity assessment consists of a baseline assessment, to be conducted within 7 years after the effective date of the final rule, and subsequent reassessment at intervals not to exceed every 5 years. We estimate the cost of additional baseline assessments at approximately $377,000 a year, and the cost of additional reassessments at approximately $531,000 a year. Cost impact will be greater in the sixth and seventh years after the effective date of the final rule due to an overlap between baseline inspection and the initial subsequent inspection. The additional costs in these two years are estimated at $5.26 million.

We cannot easily quantify the benefits of this Final Rule, but we can describe them qualitatively. Issuance of this Final Rule ensures that all operators will perform at least to a baseline safety level and will contribute to an overall higher level of safety and environmental performance nationwide.

The Final Rule will lead to greater uniformity in how risk is evaluated and addressed. It will also provide more clarity in discussions by government, industry and the public about safety and environmental issues, and how the issues can be resolved.

Section 195.452 is written using a performance-based approach. This approach has several advantages. First, it encourages development and use of new technologies. Secondly, it supports operators' development of more formal, structured risk-based programs. Thirdly, it supports continual evaluation of the programs by RSPA and state inspectors. And lastly, it provides greater opportunity for operators to customize their long-term maintenance programs.

Section 195.452 has stimulated the pipeline industry to develop its own consensus standard using a risk-based approach to integrity management. The rule has further fostered development of industry-wide technical standards, such as repair criteria to use following an internal inspection.

The Final Rule encourages a balanced program, addressing the range of prevention and mitigation needs and avoiding reliance on any single tool or overemphasis on any single cause of failure. A balanced program will lead to addressing the most significant risks in populated areas, unusually sensitive environmental areas, and commercially navigable waterways, thus improving industry performance in these areas.

The Final Rule requires a verification process that gives RSPA and state inspectors an opportunity to influence the methods of assessment and the interpretation of results. Government monitoring of the adequacy and implementation of this process should expedite the operators' rates of remedial action and reduce the public's exposure to risk.

A particularly significant benefit of this Final Rule involves the information that operators will gather to support decisions. Two essential elements of the integrity management program are the continual assessment and evaluation of pipeline integrity using inspection and testing technology, and the integration and analysis of all available information about the pipeline. The processes of planning, assessment, and evaluation will provide operators with better data to use in determining a pipeline's condition and the location of potential problems that must be addressed. Also, government inspectors will be able to focus on potential risks and consequences that require greater scrutiny and the need for more intensive preventive and mitigation measures.

The public has expressed concern about the danger pipelines may pose to their neighborhoods. The integrity management process leads to greater accountability to the public for both operators and DOT. This accountability is enhanced through our choice of a map-based approach to defining the areas most in need of additional protection—a visual depiction of pipelines in relation to populated areas, unusually sensitive environmental areas, and commercially navigable waterways. The system integrity requirements will assure the public that operators are continually inspecting and evaluating the threats to pipelines that pass through or close to populated areas.

We have not estimated quantitative benefits for the continual integrity management evaluation required by this Final Rule. We do not believe, however, that requiring this comprehensive process, including the reassessment of pipelines every 5 years, will be an undue burden on operators. We believe the added security this assessment will provide and the generally expedited rate of strengthening the pipeline system in high consequence areas are benefit enough to promulgate these requirements.

Laclede commented that we grossly underestimated implementation costs. Laclede notes that our estimate of the cost for all affected operators is $9.64 million, whereas Laclede expects itself to incur costs in excess of $1 million to modify its pipeline. Laclede's estimated costs are to replace piping that can not now be inspected with internal inspection devices. The rule does not require such pipe replacement, and costs for such replacement therefore were not included in the implementation cost estimate. The rule allows use of hydrostatic testing as an alternative to internal inspection. Laclede's replacement of piping to allow passage of internal inspection devices, if

undertaken, would be an operational choice based on the company's conclusion that internal inspection would be a better method of assessment than hydrostatic testing. Operators are free to make such operational choices, but they are not required by the rule, and costs associated with pipe replacement are not, therefore, a cost of implementing the rule. We fully considered the costs of hydrostatic testing in the Regulatory Evaluation.

DOE expressed concern that costs associated with shutdown time during assessment or with obtaining permits to conduct repair activities may not have been included in the Regulatory Evaluation. DOE also thought per-mile cost estimates may not be appropriate for operators with only a few miles of pipe. With respect to the impact on small entities, DOE thought the requirements could have an unreasonable impact in some cases.

The values we used to estimate costs for internal inspection and hydrostatic testing were based on detailed studies of both methods that considered all relevant costs. The outcome of those studies are per-mile estimates for conducting assessments. We recognize that costs may be higher for operators that have only a few miles of pipeline, and for whom "fixed" costs of assessment would be amortized over just a few miles. However, we are unable to estimate how many operators may be so affected. Many of the operators subject to this Final Rule are parts of larger companies, as described further in response to Small Business Administration comments, and should not be so affected. We will work with operators who may be unusually impacted, each of whom may request a waiver from particular requirements.

While costs for permitting associated with conducting assessments were included, permitting costs associated with repairs were not estimated. No repair costs were included in the Regulatory Evaluation. This rule does impose time limits on the repair of certain types of defects. Generally, however, repair of conditions that could adversely affect the safe operation of a pipeline is already required by 49 CFR 195.401 and so is not a new requirement in this rule.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This Final Rule covers only those operators that own or operate less than 500 miles of regulated pipeline. Because of this limitation, only 132 hazardous liquid pipeline operators, covering 13.3 percent of regulated hazardous liquid pipelines, are covered by the Final Rule.

The risks of operating pipelines are similar regardless of the size of the operating company. Accordingly, the need to protect against those risks is also similar, regardless of operator size. We agree with WUTC's comment that "[t]he integrity of the hazardous liquid infrastructure that runs beneath our nation's cities, and crosses our public and private lands, should not be treated differently depending on the amount of pipeline owned or operated by pipeline companies."

We established an artificial cutoff criterion of 500 miles specifically so that we could review further the potential impact and safety needs of smaller operators to see if different treatment was needed. We completed our review and concluded that different treatment was not needed. By this Final Rule, we are establishing the same integrity management requirements for operators with less than 500 miles of pipelines as we established previously for operators with more pipeline mileage. Extending the existing requirements to the remaining operators of regulated pipelines is necessary to ensure the integrity of pipelines which could, if damaged or ruptured, cause significant injury to public safety and the environment.

We preliminarily concluded that there is no disproportionate impact on small businesses, principally because the risks are the same. We examined the companies that operate less than 500 miles of pipelines. A few of these operators are "small businesses" (less than 1500 employees, the Small Business Administration's criterion for defining a small business in the hazardous liquid pipeline industry.) The majority, however, is not. The majority includes larger companies or divisions or subsidiaries of very large national and multi-national companies.

We estimate that 132 operators are potentially subject to the requirements of this Final Rule, because that is the number of operators who paid user fees on less than 500 miles of pipeline in the last fiscal year. This number is a conservative upper bound. Some of these operators are not, in fact, affected by this rulemaking. As noted above, many are divisions or subsidiaries of larger companies. In many cases, the parent companies have other divisions or subsidiaries that operate pipelines and, when all are considered, own or operate more than 500 miles of such pipeline. Those companies, including all their divisions and subsidiaries which may, themselves, operate less than 500 miles of pipeline, are covered by existing § 195.452 and not by this Final Rule. In addition, this Final Rule only covers pipeline segments that could affect a high consequence area. It is possible that some operators, particularly those with only a few miles of pipe, may not operate any segments that could affect such areas. If so, those operators would not be covered by this Final Rule. Nevertheless, we continue to estimate costs on the basis of 132 covered companies, in order to provide a conservative estimate.

SBA thought the NPRM's discussion of the Regulatory Flexibility Act was inadequate. The discussion did not include background and basis information that was in the previous rulemaking applicable to operators with 500 or more miles of regulated pipeline. However, in the present document we have improved our discussion of Regulatory Flexibility Act issues to describe more clearly the basis for concluding that this Final Rule does not disproportionately affect small businesses. SBA's comments are also discussed in detail in the final Regulatory Evaluation, included in the docket.

Therefore, based on the facts available about the anticipated impacts of this rulemaking, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this Final Rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This Final Rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of the Paperwork Reduction Act Analysis to the OMB for review. The name of the information collection is "Pipeline Integrity Management in High Consequence Areas for Operators with less than 500 miles of pipeline." The purpose of this information collection is designed to require operators of pipelines to develop a program to provide direct integrity testing and evaluation of pipelines in high consequence areas.

No comment submitted in response to the NPRM addressed the information collection requirements.

One hundred and thirty-two operators of hazardous liquid pipelines will be potentially subject to this Final Rule. We estimate that those operators will have to develop integrity management programs taking approximately 2,800 hours per program. Each of the operators will also have to devote 1,000 hours in the first year to integrate data

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into current management information systems.

Additionally, under this Final Rule, operators will have to update their integrity management programs on a continual basis. We estimate updates will take approximately 330 hours per program, annually. An additional 500 hours per operator is estimated for the requirement to annually integrate data into the operator's current management information systems.

Under the Final Rule, operators may use either hydrostatic testing or an internal inspection tool as a method to assess their pipelines. However, operators may use another technology if they can demonstrate it provides an equivalent understanding of the condition of the line pipe as the other two assessment methods. Operators have to provide RSPA 90-days notice (by mail or facsimile) before using the other technology. We believe that few operators will choose this option. If they do choose an alternative technology, notice preparation should take approximately 1 hour. Because we believe few if any operators will elect to use other technologies, the burden was considered minimal and therefore not calculated.

Additionally, the Final Rule allows operators in particular situations to vary from the 5-year continual reassessment interval or repair schedule if they can provide the necessary justification and supporting documentation. Advance notice would have to be provided to RSPA if an operator does so. The advance notification can be in the form of letter or fax. We believe the burden of a letter or fax is minimal and therefore did not add it to the overall burden hours discussed above.

Organizations and individuals desiring to submit comments on the information collection should direct them to: The Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: RSPA Desk Officer, 727 Jackson Place, NW, Washington, DC 20503. Please provide the docket number of this action. Comments must be sent within 30 days of the publication of this Final Rule.

OMB is specifically interested in the following issues concerning the information collection:

1. Evaluating whether the collection is necessary for the proper performance of the functions of DOT, including whether the information would have a practical use;

2. Evaluating the accuracy of DOT's estimate of the burden of the collection of information, including the validity of assumptions used;

3. Enhancing the quality, usefulness and clarity of the information to be collected; and minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless a valid OMB control number is displayed. The OMB control number for this information collection is 2137–0605.

Executive Order 13084

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This Final Rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on state and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255, Aug. 10, 1999) do not apply. In a public meeting we held on November 18–19, 1999, we invited the National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Again in January, and February 2000, we held conference calls with NAPSR, to receive its input before proposing an integrity management rule.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. This Final Rule does not mandate business process changes or require modifications to computer systems. Because the final rules will not affect the ability of organizations to respond to those problems, we are not delaying the effectiveness of the requirements.

Unfunded Mandates Reform Act of 1995

This Final Rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the NPRM.

National Environmental Policy Act

We have analyzed the Final Rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT Order 5610.1D. We have determined that this action will not significantly affect the quality of the human environment.

The Environmental Assessment (available in the Docket) determined that the combined impacts of the initial baseline assessment (pressure testing or internal inspection), the subsequent periodic assessments, and additional preventive and mitigative measures that may be implemented to protect high consequence areas will result in positive environmental impacts. The number of incidents and the environmental damage from failures in and near high consequence areas are likely to be reduced. However, from a national perspective, the impact is not expected to be significant for the pipeline operators covered by the Final Rule. The following discussion summarizes the analysis provided in the Environmental Assessment.

Many operators covered by the Final Rule (those operating less than 500 miles of regulated pipeline) already have internal inspection and pressure testing programs that cover most, if not all, of their pipeline systems. These operators typically place a high priority on the pipeline's proximity to populated areas, commercially navigable waterways, and environmental resources when making decisions about where and when to inspect and test pipelines. As a result, some high consequence areas have already been recently assessed, and a large fraction of remaining locations would probably have been assessed in the next several years without the Final Rule. The most tangible impact will be to ensure

assessments are performed for those line segments that could affect a high consequence area that are not currently being internally inspected or pressure tested, and ensuring that integrity is maintained through an integrity management program that requires periodic assessments in these locations. Because hazardous liquid pipeline failure rates are low, and because the total pipeline mileage operated by operators with less than 500 miles of pipeline that could affect high consequence areas is small, the Final Rule has only a small effect on the likelihood of pipeline failure in these locations.

The Final Rule will result in more frequent integrity assessments of line segments that could affect high consequence areas than most operators are currently conducting (due to the 5-year interval required for periodic assessment). However, if the operator identifies and repairs significant problems discovered during the baseline inspection, and has in place solid risk controls to prevent corrosion and other threats, as they must, the benefits of assessing every 5 years versus the longer intervals operators more typically employ are not expected to be significant.

The Final Rule requires operators to conduct an integrated evaluation of all potential threats to pipeline integrity, and to consider and take preventive or mitigative risk control measures to provide enhanced protection. If there is a vulnerability to a particular failure cause, like third-party damage, these evaluations should identify additional risk controls to address these threats. Some operators covered by the Final Rule already perform integrity evaluations or formal risk assessments that consider the environmental sensitivity and impacts on population. These evaluations have already led to additional risk controls beyond existing requirements to improve protection for these locations. For these operators, it is expected that additional risk controls will be limited and customized to site-specific conditions that the operator may not have previously recognized.

Finally, an important, although less tangible, benefit of the Final Rule will be to establish requirements for operator integrity management programs that assure a more comprehensive and integrated evaluation of pipeline system integrity in high consequence areas. In effect, this will codify and bring an appropriate level of uniformity to the integrity management programs some operators are currently implementing. It will also require operators who have limited, or no, integrity management programs to raise their level of performance.

We expect this Final Rule to provide a more consistent, and overall, a higher level of protection for high consequence areas across the nation. Even though there is a benefit, we have concluded that it is not significant, and, therefore, have issued a finding of no significant impact.

Executive Order 13211

This rulemaking is not a "Significant energy action" under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart F—Operation and Maintenance

2. In § 195.452, paragraphs (a), (b), (d) heading, (d)(1), and (d)(2) are revised and paragraph (d) introductory text is added to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) *Which pipelines are covered by this section?* This section applies to each hazardous liquid pipeline and carbon dioxide pipeline that could affect a high consequence area, including any pipeline located in a high consequence area unless the operator effectively demonstrates by risk assessment that the pipeline could not affect the area. (Appendix C of this part provides guidance on determining if a pipeline could affect a high consequence area.) Covered pipelines are categorized as follows:

(1) Category 1 includes pipelines existing on May 29, 2001, that were owned or operated by an operator who owned or operated a total of 500 or more miles of pipeline subject to this part.

(2) Category 2 includes pipelines existing on May 29, 2001, that were owned or operated by an operator who owned or operated less than 500 miles of pipeline subject to this part.

(3) Category 3 includes pipelines constructed or converted after May 29, 2001.

(b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	March 31, 2002.
Category 2	February 18, 2003.
Category 3	1 year after the date the pipeline begins operation.

(2) Include in the program an identification of each pipeline or pipeline segment in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	December 31, 2001.
Category 2	November 18, 2002.
Category 3	Date the pipeline begins operation.

(3) Include in the program a plan to carry out baseline assessments of line pipe as required by paragraph (c) of this section.

(4) Include in the program a framework that—

(i) Addresses each element of the integrity management program under paragraph (f) of this section, including continual integrity assessment and evaluation under paragraph (j) of this section; and

(ii) Initially indicates how decisions will be made to implement each element.

(5) Implement and follow the program.

(6) Follow recognized industry practices in carrying out this section, unless—

(i) This section specifies otherwise; or

(ii) The operator demonstrates that an alternative practice is supported by a reliable engineering evaluation and provides an equivalent level of public safety and environmental protection.

* * * * *

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(d) *When must operators complete baseline assessments?* Operators must complete baseline assessments as follows:

(1) *Time periods.* Complete assessments before the following deadlines:

If the pipeline is:	Then complete baseline assessments not later than the following date according to a schedule that prioritizes assessments:	And assess at least 50 percent of the line pipe on an expedited basis, beginning with the highest risk pipe, not later than:
Category 1	March 31, 2008	September 30, 2004.
Category 2	February 17, 2009	August 16, 2005.
Category 3	Date the pipeline begins operation	Not applicable.

(2) *Prior assessment.* To satisfy the requirements of paragraph (c)(1)(i) of this section for pipelines in the first column of the following table, operators may use integrity assessments conducted after the date in the second column, if the integrity assessment method complies with this section. However, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe according to paragraph (j)(3) of this section. The table follows:

Pipeline	Date
Category 1	January 1, 1996.
Category 2	December 18, 2006.

* * * * *

Issued in Washington, DC, on January 8, 2002.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–858 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 67, No. 11
Wednesday, January 16, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for certain serial numbered MD Helicopters, Inc. (MDHI) Model MD900 helicopters. The AD would require, for the lateral-mixer bellcrank assembly (bellcrank), establishing a life limit, creating a component history card or equivalent record, determining the hours time-in-service (TIS), and applying a serial number (S/N). This proposal is prompted by additional testing, which revealed that the original load test to establish the life limits of the bellcrank did not accurately represent the actual loading. The actions specified by the proposed AD are intended to prevent fatigue failure of the bellcrank and subsequent loss of lateral control of the helicopter.

DATES: Comments must be received on or before March 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This amendment proposes adopting a new AD for certain serial numbered MDHI Model MD900 helicopters with a bellcrank, P/N 900C2010203–105, installed that currently has an unlimited life. Additional testing has revealed that the original load test to establish the life limits of the part did not accurately represent the actual loading. Thus, we have determined that the bellcrank should have a serviceable life of 13,300 hours TIS. This creates an unsafe condition. This condition, if not corrected, could result in fatigue failure of the bellcrank and subsequent loss of lateral control of the helicopter.

This unsafe condition is likely to exist or develop on certain other helicopters of the same type design. Therefore, the proposed AD would require, before further flight, the following for the bellcrank on an affected helicopter:

- Create a component history card or equivalent record.
- Determine the hours TIS of the bellcrank.
- Apply a S/N.
- Remove any affected bellcrank that exceeds the life limit.

This AD would revise the Limitations section of the maintenance manual by establishing a life limit of 13,300 hours TIS for the bellcrank, P/N 900C2010203–105.

The FAA estimates that 30 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately ½ work hour per helicopter to accomplish the required actions for the bellcrank, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,120 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $304,500 assuming replacement of the bellcranks in all 30 helicopters.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

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under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

MD Helicopters, Inc.: Docket No. 2001–SW–25–AD.

Applicability: Model MD900 helicopters, Serial Number (S/N) 900–00008, 900–00010 through 900–00098, and 900–00100, with a lateral-mixer bellcrank assembly (bellcrank), part number (P/N) 900C2010203–105, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Before further flight, unless accomplished previously.

To prevent fatigue failure of the bellcrank and subsequent loss of lateral control of the helicopter, accomplish the following:

(a) Create a component history card or equivalent record for each bellcrank and record the hours time-in-service (TIS) of the bellcrank. If the hours TIS of the bellcrank cannot be determined, use the helicopter's total hours TIS as the hours TIS for the bellcrank.

(b) Apply a S/N to the bellcrank in accordance with the Accomplishment Instructions, paragraph (1)(a) and (1)(b), of MD Helicopters, Inc, Service Bulletin SB 900–084, dated December 3, 2001.

(c) Remove any bellcrank that has exceeded 13,300 hours TIS.

(d) This AD revises the Limitations section of the maintenance manual by establishing a life limit of 13,300 hours TIS for bellcrank, P/N 900C2010203–105.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on January 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1058 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–54–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This proposal would require visually inspecting the forward hanger bearing bracket (bracket). This proposal is prompted by reports of cracks in the bracket. The actions specified by this proposed AD are intended to detect a crack in the bracket, to prevent loss of tail rotor drive or tail rotor control and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before March 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–54–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–54–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 407 helicopters. Transport Canada advises of reports of cracks in certain brackets.

BHTC has issued Alert Service Bulletin No. 407–01–39, Revision A, dated May 30, 2001 (ASB). That ASB specifies initial and repetitive inspections for a crack in bracket, part number (P/N) 407–040–321–101 and –103, for helicopters, serial number 53000 through 53442 with flywheel, P/N 407–040–316–101, installed. Transport Canada classified this ASB as mandatory and issued AD No. CF–2001–32, dated August 13, 2001, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopter models of the same type design registered in the United States. Therefore, the proposed AD would require initial and repetitive visual inspections for a crack in certain brackets and if a crack is found, removing the bracket before further flight.

The FAA estimates that 442 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1/4 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6630 assuming no crack is detected in a bracket.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 2001–SW–54–AD.

Applicability: Model 407 helicopters, serial number 53000 through 53442, with flywheel, part number (P/N) 407–040–316–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the forward bearing hanger bracket (bracket) and to prevent loss of tail rotor drive or tail rotor control and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 25 hours TIS, visually inspect each bracket, P/N 407–040–321–101 or –103, for a crack in the shaded area shown in Figure 1 of this AD. Remove any cracked bracket from service.

Note 2: Dismantling of the bearing hanger and the support is not required to accomplish the requirements of this AD.

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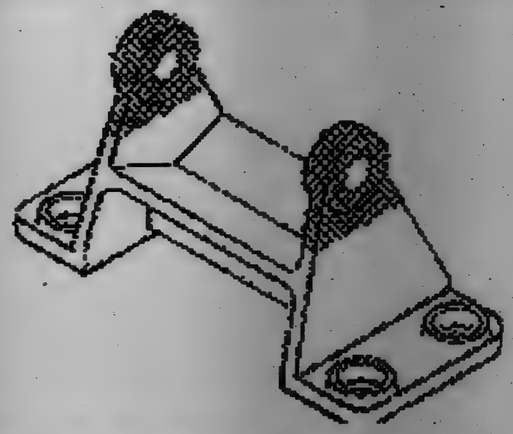

Bracket P/N 407-040-321-101/-103

Figure 1

Note 3: Bell Helicopter Textron Canada Alert Service Bulletin No. 407–01–39, Revision A, dated May 30, 2001, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2001–32, dated August 13, 2001.

Issued in Fort Worth, Texas, on January 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1057 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–03]

Proposed Modification of Class E Airspace; Lake Geneva, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Lake Geneva, WI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 23 has been developed for Grand Geneva Resort Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace for Grand Geneva Resort Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–03, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or agruments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 01–AGL–03." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Lake Geneva, WI, by increasing the radius of the controlled airspace for Grand Geneva Resort Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "signficant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administratiaon Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI ES Lake Geneva, WI [REVISED]

Grand Geneva Resort Airport, WI
(Lat. 42°36'53" N., long. 88°23'22" W.)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of the Grand Geneva Resort Airport, excluding that airspace within the Chicago, IL, Burlington, WI, Delevan, WI, and East Troy, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1014 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–04]

Proposed Modification of Class E Airspace; Winona, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Winona, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 29 has been developed for Winona Municipal-Max Conrad Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace for Winona Municipal-Max Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–04, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the

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airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Winona, MN, for Winona Municipal-Max Conrad Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and route amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Winona, MN [REVISED]

Winona Municipal-Max Conrad Field, MN
(Lat. 44°04'38" N., long. 91°42'30" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Winona Municipal-Max Conrad Field, and within 2 miles each side of the 108° bearing extending from the 7 mile radius to 9.5 miles southeast of the airport excluding that airspace within the LaCrosse WI, class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1013 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–07]

Proposed Modification of Class E Airspace; Brainerd, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Brainerd, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 05 has been developed for Brainerd-Crow Wing County Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Brainerd-Crow Wing County Region Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–07, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Brainerd, MN, by increasing the radius of the controlled airspace for Brainerd-Crow Wing County Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Brainerd, MN [Revised]

Brainerd-Crow Wing County Regional Airport, MN
(Lat. 46° 23' 52"N., long. 94° 08' 14"W.)

That airspace extending upward from 700 feet above the surface within 7.9-mile radius of the Brainerd-Crow Wing County Regional Airport, Brainerd, MN.

* * * * *

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1010 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–09]

Proposed Modification of Class E Airspace; Green Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Green Bay, WI. An Area Navigation (RNAV) Standard Instrument Approach procedure (SIAP) to Runway (Rwy) 06, an RNAV SIAP Rwy 18, an RNAV SIAP Rwy 24, and an RNAV SIAP Rwy 36 has been developed for Austin-Straubel International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would add an extension for Austin-Straubel International Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AG–09, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal

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Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 east Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Green Bay, WI, by adding an extension of the controlled airspace for Austin-Straubel International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Green Bay, WI [REVISED]

Green Bay, Austin-Straubel International Airport, WI
(Lat. 44°29'06"N., long. 88°97'47"W.)

That airspace extending upward from 700 feet above the surface within 6.9 mile radius of the Austin-Straubel International Airport and within 2 miles each side of the 180° bearing from the Airport extending from the 6.9 mile radius to 12 miles south of the Airport.

* * * * *

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1009 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–10]

Proposed Modification of Class D Airspace; Mosinee, WI; and Modification of Class E Airspace; Mosinee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Mosinee, WI, and modify Class E airspace at Mosinee, WI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 08, an RNAV SIAP to Rwy 17, an RNAV SIAP to Rwy 26, and an RNAV SIAP to Rwy 35 have been developed for Central Wisconsin Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing Class D and Class E airspace for Central Wisconsin Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Mosinee, WI, by increasing the radius of the existing Class D airspace and Class E airspace for Central Wisconsin Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from the surface of the earth are published in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL WI D Mosinee, WI [REVISED]

Central Wisconsin Airport, WI
(Lat. 44° 46' 39"N., long. 89° 40' 00"W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.5-mile radius of the Central Wisconsin Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

AGL WI E2 Mosinee, WI [REVISED]

Central Wisconsin Airport, WI
(Lat. 44° 46' 39"N., long. 89° 40' 00"W.)

That airspace extending upward from the surface within 4.5-mile radius of the Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Mosinee, WI [REVISED]

Central Wisconsin Airport, WI
(Lat. 44° 46' 39"N., long. 89° 40' 00"W.)
Wausau VORTAC
(Lat. 44° 50' 48"N., long. 89° 35' 12"W.)

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That airspace extending upward from 700 feet above the surface within 7.0-mile radius of the Central Wisconsin Airport, and within 4 miles each side of the Wausau VORTAC 039° radial extending from the 6.9-mile radius to 10.9 miles northeast of the airport, excluding the airspace within the Wausau, WI Class E airspace area.

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1008 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–12]

Proposed Creation of Class E Airspace; Boyceville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to create Class E airspace at Boyceville, WI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 08, and an RNAV SIAP Rwy 26 have been developed for Boyceville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would create Class E airspace for Boyceville Municipal Airport .

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520,Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Boyceville, WI, by creating controlled airspace for Boyceville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Boyceville, WI [NEW]

Boyceville Municipal Airport, WI
Lat. 45°02'39"N., long. 92°01'13"W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Boyceville Municipal Airport, excluding that airspace within the Menomonie, WI, class E–5 airspace area.

* * * * *

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1015 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–13]

Proposed Creation of Class E Airspace; Walhalla, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to create Class E airspace at Walhalla, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 33 has been developed for Walhalla Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would create Class E airspace for Walhalla Municipal Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any persons may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a malign list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Walhalla, ND, by creating controlled airspace for Walhalla Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

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§71.1 [Amended]

2. The incorporation by references in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Walhalla, ND [NEW]

Walhalla Municipal Airport, ND
(Lat. 48°56'26"N., long. 97°54'10"W.)
Devils Lake VOR/DME
(Lat. 48°06'55"N., long. 98°54'45"W.)

That airspace extending upward from 700 feet above the surface within an 6.3-mile radius of the Walhalla Municipal Airport, excluding that airspace north of lat. 49°00'00"N., and that airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 49°00'00"N., long. 97°30'00"W., to lat., 48°48'00"N., long. 97°30'00"W., to lat. 48°22'00"N., long. 98°31'00"W., via the Devils Lake VOR/DME 22 mile radius counter clockwise to long. 99°00'00"W., to lat. 49°00'00"N., long. 99°00'00"W., to point of beginning.

* * * * *

Issued in Des Plaines, Illinois, on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lake Region.

[FR Doc. 02–1011 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–14]

Proposed Modification of Class D Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Columbus, OH. A cutout in the Bolton Field Class D airspace is currently in place between 060 degrees and 105 degrees, from a 1.3-mile radius of the airport. This cutout exists to protect South Columbus airport which has since been closed. This action would revert the airspace contained in the cutout back to Bolton Field Class D airspace.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Columbus, OH, by changing the Bolton Field Class D Airspace legal description. The new description would include a former cutout established to protect the South Columbus Airport which has since been closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 500 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AFGL OH D Columbus, OH [REVISED]

Columbus, Bolton Filed Airport, OH
(Lat. 39°54'03"N., long. 83°08'14"W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 3.9-mile radius of Bolton Field Airport, extending that portion beyond a 1.9-mile radius of the Bolton Field Airport bearing 290° to 325°, excluding that airspace within the Port Columbus International Airport, OH Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1007 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 345

RIN 3220–AB52

Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to permit the filing of contribution reports via the Internet. The Government Paperwork Elimination Act provides that Federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The proposed changes to part 345 will permit the filing of Form DC–1, "Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act" electronically.

The revision of § 345.111 provides that if the DC–1 is filed electronically, no duplicate filing is required. The revision to § 345.113 provides that the DC–1 may be filed electronically through the Board's agent. That section is further amended to provide that if the DC–1 is filed electronically, no further authentication is required. The paper Form DC–1 must be signed. However, with submission of the DC–1 electronically, the Board intends to use a user-ID/PIN/Password system for the submission of the form as a substitute for a required signature.

Employers currently use a user-ID/PIN/password system to access RRBLINK and make electronic tax deposits. Form DC–1 is being added to the existing system. The user-ID/PIN/password system was established under a Memorandum of Understanding between Firstar Bank and the U.S. Department of the Treasury. A PIN/password system is used to access the pay.gov site to which the RRBLINK system will eventually migrate. The pay.gov site is operated by U.S. Department of the Treasury. Such a system also is consistent with the guidance provided by the Department of Justice regarding the use of electronic processes.

The revision to § 345.114 permits the use of an electronic version of the DC–1 that can be accessed from the Board's financial agent. Section 345.115 has been revised to provide that the DC–1, if filed electronically, may be filed with the Board's designee.

Section 345.124 has been revised to clarify that if an employer wishes to appeal the amount of the contribution, interest, or penalty, the procedure in that section is to be followed. Section 345.307 has been revised to clarify that if the employer wishes to protest the contribution rate, the procedure in that section is to be followed. In addition, the title of the person who hears such a protest has been revised due to an agency reorganization from the "Director of Unemployment and Sickness Insurance" to the "Director of Assessment and Training'.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory analysis is required. The Office of Management and Budget has approved information collections associated with this rule under control number 3220–0012.

DATES: Submit comments on or before March 18, 2002.

ADDRESSES: Address any comments concerning this proposed rule to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The amendments would revise sections of part 345 of the Board's regulations (20 CFR part 345) to permit the filing of employer contribution reports via the Internet. The Government Paperwork Elimination Act, Pub. L. 105–277 §§ 1701–1710 (codified as 44 U.S.C. 3504n) provides that Federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The proposed amendments to part 345 will permit the filing of Form DC–1, "Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act" electronically.

The revision of § 345.111 provides that if the DC–1 is filed electronically, no duplicate filing is required. The revision to § 345.113 provides that the DC–1 may be filed electronically through the Board's agent. That section is further amended to provide that if the DC–1 is filed electronically, no further authentication is required. The paper Form DC–1 must be signed. However, with submission of the DC–1 electronically, the Board intends to use a user-ID/PIN/Password system for the submission of the form as a substitute for a required signature.

Employers currently use a user-ID/PIN/password system to access RRBLINK and make electronic tax deposits. Form DC–1 is being added to the existing system. The user-ID/PIN/password system was established under a Memorandum of Understanding between Firstar Bank and the U.S. Department of the Treasury. A PIN/password system is used to access the pay.gov site to which the RRBLINK system will eventually migrate. The pay.gov site is operated by U.S. Department of the Treasury. Such a system also is consistent with the guidance provided by the Department of Justice regarding the use of electronic processes.

The revision to § 345.114 permits the use of an electronic version of the DC–1 that can be accessed from the Board's financial agent. Section 345.115 has been revised to provide that the DC–1, if filed electronically, may be filed with the Board's designee.

Section 345.124 has been revised to clarify that if an employer wishes to appeal the amount of the contribution, interest, or penalty, the procedure in that section is to be followed. Section 345.307 has been revised to clarify that if the employer wishes to protest the contribution rate, the procedure in that section is to be followed. In addition, the title of the person who hears such a protest has been revised due to an agency reorganization from the "Director of Unemployment and Sickness Insurance" to the "Director of Assessment and Training'.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory analysis is required. The Office of Management and Budget has approved information collections associated with this rule under control number 3220–0012.

List of Subjects in 20 CFR Part 345

Electronic filing, Paperwork elimination, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, Part 345 of the Code of Federal Regulations as follows:

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

1. The authority citation for part 345 continues to read as follows:

Authority: 45 U.S.C. 362(1).

2. Section 345.111 of Subpart B is revised to read as follows:

§ 345.111 Contribution reports.

(a) *General.* (1) Except as provided in paragraph (a)(2) of this section, every employer shall, for each calendar quarter of each year, prepare a contribution report, in duplicate, on Form DC–1. If the Form DC–1 is filed

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electronically, no duplicate submission is required.

(2) Contribution reports of employers who are required by State law to pay compensation on a weekly basis shall include with respect to such compensation all payroll weeks in which all or the major part of the compensation falls within the period for which the reports are required.

(b) *Compensation to be reported on Form DC–1.* Employers shall enter on the employer's quarterly contribution report, prior to any additions or subtractions, the amount of creditable compensation appearing on payrolls or other disbursement documents for the corresponding quarter as the amount of creditable compensation from which the contribution payable for that quarter is to be computed.

(Approved by the Office of Management and Budget under control number 3220–0012)

3. Section 345.113 of Subpart B is revised to read as follows:

§ 345.113 Execution of contribution reports.

(a) Each contribution report on Form DC–1 shall be signed by hand by:

(1) The individual, if the employer is an individual;

(2) The president, vice president, or other duly authorized officer, if the employer is a corporation; or

(3) A responsible and duly authorized member or officer having knowledge of its affairs if the employer is a partnership or other unincorporated organization.

(b) The Form DC–1 may be filed electronically through the Board's authorized agent. If filed electronically, no further authentication is required.

4. Section 345.114 of Subpart B is revised to read as follows:

§ 345.114 Prescribed forms for contribution reports.

Each employer's contribution report, together with any prescribed copies and supporting data, shall be filled out in accordance with the instructions and regulations applicable thereto. The prescribed forms may be obtained from or accessed by contacting the Board. An employer will not be excused from making a contribution report for the reason that no form has been furnished to such employer. Application should be made to the Board for the prescribed forms in ample time to have the contribution report prepared, verified, and filed with the Board on or before the due date. Contribution reports that have not been so prepared will not be accepted and shall not be considered filed for purposes of § 345.115 of this part. In case the prescribed form has not been obtained, a statement made by the employer disclosing the period covered and the amount of compensation with respect to which the contribution is required may be accepted as a tentative contribution report if accompanied by the amount of contribution due. If filed within the prescribed time, the statements so made will relieve the employer from liability for any penalty imposed under this part for the delinquent filing of the contribution report provided that the failure to file a contribution report on the prescribed form was due to reasonable cause and not due to willful neglect, *and provided further*, that within 30 days after receipt of the tentative report, such tentative report is supplemented by a contribution report made on the proper form. (Approved by the Office of Management and Budget under control number 3220–0012)

5. Section 345.115 of Subpart B is revised to read as follows:

§ 345.115 Place and time for filing contribution reports.

Each employer shall file its contribution report with the Chief Financial Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092, or the Chief Financial Officer's designee. The employer's contribution report for each quarterly period shall be filed on or before the last day of the calendar month following the period for which it is made. If such last day falls on Saturday, Sunday, or a national legal holiday, the report may be filed on the next following business day. If mailed, reports must be postmarked on or before the date on which the report is required to be filed.

6. Section 345.124 of Subpart B is revised to read as follows:

§ 345.124 Right to appeal the amount of a contribution, interest, or penalty.

(a) Except as otherwise provided, an employer may seek administrative review of any determination with respect to any contribution, interest, or penalty made under this part by filing a request for reconsideration with the Chief Financial Officer within 30 days after the mailing of notice of such determination. An employer shall have a right to appeal to the Board from any reconsideration decision under this section by filing notice of appeal to the Secretary to the Board within 14 days after the mailing of the decision on reconsideration. Upon receipt of a notice of an appeal, the Board may designate one of its officers or employees to receive evidence and report to the Board under the procedures set forth in part 319 of this chapter. An appeal of the contribution rate is made under § 345.307 of this part.

(b) Any appeal filed under this part shall not relieve the employer from filing any reports or paying any contribution required under this part nor stay the collection thereof. Upon the request of an employer, the Board may relieve the employer of any obligation required under this part pending an appeal. Unless specifically provided by the Board, such relief shall not stay the accrual of interest on any disputed amount as provided for in § 345.122 of this part.

7. Section 345.307 of Subpart D is revised to read as follows:

§ 345.307 Rate protest.

(a) *Request for reconsideration.* An employer may appeal a determination of a contribution rate computed under this part by filing a request for reconsideration with the Director of Assessment and Training within 90 days after the date on which the Board notified the employer of its rate of contribution for the next ensuing calendar year. Within 45 days of the receipt of a request for reconsideration, the Director shall issue a decision on the protest.

(b) *Appeal to the Board.* An employer aggrieved by the decision of the Director of Assessment and Training under paragraph (a) of this section may appeal to the Board. Such appeal shall be filed with the Secretary to the Board within 30 days after the date on which the Director notified the employer of the decision on reconsideration. The Board may decide such appeal without a hearing or, in its discretion, may refer the matter to a hearings officer pursuant to part 319 of this chapter.

(c) *Decision of the Board final.* Subject to judicial review provided for in section 5(f) of the RUIA, the decision of the Board under paragraph (b) of this section is final with respect to all issues determined therein.

(d) *Waiver of time limits.* A request for reconsideration or appeal under this section shall be forfeited if the request or appeal is not filed within the time prescribed, unless reasonable cause, as defined in this part, for failure to file timely is shown.

(e) *Rate pending review.* Pending review of the protested rate, the employer shall continue to pay contributions at such rate. Any adjustment in the contributions paid at such rate as the result of an appeal shall be in accordance with § 345.118 of this part.

(f) The amount of a contribution, interest, or penalty may be protested in accord with § 345.124 of this part.

By Authority of the Board.

Dated: January 10, 2002.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–1095 Filed 1–15–02; 8:45 am]

BILLING CODE 7905–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7129–2]

RIN 2060–AJ73

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed Non-Conformance Penalties for 2004 and Later Model Year Emission Standards for Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing that nonconformance penalties (NCPs) be made available for the 2004 and later model year non-methane hydrocarbons and nitrogen oxides ($NMHC+NO_X$) standard for heavy-duty diesel engines and vehicles. In general, the availability of NCPs allows a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) (which include heavy light-duty trucks) whose engines or vehicles fail to conform with certain applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The proposed upper limit associated with the 2004 emission standard for $NMHC+NO_X$ is 4.5 grams per brake-horsepower-hour for light and medium heavy-duty engines and urban buses, and 6.0 grams per brake-horsepower-hour for heavy heavy-duty engines.

DATES: *Public comment:* We must receive your comments by March 18, 2002.

Public hearing: We will hold a public hearing regarding this proposed rule on February 15, 2002, beginning at 10:00 a.m.

ADDRESSES: *Comments:* We must receive your comments by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. In your correspondence, refer to Docket A–2000–30. See Section VI.B for more information on comment procedures.

Public hearing: We will hold a public hearing on February 15, 2002 at the Washington Dulles Airport Marriott, 45020 Aviation Drive, Dulles, Virginia 20166. Phone: (703–471–9500). If you want to testify at the hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section VI.B for more information on the public-hearing procedures.

Public docket: EPA's Air Docket makes materials related to this rulemaking available for review in Docket No. A–2001–30 located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M. Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; Fax: (734) 214–4816; E-mail: borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect you if you produce or import new heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses or heavy-duty highway vehicles. The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS[a] Codes	SIC Codes[b]	Examples of potentially regulated entities
Industry	336112 336120	3711	Engine and truck manufacturers

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's proposal is available electronically on the day of publication from the Environmental Protection Agency Internet Web site listed below. Electronic copies of the preamble, regulatory language, Draft Technical Support Document, and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality (formerly the Office of Mobile Sources) Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you incur for connecting to the Internet.

Environmental Protection Agency Web Site: *http://www.epa.gov/fedrgstr/*

(Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Web Site: *http://www.epa.gov/otaq/*

(Look in "What's New" or under the "Heavy Trucks/Buses" topic.)

Please note that due to differences between the software used to develop the document and the software into which document may be downloaded, changes in format, page length, etc. may occur.

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I. Background and Statutory Authority

A. Background to Nonconformance Penalty Rules

Since the promulgation of the first NCP rule in 1985, NCP rules have generally been described as continuing "phases" of the NCP program. The first NCP rule (Phase I), sometimes referred to as the "generic" NCP rule, established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year (50 FR 35374, August 30, 1985). For regulatory language, *see* 40 CFR 86.1103–87. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent. Second, substantial work must be required in order to meet the emission standard. EPA considers "substantial work" to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, in order to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work. Third, a technological laggard must be likely to develop. Prior NCP rules have considered a technological laggard to be a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. EPA will make the determination that a technological laggard is likely to develop, based in large part on the above two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

The criteria and methodologies established in the 1985 rule have since been used to determine eligibility and to establish NCPs for a number of heavy-duty emission standards. Phases II, III, IV, and V, published in the period from 1985 to 1996, established NCPs that, in combination, cover the full range of heavy-duty—from heavy light-duty trucks (6,000–8,500 pounds gross vehicle weight) to the largest diesel truck and urban bus engines. NCPs have been established for hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_X), and particulate matter (PM). The most recent NCP rule (61 FR 6949, February 23, 1996) established NCPs for the 1998 and later model year NO_X standard for heavy-duty diesel engines (HDDEs), the 1996 and later model year for Light-Duty Truck 3 (LDT3) NO_X standard, and the 1996 and later urban bus PM standard. A concurrent but separate final rule (61 FR 6944, February 23, 1996) established NCPs for the 1996 LDT3 PM standard. The NCP rulemaking phases are summarized in greater detail in the Draft Technical Support Document for this proposal.

B. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or HDVs which exceed a federal emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. At the same time, conforming manufacturers would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on money saved by the technological laggard and its customer from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine. HDVs are defined in section 202(b)(3)(C) of the CAA as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). The light-duty truck (LDT) classification includes trucks that have a GVWR of 8500 lbs or less. Therefore, certain LDTs may be classified as HDVs. Historically, LDTs up through 6000 lbs GVWR have been considered "light light-duty trucks" (LLDTs) and LDTs between 6,001 and 8,500 pounds GVWR have been considered "heavy light-duty trucks" (HLDTs). Based on various new requirements established by the Clean Air Act Amendments of 1990, each of these two light truck categories has been further subdivided into groups by weight. The LLDTs are classified by weight based on "loaded vehicle weight," or LVW, which maintains its current definition: curb weight plus 300 lbs. The trucks up through 3750 lbs LVW make up a subclass called light-duty-trucks-1, or LDT1. Those greater than 3750 lbs LVW but less than or equal to 6000 lbs GVWR are the subclass light-duty-trucks-2, or LDT2. The HLDTs are divided at 5750 lbs "adjusted loaded vehicle weight," or ALVW. Adjusted loaded vehicle weight is the average of the curb weight and the GVWR. The HLDTs that are up through 5750 lbs ALVW are called light-duty trucks-3, or LDT3. Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR are light-duty-trucks-4, or LDT4. The LDT3 and LDT4 subclasses make up the HLDT vehicle class. Since NCPs can only be established for heavy duty vehicles or engines, emission standards for light-duty trucks of the LDT3 and LDT4 categories are the only light-duty truck categories eligible for NCPs.

Section 206(g)(3) requires that NCPs:

- Account for the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use, unless, for the case of HLDTs, the compliance level is below the in-use standard. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

C. Heavy-duty Diesel Consent Decrees

On October 22, 1998, the Department of Justice and the Environmental Protection Agency announced settlements with seven major manufacturers of diesel engines that represent a majority of the diesel engine market. The settlements resolved claims that they installed computer software on heavy duty diesel engines that turned off the engine emission control system during highway driving in violation of the CAA's prohibition on defeat devices (42 USC 7522(a)(3)). The settlements were entered by the Court on July 1, 1999. These consent decrees with the Federal Government contained a number of provisions applying to heavy-duty on-road, and in some cases, nonroad, engines. Specific to the engines that would be addressed by the proposed 2004 NCPs, the decrees permit the continued use of non-complying engines for a period of time (although emissions are capped by limits associated with new supplemental test procedures). Other elements of these consent decrees include a program under which the consent decree manufacturers are required to invest considerable resources to evaluate instrumentation and methodologies for on-road testing. Because the Consent Decrees refer to NCPs for the 2004 model year, if published, promulgation of this rule would have an impact on the penalties determined under the Consent Decrees.

II. Nonconformance Penalties for 2004 and Later Heavy-Duty Engines and Heavy-Duty Vehicles

A. NCP Eligibility: Emission Standards for Which NCPs are Proposed

1. Heavy-Duty Diesel NMHC+NO_X Standard

As discussed in section III.A., EPA must determine that three criteria are met in order to determine an NCP should be established in any given model year. For the model year 2004 heavy-duty diesel NMHC+NO_X standard, we believe these criteria have been met and it is therefore appropriate to establish NCPs for the 2004 model year NMHC+NO_X standard.

The first criteria requires that the emission standard in question must become more difficult to meet. This is the case with the 2004 NMHC+NO_X standard. The previous emission standards for this category are 4.0 g/bhp-hr NO_X and 1.3 g/bhp-hr HC. The 2004 standards is a combined NMHC+NO_X standard of 2.4 g/bhp-hr, or optionally a 2.5 g/bhp-hr NMHC+NO_X with a limit of 0.5 g/bhp-hr NMHC.[1] When promulgated, the Agency concluded that the 2004 standard was a technology forcing standard, and therefore it is logical to conclude the standard is more difficult to meet.

The second criteria which must be met in order for EPA to determine that an NCP should be established is substantial work must be required to meet the emission standard. This criteria has also been met. As discussed in both the 1997 final rule (See 62 FR 54694, October 21, 1997) which established the 2004 standards, as well as the 2000 final rule (See 65 FR 59896, October 6, 2000) which reaffirmed those standards, EPA projected that new emission control technologies would be needed to achieve the 2004 standards. In these previous rulemakings EPA pointed to technologies such as cooled exhaust gas recirculation (EGR) and variable geometry turbochargers (VGT) as some of the technologies manufacturers could use to meet the 2004 standards. Such technologies have not previously been used in the on-highway heavy-duty diesel market, and EPA estimated substantial research and development efforts by the engine manufacturers would be undertaken to meet the 2004 standards. We continue to believe such new technologies will be used by a number of engine manufacturers, and in fact several manufacturers have indicated in recent statements they will use new emission control technologies in order to achieve the 2004 standards.[2]

The final criteria for EPA to determine that an NCP should be established is that a technological laggard is likely to develop. EPA has several reasons to believe a technological laggard is likely. First, during our recent discussions with a number of engine manufacturers, several manufacturers have indicated they may not be able to make the necessary technological changes to meet the 2004 emission standards for some of their high horsepower ratings by model year 2004. Manufacturers have indicated that while they are continuing to develop cooled EGR systems and associated technologies (such as advanced turbocharger technologies) and have reached no definitive conclusion, they are concerned regarding their ability to comply in 2004 with these higher horsepower engines. Engines with higher horsepower ratings typically operate at higher boost levels (higher intake manifold pressures), as well as higher fueling rates. This is the case on today's engines. With the addition of cooled EGR, boost levels must be increased even further in order to accommodate EGR while maintaining the same power ratings. This can push both peak cylinder pressures and turbocharger designs to their physical limitations. While manufacturers are exploring a number of technologies to extend the current limitations, they are concerned with their ability to do so with all of the currently available power ratings between now and 2004.

Second, during recent discussions with engine manufacturers, one manufacturer has indicated that some low volume engine families currently available may not be ready by 2004. A low volume engine family may require specific and targeted research and development efforts in order to comply with the 2004 standards, and it is reasonable to expect that manufacturers may focus their efforts on these low volume products later in the development process, and time may be too short to bring the product into compliance for the 2004 model year.

Finally, in the final rule completed in 2000 which reaffirmed the 2004 NMHC+NO_X standard, three engine manufactures as well as the Engine Manufacturers Association (EMA),

[1] NMHC stands for non-methane hydrocarbons, which is a measure of total hydrocarbons with the methane emissions subtracted out. For typical on-highway diesel fueled heavy-duty engines, methane emissions are on the order of 10 percent of the total hydrocarbon emissions.

[2] See press releases from Caterpillar Inc., Cummins, Detroit Diesel Corp. and Mack, available in EPA Air Docket A–2001–30.

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commented that EPA should establish NCPs for the 2004 standards.[3] EMA commented the standards "will be technology-forcing and likely will result in the inability of some engine manufacturers and/or engine families to comply with the standards." Detroit Diesel Corp. commented "Meeting the 2004 standards will require the use of sophisticated new emission control technology and will require emission durability evaluation over a greatly extended useful life period. * * * Any development setbacks or misjudgement regarding the capability or durability of the new emission control technology could, at the last minute, put an engine manufacturer into a laggard position and prevent certification of an engine family. The likelihood of a technological laggard for 2004 is at least as great and probably much greater than for other standards for which NCPs have been provided." When we finalized the reaffirmation of the 2004 NO_X+NMHC standard in 2000 we agreed that the standards were technology-forcing and that sophisticated technologies would be required, and thus, that the first two eligibility criteria were likely met. However, we concluded at the time that it was too early to determine the likelihood of a technological laggard, and further, that it was not necessary to attempt to make such a judgement at that time. Now we are a year closer to implementation of the 2004 standards, and manufacturers have not revoked their claims that the likelihood of a technological laggard is high. The fact that several engine manufacturers as well as a major trade organization have indicated they believe a technological laggard is likely to develop is an important indicator for the Agency regarding the technological laggard criteria.

Based on this information, the Agency believes it is reasonable to conclude that a technological laggard is likely to develop for the 2004 NMHC+NO_X standards.

B. NCP Eligibility: Emission Standards for Which NCPs are Not Proposed

1. Heavy-Duty Gasoline Standards

In a final rule published on October 6, 2000 (65 FR 59896), EPA established more stringent emission standards for all heavy-duty gasoline (or "Otto-cycle") vehicles and engines. These standards took two forms: A chassis-based set for complete vehicles under 14,000 pounds GVWR (the chassis-based program), and an engine-based set for all other Otto-cycle heavy-duty engines (the engine-based program). Each of the two programs has an associated averaging, banking, and trading (ABT) program. The new standards generally take effect starting with the 2005 model year, but manufacturers are provided with two additional options for early compliance, each of which provides additional flexibility relative to the 2005 model year compliance option.

We have considered the potential need for NCPs to be provided for the new standards applicable to Otto-cycle heavy-duty engines and vehicles, and have concluded at this time that NCPs are not required for any of these standards. We recognize that in general these new standards represent an increase in stringency over the prior federal standards, and thus, that the first criterion for NCP eligibility is satisfied. While some additional work is likely required to meet these new standards, the second and third eligibility criteria are not satisfied.

With respect to the chassis-based standards, manufacturers will largely be using vehicles already certified to California standards to meet the federal requirements. The new federal chassis-based standards effectively extend the current California medium-duty vehicle standards to a nationwide basis. California began requiring some vehicles to meet these standards in 1998, and the phase-in reached completion in the 2001 model year. Thus, manufacturers will be producing a fleet of vehicles for California that meets the new federal chassis-based requirements several years prior to having to introduce the vehicles on a nationwide basis. The technology required to meet the new federal standards has therefore already been successfully demonstrated on this class of vehicles, and manufacturers have up to several additional years to further develop and improve these systems prior to introducing them nationwide. Therefore, for vehicles required to meet the chassis-based standards, we do not believe that substantial work, as described above, will be necessary to meet the new standards. For similar reasons, as well as the fact that manufacturers have not raised the possibility of requiring NCPs, we do not believe that a technological laggard is likely to develop for this class of vehicles.

Vehicles meeting the new engine-based standards will generally be employing more advanced versions of technologies that are currently in use, such as advanced catalytic converters and closed loop electronic control of the air-fuel ratio. All heavy-duty Otto-cycle engines are already equipped with three-way catalysts, and some recently introduced engines featuring precise air/fuel control and superior catalyst designs have been certified at levels below the most stringent standards included under the three optional compliance programs. In fact, the level of the engine-based standard under the optional programs that manufacturers are likely to select (1.5 grams per brake-horsepower-hour) is consistent with the recommendations of two manufacturers providing comment on the rule. Given these factors, we do not believe that a technological laggard is likely to emerge. Thus, for vehicles required to meet the engine-based standards, we do not believe that substantial work, as described above, will be necessary to meet the new standards.

In addition, the three compliance options that we included in the rule were developed through discussions with manufacturers, and based on those discussions we believe that these options are viable options that provide a range of choices and offer manufacturers flexibility to fit the program with their product planning. Due to the availability of these options and the discussions with manufacturers, we do not believe that a technological laggard is likely to develop with respect to any of the new Otto-cycle heavy-duty vehicle or engine standards. The ABT programs also offer considerable additional flexibility to meet the new standards.

In conclusion, based on the factors described above, we do not believe that there is sufficient evidence at this time that either substantial work is required to meet the now standards or that a technological laggard is likely to develop. Therefore, we are not proposing NCPs for any of the Otto-cycle heavy-duty emission standards.

2. 2004 Tier 2 Medium-duty Passenger Vehicles & Heavy Light-duty Trucks

In December 1999, EPA promulgated a new set of emission control requirements for heavy-duty vehicles with a GVWR between 6,001 and 10,000 lbs. (See 65 FR 6698, February 10, 2000). These requirements were implemented as part of EPA's Tier 2 vehicle emission control program. Beginning in 2004, heavy light-duty trucks (HLDTs) and medium-duty passenger vehicles (MDPVs) are combined in an averaging set which must meet a fleet average NO_X emission standard of 0.20 g/mi. The program phases in at 25/50/75/100% of each years sales over the period 2004–2007. Those not included in this fleet average must meet the current standards. This is referred to as the interim program. Beginning in 2008, the fleet must average 50% at 0.20 g/mi NO_X and the remaining 50% at 0.07 g/mi NO_X on average. And, by 2009 the fleet must average 0.07 g./mi NO_X. This is referred to as the Tier 2 program. This fleet average includes all covered vehicles without regard to fuel-type or combustion cycle. To be considered as part of the average, vehicle families must certify to NO_X, NMOG, CO, HCHO, and PM standards in one of a number of the emission "bins." There are 11 bins available for the interim program and eight for the Tier 2 program. In order for a family to qualify for the program it need only be able to certify in the top bin of each program.

EPA believes that NCPs are not necessary for either the interim or Tier 2 programs applicable to HLDTs and MDPVs. While the standard will be more difficult to meet, it does not involve "substantial work" as defined in the regulation and discussed above, nor does EPA expect there to be a "technological laggard." The technology needed to meet these standards is well understood now, and, as discussed in the rulemaking, there are already a number of vehicle families capable of meeting the requirements. To enable this technology further, EPA has promulgated fuel quality requirements for gasoline and diesel fuel aimed at substantially reducing sulfur content and thus enabling highly efficient aftertreatment technology.

Beyond that, these programs are constructed with a phase-in, which means that there is ample opportunity for technological development with the potentially more difficult vehicle configurations deferrable until the final year of each program's phase-in. Furthermore, the programs are based on fleet average standards independent of fuel or combustion cycle and do not limit emission standards to the fleet average. In order to be certified, a vehicle family need only qualify in one of the emission bins. For the interim and Tier 2 programs there are three bins above the average. Generally, the top bin in the interim program was constructed such that current technology vehicles could qualify. The top bin of the Tier 2 program was set at the fleet average value of the interim program.

The program also includes a number of flexibilities designed to enhance compliance. These include a provision to allow the generation of credits through early banking, manufacturer-developed alternative phase-in schedules, deficit carryforward for the fleet average, and a number of technology phase-in flexibilities such as in-use standards and alternative certification test-cycles.

In conclusion, given the significant flexibilities and options contained in the Tier 2 rule, we are not proposing NCPs for 2004 and later model year HLDTs or MDPVs.

III. Penalty Rates

This proposed rule is the most recent in a series of NCP rulemakings. The discussion of penalty rates in the Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference. This section briefly reviews the penalty rate formula and discusses how EPA arrived at the penalty rates in this proposed rule.

A. Parameters

As in the previous NCP rules, we are specifying the NCP formula for each standard using the following parameters: COC_{50}, COC_{90}, MC_{50}, F, and UL. The NCP formula is the same as that promulgated in the Phase I rule. As was done in previous NCP rules, costs include additional manufacturer costs and additional owner costs, but do not include certification costs because both complying and noncomplying manufacturers must incur certification costs. COC_{50} is an estimate of the industry-wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. More precisely, the values of COC_{50} presented here are estimates of the sales weighted mean incremental cost. We request comment regarding whether it would be more appropriate to set COC_{50} equal to the 50th percentile costs of compliance (i.e., median) instead of the mean costs. Commenters supporting the use of the median costs should address whether such an approach would reveal confidential business information.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. MC_{50} is an estimate of the industry-wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/bhp-hr for HDEs. F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} defines the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. UL is the upper limit above which no engine may be certified. UL is specified for each of the four service classes for which NCPs are being proposed.

The derivation of the proposed cost parameters is described in a support document entitled "Draft Technical Support Document: Nonconformance Penalties for 2004 Highway Heavy-Duty Diesel Engines," which is available in the public docket for this rulemaking. All costs are presented in 2001 dollars. Because we are trying to account for cost differences at the point of sale, all costs were converted to net present value (NPV) for calendar year 2004 using a discount rate of 7.0 percent. The upper limits applicable to a pollutant emission standard are described in the following section.

We requested cost information from several of the engine manufacturers for each engine model that they plan to produce for model year 2004. We used these estimates along with all other available information to estimate the average and 90th percentile compliance costs. However, as we have in previous NCP rules, we relied heavily on the manufacturers' projections of their own costs, especially for fixed, hardware, and warranty costs. We request comment on the availability of other data to estimate these costs on a manufacturer-specific basis.

It is important to note that this analysis differs from the analyses for the model year 2004 standard-setting rulemakings in three basic ways:

(1) The goal of this analysis is to estimate manufacturer and operator costs during the first year of the new standards rather than to project the long-term costs.

(2) The baselines for calculation of compliance costs differ significantly due to issues associated with the Consent Decrees.

(3) We now have more detailed information about costs identified in the earlier analysis, as well as cost categories not previously included.

Thus, the costs estimated here are not comparable to the estimates described in the standard-setting rulemakings. These differences are discussed in detail in Chapter 3 of the Draft Technical Support Document for this rulemaking, and only a summary will be presented here.

First, it is necessary for this NCP analysis to focus solely on the compliance costs associated with the first year of production, while standard-

[3] See EPA Air Docket A–98–32, comments from Navistar (item IV–D–29), Mack Truck (IV–D–06), Detroit Diesel Corp. (IV–D–28), and EMA (IV–D–05).

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setting analyses require a longer term view. This is most significant with respect to the costs associated with hardware, reliability (warranty, repairs, and associated costs), and fuel consumption. Manufacturers often make significant progress in reducing these costs with additional time.

Second, as is discussed in Section III(A)(1) of this preamble, the engine designs currently produced and sold under the Consent Decrees lead us to propose an Upper Limit value of 6.0 g/bhp-hr NMHC+NO_X, for the heavy-heavy duty service class, which fundamentally changes the cost analysis. The penalty rate factors are based on the compliance costs associated with lowering the emissions from model year 2001 engines to the 2004 standard. For heavy-heavy duty engines the NCPs are therefore based on the compliance costs associated with lowering the emissions from 6.0 g/bhp-hr NMHC+NO_X to the 2004 standard of 2.5g/bhp-hr NMHC+NO_X. This analysis was not performed in the standards-setting rules, and therefore the costs estimates in the standard-setting rule and this NCP proposal are not comparable. For the standard-setting rules, we estimated the compliance costs associated with bringing an engine which meets the current NO_X standard of 4.0 g/bhp-hr into compliance with the 2.5g/bhp-hr NMHC+NO_X. Even for the other service classes, where we have proposed an Upper Limit based directly on the 4.0 g/bhp-hr NO_X standard, the impact on engine designs of the alleged defeat device strategies used by a number of engine manufacturers over the past decade makes comparison between the standard-setting rule cost analysis and this analysis difficult.

Finally, for this NCP proposal we have received new information since the standard-setting FRMs. This included more detailed estimates of actual manufacturer costs, plus data on a few additional cost items which were not part of the standards-setting rulemaking analysis. Specifically, we have included new cost items for vehicle manufacturer costs, post-warranty repairs, and revenue impacts (lost revenue due to the increased weight of the engine and the loss in freight capacity). We did not have this information during the standard-setting rule. As a result of the three factors summarized above, the costs estimated in this NCP proposal are not directly comparable to the estimates described in the standard-setting rulemakings.

The significance of the various cost categories varied with service class. For example, the largest costs for light-heavy duty were hardware costs, while fuel costs were relatively low. However, for heavy-heavy duty, the fuel costs represent about half of the total cost of compliance.

1. Upper Limit

The upper limit is the emission level established by regulation above which NCPs are not available and a heavy duty engine cannot be certified or introduced into commerce. CAA section 206(g)(2) refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be "practicable." The upper limit is an important aspect of the NCP regulations not only because it establishes an emission level above which no engine can be certified, but it is also a critical component of the cost analysis used to develop the NCP factors. The regulations specify that the relevant NCP costs for determining the COC_{50} and the COC_{90} factors are the difference between an engine at the upper limit and one that meets the new standards (*see* 40 CFR 86.1113–87).

The regulatory approach adopted under the NCP rules sets the Upper Limit (UL) at the prior emission standard when a prior emission standard exists and that standard is changed and becomes more stringent. EPA concluded that the UL should be reasonably achievable by all manufacturers with vehicles in the relevant class. It should be within reach of all manufacturers of HDEs or HDVs that are currently allowed so that they can, if they choose, pay NCPs and continue to sell their engines and vehicles while finishing their development of complying engines. A manufacturer of a previously certified engine or vehicle should not be forced to immediately remove an HDE or HDV from the market when an emission standard becomes more stringent. The prior emissions standard meets these goals, because manufacturers have already certified their vehicles to that standard.

EPA also concluded that the prior emission standard is the appropriate upper limit when an emission standard is tightened by operation of another standard. EPA recognized that the previous standard would not necessarily represent the level that is reasonably achievable by all manufacturers with engines in the relevant class, but in practice the prior standard should be achievable in almost all cases. EPA rejected a suggestion that the upper limit, in such cases, should be more stringent than the prior emission standard, because it would be very difficult to identify a limit that would be within reach of, and could be met by, all manufacturers.

In this case, the new standard is a limit on the combination of NO_X+NMHC, while the prior regulatory standards are separate limits, one for NO_X and one for total HC. For a large portion of the industry, there are also emissions limits set under judicial Consent Decrees, many of which vary from the regulatory standards, in particular for the heavy-heavy service class as discussed latter in this section. In this situation, there is no simple way to determine the appropriate prior emission standard to use as an Upper Limit. One option would be to add the current NO_X and HC standards together, resulting in a 5.3 NO_X+NMHC standard. Another option would recognize that the HC standard has resulted in emissions of NMHC that are generally at 0.5 or below, producing NO_X+NMHC levels consistent with a standard of 4.5 for engines meeting a 4.0 g/bhp-hr NO_X standard. If there were no Consent Decree emissions limits, and the entire industry was already operating at these levels, a 4.5 standard would be more consistent with the policy and purposes of 40 CFR 86.1104–91, the general regulatory provision addressing Upper Limits. A NO_X+NMHC standard of 5.3 would in effect allow for increases in NO_X above the current regulatory emissions standards, because there is no reason to expect NMHC levels would increase above 0.5. The UL is designed to allow continued production of current engines, but not to allow backsliding.

EPA also considered the CD emissions limits in this analysis, as they establish legally binding requirements on the manufacturers that directly affect the way engine manufacturers design their engines. In many cases it is the CD limits, and not the regulatory standards, that are the controlling factor and dictate the level of emissions control required on engines produced during the term of the Decrees. Since the role of an NCP is to address the real world problems associated with a transition from a prior emissions requirement to a new more stringent requirement, it is appropriate to take the CD requirements into account where the levels required under the CD are in fact the controlling factor in establishing the prior level of control.

For light heavy-duty, medium heavy-duty, and urban bus engines, the CD requirements are consistent with the regulatory requirements for FTP standards and the defeat device prohibition. Manufacturers are currently certifying to the emissions levels provided under the CD. An examination

of model year 2001 certification data shows that for both CD and non-CD engine manufacturers, engines are generally being certified with HC emissions below 0.3 g/bhp-hr, and no engines in these service classes certified to the 4.0 g/bhp-hr NO_X standard have a combined NO_X plus HC emission level greater than 4.5 g/bhp-hr.[4] Hence, an UL of 4.5 NO_X+NMHC on the FTP would be most consistent with the policy approach embodied in 40 CFR 86.1104–91.

For heavy heavy-duty engines, however, the CD provides a significantly different approach. For these engines, limits are set for Euro III and NTE levels that allow for significantly higher emissions off the FTP than EPA would expect to allow under the defeat device prohibition. While the FTP standard under the CD is the same as in the regulations, it is the level of off-cycle control that drives the design requirements for the engine manufacturers. They are the legal requirements that drive the level of control embodied in the engine design. Model year 2001 certification data shows that combined HC and NO_X emissions for these engines are at or below 6.0 g/bhp-hr when measured using the Euro III test.[5]

This NCP rulemaking focuses on technological laggards, which would be those heavy-duty engines that need more lead time to comply with the 2004 NO_X+NMHC standard. For heavy heavy-duty engines, the prior actual level of control that they are now achieving and certifying to is driven by the CD levels. As such, an UL at the level of control required under the CD would set a level that is within the reach of all such manufacturers, including the technological laggards. It would be reasonably achievable by all manufacturers in this class, and would avoid forcing the technical laggards to remove an engine from the market when the 2004 emissions standards go into effect. This UL would be consistent with the policy embodied in the NCP regulations.

EPA recognizes that under the CD this group of heavy-duty engines is also required to achieve the 2004 emissions levels by October 2002. However, as discussed before, EPA has determined that there is likely to be a technological laggard for purposes of meeting this standard in 2004. The prior deadline in the CD does not change this determination, and means only that such manufacturers would also be subject to the constraints in the CD, including its compliance and enforcement provisions. EPA also recognizes that the CD calls for compliance with a 4.0 NO_X standard on the FTP with a 6.0 NO_X standard for the Euro III, and the UL we are proposing is for the FTP. Setting the UL at 6.0 NO_X+NMHC for the FTP would be expected to allow continued production of engines with NO_X at their CD levels, as the Euro III levels would not be expected to raise serious concerns about compliance with the defeat device prohibition.

EPA also considered an UL or 4.5 or 5.3 for the heavy heavy-duty engines An UL of 4.5 NO_X +NMHC would significantly reduce the level of off-cycle emissions for these engines, but would do it by requiring significant design changes at the same time design work is underway to meet the 2.5 standard. It is questionable whether there is adequate lead time to accomplish this in time for 2004 model year, and it is not consistent with the policy underlying the NCP regulation concerning ULs. In addition, the majority of the heavy-heavy cost numbers obtained by EPA from industry involved bringing an engine to compliance from the CD levels to the 2004 levels, and not for reducing from some third level to the 2004 levels. EPA does not believe it could readily develop the cost figures for such a development phase. An UL of 5.3 NO_X+NMHC would involve a hybrid of these two options—it would involve some change from the CD levels, but less of a change than going to the 4.5 level.

Of the three possible ULs for heavy heavy-duty engines, EPA believes that 6.0 NO_X+NMHC is most consistent with the policy approach embodied in 40 CFR 86.1104–91. The cost calculation in this proposal are based on this as the UL. However, EPA invites comment on using an UL of either 5.3 or 4.5 NO_X+NMHC, including information on the technology such an engine would use to comply with either 5.3 or 4.5, as well as the costs associated with these options.

2. Parameter Values

We propose that the values in Table 1 (in 2001 dollars) be used in the NCP formula for the 2004 and later model year NMHC+NO_X standard of 2.5 g/bhp-hr for diesel heavy-duty engines and diesel urban bus engines at full useful life. The derivation of these parameters is described in the Draft Technical Support Document for this rulemaking. We request comment on our estimates of these parameters.

[4] EPA Memorandum "Summary of Model Year 2001 Heavy-duty Diesel Engine HC and NO_X Certification Data", copy available in the docket for this rulemaking.

[5] EPA Memorandum "Summary of Model Year 2001 Heavy-duty Diesel Engine HC and NO_X Certification Data", copy available in the docket for this rulemaking.

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TABLE 1.—PROPOSED NCP CALCULATION PARAMETERS

Parameter	Light heavy-duty diesel engines	Medium heavy-duty diesel engines	Heavy-duty diesel engines	Urban bus engines
COC_{50}	$1,080	$3,360	$8,940	$4,400.
COC_{90}	$2,610	$6,870	$14,790	$7,120.
MC_{50}	[1] $2,000	[1] $1,800	[1] $7,200	[1] $4,900
F	1.3	1.3	1.3	1.3
UL	[1] 4.5	[1] 4.5	[1] 6.0	[1] 4.5

[1] Per gram per brake-horsepower-hour.

3. Penalty Curves

The calculation parameters listed in Table 1 are used to calculate the penalty rates for each heavy-duty service class. These parameters are used in the penalty rate formulas which are defined in the existing NCP regulations (See 40 CFR 86.1113(a)(1) and (2)). Using the parameters in Table 1, and the equations in the regulations, we have plotted penalty rates versus compliance levels for each service class in Figures 1–4 below. These penalty curves are for the first year of use of the NCPs, that is, the annual adjustment factors specified in the regulations have been set equal to one.

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Figure 1: Light-heavy Penalty Curve

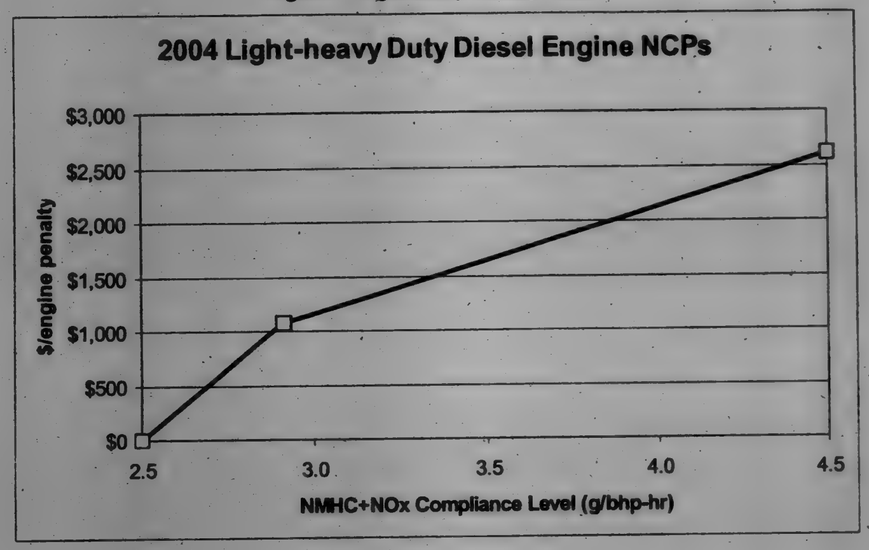

Figure 2: Medium-heavy Penalty Curve

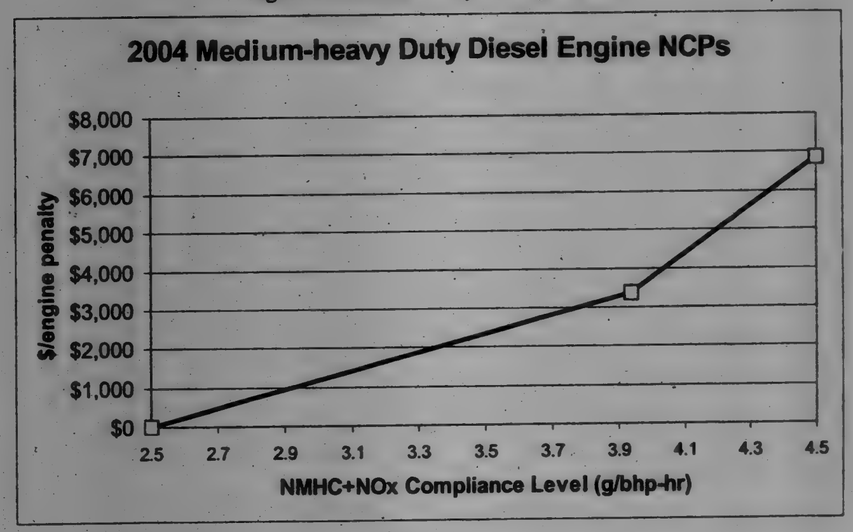

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Figure 3: Heavy-heavy Penalty Curve

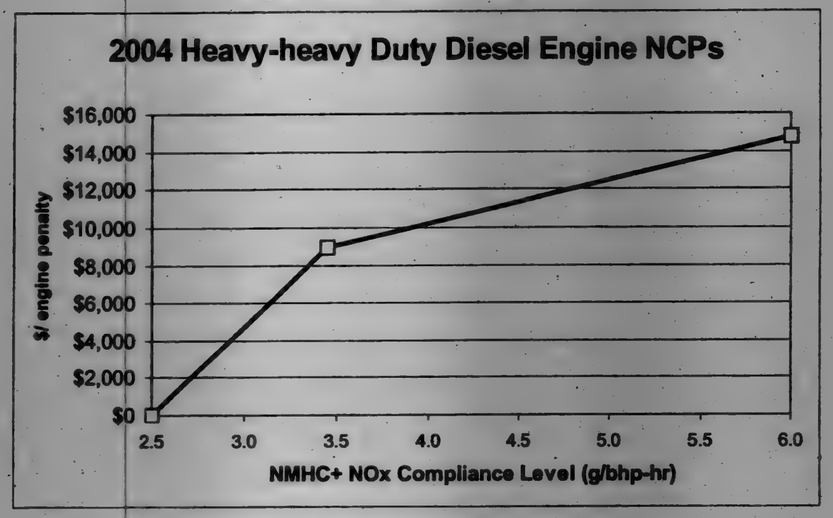

Figure 4: Urban Bus Penalty Curve

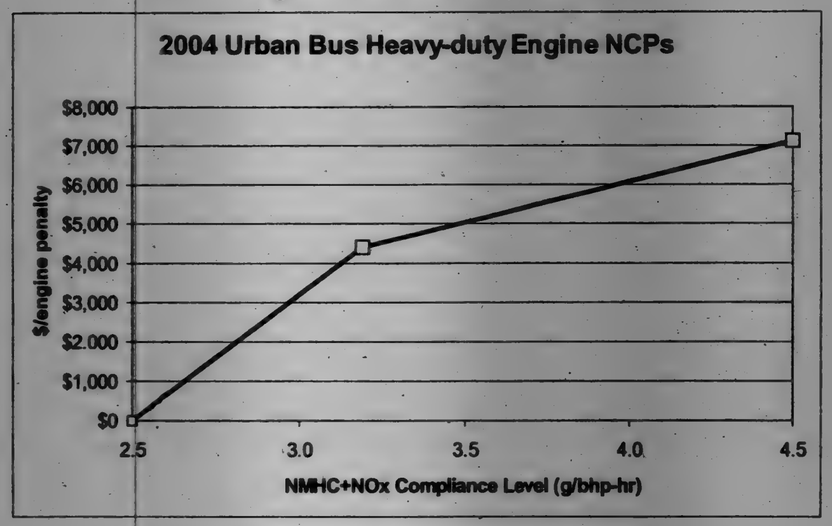

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B. Issues and Alternatives

The Clean Air Act requires EPA to set the NCPs "to remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction". The analysis presented in detail in the Draft Technical Support Document deals with an assessment of the cost of compliance, using essentially the same methodology that has historically been used to establish NCPs. We believe that our estimates of the costs are appropriate and that the methodology is sound. In establishing prior NCP rules, we have frequently made it clear that satisfying the statutory objective of protecting the complying manufacturer was paramount.

The NCP generic rule establishes an approach which attempts to remove any competitive disadvantage to complying manufacturers by assessing a cost to the manufacturer of a non-complying engine in the form of an NCP, with the expectation that this cost is at least equivalent to or exceeds the value of the competitive benefit gained by building a noncomplying engine. Imposing such a cost is a way to level the playing field without interfering in the actual marketing or pricing of the engines. The problem here is that for some factors it is hard to quantify with certainty the value of this competitive benefit, and EPA is concerned that the calculation may not remove all competitive disadvantages.

1. Purchaser Perception Effects on Competition

A manufacturer of a non-complying engine generally gains a competitive advantage or benefit of two types. The first typically involves production expenses saved by not producing a complying engine, such as fixed costs, hardware costs, and the like. The second category involves, in some cases, the competitive benefits gained by producing an engine that has better performance characteristics compared to a complying engine, including reduced operating expenses for the purchasers of noncomplying engines. In addition, manufacturers may realize a reduced number of warranty claims by producing current technology noncomplying engines.

The first category is easier to quantify, as it involves considering costs directly incurred by the industry, and it is generally easier to get a fuller quantification of amounts in categories such as hardware costs. The second category is much harder to quantify with certainty. For example, as discussed below with respect to fuel economy, the actual amount of savings to the operator will vary based on several factors. An even harder to quantify competitive advantage is the benefit in the marketplace from producing an engine that is, or may be perceived to perform better, such as being more durable or reliable, and thus less prone to malfunction or breakdown. Including the cost of warranty claims and related expenses for the new technology engines in the NCP is one way to take into consideration the expected durability of complying engines. Including this cost helps to level the playing field with respect to this increased cost experienced by manufacturers of complying engines. This cost component of the NCP is therefore like the costs in the first category—out of pocket expenses experienced by complying manufacturers that a non-complying manufacturer might otherwise avoid.

There is significant uncertainty as to whether warranty and related costs in the NCP calculation fully reflect the competitive benefit gained in the marketplace by a non-complying engine. This competitive benefit could readily be greater than the out-of-pocket warranty expenses paid by the manufacturer of a complying engine. For example, non-complying engines may be either perceived or may in fact be more reliable during the early years of the transition to the new technology engines. This difference in performance gives a competitive advantage to producers of noncomplying engines. In order to remove this advantage, the cost of an NCP needs to account for the marketplace value of this difference in performance.

However, it is hard to quantify this value with certainty. For example it is hard to quantify in dollar terms the value purchasers will attribute to a real or perceived difference in durability or reliability. There is little real world experience with the new technology engines; hence it will be hard for a purchaser to judge with certainty the actual difference in reliability and the increased costs associated with it. It is also unlikely that the dollar amount of a warranty claim would fully reflect the loss in value expected from a malfunction or breakdown. The purchaser experiences both the repair expenses as well as down time for their equipment, disruption of their business, and other potential adverse impacts, which may not be fully covered by payment of a warranty claim. Especially where there is little historical evidence to rely on regarding a new technology, there may be significant uncertainty concerning the reliability of new technology engines when they are first introduced, and the value a purchaser places on the proven reliability of an older technology engine may therefore be magnified. While this proposal includes costs related to downtime and demurrage expenses during warranty repairs in the NCP, it is not clear how, as part of a business decision, the engine purchasers will trade-off higher purchase costs for the noncomplying engine versus the uncertainty of the reliability and durability of the new technology.

This is potentially a significant issue in this action because there is reason to believe that manufacturers may choose to make extensive use of NCPs and continue to produce pre-2004 technology engines. As has been the case in past NCP rules, where a noncomplying manufacturer does essentially nothing in terms of new technology (i.e., produces an upper limit engine), it must pay an NCP based on COC_{90}. The noncomplying manufacturer would then raise prices on its engines to levels comparable to those for complying engines in order to be able to capture back at least part of that NCP (the portion related to first price increase). The noncomplying manufacturer may even be able to charge a premium (relative to the first price increase of the complying manufacturer) if the engine purchaser perceives its "old technology" engine to be more desirable than the relatively unproven new technology engine.

Thus, in summary, we have three related factors affecting the issue of whether the proposed NCP would remove competitive disadvantage (purchase price, operating cost, purchaser perception). Even with an NCP set at a level which addresses quantifiable cost differences between complying and non-complying engines, in the eyes of the purchaser there still may be an advantage to paying the higher first cost for an engine (including the NCP) with known performance.

It is difficult to establish the degree to which the NCP calculation discussed above will fully remove any competitive advantage for non-compliers attributable to purchaser perception. Therefore, EPA is requesting comment on whether there is an additional factor that should be included in the NCP calculation and on methods to value these potential performance advantages. If engine purchaser perception favors noncomplying engines, this affects market share and thus business viability, per engine amortized fixed costs, and overall profitability. Therefore, we are considering adding a factor to the NCP formula to address

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such an advantage if it exists, and there is an appropriate way to quantify it. Conceptually, such a factor would need to be equal to the purchase price difference at which a potential purchaser would be indifferent between purchasing a complying and non-complying engine, after accounting for all of the factors that are currently included in the proposed NCP calculation (e.g., fuel costs, maintenance, warranty, demurrage, and the revenue impact of additional engine weight. These factors are discussed in more detail in the draft Technical Support Document for this proposal. EPA requests comment on whether such an additional factor is needed here and if so what is the appropriate means to implement this adjustment. Commenters who believe that such a factor is appropriately included in the NCP calculation should provide an empirical and quantitative basis for calculating the appropriate level at which to set it.

2. Projected Fuel Price

One of the most significant categories of cost is the impact of the standards on fuel consumption rates. However, this cost element is difficult to estimate because actual fuel costs will vary based on the price of the fuel and on the vehicle operation. We, therefore, are requesting comment on our estimates of the economic impact of increased fuel consumption.

Fuel price varies with time and with location. According to the Energy Information Administration (EIA), the national average highway diesel fuel price in February of 1999 was 95 cents per gallon (with taxes), but in October of 2000 it was $1.67 per gallon (with taxes). That represents a 76 percent increase in the fuel price within a two year period. The average price for diesel fuel over the past five years was $1.25 per gallon. This kind of variation makes it difficult to project future prices. For our analysis, we estimated the fuel price to be $1.50 for 2004 and 2005. This is equal to the national average highway diesel fuel price for last year. We are requesting comment on the use of the five-year average price of $1.25 per gallon. Our analysis projects that fuel costs will be five cents per gallon higher after 2005 to account for the additional cost of the very low sulfur fuel that will be required beginning in 2006. This would also be true if we started with the five-year average price instead of the 2000 price. Given the difficulty in projecting future fuel prices, we are also requesting comments on the concept of adjusting the NCP based on price of diesel fuel. This could be done in two ways. First, we could adjust the NCP by regulation before the beginning of the 2004 model year if we determine that the fuel price used to determine the NCP inputs is no longer appropriate. Second, we could finalize in this rulemaking a regulatory provision that makes COC_{50}, COC_{90} and MC_{50} functions of the national average highway diesel fuel price in the preceding year (or preceding five years). This would be similar to the use of the Consumer Price Index to adjust the penalties for inflation (see 40 CFR 86.113–87(a)(4). The NCP could be adjusted "automatically" using the latest EIA estimate of national average highway diesel fuel price, or some other independent estimate.

In addition, at any given time, fuel prices before taxes can vary regionally by as much as ±10 percent from the national average. This is compounded by differences in state taxes, which vary from 8 to 29 cents per gallon. This regional variability is potentially significant for our 90th percentile analysis. Some trucks may operate locally in an area that has fuel prices significantly higher than the national average. However, we believe that the number of these trucks will be relatively small, and thus did not include a regional fuel price component in our 90th percentile analysis. Nevertheless, we request comment on this issue.

Another important factor in estimating fuel cost is how much fuel a model year 2004 vehicle will use over its lifetime. This is most important for heavy-heavy duty engines. Some vehicles may be scrapped after their useful life (435,000 miles) while others may be rebuilt more than once and not be scrapped until after 2 million miles. Thus, the fuel cost could vary by a factor of four from one vehicle to another. The mileage estimates that we used in our analysis are shown in the table below. You should read the Draft Technical Support Document for more information about how we used these mileage estimates.

ESTIMATES OF LIFETIME VEHICLE MILES TRAVELED (VMT) USED IN COST ANALYSIS

	VMT for average vehicle	VMT used for COC_{90} analysis
Light Heavy	209,000	280,000
Medium Heavy	262,000	343,000
Heavy Heavy	767,000	1,000,000

Finally, our methodology for calculating the cost of changes in fuel consumption uses estimates of average miles driven per gallon of fuel used. These estimates are 14.0, 8.0 and 6.0 miles per gallon (MPG) for light-, medium, and heavy-heavy duty, respectively. We used these same estimates for both the COC_{50} and COC_{90} analyses. Using different estimates could significantly change the projected costs. For a typical light-heavy duty vehicle, where we are projecting a decrease in the brake-specific fuel consumption rate, using a higher MPG rate would increase net costs for a given number of miles traveled because the fuel savings would be reduced. The opposite is true for medium- and heavy-heavy duty, where we project increases in brake-specific fuel consumption rates. For these larger engines, using a higher MPG rate would decrease net costs for a given number of miles traveled. We request comment on these MPG estimates.

3. Discount Rates

All of the compliance costs in this analysis are presented in terms of net present value (NPV) for calendar year 2004. This means that costs that occur before 2004 are adjusted upward, and costs that occur after 2004 are adjusted downward to reflect the time or opportunity value of the money involved. (i.e., discounted).

In our analysis, each manufacturer's pre-production investment costs were adjusted upward to reflect the lost opportunity cost or the cost of borrowing the capital for the investment. A manufacturer would typically seek to set its prices to recover this adjusted investment from sales within the first several years of production. We used a seven percent annual discount rate for these costs, as we have done in previous analyses for pre-production costs. EPA also used a seven percent discount rate in

Regulatory Impact Analyses for the 1997 and 2000 FRMs that established the 2004 standards. This rate is based on studies which indicate that this has been a reasonable opportunity cost of diverting private capital to support Federal regulatory objectives (See OMB Circular A–94; available at www.whitehouse.gov/omb/circulars/a094/a094.html). We request comment in whether this rate is appropriate for the opportunity costs for the period of 1998 through 2003, the time period when the 2004 model year investment is being made by the manufacturers.

The NPV analysis also requires that all in-use operating costs be adjusted downward to reflect the time value of money for future costs. More specifically, the stream of operating costs must be discounted to make them equivalent to costs incurred at the time of purchase. Truck purchasers would use this approach before purchase when comparing future operating costs of two or more engines before purchase. We used a seven percent discount rate for these costs as well. However, there is evidence in other contexts that users might apply a different discount rate than seven percent when considering future operating costs during a purchase decision. We request comment on whether there is evidence to support the application of such an alternative discount rate to operating costs in the various segments of the heavy duty engine market. Your comments in support of an alternative discount rate (a higher or lower value) should include a discussion of the supporting economic and business rationale for the alternative rate. We have included an example of the impact on the NCP parameters from using a smaller discount rate (three percent) in the draft Technical Support Document for this proposal.

IV. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If no HDE manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs. NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a SEA has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce.

V. Environmental Impact

When evaluating the environmental impact of this proposed rule, one must keep in mind that, under the Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus*, 478 F. 2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain conditions. This mechanism would allow manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers out of the market, NCPs provide flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be possible. By design, NCPs encourage the technological laggard that is using NCPs to reduce emission levels to the more stringent standard as quickly as possible.

However, we believe that the potential exists for there to be more widespread use of the NCPs proposed in this rule in comparison to prior NCPs, thus indicating the possibility for an environmental impact somewhat greater in magnitude than we have suggested in prior NCP rules. Nevertheless, we believe that any such impacts would be short-term in nature. By including an annual adjustment factor that increases the levels of the penalties, the NCP program is structured such that the incentives to produce engines that meet the standards increase year-by-year. The practical impact of this adjustment factor is that the NCPs will rapidly become an obsolete option for non-complying manufacturers. However, we have no way of predicting at this time how many manufacturers will make use of the proposed NCPs, or how many engine families would be subject to the NCP program. Because of these uncertainties we are unable to accurately quantify the potential impact the proposed NCPs might have on emission inventories, although, as stated above, any impacts are expected to be short-term in nature.

VI. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it "Confidential Business Information." You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a non-confidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you don't identify information as confidential when we receive it, we may make it available to the public without notifying you.

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B. Will There Be a Public Hearing?

We will hold a public hearing in the Washington, DC area on February 15, 2002. The hearings will start at 10:00 am and continue until everyone has had a chance to speak.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of each hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

VII. Administrative Requirements

A. Regulatory Planning and Review: Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 2004 NMHC+NO_X standard for diesel heavy-duty engines and heavy-duty vehicles. Without this proposed rule, a manufacturer experiencing difficulty in complying with this new emission standard (after the use of credits) has only two alternatives: fix the non-conforming engines for the associated model years or not sell them at all. NCPs provide manufacturers with additional time to bring their engines into conformity. In addition, NCPs are calculated to deprive non-conforming manufacturers of any cost savings and competitive advantages stemming from marketing a non-conforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has no more than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The non-conformance penalties that would be established by this proposed rule are for emission standards that pertain to heavy-duty diesel engines. When these emission standards were established, the final rulemaking (65 FR 59895, October 6, 2000) noted that only two small entities were known to be affected. Those entities were small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline engines. The emission standards for heavy-duty diesel engines, for which NCPs are proposed, do not pertain to the engines manufactured by these businesses.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared and its availability for comment will be announced in a separate **Federal Register** document when the ICR is sent to OMB.

The existing regulations in 40 CFR part 86, subpart L require that manufacturers seeking NCPs annually conduct a Production Compliance Audit (PCA) for each engine configuration. This means that they must perform additional emission testing. This testing is necessary to determine more precisely the emission levels for engine configurations that exceed an applicable emission standard. While the use of NCPs is voluntary, manufacturers choosing to use them must submit the additional testing information (40 CFR 86.1106–87). Manufacturers may assert that some or all of the information provided is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

EPA has previously estimated the annual burden associated with NCPs to 906 hours and $51,786, based on a projection of six respondents per year. We estimated the average burden hours per response to 144 hours for reporting, and 7 hours for recordkeeping. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed non-conformance penalties and associated requirements for heavy-duty diesel engine manufacturers in this proposal would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required

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under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule proposes to adopt non-conformance penalties for national emission standards for certain categories of motor vehicles. The requirements of the proposed rule would be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

I. Executive Order 13211: Energy Effects

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As described in the 2000 final rule in which we affirmed the 2004 standard (65 FR 59896, Oct. 6, 2000), we have concluded that there would be no net long-term change in the fuel consumption performance of heavy-duty diesel engines as a result of the 2004 model year emission standards. However, there may be the potential for higher fuel consumption rates in the short term as diesel engine manufacturers work to balance the inherent tradeoff between control of NO_X emissions and fuel consumption. The availability of NCPs for the 2004 and later model years provides manufacturers with another option for balancing this tradeoff and working towards optimizing fuel consumption and emissions—they would be able to use NCPs to emit somewhat higher NO_X levels than they would otherwise be allowed, while at the same time avoiding undesirable fuel consumption impacts. Thus, we have concluded that this proposed rule is not likely to have any significant adverse energy effects.

J. Plain Language

This document follows the guidelines of the June 1, 1998 Executive Memorandum on Plain Language in Government Writing. To read the text of the regulations, it is also important to understand the organization of the Code of Federal Regulations (CFR). The CFR uses the following organizational names and conventions.

Title 40—Protection of the Environment
Chapter I—Environmental Protection Agency
Subchapter C—Air Programs. This contains parts 50 to 99, where the Office of Air and Radiation has usually placed emission standards for motor vehicle and nonroad engines.
Subchapter U—Air Programs Supplement. This contains parts 1000 to 1299, where we intend to place regulations for air programs in future rulemakings.
Part 86—Control of Emissions from New and In-use Highway Vehicles and Engines. Provisions of this part apply generally to highway vehicles and engines used in highway vehicles.

Each part in the CFR has several subparts, sections, and paragraphs. The following illustration shows how these fit together.

Part 86

Subpart A

Section 86.1

(a)
(b)
(1)
(2)
(i)
(ii)
(A)
(B)

A cross reference to Sec. 1048.001(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to "Sec. 1048.001(b) introductory text" would refer only to the single, parent paragraph (b).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential Business Information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 10, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.1105–87 is proposed to be amended by revising paragraph (e) and by adding paragraph (i), to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (f) of this section are expressed in December 1991 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (g) and (h) of this section are expressed in December 1994 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (i) of this section are expressed in December 2001 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. The method was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM, 1916 Race Street, Philadelphia, PA 19103, and is also available for inspection as part of Docket A–91–06, located at the

Central Docket Section, EPA, 401 M Street, SW, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * *

(i) Effective in the 2004 model year, NCPs will be available for the following emission standard:

(1) Diesel heavy-duty engine non-methane hydrocarbon plus oxides of nitrogen standard of 2.4 grams per brake horsepower-hour (or alternatively, 2.5 grams per brake horsepower-hour with a limit on non-methane hydrocarbon emissions of 0.5 grams per brake horsepower-hour), in § 86.004–11(a)(1)(i).

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1080.
(*2*) COC_{90}: $2610.
(*3*) MC_{50}: $2000 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 4.5 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.333.

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $3360.
(*2*) COC_{90}: $6870.
(*3*) MC_{50}: $1800 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 4.5 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.167.

(iii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $8940.
(*2*) COC_{90}: $14790.
(*3*) MC_{50}: $7200 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 6.0 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.067.

(iv) For diesel urban bus engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $4400.
(*2*) COC_{90}: $7120.
(*3*) MC_{50}: $4895 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 4.5 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.136.

(2) [Reserved]

[FR Doc. 02–1109 Filed 1–15–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301192; FRL–6810–3]

RIN 2070–AB78

Nicotine; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke specific tolerances forresidues of nicotine-containing compounds used as insecticides and for the insecticide nicotine because nicotine is no longer registered for those uses in the United States. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the proposed revocation of 66 nicotine tolerances which would be counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: Comments, identified by docket control numberOPP–301192, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301192 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301192. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall# 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301192 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301192. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke specific tolerances for residues of nicotine-containing compounds used as insecticides and for the insecticide nicotine in or on commodities listed in the regulatory text because nicotine is no longer registered under FIFRA for use on those commodities. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Many food uses were removed from nicotine labels in 1992 and in 1994. On April 29, 1992 a FIFRA 6(f)(1) notice of receipt of a request to voluntarily cancel certain nicotine registrations was published in the **Federal Register** (57 FR 18146) (FRL–4056–6), with a use deletion date of July 28, 1992. On October 20, 1993 another 6(f)(1) notice of a receipt of request to voluntarily cancel certain nicotine registrations was published in the **Federal Register** (58 FR 54148) (FRL–4647–1), with a cancellation date of January 28, 1994. No residue data exist to support the tolerances being proposed for revocation. With the exception of cucumber, lettuce, and tomato, there are no other active food use registrations existing for nicotine-containing compounds or nicotine. Therefore, EPA is proposing to revoke a total of 66 tolerances, of which 62 tolerances are found in 40 CFR 180.167 and 4 tolerances are found in § 180.167a.

Specifically, in 40 CFR 180.167 EPA is proposing to revoke tolerances for the following: Apples; apricots; artichokes; asparagus; avocados; beans; beets (with or without tops) or beet greens alone; blackberries; boysenberries; broccoli; Brussels sprouts; cabbage; cauliflower; celery; cherries; citrus fruits; collards; corn; cranberries; currants; dewberries; eggplants; gooseberries; grapes; kale; kohlrabi; loganberries; melons; mushrooms; mustard greens; nectarines; okra; onions; parsley; parsnips (with or without tops) or parsnip greens alone; peaches; pears; peas; peppers; plums (fresh prunes); pumpkins; quinces; radishes (with or without tops) or radish tops; raspberries; rutabagas (with or without tops) or rutabaga tops; spinach; squash; strawberries; summer squash; Swiss chard; turnips (with or without tops) or turnip greens; and youngberries. In 40 CFR 180.167a EPA is proposing to revoke tolerances for eggs; poultry, fat; poultry, meat; and poultry, meat byproducts by removing § 180.167a in its entirety. For counting purposes, the tolerances depicted above as with or without tops are each counted as two tolerances.

In order to conform to current Agency practice, EPA is also proposing to revise the remaining tolerance commodity names in 40 CFR 180.167 for cucumbers to cucumber and tomatoes to tomato.

B. What is the Agency's Authority for Taking this Action?

A tolerance represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore adulterated under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be adulterated, you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a fooduse pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Fooduse pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as import tolerances, are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances and commits to the data needed to support them. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

For this rule, the proposed actions will affect uses which have been canceled for many years. EPA is proposing that these actions become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing to delay the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. EPA believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been exhausted. However, if EPA is presented with information that existing stocks would still be available and that information is verified, EPA will consider extending the expiration date of the tolerance. If

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you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under SUPPLEMENTARY INFORMATION.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of January 3, 2002, EPA has reassessed over 3,830 tolerances. This document proposes to revoke a total of 66 tolerances of which 62 are in 40 CFR 180.167 and 4 are in 40 CFR 180.167a. Therefore, 66 tolerance reassessments would be counted when the final rule is published toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domesticallyproduced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under **Federal Register** Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any *special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any tribal implications as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Policies that have tribal implications is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities,Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.167 is amended by removing entries from the existing paragraph and designating the existing paragraph as paragraph (a), and by adding and reserving paragraphs (b), (c), and (d), to read as follows:

§ 180.167 Nicotine-containing compounds; tolerances for residues.

(a) *General.* Tolerances are established for residues ofnicotine-containing compounds used as insecticides in or on the following raw agricultural commodities:

Commodity	Parts per million
Cucumber	2.0
Lettuce	2.0
Tomato	2.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.167a [Removed]

3. Section 180.167a is removed.

[FR Doc. 02–628 Filed 1–15–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 241

[FRA Docket No. FRA–2001–8728, Notice No. 2]

RIN 2130–AB38

U.S. Locational Requirement for Dispatching of U.S. Rail Operations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearing.

SUMMARY: On December 11, 2001 (66 FR 63942), FRA published an Interim Final Rule (IFR) requiring all dispatching of railroad operations that occur in the United States to be performed in the United States with three minor exceptions. FRA is interested in receiving public comments on possible benefits and costs of this IFR and comments on whether FRA should adopt an alternative regulatory scheme under which extraterritorial dispatching of United States railroad operations would be permitted and, if so, under what conditions. In the IFR, FRA announced that it would schedule a public hearing to allow interested parties the opportunity to comment on these issues. This notice announces the scheduling of the public hearing.

DATES: *Public Hearing:* The date of the public hearing is Tuesday, February 12, 2002, at 10 a.m. in Washington, DC. Any person wishing to participate in the public hearing should notify the Docket Clerk by telephone (202–493–6030) or by mail at the address provided below at least five working days prior to the date of the hearing and submit to the Docket Clerk three copies of the oral statement that he or she intends to make at the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address.

ADDRESSES: (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to Ms. Ivornette Lynch, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Ave., NW., Stop 10, Washington, DC 20590.

(2) *Public Hearing:* The public hearing will be held in the Department of Transportation Headquarters Building, 400 7th Street, SW., Rooms 3200–3204, Washington, DC 20590. Attendees should bring an identification card with photograph (such as a current driver's license), report to the security counter in the southwest quadrant of the DOT building for admission, and follow security procedures as provided at that location.

FOR FURTHER INFORMATION CONTACT: Douglas Taylor, Staff Director for Operating Practices, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202–493–6255); John Winkle, Trial Attorney, FRA Office of the Chief Counsel, RCC–12, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6067); or Billie Stultz, Deputy Assistant Chief Counsel, FRA Office of Chief Counsel, RCC–12, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6053 or 202–493–6029).

Issued in Washington, DC, on January 9, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–1027 Filed 1–15–02; 8:45 am]

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Notices

Federal Register
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Wednesday, January 16, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors

TIME: 11:00 am–2:30 pm.
PLACE: ADF Headquarters.
DATE: Tuesday, January 29, 2002.
STATUS: Open.

Agenda

11:00 am–11:30 am—Chairman's Report
11:30 am–12:30 pm—President's Report
12:30 pm–1:00 pm—Lunch
1:00 pm–2:30 pm—Executive Session (Closed)
2:30 pm—Adjournment

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who can be reached at (202) 673–3916.

Nathaniel Fields,
President.
[FR Doc. 02–1281 Filed 1–14–02; 3:50 pm]
BILLING CODE 6117–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).
Title: Performance Reporting System (PRS) for the Technology Opportunities Program (TOP).
Form Number(s): None.
OMB Approval Number: 0660–0015.
Type of Request: Regular Submission.
Burden Hours: 1492.
Number of Respondents: 50.
Average Hours Per Response: Start-Up Documentation—20 hours; Progress Reports—16 hours; Annual Report—0.5 hours; Final Closeout Report—20 hours.
Needs and Uses: The purpose of the Technology Opportunities Program (TOP), formerly the Telecommunications and Information Infrastructure Assistance Program (TIIAP), is to promote the widespread and efficient use of advanced telecommunications services in the public and non-profit sectors to serve America's communities through the award of matching grants.
Affected Public: State, local, or tribal government, and not-for-profit institutions.
Frequency: Quarterly, annually, and final report.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 02–1032 Filed 1–15–02; 8:45 am]
BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: 2002 Vehicle Inventory and Use Survey (VIUS).
Form Number(s): TC–9501, TC–9502.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 85,170.
Number of Respondents: 135,300.
Avg Hours Per Response: 38 minutes.
Needs and Uses: The Census Bureau requests clearance of the forms it will use to conduct the 2002 Vehicle Inventory and Use Survey (VIUS) as part of the 2002 Economic Census. The 2002 VIUS will collect data to measure the physical and operational characteristics of trucks from a sample of approximately 135,300 trucks. These trucks are selected from more than 76 million private and commercial trucks registered on file with motor vehicle departments in the 50 states and the District of Columbia. The Census Bureau will collect the data for the sampled trucks from a questionnaire mailed to truck owners. We will publish physical and operational vehicular characteristics estimates for each state, the District of Columbia, and the United States.

The VIUS is the only comprehensive source of information on the physical and operational characteristics of the Nation's truck population. The need for truck industry data continues to be increasingly important with the passage of the Motor Carrier Act of 1980, the Clean Air Act amendments of 1990, and the Hours-of-Service Regulations proposal of 2000. The VIUS provides unique, essential information for government, business, and academia. The U.S. Department of Transportation, State Departments of Transportation, and transportation consultants compliment VIUS microdata as extremely useful and flexible to meet constantly changing requests that cannot be met with predetermined tabular publications. The microdata file enables them to cross-tabulate data to meet their needs. Federal, state, and local transportation agencies use information from the VIUS for the analysis of safety issues, proposed investments in new roads and technology, truck size and weight issues, user fees, cost allocation, energy and environmental constraints, hazardous materials transport, and other aspects of the Federal-aid highway program. The Federal government uses information from the VIUS as an important part of the framework for: (1) The national investment and personal consumption expenditures component of the gross domestic product (GDP), (2) input-output tables, (3) economic development evaluation, (4) maintenance of vital statistics for prediction of future economic and transportation trends, (5) logistical requirements, (6) Metropolitan Planning Organization (MPO) transportation development requirements, and (7) regulatory impact analysis. Business and academia use information from the VIUS to assess intermodal use, conduct market studies and evaluate market strategies, assess the utility and cost of certain types of equipment, and calculate the longevity of products. VIUS information also is used to determine fuel demands and needs for fuel efficiency, to produce trade publication articles and special data arrays, and to assess the effects of deregulation on the restructuring of the transportation industries.

Affected Public: Individuals or households; Businesses or other for profit; Not-for-profit institutions; Farms.
Frequency: One time.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., section 131.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 02–1035 Filed 1–15–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: 2002 Survey of Program Dynamics.
Form Number(s): SPD–22005, SPD–222105(L), SPD–22107(L), SPD–22103(L), SPD–22113(L).
Agency Approval Number: 0607–0838.
Type of Request: Revision of a currently approved collection.
Burden: 25,138 hours.
Number of Respondents: 41,990.
Avg Hours Per Response: 36 minutes.
Needs and Uses: The Census Bureau seeks OMB approval to conduct the 2002 Survey of Program Dynamics (SPD), the final data collection for this annual survey which began in 1997. The SPD provides the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people. This survey simultaneously measures the important features of the full range of welfare programs, including programs that are being reformed and those that are unchanged, and the full range of other important social, economic, demographic, and family changes that will facilitate or limit the effectiveness of the reforms.

The SPD is a longitudinal study that follows a subset of the respondents from the 1992 and 1993 panels of the Survey of Income and Program Participation (SIPP). The SPD was first implemented in the spring of 1997 with a bridge survey that provided a link to baseline data for the period prior to the implementation of welfare reforms. The first full-scale SPD was conducted in 1998. The data gathered for the 10-year period (1992–2002) will aid in assessing short- to medium-term consequences of outcomes of the welfare legislation.

The 2002 SPD will exclude the self-administered questionnaire (SAQ) which we administered to 12- to 17-year-olds during the 2001 SPD, and will include questions on the extended measures of child well-being, last asked during the 1999 data collection. Due to cost constraints, the sample for the 2002 SPD will be reduced by approximately 30 percent to 20,000 households.

The 2002 SPD will be conducted by our interviewing staff using a computer-assisted interviewing instrument on laptops during personal and telephone interviews. As in previous years, we will offer monetary incentives to select groups of respondents in order to maintain and improve response rates.

Affected Public: Individuals or households.
Frequency: Annually.
Respondent's Obligation: Voluntary.
Legal Authority: Title 42 U.S.C., section 614.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 02–1036 Filed 1–15–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: Survey of Building and Zoning Permit Systems.
Form Number(s): C–411.
Agency Approval Number: 0607–0350.
Type of Request: Reinstatement, with change, of an expired collection.
Burden: 500 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: 15 minutes.
Needs and Uses: The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country. The Census Bureau uses Form C–411, "Survey of Building and Zoning Permits," to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places from which samples for the Report of Privately-Owned Residential Building or Zoning Permits Issued (also known as

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the Building Permits Survey (BPS)), and the Survey of Housing Starts, Sales, and Completions (also known as Survey of Construction (SOC)) are selected. The questions pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued. The form is sent to jurisdictions when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed.

We are requesting a reinstatement of the Form C–411 which has remained unused since its expiration earlier this year. We are requesting revisions to the form to streamline the collection and because of changing data needs.

Affected Public: State, local, or Tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., sections 8(b), 9(b), 161, and 182; Title 15 U.S.C., section 1525.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1037 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Overseas Business Interest Questionnaire.

Agency Form Number: 471P.

OMB Number: 0625–0039.

Type of Request: Regular Submission.

Burden: 490 hours.

Number of Respondents: 1,000.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: This collection allows U.S. firms participating in overseas trade events sponsored by the U.S. Department of Commerce's International Trade Administration (ITA) an opportunity to specifically identify their marketing objective for a specific event as well as current marketing activities and status in the specific foreign markets where the event will take place. The U.S. and Foreign Commercial Service/ITA overseas posts use the information to schedule business appointments during the trade event, arrange "blue ribbon" calls on key agents or distributors identified by participants prior to an event, and to issue specific show invitations appropriate prospective overseas business partners. It is critical to prearrange business appointments thus providing U.S. participants with a program of high caliber business appointments.

Affected Public: Businesses or other for-profits.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, N.W., Washington, DC 20230 or via internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1038 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Advocacy Questionnaire.

Agency Form Number: ITA–4133P.

OMB Number: 0625–0220.

Type of Request: Regular Submission.

Burden: 205.

Number of Respondents: 200.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Department of Commerce invites the general public and other Federal agencies to comment on the proposed extension of the use of the advocacy questionnaire by the Trade Promotion Coordination Committee's (TPCC) Advocacy Network. The questionnaire is used to evaluate requests for United States' Government (USG) commercial advocacy in connection with overseas bids and proposals. The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. business interests competing for foreign government procurements worldwide. The mission of the Advocacy Center is to coordinate USG commercial advocacy in order to promote U.S. exports and create U.S. jobs. The Advocacy Center is under the umbrella of the TPCC, which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The purpose of the advocacy questionnaire is to collect the information necessary to make an evaluation about a company's eligibility for USG advocacy assistance. There are clear, well established USG advocacy guidelines that describe the various situations in which the USG can provide advocacy support for a firm. The questionnaire was developed to collect only the information necessary to determine if the firm meets the eligibility requirements set forth in these guidelines. The Advocacy Center, appropriate ITA officials, our U.S. Embassies worldwide, and other federal government agencies (the Advocacy Network) that provide advocacy support, will require firms seeking USG advocacy support to complete the questionnaire. Without this information, the USG would be unable to make eligibility determinations.

Affected Public: Businesses or other for-profits.

Frequency: Occasionally.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW, Washington, DC 20230 or via internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1039 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: National Defense Authorization Act (NDAA).

Agency Form Number: BXA–742R, BXA–742S.

OMB Approval Number: 0694–0107.

Type of Request: Extension of a currently approved collection of information.

Burden: 35 hours.

Average Time Per Response: 15 minutes per response.

Number of Respondents: 140 respondents.

Needs and Uses: This collection of information is required as the result of the amending of the Export Administration Regulations (15 CFR parts 730–799) (EAR) by revising the (EAR) requirements for exports and reexports contained in sections 1211–1215 of the National Defense Authorization Act (NDAA) for fiscal year 1998 (Pub. L. 105–85, 111 Stat. 1629), signed by the President on November 18, 1997. The Bureau of Export Administration (BXA) needs the information in this collection to fulfill two requirements of the National Defense Authorization Act for Fiscal Year 1998 (NDAA). Those requirements are: (1) Proposed exports and reexports of high performance computers to specific countries must be reviewed by enumerated government agencies prior to the export and (2) that the government conduct a "post shipment verification" of each high performance computer exported to those countries after November 17, 1997. Both of these requirements are new and were imposed by the Congress with the passage of the NDAA. To simplify the latter, BXA has developed a new form that will incorporate the relevant data elements and replace the written report, thereby standardizing the data format for the applicant, and enabling the use of information technology in the processing of the data.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1040 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Prior Notification of Exports Under License Exception AGR.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0123.

Type of Request: Emergency approval requested.

Burden: 93 hours.

Average Time Per Response: 52–57 minutes per response.

Number of Respondents: 25 respondents.

Needs and Uses: Section 906 of the TSRA requires that exports of agricultural commodities, medicine or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State to have repeatedly provide support for acts of international terrorism, or to any other entity in such a country, are made pursuant to one-year licenses issued by the U.S. Government, while further providing that the requirements of one-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce, except that procedures shall be in place to deny licenses for exports to any entity within such country promoting international terrorism.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1042 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Technology Letter of Explanation.

Agency Form Number: N/A.

OMB Approval Number: 0694–0047.

Type of Request: Extension of a currently approved collection of information.

Burden: 3,602 hours.

Average Time Per Response: ½ to 2 hours.

Number of Respondents: 2,896 respondents.

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Needs and Uses: The information contained in these letters will assure BXA that no unauthorized technical data will be exported for unauthorized end-uses or to unauthorized destinations and thus provide assurance that U.S. national security and foreign policy programs are followed.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dave Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1043 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Computers and Related Equipment.

Agency Form Number: N/A.

OMB Approval Number: 0694–0013.

Type of Request: Extension of a currently approved collection of information.

Burden: 43.

Average Hours Per Response: 32 minutes.

Number of Respondents: 80.

Needs and Uses: The advances in U.S. computer technology have created products that have a broad range of end-uses that include military applications and other uses that may be contrary to our national security, foreign policy, and proliferation concerns. In order to continue our profitable international trade position and at the same time protect our national security, it has become necessary to establish a system for precise and detailed evaluations of computer systems.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1044 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

[I.D. 011102A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Permits for Incidental Taking of Endangered or Threatened Species.

Form Number(s): None.

OMB Approval Number: 0648–0230.

Type of Request: Regular submission.

Burden Hours: 1,048.

Number of Respondents: 13.

Average Hours Per Response: 80 hours for a permit application; 30 minutes for an application for a Certificate of Inclusion; 8 hours for a permit report; 10 hours for a watershed plan; and 40 hours for a transfer of an Incidental Take permit.

Needs and Uses: The Endangered Species Act (ESA) prohibits the taking of endangered species. Section 10 of the ESA allows for certain exceptions to the prohibitions, such as a taking that would be incidental to an otherwise lawful activity. The corresponding regulations provide application and reporting requirements for such exceptions. The required information is used to evaluate the proposed activity (application) and ongoing activities (reports) and is necessary for National Marine Fisheries Service to ensure the conservation of the species under the ESA.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal government.

Frequency: On occasion; annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1138 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011102B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Billfish Tagging Report.

Form Number(s): NOAA Form 88–162.

OMB Approval Number: 0648–0009.

Type of Request: Regular submission.

Burden Hours: 62.

Number of Respondents: 750.

Average Hours Per Response: 5 minutes.

Needs and Uses: The National Oceanic and Atmospheric Administration's Southwest Fishery Science Center operates an angler-based billfish tagging program. Tagging supplies are provided to volunteers. When they catch and tag fish, they submit a brief report on the fish tagged and the location of tagging. The information obtained is used in conjunction with tag returns to determine billfish migration patterns, mortality rates, and similar information useful in the management of the fishery.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1139 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011102C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Statement of Financial Interests, Regional Fishery Management Councils.

Form Number(s): NOAA Form 88–195.

OMB Approval Number: 0648–0192.

Type of Request: Regular submission.

Burden Hours: 110.

Number of Respondents: 188.

Average Hours Per Response: 35 minutes.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act authorizes the establishment of Regional Fishery Management Councils to exercise sound judgement in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (a) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (b) which take into account the social and economic needs of the States. Section 302 (j) of the Act, requires that Council members and Executive Directors disclose their financial interests in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

The Act further provides that a member shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close, causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interest of other participants in the same gear type or sector of the fishery. However, an affected individual who is declared ineligible to vote on a Council action may participate in Council deliberations relating to the decision after notifying the Council of his/her recusal and identifying the financial interest that would be affected.

Affected Public: Individuals or households.

Frequency: On occasion; annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1140 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011102D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Bycatch Reduction Device Certification Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0345.

Type of Request: Regular submission.

Burden Hours: 7,500.

Number of Respondents: 31.

Average Hours Per Response: Submissions for certification in the Gulf of Mexico, 140 minutes for pre-certification; 180 minutes for pre-certification data; 140 minutes for a certification application; 20 minutes each for a vessel identification form, a gear specification form, a station sheet form, a turtle excluder device/bycatch reduction device specification form, a length frequency form, and a condition and fate form; 5 hours for a species characterization form; 4 hours for a final report; 1 hour for an observer certification or observer reference; 4 hours for testing; and 30 minutes for a submission of independent tests. Submissions for certification in the South Atlantic, 30 minutes each for a vessel identification form or a gear form; 2 hours for a station sheet bycatch reduction device evaluation form; 50 minutes for a length frequency form; 100 hours for testing; and 30 minutes for a submission of independent tests.

Needs and Uses: Persons seeking to obtain certification for bycatch reduction devices to be used on shrimp vessels in the Gulf of Mexico or South Atlantic must apply for authorization to conduct tests and submit the test results. Persons seeking certification to be observers for such tests in the Gulf of Mexico must file an application and provide two references. The information is needed for NOAA to determine if equipment meets the standards that

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would allow its use in commercial fisheries.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1141 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011102E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Marine Sport Fishing Economics Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 1,048.

Number of Respondents: 3,740.

Average Hours Per Response: 20 minutes to respond to a mail survey; 5 minutes to respond to a follow-up phone survey.

Needs and Uses: The survey data is necessary to conduct required economic analyses of marine sport fisheries off Alaska. This data is currently not available for many areas and fisheries in Alaska. The survey data will be used to estimate the economic value of fishing to anglers, and how catch rates and fishery regulations affect that value. The respondents will be drawn from a random sample of U.S. residents who purchased an Alaska State sport fishing license in 2001. Follow-up calls will be made to people not responding to a mail survey.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1142 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Census Bureau

The American Community Survey; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paper work and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 18, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lawrence McGinn, U.S. Census Bureau, Demographic Surveys Division, Washington, DC 20233. Phone: (301) 457–8050.

SUPPLEMENTARY INFORMATION:

I. Abstract

Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade data collection approach of a decennial census is no longer acceptable. To meet the needs and expectations of the country, the Census Bureau developed the American Community Survey. This survey will collect long-form data every month and provide tabulations of these data on a yearly basis. In the past, the long-form data were collected only at the time of each decennial census. The American Community Survey will allow the Census Bureau to remove the long form from the 2010 Census, thus reducing operational risks, improving accuracy, and providing more relevant data. After years of development and testing, the American Community Survey is ready for full implementation in FY 2003.

The American Community Survey will provide more timely information for critical economic planning by governments and the private sector. In the current information-based economy, federal, state, tribal, and local decisionmakers, as well as private business and nongovernmental organizations, need current, reliable, and comparable socioeconomic data to chart the future. The American Community Survey will provide up-to-date profiles of American communities every year beginning in 2004, providing policymakers, planners, and service providers in the public and private sectors with information every year—not just every ten years.

The American Community Survey must begin full implementation in 2003 to provide comparable data at the census tract level by July 2008. These data are needed by federal agencies and others to provide assurance of long-form type data availability before eliminating the long form from the 2010 Census.

The American Community Survey demonstration period began in 1996 in four sites. In 1999, the number of sites was increased to 31 comparison sites. The comparison with Census 2000 was designed to collect several kinds of information necessary to understand the differences between data from the 1999–2002 American Community Survey and data from the 2000 long form. The purpose of the comparison sites was to give a good tract-by-tract comparison between the 1999–2002 American Community Survey cumulated estimates and the Census 2000 long-form estimates and to use these comparisons to identify both the causes of differences and diagnostic variables that tend to predict a certain kind of difference.

In 2000–2002, the Census Bureau conducted the Census 2000 Supplementary Survey, the 2001 Supplementary Survey, and the 2002 Supplementary Survey using the American Community Survey methodology. Each of these surveys had a sample of approximately 700,000 residential addresses per year. These surveys were conducted to study the operational feasibility of collecting long-form type data in a different methodology from the decennial census, demonstrate the reliability and stability of state and large area estimates over time, and demonstrate the usability of multiyear estimates.

For 2003–2005, the Census Bureau plans to conduct the American Community Survey in every part of the United States and also in Puerto Rico. In November 2002, the Census Bureau will begin full implementation of the American Community Survey by increasing the sample to a total of 250,000 residential addresses per month in the 50 states and the District of Columbia and 3,000 residential addresses per month in Puerto Rico. Data will be collected by mail and Census Bureau staff will follow up with households that do not respond using computer-assisted telephone interviewing (CATI) and computer-assisted personal interviewing (CAPI).

In addition to selecting a sample of residential addresses, the Census Bureau plans to select a sample of group quarters (GQs) and conduct the American Community Survey with a sample of persons within the GQs starting in January 2004. The Census Bureau will also conduct a reinterview operation with a small sample of households to monitor the quality of data collected during the CAPI.

II. Method of Collection

The Census Bureau will mail questionnaires to households selected for the American Community Survey. For households that do not return a questionnaire, Census Bureau staff will attempt to conduct interviews via CATI. We will also conduct CAPI interviews for a subsample of nonrespondents.

For most types of GQs, Census Bureau field representatives (FRs) will either help respondents complete questionnaires or leave questionnaires and ask respondents to return them by mail. For a few GQs, the FRs will attempt to conduct interviews by telephone.

The Census Bureau staff will provide Telephone Questionnaire Assistance (TQA).

The Census Bureau staff will conduct reinterviews using CAPI.

III. Data

OMB Number: 0607–0810.

Form Number(s): ACS–1, ACS–1 (GQ), ACS–3 (GQ), ACS–4(GQ), ACS–290.

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: During the period of November 2002 through October 2005, we plan to contact 9,105,000 households, 40,000 persons in group quarters, and 81,000 households for reinterview.

Estimated Time Per Response: Estimates are 38 minutes per household, 15 minutes per person in group quarters, and 10 minutes per household in the reinterview sample.

Estimated Total Annual Burden Hours: 1,930,000 hours.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collections techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for the OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1033 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Covering the Manufacturing Sector; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 18, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mendel D. Gayle, U.S. Census Bureau, Manufacturing and Construction Division, Room 2108, Building 4, Washington, DC 20233, (301) 457–4769, (or via the Internet at *mendel.d.gayle@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13, United States Code, is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 2002 Economic Census Covering the Manufacturing Sector will measure the economic activity for more than 400,000 manufacturing establishments.

The information collected from companies in the manufacturing sector

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of the economic census will produce basic statistics by industry for number of establishments, payroll, employment, value of shipments, value added, capital expenditures, depreciation, materials consumed, selected purchased services, electric energy used and inventories held. Primary strategies for reducing burden in the Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, electronic data interchange, and other electronic data collection methods.

II. Method of Collection

Establishments included in this collection will be selected from a frame provided by the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the manufacturing sector; (ii) it must be an active operating establishment of a multi-establishment company, or it must be an operating single-establishment company with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Most establishments will be included in the mail portion of the collection. Forms tailored for the particular kind of business will be mailed to the establishment to be filled out and returned. Establishments not meeting certain cutoffs for payroll will be included in the non-mail portion of the collection. We will use administrative data in lieu of collecting data directly from these establishments.

Mail selection procedures will distinguish several groups of establishments. Establishment selection to a particular group is based on a number of factors. The more important considerations are the size of the company and whether it is included in the intercensal Annual Survey of Manufactures (ASM) sample panel. The ASM panel is representative of both large and small establishments from the mail component of the manufacturing census. The ASM sample panel includes approximately 55,000 establishments. The various groups of establishments that will constitute the 2002 Economic Census are outlined below.

A. Establishments of Multi-Establishment Companies

Selection procedures will assign eligible establishments of multi-establishment companies to the mail components of the potential respondent universe.

We estimate that the census mail canvass for 2002 will include the following:

1. *ASM sample establishments:* 32,000.

2. *Non-ASM:* 50,000.

B. Single-Establishment Companies Engaged in Manufacturing Activity With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe for manufacturing. The study of potential respondents will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small-establishment companies within each industry. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Companies

Single-establishment companies having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry will be assigned to the mail component of the potential respondent universe.

We estimate that the census mail canvass for 2002 will include the following:

a. *ASM sample establishments:* 23,000.

b. *Non-ASM:* 101,000.

2. Small Single-Establishment Companies

In selected industries, small single-establishment companies that satisfy a particular criteria (administrative record payroll cutoff) will receive a manufacturing short form, which will collect a reduced amount of basic statistics and other essential information that is not available from administrative records.

We estimate that the census mail canvass for 2002 will include approximately 54,000 companies in this category. This category does not contain ASM establishments.

3. All remaining single-establishment companies with payroll will be represented in the census by data estimated from Federal administrative records. Generally, we do not include these small employers in the census mail canvass.

We estimate that this category for 2002 will include approximately 140,000 manufacturing companies.

III. Data

OMB Number: Not available.

Form Number: The forms used to collect information from businesses in these sectors of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Mendel D. Gayle on (301) 457–4769 (or via the Internet at *mendel.d.gayle@census.gov*).

Type of Review: Regular review.

Affected Public: Business or Other for Profit, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments.

Estimated Number of Respondents:

ASM—55,000
Non-ASM (Long Form)—151,000
Non-ASM (Short Form)—54,000
Total—260,000

Estimated Time Per Response:

ASM—5.6 hrs.
Non-ASM (Long Form)—3.4 hrs.
Non-ASM (Short Form)—2.2 hrs.

Estimated Total Annual Burden Hours:

ASM—308,000
Non-ASM (Long Form)—513,400
Non-ASM (Short Form)—118,800
Total—940,200

Estimated Total Annual Cost: $14,403,864.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1034 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance

ACTION: Extension of a currently approved collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance.

Agency Form Number: ED–840.

OMB Approval Number: 0610–0091.

Type of Request: Extension of a currently approved collection.

Burden: 1,544 hours.

Average Hours Per Response: 8 hours.

Number of Respondents: 193 respondents.

Needs and Uses: The information collection is needed to determine whether a firm is eligible to apply for trade adjustment assistance. This assistance helps U.S. manufacturing firms injured by imports to develop strategies for competing in the global market place. The information submitted is a major phase in obtaining a firm's history, including sales, production and employment data (the firm provides quarterly unemployment security forms submitted to the state, a description of the products produced by such firm, tax returns and/or financial statements, a firm's decline in sales accounts, and brochures of such firm's production). The information collection provides an essential tool for firms to use in submitting the information required to demonstrate that they qualify for certification of eligibility. The information is required under section 251 of the Trade Act of 1974, as amended.

Affected Public: Businesses, farms or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine G. Clayton, DoC Forms Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine G. Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1041 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–870]

Notice of Postponement of Final Determination of Antidumping Duty Investigation: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final determination of antidumping duty investigation.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Bob Bolling, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6412 and (202) 482–3434, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Background

This investigation was initiated on June 13, 2001. *See Notice of Initiation of Antidumping Duty Investigation: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 66 FR 33227 (June 21, 2001). The period of investigation (POI) is October 1, 2000 through March 31, 2001. On December 31, 2001, the Department published the notice of preliminary determination. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 66 FR 67500 (December 31, 2001).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On December 17, 2001 Tianjin Shuang Jie Steel Pipe Co., Ltd (Shuang Jie) requested that the Department postpone its final determination until no later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and requested an extension of the provisional measures pursuant to 19 CFR 351.210(e)(2). In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination was affirmative, (2) Shuang Jie accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Shuang Jie's request and are postponing the final determination until no later than 135 days after the publication of preliminary determination in the **Federal Register**. We are also extending the provisional measures, from four months to six months, in accordance with 19 CFR 351.210(e)(2). Suspension of liquidation will be extended accordingly.

Therefore, the final results are now due on May 15, 2002. This notice is published in accordance with section 735(a)(2) of the Act.

Dated: January 9, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1129 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On October 9, 2001, the Department of Commerce published the preliminary determination to rescind the administrative review, in part, and to revoke the order, in part, and the preliminary results of the administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan. The review covers Tokyo Kikai Seisakusho, Ltd., a manufacturer/exporter of the subject merchandise to the United States. The period of review is September 1, 1999, through August 31, 2000.

No interested party submitted comments on our preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for Tokyo Kikai Seisakusho, Ltd. is listed below in the "Final Results of Review" section of this notice.

In addition, we have made a final determination to rescind the administrative review with respect to Mitsubishi Heavy Industries, Ltd., and to revoke the antidumping duty order with respect to Tokyo Kikai Seisakusho, Ltd.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136, or 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2000).

Background

This review covers one manufacturer/exporter, Tokyo Kikai Seisakusho, Ltd. (TKS).

On October 9, 2001, the Department of Commerce published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on large newspaper printing presses (LNPP) and components thereof, whether assembled or unassembled, from Japan (66 FR 51379) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. TKS submitted a case brief on November 8, 2001. On December 4, 2001, TKS withdrew its case brief from the record of this review. No other interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) The term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in a changed-circumstances antidumping duty administrative review of the order which resulted in the partial revocation of the order with respect to certain merchandise, are elements and components of LNPP systems, and additions thereto, which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour. *See Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (Dec. 27, 1999). In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded from the scope of the order, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the order.

1. *Printing Unit:* A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

- Each tower consisting of four levels, one or more of which must be populated.
- Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.
- Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.
- The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
- The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder:* A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP:* A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus:* Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System:* A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Duty Absorption

On September 29, 2000, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the period of review (POR). Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, TKS sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act.

Because this review was initiated four years after the publication of the antidumping duty order, we will make a duty absorption determination in this segment of the proceeding. As we have found that there is no dumping margin for TKS with respect to its U.S. sales, we have also found that there is no duty absorption for purposes of the final results.

Rescission of Administrative Review

Mitsubishi Heavy Industries, Ltd. (MHI) notified the Department that it had not made any U.S. sales or entries of subject merchandise during the POR. Accordingly, in the preliminary results, we made a preliminary determination to rescind this review with respect to MHI. As we have not received any comments on this determination, we are rescinding this review with respect to MHI.

Determination To Revoke Order in Part

The Department "may revoke, in whole or in part," an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will revoke an order, in part, if it concludes that: (1) The company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping order is not otherwise necessary to offset dumping; and (3) the company has agreed in writing to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR part 351.222(b)(2).

In the preliminary results, we found that TKS met the requirements for revocation (*see Preliminary Results*). We received no comments on this determination. Accordingly, we have determined that the Department's requirements for revocation have been met. Based on the final results in this review and the final results of the two preceding reviews, TKS has demonstrated three consecutive years of

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sales at not less than NV. Furthermore, we find that TKS's aggregate sales to the United States have been made in commercial quantities during each of those years. In the particular situation of LNPPs, one sale, which may be worth millions of dollars, constitutes a commercial quantity. TKS had at least one sale in each of the three reviews. Finally, based on our review of the record, there is no basis to find continued application of the order is necessary to offset dumping.

Therefore, for the reasons discussed above, we find that TKS qualifies for revocation of the order on LNPPs which it produces and exports to the United States under 19 CFR 351.222(b)(2)(ii).

Final Results of the Review

Our final results remain unchanged from the preliminary results. The following weighted-average margin percentage applies to TKS for the period September 1, 1999, through August 31, 2000:

Manufacturer/exporter	Percent margin
Tokyo Kikai Seisakusho, Ltd	0.00

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by TKS and that are also exported by TKS, entered, or withdrawn from warehouse, for consumption on or after September 1, 2000. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made after August 31, 2000.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR part 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following deposit requirements shall be effective for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) Cash deposits for TKS will no longer be required and the suspension of liquidation will cease for entries made on or after September 1, 2000; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 58.69 percent, the all others rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR part 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR part 351.221.

Dated: January 9, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1130 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 9, 2001, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany. The review covers MAN Roland Druckmaschinen AG, a manufacturer/exporter of the subject merchandise to the United States. The period of review is September 1, 1999, through August 31, 2000.

No interested party submitted comments on our preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for MAN Roland Druckmaschinen AG is listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136, or 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2000).

Background

This review covers one manufacturer/exporter, MAN Roland Druckmaschinen AG (MAN Roland).

On October 9, 2001, the Department of Commerce published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on large newspaper printing presses (LNPP) and components thereof, whether assembled or unassembled, from Germany (66 FR 51375) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. MAN Roland submitted a case brief on November 8, 2001. On November 29, 2001, MAN Roland withdrew its case brief from the record of this review. No other interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) The term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Duty Absorption

On September 29, 2000, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the period of review. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, MAN Roland sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act.

Because this review was initiated four years after the publication of the antidumping duty order, we will make a duty absorption determination in this segment of the proceeding. As we have found that there is no dumping margin for MAN Roland with respect to its U.S. sales, we have also found that there is no duty absorption for purposes of the final results.

Final Results of the Review

Our final results remain unchanged from the preliminary results. The following weighted-average margin percentage applies to MAN Roland for the period September 1, 1999, through August 31, 2000:

Manufacturer/Exporter	Period	Margin (percent)
MAN Roland Druckmaschinen AG.	9/1/99–8/31/00	0.00

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Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following deposit requirements shall be effective for all shipments of the subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for MAN Roland will be the rate established above in the "Final Results of the Review" section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 30.72 percent, the all others rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: January 9, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1131 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Notice of Amended Final Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review of stainless steel sheet and strip in coils from the Republic of Korea.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander and Laurel LaCivita, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 and (202) 482–4243, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[6]

Amendment of Final Results

On December 6, 2001, the Department of Commerce ("the Department") issued its final results and partial rescission for stainless steel sheet and strip in coils from the Republic of Korea for the January 4, 1999 through June 30, 2000 period of review. *See Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review ("Final Results")*, 66 FR 64950 (December 17, 2001).

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy; S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

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On December 13, 2001, respondent Sammi Steel Co., Ltd. ("Sammi") timely filed an allegation that the Department made a ministerial error in the final results. Petitioners did not submit any comments in reply to this ministerial error allegation.

The Department is revising the all others rate applied to Sammi in the final results in this administrative review of stainless steel sheet and strip in coils from the Republic of Korea. Because Sammi did not participate in the original investigation and because Sammi had no shipments during the period of review, its cash deposit rate is the all others rate assigned to this case.

Sammi's Allegation of a Ministerial Error by the Department

Sammi contends that the Department, in its *Final Results*, erroneously applied the all others rate determined in the original investigation to Sammi, a no shipper during the period of review. Sammi notes that the Department amended its final determination on August 28, 2001, revising the all others rate from 12.12 percent to 2.49 percent. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea ("Amended Final Determination")*, 66 FR 45279 (August 28, 2001). Sammi contends that the Department should amend its *Final Results* to apply the all others rate of 2.49 percent determined in the *Amended Final Determination* to Sammi.

Sammi notes that the Department's regulations defines a ministerial error as an "error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial," citing 19 CFR 351.224(f). Therefore, Sammi requests that the Department correct this ministerial error by revising Sammi's cash deposit rate and the all others rate to 2.49 percent in this administrative review, in accordance with the *Amended Final Determination*.

Department's Position: We agree with Sammi. Our *Final Results* erroneously stated that the "all others rate" applicable to exporters or manufacturers who have not been covered in this or any previous review conducted by the Department is 12.12 percent rather than the 2.49 percent established in the *Amended Final Determination*. The correct all others rate applicable to Sammi is the all others rate established in the *Amended Final Determination*. Since Sammi did not participate in the original investigation and because Sammi had no shipments in the current period of review, its cash deposit rate is the all others rate determined in the *Amended Final Determination*.

Therefore, we are amending the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils from the Republic of Korea to reflect the correction of the above-cited ministerial error.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 9, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1128 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–022. *Applicant:* The Scripps Research Institute, 10550 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model Tecnai F20T. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used in the study of the following:

(1) Cowpea Mosaic Virus isolated from infected plants.

(2) NwV Mosaic Virus isolated from insect cells.

(3) Muscle Proteins isolated from vertebrate striated and smooth muscle fibers.

(4) Microtubules and associated proteins isolated from bovine brain or from bacterial expression systems.

(5) CHIP28 Water Channels isolated from human erythrocytes.

(6) Aqua Porins isolated from plants.

(7) Acetylcholine Receptors isolated from the electric organ of Torpedo californica and T.marmorata.

(8) Gap Junctions isolated from rat hearts and liver as well as from tissue culture expression systems.

(9) Rotavirus and Reovirus isolated from infected tissue culture cells.

(10) Transcription Complexes from bacterial and yeast expression systems.

(11) A number of enzyme complexes: fatty acid synthane, gylceraldehyde-3-phosphate dehydrogenase, hemocyanin, GroEL, isolated from various tissues of animal and plant origin.

(12) Tobacco Mosaic Virus isolated from infected plants.

The goals of the investigations are in general to understand the structural basis for how the subcellular organelles function and to elucidate the role that they play in the life of the cell.

Application accepted by Commissioner of Customs: October 14, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–1132 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011102G]

Proposed Information Collection; Comment Request; Economic Performance Data for the West Coast (California-Alaska) Commercial Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 18, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dave Colpo, Pacific States Marine Fisheries Commission, 7600 Sand Point Way N.E., Seattle, WA 98115, phone 206–526–4251, dave—colpo@psmfc.org; Steve Freese, Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Seattle, WA 98115, phone 206–526–6113, Steve.Freese@noaa.gov; or Joe Terry, Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Seattle, WA 98115, phone 206–526–4253, Joe.Terry@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Economic performance data for selected West Coast (California-Alaska) commercial fisheries will be collected for each of the following groups of operations: (1) processors, including on-shore plants, mothership vessels and at-sea catcher/processor vessels; (2) catcher vessels; and (3) charter vessels. Companies associated with these groups will be surveyed for expenditure, earnings and employment data. In general, questions will be asked concerning ex-vessel and wholesale prices and revenue, variable and fixed costs, expenditures, dependence on the fisheries, and fishery employment. The data collection efforts will be coordinated to reduce the additional burden for those who participate in multiple fisheries. Each year the principal focus of this data collection program will be on a different set of fisheries or on a different set of participants in these fisheries. The data will be used for the following three purposes: (1) to monitor the economic performance of these fisheries and various components of these fisheries through primary processing; (2) to analyze the economic performance effects of current management measures; and (3) to analyze the economic performance effects of alternative management measures. The measures of economic performance to be supported by this data collection program include the following: (1) contribution to net National benefit; (2) contribution to income of groups of participants in the fisheries (i.e., fishermen, vessel owners, processing plant employees, and processing plant owners) (3) employment; (4) regional economic impacts (income and employment); and (5) factor utilization rates. As required by law, the confidentiality of the data will be protected.

In each year, the data collection effort will focus on different components of the West Coast fisheries and more limited data will be collected for the previously surveyed components of these fisheries. The latter will be done to update the models that will be used to track economic performance and to evaluate the economic effects of alternative managment actions. This cycle of data collection will result in economic performance data being available and updated for all the components of the West Coast fisheries identified above.

The large scale of most of the processing operations involved in these fisheries and of many of the harvesting operations and the concentration of ownership in many of these fisheries, particularly off Alaska, means that improved economic data for the management of these fisheries is a high priority for the individuals who will provide data for these fisheries. This is demonstrated by the fact that associations representing many of the Alaskan participants in these fisheries support this data collection effort and have volunteered to assist in verifying the data.

II. Method of Collection

Data will be collected from a sample of the owners and operators of catcher vessels, catcher/processors, on-shore processing plants, motherships and charter vessels that participate in these fisheries. The data are expected to be collected principally by NMFS and Pacific States Marine Fisheries Commission economists. Questionnaires will be mailed to the selected members of each of the different survey groups and in many cases those individuals will be interviewed to ensure the clarity of their responses. To the extent practicable, the data collected will consist of data that the respondents maintain for their own business purposes. Therefore, the collection burden will consist principally of transcribing data from their internal records to the survey instrument and participating in personal interviews. In addition, current data reporting requirements will be evaluated to determine if they can be modified to provide improved economic data at a lower cost to respondents and the Agency. Similarly, it will be determined if some of these data can be collected more effectively and efficiently from the firms that provide bookkeeping and accounting services to participants in West Cost commercial marine fisheries. This data collection method would be used only after obtaining permission to do so from participants in the fisheries.

The surveys described in this Federal Register Notice will be voluntary. The North Pacific Fishery Management Council is considering the development of additional mandatory reporting requirements for economic data. If such requirements are implemented, the data collected with voluntary surveys in Alaska would be decreased.

III. Data

OMB Number: 0648–0369.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 2,278.

Estimated Time Per Response: 2 hours for a response from a catcher vessel; 1 hour for a response from a charter boat operator; and 8 hours for a response from a processor.

Estimated Total Annual Burden Hours: 7,074.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1143 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011102F]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Committee Meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Essential Fish Habitat (EFH) Committee will meet in Juneau, AK.

DATES: The meeting will be held on January 29–30, 2002.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, North Pacific Fishery Management Council; 907–271–2809.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10:30 a.m. on Tuesday, January 29, continue through Wednesday, January 30. The committee's agenda includes the following issues:

1. Review of alternatives for EFH and habitat areas of particular concern (HAPC).
2. Discussion of HAPC site designation/proposal process.
3. Develop final recommendation on EFH and HAPC alternatives.
4. Review draft Groundfish Programmatic Groundfish Supplementary Environmental Impact Statement schedule, table of contents, and purpose and need statements.
5. Presentation and discussion of white paper on mitigation alternatives and gear impact analysis.
6. Discussion of format for NMFS workshop on gear effects.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 11, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1134 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010902B]

Marine Mammals; File No. 775–1600–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Michael Sissenwine, Northeast Fisheries Science Center, National Marine Fisheries Service, Room 312, 166 Water Street, Woods Hole, MA 02543, has requested an amendment to scientific research Permit No. 775–1600–01.

DATES: Written or telefaxed comments must be received on or before February 15, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508) 281–9250; fax (508) 281–9371.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 775–1600–01, issued on March 6, 2001 (66 FR 32793) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 775–1600–01 authorizes the permit holder to conduct research on 28 species of cetacean in the North Atlantic Ocean, and on harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) in coastal Maine, Massachusetts, New Hampshire, and Delaware. The principal purpose of the research, for all species, relates to stock assessment, an activity for which NMFS has primary responsibility under the MMPA. Types of take for cetaceans include potential harassment by shipboard and aerial approach, photo-ID, biopsy sampling, acoustic sampling, and tagging. Types of take for the 4 species of pinnipeds include potential harassment by shipboard and aerial approach; type of takes for harbor and gray seals include photo-ID and incidental harassment during scat and carcass collections; harbor seals may also be captured, biopsy and blood sampled, VHF tagged, "hat tagged", and flipper tagged. The Permit also authorizes import and export of marine mammal parts (including soft and hard tissue, blood, extracted DNA, and whole dead animals or parts thereof) to and from any country.

The permit holder requests authorization to capture, examine, measure, flipper tag (retain tissue from tagging), apply a "seal hat", and photograph up to 200 gray seal pups; blood sample 50 of the 200 pups captured; and VHF tag 30 of the 200 pups captured. These activities would occur in coastal Maine and Massachusetts for purposes of stock assessment.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 9, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1135 Filed 1–15–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, January 24, 2002, 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b)(3), (7), (9) and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: January 14, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–1277 Filed 1–14–02; 2:15 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense will meet in closed session on January 23, 2002, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review, there is insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on Missile Defense.

Dated: January 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1051 Filed 1–15–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Record of Decision on Arthur Kill Channel—Howland Hook Marine Terminal, New York and New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The Record of Decision (ROD) on the Arthur Kill Channel—Howland Hook Marine Terminal, New York and New Jersey, was signed by Robert H. Griffin, Brigadier General, U.S. Army, Director of Civil Works and transmitted to the New York District of the U.S. Army Corps of Engineers by memo dated 4 September, 2001. The ROD closes the administrative record for the Final Supplemental Environmental Impact Statement on the above referenced project.

DATES: There is no closing date for the availability of the ROD.

ADDRESSES: The ROD may be obtained from the Army Corps of Engineers Planning Division, 26 Federal Plaza, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Ms. Therese Fretwell, Environmental Technical Coordinator, CENAN–PL–EA, Corps of Engineers, New York District, 26 Plaza, NY, NY 10278–0090, Tel. 212–264–5736.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1148 Filed 1–15–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Hurricane and Storm Damage Reduction Project at the Village of Asharoken, Suffolk County, NY

AGENCY: U.S. Army Corps of Engineers, DoD.

NOTICE: Notice of intent.

SUMMARY: U.S. Army Corps of Engineers (USACE), New York District, announces its intent to prepare a DEIS pursuant to the National Environmental Policy Act (NEPA), in accordance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA and the Department of the Army, USACE Procedures for Implementing NEPA, to assess the environmental impacts of a proposed hurricane and storm damage reduction project for the north shore of Long Island in the Village of Asharoken, NY. In accordance with USACE policies, the USACE will conduct a feasibility study to evaluate a range of structural and non-structural project alternatives. The following improvement measures would be considered: beach fill only, beach fill in combination with structures such as floodwalls, buried rubble-mound seawalls, dunes, stone revetments, interior drainage features, modifications to existing shore structures, sand by-passing; and non-structural measures

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such as relocations, buyouts, and flood proofing of threatened properties. Offshore sand borrow areas, as well as upland areas, will be investigated as potential sources of beach fill material.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS can be answered by: Ms. Megan B. Grubb, (212) 264–5759, U.S. Army Engineer District, New York Planning Division, ATTN: CENA–PL–EA, 26 Federal Plaza, New York, NY 10278–0090.

SUPPLEMENTARY INFORMATION:

Project Location: This notice announces the initiation of the feasibility phase study for beach erosion control, storm damage reduction and related purposes along the north shore of Long Island at Asharoken, NY. The study area extends from Long Island Sound on the north, Duck Island Harbor and Northport Bay on the south, the North Power Station on the East and Eatons Neck on the west.

Project Authorization and History: The North Shore of Long Island, village of Asharoken, New York, Hurricane and Storm Damage Reduction Study was authorized by a resolution of the U.S. House of Representatives Committee on Public Works and Transportation, adopted May 13, 1993. In response to the study resolution and a State request, following the devastating coastal storm of December 1992, the USACE performed a Reconnaissance Study and issued a Reconnaissance Report in September 1995 that demonstrated a potential Federal interest and the need for a more detailed feasibility study.

Project Need: The Long Island northern shoreline has historically experienced coastal erosion and related storm damage, most recently from the two storms of September 1996 and October 1996, and from previous storms including the Christmas Eve 1994 storm, and March 1993 Blizzard of the Century, the December 1992 northeaster, Hurricane Danielle of September 1992 and Halloween Storm of 1991. These Storms caused evacuations in several north shore communities as well as damage from flooding and loss of structures from erosion. The December 1992 storm alone inundated hundreds of residential and business properties and caused damages estimated at $12,000,000. The loss of beachfront in some areas now leaves the site increasingly vulnerable to severe damages even from moderate storms. The length of Asharoken Beach is approximately 2.5 miles, while the width varies from 100 feet at the northwestern end to 1,000 feet at the southeastern end. Asharoken Avenue, which generally runs parallel to the Long Island Sound shoreline, provides only vehicular access to the Village and the Eatons Neck community. While the most critically threatened location of Asharoken Avenue is protected by a small temporary shore protection project, the feasibility study will consider long-term protection throughout the Village.

DEIS Scope: The intended DEIS will evaluate the potential environmental and cultural impacts associated with the proposed hurricane and storm damage reduction alternatives for the Village of Asharoken, NY.

Public Involvement: The USACE intends to schedule an interagency meeting and public scoping meeting in the spring/summer 2002 to discuss the scope of the DEIS and data gaps. The public scoping meeting place, date, and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. A scoping document will be made available at least one month before scheduled public scoping meeting date at the following locations:

(1) Northport Public Library, 151 Laurel Avenue, Northport, NY 11768.

(2) East Northport Public Library, 185 Larkfield Road, East Northport, NY 11731.

(3) Huntington Main Library, 338 Main Street, Huntington, NY 11743.

The public will have an opportunity to provide written and oral comments at the public scoping meeting. Written comments may also be submitted via mail and should be directed to Ms. Megan B. Grubb at the address listed above under **FOR FURTHER INFORMATION CONTACT** heading. The USACE plans to issue the DEIS in Spring 2003. The USACE will announce availability of the draft in the **Federal Register** and other media, and will provide the public, organizations, and agencies with the opportunity to submit comments, which will be addressed in the final Environmental Impact Statement.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1147 Filed 1–15–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Hurricane and Storm Damage Reduction Project at the Village of Bayville, Nassau County, New York

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, announces its intent to prepare a DEIS pursuant to the National Environment Policy Act (NEPA), in accordance with the Council on Environmental Quality (CEO) Regulations for Implementing the Procedural Provisions of NEPA and the Department of the Army, USACE Procedures for Implementing NEPA, to assess the environmental impacts of a proposed hurricane and storm damage reduction project for the north shore of Long Island in the Village of Bayville, NY. In accordance with USACE policies, the USACE will conduct a feasibility study to evaluate a range of structural and non-structural project alternatives. The following improvement measures would be considered: beach fill only, beach fill in combination with structures such as floodwalls, buried rubble-mound seawalls, dunes, stone revetments, interior drainage features, pump stations; and nonstructural measures such as relocations, buyouts, and flood proofing of threatened properties.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS can be answered by Ms. Megan B. Grubb, (212) 264–5759, U.S. Army Engineer District, New York Planning Division, ATTN: CENAN–PL–EA, 26 Federal Plaza, New York, NY 10278–0090.

SUPPLEMENTARY INFORMATION:

Project Location: This notice announces of the feasibility phase study for beach erosion control, storm damage reduction and related purposes along the north shore of Long Island at Bayville, NY. The study area extends from Long Island Sound on the north, Mill Neck Creek and Oyster Bay on the South, Centre Island on the east and the western boundary of the Village of Bayville on the west.

Project Authorization and History: The North Shore of Long Island, Village of Bayville, New York, Hurricane and Storm Damage Reduction Study was authorized by a resolution of the U.S. House of Representatives Committee on Public Works and Transportation, adopted May 13, 1993. In response to the study resolution and a State request following the devastating coastal storm of December 1992, the USACE performed a Reconnaissance Study and issued a Reconnaissance Report in September 1995 that demonstrated potential Federal interest and the need for a more detailed feasibility study.

Project Need: The Long Island northern shoreline has historically experienced coastal erosion and related storm damage, most recently from the two storms of September 1996 and October 1996, and also from previous storms including the Christmas Eve 1994 storm, the March 1993 Blizzard of the Century, the December 1992 northeaster, Hurricane Danielle of September 1992 and the Halloween Storm of 1991. These storms caused evacuations in several north shore communities as well as damage from flooding and loss of structures from erosion. The December 1992 storm alone inundated hundreds of residential and business properties and caused damages estimated at $12,000,000. Approximately 300 families were evacuated and several sections of Bayville Avenue were impassable for days. The loss of beachfront in some areas now leaves the site increasingly vulnerable to severe damages even from moderate storms.

DEIS Scope: The intended DEIS will evaluate the potential environmental and cultural impacts associated with the purposed hurricane and storm damage reduction alternatives for the Village of Bayville, NY.

Public Involvement: The USACE intends to schedule an interagency meeting and public scoping meeting in spring/summer 2002 to discuss the scope of the DEIS and data gaps. The public scoping meeting place, date, and time will be advertised in advanced in local newspapers, and meeting announcement letters will be sent to interested parties. A scoping document will be made available at least one month before scheduled public scoping meeting date at the following locations:

(1) Bayville Free Library, 34 School Street, Nayville, NY 11709.

(2) Oyster Bay-East Norwich Public Library, 89 E. Main St., Oyster Bay, NY 11771.

The public will have an opportunity to provide written and oral comments at the public scoping meeting. Written comments may also be submitted via mail and should be directed to Ms. Megan B. Grubb at the address listed above under **FOR FURTHER INFORMATION CONTACT** heading. The USACE plans to issue the DEIS in Spring 2003. The USACE will announce availability of the draft in the **Federal Register** and other media, and will provide the public, organization, and agencies with the opportunity to submit comments, which will be addressed in the Final Environmental Impact Statement.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1146 Filed 1–15–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Scoping Meeting for Va Shly'ay Akimel Salt River Restoration Project, Maricopa County, Arizona (Revised Date)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: The Los Angeles District intends to prepare an Environmental Impact Statement (EIS) to support the proposed study for the Salt River Pima-Maricopa Indian Community and the City of Mesa. A notice of "Intent to Prepare a Draft Environmental Impact Statement for Va Shly'ay Akimel Salt River Restoration Project, Maricopa County, Arizona" was previously published in the **Federal Register** (66 FR 55644, November 2, 2001). In that notice the Corps indicated that a public scoping meeting would be held some time in November 2001. Because of logistical considerations, the meeting was not held at that time. This notice provides information on the rescheduled meeting.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Attn: Stephen Dibble, CESPL–PD–RN, Los Angeles District, Ecosystem Planning Section, P.O. Box 532711, Los Angeles, CA 90053–2325.

DATES: January 24, 2002, 6:00 PM, Scottsdale, AZ 85256.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Dibble, Environmental Manager, at (213) 452–3849. He can also be reached by e-mail at *ddibble@spl.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Scoping Process:* The Corps will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held in conjunction with the local sponsor to discuss the project scope and invite public participation in developing alternatives for the project. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting, or by mailing the information to the above address.

2. *Public Scoping Meeting:* A public scoping meeting will be held on January 24, 2002 at 6:00 PM.

. *Location:* Salt River Pima Maricopa Indian Community, Multi-purpose Building, 1880 N Longmore, Scottsdale, AZ 85256.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1149 Filed 1–15–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 15, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

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Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 10, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Revision.

Title: Safe and Drug-Free Schools and Communities Act of the Governor's Report Forms.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56.

Burden Hours: 2,240.

Abstract: Section 4117 of the Safe and Drug-Free Schools and Communities Act (SDFSCA) requires state chief executive officers to submit to the Secretary on a triennial basis a report on the implementation and outcomes of Governor's SDFSCA programs. ED must report to the President and Congress regarding the national impact of SDFSCA programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1061 Filed 1–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.038, 84.033, and 84.007]

Student Financial Assistance; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an Application for Approval to Participate in Federal Student Financial Aid Programs (ED Form E40–34P, OMB #1845–0012) to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs (known collectively as the campus-based programs) for the 2002–2003 award year.

SUMMARY: We invite currently non-participating institutions of higher education who filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1), to submit to the U.S. Department of Education (Department) an Application for Approval to Participate in Federal Student Financial Aid Programs. In order to participate in one or more of the campus-based programs for the 2002–2003 award year, non-participating institutions must submit an Application for Approval to Participate in Federal Student Financial Aid Programs and all required supporting documents for an eligibility and certification determination by the Department.

The campus-based programs are authorized by title IV of the Higher Education Act of 1965, as amended (HEA). The 2002–2003 award year is July 1, 2002, through June 30, 2003.

CLOSING DATE: To participate in the campus-based programs in the 2002–2003 award year, a currently non-participating institution must electronically submit its Application for Approval to Participate in Federal Student Financial Aid Programs on or before February 15, 2002. The application, along with all required supporting documents for an eligibility and certification determination, must be submitted to Case Management and Oversight at one of the addresses indicated below.

ADDRESSES: *Applications.* Paper applications are no longer being accepted. Electronic applications must be submitted through the ED website www.eligcert.ed.gov. Required supporting documents delivered by mail must be addressed to the U.S. Department of Education, Case Management and Oversight, Data Management and Analysis, Document Receipt and Control Center, P.O. Box 44805, L'Enfant Plaza Station, Washington DC 20026–4805.

Required Supporting Documents Delivered by Mail. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to us.

If documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use certified or at least first class mail. Institutions that submit an Application for Approval to Participate in Federal Student Financial Aid Programs and required supporting documents after the closing date of February 15, 2002, will not be considered for funding under the campus-based programs for award year 2002–2003.

Required Supporting Documents Delivered by Hand. An Application for Approval to Participate in Federal Student Financial Aid Programs must be submitted electronically through the ED website *www.eligcert.ed.gov*. Supporting documents delivered by hand must be taken to the U.S. Department of Education, Case Management and Oversight, Data Management and Analysis, Document Receipt and Control Center, 7th and D Streets, SW, Regional Office Building 3, (GSA Building), Room 5643, Washington, DC 20407. We will accept hand-delivered documents between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An Application for Approval

to Participate in Federal Student Financial Aid Programs for the 2002–2003 award year will not be accepted after 4:30 p.m. on February 15, 2002.

SUPPLEMENTARY INFORMATION: We allocate funds to eligible higher education institutions in each of the campus-based programs. We will not allocate funds under the campus-based programs for award year 2002–2003 to any currently non-participating institution unless the institution files its Application for Approval to Participate in Federal Student Financial Aid Programs and required supporting documents by the closing date. If the institution submits its Application for Approval to Participate in Federal Student Financial Aid Programs or other required supporting documents after the February 15, 2002 closing date, we will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 2003–2004 award year.

For purposes of this notice, ineligible institutions include only:

(1) An institution that has not been designated as an eligible institution by the Department, but has previously filed a FISAP; or

(2) An additional location of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution, but has been included in the institution's 2002–2003 FISAP.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact the appropriate ED Case Management and Oversight (CMO) case management team by telephone, fax, or the Internet. The case management teams are listed with telephone and fax numbers and Internet addresses in the Application for Approval to Participate in Federal Student Financial Aid Programs on pages 5, 6, and 7 of the Introduction. For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Sandra K. Donelson, Campus-Based Operations, telephone: (202) 377–3183, fax: (202) 275–3476 or via Internet: *Sandra.Donelson@ed.gov*.

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Alternate Format Center at (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: January 10, 2002.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 02–1096 Filed 1–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–141–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 10, 2002.

Take notice that on January 8, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets proposed to be effective on February 7, 2002:

Second Revised Sheet No. 930
First Revised Sheet No. 931
First Revised Sheet No. 932
First Revised Sheet No. 933
First Revised Sheet No. 934
Second Revised Sheet No. 935

Algonquin states that the purpose of this filing is to modify the LINKr System Agreement contained in its tariff to: (1) Remove certain outdated provisions related to software needed to access Algonquin's LINKr Customer Interface System; (2) remove Algonquin LNG, Inc. as a party to the agreement; (3) add Egan Hub Partners, L.P. and Moss Bluff Hub Partners, L.P. as parties to the agreement; (4) add language that was inadvertently omitted from the agreement originally submitted for inclusion in the tariff; (5) provide that notices can be sent to any specified address instead of only to a post office address; and (6) reflect certain non-substantive changes.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link.

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select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1083 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–602–001]

Dominion Transmission, Inc.; Notice of Compliance Filing and Cancellation of Part 157 Service Agreements

January 10, 2002.

Take notice that on January 4, 2002, Dominion Transmission, Inc. (DTI) tendered for filing to be part of its FERC Gas Tariff, the revised tariff sheets listed below, with an effective date of January 1, 2002:

Third Revised Volume No. 1
Second Revised Sheet No. 8
Seventh Revised Sheet No. 1300

First Revised Volume No. 2
First Revised Sheet No. 7
First Revised Sheet No. 414–427
First Revised Sheet No. 469–483

DTI states that the filing is being filed in compliance with the letter order issued in the captioned proceedings on October 30, 2001.

In the letter order, the Commission approved the conversion of the individually certificated services that DTI has historically provided to Doswell Limited Partnership (Doswell) and Virginia Power Services Energy Corporation, Inc. (Virginia Power) to open access services under part 284 of the Commission's regulations. DTI explains that the Commission required DTI to advise the Commission of the effective date of the conversion and to file a tariff sheet listing the non-conforming agreements and notice of the cancellation of the individually certificated service agreements at that time.

DTI explains in its filing that the conversion of its services to Doswell and Virginia Power to part 284 service became effective on January 1, 2002.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1077 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–80–002]

East Tennessee Natural Gas Company; Notice of Compliance Filing

January 10, 2002.

Take notice that on January 4, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective February 1, 2002:

Twenty-third Revised Sheet No. 4
Second Revised Sheet No. 4A

East Tennessee states that the purpose of this filing is to comply with the Commission's October 11, 2001 Order that authorized East Tennessee to construct, own, operate and maintain certain pipeline facilities to provide firm transportation service to the Murray Project shippers at the proposed initial incremental FT–A recourse rate of $7.646 or, on a daily demand basis, $0.2514.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1076 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–138–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 10, 2002.

Take notice that on January 8, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective on February 7, 2002:

Fourth Revised Sheet No. 266
Fourth Revised Sheet No. 267
Third Revised Sheet No. 269
Fourth Revised Sheet No. 270

East Tennessee states that the purpose of this filing is to modify the LINKr System Agreement contained in its tariff to: (1) Remove certain outdated provisions related to software needed to access East Tennessee's LINKr Customer Interface System; (2) add Egan Hub Partners, L.P. and Moss Bluff Hub Partners, L.P. as parties to the agreement; (3) provide that notices can be sent to any specified address instead of only to a post office address; and (4) reflect certain non-substantive changes.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1080 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–142–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 10, 2002.

Take notice that on January 8, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of February 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1084 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–135–000]

Iroquois Gas Transmission System, L.P.; Notice of Fuel Calculations

January 10, 2002.

Take notice that on December 31, 2001, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its schedules which reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2001 through December 31, 2001.

Iroquois states that data from the data base during this period had to be verified to ensure accurate and complete information. Iroquois states that the schedules attached to the filing include calculations supporting each of the following three components of Iroquois' composite Measurement Variance/Fuel Use Factor:

(1) Lost and unaccounted—for gas (Measurement Variance Factor);

(2) Fuel use associated with the transportation of gas by others on behalf of Iroquois (Account 858 Fuel Use Factor); and

(3) Fuel use associated with the transportation of gas on Iroquois' pipeline system (Account 854 Fuel Use Factor).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 17, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1079 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–140–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 10, 2002.

Take notice that on January 8, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective on February 7, 2002:

First Revised Sheet No. 480
First Revised Sheet No. 481
First Revised Sheet No. 482
First Revised Sheet No. 483
First Revised Sheet No. 484

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,
Acting Secretary.
[FR Doc. 02–1081 Filed 1–15–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–139–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 10, 2002.

Take notice that on January 8, 2002, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective on February 7, 2002:

Fifth Revised Sheet No. 53
Fifth Revised Sheet No. 54
Fifth Revised Sheet No. 55
Fifth Revised Sheet No. 56
Fifth Revised Sheet No. 57
Fifth Revised Sheet No. 58
Fifth Revised Sheet No. 59
Fifth Revised Sheet No. 60
Fifth Revised Sheet No.

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Maritimes states that the purpose of this filing is to modify the LINKr System Agreement contained in its tariff to: (1) Remove certain outdated provisions related to software needed to access Maritimes' LINKr Customer Interface System; (2) add language that was inadvertently omitted from the agreement originally submitted for inclusion in the tariff; (3) provide that notices can be sent to any specified address instead of only to a post office address; and (4) reflect certain minor editorial changes.

Maritimes states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1082 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016]

City of Tacoma; Notice of Authorization for Continued Project Operation

January 10, 2002.

On December 27, 1999, the City of Tacoma, licensee for the Cowlitz River Project No. 2016, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2016 is located on the Cowlitz River in Lewis County, Washington.

The license for Project No. 2016 was issued for a period ending December 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2016 is issued to the City of Tacoma for a period effective January 1, 2002, through December 31, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Tacoma is authorized to continue operation of the Cowlitz River Project No. 2016 until such time as the Commission acts on its application for subsequent license.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1086 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–139–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

January 10, 2002.

Take notice that on January 8, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets proposed to be effective on February 7, 2002:

First Revised Sheet No. 1071
First Revised Sheet No. 1072
First Revised Sheet No. 1074
First Revised Sheet No. 1075

Texas Eastern states that the purpose of this filing is to modify the LINKr System Agreement contained in its tariff to: (1) Remove certain outdated provisions related to software needed to access Texas Eastern's LINKr Customer Interface System; (2) add Egan Hub Partners, L.P. and Moss Bluff Hub Partners, L.P. as parties to the agreement; and (3) provide that notices can be sent to any specified address instead of only to a post office address.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1081 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–33–001]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

January 10, 2002.

Take notice that on January 4, 2002, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Ninth Revised Sheet No. 4B, to become effective February 1, 2002.

WIC states that the tendered tariff sheet revises the fuel charges applicable to transportation service on WIC's system. The tariff sheet is proposed to become effective February 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1078 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–569–019, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 9, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Entergy Services, Inc.

[Docket No. ER91–569–019]

Take notice that on January 4, 2002, Entergy Services, Inc., on behalf of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy), submits this compliance filing in response to the Commission's November 20, 2001 Order in the above-captioned docket. A copy of this filing has been served upon the state regulators of the Entergy operating companies.

Comment Date: January 25, 2002.

2. Southern Company Energy Marketing L.P.

[Docket No. ER97–4166–011]

Take notice that on January 4, 2002, Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, submitted a compliance filing with the Federal Energy Regulatory Commission (Commission) in response to the Commission's directions in the above referenced docket.

Comment Date: January 25, 2002.

3. AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., Central and South West Services, Inc.

[Docket Nos. ER96–2495–017; ER97–4143–005; ER97–1238–012; ER98–2075–011; ER98–542–007]

Take notice that on January 4, 2002, American Electric Power Service Corporation (AEPSC), on behalf of itself and its affiliated power marketers, submits a report of its compliance in connection with the Commission's November 20, 2001 Order and December 20, 2001 Notice Delaying Effective Date of Mitigation and Announcing Technical Conference issued in the above-referenced dockets.

Comment Date: January 25, 2002.

4. Frederickson Power L.P.

[Docket No. ER01–2262–001]

Take notice that on January 4, 2002, Frederickson Power L.P. filed with the Federal Energy Regulatory Commission (Commission) an amendment to the application for authority to sell electric energy and capacity at market-based rates filed by it on June 8, 2001.

Comment Date: January 25, 2002.

5. Select Energy New York, Inc.

[Docket No. ER02–556–000]

Take notice that on December 13, 2001, Niagara Mohawk Energy Marketing, Inc., changed it name to Select Energy New York, Inc. Accordingly, Select Energy New York, Inc. is filing a Notice of Succession, with the Federal Energy Regulatory Commission's regulations 18 CFR parts 35.16 and 131.51.

Comment Date: January 22, 2002.

6. Florida Power & Light Company

[Docket No. ER02–696–000]

Take notice that on January 4, 2002 Florida Power & Light Company (FPL) tendered for filing a proposed service agreement with Georgia Transmission Corporation for Long-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement become effective on January 1, 2002.

Comment Date: January 25, 2002.

7. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–697–000]

Take notice that on January 4, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *Duke Energy Trading and Marketing, L.L.C.* Ameren Energy seeks Commission acceptance of these service agreements effective November 20, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counterparty.

Comment Date: January 25, 2002.

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8. Pleasants Energy, LLC

[Docket No. ER02–698–000]

Take notice that on January 4, 2002, Pleasants Energy, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a Power Purchase Agreement between Pleasants Energy, LLC and Dominion Nuclear Marketing I, Inc. and Dominion Nuclear Marketing II, Inc. The agreement is filed pursuant to Pleasants Energy's market based rate tariff, FERC Electric Tariff, Original Volume No. 1 (the Tariff) granted by the Commission by letter order dated December 6, 2001. Pleasants Energy, LLC requests an effective date for the agreement of December 5, 2001.

Copies of the filing were served upon the the Public Service Commission of West Virginia, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: January 25, 2002.

9. Constellation Power Source Maine, LLC

[Docket No. ER02–699–000]

Take notice that on January 4, 2002, Constellation Power Source Maine, LLC submitted for filing, pursuant to section 205 of the Federal Power Act, and part 35 of the Federal Energy Regulatory Commission's (Commission) regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, to resell Firm Transmission Rights, and for certain waivers and blanket authorizations of the Commission's regulations typically granted to entities with market-based rate authorizations.

Comment Date: January 25, 2002.

10. Florida Power & Light Company

[Docket Nos. ER02–700–000]

Take notice that on January 4, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted Interconnection and Operation Agreement between FPL and PG&E Okeechobee Generating Company, LLC (PG&E Okeechobee) that sets forth the terms and conditions governing the interconnection between PG&E Okeechobee's generating project and FPL's transmission system. A copy of this filing has been served on PG&E Okeechobee and the Florida Public Service Commission.

Comment Date: January 25, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR parts 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1062 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11516–000, 11120–002, and 11300–000—Michigan]

Commonwealth Power Company; Notice of Availability of Final Environmental Assessment

January 10, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Irving, Middleville and LaBarge Hydroelectric Projects, located on the Thornapple River in Barry and Kent Counties, Michigan, and has prepared a Final Environmental Assessment (FEA) for the projects. No federal lands are occupied by the projects.

On March 29, 2001, the Commission staff issued a draft Environmental Assessment (EA) for the Irving, Middleville and LaBarge Hydroelectric Projects and requested that any comments be filed within 45 days. Comments were filed by three entities and are addressed in the final EA.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Mark Pawlowski at (202) 219–2795.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1085 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 10, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 5334.

c. *Date Filed:* October 2, 2001.

d. *Applicant:* Charter Township of Ypsilanti.

e. *Name of Project:* Ford Lake Hydroelectric Station.

f. *Location:* On the Huron River, Washtenaw County, within the township of Ypsilanti, MI. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Joann Brinker, Administrative Services/Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Drive, Ypsilanti, MI 48197, (734) 484–0065.

i. *FERC Contact:* Monte TerHaar, (202) 219–2768 or *monte.terhaar@ferc.fed.us.*

j. *Deadline for filing additional study requests:* 60 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time. We are not requesting intervenors to this project at this time.

l. The existing Ford Lake Hydroelectric Project consists of: (1) A 1,050 acre reservoir; (2) a 110-foot-long earth embankment dam; (3) a 46.5-foot powerhouse with 2 hydroelectric turbines; (4) a 172-foot-long spillway with six bays, each with a 6-foot by 8-foot sluice gate; (5) a 380-foot-long earth embankment; (6) a 175-foot-long emergency spillway; (7) two vertical shaft turbine/generator units with an installed capacity of 1,920 kilowatts at normal pool elevation; and (8) appurtenant facilities. The project operates run-of-river with a normal reservoir elevation maintained between 684.4 and 684.9 feet M.S.L. Average annual generation between 1995 and 2000 has been 8,664 megawatthours. Generated power is sold to Detroit Power. No new facilities are proposed.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *Michigan State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

o. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice of NEPA Scoping
Notice of application is ready for environmental analysis
Notice soliciting final terms and conditions
Notice of the availability of the draft NEPA document (draft EA)
Notice of the availability of the final NEPA document (final EA)
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1087 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Technical Conference

January 9, 2002.

In the matter of: Docket Nos. RM01–12–000, RT01–2–001, RT01–10–000, RT01–15–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT02–1–000, EL02–9–000; Electricity Market Design and Structure, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, UGI Utilities Inc., Allegheny Power, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, Southwest Power Pool, Inc., Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation, Tampa Electric Company, Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company, GridSouth Transco, LLC, Entergy Services, Inc., Southern Company Services, Inc., California Independent System Operator Corporation, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, ISO New England Inc., Midwest Independent System Operator, Alliance Companies, NSTAR Services Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C., Regional Transmission Organizations, Regional Transmission Organizations, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, WestConnect RTO, LLC.

Take notice that a technical conference will be held on January 22–23, 2002, from approximately 9:30 a.m. to 4:30 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The goals of the conference will be to gain a mutual understanding of similarities and differences between various market designs and to allow participants to provide further detail on market operations. Members of the Commission will attend the conference and participate in the discussions. All interested persons may attend.

The Commission is inviting selected panelists on these topics to participate in these workshops; it is not at this time entertaining requests to make presentations. There will be ample opportunity for non-panelists to submit comments in the above dockets. Additional details about the workshops will be provided in a subsequent notice, and will be posted on the Commission's web site under RTO Activities. For additional information about the conference, please contact Saida Shaalan at (202) 208–0278.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1075 Filed 1–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–341399D; FRL–6814–7]

Organophosphate Pesticides; Availability of Terbufos Interim Risk Management Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the interim risk management decision document for terbufos. In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit comments on the terbufos

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interim risk management decision document. This decision document has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The interim risk management decision documents are available under docket control number OPP–341399D.

FOR FURTHER INFORMATION CONTACT: Eric Olson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8067; e-mail address: olson.eric@gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision documents for terbufos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide interim risk management decision documents released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–341399D. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

EPA has assessed the risks of terbufos and reached an Interim Reregistration Eligibility Decision (IRED) for this organophosphate pesticide. Provided that risk mitigation measures are adopted, terbufos fits into its own risk cup its individual, aggregate risks are within acceptable levels. Used on corn, sorghum, and sugar beets, terbufos residues in food and drinking water do not pose risk concerns with the implementation of certain risk mitigation measures. Terbufos has no residential uses. With other risk reduction measures, worker and ecological risks also will be substantially reduced.

The interim risk management decision documents for terbufos were made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision documents, which conclude the pilot public participation process for terbufos. As part of the pilot public participation process, numerous opportunities for public comment were offered as these interim risk management decision documents were being developed. There will also be a 60–day comment period on the interim reregistration eligibility decision and the docket will remain open after this period for any comments submitted to the Agency.

The risk assessments for terbufos were released to the public through a notice published in the **Federal Register** of August 12, 1998 (63 FR 43175) (FRL–6024–5), and September 1, 1999 (64 FR 34195) (FRL–6099–9).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision documents on terbufos cannot be considered final until this cumulative assessment is complete. When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision(s) for terbufos and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: January 4, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–1121 Filed 1–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00658B; FRL–6814–3]

Pesticides; Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA announces the availability of the revised version of the pesticide science policy document entitled "Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity." This notice is one in a series of science policy documents related to the implementation of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

FOR FURTHER INFORMATION CONTACT: Beth Doyle, Environmental Protection Agency (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–2722; fax number: (703) 305–0871; e-mail address: doyle.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home page at http://www.epa.gov. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry to this document under "**Federal Register**—Environmental Documents." You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00658B. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) under docket control number OPP–00557, are considered as part of the official record for this action under docket control number OPP–00658B even though not placed in the official record. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background Information

On August 3, 1996, FQPA was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and FFDCA. Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, EPA and the U.S. Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998, through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of the revised science policy

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document concerning cumulative risk assessment.

III. Summary of "Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity"

In assessing the potential health risks associated with exposure to pesticides, attention has historically focused on single pathways of exposure (e.g., from pesticide residues in food, water, or residential/nonoccupational uses) for individual chemicals, and not on the potential for individuals to be exposed to multiple pesticides by all pathways concurrently. In 1996, FQPA modified FFDCA to require OPP to consider potential human health risks from all pathways of dietary and nondietary exposures to more than one pesticide acting through a common mechanism of toxicity. This document provides guidance to OPP scientists for evaluating and estimating the potential human risks associated with such multichemical and multipathway exposures to pesticides. This process is referred to as cumulative risk assessment.

The current guidance has been revised in light of review and comment offered by the public on an earlier draft version during the public comment period of June through September 2000 (USEPA, 2000a) (65 FR 40644, June 30, 2000 (FRL–6556–4) and 65 FR 50526, August 18, 2000 (FRL–6739–3)), by the SAP in September and December 1999, and by comments offered by other external parties at the SAP meetings. Furthermore, OPP has gained experience in applying the principles of the draft guidance itself with actual datasets on pesticides that share a common mechanism of toxicity. A pilot analysis was presented to the SAP on 24 organophosphorus pesticides illustrating the hazard and dose-response guidance in September 2000, and on the exposure assessment and risk characterization process in December 2000. The SAP comments on this pilot analysis have also led to refinements in the process of conducting cumulative risk assessments.

Cumulative risk assessments will play a significant role in the evaluation of risks posed by pesticides, and will enable OPP to make regulatory decisions that more fully protect public health and sensitive subpopulations, including infants and children. The cumulative assessment of risks posed by exposure to multiple chemicals by multiple pathways (including food, drinking water, and residential/nonoccupational exposure to air, soil, grass, and indoor surfaces) presents a formidable challenge for OPP. This guidance takes into account the knowledge and methods available now for assessing cumulative risk, and provides flexibility for addressing a variety of data situations. Because methods and knowledge are expected to continue to evolve in this area, OPP will update specific procedures with peer-reviewed supplementary technical documentation as needed. Further revision of the guidance itself will take place when extensive changes are necessary.

Before undertaking a cumulative risk assessment on pesticides sharing a common mechanism of toxicity, OPP will typically perform an aggregate risk assessment for each chemical in the common-mechanism group. When conducting aggregate assessments, OPP will follow the guidance described in the document entitled "Guidance for Performing Aggregate Exposure and Risk Assessments" (USEPA, 1999b), dated November 16, 2001 (66 FR 59428, November 28, 2001) (FRL–6792–8). Using this guidance, OPP will simultaneously consider the exposures from food, drinking water, and residential/non-occupational uses of each pesticide. When the aggregate risk assessments are completed for individual chemicals that share a common mechanism of toxicity, OPP will perform the cumulative risk assessment in the steps summarized below.

A cumulative risk assessment begins with the identification of a group of chemicals, a common mechanism group (CMG), that induce a common toxic effect by a common mechanism of toxicity. OPP will follow the framework for identifying the chemicals that belong in that group (see "Guidance for Identifying Pesticide Chemicals and Other Substances That Have a Common Mechanism of Toxicity," USEPA, 1999a (64 FR 5796, February 5, 1999) (FRL–6060–7)). Once a CMG has been established, the next step is to evaluate registered and proposed uses for each CMG member in order to identify potential exposure pathways (i.e., food, drinking water, residential) and routes (i.e., oral, inhalation, dermal). During the hazard characterization phase, the various endpoints associated with the common mechanism of toxicity are identified, as well as the test species/sex that might serve as a uniform basis for determining relative potencies among the chemicals of interest. The common effect is also evaluated to determine if it is expressed across all exposure routes and durations of interest for each CMG member. The temporal aspects (e.g., time to peak effects, time to recovery) of the common mechanism toxicity are characterized to determine the critical window of its expression.

Not all cumulative assessments need to be of the same depth and scope. Thus, early in the cumulative assessment process, it is important to determine the need for, or the capability to perform, a comprehensive risk assessment. This is done by considering the number and types of possible exposure scenarios in conjunction with the associated residue values available. Initial toxicological and exposure information is collected. A screening-level assessment may be conducted that applies more conservative approaches than would a comprehensive and refined cumulative risk assessment. For example, margins of exposure may be based on no-observed adverse-effect-levels (NOAELs) for the common toxic effect rather than modeling dose-response curves of each chemical member to derive more refined relative potencies and points of departures. For dietary food risk, treatment of 100% of crops is assumed for each CMG chemical registered for use on a crop. Tolerance-level residues for the exposure component of the assessment may be assumed, rather than producing a refined estimate of actual residue levels from monitoring. If a screening-level analysis including such overestimates of exposure indicates that there is no risk concern, then no further detailed assessment may be necessary. But if this conservative approach indicates a potential for unacceptable risk, then a refined assessment should be conducted. This may engender the need for additional data.

As the risk assessor proceeds with the cumulative assessment, it is important to determine candidate chemicals and uses, routes, and pathways from the CMG that may cause cumulative effects. Cumulative assessments should not attempt to quantify risk resulting from those common-mechanism chemicals that will have a minimal toxic contribution to the cumulative hazard, or from minor exposure pathways, routes, or uses.

Exposures from minor pathways should be considered qualitatively. Thus, a subset of common-mechanism chemicals to be included in the quantification of cumulative risk needs to be identified from the CMG. This subgroup is called the cumulative assessment group (CAG). The identification of the CAG is done throughout the process as a detailed understanding of each group member's hazard and exposure potential emerges from the analysis. Although a chemical(s) may be removed from the quantification of risk, the rationale for such decisions will be explained. Thus, all chemicals that were grouped by a common mechanism of toxicity will be accounted for (qualitatively or quantitatively) in the final assessment.

OPP will use dose addition for determining the combined risk of the CAG. This approach is consistent with the Agency's approach to multichemical assessments that involve chemicals that are toxicologically similar and share a common toxic effect. OPP will depart from the dose-addition approach if there are data available to support an alternative method. A dose-response analysis is performed on each CAG member to determine its toxic potency for the common toxic effect. The determination of toxic potency should, to the extent feasible with available data, be conducted on a uniform basis (i.e., same measure of potency, for the same effect, from the same test species/sex using studies of comparable methodology).

Once the toxic potency of each common-mechanism chemical is determined, the relative potencies of the CAG members are established. To determine relative potency, a chemical from the CAG is selected to serve as the index chemical. The index chemical is used as the point of reference for standardizing the common toxicity of the other chemical members of the CAG. Once the index chemical is selected, relative potency factors (RPFs) are calculated (i.e., the ratio of the toxic potency of a given chemical relative to that of the index chemical). RPFs are used to convert exposures of all chemicals in the CAG into exposure equivalents of the index chemical. Given that the RPF method portrays risk as exposure equivalents to one chemical (the index compound), it is preferred that index chemical (1) have high-quality dose-response data, (2) have a toxicological/biological profile for the common toxicity that is representative of the common toxic effect(s), and (3) be well characterized for the common mechanism of toxicity. The last step in the dose-response assessment is to calculate a point of departure(s) for the index chemical so that the risk of the CAG can be extrapolated to anticipated human exposures.

Detailed exposure scenarios for all of the uses remaining for each pesticide in the CAG must be developed. This includes determination of potential human exposures by all relevant pathways, durations, and routes that may allow simultaneous exposures, or any sequential exposures among the CAG members that could contribute to the same joint risk of the common toxic effect (i.e., either by overlapping internal doses or by overlapping toxic effects). The framework for estimating combined exposures is based on exposure to individuals, representing differing attributes of the population (e.g., human activity patterns, place of residence, age) that link pathways/route of exposure through scenario building. Cumulative risk values for a given common toxic effect are calculated separately for each exposure route and duration and then combined. To the extent data permit, the temporal and spatial linkages should be maintained for the many factors defining a possible individual exposure. A decision must be made on the relative importance of scenarios and the need for their inclusion in a quantitative assessment, as well as on the populations of interest and locations for evaluation in the assessment. The potential for co-occurrence of possible exposure scenarios is evaluated. Spatial, temporal, and demographic considerations are major factors in determining whether a concurrent exposure is likely to occur. In other words, all exposure events need to occur over a specific interval of time; events need to agree in time, place, and demographic characteristics; and an individual's dose needs to be matched with relevant toxicological values in terms of route and duration.

Exposure input parameters must be established. The magnitude, frequency, and duration for all pertinent exposure pathway/route combinations are determined, and appropriate sources of use/usage information, residues in all appropriate media, and any modifying factors necessary for inclusion in the assessment are identified. Where necessary, any appropriate surrogate datasets from other chemical-specific data, published literature, or generic datasets are identified. A trial run of a quantitative cumulative risk is conducted by assigning route-specific and duration-specific risk metrics. The outputs of this trial run are evaluated and a sensitivity analysis is conducted. Subpopulations of concern are assessed.

The last step of the assessment process is to characterize the risk. The results and conclusions of the cumulative risk analysis are clearly described, including the relative confidence in toxicity and exposure data sources and model inputs. The risk characterization also includes a description of the variability. Major areas of uncertainty are described both qualitatively and quantitatively. The magnitude and direction of likely bias and the impact on the final assessment are discussed. Risk contributors are identified with regard to pesticide(s), pathway, source, time of year, and impacted subpopulation (with particular attention to children). The basis for group uncertainty and FQPA safety factors is explained.

In the event that a cumulative risk assessment indicates that there may be risks of concern, OPP would need to develop risk mitigation measures and take appropriate regulatory actions. OPP notes that the Cumulative Risk Assessment Guidance document does not address the process used to decide on the need for or the choice of risk mitigation measures. It may be possible to address risk concerns through mitigation measures that do not significantly change the use of a pesticide (e.g. reducing application rates or changing the timing or manner of application). In other cases, however, OPP acknowledges that regulatory measures, that reduce or eliminate pesticide uses, may be necessary and may result in the use of other pesticides or alternative pest control practices, which may have their own risks and benefits. While beyond the scope of this science policy document, OPP also recognizes that it is important to consider potential risks and benefits of such substitutes and alternatives to ensure that decisions do not increase net risk, transfer risk unreasonably, and fail to preserve important benefits wherever possible. Such consideration would be an important part in designing mitigation options for aggregate risk assessments for individual chemicals and for cumulative risk assessments for chemicals sharing a common mechanism of toxicity. The consideration of the risks and benefits of alternatives would contribute to an understanding of whether adoption of a possible risk mitigation measure might actually result in increased risks. When alternative means of reducing risk exist, OPP intends that the risk management decisions appropriately take into account which of the mitigation measures achieves the necessary reduction in risk in the most efficient manner, i.e., the manner that has the highest societal benefits. Accordingly, OPP will produce an analysis of alternatives when developing risk reduction options so that the net societal risk and net societal benefits for the options can be estimated. This analysis will enable risk managers to assure that there are not significant risk transfers and uses with important benefits are maintained, to the extent possible.

OPP is interested in understanding the views of the public on these issues—

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both in the context of making regulatory decisions on specific pesticides and more broadly. OPP's ongoing process of public particpation in individual pesticide tolerance reassessment decisions affords ample opportunity for interested stakeholders to comment on these issues as they may affect individual chemicals, classes of chemicals, and the transfer of risks and benefits. In addition, OPP intends to seek public input on broader methodological aspects of these issues through its existing federal advisory committee, the Committee to Advise on Reassessment and Transition, and/or through other avenues that give the public an opportunity to comment. OPP intends to make publicly available the comments received, and to use an open and participatory process to discuss the analysis, methods, and scientific considerations the Agency may use when characterizing changes in net risk, and effects of any transfer of risk and benefits associated with mitigation options.

IV. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 8, 2002.

Stephen Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–959 Filed 1–15–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Tuesday, January 22, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1.Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Senior Advisor to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1279 Filed 1–14–02; 2:54 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086]

Submission for OMB Review and Extension GSA Form 1364, Proposal To Lease Space (Not Required by Regulation)

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration (GSA) Regulatory Secretariat requested in August 2001 that the Office of Management and Budget (OMB) reinstate an information collection that pertains to GSA Form 1364, Proposal to Lease Space (not Required by Regulation). OMB reinstated the collection on August 24, 2001. Information collected under this authority is not otherwise required by regulation.

Public comments are particularly invited on: Whether the GSA Form 1364, Proposal to Lease space, is necessary to conduct a proper analysis of leasing proposals prior to awarding leasing contracts, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. A request for public comments was published at 66 FR 52769, October 17, 2001. No comments were received.

DATES: Submit comments on or before February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris General services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 5016.
Responses Per Respondent: 1.
Total Responses: 5,016.

Total Burden Hours: 25,183.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0086, GSA Form 1364, Proposal to Lease Space (Not Required by Regulation), in all correspondence.

Dated: January 10, 2002.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 02–1107 Filed 1–15–02; 8:45 am]

BILLING CODE 6820–34–M

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Updated Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted the proposed updated executive branch qualified trust model certificates and draft documents to the Office of Management and Budget (OMB) for for review and three-year extension of approval under the Paperwork Reduction Act. A total of twelve OGE model certificates and documents are involved.

DATES: Comments by the public and agencies on this information collection as proposed for revision should be received by February 15, 2002.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the U.S. Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD 202–208–8025; FAX 202–208–8038. Copies of the executive branch qualified trust model certificates and documents may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is the supervising ethics office for the executive branch of the Federal Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for Ethics Act qualified blind or diversified trusts to be used to avoid conflicts of interest.

The Office of Government Ethics is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

On July 3, 2001, OGE issued its first round **Federal Register** notice to announce its forthcoming request to OMB for paperwork renewal of the updated qualified trust model certificates and model trust documents. See 66 FR 35243–35244, with comments due by September 17, 2001. (OGE did not receive any comments or requests for copies of the updated qualified trust model certificates and model trust documents.) In that notice, and this one, OGE has proposed a minor change to the qualified trust model documents. The Office of Government Ethics has proposed to substitute the words "mailing address" for the words "home address" where they appear within the model trust documents. The proposed change is a minor improvement that will enhance privacy with respect to trust instruments once executed. No change is needed for the model certificates of independence and compliance as codified at appendices A–C to 5 CFR part 2634.

The Office of Government Ethics has submitted updated versions of all twelve qualified trust certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007, currently cleared through the end of January 2002) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

There are two categories of information collection requirements, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) & (b), 2634.408, 2634.409 and appendixes A & B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.401(c)(1)(i) & (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The various model trust certificates and model trust documents as proposed to be modified are available without charge to the public upon request as indicated in the "For Further Information Contact" section above.

The communications formats and the confidentiality agreements (items ii (A), (I) and (J) above) would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are publicly available based upon a proper Ethics Act request (by filling out an OGE Form 201 access form).

The total annual public reporting burden represents the time involved for completing qualified trust certificates and model trust documents which are processed by OGE. The burden is based on the amount of time imposed on private citizens. Virtually all filers/document users are private trust administrators and other private representatives who help to set up and maintain the qualified blind and diversified trusts. The detailed paperwork estimates below for the various trust certificates and model trust documents, which remain the same as

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for the last paperwork clearance three years ago, are based primarily on OGE's experience with administration of the qualified trust program.

i. Trust Certificates

A. *Certificate of Independence:* Total filers (executive branch): 10; Private citizen filers (100%): 10; OGE-processed certificates (private citizens): 10; OGE burden hours (20 minutes/certificate): 3.

B. *Certificate of Compliance:* Total filers (executive branch): 35; Private citizen filers (100%): 35; OGE-processed certificates (private citizens): 35; OGE burden hours (20 minutes/certificate): 12; and

ii. Model Qualified Trust Documents

A. *Blind Trust Communications:* Total Users (executive branch): 35; Private citizen users (100%): 35; OGE-processed documents (private citizens): 210 (based on an average of six communications per user, per year); OGE burden hours (20 minutes/communication): 70.

B. *Model Qualified Blind Trust:* Total Users (executive branch): 10; Private citizen users (100%): 10; OGE-processed models (private citizens): 10; OGE burden hours (100 hours/model): 1,000.

C. *Model Qualified Diversified Trust:* Total users (executive branch): 15; Private citizen users (100%): 15; OGE-processed models (private citizens): 15; OGE burden hours (100 hours/model): 1,500.

D.–H. *Each of the five remaining model qualified trust documents:* Total users (executive branch): 2; Private citizen users (100%): 2; OGE-processed models (private citizens): 2, multiplied by 5 (five different models) = 10; OGE burden hours (100 hours/model): 200, multiplied by 5 (five different models) = 1,000.

I.–J. *Each of the two model confidentiality agreements:* Total users (executive branch): 2; Private citizens users (100%): 2; OGE-processed agreements (private citizens): 2, multiplied by 2 (two different models) = 4; OGE burden hours (50 hours/agreement): 100, multiplied by 2 (two different models) = 200.

Based on these estimates, the total number of forms expected annually at OGE remains unchanged at 294 with a cumulative total of 3,785 burden hours.

In this second round notice, public comment is again invited on all aspects of OGE's qualified trust model certificates and model trust documents as proposed for renewal with minor revision, including specifically views on: the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility, and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: January 10, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–1144 Filed 1–15–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–13–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Effectiveness of NIOSH Publications—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Through the development, organization, and dissemination of information, NIOSH promotes awareness about occupational hazards and their control, and improves the quality of American working life. Although NIOSH uses a variety of media and delivery mechanisms to communicate with its constituents, one of the primary vehicles is through the distribution of NIOSH-numbered publications. The extent to which these publications successfully meet the information needs of their intended audience is not currently known. In a period of diminishing resources and increasing accountability, it is important that NIOSH be able to demonstrate that communications about its research and service programs are both effective and efficient in influencing workplace change. This requires a social marketing evaluation of NIOSH products to measure the degree of customer satisfaction and their adoption of recommended actions.

The present project proposes to do this by conducting a mail survey of a primary segment of NIOSH's customer base, the community of occupational safety and health professionals. In collaboration with the American Association of Occupational Health Nurses (13,000 members), the American Industrial Hygiene Association (12,400 members), the American College of Occupational and Environmental Medicine (6,500 members), and the American Society of Safety Engineers (33,000 members), NIOSH will survey a sample of their memberships to ascertain, among other things: (1) Their perceptions and attitudes toward NIOSH as a general information resource; (2) their perceptions and attitudes about specific types of NIOSH publications (*e.g.*, criteria documents, technical reports, alerts); (3) the frequency and nature of referral to NIOSH in affecting occupational safety and health practices and policies; (4) the extent to which they have implemented NIOSH recommendations; and (5) their recommendations for improving NIOSH products and delivery systems. The results of this survey will provide an empirical assessment of the impact of NIOSH publications on occupational safety and health practice and policy in the United States as well as provide direction for shaping future NIOSH communication efforts. The annual burden for this data collection is 400 hours.

Respondents	No. of responses/ respondents	Average burden per response
1,200	1	20/60

Dated: January 8, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1053 Filed 1–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of new system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records (SOR), called the "Evaluations of The Medicaid Reform Demonstrations (EMRD)," HHS/CMS/OSP No. 09–70–0068. The primary purpose of this SOR is to collect and provide data necessary to evaluate a series of Medicaid Reform Demonstrations that rely on waivers of section 1115 of the Social Security Act. This system will allow measurement of the effects of the demonstration on beneficiaries eligibility, access to care, utilization, health care costs, satisfaction with care, quality of care and health status. The information retrieved from this SOR will be used: (1) To support program administration, reporting, and regulatory, reimbursement, and policy functions performed within the CMS or by a contractor or consultant; (2) to enable another Federal or State Agency to contribute to the accuracy of the CMS's proper payment of Medicaid, State Children's Health Insurance Program and Medicare benefits; (3) to enable CMS to administer a Federal health benefits program or to enable CMS to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (4) to support constituent requests made by a Congressional representative; (5) to support litigation involving the Agency; (6) to support program administration, reporting, research, evaluation, and related issues; (7) and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. *See* **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 4, 2002. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Sydney Galloway, Office of Strategic Planning, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6645.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System of Records

CMS proposes to initiate a new SORs collecting data under the authority of section 1875(a) (42 U.S.C. 1395ll) and section 1115 (42 U.S.C. 1315) of the Social Security Act. The EMRD SOR will provide data necessary to evaluate CMS's Evaluations of the Medicaid Reform Demonstrations. As part of this effort, individually identifiable data will be used to analyze the effects of the demonstration on beneficiary eligibility, access to care, utilization, health care costs, satisfaction with care, quality of care, and health status. The information retrieved from this SOR will be used: (1) To support program administration, reporting, and regulatory, reimbursement, and policy functions performed within the Centers for Medicare & Medicaid Services (CMS) or by a contractor or consultant; (2) to enable another Federal or State agency to contribute to the accuracy of the CMS's proper payment of Medicaid, State Children's Health Insurance Program and Medicare benefits; (3) to enable CMS to administer a Federal health benefits program or to enable CMS to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (4) to support constituent requests made by a Congressional representative; (5) to support litigation involving the Agency; (6) to support program administration, reporting, research, evaluation, and related issues; (7) and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

B. Background

As of September 1, 1999, 21 section 1115 waivers for demonstrations in the following States have been approved and implemented: Alabama (Mobile County only), Arizona, Arkansas, California (Los Angeles County only), Delaware, District of Columbia, Florida, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Vermont and Wisconsin.

CMS has awarded a number of contracts to independent evaluators to assess the demonstrations thus far. These evaluations include:

Evaluation of the State Health Reform Demonstrations (Contract Number 500–94–0047)—Awarded to prime contractor Mathematica Policy Research, Inc. and subcontractors.

Examines the impact of five State Medicaid reform demonstrations (Hawaii, Maryland, Oklahoma, Rhode Island, and Tennessee).

Evaluation of the Medicaid Health Reform Demonstrations (Contract Number 500–95–0040) Awarded to Urban Institute and its subcontractors:

Examines five health reform demonstrations (California (Los Angeles County only), Kentucky, Minnesota, New York, and Vermont).

Evaluation of the Oregon Medicaid Reform Demonstration (Contract Number 500–94–0056)—Awarded to Health Economics Research, Inc. and subcontractors.

Examines the impacts of the Oregon Medicaid Reform Demonstration.

Evaluation of Delaware's Diamond State Health Plan (500–92–0033 Delivery Order Nos. 1 and 4)—Awarded to Research Triangle Institute and subcontractors.

Examines the impacts of the Delaware demonstration, with particular emphasis on children, including children with special health care needs.

Evaluation of Mass Health Quality Improvement Plan and Insurance Reimbursement Program (Contract Number 500–95–0058/T.O. #9)—Awarded to Health Economics Research, Inc. and subcontractors.

The evaluation will consist of two parts: (1) A case study of the quality improvement process in Medicaid MCOs and PCCs; (2) A case study of the implementation of the Insurance Reimbursement Program for low-income families.

Evaluation of the District of Columbia's Demonstration Project, "Managed Care System for Disabled and

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Special Needs Children" (Contract Number 500–96–0003)—Awarded to Abt Associates, Inc. and subcontractors.

The goal of this project is to document and analyze the experiences of the District of Columbia's managed care system for children and adolescents under the age of 22 who are eligible for Medicaid and who are considered disabled according to Supplemental Security Income (SSI) Program guidelines.

Focused Evaluation of Ohio Section 1115 State Health Reform Demonstration: Behavioral Health (Contract Number 500–97–0022)—Awarded to Heath Economics Research, Inc. and subcontractors.

This evaluation will consist of the following two components: (1) A focused evaluation of the behavioral health component of OhioCare, Ohio's section 1115 State health reform demonstration; and (2) A case study of the implementation of OhioCare.

Additional contracts will be awarded to evaluate other demonstrations as they are approved.

1. Each evaluation conducts analyses to answer the following broad questions for participants, individuals, employers or other relevant parties; or nonparticipant comparison populations from the pre-demonstration period, during the demonstration, and post-demonstration period.

2. How were the demonstrations implemented, and what processes were put in place to administer them. Are these processes effective?

3. What are the impacts of the demonstrations on eligibility and access to care?

4. What are the demonstrations' impacts on quality, including health status impacts, the process of care delivered, and satisfaction with care received?

5. What are the impacts of the demonstrations on the utilization of services?

6. What are the impacts of the demonstrations on cost, from Federal, State, provider, employer, and beneficiary perspectives?

As part of these efforts, the contractors will use individually identifiable data from state administrative data bases (including, but not, limited to, Medicaid eligibility, claims and encounter data), CMS data bases, data from other Federal and State agencies (including, but not limited to, the Social Security Administration), and other relevant data bases, surveys and vital records to analyze the effects of the demonstration on beneficiary eligibility, access to care, health care costs, satisfaction with care, and health status. CMS and the contractor will collect only that information necessary to perform the system's function.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The SOR is expected to include data on the number and type of services used by demonstration participants and comparison group members and their experiences in accessing health care before, during, and after the demonstration period. Sources of information contained in this records system are expected to include: State Medicaid Management Information Systems, managed care organizations (i.e., encounter data), fee-for-service providers, surveys of demonstration participants or providers and comparison group members, medical records, Social Security Administration data bases, vital statistics, and other relevant data systems.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release EMRD information that can be associated with an individual patient as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with EMRD information and identifiers. Non-identifiable data includes individual records with EMRD information and masked identifiers or EMRD information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of the EMRD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; *e.g.*, to evaluate the effects of the demonstration on beneficiaries eligibility, access to care, utilization, health care costs, satisfaction with care; quality of care, and health status.

1. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent

b. Unauthorized use of disclosure of the record;

c. Remove or destroy at the earliest time all patient-identifiable information; and

d. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EMRD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so

would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To the Agency of a state or local government, or established by state law, for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicaid, SCHIP, Medicare or other Federal and State health care programs. Data will be released to the State only on those individuals who are either individuals or entities excluded from participation in Medicaid, SCHIP, Medicare, or other Federal and State health care programs, or employers of excluded individuals or entities, or are legal residents of the State, irrespective of the location of a provider or supplier furnishing items or services.

Program evaluation relies, in large part, on program integrity and the integrity of collected data, the routine use proposed in this paragraph is a necessary requirement for this database, and is therefore, compatible with the purpose for which the information is being collected.

3. To another Federal or state agency:

a. To contribute to the accuracy of CMS's proper payment of Medicaid, SCHIP, or Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, or

c. To fulfill reporting requirements, research, evaluation, or other policy or epidemiological considerations.

CMS, and other Federal or state and local agencies, all contribute data to the databases included in this SOR, and (both separately and jointly) have an interest in performing program evaluation, conducting research and maintaining program integrity. Therefore, the routine uses described herein are compatible with the purpose for which the data are being collected.

4. To an individual or other private or public entity for research, evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for projects designed to increase the efficiency and economy of care provision.

The EMRD data will provide an opportunity for comprehensive research, evaluation and epidemiological projects regarding EMRD patients. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicaid, SCHIP and Medicare beneficiaries and the policy that governs the care.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

7. To CMS or State contractors, to administer some aspect of the health benefits programs, or to a CMS grantee or program which is or could be affected by fraud and abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this SORs.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information.

Program evaluation relies, in large part, on program integrity and the integrity of collected data, the routine use proposed in this paragraph is a necessary requirement for this database, and is therefore, compatible with the purpose for which the information is being collected.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any State or Local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in health benefits program funded in whole or in part by Federal funds.

Other State or local agencies in their administration of a Federal health program may require EMRD information for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

Program evaluation relies, in large part, on program integrity and the integrity of collected data, the routine use proposed in this paragraph is a necessary requirement for this database, and is therefore, compatible with the

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purpose for which the information is being collected.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

IV. Safeguards

The HHS EMRD system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (e.g., tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Index Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

A. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

A. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

II. Effects of the New System On Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of EMRD data. EMRD information on patients is submitted to CMS through standard systems. Accuracy of the data is important since incorrect information could result in the wrong payment for services and a less effective process for assuring quality of services. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of EMRD data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: January 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0068

SYSTEM NAME:

"Evaluations of the Medicaid Reform Demonstrations," (EMRD).

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals eligible for Medicaid under the demonstrations (eligibility requirements vary by State) and individuals selected as comparison group members for the evaluations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning individual identifiers, demographics, employment, health care coverage, diagnostic and health status information, utilization and cost of health care services, and responses to survey or, other types of data collection methods.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875(a) (42 U.S.C. 1395ll) and section 1115 (42 U.S.C. 1315) of the Social Security Act.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system of records (SOR) is to collect and provide data necessary to evaluate a series of Medicaid Reform Demonstrations that rely on waivers of section 1115 of the Social Security Act. This system will allow measurement of the effects of the demonstration on beneficiaries eligibility, access to care, utilization, health care costs, satisfaction with care, quality of care and health status. The information retrieved from this SOR will be used: (1) To support program administration, reporting, and regulatory, reimbursement, and policy functions performed within the Health Care Financing Administration (CMS) or by a contractor or consultant; (2) to enable another Federal or State agency to contribute to the accuracy of the CMS's proper payment of Medicaid, State Children's Health Insurance Program and Medicare benefits; (3) to enable CMS to administer a Federal health benefits program or to enable CMS to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (4) to support constituent requests made by a Congressional representative; (5) to support litigation involving the agency; (6) to support program administration, reporting, research, evaluation, and related issues; (7) and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EMRD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To the Agency of a state or local government, or established by state law, for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicaid, SCHIP, Medicare or other Federal and state health care programs. Data will be released to the State only on those individuals who are either individuals or entities excluded from participation in Medicaid, SCHIP, Medicare, or other Federal and state health care programs, or employers of excluded individuals or entities, or are legal residents of the State, irrespective of the location of a provider or supplier furnishing items or services.

3. To another Federal or state agency:

a. To contribute to the accuracy of CMS's proper payment of Medicaid, SCHIP, or Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, or

c. To fulfill reporting requirements, research, evaluation, or other policy or epidemiological considerations.

4. To an individual or other private or public entity for research, evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for projects designed to increase the efficiency and economy of care provision.

5. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

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a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To CMS or state contractors, to administer some aspect of the health benefits programs, or to a CMS grantee or program which is or could be affected by fraud and abuse, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, including any State or Local government agency, for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in health benefits program funded in whole or in part by Federal funds.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on paper or electronic media.

RETRIEVABILITY:

Beneficiary's name, Medicaid identification number, Health Insurance Claim Number, Social Security Number or other identifying variables retrieve the records.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

CMS and the repository of the National Archive and Records Administration (NARA) will retain identifiable EMRD data permanently, or as an indefinite retention.

SYSTEM MANAGER AND ADDRESS:

CMS, Director, Office of Strategic Planning, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, age, and sex, and social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR part 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR part 5b.7.)

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include: State Medicaid Management Information Systems, managed care organizations (i.e., encounter data), fee-for-service providers, surveys of demonstration participants or providers and comparison group members, medical records, Social Security Administration data bases, vital statistics and other relevant data systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–1063 Filed 1–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2002. The Prescription Drug User Fee Act of 1992 (PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 2002 were set by PDUFA, as amended, subject to adjustment for inflation. Total application fee revenues fluctuate with the number of fee-paying applications FDA receives. Fees for establishments and products are calculated so that total revenues from each category will approximate FDA's estimate of the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

PDUFA (Public Law 102–571), as amended by FDAMA (Public Law 105–115), referred to as PDUFA II in this document, establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 1998 through 2002, under PDUFA II, the application fee rates are set in the statute, but are to be adjusted annually for cumulative inflation since FY 1997. Total application fee revenues are structured to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases.

Each year from FY 1998 through 2002, FDA is required to set establishment fees and product fees so that the estimated total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2002 for application, establishment, and product fees. These fees are retroactive to October 1, 2001, and will remain in effect through September 30, 2002. For fees already paid on applications and supplements submitted on or after October 1, 2001, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedule. For applications and supplements submitted after January 16, 2002, the new fee schedule must be used. Invoices for establishment and product fees for FY 2002 will be issued in January 2002, using the new fee schedule.

II. Inflation and Workload Adjustment Process

PDUFA II provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of : (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees stationed in the Washington, DC metropolitan area. PDUFA II provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)(1)).

PDUFA II also structures the total application fee revenue to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as this portion of FDA's workload rises or falls. To implement this provision, each year FDA will estimate the number of fee-paying applications it anticipates receiving. The number of applications estimated will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA estimate of total application fee revenues to be received.

PDUFA II also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories is projected to equal the revenues FDA expects to collect from application fees that year. PDUFA II provides that the new fee rates based on these calculations be adjusted within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation Adjustment and Estimate of Total Application Fee Revenue

PDUFA II provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation since 1997. It also provides for total application fee revenues to increase or decrease based on increases or decreases in the number of fee-paying applications submitted.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data for safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in PDUFA II for FY 2002 ($258,451 for applications requiring clinical data, and $129,226 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for cumulative inflation since 1997. That adjustment each year is to be the greater of: (1) The total percentage change that occurred during the preceding FY in the CPI, or (2) the total percentage pay change for that FY for Federal employees stationed in the Washington, DC metropolitan area, as adjusted for any locality-based payment. PDUFA II provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The adjustment for FY 1998 was 2.45 percent (62 FR 64849, December 9, 1997). This was the greater of the CPI increase for FY 1997 (2.15 percent) or the increase in applicable Federal salaries (2.45 percent).

The adjustment for FY 1999 was 3.68 percent. (63 FR 70777 at 70778, December 22, 1998). This was the greater of the CPI increase for FY 1998 (1.49 percent) or the increase in applicable Federal salaries (3.68 percent).

The adjustment for FY 2000 was 4.94 percent (64 FR 72669 at 72670, December 28, 1999). This was the greater of the CPI increase for FY 1999 (2.62 percent) or the increase in applicable Federal salaries (4.94 percent).

The adjustment for FY 2001 was 3.81 percent (65 FR 79107 at 79108, December 18, 2000). This was the greater of the CPI increase for FY 2000 (2.62 percent) or the increase in applicable Federal salaries (3.81 percent).

The adjustment for FY 2002 is 4.77 percent. This is the greater of the CPI increase for FY 2001 (2.65 percent) or the increase in applicable Federal salaries (4.77 percent).

Compounding these amounts (1.0245 times 1.0368 times 1.0494 times 1.0381 times 1.0477) yields a total compounded inflation increase of 21.23 percent for FY 2002. The adjusted application fee rates are computed by adding one to the decimal equivalent of this percent (0.2123) and multiplying this amount (1.2123) by the FY 2002 statutory application fee rates stated above ($258,451 for applications requiring clinical data, and $129,226 for applications not requiring clinical data or supplements requiring clinical data). For FY 2002 the adjusted application fee rates are $313,320 for applications requiring clinical data, and $156,660 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 2002.

B. Estimate of Total Application Fee Revenue

Total application fee revenues for FY 2002 will be estimated by multiplying the number of fee-paying applications FDA expects to receive in FY 2002 (from October 1, 2001, through September 30,

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2002) by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are projected to be equal to total revenues FDA collects from application fees, FDA must first estimate its total FY 2002 application fee revenues. To do this FDA first determines its FY 2001 fee-paying full application equivalents, and uses that number in a linear regression analysis to predict the number of fee-paying full application equivalents expected in FY 2002. This is the same technique applied in each of the previous 3 fiscal years.

In FY 2001, FDA received and filed 95 human drug applications that require clinical data for approval, 16 that did not require clinical data for approval, and 126 supplements to human drug applications that required clinical data for approval. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications that may be subject to full application fees.

In addition, as of September 30, 2000, FDA refused to file, or firms withdrew before filing, 2 applications that required clinical data, and 5 applications that either did not require clinical data or that were supplements requiring clinical data. The full applications refused for filing or withdrawn before filing pay one-fourth the full application fee and are counted as one-fourth of an application; the applications that do not require clinical data and the supplements refused for filing or withdrawn before filing pay one-eighth of the full application fee and are each counted as one-eighth of an application.

Using this methodology, the number of full application equivalent (FAE) submissions that were received for review in FY 2001 was 167.125, before any exemptions, waivers or reductions. Under PDUFA II, FDA waives application fees for certain small businesses submitting their first application and for certain orphan products. Certain application supplements for pediatric indications are also exempt from fees. In addition, PDUFA II provides a number of other grounds for waivers (public health necessity, preventing significant barriers to innovation, and fees exceed the cost). In FY 2001 waivers or exemptions were applied to 59 FAE submissions (14.5 for orphan products, 12 for small businesses, 19 for pediatric supplements, and 13.5 miscellaneous exemptions/waivers). Therefore, for FY 2001, FDA estimates that it received 108.125 (167.125 minus 59) FAE submissions that will pay fees, after allowing for exemptions, waivers and reductions.

Next a linear regression line based on the adjusted number of fee-paying FAE submissions since 1993, and including our FY 2001 total of FAEs, must be drawn to project the number of FAEs in FY 2002.

In FY 2002, however, additional applications will have to pay fees. All pediatric supplements will be required to pay fees effective January 4, 2002 (for three-fourths of FY 2002). This is the result of section 5 of the Best Pharmaceuticals for Children Act. It repealed the fee exemption for pediatric supplements effective January 4, 2002. Thus, the regression line projecting FY 2002 fee-paying receipts must be drawn to reflect this change. In FY 1998, 8 full fees were exempted for pediatric supplements; the numbers for FY 1999, FY 2000, and FY 2001 respectively were 5.25, 12.5, and 19. Since fees on these supplements will only be paid for three-fourths of FY 2002 (January 1 through September 30, 2002), three-fourths of the number of pediatric supplements waived each year from FY 1998 through FY 2001 (the only years when fees were waived) will be added to the total of fee-paying FAEs received each year.

A linear regression line based on this adjusted number of fee-paying FAE submissions since 1993, and including our adjusted FY 2001 total of 122.375 FAEs (108.125 fee-paying FAEs and three-fourths of the 19 pediatric supplements that were exempted in FY 2001), projects the receipt of 158.3 fee-paying FAEs in FY 2002, as reflected in table 1 of this document and the graph below.

TABLE 1.

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Fee-paying FAEs	101.0	108.9	112.5	136.3	161.5	124.5	154.6	162.9	122.4	
Regression Line	110.3	115.6	121.0	126.3	131.6	137.0	142.3	147.6	152.9	158.3

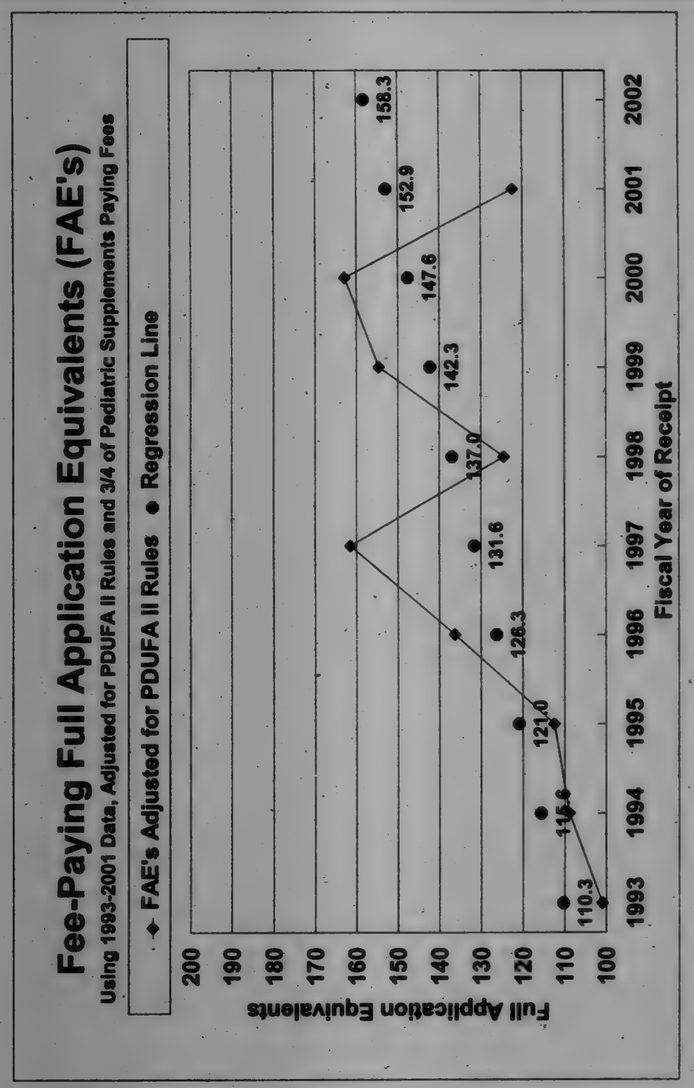

The total FY 2002 application fee revenue is estimated by multiplying the adjusted application fee rate ($313,320) by the number of applications projected to qualify for fees in FY 2002 (158.3), for a total estimated application fee revenue in FY 2001 of $49,598,556. This is the amount of revenue that FDA is also expected to derive both from establishment fees and from product fees.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of PDUFA II, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in PDUFA II fee revenue. To date, collections for FY 1998 total $117,737,470---a total of $615,470 in excess of the appropriation limit. This is the only fiscal year since 1997 in which FDA has collected more

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in PDUFA II fees than Congress appropriated.

FDA also has requests for waivers or reductions of FY 1998 fees pending. For this reason FDA is not reducing its FY 2002 fees to offset excess collections at this time. An offset will be considered in a future year, if FDA still has collections in excess of appropriations for FY 1998 after the pending requests for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2001, the establishment fee was based on an estimate of 347 establishments subject to fees. For FY 2001, 379 establishments qualified for and were billed for establishment fees, before all decisions on requests for waivers or reductions were made. FDA estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2001, for a net of 354 fee-paying establishments, and will use this number for its FY 2002 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($49,598,556), by the estimated 354 establishments, for an establishment fee rate for FY 2002 of $140,109 (rounded to the nearest dollar).

B. Product Fees

At the beginning of FY 2001, the product fee was based on an estimate that 2,314 products would be subject to product fees. By the end of FY 2001, 2,348 products qualified and were billed for product fees before all decisions on requests for waivers or reductions were made. Assuming that there will be about 55 waivers and reductions made, FDA estimates that 2,293 products will qualify for product fees in FY 2002, after allowing for waivers and reductions, and will use this number for its FY 2002 estimate. Accordingly, the FY 2002 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($49,598,556) by the estimated 2,293 products for a product fee rate of $21,630 (rounded to the nearest dollar).

VI. Adjusted Fee Schedule for FY 2002

The fee rates for FY 2002 are set out in table 2 of this document:

TABLE 2.

Fee Category	Fee Rates for FY 2002
Applications	$313,320
Requiring clinical data	$156,660
Not requiring clinical data	$156,660
Supplements requiring clinical data	$140,109
Establishments	$21,630
Products	

VII. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under PDUFA II that is submitted after January 16, 2002, must be accompanied by the appropriate application fee established in the new fee schedule. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee ID number on your check. Your check can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Food and Drug Administration (360909), Mellon Client Service Center, rm. 670, 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This Mellon Bank Address is for courier delivery only.)

Please make sure that the FDA P.O. Box number (P.O. Box 360909) is on the enclosed check.

FDA will bill applicants who submitted lower application fees from October 1 to January 16, 2002, for the difference between the amount they submitted and the amount specified in the Adjusted Fee Schedule for FY 2002.

B. Establishment and Product Fees

By [*insert date of publication in the* **Federal Register**], FDA will issue invoices for establishment and product fees for FY 2002 under the new Adjusted Fee Schedule. Payment will be due by January 31, 2002. FDA will issue invoices for any products and establishments subject to fees for FY 2002 that qualify for fees after the January 2002 billing.

Dated: January 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1068 Filed 1–11–02; 2:57 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0318]

"Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated January 2002. The new recommendations are intended to minimize the possible risk of CJD and vCJD transmission from blood and blood products. The guidance document provides comprehensive current recommendations to all registered blood and plasma establishments for deferral of donors with possible exposure to the agent of vCJD. The guidance document announced in this notice finalizes the draft guidance of the same title, dated August 2001, and supersedes the guidance document entitled "Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products" dated November 1999.

DATES: Submit written or electronic comments on agency guidance documents at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated January 2002. This guidance document contains comprehensive revised recommendations based upon advisory committee discussions, internal Public Health Service and FDA deliberations, and public comments. FDA has developed recommendations for donor deferral, and product retrieval, quarantine, and disposition based upon consideration of risk in the donor and product, and the effect that withdrawals and deferrals might have on the supply of life- and health-sustaining blood components and plasma derivatives. The new recommendations are intended to minimize the possible risk of CJD and vCJD transmission from blood products while maintaining their availability. The guidance document announced in this notice finalizes the draft guidance of the same title, dated August 2001, announced in the **Federal Register** of August 29, 2001 (66 FR 45683). The guidance document also supersedes the guidance document entitled "Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products" dated November 1999 (64 FR 65715; November 23, 1999).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1026 Filed 1–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–01]

Notice of Proposed Information Collection: Comment Request; Land Sales Registration, Purchaser's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 18, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Interstate Land Sales/RESPA Division, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0502 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Land Registration, Purchaser's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice.

OMB Control Number, if applicable: 2502–0243.

Description of the need for the information and proposed use: The Interstate Land Sales Full Disclosure Act protects consumers from fraud in the sale of land by requiring developers of non-exempt subdivisions to register with HUD and give purchasers a

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property report. The property report discloses facts about the land so the purchaser can make an informed lot purchase and tells them of their revocation rights. Developers are required to register subdivisions of 100 or more non-exempt lots with HUD.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: There is a total of 19,579 annual burden hours estimated for a total of approximately 5,270 respondents. The frequency of response is on occasion, annually, and third-party disclosure totaling 117,958 total annual responses.

Status of the proposed information collection: Extension of a currently approved information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 6, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–1031 Filed 1–15–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–31]

Housing Counseling Program Announcement of Funding Awards for Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a SuperNOFA competition for funding of HUD-approved counseling agencies to provide counseling services. This announcement contains the names and addresses of the agencies selected for funding and the amount. Additionally, this announcement outlines various noncompetitive housing counseling awards made by the Department.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Program Support Division, Room 9166, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2121. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 1–800–877–8339 or (202) 708–9300. (With the exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into agreement with qualified public or private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. The services include providing information, advice and assistance to renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial management, property maintenance and other forms of housing assistance to improve the clients' housing conditions and meet the responsibilities of tenancy and homeownership.

The purpose of the grant is to assist HUD-approved housing counseling agencies in providing housing counseling services to HUD-related and other clients. HUD funding of approved housing counseling agencies is not guaranteed and when funds are awarded, a HUD grant does not cover all expenses incurred by an agency to deliver housing counseling services. Counseling agencies must actively seek additional funds from other sources such as city, county, state and federal agencies and from private entities to ensure that they have sufficient operating funds. The availability of housing counseling program grants depends upon whether the U.S. Congress appropriates funds for this purpose, the amount of those funds, and the outcome of the competitions for award.

The 2001 grantees announced in Appendix A of this Notice were selected for funding through a competition announced in a **Federal Register** notice published on February 26, 2001 (66 FR 11841) for the housing counseling program. Applications submitted for each competition were scored and selected for funding on the basis of selection criteria contained in the Notice. HUD awarded $17.548 million in housing counseling grants to 369 housing counseling agencies nationwide: 340 local agencies, 11 intermediaries, and 18 State housing finance agencies.

Additionally, HUD distributed $734,500 in noncompetitive housing counseling grants. Specifically, $584,500 was awarded to the American Association of Retired Persons (AARP) to provide housing counseling services related to the Home Equity Conversion Program (HECM). HUD also awarded 7 housing counseling grants, totaling $150,000, to provide Native Americans with quality homeownership education and counseling services, and to build the capacity of organizations in Indian Country to provide housing counseling. Noncompetitive awards are announced in Appendix B of this notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and award amounts as provided in Appendix A.

The Catalog of Federal Domestic Assistance number for this program is 14.169.

Dated: December 27, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A

Competitive/SuperNOFA Grants

Intermediary Organizations (11)

ACORN HOUSING CORPORATION, 846 N. Broad Street, Philadelphia, PA 19130, *Amount Awarded:* $1,032,192.00.

Catholic Charities USA, 1731 King Street, Suite 200, Alexandria, VA 22314, *Amount Awarded:* $971,280.00.

Citizens' Housing and Planning Association, 18 Tremont Street, Suite 401, Boston, MA 02108, *Amount Awarded:* $250,000.00.

Housing Opportunities, Inc., 133 Seventh Avenue, P.O. Box 9, McKeesport, PA 15132, *Amount Awarded:* $1,056,768.00.

National Council of La Raza, 1111 19th Street, NW, Suite 1000, Washington, DC 20036, *Amount Awarded:* $1,081,344.00.

National Foundation for Credit Counseling, 801 Roeder Road, Suite 900, Silver Spring, MD 20910, *Amount Awarded:* $1,155,072.00.

National Urban League, 120 Wall Street, New York, NY 10005, *Amount Awarded:* *Amount Awarded:* $1,155,072.00.

Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Washington, DC 20005–3100, *Amount Awarded:* $1,155,072.00.

The Congress of National Black Churches, Inc., 1225 Eye Street, NW, Suite 750, Washington, DC 20005–3914, *Amount Awarded:* $712,704.00.

The Housing Partnership Network, Inc., 160 State Street, 5th Floor, Boston, MA 02109, *Amount Awarded:* $1,130,496.00.

West Tennessee Legal Services, Inc., 210 West Main Street, P.O. Box 2066, Jackson, TN 38302–2066, *Amount Awarded:* $250,000.00.

State Housing Finance Agencies (18)

Atlanta (SHFA)

Georgia Housing & Finance Authority, 60 Executive Park South, Atlanta, GA 30329–2231, *Amount Awarded:* $64,672.00.

Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601, *Amount Awarded:* $49,420.00.

Mississippi Home Corporation, 735 Riverside Drive, P.O. Box 23369, Jackson, MS 39225–3369, *Amount Awarded:* $61,621.00.

South Carolina State Housing Finance & Development Auth., 919 Bluff Road, Columbia, SC 29201, *Amount Awarded:* $58,572.00.

Virgin Islands Housing Finance Authority, 210–3A Altona (Frostco Building, Ste 101, St. Thomas, VQ 00802, *Amount Awarded:* $20,000.00.

Denver (SHFA)

New Mexico Mortgage Finance Authority, 344 4th Street SW, Albuquerque, NM 87102, *Amount Awarded:* $115,000.00.

North Dakota Housing Finance Agency, P.O. Box 1535, Bismarck, ND 58502–1535, *Amount Awarded:* $50,000.00.

South Dakota Housing Development Authority, PO Box 1237, Pierre, SD 57501–1237, *Amount Awarded:* $65,000.00.

Philadelphia (SHFA)

Delaware State Housing Authority, Carvel State Building, 801 North French Street—10th Floor, Wilmington, DE 19801, *Amount Awarded:* $25,722.00.

Maine State Housing Authority, 353 Water Street, Augusta, ME 04330–4633, *Amount Awarded:* $43,967.00.

Maryland Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, *Amount Awarded:* $24,063.00.

New Hampshire Housing Finance Authority, P.O. Box 5087, Manchester, NH 03108, *Amount Awarded:* $26,551.00.

Pennsylvania Housing Finance Agency, 2101 North Front St., Harrisburg, PA 17105, *Amount Awarded:* $41,479.00.

Rhode Island Housing & Mortgage Finance Corporation, 44 Washington St., Providence, RI 02903, *Amount Awarded:* $43,967.00.

State of Michigan, 401 S. Washington Square, P.O. Box 30044—MSHDA, Lansing, MI 48909, *Amount Awarded:* $32,357.00.

Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, *Amount Awarded:* $29,039.00.

Santa Ana (SHFA)

Idaho Housing and Finance Association, P.O. BOX 7899, 565 Myrtle, Boise, ID 83707–1899, *Amount Awarded:* $94,191.00.

Washington State Housing Finance Commission, 1000 Second Avenue, Suite 2700, Seattle, WA 98104–1046, *Amount Awarded:* $130,094.00.

Local Organizations (340)

Atlanta (HOC)

Access Living of Metropolitan Chicago, 614 West Roosevelt Road, Chicago, IL 60607, *Amount Awarded:* $26,757.00.

Affordable Housing Coalition, 34 Wall Street, Suite 607, Asheville, NC 28801, *Amount Awarded:* $20,000.00.

Agency Metropolitan Program Services, 3210 W. Arthington Street, Chicago, IL 60624, *Amount Awarded:* $4,146.00.

Alabama Council on Human Relations, P.O. Drawer 1632, 319 West Glenn Avenue, Auburn, AL 36831–1632, *Amount Awarded:* $15,146.00.

Anderson Housing Authority, 528 West 11th Street, Anderson, IN 46016, *Amount Awarded:* $24,312.00.

Appalachian Housing & Redevelopment (Rome Housing Authority, 800 North Fifth Avenue, Rome, GA 30162, *Amount Awarded:* $19,423.00.

Birmingham Urban League, Inc., 1717 4th Avenue North, P.O. Box 11269, Birmingham, AL 35202–1269, *Amount Awarded:* $29,812.00.

C.C.C.S. of Middle Tennessee, Inc., P.O. Box 160328, Nashville, TN 37216–0328, *Amount Awarded:* $4,146.00.

Campbellsville Housing and Redevelopment Authority, P.O. Box 597, 400 Ingram Ave., Campbellsville, KY 42719, *Amount Awarded:* $10,870.00.

Carolina Regional Legal Services, Inc., P.O. Box 479, 279 West Evans Street, Florence, SC 29503–0479, *Amount Awarded:* $32,868.00.

CEFS Economic Opportunity Corporation, 1805 S. Banker Street, P.O. Box 928, Effingham, IL 62401, *Amount Awarded:* $16,979.00.

CEIBA Housing & Economic Development Corporation, Ave. Lauro Pinero #252, P.O. Box 203, Ceiba, PR 00735, *Amount Awarded:* $18,201.00.

Central Florida Community Development Corp., P.O. Box 15065, Daytona Beach, FL 32115, *Amount Awarded:* $12,090.00.

Chicago Commons, 3645 West Chicago Avenue, Chicago, IL 60651, *Amount Awarded:* $19,145.00.

Citizens for Affordable Housing, Inc., 1719 West End Avenue, Suite 607W, Nashville, TN 37203, *Amount Awarded:* $15,757.00.

City of Albany, Georgia, 230 S. Jackson St., Suite 315, Albany, GA 31701, *Amount Awarded:* $5,368.00.

City of Bloomington, P.O. Box 100, 401 North Morton, Bloomington, IN 47402, *Amount Awarded:* $24,925.00.

Cobb Housing, Inc., 700 Sandy Plains Road, Suite B–8, Marietta, GA 30066, *Amount Awarded:* $23,701.00.

Community Action & Community Development Agency, P.O. Box 1788, 207 Commerce Circle, SW, Decatur, AL 35602, *Amount Awarded:* $31,034.00.

Community Action Agency Huntsville/Madison & Limestone, 3516 Stringfield Road, P.O. Box 3975, Huntsville, AL 35810–0975, *Amount Awarded:* $27,979.00.

Community Action Agency of Northwest Al, 745 Thompson Street, Florence, AL 35630, *Amount Awarded:* $9,000.00.

Community Action of Greater Indianapolis, Inc., 2445 North Meridian Street, Indianapolis, IN 46208, *Amount Awarded:* $12,701.00.

Community and Economic Development Assoc. of Cook County, 208 South LaSalle, Suite 1900, Chicago, IL 60604–1001, *Amount Awarded:* $22,479.00.

Community Equity Investments, Inc. (CEII), 302 North Barcelona Street, Pensacola, FL 32501, *Amount Awarded:* $19,000.00.

Consumer Credit Counseling Service of Western NC, 50 South French Broad Ave., Suite 227, Ashville, NC 28801, *Amount Awarded:* $33,479.00.

Consumer Credit Counseling of NWI, Inc., 3637 Grant Street, Gary, IN 46408–1439, *Amount Awarded:* $20,500.00.

Consumer Credit Counseling Service of Family Counseling CEN, 220 Coral Sands Drive, Rockledge, FL 32955, *Amount Awarded:* $18,812.00.

Consumer Credit Counseling Service of FL. Gulf Coast, Inc., 5201 W. Kennedy Blvd., Suite 110, Tampa, FL 33609, *Amount Awarded:* $26,146.00.

Consumer Credit Counseling Service of Forsyth County, Inc., 8064 North Point Boulevard, Suite 204, Winston-Salem, NC 27106, *Amount Awarded:* $31,034.00.

Consumer Credit Counseling Service of South FL, 11645 Biscayne Blvd. #205, No. Miami, FL 33181, *Amount Awarded:* $18,812.00.

Consumer Credit Counseling Service of West Florida, 14 Palafox Place, Pensacola, FL 32501, *Amount Awarded:* $24,312.00.

Cumberland Community Action Program, Inc., P.O. Box 2009, 316 Green Street, Fayetteville, NC 28302, *Amount Awarded:* $30,000.00.

Davidson County Community Action, Inc., P.O. Box 389, 701 South Salisbury Street, Lexington, NC 27293–0389, *Amount Awarded:* $4,146.00.

Dekalb Fulton Housing Counseling Center, Inc., 4151 Memorial Drive, Suite 107–E, Decatur, GA 30032, *Amount Awarded:* $27,979.00.

Dupage Homeownership Center, Inc., 1333 North Main Street, Wheaton, IL 60187, *Amount Awarded:* $28,000.00.

Economic Opportunity for Savannah-Chatham County Area, Inc., 618 West Anderson Street, Savannah, GA 31401, *Amount Awarded:* $22,479.00.

Elizabeth City State University, 1704 Weeksville Road, Campus Box 761, Elizabeth City, NC 27909, *Amount Awarded:* $26,145.00.

Family and Children's Services of Chattanooga, Inc., Osborne Office Park, 6000 Building, Suite 2300, Chattanooga, TN 37411, *Amount Awarded:* $10,868.00.

Family Service Center, 1800 Main Street, Columbia, SC 29201, *Amount Awarded:* $33,479.00.

Fulton-Atlanta Community Action Authority, Inc., 1690 Chantilly Drive, Atlanta, GA 30324, *Amount Awarded:* $18,812.00.

Gainesville/Hall County Neighborhood Revitalization, P.O. Box 642, Gainesville, GA 30503, *Amount Awarded:* $18,812.00.

Gulf Coast Community Action Agency, Inc., 443 Security Square, P.O. Box 519, Gulfport, MS 39502–0519, *Amount Awarded:* $10,868.00.

Gwinnett Housing Resource Partnership, Inc., 3453 Holcomb Bridge Road, Suite 140, Norcross, GA 30092, *Amount Awarded:* $25,534.00.

Hammond Housing Authority, 7329 Columbia Circle—West, Hammond, IN 46324, *Amount Awarded:* $27,979.00.

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Homes in Partnership, Inc., 235 E. Fifth Street, P. O. Box 761, Apopka, FL 32704–0761, *Amount Awarded:* $23,701.00.
Hoosier Uplands Economic Development Corporation, 521 West Main Street, Mitchell, IN 47446, *Amount Awarded:* $15,000.00.
Hope of Evansville, Inc., 608 Cherry Street, Evansville, IN 47713, *Amount Awarded:* $25,534.00.
Housing and Economic Leadership Partners, Inc., 485 Huntington Road, Suite 200, Athens, GA 30606, *Amount Awarded:* $21,868.00.
Housing and Neighborhood Dev. Serv of Central Florida, 990 North Bennett Avenue, Winter Park, FL 32789, *Amount Awarded:* $20,034.00.
Housing Authority of the Birmingham District, 1826 3rd Avenue South, Birmingham, AL 35233, *Amount Awarded:* $24,312.00.
Housing Authority of the City of Fort Wayne, P.O. Box 13489, 2013 South Anthony Blvd., Fort Wayne, IN 46869–3489, *Amount Awarded:* $27,979.00.
Housing Authority of the City of High Point, 500 East Russell Avenue, Post Office Box 1779, High Point, NC 27260, *Amount Awarded:* $24,923.00.
Housing Authority of the County of Lake, IL, 33928 North Route 45, Grayslake, IL 60030, *Amount Awarded:* $5,979.00.
Housing Development Corporation of St. Joseph County, 1200 County City Building, South Bend, IN 46601, *Amount Awarded:* $20,672.00.
Housing Education and Economic Development, 3405 Medgar Evers Blvd., Jackson, MS 39213, *Amount Awarded:* $10,868.00.
Johnston-Lee Community Action, Inc., P.O. Drawer 711, 1102 Massey Street, Smithfield, NC 27577, *Amount Awarded:* $20,000.00.
Knoxville Legal Aid Society, Inc., 502 S. Gay Street, Suite 404, Knoxville, TN 37902, *Amount Awarded:* $16,979.00.
Lake County, 2293 North Main Street, Crown Point, IN 46307, *Amount Awarded:* $18,201.00.
Latin American Association, 2665 Buford Highway, Atlanta, GA 30324, *Amount Awarded:* $22,479.00.
Latin United Community Housing Association, 3541 W. North Avenue, Chicago, IL 60647, *Amount Awarded:* $31,646.00.
Legal Assistance Foundation of Chicago, 111 West Jackson Blvd., Chicago, IL 60604, *Amount Awarded:* $27,368.00.
Legal Services of Upper East TN, Inc., 311 West Walnut Street, P.O. Drawer 360, Johnson City, TN 37605–0360, *Amount Awarded:* $24,312.00.
Lincoln Hills Development Corporation, 302 Main Street, P.O. Box 336, Tell City, IN 47586, *Amount Awarded:* $10,000.00.
Louisville Urban League, 1535 West Broadway, Louisville, KY 40203, Amount Awarded: $25,534.00.
Manatee Coalition for Affordable Housing, Inc., 319 6th Avenue West, Bradenton, FL 34205, *Amount Awarded:* $17,590.00.
Manatee Opportunity Council, Inc., 369 6th Avenue West, Bradenton, FL 34205, *Amount Awarded:* $13,312.00.
Memphis Area Legal Services, 109 N. Main, 2 Floor, Memphis, TN 38103–5013, *Amount Awarded:* $20,034.00.
Miami Beach Community Development Corporation, 1205 Drexel Avenue, Miami Beach, FL 33139, *Amount Awarded:* $18,812.00.
Mid-Florida Housing Partnership, Inc., P.O. Box 1345, 330 North Street, Daytona Beach, FL 32115, *Amount Awarded:* $18,812.00.
Mobile Housing Board, 151 South Claiborne Street, P. O. Box 1345, Mobile, AL 36633–1345, *Amount Awarded:* $31,646.00.
Muncie Homeownership and Development Center, 407 South Walnut Street, Muncie, IN 47305, *Amount Awarded:* $14,750.00.
Northeastern Community Development Corp., P.O. Box 367, Camden, NC 27921, *Amount Awarded:* $14,534.00.
Northwestern Regional Housing Authority, P.O. Box 2510, Hwy. 105 Ext., Boone, NC 28607, *Amount Awarded:* $31,646.00.
Ocala Housing Authority, 233 S.W. 3RD Street, Ocala, FL 34474, *Amount Awarded:* $25,000.00.
Palmetto Legal Services, 2109 Bull Street, P.O. Box 2267, Columbia, SC 29202, *Amount Awarded:* $5,368.00.
Purchase Area Housing Corporation, P.O. Box 588, Mayfield, KY 42066, *Amount Awarded:* $15,000.00.
Realtor-Community Housing Foundation, 2250 Regency Road, Lexington, KY 40503, *Amount Awarded:* $8,423.00.
Residential Resources, Inc., 602 Gallatin Road, Suite 102, Nashville, TN 37206, *Amount Awarded:* $18,201.00.
Rogers Park Community Council, 1530 W. Morse Avenue, Chicago, IL 60626, *Amount Awarded:* $14,534.00.
Sacred Heart Southern Missions Housing Corp., 6144 Highway 161 North, P.O. Box 365, Walls, MS 38680, *Amount Awarded:* $21,257.00.
Sandhills Community Action Program, Inc., P.O. Box 937, 103 Saunders Street, Carthage, NC 28327–0000, *Amount Awarded:* $20,646.00.
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430, *Amount Awarded:* $19,423.00.
Spanish Coalition for Housing, 4035 West North Avenue, Chicago, IL 60639, *Amount Awarded:* $31,646.00.
Tallahassee Urban League, Inc., 923 Old Bainbridge Road, Tallahassee, FL 32303, *Amount Awarded:* $7,812.00.
Tenant Services & Housing Counseling, Inc., 136 North Martin Luther King Blvd., Lexington, KY 40507, *Amount Awarded:* $30,000.00.
The Agricultural & Labor Program, Inc., P.O. Box 3126, Winter Haven, FL 33885, *Amount Awarded:* $3,535.00.
The Housing Authority of the City of Montgomery, 1020 Bell Street, Montgomery, AL 36104, *Amount Awarded:* $33,479.00.
Trident United Way, 6296 Rivers Avenue, P. O. Box 63305, North Charleston, SC 29419, *Amount Awarded:* $18,812.00.
Twin Rivers Opportunities, Inc., P.O. Box 1482, New Bern, NC 28563, *Amount Awarded:* $9,600.00.
Unified Government of Athens-Clarke County, 155 E. Washington St., P.O. Box 1868, Athens, GA 30603, *Amount Awarded:* $18,812.00.
Urban League of Greater Columbus, 802 First Avenue, Columbus, GA 31901, *Amount Awarded:* $27,979.00.
Wateree Community Action, Inc., Post Office Box 1838, 13 South Main Street, Sumter, SC 29150, *Amount Awarded:* $10,000.00.
West Perrine Community Development Corporation, 17623 Homestead Avenue, Miami, FL 33157, *Amount Awarded:* $19,423.00.
Willow Nonprofit Housing, Inc., P. O. Box 383, 200 A Commerce Street, Hayneville, AL 36040, *Amount Awarded:* $30,000.00.
Wilson Community Improvement Association, Inc., 504 E. Green Street, Wilson, NC 27893, *Amount Awarded:* $15,146.00.
Woodbine Community Organization, 222 Oriel Avenue, Nashville, TN 37210, *Amount Awarded:* $16,368.00.

Denver (HOC)

Adams County Housing Authority, 7190 Colorado Blvd., Commerce City, CO 80022, *Amount Awarded:* $29,692.00.
Anoka County Community Action Programs, Inc., 1201 89th Avenue NE, Suite 345, Anoka County, Blaine, MN 55343, *Amount Awarded:* $4,203.00.
Avenida Guadalupe Association, 1327 Guadalupe Street, San Antonio, TX 78207, *Amount Awarded:* $18,579.00.
Better Family Life, Inc., 724 North Union, Suite 301, St. Louis, MO 63108, *Amount Awarded:* $20,061.00.
Black Hills Legal Services, Inc., P.O. Box 1500, Rapid City, SD 57709–1500, *Amount Awarded:* $20,000.00.
Boulder County Housing Authority, P.O. Box 471, Boulder, CO 80306, *Amount Awarded:* $28,950.00.
Brothers Redevelopment, Inc., 2250 Eaton St., Garden Level, Suite B, Denver, CO 80214, *Amount Awarded:* $19,541.00.
Carver County Housing & Redevelopment Authority, 705 Walnut Street, Chaska, MN 55318, *Amount Awarded:* $7,687.00.
CCCS of Central Oklahoma, Inc., 3230 N. Rockwell Avenue, Bethany, OK 73008, *Amount Awarded:* $32,359.00.
CCCS of Greater Dallas, Inc., 8737 King George Dr., Suite 200, Dallas, TX 75235, *Amount Awarded:* $38,805.00.
CCCS of Greater San Antonio, 6851 Citizens Parkway, Suite 100, San Antonio, TX 78229, *Amount Awarded:* $7,687.00.
CCCS of Salina, 1201 West Walnut, Salina, KS 67401, *Amount Awarded:* $19,541.00.
Cedar City Housing Authority, 364 South 100 East, Cedar City, UT 84720, *Amount Awarded:* $3,172.00.
Center for A.I.D./CCCS of Greater Siouxland, 715 Douglas Street, Sioux City, IA 51101, *Amount Awarded:* $16,578.00.
Central City Housing Development Corp., 2020 Jackson Avenue, New Orleans, LA 70113, *Amount Awarded:* $7,687.00.
Chickasaw Nation, Division of Housing, P.O. Box 788, Ada, OK 74821–0788, *Amount Awarded:* $12,873.00.
City of Aurora—Home Ownership Assistance Program, 9801 E. Colfax Ave., Aurora, CO 80010, *Amount Awarded:* $19,205.00.
City of Des Moines (Services for Homeowner's Program (Shop)), Department of Community Development, 602 East 1st Street, Des Moines, IA 50309–1881, *Amount Awarded:* $4,723.00.
City of Fort Worth, Housing Department, 1000 Throckmorton Street, Fort Worth, TX 76102, *Amount Awarded:* $30,655.00.
City of San Antonio, 115 Plaza de Armas, Suite 230, San Antonio, TX 78205, *Amount Awarded:* $30,433.00.
City Vision Ministries, Inc., 1321 N. 7th Street, Kansas City, KS 66101, *Amount Awarded:* $3,241.00.
Colorado Housing Enterprises/Colorado Rural Housing Dev Corp, 3621 West 73rd Avenue, Suite C, Westminster, CO 80030, *Amount Awarded:* $3,241.00.
Community Action Agency of Oklahoma City and OK/CN Counties, 1900 NW 10th Street, Oklahoma City, OK 73106, *Amount Awarded:* $18,466.00.
Community Aaction for Suburban Hennepin, 33 10th Avenue South, Suite 150, Hopkins, MN 55343, *Amount Awarded:* $27,691.00.
Community Action Project of Tulsa County, 717 S. Houston Ave, Suite 200, Tulsa, OK 74127, *Amount Awarded:* $22,283.00.
Community Action Services, 257 East Center Street, Provo, UT 84606, *Amount Awarded:* $26,500.00.
Community Action, Inc. of Rock and Walworth Counties, 2300 Kellog Avenue, Janesville, WI 53546, *Amount Awarded:* $12,000.00.
Community Development Authority of the City of Madison, 215 Martin Luther King Jr Blvd, Ste 318, P.O. Box 1785, Madison, WI 53701–1785, *Amount Awarded:* $31,618.00.
Community Development Corporation of Brownsville, 1150 E. Adams St., Second Floor, Brownsville, TX 78520, *Amount Awarded:* $33,841.00.
Community Development Support Association (CDSA), 2615 E. Randolph, Enid, OK 73701, *Amount Awarded:* $17,540.00.
Community Services League, 300 W. Maple, P.O. Box 4178, Independence, MO 64051, *Amount Awarded:* $25,690.00.
Crawford-Sebastian Community Development Council, Inc., 4831 Armour, P.O. Box 4069, Fort Smith, AR 72914, *Amount Awarded:* $16,876.00.
Crowley's Ridge Development Council, Inc., 249 S. Main, P.O. Box 1497, Jonesboro, AR 72401, *Amount Awarded:* $13,836.00.
Dallas Urban League, 4315 South Lancaster Road, Dallas, TX 75216, *Amount Awarded:* $9,688.00.
District 7 Human Resources Development Council 7 North 31st Street, P.O. Box 2016, Billings, MT 59103 *Amount Awarded:* $16,800.00.
E*TRAD (Education, Training, Research and Development) 608 E. Cherry Street, Suite 101, P.O. Box 10298, Columbia, MO 65201 *Amount Awarded:* $14,874.00.
East Arkansas Legal Services, 2126 E. Broadway, P.O. Box 1149, West Memphis, AR 72303, *Amount Awarded:* $17,540.00.
Family Housing Advisory Services, Inc.; 2416 Lake Street, Omaha, NE 68111, *Amount Awarded:* $38,805.00.
Family Life Center/Utah State University, 493 North 700 East, Logan, UT 84321, *Amount Awarded:* $11,391.00.
Family Management Credit Counselors, Inc. (FMCCI), 1409 W. 4th Street, Waterloo, IA 50702, *Amount Awarded:* $10,000.00.
Family Service Agency, 4504 Burrow Drive, P.O. Box 16615, North Little Rock, AR 72231–6615, *Amount Awarded:* $26,951.00.
Greater Kansas City Housing Information Center, 3810 Paseo, Kansas City, MO 65109–2721, *Amount Awarded:* $38,583.00.
Gulf Coast Community Services Association, 5000 Gulf Freeway Building #1, Houston, TX 77023, *Amount Awarded:* $3,760.00.
Hawkeye Area Community Action Program, Inc., 1515 Hawkeye Drive, P.O. Box 490, Hiawatha, IA 52233–0490, *Amount Awarded:* $23,987.00.
High Plains Community Development Corp. Inc., 130 East Second Street, Chadron, NE 69337, *Amount Awarded:* $27,173.00.
Housing and Credit Counseling, Inc., 1195 SW Buchanan, Suite 101, Topeka, KS 66604–1183, *Amount Awarded:* $24,209.00.
Housing Authority of the City of Lawton, OK, 609 Southwest F Avenue, Lawton, OK 73501, *Amount Awarded:* $3,241.00.
Housing Authority of the City of Muskogee 220 North 40th Street, Muskogee, OK 74401, *Amount Awarded:* $30,655.00.
Housing Authority of the City of Stillwater, 807 S. Lowry, Stillwater, OK 74074, *Amount Awarded:* $2,500.00.
Housing Options Provided for the Elderly, 4265 Shaw Avenue, St. Louis, MO 63110, *Amount Awarded:* $10,000.00.
Housing Partners of Tulsa, Inc., P.O. Box 6369, Tulsa, OK 74148, *Amount Awarded:* $32,137.00.
In Affordable Housing, Inc., 1200 John Barrow Rd., Ste 109, Little Rock, AR 72205, *Amount Awarded:* $13,836.00.
Interfaith of Natrona County, Inc., 1514 East #12th Street, #303, Casper, WY 82601, *Amount Awarded:* $10,000.00.
Justine Petersen Housing & Reinvestment Corp., 5031 Northrup, St. Louis, MO 63110, *Amount Awarded:* $24,950.00.
Lafayette Consolidated Government, P.O. Box 4017–C, Lafayette, LA 70502–4017, *Amount Awarded:* $15,837.00
Legal Aid of Central Texas, 2201 Post Road, Suite 104, Austin, TX 78704, *Amount Awarded:* $37,102.00.
Legal Aid Society of Albuquerque, Inc., 121 Tijeras NE, Suite 3100, Albuquerque, NM 87125–5486, *Amount Awarded:* $27,173.00.
Legal Services of Eastern Missouri, Inc., 4232 Forest Park Avenue, St. Louis, MO 63108, *Amount Awarded:* $17,540.00.
Lincoln Action Program, Inc., 210 O Street, Lincoln, NE 68508, *Amount Awarded:* $29,174.00.
Marshall Housing Authority, 1401 Poplar Street, P.O. Box 609, Marshall, TX 75671, *Amount Awarded:* $3,463.00.
Neighbor to Neighbor, Inc., 424 Pine Street, Suite 203, Fort Collins, CO 80524, *Amount Awarded:* $22,505.00.
Norman Housing Authority, 700 N. Berry Rd., Norman, OK 73069, *Amount Awarded:* $20,282.00.
North Louisiana Legal Assistance Corporation, 200 Washington Street, P.O. Box 3325, Monroe, LA 71201, *Amount Awarded:* $26,210.00.
Northeast Denver Housing Center, 1735 Gaylord St., Denver, CO 80206, *Amount Awarded:* $5,242.00.
Northeast Kansas Community Action Program (NEK-CAP, Inc.), Community Services Department, P.O. Box 380, Hiawatha, KS 66434, *Amount Awarded:* $9,168.00.
Northwest Montana Human Resources, Inc., 214 Main, P.O. Box 8300, Kalispell, MT 59904–1300, *Amount Awarded:* $3,241.00.
Oglala Sioux Tribe Partnership for Housing, Inc., P.O. Box 3001, Pine Ridge, SD 57770, *Amount Awarded:* $11,613.00.
Our Casas Resident Council, Inc., 3006 Guadalupe Street, San Antonio, TX 78207, *Amount Awarded:* $3,463.00.
Parish of Jefferson, Community Action Programs (JEFFCAP), 1221 Elmwood Park Blvd., Suite 402, Jefferson, LA 70123, *Amount Awarded:* $19,541.00.
Senior Housing, Inc., 2021 East Hennipin, Minneapolis, MN 55413, *Amount Awarded:* $24,950.00.
Southeastern North Dakota Community Action Agency, 3233 South University Drive, P.O. Box 2683, Fargo, ND 58104, *Amount Awarded:* $14,000.00.
Southern Minnesota Regional Legal Service, 700 Minnesota Building, 46 East Fourth Street, St. Paul, MN 55101, *Amount Awarded:* $19,319.00.
Southwest Community Resources, 295 Girard Street, Durango, CO 81301, *Amount Awarded:* $5,686.00.
St. Martin, Iberia, Lafayette Community Action Agency, Inc., 501 St. John Street, P.O. Box 3343, Lafayette, LA 70502, *Amount Awarded:* $20,802.00.
St. Mary Community Action Committee Assoc., Inc., P.O. Box 271, Franklin, LA 70538, *Amount Awarded:* $5,983.00.
St. Paul Housing Information Office, 25 West Fourth Street, Room 150, St. Paul, MN 55102, *Amount Awarded:* $21,764.00.
St. Paul Urban League, 401 Selby Avenue, St. Paul, MN 55102, *Amount Awarded:* $26,431.00.
Summit Housing Authority, 106 N. Ridge Street, P.O. Box 188, Breckenridge, CO 80424, *Amount Awarded:* $3,241.00.
Tarrant County Housing Partnership, Inc., 603 West Magnolia Ave, Suite 207, Ft. Worth, TX 76104, *Amount Awarded:* $3,241.00.
Universal Housing Development Corp., P.O. Box 846, Russellville, AR 72811, *Amount Awarded:* $24,728.00.
Urban League of Wichita, Inc., 1802 East 13th Street N., Wichita, KS 67214, *Amount Awarded:* $4,501.00.
Walker's Point Development Corp, 914 S. 5th Street, Milwaukee, WI 53204, *Amount Awarded:* $8,947.00.
West Central Missouri Community Action Agency, 106 W. 4th, P.O. Box 125, Appleton City, MO 64724, *Amount Awarded:* $35,620.00.
Women's Opportunity & Resource Development, 127 N. Higgins, Missoula, MT 59802, *Amount Awarded:* $6,426.00.

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Philadelphia (HOC)
Affordable Homes of Millville Ecumenical (AHOME), Inc., P.O. Box 241, Millville, NJ 08332, *Amount Awarded:* $17,340.00.
Albany County Rural Housing Alliance, Inc., P.O. Box 407, 24 Martin Road, Voorheesville, NY 12186, *Amount Awarded:* $18,376.00.
Anne Arundel Co. Economic Opportunity Committee, Inc., 251 West Street, Annapolis, Anne Arundel, MD 21401, *Amount Awarded:* $10,779.00.
Arundel Community Development Services, Inc., 2660 Riva Road, Suite 210, Annapolis, MD 21401, *Amount Awarded:* $19,800.00.
Asian Americans for Equality, Inc., 111 Division Street, New York, NY 10002, *Amount Awarded:* $18,721.00.
Bayfront Nato, Inc., 312 Chestnut Street, Erie, PA 16507, *Amount Awarded:* $3,078.00.
Belmont Shelter Corporation, 1195 Main Street, Buffalo, NY 14209–2196, *Amount Awarded:* $19,425.00.
Berks Community Action Program/Budget Counceling Center, Post Office Box 22, Berks County, Reading, PA 19603–0022, *Amount Awarded:* $19,425.00.
Better Housing League of Greater Cinti, 2400 Reading Road, Cincinnati, OH 45202, *Amount Awarded:* $18,376.00.
Better Neighborhoods Incorporated, 986 Albany Street, Schenectady, NY 12307, *Amount Awarded:* $20,500.00.
Bishop Sheen Ecumenical Housing Foundation, Inc., 935 East Avenue, Suite 300, Rochester, NY 14607, *Amount Awarded:* $15,268.00.
Burlington County Community Action Program, 718 Route 130 South, Burlington, NJ 08016, *Amount Awarded:* $14,578.00.
Catholic Charities, Diocese of Metuchen, 540–550 Route 22 East, Brigewater, Somerset, NJ 08807, *Amount Awarded:* $14,923.00.
Center City Neighborhood Development Corporation, 1824 Main Street, Niagara Falls, NY 14305, *Amount Awarded:* $20,500.00.
Chautauqua Opportunities, Inc., 17 West Courtney Street, Dunkirk, NY 14048, *Amount Awarded:* $20,500.00.
Chester Community Improvement Project, 412 Avenue of the States, Chester, PA 19016, *Amount Awarded:* $20,150.00.
Citizen Action of New Jersey, 400 Main Street, Hackensack, NJ 07601, *Amount Awprded:* $19,425.00.
City of Frederick, 100 South Market Street, Frederick County, Frederick, MD 21701, *Amount Awarded:* $8,000.00.
Coastal Enterprises, Inc., 36 Water Street, P.O. Box 268, Wiscasset, ME 04578, *Amount Awarded:* $20,150.00.
Commission on Economic Opportunity, 165 Amber Lane, Wilkes-Barre, PA 18703, *Amount Awarded:* $19,067.00.
Communities Organized to Improve Life: CEDC, 11 South Carrollton Avenue, Baltimore, MD 21223, *Amount Awarded:* $4,909.00.
Community Access Unlimited, Inc., 80 West Grand Street, Elizabeth, NJ 07202, *Amount Awarded:* $8,016.00.
Community Action Commission of Belmont CTY, 410 Fox-Shannon Place, St. Clairsville, OH 43950, *Amount Awarded:* $4,563.00.
Community Action Commission of Fayette County, Inc., 324 East Court Street, Fayette County, OH 43160, *Amount Awarded:* $12,851.00.
Community Action Committee of the Lehigh Valley, Inc., 651 East Broad Street, Bethlehem, PA 18018, *Amount Awarded:* $16,649.00.
Community Action Program Madison County, 3 East Main Street, P.O. Box 249, Morrisville, NY 13408, *Amount Awarded:* $18,721.00.
Community Action Southwest, 315 East Hallam Avenue, Washington, PA 15301, *Amount Awarded:* $17,000.00.
Community Assistance Network, Inc., 7701 Dunmanway, Baltimore, MD 21222, *Amount Awarded:* $18,721.00.
Community Development Corporation of Long Island, 2100 Middle Country Road, Centereach, NY 11720, *Amount Awarded:* $19,067.00.
Community Housing, Inc., 613 Washington Street, Wilmington, DE 19801, *Amount Awarded:* $14,578.00.
Consumer Credit Counseling Service of Greater Washington, 15847 Crabbs Branch Way, Rockville, MD 20855, *Amount Awarded:* $12,506.00.
Cortland Housing Assistance Council, Inc., 159 Main Street, Cortland, NY 13045, *Amount Awarded:* $12,000.00.
County Commissioners of Carroll County, 10 Distillery Drive, Suite 101, Westminster, MD 21157–5194, *Amount Awarded:* $18,721.00.
Credit Counseling Centers, Inc., 111 Westcott Road, South Portland, ME 04106, *Amount Awarded:* $19,800.00.
Cypress Hills Local Development Corp., 625 Jamaica Avenue, Kings County, Brooklyn, NY 11208, *Amount Awarded:* $19,425.00.
Detroit Non-Profit Housing Corporation, 1200 Sixth Street Suite 404, Detroit, MI 48226, *Amount Awarded:* $15,268.00.
Druid Heights Community Development Corporation, 1821 Mc Culloh Street, Baltimore, MD 21217, *Amount Awarded:* $10,434.00.
Fair Housing Contact Service, 333 South Main Street—Suite 300, Akron, OH 44308, *Amount Awarded:* $6,290.00.
Family Service—Upper Ohio Valley, 51 Eleventh Street, Wheeling, WV 26003, *Amount Awarded:* $12,160.00.
Fayette County Community Action Agency, Inc., 137 N. Beeson Avenue, Uniontown, PA 15401, *Amount Awarded:* $15,000.00.
First State Community Action Agency, Inc., 308 North Railroad Avenue, P.O. Box 877, Georgetown, DE 19947, *Amount Awarded:* $15,268.00.
Garfield Jubilee Association, Inc., 5138 Penn Avenue, Pittsburgh, PA 15224, *Amount Awarded:* $15,000.00.
Greater Boston Leagal Services, Inc., 197 Friend Street, Boston, MA 02114, *Amount Awarded:* $20,150.00.
Greater Erie Community Action Committee, 18 West 9th Street, Erie, PA 16501, *Amount Awarded:* $2,500.00.
Hampton Redevelopment & Housing Authority, P.O. Box 280, 22 Lincoln Street, Hampton, VA 23669, *Amount Awarded:* $8,016.00.
Harford County, 15 South Main Street—Suite 106, Harford County, Bel Air, MD 21014, *Amount Awarded:* $15,959.00.
Harlem Park Revitalization Corporation, 1017 Edmondson Avenue, Baltimore, MD 21223, *Amount Awarded:* $12,160.00.
Hispanic American Organization, 136 S. 4th Street, Allentown, PA 18102, *Amount Awarded:* $14,232.00.
Home Partnership, Inc., 1221 B Brass Mill Road, Belcamp, MD 21017, *Amount Awarded:* $11,470.00.
Housing Association of Delaware Valley, 1500 Walnut Street, Suite 601, Philadelphia, PA 19102, *Amount Awarded:* $10,434.00.
Housing Authority of the County of Butler, 114 Woody Drive, Butler, PA 16001, *Amount Awarded:* $16,649.00.
Housing Coalition of Central Jersey, 78 New Street, New Brunswick, NJ 08901, *Amount Awarded:* $14,923.00.
Housing Consortium for Disabled Individuals, 4040 Market Street, Philadelphia, PA 19104, *Amount Awarded:* $16,995.00.
Housing Council Of York, Inc., 116 North George Street, York County, York, PA 17401, *Amount Awarded:* $19,425.00.
Housing Counseling Services, Inc., 2430 Ontario Road N.W., Washington, DC 20009, *Amount Awarded:* $14,232.00.
Housing Initiative Partnership, Inc., 4310 Gallatin Street, 3rd Floor, Hyattsville, MD 20781, *Amount Awarded:* $17,685.00.
Housing Opportunity Made Equal, 2201 West Broad St—Suite 200, Richmond, VA 23220, *Amount Awarded:* $20,500.00.
Housing Partnership for Morris County, Inc., 22 East Blackwell Street, Dover, NJ 07801, *Amount Awarded:* $20,150.00.
Isles Inc., 10 Wood Street, Trenton, NJ 08618, *Amount Awarded:* $16,304.00.
Jamaica Housing Improvement, Inc 161–10 Jamaica Avenue, Suite 601, Jamaica, NY 11432, *Amount Awarded:* $19,067.00.
Jersey Counseling and Housing Development, Inc., 1840 South Broadway, Camden City, NJ 08104, *Amount Awarded:* $8,362.00.
Kanawha Institute for Social Research and Action, 124 Marshall Avenue, Dunbar, WV 25064, *Amount Awarded:* $20,500.00.
Long Island Housing Services, Inc., 3900 Veterans Memorial Highway-Suite 251, Bohemia, NY 11716, *Amount Awarded:* $20,500.00.
Lutheran Housing Corporation, 13944 Euclid Avenue, Suite 208, East Cleveland, OH 44112, *Amount Awarded:* $10,779.00.
Lynchburg Community Action Group, Inc, 926 Commerce Street, Lynchburg, VA 24504, *Amount Awarded:* $16,649.00.
Margert Community Corporation, 1931 Mott Avenue, Room 412, Far Rockaway, NY 11691, *Amount Awarded:* $19,067.00.
Marshall Heights Community Dev., Org, 3939 Benning Road NE, Washington, DC 20019, *Amount Awarded:* $19,067.00.
Maryland Rural Development Corporation, P.O. Box 4848, Annapolis, MD 21403, *Amount Awarded:* $15,613.00.
Metro Interfaith Services, Inc. 21 New Street, Binghamton, NY 13903, *Amount Awarded:* $10,000.00.
Michigan Housing Counselors, Inc., 237 S.B. Gratiot Avenue, Mt. Clemens, MI 48043, *Amount Awarded:* $15,959.00.

Middle East Community Development Corp., 730 North Collington Avenue, Baltimore, MD 21205, *Amount Awarded:* $13,196.00.
Monmouth County Board of Chosen Freeholders, P.O. Box 1255, Freehold, NJ 07728, *Amount Awarded:* $14,578.00.
NCALL Research, Inc., 20 East Division Street, P.O. Box 1092, Dover, DE 19903–1092, *Amount Awarded:* $19,425.00.
Near Northeast Community Improvement Corporation, 1326 Florida Avenue—N.E., Washington, DC 20002, *Amount Awarded:* $17,685.00 .
Neighborhood House, Inc., 1218 B Street, New Castle County, Wilmington, DE 19801, *Amount Awarded:* $14,578.00.
Neighborhood Housing Services of New Britain, Inc, 223 Broad Street, New Britian, CT 06053, *Amount Awarded:* $17,340.00.
Neighborhood Housing Services of NYC, 121 W. 27th Street, 4th Floor, New York, NY 10001, *Amount Awarded:* $19,067.00.
Neighbors Helping Neighbors, Inc., 443 39th Street, Brooklyn, NY 11232, *Amount Awarded:* $19,425.00.
Northfield Community LDC of SI, Inc., 160 Heberton Avenue, Staten Island, NY 10302, *Amount Awarded:* $19,425.00.
Northwest Counseling Service, Inc., 5001 North Broad Street, Philadelphia, PA 19141, *Amount Awarded:* $17,685.00.
Oakland County Michigan, 1200 North Telegraph Road Oakland County, Pontiac, MI 48341–9901, *Amount Awarded:* $13,542.00.
Office of Human Affairs, 6060 Jefferson Avenue, Suite 12C, P.O. Box 37, Newport News, VA 23607, *Amount Awarded:* $11,470.00.
Open Housing Center, Inc., 45 John Street, Suite #308, New York, NY 10038, *Amount Awarded:* $17,340.00.
Opportunities for Chenango, Inc., P.O. Box 470, 44 West Main Street, Norwich, NY 13815–0470, *Amount Awarded:* $11,280.00.
People Incorporated of Southwest Virginia, 1173 West Main Street, Abington, VA 24210,*Amount Awarded:* $10,000.00.
Philadelphia Council for Community Advancement, 100 North 17th Street, Suite 700, Philadelphia, PA 19107, *Amount Awarded:* $19,425.00.
Phoenix Non-Profit Housing Corp., 1640 Porter Street, Detroit, MI 48216, *Amount Awarded:* $5,599.00.
Piedmont Housing Alliance, 515 Park Street, Charlottesville, VA 22902, *Amount Awarded:* $14,578.00.
Plymouth Redevelopment Authority, 11 Lincoln Street, Plymouth, MA 02360, *Amount Awarded:* $20,500.00.
Prince William County, 8033 Ashton Avenue, Suite 105, Manassas, VA 20109, *Amount Awarded:* $18,721.00.
Putnam County Housing Corporation, 11 Seminary Hill Road, Carmel, NY 10512, *Amount Awarded:* $20,500.00.
Quincy Community Action Programs, Inc., 1509 Hancock Street, Norfolk County, Quincy, MA 02169, *Amount Awarded:* $10,500.00.
Rockland Housing Action Coalition, Inc, 747 Chestnut Street, Chestnut Ridge, NY 10977, *Amount Awarded:* $19,425.00.
Rural Sullivan County Housing Opp., Inc, P.O. Box 1497, Monticello, NY 12701, *Amount Awarded:* $15,000.00.
Rural Ulster Preservation Company, Inc., 289 Fair Street, Ulster County, Kingston, NY 12401, *Amount Awarded:* $18,000.00.
Schuylkill Community Action, 225 North Centre Street, Pottsville, PA 17901, *Amount Awarded:* $18,000.00.
Senior Citizens United Community Services of CC, Inc, 146 Black Horse Pike, Mt. Ephraim, NJ 08059, *Amount Awarded:* $15,268.00.
Shore Up!, Inc., 520 Snow Hill Road, P.O. Box 430, Salisbury, MD 21803, *Amount Awarded:* $15,613.00.
Skyline Cap, Inc, P.O. Box 588, Madison, VA 22727, *Amount Awarded:* $8,362.00.
Somerset County Coalition on Affordable Housing, One West Main Street, 2nd Floor, Somerville, NJ 08876, *Amount Awarded:* $18,376.00.
Southern Maryland Tri-County Community Action Committee, Inc, P.O. Box 280, Hughesville, MD 20637, *Amount Awarded:* $11,124.00.
Southside Community Development & Housing Corp., 1624 Hull Street, Richmond, VA 23224, *Amount Awarded:* $10,088.00.
St. Ambrose Housing Aid Center, 321 East 25th Street, Baltimore, MD 21218, *Amount Awarded:* $20,500.00.
St. James Community Development Corporation, 260 Broadway, Suite 300, Newark, NJ 07104, *Amount Awarded:* $10,088.00.
Tabor Community Services Inc, 439 East King St., Lancaster, PA 17602, *Amount Awarded:* $19,425.00.
Telamon Corporation, 4913 Fithzhugh Avenue, Suite 202, Richmond, VA 23230, *Amount Awarded:* $13,887.00.
The Housing Council in the Monroe County Area., 183 East Main Street, Suite 1100, Rochester, NY 14604, *Amount Awarded:* $20,150.00.
The Southeastern Tidewater Opportunity Project, Inc., 2551 Almeda Avenue, Norfolk, VA 23513, *Amount Awarded:* $8,016.00.
The Trehab Center, 10 Public Avenue, P.O. Box 366, Montrose, PA 18801, *Amount Awarded:* $19,425.00.
Total Action Against Poverty (TAP), 145 Campbell Avenue, S.W., Roanoke, VA 24001–2868, *Amount Awarded:* $17,340.00.
Trcil Services, Inc., 900 Rebecca Avenue, Wilkinsburg, PA 15221, *Amount Awarded:* $8,362.00.
Tri-Churches Housing, Inc., 815 Scott Street, Baltimore, MD 21230, *Amount Awarded:* $15,000.00.
Tri-County Community Action Agency, Inc., 110 Cohansey Street, Bridgeton, NJ 08302, *Amount Awarded:* $8,707.00.
United Neighborhood Centers of Lackawanna County, Inc., 410 Olive Street, Scranton, PA 18509, *Amount Awarded:* $14,923.00.
Universal Credit Consulting Services, Inc., 531 Market Street, Zanesville, OH 43701–3610, *Amount Awarded:* $8,016.00.
University Legal Services, 300 I Street, NE, Suite 202, Washington, DC 20002, *Amount Awarded:* $18,376.00.
Urban League of Rhode Island, Inc., 246 Prairie Avenue, Providence County, Providence, RI 02905, *Amount Awarded:* $19,425.00.
Urban League of Union County, Inc., 272 North Broad St., Elizabeth, NJ 07207, *Amount Awarded:* $12,506.00.
Washington County Community Action Council, Inc., 101 Summit Avenue, Hagerstown, MD 21740, *Amount Awarded:* $15,954.00.
Washtenaw Homebuyers Program, 2301 Platt Road, Ann Arbor, MI 48014, *Amount Awarded:* $3,873.00.
Westchester Residential Opportunities, Inc, 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605, *Amount Awarded:* $20,500.00.
YWCA of New Castle County, 233 King Street, Wilmington, DE 19801, *Amount Awarded:* $19,425.00.

Santa Ana (HOC)
Administration of Resources and Choices, 209 South Tucson Blvd., P.O. Box 86802, Tucson, AZ 85754, *Amount Awarded:* $22,655.00.
CCCS of Alaska, 208 East 4th Avenue, Anchorage, AK 99501, *Amount Awarded:* $46,422.00.
CCCS of Central Valley Inc., 4969 E. McKinley, Suite #107, Fresno, CA 93727, *Amount Awarded:* $41,260.00.
CCCS of East Bay, 333 Hegenberger Rd, Suite 710, Oakland, CA 94621, *Amount Awarded:* $62,965.00.
CCCS of Los Angeles, 500 Citadel Drive, Suite 300, Los Angeles, CA 90040, *Amount Awarded:* $18,004.00.
CCCS of Mid Counties, 2575 Grand Canal Blvd., Suite 100, Stockton, CA 95207, *Amount Awarded:* $19,043.00.
CCCS of Orange County, P.O. Box 11330, 1920 Old Tustin Avenue, Santa Ana, CA 92711–1330, *Amount Awarded:* $55,725.00.
CCCS of San Diego and Imperial Counties, 1550 Hotel Circle N. Suite 110, San Diego, CA 92108–2907, *Amount Awarded:* $20,593.00.
CCCS of South Nevada, 3650 S. Decatur, Suite 30, Las Vegas, NV 89103, *Amount Awarded:* $42,810.00.
Central Oregon Comm Action Agency Network, 2303 SW First Street, Redmond, OR 97756, *Amount Awarded:* $35,000.00.
Chicanos Por La Causa, Inc., 1112 East Buckeye Road, Phoenix, AZ 85034, *Amount Awarded:* $43,849.00.
City of Anaheim Housing Authority, 201 S. Anaheim Blvd., Ste. 203, Anaheim, CA 92805, *Amount Awarded:* $13,864.00.
City of Vacaville, Office of Housing and Redevelopment, 40 Eldridge Avenue, Suite 2, Vacaville, CA 95688, *Amount Awarded:* $39,198.00.
Community Action Agency, 124 New 6th Street, Lewiston, ID 83501, *Amount Awarded:* $19,554.00.
Community Housing & Credit Counseling Center (CHCCC), 1001 Willow St., Chico, CA 95928, *Amount Awarded:* $35,058.00.
Community Housing & Shelter Services, PO Box 881, Modesto, CA 95353, *Amount Awarded:* $33,507.00.
Community Housing Resource Center, 5212 NE St. John Road, Suite B, Vancouver, WA

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98668–6248, *Amount Awarded:* $58,826.00.
County of Santa Cruz Housing Authority, 2160 41st Avenue, Capitola, CA 95010–2060, *Amount Awarded:* $16,965.00.
Eden Council for Hope and Opportunity, 770 A Street, Hayward, CA 94541, *Amount Awarded:* $25,500.00.
Fair Housing Council of Orange County, 201 So Broadway, Santa Ana, CA 92701, *Amount Awarded:* $44,872.00.
Family Housing Resources, Inc., 3777 East Broadway, Suite 100, Tucson, AZ 85716, *Amount Awarded:* $25,000.00.
Fremont Public Association, P.O. Box 31151, Seattle, WA 98103, *Amount Awarded:* $50,000.00.
Inland Fair Housing and Mediation Board, 1005 Begonia Avenue, Ontario, CA 91762, *Amount Awarded:* $61,415.00.
Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813, *Amount Awarded:* $11,802.00.
Neighborhood House Association, 5660 Copley Drive, San Diego, CA 92111, *Amount Awarded:* $47,973.00.
Open Door Counseling Social Service, 34420 SW Tualatin Valley Highway, Hillsboro, OR 97123, *Amount Awarded:* $44,872.00.
Pacific Community Services, Inc., 329 Railroad Avenue, Pittsburg, CA 94566, *Amount Awarded:* $67,105.00.
Pierce County Department of Community Services, 8811 South Tacoma, Lakewood, WA 98499, *Amount Awarded:* $30,000.00.
Project Sentinel, 430 Sherman Avenue, Ste 308, Palo Alto, CA 94306, *Amount Awarded:* $41,771.00.
Sacramento Neighborhood Housing Services, Inc., 3453 5th Avenue, Sacramento, CA 95817, *Amount Awarded:* $43,849.00.
San Diego Home Loan Counseling Service, 3180 University Avenue, Ste 430, San Diego, CA 92104, *Amount Awarded:* $44,872.00.
Southeastern Arizona Government Organization, 118 Arizona Street, Bisbee, AZ 85603, *Amount Awarded:* $5,601.00.
Spokane Neighborhood Action Program, 2116 East First Avenue, Spokane, WA 99202, *Amount Awarded:* $64,004.00.
Springboard, Non-Profit Consumer Credit Mgmt., 6370 Magnolia Avenue, Suite 200, Riverside, CA 92506, *Amount Awarded:* $3,539.00.
Umpqua Community Action Network, 2448 West Harvard, Roseburg, OR 97470, *Amount Awarded:* $20,000.00.
Washoe County Department of Senior Services, 1155 East Ninth Street, Reno, NV 89512, *Amount Awarded:* $18,515.00.
Washoe Legal Services, 650 Tahoe Street, Reno, NV 89509, *Amount Awarded:* $34,546.00.
Women's Development Center, 953 E. Sahara Suite #201, Las Vegas, NV 89104, *Amount Awarded:* $34,019.00.

Appendix B

NonCompetitive Awards

Home Equity Conversion (HECM) Counseling

American Association of Retired Persons (AARP), 601 E Street, NW, Washington, DC 20049, *Amount Awarded:* $584,500.

Native American Grants

Navajo Partnership for Housing, Inc., P.O. Box 1370, St. Michaels, AZ 86511, *Amount Awarded:* $20,800.
Native American Housing Services, Inc., 132 E. Broadway, Suite 1, Anadarko, OK 73005, *Amount Awarded:* $20,800.
Nez Perce Tribal Housing Authority, P.O. Box 188, Lapwai, ID 83540, *Amount Awarded:* $20,800.
Sault Tribe Housing Authority, Homeownership Opportunities Program, 2218 Shunk Road, Sault Ste. Marie, MI 49783, *Amount Awarded:* $20,800.
Sicangu Enterprise Center, P.O. Box 205, Sicangu Lakota Nation, Mission, SD 57555, *Amount Awarded:* $20,800.
Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Washington, DC 20005, *Amount Awarded:* $25,000.

[FR Doc. 02–1029 Filed 1–15–02; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

The proposal for the information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore comments on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Visitor knowledge and economic impact at Arapaho, Arrowwood and Sand Lake National Wildlife Refuges.

OMB Approval No.: New collection.

Abstract: The National Wildlife Refuge System Improvement Act of 1997 requires that all refuges will be managed in accordance with an approved Comprehensive Conservation Plan (CCP) which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the Wilderness Preservation System; and meet other mandates. An underlying component of these plans is a strong scientific foundation for establishment for refuge objectives, implementation of management actions, and quantitative monitoring of progress towards these objectives. Few studies have been conducted that evaluate public knowledge, perception, or economic value associated with National Wildlife Refuges. Information about the existing community, economic, and public relations status is a precursor to many of the habitat and visitor management decisions. The primary objective of this study is to gain sufficient knowledge about refuge visitors. Our second objective is to develop and test a set of tools that can be used/repeated at other refuges around the country. Understanding public knowledge, perception, and values is a vital component of natural resource management. Improved understanding will guide future management practices.

Bureau Form No.: None.

Frequency: One time.

Description of Respondents: A sample of visitors to Arapaho, Arrowwood, and Sand Lake National Wildlife Refuges.

Estimated Completion Time: 15 minutes per respondent (approximate).

Number of Respondents: 600 (200 per refuge).

Burden Hours: 150 hours (The burden estimates are based on 15 minutes to complete each questionnaire and an 70% return rate.)

For Further Information Contact: Phadrea Ponds (970) 226–9445, *phadrea ponds@usgs.gov*.

Dated: September 24, 2001.
Dennis B. Fenn,
Associate Director for Biology.
[FR Doc. 02–1071 Filed 1–15–02; 8:45 am]
BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–912–6320–AA; GP2–0062]

Meeting for the Five Western Oregon BLM Resource Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the five western Oregon Bureau of Land Management (BLM) Resource Advisory Committees under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the five western Oregon BLM Resource Advisory Committees including the Coos Bay, Eugene, Medford, Roseburg and Salem Districts pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the BLM Resource Advisory Committees include operating procedures, establishing roles and responsibilities, selection of a chairperson, Federal travel regulations, facilitation needs, as well as future meeting dates. Follow-up meetings will address projects to proposed for funding under Title II of the Act.

DATES: The BLM Resource Advisory Committees will meet on the following dates: The Coos Bay Resource Advisory Committee will meet at the BLM Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459, 9 a.m. to 3 p.m., on February 22, 2002 and 9 a.m. to 3 p.m., on March 7, 2002.

The Eugene Resource Advisory Committee will meet at the BLM Eugene District Office, 2890 Chad Drive, Eugene, Oregon 97440, 9 a.m. to 3 p.m., on February 28, 2002 and 9 a.m. to 3 p.m., on March 14, 2002.

The Medford Resource Advisory Committee will meet at the BLM Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, 10 a.m. to 4 p.m., on February 14, 2002 and 10 a.m. to 4 p.m. March 27, 2002.

The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306, 9 a.m. to 3 p.m., on February 1, 2002 and 9 a.m. to 3 p.m., on March 1, 2002

The Roseburg Resource Advisory Committee will meet at the BLM Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, Oregon 97470, 9 a.m. to 4 p.m., on February 11, 2002 and 9 a.m. to 4 p.m., on February 25, 2002.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the BLM Resource Advisory Committees may be obtained from Maya Fuller, Public Affairs, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (503) 952–6437, or *maya_fuller@or.blm.gov*, or on the Web at *www.or.blm.gov*.

Dated: December 21, 2001.
Chuck Wassinger,
Associate State Director.
[FR Doc. 02–984 Filed 1–15–02; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0107).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Designation of Royalty Payment Responsibility."

DATES: Submit written comments on or before March 18, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385, email *Carol.Shelby@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: Designation of Royalty Payment Responsibility.

OMB Control Number: 1010–0107.

Bureau Form Number: MMS–4425.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, established that owners of operating rights or lease record title (referred to as "lessees") are responsible for making royalty and related payments on Federal oil and gas leases. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. These RSFA requirements are codified in 30 CFR 218.52.

MMS designed Form MMS–4425, Designation Form, to contain all the information necessary for lessees to comply with these RSFA requirements. We are proposing a minor revision to Form MMS–4425 to remove the field for revenue source code. This revision is necessary to make Form MMS–4425 compatible with other recently revised

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forms such as the Form MMS–2014, Report of Sales and Royalty Remittance. These revisions are the result of a major reengineering of MMS's financial and compliance processes and the procurement of a new computer system.

Submission of the information in this collection is necessary to comply with RSFA requirements to notify MMS in writing when a lessee wishes to designate a designee. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1,600 oil and gas lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,200 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request.

Public Comment Policy. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 16, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–1060 Filed 1–15–02; 8:45 am]

BILLING CODE 4310–MR–W

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–986 and 987 (Preliminary)]

Ferrovanadium From China and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and South Africa of ferrovanadium, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in these investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

These investigations are being instituted in response to a petition filed on November 26, 2001, by the Ferroalloys Association Vanadium Committee and its members Bear Metallurgical Co., Butler, PA, Shieldalloy Metallurgical Corp., Cambridge, OH, Gulf Chemical & Metallurgical Corp., Freeport, TX, U.S. Vanadium Corp., Danbury, CT, and CS Metals of Louisiana LLC, Convent, LA.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 30, 2001 (66 FR 59815). The conference was held in Washington, DC, on December 17, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 10, 2002. The views of the Commission are contained in USITC Publication 3484 (January 2002), entitled Ferrovanadium from China and South Africa: Investigations Nos. 731–TA–989 and 987 (Preliminary).

Issued: January 10, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1124 Filed 1–15–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation 332–435]

Tools, Dies, and Industrial Molds: Competitive Conditions in the United States and Selected Foreign Markets

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: January 10, 2002.

SUMMARY: Following receipt of a request on December 21, 2001, from the Committee on Ways and Means of the U.S. House of Representatives, the Commission instituted investigation No. 332–435, Tools, Dies, and Industrial Molds: Competitive Conditions in the United States and Selected Foreign Markets, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Dennis Fravel, Project Leader (202–205–3404; *fravel@usitc.gov*) or Harry Lenchitz, Deputy Project Leader (202–205–2737; *lenchitz@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by the Committee, the Commission will provide information, to the extent possible, for the most recent five-year period regarding the following:

1. A profile of the U.S. tool, die, and industrial mold industries.

2. Changes in marketing and manufacturing processes, and trends in U.S. production, consumption, and trade.

3. A global market overview and assessment of foreign markets and significant foreign industries, including those in China, Taiwan, Japan, Canada, Mexico, and European Union member countries.

4. A comparison of the strengths and weaknesses of U.S. and foreign producers regarding factors of competition such as production costs, labor costs, availability of skilled/experienced labor force, level of technology in the design and manufacturing process, availability of capital, transportation costs, pricing, product quality and after-sales service, and government programs assisting these industries.

5. The principal challenges and potential implications for the industries over the near term. As requested by the Committee, the Commission plans to submit its report to the Committee by October 21, 2002.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on May 21, 2002. All persons shall have the right to appear, by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., May 7, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 9, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 30, 2002. In the event that, as of the close of business on May 7, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1806) after May 7, 2002, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 30, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Tools, dies, industrial molds, competitiveness, and imports.

Issued: January 11, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1123 Filed 1–15–02; 8:45 am]

BILLING CODE 7020–02–P

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DEPARTMENT OF JUSTICE

Provision of Aviation Training to Certain Alien Trainees

AGENCY: Department of Justice.

ACTION: Notice of advance consent for providing aviation training to certain alien trainees.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act (ATSA), training providers subject to regulation by the Federal Aviation Administration (FAA) are prohibited from providing training to aliens in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General. This notice temporarily grants advance consent for the training of certain categories of aliens, without requiring that they provide identifying information to the Attorney General, based on a provisional finding that they do not constitute a risk to aviation or national security at this time.

DATES: This notice is effective January 15, 2002 and remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Steven C. McCraw, Director, Foreign Terrorist Tracking Task Force, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Telephone (703) 414–9535.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), Pub. L. 107–71. Upon enactment, section 113 of the ATSA imposed new constrictions on persons subject to regulation under Title 49 subtitle VII part A, United States Code, with respect to providing aviation training to aliens. Persons subject to regulation under Title 49 subtitle VII Part A, United States Code, include individual training providers, certificated carriers, and flight schools (hereinafter collectively referred to as "training providers"). Pursuant to section 113, training providers must provide the Attorney General with the alien's identification in such form as the Attorney General may require in order to initiate a security risk assessment by the Department of Justice. After notification, the Attorney General then has 45 days to inform the training provider that the alien should not be given the requested training because he or she presents a risk to aviation or national security. If the Attorney General does not indicate that the person is a risk within this 45-day review period, then the training provider may proceed with training. The ATSA, however, permits the Attorney General to interrupt training if he later determines that the alien poses a risk to aviation or national security. The Attorney General has delegated his authority under Section 113 to the Director of the Foreign Terrorist Tracking Task Force.

The Department recognizes that section 113 of the ATSA became immediately effective, and that training providers have been forced to suspend the training of aliens covered by the ATSA pending the implementation of the process for notification to the Attorney General. The Department plans to issue any necessary implementing regulations as soon as possible. However, because the suspension of training imposes a substantial economic burden on regulated training providers, the Department is granting provisional advance consent, effective immediately, for training providers to resume aviation training for certain categories of aliens who appear to pose a risk to aviation and national security which is sufficiently minimal that the Department would not deny them training. In addition, section 113 also permits the Under Secretary of Transportation for Security to specify other individuals for whom the Department should conduct security risk assessments. At this time, however, no other individuals have been specified. The Department plans to publish implementation procedures shortly to provide a means by which training providers may notify the Attorney General with respect to covered individuals seeking aviation instruction who are not eligible for advance consent in order to initiate the Department of Justice's 45-day review period.

Provisional Advance Consent for the Training of Certain Aliens

The Department believes that the primary intent of Congress regarding the enactment of this statute was to prevent potentially dangerous aliens from being taught how to pilot aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Based on that standard, it appears that certain categories of aliens pose little such risk. For example, currently licensed pilots who seek recurrent training already know how to fly the aircraft for which they wish to maintain proficiency. Denying such retraining would appear to offer no benefit to aviation or national security. Indeed, the purpose behind recurrent training is to make flying safer for the public. The Department has identified several similar classes of aliens who appear not to pose the risk to aviation or national security contemplated by Congress in section 113 of the ATSA. The Department will revisit this provisional advance consent when it promulgates any necessary implementing regulations to determine whether these pilots should continue to be granted advance consent.

Accordingly, effective immediately and until further notice, the Department is granting a provisional advance consent for the training of the following three categories of aliens, based on an initial determination that they do not appear to pose a risk to aviation or national security:

(1) Foreign nationals who are currently employed by U.S. air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Foreign nationals employed by foreign air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates and ratings recognized by the United States; and

(3) Commercial, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who must receive familiarization training on a particular aircraft in order to transport it to the purchaser.

Determination of Status as a U.S. Citizen or National or as an Alien

Section 113 of the ATSA applies to all aliens as defined in section 101(a)(3) of the Immigration and Nationality Act, but does not currently apply to citizens or nationals of the United States. Accordingly, training providers must make a determination as to whether or not a prospective trainee is an alien. If the prospective trainee establishes that he or she is a citizen or national of the United States, the restrictions of section 113 do not apply.

Training providers should require appropriate proof of citizenship or nationality from all trainees who claim to be citizens or nationals of the United States, before commencing aviation training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. This requirement is necessary to prevent aliens from falsely claiming to be United States citizens or nationals in order to evade the Department's security risk assessment.

The Department believes that the following documents are sufficient to establish proof of citizenship or nationality:

(1) A valid, unexpired United States passport;

(2) An original birth certificate with raised sea documenting birth in the United States or one of its territories;

(3) An original U.S. naturalization certificate with raised seal, Form N–550 or Form N–570;

(4) An original certification of birth abroad, Form FS–545 or Form DS–1350; or

(5) An original certificate of U.S. citizenship, Form N–560 or Form N–561.

If a training provider has questions about the documents above or any other documentation presented by a person who claims to be a citizen or national of the United States, the training provider may seek further guidance from the Department or the Immigration and Naturalization Service.

Commencement of Aviation Training for Aliens Granted Advance Consent

After a training provider reasonably determines that a prospective alien trainee falls within one of the three advance consent categories, the training provider may proceed with training the alien immediately and does not have to submit any identifying information to the Department. The training provider, however, should retain records to document how the training provider made the determination that the alien was eligible for advance consent. Appropriate measures will be taken by the Department with respect to any alien who is determined to pose a risk to aviation or national security. Available civil and/or criminal penalties will be pursued with respect to any training provider who knowingly or negligently provides training to aliens not covered by this notice.

Dated: January 14, 2002.

Steven C. McCraw,

Director, Foreign Terrorist Tracking Task Force.

[FR Doc. 02–1250 Filed 1–14–02; 2:51 pm]

BILLING CODE 4410–19–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on January 3, 2002, a proposed consent decree in *United States* v. *American Allied Additives, Inc., et al.*, No. 00–01014, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree would resolve the United States' claims against defendant Advanced Chemical Design, Inc. under CERCLA Sections 106 and 107, 42 U.S.C. 9606 and 9607, in connection with the American Allied Additives Superfund Site ("Site") in Cleveland, Ohio. The proposed consent decree would also resolve Advanced Chemical Design's counterclaim against the United States alleging a taking of private property in violation of the Fifth Amendment to the United States Constitution.

The U.S. Environmental Protection Agency ("EPA") incurred unreimbursed costs of approximately $148,000 in responding to the release or threatened release of hazardous substances at the Site. Advanced Chemical Design is liable for response costs at the Site as a generator of waste disposed there and is subject to civil penalties as a result of noncompliance with a Unilateral Administrative Order issued by EPA for the performance of an emergency removal at the Site.

Under the proposed consent decree, Advanced Chemical Design agrees to pay a total of $1,000 ($300 for the claim under CERCLA Section 106, and $700 for the claim under CERCLA Section 107) within thirty (30) days of entry of the consent decree. Advanced Chemical Design also agrees to dismiss with prejudice its counterclaim against the United States. In exchange, Advanced Chemical Design will receive a covenant not to sue for Site response costs, and for civil penalties for the violations alleged in the complaint. Advanced Chemical Design will also receive contribution protection for Site response costs.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments related to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to *United States* v. *American Allied Additives, Inc., et al.*, Civil Action No. 00–01014; D.J. Ref. No. 90–11–2–1318.

The consent decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, Cleveland, Ohio 44114, and at the U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $5.75 (23 pages at 25 cents per page reproduction cost), and please refer to *United States* v. *American Allied Additives, Inc., et al.*, Civil Action No. 00–01014; D.J. Ref. No. 90–11–2–1318.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1150 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a partial consent decree in *United States* v. *American Scrap Company*, Civil Action No. 1:99–CV–2047, was lodged with the United States District Court for the Middle District of Pennsylvania on October 1, 2001. This notice was previously published in the **Federal Register** on October 15, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in mail service to the Department of Justice, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been delivered to the Department of Justice. As a result, the United States is providing this opportunity for any persons who previously submitted comments to resubmit their comments as directed below.

The Partial Consent Decree resolves the United States' claims against Chemung Supply Corporation ("Settling Defendant") under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania. The Partial Consent Decree requires the Settling Defendant to pay $210,000.00 in past response costs.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree that were previously submitted during the original comment period. Any persons who previously submitted comments should resubmit those comments by facsimile (at 202–

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616–6583) to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. The comments should refer to *United States* v. *American Scrap Company*, DOJ #90–11–2–911/1.

Alternatively, the comments may be mailed to the Office of the United States Attorney, ATTN: Anne Fiorenza, 228 Walnut Street, Harrisburg, PA 17108.

Copies of the proposed Partial Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108, and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed Partial Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. When requesting a copy of the proposed Partial Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $6.00, and reference *United States* v. *American Scrap Company*, DOJ # 90–11–2–911/1.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1152 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, Clean Water Act, RCRA, CERCLA and EPCRA

Under 28 CFR 50.7, notice is hereby given that on December 28, 2001, a Consent Decree in *United States of America* v. *ATOFINA Chemicals, Inc.*, Civil Action No. 01–7807, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In the Complaint, the United States seeks injunctive relief and civil penalties against ATOFINA Chemicals, Inc. (hereinafter, "ATOFINA"), pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), section 309 of the Clean Water Act, 33 U.S.C. 1319, and the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. 6901 *et seq.* for alleged violations at ATOFINA's chemical product manufacturing facilities in Axis, Alabama, Calvert City and Carrollton, Kentucky, Beaumont and Houston, Texas, and Piffard, New York.

Under the settlement, ATOFINA will install pollution control technologies to reduce emissions of volatile organic compounds ("VOCs") from process units at its Calvert City and Carrollton Kentucky facilities. In addition, ATOFINA will undertake various remedial measures to ensure compliance with the Clean Water Act. The settlement requires ATOFINA to pay a civil penalty of $1.9 million, and perform supplemental environmental projects totaling approximately $300,000.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.*, v. *ATOFINA Chemicals, Inc.*, D.J. Ref. 90–7–1–06426.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $12.50 (25 cents per page reproduction cost) payable to the Consent Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1113 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Chevron Environmental Management Co., et al.*, No. CV 01–11162 MMM (JWJx), was lodged on December 28, 2001, with the United States District Court for the Central District of California, Western Division.

In a complaint filed concurrently with the lodging of the consent decree, the United States, the State of California, and the California Hazardous Substance Account, seek injunctive relief for performance of response actions and reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") and by the California Department of Toxic Substances Control ("DTSC"), pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 96060, 9607, in response to releases of hazardous substances at the Operating Industries, Inc. ("OII") Superfund site in Monterey Park, California. Under the proposed consent decree, the settling defendants have agreed to pay response costs and fund and perform future response actions at the OII Site.

Overall this consent decree has a combined value of approximately $340 million, contributed by the respective parties in cash, or work commitments and reimbursement of past response costs. The settlement addresses the full implementation of the final remedy at the Site. Under this settlement, Work Defendants will perform the Work required by the consent decree, valued at approximately $297 million ($262 million in work plus $25 million in future oversight costs), which will be funded through Work Defendant contributions, payments by Cash Defendants and escrow accounts established under prior settlements or to be established under this settlement. EPA will receive approximately $10 million to be placed in a Special Account, which is available to pay for Excluded Work. The settlement also includes an agreement by the United States Navy to pay approximately $1 million to resolve the Navy's potential liability at the OII site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Chevron Environmental Management Co. et al.*, DOJ Ref.#90–11–2–156/4. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at the EPA Region 9 Superfund Records Center, 75 Hawthorne Street, Fourth Floor, San Francisco, California 94015, and at the Office of the United States Attorney for the Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. A copy of the proposed consent decree may be also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $250.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of the defendants' signature pages and the attachments, may be obtained for $54.50.

Catherine McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1114 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Town of Greenwich*, No. 01–CV–2424 (D. Conn.), was lodged with the United States District Court for the District of Connecticut on December 27, 2001, pertaining to the payment of a civil penalty and injunctive relief, in connection with the Town of Greenwich's (Town) violations of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, and National Pollution Discharge Elimination System (NPDES) permit, issued to the Town under the CWA.

Under the proposed consent decree, the Town will pay a civil penalty of $285,000, to be shared equally between the United States and the State of Connecticut, a co-plaintiff in the case, and will perform injunctive relief to evaluate and rehabilitate its wastewater collection, storage, and transmission system. The Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Town of Greenwich*, No. 01–CV–2424 (D. Conn.), and DOJ Reference No. 90–5–1–1–06717.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the District of Connecticut, 157 Church St., 23rd floor, New Haven, Connecticut 06510, (203) 821–3700; and (2) the United States Environmental Protection Agency (Region 1), One Congress Street, Boston, MA 02114 (contact Karen McGuire in the Office of Regional Counsel). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $20.75 (with attachments) or $8.50 (without attachments) (83 pages with attachments or 34 pages without attachments at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1115 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

Under 42 U.S.C. 9622, notice is hereby given that on December 17, 2001, a proposed Consent Decree in *United States* v. *City of Jacksonville, et al.*, Civil Action No. 3:01cv1424J 21TEM was lodged with the United States District Court for the Middle District of Florida, Jacksonville Division.

In this action, the United States seeks reimbursement of response costs, performance of injunctive relief, and payment of natural resource damages pertaining to the Whitehouse Oil Pits Site in Whitehouse, Florida. The United States alleges that the defendants are liable under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, because they operated the site at the time of a disposal of hazardous substances, or they sent hazardous substances to the site for disposal. The defendants in this action are: City of Jacksonville, Florida, Anchor Glass Container Corp., BP America, Inc., Chevron Environmental Management Co., Chevron USA, Inc., City of Starke, Florida, CSX Transportation, Inc., David J. Joseph Company, Exxon Mobil Corporation, Florida East Coast Railway, Norfolk Southern Railway, Ryder Truck Rental, Inc., USA Petroleum Corporation, Viacom, Inc., Western Auto Supply Company.

In settlement of the claims raised in the Complaint, a group of defendants will perform remedial work at the site. This work generally requires the installation of a vertical barrier to isolate contaminated soil, sludge, and groundwater; installation of a lime "curtain" inside the barrier to adjust groundwater pH; a cap over portions of the site; and realignment of McGirts Creek so that it runs farther away from the site. The work is expected to cost approximately $14,067,054, including operation, maintenance, and oversight by the United States Environmental Protection Agency. Other defendants will contribute to the cost of the remedy, as will the United States government and parties who are settling their liability under a separate administrative settlement. The defendants are also paying $77,000 to settle the claim for natural resource damages.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Michael Stephenson, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *City of Jacksonville, et al.*, DOJ No. 90–11–3–1588. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District

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of Florida, 200 West Forsyth Street, Suite 700, Jacksonville, Florida, and at the Region 4 office of the Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $55.00 to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *City of Jacksonville, et al.*, DOJ No. 90–11–3–1588. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1116 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Republication of Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Under 28 CFR 50.7 notice is hereby given that on September 27, 2001, a proposed Consent Decree ("Consent Decree") in *United States of America* v. *Knauf Fiber Glass GmbH*, Civil Cause No.: IP–01–1445–CV–B/S was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division.

Notice of the lodging of this Amended Consent Decree was first published by the Department of Justice in the **Federal Register** of October 15, 2001 (66 FR 52449–52450). The Department of Justice is republishing the Notice of Lodging because mail delivery problems associated with anthrax mailings to government offices have precluded the Department of Justice's receipt of public comments. To avoid additional delays related to such problems, the Department of Justice is requesting that any comments that were submitted under the original Notice of Lodging be resubmitted, this time to the U.S. Environmental Protection Agency, which will forward the comments to the Department of Justice. In this action the United States sought enforcement of the Clean Air Act and the State Implementation Plan ("Indiana SIP"), duly promulgated by the State of Indiana, for emission violations at the Knauf fiber glass manufacturing facilities located in Shelbyville, Indiana. The proposed Consent Decree resolves claims of the United States concerning Knauf's past violations of the emission standards, as established in the Indiana SIP, and the Clean Air Act, 42 U.S.C. 7413(b), including, *inter alia*, emissions of particulate matter from the Line 205 furnace stack at the Shelbyville facility. Pursuant to the proposed Consent Decree, Knauf Fiber Glass GmbH will, among other requirements, develop and implement a Supplemental Environmental Project ("SEP") providing for the installation and operation of equipment (approximately one year earlier than would otherwise be required by EPA regulations) that will decrease particulate matter, carbon monoxide, and NO_X emissions. Also, under the proposed Consent Decree, Knauf Fiber Glass GmbH will pay $70,000 in civil penalties for violations of the Indiana SIP and the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the U.S. Environmental Protection Agency, Region 5, 14th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (Attn: Assistant Regional Counsel Padmavati Klejwa), and should refer to *United States* v. *Knauf Fiber Glass GmbH*, Civil Cause No. IP–01–1445–CV–B/S, D.J. Ref. 90–5–2–1–06368.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204–3048 (contact Assistant United States Attorney Thomas Kieper at (317) 229–2400), and at U.S. EPA Region 5, 14th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Padmavati Klejwa at (312) 353–8917).

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.75 ($.25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1153 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Republication of Notice of Lodging of First Amended Consent Decree Under the Clean Water Act

Under 28 CFR 50.7 notice is hereby given that on September 27, 2001, a proposed First Amended Consent Decree ("Amended Consent Decree") in *United States of America and State of Indiana* v. *City of New Albany*, Civil No. NA–90–46–C–B/G was lodged with the United States District Court for the Southern District of Indiana, New Albany Division.

Notice of the lodging of the Amended Consent Decree was first published by the Department of Justice in the **Federal Register** of October 15, 2001 (66 FR 52451). The Department of Justice is republishing the Notice of Lodging because mail delivery problems associated with anthrax mailings to government offices have precluded the Department of Justice's receipt of public comments. To avoid additional delays related to such problems, the Department of Justice is requesting that any comments that were submitted under the original Notice of Lodging be resubmitted, this time to the U.S. Environmental Protection Agency, which will forward the comments to the Department of Justice.

In this action, the United States sought enforcement of a Consent Decree entered into in 1993 for Clean Water Act violations at New Albany's wastewater treatment plant. The First Amended Consent Decree resolves claims of the United States concerning New Albany's wastewater treatment facility and sewer collection system for violations of the 1993 Consent Decree and the Clean Water Act, 33 U.S.C. 1251, *et seq.*, including, *inter alia*, bypasses and sanitary sewer overflow events. Pursuant to the Amended Consent Decree, New Albany will, among other requirements, develop and implement a capacity assurance plan to address the bypasses and sanitary sewer overflows at its wastewater treatment plant and in the sewer collection system. Also, under the Amended Consent Decree, New Albany will pay $180,000 in civil penalties for violations of the 1993 Consent Decree.

The United States will receive for a period of thirty (30) days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the U.S. Environmental Protection Agency, 14th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (Att.: Asst. Regional Counsel Deborah A. Carlson) and should refer to *United States and State of Indiana* v. *City of New Albany*, Civil Cause No. NA–90–46–C–B/G, D.J. Ref. 90–5–1–1–3448/A.

The Amended Consent Decree may be examined at the Office of the United States Attorney, 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204–3048 (contact Assistant United States Attorney Thomas Kieper at (317) 226–6333), and at U.S. EPA Region 5, 14th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Asst. Regional Counsel Deborah A. Carlson at (312) 353–6121). A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $15.00 ($.25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1154 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 42 U.S.C. 9622, notice is hereby given that on January 3, 2002 a proposed consent decree in *United States* v. *Pemaco, Inc. and Lawrence Sze*, Civil No. 00–6199DDDP(CTx), was lodged with the United States District Court for the Central District of California.

This consent decree represents a settlement of claims brought against Lawrence Sze, under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA") ("the Act"), 42 U.S.C. 9607(a), for recovery of past and future response costs incurred by the United States in connection with the release or threat of release of hazardous substances at the Pemaco Superfund Site located in the City of Maywood, Los Angeles County, California ("the Site"). The Site is located at 5050 Slauson Avenue, in the City of Maywood, Los Angeles County, California, and consists of approximately 4 acres of land adjacent to the Los Angeles River. Lawrence Sze operated the facility from 1986 through 1991. Pemaco, Inc's operation included the purchase of chlorinated solvents, aromatic solvents, flammable liquids, and industrial oils. These chemicals were brought to the facility by rail and tanker truck, where they were repackaged for resale to industrial companies.

The Department of Justice has determined that Mr. Sze has a limited ability to pay and therefore entered into this proposed settlement, whereby Lawrence Sze will pay $50,000 in settlement of the government's claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, care of Angels O'Connell, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, CA 94105 and should refer to *United States* v. *Pemaco, Inc. and Lawrence Sze*, DOJ Ref. 90–11–3–06958.

The Consent Decree may be examined at the Office of the United States Attorney for the Central District of California, 312 North Spring Street, G–8 U.S. Courthouse, Los Angeles, California 90012, and at the Region 9 office of the U.S. EPA, 75 Hawthorne Street, San Francisco, California. A copy of the Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation number (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $4.25, to: Consent Decree Library, U,S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Pemaco, Inc., and Lawrence Sze*, Civil No. 00–6199–DDDP(CTx), DOJ Ref. 90–11–3–06958.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1117 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 12, 2001 a proposed Consent Decree ("Decree") in *United States et al.* v. *The S.W. Chemical Company, Inc.* Civil Action No. 01–2404, was lodged with the United States District Court for the District of Colorado. The action was filed pursuant to section 107(a)(1) and (4) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a)(1) and (4). The action concerns EPA's costs of responding to the release or threatened release of hazardous substances at or from the Denver Radium Superfund Site, Operable Unit VIII, in the City and County of Denver, Colorado, also known as the Shattuck Superfund Site (the "Site"), and possible damages for injury to or destruction of, or loss of natural resources resulting from the release of hazardous substances from the Site.

Under the terms of the Decree The S.W. Shattuck Chemical Company, Inc. (the "Defendant"), will: (a) Pay the United States $5.45 million to be deposited into an EPA special account to offset EPA's response costs at the Site; (b) pay $250,000 to the United States Department of the Interior to settle a potential natural resource damages claim; and (c) establish a trust and convey the 5.9 acre parcel which is the subject of the environmental clean-up to the trust for sale and distribution of net sale proceeds to EPA's special account for the Site. The decree also includes proposed settlement terms between the State of Colorado and the Defendant.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of forty-five (45) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent to (1) Denver Field Office, 999 18th Street, Suite 945NT, Denver, CO 80202; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue NW., 13th Floor, Washington, DC 20005. Each communication should refer to *United States et al.* v. *The S.W. Shattuck Chemical Company, Inc.*, D.J. Ref. 90–11–2–741/1.

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The proposed Consent Decree may be examined at the offices of the EPA Superfund Records Center, EPA Region VIII, located at 999 18th Street (check in at Suite 300), Denver, Colorado 80202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; telephone confirmation no (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $17.75, to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States et al.* v. *The S.W. Shattuck Chemical Company, Inc.*, D.J. Ref. 90–11–2–741/1.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1118 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Chapter 11 of Title 11 of the United States Bankruptcy Code

In accordance with the policy of the Department of Justice, notice is hereby given that on December 10, 2001, a proposed settlement agreement in United States v. American Allied Additives, Inc., et al., Civil Action No. 00–01014, was lodged with the United States District Court for the Northern District of Ohio. The proposed settlement agreement would resolve the United States' claim against defendant Gibson-Homans Company pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, in connection with the American Allied Additives Superfund Site in Cleveland, Ohio. Under the proposed settlement agreement, the United States' claim would be allowed as a pre-petition general unsecured claim for $24,050 in Gibson-Homans' bankruptcy proceeding, In Re: The Gibson-Homans Company, No. 00–50369 (Bankr. N.D. Ohio), pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. 101, et seq.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments related to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to United States v. American Allied Additives, Inc., et al., Civil Action No. 1:00CV1014; D.J. Ref. No. 90–11–2–1318.

The settlement agreement may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, Cleveland, Ohio 44114, and at the U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $2.00 (8 pages at 25 cents per page reproduction cost), and please refer to United States v. American Allied Additives, Inc., et al., Civil Action No. 00–01014; D.J. Ref. No. 90–11–2–1318.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1151 Filed 1–15–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of data on the costs and usage of Workforce Investment Act (WIA) and Wagner Peyser services that do not require registration.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 18, 2002.

ADDRESSES: James Aaron, Chief, Division of Performance and Results, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–4702, Washington, DC 20210, Telephone: (202) 693–2814 this is not a toll-free number), E-mail: jaaron@doleta.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The Department of Labor seeks to collect data regarding the costs and usage of Workforce Investment Act (WIA) and Wagner Peyser services that do not require participant registration. Current reporting systems do not capture this information because self and informational services do not require registration and are not part of the performance accountability provisions of the respective statutes. This fact has complicated the budget process by limiting DOL's capacity to develop unit cost projections. In addition, DOL does not have complete information on WIA service design. The information that is developed will be used to inform budget decisions and the WIA reauthorization process.

The data will consist of information already collected by state and local workforce development staff for their own management purposes and data collected from a probability sample of persons using self-service facilities. The principal goal of the data collection is to develop a national estimate of the number of job seekers who use informational, self, or staff facilitated services that do not require registration in primary One-Stop programs and related costs.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

DOL is seeking Office of Management and Budget (OMB) approval to collect data on the costs and usage of Workforce Investment Act (WIA) and Wagner Peyser services that do not require registration. The data are necessary to inform budget decisions and for the WIA reauthorization process. The data will consist of information already collected by state and local workforce development staff for their own management purposes and data collected from a probability sample of persons using self-service facilities. The principal goal of the data collection is to develop a national estimate of the number of job seekers who use informational, self, or staff facilitated services that do not require registration in primary One-Stop programs.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Estimation of ETA Non-Registrant Service Usage and Costs.

OMB Number: 1205–ONEW.

Affected Public: Individuals or households; State, Local or Tribal Government.

Total Respondents: 12,554.

Frequency: On occasion.

Total Responses: 12,554.

Average Time per Response: 12.37 hours for state survey; 2 minutes for participant survey.

Estimated Total Burden Hours: 1,085 for state and participant surveys; 2,760 local staff burden for participant survey.

TABLE 1.—RESPONDENT BURDEN FOR STATE AND PARTICIPANT SURVEYS

Data form	Total respondents	Frequency	Total responses	Average time per response	Total burden hours
State survey	54	1	54	12.37	668
Participant survey	12,500	1	12,500	2 minutes	417
Totals	12,554	1	12,554	NA	1,085

TABLE 2.—LOCAL STAFF BURDEN FOR PARTICIPANT SURVEY

Tasks conducted by local staff	Staff hours per sampled office	Staff hours for 120 sampled offices
Orientation and Training	2	240
Data Collection	20	2,400
Maintenance and Delivery of Data Collection Forms	1	120
Total Burden Hours	23	2,760

Total Burden Hours for all surveys: 3,845.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Bryan T. Keilty,

Administrator, Office of Financial and Administrative Management, Employment and Training Administration.

[FR Doc. 02–1111 Filed 1–15–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collection: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

DATES: Written comments must be submitted to the office listed in the addressee section below within March 18, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451, EMail pforkel@fenix2.dol-esa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 203(b)(1) of the Migrant and Seasonal Agricultural Worker Protection

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Act (MSPA), and § 500.135(b) of Regulations, 29 CFR part 500, provide that any person who owns or controls a facility or real property to be used for housing migrant agricultural workers must obtain and post on site, a certificate of occupancy from the State, local, or Federal agency which conducted the housing safety and health inspection. The WH–520 is a form used to gather information to determine whether or not the facility meets the applicable safety and health standards, and also serves as the certificate of occupancy.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to inspect and certify a migrant housing facility as meeting applicable safety and health standards under the law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

OMB Number: 1215–0158.

Agency Number: WH–520.

Affected Public: Individuals or households; Businesses or other for-profit; Farms.

Frequency: On occasion.

Total Respondents/Responses: 60.

Time per Response 3 minutes (Reporting): 1 minute (Recordkeeping and Posting).

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 10, 2002.

Margaret J. Sherrill,

Chief, Branch of Management, Review, and Internal Control, Chief, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–1110 Filed 1–15–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Applications for Approval of Sanitary Toilet Facilities

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before March 18, 2002.

ADDRESSES: Send comments to David L. Meyer, Director, Office of Administration and Management, 4015 Wilson Boulevard, Room 615, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Meyer-David@msha.gov*, along with an original printed copy. Mr. Meyer can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Barnard can be reached at *barnard-charlene@msha.gov* (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

I. Background

The purpose of the collection of this information is to evaluate the sanitary features of manufactured toilets for use at coal mines. Protecting the health of miners is a vital function of the agency. Proper environmental sanitation is necessary to protect coal miners from illnesses that can be transported by human waste and also needed to maintain equalization of working conditions with other occupational groups.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed reinstatement of the information collection related to the Approval of Sanitary Facilities at Coal Mines. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice of a hard copy.

III. Current Action

The agency feels that the information is necessary for the continuing evaluation of applications under the standards. No revisions or new proposals are included.

Type of Review: Reinstatement.

Agency: Mine Safety and Health Administration.

Title: Applications for Approval of Sanitary Toilet Facilities.

OMB Number: 1219–0101.

Affected Public: Business or other for profit.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response	Burden (in hours)
71.500	1	1	1	8	8
75.1712–6	1	1	1	8	8
Totals	2	2	2	16	16

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–1112 Filed 1–15–02; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–007]

NASA Advisory Council, Minority Business Resource Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Wednesday, January 30, 2002, 9 a.m. to 4 p.m., and Thursday, January 31, 2002, 9 a.m. to 12 noon.

ADDRESSES: NASA Ames Research Center, Center Directors Conference Room, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting
- OSDBU Update of Activities
- NAC Meeting Report
- Overview of NASA Ames
- Overview of Small Business Program
- Public Comment
- Panel Discussion and Review
- Committee Panel Reports
- Status of Open Committee Recommendations
- New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–1024 Filed 1–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–004]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Boundary Layer Research Inc., of Everett, Washington has applied for an exclusive license to practice the invention disclosed in US Patent No. 5,738,298, entitled "Tip Fence for Reduction of Lift-Generated Airframe Noise," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, M/S 202A–3, Moffett Field, CA 94035–1000, (650) 604–5104.

Dated: January 5, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–1021 Filed 1–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–003]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Maecker and Company, MakerToys Division of Silver Creek, New York, has applied for an exclusive copyright license to ARC–14263, "Exploring Aeronautics Multimedia CD–ROM," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, (650) 605–5104.

Dated: January, 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–1020 Filed 1–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–006]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

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ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Phoenix Systems International, Inc., of Pinebrook, New Jersey, has applied for an exclusive patent license to practice the inventions described and claimed in the following: U.S. Patent No. 6,039,783, "Process and Equipment for Nitrogen Oxide Waste Conversion to Fertilizer," KSC–11884–2, "Process and Equipment for Nitrogen Oxide Waste Conversion to Fertilizer," and KSC–12235–1, "High Temperature Decomposition of Hydrogen Peroxide," which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randy Heald, Patent Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

DATES: Responses to this Notice must be received by January 31, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: January 8, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–1023 Filed 1–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–005]

Notice of Prospective Patent and Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent and Copyright License.

SUMMARY: NASA hereby gives notice that Williams Electrical Systems Company of Greensboro, North Carolina has applied for an exclusive patent license for the "Remote Monitor Alarm System," U.S. Patent No. 5,485,142, and an exclusive copyright license for KSC–12314, "Remote Monitoring and Alarm System," both technologies are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by January 31, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: January 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–1022 Filed 1–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by March 18, 2002 to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Cross Site Analysis of the Integrative Graduate Education and Research Traineeship (IGERT) Program.

OMB Control No.: 3145–0182.

EXPIRATION DATE OF APPROVAL: May 31, 2002.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Integrative Graduate Education and Research Traineeship (IGERT) Program. This site-based interview component is a part of a mixed method implementation and impact study and is comprised of on-site interviews of PIs, trainees, key faculty, and administrative personnel for all IGERT projects in their third year of funding (approximately 20 sites per year). It complements and verifies data from the previously cleared IGERT Distance Monitoring System (a Web-based survey completed annually by the project Principal Investigators, funded trainees, and non-funded associate students). While the Web-based survey provides prescribed and consistent data across all IGERT sites, site visits allow the collection of site-specific, in-depth information that answers questions raised by the Web-based collection and extends its scope. The two approaches inform and enrich each other to provide the clearest and most complete portrait possible of the evaluated program. Data are needed by NSF for program monitoring and to support program analysis, impact assessment, and evaluation activities.

Expected Respondents: Interview respondents at each IGERT project will include: the Principal Investigator, Co-Principal Investigators, Faculty associated with the project or advisors to trainees, Funded Trainees, Non-Funded Associates, and University Administrators.

Burden on the Public: Burden for respondents varies according to role, from 30 minutes to three hours. A total of 34 hours and 30 minutes interview time is projected for the estimated 44 respondents at each site. Over the average of 20 sites each year, this amounts to 880 respondents and a total of 690 hours. Burden to the public is limited because all respondents are limited to those associated with IGERT projects in their third year of implementation.

Dated: January 11, 2002.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 02–1145 Filed 1–15–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation 725—17th Street, NW Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title: National Science Foundation Proposal Evaluation Process.

OMB Control Number: 3145–0060.

Proposed Project Proposal Evaluation Process

The National Science Foundation (NSF) is an independent Federal agency created by the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–75). The Act states the purpose of the NSF is "to promote the progress of science; (and) to advance the national health, prosperity, and welfare" by supporting research and education in all fields of science and engineering."

From those first days, NSF has had a unique place in the Federal Government: It is responsible for the overall health of science and engineering across all disciplines. In contrast, other Federal agencies support research focused on specific missions such as health or defense. The Foundation also is committed to ensuring the nation's supply of scientists, engineers, and science and engineering educators.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. It does this through grants and cooperative agreements to more than 2,000 colleges, universities, K–12 school systems, businesses, informal science organizations and other research institutions throughout the U.S. The Foundation accounts for about one-fourth of Federal support to academic institutions for basic research.

The Foundation relies heavily on the advice and assistance of external advisory committees, ad–hoc proposal reviewers, and to other experts to ensure that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, nonprofit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals the counsel of these merit reviewers has proven invaluable to the Foundation both in the identification of meritorious projects and in providing sound basis for project restructuring.

Review of proposals may involve large panel sessions, small groups, or use of a mail-review system. Proposals are reviewed carefully by scientists or engineers who are expert in the particular field represented by the proposal. About 50% are reviewed exclusively by panels of reviewers who gather, usually in Arlington, VA, to discuss their advice as well as to deliver it. About 35% are reviewed first by mail reviewers expert in the particular field, then by panels, usually of persons with more diverse expertise, who help the NSF decide among proposals from multiple fields or sub-fields. Finally, about 15% are reviewed exclusively by mail.

Use of the Information

The information collected is used to support grant programs of the Foundation. The information collected on the proposal evaluation forms is used by the Foundation to determine the following criteria when awarding or declining proposals submitted to the Agency: (1) What is the intellectual merit of the proposed activity? (2) What are the broader impacts of the proposed activity?

The information collected on reviewer background questionnaires is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data are also used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education.

Confidentiality

When a decision has been made (whether an award or a declination), verbatim copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, are provided to the PI. Proposers also may request and obtain any other releasable material in NSF's file on their proposal. Everything in the file except information that directly identifies either reviewers or other pending or declined proposals is usually releasable to the proposer.

While listings of panelists' names are released, the names of individual reviewers, associated with individual proposals, are not released to anyone.

Because the Foundation is committed to monitoring and identifying any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s), the Foundation also collects information regarding race, ethnicity, disability, and

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gender. This information is also protected by the Privacy Act.

Burden on the Public

The Foundation estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of 8.5 reviews.

Dated: January 10, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–1025 Filed 1–15–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Executive Committee.

DATE AND TIME: January 24, 2002, 1 p.m.–1:30 p.m., Closed Session; January 24, 2002, 1:30 p.m.–2 p.m., Open Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1295, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public, part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, January 24, 2002

Closed Session (1 p.m. to 1:30 p.m)

—Awards and Agreements

Open Session (1:30 p.m. to 2 p.m.)

—Director's Items
—Chairman's Items
—Program Approval: Math and Science Partnerships

Marta Cehelsky,

Executive Officer.

[FR Doc. 02–1185 Filed 1–11–02; 4:48 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 AND 50–278]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee), to withdraw its February 8, 2001, application for proposed amendments to Facility Operating License Nos. DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendments would have modified the facility and the facility Technical Specifications by replacing the interim corrective actions for thermal-hydraulic power oscillations with an automatic reactor scram from the output of the oscillation power range monitor.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 30, 2001 (66 FR 29354). However, by letter dated December 13, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 8, 2001, and the licensee's letter dated December 13, 2001, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 10th day of January 2002.

For the Nuclear Regulatory Commission.

John P. Boska,

Project Manager, Project Directorate, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1088 Filed 1–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Finding of No Significant Impact

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impact related to the request by Alaron Corporation to utilize a wet waste processing system to dry high-solids wet wastes and aqueous liquid wastes in their Wampum, Pennsylvania facility.

FOR FURTHER INFORMATION CONTACT: John R. McGrath, Senior Health Physicist, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Telephone 610–337–5069.

SUPPLEMENTARY INFORMATION: The Alaron Corporation of Wampum, Pennsylvania holds a license issued by the U.S. Nuclear Regulatory Commission (NRC) for performing decontamination of equipment contaminated with radioactive material. Alaron has requested authority to add a system for the treatment of wet wastes by installing a system which includes a concentrate dryer, ultra-filtration, reverse-osmosis, demineralizers and steam generator on its site in Wampum.

Alaron estimates that approximately 214 curies of radioactive materials would be processed per year. Environmental radiation safety concerns include exposure due to airborne releases. To evaluate airborne releases, the licensee utilized a computer code (COMPLY, an EPA computer code for calculating the dose to individuals due to airborne releases) to assess dose from radionuclide emissions. The code assumed that an activity of 740 millicuries would be released in effluents to the air and projected a effective dose equivalent of 0.03 millirem/year to an individual at the nearest site boundary.

NRC has reviewed the assumptions used in the above described codes and concurs with the reported results. The maximum annual dose of 0.03 millirem is well below the regulatory limit of 100 millirem per year.

Copies of the EA and FONSI as well as supporting documentation are available for review at the NRC offices located at 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone number (610) 337–5000, during normal business hours.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Material Safety, U.S. Nuclear Regulatory Commission, Region I.

Environmental Assessment of Proposal by Alaron Corporation To Perform Processing of Wet Wastes Utilizing a Multi-Methodology Treatment System

1. The Need for the Proposed Action

The Alaron Corporation of Wampum, Pennsylvania holds a license issued by the U.S. Nuclear Regulatory Commission (NRC) for performing

decontamination of equipment contaminated with radioactive material. Alaron uses a variety of techniques to perform the decontamination. In a letter dated May 31, 2001, Alaron requested an amendment to their license to authorize a wet waste processing system to dry high-solids wet wastes and aqueous liquid wastes in their Wampum facility. The system will be supplied by NUKEM Nuclear Technologies and includes a concentrate dryer, ultra-filtration units, reverse-osmosis units, demineralizers, steam generator and holding tanks. The purpose of this Environmental Assessment is to determine whether or not the proposed action could contribute to significant impacts on the human environment.

2. Alternatives to the Proposed Action

The only credible alternative is to not allow Alaron to install and use the treatment system. Relocation of the unit to another part of the site would not alter the environmental impact of the operation of the unit. To allow the use of some components of the system and not others could actually result in an increase in the amount of activity released to the environment.

3. The Environmental Impacts of the Proposed Action

Alaron is located on a 24 acre site in the Point Industrial Park, Wampum, Pennsylvania. Building F1 is a 67,800 ft^2 steel frame and steel wall building with a flat synthetic membrane type roof. The proposed wet waste processing system would be located inside a curbed area at the east end of the F1 Annex. The F1 Annex is located on the east side of the F1 Building and is a steel frame, steel walled building 32 feet wide and 88 feet long. The curbed area in the F1 Annex is capable of holding all of the contaminated liquid in the wet waste system. The NUKEM system consists of a number of water treatment components, including a concentrate dryer (CD), an ultra-filtration (UF) unit, a reverse osmosis (RO) unit, two demineralizers, and a steam generator. Wet waste will arrive by truck and will be transferred to one of two 1400 gallon sludge tanks inside the curbed area of the F1 Annex using a pneumatic pump through a double containment transfer hose.

Alaron's License No. 37–20826–01 was last renewed in its entirety on December 3, 1998. As part of that renewal, NRC issued an Environmental Assessment (NUREG/CR–5549) and published a Finding of No Significant Impact in the **Federal Register** on December 2, 1998. The Environmental Assessment found that no atmospheric emissions containing radioactive contaminants were expected to be released from the operation as then licensed. This was based on the fact that potentially contaminated air within work areas is cycled through HEPA filters and exhausted back into the building. Alaron recognized, though, that fugitive emissions, through doors, vents, etc. exist and a conservative estimate of an annual dose to the nearest residence was calculated to be 0.26 millirem. 10 CFR 20.1301 requires that each licensee conduct operations so that the total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (100 millirem) in a year.

The installation of this waste treatment system would add an airborne release point at the Alaron facility. Steam from the steam generator will be vented through an exhaust stack on the roof of the F1 Building. Most of the radioactivity in the wet waste to be processed will be removed by the various treatment methods in the system and will be disposed of as solid waste. After being cleaned by passing through the system, the cleaned or polished water feeds the steam generator. Steam from the steam generator is exhausted through the stack.

Alaron estimates that the wet waste processing system will process liquid, sludge and/or resin waste whose isotopic distribution is typical of waste currently being disposed from nuclear power facilities. Based on the estimated waste throughput, approximately 214 curies of radioactive material will be processed per year. Assuming that all of the H–3 activity will become airborne, that the polished water feed to the steam generator contains other isotopes at 10 CFR Part 20 effluent limits, and that all of the radioactivity in the feed is released, the total activity emitted per year would be about 740 millicuries. The licensee performed dose calculations using the computer code COMPLY (an EPA computer code for calculating the dose to individuals due to airborne releases) which projects an effective dose equivalent of 0.03 millirem/year to an individual at the nearest site boundary as a result of the estimated release. NRC has performed a dose assessment of the proposal and agrees with the basic assumptions and results of the licensee's analysis.

With regard to direct radiation exposure, the licensee plans to conduct cleaning and back flush evolutions that will assure that accumulation of radioactive material on filter media will not result in high radiation levels around the unit. In addition, there will be shielding in place to avoid creation of high radiation levels. The maximum radiation levels is expected to be 50 millirem per hour one foot from the Concentrate Dryer, *i.e.* within the restricted area. Radiation levels at the closest unrestricted area, including the contribution from existing operations, will be about 10 microrem per hour.

4. Conclusion

In view of the fact that the additional dose of 0.03 millirem/year to an individual at the nearest site boundary as a result of the proposed amendment is a small fraction of the dose attributed to fugitive emissions to an individual at the nearest residence as a result of existing operations, the staff concludes that the proposed action will have a negligible impact on the environment.

[FR Doc. 02–1090 Filed 1–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Environmental Assessment and Finding of No Significant Impact of License Amendment for BWX Technologies, Inc., and Notice of Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of BWX Technologies, Inc., Materials License SNM–42 to authorize the installation and use of the Metal Dissolution Facility.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–42 to authorize the installation and use of the Metal Dissolution Facility at the BWX Technologies, Inc., facility located in Lynchburg, VA, and has prepared an Environmental Assessment in support of this action.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has received a license request, dated August 7, 2001, and a revision to that submittal dated December 18, 2001. The request is to amend SNM–42 to authorize the installation and use of the Metal Dissolution Facility (MDF) for the dissolution of high enriched uranium (HEU) metal to support BWXT's downblending operations. The purpose of this document is to assess the

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environmental consequences of the proposed license amendment.

The BWXT facility in Lynchburg, VA, is authorized under SNM–42 to possess nuclear materials for the fabrication and assembly of nuclear fuel components. The facility supports the U.S. naval reactor program, fabricates research and university reactor components, and manufactures compact reactor fuel elements. The facility also performs recovery of scrap uranium. Research and development activities related to the fabrication of nuclear fuel components are also conducted.

1.2 Review Scope

This environmental assessment (EA) serves to present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS). Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–42 to authorize the installation and use of the MDF for the dissolution of HEU metal to support BWXT's downblending operations. The MDF will be used to receive, store, dissolve HEU metal ranging from 20 to 97 percent uranium-235 (U–235). The MDF will support other processing areas and will be located within the Bay 15A Material Access Area (MAA). The building is already in place, so there will be no new construction on the BWXT site. The building is approximately 37 feet long, 20 feet wide, and 18 feet high.

The purpose of the MDF is to produce a homogeneous uranyl nitrate solution with a uranium concentration of approximately 400 grams/liter (g/l). The first step in the MDF is the weighing out of an appropriate amount of HEU in a charging basket in a ventilated glove box. The charging basket is then transferred via a lift to a dissolver digester. Measured quantities of nitric acid and deionized water are added in the dissolver to dissolve the HEU. The resulting mixture is then heated to approximately 180 degrees Fahrenheit and circulated until a homogeneous uranyl nitrate solution is made. This homogeneous uranyl nitrate solution is then pumped through filters into a process monitoring column where the solution is circulated, weighed, and sampled for U–235 concentration. The solution is then transferred via a manually activated pump to one of five storage columns where it is retained until required for blending with depleted or low enriched uranium.

1.4 Purpose and Need for Proposed Action

The proposed action would allow the licensee to install and operate the MDF. The operation of the MDF is needed to downblend HEU in support of HEU disposition for the Department of Energy. The MDF is expected to operate for many years.

1.5 Alternatives

The alternatives available to the NRC are:

1. Approve the license amendment request as submitted;
2. Approve the license amendment with restrictions; or
3. Deny the amendment request.

2.0 Affected Environment

The affected environment for Alternatives 1 and 2 is the BWXT site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment (EA) for the Renewal of the NRC license for BWXT. The BWXT facility is located on a 525 acre (2 km²) site in the northeastern corner of Campbell County, approximately 5 miles (8 km) east of Lynchburg, Virginia. This site is located in a generally rural area, consisting primarily of rolling hills with gentle slopes, farm land, and woodlands.

3.0 Effluent Releases and Monitoring

A full description of the effluent monitoring program at the site is provided in the 1995 Environmental Assessment for the Renewal of the NRC license for BWXT. Monitoring programs at the BWXT facility comprise effluent monitoring of air and water and environmental monitoring of various media (air, soil, vegetation, and groundwater). This program provides a basis for evaluation of public health and safety impacts, for establishing compliance with environmental regulations, and for development of mitigation measures if necessary. The monitoring program is not expected to change as a result of the proposed action. The NRC has reviewed the location of the environmental monitoring program sampling points, the frequency of sample collection, and the trends of the sampling program results in conjunction with the environmental pathway and exposure analysis and concluded that the monitoring program provides adequate protection of public health and safety.

Gaseous, liquid, and solid wastes are produced at the BWXT site. These wastes are categorized as low-level radioactive, nonradioactive, hazardous, or mixed wastes. A description of each of these waste categories, control strategies, and an estimate of release quantities is provided in the 1995 Environmental Assessment for the Renewal of the NRC license for BWXT.

The amendment request is expected to have no impact on the liquid and solid wastes released from the site. Routine liquid radiological and chemical releases from the MDF are not planned.

A new exhaust scrubber will be used to maintain airborne releases from the MDF within NRC limits. The dissolvers will be vented to a scrubber that will provide removal of uranium and NO_x from the exhaust gases using a two-stage oxidation/absorption system. Local warning indicators and controls will be provided in the U-Metal Dissolution area for monitoring and control of the scrubber operation. BWXT has conservatively estimated that the offsite exposure from operation of the new exhaust scrubber will be less than 0.005 millirem per year. The NRC staff has reviewed the exposure estimate and has determined that it is acceptable.

4.0 Environmental Impacts of Proposed Action and Alternatives

4.1 Occupational and Public Health

Use of the MDF will not include any change in the type or form of special nuclear material (SNM) or any new or different operations from those currently authorized under BWXT's license. However, the amounts of HEU metal that will be processed will be higher but within BWXT's license limits. A new exhaust scrubber will be used to maintain airborne releases within NRC limits. The impacts of normal operation of the site were evaluated in 1995 Environmental Assessment (EA) for the Renewal of the NRC license for BWXT. The total effective dose equivalent (TEDE) for members of the public from the normal operations at the BWXT site was calculated to be 0.024 mrem per year. BWXT has conservatively estimated that the offsite exposure from operation of the new exhaust scrubber will be less than 0.005 millirem per year. The increase in offsite exposure due to operation of the MDF is considered insignificant because the new predicted TEDE (0.029 mrem/yr) remains well below the 10 CFR 20 limit of 100 mrem for a member of the public.

Three employees will be working in the MDF. BWXT has conservatively estimated that the three employees will increase the sites cumulative exposure by about 6.0 person-rem based on the highest individual exposure in 2000 of 2.0 person-rem. Comparing this to the sites 2000 cumulative exposure of 204.9 person-rem, results in an insignificant increase of only 2.9 percent.

4.2 Water Resources and Biota

No liquid process effluents will be released by operation of the facility and there will be no withdrawals from waterways to operate this process. Thus there will be no impacts to water resources (including groundwater) or biota from the operation of the MDF, under normal conditions.

4.3 Geology and Seismology

The operation of the MDF will have no impact on geology or seismology. The process will be performed in an existing facility on the site, therefore there will be no new construction as part of this amendment application. For example, no deep well injection of wastewater would occur that could modify seismic activity or alter geology.

4.4 Soils

Soils will not be impacted as a result of the operation of the MDF. There will be no physical disturbance of soils, and there will not be any releases of process materials to soils as a result of normal operations.

4.5 Air Quality

The NRC staff has determined that the proposed amendment will have minimal impact on air quality. As discussed above, a scrubber system will be used to maintain radiological airborne releases within NRC limits. The scrubber system will also be permitted by the State of Virginia to control non-radiological releases.

4.6 Demography, Cultural and Historic Resources

The NRC staff has determined that the proposed amendment will not impact demography, or cultural or historic resources. A full description of these parameters is given in the 1995 Environmental Assessment for Renewal.

4.7 Impacts Due to Accident Conditions

In accordance with 10 CFR 70.61, BWXT is required to limit the risk of each credible high or intermediate consequence event through the application of engineered and/or administrative controls. Also nuclear criticality events must be limited through assurance that all processes are maintained at subcritical levels. The analyses for these events were provided by BWXT in the amendment request submittals dated August 7, and December 18, 2001.

The impacts due to accident conditions will be evaluated and discussed in the Safety Evaluation Report which will be prepared by the NRC in conjunction with this document. Therefore, impacts due to accident conditions were not evaluated in this document.

4.8 Alternatives

The action that the NRC is considering is approval of an amendment request to Materials license SNM–42 issued pursuant to 10 CFR Part 70. The proposed action is to amend NRC Materials License SNM–42 to authorize the use of the MDF. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted;
2. Approve the license amendment request with restrictions; or
3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are insignificant. Thus, the staff considers that Alternative 1 is the appropriate alternative for selection.

5.0 Agencies and Persons Contacted

The NRC contacted the Director of Radiological Health at the Virginia Department of Health (VDH) January 2, 2002 concerning this request. The Director reviewed the draft document and concluded that the Environmental Assessment does not contain any issues that may be objectionable to VDH.

Because the proposed action is entirely within existing facilities, the NRC has concluded that there is no potential to affect endangered species or historic resources, and therefore consultation with the State Historic Preservation Society and the U.S. Fish and Wildlife Service was not necessary.

6.0 References

U.S. Nuclear Regulatory Commission (NRC), August 1995, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–42."

BWX Technologies, August 7, 2001, Letter from Arne Olson to Director of Office of Nuclear Materials Safety and Safeguards, Amendment of License SNM–42.

7.0 Conclusions

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of amending NRC Materials License SNM–42 to authorize the operation of the MDF and have determined that the approval of the request will have no significant effect on public health and safety or the environment.

Finding of No Significant Impact

The Commission has prepared the above Environmental Assessment related to the amendment of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Opportunity for a Hearing

Based on the EA and accompanying safety evaluation, NRC is preparing to amend License SNM–42. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part

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2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, BWX Technologies, Inc., P.O. Box 785, Lynchburg, VA 24505–0785; and

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC contact for this licensing action is Edwin Flack, who may be contacted at (301) 415–8115 or by e-mail at edf@nrc.gov for more information about the licensing action.

Dated at Rockville, Maryland, this 9th day of January 2002.

For the Nuclear Regulatory Commission.

Lidia Roché,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–1089 Filed 1–15–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 7d–1, OMB Control No. 3235–0311, SEC File No. 270–176

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. 80a–7(d)] (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 [17 CFR 270.7d–1] under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting those foreign funds' registration under the Act.

The rule requires a Canadian fund that wishes to register to file an application with the Commission that contains various undertakings and agreements by the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals and copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The funds contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 [15 U.S.C. 77a–77z–3], and the Securities Exchange Act of 1934 [15 U.S.C. 78a–78mm], as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the [Act]." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a respondent would make two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a respondent's investment adviser would make one response each year under the rule to maintain records in the United States. Commission staff estimates that each recordkeeping response would require 6.25 hours each of secretarial and compliance clerk time at a cost of $13.48 and $12.77 per hour, respectively, and the response to update the list of affiliated persons would require 0.25 hours of secretarial time, for a total annual burden of 25.25 hours at a cost of $331.49. The estimated number of 25.25 burden hours is identical to the current allocation.

If a fund were to file an application under this rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no foreign fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for the applications.

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules and forms.

The Commission believes that the active registrant and its associated persons may spend (excluding the cost of burden hours) approximately $540 per year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no foreign fund has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

We request written comment on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. We will consider comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Officer of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549.

Dated: January 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1098 Filed 1–15–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45260; File No. SR–Amex–2001–19]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC Relating to its Performance Evaluation and Allocations Procedures

January 9, 2002.

On March 19, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the Exchange's performance evaluation and allocations procedures. On May 31, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On August 13, 2001, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On August 27, 2001, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published in the **Federal Register** on October 31, 2001.[6] On December 18, 2001, the Exchange submitted Amendment No. 4 to the proposed rule change.[7] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended, and approves Amendment No. 4 on an accelerated basis.

I. Description of the Proposed Rule Change

The Exchange proposes to adopt Amex Rules 26 and 27 to codify the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (May 31, 2001). Amendment No. 1 adds discussion to the purpose section of the proposal regarding the ability of the Performance Committee to take appropriate action should a member or member organization fail without a reasonable excuse to meet with the committee after receiving notice. In addition, Amendment No. 1 corrects structural and typographical errors that appeared in the proposed rule language.

[4] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division, Commission (August 10, 2001). Amendment No. 2 adds a reference to the Special Allocations Committee in the proposal and proposed rule text; adds allocations procedures for structured products and Exchange Traded Funds; and makes technical changes to the proposed rule test.

[5] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division, Commission (August 24, 2001). Amendment No. 3 clarifies the Performance and Allocations Committee review procedures.

[6] *See* Securities Exchange Act Release No. 44972, (October 23, 2001), 66 FR 55031 (SR–Amex–2001–19).

[7] *See* Letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (December 14, 2001). Amendment No. 4 (1) clarifies that the Adjudicatory Council shall review the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal; (2) specifies in the proposed rule text that the specialist will receive written notice or notice will be posted on one of the Exchange's websites of allocation decisions by the Allocations Committee; (3) decreases the number of days an appellant would have to submit a timely application for review; and (4) makes technical changes to the proposed rule text.

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Exchange's performance evaluation and allocations procedures in order to make them readily available in one accessible location. Performance evaluation is the process by which the Exchange reviews Floor member conduct and takes remedial action where necessary to improve performance. The registration of specialists ("allocations") is the process by which the Exchange matches appropriate specialists to particular securities.

Proposed Rule 26 describes the composition of the Performance Committee, and allows the Performance Committee to delegate some or all its responsibilities to one or more subcommittees consisting of six persons. Proposed Rule 26 also describes the responsibilities of the Performance Committee with respect to specialists, registered traders, and brokers, including remedial actions available to the Performance Committee with respect to each group of Floor members.

Proposed Rule 27 describes the composition and responsibilities of the Options and Equities Allocations Committees. In addition, the Exchange represents that the Special Allocations Committee allocates securities that are not allocated by the Options or Equities Allocations Committees and securities with special characteristics as may be determined by the Chief Executive Officer of the Exchange or his or her designee.

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's procedures are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that codifying the Exchange's performance evaluation and allocations procedures should help the Exchange to ensure quality markets by monitoring and encouraging the performance and competition among specialists and other Floor members, thereby protecting investors and the public interest.

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

III. Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after notice of publication in the **Federal Register**. In addition to making minor technical changes to the proposed rule language, Amendment No. 4 (1) clarifies that the Adjudicatory Council shall review the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal; (2) specifies in the proposed rule text that the specialist will receive written notice or notice will be posted on one of the Exchange's Web sites of allocation decisions by the Allocations Committee; and (3) decreases the number of days an appellant would have to submit a timely application for review.[10] The Commission finds that Amendment No. 4 to the proposed rule enhances the fairness of Amex procedures for the evaluation of specialists' performance and allocation measures. The Commission believes that it is not necessary to separately solicit comment on Amendment No. 4 before approving this proposal because it received no comments in response to the initial publication of the proposed rule change and Amendment No. 4 makes changes that improve the rule. The Commission therefore finds that the approval of Amendment No. 4 on an accelerated basis is appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–19 and should be submitted by February 6, 2002.

[10] The Amex, however, determined that it would not further amend the proposed rule to require that the Performance Committee maintain a verbatim record of its meetings, although the rule as proposed requires that a verbatim record of Adjudicatory Council proceedings be kept.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the ACt,[11] that the proposed rule change (SR–AMEX–2001–19), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1099 Filed 1–15–02; 8:45 am]

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[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45259; File No. SR–NASD–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Relieve Registered Representatives Serving in the Armed Forces From Continuing Education Requirements

January 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD IM–1000–2 to codify the staff's interpretive position regarding the relief from NASD Rule 1120, Continuing Education Requirements, for securities industry professionals who volunteer or are called into active military duty. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

IM–1000–2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces

Any *Registered* [registered] Representative of a member who volunteers or is called into the Armed Forces of the United States shall be placed, after proper notification to the Executive Office, upon inactive status and need not be re-registered by such member upon his *or her* return to active employment with the member.

Any member (Sole Proprietor) who temporarily closes his *or her* business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his *or her* return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be included within the definition of "Personnel" for purposes of the dues or assessments as provided in Article VI of the By-Laws.

Any member placed on inactive status as set forth above shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD IM–1000–2 ("the Interpretation") addresses the registration status of sole proprietors and registered representatives serving in the armed forces. The Interpretation states that securities industry professionals who volunteer or are called into active military duty ("Active Duty Professionals") will be placed in a specially designated "inactive" status once the NASD is notified of their military service, but will remain registered for NASD purposes. While the Interpretation does not address continuing education obligations with respect to Active Duty Professionals, NASD Regulation staff has interpreted Rule 1120 to relieve Active Duty Professionals from continuing education obligations for the period of time that they are on active duty. The proposed rule change codifies the staff's position through amendments to the Interpretation. The Securities Industry/Regulatory Council on Continuing Education ("CE Council") supports the staff's views.[5]

NASD Regulation has, for the reasons set forth below, relieved Active Duty Professionals from continuing education requirements. Rule 1120(a)(2) provides that "Unless otherwise determined by the Association, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied." A registered person may satisfy his or her Regulatory Element requirement at a Prometric Center in the United States and Canada, or at a VUE Center in Europe and the Pacific Rim. Because it is generally not practical for Active Duty Professionals to be at a facility that delivers the Regulatory Element, NASD Regulation believes that Active Duty Professionals should be relieved from fulfilling the Regulatory Element requirements that arise during the period of time that they are on active duty.

With respect to the Firm Element requirements of continuing education, Rule 1120(b)(1) provides that only persons who have "direct contact with customers" in the conduct of securities activities are subject to the Firm Element requirements. Active Duty Professionals are excluded from the Firm Element requirements because they do not have contact with customers. Accordingly, the proposed amendment to the Interpretation expressly states that Active Duty Professionals are not required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASD Regulation believes that codifying the staff's interpretative position to relieve Active Duty Professionals from the NASD's continuing education requirements during the time they are on active duty is consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A) of the Act,[7] and Rule 19b–4(f)(1)[8]

[5] The CE Council, of which all of the self-regulatory organizations and 14 industry representatives are members, is responsible for the oversight of the continuing education program as a whole. The SEC and North American Securities Administrators Association also send liaisons to attend CE Council meetings.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

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thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meeting, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–03 and should be submitted by February 6, 2002.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1103 Filed 1–15–02; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45261; File No. SR–NASD–00–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending the NASD Code of Arbitration Procedure Rules 10335 and 10205(h) Relating to Injunctive Relief

January 9, 2002.

I. Introduction

On January 13, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary NASD Regulation Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the NASD Code of Arbitration Procedure ("Code") Rules 10335 and 10205(h) relating to injunctive relief.

NASD Regulation submitted to the Commission Amendment No. 1 to its proposed rule change on March 9, 2000[3] and Amendment No. 2 on March 25, 2000.[4] On April 27, 2000, the proposed rule change, as amended, was published for comment in the **Federal Register**.[5] The Commission received 13 comment letters on the proposed rule change, as amended by Amendments No. 1 and 2.[6] On December 19, 2000, NASD, through NASD Dispute Resolution Inc. ("NASD Dispute Resolution"), filed Amendment No. 3 and a response to comments[7] and on December 21, 2000, filed a supplemental response to comments.[8] In response to Amendment No. 3 and NASD Supplemental Response, the Commission received two additional comment letters on the proposal.[9] NASD, through NASD Dispute Resolution, filed Amendment No. 4 and Amendment No. 5 on May 17, 2001 and August 10, 2001, respectively.[10] On October 25, 2001, the proposed rule change, as amended by Amendment Nos. 3, 4, and 5, was published for comment in the **Federal Register**.[11] The Commission received one additional comment letter on the amended proposal.[12] As discussed below, this order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 7, 2000 ("Amendment No. 1").

[4] *See* letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 24, 2000 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000).

[6] Letter from Alan Foxman, Esq. Chairman, National Association of Investment Professionals, Government and Regulatory Committee, and T. Sheridan O'Keefe, President, National Association of Investment Professionals, to Jonathan G. Katz, Secretary, Commission, dated April 26, 2000 ("Foxman Letter"); letter from Thomas M. Campbell, Smith Campbell & Paduano, to Katherine A. England, Assistant Director, Division, Commission, dated April 27, 2000 ("Campbell Letter"); letter from John W. Shaw and Jeffrey A. Ziesman, Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, counsel to Sutro & Co. Incorporated, to Secretary, Commission, dated April 28, 2000 ("Sutro Letter"); letter from Dana N. Pescosolido, Law Offices of Saul, Ewing, Weinberg & Green, counsel to Ferris, Baker Watts, Incorporated, Janney Montgomery Scott LLC, Legg Mason Wood Walker, Incorporated, Morgan Keegan & Company, Inc. and Raymond James & Associates, Inc. to Jonathan G. Katz, Secretary, Commission, dated April 28, 2000 ("Pescosolido Letter"); letter from Dan Jamieson, Public Investor, to Jonathan Katz, Secretary, Commission, dated May 1, 2000 ("Jamieson Letter"); e-mail from Joseph G. Kathrein jr. to Commission, dated May 23, 2000 ("Kathrein E-mail"); letter from Gary R. Irwin, Vice President and Group Counsel, American Express Financial Corporation, American Express Financial Advisors, to Jonathan G. Katz, Secretary, Commission, dated May 25, 2000 ("Irwin Letter"); e-mail from Kosta, to Commission, dated July 10, 2000 ("Kosta E-mail"); e-mail from Michael A. Yoakum, to Commission, dated July 10, 2000 ("Yoakum E-mail"); e-mail from Frank Louis Blair Koucky III to Commission, dated July 11, 2000 ("Koucky E-mail"); e-mail from Gilbert A. Armour, Financial Consultant, Kirlin Securities, to Commission, dated July 11, 2000 ("Armour E-mail"); letter from Bob Chernow, to J. Katz, Secretary, Commission, dated July 10, 2000 ("Chernow Letter"); and letter from Dan Jamieson, to Jonathan Katz, Secretary, Commission, dated January 3, 2001 ("Jamieson Letter 2").

[7] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division, Commission, dated December 18, 2000 ("Amendment No. 3").

[8] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute.Resolution, to Katherine A. England, Assistant Director, Division, Commission, dated December 21, 2000 ("NASD Supplemental Response")

[9] Letter from Dan Jamieson, to Jonathan Katz, Secretary, Commission, dated January 4, 2001 ("Jamieson Letter 3"); and letter from Dana N. Pescosolido, Saul Ewing LLP, to Katherine A. England, Assistant Director, Division, Commission, dated January 20, 2001 ("Pescosolido Letter 2," and together with Pescosolido Letter, "Pescosolido Letters").

[10] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division, Commission, dated May 17, 2001 ("Amendment No 4"), and letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division, Commission, dated August 10, 2001 ("Amendment No. 5").

[11] *See* Securities Exchange Act Release No. 44950 (October 18, 2001), 66 FR 54041 (October 25, 2001) ("Second Release").

[12] *See* letter from Dan Jamieson, to Jonathan Katz, Secretary, Commission, dated November 1, 2001 ("Jamieson Letter 4," and together with Jamieson Letter, Jamieson Letter 2 and Jamieson Letter 3, "Jamieson Letters").

II. Description

Background

NASD proposes to amend Rules 10335 and 10205(h) of the Code to simplify and clarify the procedures for obtaining injunctive relief in certain disputes subject to arbitration. Rule 10335, the NASD's pilot injunctive relief rule, provides procedures for obtaining interim injunctive relief in controversies involving member firms and associated persons in arbitration. NASD Rule 10335 currently provides that parties to arbitration may seek temporary injunctive relief within the arbitration process or from a court of competent jurisdiction. NASD represents that this rule has primarily been used in "raiding cases," or cases involving the transfer of an employee to another firm. NASD Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Dispute Resolution to assess the effectiveness of the rule. The pilot rule is currently due to expire on July 1, 2002.[13]

NASD represents that the principal objectives of the amended proposal are to simplify and expedite the procedures for seeking immediate injunctive relief in intra-industry disputes and to fairly and effectively integrate court-ordered initial injunctive relief with the arbitration of the underlying claims in the same disputes.[14] The amended proposal would (i) eliminate the option of seeking temporary injunctive relief within the arbitration process by requiring parties to seek temporary injunctive relief in a court of competent jurisdiction; (ii) require simultaneous filing of an arbitration claim for permanent injunctive and all other relief; (iii) require arbitration to be expedited once interim relief has been granted; (iv) set forth the procedures for establishing the composition of the arbitration panel; (v) specify the applicable legal standard for granting or denying a request for permanent injunctive relief; (vi) address the effect of court-ordered temporary injunctive relief during and after arbitration; and (vii) address the allocation of arbitration fees, costs and expenses, and arbitrator honoraria.

[13] *See* Securities Exchange Act Release Act No. 45162 (December 18, 2001), 66 FR 66489 (December 26, 2001). The rules approved pursuant to this order supersede and replace the pilot program.

[14] *See* Second Release, *supra* note 11.

Temporary Injunctive Relief

The proposed rule change would eliminate arbitration as a forum for seeking temporary injunctive relief. Parties would still be able to seek temporary injunctive relief, but only in a court of competent jurisdiction. Under the proposal, a party may seek temporary injunctive relief in court if another party has already filed a claim arising from the same dispute in arbitration, provided that an arbitration hearing on a request for permanent injunctive relief has not yet begun. NASD Dispute Resolution clarified that an arbitration hearing on permanent injunctive relief would not include preparations for the arbitration hearing, such as pre-hearing conferences or assembling an arbitration panel or resolving discovery or other pre-hearing matters.[15] The proposal would require any party seeking a temporary injunctive order from a court to simultaneously file a Statement of Claim in arbitration requesting permanent injunctive and all other relief.

Several commenters criticized the elimination of arbitration as a forum for the issue of temporary injunctive relief.[16] Two commenters argued that NASD did not offer any statistical data or evidence justifying the elimination of this option.[17] Three commenters believe that requiring parties to seek interim relief from courts and having the ultimate conflict resolved by arbitrators is inefficient and will increase the expense to the parties.[18] Another commenter argued that the experience and training of NASD arbitrators made them more qualified that judges to make decisions relating to temporary injunctive relief.[19] In response, NASD explained that its experience has shown that it is not possible to obtain temporary injunctive relief in arbitration as quickly as in court, due largely to the need to appoint and convene arbitrators specifically for each case.[20] One commenter responded by arguing that arbitration is the preferred option for some parties in spite of time delays.[21]

Commenters concerned about the interests of associated persons stated that eliminating arbitration as a forum for temporary injunctive relief favors the party requesting injunctive relief because these commenters believe that courts are more likely to grant injunctive relief than arbitrators.[22] NASD believes that this premise is flawed because the proposed NASD Rule 10335 does not govern when such relief is appropriate, either in court or in arbitration. NASD notes that the same substantive legal standards for granting injunctive relief apply in both forums. NASD contends that the elimination of the option of seeking temporary injunctive relief in arbitration would only discriminate against associated persons and investors if courts applied the applicable legal standards in a discriminatory manner. NASD believes that because there is no evidence that courts apply the applicable legal standard in a discriminatory manner, the elimination of the option of seeking temporary injunctive relief in arbitration is a procedural change designed to expedite this process and should not affect the likelihood of whether such relief is granted or denied.[23] One commenter responded by arguing that Rule 10335 is more than a procedural rule.[24]

The same commenters argued that injunctions are anticompetitive, as highly profitable for firms, are prejudicial to the investing public, and conflict with other NASD rules that protect customers' rights.[25] In response, NASD stated that while these questions may warrant attention, NASD Rule 10335 is not the appropriate vehicle for addressing them because it is a procedural rule.[26] In addition, NASD notes that temporary restraining orders were always an option under the pilot rule, which the Commission approved as consistent with the Exchange Act.[27]

[15] Telephone call between Florence Harmon, Senior Special Counsel, Division, Commission, and Laura Leedy Gansler, Counsel, NASD Dispute Resolution, on January 3, 2002.

[16] *See* Foxman Letter, Jamieson Letter and Sutro Letter, *supra* note 6.

[17] *See* Foxman Letter and Jamieson Letters, *supra* notes 6, 9 and 12.

[18] *See* Foxman Letter, Sutro Letter, and Jamieson Letter, *supra* note 6.

[19] *See* Sutro Letter, *supra* note 6.

[20] *See* Amendment No. 3, *supra* note 7.

[21] *See* Pescosolido Letter 2, *supra* note 9.

[22] *See* Foxman Letter, Pescosolido Letter, Jamieson Letter, Kosta E-mail, Yoakum E-mail, Koucky E-mail, Armour E-mail, and Chernow Letter, *supra* note 6.

[23] *See* Amendment No. 3, *supra* note 7.

[24] *See* Pescosolido Letter 2, *supra* note 9.

[25] *See* Foxman Letter, Pescosolido Letter, Jamieson Letter, Kosta E-mail, Yoakum E-mail, Koucky E-mail, Armour E-mail, and Chernow Letter, *supra* note 6.

[26] *See* Amendment No. 3, *supra* note 7. We note that on December 21, 2001, NASD Dispute Resolution submitted a proposed rule change, which was effective upon filing, that expressly interprets NASD Rule 2110 to prohibit members from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. *See* Securities Exchange Act Release No. 45239 (January 4, 2001) (pertaining to NASD IM–2110–7 Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes).

[27] *See* Amendment No. 3, *supra* note 7.

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Two comments made suggestions for improving the provision requiring simultaneous filing of the court and arbitration claims.[28] In response, NASD amended the proposal to require the party seeking temporary injunctive relief to simultaneously file with the Director of Arbitration a Statement of Claim requesting permanent injunctive and all other relief and to serve such Statement of Claim on all other parties in the same manner and at the same time as it is filed with the Director.[29] The proposal provides that the filing and service of both the court filed complaint seeking temporary injunctive relief and the simultaneous arbitration filed complaint seeking permanent injunctive and all other relief shall be made by facsimile, overnight delivery or messenger.[30]

Hearing or Request for Permanent Relief; Selection of Arbitrators; Appointment of Chairperson

The proposal initially provided that if a court issues a temporary injunctive order, the hearing on the request for permanent relief must begin within 15 calendar days of the date the court issued its temporary injunctive order. One commenter stated that parties' lawyers would be able to stall the arbitration hearing by claiming to be unavailable within 15 days.[31] Another commenter found the language unclear as to whether the hearing itself was required to begin or whether preparations for the hearing, such as assembling an arbitration panel, were required to have begun within 15 days.[32] In response, NASD amended the proposal by adding language to paragraph (a)(1) of proposed Rule 10335 to clarify that the hearing itself would be required to begin within 15 days of the date a court issues a temporary injunctive order.[33] NASD Dispute Resolution clarified that the arbitration hearing on the merits must begin within 15 calendar days of the date that the court issues the order, and that this does not include preparations for the arbitration hearing, such as pre-hearing conferences or assembling a panel or resolving discovery disputes or other pre-hearing matters.[34]

Under the proposed rule change, the hearing on the request for permanent injunctive relief would be heard by a panel of three arbitrators. In cases in which the underlying dispute would be heard by a panel of non-public arbitrators as defined in NASD Rule 10308(a)(4), the three arbitrators would be non-public. In cases in which the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under NASD Rule 10202, the three arbitrator panel hearing the request for permanent relief would consist of a majority of public arbitrators as defined in NASD Rule 10308(a)(5).

In cases in which all of the members of the arbitration panel are non-public, the Director of Arbitration would generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. NASD originally proposed that at least a majority of the arbitrators on the list would be lawyers specializing in injunctive relief. Each party would be able to exercise one strike to the arbitrators on the list.

In cases in which the panel of arbitrators consists of a majority of public arbitrators, the Director of Arbitration would generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. NASD originally proposed that at least a majority of the arbitrators in those cases would be (1) public arbitrators and (2) lawyers specializing in injunctive relief. In those cases, the parties would be able to exercise two strikes to the arbitrators on the list.

Regardless of the number of strikes given to the parties, the rule would incorporate by reference other NASD Code of Arbitration rules providing unlimited strikes for cause, so that parties would always be able to strike arbitrators who were unqualified due to conflicts of interest or for other reasons constituting cause.

Under the proposed rule change, the parties would be required to inform the Director of their preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members. If the parties did not agree on a chairperson within that time, the Director would select the chairperson. The proposal initially provided that, in cases in which the panel consists of a majority of public arbitrators, the chairperson would be one of the public arbitrators who is a lawyer specializing in injunctive relief; and in cases in which the panel consists of non-public arbitrators, the chairperson would be a lawyer specializing in injunctive relief. The proposal initially provided that, whenever possible, the Director would select as chairperson the lawyer specializing in injunctive relief whom the parties have ranked the highest. The proposed rule change also provides that the Director of Arbitration may exercise discretionary authority and make any decision that is consistent with the purposes of the rule and the arbitrator selection rule (NASD Rule 10308) to facilitate the appointment of arbitration panels and the selection of the chairperson.

Several commenters concerned with the interests of associated persons expressed dissatisfaction with a list of potential arbitrators (and a chairman) composed of a majority of "lawyers specializing in injunctive relief."[35] They found this requirement unclear, too limiting and fraught with the potential for bias.[36] In response, NASD amended the proposal to provide that one less than a majority of the list of arbitrators be lawyers "with experience litigating cases involving injunctive relief" and that the chairman of the panel, if possible, also be a lawyer with "experinece litigating cases involving injunctive relief."[37]

NASD also made the following changes to the procedure for selecting an arbitration panel: the Director shall send to the parties the employment history for the past 10 years and other background information for each listed arbitrator; the Director shall consolidate the parties' rankings; and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification; and, in cases in which the panel consists of a majority of public arbitrators, the Director shall select a public arbitrator as chairperson.[38]

Applicable Legal Standard

The proposed rule change provides that the decision to grant or deny a request for permanent injunctive relief would be governed by an enforceable choice of law agreement between the parties, or, if there were no such agreement, then by the law of the state where the events upon which the request is based occurred. Some commenters argued that permitting an enforceable choice of law agreement between the parties to establish the governing law would be unfair to associated persons since firms draft these agreements in their own favor and force associated persons to sign them.[39] One commenter was also concerned that the absence of a uniform legal standard would yield wildly inconsistent results.[40] In response, NASD stated that this provision codifies the status quo, which is that enforceable choice of law agreements are applicable to requests for injunctive relief in arbitration and that this provision would not render any otherwise unenforceable choice-of-law provision or employment contract enforceable.[41]

Temporary Injunctive Order in Effect During Hearing

The proposed rule change provides that, in the event that a court-issued temporary injunctive order is still in effect, after a full and fair presentation of evidence from all relevant parties, an arbitration panel may prohibit the parties from seeking an extension of the pending court order, and, if appropriate, may order the parties to jointly move the court to modify or dissolve the pending order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

Some commenters expressed concern that this process would keep the injunctive order in place longer than was fair and appropriate because arbitrators could not make decisions on injunctive issues until a full and fair hearing had occurred. Commenters argued that this could be an extended period of time because of the potential for a fifteen day delay before an arbitration hearing would be required to begin; the hearing would not be required to be expedited; the hearing would not be required to be held on consecutive days; and the temporary injunctive order could not be terminated until the parties petitioned the court after arbitration was complete.[42]

NASD responded that it does not believe that arbitration panels have the authority to dissolve, modify or supersede a court order; rather, arbitrators have the authority to order parties not to seek extensions of pending orders, or to jointly ask the court to modify or dissolve a pending order, if necessary. NASD does not believe arbitrators should exercise this authority until they have heard a full and fair presentation of the evidence regarding a request for permanent relief to ensure that arbitrators will be in a position to make an informed decision. In response to commenters' concerns about how long it would take arbitrators to reach a decision after a full and fair hearing, NASD stated that statistics on the average length of evidentiary hearings on requests for permanent injunctive relief suggest that, in most cases, arbitrators will be in a position to make that decision in a short period of time because the average duration of such hearings is 1.36 days, and almost 80% of all cases that go to a hearing are resolved after one day of hearings.[43] NASD also revised the proposal to expedite a hearing on permanent injunctive relief. Under the amended proposal, unless the parties agreement otherwise, a hearing lasting more than one day would be held on consecutive days when reasonably possible.[44] NASD also added language to make clear that arbitrators may make decisions on the issue of permanent injunctive relief and hold subsequent hearing sessions to decide other issues between the parties, including damages or other relief, to allow the parties time to gather or present additional evidence without delaying the termination of a temporary injunctive order.[45]

In response to a comment that judges often include language in their orders that transfer authority to arbitrators,[46] NASD further stated that the provision requiring arbitrators to have a full and fair hearing before ordering parties to petition the court for dismissal of a temporary injunctive order does not apply to court orders that expire by their own terms or otherwise contain provisions that confer authority on arbitrators to modify, amend, or dissolve the order.[47]

Fees

NASD originally proposed that the parties would jointly bear the travel-related costs and expenses of the arbitrators appointed to hear the request for permanent injunctive relief and prohibited arbitrators from reallocating arbitrator travel costs and expenses among the parties. Under the proposed rule change, notwithstanding any other provision of the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this rule shall receive an honorarium of $375 for each single session, and $700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of $300 for each single session, and $600 for each double session, of the hearing. The proposal initially provided for the parties to share the difference between these amounts and the amounts panel members and the chairperson would otherwise receive under the Code and prohibited arbitrators from reallocating these amounts among the parties.[48]

The proposed rule change also provides that the party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, the proposed rule specifically provides that the arbitrators shall have the authority to allocate such fees among the parties. The proposed rule would have no effect on the obligations of parties to pay, or on the authority of arbitrators to allocate, any other hearing fees required under the Code.

Several commenters argued that the provision prohibiting arbitrators from reallocating the travel-related costs and expenses of the arbitrators among the parties was unfair to associated persons.[49] In response, NASD amended the text of the proposed rule change to expressly permit arbitrators to reallocate the travel-related costs and expenses of arbitrators and the arbitrators' fees among the parties.[50] NASD also clarified that the parties were responsible for the "reasonable" travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location or locations.[51]

Development of Proposal

Several commenters stated that the subcommittee that worked on the proposal consisted only of representatives from retail firms, and did not include representatives from associated persons and the investing

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[28] *See* Sutro Letter and Campbell Letter, *supra* note 6.

[29] *See* Amendment No. 5, *supra* note 10.

[30] *See* Amendment No. 4, *supra* note 10.

[31] *See* Pescosolido Letter 2, *supra* note 9.

[32] *See* Sutro Letter, *supra* note 9.

[33] *See* Amendment No. 4, *supra* note 10.

[34] Telephone call between Florence Harmon, Senior Special Counsel, Division, Commission, and Laura Leedy Gansler, Counsel, NASD Dispute Resolution, on January 3, 2002. *See supra* note 15.

[35] *See* Sutro Letter, Campbell Letter, Pescosolido Letters, Jamieson Letter 3 and Jamieson Letter 4, *supra* notes 6, 9 and 12.

[36] *Id.*

[37] *See* Amendment No. 3, *supra* note 7 and Amendment No. 5, *supra* note 10.

[38] *See* Amendment No. 4 and Amendment No. 5, *supra* note 10.

[39] *See* Foxman Letter, Sutro Letter, Jamieson Letter 2 and Jamieson Letter 3, *supra* notes 6, 9 and 12.

[40] *See* Sutro Letter, *supra* note 6.

[41] *See* Amendment No. 3, *supra* note 7.

[42] *See* Foxman Letter, Sutro Letter, Pescosolido Letters, Jamieson Letters, and Campbell Letter, *supra* notes 6, 9 and 12.

[43] *See* Amendment No. 3, *supra* note 7. One commenter responded that these statistics were inaccurate. This commenter, however, conceded that if hearings took place within 15 days following an injunction on consecutive days his concerns would not be as critical. *See* Pescosolido Letter 2, *supra* note 9.

[44] *See* Amendment No. 4 *supra* note 10.

[45] *See* Amendment No. 4, *supra* note 10.

[46] *See* Pescosolido Letter 2, *supra* note 9.

[47] *See* Amendment No. 4, *supra* note 10.

[48] NASD proposes that the payment of ordinary honoraria, as provided in NASD IM–10104 of the Code, shall not be affected by this provision.

[49] *See* James Letters, Sutro Letter, Pescosolido Letter, and Campbell Letter, *supra* notes 6, 9 and 12.

[50] *See* Amendment No. 3 and Amendment No. 4, *supra* note 7 and note 10.

[51] *See* Amendment No. 4, *supra* note 10.

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public.[52] In response, NASD stated that it believed that interests of all relevant parties, including member firms, associated persons and the investing public were represented during the process. The committee included member firms with interests on both sides of raiding cases. NASD believes that views of associated persons and the investing public were represented by these firms. In addition, the proposal was reviewed and approved by the full National Arbitration and Mediation Committee, which consists of a majority of public members, as well as the Board of Directors of NASD Dispute Resolution. NASD believes that "advocates of the interests of associated persons, as well as investors, have had ample opportunity to express opinions about the proposed rule change at all levels of review, and changes have been made throughout the process to address the interests of both constituencies".[53]

III. Discussion

After careful review, the Commission finds, for the reasons discussed below, that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission finds the proposed rule change, as amended, is consistent with sections 15A(b)(5), 15A(b)(6) and 15A(b)(9) of the Exchange Act.[54]

NASD Rule 10335 was initially adopted as a pilot program in order to give NASD the opportunity to assess the rule's effectiveness.[55] NASD represents, based on its experience with Rule 10335, that the current rule is confusing and unnecessarily complex. NASD represents that the proposed rule change is the result of lengthy deliberation and careful compromise by the Injunctive Relief Rule Subcommittee of the National Arbitration and Mediation Committee ("NAMC"). Before the proposal was filed with the Commission, it was approved by the National Arbitration and Mediation Committee, which consisted of a majority of public members, as well as the board of NASD Regulation. The proposal was published for comment on two separate occasions, after Amendment No. 2 and Amendment No. 5 were filed, respectively. The Commission received 16 comment letters. The NASD incorporated many of the commenters' suggestions in the proposal, as amended.

In approving this proposal, the Commission does not address the merit of injunctive relief in the context of NASD Rule 10335. In large part, NASD Rule 10335 is a procedural rule that establishes the process for seeking temporary injunctive relief. The Commission notes that NASD Dispute Resolution has recently provided interpretive guidance to NASD Rule 2110 designed to protect investors by prohibiting members from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative.[56]

Further, the Commission notes that the proposal, as amended, contains provisions that address the commenters' concerns pertaining to associated persons and public investors. A party seeking temporary injunctive relief is required to file its permanent claim at the same time it files its temporary claim and must simultaneously serve such claim on all parties by facsimile, overnight delivery or messenger. To keep the arbitration process as short as possible, once temporary injunctive relief has been granted, an arbitration hearing on permanent injunctive and all other relief must begin within 15 calendar days, must be held on consecutive days when reasonably possible, and arbitrators may hold separate subsequent hearings to decide other issues in order to expedite the "full and fair" hearing on permanent injunctive relief.

To address commenters' concerns regarding the composition of the arbitration panel, NASD made a number of changes to the proposal. In particular, a portion, but not a majority, of the list of potential arbitrators will be required to be lawyers with experience litigating cases involving injunctive relief. Further, the parties will be provided with a 10-year employment history for each potential arbitrator and the arbitrators will be selected based on the consolidated rankings of the parties. In addition, NASD modified the proposal to address certain commenters' concerns about fees. Specifically, the arbitrators now have the discretion to reallocate the reasonable travel-related costs and expenses incurred by the arbitrators and the arbitrators' fees among the parties.[57]

IV. Commission Findings and Order Granting Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Exchange Act and the rules and regulations thereunder that govern NASD.[58] In particular, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Exchange Act[59] because the proposal establishes procedures that allow for the quick resolution of disputes involving injunctive relief, provides a process for selecting a balanced arbitration panel, and improves procedural notice and service of injunctive relief claims. The Commission also finds that the proposed rule change, as amended, is consistent with the provisions of sections 15A(b)(5) of the Exchange Act[60] because the rule change provides that the parties are responsible for the "reasonable" travel-related costs and expenses of the arbitrators, and permits the arbitrators to use their discretion to reallocate costs and fees among the parties.

In reviewing this proposal, the Commission is required to consider whether the proposal will promote competition, efficiency and capital formation.[61] In this regard, the proposal provides a process that should help expedite and streamline the process for obtaining injunctive relief and deciding cases on the merits where injunctive relief is ordered. Further, the Commission does not believe that this procedural process, which does not address employment contracts, should result in any burden on competition not necessary or appropriate in furtherance of the Exchange Act. Therefore, the Commission finds that the proposal is consistent with section 15A(b)(9) of the Exchange Act.[62]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act[63] that the proposed rule change (SR–NASD–00–02), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[64]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1105 Filed 1–15–02; 8:45 am]

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[52] *See* Foxman Letter, Campbell Letter, Pescosolido Letter, and Jamieson Letters, *supra* note 6.

[53] *See* Amendment No. 3, *supra* note 7.

[54] 15 U.S.C. 78*o*–3(b)(5), 15 U.S.C. 78*o*–3(b)(6) and 15 U.S.C. 78*o*–3(b)(9).

[55] *See* Securities Exchange Act Release No. 36145 (August 23, 1995), 60 FR 45200 (August 30, 1995); Securities Exchange Act Release No. 38069 (December 20, 1996), 61 FR 68806 (December 30 1996); Securities Exchange Act Release No. 39458 (December 17, 1997), 62 FR 67423 (December 24, 1997), Securities Exchange Act Release No. 40124 (June 24, 1998), 63 FR 36282 (July 2, 1998); Securities Exchange Act Release No. 40846 (December 28, 1998), 64 FR 548 (January 5, 1999); Securities Exchange Act Release No. 41532 (June 16, 1999), 64 FR 33335 (June 22, 1999); Securities Exchange Act Release No. 42280 (December 28, 1999), 65 FR 1211 (January 7, 2000) and Securities Exchange Act Release No. 43813 (January 5, 2001), 66 FR 2629 (January 16, 2001).

[56] *See* note 26, *supra*.

[57] Jamieson Letter 4 argued that in the context of arbitration, cost-splitting is illegal even if the arbitrators are permitted to reallocate costs based on a recent California Supreme court decision. *Armendariz* v. *Foundation Health Psychcare Services, Inc.*, 6 P.3d 669 (2000). This court decision is not relevant to NASD 00–02 because the court's decision was directed to the validity of a predispute arbitration agreement involving certain employment matters, not the validity of the arbitration forum's fees (or the arbitration forum's procedural rules). In California, NASD–DR has limited the arbitration fees for employees in applicable cases involving employment disputes pursuant to this court decision, including those filed under the procedural injunctive relief rule. *See* note 12, *supra*.

[58] 15 U.S.C. 78*o*–3.

[59] 15 U.S.C. 78*o*–3(b)(6).

[60] 15 U.S.C. 78*o*–3(b)(5).

[61] 15 U.S.C. 78c(f).

[62] 15 U.S.C. 78*o*–3(b)(9).

[63] 15 U.S.C. 78s(b)(2).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45258; File No. SR–NYSE–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Fees for Mandatory Participation in the Floor Member Continuing Education Program

January 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees as of January 14, 2002 to be charged to members that are active on the floor of the Exchange who are required under NYSE Rule 103A (Specialist Stock Reallocation and Member Education and Performance) to participate in the Exchange's Floor Member Continuing Education Program on a semi-annual basis. The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 103A requires members active on the floor of the Exchange to participate in the Exchange's Floor Member Continuing Education Program on a semi-annual basis and at such other times as may be necessary in connection with any particular matter or matters. Any floor member who fails to complete an educational program as scheduled must attend a make-up program no later than 120 days from the date of the originally scheduled program. Failure to do so will result in the member being precluded from entering on the floor until such time as the member satisfies the requirement to participate in the program.

A new interactive computer-based education program has been developed that will be implemented during January 2002. Participants will be required to be trained on market activities such as Opening, Intra-Day and the Closing. Specific categories include, but are not limited to: foreign stocks and parity, the opening of a volatile stock, NYSE Rule 127 (Block Positioning) and NYSE Rule 726 (Delivery of Options Disclosure Document and Prospectus) trades, CAP orders, error accounts, crossing sessions, MOC/LOC orders and informational imbalances. An industry committee has also been formed to guide the development of the content. Participation will continue to be required on a semi-annual basis, and a $100 registration fee will be charged for each session.

If a registrant fails to keep the scheduled appointment or does not complete the session, the registrant will be charged an additional $100 to re-register for another session.

The proposed fees are intended to help offset the costs of developing the program and infrastructure, administration, and ongoing development and maintenance.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the provisions of section 6(b)(4) of the Act,[3] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (f)(2) of Rule 19b–4 thereunder,[5] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–02 and should be submitted by February 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1100 Filed 1–15–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45263; File No. SR–NYSE–2001–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New Stock Exchange, Inc. Amending its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth in Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines

January 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 9, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Subject to the guideline amendments noted below, the Exchange seeks permanent approval of the pilot program setting forth guidelines for the amounts that NYSE issuers should reimburse member organizations for the distribution of proxy materials and other issuer communications to security holders whose securities are held in street name. In addition, the Exchange proposes to amend the guidelines under the current pilot program by decreasing the basic mailing fee paid by "Large Issuers" (as defined below) by 5¢ (from 50¢ to 45¢) and by cutting in half the incentive fee payable by Large Issuers (from 50¢ to 25¢).

The text of the proposed rule change, as amended, is available upon request from the Office of the Secretary, the NYSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 451 ("Transmission of Proxy Material") and Exchange Rule 465 ("Transmission of Interim Reports and Other Material") (collectively, the "Rules") currently provide for a pilot program pursuant to which the NYSE has established fee reimbursement guidelines (the "Pilot Program"). Under the Pilot Program, the NYSE has established guidelines for the amounts that NYSE issuers should reimburse member organizations for the distribution of proxy materials and other issuer communications to security holders whose securities are held in street name (the "Guidelines"). In this proposed rule change, as amended, the Exchange seeks permanent approval of the Pilot Program Guidelines. In addition, the Exchange proposes to amend certain reimbursement fees that the Guidelines establish. Those amendments seek to decrease the basic mailing fees paid by large issuers by 5¢ (from 50¢ to 45¢) and to cut in half (from 50¢ to 25¢) the incentive "suppression" fee that large issuers pay to member organizations that succeed in reducing the number of sets of materials that need to be distributed (such as by sending one set of materials to a household holding multiple positions in the issuer's securities).

A. Permanent Approval

Supplementary Material .90 ("Schedule of approved charges by member organizations in connection with proxy solicitations") to Exchange Rule 451 applies the Guidelines to the transmission of proxy materials to shareholders. Supplementary material .20 ("Mailing charges by member organizations") to Exchange Rule 465 applies them to the transmission of other materials to shareholders. In addition, Paragraph 402.10(A) of the NYSE's *Listed Company Manual* ("Charges for Initial Proxy and/or Annual Report Mailings") includes the text of Supplementary Material .90 to Exchange Rule 451 and the Exchange proposes to conform Paragraph 402.10(A) to conform to the changes described below to Exchange Rule 451. The Commission initially approved the Pilot Program on March 14, 1997.[4] Pursuant to Commission extensions of its initial approval, the Pilot Program has remained in effect since then. Pursuant to the Commission's most recent extension, the Pilot Program is currently scheduled to expire on April 1, 2002.[5]

During this period, the NYSE has participated on the Proxy Voting Review Committee (the "Committee"). The Committee is a private initiative that is designed to review the proxy process. It includes self-regulatory organizations and representatives of the securities industry, corporate issuers and institutional investors, as well as the largest provider of proxy intermediary services. The Committee has monitored the effects of the Guidelines on the market and has maintained an on-going dialogue among Committee representatives. In addition, the Exchange has had an independent accounting firm audit the Pilot Program.[6]

The Committee's experience with the Pilot Program has convinced it that the Guidelines have been instrumental in setting at fair and reasonable levels the costs that issuers incur in having member organizations and

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Darla C. Stuckey, Corporate, NYSE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated January 7, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange made some technical and clarifying corrections to the proposed rule change.

[4] See Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997) (File No. SR–NYSE–96–36).

[5] See Securities Exchange Act Release No. 44750 (August 29, 2001), 66 FR 46488 (September 5, 2001) (File No. SR–NYSE–2001–22).

[6] See Amendment No. 1, *supra* note 3.

intermediaries transmit proxy and other materials to security holders. For that reason, the Committee unanimously voted (with one abstention) to recommend that the NYSE seek permanent approval of the Guidelines, as modified by this proposed rule change, as amended, and the Exchange has determined that it is appropriate to do so.

B. Guideline Changes

In addition to seeking permanent approval of the Guidelines, the Committee has recommended certain amendments to the Guidelines. The Exchange supports those amendments, proposes to adopt them into its Rules and supports the Committee's rationale for the amendments, as set forth below. The proposed amendments are as follows:

(i) Reduce the suggested rate of reimbursement for initial mailings of each set of material (*i.e.*, proxy statement, form of proxy and annual report when mailed as a unit) from 50¢ to 40¢.

(ii) Increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees. That suggested fee is currently $20 per nominee. The increase would raise it (A) 10¢ per set of material required for "Small Issuers" (defined as issuers whose shares are held in fewer than 200,000 nominee accounts), or (B) 5¢ per set of material required for "Large Issuers" (defined as issuers whose shares are held in at least 200,000 nominee accounts).

(iii) Reduce from 50¢ to 25¢ the incentive fee for initial mailings of the materials of Large Issuers (again, issuers whose shares are held in at least 200,000 nominee accounts). As a result, the incentive fee for Large Issuers will decrease by 25¢ and the incentive fee for Small Issuers will remain at 50¢.

The Committee and the Exchange represent that the net effect of clauses (i) and (ii) is to decrease the effective mailing fee by 5¢ for Large Issuers, but not for Small Issuers. One intermediary projects that the combination of that decrease and the decrease in the incentive fee for Large Issuers will decrease the total fees that issuers pay to have materials distributed to shareholders by almost $11 million.[7]

The Guidelines currently subject Small Issuers and Large Issuers to the same rates. The Committee has designed the proposed revamped fee schedule to allocate more fairly the costs of distributing proxy and other material between Large Issuers and Small Issuers. The Committee recognizes that economies of scale create overall per-account cost savings for Large Issuers and that those savings justify lower fees for Large Issuers. The Committee determined that reducing the rates applicable to Large Issuers relative to the rates applicable to Small Issuers is fair, reasonable and appropriate.[8]

The Committee recognizes that a member organization typically spends less in transmitting material to the nominee account of a Large Issuer than in transmitting material to the nominee account of a Small Issuer. That is because economies of scale apply to many of the tasks of processing material for distribution and of collecting voting instructions. For instance, processing search dates and record dates, logging receipt of materials, coding proxies, reporting voting results and invoicing fees payable involve costs that are essentially fixed. As a result, the per-account cost for these tasks decreases in relation to the number of accounts in which the issuer's shares are held. That per-account cost is therefore lower with respect to a Large Issuer than with respect to a Small Issuer.

In addition, modern data processing and mailing techniques reduce the amount of human intervention involved in the process, driving down the actual per-account cost of handling mailings in large volume. The Committee believes that the actual cost incurred with respect to Large Issuers in handling mailings is lower than the reimbursable amount that results from adherence to the current Guidelines. On the other hand, the actual cost of handling mailings for Small Issuers far exceeds the fees set forth in the current guidelines.[9] The Committee believes that these factors justify reducing the incentive fee from 50¢ to 25¢ for Large Issuers, but not reducing the 50¢ fee for Small Issuers. They also justify the 5¢ difference in the per-set-of-material per-nominee fee for Large Issuers and Small Issuers.

In applying the proposed revamped fee schedules to the Guidelines, the Committee has had to establish a line of demarcation that separates Large Issuers from Small Issuers. It settled on requiring an issuer to have 200,000 nominee accounts in order to qualify as a Large Issuer. As a result, only the largest issuers, fewer than 200 overall, fall within that definition. However, beneficial owners' positions in shares of those Large Issuers account for approximately 50 percent of the number of positions that all beneficial owners maintain in the shares of all issuers. The Exchange has adopted the Committee's recommendations discussed above, including the recommendation that the 50 percent mark is an appropriate place at which to draw the line. The Exchange, in this proposed rule change, as amended, proposes to incorporate the Committee's recommendations into its Guidelines and Rules.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of sections 6(b)(4)[11] and 6(b)(5)[12] of the Act, in particular. Section 6(b)(4) of the Act[13] provides that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. Section 6(b)(5) of the Act[14] provides that an exchange have rules to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

[7] See letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Stephen P. Norman, Chairman, Committee, dated November 28, 2001 (the "Committee Letter"). A copy of the Committee Letter is attached as Exhibit C to the Exchange's proposed rule change.

[8] The Committee voiced its support for the proposed fee changes in the Committee Letter. See Exhibit C to the Exchange's proposed rule change.

[9] Even taking into consideration increased costs associated with institutional shareholder requirements and peak season processing, both of which are associated more with Large Issuers than Small Issuers, the Committee nonetheless found that handling costs for Large Issuers are lower than for Small Issuers, due primarily to economies of scale.

The largest provider of proxy intermediary services presented information to the Committee that detailed the costs that issuers pay for registered proxy processing. That information indicated that the per-unit costs that Small Issuers pay are, on average, more than 10 times greater than the per-unit costs that Large Issuers pay.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants or Others

The NYSE has engaged in on-going dialogue regarding the proposed rule change and other aspects of the Pilot Program with Commission staff, as well as with the Committee. The proposed fee changes were developed and approved by the Committee. In the Committee Letter, the Committee asserts that the proposed fees appear reasonable in light of the service levels required and the overall costs associated with the elimination of duplicate mailings, that the proposed fees reflect the economies of scale of the Large Issuers and that the Guidelines should be made permanent.

In addition, the NYSE has received other comment letters on the proposed fee changes from the Securities Industry Association ("SIA"), the American Society of Corporate Secretaries ("ASCS") and the Association of Publicly Traded Companies ("APTC").[15] SIA, ASCS and APTC all endorse the proposed fee changes. APTC notes in its letter that the Pilot Program provided a $235 million reduction in costs in 2001 from mail suppressions and is projected to provide savings of more than twice that amount by 2005. APTC also posits that the large volumes and low incremental cost of transmitting proxy materials for Large Issuers justify their payment of lower rates than Small Issuers.

Several of the Commission releases approving changes to the Pilot Program included language encouraging interested parties to consider approaches that would foster competition in the proxy distribution service industry. The releases also suggested that market forces, rather than regulators, should determine reasonable rates for proxy distribution services.

The Exchange views the Guideline-setting process as an on-going matter. Even if the Commission grants permanent status to the Guidelines, the Exchange intends to continue to meet with the Committee to evaluate and tune the Guidelines and to consider possible approaches to broader reform of the proxy distribution system.

[15] *See* letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Donald D. Kittell, Executive Vice President, SIA, dated November 29, 2001 (the "SIA Letter"); letter to James E. Buck, Senior Vice President and Secretary, NYSE, from Brian T. Borders, President, APTC, dated November 29, 2001 (the "APTC Letter"). Those letters are included in Exhibit D to the Exchange's proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–53 and should be submitted by February 6, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1104 Filed 1–15–02; 8:45 am]

BILLING CODE 8010–01–M

[16] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45262; File No. SR–PCX–2001–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the Pacific Exchange, Inc. Establishing a New Exchange Fee Based on the Number of Order Cancellation Routed Through the Exchange's Member Firm Interface

January 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 27, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 13, 2001, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On December 26, 2001, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to establish a new fee based upon the number of order cancellations that are routed through the MFI.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 12, 2001 ("Amendment No. 1"). In Amendment No. 1, the PCX amended note 2 to the PCX Fee Schedule entitled "Options: Trade-Related Charges" to clarify that the fee will be assessed when the total number of orders an executing clearing member cancels through the PCX Member Firm Interface ("MFI") in a particular month exceeds the total number of orders that member executes through the MFI in that same month.

[4] *See* letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 21, 2001 ("Amendment No. 2"). In Amendment No. 2, the PCX clarified the purpose of the proposed rule change. For purposes of calculating the 60-day period, within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 26, 2001, the date the PCX filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish a fee to deal with various operational problems and costs resulting from the practice of immediately following orders routed through the Exchange's automated MFI with a cancel request. Since these orders frequently come in large numbers, components, of the MFI, such as the Floor Broker Hand Held Terminals ("HHTs"), can very quickly become backlogged, which increases Exchange costs and adversely impacts public customers, their clearing firms, and Lead Market Makers by making the execution of other customer orders less timely. A high volume of cancellations sent through the MFI to HHTs or to the Exchange's Limit Order Book also increases Exchange costs by requiring the Exchange to spend increased amounts on systems and other hardware to process increased order traffic flow.[5]

Under the proposed fee, the executing Clearing Member would be charged $1.00 for every order that it cancels through the MFI in any month where the total number of cancellations sent by the executing Clearing Member exceeds the total number of orders that same firm executed through the MFI in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through the MFI in a given month. The Exchange believes that the fee will help ease backlogs on the MFI and particularly HHTs.

[5] This sentence was clarified to reflect a telephone converation between Cindy L. Sink, Senior Attorney, PCX, and Gordon Fuller, Counsel to the Assistant Director and Frank N. Genco, Attorney, Division, Commission, (January 3, 2002).

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[6] in general, and section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes or changes a due, fee, or other charge.[10] At any time within 60 days of December 26, 2001, the Commission may summarily abrogate such proposed rule change, as amended, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–2001–47 and should be submitted by February 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1101 Filed 1–15–02; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The Exchange's proposed rule change is substantially similar to a fee instituted by the Chicago Board Options Exchange, Inc., which became immediately effective on July 27, 2001, and a fee instituted by the American Stock Exchange LLC, which became immediately effective on November 27, 2001. *See* Securities Exchange Act Release Nos. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001), (Notice of Filing and Immediate Effectiveness, SR–CBOE–2001–40); and 45110 (November 27, 2001), 66 FR 63080 (December 4, 2001), (Notice of Filing and Immediate Effectiveness, SR–Amex–2001–90).

[11] *See* 15 U.S.C. 78(b)(3)(C).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45255; File No. SR–SCCP–00–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to the Eligibility of Holders of Equity Trading Permits Issued by the Philadelphia Stock Exchange, Inc. To Be Participants of the Stock Clearing Corporation of Philadelphia

January 9, 2002.

On January 12, 2000, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on May 31, 2000, amended a proposed rule change (File No. SR–SCCP–00–01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 1, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends SCCP's rules to permit holders of Equity Trading Permits ("ETPs") issued by the

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43210 (August 25, 2000), 64 FR 53259.

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Philadelphia Stock Exchange, Inc. ("PHLX") to be eligible to become SCCP participants. SCCP Rule 3 provides that, subject to certain conditions,[3] any person who is a broker-dealer registered under the Act and a member in good standing of PHLX is eligible to be a SCCP participant.[4] The rule change amends SCCP Rule 3 to permit holders of PHLX ETPs to be considered "members" of PHLX for purposes of SCCP's participant qualification requirements.[5] ETP holders would thus be eligible to apply to be participants in SCCP.

The rule change also makes a corresponding amendment to Article 2 of SCCP's Articles of Incorporation. Article 2 currently includes as one of SCCP's corporate purpose the carrying of securities "for members, member firms and/or member corporation of the Philadelphia Stock Exchange. * * *" The rule change amends Article 2 to add a statement that SCCP's Board of Directors may determine by rule the identity of PHLX "members, member firms and/or member corporations."

II. Discussion

PHLX has proposed the creation of ETPs in order to reduce the cost of access to the exchange's equity trading floor as well as to provide an opportunity to attract additional order flow and new business and services. All trades on the PHLX in equity securities are processed through SCCP and require a SCCP participant to be involved. ETP holders will not be required to be SCCP participants themselves. Like PHLX members, ETP holders may elect instead to enter into a correspondent arrangement with another SCCP participant whereby the SCCP participant assumes responsibility for the clearance and settlement of the ETP holder's trades. The herein approved amendments to SCCP Rule 3 and SCCP's Articles of Incorporation simply assure that those ETP holders wishing to become SCCP participants themselves will be treated by SCCP in he same fashion as SCCP participants who are PHLX members. In doing so, the amendments also provide a clear basis upon which the SCCP board of directors can determine by rule, as and when future circumstances may warrant, the identity of such "members, member firms and/or member corporations."

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] The Commission believes that the approval of SCCP's Rule 3 change and Article 2 amendment is consistent with this section because these changes allow holders of ETPs issued by the PHLX to be eligible to become SCCP participants just as PHLX members are. As a result, more broker-dealers will have access to and be able to utilize SCCP.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–00–01) be and hereby is approved.[7]

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1102 Filed 1–15–02; 8:45 am]

BILLING CODE 8010–01–M

[3] SCCP approves applicants for participant status only upon a determination that the applicant meets certain standards of financial condition, operational capability, and character set forth in SCCP's rules. Each participant is required to make a contribution to the SCCP Participant's Fund and to comply with SCCP's By-laws and Rules as well as with a participant's agreement. ETP holders must apply for SCCP membership and will be subject to the same admission criteria as PHLX members.

[4] The Commission has approved two rule changes proposed by PHLX. PHLX 00–02 adds new Article Twenty-First to PHLX's Certificate of Incorporation which enables PHLX to issue ETPs. PHLX 00–03 implements PHLX Rule 23 which sets forth the terms and conditions of the ETPs. Under PHLX Rule 23, holders of ETPs generally have the same rights under PHLX rules as PHLX members without options privileges except that ETP holders do not have the right to vote. ETPs are not transferable and their holders are not entitled to any residual interest in PHLX assets upon a liquidation of PHLX. Holders of ETPs are generally subject to the same obligations as PHLX members, except with respect to certain fees. Securities Exchange Act Release No. 45254 (January 9, 2002).

[5] The amendment to SCCP Rule 3 states, "For purposes of this Rule 3 as well as all provisions of the Corporation's Certificate of Incorporation, By-laws, rules, regulations, requirements, orders, directions and decisions adopted or made in accordance therewith, holders of Equity Trading Permits ("ETPs") issued pursuant to PHLX Rule 23 shall be deemed to be members of PHLX, and holders of Regular ETPs issued pursuant to PHLX Rule 23 who transact business from a location on the PHLX's equity floor shall be deemed to be PHLX floor members." Off-Floor ETPs, the other class of ETPs, allows holders electronic and telephone access, but not physical access, to the Exchange floor. Accordingly, SCCP would treat ETP holders, regardless of class, just like PHLX members both in terms of SCCP participant qualification requirements and privileges of SCCP participant status.

[6] 15 U.S.C. 8q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45265; File No. SR–SCCP–2001–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change to Increase the Margin Threshold for Margin Members in Certain Nasdaq National Market Securities

January 10, 2002.

On April 30, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–SCCP–00–06) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 26, 2001.[2] On July 26, 2001, SCCP amended the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

SCCP Rule 9 provides in part that SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP provides margin for such accounts based on SCCP's Rule 9 and other relevant SCCP rules, by-laws, and procedures and Regulation T of the Board of Governors of the Federal Reserve System. Currently, margin members who are designated as specialists or alternate specialists in an exchange listed security have a margin financing threshold rate of 15 percent for positions in those securities held in their specialist accounts. Members holding positions for which they are not designated as specialist or alternative specialist have a non-specialist margin rate of 50 percent. Pursuant to Rule 9, SCCP may issue margin calls to any margin member when the margin requirement exceeds the account equity.

The rule change amends SCCP's providers to specify a margin financing threshold rate of 25 percent for members registered as specialists and alternate specialists in Nasdaq NM securities. It should be noted that the Philadelphia Stock Exchange, Inc. ("Phlx") has recently reinstated its over the counter/unlisted trading privileges ("OTC/UTP") pilot program for trading activity during regular trading hours.[4] SCCP expects that some of its margin members will be registered in certain of the eligible Nasdaq NM securities once the Phlx begins trading Nasdaq NM securities again.

It also should be noted that no other aspects of the SCCP procedures respecting Rule 9 are being modified. The rule change establishes a margin financing threshold rate of 25 percent for margin members registered as specialists or alternative specialists in certain Nasdaq NM securities.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. Once the Phlx begins trading Nasdaq NM securities again, it will be prudent for SCCP to require a higher margin financing threshold rate (25 percent) for Nasdaq NM securities than for exchange listed securities (15 percent).[6] Accordingly, the Commission finds that the higher margin financing threshold rate for Nasdaq NM securities should help SCCP meet its statutory safeguarding obligations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–2001–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1106 Filed 1–15–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44582 (July 20, 2001), 66 FR 39071.

[3] The amendment was technical in nature and did not require republication of the notice.

[4] Securities Exchange Act Release No. 45182 (December 20, 2001), 66 FR 67609 (December 31, 2001) [File No. SR–Phlx–00–20]

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] SCCP recently reviewed volatility levels for the Nasdaq 100 index and Nasdaq Composite index as compared to the Dow Jones Industrial average and the NYSE Composite index indicated significantly higher volatility levels over 10 day, 20 day, 50 day, and 90 day time periods.

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before March 18, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Walker, Chief, Office of Civil Rights Compliance Small Business Administration, 409 3rd Street, SW., Suite 6400, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Carol Walker, Chief, Civil Rights Compliance (202) 205–7149 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Notice to New Borrowers.
Form No: 793.
Description of Respondents: Companies are requested to keep records in order for SBA to determine the compliance status of recipient.
Annual Responses: 24,985.
Annual Burden: 5,767.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

Title: Statement of Personal History.
Form No: 1081.
Description of Respondents: Certified Development Companies.
Annual Responses: 300.
Annual Burden: 75.
Title: Servicing Agent Agreement.
Form No: 1506.
Description of Respondents: Certified Development Companies.
Annual Responses: 4,200.
Annual Burden: 4,200.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–1133 Filed 1–15–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region IV Regulatory Fairness Board

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Roundtable on Thursday, January 17, 2002 at 1 p.m. at Capital Plaza Holiday Inn, 405 Wilkinson Blvd., Frankfort, Kentucky 40601, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make an oral presentation must contact Jeri Grant in writing or by fax, in order to be put on the agenda. Jeri Grant, Kentucky District Office, U.S. Small Business Administration, Room 188, 600 Dr. Martin Luther King, Jr. Place, Louisville, KY 40202, Phone (502) 582–5971 ext. 224, fax (502) 582–5009, e-mail *jeri.grant@sba.gov.*

For more information see our web site at *http://www.sba.gov/ombudsman/events/dsp_roundtable.html.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–1045 Filed 1–15–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V—Minnesota District Advisory Council Public Meeting

The Small Business Administration Region V Minnesota District Advisory Council, located in the geographical area of Minneapolis, Minnesota, will hold a public meeting at 11:30 a.m. central time on Friday, February 8, 2002, at Maria's Café, 1113 Franklin Avenue East, Minneapolis, MN 55404, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Edward A. Daum, District Director, in writing by letter or fax no later than February 7, 2002, in order to be put on the agenda. Edward A. Daum, District

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Director, U.S. Small Business Administration, 100 N. 6th Street, Suite 210–C, Minneapolis, MN 55403, (612) 370–2306 phone (612) 370–2303 fax.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–1046 Filed 1–15–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of an opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on January 28, 2002, from 9 a.m. to 3 p.m. The meeting will be opened to the public from 9 a.m. to 3 p.m.

DATES: The meeting is scheduled for January 28, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room C, of the Minority Business Development Agency (MBDA), located at 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Pam Wilbur or Kelly Parsons (principal contacts), at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the agenda topics to be addressed will be:

- Discussion on the impact of the September 11th attacks on Small Business exporters, including presentations by officials from the Small Business Administration (SBA), MBDA, U.S. Customs, Federal Emergency Management Agency (FEMA), the New York City Mayor's office, the New York City Comptroller, the New York City public advocate, the New York City Fire Department, the New York City USFCS; and,
- Discussion on the upcoming APEC SME Ministerial.

Elizabeth A. Gianni,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 02–1097 Filed 1–15–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 21, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–11182.
Date Filed: December 17, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SEA 0129 dated 14 December 2001, Mail Vote 186—Resolution 010r.
TC23/TC123 Europe-South East Asia Special Passenger, Amending Resolution 010r r1.
PTC23 EUR–SEA 0130 dated 14 December 2001, Mail Vote 187—Resolution 002 r2–r26.
TC23/TC123 Europe-South East Asia Standard, Revalidation Resolution.
Report—PTC23 EUR–SEA 0128 dated 7 December 2001, TC23/TC123 Europe-South East Asia Policy Group Report.
Tables—PTC23 EUR–SEA Fares 0035, dated 14 December 2001, *Intended effective date:* 15 March 2002 and 1 April 2002.

Docket Number: OST–2001–11183.
Date Filed: December 17, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0133 dated 18 December 2001, Mail Vote 189—Resolution 010t.
TC23/TC123 Middle East–TC3 Special Passenger, Amending Resolution, *Intended effective date:* 1 April 2002.

Docket Number: OST–2001–11186.
Date Filed: December 17, 2001.
Parties: Members of the International Air Transport Association.
Subject:
IATA telexes TE537/TE542/TE549, dated 7/10/14 December 2001, Mail Vote 188—Resolution 010.
TC23/TC123 Europe-Japan/Korea, Middle East–TC3, Africa–TC3 and TC123 North/Mid/South Atlantic, Special Passenger Amending Resolution from Japan, *Intended effective date:* 1 April 2002.

Docket Number: OST–2001–11203.
Date Filed: December 19, 2001.
Parties: Members of the International Air Transport Association.
Subject:
TC31 North and Central Pacific and TC31 Circle Pacific, PTC31 N&C/CIRC 0184 dated 16 November 2001 r1–r2, PTC31 N&C/CIRC 0185 dated 16 November 2001 r1–r2, PTC31 N&C/CIRC 0186 dated 16 November 2001 r10–r31, PTC31 N&C/CIRC 0187 dated 16 November 2001 r32–r46, PTC31 N&C/CIRC 0192 dated 7 December 2001.
(Technical Correction), Minutes—PTC31 N&C/CIRC 0193, dated 21 December 2001.
Tables—PTC31 N&C/CIRC Fares 0088, dated 7 December 2001.
PTC31 N&C/CIRC Fares 0089 dated 7 December 2001, PTC31 N&C/CIRC Fares 0090 dated 7 December 2001, *Intended effective date:* 1 April 2002.

Docket Number: OST–2001–11221.
Date Filed: December 20, 2001.
Parties: Members of the International Air Transport Association.
Subject:
TC31 North and Central Pacific, between Malaysia and USA.
PTC31 N&C/CIRC 0189, dated 16 November 2001, between Malaysia and USA r1–r13.
Minutes—PTC31 N&C/CIRC 0194, dated 21 December 2001.
Tables—PTC12 N&C/CIRC Fares 0092, dated 7 December 2001.
Intended effective date: 1 April 2002.

Docket Number: OST–2001–11222.
Date Filed: December 20, 2001.
Parties: Members of the International Air Transport Association.
Subject:
TC31 North and Central Pacific—TC3–Central America, South America.
PTC31 N&C/CIRC 0188 dated 16 November 2001.
TC3–Central America, South America Resolution r1–r18, Tables—PTC31 N&C/CIRC Fares 0091, dated 7 December 2001.
Intended effective date: 1 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–1155 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending December 21, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11198.
Date Filed: December 18, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 2002.

Description: Application of Caribbean Star Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting issuance of a certificate of public convenience and necessity to engage in scheduled interstate air transportation.

Docket Number: OST–2001–11206.
Date Filed: December 19, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 2002.

Description: Application of Freedom Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in scheduled interstate air transportation of persons, property and mail.

Docket Number: OST–2001–11230.
Date Filed: December 21, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 2002.

Description: Application of Transcarga Intl. Airways, C.A., pursuant to 49 U.S.C. section 41302, 14 CFR parts 211 and 212 and subpart B, requesting issuance of a foreign air carrier permit to engage in charter (non-scheduled) foreign air transportation of property and mail between a point or points in Venezuela, on the one hand, and a point or points in the United States, to include: Miami, Florida; New York, New York; Houston, Texas; Aguadilla, Puerto Rico; and, San Juan, Puerto Rico.

Docket Number: OST–2001–11235.
Date Filed: December 21, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 2002.

Description: Application of Ogden Flight Services Group, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in foreign charter air transportation of persons, property and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–1156 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11137]

Maritime Security

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comment.

SUMMARY: The Coast Guard announces the availability of the maritime security public workshop agenda and a new comment period closing date. The public workshop is to discuss security procedures, programs, and capabilities within marine transportation systems. The focus of the workshop will be on identifying possible security measures, standards, and responses to threats and acts of crime and terrorism.

DATES: The public workshop will be held on January 28 through 30, 2002, from 9 a.m. to 5 p.m. We may end the workshop early, if we have covered all of the agenda topics and if the people attending have no further comments. In order to allow comments on the results of this workshop, comments and related material must reach the Docket Management Facility on or before March 15, 2002, rather than the February 14, 2002, date originally requested in the **Federal Register** on December 17, 2001 (66 FR 65020).

ADDRESSES: The workshop will be held at the following location: Grand Hyatt Washington at Washington Center, 1000 H Street, NW, Washington DC, 20001, Phone 202–582–1234.

You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material do not enter the docket [USCG–2001–11137] more than once, please submit them by only one of the following means:

(1) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov/.*

(2) By fax to the Docket Management Facility at 202–493–2251.

(3) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) By mail to the Docket Management Facility, (USCG–2001–11137), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this notice in the docket on the Internet at *http://dms.dot.gov/.* Comments in the docket are available to the public for inspection and further comment, including proprietary information if submitted.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or the public workshop, write or call CDR Sue Englebert, at the Administrative and Coordination Division (G–M–1), *senglebert@comdt.uscg.mil,* or at 202–267–2388. If you contacted CDR Rand prior to January 7, 2002 to request a presentation time during the workshop, you will be contacted by January 23, 2002 with your scheduled presentation time and location. All presentation times have been filled therefore; additional requests are no longer accepted. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this workshop by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2001–11137] and give the reason for each comment. You may submit your comments and material electronically, by fax, by delivery, or by mail to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

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Background and Purpose

For the reasons discussed in a notice of workshop, published in the **Federal Register** on December 17, 2001 (66 FR. 65020), the Coast Guard will conduct a public workshop to assess existing marine transportation systems (MTS) security standards and measures and to gather ideas on possible improvements. We request workshop attendees to provide information about all Federal, State, and local government laws, procedures, regulations, and standards that are either functioning or that are planned. We will provide copies of international standards and Coast Guard regulations concerning the security of MTS. We also request industry to provide any current and planned standards and procedures covering the security of vessels and facilities.

The prior notice outlined general topics that will be focused on during the workshop, though it did not contain a specific agenda. Workshop attendees will be asked to divide into four workgroups to discuss the physical security and operational measures for facilities, vessels, and ports, as well as identification or credentialing measures that could be used to control access to facilities, vessels, or sensitive areas. Each workgroup's goal will be to develop criteria, measures to meet such criteria, and possible security performance standards for the criteria within their area of concentration. On Tuesday afternoon, January 29, 2002 the workgroups will summarize the results of their discussions in a brief presentation. Attendees will be provided an opportunity to comment on the impact, cost, and estimated value of the criteria, measures, and standards developed during this workshop. The workshop presentations will be included in the docket by February 4, 2002. The final workshop report will be placed in the docket by February 28, 2002. Comments on the workshop presentations will be accepted until March 15, 2002 as opposed to February 14, 2002, and should be sent to the Docket Management Facility at the address under **ADDRESSES**.

The following is the agenda for the public workshop, and is subject to change:

Agenda

Monday: January 28, 2002

8:30 a.m.: Sign-in.

9 a.m.: Introduction and overview.

10:15–11:30 a.m.: Morning discussion with breakout sessions to review current criteria, introduce criteria attendees bring, and develop criteria for the following:

(1) Physical security and operational measures—Facilities

(2) Physical security and operational measures—Vessels

(3) Physical security and operational measures—Ports

(4) Access Control—Credentials

11:30 a.m.–1 p.m.: Lunch break.

1–3:30 p.m.: Afternoon discussion with breakout sessions in the same workgroups as above to develop a list of possible measures to meet the criteria.

4–5 p.m.: Public presentations. (A program for these presentations will be available at the workshop.)

Tuesday: January 29, 2002

8:30 a.m.: Sign-in.

9–11:30 a.m.: Morning discussion with breakout sessions in the same workgroups as above to develop performance standards that could be used to evaluate the physical security and operational measure criteria.

11:30–1 p.m.: Lunch break.

1–3 p.m.: Workgroups present summations of their breakout sessions.

3–4 p.m.: Open discussion of the information presented by each workgroup.

4–5 p.m.: Public presentations. (A program for these presentations will be available at the workshop.)

Wednesday: January 30, 2002

9–11 a.m.: Opportunity for comment and further discussion for workshop attendees.

Dated: January 11, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1184 Filed 1–11–02; 4:07 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–95]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 5, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 11, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–10442.
Petitioner: Era Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 119.71.
Description of Relief Sought: To allow Era to employ a captain as a chief pilot while he is pursuing medical requalification for the position.

Docket No.: FAA–2001–10622.
Petitioner: Papillon Grand Canyon Helicopters.
Section of 14 CFR Affected: 14 CFR 135.265(d).
Description of Relief Sought: To allow PGCH to engage flight crewmembers on a seven days on, seven days off work rotation schedule.

Docket No.: FAA–2001–11150.
Petitioner: F.S. Air Service, Inc.
Section of 14 CFR Affected: 14 CFR 25.857(b)(3).
Description of Relief Sought: To allow FSAS to configure the CASA C–212 CC and CD series airplane in a passenger/cargo configuration and be exempt from the requirements of 14 CFR 25.857(b)(3) for a "separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station."

[FR Doc. 02–1160 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–96]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on January 11, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–11089 (previously Docket No. 28660).
Petitioner: Collings Foundation.
Section of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).
Description of Relief Sought/Disposition: To permit Collings to operate its Boeing B–17 aircraft, which is certificated in the limited category, for the purpose of carrying passengers on local flights for compensation or hire. *Grant, 12/13/2001, Exemption No. 6540D*

Docket No.: FAA–2001–10831.
Petitioner: Pomona Valley Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit PVPA to conduct local sightseeing flights at Cable Airport, Upland, California, during January 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 12/11/2001, Exemption No. 7682*

Docket No.: FAA–2001–11081.
Petitioner: Merlin Airways.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Merlin to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 12/11/2001, Exemption No. 7681*

Docket No. 30155.
Petitioner: University of Oklahoma Department of Aviation.
Section of 14 CFR Affected: 14 CFR 141.36(b)(2)(i), (c)(3)(i), (d)(1), and (d)(2)(i).
Description of Relief Sought/Disposition: To permit ODA to use an assistant chief flight instructor (1) who has not had at least 1 year of flight instructor training experience for a course of training leading to the issuance of a recreational or private pilot certificate or rating, (2) who has not had at least 1 year of instrument flight instructor training experience for a course of training leading to the issuance of an instrument rating or a certification with instrument privileges, and (3) who has not had at least 1,000 hours as pilot in command and 1½ years of flight instructor training experience for a course of training leading to the issuance of other than a recreational or private pilot certificate or rating, or an instrument rating or a certificate with instrument privileges, *Denial, 12/07/2001, Exemption No. 7683.*

Docket No.: FAA–2001–11129.
Petitioner: Heartland Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Heartland to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 12/14/2001, Exemption No. 7684*

Docket No.: FAA–2001–11050.
Petitioner: Big Sky Transportation dba Big Sky Airlines.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit BSA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 12/19/2001, Exemption No. 7685*

[FR Doc. 02–1161 Filed 1–15–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–97]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain pertitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Dated: Issued in Washington, DC, on January 11, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10004.
Petitioner: America West Airlines, Inc.

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Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought/Disposition: To permit America West to operate three flights at Ronald Reagan Washington National Airport, *Grant, 12/10/2001, Exemption No. 5133J.*

Docket No.: FAA–2001–11054.
Petitioner: SC Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit SCA to operate certain aircraft under part 135 without TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 12/05/2001, Exemption No. 7673.*

Docket No.: FAA–2001–11059.
Petitioner: Mulchatna Air Service.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit MAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 12/05/2001, Exemption No. 7674.*

Docket No.: FAA–2000–8091.
Petitioner: Mr. Larry G. Munro.
Section of 14 CFR Affected: 14 CFR 61.3(j)(1).

Description of Relief Sought/Disposition: To permit Mr. Munro to act as a pilot in certain international operations after reaching his 60th birthday. *Denial, 11/27/2001, Exemption No. 7669.*

[FR Doc. 02–1162 Filed 1–15–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Model Deployment of a Regional, Multi-Modal 511 Traveler Information System; Request for Participation

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for participation.

SUMMARY: The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) are seeking applications from public agencies that are currently deploying, or operating, a telephone system that delivers traveler information services so that those agencies may enhance their system to provide a high quality 511 service. This effort will provide for the enhancements to an existing telephone traveler information service, which has converted to the nationally available three-digit telephone number, 511, or will soon convert to 511. The purpose of this model deployment is to establish and document an innovative example of a 511 system that advances content quality and user interfaces. Applicants in response to this notice are encouraged to demonstrate their readiness to develop and implement a state-of-the-art 511 traveler information service and to articulate the adequacy of their proposed approach related to geographic areas, institutional coordination, and information to be provided.

DATES: Applications must be received at the office designated below on or before 4 p.m. on March 18, 2002.

ADDRESSES: Applications should be submitted to the U.S. Department of Transportation, Intelligent Transportation Systems (ITS) Joint Program Office (JPO), 511 Model Deployment, 400 Seventh St., SW., Room 3416, HOIT–1, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: For technical questions or concerns, please contact Mr. Robert Rupert, FHWA Office of Travel Management (HOTM–1), (202) 366–2194; Mr. Ron Boenau, FTA Advanced Public Transportation Systems Division (TRI–11), (202) 366–4995; or Mr. James Pol, FHWA Intelligent Transportation Systems (ITS) Joint Program Office (HOIT–1), (202) 366–4374. For legal questions or concerns please contact Ms. Gloria Hardiman-Tobin, FHWA Office of Chief Counsel (HCC–40), (202) 366–0780; or Ms. Linda Sorkin, FTA Office of Chief Counsel (HCC–20), (202) 366–1936; Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

The document may also be viewed at the U.S. DOT's ITS home page at *http://www.its.dot.gov.*

Background

On July 21, 2000, the Federal Communications Commission assigned 511 as the nationwide traveler information telephone number and granted responsibility for it to government transportation agencies. The nationwide three-digit number utilizes and significantly advances the intelligent transportation infrastructure already in place to assist some States and cities in providing traveler information. Data obtained from 511 traveler information services will provide current information about bad weather, construction, or traffic jams that cause delays for businesses and the general public, as well as information about the status of transit buses, ferries, light rail, and other public transportation in local communities. In addition, by providing information that will direct drivers away from congestion and hazardous conditions, better access will be available for emergency vehicles responding to incidents.

This model deployment seeks to demonstrate the potential of 511 services to bring together various and disparate data, and provide useful information to travelers and potential travelers through a state-of-the-art telephone interface. The selected application (or applications) will demonstrate an understanding of the project objectives and will describe an approach that can be realistically accomplished within the schedule and funding constraints. The selected application will represent a location that presents a rich environment for generating a demand for traveler information. This environment will include recurring traffic congestion, on-going roadway construction impacting regional travel, variable weather conditions that impact travel, the availability of multiple modes of travel, and coordination with public safety agencies in a regional incident management program.

The timing of this model deployment has been planned by the U.S. DOT to take advantage of several on-going efforts by both the American Association of State Highway Transportation Officials (AASHTO) and the U.S. DOT. These efforts are at various stages of completion at the time of the release of this request for participation (RFP). It is the goal of the U.S. DOT that this model deployment illustrates how the innovative application of technologies can create a highly effective 511 service that sets a standard for high quality telephone traveler information. Some on-going research activities are likely to yield

products that will aid in the advancement of the selected agency's 511 system. These on-going research efforts include the following activities:

(a) 511 Early Adopters Evaluations—Six areas of the country have been identified as early adopters of 511. These six areas are working with an independent evaluation team contracted by the FHWA to glean institutional and technical issues surrounding the redirection of existing traveler information phone numbers to 511. This is an on-going activity with reports available on the U.S. DOT 511 web page (*http://www.its.dot.gov/511/511.htm*). The six early adopters of 511 include metropolitan Cincinnati, Ohio (including Covington, Kentucky); San Francisco, California; Arizona (Statewide); Minnesota (Statewide); Utah (Statewide); and Detroit, Michigan.

(b) 511 Deployment Assistance and Coordination Program—The AASHTO is leading the 511 Deployment Coalition to develop policy and technical materials that will provide guidance to States and locations as they implement 511. Guidelines for the information content, service consistency, and quality of service will be available in the spring of 2002. More information on the guidelines can be obtained through *http://www.itsa.org/511.html.*

(c) Testing of XML conversion of the Society of Automotive Engineers (SAE) Advanced Traveler Information Systems (ATIS) Message Sets—The FHWA is currently testing the eXtensible Mark-up Language (XML) conversion of the SAE ATIS Message Sets through the implementation of a multi-jurisdictional traveler information service. The draft results of this test will be available by the end of 2001.[1]

(d) ATIS Data Fusion—The FHWA is beginning to develop guidelines for combining, or fusing, data from a variety of sources to produce traveler information. This effort focuses on examining the different levels of quality that can be achieved according to a set of operating scenarios. Draft data fusion guidelines will be available in early 2002, and will be retrievable through the U.S. DOT Web site at *http://www.its.dot.gov.*

Objectives and Scope of the 511 Model Deployment

The objective of the 511 model deployment is to "push the envelope" of traveler information quality production and dissemination, along with an innovative user interface that promotes ease of use without compromising the user's expectation for personalized information. The resulting deployment is expected to remain in operation following the end of the model deployment evaluation. The period of performance of the 511 model deployment is expected to be 12 months from the effective date of the partnership agreement.

The scope of this model deployment includes addressing the institutional coordination that is necessary to implement an effective, sophisticated 511 service. The agency lead for the project team to which this model deployment is awarded (hereafter referred to as "lead agency") will assess the extent of integration that is currently available among the key stakeholder agencies (highway agencies, transit organizations and public safety agencies). The lead agency will secure agreements from each stakeholder to provide their content to the 511 system, and forge agreements that enable the transmission of information with the greatest frequency possible to provide current information. The lead agency will ensure that all the information elements that will be received from the stakeholders, including frequency of transmission of information, are documented. The lead agency will develop appropriate message sets to convey each of the stakeholders' information to a consolidation point. The message sets shall take full advantage of the Society of Automotive Engineers (SAE) standard message sets for ATIS (standard SAE J2354).[2] The lead agency will also consider the XML translation of the SAE Message Sets to simplify transmission via the Internet to any number of media outlets. Other viable solutions for exchanging information among centers will be considered.

The lead agency will describe the operational concept for the 511 service that articulates the roles and responsibilities for each of the stakeholders in providing content for the innovative 511. This operational concept will fully describe how the project team will seek innovative methods to deliver telephone-based traveler information. The lead agency will also distinguish how the information among its stakeholders will be conveyed according to geographical context. The purpose of developing an operational concept is to guide the lead agency, the stakeholder agencies, and the project participants in an understanding of what their levels of effort will be in sustaining the innovative 511 system. In addition, the operational concept will aid in the incorporation of new functionalities as technology and customer demands evolve.

Two elements of the innovative 511 service should be highlighted:

(1) The project team to which this 511 model deployment is awarded (hereafter referred to as "project team") will perform data fusion of all stakeholder content. Effective data fusion will enable the 511 system to provide information to callers automatically on a route segment or corridor basis, with no direct contact necessary between callers and human operators. At a minimum, the content shall include: current traffic conditions; major service disruptions for public transportation properties; current information on active construction and maintenance projects along route segments that may affect traffic flow or restrict lanes; unplanned events, major incidents, or congestion that shut down or significantly restrict traffic for an extended period; transportation-related information associated with significant special events (fairs, sporting events, etc.); and abnormal weather or road surface conditions that could affect travel along the route segment. The project team will describe, in the operational concept, how the innovative 511 system will affect their existing methods of data fusion.

(2) The design of the user interface must allow callers to locate the content they desire quickly and efficiently. User interfaces must be consistent in appearance, but may vary in content according to the origin of the phone call, *i.e.*, whether the caller is mobile or landline based. The user interface must take advantage of proven voice-recognition, voice response, and synthesized speech technologies. "Natural speech" techniques are desired. Keypad entry interfaces alone will not be considered innovative technology for this 511 model deployment. The user interface should provide the most convenient method of information retrieval possible. Keypad entry interfaces rely upon extensive information trees which extends the user's retrieval time. The following top-level commands should be used when a system has the relevant information available: "Transit Information," "Highway Information," "Airport Information," "Rail Station Information," and "Ferry Information."

Upon the completion of the operational concept, the ITS Joint Program Office (ITS JPO) shall have the opportunity to review the progress of

[1] For more information, visit *http://www.mitretek.org/its/TripInfo/atis.html*

[2] More information on the SAE ATIS Message Sets can be obtained through *http://www.its-standards.net/Documents/j2354.pdf*

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the project and determine the likelihood of a successful completion of the 511 model deployment. Upon completion of the review, the ITS JPO will determine if funding will be made available to the selected model deployment location for the completion of the innovative 511 service.

The project team will implement the 511 multi-modal, regional system and demonstrate that the system functions as described in the operational concept and as designed. The project team will ensure monitoring of the operational status of the 511 system, and that necessary adjustments are made. The project team will demonstrate that the 511 system has the stability criteria developed jointly between the U.S. DOT and the project team during the development of the operational concept. The project team will operate the stable 511 system in support of an evaluation for a period of time as jointly developed and agreed to during the development of the operational concept. The project team will provide an appropriate level of ongoing support to achieve completion of all deployment and testing tasks as described in the operational concept.

The project team will synthesize and present evaluation findings as they relate to the objectives of the model deployment. The project team will document the 511 system design, and synthesize the technical and institutional issues documented in previous tasks. The project team will submit a final report to the ITS JPO that includes the above information and describes the project and its findings.

Funding

The total amount of Federal funding available for this effort is estimated at $1,100,000. The instrument to provide funding, on a cost reimbursable basis, will be an ITS partnership agreement between the FHWA and a public organization. Multiple partnership agreements are anticipated. Federal funding authority is derived from § 5001(a)(5) of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 419 (1998). Actual award of funds will be subject to funding availability.

Matching Share

There is a statutorily required (refer to § 5001(b) and § 5207(d) of TEA–21) minimum twenty percent matching share that must be from non-federally derived funding sources, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the 511 model deployment for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. Note that funding identified to support continued operations, maintenance, and management of the system will *not* be considered as part of the partnership's cost-share contribution.

Offerors are encouraged to consider additional matching share above and beyond the required minimum match described above. Those offerors willing to propose additional match may include the value of federally-supported projects directly associated with the 511 model deployment. Offerors that do propose additional matching share above and beyond the required minimum match may receive additional consideration in the proposal evaluation.

The U.S. DOT and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits (refer to 49 CFR 18.26).

National Evaluation

Evaluation is the reasoned consideration of how well project goals and objectives are being achieved. The primary purpose of evaluation is to cause changes in the project so that it eventually meets or exceeds its goals and objectives. Formal, in-depth, independently conducted evaluations are funded by the ITS JPO.

The partnerships selected to participate in this 511 model deployment are expected to cooperate with the ITS JPO and its national evaluation team. The independent national evaluator is selected and provided by the ITS JPO.

This cooperation that is expected by the awarded partnership includes:

(a) Providing all relevant project information such as cost data (deployment, operations, and maintenance), project goals and objectives, contractual documents, project documentation, existing or archived data, benefits data, and other project related information;

(b) Ensuring that the relevant project information is provided to the independent national evaluator in a timely fashion;

(c) Identifying an evaluation point(s) of contact to represent the participating agencies in coordinating with the independent national evaluator;

(d) Making accommodations (where appropriate) for the independent national evaluator to be present at coordination or partnership meetings;

(e) Ensuring that any self-evaluation activities being conducted by the project participants are coordinated with and reviewed by the national evaluation effort; and

(f) Providing review of relevant reports, presentations, etc., prepared by the independent national evaluator.

Eligibility

To be eligible for participation in the 511 model deployment program, applications must:

(a) Demonstrate that they either have an operational 511 traveler information telephone system, or have a telephone system for traveler information that is prepared to convert to using 511;

(b) Demonstrate that the proposed location for the 511 model deployment experiences recurring congestion, has roadway construction that will significantly impact regional travel for the period of the model deployment, is likely to experience weather conditions that will impact regional travel during the period of the model deployment (snowstorms, hurricanes, etc.), offers multiple mode choices for regional travel, and has some form of regional incident management program that is coordinated with public safety agencies;

(c) Demonstrate that the transportation data and information generated from the federal funds applied to this model deployment, as well as all public sector matching funds, will be made available equally and freely (apart from the costs of the physical connection to retrieve such data) to all parties who express interest in such data or information;

(d) Demonstrate that sufficient funding is available to successfully complete all aspects of implementing the 511 model deployment;

(e) Contain a technical plan, a management and staffing plan, and a financial plan. Any portion of the application or its contents that may contain proprietary information shall be clearly indicated; otherwise, the application and its contents shall be non-proprietary; and

(f) Demonstrate a commitment to a 12 month schedule that will produce results within the expected period of performance.

Instructions to Applicants

An application to participate in the 511 model deployment shall consist of three parts: (1) A technical plan describing the proposed project team and the approach for implementing 511 services in accordance with the objectives and scope; (2) a management and staffing plan that provides the names of all key personnel and the positions they will occupy as related to this project; and (3) a financial plan, that describes the proposed activities to be conducted with this funding. The complete application shall not exceed 35 pages in length, exclusive of appendices, résumés, and Memoranda of Understanding (MOUs) or other documents indicating cooperation among proposing parties. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point. Applicants must submit seven (7) copies plus an unbound reproducible copy. The cover sheet or front page of the application should include the name, address, e-mail address, fax number and phone number of an individual to whom correspondence and questions about the application may be directed.

The technical, management and staffing, and financial plans together shall describe the existing inter-agency, inter-jurisdictional, and public/private cooperation and partnership arrangements, working relationships, and information sharing that will be integral to the 511 model deployment. All inter-agency, inter-jurisdictional, and public/private cooperation and partnerships necessary to support the 511 model deployment shall be documented with signed MOUs, or alternate appropriate documents, that clearly define financial and programmatic responsibilities and relationships among the partners. Similarly, the application should document business relationships with the private sector to support the 511 model deployment, for example, as telecommunications providers or as providers of traveler information services or products. The MOUs, or alternate appropriate documents, must clearly describe and document the role of the private sector, and the financial and institutional arrangement(s) under which they are integrated into the 511 model deployment. Applicants should include copies of the MOUs or other indications of cooperation. Applicants are strongly encouraged to seek participation from certified disadvantaged business enterprises (see 49 CFR part 26), historically black colleges and universities, Hispanic serving institutions, and other minority colleges.

Applications shall be organized in the following three sections:

1. Technical Plan

Applications should describe the partnership or project team arrangements, which include providing the information described in the preceding paragraph. Applications should describe the methodology for advancing their existing, or soon-to-be-available, 511 system to provide a sophisticated user interface with high quality content. This technical approach, at a minimum, should:

(a) Describe the methodology to collocate and ultimately to fuse relevant data elements to provide 511 users with comprehensive, current, multi-modal traveler information, including a description of the current sources of information along with the sources of information that will be included for the innovative 511;

(b) Describe the provision of any personalized and/or geographically specific content to the 511 user (applicants must demonstrate an acknowledgement and understanding of the *ITS Fair Information and Privacy Principles* crafted by the Intelligent Transportation Society of America[3]);

(c) Describe a generalized migration plan that describes how and when the existing, or soon-to-be-deployed, 511 service will be migrated to the proposed innovative services;

(d) Describe how the enhanced 511 service will differ from the service already provided to the user in terms of sophistication of the user interface and the reliability and quality of the information provided; and

(e) Describe how the 511 service may be accessible for the rural and inter-city travelers.

2. Project Management and Staffing Plan

The application should include a management and staffing plan that provides a clear description of the lines of responsibility, authority, and communication among the participants in the 511 model deployment. The management and staffing plan shall include the names of all key personnel and the positions they will occupy as related to the 511 model deployment. Provide the estimated staffing in terms of length of employment for each staff member and categorized by the types of staff required. The management and staffing plan should demonstrate that the project manager is capable, available, and able to commit to a level of involvement that ensures project success. Also include brief biographical summaries of key technical and other personnel. Applicants should provide the schedule of all key activities, including contingency for possible difficulties.

3. Financial Plan

The application should provide a description of the cost of achieving the objectives of the model deployment, and the partnership's plans for ensuring the matching funds required by this solicitation. The application should provide a statement of commitment from the proposed 511 model deployment partners that affirms that the proposed funding is secure. The application should include all financial commitments, from both the public and private sector.

Selection Criteria

Applicants must submit acceptable technical, management and staffing, and financial plans together that provide sound evidence that the proposed partnership can successfully meet the objectives of the 511 model deployment. The ITS JPO will use the following criteria, in order of importance, in selecting locations for participation in the 511 model deployment.

1. Technical Plan

The technical plan must contain an operational concept and technical approach that demonstrates how the 511 model deployment will operate when fully implemented, as well as during any incremental implementation steps leading to full deployment. The technical plan must define the operational roles and responsibilities of the partners during operations (and key operator responsibilities). Applicants must describe the changes to existing systems and additional elements.

The technical plan will be evaluated on its adequacy and reasonableness to achieve the objectives of the 511 model deployment, as previously described under Objectives and Scope of the 511 Model Deployment. In particular, the technical plan will be evaluated for the overall concept and the extent to which it addresses the scope described for the 511 model deployment, including the content and user interface of the 511 system. Specifically, the following sub-criteria will be used to evaluate the technical proposal (these criteria are listed in order of importance):

[3] This document can be obtained through *http://www.itsa.org/privacy.html*

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(a) The ability to provide frequently updated information from a variety of sources including traffic management, transit management, roadway weather information services, construction and road closure information, parking management, and emergency services;

(b) How well the applicant demonstrates the capacity to provide sophisticated, innovative solutions in content creation, fusion, and dissemination;

(c) How well the applicant demonstrates the capacity to provide sophisticated, innovative solutions in designing and implementing the user interface;

(d) The design of an implementation strategy including a timeline for rollout of the enhanced 511 service;

(e) The application of ITS Standards for information exchange and delivery; and

(f) The demonstrated ability to bring together State, metropolitan, and local partners to create a seamless, regional traveler information system.

2. Management and Staffing Plan

The management and staffing plan must demonstrate a reasonable estimate that reflects the level of effort and skills needed to successfully complete the 511 model deployment, along with the identification of the organizations that will supply the staff needed, lines of reporting, and responsibilities. The management and staffing plan must include the names and qualifications of key staff.

The management and staffing plan will demonstrate a commitment to hire or assign a project manager and provide adequate full-time staff to ensure timely implementation of the 511 model deployment. Proposed staff should have demonstrated skills for effective operations and management, or the commitment to acquiring the necessary skills in relevant technical areas, such as systems engineering and integration; telecommunications; and information management.

The selection will be based on the adequacy, thoroughness, and appropriateness of the management and staffing plan, including organization of the project team, staffing allocation, and the schedule for completing the proposed work. Some of the specific items that will be evaluated in the management and staffing plan are:

(a) The availability of key personnel among the participating agencies to attend periodic 511 coordination meetings;

(b) The key personnel that are focused on the systems engineering aspects for incorporating the enhancements to the existing, or soon-to-be-deployed, 511 service; and

(c) A staffing chart that demonstrates the relationships among the participating organizations, including the names of the key personnel from each of the organizations.

3. Financial Plan

The ITS JPO will evaluate the applications based on the total cost of the 511 model deployment, as well as the individual staffing costs. The financial plan must demonstrate that sufficient funding is available to successfully complete all aspects of the 511 model deployment as described in the technical plan. The financial plan must provide the financial information described previously under Instructions to Applicants. The financial plan must include a clear identification of the proposed funding for the 511 model deployment, including an identification of the required minimum 20% matching funds.

The financial plan must include a sound financial approach to ensure the timely deployment and the continued, long-term operations and management of the 511 system. The financial plan must include documented evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

Authority: Sec. 5001(a)(5), sec. 5001(b), sec. 5207(d), Pub. L. 105–178, 112 Stat. 107, 420; 23 U.S.C. 315; 49 CFR 1.48; and 49 CFR 18.26.

Issued on: January 9, 2002.

Mary E. Peters,
Administrator, Federal Highway Administration.

Jennifer L. Dorn,
Administrator, Federal Transit Administration.

[FR Doc. 02–1163 Filed 1–15–02; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–2000–6757]

High Speed Rail Projects for the Congestion Mitigation and Air Quality Improvement Program (CMAQ)

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; final decision on CMAQ eligibility for high speed rail projects.

SUMMARY: This notice announces a decision regarding the eligibility of Congestion Mitigation and Air Quality Improvement (CMAQ) funds for projects outside nonattainment or maintenance area boundaries. A request for comments on this issue was published at 65 FR 16997 on March 30, 2000. Eligibility under the CMAQ program has already been granted for high speed rail improvements located within air quality nonattainment and maintenance areas. The issue raised by several States was if, and under what conditions, State departments of transportation (DOT) should be permitted to use their CMAQ allocations to fund high speed rail improvements located outside of nonattainment or maintenance areas. This notice summarizes the comments to the docket and addresses the key issues and concerns raised by respondents. In this notice, the FHWA and the FTA reaffirm the current policy which allows CMAQ funding for projects in close proximity to nonattainment and maintenance areas where it is determined that the air quality benefits will be realized primarily within such areas. Intercity rail lines, including high speed rail projects, compete equally with other types of projects under these criteria and have been funded under CMAQ in some places.

FOR FURTHER INFORMATION CONTACT: For the FHWA program office: Mr. Daniel Wheeler, Office of Natural Environment, (202) 366–2204. For the FTA program office: Mr. Abbe Marner, Office of Planning, (202) 366–4317. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve comments online through the Document Management System (DMS) at *http://dmses.dot.gov/submit*. The DMS in available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

The CMAQ program was established by the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) and reauthorized with some changes by the Transportation Equity Act for the 21st Century (TEA–21) in 1998 (Pub. L. 105–178, 112 Stat. 107). The primary purpose of the CMAQ program is to fund transportation projects that reduce air pollution emissions in areas designated by the U.S. Environmental Protection Agency (EPA) as nonattainment or maintenance with respect to a National Ambient Air Quality Standard (NAAQS).[1] Program guidance was issued by the FHWA and the FTA on April 28, 1999. This guidance document was published at 65 FR 9040 on February 23, 2000.

The current CMAQ statutory language, which is codified in section 149 of title 23 of the United States Code, requires that projects and programs proposed for CMAQ funding be for a designated area.[2] The FHWA and the FTA have generally interpreted the statute to allow CMAQ funding for projects within nonattainment and maintenance areas, but the agencies' guidance allows funding for proposals that are in close proximity to designated areas where the air quality benefits are primarily realized in those areas. For example, a park-and-ride lot located at the edge of a metropolitan area may reduce the number of cars going into that area by the same amount whether it is located just inside the officially designated boundary or just outside of it. Another example is a commuter rail line with a segment located beyond the nonattainment area boundary.

The purpose of the current policy is to allow CMAQ eligibility for projects which serve a designated area by being very close to the area and whose emission reductions primarily benefit such areas, so long as those projects meet all of the statutory eligibility criteria of 23 U.S.C. 149. The primary eligibility criterion is a reduction in transportation related emissions that will contribute to the attainment or maintenance of a NAAQS.

Eligibility for high speed rail projects has already been established under the above policy. Several States have explored the possibility of using CMAQ funds to support high speed rail projects outside of nonattainment or maintenance areas on the basis that they would have benefits within designated areas only if an entire corridor were funded, including portions outside of such areas.

The issue then is whether, and under what conditions, State DOTs should be permitted to use their States' CMAQ allocations to fund high speed rail improvements located outside of nonattainment or maintenance areas. To gather input from interested parties, the FHWA and the FTA published a request for comments at 65 FR 16997 on March 30, 2000.

Discussion of Comments

A total of 39 comments were received. Twenty-one commenters opposed expansion of eligibility and believed the existing policy should remain intact. There were 18 who supported it, either conditionally or fully. Those who supported changing the policy stated that emissions reductions are the most important part of CMAQ eligibility, and therefore projects that reduce emissions should proceed. Those who proposed conditional support for the expansion felt that such projects may be eligible, but should be held to a higher standard, or have funding limitations or a separate funding source.

A categorization of these comments is as follows: Seven metropolitan planning organizations (MPOs), five State DOTs, one State air agency, two cities, one private citizen and five associations opposed the expansion of existing policy. One State legislator, one MPO, three State DOTs, two railroads, one railroad development commission and five rail passenger associations supported changes. The five comments that expressed limited support, or support under certain conditions, were all from State DOTs.

The comments were generally thoughtful, and many raised excellent points. However, no comments were received that persuaded us that the current policy on eligibility was unsound. Several issues were raised, however, that do merit further discussion and thereby provide an opportunity for further clarification and amplification of our current interpretation of the factors that serve as the basis for our position. The full set of comments can be reviewed by accessing: *http://dms.dot.gov*. The docket number is FHWA–2000–6757.

Those who did not support the expanded eligibility argued that it conflicts with legislative language and intent that they claim precludes funding for projects outside of nonattainment and maintenance areas. One group commented that "Congress * * * (in) * * * TEA–21 specifically directed CMAQ allocations to be used by States to fund projects that reduce transportation-related emissions in air quality nonattainment areas. * * * proposal(s) to fund projects outside of these areas are not in compliance with the law's intent * * *."

Other commenters took issue with the flexibility that currently exists in the guidance. Several of those opposed to expansion expressed concern that even allowing eligibility for projects in close proximity to the nonattainment or maintenance area does not go far enough in ensuring that air pollution will be reduced in the area. One stated, "The ability to demonstrate air quality benefits for high speed rail projects outside the nonattainment areas would be problematic at best."

Overall, supporters of expanded eligibility were of the opinion that this new high speed rail service would benefit air quality in both nonattainment/maintenance areas as well as attainment areas. Nine of the respondents commented that there would be positive emissions benefits in the nonattainment and maintenance areas regardless of whether the high speed rail service passed through attainment areas. Responses included statements such as "all projects that contribute to decreased pollution and congestion should be considered * * *" and "[T]he critical factor should not be where the funds are spent, but rather how much congestion and pollution will be prevented in nonattainment areas * * *."

There were also a number of respondents whose support was limited. These respondents favored the idea of CMAQ flexibility for rail projects, but through additional eligibility requirements, new regulations, or major changes to the program for which statutory authority does not exist. Many of these proposed changes are infeasible under current legislation. However, a number of these respondents provided information that may help to address

[1] States which have no designated nonattainment or maintenance areas receive a minimum apportionment of one-half of one percent of the national CMAQ funding. This money may be spent anywhere in the State for any project which would be eligible for funding under the Surface Transportation Program (STP) as well as for any CMAQ purpose. States whose apportionments based on their nonattainment and maintenance area populations are less than one-half of one percent receive additional funds to make up to the one-half percent minimum. These additional funds may also be spent anywhere in the State for any STP or CMAQ eligible purpose.

[2] Specifically, 23 U.S.C. 149(b) provides: "ELIGIBLE PROJECTS.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, and * * *."

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the issues of what it means for projects to be in close proximity to and primarily benefitting the nonattainment area. For example, it was suggested that "close proximity should be defined as a government defined jurisdiction that shares a common border with the nonattainment or maintenance area."

In relation to the demonstration of benefits primarily realized (or occurring) within the designated areas, it was offered that "Projects must demonstrate air quality benefits primarily within the nonattainment area or maintenance area boundary [and] a performance standard is important. To be eligible for funding, at least 75 percent of the project's emission reduction should accrue in the nonattainment or maintenance area." Apparently with respect to defining the criterion that the project primarily serve the area, it was also suggested that the * * * decision * * * on whether a project provides enough emission reduction potential to warrant receipt of a CMAQ allocation should be decided at the State and local level."

The FHWA and the FTA believe that the commenter is right that a preponderance of the emissions reduction benefit should accrue within such areas for a project to be eligible. However, no commenter provided a legislative or clear scientific basis to assign any specific share of emission reduction benefits as a threshold for determining eligibility. The threshold could just as easily be set at 85 or 95 percent to meet the statutory requirements. Further, the agencies believe that while State and local entities, including the MPOs, are in a good position to weigh the emissions and air quality benefits of an activity proposed for CMAQ funds, a final determination must rest with the FHWA and the FTA.

The FHWA and the FTA continue to believe that there are instances where the project sponsor can demonstrate benefits primarily for a nonattainment or maintenance area despite the fact that the project or program may not be physically located entirely within the boundary area, but that this demonstration becomes increasingly difficult the farther the project, program or service extends beyond the area's boundaries. We have retained "close proximity" as part of the eligibility standard because, whatever else may be argued about the difficulty of accurately quantifying benefits, they do diminish with distance.

There is no disagreement among the commenters that the primary purpose of the CMAQ program is to fund transportation improvements within nonattainment and maintenance areas that reduce emissions. The FHWA and the FTA believe that this will continue to be the general case for CMAQ eligibility. The FHWA and the FTA have administered the program under the general policy that CMAQ funds should be used for projects located in nonattainment and maintenance areas.

The current policy, set forth in the agencies' program guidance document, also allows certain circumstances under which projects can be determined to be eligible for CMAQ funding even though they are not located entirely within designated nonattainment or maintenance areas. Those exceptional circumstances are when a project is located in close proximity to designated areas and the benefits will be realized primarily within the nonattainment or maintenance area boundaries. For example, the rail proposals found eligible thus far have both begun and ended in nonattainment or maintenance areas, have been for the most part located in designated areas, and have benefits which are primarily realized within the boundaries of the designated areas.

As mentioned above, the FHWA and the FTA support flexibility and keeping the decisionmaking as close to the affected area as possible. Standards to define "close proximity" are difficult to establish without being arbitrary. Defining a specific distance from the designated boundary could artificially establish a second boundary. This new "boundary" could lead to another round of proximity questions. To avoid this, we believe that maintaining our policy of allowing emission reducing projects to go forward without specifically defining close proximity is the more prudent course. Of course, in the absence of an exact limit, the "burden of proof" falls on the project sponsor. It is up to the project sponsor to demonstrate that its emission reductions primarily benefit the nonattainment or maintenance area, a task clearly aided by showing a close proximity to the area.

We believe that the preponderance of emission reduction benefits must accrue to such areas, in comparison with other areas served, to demonstrate that the project will primarily benefit the nonattainment or maintenance area. To that end we believe that the project sponsor must demonstrate the project's emission reduction benefits will primarily be realized within the nonattainment and maintenance area boundaries to be eligible.

High Speed Rail Projects

High speed rail service, in general, is a passenger transportation mode that links well-populated metropolitan areas that could be as much as 100 to 500 miles apart. It usually has few station stops since more would increase travel times. The metropolitan areas that such links serve may, or may not, be in nonattainment or maintenance areas.

A project to improve a high speed rail service which is located within a nonattainment or maintenance area would be eligible for CMAQ if it reduces emissions and meets the other eligibility criteria and title 23, U.S. Code, requirements. Similarly, a high speed rail service may link two or more nonattainment (or maintenance) areas. If the project creates emission reductions in the nonattainment or maintenance areas, it may be eligible for CMAQ.

Using CMAQ funds, the FHWA has funded rail projects that primarily serve nonattainment or maintenance areas and whose benefits occur primarily within those areas. CMAQ funds have already been used for a variety of freight and passenger rail services in New York, Ohio, Maine, and Illinois.

One such project is the Empire Corridor of New York State. CMAQ funds are being provided to support rail improvements necessary for high speed rail in five counties between New York City and Schenectady. Four of those counties are designated as maintenance areas for the 1-hour ozone standard. One county, in the middle of the project, is not designated.

The portion of the Empire Corridor that is being funded is approximately 160 miles long and connects the New York City nonattainment area with the Albany maintenance area. Various track improvements, double track additions, bridge work and station improvements are needed to complete a viable project, in addition to new train-sets that will run the entire length of the project. Approximately 25 miles of the track work will be in the one county that is not designated. That track begins and ends in designated areas and is in close proximity to a designated county just to the west of the county through which it runs. The project is not viable without the link through the undesignated county, and the emissions benefits to be obtained within the designated areas by providing a quick alternative to automobile travel cannot be realized without this important portion. Therefore, the entire length from New York City to Schenectady has been found to be eligible for CMAQ funding, including the link within the one county that is not designated.

Another proposal that was recently approved is to provide CMAQ support to a new rail service between Los Angeles and Las Vegas. The State of Nevada proposed to provide a relatively small portion of the total cost of this service using CMAQ funds. The eligibility determination was based on the particulate emission reductions to be obtained within the Las Vegas particulate matter nonattainment area.

Within Nevada, the project will begin in the Las Vegas nonattainment area and proceed southwesterly toward the California State line, about 30 miles away. Approximately half of that distance is within the designated nonattainment area; the remainder of the distance within Nevada is not designated. Within California, the entire remaining distance is designated nonattainment for particulate matter. The western part of the route, closer to Los Angeles is classified as a serious nonattainment area. Thus, only about 15 miles of the approximately 275 mile long project is outside of designated areas. And, the emission benefits related to moving people by train rather than by automobile can only be obtained by a continuous project, including the area not designated.

Policy Decision

The FHWA and the FTA believe that the current policy can serve the needs of those high speed rail projects that are eligible within the statutory authority of 23 U.S.C. 149. Under the current policy, rail projects can be funded if they (1) are located within, or in close proximity to, nonattainment or maintenance areas, (2) can demonstrate the projects' emission reductions are realized primarily within the designated areas, and (3) meet other criteria for CMAQ funding. There is no compelling need to modify the policy at this time. The determination that proposals for CMAQ funding meet these criteria should be made in close collaboration with State and local officials at transportation and air quality agencies, including the MPO, and the EPA, but the final determination of CMAQ eligibility rests with the FHWA and the FTA, as always.

Authority: 23 U.S.C. 149, 315; 49 CFR 1.48 and 1.51.

Issued on: January 9, 2002.

Mary E. Peters,

Administrator, Federal Highway Administration.

Jennifer L. Dorn,

Federal Transit Administrator.

[FR Doc. 02–1164 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34149]

Stillwater Central Railroad, Inc.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Stillwater Central Railroad, Inc. (SCRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from The Burlington Northern and Santa Fe Railway Company and operate approximately 119.73 miles of rail line between milepost 549, at Wheatland, OK, and milepost 668.73, at Long, OK.

The transaction was scheduled to be consummated on or shortly after December 28, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34149, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–766 Filed 1–15–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34121]

Craggy Mountain Line, Inc.—Acquisition and Operation Exemption—Norfolk Southern Railway Co.

Craggy Mountain Line, Inc. (CMLX), a noncarrier, has filed a verified notice of exemption under 49 CFR part 1150.31 to acquire and operate approximately 3.45 miles of rail line currently owned by Norfolk Southern Railway Company (NS). The line, known as the Asheville to Craggy Branch, is a portion of the former Southern Railroad located in Woodfin Township, Buncombe County, NC, and extends between the beginning Survey Station ACM, 17+63=0100 in Woodfin Township and the ending Survey Station 123+00 "Asheville to Southern" 17+97 in Woodfin Township. CMLX certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or after December 31, 2001.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34121, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David R. Payne, P.A., 218 East Chestnut St., Asheville, NC 28801.

Boards decisions and notices are available on our Web site at "*www.stb.dot.gov*."

Decided: January 9, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–968 Filed 1–15–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small

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certificated and commuter air carriers. Small certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) currently must file the five quarterly schedules listed below:

A–1 *Report of Flight and Traffic Statistics in Scheduled Passenger Operations,*

E–1 *Report of Nonscheduled Passenger Enplanements by Small Certificated Air Carriers,*

F–1 *Report of Financial Data,*

F–2 *Report of Aircraft Operating Expenses and Related Statistics, and*

T–1 *Report of Revenue Traffic by On-Line Origin and Destination.*

Commuter air carriers must file the three quarterly schedules listed below:

A–1 *Report of Flight and Traffic Statistics in Scheduled Passenger Operations,*

F–1 *Report of Financial Data,*

T–1 *Report of Revenue Traffic by On-Line Origin and Destination.*

On August 28, 2001, BTS published in the **Federal Register** (66 FR 45201) a notice of proposed rulemaking which recommends that small certificated and commuter air carriers report their traffic under the T–100 reporting system. If this proposal becomes a final rule, Form 298–C, Schedules A–1, E–1 and T–1 would be eliminated.

Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility, and clarity of the information collected.

DATES: Written comments should be submitted by March 18, 2002.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, fax No. 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the OMB # 2138–0009. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0009. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0009.

Title: Report of Financial and Operating Statistics for Small Aircraft Operators.

Form No.: BTS Form 298–C.

Type Of Review: Extension of a currently approved collection for the financial data. The traffic data will be included under OMB Approval number 2138–0040.

Respondents: Small certificated and commuter air carriers.

Number of Respondents: 90.

Estimated Time per Response: 4 hours per commuter carrier; 12 hours per small certificated carrier.

Total Annual Burden: 2,880 hours.

Needs and Uses: Program uses for Form 298–C financial data are as follows:

Mail Rates

The Department of Transportation sets and updates the Intra-Alaska Bush mail rates based on carrier aircraft operating expense, traffic, and operational data. Form 298–C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Essential Air Service

DOT often has to select a carrier to provide a community's essential air service. The selection criteria include historic presence in the community, reliability of service, financial stability and cost structure of the air carrier.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 298–C for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of Title 49 of the United States Code requires DOT to find all commuter and small certificated air carriers fit, willing, and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier begins conducting flight operations, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers prepared for senior DOT officials may use the same information.

Air Transportation Safety and System Stabilization Act

DOT is using financial data reported by small certificated and commuter air carriers to establish benchmarks to assess the reasonableness of air carrier claims under the Stabilization Act.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 02–1157 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Large Certificated Air Carriers

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of the BTS Form 41. Comments are requested concerning whether (a) the continuation of Form 41 is necessary for DOT to carry out its mission of promoting air transportation; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, use and clarity of the data collected; and (d) there are ways to minimize reporting burden,

including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by March 18, 2002.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, fax No. (202) 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the OMB # 2138–0013. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0013. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0013.

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Form No.: BTS Form 41.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 75.

Estimated Time per Response: 4 hours per schedule, an average carrier may submit 90 schedules in one year.

Total Annual Burden: 27,000 hours.

Needs and Uses: Program uses for Form 41 data are as follows:

Mail Rates

The Department of Transportation sets and updates the international and mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Submission of U.S. Carrier Data to ICAO

As a party to the Convention on International Civil Aviation, the United States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

Standard Foreign Fare and Rate Levels

DOT uses Form 41 cost data to calculate the Standard Foreign Fare Level (SFFL) for passengers and the Standard Foreign Rate Level (SFRL) for freight. Any international fare or rate set below this fare level are automatically approved. Separate passenger fare and rate levels are established for Canadian, Atlantic, Latin America, and Pacific areas. In markets where liberal bilateral or multilateral pricing agreements provide for more competitive open market pricing, such agreements may take precedence over the SFFL and SFRL.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information.

War Air Service Program (Emergency Preparedness)

Under the War Air Service Program (WASP), FAA develops an official airline guide to establish air carrier boarding priorities in the event of a national emergency. The inventory of aircraft available for WASP equals the total aircraft fleet operated by certificated air carriers less the number of the largest wide-body aircraft that are allocated to the Civil Reserve Aircraft Fleet Program. Data on air carrier aircraft inventories, plus interim updates of acquisitions and retirements are used to assess the air transportation capabilities of the U.S. airline industry. This assessment is used in developing plans for emergency utilization of U.S. airline industry aircraft and resources in the event of a national emergency and/or mobilization.

Air Transportation Safety and System Stabilization Act

DOT is using Form 41 financial data to establish benchmarks to assess the reasonableness of air carrier claims under the Stabilization Act.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 02–1158 Filed 1–15–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2553

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2553, Election by a Small Business Corporation.

DATES: Written comments should be received on or before March 18, 2002, to be assured of consideration.

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ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election by a Small Business Corporation.

OMB Number: 1545–0146.

Form Number: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an "S" Corporation as defined in Internal Revenue Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an "S" Corporation and the corporation's income is taxed to the shareholders of the corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and Farms.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 15 hrs., 29 min.

Estimated Total Annual Burden Hours: 7,745,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 5, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–896 Filed 1–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the United States Mint within the Department of the Treasury is soliciting comments concerning the United States Mint Generic Clearance Package for OMB.

Written comments should be received on or before March 18, 2002, to be assured of consideration. Direct all written comments to Philip Neisser, Acting Director, Office of Business Alignment, United States Mint, 801 9th Street, NW., Washington, DC 20220; 202.772.7323; *Pneisser@usmint.treas.gov.*

Requests for additional information or copies of the form(s) and instructions should be directed to Melissa Ferring, Communications Specialist, Office of Business Alignment, United States Mint, 801 9th Street, NW., Washington, DC 20220; 202.772.7320; *Mferring@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Mint Generic Clearance Package.

OMB Number: 1525–0012.

Abstract: This is a request for a reinstatement of a three year Generic Clearance to conduct customer satisfaction surveys for the United States Mint.

Current Actions: The United States Mint conducts customer service surveys and focus groups to determine the level of satisfaction from the Mint customers. These actions allow the Mint access to the needs and desires of customers for future products and more efficient, economical services. The United States Mint currently has a Generic Clearance with OMB which allows expedition of the customer satisfaction surveys and focus groups. The United States Mint is requesting another three year reinstatement of this Generic Clearance.

Type of Review: This is a Reinstatement submission, with the only changes being that the necessary survey requests are far fewer than in the past three years.

Affected Public: The affected public includes the serious and casual numismatic collectors, dealers and people in the numismatic business and the general public or one time only customers.

Estimated Number of Respondents: The estimated number of respondents for the next three years is 10,390. With a total estimated number of burden hours of 4,659.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 1,553.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 4, 2002.

Philip Neisser,

Acting Director, Office of Business Alignment, United States Mint.

[FR Doc. 02–1072 Filed 1–15–02; 8:45 am]

BILLING CODE 4810–37–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Wednesday,
January 16, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

Clarifications to Existing National Emissions Standards for Hazardous Air Pollutants Delegations' Provisions; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7122–3]

RIN 2060–AJ26

Clarifications to Existing National Emissions Standards for Hazardous Air Pollutants Delegations' Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: As part of the section 112(l), "Approval of State Programs and Delegation of Federal Authorities" rulemaking process, EPA (we) agreed to clarify which portions of the existing national emission standards for hazardous air pollutants (NESHAP) contain authorities that can be delegated to State, Local, and Tribal (S/L/T) agencies (September 14, 2000). Today's rulemaking clarifies which parts of the existing NESHAP can be delegated to S/L/T agencies by adding or modifying a section in each NESHAP to describe the authorities that can be delegated to S/L/T agencies and those that must be retained by us. In addition, to further clarify which portions of the NESHAP are delegable, some NESHAP standards sections were slightly reorganized or rephrased to separate delegable from non-delegable authorities. These clarifications do not change any substantive NESHAP requirements for industrial sources. This action does not reopen any of the other requirements in these NESHAP, nor are we accepting comments beyond the scope of this proposal.

DATES: *Comments.* Submit comments on or before March 18, 2002.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 5, 2002, a public hearing will be held on February 15, 2002.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–57, Room M–1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The EPA requests that a separate copy also be sent to Ms. Pam Smith, USEPA OAQPS/ITPID (C339–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–0641, facsimile (919) 541–5509 or e-mail *smith.pam@epa.gov.*

Public Hearing. If a public hearing is held, it will be held at 10 a.m. in the EPA's Office of Administration's Auditorium in Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–2000–57 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Driscoll, USEPA OAQPS/ITPID (C339–03), Research Triangle Park, North Carolina 27711, telephone (919) 541–5135, or electronic mail at *driscoll.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel® 8 file format. All comments and data submitted in electronic form must note the docket number (Docket No. A–2000–57). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Docket Center, 4930 Old Page Rd., Building C, Room 530A, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact, Ms. Pam Smith, USEPA OAQPS/ITPID (C339–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–0641 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Smith to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (Act).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of these proposed amendments are also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding accessing the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities potentially affected by this rule are S/L/T agencies that voluntarily request delegation of section 112 rules, emissions standards, or requirements. The procedures and criteria for requesting and receiving delegation are in § 63.90 through § 63.97, excluding § 63.96, of 40 CFR 63 subpart E. Facilities that are subject to the individual subparts proposed for modification should not be affected by the proposed changes, which clarify the delegation requirements between EPA and the S/L/T agencies.

Outline. The information presented in this preamble is organized as follows:

I. Background
- A. How do we delegate section 112 standards to you?
- B. When a standard is delegated, can you change any of the requirements?
- C. What is the purpose of this rulemaking?
- D. What are the types of changes proposed?
- E. Do these clarifications change any substantive requirements to sources?
- F. Why do we need a consistent "Implementation and Enforcement" section in each NESHAP?
- G. Once NESHAP are delegated, does the S/L/T agencies' enforcement authority replace EPA's authority?
- H. Does today's rulemaking affect prior delegations of these part 63 NESHAP (maximum achievable control technology (MACT) standards)?

II. Overview of Proposed Changes
- A. What categories of changes are we proposing?
- B. What clarifications have we made to individual subparts?

III. Administrative Requirements
- A. Docket
- B. Executive Order 12866—Regulatory Planning and Review
- C. Executive Order 13132—Federalism
- D. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
- E. Paperwork Reduction Act
- F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq
- G. Unfunded Mandates Reform Act of 1995
- H. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
- I. National Technology Transfer and Advancement Act of 1995
- J. Executive Order 13211—Energy Effects

I. Background

A. How Do We Delegate Section 112 Standards to You?

The requirements in 40 CFR part 63, subpart E provide a framework for you, the S/L/T agencies, to request and receive delegation of the NESHAP we, EPA, develop under section 112 of the Act. Once you accept delegation, you are responsible for implementing and enforcing the NESHAP for sources in your jurisdiction.

B. When a Standard Is Delegated, Can You Change Any of the Requirements?

In addition to the overall implementation and enforcement authority conferred by the delegation, there are separate parts of each section 112 requirement that we cannot delegate to you. Each individual NESHAP, for example, contains requirements that are considered the standards' and are, therefore, not delegable in terms of you making changes to them. Because the Administrative Procedures Act requires us to approve alternative emission limitations or control requirements through Federal rulemaking, we cannot delegate our rulemaking authority to you. More specifically, any requests by sources for alternative standards must be considered by us and acted upon in a notice and comment rulemaking. Additionally, we cannot delegate authorities that may alter the stringency of the standard, that require Federal oversight for national consistency or that may require Federal rulemaking. Generally, requests by you to revise standards for the source category (or portions thereof) must be addressed through the subpart E rulemaking process for alternative standards. Please note that nothing in the section or this rulemaking usurps your authority to have more stringent state program requirements, such as more stringent emission limitations, apply to sources subject to NESHAP.

However, the authorities in other sections of the rules may be delegable, and approval of alternatives to these requirements may be exercised by you, once you have been delegated the NESHAP through subpart E (straight delegation, § 63.91). Similar authorities may also be in the 40 CFR part 63, subpart A General Provisions, which are incorporated into the majority of the NESHAP, and they contain provisions for the consideration of alternatives to testing, monitoring, reporting, and recordkeeping requirements on a case-by-case basis. Section 63.91(g)(1)(i) of 40 CFR part 63, subpart E further clarifies that "Category I" changes, including minor and intermediate changes to testing, monitoring, recordkeeping, and reporting requirements may be considered and approved by delegated S/L/T agencies. There are similar discretionary authorities, to those mentioned directly above, in each NESHAP that may also be delegated to you. Please note, each NESHAP being revised in today's rulemaking will describe those authorities that will be retained by EPA. All other authorities in those NESHAP are delegable to S/L/Ts.

C. What Is the Purpose of This Rulemaking?

As a part of the large regulatory and policy effort to clarify and streamline delegation of part 63 requirements, we agreed to clarify which portions of the existing 40 CFR part 63 NESHAP contain authorities that can be delegated to you (65 FR 55810). In order to achieve this objective, we are proposing slight changes to many of the existing NESHAP. These clarifications will allow you to approve alternatives to the delegable authorities, including category I authorities listed in § 63.91(g)(i), instead of requiring a rulemaking by the EPA to approve the site-specific alternatives. Many of the existing NESHAP lack a clear delegation section which this proposal would remedy.

This is also an opportunity to make the format of the existing NESHAP more consistent with the format used for NESHAP.

D. What Are the Types of Changes Proposed?

The existing NESHAP were promulgated before we developed a consistent rule format, so each one has a slightly different format. Due to these inconsistencies, each NESHAP may need one or more clarifications, listed below, to ease delegation:

- Addition or modification of a section (Implementation and Enforcement) in each NESHAP describing the authorities that can be delegated to you and those that must be retained by us.
- Reorganization of the standards sections in NESHAP to separate compliance assurance measures from actual standards.
- Minor rephrasing of work practices and other standards developed under the authority of section 112(h) of the Act to allow approval of delegable testing, monitoring, reporting, and recordkeeping authorities by S/L/Ts and without rulemaking by us.

E. Do These Clarifications Change Any Substantive Requirements to Sources?

None of these clarifications change any substantive requirements for sources subject to these subparts. These clarifications are intended only to allow you to clearly identify which authorities you may be delegated through 40 CFR part 63, subpart E. As stated earlier, we are not accepting comment on any other provision of these subparts that is outside the scope of this proposal.

F. Why Do We Need a Consistent "Implementation and Enforcement" Section in Each NESHAP?

We recognized a need for more consistent formats between the standards, primarily because more than one NESHAP may apply to an individual facility. Consistent NESHAP formats will help you write comprehensive permits for these sources and allow owners and operators to focus on one rather than multiple regulatory formats. Consistent formats will also aid in determining compliance within sources; especially those facilities that are subject to more than one NESHAP. Therefore, we developed a straightforward format which we are now using in NESHAP to address these concerns and enhance the readability of the rules. We recognized that the format should include a section to describe the authorities for which you are allowed to approve alternatives to a NESHAP once

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you have received delegation of the standard. This section is termed "Implementation and Enforcement."

Many existing NESHAP do not currently contain a section explaining which authorities must be retained by EPA and which can be delegated to S/L/T agencies. In other instances, the NESHAP contain an explanation of these authorities in a section termed "Delegation of Authority" which vary widely in form and in content. We are proposing to amend both the existing subparts that do contain and those that do not contain delegation provisions in today's rulemaking. We have incorporated an "Implementation and enforcement" section into the NESHAP that do not already contain such a section. As mentioned above, we revised the delegation provisions in subparts that currently contain a "Delegation of Authority" section to conform with the "Implementation and enforcement" section format.

G. Once NESHAP Are Delegated, Does the S/L/T Agencies' Enforcement Authority Replace EPA's Authority?

Throughout this preamble, we state that once NESHAP are delegated to you, then you will have the authority to implement and enforce those rules for sources in your jurisdiction. However, nothing in this language is intended to suggest that your enforcement agencies have replaced our Federal authority to enforce and implement those rules. We remain partners with you in enforcing the NESHAP.

H. Does Today's Rulemaking Affect Prior Delegations of These Part 63 NESHAP (MACT Standards)?

In many cases, you have already accepted delegation of these NESHAP and, consequently, you are currently implementing and enforcing them. We do not believe that today's rulemaking adversely affects existing delegations of these NESHAP to you. For the most part, today's rulemaking clarifies which of the authorities in each existing NESHAP can, and cannot, be delegated to you, so that you can approve or disapprove alternative requirements.

In all prior delegations, specific authorities in the NESHAP were generally not identified as being delegated. Instead, the NESHAP have been generally delegated in their entirety. For example, when our Regional Offices delegate a NESHAP or MACT standard through straight delegation (see 65 FR 55810, September 14, 2000) to a S/L/T, they reference the whole NESHAP, such as Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, in any rulemaking or documents. They usually do not reference a particular authority within the NESHAP, such as § 63.324(d), "[E]ach owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases * * *" in any delegation. Therefore, today's rulemaking will not affect your existing part 63 NESHAP delegation.

Potential issues may occur where you have already acted on the authorities you believed you had been delegated. For example, in Subpart HH, the delegation of authority paragraph in § 63.776 does not withhold the delegation of any of the standards' sections. Therefore, you may have exercised the authority to approve alternative emissions controls or limitations in this example. As mentioned above, you cannot approve alternatives to NESHAP's emissions controls or limitations because they must be established through national rulemaking. Only we can approve alternatives to emissions controls or limitations through national rulemaking.

If you have inadvertently approved alternatives to NESHAP's emissions controls or limitations for a specific source, then the appropriate EPA Regional Office must be notified of this approval. Our Regional Office will then work with you and our Office of Air Quality Planning and Standards, Office of Enforcement and Compliance Assurance, and Office of General Counsel to reevaluate the alternative through § 63.6 or the provisions in 40 CFR part 63, subpart E. If you have any questions regarding inadvertent approvals, please contact your appropriate EPA Regional Office.

II. Overview of Proposed Changes

A. What Categories of Changes Are We Proposing?

1. Adding an "Implementation and Enforcement" Section

The first category of changes involves adding a section that describes non-delegable authorities or changing current delegation sections to conform to a consistent format. The new "Implementation and enforcement" sections cite the rule sections or requirements for which you may not approve alternatives (i.e., non-delegable authorities). The authority to make changes to those sections or requirements is retained by us and includes the authority to approve any alternatives to emissions standards; including their applicability requirements. Conversely, any authority not expressly reserved for us, in these paragraphs, can be delegated to you so that you can exercise these authorities.

As part of the recent subpart E rulemaking (65 FR 55810), we have clarified which of the specific General Provisions authorities regarding alternative requirements could not be delegated to you because they would be nationally significant or would alter the stringency of an underlying standard and, thus, could not be delegated to you. We divided the General Provisions discretionary authorities into two groups, based upon the relative significance of each type of decision. Category I contains those authorities which can be delegated. We believe that the EPA Regional Office retains the ability to request review of these decisions, although we expect that this authority will be exercised infrequently. Category II contains those authorities which cannot be delegated.

In general, we believe that where possible, authority to make decisions which are not likely to be nationally significant or to alter the stringency of the underlying standard, such as minor changes to test methods, should be delegated to those with the most expertise in dealing with these kinds of decisions, the S/L/Ts; resulting in minimal involvement by us. Section 63.91(g)(1)(i) of subpart E lists the authorities in category I, i.e., those authorities which may be delegated.

Section 63.91(g)(2)(ii) of subpart E lists the authorities which may not be delegated in Category II, which includes those decisions which generally may result in a change to the stringency of the underlying standard, which is likely to be nationally significant, or which may require a **Federal Register** notice when approving an alternative. These authorities, as mentioned previously, must always be retained by us, and cannot be delegated to you. Consistent with this approach, we must retain the authority to approve major alternatives to test methods, monitoring, recordkeeping, and reporting.

With this proposal, we are not requesting comment on the appropriateness of our decisions regarding the classification of General Provisions authorities into Category I or II. That decision was recently finalized (65 FR 55810) based on public comment and internal discussion. However, the changes proposed today in the individual subparts reference the subpart E classifications to ensure that they conform with this similar framework. We are requesting comment on whether the individual provisions in the existing subparts are appropriately included in this framework or whether there are subpart-specific reasons for an alternative scheme.

2. Reorganizing Sections To Separate Compliance Assurance Measures From Actual Standards

The NESHAP contain two major types of requirements: standards and delegable requirements. The standards are the essential requirements that implement EPA's authority under the Act to establish hazardous air pollutant (HAP) emission standards. These standards may be emission limitations (emission limits, operating limits, opacity limits, and visible emission limits) and/or work practice standards (design, equipment, work practices, and operational standards). The authority to approve alternatives to any of the promulgated standards must be retained by us. Requirements that are essential to ensuring that the standards are achieved as EPA intended, such as applicability requirements and compliance dates, are also retained.

The delegable requirements are also essential, but they offer some flexibility in their implementation. For example, you can approve minor and intermediate changes to testing, monitoring, reporting, and recordkeeping provisions, as long as they are at least as stringent as EPA requirements. For example, a source may request to inspect air pollution control equipment on a different schedule than that contained in the rule for source-specific reasons. An alternative inspection scheme may be accepted if the proposed schedule meets the intent of the original requirements to ensure the equipment is inspected regularly and repaired in a timely fashion.

In another instance, a source may wish to submit reports to coincide with the schedule of other required reports. A change in the schedule for submission of reports would be considered a minor change to reporting, and the authority to approve these types of minor changes is one which can be delegated to the S/L/T agencies.

In other cases, the S/L/T agency is given authority to make changes in the implementation of a requirement, but not to change the actual requirement itself. For example, some NESHAP require operation and maintenance plans. Here the S/L/T agency is given the authority to approve some changes in the content of the plan, but does not have the authority to waive the requirement that the plan must be created and followed. Additionally, some newly named operation and maintenance sections contain provisions which are similar to work practices, in that they can potentially affect emissions, such as the requirement to operate and maintain the source's equipment in keeping with good air pollution control practices, or the requirement to correct malfunctions as soon as practicable. You may not approve alternatives that are less stringent than the criteria outlined in the subpart. However, you may require more stringent provisions, such as not permitting excess emissions during malfunctions at all. Where an operations and maintenance plan is required, it usually allows the source considerable latitude in designing the plan, so long as the plan meets certain criteria. You may approve alternatives to the plan that are more stringent than the criteria listed, but you may not approve elimination of major criteria, such as specifying the process and control system monitoring equipment.

As a second example, most NESHAP include requirements to monitor certain specified control equipment operating parameters and to set enforceable operating limits for these same parameters based on data from the performance test. In this case, the S/L/T may be delegated the authority to approve changes to the ranges for the operating limits based on new performance test data and/or other relevant information submitted by the source. However, we retain the authority to approve modifications to requirements affecting which parameters are monitored (e.g., EPA would approve appropriate parameters to monitor for a control device not addressed in a NESHAP).

A more detailed discussion and additional examples of changes that may be made to the delegable requirements are presented in the preambles to the proposed and final subpart E rule (64 FR 1880) and (65 FR 55822).

In most NESHAP, the non-delegable authorities and the delegable authorities are separated into different sections of the rule. However, in a few NESHAP, these authorities are mixed within a single section; in the standard section in some NESHAP. In this case, we identified and separated out (where possible) the paragraphs that contain requirements for which you may not approve alternatives in the "Implementation and enforcement" section.

In other situations, the delegable and non-delegable authorities are not clearly separated into different sections or into different paragraphs within a standards section. In these cases, we have restructured the standards sections to separate the delegable and non-delegable authorities. This restructuring was accomplished by moving the delegable authorities to more appropriate sections of the rule, such as "Monitoring requirements" or "Recordkeeping requirements" sections. As a result, the "Implementation and enforcement" section more clearly shows which authorities you may not be delegated by simply listing the sections containing those authorities.

3. Proposing Minor Work Practices' Amendments To Allow Approval of Alternatives Without EPA Rulemaking

In some MACTs, provisions for which you could or should have the authority to approve alternatives are written in a way that precludes you from approving alternatives to these practices. Authority to approve alternatives to work practice standards or any other emission limitation established under section 112(d) or (h) of the Act cannot be delegated to you. However, some work practice requirements could be written more broadly to allow alternative practices to be implemented or these work practice requirements could be written to expressly state that you may approve alternative practices.

We have rewritten these work practice standards, where possible, to specifically state that you have the authority to approve equivalent or more stringent alternative compliance assurance measures. The sections containing these requirements are not listed as authorities retained by us in the implementation and enforcement section. These kinds of changes are necessary only for a small number of subparts.

An example of the need for broader flexibility in these requirements is presented in subpart GG, the Aerospace NESHAP. This subpart includes a requirement that solvent-laden rags be stored in closed containers with tight-fitting lids. This requirement prohibits the use of other methods for storing solvent-laden rags to prevent HAP emissions, such as storing them in a room that is vented to a control device. This practice may be as effective as the use of a closed container. However, as subpart GG is currently written, sources must apply to our Office of Air Quality Planning and Standards to have such an alternative work practice approved as equivalent. In turn, we must approve this alternative work practice through rulemaking. In this and other instances where this rulemaking procedure does not seem necessary, we have rephrased the work practice standard to specifically state that S/L/T agencies may determine whether alternatives are equivalent.

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B. What Clarifications Have We Made to Individual Subparts?

1. Subpart F, National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

Subpart F contains the primary MACT standards of the Hazardous Organic NESHAP (HON). This regulation is one subpart in a group of subparts that make up the HON regulation, where each subpart regulates a group of emission points. These unit-specific subparts were written to collectively regulate the production of 300 defined organic chemicals, but have subsequently been used as a reference in other MACT regulations for some requirements. Therefore, for cross-referencing and delegation purposes, it is important for each of these subparts to have adequate separation of delegable versus non-delegable authorities and to have delegation provisions that are specific to each subpart.

In some instances, this regulation is not clear about separating delegable authorities. For example, § 63.104 contains monitoring requirements associated with leak detection and repair. However, these types of requirements actually constitute an integral part of the standard in leak detection and repair programs. The leak detection and repair requirements of subpart F fall into this category, so we are not proposing to delegate these authorities.

To clarify which authorities are delegated, we have replaced the existing delegation paragraph with "Implementation and enforcement" section language. These delegation provisions show that delegation of authority to approve alternatives is not given to S/L/T agencies for the requirements in §§ 63.100, 63.102, and 63.104, which contain applicability requirements, general standards, and standards for heat exchangers. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. We have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts.

2. Subpart G, HON Standards for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

Subpart G contains the HON MACT standards for process vents, storage vessels, transfer operations, and wastewater. As described above, it is important for cross-referencing and delegation purposes for each of the HON subparts to have adequate separation of compliance assurance measures from the standards and to have a delegation paragraph specific to the requirements of each subpart.

In some instances, this regulation does not adequately separate delegable versus non-delegable authorities. For example, §§ 63.133–63.139 contain inspection requirements and schedules for problem detection and repair. However, these types of requirements actually constitute an integral part of the standard in leak detection and repair programs. The leak detection and repair requirements of subpart G fall into this category, so we are not proposing to delegate these authorities.

This subpart does not currently contain its own delegation provisions. However, § 63.121 describes procedures that should be followed to request the use of alternative means of emissions limitation for storage vessels. Also, the delegation provisions in subpart F address delegation of some subpart G requirements. To clarify which authorities are delegated, we propose to add "Implementation and enforcement" section for delegation provisions to this subpart in a new section, § 63.153. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.112–63.113, 63.119, 63.126, 63.132–63.140, and 63.148–63.149, which contain the emission standards; for the requirements in § 63.110 which contains the applicability requirements for this rule; and § 63.150(i)(1)–(4), which contains requirements to request permission to take credit for use of a control technology that is different in use or design from the reference control technology. To retain the intent of the original language of § 63.121, the new delegation paragraph cross-references the section identifying the procedures to follow in requesting an alternative means of emission limitation for storage vessels. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. We have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where subpart G requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we have clarified that those provisions should be changed accordingly and then delegated according to the delegation provisions of the referenced subpart.

3. Subpart H, HON for Organic Hazardous Air Pollutants for Equipment Leaks

Subpart H is the MACT standard for equipment leaks at facilities regulated by the HON. As described above, it is important for cross-referencing and delegation purposes for each of the HON subparts to have adequate separation of compliance assurance measures from the standards and to have a delegation paragraph specific to the requirements of each subpart.

In some instances, this subpart does not adequately separate delegable versus non-delegable authorities. Several standards sections contain monitoring, inspection, recordkeeping, and reporting requirements associated with leak detection and repair. However, we believe that these types of requirements actually constitute an integral part of the standard in leak detection and repair programs. The leak detection and repair requirements of subpart H fall into that category, so we are not proposing to delegate these authorities.

This subpart does not have its own delegation provisions. To clarify which authorities are delegated, we have added "Implementation and enforcement" section in a new section, § 63.183. The section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.160, 63.162–63.176, and 63.178–63.179, which contain the applicability provisions, emissions standards, standards for quality improvement programs, and provisions for alternative emission limitations. The reader is also instructed to follow the requirements of § 63.177 to request an alternative means of emission limitation for batch processes and enclosed-vented process units.

This subpart also requires affected sources to meet specific requirements that are contained in other subparts. We have clarified in the implementation and enforcement language that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where subpart H requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we have clarified that those provisions should be modified accordingly and then delegated according to the delegation provisions of the referenced subpart.

4. Subpart I, HON for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

Subpart I is the negotiated MACT standard for equipment leaks at facilities regulated by the HON. As described above, it is important for cross-referencing and delegation purposes for each of the HON subparts to have adequate separation of compliance assurance measures from the standards and to have a delegation paragraph specific to the requirements of each subpart.

In some instances, this subpart does not adequately separate compliance assurance measures from the standards. Section 63.192, "Standard," contains performance test, recordkeeping, reporting, and other provisions that are considered delegable. Since the paragraphs containing these provisions are reasonably separable from the other standards in the section, we have indicated that the requirements in paragraphs § 63.192(c)–(d), (f)–(g), and (k)–(m) are not part of the standard and, thus, are delegable. Again, we are not changing the substance of these requirements and are, thus, accepting comments only on the delegation of them.

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with "Implementation and enforcement" section. The section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.190 and 63.192(a)–(b), (e), (h)–(j), which contain the applicability provisions and emissions standards for this subpart. In addition, this subpart requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts.

5. Subpart L, National Emission Standards for Coke Oven Batteries

Subpart L is the MACT standard for coke oven batteries. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with "Implementation and enforcement" section. In the delegation section, we retain the authorities in §§ 63.300 and 63.302–63.308, which contain the applicability provisions and emissions standards for by-product and nonrecovery coke oven batteries, compliance date extensions, coke oven doors equipped with sheds, work practice standards, bypass/bleeder stacks, and collecting mains.

The original delegation provisions contained language addressing failure of delegated agencies to carry out required inspections and tests. We retained this language in the revised delegation provisions, but added language to it and to § 63.609, "Performance tests and procedures," explaining that the Administrator may also withdraw delegation of authority pursuant to the provisions of § 63.96.

6. Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Subpart M is the MACT standard for perchloroethylene dry cleaning operations. This subpart does not separate delegable authorities from non-delegable ones in some instances. Section 63.322, "Standards," contains inspection and repair requirements for equipment leaks in paragraphs (k)–(n), which are considered delegable monitoring authorities for this subpart. Since these paragraphs are reasonably separable from the other standards in the section, we have indicated that the requirements in paragraphs (k)–(n) are not considered part of the standard and, thus, are delegable authorities.

This subpart also does not currently contain a delegation section. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.326. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.322(a)–(j), which contain the emissions and work practice standards for this rule. This section also shows that delegation of authority to approve alternatives is not given to S/L/T agencies for the applicability provisions in § 63.320. Finally, to retain the intent of the original language of § 63.325, which identifies procedures to demonstrate equivalence of an alternative control technology, the delegation provisions cross-reference the section that identifies procedures to follow in requesting use of an alternative control technology.

7. Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

Subpart N is the MACT standard for chromium electroplating. This subpart does not separate delegable requirements from non-delegable standards in one instance. Section § 63.342(f) contains operation and maintenance requirements, which are inappropriately termed "work practice standards." We have replaced the term "work practice standards" with "operation and maintenance practices" to clarify that these authorities are delegable requirements rather than actual standards and made similar conforming changes elsewhere in the rule, as needed. Since these paragraphs are reasonably separable from the other standards in the section, we have indicated that the authorities in § 63.342(f) are not considered part of the standard and, thus, are delegable.

This rule does not currently contain delegation provisions. To clarify which authorities are delegated, we have added "Implementation and enforcement" section for the delegation provisions in a new section, § 63.348. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the authorities in §§ 63.340 and 63.342(a)–(e) and (g), which contain the applicability provisions and the emission standards for hard chromium electroplating tanks, decorative chromium electroplating tanks using a chromic acid bath and chromium anodizing tanks, and decorative chromium electroplating tanks using a trivalent chromium bath.

8. Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities

Subpart O is the MACT standard for the ethylene oxide sterilization industry. This subpart does not currently contain delegation provisions. To clarify which authorities are delegated, we have added "Implementation and enforcement" section for the delegation provisions in a new section, § 63.368. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.360 and 63.362, which contain the applicability provisions and emission standards for this rule.

9. Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

Subpart Q is the MACT standard for industrial cooling towers. This subpart does not currently contain delegation provisions. To clarify which authorities are delegable, we have added "Implementation and enforcement" section for the delegation provisions in a new section, § 63.407. This section, as proposed, indicates that delegation of authority to approve alternatives cannot

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be given to S/L/T agencies for the authorities in §§ 63.400 and 63.402–63.403, which contain the applicability provisions, the emissions standard, and the compliance dates for this subpart.

10. Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

Subpart R is the MACT standard for gasoline distribution. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.420 and 63.422–63.424, which contain the applicability provisions and emissions standards for loading racks, storage vessels, and equipment leaks.

To retain the intent of the original delegation provisions, the revised delegation section also retains delegation of the authority to approve major alternatives to the monitoring specified in § 63.427(a)(1)–(4) per § 63.427(a)(5), which contains provisions for monitoring an alternative operating parameter. To retain the intent of the original language of § 63.426, the revised delegation paragraph cross-references that section for procedures to follow in requesting an alternative means of emission limitation for storage vessels.

11. Subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

Subpart S is the MACT standard for pulp and paper production. This subpart does not separate delegable requirements from non-delegable standards in some instances. Section § 63.450, "Standards for enclosures and closed-vent systems," contains monitoring and recording requirements for closed vent system bypass lines. We have removed the monitoring and recording authorities from § 63.450(d)(1) and placed them in § 63.454(e), "Recordkeeping requirements." However, we added a reference in § 63.450(d)(1) that the provisions of § 63.454(e) must be followed.

This subpart contains delegation provisions that are not consistent with "Implementation and enforcement" section. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.440, 63.443–63.437 and 63.450, which contain the applicability provisions and the emissions standards for pulping systems, bleaching systems, kraft pulping process condensates, clean condensate alternatives, and enclosures and closed-vent systems. This subpart also requires that provisions of another subpart be followed. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the subpart that is referenced.

12. Subpart T, National Emission Standards for Halogenated Solvent Cleaning

Subpart T is the MACT standard for halogenated solvent cleaning. We have restructured the work practices in § 63.462 to give S/L/T agencies greater flexibility to approve alternatives that will still meet the intent of the standard. To create this flexibility we have added paragraph (e) to § 63.462. In addition, § 63.463, "Batch vapor and in-line cleaning machine standards," contains recordkeeping provisions in § 63.463(e)(2)(ix)(B). We have restructured this section to refer to § 63.467 "Recordkeeping requirements," for these provisions in § 63.467(a)(6).

This subpart also does not currently contain delegation provisions. To clarify which authorities are delegated, we added "Implementation and enforcement" section in a new section, 63.470. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.460, 63.462(a)–(d), and 63.463–63.464, which contain the applicability provisions and the emissions standards for batch cold cleaning machines and batch vapor and in-line cleaning machines.

Section 63.469 describes procedures that must be followed to request the use of alternative equipment or an alternative work practice. Section 63.460(f) retains delegation of this section to the Administrator and also retains § 63.463(d)(9), which requires the owner or operator to maintain each solvent cleaning machine as recommended by the manufacturer or to use alternative practices that have been approved by the Administrator. The delegation provisions added in § 63.470 cross-reference § 63.469 for procedures to follow in requesting an alternative means of emission limitation. We have removed § 63.460(f), since the requirements of that paragraph are now listed in § 63.470 as authorities that are not delegated.

13. Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

Subpart U is the MACT standard for group I polymers and resins. This subpart does not separate compliance assurance measures from the standards in some instances. Several standards sections contain provisions that are considered delegable requirements. Since the paragraphs containing these delegable provisions are reasonably separable from the standards in the section, we have indicated in the delegation provisions that the requirements in paragraphs §§ 63.483(d), 63.485(l), (t) and (v), 63.488(b)(5)(i)–(iii), 63.500(a)(4)–(5), (c)–(e), and 63.502(g)–(i), (j), and (n) are not considered part of the standard and, thus, are authorities that may be delegated to S/L/T agencies.

This subpart also does not currently contain delegation provisions. To clarify which authorities are delegable, we have added "Implementation and enforcement" section for the delegation provisions in a new section, § 63.507. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.480–63.481, 63.483(a)–(c), 63.484, 63.485(a)–(k), (m)–(s), (u), 63.486–63.487, 63.488(a), (b)(1)–(4), (5)(iv)–(v), (6)–(7), (c)–(i), 63.493–63.494, 63.500(a)(1)–(3), (b), 63.501, and 63.502(a)–(f), (i), (k)–(m), and 63.503, which contain applicability provisions, compliance dates, the emission standards, and the emissions averaging provisions for this subpart. In addition, this subpart requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where subpart U requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we have clarified that those provisions should be changed accordingly and then delegated according to the delegation provisions of the referenced subpart. For example, subpart U references subpart G, §§ 63.113–63.116 but slightly changes these requirements. We clarify in this rulemaking that although subpart U changes these specific subpart G requirements for the purposes of subpart U, the delegation of these referenced requirements follow the original delegation of subpart G.

14. Subpart W, National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

Subpart W is the group II polymers and resins MACT for epoxy resins and non-nylon polyamide production. This subpart does not currently contain delegation provisions. To clarify which authorities are delegable, we have added "Implementation and enforcement" section for the delegation provisions in a new section, § 63.529. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.520, 63.523 and 63.524, which contain the applicability provisions and the emissions standards for basic liquid and wet strength resins. In addition, this subpart requires provisions of another subpart, subpart H, to be followed. We have clarified that delegation of the requirements from the other subpart, subpart H, will occur according to the delegation provisions of the subpart that is referenced.

15. Subpart X, National Emissions Standards for Hazardous Air Pollutants From Secondary Lead Smelting

Subpart X is the MACT standard for secondary lead smelting. We have restructured the work practices in § 63.545 to give S/L/T agencies greater flexibility in approving alternatives that still meet the intent of the standard by adding a paragraph to explain that either the Administrator or delegated S/L/T authorities may approve alternatives to the fugitive dust reduction practices in § 63.545(c).

This subpart also does not currently contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.551. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.541, and 63.543–63.545(a)–(e), which contain the applicability provisions and emissions standards for process sources, process fugitive sources, and fugitive dust sources.

16. Subpart Y, National Emission Standards for Marine Tank Vessel Loading Operations

Subpart Y is the MACT standard for marine tank vessel loading operations. This subpart does not separate delegable requirements from non-delegable standards in some instances. Section 63.562, "Standards," contains requirements for an operation and maintenance plan in § 63.562(e) and its associated recordkeeping and reporting provisions are contained in § 63.562(d)(3), which are delegable authorities. We have removed the reporting and recordkeeping requirements from § 63.562 by deleting paragraph § 63.562(d)(3) and added those provisions to § 63.567, "Reporting and recordkeeping," by adding paragraph § 63.567(l). Since paragraph (e) is reasonably separable from the other standards in § 63.562, we have indicated in the implementation and enforcement provisions that the requirements in this paragraph are not considered part of the standard and, thus, are delegable.

This subpart also does not currently contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.568. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.560 and 63.562(a)–(d), which contain the applicability provisions and emission standards for this rule.

17. Subpart AA, National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

Subpart AA is the MACT standard for the phosphoric acid manufacturing industry. This subpart does not currently contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.611. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.600, 63.602–63.604, and 63.609–63.610, which are the applicability provisions, the emission standards for existing and new sources and the operating requirements for wet scrubbing emission control systems, the compliance dates, and other requirements for this subpart.

18. Subpart BB, National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants

Subpart BB is the MACT standard for phosphate fertilizers production. This subpart does not currently contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.632. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.620, 63.622–63.624, and 63.629–63.631, which contain the applicability provisions, the emissions standards for existing and new sources, the operating requirements for wet scrubbing emission control systems, and the compliance dates and other requirements for this subpart.

19. Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries

Subpart CC is the MACT standard for petroleum refineries. This subpart does not separate delegable requirements from non-delegable standards in some instances. Section 63.642, "General standards," contains recordkeeping, reporting, and other delegable requirements in paragraphs (a)–(f) and (m). Since these paragraphs are reasonably separable from the standards in the section, we have indicated that the requirements in these paragraphs are not considered part of the standard and, thus, are delegable.

This subpart also does not currently contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.655. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.640, 63.642(a),

(g)–(l), 63.643, 63.646–63.648, and 63.649–63.652, which contain applicability provisions, standards for applicability determinations, process vents, storage vessels, wastewater, equipment leaks, connectors in gas/vapor and light liquid service, gasoline loading racks, marine vessel tank loading operations, and emissions averaging provisions. In addition, this subpart requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where subpart CC requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we have clarified that those provisions should be changed accordingly and then delegated according to the delegation provisions

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of the referenced subpart. For example, subpart CC references subpart H, § 63.1182(c) but slightly changes these requirements. We clarify in this rulemaking that although subpart CC changes these specific subpart H requirements for the purposes of subpart CC, the delegation of these referenced requirements follow the original delegation of subpart H.

20. Subpart DD, National Emission Standards for Hazardous Air Pollutants From Off-Site Waste and Recovery Operations

Subpart DD is the MACT standard for offsite waste and recovery operations. This regulation is the primary subpart in a group of subparts that make up the off-site waste and recovery operations regulation. The subsequent subparts each regulate a group of emission points, which were written so that new rules for other MACT source categories can reference these subparts for some requirements. Since these subparts reference subpart DD for some authorities, it is important that subpart DD separates delegable requirements from the non-delegable standards and contains delegation provisions that delegate the appropriate authorities.

Subpart DD does not separate delegable requirements from non-delegable authorities in some instances. Section 63.684, "Standards for off-site material treatment," contains monitoring requirements, and § 63.693, "Standards for closed-vent systems and control devices," contains monitoring and inspection requirements, which are delegable authorities. We have rephrased the language of § 63.684(e)(1) to remove the monitoring and reporting requirements from that section. Those requirements were added to § 63.695, "Inspection and monitoring requirements" in § 63.695(e), with an introductory paragraph to match the format of the section in § 63.695(a)(4). The continuous monitoring requirements and visual inspection requirements in § 63.693(b)(4)(i) and § 63.693(c)(2)(ii) were also removed and placed in § 63.695(c)(1)(ii)(C) and (D).

To clarify which authorities can be delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.680, 63.684–63.691, and 63.693, which contain applicability provisions and the standards for off-site material treatment, tanks, oil-water and organic-water separators, surface impoundments, containers, transfer systems, process vents, equipment leaks, closed-vent systems, and control devices. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the subpart that is referenced.

21. Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations

Subpart EE is the MACT standard for the magnetic tape manufacturing industry. To clarify which authorities are delegated, we have replaced the existing delegation paragraph with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in § 63.701 and § 63.703, which contain the applicability provisions and the emission standards for this rule.

22. Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities

Subpart GG is the MACT standard for aerospace manufacturing and rework facilities. We have restructured the work practices in § 63.744 to give S/L/T agencies greater flexibility in approving alternatives that still meet the intent of the standard by adding a paragraph to explain that either the Administrator or delegated State, local, or tribal authorities may approve alternatives to the cleaning operations measures in § 63.744(a).

In addition, this subpart does not contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.759. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.741, 63.743, 63.744(a)(1)–(3), 63.744(b)–(e), 63.745–63.748, and 63.749(a), which contain the applicability provisions, cleaning, primer and top-coat application, depainting, chemical milling maskant application, and waste handling and storage standards, and the compliance dates for this rule.

23. Subpart HH, National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

Subpart HH is the MACT standard for oil and natural gas production facilities. This subpart does not separate delegable from non-delegable authorities in some instances. A standards section, § 63.771, "Control equipment requirements," contains inspection and monitoring requirements, which are considered delegable requirements. We have removed the language for inspection and monitoring requirements from § 63.771 and added it to § 63.773, "Inspection and monitoring requirements," in § 63.773(c)(2)(iv).

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.760, 63.765–63.766, 63.769, and 63.771, which contain the applicability provisions and the emission standards for glycol dehydration unit process vents, storage vessels, equipment leaks, and control equipment requirements. We did not reserve § 63.764, "General Standards," which does not contain actual standards, but provides a guide to the applicable requirements in other sections of the subpart.

This subpart also contains a section, § 63.777, which describes procedures that should be followed to obtain approval of an alternative means of emission limitation. To retain the intent of the original language of § 63.777, the delegation provisions also reserve that section for procedures to follow in requesting an alternative means of emission limitation.

24. Subpart II, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

Subpart II is the MACT standard for shipbuilding and ship repair. This subpart currently does not have a delegation section. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.789. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.780–63.781 and 63.783–63.784, which contain the applicability provisions, emission standards, and compliance dates for this rule.

25. Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations

Subpart JJ is the MACT standard for wood furniture manufacturing. This subpart does not separate delegable requirements from the standards in some instances. Section 63.803, "Work practice standards," contains requirements for an inspection and maintenance plan in § 63.803(c)(1)–(4), which should be delegable. Because these paragraphs are reasonably separable from the other standards in the section, we have indicated that the requirements of those paragraphs are not considered part of the standard and, thus, are delegable. However, we renumbered the paragraphs in that section so the introductory paragraph of (c) is now (c)(1), and the subsequent paragraphs were renumbered as (c)(2)–(5) to accommodate that change.

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.802 and 63.803(a)–(b), (c)(1), and (d)–(l), which contain the standards for this rule. This section also shows that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the applicability provisions in § 63.800. To retain the intent of the original delegation provisions in § 63.808, the revised delegation section also reserves the monitoring and compliance assurance measures and test methods in §§ 63.804(f)(4)(iv)(D) and (E), 63.804(g)(4)(iii)(C), 63.804(g)(4)(vi), 63.804(g)(6)(vi), 63.805(a), 63.805(d)(2)(v), and 63.805(e)(1).

26. Subpart KK, National Emission Standards for the Printing and Publishing Industry

Subpart KK is the MACT standard for the printing and publishing industry. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.820–63.821 and 63.824–63.826. These sections contain applicability provisions, compliance dates, standards for publication rotogravure printing and product and packaging rotogravure, and wide-web flexographic printing. We are not reserving § 63.823, which only indicates which general provisions requirements apply to subpart KK. As part of the implementation and enforcement language, we clarify that the authority to approve major alternatives to test methods is not delegated. In addition, to retain the intent of the original delegation paragraph language of § 63.831, the revised delegation provisions also clarify that the authority is not given to approve any alternatives to the test methods specified in § 63.827(b) and (c).

27. Subpart LL, National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

Subpart LL is the MACT standard for primary aluminum production plants. This subpart does not separate the delegable requirements from non-delegable authorities in some instances. Section 63.845, "Incorporation of new source performance standards for potroom groups," contains requirements for applicability determinations, reporting requirements, and criteria to use to determine emissions quantities, which are not considered standards for this regulation. Since these measures are in paragraphs reasonably separable from the standards in the section, we have indicated that paragraphs § 63.845(a) and (f)–(g) are not considered part of the standard and are, thus, delegable.

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section now shows that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.840, 63.843–63.844, 63.845(b)–(e), (h)–(i), and 63.846 which contain the applicability provisions, emission standards for existing and new or reconstructed sources, standards for incorporation of new source performance standards for potroom groups, and emissions averaging provisions.

28. Subpart OO, National Emission Standards for Tanks—Level 1

Subpart OO is the MACT national emission standard for level 1 tanks. This regulation is one subpart in a group of subparts that make up the off-site waste and recovery operations regulation, where each subpart regulates a specific group of emission points. These unit-specific subparts were written so that new rules for other MACT source categories can reference these subparts for some requirements. Therefore, it is important for each of these subparts to contain delegation provisions specific to the requirements of that subpart. Since this subpart does not contain delegation provisions, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.908. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.900 and 63.902, which contain the applicability provisions and emissions standards for tanks with fixed roofs.

29. Subpart PP, National Emission Standards for Containers

Subpart PP is the MACT national emission standard for containers. This regulation is one subpart in a group of subparts that make up the off-site waste and recovery operations regulation, where each subpart regulates a specific group of emission points. As explained above, it is important for each of these subparts to have delegation provisions specific to the requirements of that subpart. Since this subpart does not contain delegation provisions, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.929. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.920 and 63.922–63.924, which contain the applicability provisions and container level 1, 2, and 3 control standards.

In addition, this subpart requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation paragraph of the subpart that is referenced.

30. Subpart QQ, National Emission Standards for Surface Impoundments

Subpart QQ is the MACT national emission standard for surface impoundments. This regulation is one subpart in a group of subparts that make up the off-site waste and recovery operations regulation, where each subpart regulates a specific group of emission points. As explained above, it is important for each of these subparts to have delegation provisions specific to the requirements of that subpart. Since this subpart does not contain delegation provisions, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.949. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.940, and 63.942–

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63.943, which contain the applicability provisions and emission standards for surface impoundments vented to control devices and for those with floating membrane covers. In addition, this rule requires provisions of subpart DD to be followed. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation paragraph of subpart DD.

31. Subpart RR, National Emission Standards for Individual Drain Systems

Subpart RR is the MACT national emission standard for individual drain systems. This regulation is one subpart in a group of subparts that make up the off-site waste and recovery operations regulation, where each subpart regulates a specific group of emission points. As explained above, it is important for each of these subparts to have delegation provisions specific to the requirements of that subpart. Since this subpart does not have a delegation section, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.967. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.960 and 63.962, which contain the applicability provisions and emissions standards for this subpart. In addition, this subpart requires provisions of subpart DD to be followed. In the "Implementation and enforcement" section, we have clarified that delegation of those requirements will occur according to the delegation provisions of subpart DD.

32. Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators

Subpart VV is the MACT national emission standard for oil-water and organic-water separators. This regulation is one subpart in a group of subparts that make up the off-site waste and recovery operations regulation, where each subpart regulates a specific group of emission points. As explained above, it is important for each of these subparts to have delegation provisions specific to the requirements of that subpart. Since, this subpart does not have a delegation section, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.1050. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1040 and 63.1042–63.1044, which contain the applicability provisions, the emissions standards for separators with fixed and floating roofs, and those vented to a control device. In addition, this subpart requires provisions of subpart DD to be followed. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of subpart DD.

33. Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

Subpart CCC is the MACT standard for steel pickling—HCl process facilities and hydrochloric acid regeneration plants. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1155 and 63.1157–1159, which contain the applicability provisions and the emissions, operational, and equipment standards for existing, new, and reconstructed sources.

To retain the intent of the original delegation paragraph language, the revised delegation provisions reserve approval of alternative measurement methods for HCl and Cl_2 to those specified in § 63.1161(d)(1), reserve approval of alternative monitoring requirements to those specified in §§ 63.1162(a)(2)–(5) and 63.1162(b)(1)–(3), reserve the authority to grant a waiver of recordkeeping requirements specified in § 63.1165, and expressly delegate approval of an alternative schedule for conducting performance tests to the requirement specified in § 63.1162(a)(1).

34. Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

Subpart DDD is the MACT standard for mineral wool production. This subpart does not currently contain delegation provisions. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1177–63.1179, which contain the applicability provisions and the emission standards for cupolas and curing ovens.

35. Subpart EEE, National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

Subpart EEE is the MACT standard for hazardous waste combustors. This subpart does not currently have a delegation section. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.1214. The delegation provisions show that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1200 and 63.1203–63.1205, which contain the applicability provisions and emission standards for this subpart.

36. Subpart GGG, National Emission Standards for Pharmaceuticals Production

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1250 and 63.1252–63.1256, which contain the applicability provisions and emission standards for this subpart. In addition, this subpart requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts.

37. Subpart HHH, National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

Subpart HHH is the MACT standard for natural gas transmission and storage. This subpart does not separate delegable from non-delegable authorities in some instances. The standards section, § 63.1281, "Control equipment requirements," contains inspection and monitoring requirements, which are considered delegable requirements. To separate these delegable requirements from non-delegable authorities in that section, we have removed the language for inspection and monitoring requirements from § 63.1281 and added it to § 63.1283, "Inspection and monitoring requirements," in paragraph (c)(2)(iii).

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1270, 63.1275, and 63.1281, which contain applicability provisions, glycol dehydration unit process vent standards, and control equipment requirements.

In addition, subpart HHH contains a section, § 63.1287, which describes procedures that should be followed for approval of an alternative means of emission limitation. To retain the intent of the original language of § 63.1287, the delegation provisions also reserve that section.

38. Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

Subpart III is the MACT standard for flexible polyurethane foam production. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1920 and 63.1293–63.1301, and 63.1305(d) which contain the applicability provisions, emission standards for this rule, and provisions for approval of an alternative means of emission limitation.

39. Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

Subpart JJJ is the MACT standard for Group IV polymers and resins. This subpart currently does not contain delegation provisions. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.1336. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1310–63.1311, 63.1313–63.1316, 63.1321–63.1323, and 63.1328–63.1332, which contain the applicability provisions, compliance dates, the emissions standards, and the emissions averaging provisions for this subpart.

This subpart also requires that provisions of another subpart be followed, with slight changes. In the implementation and enforcement delegation provisions language, we have clarified that those requirements should be changed as directed, and then delegation of those requirements will occur according to the delegation provisions of the subpart that is referenced. For example, subpart JJJ references subpart H, §§ 63.182(a)(2) and 63.182(c) but slightly changes these requirements. We clarify in this rulemaking that although subpart JJJ changes these specific subpart H requirements for the purposes of subpart JJJ, the delegation of these referenced requirements follow the original delegation of subpart H.

40. Subpart LLL, National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

Subpart LLL is the MACT standard for portland cement production. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1340, and 63.1343–63.1348, which contain the applicability provisions, emission standards and operating limits for kiln and in-line kiln/raw mills, and the standards for clinker coolers, new and reconstructed raw material dryers, raw and finish mills, and other sources.

41. Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

Subpart MMM is the MACT standard for pesticide active ingredient production. This subpart does not separate delegable requirements from the non-delegable standards in some instances. Section 63.1362, "Standards," contains delegable monitoring requirements for closed vent systems in § 63.1362(j). We have restructured this section to remove the specific monitoring requirements and placed them in § 63.1366, "Monitoring and inspection requirements," in paragraphs § 63.1366(b)(1)(xiii)(B) and (C).

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1360 and 63.1362–63.1363, which contain the applicability provisions, emission standards, and standards for equipment leaks. This rule also requires that provisions of another subpart be followed, with slight changes. In the "Implementation and enforcement" section, we have clarified that those requirements should be changed as directed, and then delegation of those requirements will occur according to the delegation provisions of the subpart that is referenced.

42. Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

Subpart NNN is the MACT standard for wool fiberglass manufacturing. This subpart does not have a delegation paragraph. To clarify which authorities are delegated, we have added the "Implementation and enforcement" section for the delegation provision in a new section, § 63.1388. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1380 and 63.1382, which contain the applicability provisions and the emissions standards for this subpart.

43. Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production

Subpart OOO is the MACT standard for Group III polymers and resins: amino and phenolic resins. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1400 and 63.1404–63.1410, which contain the applicability provisions and the emission standards for process vents, storage vessels, heat exchangers, and equipment leaks. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where subpart OOO requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we have clarified that those provisions should be changed accordingly and then delegated according to the delegation provisions of the referenced subpart.

44. Subpart PPP, National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

Subpart PPP is the MACT standard for polyether polyols production. To clarify which authorities are delegated, we have replaced the existing delegation

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provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1420, 63.1422, 63.1424–63.1428 and 63.1432–63.1436, which contain the applicability provisions, compliance dates, and emission standards for this subpart. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where subpart PPP requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we have clarified that those provisions should be modified accordingly and then delegated according to the delegation provisions of the referenced subpart.

45. Subpart RRR, National Emission Standards for Secondary Aluminum Production

Subpart RRR is the MACT standard for secondary aluminum production. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1500 and 63.1505–63.1506, which contain the applicability provisions and the emission standards and operating requirements for this subpart.

46. Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

Subpart TTT is the MACT standard for primary lead smelting. This subpart does not separate the delegable from the non-delegable authorities in some instances. Section 63.1543, "Standards for process and process fugitive sources," contains compliance testing requirements in paragraphs (d)–(e), which are considered delegable requirements. Since these paragraphs are reasonably separable from the other standards in the section, we have indicated that the requirements in paragraphs (d)–(e) are not considered part of the standard and, thus, are delegable.

To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1541, 63.1543(a)–(c), (f)–(g), and 63.1544, which contain the applicability provisions and emission standards for process and process fugitive sources, and fugitive dust sources.

47. Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Subpart VVV is the MACT standard for publicly owned treatment works. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1580, 63.1583, and 63.1586, which contain the applicability provisions and the emissions and control standards for industrial and non-industrial publicly owned treatment works.

48. Subpart XXX, National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

Subpart XXX is the MACT standard for ferroalloys production. To clarify which authorities are delegated, we have replaced the existing delegation provisions' language with the "Implementation and enforcement" section. This section, as proposed, indicates that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.1650 and 63.1652–63.1654, which contain the applicability provisions, the opacity and non-opacity emission standards, and the operational and work practice standards for this rule.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is docket number A–2000–57. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this rule.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) on the basis of the requirements of the Executive Order, in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

These proposed rule changes will not have an annual effect on the economy of $100 million or more, and therefore are not considered economically significant. In addition, we have determined that this rule is not a "significant regulatory action" because it does not contain novel policy issues.

C. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and Local governments or EPA consults with State and Local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and Local officials early in the process of developing the proposed regulation.

The proposed changes in today's rulemaking do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this proposed rule only clarifies which portions of the existing NESHAP contain authorities that can be delegated to State, Local, and Tribal (S/L/T) governments and does not create any new requirements for S/L/Ts. In other words, this rulemaking only makes insignificant clarifications to existing NESHAP and is not expected to have any additional impact on the relationship between S/L/Ts and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to today's rulemaking. Nevertheless, EPA will consider comments from S/L/T agencies to enable them to provide meaningful and timely input in the development of the final changes.

D. Executive Order 13175—Consultation with Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 CFR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. However, the rules that we propose to amend were developed during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. The EPA will analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The proposed changes in today's rulemaking do not significantly or uniquely affect the communities of Indian tribal governments. Because they implement a voluntary program, they impose no direct compliance costs on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed changes are being made to rules that already have approved information collection requirements and valid OMB control numbers as required by the Paperwork Reduction Act. The proposed changes in today's rulemaking are clarifications to the relationship between EPA and the S/L/T agencies that have chosen to implement and enforce the rules. Therefore, there is no change in the burden that the rules impose on sources or S/L/Ts.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

We believe that there will be little or no impact on small entities as a result of these rule revisions. State, Local, and Tribal governments are the only entities affected by this action and we expect that most or all of the governments which would have the authority to accept delegation under section 112(l) of the Act are those whose populations exceed 50,000 persons and are thus, not considered "small." In the case of Tribal jurisdictions where population will not exceed 50,000 persons, we still believe that there will be little or no impact as a result of these revisions because none currently have air toxics programs. Furthermore, these rule revisions add flexibility and clarity to the existing NESHAP that these governments may choose to implement and enforce and, therefore, eases rather than imposes burdens. Accordingly, because few or none of the affected entities are expected to be small entities and because the regulatory impacts will be insignificant, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on S/L/T governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to S/L/T governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and

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consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The proposed rule changes contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for S/L/T governments or the private sector. Because the rule is estimated to result in the expenditure by S/L/T governments of significantly less than $100 million in any 1 year, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Moreover, this action clarifies the relationship between EPA and the S/L/T agencies who have voluntarily requested delegation of the part 63 NESHAP, so it does not impose any mandates on those entities. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

H. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

These proposed changes are not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because they are not an economically significant regulatory action as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed changes do not affect selection of technical standards that are contained in the existing subparts. Therefore, we are not considering the use of any voluntary consensus standards.

J. Executive Order 13211—Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 19, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart F—[Amended]

2. Section 63.106 is revised to read as follows:

§ 63.106 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to requirements in §§ 63.100, 63.102, and 63.104. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart G—[Amended]

3. Section 63.153 is added to Subpart G to read as follows:

§ 63.153 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.110, 63.112 and 63.113, 63.119, 63.126, 63.132 through 63.140, 63.148–63.149, and 63.150(i)(1) through (4). Follow the requirements in § 63.121 to request permission to use an alternative means of emission limitation for storage vessels. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart H—[Amended]

4. Section 63.183 is added to Subpart H to read as follows:

§ 63.183 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.160, 63.162–63.176, 63.178–63.179. Follow the applicable procedures of § 63.177 to request an alternative means of emission limitation for batch processes and enclosed-vented process units. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart I—[Amended]

5. Section 63.193 is revised to read as follows:

§ 63.193 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart e of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.190 and 63.192(a) and (b), (e), and (h) through (j). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart L—[Amended]

6. Section 63.309 is amended by revising (a)(5)(i) to read as follows:

§ 63.309 Performance tests and procedures.

(a) * * *

(5)(i) The EPA shall be the enforcement agency during any period of time that a delegation of enforcement authority is not in effect or a withdrawal of enforcement authority under § 63.313 is in effect, and the Administrator is responsible for performing the inspections required by this section. pursuant to § 63.313(c).

* * * * * *

7. Section 63.313 is revised to read as follows:

§ 63.313 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this

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subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart e of this part, the authorities contained in paragraph (d) of this section are retained by the Administrator and cannot be transferred to the State, local, or tribal agency.

(c) *Withdrawal of authority.* (1) Whenever the Administrator learns that a delegated agency has not fully carried out the inspections and performance tests required under § 63.309 for each applicable emission point of each battery each day, the Administrator shall immediately notify the agency. Unless the delegated agency demonstrates to the Administrator's satisfaction within 15 days of notification that the agency is consistently carrying out the inspections and performance tests required under § 63.309 in the manner specified in the preceding sentence, the Administrator shall notify the coke oven battery owner or operator that inspections and performance tests shall be carried out according to § 63.309(a)(5). When the Administrator determines that the delegated agency is prepared to consistently perform all the required inspections and performance tests each day, the Administrator shall give the coke oven battery owner or operator at least 15 days notice that implementation will revert to the previously delegated agency.

(2) In addition to the provisions in paragraph (c)(1) of this section, the Administrator may also withdraw delegation of authority pursuant to the provisions of § 63.96 of subpart E of this part.

(d) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (d)(1) through (5) of this section.

(1) Approval of alternatives to the requirements in §§ 63.300 and 63.302 through 63.308.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of any changes to section 2 of Method 303 in appendix A of this part.

(4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart M—[Amended]

8. Section 63.326 is added to Subpart M to read as follows:

§ 63.326 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart e of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.320 and 63.322(a) through (j). Follow the requirements in § 63.325 to demonstrate that alternative equipment or procedures are equivalent to the requirements of § 63.322.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart N—[Amended]

9. Section 63.342 is amended:

a. By revising paragraph (f) introductory text.

b. Revising paragraph (f)(3)(i) introductory text.

c. Revising paragraphs (f)(3)(i)[B and (C).

d. Revising the headings for Table 1 and its columns.

The revisions read as follows:

§ 63.342 Standards.

* * * * *

(f) *Operation and maintenance practices.* All owners or operators subject to the standards in paragraphs (c) and (d) of this section are subject to these operation and maintenance practices.

* * * * *

(3) *Operation and maintenance plan.* (i) The owner or operator of an affected source subject to paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than the compliance date, except for hard chromium electroplaters and the chromium anodizing operations in California which have until January 25, 1998. The plan shall be incorporated by reference into the source's title V permit, if and when a title V permit is required. The plan shall include the following elements:

* * * * *

(B) For sources using an add-on control device or monitoring equipment to comply with this subpart, the plan shall incorporate the operation and maintenance practices for that device or monitoring equipment, as identified in Table 1 of this section, if the specific equipment used is identified in Table 1 of this section;

(C) If the specific equipment used is not identified in Table 1 of this section, the plan shall incorporate proposed operation and maintenance practices. These proposed operation and maintenance practices shall be submitted for approval as part of the submittal required under § 63.343(d);

* * * * *

TABLE 1 TO § 63.342.—SUMMARY OF OPERATION AND MAINTENANCE PRACTICES

Control technique	Operation and maintenance practices	Frequency
*	*	* * *

10. Section 63.343 is amended by revising paragraph (d) to read as follows:

§ 63.343 Compliance provisions.

* * * * *

(d) An owner or operator who uses an air pollution control device not listed in this section shall submit a description of the device, test results collected in accordance with § 63.344(c) verifying the performance of the device for reducing chromium emissions to the atmosphere to the level required by this subpart, a copy of the operation and maintenance plan referenced in § 63.342(f) including operation and maintenance practices, and appropriate operating parameters that will be monitored to establish continuous

compliance with the standards. The monitoring plan submitted identifying the continuous compliance monitoring is subject to the Administrator's approval.

11. Section 63.348 is added to Subpart N to read as follows:

§ 63.348 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.340 and 63.342(a) through (e) and (g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart O—[Amended]

12. Section 63.368 is added to Subpart O to read as follows:

§ 63.368 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.400 and 63.402–63.403.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart R—[Amended]

14. Section 63.429 is revised to read as follows:

§ 63.429 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.420 and 63.422 through 63.424. Any owner or operator requesting to use an alternative means of emission limitation for storage vessels covered by § 63.423 must follow the procedures in § 63.426.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart, and any alternatives to § 63.427(a)(1) through (4) per § 63.427(a)(5).

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart S—[Amended]

15. Section 63.450 is amended by revising paragraph (d)(1) to read as follows:

§ 63.450 Standards for enclosures and closed-vent systems.

* * * * *

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(d) * * *

(1) On each bypass line, the owner or operator shall install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that is capable of taking periodic readings as frequently as specified in § 63.454(e). The flow indicator shall be installed in the bypass line in such a way as to indicate flow in the bypass line; or

* * * * *

16. Section 63.454 is amended by revising paragraph (e) to read as follows:

§ 63.454 Recordkeeping requirements.

* * * * *

(e) The owner or operator shall set the flow indicator on each bypass line specified in § 63.450(d)(1) to provide a record of the presence of gas stream flow in the bypass line at least once every 15 minutes.

* * * * *

17. Section 63.458 is revised to read as follows:

§ 63.458 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.440, 63.443 through 63.447 and 63.450. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of alternatives to using §§ 63.457(b)(5)(iii), 63.457(c)(3)(ii) and (iii), and 63.257(c)(5)(ii), and any major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of alternatives using § 64.453(m) and any major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart T—[Amended]

18. Section 63.460 is amended by removing and reserving paragraph (f).

19. Section 63.462 is amended by adding paragraph (e) to read as follows:

§ 63.462 Batch cold cleaning machine standards.

* * * * *

(e) Each owner or operator subject to the requirements of paragraph (c)(1) through (8) of this section may request to use measures other than those described in these paragraphs. The owner or operator must demonstrate to the Administrator (or delegated State, local, or Tribal authority) that the alternative measures will result in equivalent or better emissions control compared to the measures described in paragraphs (c)(1) through (8) of this section. For example, storing solvent and solvent-laden materials in an enclosed area that is ventilated to a solvent recovery or destruction device may be considered an acceptable alternative.

20. Section 63.463 is amended by revising paragraph (e)(2)(ix)(B) to read as follows:

§ 63.463 Batch vapor and in-line cleaning machine standards.

* * * * *

(e) * * *

(2) * * *

(ix) * * *

(B) Conduct the weekly monitoring required by § 63.466(a)(3). Record the results required by § 63.467(a)(6).

* * * * *

21. Section 63.467 is amended by revising paragraph (a)(6) to read as follows:

§ 63.467 Recordkeeping requirements.

(a) * * *

(6) If a squeegee system is used to comply with these standards, records of the test required by § 63.466(f) to determine the maximum product throughput for the squeegees and records of both the weekly monitoring required by § 63.466(a)(3) for visual inspection and the length of continuous web product cleaned during the previous week.

* * * * *

22. Section 63.470 is added to Subpart T to read as follows:

§ 63.470 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.460, 63.462(a) through (d), and 63.463 and 63.464. Use the procedures in § 63.469 to request the use of alternative equipment or procedures, and use the procedures in § 63.463(d)(9) to request alternative maintenance practices.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart U—[Amended]

23. Section 63.507 is added to Subpart U to read as follows:

§ 63.507 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.480 and 63.481, 63.483(a) through (c), 63.484, 63.485(a) through (k), (m) through (s),(u), 63.486 and 63.487, 63.488(a), (b)(1) through (4), (b)(5)(iv) and (v), (b)(6) and (7), (c) through (i), 63.493 and 63.494, 63.500(a)(1) through (3), (b), 63.501, 63.502(a) through (f), (i), (k) through (m), and 63.503. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart W—[Amended]

24. Section 63.529 is added to Subpart W to read as follows:

§ 63.529 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.520, 63.523, and 63.524. Where these standards reference another rule, the cited provisions in that rule will be delegated according to the delegation provisions of that rule.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart X—[Amended]

25. Section 63.545 is amended by revising paragraph (c) introductory text and adding paragraph (f) to read as follows:

§ 63.545 Standards for fugitive dust sources.

* * * * *

(c) The controls specified in the standard operating procedures manual shall at a minimum include the requirements of paragraphs (c)(1) through (c)(5) of this section, unless the owner or operator satisfies the requirements in paragraph (f) of this section.

* * * * *

(f) Demonstrate to the Administrator (or delegated State, local, or Tribal authority) that an alternative measure(s) is equivalent or better than a practice(s) described in paragraphs (c)(1) through (c)(5) of this section.

26. Section 63.551 is added to Subpart X to read as follows:

§ 63.551 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.541 and 63.543 through 63.545(a) through (e).

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart Y—[Amended]

27. Section 63.562 is amended by removing paragraph (d)(3).

28. Section 63.567 is amended by adding paragraph (l) to read as follows:

§ 63.567 Recordkeeping and reporting requirements.

* * * * *

(l) The owner or operator of the VMT source required by § 63.562(d)(2)(iv) to develop a program, shall submit annual reports on or before January 31 of each year to the Administrator certifying the annual average daily loading rate for the previous calendar year. Beginning on January 31, 1996, for the reported year 1995, the annual report shall specify the annual average daily loading rate over all loading berths. Beginning on January 31, 1999, for the reported year 1998, the annual report shall specify the annual average daily loading rate over all loading berths, over each loading berth equipped with a vapor collection system and control device, and over each loading berth not equipped with a vapor collection system and control device. The annual average daily loading rate under this section is calculated as the total amount of crude oil loaded during the calendar year divided by 365 days or 366 days, as appropriate.

29. Section 63.568 is added to Subpart Y to read as follows:

§ 63.568 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or

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tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.560 and 63.562(a) through (d).

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart AA—[Amended]

30. Section 63.611 is added to Subpart AA to read as follows:

§ 63.611 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.620, 63.622 through 63.624, and 63.629 through 63.631.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart BB—[Amended]

31. Section 63.632 is added to Subpart BB to read as follows:

§ 63.632 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.640, 63.642(g) through (l), 63.643, 63.646 through 63.648, and 63.649 through 63.652. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

§ 63.655 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.600, 63.602 through 63.604, and 63.609 and 63.610.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart CC—[Amended]

32. Section 63.655 is added to Subpart CC to read as follows:

§ 63.655 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.640, 63.642(g) through (l), 63.643, 63.646 through 63.648, and 63.649 through 63.652. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart DD—[Amended]

33. Section 63.684 is amended by revising paragraph (e)(1) to read as follows:

§ 63.684 Standards: Off-Site material treatment.

* * * * *

(e) * * *

(1) A continuous monitoring system shall be installed and operated for each treatment that measures operating parameters appropriate for the treatment process technology. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that is capable of recording either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

* * * * *

34. Section 63.693 is amended by revising paragraphs (b)(4)(i) and (c)(2)(ii) to read as follows:

§ 63.693 Standards: closed-vent systems and control devices.

* * * * *

(b) * * *

(4) * * *

(i) A continuous monitoring system shall be installed and operated for each control device that measures operating parameters appropriate for the control device technology as specified in paragraphs (d) through (h) of this section. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that is capable of recording either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

* * * * *

(c) * * *

(2) * * *

(ii) If a seal or locking device is used to comply with paragraph (c)(2) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve.

* * * * *

35. Section 63.695 is amended by revising paragraphs (a)(4), adding paragraphs (c)(1)(ii)(C) and (D), and revising paragraph (e) introductory text to read as follows:

§ 63.695 Inspection and monitoring requirements.

* * * * *

(a) * * *

(4) To monitor and record off-site material treatment processes for compliance with the standards specified in 63.684(e), the monitoring procedures are specified in paragraph (e) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) The continuous monitoring system required by § 63.693(b)(4)(i) shall monitor and record either an instantaneous data value at least once very 15 minutes or an average value for intervals of 15 minutes or less.

(D) The owner or operator shall visually inspect the seal or closure mechanism required by § 63.693(c)(2)(ii) at least once every month to verify that the bypass mechanism is maintained in the closed position.

* * * * *

(e) The continuous monitoring system required by § 63.684(e)(1) shall monitor and record either an instantaneous data value at least once very 15 minutes or an average value for intervals of 15 minutes or less.

* * * * *

36. Section 63.698 is revised to read as follows:

§ 63.698 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.680, 63.684 through 63.691, and 63.693. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart EE—[Amended]

37. Section 63.708 is revised to read as follows:

§ 63.708 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.701 and 63.703.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart GG—[Amended]

38. Section 63.744 is amended:

a. By revising the first sentence of paragraph (a)(1).

b. By revising paragraph (a)(2).

c. Adding paragraph (a)(4).

The revisions and addition read as follows:

§ 63.744 Standards: Cleaning operations.

(a) * * *

(1) Unless the owner or operator satisfies the requirements in paragraph

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(a)(4) of this section, place used solvent-laden cloth, paper, or any other absorbent applicators used for cleaning in bags or other closed containers.

* * *

(2) Unless the owner or operator satisfies the requirements in paragraph (a)(4) of this section, store fresh and spent cleaning solvents, except semi-aqueous solvent cleaners, used in aerospace cleaning operations in closed containers.

* * * * *

(4) Demonstrate to the Administrator (or delegated State, local, or tribal authority) that equivalent or better alternative measures are in place compared to the use of closed containers for the solvent-laden materials described in paragraph (a)(1) of this section, or the storage of solvents described in paragraph (a)(2) of this section.

* * * * *

39. Section 63.759 is added to Subpart GG to read as follows:

§ 63.759 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.741, 63.743, 63.744(a)(3), (b) through (e), 63.745 through 63.748, and 63.649(a).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart HH—[Amended]

40. Section 63.771 is amended by revising paragraphs (c)(3)(i)(A) and (B).

§ 63.771 Control equipment requirements.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) At the inlet to the bypass device that could divert the stream away from the control device to the atmosphere, properly install, calibrate, maintain, and operate a flow indicator that is capable of taking periodic readings and sounding an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

* * * * *

41. Section 63.773 is amended by revising paragraph (c)(2) introductory text and adding paragraph (c)(2)(iv) to read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(c) * * *

(2) Except as provided in paragraphs (c)(5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2)(i) and (ii) of this section, each cover shall be inspected according to the procedures and schedule specified in paragraph (c)(2)(iii) of this section, and each bypass device shall be inspected according to the procedures of (c)(2)(iv) of this section.

* * * * *

(iv) For each bypass device, except as provided for in § 63.771(c)(3)(ii), the owner or operator shall either:

(A) At the inlet to the bypass device that could divert the steam away from the control device to the atmosphere, set the flow indicator to take a reading at least once every 15 minutes; or

(B) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

* * * * *

42. Section 63.776 is revised to read as follows:

§ 63.776 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.760, 63.765, 63.766, 63.769, 63.771, and 63.777.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart II—[Amended]

43. Section 63.789 is added to Subpart II to read as follows:

§ 63.789 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.780 and 63.781, and 63.783 and 63.784.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart JJ—[Amended]

44. Section 63.803 is amended by revising paragraph (c) introductory text, paragraphs (c)(1) through (3), and paragraphs (c)(4) introductory text to read as follows:

§ 63.803 Work practice standards.

* * * * *

(c) Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan that specifies:

(1) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply coating, adhesives, or organic solvents;

(2) An inspection schedule;

(3) Methods for documenting the data and results of each inspection and any repairs that were made;

(4) The time frame between identifying the leak and making the repair, which adheres, at a minimum, to the following schedule:

* * * * *

45. Section 63.808 is revised to read as follows:

§ 63.808 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the requirements in §§ 63.800, 63.802, and 63.803 (a) and (b), (c)(1), and (d) through (l).

(2) Approval of alternatives to the monitoring and compliance requirements in §§ 63.804(f)(4)(iv)(D) and (E), 63.804(g)(4)(iii)(C), 63.804(g)(4)(vi), and 63.804(g)(6)(vi).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart, as well as approval of any alternatives to the specific test methods under §§ 63.805(a), 63.805(d)(2)(v), and 63.805(e)(1).

(4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart KK—[Amended]

46. Section 63.831 is revised to read as follows:

§ 63.831 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.820 and 63.821 and 63.824 through 63.826.

(2) Approval of alternatives to the test method for organic HAP content determination in § 63.827(b) and alternatives to the test method for volatile matter in § 63.827(c), and major alternatives to other test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart LL—[Amended]

47. Section 63.853 is revised to read as follows:

§ 63.853 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this regulation. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.840, 63.843 and 63.844, 63.845(b) through (e), (h) and (i), and 63.846.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart OO—[Amended]

48. Section 63.908 is added to Subpart OO to read as follows:

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§ 63.908 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.900 and 63.902.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart PP—[Amended]

49. Section 63.929 is added to Subpart PP to read as follows:

§ 63.929 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.920 and 63.922 through 63.924. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart QQ—[Amended]

50. Section 63.949 is added to Subpart QQ to read as follows:

§ 63.949 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.940, 63.942, and 63.943. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions of subpart DD.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart RR—[Amended]

51. Section 63.967 is added to Subpart RR to read as follows:

§ 63.967 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.960 and 63.962. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions subpart DD of this part.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart VV—[Amended]

52. Section 63.1050 is added to Subpart VV to read as follows:

§ 63.1050 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1040 and 63.1042 through 63.1044. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions of subpart DD of this part.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart CCC—[Amended]

53. Section 63.1166 is revised to read as follows:

§ 63.1166 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (8) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1155 and 63.1157 through 63.1159.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of any alternative measurement methods for HCl and CL2 to those specified in § 63.1161(d)(1).

(4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of any alternative monitoring requirements to those specified in §§ 63.1162(a)(2) through (5) and 63.1162(b)(1) through (3).

(6) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

(7) Waiver of recordkeeping requirements specified in § 63.1165.

(8) Approval of an alternative schedule for conducting performance tests to the requirement specified in § 63.1162(a)(1).

Subpart DDD—[Amended]

54. Section 63.1195 is revised to read as follows:

§ 63.1195 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1177 through 63.1179.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart EEE—[Amended]

55. Section 63.1214 is added to Subpart EEE to read as follows:

§ 63.1214 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to requirements in §§ 63.1200 and 63.1203 through 63.1205.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart GGG—[Amended]

56. Section 63.1261 is revised to read as follows:

§ 63.1261 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in

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addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1250 and 63.1252 through 63.1256. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart HHH—[Amended]

57. Section 63.1281 is amended by revising paragraphs (c)(3)(i)(A) and (B) to read:

§ 63.1281 Control equipment requirements.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) At the inlet to the bypass device that could divert the stream away from the control device to the atmosphere, properly install, calibrate, maintain, and operate a flow indicator that is capable of taking periodic readings and sounding an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

* * * * *

58. Section 13.1283 is amended by revising paragraph (c)(2) introductory text and adding paragraph (c)(2)(iii) to read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(c) * * *

(2) Except as provided in paragraphs (c)(5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2)(i) and (ii) of this section and each bypass device shall be inspected according to the procedures of (c)(2)(iii) of this section.

* * * * *

(iii) For each bypass device, except as provided for in § 63.1281(c)(3)(ii), the owner or operator shall either:

(A) At the inlet to the bypass device that could divert the stream away from the control device to the atmosphere, set the flow indicator to take a reading at least once every 15 minutes; or

(B) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

* * * * *

59. Section 63.1286 is revised to read as follows:

§ 63.1286 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1270, 63.1275, 63.1281, and 63.1287.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart III—[Amended]

60. Section 63.1309 is revised to read as follows:

§ 63.1309 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1290, 63.1293 through 63.1301, and 63.1305.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of alternatives to the specific monitoring requirements of § 63.1303(b)(5).

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart JJJ—[Amended]

61. Section 63.1336 is added to Subpart JJJ to read as follows:

§ 63.1336 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1310 and 63.1311, 63.1313 through 63.1315(a)(1) through (9), (a)(11) through (18), (b) through (e), 63.1316, 63.1321 and 63.1322, 63.1323(a), (b)(1) through (4), (b)(5)(iv) and (v), (b)(6) and (7), (c) through (j), and 63.1328 through 63.1331. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart LLL—[Amended]

62. Section 63.1358 is revised to read as follows:

§ 63.1358 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1340 and 63.1343 through 63.1348.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart MMM—[Amended]

63. Section 63.1362 is amended by revising paragraphs (j)(1) and (j)(2) to read as follows:

§ 63.1362 Standards.

* * * * *

(j) * * *

(1) Install, calibrate, maintain, and operate a flow indicator that is capable of determining whether vent stream flow is present and taking frequent, periodic readings. Records shall be maintained as specified in § 63.1367(f)(1). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration. Records shall be maintained as specified in § 63.1367(f)(2).

* * * * *

64. Section 63.1366 is amended by revising paragraph (b)(1)(xiii) to read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(1) * * *

(xiii) *Closed-vent system visual inspections.* The owner or operator shall comply with the requirements in either paragraph (b)(1)(xiii)(A) or (B) of this section:

(A) Set the flow indicator at the entrance to any bypass line that could divert the stream away from the control device to the atmosphere to take a reading at least once every 15 minutes; or

(B) If the bypass device valve installed at the inlet to the bypass device is secured in the closed position with a car-seal or lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

* * * * *

65. Section 63.1369 is revised to read as follows:

§ 63.1369 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1360 and 63.1362 and 63.1363. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also

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occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart NNN—[Amended]

66. Section 63.1388 is added to Subpart NNN to read as follows:

§ 63.1388 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1380 and 63.1382.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart OOO—[Amended]

67. Section 63.1419 is revised to read as follows:

§ 63.1419 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1400 and 63.1401 and 63.1404 through 63.1410. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63,90, and as required in this subpart.

Subpart PPP—[Amended]

68. Section 63.1421 is revised to read as follows:

§ 63.1421 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1420, 63.1422, 63.1424 through 63.1428, and 63.1432 through 63.1436. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart RRR—[Amended]

69. Section 63.1519 is revised to read as follows:

§ 63.1519 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this regulation. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this regulation to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot

be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1500, 63.1505, and 63.1506.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart TTT—[Amended]

70. Section 63.1550 is revised to read as follows:

§ 63.1550 Implementation and enforcement.

(a) This subpart be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1541, 63.1543(a) through (c), (f) and (g), and 63.1544.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart VVV—[Amended]

71. Section 63.1594 is revised to read as follows:

§ 63.1594 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1580, 63.1583, and § 63.1586.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart XXX—[Amended]

72. Section 63.1661 is revised to read as follows:

§ 63.1661 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to requirements in §§ 63.1650 and 63.1652 through 63.1654.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

[FR Doc. 02–188 Filed 1–15–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–4]

Export Certification; Canadian Solid Wood Packing Materials Exported From the United States to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations for the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. Prior to the interim rule, the packing materials had to be certified as having been heat treated in the United States. The interim rule allowed certification of packing materials that were heat treated in Canada if that treatment was certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. The interim rule was necessary to facilitate the exportation of the large volume of U.S. goods shipped to China using Canadian-origin coniferous solid wood packing materials.

EFFECTIVE DATE: The interim rule became effective on July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Thomas, Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8367.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 11, 2001, and published in the **Federal Register** on July 17, 2001 (66 FR 37114–37117, Docket No. 99–100–3), we amended the export certification regulations in 7 CFR part 353 regarding the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. The interim rule allowed certification of packing materials that were heat treated in Canada if that treatment was certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. These changes were necessary to facilitate the exportation of the large volume of U.S. goods shipped to China using Canadian-origin coniferous solid wood packing materials.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

PART 353—EXPORT CERTIFICATION

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 353 and that was published at 66 FR 37114–37117 on July 17, 2001.

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1240 Filed 1–16–02; 8:45 am]
BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–21–AD; Amendment 39–12598; AD 2002–01–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters that requires changes to the electrical power distribution system. This amendment is prompted by design deficiencies in the electrical systems. The actions specified by this AD are intended to prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter.

DATES: Effective February 21, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for BHTC Model 430 helicopters was published in the **Federal Register** on October 12, 2001 (66 FR 52072). That action proposed to

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require, before further flight after March 31, 2002, accomplishing the electrical power distribution system changes in accordance with BHTC Alert Service Bulletin No. 430–01–19, dated February 22, 2001 (ASB).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 33 helicopters of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per helicopter to accomplish the changes to the electrical system, and that the average labor rate is $60 per work hour. The manufacturer states in its ASB that the parts will be provided at no cost before March 31, 2002. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $95,040.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–01–07 Bell Helicopter Textron Canada: Amendment 39–12598. Docket No. 2001–SW–21–AD.

Applicability: Model 430 helicopters, serial numbers 49002 through 49071, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight after March 31, 2002, perform the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001, which is terminating action for the requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 21, 2002.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–32R1, dated May 28, 2001.

Issued in Fort Worth, Texas, on January 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1055 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–56–AD; Amendment 39–12601; AD 2001–25–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–25–51, which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires performing a dual power confirmation test on the Integrated Instrument Display System (IIDS) and inserting a revision to the Rotorcraft Flight Manual (RFM), as applicable. If the IIDS fails the power test, replacing it is required before further flight. Removing the temporary revision when the IIDS is replaced and inserting the applicable revision into the RFM is also required. This AD is prompted by the failure of the IIDS during a helicopter hover operation. The actions specified by this AD are intended to prevent total power failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter.

DATES: Effective February 1, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–51, issued on December 7, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–56–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The applicable service information may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at www.mdhelicopters.com. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5248, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 7, 2001, the FAA issued Emergency AD 2001–25–51 for MDHI Model MD900 helicopters, which requires performing a dual power confirmation test on the IIDS and inserting a revision to the RFM, as applicable. If the IIDS fails the power test, replacing it is required before further flight. Removing the temporary revision when the IIDS is replaced and inserting the applicable revision into the RFM is also required. That action was prompted by the failure of the IIDS during a helicopter hover operation. The failure was attributed to an error in the manufacturing process and a design deficiency. Failure of the IIDS, if not corrected, could result in the inability to monitor information and warning indications essential for the operation of the helicopter.

The FAA has reviewed MDHI Service Bulletin SB900–081R1, dated November 8, 2001 (SB), which describes procedures for inspecting and replacing the IIDS and inserting revisions into the RFM.

Since the unsafe condition described is likely to exist or develop on other MDHI MD900 helicopters of the same type design, the FAA issued Emergency AD 2001–25–51 to prevent total power failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter. The AD requires the following within 10 days:

- Perform an IIDS dual power confirmation test.
- If the IIDS continues to operate after the dual power confirmation test, insert into the RFM the applicable TEMPORARY RFM revisions that state the pilot must "land as soon as possible" after an IIDS failure.
- If the IIDS does not continue to operate, replace it with a specified IIDS before further flight. Insert into the RFM the applicable RFM revision that states the pilot must "land as soon as practical" after total power failure of the IIDS.
- Remove the TEMPORARY RFM revisions when the IIDS is replaced in accordance with this AD, and insert the applicable RFM revision into the RFM.

The actions must be accomplished in accordance with the SB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions previously described are required as indicated, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 7, 2001 to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 53 helicopters of U.S. registry will be affected by this AD. It will take approximately 1 work hour per helicopter to perform the dual power confirmation test and 1 work hour to replace the IIDS, if necessary. The manufacturer has stated in the SB that they will provide replacement IIDS at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6360, assuming that the IIDS is replaced on each helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–56–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT

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Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–25–51 MD Helicopters, Inc.: Amendment 39–12601. Docket No. 2001–SW–56–AD.

Applicability: Model MD900 helicopters, serial numbers (S/N) 900–00008 through 900–00107, with integrated instrument display system (IIDS), part number (P/N) 900A3720002–107, –109, –111, or –113, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 10 days, unless accomplished previously.

To prevent failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter, accomplish the following:

(a) Conduct a dual power confirmation test (power test) with external power ON or both generators on line in accordance with Section 2, Accomplishment Instructions, paragraphs 2.B.(1), 2.B.(2), and 2.B.(3), of MD Helicopters Service Bulletin SB900–081R1, dated November 8, 2001.

(1) If the IIDS continues to operate after the power test, insert into the Rotorcraft Flight Manual (RFM) the applicable TEMPORARY RFM revision stating that the pilot must "land as soon as possible" after an IIDS failure:

(i) TR01–001, dated November 2, 2001, into RFM CSP–900RFM–1 (Reissue 1), CSP–900ERFM–1, CSP–902RFM–1 (Reissue 1), or CSP–902RFM207E–1; and

(ii) TR01–002, dated November 28, 2001, into RFM CSP–902RFM–1 (Reissue 1), or CSP–902RFM207E–1.

(2) If the IIDS does not continue to operate after the power test, before further flight:

(i) Replace IIDS, P/N 900A3720002–107 with 900A3720002–115; 900A3720002–111 with 900A3720002–117; 900A3720002–109 with 900A3720002–119; or 900A3720002–113 with 900A3720002–121.

(ii) Insert into the RFM the applicable RFM revision, dated November 2, 2001, stating that the pilot must "land as soon as practical" after an IIDS failure:

(A) Revision 4 into RFM CSP–900RFM–1 (Reissue 1);

(B) Revision 1 into CSP–900ERFM–1;

(C) Revision 5 into CSP–902RFM–1 (Reissue 1); or

(D) Revision 2 into CSP–902RFM207E–1.

(b) After replacing the IIDS in accordance with this AD, before further flight, remove the TEMPORARY RFM revisions specified in paragraph (a)(1) of this AD if inserted into the RFM, and insert into the RFM the applicable RFM revision specified in paragraph (a)(2)(ii) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The power test shall be done in accordance with the Accomplishment Instructions, paragraphs 2.B.(1), 2.B.(2), and 2.B.(3), of MD Helicopters Service Bulletin SB900–081R1, dated November 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at www.mdhelicopters.com. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 1, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–51, issued December 7, 2001, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 9, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1054 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–34–AD; Amendment 39–12596; AD 2002–01–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain main landing gear (MLG) radius rods. This AD requires you to inspect the MLG radius rod cylinders for the required conductivity or hardness standard. This AD also requires you to replace any MLG radius rod cylinder that does not meet this standard. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations, could lead to loss of airplane control.

DATES: This AD becomes effective on February 11, 2002.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of February 11, 2002.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes equipped with certain main landing gear (MLG) radius rods.

The CAA reports, that the manufacturer of the MLG radius rods, APPH Ltd., incorrectly heat treated a batch of radius rod cylinders, part number (P/N) 184811. Incorrect heat treatment of the MLG radius rod cylinder causes the part to be below required design strength. This results in reduced structural integrity of the part.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the MLG. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain MLG radius rods. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 5, 2001 (66 FR 50894). The NPRM proposed to require you to inspect the MLG radius rods for the required conductivity or hardness standard, and replace any rod that does not meet this standard.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 250 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection using the eddy current conductivity test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour per radius rod (2 per airplane) × $60 = $120.	No parts required	$120	$30,000

We estimate the following costs to accomplish the inspection using the Rockwell hardness test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours per radius rod (2 per airplane) × $60 = $600.	No parts required	$600	$150,000

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost for replacement of each main landing gear radius rod	Parts cost	Total cost per airplane
5 workhours × $60 = $300	$9,000	$9,300

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Are There Differences Between This AD and the Service Information?

British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British Aerospace Regional Aircraft. This AD does not require this action. The FAA recommends that each owner/operator submit this information. We are including a note in this AD to reflect this. British Aerospace and the British CAA will use this information to determine whether further action is necessary.

The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is "within the next 30 calendar days after the effective date of this AD".

Why is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the MLG is an unsafe condition; however, it is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it is for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–05 British Aerospace: Amendment 39–12596; Docket No. 2001–CE–34–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with a main landing gear (MLG) radius rod, APPH Ltd. part number 1847–A through 1847–L, 1848–A through 1848–F, or 1862–A through 1862–L.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect, using an eddy current conductivity tester, or the Rockwell hardness test, the left and right main landing gear (MLG) radius rods, part numbers (P/N) 1847–A through 1847–L, 1848–A through 1848–F, and 1862–A through 1862–L, for correct conductivity or hardness standard specified in the referenced service information.	Within the next 30 calendar days after February 11, 2002 (the effective date of this AD).	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.
(2) If the results of the inspection are greater than 46% International Aluminum & Copper Standards (IACS) using the eddy current conductivity test, or less than 79 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness standard specified in the referenced service information.	Within the next 90 calendar days after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.

Actions	Compliance	Procedures
(3) If the results of the inspection are equal to or greater than 41.5% IACS but less than or equal to 46% IACS using the eddy current conductivity test, or equal to or greater than 79 but less than or equal to 87 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness requirements specified in the referenced service information.	Within the next 180 calendar days after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.
(4) If the results of the inspection are greater than 36.5% IACS and less than 41.5% IACS using the eddy current conductivity test, or greater than 87 and less than 90 using the Rockwell hardness test, no replacement of the MLG radius rod is required.	Not applicable	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001.
(5) Do not install, on any affected airplane, a P/N 1847–A through 1847–L, 1848–A through 1848–F, or 1862–A through 1862–L MLG radius rod, unless it has been inspected and is found to meet the conductivity or hardness standard specified in the referenced service information.	As of February 11, 2002 (the effective date of this AD).	In accordance with British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001.

Note 1: The compliance time of this AD differs from that specified in British Aerospace Alert Service Bulletin 32–A–JA–010740, Revision 2, Issued July 23, 2001. This AD takes precedence over any other information.

Note 2: British Aerospace Alert Service Bulletin 32–JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British Aerospace Regional Aircraft. The FAA highly recommends that each owner/operator submit this information. British Aerospace and the British Civil Airworthiness Authority (CAA) will use this information to determine whether further action is necessary. The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, and APPH Ltd. Service Bulletin 1862–32–08, dated July 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British AD Number 005–07–2001, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on February 11, 2002.

Issued in Kansas City, Missouri, on January 4, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–797 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–33–AD; Amendment 39–12600; AD 2002–01–09]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This AD requires you to inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately

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torqued and re-torque as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: This AD becomes effective on February 28, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of an unsafe condition that may exist on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes. The FOCA reports instances of fuel leaking from the engine-driven pump on the referenced airplanes. The compression set of the gasket and diaphragm after thermal cycling could cause the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing. This in turn relieves the torque of the relief-valve cover screws of the engine-driven pump, which could result in fuel leakage.

Information on the affected pumps follows:

—The affected engine-driven pumps are Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) as installed on Models PC–12 and PC–12/45 airplanes or Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) as installed on Model PC–7 airplanes;

—Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes; and

—These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What Is the Potential Impact if FAA Took No Action?

Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 24, 2001 (66 FR 53738). The NPRM proposed to require you to inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 278 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspections and re-torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Not Applicable	$120	$120 × 278 = $33,360.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour X $60 per hour = $60	$3,900 per new pump	$3,960 per airplane.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of the inspections that will be required by this AD is "within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane usage if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that the unsafe condition defined in this document is detected and corrected in a timely manner, we are stating the compliance in both calendar time and hours TIS.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–09 Pilatus Aircraft Ltd.: Amendment 39–12600; Docket No. 2001–CE–33–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
PC–7	All manufacturer serial numbers (MSN) with a Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.
PC–12 and PC–12/45	All MSN with a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump.

Note 1: Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all airplanes: inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material.	Initially inspect within the next 20 hours time-in-service (TIS) after February 28, 2002 (the effective date the of this AD) or within the next 30 days after February 28, 2002 (the effective date of this AD), whichever occurs first.	In accordance with the Accomplishment Instructions section of either Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(2) For the Model PC–7 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with a Lear Romec part number RG9570M1/M engine-driven pump.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of Pilatus PC–7 Service Bulletin No. 28–006, dated August 10, 2001; and the appropriate maintenance manual.

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Actions	Compliance	Procedures
(3) For the Models PC–12 and PC–12/45 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with one of the following and accomplish any specified follow-on action:. (i) a Lear Romec part number RG95701R1/M (Pilatus part number 968.84.51.106/M) engine-driven pump; or. (ii) a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump. Installation of this part requires you to accomplish the inspection and replacement, if necessary, specified in paragraphs (d)(1) and (d)(3) of this AD, respectively. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD. Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001; and the appropriate maintenance manual.
(4) For all affected airplanes: inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of either Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(5) Do not install, on any affected Model PC–7 airplane, a replacement Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.	As of February 28, 2002 (the effective date of this AD).	Not Applicable.
(6) If you install, on any Model PC–12 or PC–12/45 airplane, a part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump, you must accomplish the inspection and replacement, if necessary, as specified in paragraphs (d)(1) and (d)(3) of this AD, respectively. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2002.

Note 3: The subject of this AD is addressed in Swiss AD HB 2001–500 (PC–12 and PC–12/45) and Swiss AD HB–505 (PC–7), both dated August 24, 2001.

Issued in Kansas City, Missouri, on January 8, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–899 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8977]

RIN 1545–BA39

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective January 17, 2002.

Applicability Date: For dates of applicability, *see* § 1.1441–6T(h)(6).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Payments of U.S. source income to foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under the Internal Revenue Code and associated Treasury regulations. Specifically, under section 871(a), nonresident alien individuals are subject to a 30 percent tax on certain items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Those items of income include interest, dividends, royalties, compensation, and other fixed or determinable annual or periodical income. The tax liability imposed under section 871(a) on the payment of such items of income is generally collected by way of withholding at the source pursuant to section 1441(a). Withholding agents are generally required to report payments of such income to the IRS on Form 1042–S.

The 30 percent rate of tax can be reduced under an income tax treaty. Under current Treasury regulations, a withholding agent may generally rely on a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," or Form 8233, "Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual," provided by, or for, the foreign individual certifying eligibility for a reduced rate of tax under an income tax treaty.

Section 1.1441–1(e)(4)(vii) generally provides that a taxpayer identifying number (TIN) must be furnished on a Form W–8BEN or Form 8233 in order for a foreign individual to obtain the benefit of reduced withholding under an income tax treaty. *See* § 1.1441–6(b)(2)(ii). Treasury and the IRS have recently become aware, however, of certain unusual cases where an unexpected payment to a nonresident alien individual claiming treaty benefits arises on short notice. In general, a foreign individual receiving such an unexpected payment currently may be unable to obtain a TIN prior to payment. In such a case, unless the foreign individual already has a TIN, the withholding agent would be required to withhold tax at the 30 percent rate, rather than the treaty rate, and the foreign individual would be required to file for a refund in order to obtain the benefits of the income tax treaty.

To alleviate this filing burden on foreign individuals, IRS is putting in place administrative procedures that will allow certain withholding agents, who also are acceptance agents (as defined in § 301.6109–1(d)(3)(iv)) and who make unexpected payments to foreign individuals, to apply for and obtain an individual taxpayer identification number (ITIN) for such individuals on an expedited basis. However, Treasury and IRS recognize that, in certain circumstances, these expedited ITIN procedures will not be sufficient to ensure that foreign individuals receiving an unexpected payment can obtain the benefits of a reduced rate of withholding under an income tax treaty at the time of payment. Accordingly, these temporary regulations will allow, in limited circumstances, withholding agents to rely on a Form W–8BEN or Form 8233 that does not include a TIN for purposes of withholding at the reduced treaty rate.

The proposed rules are published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

These temporary regulations amend § 1.1441–1(b)(7) and § 1.1441–6(b)(1) and add new § 1.1441–6T(h) to provide a limited exception to the requirement that a foreign individual provide a TIN to its withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. As noted above, under the current regulatory framework, a foreign individual generally is required to put the individual's TIN on the Form W–8BEN or Form 8233 in order to claim a reduced rate of withholding based upon a tax treaty. If a foreign individual does not have a TIN, a withholding agent who is an acceptance agent, as defined in § 301.6109–1(d)(3)(iv), can aid the foreign individual in obtaining an ITIN.

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the IRS has decided to permit certain withholding agents to enter into special acceptance agent agreements with the IRS that will allow those withholding agents, in their capacity as acceptance agents, to seek ITINs through an expedited process for these foreign individuals claiming treaty benefits. It is anticipated that any withholding agent who qualifies as an acceptance agent under § 301.6109–1(d)(3)(iv) and who anticipates making unexpected payments will be allowed to enter into such an agreement. However, the IRS intends to allow the use of the expedited process only when an application for an ITIN using the standard process will not generate an ITIN in time for the payment.

These temporary regulations provide that, in limited circumstances, a withholding agent who has entered into such a special acceptance agent agreement may rely on a beneficial owner withholding certificate without regard to the requirement that it include a TIN. Generally, these temporary regulations provide that, in order for a withholding agent to rely on a beneficial owner withholding certificate that does

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not contain a TIN, the withholding agent must be unable to obtain an ITIN for the foreign individual because the IRS is not issuing ITINs at the time of an unexpected payment to the individual or any time prior to the time of payment when the withholding agent had knowledge of the unexpected payment and the nature of the unexpected payment must be such that it cannot reasonably be delayed until the withholding agent could obtain an ITIN for the foreign individual through the use of the expedited process. The temporary regulations further provide that the IRS must receive the foreign individual's application for an ITIN on the first business day following payment. At this time, the IRS intends to issue ITINs through the expedited process from 6 a.m. until 11:30 p.m. E.S.T., except for weekends and holidays. The IRS intends to increase the availability of this expedited process in the future.

Except as provided in these regulations or in § 1.1441–6(c), a foreign individual will continue to be required to provide a TIN on a beneficial owner withholding certificate (Form W–8BEN or Form 8233) in order to obtain the benefit of a reduced rate of withholding under an income tax treaty.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities, therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.1441–1T is added to read as follows:

§ 1.1441–1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

(a) Through (b)(7)(i)(C) [Reserved]. For further guidance, *see* § 1.1441–1(a) through (b)(7)(i)(C).

(b)(7)(i)(D). The withholding agent has complied with the provisions of § 1.1441–6(d).

(b)(7)(ii) through (f)(2)(ii) [Reserved]. For further guidance, *see* § 1.1441–1(b)(7)(ii) through (f)(2)(ii).

§ 1.1441–6 [Amended]

Par. 3. In § 1.1441–6, the fifth sentence of paragraph (b)(1) is amended by adding the language "and § 1.1441–6T(h)" immediately following the language "(c)(1) of this section."

Par. 4. Section 1.1441–6T is added to read as follows:

§ 1.1441–6T Claim of reduced withholding under an income tax treaty (temporary).

(a) through (g) [Reserved]. For further guidance, see § 1.1441–6(a) through (g).

(h) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits*—(1) *General rule.* Except as provided in § 1.1441–6(c) or paragraph (h)(2) of this section, for purposes of § 1.1441–6(b)(1), a withholding agent may not rely on a beneficial owner withholding certificate, described in § 1.1441–6(b)(1), that does not include the beneficial owner's taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of § 1.1441–6(b)(1), a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner's TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109–1(d)(3)(iv) of this chapter (hereafter the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS), Philadelphia Service Center, because the IRS, Philadelphia Service Center is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (h)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W–7) that complies with the requirements of § 301.6109–1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109–1(d)(3)(iv)(A)(*4*) of this chapter, to the IRS, Philadelphia Service Center, during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (h)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (h) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the U,S. has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the U.S. for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins $5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W–7, including the required certification, for G, to the IRS, Philadelphia Service Center for an expedited ITIN. Pursuant to § 1.1441–6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the $5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the $5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the U.S. has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the U.S. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P $5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W–7, including the required certification, for P, to the IRS, Philadelphia Service Center, for an expedited ITIN. Pursuant to § 1.1441–6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay $5000 to P without withholding U.S. tax based on the treaty exemption.

(6) *Effective date.* This paragraph (h) applies to payments made after December 31, 2001.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 6. In § 301.6109–1, paragraph (g)(3) is revised to read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see § 301.6109–1T(g)(3).

* * * * *

Par. 7. Section 301.6109–1T is added to read as follows:

§ 301.6109–1T Identifying numbers (temporary).

(a) Through (g)(2) [Reserved]. For further guidance, see § 301.6109–1(a) through (g)(2).

(g)(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

(h) through (j)(2)(iii). For further guidance, see § 301.6109(h) through (j)(2)(iii).

Approved: December 21, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–1125 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 84 and 183

46 CFR Part 25

[USCG–1999–6580]

RIN 2115–AF70

Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of the final rule on Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels published in the **Federal Register** on November 1, 2001. The final rule requires domestic manufacturers of vessels to install only certified navigation lights on all newly manufactured uninspected commercial vessels and recreational vessels. This rule aligns the requirements for these lights with those for inspected commercial vessels and with requirements for all other mandatory safety equipment carried on board all vessels. The Coast Guard expects the resulting reduction in the use of noncompliant lights to improve safety on the water.

EFFECTIVE DATE: The final rule is effective on November 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6580 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5p.m., Monday through Friday, except Federal holidays. You may also find this

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docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Randolph J. Doubt, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–6810 or by e-mail at *rdoubt@comdt.uscg.mil*. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, by telephone at 202–366–5149.

SUPPLEMENTARY INFORMATION: On November 1, 2001, the Coast Guard published a final rule entitled "Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels" in the **Federal Register** (66 FR 55086). The final rule, which was to become effective on November 1, 2002, directs manufacturers of uninspected commercial vessels and recreational vessels to install only navigation lights certified and labeled by a laboratory listed by the Coast Guard as meeting the technical requirements of the Navigation Rules.

Upon publication of the final rule, the Coast Guard noted that the implementation date may not provide enough time to complete the testing of navigation lights by laboratories listed by the Coast Guard to allow the recreational boat manufacturers to comply with the regulation. July 2002 is the date most of next year boat models will appear on show room floors. Photo boats for sales brochures will be built in March and April 2002 so that these brochures can be printed in time for the introductions. Actual new model year production will start in April and May 2002. Thus, boat builders must make their navigation light selections for the upcoming model year as early as February 2002. Each navigation light manufacturer will have to make tooling changes to meet the new marking requirements, and many will have to retest their applicable product line. Sufficient time is not available to do this by February 2002. The alternative would be to pull all unsold boats off the market on November 1, 2002, replacing them either with new boat models equipped with compliant navigation lights or modifying their navigation lights to meet the new marking and certification requirements. Most, if not all, agree that this latter alternative is not a reasonable course to take.

Based upon this concern, the Coast Guard is delaying the effective date of the final rule to November 1, 2003.

Accordingly, in FR Doc. 01–27320 published in the **Federal Register** on November 1, 2001, at 66 FR 55086, the effective date for the referenced final rule is changed from November 1, 2002, to November 1, 2003.

Dated: January 9, 2002.

Terry M. Cross,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 02–1252 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–112]

RIN 2115–AA97

Security Zone; San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone 50 yards around all cruise ships while entering or departing the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when these vessels are moored in the Port of San Juan. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico or his designated representative.

DATES: This regulation is effective from 12:01 a.m. on November 30, 2001 until 11:59 p.m. on February 28, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan CGD 07–01–112] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00969 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and written information via facsimile and electronic mail to inform mariners of this regulation.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within this port. There may be Coast Guard, local police department or other patrol vessels on scene to monitor traffic through these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico.

The security zone for a vessel entering the Port of San Juan is activated when the vessel is one mile north of the #1 buoy, at approximate position 18°28.3′ N, 66°07.6′ W, when entering the Port of San Juan. The zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port. The Captain of the Port will also notify the public of these security zones via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan website at *http://www.msocaribbean.com*.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because vessels should be able to safely transit around the zone and may be allowed to enter the zone with the authorization of the Captain of the Port of San Juan.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–112 is added to read as follows:

§ 165.T07–112 Security Zone; Port of San Juan, Puerto Rico.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships while entering or departing the Port of San Juan. These moving security zones are activated when the subject vessel is one mile north of the #1 buoy at approximate position 18°28.3′ N, 66°07.6′ W when entering the Port of San Juan and deactivated when the vessel passes this buoy on its departure from the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when these vessels are moored in the Port of San Juan.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates.* This section becomes effective at 12:01 a.m. on November 30, 2001 until 11:59 p.m. on February 28, 2002.

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Dated: November 30, 2001.

J. A. Servidio,

Commander, U. S. Coast Guard, Captain of the Port.

[FR Doc. 02–1187 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 07–01–135]

RIN 2115–AA97

Security Zone; St. Croix, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. This security zone extends 3 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan or the HOVENSA Facility Port Captain prior to entering this temporary security zone. This security zone is needed for national security reasons to protect the public and the port of HOVENSA from potential subversive acts.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD 07–01–135] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

DATES: This regulation is effective at 6 p.m. on December 19, 2001 until 11:59 p.m. on June 15, 2002.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Lefevers, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan or the HOVENSA Facility Port Captain. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, seven days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, seven days a week. The temporary security zone around the HOVENSA facility is outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that operate near the HOVENSA facility. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M14475.1D that this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–135 is added to read as follows:

§ 165.T07–135 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* All waters 3 miles seaward of the HOVENSA facility waterfront outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan or a Coast Guard commissioned, warrant, or petty officer designated by him or unless authorized by the HOVENSA Port Captain who can be reached on VHF Marine Band Radio Channel 11(156.6 Mhz). The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz).

(c) *Effective dates.* This section is effective from 6 p.m. on December 19, 2001 until 11:59 p.m. on June 15, 2002.

Dated: December 19, 2001.

J.A. Servidio,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–1253 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301208; FRL–6818–6]

RIN 2070–AB78

Ethalfluralin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of ethalfluralin in or on canola seed and safflower seed. IR-4 requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective January 17, 2002. Objections and requests for hearings, identified by docket control number OPP–301208, must be received by EPA on or before March 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301208 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9368; and e-mail address: Jamerson.Hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

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Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301208. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 14, 2001 (66 FR 57082) (FRL–6808–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of pesticide petitions (PP 9E5037, 1E6326, and 1E6345) for tolerances by Interregional Research Project Number 4 (IR–4), 681 U.S. Highway Number 1, South, North Brunswick, New Jersey 08902–3390. This notice included a summary of the petitions prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.416 be amended by establishing tolerances for residues of the herbicide ethalfluralin, [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine, in or on canola seed and safflower seed at 0.05 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances, November 26, 1997) (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of ethalfluralin on canola seed and safflower seed at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ethalfluralin are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 68 mg/kg/day LOAEL = 136 mg/kg/day based on low bilirubin and low kidney weights in males.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 27.5 mg/kg/day LOAEL = 80 mg/kg/day based on elevated alkaline phosphatase, slight fatty metamorphosis of the liver, increase cholesterol, and increased blood urea nitrogen (BUN).
870.3200	21–Day dermal toxicity in rabbits	NOAEL = 1,000 mg/kg/day - highest dose tested (HDT) LOAEL =>1,000 mg/kg/day no systemic effects were seen at the HDT.
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 50 mg/kg/day LOAEL = 250 mg/kg/day based on decreased body weight gain and dark urine. Developmental NOAEL = 1,000 mg/kg/day no systemic effects were seen at the HDT. LOAEL = >1,000 mg/kg/day no systemic effects were seen at the HDT.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 75 mg/kg/day LOAEL = 150 mg/kg/day based on abortions and decreased food consumption. Developmental NOAEL = 75 mg/kg/dayLOAEL = 150 mg/kg/day based on slightly increased resorptions, abnormal cranial development, and increase sternal variants.
870.3800	Reproduction and fertility effects in rats	Parental/Systemic NOAEL = 12.5 mg/kg/day LOAEL = 37.5 mg/kg/day based on decreased mean body weight gains in males in all generations. Reproductive NOAEL = 37.5 mg/kg/day HDT LOAEL = >37.5 mg/kg/day no systemic effects were seen at the HDT.
870.4100	Chronic toxicity dogs	NOAEL = 4 mg/kg/day LOAEL = 20 mg/kg/day based on increased urinary bilirubin, variations in erythrocyte morphology, increased thrombocyte count, and increased erythroid series of the bone marrow.
870.4300	Combined chronic toxicity/carcinogenicity in rats	NOAEL = 32.3 mg/kg/day HDT LOAEL = > 32.3 mg/kg/day no systemic effects were seen at the HDT. Mammary gland fibroadenomas were found in dosed female rats at statistically significant incidences in mid and high doses.
870.4300	Combined chronic toxicity/carcinogenicity in mice	NOAEL = 10.3 mg/kg/day LOAEL = 41.9 mg/kg/day based on focal hepatocellular hyperplasia in both sexes and increased liver, kidney, and heart weights in females. No increase in of neoplasms was attributed to the treatment.
870.5100	Bacterial reverse mutation test	Ethalfluralin was weakly mutagenic in activated strains TA1535 and TA100 of *Salmonella typhimurium*, but not in strains TA1537, TA1538, and TA98 in an Ames assay. In a modified Ames assay with *Salmonella typhimurium* and *Escherichia coli*, ethalfluralin was weakly mutagenic in strains TA1535 and TA100, with and without activation, and in strain TA 98 without activation, at the highest dose.
870.5300	*In vitro* mammalian cell mutation test	No mutagenicity was found in the mouse lymphoma assay for forward mutation.
870.5550	Unscheduled DNA synthesis in mammalian cells in culture	Ethalfluralin did not induce unscheduled DNA synthesis in rat hepatocytes.
870.5375	*In vitro* mammalian chromosome aberration test	In Chinese hamster ovary cells, ethalfluralin was negative without S9 activation, but it was clastogenic with activation.

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TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	Rats were treated orally with a single low dose, a single high dose, or repeated low doses of radiolabeled ethalfluralin. Absorption of ethalfluralin was estimated at 79–87% of the dose for all dose levels. Ethalfluralin was rapidly and extensively metabolized, and 95% of the chemical was excreted in urine and feces by seven days. The major route of elimination for the radiolabel was in the feces, 50.9–63.2%, and the levels remaining in the tissues after 72 hours were negligible.
870.7600	Dermal penetration	A Dermal penetration study with rhesus monkeys indicated that 2.8% of a dermal dose was absorbed through the skin.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for ethalfluralin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	NOAEL = 75 mg/kg/day UF = 100 Acute RfD = 0.75 mg/kg/day	FQPA SF = 10 aPAD = acute RfD FQPA SF = 0.075 mg/kg/day	Oral developmental toxicity study in rabbits LOAEL = 150 mg/kg/day based on an increased number of resorptions and increased sternal and cranial variations.
Acute dietary general population including infants and children	None	None	None
Chronic dietary all populations	NOAEL= 4.0 mg/kg/day UF = 100 Chronic RfD = 0.04 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD FQPA SF = 0.004 mg/kg/day	1–year oral toxicity study in dogs LOAEL = 20 mg/kg/day based on altered red cell morphology and urinary bilirubin.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-term dermal (1 to 7 days) Intermediate-term dermal (1 week to several months)	None	None	A dermal penetration study with rhesus monkeys indicated that 2.8% of a dermal dose was absorbed through the skin. Although the developmental and fetotoxic effects (refer to toxicological effects for acute dietary for females above) would normally be used for this assessment, the dermal absorption rate of 2.8% precludes the need. Dermal absorption is too low to cause concern.
Short-term inhalation (1 to 7 days) Intermediate-term Inhalation (1 week to several months) Long-term inhalation (several months to lifetime) (Residential)	None	None	Ethalfluralin has a low inhalation toxicity category (III). The maximum attainable concentration (gravimetric) was tested in an acute inhalation toxicity study, and no deaths occurred to exposed rats. Clinical signs included hypoactivity, dyspnea, ataxia, chromodacryorrhea, poor grooming, and yellow urine; these were reversible after 4 days (LC_{50} 0.94 mg/L). This maximum attainable concentration is considered to be non-lethal. An inhalation risk assessment is not needed.
Cancer (oral, dermal, inhalation)	Ethalfluralin has been classified as a possible human carcinogen (Group C). $Q_1^* = 8.9 \times 10^{-2}$ (mg/kg/day)$^{-1}$	Negligible risk	2–year chronic carcinogenicity study in rats, showing an increased incidence of mammary gland fibroadenomas and combined adenomas/fibroadenomas in female rats.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA. The safety factor of 10X was retained until ethalfluralin is assessed by the Agency's FQPA Safety Factor Committee. Therefore, the 10X is subject to change when ethalfluralin is assessed in an upcoming Tolerance Reassessment Eligibility Decision (TRED).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.416) for the residues of ethalfluralin, in or on a variety of raw agricultural commodities. Tolerances for residues of ethalfluralin are established for dry beans and peas, the Cucurbits vegetable subgroup, peanuts, soybeans, sunflower seeds, and fat, meat, and meat by-products of goats. The tolerance level for all these commodities is 0.05 ppm. Time limited tolerances associated with section 18 requests have also been established for canola and safflower. Risk assessments were conducted by EPA to assess dietary exposures from ethalfluralin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document prepared for ethalfluralin. No percent crop-treated adjustment was made therefore, 100% crop treated was assumed. Further refinements (such as percent crop-treated adjustments and/or Monte Carlo analysis) would yield even lower estimates of acute dietary exposure.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document. In addition, weighted average percent crop treated data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iii. *Cancer.* In conducting this cancer dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII. The following assumptions were made for the cancer exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are

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ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document. In addition, weighted average percent crop treated data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop-treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 34% of dry beans and dry peas treated; 4% melons and cantaloups treated; 16% cucumbers treated; 15% watermelons treated and 1% soybeans treated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which ethalfluralin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for ethalfluralin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of ethalfluralin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly-unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to ethalfluralin they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of ethalfluralin for acute exposures are estimated to be 2.3 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 0.05 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ethalfluralin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether ethalfluralin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, ethalfluralin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ethalfluralin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal (systemic) NOAEL was 50 milligram/kilogram/day (mg/kg/day), based on decreased body weight gain and dark urine at the LOAEL of 250 mg/kg/day. The developmental (fetal) NOAEL was 1,000 mg/kg/day (the highest dose tested, HDT).

In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 75 mg/kg/day, based on abortions and decreased food consumption at the LOAEL of 150 mg/kg/day. The developmental (fetal) NOAEL was also 75 mg/kg/day, based on a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants at the LOAEL of 150 mg/kg/day.

3. *Reproductive toxicity study.* In a 3-generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 12.5 mg/kg/day, based on decreased mean body weight gains in males in all generations at the LOAEL of 37.5 mg/kg/day. The reproductive (pup) NOAEL was 37.5 mg/kg/day (the HDT).

In a 7-month multi-generation bridging study in rats, the parental NOAEL of 20 mg/kg/day was based on increased liver weights at the LOAEL of 61 mg/kg/day. The reproductive (pup) NOAEL was 61 mg/kg/day (the HDT).

4. *Prenatal and postnatal sensitivity.* There is qualitative evidence of increased susceptibility following *in utero* exposure to ethalfluralin in the developmental toxicity study in rabbits demonstrated by abortions and a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants in the pups. There was no indication of increased susceptibility following *in utero* exposure to ethalfluralin in the prenatal developmental toxicity study in rats.

5. *Conclusion.* There is a complete toxicity data base for ethalfluralin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

To date, ethalfluralin has not been assessed by the Agency's FQPA Safety Factor Committee. The Agency is in the preliminary stages of evaluating ethalfluralin for an upcoming Tolerance Reassessment Eligibility Decision (TRED) (Reports on FQPA Tolerance Reassessment Progress and Interim Risk Management Decisions). During this reassessment, the Agency's FQPA Safety Factor Committee will evaluate this chemical.

EPA's preliminary review of the studies bearing on risks to infants and children indicates that an additional safety factor of greater than 10X will not be needed to protect the safety of infants and children. Previously, when time-limited tolerances were established for residues of ethalfluralin in or on canola seed and safflower seed to support specific emergency exemptions the Agency concluded that an additional FQPA safety factor of 3X for assessing acute dietary risk and an additional FQPA safety factor of 1X for assessing chronic dietary risk would be adequate for protecting the safety of infants and children. This was based on a determination made by ad hoc FQPA Safety Factor Committee which based its decision on the results of the oral developmental toxicity study in rabbits.

Accordingly, for the purpose of acting on the petition for tolerances for residues of ethalfluralin in or on canola seed and safflower seed prior to completion of the ethalfluralin TRED, the FQPA safety factor of 10X was retained.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to ethalfluralin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of ethalfluralin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An acute dietary endpoint was only identified for females. Using the exposure assumptions discussed in this unit for

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acute exposure, the acute dietary exposure from food to ethalfluralin will occupy less than 1% of the aPAD for females 13 years and older. In addition, despite the potential for acute dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ETHALFLURALIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–50 years old)	0.075	<1	2.3	0.02	2,200

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to ethalfluralin from food will utilize less than 1% of the cPAD for the U.S. population and all other population subgroups included in DEEM™. There are no residential uses for ethalfluralin that result in chronic residential exposure to ethalfluralin. In addition, despite the potential for chronic dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.004	<1	0.05	0.02	140
Females 13–50	0.004	<1	0.05	0.02	120
Children	0.004	<1	0.05	0.02	40
Infants	0.004	<1	3.05	0.02	40

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that exposure to ethalfluralin from food will result in an estimated lifetime cancer risk to the U.S. population of 5.8×10^{-7}. Currently there are no uses registered for ethalfluralin that will result in residential exposures. In addition, despite the potential for chronic (cancer) dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to pose greater than a negligible risk (the range of 10^{-6}), as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	Q1*	Cancer Risk Estimate (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	8.9×10^{-2} (mg/kg/day)$^{-1}$	5.8×10^{-7}	0.05	0.02	0.18

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to ethalfluralin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (GLC-ECD) is available in PAM II to enforce the tolerance expression. The limit of detection in plant commodities is 0.01 ppm.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for ethalfluralin. Mexico has established MRLs of 0.05 ppm in/on squash, cucumber, and melon. Canada has labels for uses on oilseed and pulse crops, wheat, field crop vegetables, barley, rapeseed, flax, canola, and mustard however, there are no published tolerances.

V. Conclusion

Therefore, tolerances are established for residues of ethalfluralin,[*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine], in or on canola seed and safflower seed at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301208 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 18, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301208, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public

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Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 3, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.416 is amended as follows:

i. By alphabetically adding entries for the commodities "canola, seed" and "safflower, seed" to the table in paragraph (a) as set forth below.

ii. The text of paragraph (b) is removed and reserved.

§ 180.416 Ethalfluralin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Canola, seed	0.05
* * * * *	
Safflower, seed	0.05
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 02–701 Filed 1–16–02; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 82

RIN 0920–ZA00

Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Interim Final Rule; Reopening of Comment Period.

SUMMARY: The Department of Health and Human Services(DHHS), is reopening the comment period for the interim final rule for dose reconstruction for certain claims for cancer under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** of Friday, October 5, 2001. After considering these comments, comments previously received, and comments from the Advisory Board on Radiation and Worker Health (ABRWH) DHHS will publish a final rule.

DATES: Any public written comments not submitted at the meeting of the ABRWH must be received on or before Wednesday, January 23, 2002.

ABRWH must submit any comments and recommendations on the interim final rule to DHHS by Wednesday, February 6, 2002.

ADDRESSES: Submit written comments to: Attention—DoseReconstruction Comments, Department of Health and HumanServices, National Institute for Occupational Safety andHealth (NIOSH), Robert A. Taft Laboratories, MS–C34, 4676Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 533–8450, Fax: (513) 533–8285, e-mail: *NIOCINDOCKET@CDC.GOV*.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director,Office of Compensation Analysis and Support, NationalInstitute for Occupational Safety and Health, 4676 ColumbiaParkway, Cincinnati, Ohio 45226, Telephone 513–841–4498(this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On October 5, 2001, HHS published an interim final rule establishing methods for radiation dose reconstruction to be conducted for certain cancer claims filed under EEOICPA, Public Law 106–398 [See FR Vol. 66, No. 194, 50978]. The notice included a public comment period that ended on November 5, 2001. However, DHHS is requesting the ABRWH to conduct a review of its dose reconstruction methods. ABRWH will be conducting its review during a meeting of the ABRWH scheduled for Tuesday, January 22, 2002 and Wednesday, January 23, 2002.

To permit HHS to consider the ABRWH review and any comments and recommendations of ABRWH in the rulemaking, DHHS will reopen the public comment period. This will also provide the public with the opportunity to participate in this review. The public comment period will be reopened to include the ABRWH meeting transcript and any statements submitted for the record of that meeting in the docket for this rule. DHHS will also accept additional public written comments submitted to its docket office on or beforeWednesday, January 23, 2002. The record for this rulemaking will close on Wednesday, February 6, 2002, by which time ABRWH must submit any comments and recommendations on the interim final rule to DHHS.

Dated: January 14, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1318 Filed 1–16–02; 8:45 am]
BILLING CODE 4160–17–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 126

[USCG–2001–10184]

RIN 2115–AG17

Alternate Compliance Program; Incorporation of Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On October 23, 2001, we published a direct final rule (66 FR 53542). The direct final rule notified the public of our intent to incorporate Offshore Supply Vessels (OSVs) into the Alternate Compliance Program (ACP). This action will improve the flexibility of regulations governing OSVs by providing an alternative method for vessel design, inspection, and certification without compromising existing safety standards. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as January 22, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Benjamin Nicholson, United States Coast Guard Office of Design and Engineering Standards (G-MSE), at 202–267–0143, or e-mail him at *BNicholson@comdt.uscg.mil*.

Dated: January 10, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02–1251 Filed 1–16–02; 8:45 am]
BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300–1007–05; I.D. 120996A]

RIN 0648–AJ30

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations implementing the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule establishes guidelines to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The regulations also detail procedures the Secretary (acting through NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. The intended effect of the rule is to promote the protection, conservation, and enhancement of EFH.

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If further changes to the EFH regulations are warranted in the future, NMFS will propose changes through an appropriate public process.

DATES: Effective on February 19, 2002.

ADDRESSES: Requests for copies of the Environmental Assessment (EA) or related documents should be sent to EFH Coordinator, Office of Habitat Conservation, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. The EA and related documents are also available via the internet at: *http://www.nmfs.noaa.gov/habitat.*

FOR FURTHER INFORMATION CONTACT: Jonathan Kurland, NMFS EFH Coordinator, 301/713–2325; fax 301/713–1043; e-mail jon.kurland@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) as reauthorized by the Sustainable Fisheries Act, signed into law on October 11, 1996. NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on November 8, 1996 (61 FR 57843) to solicit comments to assist NMFS in developing an approach for the proposed regulations. NMFS published a second ANPR on January 9, 1997 (62 FR 1306) to announce the availability of the "Framework for the Description, Identification, Conservation, and Enhancement of Essential Fish Habitat" (Framework) and to solicit additional public comment. The Framework provided a detailed outline for the proposed regulations. NMFS held 15 public meetings, briefings, and workshops across the nation during the public comment period on the Framework and issued a proposed rule on April 23, 1997 (62 FR 19723). NMFS held an additional 6 public meetings and numerous briefings nationwide during the comment period on the proposed rule and issued an interim final rule on December 19, 1997 (62 FR 66531). The interim final rule took effect on January 20, 1998.

NMFS decided to issue the regulations as an interim final rule in 1997 for two reasons. First, NMFS decided to provide an additional comment period to allow another opportunity for affected parties to provide input prior to the development of a final rule. Second, NMFS determined that it would be advantageous to implement the EFH provisions of the Magnuson-Stevens Act for a period of time via interim final regulations, which would afford an opportunity to gain experience adding EFH information to fishery management plans and carrying out consultations and coordination with Federal and state agencies whose actions may adversely affect EFH. NMFS planned to use the additional comments and its experience implementing the interim final rule to make any necessary changes in the final rule.

The comment period on the interim final rule closed on March 19, 1998 (63 FR 8607, February 20, 1998). On November 8, 1999, NMFS reopened the comment period (64 FR 60731) to announce its intention to proceed with development of a final rule and to request additional public comments on four specific issues: how to improve the regulatory guidance on the identification of EFH; how to improve the regulatory guidance on minimizing the effects of fishing on EFH; whether the final rule should provide additional guidance on using existing environmental reviews to satisfy EFH consultation requirements; and whether to revise in the final rule the requirement for Federal agencies to prepare EFH Assessments as part of the EFH consultation process.

In total, NMFS provided five separate public comment periods for this rulemaking totaling 270 days. NMFS also held numerous public meetings and briefings to explain the EFH requirements for interested parties and to solicit their input. Based on the comments received, as well as NMFS' experience implementing the interim final rule, NMFS identified a number of improvements that would clarify and simplify the regulations. NMFS incorporated those changes in the final rule.

Although NMFS is finalizing this rule, NMFS recognizes that there remains a great deal of interest in the EFH regulations from various stakeholders. There is a diversity of opinions on the best way to integrate habitat and ecosystem considerations into fishery management. NMFS is actively evaluating these issues, and will continue to work with stakeholders to use the best available scientific information regarding habitat and ecosystem principles in fishery management decisions. For example, NMFS will hold a workshop in the coming months to examine the concepts underlying ecosystem-based approaches to marine resource management, followed by a second workshop to develop technical guidelines for implementing an ecosystem-based approach to fishery management. NMFS is also developing new environmental impact statements that will reexamine the EFH sections of many FMPs. NMFS will evaluate the efficacy of the EFH final rule in light of these activities and will apply the lessons learned as appropriate. If further changes to the EFH regulations are warranted, NMFS will propose changes through an appropriate public process.

Overview of the EFH Regulations

The final rule retains the same overall structure as the interim final rule, with minor organizational and editorial changes to improve clarity. These clarifications do not constitute substantial changes to the rule. Subpart J of 50 CFR part 600 contains guidelines to assist Councils in developing the EFH components of FMPs. Subpart K of 50 CFR part 600 contains procedures for coordination, consultations, and recommendations for Federal and state agency actions that may adversely affect EFH. NMFS is finalizing both subparts together so that all interested parties will understand the implications of areas being identified as EFH. The final rule contains no major substantive changes from the interim final rule, although the final rule includes numerous clarifications, simplifications, and editorial improvements intended to make the regulations easier to use.

Under subpart J, Councils must identify in FMPs EFH for each life stage of each managed species in the fishery management unit. Councils should organize information on the habitat requirements of managed species using a four-tier approach based on the type of information available. Councils must identify as EFH those habitats that are necessary to the species for spawning, breeding, feeding, or growth to maturity. Councils must describe EFH in text and must provide maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Councils should identify EFH that is especially important ecologically or particularly vulnerable to degradation as "habitat areas of particular concern" (HAPC) to help provide additional focus for conservation efforts. Councils must evaluate the potential adverse effects of fishing activities on EFH and must include in FMPs management measures that minimize adverse effects to the extent practicable. Councils must identify other activities that may adversely affect EFH and recommend actions to reduce or eliminate these effects.

Subpart K contains procedures for implementing the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. NMFS will make available descriptions and maps of EFH to promote EFH conservation and enhancement. The regulations encourage Federal agencies to use existing environmental review procedures to fulfill the requirement to consult with NMFS on actions that may adversely affect EFH, and they contain procedures for abbreviated or expanded consultation in cases where no other environmental review process is available. Consultations may be conducted at a programmatic and/or project-specific level. In cases where adverse effects from a type of actions will be minimal, both individually and cumulatively, a General Concurrence procedure further simplifies the consultation requirements. The regulations encourage coordination between NMFS and the Councils in the development of recommendations to Federal or state agencies for actions that would adversely affect EFH. Federal agencies must respond in writing within 30 days of receiving EFH Conservation Recommendations from NMFS. If the action agency's decision is inconsistent with NMFS' EFH Conservation Recommendations, the agency must explain its reasoning and NMFS may request further review of the decision. EFH Conservation Recommendations are non-binding.

Effect on Approved FMP EFH Provisions

The final rule modifies portions of the guidelines to Councils for developing the EFH components of FMPs (Subpart J of the rule). Although the changes do not constitute substantial revisions to the guidelines contained in the interim final rule, some of the clarifications and explanations in the final rule result in minor changes to the Secretary's interpretation of the mandatory contents of FMPs. Existing FMP EFH provisions were approved (or in some cases partially approved) by the Secretary pursuant to the interim final rule. Councils are not required to develop immediate amendments to those FMPs to address any changes in regulatory guidelines pursuant to this final rule. To the extent that changes to approved FMPs are necessary to meet the standards of the final rule, Councils should incorporate those changes during the next regular review and revision of FMP EFH provisions. Section 600.815(a)(9) of the final rule (renumbered from § 600.815(a)(11) of the interim final rule) states that Councils should conduct such reviews as recommended by the Secretary, but at least once every five years.

Related Documents

NMFS prepared a draft internal technical guidance manual for EFH in conjunction with the interim final rule. That guidance will be superseded with guidance for the final rule. The draft technical guidance, the Framework, the EA, and other related documents that led to this final rule are available via the internet or by mail upon request (see **ADDRESSES**).

Comments and Responses

NMFS received approximately 3,300 written comments during the two comment periods on the interim final rule. Commenters included Fishery Management Councils, Federal agencies, state agencies, fishery groups, environmental groups, non-fishing industry groups, other non-governmental organizations, academicians, citizens groups, and numerous individuals. The comments and responses discussed below are arranged by topic to parallel the organizational structure of the interim final rule.

1. Comments Asking for Additional Opportunity to Comment on the Rule or to be Involved in the Designation of EFH

Comment A: Several commenters requested that the public comment period be extended and development of the final rule be delayed to allow the public to better assess EFH implementation.

Response A: NMFS disagrees that additional time is needed for public comment. NMFS provided five separate public comment periods on the EFH regulations, for a total of 270 days, which generated more than 3,600 separate written public comments. NMFS published the regulations as an interim final rule for the express purpose of allowing additional comments and gaining experience implementing the EFH provisions of the Magnuson-Stevens Act before issuing a final rule. Since the public comments received during each comment period raised similar issues and concerns with the EFH regulations, NMFS has had ample opportunity to gain understanding of the range of topics and opinions raised by the public and has made many revisions to the EFH regulations to address public comments.

Comment B: Several commenters criticized NMFS for failing to engage non-fishing stakeholders in the development of the EFH regulations and for failing to develop mechanisms to consider non-fishing interests in the EFH regulations.

Response B: NMFS disagrees that non-fishing groups were not given the opportunity to be included in this rulemaking. NMFS held numerous public meetings, briefings, and workshops to engage all interested parties in the development of the EFH regulations and held five separate public comment periods. In addition, NMFS met with every stakeholder group that asked to discuss how the regulations might affect them, including many prominent non-fishing organizations. Many of the changes to the regulations, from the proposed rule to the interim final rule and from the interim final rule to the final rule, responded directly to non-fishing stakeholder concerns.

Comment C: Two commenters requested that NMFS suspend the designation of EFH for Pacific salmon until after final revisions to the EFH regulations are made, since the EFH provisions of the Pacific salmon FMP had not been completed at the time NMFS reopened the comment period on the interim final rule. These commenters also asked NMFS to reopen the comment period on the rule again after the Pacific salmon EFH designations are in effect for a period of time.

Response C: NMFS approved the designation of EFH for Pacific salmon on September 27, 2000 (65 FR 63047). The Magnuson-Stevens Act prescribes a strict time frame for Secretarial action on an FMP amendment following submission by a Council, including an opportunity for public comment on what action the Secretary should take. NMFS cannot delay Secretarial review, and sees no need for another formal comment period on the EFH regulations to gauge implementation of Pacific salmon EFH. Nevertheless, if problems arise related to Pacific salmon EFH, NMFS will address them as appropriate.

Comment D: Several non-fishing industry groups commented that NMFS did not make necessary information on the consultation process available to commenters when the comment period for the interim final rule was reopened in November 1999. Some of these commenters referred specifically to their pending Freedom of Information Act (FOIA) request for copies of documents related to the EFH consultation process and every individual consultation that had occurred to date.

Response D: NMFS' intent in reopening the public comment period on the interim final rule in November 1999 was to solicit comments from interested parties on four specific issues: the scope of EFH designations, documentation of measures to minimize adverse fishing impacts to EFH, the use of existing environmental review

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procedures for EFH consultations, and the preparation of EFH Assessments (64 FR 60731). NMFS asked commenters to answer based on their individual experience under the interim final rule. NMFS did not request that commenters conduct a program review of the EFH consultation process, nor did NMFS ask for comments on the totality of experience gained through all of the consultations completed thus far. The information requested by the commenters under FOIA was not necessary to enable the commenters to provide answers to NMFS' questions regarding their experience under the interim final rule, and analysis of that information was not a prerequisite to providing informed comments.

Comment E: One commenter noted that the absence of lists of species managed under FMPs and prey species in the proposed and interim final rules made it more difficult to provide meaningful comment on the EFH regulations.

Response E: NMFS determined that providing lists of managed and prey species in the EFH regulations was unnecessary. NMFS' intent in soliciting public comment on the regulations was to seek input on the process of identifying EFH and implementing the other EFH provisions of the Magnuson-Stevens Act, and not on how to identify EFH for specific managed species. Furthermore, the list of managed species changes whenever Councils develop management plans for new species. Nonetheless, the EA that accompanied publication of the interim final rule contained a list of managed species, and this list has been updated in the revised EA. Since the list will continue to change over time, interested parties should contact the Councils to obtain the most updated information on managed species. EFH cannot be designated for non-managed prey species, so a list of such species is not directly relevant to the rule.

Comment F: Several non-fishing groups commented that Fishery Management Councils should include representation of non-fishing interests.

Response F: The Secretary appoints members of each Council from lists of individuals recommended by the Governors of applicable states. Section 302(b)(2)(A) of the Magnuson-Stevens Act states that the appointed members of each Council "must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned." There is ample flexibility in this requirement to allow for a broad range of representation on Councils. For example, a rancher from Idaho formerly served as a member of the Pacific Fishery Management Council.

Comment G: One commenter noted that the rule contains no provisions to ensure that non-fishing interests receive timely notification of Council meetings.

Response G: There are ample mechanisms through which interested parties can obtain information regarding Council meetings, and it is unnecessary to ensure such notification in the EFH regulations. Section 302(i) of the Magnuson-Stevens Act requires timely public notice of Council meetings in local newspapers and the **Federal Register**. All Councils have internet sites, most of which post the schedule and agendas for upcoming meetings. Additionally, interested parties can call Councils directly to receive information on upcoming meetings, and many Councils maintain mailing lists and send agendas to interested parties. NMFS encourages all interested parties to participate in the Council process.

Comment H: Both fishing and non-fishing groups commented that NMFS should engage local stakeholders in the process of EFH identification.

Response H: NMFS agrees and continues to encourage public involvement in EFH identification via the Council process. Section 305(b)(1)(B) of the Magnuson-Stevens Act requires NMFS, in consultation with participants in the fishery, to provide recommendations and information to assist Councils in EFH identification. NMFS typically solicits this input from the public via the Council process. Each Council holds numerous meetings throughout the year that focus on habitat and other issues related to fishery management. These meetings include public scoping meetings and public hearings and are specifically designed to engage interested parties in fishery management decisions, including decisions related to EFH identification. Furthermore, many Councils have habitat advisory panels. NMFS encourages interested parties to seek membership on Council advisory panels.

2. General Concerns with the Rule

Comment A: Several non-fishing groups commented that the EFH regulations are too complex, ambiguous, and burdensome.

Response A: NMFS has attempted to improve the clarity of the EFH regulations by eliminating wordiness, increasing specificity of the language, improving the efficiency of certain procedures, and reorganizing several sections. These changes should make the regulations easier to use and should promote better understanding of how to implement the EFH provisions of the Magnuson-Stevens Act. Councils, Federal agencies, and other interested parties should benefit from the modifications that were made to the EFH regulations.

Comment B: Two non-fishing industry groups expressed concern that their comments on the proposed rule were not addressed and asked NMFS to revisit their initial concerns. The comments questioned NMFS' authority to address non-fishing activities and said that the EFH coordination, consultation, and recommendation requirements of the regulations are burdensome and duplicative.

Response B: NMFS considered all comments received on the proposed rule, but did not accept all of the recommendations for changes to the rule. NMFS responded to the cited comments in the preamble to the interim final rule at 62 FR 66539–66540 and 66543. NMFS revisited these concerns while developing the final rule and concluded that, with the exception of changes described herein to clarify and streamline portions of the rule, no additional changes are warranted.

Comment C: One commenter questioned NMFS' approach to implementing the EFH provisions in light of the commenter's concerns about the U.S. Fish and Wildlife Service's efforts to protect bull trout under the Endangered Species Act.

Response C: Bull trout are not managed under the Magnuson-Stevens Act and the commenter's concerns are unrelated to the EFH regulations.

3. Comments in Favor of Implementing the Rule Without Substantial Changes

Comment A: Numerous commenters, primarily from conservation groups, expressed concern about the extended comment period and delay in promulgating the final rule, and questioned NMFS' commitment to implementing the EFH regulations. Many commenters urged NMFS to finalize the EFH regulations immediately without weakening them.

Response A: NMFS has been implementing the EFH regulations since January 1998, 30 days following publication of the interim final rule. The final rule benefitted from public comments on ways to improve the EFH regulations, and it incorporates many of the suggestions NMFS received.

Comment B: Several commenters supported the rule but expressed concern that the EFH regulations impose an additional burden on the already heavy workload of NMFS personnel without offering new budgetary or staff resources. These commenters were concerned that resources may be diverted from other priorities to EFH, or that insufficient NMFS staff levels may slow the EFH consultation process.

Response B: NMFS agrees that the EFH mandate will impose additional work on NMFS staff and has taken this into consideration in crafting the final rule to minimize duplication and maximize efficiency. For example, NMFS encourages agencies to use existing environmental review procedures to complete EFH consultations. Additionally, NMFS has created options such as the General Concurrence and programmatic consultations that will help streamline the EFH consultation process. NMFS has redirected staff from other tasks as necessary to fulfill the new requirements of the Magnuson-Stevens Act.

Comment C: Several individuals and organizations from Alaska remarked that the future of fishing in Alaska depends on marine habitat, and thus the rule is important for Alaska fisheries.

Response C: NMFS agrees. The final rule is intended to benefit marine, estuarine, and riverine habitats of federally managed species and help promote sustainable fisheries in Alaska and nationwide.

4. Comments Regarding Definition of Terms in the Rule

Comment A: Several commenters questioned NMFS' interpretation of the statutory definition of EFH, wherein NMFS interpreted the meaning of several key terms: "waters," "substrate," necessary," and "spawning, breeding, feeding, and growth to maturity." Some commenters asked whether, for purposes of identifying EFH, the term "waters" may include wetlands or riparian areas in proximity to waters occupied by a managed species. Other commenters suggested that NMFS remove the interpretation that "waters" and "substrate" can include biological properties, stating that the references to biological features inappropriately expand the definition of EFH. Two commenters thought that the interpretation of "substrate" should explicitly include historically important substrate areas that may have been modified by human activity. One commenter said that the word "structures," which is part of the interim final rule interpretation of the word "substrate," should not refer to human-made structures such as oil platforms, but only to natural structures that support fish. Several commenters took the opposite view and wanted the rule to encourage identifying artificial reefs, jetties, and shipwrecks as EFH. Other commenters objected to the narrowed interpretation of "necessary" in the interim final rule and recommended that NMFS return to the approach in the proposed rule where "necessary" meant the habitat required to support a sustainable fishery and a health ecosystem.

Response A: NMFS is not modifying its interpretation of the statutory definition of EFH in the final rule. The final rule retains the language in § 600.805(b)(2) of the interim final rule stating that EFH may be identified in waters of the United States, as defined in 33 CFR 328.3, which includes wetlands. EFH is limited to aquatic areas, so it may not include riparian habitats. As explained in the preamble to the interim final rule at 62 FR 66533, NMFS disagrees that interpreting "waters" and "substrate" to include "biological properties" and "biological communities" respectively is an impermissible expansion of the statutory definition of EFH. Certain biological properties of water and substrate are fundamental components of habitat and are necessary to maintain the function of habitat for fish. NMFS is not modifying the interpretation of "substrate" to discuss historically important substrate areas because the potential identification of historic habitats as EFH is addressed adequately in § 600.815(a) of the rule. NMFS is not modifying the interpretation of "substrate" to exclude human-made structures, because in some cases such structures can provide valuable habitat for managed species. As discussed in the preamble to the interim final rule at 62 FR 66534, structures such as artificial reefs, jetties, and shipwrecks may be identified as EFH in an FMP if they meet the criteria for EFH identification in the rule. The interpretation of "necessary" in the final rule continues to include the clarifying phrase "and the managed species' contribution to" a healthy ecosystem because it would be inappropriate for the rule to suggest that EFH must include habitats for species other than managed fish.

Comment B: Many commenters objected to or asked for clarification of the definition of "adverse effect" in §§ 600.810(a) and 600.910(a). Most of these commenters said the definition is vague and can be interpreted too broadly to include even effects that are of no consequence or significance to EFH. One commenter asked to what extent an activity must reduce the quality and/or quantity of EFH to trigger action. Some commenters thought that the example of a loss of prey being an adverse effect to EFH exceeds the proper interpretation of what constitutes EFH. These commenters felt that prey is not part of EFH so should not be referenced in a definition of "adverse effect." One commenter recommended that the definition of "adverse effect" in the rule address only statistically significant adverse effects and provide for documentation of probabilities of error when predicting adverse effects. Another commenter focused on the statutory requirement for Federal agencies to consult with NMFS regarding actions that may adversely affect EFH and said NMFS' definition of "adverse effect" illegally negates the statutory duty of other agencies to decide what effects are adverse.

Response B: NMFS is modifying the definition of "adverse effect" in response to comments. The revised definition retains the original standard that an adverse effect is any impact that reduces the quality and/or quantity of EFH. The definition clarifies the types of alterations that may be included and explains that such modifications to habitat are only considered adverse effects if they reduce the quality and/or quantity of EFH. The definition also clarifies that adverse effects to EFH may result from actions occurring within EFH or outside of EFH. NMFS disagrees with the comments that loss of prey is beyond the appropriate scope of adverse effects to EFH. The revised definition specifically mentions the loss of or injury to prey species and their habitats as potential adverse effects to EFH because, as mentioned above, prey can be a vital component of habitat for managed species. NMFS disagrees that only statistically significant adverse effects should be considered because the Magnuson-Stevens Act contains no such limitations. A much more inclusive definition of "adverse effect" is necessary in the regulations to clarify what kinds of potential effects should be addressed in FMPs and in the coordination, consultation, and recommendation process for Federal and state agency actions. Federal agencies retain the discretion to make their own determinations as to what actions may fall within NMFS' definition of "adverse effect."

Comment C: One commenter said that the definition of "healthy ecosystem" should not say that such areas should be similar to undisturbed ecosystems, because hardly any ecosystem could be characterized as pristine or entirely undisturbed. Another commenter asked

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for an explanation of the terms "species richness" and "resilience" within the definition of "healthy ecosystem."

Response C: NMFS does not agree that the regulations should omit the reference to undisturbed ecosystems. The definition of "healthy ecosystem" in the rule refers to comparing ecological features of ecosystems. Saying that healthy ecosystems should be similar to comparable undisturbed ecosystems is intended to convey that the basic functions of such ecosystems have not been altered by anthropogenic events, and not that such ecosystems are entirely pristine. The term "species richness" refers to biodiversity. The term "resilience" refers to the ability of a healthy ecosystem to withstand a certain level of environmental stress yet maintain its ecological functions.

Comment D: One commenter inferred that best professional judgment will be necessary to evaluate available data and identify EFH, and asked for a definition of "best professional judgment" in the final rule. The commenter asked what process NMFS envisions for gathering a range of scientific opinions and how NMFS will overcome the disadvantages of expert panels.

Response D: NMFS decided not to add a definition of "best professional judgment." The regulations do not specifically call for using such judgments, so a definition is unnecessary. NMFS recognizes that professional opinion must be factored into EFH-related decisions by Councils, Federal agencies, and NMFS, but NMFS sees no need to define a separate process for considering professional opinions related to EFH as opposed to professional opinions on other matters.

Comment E: One commenter said that NMFS had overstepped its authority by referring to EFH "protection" when the Magnuson-Stevens Act uses the words "conservation and enhancement" of EFH.

Response E: NMFS reviewed the EFH regulations carefully to ensure that word usage reflected the intent of the Magnuson-Stevens Act. For instance, language in § 600.815(a)(2)(ii)(A) of the interim final rule was revised in the final rule (now in § 600.815(a)(1)(iv)(A)) to replace "protected" with "identified" as follows: "Councils should interpret this information in a risk-averse fashion, to ensure adequate areas are identified as EFH for managed species." In other cases, use of the term "protection" was appropriate. For example, § 600.905(a), which reads, "The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH" is consistent with section (2)(b)(7) of the Magnuson-Stevens Act, which states that one of the Act's purposes is to "promote the protection of EFH in the review of projects conducted under Federal permits, licenses, or other authorities that affect such habitat."

5. Comments on the Purpose and Scope of the Rule

Comment A: Numerous commenters endorsed the use of the precautionary principle in identifying EFH. Several said that EFH should be identified for all marine fish species, and not just those managed under an FMP. Other commenters said that EFH designations should consider all relevant ecosystem components, including prey for managed species. A few commenters thought the regulations should call for identifying all areas as EFH until proven otherwise.

Response A: NMFS addressed similar comments from the proposed rule in the preamble to the interim final rule at 62 FR 66534. The Magnuson-Stevens Act requires that each FMP describe and identify EFH, and it is not appropriate to extend this requirement to species not managed under an FMP. NMFS agrees that EFH designations should account for pertinent features of the ecosystem such as prey, as noted in the interpretation of EFH in § 600.10. However, only the habitat necessary to managed species may be considered EFH. The final rule retains language in § 600.815(a) stating that Councils should interpret habitat information in a risk-averse fashion when identifying EFH. NMFS does not agree that all areas should be identified as EFH until proven otherwise, because EFH designations must be based on available scientific information indicating that the specified habitat is necessary for the managed species.

Comment B: Some commenters objected to the interim final rule restricting EFH designations to the outer limits of the U.S. Exclusive Economic Zone (EEZ), and thought that Councils should be required to address adverse effects to EFH in waters beyond the EEZ.

Response B: As explained in the preamble to the interim final rule at 62 FR 66535, areas beyond the EEZ cannot be identified as EFH, and Federal agencies need not consult with NMFS regarding the effects of actions on habitats beyond the EEZ. However, Councils may promote the protection of managed species' habitats outside the EEZ, and NMFS will use that information as appropriate in discussions regarding international actions.

Comment C: One commenter said that NMFS should delete from § 600.805(b) the language saying that a Council may describe, identify, and protect the habitat of species not in a fishery management unit, but such habitat may not be considered EFH. The commenter said that under the Magnuson-Stevens Act, Councils may only develop FMPs for identified species and may not act to describe, identify, or protect the habitat of other species. The commenter also said that Councils have no authority under the Magnuson-Stevens Act to protect the habitat of any fish.

Response C: The preamble to the interim final rule at 62 FR 66534 notes that the Magnuson-Stevens Act does not preclude Councils from identifying habitat (other than EFH) of a fishery resource under its authority even if the species is not managed under an FMP. Council action to protect the habitats of managed or non-managed species is limited to protecting habitats from fishing activities. Councils have no authority to protect habitats from other activities, although they may comment to state and Federal agencies on non-fishing activities under section 305(b)(3) of the Act.

Comment D: One organization commented that the regulations should consider recreationally important species, including the economic value of recreational fisheries, in any actions taken pursuant to the rule.

Response D: NMFS agrees. EFH must be identified for all species in the fishery management unit of an FMP, including recreationally important species. Actions taken by a Council, NMFS, or a Federal or state action agency to address threats to EFH should account for the recreational as well as commercial value of fishery resources dependent on EFH. However, no specific changes to the rule are necessary to provide for consideration of recreational fisheries.

Comment E: A few commenters urged regional flexibility in the regulations so Councils can develop their own EFH designations and procedures for tracking actions that may adversely affect EFH.

Response E: NMFS agrees. The final rule contains national guidelines for Councils but provides sufficient flexibility to account for the variety of managed species and to address regional variations in the availability of scientific information and differences in Council operating procedures nationwide.

6. Comments on Using an Ecosystem or Watershed Approach to Resource Management

Comment A: A number of commenters representing non-fishing interests stated that the Magnuson-Stevens Act does not authorize a risk-averse or ecosystem approach to EFH. These commenters thought that the focus should be limited to fish species and not ecosystem principles.

Response A: NMFS provided a detailed response to this comment in the preamble to the interim final rule at 62 FR 66532–66533, and the response remains the same. In summary, the Magnuson-Stevens Act provides authority for the link between EFH and the managed species' contribution to a healthy ecosystem in a number of places. Ecosystem concepts are common in the statutory definitions of "fishery resources," "conservation and management," and "optimum." The fact that the Magnuson-Stevens Act directs the Councils to address the degradation and loss of EFH from both fishing and non-fishing activities through conservation and enhancement measures further reflects support for the ecosystem-based management of marine and anadromous fisheries. Ecosystem management encourages sustainable resource use and recognizes the uncertainties inherent in management and the need to make risk-averse decisions. This regulation embraces those concepts and urges Councils to seek environmental sustainability in fishery management, within the current statutorily prescribed fishery management framework (i.e., management by FMPs).

Comment B: A number of commenters from Louisiana stated that the rule places too much emphasis on species managed under FMPs, to the detriment of activities that are designed to protect and restore the coastal ecosystem. The commenters expressed concern that the focus on habitat for federally managed species would undermine the importance of ecosystem components besides federally managed fish species and potentially hinder Louisiana's extensive efforts to restore coastal wetlands as authorized under the Coastal Wetlands Planning, Protection, and Restoration Act (also known as the Breaux Act).

Response B: The rule is intended to promote the conservation and enhancement of EFH for federally managed species through means other than traditional harvest management. The EFH provisions are designed to encourage a broader, ecosystem approach to meet the requirements of the Magnuson-Stevens Act. NMFS recognizes the importance of Louisiana's coastal restoration efforts and is an active partner in implementing the Breaux Act. Although the final rule requires Federal agencies to consult with NMFS on any activity "that may adversely affect EFH," including habitat restoration projects, EFH and ecosystem restoration can be compatible. NMFS works closely with other agencies and the private sector to ensure that restoration projects proceed expeditiously while considering and minimizing any temporary or permanent adverse effects to EFH. The rule recognizes the importance of ecosystem restoration and states that EFH may be designated for certain historic habitats for which restoration is technologically and economically feasible.

Comment C: Commenters from Louisiana wanted NMFS to examine the state's coastal management program and its relationship to the rule. These commenters asked NMFS to exempt from the final rule Louisiana's state programs and Federal activities in Louisiana with existing review procedures, and/or place an emphasis on programmatic consultations and General Concurrences for these actions.

Response C: NMFS highlighted its interaction and coordination with the states and state coastal zone management programs in the preamble to the interim final rule at 62 FR 66536. NMFS has no authority to exempt Federal and state actions in Louisiana from the EFH consultation and recommendation requirements of the Magnuson-Stevens Act. As outlined in Subpart K, NMFS encourages Federal action agencies to combine EFH consultations with other environmental review processes and to complete programmatic consultations and General Concurrences where appropriate.

7. Comments on the Guidance for Description and Identification of EFH in Fishery Management Plans

Comment A: Where the rule states that "EFH can be inferred" based on a species' distribution among habitats and on information about the species' habitat requirements and behavior, one commenter wanted the rule to require that the Councils clearly identify instances when EFH is designated based on these inferences.

Response A: The rule provides guidance to the Councils to evaluate all available information and use specified criteria to identify EFH. In some cases, Councils may need to use their best scientific judgement. To help explain how Councils identify EFH in FMPs, including cases where EFH is based on inferences, the final rule includes new language advising Councils to explain the analyses conducted to distinguish EFH from all habitats potentially used by a species. Councils must also demonstrate that the identification of EFH is based on the best scientific information available.

Comment B: Several groups of commenters expressed concern about the guidance in § 600.815(a)(2)(ii)(B) of the interim final rule that states all habitats, including historic habitats, "should be considered essential" if a species is overfished and habitat loss or degradation may be contributing to the species being overfished. One of these commenters stated that this was unreasonable because not all habitat used by an overfished species is essential. Another commenter wanted NMFS to require that the Councils establish a stronger link between the loss of habitat and its contribution to overfishing before it is considered essential. Several commenters wanted this provision deleted from the rule entirely, while others wanted to see all habitat for overfished species identified as EFH. One commenter evaluated the provisions for designating EFH for overfished species in the context of the Endangered Species Act (ESA). This commenter stated that the EFH provisions appear inconsistent with the way in which NMFS evaluates habitat in the ESA. The commenter noted that in NMFS' implementation of the ESA, the agency recognizes that currently available habitat is sufficient for conservation for some species. These commenters stated that identifying EFH in areas historically used by fish may not be the best means to ensure the conservation and enhancement of EFH.

Response B: NMFS agrees that it might not always be appropriate to identify as EFH all current habitats as well as certain historic habitats. NMFS has changed the guidance related to determining EFH for overfished species, now in § 600.815(a)(1)(iv)(C), to state that all habitats currently used by the species "may be considered essential" (versus "should be considered essential") if a species is overfished and habitat loss or degradation may be contributing to the species being overfished. Councils should make this determination on a case-by-case basis.

All FMP conservation and management measures, including identifying the limits of EFH for overfished species, must be based on the best scientific information available. As addressed in the preamble to the interim final rule at 62 FR 66537, the rule advocates a risk-averse approach to

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identifying EFH because of the uncertainty in our knowledge of habitat and its relation to fisheries production. Councils should take particular care when inadequate information exists on overfished stocks to ensure that habitat losses do not hinder the stock rebuilding.

EFH and the habitat components of the ESA are authorized under different legislative mandates and have unique objectives. EFH must be designated for all federally managed species. Conservation and enhancement measures for EFH, if implemented by the agencies with relevant jurisdiction, should help prevent the need to list species under the ESA.

Comment C: One commenter wanted the guidance in § 600.815(a)(2)(ii)(F) of the interim final rule to be deleted from the regulations. This commenter stated that the Magnuson-Stevens Act only authorizes designation of existing habitat as EFH and does not provide the authority to identify EFH for degraded or inaccessible habitat.

Response C: NMFS responded to similar comments in the preamble to the interim final rule at 62 FR 66534, and upon further consideration takes the same position. The provision of the rule that allows the designation of inaccessible or degraded habitat as EFH is consistent with the EFH provisions of the Magnuson-Stevens Act. Section 2 of the Magnuson-Stevens Act recognizes that habitat losses have resulted in a diminished capacity to support sustainable fisheries and that the protection of habitat is necessary to prevent overfishing and rebuild overfished stocks. The restoration of degraded or inaccessible habitats may therefore be necessary to maintain or rebuild sustainable fisheries.

Comment D: Several commenters wanted the final rule to restrict EFH designation to the habitat required to maintain commercial fisheries at optimal yield or another quantitative measure of the status of a stock.

Response D: NMFS provided a detailed response to this comment in the preamble to the interim final rule at 62 FR 66533, and, upon further consideration, still takes the same position. The Magnuson-Stevens Act states that one of its purposes is to provide for the preparation and implementation of FMPs that will achieve and maintain the optimal yield from each fishery. Therefore, NMFS has linked the guidelines for identifying EFH to sustainable fisheries as is appropriate under the Magnuson-Stevens Act. The rule states that FMPs should identify sufficient EFH to support a population adequate to maintain a sustainable fishery and the managed species' contributions to a healthy ecosystem. When considering the EFH requirements of a managed species, the rule advises Councils to describe and identify enough habitat to support the total population, of which optimal yield is a subset, not just the individual fish that are removed by fishing.

Comment E: Several commenters wanted the final rule to establish incentives for improving the data available for identifying EFH. These commenters thought a research agenda should be developed to collect the information needed to identify EFH with Level 2, 3, and 4 data.

Response E: NMFS agrees that a prioritized EFH research agenda would be beneficial. The final rule asks the Councils to set priority research needs to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the development of conservation and enhancement recommendations. The rule also encourages the Councils to strive to describe habitat based on the highest level of detail (i.e., Level 4). Additionally, the final rule says that Councils and NMFS should periodically review and revise the EFH components of FMPs based on available pertinent information. NMFS is working within the constraints of available funding to conduct additional research to improve the designations of EFH.

Comment F: One port authority stated that the EFH designations should undergo a formal rulemaking process.

Response F: NMFS disagrees. Councils identify EFH within the existing statutory and regulatory process for FMP development and amendment, which provides numerous opportunities for public involvement. All Council deliberations on fishery management measures are open to the public, and all Council meeting agendas are published in the **Federal Register**. Additionally, NMFS publishes notices of availability and solicits public comments for FMPs and amendments received for Secretarial review. NMFS also publishes a public notice of decision in the **Federal Register**.

Comment G: A member of the recreational fishing community commented that the rule should be revised to require the identification of EFH for species assemblages, not individual species. Another commenter asked that Councils describe EFH separately within each FMP rather than making broad regional designations.

Response G: The final rule clarifies that every FMP must describe and identify EFH for each life stage of each managed species, but if appropriate, EFH may be designated for assemblages of species or life stages that have similar habitat requirements. If an FMP designates EFH for species assemblages, it must include a justification and scientific rationale.

Comment H: One Council stated that the specification that tables must be used to describe EFH may constrain the development of useful EFH descriptions. The Council stated that textual EFH descriptions would be more helpful.

Response H: NMFS agrees, and the final rule does not require that EFH be described in tables. The final rule clarifies that FMPs must describe and identify EFH in text and should use text and tables as appropriate to summarize information on variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity.

Comment I: Many commenters stated that the final rule should allow the Councils to identify EFH within state and Federal waters. One commenter wanted to see EFH designations based on the biological needs of each species, not geographic or political boundaries.

Response I: NMFS agrees, and addressed these comments in the preamble to the interim final rule at 62 FR 66535. The Magnuson-Stevens Act requires Councils to describe and identify EFH based on the biological requirements of all life stages of the managed species, with no limitations placed on the geographic location of EFH. EFH may be designated in state or Federal waters, but may not be designated beyond the United States exclusive economic zone.

Comment J: One commenter from a non-fishing industry group expressed concern that EFH might be designated in upland areas where fish habitat does not exist. One commenter from a conservation group and a commenter from a fishing group recommended that Councils be allowed to designate EFH in riparian corridors and on other dry lands that influence the productivity of aquatic areas.

Response J: EFH is defined in the Magnuson-Stevens Act as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH regulations interpret this definition by defining "waters" and "substrate." "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate. "Substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities. EFH can only be designated in aquatic areas. EFH cannot be designated in riparian habitat or on dry land, although actions in these areas that may adversely affect EFH do require consultation with NMFS. The definition of "adverse effect" in the final rule clarifies that adverse effects to EFH may result from actions occurring within EFH or outside of EFH.

Comment K: Several commenters, including fishing and non-fishing groups and some government agencies, expressed concern that the EFH designations made under the interim final rule are extremely broad. Non-fishing groups commented that NMFS arbitrarily designated all habitat as EFH rather than designating "necessary" or "essential" habitats, as the statute requires. In contrast, one commenter thought that the guidance in § 600.815(a)(2)(ii) of the interim final rule that asks the Councils to identify EFH as the habitats areas "valued most highly" and "most commonly used" was not sufficiently inclusive to capture all the areas that should be identified as EFH.

Response K: Councils were justified in designating broad areas as EFH based on the guidance in the interim final rule. For many species there is little available scientific information linking the biological requirements of managed species to specific habitats. In such cases the rule encourages Councils to interpret available information in a risk-averse fashion. Moreover, NMFS is undertaking research in several regions to obtain additional scientific information. As further information becomes available, EFH designations will be refined.

NMFS has also taken steps to clarify in the final rule that EFH identification should emphasize necessary habitats for fish, based on available information. To reduce confusion about what habitats generally should be considered essential, the final rule omits language from the interim final rule saying that "habitats of intermediate or low value may also be essential, depending on the health of the fish population" because this concept is covered elsewhere in the rule. The final rule also clarifies that if sufficient information is available, EFH should be identified as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. Furthermore, the final rule encourages Councils to identify EFH based on the highest level of information available, and states that EFH should not be designated if there is no information available and if habitat usage cannot be inferred from other means, such as information on a similar species.

Comment L: Two conservation groups expressed concern about specific elements of Amendment 14 to the Pacific Coast Salmon FMP.

Response L: These comments were not relevant to the EFH regulations.

8. Comments on the Sources and Quality of Information Used to Identify EFH

Comment A: Commenters representing fishing and non-fishing interests and environmental groups wanted to see NMFS use all good quality information to identify EFH. Some of these commenters wanted the standard of "best scientific information" to be replaced with a standard of "best available information from all sources," including fishing interests. Some commenters also wanted this standard of information to extend to NMFS' EFH Conservation Recommendations.

Response A: Section 600.815(a)(1)(ii)(B) of the final rule reflects that Councils should use information from the best available sources to identify EFH, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. As stated in the preamble to the interim final rule at 62 FR 66536, NMFS intended to have the Councils use the best available information from a variety of sources, and the Magnuson-Stevens Act requires NMFS to consult with participants in the fishery before submitting its recommendations to the Councils to assist in developing the EFH components of FMPs. However, all information should be evaluated with regard to reliability, so the final rule clarifies that Councils should consider different types of information according to its scientific rigor. NMFS intends to continue using the best available sources of information to develop EFH Conservation Recommendations to Federal and state agencies.

Comment B: One marine conservation group thought the requirement that Councils must demonstrate their use of best available science in the identification of EFH may place an inappropriate burden of proof on the Councils.

Response B: The final rule maintains the requirement that Councils demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2. Section 301(a) of the Magnuson-Stevens Act requires all fishery management plans, and any regulation promulgated to implement such plans, to be consistent with the national standards. National standard 2 requires that fishery conservation and management measures be based on the best scientific information available. Applying this standard to the identification of EFH is appropriate and necessary to comply with the Magnuson-Stevens Act.

Comment C: A commenter representing non-fishing industry interests wanted the final rule to require the Councils to record, and make available for public review and comment, the scientific basis for all Council decisions. Another commenter wanted to require a list of all judgments for which data were not available and recommended that this list of data gaps be used to set a research agenda.

Response C: All Council deliberations on fishery management measures are open to the public, and adopted measures must be based on the best scientific information available. The final rule clarifies that FMPs should identify species-specific habitat data gaps. The final rule also clarifies that FMPs should contain recommendations for research needed to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the development of conservation and enhancement measures for EFH.

9. Comments on the Four-Level Approach for Organizing EFH Data

Comment A: As discussed separately above, NMFS received numerous general comments in favor of implementing the regulations without substantial changes, many of which mentioned specific support for the approach used in the interim final rule for organizing information used to designate EFH.

Response A: The final rule retains the four-level approach for organizing information used to designate EFH. However, the final rule clarifies that Level 1 information encompasses a variety of types of distribution data, which may be derived from systematic presence/absence sampling and/or may include information collected opportunistically. Since distribution data are lacking for a number of managed species, especially in Alaska, the final rule clarifies that habitat use for a given species or life stage may be inferred, if appropriate, based on information on a similar species or another life stage. The final rule also clarifies that if there is no information on a given species or life stage, and habitat usage cannot be inferred from

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other means, EFH should not be designated.

Comment B: One commenter recommended that NMFS develop an incentives program or funding mechanism to encourage data collection to support identifying EFH with Level 3 or 4 data, as described in the interim final rule. Another commenter said that EFH should be categorized and prioritized according to its availability, vulnerability, and utilization.

Response B: For most species managed under the Magnuson-Stevens Act, available information on habitat requirements falls into Levels 1 or 2 (distribution or relative abundance data). NMFS agrees that having Level 3 or 4 data (rates of habitat-related growth, reproduction, or survival, or production rate data) would enable the Councils to refine the designations of EFH. NMFS is pursuing budget initiatives and partnerships with others to encourage the development of this type of information. Regarding the characterization and prioritization of EFH, NMFS agrees that the categories mentioned by the commenter are valid considerations for evaluating habitats. However, NMFS does not agree that the regulations should require EFH to be categorized, because requisite information to categorize EFH in this fashion is not available in many cases. Where Councils have more information on the ecological importance or vulnerability of portions of EFH, they may identify those areas as Habitat Areas of Particular Concern.

Comment C: One commenter said that further mechanisms are necessary to delineate important habitats based on habitat characteristics rather than the distribution of fish species. The commenter recommended adding to the regulations guidance that is complementary to the four-level approach but is based on an assessment of ecological significance and function of habitat.

Response C: NMFS agrees that where sufficient information is available, EFH designations should specify those habitat features that contribute most to the growth, reproduction, and survival of managed species (Level 3) or, ideally, those habitats with the highest production rates (Level 4) for each species. The final rule clarifies that this type of information, if available, should be used to identify EFH as the habitats supporting the highest growth, reproduction, survival, and/or production rates within the geographic range of a species. Currently, however, in most cases the best available scientific information is fish distribution (Level 1) or relative abundance (Level 2) data. Additional guidance linking EFH to habitat function, beyond the clarification mentioned above, is not necessary at this time because the rule already explains how to use Level 3 and 4 information to identify habitats with the highest ecological function for managed species.

10. Comments on the Guidelines for Determining the Limits of EFH

Comment A: One commenter representing waterfowl management efforts said that the importance of long-term sustainability of coastal wetlands habitat is overshadowed by the narrow focus of the EFH regulations on achieving optimal yield from a fishery.

Response A: As explained in the preamble to the interim final rule at 62 FR 66533, the Magnuson-Stevens Act states that FMPs must achieve the optimum yield from each fishery on a continuing basis, and determinations of optimal yield should take into account the protection of marine ecosystems. There is no inherent inconsistency between the overall objectives of promoting the conservation of coastal wetlands for waterfowl and promoting the conservation of EFH that is necessary to support a sustainable fishery and the managed species' contribution to a healthy ecosystem (including avian predators of managed species). However, specific wetlands management activities may not always advance both these objectives, and should be evaluated on a case-by-case basis.

Comment B: An alliance of Pacific northwest conservation groups commented that habitats that were historically used by salmon but are currently degraded or inaccessible should be included in EFH.

Response B: NMFS agrees that EFH should include historic habitats in certain circumstances. The final rule retains language in § 600.815(a) allowing the inclusion of such habitats as EFH, provided that the habitats are necessary to support rebuilding the fishery and that restoration is technologically and economically feasible.

Comment C: One organization commented that the Magnuson-Stevens Act defines EFH in terms of life history characteristics for managed species, whereas the interim final rule interprets EFH in terms of productivity.

Response C: The guidelines for determining the limits of EFH emphasize the habitat functions that have the most benefits to fish during the life stages contained in the statutory definition of EFH: spawning, breeding, feeding, and growth to maturity. Thus, the guidelines refer to habitats that support the highest productivity of managed species at each life stage. The regulations must make this connection between species and productivity to offer guidance on how to identify EFH based on the habitat needs of managed species at each life stage.

Comment D: One commenter asked who will determine whether it is economically feasible to restore degraded or inaccessible habitat in connection with the provision of the interim final rule that allows Councils to identify such areas as EFH.

Response D: The final rule retains language from the interim final rule saying that the Secretary and the appropriate Council(s) determine whether, for purposes of potentially identifying degraded or inaccessible aquatic habitat as EFH, restoration of such habitats is technologically and economically feasible. Through the Magnuson-Stevens Act process for developing FMPs and amendments, there are numerous opportunities for public comment on any proposal to designate degraded or inaccessible habitat as EFH, including the economic feasibility or infeasibility of restoration.

11. Comments on the Relationship Between EFH and Critical Habitat

Comment A: Several commenters said that EFH should be restricted to waters and substrate only and must always be greater than or equal to "critical habitat" identified for managed species that are listed as threatened or endangered under the ESA. Several other commenters thought it was inappropriate for the interim final rule to state a relationship between EFH and "critical habitat" that will always apply for ESA listed species. These commenters thought that the extent of EFH for listed species should be left to the Councils to decide on a case-by-case basis.

Response A: In the preamble to the interim final rule at 62 FR 66537, NMFS responded to similar comments that were critical of the corresponding provision in the proposed rule, and noted that the interim final rule contained modifications to help distinguish between EFH and critical habitat. NMFS maintained that it is appropriate for the rule to state that EFH will always be greater than or equal to the aquatic portions of critical habitat because, for example, important adult marine habitats for endangered salmonids have not been identified as critical habitat. Upon further consideration of this issue, NMFS agrees that there could conceivably be some

circumstances where this relationship between EFH and critical habitat might not be appropriate, so the word "always" is not appropriate in this provision of the regulations. The term "will" in the EFH regulations is used descriptively and does not denote an obligation to act, but apparently the use of "will" in combination with "always" implied to some readers a mandatory requirement. Therefore, the final rule states that areas described as EFH "will normally" (rather than "will always") be greater than or equal to aquatic areas that have been identified as critical habitat. NMFS agrees with the commenters who stated that EFH must be limited to aquatic areas.

Comment B: One commenter addressed the explanation in the preamble to the interim final rule at 62 FR 66537 stating that directed fishing of listed species is not permitted. This commenter said that rather than focus on non-fishing related threats to managed species that are listed under the ESA, NMFS should control indirect fishing effects on listed runs (which NMFS assumes to mean bycatch).

Response B: Salmon managed under the Pacific Coast Salmon FMP and the Atlantic Salmon FMP are the only species that currently are both listed under the ESA and managed under the Magnuson-Stevens Act. The 1996 amendments to the Magnuson-Stevens Act included a new requirement that fishery management measures minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of bycatch. Amendment 14 to the Pacific Coast Salmon FMP addresses this requirement by providing guidance for minimizing salmon bycatch and bycatch mortality, and by establishing salmon bycatch reporting specifications. The Atlantic Salmon FMP minimizes bycatch by prohibiting the possession of Atlantic salmon in the EEZ. The Magnuson-Stevens Act also requires evaluation of threats to EFH from non-fishing activities, so NMFS cannot divert all efforts to bycatch reduction at the expense of addressing threats from activities other than fishing.

12. Comments on the Effects of Fishing on EFH

Comment A: Some commenters expressed concern that the EFH regulations imply that fishing is the major, if not only, cause of habitat degradation.

Response A: NMFS disagrees with the commenters' perception of the interim final rule. Fishing and non-fishing activities have potential adverse effects on habitat and the regulations address both. The regulations provide guidance to Councils and procedures for Federal agencies on how to address adverse effects from non-fishing activities on EFH. The Magnuson-Stevens Act specifically requires that FMPs minimize to the extent practicable adverse fishing effects on EFH, so the regulations also include sections that focus on habitat impacts from fishing.

Comment B: One commenter expressed concern that the EFH provisions are being used arbitrarily to prevent the use of certain fishing gears, rather than to protect EFH based on scientific information.

Response B: NMFS disagrees with the commenter's opinion. The EFH provisions require Councils to minimize to the extent practicable the adverse effects on EFH caused by fishing. The Magnuson-Stevens Act and the EFH regulations address impacts caused by fishing activities in general and do not target specific gear types. Councils must evaluate the effects of all fishing activities (e.g., each gear type) on EFH, and fishery management measures must be based on the best scientific information available.

Comment C: One commenter from the commercial fishing community remarked that the size and duration of time/area closures, mentioned in the EFH regulations as an option for managing adverse effects from fishing, must be considered carefully since these management measures can impact the socioeconomic status of fishermen and their families.

Response C: NMFS agrees. By including the language "to the extent practicable" in the requirement to minimize adverse fishing impacts, Congress intended for fishery managers to take both ecological and socioeconomic effects of measures into consideration in determining whether it is appropriate to adopt particular management measures. The final rule clarifies the guidance to Councils for determining whether it is practicable to minimize an adverse effect from fishing, and states that Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation.

13. Comments on the Evaluation of the Effects of Fishing

Comment A: One commenter expressed concern about the quality of information that Councils were using to conduct assessments of the effects of fishing on EFH as required by the interim final rule, and recommended that NMFS provide Councils with a standard of review for non-scientific information such as "gray" literature, videos, and anecdotal information. Other commenters suggested that NMFS provide guidance to Councils for how to fulfill their obligation to minimize adverse fishing effects on EFH to the extent practicable when information is lacking.

Response A: NMFS agrees that further guidance is warranted to explain how Councils should consider available information. The final rule clarifies the requirement for Councils to examine the effects of fishing on EFH, and refers to this analysis as an "evaluation" rather than an "assessment" to avoid confusion with the requirement to perform an EFH Assessment during consultations as described in Subpart K. The final rule retains language from the interim final rule advising Councils to complete the evaluation using the best scientific information available, as well as other appropriate information sources, as available. When information is lacking, or when Councils use non-peer-reviewed or non-scientific information to augment the evaluation, the final rule states that Councils should consider the different types of available information according to its scientific rigor.

Comment B: Several commenters said that Councils did not adequately evaluate adverse effects from fishing in their EFH FMP amendments and urged NMFS to establish specific requirements, such as requiring Councils to classify the level of impacts according to gear type, to guide Councils in completing fishing impact evaluations.

Response B: The EFH regulations require Councils to evaluate the potential adverse effects of fishing activities on EFH so that Councils will be informed when making decisions regarding minimization of adverse effects to EFH from fishing. NMFS did not fully approve those EFH FMP amendments that did not meet this requirement.

Based upon experience implementing the interim final rule, NMFS agrees that the regulations should clarify the requirements for conducting fishing impact evaluations, and NMFS has modified the rule accordingly. Specifically, the final rule requires Councils to describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing

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activity adversely affects EFH. The final rule also clarifies that Councils should consider the cumulative impacts of multiple fishing activities on EFH in the fishing impact evaluation.

Comment C: Two commenters recommended that the EFH regulations be revised to advise Councils to document and assess in FMPs all management actions taken prior to the enactment of the EFH provisions that benefit habitat before recommending new measures to conserve and enhance EFH.

Response C: NMFS agrees that it is useful for Councils to document and consider any past management actions that provide habitat protection. The final rule recommends that Councils list past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH in the evaluation of fishing impacts on EFH.

14. Comments on the Threshold That Requires Councils to Minimize Adverse Effects of Fishing on EFH

Comment A: One commenter questioned use of the words "prevent" and "mitigate" in the portion of the EFH regulations that states, "Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable..." The commenter indicated that use of these words is inappropriate since the Magnuson-Stevens Act only authorizes Councils to "minimize" adverse fishing effects on EFH.

Response A: NMFS disagrees. By using the words "prevent" and "mitigate" in this provision of the EFH regulations, NMFS' intent is to give Councils the flexibility to adopt the approach that is most suitable to meet the statutory obligation to minimize adverse fishing effects on EFH. For instance, it might be more effective for Councils to act to prevent particularly damaging adverse effects rather than allowing all types of effects to occur with some degree of minimization.

Comment B: The interim final rule stated that Councils must minimize to the extent practicable adverse effects on EFH from fishing if there is evidence that a fishing practice is having an identifiable adverse effect on EFH. Some commenters from conservation groups were pleased that NMFS replaced the word "substantial" (from the proposed rule) with "identifiable," stating that "identifiable" is closer to the intent of the statute in terms of indicating the threshold at which Councils must take action to minimize adverse fishing effects to EFH. Others expressed concern that the word "identifiable" is inappropriate since this language does not appear in the Magnuson-Stevens Act and may still raise the threshold for action above that set by the Act. Commenters also expressed concern that the need to demonstrate an "identifiable" adverse effect might lead the Councils to inaction. Furthermore, commenters questioned the meaning of the descriptors for the term "identifiable," offered in both the preamble to the interim final rule and the draft technical guidance manual, that "identifiable means both more than minimal and not temporary in nature." Some commenters recommended that the EFH regulations require Councils to demonstrate adverse impacts scientifically and make the specific connection between adverse impacts and reduced stock productivity before taking action to minimize these impacts.

Response B: As discussed in the preamble to the interim final rule at 62 FR 66538, NMFS' intent was to provide guidance to Councils for determining when to act to minimize adverse fishing effects to EFH. Such action is warranted to regulate fishing activities that reduce the capacity of EFH to support managed species, not fishing activities that result in inconsequential changes to the habitat. In response to commenters' concern over the word "identifiable" in the interim final rule, NMFS modified this section to read, "Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature", based on the Councils' evaluation of the potential adverse effects of fishing. Temporary impacts are those that are limited in duration and that allow the particular environment to recover without measurable impact. Minimal impacts are those that may result in relatively small changes in the affected environment and insignificant changes in ecological functions.

It is not appropriate to require definitive proof of a link between fishing impacts to EFH and reduced stock productivity before Councils can take action to minimize adverse fishing impacts to EFH to the extent practicable. Such a requirement would raise the threshold for action above that set by the Magnuson-Stevens Act. The final rule encourages Councils to use the best available science as well as other appropriate information sources when evaluating the impacts of fishing activities on EFH, and to consider different types of information according to its scientific rigor.

Comment C: Several conservation groups criticized Councils for not adopting any new measures to minimize adverse effects from fishing activities and requested that NMFS require in the EFH regulations that new measures be taken to comply with the Magnuson-Stevens Act. Many of the same groups commented that NMFS should develop documentation requirements for Councils to demonstrate compliance with the requirement to minimize adverse fishing impacts to EFH to the extent practicable.

Response C: The final rule clarifies that Councils should document compliance with the requirement to minimize to the extent practicable adverse effects on EFH caused by fishing. When there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, Councils should identify in FMPs a range of potential new actions that could be taken to address adverse effects on EFH; include an analysis of the practicability of potential new actions; and adopt any new measures that are necessary and practicable. However, new measures may not be necessary in all cases. The final rule requires that FMPs explain the reasons for Councils' conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

Comment D: One commenter suggested that NMFS revise the EFH regulations to require Councils to adopt framework measures to address fishing impacts.

Response D: NMFS disagrees with this suggestion. It is not necessary or appropriate to add a requirement to the EFH regulations that Councils use framework measures as the mechanism to address fishing impacts. Rather, Councils should decide which administrative approach is most appropriate to use to meet the requirements of the EFH provisions.

Comment E: Several conservation groups recommended that each fishing activity be prohibited until it can be demonstrated that the activity does not adversely affect EFH.

Response E: NMFS disagrees. The approach suggested by the commenters would not be consistent with the statutory requirement to minimize adverse effects on EFH "to the extent practicable" and would have significant adverse socioeconomic impacts. The EFH provisions of the Magnuson-Stevens Act and the EFH regulations provide adequate mechanisms to evaluate the effects of fishing activities on EFH and ensure the minimization of adverse impacts on such habitat.

Comment F: Two commenters recommended that NMFS provide clearer guidance on how to interpret the term "practicable" and how Councils should carry out practicability analyses to comply with the statutory requirement to minimize to the extent practicable adverse effects on EFH caused by fishing. Another commenter noted that the phrase "consistent with national standard 7" in the section on conducting practicability analyses is unnecessary since all actions must be consistent with national standard 7 under the Magnuson-Stevens Act.

Response F: The final rule clarifies the guidance for considering practicability. The revised language eliminates redundancy and advises Councils to consider long- and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation. The final rule retains a reference to national standard 7 to provide context for the consideration of the costs and benefits of potential management measures.

Comment G: One commenter requested that NMFS reinsert the words "the marine ecosystem" in place of "EFH" in the following passage from § 600.815(a)(3)(iv) of the interim final rule: "Councils should consider whether, and to what extent, the fishing activity is adversely impacting EFH..." The commenter stated that the language used in the proposed rule was a more accurate reflection of the spirit of the Magnuson-Stevens Act.

Response G: NMFS disagrees. The Magnuson-Stevens Act requires Councils to address the effects of fishing on EFH, not on the entire marine ecosystem. The final rule incorporates editorial changes to eliminate redundancy, and therefore omits language cited by the commenter. The cited paragraph appears at § 600.815(a)(2)(iii) of the final rule.

Comment H: One commenter suggested that the EFH regulations clarify that Councils must address the effects of fishing covered under one FMP on EFH covered under another FMP.

Response H: NMFS agrees. The final rule clarifies that each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. The final rule also clarifies that each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs.

Comment I: Several commenters recommended that NMFS revise the EFH regulations to indicate what constitutes grounds for disapproval of the portion of FMPs pertaining to minimization of fishing impacts.

Response I: Disapproval is warranted if an FMP or amendment is not consistent with the national standards, other provisions of the Magnuson-Stevens Act, or other applicable law. The EFH regulations provide guidance on meeting the EFH requirements of the Act, and failure to follow the guidance may lead to disapproval or partial approval of an FMP or amendment. It is unnecessary to state the grounds for disapproval in the regulations.

Comment J: One commenter recommended that NMFS require Councils to coordinate with states and other authorities to provide conservation recommendations when Council-managed fisheries adversely affect EFH outside Federal jurisdiction.

Response J: The Magnuson-Stevens Act does not authorize NMFS to require Councils to coordinate with or provide recommendations to states or other authorities, although Councils have authority under the Act to provide recommendations to states regarding actions that may affect the habitat of species under Council jurisdiction. When Council-managed fisheries adversely affect EFH in state waters, the Council should coordinate with the affected state(s) when developing management strategies.

15. Comments on the Identification of Specific Industries with Potential Adverse Effects on EFH

Comment A: Two commenters thought that the final rule should identify specific industries that adversely impact EFH.

Response A: During the comment period for the proposed rule, many commenters objected to their particular industries or activities being highlighted as having potential adverse effects on EFH. Many pointed out that non-fishing activities do not always adversely impact fish habitat. Some industries pointed out that they are involved in restoration efforts and that some of their activities have been documented as producing positive effects on fisheries, not adverse effects. In the preamble to the interim final rule at 62 FR 66540, NMFS acknowledged that many industries take certain actions specifically to improve fish habitat even if other activities conducted by the industry may adversely affect fish habitat. Therefore, the final rule avoids singling out specific industries or activities that have the potential to adversely affect EFH.

Comment B: One port authority asked NMFS to clarify that "non-water dependent activities," as used in the interim final rule, excludes port development and maintenance activities. The commenter's request extended to other location-dependent activities such as bridge and utility/cable-line installation and maintenance.

Response B: Although NMFS has removed from the regulations the reference to specific non-water dependent activities, any Federal action that may adversely affect EFH is subject to consultation regardless of water dependency.

Comment C: Several non-fishing industry commenters asked NMFS to explain its authority for asking the Councils to identify non-fishing activities, and stated that the Magnuson-Stevens Act appears only to provide authority to identify fishing activities.

Response C: NMFS addressed this concern in the preamble to the interim final rule at 62 FR 66539–66540 and continues to disagree that its authority is limited to addressing fishing activities. One of the stated purposes of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects include non-fishing activities. Section 303(a)(7) of the Magnuson-Stevens Act requires FMPs to address the effects of fishing on EFH and identify other actions to encourage the conservation and enhancement of EFH. The statute does not limit these measures to pertain only to fishing activities. A necessary first step to identifying conservation and enhancement measures is to identify adverse effects.

Comment D: One commenter representing non-fishing industry interests wanted the final rule to require that FMPs document actual adverse effects to EFH, rather than potential adverse effects.

Response D: NMFS disagrees. Documentation of actual adverse effects in most cases depends on site-specific factors, whereas the intent of this portion of the rule is to identify the types of activities that can commonly cause adverse effects. The final rule omits language stating that FMPs must identify activities that "have the potential to adversely affect EFH" and instead says that FMPs must identify activities "that may adversely affect EFH." This change will make the standard for identifying threats to EFH consistent with the standard for actions

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that require consultation under section 305(b)(2)of the Magnuson-Stevens Act.

16. Comments on Cumulative Impacts Analysis

Comment A: Many commenters, primarily environmental organizations and some individual commenters, wanted the final rule to mandate that the FMPs contain a cumulative impacts analysis of fishing and non-fishing activities on EFH.

Response A: NMFS agrees that FMPs should provide an analysis of cumulative impacts, but does not agree that such an analysis should be mandatory. The final rule clarifies that, to the extent feasible and practicable, FMPs should analyze how the cumulative impact of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale.

Comment B: Commenters representing non-fishing interests asked that cumulative impact analysis concentrate on a more clearly defined and focused group of watershed activities. The commenters also wanted to know what time period the cumulative impact analysis should address and why cumulative risk assessments would be conducted at all, since they are likely to be time consuming and expensive.

Response B: NMFS has clarified the cumulative impacts analysis language in the final rule. A cumulative impacts analysis is intended to evaluate the effect on EFH of impacts occurring within a watershed or marine ecosystem that may result from individually minor but collectively significant actions. It should consider the effects of all actions that affect the quantity and/or quality of EFH spanning a time frame deemed appropriate by the Councils. The resulting analysis will improve NMFS' and the Councils' ability to examine actions within a watershed or marine ecosystem that adversely affect EFH and will highlight the potential for future concerns. The final rule retains language stating that the FMPs should contain such an analysis to the extent feasible and practicable.

Comment C: One commenter requested that the word "minor" be removed from the description of what can cause cumulative impacts from § 600.815(a)(6) of the interim final rule.

Response C: NMFS disagrees. The intent of a cumulative impacts analysis is to address potential effects of actions that may appear minor individually, yet have more serious consequences when viewed in the aggregate. Thus, the final rule retains language stating that cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time.

Comment D: One commenter stated that the final rule should require the Councils to gather data to analyze cumulative impacts and that the quantity and quality of data should guide the conclusions on cumulative impacts. The commenter also wanted the FMPs to indicate which impacts are supported by data.

Response D: National standard 2 requires that all conservation and management measures, including those that arise from a cumulative impacts analysis, be based upon the best scientific information available. NMFS agrees that the quantity and quality of available data should guide Councils' conclusions on cumulative impacts, although Councils should also consider that cumulative impacts may not be easily discernable from available data.

17. Comments on the Guidance for Identifying Actions to Encourage the Conservation and Enhancement of EFH

Comment A: Two commenters addressed the guidance for general conservation and enhancement recommendations found in § 600.815(a)(7)(ii) of the interim final rule. One of the commenters focused on the statement that "Activities that may result in significant adverse effect on EFH should be avoided where less environmentally harmful alternatives are available." The commenter questioned the use of the term "significant" here as opposed to "identifiable" in § 600.815(a)(3) of the interim final rule and said that NMFS appears to be condoning an increased level of habitat disturbance for non-fishing activities. The commenter also suggested replacing "should be avoided" with "will be avoided" in this sentence. Another commenter, representing non-fishing interests, wanted NMFS to delete the reference to "protecting" EFH in this portion of the regulations.

Response A: In the final rule NMFS deleted a large portion of the section entitled "Conservation and enhancement" that appeared in the interim final rule at § 600.815(a)(7), including the language referenced by the commenters. The deleted paragraphs contained general recommendations and options for EFH conservation and enhancement to assist Councils in developing the required provision of FMPs discussing measures to conserve and enhance EFH. However, NMFS determined that such general recommendations do not need to be codified in regulations and that including this information in the final rule could lead to confusion since the general recommendation might not apply equally in all areas. The shortened section dealing with conservation and enhancement recommendations appears in the final rule at § 600.815(a)(6).

Comment B: One commenter wanted NMFS to clarify that habitat creation should be reserved for mitigating habitat losses or restoring native fish populations and should not alter natural habitats.

Response B: As discussed above, the rule no longer contains any general recommendations for habitat creation or other methods to conserve and enhance EFH. Conservation and enhancement recommendations in FMPs must include options to avoid, minimize, or compensate for adverse effects to EFH. If appropriate, habitat creation may be a means of compensating for lost or degraded habitat. However, converting naturally functioning systems to another type of habitat warrants justification within an ecosystem context.

Comment C: One state commenter asked for clarification on how the Councils will evaluate the effectiveness of each recommended mitigation measure (i.e., conservation and enhancement option). The commenter asked that the FMPs include feedback mechanisms to assess the effectiveness of, and establish a monitoring program for, recommended mitigation measures.

Response C: The final rule does not require Councils to evaluate the effectiveness of each recommendation in FMPs for EFH conservation and enhancement. Council recommendations, however, should be based on the best scientific information available. NMFS and Councils may suggest monitoring requirements or other appropriate measures in their recommendations on state and Federal agency actions under sections 305(b)(3) and (4) of the Magnuson-Stevens Act.

Comment D: One commenter representing non-fishing interests wanted NMFS to delete the requirements of § 600.815(a)(5) of the interim final rule that require Councils to identify non-fishing activities that may adversely affect EFH. Several commenters representing non-fishing interests wanted NMFS to delete the language in § 600.815(a)(7)(i) of the interim final rule that refers to conservation and enhancement measures for non-fishing activities. The commenters thought that the language addressing non-fishing activities exceeded the statutory authority of the Magnuson-Stevens Act and should be limited to fishing activities. The commenters also stated that since the rule does not require listing conservation and enhancement recommendations for fishing activities, then it cannot do so for non-fishing activities.

Response D: NMFS disagrees and maintains that it has statutory authority to address non-fishing activities. NMFS has clarified the language in the final rule that discusses the identification of non-fishing activities that may adversely affect EFH in § 600.815(a)(4) and conservation and enhancement recommendations in § 600.815(a)(6), but these modifications did not change the substantive requirements of the rule. One stated purpose of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects include non-fishing activities. Section 303(a)(7) of the Magnuson-Stevens Act requires FMPs to address the effects of fishing on EFH and identify other actions to encourage the conservation and enhancement of EFH. The statute does not limit these measures to fishing activities only. Likewise, section 305(b)(2) of the Magnuson-Stevens Act requires consultation for any federal action that may adversely affect EFH regardless of whether it is a fishing or non-fishing activity.

Comment E: Several non-fishing interests wanted the final rule to require the Councils to report on current conservation and enhancement practices and use data to identify how further conservation and enhancement of EFH is possible with additional measures. One commenter said that FMPs should document existing conservation measures before recommending new measures.

Response E: Councils must recommend appropriate measures for conservation and enhancement of EFH. These measures may include new recommendations or existing, routine practices of industry or other organizations that minimize potential harm to fish habitat. All Council recommendations should be based on the best scientific information available.

Comment F: A port authority asked that the Councils be required to consider the economic impacts to non-fishing maritime interests of making recommendations for minimizing adverse effects to EFH. The commenter pointed out that the rule requires the Councils to consider whether it is practicable to recommend conditions to minimize adverse effects from fishing. Given the economic importance of ports, the commenter thought that the Councils should apply the same standard of practicability to other recommendations for minimizing adverse effects to EFH from port maintenance and development activities.

Response F: As explained in the preamble to the interim final rule at 62 FR 66540, non-fishing and fishing impacts are held to different standards in the EFH regulations because of differences in the applicable provisions of the Magnuson-Stevens Act. Section 303(a)(7) of the Magnuson-Stevens Act requires that FMPs minimize effects of fishing on EFH to the extent practicable, and NMFS and the Councils manage fishing activities through regulations that must consider costs and benefits of required management measures. The requirement in Section 303(a)(7) of the Magnuson-Stevens Act for Councils to recommend conservation and enhancement measures for non-fishing activities does not mention practicability, and it is the responsibility of the agencies with relevant jurisdiction to determine whether it is practicable to implement Council recommendations. Nevertheless, Council recommendations should be reasonable.

18. Comments on Habitat Areas of Particular Concern

Comment A: Some commenters requested that NMFS delete all references to Habitat Areas of Particular Concern (HAPCs), saying that in encouraging Councils to designate HAPCs, NMFS is going beyond the scope of the EFH provisions since the Magnuson-Stevens Act does not specifically authorize the development of a subset of habitat within EFH. One commenter asked NMFS to clarify how the designation of HAPCs will be used to protect EFH, and specifically, how it will affect implementation of the consultation process. Other commenters urged NMFS to require Councils to designate HAPCs for all species and to hold HAPCs to a higher standard of protection.

Response A: NMFS disagrees that development of HAPCs as a subset of EFH goes beyond the scope of the Magnuson-Stevens Act. The statutory definition of EFH is broad, encompassing all habitat necessary for fish to carry out their basic life functions. HAPCs provide a mechanism to acknowledge areas where more is known about the ecological function and/or vulnerability of portions of EFH.

The designation of HAPCs is a valuable way to highlight priority areas within EFH for conservation and management. For example, a General Concurrence that is proposed for actions affecting HAPCs should be subject to a higher level of scrutiny than a General Concurrence not affecting HAPCs. Proposed fishing activities that might threaten HAPCs may likewise receive a higher level of scrutiny. NMFS has no authority to regulate activities other than fishing that may adversely affect EFH or HAPCs, so NMFS cannot impose protective measures for HAPCs through the consultation process. However, NMFS may recommend such measures to the applicable Federal or state action agency.

NMFS cannot require Councils to designate HAPCs. Any higher degree of protection for areas designated as HAPCs would result from having more available information about the function or sensitivity of the habitat, or the human-induced threats to the habitat, which may justify more stringent or precautionary management approaches.

Comment B: Some commenters recommended that the EFH regulations be revised to direct Councils to use HAPCs as the principal means to meet the requirements of the EFH provisions.

Response B: While HAPCs help to focus EFH conservation priorities, HAPCs are localized areas that are especially vulnerable or ecologically important. Healthy populations of fish require not only these relatively small habitats, but also other suitable areas that provide necessary habitat functions to support larger numbers of fish. HAPCs can highlight valuable and/or vulnerable habitats, but alone are not intended to comprise the areas necessary to support healthy stocks of fish throughout all of their life stages.

Comment C: One commenter requested that NMFS add a provision to the EFH regulations to allow stakeholders to petition NMFS to designate HAPCs.

Response C: It is not appropriate to add an HAPC petitioning provision to the rule, because HAPCs should be proposed through the Council process. NMFS encourages interested parties to participate in the identification of HAPCs through the Council process. Council meetings occur regularly throughout the year and are open to the public.

Comment D: The interim final rule listed four criteria for identifying HAPCs. One commenter requested that NMFS change the term "criteria" to more accurately reflect that the four items are "considerations."

Response D: NMFS agrees and has changed "criteria" to "considerations."

Comment E: One commenter requested that NMFS revise the first

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consideration for HAPCs to distinguish between current and historical importance of ecological function provided by a particular habitat. The commenter also noted that this consideration should be expanded to include a determination as to whether the area in question serves more than one ecological function.

Response E: NMFS disagrees that a revision to this portion of the rule is necessary. The HAPC consideration regarding ecological importance may include both currently and historically important areas, provided that restoration of historic habitat functions is technologically and economically feasible. Additionally, Councils have flexibility to identify areas as HAPC that provide one or more important ecological functions.

Comment F: One commenter requested that NMFS define the word "rarity" in the fourth consideration for HAPC designation.

Response F: The fourth consideration for HAPC designation is the rarity of the habitat type. NMFS disagrees that a definition of "rarity" in the rule is needed, but suggests that Councils consider as rare those habitats that are less common than other habitats in a particular geographic area.

Comment G: One commenter recommended that the EFH regulations be revised to require Councils to address all four HAPC considerations to designate an area as an HAPC.

Response G: NMFS disagrees. Councils may designate HAPCs based on one or more of the four specified considerations, because any one of the considerations may provide sufficient basis for distinguishing a subset of EFH from the remainder of EFH.

Comment H: One commenter recommended that the EFH regulations be revised to require Councils to use information sources that meet a high scientific standard to designate HAPCs.

Response H: National standard 2 states that conservation and management measures shall be based upon the best scientific information available. This standard applies to all fishery management actions, including HAPC designation, and the final rule reemphasizes this point. Section 600.815(a)(1)(ii)(B) states, "Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information." The final rule further clarifies that Councils should consider different types of information according to its scientific rigor. Since HAPCs are a subset of EFH, the same standard applies to HAPC designation.

Comment I: One Council requested that NMFS rename HAPCs "EFH-HAPCs" to distinguish them from HAPCs identified by the Council prior to enactment of the EFH provisions of the Magnuson-Stevens Act.

Response I: The final rule does not change the terminology for HAPCs because doing so would likely result in unnecessary confusion. Councils had the ability to identify particularly important habitat areas prior to the development of the EFH regulations, and may now identify such areas in the context of EFH. If a Council chooses to refer to HAPCs identified under the EFH regulations as "EFH-HAPCs," it may do so. NMFS encourages the Councils to determine whether their previous identification of important habitats should be designated as HAPCs under the final rule.

Comment J: One commenter questioned why the draft technical guidance manual would not be reopened for public review and comment given that it elaborates on the considerations on which to base HAPC designations.

Response J: The rationale for not soliciting additional public comment on the guidance is discussed in the preamble to the interim final rule at 62 FR 66532. The draft technical guidance will be superseded with appropriate guidance for the final rule.

Comment K: One Council stated that all mid-Atlantic estuaries should be considered as HAPCs because they function as spawning grounds and/or nursery areas for many managed species.

Response K: The rule allows Councils to designate HAPCs in FMPs based on the ecological importance of an area of EFH, its sensitivity to anthropogenic degradation, whether it is or will be subject to stress from development, or its rarity. The commenting Council may designate HAPCs as appropriate using these guidelines.

19. Comments on New FMPs, FMP Amendments, and Updates

Comment: A Council suggested that the final rule encourage updating the EFH information in FMPs whenever better information becomes available, rather than just once every five years. Several conservation groups commented that the regulations should require that new FMPs and modifications to existing FMPs continue to comply with the EFH requirements of section 303(a)(7) of the Magnuson-Stevens Act. Another commenter asked for clarification of what constitutes new information worthy of updating the EFH portions of an FMP. The same commenter recommended that NMFS amend the regulations regarding Stock Assessment and Fishery Evaluation (SAFE) reports at 50 CFR 600.315(e) to require the inclusion of EFH information, rather than keeping such information optional as in the current regulations.

Response: NMFS agrees that the EFH components of FMPs should be revised as warranted based on available pertinent information. The final rule clarifies this point and encourages Councils to outline the procedures that will be used to review and update EFH information. The final rule also explains some of the types of information that Councils should review. The final rule does not establish a threshold level of information that should prompt revisions to an FMP because such decisions are best made on a case-by-case basis. Regarding SAFE reports, the regulations describing these reports do not list mandatory contents, but list information that "should" or "may" be included. NMFS does not intend to make EFH information a required part of SAFE reports since Councils should be able to report on their review of EFH information using other means if appropriate.

20. Comments on Development and Review of NMFS EFH Recommendations to Councils

Comment: One commenter said that in NMFS' recommendations to Councils regarding the EFH components of FMPs, NMFS should include a description of the extent and quality of the best available scientific information.

Response: NMFS' recommendations to Councils under § 600.815(c) may take one of two forms: suggestions for the EFH components of an FMP that precede a Council's development of a draft EFH document, or a technical and policy review of a draft EFH document prepared by a Council. In cases where NMFS' recommendations precede a Council's development of a draft EFH document, the recommendations typically will include a review of the best available science. In cases where the recommendations constitute a review of a draft Council document, it may not be necessary for the recommendations to describe the available science if that information is summarized adequately in the Council's document. Therefore, the final rule does not contain language specifying that NMFS' recommendations should address the extent and quality of the best available scientific information. Nevertheless, national standard 2 requires fishery management measures to be based upon the best scientific information available.

21. Comments on the Effect of EFH Designations on other Agencies and Other Uses of Aquatic Areas

Comment A: One commenter requested that NMFS delete reference to the word "state" in the sentence in § 600.905(a) of the EFH regulations that reads, "The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH." The commenter said that use of the word "state" is inappropriate since the Magnuson-Stevens Act only applies to the review of Federal actions.

Response A: NMFS disagrees. References to state actions is appropriate in this case since sections 305(b)(3) and (4) of the Magnuson-Stevens Act include provisions for NMFS and Councils to provide recommendations to state agencies on actions that could harm EFH.

Comment B: One commenter suggested that NMFS defer to the U.S. Army Corps of Engineers on matters related to dredging and contaminated dredged material.

Response B: NMFS has coordinated extensively with the Corps of Engineers on matters related to dredging and dredged material disposal and will continue to do so in the future. However, the Corps must consult with NMFS regarding its actions that may adversely affect EFH, and NMFS must provide EFH Conservation Recommendations on actions that would adversely affect EFH. NMFS and the Corps may in some cases disagree about potential impacts to EFH or appropriate measures to avoid, minimize, or offset such impacts.

Comment C: One commenter requested that NMFS clarify that owners of structures designated as EFH are not required to maintain them for the sole purpose of providing EFH.

Response C: NMFS does not have the authority to require owners of structures designated as EFH to maintain them as EFH.

Comment D: One commenter opposed designation of heavily industrialized areas, such as active ports, as EFH, stating that EFH designation would be in direct conflict with the purpose of such areas.

Response D: The Magnuson-Stevens Act requires Councils to identify as EFH those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity, regardless of whether those habitats occur in an industrialized area. NMFS disagrees that EFH designation is necessarily in conflict with heavily industrialized areas, since many active ports and other industrial areas continue to provide useful habitat for managed species.

Comment E: Several commenters expressed concern that EFH designations would affect the rights of private landowners.

Response E: NMFS addressed this concern in the preamble to the interim final rule at 62 FR 66535, and the response remains the same. EFH designation has no effect on the rights of private landowners.

Comment F: One commenter recommended that the EFH identification process should recognize existing treaties, statutes, compacts, decrees, and other laws and regulations that apply to areas under consideration for EFH designation so that the public is aware that EFH identification does not supersede other existing laws, interests, rights, or jurisdictions.

Response F: NMFS agrees that the identification of EFH in an area and any applicable regulations do not supersede the regulations, rights, interests, or jurisdictions that pertain to such an area under treaties, compacts, decrees, and other laws.

Comment G: One commenter requested that NMFS add language to the rule to recognize that non-fishing activities provide important economic and security benefits to the nation. The commenter suggested that NMFS direct the Councils to seek ways to provide for these activities while conserving EFH.

Response G: NMFS recognizes the value and contributions of non-fishing activities to the general public, but disagrees with the suggestion. NMFS and Councils have authority under the Magnuson-Stevens Act to provide recommendations to Federal and state agencies to minimize the adverse effects of non-fishing activities on EFH. It would be inappropriate to include in the EFH regulations a requirement for Council or NMFS positions on non-fishing activities to balance competing public interest factors. Council and NMFS recommendations on non-fishing activities under the Magnuson-Stevens Act are non-binding and are intended to address effects on EFH and fishery resources. Action agencies must consider the overall public interest, including the public benefits of the proposed action, when deciding whether to adopt these recommendations.

22. Comments on the Authority to Issue Regulations Regarding EFH Coordination, Consultation, and Recommendations

Comment A: A number of non-fishing industry groups questioned NMFS' authority to establish procedures by regulation for the EFH coordination, consultation, and recommendation process. These commenters questioned the need for such procedures and asserted that the Magnuson-Stevens Act does not authorize NMFS to establish requirements for other agencies as part of the EFH consultation process.

Response A: NMFS addressed similar comments in the preamble to the interim final rule at 62 FR 66542, and continues to maintain that it has the authority to issue regulations to implement the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Section 305(d) of the Magnuson-Stevens Act confers upon the Secretary the authority to promulgate such regulations as may be necessary to carry out any provision of the Act. Regulations are necessary to implement Sections 305(b)(1)(D) and 305(b)(2)-(4) of the Magnuson-Stevens Act so that all affected parties will understand the Secretary's interpretation of these sections of the Act and the processes and information needs associated with carrying out the specific statutory requirements. Without such regulations, there likely would be considerable confusion, inconsistency, and inefficiency amongst Federal agencies, state agencies, Councils, and NMFS regarding the implementation of these sections of the Act.

Comment B: Several non-fishing industry groups identified specific provisions of the interim final rule that they believed illustrate that NMFS has exceeded its authority. With regard to the preparation of EFH Assessments, some commenters said that the Magnuson-Stevens Act gives NMFS no authority to require other agencies to provide specific information or otherwise prescribe how they should consult with NMFS regarding EFH. Some commenters felt that EFH consultations can be addressed through existing environmental review processes under other laws (such as the National Environmental Policy Act) with no additional EFH-specific information. Some commenters said that the requirement for a finding by NMFS is not authorized by the Magnuson-Stevens Act and should not be necessary before an existing environmental review process can be used for EFH consultations. Others said

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that it is inappropriate for NMFS to suggest time frames that Federal agencies should follow as part of the EFH consultation process. A few commenters said NMFS has no authority to require other agencies to use the best scientific information available regarding potential adverse effects of an action on EFH, suggesting that action agencies may simply notify NMFS of proposed actions and leave the evaluation to NMFS.

Response B: Subpart K of the regulations details the procedures and information determined by the Secretary to be necessary to carry out the specific requirements of Sections 305(b)(1)(D) and 305(b)(2)-(4) of the Magnuson-Stevens Act in an efficient and effective manner. As noted in the preamble to the interim final rule at 62 FR 66542, information in an EFH Assessment is necessary to enable NMFS to fulfill its statutory requirement to provide EFH Conservation Recommendations to Federal agencies. This cooperative exchange of information and recommendations between NMFS and Federal agencies is vital for effective consultation regarding actions that may adversely affect EFH, and is inherent in the requirement for Federal agencies to consult with NMFS.

The Magnuson-Stevens Act does not provide for an exemption from EFH consultations if another environmental review is required for an action, and other environmental reviews generally do not address specific habitat considerations for managed species of fish and shellfish. However, NMFS encourages Federal agencies to combine EFH consultations with other environmental reviews. When Federal agencies choose this approach to EFH consultation, the regulations require a finding by NMFS that the selected process provides specific EFH-related information in a timely way. A finding is necessary to ensure that consultations are implemented effectively and efficiently. It is appropriate for NMFS to require the EFH Assessment information and a finding because otherwise consultations using different environmental review processes might not fulfill the requirements of Section 305(b)(2) of the Magnuson-Stevens Act.

The final rule continues to provide time frames for abbreviated and expanded consultation, and continues to include language allowing NMFS and a Federal action agency to agree to use a compressed schedule in cases where shorter time frames are appropriate. The inclusion of time frames in the regulations helps to make consultations efficient, and NMFS recognizes the need to be flexible when consultation using those time frames is not practicable for other agencies.

Regarding the requirement for Federal agencies and NMFS to use the best available scientific information, NMFS' intent is to promote an open exchange of information regarding the effects of actions on EFH. Federal agencies may have scientific information about their actions that is not readily available to NMFS, so providing this information will help to make consultations efficient.

Comment C: A national association involved in the construction trades requested that NMFS rescind or suspend the consultation and coordination provisions of the interim final rule until an open, constructive dialog has occurred with all interested parties.

Response C: NMFS has provided numerous opportunities for constructive dialog as part of this rulemaking. NMFS held five public comment periods, 21 public meetings, and numerous briefings and meetings with individual groups, including representatives of the construction trades and other non-fishing industries. NMFS received many written comments as well as extensive verbal feedback from these groups and others interested in the EFH regulations, and NMFS has carefully considered these comments. Based in part on this productive exchange of information, NMFS decided to proceed with the final rule.

23. Comments on Coordination for the Conservation and Enhancement of EFH

Comment: One commenter criticized the section of the interim final rule that says NMFS will compile and make available to other agencies information on the locations of EFH, and that NMFS will provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. The commenter said there is no authority for what the commenter characterized as NMFS' aggressive provision of information to other agencies, and implied that NMFS is seeking to reopen approved Federal programs. The same commenter said that the final rule should allow for public access to the information NMFS provides to Federal agencies under this section of the regulations.

Response: Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with and provide information to other Federal agencies to further the conservation and enhancement of EFH. The interim final rule addressed this requirement by stating that NMFS would provide pertinent information to Federal and state agencies. NMFS does not consider this to be improper; rather, it is an attempt to promote awareness of EFH and opportunities for conservation of EFH, as required by the Act. The final rule clarifies that EFH consultation is not required for Federal actions that were completed prior to the approval of EFH designations by the Secretary. The final rule also states that NMFS will make available to Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions.

24. Comments on Federal Actions Subject to EFH Consultation

Comment A: One commenter, concerned about potentially large workload requirements on Councils, NMFS, and action agencies, recommended that NMFS restrict the consultation requirements to those actions that will adversely affect EFH, rather than those that may. The commenter also recommended that NMFS establish realistic procedures and requirements for EFH consultation.

Response A: The Magnuson-Stevens Act requires Federal agencies to consult on any action that may adversely affect EFH, and NMFS cannot change this requirement by regulation. The final rule clarifies the approaches for conducting EFH consultation and simplifies the development of General Concurrences to improve the efficiency of the consultation process.

Comment B: One commenter recommended that the taking of species under special permits, such as for research and monitoring, not be subject to consultation. Another commenter recommended that projects designed to restore, improve, or protect fish habitat be excluded from consultation.

Response B: Any Federal action that may adversely affect EFH requires consultation, and NMFS cannot grant waivers for specific types of actions. The action agency must determine whether the approved action may adversely affect EFH and, if so, consult with NMFS. Not all activities result in adverse effects on EFH. Research or monitoring activities may cause no adverse effects at all, or may result in minimal impacts that could be addressed through a General Concurrence. Restoration or similar projects for beneficial purposes may still result in habitat disruption or alteration, both short- and long-term, and are subject to consultation if they may adversely affect EFH. In such cases, consultation provides an opportunity for NMFS to make EFH Conservation Recommendations to reduce or eliminate any adverse effects.

Comment C: One commenter requested clarification on how NMFS intended to handle consultations regarding Federal programs delegated to states.

Response C: The rule requires consultation on Federal programs delegated to non-Federal entities at the time of delegation for those programs that result in activities that may adversely affect EFH. For programs that were delegated prior to the approval of EFH designations by the Secretary, EFH consultation is required when the delegation is reviewed, renewed, or revised. The delegation itself, and any review, renewal, or revision of the delegation, are Federal actions, and the Federal agency may consult with NMFS using any of the approaches for conducting consultation (§ 600.920(a)(2)) applicable for a particular delegation. Such consultations can be performed on a national or regional basis, as appropriate.

Comment D: Three commenters questioned the guidance on actions requiring EFH consultation, and specifically the guidance regarding consultation for existing or completed actions. One specifically requested clarification regarding the need for consultation on Federal reviews of actions.

Response D: The final rule clarifies that EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary. In addition, the rule clarifies that consultation is required on renewals, reviews, or substantial revisions of actions only if the renewal, review, or revision may adversely affect EFH.

Comment E: One non-fishing industry trade association commented that in many cases there are statutory constraints on Federal delegations of authority to states that may prevent the delegating agency from addressing other concerns, such as EFH. The commenter said that such actions therefore should not be subject to EFH consultation.

Response E: Federal agency delegations are subject to consultation if they may adversely affect EFH, regardless of whether the agency has the discretion to condition the delegation. Many agencies provide for interagency review of these actions specifically to incorporate other concerns, and condition the delegations accordingly. If a particular agency is incapable of addressing such concerns because of statutory constraints, such information should be provided as part of the EFH Assessment during consultation. Additionally, the final rule retains a provision that NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

Comment F: One commenter representing agricultural interests said that NMFS should establish a causal link between agricultural practices and effects to EFH before requesting consultation or providing EFH Conservation Recommendations. The commenter expressed concern that there is no clear threshold of significance or likelihood of adverse effect on EFH to trigger consultation or recommendations from NMFS or a Council.

Response F: The Magnuson-Stevens Act contains no requirement for definitive proof of an adverse effect to EFH before triggering the requirements for consultation and recommendations. Section 305(b)(2) of the Act requires Federal agencies to consult with the Secretary regarding any action or proposed action that may adversely affect EFH. Section 305(b)(3) of the Act authorizes Councils to comment on any Federal or state agency action that may affect the habitat, including EFH, of a fishery resource under Council jurisdiction, and requires such comments when a Council believes the action would substantially affect the habitat of an anadromous fishery resource. Section 305(b)(4)(A) of the Act requires NMFS to provide conservation recommendations for any Federal or state agency action that would adversely affect EFH.

Comment G: One sport diving association expressed concern about the loss of artificial reefs, jetties, shipwrecks, and other shoreline fish habitat as a result of large-scale sand replenishment projects and recommended a number of measures to address these concerns through the EFH consultation process.

Response G: If artificial structures are identified as EFH in a fishery management plan, NMFS will address potential adverse effects through the consultation process.

25. General Comments on the Coordination, Consultation, and Recommendation Procedures

Comment A: A number of non-fishing industry commenters said that the interim final rule creates a duplicative regulatory review process and recommended that NMFS exempt all activities currently subject to habitat review under other statutes from EFH consultations.

Response A: The Magnuson-Stevens Act requires consultation on all Federal actions that may adversely affect EFH. While other laws also have environmental review requirements, no other mandate specifically evaluates potential adverse effects on habitats for commercially and recreationally important species of fish. Section 2(b) of the Act states that one of Congress' purposes was "to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat." Therefore, an important purpose of EFH consultations is to provide information to action agencies to ensure consideration of potential impacts to EFH. NMFS has no authority to exempt any Federal actions from the consultation requirements, but has provided flexibility in the rule to combine EFH consultations with other environmental reviews to avoid duplication.

Comment B: Two non-fishing interests suggested that EFH consultation provides little benefit given the comprehensive protections already in place through other environmental review processes.

Response B: Congress indicated through the EFH provisions of the Magnuson-Stevens Act that existing environmental reviews are not adequate for the conservation and management of fishery resources of the United States. Direct and indirect habitat losses have been and continue to be serious threats to the long-term sustainability of many fisheries. Fish habitat has received limited consideration in the assessment of environmental impacts for activities authorized or supported by Federal agencies. The EFH provisions enable NMFS to work cooperatively with other agencies to promote the conservation of EFH.

Comment C: Four non-fishing industry organizations recommended that the final rule make clear that EFH consultations are an information exchange process, not a separate regulatory review, and may be documented in an informal manner. A separate forestry association commenter recommended that EFH consultations be verbal since they are not binding.

Response C: NMFS disagrees with these suggestions. The EFH provisions of the Magnuson-Stevens Act require more than a simple information exchange. Federal agencies must consult with NMFS regarding actions that may adversely affect EFH and must provide detailed written responses to NMFS' EFH Conservation Recommendations. An informal process without documentation would not fulfill these

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statutory requirements. Moreover, documenting EFH consultations in writing reduces the chances for errors and misunderstandings.

Comment D: One commenter suggested that NMFS write a clear explanation about the minimum steps an action agency must take to comply with this rule.

Response D: The final rule simplifies and more clearly explains the approaches for conducting EFH consultations, the level of detail and mandatory contents of an EFH Assessment, the preparation of General Concurrences, and the process for programmatic consultations. Because the rule provides flexibility for Federal action agencies to choose a particular consultation approach depending on the nature and scope of the actions that may adversely affect EFH and the opportunities for combining EFH consultation with other environmental review procedures, there is no single set of minimum steps.

Comment E: One Federal agency recommended that the final rule contain a provision allowing more flexibility regarding the timing for notification and consultation through the use of memoranda of agreement at the field level.

Response E: NMFS disagrees that memoranda of agreement are necessary. However, the final rule retains language allowing Federal agencies to combine EFH consultations with other environmental reviews, and specific time frames may be developed in findings signed by NMFS at the regional level. In cases where EFH consultation is handled separately through abbreviated or expanded consultation, the rule also allows NMFS and action agencies to use a compressed schedule, which may be agreed upon at the field level.

Comment F: One commenter expressed a need for greater clarification regarding the EFH and ESA consultation requirements and recommended a single point of contact for both programs.

Response F: NOAA is implementing a one-stop-shopping approach to coordinate EFH, ESA, and other consultative requirements in an efficient and effective manner. As part of this approach NOAA staff will assist other agencies and the public in meeting all applicable NOAA consultative requirements, which in many cases (but not all) will mean that there is one principal NOAA point of contact. In addition, the interim final rule encouraged consolidating EFH consultations with other environmental reviews and incorporating EFH Assessments into documents prepared for other purposes, such as ESA biological assessments. This language has been retained in the final regulations.

Comment G: Several states and non-fishing interests asked for clarification on how to meet the EFH requirements, including meshing multiple state and Federal environmental reviews when undertaking activities with Federal permits or funding. These commenters wanted the EFH requirements combined with existing Federal and state environmental programs.

Response G: The final rule retains provisions from the interim final rule that encourage Federal agencies to consolidate EFH consultations with other environmental reviews. Further details on the operational procedures for combining EFH consultations with other environmental reviews should be provided in findings developed by NMFS pursuant to § 600.920(f)(3) (renumbered from § 600.920(e)(3) in the interim final rule). NMFS has developed over 40 such findings with Federal agencies to date. Regarding NMFS' EFH Conservation Recommendations to state agencies, the rule continues to state that NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

Comment H: Two commenters recommended that the final rule provide clarification on how NMFS and the Councils will coordinate in developing recommendations on Federal and state actions to ensure that agencies are not forced to choose between NMFS and Council recommendations.

Response H: The final rule includes a new subsection (§ 600.925(d)) stating that NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment and that NMFS will share pertinent information with the Council on such actions. However, Councils have independent authority under section 305(b)(3) of the Magnuson-Stevens Act to comment on Federal and state actions.

Comment I: One commenter recommended that the rule be strengthened to prevent the segmentation of approvals for a single overall project in a specific geographic area that includes EFH.

Response I: NMFS has no authority to prevent or restrict project approvals by other agencies. Under most circumstances, approaching project approvals in a piecemeal fashion is contrary to the environmental assessment requirements of statutes such as the National Environmental Policy Act and Clean Water Act, which call for the review of single and complete projects versus the sequential review of smaller phases of a larger project.

Comment J: Several environmental organizations expressed concern that there will be instances where an action should not go forward because its adverse impacts are so significant. These commenters expressed particular concern for actions that have no available alternatives and for which mitigation will not eliminate significant adverse impacts.

Response J: Section 305(b)(4)(A) of the Magnuson-Stevens Act directs NMFS to provide EFH Conservation Recommendations to Federal or state agencies on actions that would adversely affect EFH. The EFH Conservation Recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. NMFS could recommend that a particular Federal action should not be allowed. However, NMFS will not ask state or Federal agencies to take actions beyond their statutory authority and EFH Conservation Recommendations are not binding.

26. Comments Regarding Participation in the Consultation Process

Comment A: One Federal agency commenter advocated its participation as an active technical team member in the process of developing EFH consultative procedures.

Response A: NMFS will continue to work closely with Federal agencies when developing agency-specific procedures for EFH consultation, such as findings regarding the use of existing environmental review processes to handle EFH consultations.

Comment B: One commenter requested clarification regarding the types of entities that a Federal agency may designate as a non-Federal representative for EFH consultation purposes, and expressed concern about the potential resource expenditures for non-Federal representatives to perform these duties.

Response B: The rule places no restrictions on which entities a Federal agency may designate as non-Federal representatives for EFH consultation purposes. However, the Federal agency remains ultimately responsible for compliance with the EFH consultation provisions of the Magnuson-Stevens Act, including any costs associated with consultation. Federal agencies can reduce costs and maximize the efficiency of required environmental analyses by combining EFH consultations with other environmental reviews.

Comment C: Two non-fishing industry associations recommended that the rule provide an opportunity for Federal permit applicants to be involved in EFH consultations, beyond the possibility of designation as a non-Federal representative. One of these commenters said that NMFS should provide public notices of consultations, individual notices to stakeholders that are likely to be affected, and opportunities for affected stakeholders to request a hearing following the issuance of any recommendations.

Response C: The Magnuson-Stevens Act requires that Federal agencies consult on actions that may adversely affect EFH. Permit applicants and other parties are under no such obligation and should confer with the applicable action agency to identify any opportunities for their involvement. It is not appropriate to provide public or personalized notices of consultations or opportunities for hearings regarding EFH Conservation Recommendations because the recommendations from NMFS are advisory in nature and because these additional steps would be inefficient, time consuming, and beyond the statutory requirements for EFH consultation.

27. Comments on EFH Assessments

Comment A: A large number of environmental groups and individual commenters wanted NMFS to retain in the regulations the requirement to prepare an EFH Assessment. Similarly, these commenters wanted the final rule to ensure that EFH Assessments are required for Federal land-based actions that may adversely affect EFH. These commenters argued that the EFH Assessment is a necessary and appropriate mechanism to evaluate effects to EFH during the consultation process.

Response A: The final rule maintains the requirement to prepare an EFH Assessment for any Federal action that may adversely affect EFH, regardless of whether the action is land-based or directly within waters designated as EFH. For actions covered by a General Concurrence, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation.

Comment B: Many commenters addressed the required contents of an EFH Assessment. Many environmental groups and individual commenters asked that NMFS expand the required contents of an EFH Assessment to include mitigation measures, but some cautioned that the effectiveness of many mitigation measures is unproven. Many of the commenters thought the EFH Assessment should include the additional information requirements in § 600.920(g)(3) of the interim final rule if available rather than just "if appropriate." Several commenters wanted to know when the inclusion of additional information is needed and whether it related to the need for expanded consultation. One Fishery Management Council believed that a literature review should be included in the mandatory contents of an EFH Assessment.

Response B: The final rule clarifies that the level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the Federal action. Relatively simple actions involving minor adverse effects on EFH may have very brief EFH Assessments. Actions that pose a more serious threat to EFH, or involve more complex potential adverse effects, warrant a more detailed EFH Assessment. Since an expanded consultation is meant to address actions with substantial adverse effects, in many cases it would be appropriate for expanded consultations to include the additional information in an EFH Assessment. However, there also may be cases where some of the additional information (e.g., an alternatives analysis) is warranted for an abbreviated consultation. The level of information in an EFH Assessment depends on the action, and it is not appropriate to require additional information such as literature reviews and the results of on-site inspections for every EFH Assessment.

Comment C: An industry association representing non-fishing interests wanted clarification on whether project applicants would be required to support a more detailed evaluation and incur the costs of developing Level 3 or 4 data when EFH had been identified by Level 1 or 2 data.

Response C: The description of data levels in the rule notes the type of information that the Councils will use to describe and identify EFH, whereas EFH Assessments do not require data collection for the purposes of identifying and describing EFH. The consultation requirements of the regulations apply to the Federal action agency and neither the action agency nor project applicant will be asked to collect Level 3 or 4 data as a consultation requirement. The Federal agency, however, might in some cases request information from the applicant for a Federal permit, license, or grant when the agency is completing an EFH Assessment.

Comment D: One commenter thought a written EFH Assessment should be required only when an existing environmental review procedure could not be used and indicated that otherwise the EFH Assessment requirement would be too burdensome.

Response D: The final rule maintains the requirement to prepare a written EFH Assessment for every Federal action that may adversely affect EFH. As described in the preamble to the interim final rule at 62 FR 66543, to promote efficiency, when existing environmental review processes are available the EFH Assessment should be integrated into the same processes and documents that are used to satisfy other review requirements. NMFS encourages the use of existing environmental review procedures, but such procedures must include the information that comprises an EFH Assessment to support the consultation requirement set forth in section 305(b)(2) of the Magnuson-Stevens Act.

Comment E: Some commenters wanted the final rule to reflect that a prior EFH Assessment could only be incorporated by reference into a new EFH Assessment if the Council(s) and NMFS determine it is adequate.

Response E: Prior approval from NMFS or a Council is not necessary before a Federal agency incorporates by reference a completed EFH Assessment from another action. However, to make consultations efficient and to avoid requests for additional information, NMFS encourages action agencies to ensure that EFH Assessments include all necessary information.

Comment F: One commenter cited the provision of the interim final rule regarding additional information that should be included in EFH Assessments, and recommended deleting the language that encouraged providing an alternatives analysis "particularly when an action is non-water dependent." Furthermore, this commenter thought nothing in the Magnuson-Stevens Act suggests that non-fishing, non-water dependent activities should be covered by the rule.

Response F: NMFS has deleted the reference to non-water dependent

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activities from this section of the regulations because water dependency is not necessarily a more important consideration than others in determining the need for an alternatives analysis. NMFS disagrees, however, with the commenter's assertion that non-water dependent activities should not be covered by the rule. Section 305(b)(2) of the Magnuson-Stevens Act requires consultation for any federal action that may adversely affect EFH and does not distinguish between water and non-water dependent activities.

Comment G: A commenter asked NMFS to explain a statement in the response to comments on EFH Assessments in the preamble to the interim final rule at 62 FR 66545, which said that an action agency's conclusions regarding a potential adverse impact should be "well supported by relevant research." The commenter asked that NMFS use the same standard when making EFH Conservation Recommendations.

Response G: The final rule contains additional language to clarify that the level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the federal action. Simple actions involving minor adverse effects on EFH would not necessitate that an action agency's conclusions be documented by citations to relevant research, whereas more complex actions and more detailed EFH Assessments could benefit from a review of pertinent literature. NMFS agrees that its EFH Conservation Recommendations must be based on the best scientific information available, and has modified § 600.920(d) accordingly.

28. Comments on the Use of Existing Consultation or Environmental Review Procedures

Comment A: One commenter stated that it was not NMFS' responsibility to make the implementation of all Federal laws more efficient.

Response A: In emphasizing the use of existing environmental review processes for EFH consultation, NMFS seeks to make more efficient the implementation of the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act, not all Federal laws.

Comment B: Many commenters expressed concern about significant project delays due to the requirements for EFH consultation, and argued that EFH consultation should occur within the normal approval times established by Federal agencies for their authorizations. Some of these commenters said that NMFS does not have the authority to set or influence time frames for EFH consultations.

Response B: The EFH regulations include numerous provisions to make EFH consultations efficient and effective, such as the use of existing environmental review procedures, General Concurrences, programmatic consultations, and options for using compressed schedules for abbreviated or expanded consultation. Regardless of the approach used for EFH consultation, NMFS will strive to provide its EFH Conservation Recommendations to action agencies within the normal public or agency comment periods for proposed actions.

Federal agencies are required by section 305(b)(2) of the Magnuson-Stevens Act to consult with the Secretary regarding actions that may adversely affect EFH. Section 305(d) of the Act authorizes the Secretary to promulgate such regulations as may be necessary to implement any provision of the Act. Accordingly, NMFS may establish time lines it considers appropriate to provide adequate notification and coordination regarding proposed actions and to allow sufficient time to prepare EFH Conservation Recommendations for actions that would adversely affect EFH. The rule allows NMFS and Federal agencies to agree to compressed consultation schedules in certain situations. In addition, existing environmental review processes may be used that allow shorter time frames for EFH consultation.

Comment C: Numerous individuals and ten conservation and fishery organizations stated that the regulatory language in the interim final rule for the use of existing environmental review procedures was adequate and should not be changed. Another two commenters requested that procedures for use of existing environmental review processes not be changed until additional experience has been gained with the use of these processes to determine whether they meet the requirements of the law.

Response C: The final rule includes only minor changes to the regulations regarding use of existing processes for EFH consultations. The changes are not substantive and are intended to clarify this portion of the rule.

Comment D: Numerous individuals and ten conservation and fishery organizations expressed concern that a specific review of potential impacts of activities that may adversely affect EFH was critical, and that NMFS should not rely wholly on other environmental review processes.

Response D: NMFS agrees, and the final rule clarifies that Federal agencies must provide NMFS with a written assessment of the effects of any action that may adversely affect EFH. While agencies may incorporate an EFH Assessment into documents prepared under another environmental review process, the assessment must still include all of the required information specified in the rule, which will ensure specific consideration of potential impacts to EFH. The final rule also explains that the level of detail in the EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse impacts on EFH.

Comment E: Three commenters recommended that the final rule require (rather than encourage) the use of existing environmental review processes for EFH consultations.

Response E: While NMFS strongly encourages the use of existing processes and has signed more than 40 findings to date with various Federal agencies at both the national and regional levels, the use of existing processes is not appropriate in all situations. An action may be so unique or infrequent that a stand-alone EFH consultation is the most efficient approach to meet the statutory requirements, or a Federal agency may prefer to complete EFH consultation prior to initiating another required consultation (e.g., under ESA). In addition, other approaches to EFH consultation, such as programmatic consultations and General Concurrences, may be more efficient for certain categories of actions.

Comment F: Three fishery or conservation organizations recommended that the rule be modified such that when using an existing process to complete EFH consultation, Federal agencies are required to notify NMFS of a proposed action according to the same time frames as in the existing process or 60–90 days prior to final agency action, whichever provides greater notice.

Response F: The final rule specifies that existing processes must provide NMFS with timely notification and states that whenever possible NMFS should have at least 60 days notice prior to a final decision, or at least 90 days if the actions would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter time frames provided they allow sufficient time for NMFS to develop EFH Conservation Recommendations. Any use of an existing environmental review process for EFH consultation requires that NMFS determine that the existing or modified process satisfies the requirements of the Magnuson-Stevens Act, and if so, make a finding before the process may be used for EFH consultation. NMFS will not make findings for existing processes that do not provide adequate time to conduct EFH consultations.

Comment G: One commenter remarked that the rule sets forth extremely stringent criteria for the use of existing environmental review processes for EFH consultations, such that no existing processes are likely to meet these criteria and all will have to be modified significantly to satisfy the requirements.

Response G: Based on NMFS' experience implementing the interim final rule, this has proven not to be the case. To date NMFS has signed more than 40 findings with Federal agencies at both the regional and national level to use existing processes for EFH consultation. Numerous EFH consultations have been completed using a variety of other review processes pursuant to the National Environmental Policy Act; Clean Water Act; Rivers and Harbors Act; Marine Protection, Research, and Sanctuaries Act; Fish and Wildlife Coordination Act; and Endangered Species Act.

Comment H: One commenter supported the use of existing procedures but noted that their use does not mean that no additional resources or time would be needed to comply with the EFH consultation requirements, because existing procedures may not have considered the specific factors involved in addressing adverse affects to EFH.

Response H: NMFS agrees. Congress declared in section 2 of the Magnuson-Stevens Act that habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States and noted that a purpose of the Act is to promote the protection of EFH in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. The statutory mandates for Federal agencies to consult on activities that may adversely affect EFH and to respond to NMFS' EFH Conservation Recommendations were intended as new requirements. NMFS designed the approaches to EFH consultation detailed in the final rule to implement the EFH provisions in an efficient manner, using existing processes and other mechanisms to minimize additional workload.

29. Comments on the Use or Development of General Concurrences and/or Programmatic Consultations

Comment A: Two commenters asked NMFS to provide an update in the preamble to the final rule on the number of General Concurrences and programmatic consultations completed under the interim final rule and the overall status of NMFS' efforts to encourage the use of these two approaches to EFH consultations.

Response A: NMFS has completed one General Concurrence and five programmatic consultations to date. The General Concurrence applies to actions authorized by the Army Corps of Engineers New England District via programmatic general permits under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. The programmatic consultations cover certain Minerals Management Service petroleum development activities in the central and western Gulf of Mexico; certain Corps of Engineers nationwide permits; actions authorized by the Corps of Engineers Alaska District under general permits associated with the Anchorage Wetlands Management Plan; actions authorized by the Corps of Engineers Alaska District under general permits for water, wastewater, and sanitation facilities in Alaskan villages; and land management activities undertaken by the Bureau of Land Management and the Forest Service with the Oregon Coast, Lower Columbia River, and Willamette River Provinces of Oregon. NMFS is discussing several more General Concurrences and programmatic consultations with Federal agencies, and continues to advocate the use of these approaches to help reduce the number of actions that require individual consultations.

In the course of working with Federal agencies to identify opportunities for developing General Concurrences and programmatic consultations, it became apparent to NMFS that some parties were confused about the distinction between these two approaches to EFH consultation. General Concurrences may be developed for categories of similar actions that would cause no more than minimal adverse effects on EFH individually or cumulatively. No further consultation is generally required for actions that fall within a General Concurrence. Programmatic consultations also cover categories of actions, but are not limited to actions with minimal effects on EFH and may result in identifying effects that need to be addressed separately through project-specific consultation. To help clarify the difference between General Concurrences and programmatic consultations, and to provide clearer guidance on how to conduct programmatic consultations, the final rule discusses programmatic consultations in a distinct section.

NMFS also discovered through implementing the interim final rule that although General Concurrences are meant to be an efficient way of dispensing with consultations on actions that have minimal adverse effects, the process for issuing General Concurrences has actually hindered their development. The interim final rule required NMFS to consult with the appropriate Council(s) and provide an opportunity for public review prior to issuing a General Concurrence. These requirements stemmed from comments NMFS received on the Framework and proposed rule expressing concern that General Concurrences might allow more than minimal adverse effects to EFH without some degree of oversight.

For the General Concurrence that NMFS completed, NMFS coordinated with the affected Councils. However, NMFS found the process to be cumbersome and not very beneficial. Council meeting agendas are often very full, and because General Concurrences are intended to address minor threats to EFH, the Councils did not view the proposed General Concurrence as a high priority and were not able to accommodate it immediately on their meeting agendas. Also, a discussion of the proposed General Concurrence could not be added to Council agendas at the last minute if time permitted because the Magnuson-Stevens Act does not allow additions to Council meeting agendas without public notice or within 14 days before a meeting. Since Councils meet relatively infrequently, this led to delays. After NMFS briefed the Councils, NMFS sought public comment through Council meetings and a **Federal Register** notice, but received no comments. In other cases nationwide, NMFS considered developing General Concurrences but deferred action because the time-consuming process of soliciting Council and public input led to potential General Concurrences being eclipsed by other EFH priorities. In summary, while the intent behind General Concurrences was to improve efficiency and allow NMFS and other agencies to focus more effort on actions posing a greater threat to EFH, the cumbersome process of issuing General Concurrences has discouraged their use, with little

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apparent benefit in terms of public and Council review.

NMFS modified the regulations to address these procedural inefficiencies while still keeping the public and Councils informed regarding General Concurrences. The final rule omits the requirements for public review and consultation with the appropriate Council(s), but contains a new provision stating that after completing a General Concurrence NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means. The final rule retains language allowing NMFS to review and revise General Concurrences as needed, so NMFS can make adjustments if necessary to ensure that General Concurrences only cover actions with minimal adverse effects to EFH.

Comment B: One conservation group commented that programmatic consultations do not ensure that individual projects or actions will be designed to minimize adverse effects, and thus consultation should occur at both the programmatic and project-specific level. Another organization commented that General Concurrences should not be used as an excuse to avoid project-specific consultations.

Response B: Neither programmatic consultations nor General Concurrences may be used to avoid abbreviated or expanded consultation if an action warrants individual review to evaluate potential adverse effects to EFH. The final rule clarifies that for a programmatic consultation, NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and will identify any potential adverse effects that require project-specific consultation because they could not be addressed programmatically. In some cases, however, it may be possible to address all reasonably foreseeable adverse effects to EFH with programmatic recommendations, so there would be no need for consultation on individual actions taken as part of the program. Likewise, General Concurrences can only be used for specified actions that have no more than minimal adverse effects on EFH, and any action that does not meet that standard would require separate consultation.

Comment C: One commenter asked for clarification of the programmatic consultation process.

Response C: NMFS agrees that clearer guidance is warranted for the programmatic consultation process. The final rule discusses programmatic consultation in a distinct subsection of § 600.920 to allow easier comparison to the other approaches to conducting EFH consultations, and provides more detail on the purpose of and process for programmatic consultations.

Comment D: One commenter said the process for developing General Concurrences is vague and may be burdensome.

Response D: As discussed above, NMFS discovered through implementation that the process in the interim final rule for developing General Concurrences was more complicated and time-consuming than NMFS intended. The final rule simplifies and clarifies this process by removing the requirements for public review and consultation with the appropriate Council(s).

Comment E: Many commenters said that NMFS should develop General Concurrences or programmatic consultations to cover actions related to the specific industries or activities in which the commenters are engaged, such as port development and operations, forest products, and petroleum development. Some of these commenters asked for clarification of proponents' responsibilities when advancing such a request.

Response E: The development of a General Concurrence or programmatic consultation is initiated by NMFS or a Federal agency, although other interested parties may bring to the attention of NMFS or a Federal agency specific types of actions that might be appropriate for one of these categorical approaches to EFH consultation. Affected industries or other groups are not required to provide specific information in support of such a request, although specificity regarding the actions to be covered and their potential effects to EFH would help NMFS and the action agency evaluate such proposals.

Comment F: A few commenters addressed the standards for determining whether a General Concurrence is appropriate for a given suite of actions. Two of these commenters asked for clarification of the standard that General Concurrences may be used for actions that would not cause greater than minimal adverse effects on EFH individually and cumulatively. A Federal agency recommended that NMFS should determine before issuing a General Concurrence not only that the actions would cause no more than minimal adverse effects, but also that coastal ecosystem health, including EFH, will generally benefit as a result of the Federal actions.

Response F: Given the wide variety of Federal actions that could adversely affect EFH, NMFS decided that rather than defining "minimal adverse effects" in the rule, it is best to determine separately for each contemplated General Concurrence whether the actions would cause greater than minimal adverse effects on EFH individually and cumulatively. In general terms, however, minimal effects are those that can be considered negligible in terms of their impact on the quality or quantity of EFH due to their limited scope and/or duration. Since EFH consultation covers effects to EFH specifically rather than effects to coastal ecosystems in general, it is not appropriate to state in the rule that General Concurrences must benefit coastal ecosystem health.

Comment G: One commenter said that it should be up to the Federal action agency to determine whether programmatic consultation is appropriate for a given circumstance, and suggested that it is improper for NMFS to tell Federal agencies how to consult.

Response G: NMFS disagrees. NMFS must determine what type of EFH consultation is appropriate for any given Federal action or group of actions so that NMFS can ensure the consultation is consistent with the Secretary's interpretation of the requirements of section 305(b)(2) of the Magnuson-Stevens Act. It is important to select the appropriate approach to EFH consultation so that the exchange of information between NMFS and the Federal agency considers potential effects to EFH at a suitable level of detail, resulting in NMFS having the information necessary to provide EFH Conservation Recommendations as required by section 305(b)(4)(A) of the Magnuson-Stevens Act. If a Federal agency attempts to use a method of consultation that NMFS determines is inappropriate for a given action or actions, NMFS will advise the agency as to which approach is best suited to handle the action(s). If a Federal agency nevertheless fails to consult properly for actions that would adversely affect EFH, NMFS will provide EFH Conservation Recommendations based on the information available.

Comment H: One commenter suggested that NMFS provide an example to illustrate how a Federal agency would track actions taken under a General Concurrence, as called for in the interim final rule. The commenter also recommended that the final rule require, rather than just suggest, annual reporting from each action agency.

Response H: Tracking actions covered by a General Concurrence is necessary to ensure that the cumulative effects of the actions are no more than minimal. The final rule retains language from the interim final rule stating that tracking should include the number of actions taken under a General Concurrence, the amount and type of habitat adversely affected, and the baseline against which the actions will be tracked. For example, for a particular General Concurrence tracking could entail a Federal agency providing NMFS with periodic reports specifying this information, comparing the condition of the EFH prior to the actions with its condition after the actions, and providing any revised estimates of the number or location of actions expected during the next reporting period. The final rule does not require such reporting on an annual basis because there may be circumstances where reporting on another time cycle would be equally effective.

Comment I: One commenter said that General Concurrences should also apply to Councils, so that Councils would not comment on individual Federal actions for which a General Concurrence has been issued.

Response I: General Concurrences are a means of obviating the need for Federal agencies to consult with NMFS individually on specified types of actions that would cause no more than minimal adverse effects on EFH. The Magnuson-Stevens Act does not require Federal agencies to consult with Councils regarding EFH, and General Concurrences do not apply to comments from Councils on Federal actions. As discussed above, the final rule modifies the process for NMFS to coordinate with Councils regarding the development of General Concurrences. NMFS will provide a copy of all General Concurrences to the appropriate Council(s). If the Councils agree that the actions covered by a General Concurrence would have no more than minimal adverse effects on EFH, it is unlikely that the Councils would comment on those actions. However, Councils have independent authority under section 305(b)(3) of the Magnuson-Stevens Act to comment on federal and state agency actions that may affect the habitat of fishery resources under Council jurisdiction.

30. Comments on the Expanded Consultation Process

Comment: Several commenters representing non-fishing interests wanted NMFS to clarify the thresholds for conducting EFH consultations and EFH expanded consultations. The commenters wanted NMFS to define the "substantial adverse effects" standard for actions requiring expanded consultation, and wanted examples of federal actions that would result in expanded consultation. Also, one commenter wanted to know who would be responsible for the costs of completing an EFH Assessment if an expanded consultation was required.

Response: Section 305(b)(2) of the Magnuson-Stevens Act requires federal agencies to consult with NMFS when any Federal action may adversely affect EFH. The EFH regulations require expanded consultation for Federal actions that would result in substantial adverse effects to EFH. Generally, the action agency determines the appropriate level of consultation, although if NMFS believes that a proposed action will have substantial adverse effects on EFH, NMFS may request expanded consultation. The determination of substantial adverse effects should be based on project-specific considerations, such as the ecological importance or sensitivity of an area, the type and extent of EFH affected, and the type of activity. Substantial adverse effects are effects that may pose a relatively serious threat to EFH and typically could not be alleviated through minor modifications to a proposed action. For example, a harbor development project that requires significant dredging and filling, channel realignments, or shoreline stabilization near EFH would likely be considered to have substantial adverse effects to EFH. Regardless of the type of consultation, the action agency is responsible for preparing an EFH Assessment.

31. Comments on Supplemental Consultation

Comment: Two commenters recommended that NMFS delete the section of the rule concerning supplemental consultation. One of these commenters said there is no provision in the Magnuson-Stevens Act to reopen a consultation. The other commenter thought this section was ambiguous and said that because of this provision action agencies and affected parties will not know whether consultations are final.

Response: The provision on supplemental consultation is a necessary and appropriate part of the regulations because it informs Federal agencies that changes to the factual basis behind a completed EFH consultation may warrant reinitiating the consultation. Supplemental consultation is not necessary unless a Federal agency substantially revises its plans for an action in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH Conservation Recommendations. It is reasonable to expect that a substantial change in circumstances may warrant review and potentially a change in EFH Conservation Recommendations.

32. Comments on NMFS' EFH Conservation Recommendations

Comment A: Several commenters asked for more information to clarify the role of EFH Conservation Recommendations. One commenter asked whether the recommendations NMFS will make on Federal or state actions that would adversely affect EFH are limited to the recommendations contained in FMPs for EFH conservation and enhancement. Another expressed confusion about the difference between EFH Conservation Recommendations and EFH Assessments.

Response A: The term "EFH Conservation Recommendations" in the final rule refers to recommendations provided by NMFS to a Federal or state agency pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS is required to provide these recommendations regarding any Federal or state agency action that would adversely affect EFH, and Federal agencies are required to provide a detailed written response to such recommendations under section 305(b)(4)(B) of the Act. Thus, EFH Conservation Recommendations have different legal connotations than other EFH-related recommendations called for under the Magnuson-Stevens Act, such as Council recommendations to Federal or state agencies under section 305(b)(3), or recommendations for EFH conservation and enhancement in FMPs pursuant to section 303(a)(7). The final rule capitalizes the term "EFH Conservation Recommendations" to help emphasize that these recommendations differ from other EFH-related recommendations discussed in the regulations.

EFH Conservation Recommendations are not limited to the recommendations contained in FMPs for EFH conservation and enhancement under section 303(a)(7) of the Act. For EFH consultations, NMFS' EFH Conservation Recommendations are based in part on EFH Assessments prepared by Federal agencies to describe the effects of agency actions on EFH.

Comment B: One commenter said that NMFS should release its EFH Conservation Recommendations in draft form and make them available for public comment before conveying the

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recommendations to a Federal or state agency.

Response B: NMFS disagrees. Providing a comment period on EFH Conservation Recommendations could result in delays for Federal and state agencies that may be relying on NMFS' input to decide on appropriate measures to avoid or minimize adverse effects to EFH. Moreover, since EFH Conservation Recommendations are non-binding, they do not impose restrictions on proposed actions. If an action agency agrees with NMFS' EFH Conservation Recommendations but determines that adopting the recommendations may result in substantial changes to a proposed action, the agency may be required to seek additional public input under other laws before taking a final action that incorporates NMFS' recommendations.

Comment C: Several commenters asked NMFS to clarify the process for providing EFH Conservation Recommendations to state agencies. Three of these commenters suggested that the final rule say specifically that state agencies are not required to consult with NMFS. A state regulatory agency asked for clarification as to when NMFS will provide EFH Conservation Recommendations to state agencies. The same agency asked whether NMFS and the Councils will provide recommendations by category of activity or adverse impact (e.g., dredging or filling) or on a case-by-case basis.

Response C: The final rule includes a clarification that the Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. The final rule retains language stating that NMFS will use existing coordination procedures or establish new procedures to identify state agency actions that may adversely affect EFH and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies. In general, NMFS will strive to provide EFH Conservation Recommendations as appropriate on individual actions during the agency or public comment period. Councils may provide general recommendations in FMPs by category of activity or adverse impact under section 303(a)(7) of the Magnuson-Stevens Act, and may comment on individual actions under section 305(b)(3) of the Act.

Comment D: A number of non-fishing industries commented that NMFS has little or no experience or expertise to evaluate non-fishing activities and provide recommendations.

Response D: NMFS has commented on a variety of non-fishing threats to fish habitat under the Fish and Wildlife Coordination Act, National Environmental Policy Act, and other statutes since the agency was established in 1970. NMFS comments on thousands of such activities every year. Under section 305(b)(4)(A) of the amended Magnuson-Stevens Act, NMFS now is required to provide conservation recommendations for any Federal or state agency action that would adversely affect EFH. While NMFS may not have extensive expertise on all such threats to EFH, the information provided by Federal agencies through the consultation process in EFH Assessments will help NMFS to understand potential adverse effects and develop appropriate EFH Conservation Recommendations.

Comment E: One commenter referenced the section of the interim final rule that said Federal agencies and NMFS must use the best scientific information available regarding the effects of proposed actions on EFH. The commenter said that NMFS should also use the best scientific information available to support its mitigation recommendations.

Response E: NMFS agrees and has modified the regulations to add that Federal agencies and NMFS also must use the best scientific information available regarding the measures that can be taken to avoid, minimize, or offset adverse effects on EFH.

33.Comments on Federal Action Agency Responsibilities After Receiving NMFS' EFH Conservation Recommendations

Comment A: Three commenters recommended that NMFS delete the provision requiring that Federal agency responses that are inconsistent with EFH Conservation Recommendations must include the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects. The commenters stated that NMFS has no authority to require a scientific justification, and pointed out that agencies may reject NMFS' recommendations on non-scientific grounds.

Response A: As noted in the preamble to the interim final rule at 62 FR 66546, section 305(d) of the Magnuson-Stevens Act gives the Secretary authority to issue regulations necessary to carry out any provision of the Act, including the provision that calls for a detailed written response to NMFS' EFH Conservation Recommendations and an explanation for not following the recommendations. In the regulations, NMFS interprets this statutory requirement to include explaining the basis for any disagreement over technical matters that are within NMFS' area of expertise. NMFS acknowledges that Federal agencies may disagree with EFH Conservation Recommendations for reasons that involve economic costs, public safety considerations, or other factors unrelated to the scientific merit of the recommendations, and the rule does not require a scientific justification in such cases.

Comment B: Several commenters said that NMFS does not have the authority to request further review of Federal agency decisions that are inconsistent with EFH Conservation Recommendations.

Response B: NMFS disagrees. The process for further review of Federal agency decisions that are inconsistent with NMFS' EFH Conservation Recommendations is integral to completing interagency consultation effectively under section 305(b)(2) of the Magnuson-Stevens Act. Interagency consultations by nature involve an exchange of information between agencies, and the process for further review provides a mechanism for resolving disagreements. NMFS has no authority to compel another Federal agency to hold final actions in abeyance pending the resolution of disputes about EFH. However, since NMFS does not anticipate requesting further review very frequently, NMFS hopes that Federal agencies will agree to defer final decisions temporarily if NMFS requests further review.

Comment C: One commenter said that the process for further review must preserve the autonomy of the action agency to decide whether to implement NMFS' recommendations.

Response C: NMFS agrees. NMFS' recommendations are non-binding. If a Federal agency ultimately decides not to accept one or more recommendations, the final rule and section 305(b)(4)(B) of the Magnuson-Stevens Act merely require the agency to explain in writing the reasons for not following the recommendations.

Comment D: Several commenters requested more information about the process for further review of Federal action agency decisions that are inconsistent with NMFS' EFH Conservation Recommendations. One of these commenters said the final rule should specify a time period within which disagreements must be resolved. Another asked for the final rule to specify sequential levels of review in each agency and procedures for suspending action agency decisions during higher level review. Two of the commenters asked for more detailed procedures for involving the Councils in higher level review of action agency decisions.

Response D: The final rule does not include a time frame for resolving disagreements, nor does it specify sequential levels of review. Likewise, the final rule does not call for suspending action agency decisions pending higher level review. NMFS relies on other agencies to agree to further review of decisions that are inconsistent with NMFS' EFH Conservation Recommendations, including the procedures and time frames for such review. Procedures for Council involvement in higher level review are already discussed in the regulations, and may be elaborated upon if appropriate in any written procedures NMFS might develop to refine the process in the future.

34.Comments on Compliance with Applicable Laws and Executive Orders

Comment A: One commenter asked for clarification on the relationship between the interim final rule and Executive Order 12962 on Recreational Fisheries.

Response A: Although the EFH regulations and Executive Order 12962 both promote the themes of sustainability and interagency cooperation, there is no direct relationship between Executive Order 12962 and the Magnuson-Stevens Act EFH provisions. Executive Order 12962 was specifically designed to restore and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide. Executive Order 12962 established the National Recreational Fisheries Coordination Council (the Coordination Council) to develop and encourage partnerships between government and private sports fishing and boating groups to foster aquatic conservation that benefits recreational fisheries. The Coordination Council was to promote conservation awareness of aquatic restoration programs and evaluate the effects of Federal activities on recreational fishing. The EFH regulations pertain to all federally managed species without distinguishing between commercial and recreational fisheries. The EFH regulations establish procedures to identify important habitats and evaluate the effects of various actions on EFH, rather than on recreational or commercial fishing.

Comment B: Several commenters questioned whether NMFS had met its responsibilities under the Small Business Regulatory Enforcement Fairness Act (SBREFA), Title II of the Unfunded Mandates Reform Act, and Executive Order 12866.

Response B: The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires federal agencies to prepare an initial and final regulatory flexibility analysis for a rule unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made such a certification to the Chief Counsel for Advocacy of the Small Business Administration, as required by 5 U.S.C. 605(b). Therefore, NMFS was not required to complete an initial or final regulatory flexibility analysis under RFA.

Under the Unfunded Mandates Reform Act, Federal agencies are required to enter a consultation process for any rulemaking that places responsibilities on another level of government (e.g., states) without paying the costs for carrying out these duties. Title II describes analyses and consultations that agencies must undertake for rules that may result in expenditures over $100 million in any year by state, local, and tribal governments, or the private sector. This rule will not require any expenditures by, nor place any responsibilities or duties on, state, local, or tribal governments, or the private sector. EFH consultations regarding Federal permits, licenses, or funding could lead the responsible Federal agency to restrict or limit the proposed action, which may result in indirect costs on the entity seeking the authorization or funding. However, any such requirements would be imposed at the discretion of the responsible Federal agency, and it would be speculative to evaluate such costs in conjunction with this rulemaking. Therefore, NMFS was not required to develop an assessment of the effects of this rule on other levels of government or the private sector.

The final rule has been determined to be significant for the purposes of Executive Order 12866. As such, NMFS submitted this rule to the Office of Management and Budget (OMB) for review and approval.

Comment C: One commenter thought the finding of no significant impact under the National Environmental Policy Act ignores the substantial amounts of staff time and other resources that Federal agencies will divert from other priorities to meet the EFH requirements.

Response C: NMFS completed a revised EA that addresses how the final rule could affect various parties, including Federal agencies. The provisions of the final rule related to Federal agency consultation with NMFS could result in an expenditure of time and resources that detracts from other activities. However, the rule implements a clear requirement in the Magnuson-Stevens Act for Federal agencies to consult with NMFS on any action that may adversely affect EFH. The rule provides guidance on required information for consultations and encourages agencies to combine the consultation process with existing environmental review procedures, so that consultations will be completed in an efficient and effective manner.

Changes from the Interim Final Rule

NMFS restructured parts of the section detailing the EFH contents of FMPs by providing a separate overview of the mandatory requirements and separating into distinct sections the guidelines for addressing general habitat information, information necessary to describe and identify EFH, and considerations for determining the limits of EFH. NMFS also restructured the section addressing fishing activities that may adversely affect EFH by separating into distinct sections the guidelines for evaluation of fishing activities and minimization of adverse effects. NMFS made these changes in response to commenters' concerns about a lack of clarity in the interim final rule, and based on NMFS' experience working with the Councils to add EFH information to existing FMPs.

NMFS reorganized parts of the coordination, consultation, and recommendation procedures by providing a separate summary of the five approaches for conducting EFH consultation; addressing the requirements for EFH Assessments before providing the procedures for each approach for EFH consultation; and placing the requirements for programmatic consultations in a distinct section. NMFS made these revisions in response to commenters' concerns that the consultation requirements were confusing and difficult to follow.

The changes to the rule are predominantly technical or administrative in nature and clarify intent or otherwise ease implementation of the EFH provisions of the Magnuson-Stevens Act. The following changes are listed in the order that they appear in the regulations. Grammatical or other minor changes are not detailed. Unless otherwise discussed below, the rationale for why changes were made from the interim final rule is contained in the Comments and Responses section.

In many cases throughout the final rule "effect" or "affect" replaces "impact" because the Magnuson-

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Stevens Act uses "affect" in the applicable provision of the statute, and/or to reflect common usage of the terms in the fields of ecology and environmental assessment. Also, "Federal agency" or "agency" replaces "Federal action agency" or "action agency" in many places throughout the rule. This change eliminates redundancy and simplifies the text, particularly given that many sections of the rule only apply to Federal agencies with actions that may adversely affect EFH (i.e., Federal action agencies).

Throughout the final rule the phrase "fishery management unit" replaces the acronym "FMU" to improve understanding. "Action" replaces "proposed action" in many places to be inclusive of all types of agency actions. In several instances throughout Subpart J of the final rule "life stage" replaces "life history stage" to use the more common scientific term. In several places throughout Subpart K, "existing environmental review process" replaces "existing consultation process" to encompass environmental reviews that are not consultations per se.

In a number of places throughout the final rule, paragraphs have been renumbered and references to paragraphs and sections have been changed to reflect the renumbering.

In § 600.805, paragraph (a), "EFH provisions" replaces "provision on EFH" to improve clarity.

In § 600.805, paragraph (b), "An FMP may" replaces "A Council may" to clarify that FMPs are the appropriate vehicle to discuss habitat for species not included in the fishery management unit, if a Council chooses to do so.

In § 600.810, paragraph (a), NMFS modified the definition of "adverse effect" by deleting the parenthetical examples of direct and indirect effects and instead explaining that "Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH." The definition also includes new language to clarify that "Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions."

In § 600.810, paragraph (a), the definition of "Council" omits the word "Secretarial" to be consistent with the definition of this term in § 600.305(c) and 600.910(a).

In § 600.810, paragraph (a), the definition of "habitat area of particular concern" refers to areas identified pursuant to § 600.815(a)(8) rather than § 600.815(a)(9) because the final rule includes renumbered paragraphs.

In § 600.815, paragraph (a), a new paragraph (1) entitled "Description and identification of EFH" replaces the former paragraphs (1) "Habitat requirements by life history stage" and (2) "Description and identification of EFH." As discussed above, the new organization clarifies the mandatory contents of FMPs by providing a separate overview and separating into distinct sections the guidelines for addressing general habitat information, information necessary to describe and identify EFH, and considerations for determining the limits of EFH. The language within this paragraph includes much of the language from corresponding sections of the interim final rule. Substantive changes are described below.

In § 600.815, paragraph (a), the description of Level 1 information (formerly § 600.815(a)(2)(i)(C)(*1*); now § 600.815(a)(1)(iii)(A)(*1*)) clarifies that distribution data need not necessarily be limited to systematic presence/absence sampling data. The word "distribution" replaces "presence/absence" and "geographic range" replaces "distribution." The paragraph also includes a new sentence: "Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage."

In § 600.815, paragraph (a), a new paragraph (1)(iii)(B) says that in the absence of information to identify habitat usage by a given species or life stage, EFH should not be designated.

In § 600.815, paragraph (a), the former paragraph (2)(ii)(A) (now numbered (1)(iv)(A)) includes a new introductory sentence. The word "described" replaces "obtained through the analysis" and "identified as EFH of managed species" replaces "protected as EFH for managed species." The words "at each life stage" now appear at the end of the sentence regarding Level 1 information. The sentence regarding Level 2 through 4 information appears in a different place in the paragraph to improve organization, and instead of saying the information should be used "to identify the habitats valued most highly within the geographic range of the species" the sentence includes new language to identify "habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species." In the same paragraph "distribution" replaces "presence/absence" and the former "identify those habitat areas most commonly used" reads "identify EFH as those habitat areas most commonly used" because the purpose of the analysis is to identify EFH, if sufficient information is available. A new sentence advises Councils to explain the analyses conducted to distinguish EFH from all habitats potentially used by a species, which will improve understanding of the basis for the designations. The paragraph omits three sentences: "Areas so identified should be considered essential for the species. However, habitats of intermediate and low value may also be essential, depending on the health of the fish population and the ecosystem. Councils must demonstrate that the best scientific information available was used in the identification of EFH, consistent with national standard 2, but other data may also be used for the identification." The first of these sentences is unnecessary since references to identifying EFH now appear earlier in the paragraph. The second sentence is unnecessary and confusing since other provisions of the rule allow Councils to identify EFH broadly if warranted, and in such cases the habitats would not be regarded as intermediate or low value. The third sentence is unnecessary and redundant with the requirements of the Magnuson-Stevens Act.

In § 600.815, paragraph (a), a new paragraph (1)(iv)(B) includes more specific guidance for the text descriptions of EFH.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(B) (now numbered (1)(iv)(C)), "may" replaces "should" so that the rule permits, but no longer strongly recommends, considering all habitats currently used by a species to be essential, as well as certain historic habitats, if a species is overfished and habitat factors may be contributing to the species being identified as overfished. Councils should make this determination on a case-by-case basis. In the same paragraph, "should be reviewed and amended" replaces "should be reviewed, and the FMP amended" because in many cases the identification of EFH can be amended via a framework adjustment rather than a full FMP amendment.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(C) (now numbered (1)(iv)(D)), "Areas described as EFH will normally" replaces "EFH will always."

The final rule omits the language that appeared as § 600.815 (a)(2)(ii)(D) of the interim final rule to eliminate redundancy.

In § 600.815, paragraph (a), the former paragraph (2)(ii)(E) (now numbered (1)(v)(E)) omits "or species assemblage" and includes two new sentences to explain the conditions for designating EFH for species assemblages.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(F) (now numbered (1)(iv)(F)), "stream or river blockages" replaces "fish blockages" to be more accurate about the problem to be address by improved fish passage techniques. The text omits the words "or quantity" before "measures" to eliminate jargon and redundancy. The word "necessary" replaces "essential" to improve consistency with the Magnuson-Stevens Act.

In § 600.815, paragraph (a), in the former paragraph (2)(iii) (now numbered (1)(v)), the final rule contains new language to clarify the guidance for mapping EFH. The changes are intended to encourage more explicit and informative EFH maps in FMPs, based on NMFS' experience with maps produced using the guidance in the interim final rule. The new language requires that FMPs include maps that display, within the constrains of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. The new language also encourages Councils to map different types of habitat designated as EFH to the extent possible; to use maps to distinguish EFH from non-EFH areas; to confer with NMFS regarding national mapping standards; and to include maps of HAPCs.

Section 600.815, paragraph (a)(2) includes reorganized and expanded guidance regarding fishing activities that may adversely affect EFH (formerly addressed in paragraph (a)(3)). The final rule includes separate subsections on the evaluation of fishing activities and minimization of adverse effects, and explains in more detail the information that Councils should address in these portions of FMPs.

In § 600.815, paragraph (a), the former paragraph (3)(iv) (now numbered (2)(iii)) includes a new title, "Practicability," and omits the phrase "whether, and to what extent, the fishing activity is adversely impacting EFH, including the fishery" to eliminate redundancy. The language also omits the phrase "and whether the management measures are practicable, taking into consideration" to eliminate redundancy. To clarify the intent of considering costs and benefits, the words "the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation" replace "the long and short-term costs as well as benefits to the fishery and its EFH, along with other appropriate factors." A new sentence clarifies that Councils are not required to perform a formal cost/benefit analysis.

In § 600.815, paragraph (a), in the former paragraph (4)(i) (now numbered (2)(iv)(A)), "damage to EFH" replaces "physical damage in EFH" because adverse effects are not limited to physical effects.

Section 600.815, paragraph (3) is new. The paragraph clarifies that FMPs must identify threats to EFH from fishing activities that are managed under laws other than the Magnuson-Stevens Act, such as state managed fisheries or those fisheries managed by other agencies. The language addresses non-Magnuson-Stevens Act fishing directly, whereas the interim final rule more indirectly stated in § 600.815(a)(3)(ii) that FMPs must assess all fishing equipment types used in EFH.

In § 600.815, paragraph (a), the former paragraph (5) is now numbered (4). The title of the paragraph omits "Identification of" to reduce wordiness. The sentence "FMPs must identify activities other than fishing that may adversely affect EFH" replaces "FMPs must identify activities that have the potential to adversely affect EFH quantity or quality, or both." This change clarifies that the requirement is to identify all adverse effects to EFH from non-fishing activities. The same paragraph omits language saying that FMPs should describe the EFH most likely to be adversely affected and should explain the mechanisms that may cause the effects, because this language is redundant with the sentence saying that FMPs should describe known and potential adverse effects to EFH. The paragraph also omits two sentences regarding geographical analysis of non-fishing impacts, because Councils should have the flexibility to analyze potential impacts using any suitable approach.

In § 600.815, the former paragraph (a)(6) is now numbered (a)(5). To provide context, the explanation of cumulative impacts appears at the beginning of the paragraph rather than later. The words "the cumulative impacts of" appear before "fishing and non-fishing activities" to emphasize that the focus is cumulative effects. To emphasize EFH over other fish habitat, the term "the function of EFH" replaces "habitat function" and "EFH" replaces "the managed species' habitat." The paragraph omits the discussion of cumulative impacts from fishing that appeared in the interim final rule, because the final rule addresses cumulative impacts from fishing as part of the evaluation of fishing activities that may adversely affect EFH (§ 600.815(a)(2)(i)). The paragraph omits other language from the interim final rule that described suggested contents of cumulative impacts analyses and mapping for cumulative impacts, because Councils should have flexibility to evaluate cumulative impacts using any appropriate methods. The paragraph omits discussion of research needs pertaining to cumulative impacts because research needs are covered adequately in § 600.815(a)(9). The paragraph also omits language regarding schedules for research because Councils have no control over such schedules.

In § 600.815, the former paragraph (a)(7) is now numbered (a)(6). To more accurately reflect the statutory language, the text states that "FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for" adverse effects. The paragraph omits "and promote the conservation and enhancement of EFH" to better reflect the Councils' role as outlined in the EFH provisions of the Magnuson-Stevens Act. The paragraph also omits the general recommendations and options for conservation and enhancement that appeared in the interim final rule.

In § 600.815, the former paragraph (a)(8) is now numbered (a)(7). The words "may be" replace "is" because loss of prey does not always constitute an adverse effect on EFH and managed species. The first sentence omits the word "a" before "managed species" because adverse effects may apply to more than one species. To clarify that the consideration of effects to prey is consistent with the Magnuson-Stevens Act, the phrase "because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding" replaces "because one component of EFH is that it be necessary for feeding." To clarify the conditions under which effects to prey should be considered, the phrase "may be considered adverse effects on EFH if such actions reduce the quality and/or quantity of EFH" replaces "may be considered adverse effects on a managed species and its EFH." The word "list" replaces "identify" and "discuss" replaces "generally describe" to be clearer about how FMPs should address prey species and their habitat. The final rule omits

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the sentence from the interim final rule saying that actions that cause a reduction of the prey species population should be described and identified. This language caused confusion about the scope of the required analysis, and was substantially redundant with other text in the paragraph.

In § 600.815, the former paragraph (a)(9) is now numbered (a)(8). The final rule combines the two introductory sentences from the interim final rule to be more concise, and the word "considerations" replaces "criteria."

In § 600.815, the former paragraph (a)(10) is now numbered (a)(9). The final rule includes much more concise text to explain that FMPs should identify the research and information needed to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

In § 600.815, the former paragraph (a)(11) is now numbered (a)(10). The final rule omits the words "including an update of the equipment assessment originally conducted pursuant to paragraph (a)(3)(ii) of this section" to eliminate redundancy. The final rule clarifies that Councils and NMFS should "revise or amend EFH provisions as warranted based on available information." The final rule omits the language stating that "each FMP amendment should include a provision requiring review and update of EFH information and preparation of a revised FMP amendment if new information becomes available" and instead says that "FMPs should outline the procedures the Council will follow to review and update EFH information." The final rule adds a sentence to provide guidance on the type of information the Councils and NMFS should examine when updating the EFH provisions of FMPs. These changes better reflect the process for revising FMPs based on a review of current information. The language in this section also clarifies that the Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation report. The new words "all EFH" clarify the type of information that needs to be reviewed at least once every five years.

In § 600.815, the final rule omits paragraph (b) of the interim final rule to eliminate redundancy with § 600.805(b)(1).

In § 600.815, the former paragraph (c) is now (b) and the heading includes the words "for Councils" to clarify that the EFH recommendations referred to in this paragraph are recommendations from NMFS to the Councils. The final rule adds new text explaining the intent and timing of NMFS' written recommendations to assist the Councils in identifying EFH and adverse affects to EFH, and incorporating EFH information into FMPs. The paragraph omits several sentences from the interim final rule that provided for public review of NMFS' written EFH recommendations.

In § 600.905, paragraph (c), "NMFS" replaces "the Secretary" to clarify that the NMFS is the agency responsible for working with the Councils. Additional language changes in this paragraph serve to simplify the language and reduce wordiness.

In § 600.910, paragraph (a), the final rule modifies the definition of "adverse effect" in the same manner as in § 600.810(a). The final rule omits the definition of "Council" provided in the interim final rule because the definition was originally meant to provide for NMFS' comments under section 305(b)(3) of the Magnuson-Stevens Act, allowing NMFS to comment as a Council for FMPs developed by the Secretary. This provision is unnecessary since NMFS comments will be provided under section 305(b)(4)(A).

In § 600.910, paragraph (a) also includes a new definition for "anadromous fishery resource under Council authority" to clarify that the term means an anadromous species managed under an FMP. The interim final rule discussed anadromous fishery resources in § 600.930(c), and NMFS explained that provision in the preamble to the interim final rule at 62 FR 66546. Upon further consideration, NMFS determined that § 600.930(c) and the preamble were not sufficiently clear as to what species should be considered anadromous fishery resources under Council authority for purposes of section 305(b)(3)(B) of the Magnuson-Stevens Act. Since Councils may not have sufficient expertise regarding non-managed anadromous species to provide the comments and recommendations that are required by section 305(b)(3)(B) of the Act, NMFS determined that the most appropriate interpretation of that section is for "anadromous fishery resource under Council authority" to mean those anadromous species managed under FMPs.

In § 600.915 the final rule adds the phrase "and the general public" and "EFH" replaces "such habitat."

In § 600.920, paragraph (a)(1), the phrase "actions that were completed prior to the approval of EFH designations by the Secretary" replaces the phrase "completed actions." The second sentence of the paragraph adds the phrase "if the renewal, review, or revision may adversely affect EFH" to the end of the sentence. The final rule adds a reference to paragraph (j) of this section to refer to the procedures for programmatic consultation. The final rule includes new text that describes the requirement to complete EFH consultations for emergency Federal actions that may adversely affect EFH. This addition clarifies the requirement and timing for EFH consultations for Federal actions that must be carried out in an expedited manner due to emergency circumstances. If consultation is not practicable before taking an emergency action, Federal agencies may consult after-the-fact and NMFS may provide EFH Conservation Recommendations for measures to offset any unavoidable adverse effects to EFH.

The final rule omits § 600.920(a)(2) of the interim final rule and instead describes the five approaches for conducting consultation, and discusses procedures for programmatic consultation in a separate section. Section 600.920, new paragraph (a)(3), titled "Early notification and coordination," encourages discussions of measures to conserve EFH for actions that may adversely affect EFH as early as practicable during project planning. In the interim final rule this language appeared in the procedures for abbreviated consultation but it applies equally to other types of consultation.

In § 600.920, paragraph (b), "should" replaces "must" to encourage, but not require, the lead agency to notify NMFS in writing that is representing another agency or agencies. New text provides additional clarification of when one Federal agency's EFH consultation may suffice for one of another Federal agency.

In § 600.920, paragraph (c), the final rule allows a non-Federal representative to conduct any type of EFH consultation.

In § 600.920, paragraph (d) adds a phrase clarifying that the best scientific information is needed regarding the effects of actions on EFH "and the measures that can be taken to avoid, minimize, or offset such effects.≥

In § 600.920, paragraph (e) discusses EFH Assessments. This discussion was moved from § 600.920, paragraph (g) of the interim final rule to provide better organization and understanding of the provision.

In § 600.920, paragraph (e)(1) omits the language that suggested that EFH Assessments are unnecessary for some activities, and clarifies the preparation requirements for EFH Assessments associated with the development of General Concurrences and programmatic consultations. Additional text clarifies that "Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH because EFH consultation is not required for such actions." The final sentence omits that words "consultation of" to eliminate confusing language.

Section 600.920 adds a new paragraph (e)(2), titled "Level of detail," to explain that the extent of information in an EFH Assessment should be based on the complexity and magnitude of the adverse affects of the action.

In § 600.920, paragraph (e)(3)(ii) adds "potential adverse" before "effects" and omits "cumulative effects" and "associated species such as major prey species, including affected life history stages." This simplifies the rule and provides consistency with the definition of "adverse effects" provided in the final rule.

In § 600.920, paragraph (e)(3)(iii) "conclusions" replaces "views" to clarify that Federal agencies must indicate their opinions regarding the results or implications of the EFH Assessment.

In § 600.920, paragraph (e)(4)(iv) omits "particularly when an action is non-water dependent."

In § 600.920, former paragraph (e) is now paragraph (f) and the heading as been changed from "Use of existing consultation/environmental review procedures" to "Use of existing environmental review procedures."

In § 600.920, paragraph (f)(1) is newly titled "Criteria" rather than "Purpose and criteria" to better reflect the content of the paragraph. The paragraph now uses acronyms for "National Environmental Policy Act" and "Endangered Species Act." The final rule adds reference to section 305(b)(4) of the Magnuson-Stevens Act and additional text to reflect that consultation under sections 305(b)(2) and 305(b)(4) of the Act, including abbreviated or expanded consultations, can be combined with existing environmental review procedures if the procedures meet or are modified to meet stated criteria.

In § 600.920, paragraph (f)(1)(i), to improve clarity "Whenever possible" replaces "However" and "provided that" replaces "if."

In § 600.920, paragraph (f)(1)(ii), the phrase "the action agency must identify that section of the document as the EFH Assessments" replaces the phrase "that section of the document must be clearly identified as the EFH Assessment" to clarify that it is the action agency's responsibility to identify an EFH Assessment when submitted as part of another document.

In § 600.920, paragraph (f)(1)(iii), "can be used to satisfy" replaces "satisfies" because even when using another environmental review process, specified procedures must be followed to fulfill the requirements of the Magnuson-Stevens Act. Also, the final rule adds reference to section 305(b)(4) of the Magnuson-Stevens Act to clarify that when consulting under section 305(b)(2), NMFS will use the process specified in a finding to provide EFH Conservation Recommendations. However, in the absence of a finding, if a Federal agency fails to consult under section 305(b)(2) of the Act, NMFS may provide EFH Conservation Recommendations under section 305(b)(4) either through another environmental review process or separately.

In § 600.920, paragraph (f)(2) is newly titled as "NMFS response to Federal agency" rather than "EFH conservation recommendation requirements" to better reflect the process described in this paragraph. The final rule replaces "consultation" with "environmental review" to clarify that the use of existing review processes is not limited to consultation processes. To eliminate redundancy, the final rule omits language reiterating the requirements of section 305(b)(4)(B) of the Magnuson-Stevens Act and the procedures for further review of Federal agency decisions. "Will" replaces "shall" since "shall" is used in the regulations only when quoting statutory language directly, to avoid confusion with the future tense, and "will" is used descriptively, as distinguished from denoting an obligation to act or the future tense. "Action agency" has been added to clarify from whom a response is needed pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act.

In § 600.920, paragraph (f)(3) includes a new phrase "to combine the EFH consultation requirements with" and removes the phrase "can be used to satisfy the EFH consultation requirements." These and other minor changes to the paragraph clarify that existing or modified environmental reviews cannot substitute for an EFH consultation but can provide the format and process for an EFH consultation.

In § 600.920, paragraph (f) is now paragraph (g). Paragraph (g)(1) omits the word "process" to emphasize the end product rather than the process.

In § 600.920, paragraph (g)(2)(i) omits "after consultation with the appropriate Council(s)." The rule no longer requires NMFS to consult with the Councils before issuing a General Concurrence.

In § 600.920, paragraph (g)(2)(ii) includes the new phrase "actions covered by a General Concurrence" to clarify what activities need to be tracked. The final rule splits the second sentence into two sentences and restructures the language to improve clarity and remove redundancy. The final rule omits "of habitat adversely affected" and includes other minor edits to increase clarity and reduce wordiness. The addition of "applicable" clarifies that tracking information related to actions covered by a General Concurrence does not need to be made available to all Councils.

In § 600.920, paragraph (g)(2)(iv), "proposed for actions that may adversely affect" replaces "developed for actions affecting" to convey that the review for potential effect to HAPCs should occur while a proposed General Concurrence is being evaluated.

In § 600.920, paragraph (g)(3), "an EFH Assessment containing a description" replaces "a written description" to clarify that a Federal agency's request for a General Concurrence must include an EFH Assessment that evaluates the anticipated effects of the actions to be covered under the General Concurrence. The final rule omits the phrase "and associated species and their life history stages," since this is implicit in an evaluation of effects to EFH. The final rule omits the phrase "after consultation with the appropriate Council(s)." The final rule also removes the phrase "and that preparation of EFH Assessments for individual actions subject to the General Concurrence is not necessary" to eliminate redundancy. "Another type of" replaces "abbreviated or expanded" to better describe the options available for consultation if a General Concurrence is not issued.

In § 600.920, paragraph (g)(4) is newly titled as "Further consultation" rather than "Notification and further consultation." "Request" replaces "require" to more accurately reflect NMFS' role in asking for further consultation for actions covered under a General Concurrence.

In § 600.920, paragraph (g)(5) is newly titled as "Notification" rather than "Public review." The rule no longer requires an opportunity for public or Council review before NMFS provides a Federal agency with a written statement of General Concurrence. The new paragraph states that NMFS will notify the appropriate Council(s) and make the General Concurrence available to the public.

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In § 600.920, paragraph (g)(6) omits "findings of" to avoid confusion between establishing a finding pursuant to § 600.920(f)(3) of the final rule and issuing a General Concurrence under § 600.920(g).

Section 600.920(g) of the interim final rule addressed EFH Assessments. The final rule discusses EFH Assessments in § 600.920(e).

In § 600.920, paragraph (h)(2) is newly titled as "Notification by agency and submittal of EFH Assessment" rather then "Notification by agency." Paragraph (h)(2) is combined with former paragraph (h)(3) and condensed to provide clearer guidance on notification and submittal of an EFH assessment.

In § 600.920, the former paragraph (h)(4)is now numbered (h)(3). The final rule provides new language regarding NMFS' response to an EFH Assessment to clarify that the type of response depends upon NMFS' determination of potential adverse effects to EFH. The final rule removes "accurately" to eliminate any suggestion that a Federal agency's EFH Assessment for abbreviated consultation might include inaccuracies. The paragraph adds the words "in writing" to clarify how NMFS will request that a Federal agency initiate expanded consultation for actions that may result in substantial adverse effects to EFH. The term "additional" replaces "expanded" to more accurately describe the type of consultation being discussed. The paragraph is restructured to state more succinctly that NMFS will provide EFH Conservation Recommendations, if appropriate. Also, the final rule deletes the sentence stating that "NMFS will send a copy of its response to the appropriate Council."

In § 600.920, the former paragraph (h)(5), which is now numbered (h)(4), omits "complete" and "NMFS must receive it" to reduce wordiness.

Section 600.920, paragraph (i)(2), is newly titled "Notification by agency and submittal of EFH Assessment" rather than "Initiation." This paragraph omits "completed" to reduce wordiness. The paragraph includes the new phrase "to facilitate review of the effects of the action on EFH" to clarify why additional information identified under § 600.920(e)(4) should be submitted. To eliminate potential confusion with programmatic consultations, the paragraph omits the language that allowed a request for expanded consultation to encompass several similar individual actions within a given geographic area.

In § 600.920, paragraph (i)(3)(iv), the final rule omits the sentence stating that "NMFS will also provide a copy of the recommendations to the appropriate Council(s)."

In § 600.920, paragraph (i)(4) omits "complete" to reduce wordiness, and contains new language clarifying that NMFS and Federal agencies may agree to conduct consultation early in the planning cycle for actions with lengthy approval processes.

In § 600.920, paragraph (j) is a new section on programmatic consultation.

In § 600.920, former paragraph (j) is now paragraph (k).

Section 600.920 paragraph (k)(1) replaces "the appropriate Council" with "to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act" to clarify which Councils must receive the Federal agency's written response to EFH Conservation Recommendations. The final rule adds "from NMFS" to more accurately parallel the statutory language requiring the Federal agency to provide its detailed written response within 30 days of receiving recommendations under section 305(b)(4)(A) of the Act. The final rule restructures the language from the interim final rule that required a response be provided at least 10 days prior to final approval of an action, if a decision by the Federal agency is required in fewer than 30 days. The new language requires a response at least 10 days prior to final approval only if the Federal agency's response is inconsistent with any of NMFS' EFH Conservation Recommendations, because there is no need for a 10–day review period if the Federal agency accepts NMFS' recommendations.

In § 600.920, paragraph (k)(2), "NMFS may develop written procedures" replaces "Memoranda of agreement or other written procedures will be developed" to reflect that any form of written procedures may be developed as necessary to further define review processes. The word "may" replaces "will" because written procedures may not be necessary in all cases. Also, the paragraph omits "with Federal action agencies" to reduce wordiness.

In § 600.925, paragraph (a) omits "EFH conservation recommendations" and "suggest" and adds "recommend" to be clearer and more concise.

In § 600.925, paragraph (b) omits the redundant statement that the recommendations fulfill the requirements of section 305(b)(4)(A) of the Magnuson-Stevens Act. The paragraph also omits the statement that "NMFS will provide a copy of such recommendation to the appropriate Councils."

In § 600.925, paragraph (c)(1) clarifies with new text that "the Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH." "NMFS will" replaces "each NMFS region should" to convey more clearly that NMFS intends to use existing coordination procedures when making recommendations to state agencies. The final rule omits the unnecessary reference to other statutes in describing the use of existing coordination procedures. "To determine" replaces "for determining." The final rule omits the sentence stating the "NMFS will provide a copy of such recommendation to the appropriate Council(s)."

In § 600.925, paragraph (c)(2), the phrase "is authorized, funded, or undertaken" replaces "requires authorization or funding" to better reflect the requirements of the Magnuson-Stevens Act.

In § 600.925, paragraph (d) is a new paragraph, titled "Coordination with Councils," that describes how NMFS will coordinate with each Council to identify actions on which the Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act.

Section 600.930 includes new language describing the statutory authority for Council comments and recommendations to Federal and state agencies.

In § 600.930, paragraph (a), the words "habitat, including EFH, of a species under its authority" replace "EFH of a species managed under its authority" to better reflect the statutory authority for Councils to comment on Federal or state actions. The phrase "actions of concern that would adversely affect EFH" replaces "actions that may adversely impact EFH" to convey more clearly that the Regional Administrator would screen the actions.

In § 600.930, paragraph (b), a change from passive to active voice clarifies that "Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies."

The final rule omits § 600.930, paragraph (c) of the interim final rule because that paragraph is redundant with the new definition of "anadromous fishery resource under Council authority" in § 600.910(a).

Classification

The NOAA Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to the National Environmental Policy Act (NEPA)

NMFS prepared a new EA for the final rule, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. The regulations contain guidelines to the Councils for incorporating EFH information into FMPs in accordance with the Magnuson-Stevens Act, and procedures to be used by NMFS, the Councils, and Federal action agencies to satisfy the coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Any specific effects of the EFH provisions of individual FMPs will be addressed in NEPA documents prepared for the approval of those FMP provisions. A copy of the EA is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be significant for the purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. As discussed in the response to comments above, NMFS received comments on the interim final rule questioning whether the agency had met its responsibilities under applicable laws requiring economic analyses. These comments did not cause any change in the certification regarding effects on small entities. As a result, NMFS was not required to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 601 *et seq.*). The rule provides guidelines to the Councils for developing the EFH components of FMPs in compliance with the Magnuson-Stevens Act, and the guidelines do not have the force of law. Should Councils establish fishing regulations as a result of the guidelines, those actions may affect small entities and could be subject to the requirement to prepare regulatory flexibility analyses at the time the Councils propose them. The rule also establishes consultation procedures and a process for NMFS to provide EFH Conservation Recommendations to Federal and state action agencies. However, because compliance with NMFS recommendations is not mandatory, any effects on small businesses would be speculative.

This final rule does not include policies that have federalism implications as that term is defined in Executive Order 13132. This rule establishes procedures for consultation between Federal agencies and NMFS when Federal actions may adversely affect EFH. States are not required to consult regarding EFH. The rule requires NMFS to provide conservation recommendations for any Federal or state actions that would adversely affect EFH. The Councils may comment and make recommendations on Federal and state actions that may affect EFH and must comment and make conservation recommendations concerning any Federal or state activity that is likely to substantially affect the habitat of an anadromous fishery resource under Council authority. Neither NMFS' nor the Council's recommendations are mandatory, and states are not required to respond to the recommendations. Similarly, the rule does not require any expenditures by, nor place any responsibilities or duties on, state, local, or tribal governments. Therefore, in accordance with the provisions of the Unfunded Mandates Reform Act, NMFS was not required to develop an assessment of the effects of this rule on other levels of government or the private sector.

NMFS determined that this rule does not have reasonably foreseeable coastal effects and that this action is consistent to the maximum extent practicable with the approved coastal management programs for the coastal states. Therefore, a Coastal Zone Management Act consistency determination is not needed. EFH provisions of FMPs should be provided to state coastal zone consistency coordinators for review prior to approval by the Secretary.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act (PRA). The PRA requires OMB clearance for most planned information collections. The only information collection that derives from the rule is the requirement for Federal agencies to prepare EFH Assessments for actions that may adversely affect EFH. OMB clearance is not required for a collection of information from Federal agencies.

The rule provides guidance to the Councils on how to designate EFH and establishes a consultation process for Federal actions that may adversely affect EFH. This action will not result in a taking of private property and does not have takings implications. Accordingly, NMFS was not required to complete a Federal takings assessment.

This rule does not contain policies that have tribal implications as that term is defined in Executive Order 13175.

This rule will not have a significant adverse effect on the supply, distribution, or use of energy, and preparation of a Statement of Energy Effects under Executive Order 13211 is not required. EFH consultations result in non-binding conservation recommendations. EFH consultations regarding Federal permits, licenses, or funding could lead the responsible Federal agency to restrict or limit proposed actions, which potentially may affect entities seeking authorization or funding for projects involving energy supply, distribution, or use. However, any such requirements would be imposed at the discretion of the responsible Federal agency, and it would be speculative to evaluate the effects of such requirements in conjunction with this rulemaking.

List of Subjects in 50 CFR Part 600

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations.

Dated: January 7, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON–STEVENS ACT PROVISIONS

1.The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2.In § 600.10, the definition for "Essential fish habitat" is revised to read as follows:

§ 600.10 Definitions.

* * * * *

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

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3. Subparts J and K of part 600 are revised to read as follows:

* * * * *

Subpart J—Essential Fish Habitat (EFH)

Sec.
600.805 Purpose and scope.
600.810 Definitions and word usage.
600.815 Contents of Fishery Management Plans.

Subpart K—EFH Coordination, Consultation, and Recommendations

600.905 Purpose, scope, and NMFS/Council cooperation.
600.910 Definitions and word usage.
600.915 Coordination for the conservation and enhancement of EFH.
600.920 Federal agency consultation with the Secretary.
600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.
600.930 Council comments and recommendations to Federal and state agencies.

Subpart J—Essential Fish Habitat (EFH)

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for Councils and the Secretary to use in adding the required EFH provisions to an FMP, i.e., description and identification of EFH, adverse effects on EFH (including minimizing, to the extent practicable, adverse effects from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered.* An EFH provision in an FMP must include all fish species in the fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic.* EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3, and in the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that may adversely affect such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Council includes the Secretary, as applicable, when preparing FMPs or amendments under sections 304(c) and (g) of the Magnuson-Stevens Act.

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to section 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage.* The terms "must", "shall", "should", "may", "may not", "will", "could", and "can" are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Description and identification of EFH*—(i) *Overview.* FMPs must describe and identify EFH in text that clearly states the habitats or habitat types determined to be EFH for each life stage of the managed species. FMPs should explain the physical, biological, and chemical characteristics of EFH and, if known, how these characteristics influence the use of EFH by the species/life stage. FMPs must identify the specific geographic location or extent of habitats described as EFH. FMPs must include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found.

(ii) *Habitat information by life stage.* (A) Councils need basic information to understand the usage of various habitats by each managed species. Pertinent information includes the geographic range and habitat requirements by life stage, the distribution and characteristics of those habitats, and current and historic stock size as it affects occurrence in available habitats. FMPs should summarize the life history information necessary to understand each species' relationship to, or dependence on, its various habitats, using text, tables, and figures, as appropriate. FMPs should document patterns of temporal and spatial variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding habitat needs. FMPs should summarize (e.g., in tables) all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. The information should be supported with citations.

(B) Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. Councils should consider different types of information according to its scientific rigor. FMPs should identify species-specific habitat data gaps and deficits in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation). FMPs must demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2.

(iii) *Analysis of habitat information.* (A) The following approach should be used to organize the information necessary to describe and identify EFH.

(*1*) *Level 1: Distribution data are available for some or all portions of the geographic range of the species.* At this level, only distribution data are available to describe the geographic range of a species (or life stage). Distribution data may be derived from systematic presence/absence sampling and/or may include information on species and life stages collected opportunistically. In the event that distribution data are available only for portions of the geographic area occupied by a particular life stage of a species, habitat use can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior. Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance] are available for the habitats occupied by a species or life stage. Because the efficiency of sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(B) Councils should strive to describe habitat based on the highest level of detail (i.e., Level 4). If there is no information on a given species or life stage, and habitat usage cannot be inferred from other means, such as information on a similar species or another life stage, EFH should not be designated.

(iv) *EFH determination.* (A) Councils should analyze available ecological, environmental, and fisheries information and data relevant to the managed species, the habitat requirements by life stage, and the species' distribution and habitat usage to describe and identify EFH. The information described in paragraphs (a)(1)(ii) and (iii) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion to ensure adequate areas are identified as EFH for managed species. Level 1 information, if available, should be used to identify the geographic range of the species at each life stage. If only Level 1 information is available, distribution data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. FMPs should explain the analyses conducted to distinguish EFH from all habitats potentially used by a species.

(B) FMPs must describe EFH in text, including reference to the geographic location or extent of EFH using boundaries such as longitude and latitude, isotherms, isobaths, political boundaries, and major landmarks. If there are differences between the descriptions of EFH in text, maps, and tables, the textual description is ultimately determinative of the limits of EFH. Text and tables should explain pertinent physical, chemical, and biological characteristics of EFH for the managed species and explain any variability in habitat usage patterns, but the boundaries of EFH should be static.

(C) If a species is overfished and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species may be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed and amended, if appropriate.

(D) Areas described as EFH will normally be greater than or equal to aquatic areas that have been identified as "critical habitat" for any managed species listed as threatened or endangered under the Endangered Species Act.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species. EFH must be designated for each managed species, but, where appropriate, may be designated for assemblages of species or life stages that have similar habitat needs and requirements. If grouping species or using species assemblages for the purpose of designating EFH, FMPs must include a justification and scientific rationale. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that are necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to reduced yields of a species or assemblage and if, in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for stream or river blockages), improved water quality measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, EFH should include those habitats that would be necessary to the species to obtain increased yields.

(v) *EFH mapping requirements.* (A) FMPs must include maps that display, within the constraints of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Maps should identify the different types of habitat designated as EFH to the extent possible. Maps should explicitly distinguish EFH from non-EFH areas. Councils should confer with NMFS regarding mapping standards to ensure that maps from different Councils can be combined and shared efficiently and effectively. Ultimately, data used for mapping should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation.

(B) Where the present distribution or stock size of a species or life stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known.

(C) FMPs should include maps of any habitat areas of particular concern identified under paragraph (a)(8) of this section.

(2) *Fishing activities that may adversely affect EFH*—(i) *Evaluation.* Each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs. This evaluation should consider the effects of each fishing

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activity on each type of habitat found within EFH. FMPs must describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing activity adversely affects EFH. The evaluation should also consider the cumulative effects of multiple fishing activities on EFH. The evaluation should list any past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The evaluation should give special attention to adverse effects on habitat areas of particular concern and should identify for possible designation as habitat areas of particular concern any EFH that is particularly vulnerable to fishing activities. Additionally, the evaluation should consider the establishment of research closure areas or other measures to evaluate the impacts of fishing activities on EFH. In completing this evaluation, Councils should use the best scientific information available, as well as other appropriate information sources. Councils should consider different types of information according to its scientific rigor.

(ii) *Minimizing adverse effects.* Each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, based on the evaluation conducted pursuant to paragraph (a)(2)(i) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(5) of this section. In such cases, FMPs should identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable. Amendments to the FMP or to its implementing regulations must ensure that the FMP continues to minimize to the extent practicable adverse effects on EFH caused by fishing. FMPs must explain the reasons for the Council's conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

(iii) *Practicability.* In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.(iv) Options for managing adverse effects from fishing. Fishery management options may include, but are not limited to:

(A) *Fishing equipment restrictions.* These options may include, but are not limited to: seasonal and areal restrictions on the use of specified equipment, equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles), prohibitions on the use of explosives and chemicals, prohibitions on anchoring or setting equipment in sensitive areas, and prohibitions on fishing activities that cause significant damage to EFH.

(B) *Time/area closures.* These actions may include, but are not limited to: closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life stages, such as those areas designated as habitat areas of particular concern.

(C) *Harvest limits.* These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities and limits on the take of prey species.

(3) *Non-Magnuson-Stevens Act fishing activities that may adversely affect EFH.* FMPs must identify any fishing activities that are not managed under the Magnuson-Stevens Act that may adversely affect EFH. Such activities may include fishing managed by state agencies or other authorities.

(4) *Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities other than fishing that may adversely affect EFH. Broad categories of such activities include, but are not limited to: dredging, filling, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to non-point source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each activity, the FMP should describe known and potential adverse effects to EFH.

(5) *Cumulative impacts analysis.* Cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. To the extent feasible and practicable, FMPs should analyze how the cumulative impacts of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts) and an assessment of the ecological risks resulting from the impact of those threats on EFH, also should be included.

(6) *Conservation and enhancement.* FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a)(3) through (5) of this section, especially in habitat areas of particular concern.

(7) *Prey species.* Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. FMPs should list the major prey species for the species in the fishery management unit and discuss the location of prey species' habitat. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(8) *Identification of habitat areas of particular concern.* FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(9) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

(10) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Development of EFH recommendations for Councils.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations to assist each Council in the identification of EFH, adverse impacts to EFH, and actions that should be considered to ensure the conservation and enhancement of EFH for each FMP. NMFS will provide such recommendations for the initial incorporation of EFH information into an FMP and for any subsequent modification of the EFH components of an FMP. The NMFS EFH recommendations may be provided either before the Council's development of a draft EFH document or later as a review of a draft EFH document developed by a Council, as appropriate.

(c) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely affects EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(3) of this section and will provide EFH Conservation Recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

§ 600.905 Purpose, scope, and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH Conservation Recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate closely to identify actions that may adversely affect EFH, to develop comments and EFH Conservation Recommendations to Federal and state agencies, and to provide EFH information to Federal and state agencies. NMFS will work with each Council to share information and to coordinate Council and NMFS comments and recommendations on actions that may adversely affect EFH. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Anadromous fishery resource under Council authority means an anadromous species managed under an FMP.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage.* The terms "must", "shall", "should", "may", "may not", "will", "could", and "can" are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become

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familiar with areas designated as EFH, potential threats to EFH, and opportunities to promote the conservation and enhancement of EFH.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation.* Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions if the renewal, review, or revision may adversely affect EFH. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level under paragraph (j) of this section, if appropriate, with respect to these actions. Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NMFS early in emergency response planning, but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the action.

(2) *Approaches for conducting consultation.* Federal agencies may use one of the five approaches described in paragraphs (f) through (j) of this section to fulfill the EFH consultation requirements. The selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely affect EFH. Federal agencies should use the most efficient approach for EFH consultation that is appropriate for a given action or actions. The five approaches are: use of existing environmental review procedures, General Concurrence, abbreviated consultation, expanded consultation, and programmatic consultation.

(3) *Early notification and coordination.* The Federal agency should notify NMFS in writing as early as practicable regarding actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve EFH. Such early coordination should occur during pre-application planning for projects subject to a Federal permit or license and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2) through (4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency should notify NMFS in writing that it is representing one or more additional agencies. Alternatively, if one Federal agency has completed an EFH consultation for an action and another Federal agency acts separately to authorize, fund, or undertake the same activity (such as issuing a permit for an activity that was funded via a separate Federal action), the completed EFH consultation may suffice for both Federal actions if it adequately addresses the adverse effects of the actions on EFH. Federal agencies may need to consult with NMFS separately if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on EFH and that agency does not act as the lead agency.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an EFH consultation by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4)(B) of the Magnuson-Stevens Act.

(d) *Best available information.* The Federal agency and NMFS must use the best scientific information available regarding the effects of the action on EFH and the measures that can be taken to avoid, minimize, or offset such effects. Other appropriate sources of information may also be considered.

(e) *EFH Assessments*—(1) *Preparation requirement.* For any Federal action that may adversely affect EFH, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. For actions covered by a General Concurrence under paragraph (g) of this section, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation under paragraph (j) of this section, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation. Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as Endangered Species Act (ESA) Biological Assessments pursuant to 50 CFR part 402 or National Environmental Policy Act (NEPA) documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (e)(3) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other environmental reviews is set forth in paragraph (f) of this section.

(2) *Level of detail.* The level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action. For example, for relatively simple actions involving minor adverse effects on EFH, the assessment may be very brief. Actions that may pose a more serious threat to EFH warrant a correspondingly more detailed EFH Assessment.

(3) *Mandatory contents.* The assessment must contain:

(i) A description of the action.

(ii) An analysis of the potential adverse effects of the action on EFH and the managed species.

(iii) The Federal agency's conclusions regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(4) *Additional information.* If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.

(v) Other relevant information.

(5) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action,

supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with the EFH Assessment.

(f) *Use of existing environmental review procedures*—(1) *Purpose and criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. The requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act, including consultations that would be considered to be abbreviated or expanded consultations under paragraphs (h) and (i) of this section, can be combined with existing procedures required by other statutes if such processes meet, or are modified to meet, the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. Whenever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes provided that they allow sufficient time for NMFS to develop EFH Conservation Recommendations.

(ii) Notification must include an assessment of the impacts of the action on EFH that meets the requirements for EFH Assessments contained in paragraph (e) of this section. If the EFH Assessment is contained in another document, the Federal agency must identify that section of the document as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (f)(3) of this section that the existing process can be used to satisfy the requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(2) *NMFS response to Federal agency.* If an existing environmental review process is used to fulfill the EFH consultation requirements, the comment deadline for that process should apply to the submittal of NMFS EFH Conservation Recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless NMFS and the Federal agency agree to a different deadline. If NMFS EFH Conservation Recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH Conservation Recommendations will be clearly identified as such (e.g., a section in the comment letter entitled "EFH Conservation Recommendations") and a Federal agency response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing environmental review process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how to combine the EFH consultation requirements with the existing process, with or without modifications. If, at the conclusion of these discussions, NMFS determines that the existing or modified process meets the criteria of paragraph (f)(1) of this section, NMFS will make a finding that the process can be used to satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the agency and NMFS should follow one of the approaches for consultation discussed in the following sections.

(g) *General Concurrence*—(1) *Purpose.* A General Concurrence identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria.* (i) For Federal actions to qualify for General Concurrence, NMFS must determine that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking actions covered by a General Concurrence will be the responsibility of the Federal agency. However, NMFS may agree to track such actions. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the applicable Council(s), and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (g)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is proposed for actions that may adversely affect habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with an EFH Assessment containing a description of the nature and approximate number of the actions, an analysis of the effects of the actions on EFH, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will provide the Federal agency with a written statement of General Concurrence that further consultation is not required. If NMFS does not agree that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that another type of consultation will be required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Further consultation.* NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is no process in place to adequately assess the cumulative impacts of actions covered

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under the General Concurrence. NMFS may request further consultation for these actions on a case-by-case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Notification.* After completing a General Concurrence, NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means.

(6) *Revisions.* NMFS will periodically review and revise its General Concurrences, as appropriate.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria.* Abbreviated consultation allows NMFS to determine quickly whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action could be alleviated through minor modifications.

(2) *Notification by agency and submittal of EFH Assessment.* Abbreviated consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for consultation.

(3) *NMFS response to Federal agency.* If NMFS determines, contrary to the Federal agency's assessment, that an action would not adversely affect EFH, or if NMFS determines that no EFH Conservation Recommendations are needed, NMFS will notify the Federal agency either informally or in writing of its determination. If NMFS believes that the action may result in substantial adverse effects on EFH, or that additional analysis is needed to assess the effects of the action, NMFS will request in writing that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If expanded consultation is not necessary, NMFS will provide EFH Conservation Recommendations, if appropriate, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(i) *Expanded consultation procedures*—(1) *Purpose and criteria.* Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effects of an action make expanded consultation appropriate.

(2) *Notification by agency and submittal of EFH Assessment.* Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for expanded consultation. Federal agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (e)(4) of this section to facilitate review of the effects of the action on EFH.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the action with the appropriate Council(s).

(iv) Discuss EFH Conservation Recommendations with the Federal agency and provide such recommendations to the Federal agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60 days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal agency. NMFS and Federal agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 60 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(5) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH Conservation Recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal agency agree to an extension, the Federal agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal agency do not agree to extend consultation, NMFS must provide EFH Conservation Recommendations to the Federal agency using the best scientific information available to NMFS.

(j) *Programmatic consultation*—(1) *Purpose.* Programmatic consultation provides a means for NMFS and a Federal agency to consult regarding a potentially large number of individual actions that may adversely affect EFH. Programmatic consultation will generally be the most appropriate option to address funding programs, large-scale planning efforts, and other instances where sufficient information is available to address all reasonably foreseeable adverse effects on EFH of an entire program, parts of a program, or a number of similar individual actions occurring within a given geographic area.

(2) *Process.* A Federal agency may request programmatic consultation by providing NMFS with an EFH Assessment in accordance with paragraph (e) of this section. The description of the proposed action in the EFH Assessment should describe the program and the nature and approximate number (annually or by some other appropriate time frame) of the actions. NMFS may also initiate programmatic consultation by requesting pertinent information from a Federal agency.

(3) *NMFS response to Federal agency.* NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and, if applicable, will identify any potential adverse effects that could not be addressed programmatically and require project-specific consultation. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH Conservation Recommendations will be deferred to project-specific consultations. If appropriate, NMFS' response may include a General Concurrence for activities that qualify under paragraph (g) of this section.

(k) *Responsibilities of Federal agency following receipt of EFH Conservation Recommendations*—(1) *Federal agency response.* As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal agency must provide a detailed response in writing to NMFS and to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act within 30 days after receiving an EFH Conservation Recommendation from NMFS. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations, unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations.* If a Federal agency decision is inconsistent with a NMFS EFH Conservation Recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal agency, as well as with any other agencies involved, to discuss the action and opportunities for resolving any disagreements. If a Federal agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. NMFS may develop written procedures to further define such review processes.

(l) *Supplemental consultation.* A Federal agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS EFH Conservation Recommendations.

§ 600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.

(a) *General.* Under section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH Conservation Recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies.* For Federal actions, EFH Conservation Recommendations will be provided to Federal agencies as part of EFH consultations conducted pursuant to § 600.920. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not initiated an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation, or NMFS will provide EFH Conservation Recommendations based on the information available.

(c) *Recommendations to state agencies*—(1) *Establishment of procedures.* The Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

(2) *Coordination with states on recommendations to Federal agencies.* When an action that would adversely affect EFH is authorized, funded, or undertaken by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH Conservation Recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

(d) *Coordination with Councils.* NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act. For such actions NMFS will share pertinent information with the Council, including copies of NMFS' EFH Conservation Recommendations.

§ 600.930 Council comments and recommendations to Federal and state agencies.

Under section 305(b)(3) of the Magnuson-Stevens Act, Councils may comment on and make recommendations to the Secretary and any Federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. Councils must provide such comments and recommendations concerning any activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the habitat, including EFH, of a species under its authority. Each Council may receive information on actions of concern by methods such as directing Council staff to track proposed actions, recommending that the Council's habitat committee identify actions of concern, or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions of concern that would adversely affect EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.

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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0401]

Revision of the Definition of the Term "No Residue"

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding carcinogenic compounds used in food-producing animals. Specifically, FDA is deleting the operational definition of the term "no residue" and is making conforming amendments to other parts of these regulations. FDA is proposing these amendments in response to a legal opinion issued by the Department of Justice (DOJ), Office of Legal Counsel, which concluded that the operational definition of "no residue" is not legally supportable.

DATES: Submit written or electronic comments on the proposed rule by April 17, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Steven D. Brynes, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6975.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 31, 1985 (50 FR 45530), FDA issued a proposed rule implementing the diethylstilbestrol (DES) proviso of the Delaney clause in sections 409, 512, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348, 360b, and 379e). The DES proviso provides that we (FDA) can approve an animal feed or color additive or a new animal drug that induces cancer if we find that "no residue" of such additive or drug "will be found (by methods of examination prescribed or approved by the Secretary by regulations * * *), in any edible portion of such animals after slaughter." See e.g., 21 U.S.C. 360b(d)(1)(I). We issued final regulations based on the 1985 proposal in the **Federal Register** of December 31, 1987 (52 FR 49572).

The final rule, which was codified in part 500 (21 CFR part 500) in §§ 500.80 to 500.92, included an operational definition of "no residue" in § 500.84. That definition provides that FDA will consider that "no residue" of a carcinogenic compound remains in the edible tissue of treated animals when the "concentration of the residue of carcinogenic concern in the total diet of people will not exceed S_o." Section 500.82 defines S_o as "the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million." Section 500.82 further provides that FDA will assume that the "S_o will correspond to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people." Therefore, under these regulations, it is possible for a residue detected by the method approved by FDA to be considered "no residue" if the detectable residue is below the level that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million ("insignificant risk" or "no significant risk" level).

In the final rule of December 31, 1987, we explained the rationale for this operational definition of "no residue." The preamble to the final rule stated:

> Application of * * * the "DES Proviso," hinges therefore on the finding of "no residue" of the substance in edible products.
>
> As a practical matter, however, FDA has been unable to conclude that no trace of any given substance will remain in edible products. The new procedures, therefore, provide an operational definition of "no residue." That is, the procedures are designed to permit the determination of the concentration of residue of a carcinogenic compound that presents an insignificant risk of cancer to the consuming public. That concentration corresponds to a maximum lifetime risk of cancer to the test animal on the order of 1 in 1 million. Thus, the procedures provide for a quantitative estimation of the risk of cancer presented by the residues of a carcinogenic compound proposed for use in food-producing animals. "No residue" remains in food products when conditions of use, including any required preslaughter withdrawal period or milk discard time, ensure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed the concentration that has been determined to present an insignificant risk.

On October 13, 1995, the DOJ, Office of Legal Counsel, responding to questions posed by the Environmental Protection Agency and FDA, issued a legal opinion entitled "The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act" (DOJ Opinion on FDA Implementation of the DES Proviso) (Ref. 1). Specifically, the opinion addressed the following questions: (1) Whether the FDA has the discretion to refuse to permit the use of an additive in animal feed if the agency finds that there is no method that can "reliably measure and confirm" the presence of residues of carcinogenic concern at and above the "no residue" level for such residues, (2) whether the FDA must revise its regulations to adopt more sensitive methods when they become available once the agency has approved a method of detection, and (3) whether the FDA has the discretion to determine that an edible tissue contains "no residue" when a method of detection reveals the presence of residues of carcinogenic concern that is below the "no significant risk" level.

With respect to the first question, the opinion determined that FDA is under no obligation to approve at least one method for the detection of a residue of a carcinogenic animal food additive and that it has the discretion to refuse to permit the use of unsatisfactory detection methods. In so concluding, the DOJ further stated that FDA may use the "no significant risk" level (defined in § 500.84) as a benchmark for rejecting analytical methods. These conclusions are consistent with FDA's current interpretations of the DES proviso regarding analytical methods.

The second question asks whether FDA must revise its regulations to adopt the "best available" methods for the detection of carcinogenic residues or whether it has discretion to continue to accept results from less sensitive methods. The DOJ asserted that, although one interpretation of the proviso could allow the best available method approach, the statute does not compel that course of action. Thus, the opinion concluded that the statute does not require FDA to replace currently approved methods with more sensitive methods as they become available. Once again, this conclusion agrees with the position taken by FDA.

In considering the third question, the DOJ reasoned that "[g]iving 'no residue' its ordinary meaning, the detected presence of any residue by an approved method would be incompatible with a finding of 'no residue,' and thus would preclude a finding that the [DES] proviso applies." Furthermore, the opinion stated that "[t]here is nothing * * * to suggest that a finding of 'no residue' could be based upon the detected presence of residue, however insignificant * * *."

DOJ's conclusion that "FDA may not accept a finding that residue is present, but below the 'no significant risk' level, as satisfying the statutory requirement of 'no residue,'" contradicts FDA's present operational definition of "no residue" issued in § 500.84. Therefore, we are proposing amendments to the regulations to make them consistent with the DOJ legal opinion.

II. Description of the Proposed Rule

The agency is proposing to revise the regulations to delete the operational definition of "no residue." Therefore, for a substance to be approved under the DES proviso, no residue can be detectable by the approved regulatory method; that is, any residue in the target tissue must be nondetectable or below the limit of detection (LOD) of the approved regulatory method. Inasmuch as: (1) The regulatory method currently is defined in § 500.82 as the aggregate of all experimental procedures for measuring and [emphasis added] confirming the presence of the marker residue in the target tissue, and (2) FDA must, for regulatory and scientific reasons, be capable of identifying the detected residue with a high degree of certainty, FDA is proposing to define the LOD, for the purposes of this rule, as the lowest concentration of analyte that can be confirmed by the approved regulatory method.

The agency is proposing the following conditions that a sponsor of a carcinogenic compound must satisfy with respect to the sponsor's proposed regulatory method. First, the sponsor must provide a method that is at least capable of reliably quantitating residues at and above the R_m (the concentration of marker residue that the regulatory method must be capable of measuring in the target tissue), which we will continue to calculate in the manner provided in the current regulations in §§ 500.80 to 500.92. Therefore, FDA will use the "no significant risk" level determined through appropriate toxicological testing as a benchmark for assessing the acceptability of a regulatory method. Second, under the proposed regulations, a sponsor must provide sufficient data to permit us to estimate the LOD of the method as defined above and in proposed § 500.82. Given the first requirement, the LOD will likely be below the R_m, and consequently, the LOD will replace the R_m as the "no residue" determinant.

Under the proposed regulations, we have defined the LOD as the lowest concentration of analyte that can be confirmed by the approved regulatory method. Believing that there are several valid procedures to estimate the LOD, we have chosen not to specify in this proposed rule any one specific procedure or protocol as a standard requirement for establishing the LOD. Therefore, under the proposed rule, we would consider and evaluate any reasonable, generally recognized procedure that is consistent with the aims and requirements of regulatory exposure estimation and risk assessment practices of FDA.

III. Environmental Impact

The agency has carefully considered the potential environmental impacts of this proposed rule. The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency concludes that this proposed rule is consistent with the principles set forth in the Executive order and in these two statutes. The agency expects only very slight, if any, compliance costs to result from the proposed rule. Companies have requested approvals for carcinogenic compounds under the current regulation in only a few cases since it was published as a final rule in 1987, probably at least in part because of concerns over public acceptance of such products. We anticipate that, for the same reasons, companies will rarely request approvals for carcinogenic compounds under a final version of the proposed rule. As a result, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Further, we certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

We are proposing to amend the regulations regarding the carcinogenic compounds used in food-producing animals by deleting the operational definition of "no residue." Under the proposed rule, for a carcinogenic compound to be approved, no residue of the compound can be detectable using an approved regulatory method. Any residue in the target tissue would have to be nondetectable or below the LOD.

As stated previously, we are making this change in response to a DOJ opinion that the current operational definition of "no residue" is not legally supportable. The benefit of this change would be an increase in the clarity of

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the current regulations concerning carcinogenic compounds used in food-producing animals.

The deletion of the definition is not expected to impose any measurable compliance costs on the sponsors of compounds that are submitted to us for approval as new animal drugs or feed or color additives. The submission of data to meet the requirements of the proposed rule will be in place of, and nearly identical to, data that were submitted to meet the operational definition of "no residue." We do not expect a noticeable increase in the level of effort expended in preparing a submission. To the extent that incremental compliance costs exist, we believe them to be inconsequential. In theory, another result of this proposal might be the possible increase in the withdrawal period for some number of compounds submitted for approval, which would represent some loss of value to the sponsor. However, because we anticipate very few requests for approval of new animal drug applications or feed additives under the provisions of the proposed rule, we believe any loss of value would be insignificant.

As stated above, the Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant economic impact on a substantial number of small entities. Since we have determined that the possible compliance costs to any sponsor would be extremely small, if they occur at all, we are certifying that the proposal would not have a significant economic impact on a substantial number of small entities. No further small business analysis is required.

V. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

The information collected in § 500.88 has been approved by the Office of Management and Budget (OMB) under OMB control number 0910–0032. This proposed rule amends § 500.88, but does not substantively modify the information collection. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposal by April 17, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Justice, "The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act: Memorandum Opinion for the Assistant Administrator and General Counsel Environmental Protection Agency and the General Counsel Department of Health and Human Services," October 13, 1995.

List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 500 be amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

§ 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (a) by removing the phrase "provides an operational definition of no residue and".

§ 500.82 [Amended]

3. Section 500.82 *Definitions* is amended in paragraph (b) by alphabetically adding *"Limit of Detection (LOD)* means the lowest concentration of analyte that can be confirmed by the approved regulatory method."; by removing from the definition of *"Marker residue"* the phrase "permitted concentration" and by adding in its place "S_m"; by removing from the definition for *"Preslaughter withdrawal period or milk discard time"* the phrase "for the residue of carcinogenic concern in the edible product to deplete to the concentration that will satisfy the operational definition of no residue" and by adding in its place "at which no residue is detectable in the edible product using the approved regulatory method (i.e., the marker residue is below the LOD)"; by removing from the definition of "R_m" the phrase "in the last tissue to deplete to its permitted concentration"; and by revising the definition of "S_m" to read "S_m means the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.".

4. Section 500.84 is amended by revising the section heading, by adding two sentences at the end of paragraph (c)(1), by revising paragraph (c)(2), and by adding paragraph (c)(3) to read as follows:

§ 500.84 Conditions for approval of the sponsored compound.

* * * * *

(c) * * *

(1) * * * Because the total diet is not derived from food-producing animals, FDA will make corrections for food intake. FDA will designate as S_m the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in test animals of 1 in 1 million.

(2) From the appropriate residue chemistry data FDA will calculate the R_m as described in § 500.86(c). The sponsor must provide a regulatory method in accordance with § 500.88(b). FDA will calculate the LOD of the method from data submitted by the sponsor under § 500.88. The LOD must be less than or equal to R_m.

(3) FDA will conclude that the provisions of this subpart are satisfied when no residue of the compound is detectable (that is, the marker residue is below the LOD) using the approved regulatory method under the conditions of use of the sponsored compound, including any required preslaughter withdrawal period or milk discard time.

5. Section 500.88 is revised to read as follows:

§ 500.88 Regulatory method.

(a) The sponsor shall submit for evaluation and validation a regulatory method developed to monitor compliance with this subpart.

(b) The regulatory method must be able to confirm the identity of the marker residue in the target tissue at a minimum concentration corresponding to the R_m. FDA will determine the LOD from the submitted analytical method validation data.

(c) FDA will publish in the **Federal Register** the complete regulatory method for ascertaining the marker residue in the target tissue in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(I), and 721(b)(5)(B) of the act.

Dated: January 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1170 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–159079–01]

RIN 1545–BA38

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Immediate Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these proposed regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations on this subject in this issue of the **Federal Register**, also serves as the text of these proposed regulations set forth in this cross-referenced notice of proposed rulemaking.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–159079–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–159079–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS internet site at *http://irs.gov/tax_regs/reglist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Sambur at (202) 622–3840; concerning submissions, Donna Poindexter, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1 and 301. The temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1441–1 is amended as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–1T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1441–6 is amended as follows:

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§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–6T published elsewhere in this issue of the **Federal Register**].

PART 301— ADMINISTRATIVE PRACTICES AND PROCEDURE, INCOME TAXES, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 301.6109–1 is amended as follows:

§ 301.6109–1 Identifying numbers.

[The text of the proposed amendments to this section is the same as the text of § 301.6109–1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–1126 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Realignment of Buffalo and Pittsburgh Postal Facilities for Deposit of DBMC Rate Standard Mail and Package Services Machinable Parcels

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Domestic Mail Manual (DMM) to realign permissible points for mailer deposit of Standard Mail machinable parcels and Package Services machinable parcels currently taken to the Buffalo, New York, Auxiliary Service Facility (ASF), and claimed at destination bulk mail center (DBMC) rates. The proposed rule would require such mail to be taken to and postage calculated from the Pittsburgh Bulk Mail Center (BMC) to qualify for the DBMC rates.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mail Preparation and Standards, USPS, 1735 N Lynn Street, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Library, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: OB Akinwole, (703) 292–3643; or Cheryl Beller (202) 268–5166.

SUPPLEMENTARY INFORMATION:

Background

Currently machinable and nonmachinable parcels deposited at the Buffalo ASF are eligible for destination bulk mail center (DBMC) rates if the applicable preparation standards are met (e.g., pieces are prepared in 5-digit containers or Buffalo ASF containers) and the pieces deposited are addressed for delivery within the ZIP Code range of the Buffalo ASF service area as defined in DMM E650, Exhibit 5.1 and E751, Exhibit 1.3. For the DBMC rates, that service area currently comprises destination 3-digit ZIP Code prefixes 130 through 136 and 140 through 149. All machinable parcels and nonmachinable parcels entered at the Buffalo ASF are sorted manually by the Postal Service to the first three digits of the delivery address ZIP Codes. They are then transported to sectional center facilities (SCFs) in Rochester, Syracuse, Elmira, and Utica. At the SCFs the parcels are sorted by 5-digit ZIP Code to the associated delivery offices and subsequently transported to those delivery offices.

In contrast to this manual operation in Buffalo, machinable parcels entered at the Pittsburgh BMC are sorted on parcel sorting machines (PSMs) and finalized to 5-digit ZIP Codes in the 130–136 and 140–149 range in one or two passes. Sorted parcels destined for the Buffalo ASF service area are then transported directly from the Pittsburgh BMC to the appropriate SCFs for cross docking to the delivery offices without further sortation at the SCFs. Approximately 31 percent of the parcel volume now handled by the Pittsburgh BMC is destined for the Buffalo ASF service area ZIP Codes and, of that volume, nearly 90 percent is sorted to 5-digit ZIP Codes on the PSMs.

The diversion of machinable parcels from the Buffalo ASF to the Pittsburgh BMC is generally not the result of redirection of that volume by the Buffalo ASF. Almost since the inception of the DBMC entry rate, most drop shippers have deposited machinable parcels and some nonmachinable parcels destined for the Buffalo ASF service area at the Pittsburgh BMC, either under a 1995 Postal Service exception letter or at the direction of the Buffalo ASF.

In order to calculate postage for these diverted parcels, some mailers depositing machinable parcels at the Pittsburgh BMC zone their mail from the Buffalo ASF, and others zone their mail from the Pittsburgh BMC. Since 1993, the Buffalo ASF has received extremely few drop shipments of machinable parcels. In fact, current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments.

Officials at the Pittsburgh BMC confirm that mailers are making appointments and dropping machinable parcels destined for the Buffalo ASF service area at the Pittsburgh BMC rather than the Buffalo ASF. This arrangement coincides with the fact that western New York is not an originating site for parcel shippers, and the volume that is destined for Buffalo generally originates outside the local area by mailers who are also likely to have parcels destined for the Pittsburgh BMC service area.

Facility restrictions at the Buffalo ASF also make it desirable that the Postal Service redirect machinable parcels from Buffalo to Pittsburgh. The Buffalo ASF lacks sufficient space to handle a large volume of parcels. Additionally, since it does not have PSMs even machinable parcels must be handled in manual operations.

Moreover, if the current parcel diversion were stopped, the cost to process the 21.5 million parcels annually that would shift from the Pittsburgh BMC to the Buffalo ASF would greatly increase because additional work hours would be required at the downstream SCFs within the Buffalo ASF to sort the parcels to the five-digit delivery offices. As previously noted, these parcels are currently finalized to 5-digits at the Pittsburgh BMC. At the same time, there would be no reduced transportation costs for the Postal Service between Pittsburgh and Buffalo because the volume of Standard Mail, not Package Services mail, primarily determines the number of daily trips between the two facilities.

Effective Date

The Postal Service is proposing that the following revisions become effective March 31, 2002. Mailers are permitted to enter mail under the revised standards immediately upon publication of the final rule with required compliance by June 1, 2002.

Proposed Changes

Under the proposed realignment, all machinable parcels claiming DBMC rates for Standard Mail, Parcel Select, and Bound Printed Matter for ZIP Codes currently listed under the Buffalo ASF service area in DMM L602 would be entered, by mailers, at the Pittsburgh BMC. Machinable parcels for those ZIP Codes claimed at DBMC rates, would be sorted to the Pittsburgh BMC, rather than the Buffalo ASF, using DMM Labeling list L601. This processing is currently done by the Pittsburgh BMC.

In addition, mailers would be permitted, as an option, to deposit nonmachinable parcels, at non DBMC rates, for the Buffalo ASF service area ZIP Codes listed in DMM labeling list L602 at the Pittsburgh BMC if the parcels were commingled in bedloads with the DBMC rate machinable parcels deposited at the Pittsburgh BMC. Mailers would continue to claim DBMC rates for the following types of mail deposited at the Buffalo ASF for delivery to Buffalo ASF service area ZIP Codes as prescribed in DMM E650, Exhibit 5.1 and E751, Exhibit 1.3:

- Parcel Post nonmachinable parcels not commingled in DBMC bedloads with machinable parcels.
- Parcel Select perishables.
- Bound Printed Matter flats and irregular parcels.
- Standard Mail flats, irregular parcels, and letters.

Under this proposal, Standard Mail, Parcel Select, and Bound Printed Matter machinable parcels sorted to 5-digit ZIP Codes within the Buffalo SCF service area, as defined in DMM L005, would still be required to be entered at Buffalo to qualify for the DSCF rate. Standard Mail machinable parcels claimed at DSCF rates and entered at Buffalo would continue to be eligible for a parcel barcode discount.

As part of this proposal, machinable and nonmachinable parcels—both Parcel Post and Bound Printed Matter—would be zoned from the Pittsburgh BMC using Postal Service zone chart 150. Barcoded machinable parcels for the Buffalo ASF service area would also be eligible for the parcel barcode discount when entered at the Pittsburgh BMC. The Postal Service believes that this realignment of ZIP Codes for DBMC rate eligibility between the Pittsburgh BMC and the Buffalo ASF will provide consistent customer service and promote the most efficient and cost-effective method for processing machinable parcels for mailers and for the Postal Service.

The Postal Service also believes that this proposal will eliminate any confusion concerning the applicable standards for the deposit of DBMC machinable parcels in the affected service areas.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual (DMM) modules E and L as follows:

Domestic Mail Manual (DMM)

* * * * *

E ELIGIBILITY

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

* * * * *

5.0 DBMC DISCOUNT

5.1 Definition

[Amend Exhibit 5.1 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

Eligible destination ZIP Codes	Entry facility
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140.
150–168, 260–266, 439–447 [Except machinable parcels]	BMCPITTSBURGH PA 15195.
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195.

* * * * *

5.5 Additional Standards for Machinable Parcels

[Amend 5.5a by adding the phrase "except as shown in Exhibit 5.1" to the second sentence to explain when sortation of parcels to ASFs is optional to read as follows:]

* * * * *

a. Destination BMC/ASF Containers. Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. When machinable parcels are sorted to both destination BMCs and ASFs under L601 and L602, they qualify for DBMC rates under 5.2. Except as provided in Exhibit 5.1, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates.

* * *

* * * * *

E700 Package Services

* * * * *

E750 Destination Entry

E751 Parcel Select

* * * * *

1.0 BASIC STANDARDS

* * * * *

1.3 Definition

[Amend Item and Exhibit 1.3 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

b. Except as provided in Exhibit 1.3, pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

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Eligible destination ZIP Codes	Entry
. . . . .	. . .
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140.
150–168, 260–266, 439–447 [Except machinable parcels]	BMCPITTSBURGH PA 15195.
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195.
. . . . .	. . .

* * * * *

E752 Bound Printed Matter

* * * * *

2.0 Destination Bulk Mail Center (DBMC) Rates

* * * * *

2.3 Presorted Machinable Parcels

[Amend 2.3 by adding the phrase "except as shown in Exhibit E751.1.3" to the third sentence to read as follows:]

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DBMC rates. Machinable parcels palletized under M045 or sacked under M722 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. Except as provided in Exhibit E751.1.3, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. * * *

* * * * *

L Labeling Lists

* * * * *

L600 Standard Mail and Package Services

L601 BMCs

[Amend L601 by revising items to read as follows:]

* * * * *

a. Standard Mail machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

c. Bound Printed Matter machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

e. Parcel Post except for ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates and nonmachinable BMC Presort or OBMC Presort rate mail. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC if bedloaded and presented with machinable parcels.

* * * * *

L602 ASFs

[Amend L602 by revising L602a, L602c, and L602e to read as follows:]

L602 defines the service area by individual 3-digit ZIP Code prefix for Standard Mail and Package Services mail that must be sorted to ASFs.

Use this list for:

a. Standard Mail machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

c. Bound Printed Matter machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

e. Parcel Post machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC under L601 if bedloaded and presented with machinable parcels.

* * * * *

An appropriate amendment to 39 CFR part 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–1272 Filed 1–16–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7129–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a delegation request submitted by the State of Maine. Pursuant to section 112(l) of the Clean Air Act (CAA), Maine Department of Environmental Protection (ME DEP) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. EPA is proposing to grant ME DEP the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. This action is being taken under the Clean Air Act.

DATES: Written comments must be received by February 7, 2002.

ADDRESSES: Comments should be addressed to: Steven Rapp, Manager, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023.

Copies of the submitted request are available for public inspection at EPA's Region I office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023, Telephone: (617) 918–1655.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (see 63 FR 18617), which has been codified in 40 CFR part 63, subpart S, "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry" (Pulp and Paper MACT I). On July 16, 1999, EPA delegated its authority to implement and enforce 40 CFR part 63, subpart S, the Pulp and Paper MACT Standard, to ME DEP. Lincoln Pulp and Paper Company of Lincoln, Maine (Lincoln Pulp and Paper), is one of several sources in Maine currently subject to subpart S.

On September 25, 2001, ME DEP requested delegation of subpart S under § 63.94 for Lincoln Pulp and Paper. EPA received the request on October 5, 2001. ME DEP requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S for Lincoln Pulp and Paper under the process outlined in 40 CFR 63.94. ME DEP will continue to implement and enforce subpart S without changes for the remainder of sources in Maine subject to subpart S. As part of its request to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable federal section 112 standards, ME DEP also requested approval of its demonstration that ME DEP has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 federal rules, emission standards, or requirements. The federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (see 65 FR 55810, dated September 14, 2000). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category-specific regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (see 40 CFR 63.94(a) and (b)) is the "up-front approval" of the state EBP program. The second step (see 40 CFR 63.94(c) and (d)) is EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (see 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the "up-front approval" of the EBP program, is three fold: (1) It ensures that ME DEP meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for ME DEP to replace the otherwise applicable federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and federal emission standards for which ME DEP will be accepting delegation under the EBP option.

Under §§ 63.91 and 63.94(b), ME's request for approval is required to include the identification of the sources and the source categories for which the state is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources. EPA's review of the request for approval of ME DEP's EBP program for subpart S indicates that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. EPA is proposing to approve ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper for subpart S. The requirement applicable to the source and the "applicable requirement" for title V purposes remains the federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

II. Proposed Action

EPA is proposing to approve ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper for subpart S.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this action.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

EPA has concluded that this proposed rule may have tribal implications. Lincoln Pulp and Paper is located near the Penobscot Nation. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with

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representatives early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA has discussed this with representatives of the Penobscot Indian Tribe. EPA has agreed to work with the State, the Tribe, and the company to ensure that whatever alternative EPA approves will have no discernible environmental effect on the Tribe. We are conducting ongoing consultation with the Penobscot Nation on this request by the State of Maine and have explained that while this action gives Maine flexibility, it does not increase its authority. This federal action will allow the State of Maine to implement equivalent alternative permit requirements to replace pre-existing requirements under federal law.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will simply allow Maine to implement equivalent alternative requirements to replace a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed rule.

D. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This proposed rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but will simply allow the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action will allow Maine to implement equivalent alternative requirements to replace pre-existing requirements under federal law, and will impose no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: January 10, 2002.

Robert W. Varney,

Regional Administrator, EPA-New England.

EPA is proposing to amend Title 40, chapter I, part 63 of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(20) to read as follows:

§ 63.99 Delegated Federal authorities.

(a)* * *

(20) Maine.

(i) [Reserved].

(ii) Maine Department of Environmental Services (ME DEP) may implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper, located in Lincoln, Maine, for subpart S–National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon ME DEP including, in title V permits, terms and conditions that are no less stringent than the Federal standard and have been approved by EPA. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 02–1244 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301210; FRL–6818–2]

RIN 2070–AC18

Sodium Starch Glycolate; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of sodium starch glycolate when used as an inert ingredient (disintegrant) in granular or tableted pesticide products, in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: Comments, identified by docket control number OPP–301210, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301210 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301210. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301210 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in

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this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301210. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

In a letter to the Agency dated June 28, 1994, Generichem Corp, now located at 755 Union Boulevard in Totowa, NJ 07511–0457 requested that 40 CFR 180.1001(c) and (e), be amended by establishing an exemption from the requirement of a tolerance for residues of sodium starch glycolate. The action was assigned pesticide petition (PP) number 5E4433. Neither a Proposed Rule nor a Notice of Filing has been previously published for PP 5E4433. After consideration of the petition, EPA is proposing to establish an exemption from the requirement of a tolerance for residues of sodium starch glycolate.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sodium starch glycolate (CAS Reg. No. 9063-38-1) are discussed in this unit.Sodium starch glycolate is manufactured from potato starch. It is produced by crossing-linking and carboxymethylation of the potato starch. Sodium starch glycolate is a polymer which has a molecular weight of approximately 2 million daltons.

A. Medical Uses

Sodium starch glycolate has been approved for use by the Food and Drug Administration (FDA) as a disintegrant in both prescription and over-the-counter drug products. In addition to these uses, sodium starch glycolate is also often used as a disintegrant in a number of dietary supplements. Typically, sodium starch glycolate is incorporated into oral dosage forms of drugs (*e.g.*, tablets) at levels up to 8% by weight. When the tablet is ingested, the sodium starch glycolate readily absorbs many times its weight in water, resulting in swelling which leads to the disintegration and enhanced dissolution of the tablet.

B. SAR (Structure Activity Relationship) Assessment

Sodium starch glycolate is an inert ingredient. To the best of the Agency's knowledge sodium starch glycolate has no active ingredient properties. Toxicity was assessed by a process called structure activity relationship (SAR). In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and

sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

For sodium starch glycolate the SAR assessment determined that the chemical was not structurally related to any known carcinogens or developmental/reproductive toxicants. The following human exposures were examined as part of the analysis: Inhalation, dermal, exposures to the eyes, and drinking water. Absorption was expected to be nil for all routes of exposure based on the high molecular weight. Digestion in the gastrointestinal tract is possible, but the amounts that could be absorbed would be extremely small. The only health concern was for inhalation of respirable particles (less than 10 microns). Since sodium starch glycolate will absorb many times its own weight in water and swell (in volume), inhalation of respirable particles can lead to lung effects. Thus, there is a moderate concern for inhalation of respirable particles only. For all other routes of exposure, concern is low.

C. Rat Feeding Study

This 21-day rat feeding study was conducted using a modified starch compound that is very similar to sodium starch glycolate. It was performed by the Central Institute for Nutrition and Food Research (referred to as TNO) in 1963. The Agency has not reviewed this study. Rats were fed diets that contained 60% wheat starch (control), 20%, 40%, or 60% of the modified starch. The institute summarized the study as follows: It "appears that good growth occurred on rations with 20% modified starch, although slight loss of hair was observed; 40% modified starch supported good growth, but caused loss of hair and slight diarrhea; 60% modified starch caused slight growth retardation, moderate diarrhea and loss of hair and distinctly increased water intake."

In 1993, in correspondence dated July 29, TNO discussed the 1963 21-day rat feeding study. The reviewer indicated sodium starch glycolate would be well-tolerated at a level of 5% which would correspond to a daily intake of about 5 g/kg body weight.

D. Information from the Internet

To ascertain whether additional information on sodium starch glycolate were available, the Agency also searched the Tox Net website at the National Library of Medicine (*http://www.toxnet.nlm.nih.gov*). The internet site did not contain any information on sodium starch glycolate by name or CAS Reg. No.

V. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

For the purposes of assessing potential exposure under this exemption, EPA considered that sodium starch glycolate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible.

1. *Dietary exposure*—i. *Food.* As previously stated, sodium starch glycolate is a high molecular weight material that is derived from potato starch. It is widely used in pharmaceuticals and dietary supplements as a disintegrant. In its 1993 correspondence TNO estimated the maximum amount of sodium starch glycolate that would be consumed by humans as a result of these FDA-approved uses as 13 mg/kg/day for adults and 80 mg/kg/day for children. EPA will regulate only the use of sodium starch glycolate as an inert ingredient in pesticide formulations. Based on its high molecular weight any sodium starch glycolate that may be ingested would not be expected to undergo any significant amount of absorption into the body from the gastrointestinal (GI) tract. From its proposed use as a disintegrant in granular and tableted pesticide products (which should be soil-directed), any food exposure to sodium starch glycolate as a result of its use in a pesticide product as an inert ingredient would be expected to be significantly lower than the exposure that currently occurs from those uses permitted by FDA.

ii. *Drinking water.* Sodium starch glycolate is water-absorbing and therefore does not readily dissolve in water. The hydrated form of sodium starch glycolate would be practically insoluble in water. Given this insolubility, the Agency has determined that exposure for all human population groups through drinking water would be extremely low.

2. *Other non-occupational exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The Agency believes that the potential for the use of sodium starch glycolate in and around the home exists. However, given its high molecular weight absorption is expected to be nil for dermal exposure. The concern would be, as previously stated, for inhalation of respirable particles. This concern will be addressed by end-product acute inhalation toxicity testing at the time of product registration.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Given the low toxicity of sodium starch glycolate, by all routes of exposure except inhalation, the Agency does not believe it likely that sodium starch glycolate in combination with other substances could result in cumulative adverse effects.

VII. Determination of Safety for U.S. Population

EPA's analysis shows that this derivative of potato starch is unlikely to pose any significant toxic potential through dietary exposure. Not only can a compound similar to sodium starch glycolate serve as a significant portion of the animal diet, but sodium starch glycolate cannot be absorbed in the intestinal tract in significant amounts. The moderate inhalation toxicity concern with sodium starch glycolate

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will be addressed by end-product acute inhalation toxicity testing and appropriate label restrictions at the time of product registration. Accordingly, the Agency concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of sodium starch glycolate. A tolerance is not necessary because sodium starch glycolate residues will pose no appreciable risks to human health under reasonably forseeable circumstances.

VIII. Additional Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of sodium starch glycolate by the oral and dermal pathways of exposure, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . ." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing sodium starch glycolate for endocrine effects may be required.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing exemptions for sodium starch glycolate.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for sodium starch glycolate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

E. Conditions

Given the moderate concern for sodium starch glycolate inhalation toxicity, the Agency would normally require testing of formulated end use pesticide products incorporating sodium starch glycolate to ascertain the LC_{50} in the acute inhalation toxicity test (OPPTS 870.1300). Since the use of sodium starch glycolate will be restricted to granular and tableted products only, it is likely that a waiver for the acute inhalation toxicity study would be granted. In order to determine the amount of fine particulate materials that could form during product transportation and storage, an attrition study will be required as part of the registration process for any end use product that contains sodium starch glycolate.

X. Conclusions

Based on the information in this preamble and considering the restriction to granular and tableted formulations, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to sodium starch glycolate (CAS Reg. No. 9063–38–1). Accordingly, EPA finds that exempting sodium starch glycolate from the requirement of a tolerance will be safe.

XI. Regulatory Assessment Requirements

This proposed rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since this tolerance exemption would be established on the basis of a petition under FFDCA section 408(d), the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.*) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled*Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Sodium starch glycolate (CAS Reg. No. 9063–38–1)	Granular and tableted products only; not to exceed 8% of the formulated product	Disintegrant

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
Sodium starch glycolate (CAS Reg. No. 9063–38–1)	Granular and tableted products only; not to exceed 8% of the formulated product	Disintegrant

[FR Doc. 02–1247 Filed 1–16–02; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 81

RIN: 0920–ZA00

Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Health and Human Services(DHHS) is reopening the comment period for the proposed rule on the guidelines for determining probability of causation for certain claims for cancer under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** of Friday, October 5, 2001. After considering these comments, comments previously received, and the technical review and comments from the Advisory Board on Radiation and Worker Health (ABRWH), DHHS will publish a final rule.

DATES: Any public written comments not submitted at the meeting of the ABRWH must be received on or before Wednesday, January 23, 2002.

ABRWH must submit any comments and recommendations on the probability of causation to DHHS by Wednesday, February 6, 2002.

ADDRESSES: Submit written comments to: Attention—Dose Reconstruction Comments, Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 533–8450, Fax: (513) 533–8285, e-mail: *NIOCINDOCKET@CDC.GOV*.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–841–4498 (this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On October 5, 2001, HHS published a notice of proposed rulemaking proposing guidelines for determining the probability of causation for certain cancer claims filed under EEOICPA, Public Law 106–398 [See FR Vol. 66, No. 194, 50967]. The notice included a public comment period that ended on December 4, 2001. However, EEOICPA requires ABRWH to complete a technical review of the proposed guidelines before they are promulgated as an effective regulation. ABRWH will be conducting its technical review during a meeting of the ABRWH scheduled for Tuesday, January 22, 2002 and Wednesday, January 23, 2002.

To provide the public with the opportunity to participate in this review, HHS will reopen the public comment period to include the ABRWH Meeting transcript and any statements submitted for the record of that meeting in the docket of this rule. DHHS will also accept additional public written

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comments submitted to its docket office on or before Wednesday, January 23, 2002. The record for this rulemaking will close on Wednesday, February 6, 2002, by which time ABRWH must submit its final recommendations on the probability of causation to DHHS.

Dated: January 14, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1319 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–17–P

Notices

Federal Register

Vol. 67, No. 12

Thursday, January 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–027N]

Bovine Spongiform Encephalopathy (BSE) Current Thinking Paper; Notice of Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the Agency's current thinking paper on possible actions to minimize human exposure to meat food products from cattle that could contain the infective agent that causes Bovine Spongiform Encephalopathy (BSE). BSE, commonly referred to as "Mad Cow Disease," is a chronic degenerative disease affecting the nervous system of cattle. Worldwide, there have been more than 178,000 cases since the disease was first diagnosed in 1986 in Great Britain, although no cases of BSE have been confirmed in the United States. Recent laboratory and epidemiological research indicate that there is a causal association between BSE and a variant of Creutzfeldt-Jakob Disease, a slow degenerative disease that affects the central nervous system of humans.

The Agency current thinking paper follows the recent publication of a risk assessment conducted by the Harvard University School of Public Health to analyze and evaluate the U.S. Department of Agriculture's current measures to prevent BSE. FSIS requests comments on both the current thinking paper and the Harvard risk assessment.

ADDRESSES: Copies of the current thinking paper and the Harvard risk assessment are available from the FSIS Docket Clerk, FSIS Docket Room, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. Copies of both documents also are available on the Internet at: *http://www.fsis.usda.gov/OPPDE/rdad/default.htm.* Send all written comments on the current thinking paper and the risk assessment to the FSIS Docket Room. All comments received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Director, Regulations and Directives Development Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–5627.

Done in Washington, DC on: January 15, 2002.

Ronald F. Hicks,

Acting Associate Administrator.

[FR Doc. 02–1342 Filed 1–15–02; 2:09 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Greendale Project, Green Mountain National Forest, Manchester Ranger District, Town of Weston, Windsor County, Vermont

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Greendale Project (Project Area) is located on the Green Mountain National Forest (GMNF) in the Town of Weston on lands north of the Landgrove-Weston Road and west of Route 155, and affects National Forest Service System Lands adjacent to the Trout Club Rd., Moses Pond Rd., Jenny Coolidge Rd., and the Greendale Rd. The Project Area covers approximately 5,404 acres and includes portions of Forest Plan designated Management Areas 2.1A, 3.1, 4.1, and 6.2A encompassing Compartments 27, 29, 30, 31, 32, and 45. The 1986 Green Mountain National Forest Land and Resource Management Plan (Forest Plan) determined that these lands are administratively available for recreation, wildlife, fisheries and vegetation management to meet a range of resource management objectives.

The Proposed Action would treat approximately 895 acres through evenage and unevenage tree harvest using three or more commercial timber sales; harvesting approximately 4 million board feet of timber.

Evenage management would include 26 acres of overstory removal, 267 acres of thinning, 62 acres of clear-cutting scattered throughout the project area, and 154 acres of delayed shelter-wood harvest. Unevenage management would consist of 282 acres of individual and 104 acres of group tree selection harvest. The objective is to promote both aspen and softwood tree regeneration, maintain and restore the diversity of tree species & age classes, promote forest health, improve winter deer habitat, and maintain a diversity of wildlife habitats within the Project Area. The project would also restore and maintain approximately 32 acres of historic apple orchards and improve stream and fish habitat on approximately 1.5 miles of Jenny Coolidge Brook. There would be no new road construction or reconstruction of existing roads.

DATES: Written comments concerning the scope of the analysis should be received by February 20, 2002 to ensure timely consideration. The Forest Service will also conduct one or more public scoping meetings regarding this vegetation management proposal. The public will be notified as to the date, time and location of these meeting as they are scheduled.

ADDRESSES: Please send written comments to: Dennis Roy, District Ranger, Manchester Ranger District, 2538 Depot Street, Manchester Center, Vermont 05255.

FOR FURTHER INFORMATION CONTACT: Edward Toth, project leader either by writing to him at the Manchester Ranger District, 2538 Depot Street, Manchester Center, Vermont 05255 or by telephone at (802) 362–2307 Ext: 212 if you have questions about the project and the preparation of the EIS or if you would like to be on the mailing list for this project.

SUPPLEMENTARY INFORMATION: The Project Area is located within the Town Of Weston, Windsor County, Vermont. It encompasses approximately 5,404 acres of National Forest System Lands on the GMNF. The 1986 Forest Plan determined these public lands to be administratively available for recreation, wildlife and fisheries habitat improvement and vegetation management provided: (1) The proposed

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activities are consistent with the management prescription for each Management Area (MA), and (2) that site-specific restrictions, in the form of standards and guidelines, are implemented to protect the Project Area's natural and cultural resource values. MAs found in the Project Area are:

Management Area 2.1 (38% of the Project Area)—Uneven age management is the preferred forest management method to maintain continuous forest cover and both roaded natural and dispersed recreation opportunities.

Management Area 3.1 (18% of the Project Area)—Even age management is the preferred forest management method to maintain a mosaic of vegetative conditions in a roaded, intensively managed but natural appearing environment.

Management Area 4.1 (13% of the Project Area)—Both evenage and uneven age management would be used to provide long-term suitable, stable deer winter habitat with a mix of forest age.

Management Area 6.2a (32% of the Project Area)—Even age management, using extended rotation lengths, is the preferred silvicultural method to maintain a physical setting that provides opportunities for solitude and a feeling of closeness to nature.

General standards and guidelines found in the Forest Plan as well as site-specific measures resulting from the EIS analysis would be applied to protection Forest resources including, but not limited to: Open water, wetlands, streams and riparian areas; wet, steep, and shallow soils; designated trails; developed recreational areas; and habitat for endangered, threatened, and sensitive plant and animals.

Public participation has been, and will be, an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, state county and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. Initial public scoping was held on April 6, 1998, and an open house was held during the same month. Preliminary issues identified for analysis in the EIS include the potential effects by, or on: (1) Recreational use of the Project Area, (2) the solitude and a feeling of closeness to nature in MA 6.2a, (3) wildlife and wildlife habitat, (4) deer habitat management, (5) project size and intensity of vegetation management, (6) economics, (7) opportunities for ecosystem restoration, (8) the spiritual setting of the Weston Priory, (9) fish and aquatic habitat and (10) threatened, endangered and sensitive species; including the federally-listed Indiana bat.

We expect these preliminary issues to be carried through this analysis. Additional scoping will be completed to coincide with this notice, giving the public an opportunity to identify any new issues or concerns.

Based on the results of scoping and the resource conditions within the Project Area, alternatives (including a no-action alternative) will be developed for the Draft EIS.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in June, 2002. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date EPA's Notice of Availability appears in the **Federal Register**. The final EIS is anticipated in October, 2002.

The Forest Service believes, at this early stage, it is important to notify reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that publics interested in this proposed action participate by the close of the 45 day comment period on the draft EIS, so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Interested parties may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Lead and Cooperating Agencies: The USDA Forest Service, Green Mountain National Forest is the lead agency for preparation of this document.

Responsible Official: Dennis P. Roy, District Ranger, Manchester Ranger District is the responsible Forest Service official. In making the decisions, the responsible official will consider the comments; responses; disclosure of environmental consequences; and applicable laws, regulations and policies. The responsible officials will state the rationale for the chosen alternative in the Records of Decision.

Dated: January 7, 2002.

Paul K. Brewster,

Forest Supervisor.

[FR Doc. 02–1217 Filed 1–16–02; 8:45 am]

BILLING CODE 3401–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on January 25 and February 8, 2002, in Quincy, California. The purpose of the meetings is to review the Resource Advisory Committee's role in implementing the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) and to determine how to proceed with project solicitation and selection.

DATES: The January 25, 2002, meeting will be held from 9–4 p.m. The February 8, 2002, meeting time will be determined at the meeting on the 25th.

ADDRESSES: Both meetings will be held at the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California, 95971.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the January 25 meeting include: (1) Review applicable laws including: Federal Advisory Committee Act (FACA), the Secure Rural Schools and Community Self-Determination Act of 2000, the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA); (2) Discuss Collaboration and Interest-Based Bargaining; (3) Continue project solicitation/design and selection process; (4) Review ongoing public and private programs of work that fit Title 2 parameters; (5) Public Comment; and, (6) Future meeting schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee at the time provided on the agenda. Agenda items for the February 8 meeting will be determined at the meeting on the 25th.

Dated: January 10, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–1216 Filed 1–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 011402B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region).

Form Number(s): None.

OMB Approval Number: 0648–0243.

Type of Request: Regular submission.

Burden Hours: 3.

Number of Respondents: 40.

Average Hours Per Response: 5 minutes.

Needs and Uses: A telephone survey is conducted of fishery processors, joint venture companies, and fishermen's trade associations in the Pacific Northwest to determine the tonnage of fish processed or harvested, and their estimated tonnage for the next year. The information is used to help form allocations of groundfish quotas.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Office.

[FR Doc. 02–1273 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011402A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Data Collection on Marine Protected and Managed Areas.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 5,000.

Number of Respondents: 1,000.

Average Hours Per Response: 5.

Needs and Uses: Executive Order 13158 directs the Department of Commerce and the Department of the Interior to work with partners to inventory the protection of U.S. ocean and coastal resources by developing a national system of marine protected areas. The Departments of Commerce and the Interior plan to work closely with state, territorial, local, and tribal governments, as well as other stakeholders, to identify and inventory the nation's existing marine protected and managed areas. Toward this end, the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) have created a dataform to be used as a survey tool to collect and analyze information on these existing sites. This survey will allow NOAA and DOI to better understand and evaluate the existing protections for marine resources within marine protected and managed areas in the United States.

Affected Public: State, local, or tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1274 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2002]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Application for Subzone, Schering-Plough Products, L.L.C., (Pharmaceutical Products), Las Piedras, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Corporation, grantee of FTZ 7, requesting special-purpose subzone status for the pharmaceutical manufacturing plant of Schering-Plough Products, L.L.C. in Las Piedras, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 10, 2002.

Schering-Plough's Las Piedras plant (3 bldgs./401,814 sq. ft. (including 84,814 square feet proposed) on 40 acres) is located at State Road No. 183, Km 2.6, Las Piedras, Puerto Rico. The facility (500 employees) produces finished pharmaceutical products and their

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intermediates, including Theo-Dur®, K–Dur®, Uni-Dur®, Normodayne/Labetalol®, Eulexin®, Claritin®, and Rebetol®. Foreign-sourced materials will account for some 40–50 percent of finished product value, and include items from the following general categories: chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

Zone procedures would exempt Schering-Plough from Customs duty payments on foreign materials used in production for export. Some 30–35 percent of the plant's shipments are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products and intermediates (primarily duty-free) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 20.0 percent). At the outset, zone savings would primarily involve choosing the finished product duty rate on a cholesterol absorption inhibitor, (HTSUS 3004.90.9060–duty-free), rather than the rate for a foreign-sourced active ingredient (bulk ezetimibe, HTSUS 2933.79.0800–7.9%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 2, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: January 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–1271 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limits for the preliminary results of the antidumping administrative review.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Ross, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4794.

The Applicable Statute

Unless otherwise indicated, all citations made to the Tariff Act of 1930, as amended(the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews

The Department has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. On June 19, 2001, the Department initiated these administrative reviews covering the period May 1, 2000, through April 30, 2001. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 66 FR 32934, June 19, 2001.

Because of the complexity of certain issues in each review and the large number of respondents in each review, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results of these administrative reviews until April 1, 2002.

Dated: January 10, 2002.

Susan H. Kuhbach,

Deputy Assistant Secretary, Acting, for AD/CVD Enforcement I.

[FR Doc. 02–1270 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review of certain cased pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that sales by the respondents in this review, covering the period December 1, 1999, through November 30, 2000, have been made below normal value (NV). In addition, we are preliminarily rescinding this review with respect to Three Star Stationery Industry Co., Ltd. (Three Star) and Guangdong Provincial Stationary & Sporting Goods Import and Export Corporation (GSSG). If these preliminary results are adopted in the final results of this review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michele Mire, Crystal Crittenden, or Paul Stolz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4711, (202) 482–0989, and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Period of Review

The period of review (POR) is December 1, 1999 through November 30, 2000.

Background

On December 20, 2000, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC), covering the period December 1, 1999 through November 30, 2000. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 65 FR 79802–02 (December 20, 2000).

On December 21, 2000, in accordance with 19 CFR 351.213(b), the respondent, Kaiyuan Group Corporation (Kaiyuan), requested an administrative review of its exports of subject merchandise to the United States during the POR. On December 29, 2000, China First Pencil Co., Ltd. (CFP) requested an administrative review of its exports of subject merchandise to the United States. In addition, on January 2, 2001, in accordance with 19 CFR 351.213(b), the Writing Instrument Manufacturers Association, Inc., Pencil Section; Sanford Corp.; Berol Corp.; General Pencil Co., Inc; J.R. Moon Pencil Co.; Tennessee Pencil Co.; and Musgrave Pencil Co. (collectively, the petitioners), requested that we conduct an administrative review of exports of the subject merchandise made by an additional 37 producers/exporters. The Department published a notice of initiation of this review on January 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 21 (January 31, 2001).

On February 12, 2001, we issued antidumping duty questionnaires to all parties named in the notice of initiation for whom we were able to obtain addresses.[1] In addition, on March 6, 2001, we issued a questionnaire to the PRC embassy in order to collect information relevant to the calculation of the PRC-wide rate. CFP, Orient International Holding Shanghai Foreign Trade Corporation (OIHSFTC), Kaiyuan, GSSG, and Three Star responded to our February 12, 2001, questionnaire. In their March 21, 2001, response to the Department's questionnaire, Three Star and GSSG stated that they did not export subject merchandise to the United States during the POR. Specifically, Three Star stated that it had no exports of subject merchandise to the United States. GSSG stated that it shipped pencils to the United States during the POR which were produced by Three Star. GSSG noted that this was not subject merchandise because GSSG was excluded from the antidumping duty order with respect to merchandise it exported which was produced by Three Star.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 6, 2001, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until December 1, 2001 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 53701). On November 28, 2001, the deadline was extended a second time until December 31, 2001 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 63018).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Preliminary Partial Rescission

We are preliminarily rescinding this review with respect to Three Star and GSSG because they made no shipments of subject merchandise to the United States during the POR. The Department reviewed Customs data which indicates that Three Star and GSSG did not export subject merchandise to the United States during the POR.

[1] On February 9, 2001, we sent a letter to the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) requesting that it deliver questionnaires to twelve parties for whom we could not find addresses. On August 7, 2001, we sent a letter to MOFTEC repeating our request that MOFTEC deliver the questionnaires to the twelve parties. We also requested that it deliver questionnaires to 5 parties for whom questionnaires were returned to us as undeliverable due to incorrect addresses or contact information. We requested that MOFTEC contact us by August 24, 2001, if it could not deliver any of these questionnaires and advised MOFTEC that if we did not receive its response within the time provided, we would be required to base our findings with respect to these firms on facts available which could be adverse to the firms' interests. The China Chamber of Commerce For Import & Export of Light Industrial Products and Arts—Crafts (CCCLA) faxed us on August 21, 2001, informing us that MOFTEC had asked it to transmit questionnaires to listed parties but could contact only two companies: China National Light Industrial Products Import/Export Corp. (CNLIP) and Jiangsu Light Industrial Products Import and Export Group Corp. (JP). However, we did not receive questionnaire responses from these firms.

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Verification

As provided in section 782(i) of the Act, during October 2001, the Department conducted verifications of OIHSFTC and its suppliers. The Department intends to conduct verifications of CFP, GSSG, Three Star and Kaiyuan subsequent to the publication of these preliminary results. During the verification of OIHSFTC and its suppliers, we followed standard procedures in order to test information submitted by the respondents. These procedures included on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the report: Verification of the Sales Responses of OIHSFTC in the 1999–2000 Administrative Review of Certain Cased Pencils from the People's Republic of China (Verification Report), the public version of which is on file in the Department's Central Records Unit, Room B099, of the Main Commerce building (CRU–Public File).

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. OIHSFTC, CFP and Kaiyuan provided the separate rates information requested by the Department and reported that their export activities are not subject to government control.

We examined the separate rates information provided by OIHSFTC, CFP and Kaiyuan in order to determine whether the companies are eligible for a separate rate. The Department's separate rates test which is used to determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508 (May 6, 1991).

OIHSFTC, CFP and Kaiyuan reported that the subject merchandise was not restricted to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POR. OIHSFTC, CFP and Kaiyuan submitted copies of their business licenses in their questionnaire responses. We inspected OIHSFTC's original business license at verification. We found no inconsistencies with their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, OIHSFTC, CFP and Kaiyuan submitted copies of PRC legislation demonstrating the statutory authority for establishing the de jure absence of government control over the companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of de jure governmental control based on: (1) An absence of restrictive stipulations associated with the business licenses of OIHSFTC, CFP and Kaiyuan; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

OIHSFTC, CFP and Kaiyuan reported that they determine prices for sales of the subject merchandise based on the cost of the merchandise, movement expenses, overhead, profit, and the market situation in the United States. Moreover, OIHSFTC, CFP and Kaiyuan stated that they negotiated the price directly with their customers. Also, OIHSFTC, CFP and Kaiyuan claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that OIHSFTC, CFP and Kaiyuan have the authority to negotiate and sign contracts and other agreements. Further, OIHSFTC, CFP and Kaiyuan claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, CFP and Kaiyuan reported that they have autonomy in making decisions regarding the selection of management. CFP and Kaiyuan claimed that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of CFP and Kaiyuan. Although there is evidence on the record indicating that the Shanghai State Assets Administration plays an indirect role in the appointment of OIHSFTC management, we do not find that this constitutes de facto government control of the business operations of the company relating to its export activity.

Finally, OIHSFTC, CFP and Kaiyuan reported that they retain the proceeds of their export sales, they use profits according to their business needs, and their management determines how to allocate profits. There is no evidence on the record to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, we find that the evidence on the record supports a preliminary finding of absence of de facto governmental control based on record statements and supporting documentation showing that: (1) OIHSFTC, CFP and Kaiyuan set their own export prices independent of the government and without the approval of a government authority; (2) OIHSFTC, CFP and Kaiyuan have the authority to negotiate and sign contracts and other agreements; (3) OIHSFTC, CFP and Kaiyuan have adequate autonomy from the government regarding the selection of management; and (4) OIHSFTC, CFP and Kaiyuan retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this investigation by OIHSFTC, CFP and Kaiyuan demonstrates an absence of government control, both in law and in fact, with respect to their exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of this preliminary determination, we are granting a separate rate to OIHSFTC, CFP and Kaiyuan.[2]

[2] In the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625 (November 8, 1994) (LTFV), the Department granted separate rates to CFP and Shanghai Foreign Trade Corporation (SFTC). In December of 1999, SFTC was merged into Orient International (Holding) Co., Ltd. (OIH) and was renamed Orient International Holding Shanghai Foreign Trade Co., Ltd. (OIHSFTC). While CFP and OIHSFTC received separate rates in a previous segment of this proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998).

Country-Wide Rate

As noted below, Anhui, CNLIP and JP failed to respond to the Department's questionnaire. As these exporters do not qualify for separate rates, they will continue to be subject to the PRC country-wide rate of 53.65 percent.

Normal Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than normal value (NV), we compared for all responding entities, the export price (EP) to NV, as described in the *Export Price* and *Normal Value* sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales to the United States because the subject merchandise was sold directly to an unaffiliated customer in the United States prior to importation and constructed export price methodology was not otherwise indicated. We made deductions from the sales price for foreign inland freight, foreign brokerage and handling, and domestic inland insurance. Each of these services was provided by a NME vendor, and thus, we based the deductions for these movement charges on surrogate values.

We valued foreign brokerage and handling using Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review*, 63 FR 48184 (September 9, 1998) (*India Wire Rod*). We valued domestic inland insurance using the Department's recently revised Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC (available on the Department's website). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if: (1) The subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Since none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOPs utilized in producing pencils include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See Memorandum From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement*, dated July 30, 2001, which is on file in the CRU–Public File. In instances where Indian surrogate value information was not available, we relied on Indonesian values and, as noted below, U.S. values. Indonesia is also comparable to the PRC in terms of per capita gross national product and the national distribution of labor, and it is a significant producer of comparable merchandise. We valued Chinese Lindenwood, the wood product used to produce pencils in the PRC, using U.S. publicly available, published prices for American Basswood because price information for Chinese Lindenwood

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and for American Basswood is not available elsewhere.[3]

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. However, when we were unable to obtain the surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We calculated a surrogate value for Chinese Lindenwood Pencil Slats based on the publicly available U.S. lumber prices for Basswood published in the ©§ 2001 Hardwood Market Report for the period December 1999 to November 2000.

(2) We valued Chinese Lindenwood Logs using prices for grade 2 U.S. basswood, kiln dried, 9/4 lumber prices set forth in the Sawlog Bulletin for the period January 2000 to November 2000.

(3) We valued the following material inputs based on Indian import data from the Monthly Statistics of the Foreign Trade of India (MSFTI) for April–August 2000[4]: graphite, kaolin clay, bees wax, mixed wax, wax, clear wax, lacquer, paint, dipping lacquer, glue, clear glue, foil, sealing paper, stearic acid, printing ink, key chain, plastic, foam grip, glitter, talcum powder, heat transfer film, pigment, dye, dyestuff, diluent, hardening oil, and cellulose.

(4) We valued the following material inputs based on Indian import data from the MSFTI for January–December 2000: black cores, color cores, raw pencils, erasers, and ferrules.

(5) We valued the following material inputs based on Indonesian import data from the Foreign Trade Statistical Bulletin of Indonesia (FTSBI) for January–December, 2000: petrol wax, tallow, paraffin wax, emulsified paraffin wax.

(6) In accordance with section 351.408(c)(1) of the Department's regulations, we valued solid glue at the actual purchase price because it was purchased from a market economy in U.S. Dollars.

(7) We valued the following packing materials based on Indian import data from MSFTI for April–August, 2000: paperboard blister cards (sleeves), inner paperboard boxes, master paperboard cartons, pencil paperboard packaging, non-corrugated paper cartons, cardboard boxes, inner paper boxes, cards, sticker paper, corrugated cardboard, PVC covers for blister cards, plastic shrink wrap, plastic film, plastic strips, poly bags, plastic twisty, plastic canisters, plastic boxes, packing tape and paper labels.

(8) We valued energy inputs as follows. We valued coal based on Indian import data from MSFTI for April–August 2000. We valued steam based on Asian Development Bank data published in October, 1997. We valued electricity based on the 1998/1999 consumer category-wise average tariff of electricity (paise/kWh) for industrial enterprises from the publicly available 1999–2000 "Energy Data Directory & Yearbook" published by Tata Energy Research Institute.

(9) In accordance with 19 CFR 351.408(c)(3) we valued labor using a regression-based wage rate for the PRC listed in the Import Administration Web site under "Expected Wages of Selected NME Countries." *See http://ia.ita.doc.gov/wages.*

(10) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1999–2000 in the *Reserve Bank of India Bulletin* of March 31, 2001. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(11) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. We valued truck freight services using the 1999 rate quotes reported by Indian freight companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association.

For further discussion of the surrogate values used in this review, see *Memorandum From The Team Regarding Selection of Surrogate Values for Factors of Production for the Preliminary Results of the Administrative Review of Certain Cased Pencils from the People's Republic of China*, (December 31, 2001), which is on file in the CRU–Public File.

Facts Available

On August 7, 2001, in letters to all non-responding parties to whom we issued antidumping duty questionnaires, we noted that the questionnaire deadline had passed without the Department having received either the party's response or a request to extend the deadline for responding. Also, we advised these parties that, pursuant to 19 CFR 351.302(d)(i), we would consider any information submitted after the deadline as untimely filed and would return it to the submitting party. Finally, we advised these parties that since we had not received their responses, we were required by section 776(a)(2)(B) of the Act to rely on facts available in our determination.

Anhui Light Industrial Products Import/Export Corporation (Anhui) submitted a letter dated August 20, 2001, indicating that it would not respond to the Department's questionnaire.

On August 21, 2001 the Department received a facsimile from the CCCLA stating that MOFTEC entrusted CCCLA to transmit the Department's questionnaires to listed respondents. CCCLA stated that it could contact only two firms: CNLIP and JP. CNLIP and JP, however, failed to respond to the Department's questionnaire.

For non-responding parties that received the Department's questionnaire but failed to respond, including Anhui, CNLIP and JP, the Department is applying adverse facts available.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because these firms to whom we sent questionnaires did not respond, we preliminarily determine that these entities did not act to the best of their abilities to comply with our requests. Moreover, we have determined that these firms are not eligible for separate rate status. Therefore, they are all being treated as part of the PRC-wide entity. Pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margins for the PRC-wide entity. Specifically, for adverse facts available for the PRC-wide entity, we have applied the highest rate from any prior segment of this proceeding, 53.65 percent, which is the current PRC-wide rate. This rate was the "recalculated" petition rate from the LTFV investigation.

Corroboration

Section 776(c) of the Act provides that when the Department resorts to facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (H.R. Doc. 103–316 (1994)) (SAA) states that "corroborate" means to determine that the information used has probative value. *See* SAA at *870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In this review, we are using, as adverse facts available, the highest margin from this or any prior segment of the proceeding. Specifically, we are using 53.65 percent, the current PRC-wide rate. This rate was the petition rate which was "recalculated" for the final determination in the investigation. *See Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order in Accordance With Final Court Decision*, 64 FR 25275 (May 11, 1999).

The "recalculated" petition rate constitutes secondary information within the meaning of the SAA. *See* SAA at 870. This rate is currently applicable to all exporters that do not have separate rates and was corroborated by the Department in a prior segment of this proceeding. Further, nothing on the record of the instant review calls into question the reliability of the "recalculated" rate. *See Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Administrative Review*, 63 FR 779 (January 7, 1998). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevancy of the selected margin. Furthermore, the rate has not been judicially invalidated. Moreover, the rate used is the rate currently applicable to the uncooperative exporters. Assigning a lower rate to these firms would reward them for their failure to cooperate. Thus it is appropriate to use the selected rate as adverse facts available in the instant review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1999 through November 30, 2000:

Manufacturer/exporter	Margin (percent)
China First Pencil Co., Ltd.	59.81
Orient International Holding Shanghai Foreign Trade Co., Ltd.	76.46
Kaiyuan Group Corporation	223.60
PRC-wide Rate	53.65

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of case briefs/written comments and rebuttal briefs or rebuttals to written comments, limited to issues raised in such briefs or comments, after verification of CFP, GSSG, Three Star and Kaiyuan. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in interested party comments, within 120 days of publication of these preliminary results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Duty Assessment Rates

Upon completion of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs upon completion of this review. For assessment purposes, for CFP, OIHSFTC and Kaiyuan we calculated importer-specific assessment rates for pencils from the PRC. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above de minimis, we will direct U.S. Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR. For exporters subject to the PRC-wide rate, we will instruct Customs to assess the PRC-wide rate against the entered value of the subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of this review; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with

[3] Chinese Lindenwood and American Basswood are virtually the same type of wood. U.S. prices for American Basswood were used to value Chinese Lindenwood in the Less Than Fair Value investigation. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cased Pencils from the People's Republic of China*, 59 FR 55625, 55632 (1994). This methodology was upheld by the Court of International Trade on remand. *See Writing Instrument Manufacturers Association, Pencil Section, et al.* v. *United States*, Slip Op. 97–151 (Ct. Int'l. Trade, Nov. 13, 1997) at 16.

[4] We note that we were unable to collect surrogate value data for certain months of the POR. We intend to continue to research and gather this data for the final results of this review.

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sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2001.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–1269 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On July 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Preliminary Results of Antidumping Administrative Review*, 66 FR 35928 (*Preliminary Results*). The period of review (POR) is February 19, 1999 through May 31, 2000. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. We have determined that Kawasaki did not make sales to the U.S. below normal value during the POR. *See Final Results of the Review* section, below.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2000).

Case History

On June 29, 1999, the Department published in the **Federal Register** an antidumping duty order on certain hot-rolled, flat-rolled, carbon-quality steel products (hot-rolled steel) from Japan. *See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 34778. On June 30, 2000, the Department received a timely request from Kawasaki Steel Corporation (Kawasaki) to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. On July 31, 2000, the Department published its notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 46687. As noted above, on July 10, 2001, the Department published the preliminary results of this antidumping administrative review. *See Preliminary Results*. The Department determined that it was impracticable to complete this antidumping administrative review within the standard time frame, and extended the due date for the final results from November 7, 2001 to January 7, 2002. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Extension of Time Limit for Final Results of Antidumping Administrative Review*, 66 FR 57423 (November 15, 2001).

Scope of the Antidumping Duty Order

The products covered by this antidumping duty order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive,

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the *Issues and Decision Memorandum* from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 7, 2002 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in B–099 in the main Department of Commerce Building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ia.ita.doc.gov/frn.

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The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have changed our approach to the margin calculation for Kawasaki. Below is a list of the changes for the final results. *See* the *Decision Memorandum* for further details.

- The Department treated home market sales made through Channel 1 as having been made at one home market level of trade, and treated home market sales made through Channels 2 and 3 as having been made at a second, more advanced home market level of trade. All U.S. sales were matched at the same LOT, *i.e.*, to home market Channel 1 sales. (*See* Comment 1 in the *Decision Memorandum*.)
- The Department matched Home Market sales to U.S. sales using CONNUMH rather than CONNUM2H. (*See* Comment 4 in the *Decision Memorandum*.)
- The Department included lease income and associated lease expenses in the G&A rate calculation. (*See* Comment 9 in the *Decision Memorandum*.)
- The Department included only the current portion of the gains and losses from cancellation of interest rate swap agreements for the final results. (*See* Comment 10 in the *Decision Memorandum*.)
- The Department included the profit on sale of scrap in the G&A rate calculation. (*See* Comment 11 in the *Decision Memorandum*.)

Currency Conversion

We made currency conversions based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for Kawasaki for the period February 19, 1999 through May 31, 2000:

Manufacturer/exporter	Time period	Margin
Kawasaki Steel Corporation ...	02/19/1999–05/31/2000	0.00 %

Because the weighted-average dumping margin is zero, we will instruct the U.S. Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Kawasaki exported.

In addition, the following deposit requirements will be effective upon publication of this notice for all shipments of hot-rolled steel from Japan, entered or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For Kawasaki, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final determination in which that manufacturer or exporter was covered; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 29.30 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: January 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Level of Trade in the Home Market
2. Level of Trade Adjustment
3. Billing Adjustments
4. Matching Home Market Sales to U.S. Sales Using CONNUMH Rather than CONNUM2H
5. Zeroing Negative Margins
6. Application of the Department's Arm's Length Test
7. Exclusion of Inter-company Profit and Loss from Production Variances
8. Adjustment of Electricity Cost for Affiliated Party Transactions
9. Exclusion of Lease Income and Expenses from G&A Rate Calculation
10. Exclusion of Gain on Cancellation of Interest Rate Swaps from Net Financing Expense
11. Inclusion of Gain on Sale of Steel Scrap in the G&A Expense Rate Calculation
12. Allowing Kawasaki to Report Sales by Kawasho Instead of Downstream Sales

[FR Doc. 02–1268 Filed 1–16–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083000B]

RIN 0648–AN92

Notice of the Continuing Effect of the List of Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the list of fisheries for 2002.

SUMMARY: The National Marine Fisheries Service is providing notification that the 2001 List of Fisheries (LOF) remains in effect for 2002. Under the Marine Mammal Protection Act (MMPA), NMFS must place a commercial fishery on the LOF under one of three categories, based upon the level of serious injury and mortality of marine mammals that occur incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protetted Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Emily Menashes, Office of Protected Resources, 301–713–2322 ext. 101; Kim Thounhurst, Northeast Region, 978–281–9138; Katie Moore, Southeast Region, 727–570–5312; Tim Price, Southwest Region, 562–980–4029; Brent Norberg, Northwest Region, 206–526–6733; Amy Van Atten, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

The 2001 List of Fisheries is accessible by the Internet at http://www.nmfs.noaa.gov/prot—res/PR2/Fisheries—Interactions/list—of—fisheries.html.

Background

This notice provides that the 2001 LOF published in August 15, 2001 (66 FR 42788) remains in effect for 2002 with no changes. NMFS intends to propose changes to the LOF for 2003, which is scheduled to publish as a proposed rule and be available for public comment in the summer of 2002.

What Is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, a LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine In Which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are summarized in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995), the final LOF for 1996 (60 FR 67063, December 28, 1995), and the proposed LOF for 2001 (66 FR 6545, January 22, 2001).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This document includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under 50 CFR 229.4 to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

You must register through NMFS' Regional Offices (see **ADDRESSES**) unless you participate in a fishery that has an integrated registration program. Upon receipt of a completed registration, NMFS will issue vessel or gear owners a decal or other physical evidence of a current and valid registration that must be displayed or that must be in the possession of the master of each vessel while fishing (MMPA Section 118(c)(3)(A)).

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to pay the $25 registration fee.

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA: all Alaska Category II fisheries; all Washington and Oregon Category II fisheries; the Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot fishery; the Federal portion of the Northeast sink gillnet fishery; and, the Federal portion of the Atlantic squid, mackerel, butterfish trawl fishery. Special procedures and instructions for registration in these integrated fisheries are described in the preamble to the final LOF for 1998 (63 FR 5748, February 4, 1998).

How Do I Renew My Registration Under the MMPA?

The Regional Offices annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is your responsibility to ensure that registration or renewal forms are submitted to NMFS at least 30 days in advance of fishing. If you have not received a renewal packet by January 1 or are registering for the first time, request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

Any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must comply with 50 CFR 229.6 and report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard your vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. NMFS may develop and implement take reduction plans for any Category I or II fishery that interacts with a strategic stock. 50 CFR part 229, subpart C provides take reduction plan regulations.

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List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers' reports. This list includes all species or stocks known to incur injury or mortality in a given fishery. However, not all species or stocks identified are necessarily independently responsible for a fishery's categorization. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996.

Commercial fisheries in the Pacific Ocean (including Alaska) are included in Table 1; commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean are included in Table 2. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet	130	Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern north Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+
AK Kodiak salmon set gillnet	188	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Pacific white-sided dolphin, North Pacific Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific*+
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
LONGLINE FISHERIES:		
California longline	45	California sea lion
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.*+
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S.*+ Harbor seal, GOA
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented

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TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Western U.S.°+ Steller sea lion, Eastern U.S.°+
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	115	HI trolling, rod and reel Northern elephant seal, CA breeding Killer whale, Eastern North Pacific resident Killer whale, transient Steller sea lion, Western U.S.°+ Pacific white-sided dolphin, North Pacific Dall's porpoise, AK Harbor seal, Bering Sea
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	876	Steller sea lion, Western U.S.°+ Harbor seal, Southeast AK Northern elephant seal, CA breeding
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.°+
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented
CA shark/bonito longline/set line	10	None documented
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific°+ False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Bering Sea and Aleutian Islands Groundfish Trawl	166	Steller sea lion, Western U.S.°+ Northern fur seal, Eastern pacific° Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Pacific white sided dolphin, North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, AK Pacific walrus, AK Humpback whale, Central North Pacific°+ Humpback whale, Western North Pacific°+
AK food/bait herring trawl	3	None documented
AK Gulf of Alaska groundfish trawl	198	Steller sea lion, Western U.S.°+ Northern fur seal, Eastern Pacific° Harbor seal, GOA Dall's porpoise, AK Northern elephant seal, CA breeding Fin whale, Northeast Pacific
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S.°+ Northern fur seal, Eastern Pacific° Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	257	Harbor seal, GOA Harbor seal, Bering Sea Sea otter, AK
AK crustacean pot	1,852	Harbor porpoise, Southeast AK
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal°+
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal°+
Hi inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal°+
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented

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TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

* Marine mammal stock is strategic.
+ stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA. List of Abbreviations Used in Table 1: AK, Alaska; CA , California; HI, Hawaii; GOA, Gulf of Alaska; OR, Oregon, and WA, Washington

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Category I		
GILLNET FISHERIES:		
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA * Fin whale, WNA *+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline ..	<200	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast Harbor seal, WNA
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Category II		
GILLNET FISHERIES:		
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Northeast anchored float gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+ Atlantic spotted dolphin, WNA
U.S. Mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF* Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White sided dolphin, WNA Common dolphin, WNA
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal* West Indian manatee, FL
Northeast trap/pot	unknown	Fin whale, WNA
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal*
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
POUND NET FISHERIES:		

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TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Virginia pound net	187	Bottlenose dolphin, WNA coastal*
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented
Crab trawl	400	None documented
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Mexico butterfish trawl	?	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Gulf of Mexico mixed species trawl	20	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal*+
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal*+ Humpback whale, WNA*+
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line	46	Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	124	None documented
Southeastern U.S. Atlantic, Gulf of Mexico; U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern Gulf of Mexico coastal

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine* West Indian manatee, FL*+
Gulf of Mexico mixed species trap/pot	unknown	None documented
Mid-Atlantic mixed species trap/pot	unknown	Humpback whale, Gulf of Maine Minke whale, Canadian east coast Harbor porpoise, GM/BF
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/ pound net (except the North Carolina roe mullet stop net).	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

* Marine mammal stock is strategic.
+ Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA. List of Abbreviations Used in Table 2 FL - Florida;GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

Dated: January 10, 2002.

Samuel W. Mckeen,

Acting Assistant Administrator, national Marine Fisheries Service.

[FR Doc. 02–1275 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Recognition of Multilateral Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing an Order pursuant to section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"). Section 409 provides that the Commission (or one of several other authorized U.S. financial regulators) may determine that the supervision by a foreign financial regulator of a multilateral clearing organization for over-the-counter derivative instruments satisfies appropriate standards. The Commission is issuing this Order pursuant to section 409(b)(3) of FDICIA with respect to the Norwegian Banking, Insurance and Securities Commission and its supervision of NOS Clearing ASA, a Norwegian clearing house.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

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Order Issued Pursuant to Section 409 of the Federal Deposit Insurance Corporation Improvement Act Regarding the Multilateral Clearing Activities of NOS Clearing ASA in Connection With Transactions Entered Into on the International Maritime Exchange

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act ("CFMA"), which substantially revised the Commodity Exchange Act ("CEA") and other federal statutes, including FDICIA.[1] In particular, new section 409 of FDICIA provides that a clearing organization may operate a multilateral clearing organization ("MCO")[2] for over-the-counter derivatives instruments ("OTC derivatives")[3] if, among other alternatives, it is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commission, as applicable, has determined satisfies appropriate standards.

NOS Clearing ASA ("NOS") has requested that the Commission determine that the oversight of its activities by the Norwegian Banking, Insurance and Securities Commission ("BISC") satisfies the criteria for operating as an MCO set forth in section 409(b)(3) of FDICIA.[4] NOS intends to operate as an MCO with respect to OTC derivatives transactions to be executed on the International Maritime Exchange ("IMAREX").[5] IMAREX operates an electronic trading facility for cash-settled futures contracts for the transportation of maritime freight.

In its request, NOS provided the Commission with a detailed description of the Norwegian regulatory program applicable to clearing organizations along with English translations of the relevant Norwegian statutes and regulations. NOS also provided the Commission with information comparing the regulatory requirements applicable to NOS and the regulatory requirements applicable to derivatives clearing organizations ("DCOs") in the U.S., as set forth in Part 39 of the Commission's rules.[6] The Commission also evaluated the oversight activities undertaken by BISC in the context of the Principles and Objectives of Securities Regulation issued by the International Organization of Securities Commissions.

In support of NOS's request for relief, BISC confirmed that:

- BISC is authorized under the Norwegian Securities Trading Act and the Financial Supervision Act to supervise the clearing of financial instruments by persons located in Norway and has the ability to enforce compliance with the applicable laws, rules and regulations;[7]
- Clearing in Norway of financial derivatives, including commodity derivatives, as defined in the Securities Trading Act,[8] as well as financial forward contracts, options or swaps, may be conducted only by a clearing house with authorization from the Norwegian Ministry of Finance, and NOS Clearing ASA has received such authorization;
- Trading on IMAREX that is cleared by NOS is subject to regulatory oversight by BISC;
- BISC is a member of IOSCO, has adopted IOSCO's Principles and Objectives of Securities Regulation, and has established systems consistent with those Principles and Objectives; and
- BISC has the ability and undertakes to share with the Commodity Futures Trading Commission, upon request, information in its possession regarding U.S. persons using NOS as a clearing facility in connection with contracts listed for trading on IMAREX and to otherwise cooperate with the CFTC, subject to Norwegian law.[9]

Based upon the information and materials submitted by NOS, and the representations made by BISC, the Commission has determined that the supervision by BISC of an MCO for OTC derivatives operated by NOS satisfies the criteria set forth in section 409(b)(3) of FDICIA. The Commission has not, however, made any independent investigation or assessment of the Norwegian regulatory program applicable to NOS and its clearing activities. Any material changes or omissions in the facts and circumstances pursuant to which this Order is issued might require the Commission to reconsider this matter.

Issued in Washington, DC on January 11, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1205 Filed 1–16–02; 8:45 am]

BILLING CODE 6351–01–M

[1] *See* Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 408(1) of FDICIA defines MCO to mean "a system utilized by more than [two] participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss."

[3] Section 408(2) of FDICIA defines over-the-counter derivative instrument to include any agreement, contract, or transaction exempt under section 2(h) of the CEA.

[4] Letter from Joshua M. Cohn, Esq., Allen & Overy, counsel to NOS, to Jean Webb, Secretary, Commodity Futures Trading Commission, dated December 21, 2001, with exhibits.

[5] IMAREX filed a notification with the Commission indicating its intent to operate an electronic trading facility in reliance on the exemption set forth in section 2(h)(3) of the CEA. In accordance with the notification requirement applicable to section 2(h)(3) electronic trading facilities, IMAREX identified NOS as the MCO to which IMAREX will transmit transaction data for the purpose of facilitating clearance and settlement of transactions. IMAREX commenced trading on November 2, 2001.

[6] *See* 66 FR 45604 (August 29, 2001). Part 39 of the Commission's rules stipulates the form and provides guidance for what should be included in applications for DCO registration. Part 39 also addresses ongoing compliance by DCOs with the core principles and other provisions of the CEA and rules thereunder. The guidance set forth in Part 39 merely illustrates the manner in which a clearing organization may meet a core principle and is not intended to be a mandatory checklist.

[7] *See* Act on Securities Trading, No. 79 of 19 June 1997 ("Securities Trading Act"); Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading of 1956 ("Financial Supervision Act"), paragraph 1 No. 13.

[8] *See* Securities Trading Act, section 1–2 paragraph 2 No. 8.

[9] *See* Act of 10 February 1967 Relating to Procedure in Cases Concerning the Public Administration; Act of 19 June 1970 no. 69 on Public Access to Documents in the Public Administration; Financial Supervision Act.

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting That ASTM F400–00, Safety Standard for Lighters, Be Adopted as a Consumer Product Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP 02–1) requesting that the Commission adopt a voluntary standard for cigarette lighters, ASTM F400–00, as a consumer product safety standard. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by March 18, 2002.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned "Petition CP 02–1, Petition on Lighters." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Lighter Association, Inc., the national trade association of the lighter industry, requesting that the Commission issue a rule adopting an ASTM voluntary standard as a consumer product safety standard. The Commission is docketing this request as a petition under the Consumer Product Safety Act. 15 U.S.C. 2056 and 2058. The petitioner states that the ASTM standard has the force and effect of law in Canada and Mexico. The petitioner asserts that unreasonable risks of injury are being created by failure to enforce the existing voluntary standard in the U.S. The petitioner states that although most disposable lighters imported to the U.S. are child-resistant, they do not meet minimum safety standards followed by the U.S. lighter industry in accordance with the ASTM standard.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: January 14, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–1278 Filed 1–16–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 18, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 11, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Reinstatement.

Title: 2002 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 48,110; Burden Hours: 360,825.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is a biennial survey which collects data from schools and school districts on issues of interest to the Office for Civil Rights (OCR), U.S. Department of Education. The Compliance Report may be used by OCR in tracking civil rights issues and trends and may be used by OCR to aid in identifying sites for compliance reviews. The Compliance Report provides a database that can provide information about critical civil rights issues. It is also used to provide contextual information on the state of civil rights in the nation. The Compliance Report collects data related to Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin), Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex) and Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via her Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1204 Filed 1–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–16: Early Career Principal Investigator Program in Applied Mathematics, Computer Science and High-Performance Networks

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of its

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Early Career Principal Investigator Program. The purpose of this program is to support research in applied mathematics, computer science and networks performed by exceptionally talented scientists and engineers early in their careers. The full text of Program Notice 02–16 is available via the Internet using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: To permit timely consideration for award in Fiscal Year 2002, completed applications in response to this notice should be received by April 17, 2002, to be accepted for merit review and funding in Fiscal Year 2002.

ADDRESSES: Completed applications referencing Program Notice 02–16, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–16. This address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Walter M. Polansky, Office of Advanced Scientific Computing Research, SC–31, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–5800, e-mail: *walt.polansky@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Program Mission

The primary mission of the Office of Advanced Scientific Computing Research, which is carried out by the Mathematical, Information and Computational Sciences (MICS) Division, is to discover, develop and deploy the computational and networking tools that enable researchers in the scientific disciplines to analyze, model, simulate and predict complex physical, chemical, and biological phenomena important to DOE. To accomplish this mission, the MICS Division fosters and supports fundamental research in advanced scientific computing—applied mathematics, computer science and networking—and operates supercomputers, a high performance network and related facilities. Further descriptions of the base research portion of the MICS portfolio, which is the scope of this Notice is provided below:

Applied Mathematical Sciences Research

The objective of the applied mathematics component of the MICS research portfolio is to support research on the underlying mathematical understanding as well as the numerical algorithms needed to enable effective description and prediction of physical, chemical and biological systems such as fluids, materials, magnetized plasmas, or protein molecules. This includes, but is not limited to, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

In addition to the existing research topics described, MICS plans to invest in new areas of applied mathematics research to support DOE's mission. Such investments may include research in multiscale algorithms, the mathematics of feature identification in large datasets, asymptotically optimal algorithms for solving PDEs, fast multipole and related hybrid methods, and algorithms for handling complex systems with constraints. The MICS research portfolio in Applied Mathematics emphasizes investment in long-term research that will result in the next generation of computational tools for scientific discovery.

Computer Science Research

The objective of the computer science component of the MICS research portfolio is to support research that results in a comprehensive, scalable, and robust high performance software infrastructure that translates the promise and potential of high peak performance to real performance improvements in DOE scientific applications. This software infrastructure must address needs for: portability and interoperability of complex high performance scientific software packages; operating systems tools and support for the effective management of terascale and beyond systems; and effective tools for feature identification, data management and visualization of petabyte-scale scientific data sets. The Computer Science component encompasses a multi-discipline approach with activities in:

- Program development environments and tools—Component-based, fully integrated, terascale program development and runtime tools, which scale effectively and provide maximum performance, functionality and ease-of-use to developers and scientific end users.
- Operating system software and tools—Systems software that scales to tens of thousands of processors, supports high performance application-level communication and provides the highest levels of performance, fault tolerance, reliability, manageability, and ease of use for system administrators, tool developers and end users.
- Visualization and data management systems—Scalable, intuitive systems fully supportive of DOE application requirements for moving, storing, analyzing, querying, manipulating and visualizing multi-petabytes of scientific data and objects.
- Problem Solving Environments—Unified systems focused on the needs of specific scientific applications, which enable radically improved ease-of-use of complex systems software and tools by domain application scientists.

The MICS research portfolio in Computer Science emphasizes investment in long-term research that will result in the next generation of high performance tools for scientific discovery.

High-Performance Networks Research

Scientists working in teams on emerging complex energy problems involving the fundamental building blocks of life and matter are increasingly dependent on advanced networking to harness the capabilities of geographically distributed science facilities and data resources. Networks enable access to distributed terascale computing facilities and remote instrumentation, provide a medium for large-scale scientific collaboration between distributed teams, and make remote visualization possible. Unlike today's commodity Internet, optimized for low-speed commercial applications, networks used to support science infrastructures are high-speed and high-performance networks capable of delivering and sustaining multi-Gigabits/sec to high-end data intensive applications and of providing transparent security to end users.

These networks should be amenable to dynamically controllable end-to-end performance and differentiated services. Designers developing networks with these capabilities are faced with the challenge of:

- Developing high-performance transport protocols that deliver and sustain multi-gigabits/sec to scientific applications.
- Understanding and characterizing large traffic flows generated by single sources and their impact on aggregate traffic in the core networks.
- Developing innovative formal techniques for estimating the robustness of proactive secure systems.
- Developing network-aware middleware services and toolkits that couple scientific applications to networks.

This announcement calls for proposals to address the fundamental issues of high-performance networks that support DOE's science mission. It focuses on four major topics: (1) High-throughput transport protocols, (2) traffic engineering and characterization, (3) cyber-security science and engineering, and (4) modeling of network-aware middleware and middleboxes (firewalls, NAT, proxies, etc.) deployed in networks to perform functions other than standard routing functions. Responses to this announcement must go beyond the development of tools and software to an emphasis on rigorous techniques and proofs for analyzing and validating the performance of the proposed approaches.

The focus of this announcement is on the fundamental issues of networking technologies that address these challenges.

Background: Early Career Principal Investigator Program

This is the first year of the Early Career Principal Investigator Program. A principal goal of this program is to identify exceptionally talented applied mathematicians, computer scientists and high-performance networks researchers early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is restricted to tenure-track regular academic faculty investigators, who are no more than five years beyond completing either a Ph.D., or equivalent, or a postdoctoral position, and are conducting research in applied mathematics, computer science, or high-performance networks. Applications should be submitted through a U.S. academic institution. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. However, no salary support will be provided for other faculty members or senior personnel.

It is anticipated that up to $4 million will be available for grant awards during Fiscal Year 2002, contingent upon the availability of appropriated funds. DOE expects to make up to forty (40) awards for exceptional applications in Fiscal Year 2002, to meet the needs of the program. Multiple-year funding of grant awards is expected, with funding provided on an annual basis subject to the availability of funds. The typical duration of these grants is three years, and they will not normally be renewed after the project period has been completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to DOE or other Federal funding agencies.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, which are listed in descending order of importance as codified at 10 CFR 605.10(d):

(1) Scientific and/or Technical Merit of the Project;

(2) Appropriateness of the Proposed Method or Approach;

(3) Competency of Applicant's Personnel and Adequacy of Proposed Resources;

(4) Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay attention to the responsiveness of the proposed research to the research challenges of the MICS base research programs in Applied Mathematics, Computer Science, and Network Research.

It is expected that the application will include involvement of graduate and/or undergraduate students in the proposed work.

Applicants are encouraged to collaborate with DOE National Laboratory researchers. The collaborations may include one, or more, extended visits to the laboratory by the applicant each year. Such an arrangement, if proposed, must be clearly explained in the grant application. Furthermore, a letter of support from the DOE National Laboratory collaborator(s) should be included with the application. A list of the DOE National Laboratories can be found at: *http://www.sc.doe.gov/sub/lab_map/index.htm.*

Grantees under the Early Career Principal Investigator Program may apply for access to high-performance computing and network resources at several National Laboratories. Such resources include, but are not limited to, the National Energy Research Scientific Computing (NERSC) Center: *http://www.sc.doe.gov/production/octr/mics/nersc/index.html;* the Advanced Computing Research Testbeds *http://www.sc.doe.gov/production/octr/mics/acrt/index.html;* the Energy Sciences Network *http://www.sc.doe.gov/production/octr/mics/esnet/index.html;* and the High-Performance Networking Research effort at the Oak Ridge National Laboratory; *http://www.csm.ornl.gov/net.*

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will consider the quality of the proposed plan, if any, for interacting with a DOE National Laboratory.

Please note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator and the submitting institution.

Submission Information

The Project Description should be 20 pages or less, exclusive of attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, FAX and E-mail listed, and a short curriculum vita for the applicant.

To provide a consistent format for the submission, review, and solicitation of grant applications under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program, 10 CFR part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 11, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–1227 Filed 1–16–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

North American Energy Working Group

AGENCY: Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop sponsored by the US

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delegation (Department of Energy, Department of Commerce and Department of State) of the North American Energy Working Group (NAEWG) Electricity Regulatory Issues Group of Experts, and a request for comments.

DATES: The Department of Energy will host a public workshop to hear the views of U.S. stakeholders at the following date, time and location. Those planning to attend the workshop should register by calling 202 586–5125.

—February 13, 2002/9 a.m.–4 p.m./ Washington, DC.Department of Energy, 1000 Independence Ave., SW, Room 1E–245

Public Participation: The workshops are open to the public. Written comments can be submitted at the workshop or to the address below on or before February 13, 2002. E-mailed comments are preferable.

ADDRESSES: Send comments to: Debra.Smith@hq.doe.gov or Debra Smith, US DOE, Office of Policy and International Affairs, PI–32, 1000 Independence Avenue, SW Washington, DC 20585.

SUPPLEMENTARY INFORMATION: President Bush and Mexican President Fox, during President Bush's visit to Mexico on February 16, 2001, and President Bush and Canadian Premier Chretien, during a subsequent visit to Washington, DC, agreed to the development of a North American Energy Initiative. The Initiative is being developed by the NAEWG. In March 2001, Secretary Abraham, Minister of Natural Resources Canada Goodale, and Mexican Secretary of Energy Martens, met in Mexico City and agreed to the overarching principles and approach that would govern the NAEWG. President Bush's National Energy Policy, released in May 2001, directed the Secretaries of Energy, State, Commerce, to engage in a dialogue with Canada and Mexico through the NAEWG.

The broad goals of the NAEWG are to foster communication and cooperation among the governments and energy sectors of the three countries; enhance North American energy trade, development and interconnections; and promote regional integration and increased energy security for the people of North America. The NAEWG agreed to three areas of work to be carried out by three Groups of Experts. One such group, the Electricity Regulatory Issues Group of Experts, was formed to examine key regulatory issues associated with North American electricity markets, such as reliability, regional transmission organizations, and transmission access. Canada led the Electricity Experts Group which drafted a discussion paper and made recommendations to the NAEWG as to further actions. One recommendation accepted by the NAEWG suggested soliciting stakeholder input regarding the Experts Group discussion paper and other issues identified in this Supplementary Information section.

The purpose of the workshop is to solicit public comments on the issues raised in the Draft Discussion Paper with a view to better enable the Group of Experts to further its work and, in particular, to solicit public comments on the following question, drafted by the Group of Experts, to facilitate discussion:

What issues present challenges to Regional Transmission Organizations with international members? Issues that should be explored by stakeholders include, but are not limited to, organization, governance, rates, reliability standards, enforcement, and dispute resolution and transmission access.

Issued in Washington, DC, on January 11, 2002.

Vicky Bailey,

Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 02–1226 Filed 1–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (IC01–521–001 FERC–521)

January 11, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 9, 2001 (66 FR 51416). The Commission has noted this fact in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before February 19, 2002.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail: *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–521 "Headwaters Benefits"
2. *Sponsor:* Federal Energy Regulatory Commission
3. *Control No.:* OMB No. 1902–0087. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.
4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Section 10(f) of the Federal Power Act (FPA). The reporting requirements associated with FERC–521 are codified at 18 CFR Part 11 of the Commission's regulations.

FERC–521 implements the Commission's regulations for the determination of headwater benefits derived by downstream parties. The regulations set forth a formula for determining an equitable apportionment of the annual charges for interest, maintenance, and depreciation for a storage reservoir or other headwater improvement owned by the United States, a licensee, or pre-1920 permittee. Headwater benefits are the additional energy production possible at a downstream hydropower project. Under Section 10(f) of the Federal Power Act, an owner of a hydropower project is required to reimburse upstream headwater project owners for an equitable part of the benefits it receives. This includes paying equitable portions of annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury.

The Commissions regulations provide for apportionment of the costs between the headwater project and down-stream projects based on downstream energy gains and propose equitable apportionment methodology that can be applied to all river basins in which headwater improvements are built. In determining energy gains, the size and efficiency of the turbines and their generators, and the load to be served will remain constant, while streamflow, reservoir storage, and head will vary depending on the operating conditions of the upstream reservoirs. Because head and streamflow determine the amount of energy produced at the hydropower project, a relationship that the generation is a function of the head and streamflow can be developed. Commission experience has shown that the relationship between generation and streamflow is an adequate tool for estimating generation in calculating energy gains. The information submitted enables the Commission to carry out its responsibilities in implementing the statutory provisions of the FPA.

Respondent Description: The respondent universe currently comprises on average, five entities subject to the Commission's jurisdiction.

6. *Estimated Burden:* 200 total burden hours, five respondents, one response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 200 hours ÷ 2,080 hours per year × $117,041 per year = $11,254, average cost per respondent = $2,250.

Statutory Authority: Section 10(f) of the Federal Power Act (16 U.S.C. 803).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1229 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–143–000]

Kansas Gas Service, A Division of ONEOK, Inc., Complainant, v. Enbridge Pipelines (KPC), Respondent; Notice of Complaint

January 11, 2002.

Take notice that, on January 10, 2002, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2001), Kansas Gas Service, a Division of ONEOK, Inc. (Kansas Gas Service) tendered for filing a Complaint against Enbridge Pipelines (KPC).

Kansas Gas Service alleges that: (1) KPC is violating the terms of certain service agreements with Kansas Gas Service, which are part of KPC's approved FERC Gas tariff, by failing to charge lower rates under those service agreements, and (2) KPC's obligation to charge the lower rates was triggered by a separate written agreement, a July 9, 1997 Settlement Agreement, in which KPC, in consideration for Kansas Gas Service's payment of: (1) $7.5 million in August 1997, and (2) rates based on an annual cost of service of $31 million from August 1997 through July 2001, agreed to charge Kansas Gas Service, under the service agreements, a lower Zone 3 rate, effective August 1, 1998, and lower rates based on Williams Gas Pipelines Central's rates for comparable service, effective August 1, 2001.

Kansas Gas Service requests that the Commission determine that: (1) KPC's actions and inaction described in the Complaint constitute unjust and unreasonable rates and rate practices in violation of its FERC Gas tariff and Section 4 of the Natural Gas Act; and (2) KPC should take steps necessary to implement the Settlement Agreement rates as discounted or negotiated rates (and bill Kansas Gas Service accordingly) in order to comply with its tariff and give full effect to the "motion rates," which KPC urged the Commission to approve in February 1998. Kansas Gas Service further requests that the Commission affirm that: (1) The Commission, in its April 2, 1999 Order in Docket No. CP96–152, 87 FERC ¶ 61,020, did not intend to interpret its various provisions, nor did it intend to void, or otherwise disturb the Agreement, or adjudicate the issue of whether the Settlement Agreement amended the then exjsting contracts between KPC and Kansas Gas Service; (2) Kansas Gas Service's claims for common law relief based on KPC's breach of contract, repudiation, fraud and breach of the duty of good faith and fair dealing, as pleaded in Kansas Gas Service's Petition in Kansas state court, belong properly in state court in accordance with Commission and court precedent; and (3) if the relief sought by Kansas Gas Service in its state court Petition were granted, such relief would neither violate the filed rate doctrine nor impinge upon the Commission's jurisdiction under the NGA.

Kansas Gas Service requests that the Commission complete action on the Complaint within 110 days, in accordance with the time standards established in Order No. 602 for a decision on the pleadings, III FERC Stats. and Regs. ¶ 31,071, on reh'g and clarification, 88 FERC ¶ 61,114 (1999).

In accordance with subsection (f) of Rule 206, answers, interventions and comments must be filed with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, on or before January 30, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1232 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–141–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Technical Conference

January 11, 2002.

On August 6, 2001, the Commission issued an order granting PG&E Gas Transmission, Northwest Corporation (PG&E Transmission) a certificate of public convenience and necessity authorizing a proposed pipeline expansion project. 96 FERC ¶ 61,194 (2001). The PG&E Transmission certificate was conditioned upon PG&E Transmission developing a fuel surcharge mechanism to ensure that expansion shippers, rather than existing shippers, be responsible for all fuel costs above those attributable to fuel absent the proposed expansion's additional 97,500 horsepower of compression. On October 26, 2001, on rehearing, the Commission reiterated its rationale for and affirmed the imposition of this fuel surcharge. 97 FERC ¶ 61,101 (2001).

On November 26, 2001, PG&E Transmission filed a motion requesting the Commission reconsider the fuel surcharge for expansion shippers. Alternatively, PG&E Transmission requests the Commission initiate a technical conference to discuss aspects of the fuel charge. PG&E Transmission states that without further guidance it is unable to develop an incremental

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surcharge that both insulates existing shippers from fuel costs attributable to expansion compression, and at the same time, protects expansion shippers from fuel costs which do not reflect their actual share of such costs.

Take notice that a technical conference to discuss issues associated with the PG&E Transmission expansion project's fuel surcharge will be held on Tuesday, February 5, 2002, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Conference will continue through Wednesday, February 6, 2002, if necessary. Parties objecting to aspects of PG&E Transmission's filings should be prepared to discuss alternatives.

All interested parties and staff are permitted to attend.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1228 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030]

Portland General Electric Company Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Authorization for Continued Project Operation

January 11, 2002.

On December 16, 1999, Portland General Electric Company and on December 17, 1999, the Confederated Tribes of the Warm Springs Reservation of Oregon, joint licensees for the Pelton Round Butte Project No. 2030, filed competing applications for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. On June 29, 2001, they filed a joint application for a new or subsequent license. Project No. 2030 is located on the Deschutes River in Jefferson, Wasco, and Marion Counties, Oregon.

The license for Project No. 2030 was issued for a period ending December 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2030 is issued to Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon for a period effective January 1, 2002, through December 31, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or beforeJanuary 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon are authorized to continue operation of the Pelton Round Butte Project No. 2030 until such time as the Commission acts on their application for subsequent license.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1231 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2887–000, ER01–2887–001]

South Point Energy Center, LLC;Notice of Issuance of Order

January 11, 2002.

South Point Energy Center, LLC (South Point), an affiliate of Calpine Energy Services, L.P., submitted for filing a proposed tariff under which South Point will make sales of various electric services at market-based rates, as well as, reassign transmission capacity and resell Firm Transmission Rights. South Point also requested waiver of various Commission regulations. In particular, South Point requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by South Point.

On December 3, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by South Point should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, South Point is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of South Point, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of South Point's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1233 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–454–002, et al.]

West Penn Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 10, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. West Penn Power Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, dba Allegheny Power

[Docket No.ER02–454–002]

Take notice that on December 31, 2001, West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company, all doing business as Allegheny Power, filed an unexecuted Network Integrated Transmission Service Agreement and an unexecuted Network Operating Agreement for service to Allegheny Electric Cooperative, Inc. Allegheny Power requests an effective date of January 1, 2002.

Comment Date: January 22, 2002.

2. Oildale Energy LLC

[Docket No. EG02–44–000]

Take notice that on December 6, 2001, Oildale Energy LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generators Status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Comment Date: January 17, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on January 7, 2002, TXU Tradinghouse Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on January 7, 2002, TXU DeCordova Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Mountain Creek Company LP

[Docket No. EG02–51–000]

Take notice that on January 7, 2002, TXU Mountain Creek Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on January 7, 2002, TXU Big Brown Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on January 7, 2002, TXU Handley Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. TXU Generation LP

[Docket No. EG02–54–000]

Take notice that on January 7, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Prairie Gen L.P.

[Docket No. EG02–64–000]

Take notice that on January 7, 2002, Prairie Gen L.P., 80 South 8th Street, Suite 4040, Minneapolis, Minnesota 55402, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a limited partnership organized under the laws of the state of Minnesota.

The Facility consists of a gas-fired, simple-cycle turbine project located in St. Paul, Ramsey County, Minnesota (the Facility). The Facility will have a maximum net electrical capacity of 49MW. The point of delivery is the point at which the Facility interconnects with Xcel Energy's Highbridge substation.

The applicant will be engaged directly and exclusively in the business of owning an eligible facility and selling the electric energy from the Facility at wholesale.

Copies of the application have been served upon the Minnesota Public Utilities Commission, the "Affected State Commission," and the Securities and Exchange Commission.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. American Electric Power Service Corporation

[Docket No. ER02–141–001]

Take notice that on January 7, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amendment to Filing in Docket ER02–141–000 to comply with FERC

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Order 614. AEPSC respectfully requests waiver of notice to permit ER02–141–000 to be made effective on or prior to September 20, 2001, as initially requested on October 15, 2001. AEPSC also respectively requests that the Commission accepts its request to terminate those Service Agreements identified in Attachment B and the assignments identified in Attachment C to be effective on, or prior to September 20, 2001, as initially requested in its filing on October 15, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 28, 2002.

11. West Penn Power Company (dba Allegheny Power)

[Docket No. ER02–288–001]

Take notice that on January 7, 2002, West Penn Power Company, dba Allegheny Power, filed with the Federal Energy Regulatory Commission (Commission) an Addendum to its Electric Service Agreement with Allegheny Electric Cooperative. An effective date for the Addendum is December 19, 2001 in accordance with the Commission's Order issued in Docket No. ER02–123–000, 97 FERC 61,274.

Copies of the filing have been provided to all parties of record.

Comment Date: January 28, 2002.

12. San Diego Gas & Electric Company

[Docket No. ER02–613–000]

Take notice that on December 26, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing its forecast of the changes it will pay under its Reliability Must Run (RMR) contracts with the California Independent System operator (ISO) for the year 2002, and proposed allocation for recovering those costs in rates.

SDG&E states that, under Section 5.2.8 of the ISO tariff, it is the Responsible Utility (RU) for payments to operators of RMR units within its service territory. SDG&E recovers its costs for those payments through a dedicated rate component, and requests an effective date of January 1, 2002 for the proposed rate.

SDG&E states that copies of the filing have been served on the California Independent System Operator and on the California Public Utilities Commission.

Comment Date: January 22, 2002.

13. Consolidated Water Power Company

[Docket No. ER02–695–000]

Take notice that Consolidated Water Power Company (CWP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an umbrella service agreement with Wisconsin Public Service Corporation (WPSC) under CWP's market-based rates tariff, FERC Electric Rate Schedule No. 1. CWP states that it has served the Customer with a copy of this filing.

CWP requests that the umbrella service agreement be made effective on June 11, 2001.

Comment Date: January 24, 2002.

14. American Transmission Company LLC

[Docket No. ER02–702–000]

Take notice that on January 7, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Service Agreement No. 90 with additions to the Generation-Transmission Interconnection Agreement between Wisconsin Power and Light Company and ATCLLC.

ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 28, 2002.

15. Puget Sound Energy, Inc.

[Docket No. ER02–703–000]

Take notice that on January 7, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Long-Term Firm Point-To-Point Transmission Service with TransAlta Energy Marketing (US) Inc. (TransAlta), as Transmission Customer. A copy of the filing was served upon TransAlta.

Comment Date: January 28, 2002.

16. Entergy Services, Inc.

[Docket No. ER02–704–000]

Take notice that on January 7, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and City Water and Light Plant of the City of Jonesboro, Arkansas.

Comment Date: January 28, 2002.

17. Michigan Electric Transmission Company

[Docket No. ER02–705–000]

Take notice that on January 7, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with each of the following: Detroit Edison Merchant Operation; Exelon Generation Company, LLC; FirstEnergy Solutions Corp.; and Virginia Electric & Power Company (jointly, Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 127 through 134 under that tariff.

Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements. Copies of all filed agreements were served upon the Michigan Public Service Commission and ITC. And each Customer was served with its own Service Agreements.

Comment Date: January 28, 2002.

18. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–706–000]

Take notice that on January 7, 2002, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements with NRG Power Marketing Inc., establishing NRG Power Marketing Inc., as a Short-Term Firm and Non-Firm Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., Open Access Transmission Tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of November 30, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: January 28, 2002.

19. Cinergy Services, Inc.

[Docket No. ER02–707–000]

Take notice that on January 7, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Network Service Agreement, Network Operating Agreement, and Specifications for Network Integration Service under Cinergy's Open Access Transmission Tariff (OATT) entered into between Cinergy and Union Light, Heat and Power Company (Union). An application for Network Integration Service for Union has been included as an Exhibit to the Service Agreement under OATT. Copies of the filing were served upon Union.

Cinergy and Union are requesting an effective date of January 1, 2002.

Comment Date: January 28, 2002.

20. Central Illinois Light Company

[Docket No. ER02–708–000]

Take notice that on January 7, 2002, Central Illinois Light Company (CILCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a new tariff, the Ancillary Service Tariff, and revised transmission rates to be effective through Attachment O of the Midwest Independent System Operator's Open Access Transmission Tariff. Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

CILCO requested an effective date of February 1, 2002.

Comment Date: January 28, 2002.

21. Generator Coalition, consisting of: Calcasieu Power, LLC; Calpine Central, L.P.; Exelon Generation Company, LLC; Mirant Americas Energy, Marketing, LP, Perryville Energy Partners, LLC, and Wrightsville Power Facility, LLC; Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, and the Public Service Commission of Yazoo City; Occidental Chemical Corporation, PLC II, LLC; Reliant Energy Power Generation, Inc.; TECO Power Services Corp.; Tenaska Frontier Partners, Ltd.; Williams Energy Marketing & Trading Company, Complainants, v. Entergy Services, Inc., Respondent

[Docket No. EL02–46–000]

Take notice that on January 8, 2002, The Generator Coalition, comprised of Calcasieu Power, LLC, Calpine Central, L.P., Exelon Generation Company, LLC, Mirant Americas Energy Marketing LP, Perryville Energy Partners, LLC, Wrightsville Power Facility, LLC, Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, Occidental Chemical Corporation, PLC II, LLC, Reliant Energy Power Generation, Inc., TECO Power Services Corp., Tenaska Frontier Partners, Ltd., and Williams Energy Marketing & Trading Company, submitted a complaint against Entergy Services, Inc. ("Entergy") requesting fast track processing by the Commission.

The Generator Coalition alleges that Entergy is charging independent generating facility customers unjust, unreasonable, and unduly discriminatory rates for energy imbalances resulting from generation under deliveries by overstating its incremental cost for supplying such balancing energy in rates under its Generator Imbalance Agreement ("GIA"). The Generator Coalition also alleges that Entergy refuses to credit non-offending generators with the penalties it collects under the GIA. Entergy is also preventing unaffiliated generators from self-supplying imbalance service or obtaining imbalance service from third parties, and thus forces generators into paying these inflated "incremental costs." Further, The Generator Coalition contends that Entergy is violating the Standards of Conduct by allowing its wholesale merchant arm, the entity that competes with independent generators in the Entergy control area, to control numerous transmission-related functions under the guise of implementing Entergy's generator imbalance agreements. Entergy has also refused to include an appropriate RTO clause in its GIA, making clear that generators may, at their discretion, properly obtain generator imbalance services from an RTO-wide generator imbalance market that may be implemented by the Commission in the future. Lastly, the Generator Coalition contends that Entergy has failed to explain or justify the criteria it utilizes when it declares a "Low-Load Event" under the GIA.

Comment Date: January 28, 2002. Answers to the complaint shall also be filed on or before January 28, 2002.

22. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–713–000]

Take notice that on January 7, 2002, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 369 and 370 to add Service Agreements with Old Dominion Electric Cooperative to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the Service Agreements is January 1, 2002.

Copies of the filing have been provided to the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment Date: January 28, 2002.

23. Wisconsin Public Service Corporation

[Docket No. ER02–714–000]

Take notice that on January 7, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to its February 22, 1993 Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service Requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 2002.

Comment Date: January 28, 2002.

24. Northern Indiana Public Service Company

[Docket No. ER02–715–000]

Take notice that on January 7, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with American Electric Power Service Corporation (AEP). Northern Indiana has requested an effective date of January 7, 2002.

Copies of this filing have been sent to AEP, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: January 28, 2002.

25. Ameren Energy, Inc. on Behalf of Union Electric Company, D/b/a Ameren UE and Ameren Energy Generating Company

[Docket No. ER02–716–000]

Take notice that on January 7, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a Ameren UE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the FPA and the market rate authority granted to the Ameren Parties, submitted for filing to the Federal Energy Regulatory Commission (Commission) umbrealla power sales service agreements under the Ameren parties' market rate authorizations entered into with Mirant Americas Energy Marketing, LP.

Ameren Energy seeks Commission acceptance of these service agreements effective November 30, 2001.

Comment Date: January 28, 2002.

26. Southwest Power Pool, Inc.

[Docket No. ER02–709–000]

Take notice that on January 7, 2002, Southwest Power Pool, Inc. (SPP) tendered for filing an unexecuted service agreement with Power Resources Group, Inc. (PRG) for long-term firm point-to-point transmission service under the SPP Open Access Transmission Tariff. This agreement was filed at the direction of PRG.

SPP request an effective date of October 1, 2004 for this service

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agreement. A copy of this filing was served on representatives of PRG and other affected parties.

Comment Date: January 28, 2002.

27. Duke Energy Corporation

[Docket No. ER02–710–000]

Take notice that on January 7, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised service agreement (First Revised Service Agreement No. 170) with Rockingham Power L.L.C. in this proceeding.

Comment Date: January 28, 2002.

28. American Electric Power Service Corporation

[Docket No. ER02–711–000]

Take notice that on January 7, 2002, American Electric Power Service Corporation submitted for filing an unexecuted interconnection and Parallel Operation Agreement between Southwestern Electric Power Company (SWEPCO), Entergy Power Ventures, L.P., Northeast Texas Electric Cooperative, Inc. and EN Services, L.P. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

SWEPCO requests an effective date of March 5, 2002. Copies of SWEPCO's filing have been served upon Entergy Power Ventures, LP, Northeast Texas Electric Cooperative, Inc., NE Services, L.P. and the Public Utility Commission of Texas.

Comment Date: January 28, 2002.

29. PJM Interconnection, L.L.C.

[Docket No. ER02–712–000]

Take notice that on January 7, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the currently effective PJM Open Access Transmission Tariff (PJM Tariff) and the PJM Tariff that will implement PJM West as well as the currently effective Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and the Operating Agreement that will implement PJM West to accommodate providers of last resort under the New Jersey Basic Generation Service (BGS) program and other similar state programs for the provision of provider of last resort services.

Copies of this filing were served upon all PJM members, Allegheny Power, and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: January 28, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1207 Filed 1–16–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket Nos. CP01–22–002 and CP01–23–000; CA Clearinghouse No. 2001011020; BLM Reference No. CACA–42662]

North Baja Pipeline, LLC; Notice of Availability/Completion of the Final Environmental Impact Statement/Report and Proposed Land Use Plan Amendment for the North Baja Pipeline Project

January 3, 2002.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission), the California State Lands Commission (CSLC), and the Bureau of Land Management (BLM) have prepared a final environmental impact statement/report (EIS/EIR) and proposed land use plan amendment (plan amendment) to address natural gas pipeline facilities proposed by North Baja Pipeline, LLC (NBP).

The final EIS/EIR and proposed plan amendment was prepared as required by the National Environmental Policy Act (NEPA), the California Environmental Quality Act, and the Federal Land Management and Policy Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures that would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less than significant level. The FERC, the CSLC, and the BLM staffs conclude that if the project is constructed as modified and in accordance with NBP's proposed mitigation and our recommendations it would be an environmentally acceptable action.

The BLM is participating as a cooperating agency in the preparation of the final EIS/EIR and proposed plan amendment because the project would cross Federal land under the jurisdiction of the Palm Springs, El Centro, and Yuma Field Offices. The Bureau of Reclamation (BOR) is also a cooperating agency in the preparation of the document because lands administered by the BOR would be crossed by the project. The final EIS/EIR and proposed plan amendment will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on lands managed by the BLM and the BOR. The document will also be used by the BLM to consider amending the California Desert Conservation Area (CDCA) Plan (as amended), which would be necessary for pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan (Yuma District Plan), which would be necessary for pipeline construction across the Milpitas Wash Special Management Area. The BLM proposes to adopt the final EIS/EIR and proposed plan amendment per Title 40 Code of Federal Regulations (CFR) part 1506.3 to meet its responsibilities under NEPA and its planning regulations per Title 43 CFR part 1610. The BLM Arizona and California State Directors have approved the proposed plan amendments for their respective planning areas. The BLM will present separate Records of Decision for the right-of-way grant and the plan amendment for the North Baja Pipeline Project after the issuance of the final EIS/EIR and proposed plan amendment.

The final EIS/EIR and proposed plan amendment addresses the potential environmental effects of the construction and operation of the following facilities in Arizona and California:

- About 79.9 miles of 36-inch-diameter (11.8 miles) and 30-inch-diameter (68.1 miles) natural gas pipeline (North Baja pipeline) extending from an interconnection with El Paso Natural Gas Company (El Paso) in La Paz County, Arizona, through Riverside and Imperial Counties, California to the international border between the United States and Mexico;
- A new compressor station (Ehrenberg Compressor Station) consisting of three 7,200-horsepower (hp) gas-fired centrifugal compressor units for a total of 21,600 hp (with one additional 7,200-hp spare unit) at the El Paso interconnect in La Paz County, Arizona;
- Two meter stations, one at the interconnect with El Paso at the Ehrenberg Compressor Station site (Ehrenberg Meter Station) and one in Imperial County, California near the interconnect at the international border (Ogilby Meter Station);
- A pig launcher at the Ehrenberg Compressor Station site; a pig launcher and receiver at the Ogilby Meter Station site; and a separate pig launcher and receiver facility (Rannells Trap) in Riverside County, California; and
- Seven mainline valves, one each at the Ehrenberg Compressor Station site, Rannells Trap, and Ogilby Meter Station site, and another four spaced as required along the proposed pipeline route.

The final EIS/EIR and proposed plan amendment has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Regulatory Energy Commission
Public Reference and Files Maintenance Branch
888 First Street, NE., Room 2A
Washington, DC 20426
(202) 208–1371
and
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825–8202
(916) 574–1889

The final EIS/EIR and proposed plan amendment has been mailed to appropriate Federal, state, and local agencies; elected officials; Native American groups; newspapers; public libraries; intervenors to the FERC's proceeding; and other interested parties who provided scoping comments, commented on the draft EIS/EIR and draft plan amendment, or wrote to the FERC, the CSLC, or the BLM asking to receive a copy of the document. A formal notice indicating that the final EIS/EIR and proposed plan amendment is available was sent to the remaining parties on the environmental mailing list.

A limited number of copies of the final EIS/EIR and proposed plan amendment are available from the FERC's Public Reference and Files Maintenance Branch identified above. Copies may also be obtained from Goodyear K. Walker, CSLC, at the address above. The final EIS/EIR and proposed plan amendment is also available for viewing on the CSLC Web site at the Internet address below.

Additional information about the proposed project is available from Goodyear K. Walker at the CSLC at (916) 574–1893, or on the CSLC Web site at *http://www.slc.ca.gov*, or from the FERC's Office of External Affairs at (202) 208–1088, or on the FERC Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call (202) 208–2222 for assistance). Access to the text of formal documents issued by the Commission with regard to these dockets, such as orders and notices, is also available on the FERC Web site using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the proposed CDCA and Yuma District Plan amendments and the involvement of the BLM in the EIS/EIR and plan amendment process is available from Lynda Kastoll, BLM Project Manager, at (760) 337–4421.

The CSLC is expected to certify the final EIS/EIR and act on NBP's application at a regularly scheduled meeting in early 2002. Interested parties will be notified of the date, time, and place of the meeting. If you have any questions regarding the CSLC hearing, or wish to testify, please contact Goodyear K. Walker at the number above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–462 Filed 1–16–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amended Application for the St. Anthony Falls Project and Extension of Time for Comments, Recommendations, Terms and Conditions, and Prescriptions

January 11, 2002.

Take notice that the following hydroelectric application has been amended by the applicant as identified in the project description below. By notice dated November 11, 2001, the Commission requested Comments, Recommendations, Terms and Conditions, and Prescriptions, due within 60 days of the notice. In order to give parties time to comment on the revised Application, the due date for Comments, Recommendations, Terms and Conditions, and Prescriptions has been extended to 60 days from the date of this notice. Changes proposed by the Applicant include removal of the Lower Development from the Project, revision of proposal for facilities for public access and usage at the new Main Street and Hennepin Island Dams, a new park on Upper Hennepin Island, and a combination of canoe access site, shoreline fishing structure, and observation deck at the Lower Development. The Applicant no longer proposes moving the Pillsbury Substation, diverting flows for a waterfall in the east Bluff area, donation of Hennepin Islands or direct funding to the Minnesota Park and Recreation Board.

a. *Type of Application:* New Major License

b. *Project No.:* P–2056–016

c. *Date filed:* Application filed December 21, 1998; Application amended October 11, 2001, and November 2, 2001.

d. *Applicant:* Northern States Power Company (NSP)

e. *Name of Project:* St. Anthony Falls Project

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401; (612) 330–6568

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail: *monte.terhaar@ferc.fed.us*, or telephone (202) 219–2768.

j. *Deadline Date:* March 18, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments, protests and interventions may also be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission

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to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a draft and a final Environmental Assessment.

l. *Description of the Project:* The St. Anthony Falls Project currently consists of two developments on the Mississippi River, the Upper Development and the Lower Development.

Upper Main Dam Development

The Upper Main Dam development of the project consists of the Horseshoe dam spillway, main spillway, roll dams, Hennepin Island earthen dam, two abandoned wasteways, the Hennepin Island hydro entrance canal and powerhouse, the Main Street/Hennepin Island dam, and the Main Street plant. The U.S. Army Corps of Engineers (COE) Upper St. Anthony Lock is on the right (south) bank of the river adjacent to the Upper Dam development. The headrace canal for the Crown Mill Hydroelectric Project (FERC No. 11175) is being developed just upstream of the lock.

NSP has completed construction of a replacement, multiple-circular-cell sheetpile dam to replace the existing Main Street/GE Dam and adjacent intake structure. A similar cellular dam structure has been constructed at the Wasteway No. 2 Intake Gates.

Lower Development

The Lower Development consists of an upstream closure dam, a downstream closure dam, and left retaining wall which encompass approximately 3.53 acres of land owned by NSP. There are currently no hydropower facilities at the Lower Development. In November of 1987, the St. Anthony Falls Lower Dam Hydro Plant experienced an undermining failure. On August 19, 1988, the Commission issued an order authorizing complete demolition and removal of the lower facility. Demolition of the powerhouse was completed by the end of 1988. As of August 2001, all necessary remedial work necessary to ensure dam safety at the Lower Development has been completed to the Commission's satisfaction. In their application, and by a letter dated November 2, 2001, NSP has proposed to remove the lower development from the project.

NSP had proposed a number of recreational enhancements in its original application for license in 1998. These enhancement measures were developed in consultation with the Minnesota Department of Natural Resources, Minnesota Parks and Recreation Board, the City of Minneapolis, and the Mississippi Whitewater Development Corporation. However, NSP states that the consultative process has broken down without an agreement and hence, the NSP has revised its recreational/aesthetic mitigation and enhancement proposal as described below:

(1) Mitigation Measures at the Upper Development

- A straight-line cantilever along the face of the new dams providing an overhang to partially shade or cover the facade of the dam;
- Smooth, broom-swept concrete surface covering for the upstream edge (bridged sections) of the dam excluding the bicycle path;
- Surface covering of dam (excluding concrete slabs and bicycle path) with finely crushed limestone aggregate of compatible color with the concrete slabs;
- Earth fill between the steel sheet pile cells and the old (Main Street) powerhouse limited to reach but not cover the brick of the historic powerhouse; and
- Surface covering for the swale upstream of the powerhouse with finely crushed limestone aggregate of compatible color with the concrete slabs; planting swale areas upstream of the old GE Dam and between the new Hennepin Island Dam and the old wasteway headworks with native vegetation.

NSP has completed the last two items and expects to complete the others shortly.

(2) Other Measures at the Upper Development

- An eight-foot bicycle path of bituminous composition on the powerhouse side of the concrete slabs along the upstream face of the dam;
- A switchback ramp between the old powerhouse and the Main Street to provide bicycle/barrier-free access to the new dam; steps leading straight down the river bank on to the new dam from Main Street;
- Observation areas and benches at four locations on the dams;
- An overlook area on the new dam for interpretive displays;
- An interpretive sign for the Main Street Substation at the trashrack observation area;
- Railings, lights, and interpretive signs to generally match those on the Stone Arch Bridge.
- A pedestrian bridge linking the Main Street Dam to Hennepin Island; and
- New walkways, interpretive nodes, visual overlooks, information shelter, natural areas, landscaping, and other improvements on upper Hennepin Island.

(3) Mitigation Measures at the Lower Development

NSP proposes to provide new facilities for canoe access, shoreline fishing, and public observation at the restored Lower Dam site.

(4) Changes in NSP's Proposed Mitigation Measures

NSP does not propose to move the Pillsbury Substation or diverting water to re-create a waterfall in the East Bluff area from its current location. NSP's revised recreation mitigation plan does not include any funding to the Minnesota Park and Recreation Board for operation and maintenance of the East Bank Park Development, nor donation of Hennepin Island lands to the Minnesota Park and Recreation Board. Instead, NSP proposes to independently develop, operate, and maintain park facilities on the upper part of Hennepin Island and the former Lower Dam site.

Details of the enhancement and mitigation measures were filed with the Commission on October 11, 2001 and are available electronically for review at the Commission's website (www.ferc.gov). Copies may also be requested directly from NSP. The Commission will discuss this alternative in its Environmental Assessment.

m. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1230 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 EX01–3–000]

Electricity Market Design & Structure; Notice of Meetings and Conferences on Electric Market Matters

January 11, 2002.

As announced in a recent Commission Meeting, the Federal Energy Regulatory Commission (FERC) is planning a series of discussions on various electric market design issues.

Our Commissioners are especially interested in the views of state Commissioners and in discussing some of these issues with them. The National Association of Regulatory Utility Commissioners (NARUC) has scheduled its winter meetings for February 10th—13th, 2002. NARUC is allowing FERC to have time during its winter meetings to hold two sessions on issues of mutual concern. NARUC is holding its meetings at the Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington DC 20001.

The following two sessions on FERC-related issues are in the Hyatt's Regency A Room:

Date: Sunday, February 10, 2002.
Time: 10 a.m.—12 p.m.
Topic: Whether all wholesale and retail transmission services should be under the same rates, terms and conditions.

Date: Monday, February 11, 2002.
Time: 4 p.m.—5:45 p.m.
Topic: Whether the Federal Energy Regulatory Commission should require RTOs to administer a regional, long-term generation capacity obligation, and if so, the form and mechanism for that obligation.

These two sessions are open to everyone. There will be no charge for those attending these two sessions only.

The Commission is also co-sponsoring a conference with the U.S. Department of Energy (DOE) to raise awareness about the potential role of demand response programs in the evolution of efficient electric market operations. A series of panel discussions will address related topics. Some conference details are as follows:

Date: Thursday, February 14, 2002.
Time: 7:30 a.m. to 8:30 a.m.—Registration; Adjournment at 5:00 p.m.
Location: Washington DC Convention Center, 900 Ninth Street NW., Washington, DC 20001.

This conference is open to everyone, but registration and a fee ($75 until January 31st, and $125 thereafter) are required.

More information on the topics and presenters may be issued in a later notice.

The three sessions will be transcribed. The transcripts will be included as part of the record for the referenced proceedings and will be posted in the Commission's Records and Information Management System (RIMS) within 10 days of the events. More prompt copies of transcripts can be obtained sooner for a fee from the court reporter designated to handle the three sessions.

More information on the first two events, and procedures to register for the entire NARUC winter meetings (including information on registration, fees, and lodging) is at the following Web site: *www.naruc.org/Meetings/winter/2002/naruc_winter.pdf.*

Registration and lodging information on the Demand Response Conference is at the following Web site: *www.ferc.gov/Electric/RTO/Mrkt-Strct-comments/rm01–12-comments.htm.*

Additional questions about the program, not answered by information at these Web sites, should be directed to: Norma McOmber, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–1015, *norma.mcomber@ferc.fed.us.*

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1234 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Request for Comments on Potential Changes to the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures

January 11, 2002.

The Office of Energy Projects (OEP) staff is in the process of reviewing the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures referred to at 18 CFR 157.206(b)(3)(iv) of the Commission's regulations to see if there are appropriate modifications to be made at this time. As promised in Order 609, the staff is asking for public input on potential modifications.

This process of obtaining public input began at the Post-Certificate Environmental Compliance Seminar conducted in Houston on December 12 and 13, 2001. Additional input will be

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solicited at the subsequent sessions of this training course identified in our November 15, 2001 notice. However, in order to obtain the broadest public participation in this process, we are asking for comment outside of these training sessions as well.

We have posted a table on our Web site showing the changes that were identified for discussion at the December 12th session and we request your comments on whether each of the changes are appropriate, with discussion of your rationale. In addition, please describe any additional changes you believe might be appropriate. The table is at *http://www.ferc.gov/gas/pptable.pdf.*

To provide comments you may log on to the FERC Web site at *www.ferc.gov,* and follow the links to "Gas Industry Seminars," "Online Registration," and "Participant Recommendations" or go directly to *www.ferc-envtraining.com* and select "Participant Recommendations."

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1235 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–4]

Request for Proposals for an Improved Atmospheric Nitrogen Deposition Data Set for the Chesapeake Bay Program

The Environmental Protection Agency (EPA) is issuing a request for proposals (RFP) for organizations interested in providing the Chesapeake Bay Program (CBP) with improved estimates of daily wet nitrogen deposition loadings to the Chesapeake Bay and its watershed. Proposals must be postmarked no later than March 1, 2002. Funding will be provided to an organization under the authority of the Clean Water Act, Section 117.

The RFP is available at the following Web site: *http://www.gov/r3chespk/.* You may also request a copy by calling Julie Thomas at 410–267–9848 or by e-mail at *thomas.julie@epa.gov.* Proposals must be postmarked no later than March 1, 2002. Any late, incomplete or fax proposals will not be considered.

Diana Esher,

Acting Director, Chesapeake Bay Program Office.

[FR Doc. 02–1242 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–5]

Clear Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, March 6, 2002, from approximately 8:30 a.m. to 4 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NRS/Toxics Integration Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Tuesday, March 5, 2002 from approximately 10 a.m. to 5 p.m. at the Renaissance Mayflower Hotel, the same location as the full Committee. The Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The Linking Energy, Land Use, and Transportation, and Air Quality Concerns Subcommittee is scheduled to meet from 10 a.m. to 12 noon; the Economic Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 12:30 p.m. to 3 p.m.; and the Permits/NSR/Toxics Subcommittee is scheduled to meet from 3 p.m. to 4 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *www.epa.gov/oar/caaac/.*

Dated: January 9, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–1241 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–7]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. The PM Centers Interim Review Panel of the Executive Committee (PM Centers Panel)—February 11–12, 2002

The PM Centers Interim Review Panel of the Executive Committee of the US EPA Science Advisory Board (SAB), will meet on Monday and Tuesday, February 11–12, 2002 in the EPA Science Advisory Board Conference Room (room 6013), USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 8:30 am on February 11 and adjourn no later than 5 pm on February 12, 2002.

Purpose of the Meeting—In 1995 EPA introduced a research grants program (Science To Achieve Results (STAR)) focused on targeted, investigator-initiated, peer-review-competed grants. Subsequent experience suggested that there could be substantial benefits gained by investing some resources in larger, more coordinated grants to "research centers" that would focus the combined efforts of a group of researchers on closely related problems. The Particulate Matter (PM) Centers were funded in 1999 for a five-year period and thus, are in the middle of their grants. Although two and a half years of the PM Centers program is not sufficient time to evaluate fully its merits, the Agency is seeking an interim assessment of the PM centers concept that will help the Agency as it formulates its future research funding plans. It is for this purpose of providing interim advice on the effectiveness of the PM centers concept as a research mechanism that the SAB Panel is being convened.

Charge to the Subcommittee—The Panel has been asked to address the following Charge questions:

Overall Objective

To assess the value-added nature of a PM Centers research program.

Overall Charge Question

Based on progress to date, should a PM Centers research program be undertaken beyond 2004? In which areas, to what extent, and for what reasons is a PM Centers program beneficial? Identify specific areas in which the program could be improved.

Specific Charge Questions

(a) Recognizing the PM Centers program is barely at its halfway point, what important research findings (or promising investigations) have been made that would not have occurred otherwise? What unique aspect(s) of a Centers program enabled such actions to be taken?

(b) To what extent has the direction or focus of research shifted as a result of the multi-disciplinary interactions within the Center (i.e., findings in one department influence researchers in another to change direction or emphasis)? To what extent have changes in research direction or emphasis been influenced by Science Advisory Committee reviews, interactions with other PM Centers, or interactions with the broader PM research community? Which factors have been most influential?

(c) How successful are Centers in communicating their findings to the public and specifically, to those who directly use their research? Is it clear that the work has been supported by the PM Centers program?

(d) How, if at all, does a PM research centers program facilitate agreement or consensus on protocols or procedures to enable more direct comparison of results among research institutions or centers?

(e) How, if at all, does a PM research centers program leverage or maximize use of resources through sharing expensive equipment, samples, data, etc.?

(f) How is the program perceived within and outside the research community? Does a research center have greater visibility, and if so, what is the impact?

Availability of Review Materials: The Agency is coordinating the preparation of background materials that will help to inform the review. To access these materials, please contact Ms. Stacey Katz (Phone: 202–564–8201, or e-mail *katz.stacey@epa.gov*) or Ms. Gail Robarge (Phone: 202–564–8301, or e-mail *robarge.gail@epa.gov)* in the EPA Office of Research and Development (ORD).

For Further Information—Members of the public wishing an Agenda or a roster of the Committee should contact Ms. Diana Pozun, Program Specialist, Research Strategies Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4544; fax at (202) 501–0582; or via e-mail at *pozun.diana@epa.gov.* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Eastern Standard Time on February 4, 2002 [five business days before the meeting].

2. Research Strategies Advisory Committee (RSAC)—February 20–21, 2002

The Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB) will meet on Wednesday, February 20, 2002 and Thursday, February 21, 2002 from 8:30 am to 5:00 pm (Eastern Time). The meeting will be held in the EPA Science Advisory Board Conference Room (room 6013), USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004.

Purpose of the Meeting—In this meeting, the Research Strategies Advisory Committee plans to review the Science and Technology component of the President's Budget Request for the Fiscal Year 2003 EPA budget. The tentative charge questions are:

(a) Does the budget request provide adequate balance and attention to the core and problem driven research needed to provide satisfactory knowledge for current and future decisions EPA will be required to make?

(b) How can EPA better use measures of performance to identify the impact of its research and development program and the funds that Congress provides for that Program? (the intent of this question is to go beyond GPRA requirements and help address issues surrounding using the findings from GPRA evaluations, OIG audits, GAO reports, etc.)

(c) Is the EPA research and development program addressing the important issues needed to adequately protect human health and the environment in the US and globally? What important issues are not receiving adequate attention at the current level of resources provided for the R&D program and the S&T budget?

(d) Does the budget request reflect the priorities identified in the EPA and ORD Strategic Plans?

Availability of Review Materials: Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Ms. Amy Battaglia Office of Research and Development. Mr. Feldman can be reached on (202) 564–6951 or by e-mail at *feldman.mike@epa.gov* and Ms. Battaglia can be reached on (202) 564–6685 or via e-mail on *battaglia.amy@epa.gov.*

For Further Information—Members of the public wishing an Agenda or a roster of the Committee should contact Ms. Betty Fortune, Office Assistant, Research Strategies Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4534; fax at (202) 501–0323; or via e-mail at *fortune.betty@epa.gov.* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John "Jack" R. Fowle III, Designated Federal Officer,

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EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0582; or via e-mail at *fowle.jack@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on February 13, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in *The FY2000 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 11, 2002.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–1245 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–3]

Draft Recommendations for Implementing EPA's Public Involvement Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA seeks public comment on the 12-page document "Draft Recommendations for Implementing EPA's Public Involvement Policy." The document recommends specific EPA actions to enhance adoption of the Agency's Public Involvement Policy by EPA staff and managers. EPA published its Draft 2000 Public Involvement Policy in the **Federal Register** in December, 2000 (65 FR 82335, Dec. 28, 2000) and is currently writing the final policy and response to comments, both of which will be released in the Spring of 2002. The recommended implementation actions include: creating a communication network and mechanisms that allow EPA staff to exchange public involvement information; creating an electronic database that includes public involvement training opportunities, case studies and other helpful resources; providing public involvement training to EPA staff and managers; developing evaluation measures and tools to measure the effectiveness of EPA's public involvement activities; and evaluating the Agency's adoption of the Public Involvement Policy over time. EPA seeks public comment on this document for 60 days following publication on EPA's web page and notice in the **Federal Register**. After reviewing public comments, EPA will begin implementing many of these recommended activities. The revised document will be issued along with the Final Public Involvement Policy in the Spring of 2002. The draft recommendations document and future updates will be posted on the Agency's Web site at *http://www.epa.gov/stakeholders*.

DATES: Comments will be accepted until March 18, 2002.

ADDRESSES: Submit comments to Patricia A. Bonner, United States Environmental Protection Agency, Office of Policy, Economics and Innovation (MC 1807), 1200 Pennsylvania Ave, NW., Washington, DC 20460, by facsimile at 202–260–4903 or by electronic mail to *bonner.patricia@epa.gov* or to *stakeholders@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Patricia Bonner at 202–260–0599. To request a mailed copy, call Loretta Schumacher at 202–260–3096 or e-mail a request to *stakeholders@epa.gov*. The draft recommendations document and the Draft Public Involvement Policy may be viewed or downloaded from [*http://www.epa.gov/stakeholders*].

Thomas J. Gibson,

Associate Administrator, Office of Policy, Economics and Innovation.

[FR Doc. 02–1243 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51981; FRL–6819–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 1, 2001 to December 22, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51981 and the specific PMN number, must be received on or before February 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51981 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations"," Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51981. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51981 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51981 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

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periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from December 1, 2001 to December 22, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0111	12/04/01	03/04/02	CBI	(G) Open, non-dispersive use	(G) Aromatic acid diesters
P–02–0112	12/04/01	03/04/02	Dow Corning Corporation	(S) Powder coating additive	(G) Amidosiloxane
P–02–0113	12/03/01	03/03/02	CBI	(G) Ingredients for use in consumer products: highly dispersive use	(G) Alkoxy alkyl ester
P–02–0114	12/03/01	03/03/02	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polymer of alkyl substituted propenoic acid and propenamide with alkyl acrylate
P–02–0115	12/04/01	03/04/02	Dow Corning Corporation	(S) Chemical intermediate	(G) N,n'-alkylenebis(alkenamide)
P–02–0116	12/04/01	03/04/02	Dow Corning Corporation	(S) Chemical intermediate	(G) N,n'-alkylenebis(alkenamide)
P–02–0117	12/03/01	03/03/02	CBI	(G) Open, non-dispersive use	(G) Aromatic alkanoate
P–02–0118	12/04/01	03/04/02	CBI	(S) Pressure sensitive adhesive	(G) Acrylic copolymer
P–02–0119	12/04/01	03/04/02	Shin-ETSU Microsi, Inc.	(S) Flame-retardant for plastics, thermoplastics and resins	(G) Phosphazene
P–02–0120	12/04/01	03/04/02	CBI	(G) Emulsifier	(G) Polyalkyleneamine
P–02–0121	12/04/01	03/04/02	Hanse Chemie USA, Inc.	(S) Flexibilisation of epoxy resins	(S) Siloxanes and silicones, di-me, hydrogen-terminated, reaction products with bisphenol a diglycidyl ether and 10-undecenoic acid
P–02–0122	12/05/01	03/05/02	CBI	(S) Reactive dyestuff for coloring cellulosic fibers	(G) Sodium salt of a disubstituted diazo-amino-hydroxy-naphthalenedisulfonic acid
P–02–0123	12/06/01	03/06/02	CIBA Specialty Chem.Corp., Colors Division	(G) Textile dye	(G) Anthracenesulfonic acid, amino[[[[(alkenylsulfonyl)alkyl] substituted phenyl]amino]-substituted 1,3,5-triazin]amino]-alkyl-substituted phenyl]amino]-9,10-dihydro-9,10-dioxo-, disodium salt
P–02–0124	12/05/01	03/05/02	Hercules Incorporated	(G) A performance additive in sizing emulsions (i.e. promoter resins) used in papermaking process	(G) Aminoacrylic polymer
P–02–0125	12/05/01	03/05/02	Hercules Incorporated	(G) Destructive use (chemical intermediate)	(G) Dialkylamine hydrochloride salt
P–02–0126	12/05/01	03/05/02	Gateway Additive Company	(S) Cutting oils; industrial lubricants; metalworking fluids, soluble oil	(G) Polymer ester of mono and dibasic acids
P–02–0127	12/06/01	03/06/02	International Flavors and Fragrances, Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 3-mercaptohexyl acetate
P–02–0128	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Polyester type polyurethane resin
P–02–0129	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Organopolysiloxane containing carboxylic acid
P–02–0130	12/07/01	03/07/02	CBI	(G) Component in industrial product used in consumer products, dispersive use	(S) 4-formylphenylboronic acid*
P–02–0131	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Methacrylate and maleimide copolymer
P–02–0132	12/07/01	03/07/02	CBI	(G) Chemical intermediate	(G) Benzenediacetic acid derivative
P–02–0133	12/07/01	03/07/02	CBI	(G) Chemical intermediate	(G) Benzofuranone derivative

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0134	12/07/01	03/07/02	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties	(G) Trineoalkoxy amino zirconate
P–02–0135	12/07/01	03/07/02	BASF Corporation	(S) Aprotic solvent	(S) 2(1h)-pyrimidinone, tetrahydro-1,3-dimethyl-
P–02–0136	12/07/01	03/07/02	CBI	(S) Film coating	(G) Polyester polyurethane
P–02–0137	12/10/01	03/10/02	CBI	(G) Open, non-dispersive (plastic)	(G) Modified abs
P–02–0138	12/07/01	03/07/02	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties.	(G) Trineoalkoxy sulfonyl zirconate
P–02–0139	12/10/01	03/10/02	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polymer of substituted propenoic acid, propenamide and propenoic esters
P–02–0140	12/10/01	03/10/02	CBI	(G) Resin coating	(G) Acrylic copolymer polyurethane dispersion
P–02–0141	12/10/01	03/10/02	CBI	(G) Petroleum lubricant additive	(G) Polyalkenylbenzene sulfonate
P–02–0142	12/10/01	03/10/02	CBI	(G) Resin coating	(G) Urethane acrylate
P–02–0143	12/10/01	03/10/02	UBE America Inc.	(S) Raw material of polyurethane	(S) 1,3-dioxolan-2-one, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0144	12/11/01	03/11/02	CBI	(G) Plastics additive	(G) Chromophore substituted polyoxyalkylene
P–02–0145	12/11/01	03/11/02	CBI	(G) Plastics additive	(G) Chromophore substituted polyoxyalkylene
P–02–0146	12/11/01	03/11/02	Arteva Specialties S.A.R.L. d/b/a Kosa	(S) Structural material for production of textile fibers	(G) Modified polyester
P–02–0147	12/11/01	03/11/02	CBI	(G) Open, non-dispersive use.	(G) Acrylic resin
P–02–0148	12/11/01	03/11/02	CBI	(G) Open, non-dispersive use.	(G) Polyester resin
P–02–0149	12/11/01	03/11/02	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Alkyl octanal
P–02–0150	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenoic acid, sodium salt
P–02–0151	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid and 2-propenoic acid, sodium salt
P–02–0152	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenamide and 2-propenoic acid, sodium salt
P–02–0153	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid,2-propenamide and 2-propenoic acid, sodium salt
P–02–0154	12/11/01	03/11/02	Arch Chemicals, Inc.	(S) Component in a photoresist formulation to be used in the manufacture of semiconductor and related devices.	(G) Derivatized ethoxylated polystyrene resin
P–02–0155	12/11/01	03/11/02	CBI	(G) Acrylic polymer for use in a coating application	(G) Copolymer of alkyl acrylates and alkyl methacrylates
P–02–0156	12/12/01	03/12/02	CBI	(G) Additive in composites	(G) Metallic dimethacrylate
P–02–0157	12/13/01	03/13/02	CBI	(G) Machine seals	(G) Polyurethane-poly carbonate polymer
P–02–0158	12/13/01	03/13/02	CBI	(G) Open non-dispersive use	(G) Polyacrylic resin, based on methyl methacrylate
P–02–0159	12/13/01	03/13/02	GE Silicones	(G) Release additive	(G) Silane hydrolyzate
P–02–0160	12/13/01	03/13/02	CBI	(S) Agricultural dispersant	(G) Alkylated naphthalenesulfonate-formaldehyde condensate, sodium salt
P–02–0161	12/14/01	03/14/02	CBI	(G) Flame-retardant	(G) Copolymer

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I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0162	12/13/01	03/13/02	CBI	(G) Paper sizing agent	(G) Cyclohexene-carboxylic acid, [(dipropenylamino]carbonyl]-, reaction products with pentafluoroiodoethane-tetrafluoroethylene telomer
P–02–0163	12/13/01	03/13/02	CMP Coatings, Inc.	(S) Binder polymer in paints	(G) Acrylate copolymer
P–02–0164	12/14/01	03/14/02	Amfine chemical Corporation	(G) Thickening agent	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0165	12/13/01	03/13/02	Image Polymers Company	(S) Toner binder	(G) Urethane-modified polyester resin
P–02–0166	12/14/01	03/14/02	CBI	(G) Open non-dispersive(resin)	(G) Amino polyester
P–02–0167	12/14/01	03/14/02	Valence Technology, Inc.	(G) Electrode material	(G) Lithium metal phosphate
P–02–0168	12/18/01	03/18/02	CBI	(G) Binder resin	(G) Acrylic polyol
P–02–0169	12/17/01	03/17/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–0170	12/17/01	03/17/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–0171	12/18/01	03/18/02	CBI	(S) Flame retardant in polyamides, epoxy, or polyester	(G) Organophosphorous salt
P–02–0172	12/18/01	03/18/02	CBI	(G) Adhesive component	(G) Aromatic polyester polyol
P–02–0173	12/19/01	03/19/02	Quest International Fragrances Co.	(S) Fragrance ingredient	(S) N-ethyl-n-(3-methylphenyl) propionamide*
P–02–0174	12/19/01	03/19/02	CBI	(G) Mold release agent	(G) 1,2,3-propanetriol, homopolymer, derivative
P–02–0175	12/20/01	03/20/02	CBI	(G) Open, non-dispersive (resin)	(G) Amine-accelerated, unsaturated polyester resin
P–02–0176	12/21/01	03/21/02	Lithchem, International	(G) Contained use in sealed battery components	(G) Dialkyl carbonate; carbonate diester
P–02–0177	12/21/01	03/21/02	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) Naphthalene disulfonicacid,azo substituted phenyl disodium salt, reaction products with halo triazin amino substituted phenyl sulfonyl compound
P–02–0178	12/21/01	03/21/02	Xerox Corporation	(G) Destructive use (site limited intermediate)	(G) Alkyl aryl phthalonitrile ether
P–02–0180	12/21/01	03/21/02	CBI	(S) Surfactant for use in lubricants	(S) Alcohols, C_{9-11}, ethers with polyethylene glycol mono-me ether
P–02–0181	12/21/01	03/21/02	CBI	(G) Component of coating with open use	(G) Epoxy functional styrenated methacrylate
P–02–0185	12/21/01	03/21/02	CBI	(G) Ink additive	(G) Aluminum chelate compound
P–02–0186	12/21/01	03/21/02	CBI	(G) Ink additive	(G) Aluminum chelate compound
P–02–0190	12/21/01	03/21/02	Prc-desoto international, a ppg industries Company	(S) Polymer for adhesives and sealants; intermediate for production of blend polymer	(G) Mercaptan terminated polyether polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 3 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0004	12/06/01	01/20/02	CBI	(G) Intermediate	(G) Disubstituted heteropolycyclic carboxylic acid, alkyl ester
T–02–0005	12/06/01	01/20/02	CBI	(G) Intermediate	(G) Halogenated alkanesulfonic acid ester
T–02–0006	12/06/01	01/20/02	CBI	(G) Coating component	(G) Ester of a disubstituted heteropolycyclic carboxylic acid

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 23 NOTICES OF COMMENCEMENT FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0428	12/03/01	10/16/01	(G) Hydrolyzed alkoxysilane
P–01–0069	12/18/01	11/19/01	(G) Substitute naphtalene derivatives
P–01–0160	12/04/01	10/24/01	(G) Polymer dispersion of aromatic isocyanate, aliphatic polyols, and aliphatic amines
P–01–0190	12/11/01	10/19/01	(G) Polyester acrylate
P–01–0339	12/06/01	08/25/01	(S) 1,3-benzenedicarboxylic acid, polymer with 1,3-diisocyanatomethylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid and alpha,alpha'-[(1-methylethylidene)di-4,1-phenylene]bis[omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)]], benzoate
P–01–0425	12/04/01	11/19/01	(G) Substituted zirconate ester
P–01–0460	12/20/01	11/12/01	(G) Chromate, bis[[[substituted [[[hydroxynaphthalenyl)azo]phenyl]sulfonyl] amino]heterocycle]azo]-(hydroxynitrobenzene sulfonato)], - mixed salts
P–01–0537	12/20/01	11/25/01	(G) Epoxy novolac acrylate carboxylate
P–01–0538	12/11/01	10/31/01	(G) Epoxy novolac acrylate
P–01–0539	12/14/01	11/18/01	(G) Epoxy novolac acrylate carboxylate
P–01–0575	12/18/01	12/14/01	(G) Arylazo substituted sulfonated naphthalene compound
P–01–0632	12/10/01	12/04/01	(G) Epoxy isocyanate copolymer
P–01–0650	12/18/01	12/04/01	(G) Epoxy acrylate
P–01–0662	12/05/01	11/05/01	(G) Acrylate polymer
P–01–0684	12/18/01	12/07/01	(G) Phenolic sulfone reaction products
P–01–0716	12/06/01	11/09/01	(G) Polyurea
P–01–0717	12/19/01	11/08/01	(S) Poly(oxy-1,2-ethanediyl), alpha-sulfo-omega-(2-propenyloxy)-, ammonium salt
P–01–0726	12/07/01	10/29/01	(G) Fluoroalkyl substituted siloxanes
P–01–0734	12/06/01	11/15/01	(G) Polyamide
P–01–0775	12/05/01	11/21/01	(G) Organic zirconium compound
P–01–0876	12/17/01	12/07/01	(G) Imidazole phosphate salt
P–01–0886	12/18/01	12/13/01	(G) Polyester acrylate
P–96–0662	12/11/01	10/23/01	(G) Hydroxy acrylic resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 4, 2002.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–1248 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2524]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 9, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 1, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No. 00–226).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1214 Filed 1–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2525]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 10, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 1, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No.00–87).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1215 Filed 1–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011785.

Title: COSCON/KL/YMUK Asia/U.S. East and Gulf Coast/Mediterranean Vessel Sharing Agreement.

Parties: COSCO Container Lines Company, Ltd., Yangming (U.K.), Ltd., Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would authorize the parties to charter

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container space to each other and rationalize port calls and sailings in the trade to and from ports in Japan, China, the U.S. East and Gulf Coasts, and Mediterranean ports in the Gibraltar/Port Said range. This agreement combines and replaces two existing vessel sharing agreements among the parties into a single east-west pendulum service.

Agreement No. 011786.
Title: Zim/Great Western Agreement.
Parties: Zim Israel Navigation Co. Ltd, Great Western Agreement.
Synopsis: The proposed agreement authorizes the parties to cross-charter and exchange space on their vessels that operate in the trade between Long Beach, California, on the one hand, and Hong Kong, South Korea, and the People's Republic of China, on the other hand. It also authorizes Zim to time charter one vessel to Great Western. The parties request expedited review.

Agreement No.: 011787.
Title: NSCSA/NYK Middle East Space Charter Agreement.
Parties: National Shipping Company of Saudi Arabia, Nippon Yusen Kaisha.
Synopsis: The proposed agreement would permit the parties to charter space to one another on their respective ro-ro vessels on an "as needed, as available basis" in the trade between U.S. Atlantic and Gulf Coasts and ports in the Arabian Gulf, Red Sea, Gulf of Aden, and Gulf of Oman.

Dated: January 11, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1168 Filed 1–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Sea-Bridge International, Inc., 13 John Paul Drive, Hamilton Square, NJ 08690. *Officers:* Donald Michael Guerraggi, President (Qualifying Individual), Shari A. Guerrazzi, Vice President.

Dated: January 11, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1167 Filed 1–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First National Bank of Wynne ESOP, Wynne, Arkansas; to retain voting shares of First National Corporation of Wynne, Wynne, Arkansas, and thereby indirectly retain voting shares of First National Bank of Wynne, Wynne, Arkansas.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Catherine E. and Kim A. Jackson, both of Waverly, Minnesota; to acquire voting shares of Graham Shares of Waverly, Inc., Waverly, Minnesota, and thereby indirectly acquire voting shares of Citizens State Bank of Waverly, Waverly, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1172 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Merchants Corporation, Muncie, Indiana; to merge with Lafayette Bancorporation, Lafayette, Indiana, and thereby indirectly acquire voting shares of Lafayette Bank and Trust Company, Lafayette, Indiana.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Riverdale Bancshares, Inc., Riverdale, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Riverdale, Riverdale, Nebraska.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1173 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo- und Vereinsbank AG, Munich, Germany, to directly and indirectly engage through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the "First Integrion Order") and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the "Second Intgrion Order: and together with the First Integrion Order, the "Integrion Orders"). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–1171 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Proposed Project 1. Evaluation of the Cash and Counseling Demonstration—0990–0223—Extension—Cash and Counseling is a consumer directed care model for individuals in need of personal assistance services. A demonstration project utilizing this model is being undertaken. The Office of the Assistant Secretary for Planning and Evaluation (ASPE), in partnership with the Robert Wood Johnson Foundation, is engaging in information collection for the purpose of evaluating this demonstration project. Controlled experimental design methodology is being used to test the effects of the experimental intervention: cash payments in lieu of arranged services for Medicaid covered beneficiaries: *Respondents:* Individuals or Households.

BURDEN INFORMATION FOR CLIENT INTERVIEWS (0990–0223)

Instrument	Annual number of respondents	Hours per response	Burden hours
Baseline Survey	1,020	.38	388
4/6 Month Survey	1,049	.33	465
9 Month Survey	3,629	.70	2,540
Participation Survey	1,292	.08	103
Total			3,496

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OMB Desk Officer: Allision Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch,Office of Management and Budget,New Executive Office Building, Room 10235,725 17th Street NW.,Washington, DC 20503.

Comments may also be sent to Cynthia Agens Baurer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: January 3, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–1266 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Applicant Background Survey—0990–0208—This form will be used to ask applicants for employment how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities in compliance with EEOC management directives. *Respondents:* Individuals, *Annual Number of Respondents:* 30,000; *Average Burden per Response:* 2 minutes; *Total Annual Burden:* 1,000 hours; and *OMB Desk Officer:* Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: January 2, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–1267 Filed 1–16–02; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting location and time change.

SUMMARY: The President's Council on Bioethics will hold its first meeting to discuss its agenda and future activities. This notice is to provide the exact location of the meeting and notice of a time change.

DATES: Meetings will be held on Thursday, January 17, 2002, from 8:30 a.m. to 6 p.m., and Friday, January 18, 2002, from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will take place in Washington, DC at the L'Enfant Plaza Loews Hotel in Ballrooms C & D, 480 L'Enfant Plaza, SW, Washington, DC 20024. The phone number is (202) 484–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McMahon, President's Council on Bioethics, Sixth Floor, 1801 Pennsylvania Avenue, NW., Washington, DC 20036, (202) 296–4694.

SUPPLEMENTARY INFORMATION: The agenda of the meeting will include discussion of the future activities of the President's Council on Bioethics, a Presidential advisory committee established by executive order to, among other things, conduct fundamental inquiry into the moral and human meaning of developments in biomedical science and technology. The meeting will include a period for comments from the public and any required administrative discussions and executive sessions. Due to unforeseen circumstances, this notice is published less than 15 calendar days prior to the Council's meeting date (see 41 CFR 102–3.150).

Dated: January 12, 2002.

Dean Clancy,

Executive Director, President's Council on Bioethics.

[FR Doc. 02–1169 Filed 1–16–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Project

Title: Temporary Assistance for Needy Families (TANF) State Plan Guidance.

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Administrative Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State TANF plan	54	1	30	1,620
Title Amendments	54	1	3	162

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated total annual burden hours				1782

In compliance with the requirements of section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 10, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1237 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Trafficking Victims Certification and Reporting System.

OMB No. New.

Description: HHS has three specific areas of responsibility under the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386) that require new information. These are: (1) Issuing a letter certifying victims as eligible to apply for public benefits, (2) Expanding benefits, and (3) reporting to Congress on the number of people who receive benefits and services. Other requirements may result from the activities of an Interagency Task Force of which HHS is a member.

Information concerning victims of a severe form of trafficking is needed to certify those individuals as eligible to apply for public benefits and to help them secure subsistence while they wait to assist the Attorney General in the prosecution of a case against the trafficker. Updated information on client location is critical to statutory intent to ensure the victim's ability to meet basic needs while in the U.S. to cooperate in the prosecution of a trafficker. Current information on the number of victims receiving benefits is required to be annually reported to the U.S. Congress by the Secretary. Such information is also essential to program management and budget planning.

Respondents: Respondents are primarily state and county public assistance eligibility workers and the DOJ. DOL, DOS, other federal agencies, other law enforcement agencies, victims of trafficking and voluntary agency staff could contribute information as well.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DOJ Request for Victim letter of Certification.	One per request; estimated 200 requests annually.	1	Thirty minutes	100 hours.
Database and telephone script.	52 (+/-) state refugee coordinators or district eligibility workers.	Two for each client. Initial call at intake, plus second call for update on benefits being received	6000 minutes (4 minutes x 750 clients x 2 calls).	100 hours (6000 minutes divided by 60).
Trafficking Certification Statistics.	One ORR staffer compiles.	One for every client	Thirty seconds per client.	6.2 hours.
Estimated total annula burden hours.				206.2

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

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comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1239 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Financial Report for Tribes (ACF–696T).

OMB No.: 0970–0195.

Description: The Child Care and Development Fund (CCDF) annual financial reporting form (ACF–696T) provides a mechanism for Indian Tribes to report expenditures under the CCDF program. The CCDF program provides funds to Tribes, as well as States and Territories, to assist low-income families in obtaining child care so that they can work or attend training/education, and to improve the quality of care. Information collected via the ACF–696T allows the Administration for Children and Families (ACF) to monitor expenditures and to estimate outlays and may be used to prepare ACF budget submissions to Congress. This information collection is a revised version of the currently-used ACF–696T for which Office of Management and Budget (OMB) approval expires on February 28, 2002.

Respondents: Indian Tribes and Tribal Organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T	232	1	8	1856

Estimated Total Annual Burden Hours: 1856.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for ACF.

Dated: January 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1238 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Food Labeling and Allergen Declaration; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 21, 2001 (66 FR 65976). The notice announced a public workshop entitled "FDA Food Labeling and Allergen Declaration; Public Workshop" intended to provide information about FDA food regulations, food labeling allergen declaration, good manufacturing practices, and other related matters to the regulated industry, particularly small businesses and start-ups. The notice was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: David Arvelo, Food and Drug Administration, 7920 Elmbrook Dr., Suite 102, Dallas, TX 75247, 214–655–8100, ext. 133.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–31572, appearing on pages 65976 at 65977 in the **Federal Register** of Friday, December 21, 2001, the following correction is made:

1. On page 65977, in the first column, the "Transcripts" portion of the notice is removed.

Dated: January 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1280 Filed 1–14–02; 3:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material; and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program and Small Grant Program for Cancer, Epidemiology.

Date: February 21–22, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1194 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Human Factors in Breast Cancer Detection and Diagnosis.

Date: January 30, 2002.

Time: 12 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6116 Executive Blvd., Room 8129, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1195 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Spores in Prostate Cancer.

Date: January 21–23, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Riverwalk, 217 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Brian E. Wojcik, Phd., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested persons may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 11, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1199 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 11–12, 2002.

Open: February 11, 2002, 8:30 AM to 5:00 PM.

Agenda: Discussion of program policies and issues.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 12, 2002, 9:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexandria Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93,143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1188 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 20–21, 2002.

Open: February 20, 2002, 9:00 AM to 4:00 PM.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: February 21, 2002, 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD., Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1191 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.

Date: February 25–27, 2002.

Time: 8:30 AM to 1: 00 PM.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute of Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: February 25–26, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street NW., Washington, DC 20037–1417.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institutes on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: February 26–27, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Ave., NW., Washington, DC 20037.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Sciences Research Subcommittee.

Date: February 26–27, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marina L. Volkov, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institutes on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 12–14, 2002.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 13, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 13, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1192 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–34 Review of T32 Grants.

Date: February 20, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Phd, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1193 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 5–6, 2002.

Time: 9 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, N.W., Washington, DC 20036–3305.

Contact Person: David J. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 14, 2002.

Time: 3:30 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, dsommers@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1196 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, RFP 02–01—High Throughput Genotyping for Locating Human Disease Genes.

Date: January 29, 2002.

Time: 12:30 PM to 2 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS—East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, RFP 01–14—National Center for Toxicogenomics (NCT) Proteomics Resource.

Date: January 31–February 1, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: January 11, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1197 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 13–14, 2002.

Open: February 13, 2002, 8:30 AM to 12 PM.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 14, 2002, 9:45 AM to 10:15 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: February 14, 2002, 10:15 AM to 12 PM.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to 3:15 PM.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 13, 2002, 3:15 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: February 14, 2002, 8 AM to 8:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 14, 2002, 8:30 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 11, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1198 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 18, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 9, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1200 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

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552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.
Date: February 6–7, 2002.
Closed: February 6, 2002, 7 p.m. to 9 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 7, 2002, 8:30 a.m. to 3:30 p.m.
Agenda: Program documents.
Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.
Contact Person: Kenneth R. Warren, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, *kwarren@niaaa.nih.gov*.

Information is also available on the Institute's/Center's homepage: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1202 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel (Telephone Conference MMR J S).
Date: January 29, 2002.
Time: 3 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine Division of Extramural Programs 6705 Rockledge Drive Suite 301 Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Merlyn M. Rodrigues Medical Officer/SRA.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1203 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 17, 2002.
Time: 3 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 18, 2002.
Time: 3 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Perkins, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1189 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 14, 2002.
Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 14, 2002.
Time: 3:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Phillip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 14, 2002.
Time: 4:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1190 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: January 14, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel
Date: January 18, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Daniel McPherson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175 *mcphersod@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 2002.

Anna Snouffer,

Deputy Director, Office of the Federal Advisory Committee Policy.

[FR Doc. 02–1201 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Department of the Interior.
ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group (CAG), Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior (Secretary), will hold a public meeting. The purpose of the CAG is to provide technical advice and counsel to the Secretary and the State of Washington on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Wednesday, January 23, 2002, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington, 98901; (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review water marketing opportunities in the Yakima River Basin and develop recommendations.

Dated: December 19, 2001.

James A. Esget,

Program Manager.

[FR Doc. 02–485 Filed 1–16–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–427 (Preliminary)]

Film and Television Productions From Canada

AGENCY: United States International Trade Commission.
ACTION: Notice of withdrawal of petition in countervailing duty investigation.

SUMMARY: On January 11, 2002, the Department of Commerce and the Commission received a letter from petitioners in the subject investigation (Film and Television Action Committee,

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Studio City, CA; the Screen Actors Guild, Los Angeles, CA; Studio Utility Employees Local 724 of the Laborers International Union, Hollywood, CA; Local 355 of the International Brotherhood of Teamsters (Teamsters), Baltimore, MD; Teamsters Local 391, Greensboro, NC; Teamsters Local 399, North Hollywood, CA; Teamsters Local 509, Cayce SC; Teamsters Local 592, Richmond, VA; and the Maryland Production Alliance, Baltimore, MD) withdrawing the petition. Commerce has not initiated an investigation as provided for in section 702(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c)). Accordingly, the Commission gives notice that its countervailing duty investigation concerning film and television productions from Canada (investigation No. 701–TA–427 (Preliminary)) is discontinued.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: January 11, 2002.
By order of the Commission.

Marilyn R. Abbott,
Acting Secretary.

[FR Doc. 02–1224 Filed 1–16–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–740 (Review)]

Sodium Azide From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in December 2001 to determine whether termination of the suspended antidumping duty investigation on sodium azide from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On January 11, 2002, the Department of Commerce published notice that it was terminating the suspended investigation effective January 7, 2002 "[b]ecause no domestic interested party responded to the notice of initiation by the applicable deadline" (67 FR 1438–39). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the subject review is terminated.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: January 14, 2002.

By order of the Commission.

Marilyn R. Abbott,
Acting Secretary.

[FR Doc. 02–1225 Filed 1–16–02; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-To-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 2001, a proposed consent decree in *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.*, Case No. 2:01 CV–1050 ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. ("Texaco") and Envirotech Inc. under section 113(b) of the Clean Air Act ("the CAA"), 42 U.S.C. 7413(b), and section 325(b)(3) of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. 11045(b)(3), in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Texaco violated the CAA and the New Source Performance Standards, 40 CFR part 60, subparts A and KKK, at its Aneth gas plant by filing to monitor its equipment for VOC leaks, maintain records, submit reports, test its flare, and use a thermocouple to monitor its flare's pilot flame. The complaint also alleges that Texaco and Envirotech violated the CAA and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M, during the removal and disposal of asbestos-containing material at the Aneth gas plant. Finally, the complaint alleges that Texaco violated section 304 of EPCRA, 42 U.S.C. 11004, by twice failing to report the release of more than 500 pounds of sulfur dioxide from its oil and gas production field in Aneth, Utah.

Under the proposed settlement, Texaco will submit a certification that its affected facility is not in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart KKK. In addition, Texaco will pay a civil penalty of $243,725 and provide up to $51,275 in emergency response equipment and hazardous materials training to a local fire department in Montezuma Creek, Utah, as a supplemental environmental project. Envirotech will pay a civil penalty of $10,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.*, DOJ Ref. 90–5–2–1–06466. A copy of all comments should also be sent to Robert D. Mullaney, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, CA 94105.

The Consent Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.*, Case No. 2:01 CV–1050 ST (D. Utah), DOJ Ref. 90–5–2–1–06466, and enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–01176 Filed 1–16–02; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-To-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 2001, a proposed consent decree in *United States v. Texaco Exploration and Production Inc. and Envirotech Inc.*, Case No. 2:01 CV–1050 ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. ("Texaco") and Envirotech Inc. under section 113(b) of the Clean Air Act ("the CAA"), 42 U.S.C. 7413(b), and section 325(b)(3) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11045(b)(3), in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Texaco violated the CAA and the New Source Performance Standards, 40 CFR part 60, subparts A and KKK, at its Aneth gas plant by failing to monitor its equipment for VOC leaks, maintain records, submit reports, test its flare, and use a thermocouple to monitor its flare's pilot flame. The complaint also alleges that Texaco and Envirotect violated the CAA and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M, during the removal and disposal of asbestos-containing material at the Aneth gas plant. Finally, the complaint alleges that Texaco violated section 304 of EPCRA, 42 U.S.C. 11004, by twice failing to report the release of more than 500 pounds of sulfur dioxide from its oil and gas production field in Aneth, Utah.

Under the proposed settlement, Texaco will submit a certification that its affected facility is now in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart KKK. In addition, Texaco will pay a civil penalty of $243,725 and provide up to $51,275 in emergency response equipment and hazardous materials training to a local fire department in Montezuma Creek, Utah, as a supplemental environmental project. Envirotech will pay a civil penalty of $10,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments that are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, and sent: (1) C/o Robert D. Mullaney, U.S. Department of Justice, 301 Howard St., Suite 1050, San Francisco, CA 94105; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.*, DOJ Ref. 90–5–2–1–06466.

The proposed consent decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury," in the amount of $6.75 to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.*, DOJ Ref. 90–5–2–1–06466.

Ellen M. Mahan,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1177 Filed 1–16–02; 8:45 am]
BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–80 and DPR–82, for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (Diablo Canyon) currently held by Pacific Gas and Electric Company (PG&E), as owner and licensed operator of Diablo Canyon. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer, and amending the antitrust conditions in licenses as discussed below.

According to an application for approval filed by PG&E, the transfer of the licenses would be to a new generating company named Electric Generation LLC (Gen), which would operate the facility, and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear), which would hold title to Diablo Canyon and lease it to Gen. PG&E is requesting approval of these transfers in connection with a comprehensive Plan of Reorganization (Plan) for PG&E filed under Chapter 11 of the United States Bankruptcy Code.

No physical changes to Diablo Canyon or operational changes are being proposed in the application.

The proposed conforming administrative amendments generally would replace references to PG&E in the licenses with references to Gen and Nuclear, as appropriate, to reflect the proposed transfer. With specific regard to the antitrust conditions in the licenses, the application proposes changes such that Gen will be inserted in the conditions and thus become

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subject to complying with them, and E Trans LLC, a new company that will be affiliated with Gen upon implementation of the Plan and that will acquire the electric transmission assets of PG&E but not have any interest in Diablo Canyon, will be also be inserted in the conditions and thus become subject to complying with them. In addition, the application proposes that PG&E will remain designated in the conditions for the limited purpose of compliance with the conditions, notwithstanding the divesting of its interest in Diablo Canyon, while Nuclear will not be named in the conditions.

Notwithstanding the proposed changes to the antitrust conditions proffered as part of the amendments to conform the licenses to reflect their transfer from PG&E to Gen and Nuclear, the Commission is considering specifically whether to approve either all of the proposed changes to the conditions, or only some, but not all, of the proposed changes, as may be appropriate and consistent with the Commission's decision in Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 466 (1999). In particular, the Commission is considering approving only those changes that would accurately reflect Gen and Nuclear as the only proposed entities to operate and own Diablo Canyon.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 6, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Richard F. Locke, Esq., Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, California 94105 (e-mail address *rfl6@pge.com*), and to David A. Repka, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005 (e-mail address *drepka@winston.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *ogclt@nrc.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 19, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

Further details with respect to this action, see the application dated November 30, 2001, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/ADAMS/index.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 10th day of January 2002.

For the Nuclear Regulatory Commission.

Girija S. Shukla,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1211 Filed 1–16–02; 8:45 am]

BILLING CODE 7590–01–P

SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice additionally sets forth a number of issues for comment, including a request for comment set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice regarding retroactive application of proposed amendments.

The proposed amendments and issues for comment contained in this notice are as follows: (1) Proposed amendment and issues for comment in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56, and the Commission's assessment of the guidelines' treatment of offenses involving terrorism; (2) proposed amendments to a number of guidelines covering controlled substances offenses, including enhancements and downward adjustments to account more adequately for aggravating and mitigating conduct sometimes associated with drug trafficking offenses, and issues for comment, including issues pertaining to offenses involving cocaine base ("crack cocaine"); (3) proposed amendment to provide increased sentencing alternatives in Zone B of the Sentencing Table; and (4) proposed amendment that corrects a technical error made in the November 27, 2001, **Federal Register** notice (66 F.R. 59295) pertaining to the proposed amendment to § 3E1.1 (Acceptance of Responsibility). In addition to the issues for comment that are contained within these proposed amendments, this notice sets forth a separate issue for comment regarding whether to expand § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to include discharged terms of imprisonment.

DATES: *Written Public Comment.*—Written public comment regarding the amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments, should be received by the Commission not later than March 19, 2002. Written public comment regarding retroactivity of proposed amendments set forth in the November 27, 2001, **Federal Register** notice (See 66 F.R. 59295) should be received by the Commission not later than March 4, 2002.

Public Hearings.—The Commission plans to hold three public hearings on its proposed amendments, one on each of the following days: February 25, 2002; February 26, 2002; and March 19, 2002. The tentative times for the hearings are as follows: 3:00 to 5:00 p.m. on February 25, 2002; 9:30 to 11:30 a.m. on February 26, 2002; and 3:00 to 5:00 p.m. on March 19, 2002. Witnesses at the first two hearings will be invited to testify by the Commission on issues specified by the Commission prior to the hearings. A person who wishes to testify at the third hearing, the subject of which may include any of the proposed amendments, should notify Michael Courlander, at (202) 502–4500, not later than March 9, 2002. Written testimony must be received by the Commission not later than March 9, 2002. Timely submission of written testimony is required for testifying at the public hearing. The Commission requests that, to the extent practicable, commentators submit an electronic version of the comment and of the testimony for the relevant public hearing. The Commission also reserves the right to select persons to testify at any of the hearings and to structure the hearings as the Commission considers appropriate and the schedule permits.

Further information regarding the public hearings, including the location, time, and scope of the hearings, will be provided by the Commission on its website at www.ussc.gov.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

The Commission also requests public comment regarding whether any of the proposed amendments contained in this notice, and the **Federal Register** notice of November 27, 2001, (66 FR 59295), that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 3.4, 4.3, 4.4.

Diana E. Murphy,

Chair.

1. Terrorism

Synopsis of Proposed Amendment

Overview: On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56. Among other things, the Act created a number of new terrorism, money laundering, and currency offenses, and increased the statutory maximum penalties for certain pre-existing offenses. In light of this legislation, the Commission is assessing the Guidelines' treatment of terrorism offenses, and certain money laundering and currency offenses as they may be related to terrorism.

This amendment cycle, the Commission is interested in considering amending the guidelines as they pertain to these newly created offenses and those offenses modified by the Act. Additionally, the Commission is requesting comment regarding the efficacy of guideline 3A1.4, the sentencing enhancement for terrorism. The proposed amendment provides a definition for terrorism for certain money laundering and immigration offenses. In addition, the proposed amendment contains a number of modifications to existing guidelines, the statutory index, the terrorism

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adjustment, and provides issues for comment.

Synopsis of Proposed Amendment: This is a multi-part amendment proposed in response to the USA PATRIOT Act of 2001 (the Act) and the Commission's assessment of the guidelines' treatment of offenses involving terrorism. Parts (A) through (E) address offenses that involve, or potentially involve, terrorism. Providing guideline treatment for these offenses in Chapter Two (Offense Conduct) is important, in part, to ensure applicability of the Chapter Three adjustment for terrorism, § 3A1.4. Specifically, Parts (A) through (E) of this amendment provide guideline treatment (or issues for comment) for the following: (A) New predicate offenses to federal crimes of terrorism; (B) other predicate offenses to federal crimes of terrorism that are not currently referenced in the Statutory Index; (C) increases in statutory maximum penalties for predicate offenses to federal crimes of terrorism that currently are referenced in the Statutory Index; (D) penalties for terrorism conspiracies; and (E) issues related to the terrorism adjustment in § 3A1.4.

Part (F) of this amendment addresses money laundering provisions of the Act. Part (G) addresses currency and counterfeiting provisions of the Act. Part (H) addresses miscellaneous issues.

Part (A): New Predicate Offenses to Federal Crimes of Terrorism

Synopsis of Proposed Amendment: This amendment amends Chapter Two, Part A, Subpart 5 (Air Piracy) to include offenses against mass transportation systems under 18 U.S.C. 1993 within the scope of that Subpart and provides references in the Statutory Index to a number of guidelines. Section 1993, added by section 801 of the Act, prohibits (1) willfully wrecking, derailing, setting fire to, or disabling a mass transportation system; (2) willfully or recklessly placing any biological agent or toxin for use as a weapon or destructive device on or near a mass transportation system vehicle or ferry; (3) willfully or recklessly setting fire to, or placing any biological agent or toxin for use as a weapon or destructive device in or near a mass transportation system garage, terminal, structure, supply, or facility; (4) willfully removing appurtenances from, damaging, or otherwise impairing the operation of a mass transportation signal system without authorization; (5) willfully or recklessly interfering with, disabling, or incapacitating any dispatcher, driver, captain, or person employed in dispatching, operating, or maintaining a mass transportation system; (6) committing an act, including the use of a dangerous weapon, with intent to cause death or serious bodily injury to an employee or passenger of a mass transportation system; (7) conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt to do any act prohibited by this section; and (8) attempting, threatening, or conspiring to do any of the above acts. The maximum term of imprisonment is 20 years, or life imprisonment if the offense results in death.

The amendment also includes several issues for comment, including an issue regarding how hoaxes should be treated and an issue regarding how the guidelines should treat offenses involving the conveying of false information and threats under 18 U.S.C. 1993(a)(7) and (8) and under 49 U.S.C. 46507. Section 46507 prohibits (i) conveying or causing to be conveyed false information, knowing the information to be false, concerning an air piracy and similar offenses under title 49, United States Code, and (ii) threatening to commit air piracy or similar offenses under title 49, United States Code, having the apparent determination and will to carry out the threat. The maximum term of imprisonment is 5 years. Currently, section 46507 offenses are not listed in the Statutory Index.

This amendment also references the new offense at 49 U.S.C. 46503 to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant). That offense, created by section 114 of the Aviation and Transportation Security Act, prohibits an individual in an area within a commercial service airport in the United States from assaulting a Federal, airport, or air carrier employee who has security duties within the airport, thereby interfering with the performance of the employee's duties or lessening the ability of that employee from performing those duties. The maximum term of imprisonment is 10 years, or, if the individual used a dangerous weapon in committing the assault or interference, any term of years or life.

The amendment expands the guideline covering nuclear, biological, and chemical weapons, § 2M6.1, to cover new offenses created by section 817 of the Act involving possession of biological agents, toxins, and delivery systems. Specifically, section 817 added a new offense at 18 U.S.C. 175(b), which prohibits a person from knowingly possessing any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The maximum term of imprisonment is 10 years. Section 817 also added a new offense at 18 U.S.C. 175b, which prohibits certain classes of individuals from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any biological agent or toxin, or receiving any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in applicable federal regulations. The maximum term of imprisonment is 10 years.

The amendment also proposes to amend the Statutory Index to reference 18 U.S.C. 2339 to §§ 2X2.1 (Aiding and Abetting) and 2X3.1 (Accessory After the Fact). This offense prohibits harboring or concealing any person who the defendant knows, or has reasonable grounds to believe, has committed or is about to commit, one of several enumerated offenses. The maximum statutory term of imprisonment is 10 years.

Proposed Amendment (Part (A)):

The title to Chapter Two, Part A, Subpart 5 is amended by adding ", Offenses Against Mass Transportation Systems" after "Air Piracy".

Section 2A5.2 is amended in the title by adding "; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or Ferry" after "Attendant".

Section 2A5.2 is amended by striking subsections (a)(1) and (a)(2) and inserting the following:

"(1) 30, if the offense involved intentionally endangering the safety of: (A) An aircraft; (B) a mass transportation vehicle or a ferry; or (C) any person in, upon, or near an aircraft, a mass transportation vehicle, or a ferry, with the intent to endanger the safety of an aircraft, a mass transportation vehicle, or a ferry, during the course of its operation;

(2) 18, if the offense involved recklessly endangering the safety of: (A) an aircraft; (B) a mass transportation vehicle or a ferry; or (C) any person in, upon, or near an aircraft, a mass transportation vehicle, or a ferry, with the intent to endanger the safety of an aircraft, a mass transportation vehicle, or a ferry, during the course of its operation;".

The Commentary to § 2A5.2 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 1993(a)(4), (5), (6);" before "49 U.S.C. 46308"; and by inserting "46503," before "46504".

The Commentary to § 2A5.2 is amended by inserting before "Background" the following:

"**Application Note**

1. Definition.—For purposes of this guideline, 'mass transportation' has the meaning given that term in 49 U.S.C. 5302(a)(7).".

The Commentary to § 2A5.2 captioned "Background" is amended in the first sentence by striking "the aircraft and passengers" and inserting "an aircraft, a mass transportation vehicle, or a ferry, or any person in, upon, or near an aircraft, a mass transportation system, or a ferry".

Issues for Comment: The Commission requests comment regarding whether § 2A5.2 should be amended to provide an enhancement or a cross-reference to the homicide guidelines if death results, and also whether a specific offense characteristic should be added if the offense endangered or harmed multiple victims. In order to take into account aggravating conduct under 49 U.S.C. 46503, should § 2A5.2 provide an enhancement for assaulting airport security personnel? Alternatively, should there be a more general enhancement in that guideline for jeopardizing the security of an airport facility, mass transportation vehicle, or ferry? Should the Commission limit application of such an enhancement so that it does not apply to assaults that do not jeopardize the overall safety or security of an airplane, mass transportation vehicle, or ferry?

The Commission also requests comment regarding how the guidelines should treat offenses involving the conveying of false information and threats under 18 U.S.C. 1993(a)(7) and (8) and under 49 U.S.C. 46507. Section 1993(a)(7) and (8) prohibit conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt to do any act prohibited by this section, and attempting, threatening, or conspiring to do any of the above acts. Section 46507 prohibits (i) conveying or causing to be conveyed false information, knowing the information to be false, concerning an air piracy and similar offenses under title 49, United States Code, and (ii) threatening to commit air piracy or similar offenses under title 49, United States Code, having the apparent determination and will to carry out the threat. Currently, section 46507 offenses are not listed in the Statutory Index. Should the offense levels for such cases be the same as the offense levels that would pertain if the threatened offense (or the offense about which false information had been conveyed) had actually been committed, or should the guidelines provide a reduction in offense level for such cases?

The Commission also requests comment regarding whether any of the base offense levels in § 2A5.2 should be increased to cover offenses under 18 U.S.C. 1993 and 49 U.S.C. 46503.

The Commission generally requests comment on how the guidelines should treat hoaxes concerning attempts to commit any act of terrorism. Should a hoax be treated the same as the underlying offense which was the object of the hoax?

Subsection 2M6.1(a)(2) is amended by striking "or".

Subsection 2M6.1(a)(3) is amended by striking the period at the end and inserting "; or".

Subsection 2M6.1(a) is amended by adding at the end the following:

"(4) [14–22], if the defendant (A) was a restricted person at the time the defendant committed the instant offense; or (B) is convicted under 18 U.S.C. 175(b) or 175b.".

The Commentary to § 2M6.1 captioned "Statutory Provisions" is amended by inserting "175b," after "175,".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 1 by inserting after "18 U.S.C. 831(f)(1)." the following:

"Restricted person" has the meaning given that term in 18 U.S.C. 175b(b)(2).".

Issue for Comment: The Commission requests comment regarding whether the specific offense characteristics in § 2M6.1(b)(1) and (b)(3) should be applicable to offenses under 18 U.S.C. 175b and 175(b).

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 175" the following new line:

"18 U.S.C. § 175b 2M6.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. § 1992" the following new lines:

"18 U.S.C. 1993(a)(1) 2K1.4
18 U.S.C. 1993(a)(2) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(3) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(4) 2A5.2, 2B1.1
18 U.S.C. 1993(a)(5) 2A5.2
18 U.S.C. 1993(a)(6) 2A2.1, 2A2.2, 2A5.2".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 2332a" the following new line:

"18 U.S.C. 2339 2X2.1, 2X3.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "49 U.S.C. 46502(a), (b)" the following new line:

"49 U.S.C. 46503 § 2A5.2".

Part (B): Pre-existing Predicate Offenses to Federal Crimes of Terrorism Not Covered by the Guidelines

Synopsis of Proposed Amendment: A number of offenses that currently are enumerated in 18 U.S.C. 2332b(g)(5) as federal crimes of terrorism are not listed in the Statutory Index (Appendix A). This means that the court needs to look for an analogous Chapter Two guideline for these offenses. The amendment proposes a number of Statutory Index references, as well as modifications to various Chapter Two guidelines, for these offenses.

Specifically, 18 U.S.C. 2332b(a)(1), prohibits, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. The maximum statutory penalty for such offenses is life imprisonment. The amendment proposes to reference these offenses to §§ 2A1.1, 2A1.2, 2A1.3, 2A1.4, and 2A2.2, as § 2332b offenses are by definition offenses against the person and therefore are analogous to offenses currently referenced to those guidelines.

The amendment also provides an issue for comment on how the Commission should treat threat cases under 18 U.S.C. 2332b(a)(2), which prohibits threats to commit an offense under 18 U.S.C. 2332b(a)(1). Those offenses prohibit, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. (The amendment also proposes to reference 18 U.S.C. 2332b(a)(2) to §§ 2A1.5 and 2A2.1, to the extent attempt or conspiracy to commit murder is involved.). The maximum term of imprisonment for threats to commit an offense under 18 U.S.C. 2332b(a)(1) is ten years.

This amendment also creates a new guideline, at 2M6.3 (Providing Material Support to Terrorists and Foreign Terrorist Organizations), for the following two offenses:

(1) 18 U.S.C. 2339A, which prohibits the provision of material support or resources to terrorists, knowing or intending that they will be used in the preparation for, or in carrying out, specified crimes (i.e., those designated as predicate offenses for "federal crimes

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of terrorism") or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation. The maximum term of imprisonment is 15 years.

(2) 18 U.S.C. 2339B, which prohibits the provision of material support or resources to a foreign terrorist organization. The maximum term of imprisonment is 15 years.

An issue for comment is included on how the new guideline proposed to be added at § 2M6.3 should cover the wide variety of conduct encompassed by the offenses at 18 U.S.C. 2339A and 2339B, and whether there exists sufficiently analogous guidelines for these offenses. Further, the Commission requests comment on whether 18 U.S.C. 2339A and 2339B offenses should be referenced to the same or different guidelines. For example, should § 2339A be referenced to § 2X2.1 (Aiding and Abetting) in a case in which the offense occurred prior to the underlying terrorism offense, and be referenced to § 2X3.1 (Accessory After the Fact) in a case in which the offense occurred after the underlying terrorism offense. Should § 2339B be referenced to § 2M5.1?

The amendment also proposes to reference torture offenses under 18 U.S.C. 2340A to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A2.2 (Aggravated Assault), and 2A4.1 (Kidnapping, Abduction, Unlawful Restraint). The statutory maximum penalty for this offense is 20 years imprisonment, or life imprisonment if death results. "Torture" is defined in 18 U.S.C. 2340(1) as "an act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control". Although this offense has not been listed in the Statutory Index for some time, reference in the Statutory Index is recommended at this time because the offense is now a predicate offense that may qualify as a "federal crime of terrorism".

The amendment also proposes to reference 49 U.S.C. 60123(b) (damaging or destroying an interstate gas or hazardous liquid pipeline facility) to §§ 2B1.1 (Theft, Property Destruction, and Fraud), 2K1.4 (Arson; Property Damage by Use of Explosives), 2M2.1 Destruction of, or Production of Defective, War Material, Premises, or Utilities), and 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities). The maximum penalty is 20 years, or life imprisonment if the offense resulted in the death of any person. Although this offense has not been listed in the Statutory Index for some time, reference in the Statutory Index is recommended at this time because the offense is now a predicate offense that may qualify as a "federal crime of terrorism". An issue for comment is included regarding which, if any, of the guidelines listed above are appropriate for these offenses.

Proposed Amendment (Part B):

Chapter Two, Part M, Subpart 6 is amended in the heading by adding at the end "; Providing Material Support to Terrorists".

Chapter Two, Part M, Subpart 6, is amended by adding at the end the following:

"§ 2M6.3. Providing Material Support or Resources to Terrorists or Designated Foreign Terrorist Organizations

(a) Base Offense Level: [26][32]

Commentary

Statutory Provisions: 18 U.S.C. 2339A, 2339B.

Application Note:

1. Application of Terrorism Adjustment.—An offense covered by this guideline is not precluded from (A) application of the adjustment in § 3A1.4 (Terrorism), or (B) if the adjustment does not apply, an upward departure under Application Note 3 of § 3A1.4.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 2332a" the following new lines:

"18 U.S.C. 2332b(a)(1) 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.2
18 U.S.C. 2332b(a)(2) 2A1.5, 2A2.1, 2M6.3
18 U.S.C. 2339A 2M6.3
18 U.S.C. 2339B 2M6.3
18 U.S.C. 2340A 2A1.1, 2A1.2, 2A2.2, 2A4.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "49 U.S.C. 46506" the following new line:

"49 U.S.C. 60123(b) 2B1.1, 2K1.4, 2M2.1, 2M2.3".

Issues for Comment: The Commission requests comment on the appropriate treatment in the guidelines for threat cases under 18 U.S.C. 2332b(a)(2), which prohibits threats to commit an offense under 18 U.S.C. 2332b(a)(1). Those offenses prohibit, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. (The amendment also proposes to reference 18 U.S.C. 2332b(a)(2) to §§ 2A1.5 and 2A2.1, to the extent attempt or conspiracy to commit murder is involved.) The maximum term of imprisonment for threats to commit an offense under 18 U.S.C. 2332b(a)(1) is ten years. Should the offense levels for such threat cases be the same as the offense levels that would pertain if the threatened offense had actually been committed, or should the guidelines provide a reduction in offense levels for such cases? Would a reference to § 2A6.1 (Threatening or Harassing Communications) be appropriate? If so, how should that guideline be amended in order to account for the seriousness of threats under 18 U.S.C. 2332b (e.g., should the base offense level be increased for such offenses)?

The maximum term of imprisonment for providing material support to terrorists under 18 U.S.C. 2339A(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate. Should there be alternative base offense levels and/or specific offense characteristics in the new guideline to provide enhanced punishment for the most serious cases covered by the guideline (e.g., should there be a cross reference to Chapter Two, Part A guidelines if death resulted)? What are the most serious cases? For example, should there be an enhancement for providing material support to a designated foreign terrorist organization? Is, for example, providing lodging to a defendant after the commission of a terrorist offense in order to allow that defendant to escape prosecution less serious than providing weapons to a defendant to enable the defendant to carry out a terrorist offense, or should those two cases be treated the same under the guidelines?

Part (C): Increases to Statutory Maximum Penalties For Predicate Offenses Covered by the Guidelines

Synopsis of Proposed Amendment: Section 810 of the Act increased statutory maximum terms of imprisonment for several offenses. An issue for comment follows regarding whether guideline penalties should be increased in response.

Issue for Comment: The Commission requests comment regarding whether guideline penalties should be increased for any of the following offenses for which statutory maximum terms of

imprisonment were increased by section 810 of the Act. Specifically:

(1) The maximum statutory term of imprisonment for arson of a dwelling under 18 U.S.C. 81 was increased from 20 years to any term of years or life. That offense is covered by § 2K1.4 (Arson; Property Damage by Use of Explosives).

(2) The maximum statutory term of imprisonment for destruction of an energy facility under 18 U.S.C. 1366 was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2B1.1 (Theft, Property Destruction, and Fraud).

(3) The maximum term of imprisonment for providing material support to terrorists under 18 U.S.C. 2339A(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate.

(4) The maximum term of imprisonment for providing material support to designated foreign terrorist organizations under 18 U.S.C. 2339B(a)(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate.

(5) The maximum statutory term of imprisonment for destruction of national defense materials under 18 U.S.C. 2155(a) was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities).

(6) The maximum statutory term of imprisonment for sabotage of nuclear facilities or fuel under 42 U.S.C. 2284 was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by §§ 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities) and 2M2.3.

(7) The maximum statutory term of imprisonment for willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505 was increased from 15 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2K1.5 (Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft).

(8) The maximum statutory term of imprisonment for damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123 was increased from 15 years to 20 years, or for any term of years or life if the offense resulted in the death of any person.

Part (D): Penalties for Terrorist Conspiracies

Synopsis of Proposed Amendment: Section 811 of the Act amended the following offenses to provide that a conspiracy to commit any of those offenses shall subject the offender to the same penalties prescribed for the offense, commission of which was the object of the conspiracy: (1) Arson under 18 U.S.C. 81; (2) killings in federal facilities under 18 U.S.C. 930(c); (3) willful or malicious injury to or destruction of communications lines, stations, or systems under 18 U.S.C. 1362; (4) destruction of buildings or property within the maritime of territorial jurisdiction of the United States under 18 U.S.C. 1363; (5) wrecking trains under 18 U.S.C. 1992; (6) providing material support to terrorists under 18 U.S.C. 2339A; (7) torture under 18 U.S.C. 2340A; (8) sabotage of nuclear facilities or fuel under 42 U.S.C. 2284; (9) interference with flight crew members and attendants under 49 U.S.C. 46504; (10) willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505; and (11) damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123(b).

An issue for comment follows regarding whether the Commission should amend § 2X1.1 (Attempt, Solicitation, or Conspiracy) to provide that conspiracies to commit any of these offenses are expressly covered by the applicable Chapter Two offense guidelines.

Issue for Comment: The Commission requests comment regarding the appropriate treatment under the guidelines for conspiracies to commit certain terrorist offenses. Specifically, section 811 of the Act amended the following offenses to provide that a conspiracy to commit any of those offenses shall subject the offender to the same penalties prescribed for the offense, commission of which was the object of the conspiracy: (1) arson under 18 U.S.C. 81; (2) killings in federal facilities under 18 U.S.C. 930(c); (3) willful or malicious injury to or destruction of communications lines, stations, or systems under 18 U.S.C. 1362; (4) destruction of buildings or property within the maritime of territorial jurisdiction of the United States under 18 U.S.C. 1363; (5) wrecking trains under 18 U.S.C. 1992; (6) providing material support to terrorists under 18 U.S.C. 2339A; (7) torture under 18 U.S.C. 2340A; (8) sabotage of nuclear facilities or fuel under 42 U.S.C. 2284; (9) interference with flight crew members and attendants under 49 U.S.C. 46504; (10) willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505; and (11) damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123(b).

Should the Commission amend § 2X1.1 (Attempt, Solicitation, or Conspiracy) and the heading of each applicable Chapter Two Offense guideline to provide that conspiracies to commit any of these offenses are expressly covered by the applicable Chapter Two offense guideline? Should there be a special instruction in § 2X1.1 (Attempt, Solicitation, or Conspiracy) to treat these offenses the same as the substantive offense which was the object of the conspiracy if the offense involved terrorism?

Part (E): Terrorism Adjustment in § 3A1.4

Synopsis of Proposed Amendment: This amendment adds an invited structured upward departure in § 3A1.4 (Terrorism) for offenses that involve domestic terrorism or international terrorism but do not otherwise qualify as offenses that involved or were intended promote "federal crimes of terrorism" for purposes of the terrorism adjustment in § 3A1.4. An issue for comment also follows regarding whether terrorist offenses should be sentenced at or near the statutory maximum for the offense of conviction.

Proposed Amendment (Part E):

The Commentary to § 3A1.4 is amended by striking Application Note 1 in its entirety and inserting the following:

"1. Federal Crime of Terrorism Defined—For purposes of this guideline, 'federal crime of terrorism' has the meaning given that term in 18 U.S.C. 2332b(g)(5). Accordingly, in order for the adjustment under this guideline to apply, the offense (A) must be a felony that involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B):

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and (B) pursuant to 18 U.S.C. 2332b(g)(5)(A), must have been calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.".

The Commentary to § 3A1.4 is amended in Note 2 by inserting "Computation of Criminal History Category.—" before "Under".

The Commentary to § 3A1.4 is amended by adding at the end the following:

"3. Upward Departure Provision.—By the terms of the directive to the Commission in section 730 of Pub. L. 104–132, the adjustment provided by this guideline applies only to Federal crimes of terrorism. However, there may be cases that involve international terrorism (as defined in 18 U.S.C. 2331(1)) or domestic terrorism (as defined in 18 U.S.C. 2331(5)) but to which the adjustment under this guideline technically does not apply. For example, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B) but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the resulting sentence may not exceed the top of the guideline range that would result if the adjustment under this guideline had been applied.".

Issues for Comment: The Commission generally requests comment on whether the current terrorism enhancement at § 3A1.4 addresses the sentencing of terrorists appropriately. Should the Commission amend § 3A1.4 to clarify that the adjustment may apply in the case of offenses that occurred after the commission of the federal crime of terrorism, e.g., a case in which the defendant, in violation of 18 U.S.C. 2339A, concealed an individual who had committed a federal crime of terrorism.

As an alternative to the upward departure provision in proposed Application Note 3 of § 3A1.4, should the Commission provide an additional enhancement for terrorism offenses to which the current adjustment does not apply? If so, should this additional enhancement be the same as, or less severe than the current adjustment at § 3A1.4?

Part (F): Money Laundering Offenses

Synopsis of Proposed Amendment: This amendment amends § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) to incorporate the following new money laundering provisions created by the Act. The amendment proposes to reference these provisions to the structuring guideline and proposes a number of changes to that guideline in order to more fully incorporate the new offenses. Specifically:

(1) 31 U.S.C. 5318A(b), created by section 311 of the Act, authorizes the Secretary of the Treasury to (i) require domestic financial institutions to maintain records, file reports, or both, concerning transactions with financial institutions or jurisdictions outside the United States if the Secretary finds that such transactions are of "primary money laundering concern"; (ii) require domestic financial institutions to provide identifying information about payable-through accounts on such transactions that are of "primary money laundering concern"; and (iii) prohibit domestic financial institutions from opening or maintaining a payable-through account on behalf of a foreign banking institution, if any such transactions could be conducted. The applicable penalty provision, 31 U.S.C. 5322, provides for a maximum term of imprisonment of 5 years, or ten years if the defendant engaged in a pattern of unlawful activity.

(2) 31 U.S.C. 5318(i), added by section 312 of the Act, requires financial institutions that established or maintains a private banking account or correspondent account in the United States for a non-United States person, to establish due diligence policies, procedures, and controls that are reasonably designed to detect and report money laundering through those accounts, and a new subsection (h), which prohibits financial institutions from establishing or maintaining a correspondent account for a foreign bank that does not have a physical presence in any country. The applicable penalty provision, 31 U.S.C. 5322, provides for a maximum term of imprisonment of 5 years, or ten years if the defendant engaged in a pattern of unlawful activity.

The amendment revises the definition of "value of the funds" for purposes of calculating the base offense level in § 2S1.3(a) in order to incorporate these offenses into the guideline.

The amendment also adds an enhancement if the defendant committed the offense as part of a pattern of unlawful activity. This enhancement takes into account the enhanced penalty provisions (imprisonment of not more than ten years) under 31 U.S.C. 5322(b) for such conduct if the pattern of unlawful activity involved more than $100,000 in a 12-month period.

An issue for comment follows regarding how the Commission should treat these offenses.

(3) 31 U.S.C. 5331, added by section 365 of the Act, which requires nonfinancial trades or businesses to report the receipt of more than $10,000 in coins and currency in one transaction or two or more related transactions. The maximum term of imprisonment is five years, or ten years if the defendant engaged in a pattern of unlawful activity.

(4) 31 U.S.C. 5332, added by section 371 of the Act, prohibits concealing on one's person or any conveyance more than $10,000 in currency or other monetary instruments in order to evade currency reporting requirements (i.e., bulk cash smuggling). The maximum term of imprisonment is not more than five years. An issue for comment follows regarding whether an enhancement for bulk cash smuggling should be added to the guidelines.

In addition, section 315 of the Act expanded the predicate offenses under 18 U.S.C. 1956 to include public corruption. An issue for comment follows regarding whether the money laundering guideline, § 2S1.1, should be amended to add public corruption offenses to the list of offenses that qualify for the 6-level enhancement in subsection (b)(1) because of the seriousness of these offenses.

The amendment also proposes to add a definition of "terrorism" for purposes of the 6-level enhancement in § 2S1.1(b)(1). The definition of terrorism is added for consistency of application within the guidelines.

Proposed Amendment (Part (F))

The Commentary to § 2S1.1 captioned "Application Notes" is amended in Note 1 by adding at the end the following new paragraph:

"'Terrorism' means domestic terrorism (as defined in 18 U.S.C. 2331(5)), a federal crime of terrorism (as defined in 18 U.S.C. 2332b(g)(5)), or international terrorism (as defined in 18 U.S.C. 2331(1)).".

Section 2S1.3 is amended in the title by adding at the end "; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts".

Section 2S1.3(b) is amended by redesignating subdivision (2) as subdivision (3); and by inserting after subdivision (1) the following:

"(2) If the defendant committed the offense as part of a pattern of unlawful activity [involving more than $100,000 in a 12-month period], increase by 2 levels.".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "5318, 5318A(b)," after "5316,"; and by inserting ", 5331, 5332" after "5326".

The Commentary to § 2S1.3 captioned "Application Note" is amended by striking the text of Note 1 and inserting the following:

"Definition of 'Value of the Funds'.—

(A) In General.—Except as provided in subdivision (B), the 'value of the funds' for purposes of subsection (a) means the amount of the funds involved in the structuring or reporting conduct.

(B) Exceptions.—If the offense involved a correspondent account or payable-through account prohibited or restricted under 31 U.S.C. 5318A(b)(5), the 'value of the funds' means the total amount of funds routed through that account on behalf of a foreign jurisdiction, foreign financial institution, or class of transaction that the Secretary of the Treasury found to be of primary money laundering concern.

If the offense involved a correspondent account for or on behalf of a foreign bank that does not have a physical presence in any country, in violation of 31 U.S.C. 5318, the 'value of the funds' means the total amount of funds routed through that account on behalf of that foreign bank.

The terms "correspondent account" and "payable-through account" have the meaning given those terms in 31 U.S.C. 5318A(e)(1).".

The Commentary to § 2S1.3 captioned "Application Note" is amended in the heading by striking "Note" and inserting "Notes"; and by adding at the end the following new note:

"2. Enhancement for Pattern of Unlawful Activity.—For purposes of subsection (b)(2), a pattern of unlawful activity means [at least two separate and unrelated occasions of unlawful activity] [unlawful activity involving a total amount of more than $100,000 in a 12-month period], without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion.".

The Commentary to § 2S1.3 captioned "Background" is amended in the first sentence by striking "The" and inserting "Some of the" and by adding at the end the following new paragraph:

"Other offenses covered by this guideline, under 31 U.S.C. 5318 and 5318A, relate to records, reporting and identification requirements, and prohibited accounts involving certain foreign jurisdictions, foreign institutions, foreign banks, and other account holders.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "31 U.S.C. 5316" the following new lines:

"31 U.S.C. 5318 2S1.3
31 U.S.C. 5318A(b) 2S1.3".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "31 U.S.C. 5326" the following new lines:

"31 U.S.C. 5331 2S1.3
31 U.S.C. 5332 2S1.3".

Issues for Comment: Offenses under 31 U.S.C. 5318A(b)(5) prohibit domestic financial institutions from opening or maintaining a payable-through account on or behalf of a foreign banking institution, if any such transactions could be conducted. Offenses under 31 U.S.C. 5318(j) prohibit financial institutions from establishing or maintaining a correspondent account for a foreign bank that does not have a physical presence in any country. How should the guidelines treat such offenses? Specifically, should such offenses be referenced to § 2S1.3? If so, does § 2S1.3 adequately account for all the conduct prohibited by these offenses? For example, for purposes of computing the base offense level under subsection (a), should the definition of the "value of the funds" be revised to include the total amount of the funds maintained in a payable-through account or in a prohibited correspondent account for a foreign bank, or would such a calculation overestimate the seriousness of the offense? Is there a more appropriate method to determine the value of the funds in such cases?

Offenses under 31 U.S.C. 5332, added by section 371 of the Act, prohibit concealing on one's person or any conveyance more than $10,000 in currency or other monetary instruments in order to evade currency reporting requirements (i.e., bulk cash smuggling). Congress has indicated that these offenses are more serious than failing to file a customs report, even though the statutory maximum terms of imprisonment are the same for both of these offenses. See H. Rept. 107–250. The Commission requests comment on whether an enhancement should be added to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) if the offense involved bulk cash smuggling.

In addition, section 315 of the Act expanded the predicate offenses under 18 U.S.C. 1956 to include foreign public corruption. The Commission requests comment regarding whether the money laundering guideline, § 2S1.1, should be amended to add all forms of public corruption offenses to the list of offenses that qualify for the 6-level enhancement in subsection (b)(1) because of the seriousness of these offenses.

Part (G): Currency and Counterfeiting Offenses

Synopsis of Proposed Amendment: Sections 374 and 375 of the Act increase the statutory maximum terms of imprisonment for a number of offenses involving counterfeiting domestic and foreign currency and obligations. The Act increased the statutory maximum terms of imprisonment to 20 years or 25 years for all counterfeiting offenses that had a statutory maximum term of imprisonment of 10 years or 15 years. Penalties for counterfeiting foreign bearer obligations that had a maximum term of imprisonment of one, three, and five years were increased to ten years or, in some cases, 20 or 25 years. In response, an issue for comment is provided regarding whether guideline penalties should be increased in light of the increased statutory maximum penalties.

Issue for Comment: Section 374 of the Act changed or otherwise increased the statutory maximum penalties for counterfeiting domestic currency obligations as follows: the statutory maximum penalty for violations of 18 U.S.C. 470 (counterfeit acts committed outside the United States) was changed from 20 years to the punishment "provided for the like offense within the United States;" the statutory maximum penalty for violations of 18 U.S.C. 471 (obligations or securities of the United States) was increased from 15 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 472 (uttering counterfeit obligations or securities) was increased from 15 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 473 (dealing in counterfeit obligations or securities) was increased from 10 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 476 (taking impressions of tools used for obligations or securities) was increased

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from 10 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 477 (possessing or selling impressions of tools used for obligations or securities) was increased from 10 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 484 (connecting different parts of different notes) was increased from 5 years to 10 years; and the statutory maximum penalty for violations of 18 U.S.C. 493 (bonds and obligations of certain lending agencies) was increased from 5 years to 10 years. The Commission requests comment regarding whether the guideline penalties for these offenses should be increased in light of the increased statutory maximum penalties.

Section 375 of the Act increased the statutory maximum penalties for counterfeiting foreign currency obligations as follows: the statutory maximum penalty for violations of 18 U.S.C. 478 (foreign obligations or securities) was increased from 5 years to 10 years; the statutory maximum penalty for violations of 18 U.S.C. 479 (uttering foreign obligations) was increased from 3 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 480 (possessing foreign counterfeit obligations) was increased from 1 year to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 481 (plates, stones, or analog, digital, or electronic images for counterfeiting foreign obligations or securities) was increased from 5 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 482 (foreign bank notes) was increased from 2 years to 20 years; and finally, the statutory maximum penalty for violations of 18 U.S.C. 483 (uttering foreign counterfeit bank notes) was increased from 1 year to 20 years. The Commission requests comment regarding whether the guideline penalties for these offenses should be increased in light of the increased statutory maximum penalties.

Currently, offenses under 18 U.S.C. 478, 479, 480, 481, 482, and 483 are referenced to § 2B1.1. Should these offenses also be referenced to § 2B5.1, and should that guideline be reworked in order to cover the counterfeiting of foreign obligations?

Additionally, the guidelines provide in §§ 2B1.1(b)(8)(B) a two-level enhancement, with a minimum offense level of level 12, if a substantial portion of a fraudulent scheme was committed from outside the United States. Should this enhancement be amended to provide an alternative prong if the offense was intended to promote terrorism?

Finally, the guidelines provide in § 2B5.1(b)(5) a two-level enhancement if any part of the offense was committed outside the United States. Should this enhancement be amended to provide an alternative prong if the offense was intended to promote terrorism? Should an additional enhancement be provided if the offense was intended to promote terrorism, and if so, what should be the extent of the enhancement?

Part (H): Miscellaneous Amendments

Synopsis of Proposed Amendment: This part of the amendment proposes to address eight miscellaneous issues related to terrorism:

(1) It provides a definition of terrorism for purposes of the prior conviction enhancement in the illegal reentry guideline, § 2L1.2. For consistency, the definition is the same definition proposed to be added to the money laundering guideline and to the Chapter Three terrorism adjustment.

(2) It provides two options for amending the obstruction of justice guideline, § 3C1.1, in response to section 319(d) of the Act. Section 319(d) amends the Controlled Substances Act at 21 U.S.C. 853(e) to require a defendant to repatriate any property that may be seized and forfeited and to deposit that property in the registry of the Court or with the U.S. Marshal. That section also states that the failure to comply with a protective order and an order to repatriate property "may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines."

(3) It amends the guideline on terms of supervised release, § 5D1.2, in response to section 812 of the Act, which authorizes a term of supervised release of any term of years or life for a defendant convicted of a federal crime of terrorism the commission of which resulted in, or created a substantial risk of, death or serious bodily injury to another person.

(4) It amends the theft, property destruction and fraud guideline, § 2B1.1, to delete the special instruction pertaining to the imposition of not less than six months imprisonment for a defendant convicted under section 1030 of title 18, United States Code. Section 814(f) of the Act directed the Commission to amend the guidelines "to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment."

(5) It adds a reference in the Statutory Index to the bribery guideline, § 2C1.1, for the new offense created by section 329 of the Act. Section 329 prohibits a Federal official or employee, in connection with administration of the money laundering provisions of the Act, to corruptly demand, seek, receive, accept, or agree to receive or accept anything of value in return for being influenced in the performance of an official act, being influenced to commit or aid in committing any fraud on the United States, or being induced to do or omit to do any act in violation of official duties. The term of imprisonment is not more than 15 years.

(6) It amends § 2M5.1 (Evasion of Export Controls) to incorporate 18 U.S.C. 2332d, which prohibits a person, knowing or having reasonable cause to know that a country is designated under the Export Administration Act as a country supporting international terrorism, to engage in a financial transaction with the government of that country. The amendment also proposes to provide for application of the base offense level of level 26, for 18 U.S.C. 2332d offenses.

(7) It proposes an issue for comment regarding how the Commission should treat an offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Pub. L. 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The maximum penalty is five years imprisonment.

(8) It provides an issue for comment on how the guidelines should treat offenses involving fraudulent statements under 18 U.S.C. 1001, particularly such offenses committed in connection with acts of terrorism.

Proposed Amendment (Part (H)):

Section 2B1.1 is amended by striking subsection (d) in its entirety.

The Commentary to 2B1.1 captioned "Background" is amended by striking the last paragraph in its entirety.

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1, paragraph (B), by adding at the end the following new paragraph:

"(vi) 'Terrorism offense' means any offense involving domestic terrorism (as defined in 18 U.S.C. 2331(5)), a federal crime of terrorism (as defined in 18 U.S.C. 2332b(g)(5)), or international terrorism (as defined in 18 U.S.C. 2331(1)).".

Section 2M5.1 is amended in the title by adding at the end "; Financial Transactions with Countries Supporting International Terrorism".

Section 2M5.1(a)(1) is amended by inserting "(A)" after "if" and by

inserting ", or (B) the offense involved a financial transaction with a country supporting international terrorism;" after "evaded".

The Commentary to § 2M5.1 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 2332d;" before "50 U.S.C. App. secs. 2401–2420".

The Commentary to § 2M5.1 captioned "Application Notes" is amended by adding at the end the following:

"4. For purposes of subsection (a)(1)(B), "a country supporting international terrorism" means a country designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405).".

[Option 1

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by striking the period at the end of paragraph (i) and inserting a semicolon; and by inserting after paragraph (i) the following:

"(j) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).".]

[Option 2

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by adding at the end the following new paragraph:

"This adjustment may also apply if the defendant failed to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).".]

Section 5D1.2(a) is amended by adding at the end the following new paragraph:

"Notwithstanding subdivisions (1) through (3), the length of the term of supervised release shall be [not less than three years][life] for any offense listed in 18 U.S.C. 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 2332a" the following new line:

"18 U.S.C. 2332d 2M5.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "50 U.S.C. App. § 2410" the following new line:

"Section 329 of the USA Patriot Act of 2001, Pub. L. 107–56. 2C1.1".

Issues for Comment: The Commission requests comment regarding how the Commission should treat an offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Pub. L. 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The maximum penalty is five years imprisonment. Should such offenses be referenced to § 2B2.3 (Trespass)? If so, how should that guideline be amended to take into account the seriousness of these offenses (e.g., should the enhancement at § 2B2.3(b)(1) be amended to cover trespasses occurring with respect to a vessel or aircraft of the United States, a secure area of an airport, and/or a secure area of a mass transportation system)?

The Commission also requests comment on how the guidelines might more appropriately treat offenses under 18 U.S.C. 1001, particularly such offenses that are committed in connection with acts of terrorism. Currently, offenses under 18 U.S.C. 1001 (making false statements) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud), and a cross reference at § 2B1.1(c)(3) calls for application of another Chapter Two guideline if the conduct set forth in the count of conviction under section 1001 establishes an offense specifically covered by that other Chapter Two guideline.

2. Drugs

Synopsis of Proposed Amendment

In General

The Commission has begun a long term assessment of the guidelines pertaining to drug offenses and is studying how it might amend the guidelines to (A) decrease somewhat the contribution of drug quantity on penalty levels for drug trafficking offenses generally; (B) more adequately account for aggravating and mitigating conduct that may be unrelated to drug quantity; (C) address various circuit conflicts that pertain to the drug guidelines; and (D) improve generally the overall operation of the drug guidelines.

This amendment cycle, the Commission is particularly interested in considering amending the guidelines as they pertain to offenses involving cocaine base ("crack cocaine"). In deciding how best to address various concerns that have been expressed regarding the penalties for crack cocaine offenses, the Commission is considering adding a number of enhancements to the primary drug trafficking guideline, § 2D1.1, to account more adequately for aggravating conduct sometimes associated not only with crack cocaine offenses, but also with drug trafficking offenses generally. The Commission is paying particular attention to the considerations stated in Pub. L. 104–38, the legislation enacted in 1995 disapproving the prior Commission's amendment which, among other things, would have equalized the penalties based on drug quantity for crack cocaine and powder cocaine. The proposed amendment contains a number of enhancements that directly address many of those considerations, especially those that focus on violence, and apply across drug type.

As part of its assessment, and in light of the proposed enhancements which, if adopted, would apply across drug type, the Commission also is exploring how it might amend the guidelines to decrease penalties in appropriate cases in which the current penalty structure may overstate the culpability of the defendant. Accordingly, the Commission is studying a number of options, including a maximum base offense level for offenders who qualify for a mitigating role adjustment and a two level reduction for offenders who meet the "safety valve" criteria set forth in § 5C1.2 and have no prior convictions.

Base Offense Level

Mitigating Role Adjustment

The proposed amendment provides a maximum base offense level of [24–32] if the defendant qualifies for an adjustment under § 3B1.2 (Mitigating Role). This base offense level cap is designed to limit somewhat the exposure of low level drug offenders to increased penalties based on drug quantity alone. The impact of the proposed base offense level cap will vary depending on the level at which the cap is set. If level 32 is adopted as the maximum base offense level for these defendants, 805 cases would be affected, and their average sentence would decrease from 82 months to 60 months. If the Commission adopted level 26, 2,062 cases would be affected, and their average sentence would decrease from 60 months to 37 months.

Two issues for comment pertaining to mitigating role follow the proposed amendment. The first issue invites comment regarding whether application of the maximum base offense level should be limited in some manner, for example to defendants who receive a minimal role adjustment under § 3B1.2 or who do not receive enhancements for aggravating conduct such as weapon involvement or bodily injury. The second issue invites comment regarding

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whether the Commission also should address three circuit conflicts that remain pertaining to mitigating role, and if so, how should those conflicts be resolved. The issue then requests comment regarding whether the Commission should provide guidance on whether particular drug offenders who perform certain drug trafficking functions (e.g., courier or mule) should or should not receive a mitigating role adjustment.

Enhancements

Violence

The proposed amendment also contains a number of enhancements. First, the proposed amendment contains a number of modifications to § 2D1.1 to more adequately account for violence sometimes associated with drug trafficking offenses. Subsection (b)(1) currently provides a two level enhancement for offenses involving possession of a dangerous weapon, but it does not differentiate penalties to account for the defendant's weapon use, the seriousness of the weapon use, or the type and number of firearms involved.

Accordingly, the proposed amendment modifies subsection (b)(1) to provide a graduated enhancement of [2] to [6] levels for weapon involvement to account more adequately for these factors. Specifically, proposed subsection (b)(1)(A) provides a [6] level enhancement if the defendant discharged a firearm. Proposed subsection (b)(1)(B) provides a [4] level enhancement if the defendant (i) brandished or otherwise used a dangerous weapon (including a firearm); or (ii) possessed a firearm described in 18 U.S.C. 921(a)(30) or 26 U.S.C. 5845(a). Proposed subsection (b)(1)(C) provides (i) a [2] level enhancement if a dangerous weapon (including a firearm) was possessed; or (ii) a [4] level enhancement if eight or more firearms were possessed. An option for an upward departure provision if the number of firearms involved in the offense substantially exceeded eight firearms is provided in proposed Application Note 3.

The enhanced penalties provided by this part of the amendment are likely to apply in a minority of cases. In fiscal year 2000, 21.3 percent of crack cocaine cases received either the enhancement for possession of a dangerous weapon in § 2D1.1(b)(1) or a penalty for a violation of 18 U.S.C. 924(c), 18.7 percent of methamphetamine cases, 10.6 percent of powder cocaine cases, 6.6 percent of heroin cases, and 5.9 percent of marijuana cases. The proposed heightened penalties in subsection (b)(1) would apply in a subset of those cases.

Proposed subsection (b)(2) provides a graduated enhancement of [2] to [8] levels for [death] or bodily injury, depending on the degree of injury. The enhancement does not apply to injury resulting from the use of the controlled substance because subsection (a) already provides heightened base offense levels that account for death or serious bodily injury resulting from such use. Proposed subsection (b)(2) provides an option for an eight level enhancement for death. The option is provided because the cross reference to § 2A1.1 (First Degree Murder) provided by subsection (d) does not apply if a victim was killed under circumstances that would not constitute murder under 18 U.S.C. 1111 (e.g., manslaughter). Proposed subsection (b)(2) also provides a bracketed option that limits the cumulative adjustments from subsections (b)(1) and (b)(2) to [10][12] levels because weapon use and bodily injury are so interrelated.

Two issues for comment follow the proposed amendment pertaining to these proposed enhancements. The first issue invites comment regarding whether subsections (b)(1) and (b)(2) also should provide minimum offense levels, particularly in light of the minimum offense level currently provided in subsection (b)(5) for methamphetamine and amphetamine manufacturing offenses that create a substantial risk of harm to human life. The second issue invites comment regarding whether the Commission also should provide an enhancement that would apply if the offense involved an express or implied threat of death or bodily injury, and if so, what would be an appropriate increase and should the enhancement be applied cumulatively to the proposed enhancements in subsections (b)(1) and (b)(2).

Protected Locations, Underage or Pregnant Individuals

The primary drug trafficking guideline, § 2D1.1, currently does not provide an enhancement for drug distribution near protected locations or distribution involving underage or pregnant individuals. Section § 3B1.4 (Using a Minor to Commit a Crime) provides a two level enhancement if the defendant used or attempted to use a person less than eighteen years of age to commit the offense. Enhanced penalties also are provided in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals), but a conviction for a statutory violation of drug trafficking in a protected location (21 U.S.C. 860) or to underage or pregnant individuals (21 U.S.C. 859 and 861) is necessary in order for § 2D1.2 to be applied.

The proposed amendment consolidates § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) into § 2D1.1, and makes conforming changes to the Statutory Index for offenses currently referenced to § 2D1.2 (21 U.S.C. 849, 859, 860, 861, and 963). Proposed subsection (b)(3) provides a two level enhancement if the defendant (A) was convicted of an offense under 21 U.S.C. 849[, 859] 860[, or 861]; (B) distributed to a pregnant individual [knowing, or having a reasonable cause to believe, that the individual was pregnant at that time]; (C) distributed to a minor individual [knowing, or having a reasonable cause to believe, that the individual was a minor at that time]; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense. The requirement that the defendant be convicted of a statutory violation of drug trafficking in a protected location is retained because otherwise the enhancement could apply in an overly broad manner, particularly for trafficking offenses occurring in dense urban areas.

A minimum offense level of [26] is provided if subdivision (C) or (D) applies. This minimum offense level is required by the directive to the Commission contained in section 6454 of the Anti-Drug Abuse Act of 1988. An issue for comment follows the proposed amendment that invites comment regarding whether the minimum offense level should be extended to apply to any of the other subdivisions of proposed subsection (b)(3).

The impact of this enhancement should be limited but it will allow increased sentences in appropriate cases. Compared to the 22,639 defendants sentenced under § 2D1.1 in fiscal year 2000, only 196 were convicted under any of the statutes referenced to § 2D1.2. The majority of those cases (89.3%) were for violations of 21 U.S.C. 860 for trafficking in a protected location. There likely would be no net penalty increase from this part of the proposed amendment because the proposed amendment still would require a conviction under that statute. Also, in fiscal year 2000, only 131 defendants received the adjustment in § 3B1.4 (Use of a Minor) and, for those cases, no net increase results from this part of the proposed amendment because proposed Application Note 22 expressly provides that if proposed subsection (b)(3)(D) applies, § 3B1.4 does not apply. This proposed application note corresponds to Application Note 2 in § 3B1.4, which instructs that if the Chapter Two offense guideline incorporates use of a minor to commit a crime, § 3B1.4 should not be applied.

Prior Criminal Conduct

Proposed subsection (b)(8) provides a [2][4] level increase if the defendant committed any part of the instant offense after sustaining one felony conviction of [either a crime of violence or] a controlled substance offense. Chapter Four operates generally to provide increased punishment for past criminal conduct and includes a number of particular provisions often applicable in drug trafficking cases, such as the career offender provision. The proposed enhancement, however, may more adequately account for certain prior criminal conduct, particularly drug trafficking offenses. Proposed subsection (b)(8) also presents an option that extends application of the enhancement to convictions for prior crimes of violence.

Proposed Application Note 23 defines "controlled substance offense" and "crime of violence" as those terms are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1) and defines "felony conviction" as a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. (The definitions also are consistent with the approach taken in § 2K2.1.) Proposed Application Note 23 also presents an option that limits application of proposed subsection (b)(8) to felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c). Additionally, proposed Application Note 23 expressly provides that prior felony convictions that trigger application of proposed subsection (b)(8) also are counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

An issue for comment follows the proposed amendment that invites comment regarding whether a minimum offense level should be provided in proposed subsection (b)(8), similar to the minimum offense level provided in § 2K2.1(a)(4).

Reduction for No Prior Convictions

The proposed amendment provides, in proposed subsection (b)(9)(B), an additional reduction of two levels for defendants who previously have not been convicted of any offense and who currently qualify for a two level reduction for meeting the criteria set forth in subdivisions (1) through (5) of § 5C1.2(a). This additional reduction is available only to defendants who meet that criteria and who previously have not been convicted of any offense. For purposes of applying the reduction, "convicted" means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere, without regard to the applicable time periods set forth in § 4A1.2(e). [The definition also includes juvenile adjudications.] Although tribal, foreign, and military convictions are excluded for criminal history purposes under Chapter Four, such convictions are considered "convictions" for purposes of applying the proposed reduction, and any such conviction would disqualify the defendant from receiving the additional two level reduction. Expunged convictions and convictions for certain petty offenses set forth in § 4A1.2(c)(2) are specifically excluded from the definition. By permitting the court to consider tribal, foreign, and military convictions, as well as permitting the court to consider convictions outside of the applicable time periods from Chapter Four, the proposed amendment differentiates penalties for defendants with zero or one criminal history point and defendants who do not have any prior convictions.

This portion of the proposed amendment also clarifies the application of the current two level reduction in § 2D1.1(b)(6) (redesignated as subsection (b)(9) by this proposed amendment) by stating more clearly that the reduction applies regardless of whether the defendant was subject to a mandatory minimum term of imprisonment. Additionally, the proposed amendment makes clear that § 5C1.2(b), which provides a minimum offense level of 17 for certain defendants, is not pertinent to the application of the current two level reduction.

Maintaining Drug-Involved Premises and Ecstasy Offenses

Concerns have been raised that § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy) does not adequately punish certain defendants convicted under 21 U.S.C. 856 (Establishment of manufacturing operations). That statute originally was enacted to target so-called "crack houses" and more recently has been applied to defendants who promote drug use at commercial dance parties frequently called "raves."

Currently, § 2D1.8 provides two alternative base offense level computations. For defendants who participate in the underlying controlled substance offense, the offense level from § 2D1.1 applies pursuant to § 2D1.8(a)(1). For defendants who had no participation in the underlying controlled substance offense other than allowing use of the premises, subsection (a)(2) provides a four level reduction from the offense level from § 2D1.1 and a maximum offense level of 16. Because many club owners and rave promoters who do not participate in the underlying offense nonetheless facilitate, promote and profit, at least indirectly, from the use of illegal drugs (primarily 3,4-methylenedioxymethamphetamine, more commonly known as MDMA or ecstasy), the maximum offense level of 16 may not adequately account for the seriousness of these offenses.

The proposed amendment addresses this concern by consolidating § 2D1.8 into § 2D1.1 and making a conforming change to the Statutory Index. The proposed consolidation will have no impact on the offense level for cases in which § 2D1.8(a)(1) previously applied. Proposed Application Note 24 effectively retains the four level reduction currently provided in § 2D1.8(a)(2) by providing that a minimal role adjustment under § 3B1.2 shall apply if the defendant (a) was convicted under 21 U.S.C. 856; and (b) had no participation in the underlying controlled substance offense other than allowing use of the premises.

The maximum offense level for those defendants for which § 2D1.8(a)(2) applied, however, will be increased because the level 16 base offense level cap currently provided in § 2D1.8(a)(2) effectively will be increased to [24–32], the proposed maximum base offense level for defendants who qualify for a mitigating role adjustment. In addition, under the proposed consolidation, the enhancements contained in § 2D1.1 can apply to those defendants. Although the overall impact of the proposed consolidation on drug trafficking sentences will be minimal (only 69 defendants were sentenced under § 2D1.8 in fiscal year 2000), 95.6 percent of defendants sentenced under § 2D1.8 received a base offense level of 16 and likely will be affected by the proposed consolidation.

The proposed amendment also amends the Typical Weight Per Unit (Dose, Pill, or Capsule) Table in Application Note 11 of § 2D1.1 to more accurately reflect the type and quantity

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of ecstasy typically trafficked and consumed. Specifically, the proposed amendment adds a reference in the Typical Weight Per Unit Table for MDMA and sets the typical weight at 250 milligrams per pill. Ecstasy usually is trafficked and used as MDMA, not MDA, the drug currently listed in the table. In addition, the proposed amendment revises upward the typical weight for MDA from 100 milligrams to 250 milligrams and deletes the asterisk that previously indicated that the weight per unit shown is the weight of the actual controlled substance, and not the weight of the mixture or substance containing the controlled substance. The absence of MDMA from the table and the use of an estimate of the actual weight of the controlled substance (MDA) rather than an estimate of the weight of the mixture or substance containing the controlled substance may create an incentive to improperly apply the MDA estimate in cases in which the drug involved is MDMA, resulting in underpunishment in some cases, and generally resulting in unwarranted disparity.

Simple Possession of Crack Cocaine

Defendants convicted of possession of five or more grams of a mixture or substance containing cocaine base receive a mandatory minimum sentence of five years under 21 U.S.C. 844(a). The mandatory minimum for simple possession is unique to crack cocaine. The guidelines incorporate the mandatory minimum in § 2D2.1 (Unlawful Possession; Attempt or Conspiracy) by providing a cross reference at subsection (b)(1) to § 2D1.1 if the defendant is convicted of possession of more than five grams of crack. The proposed amendment deletes the cross reference to the drug trafficking guideline, but retains the heightened base offense level of 8.

The cross reference to the drug trafficking guideline is deleted to more adequately differentiate between the seriousness of an offense involving the distribution of crack cocaine and an offense merely involving simple possession of crack cocaine, with no intent to distribute. The impact of the proposed deletion of the cross reference will have minimal impact on drug penalties overall because a total of only 67 defendants have been cross referenced from § 2D2.1 to § 2D1.1 in the past three fiscal years.

Proposed Amendment

Section 2D1.1 is amended in the title by inserting "Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Renting or Managing a Drug Establishment;" after "Offenses);".

Subsection 2D1.1(a)(3) is amended by striking "below" and inserting ", except that if the defendant qualifies for an adjustment under § 3B1.2 (Mitigating Role), the base offense level under this subsection shall not exceed level [24–32]".

Subsection 2D1.1(b)(1) is amended to read as follows:

"(1) (Apply the greatest):

(A) If the defendant discharged a firearm, increase by [6] levels.

(B) If the defendant (i) brandished or otherwise used a dangerous weapon (including a firearm); or (ii) possessed a firearm described in 18 U.S.C. 921(a)(30) or 26 U.S.C. § 5845(a), increase by [4] levels.

(C) If (i) a dangerous weapon (including a firearm) was possessed, increase by [2] levels; or (ii) eight or more firearms were possessed, increase by [4] levels.".

Subsection 2D1.1(b)(5) is amended by striking "greater" and inserting "greatest".

Subsection 2D1.1(b) is amended by redesignating subdivision (6) as subdivision (9); by redesignating subdivisions (2) through (5) as subdivisions (4) through (7), respectively; by inserting the following after subsection (b)(1):

"(2) If the offense involved [death or] bodily injury other than [death or] bodily injury that resulted from the use of the controlled substance, increase the offense level according to the seriousness of the injury:

Degree of injury	Increase in level
(A) Bodily Injury	add [2] levels.
(B) Serious Bodily Injury.	add [4] levels.
(C) Permanent or Life-Threatening Bodily Injury.	add [6] levels.
[(D) Death	add [8] levels.].

[The cumulative adjustments from subsections (b)(1) and (b)(2) shall not exceed [10][12] levels.]

(3) If the defendant (A) was convicted of an offense under 21 U.S.C. 849, [859,] 860 [, or 861]; (B) distributed a controlled substance to a pregnant individual [knowing, or having a reasonable cause to believe, that the individual was pregnant at that time]; (C) distributed a controlled substance to a minor individual [knowing, or having a reasonable cause to believe, that the individual was a minor at that time]; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense, increase by [2] levels. If subdivision (C) or (D) applies and the offense level is less than [26]; increase to level [26].";

and by inserting after redesignated subdivision (7) (formerly subdivision (5)) the following:

"(8) If the defendant committed any part of the instant offense after sustaining one felony conviction of [either a crime of violence or] a controlled substance offense, increase by [2][4] levels.".

Subsection 2D1.1(b)(9) (formally subdivision (6)) is amended by inserting "(A)" before "If the" and by adding at the end the following:

"(B) If (i) subsection (A) applies; and (ii) the defendant previously has not been convicted of any offense, decrease by 2 levels.".

The Commentary to § 2D1.1 captioned "Statutory Provisions" is amended by inserting "849, 856, 859, 860, 861," before "960(a)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by striking Note 3 in its entirety and inserting the following:

"3. Application of Subsection (b)(1).—

(A) Definitions.—For purposes of this subsection:

'Brandished', 'dangerous weapon', 'firearm', and 'otherwise used' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'A firearm described in 18 U.S.C. 921(a)(30)' does not include a weapon described in 18 U.S.C. 922(v)(3).

(B) Possession of Dangerous Weapon or Firearm.—Subsections (b)(1)(B)(ii) and (b)(1)(C) apply if a dangerous weapon or firearm was present, unless it is clearly improbable that the dangerous weapon or firearm was connected with the offense. For example, the enhancement would not apply if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet.

[(C) Upward Departure Based on Number of Firearms.—If the number of firearms involved in the offense substantially exceeded eight firearms, an upward departure may be warranted.]".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in the second paragraph of Note 8 by striking "(b)(2)(B)" and inserting "(b)(4)(B)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 11 in the table captioned "Typical Weight Per Unit (Dose, Pill, or Capsule) Table" in the line referenced to "MDA" by striking the asterisk after "MDA"; and by striking "100 mg" and inserting "250 mg".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 11 in the table captioned "Typical Weight Per Unit (Dose, Pill, or Capsule) Table" by inserting after the line referenced to "MDA" the following:

"MDMA 250 mg".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 19 by striking "(b)(5)(A)" both places it appears and inserting "(b)(7)(A)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 20 by striking "(b)(5)(B)" and inserting "(b)(7)(B)"; and by striking "subsection (b)(5)(C)" and inserting "subsection (b)(7)(C)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by adding at the end the following:

"21. Subsection (b)(2) Definitions."For purposes of subsection (b)(2), "bodily injury", "permanent or life-threatening bodily injury", and "serious bodily injury" have the meaning given those terms in Application Note 1 of § 1B1.1 (Application Instructions).

22. Non-applicability of § 3B1.4.—If subsection (b)(3)(D) applies, do not apply § 3B1.4 (Using a Minor to Commit a Crime).

23. Application of Subsection (b)(8).—

(A) Definitions.—For purposes of this subsection:

'Controlled substance offense' has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

['Crime of violence' has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.]

'Felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

(B) [Qualifying Prior Felony Conviction and] Computation of Criminal History Points.—[For purposes of applying subsection (b)(8), use only a prior felony conviction that receives criminal history points under § 4A1.1(a), (b), or (c).] A prior felony conviction that results in application of subsection (b)(8) also is counted for purposes of determining criminal history points under Chapter 4, Part A (Criminal History).

24. Application of § 3B1.2 for Defendant Convicted Under 21 U.S.C. 856.—If the defendant (A) was convicted under 21 U.S.C. 856; and (B) had no participation in the underlying controlled substance offense other than allowing use of the premises, an adjustment under § 3B1.2(a) for minimal role in the offense shall apply.

25. Application of Subsection (b)(9).—

(A) In General.—Subsection (b)(9)(A) applies regardless of whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the application of subsection (b)(9)(A).

(B) Subsection (b)(9)(B).—For purposes of this subdivision, 'convicted'—

(i) means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere, without regard to the applicable time periods set forth in § 4A1.2(e);

[(ii)includes a juvenile adjudication other than an adjudication for a juvenile status offense or truancy;] and

(iii)does not include an expunged conviction or a conviction for any offense set forth in § 4A1.2(c)(2).".

The Commentary to § 2D1.1 captioned "Background" is amended in the fifth paragraph by striking "Specific Offense Characteristic (b)(2)" and inserting "Subsection (b)(4)".

The Commentary to § 2D1.1 captioned "Background" is amended in the ninth paragraph by striking "(b)(5)(A)" and inserting "(b)(7)(A)".

The Commentary captioned "Background" is amended in the tenth paragraph by striking "(b)(5)(B)" and inserting "(b)(7)(B)".

The Commentary to § 2D1.1 captioned "Background" is amended by inserting after the fourth paragraph the following:

"The minimum offense level applicable to subsection (b)(3)(C) and (D) implements the direction to the Commission in Section 6454 of the Anti-Drug Abuse Act of 1988.".

Chapter Two, Part D, is amended by striking § 2D1.2 and its accompanying commentary in its entirety.

Chapter Two, Part D, is amended by striking § 2D1.8 and its accompanying commentary in its entirety.

Section 2D2.1 is amended by striking subsection (b)(1) in its entirety and by redesignating subsection (b)(2) as subsection (b)(1).

The Commentary to § 2D2.1 captioned "Background" is amended by striking the second paragraph in its entirety.

Appendix A (Statutory Index) is amended by striking the following:

"21 U.S.C. 845 2D1.2
21 U.S.C. 845a 2D1.2
21 U.S.C. 845b 2D1.2".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 846" by striking "2D1.2,"; and by striking "2D1.8,".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 849" by striking "2D1.2" and inserting "2D1.1".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 856" by striking "2D1.8"; and inserting "2D1.1".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 859" by striking "2D1.2" and inserting "2D1.1".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 860" by striking "2D1.2" and inserting "2D1.1".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 861" by striking "2D1.2" and inserting "2D1.1".

Appendix A (Statutory Index) is amended in the line referenced to "21 U.S.C. 963" by striking "2D1.2,"; and by striking "2D1.8,".

Issues for Comment

(1) The Commission requests comment concerning the sentencing of defendants convicted of cocaine base ("crack cocaine") offenses under the sentencing guidelines. Currently, five grams of crack cocaine triggers a five year mandatory minimum sentence and is assigned a base offense level of 26 under the guidelines, and 50 grams of crack cocaine triggers a ten year mandatory minimum sentence and is assigned a base offense level of 32. This penalty structure has raised several concerns. First, concern has been expressed that the penalty structure does not adequately differentiate between crack cocaine offenders who engage in aggravating conduct and those crack cocaine offenders who do not. This lack of differentiation is caused by the fact that, for crack cocaine offenses, the Drug Quantity Table accounts for aggravating conduct that is sometimes

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associated with crack cocaine (e.g., violence). Building these aggravating factors into the Drug Quantity Table essentially penalizes all crack cocaine offenders to some degree for aggravating conduct, even though a minority of crack cocaine offenses may involve such aggravating conduct. As a result, the penalty structure does not provide adequate differentiation in penalties among crack cocaine offenders and often results in penalties too severe for those offenders who do not engage in aggravating conduct. It has been suggested by some that proportionality could be better served (i) by providing sentencing enhancements that target offenders who engage in aggravating conduct such as violence or distribution in protected locations or to minors or pregnant individuals; and (ii) by reducing the penalties based solely on the quantity of crack cocaine to the extent that the Drug Quantity Table takes into account aggravating conduct. Such an approach may better provide proportionate sentencing because it will enable the court to punish more severely the defendant who actually engages in aggravating conduct.

Second, concerns have been expressed that the current penalty structure for crack cocaine offenses overstates the drug trafficking function of crack cocaine offenders. In general, the statutory penalty structure for most, but not all, drug offenses was designed to provide a five year sentence for a serious drug trafficker (often a manager and supervisor of retail level trafficking) and a ten year sentence for a major drug trafficker (often the head of the organization that is responsible for creating and delivering very large quantities). The guidelines have incorporated this structure in § 2D1.1 by linking the Drug Quantity Table to statutory mandatory minimums. The drug quantities that trigger the five year and ten year penalties for crack cocaine offenses, however, are thought by many to be too small to be associated with a serious or major trafficker, respectively. As a result, many low level retail crack traffickers are subject to penalties that may be more appropriate for higher level traffickers.

Third, concerns have been expressed that these problems may result in an unwarranted disparate impact on minority populations, particularly African-Americans, as they comprise the majority of offenders sentenced for crack cocaine offenses.

The Commission requests comment regarding whether the current penalty structure for crack cocaine offenses is appropriate, or whether some other penalty structure is more appropriate for guideline purposes. In deciding how these various concerns might be addressed, the Commission is reviewing Pub. L. 104–38, the legislation enacted in 1995 disapproving the prior Commission's submitted amendment, which among other things equalized the penalties based on drug quantity for crack cocaine and powder cocaine. Any proposed change might contain enhancements that address a number of the considerations contained in that legislation, especially violence associated with drug trafficking. Other considerations set forth in Pub. L. 104–38 already may be adequately accounted for in the guidelines (e.g., obstruction of justice).

The Commission also requests comment regarding the 100:1 drug quantity ratio for crack cocaine and powder cocaine offenses. Under the current penalty structure of the sentencing guidelines and 21 U.S.C. 841, 100 times as much powder cocaine as crack cocaine is required to trigger the same five and ten year penalties based on drug quantity. The Commission requests comment regarding whether the 100:1 drug quantity ratio is appropriate, or whether some alternative ratio is more appropriate for guideline purposes. If so, how should the alternative ratio be achieved (i.e., by decreasing the penalties for crack cocaine, increasing the penalties for powder cocaine, or a combination of both) and why? How would any such change to the penalty structure for crack cocaine effect crime rates and deterrence? How would such change impact minority populations? Additionally, the Commission requests comment regarding whether the penalties for crack cocaine offenses should be more severe, less severe, or equal to the penalties for heroin or methamphetamine offenses. In particular, how do the addictiveness of crack cocaine, short term and long term physiological and psychological effects on the user, the violence associated with its use or distribution, its distribution trafficking pattern, and any secondary health consequences of its use (e.g., its effect on an infant who has been exposed prenatally to crack cocaine) compare to those associated with heroin or methamphetamine?

(2) The proposed amendment provides enhancements that address harms caused by violence often associated with drug trafficking offenses. Specifically, the proposed weapon enhancement in subsection (b)(1) provides graduated penalties for weapon involvement, depending on the use, type, and number of weapons involved. Similarly, the proposed bodily injury enhancement in subsection (b)(2) provides graduated penalties depending on the degree of injury involved in the offense. The Commission requests comment regarding whether either or both of these two enhancements also should provide minimum offense levels. If so, what is the appropriate minimum offense level for the conduct described in each subdivision? For example, should the Commission provide a minimum offense level of 27 in the case of a defendant who discharges a firearm (subdivision (b)(1)(A)), on the basis that the discharge of a firearm creates a risk of harm similar to that which is accounted for by the minimum offense level currently provided in subsection (b)(5)? Should the Commission provide a minimum offense level of 27 for offenses involving permanent or life threatening injury for similar reasons?

The Commission also requests comment regarding whether, in addition to the proposed enhancements pertaining to violence, it also should provide an enhancement that would apply if the offense involved an express or implied threat of death or bodily injury. (Note that 18 U.S.C. 3553 and § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases) preclude a "safety valve" reduction for any defendant who uses violence or credible threats of violence in connection with the offense.) If so, what would be an appropriate increase and should the enhancement be applied cumulatively to the proposed enhancements in subsections (b)(1) and (b)(2)?

(3) The proposed amendment consolidates §§ 2D1.2 (Drug Offense Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) and 2D1.1 and also provides a new enhancement in § 2D1.1(b)(3) to cover the conduct previously covered by § 2D1.2. That enhancement provides a minimum offense level of 26 for offenses in which the defendant distributed a controlled substance to a minor or used a minor to commit the offense or to assist in avoiding detection or apprehension for the offense. This minimum offense level complies with the directive to the Commission in section 6454 of the Anti-Drug Abuse Act of 1988 and maintains the penalties that currently exist for such offenses under § 2D1.2. The Commission requests comment regarding whether it should extend this minimum offense level to the other conduct contained in proposed § 2D1.1(b)(3).

(4) Subsection (b)(8) of the proposed amendment provides a [two][four] level enhancement if the defendant committed any part of the instant offense after sustaining one felony conviction for either a crime of violence or a controlled substance offense. The Commission requests comment regarding whether proposed subsection (b)(8) also should provide a minimum offense level. If so, what offense level would be appropriate?

(5) Subsection (a)(3) of the proposed amendment provides a maximum base offense level of [24–32] for a defendant who qualifies for an adjustment under § 3B1.2 (Mitigating Role). The Commission requests comment regarding whether application of this maximum base offense level should be limited to only defendants who receive an adjustment for minimal role in the offense (as opposed to an adjustment for either minimal role or minor role in the offense). Additionally, should application of the maximum base offense level be predicated on the absence of certain aggravating factors, such as bodily injury or dangerous weapon possession? Should any other limitation apply?

(6) The Commission recently amended § 3B1.2 (Mitigating Role) to resolve a circuit conflict regarding whether a defendant who is accountable under § 1B1.3 (Relevant Conduct) only for conduct in which the defendant was personally involved, and who performs a limited function in concerted criminal activity, is precluded from consideration of a mitigating role adjustment under § 3B1.2. See USSG Appendix C (Amendment 635, effective November 1, 2001). Under the approach adopted by the Commission, even in a case in which a defendant is liable under § 1B1.3 only for conduct in which the defendant was personally involved (e.g., drug quantities personally handled by the defendant), the court can apply the traditional § 3B1.2 analysis to determine whether the defendant should receive a reduction for mitigating role.

The amendment, however, did not address three additional circuit conflicts pertaining to mitigating role:

(A) Whether, in determining if the defendant is substantially less culpable than the "average participant", the court should assess the defendant's conduct in relation not only to the conduct of co-conspirators, but also to the conduct of a hypothetical defendant who performs similar functions in similar offenses involving multiple participants. *Compare United States* v. *Ajmal*, 67 F.3d 12, 18 (2d Cir. 1995) (holding that defendant only played a minor role in the offense if he was less culpable than his co-conspirators as well as the average participant in such a crime); *United States* v. *Thomas*, 932 F.2d 1085, 1092 (5th Cir. 1991) (holding that defendant was not entitled to minor role adjustment because his role "as greater than the minimal participation exercised by the defendant to whom we have previously allowed a downward adjustment"); *United States* v. *Caruth*, 930 F.2d 811, 815 (10th Cir. 1991) ("The Guidelines permit courts not only to compare a defendant's conduct with that of others in the same enterprise, but also with the conduct of an average participant in that type of crime."); *United States* v. *Daughtrey*, 874 F.2d 213, 216 (4th Cir. 1989) (holding that the court should measure both the relative culpability of each participant in relation to the relevant conduct and the defendant's acts and relative culpability against an objective standard); *United States* v. *Rotolo*, 950 F.2d 70, 71 (1st Cir. 1991) (distinguishing between aggravating and mitigating roles and suggesting that "substantially less culpable than the average participant" means an objective comparison between the defendant and average person engaged in such conduct); *United States* v. *Owusu*, 199 F.3d 329, 337 (6th Cir. 2000) (to qualify for a minor role reduction, "a defendant must be less culpable than most other participants and substantially less culpable than the average participant"); *United States* v. *Westerman*, 973 F.2d 1422 (8th Cir. 1992) (whether role in the offense adjustments are warranted is to be determined not only by comparing the acts of each participant in relation to the relevant conduct for which the participant is held accountable, § 1B1.3, but also by measuring each participant's individual acts and relative culpability against the elements of the offense of conviction) *with United States* v. *Rojas-Millan*, 234 F.3d 464, 473 (9th Cir. 2000) (rejected the consideration of comparisons against the hypothetical "average participant" in the type of crime involved); *United States* v. *Scroggins*, 939 F.2d 416 (7th Cir. 1991) (ruled that a mitigating role assessment must include a comparison of the acts of each participant in relation to the relevant conduct for which the participant is held accountable under § 1B1.3); *United States* v. *Valencia*, 907 F.2d 671 (7th Cir. 1990) (the § 3B1.2 adjustment requires us to focus on the defendant's "role in the offense," rather than unspecified criminal conduct that is not part of the offense).

(B) Whether, in determining if a mitigating role adjustment is warranted, the court may consider only the relevant conduct for which the defendant is held accountable at sentencing, or whether it may also consider "expanded" relevant conduct (additional conduct that would appear to be properly includable under § 1B1.3 but was not considered in determining the defendant's offense level). *Compare United States* v. *James*, 157 F.3d 1218, 1220 (10th Cir. 1998) (holding that defendant's role in the offense is determined on the basis of the relevant conduct attributed to him in calculating his base offense level); *United States* v. *Burnett*, 66 F.3d 137, 140 (7th Cir. 1995) (same); *United States* v. *Atanda*, 60 F.3d 196, 199 (5th Cir. 1995) (per curiam) (same); *United States* v. *Lampkins*, 47 F.3d 175, 180 (7th Cir. 1995) (same); *United States* v. *Gomez*, 31 F.3d 28, 31 (2d Cir. 1994) (per curiam) (same); *United States* v. *Lucht*, 18 F.3d 541, 555–56 (8th Cir. 1994) (same); *United States* v. *Olibrices*, 979 F.2d 1557, 1560 (D.C. Cir. 1992) ("To take the larger conspiracy into account only for purposes of making a downward adjustment in the base level would produce the absurd result that a defendant involved both as a minor participant in a larger distribution scheme for which she was not convicted, and as a major participant in a smaller scheme for which she was convicted, would receive a shorter sentence than a defendant involved solely in the smaller scheme.") with *United States* v. *Assisi-Zapata*, 148 F.3d 236, 240–41 (3d Cir. 1998) (relying on this Court's panel opinion in *De Varan* and holding that a court must examine all relevant conduct even if defendant is sentenced only for own acts); *United States* v. *Rails*, 106 F.3d 1416, 1419 (9th Cir.) (recognizing that "[the defendant's role in relevant conduct may provide a basis for an adjustment even if that conduct is not used to calculate the defendant's base offense level" but holding that defendant was "not entitled to a reduction in his sentence simply because he was tied to a larger drug trafficking scheme"), *cert. denied*, 520 U.S. 1282 (1997); *United States* v. *Demers*, 13 F.3d 1381, 1383 (9th Cir. 1994) (declining "to restrict the scope of relevant conduct on which a downward adjustment may be based to the relevant conduct that is included in the defendant's base offense level.").

(C) Whether the court may depart downward from the applicable guideline offense level for defendants who, but for the law enforcement status of other participants, would have received a mitigating role adjustment under § 3B1.2. *Compare United States* v. *Speenburgh*, 990 F.2d 72, 75 (2d Cir. 1993) (if a district court would have decreased the defendant's offense level under section 3B1.2 had the other

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person involved in the offense been criminally responsible, it should likewise have the discretion to depart downward between two and four levels, based on the defendant's culpability relative to that of the Government agent); *United States* v. *Bierley*, 922 F.2d 1061 (3d Cir. 1990) ("when an adjustment for Role in the Offense is not available by strict application of the Guideline language, the court has power to use analogic reasoning to depart from the guidelines when the basis for departure is conduct similar to that encompassed in the Role in the Offense Guideline."); *United States* v. *Valdez-Gonzalez*, 957 F.2d 643, 648 (9th Cir. 1992), ("[I]n view of the limited application of § 3B1.2 minimal participant adjustment, the Sentencing Commission had failed to consider adequately the role of the defendants in conduct surrounding the offense of conviction") *with United States* v. *Costales*, 5 F.3d 480 (11th Cir. 1993) (held that a defendant was not entitled to an adjustment or "analogous" downward departure from the applicable guideline range where the defendant was the only "criminally responsible" participant in a crime).

The proposed amendment's inclusion of a maximum base offense level in § 2D1.1 for a defendant who qualifies for an adjustment under § 3B1.2 raises the issue of whether the Commission also should address some or all of these remaining circuit conflicts. The Commission therefore requests comment regarding whether, in conjunction with the proposed maximum base offense level for mitigating role defendants, it should resolve any of these circuit conflicts and, if so, how should the Commission resolve them. If the Commission does address these issues of circuit conflict, should the Commission also amend § 3B1.2 to provide guidance on whether particular drug offenders who perform certain drug trafficking functions (e.g., courier or mule) should or should not receive a mitigating role adjustment?

3. Alternatives to Imprisonment

Synopsis of Amendment: This amendment provides three options to increase sentencing alternatives in Zone C of the Sentencing Table (Chapter Five, Part A).

Currently, under §§ 5B1.1 and 5C1.1, the court has three options when sentencing a defendant whose offense level is in Zone B. The court may impose (A) a sentence of imprisonment; (B) a sentence of probation with a condition of confinement sufficient to satisfy the minimum of the applicable guideline range; or (C) a "split-sentence" in which the defendant must serve at least one month of imprisonment followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range.

When the defendant's offense level is in Zone C, the court may impose either (A) a sentence of imprisonment; or (B) a "split-sentence" in which the defendant must serve at least one-half of the minimum of the applicable guideline range followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range.

Option One amends the Sentencing Table by combining Zones B and C, thereby providing offenders at offense levels 11 and 12 with the sentencing options currently available in Zone B: (A) a probation sentence with a condition of confinement sufficient to satisfy the minimum of the applicable guideline range; and (B) one month imprisonment followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range (a "split-sentence"). This option reduces the amount of imprisonment required for the "split-sentence" from four or five (at offense levels 11 and 12, respectively) months to one month.

Option Two also increases sentencing alternatives in Zone C of the Sentencing Table by combining Zones B and C, thereby providing offenders at offense levels 11 and 12 with additional sentencing options similar to Option One. This option differs from Option One in that it limits the use of home detention for defendants in which the minimum of the guideline range is at least eight months (i.e., current Zone C). In such cases, the defendant must satisfy the minimum of the applicable guideline range by some form of confinement, but, unlike Option I, the defendant must serve at least half of that minimum in a form of confinement other than home detention. This ensures that these more serious offenders will serve at least eight or ten (at offense levels 11 and 12, respectively) months in some form of confinement, of which at least four or five (at offense levels 11 and 12, respectively) months shall be served in some form of confinement other than home detention.

Option Three also increases sentencing alternatives in Zone C of the Sentencing Table. However, it differs from Option One and Option Two in that it limits the expansion of the sentencing options available in Zone B to offenders in criminal history Category I of Zone C of the Sentencing Table. This option provides these less serious offenders with the same sentencing options available to offenders in Zone B. Under this option, offenders in Categories II through VI will not benefit from additional sentencing alternatives.

Proposed Amendment

Option 1

The Sentencing Table in Chapter Five, Part A, is amended by striking the lines between Zones B and C; by redesignating Zones B and C as Zone B; and by redesignating Zone D as Zone C.

The Commentary to § 5B1.1 is amended in subdivision (a) of Note 1 by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)".

The Commentary to § 5B1.1 is amended in subdivision (b) of Note 1 by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)"; and by striking "where" and inserting "in a case in which".

The Commentary to § 5B1.1 is amended in Note 1 by redesignating subdivisions (a) and (b) as subdivisions (A) and (B), respectively.

The Commentary to § 5B1.1 is amended in Note 2 by striking "Where" and inserting "In a case in which"; by striking "or D"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)".

Section 5C1.1(c)(1) is amended by striking "or".

Section 5C1.1(f) is amended by striking "Zone D" and inserting "Zone C".

Section 5C1.1 is amended by striking subsection (d) in its entirety; and by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

The Commentary to § 5C1.1 captioned "Application Notes" is amended in the first paragraph of Note 2 by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)"; and by striking "Where" and inserting "In a case in which".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 3 by striking "where" each place it appears and inserting "in a case in which"; in the first paragraph by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)"; in paragraph (C) by striking "must" and inserting "shall"; and in the last paragraph by inserting "of " after "two months".

The Commentary to § 5C1.1 captioned "Application Notes" is amended by striking Note 4 in its entirety; and by redesignating Notes 5 through 8 as Notes 4 through 7, respectively.

The Commentary to § 5C1.1 captioned "Application Notes" is amended in redesignated Note 4 (formerly Note 5) by striking "(e)" and inserting "(d)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in redesignated Note 6 (formerly Note 7) by striking "subsections (c) and (d)" and inserting "subsection (d)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in redesignated Note 7 (formerly Note 8) by striking "(f)" and inserting "(e)"; by striking "where" and inserting "in a case in which"; by striking "Zone D" and inserting "Zone C"; by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more)"; and by striking "subsection (e)" and inserting "subsection (d)".

Option Two

The Sentencing Table in Chapter Five, Part A, is amendment by striking the lines between Zones B and C; by redesignating Zones B and C as Zone B; and by redesignating Zone D as Zone C.

The Commentary to § 5B1.1 captioned "Application Notes" is amended in subdivision (a) of Note 1 by striking "Where" and inserting "In a case in which"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in subdivision (b) of Note 1 by striking "Where" and inserting "In a case in which"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)"; by striking "In such cases" and inserting "(i) Except as provided in subdivision (ii)"; by striking "where" and inserting "in a case in which"; and by inserting after "at least two months." the following:

"The court, of course, may impose a sentence at a point within that 2–7 month range that is higher than the minimum sentence. For example, a sentence of probation with a condition requiring six months of community confinement or home detention (under subsection (c)(3)) would be sufficient to satisfy the requirements of this subdivision.

(ii) The court may impose probation in a case in which the minimum term of the applicable guideline range is at least eight months, but only if the court imposes a condition (I) that the defendant shall serve a period of confinement sufficient to satisfy the minimum term of imprisonment specified in the applicable guideline range; except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the offense level is 11 and the criminal history category is I, the guideline range from the Sentencing Table is 8–14 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least eight months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement or intermittent confinement (or a combination of community confinement and intermittent confinement totaling at least four months)). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court may impose a sentence of probation with any combination of community confinement, intermittent confinement, or home detention, as long as at least four of those months are served in a form of confinement other than home detention.".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 1 by redesignating subdivisions (a) and (b) as subdivisions (A) and (B), respectively.

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 2 by striking "Where" and inserting "In a case in which"; by striking "or D"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)".

Section 5C1.1(c)(1) is amended by striking "or".

Section § 5C1.1(c) is amended by striking subsection (2) in its entirety and by inserting the following:

"(2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (d), except that (A) at least one month shall be satisfied by actual imprisonment; and (B) the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention, except that if the minimum term of the applicable guideline range is at least eight months, at least one-half of that minimum term shall be served in a form of confinement other than home detention; or".

Section § 5C1.1(c)(3) is amended by striking "(e)" and inserting "(d) sufficient to satisfy the minimum term of imprisonment specified in the guideline range, except that if the minimum term of the applicable guideline range is at least eight months, at least one-half of that minimum term shall be served in a form of confinement other than home detention.".

Section § 5C1.1 is amended by striking subsection (d) in its entirety; and by redesignating subsections (e) and (f) and subsections (d) and (e), respectively.

Redesignated section § 5C1.1(e) (formerly § 5C1.1(f)) is amended by striking "Zone D" and inserting "Zone C".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 2 by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)"; and by striking "Where" and inserting "In a case in which".

The Commentary to § 5C1.1 captioned "Application Notes" is amended by striking Note 3 in its entirety; and by inserting the following:

"3. Subsection (c) provides that in a case in which the applicable guideline range is in Zone B of the Sentencing Table , the court has three options:

(A) It may impose a sentence of imprisonment.

(B) (i) Except as provided in subdivision (ii), the court may impose probation only if it imposes a condition or combination of conditions requiring a period of community confinement, home detention, or intermittent confinement sufficient to satisfy the minimum term of imprisonment specified in the guideline range. For example, in a case in which the offense level is 7 and the criminal history category is II, the guideline range from the Sentencing Table is 2–8 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least two months of community confinement, home detention, or intermittent confinement, or a combination of community confinement, home detention, and intermittent confinement totaling at least two months. The court, of course, may impose a sentence at a point within that 2–7 month range that is higher than the minimum sentence. For example, a sentence of probation with a condition

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requiring six months of community confinement or home detention (under subsection (c)(3)) would be sufficient to satisfy the requirements of this subdivision.

(ii) The court may impose probation in a case in which the minimum term of the applicable guideline range is at least eight months, but only if the court imposes a condition (I) that the defendant shall serve a period of confinement sufficient to satisfy the minimum term of imprisonment specified in the applicable guideline range; except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the offense level is 11 and the criminal history category is I, the guideline range from the Sentencing Table is 8–14 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least eight months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement or intermittent confinement (or a combination of community confinement and intermittent confinement totaling at least four months)). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court may impose a sentence of probation with any combination of community confinement, intermittent confinement, or home detention, as long as at least four of those months are served in a form of confinement other than home detention.

(C) (i) Except as provided in subdivision (ii), it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least one month shall be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, in a case in which the guideline range is 4–10 months, a sentence of imprisonment of one month followed by a term of supervised release with a condition requiring three months of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range. The court, of course, may impose a sentence at a point within that 4–10 month range that is higher than the minimum sentence. For example, a sentence of two months of imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (under subsection (c)(2)) would be within the guideline range.

(ii) If the minimum term of the applicable guideline range is at least eight months, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, (I) at least one month shall be satisfied by actual imprisonment, (II) the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention, except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the applicable guideline range is 8–14 months, the court must impose a sentence of actual imprisonment of one month followed by a term of supervised release requiring a condition or conditions of at least seven months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court must impose a sentence of actual imprisonment of at least one month followed by a term of supervised release requiring a condition or conditions of at least thirteen months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement).".

The Commentary to § 5C1.1 captioned "Application Notes" is amended by striking Note 4 in its entirety.

The Commentary to § 5C1.1 captioned "Application Notes" is amended by redesignating Notes 5 through 8 as Notes 4 through 7, respectively.

The Commentary to § 5C1.1 captioned "Application Notes" is amended in redesignated Note 4 (formerly Note 5) by striking "(e)" and inserting "(d)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in redesignated Note 6 (formerly Note 7) by striking "subsections (c) and (d)" and inserting "subsection (d)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in redesignated Note 7 (formerly Note 8) by striking "(f)" and inserting "(e)"; by striking "where" and inserting "in a case in which"; by striking "Zone D" and inserting "Zone C"; and by striking "subsection (e)" and inserting "subsection (d)".

Option Three

Section § 5B1.1(a)(2) is amended by inserting ", or in criminal history Category I of Zone C," after "Zone B".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in subdivision (a) of Note 1 by striking "Where" and inserting "In a case in which"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in subdivision (b) of Note 1 by striking "Where" and inserting "In a case in which"; by inserting ", or in criminal history Category I of Zone C," after "Zone B"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)"; and by striking "where" and inserting "in a case in which".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 1 by redesignating paragraphs (a) and (b) as paragraphs (A) and (B), respectively.

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 2 by striking "Where" and by inserting "In a case in which"; by striking "Zone C or" and inserting "criminal history Category II, III, IV, V, or VI of Zone C, or any criminal history category of Zone"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)".

Section § 5C1.1(c) is amended by inserting ", or in criminal history Category I of Zone C," after "Zone B"; and in subdivision (c)(1) by striking "or".

Section § 5C1.1(d) is amended by inserting "criminal history Category II, III, IV, V, or VI of" after "is in".

The Commentary to § 5C1.1 captioned "Application Notes" is amended by striking "where" each place it appears and inserting "in a case in which".

The Commentary to § 5C1.1 is amended in Note 2 by striking "Where" and inserting "In a case in which"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)".

The Commentary to § 5C1.1 is amended in Note 3 by inserting ", or in criminal history Category I of Zone C," after "Zone B"; and by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)".

The Commentary to § 5C1.1 is amended in Note 4 by inserting "criminal history Category II, III, IV, V, or VI of" after "is in"; and by striking "(i.e., the minimum term specified in the applicable guideline range is eight, nine, or ten months)".

The Commentary to § 5C1.1 is amended in Note 8 by striking "(i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more)".

4. Discharged Term of Imprisonment

Issue for Comment: The Commission requests comment regarding whether subsections (b) and (c) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) should be expanded to apply to discharged terms of imprisonment. If so, how should this be accomplished? Alternatively, should the Commission provide a structured downward departure in cases in which the discharged term of imprisonment resulted from offense conduct that has been taken into account in the determination of the offense level for the instant offense of conviction? If so, how should such a departure be structured? For example, should the extent of the departure be linked to the length of the discharged term of imprisonment?

The Commission further requests comment regarding any other issue that should be resolved pertaining to the overall application of § 5G1.3

5. Acceptance of Responsibility

Synopsis of Amendment: This proposed amendment corrects a technical error made in the Commission's notice of proposed amendments to sentencing guidelines, policy statements, and commentary in the **Federal Register**, November 27, 2001(66 FR. 59330–59340). Specifically, proposed amendment 5, regarding § 3E1.1 (Acceptance of Responsibility), inadvertently deletes "timely" from subsection (b)(2) of § 3E1.1. The following proposed amendment corrects that inadvertent deletion.

Section 3E1.1(b) is amended by striking "has assisted authorities" and all that follows through "notifying" and inserting "timely notified".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 1 by inserting "Appropriate Considerations in Determining Applicability of Acceptance of Responsibility."—before "In determining".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 2 by inserting "Convictions by Trial.—" before "This adjustment".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 3 by inserting "Application of Subsection (a).—"before "Entry of a plea".

The Commentary to § 3E1.1 captioned "Application Notes" is amended by striking the text of Note 4 in its entirety and inserting the following:

"Inapplicability of Adjustment.—A defendant who (A) receives an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice); or (B) commits another offense while pending trial or sentencing on the instant offense, ordinarily is not entitled to a reduction under this guideline. [There may, however, be extraordinary cases in which an adjustment under this guideline is warranted even though the defendant received an enhancement under § 3C1.1, or committed another such offense, or both.]".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 5 by inserting "Deference on Review.—" before "The sentencing judge".

The Commentary to § 3E1.1 captioned "Application Notes" is amended by striking the first sentence of Note 6 and inserting "Application of Subsection (b).—"; and by striking "has assisted authorities in the investigation or prosecution of his own misconduct by taking one or both of the steps set forth in subsection (b)" and inserting "timely notified authorities of the defendant's intention to enter a guilty plea".

The Commentary to § 3E1.1 captioned "Background" is amended in the second sentence of the first paragraph by striking "by taking, in a timely fashion, one or more of the actions listed above (or some equivalent action)"; and in the second paragraph by striking "has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the steps specified in subsection (b)" and inserting "timely notified authorities of the defendant's intention to enter a guilty plea".

[FR Doc. 02–1264 Filed 1–16–02; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Sale of Business and Disaster Assistance Loans

AGENCY: Small Business Administration.

ACTION: Notice of sale of business and disaster assistance loans—Loan Sale #5.

SUMMARY: This notice announces the Small Business Administration's ("SBA") intention to sell approximately 30,000 secured and unsecured business and disaster assistance loans, (collectively referred to as the "Loans"). The total unpaid principal balance of the Loans is approximately $620 million. This is the fifth sale of loans originated under the SBA's Business Loan Programs and the fourth sale of Disaster Assistance Loans (both business and consumer loans). SBA previously guaranteed some of the Loans under various sections of the Small Business Investment Act, as amended, 15 U.S.C. 695 et seq. Any SBA guarantees that might have existed at one time have been paid and no SBA guaranty is available to the successful bidders in this sale. The majority of the loans were originated by and are serviced by SBA. The collateral for the secured Loans includes commercial and residential real estate and other business and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

DATES: The Bidder Information Package became available to qualified bidders on October 25, 2001. The Bid Date is scheduled for January 15, 2002, and closings are scheduled to occur between January 22, 2002 and February 15, 2002. These dates are subject to change at SBA's discretion.

ADDRESSES: Bidder Information Packages will be available from the SBA's Transaction Financial Advisor, KPMG Consulting, Inc. ("KPMG") and its subcontractor, Hanover Capital Partners, Ltd. ("Hanover"). Bidder Information Packages will only be made available to parties that have submitted a completed Confidentiality Agreement and Bidder Qualification Statement and have demonstrated that they are qualified bidders. The Confidentiality Agreement and Bidders Qualification Statement are available on the SBA Web site at *http://www.sba.gov/assets/current_sale/sale5.html* or by calling the SBA Loan Sale #5 Center toll-free at Hanover at (888) 737–3840. The completed Confidentiality and Bidder Qualification Statement can be sent to the attention of Kathryn Merk, SBA Loan Sale #5, by either fax, at (732) 572–5959 or by mail, to Hanover Capital Partners, Ltd., 100 Metroplex Drive, Suite 301, Edison, NJ 08817.

The Due Diligence Facility opened October 29, 2001 and will close January 14, 2002. These dates are subject to change at SBA's discretion.

FOR FURTHER INFORMATION CONTACT: Margaret L. Hawley, Program Manager,

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Small Business Administration, 409 Third Street, SW., Washington, DC 20416: 202–401–8234. This is not a toll free number. Hearing or speech-impaired individuals may access this number via TDD/TTY by calling the Federal Information Relay Service's toll-free number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 30,000 secured and unsecured business and disaster assistance loans, collectively referred to as the "Loans". The Loans include performing, sub-performing and non-performing loans. The Loans will be offered to qualified bidders in pools that will be based on such factors as performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools and pool descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools, subject to conditions set forth in the Bidder Information Package. SBA shall use its sole discretion to evaluate and determine winning bids. No loans will be sold individually. The Loans to be sold are located throughout the United States as well as Puerto Rico, U.S. Virgin Islands, Guam and other Pacific Islands.

The Bidding Process: To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation. SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include bid forms, a non-negotiable loan sale agreement prepared by SBA ("Loan Sale Agreement"), specific bid instructions, as well as pertinent loan information such as total outstanding unpaid principal balance, interest rate, maturity term, aggregate payment history and collateral information including geographic location and type. The Bidder Information Package also includes CD–ROMs that contain information pertaining to the Loans.

The Bidder Information Package became available approximately 10 weeks prior to the Bid Date. It contains procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed copy of the Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, a Bidder Information Package Supplement will be mailed to all recipients of the original Bidder Information Package. It will contain the final list of loans included in Sale #5 and any final instructions for the sale.

Deposit and Liquidated Damages: Each Bidder must include with its bid a deposit equal to 10 percent of the amount of the bidder's highest bid. If a successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying SBA any remaining sums due pursuant to the Loan Sale Agreement and closing within the time period specified in the Loan Sale Agreement, SBA shall retain the deposit as liquidated damages.

Due Diligence Facility: The bidder due diligence period began October 29, 2001. During the bidder due diligence period, qualified bidders may, for a non-refundable assessment of $500 US dollars, review all asset file documents that have been imaged onto a database by visiting the due diligence facility located at 1050 Connecticut Avenue, NW., 8th Floor, Washington, DC 20036 and/or via remote access. Bidders that have paid the due diligence assessment of $500 US dollars may also request CD–ROMs that contain substantial due diligence materials such as loan payment history and updated third party reports.

Specific instructions for ordering information in electronic format or making an appointment to visit the due diligence facility are included in the SBA Loan Sale5 Web site (*http://www.sba.gov/assets/current_sale/sale5.html*) and the Bidder Information Package.

SBA Reservation of Rights: SBA reserves the right to remove loans from the sale at any time prior to the Closing Date, and add loans prior to the Cut-Off Date for any reason and without prejudice to its right to include any loans in a later sale. After the Cut-Off Date, SBA will retain any loan that meets the following criteria: (1) The obligor makes a payment that fully satisfies his/her obligation; (2) Seller cannot provide any Evidence of Indebtedness; (3) Seller does not own, control or have the right to transfer the Loan; (4) A pending or threatened suit, action, arbitration, investigation or proceeding which could affect the Seller in an unacceptable manner; and (5) Loan is inextricably related to another asset, claim, right of action that is retained by the Seller.

SBA also reserves the right to terminate this sale at any time prior to the Bid Date.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in its sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a "best and final" round of bidding wherein bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

SBA reserves the right to sell less than 100 percent of the Loans offered for sale and "re-offer" the remaining loans subsequent to the initial bid.

Ineligible Bidders: The following individuals and entities (either alone or in combination with others) are ineligible to bid on the Loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by a SBA employee or by a member of such employee's household.

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government.

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(4) Any individual that was an employee, partner, director, agent or principal of any entity, or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure: SBA plans to use a competitive online closed bid auction process as the method to sell the majority of the Loans. SBA also plans to offer eight designated pools of loans in an open E-cry on line auction format. SBA believes an auction sale optimizes the return on the sale of Loans and attracts the largest field of interested parties. A competitive bid auction also provides the quickest and most efficient vehicle for the SBA to dispose of the Loans.

Post Sale Servicing Requirements: The Loans will be sold servicing released. Purchasers of the Loans and their successors and assigns will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement for the life of the Loans. In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy in order to service the Loans.

Scope of Notice: This notice applies to Loan Sale Number #5 and does not establish agency procedures and policies for other loan sales. If there are any conflicts between this Notice and the Bidder Information Package, the Bidder Information Package shall prevail.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 02–1265 Filed 1–16–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Maximum Dollar Limit in the Fee Agreement Process

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Social Security Administration (SSA) is announcing that the maximum dollar limit for fee agreements approved under sections 206(a)(2)(A) and 1631(d)(2)(A) of the Social Security Act will be increased to $5,300 effective February 1, 2002. On or after February 1, 2002, decision-makers may approve fee agreements up to the new limit provided that the fee agreement otherwise meets the statutory conditions and is not excepted from the fee agreement process.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Office of the General Counsel, phone (410) 965–3137, e-mail: john.watson@ssa.gov.

SUPPLEMENTARY INFORMATION: Section 5106 of Public Law No. 101–508, the Omnibus Budget Reconciliation Act of 1990, amended sections 206(a)(2)(A) and 1631(d)(2)(A) of the Social Security Act to provide for a streamlined process for obtaining approval of the fee a representative wishes to charge for representing a claimant before the Social Security Administration. To use that process, the representative and the claimant must agree, in writing, to a fee that does not exceed the lesser of 25% of past due benefits or a prescribed dollar amount. Public Law 101–508 established the initial amount at $4,000 and gave the Commissioner of Social Security the authority to increase it, from time to time, provided that the cumulative rate of increase does not at any time exceed the rate of increase in primary insurance amounts since January 1, 1991. The law further provided that notice of any increased amount shall be published in the **Federal Register**.

By this notice, we announce that the maximum dollar amount for fee agreements will increase to $5,300; fee agreements with the increased amount may be approved by a decision-maker on or after February 1, 2002. The limit of $5,300 was determined by applying the guideline described above: a hypothetical primary insurance amount of $4,000 on January 1, 1991 would increase by calendar year 2002 to $5,350. We rounded this amount down to the nearest $100 to simplify the figure for use by claimants, representatives, and SSA.

Dated: January 8, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 02–1223 Filed 1–16–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3876]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: State Department.

ACTION: Notice.

SUMMARY: At its Twentieth Meeting in Hobart, Tasmania, October 22 to November 2, 2001, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twentieth meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR web site at *www.ccamlr.org*. This notice, therefore, together with the U.S. regulations referenced under the Supplementary Information provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments within 30 days of this announcement.

FOR FURTHER INFORMATION CONTACT: Roberta L. Chew, Office of Oceans Affairs (OES/OA), Room 5805. Department of State, Washington, DC 20520; tel: 202–647–3947; fax: 202–647–9099; *e-mail: chewrl@state.gov.*

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G— Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Convention area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and recordkeeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Conservation Measures Remaining in Force: The Commission agreed that the Conservation Measures 2/III, 3/IV, 4/V, 5/V, 6/V, 7/V, 18/XIX, 19/IX, 29/XIX, 31/X, 32/XIX, 40/X, 51/XIX, 61/XII, 62/XIX, 63/XV, 64/XIX, 65/XII, 72/XVII, 73/XVII, 82/XIX, 95/XIV, 106/XIX, 121/XIX, 122/XIX, 129/XVI, 146/XVII, 147/XIX, 160/XVII, 171/XVIII, 173/XVIII, and 180/XVIII, and Resolutions 7/IX, 10/XII, 13/XIX, 14/XIX, 15/XIX, and 16/XIX remain in force. For the text of CCAMLR Conservation Measures remaining in force, see 61 FR 66723, dated December 18, 1996; 63 FR 5587, dated February 3, 1998; 63 FR 300 dated December 22, 1998; 64 FR 71165, dated December 20, 1999; and 66 FR 7527, dated January 23, 2001.

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New and Revised Conservation Measures: At its Twentieth Meeting in Hobart, Tasmania, October 22 to November 2, 2001, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) revised the following Conservation Measures 45/XIV, 118/XVII, 119/XVII, 148/XVII and 170/XIX. In addition, 23 new measures and one new resolution were adopted. The conservation measures and resolution adopted at the Twentieth Meeting follow:

Conservation Measure 45/XX

Precautionary Catch Limitation on Euphausia superba in Statistical Division 58.4.2

Catch Limit 1.

The total catch of Euphausia superba in Statistical Division 58.4.2 shall be limited to 450,000 tonnes in any fishing season. This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season 2.

A fishing season begins on 1 December and finishes on 30 November of the following year.

Data 3.

For the purposes of implementing this conservation measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 118/XX

Scheme To Promote Compliance by Non-Contracting Party Vessels With CCAMLR **Conservation Measures**

The Commission,

Requesting non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined, hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or has been denied landing or transhipment in accordance with Conservation Measure 147/XIX is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

2. Information regarding such sightings or denial of landings or transhipments shall be transmitted immediately to the Commission in accordance with Article XXII of the Convention. The Secretariat shall transmit this information to all Contracting Parties, within one business day of receiving this information, and to the Flag State of the sighted vessel as soon as possible.

3. The Contracting Party which sights the non-Contracting Party vessel or denies it landing or transhipment under paragraph 1 shall attempt to inform the vessel it is presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties and to the Secretariat, and to the Flag State of the vessel.

4. When the non-Contracting Party vessel referred to in paragraph 1 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials in accordance with Conservation Measure 147/XIX and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, logbooks, fishing gear, catch on board and any other matter, which may include information from a VMS, relating to the vessel's activities in the Convention Area.

5. Landing and transhipments of all fish from a non-Contracting Party vessel which has been inspected pursuant to paragraph 4, shall be prohibited in all Contracting Party ports if such inspection reveals that the vessel has on board species subject to CCAMLR conservation measures, unless the vessel establishes that the fish were caught outside the Convention Area, or in compliance with all relevant CCAMLR conservation measures and requirements under the Convention.

6. Contracting Parties shall ensure that their vessels do not receive transhipments of fish from a non-Contracting Party vessel which has been sighted and reported as having engaged in fishing activities in the Convention Area and therefore presumed as having undermined the effectiveness of CCAMLR conservation measures.

7. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and on any subsequent action, shall be transmitted immediately to the Commission. The Secretariat shall transmit this information immediately to all Contracting Parties, and to the relevant Flag State(s).

8. At each annual meeting the Commission will identify those non-Contracting Parties whose vessels have been sighted engaging in fishing activities in the Convention Area or have been denied landing or transhipment under paragraph 1, or who are otherwise engaged in activities that threaten to undermine the effectiveness of CCAMLR conservation measures.

9. The Secretariat, in consultation with the Chair of the Commission shall request those non-Contracting Parties identified pursuant to paragraph 8, to immediately take steps to desist from activities undermining the effectiveness of CCAMLR conservation measures, and advise the Secretariat of the actions taken in this regard.

10. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 8, to cooperate fully with the Commission in order to avoid undermining the effectiveness of conservation measures adopted by the Commission.

11. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by those non-Contracting Parties identified pursuant to paragraph 8 to which requests have been made pursuant to paragraphs 9 and 10.

12. The Commission shall annually review information accrued under paragraphs 8 to 11 to decide the appropriate measures to be taken so as to address these issues with those identified non-Contracting Party States. Such measures could include, but are not limited to, those measures set out in paragraph 68[1] of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

Conservation Measure 119/XX[1], [2]

Licensing and Inspection Obligations of Contracting Parties With Regard to Their Flag Vessels Operating in the Convention Area

1. Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a licence[3] that the Contracting Party has issued setting forth the specific areas, species and time periods for which such fishing is authorised and all other specific conditions to which the fishing is subject to give effect to CCAMLR conservation measures and requirements under the Convention.

2. A Contracting Party may only issue such a licence to fish in the Convention Area to vessels flying its flag, if it is satisfied of its ability to exercise its responsibilities under the Convention and its conservation measures, by requiring from each vessel, *inter alia*, the following:

(i) Timely notification by the vessel to its Flag State of exit from and entry into any port;

(ii) Notification by the vessel to its Flag State of entry into the Convention Area and movement between areas, subareas/divisions;

(iii) Reporting by the vessel of catch data in accordance with CCAMLR requirements; and

(iv) Operation of a VMS system on board the vessel in accordance with Conservation Measure 148/XX.

3. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

- Name of the vessel;
- Time periods authorised for fishing (start and end dates);
- Area(s) of fishing;
- Species targeted; and
- Gear used.

4. The licence or an authorised copy of the licence must be carried by the fishing vessel and must be available for inspection at any time by a designated CCAMLR inspector in the Convention Area.

5. Each Contracting Party shall verify, through inspections of all of its fishing vessels at the Party's departure and arrival ports, and where appropriate, in its ExclusiveEconomic Zone, their compliance with the conditions of the licence as described in paragraph 1 and with the CCAMLR conservation measures. In the event that there is evidence that the vessel has not fished in accordance with the conditions of its licence, the Contracting Party shall investigate the infringement and, if necessary, apply appropriate sanctions in accordance with its national legislation.

6. Each Contracting Party shall include in its annual report pursuant to paragraph 12 of the CCAMLR System of Inspection, steps it has taken to implement and apply this conservation measure; and may include additional measures it may have taken in relation to its flag vessels to promote the effectiveness of CCAMLR conservation measures.

[1] '***multilateral trade-related measures envisaged in regional fisheries management organizations may be used to support cooperative efforts to ensure that trade in specific fish and fish products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of conservation and management measures which are consistent with the 1982 UN Convention.'

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjcent to the Prince Edward Islands.

[3] Includes permit.

Conservation Measure 148/XX

Automated Satellite-Linked Vessel Monitoring Systems (VMS)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall, no later than March 1, 1999, establish an automated VesselMonitoring System (VMS) to monitor the position of its fishing vessels, which are licensed [1] in accordance with Conservation Measure 119/XX, to harvest marine living resources in the Convention Area, and for which catch limits, fishing seasons or area restrictions have been set by conservation measures adopted by the Commission.

2. Any Contracting Party unable to establish VMS in accordance with paragraph 1 shall inform the CCAMLR Secretariat within 90 days following the notification of this conservation measure, and communicate its intended timetable for implementation of VMS. However, the Contracting Party shall establish VMS at the earliest possible date, and in any event, no later than December 31, 2000.

3. The implementation of VMS on vessels while participating only in a krill fishery is not currently required.

4. Each Contracting Party, within two working days of receiving the required VMS information, shall provide to the Secretariat dates and the statistical area, subarea or division for each of the following movements of its flag fishing vessels:

(i) Entering and leaving the Convention Area; and

(ii) Crossing boundaries between CCAMLR statistical areas, subareas and divisions.

5. For the purpose of this measure, VMS means a system where, *inter alia:*

(i) Through the installation of satellite-tracking devices on board its fishing vessels, the Flag State receives automatic transmission of certain information. This information includes the fishing vessel identification, location, date and time, and is collected by the Flag State at least every four hours to enable it to monitor effectively its flag vessels;

(ii) Performance standards provide, as a minimum, that the VMS:

(a) Is tamper proof;

(b) Is fully automatic and operational at all times regardless of environmental conditions;

(c) Provides real time data;

(d) Provides the geographical position of the vessel, with a position error of less than 500 m with a confidence interval of 99%, the format being determined by the Flag State; and

(e) In addition to regular messages, provides special messages when the vessel enters or leaves the Convention Area and when it moves between oneCCAMLR area, subarea or division within the Convention Area.

6. In the event of technical failure or other non-function of the VMS, the master or the owner of the fishing vessel, as a minimum:

(i) Shall communicate at least once every 24 hours, starting from the time that this event was detected, the data referred in paragraph 4(i) by telex, by fax, by telephone message or by radio to the Flag State; and

(ii) Shall take immediate steps to have the device repaired or replaced as soon as possible, and, in any event, within two months. If during that period the vessel returns to port it shall not be allowed to commence a further fishing trip without having the defective device repaired or replaced.

7. In the event that the VMS ceases to operate, the Contracting Party as soon as possible shall advise the Executive Secretary of the name of the vessel, the date, time and the location of the vessel when the VMS failed. The Party shall also inform the ExecutiveSecretary when the VMS becomes operational again. The Executive Secretary shall make such information available to Contracting Parties upon request.

8. Contracting Parties shall report to the Secretariat before the start of the annual meeting of the Commission in 1999, on the VMS which has been introduced in accordance with paragraphs 1 and 2, including its technical details, and each year thereafter, on:

(i) Any change in the VMS; and

(ii) In accordance with paragraph XI of the CCAMLR System of Inspection, all cases where they have determined, with the assistance of the VMS that vessels of their flag had fished in the Convention Area in possible contravention of CCAMLR conservation measures.

Conservation Measure 170/XX

Catch Documentation Scheme for Dissostichus spp.

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

[1] Includes permit.

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Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus spp.*, hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or tranships *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. EachContracting Party shall provide *Dissostichus* catch document forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) The name, address, telephone and fax numbers of the issuing authority;

(ii) The name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) The reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) The weight of each *Dissostichus* species landed or transhipped by product type, and

(a) By CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) By FAO statistical area, subarea or division if caught outside the ConventionArea;

(v) The dates within which the catch was taken;

(vi) The date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) The name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 170/A to this measure. The standard catch document is available at the CCAMLR website, *www.ccamlr.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone DeanSwanson: 301–713–2276).

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(i) Includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 170/A to this measure; and

(ii) Includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch documents by Flag States by using, *inter alia*, VMS, in respect of catches [1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

Annex 170/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) A four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) A three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) The master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) If a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) If a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division; and

(iv) The master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches [1] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraphs 5 and 6 of Conservation Measure 148/XX), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) In the case of a transhipment, the master shall confirm the transhipment by obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is transferred;

(ii) In the case of a landing, the master or authorised representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(iii) In the case of a landing, the master or authorised representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone; and

(iv) In the event that the catch is divided upon landing, the master or authorised representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorised representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorised representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) The master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(ii) The master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

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individual that receives the catch at the port of landing or free trade zone; and

(iii) In the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorised representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) The exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) The exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) The exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) The re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) The re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s); and

(iv) The responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

The standard form for re-export is available at the CCAMLR website, *www.ccamlr.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone Dean Swanson: 301–713–2276).

Annex 170/B

The Use of the CDS Fund

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat, although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for routine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemised statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to make recommendations to the Commission on whether to fund special projects or special needs. The Review Panel will operate by email intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

Conservation Measure 216/XX

Experimental Line-Weighting Trials

In respect of fisheries in Statistical Subareas 48.6 south of 60°S, 88.1 and 88.2, paragraph 3 of Conservation Measure 29/XIX shall not apply only where a vessel can demonstrate prior to licensing for this fishery its ability to fully comply with either of the following experimental protocols.

Protocol A:

A1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines with a minimum of four Time Depth Recorders (TDR) on each line;

(ii) Randomise TDR placement on the longline within and between sets;

(iii) Calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) The sink rate shall be measured as an average of the time taken to sink from the surface (0 m) to 15 m; and

(b) This sink rate shall be at a minimum rate of 0.3 m/s;

(iv) If the minimum sink rate is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(v) All equipment and fishing gear used in the tests is to be the same as that to be used in the Convention Area.

A2. During fishing, for a vessel to maintain the exemption to night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to place a TDR on every longline set during the observer's shift;

(ii) Every seven days place all available TDRs on a single longline to determine any sink rate variation along the line;

(iii) Randomise TDR placement on the longline within and between sets;

(iv) Calculate an individual rate for each TDR when returned to the vessel; and

(v) Measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) Ensure the average sink rate is at a minimum of 0.3 m/s;

(ii) Report daily to the fishery manager; and

(iii) Ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the conclusion of the season.

Protocol B:

B1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines of the maximum length to be used in the Convention Area with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of the longline;

(ii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iii) Calculate an individual sink rate for each bottle test, where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 15 m;

(iv) This sink rate shall be at a minimum rate of 0.3 m/s;

(v) If the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(vi) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to maintain the exemption to paragraph 3 of ConservationMeasure 29/XIX, regular line sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(ii) Every seven days place at least four bottle tests on a single longline to determine any sink rate variation along the line;

(iii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iv) Calculate an individual sink rate for each bottle test; and

(v) Measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 15 m.

B3. The vessel shall whilst operating under this exemption:

(i) Ensure that all longlines are weighted to achieve a minimum line sink rate of 0.3 m/s at all times;

(ii) Report daily to its national agency on the achievement of this target; and

(iii) Ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the conclusion of the season.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 15 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle [1] (buoyancy about 0.7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point(terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed at night. A piece of waterproof paper with a unique identifying number large enough to be read from a few metres away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline [2], midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t_2 in seconds[3]. The result of the test is calculated as follows:

Line sink rate = $15 / (t_2 - t_1)$

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

Conservation Measure 217/XX

Fishing Seasons

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

The fishing season for all Convention Area species is 1 December to 30 November of the following year, unless otherwise set in specific conservation measures.

[1] A plastic water bottle that has a hard plastic screw-on 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[2] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[3] Binoculars will make this process easier to view, especially in foul weather.

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Conservation Measure 218/XX [1]

Prohibition of Directed Fishing for Dissostichus spp. Except in Accordance With Specific Conservation Measures in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subareas 48.5, 88.2 north of 65°S and 88.3, and Divisions 58.4.1 and 58.5.1 is prohibited from 1 December 2001 to 30 November 2002.

Conservation Measure 219/XX

Limits on the Fishery for Champsocephalus gunnari in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period March 1 to May 31, 2002 (spawning period).

Catch Limit

3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2001/02 season shall be limited to 5 557 tonnes. The total catch of *Champsocephalus gunnari* taken in the period March 1 to May 31, 2002. shall be limited to 1 389 tonnes.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days[2].

The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 95/XIV. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes, then the fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 95/XIV exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of the fishery.

8. When any vessel has caught a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2001/02 season.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

13. Each vessel operating in this fishery during the period March 1 to May 31, 2002 shall conduct twenty (20) research trawls in the manner described in Annex 219/A.

Annex 219/A

Research Trawls During Spawning Season

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between March 1 and May 31, 2002 shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area: Four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari*.

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

[1] Except for waters adjacent to the Kerguelen Islands.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

Conservation Measure 220/XX

Limits on the Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 2001/02 Season

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari*, the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) Starting at the point where the meridian of longitude 72°15′E intersects the Australia-France Maritime Delimitation AgreementBoundary then south along the meridian to its intersection with the parallel of latitude 53°25′S;

(ii) Then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) Then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′S and the meridian of longitude 76°E;

(iv) Then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) Then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30′E; and

(vi) Then southwesterly along the geodesic to the point of commencement.

3. Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari*.

Catch Limit

4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2001/02 season shall be limited to 885 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-catch

7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 224/XX.

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

11. For the purpose of Annex 220B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological

12. Fine-scale biological data, as required under Annex 220/B, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 220/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: Day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version.

These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

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(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 221/XX

Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2001/02 season shall be limited to 5 820 tonnes.

Season

3. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from 1 May to 31 August 2002, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from 1 December 2001 to 30 November 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch of crab shall be counted against the catch limit in the crab fishery in Subarea 48.3.

5. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2001/02 season shall not exceed 291 tonnes for skates and rays and 291 tonnes for *Macrourus* spp. For the purpose of these by-catch limits, skates and rays shall be counted as a single species.

6. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n-miles [1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.

11. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Conservation Measure 222/XX

Limits on the Fishery for Dissostichus eleginoides in Statistical Division 58.5.2 in the 2001/02 Season

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2001/02 season shall be limited to 2 815 tonnes.

Season

3. For the purpose of the trawl fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2001/02 season is defined as the period from 1 December 2001 to 30 November 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 224/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 222/A; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 222/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 222/A, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.

9. The total number and weight of *Dissostichus eleginoides* discarded; including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

10. Fine-scale biological data, as required under Annex 222/A, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 222/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 223/XX

Precautionary Catch Limit for Electrona carlsbergi in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. For the purposes of this conservation measure the fishing season for *Electrona carlsbergi* is defined as the period from December 1, 2001 to November 30, 2002.

2. The total catch of *Electrona carlsbergi* in the 2001/02 season shall be limited to 109,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 2001/02 season shall be limited to 14,500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tonnes in the 2001/02 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the meeting of the Working Group on Fish Stock Assessment in 2002.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tonnes, whichever is sooner.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tonnes, whichever is sooner.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch in any one haul of any species other than the target species—

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes,

then the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this conservation measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 2001/02 season;

(ii) The Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 122/XIX shall also apply in the 2001/02 season. For the purposes of Conservation Measure 122/XIX, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*; and

(iii) The Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure 121/XIX shall also apply in the 2001/02 season. For the purposes of Conservation Measure

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

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121/XIX, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 3(ii) of Conservation Measure 121/XIX a representative sample shall be a minimum of 500 fish.

Conservation Measure 224/XX

Limitation of By-Catch in Statistical Division 58.5.2 in the 2001/02 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2001/02 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2001/02 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, and the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2. For the purposes of this measure, '*Macrourus spp.*' and 'skates and rays' should each be counted as a single species.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus* or *Lepidonotothen squamifrons* is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days.[2] The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Conservation Measure 225/XX

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

Catch Limit

4. The total catch of crab in Statistical Subarea 48.3 in the 2001/02 season shall not exceed a precautionary catch limit of 1.600 tonnes.

5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa*, males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

6. Crab processed at sea shall be frozen as crab sections (size of crabs can be determined using crab sections).

Season

7. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

8. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 61/XII and 122/XIX the target species is crab and by-catch species are defined as any species other than crab.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 225/A and the experimental harvest regime described in Conservation Measure 226/XX. Data collected for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2002. Such data collected after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 225/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data:
Cruise Descriptions
  Cruise code, vessel code, permit number, year.
Pot Descriptions
  Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.
Effort Descriptions
  Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.
Catch Descriptions
  Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data Requirements
Dissostichus eleginoides	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other species	Estimated total weight.

Biological Data:
  For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.
Cruise Descriptions
  Cruise code, vessel code, permit number.
Sample Descriptions
  Date, position at start of the set, compass bearing of the set, line number.
Data
  Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 226/XX

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2001/02 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2001/02 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2001/02 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) Every vessel when undertaking an experimental harvesting regime shall expend its first 200,000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 226/A, the blocks are illustrated(Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) Vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) If a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime; and

(v) After completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to June 30, 2002 shall be submitted to CCAMLR by August 31, 2002.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 225/XX.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 225/XX.

6. Fishing vessels shall participate in the experimental harvest regime independently(i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

Conservation Measure 227/XX[1,2]

General Measures for Exploratory Fisheries for Dissostichus spp. in the Convention Area in the 2001/02 Season

The Commission,

Noting the need for the distribution of fishing effort and catch in fine-scale rectangles [3] in these exploratory fisheries,

hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tonnes and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

3. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul;

(ii) The precise geographic position of a haul in longline fisheries will be determined by the centre-point of the line or lines deployed;

(iii) Catch and effort information for each species by fine-scale rectangle

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the statistical subarea or division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

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shall be reported to the Executive Secretary every five days using the Five-Day Catch andEffort Reporting System set out in Conservation Measure 51/XIX; and

(iv) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any fine-scale rectangle is likely to reach 100 tonnes, and fishing in that fine-scale rectangle shall be closed when that limit is reached.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 228/XX.

5. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2001/02 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 227/A) and Research Plan (Annex 227/B) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2002. Such data taken after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

Annex 227/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 51/XIX) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 121/XIX and 122/XIX).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms; and

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak, and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type; and

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 227/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 andFigure 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, should be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger level is achieved first, or 10 tonnes of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) When either the catch limit or the end of the fishing season is reached, all fishing within the designated area should cease.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI,Annex 5, Appendix H, Attachment E, paragraph 4); and

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 227/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies(paragraphs 2(iv) to 2(vi) of Annex 227/A). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

TABLE 1.—THE COORDINATES OF THE SMALL-SCALE RESEARCH UNITS (SSRUs)

[Figure 1]

Subarea/division	SSRU	Grid coordinates			
		Top left latutude	Top left longitude	Bottom right latitude	Bottom right longitude
58.4.1	A	55 S	80 E	64 S	89 E
58.4.3	A	55 S	60 E	62 S	73.5 E
58.4.3	B	55 S	73.5 E	62 S	80 E
58.4.4	A	51 S	40 E	54 S	42 E
58.4.4	B	51 S	42 E	54 S	46 E
58.4.4	C	51 S	46 E	54 S	50 E
58.4.4	D	Areas outside SSRUs A, B, C			
58.7	A	45 S	37 E	48 S	40 E
58.6	A	45 S	40 E	48 S	44 E
58.6	B	45 S	44 E	48 S	48 E
58.6	C	45 S	48 E	48 S	51 E
58.6	D	45 S	51 E	48 S	54 E
88.1	A	60 S	150 E	65 S	170 W
88.1	B	65 S	150 E	72 S	180
88.1	C	65 S	180	72 S	170 W
88.1	D	72 S	160 E	84 S	180
88.1	E	72 S	180	84.5 S	170 W

Note.—Subarea 88.2 is divided into six 10° longitudinal sections and one 5° longitudinal section; designated A–G from west to east. Subarea 48.6 is divided into one section north of 60° (A) and five 10° longitudinal sections south of 60°; designated B–F from west to east.

Conservation Measure 228/XX[1]

Limitation of By-Catch in New and Exploratory Fisheries in the 2001/02 Season

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2001/02 season except where specific by-catch conservation measures apply.

2. The by-catch of any species other than Macrourus spp. shall be limited to the following:

- In each SSRU in Statistical Subarea 48.6, Statistical Division 58.4.2 and Statistical Subarea 88.1 south of 65°S, and in Statistical Division 58.4.3b, the by-catch of any species shall be limited to 50 tonnes; and
- In other SSRUs, the by-catch of any species shall be limited to 20 tonnes.

3. The by-catch of Macrourus spp. shall be limited to the following:

- In each SSRU in Statistical Subarea 48.6, Statistical Division 58.4.2 and Statistical Subarea 88.1 south of 65°S, and in Statistical Division 58.4.3b, the by-catch of Macrourus spp. shall be limited to 100 tonnes; and
- In other SSRUs, the by-catch of Macrourus spp. shall be limited to 40 tonnes.

4. For the purposes of this measure, "Macrourus spp." and "skates and rays" should each be counted as a single species.

5. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n mile[2] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days[3]. The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 229/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 48.6 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, New Zealand, South Africa and Uruguay. The fishery shall be conducted by Japanese, New Zealand, South African and Uruguayan-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

[2] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[3] The specified period is adopted in accordance with the reporting period specified in ConservationMeasure 51/XIX, pending the adoption of a more appropriate period by the Commission.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2001/02 season shall not exceed a precautionary catch limit of 455 tonnes north of 60°S and 455 tonnes south of 60°S.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2001/02 season is defined as the period from March 1 to August 31, 2002 north of 60°S and the period from February 15 to October 15 2002 south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply south of 60°S. South of 60°S, prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX and such data shall be reported to the Secretariat immediately.

6. South of 60°S, longlines may be set during daylight hours only if the vessels are demonstrating a consistent

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minimum line sink rate of 0.3 m/s. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with ConservationMeasure 29/XIX.

7. There shall be no offal discharge in this fishery.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 230/XX

Limits on the Demersal Trawl Fisheries in Statistical Division 58.4.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure for the exploratory fishery for *Dissostichus* spp. in accordance with Conservation Measure 65/XII and the new fishery for *Macrourus* spp. in accordance with Conservation Measure 31/X:

Access

1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Australia. Fishing for *Macrourus* spp. in Statistical Division 58.4.2 shall be limited to the new trawl fishery by Australia. The fisheries shall be conducted by Australian-flagged vessels using trawls only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2001/02 season shall not exceed a precautionary catch limit of 500 tonnes, of which no more than 200 tonnes shall be taken in any one of the three zones bounded by longitudes 40°E to 50°E, 50°E to 57°E and 57°E to 70°E.

3. The total catch of *Macrourus* spp. in Statistical Division 58.4.2 in the 2001/02 season shall not exceed a precautionary catch limit of 150 tonnes, of which no more than 100 tonnes shall be taken in any one of the three zones bounded by longitudes 40°E to 50°E, 50°E to 57°E and 57°E to 70°E.

Season

4. For the purpose of the exploratory trawl fishery for *Dissostichus* spp. and the new fishery for *Macrourus* spp. in Statistical Division 58.4.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit of either species is reached, whichever is sooner.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX. The provisions governing by-catch of *Macrourus* spp. contained in Conservation Measure 228/XX do not apply to this fishery.

Mitigation

6. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

7. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

8. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

9. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

10. The total number and weight of *Dissostichus* spp. discarded, including those with the "jellymeat" condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 121/XIX shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data collection and research plans described in Annex 230/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 230/A

Data Collection and Research Plans

1. Demersal trawling for *Dissostichus* spp. and *Macrourus* spp. in water shallower than 550 m shall be prohibited except for the research activities described below:

(i) Demersal trawling shall be allowed only in designated "open" areas on the upper and mid-slope in depths greater than 550 m;

(ii) The manner in which areas are designated "open" and "closed" for demersal trawling will be determined according to the following procedure:

(a) Open and closed areas will consist of a series of north-south strips extending from the coast to beyond the foot of the continental slope. Each strip will be one degree of longitude wide;

(b) In the first instance, when the vessel has found an appropriate area for prospecting or fishing, it will designate the strip as open, with the area to be fished to be approximately centred in that strip;

(c) A single prospecting haul will be permitted in that strip before it is designated as open or closed, to establish if an aggregation of interest is present. There must be a minimum of 30 minutes of longitude between prospecting hauls where no strip is designated open;

(d) Whenever a strip is designated open, at least one strip adjacent to that strip must be designated as closed. Any remnant strips less than one degree wide resulting from the previous selection of open and closed strips, will be designated as closed;

(e) Once a strip is designated closed it cannot be subsequently fished in that season by any method that allows fishing gear to contact the bottom;

(f) Prior to commercial fishing in an open strip, the vessel must undertake the survey trawls in the open strip as described below. The survey trawls in the adjacent closed strip must be undertaken prior to the vessel fishing a new strip. If the adjacent closed strip has already been surveyed, a new survey is not necessary; and

(g) When the vessel wishes to fish in a new strip, it must not choose a strip already closed. Once a new strip is designated, conditions as described in paragraphs (b) to (f) will apply to that strip.

2. Survey trawls in each open strip and its adjacent closed strip will be conducted according to the following scheme:

(i) Each pair of strips will be divided between the shelf area above 550 m and the slope area below 550 m. In each open and closed strip the following research shall be undertaken:

(a) In the section deeper than 550 m, two stations (whose locations have been randomly pre-selected according to depth and longitude) shall be sampled. At each of these stations a beam trawl sample of benthos and a bottom-trawl sample of finfish using a commercial trawl with a small mesh liner shall be taken;

(b) In the section shallower than 550 m, two stations shall be sampled at randomly pre-selected sites according to depth and longitude for benthos using a beam trawl once at each station only; and

(c) This will be undertaken in each pair of the open and closed strips using the process described above.

3. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR *Scientific Observers Manual:*

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by haul catch and catch per effort by species;

(iii) Haul-by haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) By-catch of fish and other organisms; and

(viii) Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 231/XX

Limits on the Exploratory Fishery for Dissostichus spp. on Elan Bank (Statistical Division 58.4.3a) Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France and Japan. The fishery shall be conducted by French and Japanese-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 232/XX

Limits on the Exploratory Fishery for Dissostichus spp. on BANZARE Bank (Statistical Division 58.4.3b) Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France and Japan. The fishery shall be conducted by French and Japanese-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on BANZARE Bank(Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 300 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on

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BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 233/XX

Limits on the Exploratory Fishery for Dissostichus eleginoides in Statistical Division 58.4.4 Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France, Japan, South Africa and Uruguay. The fishery shall be conducted by French, Japanese, South African andUruguayan-flagged vessels using longlines only. No more than one vessel shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 103 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research

10. Every haul in this exploratory fishery shall meet the requirements of research hauls in Conservation Measure 227/XX Annex B, paragraph 4.

11. This fishery is exempted from paragraph 7 of Conservation Measure 227/XX except:

(i) On entry into an SSRU as described in Conservation Measure 227/XX, Annex B, Table 1, each vessel shall undertake 10 hauls prior to moving to another SSRU provided that the fishery has not been closed;

(ii) Provisions for data collection in Conservation Measure 227/XX, Annex B, paragraph 5 shall apply;

(iii) The Data Collection Plan in Conservation Measure 227/XX, Annex A will apply; and

(iv) Data collected pursuant to the Data Collection and Research Plans for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2002. Such data taken after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

Conservation Measure 234/XX

Limits on the Exploratory Fishery for Dissostichus eleginoides in Statistical Subarea 58.6 Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas

of national jurisdiction shall be limited to the exploratory longline fishery by Chile, France, Japan and South Africa. The fishery shall be conducted by Chilean, French, Japanese and South African-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 450 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas of national jurisdiction, the 2001/02 season is defined as the period from 1 May to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 235/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia and South Africa. The fishery shall be conducted by a maximum in the season of one (1) Japanese, four (4) New Zealand, three (3) Russian and two (2) South African-flagged vessels[1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2001/02 season shall not exceed a precautionary catch limit of 171 tonnes north of 65°S and 2 337 tonnes south of 65°S.

3. In order to ensure an adequate spread of fishing effort south of 65°S, the total catch of *Dissostichus* spp. shall not exceed a precautionary catch limit of 584 tonnes in each of the four small-scale research units (SSRUs) identified for Statistical Subarea 88.1 south of 65°S, as defined in Conservation Measure 227/XX, Annex B.

Season

4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2001/02 season is defined as the period from December 1, 2001 to August 31, 2002.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 227/XX, except paragraph 6.

[1] As notified to the Secretariat in accordance with Conservation Measure 65/XII paragraph 2(iv).

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

7. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX and such data shall be reported to the Secretariat immediately.

8. In Statistical Subarea 88.1, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 216/XX. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 29/XIX.

9. There shall be no offal discharge in this fishery.

Observers

10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

11. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XX.

CDS

12. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 170/XX.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Data: Catch/Effort

14. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

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(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

16. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

17. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

18. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

19. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 236/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia and South Africa. The fishery shall be conducted by a maximum in the season of one (1) Japanese, three (3) New Zealand, one (1) Russian and two (2) South African-flagged vessels [1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2001/02 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2001/02 season is defined as the period from December 1, 2001 to August 31, 2002.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 227/XX, except paragraph 6.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX, and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.2, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 216/XX. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 29/XIX.

8. There shall be no offal discharge in this fishery.

Observers

9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XX.

CDS

11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 170/XX.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Data: Catch/Effort

13. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

15. Fine-scale biological data, as required under Conservation Measures 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

[1] As notified to the Secretariat in accordance with Conservation Measure 65/XII paragraph 2(iv).

Conservation Measure 237/XX

Limits on the Exploratory Fishery for Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus and Pleuragramma antarcticum in Statistical Division 58.4.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by Australian-flagged vessels using trawls only.

Catch Limit

2. The total catch of all species in the 2001/02 season shall not exceed a precautionary catch limit of 1 500 tonnes.

3. The catch of *Chaenodraco wilsoni* in the 2001/02 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 237/A of this conservation measure, and shall not exceed 500 tonnes.

4. The catches of Lepidonotothen kempi, *Trematomus eulepidotus* and Pleuragramma antarcticum in the 2001/02 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 237/A of this conservation measure, and shall not exceed 300 tonnes for any one species.

5. Any *Dissostichus spp.* or *Macrourus spp.* caught during the directed fishery for the above species shall be deducted from the catches of these species authorised in Conservation Measure 230/XX.

Season

6. For the purpose of the exploratory trawl fishery for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species are *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* and by-catch species are defined as any species other than these species.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research and DataCollection Plans described in Annex 237/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 237/A

Research and Data Collection Plans

1. There shall be three small-scale research units (SSRUs), bounded by the longitudes 40°E to 50°E, 50°E to 57°E, and 57°E to 70°E.

2. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities once 10 tonnes of any one species have been caught, irrespective of the number of hauls required:

(i) A minimum of 20 hauls must be made within the SSRU and must collectively satisfy the criteria specified in subparagraphs (ii) to (iv);

(ii) Each haul must be separated by not less than 5 n miles from any other haul, distance to be measured from the geographical mid-point of each haul;

(iii) Each haul shall comprise at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4); and

(iv) All data specified in the paragraph 5 of this annex shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and biological characteristics obtained from 30 fish, where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

3. The requirement to undertake the above research activities applies irrespective of the period over which the trigger levels of 10 tonnes of catch in any SSRU are achieved during the 2001/02 fishing season. The research activities must commence immediately the trigger levels have been reached and must be completed before the vessel leaves the SSRU.

4. In the SSRU between 40°E and 50°E and in locations where the bottom depth is 280 m or less:

(i) A maximum total of 10 commercial bottom trawls may be conducted in no more than seven locations, but with no more than two bottom trawls in any one location;

(ii) Each location must be at least 5 n miles distant from any other location;

(iii) At each location trawled, three separate samples will be taken with a beam trawl in the vicinity of the commercial trawl track to assess the benthos present and compare with the benthos brought up in the commercial trawl; and

(iv) Catches from this program will not count towards the value that triggers the 20 research shots in an SSRU as defined in paragraph 2 above.

5. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR *Scientific Observers Manual:*

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by haul catch and catch per effort by species;

(iii) Haul-by haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

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(vii) By-catch of fish and other organisms; and

(viii) Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 238/XX

Limits on the Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 7/V and 65/XII:

Access

1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.]

Catch Limit

2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2001/02 season shall not exceed a precautionary catch limit of 2 500 tonnes.

Season

3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

Observers

4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

5. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 61/XII and 122/XIX, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi*.

Data: Biological

7. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 238/A. Data collected pursuant to the plan for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2002.

Annex 238/A

Data Collection Plan for Exploratory Squid (Martialia hyadesi) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 61/XII; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR *Scientific Observers Manual* for squid fisheries will be collected. These include:

(i) Vessel and observer program details (Form S1);

(ii) Catch information (Form S2); and

(v) Biological data (Form S3).

Resolution 17/XX

Use of VMS and Other Measures for the Verification of CDS Catch Data for Areas Outside the Convention Area, in Particular, in FAO Statistical Area 51

The Commission,

Recognising the need to continue to take action, using a precautionary approach, based on the best scientific information available, in order to ensure the long term sustainability of *Dissostichus* spp. stocks in the Convention Area,

Concerned that the Catch Documentation Scheme for *Dissostichus* spp. (CDS) could be used to disguise illegal, unregulated and unreported (IUU) catches of Dissostichus spp. in order to gain legal access to markets,

Concerned that any misreporting and misuse of the CDS seriously undermines the effectiveness of CCAMLR conservation measures,

1. Urges States participating in the CDS to ensure that *Dissostichus* Catch Documents (DCDs) relating to landings or imports of *Dissostichus* spp., when necessary, are checked by contact with Flag States to verify that the information in the DCD is consistent with the data reports derived from an automated satellite-linked VesselMonitoring System (VMS)[1].

2. Urges States participating in the CDS, if necessary to that end, to consider reviewing their domestic laws and regulations, with a view to prohibiting, in a manner consistent with international law, landings/transhipments/imports of *Dissostichus* spp. declared in a DCD as having been caught in FAO Statistical Area 51 if the Flag State fails to demonstrate that it verified the DCD using automated satellite-linked VMS derived data reports.

3. Requests the Scientific Committee to review the data concerning the areas where *Dissostichus* spp. occur outside the Convention Area and the potential biomass of *Dissostichus* spp. in such areas, in order to assist the Commission in the conservation and management of *Dissostichus* stocks and in defining the areas and potential biomasses of *Dissostichus* spp. which could be landed/imported/exported under the CDS.

See the CCAMLR website, *www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2000/2001), or contact CCAMLR at: CCAMLR Secretariat P.O. Box 213, North Hobart, Tasmania 7002, Tel: [61] 3 6231 0366, Fax: [61] 3 6234 9965.

Dated: January 8, 2002.

Margaret F. Hayes

Director, Office of Oceans Affairs, Bureau of Oceans, International Environmental & Scientific Affairs, U.S. Department of State.

[FR Doc. 02–1127 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 3876]

Culturally Significant Objects Imported for Exhibition, Determinations: "After the Scream: The Late Paintings of Edvard Munch"

AGENCY: United States Department of State.

[1] In this regard, verification of the information in the relevant DCD shall not be requested for the trawlers as described in Conservation Measure 170/XX, paragraph 14.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition: "After the Scream: The Late Paintings of Edvard Munch," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA from on or about February 9, 2002 to on or about May 5, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–1262 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 3877]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Secondary School Partnership Program in Armenia, Azerbaijan and Belarus

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Secondary School Partnership Program in Armenia, Azerbaijan and Belarus. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan or Belarus. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component.

Program Information

The Secondary School Partnership Program is funded under the FREEDOM Support Act to assist young people in building an open society and developing democratic processes and institutions in Armenia, Azerbaijan, and Belarus. This program provides grants to link schools in the three countries noted above with schools in the United States. The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in Armenia, Azerbaijan, or Belarus responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through thematic projects and substantive exchange activities.

Overview

The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and Armenian, Azerbaijani, and Belarussian schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) Develop lasting, sustainable institutional ties between U.S. and Armenian, Azerbaijani and Belarussian schools and communities; (2) support democracy and educational reform in the above countries; (3) advance mutual understanding between youth and teachers; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the paired schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

Dates: Grants may begin on or about July 2002 and cover the 2002–2003 academic year. The exact starting date of the grant will be dependent on availability of funds.

Guidelines

A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds.

Organizers and school networks in the U.S. and Armenia, Azerbaijan and Belarus should collaborate in planning and preparation. Applicants must have an organizational partner that has its base of operation in the partner country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed. For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that involves the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and

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communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include civic education, such as citizen activism, volunteerism or community service, youth leadership training, multicultural education, rule of law, and free and independent media.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Competitive proposals will demonstrate a solid and comprehensive follow-on plan to sustain the partnerships after the grant has expired.

Responsibilities

The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep the Bureau informed of its progress; (4) manage all travel arrangements, logistics, travel documents, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and Armenia, Azerbaijan, and Belarus should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not already received funding under the NIS Secondary School Initiative for a total of three years or more.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. The Bureau encourages proposals that include non-Bureau funded components such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, or capital city civics programs. However, participants from Armenia,Azerbaijan and Belarus may not be charged to participate in the program, aside from paying for home country costs, (such as transportation to the point of departure the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. Only partnerships between secondary schools in the United States and these three countries are eligible for this competition. Organizations may apply to work in more than one country. Funding for each country is expected to be as follows: Armenia, $100,000, Azerbaijan; $150,000; and Belarus,$50,000. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S., Armenian, Azerbaijani, or Belarussian participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–02–50.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–4788; fax (202) 619–5311; E-mail: *lbeach@pd.state.gov* to request a Solicitation Package. TheSolicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau ProgramOfficer Randall Biggers on all other inquiries and correspondence, email: *rbiggers@pd.state.gov*, tel: (202) 401–7356.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs *by 5 p.m.* Washington, DC time on *Friday, March 1, 2002.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and six copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–02–50, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. Applicants are also encouraged to submit proposals as Microsoft Word or Excel documents as well. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 02–1261 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3875]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Development of a Professional Journal and Research Service for Overseas U.S. Educational Advising Centers

SUMMARY: The Educational Information and Resources Branch,Office of Global Educational Programs, Bureau of Educational and Cultural Affairs (the Bureau) announces an open competition for a professional journal and research service for overseas educational advising centers. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 USC 501(c)(3) are invited to submit proposals to produce a professional journal to provide timely and in-depth information on trends and developments in U.S. higher education and other issues and topics relevant to the Department of State-affiliated overseas educational advising and information centers. The selected organization will also answer reference inquiries from Department of State-designated educational advising offices overseas. The Bureau anticipates awarding up to $97,000 to one organization for these activities.

Program Information

Overview

This grant funds a professional journal for overseas advisers to assist them in providing comprehensive information about the strengths and diversity of the U.S. higher educational system to foreign audiences. Proposals should illustrate how the organization will produce a professional journal, including an internet web site and publication, to provide timely and in-depth information for the staff of Department of State-affiliated overseas educational advising and information centers that advise foreign nationals about educational opportunities in the United States. The information provided to advisers should focus on the field of U.S. education and offer skill-building content for practitioners of advising(for example, the resource could train advisers in the ethics of the profession and teach them how to enhance their communication and listening skills). The information should also feature current information on university programs, new advising resources, short-term training programs, current testing announcements, news briefs, reference questions of world-wide interest, and scholarship and financial information useful to overseas educational advisers in the conduct of their duties. E-mail updates on timely topics relating to U.S. education must be distributed regularly to advisers between issues of the electronic and print journals.

Guidelines

The organization should produce four issues of the publication (Summer 2002, Fall 2002, Winter 2002 and Spring 2003), and describe what publishing capacity will be used to assure that each issue of the publication is produced quickly and efficiently. Five hundred copies of the publication must be shipped to the Department of State's

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shipping facility for distribution to overseas educational advising centers. The web site must be designed in a user-friendly fashion, with an index of topics, and in a format that can be shared directly with students with minimal repackaging by the adviser. The web site should include additional features such as updates, reference links, and a possible bulletin board or chat room that increases contacts between advisers and U.S. university representatives. The web site may be password protected. The first posting to the web site and the first print issue should be available within 90 days of grant receipt.

The research service will provide information regarding specific degree or postgraduate programs, particular types of resources, short-term training programs, and determining institutional accreditation or legitimacy. Most inquiries are for information which is not readily available in other print or internet resources. The proposal should describe how this service will operate, and how it would respond directly to specific inquiries from Department of State-affiliated educational advisers overseas. An explanation of the staff's expertise in answering individual questions that are detailed or geographically specific should be included. The web site and publication must acknowledge that its contents were developed, in part, under a grant from the Bureau of Educational and Cultural Affairs of the Department of State. The Bureau reserves the right to use all materials produced for its own purposes.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The budget should not exceed $97,000 for the development of the web site, publication, and research service. The $97,000 should also cover all printing costs for producing the publication. For both the electronic and print versions, applicants are encouraged to sell subscriptions and use advertising to offset production costs in excess of the grant. The Applicants must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down of the administrative budget. The Bureau's grant assistance will not exceed $97,000. The $97,000 is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits
(2) Web site design costs, printing, utilities, and other direct costs
(3) Indirect expenses, auditing costs

Applicants should refer to the Grant package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–2002–09.

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Educational Information and Resources Branch, Department of State, 301 4th Street, SW., (SA–44), Washington, DC 20547, Tel: (202) 619–5549, Fax: (202) 401–1433, E-mail: *aprince@pd.state.gov*. Potential applicants are encouraged to contact the program office to request an ApplicationPackage, which includes more detailed award criteria; all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the Bureau Program Officer,Ann Prince, on all inquiries and correspondences. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's web site at: *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, March 7, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eleven copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–2002–09,Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW.—SA–44, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to other Department of State Bureaus for their review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and CulturalAffairs. Final technical authority for assistance awards resides with the Bureau's grants contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning*: Proposals should exhibit originality, substance, precision, and relevance to design a web site, produce a publication, and provide e-mail updates on timely topics that will address the need for in-depth and balanced exploration of issues and topics important to overseas educational advisers. In addition, the proposal should demonstrate the resources and professional contacts necessary to respond in a timely manner to inquiries by overseas educational advisers.

2. *Institution's Track Record/Ability*: Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by the Bureau's Office of Contracts. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals.

3. *Demonstrated Ability*: Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. The proposal should describe technological and editorial capability.

4. *Project Evaluation*: Proposal should provide a plan for evaluation by the grantee institution that includes measures of success. Evaluation plan should include periodic progress reports at the end of the grant cycle, as well as intermediate reports describing results of the project.

5. *Cost-Effectiveness*: The overhead and administrative components of the proposal, including salaries, should be kept as low as possible. All other items should be necessary and appropriate.

6. *Cost-Sharing*: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. For both electronic and print versions, applicants may sell subscriptions and use advertising to offset production costs in excess of the grant.

7. *Support of Diversity*: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and to exposing readers to the widest possible range of views and approaches to U.S. higher education. Attention should be given to printing articles relating to different kinds of schools and universities from various regions of the U.S. The Department of State strives to ensure that all programs conducted under its mandate reflect the diversity of the intended audiences.

The Bureau aggressively seeks and actively encourages the involvement of American and international participants from traditionally underrepresented groups in all its grants, programs and other activities. These include women, racial and ethnic minorities and people with disabilities.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961,Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 02–1260 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3835]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, February 1, 2002, from 10 a.m. to approximately 5 p.m., as necessary, in Room 1207 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss the Draft Convention on Jurisdiction and Enforcement of Judgments, the Draft United Nations Convention on Terrorism, the International Law Commission's Articles on State Responsibility, recent legal developments related to International Court of Justice, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, January 30, 2002, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes both government and non-government admittance. All attendees must use the "C" Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: January 4, 2002.

Mary Catherine Malin,

Attorney-Adviser, Office of United Nations Affairs, Executive Secretary, Advisory Committee on International Law.

[FR Doc. 02–1259 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–08–P

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 4, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11268.
Date Filed: January 3, 2002.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 191—Resolution 011a.
Mileage Manual Non-TC Member/Non-IATA Carrier Sectors (Amending).
Intended effective date: 1 February 2002 for implementation 1 April 2002.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–1258 Filed 1–16–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending December 28, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11251.
Date Filed: December 28, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 2002.
Description: Application of Amerijet International, Inc., pursuant to 49 U.S.C. section 41105, requesting a disclaimer of jurisdiction and reissuance of certificate or, alternatively, approval of the transfer of Amerijet's certificates of public convenience and necessity and other operating authority to Amerijet Acquisition Corporation.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–1257 Filed 1–16–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11313]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various organizational and administrative issues relating to the operation of the Committee and to develop a business plan for 2002. The meetings are open to the public.

DATES: GLPAC will meet on Friday, February 1, 2002, from 9:00 a.m. to 12:00 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 25, 2002. Requests to have material distributed to each member of the Council prior to the meeting should reach the Executive Director of GLPAC along with 25 copies of the material on or before January 22, 2002.

ADDRESSES: GLPAC will meet at in Room B1 of the Federal Building, 1240 East 9th Street, Cleveland, OH 44199. Send written material and requests to make oral presentations to Ms. Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:
(1) Review of GLPAC's Charter.
(2) Overview of the Federal Advisory Committee Act (FACA).
(3) Committee Operating Procedures.
(4) Committee Planning Session for 2002 and Business Plan Development.

Procedural

All meetings are open to the public. Please note that the meeting may close early if all business is finished. At the Executive Director's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than January 25, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than January 25, 2002. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive Director no later than January 22, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: January 11, 2002.

Jeffrey P. High,
Director of Waterways Management.
[FR Doc. 02–1186 Filed 1–16–02; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 27]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Wednesday, February 13, 2002.

ADDRESSES: The meeting of the RSAC will be held at the Almas Temple Club in the Grand Ballroom, 1315 K Street, NW., Washington, DC 20005, (202) 898–1688. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Wednesday, February 13, 2002. The meeting of the RSAC will be held at the Almas Temple Club, 1315 K Street, NW, Washington, DC, 20005, (202) 898–1688. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will receive greetings and a charge from the new FRA Administrator. The morning session will be dedicated to a discussion of security of railroad passenger and freight operations. Status briefings will be held on Locomotive Cab Working Conditions (full RSAC ballot votes on the NPRM completed by December 10th, 2001), Accident/Incident Reporting, Crashworthiness, Event Recorders and other Working Group activities. The Committee may be requested to act upon recommendations of the Accident Reports Working Group regarding estimation of railroad property damages (RSAC Task 97–7) and recommendations of the Positive Train Control Working Group for resolution of comments on the proposed rule for Processor-Based Signal and Train Control Systems (RSAC Task 97–6). The RSAC will also discuss implications of the use of prescription and over-the-counter medications by safety-sensitive employees, and a briefing on safety initiatives directed a highway-rail grade crossings will be held in the afternoon.

See the RSAC Web site for details on pending tasks at: *http: //rsac.fra.dot.gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 11, 2002.

George A. Gavalla,
Associate Administrator for Safety.
[FR Doc. 02–1255 Filed 1–16–02; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–11109]

Temporary Cessation of Sounding of Locomotive Horn—Yakima, Washington

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Interim Final Order and Request for Comments.

SUMMARY: FRA is issuing an Interim Final Order in which The Burlington Northern and Santa Fe Railway Company (BNSF) is ordered to temporarily cease the sounding of locomotive horns at specific crossings within the City of Yakima, Washington. As provided by statute, the Secretary of Transportation, and by delegation, the Federal Railroad Administrator, in order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail crossings, may, in connection with demonstration of proposed new supplementary safety measures, order a railroad to temporarily cease the sounding of locomotive horns at such crossings.

DATES: Written comments must be received by February 19, 2002. Comments received after that date will be considered to the extent possible without incurring additional delay.

ADDRESSES: Written comments concerning these proceedings should identify the appropriate docket number (*e.g.* Docket No. FRA–2001–11109) and must be submitted to the Docket Clerk, DOT Docket Management System (DMS), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All written communications concerning these proceedings are available for examination during regular business hours (9am—5 pm) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. You may submit comments online through the DMS Web site at *http://dmses.dot.gov/submit.* All documents in the public docket are also available for inspection and downloading at the DMS Web site at *http://dms.dot.gov.* Internet users may also reach the Office of the Federal Register's home page at *http://www.nara.gov.fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov/nara.*

FOR FURTHER INFORMATION CONTACT: Ron Ries, Staff Director, Highway Rail Crossing and Trespasser Programs, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6285); or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6061 (e-mail address: *mark.tessler@fra.dot.gov).*

SUPPLEMENTARY INFORMATION:

Background

Section 20153 of Title 49 of the United States Code authorizes the Secretary of Transportation (and by delegation of the Secretary of Transportation, the Federal Railroad Administrator) to prescribe regulations requiring that locomotive horns be sounded while each train is approaching and entering upon each public highway-rail grade crossing. The statute also permits the Secretary to exempt from the requirement to sound the locomotive horn any category of rail operations or categories of highway-rail grade crossings for which supplementary safety measures fully compensate for the absence of the warning provided by the horn. Section 20153(e)(1) states that:

> In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new supplementary safety measures, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn.

FRA has been requested by representatives of the City of Yakima, Washington, to order the BNSF to temporarily cease the sounding of locomotive horns at five highway-rail grade crossings in the city in order to demonstrate new and innovative engineering solutions to prevent motorists from entering onto highway-rail grade crossings equipped with fully

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functioning gated grade crossing warning devices. The crossings which are the subject of this Order are located at I Street (DOT Inventory No. 098492F), D Street (DOT Inventory No. 099162D), Lincoln Avenue (DOT Inventory No. 099163K), B Street (DOT Inventory No. 099164S), and Yakima Avenue (DOT Inventory No. 099165Y). FRA is prepared to order cessation of routine sounding of locomotive horns at the specified public highway grade crossings.

In order to institute this demonstration project as soon as possible, FRA is issuing this order on an interim basis. Upon compliance with the provisions contained in the Interim Final Order published today, BNSF will be required to cease sounding of the locomotive horn at the crossings under the terms of the order. FRA will revise the order, rescind it, or issue a final order without change, depending on information contained in any comments received.

FRA has evaluated the proposed actions in accordance with its procedures for ensuring full consideration of the environmental impact of FRA action, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and the DOT Order 5610.1c (Procedures for Considering Environmental Impacts). It has been determined that the proposed actions will have a beneficial impact on the environment by the cessation of the sounding of locomotive horns.

This action has been evaluated in accordance with existing regulatory policies and procedures and is considered to be non-significant under DOT policies and procedures (44 FR 11304). This action will not have an impact on a substantial number of small entities.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. Inasmuch as implementation of this order is, by its own terms, dependent on the request of the City of Yakima that such order be issued, and the purpose of the order is to enable effectuation of a quiet zone demonstration project proposed by the community and supported by the Washington Utilities and Transportation Commission, all appropriate prior consultation with state and local officials has taken place.

Public Participation

Interested parties are invited to participate in this proceeding by submitting to the Docket Clerk at the address listed above written data, views, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify the Docket Clerk, in writing, before the end of the comment period and specify the basis for their request.

Interim Final Order

Based on the above, FRA issues the following order:

U.S. Department of Transportation, Federal Railroad Administration, Interim Final Order To Temporarily Cease Sounding of Locomotive Horns

I find that:

1. The City of Yakima, Washington, (City) in conjunction with The Burlington Northern and Santa Fe Railway Company (BNSF), and in consultation with the Federal Railroad Administration (FRA), has instituted a demonstration of new and innovative engineering solutions to prevent motorists from entering the public highway-rail grade crossings at I Street (DOT Inventory No. 098492F), D Street (DOT Inventory No. 099162D), Lincoln Avenue (DOT Inventory No. 099163K), B Street (DOT Inventory No. 099164S), and Yakima Avenue (DOT Inventory No. 099165Y) (collectively "crossings").

2. As part of the demonstration, and preliminary to the temporary cessation of the sounding of locomotive horns at the crossing, the City has tested median barriers to prevent motorists from entering public highway-rail grade crossings when warning gates and lights are activated. The tested median barrier consists of an 18-inch wide, one-foot high, raised concrete barrier placed along the centerline of the roadway and consisting of various lengths. Reflective, flexible, three-inch diameter tubular shaped cones are mounted on top of the barrier, spaced five feet apart. This study will provide information on the effectiveness of medians in relationship to both heavy commercial motor vehicles and heavy motor vehicle traffic and the maintenance issues that may arise from these types of traffic.

3. The demonstration project has been designed with three distinct phases. "Phase 1" entails studying driver behavior at three of the crossings without medians for four months. "Phase 2" of the project, lasting four months, includes studying driver behavior at those crossings with medians installed but with locomotive horns routinely sounded. Driver behavior was compared with the results of the first phase in order to determine the effectiveness of the supplementary safety devices. "Phase 3" of the project includes studying driver behavior at the crossings with medians installed and routine sounding of locomotive horns prohibited. As an integral part of this demonstration data has been gathered during Phases 1 and 2 concerning base line safety risk and the impact on risk of installing these proposed new supplementary safety measures. Data concerning responses to the automated warning system by motor vehicle drivers was gathered by means of video monitoring of driver behavior. FRA will gather further data to determine the long-term effect on motorist behavior of the new engineering improvements at these crossings combined with cessation of routine use of locomotive horns.

4. All engineering improvements comprising the demonstration have been tested and evaluated and are deemed necessary in lieu of the locomotive horn.

5. City officials have expressed a strong interest in establishing quiet zones at these crossings, which are placed within a segment of railroad exceeding one-half mile in length, making establishment of a quiet zone clearly practicable.

6. Issuance of this order will assist the FRA in gathering information and data useful to development of innovative supplementary safety devices.

7. At the request of the City and the FRA, the BNSF has fully cooperated in the exploration of options for safety improvements at the crossings but considers that the company is not able to unilaterally cease use of the train horn at the crossings, absent issuance of this order.

Accordingly, pursuant to 49 U.S.C. 20153(e)(1), and in order to promote the quiet of the City, and to promote the development of innovative safety measures at highway-rail crossings, *I hereby order* the BNSF, to cease the routine sounding of locomotive horns on approaches to and at the above crossings beginning on such date as the City may determine, subject to the following conditions:

(a) Once every crossing configuration, including all signage, median design, and delineator design and spacing, is approved by necessary state and local governmental entities, and every crossing is so configured, the City, through an authorized officer, shall inform BNSF in writing that the routine sounding of the locomotive horn shall cease pursuant to the terms of this order and shall serve such notice on the BNSF with a copy sent to the Associate Administrator for Safety, FRA, at least 14 days prior to the date on which cessation is planned;

(b) All highway-rail grade crossing warning devices installed at the crossing shall operate properly and in accordance with the provisions of 49 CFR part 234. In the event of a warning system malfunction as defined in 49 CFR 234.5, an engineer operating a train through the crossing is not responsible for sounding the locomotive horn until he or she has been informed of the warning system malfunction; and

(c) Advance warning signs, as approved by the Washington Utilities and Transportation Commissioner and in conformance with the Manual on Uniform Traffic Control Devices issued by the Federal Highway Administration, shall be posted and maintained by the City advising motorists that locomotive horns will not be sounded.

Unless rescinded by the FRA Associate Administrator for Safety at an earlier date, this order is in effect until the effective date of a final rule issued pursuant to 49 U.S.C. 20153, provided that the Associate Administrator for Safety determines that data developed during the initial demonstration period confirms the effectiveness of the subject engineering improvements and periodic monitoring continues to confirm this effectiveness.

Nothing in this order is intended to prohibit an engineer from sounding the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage. This order does not require that such warnings be provided nor does it impose a legal duty to sound the locomotive horn in such situations.

Nothing in this order excuses compliance with sections 214.339, 234.105, 234.106, and 234.107 of title 49, Code of Federal Regulations, concerning use of the locomotive horn under circumstances therein described. Nothing in this order is intended to prohibit an engineer from sounding the locomotive horn or whistle to provide necessary communication with other trains and train crew members if other means of communication are unavailable.

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA, may through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Issued in Washington, DC on January 10, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–1254 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 26]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect their current status.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on April 6, 2001, (66 FR 18352). The seventeenth full Committee meeting was held April 23, 2001, at the Mayflower Hotel in the Colonial Ballroom in Washington, DC. The eighteenth meeting is scheduled for February 13, 2002.

Since its first meeting in April of 1996, the RSAC has accepted seventeen tasks. Status for each of the tasks is provided below:

Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule was published on January 17, 2001 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). In addition, the FRA is reviewing petitions for reconsideration of the final rule and has published amendments to Subpart D of the final rule (66 FR 36983; 8/1/01). Contact: Thomas Hermann (202) 493–6036.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August 2000. The GRMS final rule amendment was published January 10, 2001 (66 FR 1894) and the Roadway Maintenance Machines NPRM was published January 10, 2001 (66 FR 1930). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001 in accordance with the Regulatory Review Plan (66 FR 9676). Contact: Al MacDowell (202) 493–6236.

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. Contact: Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to

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the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). The final rule became effective January 18, 2000. Contact: George Scerbo (202) 493–6349.

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493–6318.

Task 96–7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August 2000. The NPRM was published January 10, 2001 (66 FR 1930). The Task Force is to meet to review comments on February 27—March 1, 2002. Contact: Al MacDowell (202) 493–6236.

Task 96–8—This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Tasks 97–1 and 97–2.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. An accident review task force has evaluated the potential effectiveness of suggested improvements. An NPRM has been prepared and circulated, and the Working Group met to review the draft on October 9–10, 2001. The next meeting is scheduled for January 17–18, 2002 to go over proposed drafts. The full RSAC will review after approval of the Working Group. Contact: Sean Mehrvazi (202) 493–6237.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation). A draft sanitation NPRM was circulated to the Working Group on Cab Working Conditions with ballot requested by November 3, 2000. The NPRM on sanitation was discussed during the full RSAC meeting on September 14, 2000 and published January 2, 2001 (66 FR 136). A public hearing was held April 2, 2001. Refinement and substantive changes were incorporated into the rule language. A meeting was held on August 21, 2001, to discuss comments in response to the NPRM on sanitation. Agreement was reached on resolution of the comments to the NPRM. The Working Group gave concurrence to send the recommendations to the full RSAC for mail ballot vote. The recommendations were approved by the full Committee in December 2001, and FRA is preparing the final rule for early issuance.

(Noise exposure.) A Task Force has assisted in identifying options for strengthening the occupational noise exposure standard, and the Cab Working Group met in October and November, 2000, and April, 2001, and reached tentative agreement on most of the significant issues related to the noise NPRM. The Cab Working Group held a meeting April 3 to 5, 2001, to discuss Noise exposure Standards. Refinement and substantive changes were incorporated into the rule language. A full draft NPRM will be circulated to the working group for consideration. The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. Contact: Jeffrey Horn (202) 493–6283.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. The Event Recorder Working Group is completing preparation of an NPRM. The NPRM went to the Working Group on May 21, 2001, for comments, and FRA has reviewed the comments. A new draft is under review within FRA. It will be circulated to the Working Group, which will be asked to consider it. Contact: Edward Pritchard (202) 493–6247.

Task 97–4 and Task 97–5—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The Standards Task Force, formed to develop PTC standards, is developing draft recommendations for performance-based standards for processor-based signal and train control standards. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas to formulate recommendations for resolution of issues raised in the public comments. Consultations continue to complete that activity, after which recommendations will be submitted to the full committee for consideration. Monitoring of implementation continues. Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work, and the Working Group will continue to meet to monitor project implementation. Contact: Grady Cothen (202) 493–6302.

Task 97–7—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group was formed to address this task and conducted their initial meeting on February 8, 1999. The working group designed a survey form to collect specific data about damages to railroad equipment. The survey started on August 1 and ended January 31, 2001. A statistical analysis, using the survey data, was done to see if the method could be used to calculate property damages. The report was complete by the last week of April, 2001. A meeting was held May 21–23, 2001 to review the report. The Working Group has agreed to terminate action on this task after reviewing the options. The Working Group is reviewing a draft close-out report for approval by the full RSAC. Contact: Robert Finkelstein (202) 493–6280.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). A working group has been formed and held its first meeting on October 16–18, 2000. Meetings have been held: February 27–March 1, 2001, March 19–21, 2001, May 1–3, 2001, June 19–21, 2001 and October 23–25, 2001. The next meeting is tentatively scheduled for January 2002. The Working Group has reached tentative consensus on several issues. Contact: Doug Taylor (202) 493–6255.

Task 01–1—Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide). This task was accepted April 23, 2001, by the full RSAC and assigned to the Accident/Incident Working Group. At a meeting of the Working Group, held May 21–23, 2001, the task was discussed, and four task forces were set up to review changes and/or modifications. To date, these task forces have identified a series of minor modifications to the Reporting Guide/regulations for consideration. A target of September 15, 2001, was set for reporting the recommended changes. The Working Group met September 11, 2001; meeting was dismissed due to national emergency. A meeting was held November 14–15, 2001 in St. Louis, Missouri. A Task Force on Remote Control met on December 11, 2001. The next meeting is scheduled for January 23–24, 2002, in Baltimore, Maryland. Contact: Contact: Robert Finkelstein (202) 493–6280.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 11, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1256 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. 42052]

Union Pacific Railroad Company—Petition for Declaratory Order—Unilaterally Imposed Interchange Charges

AGENCY: Surface Transportation Board Department of Transportation.

ACTION: Request for Notices of Intent to Participate.

SUMMARY: The Surface Transportation Board (Board) requests that those intending to participate in this phase of this proceeding, in which interested parties will meet to discuss ways to facilitate the interchange of railroad cars, notify the agency and the Association of American Railroads (AAR) of their intent. The Board is also suspending the procedural schedule established in the prior order (served on December 10, 2001).

DATES: We request that those intending to participate notify the Board and AAR by January 28, 2002. We will issue a further order after the notices of intent to participate have been filed, establishing dates by which the first meeting should be conducted and by which AAR should file a progress report.

ADDRESSES: An original and one copy of each party's notice of intent, referring to STB Docket No. 42052, should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, ATTN: STB Docket No. 42052. Two copies should also be sent to Association of American Railroads, 50 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: At the Board, Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.] At AAR, John Carroll, (202) 639–2373.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by the Board in response to a request for a declaratory order concerning ways in which rail carriers deal with interchange delays. However, because issues regarding interchange delays are often addressed under the framework of the industry-wide Car Service and Car Hire Agreement (CS/CH Agreement) and Code of Car Service Rules/Code of Car Hire Rules (CS/CH Rules) administered by the AAR, by notice served and published December 10, 2001 (66 FR 63741), the Board concluded that the issues raised could be better addressed in private sector discussions and that the CS/CH Rules must be considered as part of any private sector resolution of the matter that had been brought before the Board. The agency therefore requested that, before a proceeding is moved forward administratively, AAR convene a meeting or series of meetings with railroads, shippers, and other involved parties to discuss ways to address issues concerning delays in the interchange of railroad cars between railroads, and to develop proposals for addressing incidences of traffic delays associated with such interchange. The Board further requested that AAR file a report describing the progress made at the meeting(s) and recommending how best to proceed to resolve these issues.

On December 21, 2001, we received a letter from AAR's General Counsel requesting that we take certain actions to facilitate moving the process forward in the private sector. First, noting that AAR has not been a party to the agency proceeding and that it has not yet been informed of all who may be interested in the matter or what any party's position may be, the letter suggests that we issue a **Federal Register** notice asking interested parties to file notices of intent to participate. To facilitate the conduct of the meeting(s), all parties should file notices of intent to participate, which should provide the name, address, official title, and operational experience of the person who will participate on behalf of the party, along with a brief (not more than one page) summary of the party's position and preliminary recommendations.

Given the interest that we expressed in our prior order for a practical solution based on good faith cooperation among all railroads, AAR's letter further suggests that we encourage participation by persons with expertise in rail operations/interchange issues, rather than by the party's counsel. We agree that the discussions we envisioned in our prior order would focus on operational cooperation rather than legal issues, and that the meeting(s) can be most fruitful if operational solutions are pursued. Thus, we strongly encourage participation by individuals with operational backgrounds.

AAR's letter also suggests that, given the current uncertainty as to the scope of the problem or the number of parties

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wishing to participate, the Board consider extending the time for holding the meeting beyond February 8, 2002. We agree. We will suspend the current procedural schedule, and adopt a new schedule after notices of intent to participate are filed.

Finally, AAR's letter expresses concern over potential antitrust exposure in the event that any proposals relating to the interchange issues under consideration could involve collective discussion of prices, rates, or tariffs. We do not want to prejudge or limit the type of permissible dialogue in a way that could undercut resolution of the matters at issue, but our purpose in asking the parties to attempt to resolve this matter in the private sector has been to make the interchange process work better, not to provide a forum for parties to collectively discuss specific rates for specific situations. Thus, in our view, if discussion of rate matters takes place, it should be of a general nature. Such general conversations—particularly given that they would be undertaken pursuant to our request—would not in our view subject the participants to antitrust exposure. And as long as any such conversations that may implicate rates are kept to a general nature, they should not undercut what we hope could be a favorable outcome here, which is the development of a framework in which parties can conduct bilateral negotiations to work out interchange issues of the sort that precipitated this proceeding. If at any point it becomes evident that antitrust issues are a concern, we will be available to address the situation.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Interested parties shall file notices of intent to participate, as described above, by January 28, 2002.

2. The procedural schedule established in our prior order is held in abeyance pending further order.

3. This decision is effective on January 17, 2002.

Decided: January 9, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1122 Filed 1–16–02; 8:45 am]

BILLING CODE 4195–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 9, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 19, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1423.

Regulation Project Number: PS–106–91 Final.

Type of Review: Extension.

Title: State Housing Credit Ceiling and other Rules Relating to the Low-Income Housing Credit.

Description: The regulations provide the order in which credits are allocated from each State's credit ceiling under section 42(h)(3)(C) and the determination of which states qualify for credits from a National Pool and of credits under section 42(h)(3)(D). Allocating agencies need this information to correctly allocate credits and determine National Poole eligibility.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 2 hours, 30 minutes.

Frequency of Response: Other (One time per event).

Estimated Total Reporting Burden: 275 hours.

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Type of Review: Extension.

Title: Cash or Deferred Arrangements; Nondiscrimination.

Description: Section 1433(a) of the Small Business Job Protection Act of 1966 requires that the Service provide nondiscriminatory safe harbors with respect to section 401(k)(12) and section 401(m)(11) for plan years beginning after December 31, 1998. This notice implements that statutory requirement.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 02–1208 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 9, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before February 19, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1632.

Regulation Project Number: REG–118662–98 Final.

Type of Review: Extension.

Title: New Technologies in Retirement Plans.

Description: These regulations provide that certain notices and consents required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 375,000.

Estimated Burden Hours Per Respondent: 1 hour, 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 477,563 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–1263 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of intent to distribute offset for Fiscal Year 2001.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2001 in connection with certain antidumping duty orders or findings or countervailing duty orders that were not previously listed in the notice of intent to distribute the offset for Fiscal Year 2001 that was published in the **Federal Register** on August 3, 2001. This document sets forth those additional antidumping duty orders or findings and countervailing duty orders that were not previously listed, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings and the dollar amount of the offset for each order or finding that is available for distribution.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by March 18, 2002.

ADDRESSES: Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229 (ATTN: Jeffrey J. Laxague).

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202–927–0505).

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("Act"). The provisions of the CDSOA are contained in Title X (sections 1001—1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC previously supplied Customs with the list of individual antidumping and countervailing duty cases for Fiscal Year 2001, and the affected domestic producers associated with each case that were potentially eligible to receive an offset. These cases were the subject of a notice of intent to distribute the continued dumping and subsidy offset for Fiscal Year 2001 that was published in the **Federal Register** (66 FR 40782) on August 3, 2001.

However, a number of antidumping and countervailing duty cases were not included on the previously-supplied list of cases that were subject to a distribution of the continued dumping and subsidy offset for Fiscal Year 2001. Accordingly, this notice essentially constitutes a supplement to the August 3, 2001, **Federal Register** notice for the purpose of listing the additional antidumping duty orders or findings or countervailing duty orders that are subject to a distribution of the offset for Fiscal Year 2001.

Customs Regulations Implementing the CDSOA

It is noted that Customs published a final rule in the **Federal Register** (66 FR 48546) on September 21, 2001, as T.D. 01–68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the Customs Regulations (19 CFR part 159, subpart F (§§ 159.61–159.64)).

Notice of Intent to Distribute Offset

This document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that were available for distribution in Fiscal Year 2001 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. While § 159.62(a), Customs Regulations (19 CFR 159.62(a)), provides that Customs will publish a notice of intention to distribute assessed duties at least 90 days before the end of a fiscal year, this notice is being published at this time because it came to Customs attention that not all parties were listed in the original notice. In the future, it is not expected that supplemental notices of intent will be published.

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the specific instructions for filing a certification under § 159.63 to claim a distribution. Also, as required by § 159.62(b), for purposes of determining whether it is worthwhile to file a certification in a given case, this

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notice includes the dollar amount for each listed order or finding that is available for distribution.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice, where the member company does not appear on the list, should also consult § 159.61(b)(1)(i) or 159.61(b)(1)(ii), Customs Regulations, respectively (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)), concerning whether and, if so, the additional procedures under which such party may file a certification to claim an offset.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(b), Customs Regulations (19 CFR 159.63(b)), certifications to obtain a distribution of an offset must be received by Customs 60 days after the date of publication of the notice of intent in the **Federal Register**.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also be included);
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled "Amount Claimed for Distribution';
11. A statement of eligibility, as described in the section below entitled "Eligibility to Receive Distribution'; and
12. A signature by a corporate officer legally authorized to bind the producer.

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the total amount of qualifying expenditures certified by the domestic producer, and the amount certified by category.

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

Additionally, these expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case (§ 159.61(c), Customs Regulations (19 CFR 159.61(c))).

Eligibility to Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer.

Where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures (§ 159.63(b)(3)(ii), Customs Regulations (19 CFR 159.63(b)(3)(ii))).

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled "Verification of Certification").

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer, as provided in § 159.63(c), Customs Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to Customs verification. Because of this, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification (see § 159.63(d), Customs Regulations (19 CFR 159.63(d))). The records must be those that are normally kept in the ordinary course of business; these records must support each qualifying expenditure enumerated in the certification; and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), Customs Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset. Also, the amount of the offset available for distribution with respect to each listed order or finding appears in parentheses immediately below the Commerce case number for the order or finding.

Commerce case number	Commission case number	Product/country	Petitioners/supporters
A–588–015, ($24,311,452.01).	AA 1921–66 ...	Television receivers/Japan.	AGIV (U.S.A.); Casio Computer; CBM America; Citizen Watch; Funai Electric; Hitachi; Industrial Union; Department, AFL–CIO; Matsushita; Mitsubishi Electric; NEC; Orion Electric; J.C. Penney; Philips Electronics; Philips Magnavox; P.T. Imports; Sanyo; Sharp; Toshiba; Toshiba America Consumer; Products; Victor Company of Japan; Montgomery Ward; Zenith Electronics.
A–580–008, ($45,669.05).	731–TA–134 ..	Color television receivers/Korea.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics).
A–583–009, ($1,025.82).	731–TA–135 ..	Color television receivers/Taiwan.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics).
A–122–006, ($13,533.77).	AA1921–49	Steel jacks/Canada	No petition at the Commission; Commerce service list identifies: Bloomfield Manufacturing (formerly Harrah Manufacturing); Seaburn Metal Products.
A–588–029, ($65,301.74).	AA1921–85	Fish netting of man-made fiber/Japan.	No petition at the Commission; Commerce service list identifies: Jovanovich Supply; LFSI; Trans-Pacific Trading.
A–588–038, ($168,261.66).	AA1921–98	Bicycle speedometers/Japan.	No petition at the Commission; Commerce service list identifies: Avocet; Cat Eye; Diversified Products; N.S. International; Sanyo Electric; Stewart-Warner.
A–588–055, ($53.99).	AA1921–154 ..	Acrylic sheet/Japan	Polycas Technology.
C–351–037, ($2,471.93).	104–TAA–21 ..	Cotton yarn/Brazil ..	Harriet & Henderson Yarns; LaFar Industries; American Yarn Spinners Association.
A–588–005, ($572.91).	731–TA–48	High power microwave amplifiers/Japan.	Aydin; MCL.
A–122–401, ($256.98).	731–TA–196 ..	Red raspberries/Canada.	Rader Farms; Ron Roberts; Shuksan Frozen Food; Northwest Food Producers' Association; Oregon Caneberry Commission; Red Raspberry Member Group; Washington Red Raspberry Commission.
A–588–405, ($49,294.92).	731–TA–207 ..	Cellular mobile telephones/Japan.	E.F. Johnson; Motorola.
C–421–601, ($407.22).	701–TA–278 ..	Fresh cut flowers/Netherlands.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–301–602, ($32,909.01).	731–TA–329 ..	Fresh cut flowers/Colombia.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–331–602, ($385.01).	731–TA–331 ..	Fresh cut flowers/Equador.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.

Commerce case number	Commission case number	Product/country	Petitioners/supporters
A–201–601, ($24,291.74).	731–TA–333 ..	Fresh cut flowers/ Mexico.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–401–603, ($412.84).	731–TA–354 ..	Stainless steel hollow products/ Sweden.	AL Tech Specialty Steel; Allegheny Ludlum Steel; ARMCO; Carpenter Technology; Crucible Materials; Damacus Tubular Products; Specialty Tubing Group.
A–508–604, ($376.92).	731–TA–366 ..	Industrial phosphoric acid/Israel.	Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical.
A–588–802, ($8,407.02).	731–TA389	3.5″ microdisks/ Japan.	Verbatim.
A–588–809, ($70,398.66).	731–TA–426 ..	Small business telephone systems/ Japan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–583–806, ($10,079.58).	731–TA–428 ..	Small business telephone systems/ Taiwan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–580–803, ($12,773.12).	731–TA–427 ..	Small business telephone systems/ Korea.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–570–811, ($957.34).	731–TA–497 ..	Tungsten ore concentrates/China.	Curtis Tungsten; U.S. Tungsten.
A–427–804, ($59,480.21).	731–TA–553 ..	Hot-rolled lead & bismuth carbon steel products/ France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.
C–427–805, ($11,868.38).	701–TA–315 ..	Hot-rolled lead & bismuth carbon steel products/ France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.

Dated: January 11, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–1175 Filed 1–16–02; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, January 24, 2002, 9:15 a.m.—5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 2002 Board Meeting; Approval of Minutes of the One Hundred Second Meeting (November 15, 2001) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Program Reports; Review of Individual Grant Applications; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 11, 2002.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 02–1327 Filed 1–15–02; 11:48 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments, which occur during calendar year 2002.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: (202) 273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Public Law 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments, which occur during calendar year 2002, is the average cost of Government-furnished graveliners in fiscal year 2001, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $153.79 for fiscal year 2001.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.50 for calendar year 2002.

The net allowance payable for qualifying interments occurring during calendar year 2002, therefore, is $144.29.

Approved: January 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–1249 Filed 1–16–02; 8:45 am]

BILLING CODE 8320–01–P

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Federal Register

Thursday,
January 17, 2002

Part II

Environmental Protection Agency

40 CFR Part 260, et al.
Resource Conservation and Recovery Act Burden Reduction Initiative; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[FRL–7123–9]

RIN 2050–AE50

Resource Conservation and Recovery Act Burden Reduction Initiative

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to reduce the recordkeeping and reporting burden the Resource Conservation and Recovery Act (RCRA) imposes on the states, the public, and the regulated community. The burden reduction ideas proposed today will have no anticipated impact on the protections for human health and the environment we have established. At the same time, our proposals will eliminate non-essential paperwork.

In a **Federal Register** "Notice of Data Availability" published June 18, 1999, we asked for comment on an initial set of burden reduction ideas. In today's action, we are proposing for rulemaking many of these ideas.

DATES: Written comments must be received by April 17, 2002.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F–1999–IBRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this proposed rule, contact Mr. Robert Burchard at 703–308–8450, *burchard.robert@epa.gov*, write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov*. You should identify comments in electronic format with the docket number F–1999–IBRA–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Accessing Electronic Data

Background information materials for this Notice are available on the Internet. Follow the instructions below to access these materials electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction.

FTP: ftp.epa.gov.

Login: anonymous.

Password: Your Internet address.Files are located in */pub/epaoswer.*

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Regulatory Language

I. Background and Purpose of Today's Proposed Rulemaking

A. Why Are We Reducing Burden?

To meet the federal government-wide goal established by the Paperwork Reduction Act (PRA), we plan to reduce the burden imposed by our reporting and recordkeeping requirements. Burden is the time that a state employee, member of the regulated community, or private citizen spends generating and reporting information to us and keeping records. The PRA establishes a federal government-wide goal of reducing burden 40 percent from the total burden imposed annually on September 30, 1995.

B. How Is Burden Estimated?

We estimate burden by first listing the activities undertaken to collect and organize information in response to our regulations, report the information, or keep it as records. For each activity, we then estimate the time in hours it takes an average respondent to complete the information request, taking into account differences such as facility size and amount of information required. Next, we verify these estimates through consultations with affected parties. These hour estimates are then multiplied by the number of people or entities expected to complete the information collection. The results of these analyses are the basis for our Information Collection Requests, which are published in the **Federal Register**.

C. What Is the Baseline for the Resource Conservation and Recovery Act (RCRA) Paperwork Requirements?

On September 30, 1995, the baseline for the PRA, the burden imposed by RCRA regulation was 12,600,000 hours per year. Forty per cent reduction from the baseline is 7,560,000 hours per year. This proposed rule will eliminate 929,000 hours. Coupled with reductions that have occurred, and reductions that are planned, we expect to reduce our burden by 47% from 1995.

D. What Is the Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative and What Have We Done to Date?

There have already been substantial burden reduction efforts in implementing the Resource Conservation and Recovery Act (RCRA), such as for the Land Disposal Restrictions and Used Oil programs. We have already achieved reductions of close to five million burden hours.

And there are other ongoing, proactive burden reduction efforts such as revisions to the Hazardous Waste Manifest system, including allowing manifests to be sent electronically, development of a standardized permit for selected RCRA facilities, and a major information system overhaul through the Waste Information Needs (WIN) Initiative.

The WIN Initiative is a multi-year project which is reinventing RCRA information management. It operates as a partnership among EPA Headquarters, EPA Regions, and the states. Both information management experts and implementers of hazardous waste programs participate in the Initiative.

The WIN Initiative began by identifying the information needed to carry out the activities of the RCRA program, assessing the reliability and accessibility of current information systems that support these activities, projecting future information needs, and analyzing what the needed information technologies will be. It is now implementing information change, starting with the Biennial Report, Notification, and part A permit application requirements.

The standardized permit, which was proposed on October 12, 2001 (66 FR 52191), would be available to facilities that generate hazardous waste and then manage the waste in on-site units such as tanks, containers, and containment buildings. The standardized permit would streamline the entire permitting process.

Revisions to the Hazardous Waste Manifest include standardizing the content and appearance of manifest forms and allowing waste handlers to complete, send, and store manifest information electronically.

Additionally, we have combined our two main databases of hazardous waste information (the Biennial Report and the Resource Conservation and Recovery Information System—RCRIS) into a new database, named "RCRAInfo", which will provide easier and faster access to the information we collect.

These are part of the Agency's efforts to comprehensively reform and improve RCRA information management. This process has asked the questions: Who uses hazardous waste information, why do they need it, is the information useful as it is currently collected, and how can the quality and timeliness of the information be improved?

Over the past three years, the RCRA Burden Reduction Initiative has reviewed and analyzed all RCRA reporting and recordkeeping requirements. We have developed ideas for eliminating or streamlining many of them. We obtained input from program offices at EPA Headquarters, the EPA Regions, and state experts on the validity of the ideas, and whether the ideas would detract from our mission to protect human health and the environment. This input was obtained through almost twenty intensive information gathering sessions and workgroup meetings. We also had the assistance of EPA's Office of Inspector General, which made field visits to see whether certain records required by regulation are kept and used by regulatory authorities. The ideas for the Land Disposal Restrictions changes we are proposing today came from a series of information gathering roundtables on the Land Disposal Restrictions program sponsored by the Agency that brought together EPA, state implementors, the regulated community, and environmental groups.

Our ideas were first announced for comment in a June 18, 1999 **Federal Register** "Notice of Data Availability" (64 FR 32859). In the "Notice" and background documents (which are available on the Internet), we included every burden reduction idea we considered. We received 36 comments, all of which were taken into consideration when developing today's proposal. Based on comments we received on the "Notice", we dropped a number of burden reduction ideas. Ideas were dropped when a commenter demonstrated a practical use for the information, or where they presented a specific example of how an idea would negatively impact human health and the environment. Based on these comments, we also added some additional ideas which appear in today's proposal.

We discussed our burden reduction plans in public forums, including a national public meeting in April 2000, sponsored by the Office of Management and Budget on reinventing government, a national meeting of states sponsored by the Association of Territorial and Solid Waste Management Officials, several industry-outreach roundtables, and a meeting with a coalition of environmental groups. At these forums, we invited discussion of the same questions we had posed in the "Notice of Data Availability". We received no specific information from meeting participants indicating that human health and the environment would be impaired if our burden reduction ideas were implemented.

E. How Can I Influence EPA's Thinking on This Rule?

We invite comment on all aspects of this proposal. We specifically want comment on: How will this proposal affect users of environmental

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information, particularly the public? Are any of the regulations we are proposing to eliminate crucial to protecting human health and the environment? What kinds of information do people need to protect public health and the environment, and how can they get it most efficiently? Most importantly, what information is actually used? Although a very broad range of information might be theoretically useful to regulators and the public, it is our understanding that much of the information we have required to be collected and reported is not accessed or used on a regular basis for protecting human health and the environment. At this point, twenty years into the RCRA program, we would like our information requirements to reflect demonstrated needs.

We plan to implement the ideas in today's proposal in a final rulemaking, and your comments will play an important part in our decision-making process.

If you have any comments on this proposal, you must submit them even if you already submitted comments on the "Notice of Data Availability." Today's proposed rule responds to the comments we received on the NODA, and we will assume that any concerns identified in the comments on the NODA have been addressed unless we hear otherwise.

In developing this proposal, we tried to address the concerns of our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views clearly, and why you feel that way.
- Provide technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those that you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Submit your comments by the deadline in this Notice.
- Include your name, date, and docket number with your comments.

II. Our Main Burden Reduction Proposals

A. We Propose To Reduce the Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)

We require the submittal of 334 different types of notifications, reports, certifications, demonstrations, and plans from generators and TSDFs to show compliance with the RCRA regulations. We also ask for this information as part of applications for extensions, permits, variances, and exemptions. A study done by the Chemical Manufacturers Association showed that as with the other major environmental statutes implemented by EPA—such as The Clean Air Act and The Clean Water Act—RCRA imposes a large number of reporting requirements.

When we crafted our regulations, we decided to collect as much information as possible about facility operations. Without prior experience as a guide, our philosophy was that it was better to collect information in all cases, knowing that we could eliminate information requirements later if they turned out to not be useful.

Given that we now have 20 years of operating history in RCRA, we have decided to use this proposed rulemaking to step back and reevaluate based on actual experience whether this level of information collection is necessary. And if not, whether we can reduce paperwork while ensuring that public health and environmental protection continues. Doing so will ease some of the unnecessary bureaucratic controls we have established.

Based on comments we received on the "Notice of Data Availability," our own analysis (which consisted of interviews with Agency experts, consulting with stakeholders, and professional judgement in weighing the qualitative costs and benefits of the ideas), and an analysis conducted by EPA's Office of Inspector General (discussed above), we identified approximately one third of the 334 reporting requirements for elimination or modification.

We developed two criteria for determining which reports to keep, cut, or modify, to the extent there was no indication from our outreach activities and analysis that protection of human health and the environment would be affected in any way: (1) Reporting should occur for information about the opening and closing of a facility, along with informational updates such as financial assurance updates and the Biennial Report submission, and, (2) reporting on the majority of the day-to-day functions of a facility is unnecessary. Although oversight of hazardous waste facilities on a day-to-day basis is important, many of the various notices now required are not used in assessing the protectiveness of facility operations, and some are simply redundant. One of the measures we used to determine this was whether the information was put into a database by regulatory authorities.

The bulk of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement (such as complying with a technical standard for the operation of a treatment unit) was performed. Other reports we propose to cut are instances when a facility has to notify the regulatory authorities twice about something that happened at the facility. Requiring a double notification is overly burdensome and does not appreciably improve protection of human health and the environment.

Our proposal maintains facility accountability and responsibility. It still has a facility undertaking the basic environmentally protective activities that are in the regulations—it just won't have to submit a report to the regulatory authority that each activity was completed. And, it will still have to record what happens at the facility in the operating record.

Through this proposal, we hope to focus attention on those critical reports regulators really need to have to ensure protection of human health and the environment.

We are not curtailing the right of regulatory agencies to request and receive any information. We are simply saying that facilities no longer have to send in many of the reports they currently have to submit on a regular basis.

We are not cutting back the government's or the public's ability to know what is happening at a facility, and whether environmentally protective activities are still occurring, because a basic set of compliance information will still be at the facility (in the facility's operating record). This information can be examined by regulatory authorities and then shared with the public. And, another set of information about a facility (how much waste they generate and what is done with it) will still be readily accessible to the public via Agency Web sites and Web sites run by non-Agency organizations such as the Right-to-Know Network (*www.rtknet.org*).

Many of the notices and reports we propose eliminating are obscure and only rarely needed to be sent to regulatory authorities. They are the kind of notices and reports that, based on our outreach and information gathering, are little, if at all, used by the public.

Please review the regulatory language that is part of today's rulemaking for the specific changes we are proposing to existing regulatory requirements. If commenters believe that any of the notices or reports we are proposing to eliminate are necessary, they should provide specific examples of how the information has been used to address a human health or environmental problem. And, if commenters have a different way to identify which reports to eliminate or modify, they should let us know.

The following chart contains all of the reporting and recordkeeping requirements we propose to eliminate or modify. The first column shows the requirement and what we propose to do with it. The second column provides the regulatory citation that implements the requirement. The Code of Federal Regulations (CFR) is a publication containing all federal regulations. EPA's regulations are in 40 CFR.

We are interested in whether or not any of these items have an existing, specific, and demonstrable use to the public or regulators. In your comments, please provide specific examples of how this information is used, and whether it is stored in an accessible database.

RCRA Reporting and Recordkeeping Requirements Proposed for Elimination or Modification

Requirement	40 CFR (Code of Federal Regulations) citation
Submit report on industry-wide prevalence of the material production process: Eliminate—Regulatory authorities can decide whether to give a variance from classification as a solid waste without this information.	260.31(b)(2).
Exclusion—Submit one-time notification for recycled wood-preserving wastewaters and spent wood-preserving solutions: Eliminate—an unnecessary requirement. According to an EPA expert, this requirement now has limited use for regulators. Also, this proposed change does not affect the other, existing, protective regulatory requirements.	261.4(a)(9)(iii)(E).
Submit report estimating the number of studies and amount of waste to be used in treatability studies: Eliminate—an unnecessary requirement, since this information is provided to the regulatory agency at a later date, meaning that the information has to be supplied by the facility twice (an unnecessary duplication). Plus, according to EPA staff experts, these estimates are not usually accurate.	261.4(f)(9).
Exclusion—Generator submit a one-time comparable/syngas fuel notice to the permitting agency: Eliminate—an unnecessary requirement given the subsequent public notice regulatory requirements (where this information is also submitted). Plus, we are not eliminating the overall regulatory requirements for burning, blending, generation, sampling, etc.	261.38(c)(1)(i)(A).
Personnel training requirements—training program: Eliminate the RCRA requirements, and have facilities follow Occupational Safety and Health Administration standards, which are more comprehensive. This is an area of overlap that has been identified in a comprehensive study of federal personnel training requirements by the General Accounting Office.	264.16(a)(3).
Personnel training requirements—record job title: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(1).
Personnel training requirements—record job description: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(2).
Personnel training requirements—record type and amount of training that will be provided: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement isn't necessarily a good indicator of whether an employee is capable of doing the job safely.	264.16(d)(3).
Contingency Plan—Coordination with other plans: Modify—Plan should be based on the One Plan guidance, which will eliminate the need to prepare multiple contingency plans for Agency requirements.	264.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 264.56(h) before resuming operations: Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	264.56(i).
Operating record: Maintain operating record for facility Modify amount of time most of the information in operating records have to be kept—three years instead of for the life of the facility. We are proposing this to standardize our record retention requirements.	264.73(b).
Standards for Solid Waste Management Units Remove obsolete language	264.90(a)(2).
Detection Monitoring (Permitted Facilities)—Conduct and maintain ground-water monitoring: Modify—We plan to introduce flexibility by allowing sampling for a smaller subset of constituents from the Appendix IX list of constituents. This idea originated from state staff with field experience.	264.98(c).
Detection Monitoring (Permitted Facilities)—Prepare and submit the notification of contamination: We are taking comment on eliminating this requirement (but we are not proposing this in today's rule)—this has been identified through our review of the regulations as a duplicative requirement. The owner/operator must still sample groundwater wells for hazardous constituents (this is required by regulation) and also submit a permit modification to the Regional Administrator that establishes a compliance monitoring program for the constituents. This should be sufficient to protect human health and the environment.	264.98(g)(1).
Detection Monitoring (Permitted Facilities)—Prepare and submit an engineering feasibility plan for corrective action, if required: Modify—Our review of the regulations identified this requirement as one that could be switched from having to send it to the regulatory authority to just keeping it as part of the facility operating record. Our rationale is that this information will be available at the facility for inspectors to see, and that the facility operator still has to undertake the environmentally protective actions described in the regulation.	264.98(g)(5)(ii).

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RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Detection Monitoring (Permitted Facilities)— Prepare and submit notification of intent to make a demonstration: Modify—make part of operating record instead of sending it to the regulatory authority. This information will be available at the facility for inspectors to see. Additionally, this kind of information is also provided to the regulatory authorities in the permit modification submitted under 264.98(g)(6)(iii).	264.98(g)(6)(i), (ii).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of new constituent concentrations: Modify—number of wells, samples, and constituents will be determined on a case-by-case basis, instead of for all wells. This idea came from state experts, and is based on their field experience that sampling all wells can be unnecessary.	264.99(g).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of exceeded concentration limits: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since this information is later included as part of a permit modification that must be submitted under 264.99(h)(2).	264.99(h)(1).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of intent to make a demonstration: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since the Regional Administrator will get the same information through the 264.99(i)(3) permit modification.	264.99(i)(1), (2).
Closure (Permitted Facilities)—Submit semi-annual corrective action report: Modify—report only needs to be submitted annually, instead of semi-annually. According to staff experts at the Agency, annual reports will be sufficient to ensure protection of human health and the environment.	264.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of performing this certification.	264.115.
Certification of Completion of Post-Closure Care: Modify—certification can be by a Certified Hazardous Materials Manager, who will have sufficient education and skill to make this certification.	264.120.
Containers—Inspection frequency: Allow self-inspection frequencies to be changed, on a case-by-case basis. Based on comments from states and the regulated community, we want to provide flexibility in inspections for well-performing facilities.	264.174.
Assessment of existing tank system's integrity: Modify—assessment can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification.	264.191(a), (b)(5)(ii).
Assessment of new tank system and components: Modify—can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification. And, this assessment may be retained on-site.	264.192(a), (b).
Containment and detection of releases: Remove obsolete language	264.193(a), (a)(1)–(5).
Leak Detection System for Tanks: Eliminate need for demonstrations to the regulatory authorities, and make this requirement self-implementing. The owner or operator is in the best position to make the determination as to what is the earliest practical time, based on the site characteristics.	264.193(c)(3), (c)(4), (e)(3)(iii).
Variance from Leak Detection Systems for Tanks: Eliminate need to obtain variance, and make this provision self-implementing. The owner or operator can implement alternate design and operating practices as long as they follow the requirements of this section.	264.193(g), (h).
Tank Systems (Permitted)—Inspection frequency: Change frequency to weekly. Based on comments and the existence of substantial safety features required by regulation, this change will have little negative impact on human health and the environment. Also, inspections may be less frequent than weekly, as determined on a case-by-case basis by regulatory authorities.	264.195(b).
Tank Systems (Permitted)—Notify EPA of release and submit report: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility records.	264.196(d0(1)–(3).
Tank Systems (Permitted)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, the certification may be made by a Certified Hazardous Materials Manager.	264.196(f).
Surface Impoundments (Permitted)—Notify EPA in writing if flow rate exceeds action leakage rate (ALR) for any sumps within 7 days: Eliminate—an unnecessary requirement as long as action is taken to stop leaks; action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(1).
Surface Impoundments (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(2).
Surface Impoundments (Permitted)—Submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(6).
Waste Piles (Permitted)—Installation of liners and leachate collection systems after January 29, 1992: Eliminate—obsolete language.	264.251(c).
Waste Piles (Permitted)—Notify EPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(1).
Waste Piles (Permitted)—Submit a written assessment to the RegionalAdministrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(2).
Waste Piles (Permitted)—Compile and submit information to EPA each month that the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(6).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Land Treatment (Permitted)—Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone: Eliminate—a duplicative requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(g)(1).
Land Treatment (Permitted)—Prepare and submit notice of intent to make a demonstration that other sources or error led to increases below treatment zone: Eliminate—an unnecessary requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(h)(1), (2).
Land Treatment (Permitted)—Certification of closure: We are taking comment on (but not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of doing this certification.	264.280(b).
Land Fills (Permitted)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the procedures in the response action plan (a response action plan is regulatorily required) are followed.	264.304(b)(1).
Land Fills (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(2).
Land Fills (Permitted)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(6).
Special Requirements for Bulk and Containerized Liquids: Remove obsolete language	264.314(a)(1), (a)(2), (b), (f).
Incinerators (Permitted)—Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, F027: Eliminate—an unnecessary requirement since the facility is already permitted to burn this waste, and since there are already regulatory standards governing how the waste is burned.	264.343(a)(2).
Drip Pads (Permitted)—Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, these activities may also be done by a Certified Hazardous Materials Manager.	264.571(a), (b), (c).
Drip Pads (Permitted)—Evaluate drip pads: Modify—in addition to an independent, registered professional engineer, this evaluation may also be done by a Certified Hazardous Materials Manager.	264.573 (a)(4)(ii), (g).
Drip Pads (Permitted)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are taken. Information relevant to the happenings at the drip pad will be retained in the facility record.	264.573(m)(1)(iv).
Drip Pads (Permitted)—EPA makes determination about removal of pad: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are undertaken. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(2).
Drip Pads (Permitted)—Notify EPA and certify completion of repairs: Eliminate—an unnecessary requirement as long as cleanup and repairs described in the regulations of this part are made. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(3).
Drip Pads (Permitted)—Inspections: Modify—in addition to an independent, registered professional engineer, these inspections may be done by a Certified Hazardous Materials Manager.	264.574(a).
Process Vents (Permitted)—Submit semi-annual report of control device monitoring events to the Region: Eliminate need to submit report—an unnecessary requirement given the detailed recordkeeping required by 264.1035. The 264.1035 information will be retained on-site for regulators to examine.	264.1036.
Equipment Leaks (Permitted)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement since the relevant information will be retained in the facility record.	264.1061(b)(1).
Equipment Leaks (Permitted)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement since there are standards that must be followed if the regular standards are going to be followed. Relevant information will be retained in the facility record.	264.1061(d).
Equipment Leaks (Permitted)—Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary reporting requirement as long as standards are followed. Relevant information will be retained in the facility record for regulators to examine.	264.1062(a)(2).
Equipment Leaks (Permitted)—Submit a semi-annual report with record of equipment, shutdowns, and control device monitoring events:Eliminate—an unnecessary requirement. The 264.1064 recordkeeping requirements will provide adequate information. The 264.1064 information will remain on-site for regulators to examine.	264.1065.
Containment Buildings (Permitted): Remove obsolete language	264.1100.
Containment Buildings (Permitted)—Obtain certification that building meets requirements: Modify—in addition to an independent, registered professional engineer, the certification may be made by a Certified Hazardous Materials Manager.	264.1101(c)(2).
Containment Buildings (Permitted)—Notify EPA of condition that has caused a release and provide schedule for cleanup: Eliminate—an unnecessary requirement since repair of containment building must occur anyway. Information about this situation will be available in the facility record for regulators to inspect.	264.1101(c)(3)(i)(D).
Containment Buildings (Permitted)—Notify EPA and verify in writing that the cleanup and repairs have been completed after a release: Eliminate—an unnecessary requirement. EPA does not get involved in similar decisions about whether other parts of a facility need to be removed from service. Information about this situation will be available in the facility records for regulators to inspect.	264.1101(c)(3)(ii), (iii).
Containment Buildings (Permitted)—Inspection frequency: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	264.1101(c)(4).
Purpose, Scope, and Applicability: Remove obsolete language	265.1(b).
Personnel Training—Emergency response:Eliminate and replace with Occupational Safety and Health Administration requirements, which are more comprehensive than the RCRA requirements.	265.16(a)(3).

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RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Personnel Training—Record job titles: Eliminate—an unnecessary requirement—from information we received from the field, the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	265.16(d)(1), (2).
Personnel Training—Description of type and amount of training each employee will receive: Eliminate—from information we received from the field, this requirement is not necessarily a good indicator of whether an employee is capable of doing the job safely.	265.16(d)(3).
Contingency Plans—Coordination with other plans: Modify—Facilities should follow the One Plan guidance, which is designed to eliminate overlap between different regulatory requirements for contingency plans. This proposal has been endorsed by a recent General Accounting Office report on worker protection.	265.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 265.56(h) before resuming operations:Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	265.56(i).
Operating Record—Keep operating record for facility:Modify the amount of time most records have to be kept; three years instead of for the life of the facility. This will standardize the RCRA record retention time requirements, eliminating confusion about how long records have to be kept.	265.73(b).
Ground-water Monitoring (Interim Status Facilities)—Submit alternate ground-water monitoring plan: Modify—no need to submit plan to Regional Administrator, it can be kept onsite where it will be available for regulators to inspect.	265.90(d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit report: Modify—no need to submit report to Regional Administrators. It can be kept on-site, where it will be available for regulators to inspect.	265.90(d)(3).
Ground-water Monitoring (Interim Status Facilities)—Submit notification of increased indicator parameter concentrations: Modify—no need to submit reports; this information will be noted as part of the groundwater quality assessment program.	265.93 (c)(1), (d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit information for ground-water quality assessment plan: Modify—no need to submit information. It may be maintained on-site, where it will be available for regulators to inspect.	265.93(d)(2).
Ground-water Monitoring (Interim Status Facilities)—Develop and submit ground-water quality assessment reports: Modify—no need to submit these reports given other regulatory requirements in this part, which give detailed instructions on assessments and cleanups.	265.93(d)(5), (e), (f).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(i).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on indicator parameter concentrations and evaluations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(ii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on ground-water surface elevations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(iii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on the results of the ground-water quality assessment program: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(b)(2).
Closure (Interim Status Facilities)—Submit semi-annual corrective action report: Modify—according to Agency staff experts, regulators will have sufficient information if these reports are sent in annually instead of semi-annually.	265.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified HazardousMaterials Manager is capable of performing this certification.	265.115.
Certify completion of post-closure care: Modify—in addition to an independent, registered professional engineer, this certification may be made by a Certified Hazardous Materials Managers.	265.120.
Container Inspection Frequency: Modify—allow regulators to modify the self-inspection frequency for well-performing facilities on a case-by-case basis.	265.174.
Assessment of Existing Tank System's Integrity: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.191(a), (b)(5)(ii).
Design and Installation of New Tank Systems or Components—assessment of structural integrity and acceptability for storing and treating waste: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.192(a).
Design and Installation of New Tank Systems or Components—assessment of tank installation: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.192(b).
Tank Systems (Interim Status): Remove obsolete language	265.193(a).
Tank Systems (Interim Status)—Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours: Eliminate this demonstration. Having a functional leak detection system capable of detecting a release within 24 hours or the earliest practicable time, coupled with the tank design requirements, is adequately protective.	265.193(e)(3)(iii).
Tank Systems (Interim Status)—Obtain variance to use alternate tank design and operating practices: Eliminate the need to obtain a variance and make this self-implementing. Records are to be kept on-site describing the decisionmaking.	265.193(g)(1), (h).
Tank Systems (Interim Status): Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.195(a).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Tank Systems (Interim Status)—Notify EPA of release: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility record.	265.196(d)(1), (d)(2).
Tank Systems (Interim Status)—Submit report describing releases: Eliminate—the cleanup requirements in the regulations and the need to certify (required by 265.196(f)) is sufficient to protect human health and the environment.	265.196(d)(3).
Tank Systems (Interim Status)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, this certification may be done by a Certified Hazardous Materials Manager.	265.196(f).
Surface Impoundments (Interim Status): Remove obsolete language	265.221(a).
Surface Impoundments (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—Response Action Plans for other kinds of treatment units are not submitted to EPA. We are proposing that it is sufficient to keep this Plan on-site.	265.223(a).
Surface Impoundments (Interim Status)—Notify EPA in writing if flow rate exceeds action leakage rate for any sumps within 7 days: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(1).
Surface Impoundments (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(2).
Surface Impoundments (Interim Status)—Compile and submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement since information about the leak will be kept onsite, where it is available for inspection by regulators.	265.223(b)(6).
Waste Piles (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—an unnecessary requirement since other treatment units do not have to submit this plan. Removing this requirement will bring consistency to the regulations.	265.259(a).
Waste Piles (Interim Status)—NotifyEPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(1).
Waste Piles (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(2).
Waste Piles (Interim Status)—Submit information to EPA each month that the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(6).
Land Treatment (Interim Status)—Submit notification for food-chain crops at land treatment facility: Eliminate—an unnecessary requirement as long as the other regulatory requirements in 265.276 are followed. Information about compliance with these other regulatory requirements will be in the facility operating record.	265.276(a).
Landfills (Interim Status)—Remove obsolete language	265.301(a).
Land Fills (Interim Status)—Submit the Response Action Plan to EPA: Eliminate requirement to submit plan. Developing a plan, keeping it onsite, and implementing it when necessary is sufficient.	265.303(a).
Land Fills (Interim Status)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(1).
Land Fills (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(2).
Land Fills (Interim Status)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the remediation required by regulation takes place, and information about the remediation is kept in the facility record.	265.303(b)(6).
Requirements for bulk and containerized liquids: Remove obsolete language	265.314(a), (a)(1), (a)(2), (b), (g).
Drip Pads (Interim Status)—Assessment of Drip Pad, Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, certification may be made by a Certified Hazardous Materials Manager.	265.441(a), (b), (c).
Drip Pads (Interim Status)—Assessment of Drip Pad: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.443(a)(4)(ii), (g).
Drip Pads (Interim Status)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place, and is recorded in the facility operating record, where it will be available for inspection by regulators.	265.443(m)(1)(iv), (2).
Drip Pads (Interim Status)—Notify Regional Administrator and certify completion of repairs: Eliminate—an unnecessary requirement as long as the required cleanup and repairs are made.	265.443(m)(3).
Drip Pads (Interim Status)—Inspection of liners: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.444(a).
Equipment Leaks (Interim Status)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement as long as other regulatory requirements in 265.1061 are followed.	265.1061(b)(1).

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RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Equipment Leaks (Interim Status)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement. Owners or operators can decide which standard to meet without notifying the Agency. This information will be retained in the facility's operating record, where it will be available for inspection by regulatory authorities.	265.1061(d).
Equipment Leaks (Interim Status)— Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary requirement. Owners or operators may use alternative work practice without notifying the Agency. This information will be kept in the facility operating record, which is available for regulatory authorities to inspect.	265.1062(a)(2).
Containment Buildings (Interim Status)—Notify EPA of intent to be bound by the regulations earlier than as specified in section 265.1100: Eliminate—an obsolete requirement.	265.1100.
Containment Buildings (InterimStatus)—Obtain certification that building meets design requirements:Modify—in addition to an independent, registered professional engineer, this certification can be done by a Certified Hazardous Materials Manager.	265.1101(c)(2).
Containment Buildings (InterimStatus)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement to notify regulatory authorities about a cleanup that must be done by regulation. Records of the cleanup will be in a facility's operating record, which is available for inspection by regulatory authorities.	265.1101(c)(3)(i)(D).
Containment Buildings (Interim Status)—Notify EPA and verify in writing that the cleanup and repairs have been completed: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place. This information will be maintained in the operating record, which is available for inspection by regulators.	265.1101(c)(3)(ii), (iii).
Containment Buildings—Interim Status: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.1101(c)(4).
Boilers and Industrial Furnaces (Permitted)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.102(e)(10).
Boilers and Industrial Furnaces (Interim Status)—Evaluation of data and making determinations: Modify—in addition to an independent, registered professional engineer, this evaluation can be made by a Certified Hazardous Materials Manager.	266.103(b)(2)(ii)(D).
Boilers and Industrial Furnaces (Interim Status)—Periodic recertifications of compliance: Modify—extend period of time from three to five years, which Agency field staff believe is sufficient for regulatory purposes.	266.103(d).
Boilers and Industrial Furnaces (Interim Status)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.103(k).
Direct Transfer Equipment—Assessment of equipment: Modify—in addition to an independent, registered professional engineer, this assessment can be done by a Certified Hazardous Materials Manager.	266.111(e)(2).
Storage of Solid Waste Military Munitions—Notification of loss or theft: Simplify notification process—there is no need to notify the regulatory authorities twice.	266.205(a)(1)(v).
LDR Generator Requirements—Generator waste determination: Eliminate—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.7(a)(1).
LDR Generator Requirements—Generator waste determination: Eliminate—because we are eliminating 268.7(a)(1), this record retention requirement is unnecessary.	268.7(a)(6).
LDR Treatment Facility Requirements—Submit a recycling notice and certification to EPA: Modify—keep information on-site. See discussion in proposed rule preamble.	268.7(b)(6).
LDR Hazardous Debris Requirements—Submit notification of claim that debris is excluded from definition of hazardous waste: Modify—notification becomes one-time and remains on-site. See discussion in proposed rule preamble.	268.7(d)(1).
LDR Special Rules for Characteristic Wastes—Submit one-time notification: Modify—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.9(a).
LDR Special Rules for CharacteristicWastes—Submit certification: Modify—keep information on-site.See discussion in proposed rule preamble.	268.9(d).
Part B Requirements for Tank Systems—Submit written assessment of structural integrity: Modify—in addition to an registered, independent professional engineer, this assessment may be done by a Certified Hazardous Materials Manager.	270.16(a).
Part B Requirements for Surface Impoundments—Assessment of structural integrity: Modify—in addition to a registered, independent professional engineer, this assessment may be made by a Certified Hazardous Materials Manager.	270.17(d).

B. We Are Proposing Weekly Hazardous Waste Tank Inspections

We are proposing to reduce the self-inspection frequencies for hazardous waste tanks from daily to weekly. Tank regulations are found in 40 CFR 264.190 and 265.190.

This proposal is based on three factors. First, other kinds of tanks are required to be inspected at frequencies less than daily. These tanks have to meet criteria for protecting human health and the environment similar to those for hazardous waste tanks. For example, in the Underground Storage Tank Program, tanks containing petroleum or hazardous substances are only required to be monitored for releases every thirty days. Oil tanks regulated under the Spill Prevention, Control and Countermeasure Program (SPCC) are required to be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas. It is up to the engineer who certifies the SPCC Plan how often these observations should occur.

Comments we received on the "Notice of Data Availability," as well as the outreach we did, support going from a daily to weekly inspection frequency. Commenters and an expert on tank systems made the point that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same chemicals.

Additionally, the tanks are equipped with leak detection systems, and are subject to routine visual inspection by employees. Leak detection systems provide continuous surveillance for the presence of a leak or spill. Technically, they consist of wire grids, observation wells, and U-tubes containing thermal-conductivity or electrical-resistivity sensors, or vapor detectors. Visual inspection is effective for aboveground or vaulted tanks, and for other tanks where access to potentially leaking parts is available. Visual monitoring can also be effective for the inspection of ancillary equipment.

Upon detection of a leak, either through the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

Finally, tanks are simpler to design, construct, and manage than units such as combustion units or land disposal units, and therefore require less oversight than these more complicated units for assessing that they are performing protectively.

C. We Propose To Allow Facilities the Opportunity To Adjust the Frequency of Their Self-Inspections

For containers, containment buildings, and tanks (in addition to moving their inspection frequency from daily to weekly), we are proposing to allow on a case-by-case basis decreased inspection frequencies (from the frequency currently required by regulation). The regulations for containers are found in 40 CFR 264.170 and 265.170; containment buildings in 40 CFR 264.1100 and 265.1100; and tanks in 40 CFR 264.190 and 265.190. In all cases, inspections would have to occur at least monthly. Decreased inspection frequencies would be established on a site-specific basis by the Directors of authorized states' hazardous waste programs, or by EPA.

Considerations for decreasing inspection frequencies will be based on factors such as: a demonstrated commitment by facility management to sound environmental practices, demonstrations of good management practices over the years (having a record of sustained compliance with environmental laws and requirements), demonstrated commitment to continued environmental improvement, demonstrated commitment to pubic outreach and performance reporting, the installation of automatic monitoring devices at the facility, and the chemical and physical characteristics of the waste being managed in the unit. States or EPA may also include a qualification that facilities must revert to the original inspection schedule if there are spills or releases.

Several states and a coalition of environmental groups and trade unions commented that they do not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase. If the factors described above are taken into account when extending the inspection frequencies, there will be little or no increase in the likelihood of an undetected release. These decreased inspection frequencies should only be offered to the safest and best-performing facilities. In addition, the proposed approach may reduce the likelihood of release by providing a financial incentive for companies to avoid releases in order to be approved for reduced inspection frequency.

We also received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies. We are not mandating that states offer these changes. We are only providing the option to states that are interested.

Another group of commenters suggested that inspection frequency changes should be self-implementing. For example, an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. Where we were able to identify an across-the-board change, like tanks going to weekly inspections, we did so. We think beyond that, a case-by-case evaluation of facility conditions is still necessary. It is important that regulatory agencies make the decisions to decrease inspection frequencies. Thus, we are not proposing the self-implementing option.

D. We Propose Reducing the Burden of RCRA Personnel Training Requirements and Eliminating an Overlap With Occupational Safety and Health Administration Training Requirements

We currently require facilities to train their employees in facility operations and emergency response procedures. We also require a written job description for each employee. And, we require training records for current employees to be kept until closure of the facility. These requirements are found in 40 CFR 264.16 and 265.16. The idea behind these regulations is that trained employees are safe employees, and will be able to prevent releases of hazardous waste to the environment. By working with the Occupational Safety and Health Administration, we have developed an improved way of meeting these goals.

During our research, we compared the personnel training requirements imposed by EPA under RCRA with those imposed by OSHA through their Hazardous Waste Operations and Emergency Response regulation. Based on this analysis and comments received on the "Notice of Data Availability," we discovered that there is really only one area of overlap. This overlap is emergency response training. A recent report from the General Accounting Office titled: "Worker Protection, Better Coordination Can Improve Safety and Hazardous Materials Facilities" independently reached the same conclusion about an overlap in these two sets of emergency response training requirements.

We propose changing the RCRA regulations to have facilities comply with the OSHA regulations for emergency response training, and to drop the current RCRA requirements. The OSHA requirements are more extensive than the current RCRA requirements, and should therefore replace the RCRA requirements.

We are also proposing eliminating the requirement that facilities include job titles and descriptions as part of their personnel records. Based on comments received from the "Notice of Data Availability," we believe that requiring job descriptions provide little value in protecting human health and the environment. Often these job descriptions bear little resemblance to the work the employees do, and they have little relationship to whether an employee is trained properly.

Finally, we are proposing to eliminate the regulatory requirement for a description of the training employees will receive. The facility inspections ensure adequate training—simply

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documenting the employee(s) name(s) and date(s) of training is sufficient.

E. We Propose To Further Eliminate and Streamline the Land Disposal Restrictions (LDR) Paperwork Requirements, Existing LDR Paperwork Requirements

The Land Disposal Restrictions (LDR) are a major regulatory component of the RCRA program. In addition to establishing treatment standards for hazardous waste prior to land disposal, they require generators and TSDFs to determine if their waste needs to be treated before land disposal, submit demonstrations and petitions to EPA if applicable, and send notices and/or certifications with shipments to TSDFs.

Based on our review of the LDR paperwork requirements, as well as our conversations with the regulated community, states, and the public through a series of public forums, we have determined that a number of LDR requirements for waste determinations, notifications, and certifications could be eliminated without diminishing the protection of human health or the environment.

Proposed Changes to LDR Paperwork Requirements

Change 1: We Propose To Drop the § 268.7(a)(1) Generator Waste Determination Requirement

We propose to eliminate the need for generators to conduct the waste determination required by § 268.7(a)(1). Section 268.7(a)(1) requires a generator to determine if their hazardous waste must be treated prior to land disposal. This determination can be made either through testing or knowledge of the waste's properties and constituents. After consulting with staff with field experience, we concluded that a combination of several other requirements provide the same safeguards as the § 268.7(a)(1) requirement.

First, a determination of whether a waste is hazardous is required by § 262.11 (which says that generators of solid waste must determine whether a waste is hazardous). This means a generator must know what properties and constituents are present in his waste—for example, does it contain toxic constituents that cause it to exhibit the Toxicity Characteristic described in § 261.24? Some of this same information is used in the determination as to whether the waste must be treated to comply with the LDRs.

Second, § 264.13(a)(1) requires TSDFs to perform a general waste analysis to determine "all of the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter" (emphasis added). Therefore, the owner or operator of a TSDF is already required to work with the waste generator to ensure that adequate information is available to comply with LDRs.

Third, in § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of EPA hazardous waste code, waste constituents, wastewater and nonwastewater classification, and treatability group).

These other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. Therefore, we conclude that the § 268.7(a)(1) determination is duplicative, and we propose to eliminate it.

Change 2: We Propose To Modify the § 268.7(b)(6) Recycler Notification and Certification Requirements

Currently, treatment facilities must test their waste to determine whether it complies with LDR treatment standards. A one-time notice containing this information must be sent to the disposal facility. The treatment facility must also send a one-time notice to regulatory authorities that the treatment technology was operated properly. We originally thought that the regulating agency would review these reports to monitor what happens to this waste.

Based on a recent analysis of actual state and Regional facility oversight of treatment and recycling facilities, we have found that this information is not routinely used for its intended purpose. Our informants suggested that it would be sufficient for this information to be available in the facility's files if any question arises as to whether adequate treatment occurred.

Therefore, we are proposing that treatment and recycling facilities no longer send these notifications and certifications to EPA, as long as the information contained in them is kept in facility records.

Change 3: We Propose To Modify the § 268.7(d) Hazardous Debris Notification Requirement

Currently, generators or treatment facilities who claim that their hazardous debris is excluded from the definition of hazardous waste must send a one-time notice of this claim to EPA, and keep a copy of the notice in their files. We established this requirement on the assumption that regulatory agencies would review the notices to make themselves aware that this treated debris was being sent to a non-hazardous waste landfill.

We have been unable to verify that this information is routinely used for its intended purpose. Therefore, we are proposing that generators and treaters of excluded debris not send these notifications to EPA, as long as the information that would have been in the notifications is kept in facility records.

Change 4: We Propose To Modify the § 268.9(a) Characteristic Waste Determination Requirement

We propose to eliminate the need for a separate LDR waste determination for characteristic waste. As with the § 268.7(a)(1) generator determinations above, the § 268.9(a) determinations are duplicated elsewhere. Generators are already required to determine whether they have a hazardous waste under § 262.11, and treaters are required to obtain a detailed chemical and physical analysis under § 264.13. Under § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of the EPA hazardous characteristic waste code, underlying hazardous constituents, wastewater/nonwastewater classification, and treatability group).

These other determinations are sufficient to assure a waste is properly characterized for achieving compliance with the LDRs and, therefore, protecting human health and the environment.

Change 5: We Propose To Modify the § 268.9(d) Notification Requirement

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification about this must be placed in the generator's or treater's files, and also sent to EPA. We continue to see value in parties knowing that they are receiving wastes that are still subject to land disposal restrictions, even though they no longer exhibit a characteristic.

These records do not need to be sent to EPA, however, if they are kept on site in the facility's files. We have not been able to verify that this information, once sent to EPA, is routinely used. Therefore, we conclude based on the absence of such information from regulatory agencies, that its submission is not critical to overall protection of human health and the environment. And in the event of a question of compliance or enforcement action, it will be available in a facility's files.

III. Other Burden Reduction Proposals

Boiler and Industrial Furnace Records To Be Kept 3 Years

Owner/operators of Boilers and Industrial Furnaces must conduct tests, such as performance tests for their continuous emissions monitors, and report the results to us. We propose to standardize the retention period for all records required to be kept by the Boilers and Industrial Furnaces to three years, bringing it in line with other RCRA recordkeeping retention periods. See 40 CFR 266.102 for the Boiler and Industrial Furnace regulations.

Certified Hazardous Materials Managers

Owners/operators of hazardous waste facilities must certify that their treatment, storage, and disposal units are functioning properly. For example, tank systems for storing or treating hazardous waste must be certified by an independent, qualified, registered professional engineer that the tanks meet thickness and strength requirements.

We propose to modify most of the RCRA certification requirements to allow a person who is a "Certified Hazardous Materials Manager" to make the certification. The Certified Hazardous Materials Manager Certification is accredited by the Council on Engineering and Scientific Specialties Board, which also accredits certified industrial hygienists, and certified safety professionals. The Certified Hazardous Materials Manager must have a combination of education and hands-on work experience at a hazardous waste facility, pass a closed book examination, continue their professional education, and follow a code of ethics.

The Agency was not aware of this discipline when most of the regulations were written that require engineers to do certifications. Most certification duties that an independent, qualified, registered professional engineer must perform can be carried out by a Certified Hazardous Materials Manager.

General Facility Standards Are Streamlined and Updated

When EPA originally developed the operating record requirements, we thought that records should routinely be kept for the life of the facility. Our reasoning was that in case an issue or problem came up about an earlier practice at a facility, the records would be available for examination.

After many years of experience with RCRA, we are better able to distinguish records that must be kept for the life of the facility from those which can be discarded after some period of time without affecting protections of human health and the environment.

As discussed below, information about what wastes are disposed at a facility, where the disposed waste is located, and information relevant for facility closure must be kept for the life of the facility. More routine information, such as whether certain notices were filed and records of inspections, can be discarded after three years. In the RCRA regulations, we have generally settled on three years as a reasonable time frame for keeping records. This is consistent with other Agency programs, such as the Toxics Substance Control Act and the Toxic Chemical Release Reporting Community Right to Know programs, that impose a three year record retention time in their regulations.

We propose to modify a number of the §§ 264.73 and 265.73 operating record requirements to require only a three-year limit on keeping information. The following are proposed record retention times for each part of the operating record: § 264.73:

(b)(1) Description and quantity of each hazardous waste received and what was done with it: Maintain until closure of the facility.

(b)(2) The location of each hazardous waste: Maintain until closure of the facility.

(b)(3) Records and results of waste analyses and waste determinations: Maintain for three years after entry into the operating record.

(b)(4) Reports of implementation of contingency plan: Maintain for three years after entry into the operating record.

(b)(5) Records of inspections: Maintain for three years after entry into the operating record.

(b)(6) Monitoring, testing, and analytical data: Maintain until closure of the facility.

(b)(7) § 264.12(b) notices: Maintain for three years after entry into the operating record.

(b)(8) Closure estimates: Maintain in operating record until closure of the facility.

(b)(9) Waste minimization certification: Maintain for three years after entry into the operating record.

(b)(10) Records of quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction: Maintain in operating record until closure of the facility.

(b)(11) For off-site treatment facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(12) For on-site treatment facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(13) For off-site land disposal facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(14) For on-site land disposal facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(15) For off-site storage facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(16) For on-site storage facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(17) Records required under § 264.1(j)(13): Maintain for three years after entry into the operating record.

We propose to similarly change the § 265.73 Operating Record requirements.

Consolidation of Facility Contingency Plans Is Encouraged

Owners and operators of hazardous waste facilities must have contingency plans in place to minimize hazards to human health and the environment from fires, explosions, or unplanned releases of hazardous waste. We received several comments on the "Notice of Data Availability" asking that we streamline or combine the various contingency plans required not only by EPA, but by other federal agencies too.

EPA already allows combined plans. In 1996, EPA in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor issued the "Integrated Contingency Plan Guidance." This Guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities should consider developing one contingency plan based on this Guidance.

Facilities which adopt the "Integrated Contingency Plan" will minimize the duplication and costs associated with the preparation and use of multiple contingency plans. The use of a single plan per facility will also eliminate confusion for "first responders" (for example, firemen) who often must decide which of the contingency plans is applicable to a particular emergency. And, the adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

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The "Integrated Contingency Plan Guidance" can be found in the June 5, 1996 **Federal Register** (61 FR 28641–28664) or on the Internet at *http://www.epa.gov/swercepp/p-tech.htm.*

Today's proposals clarifies our regulations (see 40 CFR 265.52) to say that combined plans are acceptable.

We Propose To Streamline the Variance From Classification as a Solid Waste Procedure

We have established provisions in our regulations to allow regulated entities to submit applications for variances, exclusions, petitions, and exceptions from certain RCRA requirements.

To simplify one of these applications, we propose to eliminate the requirement that a petitioner for a variance from classification as a solid waste survey the industry-wide prevalence of the material production process (the requirement is found in 40 CFR 260.31(b)). In practice, we have found that we do not use this information in making decisions on these variances. A variance petitioner can continue to submit such information if they choose, but it will no longer be an application requirement.

We Propose To Eliminate the Requirement for Treatability Study Reports

We also propose to eliminate the requirement that facilities submit in their annual report under § 261.4(f)(9) an estimate of the number of treatability studies and the amount of waste expected to be used in treatability studies in the upcoming year. Based on the observations of recipients (EPA and state regulators), we have determined that these reports do not contribute to the protection of human health and the environment. Moreover, these annual forecasts are not necessarily accurate, and we obtain the precise information anyway in the annual report that is submitted.

We Propose To Streamline Groundwater Monitoring Requirements

Hazardous waste treatment, storage, and disposal facilities must implement a groundwater monitoring system to detect the presence of contaminants in the groundwater. If contamination is detected, monitoring must be performed. If the level of contamination exceeds the groundwater protection standard, corrective action must be undertaken.

We propose to allow owners/operators of facilities to report on the effectiveness of corrective action on an annual basis instead of the current semi-annual basis. In combination with other forms of oversight by regulatory agencies, annual reporting will provide adequate information to ensure compliance.

This proposed change makes sense because monitoring and cleaning up groundwater is almost always a multi-year or even multi-decade effort. Semi-annual reporting of data is not necessary for ensuring protection of human health and the environment.

We are also proposing to allow groundwater monitoring plans and reports to be kept at a facility.

And, we also propose to modify the § 264.99(g) requirement that facilities who are doing compliance monitoring conduct an annual Appendix IX analysis of all monitoring wells. Specifically, we propose allowing, on a case-by-case basis, sampling for a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are multiple units and wells at a facility, and only one unit shows signs of contamination.

Also, monitoring for constituents that are not likely to be found at a site is not a good use of resources and does not increase the protection of monitoring programs. Therefore, we propose allowing, on a case-by-case basis, sampling for a subset of the Appendix IX constituents. These decisions will be based on regulatory agencies' judgement of what supports the protection of human health and the environment, as well as on the contaminant situation at a site.

Biennial Report Changes Are Being Implemented Separately

We are not making changes to the Biennial Report through this effort. Reform of the Biennial Report has already been started in the 2001 Biennial Report cycle.

Changes made to the 2001 Biennial Report include streamlining the Biennial Report Source, Origin, Form, and Management codes; clarifying the types of waste to be reported; and removing some data elements. The 2001 Biennial Report forms and instructions are located on the Internet at: *www.epa.gov/epaoswer/hazwaste/data/brs01/forms.htm.*

Electronic Reporting and Recordkeeping Changes Are Being Handled Separately

In the "Notice of Data Availability," we discussed allowing all RCRA-required documents to be kept and sent electronically. Since the publication of the "Notice," the Agency has begun to develop a separate rulemaking (the "Cross-Media Electronic Reporting and Recordkeeping Rule") that will establish Agency-wide standards for electronic reporting and recordkeeping. We are deferring our efforts in this area to the "Cross-Media Electronic Reporting and Recordkeeping" rulemaking.

IV. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's proposal affects many aspects of the RCRA program and would be promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's proposal would amend provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, when promulgated, the Agency would add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Other sections of today's proposal would be promulgated pursuant to non-HSWA authority.

The requirements in today's proposed rulemaking are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those States which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended.

This rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking would not become effective in authorized States until they adopted and are authorized for it, EPA will strongly encourage states to amend their programs and seek authorization for today's proposal, once it becomes final.

C. Abbreviated Authorization Procedures

EPA considers today's proposal to be a minor rulemaking and is proposing to add it to the list of minor or routine rulemakings in Table 1 to 40 CFR 271.21. Placement in this table would enable states to use the abbreviated procedures located in 40 CFR 271.21(h) when they seek authorization for today's proposed changes after they are promulgated. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998). EPA requests comment on this placement in Table 1 to 40 CFR 271.21:

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the rule raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Environmental Justice Executive Order 12898

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agency Report" and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of this proposed rulemaking on low-income populations and minority populations and concluded that any risks resulting from the rule would be very small. The basic reason for this finding is that the current features of the RCRA program that protect human health and the environment would be preserved or enhanced under the proposal. As mentioned earlier, the proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because they add little to the protectiveness of the regulations. Most of the paperwork requirements entail notices and reports that are obscure, inconsequential or infrequently submitted. In addition, the proposal would give facilities added flexibility in how they can comply with the regulations. For example, the proposal would let facilities choose between hiring a certified hazardous materials manager or licensed professional engineer to perform specified activities (e.g., certifications). The proposal also would streamline certain requirements, such as contingency planning and personnel training, that are essential to a facility's protectiveness. Such flexibility and streamlining will make it easier for facilities to comply with the regulations.

Despite eliminating a number of paperwork requirements based on interviews and comments, we leave intact the basic environmentally protective activities that facilities are currently undertaking. That is, we would require facilities to continue performing their technical activities, but require them to submit less information to us on their daily activities. Note, however, that the proposal would not curtail the right of regulatory agencies to request any of the information we are proposing to eliminate. Facilities must continue to keep on-site records of their waste management activities and make them available to regulators when requested. As such, the rule would not limit regulators' or the public's ability to learn what is happening at a facility. In addition, basic information about a facility will still be readily accessible to the public via the Agency Web site and non-Agency Web sites such as the "Right to Know Network" Web site (*www.rtknet.org*). However, we specifically request comment on

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whether today's proposals in any way diminishes protection of human health and the environment.

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because there is no evidence suggesting they contribute in a substantial way to the protectiveness of the regulations. In particular, we propose eliminating notices and reports that are redundant, inconsequential for compliance with technical requirements, or only rarely required to be sent in to regulatory authorities. Most of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement was performed. The proposal would leave intact the basic environmentally protective activities that facilities are currently undertaking.

D. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities". 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. Today's proposal is specifically intended to be deregulatory and to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the proposed changes would reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The proposed rule, for example, would reduce the frequency by which businesses must conduct specified recordkeeping and reporting activities. It also would eliminate certain recordkeeping and reporting requirements altogether, i.e., in cases where the documents are little used by the public or regulators. In addition, the rule would eliminate redundancies between the RCRA regulations and other regulatory programs (e.g., RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule would provide increased flexibility in how waste handlers may comply with the regulations. For example, we would allow waste handlers to seek relief, on a case-by-case basis, from the inspection frequencies in the regulations. Facilities successfully demonstrating that the regulatory frequencies are not necessary (e.g., because of site-specific mitigating factors) would be granted a reduced inspection frequency by the Agency. We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities.

F. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less stringent than the existing Federal program, States would not be required to adopt and seek authorization for them. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicit comment on this proposed rule from State and local officials.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions by State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain "Federal mandates" that may result in the expenditure by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule will not result in the expenditure of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector in any one year because this is a burden reduction rulemaking which reduces costs.

H. Executive Order 13175: Consultation and Coordination With Indian and Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. As explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. Paperwork Reduction Act

We have prepared a document listing the information collection requirements of this proposed rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

We calculate the reporting and recordkeeping burden reduction for this rule as 929,000 hours and $120,000,000. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

J. Executive Order 13211 (Energy Effects)

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste Reporting and recordkeeping requirements.

40 CFR Part 261

Comparable fuels, Syngas fuels, Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, it is proposed that title 40 of

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the Code of Federal Regulations be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart C—Rulemaking Petitions

§ 260.31 [Amended]

2. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

§ 261.4 [Amended]

4. Section 261.4 is amended by removing paragraphs (a)(9)(iii)(E) and (f)(9); and redesignating paragraphs (f)(10) and (f)(11) as (f)(9) and (f)(10).

5. Section 261.38 is amended by removing the last sentence of paragraph (c)(1) introductory text and removing and reserving paragraph (c)(1)(i).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

7. Section 264.16 is amended by revising paragraphs (a)(1), (a)(3) and (d) to read as follows (the *Comment* following paragraph (a)(1) is unchanged):

§ 264.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

* * * * *

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

* * * * *

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

* * * * *

Subpart D—Contingency Plan and Emergency Procedures

8. Section 264.52 is amended by revising paragraph (b) to read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan") which meets all regulatory requirements.

* * * * *

§ 264.56 [Amended]

9. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

10. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the Comment following paragraph (b)(2) is unchanged):

§ 264.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(6) Monitoring, testing, or analytical data, and corrective action data where required by subpart F of this part and §§ 264.19, 264.191, 264.193; 264.195, 264.222, 264.223, 264.226, 264.252 through 264.254, 264.276, 264.278, 264.280, 264.302 through 264.304, 264.309, 264.347, 264.602, 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, and 264.1082 through 264.1090. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(8) All closure cost estimates, and for disposal facilities, all post-closure cost estimates. This information must be maintained in the operating record until closure of the facility.

* * * * *

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 298.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

* * * * *

11. Section 264.90 is amended by revising paragraph (a)(2) to read as follows:

§ 264.90 Applicability.

(a) * * *

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, land treatment unit, or landfill must comply with the

requirements of §§ 264.91 through 264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial assurance responsibility requirements of § 264.101 apply to all regulated units.

* * * * *

12. Section 264.98 is amended by revising paragraphs (c), (g)(5)(ii), (g)(6)(i), and (g)(6)(ii) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(c) The owner or operator must conduct and maintain records for a ground-water monitoring program for each chemical parameter and hazardous constituent specified in their permit. The Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents. The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h).

(g) * * *

(5) * * *

(ii) Note in the operating record whether this contamination was caused by a source other than the regulated unit or from an error in sampling, analysis, or evaluation;

* * * * *

(6) * * *

(i) Note in the operating record that statistically significant evidence of contamination was found;

(ii) Enter into the operating record a report demonstrating that a source other than a regulated unit caused the contamination, or that the contamination resulted from an error in sampling, analysis, or evaluation;

* * * * *

13. Section 264.99 is amended:

a. Revising paragraph (g);

b. Removing and reserving paragraph (h)(1);

c. Removing paragraphs (i)(1) and (i)(2) and redesignating paragraphs (i)(3) and (i)(4) as (i)(1) and (i)(2).

The revision reads as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(g) The owner or operator must analyze samples from monitoring wells at the compliance point. The number of wells and samples will be worked out on a case-by-case basis with the Regional Administrator. The specific constituents from Appendix IX of part 264 to be analyzed will also be worked out on a case-by-case basis with the Regional Administrator. This analysis must be done annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

* * * * *

14. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

§ 264.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) During the period of corrective action, the owner or operator shall provide an annual report to the Regional Administrator describing the progress of the corrective action. This report shall include all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the corrective action.

* * * * *

15. Section 264.120 is revised to read as follows:

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period was done in accordance with the specifications in the post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart I—Use and Management of Containers

16. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Subpart J—Tank Systems

17. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager attesting to the tank system's integrity.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include a leak test or other integrity examination that is certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, or erosion.

* * * * *

18. Section 264.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at the time of submittal of part B

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information, an assessment, reviewed and certified by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

* * * * *

19. Section 264.193 is amended:

a. By revising paragraph (a);

b. By revising paragraphs (c)(3) and (c)(4); (the **Note** following paragraph (c)(4) is unchanged);

c. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);

d. By revising paragraph (g) introductory text and paragraph (g)(1);

e. By removing paragraph (h) and redesignating paragraph (i) as (h).

The revisions read as follows:

§ 264.193 Containment and detection of releases.

(a) Secondary containment must be provided for all existing and new tank systems and components.

* * * * *

(c) * * *

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

* * * * *

(e) * * *

(3) * * *

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

* * * * *

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b).

* * * * *

20. Section 264.195 is amended by revising paragraph (b) to read as follows (the **Note** following paragraph (b) is unchanged):

§ 264.195 Inspections.

* * * * *

(b) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

21. Section 264.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

Subpart K—Surface Impoundments

22. Section 264.223 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

§ 264.223 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart L—Waste Piles

23. Section 264.251 is amended by revising paragraph (c) introductory text to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners, and a leachate collection and removal system above and between the liners.

* * * * *

24. Section 264.253 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

§ 264.253 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart M—Land Treatment

§ 264.278 [Amended]

25. Section 264.278 is amended by removing and reserving paragraph (g)(1); removing paragraphs (h)(1) and (h)(2) and redesignating paragraphs (h)(3) and (h)(4) as (h)(1) and (h)(2).

Subpart N—Landfills

26. Section 264.304 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3); and revising paragraph (c) introductory text, to read as follows:

§ 264.304 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

27. Section 264.314 is amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e) and by revising newly designated paragraphs (a) and (e) introductory text to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(e) The placement of any liquid that is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

* * * * *

Subpart O—Incinerators

§ 264.343 [Amended]

28. Section 264.343 is amended by removing the last sentence of paragraph (a)(2).

Subpart W—Drip Pads

29. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). The owner or operator must obtain an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. The assessment must be updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with the standards of § 264.573 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b). This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 264.573. The plan must be completed no later than two years before the date that all repairs, upgrades, and modifications are complete. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must develop as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager that the drip pad conforms to the drawings.

* * * * *

30. Section 264.573 is amended by revising paragraphs (a)(4)(ii), (g), and (m)(1)(iii) and removing paragraphs (m)(1)(iv) and (m)(3) and removing and reserving paragraph (m)(2) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep on file an assessment of the drip pad reviewed and certified by an independent, qualified, registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The owner or operator must evaluate the drip pad to determine that it meets the requirements of paragraphs (a) through (f) of this section and must obtain a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager and maintain this certification on-site.

* * * * *

(m) * * *

(1) * * *

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Records that repairs were completed on schedule must be kept at the facility.

* * * * *

31. Section 264.574 is amended by revising paragraph (a) to read as follows:

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (for example, membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified to meet the requirements in § 264.573 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

§ 264.1036 [Removed and Reserved]

32. Remove and reserve § 264.1036.

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1062 [Amended]

33. Section 264.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2),

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respectively; and removing paragraph (d).

§ 264.1062 [Amended]

34. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 264.1065 [Removed and Reserved]

35. Remove and reserve § 264.1065.

Subpart DD—Containment Buildings

36. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

37. Section 264.1101 is amended by revising paragraphs (c)(2), (c)(3)(i)(C) and (c)(4), removing paragraphs (c)(3)(i)(D) and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain certification by an independent qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

(3) * * *

(i) * * *

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

38. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

39. Section 265.1 is amended by revising paragraph (b) to read as follows (the *Comment* following paragraph (b) is unchanged):

§ 265.1 Purpose, scope, and applicability.

* * * * *

(b) Except as provided in § 265.1080(b), the standards of this part, §§ 264.552, 264.553, and 264.554 of this chapter apply to owners and operators of facilities that treat, store, or dispose of hazardous waste and who have complied with the requirements for interim status under RCRA section 3005(e) and § 270.10 of this chapter.

* * *

40. Section 265.16 is amended by revising paragraphs (a)(1) and (a)(3) and (d) to read as follows:

§ 265.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

* * * * *

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

* * * * *

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

* * * * *

Subpart D—Contingency Plans and Emergency Procedures

41. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance (One Plan) which meets all regulatory requirements.

* * * * *

42. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i)

43. Section 265.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the *Comment* following paragraph (b)(6) is unchanged):

§ 265.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be kept in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility;

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by §§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part. All of this information must be maintained in the operating record until closure of the facility;

* * * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8 of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

Subpart F—Groundwater Monitoring

44. Section 265.90 is amended by revising paragraph (d)(1) and (d)(3) to read as follows:

§ 265.90 Applicability.

* * * * *

(d) * * *

(1) Within one year after [the effective date of the final rule], develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system;

* * * * * *

(3) Prepare a report in accordance with § 265.93(d)(4);

* * * * *

45. Section 265.93 is amended:

a. By revising paragraph (c)(1);

b. Redesignating paragraph (d)(1) as paragraph (d) introductory text, and redesignating paragraphs (d)(2) through (d)(7) as (d)(1) through (d)(6), respectively;

c. Revising newly designated paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(3) introductory text, (d)(4), (d)(5), (d)(6), and paragraph (e) and (f).

The revisions read as follows:

§ 265.93 Preparation, evaluation and response.

* * * * *

(c)(1) If the comparisons for the upgradient wells made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must note this in the operating record.

* * * * *

(d) If the analyses performed under paragraph (c)(2) of this section confirm a significant increase (or pH decrease), the owner or operator must:

(1) Develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment program at the facility.

(2) The plan to be developed under § 265.90(d)(1) or paragraph (d)(1) of this section must specify:

* * * * *

(3) The owner or operator must implement the ground-water quality assessment program which satisfies the requirements of paragraph (d)(2) of this section, and, at a minimum, determine:

* * * * *

(4) The owner or operator must make his first determination under paragraph (d)(3) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be kept in the facility operating record.

(5) If the owner or operator determines, based on the results of the first determination under paragraph (d)(3) of this section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this section.

(6) If the owner or operator determines, based on the first determination under paragraph (d)(3) of this section, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(i) Must continue to make the determinations required under paragraph (d)(3) of this section on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under paragraph (d)(3) of this section, if the ground-water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of this subpart, any ground-water quality assessment to satisfy the requirements of paragraph (d)(3) of this section which is initiated prior to final closure of the facility must be completed in accordance with paragraph (d)(4) of this section.

(f) Unless the ground water is monitored to satisfy the requirements of paragraph (d)(3) of this section, at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continue to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

46. Section 265.94 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2), and (b), to read as follows:

§ 265.94 Recordkeeping requirements.

(a) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must:

* * * * *

(2) Keep records of the following:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in § 265.92(b)(1) for each ground-water monitoring well.

(ii) Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1).

(iii) Results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must keep records of the following:

(1) Analyses and evaluations specified in the plan, which satisfies the

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requirements of § 265.93(d)(2), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Results of his or her ground-water quality assessment program, which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water.

Subpart G—Closure and Post-Closure

47. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

§ 265.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) The owner or operator must provide annual reports to the Regional Administrator describing the progress of the corrective action program. These reports must include ground-water monitoring data and an analysis of the effect of continued receipt of non-hazardous waste on the effectiveness of the corrective action.

* * * * *

48. Section 265.120 is revised as follows:

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart I—Use and Management of Containers

49. Section 265.174 is revised to read as follows:

§ 265.174 Inspections.

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Subpart J—Tank Systems

50. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the tank system's integrity.

* * * * *

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described in paragraph (b)(5)(i) of this section, or an internal inspection and/or other tank integrity examination certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, and erosion.

* * * * *

51. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 265.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain an assessment by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

* * * * *

52. Section 265.193 is amended:

a. By revising paragraphs (a);

b. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);

c. By revising paragraphs (g) introductory text and (g)(1);

d. Removing paragraph (h);

e. Redesignating paragraph (i) as (h).

The revisions read as follows:

§ 265.193 Containment and detection of releases.

(a) Secondary containment must be provided for all existing and new tank systems and components.

* * * * *

(e) * * *

(3) * * *

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

* * * * *

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the

secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 of this chapter and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b) of this chapter.

* * * * *

53. Section 265.195 is amended by revising paragraph (a) to read as follows (the **Note** following paragraph (a) is unchanged):

§ 265.195 Inspections.

(a) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

54. Section 265.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e), to read as follows (the **Note** following newly designated paragraph (e) is unchanged):

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

* * * * *

Subpart K—Surface Impoundments

55. Section 265.221 is amended by revising paragraph (a) to read as follows:

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of a surface impoundment unit must have two or more liners, and a leachate collection and removal system between the liners. The leachate collection and removal system must be operated in accordance with § 264.221(c) of this chapter, unless exempted under § 264.221(d), (e), or (f) of this chapter.

* * * * *

56. The second section designated as § 265.223 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively;

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.223 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart L—Waste Piles

57. Section 265.259 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart M—Land Treatment

§ 265.276 [Amended]

58. Section 265.276 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Subpart N—Landfills

59. Section 265.301 is amended by revising paragraph (a) to read as follows:

§ 265.301 Design and operating requirements.

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between the liners. The leachate collection and removal system must be operated in accordance with § 264.301(d), (e), or (f) of this chapter.

* * * * *

60. Section 265.303 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

61. Section 265.314 is amended by removing paragraphs (a), redesignating paragraphs (b) through (g) as paragraphs (a) through (f), and revising newly designated paragraphs (a) and (f) introductory text to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator

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of the landfill demonstrates to the Regional Administrator or the Regional Administrator determines that:

* * * * *

Subpart W—Drip Pads

62. Section 265.441 is amended by revising paragraph (a), (b), and (c) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets the requirements of this subpart, except for the requirements for liners and leak detection systems of § 265.443(b). The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 265.443. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Regional Administrator or State Director the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager attesting that the drip pad conforms to the drawings.

* * * * *

63. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) and removing paragraph (m)(1)(iv), removing and reserving paragraph (m)(2), and removing paragraph (m)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager must be obtained and kept on-site.

* * * * *

64. Section 265.444 is amended by revising paragraph (a) to read as follows:

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1061 [Amended]

65. Section 265.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2), respectively; and removing paragraph (d).

66. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

67. Section 265.1100 is amended by revising the introductory text to read as follows:

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

68. Section 265.1101 is amended by removing paragraphs (c)(3)(i)(D), and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii); and revising paragraphs (c)(2), (c)(3)(i)(C), and (c)(4)to read as follows:

§ 265.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep a certification by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a) through (c) of this section.

(3) * * *

(i) * * *

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

69. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

70. Section 266.102 is amended by revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(e) * * *

(10) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

* * * * *

71. Section 266.103 is amended by revising paragraphs (b)(2)(ii)(D), (d), and (k) to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(D) When best engineering judgment is used to develop or evaluate data and make determinations, it must be done by an independent qualified, registered professional engineer or Certified Hazardous Materials Manager, and a certification of his or her determinations must be provided in the certification of precompliance.

* * * * *

(d) *Periodic recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

* * * * *

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

* * * * *

72. Section 266.111 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 266.111 Standards for direct transfer.

* * * * *

(e) * * *

(2) *Requirements prior to meeting secondary containment requirements.* (i) For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner or operator shall obtain and keep on file at the facility a certified assessment from a qualified, registered professional engineer or Certified Hazardous Materials Manager that attests to the equipment's integrity.

* * * * *

Subpart M—Military Munitions

73. Section 266.205 is amended by revising paragraph (a)(1)(v) to read as follows:

§ 266.205 Standards applicable to the storage of solid waste military munitions.

(a) * * *

(1) * * *

(v) The owner or operator must provide notice to the Director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this section.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

74. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

75. Section 268.7 is amended by revising paragraphs (b)(6) and (d)(1); removing paragraphs (a)(1) and (a)(6); and redesignating paragraphs (a)(2) through (a)(5) as (a)(1) through (a)(4) and (a)(7) through (a)(10) as (a)(5) through (a)(8):

§ 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

* * * * *

(b) * * *

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of 40 CFR 266.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

* * * * *

(d) * * *

(1) A one-time notification, including the following information, must be prepared and placed in the facility's on site files.

* * * * *

76. Section 268.9 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) A generator of hazardous waste must determine, following the requirements of § 262.11 of this chapter, or if applicable, § 264.13 of this chapter, and including the ability to use knowledge of the waste, if the waste has to be treated before it can be land disposed.

(1) This is done by determining if the hazardous waste meets the treatment standards in §§ 268.40, 268.48, and 268.49. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These methods of treatment are specified in § 268.40, and are described in detail in § 268.42, Table 1. Wastes with required treatment methods do not need to meet concentration levels.

(2) For purposes of this part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section.

(3) If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewater treated by CMBST, RORGS, or POLYM of § 268.42, Table 1), the generator must meet treatment standards for all underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files. The notification and certification must be updated if the process or operation generating the waste changes and/or if

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the subtitle D facility receiving the waste changes.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

77. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

78. Section 270.16 is amended by revising paragraph (a) to read as follows:

§ 270.16 Specific part B information requirements for tank systems.

* * * * *

(a) An assessment by an independent, registered professional engineer or a Certified Hazardous Materials Manager of the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this chapter.

* * * * *

79. Section 270.17 is amended by revising paragraph (d) to read as follows:

§ 270.17 Specific part B information requirements for surface impoundments.

* * * * *

(d) A certification by a qualified engineer or Certified Hazardous Materials Manager of the structural integrity of each dike. For new units, the owner or operator must submit a statement by a qualified engineer or a Certified Hazardous Materials Manager that construction will be completed in accordance with the plans and specifications.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

80. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

81. Section 271.1 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[Date of publication of final rule in the Federal Register (FR)].	Office of Solid Waste Burden Reduction Project.	[FR page numbers]	[Date of X months from date of publication of final rule].
*	*	*	*

82. Section 271.21 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
*	*	*

* * * * * * *

Resource Conservation and Recovery Act Burden Reduction Initiative

* * * * * * *

[FR Doc. 02–191 Filed 1–16–02; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Thursday,
January 17, 2001

Part III

The President

Notice of January 15, 2002—Continuation of the National Emergency With Respect to Sierra Leone and Liberia

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Federal Register
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Presidential Documents

Title 3—

The President

Notice of January 15, 2002

Continuation of the National Emergency With Respect to Sierra Leone and Liberia

On January 18, 2001, by Executive Order 13194, the President declared a national emergency with respect to Sierra Leone pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the insurgent Revolutionary United Front (RUF) in Sierra Leone and pursuant to which the United States imposed a general ban on the direct and indirect importation of all rough diamonds from Sierra Leone to the United States, except those imports controlled through the Certificate of Origin regime of the Government of Sierra Leone. On May 22, 2001, I issued Executive Order 13213, which expanded the scope of the national emergency to include actions of the Government of Liberia in support of the RUF and prohibited the importation of all rough diamonds from Liberia.

Because the actions and policies of the RUF continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on January 18, 2001, as expanded on May 22, 2001, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 18, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sierra Leone and Liberia.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

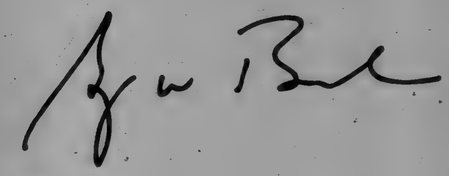

THE WHITE HOUSE,
January 15, 2002.

[FR Doc. 02–1455
Filed 1–16–02; 10:50 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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S. 1202/P.L. 107–119

Office of Government Ethics Authorization Act of 2001 (Jan. 15, 2002; 115 Stat. 2382)

S. 1714/P.L. 107–120

To provide for the installation of a plaque to honor Dr. James Harvey Early in the Williamsburg, Kentucky Post Office Building. (Jan. 15, 2002; 115 Stat. 2383)

S. 1741/P.L. 107–121

Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001 (Jan. 15, 2002; 115 Stat. 2384)

S. 1793/P.L. 107–122

Higher Education Relief Opportunities for Students Act of 2001 (Jan. 15, 2002; 115 Stat. 2386)

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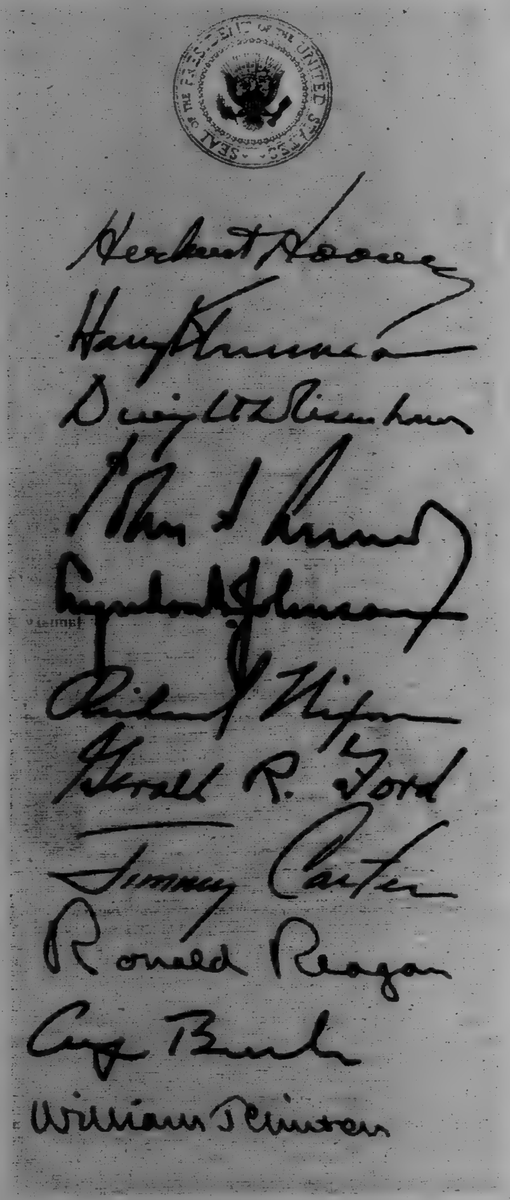

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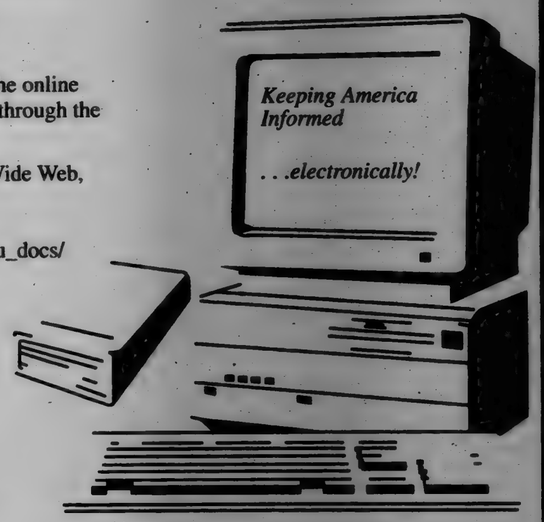

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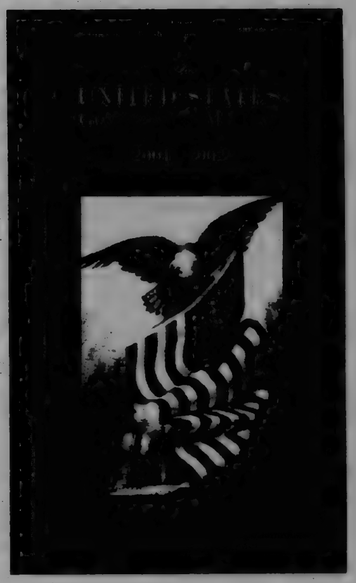

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8980]

RIN 1545–AW90

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy.

DATES: *Effective Date:* January 18, 2002.

Applicability date: These regulations apply to any levy which occurs on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) before levy. These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206; 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS intends to levy.

On January 22, 1999, temporary regulations (TD 8809) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG–117620–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). No written comments were received within the 90-day period provided for comments, although two comments were received after this comment period.

Section 6320 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing after the filing of a notice of federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8810) under section 6320 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG–116824–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). Final regulations under section 6320 are being published in the **Federal Register** along with these final regulations under section 6330.

After consideration of the comments, the proposed regulations, with certain changes to reflect IRS administrative practice under section 6330, are adopted as final regulations. The comments and changes are discussed below.

Summary of Comments

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (i.e., persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—i.e., the taxpayer.

With respect to section 6330, the legislative history to section 6330 indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, or the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (applicable to both sections) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

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One commentator stated that persons should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer prior to levy on that taxpayer's property. To reflect the recent reorganization of the IRS, paragraphs (a)(1) and (2) of the final regulations eliminate references to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Examples, similar to those in the corresponding paragraphs of the final regulations under section 6320, have been added in paragraphs (b) and (c) of these final regulations to illustrate the provisions of those paragraphs.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS's administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted and where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to where in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations dealt with the question of whether there were any time limits on when a Notice of Determination must be issued. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify the there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6330(e) generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330, and also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6330 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may file NFTLs for the tax and tax period covered by the CDP Notice issued under section 6330, although such filings may give rise to issuance of a CDP Notice under section 6320. The IRS also may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS further is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6330 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 301.6330–1 is added under the undesignated centerheading "Seizure of Property for Collection of Taxes" to read as follows:

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy (hereinafter referred to as the taxpayer) on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process (CDP) hearing with the Internal Revenue Service (IRS) Office of Appeals (Appeals). This pre-levy Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2.

(2) *Exceptions*—(i) *state tax refunds.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect state tax refunds owing to the taxpayer. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the person to be notified under section 6330?

A–A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Q–A2. Will the IRS give notification to a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to, the taxpayer of the IRS' intention to issue a levy?

A–A2. No. Such a person is not the person described in section 6331(a)(1), but such persons have other remedies. See A–B5 of paragraph (b)(2) of this section.

Q–A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A–A3. Yes. The notification of an intent to levy or of the issuance of a jeopardy or state tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q–A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19,

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1999, with respect to the same tax and tax period?

A–A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q–A5. When will the IRS provide this notice?

A–A5. Beginning on January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of the IRS' intent to levy on property or rights to property, other than in state tax refund and jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a state tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q–A6. What must a pre-levy CDP Notice include?

A–A6. Pursuant to section 6330(a)(3), a pre-levy CDP Notice must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q–A7. What must a post-levy CDP Notice include?

A–A7. A post-levy CDP Notice must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS has levied upon the taxpayer's state tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q–A8. How will this pre-levy or post-levy notification under section 6330 be accomplished?

A–A8. The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information the IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with the CDP Notice.

(i) The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q–A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A–A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. See paragraph (c) of this section for when a request for a CDP hearing must be filed. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q–A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A–A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A–B3 of paragraph (b)(2) and Q&A–C8 of paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1*, except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the unpaid tax and tax periods covered by the pre-levy or post-levy CDP Notice provided to the taxpayer. The taxpayer must request the CDP hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is the taxpayer entitled to a CDP hearing where a levy for state tax refunds is issued on or after January 19, 1999, even though the IRS had previously issued other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A–B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the type of tax and tax periods set forth in the state tax refund levy issued on or after January 19, 1999.

Q–B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice under section 6330 with respect to the unpaid tax and periods, provides subsequent notice to that taxpayer that the IRS intends to levy on property or rights to property of the taxpayer for the same tax and tax periods shown on the CDP Notice?

A–B2. No. Under section 6330, only the first pre-levy or post-levy CDP Notice with respect to the unpaid tax and tax periods entitles the taxpayer to request a CDP hearing. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals' determination with respect to levies relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances, a taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q–B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a CDP Notice under section 6330 was previously sent, is the taxpayer entitled to a section 6330 CDP hearing based on the second CDP Notice?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q–B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A–B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(3) *Example.* The following example illustrates the principles of this paragraph (b):

Example. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. The IRS gives D a CDP Notice of intent to levy with respect to the 1997 tax liability. The IRS will not notify E of its intent to levy. The IRS is not required to notify E of its intent to levy although E holds property of individual D. E is not the taxpayer.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6330, the CDP hearing must be requested during the 30-day period that commences the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1–800–829–3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing, which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative, by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period

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following the filing of the notice of federal tax lien (NFTL).

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing their taxpayer identification number (SSN or TIN).

Q–C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice issued under section 6330?

A–C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. The IRS mails a CDP Notice of intent to levy to individual A's last known address on June 24, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 24, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one pre-levy CDP hearing under section 6330 with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP pre-levy hearing under section 6330 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6330 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a CDP hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other CDP hearings which the taxpayer has requested.

Q–D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A–D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax periods shown on the CDP Notice.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

Q–D6. How are CDP hearings conducted?

A–D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q–D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A–D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of a business taxpayer, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6330(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

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Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A–E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination (under section 66 or section 6015) as to spousal defenses in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q–E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q–E6. What collection alternatives are available to the taxpayer?

A–E6. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E7. What issues may a taxpayer raise in a CDP hearing under section 6330 if the taxpayer previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E8. How will Appeals issue its determination?

A–E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A–E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q–E10. Why is the Notice of Determination and its date important?

A–E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q–E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the issuance of a notice of intention to levy, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decision made by the Appeals officer on such precluded issues is not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States:

Q–F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the Notice of Determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

Q–G3. What, if any, enforcement actions can the IRS take during the suspension period?

A–G3. Section 6330(e) provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. The IRS, however, may levy for other taxes and periods not covered by the CDP Notice if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods and taxes, whether or not covered by the CDP Notice issued under section 6330, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown

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on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (B)?

A–H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q–I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999.

§ 301.6330–1T [Removed]

3. Section 301.6330–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 2002.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–1305 Filed 1–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8979]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). A taxpayer receiving notice of a NFTL may request a hearing with IRS Office of Appeals and may subsequently seek judicial review of Appeals' determination. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the IRS files a NFTL.

DATES: *Effective Date:* These regulations are effective on or after January 18, 2002.

Applicability Date: These regulations apply to any notice of Federal tax lien which is filed on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) after the filing of a notice of federal tax lien (NFTL). These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS files a NFTL on or after January 19, 1999.

On January 22, 1999, temporary regulations (TD 8810) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG–116824–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). No public hearing was requested or held. No written comments were received within the 90-day period provided for comments, although two comments were received after this period.

Section 6330 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing prior to a levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8809) implementing the changes made by section 3401 of RRA 1998 with respect to section 6330 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG–117620–98) cross-referencing those temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). Final regulations under section 6330 are being published in the **Federal Register** along with these final regulations under section 6320.

After consideration of the comments, the proposed regulations, with certain changes to reflect the IRS administrative practice under section 6320, are adopted as final regulations. These comments and changes are discussed below.

Summary of Comments

Although the two comments were directed generally at the proposed regulations under section 6330, the comments are discussed here because they address provisions that, in large part, apply to both section 6320 and section 6330.

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (*i.e.*, persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—*i.e.*, the taxpayer.

With respect to section 6330, the legislative history to that section indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, *i.e.*, the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (which is applicable to both section 6320 and section 6330) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that taxpayers should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the

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underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the IRS officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer following the filing of a NFTL. To reflect the recent reorganization of the IRS, paragraph (a)(1) of the final regulations eliminates reference to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS's administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted, or where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to when in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations addressed whether a Notice of Determination was required to be issued within a certain period of time after the CDP hearing. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify that there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6320(c) incorporates by reference section 6330(e), which generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6320 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods and for the tax and tax periods covered by the CDP Notice under section 6320, if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS also is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6320 or from offsetting overpayments from other periods, or of other faxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax periods set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 301.6320–1 is added under the undesignated centerheading "Lien for Taxes" to read as follows:

§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

(a) *Notification*—(1) *In general.* For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see Sec. 301.6212–2.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the person entitled to notice under section 6320?

A–A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q–A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A–A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q–A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A–A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q–A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A–A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A–A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A–A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refiling the NFTL, an administrative hearing before the IRS Office of Appeals (Appeals), or assistance from the National Taxpayer Advocate.

Q–A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A–A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A–B5 of paragraph (b)(2) of this section.

Q–A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A–A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q–A9. How will notification under section 6320 be accomplished?

A–A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q–A10. What must a CDP Notice given under section 6320 include?

A–A10. These notices must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q–A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A–A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day

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period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q–A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A–A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A–B3 of paragraph (b)(2) and Q&A–C8 of paragraph (c)(2) of this section.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A–B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer forgoes the right to a CDP hearing with Appeals and judicial review of the Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q–B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A–B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q–B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A–B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q–B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A–B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D's federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153 (Request for a Collection Due Process Hearing) that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5, No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP Notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing their taxpayer identification number (SSN or TIN).

Q–C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

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Q–C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q–D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A–D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid tax and tax period involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the unpaid tax and tax periods shown on the NFTL.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

Q–D6. How are CDP hearings conducted?

A–D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q–D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A–D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of business taxpayers, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6320(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A–E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q–E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q–E6. What collection alternatives are available to the taxpayer?

A–E6. Collection alternatives would include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

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Q–E8. How will Appeals issue its determination?

A–E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A–E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q–E10. Why is the Notice of Determination and its date important?

A–E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q–E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the NFTL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer with respect to such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q–G3. What, if any, enforcement actions can the IRS take during the suspension period?

A–G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

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A–H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and generally will follow Appeals' procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q–I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

§ 301.6320–1T [Removed]

Par. 3. Section 301.6320–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–1306 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending its rules of procedure that govern the revocation process for District of Columbia parolees who are arrested and held in the District of Columbia on warrants charging them with violations of parole. The amended rules implement a decision of the U.S. District Court for the District of Columbia, in *Long* v. *Gaines*, Civ. Action No. 01–0010 (EGS), dated November 21, 2001, which obliges the Commission to promulgate amendments to its regulations so as to conform them to the requirements of constitutional due process as interpreted by the Court. The amended rules impose new deadlines for making determinations of probable cause (five days from arrest), for holding the final revocation hearing (sixty-five days from arrest), and for issuing final decisions as to revocation (eighty-six days after arrest). The amended rules also include other procedures designed to comply with the court's order.

DATES: This interim rule will take effect on February 19, 2002. Comments must be received by March 19, 2002.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In *Long* v. *Gaines*, 167 F. Supp. 2d 75 (D.D.C. 2001), the U.S. District Court for the District of Columbia held that the Parole Commission's rules governing the revocation process for District of Columbia parolees are unconstitutional with respect to the applicable time deadlines for making determinations of probable cause and completing the revocation process. Under the Commission's current rules, a parolee who is arrested on a warrant charging a violation of parole is entitled to a prompt preliminary interview, normally conducted by a parole officer other than the officer who supervised the parolee. The Commission must make a determination of probable cause "as expeditiously as possible" if the interviewing officer recommends a finding of "no probable cause," and within 21 days of the interview if the interviewing officer recommends that probable cause be found. A local revocation hearing must be held within 60 days of the probable cause determination if the parolee denies violating parole and has not been convicted of a new crime. Thereafter, the Commission must issue a final decision within 21 days of the revocation hearing, excluding weekends and holidays. See 28 CFR 2.101 through 2.105 (2001). Because the Commission customarily holds preliminary interviews within three to five days of arrest, these rules provide for an outside limit of 86 days from arrest for the revocation hearing to be held, and 107 days from arrest for the final decision to be issued. (Parolees who are convicted of new crimes are only entitled to revocation hearings within 90 days of arrest; the rules governing such offenders are not changed by these amendments.)

However, in *Long* v. *Gaines* the court has held that the due process clause of the U.S. Constitution requires that the Commission make determinations of probable cause no later than five days from arrest, that revocation hearings be held not later than 65 days from arrest, and that final decisions be issued no later than 86 days from arrest. Except in the case of parolees convicted of new crimes, the Commission has now been enjoined to operate within these deadlines. The court also held that the Commission must ensure that: (1) The parolee is given notice of the time and purpose of the probable cause hearing and the charged violations; (2) prior to the revocation hearing, the parolee is provided with disclosure of the evidence to be relied upon by the Commission in determining whether parole was violated and, if so, whether to revoke parole; and (3) the ultimate decisionmaker is informed of all the parolee's arguments and evidence prior to rendering a final decision.

The amended rules implement these requirements. Although not all of the court's requirements necessitate departures from the Commission's current practice, the amended rules significantly differ from the Commission's current practice by adopting the court's new deadlines, and by requiring that Commission hearing examiners conduct probable cause hearings in the District of Columbia within five days of the parolee's arrest. The Commission has delegated to these examiners the authority to make a probable cause decision at the conclusion of each hearing. The examiner will also have the authority to order the release of the parolee if no probable cause is found, and to set a date for the revocation hearing if probable cause is found.

Implementation

The Commission's regulations at 28 CFR 2.98 through 2.105, as amended by this publication, will be followed by the Commission in the case of all District of Columbia Code parolees who are arrested and held in the District of Columbia on warrants charging a violation or violations of parole, until the taking effect of final rules promulgated by the Commission. However, these interim amendments will also retain the status of proposed rules for the purposes of the public comment requirement of 5 U.S.C. 553 (b). The Commission will withhold promulgation of final rules until completion of the comment and objection process accorded to the plaintiffs in *Long* v. *Gaines*. These regulations do not supersede or replace any representation made by the defendants in the Compliance Plan approved by the district court on November 21, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these interim regulations do not constitute a significant rule within the meaning of Executive Order 12866. The amended rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and are deemed by the Commission to be rules of agency practice that do not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rules

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.98 is amended as follows:

a. Amend paragraph (a)(1) by removing "preliminary interview" and adding in its place "probable cause hearing".

b. Revise paragraph (f) to read as follows:

§ 2.98 Summons to appear or warrant for retaking of parolee.

* * * * *

(f) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application (or other notice) stating:

(1) The charges against the parolee;

(2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation occurred and whether to revoke parole;

(3) Notice of the Commission's intent, if the parolee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the parolee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The parolee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

* * * * *

3. Section 2.99 is amended as follows:

a. Revise paragraph (b) to read as set forth below.

b. Amend paragraph (e) by removing "preliminary interview" and adding in its place "probable cause hearing".

§ 2.99 Execution of warrant and service of summons.

* * * * *

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to the parolee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.98 (f).

* * * * *

4. Section 2.101 is revised to read as follows:

§ 2.101 Probable cause hearing and determination.

(a) Hearing. A parolee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission (or by the Board of Parole of the District of Columbia), and who has not been convicted of a new crime, shall, no later than five days from the date of such retaking, be given a probable cause hearing by an examiner of the Commission. The purpose of the probable cause hearing is to determine whether there is probable cause to believe that the parolee has violated parole as charged, and if so, whether a local or institutional revocation hearing should be conducted.

(b) Notice and opportunity to postpone hearing. Prior to the commencement of each docket of probable cause hearings, a list of the parolees who are scheduled for probable cause hearings, together with a copy of the warrant application for each parolee, shall be sent to the DC Public Defender Service. At or before the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of

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the probable cause hearing, the examiner shall advise the parolee that the parolee may accept representation by the attorney from the DC Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the parolee may request the Commission to require the attendance of adverse witnesses (i.e., witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the parolee meets the requirements of § 2.102(a) for a local revocation hearing. The parolee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) Review of the charges. At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.99 (b) has been given to the parolee. The examiner shall then review the violation charges with the parolee and shall apprise the parolee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the parolee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the parolee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the parolee. At a postponed probable cause hearing, the examiner shall also permit the parolee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses, the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) Probable cause determination. At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the parolee has violated parole as charged, and shall so inform the parolee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the parolee be released from the custody of the warrant and either reinstated to parole, or discharged from supervision if the parolee's sentence has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the parolee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.102 (a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the parolee's arrest. After the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The parolee (or the parolee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) Institutional revocation hearing. If the parolee is not eligible for a local revocation hearing as provided by § 2.102 (a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the parolee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within ninety days of the parolee's retaking.

(f) Digest of the probable cause hearing. At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the parolee, and the examiner's findings as to probable cause.

(g) Release notwithstanding probable cause. Notwithstanding a finding of probable cause, the Commission may order the parolee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the parolee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) Conviction as probable cause. Conviction of any crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke parole.

(i) Combined probable cause and local revocation hearing. A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the parolee's arrest and the parolee has been notified that the postponed probable cause hearing will constitute his final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) Late received charges. If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing if the new charge may be contested by the parolee and possibly result in the appearance of witness(es) at the revocation hearing;

(2) Notify the parolee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

5. Section 2.102 (f) is revised to read as follows:

§ 2.102 Place of revocation hearing.

* * * * *

(f) A local revocation hearing shall be held not later than sixty-five days from the retaking of the parolee on the parole violation warrant. An institutional revocation hearing shall be held within ninety days of the retaking of the parolee on the parole violation warrant. If the parolee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

6. Section 2.103 is amended by revising paragraph (d) and adding paragraphs (f) and (g) to read as follows:

§ 2.103 Revocation hearing procedure.

* * * * *

(d) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the parolee's adjustment to parole and requesting the warrant, all other documents describing the charged violation or violations of parole, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of parole. If the parolee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the parolee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the parolee prior to the revocation hearing.

* * * * *

(f) At a local revocation hearing, the Commission shall secure the presence of the parolee's Community Supervision Officer, or a substitute Community Supervision Officer, who shall bring the parolee's supervision file, if the parolee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the parolee's adjustment to parole.

(g) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the parolee and the evidence submitted by the parolee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the parolee, and the examiner's recommended decision. The hearing examiner's summary, together with the parolee's file (including any documentary evidence and letters submitted on behalf of the parolee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the parolee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

* * * * *

7. Section 2.104 (a)(1) is amended by removing "preliminary interview" and adding in its place "probable cause hearing".

8. Section 2.105 (c) is revised to read as follows:

§ 2.105 Revocation decisions.

* * * * *

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the parolee on the parole violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

* * * * *

Dated: January 10, 2002.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 02–1308 Filed 1–17–01; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG24

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects the temporary final rule with request for comments published in the **Federal Register** on October 4, 2001: That rule temporarily changed notification requirements for vessels bound for or departing from U.S. ports. The rule temporarily lengthened the usual notification period from 24 to 96 hours prior to port entry, required submission of reports to a central national clearinghouse, suspended exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and required submission of information about persons onboard these vessels.

DATES: The temporary final rule published in the **Federal Register** (66 FR 50565) was effective on October 4, 2001 to June 15, 2002. These corrections to that rule are effective on January 18, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LTJG Marcus A. Lines, Coast Guard, at telephone 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at telephone 202–366–5149.

SUPPLEMENTARY INFORMATION

Need for Correction

As published, the temporary final rule contains an error that inadvertently delays an existing effective date of a reporting requirement for certain vessels to include International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice information in the notice of arrival report.

Correction

In the temporary final rule FR Doc. 01–24984, beginning on page 50565 in the issue of October 4, 2001, make the following corrections:

§ 160.T208 [Amended]

1. In § 160.T208 in paragraph (f)(2) on page 50573, in the first column, remove the date "July 1, 2002," and add in its place the date "January 1, 2002,".

Dated: January 11, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1370 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles—Long Beach 01–011]

RIN 2115–AA97

Security Zones; Port of Los Angeles and Catalina Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving and fixed security zone 100 yards around all cruise ships that enter, are moored in, or depart from the Port of Los Angeles, and while anchored at Catalina Island. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles—Long Beach, or his designated representative.

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DATES: The regulation is effective from 11:59 p.m. PST on November 1, 2001 to 11:59 p.m. PDT on May 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles—Long Beach 01–011 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles—Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners advising of these new regulations.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Los Angeles or Catalina Island, against cruise ships entering, departing, or moored within the port of Los Angeles and against cruise ships anchored at Catalina Island. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a security zone around cruise ships to protect persons, transiting vessels, adjacent waterfront facilities, and the adjacent land of the Port of Los Angeles and Catalina Island. These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States near Los Angeles and Catalina Island, California.

These security zones are established pursuant to the authority of The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or person violating this section are subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This regulation will be enforced by the Captain of the Port Los Angeles—Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this regulation. Initially, Coast Guard and local police department patrol vessels will be on scene to monitor traffic through these areas.

This security zone prohibits all vessels and people from approaching cruise ships that are underway or moored near Los Angeles, California, and while anchored at Catalina Island. Specifically, no vessel or person may close to within 100 yards of a cruise ship that is entering, moored, or departing the Port of Los Angeles, or while anchored at Catalina Island.

A security zone is automatically activated when a cruise ship passes the Los Angeles sea buoy while entering port and remains in effect while the vessel is moored within in the Port of Los Angeles, California. Additionally, a security zone is automatically activated when a cruise ship is anchored at Catalina Island. When activated, these security zones will encompass a portion of the waterway described as a 100-yard radius around a cruise ship in the Port of Los Angeles, and at Catalina Island. These security zones are automatically deactivated when the cruise ship passes the Los Angeles sea buoy on its departure from port, or weighs anchor from Catalina Island. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for limited periods of time.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that it is categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add a new temporary § 165.T11–058 to read as follows:

§ 165.T11–058 Security Zones; Port of Los Angeles and Catalina Island.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all cruise ships while entering or departing the Port of Los Angeles. These moving security zones are activated when the cruise ship passes the Los Angeles sea buoy while entering the Port of Los Angeles. Temporary fixed security zones are established 100 yards around all cruise ships docked in the Port of Los Angeles, California, and while anchored at Catalina Island. These security zones are deactivated when the cruise ship passes the sea buoy on its departure from the Port of Los Angeles or weighs anchor at Catalina Island.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, the following rules apply to security zones established by this section:

(i) No person or vessel may enter or remain in a security zone without the permission of the Captain of the Port;

(ii) Each person and vessel in a security zone shall obey any direction or order of the Captain of the Port;

(iii) The Captain of the Port may take possession and control of any vessel in a security zone;

(iv) The Captain of the Port may remove any person, vessel, article, or thing from a security zone;

(v) No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port; and

(vi) No person may take or place any article or thing upon any waterfront facility in a security zone without the permission of the Captain of the Port.

(2) The Captain of the Port will notify the public via broadcast and published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, or his authorized representative, and the Los Angeles Port Police.

(c) *Effective dates.* This section becomes effective at 11:59 p.m. PST on November 1, 2001, and will terminate at 11:59 p.m. PDT on May 1, 2002.

Dated: November 1, 2001.

J. M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–1369 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 053–REC; FRL–7122–8]

Corrections to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the deletion of various local rules from the California State Implementation Plan (SIP) that were incorporated into the SIP in error. These primarily include rules concerning local fees, enforcement authorities, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus harmful to affected sources, local agencies and to EPA. The intended effect of this final action is to delete these rules and make the SIP consistent with the Clean Air Act as amended in 1990 (CAA or the Act). This

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action also reinserts a paragraph into the compilation of federal regulations that was deleted in error in the **Federal Register** on November 10, 1982 and redesignates another paragraph published in the **Federal Register** on June 23, 1982.

EFFECTIVE DATE: This rule is effective on February 19, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office, 75 Hawthorne Street, San Francisco, CA 94105, during normal business hours. You may also see copies of the rules at the locations listed in **SUPPLEMENTARY INFORMATION** under "Public Inspection."

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4126. Email: rose.julie@EPA.gov

SUPPLEMENTARY INFORMATION:

Public Inspection

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249–9709.

Colusa County Air Pollution Control District, 100 Sunrise Blvd. Suite F, Colusa, CA 95932–3246.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667–4100.

Feather River Air Quality Management District, 938–14th Street, Marysville, CA 95901–4149.

Glenn County Air Pollution Control District, 720 North Colusa Street, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Kern County (Southeast Desert) Air Pollution Control District, 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370.

Lake County Air Quality Management District, 883 Lakeport Blvd., Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215.

Mariposa County Air Pollution Control District, 5110 Bullion Street, Mariposa, CA 95338.

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482.

Modoc County Air Pollution Control District, 202 W. Fourth Street, Alturas, CA 96101.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, Grass Valley, CA 95945–2509.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA 93726.

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097–3036.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

Tehama County Air Pollution Control District, 1750 Walnut Street, Red Bluff, CA 96080.

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

Throughout this document wherever "we," "us," or "our" are used, we mean EPA.

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II. Public comments and EPA responses.
III. EPA action.
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I. Proposed Action

On September 13, 2001 (66 FR 47603), EPA proposed to delete various rules from the California SIP, after determining that they had been approved into the SIP in error. Most of these rules fall into one of the following categories:

A. Various local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

B. Various provisions describing local agency investigative or enforcement authority such as some rules titled enforcement, authority to inspect, authority to arrest, violation notices, and orders for abatement. States may need to adopt such rules to demonstrate adequate enforcement authority under section 110(a)(2) of the Act, but they should not be approved into the applicable SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114, and elsewhere.

C. Local adoption of federal NSPS requirements either by reference or by adopting text identical or modified from the requirements found in 40 CFR Part 60. Since EPA has independent authority to implement 40 CFR Part 60, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

D. Local adoption of NESHAP requirements found in 40 CFR 61 as similarly discussed regarding NSPS.

A complete listing of each rule being deleted can be found in the proposed rule cited above.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received two public comment letters: a letter dated October 9, 2001 from Lawrence D. Odle, air pollution control officer of Butte County Air Quality Management District (BCAQMD), and a letter dated September 24, 2001 from Robert L. Reynolds, air pollution control officer of Lake County Air Quality Management District (LCAQMD). The commenter from BCAQMD expresses support for the proposed action. The commenter from LCAQMD requests that LCAQMD rules proposed for deletion from the California SIP be retained on the grounds that administration of LCAQMD's air pollution control program relies on these rules, which relate to investigative and enforcement authorities, penalties, and fees.

EPA agrees that these rules are important for local administration of LCAQMD's program. However, removal of these rules from the SIP does not affect the authority LCAQMD has under State law to implement its program or enforce its rules. As explained above, provisions describing local agency investigative or enforcement authorities should not be approved into the SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114, and elsewhere in the Act. Also, fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit should not be approved into the SIP since doing so provides the basis for federal enforcement, i.e., by EPA or a citizen, which is inappropriate for local fee collection provisions. While, for the reasons stated, these types of provisions should not be approved into the SIP, some were erroneously approved into the California SIP, and the purpose of this action is to remove them.

The commenter also requests that certain LCAQMD rules be updated in the SIP to reflect the most recent version of these rules. EPA cannot take action on revisions to these rules because they have not been submitted as official revisions to the California SIP by the California Air Resources Board, but more importantly, for the reasons discussed above, these rules, whether or not they are the most recent versions, are not the types of rules that are appropriate for approval into a SIP.

III. EPA Action

No comments were submitted that change our assessment that the rules listed in the proposed rule are appropriate for deletion from the SIP. Therefore, as authorized in section 110(k)(6) of the Act, EPA is deleting all these rules from the California SIP.

In this action, EPA is also reinserting a paragraph listing EPA-approved rules of the California SIP that were inadvertently deleted from Title 40 of the Code of Federal Regulations, part 52, § 52.220 in other actions. On November 10, 1982, at 47 FR 50864, EPA published a final rulemaking action approving changes to rules of sixteen air pollution districts submitted by the California Air Resources Board as revisions to the California SIP. This action inadvertently deleted paragraph (B) from 40 CFR 52.220(c)(89)(iii). The rules listed in paragraph (B) of 52.220(c)(89)(iii) had previously been incorporated into the California SIP on April 12, 1982, at 47 FR 15585, and were not among the rules that were the subject of the action taken by EPA on November 10, 1982. This action corrects this inadvertent deletion by reinserting paragraph (B) to 40 CFR 52.220(c)(89)(iii).

Section 553 of the Administrative Procedure Act, 5 U.S.C 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making (the portion of) today's rule (that relates to technical corrections to the CFR) final without prior proposal and opportunity for comment because EPA is correcting inadvertent deletions of rules duly approved into a state implementation plan. The affected regulations were codified at 40 CFR part 52, subpart F, § 52.220(c)(89)(iii)(B) prior to their inadvertent deletion, and were previously subject to notice and comment prior to EPA approval. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

EPA is also correcting the letter designation of a paragraph in Title 40 of the Code of Federal Regulations, part 52, section 52.220. On June 23, 1982, at 47 FR 27068, EPA added a second paragraph (B) to 40 CFR 52.220 (c)(51)(xiv). However, a paragraph (B) citing different local rules had already been added to 40 CFR 52.220 (c)(51)(xiv) on May 27, 1982, at 47 FR 23159. Today's action redesignates the material in the second paragraph (B) published on June 23, 1982 to paragraph (C). For the same reasons as provided above for the inadvertent deletion of SIP rules, EPA has determined that there is good cause for making this technical correction to the CFR final without prior proposal and opportunity for comment.

Lastly, our proposed rule published on September 13, 2001 indicated that EPA was proposing to delete Fresno County Air Pollution Control District (APCD) rule 111 (Arrests and Notice to Appear) from the California SIP. The State of California submitted a number of local rules, including Fresno County APCD rule 111, to EPA on June 4, 1986 for incorporation into the California SIP. On April 10, 1989, at 54 FR 14224, EPA approved Fresno County APCD rule 111 into the California SIP through a direct final rulemaking. This approval was subsequently withdrawn on June 23, 1989, at 54 FR 26373, in response to receipt of adverse comment on our direct final approval. On June 22, 1989, at 54 FR 262211, in anticipation of our withdrawal notice of June 23, 1989, we proposed to approve Fresno County APCD rule 111 into the California SIP, but the approval was never finalized. Therefore, Fresno County APCD rule 111 is not in the California SIP and is no longer a part of this action.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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In this action, EPA is not developing or adopting a technical standard. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 12, 2001.

Sally Seymour,

Acting Regionnl Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended:

a. By adding paragraphs: (b)(1)(ii), (b)(2)(ii), (b)(4)(ii), (b)(6) through (b)(11), (c)(6)(ii)(B), (c)(6)(iii)(B), (c)(6)(iv)(B), (c)(6)(v)(B), (c)(6)(vi)(B), (c)(6)(vii)(B), (c)(6)(x)(B), (c)(6)(xi)(B), (c)(6)(xii)(B), (c)(6)(xiii)(B), (c)(6)(xiv)(B), (c)(6)(xvi)(B), (c)(6)(xvii)(B), (c)(6)(xix)(B), (c)(6)(xx) to (c)(6)(xxii), (c)(21)(ix)(D), (c)(21)(xviii)(B), (c)(24)(vi)(D), (c)(25)(vii)(B), (c)(26)(ii)(D), (c)(26)(iv)(D) and (E), (c)(26)(xvii)(D), (c)(27)(vii)(D), (c)(27)(viii)(D), (c)(28)(viii)(B), (c)(29)(vi)(C), (c)(30)(v)(B), (c)(30)(vi)(B), (c)(31)(i)(G), (c)(31)(iii)(B), (c)(31)(vi)(E), (c)(31)(xviii)(F), (c)(32)(ii)(C), (c)(32)(iii)(F), (c)(35)(iii)(D), (c)(35)(v)(C), (c)(35)(xii)(H), (c)(35)(xiii)(D), (c)(35)(xv)(F), (c)(37)(iv)(E), (c)(37)(v)(D), (c)(39)(iii)(G), (c)(39)(iv)(G), (c)(39)(vii)(D), (c)(39)(x)(D), (c)(41)(ix)(D), (c)(41)(x)(D) through (G), (c)(42)(i)(F), (c)(42)(iii)(D), (c)(42)(viii)(B), (c)(42)(x)(C), (c)(42)(xiv)(D), (c)(44)(iv)(D), (c)(51)(xi)(B), (c)(51)(xiii)(C), (c)(51)(xiv)(D), (c)(51)(xviii)(B), (c)(51)(xx)(C), (c)(52)(ii)(C), (c)(52)(iv)(F), (c)(52)(xi)(C), (c)(52)(xv)(D), (c)(52)(xvi)(C), (c)(54)(vi)(B), (c)(70)(iv)(B), (c)(85)(vi)(C), (c)(85)(vii)(B), (c)(85)(x)(B), (c)(89)(iii)(B) and (C), (c)(92)(iv)(B), (c)(93)(iii)(C), (c)(93)(iv)(D), (c)(96)(iii)(C), (c)(98)(i)(E), (c)(101)(ii)(G), (c)(103)(xi)(B), (c)(103)(xiii)(C), (c)(103)(xiv)(C), (c)(103)(xvii)(C), (c)(119)(i)(D), (c)(124)(ii)(B), (c)(125)(iv)(C), (c)(125)(v)(C), (c)(126)(ii)(B), (c)(127)(v)(C), (c)(127)(vii)(F) and (G), (c)(137)(i)(C), (c)(137)(ii)(E), (c)(138)(i)(C), (c)(138)(ii)(E), (c)(138)(iii)(B), (c)(138)(iv)(B), (c)(138)(v)(E), (c)(140)(i)(D), (c)(140)(iii)(C), (c)(148)(ii)(C), (c)(153)(ii)(D), (c)(154)(i)(D), (c)(155)(v)(C), (c)(156)(ii)(B), (c)(158)(i)(C), (c)(159)(iii)(D), (c)(164)(i)(A)(*2*), (c)(164)(i)(B)(*3*), (c)(168)(i)(A)(*5*), (c)(168)(i)(C)(*3*), (c)(173)(i)(B)(*2*), (c)(173)(i)(D)(*2*), (c)(177)(i)(D)(*3*), (c)(179)(i)(B)(*2*), (c)(179)(i)(E)(*4*), (c)(246)(i)(A)(*3*); and

b. By redesignating the second paragraph (c)(51)(xiv)(B) as (c)(51)(xiv)(C).

The additions read as follows:

§ 52.220 Identification of plan.

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(b) * * *

(1) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Part X, Paragraph 3.

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(2) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 40 and 42.

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(4) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Regulation 3, Rules 40, 42, 43, and 44.

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(6) Lassen County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 1.4, 3.2, 3.3 (Schedules 1–6), 3.4, and 3.5.

(7) Nevada County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 41.

(8) Orange County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 120.

(9) Sierra County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 46 and 50.

(10) Siskiyou County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 3.1, 3.2, and 3.3.

(11) Yolo-Solano AQMD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 1.7 and 2.18.

(c) * * *

(6) * * *

(ii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 109.

(iii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 1.4, 2.13, 6.11 and 6.12.

(iv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 104, 105, 107, 109, 303, and 304.

(v) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 151 and 153.

(vi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107, 109, 303, and 304.

(vii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 109.

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(x) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107, 301 (Paragraphs c to g, i, and j), 303, and 304.

(xi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 1.4.

(xii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107 and 109.

(xiii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 107.

(xiv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107 and 109.

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(xvi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 42 and 100.

(xvii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 43, 44, and Rule 120.

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(xix) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 43 and 44 (Mojave Desert AQMD only).

(xx) Mariposa County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 17.

(xxi) Plumas County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 3, 4, and 40.

(xxii) Sutter County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 2.20.

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(21) * * *

(ix) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(21)(ix)(A) of this section and now deleted without replacement, Rule 107.

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(xviii) * * *

(B) Previously approved on September 8, 1978 in paragraph (c)(21)(xviii)(A) of this section and now deleted without replacement, Rule 45.

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(24) * * *

(vi) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(24)(vi)(A) of this section and now deleted without replacement, Rule 3.7.

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(25) * * *

(vii) * * *

(B) Previously approved on October 27, 1977 in paragraph (c)(25)(vii)(A) of this section and now deleted without replacement, Rules 302 and 303.

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(26) * * *

(ii) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(26)(ii)(B) of this section and now deleted without replacement, Regulation 7.

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(iv) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(26)(iv)(A) of this section and now deleted without replacement, Rule 155.

(E) Previously approved on August 22, 1977 in paragraph (c)(26)(iv)(A) of this section and now deleted without replacement, Rule 3.1.

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(xvii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(26)(xvii)(A) of this section and now deleted without replacement, Rule 105.

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(27) * * *

(vii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(27)(vii)(A) of this section and now deleted without replacement, Rules 105, 601, and 602.

(viii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(27)(viii)(A) of this section and now deleted without replacement, Rules 323, 601, and 602.

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(28) * * *

(viii) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(28)(viii)(A) of this section and now deleted without replacement, Rules 422 and 423.

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(29) * * *

(vi) * * *

(C) Previously approved on August 15, 1977 in paragraph (c)(29)(vi)(A) of this section and now deleted without replacement, Rule 72 (72–72.8).

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(30) * * *

(v) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(30)(v)(A) of this section and now deleted without replacement, Rules 422 and 423.

(vi) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(30)(vi)(A) of this section and now deleted without replacement, Rules 422 and 423.

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(31) * * *

(i) * * *

(G) Previously approved on June 6, 1977 in paragraph (c)(31)(i)(B) of this section and now deleted without replacement, Rules 105, 302, and 303.

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(iii) * * *

(B) Previously approved on May 11, 1977 in paragraph (c)(31)(iii)(A) of this section and now deleted without replacement, Rule 5.

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(vi) * * *

(E) Previously approved on June 14, 1978 in paragraph (c)(31)(vi)(B) of this section and now deleted without replacement, Rule 105.

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(xviii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(31)(xvii)(B) of this section and now deleted without replacement, Rule 105.

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(32) * * *

(ii) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(32)(ii)(A) of this section and now deleted without replacement, Rules 104, 105, 112, 422, and 423.

(iii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(32)(iii)(C) of this section and now deleted without replacement, Rule 302.

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(35) * * *

(iii) * * *

(D) Previously approved on August 15, 1977 in paragraph (c)(35)(iii)(B) of this section and now deleted without

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replacement, Rules 72 (72.9–72.10) and 73.

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(v) * * *

(C) Previously approved on October 4, 1977 in paragraph (c)(35)(v)(A) of this section and now deleted without replacement, Rules 104, 105, and 112.

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(xii) * * *

(H) Previously approved on August 4, 1978 in paragraph (c)(35)(xii)(A) of this section and now deleted without replacement, Rules 110 and 111.

(xiii) * * *

(D) Previously approved on March 22, 1978 in paragraph (c)(35)(xiii)(A) of this section and now deleted without replacement, Rule 104.

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(xv) * * *

(F) Previously approved on November 7, 1978 in paragraph (c)(35)(xv)(C) of this section and now deleted without replacement, Rules 340.

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(37) * * *

(iv) * * *

(E) Previously approved on August 4, 1978 in paragraph (c)(37)(iv)(B) of this section and now deleted without replacement, Rules 531, 901, and 1500.

(v) * * *

(D) Previously approved on December 6, 1979 in paragraph (c)(37)(v)(B) of this section and now deleted without replacement, Rules 216, 323, and 324.

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(39) * * *

(iii) * * *

(G) Previously approved on September 8, 1978 in paragraph (c)(39)(iii)(C) of this section and now deleted without replacement, Rules 42 and 105.

(iv) * * *

(G) Previously approved on September 8, 1978 in paragraph (c)(39)(iv)(C) of this section and now deleted without replacement, Rules 42 and 301.

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(vii) * * *

(D) Previously approved on August 16, 1978 in paragraph (c)(39)(vii)(A) of this section and now deleted without replacement, Rules 216 and 402.

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(x) * * *

(D) Previously approved on September 14, 1978 in paragraph (c)(39)(x)(A) of this section and now deleted without replacement, Rule 402.

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(41) * * *

(ix) * * *

(D) Previously approved on November 7, 1978 in paragraph (c)(41)(ix)(A) of this section and now deleted without replacement, Rules 216, 324, 402, 602, 603, and 604.

(x) * * *

(D) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rule 402.

(E) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 801 to 804 (Lake Tahoe Air Basin).

(F) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 801, 802, 803 (paragraphs B and C), and 804 (Mountain Counties Air Basin).

(G) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 603, 604, 605, and 801 to 804 (Sacramento Valley Air Basin).

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(42) * * *

(i) * * *

(F) Previously approved on August 11, 1978 in paragraph (c)(42)(i)(A) of this section and now deleted without replacement, Rules 104, 106, and 303.

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(iii) * * *

(D) Previously approved on August 4, 1978 in paragraph (c)(42)(iii)(A) of this section and now deleted without replacement, Rules 104 and 110.

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(viii) * * *

(B) Previously approved on September 14, 1978 in paragraph (c)(42)(viii)(A) of this section and now deleted without replacement, Rules 152 and 154.

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(x) * * *

(C) Previously approved on November 6, 1978 in paragraph (c)(42)(x)(A) of this section and now deleted without replacement, Rules 216, 324, and 402.

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(xiv) * * *

(D) Previously approved on December 21, 1978 in paragraph (c)(42)(xiv)(A) of this section and now deleted without replacement, Rule 105 (Mojave Desert AQMD only).

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(44) * * *

(iv) * * *

(D) Previously approved on January 29, 1979 in paragraph (c)(44)(iv)(A) of this section and now deleted without replacement, Rule 1.4.

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(51) * * *

(xi) * * *

(B) Previously approved on January 27, 1981 in paragraph (c)(51)(xi)(A) of this section and now deleted without replacement, Rule 660.

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(xiii) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted without replacement, Rule 402.

(xiv) * * *

(D) Previously approved on May 18, 1981 in paragraph (c)(51)(xiv)(A) of this section and now deleted without replacement, Rules 801 to 804.

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(xviii) * * *

(B) Previously approved on January 25, 1982 in paragraph (c)(51)(xviii)(A) of this section and now deleted without replacement, Rule 618.

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(xx) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(51)(xx)(A) of this section and now deleted without replacement, Rule 9.

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(52) * * *

(ii) * * *

(C) Previously approved on January 27, 1981 in paragraph (c)(52)(ii)(B) of this section and now deleted without replacement, Rules 304 and 706.

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(iv) * * *

(F) Previously approved on December 9, 1981 in paragraph (c)(52)(iv)(B) of this section and now deleted without replacement, Rule 301.

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(xi) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(52)(xi)(A) of this section and now deleted without replacement, Rules 103, 402, and 601 to 604.

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(xv) * * *

(D) Previously approved on December 9, 1981 in paragraph (c)(52)(xv)(B) of this section and now deleted without replacement, Rule 302.

(xvi) * * *

(C) Previously approved on January 26, 1982 in paragraph (c)(52)(xvi)(A) of this section and now deleted without replacement, Rules 7.0, 7.1, and 8.1.

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(54) * * *

(vi) * * *

(B) Previously approved on January 26, 1982 in paragraph (c)(54)(vi)(A) of this section and now deleted without replacement, Rule 1.4.

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(70) * * *

(iv) * * *

(B) Previously approved on May 27, 1982 in paragraph (c)(70)(iv)(A) of this section and now deleted without replacement, Rules 601 to 613.

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(85) * * *

(vi) * * *

(C) Previously approved on April 12, 1982 in paragraph (c)(85)(vi)(A) of this section and now deleted without replacement, Rules 1.3 and 2.9.

(vii) * * *

(B) Previously approved on June 18, 1982 in paragraph (c)(85)(vii)(A) of this section and now deleted without replacement, Rule 210.

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(x) * * *

(B) Previously approved on July 6, 1982 in paragraph (c)(85)(x)(A) of this section and now deleted without replacement, Rule 110.

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(89) * * *

(iii) * * *

(B) New or amended rules 1.3, 3.0–3.7, 3.9, 3.10, 3.13, 4.0–4.5, 4.7 to 4.10, 4.12, 5.4, 6.0, 8.0, 8.2, 9.0–9.5, 9.7, and 9.8.

(C) Previously approved on April 12, 1982 in paragraph (c)(89)(iii)(B) of this section and now deleted without replacement, Rules 8.0, 8.2 and 9.0 to 9.4.

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(92) * * *

(iv) * * *

(B) Previously approved on April 13, 1982 in paragraph (c)(92)(iv)(A) of this section and now deleted without replacement, Rule 300.

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(93) * * *

(iii) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(93)(iii)(B) of this section and now deleted without replacement, Rule 509.

(iv) * * *

(D) Previously approved on June 18, 1982 in paragraph (c)(93)(iv)(B) of this section and now deleted without replacement, Rule 509.

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(96) * * *

(iii) * * *

(C) Previously approved on January 26, 1982 in paragraph (c)(96)(iii)(A) of this section and now deleted without replacement, Rule 3.

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(98) * * *

(i) * * *

(E) Previously approved on April 12, 1982 in paragraph (c)(98)(i)(B) of this section and now deleted without replacement, Rules 8.0 to 8.2 and 9.0 and 9.4.

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(101) * * *

(ii) * * *

(G) Previously approved on July 6, 1982 in paragraph (c)(101)(ii)(B) of this section and now deleted without replacement, Rules 301 and 302 (including Southeast Desert).

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(103) * * *

(xi) * * *

(B) Previously approved on April 13, 1982 in paragraph (c)(103)(xi)(A) of this section and now deleted without replacement, Rule 301.

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(xiii) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xiii)(A) of this section and now deleted without replacement, Rules 318 and 319.

(xiv) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xiv)(A) of this section and now deleted without replacement, Rules 301, 302, 306, and 307.

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(xvii) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xvii)(A) of this section and now deleted without replacement, Rule 509.

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(119) * * *

(i) * * *

(D) Previously approved on May 27, 1982 in paragraph (c)(119)(i)(A) of this section and now deleted without replacement, Rule 509.

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(124) * * *

(ii) * * *

(B) Previously approved on November 10, 1982 in paragraph (c)(124)(ii)(A) of this section and now deleted without replacement, Rules 660.1, 660.2, and 660.3.

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(125) * * *

(iv) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(125)(iv)(A) of this section and now deleted without replacement, Rule 2:11.

(v) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(125)(v)(A) of this section and now deleted without replacement, Rule 104.

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(126) * * *

(ii) * * *

(B) Previously approved on June 1, 1983 in paragraph (c)(126)(ii)(A) of this section and now deleted without replacement, Rule 210D.

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(127) * * *

(v) * * *

(C) Previously approved on August 9, 1985 in paragraph (c)(127)(v)(B) of this section and now deleted without replacement, Rule 301.

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(vii) * * *

(F) Previously approved on November 18, 1983 in paragraph (c)(127)(vii)(A) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the South Coast Air Quality Management District, Rule 302.

(G) Previously approved on October 19, 1984 in paragraph (c)(127)(vii)(C) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the South Coast Air Quality Management District, Rule 304.

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(137) * * *

(i) * * *

(C) Previously approved on February 1, 1984 in paragraph (c)(137)(i)(A) of this section and now deleted without replacement, Rules 301.1 and 302 (including Southeast Desert).

(ii) * * *

(E) Previously approved on February 1, 1984 in paragraph (c)(137)(ii)(A) of this section and now deleted without replacement, Rules 104, 113, and 301 (paragraphs a, b, and h).

* * * * *

(138) * * *

(i) * * *

(C) Previously approved on November 18, 1983 in paragraph (c)(138)(i)(A) of this section and now deleted without replacement, Rules 4–2, 4–11, and 5–3.

(ii) * * *

(E) Previously approved on November 18, 1983 in paragraph (c)(138)(ii)(A) of this section and now deleted without replacement, Rules 609 to 612 (Mountain Counties Air Basin).

(iii) * * *

(B) Previously approved on November 18, 1983 in paragraph (c)(138)(iii)(A) of this section and now deleted without replacement, Rule 301.

(iv) * * *

(B) Previously approved on November 18, 1983 in paragraph (c)(138)(iv)(A) of this section and now deleted without replacement, Rules 900 and 902.

(v) * * *

(E) Previously approved on November 18, 1983 in paragraph (c)(138)(v)(A) of this section and now deleted without replacement, Rules 105, 108, 111, and 301 to 304.

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(140) * * *
(i) * * *
(D) Previously approved on May 3, 1984 in paragraph (c)(140)(i)(A) of this section and now deleted without replacement, Regulation 3: Rules 3–100 through 3–103, 3–200 through 3–211, 3–300, 3–302 through 3–313, and 3–400 through 3–409.
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(iii) * * *
(C) Previously approved on May 3, 1984 in paragraph (c)(140)(iii)(A) of this section and now deleted without replacement, Rule 109.
* * * * * *
(148) * * *
(ii) * * *
(C) Previously approved on May 3, 1984 in paragraph (c)(148)(ii)(A) of this section and now deleted without replacement, Rule 226.
* * * * * *
(153) * * *
(ii) * * *
(D) Previously approved on December 5, 1984 in paragraph (c)(153)(ii)(A) of this section and now deleted without replacement, Rules 500 and 520.
* * * * * *
(154) * * *
(i) * * *
(D) Previously approved on December 5, 1984 in paragraph (c)(154)(i)(A) of this section and now deleted without replacement, Rules 500, 520, and Regulation 2: Rule 502.1.
* * * * * *
(155) * * *
(v) * * *
(C) Previously approved on January 29, 1985 in paragraph (c)(155)(v)(A) of this section and now deleted without replacement, Regulation 2: Rule 502.
* * * * * *
(156) * * *
(ii) * * *
(B) Previously approved on January 29, 1985 in paragraph (c)(156)(ii)(A) of this section and now deleted without replacement, Rule 112.
* * * * * *
(158) * * *
(i) * * *
(C) Previously approved on May 9, 1985 in paragraph (c)(158)(i)(A) of this section and now deleted without replacement, Rule 2–502.2.
* * * * * *
(159) * * *
(iii) * * *
(D) Previously approved on July 13, 1987 in paragraph (c)(159)(iii)(A) of this section and now deleted without replacement, Rule 104.
* * * * * *
(164) * * *
(i) * * *
(A) * * *
(*2*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(A)(*1*) of this section and now deleted without replacement, Rules 318, 319, and 509.
(B) * * *
(*3*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(B)(*1*) of this section and now deleted without replacement, Rules 500 and 520.
* * * * * *
(168) * * *
(i) * * *
(A) * * *
(*5*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(*1*) of this section and now deleted without replacement, Rules 701, 702, 703, and 902.
* * * * * *
(C) * * *
(*3*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(C)(*1*) of this section and now deleted without replacement, Rule 803.
* * * * * *
(173) * * *
(i) * * *
(B) * * *
(*2*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(B)(*1*) of this section and now deleted without replacement, Rules 105 and 108.
* * * * * *
(D) * * *
(*2*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(D)(*1*) of this section and now deleted without replacement, Rule 110.
* * * * * *
(177) * * *
(i) * * *
(D) * * *
(*3*) Previously approved on April 16, 1991 in paragraph (c)(177)(i)(D)(*1*) of this section and now deleted without replacement, Rule 112.
* * * * * *
(179) * * *
(i) * * *
(B) * * *
(*2*) Previously approved on November 27, 1990 in paragraph (c)(179)(i)(B)(*1*) of this section and now deleted without replacement, Rule 105.
* * * * * *
(E) * * *
(*4*) Previously approved on November 4, 1996 in paragraph (c)(179)(i)(E)(*1*) of this section and now deleted without replacement, Rule 1.4.
* * * * * *
(246) * * *
(i) * * *
(A) * * *
(*3*) Previously approved on September 16, 1997 in paragraph (c)(246)(i)(A)(*1*) of this section and now deleted without replacement, Rule 223.
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[FR Doc. 02–189 Filed 1–17–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301204; FRL–6817–6]

RIN 2070–AB78

Imidacloprid; Reestablishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation reestablishes a time-limited tolerance for the combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective January 18, 2002. Objections and requests for hearings, identified by docket control number OPP–301204, must be received by EPA on or before March 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301204 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112	Crop production Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301204. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of July 21, 1999 (64 FR 39041) (FRL–6088–3), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 ppm, with an expiration date of June 30, 2001. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on blueberries for this year's growing season due to the continuing emergency with beetles and aphids on blueberries in New Jersey and Michigan. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on blueberries for control of oriental beetles and blueberry aphids in New Jersey and Japanese beetle grubs in Michigan.

EPA assessed the potential risks presented by residues of imidacloprid in or on blueberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of July 21, 1999 (64 FR 39041). Based on that data and information considered, the Agency reaffirms that reestablishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is reestablished for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

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you must identify docket control number OPP–301204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 19, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301204, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule reestablishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b) by revising the date "6/1/01" to read "12/31/03" for blueberries.

[FR Doc. 02–1246 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–44 and 102–37

[FPMR Amendment H–210]

RIN 3090–AH20

Donation of Surplus Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on donation of surplus personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Peter B. Zuidema, Acting Director, Personal Property Management Policy Division (MTP), 202–501–3846.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to update, streamline, and clarify FPMR part 101–44 and move it into the Federal Management Regulation (FMR) as FMR part 102–37. This rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency (Federal holding agency, State Agency for Surplus Property (SASP), public airport, etc.) must follow the language contained in both the question and its answer.

This final rule includes the following changes:

1. The establishment of a uniform dollar threshold ($500) for recipients to report overages or shortages of donated property, in addition to a shortened timeframe (30 days) for reporting such discrepancies to GSA.

2. The removal of the provision that prohibits a SASP from recovering reimbursable costs from the sales proceeds of nondonable property that has been in its inventory for more than 2 years.

3. The change of definition of "museum" to provide SASPs with more concrete guidance for making eligibility determinations for museum applicants.

4. The reinstatement of a requirement that SASPs update donee eligibility files at 3-year intervals, plus the addition of a requirement for such updates to include a review of donee screener records.

5. GSA approval of all Red Cross donations made under 40 U.S.C. 484(l).

6. The shift in responsibility from GSA to the Federal Aviation Administration to issue screening credentials for public airports.

7. The consolidation of the Federal and donation screening periods.

A proposed rule was published in the **Federal Register** on April 13, 2000 (65 FR 20014). All public comments received were considered in the formulation of this final rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose information collection requirements that require the approval of the Office of Management and Budget (OMB).

E. Small Business Regulatory Enforcement Fairness Act

This rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

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List of Subjects in 41 CFR Parts 101–44 and 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

1. Part 101–44 is revised to read as follows:

PART 101–44 DONATION OF SURPLUS PERSONAL PROPERTY

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 101–44.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on donation of surplus personal property previously contained in this part, see FMR part 102–37 (41 CFR part 102–37).

2. Part 102–37 is added to subchapter B to read as follows:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

Subpart A—General Provisions

Sec.
102–37.5 What does this part cover?
102–37.10 What is the primary governing authority for this part?
102–37.15 Who must comply with the provisions of this part?
102–37.20 How do we request a deviation from this part and who can approve it?

Definitions

102–37.25 What definitions apply to this part?

Donation Overview

102–37.30 When does property become available for donation?
102–37.35 Who handles the donation of surplus property?
102–37.40 What type of surplus property is available for donation?
102–37.45 How long is property available for donation screening?
102–37.50 What is the general process for requesting surplus property for donation?
102–37.55 Who pays for transportation and other costs associated with a donation?
102–37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?
102–37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?
102–37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?
102–37.75 What should be included in a shortage report?
102–37.80 What happens to surplus property that isn't transferred for donation?
102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Subpart B—General Services Administration (GSA)

102–37.90 What are GSA's responsibilities in the donation of surplus property?
102–37.95 How will GSA resolve competing requests?
102–37.100 What factors will GSA consider in allocating surplus property among SASPs?
102–37.105 Is GSA required to compile any reports concerning the donation program?

Subpart C—Holding Agency

102–37.110 What are a holding agency's responsibilities in the donation of surplus property?
102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?
102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?
102–37.125 What are some donations that do not require GSA's approval?

Subpart D—State Agency for Surplus Property (SASP)

102–37.130 What are a SASP's responsibilities in the donation of surplus property?
102–37.135 How does a SASP become eligible to distribute surplus property to donees?

State Plan of Operation

102–37.140 What is a State plan of operation?
102–37.145 Who is responsible for developing, certifying, and submitting the plan?
102–37.150 What must a State legislature include in the plan?
102–37.155 When does a plan take effect?
102–37.160 Must GSA approve amendments or modifications to the plan?
102–37.165 Do plans or major amendments require public notice?
102–37.170 What happens if a SASP does not operate in accordance with its plan?

Screening and Requesting Property

102–37.175 How does a SASP find out what property is potentially available for donation?
102–37.180 Does a SASP need special authorization to screen property at Federal facilities?
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Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

Subpart A—General Provisions

§ 102–37.5 What does this part cover?

This part covers the donation of surplus Federal personal property located within a State, including foreign excess personal property returned to a State for handling as surplus property. For purposes of this part, the term State includes any of the 50 States, as well as the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

§ 102–37.10 What is the primary governing authority for this part?

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)(1)), as amended (the Property Act), gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

§ 102–37.15 Who must comply with the provisions of this part?

You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by GSA for donation (e.g., a State agency for surplus property (SASP) or a public airport).

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§ 102–37.20 How do we request a deviation from this part and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

Definitions

§ 102–37.25 What definitions apply to this part?

The following definitions apply to this part:

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Donee means any of the following entities that receive Federal surplus personal property through a SASP:

(1) A service educational activity (SEA).

(2) A public agency (as defined in appendix C of this part) which uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donees when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property through the Federal Aviation Administration as discussed in subpart F of this part.)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

Holding agency means the executive agency having accountability for, and generally possession of, the property involved.

Period of restriction means the period of time for keeping donated property in use for the purpose for which it was donated.

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of titles 40 and 41 of the United States Code), the law that centralized Federal property management and disposal functions under the GSA.

Screening means the process of physically inspecting property or reviewing lists or reports of property to determine whether property is usable or needed for donation purposes.

Service educational activity (SEA) means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; e.g., maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

Standard Form (SF) 123, Transfer Order Surplus Personal Property means the document used to request and document the transfer of Federal surplus personal property for donation purposes.

State means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

State agency for surplus property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

Surplus personal property (surplus property) means excess personal property (as defined in § 102–36.40 of this chapter) not required for the needs of any Federal agency, as determined by GSA.

Surplus release date means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

Transferee means a public airport receiving surplus property from a holding agency through the Federal Aviation Administration, or a SASP.

You, when used in subparts D and E of this part, means SASP, unless otherwise specified.

Donation Overview

§ 102–37.30 When does property become available for donation?

Excess personal property becomes available for donation the day following the surplus release date. This is the point at which the screening period has been completed without transfer to a Federal agency or other eligible recipient, and the GSA has determined the property to be surplus.

§ 102–37.35 Who handles the donation of surplus property?

(a) The SASPs handle the donation of most surplus property to eligible donees in their States in accordance with this part.

(b) The GSA handles the donation of surplus property to public airports under a program administered by the Federal Aviation Administration (FAA) (see subpart F of this part). The GSA may also donate to the American National Red Cross surplus property that was originally derived from or through the Red Cross (see subpart G of this part).

(c) Holding agencies may donate surplus property that they would otherwise abandon or destroy directly to public bodies in accordance with subpart H of this part.

§ 102–37.40 What type of surplus property is available for donation?

All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for property in the following categories:

(a) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling with respect to price support or stabilization.

(b) Property acquired with trust funds (e.g., Social Security Trust Funds).

(c) Non-appropriated fund property.

(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(e) Vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.

(f) Records of the Federal Government.

(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(h) Controlled substances.

(i) Items as may be specified from time to time by the GSA Office of Governmentwide Policy.

§ 102–37.45 How long is property available for donation screening?

Entities authorized to participate in the donation program may screen property, concurrently with Federal agencies, as soon as the property is reported as excess up until the surplus release date. The screening period is normally 21 calendar days, except as noted in § 102–36.95 of this chapter.

§ 102–37.50 What is the general process for requesting surplus property for donation?

The process for requesting surplus property for donation varies, depending on who is making the request.

(a) Donees should submit their requests for property directly to the appropriate SASP.

(b) SASPs and public airports should submit their requests to the appropriate GSA regional office. Requests must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property, or its electronic equivalent. Public airports must have FAA certify their transfer requests prior to

submission to GSA for approval. GSA may ask SASPs or public airports to submit any additional information required to support and justify transfer of the property.

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part.

(d) Public bodies, when seeking to acquire property that is being abandoned or destroyed, should follow rules and procedures established by the donor agency (see subpart H of this part).

§ 102–37.55 Who pays for transportation and other costs associated with a donation?

The receiving organization (the transferee) is responsible for any packing, shipping, or transportation charges associated with the transfer of surplus property for donation. Those costs, in the case of SASPs, may be passed on to donees that receive the property.

§ 102–37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?

The transferee (or the transferee's agent) must remove property from the holding agency premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or removal that it no longer needs the property, it must notify the GSA regional office that approved the transfer request.

§ 102–37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?

When a prospective transferee decides it cannot use surplus property that has already been approved for transfer and declines to pick it up, the GSA regional office will advise any other SASP or public airport known to be interested in the property to submit a transfer request. If there is no transfer interest, GSA will release the property for other disposal.

§ 102–37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

When the quantity of property received doesn't agree with that approved by GSA on the SF 123, the transferee should handle the overage or shortage as follows:

If . . .	And . . .	Then . . .
(a) More property is received than was approved by GSA for transfer.	The known or estimated acquisition cost of the line item(s) involved is $500 or more.	Submit a SF 123 for the difference to GSA (Identify the property as an overage and include the original transfer order number.) [1]
(b) Less property is received than was approved by GSA for transfer.	The acquisition cost of the missing item(s) is $500 or more.	Submit a shortage report to GSA, with a copy to the holding agency.[1]
(c) The known or estimated acquisition cost of the property is less than $500		Annotate on your receiving and inventory records, a description of the property, its known or estimated acquisition cost, and the name of the holding agency.

[1] Submit the SF 123 or shortage report to the GSA approving office within 30 calendar days of the date of transfer.

§ 102–37.75 What should be included in a shortage report?

The shortage report should include:

(a) The name and address of the holding agency;

(b) All pertinent GSA and holding agency control numbers, in addition to the original transfer order number; and

(c) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

§ 102–37.80 What happens to surplus property that isn't transferred for donation?

Surplus property not transferred for donation is generally offered for sale under the provisions of part 101–45 of this title. Under the appropriate circumstances (see § 102–36.305 of this chapter), such property might be abandoned or destroyed.

§ 102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Yes, surplus property being offered for sale may be withdrawn for donation if approved by GSA. GSA will not approve requests for the withdrawal of property that has been advertised or listed on a sales offering if that withdrawal would be harmful to the overall outcome of the sale. GSA will only grant such requests prior to sales award, since an award is binding.

Subpart B—General Services Administration (GSA)

§ 102–37.90 What are GSA's responsibilities in the donation of surplus property?

The General Services Administration (GSA) is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of such property, GSA:

(a) Determines when property is surplus to the needs of the Government;

(b) Allocates and transfers surplus property on a fair and equitable basis to State agencies for surplus property (SASPs) for further distribution to eligible donees;

(c) Oversees the care and handling of surplus property while it is in the custody of a SASP;

(d) Approves all transfers of surplus property to public airports, pursuant to the appropriate determinations made by the Federal Aviation Administration (see subpart F of this part);

(e) Donates to the American National Red Cross property (generally blood plasma and related medical materials) originally provided by the Red Cross to a Federal agency, but that has subsequently been determined surplus to Federal needs (see subpart G of this part);

(f) Approves, after consultation with the holding agency, foreign excess

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personal property to be returned to the United States for donation purposes;

(g) Coordinates and controls the level of SASP and donee screening at Federal installations;

(h) Imposes appropriate conditions on the donation of surplus property having characteristics that require special handling or use limitations (see § 102–37.455); and

(i) Keeps track of and reports on Federal donation programs (see § 102–37.105).

§ 102–37.95 How will GSA resolve competing transfer requests?

In case of requests from two or more SASPs, GSA will use the allocating criteria in § 102–37.100. When competing requests are received from public airports and SASPs, GSA will transfer property fairly and equitably, based on such factors as need, proposed use, and interest of the holding agency in having the property donated to a specific public airport.

§ 102–37.100 What factors will GSA consider in allocating surplus property among SASPs?

GSA allocates property among the SASPs on a fair and equitable basis using the following factors:

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific service educational activity.

(c) Need and usability of property, as reflected by requests from SASPs. GSA will also give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property. (Requests for property to be used as is will be given preference over cannibalization requests.)

(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification from the intended donee.

(e) Whether a SASP has already received similar property in the past, and how much.

(f) Past performance of a SASP in effecting timely pickup or removal of property approved for transfer and making prompt distribution of property to eligible donees.

(g) The property's condition and its original acquisition cost.

(h) Relative neediness of each State based on the State's population and per capita income.

§ 102–37.105 Is GSA required to compile any reports concerning the donation program?

Yes, biennially, GSA must compile a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of surplus property;

(b) Statistical information on the amount of surplus property approved for transfer to the SASPs and donated to eligible non-Federal organizations during the report period (as well as the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any recommendations GSA wishes to make on the donation program.

Subpart C—Holding Agency

§ 102–37.110 What are a holding agency's responsibilities in the donation of surplus property?

Your donation responsibilities as a holding agency begin when you determine that property is to be declared excess. You must then:

(a) Let GSA know if you have a donee in mind for foreign gift items or airport property, as provided for in § 102–37.525 and § 102–42.95(h) of this chapter;

(b) Cooperate with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting excess or surplus property for possible donation;

(c) Set aside surplus property selected by a screener pending GSA approval of the transfer;

(d) Upon receipt of a GSA-approved transfer document, promptly ship or release property to the transferee (or the transferee's designated agent) in accordance with pickup or shipping instructions on the transfer document;

(e) Notify the approving GSA regional office if surplus property to be picked up is not removed within 15 calendar days after you notify the transferee (or its agent) of its availability. (GSA will advise you of further disposal instructions.); and

(f) Perform and bear the cost of care and handling of surplus property pending its disposal, except as provided in § 102–37.115.

§ 102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?

Yes, you, as a holding agency, may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses. However, you may not include overhead or administrative costs in these charges.

§ 102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?

Generally, a holding agency may not donate surplus property directly to eligible non-Federal recipients without going through GSA, except for the situations listed in § 102–37.125.

§ 102–37.125 What are some donations that do not require GSA's approval?

(a) Some donations of surplus property that do not require GSA's approval are:

(1) Donations of condemned, obsolete, or other specified material by a military department or the Coast Guard to recipients eligible under 10 U.S.C. 2572, 10 U.S.C. 7306, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a (see Appendix A of this part for details). However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 102–36 of this chapter;

(2) Donations by holding agencies to public bodies under subpart H of this part;

(3) Donations by the Small Business Administration to small disadvantaged businesses under 13 CFR part 124; and

(4) Donations by holding agencies of law enforcement canines to their handlers under 40 U.S.C. 484(r).

(b) You may also donate property directly to eligible non-Federal recipients under other circumstances if you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 102–36.300 of this chapter.

Subpart D—State Agency for Surplus Property (SASP)

§ 102–37.130 What are a SASP's responsibilities in the donation of surplus property?

As a SASP, your responsibilities in the donation of surplus property are to:

(a) Determine whether or not an entity seeking to obtain surplus property is eligible for donation as a:

(1) Public agency;

(2) Nonprofit educational or public health institution; or

(3) Program for older individuals.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

§ 102–37.135 How does a SASP become eligible to distribute surplus property to donees?

In order to receive transfers of surplus property, a SASP must:

(a) Have a GSA-approved State plan of operation; and

(b) Provide the certifications and agreements as set forth in §§ 102–37.200 and 102–37.205.

State Plan of Operation

§ 102–37.140 What is a State plan of operation?

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

§ 102–37.145 Who is responsible for developing, certifying, and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must submit the plan to the Administrator of General Services for acceptance and certify that the SASP is authorized to:

(a) Acquire and distribute property to eligible donees in the State;

(b) Enter into cooperative agreements; and

(c) Undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and set forth in the plan.

§ 102–37.150 What must a State legislature include in the plan?

The State legislature must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and includes the information and assurances set forth in Appendix B of this part. It may also include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.

§ 102–37.155 When does a plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan is approved.

§ 102–37.160 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

§ 102–37.165 Do plans or major amendments require public notice?

Yes, proposed plans and major amendments to existing plans require general notice to the public for comment. A State must publish a general notice of the plan or amendment at least 60 calendar days in advance of filing the proposal with GSA and provide interested parties at least 30 calendar days to submit comments before filing the proposal.

§ 102–37.170 What happens if a SASP does not operate in accordance with its plan?

If a SASP does not operate in accordance with its plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

Screening and Requesting Property

§ 102–37.175 How does a SASP find out what property is potentially available for donation?

A SASP may conduct onsite screening at various Federal facilities, contact or submit want lists to GSA, or use GSA's or other agencies' computerized inventory system to electronically search for property that is potentially available for donation (see § 102–36.90 for information on GSA's system, FEDS).

§ 102–37.180 Does a SASP need special authorization to screen property at Federal facilities?

Yes, SASP personnel or donee personnel representing a SASP must have a valid screener-identification card (GSA Optional Form 92, Screener's Identification, or other suitable identification approved by GSA) before screening and selecting property at holding agencies. However, SASP or donee personnel do not need a screener-ID card to inspect or remove property previously set aside or approved by GSA for transfer.

§ 102–37.185 How does a SASP obtain screening authorization for itself or its donees?

(a) To obtain screening authorization for itself or donees, a SASP must submit an Optional Form 92 (with the signature and an affixed passport-style photograph of the screener applicant) and a written request to the GSA regional office serving the area in which the intended screener is located. The request must:

(1) State the prospective screener's name and the name and address of the organization he or she represents;

(2) Specify the period of time and location(s) in which screening will be conducted; and

(3) Certify that the applicant is qualified to screen property.

(b) If the request is approved, GSA will complete the Optional Form 92 and return it to the SASP for issuance to the screener.

§ 102–37.190 What records must a SASP maintain on authorized screeners?

You must maintain a current record of all individuals authorized to screen for your SASP, including their names, addresses, telephone numbers, qualifications to screen, and any additional identifying information such as driver's license or social security numbers. In the case of donee screeners, you should place such records in the donee's eligibility file and review for currency each time a periodic review of the donee's file is undertaken.

§ 102–37.195 Does a SASP have to have a donee in mind to request surplus property?

Generally yes, you should have a firm requirement or an anticipated demand for any property that you request.

§ 102–37.200 What certifications must a SASP make when requesting surplus property for donation?

When requesting or applying for property, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under subsection 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed within the State by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501), for the purpose of education or public health (including research for any such purpose).

(3) An eligible nonprofit activity for programs for older individuals.

(4) A service educational activity (SEA), for DOD-generated property only.

(d) When property is picked up by, or shipped to, your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA

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regulations, and that the property is usable and needed by the donee.

§ 102–37.205 What agreements must a SASP make?

With respect to surplus property picked up by or shipped to your SASP, you must agree to the following:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property to perform your donation program functions, but only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see § 102–37.335) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in § 102–37.200 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of property, and will comply with GSA regulations on nondiscrimination as set forth in part 101–6, subpart 101–6.2, and part 101–8 of this title.

(g) You will not seek to hold the United States Government liable for consequential or incidental damages or the personal injuries, disabilities, or death to any person arising from the transfer, donation, use, processing, or final disposition of this property. The Government's liability in any event is limited in scope to that provided for by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).

§ 102–37.210 Must a SASP make a drug-free workplace certification when requesting surplus property for donation?

No, you must certify that you will provide a drug-free workplace only as a condition for retaining surplus property for SASP use. Drug-free workplace certification requirements are found at part 105–68, subpart 105–68.6, of this title.

§ 102–37.215 When must a SASP make a certification regarding lobbying?

You are subject to the anti-lobbying certification and disclosure requirements in part 105–69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain surplus property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than $100,000.

Justifying Special Transfer Requests

§ 102–37.220 Are there special types of surplus property that require written justification when submitting a transfer request?

Yes, a SASP must obtain written justification from the intended donee, and submit it to GSA along with the transfer request, prior to allocation of:

(a) Aircraft and vessels covered by § 102–37.455;

(b) Items requested specifically for cannibalization;

(c) Foreign gifts and decorations (see part 102–42 of this chapter);

(d) Items containing 50 parts per million or greater of polychlorinated biphenyl (see part 101–42 of this title);

(e) Firearms as described in part 101–42 of this title; and

(f) Any item on which written justification will assist GSA in making allocation to States with the greatest need.

§ 102–37.225 What information or documentation must a SASP provide when requesting a surplus aircraft or vessel?

(a) For each SF 123 that you submit to GSA for transfer of a surplus aircraft or vessel covered by § 102–37.455 include:

(1) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a detailed plan of utilization for the property (see § 102–37.230 for information a donee has to include in the letter of intent); and

(2) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation.

(b) For each SF 123 that GSA approves, you must include:

(1) Your distribution document, signed and dated by the authorized donee representative; and

(2) A conditional transfer document, signed by you and the intended donee, and containing the special terms and conditions prescribed by GSA.

§ 102–37.230 What must a letter of intent for obtaining surplus aircraft or vessels include?

A letter of intent for obtaining surplus aircraft or vessels must provide:

(a) A description of the aircraft or vessel requested. If the item is an aircraft, the description must include the manufacturer, date of manufacture, model, and serial number. If the item is a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of the donee's program and the number and types of aircraft or vessels it currently owns;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, the donee must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, the donee must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts, disposition of unsalvageable parts, etc.) If a vessel is requested for waterway purposes, the donee must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent docking on water or land, the donee must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting the donee's need for the aircraft or vessel.

§ 102–37.235 What type of information must a SASP provide when requesting surplus property for cannibalization?

When a donee wants surplus property to cannibalize, include the following statement on the SF 123: "Line Item Number(s)_____requested for cannibalization.". In addition to including this statement, provide a detailed justification concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will approve requests for cannibalization only when it is clear from the justification that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

§ 102–37.240 How must a transfer request for surplus firearms be justified?

To justify a transfer request for surplus firearms, the requesting SASP must obtain and submit to GSA a letter of intent from the intended donee that provides:

(a) Identification of the donee applicant, including its legal name and complete address and the name, title, and telephone number of its authorized representative;

(b) The number of compensated officers with the power to apprehend and to arrest;

(c) A description of the firearm(s) requested;

(d) Details on the planned use of the firearm(s); and

(e) The number and types of donated firearms received during the previous 12 months through any other Federal program.

Custody, Care, and Safekeeping

§ 102–37.245 What must a SASP do to safeguard surplus property in its custody?

To safeguard surplus property in your custody, you must provide adequate protection of property in your custody, including protection against the hazards of fire, theft, vandalism, and weather.

§ 102–37.250 What actions must a SASP take when it learns of damage to or loss of surplus property in its custody?

If you learn that surplus property in your custody has been damaged or lost, you must always notify GSA and notify the appropriate law enforcement officials if a crime has been committed.

§ 102–37.255 Must a SASP insure surplus property against loss or damage?

No, you are not required to carry insurance on Federal surplus property in your custody. However, if you elect to carry insurance and the insured property is lost or damaged, you must submit a check made payable to GSA for any insurance proceeds received in excess of your actual costs of acquiring and rehabilitating the property prior to its loss, damage, or destruction.

Distribution of Property

§ 102–37.260 How must a SASP document the distribution of surplus property?

All SASPs must document the distribution of Federal surplus property on forms that are prenumbered, provide for donees to indicate the primary purposes for which they are acquiring property, and include the:

(a) Certifications and agreements in §§ 102–37.200 and 102–37.205; and

(b) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

§ 102–37.265 May a SASP distribute surplus property to eligible donees of another State?

Yes, you may distribute surplus property to eligible donees of another State, if you and the other SASP determine that such an arrangement will be of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement must be prepared as prescribed in § 102–37.335 and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP; and

(b) Forward copies of executed distribution documents to the donee's home SASP.

§ 102–37.270 May a SASP retain surplus property for its own use?

Yes, you can retain surplus property for use in operating the donation program, but only if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any surplus property in the operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing SASP operations. GSA will notify you within 30 calendar days whether you may retain the property for use in your operations. Title to any surplus property GSA approves for your retention will vest in your SASP. You must maintain separate records for such property.

Service and Handling Charges

§ 102–37.275 May a SASP accept personal checks and non-official payment methods in payment of service charges?

No, service charge payments must readily identify the donee institution as the payer (or the name of the parent organization when that organization pays the operational expenses of the donee). Personal checks, personal cashier checks, personal money orders, and personal credit cards are not acceptable.

§ 102–37.280 How may a SASP use service charge funds?

Funds accumulated from service charges may be deposited, invested, or used in accordance with State law to:

(a) Cover direct and reasonable indirect costs of operating the SASP;

(b) Purchase necessary equipment for the SASP;

(c) Maintain a reasonable working capital reserve;

(d) Rehabilitate surplus property, including the purchase of replacement parts;

(e) Acquire or improve office or distribution center facilities; or

(f) Pay for the costs of internal and external audits.

§ 102–37.285 May a SASP use service charge funds to support non-SASP State activities and programs?

No, except as provided in § 102–37.495, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees.

Disposing of Undistributed Property

§ 102–37.290 What must a SASP do with surplus property it cannot donate?

(a) As soon as it becomes clear that you cannot donate the surplus property, you should first determine whether or not the property is usable.

(1) If you determine that the undistributed surplus property is not usable, you should seek GSA approval

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to abandon or destroy the property in accordance with § 102–37.320.

(2) If you determine that the undistributed surplus property is usable, you should immediately offer it to other SASPs. If other SASPs cannot use the property, you should promptly report it to GSA for redisposal (i.e., disposition through retransfer, sale, or other means).

(b) Normally, any property not donated within a 1-year period should be processed in this manner.

§ 102–37.295 Must GSA approve a transfer between SASPs?

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA will approve or disapprove the request within 30 calendar days of receipt of the transfer order.

§ 102–37.300 What information must a SASP provide GSA when reporting unneeded usable property for disposal?

When reporting unneeded usable property that is not required for transfer to another SASP, provide GSA with the:

(a) Best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;

(b) Date you received each line item of property listed; and

(c) Certification of reimbursement requested under § 102–37.315.

§ 102–37.305 May a SASP act as GSA's agent in selling undistributed surplus property (either as usable property or scrap)?

Yes, you may act as GSA's agent in selling undistributed surplus property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. You must notify GSA each time you propose to conduct a sale under the cooperative agreement. You may request approval to conduct a sale when reporting the property to GSA for disposal instructions. If no formal agreement exists, you may submit such an agreement at that time for approval.

§ 102–37.310 What must a proposal to sell undistributed surplus property include?

(a) Your request to sell undistributed surplus property must include:

(1) The proposed sale date;

(2) A listing of the property;

(3) Location of the sale;

(4) Method of sale; and

(5) Proposed advertising to be used.

(b) If the request is approved, the GSA regional sales office will provide the necessary forms and instructions for you to use in conducting the sale.

§ 102–37.315 What costs may a SASP recover if undistributed surplus property is retransferred or sold?

(a) When undistributed surplus property is transferred to a Federal agency or another SASP, or disposed of by public sale, you are entitled to recoup:

(1) Direct costs you initially paid to the Federal holding agency, including but not limited to, packing, preparation for shipment, and loading. You will not be reimbursed for actions following receipt of the property, including unloading, moving, repairing, preserving, or storage.

(2) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt. You must document and certify the amount of reimbursement requested for these costs.

(b) Reimbursable arrangements should be made prior to transfer of the property. In the case of a Federal transfer, GSA will secure agreement of the Federal agency to reimburse your authorized costs, and annotate the amount of reimbursement on the transfer document. You must coordinate and make arrangements for reimbursement when property is transferred to another SASP. If you and the receiving SASP cannot agree on an appropriate reimbursement charge, GSA will determine appropriate reimbursement. The receiving SASP must annotate the reimbursement amount on the transfer document prior to its being forwarded to GSA for approval.

(c) When undistributed property is disposed of by public sale, GSA must approve the amount of sales proceeds you may receive to cover your costs. Generally, this will not exceed 50 percent of the total sales proceeds.

§ 102–37.320 Under what conditions may a SASP abandon or destroy undistributed surplus property?

(a) You may abandon or destroy undistributed surplus property when you have made a written finding that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The abandonment or destruction finding must be sent to the appropriate GSA regional office for approval. You must include in the finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons; and

(5) The signature of the SASP director requesting approval for the abandonment or destruction.

(b) GSA will notify you within 30 calendar days whether you may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves your request for abandonment or destruction. If GSA doesn't reply to you within 30 calendar days of notification, the property may be abandoned or destroyed.

Cooperative Agreements

§ 102–37.325 With whom and for what purpose(s) may a SASP enter into a cooperative agreement?

Section 203(n) of the Property Act (40 U.S.C. 484(n)) allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) Regional GSA personal property management offices, or designated Federal agencies, may enter into a cooperative agreement to assist a SASP in distributing surplus property for donation. Assistance may include:

(1) Furnishing the SASP with available GSA or agency office space and related support such as office furniture and information technology equipment needed to screen and process property for donation.

(2) Permitting the SASP to retain items of surplus property transferred to the SASP that are needed by the SASP in performing its donation functions (see § 102–37.270).

(b) Regional GSA personal property management offices may help the SASP to enter into agreements with other GSA or Federal activities for the use of Federal telecommunications service or federally-owned real property and related personal property.

(c) A SASP may enter into a cooperative agreement with GSA to conduct sales of undistributed property on behalf of GSA (see § 102–37.305).

§ 102–37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?

The parties to a cooperative agreement must decide among themselves the extent to which the costs of the services they provide must be reimbursed. Their decision should be reflected in the cooperative agreement itself. As a general rule, the Economy Act (31 U.S.C. 1535) would require a Federal agency receiving services from a SASP to reimburse the SASP for those services. Since SASPs are not Federal agencies, the Economy Act would not require them to reimburse Federal agencies for services provided by such agencies. In this situation, the Federal agencies would have to determine whether or not their own authorities would permit them to provide services to SASPs without reimbursement. If a Federal agency is reimbursed by a SASP for services provided under a cooperative agreement, it must credit that payment to the fund or appropriation that incurred the related costs.

§ 102–37.335 May a SASP enter into a cooperative agreement with another SASP?

Yes, with GSA's concurrence and where authorized by State law, a SASP may enter into an agreement with an adjacent State to act as its agent and authorized representative in disposing of surplus Federal property. Interstate cooperative agreements may be considered when donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of § 102–37.205(e).

§ 102–37.340 When may a SASP terminate a cooperative agreement?

You may terminate a cooperative agreement with GSA 60-calendar days after providing GSA with written notice. For other cooperative agreements with other authorized parties, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

Audits and Reviews

§ 102–37.345 When must a SASP be audited?

For each year in which a SASP receives $300,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501–7507) as implemented by Office of Management and Budget (OMB) Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" (for availability see 5 CFR 1310.3). GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

§ 102–37.350 Does coverage under the single audit process in OMB Circular A–133 exempt a SASP from other reviews of its program?

No, although SASPs are covered under the single audit process in OMB Circular A–133, from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

§ 102–37.355 What obligations does a SASP have to ensure that donees meet Circular A–133 requirements?

SASPs, if they donate $300,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A–133. If a donee receives less than $300,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee's responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

Reports

§ 102–37.360 What reports must a SASP provide to GSA?

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (OMB Control Number 3090–0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

Liquidating a SASP

§ 102–37.365 What steps must a SASP take if the State decides to liquidate the agency?

Before suspending operations, a SASP must submit to GSA a liquidation plan that includes:

(a) Reasons for the liquidation;

(b) A schedule for liquidating the agency and the estimated date of termination;

(c) Method of disposing of property on hand under the requirements of this part;

(d) Method of disposing of the agency's physical and financial assets;

(e) Retention of all available records of the SASP for a 2-year period following liquidation; and

(f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

§ 102–37.370 Do liquidation plans require public notice?

Yes, a liquidation plan constitutes a major amendment of a SASP's plan of operation and, as such, requires public notice.

Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations

§ 102–37.375 How is the pronoun "you" used in this subpart?

The pronoun "you," when used in this subpart, refers to the State agency for surplus property (SASP).

§ 102–37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

The following statutes provide the authority to donate surplus Federal property to different types of recipients:

(a) Subsection 203(j)(2) of the Property Act (40 U.S.C. 484(j)(2)) authorizes surplus property under the control of the Department of Defense (DOD) to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this part 102–37 as service educational activities or SEAs).

(b) Subsection 203(j)(3) of the Property Act (40 U.S.C. 484(j)(3)) authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

(1) Medical institutions.

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(2) Hospitals.
(3) Clinics.
(4) Health centers.
(5) Drug abuse or alcohol treatment centers.
(6) Providers of assistance to homeless individuals.
(7) Providers of assistance to impoverished families and individuals.
(8) Schools.
(9) Colleges.
(10) Universities.
(11) Schools for the mentally disabled.
(12) Schools for the physically disabled.
(13) Child care centers.
(14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.
(15) Museums attended by the public.
(16) Libraries, serving free all residents of a community, district, State or region.

(c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

Donee Eligibility

§ 102–37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

(b) For applicants that offer courses of instruction devoted to the military arts and sciences, the Defense Department will determine eligibility to receive surplus property through the SASP as a service educational activity or SEA.

§ 102–37.390 What basic criteria must an applicant meet before a SASP can qualify it for eligibility?

To qualify for donation program eligibility through a SASP, an applicant must:

(a) Conform to the definition of one of the categories of eligible entities listed in § 102–37.380 (see appendix C of this part for definitions);

(b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;

(c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;

(d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and

(e) Operate in compliance with applicable Federal nondiscrimination statutes.

§ 102–37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?

A SASP may accept the following documentation as evidence that an applicant has met established standards for the operation of its educational or health program:

(a) A certificate or letter from a nationally recognized accrediting agency affirming the applicant meets the agency's standards and requirements.

(b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.

(c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.

(d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.

(e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization.

§ 102–37.400 What type of eligibility information must a SASP maintain on donees?

In general, you must maintain the records required by your State plan to document donee eligibility (see appendix B of this part). For SEAs, you must maintain separate records that include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property that are needed or have been authorized by DOD for use in the SEA's program.

§ 102–37.405 How often must a SASP update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligibility is current and accurate. Annually, you must update files for nonprofit organizations whose eligibility depends on annual appropriations, annual licensing, or annual certification. Particular care must be taken to ensure that all records relating to the authority of donee representatives to receive and receipt for property, or to screen property at Federal facilities, are current.

§ 102–37.410 What must a SASP do if a donee fails to maintain its eligibility status?

If you determine that a donee has failed to maintain its eligibility status, you must terminate distribution of property to that donee, recover any usable property still under Federal restriction (as outlined in § 102–37.465), and take any other required compliance actions.

§ 102–37.415 What should a SASP do if an applicant appeals a negative eligibility determination?

If an applicant appeals a negative eligibility determination, forward complete documentation on the appeal request, including your comments and recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters. GSA's decision will be final.

Conditional Eligibility

§ 102–37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

You may grant conditional eligibility to such an applicant provided it submits a statement from any required approving, accrediting, or licensing authority confirming it will be approved, accredited, or licensed.

§ 102–37.425 May a SASP grant conditional eligibility to a not-for-profit organization whose tax-exempt status is pending?

No, under no circumstances may you grant conditional eligibility prior to receiving from the applicant a copy of a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code.

§ 102–37.430 What property can a SASP make available to a donee with conditional eligibility?

You may only make available surplus property that the donee can use immediately. You may not make available property that will only be used at a later date, for example, after the construction of the donee's facility has been completed.

Terms and Conditions of Donation

§ 102–37.435 For what purposes may donees acquire and use surplus property?

A donee may acquire and use surplus property only for the following authorized purposes:

(a) *Public purposes.* A public agency that acquires surplus property through a SASP must use such property to carry out or to promote one or more public purposes for the people it serves.

(b) *Educational and public health purposes, including related research.* A nonprofit educational or public health institution must use surplus property for education or public health, including research for either purpose and assistance to the homeless or impoverished. While this does not preclude the use of donated surplus property for a related or subsidiary purpose incident to the institution's overall program, the property may not be used for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* An entity that conducts a program for older individuals must use donated surplus property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

§ 102–37.440 May donees acquire property for exchange?

No, a donee may not acquire property with the intent to sell or trade it for other assets.

§ 102–37.445 What certifications must a donee make before receiving property?

Prior to a SASP releasing property to a donee, the donee must certify that:

(a) It is a public agency or a nonprofit organization meeting the requirements of the Property Act and/or regulations of GSA;

(b) It is acquiring the property for its own use and will use the property for authorized purposes;

(c) Funds are available to pay all costs and charges incident to the donation;

(d) It will comply with the nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(e) It isn't currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

§ 102–37.450 What agreements must a donee make?

Before a SASP may release property to a donee, the donee must agree to the following conditions:

(a) The property is acquired on an "as is, where is" basis, without warranty of any kind, and it will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) It will return to the SASP, at its own expense, any donated property:

(1) That is not placed in use for the purposes for which it was donated within 1 year of donation; or

(2) Which ceases to be used for such purposes within 1 year after being placed in use.

(c) It will comply with the terms and conditions imposed by the SASP on the use of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle or other donated item. (Not applicable to SEAs.)

(d) It agrees that, upon execution of the SASP distribution document, it has conditional title only to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part.

(e) It will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(f) It will use the property for an authorized purpose during the period of restriction.

(g) It will obtain permission from the SASP before selling, trading, leasing, loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(h) It will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(i) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

Special Handling or Use Conditions

§ 102–37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?

GSA has imposed special handling or processing requirements on the property discussed in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed- or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of $5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For. . .	See. . .
(1) Policies and procedures governing the donation of aircraft parts	Part 101–37, subpart 101–37.6, of this title.

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For. . .	See. . .
(2) Documentation needed by GSA to process requests for aircraft or vessels	§ 102–37.225.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels	§ 102–37.460.
(4) Guidelines on preparing letters of intent for aircraft or vessels	§ 102–37.230.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, in order to acquire the property. Include the BATF use-permit number on the SF 123, Transfer Order Surplus Personal Property.

(2) You may not store tax-free or specially denatured alcohol in SASP facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(d) *Franked and penalty mail envelopes and official letterhead.* Franked and penalty mail envelopes and official letterhead may not be donated without the SASP certifying that all Federal Government markings will be obliterated before use.

§ 102–37.460 What special terms and conditions apply to the donation of aircraft and vessels?

The following special terms and conditions apply to the donation of aircraft and vessels:

(a) There must be a period of restriction which will expire after the aircraft or vessel has been used for the purpose stated in the letter of intent (see § 102–37.230) for a period of 5 years, except that the period of restriction for a combat-configured aircraft is in perpetuity.

(b) The donee of an aircraft must apply to the FAA for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide the SASP and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) or Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by the SASP and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms and conditions imposed by the conditional transfer document are breached, title may revert to the Government. GSA may require the donee to return the aircraft or vessel or pay for any unauthorized disposal, transaction, or use.

(e) If, during the period of restriction, the aircraft or vessel is no longer needed by the donee, the donee must promptly notify the SASP and request disposal instructions. A SASP may not issue disposal instructions without the prior written concurrence of GSA.

(f) Military aircraft previously used for ground instruction and/or static display (Category B aircraft, as designated by DOD) or that are combat-configured (Category C aircraft) may not be donated for flight purposes.

(g) For all aircraft donated for nonflight use, the donee must, within 30 calendar days of receipt of the aircraft, turn over to the SASP the remaining aircraft historical records (except the records of the major components/life limited parts; e.g., engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). The SASP in turn must transmit the records to GSA for forwarding to the FAA.

Release of Restrictions

§ 102–37.465 May a SASP modify or release any of the terms and conditions of donation?

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The terms and conditions you are required by the Property Act to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of $5,000 or more.

(b) Any special handling condition or use limitation imposed by GSA, except with the prior written approval of GSA.

(c) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for those purposes within 1 year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased use of the property and that the proposed action meets the standards prescribed in your plan of operation.

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the property into use was beyond the control and without the fault or negligence of the donee.

(ii) Authority to trade in one donated item for one like item having similar use potential.

§ 102–37.470 At what point may restrictions be released on property that has been authorized for cannibalization?

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than $5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

§ 102–37.475 What are the requirements for releasing restrictions on property being considered for exchange?

GSA must consent to the exchange of donated property under Federal restrictions or special handling conditions. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged must have remained in compliance with the terms and conditions of the donation. Otherwise, § 102–37.485 applies. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged; and

(b) Of equal or greater value than the item exchanged.

Compliance and Utilization

§ 102–37.480 What must a SASP do to ensure that property is used for the purpose(s) for which it was donated?

You must conduct utilization reviews, as provided in your plan of operation, to ensure that donees are using surplus property during the period of restriction for the purposes for which it was donated. You must fully document your efforts and report all instances of noncompliance (misuse or mishandling of property) to GSA.

§ 102–37.485 What actions must a SASP take if a review or other information indicates noncompliance with donation terms and conditions?

If a review or other information indicates noncompliance with donation terms and conditions, you must:

(a) Promptly investigate any suspected failure to comply with the conditions of donated property;

(b) Notify GSA immediately where there is evidence or allegation of fraud, wrongdoing by a screener, or nonuse, misuse, or unauthorized disposal or destruction of donated property;

(c) Temporarily defer any further donations of property to any donee to be investigated for noncompliance allegations until such time as the investigation has been completed and:

(1) A determination made that the allegations are unfounded and the deferment is removed.

(2) The allegations are substantiated and the donee is proposed for suspension or debarment; and

(d) Take steps to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Enforcement of compliance may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

(iii) Transfer through GSA to a Federal agency.

(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for property in cases where the property has been loaned or leased to an ineligible user or used for an unauthorized purpose.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

§ 102–37.490 When must a SASP coordinate with GSA on compliance actions?

You must coordinate with GSA before selling or demanding payment of the fair market or fair rental value of donated property that is:

(a) Subject to any special handling condition or use limitation imposed by GSA (see § 102–37.455); or

(b) Not properly used within 1 year of donation or which ceases to be properly used within 1 year of being placed in use.

§ 102–37.495 How must a SASP handle funds derived from compliance actions?

You must handle funds derived from compliance actions as follows:

(a) *Enforcement of Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *Enforcement of State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

Returns and Reimbursement

§ 102–37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?

When a donee returns unneeded property to a SASP, the donee may be reimbursed for all or part of the initial cost of any repairs required to make the property usable if:

(a) The property is transferred to a Federal agency or sold for the benefit of the U.S. Government;

(b) No breach of the terms and conditions of donation has occurred; and

(c) GSA authorizes the reimbursement.

§ 102–37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?

If the donee has incurred repair expenses for property it is returning to a SASP and wishes to be reimbursed for them, it will inform the SASP of this. The SASP will recommend for GSA approval a reimbursement amount, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use.

(a) If this property is subsequently transferred to a Federal agency, the receiving agency will be required to reimburse the donee as a condition of the transfer.

(b) If the property is sold, the donee will be reimbursed from the sales proceeds.

Special Provisions Pertaining to SEAs

§ 102–37.510 Are there special requirements for donating property to SEAs?

Yes, only DOD-generated property may be donated to SEAs. When donating DOD property to an eligible SEA, SASPs must observe any restrictions the sponsoring Military Service may have imposed on the types of property the SEA may receive.

§ 102–37.515 Do SEAs have a priority over other SASP donees for DOD property?

Yes, SEAs have a priority over other SASP donees for DOD property, but only if DOD requests GSA to allocate surplus DOD property through a SASP for donation to a specific SEA. In such cases, DOD would be expected to clearly identify the items in question and briefly justify the request.

Subpart F—Donations to Public Airports

§ 102–37.520 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151. 49 U.S.C. 47151 authorizes executive agencies to give priority consideration to requests from a public airport (as defined in 41 U.S.C. 47102) for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport

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purposes and GSA approves the donation.

§ 102–37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?

A holding agency interested in giving priority consideration to a public airport should annotate its reporting document to make GSA aware of this interest. In an addendum to the document, include the name of the requesting airport, specific property requested, and a brief description of how the airport intends to use the property.

§ 102–37.530 What are FAA's responsibilities in the donation of surplus property to public airports?

In the donation of surplus property to public airports, the Federal Aviation Administration (FAA), acting under delegation from the DOT, is responsible for:

(a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;

(b) Setting eligibility requirements for public airports and making determinations of eligibility;

(c) Certifying that property listed on a transfer request is desirable or necessary for public airport use;

(d) Advising GSA of FAA officials authorized to certify transfer requests and notifying GSA of any changes in signatory authority;

(e) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use; and

(f) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

(1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.

(2) Maintaining a current record (to include names, addresses, and telephone numbers, and additional identifying information such as driver's license or social security numbers) of screeners operating under FAA authority and making such records available to GSA upon request.

(3) Recovering any expired or invalid screener authorizations.

§ 102–37.535 What information must FAA provide to GSA on its administration of the public airport donation program?

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, FAA must:

(a) Provide copies of internal instructions that outline the scope of FAA's oversight program for enforcing compliance with the terms and conditions of transfer; and

(b) Report any compliance actions involving donations to public airports.

Subpart G—Donations to the American National Red Cross

§ 102–37.540 What is the authority for donations to the American National Red Cross?

Subsection 203(l) of the Property Act (40 U.S.C. 484(l)) authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

§ 102–37.545 What type of property may the American National Red Cross receive?

The Red Cross may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials it processed, produced, or donated to a Federal agency.

§ 102–37.550 What steps must the American National Red Cross take to acquire surplus property?

Upon receipt of information from GSA regarding the availability of surplus property for donation, the Red Cross will:

(a) Have 21 calendar days to inspect the property or request it without inspection; and

(b) Be responsible for picking up property donated to it or arranging and paying for its shipment.

§ 102–37.555 What happens to property the American National Red Cross does not request?

Property the Red Cross declines to request will be offered to SASPs for distribution to eligible donees. If such property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

§ 102–37.560 What is a public body?

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

§ 102–37.565 What is the authority for donations to public bodies?

Subsection 202(h) of the Property Act (40 U.S.C. 483(h)) authorizes the abandonment, destruction, or donation to public bodies of property which has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale.

§ 102–37.570 What type of property may a holding agency donate under this subpart?

Only that property a holding agency has made a written determination to abandon or destroy (see process in part 102–36 of this chapter) may be donated under this subpart. A holding agency may not donate property that requires destruction for health, safety, or security reasons. When disposing of hazardous materials and other dangerous property, a holding agency must comply with all applicable laws and regulations and any special disposal requirements in part 101–42 of this title.

§ 102–37.575 Is there a special form for holding agencies to process donations?

There is no special form for holding agencies to process donations. A holding agency may use any document that meets its agency's needs for maintaining an audit trail of the transaction.

§ 102–37.580 Who is responsible for costs associated with the donation?

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (as defined in § 102–36.40 of this chapter), loading, and transportation to its site.

Appendix A—Miscellaneous Donation Statutes

The following is a listing of statutes which authorize donations which do not require GSA's approval:

Statute: 10 U.S.C. 2572.
Donor Agency: Any military department (Army, Navy, and Air Force) or the Coast Guard.
Type of Property: Books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat material.
Eligible Recipients: Municipal corporations; soldiers' monument associations; museums, historical societies, or historical institutions of a State or foreign nation; incorporated museums that are operated and maintained for educational purposes only and the charters of which denies them the right to operate for profit; posts of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association; local or national units of any war veterans' association of a foreign nation which is recognized by the national government of that nation or a principal subdivision of that nation; and posts of the Sons of Veterans Reserve.

Statute: 10 U.S.C. 7306.
Donor Agency: Department of the Navy.
Type of Property: Any vessel stricken from the Naval Vessel Register or any captured vessel in the possession of the Navy.
Eligible Recipients: States, Commonwealths, or possessions of the United States; the District of Columbia; and not-for-profit or nonprofit entities.

Statute: 10 U.S.C. 7541.
Donor Agency: Department of the Navy.
Type of Property: Obsolete material not needed for naval purposes.
Eligible Recipients: Sea scouts of the Boy Scouts of America; Naval Sea Cadet Corps; and the Young Marines of the Marine Corps League.

Statute: 10 U.S.C. 7545.
Donor Agency: Department of the Navy.
Type of Property: Captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models; other condemned or obsolete material, trophies, and flags; and other material of historic interest not needed by the Navy.
Eligible Recipients: States, territories, commonwealths, or possessions of the United States, or political subdivisions or municipal corporations thereof; the District of Columbia; libraries; historical societies; educational institutions whose graduates or students fought in World War I or World War II; soldiers' monument associations; State museums; museums operated and maintained for educational purposes only, whose charter denies it the right to operate for profit; posts of the Veterans of Foreign Wars of the United States; American Legion posts; recognized war veterans' associations; or posts of the Sons of Veterans Reserve.

Statute: 14 U.S.C. 641(a).
Donor Agency: Coast Guard.
Type of Property: Obsolete or other material not needed for the Coast Guard.
Eligible Recipients: Coast Guard Auxiliary; sea scout service of the Boy Scouts of America; and public bodies or private organizations not organized for profit.

Appendix B—Elements of a State Plan of Operation

The following is the information and assurances that must be included in a SASP's plan of operation:

STATE PLAN REQUIREMENTS

Regarding . . .	The plan must . . .
(a) Designation of a SASP	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute surplus property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority	Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.
(c) Inventory control and accounting system.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP; and (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan. (2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation. (3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property. (4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees. (5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated. (6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities. (7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it.

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STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	(8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.
(f) Terms and conditions on donated property.	(1) Require the SASP to identify terms and conditions that will be imposed on the donee for any item of donated property with a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide that the SASP may impose reasonable terms and conditions on the use of other donated property. If the SASP elects to impose additional terms and conditions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms or conditions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases. (3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.
(g) Nonutilized or undistributed property.	Provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by: (1) Transfer to another SASP or Federal agency. (2) Sale. (3) Abandonment or destruction. (4) Other arrangements.
(h) Fair and equitable distribution	(1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property. (2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. (3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee.
(i) Eligibility	(1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property. (2) Provide for donee eligibility records to include at a minimum: (i) Legal name and address of the donee. (ii) Status of the donee as a public agency or as an eligible nonprofit activity. (iii) Details on the scope of the donee's program. (iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit. (v) Proof that the donee is approved, accredited, licensed, or meets any other legal requirement for operation of its program(s). (vi) Financial information. (vii) Written authorization by the donee's governing body or chief administrative officer designating at least one person to act for the donee in acquiring property. (viii) Assurance that the donee will comply with GSA's regulations on nondiscrimination. (ix) Types of property needed.
(j) Compliance and utilization	(1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA. (3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. (4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property.
(k) Consultation with advisory bodies and public and private groups.	(1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of surplus property by eligible donees, and how distribution of surplus property can be effected to fill existing needs of donees. (2) Provide details of how the SASP will accomplish such consultation.
(l) Audit	(1) Provide for periodic internal audits of the operations and financial affairs of the SASP. (2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations" (available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with: (i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program. (ii) An outline of all corrective actions and scheduled completion dates for the actions. (3) Provide for cooperation in GSA or Comptroller General conducted audits.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
(m) Cooperative agreements	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms	Include copies of distribution documents used by the SASP.
(p) Records	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

Appendix C—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

The following is a glossary of terms for determining eligibility of public agencies and nonprofit organizations:

Accreditation means the status of public recognition that an accrediting agency grants to an institution or program that meets the agency's standards and requirements.

Accredited means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for universities, colleges, or secondary schools; or another recognized accrediting association.

Approved means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

Child care center means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14 (or as prescribed by State law) and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

Clinic means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

College means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

Conservation means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

Drug abuse or alcohol treatment center means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

Economic development means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

Education means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

Educational institution means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally or physically disabled, or an educational radio or television station.

Educational radio or television station means a public or nonprofit radio or television station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes.

Health center means an approved public or nonprofit facility that provides public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

Homeless individual means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term *homeless individual* does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Hospital means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

Library means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

Licensed means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

Medical institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of

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diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution.*

Museum means a public or nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

Nationally recognized accrediting agency means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department's web site at http://www.ed.gov/offices/OPE/accreditation/index.html)

Nonprofit means not organized for profit and exempt from Federal income tax under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Parks and recreation means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

Program for older individuals means a program conducted by a State or local government agency or nonprofit activity that receives funds appropriated for services or programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

Provider of assistance to homeless individuals means a public agency or a nonprofit institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

Provider of assistance to impoverished families and individuals means a public or nonprofit organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

Public agency means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Public health means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

Public health institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization conducting a public health program(s) such as a hospital, clinic, health center, or medical institution, including research for such programs, the services of which are available to the public.

Public purpose means a program(s) carried out by a public agency that is legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

Public safety means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

(1) Public police departments.
(2) Sheriffs' offices.
(3) The courts.
(4) Penal and correctional institutions (including juvenile facilities).
(5) State and local civil defense organizations.
(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

School (except schools for the mentally or physically disabled) means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

School for the mentally or physically disabled means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

University means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

Dated: January 2, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–880 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2134–F]

RIN 0938–AL05

Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule modifies the Medicaid upper payment limit (UPL) provisions to remove the 150 percent UPL for inpatient hospital services and outpatient hospital services furnished by non-State government-owned or operated hospitals. This final rule is part of this Administration's efforts to restore fiscal integrity to the Medicaid program and reduce the opportunity for abusive funding practices based on

payments unrelated to actual covered Medicaid services.

EFFECTIVE DATE: These regulations are effective on March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marge Lee, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(30)(A) of the Social Security Act (the Act) requires that Medicaid State plans have methods and procedures relating to the payment for care and services to ensure that payments are consistent with efficiency, economy, and quality of care. This provision is implemented in regulations at 42 CFR part 447 that set upper payment limits (UPLs) for different types of items and services. For certain institutional providers, including hospitals, these upper payment limits apply in the aggregate to all payments to a particular class of providers, and are based on the estimated payment under Medicare payment principles.

In a final rule published on January 12, 2001 in the **Federal Register** (66 FR 3148), we revised the Medicaid UPL for inpatient and outpatient hospitals to require separate UPLs for State-owned or operated facilities, non-State government-owned or operated facilities, and privately owned and operated facilities. In that final rule, we also created an exception for payments to non-State government-owned or operated hospitals. That exception provided that the aggregate Medicaid payments to those hospitals may not exceed 150 percent of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles. At that time, we believed that payments to these public hospitals needed a higher UPL because of their important role in serving the Medicaid population.

Based on further analysis, we do not believe that a higher UPL is necessary to achieve the objective of assuring access for Medicaid patients to the services of public hospitals. Our rationale is partly based on the following:

- We believe that the 100 percent UPL is more than sufficient to ensure adequate access to services for Medicaid beneficiaries at public hospitals. Under this limit, States may pay public providers up to 100 percent of a reasonable estimate of what Medicare would have paid for services provided to Medicaid beneficiaries. States also retain some flexibility to make enhanced payments to selected public hospitals under the aggregate limit.
- We do not believe that the higher payments are necessarily being used to further the mission of these hospitals or their role in serving Medicaid patients. The OIG has issued several reports demonstrating that a portion of the enhanced payments made as part of the UPL process are being transferred directly back to the State via intergovernmental transfers and used for other purposes (which may include funding the State share of other Medicaid expenditures). In cases for which hospitals did retain UPL-related enhanced payments, the OIG found that these same hospitals either did not receive disproportionate share hospital (DSH) payments or if they did, typically returned the DSH payments directly back to the State through intergovernmental transfers. We believe that Medicaid provisions permitting enhanced payments to disproportionate share hospitals should be sufficient to ensure that Medicaid beneficiaries have access to the services of these hospitals.
- Many of the public safety net hospitals affected by this rule qualify as DSH hospitals. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, provides additional funding to public hospitals by increasing the hospital-specific DSH limits originally set under the Omnibus Budget Reconciliation Act of 1993. States will have the ability to make Medicaid DSH payments to public hospitals up to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two State fiscal years beginning after September 30, 2002.
- We wish to restore payment equity among hospital providers and across other provider types.

Furthermore, the OIG stated in a report dated September 11, 2001 that the need for the higher UPL for non-State government-owned or operated hospitals has not been adequately supported through an analysis of these hospitals' financial operations. Since the public hospitals are not retaining all of the funds available under the UPL or DSH program, we believe the higher UPL is neither furthering their special mission nor ensuring continued access to these facilities for the Medicaid population. Instead, the main result is that the Federal government is effectively paying more than its share of State Medicaid expenditures.

II. Provisions of the Proposed Regulations

On November 23, 2001, we published a proposed rule in the **Federal Register** (66 FR 58694) proposing to lower the UPL for non-State government-owned or operated hospitals from 150 percent to 100 percent. The proposed rule is part of this Administration's efforts to promote fiscal integrity to the Medicaid program and restore the appropriate balance between the Federal Government and States with respect to funding the Medicaid program. In the November 2001 proposed rule, we proposed to revise §§ 447.272(c) and 447.321(c) to remove the exception in paragraph (c)(1) regarding payments to non-State government-owned or operated hospitals. In § 447.272(c), we proposed to redesignate the exceptions in paragraph (c)(2) to (c)(1) and (c)(3) to (c)(2) for payments to Indian Health Services and tribal facilities and disproportionate share hospitals (subject to a separate limit on payments to disproportionate share hospitals). We also proposed to revise the compliance dates described in §§ 447.272(d) and 447.321(d) to make clear that States would need to comply with the UPL for these non-State government-owned or operated hospitals as of the effective date of the final rule.

In addition to eliminating the higher UPL, we proposed conforming technical changes to §§ 447.272(b) and 447.321(b) that would clarify the single UPL standard generally applicable to aggregate payments to each group of facilities, including non-State government-owned or operated hospitals. This proposal would not change the substantive standard that aggregate payments would be limited to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles. Except as permitted under the transition periods, payments under an approved State plan would need to be reduced to comply with this limit as of the effective date of the final rule. We stated in the preamble of the proposed rule that we would not approve any State plan amendments that would allow payments in excess of this limit as of the effective date of the final rule. And we referenced a letter to State Medicaid Directors issued November 20, 2001, in which we indicated that we did not intend to approve any amendments submitted after the publication date of the proposed rule that would provide for payments that exceed those permitted under this proposed rule because we did not believe that States should have any reasonable reliance that such plan amendments would be approved.

We did not propose any change to the standards for determining transition periods; thus there would be no change

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in the State payment methodologies that qualified for a transition described in §§ 447.272(e) and 447.321(e). However, aggregate payments to non-State government-owned or operated hospitals during the transition period would need to be reduced to 100 percent of a reasonable estimate of the amount that would be paid for the services furnished by this group of facilities under Medicare payment principles rather than 150 percent as described in the final rule published on January 12, 2001. As noted above, we proposed a compliance provision at §§ 447.272(d) and 447.321(d) that would require that State payment methodologies that do not qualify for a transition period must be in compliance with the 100 percent UPL for non-State government-owned or operated hospitals as of the effective date of a subsequent final rule.

We also proposed some minor technical changes to §§ 447.272 and 447.321 redesignating paragraph (e)(2)(ii)(C)(*6*) regarding when a reduction begins as paragraph (e)(2)(iii). We also proposed to redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

We also proposed to remove § 447.272(f)(1)(i) and (f)(1)(ii) and § 447.321(f)(1)(i) and (f)(1)(ii), which describe the reporting requirements for non-State government-owned or operated hospitals, and retain paragraph (f)(1) that describes the reporting requirements for payments made by States in excess of the amount described in paragraph (b) of this section during the transition periods. The reporting requirements for these States would not change.

III. Analysis of and Responses to Public Comments

We received approximately 200 timely comments in response to the November 23, 2001 proposed rule. We received letters from State government officials, county government organizations, beneficiary organizations, health care providers and provider organizations, and private citizens. We reviewed each comment and grouped like or related comments. The comments and our responses are summarized below.

Support for Eliminating the 150 Percent UPL

Comment: Several commenters expressed support for removing the 150 percent UPL for inpatient and outpatient hospital services furnished by non-State government-owned or operated facilities, stating that one group of providers should not have a financial benefit over another group of providers who provide the same type of services.

Response: We agree. Our intent in this rule is to treat all facilities equally, and apply the same aggregate UPL to each group of facilities, regardless of who owns or operates the facilities.

Support for Retaining the 150 Percent UPL

Comment: Several commenters urged us to retain the 150 percent UPL and not publish this final rule.

Response: We believe that the 150 percent provision is not being used to increase real payments to hospitals but instead to replace State funds with Federal funds. We have not accepted this comment because this rule is critical for maintaining the fiscal integrity of the Medicaid program and ensuring that all facilities are treated equally under Federal Medicaid UPL regulations.

Comment: One commenter urged us to withdraw the rule and submit a report to the Congress on how future changes would impact public hospitals.

Response: Reports from the OIG demonstrate that, in many cases, higher upper payment limits are not being used to support the mission of public hospitals. As a result, we believe that the impact of this rule will not be severe for many hospitals, as they have not kept all of the funds generated by the upper payment limits. Moreover, as noted elsewhere in this rule, we are not making any changes to Medicaid DSH payments, which are designed to be the primary vehicle for supporting hospitals that serve a large number of indigent or uninsured patients. The expected impact on hospitals is discussed more fully in the Regulatory Impact Analysis in section VI of this final rule.

Comment: Several commenters expressed concern about the effect of this rule on the health care safety net in specific States. They indicated that a reduction in funds resulting from this final rule would cause hospitals to cut services or close altogether. Further, commenters indicated this rule would cut access to critically needed health services for the uninsured, including immigrants and working families. One commenter pointed out that the reduction in reimbursement rates would produce a crisis in health care in one State, which would result in many more serious illnesses and deaths across that State. Another commenter expressed particular concern with the impact of the rule on children's hospitals.

Response: This rule would permit States to reimburse hospitals for 100 percent of their reasonable costs of providing care to Medicaid patients, based on a reasonable estimate of what Medicare would have paid for services provided to Medicaid patients. Although we previously believed a higher UPL was necessary to ensure the availability of safety net facilities, we have concluded that a 100 percent UPL will achieve that purpose because it is adequate to pay hospitals their reasonable costs of serving Medicaid patients. States also have the ability to pay additional Medicaid payments to safety-net hospitals and receive Federal funding under the Medicaid disproportionate share hospital program. The statutory authority for such payments permits States to recognize those hospitals that treat a high number of Medicaid and low-income patients by increasing Medicaid payments to those hospitals that qualify.

Comment: One commenter noted that the 150 percent UPL was adopted by us in the January 12, 2001 regulation to help mitigate the impact of reduced Federal Medicaid funding available to public hospitals. The commenter was concerned that this modification would withdraw Federal funds available to help States with the special problems facing these hospitals.

Response: For those States that have relied on Federal funds generated through UPL payments to assist public hospitals, relief can be sought from two sources. First, this rule does not remove the transition periods set forth in the January 12, 2001 final regulation for those States and hospitals that have relied on the funding available under the UPL for a number of years. Second, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, provides additional funding to public hospitals by increasing the hospital-specific disproportionate share hospital limits originally set under the Omnibus Budget Reconciliation Act of 1993. States will have the ability to make Medicaid disproportionate share hospital payments to public hospitals up to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two State fiscal years beginning after September 30, 2002 and receive Federal matching funds for these higher DSH payments.

Comment: Several commenters pointed out that in the wake of September 11, 2001, rising unemployment will not only increase the number of Medicaid beneficiaries and indigents but will also reduce State tax revenues needed to finance Medicaid costs. Other commenters further added that the decrease is inappropriate given the increased demands being made on hospitals since September 11, 2001. Another commenter voiced the opinion that issuing this rule is contrary to democratic views and will exacerbate the social problems of our highly diverse society.

Response: We recognize that the events of September 11, 2001 have affected many Americans and caused States to incur costs not otherwise anticipated. We want to stress that this rule addresses only the Federal responsibility to assist States to pay for health care services provided to Medicaid beneficiaries at public hospitals. This rule is not intended to have an adverse effect on reimbursement for Medicaid services provided to Medicaid beneficiaries. Under this rule, States will retain the flexibility to pay these facilities up to 100 percent of a reasonable estimate of what Medicare would have paid for services provided to Medicaid beneficiaries. If the number or severity of Medicaid beneficiaries increases for whatever reason, the payment that can be made consistent with the UPL will likewise increase commensurate with the reasonable cost of serving the Medicaid population in each State. While we understand the situation of States that are faced with reduced budgets and strained tax revenues in the current national economic climate, we want to point out that the Congress established the Medicaid program as a joint Federal and State partnership, where each party shares in the financial responsibility of providing care to Medicaid beneficiaries.

Comment: One commenter noted that this rule will have a significant negative impact on the State's continued ability to draw down Federal funds, and, therefore, will be detrimental to all health and human services.

Response: Under this rule, States will be able to receive Federal funding for hospital expenditures incurred on behalf of Medicaid-eligibles, as permitted under Federal law. While the rule will limit States' ability to receive Federal funding for excessive payments, we believe States will retain flexibility to set fair and appropriate payment rates to public hospitals.

Comment: Several commenters stated that the 150 percent UPL is part of an agreement between Congressional leaders, CMS, and the Office of Management and Budget (OMB). The agreement aimed to protect the fragile network of health care services for low-income individuals. It is neither prudent nor fair to change the rules so quickly and nullify an agreement that was supposed to help ensure health care for those in need.

Response: We have a responsibility to interpret and apply the provisions of the Medicaid statute, including the requirement at section 1902(a)(30)(A) of the Social Security Act that payments under State plans must be consistent with efficiency, economy and quality of care. Whether or not any particular individuals had an agreement in the past about how this requirement should apply is not at issue.

Comment: One commenter suggested that we add a requirement that public hospitals have a net gain of at least two-thirds of the additional Federal funds collected under hospital-based UPL plans in order to ensure that public hospitals are, in fact, primary beneficiaries of any UPL arrangements.

Response: It is not clear what the commenter believes would be the legal authority for CMS to limit a hospital's use of its own funds. Furthermore, while the suggested approach allows public hospitals to retain the Federal funds, it does not limit other public hospital revenues from being transferred from the hospital to the State government. Federal funds, once received by the hospital, are fungible. We do not believe this alternative would increase the net funding available to these hospitals, nor do we believe that this alternative would improve access to hospital services for Medicaid beneficiaries. We do not believe this alternative would decrease the Federal share of the Medicaid program expenditures for these hospitals. Therefore, we believe the reduction of the UPL from 150 percent to 100 percent will be sufficient to maintain the fiscal integrity of the Medicaid Program and ensure that all facilities are treated equally under Federal Medicaid UPL regulations.

Comment: One commenter noted that the Congress, in passing BIPA, in effect required us to retain the 150 percent UPL for non-State government-owned or operated hospitals. The new proposed rule lowering the UPL is clearly contrary to the intent of the Congress in passing section 705 of BIPA because the Congress clearly wanted to provide a transition period for States down to the 150 percent UPL without causing economic dislocations to non-State government-owned hospitals.

Response: We do not agree that the statute at section 705(a) of BIPA requires that we retain the 150 percent UPL forever simply because it was in the October 10, 2000 proposed rule. Section 705 of BIPA required that we publish a rule based on the proposed rule, but did not remove agency discretion as to the contents of the final rule except to the extent of requiring a transition period not specified in the proposed rule. We published that final rule, fulfilling those BIPA requirements. Section 705 of BIPA did not preclude the agency from revisiting and revising its rule.

Comment: Several commenters indicated that our timing could not be worse with this rule given the economic turndown, workforce downsizing, and Medicaid experiencing a financial deficit due to a rise in health care costs. One commenter expressed concern that this rule would make it difficult for hospitals to attract and keep quality workers.

Response: This rule allows States to pay hospitals up to 100 percent of the reasonable costs of serving Medicaid patients, based on a reasonable estimate of what Medicare would have paid for the services provided to Medicaid patients. Also, as noted in an earlier response, if the number or severity of Medicaid beneficiaries increases, for whatever reason, the payment that can be made consistent with the UPL will likewise increase commensurate with the reasonable cost of serving the Medicaid population in each State.

Comment: One commenter noted that President Bush wants more funding for the military, but, at the same time, is willing to slash the country's public health care system. The commenter viewed this policy as indicating a lack of compassion for the country's poor. Another commenter considers it irresponsible for the Department and the Administration to be considering a rule change that is sure to have inhumane and tragic results.

Response: This rule is not a statement of public policy on funding for this nation's health care system. This rule also does not intend to cut funds to care for the country's poor, but is intended to promote fiscal integrity and restore an appropriate balance between the Federal government and States with respect to funding the Medicaid program. Since the publication of the January 12, 2001 rule, many States have increased payments to non-State government-owned hospitals and requested hospitals transfer a portion of those payments back to the State, county, or local governments or used Federal monies to supplant State monies for these payments. Therefore, these enhanced payments are not being used by the hospital to provide additional services to Medicaid beneficiaries, but are being transferred back to the State government for purposes not necessarily related to providing Medicaid services to Medicaid beneficiaries.

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Comment: One commenter recommended that we leave the 150 percent UPL intact for those States that transfer the Federal funds, through intergovernmental transfers, to the public hospitals and not back into the State general fund. Another commenter urged us to create an exception to the 100 percent UPL for those States that operate under cost-neutral waivers.

Response: Because of the administrative difficulty in identifying and tracking Federal funds once the State draws down the Federal share for Medicaid expenditures, it is unrealistic to consider implementing a regulation that permits the 150 percent UPL to remain for some States, but eliminates it for others. Furthermore, the reduction to a 100 percent UPL applies to all States, regardless of whether they operate under cost neutral waivers, except to the extent that the State is entitled to a transition period, discussed in detail below.

Comment: One commenter noted that the 150 percent limit should remain and that CMS has no basis for the exclusion of long term care facilities from consideration for a more flexible UPL. Additionally, this commenter requested that the 150 percent UPL be expanded to include Medicaid payments to nursing facilities.

Response: Modifying the upper payment limit for nursing home facilities is outside the scope of this rule and contrary to our intent to preserve the fiscal integrity of the Medicaid program. Therefore, we do not accept this comment.

Intergovernmental Transfers

Comment: One commenter pointed out that some States have used intergovernmental transfers (IGT) of funds to take advantage of the flexibility in past and current UPL rules to draw down excess Federal dollars. The commenter recommended that we should adopt rules that will prevent States from requiring hospitals to transfer a sizable portion of enhanced payments back to the State for other purposes. At the same time, the commenter pointed out that limiting a State's ability to finance its Medicaid program using IGT payments may result in reduced access to services for Medicaid beneficiaries. Other commenters noted that a regulation to require non-State government-owned or operated hospitals to retain their Medicaid funding would be more prudent.

Response: Under section 1903(w)(6)(A) of the Social Security Act, the Congress limited authority to regulate States' certain uses of IGTs. We have clear authority to limit the State payment levels that are not consistent with efficiency, economy, and quality of care because they exceed the amount appropriate for the Medicaid services being furnished. These limits are a reasonable measure to protect the overall fiscal integrity of the Federal Medicaid program.

Comment: The proposed rule, by lowering the UPL to 100 percent of what reasonable Medicare payments would be, effectively eliminates the use of intergovernmental transfers and thus permits the Secretary to do indirectly what section 1903(w)(6) of the Act prohibits the Secretary from doing directly.

Response: We are not restricting the States' use of funds transferred or certified from units of government. This reduction in the UPL restricts the States' payment to non-State government-owned or operated hospitals. The State still maintains control as to what government funding sources it may use to make Medicaid payments.

Transition Periods

Comment: One commenter noted that the transition periods permitted under previous rules should be eliminated or reduced.

Response: We are retaining the transition periods outlined in previously published rules in this final rule. We continue to believe that States that have had longstanding reliance on these funds need time to find other funding sources to replace the money generated by the UPL payment mechanisms. However, we want to reiterate our position with regard to States that have had payment methodologies in effect that provide for payments to non-State government-owned or operated hospitals up to the 150 percent UPL. These States were not previously entitled to a transition period and regardless of the effective date of such payment methodologies, we are not establishing a new transition period during which these States may make payments in excess of the 100 percent UPL. We have modified the regulation text at §§ 447.272(e) and 447.321(e) to clarify that States with payment methodologies that provide for payments to non-State government-owned or operated hospitals up to the 150 percent UPL do not qualify for a transition period. Such States must reduce such payments to comply with the 100 percent UPL as of the effective date of this rule.

Comment: Several commenters pointed out that States have already factored Medicaid monies gained through the 150 percent UPL into their State budgets for health care expenditures. Other commenters pointed out that at the very least States that relied on the final rule in developing their biennial budgets should be afforded a transition. Several commenters further noted that it is unfair to allow transition periods for some facilities to come into compliance with the 100 percent UPL, but not permit States that recently began using the 150 percent UPL to use similar transition periods. They believe it unfairly penalizes States that have more recently used the 150 percent UPL funds. Several commenters also noted that not allowing a transition period from the 150 percent UPL to the 100 percent UPL is arbitrary and capricious.

Response: Although we acknowledge that States may have established budgets based on the 150 percent UPL, the higher UPL has only been in effect since March 2001. The impact of the reduced funding available to public hospitals through the rule published on January 12, 2001 is mitigated by the transition periods contained in that rule, as well as those in the rule published on September 5, 2001. Furthermore, the transition periods contained in prior regulations apply equally to all States and all State payment methodologies. The transition periods are designed to mitigate the impact of the creation of new categories of providers subject to an aggregate 100 percent UPL. All States that meet the requirements of one or more transition periods will be able to reduce their payments gradually based on the schedules in the transition periods. However, as previously noted, the 150 percent UPL has only been in place since March 2001, and, therefore, States have not developed the same reasonable reliance on that higher UPL as they have on payments that were in place for several years. In the absence of any reasonable reliance on higher payment levels, we do not agree that additional modification of the transition periods is required.

Comment: One commenter requested that we clarify our intention in applying the 100 percent UPL to States that qualify for a transition period.

Response: For States that qualify for the 5 and 8 year transition periods, the maximum amount allowable during each transition period will be based on a percentage of the 100 percent UPL during each year. For example, during the 8-year transition period, for State FY 2006, a State may pay up to the 100 percent UPL for State FY 2006, plus 55 percent of the State's excess payment above 100 percent during the base year. Had we not published this rule, the State would be able to pay up to the 150 percent UPL for State FY 2006, plus 55 percent of the State's excess payment above 150 percent during the base year. For States that qualify for the 2-year transition period, payments must be reduced to the 100 percent UPL as of October 1, 2002.

Reporting Requirements

Comment: One commenter pointed out that the 150 percent UPL was put in place less than one year ago. When the higher UPL was established, we also created requirements for States to report to us how they were spending Medicaid funds under the 150 percent UPL. The commenter recommended that we delay implementing a reduction in the 150 percent UPL until we have evaluated those reports. Another commenter recommended that we allow more time to evaluate the effects of the January 12, 2001 final rule to allow a more balanced response to any legitimate concerns that might be found to exist.

Response: Our reporting requirements are not sufficiently detailed to allow us to evaluate State spending in the manner suggested by the commenters. Regardless, our decision to reduce the UPL for public hospitals to 100 percent is not based on the reporting requirements associated with the higher UPL. Based on a number of detailed reports by the OIG, it has become clear that Federal funding being claimed for excessive payments was not always being used by the public hospitals themselves; instead a portion of the Federal funding was being used to substitute for State funding. This is clearly inappropriate in the context of a joint Federal-State program and we do not see any reason to delay reducing the UPL to a level that would limit these abuses.

Comment: One commenter suggested that if additional reporting is required, the staffing for preparing the data and reports should be eligible for enhanced Federal match at 90 percent due to the extensive additional workload. Another commenter urged that the reporting requirements be strengthened to include the level of IGTs or other funds provided by or on behalf of health care providers in UPL arrangements.

Response: We have evaluated the impact of the reporting requirements in the regulatory impact section below. As noted in a previous comment, we are decreasing the reporting requirements in this regulation. As we also previously noted, this rule does not address the States' abilities to transfer funds. Accordingly, such a reporting requirement would have no bearing on the intent of this final rule.

Impact on State Plan Amendments

Commenter: One commenter has asked what effect this final rule will have on those 150 percent UPL State plans submitted before publication of the proposed rule, but which have not been approved.

Response: We reviewed and approved numerous State plans submitted before we issued the proposed rule that permitted 150 percent UPL payments. These amendments were reviewed based upon the current regulation in effect at the time of review. Unless these amendments qualify for a transition period, however, as of the effective date of this rule, no payments may be made that exceed the revised UPL. The requirements contained in this regulation will not take effect until 60 days after the publication of the regulation and, at that time, we will disapprove any pending amendments that would provide for payments that exceed the UPL in effect. Any new State plan amendments submitted on or after the effective date will be disapproved to the extent that payments would exceed the revised UPL.

Commenter: One commenter stated that States with already approved State plans that allow UPL payments up to 150 percent should be exempted from the proposed rule.

Response: We can not legally exempt from this rule States with approved State plan amendments supporting a higher UPL. We will handle all States equally with respect to the UPL. We can and have allowed States that qualify for transition periods to continue to have those transition periods at a lower level of Federal funding.

Miscellaneous

Comment: Several commenters indicated that we should consider the number of proposals the OIG has made including requiring annual audits of UPL calculations; providing definitive guidance on calculating the UPL that is uniform to all States; and requiring States to demonstrate that the enhanced payments are actually made available to the facilities and that these payments are for approved Medicaid services only. Another commenter indicated that we have an obligation to analyze the problem much more thoroughly and exercise our already broad authority to control the UPL problem using more appropriate methods targeted to the situation. For example, we could issue guidelines to clarify how States are actually calculating their upper payment limits and that Medicaid payments are reasonable and are being retained by the provider. Other commenters suggested alternatives to issuing a final rule. For example, we could reinstate the previous practice of requiring States to submit assurances that the UPL has not been exceeded.

Response: We want to curtail unnecessary spending in a way that results in the least amount of burden administratively on the States and the Federal government. The quickest way to reduce unnecessary spending is to stop the funding stream soon after the States begin to rely on it. In addition, we are considering increasing our oversight activities with respect to evaluating States' enhanced payments. The majority of the State plan proposals submitted since the effective date of the January 12, 2001 rule required hospitals to either fund the State's share of the costs of the 150 percent UPL payment or transfer part of the UPL payment back to the State or local government. In our view, the 100 percent UPL is adequate reimbursement as long as the States allow hospitals to retain the Medicaid payment. Furthermore, we do not see how creating a requirement that States submit assurances would result in the savings anticipated in this final rule.

Comment: One commenter suggested that abuses of the system be corrected on a case-by-case basis instead of by imposition of a broad based policy.

Response: We feel strongly that the problem being corrected in this rule is of national importance and is most appropriately addressed by this rule, rather than pursuing abuses based on other authorities on a case-by-case basis. As noted earlier, we want to limit any unnecessary spending that would result in burdensome administrative proceedings for the States and the Federal government. To track and evaluate each case of possible abuse would also require additional resources not currently available.

Comment: One commenter suggested that we have not met the requirements of the Administrative Procedure Act (APA) in publishing this rule. The commenter noted that relevant case law regarding the APA permits an agency to change a regulation if it can demonstrate good cause for making the change and can clearly explain the reasons for its departure from its prior stance. The commenter noted that before the January 12, 2001 rule took effect, the President announced a proposal to modify this UPL. The commenter believes we cannot articulate a reasonable basis for our policy reversal and, as a result, we cannot meet the requirements of the APA.

Response: We disagree. In publishing this rule, we have adhered to the law. In publishing this rule, we have based

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our actions on a review of the OIG reports pertaining to UPL payments as well as our own review of the new State plan amendments submitted after the January 2001 rule took effect and our further analysis of the requirements of the Medicaid statute. This additional information and analysis underlay the President's proposal to modify the UPL, and the proposal has been promulgated using full notice and comment procedures. Therefore, this regulatory action to modify the UPL does not violate the APA.

Comment: One commenter stated that in attempting to implement the proposed regulation immediately, we are violating rulemaking requirements for the effective date of a regulation. In addition, the commenter believes that we are attempting to evade the rulemaking requirements contained in Executive Order 12866 by failing to make a serious effort to evaluate existing law and regulations.

Response: We have not implemented these proposed regulations to date, nor do we have any intention of so doing until the effective date stated in this rule. This effective date is consistent with all requirements of law. Furthermore the results intended to be achieved by this rule are fully consistent with the Medicaid statute and we believe are necessary to ensure the fiscal integrity of the Medicaid program. The Medicaid statute contains a formula for the Federal and State shares of expenditures; as explained above, the 150 percent UPL has been a means for States to effectively claim a higher Federal share than warranted. The payments that States are permitted to make to hospitals consistent with the revised UPL are sufficient to pay the full reasonable costs to hospitals of serving the Medicaid population, and will assure access to those hospitals for Medicaid beneficiaries. The revised UPL will assure that payments will be consistent with "efficiency, economy and quality of care" as required by section 1902(a)(30)(A) of the Social Security Act. The Medicaid statute has specific provisions for the additional payments to assist disproportionate share hospitals but does not contemplate other general assistance to hospitals, or use of excessive payments as mechanisms to finance general State obligations. In section VI below, we set forth our full regulatory impact analysis.

IV. Provisions of the Final Regulations

We are adopting the provisions of the regulations text in the November 23, 2001 proposed rule as final. In response to comments, we have modified §§ 447.272(e) and 447.321(e) to clarify that States with payment methodologies that provide for payments to non-State government-owned or operated hospitals up to the 150 percent of the UPL do not qualify for a transition period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we have solicited public comment on each of these issues for the information collection requirements discussed below.

Section 447.272 Inpatient Services: Application of Upper Payment Limits

Under paragraph (f), *Reporting requirements for payments during the transition periods,* States that are eligible for a transition period described in § 447.272(e), and that make payments that exceed the limit under § 447.272(b) must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

We estimate that there would be 57 reports filed the first year and that they would take 8 hours, for a total of 456 hours. The number of reports and corresponding burden would decrease each year.

Section 447.321 Outpatient Hospital and Clinic Services: Application of Upper Payment Limits

Under paragraph (f), *Reporting requirements for payments during the transition periods,* States that are eligible for a transition period described in § 447.321(e), and that make payments that exceed the limit under § 447.321(b), would have to report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

We estimate that there would be 31 reports filed the first year under this section and that it would take 8 hours to complete one report, for a total of 248 hours. The number of reports and corresponding burden would decrease over the next 8 years.

The particular information collection requirements contained in these two sections were published in the January 12, 2001 final rule. We are revising these requirements by eliminating the reporting requirement that States report hospital expenditures up to the 150 percent UPL, consistent with its elimination in this final rule. This would reduce the reporting burden by 31 reports (for the 31 States noted in section VI.B of this final rule) and 248 hours of burden.

We submitted an emergency request for approval of the information collection requirements associated with the January 12, 2001 final rule to OMB for review of the requirements in §§ 447.272 and 447.321. These sections have been approved by OMB under OMB number 0938–0855 through May 2002 and are now in effect. We plan to submit a revised request for approval to OMB shortly that incorporates the elimination of the reporting requirement that States report hospital expenditures up to 150 percent of the UPL. This change will not become effective until approved by OMB.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). EO 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects

($100 million or more in any one year). We consider this a major rule and provide an analysis below.

B. Overall Impact

We have identified approximately 31 States with State plan amendments that may provide for payments to non-State government-owned or operated hospitals for inpatient or outpatient services in excess of the 100 percent UPL. These plans currently account for approximately $3 billion in Federal spending annually. This estimate is based on State-reported Federal fiscal information submitted with State plan amendments and State expenditure information, where available. In addition, we expect that, absent rulemaking, additional States would submit amendments to increase spending above the 100 percent UPL in the future. Estimates of these increased costs, both current and future, are included in the President's FY 2002 Medicaid budget baseline. Based on these budget estimates, we estimate that removing the higher UPL for non-State government-owned or operated hospitals reduces potential Federal costs by about $9 billion over fiscal years 2002 through 2006.

C. Impact on Small Entities and Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million (see 65 FR 69432) or less annually. For purposes of the RFA, all hospitals are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant number of small entities, including small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The purpose of this rule is to promote fiscal integrity to the Medicaid program and restore an appropriate balance between the Federal government and States with respect to funding the Medicaid program. This rule is necessary because, as the OIG concluded in a report dated September 11, 2001, States' use of intergovernmental transfers as part of enhanced payment programs was a financing mechanism designed to maximize Federal Medicaid reimbursements, thus effectively avoiding Federal/State matching requirements.

We believe the UPL in this final rule may potentially have a significant impact on small entities, including rural hospitals. Nationwide, we believe there are approximately 1,275 non-State government-owned or operated hospitals that could potentially be affected by this rule. We included facilities in all 50 States in this estimate because although not every State is currently making enhanced payments to non-State government-owned or operated hospitals, this rule will prevent new proposals from all States in the future. We believe that the 100 percent payment limit permits States to set fair and appropriate rates to non-State government-owned or operated hospitals for services provided to Medicaid beneficiaries. Even if States were paying rates to public hospitals to help subsidize the cost of care to non-Medicaid eligible individuals, the impact of this final rule will be mitigated due to several factors:

- First, if these hospitals are treating large numbers of indigent patients, they should be eligible to qualify as a disproportionate share hospital. Under both the Medicaid and Medicare program, supplemental funding is available to assist hospitals that serve a disproportionate share of indigent patients. In Federal fiscal year 2000, the Federal government provided more than $8.4 billion in financial assistance to safety net hospitals through the Medicaid DSH program. As noted previously, the Congress provided additional funding to public safety net hospitals by increasing the hospital-specific DSH limits from 100 percent to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two fiscal years beginning after September 30, 2002.
- Second, payment methodologies in excess of the January 12, 2001 final rule may qualify for one of the transition periods described in §§ 447.272(e) and 447.321(e). State payment methodologies that qualify for one of the transition periods would continue to qualify under this final rule; the only difference is that payments to non-State government-owned or operated hospitals must be reduced over the transition period to a 100 percent UPL rather than a 150 percent UPL. Currently, we believe that two States qualify for the 8-year transition period, four States for the 5-year transition period, and two States for the 2-year transition period. From 2002 through 2006, these States will require approximately $2.9 billion because of the transition periods allowed for in the rule.
- Third, the OIG issued a report on September 11, 2001 stating that the higher UPL for non-State government-owned or operated hospitals has not been adequately supported through an analysis of these hospitals' financial operations. To the extent that States now pay providers efficient rates that are retained by these providers, we do not believe States will be able to further reduce these rates.

We received comments on the impact analysis stating that we did not adequately consider the impact on these entities and that in fact monies paid under the 150 percent UPL were in fact retained by these facilities. The commenters also noted that the OIG did not specifically look at the 150 percent UPL. In addition, commenters noted that CMS did not effectively analyze the effects of the 150 percent UPL before issuing this new rule.

We believe that the OIG reports confirmed our subsequent analysis that States did not use these excess funds as part of the proper State and Federal match for the Medicaid program for any facilities, including non-State government-owned and operated hospitals. In fact, the OIG concluded that even in those cases where UPL enhanced payments were retained by public hospitals, these hospitals would instead return the majority of any Medicaid DSH payments to their State via intergovernmental transfers. States appear to have been replacing DSH payments with UPL enhanced payments, even though Medicaid DSH payments are specifically intended to help hospitals that provide care to a large number of Medicaid beneficiaries and uninsured patients.

D. Other Alternatives Considered

Section 1902(a)(30) of the Act requires in part that Medicaid service payments be consistent with efficiency and economy. In addition to the interpretation we are providing in this final rule, we considered several other alternatives to ensure that Medicaid service payments are consistent with efficiency and economy. In this section, we will explain these other alternatives and why we did not select them.

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1. Maintain a Higher Upper Limit for Non-State Government-Owned or Operated Facilities

Under this option, we would set the upper payment limit for non-State government-owned or operated hospitals at a level between 100 percent and 150 percent. There are several reasons for not pursuing this option. As we have stated earlier, we believe that payments above the 100 percent UPL have resulted in excessive payments to these hospitals that have either been returned to the State via intergovernmental transfers or used to replace DSH funding returned to the State. The information available to date indicates that States are combining higher payments to public hospitals with intergovernmental transfers to effectively raise their Federal match rate. Furthermore, both the Medicaid and Medicare program include disproportionate share programs that are intended to assist facilities in providing care and services to indigent patients.

2. "Grandfathering" Existing Arrangements

Under this option, we would not approve any new plan amendments after the effective date of the final rule but would allow those that have been approved to continue operating. This would permit States that are currently making excessive payments to non-State government-owned or operated hospitals to continue making those payments indefinitely. However, allowing some States to permanently continue making excessive payments solely because they were approved before this rule is published and effective would be inconsistent with our responsibility to administer the Medicaid program in an equitable manner.

3. Create a Facility-Specific Upper Payment Limit

Under this option, Medicaid spending would be limited to a provider-specific application of Medicare payment principles. FFP would not be available on the amount of Medicaid service payments in excess of what a provider would have been paid using Medicare payment principles. These limits would be applied to all hospitals, or just to public hospitals where the incentives for overpayment are significant. While a facility-specific limitation may be the most effective method to ensure State service payments are consistent with economy and efficiency, implementation of such an option would require significant additional reporting and recordkeeping requirements to verify compliance.

We believe that the transition periods provided to States in the January 12, 2001 rule, the 2-year increase in the DSH payment limit for public safety net hospitals enacted by the Congress, and the elimination of any reporting requirements on hospitals, should minimize the significant economic impact on small entities.

E. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in a mandated expenditure in any one year by State, local, or Tribal governments, in the aggregate, or by private sector, of $110 million. Because this final rule does not mandate any new spending requirements or costs, but rather limits aggregate payments to a group of hospitals, we do not believe it has any unfunded mandate implications.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not believe this final rule in any way imposes substantial direct compliance costs on State and local governments or preempts or supersedes State or local law. However, we realize the reform of upper payment limits is an issue in which some States are very interested. Therefore, in addition to providing States with an opportunity to comment on the proposed rule, we have tried to afford States ample opportunities to express their interest and concerns as we have moved forward in developing reforms.

G. Executive Order 12866

In accordance with the provisions of executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR, chapter IV, part 447 as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Amend § 447.272 as follows:
a. Revise paragraph (b).
b. Remove paragraph (c)(1).
c. Redesignate paragraph (c)(2) as (c)(1).
d. Redesignate paragraph (c)(3) as (c)(2).
e. Revise paragraph (d).
f. Revise paragraph (e)(1)(ii).
g. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).
h. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).
i. Add paragraph (e)(2)(v).
j. Revise paragraph (f).
The addition and revisions read as follows:

§ 447.272 Inpatient services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

* * * * *

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—March 19, 2002.

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(2) *General rules.* * * *

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the upper payment limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

3. Amend § 447.321 as follows:
a. Revise paragraphs (b) through (d).
b. Revise paragraph (e)(1)(ii).
c. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).
d. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).
e. Add paragraph (e)(2)(v).
f. Revise paragraph (f).
The addition and revisions read as follows:

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(c) *Exception—Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Public Law 93–638).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—March 19, 2002.

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(2) *General rules.* * * *

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 15, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1482 Filed 1–17–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995; Notice 9]

Pipeline Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of random drug testing rate.

SUMMARY: Each year, a minimum percentage of covered pipeline employees must be randomly tested for prohibited drugs. The percentage, either 50 percent or 25 percent, depends on the positive rate of random testing reported to RSPA in the previous year. In accordance with applicable standards, we have determined that the positive rate of random testing reported this year for testing in calendar year 2000 was less than 1.0 percent. Therefore, in calendar year 2002, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2002, through December 31, 2002, at least 25 percent of covered employees must be randomly drug tested.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly drug test all covered employees during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines "positive rate" as "the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *"

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206—November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297—Nov. 3, 1997); 1999 (63 FR 58324—Oct. 30, 1998); 2000 (64 FR 66788—Nov. 30, 1999), and 2001 (65 FR 81409—Dec. 26, 2000).

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Using the MIS reports received this year for drug testing done in calendar year 2000, we calculated the positive rate of random testing to be 0.6 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2002, through December 31, 2002.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 31, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–261 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 67, No. 13
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–05]

Proposed Modification of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at St. James, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 15, and an RNAV SIAP to Rwy 33, have been developed for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace for St. James Municipal Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–05, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AGL–05." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at St. James, MN, for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 St. James, MN [REVISED]
St. James Municipal Airport, MN
(lat. 43°59′11″N., long. 94°33′29″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the St. James Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1012 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–227]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessels—Boston Harbor, Weymouth Fore River, and Salem Harbor, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to establish safety and security zones for vessels determined to be high interest vessels (HIVs) by the Captain of the Port (COTP), Boston. The safety and security zones would close all waters of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor 1000 yards ahead and astern and 200 yards on each side of an HIV in transit or at anchor. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without Captain of the Port authorization. These safety and security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

DATES: Comments and related material must reach the Coast Guard on or before February 28, 2002. The public meeting will be held on February 20, 2002 from 11 a.m. to 1 p.m. Further public meetings will be scheduled if necessary.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The public meeting will be held at the Black Falcon Cruise Terminal, located at One Black Falcon Avenue Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–227), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard plans to hold a public meeting within the comment period on February 20, 2002 from 11 a.m. to 1 p.m. at the Black Falcon Cruise Terminal, located at One Black Falcon Avenue Boston, Massachusetts, to discuss the proposed high interest vessel security zones. This date coincide with the monthly Port Operators Group meeting, which provides the best forum to discuss the proposed rulemaking. For information regarding this meeting contact LT Dave Sherry at the address listed under **ADDRESSES.** If you wish to hold additional meetings, you may contact LT Dave Sherry with a request in writing explaining why one would be beneficial. If we determine an additional meeting would aid in this rulemaking, we will extend the comment period and hold one at a time and place announced by a later notice in the **Federal Register.** Those who wish to comment on the proposed rulemaking but cannot attend the public meeting may submit written comments to LT Dave Sherry at the address listed under **ADDRESSES.**

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are prudent for vessels which may be likely targets of terrorist acts. This regulation proposes to establish safety and security zones for high interest vessels (HIVs). These zones would close all waters of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor 1000 yards ahead and astern, and 200 yards on each side of an HIV in transit or at anchor.

For the purposes of this rule, high interest vessels operating in Boston Harbor, Salem Harbor or the Weymouth Fore River, include the following: Barges or ships carrying gasoline, chlorine, anhydrous ammonia, or any other bulk hazardous chemicals or other cargo deemed to be high interest by the Captain of the Port; passenger vessels; or any other vessels deemed to be of high interest by the Captain of the Port, Boston under the circumstances. For purposes of this rule, neither small passenger vessels regulated by 33 Code of Federal Regulations, subchapter T, nor liquefied natural gas carrier vessels will be considered HIVs.

Whether a vessel is considered high interest is determined by the Captain of the Port (COTP) Boston based on the potential threat posed by the vessel to the safety and/or security to the maritime community, the crews or passengers of the HIVs, and the surrounding communities from subversive or terrorist attack.

These proposed safety and security zones would prohibit entry into or movement in all waters 1000 yards ahead or astern, and 200 yards on each side of any HIV in the following waters of the Boston Captain of the Port Zone: (1) All waters of Boston Inner Harbor, including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′25″N, 070°57′15″W to Long Island at position 42°19′48″N, 070°57′15″W, and west of the Long Island Bridge, running from Long Island to Moon Head; (2) in Salem Inner Harbor, all waters southwest of a line running from Juniper Point at position 42°32′02″N, 070°51′52″W and Fluen Point at position 42°31′16″N, 070°51′12″W; and (3) all waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay south of a line running from Windmill Point at position 42°18′14″N, 070°55′19″W to Peddocks Island at position 42°18′10″N, 070°55′38″W and a east of a line running across West Gut from West Head at position 42°17′13″N, 070°56′55″W and Nut Island at position 42°16′48″N, 070°57′15″W.

The safety and security zones are necessary to protect the HIVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel which could, by the nature of its cargo or the destructive capability of the vessel structure itself, potentially cause serious negative impact to vessels, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to the their potential as a target of subversive or terrorist attack from the water, which could result in numerous casualties.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor during HIV operations, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area, vessels can pass safely around the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor during HIV operations. This proposed rule will not have a significant economic impact on a substantial number of small entities because the zone is limited in duration, vessels can pass safely around the zones, and the Coast Guard will issue marine information broadcasts before the effective period widely available to users of the harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry at the address listed under **ADDRESSES.**

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.114 to read as follows:

§ 165.114 Safety and Security Zones: High Interest Vessel-Boston Harbor, Weymouth fore River, and Salem Harbor, Massachusetts.

(a) *Location.* The following waters within the Boston Captain of the Port Zone 1000 yards ahead and astern, and 200 yards on each side of any High Interest vessel are established as safety and security zones: (1) All waters of Boston Inner Harbor, including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′25″N, 070°57′15″W to Long Island at position 42°19′48″N, 070°57′15″W, and west of the Long Island Bridge, running from Long Island to Moon Head; (2) in Salem Inner Harbor, all waters southwest of a line running from Juniper Point at position 42°32′02″N, 070°51′52″W and Fluen Point at position 42°31′16″N, 070°51′12″W; and (3) all waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay south of a line running from Windmill Point at position 42°18′14″N, 070°55′19″W to Peddocks Island at position 42°18′10″N, 070°55′38″W and a east of a line running across West Gut from West Head at position 42°17′13″N, 070°56′55″W and Nut Island at position 42°16′48″N, 070°57′15″W.

(b) *High interest vessels.* For the purposes of this rule, high interest vessels operating in Boston Harbor, Salem Harbor or the Weymouth Fore River, include the following: barges or ships carrying gasoline, chlorine, anhydrous ammonia, or any other bulk hazardous chemicals or other cargo deemed to be high interest by the Captain of the Port; passenger vessels; or any other vessels deemed to be of high interest by the Captain of the Port, Boston under the circumstances. For purposes of this rule, neither small passenger vessels regulated by 33 CFR, chapter 1, subchapter T, nor liquefied natural gas carrier vessels will be considered HIVs

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: January 9, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–1358 Filed 1–15–02; 3:13 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2001–11201]

Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Routes Study (PARS) to evaluate the need for vessel routing or other vessel traffic management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before March 19, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–11201), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Tom Flynn, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6229, e-mail *TWflynn@lantd5.uscg.mil*; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG–2001–11201), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Definitions

The following definitions should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route is a route within defined limits, which has been accurately surveyed for clearance of sea bottom, and submerged obstacles as indicated on nautical charts.

Inshore traffic zone is a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

Regulated Navigation Area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout is a routing measure comprising a separation point or circular separation zone and a circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation zone or separation line means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined width in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic separation scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Port Access Route Study Requirements. Under the Ports and Waterways Safety Act (PWSA), the Secretary of Transportation may designate necessary fairways and TSS's to provide safe access routes for vessels proceeding to and from U.S. ports (33 U.S.C. 1223 (c)). The Secretary's authority to make these designations was delegated to the Commandant, U.S. Coast Guard, in 49 Code of Federal Regulations (CFR) 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port-access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Initial port access route study. The approaches to the Cape Fear River and Beaufort Inlet, NC were last studied in 1981, and the final results were published in the **Federal Register** on July 22, 1982 (47 FR 31766). The study concluded that "there is no need to impose new ship routing measures such as TSS's or shipping safety fairways where fixed structures would be prohibited, in any" area off the North Carolina coast.

Why is a new port access route study necessary? Vessel size, traffic density and channel depth and width have changed since the 1981 study. Major channel depth, width and alignment changes are currently underway in the Cape Fear River and port of Wilmington, NC. A PARS was initiated in 1996 (61 FR 35703; July 8, 1996), but was not completed due to personnel and funding issues.

The U.S. Army Corps of Engineers' (ACoE) report, "Waterborne Commerce

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of the United States" reports that, from 1981 to 1999, annual trips to and from the Port of Wilmington, NC, increased from 10,060 to 24,190 or 140% and the number of trips to and from Morehead City, NC, decreased from 7,842 to 3,388 or 57%. Since 1981 the Army Corps of Engineers maintained Federal Navigation Project for the Cape Fear River ocean bar channel has increased the channel depth from 38 feet to 40 feet. Dredging is currently underway in the Cape Fear River, which will deepen the channels from the Atlantic Ocean to Wilmington to 42 feet and to 44 feet over the ocean bar. The project depth for Beaufort Inlet/Morehead City has increased from 42 feet to 45 feet.

Timeline, area, and process of this PARS. The Fifth Coast Guard District will conduct this PARS to determine the need to modify existing routing measures and the effects of potential modifications in the study area. The study will begin immediately and we anticipate the study will be completed by January 31, 2002.

The study area will encompass the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983):

Latitude	Longitude
34°40'N	77°00'W
34°40'N	76°15'W
34°10'N	76°15'W
33°15'N	77°30'W
33°00'N	78°20'W
33°50'N	78°20'W
33°50'N	77°55'W

The study area encompasses the approaches to the Cape Fear River and Beaufort Inlet, as well as the area offshore of North Carolina used by commercial and public vessels transiting to and from these ports.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemakings or appropriate international agreements.

Potential Study Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Establish a TSS in the Approaches to the Cape Fear River;
- Establish a TSS in the Approaches to Beaufort Inlet;
- Establish a TSS off North Carolina encompassing the routes typically used by merchant and naval vessels transiting the study area;
- Establish a Precautionary Area(s) near either or both Approaches;
- Establish an Inshore Traffic Zone(s) near either or both approaches;
- Establish an Area to be Avoided (ATBA) in shallow areas where the risk of grounding is present;
- Create Anchorage Grounds(s); and
- Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under "Request for Comments" above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and improve traffic management efficiency in the study area? Why or why not? If so, what measures should the study of port-access routes address for potential implementation?

4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: December 27, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1371 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3470

[WO–320–1430–PB–24 1A]

RIN 1004–AD43

Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The purposes of this proposed rule are to correct a technical error relating to coal lease modifications made in a final rule published on September 28, 1999 (64 FR 52239)(the 1999 rule), and to amend the regulations to reflect the statutory increase in the maximum acreage of Federal leases for coal that may be held by an individual or entity in any one state as well as nationally.

This rule would revise the regulations of the Bureau of Land Management (BLM) to reflect correction of a technical error regarding the requirement of a public hearing and publication (in the **Federal Register** and a general circulation newspaper) of a notice of availability of environmental analysis documents for coal lease modifications. This error was made in conjunction with the BLM's September 1999 regulatory revisions incorporating public participation procedures into the competitive coal leasing regulations.

DATES: Comments on the proposed rule must be received or postmarked by February 19, 2002, to be assured consideration in developing a final rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240. Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

For information about the requirements for filing comments and how to file comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Public Comment Procedures and Information."

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures and Information
II. Background
III. Discussion of the Rule
IV. Procedural Matters

I. Public Comment Procedures and Information

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.

Please make your written comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that you send after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES**: Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

On September 28, 1999, in conjunction with a settlement agreement in the lawsuit, *Natural Resources Defense Council, et al.* v. *Jamison, et al.*, Civil No. 82–2763 (D. D.C.), the Bureau of Land Management (BLM) issued a final rule (64 FR 52239) to establish regulatory procedures by which the public may participate in the Bureau of Land Management's regional coal leasing process. We issued the final rule, which became effective on October 28, 1999, to satisfy terms of a July 1997 settlement agreement (Civil No. 82–2763 (D.C. Circuit No. 93–5029) in which the Department agreed to identify in BLM's regulations the points where the public may participate in regional coal leasing decisions. In addition, the final rule amended the regulations in part 3400 to conform to statutory changes under the Unfunded Mandates Reform Act of 1995, exempting several types of meetings from Federal Advisory Committee Act requirements.

A. Lease Modifications

Section 3432.3, which addresses the terms and conditions of a coal lease modification, currently requires compliance with the provisions of 43 CFR 3425.3. At the time we wrote the regulations in subpart 3432 governing lease modifications, former § 3425.3(a), addressing lease modification terms and conditions, similarly provided that BLM could not modify a lease until you met the requirements of § 3425.3. Former § 3425.3 required BLM to prepare an environmental assessment or impact statement before approving a lease modification.

To incorporate public participation procedures addressed in BLM's Competitive Coal Leasing Handbook, the 1999 regulatory revision to 43 CFR 3425.3 included the additional requirements of—

(1) A public hearing, and

(2) publication of notices of availability of the environmental analysis document for coal leasing.

By means of the cross-reference in § 3432.3(c), these new requirements imposed on new lease sales in § 3425.3 by the 1999 rule automatically applied to lease modifications under § 3432.3. We did not intend this to be the effect of the 1999 rule.

In revising the competitive coal leasing regulations (43 CFR part 3420) to incorporate public participation procedures for competitive leasing, we intended to impose the requirements of a public hearing and publication of notices of availability of draft environmental analysis documents only on new coal lease sales, not on non-competitive coal lease modifications issued under subpart 3432. Therefore, our failure to remove the cross reference in § 3432.3(c) to the requirements of § 3425.3 when we revised the latter in 1999 was a technical error, which we propose to correct in this rule.

Lease modifications often ensure the recovery and receipt of fair market value of small areas of unleased Federal coal that may be discovered during the mining of an adjacent Federal coal lease. In many cases, BLM must process a modification expeditiously to avoid the bypass of unleased Federal coal. Unlike competitive coal leasing, where the lease acreage may be up to 5,120 acres, the maximum allowable acreage for lease modifications is a total of 160 acres per lease, regardless of the number of times BLM modifies the lease. Due to variability in exploration data and the coal geology, these small areas of unleased Federal coal are not easily identified with the limited data available when we originally configure a lease. Such areas typically cannot be developed as an independent lease because of their size and configuration. Therefore, incorporation of these areas into an existing coal lease through a coal lease modification facilitates achieving fair market value and maximum economic recovery of Federal coal resources.

Section 3432.3(c) provides that BLM cannot approve a lease modification until the lessee or operator complies with the provisions of § 3425.3. Although § 3425.3 currently contains specific procedures relating to the preparation of environmental analysis documents, its focus is competitive lease sales. Since the 1999 revised version of § 3425.3 applies exclusively to competitive coal leasing, it is not intended to apply to a lease modification. The change in this proposed rule would eliminate the recently imposed requirement of publication of notices of availability and a public hearing for environmental analysis documents relating to coal lease modifications. This is in keeping with the intent of the *Natural Resources Defense Council* lawsuit settlement agreement, which did not extend to non-competitive coal lease modifications. It is also consistent with the preamble to the existing rule (64 FR 12142, March 11, 1999), which stated: "This proposed rule does not substantially change the leasing-on-application process."

B. Acreage Limitation

On October 23, 2000, the United States Senate passed S. 2300, which became Public Law 106–463 on November 7, 2000. This law, known as the Coal Competition Act of 2000, amended Section 27(a) of the Mineral Leasing Act (30 U.S.C. 184(a)) to increase the amount of acreage of

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Federal coal leases, or permits that an individual or entity may hold in a single state from 46,080 acres to 75,000 acres and raised the national acreage limit from 100,000 acres to 150,000 acres.

As noted in Public Law 106–463, the Federal lands containing some of the nation's large commercial deposits of coal are located in Utah, Montana, and Wyoming. The acreage limitations are causing difficulty for coal producers in Wyoming and Utah. The sub-bituminous coal from these mines is low in sulfur, making it the cleanest burning coal for energy production. The present acreage limitation of 46,080 acres per state for Federal coal leases has been in place since 1964, and was not changed with the passage of the Federal Coal Leasing Amendments Act of 1976. Congress recently raised the acreage limits for other minerals. For example, currently, the single-state lease acreage limit of 46,080 acres for coal is less than the single-state Federal lease limit for potassium (96,000 acres) and for oil and gas (246,080 acres).

Congress determined that the per-state increase in acreage to 75,000 acres and the national acreage increase to 150,000 acres is warranted by modern mine technology, changes in industry economics, greater global competition, and need to conserve the Federal resource. Increased acreage limits will help existing coal lessees avoid premature closure, make better long-term business decisions about infrastructure investments based on the certainty of more available acreage, and otherwise maintain the vitality of the domestic coal industry. Furthermore, the increase in acreage limits will ensure continuation of valuable revenues to Federal and state governments and energy to the American public from coal production on Federal lands.

The amount of acreage that any lessee or operator controls will have no effect on the MLA requirement to produce commercial quantities of coal within 10 years of lease issuance. The statutory penalty for not having met this requirement is cancellation of the lease (30 U.S.C. 184(h)(1)).

III. Discussion of the Rule

In order to correct the previously discussed technical error relating to lease modifications, we plan to amend regulation 43 CFR 3432.3 by removing the cross reference to 43 CFR 3425.3 and revising subsection (c). We have also added a new paragraph (d) to require review by the Secretary of Agriculture if the proposed coal lease modification affects National Forest System lands. This is not a new requirement. It appears in § 3425.3(b) of the current regulations, where it applies to new leases. The previous § 3432.3 applied this requirement to modifications as well by means of a cross-reference. Since this proposed rule removes the cross-reference, we need to add the requirement itself to § 3432.3. There is no substantive change in the regulations, other than removing the unintended requirement for notice and a hearing on proposed coal lease modifications.

This rule also amends § 3472.1–3 to reflect the new coal lease acreage limits set by Public Law 106–463 by removing the references to the previous acreage limits, and substituting the new numbers established by Public Law 106–463.

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that this proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed above, this rule would implement a technical correction to the public participation rule completed on September 28, 1999 (64 FR 52239) and a change to the Mineral Leasing Act which was made by Congress. The amendment of the Mineral Leasing Act changed the acreage limitations for coal leases. As stated in the EA, the proposed rule should lead to more efficient production and economic recovery of the coal resource. However, it should not in and of itself lead to new mining. While more efficient mining may have environmental consequences, BLM will consider these consequences on a case-by-case basis in preparing environmental analyses before issuing a new coal lease or modifying an existing one. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section. We invite the public to review these documents and suggest that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action and was not subject to review by Office of Management and Budget under Executive Order 12866. This rule will not have an annual effect of $100 million or more on the economy. The rule affects coal leasing in only two ways: shortening the lease modification procedure, and increasing lease acreage limitations.

Further, historically, lease modifications have not had significant economic effects on the economy. In Fiscal Year 2000, there were 311 coal leases of various kinds, generating royalties of $315,166,348 on production of 392,943,074 tons of federal coal, with an average market value of $7.92 per ton, from 461,883 acres of public lands. Of these leases, in FY 2000, only 2 leases were subjects of lease modification. Since the maximum acreage that can be added by a modification is 160 for the life of the lease, it is clear that the economic effect of lease modifications is tiny compared with the coal program as a whole. The largest number of lease modifications that BLM has processed in the past few years has been 6, in FY 1998, affecting a total of 733 acres. Analyzing this strictly from averages, and using the value from FY 2000, the market value of coal affected by these modifications should have been about $4,738,000 in FY 1998, assuming, of course, that it all would have been immediately available for mining in that year. Total value for other recent years, based on the lower numbers and acreages of lease modifications shown in the accompanying chart, should have been only a fraction of this value. The following table summarizes lease modifications over the past few years.

BLM COAL LEASE MODIFICATIONS, FY1997–FY2001

State	FY1997		FY1998		FY1999		FY2000		FY2001 (through 06–30–2001)	
	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres
Colorado	1	100	1	160	.....	.....	2	288	.....	.....
Kentucky	.....	.....	3	303	1	10	.....	.....	1	160
Montana	.....	.....	2	240	2	200	.....	.....	1	122
Utah	1	133								
Total	2	233	6	703	3	210	2	288	2	282

Of course, since we do not know precisely how much coal was produced from the lease modifications shown, we state these dollar figures only to provide a sense of how small the effect of lease modifications is, compared with the threshold in the executive order. Further, the effect of the mistake that we are correcting in this rule was only to extend the time required and increase the cost of processing a lease modification. Therefore, the effects of this proposed rule amount to a financial benefit to the coal industry due to reducing the time required for lease modifications and the administrative cost of processing them for both industry and BLM, which will be something less than the value of the modification itself.

The estimated additional costs to the lessee for processing a lease modification application inadvertently imposed by the 1999 rule were based on a delay of 2 to 3 months for allowing public input. The reduced costs to BLM and the lease modification applicant from avoiding these delays are difficult to segregate and quantify. As a minimum, we estimate the savings in processing costs (for **Federal Register** processing and document preparation) will approach $10,000 per lease modification application. Assuming a average number of lease modification applications per year of 3, the total savings may be nearly $30,000.

The other element of savings created by this proposed rule is the reduction in opportunity costs. The unintended consequence of the 1999 rule was that some operators may not have been able to develop the resources contained in the lease modifications in a timely manner, or at all. Those costs would have been imposed if, due to the additional processing time, the lease modification could not be completed in time to allow recovery of the resources. If the lease modification is not processed in time for the coal it contains to be mined with the rest of the coal in the lease, the public will lose revenues from bonus payments and royalties. We estimate that this proposed rule will enable the public to avoid bonus and royalty revenue losses of about $2,200 per acre on average, and with an expected 3 modifications at a maximum of 160 acres each, the total revenue impact is about $1,056,000 per year, which, though substantial, is less than 1 percent of the total coal royalty revenues for FY 2000, and far less than the $100 million annual threshold in the Executive Order.

The second change only matches our regulations to what the law already requires BLM to do. We cannot quantify the economic impact of increasing the acreage limitations, because it would involve what would amount to speculation about future coal leases or mergers of current coal lessees. We do, however, see this a positive for industry in that it will allow greater flexibility for coal operators to maintain coal reserves that are readily available for production and consumption. Currently, lessees can be required to wait as long as 10 years before they can relinquish a lease after production has ended to allow for proof of successful reclamation. The acreage in a lease that has been mined out but not reclaimed counts the same to the state and national acreage limitations as a new lease that has never been mined.

The rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Economic recovery of coal will be enhanced, bypasses will be minimized, and efficiency of mining will be improved. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the regulations clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading.)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand? Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule, as described above, merely implements a statutory change to the regulations that apply to leasing Federal coal resources, and the rule change itself will not have a significant impact on any small entities. Rather, it is the legislation which affects these entities. The regulations make no substantive change beyond what Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully

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Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully analyzed for RFA compliance when published. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2). This rule merely makes a technical correction in the final rule published on September 28, 1999 (64 FR 52239), and implements a change to the state acreage limits that has been made by Congress. This rule is limited to making BLM's regulations consistent with the law.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor would this proposed rule have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule would merely change BLM's coal leasing regulations regarding acreage limitations to comply with Public Law 106–463 and make a technical correction to the coal leasing regulations regarding lease modifications. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule would not represent a government action capable of interfering with constitutionally protected property rights. The rule would be limited to changes reflecting Congress's amendment raising the state and nationwide acreage limits for coal leases, and correcting a technical error relating to regulations governing coal lease modifications. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule would be limited to changes to reflect Congress's amendment raising the acreage limits for coal leases and to correct a technical error pertaining to coal lease modifications. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule would not be a significant energy action. It will not have an adverse effect on energy supplies. The rule should have a favorable effect on energy production. It should improve efficiency in production by increasing acreage limitations and by removing procedural requirements inadvertently and erroneously applied to lease modifications in an earlier rule.

Paperwork Reduction Act

This rule would not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have found that this proposed rule would not include policies that have tribal implications. Since this rule would not propose significant changes to BLM policy and would not specifically involve Indian reservation lands, we have determined that the government-to-government relationships should remain unaffected.

Principal Author

The principal author of this rule is Mary Linda Ponticelli of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects

43 CFR Part 3430

Administrative practice and procedure; Coal; Government contracts; Intergovernmental relations; Mines; Public lands—mineral resources; Public lands—rights-of-way; Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal; Government contracts; Mineral royalties; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

Dated: January 2, 2002.

J. Steven Griles,

Deputy Secretary of the Interior.

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM proposes to amend Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

PART 3430—NONCOMPETITIVE LEASES

1. The authority citation for part 3430 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

Subpart 3432—Lease Modifications

2. Amend § 3432.3 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3432.3 Terms and conditions.

* * * * *

(c) Before modifying a lease, BLM will prepare an environmental assessment or environmental impact statement covering the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(d) For coal lease modification applications involving lands in the National Forest System, BLM will submit the lease modification application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment, for the attachment of appropriate lease stipulations, and for making any other findings prerequisite to lease issuance.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

3. The authority citation for part 3470 continues to read as follows:

Authority: 30 U.S.C. 189 and 359 and 43 U.S.C. 1733 and 1740.

b. removing from the second sentence of paragraph (a)(2) the term "100,000 acres" and adding in its place the term "150,000 acres."

[FR Doc. 02–1339 Filed 1–17–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–981–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Almonds Grown in California, Marketing Order 981.

DATES: Comments on this notice must be received by March 19, 2002.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order 981.

OMB Number: 0581–0071.

Expiration Date of Approval: August 31, 2002.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be resolved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Department of Agriculture (USDA) is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry. The Almond Board of California (Board) is responsible for locally administering the program.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California almond marketing order program (7 CFR part 981), which has been operating since 1950.

The California almond marketing order authorizes the issuance of quality and volume control regulations, as well as inspection requirements. Regulatory provisions apply to almonds shipped within and outside of the production area, except those specifically exempt. The order also has authority for production and marketing research and development projects, including paid advertising. Handlers who advertise may receive credit for their advertising expenses according to specific requirements.

The order, and rules and regulations issued thereunder, require handlers and growers to submit certain information. Much of this information is compiled by the Board in aggregate and provided to the industry to assist in marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to almond supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the AMAA and order. As shipments of California almonds are normally year-round, these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, almond growers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the USDA.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours per response.

Respondents: California almond growers, handlers and accepted users of inedible almonds.

Estimated Number of Respondents: 7,150.

Estimated Number of Responses per Respondent: 1.04.

Estimated Total Annual Burden on Respondents: 2,445 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0071 and the California Almond Marketing Order No. 981, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or e-mail: *moab.docketclerk@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 14, 2002.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 02–1289 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–113–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity for self-certification medical statements.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 19, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–113–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–113–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–113–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on self-certification medical statements, contact Ms. Linda Lane, Personnel Management Specialist, Human Resources Division, MRPBS, room 1724, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–3519. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Self-Certification Medical Statement.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Marketing and Regulatory Programs (MRP) agencies of the U.S. Department of Agriculture facilitate the domestic and international marketing of U.S. agricultural products and protect the health of domestic animal and plant resources. The MRP agencies are the Agricultural Marketing Service (AMS), the Animal and Plant Health Inspection Service (APHIS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA). Resource management and administrative services, including human resource management, for the three MRP agencies are provided by the MRP Business Services unit of APHIS, which is the lead agency in providing administrative support for MRP.

In accordance with 5 CFR part 339, Federal agencies are authorized to obtain medical information from applicants for and employees in positions that have approved medical standards. Medical standards may be established for positions for which the duties are arduous or hazardous or require a certain level of health status or fitness.

Certain positions in MRP agencies have medical standards. An example of such a position is the agricultural commodity grader position in AMS. Each year, AMS hires a number of agricultural commodity graders. These employees work under dusty conditions, around moving machinery and slippery surfaces, and in areas with high noise levels. They have direct contact with meat and dairy products, fresh and processed fruits and vegetables, and poultry products intended for human consumption or cotton and tobacco products intended for human use. Medical standards have also been established for positions in APHIS that involve contact with wild animals.

The MRP agencies require a self-certification statement from applicants for these positions regarding their fitness for the positions. The MRP agencies need this information to determine whether the applicants can perform the duties of the positions. Inability to collect this information would adversely affect the MRP agencies' ability to recruit and hire qualified individuals and carry out their missions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1666 hours per response.

Respondents: Applicants to MRP positions with approved medical standards.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 300.

Estimated total annual burden on respondents: 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

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number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1340 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension of Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension of an approved information collection to support the Tobacco Importer Assessments. This extension does not involve any revisions to the program rules.

DATES: Submit comments about this notice on or before March 19, 2002.

ADDRESSES: Mail or hand-deliver public comments regarding this notice to Director, Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW, Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be sent by facsimile to (202) 720–0549. Comments may be sent by e-mail to: *tob_comments@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202) 720–2715.

SUPPLEMENTARY INFORMATION:

Title: Importer Assessments.

OMB Control Number: 0560–0148.

Expiration Date: December 31, 2001.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number 0560–0148 constitutes all of the information required by CCC to effectively administer the statutory provisions for assessments on imported tobacco. Information collected from importers of unmanufactured tobacco is necessary to determine the amounts of assessments due and that the assessments are paid in a timely manner. The Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, amended sections 106, 106A, and 106B, of the Agricultural Act of 1949, to require the payment of importer no-net-cost (INNC) assessments on imported unmanufactured tobacco. INNC assessments apply only to burley and flue-cured tobacco. Information is collected on form CCC–100, Importer Enter and Assessment Worksheet. The data reported thereon includes the importer's name and address, the importer's number, and the tobacco's entry number, Harmonized Tariff Schedule (HTS) number, as well as the quantity of tobacco, and amounts of assessments remitted.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 45 minutes per response.

Respondents: Importers of unmanufactured tobacco for consumption in the United States, who may be individuals, small businesses, or large tobacco leaf dealers and cigarette manufacturers.

Estimated Number of Respondents: 40.

Estimated Number of Responses Per Respondent: 18.

Estimated Total Annual Burden on Respondents: 540 hours.

Request for Comment: Comment on the above notice is sought. Topics for comment may include, but need not be limited to: (a) Whether the collection of information is necessary for the proper performance of the functions of CCC, including whether the information will have practical utility; (b) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; and (d) minimizing the burden of the collection of information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of informational technology.

Comments should be sent the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Director, Tobacco and Peanuts Division, at the addresses listed above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on December 31, 2001.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–1359 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet twice during the month of February 2002. The first meeting is scheduled for Wednesday, February 6, 2002, at the Skagit County Hearing Room B, 700 South 2nd St., in Mt. Vernon, WA 98273. The second meeting is scheduled for Thursday, February 21, 2002, at the Whatcom County Courthouse, Multipurpose Room, 311 Grand Ave., in Bellingham, WA 98225.

The February 6 meeting will begin at 9:30 a.m. and continue until about 3:30 p.m. Agenda items to be covered include: (1) Background on the Secure Rural Schools and Community Self-Determination Act of 2000, (2) Organization of the North Mt. Baker-Snoqualmie Resource Advisory Committee, and (3) Future program of work for the North Mt. Baker-Snoqualmie Resource Advisory Committee.

The February 21, 2002 meeting will begin at 9:30 a.m. and continue until about 3:30 p.m. The topics to be covered at the meeting include the process for reviewing and recommending projects and beginning the review of project proposals for Title II funding provided by the Secure Rural Schools and Community Self-Determination Act of 2000.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 Stated Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: January 11, 2002.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 02–1310 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee (RAC) will meet on February 7 and 8, 2002. The meeting will begin at 9 a.m. in the Siuslaw Valley Fire & Rescue Station, 2625 Highway 101 N., Florence, OR. Draft agenda items include: Assigning Priorities to Title II Projects; and Public Forum. The meeting is expected to adjourn at 4 p.m. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

Dated: January 11, 2002.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 02–1311 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Pellaphalia Creek Watershed, Leake County, MS

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Pellaphalia Creek Watershed, Leake County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone: 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist had determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a watershed plan to reduce flood damage to the disadvantaged residents of a rural Leake County community in the Pellaphalia Creek Watershed. The planned works of improvement consists of installing one Class I Dike (levee) and elevating one residence above the 100-year elevation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 11, 2002.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 02–1288 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2002. The maximum dollar award on zero-interest loans for FY 2002 is $450,000. The maximum dollar award on grants for FY 2002 is $200,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2001, and ending September 30, 2002. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone: (202) 720–9558. FAX: (202) 720–6561.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2002 for zero-interest loans is $14.966 million and the projected program level for grants is $4 million. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount lower than $200,000. Therefore, the maximum grant award for FY 2002 will be $200,000.

Dated: December 7, 2001.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–1286 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–XY–U

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DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 2001 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 2001 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 2001 cost of money rates have been established as follows: 5.95% and 5.17% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 2001 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 5.95% (the liquidating account rate). All loan advances made during fiscal year 2001 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 5.17% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 2001 for the liquidating account and the financing account are provided in Tables 1 and 2. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 5.95% and 5.17%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, South Building, Washington, DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 ("Credit Reform") (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 2001 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 2001 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 2001, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 5.45%.

Sources and Costs of Funds—Liquidating Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2001. Advances for the purchase of Class B stock and cash purchases for Class B stock were $256,497. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $256,497. The amount received by the Bank in fiscal year 2001 from the issuance of Class C stock was $3,368.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 2001. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 2001 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $6,378,242. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Public Law 100–203, and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2001. Advances for the purchase of Class B stock and cash purchases for Class B stock were $2,638,376. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $2,638,376. The Bank did not receive any amounts in fiscal year 2001 from the issuance of Class C stock.

During fiscal year 2001, issuance of debentures or any other obligations related to the financing account were $63,500,000 at an interest rate of 5.426%. However, only $52,767,520 is attributable to advances made with borrowed funds. Advances totaling $2,638,376 were made through collections associated with Class B stock purchases and $8,094,104 will be carried forward and used for loan transactions in fiscal year 2002. Therefore, there is no excess of funds for fiscal year 2001.

Since there was no excess of fiscal year 2001 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations, no cost was incurred related to advances from the financing account. However, the Bank's cost of money rate for advances from the financing account is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: December 21, 2001.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

BILLING CODE 3410–15–P

TABLE 1

Rural Telephone Bank Cost of Money Rate - Liquidating Account

FY 2001 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a)x(b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 256,497	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ 3,368	5.45%	$ 184	0.0028%
Issuance of Debentures and Other Obligations	$ -	0.00%	$ -	0.0000%
Excess of Total Advances Over Issuances	$ 6,378,242	6.19%	$ 394,813	5.9477%
Total FY 2001 Advances	$ 6,638,107	CALCULATED COST OF MONEY RATE =		5.95%
		MINIMUM RATE ALLOWABLE =		5.00%

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a)x(b)	(c) / Total Advances
FY 1974	5.01%	$ 111,022,574	$ 5,562,231	0.232%
FY 1975	5.85%	$ 130,663,197	$ 7,643,797	0.319%
FY 1976	5.33%	$ 99,915,066	$ 5,325,473	0.222%
FY 1977	5.00%	$ 80,907,425	$ 4,045,371	0.169%
FY 1978	5.87%	$ 142,297,190	$ 8,352,845	0.349%
FY 1979	5.93%	$ 130,540,067	$ 7,741,026	0.323%
FY 1980	8.10%	$ 199,944,235	$ 16,195,483	0.676%
FY 1981	9.46%	$ 148,599,372	$ 14,057,501	0.587%
FY 1982	8.39%	$ 112,232,127	$ 9,416,275	0.393%
FY 1983	6.99%	$ 93,402,836	$ 6,528,858	0.272%
FY 1984	6.55%	$ 90,450,549	$ 5,924,511	0.247%
FY 1985	5.00%	$ 72,583,394	$ 3,629,170	0.151%
FY 1986	5.00%	$ 71,582,383	$ 3,579,119	0.149%
FY 1987	5.00%	$ 51,974,938	$ 2,598,747	0.108%
FY 1988	5.00%	$ 119,488,367	$ 5,974,418	0.249%
FY 1989	5.00%	$ 97,046,947	$ 4,852,347	0.203%
FY 1990	5.00%	$ 107,694,991	$ 5,384,750	0.225%
FY 1991	5.43%	$ 163,143,075	$ 8,858,669	0.370%
FY 1992	6.14%	$ 84,940,822	$ 5,215,366	0.218%
FY 1993	6.05%	$ 84,605,366	$ 5,118,625	0.214%
FY 1994	6.15%	$ 54,530,897	$ 3,353,650	0.140%
FY 1995	6.04%	$ 35,967,133	$ 2,172,415	0.091%
FY 1996	6.05%	$ 30,965,187	$ 1,873,394	0.078%
FY 1997	5.98%	$ 32,602,587	$ 1,949,635	0.081%
FY 1998	5.96%	$ 20,673,798	$ 1,232,158	0.051%
FY 1999	6.01%	$ 17,796,518	$ 1,069,571	0.045%
FY 2000	6.01%	$ 10,436,622	$ 627,241	0.026%
	TOTAL ADVANCES	$ 2,396,007,663	COST OF MONEY	6.19%

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TABLE 2

Rural Telephone Bank Cost of Money Rate - Financing Account

FY 2001 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a)x(b)	(c) / Advances
Issuance of Class A Stock	$ -	2.000%	$ -	0.0000%
Issuance of Class B Stock	$ 2,638,376	0.000%	$ -	0.0000%
Issuance of Class C Stock	$ -	5.450%	$ -	0.0000%
Issuance of Debentures and Other Obligations*	$ 52,767,520	5.426%	$ 2,863,166	5.1676%
Excess of Total Advances Over Issuances	$ -	6.260%	$ -	0.0000%
Total FY 2001 Advances	$ 55,405,896	CALCULATED COST OF MONEY RATE =		5.17%
		MINIMUM RATE ALLOWABLE =		5.00%

* RTB borrowed $63,500,000 from the financing account in FY2001, the remaining funds will be be used for loan transactions in FY2002.

Rural Telephone Bank Historical Cost of Money Rate - Financing Account

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a)x(b)	(c) / Total Advances
FY 1992	7.38%	$ 4,056,250	$ 299,351	0.098%
FY 1993	6.35%	$ 23,839,200	$ 1,513,789	0.496%
FY 1994	6.40%	$ 56,838,902	$ 3,637,690	1.191%
FY 1995	6.88%	$ 37,161,517	$ 2,556,712	0.837%
FY 1996	6.42%	$ 44,536,621	$ 2,859,251	0.936%
FY 1997	6.54%	$ 34,368,726	$ 2,247,715	0.736%
FY 1998	5.71%	$ 34,446,458	$ 1,966,893	0.644%
FY 1999	5.54%	$ 38,685,732	$ 2,143,190	0.702%
FY 2000	6.05%	$ 31,401,867	$ 1,899,813	0.622%
TOTAL ADVANCES		$ 305,335,273	COST OF MONEY	6.26%

[FR Doc. 02–1362 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–15–C

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 2002

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 2002.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 2002.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 2002, and ending March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. e-mail: *GSalgado@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 2002 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2002 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 2002.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2023 or later	5.125
2022	5.125
2021	5.000
2020	5.000
2019	4.875
2018	4.875
2017	4.875
2016	4.750
2015	4.625
2014	4.500
2013	4.375
2012	4.250
2011	4.125
2010	3.875
2009	3.750
2008	3.625
2007	3.500
2006	3.125
2005	2.625
2004	2.250
2003	1.875

Dated: December 21, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1363 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 19, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in the notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service: Fulfillment Services, Military Sealift Command, Milwaukee, Wisconsin.

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Government Agency: Military Sealift Command.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish

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the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service is proposed for deletion from the Procurement List:

Service: Janitorial/Custodial, VA Greater Los Angeles Regional Healthcare System, Consolidated Mail Outpatient Pharmacy, 11301 Wilshire Boulevard, Building 222, Los Angeles, California.

G. John Heyer,

General Counsel.

[FR Doc. 02–1368 Filed 1–17–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 011502A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirements in Antarctic Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0367.

Type of Request: Regular submission.

Burden Hours: 10.

Number of Respondents: 1.

Average Hours Per Response: 5 minutes to mark a buoy/float; 2 minutes to mark or tag a trap/pot; and 2 minutes to sew a tag on trawl nets.

Needs and Uses: Vessels participating in Antarctic fisheries must mark the vessel's fishing gear with the official vessel identification number, Federal permit or tag number, or some other specified form of identification. The information is used for enforcement purposes. The authority for this requirement comes from the Magnuson-Stevens Fishery Management and Conservation Act and the Antarctic Marine Living Resources Convention Act of 1984.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1392 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0354.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 1.

Average Hours Per Response: 75 minutes.

Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized that deploy gear which is not physically and continuously attached to the vessel are required to mark such gear in a prescribed manner to allow enforcement personnel to monitor fishing activities and ensure that a vessel harvests only from its own gear and that its gear is not illegally placed.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1393 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0089.

Type of Request: Regular submission.

Burden Hours: 25.

Number of Respondents: 25.

Average Hours Per Response: 90 minutes for an application for directed fishing; 2 hours for an application for a joint venture; and 45 minutes for an application for transshipment.

Needs and Uses: Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act provides for the issuance of fishing permits to foreign vessels. Persons wanting permits must submit application material needed by NOAA to evaluate and act on the request.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1394 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 01502D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0348.

Type of Request: Regular submission.

Burden Hours: 37.

Number of Respondents: 50.

Average Hours Per Response: 45 minutes.

Needs and Uses: Vessels licensed under the High Sea Fishing Compliance Act are required to mark their vessels in three places with their official number or international radio call sign. This identification is necessary for enforcement purposes.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1395 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Prohibited Species Donation Program.

Form Number(s): None.

OMB Approval Number: 0648–0316.

Type of Request: Regular submission.

Burden Hours: 733.

Number of Respondents: 76.

Average Hours Per Response: 40 hours for an authorized distributor application and list of participants; 12 minutes for a distributor to retain product tracking information; and 6 minutes for a processor to retain product tracking information.

Needs and Uses: A prohibited species donation (PSD) program for salmon and halibut was approved by the North Pacific Fishery Management Council and implemented by the National Marine Fisheries Service (NMFS). This program has effectively reduced regulatory discard of salmon and halibut by allowing fish that would otherwise be discarded to be donated to needy individuals through tax-exempt organizations. Vessels and processing plants participating in the donation program voluntarily retain and process salmon and halibut bycatch.

An authorized, tax-exempt, distributor, chosen by NMFS is responsible for monitoring the retention and processing of fish donated by vessels and processors. The authorized distributor also coordinates the processing, storage, transportation, and distribution of salmon and halibut. The PSD program requires a collection-of-information so that NMFS can monitor the authorized distributors' ability to effectively supervise program participants and ensure that donated fish are properly processed, stored, and distributed.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Frequency: Every three years for permit, on occasion, and recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1396 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0272.

Type of Request: Regular submission.

Burden Hours: 13,249.

Number of Respondents: 6,700.

Average Hours Per Response: 30 minutes for an application for a landing card; 30 minutes for an application for a registered buyer permit; 1 hour for an application for quota share; 4 hours for a letter of appeal; 30 minutes for a beneficiary designation; 2 hours for identification of ownership interest; 30 minutes for an annual update on status of corporation or partnership quota share; 2 hours for an application for a transfer eligibility certificate; 2 hours for

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an application for transfer of quota share; 30 minutes for an application for replacement of certificates, permits, or cards; 30 minutes for a request for a transaction terminal; 6 minutes for a request for an administrative waiver; 12 minutes for a prior notice of landing; 12 minutes for a landing report; 12 minutes for a vessel clearance; 6 minutes for a departure report; 12 minutes for a transshipment authorization; 18 minutes for a shipment report; and 6 minutes for a dockside sales receipt.

Needs and Uses: The National Marine Fisheries Service collects information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota (CDQ) Program halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ and/or CDQ. Applications and reporting are required to manage and track the program.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: Recordkeeping, on occasion, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1397 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Albacore Logbook.

Form Number(s): NOAA Form 88–197.

OMB Approval Number: 0648–0223.

Type of Request: Regular submission.

Burden Hours: 400.

Number of Respondents: 400.

Average Hours Per Response: 1.

Needs and Uses: Fishermen participating in the Pacific albacore tuna fishery are asked to voluntarily complete and submit logbooks documenting their catch and effort on fishing trips. Persons possessing High Seas Fishing Compliance Act permits are required to submit such logbooks. The information obtained is used by the agency to assess the status of albacore stocks and to monitor the fishery.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1398 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502J]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0356.

Type of Request: Regular submission.

Burden Hours: 7.

Number of Respondents: 10.

Average Hours Per Response: 45 minutes.

Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized are required to display vessel identification to make it possible for enforcement personnel to monitor fishing, at-sea processing, and other related activities, to ascertain whether a vessel's observed activities are in accordance with those authorized for that vessel.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1401 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502H]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Sea Fishing Permit Application Information.

Form Number(s): None.

OMB Approval Number: 0648–0304.

Type of Request: Regular submission.

Burden Hours: 100.

Number of Respondents: 200.

Average Hours Per Response: 30 minutes.

Needs and Uses: United States vessels that fish on the high seas are required to possess a permit issued under the High Seas Fishing Compliance Act. Applicants must submit information to identify their vessels and intended fishing areas. The application information is used to process applications and maintain a register of U.S. vessels authorized to fish on the high seas.

Affected Public: Business and other for-profit organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1402 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502I]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0355.

Type of Request: Regular submission.

Burden Hours: 1,488.

Number of Respondents: 1,984.

Average Hours Per Response: 45 minutes (15 minutes per location).

Needs and Uses: Federally-permitted vessels in the Pacific Coast Groundfish Fishery are required to identify their vessels by displaying their official number in three locations. The number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1403 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Office of Export Trading Company Affairs; Export Trading Companies Contact Facilitation Service

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before March 19, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs; Service Industries, Tourism and Finance; Room 1104; 14th St. & Constitution Ave, NW., Washington, DC 20230; phone: (202) 482–5131; and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Contact Facilitation Service (CFS) is a U.S. Department of Commerce database, designed to put U.S. producers together with export service providers. Many U.S. firms have never exported because of a fear of the risks involved in exporting and a lack of knowledge of the international marketplace. New-to-export firms need the assistance of export service firms offering export trade services. One of the purposes of the Export Trading Company (ETC) Act of 1982 is to increase United States exports of goods and services by encouraging more efficient provision of export trade services to U.S. producers and suppliers. Section 104 of the Act directs Commerce to provide a service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

The International Trade Administration (ITA) maintains the CFS database of U.S. manufacturers, export

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trading and management companies, wholesalers/distributors, and international service firms. The CFS is designed to help promote exports and enable U.S. producers to locate export service providers. Export Service firms registered in the CFS database are listed in annual print editions of the *U.S. Trade Assistance Directory*, distributed throughout the United States. U.S. producers of goods and services registered in the CFS database are listed in the annual print editions of the *U.S. Department of Commerce Exporters' Yellow Pages™*, distributed worldwide. These directories also are accessible online at *www.myexports.com*. The print and electronic directories are produced and made available through ITA's "MyExports™" program. Without the information collected by the form, the CFS database and the resulting directories would be unreliable and ineffective, because users of this kind of data need current information about the listed companies.

II. Method of Collection

Form ITA–4094P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0120.
Form Number: ITA–4094P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.
Estimated Number of Respondents: 9,500.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 4,750.
Estimated Total Annual Costs: $95,500 ($10,000 government and $85,500 respondents).

IV. Request for Comments

Comments are invited (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1360 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol From Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Tisha Loeper-Viti at (202) 482–0650 or (202) 482–7425, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on furfuryl alcohol from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 02–1390 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 90–4A005.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to the California Kiwifruit Commission ("CKC") and California Kiwifruit Exporters Association ("CKEA") on January 14, 2002. The original Certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990) and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); and February 24, 1992 (57 FR 6712, February 27, 1992).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing

Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CKC's and CKEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Stellar Distributing, Fresno, California; George Brothers, Sultana, California; Trinity Fruit Sales Co., Clovis, California; Sun Pacific Marketing Coop., Los Angeles, California; and Regatta Tropicals, Arroyo Grande, California;

2. Delete the following companies as "Members" of the Certificate: Alkop Farms, Inc., Chico, California; Bartell Marketing, Inc., Fresno, California; Blue Anchor, Inc., Sacramento, California; Coast to Coast Produce Co., San Luis Obispo, California; Nash De Camp Company, Visalia, California; and Richland Sales Co., McFarland, California; and

3. Change the listing of the company names for the current Members: Kings Canyon Fruit Sales Corp. to the new listing Kings Canyon/Corrin Sales Corp.; Venida Packing Inc. to the new listing Venida Packing Co.; and Wil-Ker-Son Kiwifruit Ranch to the new listing WKS/Wil-Ker-Son Ranch.

The effective date of the amended certificate is October 15, 2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 14, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–1294 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 01–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Vinex International, Inc. ("VINEX"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Vanessa Bachman, Acting Director Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: Government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

VINEX may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

6. Allocate export orders among Suppliers;

7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

9. Enter into contracts for shipping; and

10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

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Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, VINEX will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. VINEX will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. "Supplier" means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects VINEX and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 14, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–1295 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2002

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2002 worsted wool fabric tariff rate quota.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

The Department of Commerce (Department) has determined the allocation for calendar year 2002 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000. The companies that are being provided an allocation are listed below.

Background

Title V of the Trade and Development Act of 2000 (The Act) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meters per year. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001 the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 CFR 335.

On September 7, 2001, the Department published a notice soliciting applications for an allocation of the 2002 tariff rate quotas with a closing date of October 9, 2001. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 17 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 16 firms All applicants were determined eligible for an allocation.

Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

Three companies' 2002 tariff rate quota allocations were reduced for HTS 9902.51.11. These companies failed to import 95 percent of their 2001 tariff rate quota allocations of this fabric. The total amount of the reduction was 11,036 square meters, which will be allocated to the non-penalized 2002 license holders at a later date this year. One company's 2002 tariff rate quota allocation was reduced for HTS 9902.51.12. This company failed to import 95 percent of its 2001 tariff rate quota allocation of this fabric. The amount of the reduction was 4,903 square meters, which will be allocated to the non-penalized 2002 license holders at a later date this year. The Department determined the appropriate allocation reduction in accordance with CFR 335.

Firms That Received Allocations

1. HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.60 and 5112.19.95)

Amount allocated: 2,488,964 square meters; 11,036 square meters to be allocated at later date this year.

Companies Receiving Allocation:

Alperin Inc.—Scranton, PA
American Fashion, Inc.—Chula Vista, CA
Bowdon Manufacturing Co., Inc—Bowdon, GA
Calvin Clothing Company, Inc.—Scranton, PA
CK Apparel Corp.—New York, NY
Concorde Apparel Company, L.L.C.—Scranton, PA
Corbin Ltd.—Ashland, KY
Hardwick Clothes Inc.—Cleveland, TN
Hartmarx Corporation—Chicago, IL
Hartz & Company, Inc.—Frederick, MD
Hugo Boss Cleveland, Inc—Cleveland, TN
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Pincus Bros, Inc.—Philadelphia, PA
Sewell Clothing Company, Inc.—Bremen, GA
Southwick Clothing L.L.C.—Lawrence, MA
The Tom James Co.—Franklin, TN

2. HTS 9902.51.12, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.30 and 5112.19.60)

Amount allocated: 1,495,097 square meters; 4903 square meters to be allocated at later date this year.

Companies Receiving Allocation:

American Fashion, Inc.—Chula Vista, CA
Brooks Brothers—New York, NY
Corbin Ltd.—Ashland, KY
Dormeuil Personal Tailoring—New York, NY
Hardwick Clothes Inc.—Cleveland, TN
Hartmarx Corporation—Chicago, IL
Hartz & Company, Inc.—Frederick, MD
Hugo Boss Cleveland, Inc.—Cleveland, TN
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Martin Greenfield—Brooklyn, NY
Pincus Bros, Inc.—Philadelphia, PA
Saint Laurie—New York, NY
Sewell Clothing Company, Inc.—Bremen, GA
Southwick Clothing L.L.C.—Lawrence, MA
The Tom James Co.—Franklin, TN

Dated: January 16, 2002.

D. Michael Hutchinson,

Acting Assistant Secretary for Textiles, Apparel and Consumer Goods Industries for Import Administration.

[FR Doc. 02–1491 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee Report in February, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, February 5, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will discuss and possibly recommend actions to implement the guidance provided by the Council at the January 2002 Council meeting regarding the possible inclusion of capacity reduction proposals in Amendment 13 to the Multispecies Fishery Management Plan (FMP). They will also refine the list of capacity reduction proposals to be forwarded to the Groundfish Plan Development Team for further analyses and to the Council for consideration. The Council has directed the Committee to make recommendations on revising and combining these proposals for possible inclusion in Amendment 13 to the Multispecies FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, national Marine Fisheries Service.

[FR Doc. 02–1399 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402D]

North Pacific Research Executive Board

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Executive Board Meeting, closed to the public.

SUMMARY: The North Pacific Research Board was created by Congress for the purpose of carrying out marine research activities in the waters off Alaska. The Executive Board will meet in closed session to discuss personnel and administrative issues.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The meeting will be held on February 4, 2002.

ADDRESSES: The meeting will be held at 441 W. 5th Avenue, Suite 500, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Clarence Pautzke: 907–271–2809.

SUPPLEMENTARY INFORMATION: Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Clarence Pautzke at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1400 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency; Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to Amend and Delete Systems of Records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is amending a system of records notice and deleting one from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, NIMA is revising its Preamble to its Privacy Act systems of records to reflect its current name.

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DATES: This proposed action will be effective without further notice on February 19, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

National Imagery and Mapping Agency

How Systems of Records Are Arranged

Imagery and Mapping Agency records are grouped by subject series. Each series has records about a specific activity or function to which a subject title and number is given. Systems or records are grouped in the same way. For example, a system of records on personnel security clearances may be found in Personnel Security Files—B0504–01 and one about military personnel assignments may be found in Military Services Administrative Record Files—B0614–02. These numbers are part of the system identification. The letter B means National Imagery and Mapping Agency. The first four digits (0504 and 0614) show that the records pertain to Personnel Security and Military Personnel respectively, and the last two are a further breakdown of the series. Other systems of records which differ from these examples but have similar documents may also be found in the same series.

How To Use the Index Guide

The systems of records maintained by the National Imagery and Mapping Agency are contained within the subject series that are listed below. This list identifies each series in the order in which it appears in this issuance. Use the list to identify subject areas of interest. Having done so, use the series number (for example 0504 for Personnel Security) to locate the systems of records grouping in which you are interested.

Subject series	System identification series
Inspection	0210
Historical	0228
Finance and Accounting	0302
Civilian Personnel Pay and Accounting	0303
General Legal	0401
Claims Investigating and Processing Documents	0402
Informational Services	0408
Information Security	0502
Guard Protective Services	0503
Personnel Security	0504
Military Personnel Files	0614
Safety Management Program	0615
Medical and Health Program	0901
Individual Procurement Transactions	1202
General Supply Accounting	1205
Self Service Supply	1206
Maintenance	1208
Personnel Travel and Transportation	1211

Requesting Records

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

Blanket Routine Uses

Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

Law Enforcement Routine Use

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Disclosure When Requesting Information Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

Disclosure of Requested Information Routine Use

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Routine Use

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Private Relief Legislation Routine Use

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

Disclosures Required By International Agreements Routine Use

A record from a system of records maintained by this component may be disclosed to foreign law enfotcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

Disclosure to State and Local Taxing Authorities Routine Use

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

Disclosure to the Office of Personnel Management Routine Use

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure to Military Banking Facilities Overseas Routine Use

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Disclosure of Information to the General Services Administration Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure of Information to the National Archives and Records Administration Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Counterintelligence Purposes Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Deletions

B0303–01

SYSTEM NAME:

Individual Pay Record Files (February 22, 1993, 58 FR 10189).

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7335, Defense Civilian Pay System (DCPS) (May 19, 2000, 65 FR 31888).

Amendment

B1211–03

SYSTEM NAME:

Passport Files (February 22, 1993, 58 FR 10189).

Changes:

* * * * *

SYSTEM NAME:

Add 'and Visa' to entry.

* * * * *

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Passports and documentation relating to passports and visas for NIMA personnel, including their dependents. Included are passports, requests and receipts for passports, transmittal letters, control cards, and related documents.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from NIMA.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in locked cabinets. Electronic records are maintained with restricted access requiring user name and password authorization to access network.'

* * * * *

B1211–03

SYSTEM NAME:

Passport and Visa Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, Financial Management Office, ATTN: Passport Agent, J–06, 3200 South Second Street, St. Louis, MO 63118–3399.

National Imagery and Mapping Agency Financial Management Office, ATTN: Passport Agent, P–3, 12310 Sunrise Valley Drive, Reston, VA 22091–3414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: INDIVIDUALS TRAVELING OVERSEAS ON OFFICIAL GOVERNMENT ORDERS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passports and documentation relating to passports and visas for National Imagery and Mapping Agency personnel, including their dependents. Included are passports, requests and receipts for passports, transmittal letters, control cards, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations and NIMA Instruction 5410.1, Travel Management.

PURPOSE(S):

Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from NIMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked cabinets. Electronic records are maintained with restricted access requiring user name and password authorization to access network.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access. Access to electronic record is limited to restricted access requiring user name and password authorization to access network.

RETENTION AND DISPOSAL:

Passport documentation only held in active office until separation or transfer of individual. Passport and all documentation are destroyed by active office upon separation. Letter of passport destruction is sent to State Department.

SYSTEM MANAGER(S) AND ADDRESS:

National Imagery and Mapping Agency, Financial Management, ATTN: Passport Agent, P–3, 12310 Sunrise Valley Drive, Reston, VA 22091–3414. National Imagery and Mapping Agency, Financial Management Office, ATTN: Passport Agent, J–06, 3200 South Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Requests and receipt for passports and visas.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–1333 Filed 1–17–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 19, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information (October 16, 1997, 62 FR 53826).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'folders containing documentation used for deployment management and processing (Personnel Readiness Folders).'

* * * * *

PURPOSE(S):

Add to end of entry 'deployment management'.

* * * * *

RETENTION AND DISPOSAL:

Add to entry 'Return Personnel Readiness Folder to unit upon completion of deployment, or give to individual upon PCS, separation or discharge (Exception: return passports per DoD Instruction 1000–21.R).'

* * * * *

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters, U.S. Air Force; major command headquarters; all Air Force installations and units, and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of combatant commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, records of training, and folders containing documentation used for deployment management and processing (Personnel Readiness Folders).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2608, Military Personnel Records System; and E.O. 9397 (SSN).

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, off duty activities, and deployment management.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files and in computers and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Return Personnel Readiness Folder to unit upon completion of deployment, or give to individual upon PCS, separation or discharge (Exception: return passports per DoD Instruction 1000–21.R). Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Master Personnel Records (DPSAM), Commander, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and

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appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–1332 Filed 1–17–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of The Army

Notice of Availability of the Environmental Assessment (EA)/ Finding of No Significant Impact (FNSI) for the Programmatic Treatment of Capehart and Wherry Era Housing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the EA/FNSI for the Programmatic Treatment of Capehart and Wherry Era Housing under 36 CFR 800.14(e). The Army intends to sign the FNSI unless public comments identify significant impacts or issues that have not been considered. The Department of the Army (Army) is pursing a programmatic approach to compliance under Section 106 of the National Historic Preservation Act for its Capehart and Wherry Era Housing (1949–1962). The Army is facing a significant challenge that has direct implications for soldiers' quality of life as this housing represents 54% of the Army's total family housing stock and 70% of it is considered inadequate (defined as requiring a major repair, component upgrade, component replacement or total upgrade by the Army Family Housing Master Plan-2000). As such, the Army anticipates that all of this housing will be subject to rehabilitation, maintenance and repair, demolition and replacement, transfer, sale or lease in the next 10 years.

Development of the EA was preceded by coordination with the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers (NCSHPO), and the National Trust for Historic Preservation (NTHP). In addition, the process of gathering public input and coordinating comment on this program was initiated by The Army at a symposium to seek the comments and suggestions of experts on the proposed treatment to these properties. The EA gives full consideration of request and implementation of Program Comments in accordance with 36 CFR 800.14(e) as the proposed action, and two reasonable alternatives to the proposed action.

DATES: Submit comments on or before February 19, 2002.

ADDRESSES: To obtain copies of the EA and FNSI, contact U.S. Army Environmental Center, ATTN: SFIM–AEC–PA (Bob DiMichele), Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster at (703) 693–0675.

SUPPLEMENTARY INFORMATION: The EA considered, evaluated and assessed alternatives: (i) The no action alternative (continued project-by-project review under 36 CFR Part 800); (ii) the Programmatic Agreement Alternative; and (iii) the proposed action alternative, request and implement Program Comments in accordance with 36 CFR 800.14(e). Consideration of the alternatives analyzed in the EA leads to The Army's decision to request and implement Program Comments. The no action alternative would allow a continued ad hoc approach to compliance with Section 106 and management of historic properties. With the anticipated growth in The Army's historic properties inventory, continued review of undertakings on a case-by-case basis will likely remain inefficient and lead to increased program costs. This could have adverse impacts on the ability of The Army to provide suitable housing for military families. The Programmatic Agreement (PA) Alternative better meets the stated purpose and need since it would provide a programmatic basis for Section 106 compliance. The PA approach, however, would require development of several separate compliance agreements. This approach would not be as comprehensive in scope and would not assure predictability as management actions are carried out. Like the no action alternative, the PA alternative could result in adverse impacts to The Army's ability to provide suitable housing to military families. The proposed action more squarely meets the stated purpose and need for action and provides the necessary balance between preservation and the need to expeditiously provide suitable housing to military families. While the proposed action has the potential to adversely impact historic properties, those impacts are not likely to be significant. The Army will ensure that effects on historic properties are considered and addressed up front through programmatic treatment.

Dated: January 15, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA(I&E).

[FR Doc. 02–1405 Filed 1–17–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 14, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: The National Evaluation of Smaller Learning Communities.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,377.

Burden Hours: 3,123.

Abstract: The National Evaluation of Smaller Learning Communities is a study to assess the implementation and estimate the impact of creating smaller learning communities in high schools. The study will address how schools are implementing smaller learning communities (e.g., variety of strategies, approaches, and models; characteristics and needs of the population served; intensity, variety and quality of services); whether smaller learning communities improve student outcomes; and whether program implementation and outcomes vary by types of strategies and approaches and by types of schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1303 Filed 1–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of quarterly meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at (202) 219–2253 no later than January 22. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: February 1, 2002.

TIME: 8:30 a.m. to 3 p.m.

LOCATION: Room 1505 C, Health Science Center, University of Texas-Houston, 7000 Fannin, Houston, TX 77030.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., NW., Washington, DC 20208–7564. Telephone: (202) 219–2253; fax: (202) 219–1528; e-mail: Mary.Grace.Lucier@ed.gov. Main telephone for Board office: (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The agenda for February 1 will review how Federally-funded research informs the Texas Reading Initiative, after which Board committees will discuss their work plans for the remainder of the year. A final agenda will be available from the Board's office on January 22, and will be posted on the Board's Web site, *http://www.ed.gov/offices/OERI/NERPPB/.*

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., NW., Washington, DC 20208–7564.

Dated: January 8, 2002.

Rafael Valdivieso,

Executive Director.

[FR Doc. 02–1309 Filed 1–17–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–256]

Application To Export Electric Energy; Lighthouse Energy Trading Company, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Lighthouse Energy Trading Company, Inc. (Lighthouse) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 19, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 27, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Lighthouse to transmit electric energy from the United States to Canada. Lighthouse is a corporation formed under South Dakota Law with

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its principal place of business in Zimmerman, Minnesota. Lighthouse is a privately owned corporation and is not a subsidiary or affiliate of any other corporation. Lighthouse operates as a marketer and a broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services. Lighthouse does not own or control any electric power generation or transmission facilities and does not have a franchised service area.

Lighthouse will purchase the power to be exported from electric utilities and federal power marketing agencies within the United States and arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Lighthouse, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Lighthouse application to export electric energy to Canada should be clearly marked with Docket EA–256. Additional copies are to be filed directly with Rollie M. Hill, Lighthouse Energy Trading company, Inc., P.O. Box 81, Zimmerman, MN 55398.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy homepage at http://www.fe.de.gov. Upon reaching the Fossil Energy homepage, select "Regulatory" Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on January 14, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–1328 Filed 1–17–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Extending the Public Comment Period for the Proposed Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of comment period extension.

SUMMARY: The Department of Energy (DOE) announces the extension of the public comment period to January 25, 2002, for the Proposed Kentucky Pioneer Integrated Gasification Combined Cycle (IGCC) Demonstration Project Draft Environmental Impact Statement (Draft EIS), DOE/EIS–0318. On November 16, 2001, the Environmental Protection Agency issued a Notice of Availability (66 FR 57716) of the Proposed Kentucky Pioneer IGCC Project Draft EIS which began a planned 45-day public comment period. Subsequently, on November 27, 2001, DOE published its own Notice of Availability (66 FR 59237) of the Draft EIS and announced public hearings that were held on December 10, 2001, in Lexington, Kentucky and December 11, 2001, in Trapp, Kentucky. The original comment period was to expire on January 4, 2002. However, in response to public comments and to ensure that the public has ample opportunity to provide comments, DOE is extending the public comment period by 21 days.

DATES: DOE's public comment period on the proposed Kentucky Pioneer IGCC Demonstration Project Draft EIS is extended from January 4, 2002 to January 25, 2002. Comments should be submitted by January 25, 2002 to ensure consideration (see **ADDRESSES** section for more details). DOE will consider comments submitted after January 25, 2002, to the extent practicable.

ADDRESSES: Comments may be submitted by U.S. mail, fax, telephone, or electronic mail to: Mr. Roy Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone: 304–285–5460; Fax: 304–285–4403 leave message at 1–800–276–9851; *rspear@netl.doe.gov.*

Requests for copies of the Kentucky Pioneer IGCC Demonstration Project Draft EIS or other information regarding this environmental analysis should also be addressed to Mr. Spears at the address above.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed project or the Draft EIS, please contact Mr. Spears as directed above. For general information on DOE's NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling 202–586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Prior to publication of this **Federal Register** Notice, notices were published in the local newspapers of Winchester and Lexington, Kentucky, to notify members of the local community about the extension of the comment period. Additionally, direct notifications have been made by electronic mail and U.S. mail to individuals who participated in the public meetings in Lexington and Trapp, Kentucky and to those individuals, parties, and Federal, state, and local government agencies that are listed on the project mailing list.

Issued in Washington, DC, this 14th day of January, 2002.

Richard D. Furiga,

Acting Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 02–1329 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2672–002]

Idaho Power Company; Notice of Filing

January 11, 2002.

Take notice that on January 7, 2002, Idaho Power Company amended its filing of the Generator Interconnection and Operating Agreement between Idaho Power Company and Emmett Power Company, under its open access transmission tariff in the above-captioned proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Comment Date: January 28, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1291 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3032–002]

Virginia Electric and Power Company; Notice of Filing

January 11, 2002.

Take notice that on January 7, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Tenaska Virginia Partners, L.P. (Tenaska) that complies with the Commission's December 6, 2001 Order in Docket Nos. ER01–3032–000 and ER01–3032–001.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of November 9, 2001, the same date the Commission made the Interconnection Agreement effective in its December 6th Order. Copies of the filing were served upon Tenaska and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Comment Date: January 28, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1292 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–47–000]

Wisconsin Public Power Inc., Complainant v. Wisconsin Power & Light Co., Respondents; Notice of Complaint

January 14, 2002.

Take notice that on January 11, 2002, Wisconsin Public Power Inc. (WPPI) filed a Complaint against Wisconsin Power & Light Company (WPL) alleging violations of WPL's Rate Schedule PR–1, WPL's Rate Schedule W/W–3, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14.

WPL has been served with a copy of the Complaint

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 31, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1290 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3141–003, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 14, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. American Electric Power Service Corporation

[Docket No. ER01–3141–003]

Take notice that on January 8, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing First Revised Firm Point-to-Point Transmission (PTP) Service Agreements for Exelon Generation Company, LLC for long-term PTP reservations. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests an effective date of September 1, 2001.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 29, 2002.

2. Llano Estacado Wind, LP

[Docket No. ER02–73–002]

Take notice that on January 8, 2002, Llano Estacado Wind, LP (Llano Estacado Wind) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Change in Status informing the Commission of a change in status as a result of a change in its upstream corporate ownership.

Comment Date: January 29, 2002.

3. Virginia Electric and Power Company

[Docket No. ER02–92–002]

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with CPV Cunningham Creek LLC. (CPV) that complies with the Commission's December 11, 2001 letter order in Docket No. ER02–92–000.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11, 2001 letter order.

Copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: January 31, 2002.

4. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–124–001]

Take notice that on January 9, 2002, Rainy River Energy Corporation—Taconite Harbor (RRTH) filed an amendment to its October 18, 2001, Market Based Rate Application in compliance with a December 13, 2001, Letter Order requiring the submission of a supply margin assessment market power study and the addition of certain language conditioning the market-based rate authority contained in RRTH's proposed rate schedule.

RRTH requests that the rate schedule become effective January 28, 2002.

Comment Date: January 30, 2002.

5. Bluegrass Generation Company, L.L.C.

[Docket No. ER02–506–001]

Take notice that on January 9, 2002, Bluegrass Generation Company, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a supplement to its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1, originally submitted on December 7, 2001.

Comment Date: January 30, 2002.

6. CP&L Holdings, Inc., et al.

[Docket No. ER02–745–000]

Take notice that on January 9, 2002, Carolina Power & Light Company (CP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised service agreement with Cinergy Services, Inc. under CP&L's FERC Electric Tariff, Fourth Revised Volume No. 4 in compliance with the Commission's July 12, 2000 order issued in Docket Nos. EC00–55–000 and ER00–1520–000, *et al.*

CP&L respectfully requests that the Commission allow the revised service agreement to become effective as of December 15, 2001.

Copies of the filing were served upon the Commission's official service list in the above-mentioned dockets, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the Florida Public Service Commission.

Comment Date: January 30, 2002.

7. PacifiCorp

[Docket No. ER02–746–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Rate Schedule F.E.R.C. No. 419

Comment Date: January 31, 2002.

8. PacifiCorp

[Docket No. ER02–747–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of Rate Schedule F.E.R.C. No. 5 under PacifiCorp's FERC Electric Tariff, Volume No. 12 for the Long Term Power Sales Agreement between Public Utility District No. 1 of Okanogan County and PacifiCorp.

Comment Date: January 31, 2002.

9. PacifiCorp

[Docket No. ER02–748–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Rate Schedule F.E.R.C. No. 429 for the Long Term Power Sales Agreement between Pacific Northwest Generation Company and PacifiCorp.

Comment Date: January 31, 2002.

10. PPL Electric Utilities Corporation

[Docket No. ER02–749–000]

Take notice that on January 10, 2002, PPL Electric Utilities Corporation filed a notice of termination of the Power Supply Agreement between it and Allegheny Electric Cooperative Inc. for service to Tri-County Electric Cooperative, Inc. designated as Service Agreement No. 120 under FERC Electric Tariff, First Revised Volume No. 5. PPL Electric also filed a notice of termination of the Power Supply Agreement between it and Allegheny Electric Cooperative, Inc. for service to Sullivan County Rural Electric Cooperative Inc. designated as Service Agreement No. 121 under FERC Electric Tariff, First Revised Volume No. 5.

PPL Electric Utilities Corporation requests a February 1, 2002 termination date for both power supply agreements.

PPL Electric Utilities Corporation has served a copy of the notice of termination on Allegheny Electric Cooperative, Inc.

Comment Date: January 31, 2002.

11. PPL Electric Utilities Corporation

[Docket No. ER02–750–000]

Take notice that on January 10, 2002, PPL Electric Utilities Corporation filed a notice of termination of the Power Supply Agreement between it and Citizens' Electric Company of Lewisburg designated as Service Agreement No. 76 under FERC Electric Tariff, First Revised Volume No. 5.

PPL Electric Utilities Corporation requests a January 31, 2002 termination date for the Agreement.

PPL Electric Utilities Corporation has served a copy of the notice of termination on Citizens' Electric Company of Lewisburg.

Comment Date: January 31, 2002.

12. Mid-Continent Area Power Pool

[Docket No. ER02–751–000]

Take notice that on January 10, 2002, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, tendered for filing Firm and Non-Firm Point-To-Point service agreements under MAPP Schedule F with Entergy-Koch Trading, LP to reflect a corporate name change from Axia Energy, LP to Entergy-Koch Trading, LP.

Comment Date: January 31, 2002.

13. P Chrisman Iribe, Thomas B. King, John R. Cooper, John C. Barpoulis, David N. Bassett, Mark V. Carney, F. Joseph Feyder, J.W. Maitland Horner, William E. Quinn, Sanford L. Hartman, Nancy A. Manning, J. Tracy Mey, Dena Chapin Nolte, Thomas E. Legro, Morris Meltzer, Suzanne Rich, Kent L. Ficket

[Docket Nos. ID–3131–011, ID–3616–001, ID–3132–010, ID–3447–002, ID–3134–008, ID–3429–005, ID–3448–004, ID–3276–004, ID–3449–004, ID–3275–005, ID–3425–005, ID–3619–001, ID–3618–001, ID–3689–000, ID–3690–000, ID–3278–003, and ID–3691–000]

Take notice that on December 27, 2001, the above named individuals filed with the Federal Energy Regulatory Commission (Commission) an application for authority to hold interlocking positions in Mountain View Power, LLC; Mountain View Power II, LLC; Attala Generating Company, LLC; and Plains End, LLC all with their principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814.

Comment Date: February 7, 2002.

14. American Transmission Company LLC

[Docket No. ER02–752–000]

Take notice that on January 10, 2002, American Transmission Company LLC (ATCLLC) tendered for filing Firm and Non-Firm Point-to-Point Service Agreements for Midwest Power LLC.

ATCLLC requests an effective date of January 14, 2002.

Comment Date: January 31, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1429 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2517–012]

Allegheny Energy Supply Company, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 14, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2517–012.

c. *Date Filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 5 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Hedgesville, in Berkeley County, West Virginia. The project dam and reservoir are owned by the United States and operated by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803 or *peter.leitzke@ferc.fed.us.*

j. *Deadline for filing additional study requests:* February 15, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (http://www.ferc.gov) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Dam No. 5 Hydro Station Project consists of: (1) A 100-foot-long, 80-foot-wide headrace; (2) a brick and concrete powerhouse containing two generating units with a total installed capacity of 1,210 kilowatts; (3) a 250-foot-long, 90-foot-wide tailrace; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,945 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

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n. With this notice, we are initiating consultation with the Maryland State Historic Preservation Officer and the West Virginia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice of NEPA Scoping
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1293 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs ERP No. D–AFS–J65354–MT Rating EC2 Game Range Project, Ecosystem Health and Productivity Improvements, Fuel Loading Reduction and Game Winter Range Condition Improvements and Maintenance, Lolo National Forest, Plain/Thompson Falls Ranger District, Thompson River to Squaw Creek, Thompson Falls, MT.

Summary: EPA expressed environmental concerns regarding the need for improved discussion of how environmental commitments are provided for during implementation under the stewardship contracting program. EPA also believes additional information should be provided to: support stated minimal watershed impacts; the identification of Alternative 2 as the environmentally preferred alternative; and describe fuel loads and wildfire risks within the Ashley Creek watershed and Thompson Fall's public water supply watershed.

ERP No. D–FHW–G40167–LA Rating LO

Louisiana 1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, US Army COE Section 10 and 404, NPDES and Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA.

Summary: EPA has a lack of objections to the selection of the preferred alternative. However to strengthen the NEPA document, EPA suggests that additional information on secondary development and potential wetland losses be discussed in the FEIS.

ERP No. DS–AFS–K65307–CA

Rating EC2 Herger-Feinstein Quincy Library Group Forest Act Pilot Project, Proposal to Analyze Options for Maintaining Defensible Fuel Profile Zones (DFPZs), Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA.

Summary: EPA expressed environmental concerns regarding the limited scope of the analysis, and continuing concerns regarding water quality, habitat fragmentation and noxious weed proliferation associated with the construction of defensible fuel profile zones (DFPZs). EPA suggested a broader scope for the analysis and document formatting changes.

ERP No. D1–AFS–L65120–OR

Rating EC2 Lemolo Watershed Projects, Objectives for Management of Areas 5 and 10 and Matrix Lands, Umpqua National Forest, Diamond Lake Ranger District, Douglas County, OR.

Summary: EPA expressed environmental concerns related to listed species, silvicultural practices, logging roads and access issues. and interagency coordination. EPA requested that the Purpose and Need statement be consistent with the North West Forest Plan.

Final EISs

ERP No. F–FAA–E51047–NC

Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility and Associated Developments, Funding, NPDES and US Army COE Section 404 Permit Issuance, City of Greensboro, Guilford County, NC.

Summary: EPA continues to express environmental concern regarding noise mitigation measures. EPA recommended that the FAA extend its proposed residential land acquisitions to include those homes which would be located in the DNL 65 dBA contour and would experience a DNL 1.5 dBA or greater increase.

ERP No. F–FHW–G40146–NM

New Mexico Highway 126 (NM–126)/ Cuba-La Cueva Road (also Known as Forest Highway 12 (FH–12)) Improvement, southeast of Fenton Lake to east of Cuba at Senorito Divide, Sandoval and Rio Arriba Counties, NM.

Summary: EPA has no further comments to offer on the Final EIS or the selected alternative.

ERP No. F–FHW–H40397–MO

Interstate 70 Corridor Improvements, Kansas City to St. Louis, Funding, US Army COE Section 404 and 10 and US Coast Guard Section 9 Permits Issuance, several counties, MO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FTA–L40210–WA

Central Link Light Transit Project (Sound Transit) Construction and Operation, Additional Information concerning Consideration of the Tukwila Freeway Route Alternative, Funding and US Army COE Section 10 and 404 Permits Issuance, Cities of Seattle, Sea Tac and Tukwila, King County, WA.

Summary: EPA had a lack of objections to the FEIS.

Dated: January 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1343 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements Filed January 07, 2002 Through January 11, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020010, FINAL EIS, AFS, NY, Finger Lake National Forest, Oil and Gas Leasing, Exploration and Development, Approval and Authorization, Hector Ranger District, Seneca and Schuyler Counties, NY, Wait Period Ends: February 19, 2002, Contact: Martha Twarkins (607) 546–4470.

EIS No. 020011, FINAL EIS, AFS, MT, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County, MT, Wait Period Ends: February 19, 2002, Contact: Jodie Canfield (406) 266–3425.

EIS No. 020012, DRAFT EIS, AFS, AK, Otter Lake Timber Sale(s) Project, Implementation, Plan to Harvest and Sell Timber, Hoonah Ranger District, Tongass National Forest, AK, Comment Period Ends: March 04, 2002, Contact: Stan McCoy (907) 790–7431.

EIS No. 020013, DRAFT EIS, COE, FL, Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL, Comment Period Ends: March 04, 2002, Contact: Liz Manners (904) 232–3923.

EIS No. 020014, FINAL SUPPLEMENT, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information to Analyze Additional Reclamation Alternatives, Mine Operations Approval, Mine Reclamation and US Army COE Section 404 Permits Issuance, Little Rocky Mountains, Phillip County, MT, Wait Period Ends: February 19, 2002, Contact: Scott Haight (406) 538–1930.

EIS No. 020015, FINAL EIS, AFS/BLM, UT, CO, Flat Canyon Federal Coal Lease Tract (UTU–77114), Application for Leasing, Manti-La Sal National Forest, Ferron-Price Ranger District, Sanpete and Emery Counties, UT, Wait Period Ends: February 19, 2002, Contact: Carter Reed (AFS) (435) 637–2817. US Department of Agriculture's Forest (FS) and US Department of the Interior's Bureau of Land Management (BLM) are Joint Lead Agencies for the above project. The contact person for BLM is Stan Perks (801) 539–4038.

EIS No. 020016, FINAL EIS, AFS, FL, Ocklawaha River Restoration Project, Continued Occupation of Florida National Forest Lands, Portions of Kirkpatrick Dam, Rodman Reservoir and Eureka Lock and Dam in Conjunction with Partial Restoration of the Ocklawaha River, Operation and Maintenance, Special Use Permit Issuance and Implementation, Marion and Putnam Counties, FL, Wait Period Ends: February 19, 2002, Contact: George Hemingway (850) 942–9364.

EIS No. 020017, DRAFT EIS, BLM, WY, Powder River Basin Oil and Gas Project, To Extract, Transport, and Sell Oil and Natural Gas Resource, Application of Permit to Drill (APD), Special Use Permit and Right-of-Way Grant, Campbell, Converse, Johnson and Sheridan Counties, WY, Comment Period Ends: April 18, 2002, Contact: Paul Beels (307) 684–1100. This document is available on the Internet *at: http://fs.fed.us/r4/payette/main.html*

EIS No. 020018, DRAFT EIS, NOA, WA, CA, OR, US West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA, Comment Period Ends: March 04, 2002, Contact: Rod McInnis (562) 980–4000.

EIS No. 020019, FINAL EIS, NRC, UT, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT, Wait Period Ends: February 19, 2002, Contact: Chester Poslusny, Jr (301) 415–1341.

EIS No. 020020, FINAL SUPPLEMENT, FTA, CA, Los Angeles Eastside Corridor Transit Improvements, Light Rail Transit (LRT) Selected Build Alternative Options A and B, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and US Army COE Section 404 Permits, Los Angeles County, CA, Wait Period Ends: February 19, 2002, Contact: Erv Poka (213) 202–3952.

EIS No. 020021, FINAL EIS, COE, PA, Dents Run Watershed Ecosystem Restoration, Construction and Operation of Six Acid Mine Drainage Abatement Projects, Implementation, Benezette Township, Susquehana River Basin, Elk County, PA, Wait Period Ends: February 19, 2002, Contact: Greg Nielson (410) 962–6782.

Dated: January 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1344 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–8]

Designation and Support for Local Resource Centers To Assist Public Entities Develop Environmental Management Systems (EMS)

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of a program to assist not-for-profit organizations that wish to work with public entities that wish to adopt environmental management systems (EMS); request for applications.

SUMMARY: The Environmental Protection Agency (EPA) announces its intention to select and provide technical assistance for up to five existing not-for-profit organizations in order to increase their capacity to assist public entities wishing to adopt environmental management systems (EMS). The assistance provided to these organizations will include helping with developing business plans, providing relevant EMS materials to facilitate each organization's existing EMS assistance activities, train-the-trainer work sessions on ways to address the needs of public agencies, and other marketing services. Each organization selected will also gain increased visibility, attention, and recognition of the key role they can play in meeting the growing needs of public agencies wishing to adopt EMSs.

This program is a continuation of two highly successful projects led by U.S. EPA to directly support various public agencies as they develop EMSs. The program is designed to build on these efforts by increasing the capacity of existing EMS service providers to meet the needs of public agencies. This project is being led by EPA's Office of Water, in conjunction with EPA's Office of Air and Radiation and Office of Compliance.

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DATES: Letters of Application from interested organizations should be submitted no later than March 15, 2002.

ADDRESSES: Letters of Application should be submitted to James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue, NW, Washington, DC, Mail Code 4201M, (202) 564–0571 *and* Craig Ruberti, Global Environment and Technology Foundation, 7010 Little River Turnpike, Suite 460, Annandale, Virginia, 22003.

FOR FURTHER INFORMATION CONTACT: James Horne at (202) 564–0571.

SUPPLEMENTARY INFORMATION:

I. Background

Public entities manage complex large-scale problems of operating and maintaining physical plants; power, wastewater, water, and roadway systems; and managing solid and hazardous waste. As the front line implementers of environmental programs, they are responsible for the health and safety of hundreds millions of citizens. Faced with shrinking resources and aging infrastructure, public entities must manage their operations in a more efficient manner, at lower cost, and with less environmental impact. Environmental management systems (EMS) are an important emerging tool to help public entities do this.

EMSs follow Shewart and Deming's "*plan, do, check, and act*" systems methodology and can be implemented by organizations of all sizes and types. They provide a set of problem identification and problem-solving tools that can be implemented in an organization in many different ways, depending on its activities and needs. Based on the organization's core values, business goals, and environmental commitments, employees examine their environmental footprint and the procedures they use to manage environmental issues. They incorporate strong operational controls and environmental responsibilities into existing job descriptions and work instructions. They set measurable objectives and targets, monitor, measure, and evaluate progress, "find and fix" environmental problems as they occur, and provide top management with a feedback loop to assess progress and make appropriate changes to the management system. The various elements of the EMS work together to provide opportunities to continually improve management of environmental impacts both in regulated areas and in areas that are not regulated (*e.g.*, odor, water or electricity use, and growth management).

Key elements of the EMS include:

- An environmental policy statement endorsed and actively promoted by senior management;
- A planning process that identifies the organization's environmental impacts and integrates their management into the organization's regular business and operations decisions;
- An organizational structure that places environmental responsibilities directly with employees in operational functions that deal with significant environmental impacts;
- An implementation process that stresses training, communication, operational controls, and reaching measurable goals—all oriented toward reducing risks of significant environmental impacts and continually improving environmental management;
- Measurement and auditing procedures that focus on "finding and fixing" problems and reducing the chances of their recurring;
- Periodic top management review of the EMS to ensure continual improvement.

Since 1996, the most commonly used framework for an EMS is the ISO 14001 Environmental Management Standard developed by the International Organization for Standardization (ISO). The ISO was established in 1947 with the mission of developing voluntary technical standards to promote international trade in goods and services.

For the last several years the U. S. Environmental Protection Agency (US EPA) has been promoting the adoption of Environmental Management Systems (EMS) to help public entities, particularly local governments, improve their environmental performance beyond compliance, prevent pollution, promote greater environmental stewardship across the workforce, and improve their overall efficiency.

The US EPA's Office of Water has played a critical leadership role in bringing EMS capacity to local governments. This leadership has continued and expanded to include other headquarters and regional offices. Since 1997, in partnership with the Global Environment & Technology Foundation (GETF), the US EPA has established two EMS initiatives to help local governments test the applicability and benefits of an EMS on environmental performance, compliance, pollution prevention, and stakeholder involvement in government operations. In all, 23 local governments have participated in developing and implementing their own EMSs through these two initiatives.

Using a four-phased implementation strategy over a two-year period, each participating public entity has received EMS training, coaching, and technical assistance, as well as EMS implementation materials and toolkits specially designed for the public sector. Five intensive week long training sessions, individual bi-weekly phone consultations, and on-site visits provided additional implementation guidance. Monthly "all-hands" calls allowed participants to share their experiences and keys to success and engage in shared problem solving opportunities. Information and data were collected about the benefits, barriers, and keys to success and resource requirements of EMS implementation in a variety of public sector organizations. Participants experienced convincing environmental and economic benefits over the first two-year project period in the following areas, as evidenced by the statements below:

- *Environmental Compliance and Performance:* "With regard to environmental compliance, we have a better understanding of our legal requirements. We have better-trained employees whose competence in their work areas is critical to the environment. We expect that our EMS will increase our ability to stay in compliance."—Tim Hall, Superintendent, Massachusetts Corrections Institute, Norfolk, MA.
- *Recycling:* "Building on the momentum generated early on in the program, we moved forward with a recycling program for lab waste that has diverted 18,000 lbs of waste from the landfill in a three-month period.—Oscar Pancorbo, Director, Wall Experiment Station Laboratory, Massachusetts Department of Environmental Protection, Lawrence, MA.
- *Water Conservation:* "In our efforts to conserve potable water use in our operations we realized we have 1 million gallons of rainwater available in our sedimentation basin per large storm event. By using this water for dust control and soil compaction we estimate conserving about 800,000 gallons of potable water and $1,500 in water fees on an annual basis.—Mark zu Hone, EMS Project Manager, Department of Environmental Services, Refuse Disposal Division, City of San Diego, CA.
- *Efficient Regulatory Tracking:* "Implementing an EMS enables us to embark on a huge project we always knew we needed to do but could never find the time for—to consciously identify all our regulatory requirements and formally designate responsibility for compliance and updates. We always felt we had a handle on this, but our procedure to identify our legal requirements now relieves worries that we might have missed something.—Pam Badger, Special Waste Supervisor, King County Solid Waste Division, Seattle, WA.
- *Resource Conservation:* "In light of this summer's expected electricity shortages and water rationing we have set objectives and targets that will focus on resource conservation for both our bus and rail maintenance operations. Through these conservation initiatives we plan to save about 10% of our budgeted utilities which could result in $85,000—$90,000."—Kevin Considine, Environmental Engineer, Tri-County Metropolitan Transportation District of Oregon, Portland, OR.
- *Operational Efficiency:* "Using the process flow diagrams (PFDs) from the aspects investigation phase of the EMS, the Safety Committee has begun preparation of job hazard analyses (JHA) for approximately 200 work activities at the Bureau. It is estimated that the use of the PFDs will save approximately 300 hours of JHA development time—amounting to approximately $5,000 in savings."—Fred Murphy, Special Programs Manager, New Hampshire Department of Transportation, Concord, NH.
- *Air Quality:* "The Port has been significantly involved in the development and implementation of the Houston One-Hour Ozone State Implementation Plan (SIP). To fulfill our role in this effort we have set a target to reduce our NO_X emissions by 320 tons per year, which goes well beyond EPA's cost effectiveness guidelines. The PHA has been testing innovative technologies to reduce emissions and has committed to implementing these technologies through our EMS efforts to achieve this goal."—Laura Fiffick, Environmental Affairs Manager, Port of Houston Authority, Houston, TX.

More information about these two projects can be found at www.getf.org/projects/muni.cfm.

II. The National Public Entity EMS Resource Center—The Peer Center

The two EMS initiatives described above have helped to demonstrate the relevance of EMSs in the public sector and established a solid basis for expanding EMS adoption for public agencies, especially local governments. The strong enthusiasm and tangible environmental results with EMS through these initiatives suggest substantial long-term benefits from EMS implementation and ensure the parallel development of sustainable management practices in both the private and public sectors. Public entity EMS implementation has sparked interest from government leaders around the world. To take advantage of this momentum US EPA and GETF have launched the National Public Entity Environmental Management System Resource Center—the National PEER Center.

The National PEER Center is a virtual and live clearinghouse of information and people whose mission is to promote the adoption of EMSs in public entities, particularly local governments.

The PEER Center's goals are three-fold:

- To promote the understanding and adoption of EMSs by public entities
- To facilitate peer-to-peer exchange of information and experiences and build awareness of EMSs as a tool to improve environmental performance
- To build regional EMS competence and technical assistance capacity through the creation of Local Resource Centers.

The National PEER Center Web site is currently in place (*www.peercenter.net*) and links users to a national database of key resources such as sample EMS documentation, local and state EMS programs in place, EMS service providers, detailed descriptions of the EMS implementation phases, trainers, mentors and course providers, as well as training materials, web links, contact information, and case studies. The PEER Center serves to demystify the elements of environmental management systems and programs. It will deliver field-tested EMS tools, training, mentoring, and problem solving strategies on-line to help public entities systematically manage both their regulated and non-regulated environmental impacts.

III. Local Resource Centers

Critical to the effectiveness and success of the PEER Center will be the establishment of Local Resource Centers (LRCs) to advance the use of EMS in public entities. Building on individual EMS skills and competencies, and leveraging the successes and skills of the other LRCs and the National PEER Center, each LRC will serve as a high-quality EMS resource center for the public entities in their area, facilitating information transfer, providing training, and government-to-government mentoring in order to maximize public entities' time and resource investment in EMS implementation. The joint efforts of the National PEER Center and the LRCs will reach many more public entities, particularly municipalities and increase the ability of existing EMS service providers to advance the use of EMSs by agencies in their areas.

Although no direct financial assistance will be provided, the PEER Center staff will act as the initial support mechanism for the Local Resource Centers, providing business-planning assistance, field-tested training techniques and materials, implementation strategies, and assistance with outreach plans and marketing materials. In areas where Local Resource Centers do not exist, the PEER Center staff will work with other local entities in that area that have implemented EMSs and help provide information to agencies interested in learning more about EMSs and possibly developing them for their operations.

Information transfer between the PEER Center, the LRCs, and various public entities implementing EMSs will ensure access to the most current tools, keys to success, and lessons learned.

Activities that the LRCs selected under this program will be expected to undertake include, but are not limited to:

- Leveraging their existing EMS expertise to provide training, technical assistance, tools and materials that will facilitate EMS implementation in the public sector;
- Maintaining a database of local/regional EMS service providers, public entities who have implemented EMS, including but not limited to those that are ISO 14001 certified;
- Using their data, information, resources and key contacts to encourage EMS information transfer and facilitate government-to-government mentoring;
- Leading regular and frequent outreach activities to increase awareness and understanding of EMS applicability among public entities in their local/regional area;
- Collecting data and information and preparing case studies about EMS implementation in public entities and assisting in the dissemination of this information across public organizations;
- Facilitating information transfer between the PEER Center and other Local Resource Centers to ensure access to the most current data, information, tools, keys to success, and lessons learned; and
- Facilitating EMS workshops and conferences in their local/regional area

If at all possible, EPA intends to select existing not-for-profit organizations that are already providing some degree of EMS services in their respective areas. The Local Resource Centers will offer a menu of EMS services including—EMS training, technical expertise, field-tested tools, information, speakers/mentors,

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workshops and conferences, outreach, and EMS implementation assistance.

IV. Benefits of Becoming a Local Resource Center

Each Local Resource Center will receive, at no cost, extensive start-up support, a full catalogue of EMS implementation tools from the Global Environment & Technology Foundation (GETF) and materials that have already been field-tested and used in the public sector, including:

- Assistance in developing a business plan, and business development materials.
- An extensive suite of field-tested, high-quality and successful materials for public entities: training techniques, implementation strategies, document samples, outreach and presentation toolkits.
- Regular train-the-trainer work sessions on EMS implementation in public sector organizations with other LRCs and national partners.
- An extensive database of national mentors and experts with hands-on experience to assist in local/regional EMS outreach and implementation.
- Support services and mentoring from existing public entities that are implementing an EMS.
- Assistance with marketing services and opportunities.
- National attention, visibility, and partnership opportunities from the PEER Center and its partners and stakeholders.

In addition to the assistance provided by the National Peer Center as described above, each Local Resource Center will be authorized to use the National PEER Center Logo endorsing their selection to provide high quality EMS services to public entities as part of an EPA sponsored competitive process.

V. Criteria for Selecting the Local Resource Centers

Up to five organizations will be selected to serve as Local EMS Resource Centers (LRCs) based on the following criteria:

Business Experience:

- Well-established delivery mechanism and client base for providing EMS services.
- An excellent reputation for providing high-quality services.
- Good training/facilitation capacity and experience.
- Ability to market services and sustain a business model.
- A not-for-profit organization.

EMS Expertise:

- Excellent first hand experience, knowledge and understanding of EMS development and implementation, using the basic Plan-Do-Check-Act approach.
- Documented success in providing EMS services, but not necessarily to public entities.

Capacity:

- Strong Web literacy and functionality.
- Adequate staffing for providing range of services: marketing, training, outreach, information transfer, mentoring, speaking.
- Willingness to proactively seek out and mobilize other EMS partners in the region.
- Potential to bring partners who can leverage resources.

Organizational Commitment;

- Organizational commitment and top management support.
- Organizational resources for start up activities.
- Willingness to share data and information with other LRCs and PEER Center.

Interested organizations are invited to submit letters of application no later than March 15, 2002. Please address each of the following issues in your correspondence:

1. Briefly describe your organization's background and structure, including number of years in operation, current staffing levels and management structure. Briefly outline the range of services you provide, the typical recipients of these services and how you currently advertise/market your services. Please submit samples of communication and outreach materials you currently use. Please describe how your top management will participate in your LRC activities.

2. What types of EMS training sessions and/ or workshops do you currently develop and facilitate? Who in your organization provides/supports the training function?

3. Briefly describe your first-hand experience with EMS implementation, training, and mentoring. Please describe your sense of the demand by public entities for EMS services in your area. What type of EMS services do you currently provide and in what sector? Who in your organization provides EMS services and briefly outline their qualifications and experience in directly assisting organizations to develop and implement an EMS? How will your organization accommodate the demand on its resources for additional EMS work? Please provide contact information for two organizations as references for your EMS services.

4. Please describe your organization's Web and computer literacy and functionality.

5. To what local/regional/national organizations does your organization belong? Please describe the leadership functions that any of your employees have provided. How might your organization conduct outreach with these organizations about EMS benefit for public entities?

6. Why does your organization want to become a Local Resource Center?

US EPA and the National PEER Center will solicit applicants for Local Resource Centers through March 15, 2002 using this **Federal Register** Notice and other communication and outreach vehicles.

Each applying organization will receive a PEER Center information packet following receipt of their application. Materials will include:

- Additional details and information about the National PEER Center and the Local Resource Centers.
- A Memorandum of Understanding that each selectee will sign with Global Environment & Technology Foundation (GETF), and that outlines the relationship and obligations of the PEER Center and the Local Resource Centers.
- The selection criteria used in the interview process.
- Information about the two US EPA EMS programs for public entities.

Following the receipt of these letters, PEER Center staff will schedule interviews with each applicant's management and appropriate staff at a mutually convenient time from March 17–April 12, 2002. Results of these evaluations will be presented to an EPA selection committee who will name the Local Resource Centers no later than May 3, 2002. At that time, PEER Center staff will begin work with each Local Resource Center to develop business plans, materials, processes, marketing strategies, information transfer, data collection, etc.

Organizations who are interested in becoming Local Resource Centers are invited to submit letters of application no later than March 15, 2002, as described above to:

Jim Horne, Office of Wastewater Management, U.S. Environmental Protection Agency (EPA), 1200 Pennsylvania Avenue, NW Mail Code 4201M, Washington, DC 20460, Phone: (202) 564–0571, FAX: (202) 501–2338, e-mail: *horne.james@epa.gov*

and

Craig Ruberti, Global Environment and Technology Foundation (GETF), 7010 Little River Turnpike, Suite 460, Annandale, Virginia 22003, Phone: (703) 750–6401, FAX: (703–750–6506 e-mail: *cruberti@getf.org*

Dated: January 11, 2002.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 02–1346 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–4]

EPA Science Advisory Board; Notification of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a Subcommittee of the US EPA Science Advisory Board (SAB) (the Surface Impoundments Study Subcommittee of the SAB's Environmental Engineering Committee) will conduct a public teleconference meeting on February 1, 2002 from 12 pm to 2 pm. The meeting will be coordinated through a conference call connection in Room 6450C in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting—The primary purpose of this meeting will be to finalize and approve the Subcommittee's report on its review of Industrial Surface Impoundments in the United States for the Office of Solid Waste as announced in **Federal Register** notices 66 FR 30917–30920 June 8, 2001 and 66 FR 9671–49672 September 28, 2001. Final approval of this report will be accomplished during a public review meeting of the US EPA Science Advisory Board (SAB) at a later date (to be announced in the FR).

Availability of Review Materials: The availability of Industrial Surface Impoundments in the United States was announced previously in the FRs cited above. The January draft of Subcommittee report will be available in mid-January. Those wishing a copy of the draft report should contact the DFO, preferably by email (see contact information in following paragraph) on or about January 14.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *white.kathleen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. White no later than noon Eastern Time on Tuesday January 29, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 16, 2002.

A. Robert Flaak,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 02–1481 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–5]

Office of Research and Development Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on February 11–12, 2002. On Monday, February 11, the Meeting will begin at 1 p.m., and will recess at 5 p.m. On Tuesday, February 12, the Meeting will reconvene at 9 a.m. and will adjourn at approximately 4 p.m. All times noted are Eastern Time.

ADDRESSES: The Meeting will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005, (202) 862–1600.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not be limited to: Discussion of BOSC Sub-Committee draft reports of ORD Labs/Centers site visits, Ad-hoc Subcommittee on Communications Progress Report, and discussion of BOSC 2002 activities.

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Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton at (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Board of Scientific Counselors, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: January 14, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–1347 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–9]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing revocable license to practice the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, and all reexamined and reissued patents granted in the United States in connection with such patent application to Corus Consulting Inc., Pittsburgh, Pennsylvania. The patent application is:

U.S. Patent Application No. 08/440,965, entitled "Hydrogel Alginate Compositions," filed May 15, 1995, and claiming priority from U.S. Patent Application 07/857,046, entitled "Use of Immobilized Film Bioreactor," filed March 25, 1992.

The invention was announced as being available for licensing in the April 26, 1995 issue of the **Federal Register** (60 FR 20490), citing another application in the series, U.S. Patent Application 08/084,985, entitled "Use of Immobilized Film Bioreactor," filed July 2, 1993.

EPA has authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious granting of the license will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability because an earlier application in the family of inventions was announced as available for licensing and because the only applicant, Corus Consulting, has filed an application for an exclusive license under 37 CFR 404.8 and is prepared to enter into an exclusive license agreement.

The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with the limitations and conditions of 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Risk Management Research Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments to this notice must be received by EPA at the address listed below by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–5457.

Dated: January 11, 2002.

Robert A. Friedrich,

Acting Associate General Counsel.

[FR Doc. 02–1350 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–1]

Intent To Assign an Invention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to assign an invention.

SUMMARY: Pursuant to 35 U.S.C. 202(e)(1) and 207 and 37 CFR part 404, EPA hereby gives notice of its intent to assign ownership of the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, all corresponding patents granted and issued throughout the world, and all reexamined and reissued patents granted in connection with such patent application to the University of Southern California, Los Angeles, California. The patent application is:

U.S. Patent Application No. 09/992,544, entitled "A Technology for Continuous Measurement of Coarse Particle Mass Concentration," filed November 13, 2001.

Title 35 U.S.C. 202(e)(1) requires that assignment of rights to an invention be made in accordance with the provisions of chapter 18 of 35 U.S.C. Accordingly, EPA is required to follow the procedures set out in 37 CFR part 404, Licensing of Government Owned Inventions, which implement chapter 18, in order to issue the assignment. Normally, 37 CFR 404.7(a)(1) requires an agency to issue both a notice of availability of an invention for exclusive licensing or assignment, as well as a notice of intent to grant the exclusive license or issue the assignment. However, EPA has authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious transfer of rights will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability of this invention for licensing or assignment. The University of Southern California is co-owner by assignment from its employee inventor of an undivided interest in the invention. It is unlikely that any other party would be willing to take a license or assignment from EPA on a patent application or patent encumbered by co-ownership. Furthermore, the University of Southern California has identified a potential licensee of the University who is requesting an exclusive license of the University. The University cannot grant an exclusive license until it has obtained the exclusive license or assignment of EPA's co-ownership.

Accordingly, EPA is relying on its authority under 37 CFR 404.7(a)(1) to proceed without such notice of availability.

The proposed assignment will contain appropriate terms, limitations and conditions in accordance with the limitations and conditions of 35 U.S.C. 202(c)(4), 203 and 204, and where applicable to assignments, the limitations and conditions of 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and execute the assignment, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for assignment or for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. EPA's Grants Administration Division, the Director of the National Risk Management Research Laboratory, and other EPA officials will review all written responses and then make a recommendation to the EPA Patent Counsel who has been delegated the authority to transfer and assign patent rights on behalf of EPA.

DATES: Comments to this notice must be received by EPA at the address listed below by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: January 11, 2002.

Robert A. Friedrich,

Acting Associate General Counsel.

[FR Doc. 02–1348 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–2]

Benfield Industries Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), the United States Environmental Protection Agency ("EPA") proposes to enter into a Prospective Purchaser Agreement ("PPA") regarding the Benfield Industries Superfund Site in Waynesville, Haywood County, North Carolina. EPA proposes to enter into the PPA with the party who purchases the property pursuant to a judgment sale conducted by the Haywood County Sheriff (the "Purchaser"). The PPA obligates the Purchaser to cooperate with any response actions EPA may take on the property, to grant EPA access for any such response actions, and to comply with specified institutional controls. Further, the PPA provides the Purchaser with a covenant not to sue from the United States for Existing Contamination on the property. The covenant is conditioned upon the Purchaser's fulfilling its obligations under the PPA. EPA will consider comments on the proposed PPA for thirty (30) days.

EPA may withdraw from or modify the proposed PPA should such comments disclose facts or considerations which indicate the proposed PPA is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: December 21, 2001.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–1349 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 10, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 241,335.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 211,169 hours.

Total Annual Cost: $48,267,100.

Needs and Uses: The FCC Form 601 is used as the general application (long form) for market-based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary form changes for the

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Reallocation and Service Rules for the 698–746 MHz spectrum band (television channels 52–59). We are seeking Office of Management and Budget (OMB) approval in order to have the form changes in place for the auction scheduled for June 2002. The information is used by the Commission to determine whether the applicant is legally, technically, and financially qualified to be licensed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1334 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

January 11, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0997.

Title: 47 CFR Section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 25.

Estimated Time Per Response: 33 hours per response (avg).

Total Annual Burden: 825 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: The state of the nation's numbering resources has a direct effect on the growth of competition in the telecommunications industry. The nation's numbering resources are depleting rapidly. Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress granted the Federal Communications Commission (FCC) exclusive jurisdiction over the United States' portion of the North American Numbering Plan (NANP). Consistent with this authority, the FCC adopted an audit requirement to preserve numbering resources. The purpose of the audits is to monitor telecommunications carriers' compliance with FCC rules and to verify the accuracy and validity of the numbering data submitted to the FCC. The audits will also allow the FCC to identify inefficiencies in the manner in which carriers use numbers, including excessive use of certain categories of numbers (e.g., administrative, aging, or intermediate numbers). By ensuring compliance with FCC rules and providing in-depth information, these audits will help preserve the nation's numbering resources. The FCC staff developed a standardized audit program consisting of audit procedures and guidelines, an internal control questionnaire, and a corresponding data request, for the independent auditor to follow in conducting audits. The independent auditor would conduct audits using these tools. The audit procedures generally require the audited carrier to respond to requests for information from the independent auditor. The independent auditor will report its audit findings to the FCC. The FCC will use the audit results to determine whether the audited carriers are complying with the FCC's rules, and whether the audited carriers' numbering data submitted to the FCC , e.g., FCC Form 502, is accurate and valid.

OMB Control No.: 3060–0814.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 197.

Estimated Time Per Response: 19.42 hours per response (avg).

Total Annual Burden: 3,787 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion and annual reporting requirement.

Needs and Uses: Pursuant to 47 CFR 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carriers, and that serves a study area with 50,000 fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). Average schedule companies are required to file information pursuant to 47 CFR section 54.301(f). Both respondents must provide true-up data. The data is necessary to calculate certain revenue requirement.

OMB Control No.: 3060–0169.

Title: Reports and Records of Communications Common Carriers and Affiliates—Sections 43.51 and 43.53.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 374.

Estimated Time Per Response: 16.12 hours per response (avg).

Total Annual Burden: 6,029 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion and annual reporting requirement.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, require that the FCC examine the transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. Sections 43.51 and 43.53 require common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1335 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 10, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 3,000.

Estimated Time Per Response: 1 hour (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $450,000.

Needs and Uses: FCC Form 602 is comprised of a main form containing administrative information and Schedule A used to collect ownership data pertaining to the applicant for the proposed authorization. Filers will use multiple copies of Schedule A as needed to list each direct and indirect owner and associated information. The form was designed for use by auctionable services and all Wireless Telecommunications Services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1337 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 9, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form No.: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,283.

Estimated Time Per Response: 0.75 to 6 hours per response (avg.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,315 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The data is used by Commission staff to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee. It is also used to ensure that the public interest would be served by grant of the application. This extension is being requested to obtain the full three-year OMB approval.

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Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1338 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 11, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0665.

Expiration Date: 12/31/2004.

Title: Section 64.707—Public Dissemination of Information by Providers of Operator Services.

Form No.: N/A .

Respondents: Business or other for-profit.

Estimated Annual Burden: 436 respondents; 4 hour per response (avg.); 1744 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Third Party Disclosure.

Description: 47 CFR 64.707 requires that operator services providers (OSPs), regularly publish and make available at no cost upon request from consumers written materials that describe any changes in operator services and choices available to consumers. 47 U.S.C. 226(d)(4)(B) required adoption of this rule. This requirement was a response to a widespread failure of operator service providers to provide information necessary for informed consumer choice in the marketplace. OSPs have provided this information primarily to consumers in the form of a written report that will be regularly updated at the OSP's discretion. Consumers will use this information to increase their knowledge of the choices available to them in the operator service marketplace. Obligation to respond: Mandatory

OMB Control No.: 3060–0853.

Expiration Date: 01/31/2005.

Title: Receipt of Service Confirmation Form, Adjustment of Funding Commitment, and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection.

Form No.: FCC Forms 500, 486 and 479.

Respondents: Business or other for-profit; Not-for-profit institutions.

Estimated Annual Burden: 40,000 respondents; 1.87 hour per response (avg.); 75,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Description: Section 1721 and related sections of the Children's Internet Protection Act (CIPA) provide that in order to be eligible under section 254 of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services, schools and libraries that have computers with Internet access must have in place certain Internet safety policies. FCC Forms 486, 479 and 500 are used to implement the requirements of CIPA and 47 U.S.C. section 254.

(a) FCC Form 486, Receipt of Service Confirmation Form. Schools and libraries and consortia of such entities, apply to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for discounts on telecommunications services, Internet access and internal connections, through the use of FCC Forms 470 and 471. Both Forms 470 and 471 contain certifications that guarantee that eligible entities are ordering services for eligible purposes. The applicant must also certify that it has developed a technology plan that has been approved by an authorized entity. The technology plan should demonstrate that the applicant will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use effectively the services ordered pursuant to the section 254(h) discount. 47 CFR 54.504(b)(2). FCC Form 486, which is filed after the applicant has received a Funding Commitment Decision Letter, serves several purposes: it authorizes the payment of invoices from service providers for the services indicated on the applicant's Form 471 and also indicates the approval of technology plans as required and it indicates the state of compliance with CIPA. All schools and libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure pursuant to CIPA. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet access, Internet services, and internal connections have in place certain Internet safety policies. (*Number of respondents:* 30,000; *hours per response:* 1.5 hours; *total annual burden:* 45,000 hours).

(b) FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act. All members of a consortium must submit signed certifications to the Billed Entity of each consortium in language consistent with the FCC Form 486. FCC Form 479 provides notification to a Billed Entity by of the status of the Administrative Authority's compliance for the purposes of CIPA. The billed entity will then certify on its FCC Form 486 that it has collected duly completed and signed Forms 479 from administrative authorities that the billed entity represents. (*Number of respondents:* 10,000; *hours per response:* 1.5 hours; *total annual burden:* 15,000 hours).

(c) FCC Form 500, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form. Schools and libraries and consortia of such entities which have received funding commitments from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for discounts on telecommunications services, Internet access and internal connections, must have a mechanism by which they can adjust that funding commitment or provide updated information to SLD. The Form 500, which is filed after the applicant has received a Funding Commitment Decision Letter serves the following four purposes: to adjust the Funding Year Service Start Date reported on a previously filed Form 486 for the then-current Funding Year; to adjust the Contract Expiration Date listed on a Form 471 application for the then-current Funding Year; to cancel irrevocably and totally a Funding Request Number (FRN); and/or to reduce irrevocably the amount of a Funding Request Number (FRN). (*Number of respondents:* 10,000; *hours per response:* 1.5 hours; *total annual burden:* 15,000 hours). All schools and libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet access, Internet services, and internal connections have in place certain Internet safety policies. The schools and libraries will certify using FCC Form 486. Respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service discounts must file FCC Form 486 in order to start the payment process. FCC Form 486 informs the Administrator when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named service providers. The FCC Form 486 is filed: to authorize the payment of invoices from the service provider; to indicate approval of technology plans; and to indicate the state of compliance with CIPA. The information is to ensure that services are actually being provided and that a billing relationship exists between the service provider and the applicant. Failure to file a Form 486 means that no payments may be made to a service provider (or for an applicant reimbursement, which is passed through the service provider) on the particular Funding Request Number. In addition, all members of a consortium must submit signed certifications to the Billed Entity (using a FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act) of each consortium, in language consistent with that on the FCC Form 486. Only some applicants will avail themselves of the FCC Form 500. It is available for applicants who wish to keep their information current or who wish to return funds to the Universal Service Fund. The forms and instructions may be obtained at the SLD web site, *http://www.sl.universalservice.org/*, or by contacting the SLD Client Service Bureau at 888–203–8100. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1336 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, January 23, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 24, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–20: Careau & Co. and Mohre Communications by Richard F. Carrot, President.

Civil Penalty Inflation Adjustments (11 CFR 111.24).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–1459 Filed 1–16–02; 11:22 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001:

Tate County for Public Assistance (already designated for Individual Assistance).

Coahoma and Tallahatchie Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1315 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3170–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3170–EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 31, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New York.

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resulting from record/near record snow on December 24–29, 2001, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Erie and Niagara for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1316 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3170–EM]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA–3170–EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated December 31, 2001, FEMA is extending the time period for emergency protective measures under the Public Assistance program from 48 hours to 120 hours. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1317 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Chinatrust Financial Holding Company, Ltd., Taipei, Republic of China; to acquire 100 percent of the voting shares of Chinatrust Commercial Bank, Ltd., Taipei, Republic of China, and thereby indirectly acquire voting shares of China Trust Capital A/S, Copenhagen Denmark; China Trust Capital B.V., Amsterdam, The Netherlands; and China Trust Holdings Corporation, New York, New York; and Chinatrust Bank (U.S.A.), Torrance, California.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. SinoPac Holdings, Taipei, Taiwan, R.O.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Bank SinoPac, Taipei, Taiwan, R.O.C., and thereby indirectly acquire 100 percent of the voting shares of SinoPac Bancorp, and Far East National Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, January 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1282 Filed 1–17–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0117]

Determination of Regulatory Review Period for Purposes of Patent Extension; Heart Laser System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Heart Laser System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Heart Laser System. Transmyocardial revascularization with the Heart Laser System is indicated for the treatment of patients with stable angina refractory to medical treatment and secondary to objectively demonstrated coronary artery atherosclerosis not amenable to direct coronary revascularization. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Heart Laser System (U.S. Patent No. 5,125,926) from PLC Medical Systems, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 16, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of the Heart Laser System represented the first permitted commercial marketing or use of the product. Subsequently, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Heart Laser System is 3,135 days. Of this time, 2,586 days occurred during the testing phase of the regulatory review period, while 549 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: January 21, 1990. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective on November 30, 1990. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on January 21, 1990, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: February 18, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Heart Laser System (PMA P950015) was initially submitted February 18, 1997.

3. *The date the application was approved*: August 20, 1998. FDA has verified the applicant's claim that PMA P950015 was approved on August 20, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 695 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 19, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 17, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1320 Filed 1–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the

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Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Waiver Request Worksheets (OMB No. 0915–0234)—Revision

The National Health Service Corps (NHSC) of HRSA's Bureau of Health Professions (BHPr) is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC Site Bill is sent to all sites where NHSC members have been assigned for all or part of the calendar year. The sites are billed for the full amount of the calculated costs associated with the assignee(s). The Public Health Service Act, Section 334(b) contains provisions which permit a waiver of the reimbursement requirement for entities which are assigned Corps members. The Waiver Request Worksheets are used by the NHSC to collect the necessary information from sites which are requesting a waiver to determine if such a waiver is justified.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Billing Form	1200	1	1200	.25	300
Budget Form	1200	1	1200	.75	900
Total	1200	1	2400	1.00	2400

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1283 Filed 1–17–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–4300; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provided an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Marsha Pruitt, Realty Officer, Department of Agriculture, Reporters Building, 300 7th St., SW., Rm 310B, Washington, DC 20250; (202) 720–4335; *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th St., SW, Rm 2310, Washington, DC 20590; (202) 366–4246; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C St., NW, MS5512, Washington, DC 20240; (202) 219–0728; (These are not toll-free numbers).

Dated: January 10, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Kentucky

Residence
420 Willow Street
Moorhead Co: KY 40351
Landholding Agency: Agriculture
Property Number: 15200210004
Status: Excess
Comment: 1300 sq. ft., brick

Ranger's Residence
125 Cherry Road
Berea Co: KY
Landholding Agency: Agriculture
Property Number: 15200210005
Status: Excess
Comment: 1680 sq. ft., brick, needs repair

Montana

Ranger Residence Garage
401 Manix Street
Augusta Co: Lewis & Clark MT 59422–
Landholding Agency: Agriculture
Property Number: 15200210001
Status: Excess
Comment: 372 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Ranger Residence
401 Manix Street
Augusta Co: Lewis & Clark MT
Landholding Agency: Agriculture
Property Number: 15200210002
Status: Excess
Comment: 856 & 700 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Choteau Bunkhouse
4236 Hwy 89
Choteau Co: Teton MT 59422–
Landholding Agency: Agriculture
Property Number: 15200210003
Status: Excess
Comment: 1209 sq. ft., needs repair, presence of asbestos, most recent use—bunkhouse, off-site use only

Land (by State)

New Jersey

0.27 acres
lots 3103, 3106
209 Bay Road
Ocean City Co: Cape May NJ 08226–
Landholding Agency: GSA
Property Number: 54200210003
Status: Surplus
Comment: Undeveloped land, endangered species documented
GSA Number: 1–U–NJ–645

North Carolina

4.939 acres
Staton Road
Greenville Co: Pitt NC
Landholding Agency: GSA
Property Number: 54200210002
Status: Surplus
Comment: Undeveloped land
GSA Number: 4–D–NC–738

Washington

Richland Rail R/W
East of 1335 Lee Blvd.
Richland Co: Benton WA
Landholding Agency: GSA
Property Number: 54200210005
Status: Excess
Comment: 0.59 acre, long narrow curved strip, most recent use—gravel rail bed/parking
GSA Number: 9–B–WA–1197

Unsuitable Properties

Buildings (by State)

Maryland

Bldg. #81
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210001
Status: Underutilized
Reason: Secured Area

Bldg. #85
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210002
Status: Underutilized
Reason: Secured Area

Bldg. #86
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210003
Status: Underutilized
Reason: Secured Area

Bldg. #86D
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210004
Status: Underutilized
Reason: Secured Area

Bldg. #149
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210005
Status: Underutilized
Reason: Secured Area

New Mexico

Bldg. 220, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210002
Status: Excess
Reason: Secured Area

Bldg. 222, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210003
Status: Excess
Reason: Secured Area

Bldg. 223, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210004
Status: Excess
Reason: Secured Area

Bldg. 224, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210005
Status: Excess
Reason: Secured Area

Bldg. 226, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210006
Status: Excess
Reason: Secured Area

Bldg. 1, TA–22
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210007
Status: Excess

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Reason: Secured Area; Extensive deterioration
Bldg. 25, TA–22
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210008
Status: Excess
Reason: Secured Area; Extensive deterioration

New York

Middle Marker
Wind Shear Site
31st Ave & 75th St
Jackson Heights Co: Queens NY 11434–
Landholding Agency: GSA
Property Number: 54200210004
Status: Surplus
Reason: Extensive deterioration
GSA Number: 1–U–NY–889

Washington

Dam Tenders Qtrs.
O'Sullivan Dam
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 61200210009
Status: Unutilized
Reason: Extensive deterioration
Cox Property
Road 7820
Mesa Co: Franklin WA 99343–
Landholding Agency: Interior
Property Number: 61200210010
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Land (by State)

California

1.23 acre
Delta-Mendota Canal
Bell Road
Stanislaus Co: CA
Property Number: 61200210001
Status: Underutilized
Reason: Floodway

Kentucky

64.47 acres
between airport & prison
Pine Knot Co: McCreary KY 42635–
Landholding Agency: GSA
Property Number: 54200210001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone
GSA Number: 4–J–KY–0610

[FR Doc. 02–1030 Filed 1–17–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–21901–56, F–21904–91, DOA–12]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited, for lands in Tps. 10 S., Rs. 20 and 21 W., Fairbanks Meridian, Alaska, located in the vicinity of Denali National Preserve, aggregating approximately 37,235 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 19, 2002 to file an appeal.

2. Parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Barbara Opp Waldal, (907) 271–5669.

Barbara Opp Waldal,
Land Law Examiner, Branch of ANCSA Adjudication.
[FR Doc. 02–1380 Filed 1–17–02; 8:45 am]
BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1060–JJ]

Notice of Public Meetings on the Use of Helicopters and Motorized Vehicles in Wild Horse and Burro Gather Operations

AGENCY: Bureau of Land Management, Interior; Eagle Lake Field Office, Susanville, California.

ACTION: Notice of public meetings on the use of helicopters and motorized vehicles in wild horse and burro gather operations.

SUMMARY: In accordance with 43 CFR 4740.1(b), two public meetings will be held to discuss the use of helicopters and other motorized vehicles during wild horse and burro gathering operations on public lands managed by the Bureau of Land Management's Surprise, Eagle Lake, and Alturas Field Offices.

SUPPLEMENTARY INFORMATION: The meetings will be conducted on Monday, April 15, 2002, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, California, and on Tuesday, April 15, 2002, at the Bureau of Land Management's Surprise Field Office, 602 Cressler Street, Cedarville, California. Both meetings will begin at 7 p.m. The use of helicopters and other motorized equipment in conducting wild horse and burro gathers during calendar year 2002 will be discussed and the public will be given the opportunity to submit oral or written comments during the meeting.

FOR FURTHER INFORMATION: Contact Linda Hansen, Eagle Lake Field Manager, at (530) 257–5381 0456, or Rob Jeffers, Wild Horse and Burro Specialist, Surprise Field Office, at (530) 279–6101.

Linda D. Hansen,
Field Manager.
[FR Doc. 02–1378 Filed 1–17–02; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–PE; NMNM101473]

Notice of Realty Action; Recreation and Public Purposes Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action: Recreation and Public Purposes (R&PP) Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Gadsden Independent School District (GISD), New Mexico under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). GISD proposes to use the land for an elementary school site.

T. 26 S., R. 5 E., NMPM
Section 13, part of the S1/2SE1/4NE1/4
Containing approximately 20 acres.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before March 4, 2002.

ADDRESSES: Comments should be sent to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick at the address above or at (505) 525–4454.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations.

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before March 4, 2002 , interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective March 19, 2002.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an elementary school.

Dated: October 15, 2001.
Leonard T. Brooks,
Acting Field Manager, BLM Las Cruces Field Office.
[FR Doc. 02–1383 Filed 1–17–02; 8:45 am]
BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID074–02–1430–DU 241E]

Idaho; Notice of Intent To Prepare a Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of intent to prepare a land use plan amendment and Environmental Assessment (EA) to provide for a proposed direct land sale.

SUMMARY: Pursuant to 43 CFR 1600, the Bureau of Land Management (BLM) Idaho Falls Field Office is considering an amendment to the Medicine Lodge Resource Management Plan (RMP) to provide for the possible disposal by direct sale of approximately 140 acres of public land in Madison County, Idaho.

DATES: Comments regarding the proposed plan amendment must be received on or before March 4, 2002.

ADDRESSES: Written comments should be sent to Joe Kraayenbrink, Field Manager, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the proposed plan amendment may be obtained by contacting Skip Staffel, Realty Specialist, at the above address or by calling (208) 524–7562.

SUPPLEMENTARY INFORMATION: The following described public land in Madison County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 6 N., R. 38 E.,
Sec. 26, N½SW¼ and SW¼SW¼;
Sec. 27, E½SE¼ (that portion east of the Twin Buttes Road).

The land described above contains 140 acres, more or less.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for direct sale to Madison County at fair market value. This action would provide Madison County with a site for solid waste disposal. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and environmental assessment. The following resources will be considered in preparation of the plan amendment: lands, wildlife, recreation, wilderness, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff specialists representing these resources will make up the planning team. Planning issues will include the same planning criteria originally considered for the Medicine Lodge RMP; however, issues for this amendment are expected to primarily involve the adjustment of land tenure. This action is not expected to be controversial.

No public meetings are scheduled.

Current land use planning information is available at the Idaho Falls BLM office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Dated: December 17, 2001.
Joe Kraayenbrink,
Field Manager, Idaho Falls Field Office.
[FR Doc. 02–1382 Filed 1–17–02; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–1610–DO]

Utah Bureau of Land Management Price Field Office Resource Management Plan and the Richfield Field Office Resource Management Plan; Extension of Scoping Periods.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping periods.

SUMMARY: The Price Field Office and Richfield Field Office published Notices

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of Intent to prepare Resource Management Plans (RMP) in the **Federal Register** on November 7 and November 1, 2001 respectively. These notices officially started the scoping process for each planning area.

Since that time, the public has expressed an interest in extending the scoping period for each of these plans. In order to be responsive to the public, the Utah Bureau of Land Management (BLM) hereby extends the scoping periods for both of the above mentioned plans.

Comments, including names and addresses of respondents, will be available for public review at the BLM offices listed in this notice during regular business hours. If you wish to withhold your name and or address from public review or from disclosure under the Freedom of Information Act, you must state so prominently at the beginning of your written comments.

Public notification of scoping meetings and open houses will be made in local and regional publications at least 15 days prior to the meetings being held. Meetings are expected to be held in locally affected communities as well as the Wasatch Front area.

Even though the formal scoping period ends on the dates described below, opportunities to get involved in planning are still available for all of our planning efforts. You are welcome at any time to contact our offices which are involved in planning. Our ability to consider your input will become more limited the closer we get to alternative development and analysis. These phases are expected to begin in late summer and fall of 2002.

DATES: The scoping period for the Price Field Office Resource Management Plan is extended to February 1, 2002. The scoping period for the Richfield Field Office Resource Management Plan is extended to April 1, 2002. All comments regarding issues, concerns, resource values, or considerations for alternative development are due by the dates listed above and will be summarized in a forthcoming Scoping Summary Report.

ADDRESSES: For the Richfield Field Office Resource Management Plan, written comments should be sent to RMP Comments, Bureau of Land Management, Richfield Field Office, 150 East 900 North, Richfield Utah 84701; or faxed at 1–435–896–1550. For the Price Field Office Resource Management Plan, written comments should be sent to RMP Comments, Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501; or faxed at 1–435–636–3657.

Documents pertinent to these proposals including public comment may be examined at either BLM Field Office during regular business hours; 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: If you are interested in the Price Field Office RMP, contact Floyd Johnson, Supervisory Planning Coordinator at 1–435–636–3600 or e-mail *floyd_johnson@ut.blm.gov*. If you are interested in the Richfield Field Office RMP, contact Frank Erickson, Assistant Field Manager for Planning at 1–435–896–1532 or e-mail *frank_erickson@ut.blm.gov*.

Dated: December 19, 2001.

Sally Wisely,

Utah State Director.

[FR Doc. 02–1381 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–02–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico

T. 7 N., R. 13 W., approved September 18, 2001, for Group 946 NM;

Indian Meridian, Oklahoma

T. 11 N., R. 10 E., approved September 27, 2001, for Group 74 OK;
T. 7 N., R. 14 W., approved September 18, 2001, for Group 62 OK;

Texas

Padre Island National Seashore, approved September 27, 2001, for Group 6 TX;

Amended Protraction Diagrams for

T. 15 S., R. 9 W., approved September 18, 2001, NM;
T. 16 S., R. 9 W., approved September 18, 2001, NM;
T. 17 S., R. 9 W., approved September 27, 2001, NM;
T. 16 S., R. 10 W., approved September 27, 2001, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 4, 2002.

Stephen W. Beyerlein,

Acting Chief Cadastral Surveyor, for New Mexico.

[FR Doc. 02–1384 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP02–0009]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 7 W., accepted August 15, 2001
T. 9 S., R. 3 E., accepted August 22, 2001
T. 40 S., R. 8 W., accepted September 7, 2001
T. 38 S., R. 3 W., accepted September 7, 2001

Washington

T. 17 N., R. 11 E., accepted September 7, 2001
T. 40 N., R. 34 E., accepted September 27, 2001

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, surveys, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: October 12, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–1377 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–467]

Certain Canary Yellow Self-Stick Repositionable Note Products

AGENCY: United States International Trade Commission.

ACTION: Correction notice for the subject investigation.

SUMMARY: On January 7, 2002, the Commission published in the **Federal Register** (67 FR 757) a notice of investigation in certain canary yellow self-stick repositionable note products under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The Commission gives notice of a needed correction to the above mentioned notice. The date "December 17, 2001" in the sentence following the words "Scope of Investigation" should be "December 27, 2001."

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq. (202–205–2580), U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

Issued: January 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1302 Filed 1–17–02; 8:45 am]

BILLING CODE 7020–04–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedures.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Civil Procedure, scheduled for February 4, 2002, in Dallas, Texas, has been canceled.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 14, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–1361 Filed 1–17–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, including 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America and State of Louisiana* v. *City of Baton Rouge and Parish of East Baton Rouge*, Civil Action No. 01–978–B–M–3, was lodged on November 13, 2001, with the United States District Court for the Middle District of Louisiana.

The proposed Consent Decree settles an action brought under Clean Water Act ("CWA") Section 301, 33 U.S.C. 1311, for civil penalties and injunctive relief for violations related to the publicly owned treatment works owned and operated by the City/Parish. The Consent Decree resolves all claims in the Complaint and provides for injunctive relief, a civil penalty of $729,500; a $1.125 million supplemental environmental project that will connect certain neighborhoods to the sewage treatment system; and payment $216,000 in stipulated penalties which accrued under a prior Consent Decree. The injunctive relief will require the City/Parish to implement specified projects including a 13–15 year project to improve its sewage collection system, a Sanitary Sewer Overflow Response Plan to protect the public health by responding to overflows, and an extensive preventive maintenance program.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o United States Attorneys Office, Middle District of Louisiana, 777 Florida St., Ste 208, Baton Rouge, LA 70801, Attention: John Gaupp; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States and Louisiana* v. *Baton Rouge*, No. 01–978–B–M–3 (M.D. La.), DOJ Ref. # 90–5–1–1–2769/1.

Notice of this Consent Decree was previously published at 66 FR 66931 (2001), and, that notice instructed commenters to send comments via the U.S. Postal Service to P.O. Box 7611, Washington, DC 20044–7611. Due to the

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same mail delivery problems referred to in the previous paragraph, any comments submitted pursuant to the previous notice through the U.S. Postal Service are not expected to be received in a timely manner. In order to ensure that all comments are considered, any persons who submitted comments via the U.S. Postal Service pursuant to the previous notice are advised to resubmit those comments by one of the methods specified in the previous paragraph.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Louisiana, 777 Florida St., Ste 208, Baton Rouge, LA 70801, and at the Region 6 office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check in the amount of $67.75 payable to the "U.S. Treasury" to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States and Louisiana* v. *Baton Rouge*, No. 01–978–B–M–3 (M.D. La.), DOJ Ref. # 90–5–1–2769/1.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1298 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.*, Civil Action No. 4:01CV00062, was lodged on October 30, 2001 with the United States District Court for the Western District of Virginia. The consent decree resolves the United States' claims against defendants with respect to past costs incurred in response to contamination at the First Piedmont Rock Quarry (Route 719) Site in Pittsylvania County, Virginia, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607.

Under the consent decree, defendants will pay the United States $973,095 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court. As part of the proposed settlement, defendants will receive a covenant not to sue for and contribution protection for past response costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree that were previously submitted during the original comment period. Any persons who previously submitted comments should resubmit those comments. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Natalie Katz, USEPA Region III (3RC42), 1650 Arch Street, Philadelphia, PA 19103 and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.*, DOJ # 90–11–3–07144.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, Virginia 24008 and at the Region 3 office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $4.75, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.*, DOJ # 90–11–3–07144.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1296 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Resolving U.S. v. IBP Inc. (D. Nebraska)

Notice is hereby given that the United States, on behalf of the United States Environmental Protection Agency ("EPA"), intends, on or before February 4, 2002, to move for entry of the Consent Decree lodged with the United States District Court for the District of Nebraska on October 12, 2001. This Consent Decree, together with the Partial Consent Decree for Interim Injunctive Relief previously entered in this case, will fully resolve the United States' Complaint filed on January 12, 2000, in the District of Nebraska, alleging violations by IBP, inc. [sic] ("IBP") of the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C. 1311 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*; and the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 *et seq.*, at its Dakota City Nebraska slaughterhouse facility.

Notice of the lodging of the Consent Decree was previously published in the **Federal Register** on November 15, 2001 (Volume 66, Number 221, Page 57484), triggering a thirty-day public comment period that expired on December 15, 2001. One set of comments was received during this period by facsimile transmission on December 12, 2001, from a Nebraska group called Citizens Promoting Environmental Stewardship, to which the United States will respond in connection with its motion to enter the Consent Decree. However, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, any additional public comments on the proposed Consent Decree that were timely sent to the Department of Justice in Washington, DC, by regular, first-class mail through the U.S. Postal Service, but not sent by additional means such as overnight or facsimile transmission, have not been received. This notice, therefore, is intended to advise any such commenters that their comments on the Proposed Consent Decree have not been received to date. Any previously submitted comments thus should be re-submitted by January 31, 2002, addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Howard Bunch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, Kansas 66101 and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *IBP*, DOJ Ref. #90–11–3–06517/1. Any such re-submitted comments will be evaluated and responded to prior to any final decision by the United States to move to enter the Consent Decree.

Robert E. Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1297 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: United States Department of Justice.

ACTION: Policy guidance document.

SUMMARY: The United States Department of Justice (DOJ) is republishing for additional public comment policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance was effective January 19, 2001. Comments must be submitted on or before February 19, 2002. DOJ will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; Comments may also be submitted by facsimile at 202–307–0595.

FOR FURTHER INFORMATION CONTACT: Christine Stoneman or Sebastian Aloot at the Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, DC 20530. Telephone 202–307–2222; TDD: 202–307–2678. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Justice (DOJ) ("recipients"), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOJ's longstanding position that in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

This document was originally published on January 16, 2001. See 66 FR 3834. The document was based on the policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for the Civil Rights Division issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. The Department of Justice is presently reviewing its original January 16, 2001 publication in light of these clarifications to determine whether there is a need to clarify or modify the January 16th guidance. In furtherance of those memoranda, the Department of Justice is republishing its guidance for the purpose of obtaining additional public comment.

The policy guidance includes appendices. Appendix A provides examples of how this guidance would apply to DOJ recipients. Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance. The text of the complete guidance document, including appendices, appears below.

Dated: January 15, 2002.

Ralph F. Boyd, Jr.,

Assistant Attorney General, Civil Rights Division.

I. Introduction

For most people living in the United States, English is their native language or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. If they also have limited ability to read, speak, or understand English, then these people are limited English proficient, or "LEP." For them, language can be a barrier to accessing benefits or services, understanding and exercising important rights, or understanding other information provided by federally funded programs and activities.

This guidance ("Guidance") is based on Title VI of the Civil Rights Act of 1964 and regulations that implement Title VI. Title VI was intended to eliminate barriers based on race, color, and national origin in federally assisted programs or activities. In certain circumstances, failing to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP persons is national origin discrimination. Therefore, recipients must take reasonable steps to ensure meaningful access for LEP persons.

In August, 2000, the President signed Executive Order 13166. Under that order, every federal agency that provides financial assistance to non-federal entities must create guidance on how their recipients can provide meaningful access to LEP persons and therefore comply with the longstanding Title VI law and its regulations. DOJ is issuing this Guidance to comply with the Executive Order. The guidance document is new, but Title VI's meaningful access requirement is not.

This Guidance should help recipients of Department of Justice (DOJ) financial assistance understand how to comply with the law. Recipients have a great

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deal of flexibility in determining how to comply with the meaningful access requirement, and are not required to use all of the suggested methods and options listed. As always, recipients also have the freedom to and are encouraged to go beyond mere compliance and create model programs for LEP access.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- police and sheriffs' departments
- departments of corrections
- courts
- certain nonprofit agencies with law enforcement missions

When federal funds are passed through from one recipient to a subrecipient, the subrecipient is also covered by Title VI.

The LEP persons that are eligible to be served or encountered by these recipients include, but are not limited to:

- LEP persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- LEP persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, and community members.
- LEP persons who are not in custody but are under conditions of parole or probation.
- LEP persons who encounter the court system.
- Parents and family members of the above.

Title VI applies to the entire program or activity of a recipient of DOJ assistance. That means that Title VI covers all parts of a recipient's operations. This is true even if only one part of the agency uses the federal assistance.

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections—not just the particular prison—are covered by Title VI.

Technical Assistance

DOJ plans to continue to provide assistance and guidance in this important area. For example, DOJ plans to work with representatives of law enforcement, corrections, courts, and LEP persons to identify model plans and examples of best practices and share those with recipients.

DOJ Programs and Activities

At the same time as federal agencies are creating recipient guidance, Executive Order 13166 requires that they create LEP plans for their own agencies that are consistent with the standards for recipients. Therefore, DOJ will apply the standards in this guidance to its own activities.[1]

Appendices

There are two appendices to this guidance. Appendix A provides examples of how this guidance would apply to DOJ recipients.

Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance.

Both of these appendices should be considered part of this guidance.

State or Local "English-Only" Laws

State or local "English-only" laws do not change the fact that recipients cannot discriminate in violation of Title VI. Entities in states and localities with "English-only" laws do not have to accept federal funding. However, if they do, they still have to comply with Title VI, including its prohibition against national origin discrimination by recipients.

II. How Recipients Should Decide What Language Services They Should Provide

As mentioned in Executive Order 13166 and the DOJ Guidance issued in August, 2000, recipients should apply a four-factor test to decide what steps to take to provide meaningful access to their programs and activities for LEP persons. Once the recipient has chosen the services it will provide, the recipient should prepare a written policy on language assistance for LEP persons (an "LEP policy").

A. The Four-Factor Analysis

Recipients must take reasonable steps to ensure meaningful access to their services, programs, and activities. What "reasonable steps to ensure meaningful access" means depends on a number of factors. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for LEP persons. The results of this balancing test allow a recipient to decide what documents to translate, when oral translation is necessary, and whether language services must be made immediately available.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are needed for its different types of programs or activities. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus require more in the way of language assistance.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons eligible to be served or encountered by the recipient in carrying out its operations. Recipients should look to available data, such as the latest census data for the area served, data from school systems and from community organizations, and data collected by the recipient.[2] The greater the number or proportion of LEP persons, the more likely language services are needed.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as they can, the frequency with which they have or should have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one LEP person a year may be very different than those expected from a recipient that serves several LEP persons each day. But even those that serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

[1] DOJ has created, pursuant to the Executive Order, a separate plan for providing meaningful access to LEP persons in DOJ conducted activities.

[2] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that census data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who do not speak or understand English very well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using census data, it is important to focus in on the languages spoken by those who are not proficient in English.

(3) The Nature and Importance of the Program, Activity, or Service Provided By the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ from those to provide bicycle safety courses or recreational programming. A recipient needs to determine if a denial or delay of access to services or information could have serious implications for the LEP individual. In addition, a decision by a federal, state, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of *Miranda* rights, serves as strong evidence of the program's importance.

(4) The Resources Available to the Recipient

A recipient's level of resources may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations. Large entities should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.

Applying the four factors, for example, a small police department with limited resources encountering very few LEP people has far fewer language assistance responsibilities than larger departments with more resources and large populations of LEP individuals.[3]

[3] As another example, under the four-part analysis, Title VI does not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all official state statutes or notices of rulemaking. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of official documents. These criteria, however, may result in translation obligations where, for instance, laws are otherwise posted or summarized in waiting rooms, summarized or set forth in forms, applications, or vital outreach material, or special populations are provided with rules and regulations they must follow (e.g., in prisons, *see* Appendix A).

B. Selecting Language Assistance Services

After applying the four-factor analysis, recipients have two main ways to provide language services, where needed: oral interpretation and written translation. In deciding how to provide these services, recipients should consider the following information.

(1) Oral Language Services

Where oral interpretation is needed, recipients should develop procedures for providing competent interpreters in a timely manner. To do so, the recipient should consider some or all of the following options:

Hiring Bilingual Staff for public contact positions. When particular languages are encountered often, hiring bilingual staff offers one of the best options. Recipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally translate documents, they must be competent in the skill of interpreting. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill.

Using Community Volunteers. Recipient-coordinated use of community volunteers may provide a cost-effective way to provide language services. It is often best to use community volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, must be competent in the skill of interpreting. It is best to make formal arrangements with volunteers. That way, the service is available more regularly and volunteers understand applicable confidentiality and impartiality rules.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. Although they are useful in many situations, it is important to ensure that such services have interpreters who are able to interpret any legal terms or terms that are specific to a particular program when such terms may come up in the conversation. Also, sometimes it may be necessary to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the above options they use. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.

Competency to interpret does not always mean formal certification as an interpreter. However, certification is helpful. When using interpreters, recipients should ensure that they:

- demonstrate proficiency in both English and in the other language;
- are bound to confidentiality and impartiality to the same extent the recipient employee they are interpreting for is so bound and/or to the extent their position requires;
- have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity; and
- demonstrate the ability to convey information in both languages, accurately;

Some recipients, such as courts, may have additional self-imposed requirements for interpreters.

Inappropriate Use of Family Members, Friends, Other Inmates, or Detainees. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.[4] If the LEP

[4] While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.

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person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. In emergency situations that are not reasonably foreseeable, use of interpreters not provided by the recipient may be necessary. Proper recipient planning and implementation can help avoid such situations.

(2) Translation of Written Materials

An effective LEP policy ensures that vital written materials are translated into the language of each regularly encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

The term "vital documents" includes, for example:

- consent and complaint forms
- intake forms with the potential for important consequences
- written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- notices of disciplinary action
- notices advising LEP persons of free language assistance
- prison rule books
- written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document is "vital" also depends upon the importance of the program, information, encounter, or service involved. For instance, applications for bicycle safety courses would not generally be considered vital, whereas applications for drug and alcohol counseling in prison would generally be considered vital.

Many large documents have both vital and non-vital information in them. Written translation of only the vital information is usually sufficient.

It sometimes may be hard to tell the difference between vital and non-vital documents. This may be especially true for outreach materials like brochures or other information on rights and services. In order to have meaningful access, LEP persons need to be aware of those rights and services. Of course, it would be impossible to translate every piece of outreach material into every language. However, sometimes lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, recipients should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate.

Recent technological advances have made it easier for recipients to store and share translated documents. At the same time, DOJ recognizes that recipients in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. It would be too burdensome to demand that recipients in these circumstances translate all written materials into all of those languages. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the most frequently encountered languages, and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents will be determined on a case-by-case basis, looking at the totality of the circumstances.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the DOJ recipient to meet the guidelines outlined in paragraphs (a) and (b) below.

Paragraphs (a) and (b) outline the circumstances that provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, this will be considered strong evidence of compliance, in the area of written translations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) will not necessarily mean non-compliance with Title VI. In such circumstances, DOJ reviews the totality of the circumstances to determine the recipient's obligation to provide written materials in languages other than English.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, DOJ will not find the translation of written materials necessary for compliance with Title VI. Other ways of providing meaningful access, such as effective oral interpretation of vital documents, would be acceptable under such circumstances.

Safe Harbor. DOJ will consider a recipient to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(a) The DOJ recipient provides written translations of, at a minimum, vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other vital documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed. For example, correctional facilities should ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

The term "persons eligible to be served or likely to be affected or encountered" as used in paragraph (a) relates to the issue of identifying the DOJ recipient's service area for purposes of meeting its Title VI obligation. Because of the wide variety of recipient programs and activities, there is no "one size fits all" definition of what constitutes "persons eligible to be served or likely to be affected or encountered." Generally, the term means those persons who are in the geographic area that has been approved by a federal grant agency as the service area and who are either eligible for the recipient's services or otherwise might be affected or encountered by the recipient.

Where no service area has been approved, DOJ will consider the relevant service area as that approved by

Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples of determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients need to consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Just as with oral interpreters, translators of written documents must be competent. It is a good idea to build in a "check" on the translation. For instance, an independent translator could check the first translation. Or, one translator could translate the document, and a second, independent translator could translate it back into English. This is called "back translation."

Translators should understand the expected reading level of the audience. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version. Community organizations may be able to help consider whether a document is written at a good level for the audience.

Finally, recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art, legal, or other technical concepts. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators, and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

C. Elements of Effective Written Policy on Language Assistance for LEP Persons ("LEP Policy")

After completing the four-factor analysis and deciding what language assistance services are needed, the recipient should include those in a written LEP policy. The key to providing meaningful access is accurate and effective communication between the DOJ recipient and the LEP individual.

Although DOJ recipients have a great deal of flexibility in designing their policies, effective programs usually have five elements, discussed below. Failure to take all of the steps outlined in this section does not necessarily mean that a recipient has violated the law. Just as with all Title VI complaints, DOJ assesses each complaint on a case-by-case basis. DOJ applies the four factors in deciding whether the steps taken by a recipient provide meaningful access.

(1) Identifying LEP Individuals Who Need Language Assistance

As noted above, the first two parts of the four-factor analysis of need include an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. In addition, when developing a plan, recipients should develop a process for employees to identify the language of LEP persons encountered so that language services can be provided.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. When records are normally kept of past interactions with members of the public, the language of the LEP person should be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future application of the first two factors of the four-factor analysis.

(2) Language Assistance Measures

The LEP policy should include information about the ways in which language assistance will be provided. For instance, it should include information on at least the following:

- Types of language services available (see Section IIB, above).
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff need to know that they must provide meaningful access to information and services for LEP persons. Recipients should provide training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

It is important that this training be part of the orientation for new employees and that all employees in public contact positions (or having contact with those in a recipient's custody) be properly trained. Recipients have flexibility in deciding the way the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP policy.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, the signs could state that LEP persons have a right to free language assistance. The signs should be translated into the most common languages encountered. They should explain how to get the language help.
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the right to language services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio stations about the available language assistance services and how to get them.

(5) Monitoring and Updating the LEP policy

Recipients should always consider whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they should make any needed changes. They should then provide notice of any changes in services to the LEP public and to employees. In addition, DOJ

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recipients should evaluate their entire language policy at least every three years. One way to evaluate the LEP policy is to seek feedback from the community.

In their reviews, recipients should assess changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP policy and how to implement it.
- Whether identified sources for assistance are still available and viable.

III. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the Title VI meaningful access requirement applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

A. State and Local Law Enforcement

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.

Appendix A helps recipients identify the population they should consider when deciding the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention
- Community outreach

B. Departments of Corrections

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

C. Other Types of Recipients

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/ Treatment Programs

Title VI Compliance Procedures

DOJ recipients have a great deal of flexibility in deciding how to comply with these obligations. DOJ will continue to use the same process for handling complaints based on LEP as it uses in any other Title VI complaint. That process emphasizes voluntary compliance. (*See* Appendix B for further information). In addition, DOJ will use this Guidance, including the appendices, in conducting investigations or reviews of a recipient's language services.

Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive federal financial assistance through DOJ, most of DOJ's assistance goes to law enforcement agencies, including state and local police and sheriffs' departments, and to state departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive.

The requirements of Title VI and its implementing regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. For instance, while application of the four-factor analysis may lead to a similar result, it does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than Title VI.

A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in entry into the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. LEP individuals' encounters with police and sheriffs' departments are covered by Title VI if those departments receive federal financial assistance. This Guidance focuses on the requirements under Title VI to communicate effectively with persons who are LEP to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments have available printed *Miranda* rights in languages other than English.[1] In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for assessing need and implementing a plan in compliance with Title VI and its implementing regulations.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed. The more predictable the need for language

[1] DOJ's own Federal Bureau of Investigation makes written versions of those rights available in several different languages.

services, the greater the responsibility under the four-factor analysis.

Before giving specific examples, several general points should assist law enforcement planners in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

a. Permanent Versus Seasonal Populations. In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of agricultural workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials should not limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction's demographics.

Example: A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on census data and an information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriffs' department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction's LEP population increases to over 10% of all residents. In this case, the department should consider, under the safe harbor provisions of this Guidance, translating vital written documents into Spanish. In addition, the predictability of contact during those seasons makes it important for the jurisdiction to review its oral language services to ensure meaningful access for LEP individuals.

b. Target Audiences. For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (*e.g.*, elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators, etc.). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served. The police department could then focus language services where they are most likely to be needed.

Example: A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves "Officer in the Classroom" presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should expect the frequency of contact with Vietnamese LEP individuals in general to be quite high in those areas, and it should plan accordingly.

c. Importance of Service/Information. Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in such activities as well.

d. Interpreters. Just as with other recipients, law enforcement recipients have a variety of options for providing language services. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Proper recipient planning and implementation can help avoid such situations.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations

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be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum

While all police activities are important, the Title VI analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the "reasonableness" standard, and frequency of contact and resources factors, the obligation to provide language services increases where the importance of the activity is greater, the law enforcement activity is more focused, and/or the provision of language services is more "within the control" of the police department.

Under this framework, then, critical areas for language assistance include: 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important; further, complaint forms and investigations/hearings are directly within the control of the department. Thus, forms, hearings, and other complaint procedures should be made accessible to LEP individuals. Often very important, but less focused and controlled are: routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. In these situations, the LEP plan should provide for a great deal of flexibility while at the same time ensuring that, wherever reasonable, language resources are available to officers and the LEP persons they encounter and that, when not available, the consequences to the LEP individuals are minimized. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in these activities as well. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

a. Receiving and Responding to Requests for Assistance. LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

All emergency service lines, or "911" lines, operated by agencies that receive federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have to have a plan for serving callers who are LEP, but the LEP policy and implementation may involve a telephonic language line that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

Example: A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone language line when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. Such services are consistent with Title VI principles.

b. Enforcement Stops Short of Arrest and Field Investigations. Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, *Terry* stops, and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access, for example, in routine field investigations and traffic stops. Nevertheless, the ability of law enforcement personnel to discharge fully and effectively its enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identifying or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely and common situations.

Example: A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. Consistent with the requirements of the four-factor analysis, the police department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or *Terry* stops, and similar activities designed to solicit and obtain information from the community. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide their officers with sufficient written or oral translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

Example: A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law enforcement officials could reasonably consider the adoption of a policy assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephone language line access where other options are not successful and safety and availability of phone access permit.

c. Custodial Interrogations. Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, recipients' ability to anticipate and plan for a need for language services, and the control over LEP and other individuals asserted by recipients in custodial interrogation situations, law enforcement recipients must ensure competent and free language services for LEP individuals in such situations. A clear written policy, understood and easily accessible by all officers, will assist the law enforcement agency in complying with this obligation. In formulating a written policy for effectively communicating with LEP individuals, agencies should consider whether law enforcement personnel themselves ought to serve as interpreters during custodial interrogation, or whether a qualified independent interpreter would be more appropriate.[2]

Example: A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a statement, and any communication by an LEP individual in response to a law enforcement officer. When considering whether an interpreter is qualified, the LEP policy discourages use of police officers as interpreters in interrogations except under circumstances in which the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. Such a plan is consistent with Title VI responsibilities.

d. Intake/Detention. State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is essential that law enforcement agencies have the ability to communicate effectively with an LEP arrestee. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, language lines may provide the most cost effective and efficient method of communication.

e. Community Outreach. Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor LEP analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

Example: A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. The department should take reasonable steps to make the counseling accessible to LEP individuals. In this case, the department successfully sought bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department has an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters must sign a confidentiality agreement with the department. This would be consistent with Title VI responsibilities.

Example: A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This would be consistent with Title VI responsibilities.

B. Departments of Corrections

All departments of corrections that receive federal financial assistance from DOJ must provide LEP prisoners [3] with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in translating, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Language lines may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the

[2] Some state laws prohibit police officers from serving as interpreters during custodial interrogation of suspects.

[3] In this Guidance, the terms "prisoners" or "inmates" include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students with disabilities or limited English proficiency. Because a decision by a recipient or a federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

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entity with which it contracted to provide the services itself.

2. Applying the Four Factors Along the Corrections Continuum

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline present the most critical situations under the four-factor analysis.

a. Assessment. In order to create a plan for providing language services, each department of corrections that receives federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (*e.g.*, translated written materials are of little use to a nonliterate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

b. Intake/Orientation. Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, will likely need to translate written rules, notices, and other important orientation material into Spanish, with oral instructions, whereas prisons with very few such inmates may choose to rely upon a language line or qualified community volunteers to assist.

Example: The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a language line. Each person receives at least an oral explanation of the rights, rules, and opportunities. This orientation plan would be considered consistent with Title VI.

c. Disciplinary Action. When a prisoner who is LEP is the subject of disciplinary action, the prison must provide language assistance. That assistance must ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates cannot serve as interpreters in disciplinary hearings.

d. Health and Safety. Prisons providing health services should refer to Department of Health and Human Services' guidance [4] regarding health care providers' Title VI obligations, as well as with this Guidance.

Health care services are obviously extremely important. LEP individuals must be provided with access to those services. How that access is provided depends upon the number or proportion of LEP individuals, the frequency of contact with those LEP individuals, and the resources available to the recipient. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

e. Participation Affecting Length of Sentence. If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate cannot be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) make the program accessible to the LEP inmate; or (2) waive the requirement.

Example: State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners must be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison will still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate. Another possible option would be to waive the requirement for the LEP prisoners and allow early release without this prerequisite.

f. ESL Classes. States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance prohibits or requires such mandates. ESL courses often serve as an important part of a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are provided does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

g. Community Corrections. This guidance also applies to community corrections programs that receive, directly or indirectly, federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in

[4] A copy of that guidance can be found on the HHS website at *http://www.hhs.gov/ocr/lep/* and at *http://www.usdoj.gov/crt/cor.*

the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed. Important oral communications include, for example: Interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/release orders, including conditions of parole, and victim impact statement questionnaires.

C. Other Types of Recipients

DOJ provides federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. Title VI and this Guidance apply to those entities. Examples involving some of those recipients follow:

1. Courts.

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services. At a minimum, every effort should be taken to ensure translations for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created certification procedures for interpreters. This is one way of meeting the Title VI requirement that recipients ensure competency of interpreters. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages.

Example: A state court receiving DOJ federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, state court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The state court officials also look to other existing state plans for examples of: codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. This type of assessment of need, planning, and implementation is consistent with Title VI principles.

Many individuals, while able to communicate in English to some extent, are still LEP. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved.

Example: Judges in a county court receiving federal financial assistance have adopted a *voir dire* for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with "yes" or "no." It includes questions about comfort level in English, and questions that require active responses, such as: "How did you come to court today?" etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. Such a procedure is consistent with Title VI principles.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

Example: A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu. However, a non-certified interpreter is available and has been given the standard English-language test on court processes and interpreter ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this "second check" solution is one appropriate way of ensuring meaningful access to the LEP individual.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

Example: Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These are important steps in providing meaningful access to the court for LEP individuals.

Just as corrections recipients must take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts must ensure that LEP persons have access to programs that would give them the opportunity to avoid serving a sentence at all.

Example: An LEP defendant should be given the same access to alternatives to sentencing, such as anger management and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

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Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals requires more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family and small claims courts.

Example: Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have "how to" materials in English helping unrepresented individuals negotiate the family court processes. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly and thereby benefits from the work of the urban county. Because this type of outreach material can be vital for an unrepresented person seeking access to a vital service of the court, such a translation is consistent with Title VI obligations and falls within the safe harbor. Creative solutions, such as sharing resources across jurisdictions, can help overcome serious financial concerns in areas with few resources.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion of LEP individuals in the contact population, and the frequency of such contact.

Example: A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county, which connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a language line service suffices.

2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to whom this Guidance applies.

Example: A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator should assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

3. Domestic Violence Prevention/ Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities.

Example: A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. This program is consistent with Title VI principles.

D. Framework for Creating a Model Plan

The following is an example of a framework for a model LEP policy that is potentially useful for all recipients, but is particularly appropriate for recipients serving and encountering significant and diverse LEP populations. The framework for a model plan incorporates a variety of options and methods for providing meaningful access to LEP persons. Recipients should consider some or all of these options for their plans:

- A formal written LEP policy;
- Identification and assessment of the number or proportion of LEP persons likely to be encountered through a review of census, school district, community agency, recipient and/or other data. The data will clearly be more within the control of some recipients than others. For instance, corrections facilities will likely be able to obtain accurate data more easily than police departments. Nevertheless, police departments should take reasonable steps to identify the language needs of the population they serve.
- Identification of the frequency of contact with LEP language groups.
- Identification of important information, services, and encounters that may require language services.
- Identification of resources available to provide services.
- Posting of signs in waiting areas and public entry points, in several languages, informing people what interpreter services are available and inviting them to identify themselves as needing language assistance.
- Informing LEP suspects, detainees, inmates and others potentially subject to criminal or disciplinary action of their right to language assistance.
- Use of "I speak" cards by those who encounter the public in-person, in order to identify the language an LEP person speaks.
- If a record is normally kept on encounters with individuals, noting the language of the LEP person in his or her record.
- Employing bilingual staff in public contact positions such as police officers, 911 operators, guards, etc.
- Contracting with interpreting services that can provide competent interpreters in a variety of languages in a timely manner.
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers.
- An arrangement with a telephone language interpreter line (these can be arranged by, for instance, contacting major telephone services and asking if they have language line services).
- Where certain LEP populations make up a significant number of the population in the recipient's target area and are frequently encountered by the recipient, translation of vital documents into the languages of those LEP populations.
- Notice and training to staff, particularly those with public contact, of the LEP policy and how to access language services.
- Outreach to the LEP population on available language services.
- Appointing a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

As noted, these suggestions for a model plan are particularly appropriate for larger recipients encountering significant LEP populations. However, several of these steps will help smaller recipients prepare for and provide meaningful access when LEP individuals are encountered.

For smaller recipients with few LEP encounters, identifying the most important activities is critical, and determining how to provide language services in those critical areas should be a priority. This may be as simple as accessing a commercially available language line. Plans for such recipients should include monitoring and expanding services as needed.

Appendix B—Coverage and Legal Background

A. Who Is Covered?

Title VI applies to every entity that manages or administers a program or activity receiving direct or indirect federal financial assistance from DOJ. The term "recipients," as used in this guidance, includes all covered entities. "Covered entities" include any state or local agency, private institution or organization, or any public or private individual that receives federal financial assistance from DOJ directly or through another DOJ recipient. Examples of covered entities include but are not limited to: police departments; sheriffs' departments; state departments of corrections; courts; shelters for victims of domestic violence; community corrections programs; juvenile justice programs; and nonprofit organizations with law enforcement missions. DOJ operates over eighty different grant programs that provide funding to these and other different types of non-federal entities. Many of those grants are disbursed to subrecipients, which are also covered entities.

Grants are not the only type of "federal financial assistance" to which Title VI applies. Federal financial assistance includes, but is not limited to: grants and loans of federal funds; grants or donations of federal surplus or real property; details of federal personnel; use of federal facilities; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. See 28 CFR 42.102(c). Training, equitable sharing of federally forfeited property, and use of FBI computers can also be considered federal financial assistance.[1]

In 1988, Congress clarified what constitutes a "program or activity" covered by Title VI when it enacted the Civil Rights Restoration Act of 1987 (CRRA). The CRRA provides that, in most cases, when a recipient receives federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, Title VI covers all parts of the recipient's operations, even if only one part of the agency uses the federal assistance. For example, when DOJ provides federal financial assistance to a state department of corrections to improve a particular prison facility, all of the operations of the entire department of corrections—not just the particular prison—are covered by Title VI.[2]

The Department of Justice also has jurisdiction over enforcement of the antidiscrimination provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c) (Safe Streets Act). The standards for compliance with Title VI's prohibition against national origin discrimination also apply to the prohibition against national origin discrimination by recipients of Safe Streets Act funds.

B. Legal Background and Authority

The Title VI requirement to provide meaningful access to LEP persons is not new. The Department's position with regard to written language assistance is articulated in 28 CFR 42.405(d)(1), which is contained in the DOJ Coordination Regulations, 28 CFR part 42, subpart F, issued in 1976. These regulations "govern the respective obligations of Federal agencies regarding enforcement of Title VI." 28 CFR 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau* v. *Nichols*, 414 U.S. 563 (1974). Thus, this Guidance draws its authority from Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; 28 CFR part 42, subpart C (DOJ Title VI Regulations) and the Title VI regulations of other federal agencies; 28 CFR part 42, subpart F. Further, this Guidance is issued pursuant to Executive Order 12250, reprinted at 42 U.S.C. 2000d, note; Executive Order 13166, 65 FR 50121 (August 16, 2000); and is consistent with the DOJ "Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance)," reprinted at 65 FR 50123 (August 16, 2000).

For additional background on Title VI and its methods of enforcement, see the DOJ *Title VI Legal Manual* (September, 1998); DOJ's Investigation Procedures Manual for the *Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998); DOJ Guidelines for the Enforcement of Title VI, 28 CFR 50.3; the Attorney General's "Memorandum for Heads of Departments and Agencies that Provide Federal Financial Assistance Regarding the Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964" (July 14, 1994); and the Assistant Attorney General for Civil Rights' "Policy Guidance Document: Enforcement of Title VI and Related Statutes in Block Grant-Type Programs" (January 28, 1999).[3]

1. Existing State and Local Laws

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local "English-only" laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with "English-only" laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

[1] See Appendix A to Subpart C of the Department of Justice's regulations implementing Title VI of the Civil Rights Act of 1964 (Subpart C, 28 CFR 42.101–112).

[2] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI, only funds directed to the specific entity that is out of compliance—*e.g.*, a particular prison—would be terminated. 42 U.S.C. 2000d-1.

[3] The documents referenced in this section are available for viewing or downloading at *http://www.usdoj.gov/crt/cor.*

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2. Basic Requirements Under Title VI

Title VI prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The term "program or activity" is broadly defined. 42 U.S.C. 2000d–4a.

On its face, Title VI prohibits only intentional discrimination.[4] However, virtually every federal agency, including DOJ, that grants federal financial assistance has promulgated regulations implementing Title VI. Those regulations prohibit recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 28 CFR 42.04(b)(2). The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.[5]

In *Lau* v. *Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted similar U.S. Department of Education regulations to require recipients of federal financial assistance to ensure, in appropriate circumstances, that language barriers did not exclude LEP persons from effective participation in federally assisted programs or activities. In *Lau*, a recipient provided the same services—an education provided solely in English—for a group of students who did not speak English as it did for students who did speak English. In finding for the Chinese-American students, the Court held that, under these circumstances, the school's practice violated the Title VI regulations' prohibition against discrimination on the basis of national origin. The Court observed that "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" the Title VI implementing regulations.[6]

While *Lau* arose in the educational context, its core holding—that the failure to address limited English proficiency among beneficiary classes could constitute national origin discrimination in violation of Title VI—has equal vitality with respect to any federally assisted program or activity providing services to the public.[7]

The failure to provide language assistance has significant discriminatory effects on the basis of national origin. The Department of Justice has consistently adhered to the view that these effects place the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.[8] Also, existing language barriers may reflect underlying intentional or invidious discrimination of the type prohibited directly by Title VI itself.

Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, *see Frontera* v. *Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or there is another non-pretextual "substantial legitimate justification for the challenged practice" and there is no comparably effective alternative practice with less discriminatory affects. *Elston* v. *Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993); *New York City Environmental Alliance* v. *Giuliani*, 214 F.3d 65, 72 (2nd Cir. 2000) (plaintiffs failed to show less discriminatory options available to accomplish defendant city's legitimate goal of building new housing and fostering urban renewal). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are job-related and "consistent with business necessity" and there is no equally effective "alternative employment practice" that is less discriminatory. 42 U.S.C. 2000e–2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander* v. *Choate*, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" not to take affirmative steps to provide further access.

Executive Order 13166 reaffirms and clarifies the obligation to eliminate limited English proficiency as a barrier to full and meaningful participation in federally assisted programs and activities. 65 FR 50121 (August 16, 2000). That order states, in part:

> The Federal Government is committed to improving the accessibility of * * * services to eligible [limited English proficiency] persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English* * * [E]ach Federal agency shall* * * work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries* * *. [R]ecipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.[9]

The Executive Order requires each federal agency to develop agency-specific LEP guidance for recipients of federal financial assistance. As an aid in developing this Guidance, the Executive Order incorporates the Department of Justice's Policy Guidance Document: "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency ('LEP Guidance')" issued contemporaneously with the Executive Order.[10] That general LEP Guidance "sets forth the compliance standards that recipients must follow to ensure that programs and activities they normally provide in English are accessible to LEP persons."[11] This LEP Guidance for DOJ Recipients represents the application of DOJ's general LEP Guidance to recipients of DOJ's federal financial assistance.

While the Department of Justice's Coordination Regulation, 28 CFR 42.405(d)(1),[12] expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations.

Oral communication between recipients and beneficiaries, clients, customers, wards, or other members of the public often is a necessary part of the exchange of information. In some cases, "meaningful opportunity" to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In other circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program." This Guidance provides information to recipients on how to comply with the meaningful access requirement.

D. Explanation of Title VI Compliance Procedures

This Guidance, including appendices, is not intended to be exhaustive. DOJ recipients have considerable flexibility in determining how to comply with their legal obligations in the LEP setting, and are not required to use all of the suggested methods and options listed. However, DOJ recipients must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOJ encourages recipients to document efforts to comply with the provisions of this Guidance. DOJ will make assessments on a case-by-case basis and will consider the four factors in assessing whether the steps taken by a DOJ recipient provide meaningful access.

DOJ enforces Title VI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. In addition, aggrieved individuals may seek judicial relief.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing, and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings.

DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assist recipients in exploring cost-effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient/covered entities have addressed the language needs of diverse populations.

In determining a recipient's compliance with Title VI, DOJ's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits.

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[4] *Alexander* v. *Choate*, 469 U.S. 287, 293 (1985).

[5] *Id.* at 293–294; *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642–645 (Stevens, Brennan, Blackmun, JJ.); *Lau* v. *Nichols*, 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). Further, in a July 24, 1964, Memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964, the Attorney General stated that each agency "should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."

[6] 414 U.S. at 568. Congress manifested its approval of the *Lau* decision by enacting provisions in the Education Amendments of 1974, Pub. L. 93–380, secs. 105, 204, 88 Stat. 503–512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401, *et seq.*, which provided federal financial assistance to school districts to provide language services to LEP students.

[7] For cases outside the educational context, *see, e.g., Sandoval* v. *Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed*, 197 F.3d 484,(11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied*, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98–6598–II), *petition for certiorari granted, Alexander* v. *Sandoval* 121 S. Ct. 28 (Sept. 26, 2000) (No. 99–1908) (giving drivers' license tests only in English violates Title VI); and *Pabon* v. *Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

[8] *See, e.g.*, 28 CFR 42.405(d)(1).

[9] Section 1, Executive Order 13166.

[10] LEP Guidance, 65 FR 50123.

[11] *See* Executive Order 13166 at Section 1.

[12] Section 42.405(d)(1) states: "Where a significant number or proportion of the population eligible to be served or likely to be affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public." This LEP Guidance for DOJ Recipients is intended to clarify obligations under this regulation and further obligations under Title VI to provide language services outside of the context of such written documents.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. The specify the basis hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant tot he provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1994, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitutes the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in the section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and

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supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number f the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*.

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specifiy the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–1073 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–06; Exemption Application No. D–10894, et al.]

Grant of Individual Exemptions; Brookshire Brothers, Ltd., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Brookshire Brothers, Ltd. (Brookshire) Located in Lufkin, Texas

[Prohibited Transaction Exemption 2002–06 Application No. D–10894]

Exemption

Section I. Transaction

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the establishment by Brookshire of a minimum price guarantee (the Minimum Price Guarantee) for the valuation and purchase by Brookshire of Profit Sharing Stock owned by the Brookshire Brothers Employee Stock Ownership Plan (the ESOP), provided the conditions set forth in Section II are satisfied:

Section II. Conditions

A. The ESOP shall pay no consideration, interest or other fee or expense in connection with the Minimum Price Guarantee.

B. The Minimum Price Guarantee shall expire on the first date after December 22, 1999 upon which the fair market value of a share of the Profit Sharing Stock exceeds the minimum price per share established by the Minimum Price Guarantee.

Section III. Definitions

A. The term "Brookshire" means Brookshire Brothers, Ltd., a Texas limited partnership with headquarters in Lufkin, Texas.

B. The term "Profit Sharing Plan" means the Brookshire Brothers Profit Sharing Plan, as amended and restated effective April 30, 1988.

C. The term "Profit Sharing Stock" means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on November 19, 1999.

D. The term "Minimum Price Guarantee" means the guarantee established pursuant to the ESOP whereby the value of the Profit Sharing Stock will be equal to the price of such stock prior to December 22, 1999 plus a 4% annual increase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on September 7, 2001 at 66 FR 46837.

EFFECTIVE DATE: The exemption is effective as of November 19, 1999.

Written Comments

The Department received one comment letter with respect to the Notice. The comment letter was submitted by the Applicant's legal counsel, and concerned a typographical error in the Notice. The comment stated that the Profit Sharing Stock was transferred from the Profit Sharing Plan to the ESOP on November 19, 1999, rather than December 19, 1999 as stated in the Notice. Accordingly, the Applicant noted the following corrections:

First, Section III.C. would be restated to read as follows: "The term 'Profit Sharing Stock' means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on November 19, 1999."

Second, the effective date of the exemption would be changed from December 19, 1999 to November 19, 1999.

Third, the second sentence of paragraph 3 of the Summary of Facts and Representations would read as follows: "As of November 19, 1999, the Profit Sharing Plan held approximately 600,182 shares of the common stock (the Stock) of Brookshire Brothers Holding, Inc. (Holding), Brookshire's parent company."

Finally, the first sentence of paragraph 4 of the Summary of Facts and Representations would read as follows: "On November 19, 1999, the Stock was transferred from the Profit Sharing Plan to the ESOP."

The Department concurs with the Applicant's comment and has modified the language of the final exemption accordingly.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Ford Motor Company (Ford) Located in Dearborn, Michigan

[Prohibited Transaction Exemption 2002–07; Exemption Application No. L–10937]

Exemption

The restrictions of section 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) shall not apply, effective August 4, 2000, to: (1) the receipt by the Ford-UAW Benefits Trust (the VEBA) of approximately $2.9 billion of certain securities (the Partnership Securities) pursuant to the redemption (the Redemption) by the VEBA of its interest in the Ford Enhanced Investment Partnership and the Ford Super-Enhanced Investment Partnership (collectively, the Partnerships); and (2) the transfer of the Partnership Securities by the VEBA to Ford in exchange for the transfer of approximately $2.9 billion of certain securities (the Ford-Owned Securities) to the VEBA (the Exchange), provided that the following conditions were met:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to

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the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) State Street Bank and Trust Company (SSBT), acting as an independent fiduciary on behalf the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 27, 2001 at 66 FR 49415.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–1365 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 02–08; Exemption Application No. D–10997]

Grant of Individual Exemption To Modify Prohibited Transaction Exemption 97–08 (PTE 97–08) Involving Morgan Stanley Dean Witter & Co. Incorporated (MSDW&Co) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify PTE 97–08.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which amends PTE 97–08 (62 FR 4811, January 31, 1997), an exemption granted to Morgan Stanley & Co., Incorporated (MSC), a subsidiary of MSDW&Co.

PTE 97–08 provided relief for certain securities lending, principal transactions, and extensions of credit. This exemption modifies PTE 97–08 to permit a U.S. affiliate of a foreign broker-dealer to guaranty the obligations of such broker-dealer that arise in connection with transactions described in PTE 97–08 and affects the participants and beneficiaries of certain employee benefit plans (the Plans or Plan) participating in such transactions and the fiduciaries with respect to such plans.

EFFECTIVE DATE: The amendments to PTE 97–08 are effective, as of August 25, 1995, the effective date of PTE 97–08.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 2001, the Department published in the **Federal Register**, at 66 FR 46843, a Notice of Proposed Exemption that would amend PTE 97–08. PTE 97–08 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–08 provides retroactive exemptive relief from the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for certain principal transactions between Plans and broker-dealers affiliated with MSC which are subject to British law (the MSC/UK Affiliates), the lending of securities that are assets of Plans to MSC/UK Affiliates, and any extensions of credit to Plans by MSC/UK Affiliates to permit the settlement of securities transactions or in connection with the writing of options contracts; provided certain conditions are satisfied.

The amendment was requested in an application filed on behalf of MSDW&Co, MSC, and any current and future U.K. broker-dealer affiliates of MSDW&CO and MSC, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The Notice of Proposed Exemption invited all interested persons to comment on the proposed amendment to PTE 97–08 and to request a public hearing. During the comment period, the Department received no comments and no requests for a hearing.

For further information regarding the matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10997) that the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption to modify PTE 97–08.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)of the Act and section 4975(c)(1)(E) or (F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(4) The exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the Notice of Proposed Exemption relating to PTE 97–08, as amended by the Notice of Proposed Exemption relating to this exemption, accurately describes, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department hereby amends PTE 97–08 to include in Section I an additional transaction (D), as set forth below:

Section I. Transactions

D. Effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to a guaranty given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, provided that the guaranty when given:

(a) Is in connection with one of the transactions, described in section I (A), (B), or (C) of PTE 97–08, for which the specific conditions for such transaction and all of the general conditions, as set forth in PTE 97–08 have been satisfied;

(b) Is lawful under the applicable securities laws;

(c) Is provided at no separate cost to the Plan; and

(d) Is not a prohibited transaction under section 503(b) of the Code.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 97–08, refer to the Notice of Proposed Exemption (61 FR 58237, November 13, 1996) and the Final Exemption (62 FR 4811, January 31, 1997). For a more complete statement of the facts and representations supporting the Department's decision to grant this amendment to PTE 97–08, refer to the Notice of Proposed Exemption to Modify PTE 97–08 (66 FR 46843, September 7, 2001).

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–1366 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11035, et al.]

Proposed Exemptions; Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No._____, stated

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in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Application No. D–11035]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 below; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.[1]

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which, as of December 31, 2000, had assets totaling $3,261,663. As of the same date, the Plan had forty-one (41) participants. Richard L. Smart (Mr. Smart), S. Ray West, Jr. (Mr. West), Lee Smart (Lee) and Roger Smart (Roger) are participants in and are the Advisory Committee of the Plan. Smart Chevrolet Company (the Employer) is the sponsor of the Plan. The Employer sells new and used automobiles in the Pine Bluff, Arkansas area. As of December 31, 2000, the Employer had a net worth of $5,260,199. Mr. Smart is the president of and a shareholder in the Employer.

2. Motors is engaged in financing the purchase of new and used automobiles sold by the Employer to its customers. The net worth of Motors, as of December 31, 2000, was $300,000. Certain of the principal owners of the Employer are also partners in Motors. Mr. Smart is a five percent (5%) managing partner in Motors. Meredith S. Maxwell, Felix Smart, Lee, Roger and Mr. West each own a fifteen percent (15%) partnership interest in Motors. The collective net worth of the partners of Motors, as of December 31, 2000, was $11,700,000. The net worth of the partners of Motors includes their respective interests in Motors, in the Employer, and in certain notes payable to its partners by Motors.

3. The current trustee of the Plan is Pine Bluff National Trust Department (the Trustee), successor in interest to Boatmen's Trust Company of Arkansas (Boatmen's), the trustee at the time Prohibited Transaction Exemption (PTE) 97–52 (see rep. 4, below) was granted. Pine Bluff National Bank (PBNB) is the parent corporation of the Trustee, and participates in a line of credit to supply Motors with operating funds of from $100,000 to $200,000 daily.

4. On July 8, 1985, the Department granted an exemption (PTE 85–121, 50 FR 27863) which permitted for a period of seven (7) years beginning July 8, 1985, certain Loans to Motors by two employee benefit plans (the Plans) then sponsored by the Employer, and to the guaranty of such Loans by the Employer and the individual partners of Motors. Subsequent to the grant of PTE 85–121, the Smart Chevrolet Employees Retirement Plan, one of the Plans which participated in the exemption for PTE 85–121, was merged into the Plan.[2] On June 17, 1992, the Department granted an exemption (PTE 92–43, 57 FR 27073) which permitted, for a period of five (5) years, certain Loans by the Plan to Motors. On September 16, 1997, the Department granted an exemption (PTE 97–52, 62 FR 48673) extending PTE 92–43 for a period of five years, thus permitting certain Loans by the Plan to Motors for an additional five-year period.

It is represented that under the three prior exemptions Motors has made all payments on the Loans in a timely manner and has never defaulted on any of the Loans made by the Plans. As a result of such Loans made pursuant to PTE 97–52, the Plan received an interest rate of between 6.50% to 8.00%, depending on the Federal Discount Rate in effect at the time such Loans were executed. Further, though the principal balance of these Loans has varied from time to time, the terms and conditions of each of the Loans complied with the requirements set forth in the exemptions. The aggregate fair market value of these Loans by the Plan to Motors, as of the most recent annual report, was $486,224, which represented 14.91% of the fair market value of the total assets of the Plan. The applicant, herein, is requesting another exemption which will permit the continuation of such Loans for a period of five (5) years beginning on the date of the grant of this proposed exemption. The applicant has represented that with respect to Loans made pursuant to the exemption proposed herein, the Loans will not exceed 15% of aggregate Plan assets.

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] All references in this Summary of Fact and Representations to the Plan will, if applicable, include both Plans prior to the merger unless the context clearly dictates otherwise.

5. Jess P. Walt (Mr. Walt), who served as the Plan's independent fiduciary for purposes of the transactions exempted by PTE 97–52, has agreed to continue to serve as the independent fiduciary. Mr. Walt, who is a banker, represents that he is independent in that none of the partners of Motors, or the stockholders, officers, or directors of the Employer are officers or directors of the bank where Mr. Walt is employed, the First National Bank of Altheimer, Arkansas (the Bank). In addition, Mr. Walt represents that none of these persons are stockholders of the Bank, except Felix Smart, who owns 35 of the 7,500 outstanding shares, which represent a .47% ownership percentage of the Bank. It is represented that the partners of Motors, the Employer and its officers, directors, and shareholders do not have any loans or accounts outstanding at the Bank. Further, the Bank represents that it does not participate in the line of credit extended to Motors by PBNB.

Mr. Walt represents that he is qualified to act on behalf of the Plan in that he, as a Bank officer, has been involved for many years in making automobile installment loans and evaluating credit and collateral considerations related to such loans. Mr. Walt also represents that he is knowledgeable in selecting appropriate rates of return on short term investments and will be continuously aware of the fluctuations in short term interest rates and the alternative low risk short term investments that would be available to the Plan.

6. Mr. Walt will accept fiduciary responsibility with respect to the proposed transactions. In this regard, Mr. Walt will be responsible for determining whether it is advisable for the Plan to enter into the Loans and the Guaranty which are the subject of this proposed exemption and to continue to participate in such transactions, taking into account the rate of return of such investment and the liquidity and diversification of the Plan.

It is represented that Mr. Walt will approve Loans in an amount not to exceed fifteen percent (15%) of the assets of the Plan, provided that all of the terms and conditions described herein are met.[3] All Loans will have a maturity of ninety (90) days and will bear interest at a rate which is two percentage points above the Federal Discount Rate. Mr. Walt represents that such interest rate reflects the prevailing fair market interest rate on comparable short-term investments. Mr. Walt represents that he will receive copies of all the promissory notes evidencing the Loans in order to insure that the interest rate is two percent (2%) above the Federal Discount Rate. If at any time a rate of two percentage points above the Federal Discount Rate is not reflective of the prevailing fair market rate of return on comparable ninety (90) day investments, Mr. Walt indicates that the Loans should be liquidated at the next maturity date, or the yield on such Loans be increased to the then prevailing fair market rate.

The Loans will be secured by all of the installment sale contracts (the Contracts) of Motors. As of December 31, 2000, Motors had 1,098 outstanding Contracts totaling $10,530,000, with an average balance of $9,590 per Contract. Mr. Walt has represented that he will examine the security agreement and financing statements with regard to the Contracts and will ascertain that the Plan's security interest in all of the Contracts is properly executed, and that such security interest is perfected by properly filed financing statements in conformity with the applicable Uniform Commercial Code (UCC) provisions, as adopted in Arkansas. It is represented that Mr. Walt, through a combination of monthly reports from PBNB and monthly Certification of Compliance Statements signed by Mr. Smart, will insure that at all times the aggregate face value of the Contracts equals at least 200% of the total outstanding balance of the Loans. It is further represented that if at the end of any month the report from the Trustee indicates that the aggregate face value of the Contracts does not equal at least 200% of the total outstanding balance of the Loans, Mr. Walt will direct Motors to pay the Plan an amount sufficient to bring the Loans into compliance with the 200% collateral requirement.

Mr. Walt, on behalf of the Plan, has accepted the commitment of the Employer and Motors that the Contracts will conform to the following loan policy guidelines: (a) A complete credit history will be performed for each customer; (b) a customer's credit history will be analyzed together with the customer's equity and the terms of the Loan; (c) depending on the use of the vehicle, a customer equity of from 10% to 30% will be required; (d) with an extension of six months available in circumstances of minimal vehicle use, the maximum term of any of the Contracts will be 60 months on new and current year used vehicles, 54 months, 42 months, 42 months, 36 months, and 24 months, respectively, on one, two, three, four, and five-year old vehicles; (e) prior to closing on any Contracts, a written certificate of insurance from an insurance agent will be required showing that the automobile is covered for physical damage with no more than a $250 deductible; (f) such insurance coverage includes fire, theft, and other perils and shows Motors as loss payee; and (g) Motors will employ a full time collector and strict management supervision will be maintained daily over collections.

Motors has represented that if, at any time, it changes the above-described loan policy guidelines it will notify Mr. Walt. Therefore, it is the responsibility of Mr. Walt to determine whether such changes materially affect the value of the Contracts. Mr. Walt represents that if the value of the Contracts is materially affected, such Contracts will be excluded from the collateral which secures the Loans by the Plan to Motors.

The Loans will also be secured by the Guaranty of the partners of Motors. In this regard, the partners of Motors have executed a blanket Guaranty in order to satisfy the requirements of PTE's 92–43 and 97–52. Mr. Walt is responsible for ascertaining that any Loans entered by the Plan pursuant to this proposed exemption are also covered by this blanket Guaranty or, if necessary, a new Guaranty will be executed. In addition, it is represented that all of the partners in Motors are jointly and severally liable for the debts of the partnership, specifically including the Loans.

It is represented that from time to time in order to secure its line of credit to Motors, PBNB may take a security interest in the Contracts. However, it is represented that such security interest will be at all times subordinated to 200% of the indebtedness of Motors to the Plan. Further, it is represented that other notes payable from Motors to its partners will be subordinated to the Loans. As of December 31, 2000, a total amount of $4,994,560 was due to the partners of Motors under the terms of the notes, but such amount was subordinated to the indebtedness of Motors to the Plans.

[3] PTE's 85–121 and 92–43 permitted the Plan to invest up to 25% of its assets in these Loans. PTE 97–52 limited the Plan's investment in these Loans to no more than 15% of the Plan's assets. The applicant has represented that no more than 15% of the Plan's assets will be invested in the Loans under the exemption proposed herein.

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In addition, it is represented that all of the Contracts provide Motors with recourse against the Employer for the amount of any defaulted Contracts. In this regard, should there be defaults on any of the Contracts, it is represented that the Employer will repurchase such Contracts from Motors after giving legal notice to the customer under Arkansas law. Once the Employer repurchases any defaulted Contracts, the Employer, not Motors, will repossess the vehicles. The Employer has informed the Department that for 1999 and 2000, the average number of Contracts equaled 1,100. Of these Contracts, twenty-one (21) vehicles were repossessed in 1999 and forty-six (46) vehicles were repossessed in 2000. The Employer maintains that defaults and repossessions constitute a very small percentage of the total number of Contracts outstanding at any time.

In addition to the responsibilities outlined above, Mr. Walt is responsible for monitoring Motors' compliance with the terms of the Loans and the Guaranty. In this regard, Mr. Walt has reviewed certain monthly reports (the Monthly Reports) which have been furnished by PBNB and by Boatmen's, the trustee at the time PTE 97–52 was granted. Mr. Walt represents that such Monthly Reports are appropriate for the purposes of monitoring the proposed transactions. If this proposed exemption is granted, it is represented that similar Monthly Reports will be provided to Mr. Walt and will be reviewed monthly by Mr. Walt, or more frequently as Mr. Walt determines is necessary.

In addition, Mr. Walt is responsible for receiving and reviewing the monthly financial statements for Motors and for the Employer and annual financial statements of the partners of Motors. Mr. Walt represents that this information will assist him in monitoring the credit-worthiness of the Employer and Motors. If there are any material decreases in the net worth of any of the parties involved, it is represented that Mr. Walt will liquidate the Loans at the next maturity date. In this regard, Mr. Walt represents that he places the most significance on the ability of the Employer to repurchase any of the Contracts that are in default and considers the net worth of the partners of Motors to be a secondary source of protection for the Plan. Mr. Walt further represents that if, in reviewing the monthly financial statements of the Employer, he determines that a decrease in the net worth of the Employer has impaired the Employer's ability to repurchase any of the Contracts, he will carefully review the aggregate net worth of the partners of Motors. After such review, if he determines, based on his banking experience, judgment, and other factors, that the Plan is not properly protected, Mr. Walt will instruct the Trustee to liquidate the Loans at the next maturity date. In the event of a default by Motors on the Loans, Mr. Walt will be responsible for taking all necessary steps to protect the Plan and for enforcing all of the rights of the Plan, including pursuing the partners of Motors under the terms of the Guaranty.

In the opinion of Mr. Walt, the terms and conditions of the Loans and Guaranty are based on arm's-length considerations. After reviewing the proposed transactions, Mr. Walt represents that he would make the Loans, on behalf of the Bank, under the same terms to Motors. In conclusion, Mr. Walt has determined that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries for the following reasons: (a) The Loans by the Plan to Motors are well collateralized; (b) the risk of loss to the Plan is almost non-existent; (c) the ninety (90) day maturity of the Loans will enable the Plan to shift its investments from the Loans in a short period of time, if necessary, to provide liquidity to the Plan; (d) the yield to the Plan is expected to be approximately 200 basis points greater than that of a ninety (90) day bank certificate of deposit; (e) the rate of return, which will be at all times two percentage points above the Federal Discount Rate, prevents the Plan from becoming locked into a below market interest rate and insures a favorable rate on a continuing basis; and (f) administration of the proposed transactions should generate less expense than that of other investments.

7. The applicant maintains that the wide diversity of customers executing the Contracts significantly spreads the risk to the Plan. Further, the Employer will bear all costs of filing the application for exemption, providing notice to interested persons, and paying for the services rendered by Mr. Walt, as independent fiduciary to the Plan. In the event that it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Walt, the applicant will notify the Department at least sixty (60) days in advance of such appointment. The applicant states that the successor will be independent and will possess comparable experience and responsibilities as those of Mr. Walt. In addition, it is represented that throughout the five (5) year duration of this proposed exemption, the Plan will not pay any fees or other expenses in connection with the proposed transactions.

8. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act because, among other things: (a) Mr. Walt, the independent fiduciary of the Plan, has agreed to review, approve, and monitor the terms and conditions of the Loans and the Guaranty; (b) Mr. Walt has represented that the Loans will be in the best interest of the participants and beneficiaries of the Plan; (c) the Loans will be short-term loans limited to no more than 15% of the total assets of the Plan; (d) the Loans will be adequately secured by a perfected security interest in the Contracts, through properly filed financing statements in conformity with the UCC provisions adopted in Arkansas; (f) the face amount of the Contracts will at all times exceed 200% of the total amount of the Loans; (g) the Loans are guaranteed by the partners of Motors; (h) the terms of the Contracts provide Motors with recourse to the Employer in the event of a default on any of the Contracts; and (i) the Plan will receive a return on the Loans of at least two percentage points above the Federal Discount Rate which is represented to be the prevailing fair market rate of return on comparable short-term investments.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll free number.)

Prudential Insurance Company of America (Prudential Insurance) and Its Affiliates (collectively, Prudential) Located in Newark, NJ

[Application No. D–11051]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[4]

Section I. Exemption for the Acquisition, Holding and Disposition of Prudential Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and

[4] For purposes of this proposed exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

(E) of the Code, shall not apply, effective December 13, 2001, to the acquisition, holding and disposition of common stock issued by Prudential Financial, Inc. (the Prudential Financial Stock) and/or common stock issued by a Prudential affiliate (the Prudential Affiliate Stock; together, the Prudential Stock), by Index and Model-Driven Funds that are managed by Prudential, in which client plans of Prudential invest, provided that the following conditions and the General Conditions of Section II are met:

(a) The acquisition or disposition of Prudential Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) Whenever Prudential Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k) below), (ii) through an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (the SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section III(j) below) that is operated by a recognized U.S. securities exchange (as defined in Section III(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints a fiduciary which is independent of Prudential to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model pursuant to the restrictions described in Section I(b) above, all aggregate daily purchases of Prudential Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Prudential Stock not otherwise described above in Section I(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section III(k) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Prudential (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of Prudential Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Prudential.

(g) Prudential Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of Prudential authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the Prudential directs the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Section II. General Conditions

(a) Prudential maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Prudential, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Prudential shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by

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section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section II and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section II(b)(1) shall be authorized to examine trade secrets of Prudential or commercial or financial information which is considered confidential.

Section III. Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section III(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which Prudential does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Prudential, to transform an independently maintained Index, as described in Section III(c) below;

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Prudential or any party in which Prudential may have an interest.

(c) The term "Index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of Prudential; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of Prudential.

(d) The term "opening date" means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term "Buy-up" means an acquisition of Prudential Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term "Prudential" refers to Prudential Insurance Company of America, its indirect parent and holding company, Prudential Financial, and any current or future affiliates, as defined below in paragraph (h).

(g) The term "Prudential Financial" refers to Prudential Financial, Inc., the indirect parent and holding company of Prudential Insurance Company of America.

(h) An "affiliate" of Prudential includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term "automated trading system" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an "automated quotation system" as described in section 3(a)(51)(A)(ii) of the 1934 Act [15 USC 8c(a)(51)(A) (ii)].

(k) The term "recognized U.S. securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under section 6 of the 1934 Act (15 USC 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR part 240.3b–16).

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of December 13, 2001.

Summary of Facts and Representations

1. Prudential Insurance is a stock life insurance company, which converted from a mutual life insurance company on December 18, 2001. Prudential Insurance is organized under the laws of the State of New Jersey. Its principal place of business is located at Prudential Plaza, Newark, New Jersey. Prudential Insurance is licensed to conduct the insurance business in all 50 states comprising the United States, as well as in the District of Columbia.

As of June 30, 2001, Prudential Insurance had $21.7 billion in total equity and $303.1 billion in total assets.

Also as of that date, Prudential Insurance had—

- Total assets under management and administration of $605.8 billion, consisting of total assets under management (including assets in general and separate accounts) of approximately $393.5 billion, and additional assets in securities brokerage and bank custodial accounts and other assets under administration of $212.3 billion.
- Total gross life insurance in force in the United States of $1.3 trillion (including individual and group insurance), and
- Total gross life insurance in force in Japan and other countries outside the United States of $508.2 billion (including individual and group insurance).

As of December 31, 2000 (the latest date for which such information is available), Prudential Insurance had the third largest individual life insurance business in the United States in terms of statutory in force premiums and in terms of total gross life insurance in force in the United States according to A.M. Best.

2. Prudential Insurance's principal products include individual and group life insurance contracts, endowment contracts, insurance contracts, annuities, including tax deferred annuities described in section 403(b) of the Code and individual retirement annuities described in section 408(b) of the Code, and a wide variety of pension contracts. Additionally, Prudential Insurance has a number of affiliates that provide financial services and products, including investment management, brokerage, and mutual funds, as well as real estate services. Prudential Insurance and its affiliates (together, Prudential) provide fiduciary and other services to "employee benefit plans" described in section 3(3) of the Act and to other plans described in section 4975(e)(1) of the Code.

As a mutual life insurance company, Prudential Insurance had no authorized, issued, or outstanding stock. Instead, policyholders of a mutual insurance company are both customers and owners of the company. Specifically, the life insurance, endowment, annuity, and certain other insurance and pension plan contracts issued by Prudential Insurance combined both insurance coverage and proprietary rights, so-called "membership interests."

Prudential Insurance demutualized on December 18, 2001. The company's Board of Directors, its policyholders, and the New Jersey Department of Banking and Insurance approved the proposed Plan of Reorganization prior to the demutualization. Following the demutualization of Prudential Insurance and the simultaneous corporate reorganizations of its affiliates, Prudential Insurance and its affiliates are now owned indirectly by Prudential Financial, a holding company, the common stock of which (i.e., Prudential Financial Stock) is publicly traded, as is or may be certain of its debt or other securities. In connection with the demutualization, Prudential Insurance is distributing Prudential Financial Stock, cash and policy credits to eligible policyholders in exchange for their membership interests. Demutualization, registration of the Prudential Financial Stock and other Prudential securities under federal securities laws, an initial public offering of Prudential Financial Stock and its listing on the New York Stock Exchange took place during December 2001.[5]

3. Prudential Insurance and certain of its affiliates, including Prudential Investment Management, Inc., and Jennison Associates Capital Corporation, offer asset management and investment advisory services, insurance, securities brokerage and other types of financial services, as well as trust services, to ERISA-covered plans. Among the services offered are investment management or advisory services for investment accounts of ERISA-covered plans. These investment accounts may be structured as pooled and single client insurance company separate accounts, single client bank trust accounts and bank collective investment trust accounts in which employee benefit plans have invested. In some cases, the trust accounts will be maintained with a Prudential Insurance affiliate as trustee, while in other cases, the Prudential Insurance affiliated investment manager will direct investment of assets held by an unrelated trustee.

4. Prudential Insurance and its affiliates act as investment managers of institutional accounts, including those of employee benefit plans. As of June 30, 2001, the asset management units of Prudential managed approximately $300 billion of Prudential's $394 billion of total assets under management, as follows:

- $100 billion of retail customer assets, including mutual funds and variable insurance and variable annuity products;
- $91 billion of institutional customer assets; and
- $109 billion of insurance company general account assets.

In providing investment management services with respect to the assets of plans, Prudential is a "fiduciary" of plans, as defined in section 3(21) of the Act and a "party in interest," as defined in section 3(14)(A) and (B). Although it acts as an investment manager for the accounts, amounts invested in Prudential accounts are made at the direction of an independent plan fiduciary or by plan participants who have the ability to direct investments for their own plan accounts.[6]

5. Among the types of investment products and services Prudential provides to plans are Index and Model-Driven Funds. An Index Fund is an investment portfolio which may be, or form part of,[7] a single client trust account, a pooled or single client insurance company separate account, or a bank collective trust, with the investment objective of replicating the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively-managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indexes rather than according to active decisionmaking on the basis of fundamental research on the valuation and prospects of the securities in which the portfolio invests. Plan fiduciaries often favor Index Funds because (a) their risks and returns tend to mirror an established market index, (b) they offer broad diversification within the asset class and strategy represented by the index, and (c) they are extremely competitive in fees and expenses.

A Model-Driven Fund is an investment portfolio which may be, or

[5] With respect to the demutualization, Prudential Insurance has requested an administrative exemption from the Department. On September 27, 2001, a notice of proposed exemption was published in the **Federal Register** at 66 FR 49408.

[6] For a relatively few plan clients, Prudential has discretionary asset management authority to allocate a plan's assets among several approved investment accounts, subject to investment guidelines. In those cases, the plan's fiduciary, who is independent of Prudential, decides whether or not the plan will be permitted to invest in a particular account, including the Index or Model-Driven Funds described herein, and agrees to the particular investment guidelines used for the allocation among the approved accounts.

[7] In some cases, an Index or Model-Driven Fund may be a discrete portfolio of equity securities that is part of a larger investment fund. For example, an Index Fund may be a component of a balanced investment fund that includes both a portfolio of equities and a portfolio of debt securities and the entire balanced fund constitutes one insurance company separate account or bank trust account. Financial institutions commonly offer balanced investment funds because they offer plan fiduciaries and participants the advantage of diversifying investments across equities and bonds through a single investment.

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form part of, a single client trust account, a pooled or single client insurance company separate account, or a bank collective trust, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of individual securities in which a portfolio may invest. An example of a Model-Driven Fund would include a fund which transforms an index, making investments according to a computer model which uses quantitative data as earnings, dividends and price to earnings ratios for common stocks included in the index with the goal of exceeding the investment returns achieved by the index.

Prudential represents that the process it uses for the establishment and operation of all Model-Driven Funds is disciplined and consistent with the quantitative nature of such funds. In this regard, objective rules are established for each model as part of the computer programming for the model. Once established, these computer programs are rarely changed. The data used by the programs are updated regularly by the electronic feeds of the quantitative information (e.g., changes in corporate earnings) necessary for analysis. The computer models generally cannot be overriden in the management of the portfolios except in the event of errors or questionable data from the usual sources of data input. For example, errors in data transmission may cause an unwarranted direction by the model to sell a security due to an erroneously low valuation for the security on a given day, or public notice of the SEC. In addition, allegations of accounting improprieties in the issuer's financial statements may cause a portfolio manager to override the model with respect to a direction by the model to buy that security, because the issuer's quantitative data used for the model may be drawn from the financial statements of the issuer of the security. Such exceptions are rare and must be justified on a case-by-case basis. Prudential represents, however, that it will not exercise any discretion to override the computer model with respect to the acquisition, holding or disposition of Prudential Stock. Such transactions will always follow the output of the relevant computer model.

6. Prudential currently offers a number of Funds that are invested according to the criteria of various third party indexes or are model-driven based on such indexes. These indexes are compiled by financial information agencies that are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. For example, Prudential offers some Funds that track the Wilshire 5000 Total Market Index,[8] the Russell 2000 Index,[9] and the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).[10] In each instance, the indexes are compiled by organizations that are independent of Prudential and are generally-accepted standardized indexes of securities that are not tailored for the use of Prudential.

7. On or after the effective date of Prudential Insurance's demutualization and initial public offering of Prudential Financial Stock, Prudential Insurance represents that the indexes employed by Index and Model-Driven Funds may include Prudential Financial Stock and/or Prudential Affiliate Stock. Prudential represents that the ability of all Funds to invest in Prudential Stock, when that stock is included in an index, is necessary to ensure tracking of the indexes. In addition, the ability of the Model-Driven Funds to invest in Prudential Stock, when that stock is included in the index on which the model is based, avoids disruption to the computer modeling that is designed to transform the index in the manner approved by plans when the investment in the Model-Driven Fund is authorized.

8. Accordingly, Prudential Insurance requests an administrative exemption from the Department. If granted, the exemption will permit Prudential Insurance and its current and future affiliates to maintain individual and pooled separate accounts, collective trusts, and single client trusts that hold Prudential Stock, provided certain conditions enumerated in the operative language of the exemption are met.

Specifically, the exemption will allow Index and Model-Driven Funds which are managed by Prudential Insurance or its affiliates, in which client plans of Prudential participate, to invest in Prudential Stock if such stock is included among the securities listed in the index utilized by the Fund. Prudential Insurance is not requesting, nor is the Department providing, administrative exemptive relief herein for plans sponsored by Prudential. Prudential believes that investments on behalf of its in house plans in Index and Model-Driven Funds have been made (and will be made) in accordance with the statutory exemption provided under section 408(e) of the Act.[11] Therefore, the subject exemption will apply to client plans of Prudential only. With respect to Prudential client plans, Prudential Insurance states that plan fiduciaries which are independent of Prudential have authorized or will authorize the investment of a plan's assets in an Index or Model-Driven Fund which acquires, holds, or disposes of Prudential Stock pursuant to procedures described herein.

Prudential Insurance requests that the proposed exemption be made effective as of December 13, 2001, which is the initial public offering date for Prudential Financial Stock as well as the date such stock commenced trading on the New York Stock Exchange. Prudential Insurance states that any exemptive relief for cross-trades of securities, including Prudential Stock, by Index and Model-Driven Funds maintained by it should be considered separately.[12]

9. Prudential Insurance states that the proposed exemption is necessary to allow Funds holding plan assets to purchase and hold Prudential Stock in order to replicate, properly, the capitalization-weighted or other specified composition of Prudential Stock in an independently-maintained,

[8] The Wilshire 5000 Total Market Index was established and is maintained by Wilshire Associates Incorporated, which is not an affiliate of Prudential. The Wilshire 5000 Total Market Index is a market weighted index of returns of over 6,500 U.S. stocks with readily available price data. It is the broadest U.S. equity index available and reflects the performance of the organized securities exchanges as well as the Over the Counter markets.

[9] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of Prudential. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly-trated stocks of U.S. domiciled corporations, identified by the Frank Russell Company, and includes large, medium and small stocks.

[10] The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange and the NASDAQ National Market System. The S&P 500 Index is a market-weighted index (i.e., shares outstanding times the stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

[11] The Department is not providing an opinion in this proposed exemption on whether the conditions of section 408(e) of the Act have been or will be met for such transactions.

[12] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.

In addition, Prudential Insurance represents that when Prudential Stock is added to an index on which a Fund is based, or when Prudential Stock is added to the portfolio of a Fund which tracks an index that includes Prudential Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of Prudential to its capitalization or other specified weighting in the applicable index,[13] will comply with conditions (see Section I(b)(1)–(7) above) that are designed to prevent possible market price manipulation and which are based, in part, on the restrictions of SEC Rule 10b–18.[14]

The conditions required for a "Buy-up" of Prudential Stock are as follows:

- Purchases are from, or through, only one broker or dealer on a single trading day;
- Based on the best available information, purchases are not the opening transaction for the trading day;
- Purchases are not be effected in the last half hour before the scheduled close of the trading day;
- Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;
- Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;
- All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange [as defined in Section III(k)], (ii) through an automated trading system [as defined in Section III(j)] operated by a broker-dealer independent of Prudential that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system [as defined in Section III(j)] that is operated by a recognized U.S. securities exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and
- If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints an independent fiduciary to design acquisition procedures and monitor compliance with such procedures.

10. Prudential Insurance states that, if an independent fiduciary is required, such independent fiduciary and its principals will be parties completely unrelated to Prudential. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third party indexes. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Prudential Stock and will not receive any consideration as a result of the initial acquisition program.

As its primary goal, the independent fiduciary will develop trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. Thus, Prudential Insurance believes that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low profile, mechanical, non-discretionary manner and involve a number of small purchases over the course of each day, randomly-timed. Prudential Insurance further believes that such a program will allow Prudential to acquire the necessary shares of Prudential Stock for the Funds with minimum impact on the market and in a manner that is in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor compliance with the trading program and procedures developed for the initial acquisition of Prudential Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify Prudential should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with Prudential and must approve in advance any alteration of the trading procedures.

11. Subsequent to the initial acquisitions necessary to bring a Fund's holdings of Prudential Stock to their specified weightings in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Prudential Stock by the Funds will not exceed on any particular day the greater of—

- 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or
- 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

12. Prudential Insurance represents that all transactions by the Funds involving Prudential Stock which do not occur in connection with a Buy-up of such stock by a Fund, as described above, will be either (a) entered into on a principal basis in a direct arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) effected on an automated trading system (as defined in Section III(j) of the proposed exemption) operated by a broker-dealer independent of Prudential that is either registered under the 1934 Act, and thereby subject to regulation by the SEC or another applicable regulatory agency, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III (k)) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (c) through a recognized U.S. securities exchange (as defined in Section III(k)),

[13] These instances are referred to herein as a "Buy-up." Prudential Insurance believes that acquisitions of Prudential by an Index or Model-Driven Fund in a "Buy-up" will occur within 10 business days from the date of the event which causes the particular Fund to acquire Prudential. Prudential does not believe that the amounts of Prudential acquired by a Fund in a "Buy-up" will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any "Buy-up" of Prudential.

[14] SEC Rule 10b–18 provides a "safe harbor" for issuers of securities from section 9(a)(2) of the 1934 Act and SEC Rule 10b–5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

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so long as the broker is acting on an agency basis.[15]

13. Prudential Insurance represents that all acquisitions, holdings, and dispositions of Prudential Stock by Index or Model-Driven Funds maintained by Prudential will also not involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund (unless the transaction by the Fund with such party in interest is otherwise subject to an exemption).[16]

14. Prudential Insurance represents that no more than 5 percent of the total outstanding shares of Prudential will be held in the aggregate by the Index or Model-Driven Funds managed by Prudential. In addition, for purposes of acquisitions, holdings and dispositions of Prudential Stock by the Funds, Prudential Insurance states that such stock will not constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based. Therefore, Prudential Insurance requests that the proposed exemption allow Prudential to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track any index that contains Prudential Stock, or which transforms such an index in a fashion prescribed by the model, as long as the Prudential Stock does not constitute more than 5 percent of the index.

With respect to an index's specified composition of particular stocks in its portfolio, Prudential Insurance states that future Funds may track an index where the selection of a particular stock by the index and the amount of stock to be included in the index is not based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Prudential Insurance requests that the exemption allow for Prudential Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. In addition, Prudential Insurance represents that, in all instances, the acquisition, holding or disposition of Prudential Stock by a Fund is for the sole purpose of maintaining quantitative conformity with the relevant index upon which the Fund is based, or in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third party data.

15. Prudential Insurance will appoint an independent fiduciary to direct the voting of any Prudential Stock held by the Funds. The independent fiduciary will be a firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries.

Prudential Insurance will provide the independent fiduciary with all necessary information regarding the Funds that hold Prudential Stock on the record date for Prudential's shareholder meetings, and all proxy and consent materials with respect to Prudential Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Prudential Stock voted, the manner in which such shares were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply Prudential with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Prudential Stock, when voting such stock.

16. In summary, it is represented that the subject transactions have met or will meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved has been based or will be based on an index, as defined in Section III(c) above;

(b) The acquisition, holding and disposition of Prudential Stock by the Index or Model-Driven Fund has been or will be for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest;

(c) Whenever Prudential Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (i.e., a Buy-up), all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or its correct weighting as determined by the computer model which has been used to transform the index, has been or will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model, pursuant to the restrictions above, all aggregate daily purchases of Prudential Stock by the Funds have not exceeded nor will exceed the greater of (i) 15 percent of the average daily trading volume for the Prudential Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Prudential Stock, other than acquisitions of such stock in a Buy-up described above, have been or will be either (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as described herein) so long as the broker is acting on an agency basis;

(f) No transactions by a Fund has involved or will involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than 5 percent of the total amount of Prudential Stock that is issued and outstanding at any time has been held or will be held, in the aggregate, by Index or Model-Driven Funds managed by Prudential;

(h) Prudential Stock has not constituted nor will constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Prudential has authorized or will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein; and

(j) A fiduciary independent of Prudential will direct the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first-class mail to interested persons, including the appropriate fiduciaries of employee benefit plans currently invested in the Index and/or Model-Driven Funds that may acquire and hold Prudential Stock. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. All notices will be sent to interested persons within 30 days of the publication of the proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing are due within 60 days after the date of publication of the pendency notice in the **Federal Register**.

In addition, Prudential will provide, upon request, a copy of the proposed exemption and, if granted, a copy of the final exemption to all ERISA-covered plans which invest in any Index or Model-Driven Fund containing Prudential Stock in their respective portfolios after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–1367 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

[15] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer acting as principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, Prohibited Transaction Class Exemption 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a "qualified professional asset manager" (i.e., a QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

[16] In this regard, the Department is providing no opinion herein on whether such principal transactions would be covered by any existing exemption.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–11041]

Notice of Proposed Individual Exemption To Modify Prohibited Transaction Exemption 90–23 (PTE 90–23); Prohibited Transaction Exemption 90–31 (PTE 90–31) and Prohibited Transaction Exemption 90–33 (PTE 90–33) Involving J.P. Morgan Chase & Company and its Affiliates (the Applicants) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 90–23; PTE 90–31; and PTE 90–33 (collectively, the Exemptions).

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual administrative exemption which, if granted, would amend: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.[1] The Exemptions provide relief for the operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (the Plans) of certificates or debt instruments that are issued by such trusts with respect to which one of the Applicants is the lead underwriter or a co-managing underwriter. If granted, this proposed amendment would permit the trustee of the trust to be an affiliate of the underwriter. If adopted, the proposed amendment would affect the participants and beneficiaries of the Plans participating

[1] The notice of proposed exemption for PTE 90–23 was published on February 20, 1990 at 55 FR 5906; the notice of proposed exemption for PTE 90–31 was published on February 21, 1990 at 55 FR 6074; and the notice of proposed exemption for PTE 90–33 was published on February 21, 1990 at 55 FR 6082.

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in such transactions and the fiduciaries with respect to such Plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before 45 days from the date of the publication in the **Federal Register** of this notice of proposed amendment.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: Application No. D–11041; Proposal to Amend Certain Individual Exemptions for J.P. Morgan Chase & Co. and its Affiliates). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D–11041) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8546. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment that would modify the Exemptions. The Exemptions provide relief from certain prohibited transaction restrictions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, the Exemptions are three of the individual exemptions commonly known as the "underwriter exemptions," all of which are essentially identical to the original underwriter exemptions issued by the Department in 1989 to permit Plans to invest in pass-through certificates representing undivided interests in certain categories of investment trusts, if certain conditions are met. All of the underwriter exemptions, including the Exemptions, were subsequently amended by Prohibited Transaction Exemption 97–34 (PTE 97–34, 62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000–58 (PTE 2000–58, 65 FR 67765, November 13, 2000).

The proposed amendment has been requested in an application filed on behalf of J.P. Morgan Chase & Company and its Affiliates, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is issued solely by the Department.

In their current form, the Exemptions permit employee benefit plans to purchase certain securities representing interests in asset- or mortgage-backed investment pools for which one of the Applicants is the lead underwriter or a co-managing underwriter. The securities generally take the form of certificates issued by a trust (the Trust). The Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The entities covered include the sponsor of the Trust as well as the underwriter for the certificates issued by the Trust when the sponsor, servicer, trustee or insurer of the Trust, the underwriter of the certificates issued by the Trust, or an obligor of the receivables contained in the Trust, is a party in interest with respect to an investing plan.[2]

One of the requirements of the Exemptions (as amended by PTE 2000–58) is that the trustee of the Trust not be an affiliate of any member of what the Exemptions define as the "Restricted Group"; i.e., in addition to the trustee, each underwriter, each servicer, each insurer, the sponsor, any more than 5% obligor with respect to receivables included in the Trust, each counterparty in an Eligible Swap Agreement, and any affiliate of such persons. This restriction is common to all of the underwriter exemptions.

The Applicants represent that, while the provision requiring an independent trustee was not a major issue in 1989, developments in the banking industry over the past twelve years have caused the requirement to become onerous and disadvantageous to investors, including Plans. As the banking industry has consolidated, the number of banks participating in the corporate trust business has shrunk dramatically. This trend has been due to a number of factors which have made participation in the trust business less attractive to banks. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional float income due to the growth in book entry securities. On the expense side, the cost of entry into the corporate trust business and the cost of remaining in the business have increased dramatically. This increase includes both technological and personnel costs. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.The Applicants represent that the changes in the securities underwriting business are equally significant. These include the increased participation by banks and bank affiliates, and consolidation within the industry. As of the calendar year 2000, four of the top ten underwriters for structured finance transactions had affiliated corporate trust businesses. Eight of the top ten trustees, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector. The trend in the market to broadly syndicate underwriting exacerbates the problem: the underwriter exemptions, including the Exemptions, prohibit affiliation not only between the trustee and the lead underwriter, but between the trustee and any underwriter, without regard to the amount underwritten.

The Applicants state that currently most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve this marketplace. Most of these same banks, particularly those that are profitable and well-capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. Not only will investors (including Plans) be disadvantaged if banks and their affiliates which underwrite securities continue to be precluded from providing trust services, but further, it is clearly not in the best interest of investors, including Plan investors, to eliminate those banks— often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust providers.

A trustee in a structured finance transaction, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial, such as establishing accounts, receiving funds, making payments and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, there is no need for trustees in structured finance transactions to assume discretionary functions in order to protect the interests of debt holders in the event of default or bankruptcy, because structured finance entities are bankruptcy remote vehicles. There is no "issuer" outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract, which provides an explicit structure spelling out the action to be taken upon the happening of specified events. There is no opportunity or incentive for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter or otherwise, to take or not to take actions which might benefit the underwriter to the detriment of Plan investors. The Applicants represent that the role of the underwriter in a structured financing involves, among other things, assisting the sponsor or originator in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to the public, in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter has no further role in the transaction. The trustee has no opportunity to take or not take action, or to use information in ways which might advantage the underwriter to the detriment of Plan investors. In fact, from the point of view of enhancing its reputation, the underwriter clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter. Accordingly, the Applicants have requested this modification to the Exemptions to permit the trustee of the Trust to be an affiliate of the underwriter.

In summary, the Applicants represent that the proposed modification of the Exemptions satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The amendment will benefit Plans by ensuring that the most capable corporate trustees will continue in the corporate trust business; (b) the amendment will not be harmful to Plans because the affiliation of the trustee to an underwriter will not cause any benefit to the underwriter to the detriment of any Plan investor; and (c) the safeguards provided by the Exemptions will not otherwise be altered.

Notice to Interested Persons

The Applicants believe that the market for the securities described in their application is so broad, and the number of potentially affected Plans is so large, that notice by mailing is impracticable and inadequate. Thus, publication of this Notice in the **Federal Register** is the only practical means of providing notice to interested persons. Written comments and hearing requests are due within 45 days of the publication of the Notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notices of proposed exemption relating to the Exemptions, as modified by this Notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 90–23, PTE 90–31 and PTE 90–33, each as subsequently amended by PTE 97–34 and PTE 2000–58, as set forth below:

The first sentence of section II.A.(4) of the Exemptions is amended to read: "The trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter."

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of

[2] Interested persons should review the Department's regulations at 29 CFR 2510.3–101 (Definition of "plan assets"—plan investments) for the reasons why a Plan's investment in certificates issued by a Trust may raise prohibited transaction issues with respect to parties in interest.

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the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Exemptions, refer to the proposed exemptions and the grant notices that are cited above.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–1364 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

BUREAU OF LAND MANAGEMENT

DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

[Docket No. 72–22]

Notice of Availability of Final Environmental Impact Statement for the Proposed Private Fuel Storage, L.L.C.; Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, UT

AGENCY: Nuclear Regulatory Commission; Bureau of Indian Affairs, Interior; Bureau of Land Management, Interior; Surface Transportation Board, Transportation.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB), has published a Final Environmental Impact Statement (FEIS), "Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah" NUREG–1714, January 2002, regarding the proposal of Private Fuel Storage, L.L.C. (PFS) to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians and construct and operate a new rail line and rail siding.

The Reservation is located approximately 44 km (27 miles) west-southwest of Tooele, Utah. PFS intends to transport spent nuclear fuel (SNF) by rail from commercial power reactor sites to an existing rail line north of Skull Valley. To transport the SNF from the existing rail line to the proposed facility, PFS proposes the construction and operation of a new rail siding and rail line on public land administered by BLM. This FEIS discusses the purpose and need for the PFS proposal and describes the proposed action and its reasonable alternatives, including the No-action Alternative. The FEIS also discusses the environment potentially affected by the proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

The PFS proposal requires approval from four federal agencies: NRC, BIA, BLM, and STB. The environmental issues that each of these agencies must evaluate pursuant to the National Environmental Policy Act of 1969 (NEPA) are interrelated. Therefore, the agencies have cooperated in the preparation of this FEIS, and this document serves to satisfy each agency's statutory responsibilities under NEPA.

Based on the evaluation in this FEIS, the NRC, BIA, BLM, and STB environmental review staffs have concluded that (1) the measures required by Federal, State, and Tribal permitting authorities other than the Cooperating Agencies and (2) the mitigation measures that the Cooperating Agencies propose be required would reduce any short-or long-term adverse environmental impacts associated with the proposed action (i.e., construction and operation of the proposed ISFSI and rail line) to acceptable levels. This FEIS reflects the final analysis of the environmental impacts of the PFS proposal and its alternatives including the consideration of public comments received by the NRC. In addition, the FEIS provides summaries of the substantive public comments received within the time allotted for public comment on the draft EIS, and responses, as appropriate, to such comments.

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The FEIS and its appendices may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.The FEIS is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the FEIS can be obtained for a fee by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by E-mail (*DISTRIBUTION@nrc.gov*); or by fax at (301) 415–2289.

FOR FURTHER INFORMATION CONTACT: Chester Poslusny Jr., Sr. Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–1341, or E-mail (*CXP1@nrc.gov*).

SUPPLEMENTARY INFORMATION: The proposed action involves the construction and operation of a proposed SNF storage facility at a site (known as Site A) located on the Reservation, and transporting SNF from the existing railroad to the site by constructing a new rail siding and rail line to connect the proposed facility to the existing main line in Utah. This FEIS has been prepared in compliance with NEPA, NRC regulations for implementing NEPA (10 CFR Part 51), guidance provided by the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508), STB regulations for implementing NEPA (49 CFR Part 1105), and BLM and BIA policy, procedures, and guidance documents.

Federal agencies' actions are considered in this FEIS. NRC's action is to grant or deny a 20-year license to PFS to receive, transfer, and possess SNF on the Reservation. BIA's action is to either approve or disapprove a 25-year lease between PFS and the Skull Valley Band for use of Reservation land to construct and operate the proposed facility. If granted, both the NRC license and the BIA lease could be renewed. BLM's action is to either grant one or deny both requests for rights-of-way through public land administered by the BLM for transporting SNF from the existing rail line to the proposed facility site. Approval of the proposed action would require amending the Pony Express Resource Management Plan. STB's action is to grant or deny PFS's application for a license to construct and operate a new rail line to the proposed facility site.

This FEIS sets forth not only the Cooperating Agencies' evaluation of the proposed action (Alternative 1) described above, but also their evaluation of the environmental impacts of the alternative actions. Alternatives involving the Skull Valley site include an alternative site location on the Reservation (known as Site B), and an alternative transportation method (i.e., heavy-haul vehicles). Consideration of an alternative site location on the Reservation and an alternative transportation method resulted in evaluating the following alternatives:

Alternative 2—the construction and operation of the proposed facility at Site B on the Reservation with a rail siding and a rail line similar to that described above.

Alternative 3—construction and operation of the proposed facility at Site A, construction and operation of a new Intermodal Transfer Facility (ITF) near Timpie, Utah, and use of heavy-haul vehicles to transport SNF to the Reservation.

Alternative 4—the construction and operation of the proposed facility at Site B with the same ITF and SNF transport described in Alternative 3 above.

Additionally, the FEIS compares the construction and operation of an SNF storage facility in Wyoming in lieu of the Skull Valley site. This comparison was made to determine if an identified alternative site is obviously superior to the proposed site. Lastly, the FEIS sets forth the Cooperating Agencies' evaluation of the No-Action Alternative, i.e, not to construct and operate the proposed facility in Skull Valley. Under the No-Action Alternative, the potential impacts of constructing and operating the proposed facility and associated SNF transportation facilities in Skull Valley would not occur.

As set forth in the FEIS, the Cooperating Agencies assessed the impacts of the proposed action and its alternatives on minerals, soils, water resources, air quality, ecological resources, socioeconomics and community resources, cultural resources, human health impact, noise, scenic qualities, recreation, and environmental justice. Additionally, the NRC staff performed an analysis and comparison of the costs and benefits of the proposed action.

Based on the evaluation in the FEIS, the NRC staff's preferred alternative is the proposed action, with implementation of the mitigation measures that the Cooperating Agencies propose be required. The BIA lease will not be approved or disapproved unless the NRC issues a license to PFS, and commitments to the mitigation measures are made by PFS. BIA did not indicate a preferred alternative in the DEIS, however in the FEIS, BIA has chosen the proposed action, based on consideration of environmental impacts and mitigation measures identified in the FEIS. A BLM decision to grant a right-of-way to PFS would be dependent upon the decisions made by the NRC and BIA. If the NRC issues a license to PFS for the proposed facility and BIA approves the lease, then BLM's preferred alternative would be to amend the Pony Express Resource Management Plan and issue a right-of-way for the new rail siding and rail line. Absent such findings by the NRC and BIA, BLM would not grant either of PFS' rights-of-way requests. BLM would require resolution of a planning restriction imposed by Section 2815 of the National Defense Authorization Act for Fiscal Year 2000, and completion of the plan amendment process in accordance with 43 CFR part 1600, prior to issuance of the right-of-way grant. Based on the information and analysis to date, the STB environmental review staff has concluded that the proposed project, with the implementation of the mitigation measures that the Cooperating Agencies propose be required, would not result in significant adverse impacts to the environment and that construction and operation of the proposed rail line is the environmentally preferred alternative.

Dated at Rockville, Maryland, this 11th day of January 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

Dated at Washington, D.C., this 8th day of January 2002.

For the Surface Transportation Board.

Victoria J. Rutson,

Chief, Section of Environmental Analysis.

Dated at Salt Lake City, Utah, this 9th day of January 2002.

For the Bureau of Land Management.

Glenn A. Carpenter,

Field Office Manager, Salt Lake Field Office.

Dated at Phoenix, Arizona, this 9th day of January 2002.

For the Bureau of Indian Affairs.

Barry W. Welch,

Acting Director, Western Regional Office.

[FR Doc. 02–1351 Filed 1–17–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 3102

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for an expiring collection. SF 3102, Designation of Beneficiary, is used by employees and annuitants covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Approximately 1,136 SF 3102 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 284 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel

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Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1321 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an expiring information collection. SF 2809, Employee Health Benefits Election Form, is used by Federal employees, certain separated former Federal employees, and former dependents of Federal employees, to enroll for health insurance coverage under the Federal Employees Health Benefits (FEHB) Program. Certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1323 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 2809–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for review of an expiring collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, is used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP), and certain former dependents of these individuals. These former dependents include certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden will be 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1325 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1326 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for the Reinstatement of a Revised Information Collection: OPM Online Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for reinstatement of a revised information collection. OPM Online Form 1417, CFC Online Results Report, is used to record Combined Federal Campaign pledges from local Principle Combined Fund Organizations (PCFOs).

We estimate 360 OPM Online Form 1417's will be completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 180 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, Fax 202/418–3251 or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before February 19, 2002.

ADDRESSES: Send or deliver comments to:

Elizabeth Barber, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW, Room 5450, Washington, DC 20415, (202) 606–2564

and

Joseph Lackey, OPM Desk Manager, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building NW, Rm. 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1322 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established or revoked under Schedule C between November 1, 2001, and November 30, 2001, appear in the listing below. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Commission on Civil Rights

Special Assistant to the Staff Director. Effective November 29, 2001.

Department of Agriculture

Confidential Assistant to the Chief Financial Officer. Effective November 13, 2001.

Confidential Assistant to the Administrator, Rural Business-Cooperative Service. Effective November 19, 2001.

Confidential Assistant to the Administrator, Rural Business-Cooperative Service. Effective November 20, 2001.

Special Assistant to the Under Secretary for Natural Resources and Environment. Effective November 27, 2001.

Department of Commerce

Legislative Affairs Specialist to the Director of Legislative Affairs. Effective November 1, 2001.

Senior Advisor to the Assistant Secretary for Economic Development. Effective November 1, 2001.

Special Assistant to the Director, Office of Policy and Strategic Planning. Effective November 1, 2001.

Confidential Assistant to the Assistant Secretary for Market Access and Compliance. Effective November 1, 2001.

Director of Congressional Affairs to the Under Secretary for International Trade. Effective November 6, 2001.

Chief Counsel to the Assistant Secretary for Economic Development. Effective November 15, 2001.

Public Affairs Specialist to the Assistant Secretary for Communications and Information. Effective November 15, 2001.

Public Affairs Specialist to the Assistant Secretary for Economic Development. Effective November 19, 2001.

Senior Advisor to the Assistant Secretary for Import Administration. Effective November 19, 2001.

Deputy Press Secretary to the Director, Office of Public Affairs. Effective November 19, 2001.

Senior Advisor to the Under Secretary for Technology, International Trade Administration. Effective November 26, 2001.

Public Affairs Specialist to the Press Secretary. Effective November 28, 2001.

Special Assistant to the Assistant Secretary for Market Access and

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Compliance. Effective November 28, 2001.

Director, Intergovernmental Affairs to the Deputy Assistant Secretary for Program Research and Evaluation. Effective November 29, 2001.

Director, Office of White House Liaison to the Chief of Staff. Effective November 30, 2001.

Department of Defense

Special Assistant to the Deputy Under Secretary of Defense (Logistics and Material Readiness). Effective November 1, 2001.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective November 20, 2001.

Personal and Confidential Assistant to the Under Secretary of Defense (Acquisition, Technology and Logistics). Effective November 20, 2001.

Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Material Readiness). Effective November 26, 2001.

Department of Education

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 6, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 6, 2001.

Confidential Assistant to the Senior Advisor to the Secretary of Education. Effective November 6, 2001.

Special Assistant to the Chief of Staff. Effective November 6, 2001.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective November 7, 2001.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 7, 2001.

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 13, 2001.

Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs. Effective November 21, 2001.

Press Secretary to the Director, Office of Public Affairs. Effective November 21, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 21, 2001.

Special Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Special Assistant to the Director, Office of Public Affairs. Effective November 21, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Deputy Director to the Chief of Staff. Effective November 29, 2001.

Department of Energy

Special Assistant to the Principal Deputy Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective November 5, 2001.

Legislative Counsel to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 19, 2001.

Senior Advisor, Legislative Affairs to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective November 20, 2001.

Deputy Director of Scheduling to the Director of Scheduling and Advance. Effective November 20, 2001.

Trip Coordinator to the Director, Office of Scheduling and Advance. Effective November 20, 2001.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective November 20, 2001.

Director, Press Office to the Director, Office of Public Affairs. Effective November 20, 2001.

Staff Assistant to the Assistant Secretary for International Affairs. Effective November 28, 2001.

Department of Health and Human Services

Special Assistant to the Administrator, Human Resources and Services Administration. Effective November 1, 2001.

Congressional Liaision Specialist to the Deputy Assistant Secretary for Legislation, Office of Congressional Liaison. Effective November 1, 2001.

Executive Director, President's Advisory Commission and White House Initiative on Asian Americans and Pacific Islanders to the Assistant Secretary for Health. Effective November 6, 2001.

Confidential Assistant to the Chief Operating Officer and Deputy Administrator. Effective November 7, 2001.

Special Assistant to the Administrator, Centers for Medicare and Medicaid Services. Effective November 15, 2001.

Special Assistant to the Deputy Assistant Secretary for Legislation. Effective November 27, 2001.

Special Assistant to the Assistant Secretary for Aging. Effective November 27, 2001.

Special Assistant for International and Immigration Issues to the Assistant Secretary, Administration for Children and Families. Effective November 27, 2001.

Secretary's Regional Representative-Seattle, Washington, to the Director, Office of the Intergovernmental Affairs. Effective November 27, 2001.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Housing. Effective November 15, 2001.

Deputy Assistant Secretary for International Affairs to the Assistant Secretary for Policy Development and Research. Effective November 15, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective November 16, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective November 19, 2001.

Department of the Interior

Associate Director—House to the Director, Office of Congressional and Legislative Affairs. Effective November 5, 2001.

Assistant Director, Legislative and Congressional Affairs to the Director, National Park Service. Effective November 29, 2001.

Department of Justice

Confidential Assistant to the Director, Office of Intergovernmental Affairs. Effective November 6, 2001.

Special Assistant to the Assistant Attorney General, Office of Justice Programs. Effective November 6, 2001.

Counsel to the Assistant Attorney General, Criminal Division. Effective November 8, 2001.

Counsel to the Assistant Attorney General, Civil Rights Division. Effective November 15, 2001.

Counsel to the Assistant Attorney General, Antitrust Division. Effective November 15, 2001.

Counsel to the Assistant Attorney General, Environmental and Natural Resources Division. Effective November 20, 2001.

Counsel to the Assistant Attorney General, Civil Rights Division. Effective November 20, 2001.

Special Assistant to the Director, Community Oriented Policing Services. Effective November 21, 2001.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective November 27, 2001.

Confidential Assistant to the Assistant Attorney General, Antitrust Division. Effective November 28, 2001.

Department of Labor

Senior Legislative Officers to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 1, 2001.

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective November 1, 2001.

Special Assistant to the Chief of Staff. Effective November 7, 2001.

Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective November 7, 2001.

Chief Economist to the Assistant Secretary for Policy. Effective November 8, 2001.

Staff Assistant to the Director, Office of Faith Based Initiatives. Effective November 27, 2001.

Department of State

Attorney-Advisor to the Legal Advisor. Effective November 1, 2001.

Special Assistant to the Under Secretary for Economic, Business and Agricultural Affairs. Effective November 5, 2001.

Department of Transportation

Associate Director to the Assistant Secretary for Governmental Affairs. Effective November 6, 2001.

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective November 19, 2001.

Special Assistant to the Assistant Secretary for Governmental Affairs. Effective November 27, 2001.

Special Assistant to the Assistant Secretary for Policy. Effective November 27, 2001.

Department of the Treasury

Senior Advisor to the Assistant Secretary (Financial Markets). Effective November 8, 2001.

Special Assistant for Advance to the Director of Scheduling. Effective November 21, 2001.

Department of Veterans Affairs

Special Assistant (Assistant White House Liaison) to the Deputy Assistant Secretary for Public Affairs. Effective November 5, 2001.

Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective November 20, 2001.

Export-Import Bank of the United States

Administrative Specialist to the Executive Assistant to the President and Chairman. Effective November 15, 2001.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective November 1, 2001.

General Services Administration

Special Assistant to the Chief of Staff, Public Building Service. Effective November 29, 2001.

National Aeronautics and Space Administration

Staff Support Specialist to the Associate Administrator for Public Affairs. Effective November 7, 2001.

National Transportation Safety Board

Special Counsel to the Chairman. Effective November 8, 2001.

Office of Management and Budget

Legislative Assistant to the Associate Director for Legislative Affairs. Effective November 1, 2001.

Public Affairs Officer to the Associate Director for Communications. Effective November 26, 2001.

Staff Assistant to the Deputy Director. Effective November 28, 2001.

President's Commission on White House Fellowships

Special Assistant to the Executive Director. Effective November 19, 2001.

Associate Director to the Executive Director. Effective November 20, 2001.

Securities and Exchange Commission

Director, Public Affairs to the Chairman, Securities and Exchange Commission. Effective November 13, 2001.

Confidential Assistant to the Chairman. Effective November 13, 2001.

Small Business Administration

Regional Administrator, Region VIII, Denver Colorado to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator, Region II, New York, NY to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator to the Associate Administrator for Field Operations. Effective November 5, 2001.

Special Assistant to the Associate Administrator for Communications and Public Liaision. Effective November 6, 2001.

Special Assistant (Scheduling) to the Administrator. Effective November 15, 2001.

Director of International Trade to the Associate Deputy Administrator for Capital Access. Effective November 15, 2001.

Special Assistant to the Associate Administrator for Women's Business Ownership. Effective November 15, 2001.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development. Effective November 15, 2001.

United States Trade and Development Agency

Special Projects Officer to the Director, Trade and Development Agency. Effective November 30, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218

Office of Personnel Management,

Kay Coles James,

Director.

[FR Doc. 02–1324 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25362; 812–12715]

CityFed Financial Corp.; Notice of Application

January 14, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act") for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Summary of Application: The requested order would exempt the applicant, CityFed Financial Corp. ("CityFed"), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted until February 6, 2002.[1]

Filing Dates: The application was filed on December 7, 2001, and amended on January 14, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing.

[1] CityFed Financial Corp., Investment Company Act Release Nos. 24825 (Jan. 11, 2001) (notice) and 24851 (Feb. 6, 2001) (order).

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Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on February 5, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. CityFed, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicant's Representations

1. CityFed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). During the five-year period ending December 31, 1988, City Federal was the source of substantially all of CityFed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision ("OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation ("RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, CityFed no longer conducted savings and loan operations through any subsidiary. Thus, since December 8, 1989, almost all of CityFed's assets consisted of cash that has been invested in (a) money market instruments with a maturity of one year or less; and (b) Money market mutual funds.

3. On June 2, 1994, the OTS issued a Notice of Charges ("OTS Action") against CityFed and certain current or former directors and, in some cases, officers of CityFed and City Federal ("Individual Respondents"). The OTS Action sought restitution from and a civil money penalty against both CityFed and the Individual Respondents. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist ("Temporary Order") against CityFed. The Temporary Order sought to freeze CityFed's assets by placing them in various respects under the control of the OTS. On October 26, 1994, CityFed and the OTS entered into an escrow agreement with CoreStates Bank, N.A. (now First Union National Bank ("First Union")) ("Escrow Agreement") pursuant to which CityFed transferred substantially all of its assets to First Union for deposit into an escrow account. The Escrow Agreement provided CityFed with $15,000 per month for operating expenses and allowed CityFed to sell and purchase securities in the escrow account.

4. On May 19, 2000, CityFed finalized with the OTS and the Federal Deposit Insurance Corporation ("FDIC"), the statutory successor to the RTC, a settlement of the OTS Action ("Settlement"). Pursuant to the Settlement, the OTS dismissed with prejudice the OTS Action and the FDIC gave full and complete releases to CityFed and the Individual Respondents. In turn, CityFed and the Individual Respondents gave full and complete releases to the OTS and the FDIC. The OTS also dissolved the Temporary Order and authorized First Union to release to CityFed all of its assets remaining in the escrow account. Although the Escrow Agreement was terminated, CityFed's assets continue to be invested in money market instruments and money market mutual funds.

5. On December 7, 1992, the RTC filed suit against CityFed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal ("First RTC Action"). In light of the filing of the OTS Action on June 2, 1994, the RTC and CityFed agreed to dismiss without prejudice the RTC's claim against CityFed in the First RTC Action. Pursuant to the Settlement, the FDIC released CityFed from all claims in the First RTC Action.

6. The RTC also filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans ("Second RTC Action"). The RTC sought in excess of $200 million in damages. CityFed states that all of the defendants in the Second RTC Action have settled with the RTC or the FDIC. Pursuant to the Settlement, the FDIC assigned any rights it acquired in these settlements to CityFed. Under its bylaws, CityFed may be obligated to indemnify these former officers and directors and pay their legal expenses, including settlement amounts. On the advice of counsel to a special committee of CityFed's board of directors, comprised of directors who were not named in the First or Second RTC Action, CityFed has paid a portion of the defendants' reasonable defense costs on behalf of former directors and officers in connection with the Actions. CityFed does not know whether the amounts claimed to date might change and thus is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims. CityFed is in the process of making offers of settlement with respect to the claims of certain of its current and former officers and directors and employees who have previously requested indemnification from CityFed.

7. On August 7, 1995, CityFed, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims seeking damages for loss of "supervisory goodwill" on its books as a result of various acquisitions by City Federal of troubled depository institutions. Pursuant to the Settlement, CityFed assigned to the FDIC all of CityFed's interest in its supervisory goodwill action, ceased to be a party to the case, and has no right to share in the recovery in that case, should there be one.

8. CityFed is subject to a number of loss contingencies for which it is currently unable to assess reasonably the probability or range of loss. CityFed intends to resolve all claims against it at the minimum cost possible. While CityFed's board of directors has considered from time to time whether to engage in an operating business, CityFed states that it cannot resume an operating business at the present time because the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed CityFed's assets. Following the Settlement, CityFed may reorganize, perhaps involving a bankruptcy proceeding. It is anticipated that CityFed's outstanding claims, including its indemnification claims, will be addressed prior to, or as part of, any reorganization.

9. CityFed states that at present there is no public market for its stock and that it is traded sporadically in the over-the-counter market. Since City Federal's receivership, the operating expenses of CityFed have consisted of the employees' salaries, office expenses, and accounting and legal expenses. CityFed currently has one full-time employee and one office. As of September 30, 2001, CityFed held cash and securities of approximately $6.2 million.

Applicant's Legal Analysis

1. Section 3(a)(1)(A) defines an investment company as any issuer who "is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(1)(C) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the SEC may exempt any person from any provision of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest." Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. CityFed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, CityFed requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. CityFed requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. CityFed believes that it meets these criteria.

5. CityFed believes that its failure to become primarily engaged in a non-investment business by February 6, 2002, is due to factors beyond its control. CityFed asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If CityFed is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. CityFed also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, CityFed states that its circumstances are unlikely to change over the requested one-year period in light of the number of claims currently pending against it. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, CityFed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, CityFed states that it will comply with sections 9, 17(a) and (d) (subject to the modifications described in condition 4, below), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Applicant's Conditions

CityFed agrees that the requested order will be subject to the following conditions:

1. CityFed will not purchase or otherwise acquire any securities other than short-term U.S. government securities, certificates of deposit, commercial paper rated A–1/P–1, and shares of registered money market funds; except that CityFed may acquire equity securities of an issuer that is not an investment company as defined in section 3(a) of the 1940 Act or is relying on an exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by CityFed's board of directors.

2. CityFed will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.

3. CityFed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that CityFed and other persons, in their transactions and relations with CityFed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if CityFed were a registered investment company, except as permitted by the order requested hereby.

4. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of CityFed may engage in a transaction that otherwise would be prohibited by these sections with CityFed:

a. If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to CityFed; and (ii) The participation of CityFed in the proposed transaction will not be on a basis less advantageous to CityFed than that of other participants; and

b. In connection with each such transaction, CityFed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the Commission, by the Division of Investment Management, underdelegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1352 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 21, 2002:

A closed meeting will be held on Tuesday, January 22, 2002, at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(i), 9(ii) and (10), permit

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consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

—Institution and settlement of injunctive actions;
—Institution and settlement of administrative proceedings of an enforcement nature; and
—Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 15, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–1456 Filed 1–16–02; 11:06 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45269; File No. SR–CBOE–2001–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Fee Schedule With Respect to Certain Communications Fees

January 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4[2] thereunder, notice is hereby given that on December 26, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of this proposed rule change is to implement certain fee changes. The Exchange is proposing to increase certain monthly communications fees to recover the incremental cost of replacing the Exchange's current analog trading floor telephone system with a new digital telephone system. These fee increases were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 1, 2002.

The Exchange is amending the following fees: (1) The "Exchangefone Maintenance" monthly fee will be increased from $47.25 to $70.88; (2) the "Lines Voice Circuits" monthly fee will be increased from $13.12 to $19.68; (3) the "Data Circuits at Ameritech Frame (Entrance)" monthly fee will be increased from $13.12 to $19.68; (4) the "Data Circuits at In-house Frame: Lines Between Ameritech and Communications Center" monthly fee will be increased from $10.50 to $15.75; (5) the "Data Circuits at In-house Frame: Lines Direct from Ameritech to the Trading Floor" monthly fee will be increased from $10.50 to $15.75; (6) the "Data Circuits at In-house Frame: Lines Between the Communications Center and the Trading Floor" monthly fee will be increased from $10.50 to $15.75; and (7) the "Wireless Phone Rentals" monthly fee will be increased from $100.00 to $150.00.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–72 and should be submitted by February 8, 2002.

[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(4).
[5] 15 U.S.C. 78s(b)(3)(A)(ii).
[6] 17 CFR 240.19b–4(f)(2).
[7] *See* 15 U.S.C. 78(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1427 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45268; File No. SR–CHX–2001–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Pricing of Preopening Orders for Nasdaq/NM Securities

January 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2001, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The text of the proposed rule change is as follows. New text is italicized. Deleted text is bracketed.

RULE 37.

(a) No change to text.

1–3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [on a single price opening at or better than the NBBO] at or better than the first unlocked, uncrossed *bid (for a sell order or offer (for a buy order) in the Nasdaq* market. In trading halt situations, orders will be executed at or better than *the first unlocked uncrossed bid or offer in the Nasdaq market after reopening.* For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The proposed rule change would eliminate reference to a single price opening for such preopening orders. The amended rule would provide that opening prices would instead be determined based on the first unlocked, uncrossed bid and offer in the Nasdaq market. This standard would apply to both preopening orders and to orders executed at the opening following a trading halt.

The rule change is being proposed in response to changing practices in the Nasdaq market relating to calculation of opening prices. The vast majority of the Exchange's competitors in the Nasdaq market now calculate opening prices in a manner consistent with the proposed rule change. The Exchange believes that this rule change is not only in line with market custom and practice, but is also responsive to customer preferences. Moreover, this rule change could incentivize specialists to provide greater price improvement intraday, thereby improving execution quality statistics, to the ultimate benefit of investors in Nasdaq/NM securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(5).

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change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2001–24 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1355 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45271; File No. SR–CHX–2001–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection

January 11, 2002.

On August 6, 2001, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37(b)(6) to require that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for trade through protection.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–CHX–2001–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1357 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45270; File No. SR–NASD–99–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Establishing a Pilot Program To Establish Fees for a Volume and Issue Data Package Known as Post Data

January 11, 2002.

I. Introduction

On February 18, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010, System Services, to establish a fee for a Volume and Issue Data Package ("Post Data") provided through the *Nasdaq Trader.com* Web site. The proposal would establish one fee to be paid by subscribers, and another fee to be paid by market data vendors.

Post Data would provide three separate reports in a single package, consisting of (1) Daily share volume reports for each Nasdaq security; (2) daily issue data containing a summary of the previous day's activity for each Nasdaq issue; and (3) monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trading (such as block or total). The proposed rule change will be implemented for a one-year pilot period.

On March 24, 1999, Nasdaq amended the proposal, which amendment replaced and superseded the original proposal.[3] Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on April 9, 1999.[4] The Commission received three comment letters on the proposed rule change.[5]

Nasdaq also amended the proposal on May 30, 2001,[6] and again on July 10, 2001.[7] Because Amendment Nos. 2 and 3 proposed different fees than those proposed in the original filing and Amendment No. 1, notice of the proposed rule change, as amended since it original publication, appeared in the **Federal Register** on July 20, 2001.[8] As amended, the proposal would establish a fee of $70 per month for subscribers for each entitled user receiving the Nasdaq Volume and Issue Data Package, and $35 per month for each end user receiving the information through market data vendors. The Commission received six comment letters on the proposal,[9] one of which was retracted. This order approves the proposed rule change, as amended.

II. Summary of Comments

Four commenters asked the Commission to approve the proposal.[10] These commenters generally expressed support for the proposal because they believe Post Data will be a valuable tool that will allow them to trade more effectively.[11] By providing immediate and reliable trading data, these commenters believe Post Data will allow them to make better-informed decisions.[12] Two commenters also suggested that the proposal might reduce costs.[13] Three of commenters that supported the proposal emphasized the value in having verified information available to market participants.[14]

One commenter asked the Commission not to approve the proposal in its current form. This commenter believes the Commission should establish safeguards to ensure that preexisting commercial trade reporting services are not driven out of the market due to "a business advantage conferred on Nasdaq by virtue of its status as a regulator."[15] The commenter suggests that Nasdaq's pricing strategy for Post Data should be scrutinized to ensure that Nasdaq does not subsidize Post Data with revenue Nasdaq derives from performing regulatory functions such as trade reporting fees.[16]

The commenter also asserts that because Nasdaq pays nothing to collect the data used in Post Data, and in fact is paid to collect this data by virtue of the NASDA's status as a self-regulatory organization, Nasdaq should only be able to recover from vendors the costs incurred from passing the data on the vendors.[17]

The commenter further argues that, while proposal states that Nasdaq will make future enhancements to Post Data available to data vendors for redistribution, the proposal is ambiguous as to whether Nasdaq will charge vendors for the enhancements. The commenter believes that charging only the customers who received the enhancements through a private vendor would impose an impermissible burden on competition.[18]

The commenter also requests that Nasdaq affirmatively state that Nasdaq will not impose restrictions on a private vendor's right to redistribute trade data to the vendor's customers, whomever those customers might be.[19] This issue arises from Nasdaq's proposal to make Post Data available to NASD members, QIBs, and the retail customers of participating market data vendors, without defining "retail customers." Nasdaq discusses elsewhere in the proposal the need to restrict access to this data to entities that are likely to have proper staff and resources to comply with security mandates and are unlikely to use the data improperly. Because these two statements in conjunction with each other create an ambiguity for the commenters, the commenter asks the Commission to require Nasdaq to disclose whether or not Nasdaq will impose limitations on vendor redistribution of Post Data's content, and if so, to describe the limitations.

Nasdaq's Response to the Comments.

Nasdaq filed its response to comments with the Commission on September 27, 2001.[20] In Nasdaq's Response letter, Nasdaq asserts that Post Data does not impose an unfair burden on competition. Nasdaq maintains that no regulatory fees will be used to subsidize Post Data. As Nasdaq stated in the proposal, the projected costs of development, enhancement, maintenance, operation, and marketing of Post Data, as well as overhead costs allocable to Post Data, should be covered by the fees assessed to market data vendors. The fees Nasdaq will assess to retail customers should cover costs associated with maintenance and administration of the Nasdaq web security infrastructure used to grant and validate access to Post Data.[21] Because vendors with established data networks will be able to obtain the data directly from Nasdaq, vendors will not incur the cost associated with the Web site. Nasdaq believes vendors therefore will be able to use the price differential to provide a superior product or complete with the price of Nasdaq's product.[22]

While one commenter[23] cited *NASD* v. *SEC*[24] in support of its position that Nasdaq is precluded from charging the fees it has proposed for Post Data, Nasdaq distinguishes the facts and circumstances of the present proposal from that in *NASD* v. *SEC*. Nasdaq notes that its proposal would establish two separate fees (one for market data vendors, and one for Nasdaq's direct subscribers), and the fees are designed to be allocated equitably among product users without subsidy from other Nasdaq revenue streams.[25] Unlike the direct subscribers in *NASD* v. *SEC*, Nasdaq asserts taht market data vendors will pay only for the costs of Post Data attributable to wholesale purchasers. Nasdaq will not require market data vendors to pay for web security costs associated with providing Post Data to Nasdaq's direct subscribers.[26]

Product Enhancements. In Nasdaq's Response letter, Nasdaq clarifies that it will make product enhancements

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45115 (November 28, 2001), 66 FR 63269 (December 5, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq's initial proposal was to provide T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers ("QIBs") as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. In Amendment No. 1, Nasdaq revised the proposal to include daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trade.

[4] Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

[5] *See* April 30, 1999 letter from Matthew W. Johnson, Managing Director, Lehman Brothers Inc., to Margaret H. McFarland, Deputy Secretary, SEC ("Lehman Letter"); April 12, 1999 letter from Stephen K. Lynner, President, AutEx Group ("AutEX"), to Jonathan G. Katz, Secretary, SEC; and June 23, 1999 letter from Stephen K. Lynner, President, AutEx, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC.

[6] *See* May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1, and proposed new fees for Post Data, as well as minor adjustments to the original proposal.

[7] *See* July 9, 2001 letter form Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC ("Amendment No. 3"). In Amendment No. 3, Nasdaq clarified that: (1) Amendment No. 2, as further amended by Amendment No. 3, replaces and supersedes the original proposal and Amendment No. 1; (2) the proposal is filed by the NASD, acting through its subsidiary, Nasdaq; (3) the footnote that defines a "qualified institutional buyer" should be included in the proposed rule language of NASD Rule 7010(p); and (4) modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package and will be made in accordance with Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b) and 17 CFR 240.19b–4. Amendment No. 3 also provided further explanation of the basis for the proposed fees.

[8] Securities Exchange Act Release No. 44558 (July 16, 2001), 66 FR 38049.

[9] *See* July 31, 2001 letter from Dennis A. Green, Senior Vice President, Nasdaq Trading, Legg Mason, Inc. (via e-mail) ("Legg Mason letter"); August 2, 2001 letter from Matt Johnson, Head of U.S. Cash Trading, Lehman Brothers (via e-mail) ("Lehman Brothers letter"); August 9, 2001 letter from Stephen K. Lynner, President, Thomson Financial Sales and Trading Group to Jonathan G. Katz, Secretary, SEC ("Thomson Financial letter"); August 9, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail); August 16, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail, retracting comments filed in August 9, 2001 letter); August 16, 2001 letter from Mary McDermott-Holland, Chairman, Nasdaq Institutional Traders Council, Franklin Portfolio Associates to Jonathan G. Katz, Secretary, SEC ("NITC letter"); and August 15, 2001 letter from James P. Ryan, Vice President and Senior Counsel, Fund Business Management Group, Capital Research and Management Company, to Jonathan G. Katz, Secretary, SEC ("Capital Research letter").

[10] Legg Mason letter; Lehman Brothers letter; Capital Research letter; and NITC letter.

[11] Capital Research letter.

[12] NITC letter; and Capital Research letter.

[13] NITC letter; and Legg Mason letter.

[14] NITC letter as 1 ("Post Data represents a tremendous step forward in providing accurate and vital trading information to market participants."); Capital Research letter ("By providing verified trading information to market participants, Post Data will allow us to make more informed broker selection decisions."); and Lehman Brothers letter ("The fact that this trade data will be confirmed by ACT reporting will allow customers to have an accurate portrayal of their volume data.").

[15] Thomson Financial letter at 4.

[16] *Id.*

[17] Thomson Financial letter at 5, citing *NASD* v. *SEC*, 801 F.2d 1415 (D.C. Cir. 1986).

[18] *Id.* at 6.

[19] *Id.* at 7–8

[20] *See* undated letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC ("Nasdaq Response letter").

[21] Nasdaq Response letter at 2.

[22] Nasdaq Response letter at 3.

[23] *See* Thomson Financial letter at 5.

[24] 801 F.2d 1415 (D.C. Cir. 1986).

[25] Nasdaq Response letter at 3.

[26] *Id.*

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available to all Post Data users, whether the users are Nasdaq customers or customers of a participating market data vendor. If Nasdaq offers a free product enhancement during the pilot program, Nasdaq will make the enhancement available to all direct and indirect users at no cost, and provide notice to vendors to allow vendors an opportunity to implement programming changes if necessary.[27]

Retail Customers. Nasdaq states unequivocally that it will not limit the ability of private data vendors to redistribute the product to their respective customers. To that end, Nasdaq clarifies that it defines a "retail" user as a direct or indirect user—in other words, any user who receives the data, be it from a market data vendor or from Nasdaq.[28]

III. Discussion

After careful review, the Commission finds the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[29] In particular, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(5) and (6) of the Act.[30]

Section 15A(b)(5)[31] requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6)[32] requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these Sections of the Act. Specifically, the Commission has reviewed the comment letters and Nasdaq's response to the comment letters. Nasdaq has stated it will make the Post Data product available to retail subscribers for $70 per month, and to market data vendors for $35 per month for each end user receiving the information through the data vendor. The Commission finds that the fees that Nasdaq proposes to charge for both the retail and the wholesale distribution of Post Data are equitably allocated among members and nonmembers. The differential between the retail and wholesale fees potentially will allow market data vendors the opportunity to sell the data on a retail basis at prices higher than $35 but lower than $70, and remain competitive with Nasdaq's retail price of $70. In addition, Nasdaq has clarified that the wholesale fee does not include the costs associated with the maintenance and security of the retail web-based product.

Furthermore, the Commission believes the information contained in Post Data may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.[33] The Commission further finds that the proposal places no undue burden on competition, and in fact, may foster competition, as market data vendors obtain verified data from Post Data, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.[34] Finally, the Commission is satisfied that Nasdaq has fully and properly addressed the questions raised by the commenter regarding product enhancements and the ability of vendors to redistribute the data to their respective customers.

The Commission notes that Post Data will be provided on a one-year pilot basis. The Commission expects that Nasdaq will evaluate the fees it has established for Post Data, and provide the Commission with a report of its findings before the expiration of, or extension of, the one-year pilot program.

While minor modifications to Post Data are anticipated, should Nasdaq wish to modify the contents of Post Data in any substantive way, Nasdaq must do so pursuant to Section 19(b)[35] and Rule 19b–4[36] thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASD–99–12), as amended, be and hereby is approved on a pilot basis through January 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1299 Filed 1–17–02; 8:45 am]

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[27] Nasdaq Response letter at 4.

[28] *Id.*

[29] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78o–3(b)(5) and (6).

[31] 15 U.S.C. 78o–3(b)(5).

[32] 15 U.S.C. 78o–3(b)(6).

[33] In this regard, the Commission notes Nasdaq's representation that Nasdaq generally will provide the Post Data information to vendors approximately five minutes before it posts the information on the Web site for direct end-users. This time differential enables the vendor to capture and post the data on its own terminals before Nasdaq's release time.

[34] The Commission notes that this proposal relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD* v. *SEC,* footnote 17, *supra.*

[35] 15 U.S.C. 78s.

[36] 17 CFR 240.19b–4.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45266; File No. SR–NASD–2001–88]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Computer to Computer Interface Fees

January 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 10, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increase the fee assessed on NASD non-members that continue to use the x.25 Computer-to-Computer Interface ("CTCI") to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol ("TCP/IP") CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

* * * * *

Rule 7010. System Services

(a)–(e) No change.

(f)(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber:*

Options	Price
Option 1—Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2—Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3—Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Disaster Recovery Option—Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers. $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP—Lines within a single location.	$1700 per relocation.

(g)–(q) No change.

* * * * *

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).[4] In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD non-members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of $200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is increasing the monthly charge to $1,275 per circuit.[5] Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.[6] Nasdaq has provided and will continued to provide notice to market participants of these dates through NasdaqTrader.com alerts, direct mail, and telephone calls to NASD members that have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is an change in these dates.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers of Nasdaq's Trumbull Connection processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service ("ACT") and orders to Nasdaq's Small Order Execution ("SOES") and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of "sunsetting" its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second ("kb"). The new CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25CTCI circuits held by 60 firms remained active. Nasdaq is urging non-members that still rely upon these outmoded connections to complete their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 contains the rule text of the proposed rule filing, as well as represented that all non-members affected by the proposed rule change had been alerted about the filing and that no unlisted trading privilege exchange would be affected by the filing. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 8, 2002 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

[5] The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. *See* Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

[6] Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not foresee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

[7] On December 12, 2001, Nasdaq issued a Head Trader alert that provided notice of the fee increase and posted the alert on the NasdaqTrader.com website. At that time, Nasdaq also began making direct contacts with customers that continue to use x.25 CTCI circuits to alert them of the change, and had contacted all non-members that might be affected by SR–NASD–2001–88 within several days. *See* Amendment No. 1, *supra* note 3.

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conversions as soon as possible. Nasdaq believes that charging a higher price to non-members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. The fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to "sunset" the x.25 CTCI network on March 31, 2002 (or sooner, if all x.25 CTCI subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has either solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD 2001–88 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1301 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45273; File No. SR–NASD–2001–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Expiration Date of Nasdaq's Transaction Credit Pilot Program

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010, System Services, to extend Nasdaq's transaction credit pilot program ("Program") for an additional six months, through June 28, 2002, for Tape A and B reports. No other substantive changes are proposed to the Program at this time. The text of the proposed rule change is available at the Association and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend the Program [5] for an additional six months, through June 28, 2002, to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[6] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The Association collects trade reports from broker-dealers trading these securities in the over-the-counter ("OTC") market and provides the trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed securities ("Tape A") and in Amex-listed securities ("Tape B").

The Program began in 1999.[7] Under the Program, the NASD shares a portion of these tape revenues by providing a transaction credit to NASD members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also is an important tool for Nasdaq to compete with other exchanges (particularly the CSE and the CHX) that offer similar programs [8] and thereby maintain market share in listed securities.

The Program works as follows. Nasdaq calculates two separate pools of revenue from which credits can be earned: One representing 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by CTA (Tape A), the other representing 40% of the gross revenue received from CTA for reporting Amex trades (Tape B).

Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to receive transaction credits based on its trades during that quarter. Only those NASD members that continue to average an appropriate daily execution level are eligible for transaction credits and thus able to receive a pro-rata portion of the appropriate pool.[9] These thresholds permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to provide an incentive to NASD members to actively trade in these securities.

The current Program expired December 31, 2001. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the current Program for an additional six months, through June 28, 2002.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[10] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general to protect investors and the public interest. Nasdaq also believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act [11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit wrriten data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with espect to the proposed rule change that are filed with the Commission, and all written communications relatiang to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2001–92 and should be submitted by February 8, 2002.

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[8] 15 U.S.C. 78o–3(b)(5).

[9] 17 CFR 200.30–(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

[6] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000) 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[7] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–19–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42872 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37455 (June 14, 2000) (SR–NASD–00–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–00–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–2001–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 44734A (August 30, 2001), 66 FR 46853 (September 7, 2001) (correction).

[8] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR–CHX–97–01) and 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR–CSE–97–12).

[9] As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the InterMarket and completing for order flow. *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). Nasdaq continues to believe that such threshold numbers represent clear examples of a member's commitment to operating in the InterMarket.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1356 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45275; File No. SR–NYSE–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through March 11, 2002

January 14, 2002.

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 14, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until March 11, 2002, the effectiveness of the amendments to sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001[5] and was again extended on September 28, 2001.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[7] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[8] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[9] The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[10] One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request.[11]

The Exchange proposes to further extend the effectiveness of the Pilot until March 11, 2002 to provide additional time to evaluate the issues presented by the Pilot, in the light of recently adopted requirements relating to disclosure of equity compensation plan information.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, than an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equatable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE proposed to change the requested extension period for its pilot regarding shareholder approval of stock option plans from April 30, 2002, as originally proposed, to March 11, 2002. Accordingly, as amended, the NYSE's pilot would expire on March 11, 2002.

[4] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) ("Original Pilot Approval Order").

[5] Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] Securities Exchange Act Release No. 44886, 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) ("2001 Extension Request").

[7] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) ("2000 Extension Request").

[8] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[9] *See* note 5 *supra*.

[10] *See* note 6 *supra*.

[11] *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors ("CII") to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See infra* note 12 below.

[12] Release Nos. 33–8048 and 34–45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

[13] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change, as amended, become operative on or before January 11, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived this five-day pre-notice requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.[18] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change, as amended, merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002.[19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–03 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1353 Filed 1–17–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45274; File No. SR–NYSE–202–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Reset the Implementation Date for Exchange Rules 134, 407A, and 411, Relating to Error Accounts Procedures

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to extend the Exchange-imposed implementation date for Rules 134, 407A, and 411 (relating to members' error accounts and error account procedures) from January 7, 2002 to February 4, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* Original Pilot Approval Order, note 4 *supra*.

[19] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved amendments to Rules 134, 407A, and 411 relating to members' error accounts and error account procedures. The Exchange had intended to implement these changes on January 7, 2002.[3] However, feedback from several members and member organizations indicated that they will need additional time to implement procedures, including automatic surveillance procedures, to fully comply with the provisions of Rules 134, 407A, and 411. Therefore, the Exchange proposes to change the implementation date from January 7, 2002 to February 4, 2002.

2. Statutory Basis

The NYSE states that the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[4] that an exchange have rules that are designated to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has designated the proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the NYSE rules to which it relates,[5] which renders the proposal effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder.[7]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the NYSE. All submissions should refer to File No. SR–NYSE–2002–04, and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1354 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 44769 (September 6, 2001), 66 FR 44710 (September 13, 2001) (approval order concerning File No. SR–NYSE–99–25).

[4] 15 U.S.C. 78f(b)(5).

[5] *See* letter from Darla C. Stuckey, NYSE, to Katherine A. England, assistant director, Division of Market Regulation, Commission, dated January 9, 2002.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45254; File Nos. SR–Phlx–00–02 and SR–Phlx–00–03]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to Equity Trading Permits and Notice and Order Granting Accelerated Approval to Amendments No. 3 Thereto

January 9, 2002.

I. Introduction

On January 12, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Certificate of Incorporation to add a new article authorizing the Board of Governors to issue Equity Trading Permits ("ETPs").[3] The Exchange filed amendments to the proposed rule change on May 30, 2000[4] and July 12, 2000.[5] The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.[6] On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.[7]

Also on January 12, 2000, the Exchange submitted to the Commission, pursuant to Section 19(b)(1) of the Act[8] and Rule 19b–4 thereunder,[9] a proposed rule change to adopt a rule setting forth the terms and conditions of ownership of ETPs.[10] The Exchange filed amendments to the proposed rule change on May 30, 2000[11] and July 12, 2000.[12] The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.[13] On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.[14]

The Commission received two comment letters regarding the proposals.[15] This notice and order approves both proposed rule changes, as amended, and solicits comments from interested persons on Amendment No. 3 to each proposed rule change.

II. Description of the Proposal

A. SR–Phlx–00–02

The Exchange proposes to amend its Certificate of Incorporation by adding a new Article Twenty-First ("Article Twenty-First") that authorizes the Exchange's Board of Governors ("Board") to issue trading permits that would allow the holders of such permits to conduct business on the Exchange. Article Twenty-First also authorizes the Board to adopt rules governing, among other things, the terms, conditions, number, and transferability of permits, the qualifications that members and non-members must meet to be issued a permit, and the dues and other charges to be paid to the Exchange in connection with the permits.[16]

Article Twenty-First permits the Board to authorize the Chairman of the Board or any Board committee to exercise any powers of the Board with respect to the permits. Article Twenty-First also provides that permit holders shall be eligible to serve on, or nominate candidates for election to, the Board or Committees thereof or other Exchange Committees referred to in the By-Law or Rules of the Exchange.[17]

Article Twenty-First is intended to give the Board the flexibility to create a means, other than the purchase or lease of an Exchange membership, for qualified persons to acquire trading rights on the Exchange. The Exchange's Certificate of Incorporation provides that the purpose of the Exchange is to "act as and to provide a securities exchange where the [Exchange's] members and other persons authorized by it can [do business]."[18] In Article Twenty-First, the Exchange makes clear that such "other persons" authorized to do business at the Exchange includes holders of trading permits authorized by the Board.

B. Phlx–00–03

Phlx Rule 23 will govern the terms and conditions of ETPs, which are intended to confer access privileges to the Exchange's equity trading floor.[19] Phlx Rule 23 establishes two classes of ETPs. Regular Equity Trading Permits ("Regular ETPs") authorize their holders to trade equity securities on any facility of the Exchange, in any capacity permitted to members, including as a specialist. Off-Floor Equity Trading Permits ("Off-Floor ETPs") allow holders electronic and telephonic access, but not physical access, to the Exchange floor.

Phlx Rule 23(a) provides that the two classes of ETPs may be issued by the Exchange to applicants pursuant to resolution of the Board of Governors ("Board") for such fee as may be established from time to time by the Board. The Exchange may issue a maximum of 75 ETPs.[20]

Phlx Rule 23(b) requires ETP applications to be approved by the Exchange. The application process for applicants who are not members of the Exchange would also include an admissions determination by the Exchange's Admissions Committee. ETP applicants who are members of the Exchange when they apply for an ETP would have already received a favorable admissions determination by the Exchange's Admissions Committee. With respect to ETP applicants who are not Exchange members, the admissions process would be the same as that currently required in connection with membership applicants, and the decision to grant or deny an application for admission as an ETP holder would be made by the Admissions Committee under its established procedures.[21] Phlx Rule 23(b) also requires the applicant to sign a pledge to abide by the By-Laws and rules of the Exchange and to submit to the Exchange's disciplinary jurisdiction.

Phlx Rule 23(c) provides that, except as may be otherwise set forth in the Rule or in other rules of the Exchange or effective Commission filings, an ETP holder will have the right to transact business on the floor of the Exchange to the same extent and in the same manner, and would be deemed to have the same rights and obligations, as a member of the Exchange without options privileges.[22] It also establishes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SR–Phlx–00–02.

[4] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division of Market Regulation ("Division"), Commission, dated May 25, 2000.

[5] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

[6] *See* Securities Exchange Act Release No. 43211 (August 25, 2000), 65 FR 53251.

[7] *See* Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 ("Amendment No. 3 to SR–Phlx–00–02"). In Amendment No. 3, the Exchange amended the Certificate of Incorporation to: (1) Provide that permit holders may serve on, or nominate candidates for the Board of Governors or Committees; and (2) clarify that permit holders are not members of the Exchange for purposes of Delaware General Corporate Law ("DGCL") and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In Amendment No. 3, the Exchange also represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002. Lastly, the Exchange stated that it has authorized the Board of Governors to issue only 75 permits.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] SR–Phlx–00–03.

[11] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated May 25, 2000.

[12] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

[13] *See* Securities Exchange Act Release No. 43212 (August 25, 2000), 65 FR 53253.

[14] *See* Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 ("Amendment No. 3 to SR–Phlx–00–03"). In Amendment No. 3, the Exchange: (1) Amended proposed Rule 23(a) to specify that it will issue a maximum of 75 ETPs; (2) deleted a provision in proposed Rule 23(b) which would have required that ETP holders be at least the minimum age of majority as it was inconsistent with a By-Law requirement that the those applying for exchange membership by twenty-one years of age; (3) expanded the language of proposed Rule 23(c) to clarify that ETP holders are deemed to be members for purposes of eligibility requirements to serve on the Board of Governors or Exchange Committees and for the purpose of nominating candidates for the Board; (4) amended proposed Rule 23(c) to clarify that permits issued by the Exchange are not "Regular" or "Convertible" memberships of the Exchange, and are not members for purposes of DGCL and shall have no rights or privileges conferred on members of a nonstick corporation solely by DGCL; (5) amended proposed Rule 23(e) to clarify that ETP holders shall be subject certain Exchange fees and charges, but not to annual membership dues, technology fees or capital assessments; and (6) amended proposed Rule 239i) to clarify that ETP organizations will be required to post security with the Exchange, the proceeds of which may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under Exchange By-Law 15–3.

[15] *See* letters from Matthew D. Wayne, Vanasco, Wayne & Genelly, to Jonathan G. Katz, Secretary, Commission, dated February 25, 2000 ("Wayne Letter"), and William W. Uchimoto, Executive Vice President and General Counsel, Ashton Technology, to Jonathan G. Katz, Secretary, Commission, dated September 5, 2000 ("Ashton Letter"). These letters were sent in response to both proposed rules changes.

[16] The Commission notes and the Exchange has acknowledged that any such action undertaken pursuant to Board resolution and not proposed to be set forth in the rules of the Exchange would nonetheless be filed with the Commission to the extent required pursuant to Section 19(b) of the Act and Commission rules thereunder.

[17] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 6.

[18] Phlx Certificate of Incorporation, Article Third (emphasis added). The Exchange notes that the Commission has previously approved the issuance by the Exchange of foreign currency options participations ("FCO Participations") pursuant to which both Exchange members and non-members may trade foreign currency options on the Exchange. *See* Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982).

[19] The Exchange has a proposal pending with the Commission to amend its schedule of dues, fees, and charges to provide that the Exchange's existing application fee and initiation fee apply to ETPs, and to impose monthly ETP fees. *See* SR–Phlx–00–04. Finally, Stock Clearing Corporation of Philadelphia ("SCCP") has proposed a change to its certificate of incorporation and to SCCP Rule 3 pursuant to which SCCP may treat ETP holders as Phlx members for purposes of clearing services it provides. *See* Securities Exchange Act Release No. 45255 (January 9, 2002) (SR–SCCP–00–01).

[20] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[21] Phlx Rule 901, Denial of and Conditions to Membership, sets forth certain criteria for membership decisions which would also apply to any determination to issue an ETP to an applicant who is not already a Phlx member.

[22] The Commission has in the past approved the Exchange's issuance of Foreign Currency Options

Continued

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that an ETP holder will not be entitled by virtue of the ETP to vote in any election or on any amendment to the By-Laws or on any other matter, or to petition or to be counted as part of a quorum at meetings of members. ETP holders will, however, be eligible to serve on, and nominate candidates for, the Board of Governors and Exchange committees if elected or appointed and subject to existing qualification requirements for service, to the same extent as members.[23] Because an ETP confers no equity interest in Exchange assets or property, Phlx Rule 23(c) establishes clearly that an ETP will not entitle its holder to share in any distribution of the assets or funds of the Exchange in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Exchange, or to purchase options privileges. Finally, Phlx Rule 23(c) provides that specialist members who elect to sell or lease their memberships in favor of Regular ETPs would continue to be specialists in their allocated securities.

Phlx Rule 23(d) establishes the rights of holders of Off-Floor ETPs. An Off-Floor ETP holder will be able, if accompanied by a regular member, to visit the floor of the Exchange, but will not have the privilege of transacting business on it. Consequently, an Off-Floor ETP holder will not be eligible to apply for specialist privileges. With this exception, an Off-Floor ETP holder will have the same rights as a Regular ETP holder. In particular, an Off-Floor ETP holder will be authorized, for the purpose of trading equity securities, to maintain electronic or telephonic access to (i) the floor facilities on the equities floor of the Exchange of a member or member organization or a Regular ETP holder, (ii) the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"),[24] and (iii) such other automated trading systems of the Exchange as may be made available to members of the Exchange without options privileges.

Phlx Rule 23(e) establishes the ability of the Exchange to impose fees and charges on ETP holders. An ETP holder will be subject to the same obligations and duties (including the payment of Exchange fees and charges) imposed on Exchange members, except that ETP holders will not be charged annual membership dues, technology fees, or any capital assessments that could be imposed in the future.[25] Phlx Rule 23(e) establishes that all provisions of the Exchange's Certificate of Incorporation and By-Laws, and the rules, regulations, requirements, orders, directions and decisions adopted pursuant to them which by their terms are applicable to Exchange members will also apply to ETP holders unless their application is inconsistent with the provisions of Rule 23. Likewise, all references in such documents to "non-members" will not be construed to apply to ETP holders. Consistent with Phlx Rule 23(e), the Exchange intends to charge a $200 application fee for every ETP application made by members and non-members. Non-member applicants for ETPs will also be required to complete the same admissions process required by the Exchange for membership applicants, and will be charged the $1,500 initiation fee upon issuance of the ETP just as members are charged this fee upon election to membership. After an ETP is issued, its holder will be subject to the same fees as Phlx members (except as otherwise noted in Phlx Rule 23(e)) in addition to a monthly ETP fee.

Phlx Rule 23(f) makes clear that, unlike a membership, an ETP may not be transferred by lease, sale, gift, involuntary transfer, or any other means or as collateral to secure any obligation, except that an ETP may be transferred within the holder's ETP organization to (i) an individual who has applied for and been approved by the Admissions Committee as an ETP holder, or (ii) an "inactive nominee" registered as such with the Exchange.

Phlx Rule 23(g) provides that an individual ETP holder associated with a broker-dealer will be required to qualify such broker-dealer as an ETP firm or an ETP corporation just as a member would register it as a member firm or member corporation under current Exchange rules.[26] Except to the extent otherwise set forth in Phlx rule 23 or in other Exchange rules or effective Commission filings, an ETP organization will have the same rights and obligations as a member organization of the Exchange. The organization would cease to be an ETP organization of the Exchange upon termination of the ETP pursuant to which the ETP organization is qualified.

Phlx Rule 23(g) also requires every ETP applicant whose fees are to be paid by such ETP organization to file, along with his or her ETP application, an agreement between the ETP applicant and the ETP organization (an "ETP Use Agreement") providing that the ETP organization may direct the transfer of the ETP to another qualified individual within the ETP organization and that the ETP holder may not object to such transfer. The ETP Use Agreement is in some respects analogous to the A–B–C Agreement provided for in Exchange Rule 930 pursuant to which a member contributes the use of a membership to the membership organization. Like the A–B–C Agreement provided for in Rule 940, the ETP Use Agreement would restrict the use of the ETP by its holder in the event of the holder's termination of his association with the ETP organization.[27]

Phlx Rule 23(h) permits the Exchange to suspend or expel an individual ETP holder on the same basis as a member. It also permits the Exchange to amend the terms of, to discontinue offering or to terminate existing ETPs of one or more classes at any time upon thirty days written notice. Similarly, Phlx Rule 23(h) requires an ETP holder to provide the Exchange thirty days written notice prior to termination of the ETP. The Exchange is required to provide notice of an ETP's termination to the membership in the same manner it provides notice of a proposed transfer of a membership. The ETP holder will remain liable for all obligations incurred as an ETP holder until these obligations are discharged, and the Exchange is authorized to draw upon any security provided pursuant to Rule 23(i), discussed below, for the payment of such obligations at any time if they remain unpaid as of the date of termination.

Participations ("FCO Participations"). Like holders of FCO Participations, ETP holders would generally be subject to Phlx's rules and By-Laws but would not be entitled to all the rights an privileges granted to Phlx members. *See* Securities Exchange Act Release No. 19134 (Oct. 14, 1982), 47 FR 46949 (Oct. 21, 1982).

[23] ETP holders will be deemed to be "members" and ETP organizations will be deemed to be "member organizations" for the purpose of eligibility to serve on the Board or Exchange Committees, and nominate candidates for the Board. However, ETP holders shall only have such rights, privileges, and obligations as are expressly set forth in the Certificate of Incorporation, Rule 23, or resolutions of the Board. References in Exchange Rules, By-Laws or the Certificate of Incorporation to "members" shall includes ETP holders. *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[24] PACE is the Exchange's automatic order routing and execution system on the equity trading floor. PACE accepts orders for manual and automatic execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters.

[25] In particular, they will not be subject by virtue of the ETP to the Exchange's $1,500 capital funding fee. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000). Fees proposed to be assessed by the Exchange with respect to ETPs are described in SR–Phlx–00–04. *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[26] Like Exchange members, an ETP holder will be required to be associated with a registered broker-dealer.

[27] The A–B–C Agreement contains additional provisions arising from the division of equitable and legal title to membership, a concept which is inapplicable to ETPs.

Phlx Rule 23(i) requires ETP organizations to provide acceptable security for payment of any claims pursuant to By-Law 15–3 upon termination of an ETP. The proceeds of the posted security may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under By–law 15–3.[28] The security requirement may be met, at the option of the ATP organization, by providing a letter of credit or other guaranty acceptable to the Exchange, or by depositing $50,000 with the Exchange to be held in a segregated account with all other such deposits and held by the Exchange as security. The security required is the same for each ETP organization, regardless of the number of ETPs issued to its associated persons, and is unrelated to any security requirement established by SCCP.[29] The requirement does not apply to member organizations or ETP organizations that have been in good standing at the Exchange for the previous year. Consequently, ETP organizations in good standing for one year after providing such security will be entitled to its return, subject to any prior or appending claims. Finally, Phlx Rule 23(i) makes clear that at such time as no ETP holders remain associated with the ETP organization, the Exchange shall release any remaining security following payment of claims pursuant by By-Law 15–3 and upon execution by the ETP holder and ETP organization of releases satisfactory to the Board of Governors.

The Exchange expects to first undertake the ETP offering by distributing an informational circular and an ETP Application Form to be completed and returned to the Exchange together with payment of the Exchange's application fee. In addition to the ETP Application Form, applicants who are not Exchange members will be required to supply to the Admissions Committee all information required for that Committee to make an admissions determination under its established procedures, as discussed above.

III. Summary of Comments

The Commission received two comment letters in response to the proposed rule changes.[30] One commenter expressed general support for the proposal, stating that it would place the Phlx "in a pro-competitive position with other exchanges that have reduced the cost of access to electronic trading facilities."[31] The other commenter, however, challenged the Phlx's authority to authorize the Board to issue trading permits without a membership vote, and stated that the purpose of the proposal was to harm persons who lease seats to members wishing to trade on the Phlx Floor ("Lessors").[32]

The commenter argued that the Phlx Certificate of Incorporation contemplates a fixed number of membership seats, possession of which gives a person or entity access and trading rights to the Phlx trading floor. Issues relating to membership seats, including different classes of members, are governed by the Exchange's By-Laws, according to the commenter. The commenter goes on to argue that the proposed ETPs are "de facto membership seats," and thus should be governed by the By-Laws, a change to which requires a membership vote, not the Certificate of Incorporation. The commenter describes the addition of a new article to the Certificate of Incorporation to create the ETPs as an attempt by the Exchange to do an end-run around its By-Laws, and avoid a full membership vote on the proposal.[33]

The Exchange, however, believes that the Certificate of Incorporation already permits ETPs, and that an amendment of the Exchange's By–Laws is not required. Further, the Exchange believes that the proposed amendment to the Certificate of Incorporation authorizes ETPs in any event and supersedes any inconsistent provision in the By-Laws as a matter of basic corporate law.

The Wayne Letter also contends that the Exchange's proposal to create ETPs is part of "a methodical plan to destroy both Lessors and the value of PHLX membership seats." The commenter states that "[t]hrough the proposed trading permits, the PHLX is attempting to divert seat rental income from Lessors directly to the Exchange," and that it is the intention of the Board that if the proposal is approved, persons wishing to trade on the Exchange will purchase a permit rather than lease a seat. The commenter states that the Board owes a fiduciary duty to Lessors, which prohibits it from competing directly against Lessors in this manner.

The Exchange has considered this comment and stated that its business judgment the potential benefits to the Exchange of the trading permits, including the potential for increased access and enhance competition on the trading floor and the opportunity to attract additional order flow and new business, justify any possible dilution of memberships and may, in the longer term, result in higher prices for regular memberships. The Exchange believes that ETPs are in the best interests of the Exchange and its membership as a whole (including both lessee members and lessor owners), and notes that the Exchange's stated purpose in Article Third of its Certificate of Incorporation is "[t]o act as and to provide a securities exchange where [its] members and other persons authorized by it" can deal in securities.

IV. Discussion

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission finds that the proposed rule changes further the objectives of Sections 6(b)(2), 6(b)(3), and 6(b)(5).[35]

The Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act[36] and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that ETPs may help facilitate transactions by allowing more broker-dealers direct access to the Phlx market and attracting greater order flow consistent with Section 6(b)(2) of the Act.[37]

In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act.[38] The Commission notes that the Exchange's Board can issue no more than 75 ETPs,[39] which is not significant in relation to the number of regular members on the Exchange.[40] The Commission also notes that the Phlx is a member-controlled exchange, which includes 52 members using a

[28] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[29] *See* SCCP Rule 4.

[30] *See supra* note 7.

[31] *See* Ashton Letter.

[32] *See* Wayne Letter.

[33] The commenter contends that, "[t]he PHLX is well aware that if the full membership were presented with the issue of trading permits as a proposed amendment to the By-Laws, the membership would reject the proposal." *See* Wayne Letter.

[34] In approving this rule, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, the Commission notes that its approval of this proposed rule change only extends to the applicable Exchange Act finding under Section 6(b). 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(2), (3) and (5).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(2).

[38] 15 U.S.C. 78f(b)(3).

[39] *See* Amendments No. 3 to SR–Phlx–00–02 and SR–Phlx–00–03, *supra* notes 7 and 14.

[40] There are 505 regular members of the Exchange. If the Phlx wanted to issue more than 75 ETPs, it would have to amend its Certificate of Incorporation and By-Laws to provide for fair representation of these ETPs.

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membership on the equity floor, whose interests are represented on the Nominating and Election Commission and Business Conduct Commission, and that the Phlx has committed to appointing a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members.[41] Finally, the Commission notes that any disciplinary or trading rules affecting these members are subject to the rule filing process, which requires that proposed rules be submitted to the Commission for consideration and approval.

V. Amendment No. 3

A. SR–Phlx–00–02

The Commission finds good cause for approving Amendment No. 3 to SR–Phlx–00–02 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange amended the Certificate of Incorporation to provide that the permit holders may serve on, or nominate candidates for the Board or Committees. The Amendment also added language to the Certificate of Incorporation which clarified that permit holders are not members of the Exchange for purposes of DGCL and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In addition to making changes to the language of the Certificate of Incorporation, the Exchange represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002, and that it has authorized the Board to issue only 75 permits.

The Commission finds that the Exchange's proposed changes and representations made in Amendment No. 3 further strengthen and clarify the proposed rule change and raise no new regulatory issues. The Commission believes that permitting ETP holders to serve on the Board or Committees, and nominate candidates for the Board, is appropriate and furthers the objectives of Section 6(b)(3) of the Act, which states that the rules of the exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs.[42] These goals are also furthered by the Exchange's commitment to place an ETP holder on the Business Conduct Committee.

Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[43]

B. SR–Phlx–00–03

The Commission finds good cause for approving Amendment No. 3 to SR–Phlx–00–03 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange amended Rule 23(a) to provide that the Exchange may issue a maximum of 75 ETPs.

Amendment No. 3 also clarified in proposed Rule 23(c) that ETPs holders are deemed to be members for purposes of eligibility requirements to serve on the Board or Exchange Committees and for the purpose of nominating candidates for the Board. The Commission believes that permitting ETP holders to serve on, and nominate candidates for, the Board or Committees is appropriate and furthers the objectives of Section 6(b)(3) of the Act, which states that the rules of the exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs.[44]

In addition, Amendment No. 3 added language to proposed Rule 23(c) to clarify that ETPs issued by the Exchange are not "Regular Memberships" or "Convertible Memberships" of the Exchange, and that ETP holders are not members of the Exchange for purposes of DGCL, and shall have no rights or privileges conferred upon members of a nonstock corporation solely by the DGCL. The amendment clarifies the status of ETPs and ETP holders.

Amendment No. 3 also added language to proposed Rule 23(i) to make clear that ETP organizations will be required to post security with the Exchange, the proceeds of which may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under Exchange By-Law 15–3. Exchange By-Law 15–3 provides that the proceeds from the transfer of a membership shall be applied by the Exchange to satisfy existing claims against such member. Again, the Commission believes that this change is merely to clarify the procedure that will be followed in the event an ETP is terminated.

Finally, Amendment No. 3 makes technical non-substantive changes to the proposal to ensure internal consistency exists in the Exchange rules.

The Commission finds that the Exchange's proposed changes in Amendment No. 3 further strengthen and clarify the proposed rule change. Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[45]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File Nos. SR–Phlx–00–02 and SR–Phlx–00–03 and should be submitted by February 8, 2002.

[41] *See* Amendments No. 3 to SR–Phlx–00–02 and SR–Phlx–00–03, *supra* notes 7 and 14. The Act requires an Exchange to "assure a fair representation of its members in the selection of its directors and administration of its affairs * * *." *See* Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). This requirement serves to ensure that an exchange is administered in a way that is equitable to all those who trade on the Exchange. In approving this proposed rule change, the Commission notes that the Exchange may not issue more than a significant number of ETPs in relationship to their 505 Regular Memberships. Also, the Commission Notes that the Exchange currently has 52 members using a membership on the equity floor. These members are eligible to serve on the Nominating and Election Committee and the Business Conduct Committee, and currently such a member serves on each Committee. The Exchange has also committed to appointing a qualified ETP holder to the Business Conduct Committee. Telephone conversation between Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 9, 2002.

[42] 15 U.S.C. 78f(b)(3).

[43] 15 U.S.C. 78f(b)(2).

[44] 15 U.S.C. 78f(b)(3).

[45] 15 U.S.C. 78s(b)(2).

VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that he proposed rule changes (SR–Phlx–00–02 and SR–Phlx–00–03), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1300 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 19, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Louis Cupp, New Markets Policy Analyst, Office of New Markets Venture Capital (NMVC) program, Small Business Administration, 409 3rd Street, SW., Suite 6000.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of New Markets Venture Capital (NMVC) program, 202–205–6510 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Titles: NMVC Program Application, Funding and Reporting.

Form No's: SBA Forms 2184, 2185, 2069, 468, 468 (short form), 468, (Schedule 9,10,11) 480 and 1031 Standard Forms (SF's are under OMB Control) 269, 270, 272, 424, 424A and 424B.

Description of Respondents: NMVC Program applicants and participants; SSBICs receiving grants under the NMVC program.

Annual Responses: 947.

Annual Burden: 11,538 hours.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–1314 Filed 1–17–02; 8:45 am]

BILLING CODE 8025–01–P

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.3–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0285]

Delta Venture Partners I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Delta Venture Partners I, L.P., 8000 Centerview Parkway, Suite 100, Cordova, TN 38018, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (2000)). Delta Venture Partners I, L.P. proposes to provide equity/debt security financing to Nextek, Inc., 201 Next Technology Drive, Madison, AL 35758. The financing is contemplated for plant expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Nextek Investment Partners, L.P. and Nextek Investment Partners II, L.P., Associates of Delta Venture Partners I, L.P., currently jointly own greater than 10 percent of Nextek, Inc., and therefore Nextek, Inc., is considered an Associate of Delta Venture Partners I, L.P., as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 5, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–1313 Filed 1–17–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Guntersville Reservoir Land Management Plan, Jackson and Marshall Counties, Alabama and Marion County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has updated its 1983 land management plan for 40,236 acres of TVA-managed land on Guntersville Reservoir in Alabama and Tennessee. TVA will use the plan to guide land use approvals, private water-use facility permitting, and resource management decisions. On September 19, 2001, the TVA Board of Directors decided to adopt the preferred alternative (Alternative B3, Blended Alternative) identified in the Final Environmental Impact Statement (EIS) and Land Management Plan, Guntersville Reservoir. A Notice of Availability of the Final EIS was published in the **Federal Register** on August 11, 2001. Under the adopted land plan, TVA has allocated undeveloped lands for public recreation and natural resource conservation, and has also been responsive to local requests for use of TVA lands for water access and community development. Of the 40,236 acres of TVA lands on the reservoir which are available for allocation, 37,662 acres would be allocated to resource conservation, sensitive resource management, TVA project operation, or dispersed recreation uses; 1,704 acres would be allocated for developed recreation uses such as marinas, campgrounds, parks, and boat ramps; 543 acres would be allocated for residential lake access, and 327 acres for industrial access or commercial uses.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy & Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION:

Guntersville Reservoir is a 76-mile long reservoir completed in 1939. Although 109,671 acres were acquired for construction of the reservoir, 56,300 are covered by water. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current

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balance of 40,236 acres of TVA public land above normal summer pool elevation of 595 mean sea level. TVA first announced its proposal to update its 1983 land management plan in 2000. Meetings were held to inform the public of the land allocation plan update and to solicit input on March 20, 2000 in South Pittsburgh, Tennessee; March 21, 2000 in Scottsboro Alabama; and March 23, 2000 in Guntersville, Alabama. These meetings were attended by 112 people. In addition, written comments were invited through a news release, newspaper notices, and a web sit notice. Subsequent to the scoping meetings, TVA determined that the development of an EIS would allow a better understanding of the impacts of the alternatives. TVA published a Notice of Intent to Prepare an EIS on December 20, 2000 (**Federal Register** Vol. 65, page 79912). During the scoping period, commenters expressed a desire for more environmental protection and discussed how they valued the scenic beauty and setting of the reservoir. In addition, 13 external proposals were received for use of TVA lands along the reservoir. These proposals were from local governments and adjacent residents requesting additional recreational or industrial access uses. TVA made an effort to identify parcels of land with sensitive resources and identified tracts that should be managed for protection of these resources. In addition, TVA used the proposals received to develop alternatives for public review in the draft EIS (DEIS), which was published in April 2001. A Notice of Availability (NOA) for the DEIS appeared in the **Federal Register** on May 4, 2001.

In addition to written materials, additional information on the proposals and other aspects of the DEIS was available to the public in three public meetings held in South Pittsburg, Tennessee (May 24, 2001), Scottsboro, Alabama (May 29, 2001) and Guntersville, Alabama (May 31, 2001). Approximately 550 comments were received on the DEIS. These comments primarily related to recommendations for proposed uses of TVA land. Numerous comments and extensive public discussions took place regarding the use of several of the parcels. These discussions were especially focused on parcel 26a, adjacent to the Conners Island Industrial Park; parcel 40, proposed for a Guntersville Airport expansion; parcel 200a, proposed for a South Sauty Creek commercial recreation development; and parcel 257 in the City of Guntersville, which attracted three competing proposals. In the Final EIS (FEIS), TVA developed an alternative that would fully or partially zone parcels of land to accommodate 11 of the 13 initial requests. In addition, TVA received public suggestions for changes on other parcels. After considering all comments, the Final EIS was completed and distributed to commenting agencies and the public. A NOA for the Final EIS was published in the **Federal Register** on August 11, 2001.

Alternatives Considered

TVA initially considered three alternatives, including no action, for allocation of Guntersville Reservoir lands. The action alternatives were characterized as Alternative B1, "Balanced Development and Recreation," and Alternative B2, "Balanced Development and Conservation." Alternative B1 accommodated use requests and allocation changes for 13 parcels, while Alternative B2 did not accommodate allocation changes requests and instead allocated these lands to conservation-oriented uses or retained the lands in their previous designation under the 1983 plan. In response to public comments on the DEIS, TVA developed a fourth alternative, designated Alternative B3, or "Blended Alternative." This alternative was designed to provide zone allocations which partially accommodate the 13 requests, and make other adjustments in response to public comments.

Under *Alternative A, the No Action Alternative,* TVA would not revise the 1983 allocation plan. Proposed land use requests received from external applicants or internal TVA interests would be evaluated for consistency with the 1983 plan. Requested land uses that are consistent would be approved or denied based on a review of potential environmental impacts and other administrative considerations. If the request is not consistent with the designated land use, and TVA staff believe the proposal has merit, then the TVA Board of Directors would be asked to amend the plan and change the allocation.

The 1983 plan used 16 allocation categories to allocate 150 parcels (32,584 acres) of TVA land. Residential shoreline and other shoreline strips were not included in the allocations. In addition, the Murphy Hill coal gasification plant site and the Honeycomb Quarry Cave limestone quarry were not allocated. Many parcels in the 1983 plan were designated with multiple allocation tags, which means that they could be considered for a wide range of uses, with a wide range of resulting environmental consequences. Despite this uncertainty, TVA estimates that if the existing plan were used as a guide, 89 percent of reservoir lands would be used for resource protection or natural resource management, 19 percent would be used for industrial or other developed uses, and 13 percent would be used for recreation development. As explained in the EIS, the above figures total greater than 100 percent because certain parcels have multiple allocation tags under the 1983 plan.

Under *Alternative B1, Balanced Development and Recreation,* 80 percent of project lands would be allocated to environmental protection and natural resource management uses, 13 percent would be allocated for developed uses or industrial uses, 6 percent for recreation development, and 1 percent for residential access. Tracts would be allocated to accommodate a Guntersville Airport expansion, 9 new recreational development proposals, and 3 new commercial or industrial proposals.

Under *Alternative B2, Balanced Development and Conservation,* 82 percent of project lands would be allocated to environmental protection and natural resource management uses, 13 percent for developed uses or industrial uses, 4 percent for recreation development, and 1 percent for residential access. Zone allocations for recreational, commercial or industrial proposals, or the airport expansion under Alternative B1 would not be accommodated, and the tracts would stay in their existing allocation or be allocated to zone 4, natural resource conservation.

Alternative B3, Blended Alternative, was developed in response to public comments on the DEIS. Approximately 81 percent of project lands would be allocated to environmental protection and natural resource management uses, 14 percent for developed uses or industrial uses, 4 percent for recreation development, and 1 percent for residential access. Alternative B3 contains a mix of allocations from Alternatives B1 and B2 and attempts to address, respond to, or resolve suggestions made during public review of the DEIS. In some cases, parcel allocation revisions were made, or special commitments related to parcels have been included. In general, Alternative B3 differs from Alternative B1 in that approximately 600 acres would be retained in buffers or natural resource management zones. Adjacent human communities would be buffered from visual and other impacts of parcel development. Alternative B3 was designated as the TVA preferred alternative in the FEIS.

The EIS considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federal and state-listed species, cultural resources, and wetlands would be protected. Adoption of Alternative B3 would balance the competing demands of development and conservation. Development activities would have the potential for adverse environmental impacts. However, through the inclusion of environmental safeguards to address water quality, visual buffers, and wetland protection, and through resource avoidance and parcel-specific protection measures, these impacts would be minimized.

Because the potential effects on historic properties cannot be fully determined prior to implementation of the land plan, TVA will use a phased identification and evaluation process as allowed under 36 CFR 800.4(b)(2) to fulfill its obligations under Section 106 of the National Historic Preservation Act. Letters from the Alabama and Tennessee State Historic Preservation Officers (SHPOs) dated September 7, 2001 and August 16, 2001, respectively, concur with this phased approach. Further, in view of the regional scope of this project, TVA has initiated efforts to prepare a Programmatic Agreement (PA) consistent with the regulations of the Advisory Council on Historic Preservation (ACHP) implementing the National Historic Preservation Act. The PA includes provisions for monitoring of reservoir shorelines. A PA for the implementation of reservoir land management plans in Alabama is being reviewed by all requisite parties. ACHP, TVA, the Alabama SHPO, the Eastern Band of Cherokee Indians, and the Chickasaw Nation are proposed signatories in the PA, and the Alabama Indian Affairs Commission is a concurring party. A PA is also under development for reservoir lands in the state of Tennessee, through coordination with the Tennessee SHPO, ACHP, and consulting parties. These measures ensure that the effects of the Guntersville Reservoir Land Management Plan on historic properties have been taken into account.

Response to Comments

Appendix E of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received comments from 550 individuals and organizations on the DEIS. As indicated above, TVA believes that the open public process and discussion on a number of community proposals substantially enhanced its decision making. TVA also received comments on the FEIS from EPA, Alabama Historical Commission, and Tennessee Historical Commission. EPA appreciated that timber harvesting, an allowable activity in Zone 4, was redefined to include "timber management to promote forest health." They requested that the ROD offer management options for unit plans. Further, EPA was concerned that Alternative B3 favored development proposals and was closer to Alternative B1 than the EPA-favored Alternative B2. EPA also provided specific comments on parcel allocations. EPA expressed concerns about industrial and commercial development such as the proposed Guntersville Airport expansion, industrial park, interchange development and industrial site, and also pointed out that marinas, boat ramps and campgrounds proposed to be allowed under Alternative B3 could have reservoir water quality impacts. For parcel 257, EPA expressed a preference to allocate the parcel to for zone 4 and stated that Alternative B3 would allow partial development of the tract by allowing the siting of a headquarters for United Cherokee Intertribal.

TVA appreciates the EPA comments and will emphasize water quality considerations during its land use and Section 26a decision making processes for facilities on Guntersville Reservoir. Although TVA has attempted to accommodate a number of development proposals, these are typically of limited area and are often for water access for adjacent private landowners. TVA will use site-specific reviews to incorporate additional environmental protection, including water quality protection measures, into these proposals. Typical forest management options for unit plans (zones 3 and 4) on Guntersville Reservoir are expected to include some, but not all of, the following types of activities:

- Pine thinning and prescribed burning to maintain healthy pine stands
- Salvage activities to control southern pine beetle infestations
- Creation of brush piles for wildlife habitat
- Daylighting of road shoulders and selected other areas by selective timber removal to create conditions favorable for grasses and forbs preferred by wildlife species, and to enhance aesthetics
- Planting of areas adjacent to the reservoir with appropriate species
- Treatment of invasive exotic species infestations
- Timber stand improvements to encourage oak regeneration and growth
- Harvesting mature pine stands and allow stands to regenerate
- Harvests of limited size over a period of years to create a mosaic of hardwood forest cover types and age classes
- Controlled burn implementation during late winter to increase advanced oak regeneration

All of these activities would be oriented toward maintenance and enhancement of forest health on public lands. Other public use management and wildlife management activities would be conducted to preserve and enhance forest ecosystem health and productivity. Each unit plan would be subjected to agency and public review, and site-specific environmental safeguards incorporated into the proposed management activities. With regard to Parcel 257, TVA did not zone this parcel to accommodate the United Cherokee Intertribal request for a headquarters and interpretive center. However, TVA did decide to allow use of a limited area for an annual tribal conference and ceremonial event (pow-wow).

In other agency comments, the Tennessee Historical Commission concurred that phased compliance is an appropriate strategy, and requested that TVA submit all historic property survey reports to the office for review and comment. In accordance with standard Section 106 compliance procedures, TVA will do this for all properties in Tennessee. The Alabama Historical Commission indicated that they preferred Alternative B2, but that they could agree with Alternative B3 provided that a phase II archaeological investigation be conducted for every site which is potentially eligible for the National Register of Historic Places. TVA will conduct archaeological and historic structure surveys to identify historic properties, and will submit phase II proposals to the Alabama Historical Commission for approval prior to testing for projects in Alabama. TVA also received two comments from adjoining landowners on the Final EIS that were not made on the draft EIS questioning some proposed allocation decisions. An adjoining landowner objected to a buffer zone that TVA proposed to establish between a recreational development zone (proposed for a campground) and a subdivision. The landowner felt that the buffer zone would be subject to abuse from uncontrolled camping and motorized recreation. A second

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landowner requested that lands classified as Zone 4 because of their incorporation into a state wildlife management area be changed to zone 7 to allow residential access. Because the land in question has historically been used as part of the Mud Creek Wildlife Management Area and the wildlife management area easement with the state is proposed for extension, TVA plans to leave this property in zone 4, but to recognize the residential access rights for a 1.7-acre parcel. As part of any future conveyance to the state for wildlife management purposes, TVA would include both a general and specific reservation acknowledging these residential access rights.

Decision

The TVA Board decided to adopt the Guntersville Reservoir Land Management Plan as described in Alternative B3 on September 19, 2001. TVA believes that Alternative B3 responds to community development and recreational development needs on Guntersville Reservoir, but also recognizes and preserves the aesthetic and sensitive resources which make the reservoir unique. Like the other alternatives considered, Alternative B3 sets aside parcels containing sensitive resources and habitats in the Sensitive Resource Protection and Natural Resource Conservation categories. For lands where TVA proposes to consider development proposals, following site-specific review of development plans, Alternative B3 adopts commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below, under Environmental Commitments.

Environmentally Preferable Alternative

TVA has concluded that Alternative B2, which would not grant recreational and industrial access requests on 13 parcels, is the environmentally preferable alternative. However, TVA's responsibilities for unified development of the Tennessee River system and adjoining properties encourage the use of portions of the reservoir lands to foster the economic development of the area. Local governments and a number of people commenting also support these projects. TVA believes that Alternative B3 helps to meet the multiple objectives of the Guntersville project, and would result in substantially better environmental protection than previous shoreline development practices. Further the environmental impacts of TVA's preferred alternative would be less than Alternative B1 and the No Action Alternative.

Environmental Commitments

The land plan envisioned in Alternative B3 advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches. Alternative B3 was formulated using environmentally protective measures. Some of these measures include use of a sensitive resource protection zone and incorporation of buffers between development proposals and adjoining landowners. In addition, TVA is adopting the following measures to minimize environmental impacts:

- Wetlands will be avoided on residential access properties on parcels 12, 69, and 22 and any portion of parcel 26a and 165 allocated for recreational development.
- Recreational development on parcels 143, 154a, 159 and 168 will be designed to avoid historic properties and designed to enhance their interpretation.
- Agricultural licensing on Parcels 26a, 45, 121, 124, 132, and 260 will include buffers to avoid impacts to the reservoir and wetlands.
- All land disturbing activities shall be conducted in accordance with Best Management Practices as defined by Section 208 of the Clean Water Act and implementing regulations to control erosion and sedimentation. Forest management activities will be conducted in accordance with practices prescribed for forestry. Best Management Practices for agriculture, including maintenance of vegetative buffers, will be included in agricultural licenses.
- Visual and water quality enhancement buffers, between 50 feet and 100 feet wide, will be provided to screen timber harvest areas from public thoroughfares and shorelines and to minimize the potential for sediments or other nonpoint source pollutants to enter Guntersville Reservoir.
- Controlled burns will be conducted in accordance with the open burning regulations of the appropriate state.
- On parcel 2, TVA will place special emphasis on visual analysis during consideration of any management activities.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future development proposals on the reservoir would be substantially reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm that are associated with this alternative.

As TVA implements the Guntersville Reservoir Land Management Plan, the agency will continue to work with all affected interests to promote environmentally sound stewardship of public lands.

Dated: October 29, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 02–1166 Filed 1–17–02; 8:45 am]

BILLING CODE 6120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson and Clearfield Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Jefferson and Clearfield Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division , 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, (717) 221–3411 or Mark S. Rozich, P.E., Project Manager, Pennsylvania Department of Transportation, District 10–0, Route 286 South, P.O. Box 429, Indiana, Pennsylvania 15701, (724) 357–2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT), will prepare an Environmental Impact Statement (EIS) for a transportation improvement within the study area of U.S. Route 219 (eastern terminus), S.R. 0830 (western terminus), Interstate 80 (southern terminus), and the DuBois-Jefferson County Airport (northern terminus). The project will include the development of a reasonable range of alternatives that meet the project need and supporting environmental documentation and analysis to recommend a preferred alternative for implementation. A complete public involvement program is part of the project.

The purpose of the transportation improvement is to improve access to the DuBois-Jefferson County Airport and the associated Keystone Opportunity Zone (KOZ) and Foreign Trade Zone (FTZ). Based upon a needs analysis completed in 2001, transportation improvements are needed to support the regional economic development goals planned for the area, encourage the regional intermodal needs of the area by providing safe and efficient access to the airport, and maintain consistency with the region's transportation goals and objectives as defined by the North Central Pennsylvania Regional Planning and Development Commission.

Alternatives that will be considered include: The no-build; upgrade of existing roadways within the study area; and new roadway alignment with a new interchange on Interstate 80. These alternatives will be the basis for a recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS. Incorporated into and studied with the various alternatives will be design variations of grade and alignment.

Public meetings have been and will continue to be held throughout the development of the EIS for the general public and agencies. A Project Mailing List, a Project Newsletter and a Project Web Site will established to inform the public of project milestones.

Periodic meetings are scheduled with the state and federal environmental agencies through an Agency Coordination Meetings (ACM) to present project as well as receive comments and concerns from the agencies on the development of the project alternatives, the assessment of impacts and the identification of mitigations measures. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in the project.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or PENNDOT at the addresses provided above.

(Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 02–1285 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34151]

Beaufort & Morehead Railway, Inc.—Acquisition and Operation Exemption—North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway

Beaufort & Morehead Railway, Inc. (BMRI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease, pursuant to an agreement with its owner the North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway (NCPRC), all of NCPRC's railroad line extending from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island, Radio Island and Beaufort Team Track, together with all of the NCPRC's yard and interchange tracks.[1] BMRI will be the operator of the line. BMRI certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on December 28, 2001.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34151, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, N.W., 8th Floor, Washington, DC 20036–1601.

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Decided: January 11, 2002.

[1] *See North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.*, STB Finance Docket No. 33826 (STB served Dec. 2, 1999).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1276 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34125]

South Dakota Railroad Authority—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

South Dakota Railroad Authority (SDRA), noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire approximately 49.48 miles of rail line located in Brown and Marshall Counties, SD, owned by The Burlington Northern and Santa Fe Railway Company (BNSF). The line to be acquired is located between milepost 115.08 near Aberdeen, SD, and milepost 65.60 near Kidder, SD, at the South Dakota/North Dakota border. SDRA will also acquire limited operating rights to conduct rail freight service only, for the sole purpose of interchanging freight cars and equipment, over BNSF's rail line at or near Aberdeen, SD, between milepost 115.08 and milepost 118.6 of BNSF's Geneseo subdivision, and between milepost 706.1 and milepost 707.1 of BNSF's main line, for the sole purpose of SDRA or its designee interchanging rail cars and equipment at BNSF's Aberdeen Yard.[1] SDRA certifies that its projected annual revenues will not exceed those that would qualify it as a Class III carrier.

SDRA reports that an agreement for the transaction was reached and the transaction was consummated on June 15, 2001. The effective date of the exemption was December 27, 2001 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34125 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Bruce E.

[1] SDRA states that an operator on the track being acquired has not yet been determined.

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Lindholm, Program Manager, Office of Air, Rail and Transit, 700 East Broadway Avenue, Pierre, SD 57501.

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Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1387 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34144]

Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within a Corporate Family Transaction—South Carolina Central Railroad, Inc.

Georgia Southwestern Railroad Inc. (GSWR) and South Carolina Central Railroad, Inc. (SCCR), both Class III rail carriers, have jointly filed a notice of exemption under 49 CFR 1180.2(d)(3).[1] The exemption transaction involves what GSWR describes as a corporate family transaction whereby GSWR will sell to SCCR, and SCCR will lease back to GSWR, 101.27 miles of rail lines (the Lines), located in Georgia: (1) Between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser. In addition, GSWR will acquire the operating rights of SCCR for 13.62 miles of rail line between milepost 86.5 at Albany and milepost 72.88 at Sasser.[2] The 13.62-mile line was converted to a trail, in accordance with an interim trail use arrangement, on October 16, 1997.

The transaction was scheduled to be consummated on or shortly after December 28, 2001, the effective date of the exemption.

This transaction is within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside of the corporation family.

The purpose of the transaction is to simplify the arrangements for the operation of the Lines. SCCR will own the Lines and GSWR will operate the Lines. The proposed transaction will improve the financial viability of GSWR and SCCR and they will benefit from the purchase price and reduced operating costs, while still providing rail service.

This transaction is related to a simultaneously filed notice of exemption in STB Finance Docket No. 34057, *State of Georgia Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc.*, wherein the Georgia Department of Transportation (GDOT)[3] is acquiring certain railroad assets of SCCR, including the above-noted 101.27 miles of railroad lines, but not including the right to conduct common carrier freight operations over the Lines.[4]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34144, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

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Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1404 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34057]

State of Georgia, Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc.

State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31[1] to acquire from the South Carolina Central Railroad, Inc. (SCCR), a Class III rail carrier, but not to operate, 101.27 miles of rail lines (the Lines) located in Georgia: (1) Between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge, and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser.

GDOT, SCCR, and RailAmerica, Inc., the parent company of SCCR, have entered into an agreement whereby GDOT will acquire only the physical assets in the Lines, but not the right to conduct common carrier freight operations over the Lines. SCCR and its affiliate, Georgia Southwestern Railroad, Inc. (GSWR) have entered into a separate agreement for GSWR to sell the Lines to SCCR, and for SCCR to lease the Lines back to GSWR. That related transaction is the subject of a simultaneously filed notice of exemption in STB Finance Docket No. 34144, *Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within a Corporate Family Transaction—South Carolina Central Railroad, Inc.*, wherein GSWR seeks to sell the Lines to SCCR and SCCR will lease the lines back to GSWR to conduct common carrier freight operations over the Lines. Concurrent with the closing of that corporate family transaction, it is expected that SCCR will sell the Lines to GDOT as described in this transaction, and SCCR will retain a permanent easement to retain the residual common carrier freight obligations over the Lines in the event that GSWR or future assignees are unable to provide common carrier service.

The transaction was scheduled to be consummated on December 28, 2001, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34057, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Hal Wilson, State of Georgia, Department of Transportation, Office of Intermodal Programs, 276 Memorial Drive, SW., Atlanta, GA 30303.

Board decisions and notices are available on our web site at *"WWW.STB.DOT.GOV."*

Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1388 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

[1] GWSR and SCCR are subsidiaries of RailAmerica, Inc., a noncarrier.

[2] *See Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, GA*, Docket No. AB–389 (Sub-No. 1X) (STB served Aug. 16, 1996).

[3] GDOT simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

[4] Concurrently with the closing of the transaction between SCCR and GSWR, SCCR will sell the Lines to GDOT, and GDOT will acquire only the physical assets. GDOT will not hold or perform common carrier service. GSWR will provide common carrier service and SCCR will retain a permanent easement to provide residual common carrier service if GSWR or an assignee of GSWR is unable to provide service over the Lines.

[1] GDOT simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC on January 29, 2002, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. section 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 5526(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Paul Malvey, Director, Office of Market Finance at 202–622–2630.

Dated: January 14, 2002.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 02–1307 Filed 1–17–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed by the agency when a purchaser assumes a veteran's home in release of liability cases.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 19, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0047" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

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collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6807 is used to determine an applicant's or obligor's creditworthiness. The major use of the form occurs in release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchaser/assumers meet the necessary requirements, among which is qualifying from a credit standpoint.

The form also can be used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan. It is also used to determine the eligibility of homeowners for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 40,000.

Dated: January 8, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1406 Filed 1–17–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0404."

SUPPLEMENTARY INFORMATION: *Title:* Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased VA disability compensation based on unemployability. VA uses the information to determine a veteran's entitlement to unemployability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at page 35698.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 24,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0404" in any correspondence.

Dated: January 8, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1407 Filed 1–17–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 13

Friday, January 18, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N-0044]

Small Entity Compliance Guide: "Structure/Function Claims;" Availability

Correction

In notice document 02–451 appearing on page 1225 in the issue of Wednesday, January 9, 2002, make the following correction:

On page 1225, in the third column, in the third line, the web address is corrected to read as follows: "http://www.cfsan.fda.gov/~dms/guidance.html".

[FR Doc. C2–451 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

[Public Notice 3872]

Privacy Act of 1974, as Amended: New System of Records

Correction

In notice document 02–236 beginning on page 623 in the issue of Friday, January 4, 2002 make the following correction:

On page 624, in the second column, under the heading **Notification Procedure:** in the ninth line, "202–161–8571" should read, "202–261–8571".

[FR Doc. C2–236 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification or Exemption

Correction

In the issue of Tuesday, January 8, 2002, on page 953, in the third column, in the correction of notice document 01-31656, the table should read as set forth below.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M		Solvay Fluorides, St. Louis, MO (See Footnote 1)	3216
8215–M		Olin Corp., Brass & Winchester, Inc., East Alton, IL (See Footnote 2).	8215
10442–M		Kennedy Space Center, Kennedy Space Center, FL (See Footnote 3).	10442
10798–M		Chemetall Foote Corporation, Kings Mountain, NC (See Footnote 4).	10798
10929–M		Bulkmatic Transport Company, Jersey City, NJ (See Footnote 5).	10929
11185–M		Medical Waste Solutions, Inc., Gary, IN (See Footnote 6)	11185
11770–M		Gas Cylinder Technologies, Inc., Tecumseh, Ontario N8N 2M4 Canada (See Footnote 7).	11770
11911–M	RSPA–97–2735	Transfer Flow, Inc., Chico, CA (See Footnote 8)	11911
11924–M	RSPA–97–2744	Wrangler Corp., A Division of Lapoint Industries, Auburn, ME (See Footnote 9).	11924
12817–M	RSPA–01–10513	Phibro-Tech, Inc., Fort Lee, NJ (See Footnote 10)	12817

[FR Doc. C1–31656 Filed 1–17–02; 8:45 am]

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Federal Register

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Part II

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications—Fall/Winter Competition; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2002–05]

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications—Fall/Winter Competition

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services' (DHHS).

ACTION: Request for Applications under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program—Fall/Winter Competition.

SUMMARY: The Office of Community Services announces that competing applications will be accepted for grants pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training, and Educational Services (Coats) Human Services Reauthorization Act of 1998, (Pub. L. 105–285). This Fall/Winter competition for new Fiscal Year 2002 grants may be followed by an additional competition later in the Fiscal Year depending upon needs within the Community Services Network and the availability of funds. This program announcement does not describe priority areas or awards to be made later in Fiscal Year 2002 that continue multi-year obligations from previous competitions.

This program announcement consists of seven parts. Part A provides information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of the program, the priority areas that will be considered for funding, and which organizations are eligible to apply in each priority area. Part C provides details on application prerequisites, anticipated amounts of funds available in each priority area, estimated number of grants to be awarded, and other grant-related information. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing Date: The closing date for submission of applications is March 19, 2002. Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or are postmarked on or before the deadline date. Applications received after the closing date will be classified as late and not considered for funding. Applications that are handcarried will be classified as late if they are received after 4:30 p.m., EST, on the deadline date. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including addresses where applications must be sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Dr. Margaret J. Washnitzer, Director of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 (202) 401–9343. This program announcement is accessible on the OCS web site for reading or downloading at: *http://www/acf/dhhs/gov/programs/ocs.*

Additional copies of this program announcement can be obtained by calling (202) 401–9343.

The Catalog of Federal Domestic Assistance number is 93.570. This Program announcement title is "Training, Technical Assistance, and Capacity—Building Program."

Part A—Preamble

1. Legislative Authority

Sections 674(b)(2) and 678E(b) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (Pub. L. 105–285) authorizes the Secretary of Health and Human Services to utilize a percentage of appropriated funds for: training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may carry out these activities through grants, contracts, or cooperative agreements. To address program quality in financial management practices, management information and reporting systems, and measurement of program results and to ensure responsiveness to identified local needs, the Secretary is required to distribute funds directly to eligible entities, or statewide or to local organizations or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. The Secretary may carry out the remaining activities through appropriate entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out must (a) ensure that the needs of eligible entities and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to address the challenges and unmet needs of States and Community Action Agencies and to increase program quality and management within the Community Services Network. The Task Force has taken a comprehensive approach to monitoring, including establishing national goals and outcome measures, and established target dates for nation-wide implementation; reviewing information and data needs relevant to these outcome measures; and assessing technical assistance and training provided toward capacity building within the Community Services Network.

2. Definitions of Terms

For purposes of the FY 2002 CSBG Training, Technical Assistance and Capacity-Building Program, the following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include

upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the "low-income" community, or the "religious" community or the "professional" community. The individual members of these "communities" may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, i.e., (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement is an award instrument of financial assistance where "substantial involvement" is anticipated between the awarding agency and the recipient during the performance of the contemplated project or activity. "Substantial involvement" means that the recipient can expect Federal programmatic collaboration or participation in managing the award.

Eligible applicants for this training and technical assistance program announcement are eligible entities (see described below); States, non-profit organizations or state CAA associations who are involved in training, technical assistance planning, corrective action, evaluation and peformance measurement in order to assist States in carrying out the purposes of the CSBG program. Eligible faith-based nonprofit organizations may apply.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farmworker organizations that received CSBG funding in the previous fiscal year. Faith-based organizations that are also eligible entities may apply. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Hub is a Department of Health and Human Services designation for multiple regional locations.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Outcome Measures are indicators that focus on the direct results one wants to help clients achieve.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies for developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, i.e. activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico, and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Part B—Purposes/Program Priority Areas

This Training, Technical Assistance, and Capacity-Building program announcement is intended to provide funding to eligible applicants within the Community Services Network to advance achievement of the six national community action goals:

Goal 1: Low-income people become more self-sufficient.

Goal 2: The conditions in which low-income people live are improved.

Goal 3: Low-income people own a stake in their community.

Goal 4: Partnerships among supporters and providers of service to low-income people are achieved.

Goal 5: Agencies increase their capacity to achieve results.

Goal 6: Low-income people, especially vulnerable populations, achieve their potential by strengthening family and other supportive systems.

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These goals were established by the Community Services Network and have been used over the past eight years to focus its work on achieving meaningful and measurable improvements in the lives of clients and communities. Establishing these goals in 1994 was an initial step in the Network's voluntary effort to develop and install a comprehensive performance-based management system, "Results Oriented Management and Accountability," or ROMA. Sections 676(b)(12) and 678(E) of the CSBG Act, as amended in 1998, now mandate implementation of ROMA across the entire Community Services Network, with performance reporting from all partners in the Network beginning October 1, 2001.

This program announcement seeks to encourage the development or expansion of specific community action initiatives within the framework of the six national goals. Successful applicants will help move the Network toward improved programs, outcomes, and greater accountability through universal adoption of ROMA by Fiscal Year 2003.

The ROMA goal-related activities to be funded through this program announcement are intended to complement those now being supported by grants made in the last quarter of Fiscal Year 2001. Specifically, OCS funded a significant number of grants to States (CSBG Lead Agencies and State Community Action Associations) to carry out ROMA implementation plans developed jointly by these organizations at five regional meetings sponsored by OCS during July and August, 2001. States were encouraged at the regional meetings to focus their plans on accomplishing eight ROMA implementation "core activities" (four State and four local) described in OCS Information Memorandum Number 49 (February 21, 2001):

State Agencies

1. The agency has developed, in coordination with eligible entities and the State CAA association, a State-wide vision statement that speaks to the goals and purposes of community action within the State and that supports the six national ROMA goals. The agency is encouraged to participate in, and contribute to, broader State anti-poverty/community development initiatives with outcome measures and goals compatible with ROMA;

2. The agency has trained all its eligible entities (staff and boards) in outcome-based management, and that 80% of the entities use ROMA concepts to guide needs assessment, agency mission review, activity planning, resource allocations, service delivery, measuring and reporting results;

3. Eighty percent of the plans and program reports received from eligible entities in the State describe plans to achieve projected outcomes, and evaluate results based on measurable improvements of condition(s) among clients and/or communities served; and

4. .The agency submits complete, accurate, and timely annual reports to OCS on the "measured performance of the State and the eligible entities in the State" as required by section 678E of Public Law 105–285, the Community Services Block Grant Reauthorization Act of 1998.

Eligible Entities

1. The entity and its board complete regular assessments of the entity's overall mission, desired impact(s) and program structure, taking into account: (1) The needs of the community and its residents; (2) the relationship, or context, of the activities supported by the entity to other anti-poverty, community development services in the community; and (3) the extent to which the entity's activities contribute to the accomplishment of one or more of the six ROMA national goals;

2. Based upon the periodic assessments described above, the entity and its board has identified yearly (or multi-annually) specific improvements, or results, it plans to help achieve in the lives of individuals, families, and/or the community as a whole;

3 . The entity organizes and operates all of its programs, services, and activities toward accomplishing these improvements, or outcomes, including linking with other agencies in the community when services beyond the scope of the entity are required. All staff are helped by the entity to understand the direct or indirect relationship of their efforts to achieving specific client or community outcomes; and

4. The entity provides reports to the State that describe client and community outcomes and that capture the contribution of all entity programs, services, and activities to the achievement of those outcomes.

Model capacity building and technical assistance coordination financed through this program announcement are designed to produce both basic and advanced tools that can be used across the network to carry out these "core activities" that constitute ROMA implementation as required by law.

In addition to creating program information and tools for organizing community services to achieve client and community outcomes, OCS intends to underwrite intensive, one-on-one interaction among community action staff from one program to another. OCS hopes that those agencies/workers that have experimented with various approaches to program improvement will share their experiences with partner agencies through such strategies as extended on-site visits or staff exchanges.

OCS is soliciting applications for this Fiscal Year 2002 Fall/Winter competition for Training, Technical Assistance and Capacity-Building funding in the following priority and sub-priority areas:

Priority Area 1.0 Achieving Goal 1: Low-Income People Become More Self-Sufficient

Sub-Priority Areas

1.1 Strengthening the "Self-sufficiency Continuum" (SC)
1.2 Organizing/Coordinating Services Around Self-sufficiency: Welfare to Work (WW)
1.3 Organizing/Coordinating Services Around Self-sufficiency/ IndependentLiving Among the Aging or Disabled (SA)
1.4 Strategic Measurement and Reporting of Self-sufficiency Outcomes (SM)
1.5 The Use of Individual Development Accounts to Advance Self-sufficiency (ID)

Priority Area 2.0 Achieving Goal 2: The Conditions in Which Low-Income Individuals' Lives Are Improved

Sub-Priority Areas

2.1 Organizing/Coordinating Community Development Programs (CD)
2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs/ Services (CO)

Priority Area 3.0 Achieving Goal 3: Low-Income People Own a Stake in Their Community

Sub-Priority Areas

3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)
3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)

Priority Area 4.0 Achieving Goal 4: Partnerships Among Supporters and Providers of Service to Low-Income People Are Achieved

Sub-Priority Areas

4.1 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Client Goals I and VI (FP)
4.2 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Community Goals II and III (FC)

Priority Area 5.0 Achieving Goal 5: Agencies Increase Their Capacity To Achieve Results

Sub-Priority Areas

5.1 ROMA Training and Technical Assistance Clearinghouse (RC)
5.2 Board Training Programs (BT)
5.3 State Agency/Association ROMA Plan Implementation (RI)
5.4 Local Capacity-Building (CB)

Priority Area 6.0 Achieving Goal 6: Low-Income People, Especially Vulnerable Populations, Achieve Their Potential by Strengthening Family and Other Supportive Systems

Sub-Priority Areas

6.1 Strengthening the Role of Fathers and Marriage in Child and Family Life (MS)
6.2 Meeting the Special Needs of Children With an Incarcerated Parent (IP)
6.3 Network Guide to Measuring Family Development Outcomes (FD)

Priority Area 1.0 Achieving Goal 1: Low-Income People Become More Self-Sufficient

OCS believes that community action has a unique opportunity to strengthen its anti-poverty, self-sufficiency successes over the next several years among the variety of populations it currently serves, including: (1) Those families who have moved from welfare to work but need additional assistance in order to continue their progress to greater self-sufficiency; (2) those families that continue to receive public assistance and need help to begin the process of moving toward self-sufficiency; and (3) the aging or disabled for whom self-sufficiency is often defined in terms of "independent living."

The CSBG provides flexible funding to States and eligible entities that permits these agencies to organize the variety of services they administer, financed by a number of funding sources, around the self-sufficiency needs of the clients they serve. Indeed, the ROMA "core activities" for eligible entities described in Information Memorandum No. 49 speak to this concept of coordinated delivery of services from programs within an eligible entity and from "partner" agencies in the community. Such coordination is intended to achieve robust improvements in the lives of clients that no one service can achieve alone, such as helping them move permanently from welfare to work, or sustaining movement toward self-sufficiency once training and entry-level employment have been secured. Similarly, Information Memorandum No. 49 encourages State CSBG officials to link with other programs with purposes that are congruent with the six national community action goals in order to assure that the programs, in concert, achieve life-changing outcomes among often-shared clients.

Coordinating services across programs to help clients achieve broad, life-altering goals, especially the anti-poverty work of moving families from dependence to self-sufficiency, can make community action unique and potentially more successful than other service providers. But, such coordination is somewhat difficult to achieve and has not always been considered essential to the existence or success of community action. Many State agencies and eligible entities have evolved over the years into umbrella organizations that house separate, and administratively segregated service programs, that often serve the same clients in parallel universes, by fiat not design, and that have no pattern or broader purpose to their immediate interventions.

OCS intends to fund those community action leaders at the State or local levels that have been successful in organizing programs and services, both within and outside their agencies, toward achieving client self-sufficiency, to help others within the Network reconfigure their programs, services, and outcome expectations. It will "underwrite" the time and expense of these leaders so that they may share their experiences with colleagues in other States or communities.

OCS also intends to fund State or eligible entities that wish to develop new self-sufficiency models of coordinated service delivery for one or more of the community action client populations.

In addition, OCS seeks the development and dissemination of model ways to track the many intermediate interventions across services and programs that ultimately combine and contribute to families achieving the broader outcome of self-sufficiency. Such a tool(s) may help State and local community action officials: (1) Plan programs and deploy resources around client-specific strategies; (2) translate discrete services or interventions into building-block inputs; (3) access the effectiveness of such interventions in terms of their intermediate impact on clients; and (4) analyze and report the impact of the ultimate coalescence of intermediate, or contributory outcomes, on a family's ability to achieve and sustain self-sufficiency.

Sub-Priority 1.1 Strengthening the "Self-Sufficiency Continuum" (SC)

As a result of welfare reform, millions of families have moved from public assistance to employment over the past five years. Many of these families have taken the first steps toward self-sufficiency but they are not earning "living wages," or adequate income, to be truly self-supporting. OCS intends to strengthen the "self-sufficiency continuum" that provides purposeful and targeted assistance to these families to help them continue their movement toward ultimate economic independence.

OCS is aware that most community action agencies already provide services to the "working poor." In many cases, such services may address both temporary and longer-term family needs. The services may allow family members to remain employed rather than revert to public assistance as their primary means of support. OCS encourages purposeful and targeted assistance to working families that are transitioning to self-sufficiency.

OCS will fund up to six awards, two in each of the following categories, to advance community action creation of an effective "self-sufficiency continuum":

(1) *Training and Technical Assistance:* OCS will underwrite the development of training and technical assistance information that identifies and describes programs within the Network that have: (a) Undertaken specific initiatives to address the needs of the working poor; (b) provided coordinated services from a variety of sources to such families to help them achieve concrete and measurable advances on the "continuum" toward self-sufficiency; and (c) have installed appropriate measurement strategies to capture, record, and report meaningful family movement on the "continuum."

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

(2) *Outcome Measurement Strategies:* OCS will underwrite the development of approaches, such as scales or collected individual results/measures, to capture, record, and report the results of individual or coordinated services to help the working poor advance toward self-sufficiency. These tools are intended to help entities within the Network organize and document their efforts to help the working poor achieve greater self-sufficiency. The measurement tools developed through

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this grant should address, all or a significant number of the following aspects of family life that contribute to overall well-being: education, child care, child and adolescent development, housing, job training, employment, food and nutrition, physical health, mental health, substance abuse, family functioning, family/community integration, transportation, and financial management.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

(3) *Capacity-Building:* OCS will provide capacity building assistance to two eligible entities to underwrite the costs of developing a "self-sufficiency continuum." The successful applicants will agree to undertake and document the steps they take to: (a) Identify the needs of the working poor within their community; (b) identify a specific group or number of families/individuals to receive coordinated and targeted assistance; (c) design a set of strategies to meet the immediate and longer-term needs of participating families/individuals that involves partnerships among relevant public and private programs both within and outside the eligible entity; (d) provide assistance strategically; and (e) capture, record, and report the results of specific and aggregated interventions on the overall movement of participating working poor individuals and families toward self-sufficiency.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

Sub-Priority 1.2 Organizing/ Coordinating Services Around Self-Sufficiency: Welfare to Work (WW)

OCS recognizes that many community action agencies help families make the transition from welfare to work using coordinated services financed from a variety of sources. OCS intends to support two forms of training, technical assistance, and capacity-building activities designed to accelerate the ability of more agencies to undertake such activities:

(1) *Guide to Organizing CAA Welfare-to-Work Self-sufficiency Programs*—OCS will support the development of a technical assistance guide on how to organize services and programs around the goal of moving clients from welfare to work. The successful applicant for funds to develop this guide must demonstrate the ability to identify and describe existing strategies within the network, at both the State and local levels, that are being used to coordinate community action planning, allocation of resources, and client services to achieve client self-sufficiency outcomes, with particular emphasis on innovative approaches to: (1) Determining the comprehensive needs of clients to achieve self-sufficiency involving CAA boards and other community resources; (2) designing and implementing coordinated service delivery strategies, including case management, to respond to those needs; (3) providing for client-focused record-keeping and measurement of immediate and longer-terms impacts of interventions on client change, including common intake procedures, client-organized information systems, electronic methods to sort information for a variety of program measurement and reporting purposes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $30,000).

(2) *On-Site Technical Assistance*—Through both self-sufficiency demonstration programs in the late 1980's and seven years of pioneering work in performance-based management, the Network has developed a number of successful leaders in helping families move from welfare to work. While these leaders are known and available to some in the Network, OCS believes that our best self-sufficiency organizers ought to be helping a broader audience of State and local agencies.

OCS intends to fund approximately 5 State and/or local community action programs that have achieved a level of proficiency in helping clients transition from welfare to work to provide: (1) Intensive, on-site training and technical assistance at regional, State or local community action meetings; and/or (2) staff exchanges or extended staff loans among State or local programs to assist in knowledge transfer about self-sufficiency strategies.

Among the specific kinds of expertise OCS hopes to have shared through this process are: (a) Case managed approaches to family services (parents and children); (b) resource support to coordinated service delivery, including organization of staff and services; (c) client results-based staff performance; (d) client and results focus tracking, measurement, and reporting systems; (e) partnerships with other services/programs within the community; and (f) board involvement in needs assessment, program planning, implementation, and evaluation.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 5 (up to $35,000 each).

Sub-Priority 1.3 Organizing/ Coordinating Services Around Self-Sufficiency/Independent Living Among the Aging or Disabled (SA)

A significant number of community action agencies provide services to the aging or disabled to help them live as independently as possible for as long as possible. Because independent living among the aging or the disabled often translates into a measure of self-sufficiency, OCS intends to develop training and technical assistance resources for the Network similar to those described above for Sub-priority 1.2 (Welfare to Work):

(1) *Guide to Organizing CAA Independent Living Strategies for the Aging or Disabled*—OCS will support the development of a technical assistance guide on how to organize services and programs around the goal helping aging or disabled clients remain self-sufficient through sustaining their ability to live as independently as possible within the community. The successful applicant for funds to develop this guide must demonstrate the ability to identify and describe existing strategies within the network, at both the State and local levels, that are being used to coordinate community action planning, allocation of resources, and client services to achieve client self-sufficiency outcomes for the aging or disabled, with particular emphasis on innovative approaches to: (1) Determining the comprehensive needs of clients to achieve and sustain the appropriate level of independent living involving CAA boards and other community resources; (2) designing and implementing coordinated service delivery strategies, including case management, to respond to those needs; (3) providing for client-focused record-keeping and measurement of immediate and longer-terms impacts of interventions on client change, including common intake procedures, client-organized information systems, electronic methods to sort information for a variety of program measurement and reporting purposes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $30,000).

(2) *On-Site Technical Assistance*—OCS intends to fund approximately 5 State and/or local community action programs that have achieved a level of proficiency in helping aging or disabled clients achieve and sustain appropriate levels of independent living within their community to provide: (1) Intensive, on-site training and technical assistance at regional, State or local community action meetings; and/or (2) staff exchanges or extended staff loans among State or local programs to assist in knowledge transfer about self-sufficiency strategies.

Among the specific kinds of expertise OCS hopes to have shared through this process are: (a) Case managed approaches to service delivery; (b) resource support to coordinated service delivery, including organization of staff and services; (c) client results-based staff performance; (d) client and results focus tracking, measurement, and reporting systems; (e) partnerships with other services/programs within the community; and (f) board involvement in needs assessment, program planning, implementation, and evaluation.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 5 (up to $35,000 each).

Sub-Priority 1.4 Strategic Measurement and Reporting of Self-Sufficiency Outcomes (SM)

OCS will underwrite the development of strategic technical assistance documents that lay out the connection between discrete client interventions on the achievement of intermediate and longer-term client self-sufficiency outcomes for the three self-sufficiency populations described above: (1) The working poor (the "Self-sufficiency Continuum); (2) families transitioning from welfare to work; and (3) the aging or disabled. These tools are intended to help entities within the Network organize and document their self-sufficiency efforts more effectively.

The measurement tools developed through this grant should address, at a minimum, the following aspects of family status/condition: Education, child care, child and adolescent development, housing, job training, employment, food and nutrition, physical health, mental health, substance abuse, family functioning, family/community integration, transportation, and financial management. The measurement strategies should lay out the interactions and interrelationships of single-focus interventions/activities on the achievement of interim results and the relationship of interim results to the broader outcome of family self-sufficiency.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 3 (up to $20,000 each, one for each population group).

Sub-Priority 1.5 The Use of Individual Development Accounts To Advance Self-Sufficiency (ID)

Individual Development Accounts (IDA's) have become a promising tool among anti-poverty programs in their efforts to promote self-sufficiency among low-income families. Some in the Community Services Network, at both the State and local levels, are experimenting with the use of IDA's to assure that adequate and sufficiently flexible funds are available to meet the multiple and changing needs of families transitioning from welfare to work.

OCS intends to underwrite the development of technical assistance information about community action use of IDA's for dissemination to the Network. The successful applicant must demonstrate an ability to gather information from the network through electronic or other means, organize and present the information in a manner that will be useful to Network colleagues at both the State and local levels.

The technical assistance document developed by the successful applicant should contain, at a minimum: (1) A brief history of IDA's within and outside the Community Services Network; (2) an overview of IDA activity within the Network, both at the State and local level in terms of needs being addressed, outcomes anticipated, and any measurements taken of results to date; (3) a description of challenges faced by those agencies experimenting with IDA's and how those challenges have been or are being addressed; and (4) A summary analysis of IDA's based on experimenter views/observations and those of the applicant.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Priority Area 2.0 Achieving Goal 2: The Conditions in Which Low-Income Individuals' Lives Are Improved

Almost all eligible entities report efforts to improve one or more aspects of communities in which low-income individuals and families live. Yet, finding ways to capture and report meaningful results of community action for this first of two national goals has proven difficult in the early years of ROMA implementation.

Analysis of FY 1998 ROMA reports submitted by States, the latest that has been summarized, indicates that the Network views a wide variety of programs and services as advancing Goal 2. These programs and services include: (1) Housing (purchase, repair, transitional, weatherization, energy assistance, emergency rent); (2) help to community residents (education and literacy training, emergency food/nutrition, employment, healthcare, transportation); and (3) economic development activities (encouraging small business, establishing employment opportunities).

OCS believes that the Network could benefit from assistance in sorting through not only how to capture what community action is doing to advance community development, but also on how the Network might best approach the broader issues of community redevelopment with more comprehensive strategies in the future.

OCS believes that advancement of ROMA implementation will be served by the development of technical assistance materials for use by the Network that provide new, and more detailed, information on how Network leaders in community development design and carry out programs, and on how they record and report results of their activities.

Sub-Priority Area 2.1 Organizing/ Coordinating Community Development Programs (CD)

OCS will underwrite the development of a technical assistance guide for the Network that describes model approaches to community development undertaken by community action agencies. The guide will include information concerning: (1) How model community development agencies identify the broad needs to be addressed within their communities and the specific role to be played by community action; (2) how these agencies organize programs and services, and partnerships with other organizations in the community, to undertake or advance community development; and (3) what means the agencies use to track, record, and report the results of community development strategies.

OCS is particularly interested in collecting and disseminating information concerning the interrelationship of community action to various national, regional, State, or local economic development initiatives. The successful applicant for a grant to

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prepare the envisioned technical assistance document on community development will pay particular attention to this issue.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Sub-Priority Area 2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs/ Services (CO)

OCS will provide funds to assist one or more partners in the Network to develop strategies for measuring the results of individual and coordinated community development activities and for reporting these results. Specifically, OCS intends to support an activity similar to that described for Sub-priority area 1.4, the creation of technical assistance materials that lay out how individual activities, such as providing micro business loans to neighborhood residents, link to other individual activities to form a broader, more comprehensive effort to achieve meaningful and measurable community development. The successful applicant for funds to create this strategic technical assistance document will be expected to conduct a thorough review of community development literature and report their findings as they may relate to community development work conducted by community action agencies.

By providing the Network with such a strategic "mapping" of various elements and components of community development within the context of community action, OCS will help community action continue to make a transition from providing discrete, often disjointed services within a community, to a leader/contributor to more comprehensive community development efforts, that yield more robust and lasting outcomes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $60,000).

Priority Area 3.0 Achieving Goal 3: Low-Income People Own a Stake in their Community

Community action is unique in its ability to both advocate for, and empower, low-income individuals and families, particularly as it relates to mobilizing citizens to achieve a greater sense of authority over their lives and future. Local agencies have used a variety of approaches to both stimulate citizen involvement in community activities and to measure the extent of such involvement.

In Fiscal Year 1998, the latest year for which ROMA data from States was analyzed, most community action agencies identified the following activities as supporting the achievement of Goal 3: (1) The number of community residents that volunteer time to agency activities, and the amount of volunteer hours served; (2) client involvement in community decision making, including service on CAA, school, housing, or other kinds of citizen advisory boards; (3) participation in community events; (4) youth participation in community activities and programs; and (5) the leveraging of funds for community investments.

Sub-Priority Area 3.1 Organizing/ Coordinating Community Advocacy/ Participation Programs (CM)

OCS believes that the Network would benefit from the sharing of information across programs on how community action is working toward achieving Goal 3 and will support the development of a technical assistance guide to empowering low-income individuals and families in their communities. The successful applicant for this grant will demonstrate in their application the means to: (1) Identify community action programs across the nation that have a successful history of mobilizing citizen participation and advocacy; (2) collect information from these programs on the planning, organization, implementation, and results of citizen advocacy/ participation efforts; (3) solicit observations from community action leaders and participating clients on how to overcome challenges and obstacles to citizen empowerment; (4) describe measures used to evaluate and report the extent and effectiveness of citizen empowerment by community action; and (5) summarize and analyze information presented by selected sites and individuals.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Sub-Priority Area 3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)

OCS will provide funds to develop expanded strategies for measuring the results of individual and coordinated citizen empowerment and community advocacy activities and for reporting these results. Specifically, OCS intends to support an activity similar to that described for Sub-priority areas 1.4 and 2.2, the creation of technical assistance materials that lay out how individual activities, such as encouraging low-income community residents to become active in citizen advisory boards, link to other individual activities to form a broader, more comprehensive effort to achieve meaningful and measurable citizen involvement and empowerment. The successful applicant for funds to create this strategic technical assistance document will be expected to (1) Conduct a thorough review of citizen empowerment literature and report their findings as they may relate to the work conducted by community action agencies; (2) assess the current measurement strategies and individual measures used by community action to capture and report Goal 3 results; and (3) recommend more robust Goal 3 measures that could be used by the Network and step-by-step instructions on how to adapt the measures to the individual needs and approaches of local agencies.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Priority Area 4.0 Achieving Goal 4: Partnerships Among Supporters and Providers of Service to Low-Income People Are Achieved

One of the primary goals of the Administration is to encourage expansion of the number and kinds of organizations devoted to helping communities and low-income citizens achieve their potential. The Administration has organized a "Faith-based Initiative" that has, among other things, called for greater participation and public funding of faith-based groups providing community services as well as more coordination among the various agencies that address the needs of low-income communities, particularly community action.

OCS recognizes that the Network has a long history of forming partnerships with faith-based organizations and encourages further expansion of such collaborative efforts to achieve both client and community goals.

OCS intends to fund the development and dissemination of two technical assistance documents intended to help partners in the Network, at both the State and community levels, learn ways to enhance collaboration of community action with faith-based organizations and how such partnerships may strengthen program outcomes. In addition, OCS will support capacity-building efforts in selected States and/ or communities to form new or expanded community action and faith-based partnerships to achieve specific client or community results, and to disseminate the results of these capacity-building efforts to the Network.

Sub-Priority Area 4.1 Coordination Strategies Between Community Action and Faith-Based Organizations To Advance ROMA Client Goals I and VI (FP)

OCS will fund up to four technical assistance and capacity building efforts to promote the achievement of client-focused Goals 1 and 6 through effective collaboration of community action and faith-based organizations:

(1) *Guide to Achieving Client Outcomes Through Community Action Coordination With Faith-Based Organizations*—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with faith-based organizations to advance client-focused community action Goals 1 and 6—client/family self-sufficiency and family strengthening. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with faith-based organizations working to achieve client-focused outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, capturing and reporting results; (3) gather insights and analyses from participating community action and faith-based staff and clients on particular strengths and challenges of such collaboration, and (4) develop a guide based on the information described above in a manner useful to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants To Promote Self-sufficiency and/or Family Strengthening Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will fund between one and three States or local community action agencies, or faith-based organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative means of working among secular and religious organizations to promote client/family self-sufficiency and/or to strengthen families. The successful applicant(s) will describe in their application(s): (1) Specific goal(s) they intend to advance through new or expanded partnerships between community action and faith-based organizations; (2) specific and measurable client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) particular contributions each organizational partner will bring to the collaboration, including special skills, human and financial resources; (4) evidence of previous success, including descriptions of other collaborations and measurable client improvements that resulted from such collaborative work, and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, and non-profit faith-based organizations.

Anticipated Grant Awards: Up to 3 ($20,000 each).

Sub-Priority Area 4.2 Coordination Strategies Between Community Action and Faith-Based Organizations To Advance ROMA Community Goals II and III (FC)

As with sub-priority area 4.1, OCS will fund up to four grants to promote the achievement of community-focused goals (community development and citizen empowerment) through new or expanded collaboration between community action and faith-based organizations. OCS will solicit applications in two categories:

(1) *Guide to Achieving Community Development/Citizen Empowerment Goals Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with faith-based organizations to advance community development and citizen empowerment—community action national goals 2 and 3. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with faith-based organizations working to achieve community outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, capturing and reporting results; (3) gather insights and analyses from participating community action and faith-based staff and clients on particular strengths and challenges of such collaboration, and (4) develop a guide based on the information described above in a manner useful to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants To Promote Community Development and/ or Citizen Empowerment Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will fund between one and three States or local community action agencies, or faith-based organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative means of working among secular and religious organizations to promote community development and/ or citizen empowerment. The successful applicant(s) will describe in their application(s): (1) Specific goal(s) they intend to advance through new or expanded partnerships between community action and faith-based organizations; (2) specific and measurable community and client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) particular contributions each organizational partner will bring to the collaboration, including special skills, human and financial resources; (4) evidence of previous success, including descriptions of other collaborations, measurable community and client improvements that resulted from such collaborative work, and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, non-profit faith-based organizations.

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Anticipated Grant Awards: Up to 3 ($20,000 each).

Priority Area 5.0 Achieving Goal 5: Agencies Increase Their Capacity To Achieve Results

Over the past eight years, OCS has worked cooperatively with State CSBG agencies, State CAA associations, and local entities to move the entire Community Services Network toward renewed strength, focus, effectiveness, and accountability. The work of the Monitoring and Assessment Task Force, composed of representatives of all partners in the Network, has resulted in broad-based understanding and gradual implementation of Results Oriented Management and Accountability, or ROMA. It is through ROMA that the Network continues to assure that community action is positioned to be the anti-poverty, community development force within many hundreds of communities.

During the Summer of 2091, OCS conducted a series of regional ROMA training and technical assistance conferences with leaders from State CSBG agencies, State CAA associations, and a number of local eligible entities. At these regional sessions, OCS encouraged State agencies and associations to work together to complete ROMA implementation by the time the Community Services Block Grant program is scheduled for reauthorization in Fiscal Year 2003. Completing ROMA implementation is important for a number of reasons, not the least of which is that it will strengthen community action at a time when the Administration and Congress are placing heavy emphasis on effectiveness and accountability among all domestic assistance programs.

At the ROMA regional meetings, OCS worked with State CSBG agency and association officials to develop ROMA implementation plans. OCS identified technical assistance opportunities that are now being funded through the Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Grant Announcement (published July 2, 2001, 66 FR 34996), including, among a variety of efforts: (1) Basic program administration and financial management training at a National Academy; (2) leadership training through a number of special community action-focused programs; (3) training of ROMA instructors through a "train the trainers" initiative; and (4) financial support to underwrite the costs of tailored training contained in various State ROMA implementation plans.

OCS intends to continue its support of the special initiative to complete ROMA implementation by Fiscal Year 2003 and to maintain the impetus for full implementation generated by the regional meetings.

Sub-Priority Area 5.1 ROMA Training and Technical Assistance Clearinghouse (RC)

OCS will underwrite the creation and operation of a ROMA Training and Technical Assistance Clearinghouse to coordinate the on-going effort to achieve universal ROMA implementation by Fiscal Year 2003. The Clearinghouse will be responsible for a variety of tasks, including:

(1) Identifying individuals and information resources within, or associated with, the Network that can help State CSBG lead agencies, State CAA associations, and local eligible entities carry out their ROMA implementation plans;

(2) Serving as a referral source for partners in the Network seeking one or more forms of basic, intermediate, or advanced technical assistance on one or more of the following ROMA implementation areas:

(a) Leadership Training and the Use of ROMA for Program Renewal;

(b) ROMA-based Needs Assessment and Strategic Planning;

(c) Development and Use of Client, Community, or Organizational Outcome Measures;

(d) Strategic Board Selection and Involvement in Agency Goal Setting and Results-Oriented Oversight;

(e) Client and/or Community-Focused Programming and Service Delivery;

(f) ROMA-Focused Staffing (training, linkage to client/community outcomes);

(g) ROMA Compatible Information Systems (collection, analysis and report of client, community and/or organizational outcomes);

(h) Use of ROMA to Expand Program Linkages within and outside of Agency;

(i) Results-Oriented Financial Management; and

(j) Ways of Using ROMA to "Tell Our Story" Better to State legislatures, local governing authorities, and/or the public.

(3) Collecting and disseminating technical assistance materials to the network, including use of the ROMA website, *www.ROMA1.org;* and

(4) Organizing and/or conducting ROMA implementation training and technical assistance on-site visits, meetings, and/or conferences at the request of State CSBG lead agencies, State CAA associations, or local entities.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $200,000).

Sub-Priority Area 5.2 Board Training Programs (BT)

One of the clearest and most universal needs for technical assistance identified by community action agencies that responded to the ROMA Implementation Assessment conducted in the Spring of 2001 was the strengthening of local tripartite boards. Over 92% of Assessment respondents indicated that boards need training in a variety of topics to increase their capacity to lead and evaluate agency activities and outcomes, including: (1) Board responsibilities under the law; (2) basic board functioning; (3) board role in agency needs assessment, program planning, operations and evaluation; (4) ROMA principles and uses in all aspects of agency functioning; and (5) board selection, monitoring and evaluation of agency leadership.

OCS intends to fund the development of one or more board training programs to be made available throughout the Network. OCS will entertain applications for board training program development that focus on one or more of the following:

(1) *Comprehensive Board Training Package*—OCS will fund one grant for the development of a multi-media comprehensive board training package that covers all of the following topics: (a) Board responsibilities under the law; (b) basic board functioning; (c) board role in agency needs assessment, program planning, operations and evaluation; (d) ROMA principles and uses in all aspects of agency functioning; and (e) board selection, monitoring and evaluation of agency leadership. Information developed for each of these topics will be organized by the successful applicant into training modules, to be presented in writing, on the ROMA website, and on videotape. The successful applicant will develop model results-oriented planning, programming, and reporting instruments to facilitate communication between local agency officials and board members. The successful applicant will field-test materials and training approaches with Network partners, including local agency officials and representative board members, particularly the representatives of low-income families, before training packages are completed. The successful applicant will be responsible for working through the ROMA Implementation Clearinghouse to assure timely and effective dissemination of board training information to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $100,000).

(2) *Capacity-building Grants to States for Board Training*—OCS will fund up to four grants to consortia of State CSBG lead agencies and their respective State CAA associations to undertake board training in one or more of the topics listed above. OCS is particularly interested in building the capacity of State agencies and associations to train boards in situations that present special challenges requiring tailored and special approaches, such as: (1) Wide geographic distances within a State that makes travel to and from a central training site/program difficult or impossible for agency staff and board members; (2) geographic isolation or great distances within the catchment area of an eligible entity, especially in multi-county rural areas; (3) inability of board members to attend extended training sessions, or sessions offered during normal working hours; (4) inability of agencies or board members to finance costs associated with training, including travel, income displacement, expenses, etc; and/or (5) lack of support for board training among local agency leadership and staff.

Successful applicants for capacity-building grants under this sub-priority area will include in their applications a description of the outcomes they expect to achieve through board training and how those outcomes will be measured.

Eligible applicants: State CSBG Lead Agencies in collaboration with State CAA Associations.

Anticipated Grant Awards: 4 (up to $25,000 each).

Sub-Priority Area 5.3 State Agency/Association ROMA Plan Implementation (RI)

As indicated, OCS invited State CSBG lead agencies and State CAA associations to apply for funds under sub-priority area 1.6 in the Fiscal Year 2001 competition for training, technical assistance and capacity-building grants to carry out ROMA implementation plans developed in conjunction with the five regional meetings held during July and August, 2001. A significant number of States submitted applications under sub-priority area 1.6 and have received assistance from that competition.

OCS invites State agencies and/or associations that need financial assistance to implement ROMA by Fiscal Year 2003 in accord with plans developed over the Summer, and that were unable to apply for funding during the FY 2001 competition that closed on September 16, 2001, to submit applications under this grant announcement.

Successful applicants will describe in their application: (1) What the State has accomplished in terms of ROMA implementation to date, using the eight ROMA "core activities" described in Information Memorandum No. 49 (four State and four eligible entity activities) as a guide for measuring progress; (2) how the State plans to complete ROMA implementation as defined by the core activities in Information Memorandum No. 49; (3) a list of activities the State will undertake including training and technical assistance at the State and local levels, partnerships with other programs, creation of a State vision for community action, and the creation or modification of measurement and/or reporting tools for use by the State and local community action agencies; and (4) a timetable for completing activities described.

Applications submitted for funding under sub-priority 5.3 will be evaluated using the following criteria:

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

The degree to which ROMA has been implemented to date at both the State and local levels using the "core activities" for States and eligible entities listed in Part B of this program announcement, including progress for each of the "core" activities, and what needs to be done to complete implementation of the activities before 2003. The application should reference the results of the ROMA implementation assessment conducted in the Spring of 2001 among CAAs in the State as part of their description of the need for assistance.

(2) Criterion II: Work Program (Maximum: 30 Points)

The degree to which specific activities to be undertaken will facilitate completion of State and eligible entity ROMA "core" activities by 2003, including specific training and technical assistance to be provided to CAAs, a schedule for conducting training and technical assistance, the anticipated participants (description of the level and functions of State and CAA staff), and trainers and/or consultants to be utilized from both within the State or from other parts of the Network.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

The degree to which activities described in Criterion II above will result in effective implementation of ROMA by 2003. Specifically, the extent to which ROMA implementation will benefit both the operation of community action programs at the State and local level and increase the capacity of such programs to achieve measurable and substantial improvement in the lives of individuals, families, and communities served.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum: 10 Points)

The extent to which the State agency has enlisted the participation of the State CAA association in the design of the grant application and how the partnership between the State and its CAA association will implement the activities under the grant. Joint applications between the State agency and CAA association for funding under this sub-priority are encouraged. In addition, the extent to which other agencies that contribute funds to community action, at the State and local levels, will be encouraged to undertake performance-based management activities and/or will support the use of ROMA to measure and report the results of such programs.

(5) Criterion V: Ability of Applicant To Perform (Maximum: 20 Points)

The extent to which the State agency, the State CAA association, and/or local CAAs have developed an understanding of ROMA and their willingness to complete implementation before 2003. Specifically, the application should describe previous training received through attendance at regional or national ROMA-focused conferences, special workshops conducted by ROMA trainers, or visits to other States/CAAs for the purpose of learning about their ROMA activities.

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

Total costs are reasonable and consistent with anticipated results. (0–2 points)

Eligible applicants: State CSBG Lead Agencies and/or State CAA Associations.

Anticipated Grant Awards: 15 (up to $30,000 each).

Sub-Priority Area 5.4 Local Capacity-Building

The purpose of this sub-priority area is to promote management efficiency and program productivity among local eligible entities. It is essential that community action agencies have the opportunity to receive "seed" funds to develop and share effective program/

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management techniques addressing various aspects of anti-poverty work, including the implementation of ROMA. Grants under this sub-priority will be made to Community Action Agencies to promote such capacity building. Among the activities that may be supported by capacity-building grants are the development and sharing of: (1) Model needs assessment tools; (2) data processing innovations; (3) community organizing techniques; (4) use of scales to measure outcomes; (5) innovative tracking systems; (6) internal and external communication networks; (7) effective integration of information systems; and (8) successful leveraging strategies. Applicants must include a plan that describes how the results achieved under this project will be shared with the larger Community Services Network.

Eligible Applicants: Local eligible entities.

Anticipated Grant Awards: 10 (up to $20,000 each).

Priority Area 6.0 Achieving Goal 6: Low-Income People, Especially Vulnerable Populations, Achieve Their Potential by Strengthening Family and Other Supportive Systems

In their reporting of ROMA-based information, States have included a number of services, programs, and other forms of interventions under Goal 6. Indeed, the largest category of activities reported for Goal 6 by States and local community action agencies has been "meeting emergency needs." Other categories reported with regularity are: (1) Housing; (2) independent living for the aging; and (3) emergency food. The category, "Family functioning/life skills," ranked fifth in frequency among the 31 States and 577 local entities filing ROMA information in Fiscal Year 1998. Only 13 States and 73 local entities reported activities specifically focused on strengthening family functioning or general life skills of family members.

Because Goal 6 reflects the Administration's priority to strengthen families, particularly the role of fathers in child and family life, OCS intends to fund a number of technical assistance and capacity building activities focused on community action initiatives that seek to enhance outcomes for children and their families as a result of the presence and positive influence of fathers. OCS believes that without such an emphasis, low-income families will continue to exist with disproportionate numbers of absent fathers. Evidence indicates that the absence of participating fathers from households not only damages the economic condition and prospects for low-income families, but may also contribute to a number of negative social outcomes for children and youth that lack the guidance and emotional benefits that come from having two parents involved in their upbringing.

OCS intends to support a number of technical assistance and capacity-building activities designed to reflect and enhance the role of community action in strengthening families through the active involvement of fathers in child and family development.

In addition, OCS will support technical assistance and capacity-building activities focusing on helping strengthen families in which one or both parents are incarcerated. Finally, OCS will underwrite the development of a technical assistance guide to measuring community action efforts to strengthen families.

Sub-Priority Area 6.1 Strengthening the Role of Fathers and Marriage in Child and Family Life (MS)

OCS will fund up to four applications designed to build capacity within the Network to strengthen families through the involvement of fathers in family and child development:

(1) *Strategies for Community Action to Strengthen the Role of Fathers and Marriage in Family and Child Development*—OCS will underwrite the development of a technical assistance guide that describes ways in which community action has, or could, focus on promoting healthy marriages among low-income families and/or helping absent fathers remain involved in the lives of their children.

The successful applicant for the grant to develop this guide will demonstrate in their application the ability to: (1) Identify existing strategies within the Community Services Network that promote healthy marriages among low-income families, and/or the involvement of absent parents, especially fathers, in the creation and maintenance of stable and nurturing family environments; (2) identify possible strategies for strengthening families through healthy marriages and greater participation of absent fathers from programs/sources outside community action and assess ways the Network may adapt and adopt such strategies; (3) identify partnership opportunities with other programs, both within and outside the current administrative responsibilities of community action, that might help advance healthy marriages and the role of absent fathers in achieving family economic and functional wellbeing; and (4) develop a guide based on the information assembled in such a manner that will be useful to State and local community action officials.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants to Promote the Role of Fathers in Community Action Initiatives to Strengthen Families*—OCS will fund up to three States or local eligible entities to develop special initiatives designed to strengthen family functioning outcomes due to the active involvement of fathers in family life. Specifically, the successful applicant(s) for these capacity-building grants will demonstrate in their applications the ability to: (a) Identify specific needs within the community involving the economic and social condition of fathers of low-income children and families, both present and absent from the household; (b) identify specific strategies for addressing those needs, including the development of coordinated interventions/services through partnerships with other service providers to enhance the status of affected males in their role as individuals and fathers to children in low-income families; (c) undertake special initiatives to involve fathers in the lives of their children and increase their capacity to contribute to the economic, developmental, and social wellbeing of those children; and (d) capture and report the results of such involvement on all appropriate aspects of family life (at a minimum, economic, social and developmental outcomes).

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 3 (up to $30,000 each).

Sub-Priority Area 6.2 Meeting the Special Needs of Children With an Incarcerated Parent(s) (IP)

OCS will fund up to three capacity-building grants to support the development of programs at the State or local level focused on community action assistance to children with incarcerated parent(s). Successful applicants for these grants must demonstrate in their applications the ability to: (1) Identify the number and needs of such children/families within the State or community; (2) design and implement programs and partnerships with other service providers to meet the needs identified; and (3) establish specific results to be achieved by the special initiatives and provide for the measurement and reporting of results.

OCS is particularly interested in supporting programs focused on helping children with incarcerated parent(s) live in safe, stable households and receive appropriate adult guidance, nurturing, and emotional support from custodial parents, guardians, or other adult mentoring relationships. Applicants may wish to consider the special role played by faith-based organizations in providing such support and include such organizations in community action partnerships as appropriate. In addition to focusing on the needs of children with incarcerated parents, applicants are encourage to seek funding for activities designed to address the needs of incarcerated parents as they relate to their parenting responsibilities to their children while incarcerated, during periods prior to release, and post-release from imprisonment (reentry counseling and adjustment assistance, family functioning/parenting skill training, etc).

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 3 (up to $30,000 each).

Sub-Priority Area 6.3 Network Guide to Measuring Family Development Outcomes (FD)

OCS will award one grant for the development of a guide to help the Network improve the measurement and reporting of family development outcomes in support of achieving Goal 6. The successful applicant for this grant will demonstrate in their application the ability to: (1) Identify model family functioning/family development measures that have been developed within and outside the Community Services Network used in social service programs; (2) correlate information about measurement tools to the kinds of programs/services provided by community action alone and in partnership with other service agencies; and (3) describe the relative benefits of various approaches to measuring family functioning/family development in terms of such factors as staff orientation/training and use, appropriateness to activities/interventions being measured, and information gathering/storage/and retrieval.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Part C—Application Prerequisites

1. Eligible Applicants

See individual sub-priority areas in Part B.

2. Availability of Funds

The total amount of funds currently available for new grant awards in FY 2002 under this Fall–Winter program announcement is $2,360,000. Subject to the availability of funds, an additional amount will be set aside for a Spring–Summer 2002 competition, which will include funding of various cooperative agreements and continuation grants to multi-year awards resulting from the Fiscal Year 2001 competition.

Amounts expected to be available and numbers of grants under each sub-priority area stated in Part B are as follows:

Sub-priority area	Approx. funds available for new projects	Estimated No. of new grants
1.1 Strengthening the "Self-sufficiency Continuum" (SC)	$120,000	6
1.2 Organizing/Coordinating Services Around Self-sufficiency: Welfare to Work (WW)	205,000	6
1.3 Organizing/Coordinating Services Around Self-sufficiency/Independent Living Among the Aging or Disabled (SA)	205,000	6
1.4 Strategic Measurement and Reporting of Self-sufficiency Outcomes (SM)	60,000	3
1.5 The Use of Individual Development Accounts to Advance Self-sufficiency (ID)	45,000	1
2.1 Organizing/Coordinating Community Development Programs (CD)	45,000	1
2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs (CO)	60,000	1
3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)	45,000	1
3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)	45,000	1
4.1 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Client Goals 1 and 6 (FP)	105,000	4
4.2 Coordination Strategies Between Community Action and Faith-based Organizations to Advance ROMA Community Goals 2 and 3 (FC)	105,000	4
5.1 ROMA Training and Technical Assistance Clearinghouse (RC)	200,000	1
5.2 Board Training Programs (BT)	200,000	5
5.3 State Agency/Association ROMA Plan Implementation (RI)	450,000	15
5.4 Local Capacity Building (CB)	200,000	10
6.1 Strengthening the Role of Marriage and Absent Fathers in Child and Family Life (MS)	135,000	4
6.2 Meeting the Special Needs of Children With an Incarcerated Parent(s) (IP)	90,000	3
6.3 Network Guide to Measuring Family Development Outcomes (FD)	45,000	1
Total	2,360,000	73

3. Project and Budget Periods

For projects included in the FY 2002 Fall–Winter CSBG T&TA Program Announcement, the budget and project periods are 12 months.

4. Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under the FY 2002 Fall–Winter CSBG T&TA Program Announcement are the various "partners" in the Community Services Network. Specific beneficiaries are indicated under each sub-priority area in Part B. It is the intent of OCS, through funding provided under this program announcement, to significantly strengthen the capacity of State and regional CAA associations to provide technical assistance and support to local service providers; to strengthen the capacity of State CSBG offices to collect and disseminate accurate and reliable data and to provide support for local service providers; and to enhance the capacities of local service providers themselves. The ultimate beneficiaries of improved program management, data and information collection and dissemination, and service quality of

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local service providers are low-income individuals, families, and communities.

5. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

6. Separate Multiple Applications

Separate applications must be made for each sub-priority area. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100 percent of the total annual salary. The sub-priority area must be clearly identified by title and number.

7. Project Evaluations

Each application must include an assessment or self evaluation.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under the FY 2002 Fall–Winter CSBG T&TA Program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and the attachments to this program announcement contain all the instructions and forms required for submission of an application. These forms may be photocopied for use in developing the application.

Part F also contains instructions for the project narrative. The project narrative must be submitted on plain bond paper along with the SF–424 and related forms.

A copy of this program announcement is available on the Internet through the OCS web site at: *http://www.acf.dhhs.gov/programs/ocs.*

If the program announcement cannot be accessed through the OCS web site, it can be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this program announcement.

2. Deadlines

Refer to the section entitled "Closing Date" at the beginning of this program announcement for the last day on which applications should be submitted.

Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, "Attention: CSBG Training, Technical Assistance, and Capacity Building Program", 370 L'Enfant Promenade, SW., Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered meeting an announced deadline if the are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, Monday through Friday, excluding Federal holidays, at the: Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, "Attention CSBG Training, Technical Assistance and Capacity Building Program", 901 D Street, SW., 2nd Floor Mailroom, Washington, DC 20024.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt. Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ACF may extend the deadline for all applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of the mail service. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

3. Number of Copies Required

One signed original application and two copies should be submitted at the time of initial submission (OMB 0970–0062). Two additional copies would be appreciated to facilitate the processing of applications.

4. Designation of Sub-Priority Area

The first page of the SF–424 must contain in the lower right-hand corner a designation indicating under which sub-priority are funds are being requested.

5. Paperwork Reduction Act of 1995 (P.L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB Control Number 0970–0062 which expires 12/31/2001. However, a request has been submitted to OMB for an extension.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

6. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following States and Territories have elected not to participate under the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam. Puerto Rico, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their Single Point of Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as a part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment I to this program announcement.

7. Application Consideration

Applications that meet the screening requirements in Sections 8.a. and 8.b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Qualified panelist not directly responsible for programmatic management of the grant will review applications. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

8. Criteria for Screening Applications

a. Initial Screening

All applicants will receive a written acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A budget narrative, which corresponds to the object class categories in the SF 424A for the use of Federal funds, must be included in the application.

(3) The SF–424 and the SF–424B must be signed by an official of the applicant organization who has authority to obligate the organization legally.

(4) A project narrative must also accompany the standard forms.

b. Pre-Rating Review

Applications, which pass the initial screening, will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA State or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(4) *Program Focus:* The application must address the purpose of the sub-priority area under which funding is being requested.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score to each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B. (Applications for funding under Sub-priority 5.3, State Agency/Association ROMA Plan Implementation, will be evaluated based upon the requirements described in Part B only).

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement (Excluding Sub-Priority 5.3)

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

(a) The application documents that the project addresses vital needs related to the purposes stated under the appropriate sub-priority area discussed in this program announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, local service providers and/or State and Regional organizations of local service providers. (0–10 points)

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(2) Criterion II: Work Program (Maximum: 30 Points)

The work program is results-oriented, appropriately related to the legislative mandate and specifically related to the sub-priority area under which funds are being requested.

Applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including reasons for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, including priority this project has for the agency; past performance in similar work; and specific resources contributed to the project that are critical to success.

Applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State and/or regional associations, and/or local providers of CSBG services and activities.

The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

If proposing a project with a training and technical assistance focus, applicant indicates the number of organizations and/or staff it will impact.

If proposing a project with a data collection focus, applicant provides a description of the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

If proposing to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

Methods of securing participant feedback and evaluations of activities are described in the application.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum 10 Points)

Applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate is described.

(5) Criterion V: Ability of Applicant To Perform (Maximum: 20 Points)

(a) The applicant demonstrates that it has experience and a successful track record relevant to the specific activities and program area that it proposes to undertake.

If applicant is proposing to provide training and technical assistance, it details its competence in the specific program priority area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis.

If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) Applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of Application

A cover letter containing an e-mail address and a facsimile (FAX) number, if available, should accompany the application. This will facilitate receipt of an acknowledgment from ACF that the application has been received. (See Part D., 8.a.)

Each application should include one original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. "Budget Information-Non-Construction Programs" (SF–424A). (Attachment B)

c. A completed, signed and dated "Assurances—Non-Construction Programs" (SF–424B). (Attachment C)

d. Drug-free Certification. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment D)

e. Debarment Certification. (Attachment E)

f. Certification Regarding Environmental Tobacco Smoke. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment F)

g. Disclosure of Lobbying Activities, SF–LLL. Complete, sign and date form, as appropriate. (Attachment G)

h. A Project Abstract of 500 words or less. The abstract should provide a succinct description of the need, project goals, and a summary of work plan and the proposed impact. Abstract will be maintained as part of the Grantee Administration Tracking System (GATES).

i. A Project Narrative consisting of the following elements preceded by a consecutively numbered table of contents that will describe the project in the following order:

(i) Need for Assistance.
(ii) Work Program.
(iii) Significant and Beneficial Impact.
(iv) Evidence of Significant Collaborations.
(v) Ability of Applicant to Perform.
(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of by-laws, articles of incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; resumes; Single Point of Contact comments, where applicable; and any partnership/collaboration agreements.

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 35 pages, including appendices. Pages should be numbered sequentially throughout.

If appendices include photocopied materials, they must be legible.

Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ x 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; etc. They will be discarded if included.

Part F—Instructions for Completing Application Package (Approved by the OMB Under Control Number 0970–0062)

The standard forms attached to this program announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424, (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not applicable."

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item

1. For the purposes of this program announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, articles of incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New."

9. Enter "DHHS–ACF/OCS."

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.570."

11. In addition to a brief descriptive title of the project, priority area designations must be used to indicate the priority and sub-priority areas for which funds are being requested:

The title is "Office of Community Services" Discretionary CSBG Awards—Fiscal Year 2001 Training, Technical Assistance, and Capacity-Building Programs."

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See instructions accompanying the form as well as the instructions set forth below:

In completing these sections, the Federal budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program should be included in Non-Federal entries.

Sections A and D must contain entries for both Federal (OCS) and non-Federal (mobilized).

Section A—Budget Summary

Col. (a): Line 1—Enter "OCS Training and Technical Assistance Program";
Col. (b): Line 1—Enter "93.570".
Col. (c) and (d): Not Applicable
Col. (e)–(g): For lines 1 enter in column (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed under (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and Non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, prifiting and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line

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should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be budgeted or charged as direct costs to the grant.

Line 6k—Totals: The total amount shown in Section B, Column (5), should be the same as the amount shown in Section A, line 5, column (e).

Line 7—Program Income: Enter the estimated amount of income, if any is expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from column 1 to column 5 for all line items.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources refer to other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Categories, section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and column (f).

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant for first year and by quarter, during the first 12-month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14 for all columns.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

To be completed by applicants applying for funds for a three year project period.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant decides not apply an indirect cost rate to the proposal, then "this line should be left blank."

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances Non-Construction"

Applicant must sign and return the "Assurances" found at Attachment C with its application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below:

(a) Need for Assistance.
(b) Work Program.
(c) Significant and Beneficial Impact.
(d) Evidence of Significant Collaborations.
(e) Ability of the Applicant to Perform.
(f) Adequacy of the Budget.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award, which indicates, the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 (nonprofit) and A–87 (governmental).

Grantees will be required to submit semi-annual program progress narrative and financial reports (SF–269) as well as a final program progress narrative report and a final financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989 imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in

excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier Contractors or subgrantee will pay with profits or non-appropriated funds on or after December 22, 1989, and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governmental by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations that apply to all applicants/grantees under this program.

Dated: January 11, 2002.

Clarence Carter,

Director, Office of Community Services.

CSBG Training, Technical Assistance and Capacity-Building Program

List of Attachments

A—Application for Federal Assistance, SF 424

B—Budget Information—Non-Construction Programs, SF 424A

C—Assurances—Non-Construction Programs, SF 424B

D—Certification Regarding Drug-Free Work Place

E—Debarment Certification

F—Certification Regarding Environmental Tobacco Smoke

G—Disclosure of Lobbying Activities, SF–LLL

H—Listing of Regulations Applicable to All Grantees

I—Listing of State Single Points of Contact

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Attachment A, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State, and zip code):	Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (If applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the asistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completed date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability form an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the programs under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, your should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt included delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment B, Page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

Attachment B, Page 2

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

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Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe now and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Line a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity of function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Column (c) and (d) blank. For each line entry on Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the Column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–j—Show the totals of Lines 6a to 65h in each column.

Lines 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter total of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are need to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(3). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts of individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisions, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C: Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents relating to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for program funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audit of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal Agency may designate a central receipt point for State-wide and State Agency-wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the

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agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street Address, City, County, State, Zip Code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification numbers(s) of each affected grant.

Attachment E: Administration for Children and Families U.S. Department of Health and Human Services—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that w which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that w which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Dated: January 11, 2002.

Robert Sargis,

Reports Clearance Officer.

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4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F: Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $100 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment G: Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifiefs, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federeal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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Instructions for Completion of SF–LL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

b. Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no opersons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment H: Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), Standard Terms and Conditions—Discretionary Grants

The attached Financial Assistance Award is subject to Federal legislation and to DHHS and ACF regulations and policies. These include the following:

1. For institutions of higher education, hospitals, other non-profit organizations, and commercial (for-profit) organizations, Title 45 of the Code of Federal Regulations (45 CFR) Part 74, "Uniform Administrative Requirements for Awards and Sub-awards to Institutions of Higher Education; Hospitals, Other Non-Profit Organizations; and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments." *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr74_99.html.*

2. For States, local governments and Federally recognized Indian Tribes, 45 CFR Part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr92_99.html.*

3. Other DHHS regulations codified in Title 45 of the Code of Federal Regulations: *http://www.access.gpo.gov/nara/cfr/waisidx_00/45cfrv1_00.html.*

Part 16—Procedures of the Departmental Grants Appeals Board
Part 30—Claims Collections
Part 46—Protection of Human Subjects
Part 76—Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the DHHS Effectuation of Title VI of the Civil Rights Acts of 1964
Part 81—Practice and Procedure of Hearings Under Part 80 of this Title
Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities receiving or benefiting from Federal Financial Assistance
Part 91—Nondiscrimination on the Basis of Age in DHHS Programs or Activities receiving Federal Financial Assistance
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental review of DHHS Program and Activities

4. 37 CFR Part 401—Right to Inventions made by Nonprofit Organizations and Small Business firms under Government Grants, Contracts, and Cooperative Agreements. *http://www.access.gpo.gov/nara/cfr/waisidx_00/37cfr401_00.html.*

5. The receipt organization must carry out the project according to the application as approved by the Administration for Children and Families (ACF), including the proposed work program and any amendments, all of which are incorporated by reference in these terms and conditions.

6. If this a multi-year project and it is not the final budget period, the grantee is advised that future awards for continuation of this project will be dependent upon the availability of Federal funds, satisfactory progress by the grantee, and ACF's determination that continued funding is in the best interest of the Federal government.

7. Grantees shall liquidate all obligations incurred under the award no later than 90 days after the end of the project period. The only exceptions to this rule are the basic Head Start grants with an indefinite project period. For these grants, liquidation of obligations should occur no later than 90 days after each budget period. In either case, an unobligations balance from a prior budget period does not authorize a grantee to obligate funds in excess of the total federally approved budget reflected on the FAA for the current budget period.

8. The DHHS Inspector General maintains a toll free number, 800–HHS–TIPS (800–447–8477), for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Such reports are kept confidential, and callers may decline to give their names if they choose to remain anonymous. *http://www.dhhs.gov/progorg/oei/hotline/hhshot.html.*

9. The grantee will take all necessary affirmative steps to ensure that small, minority and women-owned business firms are utilized when possible as sources of supplies, services, equipment and construction. To the extent practicable, all equipment and products purchased with funds made available through this award should be American made.

10. Failure to submit reports (i.e., financial, progress, or other required reports) on time may be the basis for withholding financial assistance payments, suspension, termination or denial or refunding. A history of such

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unsatisfactory performance may result in designation of "high-risk" status for the recipient organization and may jeopardize potential future funding from DHHS.

11. Under Section 508 of Public Law 103–333, the following condition is applicable to all Federal awards: "When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipient of Federal research grants shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) the percentage and dollar amount of total costs of the project or program that will be refinanced by nongovernmental sources."

12. Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children's Act of 1994 requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantees. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug or alcohol treatment. *http://www.ed.gov/legislation/GOALS2000/TheAct/sec1043.html.*

13. For purposes of this award each item of equipment with acquisition cost of less than $5,000 is included under supplies, is allowable as a direct cost of this project, and does not require for prior approval of the Grants Officer. Conversely, an item of equipment with an acquisition cost of $5,000 or more is NOT considered an allowable project cost without prior approval of the Grants Management Officer.

14. The Grantee shall comply with all provisions of OMB Circular A–133 (revised June 24, 1997), "Audit of State, Local Government and Non-Profit Organizations." *http://www.whitehouse.gov/omb/circulars/a133/a133.html.*

Grantees that expend a total of $300,000 or more in Federal funds are required to submit an annual audit within nine months after the end of the audit period. The Reporting Package should include: (1) SF–SAC–Data Collection Form for Reporting on Audits of State, Local Governments and Non-Profit Organizations. *http://harvester.census.gov/fac/collect/formoptions.html;* (2) summary of prior audit findings; (3) auditors reports and (4) corrective action plans. Copies of this Reporting Package are to be sent to: Single Audit Clearinghouse. Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

15. Grantee shall comply with the particular set of Federal cost principles that applies in determining allowable cost. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs:

- The allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for States and Local Governments." *http://www.whitehouse.gov/omb/circulars/a087/a087.html.*
- The allowability of costs incurred by nonprofit organizations (except for those listed in Attachment C of Circular A–122) is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Nonprofit Organizations" and paragraph (b) of 45 CFR, 74.27. *http://www.whitehouse.gov/omb/circulars/a122/a122.html.*
- The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." *http://www.whitehouse.gov/omb/circulars/a021/a21.html.*
- The allowability of costs incurred by hospital is determined in accordance with the provisions of Appendix E of 45 CFR Part 74, "Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals."
- The allowability for costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provision of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, except that independent research and development costs are unallowable. *http://www.access.gpo.gov/nara/cfr/waisidx_99/48cfr31_99.html.*

Attachment I: State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development." This attached listing is the Official OMB Listing. OMB's point of contact for the SPOC list is Frederick J. Charney (202) 395–3993 or *grants@omb.eop.gov.* This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

OMB State Single Point of Contact Listing*, October 5, 1999

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordination, State Clearinghouse, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, NW., Suite 1200, Washington, DC 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Cherie Trainor, (850) 414–5495

Georgia

Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, SW.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Renee Miller, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2971 (directline), FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–0437

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street, Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, FAX: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, FAX: (601) 359–6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, 9th Floor, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 220, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983, Contact: Heather Elliot, (702) 687–6367

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640, FAX: (505) 827–4984

North Carolina

Jeanette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

South Carolina

Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 936–2681

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1027, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Admnistration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Sandy Ross, State Single Point of Contact, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, FAX: (307) 777–3696

Territories

Guam

Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932, Telephone: (671) 475–9411 or 9412, FAX: (671) 472–2825

Puerto Rico

Jose Caballero-Mercado, Chairman, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 727–4444, FAX: (787) 724–3270

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden, Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

*In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." STATES WITHOUT "STATE SINGLE POINTS OF CONTACT" INCLUDE: Alabama, Alaska; American Samoa; Colorado; Connecticut; Hawaii; Idaho; Kansas; Louisiana; Massachusetts, Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont, Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

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Federal Register

Friday,
January 18, 2002

Part III

Department of Education

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965 as amended (ESEA); Improving the Academic Achievement of the Disadvantaged; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged

AGENCY: Department of Education.

ACTION: Request for advice and recommendations on regulatory issues.

SUMMARY: The Secretary of Education (Secretary) is soliciting advice and recommendations from interested parties prior to publishing proposed regulations to implement programs under Title I of the Elementary and Secondary Education Act of 1965, as recently amended. Programs under Title I are designed to help disadvantaged children meet high academic standards. They include programs operated by local educational agencies in high-poverty schools (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H). The Secretary invites advice and recommendations concerning issues for which regulations may be helpful to clarify statutory ambiguities or to provide appropriate flexibility.

DATES: We must receive your written comments on or before February 19, 2002.

ADDRESSES: Address all comments to Susan B. Neuman, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W331, Washington, DC 20202. If you prefer to send your comments through the Internet, use the following address: *TitleIrulemaking@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person identified in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: See the **SUPPLEMENTARY INFORMATION** section for further information contacts.

SUPPLEMENTARY INFORMATION:

For Further Information Contact: For programs under Part A, Susan Wilhelm, Telephone (202) 260–0982; for programs under Part B, Subparts 2 and 3, Patricia McKee, Telephone (202) 260–0991; for programs under Part D, Gary Rutkin, Telephone (202) 260–4412: Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W230, Washington, DC 20202–6132.

For programs under Part B, Subpart 1, Chris Doherty, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW, Room 3W311, Washington, DC 20202–6132. Telephone: (202) 401–2176.

For programs under Part C, James English, Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E333, Washington, DC 20202–6135. Telephone: (202) 260–1989.

For programs under Part F and Part H, Hugh Burkett, Academic Improvement and Demonstration Programs, 400 Maryland Avenue, SW, Room 2W100, Washington. DC 20202–6135. Telephone: (202) 260–1989.

For programs under Part G, Edith Harvey, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6135. Telephone: (202) 260–1393.

Background

On January 8, 2002, the President signed into law the "No Child Left Behind Act of 2001" (NCLB Act), amending the Elementary and Secondary Education Act of 1965 (ESEA). The NCLB Act reauthorizes the ESEA and incorporates the major reforms proposed by President Bush in his *No Child Left Behind* framework for education reform, particularly in the areas of assessment, accountability, and school improvement. The NCLB Act will strengthen Title I accountability by requiring States to implement statewide accountability systems covering all public schools and their students. These systems must be based on challenging State standards in at least reading and mathematics, annual testing for all students in grades 3 through 8, and annual statewide progress objectives for ensuring that all students reach proficiency within 12 years. Assessment results and State progress objectives must be disaggregated by poverty, race or ethnicity, disability and limited-English proficiency to ensure that schools address the educational needs of all students. Schools that meet or exceed State adequate yearly progress (AYP) objectives or close achievement gaps will be eligible for State Academic Achievement Awards. School districts and schools that fail to make AYP toward statewide proficiency goals will, over time, be subject to improvement, corrective action, and restructuring measures to help them meet State standards. Furthermore, parents of students in those schools will have the opportunity to transfer their children to a better public school or to obtain supplemental educational services for them.

The programs included in Title I of the ESEA, as amended by the NCLB Act, are designed to help disadvantaged children meet high academic standards. They include: Improving Basic Programs Operated by Local Educational Agencies (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H).

The Department intends to implement Title I programs in a manner that respects State and local control over education while ensuring strong accountability for results. In particular, the Department intends to issue regulations only where absolutely necessary: for example, where the statute requires a regulation or where a regulation is necessary to provide flexibility or clarification for State and local educational agencies. Rather than regulating extensively, the Department intends to issue nonregulatory guidance addressing legal and policy issues under the Title I programs. This guidance can inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including multiple approaches that may be available in carrying out the statute's requirements.

The Secretary invites advice and recommendations from interested parties involved with the implementation and operation of programs under Title I concerning issues for which regulations may be necessary or for which nonregulatory guidance would be helpful to clarify statutory ambiguities or to provide appropriate flexibility. The Secretary specifically invites advice and recommendations from States and local administrators, parents, teachers,

paraprofessionals, members of local boards of education, charter school operators and public chartering authorizers, and other organizations (including civil rights groups, test publishers, representatives of private schools, and faith-based organizations with educational expertise).

Issues for Negotiated Rulemaking

Before publishing any proposed regulations to implement programs under Title I, the Secretary must establish a negotiated rulemaking process (unless regulations must be issued within a very limited time to assist State and local educational agencies with the operation of Title I programs). Negotiated rulemaking can improve the substance of regulations; increase understanding of, and support for, those regulations; encourage affected parties to communicate with each other and share information, knowledge, expertise, and analysis; and discourage expensive and time-consuming litigation concerning the regulations. The Secretary will select individuals to participate in this process from among the individuals or groups providing advice and recommendations on Title I regulatory issues. The Secretary will publish a separate notice in the **Federal Register** providing details about the negotiated rulemaking process.

Section 1901 of Title I requires that, at a minimum, the negotiated rulemaking process address issues concerning standards and assessments. The Secretary is also considering conducting negotiated rulemaking on the statutory provisions dealing with adequate yearly progress in section 1111. Therefore, the Secretary specifically invites comments on these provisions, including whether regulations are necessary and whether nonregulatory guidance would be helpful. The following discussion describes these statutory provisions. Commenters should use this discussion to guide their comments. The discussion, however, is not intended to restrict the issues that commenters may address.

Academic Standards

Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called "student performance standards") that will be used by the State, its local educational agencies, and its schools to carry out Part A. These academic standards must be the same standards that the State applies to all students and all schools in the State. States must have such standards in subjects determined by the State, but at a minimum, in mathematics, reading/language arts, and (beginning in the 2005–2006 school year) science. These standards must include challenging content standards in academic subjects that specify what children are expected to know and be able to do. They must contain coherent and rigorous content, and encourage the teaching of advanced skills. States also must have challenging student academic achievement standards that are aligned with the State's content standards and describe three levels of achievement: Advanced, proficient, and basic. Advanced and proficient levels determine how well children are mastering the State's content standards; the basic level provides complete information about the progress of lower-performing children toward achieving the proficient and advanced levels of achievement.

Academic Assessments

Under section 1111(b)(3) of Title I, each State also must implement a set of high-quality, yearly student academic assessments in, at a minimum, mathematics, reading/language arts, and (by school year 2007–08) science that will be used as the primary means of determining the yearly achievement of the State and each local educational agency and public school in enabling all children to meet the State's student academic achievement standards. These assessments must be the same ones used to measure the achievement of all children, be aligned with the State's academic content and student achievement standards, and be used for purposes for which they are valid and reliable. The statutory timeline for developing and administering assessments unfolds in three stages. In stage one, through school year 2004–05, assessments in mathematics and reading/language arts must be administered no less than one time during grades 3 though 5, grades 6 though 9, and grades 10 through 12. In stage two, beginning no later than school year 2005–2006, assessments in mathematics and reading/language arts, at a minimum, must be administered in grades 3 through 8 and one time during grades 10 through 12. In stage three, beginning no later than school year 2007–2008, assessments that measure proficiency in science must be administered no less than one time during grades 3 through 5, grades 6 though 9, and grades 10 through 12. Assessments must involve multiple up-to-date measures of academic achievement, including measures that assess higher-order thinking skills and understanding.

States must administer assessments to all students, providing reasonable adaptations and accommodations for students with disabilities and students with limited English proficiency. Moreover, students with limited English proficiency must be assessed, to the extent practicable, in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. With respect to reading/language arts, students with limited English proficiency who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years must be assessed in English, unless a local educational agency determines, on a case-by-case basis, that academic assessments in another language for up to an additional two years would likely yield more accurate and reliable information.

The results of assessments must be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged. Finally, States must produce individual student interpretive, descriptive, and diagnostic reports and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of students relative to their achievement against State standards.

Adequate Yearly Progress

Under section 1111(b)(2)(B), each State must demonstrate what constitutes adequate yearly progress of the State, and of all public elementary and secondary schools and local educational agencies in the State, toward enabling all students to meet the State's student achievement standards, while working toward the goal of narrowing achievement gaps in the State. "Adequate yearly progress" definitions must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. The definition must include separate annual measurable objectives for continuous and substantial improvement in both mathematics and reading/language arts

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for all students and for each of the following specific groups of students: Students who are economically disadvantaged, students from each major racial and ethnic group, students with disabilities, and students with limited English proficiency. However, disaggregated data are not required in cases when the number of students in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual student.

"Adequate yearly progress" definitions must include graduation rates for public secondary schools and at least one other academic indicator for public elementary schools, and may include other academic indicators. However, although additional indicators may be used to identify additional schools for school improvement, corrective action, or restructuring, they may not be used to reduce the number of, or change the identity of, the schools that would otherwise be subject to school improvement, corrective action, or restructuring.

Each State must use data from the 2001–2002 school year to establish the starting point for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement. The starting point must, at a minimum, be based on the higher of two levels defined in the statute.

"Adequate yearly progress" must include a timeline that ensures that all students in each subgroup meet or exceed the State's proficient level of academic achievement no later than 12 years after the end of the 2001–2002 school year. The timeline must include intermediate goals for meeting adequate yearly progress. These intermediate goals must increase in equal increments over the timeline; the first increment must occur in not more than two years, and the following increases must occur in not more than three years. In calculating whether a school has made "adequate yearly progress," the State may establish procedures for averaging data. These procedures may include averaging scores across grade spans and averaging data over three years.

To make "adequate yearly progress," a school must meet two criterias. First, the school must meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup. If students in any subgroup fail to make the requisite progress, however, the school need not be identified for improvement if the percentage of students in that group below proficient decreased by at least 10 percent compared to the preceding year and that group made progress on one or more of the additional academic indicators. Second, at least 95 percent of the students in each group who have been enrolled in the local educational agency's schools for at least one year must take the assessment.

Invitation to Comment

This request for comments on regulatory issues under Title I is designed to elicit the views of interested parties, particularly State and local administrators, parents, teachers, paraprofessionals, members of local boards of education, charter school operators and public chartering authorities, and other organizations (including civil rights groups, test publishers, representatives of private school children, and faith-based organizations with educational expertise) involved with the implementation and operation of Title I programs.

In addition to inviting specific comments on issues relating to standards, assessments and adequate yearly progress, the Secretary invites comments on other regulatory issues concerning provisions under Title I, including suggestions that regulations are not needed to resolve particular issues.

The Secretary requests that each commenter identify his or her role in education and the perspective from which he or she views the educational system—either as a representative of an association, agency, or school (public or private), or as an individual teacher, student, parent, or private citizen. The Secretary urges each commenter to be specific regarding his or her recommendations, including the statutory citation pertinent to the comment.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in 400 Maryland Avenue, SW, Room 3W202, Washington, DC 20202 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Electronic Access to This Document

You may view this document, in Text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use the PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.213, Even Start)

Program Authority: Public Law 107–110.

Dated: January 14, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–1341 Filed 1–17–02; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–11332; SFAR No. 95]

RIN No. 2120–AH61

Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR), applicable February 8, 2002, through February 24, 2002, establishes restrictions for aircraft operations in the vicinity of the 2002 Winter Olympic Games to be held in Salt Lake City, UT. Additionally, this action notifies the public as to the establishment of temporary flight restrictions in areas overlying the various competition venues and the Olympic Village for the XIX Olympic Winter Games. This action also establishes a security process for certain flight arrivals and departures at specified airports in the vicinity of the Olympic Games. The FAA and the United States Secret Service (Secret Service) believe this action is necessary for the security of participating athletes, dignitaries, and others attending the Winter Games, and the people of Utah, and for the safe operation and management of aircraft operating to, within, and from these areas.

DATES: Effective January 15, 2002. The Olympic Village temporary flight restriction (TFR) area is implemented January 25, 2002, 0000 hours mountain standard time (MST), through February 25, 2002, 2359 hours MST. The Olympic venue TFR's are implemented February 6, 2002, 0000 hours MST through February 24, 2002, 2359 hours MST. The Olympic Ring Airspace, the slot reservation program and the security inspection process are implemented February 8, 2002, 0000 hours MST through February 24, 2002, 2359 hours MST.

FOR FURTHER INFORMATION CONTACT: Cliff Armstrong, Special Operations Division, ATP–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–9155.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page, type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov.*

Background

The 2002 Winter Olympic Games will be held February 8 through February 24, 2002, primarily in the Salt Lake City, Utah, area. This is an important international sporting event. In terms of air traffic demand, the pre-game, the game, and the post-game activities from January 25 through February 25, 2002, are expected to generate substantial increases in aircraft operations in Salt Lake City and the surrounding areas. The Secret Service has been charged with the responsibility of developing a security plan for the Olympics, and the United States Customs Service (Customs Service) has been granted the authority for providing the security force. Additionally, the FAA is responsible for implementing the security plan as it pertains to aviation security.

Prior to September 11, 2001, the FAA, in conjunction with the Secret Service and the Customs Service, determined that it would be necessary to establish TFR's over each Olympic venue and over the Olympic village. These TFR's were to be implemented by a notice to airmen (NOTAM), pursuant to the FAA's regulations in Title 14 Code of Federal Regulations (14 CFR) section 91.145, TFR in the Vicinity Of Aerial Demonstrations Or Major Sporting Events, and section 99.7, Special Security Instructions. In addition, the FAA is establishing a reservation system to manage Instrument Flight Rules (IFR) operations into and out of key airports in the Salt Lake City area.

The terrorist attacks of September 11, 2001, and the nation's continuing high alert status have led the Secret Service, and the Customs Service, to reevaluate the security issues associated with staging a large international event such as the Winter Olympic Games. Additionally, the mountainous terrain within and around Salt Lake City provides unique security concerns that, in this new environment, necessitate stricter security measures to protect participating athletes, dignitaries, and others attending the Winter Games, and the people of Utah. These additional security measures are part of a broader security package that encompasses all transportation modes.

Given the short time frame between the events of September 11, 2001, and the 2002 Winter Olympic Games, the FAA is adopting this SFAR as a final rule, pursuant to its authority under 49 U.S.C. 40103 and 44701(a)(5) and section 553 of the Administrative Procedures Act. Section 40103 provides that the Administrator shall develop "plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft" (See 49 U.S.C. 40103(b)(1)). In addition, the FAA shall "establish security provisions that will encourage and allow the maximum use of the navigable airspace by civil aviation aircraft consistent with national security, [and] the Administrator, in consultation with the Secretary of Defense shall * * * (B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with available facilities in those areas." See 49 U.S.C. 40103(b)(3)(B). See also, 49 U.S.C. 44701(a)(5).

The Administrative Procedures Act permits an agency to forego notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b)(B). The FAA finds that notice and comment is impracticable and unnecessary because this SFAR is a temporary action, imposed for a very short time-frame, that is necessary to provide for the security of the Winter Olympic Games, the participating athletes, dignitaries, others attending the Winter Games, and the people of Utah. Additionally, the FAA finds that it is contrary to the public interest to follow notice and comment procedures and thereby delay this final rule because the affected parties need time to obtain approval from the Utah Olympic Public Safety Command (UOPSC) if they plan on operating within the Olympic ring airspace; and to take actions to otherwise mitigate the impact of this final rule.

Airspace Restrictions

The Secret Service has recommended, a four-pronged plan for securing the airspace around the Salt Lake Area that includes the following—(1) A 45 nautical mile (NM) restricted area around Salt Lake City Airport (Olympic ring airspace); (2) nine TFR's established over the Olympic venues (including the Olympic Village); (3) a slot reservation program for certain airports located just outside of the Olympic ring airspace; and (4) a security inspection for flights operating under section 4(a)(x) of this SFAR.

In support of this security plan, the FAA is establishing the Olympic ring airspace which consists of a 45 NM circle centered on Runway 17 Localizer/DME (I–BNT) at Salt Lake City International Airport with a vertical limit extending from the surface up to, but not including 18,000 feet Mean Sea Level (MSL). Operating restrictions within the 45 NM radius Olympic ring airspace are effective for the period from February 8, 2002 through February 24, 2002, 24 hours a day. The Olympic ring airspace includes all Olympic venues, the major population center in Utah, and key transportation infrastructure modes. The establishment of this Olympic ring airspace will restrict aircraft operations, including, but not limited to, ultralight vehicles regulated under 14 CFR part 103. Air Traffic Control (ATC) will retain the ability to manage aircraft through the Olympic ring airspace in accordance with normal traffic flows. No crewmember (including flight attendants) can enter the Olympic ring airspace without having a background check completed by UOPSC. Carriers who have security programs that comply with section 108.101(a) are recognized by UOPSC. For any questions on your accreditation status, please call UOPSC.

Only certain airports within the Olympic ring airspace may be used by people operating aircraft during the effective time period of this SFAR. These airports are listed in section 3(g) of this SFAR. All other airports within the Olympic ring airspace cannot be used by people operating aircraft, except that the military and other security personnel may use other airports (*e.g.*, military airports) if authorized by Aviation Security Operations Command (ASOC) under section 4 (a)(vii). See also section 3 (h). Additionally, only those flights specifically authorized in Section 4 of this SFAR are permitted to operate in the Olympic ring airspace in accordance with the conditions of this SFAR. On February 8, 2002, 1800 hours MST to 2200 hours MST, and February 24, 2002, 1800 hours MST to 2200 hours MST, the Olympic ring airspace will be closed to all air traffic except aeromedical aircraft, military aircraft, aircraft operating in support of national or event security and public safety, and aircraft instructed by ATC to enter the airspace due to weather, traffic or special ATC routing.

Within the Olympic ring airspace, the FAA is establishing additional flight restrictions over the Olympic village TFR and venue TFR areas. The establishment of TFR areas over the Olympic Village and the competition venues creates no-fly zones for all aircraft, except:

(1) Aeromedical aircraft;

(2) Military aircraft;

(3) Operations in support of national or event security and public safety that are authorized by UOPSC; or

(4) Aircraft that are under ATC control.

Operating restrictions within the airspace overlying the Olympic Village are effective for the period from January 25, 2002, through February 25, 2002, 24 hours a day. Operating restrictions within the airspace overlying the competition venues are effective for the period from February 6, 2002 through February 24, 2002, 24 hours a day. The restrictions become effective before and after the Olympic events to accommodate the observation and securing of the airspace. The TFR areas are effective from the surface up to but not including 18,000 feet MSL. The TFR area sites are as follows—

(1) Olympic Village—Salt Lake City, UT;
(2) The E Center—West Valley City, UT;
(3) Utah Olympic Oval—Kearns, UT;
(4) The Peaks Ice Arena—Provo, UT;
(5) The Ice Sheet at Ogden—Ogden, UT;
(6) Snowbasin Ski Area—Huntsville, UT;
(7) Utah Olympic Park—Park City, UT;
(8) Park City and Deer Valley Mountain Resorts—Park City, UT; and
(9) Soldier Hollow—Heber City, UT.

The TFR areas are circular areas of 2 to 3 NM in radius from the surface up to, but not including, 18,000 feet MSL. Aircraft and ultralight vehicles regulated under 14 CFR part 103 are prohibited from operating within the Olympic ring airspace during the effective dates and times unless authorized by the designated using agency or ATC. The locations, dimensions, and effective times of the TFR areas are published for use by all pilots on air navigation charts and in the **Federal Register**, and specific details will be disseminated by NOTAM. These publications are available from the Flight Service Station and on the FAA website, www.faa.gov/ntap. Requests for access to the airspace areas can be obtained by contacting the using agency. Olympic venues that fall within Class B surface areas, specifically, the Olympic Village in Salt Lake City, the E Center in West Valley City and the Olympic Oval in Kearns, are charted along with those outside of Class B airspace.

Slot Reservation Program

The FAA is aware that some operators may choose to conduct operations from airports outside the Olympic ring airspace. There are four airports located near the Olympic ring airspace that the FAA believes are likely to receive an increased amount of traffic due to the Olympics. These four airports are Wendover, Logan, and Brigham City, UT, and Evanston, WY. In order to manage aircraft operations at those airports the FAA is establishing a slot reservation program for these four airports. Thus, beginning on February 8, 2002, 0000 hours, through February 25, 2002, 2359 hours, all aircraft arriving or departing at these four airports must have a slot reservation prior to arrival or departure. Slot reservations may be obtained up to 72 hours in advance starting February 5, 2002, by calling 1–800–875–9755, 24 hours a day, or by accessing the website www.fly.faa.gov. Flights arriving or departing these airports may not enter the Olympic ring airspace unless specifically authorized in section 4 (a)(i) through (ix) of this SFAR.

Security Inspection

To ensure the safety of the Winter Olympic Games, the participating athletes, dignitaries, others attending the Winter Games, and the people of Utah, all flights entering the Olympic ring airspace under section 4(a)(x) of this SFAR (including charter operations, corporate operations and general

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aviation) must be inspected at a Gateway airport and approved by the Salt Lake City (SLC) Olympic Security Team Inspectors prior to operating within the Olympic ring airspace. Gateway airports are those airports outside of the Olympic ring airspace that have SLC Olympic Security Team Inspectors present to inspect and approve an aircraft to enter the Olympic ring airspace. The following are designated Gateway airports:

(1) City of Colorado Springs Municipal Airport, Colorado Springs, CO (COS);
(2) Boise Air Terminal (Gowen Field), Boise, ID (BOI);
(3) Walker Field, Grand Junction, CO (GJT); and
(4) McCarran International Airport, Las Vegas, NV (LAS).

Flight operations conducted under section 4(a)(x) of this SFAR that depart from an airport within the Olympic ring airspace must be inspected and approved by SLC Olympic Security Team Inspectors at that airport prior to departure. Operators must arrange for an appointment with SLC Olympic Security Team Inspectors no earlier than 48 hours in advance prior to landing at a Gateway airport or departing from an airport within the Olympic ring airspace by calling 801–257–2761. Failure to arrange for an inspection appointment may result in long delays and potentially being denied entry into or out of the Olympic ring airspace. This security inspection process is applicable at all times from February 8, 2002, 0000 hours MST, to February 24, 2002, 2359 hours MST.

Aircraft operators covered by this SFAR will be permitted to conduct operations from February 8, 2002, 0000 hours MST, to February 24, 2002, 2359 hours MST, only at the following airports within the Olympic ring airspace:

(1) Salt Lake City International (SLC), Salt Lake City, UT;
(2) Ogden Municipal Airport (OGD), Ogden, UT;
(3) Provo Municipal Airport (PVU), Provo, UT;
(4) Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT;
(5) Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and
(6) Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

Exceptions

This SFAR contains provisions to provide for the safety and security of the Winter Olympic Games, participating athletes, dignitaries, others attending the Winter Games, and the people of Utah, and for the flexible and efficient management and control of air traffic. Included in this SFAR are provisions that give priority to, or exclude from requirements of the special regulation, flight operations dealing with or containing essential military, medical emergency, rescue, law enforcement, public health and welfare, Presidential, and heads of state.

Obtaining U.S. Air Navigation Charts

The following provides information on how to obtain the special air navigation charts for the Olympic Games, as well as other air navigation charts for use in the U.S. The National Aeronautical Charting Office (NACO) publishes and distributes aeronautical charts of the U.S. National airspace system (NAS). Charts are readily available through a network of sales agents located at or near principal civil airports. Due to the large variety, all NACO products may not be available locally; users can procure these products directly from NACO. Chart prices, subscription rates, and catalogs of related publications are available on request and are obtainable by writing to: FAA, National Aeronautical Charting Office, AVN–530, Distribution Division, Riverdale, Maryland 20737, USA, Phone 1–800–638–8972, Fax 301–436–6829, E-Mail 9–AMC–ChartSales@faa.gov.

Notice to Airmen (NOTAM) Information

ATC and air traffic flow management systems will monitor and assess the air traffic demand so that restrictions are kept to an essential minimum. To assure maximum flexibility, the FAA will announce all restrictions and other actions including the lifting of any restrictions taken by the FAA in response to changing airspace conditions through NOTAMS.

Time-critical aeronautical information that is of a temporary nature or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the National NOTAM system. All domestic operators planning flight to the Olympics need to pay particular attention to NOTAM D and Flight Data Center (FDC) NOTAM information. NOTAM D information could affect a pilot's decision to make a flight. NOTAM D pertains to information on airports, runways, navigational aids, radar services, and other information essential to flight. An FDC NOTAM will contain information which is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information would also be provided to international operators in the form of International NOTAM's. NOTAM's are distributed through the National Communications Center in Kansas City, Missouri, USA, for transmission to all air traffic facilities having telecommunications access.

Pilots and operators should consult the Flight Service Station or the FAA website at www.FAA.gov/ntap. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information Manual, "Preflight" Section.

Operators of aircraft and ultralight vehicles regulated under 14 CFR part 103 must clearly understand that the restrictions in this SFAR are in addition to other laws and regulations of the U.S. The SFAR does not waive or supersede any U.S. law or obligation. When operating within the jurisdictional limits of the U.S., operators of foreign aircraft must conform to all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the U.S. must be aware of and conform to the rules and regulations of the:

(1) U.S. Federal Aviation Administration regarding flights entering the United States;

(2) U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;

(3) U.S. FAA regarding flight in or into United States airspace. This includes compliance with Federal aviation regulations regarding operations within the territorial airspace of the United States through air defense identification zones, and compliance with general flight rules; and

(4) Airport management authorities regarding use of airports and airport facilities.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance by the FAA Administrator. This action is necessary to permit aircraft operations at the affected airports and prevent possible hazardous actions directed against aircraft, persons, and property within the United States.

Environmental Effects

This action establishes the Olympic ring airspace and TFR areas for safety and security purposes and curtails or limit certain aircraft operations within designated areas at defined dates and times, rather than require aircraft to be operated along specified routings or in accordance with specific procedures. Additionally, this action is temporary in nature and effective only for the dates and times necessary to provide for the safety and protection of participants and spectators on the ground, as well as law enforcement and security personnel operating in the air at Olympic game venues. ATC retains the ability to direct aircraft through the restricted areas in accordance with normal traffic flows. The FAA believes, therefore, that the establishment of temporary flight restriction areas has minimal impact on ATC routings or procedures.

Further, this action results in a reduction in aircraft activity in the vicinity of the Olympic games by restricting aircraft operations. Therefore, there will be fewer aircraft operations in the vicinity of the Olympic games than would have occurred if the restricted areas were not in place and noise levels associated with that greater aircraft activity also are reduced. Additionally, aircraft avoiding the restricted areas will not be routed over any particular area. This action, therefore, does not result in any long-term action that routinely routes aircraft over noise-sensitive areas. For the reasons stated above, the FAA concludes that this rule does not significantly affect the quality of the human environment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the small amount of paperwork burden associated with the rule will be submitted to the Office of Management and Budget for review.

Regulatory Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.) In conducting these analyses, FAA has determined this rule:

(1) Has benefits which do justify its costs, is a "significant regulatory action" as defined in the Executive Order and is "significant" as defined in DOT's Regulatory Policies and Procedures;
(2) Will have a significant impact on a substantial number of small entities,
(3) Will not constitute a barrier to international trade; and
(4) Does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Costs and Benefits

There are five major areas where economic impacts are likely: (1) Slot reservation system; (2) the establishment of the Olympic ring airspace; (3) temporary flight restrictions; (4) background checks; and (5) required use of gateway airports for some aircraft operations for security inspections prior to entering the Olympic ring airspace.

1. Slot Reservation System

During the busy Olympic period, the U.S. Government must assure the security of the Olympic venues, the athletes, visitors and people of Utah, while also maintaining the safe and efficient use of airspace. To achieve these objectives the FAA will implement an arrival and departure slot reservation system to manage air traffic into and out of four airports serving the Olympic games that are located outside the Olympic ring airspace. These four airports are Wendover, Logan and Brigham City, Utah, and Evanston, Wyoming. The FAA has determined that a slot program is necessary at these airports because it anticipates a significant increase in air traffic at these airports due to the Olympics.

The FAA anticipates that most passenger flights going into one of the slot airports would be operating under either 14 CFR parts 91 or 135. Some cargo operations operating under either 14 CFR parts 121 or 135 also may use the slot airports and then move cargo into the Salt Lake City area by motor vehicle. Flight operations that are not able to secure a slot reservation may have to fly into an airport further outside the Olympic ring airspace, or be postponed.

For 14 CFR part 135 flight operations, the cost of the cancellations would be the value of the flights to airlines and passengers less aircraft operating cost to conduct the flights. Other flights may be diverted to other airports in the Olympic games area. Diversions would result in additional cost of trips to and from places of intended lodging and possible extra aircraft operation costs. The major economic impact in the case of diversion would be inconvenience to operators who may not be able to operate at their first choice airport. Because such occurrences are of a limited duration, the FAA believes that costs associated with any diversions from one airport to another in the affected area will probably be small. Current personnel and equipment resources will absorb the additional FAA administrative workload generated by this emergency final rule. The slot provision will not require any additional air traffic controllers nor any additional radar control equipment.

The benefits of the slot reservation system will be better management of the air traffic into airports located just outside the Olympic ring airspace. The increase of air traffic due to the Olympics could overwhelm these smaller airports without a slot reservation system. Additionally, given this increase in air traffic, there is an increased risk of accidents due to this unprecedented congestion in the airspace outside the Olympic ring if greater controls are not implemented. Implementing a slot reservation system also may reduce the number of delays at these airports.

2. Establishment of Olympic Ring Airspace

The FAA is establishing a 45 NM ring around Salt Lake City Airport Runway 17, with a vertical limit extending from the surface up to but not including 18,000 feet MSL. This airspace is known as the Olympic ring airspace. There are

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a total of 10 public airports located within this ring and an unknown number of private airports. Aircraft operators may operate only at the following six airports within the Olympic ring airspace—

- Salt Lake City International (SLC) Salt Lake City, UT;
- Ogden Municipal Airport (OGD),Ogden, UT;
- Provo Municipal Airport (PVU), Provo, UT;
- Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT;
- Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and
- Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

The FAA is aware of four public use airports located in Utah at which aircraft will not be permitted to operate due to the imposition of the Olympic ring airspace. These are Eagle Mountain, Morgan County, Spanish Fork, and Tooele Valley. It is necessary to prohibit aircraft operations due to manpower issues and to maintain security over the airspace. In selecting the airports that will be available for aircraft operations the U.S. government considered many factors including location, IFR capability, the size of the airport, the type of aircraft it will accommodate, and the presence of air traffic control towers. Airports that are not available for aircraft operations will likely lose or delay operating revenue. Additionally, the restrictions may cause some operators to relocate aircraft to other airports where they can conduct operations during the February 8, 2002 through February 24, 2002, time period. The airports at which aircraft operators will not be permitted to operate all lack control towers. Eagle Mountain does not provide fuel or any other services. Bolinder Field-Tooele Valley, Morgan County, and Spanish Fork-Springville airports do provide fuel sales, aircraft rentals, maintenance, and flight training. According to available information, general aviation operations account for virtually all activity at these airports except for Spanish Fork where an estimated 5 percent of the operations are conducted by air taxis. Between 110 and 150 aircraft are based at these airports including approximately 6 multi-engine airplanes, 17 gliders and 2 ultralights.

There are a number of restrictions on the aircraft that can enter the Olympic ring airspace. The following flight operations will be prohibited within the Olympic ring airspace at all times—

(a) Hang gliding, paragliding and parasailing;

(b) Acrobatic flights;

(c) Radio remote-controlled aircraft;

(d) Gliders;

(e) Ultralights;

(f) Hot air balloons/airships;

(g) Tethered balloons;

(h) Flight training;

(i) Parachuting;

(j) Agriculture/crop dusting

(k) Animal population control flights

(l) Rockets (manned and unmanned);

(m) Shrimp spotters;

(n) Helicopter skiing;

(o) Commercial cargo carriers that do not have a Domestic Security Integration Program (DSIP) or a program that the Administrator has determined is equal to or exceeds such program; and

(p) Banner towing.

This prohibition is only for the duration of the Olympic ring airspace, thus while it will impact these operations significantly, such impact is for a limited period of time.

Passenger operations conducted by 14 CFR part 121 domestic or flag carriers, 14 CFR part 135 commuter operations or public charter operations as defined by 14 CFR section 108.3 are permitted to operate into, out of and within the Olympic ring airspace provided certain conditions are satisfied. 14 CFR part 121 all cargo carriers are permitted within the Olympic ring airspace provided certain conditions are satisfied. The FAA anticipates that only two conditions could impose additional costs on the operators—the condition that all crewmembers be accredited and the condition that requires all operators using this provision to have a security program in compliance with 14 CFR 108.101(a). The security program condition eliminates certain operators who would operate a flight subject to less than the full security program under 14 CFR 108.101(a). The FAA recognizes that this may cause certain operators to be diverted to Gateway airports, thus accruing additional costs (flight time, inspection time, fuel). However, the cost of these extraordinary regulations are necessary to ensure that aircraft entering the Olympic ring airspace meet a certain level of security.

14 CFR part 121 supplemental all cargo operations are permitted within the Olympic ring airspace provided, among other things, the carrier operates under a published schedule (or is a 14 CFR part 91 maintenance or positioning ferry flight) and the flight is in full compliance with the FAA's Domestic Security Integration Program. The FAA is aware that these conditions will prohibit certain cargo carriers from entering Olympic airspace, however, the Government is concerned about its ability to maintain security of the airspace with cargo carriers who do not comply with all of the prescribed conditions. This action will result in certain cargo carriers flying to outlying airports and transferring cargo to motor vehicle to be moved into the Olympic area. This additional cost, however, is necessary to ensure that aircraft entering the Olympic ring airspace meet a certain level of security.

Foreign air carriers that operate under 14 CFR part 129 or special authority from the Department of Transportation are permitted to enter the Olympic ring airspace only if the flight operation has been inspected at a Gateway airport in accordance with section 4(a)(x) or the carrier has been issued a waiver by the Administrator permitting the flight operation to enter the Olympic ring airspace and has demonstrated to the Administrator that the carrier's security program for that flight is similar to a security program that is in compliance with 14 CFR 108.101(a). The FAA believes that through the waiver, it can assure that foreign air carriers are not being discriminated against as compared to similarly situated domestic carriers.

With the exception of law enforcement, aeromedical services, news media aircraft, aircraft in support of the Olympics, military aircraft, aircraft carrying heads of state or other dignitaries, or foreign aircraft which are subject to special conditions, all other aircraft must enter the Olympic ring airspace only after landing at a Gateway airport and having a security inspection completed. See section 4(a)(x) of the SFAR. The costs to these operators are discussed herein under "Gateway Inspections."

3. Temporary Flight Restrictions

To secure the airspace around the Olympic venues, the FAA is establishing nine TFR areas over the 2002 Winter Olympic village and Olympic venue areas. The Olympic Village TFR will be effective from January 25, 2002, 0000 hours, through February 25, 2002, 2400 hours. The competition venue TFR's will be effective from February 6, 2002, 0000 hours, through February 24, 2002. The establishment of TFR's over the Olympic ring airspace will result in the restriction of aircraft operations from the surface up to but not including 18,000 feet MSL.

These restrictions may require some flights to circumnavigate the TFR areas. The major economic impact of circumnavigation will be inconvenience to operators who may have wanted to operate in the area of the TFR's. Because such occurrences are of limited duration and the restricted area is limited in size, the FAA believes that any circumnavigation costs will be negligible. Maps depicting the TFR's may be purchased from NACO and will be shipped via United Parcel Service, First Class Mail, or priority package. The costs associated with these charts are small.

The potential benefits of the proposed TFR airspace will be primarily enhanced safety to the public. Enhanced safety will be achieved by reducing the risk of a terrorist attack from the air during the Olympic games.

4. Background Checks

All crewmembers will be required under this SFAR to be "accredited" prior to serving on an aircraft that enters the Olympic ring airspace. All crewmembers who are operating aircraft for operators with a security program in compliance with 14 CFR 108.101(a) should have a minimal accreditation burden. The crewmember accreditation process entails the submission of personal, company and aircraft information, and a criminal history review that requires the applicant to submit their fingerprints. The FAA estimates that it will take each applicant 1 hour to complete the forms, provide the required photos and fingerprints at a cost of $50, plus a $15 processing fee for a total of $65. The FAA had approximately 500 completed applications on hand as of the year-end and it is possible that another 500 applications will be submitted. Thus the total cost to the applicants is estimated to be approximately $65,000 ($65 × 1,000). The UOPSC will process the applications.

5. Gateway Airport Inspections

Flight operations conducted under section 4(a)(x) of the SFAR must have a special security check at a Gateway airport prior to entering the Olympic ring airspace, or prior to departing from an airport within the Olympic ring airspace. This security check will involve a check of all crewmembers, passengers, baggage and aircraft.

There are four Gateway airports:

(1) City of Coloardo Springs Municipal airport, Colorado Springs, CO (COS);
(2) Boise Air Terminal (Gowen Field), Boise, ID (BOI);
(3) Walker Field, Grand Junction, CO (GJT); and
(4) McCarran International Airport, Las Vegas, NV (LAS).

A team composed of an FAA inspector, other federal and local law enforcement representatives, and the National Guard will conduct the inspections. Assuming two teams are assigned to each airport, approximately 40 personnel will be assigned to this task for the 17-day period. Assuming an eight-hour shift at an hourly rate of $25, each team member will cost $200 per day and the total cost will be approximately $136,000 ($200 × 40 × 17). These costs will be borne by the federal and local governments.

Flights conducted under section 4(a)(x) are principally conducted by on-demand operators, corporate owners, and the general aviation community. These operators will incur additional costs to comply with this inspection requirement. The costs consist of lost time and extra operating costs. The inspection time will vary by size of aircraft and load factor; small aircraft may take less than 10 minutes while a large jet may take an hour. The FAA anticipates that this check will average ½ hour per aircraft.

Extra flying time will be required since these flights must stop at one of the four airports rather than flying directly to their destination airport. The airports where the inspections will be conducted are located from 215 miles to 407 miles from Salt Lake City with an average of 320 miles. While some flights may not incur this many extra miles depending on their routing, 320-miles serves as a benchmark. The distance of 320 miles represents about 85 minutes flight time for a twin engine turboprop and about 40 minutes for a business jet. Since the type of aircraft subject to the inspection is unknown at this time, an average of 60 minutes additional flying time is assumed. Thus the total additional time each flight will experience is estimated at 90 minutes.

The value of this additional travel time to each passenger is estimated at $50. This is based on a economic value of passenger time per hour for all general aviation passengers as calculated in Table E–1of the FAA's "Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs", June 1998, adjusted using the GDP implicit price deflator. The following values are also drawn from Table E–1. The "typical" general aviation and on-demand aircraft carries 3 passengers so the value of passenger time lost per flight is approximately $150. However, it is anticipated that larger aircraft will be used for these Olympic flights and are more likely to carry an estimated 16 passengers per flight (based on the number of passengers on commuter flights) thus increasing the value of passenger time lost per flight to approximately $800.

The "typical" general aviation and on-demand aircraft incurs fixed and variable operating costs per hour of approximately $725 while the larger aircraft which may be used for these Olympic flights incur operating costs of approximately $910 per hour (based on commuter flights operating costs). Thus the extra fixed and variable costs due to the inspection and extra flight time are estimated to range between $1,090 and $1,365 per flight.

The benefits of the Gateway Airport Inspection program will be a level of security equivalent to that of flights operated under § 108.101(a) of the Federal aviation regulations. This will provide a higher level of security within the Olympic ring that would not be possible without this program. These emergency procedures are necessary because of the terrorist attacks of September 11, 2001.

The FAA has determined that this rule will impose only temporary costs on the public. The overall magnitude of these costs while undetermined are limited to a 17-day period. The benefits will be increased aviation security resulting from a lower risk of accidents due to increased congestion during the 2002 Winter Olympics and increased security at the Olympic events due to the security inspections at the Gateway Airports.

Considering the temporary nature of this rule and the inherent benefits to the public, the FAA finds that the benefits of the rule justify its costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include

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a statement providing the factual basis for this determination, and the reasoning should be clear.

Many of the flights that will require inspections will be conducted by private operators and are not business flights for purposes of this analysis. A number of flights will be conducted as on-demand charter flights and the costs of the inspection time and the extra flight time will be costs to the business. However, it is likely that these costs will be borne by the chartering party and not the operator. In the event an on-demand operator must absorb the extra cost, the cost would consist of the crew accreditation fee and the extra operating cost. The accreditation fee will be $130 for two crewmembers and, assuming the use of a larger aircraft, additional operating costs of $1,365 for a total of approximately $1,500. If the operator flew one flight each day of the Olympics with a new crew each day the total cost would be $25,500.

The Small Business Administration (SBA) suggests that aircraft operators with 1,500 or fewer employees are "small" entities. Thus, nearly all on-demand charter operators are small entities. Data for firms with fewer than 1,500 employees are not available but a SBA analysis of Bureau of Census data for non-scheduled air transportation firms with fewer than 500 employees indicates they have average revenues of $1.87 million. Thus the possible cost of this emergency rule would equate to as much as 1.4 percent of a small entity's annual revenue. Since adequate data is not immediately available to more clearly establish impacts, the FAA assumes that this final rule will have a significant economic impact on a substantial number of small entities.

Accordingly, the FAA has prepared the following regulatory flexibility analysis although it is not required by the RFA because no notice of public rulemaking for this final rule will be published.

Reasons Agency Action Is Being Taken

The Secret Service and Customs Service have determined that in order to protect the athletes, visitors and people of Utah during the Olympics additional aviation security measures are necessary.

Statement of Objectives and Legal Basis

The Administrative Procedures Act (49 U.S.C 40103(b)(3)(B)) states that the FAA shall "establish security provisions that will encourage and allow the maximum use of the navigable airspace by civil aviation aircraft consistent with national security, [and] the Administrator, in consultation with the Secretary of Defense shall "* * * by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with aviation facilities in those areas". See also 49 U.S.C.44701(a).

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by this emergency rule are small according to thresholds established by the SBA. The on-demand charter operators that are affected by this rule could incur costs of approximately $25,500.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The crewmembers of the operator most undergo a background check at an estimated cost of $65 per member. The usual crew complement consists of a pilot and a co-pilot for a cost per crew of $130. Assuming a new crew daily for the entire period, the cost to an operator would be $2,730.

Overlapping, Duplicative, or Conflicting Federal Rules

The rule would not overlap, duplicate, or conflict with existing Federal rules.

Analysis of Alternatives

This rule is an emergency security rulemaking. In order to achieve the level of security determined by the Secret Service and Customs Service it is essential that all aircraft entering the Olympic ring comply with these requirements. Allowing aircraft to enter the ring without either having a security program meeting 14 CFR 108.101 (a) or being inspected at a Gateway airport would compromise the overall security of the Olympics. These additional security measures are part of a broader security package that encompasses all transportation modes. An alternative would have been to ban all non-scheduled operations within the ring.

Affordability Analysis

The FAA lacks reliable revenue and profit data for the individual entities affected by this rule and, therefore, is unable to explicitly compare the potential costs to revenues or profits. This is because they have no financial reporting requirements. The FAA believes that very few entities will incur these costs since they will generally be included in the charter price.

Business Closure Analysis

The FAA estimates that no entity will cease to operate due to this rule which is only in effect for a 17-day period.

Disproportionality Analysis

Almost all entities in the on-demand charter business are small. Accordingly, the costs imposed by this rule will be borne almost entirely by small businesses. Security at the Olympics is essential and the FAA believes that the only way to ensure security is to control all operations entering the ring airspace.

Key Assumption Analysis

The FAA has made several conservative assumptions in this analysis which may have resulted in an overestimate of the costs of the rule. For example, the FAA has estimated that a new crew will be used each day. It is highly possible that the same crew will be used numerous times. The FAA has also assumed that a larger than average aircraft with higher operating costs will be used for these operations. It is possible that the average operating costs may be lower than the FAA has estimated and that no operator will be affected by this rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulation set forth herein does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aircraft flight, Airspace, Aviation safety, Air Traffic Control.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation 861 stat. 1180.

2. Add Special Federal Aviation Regulation No. 95 to read as follows:

SFAR No. 95—Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, Utah

1. *Applicability.* This SFAR applies to all crewmembers aboard aircraft operating within the Olympic ring airspace, the Olympic village temporary flight restrictions area and the Olympic venue temporary flight restrictions area, and to all aircraft operating within this airspace.

2. *Definitions.*

(a) Olympic ring airspace—for the time period February 8, 2002, 0000 hours MST, through February 24, 2002, 2359 hours MST, that airspace within a 45 NM radius of the Salt Lake City International Airport Runway 17 localizer/distance measuring equipment (DME), identifier I–BNT (latitude 40°46′10.06″ N/111°57′43.44″ W) with a vertical limit extending from the surface up to but not including 18,000 feet mean sea level (MSL).

(b) Venue temporary flight restriction area (TFR)—that airspace overlying an U.S. Olympic competition venue as described in section 4(b) of this SFAR.

(c) Olympic Village temporary flight restriction area (TFR)—that airspace overlying the U.S. Olympic village and athletes housing as described in section 4(b) of this SFAR.

(d) Gateway Airport—an airport specified in section 5(b) of this SFAR that is located outside the Olympic ring airspace that aircraft flight operations seeking to enter the Olympic ring airspace pursuant to section 4 (a)(x) of this SFAR must land at prior to entry.

(e) UOPSC—Utah Olympic Public Safety Command

(f) ASOC—Aviation Security Operations Command

(g) Administrator—includes, in addition to the Administrator of the FAA, the Under Secretary of Transportation for Security, acting under the authority of the Aviation and Transportation Security Act, Pub. L. 107–71. During the transition period, the Administrator and the Under Secretary will coordinate closely to avoid duplication of requirements and disruption of operations.

3. *General rules.*

(a) Each person operating an aircraft within the Olympic ring airspace and all aircraft operating in this airspace shall adhere to the terms and conditions of this SFAR, all NOTAM's issued pursuant to this SFAR and all other applicable FAA rules and regulations. In addition, each person operating a flight originating outside U.S. airspace that enters U.S. airspace shall adhere to all international NOTAM's issued pursuant to this SFAR. NOTAM's are available for inspection at operating FAA air traffic facilities and regional air traffic division offices.

(b) As conditions warrant, the Administrator will:

(i) Restrict, prohibit, or permit VFR and IFR operations at any airport, terminal, or enroute airspace area designated in this SFAR or in a NOTAM issued pursuant to this SFAR;

(ii) Give priority to the following flights from provisions of this SFAR and NOTAM's issued pursuant to this SFAR—

(A) Essential military;

(B) Medical and rescue;

(C) Essential public health and welfare;

(D) Presidential and Vice Presidential;

(E) Flights carrying visiting heads of state;

(F) Law enforcement and security; and

(G) Flights authorized by the Director, Air Traffic Service.

(iii) Implement flow control management procedures.

(c) For security purposes, the Administrator may issue NOTAM's during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAM's issued pursuant to this SFAR if such action is consistent with the safe and efficient use of airspace, and the safety and security of persons and property on the ground.

(d) No person may operate an aircraft in or through the Olympic ring airspace unless it is specifically authorized in section 4 of this SFAR and it is operated in accordance with this SFAR and all other applicable FAA rules and regulations.

(e) No operator may use, and no person may serve as, a crewmember in an aircraft operating in the Olympic ring airspace unless they have been accredited by the UOPSC. For further information on accreditation, contact UOPSC Aviation at (801) 257–2761.

(f) No person may operate an aircraft within the Olympic ring airspace, any Olympic venue TFR, or the Olympic Village TFR area unless the aircraft is equipped with an operating transponder with Mode C, and uses an assigned discrete beacon code while in this airspace.

(g) Unless otherwise provided for in this SFAR, persons operating flights that arrive at, or depart from, an airport located within the Olympic ring airspace may only conduct operations at the following designated airports located in the Olympic ring airspace: Salt Lake City International (SLC), Salt Lake City, UT; Ogden Municipal Airport (OGD), Ogden, UT; Provo Municipal Airport (PVU), Provo, UT; Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT; Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and Skypark Airport (BTF), Bountiful, Utah (rotorcraft operations only).

(h) No person is permitted to land an aircraft at, depart from, or otherwise operate an aircraft at any location other than those identified in paragraph (g) of this section, except for aeromedical aircraft responding to an emergency, military aircraft, or law enforcement and security aircraft that are conducting flights in support of the Olympic events.

(i) The following operations are specifically prohibited within the Olympic ring airspace at all times—

(i) Hang gliding, paragliding and parasailing;

(ii) Acrobatic flights;

(iii) Radio remote-controlled aircraft;

(iv) Gliders;

(v) Ultralights;

(vi) Hot air balloons/airships;

(vii) Tethered balloons;

(viii) Flight training;

(ix) Parachuting;

(x) Agriculture/crop dusting;

(xi) Animal population control flights;

(xii) Rockets (manned or unmanned);

(xiii) Shrimp spotters;

(xiv) Helicopter skiing;

(xv) Commercial cargo carriers flight operations that do not have a Domestic Security Integration Program (DSIP) or a program that the Administrator has determined equal or exceeds such program; and

(xvi) Banner towing.

4. *Restricted airspace.*

(a) Olympic Ring Airspace. No person operating an aircraft and no aircraft may enter, depart from, or fly within the Olympic ring airspace unless the aircraft operation is identified below and is operated in compliance with all applicable conditions:

(i) A 14 CFR part 121 Domestic, Flag Operation, 14 CFR part 135 Commuter Operation or public charter operation as defined by 14 CFR 108.3 of this chapter, is permitted in the Olympic ring airspace provided the aircraft is operated by a commercial passenger carrier certificated under 14 CFR part 119 of this chapter that:

(A) Is operated in accordance with 14 CFR part 121 or part 135 of this chapter, as applicable, under a regularly published schedule, or is operated as a 14 CFR part 91 maintenance or positioning ferry flight;

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(B) Is operated in accordance with an open IFR flight plan, unless otherwise authorized by ATC;

(C) Has received a discrete beacon code and transmits that code while airborne in the Olympic ring airspace;

(D) Is conducted in accordance with a full security program under 14 CFR 108.101(a) (no exceptions allowed);

(E) Complies with the provisions of this SFAR and all other applicable FAA rules and regulations; and

(F) Complies with all additional safety and security requirements communicated to the carriers via NOTAM, security directives or operations specifications.

(ii) A 14 CFR part 121 supplemental all-cargo operation is permitted within the Olympic ring airspace provided the aircraft is operated by a commercial cargo carrier certificated under 14 CFR part 119 to operate in accordance with 14 CFR part 121 of this chapter that:

(A) Is operated in accordance with 14 CFR part 121 of this chapter under a published schedule, or is a 14 CFR part 91 maintenance or positioning ferry flight;

(B) Is operated in accordance with an open IFR flight plan, unless otherwise authorized by ATC;

(C) Has received a discrete beacon code and transmits that code while airborne in the Olympic ring airspace;

(D) Is in full compliance with the FAA's Domestic Security Integration Program or is in full compliance with a program that has been approved by the Administrator as equal to or exceeding the DSIP Program; and

(E) Complies with all additional security requirements communicated to the air carriers via NOTAM, security directive or operations specifications.

(iii) A foreign air carrier operating under 14 CFR part 129 or under authority from the U.S. Department of Transportation (14 CFR part 375) may enter the Olympic ring airspace only if the flight operation is in compliance with section 4(a)(x) of this SFAR or the carrier has been issued a waiver by the Administrator permitting the flight operation to enter the Olympic ring airspace and has demonstrated to the Administrator that the carrier's security program for that flight is similar to a security program that is in full compliance 14 CFR 108.101(a) of this chapter.

(iv) A law enforcement or aeromedical services aircraft may land in, depart from, or fly within the Olympic ring airspace provided it is in compliance with the applicable provisions of this SFAR and the pilot has notified the ASOC that the aircraft is landing in, departing from, or flying within the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(v) An aircraft carrying news media representatives may land in, depart from, or fly within the Olympic ring airspace only if it is in compliance with the applicable provisions of this SFAR and the pilot has notified ASOC that the aircraft is landing in, departing from, or flying within the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(vi) Aircraft directly supporting the Salt Lake Organizing Committee are permitted to operate in the Olympic ring airspace only if the operation is in compliance with the applicable provisions of this SFAR and the pilot notifies ASOC that it is landing in, departing from, or flying in the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(vii) Aircraft and crewmembers used in military operations or other operations in support of event security and public safety may operate within the Olympic ring airspace only if the pilot notifies ASOC that the aircraft is landing in, departing from, or flying in the Olympic ring airspace and receives authorization from ASOC to conduct such operation.

(viii) Aircraft carrying the President or Vice President of the United States are permitted to operate within the Olympic ring airspace as authorized by the U.S. Secret Service.

(ix) All aircraft carrying heads of state or other dignitaries may operate within the Olympic ring airspace, provided the flight is in compliance with the applicable provisions of this SFAR and the pilot notifies ASOC that it is landing in, departing from, or flying in the Olympic ring airspace and receives authorization from ASOC to conduct such operation.

(x) Except for those aircraft flight operations specifically prohibited for the duration of this SFAR under section 3 (i) of this SFAR, aircraft operations not satisfying one of the categories identified in section 4 (a)(i) through (a)(ix) are permitted within the Olympic ring airspace only if all of the following conditions are satisfied—

(A) The operation is in compliance with all applicable provisions of this SFAR;

(B) The aircraft is operating in accordance with an open IFR flight plan from a Gateway airport;

(C) The aircraft, passengers, baggage and crewmembers have been inspected and cleared by SLC Olympic Security Team Inspectors at a Gateway airport, or at an airport designated in section 5 of this SFAR within the Olympic ring airspace;

(D) The aircraft has been assigned a discrete beacon code and transmits that code while airborne in the Olympic ring airspace; and

(E) The aircraft complies with any additional NOTAMS or security directives.

(xi) All other aircraft, including but not limited to operations conducted under part 103 of this chapter, are prohibited from operating within the Olympic ring airspace, unless specifically authorized by the terms of the SFAR or by special authorization by the Administrator and ASOC.

(xii) All aircraft are prohibited from operating within the Olympic ring airspace on February 8, 2002, from 1800 hours to 2200 hours MST, and on February 24, 2002, from 1800 hours to 2200 hours MST, except for aircraft operated by law enforcement, emergency medical services or the military, or other operations in support of national or event security and public safety provided that the pilot has notified ASOC that it needs to operate within the Olympic ring airspace and has received authorization from ASOC to conduct such operation; or the aircraft is operating under the direction of FAA ATC and is instructed by FAA ATC to enter the airspace due to weather, traffic or routing. The pilot must remain in radio contact with FAA ATC and under ATC direction for the entire time the flight is within the Olympic ring airspace.

(b) Venue TFR area and Olympic Village TFR area. [Note: These are the planned TFRs. Pilots must check the NOTAM system to ensure they have the latest TFR information.]

(i) No aircraft may enter or operate within the airspace overlying a Venue TFR or the Olympic Village TFR area during the times indicated, unless one of the following applies—

(A) The aircraft operation is for purposes of law enforcement, aeromedical services, or is a military flight or other operation in support of national or event security and public safety operations and the pilot has notified ASOC that it needs to operate within the Olympic venue TFR or Olympic village TFR area and has received authorization from ASOC to conduct such operation; or

(B) The aircraft is operating under the direction of Air Traffic Control, and Air Traffic Control has directed the pilot to operate within the venue or Olympic village TFR due to weather, traffic or routing. The pilot must remain in radio contact with FAA ATC and under ATC direction for the entire time the flight is within the venue or Olympic village TFR.

(ii) The following TFRs are established—

(A) The Olympic Village; Salt Lake City, Utah.

That airspace within a 3 NM radius of latitude (lat.) 40 deg.46′22″ N, longitude (long.) 111 deg.50′37″ W (SLC 110R/8 NM distance measuring equipment (DME) fix). Designated altitudes: Surface up to but not including 18,000 feet mean sea level (MSL). Times of Designation: January 25, 2002 to February 25, 2002, 24 hours per day. Using agency: Utah Olympic Public Safety Command (UOPSC). Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(B) The E Center; West Valley City, Utah.

That airspace within a 2 NM radius of lat. 40 deg.42′07.6″ N, long. 111 deg.57′05.6″ W (SLC 155R/9 NM DME fix). Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(C) Utah Olympic Oval; Kearns, Utah.

That airspace within a 2 NM radius of lat. 40 deg.40′22.8″ N, long. 112 deg.00′02.8″ W (SLC 168R/10.8 NM DME fix). Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(D) The Peaks Ice Arena; Provo, Utah.

That airspace within a 2 NM radius of lat. 40 deg.14′03.7″ N, long. 111 deg.38′05.3″ W (FFU 084R/14.3 NM DME fix), excluding the airspace along and southwest of I–15. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(E) The Ice Sheet at Ogden; Ogden, Utah.

That airspace within a 2 NM radius of lat. 41 deg.11′00.6″ N, long. 111 deg.56′47.6″ W (OGD 092R/7.3 NM DME fix). Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(F) Snowbasin Ski Area; Huntsville, Utah.

That airspace within a 2.5 NM radius of lat. 41 deg.12′40″ N, long. 111 deg.51′30″ W (OGD 077R/10.9 NM DME fix). Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(G) Utah Olympic Park; Park City, Utah.

That airspace within a 2.5 NM radius of lat. 40 deg.42′40.6″ N, long. 111 deg.33′40.4″ W (SLC 097R/20.9 NM DME fix), excluding the airspace along and North of I–80. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(H) Park City and Deer Valley Mountain Resorts; Park City, Utah.

That airspace within a 3 NM radius of lat. 40 deg.38′31.8″ N, long. 111 deg.29′40.7″ W (SLC 103R/25.5 NM DME fix) excluding that airspace along and east of U.S. Highway 40. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(I) Soldier Hollow; Heber City, Utah.

That airspace within a 2.5 NM radius of lat. 40 deg.28′53.7″ N, long. 111 deg.29′44.4″ W (FFU 043R/23.9 NM DME fix) excluding that airspace along and southeast of Highway 189. Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

5. *Flights operating within the Olympic Ring Airspace pursuant to section 4 (a)(x) of this SFAR.*

(a) General Description. (i) All flights that operate in accordance with section 4 (a)(x) of this SFAR must arrive at, or depart from, one of the following airports within the Olympic ring airspace: Salt Lake City International (SLC), Salt Lake City, UT; Ogden Municipal Airport (OGD), Ogden, UT; Provo Municipal Airport (PVU), Provo, UT; Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT; Salt Lake City Municipal Airport (U42), Salt Lake City, UT; or Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

(b) Security Check: (i) Prior to entering the Olympic ring airspace, all operations conducted in accordance with section 4 (a)(x) of this SFAR must first land at one of the following Gateway airports listed below and undergo a consensual security inspection by SLC Olympic Security Team Inspectors and be approved for landing in the Olympic ring airspace:

(A) City of Colorado Springs Municipal Airport, Colorado Springs, CO (COS);

(B) Boise Air Terminal (Gowen Field), Boise, ID (BOI);

(C) Walker Field, Grand Junction, CO (GJT); and

(D) McCarran International Airport, Las Vegas, NV (LAS).

(ii) An aircraft (including passengers and baggage) and crew that has been inspected at a Gateway airport, approved for entering the Olympic ring airspace by SLC Olympic Gateway Security Team Inspectors and departs for a designated airport located within the Olympic ring airspace, is prohibited from making any intermediate stops. Any aircraft that has been inspected and approved by SLC Olympic Gateway Security Team Inspectors at a Gateway airport that lands at an airport other than its intended destination within the Olympic ring airspace, must be reinspected and reapproved by SLC Olympic Gateway Security Team Inspectors at a Gateway airport before entering the Olympic ring airspace.

(iii) All flights conducted under section 4 (a)(x) of this SFAR that depart from an Olympic ring airport identified in section 5 (a) of this SFAR must first be inspected and approved for departure by SLC Olympic Gateway Security Team Inspectors and must operate on an IFR flight plan from the Gateway airport.

(iv) No earlier than 48 hours prior to arrival at a Gateway airport, or departure from an airport within the Olympic ring airspace, an operator must arrange for a security inspection with the SLC Olympic Security Team Inspectors. This appointment may be made by calling: 801–775–5524.

6. *Slot reservation process.* (a) Starting February 8, 2002, 0000 hours MST, through February 25, 2002, 2359 hours MST, all aircraft arriving or departing at one of the following airports located outside of the Olympic ring airspace must have a slot reservation prior to arrival or departure: Wendover, Logan, or Brigham City, Utah, or Evanston, Wyoming.

(b) Slot reservations for the airports identified in section 6 (a) of this SFAR may be obtained up to 72 hours in advance by contacting 1–800–975–9755 or by accessing *www.fly.faa.gov* starting February 5, 2002.

7. *Termination date.* Except for section 4 (b)(i) and 4 (b)(ii)(A), this SFAR terminates on February 24, 2002, 2359 hours MST, unless an earlier date is prescribed for a specific provision. The Olympic Village TFR terminates on February 25, 2002, at 2359 hours MST.

Issued in Washington, DC, on January 15, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–1441 Filed 1–16–02; 10:15 am]

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Federal Register

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Part V

The President

Proclamation 7517—Religious Freedom Day, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7517 of January 15, 2002

Religious Freedom Day, 2002

By the President of the United States of America

A Proclamation

Religious freedom is a cornerstone of our Republic, a core principle of our Constitution, and a fundamental human right. Many of those who first settled in America, such as Pilgrims, came for the freedom of worship and belief that this new land promised. And when the British Colonies became the United States, our Founders constitutionally limited our Federal Government's capacity to interfere with religious belief by prohibiting the Congress from passing any law "respecting an establishment of religion, or prohibiting the free exercise thereof." These constitutional limits have allowed the flourishing of faith across our country, which greatly blesses our land.

George Washington forcefully expressed our collective constitutional promise to protect the rights of people of all faiths, in a historic letter he wrote to the Jewish community at Touro Synagogue in Newport, Rhode Island: "the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens...." Today, our cities are home to synagogues, churches, temples, mosques, and other houses of worship that peacefully welcome Americans of every belief. Preserving religious freedom has helped America avoid the wars of religion that have plagued so many cultures throughout history, with deadly consequences.

Today, as America wages war against terror, our resolve to defend religious freedom remains as strong as ever. Many miles from home, American service men and women have risked their lives in our efforts to drive the Taliban regime from power, ending an era of brutal oppression, including religious oppression. At home, Americans demonstrated the vitality of our religious freedom in the enormous outreach by faith communities to help those harmed by the terrorist attacks. In quiet prayers offered to God in churches, synagogues, temples, and mosques and in the helping hands of faith-based groups, Americans have shown a deep love for others and genuine spiritual unity that will sustain us through the difficult days of recovery.

Religious Freedom Day provides us an opportunity to celebrate America's commitment to protect the freedom of religion. On this special day, I encourage all Americans to renew their commitment to protecting the liberties that make our country a beacon of hope for people around the world who seek the free exercise of religious beliefs and other freedoms.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 2002, as Religious Freedom Day. I urge all Americans to observe this day by asking for the blessing and protection of Almighty God for our Nation, and to engage in appropriate ceremonies and activities in their homes, schools, and places of worship as a sign of our resolve to protect and preserve our religious freedom.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

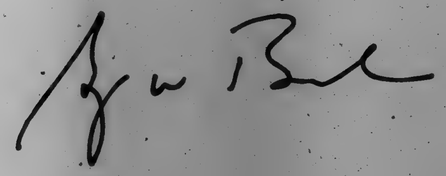

[FR Doc. 02–1593
Filed 01–17–02; 8:45 am]
Billing code 3195–01–P

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Part VI

The President

Executive Order 13253—Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation

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Presidential Documents

Title 3—

The President

Executive Order 13253 of January 16, 2002

Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 301 of title 3, United States Code, and in furtherance of Proclamation 7463 of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, which declared a national emergency by reason of the terrorist attacks on the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States, and in order to provide the Secretary of Transportation, with respect to the Coast Guard, with the authority to manage personnel requirements in a manner consistent with the authorization provided to the Secretary of Defense in Executive Order 13223 of September 14, 2001, it is hereby ordered as follows:

Section 1. Section 5 of Executive Order 13223 is amended by adding at the end: "The Secretary of Transportation is further designated and empowered, without the approval, ratification or any other action by the President, to exercise the authority vested in the President by sections 123 and 123a of title 10, United States Code, and sections 149 (detail members to assist foreign governments), 275(a) (suspension of provisions on selection, promotion, or involuntary separation of officers), and 722 (administration of reserve forces) of title 14, United States Code, as invoked by section 2 of Executive Order 13223."

Sec. 2. Section 7 of Executive Order 13223 is deleted and revised to read as follows: "Based upon my determination under 10 U.S.C. 2201(c) that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty for the Department of Defense beyond the number for which funds are provided in the appropriation Act for the Department of Defense, which, by virtue of 14 U.S.C. 652, applies to the Department of Transportation with respect to the Coast Guard, the Secretary of Defense and the Secretary of Transportation may provide

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for the cost of such additional members under their respective jurisdictions as an excepted expense under section 11(a) of title 41, United States Code."

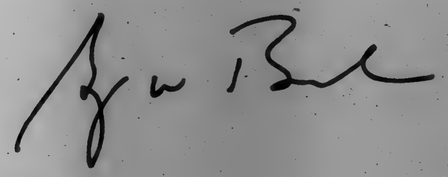

THE WHITE HOUSE,
January 16, 2002.

[FR Doc. 02–1594
Filed 1–17–02; 10:43 am]
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H.R. 2278/P.L. 107–125
To provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States. (Jan. 16, 2002; 115 Stat. 2403)

H.R. 2336/P.L. 107–126
To extend for 4 years, through December 31, 2005, the authority to redact financial disclosure statements of judicial employees and judicial officers. (Jan. 16, 2002; 115 Stat. 2404)

H.R. 2751/P.L. 107–127
General Shelton Congressional Gold Medal Act (Jan. 16, 2002; 115 Stat. 2405)

H.R. 3030/P.L. 107–128
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H.R. 3248/P.L. 107–129
To designate the facility of the United States Postal Service located at 65 North Main Street in Cranbury, New Jersey, as the "Todd Beamer Post Office Building". (Jan. 16, 2002; 115 Stat. 2408)

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM209, Special Conditions No. 25–195–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 Airplane; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplanes modified by Duncan Aviation, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an air data display unit that displays critical flight parameters to the flightcrew. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is January 9, 2002. Comments must be received on or before February 21, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM209, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM209. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 7, 2001, Duncan Aviation Inc., 15745 South Airport Road, Battle Creek, MI, 49015, applied for a supplemental type certificate (STC) to modify the Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplane listed on Type Certificate A33EU. The Model Falcon 10 is a twin engine, small transport airplane. It is capable of carrying two flightcrew members and up to nine passengers. This model is powered by two Airesearch Manufacturing Company of Arizona Model TPE731–2–1C engines. The modification incorporates the installation of an air data display system that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation must show that the AMD/BA Model Falcon 10 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified AMD/BA Model Falcon 10 airplane includes 14 CFR part 25, dated February 1, 1965, including Amendments 25–1 through 25–20, as listed in the Type Certificate Data Sheet (TCDS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Model

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Falcon 10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 10 airplane must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The AMD/BA Model Falcon 10 airplane will incorporate the following novel or unusual design feature: an air data display unit that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the AMD/BA Model Falcon 10 as modified by Duncan Aviation Inc. These special conditions require that new avionic/electronic and electrical systems such as the air data display unit, that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500 kHz–2MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplane modified by Duncan Aviation, Inc. Should Duncan apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on AMD/BA Model Falcon 10 airplanes modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplanes modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1507 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–47–AD; Amendment 39–12603; AD 2002–01–11]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. This AD requires you to repetitively inspect the throttle friction-shaft and replace the shaft if damaged. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

DATES: This AD becomes effective on February 28, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. The CAA reports an incident where the throttle friction adjuster loosened too far, causing the split pin and the washer on the shaft to break.

What Is the Potential Impact if FAA Took No Action?

The loosening of the throttle friction adjustment beyond its normal limits could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 7, 2001 (66 FR 56248). The NPRM proposed to repetitively inspect the throttle friction-shaft and replace the shaft if damaged.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 118 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $60 per hour = $60	$1	$61	$61 × 118 = $7,198.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

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Labor cost	Parts cost	Total cost per airplane
16 work hour × $60 per hour = $960	$230	$1,190

Is There a Modification I Can Incorporate Instead of Repetively Inspecting the Throttle Friction-Shaft?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–11 Pilatus Britten-Norman LTD.: Amendment 39–12603; Docket No. 2000–CE–47–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the throttle friction-shaft for damage. Replace the split pin and washer.	Inspect within 100 hours time-in-service (TIS) after February 28, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 100 hours TIS. Accomplish the replacements prior to further flight after each inspection.	In accordance with the Procedures section of BN Service Bullitin BN2/SB.272, dated July 1, 2000.
(2) If damage is found on the throttle friction-shaft, replace shaft.	Before further flight after each inspection where damage is found.	In accordance with the Procedures section of BN Service Bulletin BN2/SB.272, dated July 1, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with BN Service Bulletin BN2/SB.272, dated July 1, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British AD 003–07–2000, dated August 22, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2002.

Issued in Kansas City, Missouri, on January 11, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1222 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–80–AD; Amendment 39–12602; AD 2002–01–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 airplanes. This AD requires you to repetitively inspect the main landing gear upper torque knees and lower torque knees for evidence of fatigue cracks; and replace any torque knee with evidence of fatigue cracks. This AD is the result of reports of many incidents of main landing gear torque knees cracking or breaking on the above-referenced airplanes. The actions specified by this AD are intended to detect and replace cracked main landing gear torque knees, which could result in failure of the main landing gear and consequent loss of control of the airplane during takeoff, landing, or other ground operations.

DATES: This AD becomes effective on February 22, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 22, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; or on the Internet at *<http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3134r1.pdf>* and *<http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3116.pdf>*. These files are in Adobe Portable Document Format. The Acrobat Reader is available at *<http://www.adobe.com/>*. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–80–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports of many incidents of fatigue cracks occurring on main landing gear torque knees. There have been at least four reports where the main landing gear separated from the airplane.

The cause of this problem is cumulative fatigue damage on the main landing gear torque knees.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in the failure of the main landing gear while the airplane is in operation with consequent loss of control of the airplane during takeoff, landing, or other ground operations.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 27, 2001 (66 FR 44988). The NPRM proposed to require you to repetitively inspect the main landing gear upper torque knees and lower torque knees for evidence of fatigue cracks; and replace any torque knee with evidence of fatigue cracks.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2,124 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to inspect the landing gear torque knees:

Labor cost	Parts cost per airplane	Total cost per airplane	Total cost U.S. operators
20 workhours × $60 per hour = $1200	$50	$1,250	$1,250 × 2,124 = $2,655,000.

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The manufacturer will allow warranty credit to the extent noted in the service bulletin.

These costs only take into account the costs of the initial inspection. We have no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplane.

We estimate the following costs to do any necessary torque knee replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per airplane	Total cost per airplane
8 workhours × $60 per hour = $480	$3,286	$3,766

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–10 Raytheon Aircraft Company: Amendment 39–12602; Docket No. 99–CE–80–AD.

Actions	Compliance	Procedures
(1) Inspect the main landing gear upper torque knee and lower torque knee for fatigue cracks.	Inspect within the next 100 hours time-in-service (TIS) after February 22, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 1,000 hours TIS.	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Mandatory Service Bulletin SB 32–3134, Revision 1, Revised: July 1999, and the applicable airplane maintenance manual.
(2) If fatigue cracks are found in the main landing gear torque knees during any inspection required by this AD, replace the cracked torque knees.	Before further flight after the inspection	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Recommended Service Bulletin SB 32–3116, Issued: October 1999, and the applicable airplane model maintenance manual.
(3) When both the left and right main landing gear upper and lower torque knees are replaced with new upper torque knees (part number 50–810032–12) and new lower torque knees (part number 50–810295–25), the repetitive inspection requirement of this AD is no longer required.	You may replace all torque knees at any time, except for those torque knees that are found with evidence of fatigue cracks. Such torque knees must be replaced before further flight, as required by paragraph (d)(2) of this AD.	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Recommended Service Bulletin SB 32–3116, Issued: October 1999, and the applicable airplane maintenance manual.

(a) *What airplanes are affected by this AD?* This AD affects the following Beech airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
65–90, 65–A90, B90, C90, and C90A.	LJ–1 through LJ–1559.
65–A90–1	LM–1 through LM–141.
65–A90–4	LU–1 through LU–16.
E90	LW–1 through LW–347.
H–90	LL–1 through LL–61.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace cracked main landing gear torque knees, which could result in failure of the main landing gear with consequent loss of control of the airplane during takeoff, landing, or other ground operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 32–3134, Revision 1, Revised: July 1999, and Raytheon Recommended Service Bulletin SB 32–3116, Issued: October 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or on the Internet at *<http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3134r1.pdf>* and *<http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3116.pdf>*. These files are in Adobe Portable Document Format. The Acrobat Reader is available at *<http://www.adobe.com/>*. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 22, 2002.

Issued in Kansas City, Missouri, on January 10, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1206 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–01–AD; Amendment 39–12606; AD 2002–01–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. That action also currently requires the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. This amendment retains those requirements and expands the applicability of the existing AD to include additional airplanes that were inadvertently excluded from that AD. The actions specified in this AD are intended to prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 11, 2002 (66 FR 66739, dated December 27, 2001).

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–01–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On December 17, 2001, the FAA issued AD 2001–26–10, amendment 39–12574 (66 FR 66739, December 27, 2001), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. That action also requires the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. The actions required by that AD are intended to prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–26–10, the FAA has become aware that some airplanes were inadvertently excluded from the applicability of that AD. The applicability of that AD specified only "Model A319, A320, and A321 series airplanes, certificated in any category, having manufacturer serial numbers 1035 and 1384 inclusive." However, it was our intent for the applicability to be the same as that specified in the effectivity of Airbus Service Bulletin A320–35–1022, dated June 27, 2001. Therefore, we have determined that it is necessary to supersede AD 2001–26–10 to expand the applicability to include the additional airplanes listed in that Airbus service bulletin.

U.S. Type Certification of the Airplane Models

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD

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2001–26–10 to continue to require an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. This action also continues to require the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. This amendment retains those requirements and expands the applicability of the existing AD to include additional airplanes that were inadvertently excluded from that AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–01–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12574 (66 FR 66739, December 27, 2001), and by adding a new airworthiness directive (AD), amendment 39–12608, to read as follows:

2002–01–14 Airbus Industrie: Amendment 39–12608. Docket 2002–NM–01–AD. Supersedes AD 2001–26–10, Amendment 39–12574.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization; accomplish the following:

Inspection, Installation, and Other Actions

(a) Within 600 flight hours after the effective date of this AD, do an in-situ one-time detailed visual inspection of Dräeger Type I (three/four-mask) oxygen containers, located in the passenger service units, and Dräeger Type II (two-mask) oxygen containers, located in the utility areas, for the presence of foam pads, per Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If all foam pads are installed, before further flight, complete the other actions (including repacking the masks in the correct position; checking the masks, tubes, and lanyards for correct stowage; and doing a manual release test and an operational test) specified in the Accomplishment Instructions of the service bulletin to ensure proper operation of the masks.

(2) If any foam pad is missing, before further flight, install a foam pad in the applicable oxygen container, and complete the other actions (including repacking the masks in the correct position; checking the masks, tubes, and lanyards for correct stowage; and doing a manual release test and an operational test) specified in the Accomplishment Instructions of the service bulletin to ensure proper operation of the masks.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a Dräeger Type I or Dräeger Type II oxygen container unless it has been inspected and other actions done per Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–35–1022, dated June 27, 2001. This incorporation by reference was approved previously by the Director of the Federal Register as of January 11, 2002 (66 FR 66739, December 27, 2001). Copies may be obtained from Airbus Industrie 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–363(B), dated August 8, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2002.

Issued in Renton, Washington, on January 14, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1419 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–32–AD; Amendment 39–12606; AD 2002–01–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Company (GE) GE90 series turbofan engines. This amendment requires removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal. This amendment also requires a new lower life limit for the LIR configuration seal. This amendment is prompted by an uncontained engine failure which occured during a factory development engine ground test. The actions specified by this AD are intended to prevent failure of the HPT interstage seal that could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date February 26, 2002.

ADDRESSES: This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7135; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company (GE) GE90 series turbofan engines was published in the **Federal Register** on September 27, 2001. That action proposed to require removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal, and to require a new lower life limit for the LIR configuration seal.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter requests that paragraph (c) of the proposal be revised or deleted. Paragraph (c) proposed to prohibit the installation of HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into any engine after the effective date of the AD. The commenter believes this requirement may result in an undue burden for lease pool engines since it would require the removal of an interstage seal that had considerable remaining life. The commenter believes there would be no unsafe condition in allowing continued operation of that seal up to the maximum number of cycles-since-new, or up to December 31, 2006, the end date stated in the proposal.

The FAA does not agree. The FAA believes the commenter's request is driven by the economic benefits that would be realized from commenter's lease pool engines. This pool of engines is a very small minority of the total GE90 engine fleet. If the commenter's request were adopted, however, the entire GE90 fleet would have no restrictions on the reuse of a pre-LIR HPT interstage seal, which is not the FAA's intent. The FAA believes that the minority of lease pool engines owned by the commenter can be addressed by the alternative methods of compliance process on a case-by-case basis if required.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 232 GE90–76B, –77B, –85B, –90B, and –94B series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 36 engines installed on airplanes of U.S. registry, with one domestic operator, would be affected by this AD. The FAA estimates that the cost for replacing the pre-LIR HPT interstage seals is $536,340, based on an assumption of how many seals will be replaced prior to reaching the full retirement life. The FAA also estimates

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that the LIR HPT interstage seal life reduction cost will be $3,396,820, and is based on the pro-rated costs of HPT interstage seals that will be removed due to the reduced life limit. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $3,933,160.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–01–12 General Electric Company: Amendment 39–12606. Docket No. 2001–NE–32–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) GE90–76B, –77B, –85B, –90B, and –94B turbofan engines with high pressure turbine (HPT) interstage seals part numbers (P/N's) 1711M20P08, 1711M20P14, 1711M20P16, 1711M20P17, and 1847M96P02 installed. These engines are installed on, but not limited to Boeing 777 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT interstage seal that could result in an uncontained engine failure, and damage to the airplane, do the following:

Replacement of HPT Interstage Seals P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17

(a) For GE90–76B, –77B, –85B, –90B engines with HPT interstage seals P/N's 1711M20P08, 1711M20P16, and 1711M20P17 installed, and GE90–76B and –77B engines with interstage seal P/N 1711M20P14 installed, replace seals at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 4,800 cycles-since-new (CSN), or before December 31, 2006, whichever occurs earlier.

(b) For GE90–85B and –90B engines with HPT interstage seal P/N 1711M20P14 installed, replace seal at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 2,800 CSN, or before December 31, 2006, whichever occurs earlier.

(c) After the effective date of this AD, do not install any HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into an engine.

Reduced Life Limit

(d) For engines with HPT interstage seals P/N 1847M96P02 installed, remove engine from service before exceeding the reduced cyclic life limit of 3,500 CSN.

(e) This AD establishes a new cyclic life limit for HPT interstage seal, P/N 1847M96P02. Except as provided in paragraph (g) of this AD, no alternate life limits for this part may be approved.

Definition

(f) For the purpose of this AD, a shop visit piece-part exposure is defined as an engine removal for maintenance that cannot be performed while installed on the airplane, and that the HPT interstage seal is completely disassembled when done in accordance with the disassembly instructions of the engine manual.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(i) This amendment becomes effective on February 26, 2002.

Issued in Burlington, Massachusetts, on January 14, 2002.

Thomas Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–1453 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–64–AD; Amendment 39–12604; AD 2001–26–52]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–52, which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH (ECD) Model EC135 helicopters by individual letters. This AD requires, before further Instrument Flight Rule (IFR) flight, inserting a copy of the AD into the Limitations Section of the Rotorcraft Flight Manual (RFM) and replacing each affected Smart Multifunction Display (SMD45H) as specified. Removing the AD from the RFM is required after replacing each affected SMD45H. This AD is prompted by the discovery of an error in the assembly of an internal connector of the SMD45H that sometimes results in an inversion of the display information. The SMD45H provides the flightcrew with essential flight and navigation information. The actions specified by this AD are intended to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–52, issued on December 19, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–64–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 19, 2001, the FAA issued Emergency AD 2001–26–52 for ECD Model EC135 helicopters which requires, before further IFR flight, inserting a copy of the AD into the Limitations Section of the RFM and replacing each affected SMD45H as specified. Removing the AD from the RFM is required after replacing each affected SMD45H. That action was prompted by the discovery of an error in the assembly of an internal connector of the SMD45H that sometimes results in an inversion of the display information. The SMD45H provides the flightcrew with essential flight and navigation information. The emergency AD was issued to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter.

The FAA has reviewed ECD Alert Service Bulletin EC135–31A–002, Revision 2, dated November 15, 2001 (ASB). The ASB specifies, in order to resume IFR operation, to immediately replace certain SMD45Hs. The ASB also specifies affixing placards and inserting RFM supplements informing the pilot of display anomalies, certain restrictions, and certain limitations until all SMD45Hs have been replaced.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model EC135 helicopters. The LBA advises that sometimes an inversion of the symbols occurs on some of the SMD45Hs. The LBA classified the ASB as mandatory and issued AD No. 2001–306/3, dated November 15, 2001, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provision of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued Emergency AD 2001–26–52 to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter. The AD requires, before further IFR flight, the following:

- Inserting a copy of the AD into the Limitations Section of the RFM to prohibit IFR flight until the affected SMD45Hs are replaced.
- Replacing each affected SMD45H with the corresponding SMD45Hs as specified in the AD.
- After replacing the SMD45Hs in accordance with the AD, removing the AD from the RFM.

Replacing each specified SMD45H and removing the AD from the RFM are terminating actions for the requirements of the AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions described previously are required before further IFR flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 19, 2001 to all known U.S. owners and operators of ECD Model EC135 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 15 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to replace each SMD45H, and that the average labor rate is $60 per work hour. The manufacturer has stated that they will provide the SMD45Hs at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5400 to replace an SMD45H on each affected helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–64–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on

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the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–26–52 Eurocopter Deutschland GMBH: Amendment 39–12604. Docket No. 2001–SW–64–AD.

Applicability: Model EC135 helicopters with a Smart Multifunction Display (SMD45H) as the primary flight display (PFD) or navigation display (ND), certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further Instrument Flight Rule (IFR) flight, unless accomplished previously.

To prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert a copy of this AD into the Limitations Section of the Rotorcraft Flight Manual (RFM) to prohibit IFR flight until the old part-numbered SMD45Hs listed in Table 1 of this AD are replaced.

(b) Replace each old part-numbered SMD45H with the corresponding new part-numbered SMD45H as specified in Table 1 of this AD.

TABLE 1.—RETROFIT KIT EC135–31A–002–2.C SMD45H

Old Part Number	New Part Number
(1) C19209VF11	C19209VG11
(2) C19267VF11	C19267VG11
(3) C19209SF10	C19209SG10
(4) C19267SF10	C19267SG10
(5) C19267RF10	C19267RG10
(6) C19209NF10	C19209NG10
(7) C19267NF10	C19267NG10
(8) C19209HF09	C19209VG11
(9) C19267GF09	C19267GG09
(10) C19267DF10	C19267DG10

(c) After replacing the old part-numbered SMD45Hs in accordance with paragraph (b) of this AD, remove this AD from the RFM.

(d) Replacing each specified SMD45H and removing this AD from the RFM are terminating actions for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on February 6, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–52, issued December 19, 2001, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–306/3, dated November 15, 2001.

Issued in Fort Worth, Texas, on January 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1451 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–70–AD; Amendment 39–12605; AD 2001–26–53]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, D, and AS355E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–53, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters by individual letters. This AD requires, before further flight, removing certain serial-numbered servocontrols. This AD is prompted by a report of manufacturing defects in a batch of main servocontrol rods. The actions specified by this AD are intended to prevent failure of a main servocontrol in the flight control system and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–53, issued on December 21, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–70–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 21, 2001, the FAA issued Emergency AD 2001–26–53, for ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, which requires, before further flight, removing certain serial-numbered servocontrols. That action was prompted by a report of manufacturing defects in a batch of main servocontrol rods. This condition, if not corrected, could result in failure of a main servocontrol in the flight control system and subsequent loss of control of the helicopter.

The FAA has reviewed ECF Alert Telex Nos. 01.00.52 and 01.00.18, both dated November 15, 2001, which advise replacing certain servocontrols.

The Direction General De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters. The DGAC advises of the discovery of a manufacturing defect on a batch of rods of the main servocontrol, the failure of which would lead to the loss of control of the helicopter. The DGAC classified the ECF Alert Telexes as mandatory and issued AD No. T2001–590–087(A) (for AS 350 helicopters) and No. T2001–591–065(A) (for AS 355 helicopters), both dated November 28, 2001, to ensure the continued airworthiness of these helicopters.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the FAA issued Emergency AD 2001–26–53 to prevent failure of a main servocontrol, failure of the flight control system, and subsequent loss of control of the helicopter. The AD requires, before further flight, removing certain serial-numbered servocontrols. This AD does not apply to certain reconditioned servocontrols identified by the letter "V" engraved on the identification plate on the right-hand side of the part number. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, removing certain serial-numbered servocontrols is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 21, 2001 to all known U.S. owners and operators of ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 540 helicopters of U.S. registry will be affected by this AD. It will take approximately 2 work hours per helicopter to remove a main servocontrol. The average labor rate is $60 per work hour. Required parts will cost approximately $9200 per main servocontrol. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,032,800 ($9320 per helicopter), assuming that at least one main servocontrol is replaced on each helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–70–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–26–53 Eurocopter France: Amendment 39–12605. Docket No. 2001–SW–70–AD.

Applicability: Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, with TRW–SAMM main servocontrols, part number (P/N) SC 5083, serial number (S/N) from 1500 to 1515, inclusive, or P/N SC 5084, S/N from 722 to 726, inclusive, installed, except those reconditioned and identified by the letter "V" engraved on the identification plate on the right-hand side of the P/N, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of a main servocontrol, failure of the flight control system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove each affected main servocontrol.

Note 2: Eurocopter France Alert Telex Nos. 01.00.52 and 01.00.18, both dated November 15, 2001, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on February 6, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–53, issued December 21, 2001, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD Nos. T2001–590–067(A) and T2001–591–065(A), both dated November 28, 2001.

Issued in Fort Worth, Texas, on January 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1450 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–12]

Establishment of Class D Airspace; Titusville, NASA Shuttle Landing Facility, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Titusville, NASA Shuttle Landing Facility, FL. A federal contract tower with a weather reporting system is in operation at the National Aeronautics and Space Administration (NASA) Shuttle Landing Facility. Therefore, the airport meets the criteria for establishment of Class D airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 1,900 feet MSL within a 5.7-mile radius of the NASA Shuttle Landing Facility.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On December 3, 2001, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace at Titusville, NASA Shuttle Landing Facility, FL, (66 FR 60162) to provide adequate controlled airspace to contain IFR operations at the NASA Shuttle Landing Facility. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

The amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Titusville, NASA Shuttle Landing Facility, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Titusville, NASA Shuttle Landing Facility, FL [New]

NASA Shuttle Landing Facility, FL
(Lat. 28° 36′ 54″ N. long. 80° 41′ 40″ W)
Space Coast Regional Airport
(Lat. 28° 30′ 53″ N. long. 80° 47′ 57″ W)

That airspace extending upward from the suface to and including 1,900 feet MSL within a 5.7-mile radius of NASA Shuttle Landing Facility, excluding that portion contained within the Titusville, FL Class D airspace area; excluding that portion along the western boundary of Restricted Area R–2934, west of a line connecting the 2 points of intersection; and excluding the remaining portion within Restricted Areas R–2932 and R–2934 when they are active. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * * *

Issued in College Park, Georgia, on January 14, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–1510 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–AWP–13]

Establishment, Redesignation, and Revocation of Restricted Areas; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action redesignates Restricted Area 4804 (R–4804) Twin Peaks, NV, as R–4804A, and establishes R–4804B from flight level (FL) 180 to FL 350. Additionally, this action redesignates R–4813 Carson Sink, NV, as R–4813A, and establishes R–4813B from FL 180 to FL 350. This action also revokes R–4802 Lone Rock, NV, and designates the U.S. Navy (USN) Naval Strike and Warfare Center, Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2000, the FAA proposed the establishment, redesignation, and revocation of restricted areas in Nevada. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received regarding this rulemaking. Except for editorial changes, and the addition of the time of designation for R–4804A Twin Peaks, NV, which remains the same as currently designated but, was inadvertently omitted from the proposal, this amendment is the same as that proposed in the Notice. These rulemaking actions "are necessary in the interest of national defense," as required under 49 U.S.C. 40103(b)(3)(A).

The Rule

This action redesignates R–4804 Twin Peaks, NV, as R–4804A from surface to 17,999 mean sea level (MSL), and establishes R–4804B from FL 180 to FL 350. Additionally, this action redesignates R–4813 Carson Sink, NV, as R–4813A from surface to 17,999 MSL, and establishes R–4813B from FL 180 to FL 350. The establishment of restricted areas R–4804B and R–4813B respectively, increase the vertical limits of two existing restricted areas but does not increase the lateral boundaries of the restricted areas. The activation of the new areas will be on a real-time basis and follow agreed procedures between the United States Navy (USN) and the Manager of Oakland Center. This action also revokes R–4802 Lone Rock, NV, and designates the USN Naval Strike and Warfare Center, Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

The USN requested these modifications to meet the Chief of Naval Operations training requirements resulting from a real world threat environment that requires flight crews to develop and maintain an ability to deliver ordnance (bombs, missiles, bullets, etc.) from high altitudes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated September 1, 2000.

Environmental Review

This action was requested by the USN as part of the USN's Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon in Nevada, which also includes non-rulemaking airspace actions. Pursuant to section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable law, the USN and the Bureau of Land Management (BLM) prepared and published a Final Environmental Impact Statement (FEIS) in January 2000 that analyzed the potential environmental impacts associated with the Proposed Fallon Range Training Complex Requirements. The FAA was a cooperating agency on the FEIS. The actions taken in this final rule were among several actions included in the FEIS. According to the FEIS, each of the actions has independent utility and could be implemented separately. See FEIS, p. 1–4 (Table 1–1). The FEIS considered five alternatives, including the "no action" alternative. All but the "no action" alternative included the actions taken in this final rule. The USN issued a Record of Decision on April 10, 2000.

The FAA has conducted an independent review of the FEIS and is adopting the FEIS for this action pursuant to 40 CFR § 1506.3(a) and (c). This final rule, which increases the vertical limits of two existing restricted areas but does not increase the lateral boundaries of the existing airspace, will not result in significant environmental impacts. The FAA has also approved the non-rulemaking airspace action included in the USN's proposed training requirements at the Fallon Range Training Complex. The record of decision for the non-rulemaking action is contained in a Non-Rulemaking Decision Document (NRDD) dated November 6, 2001. A copy of the NRDD has been placed in the public docket for this rulemaking.

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List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

* * * * *

R–4802 Lone Rock, NV [Revoke]

R–4804 Twin Peaks, NV [Revoke]

R–4813 Carson Sink, NV [Revoke]

R–4804A Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″N., long. 118°12′45″W.; and a 3-nautical-mile radius centered at lat. 39°14′15″N., long. 118°17′33″W.

Designated altitudes. Surface to but not including FL 180 excluding 2,000 feet AGL up to but not including 8,500 feet MSL, north of and within 1 NM of U.S. Highway 50 between the intersection of U.S. Highway 50 with long. 118°26′00″W., and long. 118°08′00″W.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA, Oakland ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4804B Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″N., long. 118°12′45″W.; and a 3-nautical-mile radius centered at lat. 39°14′15″N., long. 118°17′33″W.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily. Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813A Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″N., long. 118°38′04″W.; to lat. 40°01′00″N., long. 118°15′04″W.; to lat. 40°01′00N., long. 118°01′03″W.; to lat. 39°58′00″N., long. 118°01′03″W.; to lat. 39°38′00″N., long. 118°17′03″W.; thence via the arc of a 15-NM radius circle centered at lat. 39°52′36″N., long. 118°20′31″W.; to lat. 39°45′50″N., long. 118°38′04″W.; thence to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813B Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″N., long. 118°38′04″W.; to lat. 40°01′00″N., long. 118°15′04″W.; to lat. 40°01′00N., long. 118°01′03″W.; to lat. 39°58′00″N., long. 118°01′03″W.; to lat. 39°38′00″N., long. 118°17′03″W.; thence via the arc of a 15-NM radius circle centered at lat. 39°52′36″N., long. 118°20′31″W.; to lat. 39°45′50″N., long. 118°38′04″W.; thence to the point of beginning.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

* * * * *

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–1374 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30289; Amdt. No. 433]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en routes authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on January 11, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

§§ 95.48, 95.6001, 95.6159, 95.6437, 95.8441, 95.6450, 95.814, and 95.6538 [Amended]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
Colored Federal Airways		
§ 95.48 Green Federal Airway 8 is Amended to Read in Part		
Campbell Lake, AK NDB	Glennallen, AK NDB	10000
Atlantic Routes		
Atlantic Routes—A315 is Amended to Read in Part		
Jayee, BS FIX *16500—MRA	*Hodgy, BS FIX	7,000
Atlantic Routes—A555 is Amended to Read in Part		
Rajay, BS FIX	Prune, BS FIX	4,000
Prune, BS FIX	Nassau, BS VOR/DME	2,000
Nassau, BS VOR/DME *1500—MOCA	Lepas, BS FIX	*3000
Lepas, BS FIX *1300—MOCA	Bosar, BS FIX	*3000
Atlantic Routes—B503 is Amended to Read in Part		
NAssua, BS VOR/DME *16500—MRA	*Hodgy, BS FIX	7000
Hodgy, BS FIX	Enamo, OA FIX	6000
Atlantic Routes—G437 is Amended to Read in Part		
Mapyl, OA FIX	Elbow, BS FIX	31000
Elbow, BS FIX	Ingra, BS FIX	8000
Ingra, BS FIX	Nassau, BS VOR/DME	2000
Nassau, BS VOR/DME	Welks, BS FIX	2000
Welks, BS FIX	Brono, BS FIX	2000
Brono, BS FIX *14000—MRA	*Jayee, BS FIX	5000
Bahamas Routes		
Bahama Routes—022V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2000
Majur, BS FIX *1500—MOCA	Nassau, BS VOR/DME	*2000
Bahama Routes—049V is Amended to Read in Part		
Nassau, BS VOR/DME	Tinky, BS FIX	4000
Bahama Routes—053V is Amended to Read in Part		
Prune, BS FIX	Nassau, BS VOR/DME	2000
Nassaue, BS VOR/DME	Guava, BS FIX	3000
Bahama Routes—054V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2,000
Majur, BS FIX	Nassau, BS VOR/DME	*2,000

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REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
*1500—MOCA		
Bahama Routes—055V is Amended to Read in Part		
Prune, BS FIX	Nassau, BS VOR/DME	2,000
Nassau, BS VOR/DME	Burrl, BS FIX	*3000
*1500—MOCA		
Burrl, BS FIX	Seaan, BS FIX	*3000
*1500—MOCA		
Seaan, BS FIX	Burgo, BS FIX	*16000
*1500—MOCA		
Bahama Routes—057V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2,000
Majur, BS FIX	Nassau, BS VOR/DME	*2,000
*1500—MOCA		
Bahama Routes—058V is Amended to Read in Part		
Nassau, BS VOR/DME	Kuray, BS FIX	*2000
*1500—MOCA		
Kuray, BS FIX	*Melon, BS FIX	**2000
*8000—MRA		
**1300—MOCA		
Melon, BS FIX	Hanlox, BS FIX	*2000
*1300—MOCA		
Hanlox, BS FIX	Barts, BS FIX	*4000
*1300—MOCA		
Barts, BS FIX	Abaco, BS FIX	10000
Bahama Routes—063V is Amended to Read in Part		
Hanlox, BS FIX	*Melon, BS FIX	**2,000
*8,000—MRA		
**1,300—MOCA		
Melon, BS FIX	Kuray, BS FIX	*2,000
*1300—MOCA		
Kuray, BS FIX	Nassau, BS VOR/DME	*2,000
*1,500—MOCA		
Bahamas Routes—065V is Amended to Read in Part		
Nassau, BS VOR/DME	Peach, BS FIX	*2000
*1500—MOCA		
Peach, BS FIX	*Sydny, BS FIX	**2000
*5000—MRA		
**1300—MOCA		
Sydny, BS FIX	Lauth, BS FIX	*5000
*1300—MOCA		
Lauth, BS FIX	Freeport, BS VOR/DME	*2000
*1400—MOCA		
Bahamas Routes—070V is Amended to Read in Part		
Marsh Harbour, BS NDB	Nassau, BS VOR/DME	6000
§ 95.6001 Victor Routes—U.S.		
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Tuskegee, AL VOR/DME	Kentt, AL FIX	*2600
*1900—MOCA		
§ 95.6437 VOR Federal Airway 437 is Amended to Read in Part		
Stary, GA FIX	*Cathy, GA FIX	**5000
*5000—MRA		
**1300—MOCA		
§ 95.6441 VOR Federal Airway 441 is Amended to Read in Part		
Stary, GA FIX	*Cathy, GA FIX	**5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
*5000—MRA		
**1300—MOCA		
§ 95.6450 VOR Federal Airway 450 is Amended to Read in Part		
Muskegon, MI VORTAC	Flint, MI VORTAC	*3000
*2400—MOCA		
§ 95.6514 VOR Federal Airway 514 is Amended to Read in Part		
*Twentynine Palms, CA VORTAC	Goffs, CA VORTAC	**12000
*10200—MCA Twentynine Palms, CA VORTAC, NE BND		
**7600—MOCA		
§ 95.6538 VOR Federal Airway 538 is Amended to Read in Part		
*Twentynine Palms, CA VORTAC	Goffs, CA VORTAC	**12000
*10200—MCA Twentynine Palms, CA VORTAC, NE BND		
**7600—MOCA		

[FR Doc. 02–1376 Filed 1–18–02; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ49–235 FRL–7127–8]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by New Jersey that consists of two elements necessary for EPA to grant final full approval of New Jersey's enhanced motor vehicle inspection and maintenance (I/M) program. The first element provides the State's final submittal for compliance with the National Highway Systems Designation Act (NHSDA), which allowed states to claim additional credit for their decentralized inspection and maintenance programs, provided they could validate that credit claim with actual program implementation data. The second element revises New Jersey's performance standard modeling to reflect the State's enhanced I/M program as it is currently implemented. This element satisfies a condition of EPA's May 14, 1997 conditional interim approval of New Jersey's enhanced I/M program SIP. The intended effect of this action is to approve the two evaluations of the enhanced I/M program, in addition to prior minor revisions to the enhanced I/M SIP, and to grant final full approval of the program. The enhanced I/M program will result in emission reductions that will help achieve attainment of the one-hour ozone standard and carbon monoxide standard.

EFFECTIVE DATE: This rule will be effective February 21, 2002.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460. New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2001 (66 FR 47130), EPA published a notice of proposed rulemaking regarding a State Implementation Plan (SIP) revision submitted by the State of New Jersey. The notice proposed to approve revisions to New Jersey's enhanced I/M SIP, and to grant final full approval of the program. The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on May 4, 2001, and the final SIP revision was formally submitted on August 20, 2001. A detailed description of New Jersey's submittals and EPA's rationale for the proposed action were presented in the September 11, 2001 proposal, referenced above, and will not be restated here.

Public Comments/Response to Comments

On October 16, 2001 (66 FR 52560), EPA published a notice extending the comment period for the September 11, 2001 proposal for an additional thirty days. This action was necessary due to the tragic events of September 11, 2001 and the resulting temporary closure of the Region 2 office of the EPA in New York City and the disruption of mail delivery and telephone service. It should be noted that EPA did not receive any comments associated with the proposed approval of New Jersey's enhanced I/M program.

Conclusion

EPA is taking final action to approve New Jersey's August 20, 2001 SIP revision, which contained the remaining elements necessary to grant final full approval of the State's enhanced I/M program. EPA's authority to approve New Jersey's enhanced I/M program is set forth at sections 110 and 182 of the Clean Air Act. In accordance with the parallel processing procedures, EPA has

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evaluated New Jersey's final SIP revision submitted on August 20, 2001, and finds that no substantial changes were made from the proposed SIP revision submitted on May 4, 2001. EPA agrees with New Jersey's responses to those comments it received which are related to the enhanced I/M program as an element of the State's SIP.

Based on the analyses included in New Jersey's August 20, 2001 submittal, EPA concludes that the State's NHSDA evaluation validates New Jersey's 80% decentralized test and repair effectiveness rate credit claim. New Jersey's evaluation uses actual program implementation data to show that the decentralized portion of the network is at least 80% as effective as its centralized program, as the State previously claimed. EPA also concludes, based on New Jersey's performance standard modeling which reflects the State's enhanced I/M program as it is currently implemented, that the State's program meets the low enhanced performance standard. Based on these conclusions, EPA is approving New Jersey's August 20, 2001 SIP revision.

EPA is also approving the final and complete test equipment specifications, test procedures and emission standards that New Jersey submitted to satisfy conditions of EPA's May 14, 1997 interim approval. New Jersey made a revision to its SIP on January 31, 1997 which contained those required elements.

EPA is finding that New Jersey's December 14, 1998, SIP revision submittal adequately remedies the eight de minimus deficiencies previously identified.

Finally, as a consequence of EPA's conclusions regarding the approvability of the elements summarized above, EPA is changing the conditional interim status of the approval of New Jersey's enhanced I/M program to final approval.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 21, 2001.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(71) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(71) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on August 20, 2001 by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) Amendments to Title 7, Chapter 27 of the New Jersey Administrative Code (NJAC) Subchapter 15, "Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles," effective November 15, 1999.

(B) Amendments to Title 7, Chapter 27B of the NJAC Subchapter 4, "Air Test Method 4: Testing Procedures for Motor Vehicles," effective November 15, 1999.

(C) Amendments to Title 13, Chapter 20 of the NJAC Subchapter 28, "Inspection of New Motor Vehicles" (Sections: 28.3, 28.4, 28.6), effective December 6, 1999.

(D) Title 13, Chapter 20 of the NJAC: Subchapter 7, "Vehicle Inspection" (Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6); Subchapter 24, "Motorcycles" (Section: 24.20); Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles" (Section: 26.16); Subchapter 29, "Mobile Inspection Unit" (Sections: 29.1, 29.2, 29.3); Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities"; Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities"; Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program"; Subchapter 44, "Private Inspection Facility Licensing"; and Subchapter 45, "Motor Vehicle Emission Repair Facility Registration", effective December 6, 1999.

(E) Title 13, Chapter 21 Subchapter 5, "Registrations" (Section: 5.12) and Subchapter 15, "New Jersey Licensed Motor Vehicle Dealers" (Section: 15.7), effective December 6, 1999.

* * * * *

3. In § 52.1605 the table is amended:

a. Revising under Title 7, Chapter 27, the entry for Subchapter 15.

b. Revising under Title 7, Chapter 27B, the entry for Subchapter 4.

c. Revising under Title 13, Chapter 20, the entry for Subchapter 28.

d. Adding new entries for Subchapters 7, 24, 26, 29, 32, 33, 43, 44, and 45 in numerical order under Title 13, Chapter 20.

e. Adding new Chapter 21 under Title 13 and new entries for Subchapters 5 and 15 in numerical order under Chapter 21.

The revisions and additions read as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
Title 7, Chapter 27			
Subchapter 15, "Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles."	Nov. 15, 1999	January 22, 2002, [Insert FR page citation].	
Chapter 27B			
Subchapter 4, "Air Test Method 4: Testing Procedures for Motor Vehicles."	Nov. 15, 1999	January 22, 2002, [Insert FR page citation].	
Title 13, Chapter 20			
Subchapter 7, "Vehicle Inspection."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.			
Subchapter 24, "Motorcycles."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Section: 24.20.			
Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Section: 26.16.			
Subchapter 28, "Inspection of New Motor Vehicles."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Sections: 28.3, 28.4, 28.6.			
Subchapter 29, "Mobile Inspection Unit."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Sections: 29.1, 29.2, 29.3.			
Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 44, "Private Inspection Facility Licensing."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 45, "Motor Vehicle Emission Repair Facility Registration."	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Chapter 21			

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State regulation	State effective date	EPA approved date	Comments
Subchapter 5, "Registrations." Section: 5.12.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 15, "New Jersey Licensed Motor Vehicle Dealers." Section: 15.7.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	

[FR Doc. 02–1345 Filed 1–18–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–77; FCC 01–355]

Billed Party Preference for InterLATA 0+ Calls.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies that the price disclosure rules apply to all interstate non-access code operator service calls. The Commission confirms that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls. The Commission also clarifies that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider. The Commission retains the requirement that oral rate information must be provided to both parties on a collect call. Finally, the Commission amends the rules to reflect that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

DATES: Effective Date: February 21, 2002.

Compliance Date: The oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Nadel, Attorney, or Michele Walters, Associate Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration in CC Docket No. 92–77, released on December 12, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

Introduction

1. In 1998, the Commission addressed the problem of widespread consumer dissatisfaction with the high rates charged by many operator services providers (OSPs) for calls from public phones and other aggregator locations such as hotels, hospitals, and educational institutions. At that time, an away-from-home caller who dialed "0" followed by an interexchange number typically did not know what rates the particular OSP would be charging. The Commission responded to this problem in the *Second Report and Order*, 63 FR 11612, March 10, 1998, by adopting price disclosure rules that apply to providers of interstate operator services from such phones and to providers of inmate operator services from phones set aside for use by inmates at correctional institutions. These rules were designed to ensure that consumers receive sufficient information about the rates they will pay for operator services at public phones and other aggregator locations, thereby fostering a more competitive OSP marketplace. In this Order, we largely affirm those rules and dispose of outstanding petitions for reconsideration. We make several minor modifications and clarifications to the rules.

2. Specifically, we clarify that the price disclosure rules apply to all interstate non-access code operator service calls, even those that are initiated by dialing 0-, if the consumer will be liable for interstate operator service charges for such calls. We confirm that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls and therefore decline to exempt interstate intraLATA toll calls from the price disclosure obligation under our rules. We also clarify that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider and amend the rules accordingly. In view of the statutory definition of "consumer" in the context of operator services, we retain the requirement that oral rate information must be provided to both parties on a collect call. Finally, we amend the rules to reflect the finding in the *Second Report and Order* that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

3. The Commission has long been concerned about consumer dissatisfaction over high charges and certain practices of many OSPs with respect to calls from public phones at away-from-home aggregator locations. OSPs have historically competed with each other to receive operator service calls by offering commissions to payphone or premises owners on all such calls from a public phone. In exchange for this consideration, premises owners have agreed to designate a particular OSP as the presubscribed interexchange carrier (PIC) serving their payphones. Many OSPs using this strategy agreed to pay very high commissions to both premises owners and sales agents who sign up those premises owners and have claimed, as a consequence, that they had to impose very high usage charges on consumers placing calls from payphones. While this process generated added revenues for premises owners and sales agents, it forced callers to pay exceptionally high rates. As a result, some callers began to use access codes, such as 800 numbers, to reach their preferred, lower-priced OSPs and to avoid the payphone's presubscribed OSP. Because payphone owners and other aggregators did not earn

commissions on these so-called "dial around" calls until relatively recently, many aggregators blocked the use of access codes from their phones.

4. In 1990, Congress provided the Commission and consumers with tools to address these practices, through the passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act.). Under TOCSIA and the Commission's implementing rules, an aggregator must, among other things, permit consumers to use an OSP of their choice by dialing an 800 or other number to reach that OSP, rather than having to use the OSP the aggregator has selected as its PIC for long-distance calls. The Commission also mandates, in accordance with TOCSIA, that each OSP "brand" its calls, that is, "identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. In 1996, in response to the forbearance provisions of the Telecommunications Act of 1996, the Commission sought comment on whether to forbear from applying the informational tariff filing requirements it had imposed under section 226, as well as whether to require all OSPs to disclose their rates on all 0+ calls. Based on that record, the Commission adopted its *Second Report and Order*.

5. In the *Second Report and Order*, the Commission amended its rules to require, *inter alia*, that operator service providers (OSPs) "[d]isclose audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange, non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call."

6. The oral price disclosure rule also requires OSPs to instruct consumers that they may obtain applicable rate and surcharge quotations for 0+ calls either by, at the option of the OSP, dialing no more than two digits or remaining on the line. The Commission further amended its rules to require "all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone."

7. The Commission ordered that the disclosure rules would become effective generally on July 1, 1998. The Commission extended the compliance date until October 1, 1999, for those carriers using store-and-forward payphones to provide operator services and stated that it would consider waiver requests on a specific factual showing of good cause.

8. Thereafter, Ameritech (now operating as SBC) petitioned for a stay of the new oral price disclosure rules to the extent that the *Second Report and Order* could be deemed to apply to interstate intraLATA toll services. In petitions for clarification or reconsideration, Ameritech and US West, Inc. (now operating as Qwest) asked the Commission to clarify, or, alternatively, to rule on reconsideration, that these rules do not apply to interstate intraLATA service. Because these petitions were pending and would not be resolved by the July 1, 1998 effective date, the Common Carrier Bureau (the Bureau) found that it would be in the public interest for the Commission to determine, prior to the compliance deadline, the applicability of the rules to interstate intraLATA toll operator services. For this reason, the Bureau stayed these requirements with respect to such intraLATA calls until 60 days after the release of an order addressing Ameritech's and US West's petitions. Seven other petitions for clarification and/or reconsideration of the price disclosure requirements were timely filed.

II. Discussion

Applicability of Rules to LECs and IntraLATA Calls

9. We affirm the application of our price disclosure rules to local exchange carriers (LECs) when they provide interstate operator services within their region. We note that the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) expressly defines "operator services" to include "any interstate telecommunications service" that meets specified criteria. Thus, there is no basis in the statute for exempting LEC-provided interstate operator services, which meet the statutory criteria, from the disclosure requirements. We disagree with US West's contention that LECs should be exempt from these rules because they have never been seen as the source of the kinds of problems that TOCSIA was intended to address. While there may have been relatively few complaints about interstate operator services provided by LECs, this may reflect the fact that LECs have not traditionally provided extensive interstate operator services. In view of the statutory language, and in the absence of forbearance, we do not believe a blanket exemption for LECs providing interstate operator services is warranted simply because companies other than LECs have been the primary subjects of complaints about high rates.

10. Some petitioners and commenters assert that we should decline to apply our price disclosure requirements to interstate intraLATA toll, or isolated so-called "bubble LATA" calls for various reasons. For example, Ameritech claims that its operator switches cannot distinguish between interstate and intrastate intraLATA traffic for this purpose and that, as a result, it would have to apply a price disclosure requirement in an overinclusive manner to all intraLATA calls. We recognize that most intraLATA toll calls are intrastate calls within the jurisdiction of the respective state regulatory agencies. We further note that many states have responded to consumer concerns over high rates and surcharges with regulations that cap rates of operator services providers and/or prohibit premises-imposed fees (PIFs). As commenters assert, requiring price disclosures may indirectly impose additional obligations with respect to all intrastate calls even though there are a relatively small number of interstate intraLATA toll calls. Commenters also assert that added expense may be required to ensure that consumers using operator services for interstate intraLATA calls receive price disclosures. Ameritech claims that the history of this proceeding demonstrates that the Commission did not intend to apply the oral disclosure rule adopted in the *Second Report and Order* to any intraLATA calls. Finally, Ameritech contends that the legislative history of TOCSIA supports its view that Congress did not intend for the statute to apply to interstate intraLATA calls, but only to interstate interLATA calls, despite the fact that the statute only uses the term "interstate."

11. Because the statute requires price disclosures to be made for any interstate operator service calls, we believe that exempting interstate intraLATA calls from our price disclosure requirement would be inconsistent with the statutory language, and we decline to do so. We will, however, grant US West's request for an additional six months after the release of this ruling to come into compliance with the price disclosure requirement for interstate intraLATA calls.

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B. Disclosure of Premises-Imposed Fees

12. We amend our rules to make clear that the only charges that an OSP must disclose to a consumer upon request are those that the OSP, or its billing agent, will bill the consumer, including any location-specific charge or premises-imposed fee (PIF) charged by the OSP, and not those charged separately by the premises owner or aggregator. Our rules already require aggregators to disclose charges they impose and collect independently of OSPs, such as a hotel surcharge billed by a hotel. PIFs often vary widely among locations and premises owners. OSPs often are unaware of the specific surcharges imposed by aggregators, such as hotels, motels, and hospitals, on their guests for phone calls from their rooms. Further, depending on the particular facts and circumstances, aggregators could be subject to regulation as common carriers if they impose per call charges on interstate calls. For these reasons, the Commission has not required informational tariffs filed by OSPs to specify any PIF other than those directly billed and collected from consumers by the OSP, or its billing agent. Accordingly, we clarify that the tariff and rate disclosure requirements apply only to PIFs and other charges collected from consumers by the OSP, or any other entity that bills and collects on behalf of the OSP. We can revisit this determination, upon complaint or on our own motion, if we find that practices of OSPs allow aggregators to impose excessive or otherwise unreasonable surcharges on interstate calls.

C. Applicability of Rate Disclosure Rules to Collect Calls

13. We reject the requests by AT&T and SBC that we only require oral rate disclosures to be made to the party responsible for payment for collect calls, and not to the party initiating the call. We note, rather, that Congress expressly requires that disclosures be made to the "consumer," which it defines as "a person initiating any interstate telephone call using operator services." Under our current rules, the definition of "consumer" includes both parties to a collect call. Because we find that the statute specifies that callers making collect calls must receive rate disclosures, we do not eliminate that portion of the requirement. Furthermore, we observe that parties initiating collect calls have the option of selecting among OSPs, so requiring rate disclosures to them can help them make informed selections. Thus, for purposes of the rate disclosures required of the presubscribed OSP under TOCSIA, we will continue to define the term "consumer" to include both parties to a collect call.

D. Applicability of Rate Disclosure Rules to Bill-to-Third-Number Calls

14. We make a minor amendment to our rules with respect to bill-to-third-number calls when an OSP contacts the party to be billed to secure billing approval. For such calls, the rules currently only require disclosures to the caller, even if that person is not the party responsible for payment of the charges. Although, in the *Second Report and Order*, the Commission stated that it would "require OSPs to make additional oral disclosure at the point of purchase of 0+ calls," the rules were not amended to reflect this requirement in the context of bill-to-third-number calls. To address this discrepancy, we amend the definition of "consumer" so that the oral rate disclosure requirement, in situations involving bill-to-third-number calls, will include the party to be billed if the OSP contacts that person to secure approval for billing. In any case, the OSP must provide the rate disclosure option to the caller, as required by the statute. We note that, in the context of inmate operator services, the Commission defines the term "consumer" as "the party to be billed," which would include persons liable for bill-to-third-number calls, if any. Our amendment regarding bill-to-third-number calls will help ensure that consumers have the ability to make informed choices about the rates of OSPs and providers of inmate operator services.

E. Rate Disclosure in Calls by Prison Inmates

15. We retain the requirement of oral rate disclosure for operator service calls from inmates in correctional institutions. We reject the requests by US West that we vacate the Commission's decision to apply our rules to inmate calling or significantly modify those rules. As US West acknowledges, both of its proposed modifications are significantly flawed. US West suggests that we permit carriers to use a "generic" system upgrade that would provide a price quote for the highest possible rate the call might entail or, alternatively, that we designate a separate phone number for rate quotes. We believe that each of these alternatives will fail to meet an important goal. US West suggests the first option, the "generic" system upgrade, because it believes such an approach would be less expensive than implementing a system capable of providing the more specific rate disclosures required by the current rules. However, as US West observes, this approach would not provide accurate rate quotes, and excessive quotations might unnecessarily discourage calling. Permitting the provision of inflated rate quotes in an inmate environment where OSPs face no competitive pressures would be inconsistent with our statutory obligation to "ensur[e] that consumers have the opportunity to make informed choices" in using operator services to place interstate telephone calls. US West proposes the second modification option, the designation of a separate phone number for rate quotes from inmate phones, as another way to minimize the expense of compliance with the current rules. The drawback of this modification option, as US West also notes, is that it would "open up" the inmate calling system by giving inmates direct access to "live outside lines," thereby threatening security. We agree that taking this approach could compromise the special security measures the Commission has acknowledged that inmate calls require. Because these two alternatives are problematic, US West urges us to vacate the rate disclosure requirement for operator service calls from inmates in correctional institutions and handle complaints about excessive rates for such calls on a case-by-case basis. We find that US West has not undermined the reasoning underlying the application of the rate disclosure rules to inmate calls, and we decline to vacate our rules. We recognize that, unlike persons making calls from aggregator locations, inmates typically do not have the option of dialing around the (PIC). In the *Second Report and Order*, the Commission concluded that recipients of collect calls from inmates "require additional safeguards to avoid being charged excessive rates from a monopoly provider." The Commission adopted price disclosure rules for providers of inmate operator services that are similar to those applicable to OSPs in order to "eliminate some of the abusive practices that have led to complaints." Finally, while Citizens United For Rehabilitation of Errants (CURE) asks us to require OSPs to provide copies of informational tariffs to prisons and other consumers, we agree with MCI that informational tariffs are already available and that prison officials can easily provide them to prisoners.

F. Rate Disclosure in Air-to-Ground Calls

16. We also retain the requirement of oral rate disclosure for air-to-ground calls. One of the principal reasons underlying the adoption of the rate prompt requirement was to ensure that prospective away-from-home callers are reminded of their right to obtain rate quotations from the presubscribed OSP because its rates generally are not posted at the aggregator location. Although AT&T asserts that oral rate disclosure for air-to-ground calls is unnecessary because airplane passengers typically sit for at least one hour with rate information directly before them, we find that the record is insufficient to support a finding that the applicable rates, including any surcharge billed and collected by the OSP, for air-to-ground operator services always are posted on or near the telephone instrument. Furthermore, for collect calls, such posting would not apprise the called parties, who are responsible for paying for the calls, of their right to know the price of a call at the time of purchase.

G. Use of Visual Rates Display

17. We decline to issue the ruling US West seeks that would permit OSPs to provide the rate quotation visually, if their embedded equipment and future business plans make oral presentations expensive. US West asserts that an oral alert tone, followed by a visual rate display on the caller's phone (*e.g.*, a visual display on the payphone), would enable OSPs to convey rate information effectively without incurring burdensome costs.

18. We disagree. The visual rate display on the telephone would provide rate information only to the caller, not to the called party. As previously noted with respect to inmate calls, as well as bill-to-third-number calls in certain circumstances, the consumer to whom the disclosure must be made is "the party to be billed," which typically is not the caller. In the case of collect calls (and certain types of bill-to-third number calls), under our rules, the "consumer" who must receive the required notice includes both the party called and the caller. Furthermore, US West does not explain how persons with impaired vision would access the information in a visual rate display. Accordingly, we will retain the requirement that the rate disclosure must be oral.

H. 0− Calls

19. We clarify that the oral price disclosure requirement does not apply to a 0− call, unless the local operator routes the call to an IXC that completes an interstate non-access code toll call from an aggregator or prison location. As noted by both Bell Atlantic and BellSouth, the *Second Report and Order*, as originally adopted by the Commission, required OSPs to advise consumers how to obtain rate information for "any interstate, domestic, interexchange 0+ call." As they further note, the Bureau subsequently issued an erratum, which, among other things, replaced the term "0+ call" with the phrase "non-access code operator service call," in order to make the terminology in our rules more uniform. Bell Atlantic and BellSouth express concern that the change in wording from "0+ calls" to "non-access code operator service calls" could be interpreted as making a substantive change regarding "0−" calls. They observe that expanding the disclosure requirement to cover "0− " calls (*i.e.*, calls that merely require the caller to enter or dial "0"), would be contrary to the express language of the *Second Report and Order*. AT&T asks the Commission to clarify that the erratum was not intended to override the text of the *Second Report and Order*, and it notes that such an interpretation would be inconsistent with the intent of this proceeding manifested in its title.

20. As is clear from the text of the *Second Report and Order*, the Commission intended the new price disclosure rules to apply to interstate 0+ calls from aggregator locations and prison inmates. The Commission stated that "[a] 0+ call occurs when the caller enters "0" plus an interexchange number, without first dialing a carrier access code * * * ." On the other hand, a 0− call occurs when the caller only dials 0, which routes the call to an operator for assistance in making local calls. We never intended our rules to cover such intrastate calls. As we said, however, our oral price disclosure prompt requirement is applicable if the local operator should route the call to a carrier that completes an interstate non-access code toll call from an aggregator or prison location. To alleviate any possible confusion on this issue, we hereby clarify that these rules are applicable to the carrier that provides an interstate call, or if consumers otherwise would be liable for interstate operator services charges.

I. AT&T's 2000 and 1000 Public Phone Sets

21. We grant AT&T's request for clarification regarding the applicability of the rules to approximately 8,700 of its Public Phone 2000 and Public Phone 1000 sets, which permit callers to "swipe" their calling or credit cards into the card-reading devices of the phones. This type of phone stores the card digits until after the caller dials the phone number of the called party and forwards them through the network at the same time that the caller would otherwise hear the announcement regarding the availability of rate information. We agree with AT&T that, under such circumstances, the phones qualify as "store-and-forward" payphones for purposes of the operator service rate disclosure rules.

J. Other Changes to Text of the Rules

22. Because a new Commission bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints about OSPs, we are amending § 64.703(b)(4) to require the new bureau's name and address to be posted on payphones in future postings. We are mindful of the need to avoid any unnecessary burdens on current payphone operators, and we therefore will not require them to correct their existing postings until they must replace those postings for other reasons. We will also ensure that consumer complaints sent to the old address (the Common Carrier Bureau's Enforcement Division, which no longer exists) will continue to be delivered to the Consumer Information Bureau.

23. We have removed the term "domestic" from the text of our rules. The rules are not applicable to foreign calls, but only to interstate calls, and the term "domestic," which is not defined in the Communications Act, is redundant. We also have removed the term "interexchange" because not all interstate interexchange calls are long-distance toll calls covered by the rules. By removing these superfluous terms, we do not intend to change the scope or extent of our rules as clarified here.

24. Finally, as suggested by the CURE, we are revising the text of the rule applicable to providers of inmate operator services to more closely parallel the language of the comparable requirements for OSPs. This revision merely clarifies that each provider of inmate operator services must identify itself and disclose, audibly and distinctly to the consumer, at no charge, and before connecting any interstate, non-access code operator services call, how to obtain the total cost of the call, including any surcharge or premises-imposed fee, or the maximum possible total cost of the call, including any such surcharge or fee. The required oral disclosure must instruct consumers that they may obtain applicable rate and surcharge quotations either, at the

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option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. As the CURE and the Inmate Calling Service Providers Coalition observe, this editorial change does not affect the substance of the rule. For the reasons discussed, we do not permit OSPs to use generic, maximum call prices for inmate calls, where they would not have a competitive incentive to provide more accurate prices.

III. Conclusion

25. We believe that the clarifications and amendments adopted in this Order will make our price disclosure rules for operator services even more effective, while removing uncertainty and minimizing administrative costs.

IV. Supplemental Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order*. The Commission received no written public comments on the FRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996). The Commission is issuing this *Second Order on Reconsideration* to clarify and amend rules it previously adopted in the *Second Report and Order* to protect consumers from excessive charges in connection with interstate non-access code operator services for payphone and prison inmate calls. Those rules sought to ensure that consumers are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

1. Need for, and Objectives of, the Second Order on Reconsideration

27. In the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry. One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

28. In this *Second Order on Reconsideration*, we grant, in part, several petitions seeking clarification of rules the Commission adopted in its *Second Report and Order*, requiring carriers to orally disclose to consumers how to obtain the charges for operator services for interstate calls from aggregator locations and from prison inmate-only telephones. The objective of the rules previously adopted, and as clarified and amended in this Order, is to further implement the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and Congressional concern toward the impact of the 1996 Act on small business entities.

2. Summary of Significant Issues Raised by the Public in Response to the FRFA

29. In the reconsideration petitions received by the Commission, no petitioner commented on the previous FRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the revised rules. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. A "small business concern" is one that: is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (the SBA). The SBA has defined a small business for North American Industry Classification System (NAICS) codes 51331 and 51333 (Wired Telecommunications Carriers and Telecommunications Resellers) to be small entities when they have no more than 1,500 employees. In the FRFA, we discussed generally the total number of telephone companies falling within these categories and estimated the number of carriers falling within relevant subcategories. Those sub-categories consisted of telephone companies, wireline carriers and service providers, interexchange carriers, resellers, operator service providers, and local exchange carriers. Except for updating the Operator Service Providers category in the following paragraph, we incorporate by reference that discussion into this Supplemental FRFA.

31. *Operator Service Providers.* According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were *primarily* engaged in the provision of operator services, but many other carriers provide operator services as a secondary business. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under section 226 of the Communications Act, and the Commission's rules and orders, to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of September 1, 2000, approximately 725 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 725 or fewer small entity OSPs that may be affected by the amended rules adopted in this Order.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. The rule amendments adopted in this Order clarify the current requirement that certain carriers disclose audibly to consumers how to obtain the price of a call before it is connected. Nondominant long-distance carriers, including small nondominant interchange carriers, currently are required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate non-access code call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they may be billed for such calls. The rule amendments adopted in this Order should not substantially affect the manner in which OSPs and providers of service from correctional institutions have been required to operate since the rules went into effect on July 1, 1998 (and with respect to store-and-forward telephones, on October 1, 1999). The changes, as noted throughout the text, are mere clarifications. For instance, even when we amend our rules to require disclosures to third parties when OSPs contact those parties to secure approval for bill-to-third number calls, this merely addresses a discrepancy that existed between the Order and the Commission rules.

33. The rules adopted require that hundreds of non-dominant, long-distance carriers continue to disclose information regarding their rates, as well as any related fees they collect on behalf of the owners of the premises where the telephone instrument is located. Small entities may continue to feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to these policies and rules. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected. To the extent that any statement contained in this Supplemental FRFA Appendix is perceived as creating ambiguity with respect to our rules or statements made in this Order, the rules and statements set forth in the Order control.

35. Previously, in the *Second Report and Order*, we carefully considered and rejected several alternatives to the price disclosure requirements and rules adopted therein, as modified herein, finding them more burdensome to carriers. For example, we rejected a proposed billed party preference routing system, which would have seamlessly routed calls to the callers preferred carrier, due to its estimated implementation cost of one billion dollars. The costs of hardware and software upgrades would have been particularly burdensome to small carriers. We also rejected a benchmark pricing system that would have required small carriers to carefully monitor the rates of the three most popular carriers. Furthermore, we limited our disclosure requirements so that they would not apply to those types of calls for which they appeared unnecessary. This order attempts to clarify and fine tune those distinctions so that disclosure requirements only apply where we believe they are in the public interest. Thus, the rules, as clarified and modified herein, are applicable only to limited interstate, non-access code calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10–10–XXX or 1–800–XXX–XXXX, whereby callers can circumvent placing the call through the long-distance carrier that is presubscribed for that line.

36. Furthermore, although we find that the law requires rate disclosures to be made for interstate intraLATA calls, we are delaying the effective date of that requirement for 6 months. We believe that a 6-month delay should give the affected parties ample opportunity to come into compliance with this requirement.

37. In addition, a new bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints, rather than the Common Carrier Bureau's Enforcement Division, which no longer exists. While we will require the new bureau's name and address to be posted on payphones in future postings, we have acted to avoid any unnecessary burdens on current payphone operators. We will require them to make the appropriate correction whenever they next revise their postings, but we are not requiring them to replace their postings now. Instead, we are ensuring that mail sent to the old address will continue to be delivered to the Consumer Information Bureau.

38. We believe that our action requiring carriers to orally disclose how to obtain the price of their interstate non-access code operator services at the point of purchase will continue to facilitate the development of increased competition in this segment of the interstate market, thereby benefiting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate non-access code operator services will continue to enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment.

6. Report to Congress

39. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with this *Second Order on Reconsideration*, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Order on Reconsideration* and this Supplemental FRFA will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

V. Ordering Clauses

40. *It is ordered*, pursuant to sections 1, 4(i), 4(j), 226, and 405 of the Communications Act of 1934, as amended, that the petitions for clarification or reconsideration filed on April 9, 1998, by Ameritech, AT&T, Bell Atlantic, BellSouth, Citizens United for Rehabilitation of Errants, Inmate Calling Service Providers Coalition, One Call Communications, Inc., US West, Inc., Cleartel Communications, Inc., Operator Services Company, and Teltrust Communications Services, Inc. are granted in part and denied in part to the extent discussed.

41. *It is further ordered* that the Commission's rules are amended as set forth, effective February 21, 2002, except that the oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carrier, Reporting and recordkeeping, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151,154, 201, 202, 205, 218, 220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat.1070, as amended, 47 U.S.C. 2201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Amend § 64.703 by revising paragraph (a)(4), in paragraph (b)(2)

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remove the word "intestate" and add in its place, the word "interstate", and revise paragraph (b)(4) to read as follows:

§ 64.703 Consumer information.

(a) * * *

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase "total cost of the call" as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. It does not include additional charges that may be assessed and collected without the involvement of the carrier, such as a hotel surcharge billed by a hotel. Such charges are addressed in paragraph (b) of this section.

(b) * * *

(4) The name and address of the Consumer Information Bureau of the Commission (Federal Communications Commission, Consumer Information Bureau, Consumer Complaints—Telephone, Washington, D.C. 20554), to which the consumer may direct complaints regarding operator services. An existing posting that displays the address that was required prior to the amendment of this rules (*i.e.*, the address of the Common Carrier Bureau's Enforcement Division, which no longer exists) may remain until such time as the posting is replaced for any other purpose. Any posting made after the effective date of this amendment must display the updated address (*i.e.*, the address of the Consumer Information Bureau).

* * * * *

3. Amend § 64.708 by revising paragraph (f) to read as follows:

§ 64.708 Definitions.

* * * * *

(f) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements handled by a provider of operator services, the term consumer also includes the party on the terminating end of the call. For bill-to-third-party calling arrangements handled by a provider of operator services, the term consumer also includes the party to be billed for the call if the latter is contacted by the operator service provider to secure billing approval.

* * * * *

4. Amend § 64.709 revising paragraph (a) to read as follows:

§ 64.709 Informational tariffs.

(a) Informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per-call fees, if any, collected from consumers by, or on behalf of, the carrier.

* * * * *

5. Amend § 64.710 by revising paragraph (a)(1) and in paragraphs (b)(1) and (b)(4) remove all references to "domestic, interexchange" to read as follows:

§ 64.710 Operator services for prison inmate phones.

(a) * * *

(1) Identify itself and disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, non-access code operator service call, how to obtain the total cost of the call, including any surcharge or premises-imposed-fee. The oral disclosure required in this paragraph shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. The phrase "total cost of the call," as used in this paragraph, means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. Such phrase shall include any per-call surcharge imposed by the correctional institution, unless it is subject to regulation itself as a common carrier for imposing such surcharges, if the contract between the carrier and the correctional institution prohibits both resale and the use of pre-paid calling card arrangements.

* * * * *

[FR Doc. 02–1178 Filed 1–18–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 010823214–2009–02; ID. 080801A]

RIN 0648–AP47

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the 30th Space Wing, U.S. Air Force, has issued a modification to regulations and the annual Letter of Authorization (LOA) that authorizes the take of small numbers of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (VAFB). The 30th Space Wing requested that the current monitoring requirements be modified so that biological monitoring is required only during the Pacific harbor seal pupping season (March 1 to June 30). By this document, NMFS is amending the regulations governing the take of marine mammals incidental to rocket launches at VAFB. NMFS, in issuing the regulation to which a modification is sought previously determined that rocket launches at VAFB would have a negligible impact on the affected species and stocks of marine mammals. In order to make the requested amendment to the regulation, NMFS has determined that the monitoring program at VAFB and the resultant data from pre- and post-launch marine mammal observations have effectively shown that rocket launch activities have a negligible impact on marine mammal populations and stocks.

DATES: The amendment to 50 CFR 216.125 is effective on January 25, 2002. The modified annual LOA is effective from January 25, 2002, until May 23, 2002.

ADDRESSES: All inquiries on this final rule and LOA should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101 (a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued. Effective January 26, 1996, by Department Delegation Order 10–15, the Secretary of Commerce (Secretary) delegated authority to perform the functions vested in the Secretary as prescribed by the MMPA to the Administrator of the National Oceanic and Atmospheric Administration. On December 17, 1990, under NOAA Administrative Order 205–11, 7.01, the Under Secretary for Oceans and Atmosphere delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Permission may be granted for periods up to 5 years if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth in regulation. To make such findings, NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." As new information is developed, through monitoring, reporting, or research, NMFS may modify the regulations governing the take, in whole or in part, after notice and opportunity for public review.

Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Summary of Request

On May 17, 2001, NMFS received a request from the 30th Space Wing for modification to the monitoring requirements of the 5–year programmatic regulations governing the incidental take of marine mammals during rocket launch operations at VAFB (50 CFR 216.120-128). The requested modification would reduce the current requirement to perform biological monitoring during all space vehicle launches at VAFB to only those space vehicle launches at VAFB during the Pacific harbor seal (*Phoca vitulina richardsi*) pupping season (March 1 to June 30). The 30th Space Wing's request is based on a scientific research program and the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB (SRS Technologies, 2001). During the pupping season, biological monitoring remains important in verifying that female harbor seals spend the necessary time on the haul-out establishing the female-neonate bond, including nursing of their pups. Although harbor seal numbers are highest during molting (May through July), NMFS did not propose additional biological monitoring during the molting season because research and monitoring results over the last 4 years show that molting Pacific harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not become subject to thermoregulatory stress.

Current Monitoring Requirements and Requested Change

According to 50 CFR 216.125, LOAs that authorize the take of marine mammals incidental to space vehicle and test flight activities must designate qualified on-site individuals to conduct the following monitoring activities:

(1) Observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching;

(2) Monitoring haul-out sites on the Northern Channel Islands if it is determined during consultation with NMFS that a sonic boom could impact those areas;

(3) Investigation of the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction;

(4) Supplemental observation on VAFB and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season; and

(5) Conducting acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

The 30th Space Wing requested to modify the first monitoring activity, observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform on VAFB, to only require observations during the March 1 through June 30 harbor seal pupping season at VAFB.

Comments and Responses

On September 14, 2001 (66 FR 47905), NMFS published a proposed modification to current regulation and opened a 30–day public comment period on the application and proposed rule. No comments were received during this period.

Potential Effect of Modification to Monitoring Requirements on Pacific Harbor Seals at VAFB

Since modification of regulations, in whole or in part, must account for new information that has been collected through monitoring, reporting, or research (see 50 CFR 216.105 (c)), this preamble outlines the 30th Space Wing's research and monitoring results to date. To verify the negligible impact determination made by NMFS as a prerequisite to issuance of the final rule, the monitoring and research programs for VAFB were designed to detect changes in population parameters that indicate the overall condition of the potentially affected populations. Based on the scientific research program and bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB, the 30th Space Wing asserted in its application that modification to the monitoring requirements would not alter the negligible impact determination made by NMFS during the rule making (64 FR 9925, March 1, 1999). Rather, results of the 30th Space Wing's monitoring and research programs have verified that the impacts of rocket launches have had a negligible impact on the harbor seals at VAFB.

Results from the monitoring and research program included an analysis of indicators of population health at the regional and site-specific level. Indicators analyzed included: trends in abundance, pup production and mortality, daily and seasonal haul-out behaviors, measured sound exposure levels from space launch vehicles, behavioral response of Pacific harbor seals to launch noise, and Pacific harbor seal auditory brainstem response (ABR) measurements. For a more detailed

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account of the 30th Space Wing's research and monitoring programs and analysis of results, see SRS Technologies (2001).

Pacific Harbor Seal Scientific Research Program at VAFB

Data from the scientific research program conducted from 1997 through 2001 shows that the harbor seal population (including pups) at VAFB is increasing and doing as well or better than other harbor seal populations in California.

Trends in Abundance

The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals at VAFB is estimated to be 1,040 (775 on south VAFB and 265 on north VAFB), where the telemetry data for seals was used to correct for seals that were at sea during the census (SRS Technologies 2001). The harbor seal population has been increasing since 1997 at an annual rate of 12.6 percent. During this period, 5 to 7 space vehicle launches were conducted per year. Recent information by several researchers suggests that harbor seals are only decreasing in areas (e.g., San Miguel Island, California) where they are in competition for haul-out space with California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*). California sea lions and northern elephant seals rarely haul-out at VAFB; therefore, competition for haul-out space should not be a factor in growth of the harbor seal population at VAFB.

Pup Production and Mortality

Annual harbor seal pup production at VAFB has increased by 5.3 percent annually. The only decrease in pup production occurred during the 1998 El Niño season when there was a 13.6 percent decrease from the previous year. In contrast to VAFB haul-out sites, pup production at Point Conception, CA (control site for the VAFB research program located 25 km south of the south VAFB haul-out site) showed an annual increase of 2.9 percent. This smaller percentage in annual pup production may be due to the fact that Point Conception has a limited area where females and pups can haul-out without being harassed by other seals or exposed to high tides and swells. There are more haul-out areas for females with pups at VAFB; therefore, only El Niño type disturbance should affect pup production at VAFB.

There are no documented occurrences of premature pupping at VAFB. In addition, the rate of pup mortality is low (0.6 pups per year), with none of the mortalities associated with any of the launch activities. Because the rough terrain along the VAFB coastline makes seal captures difficult, only 15 seal pups have been tagged; it has been difficult to estimate the long-term survival and recruitment rate of these pups. Based on telemetry data from the 15 tagged individuals and the behavior of pups at other sites, the 30th Space Wing estimates that approximately 54 percent of pups continue to haul-out at VAFB after weaning. There have been no tag returns of dead pups from VAFB, but some pups have been sighted up to 25 km away from the natal haul-out site. This suggests that mortality is low for weaned pups and that up to 35 percent of pups born at VAFB may migrate to other haul-out sites.

Daily and Seasonal Haul-out Behavior

At south VAFB, the daily haul-out behavior of harbor seals is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. At north VAFB haul-out sites, tide has a greater influence on the daily haul-out behavior of seals. Part of the reason for the tidal influence at north VAFB is the coastline's topography, which consists of low lying rocky areas that are substantially covered during high tides. In addition, haul-out behavior at all sites may be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The population is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source would not be adversely affected in their ability to molt and would not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Pacific Harbor Seal Bioacoustic Monitoring at VAFB

Data from the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 shows that haul-out behavior appears to be unaffected by launch operations, and there has been no temporary or permanent threshold shifts evidenced as a result of launch noise.

The types of sounds discussed in this document are airborne and impulsive. For this reason, the document references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second). Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved (Buck, 1995) and is beyond the scope of this document.

In order to obtain details on the launch noise reaching harbor seals on VAFB, acoustic measurements were collected via two independent systems. The first system was designed to measure the low frequency sound associated with rocket launches. The second system was designed to measure background noise levels, ambient noise levels, and sound events that exceed a pre-set minimum sound level.

Measured Sound Exposure Levels from Space Launch Vehicles

To study the effect of noise on wildlife, the sound under study is typically measured using an A-weighted filter. A-weighting is a standard filter used in acoustics that approximates human hearing. However, because most animals do not have hearing similar to humans, A-weighting does not accurately represent sounds as heard by non-human mammals (SRS Technologies, 2001). Several researchers (Mohl, 1968; Terhune, 1991; Terhune and Turnbull, 1995; Kastak and Schusterman, 1998) have measured the in-air hearing in harbor seals. At 2000 hertz (Hz), harbor seals were found to have hearing sensitivities averaging around 30 dB. In contrast, the quietest sound a human can hear at 2000 Hz registers at -1 dB (Sivian and White, 1933). At 2000 Hz, A-weighting adds 1.2 dB to the sound being analyzed; therefore, A-weighting does not accurately represent sounds as heard by harbor seals. To gain a better understanding of how launch noise is perceived by harbor seals, SRS Technologies created a frequency-weighting filter, similar to what A-weighting is for humans, based on the in-air hearing ability of harbor seals (SRS Technologies, 2001).

Acoustical measurements have been collected and analyzed for 21 space vehicle launches of 7 different types of vehicles using both A-weighted and harbor-seal weighted filters. The average measurements are shown in Table 1:

TABLE 1

Type	Distance from Haul-out (km/mi)	Average A-weighted Sound Exposure Level (dB)	Harbor seal-weighted Sound Exposure Level (dB)
Athena	2.8/1.7	107.5	68.3
Minotaur	2.3/1.4	106.2	67.3
Titan IV	8.5/5.3	100.2	58.9
Taurus	0.55/0.34	125.2	89.8
Delta II	2.0/1.2	114.9	78.6
Minuteman III	15.6/9.7	88.7	42.3
Atlas	11.0/6.8	86.1	47.3

Behavioral Response of Pacific Harbor Seals to Launch Noise

During the biological monitoring at VAFB, the response of harbor seals to rocket launch noise varied depending on the intensity of noise and the age of the seal. When launch noise was below an A-weighted sound exposure level of 100 decibels (dBA)(re 20 micro-Pa2-second), observations showed that not all seals fled the haul-out site and those that remained were exclusively adults. Given the high degree of site fidelity among adult harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches. It is possible that adult seals have become acclimated to the launch noise and react differently than younger inexperienced seals. Of the 20 seals (adult and younger) tagged at VAFB, 8 (40 percent) were exposed to at least one launch disturbance and continued to return to the same haul-out site. Three of these tagged seals were exposed to 2 or more launch disturbances. Six (75 percent) of the tagged seals exposed to launch noise appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch. The 2 tagged seals that left the haul-out site area after the launch had been on shore for at least 6 hours subsequent to the launch and returned to the haul-out site in 24 hours.

ABR Measurements

In order to further determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, the acoustic contractor conducted ABR testing on 10 harbor seals prior to and after the launches of 3 Titan IV rockets, a vehicle type with one of the loudest harbor seal-weighted SELs (see table above). Detailed analysis of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise. However, the 2 to 3.5 hour delay in ABR testing post-launch could mean that the seals had recovered from a temporary threshold shift (TTS) before the testing could begin. However, as there were no detectable changes in the hearing sensitivity of these animals when they were tested after the delay, the 30th Space Wing concludes, with confidence, that the animals did not have permanent hearing changes due to exposure to the launch noise from the Titan IV rockets.

Conclusions

As outlined in this preamble, results of on-going, long-term monitoring efforts designed to track trends in haul-out patterns and seal distribution at VAFB show that the harbor seal population at VAFB is increasing and doing as well or better than other harbor seal populations in California. Acoustic measurements in conjunction with biological monitoring of haul-out sites and tagged seals over these same 4 years, suggest that the haul-out behavior of harbor seals is unaffected by launch operations. This data also provides conclusive evidence that no permanent hearing damage has resulted from space vehicle launches at VAFB. This new information obtained through monitoring, reporting, and research verifies NMFS' previous negligible impact determination by showing that the level, manner, and effects of the marine mammal takes are so small in number that they are inconsequential to the abundance, distribution, and productivity of marine mammal populations in California (Swartz and Hofman, 1991). Therefore, NMFS has concluded that the impact of amending the current regulations to require monitoring observations only during the harbor seal pupping season at VAFB is consistent with NMFS' March 1, 1999 negligible impact determination (64 FR 9925).

Classification

This action is not significant for purposes of Executive Order 12866.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when the original rule was proposed in 1998 (63 FR 39055, July 21, 1998), that, if adopted, the rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The rule only affects the U.S. Air Force, large defense companies, and an undetermined number of contractors providing services related to the launches, including the monitoring of launch impacts on marine mammals. Some of the affected contractors may be small businesses. The economic impact on these small businesses depends on the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. Because of this classification, a regulatory flexibility analysis was neither required nor prepared. This action does not alter those conclusions.

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National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact, as part of its request for a small take authorization in 1997. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. NMFS adopted the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. In the final rule for this activity (64 FR 9925, March 1, 1999), NMFS found that the issuance of regulations and LOAs to the Air Force would not result in a significant environmental impact on the human environment and that it would be unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments. This action is within the scope of the EA and does not alter its conclusions.

Endangered Species Act (ESA) Consultation History

The Department of the Air Force consulted with NMFS, as required by section 7 of the ESA, on whether launches of Titan II and IV at SLC–4 would jeopardize the continued existence of species listed as threatened or endangered. NMFS issued a section 7 biological opinion on this activity to the Air Force on October 31, 1988, concluding that launchings of the Titan IV were not likely to jeopardize the continued existence of the Guadalupe fur seal. The Air Force reinitiated consultation with NMFS after the Steller sea lion was added to the list of threatened and endangered species (55 FR 49204, November 26, 1990). However, since Steller sea lions had not been sighted on the Channel Islands between 1984 and the time of the consultation, it was determined that these launchings were not likely to affect Steller sea lions. Additionally, on September 18, 1991, NMFS concluded that the issuance of a small take authorization to the Air Force to incidentally take marine mammals during Titan IV launches was not likely to jeopardize the continued existence of Steller sea lions or Guadalupe fur seals. Because launches of rockets and missiles other than Titan IV are unlikely to produce sonic booms that will impact the NCI and because listed marine mammals are not expected to haul out either on the Vandenberg coast or on the NCI during the 5–year period for this proposed authorization, the issuance of regulations is unlikely to adversely affect listed marine mammals (64 FR 9925, March 1, 1999). Additionally, incidental take authorizations for either of these two species under either the MMPA or the ESA are not warranted.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and record keeping requirements, Seafood, Transportation.

Dated: January 14, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.125, paragraph (b) (1) is revised to read as follows:

§ 216.125 Requirements for monitoring and reporting.

* * * * *

(b) * * *

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

* * * * *

[FR Doc. 02–1533 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011004242–2005–02; I.D. 092401F]

RIN 0648–AP09

Fisheries of the Northeastern United States; 2002 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; 2002 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs.

SUMMARY: NMFS issues final quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2002. These quotas specify allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43° 50′N. lat. in 2002.

DATES: Effective from January 16, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment, are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/FRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm.*

FOR FURTHER INFORMATION CONTACT: Walter Gardiner, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected should allow sustainable fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council must also consider the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat. will have an annual quota within a range of 17,000 to 100,000 Maine bushels (bu) (5,991 to 35,240 hectoliters (hL)), with an initial amount of 100,000 Maine bu (35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 66 FR 53770, October 24, 2001, and is not repeated here. The comment period for that rule ended on November 23, 2001. No comments were received during the comment period, and the final quotas for 2002, which are unchanged from those in the proposed rule, are shown in the table below. The 2002 quotas for both ocean quahogs and Maine mahogany quahogs are the same as the 2001 quotas. However, the 2002 surf clam quota is 10 percent higher than the 2001 quota.

2002 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	2002 final quotas (bu)	2002 final quotas (hL)
[1] Surf clam	3,135,000	1,669,000
[1] Ocean quahog	4,500,000	2,396,000
[2] Maine mahogany quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft = 53.24 liters.
[2] 1 bushel = 1.2445 cubic ft = 35.24 liters.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surf clam and ocean quahog fisheries. Individual Transferable Quota shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surf clams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation it is imperative that the vessel owner have the ability to request that NMFS temporarily transfer part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract. Further, allocation holders at times pledge their allocation as security for a loan. This entails the transfer of the individual allocation to the lending institution for the pendency of the loan. Without an effective quota, NMFS cannot make either a partial transfer or an entire allocation effective, permanently or temporarily. This inability on the part of NMFS to make such transfers effective would have a negative economic impact on the surf clam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2002 surf clam, ocean quahog, and Maine mahogany quahog quotas.

NMFS and the Council prepared a FRFA for this action. A copy of the FRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule and specifications included a detailed summary of the analysis contained in the Initial Regulatory Flexibility Analysis (IRFA), which is not repeated here. A summary of the FRFA, focusing upon the impacts of the final measures, follows:

A description of the reasons why this action is being taken by the agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Public Comments

There were no public comments received in response to the IRFA's analysis of the expected impacts of the proposed regulations on small entities.

Minimizing Significant Economic Impact of Small Entities

These specifications establish a 10-percent increase in the surf clam quota and continue the ocean quahog and Maine mahogany ocean quahog quota without change from the 2001 quotas. Since 2000 harvest levels of 2.561 and 3.161 million bu (1.364 million hL to 1.683 million hL) for surf clams and ocean quahogs, respectively, were below the 2002 quotas implemented by this action, and NMFS and the Council assume no changes in fishing effort or yield-to-effort will take place in 2001, these 2002 quotas are not expected to constrain the overall harvest in the fishery. As a result, harvesters could increase their landings over the 2000 levels, and additional revenues could accrue in 2002.

Vessels

In 2000, a total of 48 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2000 gross income from surf clam harvests was $702,317 per vessel, and $470,854 per vessel from ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 34 vessels reported harvests in the clam logbooks, with an average value of $97,223 per vessel. All of these vessels fall within the definition of a small entity.

For ocean quahogs, the proposed 2002 quota is 4.500-million bu (2.396-million hL). The other alternatives considered were 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000-million bu (2.129-million-hL) quota would represent a 12-percent decrease from the current 4.500-million

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bu (2.396-million hL) quota and, assuming the entire quota is harvested, a 27-percent increase in harvest from the 2000 harvest level of 3.161 million bu (1.683 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to NMFS and the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 90-percent increase in landings from 2000, assuming that all of the quota is harvested. However, the industry does not have a market available to absorb such a massive increase in landings and may not have the vessel capacity necessary to harvest a quota this large (two of the most productive ocean quahog vessels sank in January 1999 and have not been replaced). Since all alternatives, including the preferred, would yield increases relative to the actual 2000 landings, increased revenues would be likely to occur.

For surf clams, the proposed 2002 quota is 3.135 million bu (1.669 million hL). The other alternatives considered were 1.850, 2.850, 3.000, and 3.400 million bu (0.985, 1.517, 1.597, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surf clams. Adoption of a 1.850-million bu (0.985-million hL) quota would represent a 35-percent decrease from the current 2.850-million bu (1.517-million hL) quota, and a 28-percent decrease from the 2000 harvest level of 2.561 million bu (1.364 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall ex-vessel revenues. Adoption of the 2.850-million bu (1.517-million hL) quota would most likely have a limited impact on small entities, since it is identical to the 2001 quota. Adopting the maximum allowable quota of 3.400 million bu (1.810 million hL) for surf clams would allow for a 19-percent increase in harvest. The Council considered a 5-percent increase in quota from the 2001 level to 3.000 million bu (1.597 million hL), but industry representatives stated that they preferred a 10-percent increase. The preferred alternative allows for the 10-percent increase of 2.850 million bu (1.517 million hL) to 3.135 million bu (1.669 million hL). The only alternative that would reduce revenues to vessels is the 1.850-million bu (0.985-million hL) alternative. Both the status quo quota and the 5-percent increase alternative could be constraining on industry. At best, the 5-percent increase would probably increase revenues by a small amount. The resource can support the 10-percent increase in landings and the industry believes it can harvest and process this additional product.

The proposed 2002 quota for Maine mahogany ocean quahogs is 100,000 Maine bu (35,240 hL), which is the maximum allowed under the FMP. The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. Two other alternatives were considered: 50,000 Maine bu (17,620 hL) and 72,466 Maine bu (25,537 hL). Any quota below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels. The proposed quota is the least constraining allowed under the FMP.

Processors

Nine to 12 processors currently participate in the surf clam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the vessels and sale of processed clam products in wholesale markets. Impacts to surf clams and ocean quahog processors would most likely mirror the impacts of the various quota alternatives to vessels, as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products and, since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to depend on the price of processed clams, relative to the price of available clam substitutes.

Allocation Holders

In 2001, there were 99 surf clam allocation holders, while 63 firms or individuals held an ocean quahog allocation. Under the 2002 quotas, the increase in the surf clam quota could benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota, because of reduction in value due to the increased allocation of surf clams to each allocation holder. Some allocation holders who might otherwise have found it necessary or desirable to purchase quota share from others will have sufficient quota available to them in 2002 to make additional quota purchases unnecessary. Because the ocean quahog quota is unchanged from 2001, no impacts on allocation holders are expected.

The RIR/IRFA is available from the Council (see **ADDRESSES**). This final rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132; therefore, preparation of a Federalism assessment is not necessary.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–1500 Filed 1–16–02; 3:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 14

Tuesday, January 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM207; Special Conditions No. 25–02–02–SC

Special Conditions: Fairchild Dornier GmbH, Model 728–100; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Dornier GmbH Model 728–100 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions, in part, contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions may also be defined.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM207, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM207*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposal for special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 5, 1998, Fairchild Dornier GmbH, applied for a type certificate for their new Model 728–100 airplane. The Model 728–100 is a 70–85 passenger twin-engine regional jet with a maximum takeoff weight of 77,600 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Fairchild Dornier GmbH must show that the Model 728–100 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–96. Fairchild Dornier GmbH has also applied to extend the certification basis to include Amendments 25–97, 25–98, and 25–104.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 728–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 728–100 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Fairchild Dornier GmbH Model 728–100 will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions.

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These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Fairchild Dornier GmbH Model 728–100. These proposed special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Fairchild Dornier GmbH Model 728–100. Should Fairchild Dornier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1). Fairchild Dornier has submitted applications for certification of both increased and reduced passenger capacity derivatives of the 728–100. These derivative models are designated the 928–100, and the 528–100, respectively. As currently proposed, these derivative models share the same design features of an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions as the 728–100, and it is anticipated that they will be be included in the applicability of this proposed special condition.

Conclusion

This action affects only certain novel or unusual design features on the Fairchild Dornier GmbH Model 728–100 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Fairchild Dornier GmbH Model 728–100 airplanes.

1. *Protection from Unwanted Effects of High Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1506 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

National Airspace Redesign—Potential Revisions of Air Traffic Control (ATC) Services, Procedures, and Airspace, Juneau Area, Juneau, AK; Public Meeting 02–AAL–1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold a public meeting in support of the National Airspace Redesign (NAR) on ATC airspace, service, and procedures affecting the Juneau area, Juneau, AK. The objective of this meeting is to provide interested persons an opportunity to review proposed ATC services and procedures that are under consideration in conjunction with the FAA Alaska Region Capstone Program. The overall Capstone goal is to maximize efficiency and improve safety for aircraft operating in the Juneau area. ATC is exploring ways to implement new technology as it becomes certified for use in the National Airspace System.

DATES: The meeting will be on Thursday, March 7, 2002, 5:30 pm to 9:00 pm.

ADDRESSES: Ray Renshaw Room, Guest House Inn and Suites, 1800 Shell Simmons Drive, Juneau, AK, 99801; phone (907) 790–6435.

FOR FURTHER INFORMATION CONTACT: Ray Collins, Federal Aviation Administration, AAL–539, 222 W. 7th Ave., Box #14, Anchorage, AK 99513–7587; telephone: (907) 271–1664; fax: (907) 271–2850; email: ray.collins@faa.gov.

SUPPLEMENTARY INFORMATION:

History and Background

The Alaskan Region's Capstone program is an accelerated effort to improve aviation safety and efficiency through installation of government-furnished Global Positioning System (GPS)-based avionics and data link communications suites. The initial Capstone location was Bethel, Alaska and Capstone activities may be viewed at: http://www.alaska.faa.gov/capstone/. In addition to the avionics suites, Capstone will install a ground infrastructure for weather observation, data link communications, surveillance, and Flight Information Services (FIS) to improve safety. Under Capstone, it is anticipated that most of the commercial aircraft based in the Juneau area will be equipped, on a voluntary basis, with government-furnished avionics; certain other commercial and government aircraft regularly operating in the area will also be equipped. Services provided through the avionics suite will improve the pilot's flight capabilities and situational awareness.

There have been several user meetings concerning expanding the Capstone program into the Juneau area; the most recent have had Air Traffic Division representation that briefed a range of potential ATC services that might be provided using Capstone technology. These range from Bright Radar Indicator Tower Equipment (BRITE) displays in the Juneau airport traffic control tower, surveillance services for IFR aircraft, ground aircraft/vehicle surveillance, enhanced traffic information in the airport traffic area, and search and rescue services from the AFSS in Southeast Alaska.

Today, the National Airspace Redesign mandates a review of airspace and efficiency nationwide. It is the goal of the Alaskan Region's Air Traffic Division to address airspace, ATC Capstone enhancements, and services from an overall systems perspective in the Juneau area.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Alaskan Region Air Traffic Division. The meeting will not be formally recorded.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient capacity for expected participation. There will be neither admission fee nor other charge to attend and participate.

(c) Any person who wishes to present a position paper to FAA representatives pertinent to the revision of ATC services, airspace or procedures may do so.

(d) An official verbatim transcript or minutes of the informal airspace meeting will not be made. However, a list of the attendees, written statements received from attendees during and after the meeting and a digest of discussions during the meeting will be included in the administrative record for the project.

(e) Every reasonable effort will be made to hear all concerns of interested persons consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the team for up to two weeks (14 days) after the close of the meeting.

Agenda

a. Opening remarks and discussion of meeting procedures

b. Presentation of areas under consideration, user feedback, and aircraft airborne avionics equipment:

(1) Tower BRITE-like Display: Tower surveillance display that depicts ADS–B and transponder Mode A/C and Mode S equipped aircraft. Provides situational awareness for tower controllers. DRAWBACK: Unable to see primary target (non-equipped) aircraft and new transponder display technology must be certified prior to use.

(2) Terminal IFR surveillance service: Discussion has taken place within the Air Traffic Division concerning providing "low level" terminal approach control services in the Juneau area to support an IFR structure. As the concept developed, several constraints became obvious: vectors below 5,500 feet MSL are not possible; IFR traffic count does not support the establishment of an approach control facility, and ATC delays, while increasing, are not a significant issue at Juneau. Informal discussion with several operators in the Juneau area reveals these operators do not forsee changes in the way they conduct operations in the near or long term—they operate VFR and do not see this changing. Feedback: will operators equip and fly in an IFR structure.

(3) ARTCC: The potential exists to provide continuous radar like coverage for IFR aircraft operating into and from Juneau. Procedures could possibly be developed to reduce delays using this seamless coverage, however, delays will continue to occur due to terrain limitations effecting aircraft and ATC procedures.

(4) AFSS Display(s): Three areas are under consideration—an airport ground surveillance system where AFSS personnel will be able to "see" equipped aircraft and vehicles operating on the ground when the tower is closed; a BRITE type display where specialist can "see" equipped aircraft operating in the pattern area when the tower is closed; a monitor system where ADS–B aircraft are displayed and are able to be located at the last known position in the event contact is lost. The AFSS display(s) are contingent on aircraft/vehicle equipage. Additionally, use of display equipment is a significant departure from established FSS functions and extensive coordination and approval with FAA Headquarters and the workforce would be required. Finally, there are technical challenges ahead for any automated flight following system.

(5) Airspace: Currently, Juneau has Class D airspace. Expansion or change to this airspace is not anticipated, however, this meeting is part of the National Airspace Review process.

(c) Question and answer period.

(d) Closing comments.

* * * * *

Issued in Anchorage, AK, on January 11, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–1508 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6]

RIN 2120–AA66

Proposed Modification of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); correction.

SUMMARY: This action includes a graphic depiction of the proposed Cincinnati/Northern Kentucky International Airport Class B airspace area, KY, modification which was inadvertently omitted during the publication of the NPRM. The NPRM proposes to modify the current Cincinnati/Northern Kentucky International Airport (CVG) Class B airspace area. Specifically, this action proposes to expand the lateral limits of Area C; reduce the lateral limits of Area F; eliminate Area G; and raise the upper limit of the entire Class B airspace area from 8,000 feet mean sea level (MSL) to 10,000 feet MSL. Inclusion of this graphic is necessary to depict the proposed modifications of the Class B airspace area.

DATES: Comments must be received on or before March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant/Jan Glivings, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On December 31, 2001, Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6, Federal Register Document 01–32007, was published in the **Federal Register** proposing to modify the Cincinnati/Northern Kentucky International Airport Class B airspace area (66 FR 67632). The NPRM inadvertently omitted the graphic depicting the modifications of the Class B airspace area. This action includes the graphic for that modification.

Correction to Proposed Rule

Accordingly, pursuant to the authority delegated to me, the NPRM for the Cincinnati/Northern Kentucky International Airport KY, Class B airspace area as published in the **Federal Register** on December 31, 2001 (66 FR 67632); **Federal Register** Document 01–32007, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

By inserting the graphic behind page 67638 after the text of the NPRM.

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–P

PROPOSED MODIFICATION OF CLASS B AIRSPACE

Covington, KY
Cincinnati/Northern Kentucky International Airport
Not for Navigation
(Docket No. 00-AWA-6)

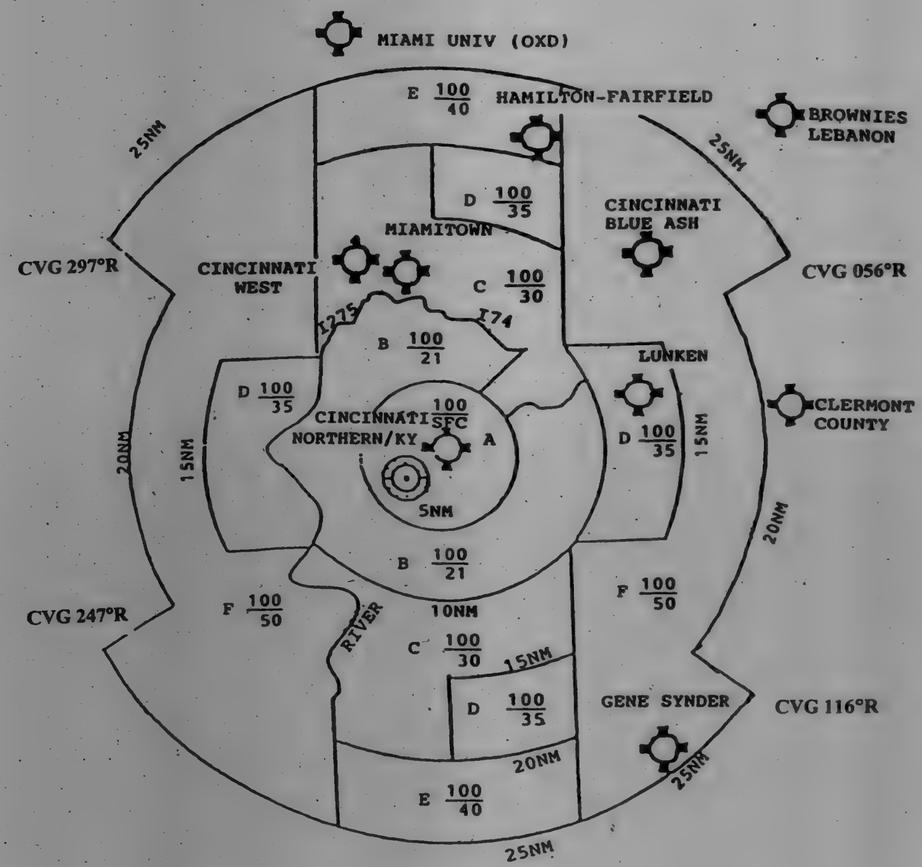

[FR Doc. 02–1372 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–C

VOL 67 ISS 14 JA 22 2002 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10432; Airspace Docket No. 01–AWA–05]

RIN 2120–AA66

Proposed Modification of the Santa Ana Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Santa Ana, CA, Class C airspace area. Specifically, this proposed rule would standardize and complete the 5 nautical mile (NM) inner circle; re-align the south and southwest quadrants; and, expand the north and east boundaries of the Santa Ana Class C airspace area. The FAA is proposing this action to improve the management of aircraft operations in the Santa Ana, CA, terminal area; enhance safety; reduce the potential for midair collision in the Santa Ana Class C airspace area, and accommodate the concerns of airspace users.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20591–0001. You must identify the docket number FAA–2001–10432/ Airspace Docket No. 01–AWA–05, at the beginning of your comments.

You may also submit comments on the Internet at http://dms.dot.gov. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number: 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2001–10432/Airspace Docket No. 01–AWA–05." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In early 2001, the Southern California TRACON (SCT), and a California Users Group (an ad hoc committee that represents all major airspace users) reviewed the current Santa Ana Class C airspace area. The revocation of the El Toro Class C airspace area, which left the eastern side of the John Wayne Airport in Class E airspace instead of Class C airspace, prompted the review. The Technical Committee of the Southern California Users Group (SCAUWG) reviewed the Santa Ana Class C airspace area and developed recommendations for modifying the existing airspace design to provide pilots with a greater awareness of arriving and departing turbojet aircraft at John Wayne Airport, Santa Ana, CA.

As announced in the **Federal Register** (66 FR 13122), one pre-NPRM airspace meeting was held on March 28, 2001, at Los Alamitos Army Airfield, Los Alamitos, CA. The purpose of this meeting was to provide local airspace users with an opportunity to present input on planned airspace changes to the Santa Ana Airspace Area prior to initiating any regulatory action.

In response to the informal airspace meeting the FAA received six comments. The following is an analysis and FAA response to those comments.

Analysis of Comments

One commenter requested that the FAA establish a Visual Flight Rules (VFR) Corridor through the Santa Ana Class C airspace. The FAA does not agree with this comment. This proposed design would safely accommodate all flight operations at SNA and a VFR corridor would not significantly enhance VFR operations in the airspace. Because of the small size of the proposed area, those aircraft transiting the area that do not want to establish radio communication with ATC may choose to circumnavigate the Class C airspace area.

One commenter recommended that the Santa Ana Class C be modified to re-open V–8 at all altitudes to non-participating aircraft. The FAA does not agree with this comment. Currently the northwest corner of the existing Class C airspace overlaps a portion of V–8. This proposal does not change the overlap of Class C airspace over this airway. This airspace is needed to accommodate IFR arrivals. California Freeway 91 (Riverside Freeway) will continue to be used as a guide to VFR pilots transitioning this portion of the Class C airspace.

Several commenters suggested that the proposed Paradise VOR 215° radial might not be suitable for navigation and should be checked for suitability. The FAA re-checked the radial and found it to be within tolerance and completely suitable for navigation.

Several commenters objected to 5,400-foot ceiling south and west of the John Wayne airport but without suggesting an alternative altitude. The FAA has reviewed this area, and has determined that the 5,400-foot ceiling is necessary to accommodate air carrier arrivals and that lowering the ceiling would not provide adequate airspace for these operations.

Several comments stated that the proposed changes in the northeast corner infringe on Santa Ana Canyon by extending the Class C airspace over the canyon. The Airline Pilots Association opposed any reduction in proposed Class C boundaries because the instrument procedures on the east side of the airport must be contained in Class C airspace.

The FAA agrees with these comments and has proposed modifications to address each comment. The LAX 083° radial would be used to redefine the northeast corner of the Class C airspace area. Using this radial as a boundary would provide more Class E airspace between the Santa Ana and Ontario Class C airspace areas (Santa Ana Canyon Area), which would provide a wider route for nonparticipating aircraft. In addition, this change would still accommodate instrument procedures east of the airport and keep them in Class C airspace.

Several commenters stated generally that the proposed 2,000-foot floor should be raised to provide more Class E airspace for non-participating aircraft. The FAA does not agree with these comments because raising the floor above 2,000 feet would not provide adequate Class C airspace to accommodate all instrument procedures.

Comments were received suggesting the FAA use a circular design between 5- and 10-miles to provide additional Class C airspace. The FAA does not agree with these commenters. A standard circular design in this case would not meet the operational requirements around Santa Ana John Wayne Airport. Furthermore, 5- and 10-mile circles centered on the airport reference point would designate more Class C airspace than necessary and adversely impact general aviation operations in the area.

Three commenters recommended that the informal VFR practice area near El Toro remain open "as it is". The FAA agrees and has raised the outer floor of the proposed Santa Ana John Wayne Airport (SNA) to accommodate the VFR practice area.

Written comments supporting the proposal were received from the Airline Transport Association; the Airline Pilots Association; International Airlines; America West Airlines; Northwest Airlines; and U.S. Airways. These users also requested that the FAA establish a Class B airspace area for SNA since that airport meets the candidacy requirements for Class B airspace as well. They also suggested that a 20-mile Mode C veil requirement be established around SNA as part of this notice.

Presently, the FAA utilizes certain criteria based on the number of passengers enplaned annually or the number of flight operations at the airport, in considering a given airport as a candidate for a Class B airspace designation. This criteria is only for determining candidacy. Meeting the criteria in and of itself does not guarantee that a Class B airspace area would be established at any particular location. A number of other factors, including traffic density, complexity, and operations conducted, must be carefully evaluated to determine whether a Class B airspace area is warranted. Most importantly, it must be demonstrated that the establishment of a Class B airspace area would enhance the safety and efficiency of airspace management. The FAA studied this airspace and found that the current Class C airspace has areas of inefficiencies, areas where turbojet aircraft are not adequately accommodated, and areas in need of modification. The FAA concluded that enhancement of the existing Class C airspace sufficiently would address these issues and the establishment of Class B airspace was not warranted at this time.

The FAA Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (commonly referred to as the "Mode C Rule") requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport, from the surface up to 10,000 feet MSL. The recommendation for the establishment of a 20-mile Mode C veil at SNA is beyond the scope of this rulemaking.

The Proposed Amendment

The FAA proposes to amend 14 Code of Federal Regulations (CFR) part 71 by modifying the Santa Ana, CA, Class C airspace area. Specifically, this action proposes to expand Area A to a complete 5 NM circle, which would standardize the inner circle. Area B to the south and Area C to the southwest would also be re-aligned to provide additional airspace to accommodate Runway 1 arrivals. Proposed changes to Area F in the north would re-align the northern and eastern boundaries to improve efficiencies of Runway 19 arrivals. In addition, a new Area G is proposed on the east to accommodate instrument operations in an area formally within the revoked El Toro Class C airspace area. The FAA is making these changes to enhance safety; reduce the risk of midair collision; and improve the management of air traffic operations in the John Wayne terminal airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) Is not a "significant regulation action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9H, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866, directs that each Federal agency shall propose, or adopt, a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade

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Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, make them the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules. This would include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. Department of Transportation Order DOT 2100.5, prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

This NPRM would modify the Santa Ana, CA, Class C airspace Area. Specifically, this proposed rule would complete the 5 nautical mile (NM) inner circle for standardization, realign the south and southwest quadrants, and expand the north and east boundaries. The FAA has determined that the expansion of the north and east boundaries would result in minimal, if any, circumnavigation cost to general aviation operators. This assessment is based on the fact that aircraft operators could request clearance to operate within the proposed Class C airspace rather than navigate around it, and air traffic control will often grant them clearance. The FAA has also determined that the proposed rule would improve the flow of air traffic, while enhancing the level of safety. Therefore, the FAA has determined that the modification of the Santa Ana, CA, Class C airspace area would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the minimal cost impact of the rule, the FAA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 4000—Subpart C Class C airspace

* * * * *

Santa Ana, CA [Revised]

John Wayne Airport/Orange County, CA
(Lat. 33°40′32″N., long. 117°52′06″W.)

That airspace extending upward from the surface to and including 4400 feet MSL within a 5-mile radius of the John Wayne Airport/Orange County (SNA); that airspace extending upward from 1500 feet MSL to and including 5400 feet MSL beginning at a point southeast of SNA where the SNA 5NM radius and the POM 185T/170M radial intersect, then south via the POM 185T/170M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the PDZ 230T/215M radial, then north via the PDZ 230T/215M radial to the SNA 5NM radius, the counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 3500 feet MSL to and including 5400 feet MSL beginning at a point south of the SNA where the SNA 5NM radius and the PDZ 230T/215M radial intersect, then southwest via the PDZ 230T/215M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the 251T/237M degree bearing from SNA at 10NM, then north via a line extending between the SNA 251T/237M degree bearing at 10 NM and the SNA 351T/337M degree bearing at 10NM to the shoreline, then via the shoreline southeast to the point of beginning; that airspace extending upward from 2500 feet MSL to and including 5400 feet MSL beginning at a point south of the SNA where the SNA 5NM radius and the PDZ 230T/215M radial intersect then west via the shoreline to a line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM, then north via the line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM to the San Diego Freeway (I–405), then east via the San Diego Freeway (I–405) to the SNA 5NM radius, then counterclockwise via the 5NM radius to point of beginning; that airspace extended upward from 2500 feet MSL to and including 4400 feet MSL beginning west of SNA at a point where the SNA 5NM radius and the San Diego Freeway (I–405) intersect, then west via the San Diego Freeway (I–405) to a line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM, then north via the line extending between the SNA 251T/237M degree bearing at 10NM and the SNA351T/337M degree bearing at 10NM, the clockwise via the SNA 10NM radius to the SNA 360T/346M degree bearing, then south via the SNA 360T/346M degree bearing to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 2000 feet MSL to and including 4400 feet MSL beginning at a point where the SNA 5NM and the SNA 360T/346M degree bearing intersect, then via the SNA 360T/346M degree bearing to the SNA 10NM radius, then via the SNA 10NM radius clockwise to the SLI 075T/060M radial to the LAX 098T/083M radial, then east via the LAX 098T/083M radial to the ELB 004T/350M radial, then south via the ELB 004T/350M radial to the PDZ 230T/215M radial, then southwest via the PDZ230T/215M radial to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 3500 feet MSL to and including 4400 feet MSL beginning northeast of SNA at a point where the SNA 5NM and the PDZ 230T/215M radial intersect, then northeast via the PDZ 230T/215M radial to the ELB 004T/350M radial, then north via the ELB 004T/350M radial, to the LAX 098T/083M radial to POM 157T/142M radial, then south via the POM 157T/142M radial to the ELB 054T/040M radial, then southwest via ELB 054T/040M radial to ELB, then south via the ELB 184T/170M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the POM 185T/170M radial, then north via POM 185T/170M radial to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning. This Class C airspace area is effective during the specific days and hours of operation of the Orange County Tower as established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility directory.

* * * * *

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–1373 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–1]

Proposed Establishment of Class D and Class E4 Airspace; St. Augustine, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace at St. Augustine, FL. A federal contract tower with a weather reporting system is being constructed at the St. Augustine Airport. Therefore, the airport will meet the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the St. Augustine Airport and Class E4 airspace extensions that are 4.8 miles wide and extend 7 miles northwest and southeast of the airport.

DATES: Comments must be received on or before February 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–1, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

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Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace and Class E4 airspace at St. Augustine, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as an extension to a Class D airspace area are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 17.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D St. Augustine, FL [New]

St. Augustine Airport, FL
(Lat. 29°57′33″N, long. 81°20′23″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of St. Augustine Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO FL E4 St. Augustine, FL [New]

St. Augustine Airport, FL
(Lat. 29°57′33″N, long. 81°20′23″W)
St. Augustine VOR/DME, FL
(Lat. 29°57′29″N, long. 81°20′18″W)

That airspace extending upward from the surface within 2.4 miles each side of the St. Augustine VOR/DME 127° and 313° radials, extending from the 4-mile radius to 7 miles northwest and southeast of the VOR/DME. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 14, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–1509 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–30]

Proposed Modification of Class E Airspace; Twentynine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Twentynine Palms, CA. The establishment of a Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 26 SIAP, to Twentynine Palms Airport, Twentynine Palms, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 26 to Twentynine Palms Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Twentynine Palms Airport, Twentynine Palms, CA.

DATES: Comments must be received on or before February 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–30, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AWP–30." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Twentynine Palms, CA. The establishment of a RNAV (GPS) RWY 26 SIAP at Twentynine Palms Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 26 SIAP to Twentynine Palms Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 26 SIAP to Twentynine Palms Airport, Twentynine Palms, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposal regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Twentynine Palms, CA [Revised]

Twentynine Palms Airport, CA
(Lat. 34°07′56″N, long. 115°56′03″W)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of the Twentynine Palms Airport. That airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 34°17′00″N, long. 115°25′03″W.; to lat. 33°28′00″N, long. 115°25′03″W; to lat. 33°28′00″N., long. 116°18′03″W.; to lat. 34°17′00″N., 116°18″03″W., thence to the point of beginning; excluding that airspace within Restricted Areas R–2501E, R–2501S, and R–2507.

* * * * *

Issued in Los Angeles, California, on December 10, 2001.

Stephen Lloyd,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–1375 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA—2000–7122]

RIN 2125–AE88

Discretionary Bridge Candidate Rating Factor

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulation on the discretionary bridge program rating factor in order to incorporate several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. These proposed changes would make the selection process easier for the FHWA to administer and the application process easier for the States to understand. Except for the formula change for defense highway status, these changes only seek to incorporate selection procedures that have been used effectively for many years. In addition, formerly designated defense highway bridges are included in the national highway system designation, so this change would have minimal impact. None of the proposed changes will have an appreciable effect on either program eligibility or the application process.

DATES: Written comments are due on or before March 25, 2002. Comments received after that date will be considered to the extent practicable.

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ADDRESSES: Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington DC 20590, or submit electronically at *http://dms.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e. t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Ernst, Office of Bridge Technology, 202–366–4619, or Mr. Steven Rochlis, Office of the Chief Counsel, 202–366–1395, FHWA, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e. t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

Background

This proposed rule implements 23 U.S.C. 144(g), as amended by sections 1109 and 1311 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (1988). Section 161 of the Surface Transportation Assistance Act of 1982 (STAA), Public Law 97–424, 96 Stat. 2097, at 2135, directed the Secretary of Transportation (Secretary) to establish a rating factor for each discretionary bridge program candidate based on seven specific items. Section 1311 of the TEA–21, as added by Public Law 105–206, 112 Stat. 836 (1998), requires the Secretary to establish criteria for all discretionary programs, including the discretionary bridge program. On November 17, 1983, using the criteria from the STAA, the FHWA published in the **Federal Register** the discretionary bridge regulations (48 FR 52292).

The funding for the discretionary bridge program is derived from contract authority for the bridge program provided in section 1101(a)(3) of the TEA–21. The allocation of the discretionary bridge funding by fiscal year for the discretionary bridge program is codified at 23 U.S.C. 144(g)(1).

These proposed revisions to the regulation propose to include the several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. These changes would:

(1) Require that candidate projects be ready to begin construction in the fiscal year in which funds are available for obligation. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

(2) Allow leveraged funds from local, State, county, or private sources to be used to reduce the total project cost for use in the rating factor formula. Reducing the total project cost with leveraged funds provides an efficient and equitable assessment of the non-federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

(3) Disallow any discretionary allocation to a State that has transferred Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous fiscal year. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

(4) Change the term "D" in the rating factor formula from defense highway status to "N" for national highway system status (NHS). This change is necessary because the defense highways are no longer a recognized national system. The factor "D" originated in section 161 of the STAA of 1982, and data is no longer collected for this item. Using the national highway system status is a reasonable alternative, since the NHS is recognized as the nation's premier highway system in 23 U.S.C. 103, and one criteria in the code is that the NHS "meets national defense requirements." In addition, formerly designated defense highway bridges are included in the national highway system, and this change will have little effect on project rankings or selection.

In light of the events of September 11, 2001, and the heightened awareness of security issues, we have determined that discretionary bridge funds could be used for security improvements on eligible bridges.

Section-by-Section Analysis

Section 650.703 Eligible Projects

Paragraph (b) would be revised to require that only those projects not previously selected which will be ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for funding. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

Paragraph (c) would be added to make any State that has transferred Highway Bridge Replacement and Rehabilitation funds to other fund categories ineligible for following fiscal year funding. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

Section 650.707 Rating Factor

We propose to revise paragraph (b) to change the term "D", "Defense Highway System Status," to "N", "National Highway System Status." This revision will bring the formula in line with the current definition of the Federal-Aid Highway Systems found in 23 U.S.C. 103.

Section 161 of the Surface Transportation Assistance Act of 1982 (STAA) required the Secretary of Transportation to develop a selection process for discretionary bridges authorized to be funded under 23 U.S.C. 144(g). Section 161 further outlined the seven criteria that must be considered in evaluating bridge eligibility. One of these seven criteria was the "defense highway system status."

Created under the Defense Highway Act of 1941 (Pub. L. 77–295, 55 Stat. 765), the Defense Highway System was designed to be a "strategic network of highways that conforms to routes designated on the diagrammatic map of principal highway traffic routes of military importance, dated October 25, 1940, revised to May 15, 1941, and approved by the Secretary of War."

Since the passage of the STAA of 1982, the Defense Highway System is now an element of the National Highway System, created by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914 (1991). Section 1006 of the ISTEA redefined the Federal-aid Highway System to include the Interstate System and the National Highway System. One of the components of the National Highway System is "a strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities of the movement of personnel, materials, and equipment in both peacetime and wartime. The highways may be on or off the Interstate System and shall be designated by the Secretary in consultation with the appropriate Federal agencies and the States." (23 U.S.C. 103 (b)(2)(D)).

In comparing the components that make up the National Highway System to the elements of the former Defense Highway System, the "strategic network of highways" is an essential element of both of these highway systems. Therefore, the elements of the former Defense Highway System make up one of the components of what is now referred to as the National Highway System. Consequently, by proposing to change the definition of the factor "D" in the formula from the Defense Highway System Status to "N" for National Highway System Status, we do not propose to change the original intent of the formula as established in the ISTEA.

Section 650.709 Special Considerations

Paragraph (a) would be revised so that leveraged funds from local, State, county, or private sources may be used to calculate the total project cost to calculate the rating factor. Reducing the total project cost with leveraged funds provides an efficient and equitable assessment of the non-Federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

Paragraph (c) would be revised so that only those continuing projects which will be ready to begin construction in the fiscal year in which funds are available for obligation will be considered for funding. This extends the requirement established in § 650.703(b) so that previously selected projects must be ready for construction to the same extent as new projects. As with new projects, previously selected projects that are not ready for construction tie up Federal funds that can be used for ready-to-build projects.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 nor significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely proposes to amend current regulations. It is not anticipated that these proposed changes would affect the total Federal funding available. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities, such as city and county governments. The modifications are substantially dictated by the statutory provisions of 23 U.S.C. and the TEA–21 and will substantially improve the selection process. Accordingly, the FHWA herby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Comments on these conclusions are welcomed and should be submitted to the docket.

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

The proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

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Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Soil conservation.

Issued on: January 8, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, part 650, subpart G as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. Revise the authority citation for part 650 to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

2. Revise § 650.703(b) and add § 650.703(c) to read as follows:

§ 650.703 Eligible projects.

* * * * *

(b) After February 21, 2002, only candidate bridges not previously selected with a computed rating factor of 100 or less and ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for consideration.

(c) Projects from States that have transferred Highway Bridge Replacement and Rehabilitation funds to other funding categories will not be eligible for funding the following fiscal year.

3. Revise § 650.707(a) and (b) to read as follows:

§ 650.707 Rating factor.

(a) The following formula is to be used in the selection process for ranking discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{SR}{N} \times \frac{TPC}{ADT'} \times \left[1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}}\right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows:

SR is Sufficiency Rating computed as illustrated in appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR=1.0);

ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included);

For load posted bridges, the ADTT furnished should be that which would use the bridge if traffic were not restricted.

The ADTT should be the annual average volume, not peak or seasonal.

N is National Highway System Status

N=1 if not on the National Highway System

N=1.5 if bridge carries a National Highway System road

The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 as of June 30 preceding the date of calculation, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated HBRRP balance is less than $10 million, use zero balance);

TPC is Total Project Cost in millions of dollars;

HBRRP is Highway Bridge Replacement and Rehabilitation Program;

ADT' is ADT plus ADTT.

4. In § 650.709, revise paragraphs (a) and (c) to read as follows:

§ 650.709 Special considerations.

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specifically included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction of less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States which have not previously been allocated discretionary bridge funds. In addition, consideration will be given to candidates with leveraged funds from local, State, county, or private sources, but not from Federal sources. Leveraged funds may be used to reduce the total project cost for use in the rating factor formula.

* * * * *

(c) Priority consideration will be given to the continuation and completion of projects previously begun with discretionary bridge funds which will be ready to begin construction in the fiscal year in which funds are available for obligation.

[FR Doc. 02–1028 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115054–01]

RIN 1545–AY83

Treatment of Community Income for Certain Individuals Not Filing Joint Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of community income under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

DATES: Written or electronically generated comments and requests for a public hearing must be received by April 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–115054–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–115054–01), room 5226, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robin M. Tuczak, 202–622–4940; concerning submissions of comments and requests for a public hearing, Guy Traynor, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by March 25, 2002.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.66–4. An individual who wishes to be relieved of the operation of community property law under § 1.66–4 must request relief from joint and several liability by timely filing Form 8857, "Request for Innocent Spouse Relief" (or other specified form), or a written statement, signed under penalties of perjury, indicating why he or she should be relieved of the operation of community property law. This collection of information is required for an individual to request relief from the operation of community property law. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The burden contained in § 1.66–4 is reflected in the burden of Form 8857.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

For married taxpayers living in community property states, income that is community property under the laws of the state or jurisdiction in which the spouses reside is generally taxed in equal shares to the husband and the wife. Thus, if a husband and wife do not elect to file a joint individual Federal income tax return (joint return) under section 6013, each spouse is generally required to report one-half of the community income on his or her married filing separate individual Federal income tax return (separate return). Section 66 contains four exceptions to the general rule that community income is taxed in equal shares to the husband and the wife.

Section 66(a) provides rules for the treatment of community income when the spouses live apart and do not share income for the entire taxable year. Section 66(b) authorizes the Secretary to disregard community property laws where one spouse is not notified of the nature and amount of items of community income. Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law in certain other cases. This provision is analogous to the relief provision in section 6015(b) relating to joint filers. Section 66(c) also authorizes the

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Secretary to grant equitable relief from the operation of community property laws where the other requirements of section 66(c) are not met. This provision is analogous to the equitable relief provision in section 6015(f) relating to joint filers.

The four exceptions in section 66 apply to community income that spouses receive while they are married. Thus, community income that is received during any taxable year in which the spouses are married at any time during that taxable year, including the taxable year during which the spouses divorce, may be subject, in whole or in part, to the provisions of section 66. If spouses file a joint return for a taxable year, section 66 does not apply to their community income for that taxable year. If a spouse files a joint return with a new spouse in the same year that the spouse divorces his or her former spouse, section 66 may be applicable to any community income of the spouse and former spouse earned prior to their divorce. For rules regarding relief from joint and several liability when a joint return is filed, see section 6015 and the regulations thereunder.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that are necessary to carry out the provisions of section 66.

Explanation of Provisions

Treatment of Community Income Under Section 66(a) Where Spouses Live Apart

Section 879(a) provides that under certain circumstances, community income is taxed to the spouse who earned the income rather than according to community property laws. Under section 66(a), a spouse may report community income in accordance with the rules provided by section 879(a) if the following requirements are satisfied: (1) The spouses must have been married to each other at some time during the calendar year; (2) the spouses must have lived apart at all times during the calendar year; (3) the spouses must not have filed a joint return under section 6013 for a taxable year beginning or ending in the calendar year; (4) at least one of the spouses must have earned income during the taxable year that is community income; and (5) the spouses must not have transferred any of the income (directly or indirectly) to each other before the close of the calendar year. The proposed regulations provide that de minimis amounts are not considered transfers for purposes of section 66(a). In addition, the proposed regulations provide that amounts that are transferred or paid to, or on behalf of, the couple's child are not considered indirect transfers to one spouse merely because such transfers satisfy a support obligation of that spouse. See H.R. Rep. No. 96–1278, 96th Cong., 2d Sess. 7 (1980).

Denial of Benefits of Community Property Law Under Section 66(b) Where Spouse Not Notified of Community Income

Section 66(b) provides the Secretary with the authority to deny the benefits of community property law to a spouse who does not notify the other spouse of the nature and amount of an item of community income and who acts as if solely entitled to such income. The proposed regulations provide that in such a case, the item of community income will be included in the gross income of the spouse for whom the benefits of community property law were denied.

Request for Relief From the Operation of Community Property Law Under Section 66(c)

Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law (specific relief) if: (1) The requesting spouse files a separate return for a taxable year; (2) the requesting spouse does not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse; (3) the requesting spouse establishes that he or she did not know, and had no reason to know, of the item of community income; and (4) taking into account all of the facts and circumstances, it is inequitable to include the item of community income in the gross income of the requesting spouse.

The proposed regulations provide that if a requesting spouse is relieved of the operation of community property law under section 66(c) for an item of community income, the item will be included in the gross income of the nonrequesting spouse, and not in the gross income of the requesting spouse. In addition, the proposed regulations provide that when a requesting spouse is granted relief from the operation of community property law under section 66(c), community income will be treated in accordance with the rules provided by section 879(a). The proposed regulations also provide that relief under section 66(c) is not available if one spouse transferred assets to the other spouse as part of a fraudulent scheme, or if the requesting spouse signed a closing agreement or offer in compromise for the taxable year for which relief from the operation of community property law is sought.

Request for Equitable Relief Under Section 66(c)

Section 66(c) also authorizes the Secretary to grant equitable relief from the operation of community property law to requesting spouses who do not otherwise meet the qualifications for relief set forth in section 66(c). This provision, which was added by section 3201(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, is only available for liabilities that were unpaid as of July 22, 1998, or that arise after July 22, 1998.

Section 66(c) directs the Secretary to prescribe procedures regarding when equitable relief may be granted. Such procedures are detailed in Revenue Procedure 2000–15 (2000–1 C.B. 447). The proposed regulations provide general information on the equitable relief provision in section 66(c) and refer individuals seeking more detailed guidance to the relevant revenue rulings, revenue procedures, or other published guidance issued on this topic.

Time and Manner of Requesting Relief

Under the proposed regulations, a spouse seeking specific relief from the operation of community property law under section 66(c) generally may only seek relief after a deficiency for such year has been asserted. A deficiency is considered "asserted" on the date that the requesting spouse either receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year.

The requesting spouse must notify the Secretary of the spouse's request for treatment under section 66(c) in a timely manner so that the Secretary can assess the tax on the community income against the nonrequesting spouse before the statute of limitations on making such an assessment under section 6501 expires. Thus, the proposed regulations provide that a requesting spouse seeking relief from the operation of community property law under section 66(c) must request such relief no later than 6 months before the statute of limitations on assessment of section 6501 expires with regard to the nonrequesting spouse. The proposed regulations further provide that if the examination of the requesting spouse's return commences during that 6 month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

A spouse seeking equitable relief from the operation of community property law under section 66(c) for a liability that was properly reported but not paid may seek relief on or after the date the return for such year is filed.

In order to request either specific or equitable relief from the operation of community property law under section 66(c), the requesting spouse must file Form 8857, "Request for Innocent Spouse Relief" (or other specified form), or a written statement, signed under penalties of perjury, with the Secretary indicating why such treatment or relief is appropriate. The statement must also include the name of the nonrequesting spouse and the taxpayer identification number of the nonrequesting spouse, as well as any other information reasonably requested by the Secretary that will help the Secretary identify and locate the nonrequesting spouse.

Interests of the Nonrequesting Spouse

The legislative history of section 6015 indicates that the Secretary must consider the nonrequesting spouse's views when making a determination of relief from joint liability under that section. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 251, 255 (1998). Because the liability of the requesting spouse under section 66 will shift from the requesting spouse to the nonrequesting spouse, notification and participation requirements similar to those in section 6015 are appropriate for section 66 cases. In addition, information provided by a nonrequesting spouse may help to determine the appropriate amount of relief, if any.

The proposed regulations provide that the Secretary must notify the nonrequesting spouse of the requesting spouse's claim for relief and provide the nonrequesting spouse with an opportunity to participate in the administrative determination of whether relief is appropriate. The nonrequesting spouse may submit relevant information to the IRS employee making the determination.

In fashioning rules regarding the notification and participation of the nonrequesting spouse, the IRS and Treasury Department attempted to balance the rights and interests of both the requesting spouse and the nonrequesting spouse. The IRS and Treasury Department recognize that some spouses may be reluctant to apply for relief from the operation of community property law, or submit information regarding the other spouse's request for relief, due to privacy concerns or for fear of reprisal by the other spouse. To address this concern, the Internal Revenue Manual provides that the Service will omit from shared documents any information that could reasonably identify a spouse's location.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations, and on how the proposed regulations can be made easier to understand. Although public comment is sought on all of the issues in the proposed regulations, the IRS and Treasury Department are particularly interested in receiving comments on the timing limitations that would be imposed on a request for relief under § 1.66–4(g)(2). All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the regulations are Robin M. Tuczak and Bridget E. Finkenaur of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.66–4 also issued under 26 U.S.C. 66(c). * * *

Par. 2. Sections 1.66–1 through 1.66–5 are added to read as follows:

§ 1.66–1 Treatment of community income.

(a) *In general.* Married individuals in community property states who do not elect to file a joint individual Federal income tax return under section 6013 generally are required to report one-half of the total community income earned by the spouses during the taxable year unless one of the following exceptions applies:

(1) When the spouses live apart and meet the qualifications of § 1.66–2.

(2) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66–3, because the nonrequesting spouse failed to notify the requesting spouse of the nature and amount of the income prior to the due date for filing the return.

(3) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66–4(a).

(4) When a requesting spouse qualifies for equitable relief from the operation of community property law under § 1.66–4(b).

(b) *Marital status.* The rules of this section apply to the community income earned during a marriage for any taxable year beginning or ending during a calendar year in which the spouses are married, including the calendar year in which the spouses divorce. Section 66 does not apply to income earned after the spouses divorce.

(c) *Transferee liability.* The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to income tax on community income under § 1.66–2 or 1.66–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

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§ 1.66–2 Treatment of community income where spouses live apart.

(a) Income of spouses residing in a community property state will be treated in accordance with the rules provided by section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;

(3) The spouses each file a separate Federal income tax return for a taxable year beginning or ending in the calendar year on which the taxpayer reports his or her income in accordance with section 66(a);

(4) One or both spouses have earned income for the calendar year which is community income and which was earned during the spouses' marriage; and

(5) No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the taxable year.

(b) *Transferred income.* For purposes of this section, transferred income does not include a de minimis amount of earned income that is transferred between the spouses. In addition, any amount of earned income transferred or paid to, or for the benefit of, the spouses' child will not be treated as an indirect transfer to one spouse solely because the payment or transfer satisfies an obligation of support imposed on that spouse.

§ 1.66–3 Denial of benefits of community property law where spouse not notified.

The Secretary may deny the benefits of community property law to any spouse with respect to any item of community income if that spouse acted as if he or she was solely entitled to the item of income and failed to notify the other spouse of the nature and amount of the income before the due date (including extensions) for filing the return for the taxable year in which the income was derived. Such item of community income will be included, in its entirety, in the gross income of the spouse for whom the benefits of community property law were denied. The tax liability arising from such item of community income must be assessed in accordance with section 6212 against the spouse for whom the benefits of community property law were denied.

§ 1.66–4 Request for relief from the operation of community property law.

(a) *Specific relief*—(1) *In general.* A requesting spouse will be relieved of the operation of community property law for an item of community income if—

(i) The requesting spouse filed a separate return for the taxable year for which relief is sought;

(ii) The requesting spouse did not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse;

(iii) The requesting spouse establishes that he or she did not know of, and had no reason to know of, such item of community income; and

(iv) Taking into account all of the facts and circumstances, it is inequitable to include such item of community income in the requesting spouse's individual gross income.

(2) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she either actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(3) *Inequitable.* All of the facts and circumstances are also considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the omitted income. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For more information on factors relevant to determining whether it is inequitable to hold a requesting spouse liable, see Revenue Procedure 2000–15 (2000–1 C.B. 447), or other guidance subsequently published by the Secretary. Relief under this paragraph (a) only applies to deficiencies arising out of items of omitted income.

(b) *Equitable relief.* Equitable relief may be available when the four requirements of paragraph (a) of this section are not satisfied but it would be inequitable to include the item of community income in the requesting spouse's gross income. For the criteria to be used in making a determination under this paragraph, see Revenue Procedure 2000–15 (2000–1 C.B. 447), and other guidance subsequently published by the Secretary. Relief under this paragraph (b) applies only to deficiencies arising out of items of omitted income or any unpaid tax arising from community income attributable to the nonrequesting spouse and is only available for liabilities that were unpaid as of July 22, 1998, and for liabilities that arise after July 22, 1998.

(c) *Effect of relief.* (1) When the requesting spouse qualifies for relief under paragraph (a) or (b) of this section, the item of community income will be included in the nonrequesting spouse's individual gross income and will not be included in the requesting spouse's individual gross income. The tax liability arising from such item of community income must be assessed against the nonrequesting spouse in accordance with section 6212.

(2) If a requesting spouse is granted relief from the operation of community property law with respect to an item of community income under paragraph (a) or (b) of this section, any community income of the spouses will be treated in accordance with the rules provided by section 879(a). Thus, if a requesting spouse is granted relief under paragraph (a) or (b) of this section, any item of community income that is attributable to the requesting spouse will be included, in its entirety, in the requesting spouse's gross income for such taxable year, and will not be included in the nonrequesting spouse's gross income for such taxable year. If additional tax were to result upon granting relief under this section, the requesting spouse may withdraw his or her request for relief.

(3) *Example.* The following example illustrates the rule of this paragraph (c):

Example. H and W are married and live in State Z (a community property state). Both H and W file returns for taxable year 2002 as "married filing separately" on April 15, 2003. H earns $56,000 in wages, and W earns $46,000 in wages in 2002. H reports half of his wage income as shown on his Form W–2, in the amount of $28,000, and half of W's wage income as shown on her Form W–2, in the amount of $23,000. W reports half of her wage income as shown on her W–2, in the amount of $23,000, and half of H's wage income as shown on his Form W–2, in the amount of $28,000. Neither H nor W reports W's income from her sole proprietorship of $34,000 or W's investment income of $5,000 for taxable year 2002. The Internal Revenue Service proposes deficiencies with respect to H's and W's taxable year 2002 returns due to the omission of W's income from her sole proprietorship and investments. H timely files a claim for relief under section 66(c). Because the Internal Revenue Service determines that H satisfies the four requirements of section 66(c) with respect to W's omitted income, the Internal Revenue Service grants H's claim for relief. Thus, the income of H and W will be treated in accordance with the rules provided by section 879(a). H is liable for the tax on his earned income, as shown on his Form W–2, in the amount of $56,000. (See section 879(a)(1).) W is liable for the tax on her earned income, as shown on her Form W–2, in the amount of $46,000, and on the trade or business income from her sole proprietorship, in the amount of $34,000. (See section 879(a)(1) and (2).) W's investment income will be treated as provided under the community property laws of State Z. (See section 879(a)(3) and (4).)

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under this section. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Secretary or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who does not file a joint individual Federal income tax return with the nonrequesting spouse for the taxable year in question, and who requests relief from the operation of community property law under this section for the portion of the liability arising from his or her share of community income for such taxable year.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual to whom the requesting spouse was married when the community income which gave rise to the claim for relief was earned.

(f) *Effect of prior closing agreement or offer in compromise.* A requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into a closing agreement (other than an agreement entered into pursuant to section 6224(c) relating to partnership items) with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(g) *Time and manner for requesting relief*—(1) *Requesting relief.* To request relief from the operation of community property law under this section, a requesting spouse must file, within the time period prescribed in paragraph (g)(2) of this section, Form 8857, "Request for Innocent Spouse Relief" (or other specified form), or other written request, signed under penalties of perjury, indicating why such relief is appropriate. The requesting spouse must include the nonrequesting spouse's name and taxpayer identification number in the written request. The requesting spouse must also comply with any of the Secretary's reasonable requests for information that will assist the Secretary in identifying and locating the nonrequesting spouse.

(2) *Time period for filing a request for relief*—(i) *Specific relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (a) of this section for an amount that was underreported on, or omitted from, the requesting spouse's separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. The latest time for requesting relief under paragraph (a) of this section is 6 months before the expiration of the statute of limitations on assessment, including extensions, against the nonrequesting spouse for the taxable year that is the subject of the claim for relief, unless the examination of the requesting spouse's return commences during that 6-month period. If the examination of the requesting spouse's return commences during that 6-month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

(ii) *Equitable relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (b) of this section for an amount that was underreported on, or omitted from, the requesting spouse's separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. Requests for equitable relief from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid may be submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed.

(iii) *Premature requests for relief.* (A) The Secretary will not consider premature claims for relief under this section. In the case of a claim for specific relief, a premature claim is a claim for relief from an item of community income that is omitted from the requesting spouse's individual Federal income tax return that is filed for a taxable year prior to the date that a deficiency for such year is asserted. A deficiency is considered asserted as of the date the requesting spouse receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings.

(B) In the case of a claim for equitable relief, a premature claim is a claim for relief from an item of community income that is received prior to the date that the requesting spouse files an individual Federal income tax return for the taxable year in question.

(h) *Nonrequesting spouse's notice and opportunity to participate in administrative proceedings*—(1) *In general.* When the Secretary receives a request for relief from the operation of community property law under this section, the Secretary must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting

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spouse should be granted relief from the operation of community property law. The Secretary will share with both spouses the information submitted by the other spouse, unless the Secretary determines that the sharing of such information will impair tax administration.

(2) *Information submitted.* The Secretary will consider all of the information (as relevant to the particular relief provision) that the nonrequesting spouse submits in determining whether relief from the operation of community property law under this section is appropriate.

§ 1.66–5 Effective date.

Sections 1.66–1 through 1.66–4 are applicable on the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–1385 Filed 1–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; notice of open meeting.

SUMMARY: The Occupational Safety and Health Administration announces a meeting of the Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee. OSHA invites all interested persons to attend. The committee members represent groups interested in, or significantly affected by, the outcome of the rulemaking. They include representatives of shipyards, labor unions, professional associations, and government agencies. The committee will continue its discussions on a proposed standard to protect workers from fire hazards in shipyard employment, including the following areas: scope and application; administrative, engineering, and work practice controls; fire brigades; written fire plans; technological advances; cost of fire protection; and the content of appendices. The committee's goal is to reach consensus on a draft proposed standard and explanatory preamble that it will recommend to OSHA.

DATES: The meeting will take place Tuesday and Wednesday, February 5–6, 2002 from 8 a.m. to about 4 p.m. daily, and Thursday, February 7, 2002 from 8 a.m. to 12 p.m. Submit comments, requests for oral presentations, and requests for disability accommodations by January 31, 2002.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport, 8181 Airport Blvd., Houston TX 77061 (713) 645–3000. Mail comments and requests for oral presentations to U.S. Department of Labor, OSHA, Mr. Joseph V. Daddura (Acting Director) Office of Maritime Standards, 200 Constitution Avenue, NW., Room N–3609, Washington, DC 20210 or e-mail at *joe.daddura@osha.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph V. Daddura (Acting Director) Office of Maritime Standards, OSHA (202 693–2067) or e-mail at *joe.daddura@osha.gov*. For disability accommodations, contact Ms. Theda Kenney (202 693–2044).

SUPPLEMENTARY INFORMATION:

Meeting Agenda

The Committee will review a working draft of the regulatory text of proposed subpart P of 29 CFR 1915 and a preamble section entitled "Summary and Explanation", which reflects the Committee's earlier work; as well as a summary of the industry profile, prepared by OSHA based on information received at earlier Committee meetings. The committee will attempt to resolve any substantive discrepancies that remain in contention, giving special consideration to small business concerns.

Public Participation

Send written comments, data, views, or statements for the Committee's consideration to Mr. Joseph V. Daddura. You may also request the opportunity to make an oral presentation to the committee by providing Mr. Daddura with a summary of the proposed presentation, an estimate of the time desired, and a statement of the interest you represent. The committee's facilitator will allow such presentations if there is adequate time in the meeting schedule.

Authority: This document is issued pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 et seq.) and Section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1589 Filed 1–17–02; 1:40 pm]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7130–9]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions for OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before February 21, 2002.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXIV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXIV.

This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXIV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXIV, Environmental Protection agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125.

I. Background information

A. Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What rule revisions were submitted to update 40 CFR part 55?

1. After review of the rule submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to sources for which the Santa Barbara County APCD is designated as the COA:

Rule #	Rule Name	Adoption Date
325	Crude Oil Production and Separations	7/19/01

2. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the South Coast AQMD is designated as the COA (**Note:** No requirements that are not related to the attainment and maintenance of federal and state ambient air quality standards will be incorporated to regulate toxics):

Rule #	Rule Names	Adoption Date
301	Permitting and Associated Fees (except (e)(7)) and Table IV	5/11/01
304	Equipment, Materials, and Ambient Air Analyses	5/11/01
304.1	Analyses Fee	5/11/01
306	Plan Fees	5/11/01
309	Fees for Regulation XVI	5/11/01
1125	Metal Container, Closure, and Coil Coating Operations	1/13/95
1303	Requirements	4/20/01
2000	General	5/11/01
2002	Allocations for Oxides of Nitrogen (Nox) and Oxides of Sulfur (Sox)	5/11/01
2004	Requirements (except 1)	5/11/01
2005	New Source Review for RECLAIM (except i)	4/20/01

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

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Rule #	Rule Names	Adoption Date
2006	Permits	5/11/01
2007	Trading Requirements	5/11/01
2010	Administrative Remedies and Sanctions	5/11/01
2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (Sox).	5/11/01
2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (Nox) Emissions.	5/11/01
2015	Backstop Provisions (b)(1)(G) and (b)(3)(B)	5/11/01
Reg. IX	Standards of Performance for New Stationary Sources (NSPS)	5/11/01
Reg. X	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	5/11/01

The following new rule was submitted:

Rule #	Rule Name	Adoption Date
2020	RECLAIM Reserve	5/11/01

The following rule was submitted but will not be incorporated because it is an administrative or procedural rule:

Rule #	Rule Name	Adoption Date
1309.1	Priority Reserve	4/20/01

The following rules have been rescinded by the District and will be removed from South Coast AQMD requirements applicable to apply to OCS sources:

Rule #	Rule Name	Rescinded Date
704	Episode Declaration	9/08/95
707	Radio-Communication System	9/08/95
708.1	Stationary Sources Required To File Plans	9/08/95
708.2	Content of Stationary Source Curtailment Plans	9/08/95
708.4	Procedural Requirements for Plans	9/08/95
709	First-Stage Episode Actions	9/08/95
710	Second-Stage Episode Actions	9/08/95
711	Third-Stage Episode Actions	9/08/95
712	Sulfate Episode Actions	9/08/95
715	Burning of Fossil Fuel on Episode Days	9/08/95

3. After review of the rule submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule #	Rule Name	Adoption Date
33.1	Part 70 Permits—Definitions	4/10/01
33.2	Part 70 Permits—Application Contents	4/01/01
33.3	Part 70 Permits—Permit Content	4/01/01
33.4	Part 70 Permits—Operational Flexibility	4/01/01
33.7	Part 70 Permits—Notification	4/01/01
33.9	Part 70 Permits—Compliance Provisions	4/01/01
42	Permit Fees	4/01/01
72	New Source Performance Standards (NSPS)	4/01/01
73	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	4/01/01
74.23	Stationary Gas Turbines	6/12/01

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because consistency updates do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant action under Executive Order 12866.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

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Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F), (G) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

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Appendix to Part 55—[Amended]

3. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (b)(6), (7) and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

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California

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(b) Local requirements.

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(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 7/19/01)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted1/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 1/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/18/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1, and D only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/01/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Parts I, II and III):

Rule 102 Definition of Terms (Adopted 4/9/99)
Rule 103 Definition of Geographaical Areas (Adopted 1/9/76)
Rule 104 Reporting of source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice of Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standard for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)

Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adoopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 9/11/98)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Regulation IX New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emissions Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/17/00)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 5/14/99)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (Adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Tubines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive and Sealant Applications (Adopted 9/15/00)
Rule 1171 Solvent Cleaning Operations (Adopted 10/8/99)
Rule 1173 Fugtive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 10/20/00)
Rule 1303 Requirements (Adopted 4/20/01)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 10/20/00)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)

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Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 04/10/01)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 8/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 6/12/01)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

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[FR Doc. 02–1497 Filed 1–18–02; 8:45 am]
BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest; California; Treatment Unit-1 Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service intends to prepare an environmental impact statement to analyze and disclose the environmental effects of implementing resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones and group selection harvests on the Almanor Ranger District on the Lassen National Forest. These land management activities would also be included in an administrative study to evaluate the effects that they may have on the California spotted owl. The construction of defensible fuel profile zones, and group selection harvests, are two management activities that are part of a five-year pilot project to test and demonstrate the effectiveness of certain resource management activities designed to meet ecologic, economic, and fuel reduction objectives described in the Herger-Feinstein Quincy Library Group Forest Recovery Act of October 21, 1998. The Record of Decision (January 12, 2001) for the Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement directed the Pacific Southwest Research Station in collaboration with Region 5 monitoring personnel and the staffs of the National Forests in the Sierra Nevada to establish the Administrative Study. Treatment Unit-1 is one of eleven proposed administrative study areas.

DATES: Comments concerning the scope of the analysis should be received in writing on, or before February 19, 2002.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Almanor District Ranger, P.O. Box 767, Chester, CA 96020.

FOR FURTHER INFORMATION CONTACT: Dominic Cesmat, Interdisciplinary Team Leader, telephone: (530) 258–2141.

SUPPLEMENTARY INFORMATION:

Proposed Action

To accomplish the purpose of the administrative study, resource management activities included in the proposed Treatment Unit-1 Project are defensible fuel profile zone (DFPZ) construction, group selection harvests, the construction and maintenance of National Forest system roads, and the construction of temporary roads. The construction and maintenance of roads are needed to provide access to treatment areas. Road decommissioning of some system roads and all temporary roads would also be employed.

The analysis area is located in the Butte Creek, Jonesville, Philbrook, and Soda Ridge Management Areas (MA 37, 44, 46, and 45 respectively) on the Almanor Ranger District of the Lassen National Forest, and in the North Fork and Rich Management Areas (MA 19 and 20 respectively) on the Plumas National Forest. The analysis area contains approximately 58,300 acres of National Forest System land and approximately 11,300 acres of private land.

The proposed project is located in Butte, Plumas, and Tehama Counties, California. On the Almanor Range District of the Lassen National Forest, the project is located in all or portions of: Sections 1–3, 10–15, T.25N., R.4E.; Sections 2–10, 15–18, 20, 21, T.25N., R.5E.; Sections 1–4, 10–14, 24, 25, 35, 36, T.26N., R.4E.; Sections 1–23, 26–35, T.26N., R.5E.; Sections 1–11, 14–18, 20–27, 36, T.26N., R.6E.; Sections 6, 30, 31, T.26N., R.7E.; Sections 33–36, T.27N., R.4E.; Sections 10–36, T.27N., R.5E.; Sections 7, 14–36, T.27N., R.6E.; and Sections 30, 31, T.27N., R.7E., MDM. On the Mount Hough Ranger District of the Plumas National Forest, the project is located in all or portions of: Section 36, T.26N., R.6E.; and Section 31, T.26N., R.7E., MDM.

The Treatment Unit-1 Project area contains two of the five sub networks established to implement a DFPZ network on the Almanor Ranger District. The purpose of DFPZs in this area is to reduce the number of acres that would be burned by high-intensity stand-replacing fires. DFPZs are needed in this area in order to improve suppression efficiency by creating an environment where wildfires would burn at lower intensities and where fire fighting production rates would be increased. DFPZs are strategically located strips of land on which forest fuels, both living and dead, have been modified in order to reduce the potential for a sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Fuels treatment strategies would focus on the alteration or reduction of surface fuels, ladder fuels, and canopy closure in order to effectively alter fire behavior and severity. Treatment methods would include thinning timbered stands, hand or machine piling of excessive forest fuels, and prescribed fire. The Treatment Unit-1 Project proposes to construct 11,400 acres of DFPZs.

Group selection harvests would be implemented to promote diversity in stand age and structure. Group selection would be implemented on an estimated 2,600 acres within the Treatment Unit-1 Project area.

The proposed action includes constructing and maintaining National Forest system roads and constructing temporary roads to provide access to treatment areas. Road decommissioning of some system roads and all temporary roads would also be employed. Some existing roads would be used to access treatment areas before decommissioning. Approximately up to eight water sources would be developed. These road treatments would include (road miles are approximate): (a) New road construction (24 miles); (b) road maintenance (13 miles); (c) temporary road construction (4 miles); and (d) road decommissioning (13 miles).

Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) to meet the purpose and need for action through some other combination of activities; or (3) take no action at this time.

The Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement Record of Decision provides for variances from the standards and guidelines in the Land and Resource Management Plan to test hypotheses in a scientifically structured manner as long as they were a part of

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a formal adaptive management research project or administrative study, done in conjunction with the Pacific Southwest Research Station. The proposed actions as outlined for this project are in conjunction with the Lassen/Plumas Administrative Study and are therefore permissible without further plan amendment. These variances are needed to present additional contrast necessary for the Study, to increase the chance of invoking a range of response, and to describe a land base suitable for group selection. Variances include adjusting diameter and canopy cover limits as identified in the Study and to adjust HFQLG area available for group selection as identified in the Study.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. Forest Supervisor Ed Cole is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

Comments from the public and other agencies will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Identification of Permits or Licenses Required

The need for several road easements, both permanent and temporary, has been identified to implement the proposed action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in the spring or summer of 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**.

The Reviewers Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 10, 2002.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–1444 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Mobile, Alabama, February 7–9, 2002. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 7–9, 2002. A tour of local projects will be held on February 7 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Mobile Marriott, 3101 Airport Blvd., Mobile, Alabama. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370. Individuals also may fax their names and proposed agenda items to (209) 536–9089.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements wish the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 1 will have the opportunity to address the Council at those sessions.

Dated: January 8, 2002.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 02–1408 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, January 30, at the Water Resources Education Center, located at 4600 SE Columbia Way, Vancouver, Washington. The meeting will begin at 10 a.m. and continue until 4 p.m. The purpose of the meeting is to: (1) Be briefed about the Memorandum of Agreement with Washington State Department of Ecology and the Roads Analysis, (2) Share information among committee members, and (3) Provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: January 11, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–1418 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 25, 2002.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: Accounting Requirements for Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Type of Request: Revision of a currently approved collection.

Abstract: RUS is proposing to revise record retention requirements for its Electric and Telecommunications borrowers more in line with standard industry practices. Three areas that we consider to be industry practice but will be specifically addressed are:

- Establishment and maintenance of an index of accounts.
- Retention of loan fund records until they are audited by RUS, generally three years or less.
- Retention of plant records for 25 years or the life of the plant plus ten years, this being necessary to support depreciation and amortization schedules.

RUS contends that this is the minimum record retention requirements needed to carry out its due diligence responsibilities in loan underwriting and maintaining loan security.

RUS borrowers should understand that they may be subject to additional record retention requirements imposed by other regulatory authorities such as FERC, FCC, state commissions and IRS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,660.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Hours per Recordkeeper: 36 hours.

Estimated Total Annual Burden on Respondents: 3,320 hours.

Estimated Total Annual Burden on Recordkeepers: 29,653 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 14, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1479 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or Marin Weaver at (202) 482–2336, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary

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month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2000, through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard Carreau,

Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 02–1518 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon from Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Amber Musser at (202) 482–3003 or (202) 482–1777, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2000, through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 02–1519 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATES: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0408.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Background

On June 11, 2001, the Department published a notice of initiation of the administrative review of the antidumping duty order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan, covering the period June 1, 2000 through May 31, 2001 (66 FR 31203). The preliminary results are currently due no later than March 1, 2002.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) This review involves certain complex United States indirect selling expenses including, but not limited to, financial statements and interest expenses; (2) this review involves certain complex Constructed Export Price (CEP) adjustments including, but not limited to, CEP profit and CEP offset; (3) this review involves certain complex warehouse expenses in the United States including, but not limited to, inland freight and inventory.

Because it is not practicable to complete this review within the time specified, we are extending the time limit for the preliminary results of the administrative review of stainless steel butt-weld pipe fittings from Taiwan by 120 days, in accordance with section 751(a)(3)(A) of the Act.

The deadline for issuing the preliminary results is extended from March 1, 2002 to June 29, 2002. Because this date falls on a weekend, the Department will issue its preliminary results on July 1, 2002.

Dated: January 14, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–1520 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Federal Highway Administration Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Buildng, 1099 14th Street, NW, Washington, DC.

Docket Number: 01–018. *Applicant:* Federal Highway Administration, McLean, VA 22101–2296. *Instrument:* Automated Ultrasonic Inspection System, Model P-scan 4 Lite. *Manufacturer:* Force Institute, Denmark. *Intended Use: See* notice at 66 FR 55913, November 5, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) An extra degree of freedom allowing rotation of the transducer and three-dimensional representation of the defect in a weld, (2) automated operation and (3) a unique software/hardware configuration to optimize use by the operator and system performance in the field. A domestic manufacturer of similar equipment advised January 10, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Director, Statutory Import Programs Staff.

[FR Doc. 02–1521 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122801A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization to take several species of marine mammals incidental to operation of a low frequency sound source by the North Pacific Acoustic Laboratory (NPAL) was issued on January 15, 2002, to the University of California San Diego, Scripps Institution of Oceanography (Scripps).

DATES: This letter of authorization is effective from January 15, 2002, through January 1, 2003.

ADDRESSES: The application and letter is available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ≥taking≥ means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to operation of a low frequency sound source by NPAL, were published on August 17, 2001 (66 FR 43442), and remain in effect until September 17, 2006.

Issuance of the letter of authorization to Scripps is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and Letter of Authorization (LOA), including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements

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and receipt of reports required by the LOA.

Dated: January 15, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1529 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402F]

North Pacific Fishery Management Council; Notice of Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held February 4–12, 2002, in Anchorage, AK. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone 907–271–2809.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, and Agendas

The Council's Advisory Panel will begin at 8 a.m. Monday, February 4, and continue through Friday, February 8, 2002.

The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 4, and continue through Wednesday, February 6, 2002.

The Joint Protocol Committee for the Council and Alaska Board of Fisheries will meet from Noon until 5 p.m. on Monday, February 4, 2002.

The full Council and Board will meet from 8 a.m. until 5 p.m. on February 5, 2002.

The Council will begin its plenary session at 8 a.m. on Wednesday, February 6, continuing through Tuesday, February 12, 2002.

All meetings are open to the public except executive sessions. An Executive Session of the Council has been scheduled during the lunch hour on Wednesday, February 6, 2002 to discuss personnel issues.

Joint Board/Council Meeting: The agenda will include the following issues of mutual interest to the Board and Council:

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:
(a) Executive Director's Report.
(b) State Fisheries Report by Alaska Dept. of Fish and Game.
(c) National Marine Fisheries Service Management Report.
(d)Enforcement and Surveillance reports by NMFS and the U.S. Coast Guard.
(e) Annual meeting report from the International Pacific Halibut Commission.
(f) Presentation of results of sea lion research on eastside of Kodiak Island.
(g) Status report on an amendment to the Community Development Quota Program policies.
(h) World Wildlife Fund report on Russian Far East fisheries.

2. Programmatic Groundfish Supplementary Environmental Impact Statement (SEIS): The Council will approve alternatives for analysis and provide direction to the Ecosystem Committee regarding involvement in the process.

3. Essential Fish Habitat: Receive a progress report and discuss alternatives for mitigating fisheries impact; provide direction to staff.

4. Halibut/Sablefish Individual Fishing Quota Program: Review Committee report: review of an amendment of alternatives for community purchase of quota shares. Provide direction to staff.

5. Gulf of Alaska Groundfish Rationalization: Review staff discussion paper and provide direction.

6. Bering Sea/Aleutian Island Crab Rationalization:
(a) Initial review of amendment analysis.
(b) Discuss the environmental impact statement for the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan and potential alternatives. Provide direction to staff.

7. American Fisheries Act (AFA):
(a) Review final pollock co-op reports for 2001.
(b) Review final AFA report to Congress.
(c) Initial review of an amendment to relax single geographic location restrictions for floating processors (if analysis is available).

8. Observer Program:
(a) Review Committee report.
(b) Initial review of regulatory amendment package.
(c)Discuss status of long-term program adjustments.

9. Discuss amendment for additional Steller Sea Lion protection measures and provide direction to staff.

10. Salmon Bycatch:
(a) Review general information on impacts of Steller sea lion protection measures on salmon bycatch.
(b) Review discussion paper on Gulf of Alaska salmon bycatch, if available.

11. Review research priorities.

12. Groundfish Management:
(a) Develop problem statement and provide staff direction for differential gear impact analysis.
(b) Review information and discussion paper on license limitation recency issues.
(c) Discuss independent review of the Council's F_{40} harvest strategy.
(d) Review discussion paper on disclosure of catch and bycatch information (if paper available).

13. Staff Tasking:
(a) Review existing tasking and provide direction as necessary.
(b) Review NMFS initiative for mandatory data collection.

Scientific and Statistical Committee: The SSC agenda will include the following issues:

1. Groundfish SEIS: (Item #2 on the Council agenda)
2. Essential Fish Habitat (Item #3 on the Council agenda)
3. Bering Sea and Aleutian Islands Crab Rationalization (Item #6 on the Council agenda)
4. Observer Program Issues (Item #8 on the Council agenda)
5. Research priorities (#11 on the Council agenda)
6. Independent review of the Council's F_{40} harvest strategy (Item #12(c) on the Council agenda)

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council, with the exception of the Reports under Items 1 and 11 of the Council agenda.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 16, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1532 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090297A]

Endangered and Threatened Species; Amendment to Permit 1056

AGENCY: National Marine Fisheries Service (NMFS), Commerce.

ACTION: Issuance of an amendment to scientific research permit 1056.

SUMMARY: NMFS has issued a permit amendment to the Fish Ecology Division of the Northwest Fisheries Science Center, NMFS, at Seattle, WA (NWFSC).

DATES: Written comments on the amended permit application must be received no later than 5 p.m. Pacific standard time on February 21, 2002.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR (503–230–5424; fax: 503–230–5435; e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION: The following species and evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated, Snake River (SnR) spring/summer.

Permit Amendment Issued

Permit 1056 authorizes NWFSC annual takes of adult and juvenile, threatened, naturally produced and artificially propagated SnR spring/summer chinook salmon. These takes are associated with two scientific research studies conducted in various tributaries of the Salmon River in Idaho, the Grande Ronde River in Oregon, and the Imnaha River in Oregon. The objective of Study 1 is to characterize the run-timing of naturally produced chinook salmon over a period of years to determine whether consistent patterns are apparent and to use this information for real-time management decisions regarding water allocation during the smolt outmigrations. The long-term objectives of Study 2 are to monitor the nature and extent of genetic change over time in supplemented and unsupplemented populations and to correlate the genetic changes with measures of productivity. For the permit amendment, permit 1056 has been extended to expire on April 30, 2002. Permit 1056 was due to expire on December 31, 2001. The extension is necessary to allow NWFSC scientists to continue their research activities in 2002 while NMFS completes a new section 7 consultation on the issuance of ESA section 10(a)(1)(A) permits for takes of threatened SnR spring/summer chinook salmon for scientific research purposes.

Dated: January 15, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1530 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081298B]

Endangered and Threatened Species; Withdrawal of Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Withdrawal of a scientific research permit application (1169).

SUMMARY: NMFS has received notice from the United States Forest Service, Mt. Hood National Forest in Sandy, OR (MHNF), to withdraw its application for a permit for take of an Endangered Species Act (ESA) - listed species associated with scientific research.

ADDRESSES: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400).

FOR FURTHER INFORMATION CONTACT: Leslie Schaeffer, Portland, OR (503–230–5424, fax: 503–230–5435, e-mail: leslie.schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION: The following ESA-listed species and evolutionarily significant unit (ESU) is covered in this notice:

Steelhead (Oncorhynchus mykiss): threatened lower Columbia River (LCR).

Permit Application Withdrawn

Notice was published on August 27, 1998 (63 FR 45799) that MHNF applied for a scientific research permit under section 10(a)(1)(A) of the ESA. The permit was requested for take of adult and juvenile, threatened, LCR steelhead associated with four routine fish distribution and monitoring research studies. At the time the permit was requested, protective regulations for threatened LCR steelhead under section 4(d) of the ESA had not been promulgated by NMFS. After the protective regulations for threatened LCR steelhead were established (see 65 FR 42422, July 10, 2000), NMFS determined that MHNF take of LCR steelhead associated with the proposed scientific research in the MHNF would best be handled under Oregon Department of Fish and Wildlife's scientific research take limit under their 4(d) rule for that species. As such, on August 27, 2001, MHNF notified NMFS to withdraw its permit application from consideration.

Dated: January, 15, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1531 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0013, Exemptions From Speculative Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from speculative limits.

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DATES: Comments must be submitted on or before March 25, 2002.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Exemptions from Speculative Limits, OMB control number 3038–0013—Extension

Section 4a(1) of the Commodity Exchange Act (Act) allows the Commission to set speculative limits in any commodity for futures delivery in order to prevent excessive speculation. Certain sections of the Act and/or the Commission's Regulations allow exemptions from the speculative limits for persons using the market for hedging and, under certain circumstances, for commodity pool operators and similar traders. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
17 CFR 147, 1.48, Part 150	12	12	3.0	36

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: January 15, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1422 Filed 1–18–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m, Friday, February 1, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1625 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 8, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1626 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 15, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1627 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 22, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1628 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Training for Future Conflict will meet in closed session on February 14–15, 2002, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA; and April 8–10, 2002 location to be determined. This Task Force will focus on identifying and characterizing what education and training are demanded by Joint Vision 2010/2020, and will address the development and demonstration time phasing over the next two decades for the combined triad of technology modernization, operational concepts, and training.

This mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will also identify those approaches and techniques that potential enemies might take that could prepare them to revolutionize their warfare capabilities, thereby achieving a training surprise against the U.S. or its allies. This review will include, but not be limited to, unique training/education developments which might be spawned by allies or an adversary, training techniques and methodologies which might be transferred from the U.S. or through third parties, and finally, the possibilities emerging as a result of the globalization of military and information technologies, related commercial services and their application by other nations.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–1330 Filed 1–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense will meet in closed session on February 25–26, 2002, and March 26–27, 2002, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1331 Filed 1–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Tier II Environmental Impact Statement (DEIS) for the Savannah Harbor Expansion Project, Savannah, GA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY OF THE ACTION: The U.S. Army Corps of Engineers is the lead Federal agency for an evaluation of the deepening of the Federal Navigation Project at Savannah Harbor, Georgia, to ease current shipping constraints and to accommodate anticipated growth in commerce and vessel sizes. In the Water Resources Development Act of 1999, the U.S. Congress authorized deepening the navigation channel to a maximum depth of 48 feet Mean Low Water, subject to further studies and approval of those study results by four Federal agencies. Those additional studies are being conducted. The Savannah District intends to prepare a combined General Reevaluation Report and Tier II Environmental Impact Statement (EIS) to evaluate information concerning the economic feasibility and environmental acceptability of various methods of addressing the existing and expected future navigation problems. These documents will serve as the decision documents concerning implementation of the recently authorized harbor improvement. The other three Federal agencies—the Environmental Protection Agency (Region IV), the Department of Commerce (acting through the National Marine Fisheries Service), and the Department of the Interior (acting through the U.S. Fish and Wildlife Service)—have agreed to participate as Cooperating Agencies in the preparation of the Tier II EIS. The Georgia Ports Authority will also serve as a Cooperator in the EIS development process. In response to requirements of the National Environmental Policy Act, the Corps hereby notifies the public that it is beginning preparation of a Draft Tier II EIS.

FOR FURTHER INFORMATION CONTACT: Questions or written comments about the proposed action and DEIS should be provided by March 7, 2002 to: Mr. William Bailey at 912–652–5781, email address: *shep@sas02.usace.army.mil*, or at U.S. Army Corps of Engineers, Savannah District, ATTN: PD–E, Post Office Box 100, Savannah, Georgia 31402.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1628 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

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Background: Following the provisions of section 203 of the Water Resources Development Act of 1986, the Georgia Ports Authority conducted a feasibility study of various methods of improving navigation in Savannah Harbor and the expected environmental effects of those proposals. The U.S. Army Corps of Engineers adopted the documents prepared by the GPA and published a Draft EIS in May 1998 and a Final Tier I EIS in September 1998. After Congressional authorization of the proposed improvement (found in section 101(b)(9) of the Water Resources Development Act of 1999), the Corps completed the EIS process when it signed a Record Of Decision (ROD) in December 1999. The ROD incorporated the requirements for further technical evaluations that were outlined in the authorization.

After the authorization, the Georgia Ports Authority sought the views of local and regional stakeholders to define what additional studies they believe are needed to determine and fully describe the potential environmental effects of deepening the navigation channel. As those studies were identified, GPA began conducting those tasks. Further information on these GPA activities can be found at *www.sysconn.com/harbor.*

1. *Proposed Action.* The proposed action is development of an Environmental Impact Statement to describe the potential impacts of deepening the navigation channel at Savannah, Georgia, in increments from the existing depth of 42 feet Mean Low Water to a potential depth of 48 feet, including the effect of no channel deepening.

2. *Alternatives.* In addition to the "No Action" alternative, channel increments between the existing 42-foot depth and a depth of 48 feet will be evaluated. Other alternatives to accommodate trade growth will be considered. Among the potential alternatives are relocation of existing port facilities within the harbor, development of new port facilities elsewhere in the harbor, and transfer of cargo to other ports in the region. Mitigation plans will be prepared for each alternative considered in detail.

3. *Scoping Process.*

3.A. As part of its public outreach efforts, the Georgia Ports Authority conducted an information meeting in July 2000 to help it define studies that it would conduct during this second phase of the project. Comments provided to GPA at that time should be submitted to the Corps in response to this Notice to ensure their consideration as part of the Federal scoping process. GPA also met with representatives of natural resource agencies and local groups to obtain input to the studies to be conducted. The Corps has coordinated with the Environmental Protection Agency (Region IV), the National marine Fisheries Service, and the U.S. Fish and Wildlife Service concerning what issues should be addressed and what studies should be conducted during this Tier II evaluation. The Corps will conduct a separate additional scoping process to ensure that all issues are identified and included in the EIS.

3.B. The National Environmental Policy Act requires Federal agencies to involve the public in determining the scope of an EIS. Savannah District intends to conduct a public scoping meeting to inform the public of the issues it intends to consider in the EIS and to solicit further input from the public regarding any other issues that may need to be addressed. The Cooperating agencies have indicated they intend to participate in that scoping meeting. The meeting will also provide a forum for people to raise questions about the work done to date and plans for further analyses of all issues. The public is cordially invited to participate, provide input on issues being considered and to make recommendations to address issues not currently under consideration. All interests are invited to participate, including Federal, state, and local agencies, Indian tribes, and other interested private organizations and parties.

3.C. The issues currently under consideration are as follows:

A. Issues identified in the Tier I as requiring further study:
   1. Impacts to the wetlands from changes in salinity, particularly wetlands located on the Savannah National Wildlife Refuge
   2. Impacts to the endangered shortnose sturgeon from changes in salinity and dissolved oxygen
   3. Impacts to striped bass spawning and nursery habitat from changes in salinity and other factors
   4. Impacts to the City of Savannah's water intake from changes in chloride levels
   5. Impacts to dissolved oxygen levels

B. Verification of the 3-Dimensional Hydrodynamic Model
C. Salinity Changes
D. Dissolved Oxygen
E. Chloride Levels
F. Striped Bass
G. Shortnose Sturgeon
H. Freshwater Wetlands
I. Saltwater Wetlands
J. TideGate Restoration
K. Cumulative Impacts from Previous Dredging
L. Closing Middle River
M. Fishery Management Plans
N. Anadromous Fish Populations
O. Other Fish Species; red drum, American shad, river herring
P. Essential Fish Habitat (EFH)
Q. Endangered Species Act Compliance
R. Management of Contaminated Sediments
S. Beach Erosion
T. Channel Slope Erosion
U. Fort Pulaski Erosion
V. Dissolved Oxygen/Fecal Coliform on Beaches
W. Agitation Dredging
X. Sand as a Resource
Y. Upstream Water Releases
Z. Project Economics
AA. U.S. Army Corps of Engineers Section 1135 Restoration Study
BB. U.S. Army Corps of Engineers Savannah River Comprehensive Study
CC. Bend Widener Impacts
DD. Fort Pulaski Impacts
EE. Dredged Material Disposal Capacity and Impacts
FF. Impacts on Adjacent South Carolina Properties
GG. Integration with the COE Savannah River Basin Comprehensive Water Resources Management Study
HH. Tidal Amplitude
II. Ballast Water
JJ. Drinking Water Aquifer
KK. Cultural and Historic Resources
LL. CSS Georgia Impacts
MM. Old Fort Jackson Impacts
NN. Impacts on Adjacent Georgia Properties
OO. Environmental Justice
PP. Multiport Analysis
QQ. Landside Infrastructure
RR. Alternate Methods to Improve Transportation Efficiencies
SS. Alternate Sites for Terminal Operations
TT. Consistency with Coastal Zone Management Plans

3.D. Environmental review and consultation requirements for this project include explicit approval by the Secretary of the Army, the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency. Environmental reviews will also be needed from the following agencies or offices:

- US Fish and Wildlife Service (endangered species)
- US Fish and Wildlife Service—Savannah National Wildlife Refuge (use of refuge property)
- National Marine Fisheries Service (endangered species)
- Georgia Department of Natural Resources—Environmental Protection Division (water quality certification)
- Georgia Department of Natural Resources—Coastal Resources Division (coastal zone management consistency certification)
- Georgia State Historic Preservation Office (cultural and historic resources)
- South Carolina Department of Health and Environmental Control (water quality certification)
- South Carolina Department of Health and Environmental Control—Office of Ocean and Coastal Resource Management (coastal zone management consistency certification)
- South Carolina State Historic Preservation Office (cultural and historic resources)

In addition, the Fish and Wildlife Coordination Act requires full coordination of potential project impacts with Federal and state agencies responsible for management of fish and wildlife resources. Savannah District intends to meet several times with technical experts in these Federal and state natural resource agencies as part of this coordination process. Coordination is also required with the National Marine Fisheries Service for potential impacts to Essential Fish Habitat.

4. *Scoping Meeting.* The scoping meeting is scheduled for February 21, 2001, from 3 p.m. until 8:30 p.m. at the Savannah International Trade and Convention Center on Hutchinson Island in Savannah, Georgia.

5. *Availability of the Draft EIS.* The Draft Tier II EIS is presently scheduled for release in late 2004. However, that date may change. Notification of the availability of the document will be published in the **Federal Register** and in the local newspaper. A Public Notice will also be sent to individuals and organizations that have expressed interest in projects proposed in Savannah Harbor.

Dated: January 15, 2002.

Terry D. Stratton,

Acting Chief, Planning Division.

[FR Doc. 02–1448 Filed 1–18–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing, Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 09/766,625 entitled "Prevention or Reversal of Sensorial Hearing Loss through Biological Mechanisms," filed January 12, 2001, Navy Case No. 82,956.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, and must include the patent application number.

FOR FURTHER INFORMATION CONTACT: Mr. A. D. Spevack, Supervisory Associate Counsel, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1447 Filed 1–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; American BioHealth Group, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American BioHealth Group, LLC, a revocable, nonassignable, exclusive license in the United States to practice, with right to sublicense, the Government-owned invention described in U.S. Patent No. 6,177,434, entitled "Prevention or Reversal of Sensorial Hearing Loss Through Biological Mechanisms," issued January 23, 2001, Navy Case No. 78,564.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. A. David Spevack, Supervisory Associate Counsel, Intellectual Property, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007, E-Mail *spevacd@onr.navy.mil* or fax (703) 696–6909.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1446 Filed 1–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

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proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.
Title: Federal Direct PLUS Loan Application and Promissory Note.
Frequency: On Occasion.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 162,915.
Burden Hours: 81,458.
Abstract: This form is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1430 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.
Title: Endorser Addendum to Federal Direct PLUS Loan Application and Promissory Note.
Frequency: On Occasion.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 40,729.
Burden Hours: 20,365.
Abstract: If an applicant for a Federal Direct PLUS Loan is determined to have an adverse credit history and obtains and endorser, this form is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMC@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1431 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Program of Research on Reading Comprehension

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary proposes a priority for a Program of Research on Reading Comprehension. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and in later fiscal years. We take this action to build a scientific foundation for educational practice by supporting rigorous research on reading comprehension. We intend this priority to produce research findings that will change instructional practice and promote academic achievement.

DATES: We must receive your comments on or before February 21, 2002.

ADDRESSES: Address all comments about this proposed priority to Anne P. Sweet or Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, NW., room 513, Washington, DC 20208–5573. You can fax your comments to (202) 219–2135. If you prefer to send your comments through the Internet, use one of the following addresses: *anne.sweet@ed.gov* or *rita.foy@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Anne P. Sweet or Rita Foy Moss. Telephone: (202) 219–2079.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 510, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The Office of Educational Research and Improvement (OERI), authorized under Title IX of Public Law 103–227, (20 U.S.C. 6001 *et seq.*) supports research and development activities designed to provide essential knowledge for the improvement of education. Although significant advances have been made in knowledge about early reading skills, much less is known about reading comprehension. The Secretary believes that reading comprehension is necessary for academic achievement in virtually all school subjects and for economic self-sufficiency in cognitively demanding job environments. Thus, improving reading comprehension in this country, and providing all members of society with equal opportunities to attain a high level of literacy, require a focused program of educational research. Knowledge gained from such educational research can help guide the national investment in education and support local and State reform efforts. Because this targeted program of research focuses on an enduring problem of practice, it will be the primary mechanism for pursuing new knowledge about reading comprehension. Research grant awards can be made to institutions of higher education, regional education laboratories, public and private organizations, institutions, and individuals, or a consortium thereof. The Secretary invites comments on the priority described in this notice.

Prior to this announcement, OERI reviewed the Report of the National Reading Panel (2000) and the RAND Reading Study Group Report (2001) to identify the most needed reading research and development activities. Following this review, OERI prepared this notice of proposed priority, recognizing that critical frontiers for reading research, such as deriving empirically-grounded theories of comprehension development and reading instruction across the full range of ages and grades, have barely been broached in the research literature. OERI's Program of Research on Reading Comprehension (PRRC) is intended to expand scientific knowledge of how students develop proficient levels of reading comprehension, how reading comprehension can be taught most optimally, and how reading comprehension can be assessed in ways that reflect as well as advance our current understanding of reading comprehension and its development. An overarching goal of the program is to obtain converging empirical evidence on the development and assessment of comprehension that coheres with scientifically supported theories of the processes involved in reading comprehension. A further purpose is to provide a scientific foundation for approaches to comprehension instruction that allow students to achieve proficient levels of comprehension across a range of texts and subjects. The Secretary encourages review of the proposed priority by all interested parties.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Program of Research on Reading Comprehension

Applicants must propose research that is focused on one or more of three areas of inquiry:

1. Developmental patterns of students' reading comprehension;
2. Instructional interventions for reading comprehension; or
3. Measures of reading comprehension that reflect empirically justified dimensions, distinguish reader differences, and are sensitive to instructional goals.

Furthermore, research must be motivated by a specific conceptual framework and relevant prior empirical evidence, both of which must be clearly articulated in the proposal. The research must have the potential to advance fundamental scientific knowledge that bears on the solution of important educational problems. The proposal must indicate method and why the approach taken optimally addresses the research question. Any approach must incorporate a valid inference process that allows generalization beyond the study participants. Proposals must indicate which of the following approaches is to be used:

1. Experiment (control group; randomized assignment—both required).
2. Quasi-experiment (comparison group, stratified random assignment, groups comparable at pretest, statistical adjustment for comparability).
3. Correlational study (simple, multiple/logistic regression, structural

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equation modeling, hierarchical linear modeling).

4. Other quantitative (e.g. simulation).

5. Descriptive study using qualitative techniques (e.g., ethnographic methods; focus groups; classroom observations; case studies; single subject designs).

The design of studies must be clear: Independent and dependent, or predictor and criterion, variables should be distinguished. Proposed research is expected to employ the most sophisticated level of design and analysis that is appropriate to the research question. For research questions that cannot be answered using a randomized assignment experimental design, the proposal must spell out the reasons why such a design is not applicable and why it would not represent a superior approach. Thus, applicants must propose to conduct rigorous studies that are scientifically sound, relevant, timely, and ultimately useful to practitioners and policy makers. The Secretary intends to expend a total of $5 million during FY 2002 on grant applications. Funding this priority will depend on the availability of funds, the nature of the final priority, and the quality of applications received.

Post-Award Requirements

The Secretary established the following post-award requirements consistent with the OERI's program regulations at 34 CFR part 700 and the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.720. Recipients of a research award must:

1. Provide OERI with information about the research project and products and other appropriate research information so that OERI can monitor progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

2. At the end of the award period, synthesize the findings and advances in knowledge that resulted from research conducted and describe the potential impact on the improvement of reading comprehension instruction.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number (84.305G) Program of Research on Reading Comprehension)

Program Authority: 20 U.S.C. 6031.

Dated: January 15, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–1480 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Program Interest for Processing U–232 To Produce RA–224/BI–212 Generators for Uses in Medicine

AGENCY: Department of Energy (DOE).

ACTION: Notice of Program Interest.

SUMMARY: The U.S. Department of Energy (DOE) announces an unrestricted grant program providing support for the production of Ra–224/Bi–212 generators from DOE provided U–232. The Department's objectives of this effort are to: (1) Develop an assured future supply of Bi–212; (2) Maximize private involvement and minimize the cost of producing Ra–224/Bi–212 generators: and (3) minimize future Government involvement. The Department wishes to encourage the private sector to be involved in the production of these generators by providing resources in a cooperative partnering arrangement for the required production. The Department's contribution will be no more than $50,000 for a period of two years.

DATES: Opening date: January 30, 2002, and closing date: February 28, 2002.

ADDRESSES: Complete details, instructions on how to apply, opening and closing dates and the forms may be obtained from the DOE NE home page on the Internet at: *http://www.ne.doe.gov*. In accordance with 10 CFR 600.9, the formal solicitation document will be disseminated electronically as solicitation number DE–PS01–02NE23296 through the Department's Industry Interactive Procurement System (IIPS) home page located at *https://doe-iips.pr.doe.gov*.

FOR FURTHER INFORMATION CONTACT: John McClure, Program Manager, at 301–903–5460, Phyllis Morgan, Contract Specialist at 202–287–1504, and Paul Gervas, Attorney and Advisor at 202–586–6918.

SUPPLEMENTARY INFORMATION: The Department will conduct marketing and sales activities of the isotope. Alternatively, concomitant proposals for the marketing and sales function will be allowed. The Department wishes to encourage the private sector to be involved in the production of these generators by providing resources in a cooperative partnering arrangement for the required production.

Effective October 1, 1999, the IIPS system became the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. All documents included in your applications should be submitted in the Microsoft Word format. To get more information about IIPS and to register your organization, go to *https://doe-iips.pr.doe.gov*. Follow the link on the IIPS home page to the Secure Services Page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. When registering, all applicants should use the same North American Industry Classifications System number: 325412. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services Page.

Kevin Smith,

Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 02–1470 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, February 7, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by representative from the Environmental Protection Agency
2. Presentation on Operable Unit 1 Five Year Review Process
3. End-state discussions
4. Report on EMSSAB Groundwater Workshop
5. Appointment of Co-chairs
6. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on January 15, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1472 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 13, 2002, 6:30 p.m.–9 p.m.

ADDRESSES: Amargosa Community Center, 821 East Farm Road, Amargosa Valley, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. CAB members will discuss their recommendations related to the recent peer review conducted on the Nevada Test Site Underground Test Area project strategy.
2. Representatives from the National Nuclear Security Administration Nevada Operations Office, Nevada Division of Environmental Protection, and Nye County will share their perspectives on the report.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on January 14, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1473 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; National Nuclear Security Administration Advisory Committee

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice announces a meeting of the National Nuclear Security Administration Advisory Committee (NNSA AC). The Federal Advisory Committee Act, 5 U.S.C. App. 2 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 12 and Wednesday, February 13, 2002; 0900–1700.

LOCATION: Science Applications International Corporation (SAIC), 1710 SAIC Drive (formerly Goodridge Drive), McLean, VA.

FOR FURTHER INFORMATION CONTACT: Betty (BJ) Morris, (202–586–6312) Executive Officer, NNSA AC.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide the Administrator for Nuclear Security with advice and recommendations on matters of technology, policy, and operations that lie within the mission and responsibilities of the National Nuclear Security Administration. Additional information about the Committee, including its charter,

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members, and charge, is available at: *www.nnsa.gov.*

Purpose of the Meeting: To discuss national security research, development, and policy programs.

Tentative Agenda

February 12, 2002

0900–0910 Chairman Opens Meeting (open)
0910–1100 Unclassified Discussion on Committee Issues (open)
1100–1200 Public Discussion (open)
1330–1700 Workshop for Members (closed)
1715 Adjourn

February 13, 2002

0900–1700 Classified Discussions (closed)

Closed Portions of Meeting: In the interest of national security, portions of the meeting will be closed to the public, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App 2 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, "How are advisory committee meetings closed to the public?", which incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b (c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Open Portions of Meeting: Per the agenda posted above, a portion of the meeting will be open to the public for observation and comment. In order to accommodate the public, including facilitating access to meeting facilities, interested parties must contact Betty (BJ) Morris, NNSA AC Executive Officer, by 17:00, February 4, 2001, in order to make appropriate arrangements. Requests for comment will be accommodated on a first-come, first-serve basis.

Minutes: Minutes of the meeting will be recorded and classified accordingly.

Issued at Washington, DC January 16, 2002.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 02–1474 Filed 1–18–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Plymouth Generating Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with Benton County, State of Washington, for an electrical interconnection including a new one-mile transmission line and other facilities associated with a proposed powerplant. BPA is the lead Federal agency under NEPA and Benton County is the lead Washington State agency under SEPA. The Plymouth Generating Facility is a 306-megawatt (MW) generating station proposed by Plymouth Energy, L.L.C. (PE) that would be located near the town of Plymouth in Benton County, Washington. PE has requested an interconnection to BPA's transmission system that would allow firm power delivery to the wholesale power market. BPA proposes to execute an agreement with PE to provide the interconnection and firm power transmission.

ADDRESSES: To be placed on the project mailing list, including notification of proposed meetings, call toll-free 1–800–622–4520, name this project, and leave your complete name and address. To comment, call toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov;* or send a letter to Communications, Bonneville Power Administration—KC–7, PO Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION, CONTACT: Philip W. Smith, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3294; or e-mail [*pwsmith@bpa.gov*]. Additional information can be found at BPA's Web site: *www.efw.bpa.gov.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the proposed project, including:

- Interconnection agreement that BPA proposes with PE;
- Construction and operation of the powerplant;
- Construction and operation of an approximately 800-foot, 6-inch diameter gas line to tie into Williams Northwest Pipeline Company's Plymouth Compressor Station pipeline;
- Construction and operation of a rail spur near the powerplant site for use during powerplant construction; and
- Construction and operation of an interconnection consisting of a substation and approximately one mile of 230-kV or 500-kV transmission line from the substation to either the existing BPA McNary-Big Eddy 230-kV transmission line or the proposed, new BPA McNary-John Day 500-kV transmission line.

The powerplant and the gas and power interconnections would all be located within Benton County, Washington.

Responsibility for construction and operation of the new facilities is principally with PE who would build and operate the powerplant. However, the transmission would be constructed under BPA's management, and BPA would be responsible for the operation and maintenance of these transmission facilities. Williams Northwest Pipeline Company would build and operate the proposed approximately 800-foot gas pipeline that would supply fuel to the powerplant.

Proposed Action: The Plymouth Generating Facility would be a natural gas-fired, combined-cycle combustion turbine powerplant with a nominal generating capacity of approximately 306 MW. The plant site would be on approximately 44 acres zoned for agricultural use (with energy projects permitted as conditional uses) and located about 6 miles west of Plymouth, Washington.

Natural gas would be burned in a gas turbine engine, in which the expanding gases from combustion would turn the turbine's rotor, driving a generator to produce electrical energy. Hot exhaust from the gas turbine would be used to boil water using a heat recovery steam generator (HRSG). Steam produced by the HRSG turns a steam turbine, which would connect to another generator, producing additional electrical energy.

The Plymouth Generating Facility would consist of a single gas turbine generator, heat recovery steam generator and steam turbine generator. Steam cycle cooling would utilize an air cooled condenser and a conventional mechanical draft tower in combination to minimize water use.

Water would be required to generate steam, for cooling and for sanitary uses. The proposed powerplant would require 1,241 gallons per minute of water under average conditions and use no more than 1000 acre feet per year. PE proposes to use on-site wells and to return wastewater flows from plant operations for agricultural irrigation.

PE proposes that project storm water be collected in retention and filtration ponds located at the south side of the property.

The proposed Plymouth Generation Facility would deliver electricity to the regional power grid through an interconnection with either the existing BPA McNary-Big Eddy 230-kV transmission line or the new, proposed BPA McNary-John Day 500-kV transmission line.

Process to Date: BPA is the lead Federal agency for the joint NEPA/SEPA EIS, and Benton County is the lead Washington State agency. Benton County has received a SEPA Checklist and determined that preparation of an EIS is required. Benton County has scheduled a public meeting to be held on January 24, 2002, at Patterson, Washington, to obtain public input concerning the scope of the EIS. An additional EIS scoping meeting will be scheduled and announced by direct mail and through local media.

Alternatives Proposed for Consideration: Alternatives thus far identified for evaluation in the EIS are (1) the proposed action, (2) alternative sites within the property under lease by PE, (3) alternative transmission line interconnections, and (4) no action. Other alternatives may be identified through the scoping process.

Identification of Environmental Issues: Benton County will prepare an EIS consistent with its responsibilities under Chapter 43.21C of the Revised Code of Washington and Chapter 197–11 of the Washington Administrative Code. PE has requested transmission interconnection and firm transmission service. Such an action triggers a need for BPA to prepare NEPA documentation. Therefore, BPA and Benton County intend to prepare a joint NEPA/SEPA EIS addressing both the powerplant and the associated electric power interconnection and transmission facilities. The principal issues identified thus far for consideration in the Draft EIS are (1) air quality impacts, (2) aesthetic and visual impacts, (3) socio-economic impacts including transportation impacts, (4) wetlands and wildlife habitat impacts, (5) cultural resource impacts, (6) water supply and quality impacts, (7) health and safety impacts, and (8) noise impacts from plant operation. These issues, together with any additional significant issues identified through the scoping process, will be addressed in the EIS. BPA will also use the EIS and NEPA process to address historic preservation and cultural resource issues under Section 106 of the National Historic Preservation Act.

Public Participation: A public scoping meeting will be held at Patterson, Washington, on January 24, 2002. Representatives of BPA and Benton County will be available to receive oral and written public comment. An additional meeting will be scheduled and announced by direct mail and through local media. We request public and agency comments on the scope of the EIS by March 15, 2002.

Receiving comments from interested parties will assure that BPA and Benton County address in the EIS the full range of issues and potentially significant impacts related to the proposed project. When completed, a draft EIS will be circulated for review and comment, and BPA and Benton County will hold at least one public comment meeting on the draft EIS. BPA and Benton County will consider and respond in a final EIS to comments received on the draft EIS.

Issued in Portland, Oregon, on January 11, 2002.

Stephen J. Wright,
Acting Administrator and, Chief Executive Officer.

[FR Doc. 02–1469 Filed 1–18–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: PNCA–02]

Proposed Adjustment to the Rate for Interchange Energy Imbalances Under the Pacific Northwest Coordination Agreement, Public Hearing, and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of proposed adjustment.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA.

By this notice, BPA announces its proposed adjustment to the rate for Interchange Energy (IE) imbalances under the Pacific Northwest Coordination Agreement (PNCA). Each party to the PNCA makes excess energy available to the other party to meet its firm loads; this excess energy is known as interchange. The existing rate, which was established in 1995, is 22.55 mills per kilowatt-hour. Since 1995 the energy industry has undergone dramatic change. It has experienced a sharply increased degree of volatility as well as unprecedentedly high prices. Therefore, BPA is proposing to link the interchange energy price to the market price for energy, thus ensuring that BPA recovers its costs when it provides interchange energy to another PNCA party.

DATES: Proposed hearing dates are supplied in Supplementary Information, Section I.B. Close of public comments is March 22, 2002. The prehearing conference will be held on January 29, 2002.

ADDRESSES: Written comments should be submitted to: Dulcy Mahar, Communications Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Documents will be available for public viewing after January 29, 2002, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th Avenue, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on January 29, 2002, from 9 a.m. to 12 p.m., Room 223, 911 NE. 11th Avenue, Portland, Oregon. The documents will also be available on BPA's website at www.bpa.gov/power/ratecase. Mr. Byron G. Keep, Power Products, Pricing, and Rates Manager, is the official responsible for the development of BPA's rates.

FOR FURTHER INFORMATION CONTACT: Interested persons may also call (503) 230–4413 or call toll-free 1–800–622–4519. Mr. Keep may be contacted at the address indicated above in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Background

A. Relevant Statutory Provisions Governing This Rate Proceeding

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular,

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section 7(a)(1), 16 U.S.C. 839e(a)(1), provides in part that:

[S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on an interim or final basis when approved by the Federal Energy Regulatory Commission (FERC). 16 U.S.C. 839e(a)(2). In addition to the Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825 *et seq.*

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to certain procedures. These procedures include issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, or arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implement and, in most instances, expand these statutory requirements. Pursuant to Rule 1010.3(c) of the Procedures Governing Bonneville Power Administration Rate Hearings (BPA Procedures), this hearing will be conducted under Rule 1010.10, which governs Expedited Rate Proceedings. The expedited procedures will be used rather than the procedures for General Rate Proceedings conducted under Rule 1010.9. The procedures for General Rate Proceedings are intended for use when the Administrator proposes to revise all, or substantially all, of BPA's wholesale power and transmission rates.

The proposed change in the interchange energy rate will apply only to the parties to the PNCA. In addition, the rate applies only to the imbalances of interchange energy between each pair of PNCA parties. For example, if two PNCA parties deliver equal amounts of interchange energy to each other, they have no imbalance between them and no rate is charged. Finally, the effect of interchange energy on BPA's revenues is negligible. For these reasons, the issues in this rate proceeding will be fewer and of more limited scope than the issues in a proceeding to adjust all BPA rates. BPA believes that the 90-day Expedited Rate Proceeding will be adequate to develop a full and complete record and to receive public comment and argument related to the proposed adjustment. If more time is required, the Hearing Officer may request under Rule 1010.10(b) of the BPA Procedures that the BPA Administrator grant an extension.

B. Proposed Schedule Concerning This Rate Proceeding

BPA will release its proposed rate for interchange energy on January 29, 2002, and expects to publish a final Record of Decision on April 30, 2002. The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

Date	Action
Jan 28	Deadline for Petitions to Intervene.
Jan 29	Prehearing Conference.
Feb 12	Data Requests on BPA's Direct Case.
Feb 19	Data Responses Due.
Feb 26	Parties' Direct Cases.
Mar 8	Data Requests on Parties' Direct Cases.
Mar 15	Data Responses Due.
Mar 22	Parties' Rebuttal.
Mar 28	Cross-Examination.
April 4	Initial Briefs.
April 12	Draft Record of Decision.
April 19	Briefs on Exceptions.
April 30	Final Record of Decision.

The procedural schedule established for Docket No. PNCA–02 will provide an opportunity for interested persons to review BPA's proposed rates, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

Part II—Purpose and Scope of Hearing

The purpose and scope of the hearing is to revise the charge for interchange energy under the PNCA. BPA proposes to link the charge to a market index to reflect wholesale power market price volatility. This revision will ensure that the charge accurately reflects the cost of providing interchange energy.

A. The Circumstances Necessitating Adjustment

Since the rate for interchange energy was established in 1995, the energy industry has undergone dramatic change. It has become far more competitive, and prices for energy have become much more volatile. During this past year, prices of energy have reached unprecedentedly high levels. The existing rate for interchange was intended to cover the PNCA parties' cost of providing the interchange. Because it is currently a fixed rate, it will not recover costs if prices remain high and continue to fluctuate. BPA is proposing this revision in the rate to ensure that the rate reflects BPA's costs.

B. Scope

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this hearing to issues respecting the rate for interchange energy imbalances described in Section II hereof.

C. NEPA Evaluation

BPA has assessed the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of BPA's Business Plan Environmental Impact Statement (EIS). The analysis includes an evaluation of the environmental impacts of a range of rate design alternatives for BPA's power services and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's proposal to revise the rate for interchange energy under the PNCA falls within the range of alternatives evaluated in the Final Business Plan EIS. The Business Plan EIS was completed in June 1995.

Part III—Public Participation

A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before March 22, 2002. Participants' written views, supporting information, questions, and arguments should be submitted to the address noted above. The second category of interest is that of a "party" as defined in Rules 1010.2 and 1010.4 of the BPA Procedures. 51 FR 7611 (1986). Parties may participate in any aspect of the hearing process.

B. Petitions for Intervention

Persons wishing to become a party to BPA's rate proceeding must notify BPA in writing of their interest. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by January 28, 2002. The petitions should be directed to: Ms. Judy Cornish Bonneville Power Administration 905 NE. 11th Avenue P.O. Box 12999 Portland, Oregon 97232

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within two days after service of the petition.

C. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of any cross-examination. After the close of the hearings, and following submission of initial briefs, BPA will issue a Draft Record of Decision (ROD) that states the Administrator's tentative decision(s). Parties may file briefs on exceptions, or when all parties have previously agreed, oral argument may be substituted for briefs on exceptions. When oral argument has been scheduled in lieu of briefs on exceptions, the argument will be transcribed and made part of the record. The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final rate for interchange energy based on the entire record. The basis for the final adjustment will be expressed in the Administrator's Final ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate adjustment, together with the record, with FERC for confirmation and approval. *See generally*, 18 CFR part 300.

Part IV—Summary of the Proposal

BPA proposes to revise the rate for interchange energy imbalances by linking the rate to a market index. The rate will apply to all parties to the PNCA who take interchange energy from BPA. The revision will ensure that the rate accurately reflects the costs of providing interchange energy. Below is the proposed rate for interchange energy imbalances.

All terms contained herein have the meaning accorded them in the PNCA. This rate schedule is to be effective upon approval by the Federal Energy Regulatory Commission (interim or final) and will remain in effect until a revised rate is approved and becomes effective.

A. Interchange Energy (IE) Imbalances For Other Than Loaned IE

1. Initial Deliveries of IE

This charge applies to IE delivered from BPA to another PNCA party. The calculation is as follows:

Formula 1

$C = (ID_{ON} * I_{ON}) + (ID_{OFF} * I_{OFF})$

Where for each day:

C= Daily charge for the Initial Deliveries of IE in dollars.

ID_{ON} = The Initial Delivery of IE made during the day during On Peak hours.

I_{ON} = The Dow Jones Mid-Columbia Firm index price for On Peak hours in dollars per megawatt hour.

ID_{OFF} = The Initial Delivery of IE made during the day during Off Peak hours in megawatt hours.

I_{OFF} = The Dow Jones Mid-Columbia Firm index price for Off Peak hours in dollars per megawatt hour.

Note: Initial Deliveries of IE on Sunday or a NERC [or its successor organization(s)] recognized holiday are priced at the Off Peak rate.

2. Return of IE

This charge applies to the return of IE that was initially delivered to BPA from another PNCA party. The charge is based on a calculated average price, unique to each PNCA party that had previously supplied BPA with IE. The calculation is as follows:

Formula 2

$C_{PARTY} = IER_{PARTY} * R_{PARTY}$

Where for each (PNCA) Party for a given day:

C_{PARTY} = Daily charge for the return of such PNCA party's IE in dollars.

IER_{PARTY} = The quantity of Interchange Energy returned to a PNCA party on a day in megawatt hours.

R_{PARTY} = The applicable IE return rate for the PNCA party for the given day as calculated in Formula 3 below in dollars per megawatt hour.

Formula 3

$R_{PARTY} = \Sigma C_{PARTY} + \Sigma IER_{PARTY}$

Where for each (PNCA) PARTY for a given day:

R_{PARTY} = the IE return rate calculated for the PNCA party as of the given day in dollars per megawatt hours.

PNCA party and all payments received by BPA from such PNCA party from the date of the last cash out of IE Imbalances to the date BPA returns the IE, in dollars.

ΣIER_{PARTY} = the net of all IE BPA has received from such PNCA party and the IE returned by BPA to such PNCA party from the date of the last cash out of IE Imbalances to the date BPA returns the IE, in megawatt hours.

Issued in Portland, Oregon, on January 14, 2002.

Steven G. Hickok,

Chief Operating Officer.

[FR Doc. 02–1468 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712, FAX at (202) 287–1705, or e-mail at *Grace.Sutherland@eia.doe.gov*.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form FE–746R, "Import and Export of Natural Gas."
2. Office of Fossil Energy.
3. OMB Number 1901–0294.
4. Three-year extension.
5. Mandatory.
6. Form FE–746R collects data to be used by the Office of Fossil Energy from persons seeking authorization to import or export natural gas, and the information collected quarterly to monitor such trade under the North American Free Trade Agreement (NAFTA), as well as other trade falling outside the parameters of NAFTA.
7. Business or other for-profit.
8. 4,240 per year (300 respondents × 4.6 responses per year × 3.10 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, December 19, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–1471 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–2–000]

ARCO, a Subsidiary of BP America, Inc., Complainant, v. Calnev Pipe Line, L.L.C., Respondent; Notice of Complaint

January 15, 2002.

Take notice that on January 14, 2002, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343, *et seq.*), Tosco Corporation (Tosco) filed a Complaint and Motion for Consolidation in the above captioned proceeding. Tosco alleges that Calnev Pipe Line, L.L.C. (Calnev) has violated the Interstate Commerce Act, 49 U.S.C. App. 1, *et seq.*, by charging unjust and unreasonable rates for Calnev's jurisdictional interstate services associated with its lines originating at Colton in San Bernardino County, California, to stations at two interstate destinations in Clark County, Nevada, one at McCarran Field and the other at North Las Vegas as more fully set forth in the Complaint. To the extent that any of Calnev's rates may be deemed just and reasonable under § 1803 of the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992), Tosco alleges that there has been a substantial change in the economic circumstances on which the rates are based.

Tosco requests that the Commission: (1) Examine the challenged rates and charges collected by Calnev for its jurisdictional interstate services; (2) order reparations to Tosco, including appropriate interest thereon, for the applicable reparation periods to the extent the Commission finds that such rates or charges were unlawful; (3) determine just, reasonable, and nondiscriminatory rates for Calnev's jurisdictional interstate service; (4) award Tosco reasonable attorneys' fees and costs; and (5) order such other relief as may be appropriate.

Tosco states that it has served the Complaint on Calnev pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206(c).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 4, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 4, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1466 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–48–000]

California Power Exchange Corporation; Notice of Petition for Declaratory Order

January 15, 2002.

Take notice that on January 15, 2002, the California Power Exchange Corporation (PX) filed a Petition for Declaratory Order. The Petition requests that the Commission issue a declaratory order stating that it is in the public interest for the successor of the PX to remain an independent entity not controlled by any segment of electric industry participants.

The PX requests that the Commission issue the declaratory order no later than January 31, 2002 for the purpose of providing guidance to the Bankruptcy Court, which is holding a hearing on February 1, 2002 to consider a Disclosure Statement and Reorganization Plan that would permit "seller-side" participants of the PX to acquire substantial control of the successor to the PX. Accordingly, the PX requests a shortened response time, sufficient to permit the Commission to issue its declaratory order by January 31, 2002.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: January 23, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1464 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–432–001]

Northern Natural Gas Company; Notice of Compliance Filing

January 15, 2002.

Take notice that on January 3, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariffs, the following tariff sheets proposed to be effective on December 19, 2001:

Fifth Revised Volume No. 1

Seventh Revised Sheet No. 3

Original Volume No. 2

69 Revised Sheet No. 1
First Revised Sheet No. 616

Northern states that the above sheets represent cancellation of Rate Schedule X–45 from Northern's Original Volume No. 2 FERC Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested state Commissions.

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1460 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–000]

Texas Eastern Transmission, LP; Notice of Site Review

January 15, 2002.

On January 24, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Freehold Project. The Freehold Project facilities are proposed for construction by Texas Eastern Transmission, LP (Texas Eastern). The proposed construction sites, located in Somerset and Hunterdon Counties, New Jersey, will be reviewed by automobile on January 24, 2002. Representatives of Texas Eastern will accompany the OEP staff.

Anyone interested in attending the site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1462 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–732–000]

Western Systems Coordinating Council; Western Regional Transmission Association; Southwest Regional Transmission Association; Notice of Filing

January 15, 2002.

Take notice that on December 19, 2001, the Western Systems Coordinating Council, Western Regional Transmission Association, and the Southwest Regional Transmission Association (collectively Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the May 3, 2001 Petition for Declaratory Order and alternative Request To Transfer

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Programs to the Western Electricity Coordinating Council (WECC).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 25, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1465 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 372–008 California]

Southern California Edison; Notice of Availability of Draft Environmental Assessment

January 15, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Lower Tule Hydroelectric Project, located on the Middle Fork of the Tule River in Tulare County, California, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is partially located within the Sequoia National Forest and the Giant Sequoia National Monument.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed by February 14, 2002, and should be addressed to Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 372–008 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

For further information, contact Nan Allen at (202) 219–2938.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1467 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–9–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line 280 Replacement Project and Request for Comments on Environmental Issues

January 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line 280 Replacement Project involving construction, operation, and abandonment of facilities by Dominion Transmission, Inc. (DTI) in Pennsylvania.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice DTI provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

DTI proposes to abandon in place approximately 71 miles of its existing LN–280 pipeline and 5 miles of its existing LN–4 pipeline in Cameron, Clinton, Elk, Potter, and Tioga Counties, Pennsylvania. In order to replace the capacity lost by the pipeline abandonment, DTI also proposes to install two additional compressor units, each rated for 1,775 horsepower, at its existing Ardell Compressor Station in Elk County, Pennsylvania.

Abandonment of LN–280 and LN–4 would require no additional land, since the pipelines would be left in place. DTI would retain ownership of the existing right-of-way. Construction of the proposed facilities at the existing Ardell Compressor Station would require about 11.5 acres of land. Of this 11.5 acres, approximately 1.9 acres would be required for the station expansion and for new right-of-way. The remaining 9.6 acres would occur on the existing station or existing right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis

[1] DTI's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- air quality and noise;
- endangered and threatened species;
- cultural resources;
- vegetation and wildlife;
- public safety.

We will not discuss impacts to water resources, fisheries, and wetlands since they are not present in the project area, or would not be affected by the proposed facilities. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket No. CP02–9–000.
- Mail your comments so that they will be received in Washington, DC on or before February 14, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account." Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services, in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1461 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically. The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–44–000, Docket No. CP02–46–000, and Docket No. CP02–53–000]

Dominion Transmission, Inc., Tennessee Gas Pipeline Company, National Fuel Gas Supply Corporation Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Leidy Extension Project and Request for Comments on Environmental Issues

January 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Leidy Extension Project in Potter County, Pennsylvania involving

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construction and operation of natural gas pipeline facilities. Dominion Transmission, Inc. (Dominion), proposes to add compression under Docket No. CP02–44–000. Tennessee Gas Pipeline Company (Tennessee) proposes to build the Ellisburg Compressor Station under Docket No. CP02–46–000. National Fuel Gas Supply Corporation (National) and Dominion propose to add compression and uprate their jointly-owned Ellisburg-Leidy Line under Docket No. CP02–53–000.[1] This EA will be used by the Commission in its decision-making process to determine whether the projects [2] are in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet can be viewed on the FERC Internet web site (*www.ferc.fed.us*).

Summary of the Proposed Project

Dominion, under Docket No. CP02–44–000, proposes to build a 4,735-horsepower (hp) relay compressor, along with an associated building and access driveway, inside the fenced-in area of its existing Little Greenlick Relay Station. The Little Greenlick Relay Station is immediately adjacent to the Greenlick Compressor Station containing four existing compressors.

Tennessee, under Docket No. CP02–46–000, proposes to build a new Ellisburg Compressor Station and associated meter station. This compressor station would be built on newly acquired property immediately adjacent to the Dominion's existing Ellisburg Storage Field Compressor Station. The Ellisburg Compressor Station would include two gas-driven 2,365-hp compressors and an associated compressor building, gas cooler, and an auxiliary building. Tennessee would construct the meter station in a previously-disturbed fenced-in area within Dominion's Ellisburg Storage Field Compressor Station.

National, under Docket No. CP02–53–000, proposes to build an 8,070-hp compressor and an associated building in a previously-disturbed fenced-in area within National's Ellisburg Compressor Station. National and Dominion would jointly own this compressor. National would also uprate the maximum allowable operating pressure (MAOP) of their jointly-owned 41-mile-long, 24-inch-diameter Ellisburg-Leidy Line by replacing two block valves and installing one new block valve at milepost (MP) 1.3. The two block valves to be modified are at MP 0.0 inside National's Ellisburg Compressor Station and at MP 34.2 at Kettle Creek. Dominion would make aboveground modifications to the Leidy M&R Station (owned jointly with National) at the southern end of the Ellisburg-Leidy Line separately under sections 2.55(a) and 157.211 of the Commission's regulations.

The locations of the facilities for the Leidy Extension Project are shown in appendix 1.[3]

Land Requirements for Construction

Construction of the 4,735-hp relay compressor in the Little Greenlick Relay Station would require 5.24 acres of previously-disturbed land within the station. Construction of two gas-driven 2,365-hp compressors for the proposed Ellisburg Compressor Station would require 5.16 acres of which 2.27 acres would be restored and allowed to revert to its former use following construction. A small area of previously-disturbed ground within Dominion's adjacent Ellisburg Storage Field Compressor Station would be required for construction of a new meter station. In addition, 0.5 acre would be used for access roads along the Ellisburg Storage Field Compressor Station.

Construction of the 8,070-hp compressor and an associated building would require use of a previously-disturbed fenced-in area within National's Ellisburg Compressor Station. Uprating the MAOP of the 41-mile-long Ellisburg-Leidy Pipeline would require temporary use of 0.11 acre of existing mowed right-of-way at MP 1.33 of the Ellisburg-Leidy Pipeline for installation of a new block valve. No ground disturbance would be required for the modification of the two block valves at MPs 0.0 and 34.2.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air and noise quality
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee, National and Dominion. This preliminary list of issues may be changed based on your comments and our analysis.

- Impacts to Rose Lake Run from (1) the clearing of 5.16 acres of vegetation and from disturbance of a hazardous waste remediation site adjacent to Tennessee's proposed Ellisburg Compressor Station, and (2) construction activities at National's Ellisburg Compressor Station within which Rose Lake Run crosses.
- Noise increases for noise sensitive areas near Tennessee's proposed Ellisburg Compressor Station.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas 2.
- Reference Docket Nos. CP02–44–000, CP02–46–000, and CP02–53–000.
- Mail your comments so that they will be received in Washington, DC on or before February 15, 2002.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC web site (*www.ferc.fed.us*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS help line can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet web site, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02–1463 Filed 1–18–02; 8:45 am]
BILLING CODE 6717–01–P

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[1] Tennessee's, National's, and Dominion's applications were filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] These three component projects of the overall Leidy Extension Project would together comprise the facility expansions and upgrades in Potter County necessary for the shipment of an additional 150,000 dekatherms per day (Dt/d) of natural gas to the Leidy Meter and Regulating Station in Clinton County, Pennsylvania.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 11, 2002, 67 FR 1460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 16, 2002 (30 Minutes Following Regular Commission Meeting).

CHANGE IN THE MEETING: The Closed Meeting scheduled for January 16, 2002, has been cancelled.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 02–1564 Filed 1–16–02; 4:20 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 01/11/2002, 67 FR 1460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 16, 2002, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Companies have been added as Item M–1, to the Commission Agenda of January 16, 2002:

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Item No.	Docket No. and Company
M–1	RM02–4–000, Rule Regarding Critical Energy Infrastructure Information. PL02–1–000, Policy Statement on the Treatment of Previously Public Documents.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1576 Filed 1–16–02; 4:55 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–2]

Agency Information Collection Activities: Continuing Collection; Comment Request; RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): RCRA Expanded Public Participation, EPA ICR Number 1688.04, OMB Control Number 2050–0149 (expiration date May 31, 2002). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 25, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–2001–R3IP–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305G) United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.gov*. Comments in eletronic format should also be identified by the Docket Number F–2001–R3IP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above in this section). Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cove to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mailcode 5305W, Washington, DC, 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page. This notice and the supporting documents that detail the ICR renewal are also available.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Toshia King, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (703) 308–7033, *King.Toshia@epamail.epa.gov*.

The docket index and some supporting documents in the docket for this ICR are available in electronic format on the Internet at *http://www.epa.gov/epaoswer/hazwaste/permit/pub-icr.htm*>.

We will keep the official record for this action in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards, under Section 3004 of RCRA, that are necessary to protect human health and the environment.

Title: RCRA Expanded Public Participation; EPA ICR Number 1688.04. OMB control Number 2050–0149, expiration date: 05/31/2002.

Abstract: Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process at 40 CFR part 124, 124.31 through 124.33 and 40 CFR part 270, 270.62 and 270.66. The part 124 requirements apply to all types of hazardous waste treatment, storage, and disposal facilities, unless exempted under a specific section; the part 270 requirements apply only to hazardous waste combustors planning trial burns.

The public participation regulations at parts 124 and 270 were promulgated by EPA under the authority of subtitle C in RCRA to provide earlier and better public participation in the hazardous waste facility permitting process. In summary the regulations require a permit applicant to provide notice of and hold an informal meeting with the public before submitting a part B application, and to submit a summary of the meeting to the agency (§ 124.31). This meeting is the earliest formal step in the RCRA permitting process. The agency is required to issue a public notice when it receives an application (§ 124.32). The notice informs the recipient that the facility has submitted a permit application for agency review. Certain facilities (as decided by the agency director on a case-by-case basis) are required to set up and maintain an information repository (§ 124.33). Lastly, the agency is required to issue a public notice of an upcoming trial burn at a permitted hazardous waste combustion facility (§§ 270.62(b)((6) and 270.66(d)(3)), or at a hazardous waste combustion facility operating under interim status (§§ 270.62(d) and 270.66(g)).

This information collection targets the reporting frequency and requirements of the permit and assures public involvement regulations are met by owners or operators. The reporting frequency is essential to assure that any changes in the trial burn plans or in the anticipated permit-application contents are made known to EPA and to the public. The requirements in this rule are also consistent with EPA's current policies on public participation. In December of 2000, EPA requested public comment on its Draft 2000 Public Involvement Policy (65 FR 82335; December 28, 2000). The draft policy updates an earlier policy issued in 1981. Among other things, the draft policy calls for a strengthened commitment to meaningful public involvement, greater attention to the specific concerns and interest of affected people and entities, and use of a wider variety of public involvement techniques. In this regard, the RCRA Expanded Public Participation Rule can serve as an example to other EPA programs of how to achieve many of the goals of the policy. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimated respondent burden hours for the information collection requirements associated with the pre-application meeting and the information repository requirements. The estimated number of likely respondents subject to pubic participation activities required under this collection of information is 33. The total annual burden to respondents, as estimated for all public participation reporting and recordkeeping activities under this collection of information is 3,005 hours. The total estimated average annual burden cost to respondents required to perform public participation activities under this information collection request is $162,834 ($159,425 in labor cost, $546 in total capital cost, and $2,863 in O&M cost). The estimates for O&M cost include preparation of multilingual notices and the purchase of a file cabinet to retain copies and other required documentation. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 15, 2002.

Matthew Hale,

Deputy Director, Office of Solid Waste.

[FR Doc. 02–1498 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–8]

Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines for awarding Clean Water Act section 319 nonpoint source grants to Indian tribes in FY 2002. As was the case in FY 2002 and 2001, Congress has authorized EPA to award nonpoint source pollution control grants to Indian tribes under section 319 of the Clean Water Act in FY 2002 in an amount that exceeds the statutory cap (in section 518(f) of the Clean Water Act) of ⅓% of the total 319 appropriation. The guidelines are intended to assist all tribes that have approved nonpoint source assessments and management programs and also have "treatment-as-a-state" status to receive Section 319 funding to help implement those programs. The guidelines describe the process for awarding base funding in FY 2002, including submissions of proposed work plans. The guidelines also describe the competitive process and schedule to select watershed projects for FY 2002 funding, including submissions of watershed project summaries and the selection criteria for funding watershed projects.

DATES: The guidelines are effective January 22, 2002.

ADDRESSES: Persons requesting additional information or a complete copy of the document should contact Ed Drabkowski at (202) 260–7009; *drabkowski.ed@epa.gov*; or U.S. Environmental Protection Agency (4503F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information or complete copy of the document should contact Ed Drabkowski at (202) 260–7009; *drabkowski.ed@epa.gov*; or U.S. Environmental Protection Agency (4503F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The complete text of today's guidelines is also available on EPA's Internet site on the Nonpoint Source Control Branch homepage at *http://www.epa.gov/owow/nps*.

SUPPLEMENTARY INFORMATION: The full text of the *Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002* is published below.

Dated: December 27, 2001.

Suzanne E. Schwartz,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

Memorandum

Subject: Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002.

From: Suzanne E. Schwartz (for) Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds.

To: EPA Regional Water Division Directors, Regional Tribal Coordinators/Program Managers, Tribal Caucus, EPA Tribal Operations Committee.

I am very pleased to report that Congress has, for the third year in a row, authorized EPA to award nonpoint source pollution control grants to Indian tribes under section 319 of the Clean Water Act ("CWA") in FY 2002 in an amount that exceeds the statutory cap (in section 518(f) of the CWA)' of ⅓% of the total 319 appropriation. This will enable all of the tribes that have approved nonpoint source assessments and management programs and "treatment-as-a-State" ("TAS") status (hereinafter referred to as "approved tribes") by January 30, 2002, to be eligible to receive Section 319 funding to help implement those programs.

The repeated allowance of increased funding for tribal nonpoint source ("NPS") programs in FY 2002 reflects Congress' continuing recognition that Indian tribes need and deserve increased financial support to implement nonpoint source programs that address critical water quality concerns on tribal lands. EPA shares this view and will continue to work closely with the tribes to assist them in developing and implementing effective

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tribal nonpoint source pollution programs. To date, EPA has already approved 66 tribal nonpoint source management programs, covering more than 35 million acres of land (representing more than 71% of all Indian country), and we expect to approve additional programs in FY 2002.

As was the case last year, the new authorization to exceed ⅓% applies only to the current year (FY 2002). As in the past, EPA will work with the tribes to continue to demonstrate that increased 319 funds for tribes can be used effectively to achieve water quality improvement. We were pleased by the high quality of the tribes' work plans that formed the basis of the grants awarded to tribes in FY 2001, which included both base grants for all approved tribes as well as grants for specific watershed projects awarded to forty-five of these tribes through a competitive process. We believe that the tribes and EPA succeeded in directing the FY 2001 grants towards high-priority activities that will produce on-the-ground results that provide improved water quality. We believe that this success warrants continued substantial investment of 319 grant dollars in FY 2002 to address the extensive NPS control needs throughout Indian country, as discussed below. In recognition of this fact, we are once again authorizing a total of $6,000,000 to tribes for FY 2002.

Summary of Process for FY 2002 Grants to Tribes

In FY 2002, we will set aside $6,000,000 for tribal nonpoint source grants. This amount is based on three factors:

1. We will continue to support all eligible tribes with base grants.
2. We will award base funding to eligible tribes as follows:
   a. $30,000 in base funding will be awarded to eligible tribes whose land area is less than 1,000 square miles (640,000 acres).
   b. $50,000 in base funding will be awarded to eligible tribes whose land area is greater than 1,000 square miles (640,000 acres).
3. We will award the remaining funds to eligible tribes through a competitive process to support the implementation of priority watershed projects.

Detailed Discussion of Process for FY 2002 Grants to Tribes

1. Base Funding

Each tribe that has an approved nonpoint source assessment and management program (and TAS status) as of January 30, 2002, will receive base funding based on the following land area scale:

Square miles (acres)	Base amount
Less than 1,000 sq. mi. (less than 640,000 acres)	$30,000
Over 1,000 sq. mi. (over 640,000 acres)	50,000

EPA considered whether other factors such as population and water resources should be used, in addition to or instead of land area, to distinguish tribes with the greatest needs from other tribes. EPA recognizes that each of these factors is relevant and in some circumstances significant. EPA ultimately chose land area as the deciding factor for a cutoff because nonpoint source pollution is strongly related to land use; thus land area is a reasonable criterion that generally is highly relevant to identifying tribes with the greatest needs (recognizing that many tribes have needs that significantly exceed available resources).

The base funding as outlined above may be used for a range of activities that implement the tribe's approved NPS management program, including hiring a program coordinator; conducting nonpoint source education programs; providing training; and implementing, alone or in conjunction with other agencies or other funding sources, on-the-ground watershed projects. In general, this base funding should not be used for assessment activities.

Each tribe that requests base funding must submit to the appropriate EPA Regional office a proposed work plan that conforms to applicable legal requirements (see 40 CFR 35.505 and 35.507) and is consistent with the tribe's approved nonpoint source management program. This proposed work plan should clearly describe each significant category of activity to be funded; the roles of any federal, local, or other partners in completing each activity; the schedule and budget for implementing funded activities; and the outputs to be produced by performance of the activity. Outputs of activities should be quantified; results of projects should be measurable and indicators to do so clearly stated. Tribes should submit their proposed work plans to their appropriate Regional office by March 4, 2002. If a tribe does not submit an approvable proposed work plan by that date, its allocated amount will be added to the competitive pool, discussed immediately below, which will be used to fund tribal NPS program and watershed project priorities.

Regions should work with the tribes to expeditiously award the base grants. However, if the tribe will be awarded additional funds to implement a watershed project, as discussed below, the tribe or the Region may prefer combining the formal process for submission of the final application for both the base and competitive funds. Regions should confer with their tribes and endeavor to proceed in a manner and on a schedule that is most compatible with the tribes' and Regions' needs and preferences.

2. Competitive Funding: Process and Schedule to Select Watershed Projects for FY 2002 Funding

The remaining funds will be awarded to tribes that have approved nonpoint source management programs as of January 30, 2002, on a competitive basis to provide funding for on-the-ground nonpoint source watershed projects that are designed to achieve additional water quality improvement. Each selected project will be eligible to receive up to $150,000, depending on the demonstrated need. The funds will be awarded using the process described below.

a. Watershed Project Review Committee

As we did for the FY 2001 grants, EPA will establish a Watershed Project Review Committee comprised of nine EPA staff, including three EPA Regional Nonpoint Source Coordinators, three EPA Regional Tribal Coordinators, two staff members of the Nonpoint Source Control Branch, and one staff member of the American Indian Environmental Office. The committee will then make funding decisions in accordance with the process described below.

b. Watershed Project Summaries

Tribes that have approved nonpoint source assessments and management programs as well as TAS status as of January 30, 2002, are invited to apply for watershed project funding by submitting watershed project summaries for proposed projects up to a maximum budget of $150,000. (This funding is in addition to the base funding that each approved tribe will receive, as described above.) Tribes that apply for funding for watershed projects should submit a brief (*e.g.*, 3–5 pages) summary of a watershed project implementation plan by March 4, 2002, to the appropriate EPA Regional office for initial screening. (Complete grant applications should not be submitted until after projects are selected, pursuant to review by the Watershed Project Review Committee, as described below.) The Regional office will, by March 18, 2002, forward the proposals that meet the required criteria to EPA Headquarters for distribution to the Watershed Project Review Committee. (E-mail versions would be appreciated where possible because they can be shared among the reviewers most rapidly and easily.)

The watershed project summary should outline the nonpoint source pollution problem and the on-the-ground improvement to be addressed; the project's goals and objectives and the expected water quality benefit to the receiving waterbody; the lead implementing agency (either the tribe or another organization authorized by the tribe to be the project leader) and other agencies that will be authorized to expend project funds; the types of best management practices or measures that will be implemented; the projected implementation schedule; the project's budget items including construction costs; and the environmental performance measures that will be used to evaluate the success of the project. Each watershed plan summary should be clearly written with enough detail to show why the proposed project should be selected for competitive funding. This is critical to help ensure that the best projects are funded.

c. Selection Criteria for Funding Watershed Projects

In ranking the projects, each reviewer on EPA's Watershed Project Review Committee will consider the extent to which the following factors are present in each project.

1. The watershed plan summary includes a clear and specific identification of the on-the-ground improvement project and the water quality problem to be addressed, including the pollutants of concern and their sources (including critical areas to be treated, if known), and clearly describes the project to be constructed or installed.

2. Where relevant, the watershed project consists of implementation actions or load calculations that are intended to help restore an impaired waterbody for which an approved nonpoint source total maximum daily load (NPS TMDL) has been developed or the NPS components of mixed-source TMDL's. [**Note:** EPA recognizes that most tribes have not yet developed NPS TMDLs. However, Section 319 funding may be used to develop and implement approved NPS TMDLs for any 303(d) listed waterbody. Where a tribe has developed a relevant water quality standard and NPS TMDL and seeks Section 319 funding to assist in the implementation of the NPS TMDL, that should be considered by reviewers to be a relevant factor supporting the funding request.]

3. The proposed project is listed as a priority implementation project in the tribal NPS management program.

4. The proposed project is designed to include cooperation and/or combination of resources with other agencies and other parties to provide additional technical and/or financial assistance to the project.

5. The watershed plan summary includes a clear and objective statement of the project's goals and objectives, in terms of controlling nonpoint sources and/or of improving/protecting water quality.

6. The summary identifies the best management practices or measures to be implemented and the location where these measures and practices will be implemented.

7. The summary outlines the construction cost of the project and the amount of Section 319 grant dollars that are requested, not to exceed $150,000. Please note that a 40% non-federal match is also required. However, pursuant to section 35.635(b), EPA's Regional Administrator may increase the maximum Federal share if the tribe or intertribal consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. In no case, will the Federal share be greater than 90 percent.

8. The summary includes an implementation schedule.

9. The summary includes a statement of how the project will be evaluated to determine its success and to derive lessons that will assist the tribe (and other tribes) in future projects.

d. Award of Grants for Tribal Watershed Projects

(i) *Award Decisions.*—The Watershed Project Review Committee will hold a conference call by April 8, 2002, to ensure that all Committee members fully understand and agree on how to objectively apply the criteria discussed above. Rankings will be developed by considering all of the factors as a whole, in accordance with a weighting system to be decided upon by the Committee.

By April 19, 2002, the Committee will compile the ranking of proposed watershed projects based on the selection criteria and then forward their rankings to the Nonpoint Source Control Branch at EPA Headquarters. Headquarters will tally the Committee's rankings and then hold a conference call to provide a final opportunity for members of the Review Committee to discuss the rankings among themselves. By April 29, 2002, EPA will select the highest ranked proposals and announce to the Regions which tribes' watershed projects have been selected for funding. These tribes will be notified immediately by phone or e-mail, with a written letter to follow.

(ii) *Final Work Plans/Full Grant Applications.*—Once a Region and tribe have been notified of the amount that will be awarded to the tribe, they will negotiate a final work plan consistent with 40 CFR 35.507. After making appropriate changes, the tribe must submit a final work plan to the Region by June 10, 2002. If a tribe fails to or is unable to submit an approvable work plan by June 10, 2002, the 319(h) grant will instead be awarded to the next highest ranking unfunded application. Regions should endeavor to finalize the grant awards no later than 60 days after receipt of a complete grant application with an approvable work plan.

(iii) *Match Requirements.*—The match requirement for Section 319 grants is 40 percent of the approved work plan costs, which include both the base funding and competitive funding components discussed above. In general, consistent with 40 CFR 31.24, the match requirement may be satisfied by allowable costs borne by non-federal grants, by cash donations from non-federal third parties, or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10% if the tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. (*See* 40 CFR 35.635.)

In making grant awards to tribes that provide for a reduced match requirement, Regions should include a brief finding that the tribe has demonstrated that it does not have adequate funds to meet the required match.

Intertribal Consortia

Some tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program. (*See* 40 CFR 35.502.) The intertribal consortium is eligible only if the

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consortium demonstrates that all its members meet the eligibility requirements for the Section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (*See* 40 CFR 35.504.)

Technical Assistance to Tribes

In addition to providing nonpoint source funding to tribes, EPA remains committed to providing continued technical assistance to tribes in their efforts to control nonpoint source pollution. During the past several years, EPA has presented many workshops to tribes throughout the United States to assist them in developing: (1) Nonpoint source assessments to further their understanding of nonpoint source pollution and its impact on water quality; (2) nonpoint source management programs to apply solutions to address their nonpoint source problems; and (3) specific projects to effect on-the-ground solutions. The workshops also have provided information on related EPA and other programs that can help tribes address nonpoint source pollution, including the provision of technical and funding assistance. EPA intends to continue providing nonpoint source workshops to interested tribes around the United States in FY 2002 and to provide other appropriate technical assistance as needed.

Non-Tribal Lands

The following discussion explains the extent to which Section 319(h) grants may be awarded to tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) Activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation, and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

1. Activities That Are Related to Waters Within a Reservation

Section 518(e) of the CWA provides that EPA may treat an Indian tribe as a State for purposes of section 319 of the CWA if, among other things, "the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation." 33 U.S.C. 1377(e)(2). EPA already awards grants to tribes under section 106 of the CWA for activities performed outside of a reservation that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of state borders. EPA has concluded that grants awarded to an Indian tribe pursuant to section 319(h) may similarly be used to perform eligible section 319(h) activities outside of a reservation if: (1) The activity pertains to the management and protection of waters within the reservation, and (2) just as for on-reservation activities, the tribe meets all other applicable requirements.

2. Activities That Are Unrelated to Waters of a Reservation

As discussed above, EPA is authorized to award section 319(h) grants to tribes to perform eligible section 319(h) activities if the activities pertain to the management and protection of waters within a reservation and the tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319(h) grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including "usual and accustomed" hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

Milestones Summary

Date Tribes to be Eligible for 319 Grants: January 30, 2002
Tribes Submit Base Grant Work Plans to Region: March 4, 2002
Tribes Submit Competitive Grant Proposals to Region: March 4, 2002
Region Forwards Proposals to Headquarters: March 18, 2002
Review Committee Discusses Proposals: April 8, 2002
Review Committee Forwards Ranking Scores to HQ: April 19, 2002
Headquarters Notifies Regions/Tribes of Selections: April 29, 2002
Tribes Submit Final Grant Application to Region: June 10, 2002

Statutory and Regulatory Requirements

All section 319(h) grants will be awarded and administered consistent with the statutory requirements in section 319(h) and 518(e) of the Clean Water Act and applicable regulations in 40 CFR parts 31 and 35.

Conclusion

By once again lifting the ⅓% statutory cap in FY 2002, Congress has continued to provide the tribes and EPA with an excellent opportunity to further tribal efforts to reduce nonpoint pollution and enhance water quality on tribal lands. EPA looks forward to working closely with the tribes to assist them in implementing effective nonpoint source programs in FY 2002 and creating a sound basis to assure that adequate funds will continue to be provided in the future.

If you have any questions, please do not hesitate to call me or have your staff contact Ed Drabkowski at (202) 260–7009 (or e-mail at *drabkowski.ed@epa.gov*).

cc: Director, American Indian Environmental Office, EPA; Jeff Besougloff, AIEO; Jerry Pardilla, National Tribal Environmental Council; Billy Frank, Northwest Indian Fisheries Council; Don Sampson, Columbia River Intertribal Fish Commission; James Schlender, Great Lakes Indian Fish and Wildlife Commission; All Tribes that have an approved Nonpoint Source Management Program; Regional Water Quality Branch Chiefs; Regional Nonpoint Source Coordinators

[FR Doc. 02–1499 Filed 1–18–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Wiley Thornton Gibson and Rebecca D. Gibson, both of Union Springs, Alabama; to retain voting shares of USAL Bancorp, Inc., Union Springs, Alabama, and thereby indirectly retain voting shares of AmeriFirst Bank, Union Springs, Alabama.

Board of Governors of the Federal Reserve System, January 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1421 Filed 1–18–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 2002.

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

Richard S. Nelson, Powell, Wyoming; to acquire voting shares of First Company, Powell, Wyoming, and thereby indirectly acquire voting shares of First National Bank & Trust Company, Powell, Wyoming.

Board of Governors of the Federal Reserve System, January 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1534 Filed 1–18–02; 8:45 am]
BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Folkston Investors, LLC, Folkston, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Corporation, Folkston, Georgia, and thereby indirectly acquire First National Bank of Folkston, Folkston, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire up to 40 percent of the voting shares of Bank of Nevada, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1420 Filed 1–18–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Reliance Bancshares, Inc., Florence, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Reliance Bank, Florence, South Carolina.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Outsource Holdings, Inc., Lubbock, Texas and Outsource Delaware Holdings, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First Citizens Bank, NA, Dallas, Texas.

In connection with this proposal, Outsource Holdings, Inc., Lubbock, Texas has applied to acquire Jefferson Mortgage Services, Inc., Dallas, Texas, and Orr Lease, Inc., Dallas, Texas, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y, and leasing

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personal or real property, pursuant to 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, January 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1535 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

January 17, 2002.

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, January 23, 2002.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to Regulation C (Home Mortgage Disclosure) based on a review of the regulation. (Proposed earlier for public comment; Docket No. R–1001).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR MORE INFORMATION PLEASE CONTACT: Office of Public Affairs at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: January 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1629 Filed 1–17–02; 2:24 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—11/13/2001			
20020040	Groupe Danone	Stonyfield Farm, Inc.	Stonyfield Farm, Inc.
20020085	Applied Materials, Inc	Schlumberger Limited	Schlumberger Technologies, Inc.
20020088	Dan L. Duncan	Ultramar Diamond Shamrock Corporation.	Diamond–Koch III, L.P. Diamond–Koch L.P.
20020089	Dan L. Duncan	Koch Industries, Inc.	Diamong–Koch III, L.P. Diamond–Koch, L.P.
Transactions Granted Early Termination—11/14/2001			
20020038	GlobeSpan, Inc	Virata Corporation	Virata Corporation.
20020047	Kenneth Rainin	Mettler–Toledo International Inc	Mettler–Toledo international Inc.
20020048	Mettler–Toledo International Inc	Kenneth Rainin	Rainin Instrument, LLC.
Transactions Granted Early Termination—11/15/2001			
20020053	ARAMARK Corporation	The ServiceMaster Company	CMI Group, Inc. Halliwell Engineering Services, L.L.C. Quantum Resource Corporation. ServiceMaster Direct Marketing Corporation. ServiceMaster Management Services Limited Partnership. ServiceMaster Management Services, Inc. ServiceMaster Management Services of Canada, Inc.
Transactions Granted Early Termination—11/19/2001			
20020063	Anglo American	Normandy Mining Limited	Normandy Mining Limited.
20020070	AT&T Wireless Services, Inc	Telecorp PCS, Inc	Telecorp PCS, Inc.
20020071	Bally Total Fitness Holding Corporation.	Douglas H. Levine	Crunch Fitness International, Inc.
20020074	Greenwich Street Capital Partners II, L.P.	Regal Cinemas, Inc	Regal Cinemas, Inc.
20020082	Ballard Power Systems Inc	Ford Motor Company	Ford Electric Drive Holdings Company.

Transaction No.	Acquiring person	Acquired person	Acquired entities
20020083	Enbridge Energy Partners, L.P	Koch Industries, Inc	Koch Midstream Gasmark Company, LP. Koch Midstream Processing Company, L.P. Koch Midstream Services Company, LLC.
20020087	Weatherford International, Inc	Vivendi Universal, S.A	Johnson Screens, Inc.
20020092	American Electric Power Company, Inc.	Enron Corp	Indian Mesa Power Partners I LP. Indian Mesa Power Partners II LP.
20020096	Rothmans Inc	Santa Fe Natural Tobacco Company, Inc.	Santa Fe Natural Tobacco Company, Inc.
20020098	Brunswick Corporation	Genmar Holdings, Inc	Hatteras Yachts, Inc.
20020104	General Electric Company	Madison Dearborn Capital Partners IV, L.P.	Telemundo Communications Group, Inc.
20020105	The Williams Companies, Inc	Duke Energy Corporation	Duke Energy Field Services, LP.
20020106	Duke Energy Company	The Williams Companies, Inc	NEWCO LLC.
20020113	Taylor Nelson Sofres, plc	Thomas S. Perakos	RapidChek Reporting Inc. Theatrical Entertainment Services, Inc.
20020118	Inversion Corporativa I.C., S.A	High Plains Corporation	High Plains Corporation.
20020121	Amerada Hess Corporation	The Marital Trust under agreement dated January 17, 1991.	Jomarco, Inc.
20020127	Cinven Luxembourg I S.a.r.l	WCM Beteiligungs-und Grundbesitz-Aktiengesellschaft.	Klockner Capital Corporation, Klockner Pentaplast GmbH.
Transactions Granted Early Termination—11/20/2001			
20020122	Cadence Design Systems, Inc	Silicon Perspective Corp	Silicon Perspective Corp.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1475 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the FEDERAL REGISTER.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—11/26/2001			
20020109	Mr. Peter R. Kellogg	Navistar International Corporation	Harco National Insurance Company
20020117	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	Salinas Cellular Telephone Company
20020120	Baylor Health Care System	All Saints Health System	All Saints Health System
20020123	BB&T Corporation	Cooney, Rikard & Curtin, Inc	Cooney, Rikard & Curtin, Inc.
20020124	Kerr-McGee Corporation	Devon Holdco	Devon Holdco
20020129	Security Capital Group Incorporated.	Equity Office Properties Trust	ECH–517 Marquette, L.L.C. ECH-Adams/Wabash Parking Garage, L.L.C. ECH-North Loop/Theater District Parking Limited Partnership ECH-St. Louis Parking Garages, L.L.C.
20020140	Observer AB	PRIMEDIA Inc	Bacon's Information, Inc.
20020146	Berkshire Hathaway Inc	Fruit of the Loom, Ltd	Fruit of the Loom, Ltd. FTL Caribe, Ltd. Union Underwear Company, Inc.
Transactions Granted Early Termination—11/27/2001			
20020132	JP Morgan Chase & Co	Emerson Electric Co	Electronic Control Systems, Inc., Ogden Manufacturing Co. Emerson Electric (U.K.) Limited, VUMA A.S. Emerson Electric Canada Limited Emerson Electric Co. Etirex S.A., ELW Industrial, S. de R.L. de C.V.

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Transaction No.	Acquiring person	Acquired person	Acquired entities
20020136	ILEX Oncology, Inc	Millennium Pharmaceuticals, Inc	Millennium & ILEX Partners, L.P. Millennium & ILEX, L.L.C.
Transactions Granted Early Termination—11/28/2001			
20020153	Fiserv, Inc	William E. Sagan	Trewit, Inc.
Transactions Granted Early Termination—11/29/2001			
20020084	Wellspring Capital Partners II, L.P	American Coin Merchandising, Inc	American Coin Merchandising, Inc.
20020097	Lockheed Martin Corporation	Cecile Barker	OAO Corporation
20020138	QUALCOMM Incorporated	VeloCom Inc	VeloCom Inc.
20020143	School Specialty, Inc	Franklin Covey Co	Premier Agendas, Inc.
20020147	Verizon Communications Inc	Everett R. Dobson Irrevocable Family Trust.	ACC Tennessee License LLC Dobson Cellular Systems, Inc., ACC of Tennessee LLC
20020148	Verizon Communications Inc	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc.
20020149	Weyerhaeuser Company	Willamette Industries, Inc	Willamette Industries, Inc.
20020159	MBNA Corporation	Wachovia Corporation	The First National Bank of Atlanta
20020160	Kmart Corporation	Windsong/Allegiance, LLC	Joe Boxer Company, LLC
Transactions Granted Early Termination—12/03/2001			
20020119	Alliant Techsystems Inc	Blount International, Inc	Estate Cartridge, Inc. Federal Cartridge Company Newco Simmons Outdoor Corporation
20020145	IM International media AG	Graham King	Initial Entertainment Group, Inc.
20020152	Long Beach Holdings Corp	Ameriquest Capital Corporation	Long Beach Acceptance Corp.
20020163	International Business Machines Corporation.	Cross Worlds Software, Inc	Cross Worlds Software, Inc.
20020168	Mr. Vic De Zen	Fineter S.A	Marley Mouldings LLC
20020173	Lap Shun (John) Hui	eMachines, Inc	eMachines, Inc.
Transactions Granted Early Termination—12/04/2001			
20020133	WellPoint Health Networks Inc	Missouri Foundation for Health (The).	RightCHOICE Managed Care, Inc.
20020171	Wind Point Partners IV, L.P	U.S. Industries, Inc	Ames True Temper, Inc. IXL Manufacturing, Inc.
Transactions Granted Early Termination—12/06/2001			
20020257	The 1998 Confederation Trust	Quality Stores, Inc	Quality Stores, Inc.
Transactions Granted Early Termination—12/07/2001			
20011241	Koninklijke Ahold N.V	Bruno's Supermarkets, Inc	Bruno's Supermarkets, Inc.
20020164	CRH, plc	Royal Bank of Canada	Global Clay Products, LLC
20020185	First Reserve Fund VIII, L.P	Key Energy Services, Inc	Key Energy Services, Inc.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1476 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—12/10/2001			
20020130	Emerson Electric Co	MKS Instruments, Inc	MKS instruments, Inc.
20020131	MKS Instruments, Inc	Emerson Electric Co	ENI Technology, Inc.
20020137	Kerr-McGee Corporation	Kinder Morgan, Inc	Kinder Morgan Power Company.
20020141	Enbridge Inc	Williams Companies, Inc	Goebel Gathering Company, L.L.C. Transcontinental Gas Pipe Line Corporation. WFS Gathering Company, L.L.C., WFS-Liquids Company.
20020144	Kaneb Pipe Line Partners, LP	Statia Terminals Group N.V	Statia Technology, Inc., Statia Marine, Inc. Statia Terminals International N.V.
20020178	Fortress Investment Fund LLC	AMRESCO, INC. (Debtor-in-Possession).	AMRESCO Commercial Finance, Inc. AMRESCO Independence Funding, Inc.
20020181	Motorola, Inc	Vincent R. Borelli	Synchronous, Inc.
20020183	General Motors Corporation	Isuzu Motors Limited	IMAC Funding Corporation I.
20020193	Voest-Alpine AG	Polynorm N.V	Polynorm N.V.
20020198	Nextel Communications, Inc	Chadmoore Wireless Group, Inc	Chadmoore Wireless Group, Inc.
20020203	Health Management Associates, Inc.	Clarent Hospital Corporation	Lancaster Hospital Corporation. Paracelsus Fentress County Medical Center, Inc. Paracelsus Mesquite Hospital, Inc. Paracelsus Santa Rosa Medical Center, Inc.
Transactions Granted Early Termination—12/11/2001			
20020154	GS Capital Partners 2000, L.P	Global Crossing Ltd	IPC Information Systems, Inc.
20020156	GS Capital Partners 2000, L.P	NEWCO (a joint venture)	NEWCO.
20020167	LaQuinta Corporation	LaQuinta Properties, Inc	LaQuinta Properties, Inc.
20020192	CAE Inc	General Electric Company	SimuFlite Training International, Inc.
20020199	ConAgra Foods, Inc	Nestle' S.A	Nestle USA, Inc.
20020205	AutoNation, Inc	Richard B. Cogswell, Jr	Fox Valley Imports, Inc. Laurel Audi, LLC. Laurel Automotive Group of Tinley Park, LLC. Laurel Motors, Inc.
Transactions Granted Early Termination—12/13/2001			
20020170	AMETEK, Inc	PerkinElmer, Inc	PerkinElmer Instruments, Inc.
20020207	Immunex Corporation	American Home Products Corporation.	Greenwich Holdings Inc. ,
Transactions Granted Early Termination—12/14/2001			
20012216	International Game Technology	Anchor Gaming	Anchor Gaming.
20020169	Progress Energy, Inc	Powergen plc	Powergen plc.
20020194	Nortrax, Inc	Nortrax Inc	Nortrax II, Inc.
20020195	Nortrax Inc	Nortrax II, Inc	Nortrax Inc.
20020208	Ford Motor Company	Ford Motor Company	FRN of Greater Salt Lake City, LLC.
20020210	Mohawk Industries, Inc	Dal-Tile International Inc	Dal-Tile International Inc.
20020211	Atlantic Equity Partners III, L.P	Ranpak Corp	Ranpak Corp.
Transactions Granted Early Termination—12/17/2001			
20020177	AOL Time Warner Inc	WGBH Educational Foundation	WGBH Educational Foundation.
20020212	CRH plc	Nuckolls Concrete Services, Inc	Nuckolls Concrete Services, Inc.
20020215	Mellon Financial Corporation	PriceWaterhouseCoopers LLP	Unifi Network LLC.
20020219	Cal Dive International, Inc	Canyon Offshore, Inc	Canyon Offshore, Inc.
20020220	CRH plc	Cemex, S.A. de C.V	Cemex, Inc.
20020222	Tyco International Ltd	Wellspring Capital Partners II, L.P	Paragon Trade Brands, Inc.
20020232	National Equipment Services, Inc	Brambles Industries Limited	Brambles Equipment Services, Inc. Brambles Equipment Services, Inc., (Canada) ,
Transactions Granted Early Termination—12/18/2001			
20020172	B & C Privatstiftung :	Bayerische Hypo - und Vereinsbank AB.	Peter Frank GmbH.
20020175	Gencorp Inc	GenCorp Inc	Aerojet Fine Chemicals LLC.
20020201	UNIPAC Service Corporation	EFS, Inc	EFS, Inc.
20020221	Digimarc Corporation	Polaroid Corporation	Polaroid Corporation ID Systems, Inc.
20020223	Limestone Electron Trust	El Paso Corporation	El Paso Golden Power, L.L.C.
20020230	The PMI Group, Inc	Fairbanks Capital Holding Corp	Fairbanks Capital Holding Corp.
20020243	National Dairy Holdings, LP	Suiza Foods Corporation	Suiza Foods Corporation.

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Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—12/19/2001			
20020165	CHB Capital Partners II, LP	Law Companies Group, Inc	Law Companies Group, Inc.
20020188	OSI Pharmaceuticals, Inc	Gilead Sciences, Inc	Gilead Sciences, Inc.
20020209	President and Fellows of Harvard College.	CCC Information Services Group, Inc.	CCC Information Services Group, Inc. ,
Transactions Granted Early Termination—12/20/2001			
20012438	Smith Investment Company	Ocelot Oil Corp	State Industries, Inc.
20020217	EdperPartners Limited	Lambert Bedard	Great Northern Paper, Inc.
20020218	EdperPartners Limited	Joseph Kass	Great Northern Paper, Inc., a Delaware Corporation.
20020231	Sandvik AB	Walter AG	Walter AG.
20020239	Tyco International Ltd	FCC Equipment Financing, Inc	FCC Equipment Financing, Inc. ,
Transactions Granted Early Termination—12/21/2001			
20012475	Mr. Georg F. W. Schaeffler	FAG Kugelfischer Georg Schafer AG.	FAG Kugelfischer Georg Schafer AG
20020062	Reliant Energy, Incorporated	Orion Power Holdings, Inc	Orion Power Holdings, Inc.
20020107	Neopost S.A.	Ascom Holding AG	Ascom Hasler Mailing Systems Inc.
20020189	Newmont Mining Corporation	Normandy Mining Limited ACN 009 295 765.	Normandy Mining Limited ACN 009 295 765
20020224	The Right Start, Inc	Royal Vendex KBB N.V.	F.A.O. Schwartz. Quality Fulfillment Services, Inc.
20020235	NetBank, Inc	Resource Bancshares Mortgage Group, Inc.	Resource Bancshares Mortgage Group, Inc.
20020237	Tyco International Ltd	Code, Hennessy & Simmons, III, L.P.	CIIT Holdings, Inc.
20020238	El Paso Corporation	El Paso Corporation	Photon Investors, L.L.C.
20020240	J.P. Morgan Chase & Co	III Associates	System & Services Technologies, Inc.
20020241	Plexus Corp	MCMS, Inc	MCMS Customer Services, Inc. MCMS International, Inc.
20020244	Three Cities Fund III, L.P	ABC-NACO Inc	ABC-NACO Inc.
20020246	ABRY Partners IV. L.P	Monitronics International, Inc	Monitronics International, Inc.
20020249	CDV Trust	Marks & Spencer p.l.c	Brooks Brothers, Inc.
20020250	Stella Vermogensverwaltungs GmbH.	Honewell International Inc	Honewell Commercial Vehicle Systems Company.
20020251	JDS Uniphase Corporation	International Business Machines Corporation.	International Business Machines Corporation.
20020253	Cumulus Media Inc	Frank D. Osborn	Aurora Communications, LLC Aurora Management, Inc.
20020254	Consumer Portfolio Services, Inc	MFN Financial Corporation	MFN Financial Corporation.
20020255	Terex Corporation	Schaeff Holding GmbH & Co. KG	BHS Baumaschinen Handels. Fuchs-Bagger Gmbh& Co. KG. Fuchs-Bagger Verwaltungs GmbH. Karl Schaeff GmbH & Co. Nippon Schafu Kabuskiki Kaisha. Portatz Baumaschinen GmbH & Co. Potratz GmbH. Schaeff & Co. (UK). Schaeff Biegetechnik Besitz GmbH & Co. Schaeff Biegetechnik GmbH. Schaeff Ersatzteile-Service GmbH & Co. KG. Schaeff Ersatztiele. Schaeff France SARL. Schaeff Gesellschaft. Schaeff GmbH. Schaeff Grundbesitz GbR. Schaeff Holding GmbH & Co. KG. Schaeff Holding Verwaltungs-GmbH. Schaeff Komponenten Beteiligungs. Schaeff Komponenten GmbH & Co. Schaeff Limited. Schaeff Machinery (Shanghai) Co. Schaeff Service Limited.
20020259	Nationwide Mutual Insurance Company.	Provident Mutual Life Insurance Company of Philadelphia.	Provident Mutual Life Insurance Company of Philadelphia.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Officer, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Directions of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1477 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquried entities
Transactions Granted Early Termination—12/27/2001			
20020202	General Electric Company	CMS Energy Corporation	Michigan Electric Transmission Company LLC
20020204	AT&T Wireless Services, Inc.	Gerald T. Vento	THC of Houston, Inc. THC of Melbourne, Inc. THC of Orlando, Inc. THC of San Diego, Inc. THC of Tampa, Inc.
20020216	Furniture Brands International, Inc.	Furnishings International Inc.	Drexel Heritage Furnishings, Inc. Furnishings International Inc. Henredon Furniture Industries, Inc. Maitland-Smith Pacific, LTD Maitland-Smith, Inc.
20020242	Perot Systems Corporation	Dianne H. Patterson	Claim Services Resources Group, Inc.
20020252	Omnicare, Inc.	Mariner Post-Acute Network, Inc.	American Medical Insurance Billing Services, Inc. American Pharmaceutical Serivces, Inc. APS Pharmacy Management, Inc. Compass Pharmacy Services of Maryland, Inc. Compass Pharmacy Services of Maryland, Inc. Ocean Pharmacy, Inc. Pinnacle Pharmaceutical Services, Inc.
Transactions Granted Early Termination—12/28/2001			
20020225	Nestle S.A.	Bristol-Myers Squibb Company	Bristol-Myers Squibb Company
20020226	L. Bettencourt	Bistol-Myers Squibb Company	Bistol-Myers Squibb Company
Transactions Granted Early Termination—01/01/2002			
20020267	American Institute of Certified Public Accountants.	Rivio, Inc.	Rivio, Inc.
20020278	Cable and Wireless Inc.	Exodus Communications, Inc.	Exodus Communications, Inc.
Transactiosn Granted Early Termination—01/03/2002			
20020275	AOL Time Warner Inc.	Oxygen Media Corporation	Oxygen Media Corporation
20020276	Paul G. Allen	Oxygen Media Corporation	Oxygen Media Corporation
20020282	Berkshire Hathaway Inc.	Craig A. Ponzio	Albecca Inc.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1478 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

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Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., February 25, 2002. 8:30 a.m.–4 p.m., February 26, 2002.

Place: Radisson Buckhead/Emory Area Inn, 2061 North Druid Hills Road, Atlanta, Georgia 30329

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals) and the Draft Guideline for Prevention of Healthcare-associated Pneumonia; public comments on the Draft Guideline for Hand Hygiene in Healthcare Settings; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1220 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on Strengthening the Supply of Routinely Recommended Vaccines in the United States

The National Vaccine Advisory Committee (NVAC), of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Strengthening the Supply of Routinely Recommended Vaccines in the United States.

Times and Dates: 8:30 a.m.—5 p.m., February 11, 2002. 8:30 a.m.—4 p.m., February 12, 2002.

Place: Omni Shoreham Hotel, 2500 Calvert Street, Washington, DC, Phone: 1–888–511–5743.

Status: Open to the public, limited only by the space available. The meeting rooms will accommodate approximately 200 people.

Purpose: The objectives of the Workshop are to define and describe the scope of the problem with vaccine supply in the United States; to identify and discuss possible contributing causes of and potential strategies to address the vaccine supply problem; and, to develop a limited number of pragmatic strategy options to address the vaccine supply issues in the United States.

Matters to be Discussed: Agenda items will include presentations and discussion including: an overview of the problems associated with vaccine supply; financial incentives for research, development, and production; review of the regulatory process; government-owned contractor-operated vaccine production facilities; vaccine stockpiles; liability protections; tailoring strategies to specific shortages; and, perspectives of constituencies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Stephen Sepe and Jeanne Santoli, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 770–488–2040 (Sepe) and 404/639–8802 (Santoli). You may also visit the NVPO web site for additional information: *www.cdc.gov/od/nvpo/calendar.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1221 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 9 a.m.—5 p.m., February 13, 2002. 8:30 a.m.—3 p.m., February 14, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (the Board) was established under the *Energy Employees Occupational Illness Compensation Program Act of 2000* to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which are being promulgated by Department of Health and Human Services (HHS), advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of an initial roster of 10 Board members. The initial tasks of the Board will be to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advises the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on progress reports, recap of Board comments on probability of causation rule, status of rule promulgation, status of rule on dose reconstruction, special exposure cohort petitioning process, and Board discussion.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1219 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., February 6, 2002. 8:30 a.m.–12 p.m., February 7, 2002.

Place: Corporate Square Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to Tuberculosis Laboratory, improving TB efforts in the Southeast, and other TB related topics. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1218 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 15, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857; 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider the safety and efficacy of biologics license application (BLA) 103780/0 REBIF (Interferon beta-1A, Serono), proposed for the treatment of relapsing-remitting multiple sclerosis. The background material will become available the day before the meeting and it will be posted under the Peripheral and Central Nervous System Drugs Advisory Committee Docket site at: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to the Peripheral and Central Nervous System Drugs meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 1, 2002. Oral presentations from the public will be scheduled from approximately 11 a.m. to 12 noon. Time allotted for each presentation may be limited. Those

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desiring to make formal oral presentations should notify the contact person before February 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 10, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1409 Filed 1–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; Comment Request; Ethical Issues Associated With Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Ethical Issues Associated with Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purposes of the study are (1) to examine whether the current practice environment has created ethical concerns/conflict for Nurse Practitioners and Physician Assistants in the provision of patient care; (2) to explore relationships between selected individual, organizational, and state regulatory factors and ethical conflict in practice and the perceived delivery of quality care; and (3) to examine the perceived level of ethics preparedness and confidence in ethics decision-making. The findings will provide valuable information concerning: (1) The importance of ethics and ethical factors from the perspective of different professional groups; and (2) ethics educational needs of Nurse Practitioners and Physician Assistants. *Frequency of Response:* Once. *Affected Public:* Individuals; Academic Institutions; Business or other for-profit; Not-for-profit organizations. *Type of Respondents:* Nurse Practitioners and Physician Assistants. The annual report burden is as follows: *Estimated Number of Respondents:* 1,400; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .33; and *Estimated Total Annual Burden Hours Requested:* 462. The annualized cost to respondents is estimated at $33,600. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection is information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Connie Ulrich, RN, PhD, Principal Investigator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to: *culrich@cc.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: January 14, 2002.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 02–1435 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; California Health Interview Survey—Complementary and Alternative Medicine

SUMMARY: In compliance with the requirement of section 2506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* California Health Interview Survey—Complementary and Alternative Medicine (CHIS–CAM). Type of Information Collection Request: New. Need and Use of Information Collection. The NCI has sponsored a Cancer Control Topical Module (CCTM) to the California Health Interview Survey (CHIS), administered in 2001. The CHIS is a telephone survey designed to provide population-based, standardized health-related data. Initiated by the UCLA Center for Health Policy Research, California Department of Health Services, and the Public Health Institute, the survey was unfunded by a number of public and private sources.

The 2001 CHIS CCTM was similar in content to the 2000 National Health Interview Survey (NHIS) CCTM and was administered to one sample adult in more than 54,000 households. NCI anticipates comparing the CHIS and NHIS data in order to conduct comparative and pooled analyses that will enable better estimates of health-related behaviors and cancer risk factor for smaller racial/ethnic minority populations.

The CHIS–CAM is a cross-sectional telephone survey nested in the CHIS study population of all adult respondents who agreed to be re-contacted. Complementary and Alternative Medicine (CAM) is a rapidly growing component of prevention and treatment of chronic illness in the United States. Yet the study of cancer has been largely excluded from the existing population-based surveys on CAM due to sample size restrictions, and little reliable information exists on how CAM utilization varies among different ethnic groups and among those with chronic illnesses.

The CHIS–CAM survey will be administered to approximately 2,000 cancer survivors and 6,000 non-cancer adults. It will enable NCI to collect extensive information on CAM, cancer and other chronic illnesses, and link it with the breadth of basic data already collected from the large, racially and ethnically diverse sample of CHIS respondents.

Comprehensive and detailed collection of information on CAM will enable NCI to increase its understanding of how, why, and to what effect CAM is used. The CHIS–CAM survey data will allow NCI to compare individuals who report various types of cancer and other chronic conditions and to determine: (1) The major categories of CAM procedures being used, as well as the specific therapies targeted toward cancer prevention and treatment, (2) how various subgroups in the population (defined by race/ethnicity, gender, age, health status, etc.) compare with regards to CAM procedures being used; (3) to what extent persons with cancer used specific types of CAM before or after diagnoses with cancer, and whether cancer patients used CAM in place of, or in addition to, conventional medical care; (4) whether systematic CAM treatments for cancer might lead to harm or interact with conventional treatments for cancer; and (5) what expenditures people are paying out-of-pocket for CAM procedures. Frequency of Response: One-time. Affected public: Individuals. Types of respondents: U.S. adults. The annual reporting burden is as follows:

TABLE A—ANNUALIZED BURDEN ESTIMATES FOR CHIS–CAM DATA COLLECTION

Type of respondents	Estimated number of respondents	Estimated no. of responses per respondent	Average burden hours per response	Estimated total annual burden hour requested
U.S. Adults	8,000	1	.35	2,800

There is no annualized cost to respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anita Ambs, Project Coordinator, National Cancer Institute, EPN 4106, 6130 Executive Boulevard, Bethesda Maryland 20892–7344, or call non-toll free number (301) 451–8500 or email your request, including your address to *ambsa@mail.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days from the date of this publication.

Dated: January 10, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–1436 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 285; fax: 301/402–0220; e-mail: *shinnm@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thermostable DNA Polymerases that Bypass Lesions in DNA

Dr. Roger Woodgate (NICHD) and Dr. Francois Boudsocq (NICHD)
DHHS Reference No. E–232–01/0—Research tool

Lesions in DNA often block DNA polymerases, especially in those polymerases used in the Polymerase Chain Reaction (PCR). Old DNA, such as that from forensic samples, is often damaged and cannot be used for PCR analysis.

The NIH announces the identification of two novel Y-family DNA polymerases—called Dbh and Dpo4—from the archea Sulfolobus solfactaricus P1 and Sulfolobus solfactaricus P2, respectively. The Y family of polymerases are characterized by their ability to replicate through DNA lesions that may block the activity of other, more conventional, polymerases such as the thermostable enzymes used in PCR. Both Dbh and Dpo4 enzymes have been shown to be as thermostable as the Taq polymerase (Dpo4, in particular) and can copy stretches of DNA up to 1300 bp in length. Because these polymerases are in general more efficient at coping with DNA lesions, they may be useful in the amplification of damaged DNA and could be useful in forensic PCR applications.

A Novel Human DNA Polymerase, POL IOTA, Involved in DNA Repair and Mutagenesis

Drs. Roger Woodgate and John McDonald (NICHD)
DHHS Reference No. E–229–01/0—Research tool

The NIH announces the identification of a novel DNA polymerase called POL IOTA, that is highly error prone and

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may be responsible for causing mutations that ultimately lead to human cancer formation.

The polymerase could be useful as a target for chemotherapeutic agents that block the polymerase's enzyme activity. This in turn could lead to an increase in the cure rate of cancer patients. In addition, a diagnostic assay could be developed to identify enzyme expression patterns and their mutations, so as to recognize humans with an increased risk of cancers. Therefore, the polymerase could be used as a research tool, or with more development, into a kit that could be used in both research and clinical labs.

TMC1 and TMC2 and Applications to Hereditary Deafness

Dr. Andrew Griffith et al. (NIDCD)
DHHS Reference No. E–168–01/0 filed 19 Sep 2001

Hearing loss is a common communication disorder effecting nearly 1 in 1,000 children in the United States alone, and nearly 50% of adults by the age of eighty. Deafness can be caused by both environmental and disease-related factors, however, in at least 50% of the cases, deafness is an inherited trait.

The NIH announces the isolation and purification of two novel genes termed TMC1 and TMC2 that may encode the mammalian hair cell mechanotransduction channel. It is known that the mechanotransduction channel is the critical molecule within the hearing pathway, which detects sound within the inner ear. Our investigators have discovered that dominant and recessive mutations in TMC1 underlie two forms of hereditary deafness known as DFNA36 and DFNB7/11, respectively. This technology would be useful to a company interested in finding new therapies to treat or prevent hearing loss as well as identifying persons at increased risk of developing aminoglycoside-induced hearing loss. This technology is also available for collaboration with a partner under a Cooperative Research and Development Award.

Gene Involved in Dietary Sterol Absorption and Excretion and Uses Therefor

Drs. Michael Dean and Shailendra Patel (NCI)
DHHS Reference No. E–295–99/1 filed 25 Sep 2001 (PCT/US01/29859)

The ATP binding cassette proteins are involved in cholesterol regulation. Cholesterol absorption from the diet is an important mechanism for regulating serum cholesterol levels. It is well known that high serum cholesterol levels are found in several diseases such as diabetes, atherosclerosis, and cardiovascular disease.

The NIH announces the identification and characterization of the ABCG5 gene. The gene maps to human chromosome 2, which has been identified as playing a role in the genetic disorder sitosterolemia. Patients with sitosterolemia display an abnormally high level of blood sterol debri from plants and fish, which can lead to coronary artery disease, atherosclerosis, and arthritis, as well as other diseases. The inventors believe that mutations in the ABCG5 gene interfere with sterol transport thereby causing sitosterolemia. Companies working in this area would find this technology useful in searching for agents that can treat or prevent any disease or condition that has associated with it high cholesterol levels.

Dated: January 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1439 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Efficient Inhibition of HIV–1 Viral Entry Through a Novel Fusion Protein Including CD4

James Arthos, Claudia Cicala, Anthony Fauci (NIAID)
DHHS Reference No. E–337–01/0 filed 25 Oct 2001
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: *soukasp@od.nih.gov*

This invention relates to CD4 fusion proteins for use in the treatment of an immunodeficiency virus infection such as human immunodeficiency virus (HIV). These polypeptides have been shown by the inventors to inhibit the entry of primary isolates of HIV–1 into CD4+ T cells by targeting the gp120 subunit of the HIV–1 envelope. The invention claims recombinant polypeptides comprising a CD4 polypeptide ligated at its C-terminus with a portion of a human immunoglobulin comprising a hinge region and two constant domains of an immunoglobulin heavy chain. The portion of the IgG is fused at its C-terminus with a polypeptide comprising a tailpiece from the C terminus of the heavy chain of an IgA antibody. This protein is very large (greater than 800 kilodaltons), which may contribute to its ability to inhibit entry of primary isolates of HIV–1 into T cells. It presents twelve gp120 binding domains (D1D2) and can bind at least ten gp120s simultaneously. The inventors have shown that the construct efficiently neutralizes primary isolates from different HIV subgroups. Also claimed are use of the construct as a component of a vaccine and as a diagnostic.

Methods and Compositions for Production and Purification of Recombinant Staphylococcal Enterotoxin B (rSEB)

Daniel Coffman, Steven Giardina, Jianwei Zhu (NCI)
DHHS Reference No. E–075–01/0 filed 09 Oct 2001
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail:*soukasp@od.nih.gov*

This invention claims processes and compositions for fermentation, recovery, and purification of recombinant bacterial superantigens (rSAgs), exemplified by a recombinant staphylococcal enterotoxin B SEB (rSEB) protein mutated for use in administration to a mammalian recipient. This process generates an economically viable quantity of rSEB vaccine protein meeting FDA parenteral drug specifications. The purification methods generally involve multiple steps including hydrophobic interaction chromatography (HIC), buffer exchange (desalting), and cation exchange. The final product of the purification is a highly purified rSAg composition satisfying clinical safety criteria and is immunogenic and protective against lethal aerosol challenge in a murine model. The methods and compositions claimed in the patent application provide possible therapeutics and prophylactics for diseases caused by bacterial SAgs, such as food poisoning, bacterial arthritis and other autoimmune disorders, toxic shock syndrome, and the potential use of SAg biowarfare agents.

Novel Peptides to a Melanoma Antigen and Their Use in Diagnostic and Therapeutic Methods

P. Hwu, R. LaPointe, S.A. Rosenberg (NCI)
DHHS Reference No. E–086–01/0 filed 22 Aug 2001
Licensing Contact: Kai Chen; 301/496–7736 ext. 247; e-mail: *chenk@od.nih.gov*

Various tumor-associated antigens are recognized by T cells, thereby eliciting an immune response. Among these tumor-associated antigens is gp100, which along with several other tumor antigens identified to date is associated with malignant melanoma. Most of the gp100 peptide epitopes identified to date are HLA–A2 (MHC Class I) restricted.

The current invention embodies the identification of a novel HLA–DRB1*0701 (MHC Class II) restricted epitope of gp100. As 16–28% of the population is HLA–DRB1*0701 positive, this peptide could represent a potential immunotherapeutic vaccine for use against melanoma in a significant percentage of the patient population. In addition, the current invention represents only the second gp100 peptide identified to date that is capable of eliciting a CD4+ helper T cell response. It is believed that administration of a peptide capable of eliciting a CD4+ T cell response may be required in order to upregulate a CD8+ T cell response against a Class I-restricted peptide. The identification of an immunogenic Class II-restricted epitope therefore could be of particular importance not only as an immunotherapeutic vaccine in and of itself, but also for use in a vaccination protocol in combination with an immunogenic Class I-restricted peptide.

Tumor Antigen Homologous to Poly(A) Polymerase

S. Topalian (NCI), M. Gonzales (NCI), J. Manley, and S. Kaneko
DHHS Reference No. E–002–01/0 filed 16 May 2001
Licensing Contact: Kai Chen; 301/496–7736 ext. 247; e-mail: *chenk@od.nih.gov*

Poly(A) polymerase (PAP) activity has long been linked to cancer, and several forms of PAP have been identified to date by various researchers. PAP is an enzyme that is required for the processing and stability of nascent RNA transcripts. The current invention embodies the identification of a new human tumor associated antigen, neo-poly(A) polymerase (neo-PAP), which shares approximately 70% amino acid and 61% nucleic acid sequence similarity with classic PAP.

Neo-PAP is overexpressed in all tumor cell lines tested, including human prostate cancers, colon cancers, and melanomas. It is expressed at low levels in normal human testis tissue as well, but is expressed only at very low levels or not at all in other normal human tissues. Thus, neo-PAP appears to be a "cancer-testis" antigen, which is a category of tumor-associated antigens that are recognized by cytotoxic and helper T lymphocytes as well as serum immunoglobulins. Members of this tumor antigen category, including NY–ESO–1 and MAGE–3, and currently in clinical testing as cancer vaccines. Neo-PAP therefore could represent a potential immunotherapeutic vaccine for use against cancers of various types, and could also be useful in the diagnosis/prognosis of cancer.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1440 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 28, 2002.

Open: 8:30 am to 2:45 pm.

Agenda: The agenda includes the Opening Remarks by Director, NCCAM, Reports on FIC Activities, International Health Research Strategic Plan, New Initiatives, and other business of the Council.

Closed: 2:45 pm to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D. Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, 301/402–7269.

The public comments session is scheduled from 1:15–1:45 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 200, Bethesda, Maryland 20892, 301–402–7269, Fax: 301–480–3519. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 pm on January 18, 2002. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (February 7, 2001) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 200, Bethesda, Maryland 20892, 301–402–7269, Fax 301–480–3519.

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Dated: January 14, 2002.

LaVerne Y. Stringfeild,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 02–1434 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: February 25–26, 2002.

Time: February 25, 2002, 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Joyce A. Hunter, PhD, Review Branch, Room 7129, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1432 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Demonstration & Education Research.

Date: February 12, 2002.

Time: 10:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe E. Huang, MD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Bethesda, MD 20892–7924, (301) 435–0287, *huangz@nih.gov.*

(Catalogue of Federal domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1433 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Diagnostic Tests for *Plasmodium falciparum* Caused Malaria

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license concerning the inventions embodied in:

USSN 5,130,416 (USPA 07/518,299, filed 05/03/90) issued July 14, 1992
USSN 5,296,382 (USPA 07/791,392, filed 11/14/91) issued March 22, 1994
USSN 5,476,785 (USPA 08/161,406, filed 12/06/93) issued December 19, 1995

all entitled "Recombinant DNA clone containing a genomic fragment of PfHRP–II gene from Plasmodium falciparum" and invented by Thomas E. Wellems and Russell J. Howard, to Akers Laboratories, Inc., a diagnostic company having a place of business in Thorofare, N.J. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the development of diagnostic tests for *Plasmodium falciparum*-caused Malaria for sales in the United States. A nonexclusive license of the present inventions to make and use in the United States but to sell in territories outside of the United States is available to other licensees.

DATES: Only written comments and/or applications for a license, which are received by the NIH Office of Technology Transfer on or before March 25, 2002, will be considered.

ADDRESSES: Requests for a copy of the patents, inquiries or comments relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 240; Facsimile: (301) 402–0220; e-mail: *reichmau@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The inventions included in the prospective license relates to the isolation of clones of DNA from the malaria-causing parasite *Plasmodium falciparum* (*P. falciparum*) that encode a histidine-rich protein (designated name PfHRP–II) from this organism. PfHRP–II is expressed on P. falciparum-infected erythrocytes, and released from the infected host erythrocytes into the body fluids. The inventions describe the cloning procedure and the characterization of the coding sequence as well as that of the encoded protein and the antibodies made against it. The inventions can be utilized in the development of diagnostic tests for malaria as contemplated by the prospective licensee, or for vaccine development against malaria.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–1438 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein

AGENCY: National Institutes of Health, Public Health Service, and DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application, 60/088,860 (refiled): "Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein" (DHHS Ref. E–201–98/0); PCT Patent Application, PCT/US99/12909 (refiled): "Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein" (DHHS Ref. E–201–98/1); Related Foreign Filed National Stage Applications claiming priority to 60/088,860, (pending) in Europe, Canada, Japan, Australia and the National Stage United States Application [S/N 09/673,707 (DHHS Ref. E–201–98/2)]: "Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein;" US Patent 4,892,827, S/N 06/911,227: "Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin with Low Side Effects,"—excluding any foreign equivalents corresponding to 4,892,827 (DHHS Ref. E–385–86/0); US Patent 5,747,654, S/N 08/077,252: "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity." PHS is an owner of corresponding foreign rights in national phase prosecution in Canada, Australia, Japan, and the European Patent Office. (DHHS Ref. E–163–93/0); US Patent 6,147,203, S/N 09/002,753: "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity," (DHHS Ref. E–163–93/4); US Patent 6,051,435, S/N 07/865,722: "Recombinant Antibody-Toxin Fusion Protein," (DHHS Ref. E–135–89/1) US Patent 5,863,745, S/N 08/461,825: "Recombinant Antibody-Toxin Fusion Protein," (DHHS Ref. E–135–89/2); and US Patent 5,696,237, S/N 08/463,163: "Recombinant Antibody-Toxin Fusion Protein," (DHHS Ref. E–135–89/3) to IVAX Corporation which is located in Miami, Florida. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of HIV-associated diseases using 3B3(scFv)-PE38 or 3B3(dsFv)-PE38 immunotoxin constructs.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before March 25, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804; Telephone: (301) 496–7056, x287; Facsimile: (301) 402–0220; and E-mail: *rodrigur@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The primary technology is directed to an immunotoxin that specifically binds to and kills cells expressing an HIV gp-120 coat protein. The immunotoxin comprises an anti-gp-120 antibody directed to the conserved CD4 binding site of gp 120 attached to a cytotoxin (e.g., a Pseudomonas exotoxin). In one preferred embodiment, the immunotoxin is a recombinantly expressed fusion protein comprising a disulfide linked Fv region attached to a modified Pseudomonas exotoxin [i.e., 3B3 (Fv)-PE38]. The technology is also directed to: a pharmaceutical composition; a composition of the immunotoxin; methods for killing HIV infected cells; and to a kit for killing cells that display a gp-120 protein.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–1437 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in February 2002.

The SAMHSA National Advisory Council meeting will be open and will include a presentation by the New SAMHSA Administrator on his Vision and Priorities for the Agency, discussions on the Agency's restructuring and delayering plans, on the National Summit on Terrorism/BioTerrorism Response Activities, on the President's new Mental Health Commission, on FY 2002 appropriation

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issues, on the FY 2003 budget submission, and a presentation on the findings from the 2000 National Household Survey on Drug Abuse. There will also be a presentation by a SAMHSA National Advisory Council member on Workforce Shortage Issues. Finally, there will be reports by the Council's workgroups on co-occurring addictive and mental disorders and HIV/AIDS.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, February 5, 2002, 9 a.m. to 5:45 p.m. (Open); Wednesday, February 6, 2002, 9 a.m. to 3:15 p.m. (Open).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact: Toian Vaughn, Executive Secretary 5600 Fishers Lane, Parklawn Building, Room 12C–05, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–7590 and e-mail: *TVaughn@samhsa.gov*.

Dated: January 14, 2002.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 02–1410 Filed 1–18–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–02]

Notice of Proposed Information Collection: Comment Request Subject HUD Survey Instructions and Report for Insured Multifamily Projects

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0614, extension 5426 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Survey Instructions and Report For Insured Multifamily Projects.

OMB Control Number, if applicable: 2502–0010.

Description of the need for the information and proposed use: Form HUD–2457 provides the standards of performance for conducting surveys and preparing the maps of survey. It also identifies data that must be addressed to meet program requirements and provides a vehicle for the surveyor to certify compliance with applicable survey and reporting requirements. Furthermore, a land survey and related information are necessary to secure a marketable title and title insurance for the property that provides security for project mortgage insurance furnished under the FHA Multifamily programs. The Form HUD–2457 describes the property to assure compliance with various regulatory provisions, e.g., flood hazard requirements, and to help determine the suitability and value of the property for the intended purpose. The Form HUD–2457 also provides necessary engineering data for project design for prosed construction projects.

Agency form numbers, if applicable: Form HUD–2457.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 750, the frequency of responses is 2, for a total of 1,500 total annual responses. The estimated time to prepare collection is approximately 0.5 hours, for a total annual burden hours of 750.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 10, 2001.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 02–1412 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–13]

Announcement of Funding Awards for Fiscal Year 2001 to the Housing Assistance Council and the Native American Indian Housing Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of two awards for Fiscal Year 2001 to the Housing Assistance Council and the Native American Housing Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing- or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2001 (Pub. L. 106–377) earmarked $3,000,000 for a grant to the Housing Assistance Council and $2,600,000 for a grant to the Native American Indian Housing Council. Subsequently, a .22 percent rescission of the Fiscal Year 2001 appropriation was enacted on December 21, 2000 (Pub. L. 106–554) resulting in a revised earmark amount of $2,993,400 for the Housing Assistance Council and $2,594,280 for the Native American Indian Housing Council. HUD's Office of Policy Development and Research administers these grants.

The Catalog of Federal Domestic Assistance for these grants is 14.225.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning these awards, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW, Suite 606, Washington, DC 20005, Grant Number H–21292CA, "Rural Housing Research and Technical Assistance" Amount $2,993,400, Date Awarded 10/01/00.

Native American Indian Housing Council, Luke Toyebo, Jr., Acting Executive Director, 900 Second Street, NE, Washington DC 20002, *Grant # H–21351RG*, Technical Assistance and Training to Indian Housing Agencies and Tribal Housing Agencies, Amount $2,594,280, Date Awarded 08/11/01.

Dated: January 2, 2002.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 02–1522 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–12]

Announcement of Funding Awards for Fiscal Year 2001 Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Research and Technology unsolicited proposals. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2001 (Pub. L. 106–377) provided $53,000,000 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. A rescission of .22 percent was enacted on December 21, 2000 (Pub. L. 106–554) reducing the amount for Research and Technology funds to $52,883,400. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the proposer's initiative. Funding of unsolicted proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY 2001 Awardees for Cooperatives Agreements

American Planning Association, William R. Klein, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603–6107, Grant # H–5951CA, "To Modernization State Laws Affecting Planning and the Management of Change—Growing Smart" Phase III, Total Amount $230,000, Date Awarded 06/29/01.

Brown University on Behalf of Campus Compact, Norman J. Hebert, P.O. Box 1975, Providence, RI 02912, Grant # H–21318CA, "Developing Socially And Civicly Engaged Engineers", Total Amount $33,571, Date Awarded 09/28/01.

Building Works, Inc, Dr. Pieter A. VanderWerf, 675 Massachusetts Avenue, 8th Floor, Cambridge, MA 02139, Grant # H–21311CA, "Reducing the Cost of Combining ICF's and Steel Framing in Residential Construction", Total Amount $74,505, Date Awarded 06/04/01.

Georgetown University, Mary E. Schmiedel, 37th & O Streets, NW, Washington, DC 20057, Grant # H–21317CA, "A Mid-Term Evaluation of the Effects of the Moving to Opportunity (MTO) Demonstration on Adult and Juvenile Criminal Offending", Total Amount $15,000, Date Awarded 07/30/01.

Johns Hopkins University, Cheryl-Lee Howard, 3400 N. Charles Street, Baltimore, MD 21218–2688, Grant # H–21302CA, "The Effects of Housing Assistance on Adult Self-Sufficiency", Total Amount $18,746, Date Awarded 04/09/01.

Manpower Demonstration Research Corporation, Jesus M. Amadeo, 16 East 34th Street, New York, NY 10016–4326, Grant # H–21042CA, "Jobs-Plus Community Revitalization Initiative for Public Housing Families", Total Amount $1,420,000, Date Awarded 09/28/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, New York NY 10025, Grant # H–21315CA, "Improving Foundation Performance in Sites Exposed to Multihazard Conditions", Total Amount $200,000, Date Awarded 09/27/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, Grant # H–21316CA, "Manufactured Homes in Hot, Humid Climates: Alternatives for Eliminating Moisture

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Problems", Total Amount $110,000, Date Awarded 09/27/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, New York, NY 10025, Grant # H–21353CA, "Accelerating Technology Advances in Manufactured Housing", Total Amount $501,400, Date Awarded 09/28/01.

Metropolitan Area Research Corporation, Myron W. Orfield, Jr., 1313 Fifth Street, SE, Suite 108, Minneapolis, MN 55414, Grant # H–21171CA, "A Comparative Study of Socioeconomic Disparity In U.S. Metropolitan Regions", Total Amount $95,500, Date Awarded 11/17/00.

Mortgage Banking Association, Steven Hornburg, 2107 Wilson Boulevard, Suite 450, Arlington, VA 22201–3042, Grant #H–21300CA, "Assessment of Consumer Mortgage Process and Home Search Process", Total Amount $200,000, Date Awarded 01/12/01.

NAHB Research Center, Liza K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant # H–21313CA, "Tool Base Services: The Source of Technical Information For The Building Industry", Total Amount $500,000, Date Awarded 06/04/01.

NAHB Research Center, Liza K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant # H–21314CA, "Updated Model Land Development Standards Featuring Green Building and Smart Growth Technologies", Total Amount $300,000, Date Awarded 09/21/01.

National Bureau of Economic Research, Susan Colligan, 1050 Massachusetts Avenue, Cambridge, MA 02138–5308, Grant # H–21301CA, "Expanding Moving To Opportunity Research", Total Amount $75,000, Date Awarded 03/07/01.

The Urban Institute, Suzanne Forehand, 2100 M Street, NW, Washington, DC 20037, Grant # H–21352CA, "Neighborhood Effects of the LIHTC Program", Total Amount $21,086, Date Awarded 09/27/01.

University Consortium for Geographic Information Science, Susan M. Jampoler, 43351 Spinks Ferry Road, Leesburg, VA 20176–5631, Grant # H–21260CA, "Global Urban Quality: An Indicator of Urban Indicators Using Geographic Information Science (GIS)", Total Amount $100,000, Date Awarded 1/16/01.

W.H. Porter, Inc., William H. Porter, 4240 N. 136th Avenue, Holland, MI 49424, Grant # H–21312CA. "Supersip Panel for Residential Construction", Total Amount $254,990, Date Awarded 07/19/01.

Dated: January 2, 2002.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 02–1523 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: International Center for Gibbon Studies, Santa Clarita, CA, PRT–050284.

The applicant requests a permit to export one live Siamang gibbon (*Hylobates syndactylus*) and four live dark-handed gibbons (*Hylobates agilis*) to Parque Las Aguilas, Spain for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of San Diego @ San Diego Wild Animal Park, Escondido, CA, PRT–049052.

The applicant requests a permit to export four Andean condors (Vultur gryphus) to the Calidad Ambiental de la CAR Cundinamarca, Santefe de Bogota, Colombia, for reintroduction into the wild to enhance the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Ken Morrill, Escalon, CA, PRT–051613.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 4, 2002.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1501 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Documents To Amend a Habitat Conservation Plan for Federally Protected Native Fish Species on Plum Creek Timber Company Lands in Washington, Idaho, and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act this notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Supplemental Environmental Impact Statement for a Proposed Amendment to the Plum Creek Native Fish Habitat Conservation Plan and request for issuance of an incidental take permit to take endangered and threatened species in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Permit applicant is Plum Creek Timber Company. The proposed amendment would add the grizzly bear to the existing permit and extend coverage of the Native Fish Habitat Conservation Plan (NFHCP) to additional Plum Creek lands. This document would supplement the September 2000 Final Environmental Impact Statement (FEIS) and NFHCP for federally protected native fish species on Plum Creek Timber Company lands.

A public meeting will be held from 3–7 p.m. MST on February 6, 2002, at the Montana Department of Fish, Wildlife, and Parks Headquarters, 490 N. Meridian Road, Kalispell, Montana 59901. Comments and participation in the process are solicited.

DATES: The public meeting will be held from 3–7 p.m. MST on February 6, 2002, at the Montana Department of Fish, Wildlife, and Parks Headquarters, 490 N. Meridian Road, Kalispell, Montana. Written comments from all interested parties must be received on or before February 21, 2002 to be considered.

ADDRESSES: Comments, materials, and requests for information should be sent to Tim Bodurtha, Plum Creek Scoping Comments, U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, Montana 59901, telephone (406) 758–6882, facsimile (406) 758–6877.

FOR FURTHER INFORMATION CONTACT: Tim Bodurtha, Kalispell Sub-office, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), prohibits the "taking" of any threatened or endangered species. However, the Fish and Wildlife Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are outlined in 50 CFR 17.22.

Background

On October 24, 2000, the Fish and Wildlife Service issued an incidental take permit under section 10(a)(1)(B) of the Act to Plum Creek Timber Company. The permit authorizes the incidental take of 17 native fish species, as identified in the FEIS (U.S. Fish and Wildlife Service 2000), from certain Plum Creek activities on Plum Creek timberlands covering approximately 1.6 million acres in Washington, Idaho, and Montana. Plum Creek is proposing to amend this current NFHCP by adding the grizzly bear to the permit and by extending coverage of the NFHCP to additional Plum Creek lands in Montana. The NFHCP Project Area lands addressed in the proposed amendment encompass 70,826 acres of timberlands owned and managed by Plum Creek within the range of the grizzly bear. Approximately 38,148 acres are in the Cabinet-Yaak Ecosystem and 32,678 acres in the Northern Continental Divide Ecosystem. In addition, the amendment would extend coverage of the NFHCP to an additional 14,892 acres which was evaluated in the original FEIS (U.S. Fish and Wildlife Service 2000). However, coverage was postponed until an amendment to the NFHCP for the addition of grizzly bear was completed.

Of the total acres of Plum Creek lands covered under the NFHCP in Montana (1.4 million acres), the proposed amendment applies to 70,826 acres, or 5.0 percent and portions of the following counties in western Montana—Lincoln, Sanders, Flathead, Lake, Missoula, Powell, and Lewis and Clark. The proposed amendment requests incidental take authorization for take that occurs as a result of the following activities as described in the FEIS (U.S. Fish and Wildlife Service 2000)—(1) Commercial forestry and associated activities—Silvicultural activities such as tree planting, site preparation, timber harvest in riparian and upland areas, stand maintenance, prescribed burning, and forest nurseries and seed orchards; Logging road construction and maintenance; Gravel quarrying primarily for logging road construction; (2) Forest fire suppression; (3) Open range cattle grazing; (4) Miscellaneous forest and land product sales; Gravel and landscaping stones; (5) Conservation activities—Habitat enhancement and restoration; Scientific surveys and studies; (6) Special forest use permits—Commercial outfitting; Special recreation permits, such as club activities; Electronic facility sites; (7) Manufacturing of forest products, such as milling activities, lumber mills, plywood mills, and remanufacturing plants.

The proposed amendment to the Plum Creek NFHCP provides for conservation of the threatened grizzly on Plum Creek lands in Montana. It further would extend conservation commitments for the threatened bull trout and four unlisted native salmonids; the redband and westslope cutthroat trout, mountain whitefish, and pygmy whitefish. The proposal to amend the NFHCP would not affect the 30-year term of the permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: January 4, 2002.

Elliott Sutta,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 02–1449 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–01–1020–JA–VEIS]

Changes to the Schedule and Scope of Public Scoping Meetings for the Environmental Impact Statement for Vegetation Treatments, Watersheds and Wildlife Habitats on Public Lands Administered by the Bureau of Land Management in the Western United States, Including Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental Notice to Change to Dates for Public Scoping Meetings and change the scope of the EIS.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on BLM's use of prescribed burning, biological control, cultural practices, mechanical, and chemical treatment of vegetation, including noxious weeds and other invasive species in public lands management. These methods will continue to be integrated into BLM's efforts to conserve and restore native vegetation, watersheds and wildlife habitats to protect people, sustain natural resources and provide for long-term multiple uses. The EIS addresses public lands administered by BLM in 16 western states, including Alaska. The public may submit comments during the initial scoping period through March 29, 2002.

DATES: You may submit written comments through March 29, 2002. The BLM will hold public scoping meetings to focus on human and environmental concerns, identify possible alternatives, and identify significant issues related to the proposed action.

New dates for the postponed Salt Lake City, Utah; Rock Springs, Wyoming; Socorro, New Mexico; and Phoenix, Arizona meetings are as listed in the following schedule:

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Date and time	Locations	BLM contact
January 22, 6–9 p.m	BLM Office Conference Room, 345 E. Riverside Drive, St. George, UT	Kim Leany (435) 688–3208.
January 23, 5–8 p.m	Utah Dept. of Natural Resources Bldg., 1594 W. North Temple, Salt Lake City, UT.	Verlin Smith (801) 539–4055.
January 24, 2–5 p.m. and 6–9 p.m.	Grand Vista Hotel, 2790 Crossroads Blvd., Grand Junction, CO	Harley Metz (970) 244–3076.
January 29, 4–7 p.m	Miles Community College—Room 106, 2715 Dickinson, Miles City, MT	Jody Weil (406) 896–5258.
January 30, 3–6 p.m	Western Wyoming Community College, Room 1003, 2500 College Drive, Rock Springs, WY.	Lance Porter (307) 352–0252.
January 31, 4–7 p.m	Elks Lodge, 604 Coburn Avenue, Worland, WY	Janine Terry (307) 347–5194.
February 4, 3–5 p.m. and 6–9 p.m.	Holiday Inn Crown Plaza, 2532 W. Peoria Avenue, Phoenix, AZ	Deborah Stevens (602) 417–9215.
February 5, 5–8 p.m	Sacred Heart Parish Hall, 507 East 4th Street, Alturas, CA	Jennifer Purvine (530) 233–7932.
February 11, 5–8 p.m	U.S. Forest Service, Helena National Forest Headquarters, 2880 Skyway Drive, Helena, MT (across from airport).	Jody Weil (406) 896–5258.
February 13, 6–9 p.m.	Vista Inn, 2645 Airport Way, Boise, ID	Barry Rose (208) 373–4014.
February 14, 6–9 p.m	College of Southern Idaho, 315 Falls Ave, Shields Bldg, Room 117, Twin Falls, ID.	Eddie Guerrero (208) 736–2355.
February 19, 4–7 p.m	BLM-Nevada State Office, 1340 Financial Blvd., Reno, NV	JoLynn Worley (775) 861–6515.
February 21, 2–5 p.m and 6–9 p.m.	Hilton Garden Inn, 3650 East Idaho Street, Elko, NV	Mike Brown (775) 753–0200.
February 25, 6–9 p.m	Holiday Inn Express—Neptune Room, 1100 North California, Socorro, NM	Margie Onstad (505) 838–1256.
February 26, 5–8 p.m	Holiday Inn Select, 801 Truxton Ave, Bakersfield, CA	Stephen Larson (661) 391–6099.
February 28, 6–9 p.m	Valley Library, 12004 East Main, Spokane, WA	Kathy Helm (509) 536–1252.
March 4, 6–9 p.m	Days Inn City Center, 1414 SW 6th, Portland, OR	Chris Strebig (503) 952–6003.
March 6, 3–6 p.m	Anchorage Field Office—BLM, 6881 Abbott Loop Road, Anchorage, AK	Gene Terland (907) 271–3344.
March 12, 9 a.m.–12 noon	Washington Plaza Hotel—Franklin Room, 10 Thomas Circle, (Massachusetts and 14th Street), Washington, DC.	Sharon Wilson (202) 452–5130.

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list for this EIS, contact Brian Amme, Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; telephone (775) 861–6645. Comments will be available for public inspection at the BLM Nevada State Office, 1340 Financial Blvd.; Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This national, programmatic EIS will support implementation of the Department of the Interior's cohesive strategy plan for restoring fire-adapted ecosystems. The EIS will also provide a comprehensive cumulative analysis of the variety of vegetation treatments BLM employs for the conservation and restoration of vegetation communities, watersheds and wildlife habitats that are designed to protect people, sustain natural resources and provide for long-term multiple uses (as specified in locally developed land use plans). Conservation and restoration activities analyzed in this document include prescribed fire, riparian restoration, native plant community restoration, invasive plants and noxious weeds treatments, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems. The EIS will:

- Consider state-specific, reasonably foreseeable activities, including hazardous fuels reduction treatments.
- Address human health risk assessments for proposed use of new chemicals on public lands.

The EIS is not a land-use plan or a land-use plan amendment. It will provide a comprehensive document to allow effective tiering to the EIS and serve as a baseline cumulative impact assessment for other new, revised or existing land use and activity level plans that involve vegetation, wildlife habitat and watershed treatment, modification or maintenance.

- An updated EIS is necessary for BLM to analyze proposed treatments on more than 6 million acres annually. Treatments will include prescribed and managed natural fire, Integrated Weed Management, hazardous fuels reduction, Emergency Stabilization and Rehabilitation, and landscape-level restoration initiatives such as Great Basin Restoration Initiative. Current average annual acres of treatment selected in the existing BLM records of decision (RODs) equate to about 500,000 acres for the combined western states.
- The analysis area includes only surface estate public lands administered by 11 BLM state offices: Alaska, Arizona, California, Colorado, Idaho, Montana (Dakotas), New Mexico (Oklahoma/Texas/Kansas), Nevada, Oregon (Washington), Utah and Wyoming (Nebraska).
- This EIS will consolidate four existing BLM vegetation treatment EISs developed between 1986 and 1992 into one programmatic document for the western United States, including Alaska. The EIS will update information and change to reflect new information and changed conditions on public lands since that time.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatments, including mechanical treatments, treatments benefitting wildlife habitat, restoration of ecological processes (predominately fire), watershed and vegetation community health treatments. It will consider the effects of these treatments on new listings of threatened and endangered species and on other sensitive and special status species, cultural properties and Native American/Alaskan Native subsistence practices. The EIS will also analyze new chemical formulations for herbicides deemed to be more environmentally favorable, smoke management and air quality, emergency stabilization and rehabilitation treatments following wildfire, and the effects of treatments on vegetation, soils, watershed and water quality.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 02–1659 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–02–1430–EU: GP2–0026; OR 55981 and OR 55502]

Realty Action; Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: This notice announces the availability of two small parcels of public land in Lane County, Oregon, for sale using direct sale procedures.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, rehabilitation plan, planning and environmental documents, is available at the Eugene District Office, PO Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Steve Madsen, Realty Specialist, Eugene District Office, at (541) 683–6948.

SUPPLEMENTARY INFORMATION: The following land is suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

Parcel OR 55981, appraised fair market value: $1,100.00
T. 21 S., R. 1 W.
Sec. 31: Lot 38
Containing 0.16 acre.

Parcel OR 55502, appraised fair market value: $8,000.00
T. 21 S., R. 2 W.
Sec. 1:Lot 9
Containing 0.45 acre.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

These lands are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Parcel OR 55981 is being offered to Tony and Sonya Bratton and Parcel OR 55502 is being offered to James L. Bean using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the land, in both cases, has been inadvertently occupied and utilized for many years as portions of residential yards, including buildings. Direct sale will resolve the unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale of both parcels are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a non-refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. Parcel OR 55502 will not be offered for sale until the purchaser has completed and the Authorized Officer has accepted and approved the restoration of riparian vegetation on public land adjacent to the sale parcel. Restoration of the lands damaged without authorization will be at the expense of the purchaser and in accordance with the rehabilitation plan developed by the Bureau of Land Management.

Dated: December 26, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 02–1379 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–02–1430–EU: GP02–0002; OR 55429]

Realty Action; Modified Competitive Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces the availability of two small parcels of public land in Lane County, Oregon, for sale using modified competitive sale procedures.

SUPPLEMENTARY INFORMATION: The following land is suitable for modified competitive sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value (FMV). The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

Parcel A

T. 21 S., R. 3 W.
Sec. 2: Lot 6
Containing 1.77 acres.
Appraised fair market value: $6,100.00.

Parcel B:

T. 21 S., R. 3 W.
Sec. 2: Lot 9
Containing 1.97 acres.
Appraised fair market value: $16,600.00.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this

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disposal. Coordination with State, tribal and local governments concerning the sale has been conducted. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The two parcels will be offered for sale at public auction using modified bidding procedures authorized under 43 CFR 2711.3–2. Bidding for each parcel is open to all qualified bidders; however, the following adjacent land owners (designated bidders) will be given the opportunity to meet the highest bid received at the sale for either parcel: Spencer K. Adair and Jeanne L. Adair; Donna R. Dennis and Wanda Dennis; Marjorie A. Nord and Roylin A. Melton; Donald J. Overholser and Rodney G. Matthews; LaVerna Pitcher and Randy Pitcher; and Paul M. Tollefson and Elizabeth Tollefson. Modified competitive sale is appropriate since the land is part of a survey hiatus identified by cadastral survey in 1999 and has been inadvertently occupied and utilized for many years by a roadway providing access to adjoining lands. A Bonneville Power Administration electric transmission line corridor occupies portions of both parcels and a portion of a residential carport encroaches upon Parcel B.

The two parcels will be offered for sale at public auction beginning at 10 am, PST on March 25, 2002, at 2890 Chad Drive, Eugene, Oregon 97401–9336. Sale will be by sealed bid only. All sealed bids must be received by the BLM's Eugene District Office at 2890 Chad Drive, Eugene, Oregon 97401–9336, prior to 10 a.m. on the date of the sale, March 25, 2002. Bid envelopes must be marked on the lower left front corner, "Sale OR 55429 Parcel A" or "Sale OR 55429 Parcel B". Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of Interior, BLM for not less than 10 percent of the amount bid. Any parcel not sold as a result of the March 25, 2002, sale will be re-offered to the general public through continuing modified competitive sales. Offers for the unsold parcel will be accepted in a manner consistent with the process described herein; bids will be opened on the 15th day of each month thereafter until the apparent high bid is declared.

Under modified competitive sale procedures the written sealed bids will be opened and an apparent high bid for each parcel will be declared at the sale. The apparent high bidder and the designated bidders will be notified. The designated bidders will be given 30 days from the date of the sale to exercise the preference consideration given to meet the high bid, individually or in combination. Should the designated bidders fail to submit a written bid that matches the apparent high bid within the specified time period, the apparent high bidder will be declared high bidder. In case more than one written bid matching the apparent high bid is received from designated bidders, the interested bidders will be given an opportunity and instructions for submission of an additional sealed bid, meeting the above stated requirements, which additional sealed bids will be opened at a specified time, date and place, followed by oral bidding. At the conclusion of the oral bidding, the high bidder will be awarded the property. The total purchase price for the land shall be paid within 180 days of the date of this sale.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. A successful bid for a parcel will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. A nonrefundable $50.00 filing fee for the conveyance of the mineral estate will be required from the prospective purchaser. The mineral interests to be conveyed simultaneously with the sale of the land have been determined to have no known mineral value.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The sale will be subject to:

a. Parcel A:

(1) A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

(2) A requirement that the purchaser, at closing, grant an easement to LaVerna Pitcher, for ingress and egress to her adjoining property.

(3) A requirement that the purchaser, at closing, grant an easement to Donald J. Overholser and Rodney G. Matthews, for ingress and egress to their adjoining property.

b. Parcel B:

(1) Such rights for public road purposes as Lane County, Oregon, or its successors in interest may have pursuant to right-of-way OR 55407. Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

(2) A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

(3) A requirement that the purchaser, at closing, grant an easement to LaVerna Pitcher, for ingress and egress to her adjoining property.

(4) A requirement that the purchaser, at closing, grant an easement to Donald J. Overholser and Rodney G. Matthews, for ingress and egress to their property adjoining Parcel A.

(5) A requirement that the purchaser, at closing, grant an easement to Donna R. Dennis and Wanda Dennis, for ingress and egress to their adjoining property.

(6) A requirement that the purchaser, at closing, grant an encroachment easement to Donna R. Dennis and Wanda Dennis, for an existing carport structure that encroaches upon Parcel B.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations; sale procedures and conditions; form of the easements to be granted to the Bonneville Power Administration, LaVerna Pitcher, Donald J. Overholser and Rodney G. Matthews, and Donna R. Dennis and Wanda Dennis; and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Realty Specialist, Eugene District Office, at (541) 683–6403.

Dated: September 27, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 02–1487 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–01–1060–JJ]

Notice of Intent To Remove Wild Horses From Public Lands and Notice of Public Hearing on the Use of Helicopters and Motor Vehicles in Wild Horse Removal Operations

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Wild, Free Roaming Horse and Burro Act, as amended (PL 92–195), provides, among other things, that excess wild horses shall be removed from public lands.

The Bureau of Land Management (BLM) plans to remove 225 horses from the Stewart Creek Herd Management Area (HMA) and the area outside HMA boundaries known as I–80 North Beginning February 15, 2002, and continuing through March 30, 2002. This will reduce the population in the Stewart Creek HMA to the Appropriate Management Level (AML).

The Wild, Free Roaming Horse and Burro Act also provides for the use of aircraft and motor vehicles in all phases of the administration of the Act. The Code of Federal Regulations, at 43 CFR 4740.1 provides (a) that the authorized officer conducts a public hearing in the area where such use is to be made.

The BLM has and plans to continue use of helicopters in the removal of wild, free roaming horses from the public lands within the Rawlins, Lander, Rock Springs, Cody, and Big Horn Basin Field Office jurisdictions in calender year 2002.

Pursuant to the requirements noted above, the BLM will conduct a public hearing on the use of helicopters and motor vehicles in gathering operations during the calendar year of 2002. The hearing will occur on Tuesday, February 12, 2002, at 3 p.m., in the large conference room of the Rock Springs Field Office of the Bureau of Land Management located at 280 Highway 191 North, Rock Springs, Wyoming.

DATES: *Hearing Date:* February 12, 2002. *Roundup dates:* March 1 through March 30, 2002.

ADDRESSES: The Helicopter Hearing will be held at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003–1828. Phone: (307) 775–6256.

Dated: January 14, 2002.

Alan R. Pierson,

State Director.

[FR Doc. 02–1486 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska Region, Norton Basin

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations (Call).

SUMMARY: The Secretary's preliminary decision to consider offering the Norton Basin planning area in the Proposed OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month "special-interest" process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale. The MMS is issuing a Call at this time recognizing that the final decision on the 2002–2007 5-year program has not been made. Final delineation of the program areas and number of sales may change from that included in the proposed program.

DATES: Nominations and comments on the Call must be received no later than April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region regarding questions on the Call.

SUPPLEMENTARY INFORMATION: The objective of this "special-interest" leasing option is to foster exploration in a frontier OCS area that is estimated to have over 1 trillion cubic feet of natural gas without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in Norton Basin that would offer only very small, very focused areas of specific interest for exploration. Norton Basin may contain quantities of natural gas, which might be used for western Alaska communities if economically feasible. We request comments from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer an area for leasing will be conditioned on a commitment from industry to explore the area leased within a specific time period.

This Call does not indicate a preliminary decision to lease in the area described below. If there is no interest expressed, the MMS will defer the sale for one year and reissue the Call the following year. If the MMS decides to proceed with the sale process, the MMS will make the final delineation of the specific areas for possible leasing at a later date in the presale process and in compliance with the final 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and the OCS Lands Act (OCSLA).

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256); and in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007, issued October 26, 2001.

2. Purpose of Call

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate the scoping process to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, "to insure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time." The objective of the "special-interest" leasing process is to encourage exploration in a frontier OCS area that might contain natural gas for potential use in local communities. Any sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Norton Basin are sought from all interested parties. Comments are also being sought on the terms and conditions of a sale in Norton Basin. Industry and other interested parties are strongly encouraged to contact the MMS, Alaska OCS Region, Mr. Tom Warren at (907) 271–6691, with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest lands process. The MMS will base its decision on whether to proceed with the presale

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process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR part 256. Commenters are encouraged to submit comments and suggestions on the "special-interest" leasing process in general and on the potential for offering other frontier areas of the Alaska OCS, such as the Chukchi Sea and Hope Basin Planning Areas, using this process.

This Call is being issued in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007 announced on October 26, 2001. The proposed program offers one sale in the Norton Basin during the 5-year program. If no interest is expressed in response to this first Call, the MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to hold a sale and the area nominated is deemed appropriate for leasing. Only one round of lease issuance in Norton Basin would occur during this 5-year program.

3. Description of Area

The area subject to this Call is located offshore the State of Alaska in the northern Bering Sea, west and south off the coast of the Seward Peninsula. It consists of approximately 4,742 whole and partial blocks (about 25 million acres). It extends offshore from about 3 to approximately 320 miles in water depths from about 25 feet to approximately 650 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302

4. Instructions on Call

The Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under Item 3, Description of Area.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in Norton Basin. If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. Areas of Interest to the Oil and Gas Industry

Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify and offer only small-focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. Terms and Conditions of Lease Issuance

Respondents are requested to comment on the terms and condition of lease issuance for any leases that may be issued as a result of a sale in Norton Basin. The following terms and conditions have been used in past sales and are being considered for this use in this sale:

—Lease term of 10 years
—Annual rental rate of $13 per hectare or fraction thereof
—Minimum cash bonus bid of $62 per hectare
—Royalty rate of 12.5 percent

In addition, the following are suggested additional terms and incentives:

—Submission of an exploration plan within 4 years of lease issuance
—Cancellation of lease for failure to submit exploration plan within 4 years
—Suspension of royalties on initial production
—Delayed payment of cash bonus bid
—Other incentives
—Mitigating measures

C. Relation to Coastal Management Plans

Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

5. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in Norton Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the scoping process for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions/mitigating measures
—Identify potential conflicts between oil and gas activities and the Alaska CMP

6. Existing Information

An extensive environmental, social, and economic studies program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Item 3, Description of Area.

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to a Norton Basin sale in 2003:

	Tentative process milestones for proposed 2003 Norton Basin sale
Call published/scoping initiated	January 2002.
Comments due on Call/scoping	April 2002.
Decision whether to proceed/Area Identification	May 2002.
NEPA analysis	February 2003.
Consistency Determination/Proposed Notice of Sale	April 2003.
Governor's Comments due	June 2003.
Final Notice of Sale published	August 2003.
Sale	September 2003.

Dated: January 3, 2002.

Lucy Querques Denett,

Acting Director, Minerals Management Service.

BILLING CODE 4310–MR–P

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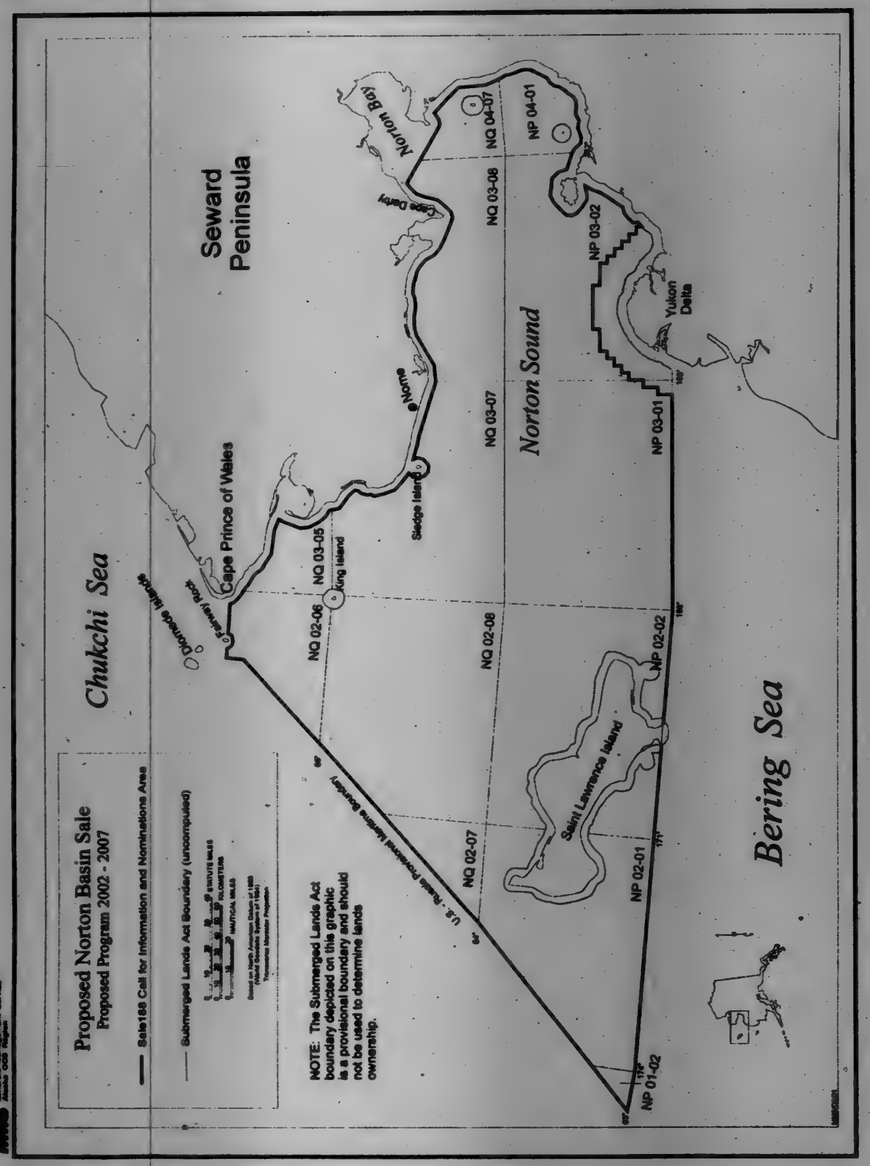

[FR Doc. 02–1414 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: February 14, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters To Be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–1517 Filed 1–18–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Long Term Implantable Glucose Monitor

Notice is hereby given that, on September, 27, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.*, ("the Act"), Animas Corporation and Sarnoff Corporation, as a joint research venture, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identifies of the parties are Animas Corporation, Frazer, PA; and Sarnoff Corporation, Princeton, NJ.

The nature and objectives of the venture are to develop and demonstrate a long term implantable glucose monitor.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1542 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on September 28, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cash Edge, New York, NY; DirectAdvice, Inc., Hartford, CT; and Innovius, Pleasontown, CA have joined the Consortium as associate members. Also, Chicago Clearing House, Chicago, IL has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 29, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39335).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1539 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: March 12, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters to be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PKI Forum, Inc.

Notice is hereby given that, on September 27, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Btexact Technologies, Ipswich, Suffolk, United Kingdom; ValiCert, Mountain View, CA; Canadian Payments Association, Ottawa, Ontario, Canada; Merck & Co., Inc., Whitehouse Station, NJ; Johnson & Johnson, New Brunswich, NJ; Seiko Instruments, Inc., Chiba, Japan; PKI Forum Singapore, Singapore, Singapore; TRW, Inc., Cleveland, OH; Chunghwa Telecom Laboratories, Taoyuan, Taiwan; Government of Canada PKI Secretariat, Ottawa, Ontario, Canada; and DOD/Federal PKIPMO, Ft. Mead, MD have been added as parties to this venture. Also, Spyrus, Inc., San Jose, CA; and Sybase, Inc., Emeryville, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PKI Forum, Inc. intends to file additional written notification disclosing all changes in membership.

On April 2, 2001, PKI Forum, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 2001 (66 FR 22260).

The last notification was filed with the Department on June 27, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1540 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on October 3, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Agusta s.p.a., Cascina Costa di Samarate, Italy; EADS Airbus GmbH, Hamburg, Germany; EADS Airbus S.A., Paris, France; Embraer-Empresa Brasileira De Aeronautica S/A, São José dos Campos, Brazil; Israel Aircraft Industries Ltd., Ben-Gurion Airport, Israel; Korea Aerospace Industries Ltd., Kyungnam, Republic of Korea; Northrup Grumman Corporation, Melbourne, FL; Siemens Westinghouse Power Corporation, Orlando, FL; and Volvo Aero Corporation, Trollhättan, Sweden. The nature and objectives of the venture are to identify and prioritize, develop and implement new NASGRO capabilities for structural integrity analysis needed by the user community to address its current and anticipated problems, to provide a wider range of user support services, including but not limited to training and technical support, the facilitate the ongoing use of the NASGRO code by industry, to expand the user community of the NASGRO code, and to promote direct technical interactions among fracture mechanics experts and practitioners regarding the development and implementation of new state-of-the-art methods for structural integrity assessment. The NASGRO (previously NASA/FLAGRO) computer code was originally developed in the 1980's for fracture control analysis on NASA (National Aeronautics and Space Administration) space hardware.

Membership in this research project group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1541 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Prices Power International Denial of Application

On or about May 8, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Price's Power International (PPI), located in Newport New, Virginia, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated August 25, 1998, for a DEA Certificate of Registration as a distributor of the List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified PPI that, should not request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received May 15, 2000, as indicated by the signed postal receipt. Since that time, no response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that PPI is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that on August 25, 1998, an application was received by the DEA Chemical Operations Registration section on behalf of PPI for DEA registration as a distributor of the List I chemicals pseudoephedrine, phenylpropanolamine, and ephedrine. PPI did not file this application in time to qualify for temporary exemption from registration pursuant to 21 CFR 1310.09. Accordingly, PPI was not authorized to distribute these chemicals before approval of the application for registration.

On February 25, 1998, an undercover DEA Special Agent (S/A) contacted PPI to discuss the purchase of nine bottles of "Revive Ephedrine." In response, on March 9, 1998, PPI sent nine bottles of 100 Guaifedrine ephedrine HCL 25 mg. tablets. On March 26, 1998, PPI sent the undercover S/A an additional twelve bottles of 100 Guaifedrine ephedrine HCL 25 mg. tables in response to an order placed by an undercover DEA S/A March 11, 1998.

On June 9, 1998, a clandestine methamphetamine laboratory was seized in Kansas. The seizures at the clandestine laboratory site included an ounce and a half of finished methamphetamine, 738 grams of pseudophedrine, twenty five bottles of 250 60 mg. pseudoephedrine tablets and nineteen bottles of 380 60 mg. pseudoephedrine tablets, all bearing the PPI label. Also seized were a number of order forms, invoices, and a catalogue from PPI. One order form detailed a shipment from PPI for 40 bottles of 380 60 mg. pseudoephedrine tablets (totaling 912 grams of pseudoephedrine) and 16 bottles of 375 37.5 mg. phenylpropanolamine tablets (totaling 225 grams of phenylpropanolamine). The recipient, Gardner's Littlehouse Minimart, and the shipping address of this business entity, were both determined to be nonexistent. In addition, documents seized at the site of the clandestine methamphetamine laboratory documented that a Federal Express package shipped on or about May 27, 1998, from PPI to Gardner's Littlehouse Minimart contained 30 bottles of 380 60 mg. pseudoephendrine tablets and 30 bottles of 250 60 mg. pseudoephedrine tablets, for a total amount of 1134 grams of pseudoephedrine. Documents obtained from Federal Express revealed that previously, on or about May 8, 1998, PPI had shipped a fourteen pound package of Gardner's Littlehouse Minimart, for which there is evidence to believe contained approximately 666 grams of pseudoephedrine.

On June 10, 1998, a Diversion Investigator (D/I) of the DEA Richmond Resident Office (R/O) visited PPI and spoke with the owner, Niles S. Price. During the visit, the D/I attempted to explain the DEA guidelines concerning the handling of List I chemicals. Mr. Price stated that he was aware of the chemical laws, and that he had contacted DEA's Richmond R/O and had just received an application for DEA registration. At this point the visit was terminated.

On June 15, 1998, a D/I in the DEA Kansas City District Office interviewed several Federal Express employees regarding the above-referenced shipments from PPI. These interviews revealed that there were at least two shipments, on May 8 and May 27, 1998, from PPI to Gardner's Littlehouse Minimart, a nonexistent business entity at a nonexistent shipping address. On both occasions, following confusion in the attempted delivery of the shipments, Federal Express employees in Kansas received calls from PPI attempting to locate the shipments. On May 11, 1998, during the first telephone call, a Federal Express employee spoke with an individual whom he believed to be the owner of PPI, telling him that the package could not be delivered because it was incorrectly addressed. The second package was mailed by PPI to the same address about two weeks later, on May 27, 1998. After several failed delivery attempts, Niles S. Price telephonically contacted the Federal Express office in Kansas in an attempt to locate the package. On both occasions, an individual identifying himself as "Randy Jones" picked up the packages from Federal Express immediately following each of the calls from PPI.

Also on June 15, 1998, a DEA S/A acting in an undercover capacity placed an order *via* mail with PPI for six bottles of 100 Guaifedrine 25 mg. ephedrine tablets and three bottles of 380 Maxi Thin 60 mg. pseudoephedrine tablets, which were shipped and received by DEA on or about June 25, 1998.

On or about July 16, 1998, in response to an order placed by an undercover DEA S/A, PPI shipped one bottle of 380 pseudophedrine 60 mg. tablets.

On August 6, 1998, three DEA Special Agents visited PPI and spoke with Niles S. Price. At that time, they delivered DEA's written Pseudoephedrine and Phenylpropanolamine Notices, together with a letter advising Mr. Price that he could not conduct any List I or List II chemical transactions until he was registered with DEA. The agents further orally advised Mr. Price that he could not distribute pseudoephedrine or phenylpropanolamine until he registered with DEA.

On or about September 1, 1998, in response to an order placed by an undercover DEA S/A, PPI shipped one bottle of 380 pseudoephedrine 60 mg. tablets.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See, e.g. Energy Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As a preliminary matter, DEA consistently has held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of and applicant or registrant for registration. See, e.g. Rick's Pharmacy, 62 FR 42595 (1997); Big T Pharmacy, Inc., 47 FR 51830 (1982). Since Niles S. Price is the owner of the applicant, and directed its operations, his conduct is relevant in determining whether or not to grant the applicant's application for registration. Moreover, PPI may be considered a retail store in that it distributes to both businesses and individuals, and also accepts walk-in customers.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that the preregistration inspection of the applicant conducted December 9, 1998, did not document any inadequacies in the applicant's security and recordkeeping arrangements.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that the evidence shows that PPI and Niles S. Price significantly violated applicable law by distributing List I chemicals on at least seven separate occasions from March, 1998 through September, 1998, when not registered to do so, in violation of 21 U.S.C. 822 and 843(a)(9) and 21 CFR 1309.21(a).

PPI further violated applicable law by failing to obtain proof of identity for at least one of its business customers, in

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violation of 21 U.S.C. 830(a)(3) and 842(a)(9) and 21 CFR 1310.07. The types of evidence constituting proof of identity are set forth at § 1310.07. That regulation states that the existence and apparent validity of a business entity should be checked by telephone directory, the local credit bureau, the local Chamber of Commerce or Better Business Bureau, or if the business entity is a registrant by verifying its DEA registration. Regarding sales to individuals or cash purchasers, the regulation states that the purchaser's signature, driver's license, and at least one other form of identification are required.

Section 830(a)(3) requires that each regulated person who engages in a regulated transaction to identify each other party to the transaction. PPI is a "regulated person" because it is a distributor of listed chemicals. 21 U.S.C. 802(38). PPI engaged in at least one "regulated transaction" when it shipped its May 27, 1998, Federal Express package containing an aggregate amount of 1134 grams of pseudoephedrine, exceeding the cumulative monthly threshold of one kilogram for that chemical established by 21 CFR 1310.04(f)(1). See 21 U.S.C. 802(39)(A)(II). There is evidence to show that the prior May 8, 1998, PPI shipment to Gardner's Littlehouse Minimart contained approximately 666 grams of pseudoephedrine, increasing PPI's distribution in excess of the cumulative monthly threshold for this List I chemical.

It is clear from the facts of this case that PPI consistently violated the proof of identity requirement. PPI sent at least two Federal Express packages containing List I chemicals about two weeks apart to Gardner's Littlehouse Minimart. The DEA investigation showed that both this business entity and address were nonexistent. A proper attempt to prove the identity of Gardner's Littlehouse Minimart in accordance with PPI's legal duty should have raised issues regarding the validity of this business entity, preventing the May 8, 1998, Federal Express shipment of List I chemicals. PPI's contacting the Federal Express office in Kansas in an effort to locate this package indicated that PPI knew something was amiss. What renders PPI's conduct especially egregious in this case is that about two weeks later, on or about May 27, 1998, it sent another package containing List I chemicals to the same bogus business entity at the same bogus address, and again had to call Federal Express in Kansas in an effort to locate the package. There is substantial documentary evidence to indicate that much of the pseudoephedrine seized at the clandestine methamphetamine laboratory on June 9, 1998, was shipped from PPI. If PPI had attempted to verify the legitimacy of Gardner's Littlehouse Minimart in accordance with its legal duty, it is likely that neither the May 8 nor the May 27, 1998 shipments of List I chemicals would have been shipped and later seized at the clandestine methamphetamine laboratory.

Regarding factor three, there is no evidence that the applicant or Niles S. Price has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that the applicant significantly violated applicable law, as set forth above.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that PPI, through its owner Niles S. Price, significantly violated applicable law by distributing List I chemicals without being registered to do so, and by failing to identify the other parties to regulated List I chemical transactions. Mr. Price stated during the June 10, 1998, interview with the DEA Richmond R/O D/I that he was award of the chemical laws regarding the distribution of listed chemicals, and was in the process of obtaining a DEA Registration. Yet, on at least three occasions following this statement, Mr. Price through PPI continued to distribute List I chemicals in response to orders submitted by undercover DEA Special Agents. PPI even continued to distribute List I chemicals following the August 6, 1998, visit by the three DEA Special Agents, who informed Mr. Price by both written and oral notice that he could not distribute listed chemicals until he was registered with DEA. Subsequently, on or about September 1, 1998, PPI shipped additional List I chemicals in response to an order from an undercover DEA Special Agent. In addition, at PPI's December 9, 1998, preregistration inspection, Mr. Price stated to investigators that he requires customers to fax a copy of their driver's license prior to purchases, and that he only ships to the address listed on the license. Yet Mr. Price did not request any form of identification whatsoever for any of the five undercover purchases made by DEA Special Agents previously set forth above. The Administrator finds this lack of candor, taken together with PPI's and Mr. Price's demonstrated cavalier disregard of the statutory law and regulations concerning the registration and distribution of List I chemicals, makes questionable PPI's and Mr. Price's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 FR 35,459 (2001); Terrence E. Murphy, 61 FR 2841 (1996). Indeed, this case is a prime example of the dangers created by the failure to follow applicable law regarding the distribution of listed chemicals. PPI's List I chemical products, distributed in violation of statutory law and regulation, were discovered in significant quantities at a clandestine methamphetamine laboratory site, together with a quantity of finished methamphetamine. If PPI had complied with applicable law, it is doubtful that these List I chemicals would have reached the hands of drug traffickers.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Price's Power International. The evidence indicates that the applicant has violated applicable law by distributing List I chemicals while not registered with DEA, and by failing to identify other parties to regulated transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certification of Registration submitted by Aseel be denied. This order is effective February 21, 2001.

December 21, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 02–1415 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–7 CARP SD 2000]

Ascertainment of Controversy for the 2000 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected under the section 119 statutory license in 2000 to submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these fees, and a Notice of Intention to Participate in a royalty distribution proceeding. Parties who submit a Notice of Intention to Participate may also submit comments on the Public Broadcasting Service's motion for a partial distribution and the scheduling of a CARP proceeding.

DATES: Comments and Notices of Intention to Participate are due no later than February 1, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year satellite carriers submit royalties to the Copyright Office for the retransmission of over-the-air broadcast signals to their subscribers. 17 U.S.C. 119. These royalties are, in turn, distributed to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and for whom a claim for royalties was timely filed with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty fees, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel ("CARP") to determine the distribution of the royalty fees that remain in controversy. See 17 U.S.C. chapter 8.

On October 30, 2001, the Library of Congress published a Notice in the **Federal Register** requesting comments from interested parties as to the existence of controversies over the distribution of 2000 satellite royalty fees collected under 17 U.S.C. 119; 66 FR 54789 (October 30, 2001). The Library requested that interested parties submit their comments, along with Notices of Intention to Participate in the 2000 distribution proceeding, by November 29, 2001. In addition, the Library sought comment on a petition for royalty distribution filed by the Public Broadcasting Service ("PBS"), seeking collection of 2000 and 2001 royalties submitted under 17 U.S.C. 119(b) for the satellite feed.

On November 6, 2001, the Motion Picture Association of America, Inc. ("MPAA") filed a motion seeking an extension of the November 29, 2001, deadline to January 15, 2002. MPAA asserted that it could not submit its Notice of Intention to Participate until it had an opportunity to examine the list of claimants who had filed for the 2000 satellite funds. This list was not made available to the public until early December. Consequently, in response to the MPAA motion, the Office suspended the November 29, 2001, date for filing comments and Notices of Intention to Participate and requested comments on MPAA's motion. See 66 FR 58761 (November 23, 2001).

Three parties filed comments in response to this notice: the Public Broadcasting Service, the MPAA, and the Joint Sports Claimants ("JSC"). In its comment, JSC stated that it was prepared to file its Notices of Intention to Participate at any time and provided additional comment on the scheduling of the proceeding. Similarly, PBS had no apparent objection to the MPAA request but it did ask that the date for filing the requisite notices not be extended beyond the January 15, 2002 date identified by MPAA in its motion and that the PBS motion for a distribution of the disputed funds be expedited upon the filing of the notices.

MPAA, for its part, acknowledged that with the release of the 2000 satellite claimant list it was now able to prepare its Notice of Intention to Participate. However, it argued that the Office should give the parties a minimum of 30–45 days after the release of the list to prepare and file the notices and suggested January 25, 2002, as an appropriate date for filing the Notices of Intention. MPAA also offered comments on scheduling.[1]

Notices of Intention to Participate. Since the Notices of Intention to Participate must list the name of each copyright owner on whose behalf the notice is being filed, the Office agrees that interested parties should have adequate time to review the official list of satellite claimants for 2000 before being required to file a Notice of Intention to Participate in a proceeding concerning the distribution of the 2000 satellite royalty fees. Moreover, interested parties must have adequate notice of the date for filing such notices. Consequently, the Office is setting a later date for filing a Notice of Intention to Participate in a proceeding to decide the distribution of the 2000 satellite royalty fees than that requested in the MPAA comment. Notices of Intention to Participate in such a proceeding shall be due no later than February 1, 2002.

Section 251.45(a) of title 37 of the Code of Federal Regulations requires that parties file a Notice of Intention to Participate in a CARP proceeding, but it does not prescribe the contents of the notice. The Office, however, has addressed the issue of what constitutes a sufficient Notice and to whom it is applicable. See Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000); see also 65 FR 54077 (Sept. 6, 2000). In light of these rulings, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2000 satellite royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Motion of Public Broadcasting Service for Distribution of PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001. On June 21, 2001, PBS filed a motion for distribution of PBS national satellite feed royalty fees for calendar years 2000 and 2001 and sent a copy of the motion to those entities that have participated

[1] MPAA's and JSC's comments on scheduling were unsolicited and beyond the scope of the November 23, 2001 notice and, thus, will not be considered at this time.

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in past satellite distribution proceedings. In an earlier notice, the Office determined that, as a matter of law, consideration of a distribution of the 2001 satellite royalty fees was premature. See 66 FR 54789 (October 30, 2001). Consequently, the Office stated that it would consider the PBS motion only so far as it concerns the distribution of the 2000 satellite royalty fees and only after all interested parties have been identified by filing the Notices of Intention requested herein and such parties have had an opportunity to respond to the motion. *Id.*

Parties who file Notices of Intention to Participate in this proceeding in accordance with this notice may, at this time, file comments on the PBS motion. The Copyright Office has posted the PBS motion for distribution of PBS national satellite feed royalty funds for 2000–2001 on the Copyright Office website at: (*http://www.loc.gov/copyright/carp/pbsmotion.pdf*). The motion is also available for copying in the Office of the General Counsel along with any additional responsive filings that have been filed in the Office of the General Counsel.

Comments on the Existence of Controversies. Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, any comments filed in response to the PBS motion as to the distribution of the 2000 satellite fees must address the existence and extent of any controversies at Phase I and Phase II.

In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by satellite carriers. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, and music programming. The Office seeks comments as to controversies between these categories for royalty distribution.

In Phase II of a satellite royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

Schedule of CARP proceeding. Outstanding controversies concerning the distribution of 1996, 1997, 1998, and 1999 satellite royalty fees still remain. Before setting a schedule for a CARP proceeding to resolve any controversies over the distribution of the 2000 satellite royalty fees at issue in the PBS motion, the Office must first decide whether to resolve the remaining controversies in the preceding years or set these aside and focus on the distribution of the 2000 satellite royalty fees as requested by PBS. Therefore, the Office invites comments from all interested parties on whether to continue to conduct distribution proceedings in a sequential manner as has been the practice historically or to set aside the unresolved controversies in the earlier years and proceed immediately to the controversies surrounding the 2000 satellite royalty fees.

Dated: January 16, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–1543 Filed 1–18–02; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with this requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques of other forms of information collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by March 25, 2002 to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Cross Site Analysis of the national Science Foundation's Local Systemic Change Through Teacher Enhancement Program (LSC).

OMB Control No.: 3145–0161.

Expiration Date of Approval: May 31, 2002.

Abstract: The National Science Foundation (NSF) requests an extension of approval of instruments to be used in the evaluation of the Local Systemic Change (LSC) through Teach Enhancement Program that were previously approved through May 2002 (OMB No. 3145–0136). The surveys are part of the ongoing data collection for the program-wide evaluation of the LSC. Each of the 72 currently funded projects administers teacher and principal questionnaires and conducts teacher interviews at appropriate times during the school year based on the program evaluation design.

These surveys have been ongoing for a number of years in LSC projects funded by NSF. The LSC program is a large-scale effort to modify the nature of teach in-service training (or professional development) provided to mathematics and science teachers in a large number of school districts across the country. Currently there are 72 projects funded at up to $6 million each. The database projects funded at up to $6 million each. The database maintained by Horizon Research, Inc. for LSC is designed to provide information on the total system, both for accountability and for judging effectiveness. For example, NSF is required to report for GPRA the number of teachers receiving NSF in-service and development support. This information is gathered through this recurring study of the LSC projects.

Expected Respondents: A total of 150 teachers and 55 principals from schools in each of the 72 LSC projects, for a total of 10,800 teachers and 3,960 principals participating in the LSC program.

Burden On The Public: 3,960 hours for teachers and 990 hours for principals per year.

Dated: January 15, 2002.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 02–1416 Filed 1–18–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

NAME: Committee on Equal Opportunities in Science and Engineering (1173).

DATES/TIMES: February 7, 2002, 8:30 am–5 pm and February 8, 2002, 9 am–2 pm.

PLACE: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

TYPE OF MEETING: Open.

CONTACT PERSON: John Wilkinson, Executive Liaison to CEOSE, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone (703) 292–8741.

MINUTES: May be obtained from the Executive Liaison at the above address.

PURPOSE OF MEETING: To provide advice and recommendations concerning broadening participation in science and engineering.

AGENDA

Thursday, February 7, 2002

8:30 a.m. Welcome; Approval of June 2001 Minutes
9:15 a.m. Discussion of NSF Data Collection and Reporting
12:30 p.m. Lunch
1:30 p.m. Discussion of Use of Supplements to Broaden Participation
5:00 p.m. Adjourn for the day

Friday, February 8

9:00 a.m. Committee Discussion
10:15 a.m. Discussion with Director, NSF
11:00 a.m. Discussion of article "Hopwood and the Top 10 Percent "—Next Steps
12:00 p.m. Lunch
1:00 p.m. Committee Discussion: Wrap-up and Future Directions
2:00 p.m. Adjourn

Dated: January 15, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–1417 Filed 1–18–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 132nd meeting on February 7–8, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Thursday, February 7, 2002

A. *8:30–9:40 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. *10–12 Noon: Meeting with the EDO and the Office Directors of NRR, NMSS, and RES* (Open)—The Committee will hold discussions with the NRC Executive Director for Operations (EDO), and Directors of the Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Regulatory Research (RES), and Office of Nuclear Material Safety and Safeguards (NMSS) on items of mutual interest. Members of the ACRS will participate in this discussion.

C. *1–2 P.M.: Update on Igneous Activity including PA Analyses* (Open)—The staff will provide an update on the igneous activity KTI, including the related PA analyses.

D. *2–6 P.M.: Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held in the Commissioners' Conference Room, One White Flint North on March 20, 2002. The Committee will review its proposed presentations.

Friday, February 8, 2002

E. *8:30–8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–10:15 A.M.: Annual Research Report to the Commission* (Open)—The Committee will discuss its annual report to the Commission on waste-related research.

G. *10:30–12 Noon: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Proposed Amendment to 10 CFR Part 63
- Update on Igneous Activity including PA Analyses
- Annual Research Report to the Commission
- Key Technical Issue Status (tentative)

H. *1:30–3:30 P.M.: Preparation for Meeting with the Commissioners* (Open)—The Committee will continue its discussion of preparations noted in item D above.

I. *3:30–5 P.M.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

J. *5–6 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 4 P.M. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend

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should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 15, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–1488 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 7–9, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, February 7, 2002

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:45 A.M.: Risk-Informed Regulation Implementation Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding update to risk-informed regulation implementation plan.

10:00 A.M.–12:00 Noon: Meeting with the EDO and the Office Directors of NRR, NMSS, and RES (Open)—The Committee will hold discussions with the NRC Executive Director for Operations (EDO), and Directors of the Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Regulatory Research (RES), and Office of Nuclear Material Safety and Safeguards (NMSS) on items of mutual interest. Members of the ACNW will participate in this discussion.

1:00 P.M.–2:30 P.M.: Proposed Final Revision to Regulatory Guide 1.174 and SRP Chapter 19 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revision to Regulatory Guide 1.174 and associated Standard Review Plan (SRP) Chapter 19 to address the use of probabilistic risk assessment (PRA) in license amendment reviews and plans to develop guidance related to PRA quality, including possible endorsement of industrial standards proposed by the American Society of Mechanical Engineers and American Nuclear Society.

2:50 P.M.–4:50 P.M.: PTS Technical Bases Reevaluation Project (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the Pressurized Thermal Shock (PTS) Technical Bases Reevaluation Project, including initial results of the Oconee Unit 1 reactor pressure vessel failure frequency calculated by using the Fatigue Assessment of Vessels—Oak Ridge (FAVOR) code, and the associated models, inputs, and assumptions used in this code.

5:10 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on the NRC Safety Research Program.

Friday, February 8, 2002

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:00 A.M.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee on matters discussed at the January 16–18, 2002 meeting.

9:00 A.M.–10:00 A.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

10:00 A.M.–10:15 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:35 A.M.–12:00 Noon: Follow-up Items Resulting from the January 24–26, 2002, ACRS Retreat (Open)—The Committee will discuss the follow-up items resulting from the ACRS retreat on January 24–26, 2002, assignments, and schedule for closure of these items.

3:00 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 9, 2002

8:30 A.M.–12:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.–1:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 15, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–1489 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 6, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, February 6, 2002—1:30 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 14, 2002.

Sher Bahadur,

Associate Director for Technical, Support, ACRS/ACNW.

[FR Doc. 02–1490 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 28, 2001 through January 10, 2002. The last biweekly notice was published on January 8, 2002 (67 FR 924).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

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and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 21, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 9, 2001.

Description of amendments request: The amendments would revise Technical Specification (TS) 5.6.5b to add topical report CENPD–404–P–A, "Implementation of ZIRLO™ Cladding Material in CE Nuclear Power Fuel Assembly Designs," to the list of analytical methods used to determine core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows the use of methods required for the implementation of ZIRLO™ clad fuel rods in PVNGS [Palo Verde Nuclear Generating Station], Units 1, 2, and 3. The use of this methodology will not increase the probability of an accident because the plant systems will not be operated outside of design limits, no different equipment will be operated, and system interfaces will not change.

As ZIRLO™ material is introduced to the reactor, transition cores will exist in which ZIRLO" and Zircaloy-4 clad fuel assemblies are co-resident. Fuel assemblies clad with each material will be evaluated based on the approved topical reports.

The use of this additional methodology will not increase the consequences of an accident because Limiting Conditions of Operation (LCOs) will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protection System (RPS) trip setpoints will restrict plant transients so that the consequences of accidents will be acceptable. In addition, the consequences of the accidents will be calculated using NRC accepted methodologies.

The transition cores that will exist as ZIRLO" clad fuel is introduced to the reactor will not increase the consequences of an accident. Operation within the LCOs and RPS setpoints will continue to restrict plant transients so that the consequences of accidents will be acceptable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function, or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator. The ZIRLO™ clad fuel rod design does not introduce features that could initiate an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Safety Limits ensure that Specified Acceptable Fuel Design Limits (SAFDLs) are not exceeded during steady state operation, normal operational transients and anticipated operational occurrences. All fuel limits and design criteria shall be met based on the approved methodologies defined in the topical reports. The RPS in combination with the LCOs will continue to prevent any anticipated combination of transient conditions for reactor coolant system temperature, pressure, and thermal power level that would result in a violation of the Safety Limits. Therefore, the proposed changes will have no impact on the margins as defined in the Technical Specification bases.

The safety analyses determine the LCO settings and RPS setpoints that establish the initial conditions and trip setpoints, which ensure that the Design Basis Events (Postulated Accidents and Anticipated Operational Occurrences) analyzed in the Updated Final Safety Analysis Report (UFSAR) produce acceptable results. In addition, all fuel limits and design criteria shall be satisfied. The Design Basis Events that are impacted by the implementation of ZIRLO" cladding will be analyzed using the NRC accepted methodology described in CENPD–404–P–A.

The change in the fuel rod cladding material and the use of the ECCS [emergency core cooling system] performance evaluation models, CENPD–132, Supplement 4–P, "Calculative Methods for the CE Nuclear Power Large Break LOCA Evaluation Model" and CENPD–137, Supplement 2–P, "Calculative Methods for the CE Small Break LOCA Evaluation Model" will not involve a reduction in the margin of safety because LCOs and Limiting Safety System Settings (LSSS) will be adjusted, if necessary, to maintain acceptable results for the impacted Design Basis Events.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 13, 2001.

Description of amendments request: The amendments would add (1) the phrase "or if open, capable of being closed" to Limiting Condition for Operation 3.9.3, "Containment Penetration," and (2) Surveillance Requirement (SR) 3.9.3.3 on verifying the capability to close the equipment hatch, if open. For refueling operations, the amendments would allow the equipment hatch to be open during core alterations and movement of irradiated fuel assemblies inside containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment[s] to Technical Specification (TS) 3.9.3 "Containment Penetrations," would allow the equipment hatch to remain open, but capable of being closed, during CORE ALTERATIONS or movement of irradiated fuel assemblies within containment. The position of the equipment hatch (open or closed) is not an initiator of any accident.

The fuel handing accident (FHA) contained in the *Updated Final Safety Analysis Report*, Revision 11, currently assumes that the entire

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airborne radioactivity reaching the containment is released to the outside environment. This results in a maximum offsite dose of 74.7 rem to the thyroid and 0.39 rem to the whole body. The calculated control room dose of 11.5 rem thyroid and 0.13 whole body are within the acceptance criteria specified in General Design Criteria 19 "Control Room."

Therefore, the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to TS 3.9.3 "Containment Penetrations," allowing the equipment hatch to be open and capable of being closed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment to TS 3.9.3 "Containment Penetrations," allowing the equipment hatch to be open and capable of being closed remains bounded by previously determined radiological dose consequences for a FHA inside containment. The previously analyzed dose consequences were determined to be within the limits of 10 CFR [part] 100, "Reactor Site Criteria," and they meet the acceptance criteria of NUREG–0800 Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants Section 15.7.4 "Radiological Consequences of Fuel Handling Accidents." Therefore, the proposed amendment request does not involve a significant reduction in a margin of safety. Additionally, a new surveillance will be added to verify the capability to close the equipment hatch, if open and CORE ALTERATIONS or movement of irradiated fuel assemblies are in progress within containment, at a frequency of seven days.

Based on the above, APS [the licensee] concludes that the activities associated with the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No 3, New London County, Connecticut

Date of amendment request: October 1, 2001.

Description of amendment request: The proposed amendment would modify the Millstone Nuclear Power Station, Unit No. 3 (MP3) Technical Specifications (TSs) to increase the emergency diesel generator (EDG) allowed outage time (AOT), to perform a verification of the offsite circuits within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements. The Bases of the affected TSs will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis, which is based on the representation made by the licensee in the October 1, 2001, application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes to increase the EDG AOT, to perform a verification of the offsite circuits within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements are not accident initiators nor will they impact the consequences of any previously evaluated accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TSs do not impact any system or component that could cause an accident nor do the proposed changes alter the plant configuration or require any unusual operator actions or alter the way any structure, system, or component functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The TS changes to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, the TS change to allow verification of offsite circuits within 1 hour prior to or after entering the condition of an inoperable offsite source or inoperable EDG, and the changes to improve the format of the electrical power sources action requirements do not change the TS-required safety limits or safety system settings; therefore, these additional changes will not result in a significant reduction in a margin of safety. The proposed TS changes to increase the EDG AOT do not affect any assumptions or inputs to the safety analyses. Unavailability of a single EDG due to maintenance or repair activities does not reduce the number of EDGs below the minimum required to mitigate all DBAs. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina and Docket Nos. 50–413 and 50–414 Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 6, 2001.

Description of amendment request: The proposed amendments would decrease the McGuire Units 1 & 2 and Catawba Unit 1 Overtemperature Delta Temperature (OTΔT) Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 & 2 Overpower Delta Temperature (OPΔT) Allowable Values. OTΔT and OPΔT are trip functions provided in the reactor trip system to protect against departure from nucleate boiling and to ensure fuel integrity under all overpower conditions. The licensee states that due to changes in reload reactor core designs since the 1.0°F hot leg streaming uncertainty value was determined, it is now necessary to increase the uncertainty value to 1.21°F. Associated changes in the TS Table 3.3.1–1 OTΔT and OPΔT allowable values have been proposed. The licensee states that the decreases are in the conservative direction and will not adversely affect the steady-state or transient analyses documented in the Updated Final Safety Analysis Reports. In addition, the licensee has proposed two minor editorial changes for Catawba Units 1 & 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

First Standard

Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This license amendment request [LAR] proposes to decrease the McGuire Units 1 & 2 and Catawba Unit 1 Overtemperature Delta Temperature (OTΔT) Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 and 2 Overpower Delta Temperature (OPΔT) Allowable Values. This decrease is in the conservative direction and will not adversely affect the steady-state or transient analyses documented in the Updated Final Safety Analysis Report. These changes have no impact on accident probabilities or consequences.

The proposed changes to the Catawba Table of Contents and Bases are solely administrative in nature and have no impact on any accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Second Standard

Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes contained in this LAR only correct administrative errors and add conservative operability requirements which are consistent with the plants' existing licensing bases. No new or different kinds of accidents are being created.

3. Involve a significant reduction in margin of safety.

Third Standard

Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in this LAR. Consequently, no margin of safety will be significantly impacted by this LAR.

Conclusion

Based upon the preceding evaluation, performed pursuant to 10CFR50.92, Duke Energy Corporation has concluded that implementation of this LAR at McGuire and Catawba Nuclear Station will not involve a significant hazards consideration. The changes proposed in this LAR make a conservative decrease in the McGuire Units 1 & 2 and Catawba Unit 1 OTΔT Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 and 2 OPΔT Allowable Values and correct unrelated administrative errors. Following implementation of these proposed changes, McGuire and Catawba will continue to be operated in a conservative manner.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would change the McGuire Technical Specifications (TS) to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with the NRC approved Industry Technical Specifications Task Force (TSTF) Standard Technical Specifications Traveler TSTF–363, "Revise Topical Report References in ITS 5.6.5 COLR". Implementation of the changes proposed in this license amendment request will have no adverse impact on Duke's practices for controlling the methodologies used to develop the core operating limits for McGuire. The complete citations (i.e., report number, title, revision number, report date or NRC safety evaluation date, and any supplements) for each of the topical reports listed in TS 5.6.5 will be displayed as applicable in each station's Core Operating Limits Report (COLR). NRC review and approval of new or revised topical reports will continue to be obtained in the same manner. Changes to the COLRs will be controlled by 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy Corporation has made the determination that this license amendment request (LAR) for McGuire Technical Specifications (TS) involves No Significant Hazards. This determination was made through the application of the standards established by 10CFR50.92. The three standards are discussed below.

1. Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6:5.b have no substantive impact on the McGuire licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would make changes in the Technical Specifications (TS) Bases Control Program to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with

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an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the McGuire licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 16, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to incorporate changes resulting from the use of an alternate source term and the implementation of several plant modifications. The proposed TS changes include the following:

- The Penetration Room Ventilation System (PRVS) will be removed from TS because the PRVS will not be credited in licensing analyses that determine Control Room and off-site doses.
- The Spent Fuel Pool Ventilation System (SFPVS) will be removed from TS because the SFPVS will not be credited in licensing analyses that determine Control Room and off-site doses.
- During certain refueling operations, the containment air locks and/or the equipment hatch and penetrations providing direct access from the containment atmosphere to the outside atmosphere will be permitted to be unisolated under administrative controls. Additionally, the requirement to maintain an operable automatic isolation capability for the Reactor Building Purge system during refueling will be removed from TS.
- The allowable value for the Reactor Building leakage rate will be lowered from 0.25 w%/day to 0.20 w%/day.
- The requirement to measure Reactor Building leakage in excess of 50% of L_a to the penetration room will be removed from TS.
- The Ventilation Filter Testing Program (VFTP) will be revised to remove all references to the PRVS and SFPVS and their testing requirements.
- The VFTP acceptance criterion for the Control Room Ventilation System Booster Fan trains will be revised to require ≥ 97.5% radioactive methyl iodide removal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The AST [Alternative Source Term] and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The AST does not affect the design or operations of the facility. Rather, the AST is used to evaluate the consequences of a postulated accident. The implementation of the AST has been evaluated in the revisions to the analysis of the design basis accidents for Oconee Nuclear Station. Based on the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems. Consequently, these systems do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The implementation of the AST, proposed changes to the TS and the implementation of the proposed modifications have been evaluated in the revisions to the analysis of the consequences of the design basis accidents for the Oconee Nuclear Station. Based on the results of these analyses, it has been demonstrated that with the requested changes the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Thus, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the licensing basis associated with the failure of non-Category I (non-seismic) piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The License Amendment Request (LAR) proposes to change the licensing basis for non-Category I (non-seismic) piping to assume a through-wall crack as the postulated piping failure. The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not affect any Chapter 15 accident analyses. Duke evaluated the effects of flooding caused by a leak from a crack size calculated using the SRP [Standard Review Plan] guidelines in the 16-inch HPSW [High Pressure Service Water] header. This evaluation concluded that for the bounding case, the effects of flooding can be mitigated without adversely affecting safety-related equipment. At least an hour is available from detection for operator action to isolate the leak. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The License Amendment Request (LAR) changes the licensing basis associated with non-seismic moderate energy line breaks. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

No. The License Amendment Request (LAR) changes the licensing basis associated with non-seismic moderate energy line breaks. The impact of flooding from a seismically induced crack in non-seismic moderate energy piping has been evaluated. Adequate time exists for operator action to isolate flooding sources prior to adversely affecting safety-related equipment required for safe shutdown. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would make changes in the Technical Specifications (TS) to eliminate the use of the term "unreviewed safety question." The change is proposed by the licensee to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Oconee licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10 CFR 50.59 regulation. Implementation of the revised 10 CFR 50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick (JAF) Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 2, 2001.

Description of amendment request: The proposed change to the JAF Nuclear Power Plant Technical Specifications establishes a combined leakage rate limit for the sum of the four main steam line leakage rates that is equal to four times the current main steam line valve (MSIV) leakage rate limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the JAF plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR [Code of Federal Regulations] 50.92 since it would not:

Involve an increase in the probability of consequences of an accident previously evaluated.

The proposed amendment does not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the FitzPatrick Updated Final Safety Analysis Report (UFSAR).

The proposed amendment results in no change in radiological consequences of the design basis LOCA [loss-of-coolant accident] as currently analyzed for the FitzPatrick Plant. These analyses were calculated assuming a combined total MSIV leakage at accident pressure for determining acceptance to the regulatory limits for the offsite, control room, and Technical Support Center (TSC) radiation doses as contained in 10 CFR 100 and 10 CFR 50, Appendix A, GDC 19 [General Design Criteria]. The proposed change does not compromise existing radiological equipment qualification, since the combined total MSIV leakage rate has been factored into existing equipment qualification analyses for 10 CFR 50.49.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify the MSIVs or any other plant system or structure associated with this amendment and therefore, will not affect their capability to perform their design function. The combined total main steam line leakage rate is included in the current radiological analyses for the assessment of radiation exposure following an accident.

This proposal changes the allowable leakage rate from a per valve limit to a total combined leakage rate limit for all four main steam lines but does not change the cumulative limit. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Involve a significant reduction in a margin of safety.

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The leakage rate limit specified for the MSIVs is used to quantify the maximum amount of bypass leakage assumed in the LOCA radiological analysis. Results of the analysis are evaluated against the dose guidelines contained in GDC 19 and 10 CFR 100. The margin of safety in this context is considered to be the difference between the calculated dose exposures and the guidelines provided by the GDC 19 and 10 CFR 100. Therefore, since the proposed combined total main steam line leakage rate limit is unchanged from the assumed maximum leakage rate for MSIVs, for the purpose of calculating potential radiation dose, the margin of safety is not affected because the postulated radiation doses remain the same.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: L. Raghavan, Acting.

Exelon Generation Company, LLC (Exelon), Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 21, 2001.

Description of amendment request: Exelon proposed changes that would revise Technical Specification (TS) 2.1 to incorporate revised Safety Limit Minimum Critical Power Ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel for LGS Unit 1, Cycle 10, which will include the use of the GE–14 fuel product line.

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) of Title 10 of the Code of Federal Regulations (CFR), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards or 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle-specific SLMCPRs for incorporation into the TSs, and its use to determine cycle-specific thermal limits, has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which incorporates Amendment No. 25. Amendment No. 25 provides the methodology for determining the cycle-specific MCPR safety limits that replaces the former generic fuel type dependent values. Amendment No. 25 was approved by the NRC (Nuclear Regulatory Commission) in a March 11, 1999, safety evaluation.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The probability of fuel damage will not increase as a result of this change. Likewise, the consequences of accidents previously evaluated are not affected by the revised SLMCPRs values. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. SLMCPRs are based on a calculation using an NRC-approved methodology discussed in NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000. The SLMCPR is not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The new SLMCPRs are calculated using NRC-approved methodology discussed in NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000. This methodology uses the same standards and margins that were used in the former generic fuel type methodology. Therefore, the proposed TS change will not involve a significant reduction in a margin of safety previously approved by the NRC.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

National Aeronautics and Space Administration (NASA), Docket No. 50–30, Plum Brook Reactor Facility (PBRF), Sandusky, Ohio

Date of amendment request: December 20, 1999, as supplemented on March 26, November 19, and December 20, 2001.

Description of amendment request: The proposed amendment would allow decommissioning of the Plum Brook Test Reactor Facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed approval of the PBRF Decommissioning Plan involve a significant increase in the probability or consequences of an accident previously evaluated?

All nuclear fuel has been removed from the PBRF site. Radioactive inventories at the PBRF are very small compared to those in operating reactors (both power and non-power) and in various kinds of fuel cycle facilities subject to NRC regulation. Analyses indicate that decommissioning activities would not involve a significant increase in the probability or consequences of an accident previously evaluated in the current Final Hazards Summary for the NASA Plum Brook Reactor Facility.

Summary: NASA considers that the approval of the Decommissioning Plan does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed approval of the PBRF Decommissioning Plan create the possibility of a new or different kind of accident from any accident previously evaluated?

The current Final Hazards Summary for the NASA Plum Brook Reactor Facility evaluated those cause-and-effect accidents related to external events and loss/failure of reactor support systems that would result in the dispersal of fission products and radioactive materials to the environment. Due to the combined absence of fuel at the PBRF site and the non-operational condition of reactor support systems, NASA has determined that decommissioning activities, as described in the Decommissioning Plan, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Summary: NASA considers that the approval of the Decommissioning Plan does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Current Technical Specifications adequately restrain the scope and nature of decommissioning activities to loose equipment removal and preparations for dismantlement. Approval of the proposed Decommissioning Plan provides for additional controls prior to commencement of dismantlement activities, thereby achieving a greater margin of safety.

Summary: NASA considers that the approval of the Decommissioning Plan does not involve a significant reduction in a margin of safety.

Based on the above evaluations, NASA concludes that the activities associated with the above described changes present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding by the NRC of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: J. William Sikora, Esquire, 21000 Brookpark Road, Mail Stop 500–118, Cleveland, OH 44135.

NRC Section Chief: Patrick M. Madden.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: October 5, 2001; as revised on January 4, 2002. This notice supersedes a previous notice (66 FR 55020) published on October 31, 2001, which was based upon the licensee's application dated October 5, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) to change the licensing basis requirement for establishing containment hydrogen monitoring "within 30 minutes" to "within 3 hours" of initiating emergency core cooling following a loss-of-coolant accident (LOCA). The January 4, 2002, revision reduces the proposed delay from 3 hours to 90 minutes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Updated Safety Analysis Report (USAR) Chapter 15 accident analyses do not require or take credit for hydrogen monitoring to be established shortly after a loss of coolant accident (LOCA). Post-LOCA hydrogen production occurs over a long period of time, and an extension from "30 minutes" to "90 minutes" for establishing hydrogen monitoring will have a positive impact on the ability of the operators to concentrate on their more immediate actions while having no negative impact on containment integrity or the long-term assessment efforts. Therefore, the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Control room operators use the containment hydrogen monitors following a LOCA to establish hydrogen control measures should it become necessary. The proposed license amendment would not eliminate the requirement to establish hydrogen monitoring, but would allow it to be delayed until those actions required to mitigate the accident and verify proper operation of essential safety equipment have been completed. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not create a new or different kind of accident from any accident previously evaluated.

(3) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The need to establish hydrogen control measures will not be present within the first 90 minutes following a LOCA since there will not be significant hydrogen accumulation. By extending the time allowed to establish containment hydrogen monitoring, the operators can remain focused on the actions necessary to mitigate the accident before directing their attention to hydrogen control measures and other long-term actions. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 21, 2001.

Description of amendment request: The proposed changes would revise Technical Specification (TS) Surveillance Requirements (SR) 4.3.1.2 and 4.3.2.2 to allow verification in place of demonstration of response time associated with certain pressure sensors, differential pressure sensors, process protection racks, nuclear instrumentation, and logic systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not result in a condition where the design, material, and construction standards that were applicable prior to the proposed changes are altered. The same Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) instrumentation is being used; the response time allocations/modeling assumptions in the Seabrook Station UFSAR [updated final safety analysis report] analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and will not increase the probability or consequences of an accident previously evaluated since these events are independent of this change.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not alter the performance of the pressure and differential pressure sensors used in the plant protection systems, nor do the proposed changes alter the performance of the Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. The sensors will still have their response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time; and the plant protection systems will still have response time verified by test before being placed in operational service.

For the pressure and differential pressure sensors; and for the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems; changing the method of periodically verifying instrument response from time

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response testing to calibration and channel checks (assuring equipment operability) will not create any new accident initiators or scenarios.

The periodic calibration of the pressure and differential pressure sensors will detect significant degradation in the sensor response characteristic.

The periodic calibration of the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems will continue to be used to detect significant degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds degradation that cannot be detected by the periodic surveillance.

Thus, these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not affect the total system response time assumed in the Seabrook Station UFSAR analyses. The periodic system response time verification method for the pressure and differential pressure transmitters; and the periodic system response time verification method for the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems, is modified to allow use of actual test data or engineering data. The method of verification will continue to provide assurance that the total system response is within that defined in Seabrook Station UFSAR analyses.

For the pressure and differential pressure sensors, calibration tests will detect degradation, which might significantly affect sensor response time.

For the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems calibration tests will continue to be performed which would detect significant degradation which might cause the response time to exceed the total allowance. The total time response allowance for each function bounds degradation that cannot be detected by the periodic surveillance.

Thus, it is concluded that these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: **The proposed amendment will remove requirements for having the equipment hatch closed with four (4) bolts and one door of the personnel access lock (PAL) closed during core alterations and refueling operations for the Fort Calhoun Station (FCS). The technical specification (TS) for other containment penetrations will be modified to delete the requirement to be closed by an operable ventilation isolation actuation signal during core alterations and refueling operations. The proposed amendment will modify requirements for radiation monitors during core alterations and refueling operations. The TS Bases that are affected by the changes described above will be modified.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to FCS TS modify requirements to have containment closure in place during core alterations and refueling operations in containment. These TS changes do not impact operation of other equipment or systems important to safety. The proposed TS changes reflect the parameters used in the radiological consequence calculations described in Section 5.0 of this license amendment request.

The proposed change to TS 2.8.2(1) will be to delete the requirement for having equipment hatch closed and held in place by at least four (4) bolts and the requirement to have at least one door in the PAL closed. The requirements for containment penetration isolation via an operable VIAS [ventilation isolation actuation signal] have been deleted with these proposed changes. Administrative controls will be put in place instead for "defense in depth" action in regards to containment penetrations. These administrative controls include:

a. The Equipment Hatch Enclosure (Room 66) doors or the equipment hatch and one door in the PAL shall be capable of being closed in less than one hour of a FHA [fuel handling accident].

b. The Equipment Hatch Enclosure (Room 66) doors or the equipment hatch and one door in the PAL shall not be obstructed unless capability for rapid removal of obstructions is provided (such as quick disconnects for hoses).

c. Penetrations providing direct access from the containment atmosphere to the outside atmosphere shall be capable of being closed on one side in less than one hour of a FHA.

d. An individual or individuals shall be designated and available during core alterations and refueling operations, capable of closing the Equipment Hatch Enclosure (Room 66) doors or the equipment hatch, one door in the PAL, and penetrations that provide direct access from the containment atmosphere to the outside atmosphere.

In addition, allowance will be granted to have penetration flow paths with direct access from the containment atmosphere to the outside atmosphere to be unisolated during core alterations and refueling operations. These proposed changes are based on a re-analysis that was performed with respect to radiological consequences. The FHA re-analysis (Reference 10.1 [in the December 14, 2001, submittal]) was performed in accordance with current accepted methodology, and consequences were expressed in TEDE [total effective dose equivalent] dose.

The proposed change to TS 2.8.2(3) will delete the requirement for two gaseous radiation monitors being operable and supplied by independent power supplies. Instead, only one gaseous radiation monitor is required to be operable. VIAS actuation upon radiation monitor alert is not credited in the FHA re-analysis. VIAS actuation for containment purge or other penetration isolation is not credited.

The current methodology as described in 10 CFR 50.67 specifies dose acceptance criteria in terms of TEDE dose. The revised FHA analysis results as discussed in Section 5.0 meet the applicable TEDE dose acceptance criteria (specified also in RG [regulatory guide] 1.183) for AST [alternative source term]. The most current FHA analysis does not credit containment integrity and, hence, is conservative in that aspect. These administrative controls proposed as stated above ensure that in the event of a FHA in containment (even though the containment fission product control function is not required to meet dose consequence criteria) that the Equipment Hatch Enclosure (Room 66) doors or the equipment hatch, one PAL door, and other pathways can be promptly closed.

Currently the equipment hatch is closed with four (4) bolts, at least one PAL door closed, and other penetrations either are closed or capable of being closed on VIAS during core alterations and refueling operations to prevent the escape of radioactive material in the event of a FHA in containment. Whether the equipment hatch or other penetrations are open or closed during core alterations and refueling operations has no effect on the probability of any accident previously evaluated.

Based on the TS changes approved in Reference 10.1, the changes being proposed in this amendment request will not affect assumptions contained in other plant safety analyses (Updated Safety Analysis Report) or the physical design of the plant, nor do they affect other TS that preserve safety assumptions.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The current FHA analysis (Reference 10.1) assumes that all the iodine and noble gases become airborne, escape, and reach the site boundary and low population zone with no credit for filtration, containment closure, or deposition. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident (DBA) events were postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). The FHA analysis documented in Reference 10.1 was performed consistent with 10 CFR 50.67 and RG 1.183. Not crediting filtration systems for EAB/LPZ dose consequences and only crediting natural forces is conservative from the aspect of dose consequences.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The implementation of the proposed changes does not reduce the margin of safety as defined in the alternate source term design basis site boundary and control room dose analyses (Reference 10.1). The radiological analyses results, with the proposed changes, remain within the regulatory acceptance criteria (10 CFR 50.67) utilizing the TEDE dose acceptance criteria directed in RG 1.183. These criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: **The licensee proposes to (1) revise Technical Specifications 3.7(2)d and 3.7(4) to allow the tests to be performed on a refueling frequency outside of a refueling outage, and (2) correct the docket concerning inconsistencies in the 1973 Fort Calhoun Station (FCS) Safety Evaluation Report (SER) associated with the 13.8 kV transmission line capability.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications Sections 3.7(2)d and 3.7(4) only provide greater flexibility in the time of testing. The periodicity remains the same, i.e., refueling frequency. There are no physical alterations proposed or being made to the D.C. emergency transfer switches or the 13.8 kV–480 V service. The proposed changes continue to address and comply with the regulatory requirements as described in Fort Calhoun Station Responses to 70 Criteria, Reference 9.2. The proposed changes will continue to assure that the D.C. emergency transfer switches and the 13.8 kV–480 V service will perform their design function. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the D.C. emergency transfer switches or 13.8 kV–480 V service, or any plant configuration, systems, equipment, or operational characteristics. There will be no change in operating modes or safety limits. With the proposed changes, the technical specifications retain requirements for operability and functionality on a refueling frequency. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide flexibility in the time of performance of the required surveillance tests. The proposed changes will not alter any physical or operational characteristics of the D.C. emergency transfer switches or the 13.8 kV–480 V service. The proposed surveillance requirements will continue to assure that the design functions are met. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: **The licensee has proposed to change Technical Specification (TS) 2.10.4, to decrease the minimum required reactor coolant system (RCS) flow rate from 206,000 gallons per minute (gpm) to 202,500 gpm.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the RCS flow rate is the same as the indicated RCS flow rate prior to the TS Amendment 193 (Reference 10.1 [in the December 14, 2001, submittal]). The plant was operated with the same RCS flow rate as the proposed value prior to Amendment 193. Chapter 14 events and design basis accidents were analyzed with the RCS flow rate of 202,500 gpm using NRC approved methodology.

In 1999 Fort Calhoun Station was granted TS Amendment 193 to increase the minimum indicated RCS flow rate to 206,000 gpm as a result of the removal of the steam generator orifice plates. Transient and thermal hydraulic analyses were performed using the amended RCS flow rate to verify that the minimum departure from nucleate boiling ratio (MDNBR) does not fall below the limiting value that supports the DNB specified acceptable fuel design limits.

The FRA–ANP analysis confirms that the proposed reduction in RCS flow rate does not degrade the margin to the mechanical fuel design limits and that the fuel design criteria continue to be met.

In view of the above confirmation, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the RCS flow rate is not new since the plant was operating with

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the same value prior to TS Amendment 193. The proposed revision does not change any equipment required to mitigate the consequences of an accident. OPPD will continue to analyze all applicable USAR Chapter 14 events and design basis accidents as part of the reload analyses to establish the safety margin to the mechanical fuel design limits and confirm that all the fuel design criteria continue to be met. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The decreased RCS flow rate has been analyzed for thermal hydraulic effects on the reactor core. The analysis has confirmed that the proposed amendment does not degrade the margin to the mechanical fuel design limits and meets the fuel design criteria. The RCS flow rate surveillance requirements will continue to assure that the design functions are met. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The proposed amendment deletes technical specification [TS] Figures 2–1A (Reactor Coolant System (RCS) Pressure—Temperature Limits for Heatup) and 2–1B (RCS Pressure—Temperature Limits for Cooldown) and replaces them with the single TS Figure 2–1. Additionally, the licensee proposes to change the lowest service temperature from 182°F to 164°F to be in compliance with Reference 4, American Society of Mechanical Engineers (ASME) Section III, NB–2332 and the basis for the minimum boltup temperature to be in compliance with Reference 5, ASME Section XI, Appendix G. The Basis section for Technical Specification 2.1.2 is being updated to reflect the use of ASME Code Case N–640 and Westinghouse Electric Company/Combustion Engineering's (W/CE) pressure temperature (P–T) limit curve methodology as applicable. Finally, based on the replacement of Figures 2–1A and 2–1B with the single Figure 2–1, the following TS are required to be changed: 2.1.1(8), 2.1.2, 2.1.2(1), 2.1.2(2), 2.1.2(6), 2.1.2(6)(a), 2.1.2(6)(c), 2.1.2(6)(d), and 2.1.6(4) as they reference the deleted curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequence of any accident for the following reasons:

(1) TS Figure 2–1 is proposed to incorporate the use of ASME Code Case N–640, which has been approved by the NRC as being acceptable for the development of P–T curves. Additionally, it is being updated for operation to higher neutron fluence values for use in the ART [adjacent reference temperature] calculations.

(2) Reducing the lowest service temperature is in compliance with Reference 10.9, Section III, NB–2332.

(3) The shift in the basis for minimum boltup temperature is in compliance with 10 CFR 50 Appendix G.

(4) Updating the fluence and EFPY [effective full power years] applicability is in compliance with Regulatory Guide 1.99, Revision 2.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision does not change any equipment required to mitigate the consequences of an accident. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident events are postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS Figure 2–1 does not constitute a significant reduction in the margin of safety due to the following:

(1) The current LTOP [low temperature overpressure protection] analysis setpoints are bounding and applicable to this TS Figure.

(2) The use of ASME Code Case N–640 has been approved by the NRC as acceptable for the development of P–T limit curves. W/CE's P–T limit curve methodology has been approved for the development of P–T curves.

(3) The reduction in lowest service temperature is in compliance with Reference 10.9, Section III, NB–2332.

(4) The shift in the basis of the minimum boltup temperature from NDTT to RT_{NDT} is in compliance with Reference 10.4, Section XI, Appendix G.

(5) Updating the fluence and EFPY applicability of the TS Figure 2–1 to maintain validity is in compliance with Regulatory Guide 1.99, Revision 2.

The P–T curve results, with the proposed changes, remain within the regulatory acceptance criteria utilizing W/CE methodology and ASME Code Case N–640. These criteria, 10 CFR 50.36(c)(2), have been developed for application to analyses performed for long term operation of reactor vessels. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * *up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3 "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001.

Description of amendment request: Proposed amendments would revise Technical Specification 3/4.6.1.6, "Containment Structural Integrity," and replace it with reference to containment Post-Tensioning System Surveillance Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, this analysis provides a determination that the proposed changes to the Technical Specifications do not involve any significant hazards consideration as defined in 10 CFR 50.92.

Criterion 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the surveillance requirements for the containment post-tensioning inservice inspection program as required by 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(viii). The revised requirements do not affect the function of the containment post-tensioning system components. The post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. The function of the containment post-tensioning system components are not altered by this change. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

Criterion 3: Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change does not impact the margin of safety included in the design pressure compared to the peak calculated pressure because the proposed activity does not alter, in any way, the available force provided by the tendons. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Based on the evaluation provided above, the proposed changes do not involve a significant hazards consideration under 10 CFR 50.92(c), and will not have a significant effect on the safe operation of the plant. Therefore, there is reasonable assurance that operation of the South Texas Project in accordance with the proposed revised Technical Specifications will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

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10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 22, 2001.

Description of amendments request: The proposed amendments would revise the Technical Specification Limiting Condition for Operation for Containment Penetrations to allow the equipment hatch to be open during core alterations and/or during movement of irradiated fuel assemblies within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether the proposed amendment involves a significant hazards consideration by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

(1) Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch to be open during core alterations and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch are bounded by the current analysis described in the UFSAR [Updated Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with the proposed amendment create the possibility of a new different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident previously evaluated.

(3) Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the personnel airlock doors open remain bounding for the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP section 15.7.4 and GDC 19. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 3, 2001.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TSs) for the Auxiliary Feedwater (AFW) System to provide consistent allowed outage times (AOT) and required actions for any inoperable motor driven AFW pump(s). The AOT for one inoperable motor drive AFW pump is also proposed to be extended from 72 hours to 28 days based on a risk-informed approach.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change. Therefore, the proposed AOT change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative change of deleting the words "At least" clarifies that there are only four AFW pumps in the design. The administrative change involves no increase in the probability or consequences of an accident.

If all four AFW trains are inoperable in Mode 1, 2, or 3, the unit is in a seriously degraded condition with only limited means for conducting a cooldown. In such a condition, the unit should not be perturbed by any action, including a power change that might result in a trip. The seriousness of this condition requires that action be started immediately to restore one AFW train to operable status. Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO [limiting condition for operation] 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) involves no increase in the probability or consequences of an accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed AOT change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The administrative change of deleting the words "At least" clarifies that there are only four AFW pumps in the design. The change does not create the possibility of any accident.

Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation dose to the public.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety systems settings, and will not relax the bases for any limiting conditions of operation. Therefore, the proposed AOT change does not involve a significant reduction in a margin of safety.

The administrative change of deleting the words "At least" clarifies that there are only four AFW pumps in the design. The change does not involve any reduction in a margin of safety.

Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92, and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2001.

Brief description of amendments: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 18, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 6, 2001.

Description of amendment request: The amendment would revise the following Technical Specifications (TSs): (1) TS 3.3.6, "Containment Purge Isolation Instrumentation;" (2) TS 3.3.7, "Control Room Emergency Ventilation

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System (CREVS) Instrumentation;" and (3) TS 3.9.4, "Containment Penetrations." The revisions to TS 3.3.6 would alter Condition C of the Actions for the Limiting Condition for Operation (LCO), and delete footnotes (a) and (b) from applicable Modes for the automatic actuation logic and actuation relays function and the containment purge exhaust radiation gaseous function in Table 3.3.6–1. The revisions to TS 3.3.7 would add (1) Surveillance Requirement (SR) 3.3.7.6, (2) footnote (c) to Table 3.3.7–1, (3) the fuel building exhaust radiation gaseous function to the table, and (4) footnote (c), 2 trains, and SR 3.3.7.6 to the applicable Modes, required channels, and surveillance requirements columns for the automatic actuation logic and actuation relays and control room radiation control room air intakes functions in Table 3.3.7–1. The revisions to TS 3.9.4 are to add the phrase "or if open, capable of being closed" to item a on the equipment hatch in LCO 3.9.4, delete the word "closed" from item b on the emergency air lock in LCO 3.9.4, add SR 3.9.4.2 on verifying the capability to install the equipment hatch when it is open, and renumber the existing SR 3.9.4.2 to SR 3.9.4.3. The revisions to the TSs are to allow the equipment hatch and the emergency air lock to be open in refueling outages during core alterations and/or movement of irradiated fuel within containment. The revisions to TSs 3.3.6 and 3.3.7 are to eliminate the requirement for automatic actuation of containment purge isolation during core alterations and/or during movement of irradiated fuel to allow the containment purge system to remain in operation during refueling when the equipment hatch is open, and to add a new surveillance to response time test the channels for the control room radiation monitor detectors, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch [or the emergency air lock] to be open during CORE ALTERATIONS and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch or the emergency air lock during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch [or open emergency air lock] are bounded by the current analysis described in the FSAR [Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch [or the emergency air lock], the proposed change[s do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analysis.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the [equipment hatch or emergency] air lock doors open remain bounding for the proposed changes. Those previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP [Standard Review Plan] section 15.7.4 and GDC 19 [for exposure of control room operators].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 21, 2001.

Brief description of amendments: Will revise the Technical Specifications to allow Sequoyah to insert tritium-producing burnable absorber rods into the reactor core.

*Date of publication of individual notice in the **Federal Register**:* December 17, 2001 (66 FR 65000).

Expiration date of individual notice: January 16, 2002.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: April 20, 2001.

Brief description of amendments: Will revise the Final Safety Analysis Report to reflect a change in the spent fuel pool cooling analysis methodology.

*Date of publication of individual notice in the **Federal Register**:* December 17, 2001 (66 FR 64998).

Expiration date of individual notice: January 16, 2002.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: August 20, 2001.

Brief description of amendments: Will revise the Technical Specifications to allow Watts Bar to insert tritium-producing burnable absorber rods into the reactor core.

*Date of publication of individual notice in the **Federal Register**:* December 17, 2001 (66 FR 65005).

Expiration date of individual notice: January 16, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 31, 2001, as supplemented August 1, 2001, and September 26, 2001.

Brief description of amendment: The amendment approves a change to the Technical Specifications and Bases associated with the operability of A.C. electrical power sources to increase the allowed outage time (AOT) for one inoperable emergency diesel generator (EDG) from 72 hours to 14 days. This change to the AOT allows the performance of various EDG maintenance and repair activities during plant operation.

Date of issuance: January 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 261.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in *Federal Register:* August 8, 2001 (66 FR 41614).

The August 1, 2001, and September 26, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

*Date of initial notice in **Federal Register**:* August 8, 2001 (66 FR 41614). The August 1, 2001, and September 26, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment deletes Technical Specifications Section 6.18, "PASS [Post Accident Sampling System]/ Sampling and Analysis of Plant Effluents," for Millstone Nuclear Power Station, Unit No. 2 and thereby eliminates the requirements to have and maintain the post-accident sampling program.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 262.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* October 31, 2001 (66 FR 55009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment deletes Technical Specifications Section 6.8.4.d, "Post Accident Sampling," for Millstone Nuclear Power Station, Unit No. 3 and thereby eliminates the requirements to have and maintain the post-accident sampling program.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 201.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* October 31, 2001 (66 FR 55011).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 23, 2001, as supplemented by letters dated June 29, July 19, and November 13, 2001.

Brief Description of amendment: The amendment changes Technical Specification (TS) 3.4.1.6, "Reactor Coolant System—Isolated Loop Startup" which includes revisions to the limiting condition for operation. Some of the changes to TS 3.4.1.6 affect restrictions that were included as part of the original Millstone Unit 3 licensing basis allowing power operation with one isolated reactor coolant system loop.

Date of issuance: January 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 202.

Facility Operating License No. NF–49: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 11, 2001 (66 FR 36338). The letters dated June 29, July 19, and November 13, 2001, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or

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expand the scope of the application as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 13, 2001.

Brief description of amendment: The change relaxes the allowable cooldown rate in the Reactor Coolant System (RCS) Technical Specifications (TS) 3.4.8.1, "Pressure/Temperature Limits." Specifically, the change eliminates the limitation of a 10 °F per hour cooldown rate when the RCS temperature is below 135 °F. The proposed limitations permit a 100 oF per hour cooldown rate to continue down to an RCS temperature of 110 °F, at which point the rate is reduced to 30 °F per hour.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 177.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 2, 2001 (66 FR 22029).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 9, 2001.

Brief description of amendments: The proposed amendments would incorporate TS changes that are being made to provide consistency with the changes to 10 CFR 50.59, "Changes, tests, and experiments," as published in the **Federal Register** (64 FR 53582), dated October 4, 1999. Specifically, the changes replace the terms "safety evaluation" with "10 CFR 50.59 evaluation" and "unreviewed safety question" with "requires NRC approval pursuant to 10 CFR 50.59."

Date of issuance: December 28, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 125 and 120.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 22, 2001 (66 FR 44170).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 28, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 21, 2001.

Brief description of amendments: The amendments delete Technical Specification 5.5.3, "Post Accident Sampling," and thereby eliminate the requirement to have and maintain the Post Accident Sampling System at the Braidwood Station, Unit Nos. 1 and 2, and Byron Station, Units Nos. 1 and 2.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 365 days.

Amendment Nos.: 126 and 121.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 31, 2001 (66 FR 55018).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 15, 2001, as supplemented by letter dated November 12, 2001.

Brief description of amendments: The proposed amendments would allow use of ATRIUM 10 fuel from Framatome Advanced Nuclear Fuel, Inc.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 152 and 138.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 8, 2001 (66 FR 41618).

The November 12, 2001, submittal was clarifying in nature and did not change the scope of the original notice or proposed no significant hazards finding dated August 8, 2001 (66 FR 41618). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: June 14, 2000, as supplemented December 19, 2001.

Brief description of amendment: The amendment changes the operating license to reflect a change in the name of IES Utilities, Inc., a co-owner of the Duane Arnold Energy Center and licensee, to Interstate Power and Light Company.

Date of issuance: January 2, 2002.

Effective date: As of January 1, 2002, and shall be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–49: The amendment revised the operating license.

Date of initial notice in ***Federal Register****:* July 26, 2000 (65 FR 46009).

The December 19, 2001, supplemental letter provided notification that (1) the required regulatory approvals for the merger had been received and (2) the projected schedule for the merger was January 1, 2002. The supplemental letter did not change the staff's initial proposed no significant hazards consideration determination or expand the application beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 8, 2001, as supplemented on February 6, December 7, and December 27, 2001.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.5.1.b.1 to change the minimum acceptable Core Spray subsystem flow from 6,350 gallons per minute (gpm) to 6,150 gpm.

Date of issuance: January 7, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 136.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register****:* January 22, 2001 (66 FR 6701).

The letters dated February 6, December 7, and December 27, 2001, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 16, 2001, as supplemented on July 5, 2001.

Brief description of amendments: The amendments revise Technical Specifications (TSs) requirements associated with the operation and surveillance testing of the 28 Volt D.C. (VDC) Batteries. The revised Limiting Condition for Operation (LCO) and Surveillance Requirements (SRs) are now more consistent with the 125 VDC Battery System LCO and SRs as well as similar to standard TSs provided by NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995.

Date of issuance: January 4, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 249 and 229.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 14, 2001 (66 FR 57124).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 2002.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001.

Brief description of amendments: The amendments modified Facility Operating License Nos. NPF–87 and NPF–89 to reflect the direct transfer of control of TXU Electric Company's operating authority and 100-percent ownership interest in the Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, to a newly formed generating company: TXU Generation Company LP.

Date of issuance: January 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 7 days from the date of issuance.

Amendment Nos.: 90 and 90.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register****:* August 20, 2001 (66 FR 43594).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 2001.

Dated at Rockville, Maryland, this 11th day of January 2002.

For the Nuclear Regulatory Commission,

John A. Zwolinski,

Director, Division of Licensing, Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1210 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Meeting

Time and Date: Thursday, January 31, 2002, 1:00 PM (Open Portion) 1:30 PM (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC

Status: Meeting Open to the Public from 1 p.m. to 1:30 p.m. closed portion will commence at 1:30 p.m. (approx.).

Matters to be Considered:

1. President's Report
2. Appointment: Daniel A. Nichols
3. Meeting Schedule Through September 2002

Further Matters to be Considered: (Closed to the Public 1:30 PM)

1. Finance Project in Indonesia
2. Finance Project in Pakistan
3. Pending Major Projects
4. Reports

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 17, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–1677 Filed 1–17–02; 4:02 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form CB, OMB Control No. 3235–0518, SEC File No. 270–457

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form CB is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c). It also is used by a subject company pursuant to Exchange Act Rule 14e–2(d). This information is made available to the public. Information provided on Form CB is mandatory. Approximately 200 issuers file Form CB annually and it takes approximately .5 hours per response for a total of 100 annual burden hours. Finally, persons who respond to collection contained in Form CB are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1424 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45276; File No. SR–NASD–202–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This is a proposal to extend through July 15, 2002, two pilot programs contained in NASD Rule 6541, which prohibits member firms from trading ahead of customer limit orders in designated OTC Bulletin Board ("OTCBB") securities. NASD Rule 6541 was established on a pilot basis through February 8, 2002. Portions of NASD Rule 6541 were separately amended for a pilot period that originally ran for a three-month period from August 1, 2001, to November 1, 2001, and was later extended through January 14, 2002. Nasdaq is proposing no changes to the language of NASD Rule 6541.

Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and has provided the Commission with the 5-day notice required by Rule 19b–4(f)(6)(iii). Nasdaq requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii). If such waiver is granted by the Commission, the two pilots programs would continue to operate without interruption, remaining in effect until July 15, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Section, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved new NASD Rule 6541 which, on a pilot basis, extended the basis customer limit order protection principles—that presently apply to Nasdaq securities—to designated securities traded on the OTCBB.[4] NASD Rule 6541(a), in general, prohibits member firms that accept customer limit orders in these securities from "trading ahead" of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. NASD Rule 6541(b) requires member firms to provide a minimum level of price improvement to incoming orders in OTCBB securities if the firm chooses to trade as principal with those incoming orders while holding customer limit orders. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders.

The limit order protection embodied in NASD Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the "Manning Rule"). In *Manning*, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has fiduciary duty not to trade for its own account at prices more favorable than the customer order.[5] NASD Rule 6541 expands to the trading of OTCBB the protections that NASD IM–2110–2 provides to the trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to NASD IM–2110–2.[6] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to file a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq securities. On July 26, 2001, Nasdaq filed and implemented an amendment to NASD Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement for trading of OTCBB securities.[7] As originally drafted, NASD Rule 6541(b) required price improvement of at least the lesser of $0.05 or one-half of the current insider spread. Under SR–NASD–2001–39, the price improvement requirement was narrowed to $0.01 or one-half the inside spread (whichever is less) for a market maker wishing to trade in front of a held customer limit order that is priced at or inside the current inside spread for an OTCBB security. For a customer limit order priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a market seeking to trade in front of such limit order to execute its trades at a price at least equal to the inside bid (with respect to a held customer limit order to buy) or inside offer (for a held order to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to a customer limit order that was priced more than $0.01 outside the current inside spread. The amendment to NASD Rule 6541 (b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

At the expiration of that period, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[8] Accordingly, any degree of price improvement would relieve a market maker from the obligation to fill a limit order that is outside of the inside spread. At the same time, Nasdaq eliminated the provision of the pilot that provided no limit order protection to customer limit orders that are priced more than $0.01 outside the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order, without filling the limit order, applies to all limit orders in OTCBB securities covered by NASD Rule 6541. The amount of required price improvement for limit orders priced inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread.

Nasdaq has represented that it is actively studying the impact of NASD Rule 6541 on quoting and trading of OTCBB securities. Nasdaq believes that a six-month extension of both pilots is necessary to allow Nasdaq to collect and analyze sufficient data upon which to base its analysis. Nasdaq further believes, preliminarily, that NASD Rule 6541 has had a positive effect on investors. Accordingly, it is Nasdaq's intent to implement limit order protection on a permanent basis at or before the end of this pilot extension.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) maintain the current rule language without a lapse, in keeping with the public interest and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a non-controversial rule change pursuant to Rule 19b–4(f)(6) under the Act. Nasdaq represents that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; therefore, it has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day pre-operative period required by Rule 19b–4(f)(6), which would allow the proposal to become operative immediately. The Commission finds that granting this request is consistent with the protection of investors and the public interest, as the price improvement standards under NASD Rule 6541 will remain in effect on an uninterrupted basis, thereby furthering the aim of protecting investors and the public interest.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–06 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1425 Filed 1–18–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22).

[5] *See In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988 ("Manning").

[6] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (approving SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (approving SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[7] *See* also Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

[8] *See* Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

[9] The Commission notes that permanent approval of limit order protection for OTCBB securities would require the NASD to submit a proposed rule change to this effect under Section 19(b) of the Act, 15 U.S.C. 78s(b).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45277; File No. SR–NASD–99–04]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change was published for comment in the **Federal Register** on March 1, 1999.[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the rules of the Association to add a new rule, Rule 2315. Below is the text of the proposed new rule, as filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41075 (February 9, 1999), 64 FR 10037.

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with the Commission on January 13, 1999 and as modified by Amendment No. 1. Proposed additions under Amendment No. 1 are in italics; proposed deletions are in brackets.

* * * * *

2315. Recommendations to Customers in OTC Equity Securities

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

(a) Review Requirement

[(1)] No member or person associated with a member shall recommend [to a customer the purchase, sale, or exchange of] *that a customer purchase or sell short* any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium unless the member has reviewed *the* current financial statements of [,] *the issuer,* [and] current *material* business information about [i] the issuer, and [makes] made a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(b) Definitions

(1) For purposes of this Rule, *the term* "current financial statements" shall include:

(A) For issuers who are not foreign private issuers,

(i) a balance sheet as of a date less than [16] *15* months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 6 months before the date of recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with [any] *the issuer's principal financial or securities* regulatory authority *in its home jurisdiction,* including the Commission, foreign regulatory authorities, bank and insurance regulators, and

(v) all *publicly available* financial information [contained in regulation statements, including any amendments, with respect to securities transactions registered under the Securities Act of 1933 (Securities Act), or in the case of securities offered pursuant to the exemptions from registration provided by Regulation A, Rule 505, or Rule 506 under the Securities Act, all financial information provided in connection with offerings conducted pursuant to those rules] *filed with the Commission during the 12 months preceding the date of the recommendation contained in registration statements or Regulation A filings.*

(B) For foreign private issuers.

(i) a balance sheet as of a date less than 18 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 9 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer; and

(iv) publicly available financial statements and other financial reports filed during 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, bank and insurance regulators.

(2) For purposes of this Rule, *the term* "quotation medium" shall mean any [quotation system, publication, electronic communication network, or any other device, including any issuer or inter-dealer quotation system, that is used to regularly disseminate quotations or indications of interest in transactions in equity securities that are not listed on Nasdaq or on a national securities exchange, including offers to buy or sell at a stated price or otherwise or invitations of offers to buy or sell]:

(A) System of general circulation to brokers or dealers that regularly disseminates quotations or indications of interest of identified brokers or dealers; or

(B) Publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations or indications of interest to others.

(c) Compliance Requirements

(1) A member [firm] shall designate a registered [individual] *person* to conduct the review required by this *R*[r]ule. In making such designation, the member [firm] must ensure that:

(A) *E*[e]ither the [individual] *person* is registered as a Series 24 principal, or [his] the person's conduct in complying with the provisions of this Rule is appropriately supervised by a Series 24 [individual] principal; and

(B) *S*[s]uch designated [individual] *person* has the requisite skills, background and knowledge to conduct the review required under this *R*[r]ule.

(2) The member shall document the information reviewed, the date of the review, and the name of the person performing the review of the required information.

(d) Additional Review Requirement for Delinquent Filers

If an issuer has not made current filings required by [any] *the issuer's principal financial or securities* regulatory authority *in its home jurisdiction,* including the Commission, [a] foreign regulatory [authority] *authorities,* or bank and insurance regulators, such review must include *an* inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(e) Exemptions

(1) The requirements of this Rule shall not apply to:

(*A*)[1] *T*[t]ransactions that meet the requirements of Rule 504 of Regulation D under the Securities Act *of 1933 ("Securities Act")* and transactions with an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act.

(*B*)[2] *T*[t]ransactions with or for an account that qualifies as an "institutional account" under Rule 3110(c)(4) or with a customer that is a *"qualified institutional buyer" under Rule 144A promulgated under the Securities Act or* "qualified purchaser" under Section [3(c)(7) *2(a)(51)* of the Investment Company Act of 1940;

(*C*)[3] *T*[t]ransactions in an issuer's securities if the issuer has [$100] *at least $50* million in *total* assets and $10 million in shareholder's equity as [of date of the issuer's most recent audited balance sheet, which balance sheet should be of a date within 6 months prior to the recommendation] *stated in the issuer's most recent audited current financial statements, as defined in this Rule;*

(*D*)[4] *T*[t]ransactions in securities of a bank [under] *as defined in* Section 3(a)[(4)] (*(6)* of the Securities Exchange Act of 1934 and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority [.];

(E) A security with a worldwide average daily trading volume value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation;

(F) A convertible security, if the underlying security meets the requirement of Section (e)(1)(E) of this Rule;

(G) A security that has a bid price, as published in a quotation medium, of at least $50 per share. If the security is a unit composed of one or more securities, the bid price of the unit divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be at least $50; or

(2) Pursuant to the Rule 9600 Series, the Association, for good cause shown after taking into consideration all relevant factors, may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of this Rule if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.

* * * * *

9600. Procedures for Exemptions

9610. Application

(a) Where To File

A member seeking exemptive relief as permitted under Rules 1021, 1070, 2210, *2315,* 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

a. Background

NASD Regulation has been concerned with abuses in the trading and sales of thinly traded, thinly capitalized ("microcap") securities quoted in the OTC market, and in particular, with the connection between potential fraud and manipulation and the lack of reliable and current financial information about issues of microcap securities. NASD Regulation proposed to amend NASD rules to include new NASD Rule 2315, entitled "Recommendations to Customers in OTC Equity Securities" ("Recommendation Rule"). As described in the rule filing and in this amendment, the Recommendation Rule requires a member, before it recommends a transaction in an OTC equity security, to review certain financial and business information and determine that there is a reasonable basis for making the recommendation. The proposed rule also provides certain exemptions from the rule's requirements.

The requirements of the Recommendation Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions for customers and to have a reasonable basis for any recommendation made to a customer. The rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

The Recommendation Rule is one of the NASD's microcap initiatives that was originally published for comment in *NASD Notice to Members 98–15* in January 1998. In May 1998, the NASD Board of Governors and NASD Regulation Board of Directors approved certain modifications, and at its meeting in December 1998, the NASD Board approved additional changes.

On March 1, 1999, the Commission published the Recommendation Rule for public comment in the **Federal Register** and specifically sought comment on the potential need for exemption from proposed Rule 2315.[4] The Commission received six comment letters in response to the **Federal Register** publication. The comment letters were from Goldman, Sachs & Co. ("Goldman"); A.G. Edwards & Sons, Inc. ("Edwards"); National Quotation Bureau ("NQB"); Securities Industry Association ("SIA") Enstar Group, Inc. ("Enstar"); and Sullivan & Cromwell ("S&C").

After considering the comments, NASD Regulation has made changes to the proposed Recommendation Rule. The text of the proposed rule provided in Amendment No. 1 reflects these changes, which include revised definitions, modified review requirements, and additional and revised exemption provisions.

b. Issues Raised in Comment Letters

The commenters generally supported the concept behind the microcap initiative, that is, as a regulator, NASD Regulation should continue to combat fraud, manipulation and other abuses in the sale of microcap securities. The comments were directed primarily at modifying and clarifying the language in the proposed rule. Absent changes, a number of the commenters believed that the rule would impose an inappropriate burden on competition.

1. Application of the Rule

Proposed Rule 2315, as published in the **Federal Register**, would apply when a member or associated person recommends to a customer the purchase, sale or exchange of any OTC equity security. Two commenters, Edwards and S&C, asked that the rule define the term "recommendation." Edwards believed the definition should distinguish a "recommendation" from a "solicitation," while S&C was concerned whether a research report with a "buy" recommendation would

[4] *See supra* note 3. NASD Regulation is filing the amendment notwithstanding that the Commission has not acted on reproposed Exchange Act Rule 15c2–11. To ensure more consistency, NASD Regulation originally had intended to await action on reproposed Rule 15c2–11 before filing the amendment. NASD Regulation will consider whether further revisions are required to this proposal following Commission action on reproposed Rule 15c2–11.

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constitute a "recommendation" under the proposed rule. NASD Regulation believes that it is not necessary to define the term "recommendation" in this rule. For guidance, members are directed to NASD Rule 2310 "Recommendations to Customers (Suitability)" and the accompanying interpretive material. Further, NASD *Notices to Members* provide supplemental advice regarding questions relating to suitable recommendations.[5]

Edwards, the SIA and NQB proposed that "sales" be eliminated from the requirement of the rule, arguing that there should not be any potential regulatory barrier to allowing a broker to recommend, for example, that a client sell a security from what the broker may suspect is a "pump-and-dump" scheme. NASD Regulation agrees that the regulatory benefits of this rule apply to recommendations to purchase or sell short, but not to recommendations to sell. Therefore, it has revised the requirement by deleting the requirement that the rule apply to recommendations to sell or exchange a security and adding the requirement that the rule apply to recommendations to sell short.

The rule applies to any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium. The SIA and Goldman stated that the rule should apply only when the member has actual knowledge that the security is published or quoted in a quotation medium. NASD Regulation, concerned about possible circumvention of the rule, does not agree that the rule should apply only when the member has actual knowledge that the security is being published or quoted.

2. *Definitions*

Several commenters, Edwards, Goldman, SIA and S&C, offered changes to the definition of "current financial statements" in the proposed Recommendation Rule. They argued that the definition did not take into account the customary accounting periods of foreign issuers. For example, Goldman noted that many nations, such as the United Kingdom and Germany, permit their domestic issuers to report financial information on a semi-annual basis rather than on a quarterly basis. Several commenters recommended that the definition be harmonized with that in reproposed Rule 15c2–11,[6] which distinguishes between the foreign private issuers and non-foreign private issuers. NASD Regulation agrees with these suggestions and has revised the definition to be consistent with the language in reproposed Rule 15c2–11 for non-reporting companies,[7] including foreign private issuers. The term "foreign private issuer" is defined in Rule 3b–4 promulgated under the Act.

Edwards, Goldman, the SIA and S&C criticized the requirement in the Recommendation Rule that firms review financial statements and other financial reports filed with "any regulatory authority" as being overly broad. The SIA, for example, pointed out that these financial reports could include an endless array of filings, such as tax filings, filings with trade authorities and even filings with environmental or labor authorities. As to foreign issuers, commenters recommended that the rule be limited to filings made by the issuer with the principal securities regulator in its home jurisdiction, rather than "any regulatory authority." NASD Regulation has revised the requirement in response to the comments.

Further, the definition of "current financial statements" included, among other things, all financial information provided in offerings made pursuant to Rule 505 or rule 506 of Regulation D. The same four commenters requested that this requirement be eliminated, pointing out that the offering materials are not publicly available. NASD Regulation has removed from the definition of "current financial statements" financial information provided in offerings made pursuant to Rules 505 and 506. However, the requirement that a broker review certain financial information prior to making a recommendation would clearly apply to the secondary trading of covered securities that were originally offered pursuant to any small or private offering exemption, including Rule 505 or Rule 506.

Finally, NASD Regulation notes that current financial statements must be prepared in accordance with generally accepted accounting principles ("GAAP") or foreign GAAP. If the financial statements are not audited, the issuer must provide a representation that the financial statements are prepared in accordance with GAAP or foreign GAAP.

The Recommendation Rule also defined the term "quotation medium." Edward argued that the rule should apply only to priced quotation, while the NQB suggested that the rule apply to all non-Nasdaq securities, as that term is defined in the Rule 6700 Series. The SIA suggested that the definition of "quotation medium" be limited to those that give period quotations, and it recommended that the definition mirror the language in reproposed Rule 15c2–11, NASD Regulations does not believe it should narrow the rule to include only priced quotations, nor does it believe it should expand the rule so broadly as to encompass all non-Nasdaq securities, including those not published or quoted in quotation medium. However, it has determined to revise the definition of "quotation medium" to be consistent with that in reproposed Rule 15c2–11.[8]

3. *Requirements*

NASD Regulation received comments on several areas relating to the Recommendation Rule's requirements. First, S&C expressed concern that the proposed rule would, in effect, add a new suitability requirement that would apply in addition to the suitability requirement in NASD Rule 2310. S&C suggested that NASD Regulation modify the rule to focus on a members's need to be "familiar" with the security and the issuer. As stated in the "Preliminary Note" to the proposed rule, the requirements of the Recommendation Rule are clearly in addition to existing obligations, including obligations to determine suitability. NASD Regulation believes that the Recommendation Rule is necessary to address abuses in the trading and sales of microcap securities, and in light of the exemptions, applies appropriately.

Second, as originally proposed, Rule 2315 required members to review current business information about an issuer. Edwards and the SIA expressed concern that the requirement was too broad and could conceivably include almost any fact or rumor published by anyone in periodicals or in sites on the Internet. In response, NASD Regulation has changed the requirements so that members need review only current *material* business information about the issuer. Generally, current material

[5] *See NASD Notice to Members 01–23*, "Suitability and Online Communications" (April 2001); NASD *Notice to Members—For Your Information*, "Clarification of *Notice to Members 96–60*" (March 1997); *NASD Notice to Members 96–60*, "Clarification of Members' Suitability Responsibilities under NASD Rules with Special Emphasis on Member Activities in Speculative and Low-Priced Securities" (September 1996); and *NASD Notice to Members 96–32*, "Members Reminded to Use Best Practices When Dealing in Speculative Securities" (May 1996).

[6] *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 FR 11124 (March 8, 1999).

[7] *Id.* at 11144.

[8] NASD Regulation has slightly modified the definition found in reproposed Rule 15c2–11 to expressly included dissemination of indications of interest. However, the NASD Regulation believes that this change remains consistent with reproposed Rule 15c2–11 because that rule incorporates indications of interest through its definition of "quotation." NASD Regulation's proposed Recommendation Rule does not contain a separate definition of "quotation".

business information would include that material information that is available or relates to events that have occurred within the last twelve months prior to the recommendation.

Third, the proposed Recommendation Rule required that a registered person conduct the review of the financial and business information. Goldman and the SIA expressed concern that it was to restrictive to limit this function to registered persons. However, NASD Regulation maintains that the review should be conducted by a registered person over whom it has jurisdiction; it has not made changes to this requirement. NASD Regulation also requires that the member document the information reviewed, the date of the review and the name of the person who conducted the review.

Finally, NASD Regulation received comments on the requirements that members conduct an inquiry when an issuer has into made current filings. Goldman suggested that the provision be strengthened to say that no recommendation can be made if the filings are delinquent. The SIA and S&C stated that the reference to "any regulatory authority" was too broad, and that it should be changed to the "issuer's principal financial or securities regulatory authority in its home jurisdiction." NASD Regulation does not agree that the rule should unilaterally prohibit a recommendation if the issuer is delinquent in its filing. However, it has narrowed the reference from "any regulatory authority" to "issuer's principal financial or securities regulatory authority in its home jurisdiction" which is consistent with the change to the definition of "current financial statements."

4. Exemptions

NASD Regulation amended the exemption provisions of the Recommendation Rule in several ways. First, the response to comments by the S&C, NASD Regulation added "qualified institutional buyers" as defined under Rule 144A to the list of customers for whom the rule would not apply.

Second, commenters recommended changes to the exemption large issuers, that is issuers with $100 million in assets and $10 million in shareholder's equity. Goldman and the SIA recommended reducing the asset threshold to $25 million in assets, while Enstar recommended changing the test to a net tangible asset test found in reproposed Rule 15c2–11. NASD Regulation recognizes that the asset amount could be reduced without significantly diminishing the effectiveness of the rule, although it believes that a reduction to $50 million in assets is sufficient. Also, the exemption was revised to refer to the revised definition of "current financial statements" so as to address comments regarding the age of the balance sheets in the original proposed Recommendation Rule.

Third, in response to comments by Edwards, Goldman, the SIA and S&C, to new exemption were added to ensure the rule focused on small issuers, where the microcap abuses have been found. NASD Regulation determined that it was appropriate to include exemptions which were consistent with those provided in reproposed Rule 15c2–11. Thus, NASD Regulation added provisions to exempt a security based on the security's average daily trading volume ("ADTV") and the security's bid price. Specifically, an exemption applies to a security with a worldwide ADTV value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation; the exemption also covers a convertible security, if the underlying security meets the ADTV requirement. An exemption also applies when a security has a bid price of at least $50 per share, as published in a quotation medium.

Finally, in response to comments by the NQB, NASD Regulations has provided that members may seek an exemption for good cause shown, pursuant to the Rule 9600 series. The exemption may be for any person, security of transaction, or for certain classes of persons, securities or transactions, such as securities listed on certain foreign exchanges.

However, NASD Regulation did not adopt two further proposals for exemptions. Goldman and the SIA suggested that the rule not apply to members who are also investment advisers, and to members who are subject to Rule 472 "Communications with the Public" of the New York Stock Exchange ("NYSE"). NASD Regulation believes that the provisions of Rule 472 do not have the specificity of the Recommendation Rule and thus, the Recommendation Rule is appropriately applied to NASD members who are also NYSE members. NASD Regulation does not agree that the rule should have an exemption for members who are also investment advisers.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will address actual and potential frauds in the quotation and trading of unlisted securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 1, 1999, the Commission published the Association's proposal and solicited comments in the **Federal Register**.[10] The comment period ended on March 22, 1999. As discussed above, the Commission received six comment letters. After considering the comments, the Association is proposing Amendment No. 1 to the rule filing, as outlined above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceeding to determine whether the proposed rule change should be disapproved.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See supra* note 3.

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rule change that are filed with the Commission; and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–99–04 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1426 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45264; File No. SR–NASD–2001–87]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Computer to Computer Interface Fees

January 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2002,[3] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases the fee assessed on NASD members that continue to use the x.25 Computer-to-Computer Interface ("CTCI") to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol ("TCP/IP") CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

Rule 7010. System Services

(a)–(l) No change.

(f)(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber.

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy.	1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), includes base bandwidth of 128kb.	8000/month.
Disaster Recovery Option: Single 56kb line with single hub and router (for remote disaster recovery sites only)	975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	4000/month per 64kb increase above 128kb T1 base.
Installation Fee	2000 per site for dual hubs and routers. 1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP Lines within a single location)	1700 per relocation.

(g)–(q) No change.

**As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87, the fee for x.25 CTCI circuits, which has remained $200 per month per circuit—is increased to $1,275 per month per circuit; until the date of the termination of such circuits.*

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).[5] In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of $200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is incerasing the monthly charge to $1,275 per circuit.[6] Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.[7] Nasdaq has provided and will continue to provide notice to market participants of these dates through Nasdaq Trader.com alerts, direct mail, and telephone calls to NASD members that have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is any change in these dates.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 10, 2002, the Commission received a letter from the NASD containing the rule text of the proposed rule filing. The proposed rule change is treated as filed on the date that the letter was received. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 8, 2002.

[4] 15 U.S.C. 78s(3)(A)(ii).

[5] *See* Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

[6] The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. *See* Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

[7] Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not forsee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Items IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull Connecticut processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service ("ACT") and orders to Nasdaq's Small Order Execution ("SOES") and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of "sunsetting" its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second ("kb"). The new CTCI network operates over the Enterprise Wide Network II ("EWIN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25 CTCI circuits held by 60 firms remained active. Nasdaq is urging NASD members that still rely upon these outmoded connections to complete their conversions as soon as possible. Nasdaq believes that charging a higher price to NASD members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, Nasdaq believes that as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. Nasdaq believes that the fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to "sunset" the x.25 CTCI network on March 31, 2002 (or sooner if all x.25 CTCI subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule is one establishing or changing a due, fee or other charge change and thus has become effective pursuant to Section 19(b)(3)of the Act[9] and subparagraph (f) of Securities Exchange Act Rule 19b–4.[10] At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD 2001–87 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1428 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(3).

[10] 17 CFR 240.19b–4(f).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3383]

State of Mississippi; Amendment #2

In accordance with information received from the Federal Emergency Management Agency, dated January 10, 2002, the above-numbered Declaration is hereby amended to include Coahoma and Tallahatchie Counties in the State of Mississippi as a disaster area due to damages caused by severe storms, tornadoes, and flooding and to establish the incident period for this disaster as beginning on November 24, 2001 and continuing through December 17, 2001.

[11] 17 CFR 200.30–3(a)(12).

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All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury is September 9, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–1458 Filed 1–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3880]

Culturally Significant Objects Imported for Exhibition Determinations: "European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia"

AGENCY: United States Department of State.

ACTION: Notice; Correction

SUMMARY: On October 3, 2000, Notice was published in the **Federal Register** (Volume 65, Number 192) by the Department of State concerning the exhibition "European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia." The referenced Notice is corrected as follows. I hereby determine that an additional work scheduled to be imported from abroad on or about January 21, 2002 is of cultural significance and that its temporary exhibit in the U.S. is in the national interest. In the summary after "January 6, 2002," add the following additional venue: "and at the Birmingham Museum of Art, Birmingham, AL from on or about February 10, 2002, to on or about April 14, 2002, is in the national interest." In addition, an object from the National Gallery of Victoria, previously on display in the Metropolitan Museum of Art in New York and included in a Notice by the Department of State published July 30, 2001 (Volume 66, Number 146), will be added to the exhibit in Birmingham.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 14, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–1492 Filed 1–18–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11275]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Application forms should reach us on or before February 29, 2002.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–6164; by faxing 202–267–4700; or by e-mail Jshort@comdt.uscg.mil. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for seven positions that expire or become vacant in June 2002. To be eligible, you should have experience in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: January 7, 2002.

Jeffrey P. High,

Acting, Assistant Commandant for Marine Safety and, Environmental Protection.

[FR Doc. 02–1513 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11242]

National Preparedness for Response Exercise Program

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for public comments on Preparedness for Response Exercise Program (PREP) triennial exercise schedule for 2002, 2003, and 2004.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA) and the Minerals Management Service (MMS), in concert with the states, the oil industry, and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the PREP triennial cycle, 2002–2004, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before March 25, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–11242), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/g-m/gmhome.htm* (see index, then oil response). To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 1994 PREP Guidelines booklet is available at no cost by writing or faxing the TASC Dept Warehouse, 3341 Q 75th Avenue, Landover, MD 20785, fax: 301–386–5394. The stock number of the manual is USCG–X0191. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2001–11242], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Background and Purpose

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, EPA, MMS, and Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

The following table is the PREP schedule for calendar years 2002, 2003, and 2004.

PREP SCHEDULE—GOVERNMENT—LED AREA EXERCISES

Area	Agency	Date/qtr[1]	Participant
Calendar Year 2002:			
South FL (MSO Miami)	CG	1	
SW LA/SE TX (MSO Morgan City, MSO Port Arthur, Exxon/Mobil & Stolt)	CG SONS[2]	2	
Hawaii (MSO Honolulu)	CG	3	
Central CA Coast (MSO San Francisco)	CG	3	
EPA Region VII	EPA	3	
Boston (MSO Boston)	CG	4	
Calendar Year 2003:			
Saipan (MSO Guam)	CG	1	
SE Alaska (MSO Juneau)	CG	2	
Philadelphia (MSO Philadelphia)	CG	3	
Savannah (MSO Savannah)	CG	3	
EPA Region II	EPA	3	
Florida Panhandle (MSO Mobile)	CG	4	
Calendar Year 2004:			
Charleston, SC (MSO Charleston)	CG	1	
Duluth Superior (MSO Duluth)	CG	2	

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PREP SCHEDULE—GOVERNMENT—LED AREA EXERCISES—Continued

Area	Agency	Date/qtr[1]	Participant
SF/LA/LB/San Diego (MSO San Francisco, MSO Los Angeles/Long Beach & MSO San Diego).	CG SONS[2]	2	
Prince William Sound (MSO Anchorage)	CG	3	
EPA Region I	EPA	3	
South Texas (MSO Corpus Christi)	CG	4	

PREP SCHEDULE—INDUSTRY—LED AREA EXERCISES

Area	Planholder type[3]	Date/qtr[1]	Participant
Calendar Year 2002:			
Tampa (MSO Tampa)	v	1	
Northwest (MSO Puget Sound)	v	1	
South LA/LB (MSO LA/LB)	f(mtr)	1	
EPA Oceania	f(nonmtr)	1	
EPA Region II	p	2	
Eastern Wisconsin (MSO Milwaukee)	v	3	
Detroit (MSO Detroit)	v	3	
Maine/New Hampshire (MSO Portland)	v	3	
Providence (MSO Providence)	v	3	
Virginia Coastal (MSO Hampton Roads)	f(mtr)	4	
Houston/Galveston (MSO Houston/Galveston	p	4	
Alabama/Mississippi (MSO Mobile)	f	4	
EPA Region VI	f(nonmtr)	4	
Calendar Year 2003:			
New Orleans (MSO New Orleans)	p	2	
W. Lake Erie (MSO Toledo)	f(nonmtr)	2	
North Coast Area (MSO San Francisco	f(mtr)	2	
EPA Region IV	f(nonmtr)	2	
EPA Region IX	p	2	
Northwest Area (MSO Portland)	v	3	
Eastern Great Lakes (MSO Buffalo)	f(mtr)	3	
Cleveland, OH (MSO Cleveland)	f(mtr)	3	
Caribbean Area (MSO San Juan)	v	4	
Jacksonville (MSO Jacksonville)	v	4	
EPA Region III	f(nonmtr)	4	
Calendar Year 2004:			
New York City (Activities NY)	f(mtr)	1	
Southern Coastal NC (MSO Wilmington)	v	1	
Guam (MSO Guam)	v	1	
Long Island Sound (MSO Long Island Sound)	f	2	
EPA Region V	f	2	
EPA Region VII	f(nonmtr)	2	
San Francisco Bay (MSO San Francisco with MSO LA/LB)	tbd SONS[2]	3	
Saulte Ste Marie (MSO Saulte Ste Marie)	f	3	
South TX Coastal Zone (MSO Corpus Christi)	v	3	
SW LA / SE Texas (MSO Morgan City)	p	3	
Maryland Coastal CG (Activities Baltimore)	v	4	
Chicago (MSO Chicago)	v	4	
Northwest (MSO Seattle)	v	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
[2] SONS: Spill of National Significance.
[3] Planholder Type: v-vessel; f(mtr)-marine transportation-related facility; f(nonmtr)-nonmarine transportation-related facility; p-pipeline; tbd-to be determined.

Dated: January 10, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1514 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of public meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of two meetings of the Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss two tasks concerning quality assurance and ratings for aeronautical repair stations.

DATES: The meetings will be held on January 31 and February 20–21, 2002, from 9 a.m. to 5 p.m. Arrange for teleconference capability and presentations no later than 3 business days before a meeting.

ADDRESSES: The meetings will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is here by given of two meetings of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meetings will be held on January 31 and February 20–21, 2002, from 9 a.m. to 5 p.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

On January 31, the committee will discuss ratings for aeronautical repair stations. On February 20, and 21, the committee will discuss quality assurance systems for aeronautical repair stations.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals to participate by teleconference if we receive notification no later than 3 business days before each meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at a meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 10 business days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 11, 2002.

David E. Cann,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–1483 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lancaster County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the SR 30 Section S01 (US 30) corridor in East Lampeter Township, Salisbury Township, Leacock Township, and Paradise Township, Lancaster County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Deborah Suciu Smith, Environmental Specialist, Federal Highway Administration, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, Telephone: 717–221–3785, or Larry Graeff, Project Manager, Pennsylvania Department of Transportation 2140 Herr Street, Harrisburg, Pennsylvania 17103, Telephone 717–783–5119.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT) and the Lancaster County Planning Commission, will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives to address transportation problems within the SR 30 Section S01 corridor. The proposed project study area runs approximately from the PA 896/U.S. 30 intersection on the west and the PA 897/U.S. 30 intersection on the east, including the intersection with PA 41.

Notices of Intent concerning this proposal were previously published in the **Federal Register**. The Notice published on February 27, 1987 described a two-phase approach to identify and evaluate alternatives that would provide a variable means of relieving traffic congestion on Traffic Route (T.R.) 23 and US 30 in Eastern Lancaster County, Pennsylvania. The Notice published on June 16, 1988 announced that separate Environmental Impact Statements to evaluate alternatives for the two projects would be prepared.

Improvements to the corridor are considered necessary to provide for the existing and project traffic demand. A needs study has been undertaken and a range of transportation alternatives, including but not limited to No-Build, Transportation Systems Management (TSM), widening the existing three-lane highways to five lanes, bypasses around communities, and constructing a four-lane limited access highway on new location will be considered. These alternatives will be developed consistent with land use strategies to address the identified transportation needs. The development of alternatives will be based on traffic demands, engineering requirements, environmental and socioeconomic constraints, the county's growth management plan, and public input. Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To issue that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistant Program Number 20. 205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 15, 2002.

James A. Cheatham,

Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 02–1454 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lehigh and Northhampton Counties, Pennsylvania; Cancellation of the Notice

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued May 8, 2000) to prepare an Environmental Impact Statement for a proposed highway project along U.S. Route 22 between its interchanges with Interstate 78 to the west and State Route 248 to

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the east, a distance of approximately 31 km (19 miles).

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Donald Lerch, Assistant District Engineer, Pennsylvania Department of Transportation, District 5–0, 1713 Lehigh Street, Allentown, PA 18103, Telephone (610) 798–4131.

SUPPLEMENTARY INFORMATION: Additional traffic analyses have indicated that the proposed project consists of distinct sections based on traffic patterns, origins and destinations, safety and capacity needs. Environmental Assessments of Categorical Exclusion Evaluations will be prepared for each section, as appropriate, based on project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

James A. Cheatham,

FHWA Division Administator, Harrisburg, PA.

[FR Doc. 02–1544 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

[Docket No. RSPA–00–7621 (PD–23(RF))]

Research and Special Programs Administration Federal Motor Carrier Safety Administration; Morrisville, PA Requirements for Transportation of "Dangerous Waste"

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

PETITIONER: Borough of Morrisville, Pennsylvania.

LOCAL LAWS AFFECTED: Morrisville, Pennsylvania Ordinance No. 902.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: The Borough's petition for reconsideration is denied, and RSPA and FMCSA reaffirm their determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 and the use of the term "dangerous waste" throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available "the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act," in Section 05(a).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Motor Carrier Safety Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively "Med/Waste"), applied for a determination that Federal hazardous material transportation law preempts provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania ("Borough"): (1) defining "infectious waste," "hospital waste," and "dangerous waste" and using the term "dangerous waste"; (2) limiting trucks transporting dangerous waste within the Borough to Route 1; and (3) requiring trucks carrying dangerous waste to carry and have available for inspection the uniform manifest required for hazardous wastes. RSPA and FMCSA published the text of Med/Waste's application and a responding letter from the Borough in the **Federal Register** and invited interested parties to submit comments. 65 FR 20258 (April 14, 2000). Comments were received from Med/Waste, Sanitec, the Medical Waste Institute ("Institute"), Biosystems, and American Waste Industries, Inc. The Borough did not submit further comments.

On July 17, 2001, RSPA and FMCSA published in the **Federal Register** their determination on Med/Waste's application in PD–23(RF), 66 FR 37260. RSPA and FMCSA found that Federal hazardous material transportation law preempts:

(1) the definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 of Ordinance No. 902 because these terms are used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR; and the term "dangerous waste" because it is used and defined throughout the ordinance in a manner that is substantively different from the use of the word "dangerous" in the HMR;

(2) the limitation that trucks transporting dangerous waste may only travel on Route 1 within the Borough, in Section 02 of Ordinance No. 902, because the Borough failed to comply with FMCSA's standards in 49 CFR part 397 when it adopted a routing limitation; and

(3) the requirement in Section 05(a) of Ordinance No. 902 that a uniform hazardous waste manifest must be carried on any truck transporting dangerous waste within the Borough because that requirement is not substantively the same as requirements in the HMR for the "preparation, execution, and use of shipping documents," which do not require the use of any specific form for shipments of regulated medical waste (or other materials that are not hazardous wastes).

In Part I.B. of their July 17, 2001 determination, RSPA and FMCSA discussed Federal regulation of the transportation of medical waste as a hazardous material since 1972 and the fact that "regulated medical wastes must be distinguished from (and are not within the category of) 'hazardous wastes.'" 66 FR at 37261. These agencies noted that the HMR specifically state that "A hazardous waste is not subject to regulation as a regulated medical waste," 49 CFR 173.134(b)(2); and that the Pennsylvania Department of Transportation has adopted as State law the HMR in 49 CFR parts 171–173 and 178–180 and FMCSA's Federal Motor Carrier Safety Regulations in 49 CFR parts 388 and 397.

In Part II of their determination, RSPA and FMCSA discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. 66 FR at 37261–62. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a local (or other non-Federal) requirement is preempted if:

—It is not possible to comply with both the local requirement and a requirement in the Federal hazardous material transportation law or regulations;

—The local requirement, as applied or enforced, is an "obstacle" to accomplishing and carrying out the Federal hazardous material transportation law or regulations;

—The local requirement concerns any of five specific subjects and is not "substantively the same as" a provision in the Federal hazardous material transportation law or regulations, including "the designation, description, and classification of hazardous materials," and the "preparation, execution, and use of shipping documents"; or

—The locality establishes on or after November 14, 1994, a designation, limitation, or requirement related to highway routing of hazardous materials that fails to comply with FMCSA's standards in 49 CFR part 397.

These preemption provisions stem from congressional findings that State, local, or Indian tribe requirements that vary from Federal hazardous material transportation law and regulations can create "the potential for unreasonable hazards in other jurisdictions and confound[] shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements," and that safety is advanced by "consistency in laws and regulations governing the transportation of hazardous materials." Pub. L. 101–615 Sections 2(3) & 2(4), 104 Stat. 3244 (Nov. 16, 1990).

RSPA and FMCSA also explained that their "[p]reemption determinations do not address issues arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law." 66 FR at 37262. RSPA and FMCSA specifically rejected the Borough's argument that the Resource Conservation and Recovery Act authorizes a State or locality to establish "more stringent" requirements applicable to the transportation of hazardous materials (including medical waste) than the HMR. 66 FR at 37262–63.

Within the 20-day time period provided in 49 CFR 107.211(a) and 397.223(a), the Borough filed a petition for reconsideration of PD–23(RF) and certified that it had mailed a copy of its petition to Med/Waste and all others who had submitted comments in this proceeding. Responses to the Borough's petition for reconsideration were submitted by Med/Waste, the Institute, and Sanitec.

B. Petition for Reconsideration

In its petition, the Borough never takes direct issue with the findings in PD–23(RF) that definitions in Ordinance No. 902 and the manifest requirement are substantively different than provisions in the HMR. Nor does the Borough dispute the finding that its routing limitation does not comply with FMCSA's standards in 49 CFR part 397. Rather, the Borough asserted that RSPA and FMCSA:

1. failed to determine "whether compliance with both federal law and the Borough Ordinance is impossible as required by the two-part preemption test set forth in *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978)" with respect to both the definitions in Section 01 of Ordinance No. 902 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

2. failed to find "why the terms of Ordinance 902, though different from the HMR, are more stringent than the federal regulations," with respect to both the definitions in Section 01 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

3. improperly equated the word "dangerous" in Ordinance No. 902 with "dangerous when wet" in the HMR and improperly concluded that "dangerous" in Ordinance No. 902 is a "synonym for "hazardous.'"

4. "failed to consider that there are alternate routes, outside of the Borough of Morrisville," that would allow Med/Waste to reach its facility on Pennsylvania Avenue, and also failed to "substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to highways and roads other than interstate highways."

II. Discussion

A. The Statutory Criteria for Preemption

The Borough appears to misread and misunderstand the criteria for preemption in 49 U.S.C. 5125(a) and (b)(1) of the Federal hazardous material transportation law. It misstates the law when it asserts, as a ground for reconsideration, that RSPA failed to determine "whether compliance with both federal law and the Borough ordinance is impossible." Similarly, its claim that RSPA failed to find "why the terms of Ordinance No. 902 * * * are more stringent than Federal regulations" seems to be based on an incorrect assumption that only "more stringent" requirements are preempted by 49 U.S.C. 5125.

1. "Conflict" Preemption and the "Obstacle" Test

In the *Ray* case, the Supreme Court used the word "or" to make it perfectly clear that the "dual compliance" and "obstacle" criteria are alternate tests of "conflict" preemption.[1] A non-Federal standard may be preempted under either of these alternate criteria:

> A state statute is void to the extent that it conflicts with a valid federal statute. A conflict will be found "where compliance with both federal and state regulations is a physical impossibility" * * * or where the state "law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

435 U.S. at 158, 98 S. Ct. at 994 (citations omitted). The five specific subject areas where non-Federal requirements must be "substantively the same as" the Federal requirements are simply areas where any substantive difference creates an "obstacle." As Congress found when it amended the Hazardous Materials Transportation Act (HMTA) in 1990 (*see* Pub. L. 101–615, 104 Stat. 3244), these subject areas

> are critical both to the safe transportation of hazardous materials and to the free flow of commerce. Thus, requiring near-uniformity by both Federal and non-Federal entities is crucial.

H. Report 101–444, Part 1, Committee on Energy and Commerce, 101st Cong., 2d Sess., p. 33 (Apr. 3, 1990).

In this respect, the 1990 amendments to the HMTA reflected prior inconsistency rulings by RSPA that consistency is necessary in these subject areas. For example, in IR–5, City of New York Administrative Code Governing Definitions of Certain Hazardous Materials, 47 FR 51991, 51994 (Nov. 18, 1982), RSPA discussed its statutory responsibility to "designate" materials as hazardous and found that

> differing hazard class definitions present an obstacle to the accomplishment of the general Congressional purpose of promoting uniformity in hazardous materials transportation [and] * * * to the more

[1] The preemption provisions in 49 U.S.C. 5125 are a form of "conflict" preemption, which differs from "field" preemption. Field preemption exists when Federal regulation is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Ray*, 435 U.S. at 157, 94 S. Ct. at 994, quoting from *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947). Thus, when there is field preemption, Congress has "completely foreclosed state legislation in a particular area." *Ray*, 435 U.S. at 158, 94 S. Ct. at 994.

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specific purpose of achieving the maximum level of compliance with the HMR. * * * [I]f it were to be determined that differing hazard class definitions are an appropriate field for local regulation, * * * the potential for regulatory chaos is obvious.

Consistent with RSPA's decision in IR–5, Congress stated that conflicting designations, descriptions, or classifications of hazardous materials "by non-Federal entities would undermine the consistency needed to promote uniform requirements for all hazardous materials [and] * * * serve no useful purpose." H. Report 101–444, Part 1, p. 34.

Congress also stated that "consistency in all aspects of [shipping] documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials." *Id.* This conclusion followed RSPA's finding in IR–5 that "the shipping paper requirements of the HMR are exclusive and that any additional shipping paper requirements are inconsistent under the HMTA" because the need to obtain or provide additional information "would obviously result in widespread confusion which could lead to noncompliance with applicable Federal regulations." 47 FR at 51994.

In this case, there was no need for RSPA to address whether it is impossible to comply with both the HMR and provisions in Ordinance No. 902 defining various terms and requiring a uniform hazardous waste manifest.[2] The classification of hazardous materials in Ordinance No. 902 and its requirement to carry the uniform hazardous waste manifest are not substantively the same as the HMR. Therefore, these provisions are preempted under 49 U.S.C. 5125(b)(1)(A) and (C), respectively.

2. The Nature of the Ordinance as More "Stringent"

In their July 17, 2001 determination, RSPA and FMCSA discussed and rejected the Borough's argument "that RCRA allows state, regional, and local authorities 'to control the collection and disposal of solid waste as one of their primary functions.'" 66 FR at 37262. RSPA and FMCSA explained that medical wastes are not within the category of hazardous wastes regulated under RCRA and that the provision in 42 U.S.C. 6929 allowing "more stringent" provisions in a State-authorized program does not authorize transportation requirements otherwise preempted by 49 U.S.C. 5125. *Id.* at 37262–63.

In its petition for reconsideration, the Borough advances an argument that a non-Federal transportation requirement must be "more stringent" in order to be preempted. However, that is not one of the criteria in 49 U.S.C. 5125. Under that section, a requirement of a State, political, subdivision of a State, or Indian tribe is preempted when:

—It does not meet the dual compliance or obstacle criterion in subsection (a);
—It concerns any of five subject matter areas listed in subsection (b)(1) and is not substantively the same as a provision in the Federal hazardous material transportation law or the HMR; or
—It is a highway routing designation, limitation, or requirement established after November 1994 and does not comply with FMCSA's standards issued under 49 U.S.C. 5112(b), as provided in 49 U.S.C. 5125(c)(1).

It is not necessary to find that the Ordinance's provisions are "more stringent" than the HMR. However, the plain language of the Ordinance would support such a finding. As discussed in the July 17, 2001 determination, Ordinance No. 902 applies to substances that "are not regulated under the HMR," 66 FR at 37263. The manifest requirement in Section 05(a) is also an additional requirement, above and beyond the requirements for shipping papers in the HMR. In this manner, Ordinance No. 902 clearly contains more stringent requirements than the HMR's provisions on regulated medical waste. The Borough's argument on this issue is both irrelevant and incorrect.

B. The Use of the Word "Dangerous" in the Ordinance

The Borough is wrong when it asserts, in its petition for reconsideration, that RSPA equated the word "dangerous" in Ordinance No. 902 with "dangerous when wet" in the HMR or concluded that "dangerous" in the Ordinance is a synonym for "hazardous" in the HMR. Rather, it is precisely the opposite. RSPA specifically found that "the term 'dangerous waste' in Ordinance No. 902 is not substantively the same as any definition, description or classification of hazardous material in the HMR." 66 FR at 37263.

As explained in the July 17, 2001 determination, "in the overall context of the HMR, 'dangerous' is a synonym for the word 'hazardous,'" and the "HMR use the term 'hazardous materials' in the same manner as the term 'dangerous goods' is used in international regulations." *Id.* However, the word "dangerous" is used differently in Ordinance No. 902, and "the term 'dangerous waste' does not correspond to the category of 'hazardous waste' in the HMR." *Id.* Thus, the Borough's petition has it backward. It was not RSPA who equated "dangerous" in the Ordinance to "hazardous" in the HMR; it is the Borough that *failed* to make that equation in its Ordinance and, therefore, created a definition and classification of hazardous materials that are preempted because they are not substantively the same as the HMR's use of the word dangerous to define and classify hazardous materials.

C. The Applicable Federal Highway Routing Standards

Although the Borough now claims in its petition for reconsideration that Med/Waste had "reasonable access" to its facility over "alternate routes, outside of the Borough of Morrisville," it provides no evidence to support this claim. In addition, the Borough does not show that it actually considered either (a) the existence of these alternate routes and the effect of requiring carriers to use those alternate routes or (b) any of the other conditions in 49 CFR for the establishment of a highway routing limitation after November 1994, including:

—A finding that this limitation "enhances public safety" within the Borough and in neighboring jurisdictions through which vehicles carrying "dangerous waste" must travel if those vehicles are limited to Route 1 within the Borough (49 CFR 397.71(b)(1));
—The required notice to the public, consideration of a public hearing, and the opportunity of the public to submit comments on the original proposal to limit vehicles carrying "dangerous waste" within the Borough to Route 1 (49 CFR 397.71(b)(2));
—Notice to and consultation with "officials of affected political subdivisions, States and Indian tribes," and any other parties that are affected by the routing limitation, and completion of the routing designation process within 18 months of the notice to the public or notice to the other affected jurisdictions (49 CFR 397.71(b)(3), (6));
—Assurance of "through highway routing * * * between adjacent areas" (49 CFR 397.71(b)(4));
—A finding that there will not be an unreasonable burden on commerce and consideration whether there was agreement by any other affected State (49 CFR 397.71(b)(5)); and
—Consideration of other specific factors besides the existence of alternate routes and the burden on commerce, including population density, emergency response capabilities, continuity of routes, potential delays in transportation, and congestion and accident history (49 CFR 397.71(b)(9)).

Because it is clear that the Borough failed to meet these conditions and did not comply with FMCSA's standards in 49 CFR part 397, its limitation of vehicles carrying dangerous waste to Route 1 is preempted. Moreover, reconsideration of this determination is not warranted on the Borough's claim that DOT somehow failed to "substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to provisions and roads other than interstate highways."

The authority of Congress to regulate interstate and intrastate commerce is not limited to traffic on interstate highways, nor is the authority of DOT in 49 U.S.C. 5112(b) to "prescribe by regulation standards for States and Indian tribes to use" in establishing a highway routing limitation limited to the transportation of hazardous materials on interstate highways. Similarly, 49 U.S.C. 31114 limits the restrictions that a State may place on a carrier's "access" between interstate highways and terminals or other facilities, all of which are presumably not located on an interstate highway itself. Accordingly, this ground for reconsideration of the July 17, 2001 determination has no more basis than any of the other positions taken by the Borough in its petition.

D. Expansion of the Preemption Determination

In its comment on the Borough's petition for reconsideration, Med/Waste asked RSPA and FMCSA "to consider complete preemption of the entire Ordinance 902." RSPA and FMCSA decline to expand or extend the scope of their July 17, 2001 determination for the same reason that they previously declined to determine whether specific provisions not originally challenged in Med/Waste's application are preempted—because the notice inviting public comment on that application "did not clearly indicate that RSPA and FMCSA would consider these other requirements." 66 FR at 37265. Nonetheless, it would seem that the Borough would be precluded from enforcing any provision in Ordinance No. 902 that applies to "infectious waste," "hospital waste," or "dangerous waste," because the definitions of these terms are preempted and the use of the term "dangerous waste" throughout the Ordinance is also preempted.

III. Ruling

For the reasons set forth above, the Borough's petition for reconsideration is denied. RSPA and FMCSA incorporate and reaffirm the determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. the definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 and the use of the term "dangerous waste" throughout the ordinance;

2. the designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02; and

3. the requirement that each truck transporting dangerous waste carry and have available "the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act," in Section 05(a).

IV. Final Agency

In accordance with 49 CFR 107.211(d) and 397.223(d), this decision constitutes the final agency action by RSPA and FMCSA on Med/Waste's application for a determination of preemption as to provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania. Any party to this proceeding may bring a civil action in an appropriate district court of the United States for judicial review of this decision not later than 60 days after publication of this decision in the **Federal Register**.

Issued in Washington, D.C. on January 15, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Joseph M. Clapp,

Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–1443 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–60–P

[2] Similarly, in IR–5, RSPA made no finding whether the local provisions failed the "dual compliance" test but found that differing hazard class definitions and additional shipping paper requirements are preempted because they "are an obstacle to the accomplishment of the HMTA and its regulations." 47 FR at 51994.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11211]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 21, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

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Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (AMMI@) (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2002 Harley Davidson VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Harley Davidson VRSCA motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 are already affixed to non-U.S. certified 2002 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red rear reflectors that are certified to meet the standard. The petitioner states that although there are no daytime running lights on the non-U.S. certified version of the vehicle, its headlamp and tail lamp are activated when the ignition is turned on.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: installation of a tire information label. The petitioner states that the vehicle is equipped with rims that are certified to meet the standard.

Standard No. 123 Motorcycle Controls and Displays: installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–1511 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11210]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Cadillac Seville Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Cadillac Seville passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991 Cadillac Seville passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 21, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL")(Registered Importer 90–005) has petitioned NHTSA to decide whether 1991 Cadillac Seville passenger cars originally manufactured for the European and other foreign markets are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1991 Cadillac Seville passenger cars that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991 Cadillac Seville passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1991 Cadillac Seville passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991 Cadillac Seville passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic tires*, 110 *Tire Selection and Rims*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1991 Cadillac Seville passenger cars comply with the Bumper Standard found in 49 CFR part 581 and with the Vehicle Identification Number plate requirement of 49 CFR part 565.

Petitioner also contends that the non-U.S. certified 1991 Cadillac Seville passenger cars are not identical to their U.S. certified counterparts, as specified below, but still comply with the following Standard in the manner indicated:

Standard No. 101 Controls and Displays: the speedometer indicates both kilometers per hour and mile per hour. The odometer indicates kilometers and is labeled as such. The brake warning indicator meets the requirements.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: removal and replacement of the headlamps and tail lamps with U.S.-model components.

Standard No. 111 Rearview Mirror: inscription of the required warning statement on the passenger side rearview mirror by applying to the mirror's face a photomask template bearing the required wording and sandblasting, with a mini-sandblaster, the photomasked area with 150 grit aluminum oxide.

Standard No. 114 theft Protection: installation of an audible warning device that will be activated whenever the key is left in the ignition and the driver's door is opened.

The petitioner also states that a certification label must be affixed to the driver's side door jamb to meet the requirements of 49 CFR part 567.

Standard No. 208 Occupant Crash Protection: installation of a seat belt warning buzzer module, wired to the driver's seat belt latch. The petitioner states that the vehicle is equipped with U.S.-model driver's and passenger's side air bags and knee bolsters, and with Type II seat belts at all front and rear outboard seating positions.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicle that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

The petitioner states that the vehicles will also require the installation of a certification label in the driver's side door jamb that meets the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–1512 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34160 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No.

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34160[1] to permit the trackage rights to expire, as they relate to the operations extending from Fort Worth, TX, to Temple, TX, on February 23, 2002.

DATES: This exemption is effective on February 21, 2002. Petitions to stay must be filed by February 1, 2002. Petitions to reopen must be filed by February 11, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34160 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339].

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 11, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1389 Filed 1–18–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 27, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe (BNSF) to grant temporary overhead trackage rights to UP over approximately 129 miles of BNSF's Ft. Worth Subdivision between BNSF milepost 6.1, near Ft. Worth, TX, and BNSF milepost 218.1, near Temple, TX. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34160 (STB served Jan. 11, 2002). The agreement is scheduled to expire on February 23, 2002. The trackage rights operations under the exemption were scheduled to be consummated on or after January 3, 2002.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33928]

Norfolk Southern Corporation and Norfolk Southern Railway Company—Construction and Operation—In Indiana County, PA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of filing of application and request for public comments.

SUMMARY: Norfolk Southern Corporation and Norfolk Southern Railway Company have filed an application under 49 U.S.C. 10901(a) for authority to construct and operate a 5.26-mile line of railroad in Indiana County, PA.[1] The Board will entertain comments and replies on whether this application meets the criteria of 49 U.S.C. 10901.

DATES: Comments are due on January 31, 2002. Replies are due on February 5, 2002.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 33928 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Constance A. Sadler, Sidley Austin Brown & Wood, 1501 K Street, NW., Washington, DC 20005 and John V. Edwards, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On December 27, 2001, Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS) filed an application under 49 U.S.C. 10901(a)[2] for authority to construct and operate a 5.26-mile line of railroad between Saltzburg and Clarksburg, in Indiana County, PA (the Saltzburg Connection).[3] The new line is part of a larger project creating a new route from the south for NSR to serve the Reliant Energy Keystone Generating Plant (Keystone Plant) at Shelocta, PA (the Keystone Project).[4]

NSR currently serves the Keystone Plant over the Northern Route, a circuitous and mountainous route utilizing trackage rights over a substantial portion of the route. Northern Route coal originates with Pittsburgh Steam coal producers located in southwest Pennsylvania and northern West Virginia on the NS-operated Monongahela Line.

NS contends that the new Southern Route will have a greater capacity than the existing Northern Route, and that it will save time, crews and locomotives required to provide rail deliveries to the Keystone Plant. NS further asserts that it will be a shorter, more efficient, effective, and environmentally superior alternative to the Northern Route. Although no shippers other than the Keystone Plant will be served by the new Southern Route, NS claims that the new route will provide an efficient service outlet to the rest of the NS system should new businesses locate in the area served by that route in the future.

Environmental review of the application is currently ongoing by the Board's Section of Environmental Analysis (SEA). On November 17, 2000, SEA granted NS's request for a waiver of the 6-month prefiling notice generally required for construction projects under 49 CFR 1105.10(a). NS filed a request for waiver of the Environmental Impact Statement under 49 CFR 1105.6 on January 16, 2001, which was granted by SEA in a letter dated January 24, 2001. Because a third-party consultant has been retained to prepare the necessary environmental documentation under the Board's direction and supervision, the Board's environmental reporting requirements are not applicable to this application. *See* 49 CFR 1105.10(d).

Written comments (an original and 10 copies) on the application to construct

[1] In anticipation of the filing of the application, applicants requested that the Board grant a protective order to maintain the confidentiality of sensitive materials. The request was granted in a decision served February 8, 2001.

[2] On the same day, NS filed a Petition for Procedural Schedule proposing a timetable for the submission of public comments and replies regarding this project, not including environmental review. The Board's regulations governing construction applications at 49 CFR 1150.10 establish the procedures for public participation. NS cited a need for expedition in support of its schedule. But the only effect of the schedule proposed by NS is to give itself additional time to reply to any comments. A need for expedition does not justify such a request. If the comments filed require more time for reply than that provided by the regulations, NS may seek additional time at that time. This proceeding shall be conducted according to 49 CFR 1150.10(g) and (h), as set forth in this notice.

[3] According to applicants, NSC, NSR or one of their respective subsidiaries will construct, and NSR will operate, the new line of railroad.

[4] The other parts of the project involve the rehabilitation of an out-of-service line between Clarksburg and Shelocta and the modification of the existing Keystone Connection near Shelocta that will connect the rehabilitated Clarksburg Segment with the existing Shelocta Industrial Running Track. The three parts of the project will be collectively referred to as the Shelocta Secondary.

and operate the above-described rail line must be filed with the Board not later than January 31, 2002. Comments must contain the basis for the party's position either in support or opposition, and must contain the name and address of the commenting party. Applicants must be concurrently served with a copy of each comment. Any replies (an original and 10 copies) by applicants to written comments must be filed with the Board not later than February 5, 2002.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1515 Filed 1–18–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 21, 2002 to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0120.

Form Number: None.

Type of Review: Extension.

Title: Commercial Invoice.

Description: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties,. The invoice(s) is attached to the CF 7501. The information which is supplied by the foreign shipper is used to ensure compliance with statutes and regulations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 46,500,000.

Estimated Burden Hours Per Respondent : 10 seconds.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 130,200 hours.

Clearance Officer: Tracey Denning (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–1484 Filed 1–18–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 21, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1478.

Regulation Project Number: INTL–3–95 Final.

Type of Review: Extension.

Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

Description: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–1485 Filed 1–18–02; 8:45 am]

BILLING CODE 4830–01–P

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Corrections

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

Correction

In notice document 01–31663 beginning on page 66477 in the issue of Wednesday, December 26, 2001, make the following correction:

On page 66480, in the table, in the fifth column titled "Other (full/third party), under section **11. Rehabilitative Services**, in the second line, "70.00" should read, "170.00".

[FR Doc. C1–31663 Filed 1–18–02; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45177; File No. SR–Amex–2001–103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to a Utilization Fee for the "Smart" Wiring Program

December 20, 2001.

Correction

In notice document 01–404 beginning on page 946 in the issue of Tuesday, January 6, 2002, make the following correction:

On page 946, in the second column, in the second paragraph, in the first sentence "$15.00" is changed to read "$150.00".

[FR Doc. C2–404 Filed 1–18–02; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45253; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Simplify the Manner in Which a Contrary Exercise Advice is Submitted and to Extend by One Hour the Time for Members to Submit Customer's Contrary Exercise Advices

January 8, 2002.

Correction

In notice document 02–946 beginning on page 2003 in the issue of Tuesday, January 15, 2002, make the following correction:

On page 2004, in the third column, under the section **IV. Solicitation of Comments**, in the second line from the bottom, "[insert date 21 days from date of publication]." should read, "February 5, 2002".

[FR Doc. C2–946 Filed 1–18–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 22, 2002

Part II

Department of Housing and Urban Development

24 CFR Part 570
Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4698–P–01]

RIN 2506–AC10

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend the Community Development Block Grant (CDBG) Entitlement program regulations by requiring grantees to obtain HUD's approval to demolish HUD-owned housing units. The proposed amendment will ensure that HUD receives notification of a grantee's intent to use CDBG funds to demolish HUD-owned housing units. In addition, the application of this rule will aid in preserving the supply of affordable housing that is available to low- and moderate-income persons.

DATES: Comments Due Date: March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Director, Entitlement Communities Division, Office of Block Grant Assistance, Room 7282, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number). Hearing-or speech-impaired individuals may access the telephone number listed in this section by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) establishes the statutory framework for the CDBG program. HUD's regulations implementing the CDBG program are codified at 24 CFR part 570 (entitled "Community Development Block Grants").

II. This Proposed Rule

This rule proposes to change § 570.201(d), Clearance activities, which currently allows the demolition of HUD-assisted housing units only if HUD has approved the demolition. The proposed change will require that grantees also obtain the approval of HUD before proceeding with CDBG-assisted demolition of HUD-owned housing units.

HUD believes that the proposed revision will aid in achieving three primary objectives: (1) Ensure that grantees notify HUD of their plans to demolish HUD-owned housing units; (2) prevent grantees from demolishing, without reasonable cause, HUD-owned housing units; and, (3) ensure that grantees preserve the supply of affordable housing available to low- and moderate-income persons.

III. Background Information Concerning the Proposed Rule

As discussed above, the proposed rule would revise the CDBG Entitlement program (24 CFR part 570) regulations at § 570.201(d), Clearance activities, to prohibit grantees from using CDBG funds for the demolition of HUD-owned housing units without prior approval from HUD. The current regulation at § 570.201(d) requires that a grantee obtain HUD's approval to demolish HUD-assisted housing units. Although the CDBG regulations do not contain a definition of the term "HUD-assisted housing units", the term has been considered to include various forms of subsidized housing such as section 8 or public housing. It has not been HUD policy to interpret the regulation as including HUD-owned properties. Thus, a regulatory change to § 570.201(d) is required to ensure that CDBG-assisted demolition of HUD-owned housing units can only be carried out with the prior approval of HUD.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection weekdays between the hours of 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, NW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa,

Community development block grant, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Section 570.201 is amended by revising paragraph (d) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

* * * * *

Dated: November 26, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–1411 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–29–P

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Federal Register

Tuesday,
January 22, 2002

Part III

Environmental Protection Agency

40 CFR Parts 260, 264, and 271
Amendments to the Corrective Action Management Unit Rule; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 271

[FRL–7124–3]

RIN 2050–AE77

Amendments to the Corrective Action Management Unit Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA" or "the Agency") is today promulgating amendments to the regulations governing Corrective Action Management Units. Corrective Action Management Units, or "CAMUs," are special units created under the Resource Conservation and Recovery Act (RCRA) to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing cleanup, and to remove the disincentives to cleanup that the application of RCRA to these wastes can sometimes impose. The original CAMU regulations were promulgated on February 16, 1993.

In today's action, EPA is amending the 1993 CAMU rule in six ways. First, EPA is establishing a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs. Second, the Agency is establishing more detailed minimum design and operating standards for CAMUs in which waste will remain after closure, with opportunities for Regional Administrators to approve alternate design standards under certain circumstances. Third, the Agency is establishing treatment requirements for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances. Fourth, EPA is establishing more specific information requirements for CAMU applications and is explicitly requiring that the public be given notice and a reasonable opportunity for public comment before final CAMU determinations are made. Fifth, the Agency is establishing new requirements for CAMUs that will be used only for treatment and storage. Sixth, today's rulemaking "grandfathers" certain types of existing CAMUs and allows them to continue to operate under the 1993 rule.

Today's rulemaking amends the regulations for "staging piles" to expressly allow for mixing, blending, and other similar physical operations intended to prepare wastes for subsequent management or treatment. It also adds a new provision allowing off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if they are treated to meet CAMU treatment standards (somewhat modified).

Finally, today's rule grants interim authorization for these CAMU amendments to states that are authorized for the 1993 CAMU rule, and it expedites state authorization for the CAMU rule for states that are authorized for the RCRA corrective action program but not the 1993 CAMU rule.

Today's amendments were proposed on August 22, 2000, referred to throughout this rulemaking as "the proposal." EPA also proposed a supplemental proposal on November 20, 2001, referred to as "the supplemental proposal."

DATES: This final rule is effective April 22, 2002.

ADDRESSES: The official record for this rulemaking under docket number F–2002–ACAF–FFFFF is located at the RCRA Docket Information Center (RID), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. It is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The Final Rule, index, and some supporting materials are also available electronically. See the Supplementary Information section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Tricia Buzzell, U.S. Environmental Protection Agency (5303W), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8632, or e-mail *buzzell.tricia@epa.gov*.

SUPPLEMENTARY INFORMATION: Copies of today's Final Rule are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu*. Printed copies of the final rule and related documents can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

The index and some of the supporting materials are available on the Internet at *www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu*.

Outline

The contents of today's preamble are listed in the following outline.

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(2) Adjustment Factor B: Consistency with Site Cleanup Levels (40 CFR 264.552(e)(4)(v)(B))
(3) Adjustment Factor C: Community Views (40 CFR 264.552(e)(4)(v)(C))
(4) Adjustment Factor D: Short-Term Risks (40 CFR 264.552(e)(4)(v)(D))
(5) Adjustment Factor E: Engineering Design and Controls (40 CFR 264.552(e)(4)(v)(E))
(6) If / Then Chart Illustrating Application of Adjustment Factor E
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D. Unfunded Mandates Reform Act
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F. Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)
G. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)
H. Federalism (Executive Order 13132)
I. Environmental Justice (Executive Order 12898)
J. Congressional Review Act
K. Energy Effects (Executive Order 13211)

I. Authority

These regulations are promulgated under the authority of sections 1006, 2002(a), 3004, 3005(c), 3007, 3008(h), and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Background

Since the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act of 1976 (RCRA), EPA has recognized that the comprehensive regulatory framework that generally governs identification, generation, transportation, treatment, storage, and disposal of hazardous wastes can present serious disincentives to management of hazardous wastes during cleanups. As discussed in the proposal[1] and in numerous other Agency documents and rulemakings,[2] these disincentives arise for three primary reasons.

First, the broad objectives of the hazardous waste program—to prevent releases through a comprehensive set of management requirements, to minimize generation of hazardous waste, and to promote legitimate reuse and recycling—are not, in general, the same as the Agency's objectives during cleanup. During cleanup, the Agency is faced primarily with remediating a release that has already occurred. In this context the Agency may, in fact, desire to maximize the amount of waste generated (i.e., maximize the amount of waste managed for implementing cleanup).

Generators of hazardous waste, for the most part, do not have a choice about whether they trigger application of the RCRA hazardous waste regulations (once the waste is generated). If a hazardous waste is generated, RCRA applies. The application of the RCRA hazardous waste regulations, however, discourages its generation in the first

[1] All references to "the proposal" are to the proposal of today's amendments, 65 FR 51080, August 22, 2000.

[2] For a fuller discussion of this issue, see the preamble discussions accompanying the Land Disposal Restrictions (LDR) Phase IV rule, 63 FR 28556, 28603–28604 (May 26, 1998); Clarification of the LDR Treatment Variance Standard (the "environmentally inappropriate" variance), § 268.44(h), 62 FR 64504, 64505–64506 (December 5, 1997); and the HWIR-Media rule, 63 FR 65874, 65876–65878 (November 30, 1998), and sources cited therein.

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place and encourages generators to reuse materials, to reduce waste, and to use fewer hazardous constituents in production processes. These outcomes are desirable and consistent with the broad objectives of RCRA. Conversely, in a cleanup situation, the waste already exists, but site owners/operators often have legal options that allow them to minimize or avoid application of the RCRA regulations, which thus discourage cleanup or the amount of wastes cleaned up. In large part, these legal options involve capping waste in place, or in some cases not engaging in cleanup at all. In general, these types of approaches are less desirable than remedies that involve excavation of some, or all, cleanup waste for more aggressive treatment and/or off-site disposal.

Second, the RCRA regulations have been conservatively designed and uniformly applied to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. The land disposal restriction (LDR) treatment standards for most hazardous wastes, for example, are established at levels achieved by the best demonstrated available technology for treating the waste in question. Likewise, the minimum national design and operation standards for hazardous waste land disposal units were developed to be protective in a range of disposal scenarios. Cleanups, on the other hand, are fundamentally site-specific and essentially risk-based. During cleanup, the Agency generally has the site- and waste-specific information it needs to develop protective management requirements for the particular site and waste in question; therefore, there is less need for generic management approaches to ensure protectiveness in a range of scenarios.

Finally, in addition to the differences in the context for regulating hazardous wastes from ongoing industrial operations versus cleanup described above, there are often (but not always) significant physical and chemical differences between wastes generated by industrial processes (or "as-generated" wastes) and cleanup wastes. These physical and chemical differences further support the need for different approaches for wastes managed for implementing cleanup.

In practice, application of the RCRA regulations developed for as-generated wastes to wastes managed for implementing cleanup often presents remediation project managers with only two choices: (1) pursue the legal option of capping or treating cleanup wastes in place, thereby avoiding application of many RCRA requirements, or (2) excavate cleanup wastes and, in accordance with RCRA requirements, treat them to the fullest extent possible given available technology and place them in a permitted hazardous waste landfill. Often neither of these options represents the best remedial approach. And the desire to avoid costs associated with the second option creates an incentive to select the first.

While recognition of this problem came relatively early, EPA and stakeholder groups have grappled for more than ten years with the policy challenges associated with solving the problem. Developing approaches to regulating cleanup wastes differently from as-generated wastes presents a number of challenges. For example, how does the Agency develop approaches tailored to cleanup wastes while at the same time leaving in place the basic features of the RCRA program as they apply to as-generated wastes? How does the Agency create a management structure for cleanup wastes that minimizes disincentives for cleanup without creating incentives to mismanage as-generated wastes? How do EPA and the states ensure that cleanup wastes are managed safely while providing for the site-specific flexibility that effective cleanups demand?

In an effort to deal with these questions, the Agency has developed over the years numerous policies, regulations, and guidance documents addressing the application of the RCRA Subtitle C regulations for as-generated wastes to wastes managed for implementing cleanup.[3] As part of its efforts to address these issues, the Agency promulgated the original CAMU rule in 1993. (February 16, 1993, 58 FR 8658) The 1993 CAMU rule created a special type of hazardous waste management unit—a Corrective Action Management Unit, or CAMU—to be used only for on-site treatment, storage, and disposal of hazardous wastes managed for implementing cleanup. Consolidation or placement of cleanup wastes into a CAMU is not considered land disposal and, therefore, does not trigger RCRA LDR requirements. 40 CFR 264.552(a)(1). Similarly, consolidation or placement of cleanup waste into a CAMU does not create a unit subject to RCRA's minimum technology requirements. 40 CFR 264.552(a)(2). Instead of applying RCRA LDRs, minimum technology requirements, and other hazardous waste requirements, overseeing agencies had considerable flexibility under the 1993 CAMU rule to tailor design, operating, closure and post-closure, and waste treatment requirements to site- and waste-specific conditions. This approach allowed a significantly broader range of cleanup options at individual sites and has led, at individual sites, to prompter and more aggressive cleanup.

Many stakeholders supported the 1993 CAMU rule. In implementation, the Agency believes the 1993 CAMU rule has resulted in appropriate, protective, site-specific remedies. (See the CAMU Site Background Document in the docket for today's rule.) Not all stakeholders, however, supported the 1993 CAMU rule. As discussed in the proposal, the 1993 CAMU rule was legally challenged after promulgation. (*Environmental Defense Fund* v. *EPA*, No. 93–1316 (D.C. Cir. filed May 14, 1993.) Among other things, the Petitioners were concerned with provisions in the 1993 CAMU rule providing that land disposal restrictions, minimum technology requirements, and other Part 264 and 265 unit requirements did not apply to CAMUs. After an extended stay of the challenge, during which EPA and stakeholders pursued a number of other approaches to addressing RCRA regulation of hazardous remediation wastes, the Agency entered into settlement discussions and reached a settlement agreement on February 11, 2000. Today's amendments to the 1993 CAMU rule are the result of this settlement process.

In developing today's amendments and in negotiating the CAMU settlement, the Agency's primary purpose was to allow continued use of CAMUs so as to remove the disincentives to cleanup that result from applying RCRA regulations for as-generated hazardous wastes to cleanup wastes. As the Agency stated in the proposal:

> The Agency recognizes the benefits of including minimum standards in a rule of this nature, i.e., such standards can make the process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse. However, the Agency did not want to include more detailed standards if they would result in potentially limiting the usefulness of the rule, thereby delaying or inhibiting cleanups. (65 FR 51084.)

[3] These include, the "area of contamination" policy; the "contained-in" policy; the "Phase IV LDR" treatment standards for contaminated soil; and, the provisions for "Remedial Action Plans" or RAPs. Descriptions of many of these and other relevant policies and regulations, including references, are included in the October, 1996 memorandum, "Management of Remediation Waste Under RCRA," EPA 530–F–98–026. These regulations, policies, and guidance documents are not changed by today's rulemaking.

It was the Agency's conclusion at the time of proposal that the proposed amendments achieved an appropriate balance, realizing the benefits of increased regulatory detail without reinstating the disincentive to cleanup the CAMU rule was originally designed to address. As discussed in the proposal, the Agency's analyses showed that the vast majority of CAMUs approved under the 1993 rule could be approved with few or no changes under the proposed amendments. The Agency requested comment on these conclusions.

The Agency received mixed comments on the proposed CAMU amendments. Many commenters, including the Petitioners from the 1993 CAMU litigation, strongly supported the proposal as remedying "major legal and policy deficiencies with [the 1993 CAMU rule], principally by providing for baseline standards rather than unconstrained discretion." Some commenters opposed the CAMU amendments, believing they were not needed to protect human health or the environment and disagreeing with the Agency's conclusion that they would not reinstate disincentives to cleanup. On balance, however, even most commenters who thought that amendments to the 1993 CAMU rule were not necessary, expressed the view that, if the Agency was convinced that amendments to the 1993 CAMU rule were needed, the proposed approach was reasonable.

After considering these comments, the Agency has decided to finalize the CAMU amendments largely as proposed. The Agency agrees with commenters who pointed out (as EPA did at proposal) that the 1993 CAMU rule has had a positive effect on cleanups and has promoted more aggressive remediation at individual sites. But the Agency continues to believe that the benefits that derive from the more specific regulatory standards of this rule will not be gained at the cost of reinstating the regulatory disincentive to cleanup that the CAMU was intended to address. This result, in EPA's view, argues in favor of promulgating today's amendments. Although many commenters expressed concern that today's rule would recreate disincentives, they provided general arguments rather than specific evidence. Furthermore, no commenter disputed the Agency's conclusion that the areas in which the Agency provides flexibility from the minimum standards cover the full variety of situations where the minimum standards might operate to discourage aggressive remediation. Similarly, comments submitted on the effects of increased CAMU processing costs (monetary and temporal) for CAMU approval expected to result from today's amendments did not convince the Agency either that such costs alone would likely outweigh the benefits to facilities of obtaining a CAMU, thereby reversing the benefits realized from the 1993 rule. The Agency is therefore promulgating the proposed amendments with only minor changes from the proposal (see discussion of specific changes below).[4]

III. Section-by-Section Analysis

A. Grandfathering CAMUs (40 CFR 264.551)

EPA proposed that CAMUs approved prior to the effective date of the final CAMU amendments (i.e., the effective date of this rulemaking) and CAMUs for which substantially complete applications (or equivalents) were submitted to the Agency on or before ninety (90) days after publication of the proposal (i.e., November 20, 2000), would generally continue to operate under the 1993 CAMU regulations and would not be subject to the CAMU amendments finalized today. This approach is referred to as "grandfathering." Commenters generally supported the grandfathering provisions and, in today's rulemaking, EPA is finalizing these provisions as proposed. Issues associated with grandfathering are discussed in section L, at the end of the section-by-section analysis.

B. Eligibility of Wastes for Management in CAMUs (40 CFR 264.552(a))

EPA's approach to defining the types of wastes that may be placed in CAMUs is an important element in its effort to strike a balance between encouraging aggressive remediation and maintaining RCRA's incentives to avoid releases and minimize wastes in the first instance. EPA's intention in the 1993 CAMU rule and in today's action is to clearly limit the wastes that may be placed in CAMUs to wastes that are managed as a result of cleanup, except under specifically described and limited circumstances.

Under the 1993 CAMU rule, the term "remediation waste" defined the types of wastes that may be placed in a CAMU. "Remediation waste" is defined at 40 CFR 264.10 as "all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup."[5] The definition of remediation waste is also used in regulations pertaining to Remedial Action Plans (see part 270, subpart H), staging piles (see 40 CFR 264.554), and site-specific LDR treatment variances under the "environmentally inappropriate" variance provisions (see 40 CFR 268.44(h)(2)(ii)).

Working from the definition of "remediation waste," EPA proposed a number of changes to define more specifically the types of remediation waste that may be placed in CAMUs. First, the Agency proposed to establish a separate subcategory of waste, within the broader category of remediation waste, to govern the types of wastes that may be placed in a CAMU. EPA proposed to call this subcategory of waste "CAMU-eligible waste." Second, EPA proposed to include in the definition of CAMU-eligible waste clarifying language to better distinguish between as-generated and cleanup wastes. Third, EPA proposed, with some exceptions, to explicitly prohibit waste in containers and other non-land-based units from being placed in CAMUs. Fourth, the Agency proposed to allow nonhazardous, as-generated wastes to be placed in a CAMU if such placement would facilitate treatment or the performance of the CAMU. The Agency also proposed to ban placement of liquids in CAMUs except under certain circumstances and to allow the Regional Administrator, under certain circumstances, to "kick out" or disallow placement in a CAMU of wastes that would otherwise be CAMU-eligible.

Commenters generally supported EPA's overall proposed approach to more specifically defining the types of remediation waste that may be placed in

[4] In finalizing today's amendments, the Agency has published the entire text of the CAMU rule as it will appear in the CFR. EPA took this approach for the sake of clarity. However, it is important to note that the CAMU regulatory provisions on which the Agency did not seek comment in the proposal (i.e., those which, at proposal, were simply repeated from the 1993 rule) are not modified by today's amendments. In addition, to further aid the reader, the Agency has placed a "redline/strikeout" version of the CAMU regulations in the docket for today's rulemaking. This document indicates exactly where changes to the 1993 rule are being finalized.

[5] As discussed in the proposal, the remediation waste definition promulgated with the 1993 CAMU regulations was modified by the Agency in the Hazardous Waste Identification Rule for Contaminated Media (HWIR-Media). See, 63 FR 65874, November 30, 1998. The remediation waste definition quoted above is the definition as modified by the HWIR-Media rule. The Agency is today promulgating an editorial change to the remediation waste definition, as discussed later in this section of the preamble.

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CAMUs, and today the Agency is finalizing its approach largely as proposed. In response to comments, however, the Agency is making two changes to the CAMU-eligible waste definition in today's final rulemaking. First, the Agency is making an editorial change to the definition of CAMU-eligible waste (and a conforming change to the related definition of "remediation waste") to make clear that these definitions include both hazardous and nonhazardous wastes (including hazardous and nonhazardous environmental media and debris), when such materials are managed for implementing cleanup. Second, the Agency is expanding the definition of CAMU-eligible wastes to include intact and substantially intact tanks. With this change, both containers and tanks excavated during cleanup (and materials they may hold) are generally CAMU eligible. The details of the Agency's approach to defining wastes eligible for management in CAMUs, including the two changes made in response to comments, are discussed below.

1. Definitions of "Remediation Waste" and "CAMU-Eligible Waste"

EPA proposed: (1) To establish a separate subcategory of waste to more specifically define the types of remediation wastes that can be placed in CAMUs, (2) to call the subcategory of waste "CAMU-eligible waste," and (3) to promulgate the definition of CAMU-eligible waste in the CAMU regulations at 40 CFR 264.552(a)(1) rather than in the general definitions section at 40 CFR 260.10. To complement the new definition of CAMU-eligible waste, EPA proposed to revise the definition of Corrective Action Management Unit to refer to "CAMU-eligible waste" rather than "remediation waste." Also, to make clear that the changes to the definition would not apply beyond the CAMU rule, the Agency proposed to move the definition of CAMU from the general definitions section at 40 CFR 260.10 to the CAMU regulations at 40 CFR 264.552(a) and, for grandfathered CAMUs, at 40 CFR 264.551(a).

EPA proposed to define CAMU-eligible waste as "[a]ll solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that contain listed hazardous waste or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes." The first sentence of the proposed definition reiterated the definition of remediation waste. The second sentence added language from the preamble to the 1993 CAMU rule to more explicitly prohibit management of as-generated wastes in CAMUs.

EPA did not receive adverse comments on the proposal to promulgate the definition of CAMU-eligible waste in the CAMU regulations, on the proposed conforming change to the definition of CAMU, or on the proposal to move the definition of CAMU from the general definitions section to the CAMU regulations. The Agency is promulgating those provisions as proposed.

Commenters also generally supported establishing a separate definition for CAMU-eligible waste; however, in evaluating the new definition, a number of commenters expressed concern that the definition could be read to preclude placement of nonhazardous cleanup wastes (or environmental media and debris that contain solid but not hazardous wastes) in a CAMU. The Agency believes this misreading—which it understands but never intended—could unnecessarily delay approvals of CAMUs and delay cleanups, so it is taking today's opportunity to make editorial changes necessary to clarify the definition of CAMU-eligible waste and the related definition of remediation waste, as discussed below.

The current definition of remediation waste is "All solid and hazardous waste, and all media (including groundwater, surface water, soils, and sediments) and debris *that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic* and are managed for implementing cleanup" (emphasis added). EPA included the phrase "that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic" to make clear that media brought under regulation through the "contained-in" policy were eligible for management in a CAMU. Under the Agency's longstanding contained-in policy, EPA requires that contaminated environmental media, although not hazardous wastes themselves, be managed as if they were hazardous waste as long as they contain hazardous waste or exhibit a characteristic of hazardous waste.[6] Commenters expressed concern that, because it is not clear which portions of the definition of remediation waste are modified by the phrase "that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic," the definition could be read to limit media and debris placed in a CAMU to those containing listed waste or exhibiting a characteristic, and not to include contaminated environmental media or debris that contain solid (but not hazardous) waste.

Commenters additionally raised concerns that the definition of "CAMU-eligible waste"—which is based on the definition of remediation waste—could similarly be read to exclude nonhazardous wastes managed for implementing cleanup. This reading would preclude management of nonhazardous remediation wastes in CAMUs.[7] Clearly, this reading does not reflect the Agency's intent as expressed in the preamble to the proposal or in earlier Agency discussions of remediation waste, and therefore the Agency is making editorial changes to the definition of CAMU-eligible waste.

As discussed in detail in the 1993 CAMU rule, "the definition of remediation waste includes nonhazardous solid waste . . . [although] management of such wastes would not require the designation of a CAMU . . . since [RCRA] Subtitle C requirements would not apply to management of [nonhazardous solid waste]" (58 FR 8664, February 16, 1993). The Agency also addressed this issue in the 1998 HWIR-Media rulemaking, where it indicated that "remediation waste" includes "both hazardous and nonhazardous solid wastes managed as a result of cleanup" (63 FR 65881, November 30, 1988). Nonetheless, to prevent any potential confusion over this issue, the Agency is revising the wording of the definition of CAMU-eligible waste to remove the

[6] The contained-in policy is described in the October 1998 memorandum, "Management of Remediation Waste Under RCRA," EPA A530-F-98-026, which is included in the docket for today's rulemaking.

[7] The confusion is caused by the restrictive clauses in the definitions of CAMU-eligible and remediation waste. In the case of remediation waste, the definition is: "Remediation waste means all solid and hazardous wastes, and all media (including ground water, surface water, soils and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup." Some commenters feared that the restrictive clauses "that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic . . ." would be read to limit media and debris placed in a CAMU to those containing listed wastes or exhibiting a characteristic. This interpretation would mean that nonhazardous media and debris could not be managed in a CAMU. In an alternative reading, commenters feared that the restrictive clauses could be read to modify "all solid and hazardous wastes, and all media . . .," that is, to require that solid or hazardous waste "contain listed hazardous wastes" or "exhibit a hazardous characteristic" in order to be covered by the definitions. While EPA believes that most readers understood what it intended in the definition, the Agency agrees that the wording is confusing and has, therefore, made the editorial changes discussed in today's rulemaking.

phrase "that contain listed hazardous wastes or that themselves exhibit a characteristic." The definition of CAMU-eligible waste promulgated today, in pertinent part, reads: "CAMU-Eligible Waste means: (i) all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup."

EPA emphasizes that this editorial change does not reflect a change in the Agency's approach toward implementing the definition of CAMU-eligible waste. Rather, it reflects the Agency's conclusion, based on comments, that the proposed definition created a potential for confusion which could hinder implementation of the CAMU amendments. EPA further emphasizes that the exclusion of nonhazardous "as-generated" waste from the definition of CAMU-eligible waste is not affected by this change. As discussed later in today's rulemaking, nonhazardous as-generated waste is generally not within the definition of CAMU-eligible waste and can be placed in CAMUs only under certain limited circumstances.

EPA is also taking this opportunity to make the same change to the definition of remediation waste. The revised definition of remediation waste reads: "Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup." EPA is making this change to avoid confusion that might result from using different wording in the definitions of remediation and CAMU-eligible waste. The Agency notes that it is making these changes solely for clarity and consistency and that they will have no substantive effect on either definition.

The Agency also received a number of comments on the inclusion of the sentence "[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes' in the definition of CAMU-eligible waste. These comments are discussed in the section "As-Generated versus Cleanup Wastes," below.

2. As-Generated versus Cleanup Wastes

The 1993 CAMU rule limited wastes placed in CAMUs to "remediation waste," i.e., to wastes, environmental media, and debris that "are managed for implementing cleanup." The preamble to the 1993 rule explained what was generally meant by this definition: "(t)oday's definition of remediation waste excludes "new" or as-generated wastes (either hazardous or nonhazardous) that are generated from ongoing industrial operations at a facility" (58 FR 8658 and 8664, February 16, 1993). While the Agency believes the 1993 CAMU rule language is clear, it also understands the concerns of critics of the rule, who argued that the regulations could benefit from additional language creating a "firewall" between industrial process waste and cleanup waste by specifically prohibiting placement of as-generated wastes in CAMUs. In response to these concerns, the Agency proposed to add the sentence "[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes" to the new definition of CAMU-eligible waste. Commenters supported adding this express exclusion, and the Agency is finalizing this part of the definition of CAMU-eligible waste as proposed.

As discussed in the proposal, including the sentence "[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes" in the definition of CAMU-eligible waste does not change the way the Agency currently distinguishes between as-generated and cleanup wastes (65 FR 51085 and 51086, August 22, 2000). It is simply a way to reflect more explicitly the original intent of the 1993 definition.

"As-generated" continues to have the same meaning that it did in 1993. For example, hazardous wastes generated by an industrial process (e.g., an electroplating operation at a metals-finishing facility), managed in an operating hazardous waste surface impoundment or landfill, are considered as-generated wastes. As such, these wastes must be managed, treated, and disposed of in compliance with applicable RCRA hazardous waste requirements.

EPA has also not changed the meaning of "from ongoing industrial operations." EPA is including this phrase in the definition of CAMU-eligible wastes solely to aid program implementers in distinguishing between wastes that are managed as a result of routine hazardous waste management activities at a facility, and wastes that are managed for implementing cleanup. Wastes from ongoing industrial operations include wastes produced during commercial operations as well as any wastes that are produced during management of such wastes. For example, hazardous sludges that, in accordance with 40 CFR 268.4, must be removed at least annually from operating hazardous waste surface impoundments are considered wastes from ongoing industrial operations. They are not considered wastes "managed for implementing cleanup" and thus are not CAMU-eligible (65 FR 51085, August 22, 2000). However, as discussed in the proposal, soil that becomes contaminated by releases (including leachate) from operating hazardous waste units would be CAMU-eligible when managed for implementing cleanup (65 FR 51085, August 22, 2000).

Similarly, soil or other materials contaminated by product spills or releases from ongoing industrial processes are not considered as-generated wastes and, as such, are CAMU-eligible when managed for implementing cleanup. Note, however, that EPA fully expects—and requires—facility owners/operators to avoid spills and unintended releases of any sort. Also, facility owners and operators should note that today's rulemaking provides that soils and other materials contaminated by spills or releases—although generally within the meaning of CAMU-eligible—might be disallowed from management in a CAMU under the discretionary kickout provision. The discretionary kickout provision is discussed later in today's rulemaking.

EPA specifically requested comment on whether including the sentence "[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes' in the definition of CAMU-eligible waste might have unintended consequences, for example, by eliminating actual or potential practices where as-generated waste is appropriately placed in a CAMU as a legitimate part of cleanup. In response to this request, one commenter expressed the concern that the phrase "generated from ongoing industrial operations" suggests a temporal condition that could be interpreted to mean that only historical wastes are CAMU-eligible. For example, this reading might preclude placement of materials contaminated by spills from ongoing industrial processes in a CAMU. As explained above, the Agency appreciates this concern and takes this opportunity to state explicitly that CAMU-eligible waste is not limited to historical waste or contamination. The Agency does not consider cleanup of contaminated soils or similar materials to be an ongoing industrial process—even if the contamination itself derives from ongoing industrial processes. Thus, material contaminated by spills from industrial processes would not be "as-generated" wastes from these processes. When managed for

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implementing cleanup, these materials are CAMU eligible.

Another commenter expressed a similar concern that the phrase "from ongoing industrial operations" could be read to preclude management of historical wastes in a CAMU simply because the industrial process that caused the wastes to be generated in the first instance continues to operate. Many industrial facilities have industrial operations that have been ongoing for a number of years. As this commenter pointed out, management strategies for wastes generated by these ongoing industrial operations typically have changed over time, in part to respond to new regulatory requirements. For example, wastes currently generated by an ongoing industrial operation might be sent off site for RCRA Subtitle C disposal; these are clearly as-generated waste. At the same time, wastes previously generated by this same industrial operation might remain on site in solid waste management units that are now subject to RCRA corrective action requirements. If these solid waste management units require cleanup, wastes removed from them during cleanup (and materials contaminated by releases from them) would be CAMU eligible. This is because removal of the wastes would be a remedial activity, rather than part of an ongoing industrial process.

3. Wastes Managed During Closure

In the proposal, the Agency clarified the circumstances under which wastes associated with closure of land-based hazardous waste treatment, storage or disposal units are "managed for implementing cleanup" and, therefore, when they are eligible for placement in a CAMU. This distinction is based primarily on a distinction between "permanent" and "non-permanent" land-based units.

Closure with waste in place is an option for permanent land-based units, e.g., landfills, surface impoundments, and land treatment units. Given the availability of the closure with waste-in-place option, EPA considers closure by removal to be "cleanup" for such permanent land disposal units. Therefore, wastes removed from closed or closing permanent land-based units are considered wastes "managed for implementing cleanup" and are CAMU eligible (65 FR 51086, August 22, 2000). As discussed in the proposal, "closed or closing" means units that have received their final volume of wastes (65 FR 51086, August 22, 2000).[8]

Conversely, non-permanent units, e.g., container and tank storage units and waste piles, are not intended as the final resting place for wastes. Rather, removal of waste from these units in general is part of the normal course of operations. Therefore, EPA believes that, typically, it is inappropriate to consider waste removed from non-permanent units to be CAMU-eligible, because removal is part of the operating life cycle of the unit (65 FR 51086, August 22, 2000).[9]

Many commenters were concerned with EPA's position that wastes associated with closure of waste piles and other non-permanent units are generally not "managed for implementing cleanup" and would not be CAMU-eligible. In particular, commenters disagreed with EPA's view that waste piles and other units are "non-permanent" units. Commenters pointed out that regulations at 40 CFR 264.197 and 40 CFR 265.197 (for tank systems) and 40 CFR 264.258 and 40 CFR 265.258 (for waste piles) require that when these units do not comply with secondary containment and liner requirements, respectively, facility owners/operators must prepare contingent plans to close these units as if they were hazardous waste landfills. Also, for both tank systems and wastes piles, landfill closure is required if, after a reasonable effort is made to meet the clean-closure performance standard, an owner/operator demonstrates that not all contaminated soils can be practicably removed or decontaminated.[10]

EPA agrees that a clarification is warranted. The Agency recognizes that waste piles and tank systems (or, more likely, environmental media contaminated by releases from these units) may be closed as landfills if it is not practicable to remove or decontaminate all contaminated material during an attempt to achieve clean closure. The Agency does not believe, however, that these circumstances justify a change to the interpretation that, as a general matter, wastes removed from these typically non-permanent units are not "managed for implementing cleanup" and therefore are not CAMU-eligible.

As explained earlier as well as in the proposal, the Agency does not typically consider waste removed from closing non-permanent land-based units (such as waste piles) to be "managed for implementing cleanup," because removal of wastes from waste piles and other non-permanent land-based units is a normal part of unit operation. (65 FR 51086, August 22, 2000.) These units are not intended as the final resting place for wastes, and the existence of a regulatory option allowing contamination to remain in the unexpected circumstance where clean closure is not practicable does not alter this general conclusion. However, the Agency does agree that when these units are closed as landfills in situations where clean closure is not practicable, they are the final resting place for the remaining wastes, and any waste thereafter removed from them would be "managed for implementing cleanup" and would therefore be CAMU eligible.[11] Also, as discussed earlier in today's rulemaking, environmental media, such as soil, ground-water, and debris contaminated by hazardous waste placed in waste piles or other non-permanent land-based units generally are CAMU eligible. Therefore, if contamination resulting from the release of waste from a waste pile or tank system is cleaned up, either during closure or otherwise, the contaminated material would generally be CAMU-eligible.[12]

One commenter also requested the Agency's view on whether miscellaneous units approved under the 40 CFR part 264, subpart X provisions are considered permanent or non-permanent land-based units, and therefore whether wastes from these units might be "managed for implementing cleanup." Given the diversity of units that may be approved under the subpart X provisions, the Agency cannot offer a generic answer. In general, the Agency expects the determination of whether wastes from a subpart X miscellaneous unit are "managed for implementing cleanup" will be made on a unit-specific basis, considering the purpose of the unit (e.g., is it intended for permanent disposal or will wastes be removed at closure?), the design and operating standards applied to the unit at the time the unit was permitted, and its similarity to conventional units. The Agency notes that many subpart X units (e.g., drum crushers or vitrification plants) are not land-based units and are more analogous to hazardous waste tanks or incinerators. Wastes managed in such units generally would not be CAMU eligible. If a subpart X unit were intended to be a final disposal site for wastes (for example, as indicated in the unit closure plan), it would likely be considered a permanent land-based unit.

Finally, the Agency reiterates the guidance offered in the proposal on abandoned units. The Agency interprets today's rule to provide that waste removed from abandoned land-based units, whether the units were intended to be permanent or non-permanent, is waste "managed for implementing cleanup" and is CAMU eligible (see, 65 FR 51086, August 22, 2000).

4. Wastes in Intact or Substantially Intact Containers, Tanks, or Other Non-Land-Based Units (40 CFR 264.552(a)(1)(ii))

The Agency proposed to prohibit management in a CAMU of wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units, even if those wastes would otherwise be within the meaning of CAMU-eligible (i.e., wastes managed for implementing cleanup). "Other non-land-based units" include intact or substantially intact non-land-based units that are not "containers" or "tanks," but were designed to contain wastes (e.g., containment buildings under part 264, subpart DD, and part 265, subpart DD). The Agency also proposed two exceptions to this general prohibition. First, the Agency proposed to allow management in a CAMU of wastes that are first placed in tanks, containers, or other non-land-based units as part of cleanup. Second, the Agency proposed to allow management in a CAMU of containers (even if they are substantially intact) that are excavated during the course of cleanup.

The Agency did not receive any adverse comment on its general exclusion of wastes in intact or substantially intact containers, tanks, or other non-land-based units, or on the proposed exemption for wastes first placed in tanks, containers or other non-land-based units as a part of cleanup. The Agency is finalizing these provisions as proposed.

Most commenters also supported the proposed exemption to allow placement in a CAMU of intact or substantially intact containers excavated during cleanup. One commenter opposed this approach. After evaluating these comments, the Agency has decided to promulgate the exemption for intact or substantially intact containers as proposed, as discussed below.

a. Intact and Substantially Intact Containers Excavated during Cleanup Are CAMU–Eligible

In developing the proposed exemption allowing placement in a CAMU of intact and substantially intact containers excavated during cleanup, EPA reflected the concerns of many stakeholders that excluding buried containers might create a disincentive to their excavation and would raise practical implementation issues. While off-site management may be chosen for these containers in many cases, in other cases (for example, where the waste in intact containers differs little from other remediation waste at the site, or where off-site management is difficult to arrange for), it may be sensible for the Regional Administrator to consider on-site treatment and disposal options chosen as part of the CAMU process. As explained in the preamble to the proposal, buried containers will typically be much more difficult to assess and manage than those found above ground and could complicate, and potentially slow cleanup, as well as possibly create an incentive not to excavate the container in the first place (65 FR 51087, August 22, 2000). For these reasons, the Agency proposed to allow intact and substantially intact containers (and the wastes they may contain) excavated during cleanup to be placed in CAMUs. (Interpretations of "intact," "substantially intact," and "excavated during cleanup" are discussed below.)

Most commenters supported this approach. One commenter opposed the approach, arguing generally that, if a container (or tank—see discussion below) is excavated and it is intact, there is no reason that the waste it contains should not be subject to normal RCRA Subtitle C requirements and the waste should not be disposed of in a CAMU. Focusing on tanks only, however, the commenter argued that requiring RCRA Subtitle C management would not create an incentive to leave buried tanks unexcavated on site (potentially to leak); presumably, therefore, the commenter would also disagree with EPA that excluding buried containers from CAMU eligibility might also act as a disincentive to excavation. The commenter was also not persuaded by EPA's concerns for practical issues of implementation, arguing that if a container is still intact after excavation, it should be managed under normal RCRA Subtitle C requirements.

As discussed in the proposal, the Agency agrees that, as a matter of practice, site-specific remedy decisions will often include off-site management under the RCRA Subtitle C requirements for intact containers (and the wastes they may hold) excavated during cleanup (65 FR 51087, August 22, 2000). EPA's analysis of CAMUs approved under the 1993 CAMU rule shows no evidence that waste in intact containers has been placed in CAMUs (65 FR 51086–51087, August 22, 2000 and CAMU Site Background Document). The Agency, however, does not agree that it should categorically exclude placement of intact containers in CAMUs.

First, EPA continues to believe that a blanket requirement excluding "substantially intact" excavated containers from placement in a CAMU could act as a disincentive for

[8] As discussed in the proposal, the Agency believes the ability to place such wastes in CAMUs will promote its objective of encouraging the removal and/or treatment of wastes during closure of RCRA units (65 FR 51086).

[9] As discussed in the proposal, "typically" is intended to indicate the Agency's ability, for example, at abandoned facilities, to place waste found in old piles or similar units in a CAMU, because once they are abandoned, management of wastes they contain is for implementing cleanups. Note also that there is a distinction between removal of waste from a closed or closing unit for placement in a CAMU and incorporation of a unit into a CAMU. EPA's position that wastes removed from non-permanent land-based units are generally not CAMU-eligible does not preclude incorporation of such units into a CAMU under appropriate circumstances. 40 CFR 552(b). As with any other regulated unit that is incorporated into a CAMU, the Subpart F, G and H requirements and the unit-specific requirements of 40 CFR Part 264 or 265 that applied to the regulated unit will continue to apply to that portion of the CAMU (i.e., the portion encompassing the former regulated unit) after incorporation into the CAMU. See, 40 CFR 264.552(b). Under § 264.110 or § 265.110, however, the Regional Administrator may defer any of these standards to the site's corrective action requirements, if certain conditions are met (most importantly, the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and the regulated unit and the solid waste management units or areas of concern are likely to have contributed to the release).

[10] The regulations for tank systems at 40 CFR 264.197 and 40 CFR 265.197 require owners/operators to remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste. If an owner/operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required, the owner/operator must close the tank system as a landfill. The regulations for waste piles at 40 CFR 264.258 and 40 CFR 265.258 require owners/operators to remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and leachate. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required, the owner/operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner/operator must close the waste pile as a landfill.

[11] Guidance on the clean closure standard is available in the 1998 guidance memorandum Risk-Based Clean Closure. See Elizabeth Cotsworth to RCRA Senior Policy Advisors, Risk-Based Clean Closure, March 16, 1998.

[12] Also, as discussed earlier in today's rulemaking, environmental media, such as soil, ground water, and debris contaminated by hazardous waste managed in waste piles or other non-permanent land-based units will generally be CAMU-eligible. Therefore, if waste that has been released from a waste pile or tank system is cleaned up, either during closure or otherwise, such waste will generally be CAMU-eligible.

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excavation of the containers in the first place. Buried containers are similar to other buried wastes in that facility owners/operators will often be under no obligation to excavate them; if removal automatically triggers RCRA Subtitle C land disposal restrictions, minimum technology requirements, and similar obligations—because placement in a CAMU is not allowed—the RCRA Subtitle C disincentives for excavation might be considerable. EPA is concerned therefore, that prohibiting placement of these wastes in a CAMU—regardless of the site-specific circumstances—could discourage aggressive cleanups.

EPA also believes the commenter underestimates the practical difficulties that could arise. As explained in the preamble to the proposal, buried containers "will typically be much more difficult to assess and manage than those found above ground" (65 FR 51087, August 22, 2000). For example, buried containers are more likely to be damaged or deteriorating than containers stored above-ground (for example, because of the burial process and conditions), and therefore questions as to whether a container is or is not "substantially intact" are much more likely to arise. EPA believes that attempts to resolve such questions at a specific site might lead to fruitless argument, would unnecessarily distract from the focus on the most effective remedial strategies at the site, and therefore might delay cleanup. Furthermore, as the commenter acknowledges, removal of "intact" containers may be dangerous, or it may be technically challenging. In such cases, as another commenter observed, the most prudent approach might be to remove the container's contents and place them in a CAMU before excavation of the container is attempted. Prohibiting placement of wastes in "intact" containers in CAMUs could discourage this practice.

More generally, it will typically be easy for remediators to identify and plan for intact containers that are on the surface before a cleanup begins, while buried containers will often not be discovered until an excavation is on-going. At that point, it will be potentially much more disruptive to cleanups if operations have to stop for a judgment on intactness and to arrange for off-site disposal. Yet this process may be unnecessary (for example, where only a few containers are involved and they contain the same waste that is being placed in the CAMU).

For these reasons, EPA is finalizing the inclusion of intact and substantially intact buried containers among CAMU-eligible wastes, as proposed. By allowing intact and substantially intact containers (and the wastes they may hold) that are excavated during cleanup to be placed in CAMUs, the Agency believes it will reduce the likelihood that the CAMU amendments would create disincentives to excavation of buried containers and their contents. As discussed in the proposal, the Agency is less concerned that these disincentives will be created for intact or substantially intact above-ground containers, tanks or other non-land-based units, because these units are much easier to assess and manage in accordance with RCRA Subtitle C requirements for as-generated wastes (65 FR 51087, August 22, 2000). For these reasons, the Agency is finalizing the provisions allowing intact or substantially intact containers excavated during cleanup to be placed in CAMUs as proposed.

b. Extension of Approach to Buried Containers to Include Buried Tanks

EPA specifically requested comment on whether the proposed exemption for buried containers that are excavated during the course of cleanup should also apply to buried tanks (65 FR 51087, August 22, 2000). The Agency received similar comments on the issue of allowing placement in a CAMU of tanks excavated during cleanup as it did on the exemption for containers excavated during cleanup: most commenters supported CAMU eligibility for intact and substantially intact tanks excavated during cleanup; one commenter opposed CAMU eligibility, arguing that—if substantially intact—tanks (and the wastes they may hold) are more appropriately managed under the RCRA Subtitle C requirements for as-generated wastes.

After evaluating these comments, the Agency is persuaded by the view of commenters that intact and substantially intact tanks excavated during cleanup should be addressed in the same way as intact and substantially intact containers excavated during cleanup.[13] The Agency has reached this conclusion based primarily on three considerations. First, as with buried containers, facility owners/operators will often have the option of leaving buried tanks in place during a cleanup action. Therefore, as commenters pointed out, the disincentives to excavation (or aggressive remediation) that application of RCRA Subtitle C requirements for as-generated wastes can impose on cleanup will apply to both buried tanks and buried containers. As discussed throughout the proposal and today's rulemaking, the primary purpose of CAMUs is to remove these disincentives. Second, the same practical difficulties that apply to excluding buried containers from CAMU-eligibility (discussed above) apply equally to buried tanks. Third, as discussed in the proposal, it could be difficult in burial situations to always distinguish between tanks and containers—a point seconded by one set of commenters. In the regulation of as-generated wastes, regulators and facility owners/operators sometimes engage in lengthy discussions over whether a particular storage unit is a "tank" or a "container"; these discussions could be considerably more complicated in the case of excavated "units" containing wastes, particularly if the original function or use of the unit is not clear (e.g., at the time it was being used, was the unit "portable"—making it a "container" under § 260.10—or "stationary"—making it a "tank"). Thus, extending the container approach to tanks furthers EPA's objective of eliminating from the cleanup context distinctions that serve a useful purpose for management of as-generated hazardous waste, but that, in a cleanup context, distract from the overall objective of achieving cleanups without adding significant value.

Furthermore, as discussed in the proposal, any material found in tanks (or containers) after excavation must meet the new CAMU treatment requirements, ensuring that any principal hazardous constituents are adequately treated so as to ensure protection of human health and the environment (65 FR 51087, August 22, 2000). The CAMU treatment requirements are discussed later in today's rulemaking.

c. Interpretations of "Intact or Substantially Intact," "Found During Cleanup" and "Excavated During Cleanup"

Today's exemption from the prohibition on placement of containers in CAMUs applies to "intact or substantially intact" tanks and containers that are "excavated during cleanup." "Intact" and "substantially intact" continue to have the meanings

[13] Note that products and waste in operating underground storage tank systems would not be CAMU-eligible under today's approach. This is because operating underground storage tank systems are considered part of on-going industrial operations at a facility. They are addressed by today's proposal in the same way as operating waste piles and other non-permanent land-based units. That is, waste removed from such systems is generally not considered waste managed for implementing cleanup and is not CAMU-eligible. Environmental media and debris contaminated by releases from such systems is, if excavated, considered managed for implementing cleanup and is CAMU-eligible.

discussed in the proposal. That is, intact or substantially intact containers, tanks, and other non-land-based units can be removed without likelihood of a significant release. Minor imperfections should not prevent a unit from being considered "intact" (65 FR 51087, August 22, 2000). Commenters who addressed this issue supported this approach.

One commenter asked for clarification of the distinction between the phrases "found during cleanup" and "excavated during cleanup." As discussed in the proposal, "found during cleanup" refers to wastes being addressed in the context of cleanup, as opposed to as-generated wastes that may also be stored at a site undergoing cleanup. It is the phrase "excavated during cleanup," not the phrase "found during cleanup," that defines whether waste in a tank, container, or similar unit is CAMU eligible. Waste "found during cleanup" might include waste in intact and substantially intact containers, tanks, or similar units that are above ground (e.g., in an old warehouse) as well as wastes that are buried. Wastes in the above ground units would not be CAMU eligible. Only the wastes in intact and substantially intact containers, tanks, or similar units that were buried and are "excavated during cleanup" are CAMU eligible. "Excavated" is intended to have its normal meaning of "unearthed" or "dug up."

d. Placement of "Historic Wastes" in CAMUs

In the proposal (65 FR 51087), the Agency also discussed the CAMU-eligibility of historic wastes left onsite in units that arguably could meet the definition of either a land-based unit or a "tank." Under today's rulemaking, as under the proposal, historic wastes would be CAMU-eligible if they are found in a land-based unit and managed for implementing cleanup. In the proposal, EPA identified wastes at manufactured coal gas production facilities as an example of "historic" wastes (although the Agency also noted that these wastes would not be hazardous under the TCLP). These facilities often have old "gas holders" that contain historic coal gas manufacturing wastes. In most cases, such units would be considered land-based units under RCRA (e.g., old building foundations, which are analogous to concrete vaults), and the wastes would be CAMU-eligible. EPA is also aware that some facilities have old units that have not been used in decades that would arguably meet the definition of a tank, and therefore would potentially not be CAMU-eligible. If such a unit were a tank and it was buried, then it and the waste it contained would be CAMU-eligible. If the "historic" tank were not buried, the rule requires that the Regional Administrator determine whether it is intact or substantially intact to decide whether the waste is CAMU-eligible. In some cases, given the age, construction, and size of such units, the Agency believes that it would be reasonable to assume that the units are not substantially intact. As a result, waste removed from the units would be CAMU-eligible (65 FR 51087, August 22, 2000). In other cases, historic units would be considered land-based units under RCRA (e.g., old building foundations), and the waste would not be excluded from CAMU eligibility. Commenters supported this approach.

5. Limited Use of Nonhazardous "As-Generated" Waste in CAMUs (40 CFR 264.552(a)(1)(iii))

EPA believes that, as a general matter, it is not appropriate to manage as-generated waste in CAMUs. This longstanding position was discussed in the preamble to the 1993 CAMU regulations (58 FR 8658 and 8664, February 16, 1993), in the proposal to this rulemaking (65 FR 51085 and 51086, August 22, 2000) and in the section on "as-generated vs. cleanup wastes" above. At the same time, the Agency acknowledges that there are accepted practices where nonhazardous as-generated wastes are used in cleanup remedies. The new language on as-generated waste added to the CAMU-eligible waste definition, however, would expressly prohibit these practices in CAMUs. EPA proposed, therefore, that Regional Administrators might allow placement of nonhazardous as-generated cleanup waste in a CAMU when such waste is being used to facilitate treatment or the performance of the CAMU. Commenters supported this approach, and the Agency is finalizing this provision as proposed.

As discussed in the proposal, the Agency is aware of two common practices that use nonhazardous as-generated wastes to facilitate treatment of cleanup wastes or the performance of waste disposal units. The first practice is to use fly ash or cement kiln dust (CKD) or similar materials as stabilization agents to reduce leaching of metals from metal-bearing wastes. The second practice is to use similar agents, such as coal combustion wastes, to provide increased structural stability for wastes, such as sludges, that do not have sufficient strength to bear their own weight or the additional weight of a cap without risk of failure. Such practices facilitate treatment or the performance of the CAMU and are within the meaning of today's exemption for placement of nonhazardous as-generated wastes.

EPA requested comment on whether Regional Administrators should also have the discretion to allow placement of hazardous as-generated waste in a CAMU if such placement would facilitate treatment or the performance of the CAMU (65 FR 51086, August 22, 2000). Most commenters did not address this issue. One commenter did suggest, however, that Regional Administrators should have the discretion to allow such placement. The commenter offered, as a hypothetical example, the situation where the corrosive properties of an otherwise hazardous waste might be useful in stabilizing other materials. EPA carefully evaluated this comment. At this time, the Agency is not persuaded to allow placement of hazardous as-generated waste in CAMUs. The Agency is concerned that such an approach might weaken the distinction between wastes generated from ongoing industrial operations and wastes managed for implementing cleanup and does not believe the appropriateness of such a provision has been demonstrated by one hypothetical example. At the same time, EPA acknowledges that there may be individual cases where placement of as-generated hazardous waste in a CAMU could safely facilitate a remedy. If experience shows that the absolute prohibition on placement of as-generated hazardous waste in CAMUs is counterproductive, the Agency may revisit the issue in the future.

Although EPA is not allowing placement of hazardous as-generated waste in CAMUs, the Agency—as commenters pointed out—has sought to encourage the use of materials such as cement kiln dust and coal combustion wastes to facilitate treatment or performance of disposal units, and it would consider these to be legitimate uses of such secondary materials. Their use in a CAMU would be allowed.

C. Discretionary Kickout (40 CFR 264.552(a)(2))

The RCRA Subtitle C regulations ensure that hazardous wastes are handled according to stringent national standards. As discussed in the 1993 CAMU rule and in the proposal to today's rulemaking, these requirements, when applied to existing contamination problems, can provide a strong incentive for leaving wastes in place or for selecting remedial approaches that minimize regulation under RCRA Subtitle C. In the 1993 CAMU rule and

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in these amendments, EPA's primary purpose is to provide appropriate opportunities to tailor the RCRA Subtitle C standards to provide better incentives to manage hazardous wastes during cleanup. At the same time, EPA does not want the CAMU regulations to reward facility owners for non-compliance with applicable RCRA Subtitle C requirements for as-generated wastes.

All facility owners/operators are legally obligated to make themselves aware of and comply with applicable RCRA Subtitle C requirements. To ensure that the CAMU rules do not create any incentive to mismanage as-generated wastes (e.g., to create a remediation waste eligible for management in a CAMU), or do not reward past non-compliance, EPA proposed that a Regional Administrator might disallow the management of CAMU-eligible waste in a CAMU where he or she has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of 40 CFR part 268, or applicable 40 CFR part 264 or part 265 unit design requirements, or that noncompliance with other applicable RCRA requirements likely contributed to the release of the waste. This is referred to as the "discretionary kickout" provision.

EPA received numerous comments on the discretionary kickout provision. Some commenters strongly supported the provision and thought it should be expanded. Other commenters questioned the need for the provision at all and expressed concern over how the provision might be implemented. As discussed below, EPA was not persuaded that the scope of the discretionary kickout provision should be expanded or reduced. The Agency continues to believe that the discretionary kickout provision strikes a reasonable balance between facilitating cleanups through CAMUs and ensuring that facility owners are not rewarded for improper waste management. EPA, therefore, is finalizing the discretionary kickout provision as proposed, and as discussed below.

As mentioned above, several commenters strongly supported the discretionary kickout provision and thought it should be expanded. One group of commenters suggested that the discretionary kickout should generally be applied to wastes previously managed in violation of major RCRA requirements and ideally should be made mandatory at least with respect to the non-complying owner/operator and affiliated parties. Similarly, other commenters argued that the discretionary kickout provision should be expanded to give Regional Administrators the discretion to exclude CAMU-eligible wastes from management in a CAMU under circumstances other than those outlined in the proposal in order to support more stringent state requirements and state risk-based cleanup evaluations.

The Agency carefully evaluated these comments. As discussed in the proposal, EPA wants to be sure that the CAMU regulations do not create incentives for noncompliance, whether the noncompliance is intentional to take advantage of the CAMU rule requirements or is the result of careless management practices (65 FR 51088, August 22, 2000). The Agency also believes that it will generally be most appropriate to apply the discretionary kickout to owners/operators (or affiliated parties) who are responsible for acts of noncompliance rather than subsequent owners/operators or government agencies conducting the cleanup.[14]

The Agency is not, however, persuaded that the discretionary kickout provision should be made mandatory with respect to such owner/operators. The circumstances where noncompliance may have led to a release will be varied, and EPA believes it would be a mistake to automatically eliminate the possibility of a CAMU in such cases, even where the entity conducting the cleanup is responsible for the original noncompliance. In many cases, CAMUs may allow remedial alternatives that all parties agree are most appropriate for a site—for example, they might facilitate a treatment alternative where, without a CAMU, the most likely alternative might be capping in place without treatment. In other cases, a compromise remedial alternative established through a CAMU might allow a protective remedy to move forward promptly, avoiding years of contention and litigation. Finally, EPA believes that making the discretionary kickout mandatory would inevitably move discussions about CAMUs away from the question of what type of remedy is most appropriate for a site and toward questions surrounding the exact set of circumstances of past waste disposal and management, whether specific management practices did or did not involve a violation, and whether a release occurred as a result of past management before or after the present owner held the property. In other words, it might undercut the objectives of developing protective remedies and avoiding wasteful disputes over ancillary issues. In such cases, action on a CAMU (and more broadly on a cleanup) might be put on hold until all these issues were resolved.

EPA remains convinced that the discretionary kickout provision will be an important tool, especially where violations are clear, or there are indications of intentional noncompliance. However, for the reasons discussed above, the Agency has determined that making the discretionary kickout mandatory—and thereby removing any discretion from overseeing agencies—would be counterproductive by increasing the transaction costs associated with CAMUs, resulting in the potential delay of cleanups, and, in some cases, precluding the most effective remedy for a site. Instead, the Agency continues to believe that the Regional Administrator should have the flexibility to consider both the significance of the violation at issue and other site-specific factors (see discussion of site-specific factors, below) when making a determination as to whether to exercise the discretionary kickout provision.

The Agency is also not persuaded that the language of the discretionary kickout provision needs to be changed in order to accommodate more stringent state approaches. Under RCRA section 3009, states are not restricted from establishing state regulations that are more stringent than the federal RCRA Subtitle C regulations. This would include state provisions to restrict additional wastes from being placed in CAMUs and provisions to establish additional circumstances under which wastes that would otherwise be CAMU-eligible may not be placed in a CAMU.

Other commenters questioned the need for the discretionary kickout provision and expressed concern over its implementation. One group of commenters expressed the view that the discretionary kickout provision could have untoward effects on cleanups, and that other mechanisms and incentives exist that would adequately promote compliance with RCRA Subtitle C standards (e.g., enforcement action against the violations). This group also suggested that if the discretionary kickout provision is retained: (1) It should be limited in all cases to situations where noncompliance "likely contributed to the release of the waste" and, in the case of LDR requirements, it should be limited to instances of

[14] Indeed, as discussed in the proposal, EPA generally would not exercise its discretion to disallow placement of CAMU-eligible wastes in a CAMU when the entity applying for the CAMU is not the same as or affiliated with the entity that mishandled the waste (65 FR 51089, August 22, 2000).

noncompliance with the prohibition against actual land disposal without required treatment (i.e., not to the other related requirements of 40 CFR part 268); (2) the Agency should designate additional illustrative factors that Regional Administrators should consider when deciding whether to exercise the kickout, including "(i) whether the violation was a substantial factor that likely contributed to the release of the waste, (ii) the impact or likely impact of the release in comparison to other releases that may have contributed to the need for cleanup, and (iii) whether the violation was intentional;" and (3) the Agency should establish a fair and responsible process to ensure that discretionary kickout decisions are properly made by overseeing agencies.

The Agency understands that most facility owners/operators are conscientious and are making their best efforts to understand and comply with applicable environmental requirements; however, the Agency is not persuaded that the discretionary kickout provision should be eliminated on that basis. EPA agrees that other mechanisms—e.g., enforcement mechanisms—also promote compliance, but the Agency continues to believe that the discretionary kickout provision is important to ensure that facilities do not benefit inappropriately from non-compliance. As discussed above, the Agency continues to believe that the discretionary kickout provision represents a reasonable balance between facilitating cleanups with CAMUs and maintaining incentives for waste minimization and proper waste management in the first instance. The discretionary kickout provision will play an important role in maintaining that balance because it provides a significant incentive to owners/operators to manage as-generated hazardous waste properly. A facility owner/operator who understands that the Regional Administrator may deny, at his or her discretion, placement of otherwise CAMU-eligible waste in a CAMU based on relevant noncompliance may focus more closely on safe management of the waste in the first place.

The Agency is also not persuaded that the discretionary kickout provision should be changed to limit its application, in the case of LDRs and design standards, to situations where the noncompliance "specifically contributed to the release of the wastes." As discussed in the proposal, the Agency singled out LDRs and unit design requirements in the discretionary kickout provision because they are fundamental RCRA Subtitle C requirements aimed at preventing or minimizing releases of hazardous waste (65 FR 51088, August 22, 2000). They are also provisions from which CAMUs may provide relief. EPA appreciates that commenters would prefer for the Agency to place less importance on violations of these key requirements, but commenters failed to address EPA's underlying assumption—that substantive violations of LDRs and unit design standards are the kinds of RCRA violations that are likely to lead to environmental contamination—and therefore the Agency is unpersuaded by their argument that the rule should not single out these requirements as a basis for the Regional Administrator to exercise the discretionary kickout.

EPA believes that it has already at least partially addressed the commenter's concern that the discretionary kickout provision would be exercised for non-germane violations of the land disposal restrictions or minimum technology requirements. The discretionary kickout provision, as written, focuses on the substantive requirements of the LDRs and unit design standards. The Agency notes that it specifically highlighted in the proposal that "unit design requirements" refers to substantive design standards, such as the tank design standards under 40 CFR 264.192 or the design requirements for waste piles under 40 CFR 264.251 and that maintenance requirements, such as the requirements that owners/operators inspect tanks under 40 CFR 264.195, are not "unit design requirements" and thus would be addressed under the phrase "or that non-compliance with the other applicable RCRA requirements likely contributed to the release of the waste." (65 FR 51088, August 22, 2000) Similarly, the element of the discretionary kickout provision related to the LDR requirements is limited, as proposed, to noncompliance with applicable "land disposal *treatment* standards" (emphasis added). The Agency believes that this clearly refers to land disposal without required treatment. Therefore, EPA has already focused the discretionary kickout provision on the aspects of LDR requirements and unit design standards that are most likely to be related to environmental releases.

The Agency does believe that it is reasonable to expect the Regional Administrator to consider a number of factors when making decisions about whether and how to apply the discretionary kickout provision. As discussed in the proposal, the Agency emphasizes that it does not intend to exercise its discretionary kickout authority in every instance of noncompliance with LDR treatment requirements or substantive unit design requirements. The Agency expects the Regional Administrator to consider, as appropriate, the significance of the violation at issue, whether it was intentional,[15] facility owner/operator has a history of violations, the extent to which it likely contributed to the release of the waste, and the likely management approach for waste excluded from placement in a CAMU, among other factors, when applying the discretionary kickout provision.

The Agency also agrees that a fair and responsible process should be used to make decisions about applying the discretionary kickout provision; however, the Agency does not agree that it is necessary to include a specific process in today's rulemaking. Decisions to apply the discretionary kickout provision will be made in the context of CAMU approvals, using the CAMU approval process, which relies on existing administrative procedures (e.g., permitting procedures) augmented by CAMU-specific requirements (i.e., public notice and opportunity for comment, as discussed later in today's rulemaking) to review and make decisions about CAMU applications. Therefore, decisions about application of the discretionary kickout provision are subject to review in accordance with available administrative and judicial review procedures.

D. Information Submission (40 CFR 264.552(d))

To implement the more specific requirements for identifying wastes eligible for management in a CAMU (discussed above), EPA also proposed to define more specifically the types of information that owners/operators must submit to enable the Regional Administrator to designate a CAMU. For wastes proposed for placement in a CAMU, the Agency proposed that owners/operators must submit information, unless not reasonably available, on (1) the origin of the waste and how it was subsequently managed

[15] This is not to say, of course, that an intent to violate RCRA has to be present where the kickout is exercised. As EPA stated in the preamble to the proposed rule, "EPA does not want the CAMU to create any incentives for non-compliance, whether intentional to take advantage of alternate requirements in the CAMU rule, or as result of careless management practices (which could, by example, thereby encourage others to ignore applicable requirements." 65 FR 51088. EPA does believe, however, that intent may be an issue appropriate for the RA to take into account when deciding whether to exercise the kickout (for example, in a situation where the facility intentionally mismanaged waste to take advantage of the flexibility in the CAMU rule).

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(including a description of the timing and circumstances surrounding the disposal and/or release), (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release, and (3) whether the waste was subject to the land disposal requirements of 40 CFR part 268 at the time of disposal and/or release.

In addition to general comments on the information requirements, the Agency specifically requested comment on an alternative approach to information on LDRs. Specifically, the Agency asked whether it should require facility owners/operators to submit information on whether "the disposal and/or release of the waste occurred before or after the LDR requirements of part 268 of this chapter were in effect for the associated listing" rather than whether wastes were "subject to the land disposal restriction requirements."

The Agency is promulgating the information requirement on waste origin and management, the information requirement on whether wastes were listed or identified as hazardous at the time of disposal and/or release, and the standard that information be provided "unless not reasonably available" as proposed. EPA received considerable comment on the "reasonably available" standard. These comments are discussed later in this section. EPA did not receive comments specifically on the other two terms. After evaluating comments received on the issue, the Agency has chosen to finalize its alternative approach to the information requirement on LDR requirements, as discussed below.

The Agency believes that requiring facility owner/operators to submit factual information on the dates of waste disposal and/or release relative to the effective dates of LDR requirements will be more efficient than expecting owners/operators to make determinations of whether wastes were "subject to" LDR requirements. Determinations of whether wastes are "subject to" LDR requirements can be complex (for example, as one commenter pointed out, the question might arise as to whether a waste was "prohibited" or "restricted" under the land disposal restrictions, and it was not clear how a facility owner should answer the "subject to" question based on the answer). In contrast, facility owners/operators can easily compare the timing of waste disposal/release to the effective dates for LDR requirements (these effective dates are published by the Agency in 40 CFR part 268, Appendix VII—Effective Dates of Surface Disposal Wastes Regulated in the LDRs) and, using this information, the Agency can make any necessary judgments about whether wastes were subject to LDR requirements at the time of disposal or release. Commenters who addressed this issue supported the alternate approach to providing information on LDRs.

In finalizing the alternate approach to information on LDRs, EPA is making a minor clarifying change to the language discussed in the proposal. The alternative language for 40 CFR 264.552(d)(2) discussed in the proposal would have required facility owners/operators to provide information on whether "the disposal and/or release of the waste occurred before or after the land disposal restriction requirements of part 268 of this chapter were in effect for the *associated listing*" (emphasis added). By referring explicitly to "the associated listing," this language does not address information requirements for characteristic wastes (although, obviously, for characteristic waste, EPA would expect information on the timing of the disposal and/or release compared to the effective date of the LDRs for the associated characteristic). To address this imprecision, EPA has revised the language of the final regulation so that it clearly covers both listed and characteristic wastes. Under the new language, facility owners/operators must submit information (unless not reasonably available) on whether "the disposal and/or release * * * occurred before or after the land disposal restrictions * * * were in effect for the *waste listing or characteristic*" (emphasis added).

The specific information now required under 40 CFR 264.552(d)(1) though (3) covers the circumstances surrounding the origin and subsequent management of wastes proposed for placement in CAMUs. The information required (unless not reasonably available) under 40 CFR 264.552(d)(1) covers waste origins and past management because that is the information the Agency needs to distinguish between as-generated and cleanup wastes and, thus, to make decisions about CAMU eligibility. The Regional Administrator would use this information for the purposes of deciding whether the waste is CAMU-eligible, including whether such waste is one for which kickout should be considered. The information required (unless not reasonably available) under 40 CFR 264.552(d)(2) and (3) speaks to whether wastes proposed for placement in a CAMU were subject to RCRA Subtitle C requirements and whether one key requirement—the land disposal restrictions—was in effect at the time of release or disposal. The Agency will use this information to make decisions about whether, because of previous mismanagement, the discretionary kickout provision should be considered.

The Agency emphasizes that the purpose of the new information submission requirements is to give Regional Administrators and the public information necessary for these specific decisions. Given the importance of restricting CAMUs to management of legitimately CAMU-eligible waste and the need for overseeing agencies to properly exercise the discretionary kickout provision, this information is important. At the same time, the Agency expects that information collection will be focused on what is needed to allow informed decisions to be made and will avoid the collection of unnecessary information. This is consistent with the Agency's general guidance on collection of information in cleanup situations. (See, e.g., 61 FR 19944, May 1, 1996, where EPA observed that "poorly focused investigations can become a drain on time and resources and, in some cases, unnecessarily delay remedial actions" and encouraged program implementers and facility owners/operators to use a variety of mechanisms to focus site investigation activities.)

EPA emphasizes that, in general, facility owners/operators will already have the information required by 40 CFR 264.552(d)(1) through (3) prior to requesting approval of a CAMU. Where a CAMU is proposed for a RCRA treatment, storage or disposal facility, information on the origin and historical management of wastes, and on the sources and causes of contamination, will routinely be available in permit applications, RCRA Facility Assessments, and RCRA Facility Investigations. This information can also be found in similar documents prepared under other cleanup programs (e.g., preliminary assessments and site investigations under the federal Superfund program or remedial assessments under state programs). Other cleanup documents, such as remedial work plans, engineering reports, and analyses of remedial alternatives, also typically include information about the waste origin and historical management. Therefore, EPA does not believe that providing this information will be burdensome or will require a special exercise in information development. Commenters agreed.

As discussed in the proposal, if information meeting the requirements of 40 CFR 264.552(d)(1) through (3) has been submitted to the Agency in the past and it remains timely and accurate, owners/operators can simply identify

the information in this past submittal. EPA generally would not expect owners/operators to resubmit information that has been provided previously (65 FR 51089, August 22, 2000). Where information required under 40 CFR 264.552(e)(1) through (3) is not reasonably available, facility owners/operators can fulfill these requirements by informing EPA of the extent of their knowledge about waste origin and history. (See discussion of the "reasonably available" standard, below.) As discussed in the proposal, EPA recognizes that there will be situations where information on the origins of contamination or the past management of waste will simply not be reasonably available. For example, there will be situations where contamination cannot be linked with specific waste management activities historically associated with a facility (e.g., characteristically hazardous soil not associated with any hazardous waste management unit). In such cases, facility owners/operators must provide what they know. If the information required by 40 CFR 264.552(d)(1) through (3) is not reasonably available, they are not required to submit it (see discussion at 65 FR 51090, August 22, 2000).

Also as discussed in the proposal, when information submitted in response to the requirements of 40 CFR 264.552(d)(1) through (3) is already in the Agency's possession, or information brought to the Regional Administrator's attention by citizens raises significant concerns about waste eligibility or past waste management practices, the Agency expects the Regional Administrator should, where appropriate, seek additional, reasonably available, information regarding waste history beyond that initially submitted pursuant to § 264.552(d), in order to make properly informed decisions about CAMU eligibility and the use of the discretionary kickout provision (65 FR 51090, August 22, 2000). Facility owners/operators and overseeing agencies often engage in a series of back-and-forth discussions, information exchanges, and requests for additional information throughout the CAMU-application process. While sometimes necessary, these exchanges, of course, should be focused on the information needed for the decision at hand (e.g., for decisions about whether waste is CAMU eligible) and should avoid the collection of information not necessary to inform or support the decision in question.

1. "Unless Not Reasonably Available" Standard

As explained above, the information specified in 40 CFR 264.552(1) through (3) is required "unless not reasonably available." Under this standard facility owners/operators must make a good faith effort to gather and provide information meeting the requirements. Also as explained above, the Agency believes that most owners/operators will already have the information required by 40 CFR 264.552(d)(1) through (3) as part of their general facility records or in site investigation reports, cleanup work plans, and other documents. In instances where this is not the case, the Agency expects that facility owners/operators will be able to gather the information from existing site- and waste-specific records. As discussed in the 1998 Phase IV LDR rule establishing treatment standards for contaminated soil, such site- and waste-specific records generally include manifests; vouchers; bills of lading; sales and inventory records; sampling and analysis reports; accident, spill investigation, and inspection reports; enforcement orders; and permits (63 FR 28619, May 26, 1998). Relevant information might also be obtained by talking with current and, in some cases, former employees, particularly where written documentation is absent.

The Agency received a number of comments on the "reasonably available" standard. In particular, some commenters were concerned with EPA's reference, in the proposal, to discussions with former employees (65 FR 51090, August 22, 2000). These commenters were concerned that the Agency might expect all facility owners/operators to interview former employees as part of a good faith effort to meet the "reasonably available" standard and that this expectation was not, in fact, reasonable. The Agency does not expect facility owners/operators to have to interview former employees in order to meet the "reasonably available" standard, except in unusual circumstances. The Agency also agrees with commenters that, in general, it is not reasonable to expect facility owners/operators routinely to contact former employees who might have knowledge relevant to meeting the new information submission requirements, solely to meet these requirements. Rather, the Agency expects that contacting former employees will likely not be necessary, because, as discussed above, facility owners/operators will already have information sufficient to meet the 40 CFR 264.552(d)(1) through (3) requirements. Where that is not the case, contact with former employees themselves would be subject to the same "reasonably available" standard. As discussed above, if the information required by 40 CFR 264.552(1) through (3) is not reasonably available, facility owners/operators do not have to provide it. At the same time, the Agency rejects the notion that it is categorically "not reasonable" to contact former employees. For example, it might be reasonable in a particular case for a facility owner/operator to contact a former plant environmental manager with a known address (or one that can be readily located) if that person had information about waste origin or past management that was not readily available through other means.

In response to one commenter, EPA also clarifies that, when the Agency asks for additional information under § 264.552(1)–(3), beyond what was submitted in a facility's initial CAMU application, the request would be limited to information that is "reasonably available." In other words, EPA's authority would be limited to the same standard that pertains to information in the original submission.

2. Application of New CAMU Information Submission Requirements to P- and U-Listed Wastes

In the proposal, the Agency clarified application of the new, more specific information requirements in 40 CFR 264.552(d) to commercial chemical products. Because there is often the potential for confusion around commercial chemical products and because, as discussed above, EPA is promulgating the alternate approach to information on LDRs, the Agency discusses the issue again here. For commercial chemical products, 40 CFR 264.552(d)(2) requires that facility owners state whether the listing associated with the commercial chemical product was in effect at the time the commercial chemical product was disposed of or released. EPA has changed the language from the proposal (as discussed above), so the discussion of previous language dealing with commercial chemical products in the proposal preamble (65 FR 51090) is no longer relevant. Under the approach to 40 CFR 264.552(d)(3) promulgated today, for commercial chemical products facility owners/operators must indicate whether the disposal or release took place before or after the effective date of the prohibition for the relevant P or U listing.[16]

[16] As explained in the proposal, commercial chemical products are not "wastes" until they are

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3. Interpretation of General CAMU Information Submission Performance Standard

The more specific information requirements promulgated today do not eliminate the general information submission performance standard established in the 1993 CAMU rule. Under the general performance standard, owners/operators must provide information sufficient to enable Regional Administrators to designate CAMUs "in accordance with the criteria in 40 CFR 264.552." As discussed in the proposal, despite the Agency's use of the term "criteria" to refer to the requirements in 40 CFR 264.552(c) in the preamble to the 1993 CAMU rule (58 FR 8671, February 16, 1993), EPA interprets the general information performance standard to require information relating to all aspects of implementation of the CAMU regulations (65 FR 51090, August 22, 2000). This includes, for example, implementation factors that are not specifically referenced in 40 CFR 264.552(c), such as information relating to the inclusion of a regulated unit in a CAMU under 40 CFR 264.552(b).

E. Liquids in CAMUs (40 CFR 264.552(a)(3))

EPA proposed a general prohibition against the placement of liquids in CAMUs, with an exception allowing placement of liquids when they facilitate the remedy selected for the waste being managed in the CAMU. As discussed in the proposal, EPA believes that the general basis for prohibiting the placement of liquids in landfills—that liquids fundamentally increase the risk of future releases from the landfill—also applies to CAMUs. The Agency does not believe that, in general, placement of liquids enhances the performance of long-term disposal units (65 FR 51091, August 22, 2000). Commenters generally supported this approach, and the Agency is promulgating these provisions as proposed.

EPA is promulgating four provisions related to the placement of liquids in CAMUs. First, at 40 CFR 264.552(a)(3)(i), the Agency prohibits the placement of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU except where placement of such wastes facilitates the remedy selected for the waste. Second, at 40 CFR 264.552(a)(3)(ii), EPA prohibits placement of containers holding free liquids in CAMUs, unless such placement facilitates the remedy selected for the waste.

Third, at 40 CFR 264.552(a)(3)(iii), EPA prohibits placement of any liquid that is not a hazardous waste in a CAMU unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to 40 CFR 264.314(f). Under this demonstration, the Regional Administrator must determine that the only reasonable alternative to placement in a CAMU is placement in a landfill or unlined surface impoundment that contains (or may be reasonably anticipated to contain) hazardous waste and that placement in a CAMU will not present a risk of contamination of any underground source of drinking water, as defined in 40 CFR 144.3. Fourth, EPA specifies that the absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with 40 CFR 264.314(c) and that sorbents used to treat free liquids in CAMUs must meet the requirements of 40 CFR 264.314(e).

These changes essentially extend the prohibitions currently in place on placement of liquids in hazardous waste landfills to CAMUs, with the exception that placement of liquids in CAMUs is allowed if it facilitates the remedy for the waste being managed in a CAMU. As discussed in the proposal, the Agency took this approach for two reasons. First, the general basis for prohibiting placement of liquids in hazardous waste landfills—that liquids fundamentally increase the risk of future releases from the landfill—generally applies to CAMUs. Therefore, the prohibitions on placement of liquids in hazardous waste landfills should apply equally to CAMUs. Second, unlike hazardous waste landfills, which are used for permanent disposal, CAMUs are used to implement a range of remedies, including treatment remedies (65 FR 51091, August 22, 2000). In some cases, remedies may involve placement of liquid CAMU-eligible waste for treatment or other management in a CAMU (e.g., dewatering of CAMU-eligible wastes containing liquids or placement of hazardous ground water in CAMU for infiltration); in other cases, placement of liquids in a CAMU may promote the remedy for non-liquid CAMU-eligible wastes (e.g., when liquids are used for soil washing or to promote certain types of bioremediation). To ensure that these legitimate remedial practices could continue, EPA proposed (and is today finalizing) an exemption to the general prohibition on placement of liquids in CAMUs when such placement facilitates the remedy.

Commenters supported the general prohibition on placement of liquids in CAMUs and the exemption for placement of liquids when such placement would facilitate the remedy, and the Agency is finalizing these provisions as proposed.

In the proposal (65 FR 51091), EPA specifically identified the use of water or leachate for dust suppression while a CAMU is under construction or operating as a reasonable cleanup waste management approach, allowable as facilitating "the remedy selected for the waste." One commenter expressed concern that the regulatory standard, in fact, would not cover this situation. The commenter requested that EPA amend the proposed language so that it allowed placement of liquids where they facilitate "the performance of the CAMU" as well as "the remedy selected for the waste." EPA appreciates the commenter's concern, but it does not believe a regulatory change is necessary. In EPA's view, if placement of a liquid facilitates the performance of a CAMU used to manage the waste as part of a cleanup remedy, then clearly it also facilities the remedy selected for the waste.

EPA also recognizes that it may have confused the issue by identifying dust suppression as a use of liquids that would not be subject to the liquids prohibition, because it would facilitate the performance of the remedy. In fact, EPA would not consider use of non-hazardous liquids for dust suppression or similar purposes to be subject to the prohibition in the first place. EPA has long maintained that use of nonhazardous liquids in landfills for dust suppression, watering vegetative caps, and similar purposes is not prohibited by the statutory or regulatory prohibition of liquids in landfills. Because the standard promulgated today simply repeats the statutory prohibition on nonhazardous liquid (with the added condition that placement of liquids would be allowed if it "facilitates the remedy for the waste"), it similarly allows application of nonhazardous liquid wastes for such uses.[17]

F. Design Standards for CAMUs

Today EPA is finalizing, essentially as proposed, three amendments to the design standards for CAMUs in which wastes will remain in place after closure. First, owners/operators must meet minimum liner requirements for new, replacement, or laterally expanded CAMUs. Second, owners/operators must meet minimum design criteria for CAMU caps. Third, owners/operators must notify and take corrective action, as necessary to protect human health and the environment, for any releases from CAMUs to ground water. Today's amendments also establish opportunities for owners/operators to propose, and Regional Administrators to approve, alternate liner and cap designs to accommodate site- and waste-specific circumstances.

EPA proposed these additional design standards as reasonable for CAMUs in which wastes will remain in place after closure and are appropriately consistent with current standards for the design, operation, and closure of other units used for long-term disposal. Given the site-specific nature of cleanups and the need to maintain the incentives for remediation that the CAMU rule provides, the Agency also proposed to allow alternate liner and cap designs, under certain circumstances (65 FR 51091–51095, August 22, 2000).

Comments on the proposal to make the CAMU design standards more specific were mixed. Some commenters supported the new design standards. A number of commenters opposed the Agency's decision to develop minimum national design standards for CAMUs. These commenters suggested that the new minimum national design standards would slow future cleanups using CAMUs or would lead owners/operators to cap cleanup wastes in place rather than pursue more aggressive remediation. Some commenters suggested that EPA abandon the minimum design standards for CAMUs altogether, or express the standards as guidance rather than in regulation. Others suggested that standards for CAMU design should be modeled after the risk reduction goals of the National Contingency Plan or otherwise based on a risk management finding.

As discussed throughout the proposal and today's rulemaking, EPA is attempting in these amendments to strike a reasonable balance between predictability in CAMU design and operation and flexibility to use CAMUs over a range of site- and waste-specific conditions. EPA believes that appropriate minimum national design standards are a key element of this balance.

The Agency is not persuaded that minimum national design standards will significantly affect the kinds of remedies selected at cleanup sites (since CAMUs approved to date generally meet these standards). Furthermore, EPA does not have evidence (and commenters did not provide specific evidence) that today's rule would increase the likelihood that facility owners/operators would cap wastes in place rather than pursuing more aggressive remedial approaches. As discussed in the proposal, the majority of new, replacement or laterally expanded CAMUs approved under the 1993 CAMU rule already include liners and capping requirements that would comply with the standards promulgated today. Where liners or caps were not used, there were legitimate reasons related to the cleanup for that decision, and the design generally would have been allowed under today's rule. (65 FR 51092, August 22, 2000; Corrective Action Management Unit (CAMU) Site Background Document, 2001). Nor did commenters provide evidence that today's rule would significantly slow approval of CAMUs. EPA designed the processes in today's rule to mirror those actually used today in CAMU approval, and therefore it does not believe today's rule would significantly add to existing processes. For these reasons, EPA sees no reason why specifying minimum standards, generally consistent with practice to date, would slow down or deter cleanups. Instead, these standards will provide for important predictability in CAMU decision-making and for transparency to the public.

The Agency also does not agree that minimum national design standards should be replaced by a risk-reduction performance goal. While EPA agrees that site-specific factors (including site-specific factors related to risk) are of central importance in cleanup and CAMU determinations, the Agency is not persuaded that a performance standard based solely on risk would ensure the minimum baseline of protection or provide the predictability in CAMU design and operation that the Agency and many stakeholders desire. As discussed above, site- and waste-specific factors are appropriately accommodated in the opportunities for owners/operators to propose and the Regional Administrator to approve alternate CAMU design standards. Commenters provided no specific examples of where a legitimate cleanup would not be accommodated by this approach.

On balance, most commenters who addressed the minimum design standards for CAMUs, including commenters who opposed or questioned the need for such standards, recognized that EPA had to balance a range of concerns in developing the CAMU amendments. Overall, these commenters thought that, if EPA was persuaded that the design standards for CAMUs should be more specific, the approach of establishing minimum national design standards for CAMUs with opportunities for Regional Administrators to approve alternate standards, and the specific standards and approaches proposed, were reasonable. The Agency appreciates this support, and is finalizing the minimum design standards as discussed below.

1. Liner Standard

In the 1993 CAMU rule, the fourth general decision criterion for designation of CAMUs (40 CFR 264.552(c)(4)) specifies that "areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize further releases to the extent practicable." As discussed in the proposal, EPA intended this standard, in conjunction with the closure and post-closure provisions for CAMUs in 40 CFR 264.552(e), to ensure that long-term controls adequate to protect human health and the environment are imposed for CAMUs in which wastes will remain for long-term disposal (65 FR 51091, August 22, 2000).

In practice, pursuant to the 1993 CAMU rule, Regional Administrators have required liners on a site-specific basis for most new, replacement, or laterally expanded CAMUs. The 1993 CAMU rule, however, does not have explicit minimum liner requirements for CAMUs in which wastes will remain after closure. Some stakeholders expressed the concern that the 1993

discarded or intended to be discarded by being abandoned (or used as fuels or in a manner constituting disposal when these are not their normal manner of use). 40 CFR 261.33. Therefore the associated LDR requirement would not apply to the product as it was spilled, even if it was spilled after the effective date of the LDR prohibition. Thus, the spill would not constitute a land ban violation triggering consideration of the discretionary kickout provision. For the sake of consistency, however, EPA concludes that it will be easier for facility owners/operators to indicate (if the information is reasonably available) whether a release of a commercial chemical product occurred before or after the date of the land disposal prohibition for the relevant P or U listing.

[17] See, e.g., the April 30, 1986 guidance, "Restrictions on Placement on Nonhazardous Liquids in Hazardous Waste Landfills" OSWER Directive 9487.01–1A(85), in which EPA states, "uses of nonhazardous liquids that are necessary to meet other regulatory or safety requirements, including EPA-approved corrective actions are not considered to be subject to the restrictions under RCRA section 3004(c)(3). . . . For this reason, uses such as the following should not be subject to the restrictions under section 3004(c)(3): dust suppression, fire fighting, intermittent watering of vegetative cover, moistening of a clay cap to prevent cracking or offgassing, washing of landfill equipment, and herbicide or pesticide treatment to control certain organisms that could break a cap or liner. In addition, EPA believes that the use of liquids for approved corrective action purposes (e.g., landfill washing or soil flushing to reduce hazardous waste concentrations) does not require an owner or operator to apply for an exemption under section 3004(c)(3)."

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CAMU rule standard, while implemented appropriately in practice to date, was too open-ended and would benefit from increased detail to better ensure that liners are designed adequately and used where appropriate. This approach would also make CAMU design more predictable for the public. In response to these concerns, EPA proposed and is today finalizing a minimum national liner standard for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. To ensure the flexibility needed for cleanups, the Agency also proposed and is today finalizing opportunities for owners/operators to propose and Regional Administrators to approve alternate liner standards. Comments on the standards are addressed in the standard-specific sections, below.

a. Standard Liner Design (40 CFR 264.552(e)(3)(i))

Today's minimum national CAMU liner standard at 40 CFR 264.552(e)(3)(i) is modeled after the uniform design standard for municipal solid waste landfills currently in place at 40 CFR 258.40(a)(2). Under today's CAMU standard, all new, replacement, or laterally expanded CAMUs in which wastes will remain after closure must be constructed with a composite liner and a leachate collection system (unless the Regional Administrator approves an alternate site-specific standard). Today's standard requires a composite liner consisting of two components: (1) An upper flexible membrane liner with a minimum thickness of 30-mil, and (2) a lower component consisting of at least two feet of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$cm/sec. The rule requires the upper flexible membrane liner component to be installed in direct and uniform contact with the compacted soil component. Flexible membrane liners consisting of high density polyethylene must be at least 60-mil thick. The leachate collection system must be constructed to maintain less than a 30-cm depth of leachate over the liner. Commenters who addressed the specific minimum national liner design requirements generally supported the requirements as reasonable, and the Agency is finalizing these provisions as proposed.

The Agency believes that these standards are appropriate minimum national standards for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure, because they will, among other things, be protective across a wide range of waste and site conditions. They also reflect what has generally been EPA and state practice at CAMUs to date. (See CAMU Site Background Document.) Indeed, commenters who addressed the specific liner and leachate collection standards proposed generally agreed that the RCRA Subtitle D standards were appropriate for CAMUs. In addition, by using the standards for municipal solid waste landfills as a guide, the Agency avoids the implementation issues associated with promulgation of a new standard. Guidance on application of the standards for municipal solid waste landfills is already available. See, for example, Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991 and EPA's 1993 guidance, Solid Waste Disposal Facility Criteria: Technical Manual (EPA 530–R–93–017, November 1993), available on the Internet at *www.epa.gov/epaoswer/non-hw/muncpl/landfill/tecnman/intro.pdf*.

The new minimum national design standards (and alternate standards, discussed below) apply only to new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. As discussed in the proposal, the terms "new," "replacement," or "laterally expanded" should be interpreted consistently with guidance EPA has developed for "new," "replacement," and "laterally expanded" landfills and surface impoundments in the context of the liner and leak detection requirements of RCRA section 3004(o) (65 FR 51092, August 22, 2000). Unlike hazardous waste landfills and surface impoundments addressed by section 3004(o), however, as discussed above, "existing" and "new" CAMUs are not defined by a specific date. For CAMUs, "new" has its common meaning. That is, a CAMU built as part of a remedial action would be "new." An existing unit that a Regional Administrator designates as a CAMU is not "new" and would not be subject to the design standards promulgated today. Over the years, EPA has issued guidance on application of the terms "new," "replacement," and "laterally expanded." The Agency has placed key elements of this guidance in the docket for today's rulemaking.

One commenter expressed the concern that the proposal did not adequately describe "existing" units. Citing a 1985 EPA memorandum on application of the section 3004(o) standards,[18] the commenter argued that relying on this interpretation of "existing" would eliminate virtually all nonhazardous solid waste management units at corrective action facilities.

The guidance cited was not placed in the docket for the proposal and does not define the Agency's approach for determining which units are "existing" for purposes of today's CAMU design standards. RCRA section 3004(o) established minimum liner and leachate detection standards for hazardous waste landfills and surface impoundments built after November 8, 1984, the effective date of HSWA. Therefore, EPA guidance at the time defined "new" in relation to the specific effective date of the section 3004(o) requirements—i.e., units built after that effective date were considered "new." In referencing guidance on the terms "new," "replacement," and "laterally expanded" in the proposal, the Agency was referring to its general principles for application of these terms, not to its determinations of specific effective dates of section 3004(o) requirements for specific types of units. To respond directly, EPA clarifies that, for the purposes of the CAMU design standards promulgated today, solid waste management units that are in existence at the time of a remedial action are not considered "new" units if they are designated as a CAMU.

b. Alternate Liner Designs (40 CFR 264.552(e)(3)(ii))

EPA proposed two provisions that would allow Regional Administrators to approve alternate liner designs for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. Under certain circumstances, such designs may include alternatives that do not include a liner or leachate collection system.

Under 40 CFR 264.552(e)(3)(ii)(A), owners/operators may propose and Regional Administrators may approve alternate liner and leachate collection system designs based on a finding that alternate design and operating practices, together with location characteristics, will prevent migration of hazardous constituents into ground or surface water at least as effectively as the standard liner and leachate collection system. As discussed in the proposal, this standard is patterned on the statutory alternate liner standard for hazardous waste land disposal units at RCRA section (o)(2), promulgated by EPA at 40 CFR 264.301(d) (65 FR 51092, August 22, 2000). This allows for alternate liner and leachate collection system designs for hazardous waste landfills provided the alternate design, in conjunction with location characteristics, will achieve technical performance equal to the standard liner and leachate collection system design. As discussed in the proposal (65 FR 51092), EPA expects this provision would provide flexibility for designs that take into account local factors, including state design protocols and availability of construction materials.

Several commenters addressed the proposal to include "location characteristics" as a consideration in determining whether an alternate liner design would prevent migration as effectively as the standard liner and leachate collection system. Commenters who addressed this issue agreed that allowing Regional Administrators to consider location characteristics when approving alternate liner designs is appropriate. Commenters suggested that location characteristics that might influence technical performance of alternate liner and leachate collection system designs could include climate, geology, hydrology, and soil chemistry at a site. The Agency agrees that these considerations are among the location characteristics that might be considered.

Commenters also suggested that the chemical and physical characteristics of specific wastes that will remain in a CAMU after closure should be considered "location characteristics" that may influence the technical performance of alternate liner and leachate collection designs. The Agency does not agree with this view. At the same time, it is reasonable for Regional Administrators to consider the physical and chemical characteristics of waste, such as a waste form's potential for leaching hazardous constituents, in comparing whether an alternate liner system will prevent migration as effectively as the standard liner and leachate collection system.

Under 40 CFR 264.552(e)(3)(ii)(B) owners/operators may propose and Regional Administrators may approve alternate approaches to liner and leachate collection systems for new, replacement, and laterally expanded CAMUs in which wastes will remain after closure, where a CAMU is "to be established in an area with significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals." Commenters generally support this approach, and EPA is finalizing these provisions as proposed.

As discussed in the proposal, EPA believes that it may be appropriate to approve CAMU designs that do not include a liner or leachate collection system under certain circumstances (65 FR 51093, August 22, 2000). For example, at some highly contaminated facilities, CAMUs may be located in areas of significant contamination is pervasive throughout the subsurface. At such facilities, remedial approaches may involve long-term ground water pump-and-treat systems, or subsurface soil contamination may be expected to remain in place as a source of ground water contamination. At these types of facilities, a liner and leachate collection system to reduce migration of hazardous constituents into an already significantly contaminated subsurface likely would not meaningfully increase protection of human health or the environment and would not be the best use of cleanup resources. When approving alternate designs that do not include a liner or leachate collection system, the Regional Administrator must find that potential migration of hazardous constituents from the CAMU will be consistent with the remedial goals for the facility (for example, not cause cleanup goals to be exceeded at locations where potential receptors would be located) (see 65 FR 51093).

The Agency also believes that the alternate approaches to liners and leachate collection systems allowed under 40 CFR 264.552(e)(3)(ii)(B) will be helpful when CAMUs are used for land treatment. As discussed in the proposal, land treatment generally does not involve the use of liners because it typically requires that rainwater or introduced liquids percolate through the waste and the underlying soil column (65 FR 51093, August 22, 2000). Also, as discussed in the proposal, EPA expects that many CAMUs used for land treatment will be existing units (see discussion above) and will not be subject to the minimum liner standards established today. In situations where an existing unit is not used, the Agency believes that land treatment CAMUs will be established in areas of significant contamination and thus will be accommodated by this provision allowing approval of CAMUs without liners or leachate collection systems. The Agency specifically requested comment on whether its proposed approach to alternate liners and leachate collection systems adequately addressed land treatment. Commenters who addressed this issue believed that land treatment was adequately accommodated.

2. Cap Standard

Under the 1993 CAMU rule at 40 CFR 264.552(e)(4)(ii)(B), owners/operators are required to cap CAMUs in which waste will remain in place after closure. Similar to the 1993 approach to liner and leachate collection systems (discussed above), the 1993 CAMU rule did not have explicit minimum cap design criteria for CAMUs. Some stakeholders expressed the concern that the 1993 CAMU rule standard was too open-ended and would benefit from increased detail to better ensure that caps are properly designed. In response to these concerns, EPA proposed and is today finalizing a minimum national cap design standard for CAMUs in which wastes will remain after closure. To maintain the flexibility necessary to encourage cleanups, the Agency also proposed, and is today finalizing, opportunities for owners/operators to propose and Regional Administrators to approve alternate cap standards.

The proposed cap standard for CAMUs would have required caps for all CAMUs where waste remained in place after closure. However, the Agency also specifically requested comment on situations where treatment of waste in a CAMU would reduce concentrations of hazardous constituents to health-based levels or below. The Agency expressed the concern that, although "waste" may remain in such units after closure, capping would not be needed to protect humans or the environment, because constituent concentrations would already be at or below health-based levels. Therefore, requiring capping would be an unnecessary and inappropriate use of cleanup resources. EPA offered specific alternative regulatory language to address this issue in the proposal; under the alternate language, caps would be required only where waste remained in place at the closed CAMU "above remedial levels or goals applicable to the site" (65 FR 51094, August 22, 2000.)

Commenters who addressed this issue agreed that caps would not be appropriate where concentrations of hazardous constituents are at or below health-based levels. In response to these comments, the Agency is modifying the standard for CAMU caps as discussed in the proposal. The final standard now reads, in pertinent part: "At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU with constituent concentrations above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to

[18] The guidance document cited by the commenter is Applicability of the HSWA Minimum Technology Requirements Respecting Liners and Leachate Collection Systems, April 1, 1985, available in the RCRA permit policy compendium as document 9480.1985(01).

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meet the following performance criteria * * * " As discussed later in today's rulemaking, this approach is consistent with the Agency's approach to situations where concentrations of hazardous constituents are at or below health-based levels when wastes are first placed in a CAMU. (See discussion of 40 CFR 264.552(g).)

a. Standard Cap Design (40 CFR 264.552(e)(6)(iv))

Today's minimum national cap design standard for CAMUs in which wastes will remain after closure is modeled after the cap design standards for hazardous waste landfills at 40 CFR 264.310(a). Under today's rule, unless Regional Administrators approve alternate site-specific standards, CAMU caps must be designed and constructed to meet five performance criteria. First, the cap must provide long-term minimization of migration of liquids through the closed CAMU. Second, the cap must function with minimum maintenance. Third, the cap must promote drainage and minimize erosion or abrasion of the cover. Fourth, the cap must accommodate settling and subsidence so that the integrity of the cover is maintained. Fifth, the cap must have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. As discussed earlier in this preamble (see section III.F, above), comments on the overarching concept of minimum national design standards for CAMUs were mixed. However, as with the standards for liners discussed above, commenters who specifically addressed the proposed minimum national standards for CAMU caps generally supported the proposed standards as reasonable. With the change discussed above, the Agency is finalizing the cap standard as proposed.

As discussed in the proposal, although the performance criteria for CAMU caps are modeled after the criteria for hazardous waste landfills, the Agency believes that CAMU caps will not generally be constructed like the caps required under RCRA Subtitle C for hazardous waste landfills (65 FR 51094, August 22, 2000). This is because the standard for permeability of the cap is set in relationship to the liner—the cap must be of equal or lower permeability than the liner. The minimum national standards for CAMU liners promulgated today apply only to new, replacement, or laterally expanded CAMUs and are modeled after the liner standards for municipal disposal facilities regulated under Subtitle D, not the standards for hazardous waste landfills regulated under Subtitle C. Given the range of liner approaches that may be taken for CAMUs under today's regulations (e.g., existing units where the new minimum national liner standards do not apply; new, replacement, or laterally expanded CAMUs with Subtitle D type liners; new, replacement, or laterally expanded CAMUs with alternate liner designs), the Agency expects a similar range of approaches to the design and construction of CAMU caps.

Also as discussed in the proposal, the minimum permeability standard for CAMU caps may be met in a variety of ways including with systems that are designed to use the water uptake capability of vegetation (65 FR 51094, August 22, 2000). As a result, it will not always be necessary for the construction materials of the cap to match the construction materials of the liner (if a liner is present) to meet the permeability standard. For more discussion on the range of cap designs that might meet the minimum permeability standard, see the preamble discussion to the July 1997 revised standards for municipal solid waste landfills (62 FR 40710, July 29, 1997).

b. Alternate Cap Designs (40 CFR 264.552(e)(6)(iv)(B))

EPA proposed and is today finalizing a provision allowing Regional Administrators to approve alternate cap designs. Under this provision, owners/operators may propose and Regional Administrators may approve alternate cap designs when such designs facilitate treatment or the performance of the CAMU. As discussed in the proposal, this provision might be used, for example, to promote continued biotreatment of wastes remaining in CAMUs after closure by allowing infiltration of rainwater through the cap into the wastes (65 FR 51094, August 22, 2000). Alternative designs might also be appropriate for caps that rely on evapotranspiration through plants to prevent infiltration of liquids. Commenters who addressed this issue generally supported the Agency's approach to alternate cap standards, and the Agency is finalizing these provisions as proposed.

3. Releases to Ground Water (40 CFR 264.552(e)(5)(iii))

The 1993 CAMU rule included at 40 CFR 264.552(e)(5) a provision for monitoring existing releases to ground water and identifying any new releases from wastes remaining in CAMUs after closure. The 1993 rule, however, did not include provisions that specifically require owners/operators to notify Regional Administrators of releases to ground water from CAMUs or to take corrective action for such releases. As discussed in the proposal, EPA expected that such requirements would be imposed on a site-specific basis under the general CAMU designation criteria at 40 CFR 264.552(c)(2) and other authorities (65 FR 51095, August 22, 2000). However, because protection from future releases is a critical aspect of CAMUs (or any hazardous waste management unit), the Agency proposed and is today finalizing an express requirement for "notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to ground water" from CAMUs. Commenters who addressed the issue generally supported this approach.

As discussed in the proposal, the new requirement for notification and corrective action as necessary to protect human health and the environment does not change the more general performance standards for CAMUs. Consistent with the Agency's policies on ground water remediation,[19] the Agency believes that decisions about the details of ground water monitoring programs, including monitoring and reporting (i.e., "notification") frequencies for CAMUs and, if necessary, decisions about corrective action for releases to ground water from CAMUs, should be made in the context of overall site remedial approaches (65 FR 51095, August 22, 2000). For example, as discussed in the proposal, monitoring and reporting frequencies are typically established on a site-specific basis in sampling and analysis plans that reflect site-specific conditions. These conditions may include the extent of existing contamination, distance to nearest ground water well, ground water flow rates, and statistical sampling protocols.

The Agency expects that notification requirements, will similarly be determined on a site-specific basis in the context of these types of site-specific plans. Like the standard for ground water monitoring established in the 1993 CAMU rule, the standard for notification and corrective action for releases to ground water established today—"as necessary to protect human health and the environment"—is a performance standard. The Agency expects that more detailed

[19] See, e.g., Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities, Advance Notice of Proposed Rulemaking at 61 FR 19432, 19461 (May 1, 1996) and Presumptive Response Strategy and Ex Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites, EPA 540/R–96/023, October, 1996.

specifications or performance goals for ground water monitoring, notification, and corrective action will be included in CAMU permits or orders based on site-specific information and conditions.

G. Treatment Requirements (40 CFR 264.552(e)(4))

Today's rulemaking establishes a new framework for treatment of wastes placed in CAMUs. Under this new framework, "principal hazardous constituents," or "PHCs," must meet either minimum national treatment standards adapted from the LDR Phase IV soil treatment standards or, in specific circumstances, site-specific treatment standards based on defined adjustment factors. In the 1993 CAMU rule, EPA did not establish specific minimum treatment requirements. Instead, the Agency emphasized the importance of treatment in a performance standard, requiring that CAMUs "enable the use, when appropriate, of treatment technologies * * * to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility or volume of wastes that will remain in place after closure." The new framework for treatment of wastes placed in CAMUs and the specific treatment standards and adjustment factors established today address concerns that the 1993 CAMU rule did not contain explicit requirements for treatment (or treatment standards) and that this deficiency might, in some cases, result in insufficient treatment of higher-risk wastes.[20] As EPA explained in the proposal (65 FR 51084), the Agency believes that minimum national standards will have significant benefits. Such standards can make the CAMU process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse.

Treatment requirements for CAMU-eligible wastes and, more generally, the application of RCRA LDR treatment standards to wastes managed during cleanups are, perhaps, the most difficult issues addressed by the CAMU amendments. The Agency's position on these issues was clearly articulated in the proposal and, because these are important and longstanding issues, bears repeating:

In developing today's treatment requirements, EPA considered what approaches to treatment would be appropriate in the context of the primary purpose of the CAMU rule, i.e., in the context of reducing disincentives to cleanup. During cleanup it is not always straightforward, possible, or reasonable to require owners/operators to excavate or remove contaminated material, because of the costs and practical issues associated with potential application of the RCRA requirements for as-generated wastes to excavated material and because there is often a legal option to leave material in place. This is particularly an issue with respect to application of the LDR treatment standards for as-generated wastes to wastes managed for implementing cleanup. Part of the benefit of the LDR treatment standards for as-generated wastes is that they create an incentive to generate less waste. At cleanup sites, contamination has already occurred, i.e., "wastes" have already been generated, and the incentive to generate less waste tends to work against the goal of cleanup, which is often to maximize the amount of waste managed in order to more aggressively manage and, where appropriate, remove the threats it poses. For a fuller discussion of this issue, see the May 26, 1998, LDR Phase IV rule establishing the soil treatment standards, at 63 FR 28556, 28603. All of the Agency's attempts to address these issues have been designed to promote more aggressive cleanups, that is, to promote cleanups that rely more heavily on excavation and management and include an appropriate degree of treatment. EPA believes that, in general, these types of cleanup result in more permanent remedies. (65 FR 51095, August 22, 2000).

Comments on EPA's proposal to establish treatment requirements, and specific treatment standards and adjustment factors for wastes placed in CAMUs were mixed. As with the CAMU design and operating standards discussed above, some commenters supported the proposed establishment of a baseline treatment requirement for wastes placed in CAMUs. Other commenters opposed the new treatment requirements, arguing that they would slow future cleanups or recreate disincentives to excavating and managing wastes and contaminated materials during cleanup. Some commenters suggested that EPA eliminate the treatment requirements altogether or, if treatment must be required, provide that treatment requirements be developed on a site-specific basis considering site risks.

The Agency does not agree that proposed CAMU treatment standards should be eliminated. As discussed throughout the proposal and today's rulemaking, EPA is attempting in these amendments to strike a reasonable balance between predictability for CAMU operation and the flexibility necessary to use CAMUs over a range of site- and waste-specific conditions. EPA believes that appropriate minimum treatment requirements for wastes that are placed in CAMUs are an important element of this balance.

The Agency does not believe that today's treatment requirements will deter cleanups. As discussed in the proposal, EPA evaluated CAMUs approved under the 1993 rule against today's treatment requirements and concluded that existing CAMU remedies involving treatment would still require treatment under today's requirements and that, similarly, existing CAMU remedies that do not involve treatment would not require treatment under today's requirements (65 FR 51096, August 22, 2000 and CAMU Background Document). Likewise, the amount of treatment required in specific instances is not expected to change. Nothing in the comments on the proposal (nor in the Agency's update of its analysis for today's rule) counters these conclusions. As explained earlier, EPA also believes these standards will have significant benefits in terms of consistency, predictability and reduction in the likelihood of mistakes or abuse.

While the Agency agrees that site-specific factors, including site-specific factors related to risk, are appropriate (under certain circumstances) to consider in adjusting treatment requirements, the Agency is not persuaded that a risk-reduction standard alone would provide the predictability in decision making about treatment of wastes placed in CAMUs that the Agency and many stakeholders desire. It is EPA's conclusion, based on its evaluation of CAMUs approved under the current risk-based CAMU standards (and the lack of comments on that evaluation), that site- and waste-specific factors, including factors related to risk, are appropriately accommodated in the treatment standard adjustments, as discussed later in today's rulemaking. The Agency also notes that, while some commenters supported a completely risk-based approach, most supported the proposed treatment requirements as reasonable.

For these reasons, EPA is promulgating the treatment requirements essentially as proposed and as discussed below.[21]

[20] As discussed in the proposal, the Agency does not believe the 1993 CAMU rule has resulted in insufficient treatment in practice. Treatment has been used at more than 70% of CAMUs approved under the 1993 rule. EPA continues to believe that CAMU remedies that require treatment under the 1993 rule would likewise require treatment under today's rulemaking; similarly, EPA believes that CAMU remedies that, under the 1993 rule do not require treatment where treatment was not required under the 1993 rule would properly not require treatment under today's rulemaking (65 FR 51096, August 22, 2000).

[21] EPA suggests that readers interested in more specific insight into how EPA intends to apply the treatment conditions of today's rule may wish to

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1. Identification of "Principal Hazardous Constituents" (PHCs) (40 CFR 264.552(e)(4)(i) and (ii))

The Agency proposed that the treatment standards established today would apply only to "principal hazardous constituents," or "PHCs." Commenters supported this approach, and the Agency is finalizing the PHC approach with one clarifying change. As discussed below, the Agency is amending the proposed regulatory language defining PHCs based on ground water risks to emphasize that the general performance standards for PHCs apply to the selection of these PHCs as well.

Under today's rulemaking, PHCs are defined as those constituents that "pose a risk to human health or the environment that is substantially higher than the cleanup levels or goals at the site." The Regional Administrator selects PHCs from those constituents that would otherwise be subject to treatment under the RCRA LDR treatment standards for as-generated waste. As proposed, EPA is requiring that "in general, the Regional Administrator will designate as principal hazardous constituents: carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose."

Today's rule also requires that: "The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than the cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions." Note that, in response to comment and to be consistent with the description of designation of "other constituents" as PHCs (below), the Agency has added the phrase "when risks to human health and the environment are substantially higher than the cleanup levels or goals for the site."

Finally, as proposed, the Agency is requiring that "The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site."

Each of the PHC criteria are discussed more completely in the sections below.

a. Approach to Identifying PHCs

During the site characterization efforts associated with cleanup, owners/operators and overseeing agencies typically identify which wastes are hazardous, which materials warrant remediation or removal, and which constituents will be used to set site cleanup levels. This process results in the identification of what are generally known as the "risk drivers" at a site. As discussed in the proposal, EPA continues to expect that the site characterization and evaluation processes that lead to remedy selection and (in some cases) to the decision to consider use of a CAMU will reliably identify PHCs. The Agency emphasizes that it views identification of PHCs as a normal part of well-designed cleanup processes, not a separate analysis. Commenters who addressed this issue agreed that the site characterization typically carried out during well-designed cleanups would generally provide the information necessary to support a PHC determination and that, therefore, a separate analysis should not be needed.

As discussed in the proposal, the designation of PHCs is made in relation to site cleanup levels or goals—that is, PHCs are those constituents that pose a risk to human health and the environment substantially higher than cleanup levels identified as protective of human health and the environment for the site (65 FR 51097, August 22, 2000). EPA took this approach based on a view that it is appropriate to designate PHCs in the context of the cleanup levels or goals set for a site, because in situations where PHCs are designated, the CAMU will generally be a permanent disposal unit.[22] Site cleanup levels or goals typically take into account such factors as reasonably anticipated land use (e.g., residential, industrial, or agricultural) and exposure pathways of concern. Therefore, the Agency believes it is appropriate to designate PHCs in the context of these factors, because the PHC concept is meant to distinguish higher-level risks relative to the risk-reduction goals for a particular site. The Agency did not propose generic national concentrations for PHC determinations, since generic concentrations would almost certainly not reflect remedial activities at individual sites.

As discussed in the proposal, in making determinations of whether PHCs are present in CAMU-eligible wastes, overseeing agencies and owners/operators cannot use pre-treatment of the waste to avoid a PHC determination that would otherwise be made. That is, PHC determinations and the related application of today's treatment standards and adjustment factors should be made based on constituent concentrations in CAMU-eligible waste as the waste is initially managed, not after pre-treatment or other activity intended to reduce constituent concentrations to below PHC levels.

In determining whether PHCs are present, based on risks from ingestion and inhalation, the Regional Administrator to will assume that an individual is directly exposed to the constituents in the CAMU-eligible waste, consistent with the exposure assumptions used to develop site-specific cleanup levels or goals, and to consider reasonably anticipated land use (which could be residential or non-residential). Fate and transport will only be considered for assessing the migration of constituents from waste into ground water or air, for the purpose of determining the risk posed by direct exposure to the ground water or inhalation. Some commenters questioned this approach, recommending that PHC determinations reflect plausible exposures that take into account the protection from exposure provided by a CAMU; these commenters argued that, where the engineering design of a CAMU makes direct contact implausible, EPA should not assume that the exposure might occur. EPA is not persuaded that designation of PHCs should reflect protection from exposure afforded by the engineering of a CAMU, at least when ingestion and inhalation are of concern (see discussion of waste-to-ground water pathway below). As discussed in the proposal, one of the reasons for specifying treatment requirements for CAMUs and for using the PHC approach is to protect against the potential for direct exposure to higher risk constituents in the event a CAMU fails (65 FR 51098, August 22, 2000). (Commenters did not challenge the possibility of such a failure occurring.) Therefore, in PHC determinations, fate and transport can be used only for assessing the potential migration of constituents from CAMU-eligible waste into ground water or air for the purpose of determining the risk posed by direct exposure to the constituents in ground water or by inhalation at points where receptors are located.

Finally, as discussed in the proposal, the Regional Administrator does not have to wait to make site-specific PHC determinations until activities associated with development and approval of site-specific cleanup levels or goals have been completed. In many cases, it will be possible and appropriate for Regional Administrators to designate site-specific PHCs based on standard cleanup values (see discussion of the use of standard tables, later in today's rulemaking) and/or information available at the time CAMU determinations are made. The Agency believes that, as a general rule, if there is enough information at a site to make a CAMU determination, there will be enough information to identify PHCs in wastes proposed for management in the CAMU.

b. Constituents from Which PHCs Are Drawn (40 CFR 264.552(e)(4)(ii))

The set of constituents from which Regional Administrators might designate PHCs is the set of constituents that, absent a CAMU, would be subject to the LDR treatment requirements. That is, for listed wastes, the "regulated hazardous constituents" for the relevant listing found in 40 CFR 268.40, Treatment Standards for Hazardous Wastes); for characteristic hazardous waste, all "underlying hazardous constituents" (40 CFR 268.2(c), § 268.40(e)); and for contaminated soil, "constituents subject to treatment" (40 CFR 268.49(d)). As discussed in the proposal, the Agency believes that it is appropriate to limit PHCs to constituents that would otherwise be subject to the LDRs, because one of the primary objectives of the CAMU rule is to provide relief from application of the LDR requirements to wastes managed for implementing cleanup (65 FR 51096, August 22, 2000). Commenters supported this approach.

c. Carcinogenic and Non-Carcinogenic PHCs

Under today's rule, the Regional Administrator will generally identify carcinogenic constituents as PHCs when they pose a direct risk from inhalation or ingestion that is at or above a 10^{-3} risk level. As discussed in the proposal, the Agency believes that risks at or above 10^{-3} will generally be "substantially higher than the cleanup levels or goals at the site" given that EPA (and most state cleanup programs) generally sets site-specific cleanup levels or goals for carcinogenic constituents within the risk range of 10^{-4} to 10^{-6}, with 10^{-6} used as a point of departure.[23]

In the rare cases where site cleanup levels or goals are established at the upper end of the risk range (i.e., at 10^{-4} risk levels), constituents with concentrations at or above the 10^{-3} risk level should generally be identified as PHCs, because, in general, a level of risk an order of magnitude above the upper end of the risk range would typically be considered a risk substantially higher than site cleanup levels or goals. The Regional Administrator would look closely at concentrations above but near the 10^{-3} risk level in light of assumptions that underlie the risk estimate (e.g., waste characteristics and site conditions) prior to determining whether the particular constituents were principal hazardous constituents. For example, if a constituent posed risks close to a 10^{-3} level, based on conservative default assumptions (e.g., promulgated state default tables or generic assumptions used to determine bioavailability), and the underlying assumptions were not applicable at the site in question, the Regional Administrator could determine that the constituents should not be designated as principal hazardous waste constituents.

Today's rulemaking also provides that the Regional Administrator will generally designate non-carcinogenic constituents as PHCs when they pose a risk from inhalation or ingestion that is greater than or equal to ten times the hazard quotient[24] for the constituent (i.e., an order of magnitude or greater over the reference dose). Hazard quotients are used as a measure of unacceptable exposure to constituents that produce toxic endpoints other than cancer. As discussed in the proposal, the Agency believes that risks ten times the hazard quotient or greater will generally be "substantially higher than the cleanup levels or goals for the site," given that EPA typically sets cleanup goals for individual non-carcinogens at a hazard quotient of one or less. (65 FR 51098, August 22, 2000).

Commenters supported this approach.

Carcinogenic and non-carcinogenic constituents may be identified as PHCs either through a site-specific risk assessment or by a comparison of site concentrations to standard values. As discussed in the proposal, many state (and federal) cleanup programs publish standard tables with cleanup levels based on risks from inhalation or ingestion under various exposure scenarios (65 FR 51097, August 22, 2000). The Regional Administrator may use these tables, where appropriate, to assist in making PHC determinations by extrapolating 10^{-3} risk levels from the standard 10^{-6} table values. While commenters generally agreed with the Agency that such tables could be useful in designating PHCs, some commenters were concerned that the Agency intended the Regional Administrator to require use of standard tables (and, therefore, standard exposure assumptions and assumptions about other factors) to the exclusion of more site-specific approaches. The Agency emphasizes that it is not requiring the use of standard tables to identify PHCs and that either standard tables or site-specific approaches may be used. The Agency recognizes that, in many cases, standard tables are developed using conservative exposure and other assumptions and that these assumptions may not match actual site-specific conditions. As discussed earlier in today's rulemaking, the Agency expects PHCs to be identified as a normal part of the site characterization and evaluation activities associated with well-designed cleanups.

Today's rule, like the proposal, requires that the Regional Administrator "generally" identify hazardous constituents as PHCs if constituent concentrations exceed the specified risk levels for carcinogens and non-carcinogens discussed above. However, as discussed in the proposal, there may be site-specific situations where these risk levels are not appropriate for determining PHCs (65 FR 51097, August 22, 2000). The Agency emphasizes that PHC determinations are made on a site-specific basis in the context of site cleanup levels or goals. In situations where the Regional Administrator decides not to identify constituents that meet the above descriptions as PHCs, the Agency expects them to document and explain the decision in the supporting materials associated with the CAMU determination.

consult EPA's Corrective Action Management Unit (CAMU) Site Background Document (October 2001), which is available in the docket to today's rule.

[22] When CAMUs are not intended to be a permanent feature, the Agency believes they will generally be implemented through the provisions for storage and/or treatment only CAMUs, discussed in section I of today's preamble. In this case, the treatment standards would not apply to wastes within the CAMU, since their removal would be required at closure.

[23] For a full discussion of the use of the risk range in setting site-specific cleanup levels or goals in the RCRA corrective action program, see the Corrective Action ANPR (61 FR 19432, 19450, May 1, 1996).

[24] The hazard quotient is the estimated site-specific exposure (dose) over a specified period divided by the reference dose for the constituent in question over similar exposure conditions. A reference dose is an estimate of a daily exposure to the general population of humans, including sensitive sub-populations, that is not likely to have an appreciable risk of adverse effects during a lifetime. The magnitude of an adverse effect is not always related directly to the magnitude of the hazard quotient. The Agency's Integrated Risk Information System (IRIS) database has a more detailed description of reference doses and hazard quotients, see *www.epa.gov/iris*.

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d. PHCs Identified Based on the Waste-to-Ground Water Pathway (40 CFR 264.552(e)(4)(i)(B))

In addition to designating PHCs based on carcinogenic and non-carcinogenic risks to humans from direct exposure through inhalation and ingestion, Regional Administrators will, where appropriate, designate PHCs based on the risk posed by the potential migration of constituents from wastes to ground water. As discussed in the proposal, the Agency expects that in making such determinations Regional Administrators will consider site-specific factors that could affect constituent migration. These site-specific factors could include factors such as the location of the CAMU, the nature of the wastes placed in the CAMU (e.g., mobility), how the waste placed in the CAMU will be managed (e.g., the type of CAMU that will be used and potential rates of liquid percolation into and out of the unit), factors that affect transport of constituents to ground water, and beneficial uses of ground water. As discussed in the proposal, in situations where constituents in soil pose a significant potential threat through the ground water pathway (e.g., based on fate and transport modeling) and the soil is excavated for disposal in a CAMU, the Regional Administrator should strongly consider whether to designate such constituents as PHCs if they are not otherwise designated as PHCs under the approach for direct human exposure to carcinogens and non-carcinogens discussed above (65 FR 51098, August 22, 2000).

The approach to designating PHCs based on risks from the waste-to-ground-water pathway is different from the approach taken to designating PHCs based on direct exposure through ingestion. It does not specify a generally appropriate risk level that would typically define PHCs, and it allows for consideration of additional factors that potentially affect exposure. As discussed in the proposal, EPA believes that this approach is appropriate because, among other things, of the highly site-specific nature of the waste-to-ground-water pathway (65 FR 51098, August 22, 2000). Commenters supported this conclusion.

While commenters who addressed the issue generally supported EPA's proposed approach to identification of PHCs based on the waste-to-ground-water pathway, some commenters expressed concern about the specific regulatory language. Commenters argued that, because the regulatory language describing identification of PHCs based on the waste-to-ground-water pathway did not include the overall PHC standard of "risks substantially higher than site cleanup levels or goals," the provision could be read as standardless. The Agency believes that the overreaching standard for identifying PHCs at 40 CFR 264.552(e)(4)(i) is clear; PHCs are constituents that, on a site-specific basis, "pose a risk substantially higher than the cleanup levels or goals for the site." However, to eliminate any potential confusion over the PHC standard as it applies to the waste-to-ground-water pathway, the Agency has modified from the proposal the regulatory language describing the waste-to-ground-water pathway to reiterate the overall standard for identification of PHCs. The new language reads, "The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health or the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than the cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions." This revised regulatory language is consistent with the comparable regulatory language addressing the designation of PHCs based on other risks (see 40 CFR 264.552(e)(4)(i)(C) and discussion below).

e. Designation of Other PHCs (40 CFR 264.552(e)(4)(i)(C))

As discussed above, EPA is today establishing a general framework for site-specific identification of PHCs that emphasizes risks to humans from direct ingestion and inhalation and highlights the waste-to-ground-water pathway. The Agency believes that this framework will result in the identification of constituents that pose risks "substantially higher" than the cleanup levels or goals for a site. The Agency also believes that this approach will screen out constituents posing lower risks, and CAMU-eligible wastes with lower concentrations of higher-risk constituents. However, there may be other types of site-specific circumstances where constituents pose risks that are "substantially higher than the cleanup levels or goals for the site," for example, based on risk scenarios not otherwise addressed in the other PHC determinations.

The Regional Administrator might, on a site-specific basis, for example, designate PHCs based on ecological concerns, potential risks posed by dermal contact, or constituent mobility. PHCs might be designated at risk levels higher or lower than the standard risk levels discussed for carcinogens and non-carcinogens above. For example, the Regional Administrator could determine that a highly mobile constituent posing a risk of 10^{-4} is a principal hazardous constituent at a site where protection of ground water is an especially significant issue. To emphasize that PHCs may be designated based on all appropriate site-specific considerations, EPA proposed and is today finalizing a provision that "the Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals for the site."

Some commenters expressed concern that, by emphasizing the Regional Administrator's ability to designate PHCs based on risks other than those posed by direct exposure to humans through inhalation or ingestion or from the waste-to-ground-water pathway, the Agency would render moot the general guidelines for establishing PHCs. The Agency disagrees that this result will occur. As discussed throughout today's rulemaking, during cleanups overseeing agencies encounter a diversity of site-specific conditions. While EPA believes that considering risks posed by direct exposure to humans through inhalation and ingestion as well as risks posed by migration of contamination from wastes to ground water will most often result in appropriate identification of PHCs (because these are the issues that typically drive cleanup decisions), the Agency cannot rule out identification of PHCs based on other site-specific risk factors. As with other PHC designations, these designations would be made only when constituents pose risks that are "substantially higher than the cleanup levels or goals for the site." The Agency would expect PHCs based on factors other than direct exposure to humans through ingestion or inhalation or risks from the waste-to-ground-water pathway would be considered where such factors were among the risk drivers for cleanup at a site, and contaminants were identified at levels substantially higher than cleanup goals.. On the other hand, the Agency does not expect that PHCs will be designated based on ecological risks unless ecological risk concerns are among the drivers for site cleanup levels or goals.

f. Relationship of PHCs to "Principal Threats" Guidance

In the proposal, the Agency discussed its approach to principal hazardous constituents and to treatment requirements in relation to the Agency's general and longstanding preference for treatment of higher-risk wastes during cleanup (65 FR 51098, August 22, 2000). The Agency observed that the PHC concept is consistent with the "principal threats" approach used in the CERCLA and RCRA corrective action programs to express the Agency's general preference for treatment of higher-risk wastes. Commenters were concerned that this presentation of the PHC approach as consistent with the "principal threats" approach could be misleading. These commenters noted that the principal threats approach is often used to inform choices between various remedial approaches and to determine which wastes are likely to need active management, while the PHC approach is meant to identify higher-risk constituents in CAMU-eligible wastes that would, absent the CAMU regulations, be subject to RCRA LDR treatment standards. Furthermore, these commenters noted that the PHC concept applies after a decision has been made to excavate and manage cleanup wastes.

The Agency agrees that the PHC approach and the "principal threats" concept apply at different points in cleanup processes and are used for different purposes. EPA's statements on this matter were only meant to observe that, like the "principal threats" concept, the PHC approach focuses on the higher-risk subset of wastes under consideration. For a fuller discussion of the application of the "principal threats" concept during RCRA corrective action, see Corrective Action ANPR (61 FR 19432, 19448 (May 1, 1996)). Also see "A Guide to Principal Threats and Low Level Threat Waste," OSWER Directive 9380.3–06FS, November 1991.

2. Treatment Standards (40 CFR 264.552(e)(4)(iii))

Under today's new framework for treatment of wastes placed in CAMUs, principal hazardous constituents must be treated to achieve minimum national treatment standards or, in certain circumstances, site-specific treatment standards developed through application of a number of adjustment factors. As discussed in the proposal, the Agency believes that this approach—minimum national standards with appropriate opportunities for site-specific adjustments—represents a reasonable balance by setting specific treatment standards while preserving the flexibility needed to address a range of site- and waste-specific circumstances. The Agency also believes that the CAMU treatment standards and specified adjustment factors will provide a valuable benchmark against which the public can review treatment options under consideration. Details of the minimum national treatment standards and application of the adjustment factors are discussed below.

a. Minimum National Treatment Standards (40 CFR 264.552(e)(4)(iv))

(1) Standard of 90% Capped by 10XUTS

EPA proposed and is today finalizing a minimum national treatment standard of ninety (90) percent reduction in concentrations of PHCs unless such treatment would result in concentrations that are less than ten (10) times the relevant Universal Treatment Standard (UTS), in which case treatment would be capped at ten times the universal treatment standard. This standard was established for hazardous contaminated soil in the LDR Phase IV rule and is commonly referred to as "90% capped by 10xUTS." For details on implementation of this standard, see the description in the LDR Phase IV rule, 40 CFR 268.49, 63 FR 28556, 28605 (May 26, 1998). Universal treatment standards are identified in 40 CFR 268.48, Universal Treatment Standards Table.

Today's treatment standard applies to both soil and non-soil wastes, including sludges and debris. Debris subject to today's treatment standards (i.e., CAMU-eligible debris that contain PHCs) must be treated using the current LDR treatment standards for hazardous debris at 40 CFR 264.45 or the CAMU treatment standards, whichever the Regional Administrator deems appropriate. Consistent with the approach it took for hazardous contaminated soils in the Phase IV rule, EPA is also requiring that wastes subject to today's treatment standards (i.e., CAMU-eligible waste that contains PHCs) that exhibit the hazardous characteristics of ignitability, corrosivity, or reactivity must be treated to eliminate such characteristics.

As discussed in the proposal, the Agency believes the 90% capped by 10xUTS treatment standard is appropriate and will generally result in meaningful treatment (65 FR 51100, August 22, 2000). Reducing concentrations of PHCs by 90% is a substantial reduction and, in cases where treatment is capped at 10xUTS, this is a relatively small increment over constituent concentrations established at the limits of the performance of available technology (i.e., the UTS levels that are established based on a Best Demonstrated Available Technology standard). The Agency continues to believe that the 90% capped by 10xUTS treatment standard is generally achievable in soils using technologies other than combustion. Because soil contaminated with hazardous waste is generally more difficult to treat than hazardous waste alone, the Agency believes that today's treatment standards can likewise be achieved in non-soil CAMU-eligible wastes using technologies other than combustion. For a fuller discussion of the achievability of the soil treatment standards, see the LDR Phase IV rule at 63 FR 28556, 28603 (May 26, 1998). As discussed in the proposal, in situations where today's treatment standards cannot be achieved using non-combustion technologies, the Agency has established an adjustment factor allowing Regional Administrators to adjust treatment standards based on a finding that the minimum national treatment standard is technically impracticable. The "technical impracticability" adjustment factor is discussed later in today's rulemaking.

Some commenters generally supported treatment standards, but opposed the 90% capped by 10xUTS standard as excessively stringent. They argued that this standard would likely limit the usefulness of CAMUs and therefore provide a significant disincentive to cleanups. The Agency does not believe that the 90% capped by 10xUTS standard is excessively stringent. As discussed in the proposal, the Agency's goal in designing today's treatment standards was that the treatment standards should provide a meaningful level of treatment and be achievable, but should not be so onerous as to discourage cleanup (65 FR 51100, August 22, 2000). The Agency also sought to ensure that today's treatment standards would not require treatment to levels significantly below those that are necessary to protect human health and the environment. The Agency continues to believe that the 90% capped by 10xUTS treatment standard, with opportunities to adjust treatment standards on a site-specific basis using the adjustment factors, meets these goals.[25] Given the fact that

[25] The Agency notes that, as part of comments opposing the 90% capped by 10xUTS treatment standard, one commenter observed that while "the proposed regulations do allow for alternate treatment standards * * * departures from specific standard requirements are very often difficult to

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treatment applies only to principal hazardous constituents, the general achievability of the numerical standards, the availability of adjustment factors, and EPA's analysis that treatment in CAMUs under the previous standards meet those of today's rule, EPA is not persuaded that the minimum national treatment standard promulgated today will reinstate disincentives to cleanups.

Today's treatment standard apply to PHCs in CAMU-eligible wastes when such wastes will be placed in a CAMU for permanent disposal. EPA is not requiring that treatment standards be met prior to placement. Treatment may occur either before or after wastes are placed in a CAMU—as is appropriate given that CAMUs will often be used to facilitate remedies involving treatment. Commenters who addressed the issue supported this approach. In addition, EPA is not requiring treatment when wastes are placed in CAMUs used for storage and/or treatment only. Requirements for CAMUs that will be used for storage and/or treatment only are discussed later in today's rulemaking.

(2) Use of TCLP and Alternative Leach Tests

EPA proposed that the Toxicity Characteristic Leaching Procedure (TCLP) be used to determine compliance with the CAMU 90%/10xUTS treatment standard under § 264.552(e)(4)(iv)(B) and (C) for metals. As noted in the proposal, the TCLP has been used as a broadly applicable leach test for assessing the potential mobility of both organic and inorganic constituents under plausible, reasonable worst-case management conditions for solid waste. The TCLP has performed reliably in many applications, with a few exceptions, and the Agency continues to believe that it is an appropriate evaluative test for waste classification and treatment compliance. This is particularly so when industrial wastes might plausibly be co-disposed under conditions similar to those typically present in municipal solid waste landfills, and also particularly when wastes are tested and managed without regulatory oversight. Thus, the TCLP is a reasonable and appropriate test for both identifying and evaluating the treatment of wastes, and today's rule establishes the TCLP as the default test for determining compliance with the CAMU treatment requirements. Today's rule also provides Regional Administrators with the flexibility to use alternatives to the TCLP for CAMU compliance, in some cases.

EPA noted in the CAMU proposal (65 FR 51101) that hazardous remediation waste will not often be co-disposed of with municipal solid waste in CAMUs. (No commenters on the proposal disputed this conclusion.) Since the TCLP reflects some key leaching conditions likely to be present in municipal solid waste landfills, but not necessarily in CAMUs, EPA, suggested that it may not always be the most appropriate predictor of waste leaching behavior in CAMUs. In addition, the Agency stated that the circumstances associated with disposal at a CAMU site will be well defined and known (although conditions at CAMUs will vary from site to site, depending on the wastes disposed of there and any previous uses of the site). Thus, leaching tests that more closely reflect individual site conditions might, in some instances, be better suited than the TCLP to estimate the behavior of waste disposed of in a CAMU. EPA sought public comment in the proposal on the appropriateness of using leach tests other than the TCLP for determining compliance with the CAMU treatment standards for metals, when warranted by site conditions.

For the most part, commenters on this issue expressed skepticism about the universal relevance of the TCLP test for cleanups, and generally supported the use of alternatives to the TCLP when warranted by site conditions. Several commenters broadly supported the use of alternative tests, while others specifically pointed to the Synthetic Precipitation Leaching Procedure or SPLP (which simulates acid rain conditions, rather than conditions in a municipal solid waste landfill). One commenter, for example, argued that the TCLP, by virtue of its design, does not appropriately simulate leachability of metals under circumstances in which metal-bearing wastes are not co-disposed with municipal wastes. On the other hand, another commenter stated that EPA should retain the TCLP as the standard test, but, where the TCLP may not be appropriate for "unusual wastes," the Regional Administrator should be allowed to require the use of supplemental tests.

After reevaluating this issue in consideration of these comments, EPA concludes that the leaching conditions represented in the TCLP may not be present at many remediation sites, and that the TCLP will, therefore, not always be the most reliable test for predicting site-specific leaching behavior for waste disposed of at these sites. (See CAMU Site Background Document).[26] The TCLP anticipates general municipal solid waste landfill conditions (as reasonable, plausible worst-case management for waste), and is not tailored to reflect conditions of other waste management unit types or specific sites. It may, to some degree, either over- or under-predict leaching potential of some waste constituents at any particular site. For example, in the Agency's recent experience with monofilling of treated K088 waste (spent aluminum pot liners), the TCLP under-predicted arsenic leaching (see 62 FR 41005, July 31, 1997, and 62 FR 63458, December 1, 1997). On the other hand, some soils are less acidic than the TCLP (particularly in the western United States), and do not have the levels of acetic acid found in municipal solid waste landfills, and the TCLP might therefore over-predict leaching of some metals from these contaminated soils.[27] Because of these types of concerns, the Agency relied on other leach tests when waste was not being disposed of in municipal solid waste landfills in its recent rulemakings on inorganic chemicals and chlorinated aliphatics manufacturing wastes (see 65 FR 55695, September 14, 2000, and 65 FR 67100, November 8, 2000). EPA therefore concludes that, where a regulatory agency can specify a disposal site for remediation waste (such as a CAMU), and conditions at the specific cleanup site differ from those simulated by the TCLP, tests other than the TCLP that are tailored to reflect conditions at the site may be better suited to assess the likely leaching behavior of waste disposed of at that site (including in a CAMU).

Section 264.552(e)(4)(iv)(F) of today's final rule, therefore, provides the Regional Administrator the flexibility to specify alternative leach tests to determine compliance with the CAMU treatment requirements for metals (except where metals removal technologies are used, and compliance is based on total concentrations). Under today's rule, the Regional Administrator must find that an available alternative to the TCLP would "more accurately reflect the conditions at the site that affect leaching." Thus, the tests must better reflect site conditions, based on available site-specific information. Site-specific use of alternatives to the TCLP would most often be appropriate in cases where disposal conditions are known and differ from municipal solid waste landfill conditions, the waste will not be co-disposed with municipal solid waste (where the TCLP would more likely be appropriate), and there is an appropriate alternative test that more accurately reflects the individual site conditions. Where important factors affecting leaching are similar to municipal solid waste landfill conditions, the TCLP will likely be most appropriate even if there is no municipal solid waste co-disposed with the CAMU wastes. This may occur when acidic chemicals (particularly organic acids, such as phenols and cresols) are found in CAMU remediation wastes. The flexibility in today's rules, allowing the Regional Administrator to specify alternatives to the TCLP, could mean that either more or less treatment will be needed to meet the standard compared with evaluating treatment with the TCLP.

In determining that an alternative test was likely to better predict waste behavior at a selected disposal site, the Regional Administrator would be expected to consider site- and waste-specific factors affecting metals leaching. These might include disposal site and waste pH, anticipated rainfall infiltration of the site, characteristics of other waste co-disposed at the site, and the anticipated long-term structural integrity and porosity of wastes stabilized using cement or other pozzolonic treatment materials. Appropriate use of alternative tests might include testing over a range of pH values known to occur at the site, or adjusting liquid/solid ratios either in the test or mathematically after testing to estimate metals leaching rates and annual mass that would be leached. In the K088 monofilling case cited above, for example, performing a leaching test in the highly alkaline range (pH > 11) might well have identified the high leaching potential of arsenic from the treated waste under the actual site conditions at the disposal facility (leachate pH of 13), before high arsenic levels were detected in the landfill leachate. EPA emphasizes that these findings are site-specific.

Today's rule requires that an alternative leach test be "appropriate for use." Leach testing is currently an active research area.[28] While some alternatives to the TCLP exist today, other testing approaches may be developed into test protocols in the future. Ideally, an appropriate alternative leach test will have a defined test protocol that has been subjected to a peer review.[29] Tests that have been incorporated into EPA technical guidance, or used routinely by other federal agencies, or published by third-party technical accreditation organizations (such as ASTM or ANSI) may be appropriate. Of tests currently available, a plausible alternative for some sites may be the Synthetic Precipitation Leaching Procedure (SPLP; SW–846 Method 1312).[30] Other tests that rely on multiple pH values and that vary other test conditions to better reflect a range of possible site conditions are under development or have been adopted by European countries, including the Netherlands.[31] However, even for established tests, the relevance of the test to the particular site circumstances must be considered in selecting and using an alternative test at that site.

One commenter recommended that EPA discuss other leaching tests that could be applied to remediation wastes, and explicitly identify and recommend alternative types of leaching tests, or specify criteria for selection of leaching tests based on site-specific application criteria (e.g., waste type, environmental setting). This commenter urged EPA to develop a leaching test, or a series of leaching tests, that reflect site specific conditions. EPA has addressed this comment in the preceding paragraph, by identifying site and waste conditions that may affect metals leaching. EPA, however, is not at this time prepared to recommend a specific set of tests, given the evolving state of the science. EPA has been conducting a broad review of leach testing, including funding of research on waste leaching and leach testing, and will continue to monitor and participate in developments in this area and provide appropriate guidance as new information and testing approaches are developed and evaluated.

Another commenter appears to suggest that non-TCLP tests be used as supplemental to the TCLP for evaluating unusual wastes, rather than as an alternative to the TCLP. While this commenter clearly supports the use of TCLP as the default test for evaluating the effectiveness of treatment, it is unclear what conditions it believes warrant departure from the TCLP, except for the opinion that such departures would be "unusual."[32] The Agency disagrees that non-TCLP tests should only supplement the TCLP. Assuming that this is an accurate reading of this comment, the Agency disagrees that non-TCLP tests should only supplement the TCLP (that is, be used in addition to the TCLP), when the question is determining compliance with CAMU treatment requirements. Rather, the Agency believes that, in a situation (such as remediation) in which adequate administrative controls and knowledge of site and waste conditions supports it, the test most likely to be accurate for the particular waste under the identified conditions should be used. Because conditions vary from site-to-site, there is no one established test that will always be most accurate.

That being said, however, EPA notes that it is retaining the TCLP as the default test because some CAMU sites may have conditions similar to those simulated by the test (due to either the nature of the site contamination or where there is naturally acidic soil), and because the TCLP is well known and widely used for determining compliance with treatment requirements. The Agency has considerable experience with the TCLP in evaluating waste treatment over a number of years (which it does not have with possible alternative tests), and the Agency believes implementation and administration of CAMU remediations

support and defend, even when they are entirely appropriate." The Agency reiterates that it sees the minimum national treatment standards and site-specific treatment standards developed through application of the adjustment factors as equally available.

[26] For additional information on this issue, see Evanko and Dzombak, 1997, Remediation of Metals-Contaminated Soils and Groundwater, Technology Evaluation Report TE–97–01, Groundwater Remediation Technologies Analysis Center, Pittsburgh, PA.

[27] Particularly metal salts that are more soluble under acidic conditions, or which are soluble in acetate (both TCLP conditions), such as lead or mercury. On the other hand, some eastern U.S. soils are moderately acidic (pH 4.5–5.5) or highly acidic (pH 3.5–4.5), and most soils are buffered to stable pH values (Brady and Well, 1999).

[28] See, for example, van der Sloot, et al., 1997, *Harmonization of Leaching/Extraction Tests;* Garrabants and Kosson, 2000, *Use of a chelating agent to determine the metal availability for leaching from soils and wastes*, Waste Management 20, 155–165; Sanchez et al., 2000, *Environmental assessment of a cement-based solidified soil contaminated with lead*, Chemical Engineering Science 55, 113–128; Kosson, D.S., van der Sloot, H.A., Sanchez, F., and Garrabants, A.C. 2002, *An Integrated Framework for Evaluating Leaching in Waste Management and Utilization of Secondary Materials*, submitted for publication in Environmental Engineering Science, on 12/13/2001; and Sanchez, F., Kosson, D.S., Mattus, C.H., and Morris, M.I., 2001, *Use of a New Leach Testing Framework for Evaluating Alternative Treatment Processes for Mercury-Contaminated Mixed Waste (Hazardous and Radioactive)*, Vanderbilt University Department of Civil and Environmental Engineering, December 14, 2001.

[29] See the *EPA Peer Review Handbook*, EPA document number EPA 100–B–00–001, December 2000, or a review of similar rigor.

[30] EPA has used and recommended use of the SPLP in some instances where municipal solid waste co-disposal is not occurring or is not plausible because it addresses one concern about the TCLP in these situations, the pH of the leaching solution.

[31] See Dutch Availability Test, NEN 7341; NEN 7349; and ongoing work of the CEN (European Committee for Standardization) working group CEN/TC292/WG2.

[32] The Agency is not clear as to what "unusual" wastes are of concern to the commenter. Any metal-bearing waste treated with solidification/stabilization treatment may generate a high pH, so these wastes are not unusual and are, in fact, common.

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will be facilitated by establishing a default test, rather than requiring that a test be selected and supported in every CAMU decision.

Several commenters asked EPA to clarify that the Regional Administrator should define the testing approach for determining acceptable treatment at the onset of CAMU consideration, and that the approach should not be revised after treatment technologies have been selected or the CAMU approved. EPA expects that the Regional Administrator will approve specific leaching tests at the onset of CAMU designation, as part of the overall approach for determining acceptable treatment. At the same time, EPA cannot categorically say the testing approaches would never be changed after approval of the CAMU. For example, a change in testing approach might be warranted if the waste treatment method were changed, or if new site information unknown at the time of approval indicated that site conditions were somewhat different from what was originally believed. Commenters can be assured, however, that any changes to testing methods or other CAMU conditions would have to go through the appropriate procedural steps. In the case of permits, for example, EPA could only modify the permit only under certain defined circumstances, unless the change was requested by the permittee. See 40 CFR 270.41 and 270.42.

In allowing the Regional Administrator to approve alternatives to the TCLP, today's rule of course assumes of course that the Regional Administrator knows exactly how and where the CAMU-eligible waste will be disposed of—that is, the waste will be disposed of in a CAMU that he or she has approved. But, today's rule also includes an option that would allow the disposal of CAMU-eligible wastes in off-site hazardous waste landfills.[33] EPA expects that the TCLP would be used in these cases to measure compliance with treatment requirements, because the regulatory authority at the remediation site would not know the details of how the disposal site is managed or the local conditions at the site (indeed, in many cases, the regulator may not know which disposal site will eventually receive the waste—but only that the landfill must meet design standards for RCRA subtitle C landfills). Therefore, EPA believes that it will be generally unlikely that the Regional Administrator will be able to approve an alternative to the TCLP to measure treatment compliance before off-site disposal.

[33] For further discussion of this provision, see section K of today's preamble.

Nevertheless, EPA recognizes that there may be limited circumstances where the Regional Administrator knows, with complete assurance, where the waste is going and also knows the specific conditions at the receiving site. (For example, this might conceivably occur where the disposal sites were in the same state under the oversight of the same regulator.) In this case, EPA believes that it might be reasonable for the Regional Administrator to accept (or require) alternative tests to the TCLP to demonstrate treatment compliance. Therefore, EPA has not precluded this possibility by regulation, although it believes that the TCLP will almost always be the appropriate test for off-site disposal.[34]

The Agency reiterates that today's rule changes retain the TCLP as the presumptive test for evaluating compliance with the CAMU treatment requirements. Alternatives to the TCLP may be used only as determined to be appropriate (based on an assessment of waste and site conditions) by the Regional Administrator. The Agency believes that, given the degree of regulatory supervision of CAMU site remediations, it is possible to appropriately implement the use of alternatives to the TCLP for determining CAMU treatment compliance, on a site-specific basis. EPA continues to find the TCLP to be an appropriate test for situations where regulatory agencies do not supervise waste testing and disposal, and where disposal in a municipal landfill (or a unit resembling a municipal landfill) is a plausible waste management or mismanagement scenario. The Agency emphasizes that the proposal, and today's rule, deal only with the use of the TCLP in determining compliance with the CAMU treatment requirements. Neither the proposal nor today's rule have any effect on existing requirements regarding use of the TCLP to determine whether a waste is hazardous or has been adequately treated under the LDR program.

(3) Assessment of 90% Reduction

As discussed in the proposal, EPA expects that the facility owner/operator will rely on normal waste and soil characterization techniques and procedures for representative sampling to determine 90% reduction in constituent concentrations. (65 FR 51101, August 22, 2000.) The Agency has recently issued draft guidance for public comment, in the context of the Phase IV Land Disposal Restrictions rule, on establishing and validating the 90% reduction levels for contaminated soil (see 66 FR 52198, October 18, 2001). EPA recommends the use of this guidance (when finalized) in assessing whether the 90% reduction standard for CAMU wastes has been achieved. In general, if the CAMU-eligible hazardous waste has a treatment standard that is measured by total constituent concentrations (i.e., organics and cyanide), then the 90% reduction would be measured using total constituent concentrations. If the treatment standard for the waste is measured using the TCLP or an approved alternative leach test (i.e., for metals), then the 90% reduction would also be measured using the TCLP or the proposed alternative leach tests. If wastes contaminated with metal constituents were treated using a technology which removed, rather than stabilized metals, the 90% reduction would be measured using total constituent concentrations.

[34] In particular, the regulator at the remediation site is unlikely to know conditions of co-disposal at the off-site landfill, which is often a critical factor in determining whether an alternative to the TCLP is acceptable.

b. Site-specific Treatment Standards based on Adjustment Factors (40 CFR 264.552(e)(4)(v))

EPA proposed and is today finalizing five factors that outline circumstances under which Regional Administrators may adjust the minimum national treatment standards on a site-specific basis: technical impracticability, consistency with site cleanup standard, community views, short-term risks, and protection offered by engineering controls under specified circumstances. When one or more of the adjustment factors are applied, EPA is requiring that the resulting site-specific treatment standard be "protective of human health and the environment," as discussed below.

As discussed in the proposal, in developing the adjustment factors, the Agency identified circumstances both where it might be appropriate to require less treatment than would be required by the minimum national treatment standards (i.e., less treatment than 90% reduction in concentrations of PHCs capped by 10xUTS) and where it might be appropriate to require more treatment than would be required by the minimum national treatment standards.[35] When one or more

[35] Of course, Regional Administrators do not need the adjustment factors to require more treatment than would be required by the minimum national treatment standards, since such treatment could be required, where necessary to protect human health or the environment, using the provision allowing for additional CAMU requirements when necessary to protect human health or the environment. See 40 CFR 264.552(i), discussed later in today's rulemaking. Agencies overseeing cleanups may also require additional treatment when selecting cleanup remedies.

adjustment factors are applied, the result is a site-specific treatment standard. Today's rule requires that such site-specific treatment standards be protective of human health and the environment. The Agency discussed the application of the "protective of human health and the environment" standard in the proposal through a specific example, which it repeats here:

> An example of how this [protection of human health and the environment standard] would be implemented is a site where there are two technologies that are available to treat the CAMU waste. Technology A, although it would technically meet the proposed generic standards, presented an unacceptable risk to site workers (e.g., because of risks of explosion). Technology B, on the other hand, did not present that risk, but could only achieve a 75% reduction in PHC concentrations. In this case, because the factors associated with adjustment factor D ("short-term risks," discussed below) were present, the Regional Administrator could consider an alternative standard; such standard could only be imposed where the alternate level (75% reduction) was protective. EPA expects that the Regional Administrator would undertake this assessment of protectiveness of the alternate standard as part of the overall remedy decision process. In judging protectiveness of the alternate standard, the Agency would expect the Regional Administrator to consider, as appropriate, the characteristics of the waste, including such factors as concentrations and mobility, how the wastes will be managed (e.g., the type of unit), and site characteristics, such as depth to groundwater and factors that affect fate and transport to potential receptors. Note, as discussed below under adjustment factor E, that protection offered by the engineering of the unit as the initial basis for considering an alternate standard is limited to a specific set of circumstances. 65 FR 51101 and 51102, August 22, 2000.

Commenters generally supported the approach of allowing adjustment of the minimum national treatment standards to accommodate certain site-specific conditions and, in general, supported the specific adjustment factors established today. EPA is finalizing the adjustment factors as proposed.

One commenter expressed the concern that the Agency might use the adjustment factors to change treatment requirements in the middle of a cleanup. The Agency clarifies that it expects decisions about treatment standards (including application of the adjustment factors) to be made as a part of CAMU determinations and, as a general matter, apply for the life of the CAMU. After a CAMU has been approved, any changes made to treatment (or other) requirements would be in response to an evolution of understanding of site-specific conditions that might occur during an iterative cleanup process. The existence of adjustment factors does not make such changes any more or less likely than they were under the 1993 CAMU rule. Furthermore, any changes would be subject to appropriate procedural safeguards—for example, the permit modification process if a CAMU were incorporated into a permit, or, in the case of orders, procedures for amending orders.

(1) Adjustment Factor A: Technical Impracticability (40 CFR 264.552(e)(4)(v)(A))

Using the technical impracticability adjustment factor, the Regional Administrator may adjust the minimum national treatment standards on a site-specific basis when it is not technically practicable to achieve these standards because of factors related to technologies or cost.

As discussed in the proposal, in some cases a facility owner/operator may find that it is not technically practicable to achieve the minimum national treatment standards, or to conduct meaningful treatment at all, because of factors relating to the performance capability or cost of technology. Factors related to the technical performance capabilities of technology and cost are routinely discussed in the remedy decision process in the federal CERCLA and RCRA corrective action cleanup programs and as part of remedy selection in state cleanup programs. As explained in the preamble to the proposal, the Agency intends that the technical impracticability adjustment factor will include the general concepts of "technically infeasible" and "inordinately costly," as those terms are used in the federal CERCLA program (65 FR 51102, 51103, August 22, 2000). As explained in the preamble to the CERCLA National Contingency Plan, technical impracticability should be based on "engineering feasibility and reliability, with cost generally not a major factor unless compliance would be inordinately costly" (55 FR 8666, 8748 (March 8, 1990)). These concepts are also described in the RCRA corrective action ANPR at 61 FR 19432 (May 1, 1990) and in the Role of Cost in the Superfund Remedy Selection Process, Publication 9200.3–23FS, September 1996.

Factors relating to the performance of technology and cost are also addressed in the RCRA LDR treatment standard requirements in the provisions for variances. As discussed in the proposal, the Agency intends for the technical impracticability adjustment factor to encompass the concepts contained in the current "unachieveable" LDR treatment variance at § 268.44(h)(1) and the "technically inappropriate" variance at § 268.44(h)(2)(i) (65 FR 51102, August 22, 2000). Under the "unachieveable" LDR treatment variance, a new treatment standard can be developed when it is not physically possible to meet the otherwise applicable treatment standard. The Agency believes this concept is equally appropriate for adjusting treatment standards for PHCs placed in CAMUs, because imposition of a treatment standard that is impossible to meet would likely result in a containment remedy that would not involve any treatment at all. See 53 FR 31138, 31199 (August 17, 1988) for a discussion of the "unachieveable" variance. Under the "technically inappropriate" variance, the Regional Administrator may approve a site-specific treatment standard if treatment to the otherwise applicable standard is not appropriate, even though such treatment is technically possible. For example, the Agency has repeatedly expressed the view that it is technically inappropriate to require combustion of large amounts of mildly contaminated environmental media. See, 53 FR 31138, 31199 (August 17, 1988) and 62 FR 64504 (December 5, 1997) for a discussion of the technically inappropriate variance.

EPA received no adverse comments on the technical impracticability adjustment factor and is today finalizing this factor as proposed.

(2) Adjustment Factor B: Consistency with Site Cleanup Levels (40 CFR 264.552(e)(4)(v)(B))

Under the "consistency with site cleanup levels" adjustment factor, the Regional Administrator may adjust the minimum national treatment standards, on a site-specific basis, to require more or less treatment of principal hazardous constituents when treatment to the minimum national treatment standards would result in concentrations of PHCs that are significantly above or below the cleanup levels for the site. In the proposal, the language in adjustment factor B did not specify that it would be used to adjust treatment requirements only for principal hazardous constituents, although this was clearly the Agency's intent (i.e., because the treatment standards in today's rule apply only to principal hazardous constituents). EPA has modified the final rule accordingly.

As discussed in the proposal, EPA intends that in considering whether to apply this adjustment factor, Regional

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Administrators will compare concentrations of PHCs that would be attained through treatment to the minimum national standards (i.e., 90% reduction in PHCs capped by 10 x UTS) to site cleanup levels that assume there is direct exposure of a receptor to the PHC (i.e., site cleanup levels based on direct exposure) (65 FR 51103, August 22, 2000). Site cleanup levels based on direct exposure could be drawn from default standards established under state or federal law, where appropriate, or from a more site-specific analysis and/or a site-specific risk assessment. Site cleanup levels are typically established in consideration of a number of factors that influence the risk potential of a site, including fate and transport considerations (e.g., migration of contamination from soil to ground water); distinctions between residential, industrial and other types of land use; and the locations of potential receptors. In some cases, these factors are standardized (e.g., when standard assumptions of exposure correspond with standard land use assumptions). In other cases, these factors are populated with site-specific data, for example, as might occur during a site-specific risk assessment. Consideration of the protection from exposure provided by the engineering of a CAMU cannot be included in the evaluation. This is because, as discussed earlier in today's rulemaking, the treatment requirements are designed, in part, to minimize the risks of adverse effects on humans or the environment in the unlikely event that the containment provided by a CAMU should fail.

In the proposal, EPA solicited comment on whether it should expressly state in adjustment factor B that site cleanup levels used for comparison had to be based on assumptions of "direct exposure" to the principal hazardous constituents (65 FR 51103). EPA explained that it assumed that state cleanup programs routinely used direct exposure scenarios in setting cleanup levels, and therefore it was not necessary to explicitly make use of a direct exposure scenario a condition in adjustment factor B language. One group of commenters stated that they disagreed with EPA's assumption that cleanup programs typically base site goals or levels on "direct exposure," arguing instead that cleanup programs did not assume direct exposure without considering actual or likely exposure scenarios at a site. The commenters, therefore, recommended that EPA not specifically require direct exposure assumptions in adjustment factor B. On the other hand, these commenters also asked EPA to clarify in the preamble to the final rule that adjustment factor B should be interpreted consistently with the Agency's interpretation of the § 268.44(h)(3) variance—which allows land disposal restriction variances for contaminated soil where LDR standards "would result in concentrations of hazardous constituents that are below * * * the concentrations necessary to minimize short- and long-term threats to human health and the environment" and which further specifies that determinations that threats have been minimized may "not consider post-land disposal controls" (§ 268.44(h)(3)(ii)).

EPA believes that commenters may have misunderstood what EPA meant by "direct exposure" in the preamble, because the Agency certainly agrees that cleanup programs do and should consider "actual or likely exposure" in setting cleanup levels. As stated in the preamble to the proposal, EPA agrees that "site-specific cleanup standards are typically derived after consideration of factors that influence the risk potential at the site, including fate and transport considerations (e.g., in setting levels in soils that are protective of ground water), distinctions between residential, industrial and other types of land use, and location of potential receptors" (65 FR 51103). Again, cleanup levels based on these assumptions would certainly be appropriate under adjustment factor B. EPA also reaffirms—as it clearly stated in the CAMU proposal (65 FR 51103)—that it interprets adjustment factor B in a manner consistent with its interpretation of the § 268.44(h)(3) variance. In particular, as the Agency stated in the preamble to the regulation, "Consistent concentrations that achieve [levels based on the Agency's risk range for cleanup levels or goals] should be calculated based on a reasonable maximum exposure scenario—that is, based on an analysis of both current and reasonably expected future land uses, with exposure parameters chosen based on a reasonable assessment of the maximum exposure that might occur." (See 63 FR 28606–28608, May 26, 1998). EPA does note, however, that this land disposal restriction variance explicitly provides that, in setting "minimize threat" levels, the Agency cannot consider "post-land-disposal" controls (§ 268.44(h)(3)(ii)), and in the preamble to the Phase IV rule EPA cautions that site-specific determinations under this variance "cannot be based on the potential safety of land disposal units, or engineered structures such as liners, caps, slurry walls or any other practice occurring after land disposal" (63 FR 28607). Similarly, as EPA explained in the preamble to the CAMU proposal, levels established under adjustment factor B could not reflect the "protection offered by the CAMU itself" (65 FR 51103).

Given that the commenters are mistaken in their concern that EPA intended to disallow consideration of actual or likely exposure scenarios in this adjustment factor, and given that no other commenters argued that cleanup programs do not routinely use "direct" exposure assumptions in setting cleanup levels or goals, the Agency continues to believe that adding the phrase "direct exposure" to this adjustment factor is unnecessary. As discussed above, EPA does reemphasize, however, that, in determining whether adjustment was appropriate under this adjustment factor—as in the LDR variance at § 268.44(h)(3)—EPA or the state would not consider protection offered by the disposal unit or engineering controls as a basis for adjusting treatment levels. As explained later in this preamble, protection offered by the CAMU as a basis for departing from the 90%/10×UTS standard is appropriately considered under adjustment factor E.

(3) Adjustment Factor C: Community Views (40 CFR 264.552(e)(4)(v)(C))

Under the community views adjustment factor, the Regional Administrator may require more or less treatment than would be required under the minimum national treatment standards based on the views of the affected community on the treatment levels or treatment methods. As discussed in the proposal, at some sites, communities express concerns about factors such as the long-term reliability of remedies, worker safety, cross-media transfer of pollutants, and interference with their day-to-day lives (e.g., from traffic, odors, or noisy technologies) (65 FR 51103, August 22, 2000). EPA expects that such community concerns could provide the impetus to either reduce or increase treatment requirements.

EPA believes it is reasonable to include community views as an explicit criterion to justify adjustment of treatment requirements, because, in the Agency's experience, treatment is often an area of specific concern to the public. For example, many communities are very concerned about the use of combustion technologies. Consideration of community views is supported by the requirement (discussed later in today's rulemaking) that the public be provided notice and an opportunity for public comment on all CAMU determinations before such determinations are made final.

Commenters who addressed this issue supported the community views adjustment factor, and the Agency is finalizing this provision as proposed.

(4) Adjustment Factor D: Short-Term Risks (40 CFR 264.552(e)(4)(v)(D))

Under the short-term-risk adjustment factor, the Regional Administrator may require more or less treatment than would be required under the minimum national treatment standards if the technology necessary to achieve the minimum national treatment standards would cause unacceptable short-term risks to workers or the public. Unacceptable short-term risks might be presented by a technology necessary to achieve treatment standards, or by the analysis necessary to determine whether treatment standards have been achieved. As discussed in the proposal, short-term risks associated with remedies and proposed treatment technologies are routinely considered during the remedy-selection process under the federal CERCLA program and the RCRA corrective action program (65 FR 51104, August 22, 2000). Commenters who addressed this issue supported consideration of short-term risks in adjusting treatment requirements, and the Agency is finalizing the short-term risk adjustment factor as proposed.

(5) Adjustment Factor E: Engineering Design and Controls (40 CFR 264.552(e)(4)(v)(E))

EPA proposed and is today finalizing an opportunity for Regional Administrators to adjust the minimum national treatment standards on a site-specific basis to require less treatment than would otherwise be required because of the protection offered by the engineering design of a CAMU. Under this provision, Regional Administrators may adjust the minimum national treatment standard based on the long-term protection offered by the engineering design of the CAMU and related engineering controls in five sets of circumstances: first, when the minimum national treatment standards are substantially met and PHCs are of very low mobility; second, when cost-effective treatment has been used and the CAMU meets the liner and leachate collection requirements for new hazardous wastes land disposal units at 40 CFR 264.301(c) and (d); third, when cost-effective treatment has been used and PHCs in the treated wastes are of very low mobility; and fifth, when the Regional Administrator determines that cost-effective treatment is not reasonably available, PHCs are of very low mobility, and the CAMU meets or exceeds the liner and leachate collection system standards for new, replacement, or laterally expanded CAMUs in 40 CFR 264.552(e)(3)(i) and (ii), or the CAMU provides substantially equivalent or greater protection. Each of these site-specific circumstances is described more completely below.

As discussed in the proposal, the Agency means the phrase "engineering design of the CAMU and related engineering controls" to include the design of the unit itself (e.g., presence and type of liner, leachate collection, and cap) and any associated engineering systems such as slurry walls, systems that produce inward hydraulic gradients in the vicinity of the unit, French drains, associated pump and treat systems, and ground water monitoring systems (65 FR 51105, August 22, 2000). Along with an assessment of the protection offered by the engineering design and related engineering controls for a CAMU, the Agency expects that the Regional Administrator's determination regarding a site-specific treatment standard would consider whether wastes placed in the CAMU pose any potential for unacceptable releases over the long term. This consideration should examine factors such as the concentrations and mobility of the PHCs in the CAMU-eligible waste, the waste matrix (soil or other), the site environment (e.g., fate and transport considerations), and how wastes might be affected by potential liquid infiltration into the CAMU.

Commenters generally supported the standards of proposed adjustment factor E. One commenter argued that EPA's proposed approach was too complicated, and that EPA should allow a broader risk-based approach. As discussed earlier, EPA does not believe the risk-based approach would provide the level of consistent protection, or of predictability for the public, that EPA's seeks in today's rule. Other commenters stressed the importance of adjustment factor E in ensuring that today's rule would not discourage aggressive remediation. As indicated in EPA's study of past CAMU decisions (included in the docket), many currently approved CAMUs would be allowed today only with consideration of adjustment factor E. EPA, therefore, agrees with these commenters on the likely importance of this adjustment factor in promoting effective cleanups

The specific subfactors available under adjustment factor E are discussed below. See also the if/then options illustrated in the chart presented in the following section of this preamble, section G.2.b(6). EPA has modified the proposed regulatory language for adjustment factor E for the sake of clarity (addressing commenters' concern with the complexity of this adjustment factor), but has not changed the substantive standards of this factor.[36]

The minimum national treatment standards are substantially met and PHCs in the waste or residuals are of very low mobility (40 CFR 264.552(e)(4)(v)(E)(1)). Adjustment factor E(1) allows Regional Administrators to adjust the minimum national treatment standards to require less treatment than would otherwise be required, based on the long-term protection offered by the engineering design of the CAMU and related engineering controls when: (1) the minimum national treatment standards are "substantially met," and (2) PHCs are of "very low mobility." EPA proposed this provision to address concerns that, where constituents in the waste are of low mobility and where the minimum national treatment standards are substantially met, it may not be reasonable to impose strict compliance with the minimum standards given (1) the level of protection provided by substantial compliance, and (2) the added protection offered by the engineering design of a CAMU and related engineering controls.

As discussed in the proposal, the term "substantially met" for purposes of adjustment factor E is meant to reflect situations where a treatment technology may result in concentrations of PHCs that meet the minimum national treatment standards for the most part, but do not precisely attain the minimum national treatment standards for all of the PHCs. In the proposal, the Agency gave two examples of application of the "substantially met" standard, which it repeats here:

For example, the most appropriate technology at a site for wastes containing organic contaminants that have low migration potential (e.g., certain polyaromatic hydrocarbons) might be biodegradation. This technology might come close to, but not achieve, 10 X UTS for the contaminants with low migration potential. Given that the contaminants have a low

[36] The regulatory language of today's rule breaks out the individual provisions of proposed § 264.555(e)(4)(v)(E)(2)(i)-(iii) into four different subfactors, but the regulatory language and substantive conditions remain identical.

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migration potential, the Regional Administrator could assess site-specific factors that affect mobility, including the geologic setting, precipitation, and evaporation, and make the determination that an alternate treatment standard based on this technology would provide long-term protection of human health and the environment. In another example, the treatment standards would be substantially met where the overwhelming majority of constituents have been treated to meet the treatment standards, but a very few immobile constituents do not meet the standards. 65 FR 51106, August 22, 2000.

The term "very low mobility" reflects the concept that certain constituents (including constituents that may present significant risks in the event of direct exposure) have very little ability to migrate from waste to receptors through media such as air, soil, or water . As discussed in the proposal, the ability of a constituent to migrate is a function of the physical and chemical properties of the constituent and of site-specific conditions such as the waste matrix, the site environment (e.g., fate and transport considerations), conditions associated with the disposa unit, and how wastes might be affected by potential liquid infiltration into a CAMU (65 FR 51105, August 22, 2000.) In the proposal, the Agency gave two examples of the application of the very low mobility standard, which it repeats here for guidance:

One example of immobile constituents are certain metals, such as lead, that have a strong affinity for organic matter and can, under proper site conditions (which are typically strongly affected by pH conditions), demonstrate very low mobility. Another common example of immobile constituents is polyaromatic hydrocarbons (PAHs), such as benzo(a)anthracene and benzo(a)pyrene. PAHs can reliably be considered non-mobile constituents (with the notable exception of when the PAHs are concentrated to the extent that they are in a free-phase—i.e., as non-aqueous phase liquids (NAPLs)—when they are dissolved in a mobile substrate, such as oil). PAHs can be present as a direct result of historical industrial processes, or may be found as a residuum of formerly more complex mixtures of organic contamination that have been exposed to breakdown processes in the environment, or as a result of applying biological treatment technologies to the wastes. At some sites, such as petroleum refineries, PAHs can be found in high concentrations in old refinery wastes and contaminated soils, PAHs tend not to be found in significant concentrations in ground water, because of their low mobility and tendency to adhere to organic matter in soils and sludges. 65 FR 51106, August 22, 2000.

Cost-effective treatment has been used and the CAMU meets the liner and leachate collection requirements for new hazardous wastes landfills at 40 CFR 264.301(c) and (d). [40 CFR 264.552(e)(4)(v)(E)(2). Under adjustment factor E(2), the Regional Administrator may adjust the minimum national treatment based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment has been used, and (2) the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills. As discussed in the proposal, this adjustment factor reflects the Agency's concerns about the uncertainties of long-term containment; thus, when the national treatment standards have not been substantially met, this adjustment factor would require more robust engineering controls to reduce the potential for and consequences of unit failure. It would also require cost-effective treatment. (If cost-effective treatment was not reasonably available, adjustment of the treatment standards would still be possible, as provided by adjustment factor E(3)).

As discussed in the proposal, the concept of "cost-effective" treatment for the purpose of adjustment factor E means that the additional cost associated with increased treatment is proportionate to the increase in protection that the treatment would provide. EPA expects that assessments of cost-effectiveness will be made based on a reasonable review of the costs and the increased protection provided by treatment and on the best professional judgment of the Regional Administrator (65 FR 51106, August 22, 2000). Commenters on "cost-effectiveness" supported EPA's proposed approach.

This adjustment factor requires a more rigorous approach to engineering design and related controls than the minimum national design standards for CAMUs in that it requires compliance with the liner and leachate collection requirements for new hazardous waste land disposal units at 40 CFR 264.301(c) and (d). As discussed in the proposal, the liner and leachate collection requirements for new hazardous waste landfills are well established and understood, and units constructed to meet the liner and leachate collection requirements for new hazardous waste landfills generally offer a high degree of protection over time (65 FR 51107, August 22, 2000). Because the engineering design and related engineering controls required by this provision are very robust, the Agency is not limiting this adjustment factor to PHCs of very low mobility.

As discussed in the proposal, the Agency does not expect that CAMUs typically will be constructed to meet the liner and leachate collection standards for new hazardous waste landfills (65 FR 51107, August 22, 2000). Where they are designed to meet these standards, however, adjustment factor E(2) would allow treatment levels to be adjusted based on the protection offered by the unit design.

The Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills at 40 CFR 264.301(c) and (d). (40 CFR 264.552(e)(4)(v)(E)(3)). Under adjustment factor E(3), the Regional Administrators may also adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment is not reasonably available, and (2) the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills. As discussed in the proposal, today's rulemaking reflects the general presumption that PHCs will be treated if cost-effective treatment is reasonably available (65 FR 51106, August 22, 2000). The Agency recognizes, however, that cost-effective treatment is not always reasonably available. In such cases, today's rule would allow the Regional Administrator to adjust the minimum national treatment standard based on the engineering design of the CAMU and related engineering controls, even where treatment is not used (that is, under this adjustment factor, when the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills, and, under adjustment factor E(5) (discussed below), when the CAMU meets the liner standards for new CAMUs promulgated today and PHCs in the waste are of very low mobility).

As discussed in the proposal, the Agency expects that reviews to determine whether potentially appropriate cost-effective treatment technologies are "reasonable available" will be carried out consistently with the types of technology evaluations that are commonly associated with remedy selection under federal and many state cleanup programs (65 FR 51106, 51107, August 22, 2000). These reviews consider the availability and timing of goods and services associated with implementing a technology and issues associated with administrative feasibility as well as technical capability, feasibility, and reliability of the technology. Thus, while an individual technology might appear, in theory, to be cost-effective and capable of meeting a treatment standard, it might not be "reasonably available" because of practical and implementation issues. Because of the range of site- and waste-specific factors that inform the types of treatment technologies that might be appropriate, the level of effort involved in reviews for reasonable availability should be determined on a site-specific basis.

Under this adjustment factor, the potential increase in risk to human health and the environment that corresponds to reduced or no treatment (because cost-effective treatment is not available) is balanced by the requirement to meet the liner and leachate collection system design standards for new hazardous waste landfills. As discussed above, the liner and leachate collection requirements for new hazardous waste landfills are well established and understood, and units constructed to meet the liner and leachate collection requirements for new hazardous waste landfills generally offer a high degree of protection over time.

Cost-effective treatment has been used and PHCs in the treated waste are of very low mobility. (40 CFR 264.552(e)(4)(v)(E)(4). Under adjustment factor E(4), Regional Administrators may adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment has been used, and (2) PHCs are of very low mobility. As discussed in the proposal, this adjustment factor is meant to accommodate circumstances where cost-effective treatment is available and will be used for PHCs, but the treatment will not meet or substantially meet the minimum national treatment standards. The Agency believes that it is reasonable for the Regional Administrator to make adjustments to the minimum national treatment standards when the engineering design of CAMUs and related engineering controls offer adequate protection and PHCs have been treated using cost-effective treatment and are unlikely to reach a receptor because they are of very low mobility. In these circumstances, the Agency believes that, even if unexpected failure of a CAMU were to occur, the constituents would not migrate far (and therefore would not be likely to reach receptors). The concepts of "cost-effective treatment" and "very low mobility" are discussed above.

The Regional Administrator determines that cost-effective treatment is not reasonably available, PHCs in the wastes are of very low mobility, and the CAMU meets or exceeds the liner and leachate collection system standards for new, replacement, or laterally expanded CAMUs in 40 CFR 264.552(e)(3)(i) and (ii) or the CAMU provides substantially equivalent or greater protection. (40 CFR 264.552(e)(4)(v)(E)(5)). Under adjustment factor E(5), Regional Administrators may adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) Cost-effective treatment is not available, (2) PHCs in the wastes are of very low mobility, and (3) the CAMU meets the design and operation standards for new, replacement or laterally expanded CAMUs promulgated today (including alternative standards). As discussed in the preamble to the proposal, this adjustment factor requires less rigorous engineering design standards than adjustment factor (E)(2) because it is limited to situations where PHCs are of very low mobility (65 FR 5107, August 22, 2000).

In situations where PHCs are of very low mobility, the Agency believes that the possibility of an increase in risk to human health or the environment resulting from reduced treatment (because cost-effective treatment is not available and therefore treatment does not take place) is balanced by the requirement that a CAMU be designed to meet the minimum standards for new, replacement, or laterally expanded CAMUs established today (or alternative standards) at 40 CFR 264.552(e)(3)or that the "CAMU provides substantially equivalent protection." The liner standards at 40 CFR 264.552(e)(3) are based on the standards for municipal solid waste landfills and are discussed earlier in today's preamble. As discussed in the proposal, the concept of a CAMU providing "substantially equivalent protection" to the liner standards under 40 CFR 264.552(e)(3) allows for consideration of the entire CAMU unit and location characteristics (65 FR 51107, August 22, 2000).

In the proposal, the Agency gave two examples of when it might find that a CAMU provides "substantially equivalent protection." These examples are repeated here for guidance:

If an existing unit without a liner were to be potentially used for a CAMU under the conditions of this adjustment factor, the Regional Administrator could examine the protectiveness offered by the CAMU components (e.g., cap, ground water monitoring, ancillary engineering features), as well as mobility of constituents in the waste within the unit (which will be very low), and geology associated with the unit, in assessing equivalent protection. In another example, soils contaminated with PAHs, with no cost-effective method of treatment reasonably available, are proposed to be disposed in an existing unit with a liner that does not meet the § 264.552(e)(3) standards. Given the very low mobility of these constituents and the calculated infiltration rate of rainwater into the unit, it might be calculated that only very low concentrations of constituents would potentially migrate from the unit, that any migration would be for a very short distance, and that the CAMU would provide substantially equivalent protection to the liner standard under § 264.552(e)(3). 65 FR 51107–51108, August 22, 2000.

(6) If / Then Chart Illustrating Application of Adjustment Factor E

Application of adjustment factor E relies on a number of site-specific determinations made in specific combinations. To assist program implementors in properly applying this adjustment factor, the Agency has prepared the following "if/then" chart, which was also included in the proposal, as guidance.

If	And If	And If	Then
Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met.	Cost-effective treatment has *not* been used.	RA has *not* determined that cost-effective treatment is not reasonably available.	RA may *not* consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls."
Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met.	The PHCs in the waste or residuals are of very low mobility.	.....	RA may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls." § 264.552(e)(4)(v)(E)(1)

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If	And If	And If	Then
Cost-effective treatment has been used.	The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at §264.301(c) and (d).	.....	RA may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls." §264.552(e)(4)(v)(E)(*2*)
The Regional Administrator determines that cost-effective treatment is not reasonably available.	The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at §264.301(c) and (d).	.....	RA may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls." §264.552(e)(4)(v)(E)(*3*)
Cost-effective treatment has been used.	The PHCs in the treated waste are of very low mobility.	.....	RA may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls." §264.552(e)(4)(v)(E)(*4*)
The Regional Administrator determined that cost-effective treatment is not reasonably available.	The PHCs in the waste are of very low mobility.	Either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraph (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.	RA may consider adjusting based upon the "long term protection offered by the engineering design of the CAMU and related controls." §264.552(e)(4)(v)(E)(*5*)

c. Relationship Between Minimum National Treatment Standards and Adjustment Factors

Commenters expressed a range of views about the relationship between the minimum national treatment standards and site-specific treatment standards developed through application of the adjustment factors. Some commenters expressed the view that ideally the minimum national treatment standards should be adjusted only in exceptional circumstances. Other commenters thought that EPA should clarify that facility owners/operators could choose either the minimum national treatment standards or site-specific treatment standards.

EPA expects program implementors, in making treatment determinations, to start from the minimum national treatment standard and then to consider whether, based on site-specific circumstances, any of the adjustment factors apply. The minimum national treatment standards may be adjusted only in accordance with the adjustment factors. The Agency, as a general matter, has a preference neither for nor against application of the factors. EPA recognizes that the minimum national treatment standards will often be the preferable approach; at the same time as discussed in the proposal, the adjustment factors reflect circumstances where, in EPA's view, adjustment of the minimum national treatment standards might be appropriate because they represent circumstances where failure to adjust treatment could result in discouraging aggressive cleanup (65 FR 51101, August 22, 2000). Therefore, as discussed above, the Agency believes it is appropriate to have neither a preference for nor against application of the factors.

d. Treatment in CAMUs Within a Reasonable Time (40 CFR 264.552(e)(4)(vi))

EPA proposed and is today finalizing provisions that allow treatment of PHCs to the minimum national treatment standards (or site-specific treatment standards based on application of the adjustment factors) to occur either before placement of wastes in CAMUs or within a reasonable time after placement of waste in a CAMU. This is different from the approach taken in the LDR requirements, where treatment generally is required prior to placement. As discussed in the proposal, the Agency believes it is appropriate to allow treatment requirements to be met either before or after placement of wastes in a CAMU so that CAMUs can be used to facilitate treatment remedies (65 FR 51108, August 22, 2000). As discussed throughout today's rulemaking, promoting aggressive remedial approaches that involve excavation and treatment of contaminated wastes and materials (i.e., removing disincentives to cleanup) is the primary purpose of the CAMU rule. The Agency received no adverse comment on this provision.

As discussed in the proposal, determinations of what is a "reasonable time" for treatment should be made on a site-specific basis in the context of the remedy selected for the waste (65 FR 51108, August 22, 2000). As a general rule, EPA expects that treatment technologies, such as biotreatment, that are implemented after wastes are placed in a CAMU will achieve treatment standards within months or years, not decades, except in very unusual circumstances. (Today's rulemaking also establishes specific provisions for storage and/or treatment only CAMUs, from which wastes will be removed at closure. Storage and/or treatment only CAMUs are described in detail later in today's rulemaking.)

d. Assessing Compliance With Treatment Standards (40 CFR 264.552(e)(4)(vii))

The Agency proposed and is today finalizing provisions to allow, on a site-specific basis, for the analysis of a subset of PHCs to determine whether treatment standards are achieved rather than requiring analysis of all PHCs present. As discussed in the proposal, the Agency believes that in many cases it will not be necessary to require analysis of all PHCs being treated to accurately assess whether treatment standards are being achieved for all constituents. The Agency received no adverse comment on this provision.

Analyzing a subset of constituents to assess performance of treatment is a common practice in cleanup and generally involves consideration of factors such as the difficulty of treatment and grouping of constituents with similar properties. Today's rule

requires that Regional Administrators consider those factors when making site-specific determinations about analysis of a subset of PHCs. As discussed in the proposal, EPA also expects the Regional Administrator to consider the ability to analyze the constituents when selecting the subset of PHCs to be evaluated (65 FR 51088, August 22, 2000). The Agency gave an example of application of this concept in the proposal, which it repeats here as guidance:

> A general strategy is to analyze, within a group of constituents with similar treatment properties, the most difficult constituents to treat, following the reasoning that treatment of the most difficult to treat constituents will result in treatment of the other constituents as well. For example, when wastes containing mixtures of organic molecules are subjected to bioremediation, certain compounds tend to be more recalcitrant and take longer to treat. It might be reasonable to focus analysis on measurement of the compounds that are most resistant to bioremediation, to assess whether the treatment standards had been met. 65 FR 51108, August 22, 2000.

H. Constituents at or Below Site Cleanup Levels or Goals (40 CFR 264.552(g))

EPA proposed that, where all wastes placed in a CAMU have constituent concentrations at or below cleanup [37] levels or goals applicable to the site, the CAMU would not have to meet the requirements for liners and leachate collection systems, caps, or ground water monitoring requirements discussed earlier in today's rulemaking or the design requirements for storage and/or treatment only CAMUs discussed below.[38] The Agency received no adverse comment on this approach and is promulgating it as proposed.

As discussed in the proposal, EPA believes that, if constituent concentrations in all wastes placed in a CAMU are at or below concentrations that are considered protective at the facility (i.e., are at or below cleanup levels or goals for the facility), it is not necessary to require that the CAMU meet design or operating requirements (65 FR 51108—51109, August 22, 2000). This approach is consistent with the Agency's "contained-in" policy. Under the 1993 CAMU rule, program implementors had considerable flexibility in developing CAMU design and operation requirements and could accommodate circumstances where wastes placed in the CAMU were at or below cleanup levels or goals for the facility. Because today's amendments establish more specific design and operating requirements for CAMUs, the exemption is necessary to retain this flexibility. EPA is limiting this provision to situations where all wastes in the CAMU are at or below site-specific cleanup levels or remedial goals. Thus, if an existing unit is used as a CAMU and that unit contains wastes with concentrations that are above cleanup levels or goals this exemption would not apply and, among other requirements, the unit would remain subject to the capping and ground water monitoring requirements established today. EPA anticipates that this section would be used when owners/operators seek a CAMU to obtain relief from RCRA LDR requirements for wastes that are no longer considered hazardous. Wastes that are no longer considered hazardous remain subject to the LDRs when, for example, a "contained-in" determination has been made because hazardous constituents are at concentrations below health-based levels but above applicable LDR treatment standards. EPA also anticipates that this section will be used for materials that are not addressed by the contained-in policy (e.g., CAMU-eligible sludges). See 65 FR 51108.

One commenter suggested that, even when constituent concentrations in cleanup wastes are at or below cleanup levels or goals, they may still pose a risk if the assumptions used to determine remedial goals change (e.g., if cleanup levels or goals are determined using exposure assumptions appropriate to nonresidential land use, and then the land use changes). This commenter recommended that administrative notices (e.g., deed notices) be required in situations where site-specific cleanup levels or goals assume non-residential land uses. The Agency agrees that when nonresidential exposure assumptions are used to establish cleanup levels or goals for a facility, it is important for overseeing agencies to consider the long-term implications of these decisions for facility land use. The Agency does not agree, however, that it should establish a specific requirement in this rule for administrative notice to address this issue. EPA believes the issues of determining appropriate land use and exposure assumptions and developing mechanisms to communicate, monitor, and maintain nonresidential land use assumptions should be addressed as part of overall remedy selection—i.e., during selection of the site-specific factors that will be used to inform site-specific cleanup levels or remedial goals—rather than as a part of CAMU determinations. Indeed, these questions are much closer to decisions as to appropriate cleanup levels than they are to the remediation waste management decisions more generally associated with CAMU determinations.

EPA notes that RCRA corrective action, Superfund, and other cleanup programs rely on a range of mechanisms to ensure that remedies remain protective when they are based on non-residential land uses. Mechanisms include informational requirements (e.g., deed notices), permits, state and local land use laws, environmental easements, and similar "institutional controls." EPA expects that overseeing agencies will carefully consider the effectiveness of these mechanisms when supervising cleanups where non-residential land use assumptions are used. For more information on EPA's current views on use of institutional controls see Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups, EPA 530–F–00–005, September, 2000. The Agency's current guidance on incorporating considerations of reasonably anticipated future land use in remedial decision making is Land Use in the CERCLA Remedy Selection Process (OSWER Directive No. 9355.7–04, May 25, 1995). The Agency does not minimize the importance of issues raised by potential changes in land use over time or reliance on institutional controls during cleanups. However, given the wide range of mechanisms now used in RCRA, CERCLA and other programs and the fact that the issue is more appropriately considered in the overall cleanup decision making than in CAMU determinations, EPA has not included specific notification requirements for non-residential future land use assumptions in today's rule.

I. Storage and/or Treatment Only CAMUs (40 CFR 264.552(f))

EPA proposed to distinguish between CAMUs that are used for storage and/or treatment only and CAMUs in which wastes will remain after closure. CAMUs used for storage and/or treatment only would be subject to the design, operating, and closure standards for staging piles. EPA proposed that storage and/or treatment only CAMUs

[37] In the proposal, EPA used both "remedial" levels or goals and "cleanup" levels or goals. As used in the proposal, there was no substantive difference between these terms and, for clarity, the Agency uses only to "cleanup levels or goals" in today's action.

[38] I.e., in this case the CAMU would not have to comply with the requirements for liners at 40 CFR 264.552(e)(3)(i), caps at 40 CFR 264.552(e)(6)(iv), ground water monitoring at 40 CFR 264.552(e)(5), or the design standards at 40 CFR 264.552(f).

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that operated for longer than the staging pile time limits (a maximum of two-and-one-half years) would be subject to the minimum CAMU design and ground-water monitoring and corrective action standards promulgated today. Commenters generally supported this approach, and the Agency is finalizing this provision as proposed. EPA has reorganized the regulatory language for clarity, but has made no substantive changes from the proposal.[39]

Under today's rulemaking, CAMUs that are used for storage and/or treatment only and that do not exceed the staging pile time limits are subject only to the performance criteria and design, operating, and closure standards for staging piles at 40 CFR 264.554(d)(1)(i)—(ii), 40 CFR 264.554(d)(2) and 40 CFR 264.554(e), (f), (j), and (k). They are not subject to the CAMU designation criteria at 40 CFR 264.552(c) and the CAMU design, treatment, ground-water monitoring and corrective action, and closure requirements at 40 CFR 264.552(e)(3) through (6).[40] Under the staging pile regulations, the Regional Administrator establishes standards and design requirements that facilitate reliable, effective, and protective remedies; that prevent or minimize releases; and that minimize or control cross-media impacts. The Regional Administrator sets staging pile standards and design requirements by considering factors such as the length of time the staging pile will be in operation, the volumes of wastes that will be managed in the pile, the physical and chemical characteristics of the wastes, the potential for releases, the environmental factors that may influence migration of releases, and the potential for human and environmental exposure to releases. As discussed in the proposal, the Agency believes it is appropriate to use the staging pile standards for CAMUs that are used for storage and/or treatment only, because the staging pile standards both reflect the general concepts in the CAMU criteria (i.e., by establishing the standard that staging piles are to facilitate "reliable" and "protective" remedies) and focus more directly on factors specific to short-term waste management (65 FR 51110, August 22, 2000). CAMUs used for storage and/or treatment only will also be subject to the staging piles standards at 40 CFR 264.554(e) and (f) governing management of ignitable, reactive, or incompatible wastes and the staging pile standards at 40 CFR 264.554(j) and (k) for closure. (Note that, as discussed in the proposal, the staging pile closure standards establish different requirements for staging piles located in previously contaminated areas and for staging piles located in uncontaminated areas. These apply in the same way to storage and/or treatment only CAMUs located in previously contaminated or uncontaminated areas (65 FR 51110, August 22, 2000).)

If storage and/or treatment only CAMUs exceed the time limits for operation of staging piles (that is, two years with the potential for a single 180-day extension), today's rule requires the Regional Administrator to establish time limits for operation that are no longer than necessary to achieve a timely remedy selected for the wastes. As discussed in the proposal, it is the Agency's general expectation that storage and/or treatment activities will be completed within months or years rather than decades, except in very unusual circumstances. Storage and/or treatment only CAMUs that operate for longer than two and one-half years must comply with the design and operating requirements for CAMUs in which waste will remain after closure at 40 CFR 264.552(e)(3) and the ground-water monitoring and corrective action requirements of 40 CFR 264.552(e)(5). They would not be subject, however, to the treatment standards of 40 CFR 264.552(e)(4) or the closure standards of 40 CFR 264.552(e)(6).

Some commenters expressed concern with this approach, indicating that it was common for large, multi-phased cleanups to require repeated staging of cleanup wastes over a number of years (i.e., more than two years). These commenters suggested that the Agency eliminate the time limit for storage and/or treatment only CAMUs or, alternatively, count only the days during which waste was actually in the storage and/or treatment only CAMU towards the two-year time limit. (For example, if wastes are staged for three weeks and then removed and the unit is "empty" for three weeks before receiving more waste for staging, only the three weeks during which waste was in the unit would apply towards the two-year time limit.)

The Agency is not persuaded that it should eliminate the time limit for storage and/or treatment only CAMUs or count only the time when waste is actually being treated or stored. The Agency believes that when storage and/or treatment only CAMUs will operate for more than two and one-half years, it is appropriate to apply the minimum national standards for CAMU design and ground-water monitoring and corrective action established today. Storage and/or treatment only CAMUs that operate for longer than two and one-half years have greater potential to release hazardous constituents to the environment (if only because they are in place for longer periods of time), and, therefore, in EPA's view should be treated in a manner similar to units designed for more permanent disposal. EPA is also not persuaded that it should count towards the two and one-half year time limit only the time that waste is actually stored and/or treated in a CAMU. Even though "waste" may not be stored in the pile during this period, past residuals may remain. Also, The Agency believes that the practical difficulties associated with such an approach are would be great. For example, would the permit have to specify the extent of removal necessary from a storage and/or treatment only CAMU such that the clock should stop? What type of record-keeping and inspection system would be necessary to document the days and times waste was actually being stored and/or treated in a CAMU? Determining, on a site-specific basis, the answers to these questions would almost certainly delay cleanups.

Finally, and most important, EPA is not convinced that the proposed approach (finalized today) will constrain cleanups in the way commenters suggested. Commenters appeared most concerned with application of the CAMU design and ground-water monitoring and corrective action requirements to storage and/or treatment only CAMUs operating for longer than two and one-half years. EPA notes that the minimum national standards for CAMU design apply only to new, replacement or laterally expanded units; they do not apply to existing units designated as CAMUs. Thus, existing units designated as storage and/or treatment only CAMUs would not have to be retrofitted, even if they were operated for more than two and one-half years. Furthermore, new CAMUs (including new CAMUs used for storage and/or treatment only) that are sited in areas of significant contamination are eligible for alternative design standards based on site-specific circumstances. The Agency believes that CAMUs used for long-term storage and/or treatment will often be located in areas of significant contamination (because facility owners/operators and regulators will choose to keep wastes confined to already contaminated areas, where practical) and therefore will be eligible for a determination that a liner is not needed under 40 CFR 264.552(e)(3)(ii)(B). Alternatively, CAMUs used for long-term storage and/or treatment may include operating practices that, together with location characteristics, will allow for a determination that alternate design approaches are acceptable under 40 CFR 264.552(e)(3)(ii)(A). For example, a roof constructed over a CAMU used for long-term storage and/or treatment, perhaps combined with pavement or a single liner, could prevent the migration of hazardous constituents into the ground water or surface water at least as effectively as the standard liner and leachate collection systems under certain circumstances (e.g., when waste is placed in the CAMU only intermittently).

As for concerns over ground-water monitoring and corrective action requirements, EPA understands the commenter's point, but it continues to expect that ground-water monitoring and corrective action requirements are going to be appropriate for land-based units that will be in place for many years. EPA does note, however, that the requirements for ground water monitoring and corrective action in § 264.552(e)(5) are expressed as performance standards. For example, ground water monitoring must be "sufficient to * * * detect and characterize" releases in ground water. Therefore, monitoring could be reduced where releases were very unlikely, as long as it met the regulatory performance standard. Similarly, corrective action requirements must be sufficient to ensure that the regulatory agency is notified of future releases to ground water and corrective action is taken as necessary to protect human health and the environment. The commenter did not explain why it considered this requirement to be unreasonable.

The Agency is sympathetic to arguments that some complex, phased cleanups may in fact take "decades rather than years." Nonetheless, as discussed above, the Agency believes these cleanups are appropriately accommodated using the provisions for storage and/or treatment only CAMUs (and, where applicable, the provisions allowing alternate design approaches) promulgated today.

J. Staging Piles (40 CFR 264.554)

The Agency specifically requested comments on whether it should revise the staging pile regulations to allow treatment in staging piles, which would complement the provisions for storage and/or treatment only CAMUs. In addition, EPA requested comment on an industry group suggestion that, at a minimum, limited physical operations (that might technically meet the definition of treatment) be allowed in staging piles.

As in the past, comments on the idea of treatment in staging piles were mixed. Some commenters supported the idea of treatment in staging piles and believed that the staging pile standards would result in unit designs and operating criteria that protect against the potential risks of treatment. Commenters pointed out, for example, under 40 CFR 264.554(d)(1)(ii), staging piles must be designed to "prevent or minimize releases of hazardous waste or hazardous constituents in to the environment" and to "minimize or adequately control cross-medial transfer." Other commenters opposed the idea of significant treatment in staging piles; they believed, among other things, that it would be misleading to the public (given the name 'staging piles') to allow treatment. They also argued that issues associated with significant treatment are more properly addressed using the CAMU designation process, which is likely to involve a higher level of government and public oversight.

After further consideration of this issue, the Agency has decided not to allow significant treatment in staging piles and to continue to require use of CAMUs (or other appropriate types of RCRA units) for significant treatment activities. EPA agrees with one commenter that issues associated with significant treatment (e.g., air emissions, use of chemical extractants) is more appropriately addressed through the CAMU designation process, where they will receive what EPA described in the proposal as "the high degree of attention and analysis that has typically accompanied CAMU decisions." (65 FR 51111) At the same time, the Agency is persuaded that, given the broad definition of treatment in RCRA, an absolute ban on any treatment in staging piles might severely limit their use and could preclude legitimate staging activities for which they were designed. The Agency, therefore, is revising the staging pile regulations at 40 CFR 264.554 to explicitly allow physical operations that are intended to prepare wastes for subsequent management or treatment. As discussed in the proposal, these operations include mixing, sizing, blending, and other similar physical operations that are intended to prepare wastes for subsequent management or treatment (65 FR 51111, August 22, 2000). These types of activities are common practices during cleanups where it is necessary to first consolidate and then size or blend contaminated soils or other wastes to facilitate subsequent treatment.

Because of the broad definition of "treatment" under RCRA, physical activities to manage or prepare wastes for further management—such as the activities described above—could be considered treatment under certain circumstances.[41] However, the Agency is convinced that it is appropriate to allow for these types of activities in staging piles—they are legitimately part of typical staging activities at many cleanup sites; disallowing these activities could significantly reduce the usefulness of staging piles; and they generally do not raise issues beyond those that would arise merely from accumulating and storing remediation waste in piles. Today's amendment to the staging pile regulations will clarify that these types of physical activities are allowed for the purposes of managing remediation wastes in staging piles, regardless of whether they might otherwise, technically, meet the RCRA definition of "treatment" and provides facility owners/operators assurance that routine staging operations such as the physical mixing, blending and sizing of waste will not result in violations of the staging pile requirements. More significant treatment operations involving something other than physical treatment—that is, where the chemical character of the waste is changed through chemical or biological treatment (such as solvent-based soil washing or biotreatment)—are subject to the CAMU regulations discussed earlier in today's rulemaking. EPA has concluded that it is appropriate to continue to regulate these more aggressive approaches to treatment under the CAMU process because of the likely higher level of public interest and the fact that they do not fit within the

[39] EPA revised these regulations by clearly separating the requirements for storage and/or treatment only CAMUs that meet the staging pile time limits (new paragraph (f)(1)) from the requirements for those that do not (new paragraph (f)(2)). The Agency reduced the section by eliminating the proposed paragraph (f)(1), but included the paragraph's conditions in the new paragraphs (f)(1) and (2).

[40] Although the treatment requirements in 40 CFR 264.552(e) would not apply, of course, nothing in this language would preclude the Regional Administrator from imposing additional treatment requirements using, for example, the overall CAMU or remedy decision process, or the provision allowing the Regional Administrator to impose requirements for CAMUs "as necessary to protect human health and the environment."

[41] Section 1004 of RCRA defines "treatment" as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume" * * *."

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staging pile regulation's original concept of "staging."

K. Placement of CAMU-Eligible Wastes in Off-Site Hazardous Waste Landfills

In response to comments on the August 2000 proposal and to a later proposal from a group of industry representatives, EPA published a supplemental proposal on November 20, 2001 (66 FR 58085). In this proposal, EPA took comment on industry's suggestion that placement of CAMU-eligible wastes be allowed in off-site hazardous waste landfills under certain circumstances. In addition, EPA also proposed to allow disposal of CAMU-eligible wastes in on-site hazardous waste landfills under the same conditions. In the supplemental proposal, EPA explained in detail why, in its view, allowing disposal of CAMU-eligible waste in hazardous waste landfills would promote more aggressive remediation and provide remediators at cleanup sites with additional options—options that might frequently be more protective than disposal in a CAMU, that would likely lead to more thorough cleanups, and that would promote opportunities for redevelopment.

In the November 2001 document, EPA stated its intention to include the new conditions it was proposing (if it chose to go forward with them) in today's final rule, scheduled for signature by December 21. Consistent with this goal and because of the relatively limited nature of the proposal (depending, as it did, on the basic structure of the August 2000 proposal), EPA provided an abbreviated comment period of fifteen days. To ensure prompt notice to commenters and an adequate time for comment, EPA provided electronic copies of the supplemental proposal to all commenters on the August 2000 proposal immediately after it was signed on November 14, 2001. No commenters expressed concern about the length of the comment period on the supplemental proposal as it applied to off-site disposal of CAMU-eligible wastes.

EPA received overwhelmingly favorable comments on the general approach in the proposal. No commenters expressed disagreement with EPA's view that allowing placement of CAMU-eligible wastes in off-site hazardous waste landfills would promote more aggressive remediation. Several commenters asked EPA to clarify implementation issues and raised questions about the workability of the approach described in the supplemental proposal, depending on how it was interpreted. In response to these commenters, EPA is finalizing the supplemental proposal at 40 CFR 264.555, generally as proposed, but it is clarifying the implementation process and adding new procedural requirements, based on comments. These revisions are designed to ensure that the off-site provision can be practically implemented and therefore that it achieves its goal of promoting aggressive remediation. The details of the requirements are discussed below.

1. Conditions for Off-Site Landfill Placement

Section § 264.555(a)(1)–(3) establishes the basic conditions that must be met for the Regional Administrator to approve placement of CAMU-eligible waste in a hazardous waste landfill unit at an off-site location under the terms of § 264.555.[42]

a. Limitation to CAMU-Eligible Wastes

In the supplemental proposal, EPA limited placement of remediation wastes in hazardous waste landfills under the terms of § 264.555 to CAMU-eligible waste, but also proposed to include the "discretionary kickout" provision of § 264.552(a)(2). The Agency proposed to include the kickout provision because the reasons behind it apply as much to placement of CAMU-eligible waste in hazardous waste landfills as it does to placement in CAMUs. The supplemental proposal, however, did not include the special provisions of § 264.552(a)(1)(iii) and (a)(3), which would have allowed placement of "as-generated" wastes and liquids under specific circumstances. EPA concluded that, in the case of "as-generated" wastes, a special exception would be unnecessary, because there is no current regulatory constraint on placement of non-hazardous as-generated wastes in RCRA permitted landfills (except of course in cases of waste incompatibility, or similar situations). As for liquids, EPA saw no reason why the current RCRA ban on liquids in landfills should not continue to apply to hazardous waste landfills receiving CAMU-eligible wastes. The circumstances EPA has identified where the RCRA ban on liquids might be inappropriate for CAMUs are specific to remediation.

Commenters provided no negative comments on this aspect of the proposal, and therefore EPA is finalizing it as proposed.

b. Limitation to Placement in Off-Site Landfills

In the supplemental proposal, EPA allowed disposal of CAMU-eligible wastes in on-site hazardous waste landfills, as well as off-site waste landfills. One group of commenters—who was one of the two industry groups who recommended the off-site disposal option to EPA—correctly noted that industry's original proposal did not extend to on-site hazardous waste landfills. This commenter expressed concern that it did not fully understand the implications of this additional provision, and strongly urged EPA to defer extending the conditions of today's rule to on-site landfills. Because of the compressed schedule of this supplemental rulemaking, EPA has decided to proceed at this time only with aspects of the proposal that interested parties support, and to defer final decisions on other aspects to ensure that EPA does not adopt a course of action that may have unintended consequences. Accordingly, EPA is not extending the relief in today's rule to the disposal of CAMU-eligible wastes in on-site hazardous waste landfills and has revised the language of § 264.555(a) to limit the applicability today's rule to "landfills not located at the site from which the waste originated."

c. Treatment Requirements

In the supplemental proposal, treatment requirements for CAMU-eligible wastes placed in permitted hazardous waste landfills would largely track the treatment requirements for CAMU-eligible wastes placed in CAMUs. That is, treatment requirements would be limited to principal hazardous constituents. Treatment would have to meet the national treatment standards of § 264.552(e)(4), with an opportunity for the Regional Administrator to adjust treatment based on specific enumerated factors.

The Regional Administrator would be able to apply the following adjustment factors without any special conditions: adjustment factor A (technical impracticability), adjustment factor C (community acceptance), adjustment factor D (short-term risk), and adjustment factor E(1) (national minimum treatment standard is substantially met and waste PHCs are of very low mobility). EPA proposed not to allow use of adjustment factor B (which considers cleanup levels or goals at the remediation site), because it concluded that these levels would be irrelevant to placement in off-site landfills. In addition, EPA proposed to tighten adjustment factor E(2) (which allows the Regional Administrator to consider the protection provided by the engineering design of the CAMU) to require treatment of principal hazardous constituents in all cases where this adjustment was exercised.

Comments on this aspect of the proposal were largely favorable, and EPA is finalizing the treatment requirements as proposed (see § 264.555(a)(2)).

Regarding use of adjustment factor E(2), § 264.555(a)(2)(iii) of today's rule allows the Regional Administrator to adjust the national treatment standards based on the design of the landfill in accordance with § 264.552(e)(4)(v)(E)(2).[43] This section allows the Regional Administrator to adjust treatment levels based on "the engineering design of the CAMU and related engineering controls" "where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d). * * *" But § 264.555(a)(2)(iii) of today's rule adds a treatment performance standard for CAMU-eligible wastes going to off-site landfills under this adjustment factor—the treatment would have to significantly reduce "the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site." Consistent with the proposal, adjustment factors (E)(3), (4), and (5) would not be allowed.

Thus, today's rule significantly tightens the conditions of adjustment factor (E) for CAMU-eligible wastes being placed in off-site hazardous waste landfills. As explained in the proposal, EPA is taking this approach to address possible concerns about potential transfer of risk to the off-site location when the Regional Administrator relies on the protection afforded by the disposal unit to adjust the treatment standards. First, adjustment factors E(3)–(5) would not be available—since either these factors do not require treatment, or they do not require that the receiving disposal unit meet subtitle C design standards. And second, today's rule requires treatment of PHCs in CAMU-eligible wastes disposed of off-site under adjustment factor E(2).

EPA notes that—as one commenter pointed out—the inclusion of "the threat at the remediation site" in the treatment performance standard in § 264.555(a)(2)(iii) contemplates that the Regional Administrator, in implementing this adjustment factor, would make the same kind of balancing of risks allowed in the "environmentally appropriate" land disposal restriction variance at § 268.44(h)(2)(ii). That is, in concluding that a particular treatment regime "minimized threat" under this adjustment factor, the Regional Administrator could weigh the risks associated with leaving waste in place (or of significantly delaying cleanup) against any possible risks associated with subsequent management of the waste in a permitted hazardous waste landfill.

d. Disposal Requirements

In the supplemental proposal, EPA limited hazardous waste landfills receiving CAMU-eligible wastes to those with RCRA permits, not including landfills under RCRA interim status. The proposal did not specify who had to hold the permit for the landfill. For example, landfills accepting CAMU-eligible wastes might be off-site commercial units, or they might be at facilities controlled by the owner/operator of the remediation site. The proposal also required that the landfill meet the technical design and operating requirements for new landfills in 40 CFR part 264, subpart N. This requirement would ensure that the landfill met the minimum technology requirements for hazardous waste landfills (i.e., the double synthetic liner and detailed leachate collection requirements of § 264.301(c)). In addition, the landfill would be subject to the specific landfill ground-water monitoring requirements of subpart F of part 264 and the closure requirements of subpart G.

EPA received no negative comments on this aspect of the supplemental proposal and is finalizing § 264.555(a)(3) as proposed.

2. Approval Procedures

a. Approval of CAMU-Eligible Waste for Placement in a Subtitle C Landfill

Under the supplemental proposal, CAMU-eligible waste would be approved for placement in a hazardous waste landfill under procedures identical to CAMU approval procedures. Facility owner/operators wishing to send CAMU-eligible waste to a RCRA hazardous waste landfill would generally have to provide the same information as persons requesting approval of an on-site CAMU. Commenters generally supported this approach and EPA is finalizing it in § 264.555(b)–(c) largely as proposed.[44]

The supplemental proposal indicated simply that the "Regional Administrator" would approve CAMU-eligible waste for disposal in a landfill, without any further specification on which "Regional Administrator." One commenter asked EPA to clarify whether the "Regional Administrator" was the regulator at the remediation site or at the receiving site; another commenter argued that the Regional Administrator approving the action under § 264.555(c) should be the person with regulatory oversight at the receiving landfill. On the other hand, several commenters assumed that EPA meant the Regional Administrator with RCRA regulatory oversight at the location of the cleanup would approve action under § 264.555(c)—that is, the Regional Administrator who would make an off-site decision was the same regulator who would likely be overseeing the cleanup (for example, if it was being conducted as part of a RCRA corrective action).

In developing the supplemental proposal, EPA did not clearly state whether the regulatory authority at the location of the cleanup site or at the receiving landfill would typically review and approve (or deny) proposals for off-site placement under § 264.555. For example, EPA stated in the preamble that "the Regional Administrator (or the authorized state program) at the location of the hazardous waste landfill would be responsible for placement of CAMU-

[42] EPA emphasizes that "CAMU-eligible" waste may of course continue to be managed off-site in any way that was allowable before today's rule. Today's rule sets alternative treatment conditions for hazardous "CAMU-eligible" waste placed off-site hazardous waste landfills. Furthermore (to respond to a question raised by one commenter), off-site management of non-hazardous "CAMU-eligible" waste is not subject to the requirements of this section, and this waste may be managed off-site (including in hazardous and non-hazardous landfills) consistent with state law.

[43] Note that, under § 264.555(g), the "design of the CAMU" in § 264.552(e)(4)(v)(E) means the design of the permitted Subtitle C landfill. Because the permitted landfill must meet the prescriptive design standards for new hazardous waste landfills, the Regional Administrator would typically base this adjustment on protection offered by a generic landfill meeting these standards. See discussion later in this section of the preamble.

[44] One commenter asked what information the "person seeking approval" would need to provide the Regional Administrator. Under § 264.555(b), the applicant would be required to provide information required under the general CAMU information requirement (§ 264.552(d)) relevant to an off-site determination. That is, the applicant would have to provide information "sufficient" for the Regional Administrator to approve CAMU-eligible waste for off-site disposal under § 264.555(c). This would include information to show the Regional Administrator that the waste is CAMU-eligible, to identify PHCs, to adjust treatment levels as appropriate (e.g., to demonstrate technical impracticability), and similar information. The applicant would not be expected to provide information not relevant to the decision (e.g., the specific design of the receiving landfill, since the landfill would be required, by regulation, to meet subtitle G design requirements, and this information would typically be enough to allow the Regional Administrator at the remediation site to make a decision).

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eligible waste in the landfill." At the same time, however, most of the questions associated with that approval relate closely to specific circumstances, processes, and decisions at the cleanup site (including remedy decisions)—for example, the identification of principal hazardous constituents, which are based on site-specific cleanup goals or levels; technical impracticability adjustments; adjustments because of short-term risks; and similar questions. More broadly, the question of whether (and how much) waste treatment is needed is typically part of the remedial decision process. Therefore, the approval process under § 264.555(c) will inevitably be closely connected to the remedy selection decision at the cleanup site.

After reviewing comments and considering this question further, EPA concludes that the regulatory authority most appropriate for determining that CAMU-eligible waste from a particular remediation is suitable for disposal in a subtitle C landfill, as a general matter, is the regulatory authority at the remediation site. As described above, the question of how the cleanup wastes should be managed is inherently part of the remedy decision, and the information needed to make decisions will be available to the regulatory authority at the cleanup site. Furthermore, the decision on how to manage remediation waste is typically made in an iterative process at the remediation site, with the facility owner and the regulator considering a broad range of alternatives as the investigation and remedy selection proceed. In this process, the options for off-site disposal become a factor in determining which remedy is selected—including, perhaps, whether the waste is excavated in the first place.

In addition, several commenters made the point that extended regulatory review processes (on a remediation-by-remediation basis) at potential disposal sites would generally repeat review processes already conducted at the remediation site, and that such processes could, as a practical matter disrupt or significantly delay the cleanup process. For example, the decision for off-site disposal is often made only late in the process (at a point where on-site options are rejected), and then it is often made only generically, i.e., the decision is made that the waste might safely sent off-site for disposal in a hazardous waste landfill, but the specific site would not yet be identified. At the point where off-site disposal has been chosen, the facility owner, in such cleanups, might solicit bids from hazardous waste management companies with processes or landfills meeting certain criteria. It would obviously be unrealistic to expect each potential bidder to go through an extended approval process with its regulator (except in the case of very large cleanups) before it submitted a bid. At smaller sites, the time between the decision to manage wastes off-site and the actual movement of wastes might only be days. In both cases, if an extended off-site approval process began only after an off-site location had been accepted, cleanup could be significantly delayed, with no meaningful gains in environmental protection.

Thus, for the off-site provisions of today's rule to work effectively to promote aggressive cleanups at a wide range of sites, EPA believes that the regulatory authority at the cleanup site should make the basic decision as to what conditions would most appropriately apply to CAMU-eligible waste disposed of off-site at a subtitle C landfill.

For these reasons, EPA is finalizing § 264.555(a)–(c) generally as proposed, but specifying that the "Regional Administrator" approving CAMU-eligible waste for subtitle C landfill disposal will be the Regional Administrator (or state regulatory authority) with RCRA oversight over the site where the remediation is occurring. In this case, disposal in a hazardous waste landfill would be allowed, as long as the conditions of § 264.555 were met. Consistent with this expectation, EPA is modifying proposed § 264.555(b)—which describes the information that the person seeking approval must provide—by removing the parenthetical phrase "(including the location of the landfill)." As explained earlier, in many cases, remediators at the cleanup site may not know the location of the specific landfill at the time of the application, or indeed at the time eligibility for off-site disposal in a Subtitle C landfill has been approved.

One state commenter raised a concern about allowing a state director at a remediation site to determine adjusted treatment standards for CAMU-eligible waste, when that waste would be disposed of in another state. The commenter argued that the state regulator overseeing the receiving landfill should be responsible for making any adjustments to the national treatment standards. In particular, the commenter was concerned that the regulator in the generating state would not be knowledgeable about the receiving facility; that the state overseeing the receiving landfill might disagree with the treatment standards determined by the generating state; and that the receiving state would likely feel compelled to repeat the work of the generating state regulator, leading to duplicative effort.

EPA understands these concerns, but it continues to believe, for the reasons described above, that: (1) The regulator at the site of remediation is the most appropriate authority to make the *general* finding that cleanup waste from a particular site is appropriate for off-site disposal in a subtitle C landfill under today's rule, and (2) the off-site provisions in today's rule will be successful in promoting more aggressive remediation only if the basic decisions on the appropriateness of disposal in a subtitle C landfill are made at the cleanup site, with regulators at the receiving landfill playing their normal role (through the permitting process) in determining what particular wastes are appropriate for disposal at that site.

In answer to the points raised by the commenter, EPA agrees that the regulator at the receiving landfill will certainly be more knowledgeable about site conditions at that particular landfill. The Agency, however, does not believe that this fact is important to decisions on adjustments, because the design standards for the off-site landfill are specified by regulation. That is, the off-site landfill will have to meet the subtitle C design standards for new hazardous waste landfills. These are very specific standards, which not only require double liners and a leachate collection system, but specify such details as the thickness and composition of the liners; the size of the gravel (or other material) in the leachate collection layer; the minimum slope of that layer; and similar details . Thus, the regulator at the remediation site will have ample information on the engineering design of the unit to adjust a treatment standard based on the protection offered by the design of the receiving landfill (if adjustment factor E is exercised). At the same time, location-specific factors at the receiving facility (e.g., site-specific hydrology)—which is the kind of information that the regulator at the remediation site would be unlikely to know—would not be an allowable consideration in adjusting a treatment standard based on the engineering design of the landfill.

EPA acknowledges that, when wastes move from one state to another, the regulator in the receiving state may conclude that treatment levels approved by the neighboring state are unacceptable for a particular landfill, or that the receiving state may feel that it needs to review the work of the neighboring state. EPA certainly expects that, in such cases, overseeing states will be able to generally rely on the

protections built into today's rule, and the protections of the permitted landfill receiving the waste,[45] so that they can be comfortable allowing receipt of waste that meets its terms. But, the Agency also acknowledges that there is a potential for redundant reviews. Nevertheless, EPA remains convinced—for the reasons stated above—that today's rule will only be successful in promoting aggressive cleanups if the state overseeing the cleanup makes the basic judgments on whether a particular remediation waste is eligible for off-site disposal, and what level of treatment is required under today's rule, before disposal in a subtitle C landfill (regardless of where that landfill is located). Otherwise, as explained above, today's rule is not likely to achieve its intended goals.

b. Permitting and Acceptance at the Receiving Landfill

Proposed § 264.555(d) required that the Regional Administrator modify the permit for a hazardous waste landfill to allow receipt of CAMU-eligible waste under the terms of § 264.555, before it could receive such waste. In some cases, state or federal regulations would already require a permit modification at a facility, but in others—for example, where the waste met the waste acceptance criteria in the permit—they might not. But, in any case, proposed § 264.555(d) ensured that the permit was modified through a public process to allow receipt of CAMU-eligible waste under the terms of proposed rule.

The modification would follow permit modification procedures specified in § 270.42 or comparable state regulations, but at a minimum it would include public notice, opportunity for comment, and an opportunity for a hearing. (EPA assumes in most cases that states would choose the class 2 permit modification process, although class 3 modifications would meet the general performance standard as well.) This process would ensure that the local public had the opportunity to comment on whether and how CAMU-eligible wastes would be managed under the facility permit. Commenters supported this approach, and EPA is finalizing it as proposed. (Several commenters did express concern that EPA expected states to modify a facility's permit for each new remediation; today's rule would not require this. The issue is discussed in detail below.)

As part of the permit modification process at the receiving landfill, the Regional Administrator would include in the permit any requirements he or she determined were necessary or appropriate. During the permitting process, the Regional Administrator would be able to accommodate any special concerns of the local community. For example, the Regional Administrator might include special requirements in the permit to address potential risks from hazardous constituents in the waste, including principal hazardous constituents, to protect human health or the environment through the RCRA "omnibus" provision.[46] Further, the permit would include requirements to ensure that treatment standards for CAMU-eligible wastes imposed under § 264.555(a)(2) would apply; and, as specified in proposed § 264.555(d), the permit would also include recordkeeping requirements to demonstrate compliance with treatment standards approved for the waste. Under the current permitting requirements at § 264.13(a)(1), the facility owner/operator at the receiving landfill would be required to conduct an analysis of the waste that, "at a minimum," contains "all the information which must be known to treat, store, or dispose of the waste in accordance with this part" (which would include information to show that treatment levels approved by the Regional Administrator were met). The plans for this analysis would be incorporated into the facility waste analysis plan (see § 264.13(b)), and the results of the analysis kept in the facility operating records in accordance with § 264.73(b)(3).

Commenters raised the question of whether a receiving land disposal facility would have to modify its permit every time it received CAMU-eligible waste from a new off-site location. Several commenters (including one state) argued that individual permit modifications would be unnecessary and counterproductive, where CAMU-eligible waste already met the acceptance criteria in a facility permit.

This was not EPA's intention in the proposal, and EPA expects that such modifications would ordinarily not be needed. Rather, EPA intends that an off-site facility would modify its permit once (with public notice, comment, and opportunity for a hearing). In fact, EPA expects that, once today's rule is effective, some commercial hazardous waste landfills will immediately seek enabling permit modifications, before they have been approached by potential customers—and EPA encourages them to do so.[47] Once an enabling permit modification has been approved, the modification would allow the facility to accept any CAMU-eligible waste that had been approved for off-site disposal by the appropriate regulatory authority at the remediation site. As part of the permitting process, the permitting authority of course could impose any additional conditions it determined were necessary, but EPA expects that complying with the terms of § 264.555, combined with the design and management standards required at the receiving facility under its RCRA permit, would provide sufficient assurance that CAMU-eligible waste would be safely managed.

One commenter argued that a permit modification at the receiving landfill should not be necessary at all. This commenter argued that permits specify the types of waste a facility may receive, and establish safe management conditions for that waste. If CAMU-eligible wastes approved for disposal under today's rule met the permit acceptance criteria, the commenter then questioned why a permit modification would be necessary at all. This commenter noted that, in many other cases, "CAMU-eligible" wastes currently go to hazardous waste landfills without permit modifications, because they meet the facilities' permit acceptance criteria. The commenter asked why EPA was requiring a permit modification under today's rule even where a facility's would otherwise allow acceptance of the CAMU-eligible waste without modification.

EPA appreciates the view of this commenter, but at the same time it notes that other commenters—including one state regulator—stressed the importance of the regulator and the local public at the receiving landfill having an opportunity to review and approve the fact that the landfill would receive wastes under the terms of today's rule. EPA also notes that the industry groups who recommended that these CAMU amendments include an off-site option supported an EPA requirement for a

[45] The receiving landfill, as explained below, would have to have a RCRA permit allowing it to receive the type of waste in question. RCRA permits establish detailed facility-wide requirements, including detailed waste analysis procedures, unit design, and waste management practices. These requirements, in EPA's view, will ensuring that the waste is managed protectively at the receiving facility.

[46] 46 Under the RCRA "omnibus" provision, "each permit . . . shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment." RCRA section 3005(c)(3).

[47] One commenter suggested that the one-time permit modification approach would lead to a network of approved facilities for EPA, states, and remediation waste generators to use for future projects involving off-site management of eligible wastes. EPA agrees that this result would be highly desirable and would promote more aggressive remediation.

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permit modification, including public notice and an opportunity for a hearing at the off-site landfill. Therefore, EPA is retaining the proposed requirement in § 264.555(d) that the receiving facility undergo an enabling permit modification before receiving CAMU-eligible waste under today's rule. But it clarifies that there would be no need for subsequent permit modifications, as long as the CAMU-eligible waste met the waste criteria in the facility's permit.

At the same time, several commenters raised concerns that decisions on CAMU-eligible waste from any particular cleanup might be of concern to the local public and the regulatory authority at a receiving facility. Therefore, today's rule provides for an abbreviated notice procedure that must be completed before CAMU-eligible waste is placed in a permitted off-site landfill. These procedures are laid out in § 264.555(e). First, the landfill—which will already have been approved to receive CAMU-eligible waste under § 264.555(d)—would notify the local public and the RCRA permitting authority of its intent to receive off-site waste from a particular cleanup. (This notice might, for example, be submitted during the bidding process on the waste.) In this case, the public would be the persons listed on the facility's mailing list, required under 40 CFR 124.10(c)(ix). The notice would identify the location of the remediation site, the principal hazardous constituents, and the treatment requirements. Second, the public would have fifteen days to provide comments or express concerns to the regulatory agency. (Because the permit had already been modified through a public process to receive CAMU-eligible waste under this provision, commenters suggested and EPA has concluded that an abbreviated notice procedure is appropriate.) Finally, the Regional Administrator would have an additional fifteen days to object to the placement of the CAMU-eligible wastes in the landfill. The Regional Administrator would have the authority to extend the review period an additional thirty days because of public concern or insufficient information. If the Regional Administrator objects, or if he or she does not notify the owner/operator that he or she has chosen not to object, the waste could not be placed in the landfill until the objection had been resolved, or, alternatively, the permit had been appropriately modified through the procedures of § 270.42.[48]

EPA notes that, while this process requires action by the Regional Administrator within 30 days, it does not mean off-site disposal would be approved by default. Disposal could not occur without notification by the Regional Administrator that he or she does not object to the placement of the CAMU-eligible waste. EPA took this approach because it did not want the public to be at a disadvantage solely because the Agency (or an authorized state) failed to act within a specified period of time. At the same time, EPA recognizes that this approach may raise concerns with owner/operators of facilities interested in receiving CAMU-eligible wastes from off-site locations. Thus it urges these owner/operators to work closely with the appropriate regulatory authorities and the local public to look for ways to ensure that the process is expedited—consistent with the needs and interests of the regulator and the local community.

Toward this end, EPA has also included in today's rule a provision (§ 264.555(e)(iv)) that would allow the facility, the local public, and the regulatory agency to work together to identify situations where, because of minimal risk, they could agree that the limited notification procedures of § 264.555 were not necessary. For example, the facility, the regulatory agency and the community might agree that notification was not necessary if the total volume of waste from a particular remediation very minimal, or if CAMU-eligible waste met a particular level of treatment (for example, the waste was treated to the generic national standards of 90%/10XUTS, and none of the adjustment factors was used). EPA expects that these situations will be the exception. At the same time, however, EPA believes this provision will significantly improve the usefulness of today's rule, especially given the concern of one commenter that the rule should address obstacles to smaller-volume projects, for which off-site management often makes the most sense.

EPA, of course, understands that the regulatory authority and the local public may choose to limit the scope of today's regulation by requiring—through the initial permitting process at potential receiving facility—additional notice or review (e.g., a longer public comment period on notifications) before CAMU-eligible waste from a new remediation is received, or before certain categories or volumes of CAMU-eligible wastes were received from remediation sites. EPA expects that these issues would be addressed as part of the site-specific permitting process at the off-site hazardous waste facility seeking approval to receive CAMU-eligible waste from off site.

Commenters were particularly concerned that EPA might require that the receiving facility's permit be modified for each remediation. Commenters pointed out that this approach would be impractical and argued that it would likely eliminate the benefits (in aggressive remediation) that it hopes to achieve through § 264.555. The incentives for off-site disposal at hazardous waste landfills provided by today's rule, according to commenters, may often be most useful in the case of relatively small cleanups (or portions of cleanups). In such cases, the facility owner might be hoping to achieve clean closure—perhaps to allow redevelopment or to remove liability. Yet in these cases, the cost of a permit modification (even a "minor" modification) could well exceed the income received from a small shipment of remediation waste. Furthermore, such a process would create essentially the same practical problems that would occur if the § 264.555(c) approval process took place at the disposal site for every remediation. As one commenter put it, cleanup projects might be stopped indefinitely while one or more off-site facilities decided whether to participate in bidding on a project and then worked through the permit modification process. Thus, EPA believes it is impractical as well as unnecessary to require permit modifications with every CAMU-eligible waste shipment under today's rule.

3. Other Requirements

EPA emphasizes that the off-site portion of today's rule is narrow in scope. Specifically, the Regional Administrator may approve CAMU-eligible waste for placement in off-site hazardous waste landfills under only limited circumstances. Meanwhile, the waste would remain a RCRA hazardous waste, subject to all applicable RCRA hazardous waste requirements. For example, the manifest, recordkeeping, and reporting requirements of part 262 and part 264, subpart E would apply. In other words, the waste would require a manifest when shipped to an off-site facility, and standard RCRA waste-management requirements would apply

[48] EPA expects that permit modifications would only be necessary or appropriate as a last resort. That is, most objections are likely to be resolved short of requiring a modification to the permit modification. EPA, however, included this option because it provides a formal process, with clear requirements for public notice and typically with rights of appeal, which may be appropriate in some few cases. EPA has not specified in this rule what category of modification would be required, although the Agency expects that—if a modification process were determined to be necessary—the state would find a class 2 process to be most appropriate.

(e.g., waste analysis, storage requirements prior to placement, etc.).

In addition, when the waste is sent off-site, the rule (§ 264.555(e)) specifies that the generator of the waste (i.e., the owner/operator of the remediation site) is subject to the reporting, recordkeeping, and tracking requirements of § 268.7(a)(4). This section establishes requirements that apply "when exceptions allow certain wastes or contaminated soil that do not meet the [land disposal restriction] treatment standards to be land disposed." With the initial shipment of waste, the generator will be required to send a one-time written notice to the land disposal facility providing specific information, such as the EPA waste identification numbers, the manifest number of the first shipment, and waste analysis data. EPA proposed this requirement and received no negative comment on it.

One commenter, however, suggested that § 268.7(a) be amended to include "appropriate" notice and certification. EPA believes that it has already, for the most part, addressed the commenter's concern by clarifying that the hazardous waste generator at the cleanup site must comply with § 268.7(a)(4), which requires a one-time written notice from the generator to the land disposal facility. The notice must indicate the hazardous waste numbers and the manifest number of the first shipment; a statement that the waste is not prohibited from land disposal; available waste analysis data; and specific information relating to the treatment of debris. EPA does recognize, however, that CAMU-eligible wastes may be treated off-site under today's rule, and that this activity might not be adequately covered by § 268.7(a)(4), which applies to waste generators. Therefore, to ensure adequate tracking and accountability when CAMU-eligible waste is treated off-site, § 264.555(f) of today's rule has been modified to require that off-site treatment facilities meet the certification requirements of § 268.7(b)(4), amended so that the treatment facility is required to certify that the treatment meets the requirements of the off-site provision of today's rule (as opposed to the requirements of the land disposal restrictions).

Finally, today's rule does not in any way restrict remediation waste management options that already exist. For example, the land disposal restriction variances of § 268.44(h) will remain available as an alternative (or complementary) approach for CAMU-eligible wastes sent for disposal. Furthermore, as described above, non-hazardous wastes will also be unaffected, because their management and disposal are generally not regulated under the federal RCRA hazardous waste program, and they will not need special approval under today's rule to allow placement in a landfill.

L. Grandfathering CAMUs (40 CFR 264.550 and 40 CFR 264.551)

EPA proposed that two types of CAMUs would remain subject to the 1993 CAMU regulations after promulgation of the CAMU amendments (i.e., after today's rulemaking): (1) CAMUs that are approved prior to the effective date of today's rulemaking and (2) CAMUs that were not approved prior to the effective date of today's rulemaking but for which substantially complete applications (or equivalents) were submitted to the Agency on or before 90 days after publication of the proposal (i.e., where substantially complete applications (or equivalents) were submitted on or before November 20, 2000). This approach is referred to as "grandfathering."

As discussed in the proposal, EPA continues to believe that it would be a poor use of cleanup resources to require reevaluation, in light of today's amendments, of CAMUs that are already approved or are substantially in the approval process (65 FR 51111–51112, August 22, 2000). The Agency's review of CAMUs approved under the 1993 rule showed that the CAMU decisions made under the 1993 rule would generally have been the same, or similar, to decisions that would likely be made under today's amendments. In general, commenters strongly supported the grandfathering approach, and EPA is today finalizing the grandfathering provisions as proposed.

The proposed effective date for the CAMU amendments was 90 days after publication in the **Federal Register**. Under RCRA Section 3010(b), RCRA regulations become effective six months after promulgation unless the Administrator provides for a shorter period because the "regulated community does not need six months to come into compliance" or for "other good cause." As discussed in the proposal (65 FR 51118), EPA proposed a 90-day effective date, believing that it provided ample time for facilities to adjust to the new procedures and waste management standards in today's rule, especially given that the 90-day effective date would only affect unapproved CAMUs that do not meet the criteria for grandfathering.

A number of commenters expressed the concern that ninety days from public notice of the final CAMU amendments does not provide enough time to allow for approval of CAMUs under the 1993 rule and suggested that the Agency instead provide a 180-day effective date. Commenters appear concerned that a 90-day period would not provide enough time for EPA or authorized states to approve CAMU applications for units that were not already grandfathered by virtue of having a substantially complete application submitted by November 20, 2000. Given the scope of the grandfathering relief provided in the proposal, EPA believes this concern is unwarranted. CAMUs will be grandfathered if the application is approved within ninety days after the publication of the rule, or if the Agency received a substantially complete application (or equivalent [49]) within 90 days of the proposal of today's amendments (i.e., by November 20, 2000).[50] Therefore, facility owners/operators who submitted a "substantially complete" application to the appropriate regulatory agency by November 20, 2000, do not need to worry about whether their applications have been approved by the effective date of today's rule; their CAMUs—if approved—are grandfathered and will be subject to the standards that were in place when they submitted their applications (that is, to the 1993 CAMU rule standards). The 90-day effective date would have relevance only to applications that were not substantially complete by November 20, 2000, or (for applications not complete by that time) that had not been approved by the effective date.

The Agency does not see any justification for further extending the process that it laid out in the proposal. The purpose of the grandfathering provision is to avoid disruptions of CAMUs that have already been approved or that are well along in the review process. It is not to accommodate facility owners who submit new CAMU applications after the proposal of the CAMU amendments in an effort to obtain approval before the amendments become final. Therefore, although EPA understands commenters' interest in extending the effective date further, it is

[49] CERCLA decision documents and state cleanup program decision documents in which CAMUs are proposed as applicable or relevant and appropriate requirements are considered "equivalent" documents.

[50] As discussed in the proposal, "substantially complete" does not mean that the Regional Administrator must have deemed an application "complete" under § 270.10(c). Some commenters seemed confused on this point. For additional guidance on the meaning of substantially complete, see the proposal at 65 FR 51112 (August 22, 2000).

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unpersuaded that an additional 90 days is needed or that a failure to provide that additional time will disrupt ongoing remedial activities or significantly set back ongoing reviews of CAMU applications.[51]

CAMUs that are grandfathered will remain subject to the 1993 CAMU rule for the life of the CAMU "so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved." As discussed in the proposal, the Agency believes that there are two types of site-specific circumstances under which decision makers would generally determine that changes are "within the general scope of the CAMU as approved." First, any change that could be made without modification of the approved CAMU conditions in a permit or other authorizing document would be considered "within the general scope of the CAMU as approved" and would therefore be grandfathered. Second, changes that require modification of the CAMU authorizing document but still remain within the general scope of the CAMU as originally approved may be allowed on a site-specific basis. These changes might include allowing additional placement of essentially the same wastes (or wastes with similar constituents and origin) that were originally approved for placement in a CAMU, or retaining the same basic design but enlarging a CAMU to accommodate an extra volume of waste. One commenter asked for clarification on the effect of permit changes to extend the duration of a CAMU. Changes to an authorizing document, including document renewals, to allow continued operation of a CAMU, as long as the continued operation of that duration was within the original "general scope," would not affect the grandfathered status of the CAMU (e.g., where the intended life of an approved CAMU extended beyond the existing duration of the unit or facility permit, renewal of the permit to extend the CAMUs authorization would be "within the general scope of the CAMU as approved"). See 65 FR 51112, August 22, 2000. Commenters supported the approach in the proposal, and EPA's views on these issues are unchanged.

Some commenters expressed concern that changes determined outside the scope of the CAMU as originally approved would automatically result in an entirely new CAMU approval process or cause an entire CAMU to lose its "grandfathered" status. This was not EPA's intention. EPA clarifies that an entirely new CAMU approval process is not needed for changes that are determined outside the scope of the originally approved CAMU, and such changes will not cause an entire CAMU to automatically lose its grandfathered status. Changes that are determined to be outside the scope of the originally approved CAMU (like other changes) would be subject to review and approval of the Regional Administrator and today's requirements would apply to them, if applicable. For example, a change to add a new type of waste to a CAMU that is considered outside the scope of the originally approved CAMU would trigger a duty to comply with today's treatment requirements with respect to that waste, but it would not require a new review, for example, of waste already disposed of in the CAMU or waste within the scope of the original approval.

EPA understands how its proposed language on grandfathering led to the commenters' concern, and therefore the Agency is making a change to that language to clarify its original intent. The proposed language (§ 264.550(b)) stated that grandfathered CAMUs are subject to the earlier CAMU standards, in § 264.551, "so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved." To make it clear that a change in one feature of the CAMU (for example, the waste to be managed) would not automatically require a reapproval of the entire CAMU under the new standards, EPA has revised the final clause to read: "CAMU waste, activities, and design will not be subject to the new standards as long as the waste, activities, and design remain within the general scope of the CAMU as approved." Thus, the placement of new waste in a grandfathered CAMU outside the scope of the original approval would require that the new waste meet the treatment standards of today's rule, and certainly operating and closure standards for the CAMU would be modified if necessary to address the new waste, but the entire CAMU would not have to undergo reapproval under the terms of today's rule.

M. Public Participation (40 CFR 264.552(h))

EPA proposed to expand and clarify the requirements providing for public participation in decisions to establish CAMUs by making prior public notice and an opportunity for public comment mandatory for all final CAMU determinations. EPA also proposed to expressly require the Regional Administrator to include in CAMU public notices the rationale for any proposed application of the treatment adjustment factors discussed earlier in today's rulemaking. Consistent with its overall policy to encourage full, fair, and equitable public participation throughout cleanup processes, the Agency believes that the public must be provided opportunities to participate in CAMU decision making and is finalizing the public participation requirements as proposed.

Today's public participation requirements for CAMUs expand on the public participation requirements established in the 1993 CAMU rule. This rule required the Regional Administrator to document his or her decision rationale and make the documentation available to the public, and it required that the incorporation of CAMUs into existing permits be done through the permit modification procedures (including the public participation procedures) of § 270.41 or § 270.42. The rule did not establish procedures for incorporating CAMUs into orders, or mandate that there be an opportunity for public comment before a decision outside of the permit context. Under today's rules, the Regional Administrator must provide "public notice and reasonable opportunity for public comment before designating a CAMU." Thus, under today's regulations, the public will have an opportunity to be involved in all final CAMU determinations before final decisions are made, whether a CAMU is authorized under a RCRA permit or an order. Commenters generally supported the explicit requirement for public notice and opportunity for comment prior to final CAMU determinations.

As discussed in the proposal, the Agency believes that the standard of "reasonable opportunity" should, as a general minimum, include informing people about a prospective CAMU and providing a meaningful opportunity for people to comment to the Regional Administrator before a final agency determination is made regarding the CAMU (65 FR 51113, August 22, 2000). At the same time, by not including more detailed provisions on how public participation should be conducted, the Agency believes that the "reasonable opportunity" standard provides the flexibility that is necessary to ensure that CAMUs can be considered and approved within the broader context of cleanup decisions using the wide variety of administrative mechanisms that may be associated with cleanups.

[51] The Agency also notes that the signature of the final rule was delayed by several months beyond EPA's original expectations, thereby giving commenters much of the time they requested.

In many cases, the Agency expects that CAMUs will be approved as part of a larger remedy selection decision. In general, remedy decision processes already include opportunities for public review and comment. The Agency expects that CAMUs approved as part of a broader remedy selection decision would undergo public notice and comment as part of that decision. The Agency believes that placing CAMUs in the context of the broader remedies of which they are a part will be helpful to the public reviewing CAMU proposals. (Where CAMUs are approved as part of a permit modification, the existing permit modification procedures (including the public participation) of § 270.41 or § 270.42(c) would apply; however, even in these cases, EPA expects that the CAMU approval and the remedy decision could be done as a single modification.) In addition to public notice and an opportunity for comment before a final CAMU determination is made, the "reasonable opportunity" standard includes the idea that Regional Administrators provide sufficient information (e.g., a description of the proposed CAMU) to allow the public to consider the proposal in a meaningful way.

In addition to the requirement that Regional Administrators provide a "reasonable opportunity" for public comment before making a CAMU determination, today's rulemaking specifically requires Regional Administrators to include the rationale for any proposed adjustments to the CAMU treatment standards. As discussed in the proposal, the Agency is including this provision to highlight the importance of the treatment adjustment factors and because decisions about treatment, including the degree of treatment necessary at any given site, are often of great interest to the public.

In the proposal, EPA requested comment on whether to apply the public participation procedures in the Agency's RCRA Expanded Public Participation Rule (60 FR 63417, December 11, 1995, 40 CFR part 124, subpart B) to all CAMU decisions. Comments on the idea of requiring the expanded public participation requirements at all final CAMU determinations were mixed. Some commenters strongly supported applying the expanded public participation requirements to all final CAMU determinations. (The expanded public participation requirements now apply only to CAMUs approved as part of an initial permit. They do not apply to CAMUs incorporated into permits through permit modifications (see 40 CFR 124.31(a))—although these modifications do require the facility to notify the public and hold a public meeting at the time it applies for the modification (see 40 CFR 270.42(c))—or to CAMUs required through orders.) Other commenters thought application of the expanded public participation rule requirements—such as pre-application meetings—would not be appropriate for all final CAMU decisions. After considering these comments carefully, the Agency has decided not to apply the expanded public participation requirements by regulation to all CAMU determinations.[52]

EPA is taking this approach, in part, because the conditions of the expanded public participation rule mirror the specifics of the RCRA Part B permit process, and therefore may not fit well with other mechanisms that might be used to approve CAMUs. For example, the expanded public participation rule requires public notice in the local newspaper *and* by radio or television. EPA believes this level of specificity is inappropriate as a general requirement outside the context of RCRA Part B permits. The requirements for a preapplication meeting conducted by the facility owner are similarly detailed, and the meeting itself is likely to be redundant at many cleanups where public involvement is addressed through the broader remedial process. Instead, the Agency believes that the "reasonable opportunity" standard discussed above and the requirement that Regional Administrators include express information about any proposed adjustment to CAMU treatment requirements provide an appropriate minimum performance standard for public involvement in final CAMU determinations (i.e., they guarantee that the public will have a meaningful opportunity to be involved in all final CAMU determinations before a final decision is made) while maintaining the flexibility for regulators to tailor the specifics of the public involvement process to the particular site, the specific needs and interests of the public in the area, and the particular mechanism used.

The Agency reiterates that today's regulations represent the minimum amount of public involvement that is appropriate for final CAMU determinations. The Agency strongly encourages all CAMU decision makers to consider additional opportunities for public involvement in important cleanup decisions, such as final CAMU determinations, within the context of the broader cleanup. The Agency's current guidance on public participation during corrective action can be found in the September 1996 RCRA Public Participation Manual (see Chapter 4 in particular).

As discussed in the proposal, the Agency is continuing to review the best ways of enhancing the role of the public in RCRA cleanup decisions (including CAMU determinations), as part of its evaluation of public involvement in the overall RCRA corrective action program undertaken as part of the RCRA Cleanup Reforms. Public participation in the CAMU process will be informed by this initiative. The Agency continues to seek feedback from all stakeholders on the RCRA Cleanup reforms. Additional information is available at *www.epa.gov/epaoswer/osw/cleanup.htm* or by calling the RCRA Hotline at 1–800–424–9346 or the other numbers listed in the **ADDRESSES** section of today's rulemaking.

N. Additional Requirements ((40 CFR 264.552(i))

As discussed throughout today's rulemaking, cleanup situations will vary considerably across sites. As part of its effort to balance predictability and certainty in cleanup decision making with site-specific flexibility, EPA proposed and is today finalizing a number of minimum technical standards for CAMU design and operation, while at the same time allowing Regional Administrators to approve alternate standards on a site-specific basis. The Agency also proposed to modify the requirement from the 1993 CAMU rule to expressly allow the Regional Administrator to establish additional CAMU requirements on a site-specific basis to

[52] Under § 270.42, permit modifications to approve CAMUs are classified as Class 3 modifications. Class 3 permit modification procedures, which were developed prior to the Expanded Public Participation rule, are similar to the procedures in that rule in requiring public participation before the Agency publishes a proposal to approve a draft permit (or a proposed decision to deny), but they differ in important respects. Under the Class 3 permit modification requirements, permit applicants must notify the public at the time they request a permit modification (rather than before the application is submitted), and they must hold a public meeting and solicit comment on the modification request, before EPA proposes to issue or deny the modification request. The expanded public participation requirements for part B permits, on the other hand, require that the facility hold an informal meeting to inform community members of proposed hazardous waste management activities *before* they apply for a permit; the permitting agency must announce to the public when the permit application is submitted; and the permitting agency may require a facility to set up an information repository. The part B expanded public participation procedures do not apply to Remedial Action Plans issued under the Hazardous Waste Identification Rule for Contaminated Media (see 63 FR 65898, November 30, 1998), or to post-closure permits (40 CFR 124.31(a)).

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protect human health and the environment. The Agency proposed that "notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment." Commenters generally supported this approach, and the Agency is today finalizing this provision as proposed.

As discussed in the proposal, the Agency believes that this new construction of the Regional Administrator's existing authority (under the 1993 CAMU rule) to impose "additional requirements as necessary to protect human health and the environment" is appropriate to clarify that, on a site-specific basis, Regional Administrators may impose additional requirements beyond the more detailed minimum technical and operational standards for CAMUs established today. Such additional requirements might include, for example, additional treatment of PHCs beyond the treatment standards, additional engineering or monitoring specifications, and prohibitions on the placement of specific CAMU-eligible wastes in a CAMU.

While agreeing with the general concept of allowing Regional Administrators to impose additional requirements as necessary to protect human health and the environment, one commenter expressed concern that the proposed regulatory language did not adequately emphasize the site-specific nature of decisions to impose additional requirements beyond the requirements established today, or the need for such requirements to be supported in the administrative record for a CAMU and to be consistent with the overall objectives of the CAMU regulations. The Agency is not persuaded that a change to the rule language is needed to clarify these points. The Agency agrees that, like other elements of CAMU decision making, decisions to impose additional requirements (like any other Agency decision made in approving a CAMU) must be made on a site-specific basis and supported by the administrative record. As discussed in the proposal, this requirement for the most part only confirms an obligation that EPA already has as part of the "omnibus" provision in RCRA permitting at 40 CFR 270.32(b)—that is, that the Regional Administrator must establish, in individual permits, ". . . terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment." The RCRA omnibus provision for permits does not include specific regulatory language emphasizing that the decision must be site-specific or that actions must be justified in the administrative record, yet such decisions are held to those standards (See, e.g., *In re Caribe General Electric Products*, Inc., RCRA Appeal, No. 98–3 (February 4, 2001); *In re Ash Grove Cement Co.*, RCRA Appeals Nos. 96–4 and 96–5, 1997 EPA App. LEXIS 30 (November 14, 1997). Similarly, EPA does not believe such language is needed here.

IV. Relationship To Other Regulatory Programs

Today's amendments do not change the relationship between other state and federal programs and the CAMU regulations. These amendments solely affect the way hazardous cleanup wastes are managed in corrective action management units. These rules set standards for hazardous waste management units when EPA or a state chooses to take advantage of the flexibility provided by the CAMU rule, but they do not affect, in any way, other aspects of RCRA cleanups, e.g., how cleanup levels are set or when treatment is required at RCRA corrective action facilities. Although these standards borrow, as appropriate, from approaches in current remediation programs (including RCRA corrective action for solid waste management units), they were not designed for making remedial decisions outside the CAMU context, such as in state or federal cleanup programs, where program-specific remedial decision-making processes are already in use. Today's rule leaves in place, and leaves untouched, all of EPA's current policies and regulations covering hazardous waste cleanups, including such familiar policies as the "area of contamination" concept, "contained-in" decisions, the regulatory definition of "remediation waste," and the various remediation-specific LDR variances. For a discussion of these and other policies, see the May, 1996 Corrective Action ANPR (61 FR 19432), the October 1998 Memorandum, Management of Remediation Waste Under RCRA, EPA530–F–98–026, RCRA Docket No. F–2000–ACAP–S0025, and the preamble discussion to the HWIR-media rule at 63 FR 65874, 65877–65878 (November 30, 1998) (these references are in the RCRA docket;). The preamble to the 1993 CAMU rule discusses the relationship between the CAMU rule and other regulatory programs, including CERCLA (see 58 FR 8658, 8679 (February 16, 1993)).

V. How Will Today's Regulatory Changes be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing federal requirements.

B. Authorization of States for Today's Final Rule (Other than § 264.555)

Today's CAMU amendments will be primarily implemented pursuant to section 3004(u) and (v) of RCRA, which are HSWA provisions. This authority also formed the statutory basis for the original federal Corrective Action Management Unit (CAMU) regulations (see 58 FR 8658, 8677 (February 16, 1993)). Therefore, the Agency is adding this rule to Table 1 in § 271.1(j), which identifies the federal program requirements that are promulgated pursuant to HSWA. The Agency received a number of comments regarding the statutory authority for today's amendments. They are discussed below.

Today's amendments to the CAMU regulations (except for § 264.555) are more stringent than the existing federal CAMU regulations.[53] Thus, states that have already been granted authorization for the existing 1993 CAMU rule must revise their programs so that they are not less stringent than the federal program, including today's amendments. Further, because today's amendments to the CAMU regulations are promulgated under HSWA authority, in states authorized for the 1993 CAMU rule that choose to not seek interim authorization-by-rule, EPA will implement today's amendments until these states receive interim or final authorization. EPA will also continue to implement the amended CAMU regulations consistent with applicable, more stringent state law in those states that have not received authorization for corrective action. As explained in the 1993 CAMU rule preamble (see 58 FR 8658 (February 16, 1993)), the CAMU rule is integral to the HSWA corrective action program, and where EPA implements the corrective action requirements, EPA also implements the CAMU rule consistent with applicable more stringent state law. Note that section 3009 of RCRA allows state laws or regulations to be more stringent or broader in scope than the federal regulations.

States that are authorized for corrective action but have not received authorization for the 1993 CAMU rule are not required to seek authorization for today's amended CAMU regulations because those states' authorized regulations for corrective action and Land Disposal Restrictions (LDRs) are more stringent than the federal regulations, which provide for CAMUs. Because CAMUs are used as part of a corrective action and are often integral to the implementation of corrective action at individual facilities, states are strongly encouraged to adopt and seek authorization for the CAMU regulations. After publication of today's final CAMU amendments, states may continue to receive authorization for the 1993 CAMU rule. However, EPA strongly discourages states from seeking authorization for the CAMU regulations without today's amendments because EPA will implement these amendments in those states.

One commenter argued that EPA should promulgate today's "modified rule" under non-HSWA authority. Specifically, the commenter believes that the amendments are better promulgated under the authority of section 3004(a) of RCRA, which provides the authority for hazardous waste management unit standards, than under the corrective action standards of RCRA sections 3004(u) and 3008(h). This commenter also argued that there is no basis on which to conclude that the CAMU rule, when applied to facilities not subject to RCRA corrective action, is promulgated pursuant to HSWA authorities.

In response, EPA first notes that the comment urges the Agency to change its approach for the CAMU rule as a whole, not just for today's amendments. However, redesignating the entire CAMU rule as non-HSWA was not at issue in the CAMU amendments proposal. The only issue the Agency discussed in the proposal was the authority for the modifications to the CAMU rule. 65 FR 51114. Any comments that are not specific to those amendments are therefore outside the scope of today's rulemaking. The Agency is thus not changing the designation of the CAMU rule to non-HSWA.

As for whether the amendments alone are appropriately considered HSWA, the Agency continues to believe that they are for several reasons. First, today's amendments simply flesh out otherwise existing requirements of the CAMU rule. Just because these provisions are now more detailed does not mean that the authority under which they are implemented must change. More specifically, even with the added detail, the standards remain very tailored to the cleanup scenario, and they were designed to further the objectives of the corrective action program. For example, the identification of principal hazardous constituents, the balancing criteria inherent in much of the rule (for example, in the adjustment factors), the way many of the conditions derive from site remedial decisions (e.g., the alternative liner standards or the treatment adjustment factor based on cleanup levels), and similar aspects of the rule are inextricably linked to the remedy decisions at corrective action sites. In fact, the standards promulgated today are integral to satisfying EPA's obligation to ensure that corrective actions both move forward expeditiously and protect human health and the environment. RCRA section 3004(u); 40 CFR 264.101. They are therefore appropriately considered promulgated pursuant to the corrective action authorities.

Second, as stated in the proposal, although the CAMU rule language was amended in the HWIR-Media rule to make it clear that CAMUs may be used at "cleanup-only" facilities,[54] today's amendments (like the original CAMU rule) were developed primarily with corrective action sites in mind. For example, almost all of the CAMUs identified in EPA's site background document are at RCRA corrective action facilities.

Similarly, the Agency does not believe that it would be appropriate to treat the CAMU rule as it applies to non-RCRA corrective action sites as non-HSWA while treating the rule in all other instances as HSWA. Although one commenter argued that the "Agency took no position on whether [allowing CAMUs to be used at "cleanup-only" facilities] was a HSWA determination or not," the Agency generally believes it is best to avoid bifurcating individual rules into HSWA and RCRA requirements. In any event, this comment is also outside the scope of today's rulemaking as it pertains to any provisions other than today's amendments. As discussed above, the Agency does not believe it would make sense to implement the amendments under a different authority than the balance of the rule.

Finally, EPA notes that it has addressed the specific concerns that, it assumes, lie behind the comments that this rule should be a RCRA rule. In the approach EPA has adopted in today's rule allowing interim authorization-by-rule, states will be able to become interim-authorized for the rule before it takes effect, eliminating any possible transitional problems or dual regulation that the original base RCRA authorization process was designed to avoid. Further, EPA has eliminated from today's final rule the two aspects of the proposal that commenters identified as causing potential transition problems—the exclusion of states with problematic

[53] The following section does not apply to § 264.555 of today's rule, because it is a less stringent HSWA provision. For a discussion of this provision, see section V.E of this preamble.

[54] "Clean-up only" facilities are sites that are subject to RCRA permitting requirements solely because clean-up activities at the facility trigger those requirements. The HWIR-Media rule eliminated facility-wide corrective action requirements in permits issued to clean-up only facilities. The Agency notes that under the HWIR-Media amendment to the CAMU rule, the universe of facilities subject to the CAMU rule did not change. The language was necessary to preserve the status quo, since the HWIR-Media rule removed cleanup-only facilities from the universe of facilities subject to RCRA's section 3004(u) facility-wide corrective action requirement. (63 FR 65880, November 30, 1998).

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audit immunity and privilege laws from eligibility for authorization-by-rule, and the termination of interim authorization if EPA has not acted on final authorization within a specific period of time. Since EPA has addressed any potential disruption resulting from classifying today's rule as a HSWA rule, the commenters' only remaining concern would be that they would become subject to the more stringent requirements of the rule before they preferred to be. Given how intimately linked the requirements in today's rule are to the HSWA requirement for protective corrective action at RCRA facilities, and given Congress's clear direction in HSWA that corrective action requirements should be immediately effective (even in authorized states), EPA believes that it would frustrate the intent of Congress to allow years of delay in the actual implementation of this rule.[55]

C. Interim Authorization-by-Rule for States Currently Authorized for the CAMU Regulations

1. Background and List of States Eligible for Interim Authorization-by-Rule

As described above, today's amendments are promulgated under HSWA statutory authority and are more stringent than the existing CAMU regulations (except for § 264.555). Thus, in states that are authorized for the 1993 CAMU rule, there is the potential for dual implementation of the CAMU regulations if these states are not authorized for today's amendments before they become effective. This dual implementation is a result of states continuing to implement the provisions of the 1993 CAMU rule, while EPA implements today's amendments.

To avoid this potential disruption in the implementation of the RCRA cleanup program caused by the regulatory authority for CAMUs being split between states and EPA, we proposed two authorization actions that would enable states to gain interim authorization for today's final amendments. First, EPA proposed a new authorization procedure called interim authorization-by-rule. Second, EPA proposed to use this new procedure to grant interim authorization to states that have final authorization for the 1993 CAMU rule and meet other eligibility criteria. Today, EPA is promulgating the interim authorization-by-rule procedure and listing those states which are eligible for interim authorization-by-rule.

EPA has determined that states which have met the criteria promulgated today in 40 CFR 271.27 are eligible for interim authorization-by-rule. These eligible states will have interim authorization if they notify EPA that they are willing and able to implement the amended CAMU regulations under 40 CFR 271.27(a)(2). This interim authorization is granted through a process that is promulgated as a part of today's rule in 40 CFR 271.27. Currently, 28 states are authorized for the existing CAMU regulations and meet the criteria for interim authorization-by-rule. These states are also authorized for corrective action. The eligible states are: Alabama, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

2. Eligibility criteria and process for interim authorization-by-rule

Under today's interim authorization-by-rule procedure, states are eligible for interim authorization for the CAMU amendments if they have final authorization for the 1993 CAMU rule (58 FR 8658, February 16, 1993), and notify EPA within 60 days after publication of today's notice that they intend to and are able to use today's amendments as guidance in the implementation of their CAMU regulations until they adopt equivalent provisions. As discussed in the preamble to the proposed rule, these authorized states are currently responsible for the implementation of the CAMU rule, including reviewing applications for CAMUs from facilities and overseeing the operation of approved CAMUs. EPA continues to believe that in general, CAMUs approved under the standards in the 1993 rule could be approved under today's amended CAMU regulations. Thus, EPA has determined that these states have regulations which are substantially equivalent to the amended CAMU regulations.

Today's rule requires states that want interim authorization to notify EPA within 60 days after publication of today's notice that the state intends to and is able to use today's amendments as guidance in the implementation of their CAMU regulations until it adopts equivalent provisions, This requirement is located at 40 CFR 271.27(a)(2). During the 60-days period after today, the eligible states listed above should evaluate today's final amendments and decide whether they can and want to seek interim authorization-by-rule. If a state decides to seek interim authorization-by-rule, the state must send a letter to the Regional Administrator which informs EPA of this intention. After this 60-day period ends, EPA will publish an additional **Federal Register** notice identifying which states have submitted the notification to EPA, and thus have interim authorization for the CAMU amendments.

EPA received several comments regarding the state notification deadline. One commenter thought that the time period for notification was too short, while others believed that it was reasonable. EPA is reassured by state commenters who had no concerns regarding the deadline, which remains at 60 days after publication of today's rule. EPA has alerted states to this deadline, and EPA continues to discuss today's rule with states in order to ensure they are aware of the notification deadline. EPA also believes that this determination will be straightforward for states, and the procedural requirement is minimal.

One commenter believed that states eligible for interim authorization-by-rule should be able to submit their notifications to EPA of their ability to have interim authorization after the proposed 60-day deadline, as long as the notification is submitted before interim authorization for the CAMU rule amendments expires. EPA understands the reasons for this comment, but intends to complete the interim authorization-by-rule process by the effective date of today's final rule since the final action will be the placement of a **Federal Register** notice which informs the public what states have interim authorization for today's CAMU amendments. EPA is concerned that confusion may arise if different states qualify for interim authorization-by-rule at different times. Moreover, given the few changes from the proposal, EPA sees no reason, and the commenter provided none, why states cannot submit their notifications within 60 days. As described below, states that are authorized for the 1993 CAMU rule may also be able to apply for interim authorization using an expedited process similar to that used today. Note that this interim authorization would expire on August 30, 2004.

Eligible states may choose not to use this interim authorization-by-rule process. If they are not able to, or choose not to seek interim authorization-by-rule, they can follow the process outlined in section F below for states that are authorized for corrective action, but not the 1993 CAMU rule.

In the August 22, 2000 proposed rule (65 FR 51116), EPA sought comment on restricting the eligibility of states with audit privilege and immunity laws for interim authorization-by-rule. Specifically, EPA proposed that under § 271.27(a)(2), states with audit privilege and immunity laws that raised EPA concerns about whether the state had adequate enforcement as required for the purpose of final authorization under RCRA section 3006(b) would not be eligible for interim authorization-by-rule for today's CAMU amendments.

In the August 22, 2000 proposed rule, Oregon, Nevada, and Illinois were identified as states with audit privilege and immunity laws that would not be eligible for the CAMU interim authorization-by-rule. Since publication of the proposed rule, Oregon and Nevada have taken actions which resolved EPA's concerns with their audit laws. Therefore, the audit laws in Oregon and Nevada no longer present a barrier to the authorization of federal environmental programs. Oregon and Nevada are eligible for interim authorization-by-rule for today's CAMU amendments and neither state will be ineligible for final authorization of today's CAMU amendments due to audit privilege and immunity laws.

In addition, EPA has decided interim authorization-by-rule for states with audit privilege and immunity laws that raise EPA concerns regarding the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). However, because audit privilege and immunity laws, without sufficient safeguards and conditions, can undermine the enforcement authority that a state must possess as a condition of having final authorization to implement federal environmental programs, states granted interim authorization-by-rule will still be required to resolve their audit law conflicts where necessary to meet minimum federal requirements as a condition of final CAMU program authorization.

EPA bases its decision on the following rationale. First, interim authorization does not necessarily require a finding by EPA that the state program provides adequate enforcement, but rather a finding that the state program requirements are substantially equivalent to the federal program requirements. Second, even if adequacy of enforcement were considered part of equivalence, Illinois's CAMU program is substantially equivalent, if not completely equivalent, to the federal program. The judgment of substantial equivalence must be made looking at the program as a whole, and EPA does not believe that the fact that Illinois's enforcement authority may be circumscribed in the specific circumstances affected by its audit privilege law undermines the substantial equivalence of its CAMU program as a whole. This conclusion is supported by the fact that the audit privilege issues are not an aspect of Illinois's CAMU program per se but affect its hazardous waste program generally. Third, interim authorization will provide a state with the opportunity to address problems and issues associated with the state's environmental audit privilege and/or penalty immunity law. EPA will continue to work with states during this interim approval period to remedy any deficiencies in their laws or help implement today's CAMU amendments. Additionally, it is EPA's position that any subsequently enacted audit law or other law that conflicts with minimum federal authorization requirements would make a state ineligible for final authorization of the CAMU program.

The State of Illinois continues to have an audit privilege law that raises EPA concerns as to the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). While Illinois is eligible for interim authorization-by-rule of today's CAMU amendments, under the approach outlined above, final authorization of Illinois's CAMU program will not be granted until Illinois resolves its audit law conflicts to meet the minimum requirements for authorization under RCRA section 3006(b).

In addition, Illinois has another law, referred to as the "Illinois Site Remediation Law" that raises EPA concerns regarding the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). The Illinois Site Remediation Law[56] replaces strict liability with limited liability requiring proof of causation for all remediations under the Illinois Environmental Protection and Groundwater Protection Acts, including the RCRA program. This law increases the state's burden of proof necessary to establish a violation under federally approved Illinois programs, thereby affecting the adequacy of the state's enforcement authority under these programs. EPA has notified Illinois of its concerns regarding the Illinois Site Remediation Law.[57] As a condition for final authorization of the CAMU program, and, unless circumstances regarding the Site Remediation Law change, Illinois must modify its Site Remediation Law to meet the minimum requirements for final authorization under RCRA section 3006(b). EPA will continue to work closely with Illinois officials to address authorization issues for both the Illinois Audit Law and the Illinois Site Remediation Law.

D. Expiration of Interim Authorization

In the August 22, 2000 notice, EPA proposed to extend the period of interim authorization for the CAMU amendments from January 1, 2003 (the date interim authorization expires under § 271.24(c)) to a date three years after the effective date of today's amendments. EPA has considered comments on this proposal, and has modified the date interim authorization expires for today's amendments to be the date of final authorization, provided that states submit a final application for authorization to EPA by August 30, 2004. Under the provisions in §§ 271.21(e)(2)(ii), (e)(2)(iv), and (e)(4)(ii), states have two years after July 1, 2002 to amend their CAMU regulations, and then an additional 60 days to submit a final authorization application to EPA, resulting in the August 30, 2004 deadline. This final deadline is different than the proposed approach, which would have required states to receive final authorization from EPA by January, 2005. As reflected in their comments, states were concerned that under the proposed approach, there would be no deadline for states to submit their application that would ensure EPA approval by the expiration of interim authorization.

Under the approach in today's final rule, the deadline which states must meet to retain regulatory authority for today's amendments occurs sooner than in the proposal, but is at an interim step in the authorization process, and is not dependent on EPA action. Further, interim authorization may actually extend for a longer period of time than in the proposal because it extends until final EPA action is taken on a state's authorization application. This revised deadline is now located in new § 271.27(b) and amended § 271.24(c).

[55] Under the RCRA authorization process, states have up to two years to amend their regulations to come into compliance with more stringent RCRA requirements. Generally, states meet this requirement. However, if they fail to do so, EPA's recourse is to begin steps to withdraw the state program's authorization to run the RCRA program. Under current regulations, state program withdrawal is a lengthy process.

[56] Illinois Environmental Protection Act, 415 ILCS 5/58.9.

[57] See January 11, 1999, letter from David Ullrich, Region V Acting Regional Administrator, to Mary Gade, Director, Illinois Environmental Protection Agency, and James Ryan, Illinois Attorney General, detailing EPA's authorization concerns with the Illinois Site Remediation Law.

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The final approach continues to require a deadline for state action because of the temporary nature of interim authorization. EPA continues to believe that final authorization should be the goal.

EPA believes that this extension to the expiration of interim authorization for the CAMU amendments rule will provide states sufficient time to amend their regulations so they are equivalent to the federal CAMU regulations, and then allow them to go through the final authorization process in § 271.21. If a state does not submit its final application for today's amendments before the deadline of August 30, 2004, interim authorization will expire, and EPA would then be responsible for implementing the new CAMU amendments in these states. (EPA would not implement the provisions in the 1993 CAMU rule that were unaffected by the amendments; the authorized states would continue to implement them.) EPA believes that this potential reversion of the implementation authority to EPA will act as a strong incentive for states with interim authorization to expeditiously seek final authorization. Further, EPA does not believe that this final authorization process will be particularly difficult. See below for additional detail regarding EPA's intention to expedite the authorization of states for the CAMU rule amendments. As part of the authorization process, EPA commits to reviewing and granting approval of a final authorization application within the time frame for interim authorization, provided that states expeditiously amend their regulations to include today's final amendments.

E. Authorization for § 264.555

Section § 264.555 of today's rule—which allows placement of CAMU-eligible wastes in off-site hazardous waste landfills—is less stringent than the existing regulations. Therefore, it will become effective only in those states which are not authorized for these parts of the hazardous waste program. Further, because the issues addressed by § 264.555 have no counterpart in the existing CAMU regulations (or any other RCRA regulation), this provision will would not be substantially equivalent to those regulations. Thus, states which are authorized for the 1993 CAMU rule will not be able to gain interim authorization-by-rule for the provisions in today's notice. The final CAMU amendments rule will not include the provisions in today's notice in the interim authorization-by-rule sections in proposed §§ 271.24(c) and 271.27 (see 65 FR 51115).

However, if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of today's notice in advance of adoption or authorization, EPA would not generally consider such implementation a concern for purposes of enforcement or state authorization. Of course, the state could not implement the requirements in a way that was less stringent than the federal requirements in today's rule, which, in this case, would include the public participation standards of today's rule. (This is similar to the approach the Agency took in promulgation of the 1993 CAMU rule. See 58 FR 8677, February 16, 1993.)

F. Authorization of States Currently Authorized for Corrective Action, but not the Existing CAMU Rule

There are a number of States authorized for corrective action that are not authorized for the 1993 CAMU rule. This situation applies in the following twelve states or territories: Arkansas, Colorado, Guam, Kentucky, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, New Hampshire, and Ohio. In addition to these states, some states authorized for the 1993 CAMU rule may not choose to receive interim authorization-by-rule. Because CAMUs expedite clean-ups, EPA encourages all of these states to seek final authorization for the CAMU regulations, including today's amendments as soon as possible. (Alternatively, states could request and receive interim authorization under § 271.24.) EPA also believes that the authorization process for the CAMU regulations can and should be completed expeditiously.

1. State Applications for Final Authorization

As discussed in the proposal, the state authorization revision procedures in § 271.21(b) provide EPA with the discretion to consider the circumstances of individual states when determining what should be the content of a state's application for final authorization. EPA believes that states which are authorized for corrective action and are seeking authorization for the amended CAMU rule generally will not need to submit a revised Program Description (PD) and Memorandum of Agreement (MOA) to EPA, where the state program seeking authorization for the CAMU regulations is the same program that is authorized for corrective action.

The implementation of the CAMU regulations requires states to make clean-up decisions that are in effect the same types of decisions states already implement through their corrective action programs. Therefore, EPA believes that the adoption and implementation of the CAMU regulations requires the same technical and resource capability that states already have to operate the corrective action program. Generally, no changes to the MOA between the state and EPA should be needed as a result of the CAMU regulations because Agency coordination issues have been addressed during the authorization process for corrective action. However, EPA would have the discretion to request these documents or other information, if necessary.

EPA believes that states should address the CAMU regulations in a revised Attorney General's (AG) statement of authority if necessary, or through other appropriate mechanisms. The CAMU regulations create a new type of waste management unit that can be used only in certain situations after a facility application and Agency review process. Thus, states may need to establish new statutory or regulatory authority, or interpret their existing authorities to determine that they can approve and regulate these units.

2. Authorization Approach for States That Adopt the CAMU Regulations by Reference or Verbatim

Many states adopt federal regulations verbatim or incorporate them by reference into their regulations. It is likely that many states will adopt the CAMU regulations in this manner. When states adopt federal regulations using these methods, it is not difficult for EPA to determine whether the state regulations are equivalent to their federal counterparts. Because of this ease of review, and the high priority of state authorization for the CAMU regulations, the Agency believes that the authorization process for these states under § 271.21 will be quick. Thus, once EPA receives an acceptable authorization application from a state which incorporates the CAMU amendments by reference or adopts them verbatim, EPA intends to immediately proceed to publish a direct final rule which grants final authorization to that state. Under this mechanism, the rule would become effective unless EPA received an adverse comment, in which case EPA would withdraw the rule prior to the effective date. An exception to this expectation would be cases where in EPA's judgment, known issues with the existing state program greatly affect the program's prospects for authorization.

An example of such issues would be questions regarding a state's enforcement authority (e.g., audit law issues), or capability (e.g., resource issues). It should also be noted that EPA will process all state authorization applications for the CAMU regulations as quickly as possible, regardless of the method of state adoption.

VI. Effective Date

In today's final rule, EPA is retaining the proposed effective date of 90 days. Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. However, RCRA section 3010(b) provides for an earlier, or immediate, effective date in three circumstances: (1) Where the industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause. Because today's rule "grandfathers" CAMUs (see discussion above in "Grandfathering CAMUs"), a 90-day effective date would only affect any unapproved CAMUs that do not meet the criteria for grandfathering (i.e., CAMUs for which a "substantially complete" application had not been submitted by November 20, 2000, and which had not been approved by the effective date). Thus, at the time this rule becomes effective, all existing and approved CAMUs will, by definition, be "in compliance" (because they will be grandfathered), and therefore industry will have no problem in coming into compliance by the effective date. (Several commenters expressed concern that 90 days did not provide enough time for them to modify CAMU applications and become approved by the effective date. These commenters, however, did not argue that they would be out of compliance unless EPA provided for a 6 months effective date; instead, their main concern was with the scope of grandfathering relief. These comments are discussed earlier in today's preamble in the section on grandfathering.)

One commenter believed that the effective date for today's final rule should be six months after publication to allow states a longer time period to notify EPA that they intend to and are able to use today's amendments as guidance in the implementation of their CAMU regulations. However, as discussed above, most states supported this notification deadline.

VII. Conforming Changes (40 CFR Part 260, Subpart S, § 260.10)

Today's rule changes the title of 40 CFR part 264, subpart S from "Corrective Action for Solid Waste Management Units" to "Special Provisions for Cleanup." The current title reflects the Agency's intention in 1993, when it was added to the CFR, to finalize the comprehensive corrective action regulations for solid waste management units proposed in September 1990. 58 FR 8658 (February 16, 1993). As discussed more fully above, in the section titled "Releases to Ground water (§ 264.552(e)(5))," the Agency withdrew the majority of that proposal in October 1999. In addition, the current provisions of subpart S, as well as those finalized today, address CAMUs, temporary units, and staging piles, which are all units which may only be used for the management of cleanup wastes, and which, in some instances, may be used at sites not subject to RCRA corrective action. In addition, today's rule includes provisions applicable to cleanup wastes disposed of off-site. EPA therefore believes that this change ensures that the title of subpart S more accurately conveys the provisions that are contained within it.

The conforming changes to § 260.10 are made to implement the distinction being drawn in today's rule between CAMUs that are grandfathered and CAMUs that are subject to today's standards at § 264.552. As discussed above in the section titled "Eligibility of Wastes for Management in CAMUs," EPA is modifying the definition governing the types of wastes that can be managed in a CAMU, and is changing the name of waste eligible for management in CAMUs from "remediation waste" to "CAMU-eligible waste." This revised definition applies to new CAMUs but not to CAMUs that qualify to continue implementation under today's "grandfathering" provisions (see § 264.550). EPA is making two conforming changes as a result of modifying the definition of remediation waste in this fashion. The first change is to remove the existing definition of CAMU at § 260.10 and to include it directly in § 260.551(a) (the introductory paragraph to the 1993 CAMU provisions, which becomes, as a result of the regulations finalized today, the regulations applicable to grandfathered CAMUs). The second change is to modify the existing definition of CAMU at § 260.10 by changing "remediation wastes" to "CAMU-eligible wastes," and to place the definition directly in the amended CAMU regulations at § 264.552(a).

EPA also changed the term "remediation waste" to "CAMU-eligible waste" throughout the CAMU regulatory language.

EPA received no comments on these conforming changes and is therefore finalizing them as proposed.

VIII. Analytical and Regulatory Requirements

A. Planning and Regulatory Review Under Executive Order 12866

Under the Planning and Regulatory Review Executive Order 12866 (58 FR 51735 (October 4, 1993)), an agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's final rule is a "significant regulatory action" because of novel legal or policy issues arising in the rule. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. The final rule is estimated to have annual incremental costs between $217,000 and $452,000, and therefore is not viewed as economically significant under the Executive Order.

EPA has prepared an economic support document for the final rule entitled Economic Analysis of the Amendments to the Corrective Action Management Unit Rule." This document can be found in the docket for today's final rule.

This section of the analysis discusses: (1) The economic analysis background and purpose, (2) the CAMU administrative approval costs assessment, (3) the analysis of impacts resulting from the treatment and unit design requirements, (4) the assessment of potential change in CAMU usage to result from the rule, and (5) the summation of these impacts. There were

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no comments on the proposed rule specifically addressing the economic analysis methodology or results. The Agency discusses economics-related comments in the relevant sections below. For a complete discussion of the comments received on the proposed rule, please see the response to comments document in the docket for today's final rule.

This section also provides a qualitative discussion of the potential impacts of allowing the placement of CAMU-eligible wastes in off-site hazardous waste landfills. See section III.K of today's preamble for a more detailed discussion of this provision.

1. Economic Analysis Background and Purpose

A CAMU is: "An area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility." (40 CFR 264.552) CAMUs may be used to consolidate hazardous wastes from various areas at the facility. While one of the chief reasons for CAMU usage is to facilitate more treatment of cleanup wastes in general (see discussion earlier in the preamble), wastes placed in CAMUs are not subject to the land disposal restriction requirements for treatment. In addition, under the 1993 CAMU Rule, CAMUs are not required to meet the existing 40 CFR part 264 and part 265 minimum design, operating, closure, and post-closure requirements for hazardous waste units.

The CAMU provisions being finalized today amend the existing CAMU rule. This economic analysis examines the impacts from these final amendments compared to the existing CAMU rule provisions. This section briefly discusses the baseline and post-regulatory scenarios in the analysis, and provides an overview of the incremental impacts assessed.

a. Framework of the Analysis

The Agency faced two important questions in developing the framework for this analysis. The first was how to address defining the universe of facilities affected by today's final rule. The second was how to assess the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's final rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which could potentially be reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used. Of these facilities, today's final rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's final standards apply to CAMUs which are not subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require remediation at some point in the future under one of these authorities, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the current CAMU rule. In this RIA, the Agency projected the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, which translates to approximately 75 CAMUs per year over a 20 year period.

However, based on data showing actual CAMU usage over the past eight years, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. These data, discussed in more detail below, show an actual CAMU approval rate of approximately six CAMUs per year. The disparity between the 1993 RIA projections and the actual usage is likely the result of four factors. First, the 1993 RIA baseline is very different from the remedial setting which has existed in recent years. Chiefly, the RIA assumed significant excavation and treatment of wastes at sites, with heavy reliance on combustion technologies and little use of innovative treatment or remedial approaches. These alternative approaches tend to be less expensive than combustion technology, and are much more available and in use than was anticipated in the 1993 RIA. Therefore, the pervasive demand for CAMUs to lower large remedial costs did not materialize as anticipated in the 1993 RIA. Second, due to its timing, the RIA estimates do not include impacts on CAMU use which resulted from various remedial policy developments such as the stabilization initiative and the use of environmental indicators. These developments have resulted in increased stabilization of sites, and thus less excavation and treatment of wastes (in the short term). This shift created conditions which reduced the need to rely on CAMUs as much as had been originally estimated in the 1993 RIA projections. Additionally, the availability of alternatives to CAMUs, such as staging piles and areas of contamination and the Phase IV LDR soil treatment standards, has potentially decreased the use of CAMUs somewhat compared to that originally projected. Third, given the historical rate at which facilities have progressed through the various stages of corrective action to reach a final remedy decision, the Agency thinks that the CAMU usage projections from the RIA were unrealistically high. The number of final remedy decisions at corrective action sites across the nation has not reached 75 per year. Therefore, it would be impossible to have an average of 75 CAMUs approved annually. Finally, the Agency believes that CAMU use has been dampened over the past eight years due to the uncertainty surrounding the use of CAMUs which resulted from the CAMU litigation, which followed shortly after the rule's promulgation.

Therefore, the Agency employed the data on existing CAMUs in the CAMU Site Background Document. EPA collected these data from regional and state site managers as part of this rulemaking effort. This report contains information on 47 CAMUs approved to date or scheduled for approval prior to the effective date of the rule (as of spring 2001). Under the grandfathering provisions in today's final rule, these CAMUs will remain subject to the 1993 CAMU regulations (as long as they continue to operate within the general scope of the originally issued CAMU authorizing document (e.g., permit)). For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design. These data are contained in the CAMU site background document, which is included in the docket for today's final rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past eight years, and applied that rate to project CAMU usage in the future. In projecting future use based on historical data, the Agency assumes that the 47 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document. As noted, this document contains information from all the CAMUs approved to date for which the Agency had good data, and therefore provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which would affect CAMU usage in the future. (Note: One exception is the anticipated change is the removal of the uncertainty associated with the CAMU litigation. The Agency has assessed the order-of-magnitude impacts from this change on the CAMU usage rate as a part of the analysis of the incremental impacts of today's final rule.)

EPA also used these historical data to identify the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the provisions being finalized today (post-regulatory case). As discussed in more detail below, the Agency used the information on the 47 existing CAMU remedies to assess consistency with the final provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the proposed provisions (post-regulatory case). In such an approach, the Agency again assumes that these actual CAMU remedies selected in the past are reasonably representative of CAMU remedies which would be selected under baseline conditions in the future. The Agency believes this assumption to be sound for the same reasons stated above regarding CAMU usage. EPA thinks these remedies are the reasonable outcome of the existing CAMU regulations implemented within the context of standard remedial goals for cleanup.

b. Baseline Case Description

The baseline scenario provides a reference against which the impacts of a particular action (e.g., a regulation) are measured. For the purposes of this analysis, the baseline is defined as the 1993 CAMU rule as implemented to date. The data underlying EPA's baseline analysis are described in the CAMU Site Background Document, which is included in the docket to today's final rule. This document provides detailed information on 47 existing CAMUs approved (or scheduled for approval) as of Spring 2001. Of the 47 CAMUs, eight are storage and/or treatment only CAMUs. According to these data, approximately 70 percent of facilities using CAMUs are performing treatment of waste. As mentioned above, EPA assumes that the 47 existing CAMUs are representative of future site characteristics and CAMU usage rates.

The Agency has not attempted to adjust this baseline to account for the effects of the uncertainty surrounding the CAMU "litigation cloud," which EPA believes has slowed the implementation of the CAMU rule since shortly after its promulgation. As discussed above, the 47 CAMUs implemented under the existing rule represent the CAMUs known to be fully approved. These CAMUs were approved as a part of the overall remedy at the facility, and therefore would generally be expected to follow the remedy selection criteria for long-term reliability and protectiveness recommended in EPA guidance (in addition to the CAMU requirements).

The baseline is discussed in greater detail in the Economic Analysis of the Final Amendments to the CAMU Rule.

c. Post-Regulatory Case Description

The post-regulatory scenario is modeled as the CAMU rule amended by the provisions in today's final rule. The reader is directed to the preamble discussion and rule language for an understanding of the final rule provisions. The economic analysis focuses on the impacts from the finalized information submittal requirements related to the CAMU approval process, the treatment requirements and adjustment factors, and the liner and cap requirements. Although today's final amendments to the CAMU rule would be more stringent than the existing federal CAMU regulations, EPA believes in practice that CAMUs are already generally meeting these standards under the existing rule. Additionally, a bounding analysis is included which examines the overall impact of the final provisions on the rate of CAMU usage. See the Economic Analysis of the Final Amendments to the CAMU Rule for a more detailed discussion of the post-regulatory scenario for this analysis.

d. Incremental Impacts

The analysis of today's final rule focuses on two potential impacts: (1) the incremental impacts associated with the changes to the approval process for CAMUs; and (2) the incremental impacts associated with the change in treatment, unit design, and use of storage and/or treatment only CAMUs. Additionally, the Agency has prepared a bounding analysis estimating the impacts from a change in the overall usage of CAMUs resulting from today's final amendments. The methodology and results for these two components of the analysis, and for the bounding analysis, are discussed below. EPA has also provided a qualitative discussion of the potential impacts of allowing the disposal of CAMU-eligible waste in off-site hazardous waste landfills.

2. CAMU Administrative Approval Costs Assessment

Today's final amendments to the CAMU rule formalize a number of administrative steps in the CAMU approval process. This analysis examines the incremental impacts associated with those administrative steps compared to the approval process in the baseline. The estimates are formulated through input by EPA Regional and state regulators. The regulators contacted have extensive knowledge of the approval process under the existing CAMU rule, and understand the changes to that approval process that would be brought about by the final amendments. The analysis estimates total incremental impacts ranging between $77,200 and $242,400 per year.[58]

The Agency followed three steps in assessing the incremental impacts from the CAMU approval process formalized in the final rule. First, the Agency selected four CAMU experts from the Regions and four from the states. These experts were selected based on their knowledge of CAMU implementation under the existing rule and their knowledge of the final amendments. Of the 47 CAMUs, the vast majority were approved by the regions/states from which the eight experts came. Second, the Agency obtained incremental cost/burden estimates from CAMU experts through phone contacts made separately with each expert. Experts were provided with a copy of Appendix A of the settlement agreement reached between EPA and the Petitioners (this document is included in the docket for today's final rule). The phone contacts followed a set of questions designed to cover all areas of the final rule (these questions are included in the Economic Analysis of the Final Amendments to the CAMU Rule). EPA requested that experts estimate the additional approval burden

[58] This analysis does not include any administrative costs related to disposal of CAMU-eligible wastes off-site under the conditions of today's rule. Please see "Paperwork Reduction Act" section below for discussion of the additional paperwork burden associated with this provision. Also, see the assessment of the total impacts from today's rule in the "Planning and Regulatory Review" section for a qualitative discussion of the overall impacts associated with this provision.

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for both regulators and owner/operators, as each would participate variously in performing such approval steps. Third, the Agency tabulated the burden estimates made by the CAMU experts. This process provided the Agency with expert estimates of the incremental impacts for the CAMU approval process. The estimates provided by individual experts ranged from a low of four hours total to a high of 1,875 hours total per CAMU. Using the individual estimates of burden provided by the experts, EPA calculated an average total burden range. EPA estimates the range of total incremental burden, calculated as an average of the eight expert estimates, to be between 210 hours and 514 hours per permanent CAMU, and between 34 hours and 50 hours per storage and/or treatment only CAMUs.

Expert views differed significantly on the impacts. Four of the experts believed the formalization of a process associated with certain steps might potentially reduce overall burden. Such a formalized process, they believed, would result in less time spent discussing the proper approach to take at a particular stage in the approval process. Alternatively, several experts thought that the changes in process requirements were so onerous that they could potentially drive facilities away from using CAMUs.

The experts estimated additional burden associated with four areas of the final amendments: (1) Information submission associated with the determination of whether wastes were subject to LDRs at the time of disposal. This requirement is a part of the provision in the final amendments which deals with CAMU waste eligibility; (2) identification of principal hazardous constituents (PHCs); (3) treatment standards and use of adjustment factors to provide site-specific flexibility in meeting the national treatment standards. Many experts focused on adjustment factor E (§ 264.552(e)(4)(v)(E)), which would offer adjustment from the treatment standards based on the long-term protection offered by the unit, in making their burden estimates. Many experts believed this factor to be the most complicated, and therefore the most likely to require significant formalized written justification; and, (4) the liner and cap standards in the final rule.

Employing these burden estimates, the Agency calculated the cost impact attributable to these provisions. The Agency performed the following steps in estimating total burden. First, the Agency estimated the number of CAMUs approved annually. The per CAMU estimate of additional burden is multiplied by an estimate of the number of CAMUs approved per year. As discussed in the Economic Analysis of the Final Amendments to the CAMU Rule, EPA assumed this rate to be the same as that calculated for the baseline. This rate was estimated to be six CAMUs per year, or five permanent CAMUs and one storage and/or treatment only CAMU per year. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule. Second, the Agency multiplied the additional hours estimated for approval by the annual number of CAMUs approved. This calculation results in an estimate of the total incremental burden associated with the final amendment approval process. This burden estimate ranges from 1,050 hours per year to 2,570 hours per year for permanent CAMUs, and 34 hours per year to 50 hours per year for storage and/or treatment only CAMUs. Third, the Agency obtained a labor rate to apply to the estimates of additional hours. EPA used a range of hourly labor rates ($71.24/hour to $92.52/hour) from the recently approved Part B Permit ICR because the CAMU experts did not provide a breakdown of labor categories in their estimates. Fourth, the Agency multiplied the total incremental hours estimated for the CAMU approval process under the final amendments by the labor rate. This approach produced an estimate for the total incremental impacts attributable to the approval process in the rule ranging from $77,200 per year to $242,400 per year.

This range represents the annual incremental impacts estimated to result from the final amendments, assuming that six CAMUs are approved per year. If the annual approval rate changed, the annual impacts for that year would change accordingly. Dividing that range by six (the number of CAMUs approved per year) yields an estimate of the incremental impact per CAMU; this estimate ranges between approximately $12,900 and $40,400 per CAMU. This calculation assumes that all the costs for CAMU approval occurred within a single year. A bounding analysis conducted using the highest burden estimate to calculate the impacts for the approval process yields an impact of $882,500 per year, or $147,000 per CAMU.

3. Assessment of the Incremental Impacts Related to the Treatment and Unit Design Provisions, and to the Storage and/or Treatment Only CAMU Provisions

This section examines the incremental impacts attributable to the treatment and unit design provisions, and to the storage and/or treatment only CAMU provisions in today's final rule. As described in the analytical framework discussion above, this analysis examines what changes would be required to make the 47 existing baseline CAMUs consistent with the new amendments. Based on these estimated changes, the Agency determines the impacts of the final amendments. (Please see the side-by-side comparison of the existing CAMU regulations and today's final rule language which is included as an appendix in the Economic Analysis of the Final Amendments to the CAMU Rule for today's final rule.)

The Agency first examines the treatment and unit design specifications employed for existing CAMUs under the baseline. These baseline CAMU remedies were assessed in light of the treatment and unit requirements promulgated today. An assessment was made of expected differences in treatment and unit design anticipated under the final amendments, and the resulting costs for those changes were quantified.

The section next addresses the storage and/or treatment only provisions in the CAMU amendments. EPA assesses how the storage and/or treatment only CAMU provisions have been implemented in the baseline by examining the temporary CAMUs approved to date under the existing rule. These CAMUs were analyzed in light of the new storage and/or treatment only CAMU provisions in the final amendments.

a. Treatment and Unit Design Standards Implemented in the Baseline

Data on the implementation of the existing CAMU rule shows that the 39 permanent CAMUs approved to date have generally employed significant treatment of wastes (approximately 70 percent of CAMUs employed treatment of wastes prior to disposal) with disposal in protective units (i.e., generally employing liners for new units, protective caps, and ground water monitoring). EPA has detailed information on 47 CAMUs in the baseline (see the CAMU Site Background Document in the docket for today's final rule for a complete discussion of each CAMU). These data provide a reasonable datum from which to assess the incremental impacts associated with the new treatment and unit design provisions in the final amendments.

b. Treatment and Unit Design Provisions in the Post-Regulatory Case

The final amendments would establish national minimum treatment standards which all principal hazardous constituents must meet prior to placement in a CAMU, unless the Agency determines in a given case that the standards are inappropriate (see discussion of adjustment factors below). This national minimum standard, which is essentially taken from the treatment standard promulgated for hazardous soils in the Phase IV LDR Final Rule, among other things, requires treatment of wastes to 90 percent reduction from the original concentrations, capped by 10 × UTS levels. This standard would apply for all CAMU-eligible wastes.

Accompanying the national minimum treatment standard are five adjustment factors, which provide site-specific flexibility in applying these treatment standards through identification of certain conditions under which full compliance with the national standard may be adjusted. This adjustment may be employed to make treatment more or less stringent, and may be used to adjust a treatment level or method. These final treatment requirements and adjustment factors were crafted through examination of the current implementation of the CAMU rule in the baseline, and the general process involved in remedial selection in the corrective action program, as well as the treatment variances used for as-generated waste under the Land Disposal Restrictions program.

The final amendments would also establish standards for liners at all new and replacement units or lateral expansion of existing units, and caps at units where waste is left in place. The reader is directed to the relevant discussions on the final provisions in their appropriate preamble sections above (see "Liner Standard," "Cap Standard," and "Adjustment Factors to the Treatment Standard").

c. Incremental Impacts Associated with Final Treatment and Unit Design Provisions

Having examined the provisions on treatment and unit design in the final amendments, the Agency then assessed the incremental impacts from these provisions with respect to current baseline implementation of the CAMU rule. The Agency examined how the baseline requirements have been implemented to date, and assessed where changes would be required at these facilities under post-regulatory conditions. See Economic Analysis of the Final Amendments to the CAMU Rule for details on this comparison.

EPA estimated the incremental costs associated with these standards through the following steps. First, the Agency compared the data on each baseline CAMU against the provisions in the final CAMU amendments. For this assessment, EPA addressed the following questions for each CAMU remedy, where necessary: (1) Does the facility have constituents that would likely be designated as PHCs? (2) For a facility where PHCs are determined to likely be present, was treatment performed to reduce PHC concentrations? (3) Where treatment was being performed, was it meeting the final national minimum standards? (4) Was the CAMU an existing unit? and (5) What liner and cap requirements were instituted for the CAMU? Second, based on this assessment, the Agency made a determination as to whether the CAMU was consistent with the treatment and unit design provisions of the final amendments. Third, where the Agency identified inconsistency with the final national minimum standards, application of the adjustment factors was considered. Potential use of adjustment factors was only considered appropriate where site-specific factors were consistent with the circumstances described in today's preamble for the different adjustment factors. And fourth, where the adjustment factors were not applicable, the Agency identified the steps that would be necessary to render the CAMU consistent with the final provisions. Each of the above steps was performed by EPA based on a detailed knowledge of the baseline CAMU requirements, the final rule provisions, and the details of the existing CAMU being analyzed. Please see the site summaries for the 47 CAMUs which are included in the CAMU Site Background Document (included in the docket for today's final rule). Additionally, the reader is directed to the preamble discussion of the adjustment factors for elaboration on how each adjustment factor would be applied at a given facility.

EPA performed this evaluation for the 39 permanent baseline CAMUs approved to date. The Agency estimated costs in the cases where additional requirements were identified as necessary for the CAMU to reach consistency with the final provisions. Results for the 39 permanent CAMUs are shown below in Exhibit VIII–1; results for the eight storage and/or treatment only CAMUs are discussed following the exhibit.

For the 39 permanent CAMUs, EPA estimates that 26 facilities would potentially require use of one of the adjustment factors to achieve consistency with the final amendments. Note that the potential use of adjustment factors was considered where such use would be consistent with the circumstances described in today's preamble for each adjustment factor. Of the five adjustment factors provided for in the amendments, adjustment factor A for technical impracticability was estimated to be applied eight times to achieve consistency, adjustment factor B addressing consistency with site cleanup goals was estimated to be possibly needed 13 times to achieve consistency, and adjustment factor E providing adjustment from the treatment standards based on the long-term protection offered by the unit was estimated to be possibly applied 11 times to achieve consistency. (Note that the estimated frequency of use for the individual adjustment factors does not sum to the overall number of facilities using adjustment factors due to the Agency identifying different available options for adjustment factor use at several facilities.)

As shown in Exhibit VIII–1, the analysis revealed three facilities for which the unit design employed in the original CAMU decision was not consistent with the final amendments. In two cases, a final cap would be required to achieve consistency with the final provisions. EPA estimated costs for these caps based on the specific information for the given facility. These costs are shown in the exhibit, and discussed in greater detail in the background document for the economic analysis. EPA estimated costs for the cap at one facility to range from $642,000 to $1,203,000, and costs for the cap at the other facility at approximately $221,000. Additionally, one CAMU would require a liner to achieve consistency with the final provisions. EPA estimated costs for addition of a liner based on the specific information for the given facility. These costs are shown in the exhibit, and are estimated to be $225,000.

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EXHIBIT VIII–1.—COMPARISONS OF BASELINE PRACTICES AND POST-REGULATORY FOR PERMANENT CAMUS

CAMU comparison: Baseline to post-regulatory	Number of CAMUs	Significance of differences	Estimated incremental impact
Treatment and Unit Design Consistent With Post-Regulatory	36	N/A	N/A.
Treatment Not Consistent With Post-Regulatory Requirements	0	N/A	N/A.
Unit Design Not Consistent With Post-Regulatory Requirements	3	Two Facilities May Have Required Additional Cap Design Features*.	Cap Costs: 1. $642,000 to $1,203,000, 2. $221,000.
		One Facility May Have Required a Liner.	Liner Costs: 3. $225,000. [Total=$1,088,000 to $1,649,000]
Treatment and Unit Design Not Consistent with Post-Regulatory Requirements.	0	N/A	N/A.

*These two CAMUs address the disposal of off-site soils contaminated with lead that resulted from smelting operations. Both facilities remain subject to long-term maintenance and periodic review.

The total estimated costs associated with ensuring that all the permanent CAMUs approved under the existing rule are consistent with the final amendments is estimated to range from approximately $1,088,000 to $1,649,000. EPA then annualized these costs over 20 years at 7 percent, divided the resulting range by the number of permanent CAMUs (39 total), and multiplied it by the number of CAMUs projected to be approved each year. This set of calculations yields the expected costs for the rule due to the treatment and unit design requirements of $140,000 to $210,000 per year. The Agency believes that these estimates reasonably cover the additional requirements to achieve such consistency with the final standards. However, EPA acknowledges the possibility that, due to the variability of site characteristics and the limitations of the available data for the given CAMUs, additional negligible costs such as minor additional treatment of small volumes of waste could be incurred at any given facility. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

Several commenters on the proposed rule believed that the amended treatment and unit design standards for permanent CAMUs are too prescriptive and stringent. According to the Agency's analysis, however, almost all of the 39 existing permanent CAMUs are meeting the treatment and design standards in the baseline. As discussed above, EPA estimates moderate incremental costs associated with these amended standards. One commenter acknowledged that the existing permanent CAMUs analyzed for the proposed rule analysis "would generally meet the revised standards." However, the commenter believed that this stringent implementation of the existing CAMU rule was, at least in part, the effect of the "litigation cloud" resulting from the legal challenge to that rule. They provided no evidence in support of such a claim. The Agency generally believes that the types of remedies seen at the CAMUs approved to date represent the logical outcome of a responsible implementation of the 1993 CAMU rule and reflect EPA's intentions in that rule. However, the Agency agrees with the commenter's point that the clarification of EPA's intentions provided in today's final rule is preferable as a matter of public policy.

d. Incremental Impacts Associated With the Storage and/or Treatment Only CAMU Provisions

The 1993 CAMU Rule provisions did not contain standards that were specific to temporary CAMUs (which are now called storage and/or treatment only CAMUs in the final provisions). However, data indicate that eight storage and/or treatment only CAMUs were approved in the baseline, and were generally employed for short-term treatment or storage of wastes at a site. These data provide a useful datum from which to assess the potential for incremental impacts resulting from the final amendments as they address storage and/or treatment only CAMUs.

The Agency analyzed the potential incremental costs associated with achieving consistency with the final rule standards for the storage and/or treatment only CAMUs. No inconsistencies were identified for these nine CAMUs; therefore, there were no incremental costs estimated for these units. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

As stated above, EPA made these comparisons based upon the types of contaminants, the unit design standards achieved, and the general circumstances surrounding the use of CAMUs.

4. Assessment of the Incremental Change in the Number of CAMUs Approved

One potential impact anticipated to result from today's final rule is a change in the average number of CAMUs approved per year. This section presents the Agency's bounding analysis of the impacts associated with an incremental change in the number of CAMUs.

The 1993 CAMU Rule was designed to provide incentives for remediation by removing certain regulatory requirements that affect the management of hazardous remediation waste during cleanup. The rule allows facilities to manage hazardous waste in a CAMU without triggering the Land Disposal Restrictions (LDR) requirements, and to dispose of hazardous remediation waste in a CAMU. The CAMU is exempt from minimum technology requirements (MTRs), although it is subject to performance-based standards intended to protect human health and the environment. The rule established performance standards for the design, operation, and closure of CAMUs, and provided the site-specific flexibility that EPA believes is necessary to encourage remediation at cleanup sites. However, EPA was sued on the CAMU rule shortly after its promulgation. The resulting uncertainty surrounding the viability of the CAMU rule, along with other factors discussed above such as the increased use of Areas of Contamination (AOCs) and staging piles, the introduction of the Phase IV Land Disposal Restriction (LDR) soil treatment standards, and the stabilization initiative in corrective action, led to considerably less use of CAMUs than the Agency originally anticipated.

With today's final rule, the Agency intends to resolve the litigation uncertainties which have dampened CAMU usage. Such resolution could promote the increased use of CAMUs. However, as discussed above, the Agency does not expect CAMU usage to approach the rate projected in the 1993 CAMU RIA (roughly 75 CAMUs per year). The Agency believes that the "litigation cloud" only accounts for part of the difference between actual CAMU usage over the past eight years and the usage estimated in the 1993 RIA. Other factors contributing to a potential change in future CAMU use include the impact of the formalized approval process, and the effect of the treatment and unit design provisions. It is very difficult to assess the significance of these factors on the individual decision at a given facility regarding whether to use a CAMU in remediation. This complexity led the Agency to prepare an order-of-magnitude analysis which seeks to establish the general direction of change in CAMU usage, and to quantify the approximate impacts from such change. These estimates focus only on the potential for changes in the number of CAMUs approved, and do not address the possible impacts from the formalized approval process or the treatment and unit design requirements of today's final rule. These impacts are presented to illustrate the potential savings which could come from such a change in CAMU usage, and should not be considered a part of EPA's estimate of the actual impacts from today's final rule.

The Agency assessed the overall direction of the expected change in CAMU use for the three time periods identified for purposes of this analysis: (1) Grandfathering Window (August 2000 through 2001); (2) Early After Promulgation (2002 for one year); and, (3) Post-Promulgation Equilibrium (2003 for four years). These time periods were designed by the Agency in order to portray the effects of the factors identified above according to logical breaks in their influence.

The Agency estimated the potential change in the number of CAMUs employed for each of the three time periods based roughly on the baseline CAMU usage figure of six CAMUs per year. Given the complexity of projecting the effect of these influences on CAMU usage in the future, these estimates are provided for illustrative purposes only. The cost savings from this change were estimated using results from the 1993 CAMU RIA (see page 3–9 of that report). This analysis, prepared in support of the CAMU rule, estimated the cost savings at a randomly selected sample of corrective action sites based on expert panel assessments of the costs for remediation with and without a CAMU. These figures were extrapolated to determine the national cost impacts for the CAMU rule. The RIA presents an annual average cost savings per CAMU of $0.5 million to $0.8 million per facility in 1992 dollars (changing the figures to 2001 dollars yields an annual cost savings per CAMU ranging from $0.6 million to $0.9 million).

This range was employed for purposes of this analysis to estimate order-of-magnitude cost impacts resulting from the changes in CAMU usage due to today's final rule. The annual cost savings per CAMU figure presented in the 1993 RIA provides the only readily available data from which to quantify the impacts of a shift from remediation without a CAMU to use of a CAMU. Although, the Agency believes that this cost savings estimate could significantly overestimate actual savings, due to the assumptions employed in the 1993 RIA regarding excavation and combustion of cleanup wastes.

Within each of the three time periods examined, a facility could either shift from not using a CAMU (baseline) to using a CAMU (post-regulatory), or using a CAMU (baseline) to not using a CAMU (post-regulation). In the case where a facility did not use a CAMU, there is a range of possible alternatives which could be considered. For purposes of this analysis, the Agency bracketed this range with leaving waste untouched on one hand, or performing full remediation without a CAMU on the other hand. As stated above, EPA employed the cost savings estimate from the 1993 RIA to model the cost savings for the case of a shift from performing full remediation without a CAMU (baseline) to using a CAMU (post-regulatory). EPA did not possess data on either the possibility of a shift from leaving waste in place (baseline) to using a CAMU in remediation (post-regulatory), or the cost impacts associated with such a shift. Finally, EPA does not believe it is reasonable to assume that facilities will shift away from CAMU use as a result of today's final rule; the anticipated costs from today's rule are not significant enough to result in such shifts. However, in the Post-Promulgation Equilibrium time period, EPA modeled the case of a shift from CAMU use (baseline) to full remediation without a CAMU (post-regulatory). While the Agency does not expect such a change, it is modeled below for illustrative purposes. The impacts from the changes in CAMU usage for the three time periods are assessed below according to these categories of change identified and discussed above (see Exhibit VIII–2 below).

EXHIBIT VIII–2.—ASSESSMENT OF THE POTENTIAL CHANGE IN CAMU USAGE RESULTING FROM THE FINAL RULE

Categories of potential change in CAMU usage	Scope of the assessment (August 2000 through approximately 2006)		
	Grandfathering window (August 2000 to Jan. 2002: approximately 1½ years)[1]	Early after promulgation (Jan. 2002 to Jan. 2003: 1 year)[2]	Post-promulgation equilibrium (Jan. 2003 through approximately 2006)[3]
Baseline: Full remediation (no CAMU).	No Change in CAMU Use Found	Change Highly Uncertain	Potential for 5 facilities estimated (annual savings of $0.6 to $0.9 million per facility).
Post-Reg: CAMU			
Baseline: Leave wastes untouched (no CAMU).	No Change in CAMU Use Found	Change Highly Uncertain	Potential for 5 facilities estimated (no cost info available).
Post-Reg: CAMU			
Baseline: CAMU	No Change Estimated	Change Highly Uncertain	Potential for 5 facilities estimated (annual cost of $0.6 to $0.9 million per facility).
Post-Reg: Full remediation (no CAMU)			
Baseline: CAMU	No Change Estimated	Change Highly Uncertain	Potential for 5 facilities estimated (no cost info available).
Post-Reg: Leave wastes untouched (no CAMU).			

[1] Publication of the proposed amendments (August 2000) to the anticipated effective date of Final rule (March–April 2002), which is 90 days after promulgation of the Final rule (December 2001).

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[2] The effective date of Final rule to one year after effective date of Final rule.
[3] One year after effective date of Final rule for roughly 5 years of "equilibrium."

For greater details on the approach to estimating these impacts, please refer to the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule. These impacts are presented in the exhibit above.

a. Grandfathering Window

For this time period, no additional costs or savings are estimated. The data collected in the revision of the CAMU Site Background Document showed no increase in CAMU usage during this period.

b. Early After Promulgation

As the exhibit above shows, EPA believes that the factors influencing potential changes in CAMU usage during this period are too uncertain to provide an assessment of the potential impacts for this time period. Beside the factors identified above, there may be a reduction in CAMU usage resulting from the anticipated increase in CAMUs within the grandfathering time window. Please see the background document for greater discussion on this issue.

c. Post Promulgation Equilibrium

For this time period, the cost savings associated with a potential increase or decrease in CAMU usage of 5 CAMUs per year are estimated as:

$$5\ \text{CAMUs per year} \times \frac{\$0.6 - \$0.9\ \text{million per year}}{\text{per CAMU}} = \$3.0 - \$4.5\ \text{million per year}$$

This estimate, ranging from a positive cost of $4.5 million per year to a savings of $4.5 million per year, is a rough figure based upon the projected change in CAMU usage for this period. Again, while it is possible that the facilities which shift to or from CAMU usage under this scenario would be those which left waste untouched, cost figures on this shift were not available. Therefore, no estimate of impacts associated with such a shift is provided.

The main competing influences in this time period are the removal of the uncertainty surrounding the litigation of the CAMU rule, and the potential dampening effect of the formalized approval process and treatment/unit design standards.

Several commenters stated that the "onerous" approval process and the "excessively stringent" treatment standards established in the amendments would result in decreased use of CAMUs. In fact, some commenters believed that the amendments would result in facilities choosing to cap-in-place rather than selecting more environmentally protective options. EPA's analysis of the approval process and treatment requirements suggests that these provisions will result in minimal to modest cost increases over the existing rule to facilities employing a CAMU.[59]

For illustrative purposes only, EPA estimated the total annual impacts of the rule including the estimates just calculated for the potential changes in CAMU usage, along with the estimates developed for the approval process and for the treatment and unit design standards. The range of estimates for this bounding analysis are shown by year for the scope of the analysis in Exhibit VIII–3 below. The Agency developed an upper bound estimate by adding the high-end cost associated with a potential change in CAMU usage, $4.5 million per year, to the high-end cost for the approval process, $242,000 per year, and the high-end cost for the treatment and unit design standards, $210,000 per year. This summation yields an upper bound cost for the rule of $5.0 million per year. EPA developed a lower bound estimate by adding the low-end impact associated with a potential change in CAMU usage, $4.5 million per year in savings, to the low-end of the cost for the approval process, $77,000 per year, and the low-end cost for the treatment and unit design standards, $140,000 per year. This summation yields a savings for the rule of approximately $4.3 million. Therefore, the bounding analysis provides a range from approximately $4.3 million in savings to $5.0 million in costs.

EXHIBIT VIII–3.—TOTAL IMPACTS FOR THE RULE INCLUDING CHANGES IN THE NUMBER OF CAMUS PER YEAR A BOUNDING ANALYSIS: OVER THE SCOPE OF ANALYSIS

[In millions of dollars]

Bounding analysis estimates	Impact estimates for each year within the scope of analysis					
	2001	2002	2003	2004	2005	2006
Impacts from CAMU usage changes (Illustrative in Nature).	No Change Estimated.	Too Uncertain to Estimate.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost

The question may be raised as to how this cost savings for increased CAMU usage in the above bounding analysis compares with the $1 to $2 billion annual savings in the 1993 CAMU RIA. The 1993 RIA baseline represented facilities performing remediation under the corrective action requirements, generally excavating wastes and treating in compliance with the land disposal restriction (LDR) requirements via combustion technologies. Given the resulting high costs for such baseline remedial approaches, the relief provided by the original CAMU regulation was presumed to be widely applied in the post-regulatory case. Therefore, significant CAMU usage was estimated. The baseline for today's final rule is described by the historical data EPA obtained on those facilities which have approved CAMUs over the past eight years. The projections made above regarding the potential change in CAMU usage resulting from today's final provisions are based roughly on these baseline CAMU usage figures. Therefore, the increase in CAMU usage projected in the post-regulatory case in the above bounding analysis for today's final rule is relatively low.

The difference in projected CAMU usage from the 1993 RIA and the actual usage seen in the CAMU Site Background Document is believed to be attributable to four factors. These four factors were discussed above under the analytical framework. The "litigation cloud" effect is just one of the factors posited to account for this difference. Therefore, the potential resolution of this litigation uncertainty through today's final rule is not anticipated to result in the significant CAMU usage estimated in the 1993 RIA. Furthermore, the increased CAMU usage estimated in the above bounding analysis is not intended to serve as an update to the 1993 RIA projections. Rather, due to the complexity involved in estimating CAMU usage in the post-regulatory case for today's final rule, the above estimates are made for illustrative purposes only, and do not represent a definitive statement of the expected savings from the rule.

5. Assessment of the Total Impacts for the Final Amendments to the CAMU Rule

This section presents a brief assessment of the total impacts of the Final Amendments to the CAMU Rule. The Agency presents the total impacts estimated for the formalized CAMU approval process and for the treatment/unit design standards, and storage and/or treatment only provisions for CAMUs below in Exhibit VIII–4; the estimates for the bounding analysis discussed above are not included in the exhibit. In addition, EPA qualitatively discusses the potential impacts of § 264.555, which allows CAMU-eligible waste to be disposed of off-site in hazardous waste landfills, without meeting the land disposal restrictions. Please see the Economic Analysis of the Final Amendments to the CAMU Rule for a full discussion of these impacts.

EXHIBIT VIII–4.—TOTAL ANNUAL IMPACTS ESTIMATED OVER THE SCOPE OF ANALYSIS, ASSUMING CONSTANT RATE OF 6 CAMUS PER YEAR

[In thousands of dollars]

Impacts assessed for CAMU amendments	Impact estimates for each year within the scope of analysis					
	2001	2002	2003	2004	2005	2006
1. CAMU Approval Process Impacts	No Costs Incurred	$77–$242	$77–$242	$77–$242	$77–$242	$77–$242
2. Impacts from Treatment and Unit Design Requirements.	No Costs Incurred	$140–$210	$140–$210	$140–$210	$140–$210	[1]$140–$210
Total impacts	No Costs Incurred	$217–$452	$217–$452	$217–$452	$217–$452	$217–$452

[1] This cost was calculated from a capital cost, annualized over 20 years. Therefore, it would continue for 15 more years.

The total impacts associated with the final rule are estimated as the sum of the incremental approval costs and the incremental treatment/unit design costs. The analysis provides estimates of the impacts from the rule from the grandfathering window to five years following the effective date of the rule (2001 to 2006). As discussed above, the impacts for the treatment and unit design standards are annualized figures associated with two facilities which required additional unit design criteria be met to achieve consistency with the final amendments. The cost impacts estimated for the potential change in the number of CAMUs are considered in the bounding analysis, which are discussed above. The total impacts are determined to range from $217,000 per year to $452,000 per year.

EPA also qualitatively examined the potential impact of allowing CAMU-eligible wastes to be disposed of off-site, under certain conditions, without meeting the land disposal restrictions. Despite the existence of various alternatives to full Subtitle C management of cleanup wastes under the baseline requirements (e.g., treatability variances), facilities are still likely to reduce the scope of their remedial efforts (or not conduct cleanup at all) because of Subtitle C requirements. Under the baseline conditions, facilities that send hazardous remediation waste off-site for disposal would typically incur significant costs to meet the requirements of the land disposal restrictions. Under today's rule, however, these facilities have the option of treating CAMU-eligible waste to the national minimum treatment standards (or the adjusted standards) and sending the waste off-site for disposal in a hazardous waste landfill. In this case, facilities may have enough of an incentive to clean up that they will increase their remedial efforts over what they would have pursued under baseline conditions. For these facilities, increasing the amount of cleanup may actually increase costs. These costs, however, would be borne voluntarily and therefore reflect (in the facility owner's view) an overall gain for the facility.

Thus, EPA believes that the off-site provision of today's rule will result in an overall reduction of costs to facilities through a reduction in treatment requirements when cleanup waste is sent off-site for disposal in hazardous waste landfills.

B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

This section of the preamble addresses the potential impacts incurred by small entities as a result of the final CAMU amendments. For the proposed rule, EPA analyzed the potential impacts on small entities for the 39 CAMUs approved at that point in time. EPA received no comments on the proposed analysis. As discussed earlier, EPA has updated the number of existing CAMUs through reviews performed by the states and Regions. This analysis, therefore, updates the analysis performed for the proposed rule by assessing the potential impacts to small entities for the nine newly identified CAMUs, and by making other minor adjustments to the CAMUs identified in the proposed rule analysis. There is no change, however, to the conclusion reached in the proposed rule analysis, that this action will not have a significant economic impact on a substantial number of small entities.

[59] Additionally, one of the Agency's chief motives in entering into the settlement agreement was the resolution of the CAMU legal challenge which may have deterred the use of CAMUs in cleanup decisions. However, as discussed above, the Agency is unclear as to the long-term result of the amendments in effecting CAMU usage.

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1. Methodology to Assess Small Entity Impacts

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the final amendments to the rule on small entities, small entity is defined as: (1) A small business that meets the RFA default definitions for small business (based on SBA size standards *www.sbaonline.sba.gov/size*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that there are three facilities employing CAMUs which are small entities, and that these facilities would incur impacts ranging from no impact to 0.01 to 0.32 percent of net sales if they had to apply for their CAMU under the amended standards. Additionally, there are five facilities for which EPA could not obtain the data to determine size status, but which EPA had the data to assess impacts. For these five facilities, the impacts ranged from 0.01 to 0.07 percent of net sales. The Agency was unable to obtain data for an additional two facilities. However, these facilities are not expected to incur significant impacts as a result of today's rule. The Agency reached this determination based on the analysis which is described below.

a. Framework for the Analysis

The Agency faced two important questions in developing the framework for analyzing small entity impacts. The first was how to define the universe of facilities affected by today's rule. The second was how to assess the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which can be potentially reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used in the future. Of these facilities, today's final rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's final standards would apply only to CAMUs which do not remain subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require cleanup at some point in the future, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the existing CAMU rule. In this RIA, the Agency made a projection of the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, or approximately 75 CAMUs per year over a 20 year period. The identities of these facilities, which would have been required for assessing the small entity impacts associated with the rule, were not determined; no impacts assessment was performed for the 1993 CAMU rule.

However, based on data depicting the actual CAMU usage rate over the past eight years at six CAMUs per year, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. (Some reasons for this disparity between the 1993 RIA projections and the actual usage are discussed above). Therefore, the Agency considered using the data on actual CAMU approval for this analysis. This report contains information on 47 CAMUs approved under the existing rule for which the Agency had good quality data. For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design; the data are contained in the CAMU Site Background Document, which is included in the docket for today's final rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past eight years, and applied that rate to project CAMU usage in the future. In projecting future use based on historical data, the Agency assumes that the 47 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document; this document contains information from all the CAMUs to date for which the Agency had good data. Therefore, it provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which affect CAMU usage in the future.

Use of these historical data also mitigated the problems associated with determining the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the final provisions (post-regulatory case). As discussed in more detail above, the Agency used the information on the 47 existing CAMU remedies to assess consistency with the final provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the final provisions (post-regulatory case). In such an approach, the Agency again assumes that these historical data are reasonably representative of future CAMU remedies under baseline conditions. The Agency believes this presupposition to be sound for the same reasons stated above regarding CAMU; there were no comments received on the proposed rule regarding this approach.

Therefore, the analysis of the small entity impacts anticipated to result from today's final rule rests on an assessment of facilities which have existing CAMUs, not an analysis of facilities which will actually be impacted in the future by this rule. As stated above, the Agency believes that this rule will not significantly affect the nature of CAMU usage related to the types of facilities employing CAMUs in the future. Thus, the Agency believes the analysis of future small entity impacts based on historical CAMU usage is reasonable.

b. Methodological Approach for SBREFA Analysis

This analysis employs the data on the existing CAMUs from the CAMU Site Background Document to assess the potential for impacts on small entities resulting from the final rule. The Agency performed two screening analyses using these data. Screening analyses are the tools the Agency uses to assess the potential for the rule to result in a significant impact on a substantial number of small entities, and thus the need for development of a Small Business Advocacy Review Panel. First, the Agency examined those facilities which employed CAMUs in the baseline to determine whether any of these facilities were small entities, and if so whether they incurred a significant impact as a result of the final rule. Second, for those facilities for which the size status could not be determined, the Agency assumed small entity status, and performed a significant impact screen using the Sales Test (i.e., assessing the ratio of incremental costs to net sales for a facility). As there are no small organizations or small governmental jurisdictions which currently have CAMUs, these entities are not anticipated to incur any impacts resulting from the rule. The results from each screening analysis are discussed below.

c. Examination of Existing CAMUs for Small Entity Status

EPA collected data on the employee size and net sales for the 47 facilities employing CAMUs in the baseline (the sources from which these data were obtained are listed in the background document). Using these data, EPA determined, according to the SBA size standards (see *www.sbaonline.sba.gov/size/section04b.htm*), whether any of the 47 facilities were small entities. Of the facilities for which data existed to determine size status, only three were identified as small entities. The impact incurred on these three small entities was under 0.01 percent of net sales. This finding suggests that it is very unlikely that these facilities would be significantly impacted by the rule. See the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule for greater detail on this analysis.

d. Significant Impact Screen of Facilities for Which Size Was Undetermined

The Agency examined the seven facilities for which data concerning size status were not available. Using the Standard Industrial Classification (SIC) Code for a given facility, the Agency was able to obtain data for five of these facilities on the estimated receipts for small entities within the SIC code and the number of small entities within the SIC code (these data were obtained from *www.sba.gov/advo/stats/int_data.html*). (The latest available industry Census data is from 1997, prior to the establishment of the North American Industry Classification Code System (NAICS) codes.) The estimated receipts for these entities were employed as a surrogate for net sales. From these data, the average estimated receipts per small firm within the SIC code was determined. This figure, the average estimated receipts per small firm, was then assumed to be representative of the receipts for the facility in question. The Sales Test ratio (i.e., the ratio of the average estimated receipts per firm by SIC code to the annual incremental costs of the final rule incurred by the facility) was then calculated.

For the five facilities for which data existed to calculate the Sales Test ratio, this ratio ranged between 0.01 percent and 0.07 percent. The Agency believes this range of percentages reasonably validates a conclusion of no significant impacts for these facilities. However, there were two facilities for which the data required to make this calculation were not available. Based on the annual incremental costs projected for these two facilities as a result of the final rule, it seems very unlikely that these facilities, if they were small entities, would incur significant impacts. See the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule for greater detail on this analysis.

2. The Impacts Estimated on Small Entities

Based on the two screening analyses described above, the Agency has concluded that today's final rule would not have a significant impact on a substantial number of small entities. (In addition, no small entity impacts are expected from the provision allowing off-site disposal of CAMU-eligible waste (40 CFR 264.555), as facilities use this provision only when it is to their advantage; in fact, EPA expects that this provision will be particularly useful to small entities.)

C. Paperwork Reduction Act

The information collection requirements in this final rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1573.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460, by e-mail at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The requirements are not effective until OMB approves them.

The U.S. Environmental Protection Agency (EPA) is amending the regulations for CAMUs under RCRA. EPA originally established regulations applicable to CAMUs at 40 CFR part 264, subpart S (58 FR 8658, Feb. 16, 1993). EPA is amending these regulations to, among other things, more specifically define the eligibility of wastes to be managed in CAMUs, establish treatment requirements for wastes managed in CAMUs, and set technical standards for CAMUs. With regard to paperwork requirements, the rule adds language identifying specific types of information that facilities must submit in order to gain CAMU approval at § 264.552(d)(1)–(3) and requires that CAMU-authorizing documents require notification for ground water releases as necessary to protect human health and the environment at § 264.552(e)(5).

The general requirement for information submission, at § 264.552(d), requires the owner or operator to submit sufficient information to enable the Regional Administrator to designate a CAMU. EPA is modifying the existing information requirement under § 264.552(d) to include submission of the specific information listed under final § 264.552(d)(1)–(3)). The modifications are additions to the existing general requirement, and add three specific information submission requirements (unless not reasonably available) to directly address the final amendments pertaining to CAMU eligibility: (1) The origin of the waste and how it was subsequently managed (§ 264.552(d)(1)); (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release to the environment (§ 264.552(d)(2)); and (3) whether the waste was subject to the land disposal requirements of Part 268 at the time of disposal and/or release to the environment (§ 264.552(d)(3)). Additionally, EPA is requiring certain facilities to notify EPA of releases to ground water. EPA will use this information to monitor releases and make determinations of when the releases might cause danger to human health or the environment. Facility owners or operators may use these data

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to keep track of releases and prevent them from reaching unacceptable levels.

EPA is amending the requirements for designating a CAMU under the authority of sections 1006, 2002(a), CFR, 3005(c), 3007, 3008(h), and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. In particular, under sections 2002 and 3007 of RCRA, EPA is requiring the information collection amendments to the CAMU rule described above because they are needed for the Agency to effectively designate and track the operation of CAMUs.

In addition, the rule requires persons seeking approval to send CAMU-eligible wastes off-site (without meeting land disposal restriction requirements) to submit enough information to allow the Regional Administrator to provide that approval (see 40 CFR 264.555).

EPA estimates the total annual respondent burden and cost for the final new paperwork requirements to be approximately 1,354 hours and $123,958. The bottom line respondent burden over the three-year period covered by this ICR is 4,167 hours, at a total cost of approximately $371,874. The Agency burden or cost associated with this final rule is estimated to be approximately 189 hours and $7,860 per year. The bottom line Agency burden over the three-year period covered by this ICR is 567 hours, at a total cost of approximately $23,580.[60]

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that will be requested pursuant to the final amended CAMU rule. If such a claim were asserted, EPA must treat the information in accordance with the regulations cited above. EPA also will make sure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

[60] Subsequent to conducting the Information Collection Request Analysis, EPA updated the number of CAMUs used for "permanent" disposal and the number used for "storage and/or treatment" only. The ICR estimates that 31 of the 39 CAMUs in the CAMU Site Background Document were for permanent disposal; the correct number is 30 of 39. EPA will make the necessary recalculations to the ICR in the context of the final rule. EPA believes that the change in estimated burden as a result of such recalculations will be inconsequential.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendments final today establish approval process changes and treatment/unit design requirements which are overall already in use in the baseline. Therefore, the incremental impacts, as discussed in this analysis, are not estimated to be significant. See the above analysis for an overview of the impacts estimated for the final amendments. Thus, the CAMU Final Amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

Finally, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Under today's final rule, small governments will not implement the CAMU rule and are not generally expected to use CAMUs based on current patterns of CAMU usage seen in historical data. In addition, the CAMU rule makes no distinction between small governments and any potential regulated party.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rulemaking involves technical standards (e.g., use of the TCLP or other tests to assess compliance with treatment requirements). The Agency did not identify any potentially applicable voluntary consensus standards during its efforts to develop appropriate standards (e.g., during its discussions with Agency personnel and stakeholders who are experts in the areas addressed by this rulemaking). EPA also did not receive comments identifying potentially available voluntary consensus standards.

F. Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

Today's final rule does not have tribal implications because Indian tribal governments do not implement the CAMU rule. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe that this rule presents disproportionate or additional risks to children. The Agency does not believe that the risks addressed by today's amendments—i.e., the risks from on-site management of hazardous cleanup wastes—present a disproportionate risk to children. The final rule, among other things, sets minimum CAMU treatment and design standards designed to help ensure the protectiveness of CAMUs. EPA's analysis of these requirements shows that CAMUs are already meeting the minimum standards in this rule. As amended by the final rule, the CAMU rule would continue to require that a decision concerning overall protectiveness of any specific CAMU be made by the Regional Administrator based on site-specific circumstances, including risks to children where appropriate. The Agency is committed to ensuring that these site-specific assessments include an assessment of risks to children where appropriate. Therefore, the Agency believes that these amendments do not present disproportionate or additional risks to children at facilities employing a CAMU.

H. Federalism (Executive Order 13132)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. First, any direct effects on the states will not be substantial, because, as described more fully above, the Agency expects the increased analytical costs for oversight agencies (i.e., EPA or authorized states) associated with the rule to be insignificant. In addition, although the final amendments would limit the discretion available to oversight agencies under the current CAMU rule, the Agency's record demonstrates that the CAMU decisions expected under the amendments are generally the same as those reached under the current regulatory framework. In addition, EPA does not believe the final rule would have a substantial direct effect on states as regulated parties, since based on past patterns of CAMU usage, state governments are not generally expected to use CAMUs.

As for the EPA-state relationship and distribution of power and responsibilities, today's rule includes state authorization provisions that would allow the large majority of states currently authorized for the CAMU provisions to become interim authorized for the amendments at the same time those amendments become effective. Thus, for those states, there will be no period in which the amendments are in effect federally, but not as a matter of state law. Even for those CAMU-authorized states that do not become interim authorized under this procedure, the Agency does not believe that any impact of the rule would be substantial. Although the Agency would implement the amendments in such states until they become authorized, EPA does not expect that this will generally result in changes to the state's individual CAMU decisions under state law, since, as described above, state CAMU decisions will likely be consistent with today's amendments. Thus, Executive Order 13132 does not apply to this rule.

The Agency notes, in addition, that prior to entering into the CAMU settlement agreement, EPA did discuss with the states potential impacts on states from amendments to the CAMU rule. During these discussions, individual states expressed concerns about potential disruption caused by the authorization process that would be required in states that are already authorized for the 1993 CAMU rule, the reduced discretion that would be available under any amendments to the CAMU rule, and the potentially more elaborate process that would be involved in making CAMU decisions.

EPA recognizes that these are valid concerns, and addressed them in the proposal and today's final rule. For example, EPA has included a provision that grandfather existing CAMUs and those that are substantially in the approval process. The rule also includes an approach to authorization that is intended to reduce disruption for states with authorized CAMU programs, and to expedite authorization for states that have corrective action programs but are not yet authorized for CAMU. In addition, EPA recognizes that increased process would be introduced by this rule, but, as is described in the background section of today's preamble, has tried to find a reasonable balance by

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adding sufficient detail to achieve the proposal's goals while preserving site-specific flexibility that provides incentives to cleanup. Finally, the rule is designed to incorporate the CAMU designation process into the existing decision-making process that is typically used by states and EPA for cleanups, including that used for making CAMU determinations. For example, EPA designed the principal hazardous constituent process, and certain final adjustment factors to reference the overall cleanup decision-making process within which the CAMU decision is made.

I. Environmental Justice (Executive Order 12898)

On February 11, 1994, the President issued Executive Order 12898, entitled "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," and an accompanying memorandum to federal department and agency heads. The Order establishes a policy to help ensure that all communities, including minority communities and low-income communities, live in a safe and healthful environment. As noted in the presidential memorandum, it is designed to focus federal attention on the human health and environmental conditions in minority communities and low-income communities to realize the goal of achieving environmental justice. The Order also is intended to foster nondiscrimination in federal programs that substantially affect human health or the environment, and to give minority communities and low-income communities greater opportunities for public participation in, and access to public information on, matters relating to human health and the environment. In general, to the greatest extent practicable and permitted by law, the Order directs federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Today's final rule is intended to amend the existing CAMU rule through, among other things, establishing a formalized process for approval of CAMUs, as well as setting national minimum treatment and unit design standards for CAMUs. The treatment and unit design standards formalize the existing expectations that site decisions be made within the overall decision making process in a manner protective of human health and the environment. The Agency's analysis shows that CAMUs are already meeting these minimum standards. Therefore, the Agency believes that these amendments, although formalizing such requirements, would not appreciably affect the risks at facilities where CAMUs are employed. This rule does not specifically address the overall remedial decision making process within which CAMUs are approved. Thus, EPA believes that this rule will not have any disproportionately high and adverse human health or environmental effects on minority populations or low-income populations. The Agency continues its commitment to ensuring that environmental justice concerns are addressed within remedial decisions in corrective action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 90 days following publication.

K. Energy Effects (Executive Order 13211)

Today's final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, EPA has concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Parts 260, 264, and 271

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Insurance, Intergovernmental relations, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water pollution control, Water supply.

Dated: December 21, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 260, 264 and 271 are amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended:

a. By removing the definition of "Corrective action management unit (CAMU)."

b. By revising the definition of "Remediation waste."

The revision reads as follows:

§ 260.10 Definitions.

* * * * *

Remediation waste means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

4. The title for Part 264 Subpart S, "Corrective Action for Solid Waste Management Units," is revised to read "Special Provisions for Cleanup."

5. Section 264.550 is added to Subpart S to read as follows:

§ 264.550 Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of § 264.552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, are subject to the requirements in § 264.551 for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in § 264.552, so long as the waste,

activities, and design remain within the general scope of the CAMU as approved.

6. Section 264.552 is redesignated as § 264.551 and newly designated § 264.551 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 264.551 Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under § 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

* * * * *

7. A new § 264.552 is added to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) *CAMU-eligible waste means:*

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) of this section are not "CAMU-Eligible Wastes" where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(B) The Regional Administrator exercises the discretion in paragraph (a)(2) of this section to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i) of this section, where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Regional Administrator may prohibit, where appropriate, the placement of waste in a CAMU where the Regional Administrator has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of part 268 of this chapter, or applicable unit design requirements of this part, or applicable unit design requirements of part 265 of this chapter, or that non-compliance with other applicable requirements of this chapter likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in § 264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to § 264.314(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with § 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of § 264.314(e).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Regional Administrator may designate a regulated unit (as defined in § 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under § 264.113 or § 265.113 of this chapter; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The subpart F, G, and H requirements and the unit-specific requirements of this part 264 or part 265 of this chapter that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Regional Administrator shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f) of this section. The Regional Administrator shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will

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remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Regional Administrator to designate a CAMU in accordance with the criteria in this section. This must include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of part 268 of this chapter were in effect for the waste listing or characteristic.

(e) The Regional Administrator shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in paragraph (g) of this section, requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. CAMUs, except as provided in paragraph (f) of this section, into which wastes are placed must be designed in accordance with the following:

(i) Unless the Regional Administrator approves alternate requirements under paragraph (e)(3)(ii) of this section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1x10–7 cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Regional Administrator may approve alternate requirements if:

(A) The Regional Administrator finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph (e)(3)(i) of this section; or

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with paragraph (f) of this section, CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of part 268 of this chapter, and that the Regional Administrator determines contain principal hazardous constituents must be treated to the standards specified in paragraph (e)(4)(iii) of this section.

(i) Principal hazardous constituents are those constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Regional Administrator will designate as principal hazardous constituents:

(*1*) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

(*2*) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are "principal hazardous constituents," the Regional Administrator must consider all constituents which, absent this section, would be subject to the treatment requirements in 40 CFR part 268.

(iii) Waste that the Regional Administrator determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section:

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (e)(4)(iv)(C) of this section.

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by paragraph (e)(4)(iv)(C) of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in § 268.48 Table UTS of this chapter.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with § 268.45 of this chapter, or by methods or to levels established under paragraphs (e)(4)(iv)(A) through (D) or paragraph (e)(4)(v) of this section, whichever the Regional Administrator determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Regional Administrator may specify a leaching test other than the TCLP (SW846 Method 1311, 40 CFR 260.11(11)) to measure treatment effectiveness, provided the Regional Administrator determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Regional Administrator may adjust the treatment level or method in paragraph (e)(4)(iv) of this section to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in paragraph (e)(4)(iv) of this section;

(B) The levels or methods in paragraph (e)(4)(iv) of this section would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(C) The views of the affected local community on the treatment levels or methods in paragraph (e)(4)(iv) of this section as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in paragraph (e)(4)(iv) of this section;

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(*1*) Where the treatment standards in paragraph (e)(4)(iv) of this section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(*2*) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*3*) Where, after review of appropriate treatment technologies, the Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*4*) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(*5*) Where, after review of appropriate treatment technologies, the Regional Administrator determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Regional Administrator may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in paragraph (f) of this section, requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(6) Except as provided in paragraph (f) of this section, closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Regional Administrator for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under paragraph (e) of this section, the Regional Administrator shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in paragraph (e)(6)(iv)(B) of this section:

(*1*) Provide long-term minimization of migration of liquids through the closed unit;

(*2*) Function with minimum maintenance;

(*3*) Promote drainage and minimize erosion or abrasion of the cover;

(*4*) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(*5*) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(B) The Regional Administrator may determine that modifications to paragraph (e)(6)(iv)(A) of this section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements of this section, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f),

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and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Regional Administrator, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f), and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(4) and (6).

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph (e)(3)(i) of this section, caps at paragraph (e)(6)(iv) of this section, ground water monitoring requirements at paragraph (e)(5) of this section or, for treatment and/or storage-only CAMUs, the design standards at paragraph (f) of this section.

(h) The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under paragraph (e)(4)(v) of this section to the treatment standards in paragraph (e)(4)(iv) of this section.

(i) Notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Regional Administrator according to the procedures for Agency-initiated permit modifications under § 270.41 of this chapter, or according to the permit modification procedures of § 270.42 of this chapter.

(k) The designation of a CAMU does not change EPA's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

8. Section 264.554 is amended by adding (a)(1) and adding and reserving (a) (2) to read as follows:

§ 264.554 Staging piles.

* * * * *

(a) * * *

(1) For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(2) [Reserved]

* * * * *

9. Section 264.555 is added to Subpart S to read as follows:

§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA 40 CFR part 268, if the conditions in paragraphs (a)(1) through (3) of this section are met:

(1) The waste meets the definition of CAMU-eligible waste in § 264.552(a)(1) and (2).

(2) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constitutes in such waste, in accordance with § 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under § 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(A), (C), (D) or (E)(*1*); or

(iii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(E)(*2*), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N of this part, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, "permit" does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Regional Administrator with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with paragraph (a) of this section. Information required by § 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at § 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 40 CFR 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with paragraph (d) of this section until the following additional conditions have been met:

(1) The landfill owner/operator notifies the Regional Administrator responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with 40 CFR 124.10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

(2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Regional Administrator within 15 days of notification.

(3) The Regional Administrator may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Regional Administrator may extend the review period an additional 30 days because of public concerns or insufficient information.

(4) CAMU-eligible wastes may not be placed in the landfill until the Regional Administrator has notified the facility owner/operator that he or she does not object to its placement.

(5) If the Regional Administrator objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding 40 CFR 270.4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of § 270.42 specifically authorizing receipt of the waste.

(6) As part of the permit issuance or permit modification process of paragraph (d) of this section, the Regional Administrator may modify, reduce, or eliminate the notification requirements of this paragraph as they apply to specific categories of CAMU-eligible waste, based on miminal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 40 CFR 268.7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with this section must comply with the requirements of § 268.7(b)(4), except that the certification must be with respect to the treatment requirements of paragraph (a)(2) of this section.

(g) For the purposes of this section only, the "design of the CAMU" in 40 CFR 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

10. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9605, 6912(2), and 6926.

11. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of Regulation	Federal Register reference	Effective date
January 22, 2002	Corrective Action Management Unit Standards Amendments	[FR pages numbers]	April 22, 2002.

12. Section 271.24 is amended by revising paragraph (c) to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

* * * * *

(c) Interim authorization pursuant to this section expires on January 1, 2003, except that interim authorization for the revised Corrective Action Management Unit rule (except 40 CFR 264.555) promulgated on January 22, 2002 and cited in Table 1 in §271.1 expires on August 30, 2004 if the State has not submitted an application for final authorization.

13. A new § 271.27 is added to Subpart A to read as follows:

§ 271.27 Interim authorization-by-rule for the revised Corrective Action Management Unit rule.

(a) States shall be deemed to have interim authorization pursuant to section 3006(g) of RCRA for the revised Corrective Action Management Unit rule if:

(1) The State has been granted final authorization pursuant to section 3006(b) of RCRA for the regulation entitled "Corrective Action Management Units and Temporary Units," February 16, 1993 and cited in Table 1 in §271.1; and

(2) The State notifies the Regional Administrator by March 25, 2002 that the State intends to and is able to use the revised Corrective Action Management Unit Standards rule as guidance.

(b) Interim authorization pursuant to this section expires on August 30, 2004 if the State has not submitted an application for final authorization.

[FR Doc. 02–4 Filed 1–18–02; 8:45 am]

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January 22, 2002

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The President

Notice of January 18, 2002—Continuation of the National Emergency With Respect to Terrorists who Threaten To Disrupt the Middle East Peace Process

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Presidential Documents

Title 3—

The President

Notice of January 18, 2002

Continuation of the National Emergency With Respect to Terrorists who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President identified four additional persons, including Usama bin Laden, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, as expanded on August 20, 1998, and the measures adopted on those dates to deal with that emergency, must continue in effect beyond January 23, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

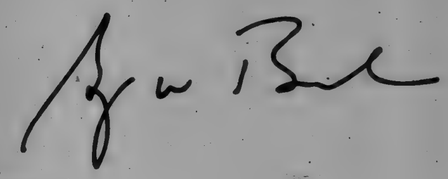

THE WHITE HOUSE,
January 18, 2002.

[FR Doc. 02–1727
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Billing code 3195–01–P

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LIST OF PUBLIC LAWS

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Promoting Safe and Stable Families Amendments of 2001 (Jan. 17, 2002; 115 Stat. 2413)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869-044-00001-6)	6.50	[4]Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869-044-00002-4)	36.00	[1]Jan. 1, 2001
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Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..

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Public Laws

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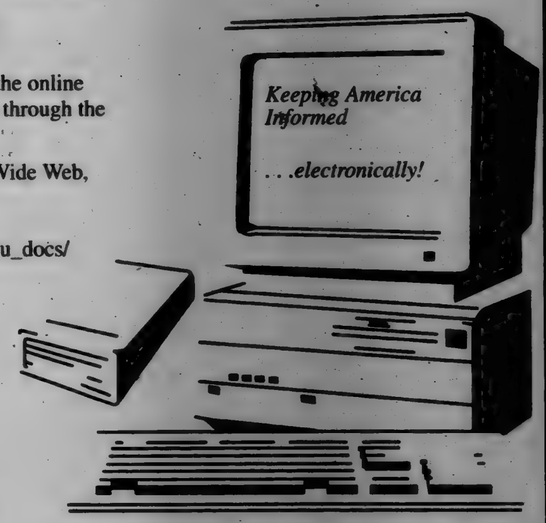

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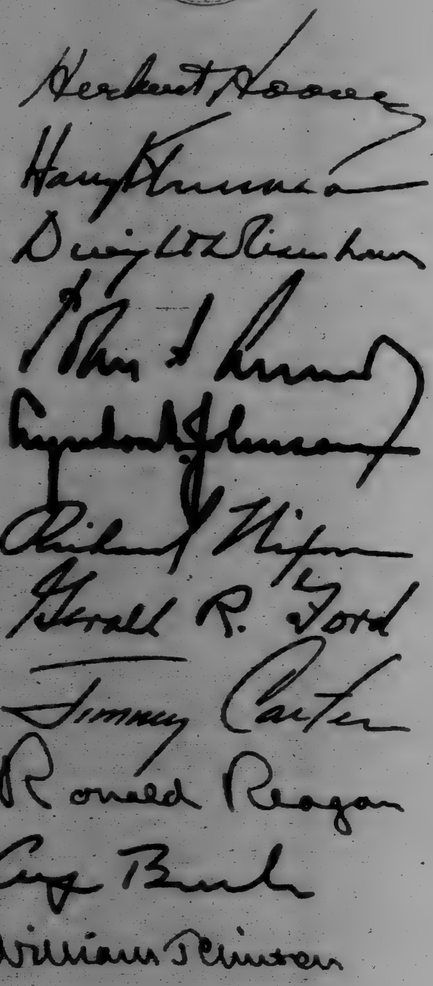

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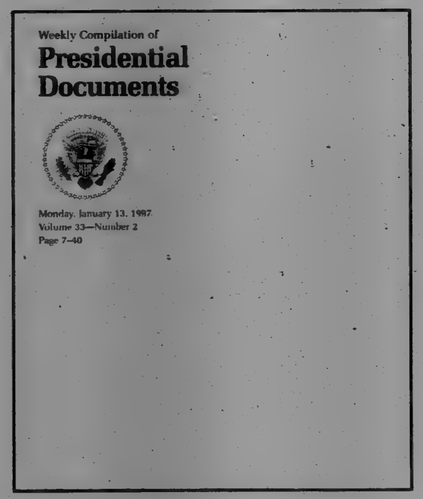

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Federal Register
Vol. 67, No. 15
Wednesday, January 23, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ35

Prevailing Rate Systems; Definition of San Joaquin County, CA, as a Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule that will define San Joaquin County, California, as a new nonappropriated fund (NAF) Federal Wage System (FWS) wage area. San Joaquin County is currently in the Sacramento, California, NAF FWS wage area. This change is necessary because the Army and Air Force Exchange Service built a new distribution facility in San Joaquin County that now has a large number of NAF FWS employees.

DATES: *Effective Date:* This interim rule is effective on January 23, 2002.

Applicability Date: Agencies will place NAF FWS employees in San Joaquin County on the new San Joaquin wage schedule on the first day of the first applicable pay period beginning on or after April 13, 2002. Comments must be received by February 22, 2002.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: William T. Beacham, (202) 606–2848, FAX: (202) 606–4264, or email wtbeacha@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is defining San Joaquin County, California, as a new nonappropriated fund (NAF) Federal Wage System (FWS) wage area. San Joaquin County is currently defined as an area of application to the Sacramento, CA, NAF FWS wage area. The Army and Air Force Exchange Service (AAFES) built a new distribution facility, which has about 450 NAF FWS employees. Under section 5343(a) of title 5, United States Code, NAF FWS wage area boundaries may not extend beyond the immediate locality where NAF employees work. OPM may establish an NAF wage area under § 532.219 of title 5, Code of Federal Regulations, when there is a minimum of 26 NAF wage employees in a survey area and there is sufficient private employment within the survey area to provide adequate data for establishing an NAF wage schedule.

San Joaquin County meets the regulatory criteria to be a separate NAF wage area. Under § 532.219, there must be a minimum of 1,800 private enterprise employees in establishments within the scope of an NAF survey for a separate wage area to be established. San Joaquin County has more than 139,000 private enterprise employees in surveyable establishments.

The Sacramento NAF wage area continues to meet the criteria under 5 CFR 532.219 to remain a separate NAF FWS wage area. No other counties in the Sacramento NAF FWS wage area are affected by the removal of San Joaquin County from the Sacramento wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. The first local wage survey for the new San Joaquin wage area will begin in February 2002. NAF FWS employees in San Joaquin County will be placed on the new San Joaquin wage schedule on the first day of the first applicable pay period beginning on or after April 13, 2002, the effective date of the new wage schedule.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary to define San Joaquin County, CA, to an NAF wage area as soon as possible to set pay for NAF FWS employees in San Joaquin County on the basis of local prevailing rates.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys [Amended]

2. Appendix B to subpart B is amended by adding under the State of California, after San Francisco, "San Joaquin" to the wage area listing, with the beginning month as "February" and the fiscal year of full-scale survey as "even."

3. Appendix D to subpart B is amended by revising the wage area listing for Sacramento, California, by removing "San Joaquin" from the area of application and adding "San Joaquin" as a new nonappropriated fund wage area, after "San Francisco," to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

* * * * *

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CALIFORNIA

* * * * *

SAN JOAQUIN

Survey area

California:
San Joaquin
Area of Application. Survey area.

* * * * *

[FR Doc. 02–1605 Filed 1–22–02; 8:45 am]

BILLING CODE 6325–38–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB79

Common Crop Insurance Regulations; Millet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is adding crop provisions for the insurance of millet. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the millet pilot crop insurance program to a permanent insurance program administered by FCIC for the 2003 and succeeding crop years.

EFFECTIVE DATE: February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through January 31, 2002.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Monday, June 19, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 37919–37922 to add 7 CFR 457.165 Millet crop insurance provisions effective for the 2002 and succeeding crop years.

Following publication of the proposed rule on June 19, 2000, the public was afforded 30 days to submit written comments and opinions. A total of 21 comments were received from two reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

Comment. Two reinsured companies and a trade association questioned why the contract change date contained in section 3 of these provisions was changed from December 31 to November 30.

Response. The contract change date was changed from December 31 to November 30 in section 3 to maintain the same time period between the contract change date and the cancellation date to be consistent with other annual crop insurance policies.

Comment. Two reinsured companies and a trade association questioned why section 11 (Written Agreement) of the previous pilot provisions was removed from the proposed rule.

Response. Section 11 was removed from the millet crop provisions because it is contained in the Basic Provisions and, therefore, is already part of the policy.

Comment. Two reinsured companies and a trade association questioned why the unit of measure, "hundredweight" was replaced by the unit of measure, "bushel" as defined in section 1 of these provisions.

Response. The appropriate unit of measure was changed from "hundredweight" to "bushel" for the following reasons: (1) There is no single standard of measure for millet; it is not contained in the United States Grain Standards or any other standards; (2) FCIC has determined that for quality purposes on a bushels basis, the test weight for millet is 50 lbs. per bushel and a test weight under 50 lbs. per bushel is eligible for quality adjustment; and (3) A bushel unit of measurement is consistent with other crops, *i.e.*, grain sorghum.

Comment. Two reinsured companies and a trade association recommend the word "limited" be removed from section 12 (Prevented Planting) of the Millet crop provisions.

Response. FCIC agrees with commenters. The proposed rule stated that if the producer had limited or additional levels of coverage and paid additional premium, the producer could increase prevented planting coverage pursuant to the actuarial documents. FCIC has removed the incorrect reference to the word "limited" from section 12 of these provisions.

Comment. Two reinsured companies and a trade association questioned whether millet planted as a nurse crop is insurable.

Response. The proposed rule allowed millet grown as a nurse crop unless harvested as grain to be insured by written agreement or pursuant to Special Provisions. However, FCIC has revised section 5(c) to state that millet planted as a nurse crop is not insurable. This change was made because millet must be swathed and windrowed prior to combining or threshing and practice cannot be done when millet is planted as a nurse crop.

Comment. Two reinsured companies and a trade association questioned the end insurance period provisions in proposed section 7. The proposal allowed 25 days after swathing millet until the end of insurance period calendar date in North Dakota and South Dakota and only 15 days after swathing millet until the end of the insurance period calendar date in all other states,

Response. The variance of days provides adequate time for swathed millet to dry prior to completing harvest. The time variances are based on geographical locations, therefore, no changes have been made in response to this comment.

Comment. Two reinsured companies and a trade association recommend adding language to the peril of fire provision contained in section 8 of these provisions to read, "Fire, but only of natural origin and not artificial or man-made".

Response. FCIC agrees with commenters but will not incorporate the suggested language in these crop provisions. FCIC is revising the Common Crop Insurance Policy Basic Provisions due to changes required by the Agricultural Protection Act of 2000. Language indicating that all causes of loss must be due to an act of natural origin will be included in this revision instead.

In addition to the changes described above, FCIC has revised section 7(b) to add language, "unless otherwise specified in the Special Provisions." This change allows for the flexibility for different ending dates of the insurance period when millet is expanded into other states as a result of changes in agronomic and geographic growing conditions.

List of Subjects in 7 CFR Part 457

Crop insurance, Millet, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.165 is added to read as follows:

§ 457.165 Millet crop insurance provisions.

The Millet Crop Insurance Provisions for the 2002 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Millet Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. *Definitions.*

Bushel. Fifty pounds of millet, or any other quantity which is designated in the Special Provisions for that purpose.

Harvest. Combining or threshing the millet for grain. A crop that is swathed prior to combining is not considered harvested.

Late planting period. In lieu of the definition of "Late planting period" contained in section 1 of the Basic Provisions, late planting period is defined as the period that begins the day after the final planting date for the insured crop and ends 20 days after the final planting date.

Local market price. The cash price for millet with a 50-pound test weight adjusted to zero percent foreign material content basis offered by buyers in the area in which you normally market the millet. Factors not associated with grading, including, but not limited to moisture content, will not be considered.

Millet. Proso millet produced for grain to be used primarily as bird and livestock feed.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition of "Planted acreage" contained in section 1 of the Basic Provisions, planted acreage is also defined as land on which seed is initially spread onto the soil surface by any method and is subsequently mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage planted in any manner not contained in the definition of "planted acreage" will not be insurable unless otherwise provided by the Special Provisions.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

Windrow. Millet that is cut and placed in a row.

2. *Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.*

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the millet in the county insured under this policy.

3. *Contract Changes.*

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. *Insured Crop.*

In accordance with section 8 of the Basic Provisions, the crop insured will be all the millet in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is not planted as a nurse crop; and

(d) That is not (unless allowed by Special Provisions or written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

6. *Insurable Acreage.*

In addition to section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. *Insurance Period.*

In accordance with section 11 of the Basic Provisions, the calendar date for the end of

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the insurance period is the date immediately following planting as follows:

(a) North Dakota and South Dakota:

(1) September 15 for acreage not swathed and windrowed; or

(2) October 10 for acreage swathed and windrowed by September 15;

(b) All other states, unless otherwise specified in the Special Provisions:

(1) September 30 for acreage not swathed and windrowed by September 30; or

(2) October 15 for acreage swathed and windrowed by September 30.

8. *Causes of Loss.*

In accordance with section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by a cause of loss that occurs during the insurance period.

9. *Duties In the Event of Damage or Loss.*

In accordance with section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting the total production to count (See section 10(c)) from the result of section 10(b)(1);

(3) Multiplying the result of section 10(b)(2) by your price election; and

(4) Multiplying the result of section 10(b)(3) by your share and any adjustment from section 10(f).

For example:

You have a 100 percent share in 100 acres of millet in the unit, with a guarantee of 15 bushels per acre and a price election of $4.00 per bushel. You are only able to harvest 800 bushels. Your indemnity would be calculated as follows:

(1) 100 acres × 15 bushel = 1,500 bushel guarantee;

(2)1,500 bushels guarantee − 800 bushel production to count = 700 bushel loss;

(3) 700 bushel × $4.00 price election = $2,800 loss; and

(4) $2,800 × 100 percent share = $2,800 indemnity payment.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Your appraised production will not be less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 10(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature millet may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each 0.1 percent point of moisture in excess of 12 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, result in the millet weighing less than 50 pounds per bushel; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health (test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Millet production that is eligible for quality adjustment, as specified in sections 10(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions if quality adjustment factors are not available in the county, the eligible millet production will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit.

(ii) The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the millet; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the millet to those buyers.

(iii) The value of the damaged or conditioned production determined in section 10(d)(4)(ii) will be divided by the local market price to determine the quality adjustment factor;

(iv) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushel, if appropriate) of the damaged or conditioned production under section 10(d)(1) will then be multiplied by the quality adjustment factor from section 10(d)(4)(iii) to determine the production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

(f) If the insured crop is not swathed and not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 30 percent to reflect those costs not incurred by you. If the insured crop is swathed but not harvested, the amount of indemnity payable under section 10(b)(4) will be reduced by 15 percent to reflect those costs not incurred by you.

11. *Late Planting.*

In lieu of the provisions contained in section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period, unless otherwise specified in the Special Provisions, will be reduced by:

(a) One percent for the first through the tenth day; and

(b) Three percent for the eleventh through the twentieth day.

12. *Prevented Planting.*

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have an additional coverage level, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, DC, on January 16, 2002.

Phyllis W. Honor,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–1619 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB70

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This direct final rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging of resources scoring criterion; revise financial information to be submitted; and make other minor changes and corrections.

DATES: This rule will become effective March 11, 2002, unless we receive written adverse comments or a written notice of intent to submit adverse comments on or before February 22, 2002. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held.

Written comments must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than February 22, 2002.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590 or via facsimile transmission to (202) 720–0810. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). All comments received will be made available for public inspection at room 4056, South Building, Washington, DC, between 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief, DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250–1550. Telephone: 202–720–0413; e-mail at *mmorgan@rus.usda.gov*; or, Fax: 202–720–1051.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic adverse impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601). The RUS DLT loan and grant program provides recipients with grants and loans at interest rates and on terms that are more favorable than those generally available from the private sector. Recipients, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with the RUS regulations and requirements.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.855 Distance Learning and Telemedicine Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0096, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

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Background

RUS is amending 7 CFR 1703, subparts D, E, F and G of its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. The current regulations implement the provision of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) (7 U.S.C. 950aaa *et seq.*) to encourage and improve telemedicine services and distance learning services in rural areas.

Subpart D is being amended to clarify eligibility for various types of financial assistance. Section 1703.103 is revised to clarify eligibility criterion for applicants in conformance with paragraphs (c)(1) and (2) of section 2333 of the 1996 Act (7 U.S.C. 950aaa–a(1) and (2). Sections 1703.131(h) and 1703.141(h) are revised to clarify that transmission facilities may be financed only with a loan and in connection with a distance learning or telemedicine project. Funding of transmission facilities is further clarified under section 1703.101. Additionally the word "eligible" was removed from the first sentence of the consortium definition and the definition of "eligible organization" was deleted under the definition section. Eligibility criteria are set forth in § 1703.103.

This rule also amends the method of calculation for the minimum matching contribution of a grant in subpart E. This rule also readjusts the award of points for the leveraging of resources scoring criterion.

Subpart E clarifies the circumstances under which the grant program will fund telecommunications facilities.

This rule makes an additional modification to subpart E regarding required financial information. This will streamline the application process for applicants.

List of Subjects in Part 1703

Community development; Grant programs—housing and community development; Loan programs—housing and community development, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, RUS amends 7 CFR chapter XVII as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for this part continues to read as follows:

Authority: 7 U.S.C. 950aaa *et seq.*

Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General

2. Amend § 1703.102 by removing the definition of "Eligible organization" and revising the definitions of "Consortium" and "Rural Community Facilities" to read as follows:

§ 1703.102 Definitions.

* * * * *

Consortium means a combination or group of entities formed to undertake the purposes for which the distance learning and telemedicine financial assistance is provided. At least one of the entities in a consortium must meet the requirements of § 1703.103.

* * * * *

Rural community facility means a facility such as a school, library, learning center, training facility, hospital, or medical facility that provides educational or health care benefits primarily to residents of rural areas.

* * * * *

3. Revise § 1703.103 to read as follows:

§ 1703.103 Applicant eligibility and allocation of funds.

(a) To be eligible to receive a grant, loan and grant combination, or loan under this subpart:

(1) The applicant must be legally organized as an incorporated organization or partnership, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c), a state or local unit of government, a consortium, as defined in § 1703.102, or other legal entity, including a private corporation organized on a for profit or not-for profit basis. Each applicant must provide written evidence of its legal capacity to contract with RUS to obtain the grant, loan and grant combination, or the loan, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with RUS in its own behalf.

(2) The applicant proposes to utilize the financing to:

(i) Operate a rural community facility; or

(ii) Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

(b) Electric or telecommunications borrowers are not eligible for grants.

Subpart E—Distance Learning and Telemedicine Grant Program

4. Remove and reserve § 1703.120

5. Amend § 1703.121 by revising the introductory text to read as follows:

§ 1703.121 Approved purposes for grants.

For distance learning and telemedicine projects, grants shall finance only the costs for approved purposes. Grants shall be expended only for the costs associated with the initial capital assets associated with the project. The following are approved grant purposes:

* * * * *

6. Amend § 1703.122 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1703.122 Matching contributions.

(a) The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be used for approved purposes for grants listed in § 1703.121. Matching contributions generally must be in the form of cash. However, in-kind contributions solely for the purposes listed in § 1703.121 may be substituted for cash.

* * * * *

(e) Any financial assistance from Federal sources will not be considered as matching contributions under this subpart unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

7. Amend § 1703.123 by revising paragraph (a)(1) to read as follows:

§ 1703.123 Nonapproved purposes for grants.

(a) * * *

(1) To cover the costs of acquiring, installing or constructing telecommunications transmission facilities;

* * * * *

8. Amend § 1703.125 by removing the words "purchases or leases of" from the first sentence of (h)(2) and by revising paragraph (e) to read as follows:

§ 1703.125 Completed application.

* * * * *

(e) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating: feasibility of the project, including having sufficient resources and expertise necessary to undertake and complete the project; and, how the project will be sustained following completion of the project.

* * * * *

9. Amend § 1703.126 by revising paragraph (a)(4) to read as follows:

§ 1703.126 Criteria for scoring grant applications.

(a) * * *

(4) The ability of the applicant to leverage financial resources—Up to 35 points. This criterion will be used to evaluate the ability of the applicant to provide a matching contribution for the project using other non-Federal financial assistance. Documentation submitted in support of the application should reflect any additional financial support for the project from non-Federal sources above the applicant's minimum matching contribution of 15 percent as required by § 1703.122. The applicant must include evidence, from authorized representatives of the sources, of a commitment that the funds are available and will be used for the project. The applicant will receive points as follows:

(i) Matching contribution for approved purposes greater than 15 percent, but less than or equal to 30 percent of the grant requested—0 points.

(ii) Matching contribution for approved purposes greater than 30 percent, but less than or equal to 50 percent of the grant requested—15 points.

(iii) Matching contribution for approved purposes greater than 50 percent, but less than or equal to 75 percent of the grant requested—25 points.

(iv) Matching contribution for approved purposes greater than 75 percent, but less than or equal to 100 percent of the grant requested—30 points.

(v) Matching contribution for a grant for approved purposes greater than 100 percent of the grant requested—35 points.

* * * * *

Dated: December 28, 2001.

Roberta D. Purcell,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–1537 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–15–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE56

Small Business Size Standards; Inflation Adjustment to Size Standards

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) is adjusting its monetary-based size standards, (e.g., receipts, net income, net worth, and assets) for the effect of inflation. This action is intended to maintain the value of size standards in inflation-adjusted terms. From 1994 to the third quarter of 2001 the general level of prices in the United States increased approximately 15.8% as measured by the chain-type price index for gross domestic product. This change will restore eligibility to firms that may have lost small business status solely due to the effect of inflation.

SBA is adding a provision in its regulations that will require, at least once every five years, an assessment of the inflationary impact on monetary-based size standards. This periodic review will generally ensure that monetary-based standards are current with inflationary factors, as appropriate, and that firms will not lose small business status due solely to the effect of inflation.

DATES: *Effective Date:* This regulation becomes effective on February 22, 2002.

Applicability Dates: For the purposes of Federal procurements, this rule applies to solicitations, except for noncompetitive Section 8(a) contracts, issued on or after February 22, 2002. For the purpose of noncompetitive Section 8(a) contracting actions, the new size standards are applicable to offers of requirements that are accepted by SBA on or after February 22, 2002. For purposes of eligibility for economic injury disaster loan assistance to small business concerns located in disaster areas declared as a result of the terrorist attacks on the World Trade Center, New York, New York and the Pentagon, the applicability date is September 11, 2001.

Comment Period: Comments must be received on or before February 22, 2002. Upon request, SBA will make all public comments available to any person or entity.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, U.S. Small Business Administration, 409 Third St., SW., Mail Code 6530, Washington, DC 20416; or, via e-mail to *SIZESTANDARDS@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

Inflationary Review

SBA is adding a provision to its size standards regulations requiring that at least once every five years it will assess the impact of inflation on its monetary-based size standards. These are size standards based on receipts, net income, or other monetary measures. Although the provision does not mandate that SBA adjust size standards for inflation, it does provide assurances to the public that SBA is monitoring inflation and is making a decision whether or not to adjust size standards within a reasonable period of time since its last inflation adjustment. If SBA decides not to make an inflation adjustment after a review, it will continue to monitor inflation on an annual basis until such time an adjustment is made. Afterwards, SBA will review inflation on a periodic basis, but at least once within five years.

As described in § 121.102(a), SBA examines a number of economic characteristics in developing size standards. Inflation is one of many considerations in this process. SBA does not believe it is appropriate to automatically adjust size standards for inflation since other factors influence the setting of size standards. For example, changes in industry characteristics or in SBA's policies may render an inflation adjustment unnecessary or inappropriate. Under this provision, if a significant amount of inflation occurs in the economy within a five-year period, SBA will consider an inflation adjustment on a more frequent basis. SBA invites the public to comment on this policy and to suggest alternative procedures.

Inflationary Adjustment

SBA is adjusting the monetary-based size standards for the effect of inflation in order to restore eligibility to firms that may have lost small business status due solely to the effect of inflation. While these adjustments are not done on a fixed schedule, prior adjustments occurred in 1994 (59 FR 16513, dated April 7, 1994), 1984 (49 FR 5024, dated February 9, 1984), and 1975 (40 FR 32824, as corrected by 40 FR 36310, dated August 5, 1975). The current adjustment is being made at this time because inflation has increased by 15.8% since 1994, which is sufficient to warrant an increase, and because SBA believes that adjustments should be made more frequently than once every ten years, as was the case with the last inflationary adjustment.

Small business size standards are based on the six-digit industry codes of the North American Industry Classification System (NAICS). In addition, SBA has several programs that have their own size standards (*e.g.*, Surety Bond Guaranteed Assistance, Sale of Government Property, etc.). The size standards that SBA is changing are those that are receipts based and those based upon other monetary measures.

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Employee-based, production-based, and those established by legislation are unaffected by inflation, and thus, not part of this rulemaking. Those standards that have been changed since the last inflation adjustment in 1994 will be increased accordingly. However, some receipt-based standards that were recently increased will not be adjusted as the inflation effect has already been factored into the new size standard. Full details of this adjustment are contained in the table, at the end of the preamble, which lists the affected industries according to NAICS.

How Does SBA Adjust Size Standards for Inflation?

The methodology for adjusting the size standards for inflation was as follows:

1. Selection of an appropriate inflation indicator. We used the chain-type price index for gross domestic product (GDP) as published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), which is a broad measure of inflation for the economy as a whole, and is available on a quarterly basis. In the past, SBA used the implicit price deflator for GDP. Since that time the BEA has produced an improved price index, the chain-type price index for GDP, that more accurately reflects inflation. This type of index relies on annual price weights rather than on the fixed price weight that the implicit price deflator relied upon. For more information, see J. Steven Landefeld and Robert P. Parker's article "BEA's Chain Indexes, Time Series, and Measures of Long-Term Economic Growth" in the May 1997 issue of *Survey of Current Business*. This article may also be found at *http://www.bea.doc.gov/bea/an/0597od/maintext.htm*, or it may be obtained by calling the Government Printing Office at (202) 512–1800.

2. Selection of a base period. We selected the fourth quarter of 1993 as the base period since this was the ending period of the last inflation adjustment in 1994. The chain-type price index for GDP stood at 94.79 at that time.

3. Selection of an end period. We selected the third quarter of 2001 as the ending period for this inflation adjustment since it is the latest available quarterly data published by BEA. The chain-type price index for GDP Deflator stood at 109.8 at that time.

4. Calculation of inflation. Based on these price indices, inflation increased 15.8% between the base and ending periods [((109.8/94.79) − 1.00) × 100=15.8%].

5. Application of the inflation adjustment to the monetary-based size standards. We multiplied the current size standard by 1.158 and rounded to the closest $0.5M.

6. Which size standards and size eligibility criteria are not being changed?

Certain size standards and size eligibility criteria are not being changed in this rule. SBA's reasons are set forth in the chart below.

Industry	Reason not being changed
Agriculture, the Very Small Business Set-Aside program, and Small Business Investment Company Program's Smaller Enterprise size standard.	Set by statute.
Travel and Real Estate Agents, Cattle Feedlots, and Architects and Engineers (A&E) with size standards of $1.0M, $1.5M, and $4.0M, respectively.	A 15.8% and 2.9% (A&E) adjustment would be too small to warrant an increase. The A&E size standards were increased in June of 1999.
Eligibility criteria for small business receiving assistance from Small Business Investments Companies (SBIC) Program.	In 1994, the average net worth and net income criteria were increased threefold. Current size standards are inclusive for purposes of the SBIC Program and no further increase is deemed necessary at this time.

What Special Situations Exist Regarding the New Inflationary Adjustment?

The size standard for banks is expressed in terms of assets and is being set at $150 million. This adjustment represents more than a 15.8% increase. The current size standard of $100 million in assets was established in 1984 and was not adjusted in the 1994 inflation adjustment. The 1994 adjustment increased only the receipt based size standards. Monetary standards, other than receipts based, and program size standards were not adjusted at that time. This rule adjusts all monetary standards.

The Health Care Group's size standards were increased in December 2000; the Freight Forwarders size standards were increased in September 2000; and the Help Supply Services size standards were increased in July 2000. These changes, however, were not due to inflation but were based on the structure of these industries using data from 1992. Unlike other industries described in the table above, these industries were adjusted for inflation in 1994. A further increase is being adopted for inflation at this time in order to make these size standards current.

The Construction and Refuse Collection size standards were increased in June 2000 to account for inflation through the end of 1999. Since that time, an additional 4.3% inflation has occurred [the chain-type price index for GDP was 105.28 at the fourth quarter of 1999 ((109.8/105.28) − 1.00) × 100=1.043, or 4.3%]. To adjust all size standards to the same common period with respect to inflation, the Construction and Refuse Collection size standards are being adjusted by 4.3%. The Dredging size standard of $17 million, however, is not being adjusted since that size standard was based on an analysis of specific industry cost data and other industry considerations.

The size standard for sales of government property, currently at $2 million, is increasing to $6.0 million. This especially large increase is being made due to an earlier oversight, in that this size standard was not raised from $2 million for inflation in 1984 or 1994. Therefore it is being increased to $6.0 million to bring it up to the present-day equivalent of $2 million and the most common size standard for the non-manufacturing industries.

What Other SBA Programs or Activities, Not Defined by the NAICS System, Will Have Their Size Standards Adjusted for Inflation?

The size standards associated with the NAICS Codes are primarily used in connection with SBA's financial assistance programs and federal procurement programs. SBA and other federal agencies oversee small business programs that are not covered by the NAICS Codes or use NAICS size standards as an alternative to the program size standard. Therefore, SBA will also make inflation adjustments to those programs that have any monetary-based size standards, except for the SBIC program as discussed above.

Program	CFR site	Inflation adjusted size standard		
		Current standard		New standard
504 Program	13 CFR 121.301(b)	$6.0M	Net Worth	$7.0M
		$2.0M	Net Income	$2.5M
Surety Bond Guarantee Assistance	13 CFR 121.301(d)	$5.0M	Average Annual Receipts	$6.0M
Sales of Government Property (Except, Timber Sales Program, the Special Salvage Timber Sales Program, the sale of Government petroleum coal, and uranium.).	13 CFR 121.502	$2.0M	Average Annual Receipts	$6.0M
		For concerns not primarily engaged in manufacturing (Manufacturing firms have an employee-based size standard)		
Stockpile Purchases	13 CFR 121.512	$42.0M	Average Annual Receipt	$48.5M

Justification for Publication as an Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations may arise where an agency must issue a rule without public participation. On September 16, 2001, the President declared a national emergency as a result of the events of September 11, 2001. The events of that day have impacted U.S. businesses both in the declared disaster areas and across the nation. Most of the affected businesses qualify as small under existing SBA size standards and are eligible for SBA and other Federal assistance. However, some of the affected businesses had previously lost their small size status solely as a result of the inflation that has occurred since SBA last revised the size standards in 1994. A proposed inflationary adjustment to the size regulations to restore eligibility to those businesses was already under development at SBA when the tragic events of September 11, 2001, occurred. SBA now believes that any delay in the adoption of those inflationary adjustments could cause serious harm to those businesses.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans and other SBA assistance available to businesses that should be considered small, but that do not qualify under SBA's existing size standards. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 USC 633(d). Pursuant to that authority, SBA has determined that it is in the public interest to give immediate effect to SBA's current determination of small size status and that it would be impracticable to delay such implementation. SBA also notes the failure to adopt this rule immediately would work to the detriment of many small businesses.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before February 22, 2002. SBA may then consider these comments in making any necessary revisions to these regulations.

Pursuant to Public Law 107–117 (Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act), SBA has the authority to apply the size standards in this rule for purposes of eligibility for economic injury disaster loans to small businesses located in the disaster areas declared as a result of the terrorist attacks of September 11, 2001. Accordingly, for that purpose only, SBA is applying these size standards as if they were in effect on September 11, 2001.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) reviewed this rule as a "significant regulatory action" under section 3(f) under Executive Order 12866.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule does not impose any new information collection requirements from SBA which require the approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this rule addressing

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the reasons and objectives of the rule; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives considered by SBA.

(1) What Is Reason for This Action?

As discussed in the supplemental information, the purpose of this rule is to restore the small business eligibility of businesses who have grown above the size standard due to inflation rather than to an expansion of business activity. A review of the latest available inflation indices show inflation that has increased a sufficient amount to warrant an increase to the current receipt-based size standards.

(2) What Are the Objectives and Legal Basis for the Rule?

The revision to the receipt-based size standards for inflation more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that there will be approximately 8,600 newly designated small business, distributed as follows by NAICS Sectors and Subsectors:

ESTIMATE OF FIRMS GAINING SMALL BUSINESS STATUS

	Number of firms	Associated annual sales
• Retail		
Sectors 44–45	2,800	$17 billion.
• Services		
Sectors 51, 52, 54, 55, 61, 62, 71, 72, 81, and Subsectors 531, 532, 561	4,000	$22 billion.
• Finance, Insurance and Real Estate		
Sectors 52–53	600	$3 billion.
• Transportation & Utilities		
Sectors 22 & 48	450	$3 billion.
• Construction and Refuse		
Sector 23 & Subsector 562	760	$10 billion.
Total	8,610	$55 billion.

Source: *1997 Economic Census*, U.S. Census Bureau, Special Tabulation for SBA. Sales estimates restated to 2000 dollars.

The percentage increase in the number of small businesses that will result from this rule, compared to the existing base of small businesses, is estimated to be about two-tenths of one percent. The special tabulation of the 1997 Economic Census for SBA reports 5,082,970 total firms in the U.S. economy as defined by this census. We estimate that 98.4% of all businesses in the U.S. are currently defined as small under the existing size standards. Under the rule, this will increase to 98.6%. The percentage increase of annual sales in the U.S. economy attributed to these new small businesses is likely to be approximately seven-tenths of one percent. This will be applied to a base of 28.6%. Thus under this proposal the percent of sales attributed to firms defined as small businesses in the U.S. is likely to increase to 29.3%.

Description of Potential Benefits of the Rule: The most significant benefit to businesses obtaining small business status as a result of this rule is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone).

SBA estimates that approximately $46.2 million of additional Federal contracts will be awarded to firms becoming newly designated small businesses. As stated above, the percentage increase of annual sales attributed to these new small businesses is likely to be approximately seven-tenths of one percent. SBA applied this factor to the Fiscal Year 1999 total small business prime contractor initial awards which totaled $6.6 billion [$6.6B x .007 (.7 of 1%) = $46.2M].

We view the additional amount of contract activity as the potential amount of transfer from non-small to newly designated small firms. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different sized firms.

Under the SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that approximately $17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19% of the $9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-based size standards.

Considering that the average size of firms gaining small business status will be $6 million, demand for assistance will likely be less than the overall participation rate for SBA loans among firms of all sizes. In any given year less than 1% of all small businesses receive SBA financing. Since larger firms are less likely to seek SBA financial assistance, we believe that no more than one-half of 1% of the 8,610 newly designated small businesses would seek SBA assistance. SBA estimates that approximately 45 out of the 8,610 firms would seek SBA financing. SBA financial assistance recipients of this size on average obtain assistance worth $375,000, so the impact in terms of new loans generated is estimated to be $17 million per year.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With This Rule?

This rule overlaps other Federal rules that use SBA's size standards to define a small business. Under § 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(6) What Alternatives Did SBA Consider?

SBA considered two alternatives to this rule. First, to wait until inflation has increased a greater amount before proposing an adjustment to receipt-based size standards. Previous inflation adjustments ranged between 48 percent to 100 percent. SBA believes that more frequent adjustments are necessary since smaller amounts of inflation can change the small business eligibility of a large number of businesses.

Second, SBA considered a policy of automatically adjusting size standards for inflation on a fixed schedule. SBA believes inflation must be closely monitored to assess the impact of inflation on size standards. Automatic adjustments may lead to inappropriate changes to size standards and prevent the Agency from taking into consideration other factors that bear on the review of size standards, such as changes in industry structure or Administration policies. Furthermore, an automatic adjustment could require SBA to make insignificant changes (*i.e.*, 1 percent) or to wait a longer period of time than necessary to adjust size standards if inflation rapidly increases.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. Amend § 121.102 as follows:

a. Redesignate the current paragraph (c) as (d).

b. Add new paragraph (c) to read as follows:

§ 121.102 How does SBA establish size standards?

* * * * *

(c) As part of its review of size standards, SBA's Office of Size Standards will examine the impact of inflation on monetary-based size standards (*e.g.*, receipts, net income, assets) at least once every five years and submit a report to the Administrator or designee. If SBA finds that inflation has significantly eroded the value of the monetary-based size standards, it will issue a proposed rule to increase size standards.

* * * * *

3. In § 121.201, revise the referenced NAICS Codes and size standards in the table "Size Standards by NAICS Industry" under Sectors 11, 21 through 23, 44–45, 48–49, 51 through 56, 61, 62, 71, 72, and 81 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
•	•	•
	Sector 11— Agriculture, Forestry, Fishing, and Hunting	
	Subsector 112—Animal Production	
•	•	•
112310	Chicken Egg Production	$10.5
•	•	•
	Subsector 113—Forestry and Logging	
113110	Timber Tract Operations	$6.0
113210	Forest Nurseries and Gathering of Forest Products	$6.0
•	•	•
	Subsector 114—Fishing, Hunting and Trapping	
114111	Finfish Fishing	$3.5

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SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
114112	Shellfish Fishing	$3.5
114119	Other Marine Fishing	$3.5
114210	Hunting and Trapping	$3.5
	Subsector 115—Support Activities for Agriculture and Forestry	
115111	Cotton Ginning	$6.0
115112	Soil Preparation, Planting, and Cultivating	$6.0
115113	Crop Harvesting, Primarily by Machine	$6.0
115114	Postharvest Crop Activities (except Cotton Ginning)	$6.0
115115	Farm Labor Contractors and Crew Leaders	$6.0
115116	Farm Management Services	$6.0
115210	Support Activities for Animal Production	$6.0
115310	Support Activities for Forestry	$6.0
	Sector 21—Mining	
	Subsector 213—Support Activities for Mining	
213112	Support Activities for Oil and Gas Operations	$6.0
213113	Support Activities for Coal Mining	$6.0
213114	Support Activities for Metal Mining	$6.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	$6.0
	Sector 22—Utilities	
	Subsector 221—Utilities	
221310	Water Supply and Irrigation Systems	$6.0
221320	Sewage Treatment Facilities	$6.0
221330	Steam and Air-Conditioning Supply	$10.5
	Sector 23—Construction	
	Subsector 233—Building, Developing and General Contracting	
233110	Land Subdivision and Land Development	$6.0
233210	Single Family Housing Construction	$28.5
233220	Multifamily Housing Construction	$28.5
233310	Manufacturing and Industrial Building Construction	$28.5
233320	Commercial and Institutional Building Construction	$28.5
	Subsector 234—Heavy Construction	
234110	Highway and Street Construction	$28.5
234120	Bridge and Tunnel Construction	$28.5
234910	Water, Sewer, and Pipeline Construction	$28.5
234920	Power and Communication Transmission Line Construction	$28.5
234930	Industrial Nonbuilding Structure Construction	$28.5
234990	All other Heavy Construction	$28.5
Except	Dredging and Surface Cleanup Activities	$17.0
	Subsector 235—Special Trade Contractors	
235110	Plumbing, Heating and Air-Conditioning Contractors	$12.0
235210	Painting and Wall Covering Contractors	$12.0
235310	Electrical Contractors	$12.0
235410	Masonry and Stone Contractors	$12.0
235420	Drywall, Plastering, Acoustical and Insulation Contractors	$12.0
235430	Tile, Marble, Terrazzo and Mosaic Contractors	$12.0
235510	Carpentry Contractors	$12.0
235520	Floor Laying and Other Floor Contractors	$12.0
235610	Roofing, Siding and Sheet Metal Contractors	$12.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
235710	Concrete Contractors	$12.0
235810	Water Well Drilling Contractors	$12.0
235910	Structural Steel Erection Contractors	$12.0
235920	Excavation Contractors	$12.0
235940	Wrecking and Demolition Contractors.	
235950	Building Equipment Other Machinery Installation Contractors	$12.0
235990	All Other Special Trade Contractors	$12.0
Except	Base Housing Maintenance	[13] $12.0
	Sector 44–45—Retail Trade (Not Applicable to Government Procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	Subsector 441—Motor Vehicle and Parts Dealers	
441110	New Car Dealers	$24.5
441120	Used Car Dealers	$19.5
441210	Recreational Vehicle Dealers	$6.0
441221	Motorcycle Dealers	$6.0
441222	Boat Dealers	$6.0
441229	All Other Motor Vehicle Dealers	$6.0
Except	Aircraft Dealers, Retail	$8.5
441310	Automotive Parts and Accessories Stores	$6.0
441320	Tire Dealers	$6.0
	Subsector 441—Furniture and Home Furnishing Stores	
442110	Furniture Stores	$6.0
442210	Floor Covering Stores	$6.0
442291	Window Treatment Stores	$6.0
442299	All Other Home Furnishings Stores	$6.0
	Subsector 442—Electronics and Appliances Stores	
443111	Household Appliance Stores	$7.5
443112	Radio, Television and Other Electronics Stores	$7.5
443120	Computer and Software Stores	$7.5
443130	Camera and Photographic Supplies Stores	$6.0
	Subsector 444—Building Material and Garden Equipment and Supplies Dealers	
444110	Home Centers	$6.0
444120	Paint and Wallpaper Stores	$6.0
444130	Hardware Stores	$6.0
444190	Other Building Material Dealers	$6.0
444210	Outdoor Power Equipment Stores	$6.0
444220	Nursery and Garden Centers	$6.0
	Subsector 445—Food and Beverage Stores	
445110	Supermarkets and Other Grocery (except Convenience) Stores	$23.0
445120	Convenience Stores	$23.0
445210	Meat Markets	$6.0
445220	Fish and Seafood Markets	$6.0
445230	Fruit and Vegetable Markets	$6.0
445291	Baked Goods Stores	$6.0
445292	Confectionery and Nut Stores	$6.0
445299	All Other Specialty Food Stores	$6.0
445310	Beer, Wine and Liquor Stores	$6.0
	Subsector 446—Health and Personal Care Stores	
446110	Pharmacies and Drug Stores	$6.0
446120	Cosmetics, Beauty Supplies and Perfume Stores	$6.0
446130	Optical Goods Stores	$6.0
446191	Food (Health) Supplement Stores	$6.0
446199	All Other Health and Personal Care Stores	$6.0

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SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Subsector 447—Gasoline Stations	
447110	Gasoline Stations with Convenience Stores	$23.0
447190	Other Gasoline Stations	$7.5
	Subsector 448—Clothing and Clothing Accessories Stores	
448110	Men's Clothing Stores	$7.5
448120	Women's Clothing Stores	$7.5
448130	Children's and Infants' Clothing Stores	$6.0
448140	Family Clothing Stores	$7.5
448150	Clothing Accessories Stores	$6.0
448190	Other Clothing Stores	$6.0
448210	Shoe Stores	$7.5
448310	Jewelry Stores	$6.0
448320	Luggage and Leather Goods Stores	$6.0
	Subsector 451—Sporting Goods, Hobby, Book, and Music Stores	
451110	Sporting Goods Stores	$6.0
451120	Hobby, Toy and Game Stores	$6.0
451130	Sewing, Needlework and Piece Goods Stores	$6.0
451140	Musical Instrument and Supplies Stores	$6.0
451211	Book Stores	$6.0
451212	News Dealers and Newsstands	$6.0
451220	Prerecorded Tape, Compact Disc and Record Stores	$6.0
	Subsector 452—General Merchandise Stores	
452110	Department Stores	$23.0
452910	Warehouse Clubs and Superstores	$23.0
452990	All Other General Merchandise Stores	$9.5
	Subsector 453—Miscellaneous Store Retailers	
453110	Florists	$6.0
453210	Office Supplies and Stationery Stores	$6.0
453220	Gift, Novelty and Souvenir Stores	$6.0
453310	Used Merchandise Stores	$6.0
453910	Pet and Pet Supplies Stores	$6.0
453920	Art Dealers	$6.0
453930	Manufactured (Mobile) Home Dealers	$11.0
453991	Tobacco Stores	$6.0
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$6.0
454110	Electronic Shopping and Mail-Order Houses	$21.0
454210	Vending Machine Operators	$6.0
454311	Heating Oil Dealers	$10.5
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	$6.0
454319	Other Fuel Dealers	$6.0
454390	Other Direct Selling Establishments	$6.0
	• • • • • • • •	
	Sectors 48–49—Transportation and Warehousing	
	• • • • • • • •	
	Subsector 481—Air Transportation	
	• • • • • • • •	
Except	Offshore Marine Air Transportation Services	$23.5
	• • • • • • • •	
Except	Offshore Marine Air Transportation Services	$23.5
481219	Other Nonscheduled Air Transportation	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	• • • • • • •	
	Subsector 484—Truck Transportation	
484110	General Freight Trucking, Local	$21.5
484121	General Freight Trucking, Long-Distance, Truckload	$21.5
484122	General Freight Trucking, Long-Distance, Less Than Truckload	$21.5
484210	Used Household and Office Goods Moving	$21.5
484220	Specialized Freight (except Used Goods) Trucking, Local	$21.5
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$21.5
	Subsector 485—Transit and Ground Passenger Transportation	
485111	Mixed Mode Transit Systems	$6.0
485112	Commuter Rail Systems	$6.0
485113	Bus and Other Motor Vehicle Transit Systems	$6.0
485119	Other Urban Transit Systems	$6.0
485210	Interurban and Rural Bus Transportation	$6.0
485310	Taxi Service	$6.0
485320	Limousine Service	$6.0
485410	School and Employee Bus Transportation	$6.0
485510	Charter Bus Industry	$6.0
485991	Special Needs Transportation	$6.0
485999	All Other Transit and Ground Passenger Transportation	$6.0
	Subsector 486—Pipeline Transportation	
	• • • • • • •	
486210	Pipeline Transportation of Natural Gas	$6.0
	• • • • • • •	
486990	All Other Pipeline Transportation	$29.0
	Subsector 487—Scenic and Sightseeing Transportation	
487110	Scenic and Sightseeing Transportation, Land	$6.0
487210	Scenic and Sightseeing Transportation, Water	$6.0
487990	Scenic and Sightseeing Transportation, Other	$6.0
	Subsector 488—Support Activities for Transportation	
488111	Air Traffic Control	$6.0
488119	Other Airport Operations	$6.0
488190	Other Support Activities for Air Transportation	$6.0
488210	Support Activities for Rail Transportation	$6.0
488310	Port and Harbor Operations	$21.5
488320	Marine Cargo Handling	$21.5
488330	Navigational Services to Shipping	$6.0
488390	Other Support Activities for Water Transportation	$6.0
488410	Motor Vehicle Towing	$6.0
488490	Other Support Activities for Road Transportation	$6.0
488510	Freight Transportation Arrangement	[10]$6.0
Except	Non-Vessel Owning Common Carriers and Household Goods Forwarders	$21.5
488991	Packing and Crating	$21.5
488999	All Other Support Activities for Transportation	$6.0
	Subsector 491—Postal Service	
491110	Postal Service	$6.0
	Subsector 492—Couriers and Messengers	
	• • • • • • •	
492210	Local Messengers and Local Delivery	$21.5
	Subsector 493—Warehousing and Storage	
493110	General Warehousing and Storage	$21.5

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Subsector 511—Publishing Industries (except Internet)	
511110	Newspaper Publishers	1,500
511120	Periodical Publishers	500
511130	Book Publishers	500
511140	Directory and Mailing List Publishers	$21.5
511191	Greeting Card Publishers	$6.0
511199	All Other Publishers	$6.0
511210	Software Publishers	$21.5
	Subsector 512—Motion Picture and Sound Recording Industries	
512110	Motion Picture and Video Production	$21.5
512120	Motion Picture and Video Distribution	$21.5
512131	Motion Picture Theaters (except Drive-Ins)	$6.0
512132	Drive-In Motion Picture Theaters	$6.0
512191	Teleproduction and Other Postproduction Services	$21.5
512199	Other Motion Picture and Video Industries	$21.5
512210	Record Production	$21.5
512220	Integrated Record Production/Distribution	$21.5
512230	Music Publishers	$6.0
512240	Sound Recording Studios	$6.0
512290	Other Sound Recording Industries	$6.0
	Subsector 515—Broadcasting (except Internet)	
515111	Radio Networks	$21.5
515112	Radio Stations	$6.0
515120	Television Broadcasting	$21.5
515210	Cable and Other Subscription Programming	$21.5
	Subsector 517—Telecommunications	
517110	Wired Telecommunications Carriers	1,500
517211	Paging	1,500
517212	Cellular and Other Wireless Telecommunications	1,500
517310	Telecommunications Resellers	1,500
517410	Satellite Telecommunications	$12.5
517910	Other Telecommunications	$12.5
	Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services	
518111	Internet Service Providers	$21.5
518112	Web Search Portals	$21.5
518210	Data Processing Services	$21.5
	Subsector 519—Other Information Services	
519110	News Syndicates	$6.0
519120	Libraries and Archives	$6.0
519190	All Other Information Services	$6.0
	• • • • • • •	
	Sector 52—Finance and Insurance	
	• • • • • • •	
	Subsector 522—Credit Intermediation and Related Activities	
522110	Commercial Banking	$150.0
522120	Savings Institutions	$150.0
522130	Credit Unions	$150.0
522190	Other Depository Credit Intermediation	$150.0
522210	Credit Card Issuing	$150.0
522220	Sales Financing	$150.0
522291	Consumer Lending	$150.0
522292	Real Estate Credit	$150.0
522293	International Trade Financing	$150.0
522294	Secondary Market Financing	$150.0
522298	All Other Nondepository Credit Intermediation	$150.0
522310	Mortgage and Nonmortgage Loan Brokers	$6.0
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities	$21.5
522390	Other Activities Related to Credit Intermediation	$6.0
	Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities	
523110	Investment Bankers and Securities Dealers	$21.5
523120	Securities Brokers	$21.5
523130	Commodity Contracts Dealers	$21.5
523140	Commodity Contracts Brokers	$21.5
523210	Securities and Commodity Exchanges	$21.5
523910	Miscellaneous Intermediation	$21.5
523920	Portfolio Management	$21.5
523930	Investment Advice	$21.5
523991	Trust, Fiduciary, and Custody Activities	$21.5
523999	Miscellaneous Financial Investment Activities	$21.5
	Subsector 524—Insurance Carriers and Related Activities	
524113	Direct Life Insurance Carriers	$6.0
524114	Direct Health and Medical Insurance Carriers	$6.0
524126	Direct Property and Casualty Insurance Carriers	$6.0
524127	Direct Title Insurance Carriers	$6.0
524128	Other Direct Insurance (except Life, Health and Medical, and Property and Casualty) Carriers	$6.0
524130	Reinsurance Carriers	$6.0
524210	Insurance Agencies and Brokerages	$6.0
524291	Claims Adjusting	$6.0
524292	Third Party Administration of Insurance and Pension Funds	$6.0
524298	All Other Insurance Related Activities	$6.0
	Subsector 525—Funds, Trusts, and Other Financial Vehicles	
525110	Pension Funds	$21.5
525120	Health and Welfare Funds	$21.5
525190	Other Insurance Funds	$21.5
525910	Open-End Investment Funds	$21.5
525920	Trusts, Estates, and Agency Accounts	$21.5
525990	Other Financial Vehicles	$21.5
	• • • • • • •	
	Sector 53—Real Estate and Rental and Leasing	
	• • • • • • •	
	Subsector 531—Real Estate	
531110	Lessors of Residential Buildings and Dwellings	$6.0
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$21.5
531130	Lessors of Miniwarehouses and Self-Storage Units	$6.0
531190	Lessors of Other Real Estate Property	$6.0
531210	Offices of Real Estate Agents and Brokers	$6.0
531311	Residential Property Managers	$6.0
531312	Nonresidential Property Managers	$6.0
531320	Offices of Real Estate Appraisers	$6.0
531390	Other Activities Related to Real Estate	$6.0
	Subsector 532—Rental and Leasing Services	
532111	Passenger Car Rental	$21.5
532112	Passenger Car Leasing	$21.5
532120	Truck, Utility Trailer and RV (Recreational Vehicle) Rental and Leasing	$21.5
532210	Consumer Electronics and Appliances Rental	$6.0
532220	Formal Wear and Costume Rental	$6.0
532230	Video Tape and Disc Rental	$6.0
532291	Home Health Equipment Rental	$6.0
532292	Recreational Goods Rental	$6.0
532299	All Other Consumer Goods Rental	$6.0
532310	General Rental Centers	$21.5
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$21.5
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	$21.5
532420	Office Machinery and Equipment Rental and Leasing	$21.5
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	$21.5
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$21.5
	• • • • • • •	
	Sector 54—Professional, Scientific, and Technical Services	
	• • • • • • •	
	Subsector 541—Professional, Scientific, and Technical Services	
541110	Offices of Lawyers	$6.0
541191	Title Abstract and Settlement Offices	$6.0
541199	All Other Legal Services	$6.0
541211	Offices of Certified Public Accountants	$6.0
541213	Tax Preparation Services	$6.0
541214	Payroll Services	$6.0
541219	Other Accounting Services	$6.0
541310	Architectural Services	$4.5
541320	Landscape Architectural Services	$4.5
541330	Engineering Services	$4.5
541340	Drafting Services	$4.5
541350	Building Inspection Services	$4.5
541360	Geophysical Surveying and Mapping Services	$4.5
541370	Surveying and Mapping (except Geophysical) Services	$4.5
541380	Testing Laboratories	$4.5
541410	Interior Design Services	$4.5
541420	Industrial Design Services	$4.5
541430	Graphic Design Services	$4.5
541490	Other Specialized Design Services	$4.5
541511	Custom Computer Programming Services	$21.5
541512	Computer Systems Design Services	$21.5
541513	Computer Facilities Management Services	$21.5
541519	Other Computer Related Services	$21.5
541611	Administrative Management and General Management Consulting Services	$6.0
541612	Human Resources and Executive Search Consulting Services	$6.0
541613	Marketing Consulting Services	$6.0
541614	Process, Physical Distribution, and Logistics Consulting Services	$6.0
541618	Other Management Consulting Services	$6.0
541620	Environmental Consulting Services	$6.0
541690	Other Scientific and Technical Consulting Services	$6.0
541710	Research and Development in the Physical, Engineering, and Life Sciences	500
541720	Research and Development in the Social Sciences and Humanities	$6.0
541810	Advertising Agencies	$6.0
541820	Public Relations Agencies	$6.0
541830	Media Buying Agencies	$6.0
541840	Media Representatives	$6.0
541850	Outdoor Advertising	$6.0
541860	Direct Mail Advertising	$6.0
541870	Advertising Material Distribution Services	$6.0
541890	Other Services Related to Advertising	$6.0
541910	Marketing Research and Public Opinion Polling	$6.0
541921	Photography Studios, Portrait	$6.0
541922	Commercial Photography	$6.0
541930	Translation and Interpretation Services	$6.0
541940	Veterinary Services	$6.0
541990	All Other Professional, Scientific, and Technical Services	$6.0
	• • • • • • •	
	Sector 55—Management of Companies and Enterprises	
	• • • • • • •	
	Subsector 551—Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies	500
551112	Offices of Other Holding Companies	500
551114	Corporate, Subsidiary, and Regional Managing Offices	500
	• • • • • • •	
	Sector 56—Administrative and Support and Waste Management and Remediation Services	
	• • • • • • •	
	Subsector 561—Administrative and Support Services	
561110	Office Administrative Services	$6.0
561210	Facilities Support Services	$12.5
561311	Employment Placement Agencies	$6.0
561312	Executive Search Services	$6.0
561320	Temporary Help Services	$6.0
561330	Professional Employer Organizations	$6.0
561410	Document Preparation Services	$6.0
561421	Telephone Answering Services	$6.0
561422	Telemarketing Bureaus	$6.0
561431	Private Mail Centers	$6.0
561439	Other Business Service Centers (including Copy Shops)	$6.0
561440	Collection Agencies	$6.0
561450	Credit Bureaus	$6.0
561491	Repossession Services	$6.0
561492	Court Reporting and Stenotype Services	$6.0
561499	All Other Business Support Services	$6.0
561510	Travel Agencies	$6.0
561520	Tour Operators	$6.0
561591	Convention and Visitors Bureaus	$6.0
561599	All Other Travel Arrangement and Reservation Services	$6.0
561611	Investigation Services	$6.0
561612	Security Guards and Patrol Services	$6.0
561613	Armored Car Services	$6.0
561621	Security Systems Services (except Locksmiths)	$6.0
561622	Locksmiths	$6.0
561710	Exterminating and Pest Control Services	$6.0
561720	Janitorial Services	$6.0
561730	Landscaping Services	$6.0
561740	Carpet and Upholstery Cleaning Services	$6.0
561790	Other Services to Buildings and Dwellings	$6.0
561910	Packaging and Labeling Services	$6.0
561920	Convention and Trade Show Organizers	$6.0
561990	All Other Support Services	$6.0
	Subsector 562—Waste Management and Remediation Services	
562111	Solid Waste Collection	$6.0
562112	Hazardous Waste Collection	$6.0
562119	Other Waste Collection	$6.0
562211	Hazardous Waste Treatment and Disposal	$6.0
562212	Solid Waste Landfill	$6.0
562213	Solid Waste Combustors and Incinerators	$6.0
562219	Other Nonhazardous Waste Treatment and Disposal	$6.0
562910	Remediation Services	$6.0
562920	Materials Recovery Facilities	$6.0
562991	Septic Tank and Related Services	$6.0
562998	All Other Miscellaneous Waste Management Services	$6.0
	• • • • • • •	
	Sector 61—Educational Services	
	• • • • • • •	
	Subsector 611—Educational Services	
611110	Elementary and Secondary Schools	$6.0
611210	Junior Colleges	$6.0
611310	Colleges, Universities, and Professional Schools	$6.0
611410	Business and Secretarial Schools	$6.0
611420	Computer Training	$6.0
611430	Professional and Management Development Training	$6.0
611511	Cosmetology and Barber Schools	$6.0
611512	Flight Training	$6.0
611513	Apprenticeship Training	$6.0
611519	Other Technical and Trade Schools	$6.0
611610	Fine Arts Schools	$6.0
611620	Sports and Recreation Instruction	$6.0
611630	Language Schools	$6.0
611691	Exam Preparation and Tutoring	$6.0
611692	Automobile Driving Schools	$6.0
611699	All Other Miscellaneous Schools and Instruction	$6.0
611710	Educational Support Services	$6.0
	• • • • • • •	
	Sector 62—Health Care and Social Assistance	
	• • • • • • •	
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$6.0
621112	Offices of Physicians, Mental Health Specialists	$6.0
621210	Offices of Dentists	$6.0
621310	Offices of Chiropractors	$6.0
621320	Offices of Optometrists	$6.0
621330	Offices of Mental Health Practitioners (except Physicians)	$6.0
621340	Offices of Physical, Occupational and Speech Therapists, and Audiologists	$6.0
621391	Offices of Podiatrists	$6.0
621399	Offices of All Other Miscellaneous Health Practitioners	$6.0
621410	Family Planning Centers	$6.0
621420	Outpatient Mental Health and Substance Abuse Centers	$6.0
621491	HMO Medical Centers	$6.0
621492	Kidney Dialysis Centers	$6.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$6.0
621498	All Other Outpatient Care Centers	$6.0
621511	Medical Laboratories	$6.0
621512	Diagnostic Imaging Centers	$6.0
621610	Home Health Care Services	$6.0
621910	Ambulance Services	$6.0
621991	Blood and Organ Banks	$6.0
621992	Miscellaneous Ambulatory Health Care Services	$6.0
621999	All Other Miscellaneous Ambulatory Health Care Services	$6.0
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$29.0
622210	Psychiatric and Substance Abuse Hospitals	$29.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$29.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$6.0
623210	Residential Mental Retardation Facilities	$6.0
623220	Residential Mental Health and Substance Abuse Facilities	$6.0
623311	Continuing Care Retirement Communities	$6.0
623312	Homes for the Elderly	$6.0
623990	Other Residential Care Facilities	$6.0
	Subsector 624—Social Assistance	
624110	Child and Youth Services	$6.0
624120	Services for the Elderly and Persons with Disabilities	$6.0
624190	Other Individual and Family Services	$6.0
624210	Community Food Services	$6.0
624221	Temporary Shelters	$6.0
624229	Other Community Housing Services	$6.0
624230	Emergency and Other Relief Services	$6.0
624310	Vocational Rehabilitation Services	$6.0
624410	Child Day Care Services	$6.0
	• • • • • • •	
	Sector 71—Arts, Entertainment, and Recreation	
	• • • • • • •	
	Subsector 711—Performing Arts, Spectator Sports, and Related Industries	
711110	Theater Companies and Dinner Theaters	$6.0
711120	Dance Companies	$6.0
711130	Musical Groups and Artists	$6.0
711190	Other Performing Arts Companies	$6.0
711211	Sports Teams and Clubs	$6.0
711212	Racetracks	$6.0
711219	Other Spectator Sports	$6.0
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	$6.0
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities	$6.0
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	$6.0
711510	Independent Artists, Writers, and Performers	$6.0
	Subsector 712—Museums, Historical Sites, and Similar Institutions	
712110	Museums	$6.0
712120	Historical Sites	$6.0
712130	Zoos and Botanical Gardens	$6.0
712190	Nature Parks and Other Similar Institutions	$6.0
	Subsector 713—Amusement, Gambling, and Recreation Industries	
713110	Amusement and Theme Parks	$21.5
713120	Amusement Arcades	$6.0
713210	Casinos	$21.5
713290	Other Gambling Industries	$6.0
713910	Golf Courses and Country Clubs	$6.0
713920	Skiing Facilities	$6.0
713930	Marinas	$6.0
713940	Fitness and Recreational Sports Centers	$6.0
713950	Bowling Centers	$6.0
713990	All Other Amusement and Recreation Industries	$6.0
	• • • • • • •	
	Sector 72—Accommodation and Food Services	
	• • • • • • •	
	Subsector 721—Accommodation	
721110	Hotels (except Casino Hotels) and Motels	$21.5
721120	Casino Hotels	$21.5
721191	Bed-and-Breakfast Inns	$6.0
721199	All Other Traveler Accommodation	$6.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	$6.0
721214	Recreational and Vacation Camps (except Campgrounds)	$6.0
721310	Rooming and Boarding Houses	$6.0
	Subsector 722—Food Services and Drinking Places	
722110	Full-Service Restaurants	$6.0
722211	Limited-Service Restaurants	$6.0
722212	Cafeterias	$6.0
722213	Snack and Nonalcoholic Beverage Bars	$6.0
722310	Food Service Contractors	$6.0
722320	Caterers	$6.0
722330	Mobile Food Services	$6.0
722410	Drinking Places (Alcoholic Beverages)	$6.0
	• • • • • • •	
	Sector 81—Other Services	
	• • • • • • •	
	Subsector 811—Repair and Maintenance	
811111	General Automotive Repair	$6.0
811112	Automotive Exhaust System Repair	$6.0
811113	Automotive Transmission Repair	$6.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$6.0
811121	Automotive Body, Paint, and Interior Repair and Maintenance	$6.0
811122	Automotive Glass Replacement Shops	$6.0
811191	Automotive Oil Change and Lubrication Shops	$6.0
811192	Car Washes	$6.0
811198	All Other Automotive Repair and Maintenance	$6.0
811211	Consumer Electronics Repair and Maintenance	$6.0
811212	Computer and Office Machine Repair and Maintenance	$6.0
811213	Communication Equipment Repair and Maintenance	$6.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	$6.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	$6.0
811411	Home and Garden Equipment Repair and Maintenance	$6.0
811412	Appliance Repair and Maintenance	$6.0
811420	Reupholstery and Furniture Repair	$6.0
811430	Footwear and Leather Goods Repair	$6.0
811490	Other Personal and Household Goods Repair and Maintenance	$6.0
	Subsector 812—Personal and Laundry Services	
812111	Barber Shops	$6.0
812112	Beauty Salons	$6.0
812113	Nail Salons	$6.0
812191	Diet and Weight Reducing Centers	$6.0
812199	Other Personal Care Services	$6.0
812210	Funeral Homes	$6.0
812220	Cemeteries and Crematories	$6.0
812310	Coin-Operated Laundries and Drycleaners	$6.0
812320	Drycleaning and Laundry Services (except Coin-Operated)	$6.0
812331	Linen Supply	$6.0
812332	Industrial Launderers	$6.0
812910	Pet Care (except Veterinary) Services	$6.0
812920	Photofinishing	$6.0
812930	Parking Lots and Garages	$6.0
812990	All Other Personal Services	$6.0
	Subsector 813—Religious, Grantmaking, Civic, Professional, and Similar Organizations	
813110	Religious Organizations	$6.0
813211	Grantmaking Foundations	$6.0
813212	Voluntary Health Organizations	$6.0
813219	Other Grantmaking and Giving Services	$6.0
813311	Human Rights Organizations	$6.0
813312	Environment, Conservation and Wildlife Organizations	$6.0
813319	Other Social Advocacy Organizations	$6.0
813410	Civic and Social Organizations	$6.0
813910	Business Associations	$6.0
813920	Professional Organizations	$6.0
813930	Labor Unions and Similar Labor Organizations	$6.0
813940	Political Organizations	$6.0
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$6.0
	Subsector 814—Private Households	
814110	Private Households	$6.0
	• • • • • • •	
	Sector 91—Public Administration	
	• • • • • • •	
	Subsector 921—Executive, Legislative, and Other General Government Support	
921110	Executive Offices	$6.0
921120	Legislative Bodies	$6.0
921130	Public Finance Activities	$6.0
921140	Executive and Legislative Offices, Combined	$6.0
921150	American Indian and Alaska Native Tribal Governments	$6.0
921190	Other General Government Support	$6.0
	Subsector 922—Justice, Public Order, and Safety Activities	
922110	Courts	$6.0
922120	Police Protection	$6.0
922130	Legal Counsel and Prosecution	$6.0
922140	Correctional Institutions	$6.0
922150	Parole Offices and Probation Offices	$6.0
922160	Fire Protection	$6.0
922190	Other Justice, Public Order, and Safety Activities	$6.0
	Subsector 923—Administration of Human Resource Programs	
923110	Administration of Education Programs	$6.0
923120	Administration of Public Health Programs	$6.0
923130	Administration of Human Resource Programs (except Education, Public Health, and Veterans' Affairs Programs)	$6.0
923140	Administration of Veterans' Affairs	$6.0
	Subsector 924—Administration of Environmental Quality Programs	
924110	Administration of Air and Water Resource and Solid Waste Management Programs	$6.0
924120	Administration of Conservation Programs	$6.0
	Subsector 925—Administration of Housing Programs, Urban Planning, and Community Development	
925110	Administration of Housing Programs	$6.0
925120	Administration of Urban Planning and Community and Rural Development	$6.0
	Subsector 926—Administration of Economic Programs	
926110	Administration of General Economic Programs	$6.0
926120	Regulation and Administration of Transportation Programs	$6.0
926130	Regulation and Administration of Communications, Electric, Gas, and Other Utilities	$6.0
926140	Regulation of Agricultural Marketing and Commodities	$6.0
926150	Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors	$6.0
	Subsector 927—Space Research and Technology	
927110	Space Research and Technology	$6.0
	Subsector 928—National Security and International Affairs	
928110	National Security	$6.0
928120	International Affairs	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Nonmanufacturer Definition	
	A concern is classified as a nonmanufacturer if it does not manufacture or process the goods it provides to the government, and it does not exercise control over or supervise the manufacturing or processing of the goods. A concern "exercises control over or supervises the manufacturing or processing of the goods" if it has the power to direct the management or to control the daily business operations of the manufacturer who produces the goods. Power to control may be exercised, for example, through ownership, by contract, or as a franchisee. A nonmanufacturer must provide the end item of a manufacturer that is not processed, packaged or physically changed by the concern. It normally must take ownership of the item, but is not required to do so if it is an agent of the manufacturer under the manufacturer's complete control. A nonmanufacturer is usually a dealer, distributor, jobber, wholesaler, or retailer.	
	Nonmanufacturer Rule	
	A concern in the United States and its outlying areas that supplies the product of a domestic small manufacturer or processor on a Federal procurement, if the concern does not exercise control over or supervise the manufacturing or processing of the product.	
	Subsector 999—Nonclassified Establishments	
999990	Nonclassified Establishments	$6.0

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SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
493120	Refrigerated Warehousing and Storage	$21.5
493130	Farm Product Warehousing and Storage	$21.5
493190	Other Warehousing and Storage	$21.5
	Sector 51—Information	
	Subsector 511—Publishing Industries	
511210	Software Publishers	$21.0
	Subsector 512—Motion Picture and Sound Recording Industries	
512110	Motion Picture and Video Production	$25.0
512120	Motion Picture and Video Distribution	$25.0
512131	Motion Picture Theaters (except Drive-Ins)	$6.0
512132	Drive-In Motion Picture Theaters	$6.0
512191	Teleproduction and Other Post-Production Services	$25.0
512199	Other Motion Picture and Video Industries	$6.0
512210	Record Production	$6.0
512240	Sound Recording Studios	$6.0
512290	Other Sound Recording Industries	$6.0
	Subsector 513—Broadcasting and Telecommunications	
513111	Radio Networks	$6.0
513112	Radio Stations	$6.0
513120	Television Broadcasting	$12.0
513210	Cable Networks	$12.5
513220	Cable and Other Program Distribution	$12.5
513340	Satellite Telecommunications	$12.5
513390	Other Telecommunications	$12.5
	Subsector 514—Information Services and Data Processing Services	
514110	News Syndicates	$6.0
514120	Libraries and Archives	$6.0
514191	On-Line Information Services	$21.0
514199	All Other Information Services	$6.0
514210	Data Processing Services	$21.0
	Sector 52—Finance and Insurance	
	Subsector 522—Credit Intermediation and Related Activities	
522110	Commercial Banking	$150 mil in Assets[8]
522120	Saving Institutions	$150 mil in Assets[8]
522130	Credit Unions	$150 mil in Assets[8]
522190	Other Depository Credit Intermediation	$150 mil in Assets[8]
522210	Credit Card Issuing	$150 mil in Assets[8]
522220	Sales Financing	$6.0
522291	Consumer Lending	$6.0
522292	Real Estate Credit	$6.0
522293	International Trade Financing	$150 mil in Assets[8]
522294	Secondary Market Financing	$6.0
522298	All Other Non-Depository Credit Intermediation	$6.0
522310	Mortgage and Nonmortgage Loan Brokers	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	$6.0
522390	Other Activities Related to Credit Intermediation	$6.0
	Subsector 523—Financial Investments and Related Activities	
523110	Investment Banking and Securities Dealing	$6.0
523120	Securities Brokerage	$6.0
523130	Commodity Contracts Dealing	$6.0
523140	Commodity Contracts Brokerage	$6.0
523210	Securities and Commodity Exchanges	$6.0
523910	Miscellaneous Intermediation	$6.0
523920	Portfolio Management	$6.0
523930	Investment Advice	$6.0
523991	Trust, Fiduciary and Custody Activities	$6.0
523999	Miscellaneous Financial Investment Activities	$6.0
	Subsector 524—Insurance Carriers and Related Activities	
524113	Direct Life Insurance Carriers	$6.0
524114	Direct Health and Medical Insurance Carriers	$6.0
524127	Direct Title Insurance Carriers	$6.0
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$6.0
524130	Reinsurance Carriers	$6.0
524210	Insurance Agencies and Brokerages	$6.0
524291	Claims Adjusting	$6.0
524292	Third Party Administration of Insurance and Pension Funds	$6.0
524298	All Other Insurance Related Activities	$6.0
	Subsector 525—Funds, Trusts and Other Financial Vehicles	
525110	Pension Funds	$6.0
525120	Health and Welfare Funds	$6.0
525190	Other Insurance Funds	$6.0
525910	Open-End Investment Funds	$6.0
525920	Trusts, Estates, and Agency Accounts	$6.0
525930	Real Estate Investment Trusts	$6.0
525990	Other Financial Vehicles	$6.0
	Sector 53—Real Estate and Rental and Leasing	
	Subsector 531—Real Estate	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$6.0
531130	Lessors of Miniwarehouses and Self Storage Units	$21.5
531190	Lessors of Other Real Estate Property	$6.0
Except	Leasing of Building Space to Federal Government by Owners	[9] $17.5
	Subsector 532—Rental and Leasing Services	
532111	Passenger Car Rental	$21.5
532112	Passenger Car Leasing	$21.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	$21.5
532210	Consumer Electronics and Appliances Rental	$6.0
532220	Formal Wear and Costume Rental	$6.0
532230	Video Tape and Disc Rental	$6.0
532291	Home Health Equipment Rental	$6.0
532292	Recreational Goods Rental	$6.0
532299	All Other Consumer Goods Rental	$6.0
532310	General Rental Centers	$6.0
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$6.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	$6.0
532420	Office Machinery and Equipment Rental and Leasing	$21.0

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SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	$6.0
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$6.0
	Sector 54—Professional, Scientific and Technical Services	
	Subsector 541—Professional, Scientific and Technical Services	
541110	Offices of Lawyers	$6.0
541191	Title Abstract and Settlement Offices	$6.0
541199	All Other Legal Services	$6.0
541211	Offices of Certified Public Accountants	$7.0
541213	Tax Preparation Services	$6.0
541214	Payroll Services	$7.0
541219	Other Accounting Services	$7.0
•	•	•
541320	Landscape Architectural Services	$6.0
541330	Engineering Services	$4.0
Except	Military and Aerospace Equipment and Military Weapons	$23.0
Except	Contracts and Subcontracts for Engineering Services Awarded under The National Energy Act of 1992	$23.0
Except	Marine and Aerospace Equipment and Military Weapons	$15.5
541340	Drafting Services	$6.0
Except	Map Drafting	$4.0
541350	Building Inspection Services	$6.0
541360	Geophysical Surveying and Mapping Services	$4.0
541370	Surveying and Mapping (except Geophysical) Services	$4.0
541380	Testing Laboratories	$6.0
541410	Interior Design Services	$6.0
541420	Industrial Design Services	$6.0
541430	Graphic Design Services	$6.0
541490	Other Specialized Design Services	$6.0
541511	Custom Computer Programming Services	$21.0
541512	Computer Systems Design Services	$21.0
541513	Computer Facilities Management Services	$21.0
541519	Other Computer Related Services	$21.0
541611	Administrative Management and General Management Consulting Services	$6.0
541612	Human Resources and Executive Search Consulting Services	$6.0
541613	Marketing Consulting Services	$6.0
541614	Process, Physical distribution and Logistics Consulting Services	$6.0
541618	Other Management Consulting Services	$6.0
541620	Environmental Consulting Services	$6.0
541690	Other Scientific and Technical Consulting Services	$6.0
•	•	•
541720	Research and Development in the Social Sciences and Humanities	$6.0
541810	Advertising Agencies	[10] $6.0
541820	Public Relations Agencies	$6.0
541830	Media Buying Agencies	$6.0
541840	Media Representatives	$6.0
541850	Display Advertising	$6.0
541860	Direct Mail Advertising	$6.0
541870	Advertising Material Distribution Services	$6.0
541890	Other Services Related to Advertising	$6.0
541910	Marketing Research and Public Opinion Polling	$6.0
541921	Photography Studios, Portrait	$6.0
541922	Commercial Photography	$6.0
541930	Translation and Interpretation Services	$6.0
541940	Veterinary Services	$6.0
541990	All Other Professional, Scientific and Technical Services	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Sector 55—Management of Companies and Enterprises	
	Subsector 551—Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies	$6.0
551112	Offices of Other Holding Companies	$6.0
	Sector 56—Administrative and Support, Waste Management and Remediation Services	
	Subsector 561—Administrative and Support Services	
561110	Office Administrative Services	$6.0
561210	Facilities Support Services	[12] $6.0
Except	Base Maintenance	[13] $23.0
561310	Employment Placement Agencies	$6.0
561320	Temporary Help Services	$11.5
561330	Employee Leasing Services	$11.5
561410	Document Preparation Services	$6.0
561421	Telephone Answering Services	$6.0
561422	Telemarking Bureaus	$6.0
561431	Private Mail Centers	$6.0
561439	Other Business Service Centers (including Copy Shops)	$6.0
561440	Collection Agencies	$6.0
561450	Credit Bureaus	$6.0
561491	Repossession Services	$6.0
561492	Court Reporting and Stenotype Services	$6.0
561499	All Other Business Support Services	$6.0
561510	Travel Agencies	[10] $1.0
561520	Tour Operators	$6.0
561591	Convention and Visitors Bureaus	$6.0
561599	All Other Travel Arrangement and Reservation Services	$6.0
561611	Investigation Services	$10.5
561612	Security Guards and Patrol Services	$10.5
561613	Armored Car Services	$10.5
561621	Security Systems Services (except Locksmiths)	$10.5
561622	Locksmiths	$6.0
561710	Exterminating and Pest Control Services	$6.0
561720	Janitorial Services	$14.0
561730	Landscaping Services	$6.0
561740	Carpet and Upholstery Cleaning Services	$4.0
561790	Other Services to Buildings and Dwellings	$6.0
561910	Packaging and Labeling Services	$6.0
561920	Convention and Trade Show Organizers	[10] $6.0
561990	All Other Support Services	$6.0
	Subsector 562—Waste Management and Remediation Services	
562111	Solid Waste Collection	$10.5
562112	Hazardous Waste Collection	$10.5
562119	Other Waste Collection	$10.5
562211	Hazardous Waste Treatment and Disposal	$10.5
562212	Solid Waste Landfill	$10.5
562213	Solid Waste Combustors and Incinerators	$10.5
562219	Other Nonhazardous Waste Treatment and Disposal	$10.5
562910	Remediation Services	$12.0
•	•	•
562920	Materials Recovery Facilities	$10.5
562991	Septic Tank and Related Services	$6.0
562998	All Other Miscellaneous Waste Management Services	$6.0
	Sector 61—Educational Services	
	Subsector 611—Educational Services	
611110	Elementary and Secondary Schools	$6.0
611210	Junior Colleges	$6.0
611310	Colleges, Universities and Professional Schools	$6.0
611410	Business and Secretarial Schools	$6.0
611420	Computer Training	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
611511	Cosmetology and Barber Schools	$6.0
611512	Flight Training	$6.0
611513	Apprenticeship Training	$6.0
611519	Other Technical and Trade Schools	$6.0
611610	Fine Arts Schools	$6.0
611620	Sports and Recreation Instruction	$6.0
611630	Language Schools	$6.0
611691	Exam Preparation and Tutoring	$6.0
611692	Automobile Driving Schools	$6.0
611699	All Other Miscellaneous Schools and Instruction	$6.0
611710	Educational Support Services	$6.0
	Sector 62—Health Care and Social Assistance	
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$6.0
621112	Offices of Physicians, Mental Health Specialists	$6.0
621210	Offices of Dentists	$6.0
621310	Offices of Chiropractors	$6.0
621320	Offices of Optometrists	$6.0
621330	Offices of Mental Health Practitioners (except Physicians)	$6.0
621340	Offices of Physical, Occupational and Speech Therapists, and Audiologists	$6.0
621391	Offices of Podiatrists	$6.0
621399	Offices of All Other Miscellaneous Health Practitioners	$6.0
621410	Family Planning Centers	$6.0
621420	Outpatient Mental Health and Substance Abuse Centers	$6.0
621491	HMO Medical Centers	$6.0
621492	Kidney Dialysis Centers	$6.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$6.0
621498	All Other Outpatient Care Centers	$6.0
621511	Medical Laboratories	$6.0
621512	Diagnostic Imaging Centers	$6.0
621610	Home Health Care Services	$6.0
621910	Ambulance Services	$6.0
621991	Blood and Organ Banks	$6.0
621992	All Other Miscellaneous Ambulatory Health Care Services	$6.0
621999	All Other Miscellaneous Health Care Services	$6.0
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$29.0
622210	Psychiatric and Substance Abuse Hospitals	$29.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$29.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$6.0
623210	Residential Mental Retardation Facilities	$6.0
623220	Residential Mental Health and Substance Abuse Facilities	$6.0
623311	Continuing Care Retirement Communities	$6.0
623312	Homes for the Elderly	$6.0
623990	Other Residential Care Facilities	$6.0
	Subsector 624—Social Assistance	
624110	Child and Youth Services	$6.0
624120	Services for the Elderly and Persons with Disabilities	$6.0
624190	Other Individual and Family Services	$6.0
624210	Community Food Services	$6.0
624221	Temporary Shelters	$6.0
624229	Other Community Housing Services	$6.0
624230	Emergency and Other Relief Services	$6.0
624310	Vocational Rehabilitation Services	$6.0
624410	Child Day Care Services	$6.0
	Sector 71—Arts, Entertainment and Recreation	
	Subsector 711—Performing Arts, Spectator Sports and Related Industries	
711110	Theater Companies and Dinner Theaters	$6.0
711120	Dance Companies	$6.0
711130	Musical Groups and Artists	$6.0
711190	Other Performing Arts Companies	$6.0
711211	Sports Teams and Clubs	$6.0
711212	Racetracks	$6.0
711219	Other Spectator Sports	$6.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$6.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$6.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$6.0
711510	Independent Artists, Writers and Performers	$6.0
	Subsector 712—Museums, Historical Sites and Similar Institutions	
712110	Museums	$6.0
712120	Historical Sites	$6.0
712130	Zoos and Botanical Gardens	$6.0
712190	Nature Parks and Other Similar Institutions	$6.0
	Subsector 713—Amusement, Gambling and Recreation Industries	
713110	Amusement and Theme Parks	$6.0
713120	Amusement Arcades	$6.0
713210	Casinos	$6.0
713290	Other Gambling Industries	$6.0
713910	Golf Courses and Country Clubs	$6.0
713920	Skiing Facilities	$6.0
713930	Marinas	$6.0
713940	Fitness and Recreational Sports Centers	$6.0
713950	Bowling Centers	$6.0
713990	All Other Amusement and Recreation Industries	$6.0
	Sector 72—Accommodation and Food Services	
	Subsector 721—Accommodation	
721110	Hotels (except Casino Hotels) and Motels	$6.0
721120	Casino Hotels	$6.0
721191	Bed-and-Breakfast Inns	$6.0
721199	All Other Traveler Accommodation	$6.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	$6.0
721214	Recreational and Vacation Camps (except Campgrounds)	$6.0
721310	Rooming and Boarding Houses	$6.0
	Subsector 722—Food Services and Drinking Places	
722110	Full-Service Restaurants	$6.0
722211	Limited-Service Restaurants	$6.0
722212	Cafeterias	$6.0
722213	Snack and Nonalcoholic Beverage Bars	$6.0
722310	Food Service Contractors	$6.0
722320	Caterers	$6.0
722330	Mobile Food Services	$6.0
722410	Drinking Places (Alcoholic Beverages)	$6.0
	Sector 81—Other Services	
	Subsector 811—Repair and Maintenance	
811111	General Automotive Repair	$6.0
811112	Automotive Exhaust System Repair	$6.0
811113	Automotive Transmission Repair	$6.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$6.0
811121	Automotive Body, Paint and Interior Repair and Maintenance	$6.0
811122	Automotive Glass Replacement Shops	$6.0
811191	Automotive Oil Change and Lubrication Shops	$6.0
811192	Car Washes	$6.0
811198	All Other Automotive Repair and Maintenance	$6.0
811211	Consumer Electronics Repair and Maintenance	$6.0
811212	Computer and Office Machine Repair and Maintenance	$6.0
811213	Communication Equipment Repair and Maintenance	$6.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	$6.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	$6.0
811411	Home and Garden Equipment Repair and Maintenance	$6.0
811412	Appliance Repair and Maintenance	$6.0
811420	Reupholstery and Furniture Repair	$6.0
811430	Footwear and Leather Goods Repair	$6.0
811490	Other Personal and Household Goods Repair and Maintenance	$6.0
	Subsector 812—Personal and Laundry Services	
812111	Barber Shops	$6.0
812112	Beauty Salons	$6.0
812113	Nail Salons	$6.0
812191	Diet and Weight Reducing Centers	$6.0
812199	Other Personal Care Services	$6.0
812210	Funeral Homes	$6.0
812220	Cemeteries and Crematories	$6.0
812310	Coin-Operated Laundries and Drycleaners	$6.0
812320	Drycleaning and Laundry Services (except Coin-Operated)	$6.0
812331	Linen Supply	$6.0
812332	Industrial Launderers	$6.0
812910	Pet Care (except Veterinary) Services	$6.0
812921	Photofinishing Laboratories (except One-Hour)	$6.0
812922	One-Hour Photofinishing	$6.0
812930	Parking Lots and Garages	$6.0
812990	All Other Personal Services	$6.0
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations	
813110	Religious Organizations	$6.0
813211	Grantmaking Foundations	$6.0
813212	Voluntary Health Organizations	$6.0
813219	Other Grantmaking and Giving Services	$6.0
813311	Human Rights Organizations	$6.0
813312	Environment, Conservation and Wildlife Organizations	$6.0
813319	Other Social Advocacy Organizations	$6.0
813410	Civic and Social Organizations	$6.0
813910	Business Associations	$6.0
813920	Professional Organizations	$6.0
813930	Labor Unions and Similar Labor Organizations	$6.0
813940	Political Organizations	$6.0
813990	Other Similar Organizations (except Business, Labor and Political Organizations)	$6.0
	Subsector 814—Private Households	
814110	Private Households	$6.0
	Sector 91—Public Administration	
	Subsector 921—Executive, Legislative and Other General Government Support	
921110	Executive Offices	$6.0
921120	Legislative Bodies	$6.0
921130	Public Finance Activities	$6.0
921140	Executive and Legislative Offices, Combined	$6.0
921150	American Indian and Alaska Native Tribal Governments	$6.0
921190	Other General Government Support	$6.0
	Subsector 922—Justice, Public Order and Safety Activities	
922110	Courts	$6.0
922120	Police Protection	$6.0
922130	Legal Counsel and Prosecution	$6.0
922140	Correctional Institutions	$6.0
922150	Parole Offices and Probation Offices	$6.0
922160	Fire Protection	$6.0
922190	Other Justice, Public Order and Safety Activities	$6.0
	Subsector 923—Administration of Human Resource Programs	
923110	Administration of Education Programs	$6.0
923120	Administration of Public Health Programs	$6.0
923130	Administration of Human Resource Programs (except Education, Public Health and Veterans' Affairs Programs)	$6.0
923140	Administration of Veterans' Affairs	$6.0
	Subsector 924—Administration of Environmental Quality Programs	
924110	Administration of Air and Water Resource and Solid Waste Management Programs	$6.0
924120	Administration of Conservation Programs	$6.0
	Subsector 925—Administration of Housing Programs, Urban Planning and Community Development	
925110	Administration of Housing Programs	$6.0
925120	Administration of Urban Planning and Community and Rural Development	$6.0
	Subsector 926—Administration of Economic Programs	
926110	Administration of General Economic Programs	$6.0
926120	Regulation and Administration of Transportation Programs	$6.0
926130	Regulation and Administration of Communications, Electric, Gas and Other Utilities	$6.0
926140	Regulation of Agricultural Marketing and Commodities	$6.0
926150	Regulation, Licensing and Inspection of Miscellaneous Commercial Sectors	$6.0
	Subsector 927—Space Research and Technology	
927110	Space Research and Technology	$6.0
	Subsector 928—National Security and International Affairs	
928110	National Security	$6.0
928120	International Affairs	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Sector 99—Unclassified Establishments	
999990	Unclassified Establishments	$6.0

[10] Average annual receipts.

[12] Annual receipts.

[13] Annual receipts (excluding subcontract costs).

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SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
611430	Professional and Management Development Training	$6.0
611511	Cosmetology and Barber Schools	$6.0
611512	Flight Training	$21.5
611513	Apprenticeship Training	$6.0
611519	Other Technical and Trade Schools	$6.0
611610	Fine Arts Schools	$6.0
611620	Sports and Recreation Instruction	$6.0
611630	Language School	$6.0
611691	Exam Preparation and Tutoring	$6.0
611692	Automobile Driving School	$6.0
611699	All Other Miscellaneous Schools and Instruction	$6.0
611710	Educational Support Services	$6.0
	Sector 62—Health Care and Social Assistance	
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$8.5
621112	Offices of Physicians, Mental Health Specialists	$8.5
621210	Offices of Dentists	$6.0
621310	Offices of Chiropractors	$6.0
621320	Offices of Optometrists	$6.0
621330	Offices of Mental Health Practitioners (except Physicians)	$6.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$6.0
621391	Offices of Podiatrists	$6.0
621399	Offices of All Other Miscellaneous Health Practitioners	$6.0
621410	Family Planning Centers	$8.5
621420	Outpatient Mental Health and Substance Abuse Centers	$8.5
621491	HMO Medical Centers	$8.5
621492	Kidney Dialysis Centers	$29.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$8.5
621498	All Other Outpatient Care Centers	$8.5
621511	Medical Laboratories	$11.5
621512	Diagnostic Imaging Centers	$11.5
621610	Home Health Care Services	$11.5
621910	Ambulance Services	$6.0
621991	Blood and Organ Banks	$8.5
621999	All Other Miscellaneous Ambulatory Health Care Services	$8.5
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$29.0
622210	Psychiatric and Substance Abuse Hospitals	$29.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$29.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$11.5
623210	Residential Mental Retardation Facilities	$8.5
623220	Residential Mental Health and Substance Abuse Facilities	$6.0
623311	Continuing Care Retirement Communities	$11.5
623312	Homes for the Elderly	$6.0
623990	Other Residential Care Facilities	$6.0
	Subsector 624—Social Assistance	
624110	Child and Youth Services	$6.0
624120	Services for the Elderly and Persons with Disabilities	$6.0
624190	Other Individual and Family Services	$6.0
624210	Community Food Services	$6.0
624221	Temporary Shelters	$6.0
624229	Other Community Housing Services	$6.0
624230	Emergency and Other Relief Services	$6.0
624310	Vocational Rehabilitation Services	$6.0
624410	Child Day Care Services	$6.0

SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
	Sector 71—Arts, Entertainment and Recreation	
	Subsector 711—Performing Arts, Spectator Sports and Related Industries	
711110	Theater Companies and Dinner Theaters	$6.0
711120	Dance Companies	$6.0
711130	Musical Groups and Artists	$6.0
711190	Other Performing Arts Companies	$6.0
711211	Sports Teams and Clubs	$6.0
711212	Race Tracks	$6.0
711219	Other Spectator Sports	$6.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$6.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$6.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$6.0
711510	Independent Artists, Writers, and Performers	$6.0
	Subsector 712—Museums, Historical Sites and Similar Institutions	
712110	Museums	$6.0
712120	Historical Sites	$6.0
712130	Zoos and Botanical Gardens	$6.0
712190	Nature Parks and Other Similar Institutions	$6.0
	Subsector 713—Amusement, Gambling and Recreation Industries	
713110	Amusement and Theme Parks	$6.0
713120	Amusement Arcades	$6.0
713210	Casinos (except Casino Hotels)	$6.0
713290	Other Gambling Industries	$6.0
713910	Golf Courses and Country Clubs	$6.0
713920	Skiing Facilities	$6.0
713930	Marinas	$6.0
713940	Fitness and Recreational Sports Centers	$6.0
713950	Bowling Centers	$6.0
713990	All Other Amusement and Recreation Industries	$6.0
	Sector 72—Accommodation and Food Services	
	Subsector 721—Accommodation	
721110	Hotels (except Casino Hotels) and Motels	$6.0
721120	Casino Hotels	$6.0
721191	Bed and Breakfast Inns	$6.0
721199	All Other Traveler Accommodation	$6.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	$6.0
721214	Recreational and Vacation Camps (except Campgrounds)	$6.0
721310	Rooming and Boarding Houses	$6.0
	Subsector 722—Food Services and Drinking Places	
722110	Full-Service Restaurants	$6.0
722211	Limited-Service Restaurants	$6.0
722212	Cafeterias	$6.0
722213	Snack and Nonalcoholic Beverage Bars	$6.0
722310	Food Service Contractors	$17.5
722320	Caterers	$6.0
722330	Mobile Food Services	$6.0
722410	Drinking Places (Alcoholic Beverages)	$6.0
	Sector 81—Other Services	
	Subsector 811—Repair and Maintenance	
811111	General Automotive Repair	$6.0
811112	Automotive Exhaust System Repair	$6.0
811113	Automotive Transmission Repair	$6.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$6.0
811121	Automotive Body, Paint and Interior Repair and Maintenance	$6.0
811122	Automotive Glass Replacement Shops	$6.0

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SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS industry description	Size standards in number of employees or millions of dollars
811191	Automotive Oil Change and Lubrication Shops	$6.0
811192	Car Washes	$6.0
811198	All Other Automotive Repair and Maintenance	$6.0
811211	Consumer Electronics Repair and Maintenance	$6.0
811212	Computer and Office Machine Repair and Maintenance	$21.0
811213	Communication Equipment Repair and Maintenance	$6.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	$6.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	$6.0
811411	Home and Garden Equipment Repair and Maintenance	$6.0
811412	Appliance Repair and Maintenance	$6.0
811420	Reupholstery and Furniture Repair	$6.0
811430	Footwear and Leather Goods Repair	$6.0
811490	Other Personal and Household Goods Repair and Maintenance	$6.0
	Subsector 812—Personal and Laundry Services	
812111	Barber Shops	$6.0
812112	Beauty Salons	$6.0
812113	Nail Salons	$6.0
812191	Diet and Weight Reducing Centers	$6.0
812199	Other Personal Care Services	$6.0
812210	Funeral Homes and Funeral Services	$6.0
812220	Cemeteries and Crematories	$6.0
812310	Coin-Operated Laundries and Drycleaners	$6.0
812320	Drycleaning and Laundry Services (except Coin-Operated)	$4.0
812331	Linen Supply	$12.0
812332	Industrial Launderers	$12.0
812910	Pet Care (except Veterinary) Services	$6.0
812921	Photo Finishing Laboratories (except One-Hour)	$6.0
812922	One-Hour Photo Finishing	$6.0
812930	Parking Lots and Garages	$6.0
812990	All Other Personal Services	$6.0
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations	
813110	Religious Organizations	$6.0
813211	Grantmaking Foundations	$6.0
813212	Voluntary Health Organizations	$6.0
813219	Other Grantmaking and Giving Services	$6.0
813311	Human Rights Organizations	$6.0
813312	Environment, Conservation and Wildlife Organizations	$6.0
813319	Other Social Advocacy Organizations	$6.0
813410	Civic and Social Organizations	$6.0
813910	Business Associations	$6.0
813920	Professional Organizations	$6.0
813930	Labor Unions and Similar Labor Organizations	$6.0
813940	Political Organizations	$6.0
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$6.0

Footnotes

[9] *NAICS code 531190*—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $17.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

[15] *Subsector 483—Water Transportation—Offshore Marine Services:* The applicable size standard shall be $23.5 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

§ 121.301 [Amended]

4. Amend § 121.301 as follows:

a. In paragraph (b)(2), remove "$6 million" and add in its place "$7 million," and "$2 million" and add in its place "$2.5 million," respectively.

b. In paragraph (d)(1), remove "$5.0 million" and add in its place "$6.0 million."

§ 121.502 [Amended]

5. In § 121.502(a)(2), remove "$2 million" and add in its place "$6.0 million."

§ 121.512 [Amended]

6. In § 121.512(b), remove "$42 million" and add in its place "$48.5 million."

Dated: January 3, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1312 Filed 1–22–02; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–45291; File No. S7–02–02]

Amendments to Rule 31–1, Securities Transactions Exempt From Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today is amending the rule that provides an exemption from section 31(c) of the Securities Exchange Act of 1934 ("Act") for over-the-counter ("OTC") transactions in OTC securities that are subject to unlisted trading privileges on a national securities exchange. One subparagraph of the rule has become obsolete and unnecessary due to the enactment of H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act").

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine England, Assistant Director, 202–942–0155, or Joseph Morra, Special Counsel, 202–942–0781, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Discussion

Subparagraph (b) of Rule 31–1 [1] under the Act is being rescinded. At the time this subparagraph was adopted, an exemption from section 31(c) of the Act was necessary to ensure that OTC transactions in OTC securities that were subject to unlisted trading privileges on a national securities exchange ("OTC–UTP Transactions") were not subject to dual charges under both sections 31(c) and (d) of the Act. With passage of the Fee Relief Act, former sections 31(c) and (d) of the Act were combined into a new Section 31(c).[2] Therefore, there is no longer a need for the exemption created by subparagraph (b) of Rule 31–1. The Commission also is making technical conforming changes to Rule 31–1 to renumber the subparagraphs and to reflect the exception in the Fee Relief Act for options on securities indexes (other than narrow-based security indexes).

Section 553(b) of the Administrative Procedure Act [3] generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [4] The Commission finds good cause to forego notice and comment procedures for the rule amendments being adopted today.

The President signed the Fee Relief Act on January 16, 2002. If the Commission does not rescind paragraph (b) of Rule 31–1 effective as of January 16, 2002, the intent of Congress in passing the Fee Relief Act could be frustrated. In addition, persons subject to section 31 of the Act may be confused as to whether OTC–UTP Transactions remain subject to fees under section 31.[5]

Specifically, as noted above, paragraph (b) of existing Rule 31–1 exempts OTC–UTP Transactions from the fee provisions of section 31(c) of the Act.[6] The purpose of the rule was to clarify that such transactions were not subject to dual charges under both former sections 31(c) and (d). OTC–UTP Transactions, however, remained subject to the fee provisions of former section 31(d) of the Act. The Fee Relief Act combined former sections 31(c) and (d) of the Act into a new section 31(c) (which encompasses all transactions formerly covered by former sections 31(c) and (d)). If paragraph (b) of existing Rule 31–1 were to remain in effect, affected persons might conclude that OTC–UTP Transactions are now exempt from section 31 fees altogether. Neither Congress, in enacting the Fee Relief Act, nor the Commission, in promulgating Rule 31–1, intended to exempt such transactions from the fee provisions of section 31. Rescinding paragraph (b) of Rule 31–1 effective immediately would preserve the intent of Congress in enacting the Fee Relief Act and avoid any confusion by persons affected by the legislation.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[7] However, an agency may forego the 30-day requirement if it finds good cause for doing so.[8] For the same reasons as it is waiving the notice and comment period, the Commission finds good cause to waive the 30-day pre-effective requirement.

II. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [9] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. As noted above, in amending Rule 31–1 the Commission is merely conforming the rule to recently enacted legislation. Moreover, adoption of the amendment to Rule 31–1 will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Regulatory Flexibility Act [10] is not applicable to the revisions to Rule 31–1. The Regulatory Flexibility Act's flexibility analysis requirements are limited to rulemaking for which the Commission would be required by the Administrative Procedure Act to publish general notice of proposed rulemaking.[11]

The Paperwork Reduction Act does not apply because the proposed amendments do not impose record keeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

[1] 17 CFR 240.31–1(b).

[2] New section (c) applies to off-exchange trades of exchange registered and last-sale reported securities.

[3] 5 U.S.C. 553(b).

[4] *Id.*

[5] The Fee Relief Act provides that changes to section 31 of the Act (except for the immediate fee reduction in section 2 of the Fee Relief Act) are effective October 1, 2001. While we are rescinding paragraph (b) of Rule 31–1 effective as of January 16, 2002, the date the President signed the Fee Relief Act into law, the Commission does not believe that it would be consistent with the intent of the Fee Relief Act to rely on paragraph (b) of Rule 31–1 (and thereby seek to avoid paying Section 31 fees on OTC–UTP Transactions) for the period from the effective date of the Fee Relief Act (October 1, 2001) to the effective date of our rescission of paragraph (b) of Rule 31–1. As a result, Section 31 fees will continue to apply to OTC–UTP transactions from the effective date of the Fee Relief Act.

[6] *See* Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590, 68591 n.10 (December 30, 1996) ("Without the exemption, the application of section 31 fees to all transactions in particular OTC securities would have depended entirely on exchange decisions to trade OTC/UTP securities, or on issuer decisions to retain an exchange listing despite the stock being designated a Nasdaq/NMS security.")

[7] *See* 5 U.S.C. 553(d).

[8] *Id.*

[9] 15 U.S.C. 78w(a)(2).

[10] 5 U.S.C. 601–612.

[11] 5 U.S.C. 603(a). As noted above, the Commission is not required to solicit public comment due to the nature of the Commission's revisions to Rule 31–1.

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III. Statutory Basis

The amendments to Rule 31–1 under the Exchange Act are being adopted pursuant to 15 U.S.C. 78a et seq., particularly sections 23(a) and 31 of the Exchange Act.

IV. Text of Final Amendments

List of Subjects in 17 CFR Part 240

Reporting and record keeping requirements, Securities.

Text of Rule Amendment

For the reasons set forth above, the Commission amends Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.31–1 is revised to read as follows:

§ 240.31–1. Securities transactions exempt from transaction fees.

Preliminary Note

The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes other than narrow-based security indexes) is to be paid by the exchange or the national securities association itself, respectively, or by, the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option. The following shall be exempt from section 31 of the Act:

(a) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder.

(b) Transactions by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(c) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(d) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(e) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) and any approved plan filed thereunder.

By the Commission.

Dated: January 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1620 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 02–05]

RIN 1515–AC85

Extension of Deadline To File a Wool Duty Refund Claim for Claim Year 2000

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule.

SUMMARY: This document amends the Customs Regulations on an interim basis to extend the deadline to file a wool duty refund claim for calendar year 2000, as authorized by section 505 of the Trade and Development Act of 2000. The regulations currently require that claims for a wool duty refund for calendar year 2000, except for certain amended claims, should already have been received by Customs by December 31, 2001. This deadline is extended until December 31, 2002, to reflect the fact that proposed legislation is currently pending before Congress which would significantly alter the scope of section 505 in regard to the amount of payment manufacturers would be eligible to receive, as well as the documents that a manufacturer would need to file to be entitled to a refund and, in part, because of the destruction of records at the New York Customshouse on September 11, 2001. The deadline extension is also intended to spare manufacturers from the filing of unnecessary documentation, again, in part, due to the destruction of records in New York. Additionally, Customs is amending the regulations to reflect the new Customs location to which all wool duty refund documentation should be sent.

DATES: This interim rule is effective January 23, 2002. The deadline to file a wool duty refund claim for calendar year 2000 is extended to December 31, 2002. Comments must be received on or before February 7, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Wool duty refund documentation should be sent to the U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927–1082.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs published in the **Federal Register** (65 FR 81344), as T.D. 01–01, the final rule adding the eligibility, documentation and procedural requirements for obtaining a wool duty refund to § 10.184 of the Customs Regulations (19 CFR 10.184).

On April 23, 2001, Customs published in the **Federal Register** (66 FR 20392), as T.D.01–33, an interim rule amending § 10.184 regarding the description of the wool products that are eligible to provide the basis for a wool duty refund and the tariff provisions that eligible wool products must be entered under to substantiate a refund.

Extension of Deadline To File a Wool Duty Refund Claim for Calendar Year 2000

Section 10.184(g) of the Customs Regulations sets forth the procedures for filing a wool duty refund claim. Paragraph (g)(1) provides, in pertinent part, that all refund claims, whether original or amended in the absence of a Customs notice of insufficiency or defect, must be received by Customs no later than December 31st of the year following the calendar claim year for which a wool duty refund is being sought. Therefore, pursuant to the existing regulations, all original claims and certain amended claims for calendar year 2000 must be received by Customs no later than December 31st, 2001.

Customs has learned that proposed legislation is currently pending before Congress which would significantly alter the scope of section 505 in regard to the amount of payment manufacturers would be eligible to receive, as well as the documents that a manufacturer would need to file to be entitled to a refund. For this reason, Customs has opted to extend the deadline to file calendar year 2000 claims until December 31, 2002, in an effort to spare manufacturers seeking refunds from the filing of unnecessary documentation.

If legislation is soon passed by Congress that amends section 505 to institute new procedures for filing a claim, Customs will publish another document in the **Federal Register** that amends § 10.184 to reflect the terms of the legislation, unless the legislation is self-effectuating. If legislation is not passed in the near future, Customs will inform potential claimants how to expedite the refund process under current law. In any event, the document published today should relieve manufacturers of concern that they must file claims by December 31st, 2001, to receive refunds for duties that they paid in the year 2000.

New Customs Address for the Submission of Wool Duty Refund Documentation

Section 10.184(g)(2) directs claimants to submit wool refund claims to Customs at the Residual Liquidation and Protest Branch located at 6 World Trade Center, New York, NY. Due to the events of September 11, 2001, that address no longer functions as a Customs office. This document amends § 10.184(g)(2) to reflect the fact that wool duty refund documentation should be submitted to the U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date

Because these regulations confer a benefit to the public by extending the deadline to file a wool duty refund claim for calendar year 2000 and redesignate the location to which such claims should be sent, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. These regulatory amendments inform the public of changes to the procedures for filing a wool duty refund claim. For this reason, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collection of information involved in this interim rule has already been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0227. This rule does not substantively change the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

For the reasons stated above, 19 CFR part 10 is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific authority for § 10.184 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106–200, 114 Stat. 251;

* * * * * *

2. In § 10.184, paragraph (g)(1), the third sentence is amended by removing the period after the word "sought" and adding the words ", with the exception of claims for calendar claim year 2000 which may be filed no later than December 31, 2002."

3. In § 10.184, paragraph (g)(2) is revised to read as follows:

§ 10.184 Refund of duties on certain wool imports.

* * * * * *

(g) * * *

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit, . . .

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1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

* * * * *

Robert C. Bonner,
Commissioner of Customs.
Approved: January 17, 2002.
Timothy E. Skud,
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–1664 Filed 1–22–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 96N–0277]

RIN 0910–AA01

Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing additional criteria and procedures by which over-the-counter (OTC) conditions may become eligible for consideration in the OTC drug monograph system. The criteria and procedures address how OTC drugs initially marketed in the United States after the OTC drug review began in 1972, and OTC drugs without any U.S. marketing experience, can meet the statutory definition of marketing "to a material extent" and "for a material time" and become eligible. If found eligible, the condition would be evaluated for general recognition of safety and effectiveness in accordance with FDA's OTC drug monograph regulations. FDA is also changing the current OTC drug monograph procedures to streamline the process and provide additional information in the review.

DATES: This final rule is effective February 22, 2002.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to establish criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. Currently, a sponsor wishing to introduce into the United States an OTC drug condition marketed solely in a foreign country must prepare and submit a new drug application (NDA). Likewise, companies with OTC drugs initially marketed in the United States after the 1972 initiation of the OTC drug review must have an NDA. This final rule provides procedures for these NDA drugs to become eligible for inclusion in the OTC drug monograph system by first submitting a time and extent application (TEA) to show marketing "to a material extent" and "for a material time." Once determined eligible, safety and effectiveness data would be submitted and evaluated. This two-step process allows sponsors to demonstrate that eligibility criteria are met before having to expend resources to prepare safety and effectiveness data.

I. Background

The OTC drug monograph system was established to evaluate the safety and effectiveness of all OTC drug products marketed in the United States before May 11, 1972, that were not covered by NDAs and all OTC drug products covered by "safety" NDAs that were marketed in the United States before enactment of the 1962 drug amendments to the Federal Food, Drug, and Cosmetic Act (the act). In 1972, FDA began its OTC drug review to evaluate OTC drugs by categories or classes (e.g., antacids, skin protectants), rather than on a product-by-product basis, and to develop "conditions" under which classes of OTC drugs are generally recognized as safe and effective (GRAS/E) and not misbranded.

FDA publishes these conditions in the **Federal Register** in the form of OTC drug monographs, which consist primarily of active ingredients, labeling, and other general requirements. Final monographs for OTC drugs that are GRAS/E and not misbranded are codified in part 330 (21 CFR part 330). Manufacturers desiring to market an OTC drug covered by an OTC drug monograph need not seek FDA clearance before marketing. In a future issue of the **Federal Register**, the agency will be publishing a final call for data for OTC drug products marketed in the United States before May 11, 1972, to be reviewed as part of the original OTC drug review.

In the **Federal Register** of October 3, 1996 (61 FR 51625), FDA published an advance notice of proposed rulemaking (ANPRM) stating that it was considering proposing to amend its regulations to include criteria under which certain additional OTC drug conditions may become eligible for inclusion in the OTC drug monograph system. Interested persons were invited to submit written comments by January 2, 1997. The agency received 16 comments, which it discussed in section III of a proposed rule that was published in the **Federal Register** of December 20, 1999 (64 FR 71062 at 71067) (the proposed rule).

Under the proposal, eligibility for consideration in the OTC drug monograph system would be determined by showing a condition's use "to a material extent" and "for a material time" in compliance with the existing statutory requirements of the act. A number of ingredients have been marketed in OTC drug products under NDAs approved after May 11, 1972. The agency provided criteria and procedures in this proposal for ingredients such as these to be considered for OTC drug monograph status.

For OTC drug products without any U.S. marketing experience, this proposal represented a change in the agency's previous interpretation of "use" requirements in section 201(p) of the act (21 U.S.C. 321(p)). Previously, the agency interpreted the use provision to mean use in the United States only. The agency proposed this change in policy to expand "use" to include foreign marketing experience because it believed that under certain circumstances use outside the United States may appropriately be considered to satisfy the use requirements in section 201(p) of the act.

In the ANPRM, the agency used the term "condition" to refer to OTC drug active ingredients, indications, dosage forms, dosage strengths, routes of administration, and active ingredient combinations. In the proposed rule, the agency has used the term "condition" to refer to an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use. The agency has included the reference to botanical drug substance to recognize that the information needed for consideration of a botanical substance for inclusion in the OTC drug monograph system may differ from the information needed to evaluate other types of active ingredients for this purpose.

II. Description of the Proposed Rule

The existing OTC drug regulations in part 330 do not define eligibility requirements for consideration in the OTC drug monograph system or what constitutes marketing to a material extent or for a material time. The proposed rule and this final rule set forth criteria and procedures for considering additional "conditions" (as discussed in section I of the proposed rule, 64 FR 71062) in the OTC drug monograph system. The definition of "conditions" appears in § 330.14(a) of the final rule.

The proposed rule established procedures for a sponsor with a condition it considered eligible for consideration to provide the agency certain information to establish eligibility. The proposed rule presented these procedures in table 1 format as part of a TEA as follows: (1) Basic chemical information about the ingredient (additional information needed for a botanical ingredient), (2) a list of all countries in which the condition has been marketed, (3) how the condition has been marketed in each country (*e.g.*, OTC general sales direct-to-consumer, sold only in a pharmacy), (4) the number of dosage units sold, (5) marketing exposure (e.g., race, gender, ethnicity), (6) the use pattern in each country, (7) each country's system for identifying adverse drug experiences (ADEs), including method of collection, (8) how long the condition has been marketed in each country, (9) all labeling used during the marketing period in any country, and the time period each labeling was used, (10) all countries where the condition is marketed only as a prescription drug and the reasons why, and (11) all countries where the condition has been withdrawn from marketing or OTC marketing has been denied.

If FDA determined the condition eligible for consideration in the OTC drug monograph system, it would publish a notice of eligibility in the **Federal Register** and place the TEA on public display. The sponsor and other interested parties would then submit data to support safety and effectiveness. If the agency tentatively determined the condition GRAS/E, it would propose to amend the applicable OTC drug monograph or propose a new monograph. There is a comment period for interested persons to comment on the agency's proposal, during which interim marketing would not be permitted. The agency would then publish a final rule, at which time marketing could begin.

Interested persons were invited to submit comments by March 22, 2000. The agency received comments from four industry trade associations, one health coverage association, three suppliers of OTC drug ingredients, and three manufacturers of OTC drug products.

III. Comments on the Proposed Rule

A. General Comments

1. One comment contended that there is no legal basis for the agency's proposal. The comment disagreed with FDA's position that for a drug to qualify for inclusion in the OTC drug review and not be a new drug under section 201(p)(2) of the act the drug must have been used to a material extent or for a material time under its conditions of use in the United States only (64 FR 71062). The comment added that there is no basis in the act to support FDA's interpretation that foreign data cannot be used to satisfy the material time or material extent requirements of the act. The comment noted FDA's willingness in recent years to accept and rely upon foreign data as the basis for approving NDAs for prescription and OTC drugs, food additives, and premarket applications for medical devices.

The agency explained in the proposal (64 FR 71062) that it had previously interpreted the "use" requirements in section 201(p) of the act to mean use in the United States only, and that the proposal represented a change in the agency's interpretation. The agency proposed this change in policy to expand "use" to include foreign marketing experience because it believed certain circumstances of use outside the United States may appropriately be considered to satisfy the use requirements in section 201(p) of the act. The agency considers this approach consistent with its use of foreign data as the basis for approving NDAs for prescription and OTC drugs, food additives, and premarket applications for medical devices. The agency continues to believe that there is an appropriate legal basis for the additional criteria and procedures in this final rule, as described in the proposal.

2. One comment contended that the proposed procedures would effectively terminate the OTC drug monograph process as conceived and implemented to date, noting that the process has included flexibility to consider new conditions and allowed interim marketing for nonmonograph products. The comment added that the agency's procedural regulations for the OTC drug review were designed to be flexible and to establish a standard procedure first for the review of pre-1972 drugs and later to determine the status of post-1972 and foreign marketed drugs. The comment considered the new procedures inflexible and unworkable.

The agency disagrees that the new procedures are inflexible and unworkable and would effectively terminate the OTC drug monograph process as conceived and implemented to date. The agency also disagrees that the procedural regulations for the OTC drug review were designed for review of post-1972 and foreign marketed drugs. The proposal (37 FR 85, January 5, 1972) and the final rule (37 FR 9464, May 11, 1972) that established the OTC drug review only discussed OTC drugs "now marketed." Estimates of the number of OTC drug products on the market (37 FR 85) only covered the United States. Thus, the original OTC drug review procedures were not developed to address post-1972 and foreign marketed drugs. Accordingly, the agency proposed (64 FR 71062 at 71067) and is modifying the existing procedures in § 330.10 to make them consistent with the new scope of the review. Interim marketing is discussed in comment 21 of section III. D of this document.

3. A number of comments contended that the proposed procedures and data requirements are too complex and protracted, unduly burdensome (more burdensome than the NDA process), unrealistic, prohibitive, and unwieldy to be of practical value to industry. The comments stated that the TEA is too onerous and broad in scope because it requires exhaustive information rather than adequate information to demonstrate marketing history. The comments argued that it is excessive to require exhaustive data from every country in the world for a threshold eligibility consideration. Another comment added that the requirement for a worldwide data search would be a disincentive to companies with good data from a few countries but without the resources to do a worldwide search. One comment added that the safety and effectiveness consideration should be based upon the quality of the data, not upon arbitrarily selected material times, material extents, or listing of countries, and that the scope of certain requirements is quite narrow and restrictive (e.g., show that pharmacy-only sale does not indicate safety concerns). Several comments requested that the procedures be more flexible and less complicated so as to encourage quality products to enter the review process rather than deter them from entry. Other comments suggested that the agency rescind the proposed rule. Two comments recommended that the agency use the same eligibility criteria for foreign ingredients as used for domestic ingredients in the original OTC drug review.

The agency does not consider the TEA too onerous or broad in scope. The TEA is designed to provide FDA basic

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information about a condition for which it may have little or no information. The TEA is also designed to provide sufficient information to allow for a one-time assessment of a condition's eligibility for consideration in an OTC drug monograph. The agency agrees with the comments that it is not necessary to require exhaustive data from every country in the world for a threshold eligibility consideration and has modified some of the TEA requirements (see comment 12 of section III.B of this document). The agency agrees that the safety and effectiveness consideration should be based upon the quality of the data. The agency does not believe that the procedures will deter quality products from entering the review process because products with quality data should be able to readily meet the requirements of the process. Excluding prescription-to-OTC switches that the panels could consider, the primary criterion for eligibility in the original OTC drug review was that the ingredient had to be in the U.S. OTC market before May 11, 1972. It would not be practical to use that date for foreign conditions because many conditions that entered the market after that date would be excluded. In addition, none of the foreign conditions have been marketed in the United States and the United States has no experience with these conditions. The agency has developed eligibility criteria, as discussed in the preamble of the proposed rule (64 FR 71062 to 71064), that it considers necessary to provide sufficient information for a condition to be considered for inclusion in the OTC drug monograph system. The agency finds no basis to rescind the proposed rule, and the agency is publishing a final rule so that additional conditions may now begin to be considered.

4. One comment contended that the proposed procedures would establish a nontariff trade barrier in violation of the General Agreement on Tariffs and Trade (GATT). The comment stated that the proposal differentiates between a cosmetic-drug sold in the United States prior to 1972, which is eligible for inclusion in the OTC drug review without any further information, and a cosmetic-drug sold outside the United States prior to 1972, which would be eligible only after submitting a comprehensive TEA. The comment added that the proposal also discriminates against foreign products by prohibiting marketing until publication of a final monograph, while U.S. products may generally be marketed after publication of a tentative final monograph (TFM).

The issue of a trade barrier in violation of GATT was also raised in the comments on the ANPRM and was discussed in comment 11 of section III.B of the proposed rule (64 FR 71062 at 71072). The agency does not believe that any provisions of this final rule would violate GATT (which is now one of the multilateral agreements annexed to the agreement establishing the World Trade Organization). Among other reasons, foreign-manufactured products marketed in the United States prior to 1972 are treated the same as domestic manufactured products marketed in the United States prior to 1972. Similarly, both foreign and domestic manufactured products marketed in the United States after 1972 under NDAs would be eligible for consideration in the OTC drug review after submission of the same TEAs demonstrating that the same material time and extent criteria have been met. Foreign manufactured products previously marketed only in foreign countries would also be eligible for consideration in the OTC drug review after submission of TEAs that show these same material time and extent criteria have been met. Under this rule, drugs produced in the United States and those produced abroad would be treated the same way, and both would be required to comply with U.S. labeling and manufacturing requirements as a condition of marketing in the United States.

Interim marketing is discussed in comment 21 of section III.D of this document. Under § 330.14(h), products previously marketed only in foreign countries that are included in a tentative final monograph may also, if appropriate, be marketed in the United States before completion of the final monograph.

The provisions of this final rule serve to promote and protect human health and safety and do not create trade barriers.

5. One comment noted that under the proposal a condition is not eligible for OTC drug monograph status if marketing in the United States is limited to prescription drug use only and requested the agency to expand the criteria for monograph status to include drugs marketed by prescription in the United States. The comment contended that FDA may determine drugs to be eligible as GRAS/E for an OTC drug monograph on the basis of various types of evidence, including "significant human experience during marketing." The comment contended that if adequate adverse event information is available for foreign OTC drugs that remain prescription drugs in the United States, FDA should allow consideration of these active ingredients for possible inclusion in an OTC drug monograph. The comment added that certain prescription conditions were considered for and added to the OTC drug monographs during the original OTC drug review (drugs marketed prior to 1972). Another comment considered the proposal narrow and restrictive because a drug sold OTC in some foreign countries would be ineligible for monograph status if it is marketed by prescription in the United States.

The agency agrees with the comments and believes there was an inconsistency with the criteria proposed in § 330.14(b). Under the proposed criteria, a condition marketed OTC in one or more foreign countries that is limited to prescription use in other foreign countries would be considered for eligibility in the OTC drug monograph system. However, a condition marketed OTC in one or more foreign countries that is limited to prescription drug use in the United States would not be considered for eligibility. The agency has decided to address this inconsistency by removing the criterion in proposed § 330.14(b)(2) to allow conditions marketed OTC in foreign countries that are limited to prescription drug use in the United States to be considered for eligibility in the OTC drug monograph system. If such a condition is found to be eligible, the sponsor must then provide the necessary information, which would include the U.S. prescription marketing experience, as part of the safety and effectiveness submission to establish that the condition is appropriate for OTC status in the United States and that it can be marketed as GRAS/E under the OTC drug monograph system. The agency believes that it can adequately address in its monograph review the issues associated with a product's prescription use in the United States, and the appropriateness of switching the product to OTC use.

6. One comment contended that there is no need for FDA to make a material time/extent determination wholly separate from its consideration of safety and effectiveness.

The agency discussed this subject in comment 13 of section III.C of the proposed rule (64 FR 71062 at 71073) and provided three reasons for the two-step review approach. The comment did not provide any reasoning to support rejecting this approach, and the agency concludes that separate evaluations of material time/extent and safety/effectiveness are the most efficient way to evaluate these additional conditions

for inclusion in an OTC drug monograph.

B. Comments on Criteria for Time and Extent of Marketing

7. One comment contended that the TEA filing reflects a misunderstanding that sponsors must show both material time and material extent. The comment stated that a product is legally required to satisfy the requirement of "to a material extent" or "for a material time," which was intended to satisfy the requirement that a drug be used for sufficient time or have wide enough distribution for discovery of any adverse experiences.

The agency discussed this subject in comment 8 of section III.A of the proposed rule (64 FR 71062 at 71069 to 71070). The agency explained there why a condition that is considered "not a new drug" must satisfy both the material extent and the material time criteria in section 201(p)(2) of the act. The comment did not provide any information to change the agency's position.

8. One comment agreed with most of the proposed time and extent criteria, but contended that specific data on the number of dosage units sold in each country (number of units sold by package sizes, number of doses per package based on labeled directions for use) is difficult to compile, unnecessarily detailed for evaluating time and extent of marketing, and unlikely to be maintained by industry with the degree of specificity proposed in the rule. The comment concluded that specific marketing information related to dosage units should be required only to the extent it is reasonably capable of being compiled. A second comment stated that there should be no numerical floor for the number of units that must have been marketed. Another comment stated that the number of dosage units sold should be replaced by the total quantity of product sold, with an extrapolation to the number of consumer units based on average package size.

The agency has reconsidered how information should be provided on the number of dosage units sold. The agency's primary concern is determining consumer exposure to the condition. The agency has determined that the number of units sold by package sizes (*e.g.*, 24 tablets, 120 milliliters (mL)) and the number of doses per package based on the labeled directions for use may not be necessary to determine a condition's extent of marketing and is removing these requirements from proposed § 330.14(c)(2)(ii). Instead, the agency is only requiring a list of the various package sizes for each dosage form in which the condition is marketed OTC along with an estimate of the minimum number of potential consumer exposures to the condition using one of the following calculations: (1) Divide the total number of dosage units sold by the number of dosage units in the largest package size marketed, or (2) divide the total weight of the active ingredient sold by the total weight of the active ingredient in the largest package size marketed. Information on package size should be readily available from marketers of the product, if other than the sponsor, or other marketing sources (e.g., wholesalers) and will allow the sponsor to estimate the minimum number of potential consumer exposures to the condition. In addition, to ensure that consumer exposure is adequate for any one dosage form, the agency is changing the proposed criterion in § 330.14(c)(2)(ii) to state "The total number of dosage units sold for each dosage form of the condition." One comment's request for replacing "the number of dosage units sold" with "total quantity of product sold" is discussed in comment 11 of section III.B of this document. The agency agrees that there should be no numerical floor for the number of dosage units that must be marketed and is not including such criteria in this final rule.

9. One comment requested the agency to reconsider its requirement for information regarding geographical and cultural differences (e.g., race, gender, ethnicity) between the countries where the product has been marketed and the U.S. population. The comment contended that this information is difficult to obtain, subjective in nature, and subject to inconsistent evaluation. The comment maintained that specific marketing information related to geographic and cultural distinctions should be required only to the extent it is reasonably capable of being compiled. The comment requested that FDA require this information only in those situations where it is aware of specific cultural and/or geographical differences that would be relevant to the review process. Another comment stated that it should be possible to refer to large geographical areas (e.g., the population of the European Union) to support sufficient variability in terms of culture and gender to show adequate population exposure.

The agency discussed the need for marketing exposure data in comment 11 of section III.B of the proposed rule (64 FR 71062 at 71071 to 71072). Because of the potential breadth of this requirement, the agency is modifying the criteria in proposed § 330.14(c)(2)(iii) to require, as a means of determining marketing exposure, information on the population demographics (percentages of various racial/ethnic groups) for each country where the condition has been marketed and the source(s) from which this information has been compiled. Examples of sources for this information include the following Internet sites: http://www.cia.gov/cia/publications/factbook/index.html, and http://www.state.gov/www/background/index.html. The national statistical office for the individual country also may provide relevant information. The agency believes this information will not be difficult to obtain or subjective in nature, and that it can be evaluated consistently. Although sponsors may use the categories and definitions in the Office of Management and Budget's **Federal Register** notice, entitled "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," when describing the population demographics of each country, the agency is removing the reference to this document from § 330.14(c)(2)(iii) because other countries may not use all of these categories and definitions.

10. One comment requested that use pattern information (e.g., how often and how long the ingredient is to be used according to its labeling) (proposed § 330.14(c)(2)(iv)) be included as part of the safety evaluation rather than as part of the time and extent information. The comment stated that such information involves an evaluation of historical labeling and appears to be related to safety; thus, it is more appropriate in the safety submission rather than in the TEA.

The agency discussed the need for providing use pattern information as part of the TEA in comment 7 of section III.A of the proposed rule (64 FR 71062 at 71069). The agency stated that this information was needed at that stage of the condition's review to determine if a product's use is different in other countries than it would be in the United States. However, the agency is modifying the criterion in proposed § 330.14(c)(2)(iv) to require use pattern information only when the use pattern varies between countries or when it has changed over time in one or more countries. The agency agrees that use pattern information is also related to the condition's safety, and also may consider it in the safety evaluation.

11. Two suppliers of active ingredients expressed concern about being able to provide accurate information on how their ingredients

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are marketed in final form, the number of final product units sold, and the labeling or adverse event reports relevant to finished products. One supplier stated that it could provide information about the countries in which the active ingredients are sold and the quantities sold for OTC use, but that customers would be unlikely to provide their sales data. The comments asked FDA to accept sales and related information from active ingredient manufacturers as evidence of material time and material extent.

The agency has reconsidered the information requirements for a TEA. In addition to the revised requirements discussed in response to other comments, sponsors of TEAs who are manufacturers or suppliers of OTC active ingredients may provide dosage unit information as total weight of active ingredient sold (cumulative total for the specific condition being considered) for each country in which the condition is marketed. This revision to § 330.14(c)(2)(ii) provides active ingredient manufacturers a mechanism to provide pertinent sales data. The agency has also reduced the amount of labeling information that must be provided (see comment 14 of section III.B of this document). The agency discussed the availability of ADE information in the proposal (64 FR 71062 at 71070 to 71071) and the comment did not provide any basis to support changing this requirement.

12. One comment agreed with the importance of the objectives of the data requested in proposed § 330.14(c)(2), i.e., that detailed information from a number of countries addresses some of the ethnic, cultural, and racial variances that may exist among users in foreign markets and the relevance of this information to potential use of the product in the United States. However, the comment considered it burdensome to provide this information from all countries if the product is marketed in a large number of foreign countries. The comment suggested an alternate TEA requirement for products that have 5 years or more of continuous marketing in 50 or more countries and marketing for 20 years or more in one of the "Tier 1" countries for purposes of the export provisions of section 802(b)(1)(A) of the act (21 U.S.C. 382). These countries include Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the European Union (EU) or a country in the European Economic Area (the countries in the EU and the European Free Trade Association).

The comments suggested that sponsors meeting the threshold criteria would be permitted to select, after consultation with FDA, six countries that represent both significant markets for the product and cultural diversity. The sponsor would then complete the TEA with information applicable to the six countries or, with FDA's agreement, obtain information by contacting public health officials and otherwise soliciting information on the type of marketing, patterns and conditions of use, and adverse drug experiences from product users in each selected country. The comment concluded that this approach should provide the necessary information for FDA to make its evaluation and provide sponsors the opportunity to consult with the agency to develop reasonable means to collect the information needed to assure FDA of the suitability of foreign-marketed conditions. Another comment stated that the information requested in proposed § 330.14(c)(1), (c)(2)(ii), (c)(2)(iv), and (c)(3) is very difficult, if not impossible, for a manufacturer of the raw material to provide because only the manufacturers of finished products would be able to provide this information. The comment recommended that for classes of OTC drugs for which there are only qualitative instructions for use, such as for sunscreen and antidandruff products, the basic information required would be based on the number of kilograms of the active ingredient sold per year and per country for this intended drug use. In addition, the regulatory status of the ingredient in those countries that have specific legislation controlling the usage of the ingredient, and the maximum amount of the substance allowed to be marketed, would be provided. The comment recommended revisions to § 330.14(c)(1), (c)(2)(ii), (c)(2)(iv), and (c)(3) and the following new § 330.14(c)(2)(vi) to allow certain products to comply with proposed § 330.14(c)(2)(ii):

For sunscreen and antidandruff OTC drugs in which there are no quantitative dosage instructions for the use of the products in the final monographs, list all countries that the drug is approved for use, what maximum concentrations are allowed, any restrictions on usage that are enforced, the number of kilograms sold per country (per year and cumulative), what known adverse effects have been reported and list the other drugs in the same OTC category that it has been combined with. This data to be supplied in tabulated form.

The comment further suggested that these modifications be limited to OTC sunscreen drugs that are permitted for use in annex VII of the EU Cosmetics Directive and the OTC antidandruff drugs that are regulated as preservation materials in annex VI, or are for restricted use as indicated in annex III of the EU Cosmetics Directive for this purpose. The comment concluded that this approach should assure FDA that the active ingredients in these two classes have had a pedigree of peer review and/or a history of long usage in the EU. Another comment strongly supported annex VII of the EU Cosmetics Directive to demonstrate the safety and effectiveness of four sunscreen agents marketed in Europe.

Another comment contended that it should not be necessary to submit a TEA for an ingredient that has been sold in the United States [under an NDA] for a material time and extent, e.g., including ibuprofen in the internal analgesic monograph. The comment added that under the proposal the only information exempted is labeling from every country.

The agency agrees with the first comment that it may not be necessary to provide detailed information from each country in which a condition is marketed if the condition has extensive marketing in a large number of foreign countries. The agency is providing an alternate TEA requirement if a condition has been marketed OTC in five or more countries with a minimum of 5 continuous years of marketing in at least one country. Sponsors who have this extensive marketing experience for a condition should select at least five of these countries from which to submit information in accord with § 330.14(c)(2)(i) through (c)(2)(iv). Countries that are selected must include the country with a minimum of 5 continuous years of OTC marketing, countries that have the longest duration of marketing, and countries having the most support for extent of marketing, i.e., a large volume of sales with cultural diversity among users of the product. If the condition meets these criteria in countries listed in section 802(b)(l)(A) of the act, some of these countries should be included among the five selected. Sponsors should provide information from more than five countries if they believe that it is needed to support eligibility. Sponsors should explain the basis for the countries selected in the TEA. This alternate TEA requirement appears in § 330.14(c)(4) of this final rule.

Even though sunscreen and antidandruff products are regulated differently by the EU, both are considered OTC drugs in the United States and are so regulated as part of the OTC drug monograph system. The agency recognizes that it may be difficult for manufacturers of the raw material to obtain some of the information on finished products. Therefore, the agency is not requiring raw material manufacturers to provide the number of dosage units sold in each country (see comment 11 of section III.B of this document). The total weight of active ingredient sold per country (cumulative) for the intended use of the condition will be adequate, and the agency has revised proposed § 330.14(c)(2)(ii) accordingly in this final rule. The other required information in the comment's proposed § 330.14(c)(2)(vi) is already included in other parts of the regulation. Therefore, the agency sees no need to adopt new § 330.14(c)(2)(vi).

The agency concludes that it is still necessary to submit a TEA for an ingredient already marketed OTC in the United States under an NDA because the agency needs to evaluate if the condition has been marketed to a material extent and for a material time whether the OTC marketing was in the United States or elsewhere. In the proposal (64 FR 71062 at 71081), the agency stated that information on marketing exposure (proposed § 330.14(c)(2)(iii)) and the length of time the condition has been marketed in each country accompanied by all labeling used during the marketing period (proposed § 330.14(c)(3)) need not be provided for OTC drugs that have been marketed for more than 5 years in the United States under an NDA. In this final rule, the agency is removing the requirements to submit certain information if the condition has more than 5 years marketing in the United States under an NDA including: (1) How the condition has been marketed (§ 330.14(c)(2)(i)), (2) a description of each country's system for identifying ADEs (§ 330.14(c)(2)(v)), and (3) all countries where the condition is marketed only as a prescription drug (§ 330.14(c)(5)). The agency is not requiring this information because the information needed to satisfy these requirements is obtainable from the NDA.

13. One comment urged that there not be a rigid and inflexible 5-year marketing requirement to determine material time prior to considering monograph status for an OTC drug active ingredient.

The agency discussed this subject in comment 6 of section III.A of the proposed rule (64 FR 71062 at 71069). The agency noted there that in response to the ANPRM a number of comments agreed with the proposed 5-year minimum requirement to satisfy marketing for a material time. The agency considers a minimum of 5 years of OTC marketing experience a necessary duration of time to detect infrequent but serious ADEs that are occurring and, thus, provide an appropriate margin of safety. The comment did not provide any information to change the agency's position. However, the agency is modifying the eligibility criteria in proposed § 330.14(b)(3) (new § 330.14(b)(2)) by deleting the word "countries" to clarify that the minimum requirement is 5 continuous years of marketing in the same country. Although the agency recognizes that some conditions may be able to demonstrate marketing to a material extent from marketing in only one country, some conditions may not be able to do so. Therefore, the agency is adding the following sentence to the criteria in new section § 330.14(b)(2): "Depending on the condition's extent of marketing in only one country with 5 continuous years of marketing, marketing in more than one country may be necessary."

14. Two comments contended that marketing history (proposed § 330.14(c)(3)) will be difficult to obtain and requested the agency to limit information to a review of time and extent of marketing. One comment requested that specific marketing information related to historical product labeling be required only to the extent it is reasonably capable of being compiled.

The agency has reassessed the historical labeling requirements in proposed § 330.14(c)(3) and determined that the requirements can be modified. Because additional warning and direction information is most likely added over time rather than removed, the agency believes that a condition's current labeling will provide the appropriate, needed information. Therefore, the agency is revising proposed § 330.14(c)(3) to require that sponsors submit a statement of how long the condition has been marketed in each country and how long the current product labeling has been in use. In addition to providing a copy of the current product labeling, the sponsor should state whether that labeling has or has not been authorized, accepted, or approved by a regulatory body in each country where the condition is marketed.

C. Comments on Administrative Procedures

15. Two comments stated that timeframes should be established for publication of proposed and final rules. Based on considerable delays in the rulemaking process, the comments believed that the delay between publication of a proposed and final rule will not be minimal. Two comments urged the agency to institute specific timeframes for review of TEAs (one comment recommended 90 days) and safety and effectiveness submissions. The comments stated that the OTC drug review was implemented in 1972, and has yet to be completed and that some foreign ingredient petitions have languished before the agency for years. One comment expressed concern that submissions would continue to languish without specific review timeframes. The comment cited the agency's rationale in the proposed rule for not including review timeframes. The comment argued that it is the applicant's responsibility to ensure that submissions are prepared adequately and that it is unlikely that the agency will be overrun with applications upon implementation of the final rule. The comment stated that review timeframes would be in keeping with the goal of the Food and Drug Administration Modernization Act (FDAMA) to improve the efficiency of application review and that the agency has a public health obligation to ensure that applications are reviewed in a timely manner. The comments concluded that it is critical that timeframes be established if the agency does not permit interim marketing.

The agency agrees that TEAs and safety and effectiveness submissions should be reviewed in a timely manner consistent with the goal of improved efficiency. The Division of OTC Drug Products will be responsible for evaluating all TEAs and overseeing the progress of safety and effectiveness reviews. As differences will invariably occur in the quantity and quality of the TEA and GRAS/E submissions received, it is not possible to set exact timeframes for completing these reviews. The Division will strive to complete TEA evaluations within 90 to 180 days of receipt and will implement procedures to ensure that agency resources are used appropriately and result in timely action on safety and effectiveness submissions. The Division will contact the sponsor within 180 days about the status of its request.

The anticipated workload for reviewing these additional conditions is difficult to predict. The agency estimated in the proposal (64 FR 71062 at 71078 to 71079) and in this final rule that the number of TEAs submitted annually would be 50, with 30 approved, and with 3 subsequent safety and effectiveness submissions for each approved TEA. The agency received only one comment on these estimates to

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help with its workload projections. That comment stated that it is unlikely that the agency will be overrun with applications upon implementation of the final rule. The agency notes that another comment from a foreign industry association representing the cosmetics, toiletries, perfumes, and detergent industry stated that it represented 350 member companies who produce cosmetic products for markets all over the world and that it has been waiting for this new process for a long time (Ref. 1). If a number of this association's members sponsor TEAs, the agency's workload estimates could be low. The agency predicts that as it gains experience with evaluating the foreign data, the speed of its reviews should increase. While the agency is currently unable to project the timeframe it will take to publish proposed rules, it anticipates that the time between proposed and final rules should be short, in many cases because the proposed action will be to add another ingredient to an already existing monograph for which the basic OTC labeling for the product is already established. When a new monograph and OTC drug product labeling is initially established, the agency anticipates that the timeframe between proposed and final rules may be somewhat longer.

16. One comment offered suggestions for streamlining the review process for TEAs and safety and effectiveness submissions. For TEAs, the comment suggested that the agency publish a guidance document to help ensure that the content and format of applications are submitted in a uniform matter. The comment stated that the agency could then use the refuse-to-file concept for applications that do not meet the basic requirements. For safety and effectiveness submissions, the comment fully supported voluntary use of accredited outside organizations or individuals, such as a third-party review program developed by the European Sunscreen Manufacturers Association (Ref. 2) or FDA's medical devices pilot program for third-party review of selected premarket notifications . The comment believed that the agency could implement such a program under the authority of FDAMA. Another comment also strongly supported third party review to reduce review time.

The agency may publish a guidance document to assist manufacturers to organize TEAs in a uniform manner. However, the agency did not want to delay publication of this final rule while developing that guidance document. In the meantime, sponsors should organize their TEA in the sequence in which information is listed in § 330.14(c). The agency will not use a "refuse-to-file" concept (a threshold determination) for TEAs that do not meet the basic requirements. The agency will do a substantive review of all TEAs, and any TEA that does not contain the required information will result in the condition being found not eligible for consideration.

The agency used a third party review system (advisory review panels) for the original OTC drug review and states that it may use an advisory review panel in § 330.14(g) of the new procedures. When a third-party reviews the safety and effectiveness data, the agency still needs to do its own independent evaluation of the data. Therefore, in the new procedures in § 330.14(g), the agency states that it may evaluate the data in conjunction with the advisory review panel or on its own without using an advisory review panel. Both of these procedures are intended to reduce the overall review time. Based on the number of conditions submitted for review, the agency may consider other alternatives, as necessary, to review submissions in a timely manner.

17. Two comments requested confirmation that the agency would maintain the confidentiality of ineligible TEAs. One comment recommended that this information be returned to the applicant. The comments also requested confirmation that sales data identified by the company in an eligible TEA as trade secret or confidential would remain confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act (21 U.S.C. 331(j)). One comment stated that it is unclear whether the agency intends to notify the applicant if it does not agree with the request for confidential treatment. The comment requested that the agency clarify that it will give notice, consistent with 5 U.S.C. 552(b), so that applicants can determine whether to withdraw the information.

The procedures related to the confidentiality of a TEA are in § 330.14(d). FDA processes a TEA as confidential until a decision is made on the eligibility of the submitted condition for consideration in the OTC drug monograph system. If the condition is not found eligible, the agency will not place the TEA on public display. Only a letter from the agency to the applicant, stating why the condition was not found acceptable, will be placed on public display in the Dockets Management Branch. However, the agency cannot return the TEA to the applicant, but must retain it as the data upon which the agency made its decision.

If the condition is found eligible, the agency will place the TEA on public display after deletion of any information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). This is similar to the process used for submissions to the advisory review panels under § 330.10(a)(2) of the OTC drug review administrative procedures. Under those procedures, when the agency published a panel's report (ANPRM) in the **Federal Register**, it stated in the notice that all of the information that had been submitted to the panel would be put on public display 30 days after the date of publication except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or 21 U.S.C. 331(j). (Section 330.10(a)(2) has been updated to also include 5 U.S.C. 552(b).) None of the information submitted to the panels was specifically designated as confidential. Requests for confidentiality were to be submitted to the agency during that 30-day period for the agency to evaluate before placing the submissions on public display. Under the new procedures in § 330.14(d), a sponsor must identify what information in the TEA it considers confidential under the above statutory provisions. The agency's general philosophy is that most, if not all of the information in a TEA should be considered public information. As discussed below, the agency has revised the information requirements to take this into account.

The agency has determined that most of the required information would not be considered confidential in making an eligibility determination. Total sales figures covering a period of years historically have not been considered confidential in the OTC drug review process. The agency has determined that yearly sales figures do not need to be provided and has revised proposed § 330.14(c)(2)(ii) accordingly in this final rule. However, if a sponsor needs to provide yearly sales figures to explain something about the marketing of a condition, it should do so but should not expect the agency to keep the information confidential.

Section 330.10(a)(2) only requires a sponsor to provide a statement of the quantities of active ingredients of the drug product. It does not require inactive ingredient information and that information should not be provided unless it appears in the product's labeling. Information about a color or fragrance in the product is not required and should not be included in the TEA. Information about inactive ingredients generally is not considered confidential, because such information would appear

in the labeling of the OTC drug or drug-cosmetic product in the United States. If a specific manufacturing process is included in a TEA because that information is necessary to explain the product and that process relates to the "product" and not the "active ingredient(s)," it may be considered confidential, unless it has a bearing on the product's safety and effectiveness. Other than this limited situation, the agency does not anticipate that other information in a TEA will be considered confidential. The agency's view is that consideration for OTC drug monograph status is a public process and all information provided should be part of the public record if the condition is determined to be eligible. If the agency does not agree with a sponsor's request for confidential treatment of specific parts of a TEA, it intends to discuss the matter with the sponsor before placing the TEA on public display, just as it did with parts of the submissions made to the panels under the original OTC drug review.

18. One comment recommended that any advisory committees used to make GRAS/E determinations for foreign marketed products be comprised of experts with OTC drug experience, including experience outside of the United States. The comment stated that this is necessary to properly assess and appreciate the full implications of non-U.S. marketing and regulatory systems under which these ingredients may have been marketed.

The agency intends to use its Nonprescription Drugs Advisory Committee (NDAC) as the primary advisory committee to consider GRAS/E determinations for foreign marketed products. NDAC will be supplemented by members from other committees as applicable to the subject matter being considered. These committee members will have OTC drug experience, some of which may include experience outside of the United States, depending on the composition of the agency's advisory committees, which changes yearly. The agency intends to allow sponsors to present information to inform advisory committees that consider GRAS/E determinations for foreign marketed products about the regulatory systems under which these ingredients may have been marketed.

19. One comment recommended that sponsors be tentatively notified if the condition can not be GRAS/E and be provided an opportunity to supplement their submission or withdraw it, rather than receiving notification from the agency that the condition is not GRAS/E. The comment explained that a determination of not GRAS/E may be inconsistent with the condition's regulatory status in other countries, and the sponsor should have the opportunity to withdraw the submission prior to a final agency decision.

The agency intends to use its established OTC drug review feedback procedures to notify sponsors and other interested parties who have submitted data and information in response to a notice of eligibility if a condition has been determined not to be GRAS/E. Parties can respond to a feedback letter and supplement their submissions. The agency may request a response within a specified timeframe in order to complete its review in a timely manner. A sponsor can also withdraw its request for the agency to consider its submission (which would not stop the agency from publishing its decision in the **Federal Register**), but the submission is part of a public docket and will not be returned. Parties will have another opportunity to respond when the agency publishes a notice of proposed rulemaking to include the condition in § 310.502 (21 CFR 310.502). (See § 330.14(g)(4) and (g)(5).)

20. One comment requested that the agency begin to accept TEAs pending the completion of the final rule. The comment based this request on the delay in issuing the final rule and numerous citizen petitions pending before the agency. The comment stated that such actions would be consistent with notifications for Generally Recognized as Safe (GRAS) status for food substances under the agency's proposed rule for GRAS notifications. The comment also requested that the agency equitably resolve its back log of citizen petitions by giving priority to those petitions which have been pending for more than 10 years.

The agency decided not to accept TEAs prior to completion of the final rule so that all TEAs that are submitted will be in the format required by this final rule. Likewise, the agency will be responding to the pending citizen petitions (for considering certain foreign conditions for OTC drug monographs) by telling the petitioners to submit TEAs with the required information in the proper format. A petitioner should be able to readily convert their petition to a TEA and submit it to the agency to begin the review process. TEAs will generally be reviewed in the order they are received. However, if the petitioners convert their pending citizen petitions to TEAs and submit them within 120 days of the publication date of this final rule, the agency will give these TEAs priority review.

D. Comments on Marketing Policy

21. A number of comments disagreed with the agency's proposed marketing policy. The comments requested that the agency allow interim marketing at different times: (1) Once the condition has been determined eligible for consideration, or (2) once the condition has been proposed in the **Federal Register** as GRAS/E and a United States Pharmacopeia (USP) monograph is in place. The comments stated that interim marketing has existed for U.S. marketed products under the OTC drug review, there is precedent for extension of the practice under the new criteria, and most conditions submitted for consideration will pose no greater risk than category III ingredients currently marketed or marketed over the last 25 years. The comments stated the principles of administrative law require the agency to apply practices consistently between similar products with similar circumstances. One comment concluded that, at a minimum, the agency should consider requests for interim marketing as part of the TEA and approve such marketing on a case-by-case basis. Another comment added that there is a need for access to a broader range of safe and effective OTC sunscreen ingredients and the agency should distinguish these ingredients. The comment believed interim marketing for sunscreens and other topical products should be available if the condition has been cleared for safety by an appropriate foreign governmental body such as the Scientific Committee on Cosmetics and Non-Food Products (SCCNFP) in Europe.

One comment believed that the prohibition against interim marketing would inappropriately bar the marketing of a product that is not a "new drug" and would be inconsistent with the agency's current enforcement policy regarding interim marketing of products currently under consideration in the OTC drug monograph system. Two comments claimed that a condition marketed after it has been proposed in **Federal Register** as GRAS/E does not constitute a "new drug" under the statutory definition. One comment maintained that a condition is legally no longer a new drug once it has been found to be GRAS/E and been determined to be marketed to a material extent and for a material time. The comments stated that there is no statutory authority for the agency to prevent the marketing of a product that is not a new drug, and that the agency has no legal basis for taking enforcement action against the marketing of such

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products. The comment concluded that once a proposed monograph amendment is published in the **Federal Register**, there is no sound policy basis for permitting the marketing of conditions with U.S. marketing history and not permitting marketing of conditions with foreign marketing history.

Other comments contended it was not necessary to only allow marketing under final OTC drug monographs. One comment contended that it is not clear whether foreign marketed OTC products would present any greater risk than domestic products at the same stage of review. The comment added that to prohibit interim marketing implies that public comment on safety and effectiveness is required to validate the agency's conclusions. The comment maintained that this position is inconsistent with the agency's expert role of safeguarding the public health. Two comments disagreed that marketing only under a final OTC drug monograph would allow for a thorough public consideration of any safety and effectiveness issues that might arise before marketing begins. One comment stated that the examples given by the agency of topically applied ingredients with prior safety concerns was not persuasive. The comment noted that the safety concerns were not so significant as to prevent OTC marketing of those ingredients under less stringent criteria than currently proposed.

One comment believed that requiring completion of a USP monograph should not be a reason to limit marketing to only under a final monograph. The comment acknowledged the importance of establishing USP monograph standards for OTC drug active ingredients, but objected to the requirement since the agency has not required USP monographs prior to the marketing of active ingredients already under consideration in the OTC drug review.

Two comments disagreed with the agency's statement that marketing only under a final OTC drug monograph would allow manufacturers to avoid expensive relabeling when changes occur between the proposal and the final rule. One comment argued that it is not FDA's place to make business decisions for industry, which might in fact conclude that the marketing potential of the product is worth the risk. The comment added that all manufacturers of OTC drug products that are not yet subject to a final monograph face the same risk. The comments concluded that it should be left up to OTC manufacturers to determine whether the revenue and product recognition lost from any proposed restrictions on interim marketing would outweigh any potential costs of relabeling.

The agency agrees that the interim marketing policy should be consistent between similar marketed products. Conditions that were reviewed by the OTC advisory review panels were allowed to be marketed during the course of the review if they had been marketed OTC in the United States when the review began. Conditions that were not marketed OTC in the United States when the review began could not be marketed until a panel's report was published in the **Federal Register** and the agency did not disagree with the panel's recommendations (see 21 CFR 330.13). When a new condition was submitted for consideration after a panel's report was published and before a TFM was published, the agency usually addressed the status of that condition in the TFM. The agency stated in the TFM that marketing may begin with publication of the TFM or not until public comments were received on the TFM and a notice of enforcement policy was published in the **Federal Register** allowing marketing to begin. A similar procedure was used if a new condition was proposed for inclusion in a monograph after the TFM was published but before a final monograph was issued. Interim marketing was usually allowed because of the period of time projected before the final rule would issue.

For those OTC drug monographs that are not final yet and where finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM as GRAS/E and the agency has not changed its position as a result of the comments, the agency will then publish a notice of enforcement policy to allow interim marketing. This enforcement notice will be similar to those used in the original OTC drug review and will allow marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. However, interim marketing will not be allowed if USP–NF compendial monograph standards for the condition do not exist.

For those conditions proposed to be included in a final OTC drug monograph or where a monograph for the condition does not exist and a new monograph is being proposed, interim marketing will not be allowed. It will first be necessary to seek public comment on the amendment to a final monograph or whether a new monograph should be established. The agency will not issue an enforcement notice under these circumstances because it takes the same amount of time and agency resources to resolve any outstanding issues and to proceed directly to issuance of a final rule.

22. One comment expressed concern that the proposed eligibility criteria would require the submission of an NDA or TEA for even a slight variation of a monograph product. The comment cited examples that could trigger the requirement of an NDA or TEA, such as a simple combination of two well established OTC drug ingredients or immaterial changes in dosage form or concentration. The comment argued that a condition not authorized by a final monograph is not automatically a "new drug" and the agency has the discretion under 21 CFR 310.3(h), to recognize that not all new conditions make a product "new." The comment concluded that the agency should reaffirm its authority to authorize interim marketing for both pre-1972 and post-1972 non-monograph conditions, consistent with its practice of issuing notices of enforcement policy for products that are the same as monograph products but for immaterial changes in such characteristics as dosage form or concentration.

Variations from a monograph product or a condition being considered may or may not trigger the need for a TEA or NDA. A combination of two well established OTC drug ingredients that is not included in an existing OTC drug monograph or that has not been marketed in the United States would need a TEA. If one of the ingredients is marketed under an NDA, the product is considered a new drug and the combination would need an NDA. A TEA could be submitted for a change in concentration outside that included in an existing OTC drug monograph if that concentration has foreign marketing experience that meet the eligibility criteria. Information would be needed to support the safety and benefit of a higher concentration (as occurred with hydrocortisone for external analgesic use in the original OTC drug review) or the effectiveness of a lower concentration. If a condition marketed in one foreign country at one concentration is found eligible to be reviewed, another sponsor using a different concentration in another country may wish to submit a TEA and request that both concentrations be evaluated simultaneously.

Most OTC drug monographs for oral products are not dosage form specific. Most OTC drug monographs for topical products also are not dosage form specific and may state that the product is in a dosage form such as a cream, gel, lotion, or ointment. Some OTC drug monographs for topical products are dosage form specific and state that particular ingredients must be in a specific vehicle, e.g., in a suitable water soluble or oleaginous ointment base. Even this specific requirement would allow some flexibility for minor changes in the dosage form. Depending on the OTC drug monograph involved, any interim marketing policy for additional conditions in § 330.14(h), will address the dosage form concentration, and other information of the condition being allowed interim marketing status.

E. Comments on Safety and Effectiveness

23. One comment believed that the absence of adverse experience reporting systems in foreign countries for either drugs or cosmetics should not preclude a condition from being considered GRAS/E. The comment added that there is nothing in the act or FDA regulations that makes the absence of such information determinative of a condition's status.

The agency agrees that the absence of an adverse experience reporting system in a foreign country for drugs or cosmetics does not necessarily mean that a condition cannot be GRAS/E. The GRAS/E determination will be based on the overall quality of the data and information presented to substantiate safety and effectiveness.

F. Comments on Specific Active Ingredients

24. One comment requested that the agency reverse the category II status of the sunscreen ingredient 3-(4-methylbenzylidene)-camphor (Eusolex 6300) and permit its marketing upon publication of the final rule. The comment based this request upon its updated citizen petition that addresses the eligibility criteria in the proposed rule and an established USP monograph for 3-(4-methylbenzylidene)-camphor. The comment asserted that the agency's decision to place Eusolex 6300 in category II and the subsequent 20 year delay in addressing the foreign marketing data in their citizen petition raise serious legal concerns under section 10 of the Administrative Procedure Act.

This comment is not directly related to this final rule. The agency discussed the status of this ingredient and its pending citizen petition in both the TMF (58 FR 28194 at 28210 to 28211, May 12, 1993) and the final monograph (64 FR 27666 at 27669 to 27670, May 21, 1999) for OTC sunscreen drug products, stating that a decision was needed on the use of foreign marketing data before this ingredient would be considered for inclusion in that monograph. With publication of this final rule, the sponsor may now submit a TEA for FDA to determine whether the condition is eligible for consideration in the OTC drug monograph system.

IV. Legal Authority

This final rule amending the agency's regulations to include criteria for additional conditions and procedures for classifying OTC drugs as GRAS/E and not misbranded is authorized by the act. Since passage of the act in 1938, submission of an NDA has been required before marketing a new drug (21 U.S.C. 355). Section 201(p) of the act defines a new drug as:

(1) Any drug * * * the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, * * * or (2) Any drug * * * the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

To market a new drug, an NDA must be submitted to, and approved by, FDA before marketing. Only drugs that are not new drugs may be covered by an OTC drug monograph. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act. FDA's regulations under part 330 outline the requirements for OTC human drugs that are GRAS/E and not misbranded. New § 330.14 adds additional requirements.

V. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure of $100 million (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action as defined by the Executive order and so is subject to review. Although the agency does not believe that this rule will have a significant economic impact on a substantial number of small entities, there is some uncertainty with respect to the estimated future impact. Thus, a regulatory flexibility analysis is presented below.

A. Regulatory Benefits

The purpose of this final rule is to establish criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. Currently, a sponsor wishing to introduce into the United States an OTC drug condition marketed solely in a foreign country must prepare and submit an NDA. Likewise, companies with OTC drugs initially marketed in the United States after the 1972 initiation of the OTC drug review must have an NDA. This final rule provides procedures for these NDA drugs to become eligible for inclusion in the OTC drug monograph system by first submitting a TEA to show marketing "to a material extent" and "for a material time." Once determined eligible, safety and effectiveness data would be submitted and evaluated. This two-step process allows sponsors to demonstrate that eligibility criteria are met before having to expend resources to prepare safety and effectiveness data.

The flexibility to market drug products under FDA's OTC drug monograph system provides an overall net benefit to the companies seeking to use this approach, as well as to the American public. One important benefit to sponsoring companies is the saving of NDA user fees. The Prescription Drug User Fee Act (21 U.S.C. 379h) requires a one-time application fee for each NDA submitted, and yearly product and establishment fees, as applicable, for each NDA approved. For FY 2000, these

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fees are $285,740 (applications with clinical data), $19,959, and $141,971, respectively. Therefore, one-time user fees of $285,740, and ongoing fees of up to $161,930 ($19,959 + $141,971) are avoided if the company can establish that the condition should be included in an OTC drug monograph.

Also, most manufacturers would experience a paperwork savings when seeking OTC drug monograph status instead of an NDA. For example, in most instances, the manufacturing controls information needed for submitting an NDA is not required for a monograph submission. Ongoing reporting requirements associated with periodic and annual reports are also avoided. Based on previous estimates of the paperwork hours needed to comply with these requirements and assuming a 33 percent reduction in paperwork activities, FDA estimates that eliminating manufacturing controls information from an application would bring a one-time savings of approximately 530 hours and an annual savings of 40 hours per submission. Applying the 1999 labor rate of $33.95 per hour for an industrial engineer (Ref. 3) (with a 40 percent adjustment for benefits), these one-time savings are approximately $17,994 (530 x $33.95/hour) per submission. Likewise, using the 1999 professional and managerial labor rate of $27.90 per hour (Ref. 3) (including a 40 percent benefit rate), the ongoing savings from the elimination of periodic and annual reports would equal approximately $1,116 (40 x $27.90/hour) per product.

Moreover, once a condition has been included in an OTC drug monograph, other companies could achieve similar benefits, as they would be permitted to enter the marketplace without submitting an NDA or an abbreviated NDA (ANDA), hereafter referred to as an application. These companies would also avoid the costs associated with achieving the inclusion of a condition in a monograph. In addition, these companies, as well as the sponsoring companies, would be permitted to market variations of a product, such as different product concentrations or dosage forms, if allowed by the monograph, saving the cost of an application or supplement when required.

Consumers would also benefit from this rule. As conditions not previously marketed in the United States obtain OTC drug monograph status, a greater selection of OTC drug products would become available. In addition, competition from these additional products may restrain prices for the entire product class.

B. Regulatory Costs

FDA estimates that the information needed for a TEA to meet the eligibility criteria for "material time" and "material extent" would take firms approximately 480 hours to prepare. Using the 1999 professional and managerial labor rate of $27.90 per hour (Ref. 3) (including a 40 percent benefit rate), this cost amounts to approximately $13,392 (480 hours x $27.90/hour) per submission. The costs associated with requiring publication in an official compendium, where applicable, would be minimal as similar information is often prepared for publication in a foreign pharmacopeia and most companies already have such standards as part of their manufacturing quality control procedures.

Considering the potential one-time cost savings described above of $303,734 ($285,740 + $17,994) associated with prescription drug user fees and reduced reporting requirements, FDA calculates a one-time net cost savings to industry of up to $290,342 ($303,734 - $13,392) per submission. Future yearly cost savings could total $21,075 ($19,959 + $1,116) per product and $141,971 per establishment if this were the establishment's only product. Accordingly, FDA estimates that if it receives 25 to 50 TEA submissions a year, the industry would save between $7.3 million and $14.5 million in one-time costs alone. The agency notes, however, that companies would submit conditions for OTC drug monograph status only where it would be profitable for them to do so.

Since 1991, the agency has approved six requests for the inclusion of post-1972 U.S. OTC drug conditions in a monograph. Four of these requests consisted of a previously unapproved concentration, dosage form, dual claim, and product combination without OTC marketing experience. Similar conditions are not allowed under the final rule without a minimum of 5 continuous years of adequate OTC marketing experience. These manufacturers would need to either market their product under an application for 5 years in the United States or have 5 years of sufficient marketing experience abroad to qualify for inclusion in a monograph. Accordingly, this rule could result in lost sales dollars for those few future applicants who, in the absence of this rule, might have successfully petitioned FDA to have a product with less than 5 years marketing experience included in a monograph. Likewise, other manufacturers would have to wait until either the agency includes the condition in a final monograph publication, or the agency evaluates the comments to a proposed rule to include a new condition in a TFM GRAS/E and then publishes a notice of enforcement policy allowing interim marketing, before they could market the product or a product variation without an application. Due to the limited number of requests approved to date, it is unlikely that many manufacturers will be significantly affected by these requirements.

C. Small Business Analysis

Although the agency believes that this rule is unlikely to have a significant economic impact on a substantial number of small entities, FDA is uncertain about the extent of the future impact. Therefore, the following regulatory flexibility analysis has been prepared.

1. Description and Objective of the Final Rule

As stated elsewhere in this preamble, the final rule makes it easier to market certain OTC drug products in the United States by amending current FDA regulations to include additional criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. The additional criteria and procedures specify how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can meet the monograph eligibility requirements. Once eligibility has been determined for a particular condition, safety and effectiveness data are evaluated.

2. Description and Estimate of the Number of Small Entities

Census data provide aggregate industry statistics on the number of manufacturers of pharmaceutical preparations, but do not distinguish between manufacturers of prescription and OTC drug products. According to the Small Business Administration (SBA), manufacturers of pharmaceutical preparations with 750 or fewer employees are considered small entities. The U.S. Census does not disclose data on the number of drug manufacturing firms by employment size, but between 92 and 96 percent of drug manufacturing establishments, or approximately 650 establishments, are small under this definition (Ref. 4). Although the number of firms that are small would be less than the number of establishments, FDA still concludes that the majority of pharmaceutical preparation manufacturing firms are small entities.

In addition, the agency finds that at least 400 firms manufacture U.S.-marketed OTC drug products. Using the SBA size designation, 31 percent of these firms are large, 46 percent are small, and size data are not available for the remaining 23 percent. Therefore, approximately 184 to 276 of the affected manufacturing firms may be considered small. The agency cannot project how many of these OTC drug manufacturers would submit a TEA for consideration of an additional condition in the OTC drug monograph system.

3. Description of Reporting, Recordkeeping, and Other Compliance Requirements

To demonstrate eligibility for consideration in the OTC drug monograph system, sponsors must submit data in a TEA showing that the condition has been marketed "for a material time" and "to a material extent." All companies who choose to be considered in the OTC drug monograph system must submit these data. FDA expects that all sponsoring companies employ or have ready access to individuals who possess the skills necessary for this data preparation.

4. Identification of Federal Rules that Duplicate, Overlap, or Conflict With the Final Rule

The agency is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the final rule.

5. Impact on Small Entities

As described above, some manufacturers could be adversely affected by the 5-year material extent and material time requirements, causing a loss in future sales dollars. The agency cannot quantify this impact. However, based on the limited number of post-1972 conditions approved to date that would not have met the 5-year material extent and material time requirements, FDA believes that few manufacturers will be significantly affected.

6. Analysis of Alternatives

In developing the requirements of this rule, the agency considered two alternatives. Initially, FDA contemplated a one-step evaluation process, where sponsors would submit safety and effectiveness data concurrently with their TEA. However, the agency decided that this process would be less efficient because it would require sponsoring companies to expend resources to prepare safety and effectiveness data before the agency determines whether eligibility criteria have been met.

The agency also considered allowing manufacturers of post-1972 U.S. OTC drugs to market prior to inclusion in a final OTC drug monograph, as long as the agency had tentatively determined that the condition is GRAS/E. However, to allow for thorough public consideration of any safety and effectiveness issues that might arise before broad marketing of the condition begins under the OTC drug monograph system, the agency proposed that interim marketing should not be allowed under the OTC drug monograph system either for post-1972 U.S. conditions or for conditions with no previous U.S. marketing experience. Under this final rule, the agency has determined for those OTC drug monographs that are not final yet and where finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM as GRAS/E and the agency has not changed its position as a result of the comments, that it will then publish a notice of enforcement policy to allow interim marketing. This enforcement notice will be similar to those used in the original OTC drug review and will allow marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. Interim marketing under these circumstances will also be dependent upon completion of official USP–NF monograph standards, as discussed above. For those conditions proposed to be included in a final OTC drug monograph or where a monograph for the condition does not exist and a new monograph is being proposed, interim marketing will not be allowed. Under these circumstances, the agency expects that it would take the same amount of time to include the condition in a final monograph as it would to publish an enforcement notice.

7. Response to Comments

In response to public comment, the agency simplified the TEA criteria and decided to publish an enforcement notice to permit interim marketing when the finalization of the OTC drug monograph is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM and the agency has not changed its position as a result of the comments. Several comments stated that the TEA is unduly burdensome because the required information is both unnecessarily detailed and difficult to compile. The final rule modifies how information should be provided on the number of dosage units sold, clarifies the criteria for determining marketing exposure, and revises the historical labeling requirements. These changes will further define the information that is necessary for the agency to determine whether the condition has been marketed to a material extent and for a material time. The agency still estimates that it will take 480 hours to prepare a TEA.

A number of comments disagreed with the proposed interim marketing policy. The comments asserted that interim marketing should be allowed, and that it should be left up to individual OTC manufacturers to determine whether the revenue and product recognition lost from the proposed restrictions on interim marketing would outweigh any potential costs of relabeling resulting from the final monograph. Therefore, for those OTC drug monographs that are not final yet and where finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a TFM as GRAS/E, and the agency has not changed its position as a result of the comments, the agency will publish a notice of enforcement policy to allow interim marketing. This notice will allow marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. Thus, in these cases, manufacturers can assess revenues and projected costs versus potential costs if relabeling, recall, or other regulatory action results from the final monograph. For those conditions proposed to be included in a final OTC drug monograph or where a monograph for the condition does not exist and a new monograph is being proposed, interim marketing still will not be allowed. However, under these circumstances, the agency expects that it would take the same amount of time to include the condition in a final monograph as it would to publish an enforcement notice. Therefore, OTC manufacturers should be able to begin marketing their product under a final rule in the same amount of time that they would have had to wait for the agency to issue an enforcement notice.

Under the Unfunded Mandates Reform Act, FDA is not required to prepare a statement of costs and benefits for this final rule because this final rule is not expected to result in any 1-year

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expenditure that would exceed $100 million adjusted for inflation.

This analysis shows that the agency has considered the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

This final rule contains collections of information which are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). "Collection of information" includes any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In the proposal, FDA invited comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology. The agency did not receive any specific comments on these items.

Title: Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded.

Description: FDA is finalizing additional criteria and procedures by which OTC conditions may become eligible for consideration in the OTC drug monograph system. The criteria and procedures address how OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience could meet the statutory definition of marketing "to a material extent" and "for a material time" and become eligible. If found eligible, the condition will be evaluated for general recognition of safety and effectiveness in accord with FDA's OTC drug monograph regulations.

FDA received no comments on the Paperwork Reduction Act section of the proposed rule. However, OMB has requested, in its review of FDA's request for approval of the proposed information collection resulting from this rulemaking, that FDA look into the possibility of applying electronic collection techniques to this collection. There is no requirement in this rulemaking that sponsors submit TEAs electronically. However, the Center for Drug Evaluation and Research has issued the following guidances to facilitate the electronic submission of marketing applications: "Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations" and "Guidance for Industry: Providing Regulatory Submissions in Electronic Format—NDA's." These guidances were issued in January 1999 and are available at http://www.fda.gov/cder/guidance/index.htm. Also available at this Internet site is a document entitled "Example of an Electronic New Drug Application Submission." These guidances provide recommendations for submitting electronic submissions in the appropriate format. Sponsors should refer to the formatting recommendations in these guidances if they wish to submit a TEA electronically.

Concerning the electronic submission of information to the Dockets Management Branch, over the last several months the Dockets Management Branch has been accepting comments electronically on specific dockets as part of a pilot program. An Internet address and an e-mail address have been set up to accept these comments. Parties may submit comments to the Dockets Management Branch through the Internet or e-mail at: http://www.fda.gov/ohrms/dockets/default.htm. Parties should then select "submit electronic comments" and follow the directions. Over the next several years, FDA expects to be able to accept electronic submissions of TEAs and safety and effectiveness data, which would eliminate the need for multiple paper copies.

Current § 330.10(a)(2) sets forth the requirements for the submission of data and information that FDA reviews to evaluate a drug for general recognition of safety and effectiveness. FDA receives approximately three safety and effectiveness submissions each year, and FDA estimates that it takes approximately 798 hours to prepare each submission.

FDA anticipates that the number of safety and effectiveness submissions would increase to 93 annually as a result of this rulemaking. (Although FDA estimates that the number of TEAs submitted annually would be 50, the agency anticipates that 30 TEAs would be approved, and that this would result in approximately 3 safety and effectiveness submissions for each approved TEA.) The time required to prepare each safety and effectiveness submission would also increase as a result of two amendments to current § 330.10(a)(2) under this final rule.

One amendment revises items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 of the "OTC Drug Review Information" format and content requirements to add the words "Identify common or frequently reported side effects" after "documented case reports." This revision clarifies current requirements for submitting documented case reports and only requires sponsors to ensure that side-effects information is identified in each submission. FDA estimates that it will take sponsors approximately 1 hour to comply with this requirement.

A second amendment to current § 330.10(a)(2) requires sponsors to submit an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). (This requirement is also stated in § 330.14(f)(1).) FDA believes that the burden associated with this requirement will also be minimal because similar information may already have been prepared for previous publication in a foreign pharmacopeia, or companies will already have these standards as part of their quality control procedures for manufacturing the product. FDA estimates that the time required to photocopy this material will be approximately 1 hour.

Thus, the time required for preparing each safety and effectiveness submission will increase by a total of 2 hours as a result of the amendments to § 330.10(a)(2), increasing the approximate hours for each submission from 798 to 800 hours.

Under § 330.14(c), sponsors must submit a TEA when requesting that a condition subject to the regulation be considered for inclusion in the OTC drug monograph system. Based on the data provided and explained in the "Analysis of Impacts" in section V above, FDA estimates that approximately 50 TEAs will be submitted to FDA annually by approximately 25 sponsors, and the time required for preparing and submitting each TEA will be approximately 480 hours.

Under § 330.14(f)(2), sponsors are required to include in each safety and effectiveness submission all serious ADEs from each country where the condition has been or is currently marketed as a prescription or OTC drug product. Sponsors will be required to provide individual ADE reports along with a detailed summary of all serious ADEs and expected or frequently reported side effects for the condition. FDA believes that the burden associated with this requirement will be minimal because individual ADE reports are already required as part of the "documented case reports" in the "OTC Drug Review Information" under § 330.10(a)(2). FDA estimates that the time required for preparing and submitting a detailed summary of all serious ADEs and expected or frequently reported side effects will be approximately 2 hours.

Due to the anticipated number of foreign conditions likely to seek immediate consideration in the OTC drug monograph system, the annual reporting burden estimated in table 1 below is the annual reporting for the first 3 years following publication of the final rule. FDA anticipates a reduced burden after this time period.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
330.10(a)(2) (safety and effectiveness submission)	93	1	93	800	74,400
330.14(c) (time and extent application)	25	2	50	480	24,000
330.14(f)(2) (adverse drug experience reports)	90	1	90	2	180
Total					98,580

The information collection provisions of the final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C20, Docket No. 96N–0277, Dockets Management Branch.
2. Comment No. C24, Docket No. 96N–0277, Dockets Management Branch.
3. "1999 Occupational Earnings Data," U.S. Department of Labor, Bureau of Labor Statistics, ftp://ftp.bls.gov/pub/special.requests/if/att39.txt, April 26, 2000.
4. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, "Industry Series Drugs," 1992 Census of Manufactures, Table 4, p. 28C–12.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 330 is amended as follows:

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 330.10 is amended as follows:

a. In paragraph (a)(2) by adding the words "or until the Commissioner places the panel's recommendations on public display at the office of the Dockets Management Branch" at the end of the second sentence;

b. In paragraph (a)(2) by adding the words "Identify expected or frequently reported side effects." after the words "Documented case reports." in items IV.A.3, IV.B.3, IV.C.3, V.A.3, V.B.3, and V.C.3 in the outline of "OTC Drug Review Information"; and

c. In paragraph (a)(2) by adding item VII at the end of the outline of "OTC Drug Review Information";

d. In paragraph (a)(5) introductory text by removing the word "shall" and adding in its place the word "may";

e. In paragraphs (a)(5)(ii) and (a)(5)(iii) by removing the word "all" from the first sentence;

f. In paragraphs (a)(6)(i) and (a)(9) by removing the word "is" and adding in its place the words "or a specific or specific OTC drugs are";

g. In paragraph (a)(6)(iv) by removing the word "quintuplicate" and by adding in its place "triplicate" in the forth full sentence, by removing the words "during regular working hours" and by adding in their place "between the hours of 9 a.m. and 4 p.m." in the sixth full sentence, and by adding two sentences at the end.

h. In paragraph (a)(7)(i) by revising the first and second sentences;

i. In paragraph (a)(7)(ii) by removing the first and second sentences and by adding three sentences in their places;

j. In paragraph (a)(10)(i) and (a)(10)(iii) by adding in the first sentence a comma and the phrase "in response to any other notice published in the **Federal Register**," after the phrase "paragraph (a)(2) of this section"; and

k. In paragraph (a)(12)(i) in the fourth sentence by removing the number "60" and by adding in its place the number "90" and by removing the word "quadruplicate" and by adding in its place the word "triplicate" to read as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

(a) * * *

(2) * * *

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OTC DRUG REVIEW INFORMATION

* * * * *

VII. An official United States Pharmacopeia (USP)–National Formulary (NF) drug monograph for the active ingredient(s) or botanical drug substance(s), or a proposed standard for inclusion in an article to be recognized in an official USP–NF drug monograph for the active ingredient(s) or botanical drug substance(s). Include information showing that the official or proposed compendial monograph for the active ingredient or botanical drug substance is consistent with the active ingredient or botanical drug substance used in the studies establishing safety and effectiveness and with the active ingredient or botanical drug substance marketed in the OTC product(s) to a material extent and for a material time. If differences exist, explain why.

* * * * *

(6) * * *

(iv) * * * Alternatively, the Commissioner may satisfy this requirement by placing the panel's recommendations and the data it considered on public display at the office of the Dockets Management Branch and publishing a notice of their availability in the **Federal Register**. This notice of availability may be included as part of the tentative order in accord with paragraph (a)(7) of this section.

(7) * * *

(i) After reviewing all comments, reply comments, and any new data and information or, alternatively, after reviewing a panel's recommendations, the Commissioner shall publish in the **Federal Register** a tentative order containing a monograph establishing conditions under which a category of OTC drugs or specific OTC drugs are generally recognized as safe and effective and not misbranded. Within 90 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written comments or written objections specifying with particularity the omissions or additions requested. * * *

(ii) The Commissioner may also publish in the **Federal Register** a separate tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may be published when no substantive comments in opposition to the panel report or new data and information were received by the Food and Drug Administration under paragraph (a)(6)(iv) of this section or when the Commissioner has evaluated and concurs with a panel's recommendation that a condition be excluded from the monograph. Within 90 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written objections specifying with particularity the provision of the tentative order to which objection is made. * * *

* * * * *

3. Section 330.13 is amended by adding paragraph (e) to read as follows:

§ 330.13 Conditions for marketing ingredients recommended for over-the-counter (OTC) use under the OTC drug review.

* * * * *

(e) This section applies only to conditions under consideration as part of the OTC drug review initiated on May 11, 1972, and evaluated under the procedures set forth in § 330.10. Section 330.14(h) applies to the marketing of all conditions under consideration and evaluated using the criteria and procedures set forth in § 330.14.

4. Section 330.14 is added to subpart B to read as follows:

§ 330.14 Additional criteria and procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded.

(a) *Introduction.* This section sets forth additional criteria and procedures by which over the counter (OTC) drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can be considered in the OTC drug monograph system. This section also addresses conditions regulated as a cosmetic or dietary supplement in a foreign country that would be regulated as OTC drugs in the United States. For purposes of this section, "condition" means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use, except as excluded in paragraph (b)(2) of this section. For purposes of this part, "botanical drug substance" means a drug substance derived from one or more plants, algae, or macroscopic fungi, but does not include a highly purified or chemically modified substance derived from such a source.

(b) *Criteria.* To be considered for inclusion in the OTC drug monograph system, the condition must meet the following criteria:

(1) The condition must be marketed for OTC purchase by consumers. If the condition is marketed in another country in a class of OTC drug products that may be sold only in a pharmacy, with or without the personal involvement of a pharmacist, it must be established that this marketing restriction does not indicate safety concerns about the condition's toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(2) The condition must have been marketed OTC for a minimum of 5 continuous years in the same country and in sufficient quantity, as determined in paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) of this section. Depending on the condition's extent of marketing in only one country with 5 continuous years of marketing, marketing in more than one country may be necessary.

(c) *Time and extent application:* Certain information must be provided when requesting that a condition subject to this section be considered for inclusion in the OTC drug monograph system. The following information must be provided in the format of a time and extent application (TEA):

(1) Basic information about the condition that includes a description of the active ingredient(s) or botanical drug substance(s), pharmacologic class(es), intended OTC use(s), OTC strength(s) and dosage form(s), route(s) of administration, directions for use, and the applicable existing OTC drug monograph(s) under which the condition would be marketed or the request and rationale for creation of a new OTC drug monograph(s).

(i) A detailed chemical description of the active ingredient(s) that includes a full description of the drug substance, including its physical and chemical characteristics, the method of synthesis (or isolation) and purification of the drug substance, and any specifications and analytical methods necessary to ensure the identity, strength, quality, and purity of the drug substance.

(ii) For a botanical drug substance(s), a detailed description of the botanical ingredient (including proper identification of the plant, plant part(s), alga, or macroscopic fungus used; a certificate of authenticity; and information on the grower/supplier, growing conditions, harvest location and harvest time); a qualitative description (including the name, appearance, physical/chemical properties, chemical constituents, active constituent(s) (if known), and biological activity (if known)); a quantitative description of the chemical constituents, including the active constituent(s) or other chemical marker(s) (if known and measurable); the type of manufacturing process (*e.g.*, aqueous extraction, pulverization); and information on any further processing of the botanical substance (*e.g.*, addition of excipients or blending).

(iii) Reference to the current edition of the U.S. Pharmacopeia (USP)–National Formulary (NF) or foreign compendiums may help satisfy the requirements in this section.

(2) A list of all countries in which the condition has been marketed. Include the following information for each country. (For a condition that has been marketed OTC in 5 or more countries with a minimum of 5 continuous years of marketing in at least one country, the sponsor may submit information in accordance with paragraph (c)(4) of this section):

(i) How the condition has been marketed (e.g., OTC general sales direct-to-consumer; sold only in a pharmacy, with or without the personal involvement of a pharmacist; dietary supplement; or cosmetic). If the condition has been marketed as a nonprescription pharmacy-only product, establish that this marketing restriction does not indicate safety concerns about its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use.

(ii) The cumulative total number of dosage units (e.g., tablets, capsules, ounces) sold for each dosage form of the condition. Manufacturers or suppliers of OTC active ingredients may provide dosage unit information as the total weight of active ingredient sold. List the various package sizes for each dosage form in which the condition is marketed OTC. Provide an estimate of the minimum number of potential consumer exposures to the condition using one of the following calculations:

(A) Divide the total number of dosage units sold by the number of dosage units in the largest package size marketed, or

(B) Divide the total weight of the active ingredient sold by the total weight of the active ingredient in the largest package size marketed.

(iii) A description of the population demographics (percentage of various racial/ethnic groups) and the source(s) from which this information has been compiled, to ensure that the condition's use(s) can be reasonably extrapolated to the U.S. population.

(iv) If the use pattern (*i.e.*, how often it is to be used (according to the label) and for how long) varies between countries based on the condition's packaging and labeling, or changes in use pattern have occurred over time in one or more countries, describe the use pattern for each country and explain why there are differences or changes.

(v) A description of the country's system for identifying adverse drug experiences, especially those found in OTC marketing experience, including method of collection if applicable.

(3) A statement of how long the condition has been marketed in each country and how long the current product labeling has been in use, accompanied by a copy of the current product labeling. All labeling that is not in English must be translated to English in accordance with § 10.20(c)(2) of this chapter. State whether the current product labeling has or has not been authorized, accepted, or approved by a regulatory body in each country where the condition is marketed.

(4) For a condition that has been marketed OTC in five or more countries with a minimum of 5 continuous years of marketing in at least one country, the sponsor may select at least five of these countries from which to submit information in accord with paragraphs (c)(2)(i) through (c)(2)(iv) of this section. Selected countries must include the country with a minimum of 5 continuous years of OTC marketing, countries that have the longest duration of marketing, and countries having the most support for extent of marketing, i.e., a large volume of sales with cultural diversity among users of the product. If the condition meets these criteria in countries listed in section 802(b)(1)(A) of the Federal Food, Drug, and Cosmetic Act, some of these countries should be included among the five selected. Sponsors should provide information from more than five countries if they believe that it is needed to support eligibility. Sponsors should explain the basis for the countries selected in the TEA.

(5) A list of all countries where the condition is marketed only as a prescription drug and the reasons why its marketing is restricted to prescription in these countries.

(6) A list of all countries in which the condition has been withdrawn from marketing or in which an application for OTC marketing approval has been denied. Include the reasons for such withdrawal or application denial.

(7) The information requested in paragraphs (c)(2), (c)(2)(i) through (c)(2)(iv), and (c)(3) of this section must be provided in a table format. The labeling required by paragraph (c)(3) of this section must be attached to the table.

(8) For OTC drugs that have been marketed for more than 5 years in the United States under a new drug application, the information requested in paragraphs (c)(2)(i), (c)(2)(iii), (c)(2)(v), (c)(3), and (c)(5) of this section need not be provided.

(d) *Submission of information; confidentiality.* The sponsor must submit three copies of the TEA to the Central Document Room, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The Food and Drug Administration will handle the TEA as confidential until such time as a decision is made on the eligibility of the condition for consideration in the OTC drug monograph system. If the condition is found eligible, the TEA will be placed on public display in the Dockets Management Branch after deletion of information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Sponsors must identify information that is considered confidential under these statutory provisions. If the condition is not found eligible, the TEA will not be placed on public display, but a letter from the agency to the sponsor stating why the condition was not found acceptable will be placed on public display in the Dockets Management Branch.

(e) *Notice of eligibility.* If the condition is found eligible, the agency will publish a notice of eligibility in the **Federal Register** and provide the sponsor and other interested parties an opportunity to submit data to demonstrate safety and effectiveness. When the notice of eligibility is published, the agency will place the TEA on public display in the Dockets Management Branch.

(f) *Request for data and views.* The notice of eligibility shall request interested persons to submit published and unpublished data to demonstrate the safety and effectiveness of the condition for its intended OTC use(s). These data shall be submitted to a docket established in the Dockets Management Branch and shall be publicly available for viewing at that office, except data deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Data considered confidential under these provisions must be clearly identified. Any proposed compendial standards for the condition shall not be considered confidential. The safety and effectiveness submissions shall include the following:

(1) All data and information listed in § 330.10(a)(2) under the outline "OTC Drug Review Information," items III through VII.

(2) All serious adverse drug experiences as defined in §§ 310.305 and 314.80 of this chapter, from each

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country where the condition has been or is currently marketed as a prescription drug or as an OTC drug or product. Provide individual adverse drug experience reports (FDA Form 3500A or equivalent) along with a summary of all serious adverse drug experiences and expected or frequently reported side effects for the condition. Individual reports that are not in English must be translated to English in accordance with § 10.20(c)(2) of this chapter.

(g) *Administrative procedures.* The agency may use an advisory review panel to evaluate the safety and effectiveness data in accord with the provisions of § 330.10(a)(3). Alternatively, the agency may evaluate the data in conjunction with the advisory review panel or on its own without using an advisory review panel. The agency will use the safety, effectiveness, and labeling standards in § 330.10(a)(4)(i) through (a)(4)(vi) in evaluating the data.

(1) If the agency uses an advisory review panel to evaluate the data, the panel may submit its recommendations in its official minutes of meeting(s) or by a report under the provisions of § 330.10(a)(5).

(2) The agency may act on an advisory review panel's recommendations using the procedures in §§ 330.10(a)(2) and 330.10(a)(6) through (a)(10).

(3) If the condition is initially determined to be generally recognized as safe and effective for OTC use in the United States, the agency will propose to include it in an appropriate OTC drug monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary.

(4) If the condition is initially determined not to be generally recognized as safe and effective for OTC use in the United States, the agency will inform the sponsor and other interested parties who have submitted data of its determination by letter, a copy of which will be placed on public display in the docket established in the Dockets Management Branch. The agency will publish a notice of proposed rulemaking to include the condition in § 310.502 of this chapter.

(5) Interested parties will have an opportunity to submit comments and new data. The agency will subsequently publish a final rule (or reproposal if necessary) in the **Federal Register**.

(h) *Marketing.* A condition submitted under this section for consideration in the OTC drug monograph system may be marketed in accordance with an applicable final OTC drug monograph(s) only after the agency determines that the condition is generally recognized as safe and effective and includes it in the appropriate OTC drug final monograph(s), and the condition complies with paragraph (i) of this section. When an OTC drug monograph has not been finalized and finalization is not imminent, after the agency has evaluated the comments to a proposed rule to include a new condition in a tentative final monograph as generally recognized as safe and effective and the agency has not changed its position as a result of the comments, and the condition complies with paragraph (i) of this section, the agency may publish a notice of enforcement policy that allows marketing to begin pending completion of the final monograph subject to the risk that the agency may, prior to or in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action.

(i) *Compendial monograph.* Any active ingredient or botanical drug substance included in a final OTC drug monograph or the subject of an enforcement notice described in paragraph (h) of this section must be recognized in an official USP–NF drug monograph that sets forth its standards of identity, strength, quality, and purity. Sponsors must include an official or proposed compendial monograph as part of the safety and effectiveness data submission listed in § 330.10(a)(2) under item VII of the outline entitled "OTC DRUG REVIEW INFORMATION."

Dated: January 11, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1457 Filed 1–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53, 301, and 602

[TD 8978]

RIN 1545–AY65

Excise Taxes on Excess Benefit Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code, as well as certain amendments and additions to existing Income Tax Regulations affected by section 4958. Section 4958 was enacted by the Taxpayer Bill of Rights 2. Section 4958 imposes excise taxes on any transaction that provides excess economic benefits to a person in a position to exercise substantial influence over the affairs of a public charity or a social welfare organization.

DATES: *Effective Date:* These regulations are effective January 23, 2002.

Applicability Date: These regulations apply as of January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1623. Responses to these collections of information are required to obtain the benefit of the rebuttable presumption that a transaction is reasonable or at fair market value.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per recordkeeper varies from 3 hours to 308 hours, depending on individual circumstances, with an estimated weighted average of 6 hours, 3 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 4958 was added to the Internal Revenue Code (Code) by the Taxpayer Bill of Rights 2, Public Law 104–168 (110 Stat. 1452), enacted July 30, 1996. The section 4958 excise taxes generally apply to excess benefit transactions occurring on or after September 14, 1995. Any disqualified person who benefits from an excess benefit transaction with an applicable tax-exempt organization is liable for a tax of 25 percent of the excess benefit. The person is also liable for a tax of 200 percent of the excess benefit if the excess benefit is not corrected by a certain date. A *disqualified person* is generally defined as a person in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization. An *applicable tax-exempt organization* is an organization described in Code section 501(c)(3) or (4) and exempt from tax under section 501(a). Additionally, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax of 10 percent of the excess benefit. The tax for which all participating organization managers are liable cannot exceed $10,000 for any one excess benefit transaction.

On August 4, 1998, a notice of proposed rulemaking (REG–246256–96) clarifying certain definitions and rules contained in section 4958 was published in the **Federal Register** (63 FR 41486). The IRS received numerous written comments responding to this notice. A public hearing was held on March 16 and 17, 1999. Those proposed regulations were revised in response to written and oral comments, and replaced by temporary regulations (TD 8920, 66 FR 2144) and a cross-referencing notice of proposed rulemaking (REG–246256–96, 66 FR 2173) on January 10, 2001. A few written comments were received in response to the notice of proposed rulemaking of January 10, 2001. A public hearing was held July 31, 2001. After consideration of all comments received, the January 2001 cross-referencing proposed regulations under section 4958 are revised and published in final form, and the temporary regulations removed. The major areas of the comments and revisions are discussed below.

Explanation and Summary of Comments

Tax Paid by Organization Managers

Organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax equal to 10 percent of the excess benefit. The temporary regulations provide that an organization manager's participation in an excess benefit transaction will ordinarily not be considered *knowing* to the extent that, after full disclosure of the factual situation to an appropriate professional, the organization manager relies on a reasoned written opinion of that professional with respect to elements of the transaction within the professional's expertise. For this purpose, appropriate professionals are legal counsel (including in-house counsel), certified public accountants or accounting firms with expertise regarding the relevant tax law matters, and independent valuation experts who meet specified requirements. Oral comments at the public hearing objected to this safe harbor, suggesting instances of the unreliability of appraisers and accountants. The final regulations retain this safe harbor. The IRS and the Treasury Department believe that an organization manager who has sought and relied upon an appropriate professional opinion has not "fail[ed] to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction", which is a required element of *knowing* for this purpose.

The temporary regulations provide an additional safe harbor: that an organization manager's participation in a transaction will ordinarily not be considered *knowing* if the manager relies on the fact that the requirements giving rise to the *rebuttable presumption of reasonableness* are satisfied with respect to the transaction. Several comments were received requesting that the safe harbor be modified, either to apply if the organization manager "reasonably believes" that the requirements for the presumption are satisfied, or to eliminate the reliance requirement. In response to these comments, the final regulations no longer require that the organization manager rely on the fact that the requirements of the rebuttable presumption of reasonableness are satisfied. The final regulations state that the organization manager's participation in a transaction will ordinarily not be considered *knowing* if the appropriate authorized body has met the requirements of the rebuttable presumption with respect to the transaction. The IRS and the Treasury Department note that the relief given by this provision is only a safe harbor, so that failure to satisfy its requirements does not necessarily mean that the organization manager acted knowingly.

Definition of Applicable Tax-Exempt Organization

The temporary regulations provide that any governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a) is not an applicable tax-exempt organization for purposes of section 4958. A comment was received requesting that the final regulations clarify whether section 115 entities are excepted from the definition of *applicable tax-exempt organization*. Because section 115 exempts certain income, and not the entity itself, the reference in the temporary regulations to any governmental entity "exempt from tax" without regard to section 501(a) is unclear. The final regulations provide that for purposes of section 4958, a governmental unit or an affiliate of a governmental unit is not an *applicable tax-exempt organization* if it is: (1) Exempt from (or not subject to) taxation without regard to section 501(a); or (2) relieved from filing an annual return pursuant to the authority of Treasury Regulations under section 6033.

Regulations under section 6033 grant the Commissioner authority to relieve organizations from filing an annual return required by that section in cases where the returns are not necessary for the efficient administration of the internal revenue laws. Under this authority, Rev. Proc. 95–48 (1995–2 C.B. 418) relieves "governmental units" and certain "affiliates of governmental units" from the annual filing requirement. A *governmental unit* as defined in this revenue procedure already falls within the exception provided in the section 4958 temporary regulations for "any governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a)". An *affiliate of a governmental unit* that is relieved from filing an annual return by Rev. Proc. 95–48 (and thus also excepted from the definition of an *applicable tax-exempt organization* under these section 4958 final regulations) includes any organization described in section 501(c) that has a ruling or determination from the IRS that: (1) Its income, derived from activities constituting the basis for its exemption under section 501(c), is excluded from gross income under section 115; (2) it is entitled to receive deductible charitable contributions under section 170(c)(1) on the basis that the contributions are "for the use of" governmental units; or (3) it is a wholly owned instrumentality of a State for employment tax purposes. An organization described in section 501(c) that does not have such a ruling or determination may also qualify as an *affiliate of a governmental unit* for purposes of the revenue procedure if: (1) It is either "operated, supervised, or controlled by" governmental units within the meaning of regulations under

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section 509; (2) it possesses at least two affiliation factors listed in Rev. Proc. 95–48; and (3) its filing of Form 990, "Return of Organization Exempt From Income Tax", is not otherwise necessary to the efficient administration of the internal revenue laws.

A comment was also received requesting that the final regulations exclude from the definition of *applicable tax-exempt organization* collectively bargained apprenticeship funds subject to the rules of the Labor Management Relations Act of 1947 (61 Stat. 157) and the Employee Retirement Income Security Act of 1974 (88 Stat. 854) (ERISA). The commenter stated that, like governmental entities, these funds seek recognition under Code section 501(c)(3) on a strictly voluntary basis, and are also eligible for tax exemption under Code section 501(c)(5). The commenter also stated that applying section 4958 to these funds would provide an unnecessary layer of regulation, because these plans already are subject to ERISA.

The final regulations do not except collectively bargained apprenticeship funds from the definition of *applicable tax-exempt organization*. However, in response to this comment, the final regulations provide a special exception under section 4958 for transactions that are covered by a final individual prohibited transaction exemption issued by the Department of Labor. The final regulations provide that section 4958 does not apply to any payment made pursuant to, and in accordance with, a final individual prohibited transaction exemption issued by the Department of Labor under ERISA with respect to a transaction involving a plan that is an applicable tax-exempt organization. Before granting an individual prohibited transaction exemption under ERISA, the Department of Labor must determine that the particular transaction is in the interests of the plan and its participants, and is protective of the rights of participants in the plan. The IRS and the Treasury Department believe that the similarity between the ERISA standard ("in the interests of" and "protective of the rights of" participants) and the fair market value standard of section 4958 warrants this special exception.

Definition of Disqualified Person

The preamble of the temporary regulations noted that the IRS and the Treasury Department considered adopting a special rule with respect to so-called *donor-advised funds* maintained by applicable tax-exempt organizations, and requested comments regarding potential issues raised by applying the fair market value standard of section 4958 to distributions from a donor-advised fund to (or for the use of) the donor or advisor. Several comments were received on this issue. Most of the comments objected to treating a donor or advisor to this type of fund as a disqualified person based solely on influence over a donor-advised fund. Others stated that the existing factors contained in the temporary regulations were adequate to find disqualified person status in appropriate circumstances. One commenter requested that if section 4958 were to apply to transactions involving donor-advised funds, the fair market standard should apply, and requested additional definitions and exclusions if the final regulations contained specific rules for these types of funds.

In response to these comments, the final regulations do not adopt a special rule regarding any donor or advisor to a donor-advised fund. Thus, the general rules of § 53.4958–3 will apply to determine if a donor or advisor is a disqualified person.

Some additional comments were received on other specific rules of the *disqualified person* definition contained in the temporary regulations. The final regulations do not change the rules or descriptions contained in the definition. However, several of the comments are discussed below to explain why the IRS and the Treasury Department concluded that changes were not necessary or desirable. Other comments suggested changes to the examples. In response to those comments, several examples in this section of the final regulations were revised from the temporary regulations, as discussed below.

The temporary regulations state that an organization described in section 501(c)(4) is deemed not to have substantial influence with respect to another applicable tax-exempt organization described in section 501(c)(4). A section 501(c)(4) organization can, however, have substantial influence with respect to an organization described in section 501(c)(3). A commenter requested that section 501(c)(4) organizations be excluded from disqualified person status with respect to all applicable tax-exempt organizations.

The IRS and the Treasury Department decline to expand the exclusion for section 501(c)(4) organizations. A section 501(c)(4) organization can engage in certain activities (such as political campaign activities) that a section 501(c)(3) organization cannot. Accordingly, the IRS and the Treasury Department are concerned about transactions in which a section 501(c)(3) organization may provide an excess benefit to a section 501(c)(4) organization to avoid limitations of section 501(c)(3).

Oral comments at the public hearing objected to including, as one of the factors tending to show no substantial influence, the fact that the person's sole relationship to an applicable tax-exempt organization is as a contractor (such as an attorney, accountant, or investment manager or advisor) providing professional advice to the organization. The commenter suggested that these providers of professional advice have a great deal of influence over applicable tax-exempt organizations, but choose not to exercise that influence. The IRS and the Treasury Department believe that the description of this factor in the temporary regulations includes sufficient safeguards to protect the organization. Accordingly, the final regulations retain this factor. Additionally, being in this category of persons is merely a factor tending to show no substantial influence. In appropriate circumstances, the IRS could still conclude that a person ostensibly described in this category was a disqualified person based on all relevant facts and circumstances.

Another comment objected to the standard of one of the factors tending to show substantial influence: that a person's compensation is primarily based on revenues derived from activities of the organization that the person controls. The commenter suggested that this factor be modified to provide that revenues controlled by the person also represent a substantial part of the organization's total revenues. The IRS and the Treasury Department do not believe that a change is necessary. The factor at issue is only one of many factors that may be considered, and will be considered in conjunction with all relevant facts and circumstances.

Another comment requested further revision to two factors tending to show substantial influence. The first factor states that the person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees. The second factor states that the person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization, as compared to the organization as a whole. The commenter suggested that the first factor is sufficient, and requested that the second factor be deleted. Alternatively, the commenter requested that the final regulations define the term *substantial*, and recommended a safe harbor percentage of 15 percent.

The IRS and the Treasury Department did not revise these two factors tending to show substantial influence. The IRS and the Treasury Department do not believe that these two factors are redundant, as they address budget and management authority, respectively, and these two functions may reside in different persons. In addition, as with any of the listed factors, these two factors are considered along with all other relevant facts and circumstances.

In response to a comment regarding the examples of this section, the final regulations revise an example that concludes that a hospital management company is a disqualified person with respect to the applicable tax-exempt organization. The comment stated that the example could create confusion because its language does not match neatly with the factors tending to show substantial influence listed in the temporary regulations. The commenter also pointed out that, under the facts of the example, the functions of the management company seemed close to those of a president, chief executive officer, or chief operating officer, one of the categories of persons who are deemed to have substantial influence. The example is revised in the final regulations to illustrate that the management company is a disqualified person *per se*, because it has ultimate responsibility for supervising the management of the hospital, consistent with the regulatory description of the functions of a president, chief executive officer, or chief operating officer. By concluding that the management company is a disqualified person, this example also addresses a comment requesting that final regulations clarify whether only individuals could be persons having substantial influence.

Economic Benefit Provided Indirectly

One comment analyzed examples in the temporary regulations defining an indirect excess benefit transaction. The commenter questioned one example in which the benefits provided to a disqualified person by an applicable tax-exempt organization and an entity controlled by the organization are evaluated in the aggregate, and the excess over reasonable compensation for the services performed by the disqualified person for both entities is treated as an excess benefit. The commenter recommended that the example be deleted or revised so that the reasonableness of compensation provided by each entity is evaluated separately.

The rules governing an indirect excess benefit transaction are intended to prevent an applicable tax-exempt organization from avoiding section 4958 by using a controlled entity to provide excess benefits to a disqualified person. Thus, for purposes of section 4958, economic benefits provided by a controlled entity will be treated as provided by the applicable tax-exempt organization. Likewise, the IRS and the Treasury Department believe that any services performed by the disqualified person for a controlled entity should be taken into account in determining the reasonableness of compensation paid by the applicable tax-exempt organization. Accordingly, this example is not changed in the final regulations. However, the IRS and the Treasury Department agree with the commenter that the payment of compensation by an applicable tax-exempt organization to a disqualified person for services provided to a controlled entity, other than a wholly-owned subsidiary, may raise private benefit issues if the other investors in the entity do not make a proportional contribution. Accordingly, another example in this section is modified to clarify that the controlled entity for which the disqualified person performs services is a wholly-owned subsidiary of the applicable tax-exempt organization.

Initial Contract Exception

The temporary regulations provide that section 4958 does not apply to any *fixed payment* made to a person pursuant to an *initial contract*, regardless of whether the payment would otherwise constitute an excess benefit transaction. For this purpose, an *initial contract* is defined as a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person immediately prior to entering into the contract. A *fixed payment* means an amount of cash or other property specified in the contract, or determined by a fixed formula specified in the contract, which is paid or transferred in exchange for the provision of specified services or property. A fixed formula may incorporate an amount that depends upon future specified events or contingencies (e.g., revenues generated by activities of the organization), provided that no person exercises discretion when calculating the amount of a payment or deciding whether to make a payment. The temporary regulations include examples to illustrate the application of the initial contract rule.

Several comments were received on this section of the temporary regulations, including comments on specific examples. Several commentators requested a more liberal definition of *initial contract*. For instance, requests were received to extend the initial contract exception to cases where there is other contemporaneous written evidence of the terms of employment (but not a binding contract), or for the rule to cover cases where the parties agree to substantial terms of the person's employment, but where a final contract has not been signed before the person begins performing services for the organization. As the term *binding written contract* is governed by State law, in some cases that term may in fact be satisfied by an exchange of writings indicating the substantial terms of an agreement. However, the IRS and the Treasury Department decline to revise the regulatory definition of this term from that contained in the temporary regulations.

One commenter at the public hearing requested that the final regulations eliminate the initial contract exception. In this commenter's view, the Seventh Circuit in *United Cancer Council, Inc.* v. *Commissioner of Internal Revenue*, 165 F.3d 1173 (7th Cir. 1999), *rev'ing and remanding* 109 T.C. 326 (1997), focused on the wrong moment in time to determine insider status (analogous to disqualified person status under section 4958). The commenter suggested that a person's insider status should be determined at the time payments are made to the person. Therefore, the commenter recommended that the IRS and the Treasury Department decline to follow the reasoning of the Seventh Circuit's decision in the *United Cancer Council* case in the final regulations. Alternatively, the commenter requested that, if the initial contract exception is retained in the section 4958 final regulations, the IRS and the Treasury Department revise the private benefit standard under the section 501(c)(3) regulations to require that any private benefit conferred by a transaction must be insubstantial relative to the public benefit resulting from the transaction (rather than the public benefit resulting from the organization's overall activities).

Although the *United Cancer Council* case addressed the issue of private inurement under the standards of section 501(c)(3) in connection with revocation of the organization's tax exemption, the temporary regulations address the concerns expressed in the Seventh Circuit's opinion in *United Cancer Council* in the context of section 4958. The Seventh Circuit concluded that prohibited inurement under section

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501(c)(3) cannot result from a contractual relationship negotiated at arm's length with a party having no prior relationship with the organization, regardless of the relative bargaining strength of the parties or resultant control over the tax-exempt organization created by the terms of the contract. The temporary regulations provide that, to the extent that an applicable tax-exempt organization and a person who is not yet a disqualified person enter into a binding written contract that specifies the amounts to be paid to the person (or specifies an objective formula for calculating those amounts), those fixed payments are not subject to scrutiny under section 4958, even if paid after the person becomes a disqualified person. However, the initial contract exception does not apply if the contract is materially modified or if the person fails to substantially perform his or her obligations under the contract. The IRS and the Treasury Department believe that the fact that the initial contract is scrutinized again when either of these situations occurs provides adequate protection to the applicable tax-exempt organization. In addition, the suggested revisions to the regulations under section 501(c)(3) are beyond the scope of this regulations project.

Several comments on specific examples in the initial contract exception section of the temporary regulations were received. One writer commented that in the example involving a hospital management company, the structure of the management fee gives the management company an incentive to provide charity care regardless of whether the hospital has the financial resources to pay for it. The intent of that example is merely to illustrate a fixed payment determined by a fixed formula specified in the contract, where the formula incorporates an amount that is dependent on future specified events, but where no person exercises discretion when calculating the amount of a payment under the contract. Therefore, the example remains unchanged in the final regulations.

Additional comments were received addressing the example in which the same hospital management company also received reimbursements for certain expenses in addition to the fixed management fee. The temporary regulations provide that any amount paid to a person under a reimbursement (or similar) arrangement where discretion is exercised with respect to the amount of expenses incurred or reimbursed is not a *fixed payment* for purposes of the section 4958 initial contract exception. A request was made to distinguish such reimbursement arrangements from payments determined by a fixed formula based on revenues from a particular activity, where a person has discretion over the extent of the activity. The IRS and the Treasury Department believe that reimbursement payments should generally be evaluated for reasonableness for purposes of section 4958. Consequently, the example is not modified in the final regulations, except to clarify that the management fee is a fixed payment, even though the reimbursement payments under the contract are not. However, as discussed below, the IRS and the Treasury Department also believe that reimbursement arrangements that meet the requirements of § 1.62–2(c) (expense reimbursements pursuant to an *accountable plan*) do not raise the same concerns as other reimbursement payments, because of the requirements to qualify as an *accountable plan*. Accordingly, the final regulations disregard amounts reimbursed to employees pursuant to an accountable plan (see the discussion of this topic in this preamble under the heading "Disregarded Economic Benefits"). Because the hospital management company in the example is a contractor, and not an employee, the expense reimbursements do not fall within this exception for expense reimbursements pursuant to an accountable plan.

Disregarded Economic Benefits

The temporary regulations provide that all fringe benefits excluded from income under section 132 (except for certain liability insurance premiums, payments or reimbursements) are disregarded for section 4958 purposes. To provide consistent treatment of benefits provided in cash and in kind, the final regulations also disregard expense reimbursements paid pursuant to an accountable plan that meets the requirements of § 1.62–2(c). Thus, as is the case with section 132(d) working condition fringe benefits, existing standards under section 162 and section 274 will apply to determine whether employee expense reimbursements are disregarded for section 4958 purposes, or are treated as part of the disqualified person's compensation for purposes of determining reasonableness under section 4958.

Several comments were received requesting that lodging furnished for the convenience of the employer (i.e., meeting the requirements of section 119) be disregarded for section 4958 purposes. These comments suggested that benefits excluded from gross income under section 119 should be disregarded for purposes of section 4958 because the policy rationale underlying section 119 is the same as that underlying section 132. However, there are differences between the two sections. In general, section 132 benefits are subject to nondiscrimination rules or are *de minimis* in amount, which is not the case with section 119 benefits. The value of housing benefits is potentially much larger than many of the section 132 benefits, and therefore a greater potential for abuse exists in the section 119 area. Accordingly, the IRS and the Treasury Department believe it is appropriate to treat section 119 benefits differently from section 132 benefits by requiring an evaluation for reasonableness.

The temporary regulations disregard economic benefits provided to a donor solely on account of a contribution deductible under section 170 if two requirements are met. First, any non-disqualified person making a contribution above a specified amount to the organization is given the option of receiving substantially the same economic benefit. Second, the disqualified person and a significant number of non-disqualified persons in fact make a contribution of at least the specified amount. Several comments were received requesting additional guidance with respect to these disregarded benefits. One commenter asked that the rule be revised to address contributions that are not deductible by the donor in the current year because of the percentage limitations under section 170(b). That commenter also requested that the final regulations provide for situations where no other donor makes a comparable contribution to the specific applicable tax-exempt organization. In that instance, the commenter requested that the benefits be considered in relation to benefits customarily provided by similar organizations for that level of contribution. Another commenter requested that any benefit provided to a donor be disregarded if the value of the benefit does not exceed the value of the donation and the donor treats the benefit as a *quid pro quo* that reduces the donor's charitable contribution deduction.

The IRS and the Treasury Department decline to address situations where a disqualified person makes a unique contribution to an applicable tax-exempt organization. As a practical matter, an excess benefit transaction would never arise in connection with a contribution to an applicable tax-exempt organization, where the value of the contribution exceeds the value of any benefit the donor receives in return. However, in response to comments, the final regulations clarify that economic benefits made available on equal terms to a disqualified person and a significant number of other donors who make charitable contributions (within the meaning of section 170) above a specified amount may be disregarded for purposes of section 4958, even if the disqualified person cannot claim a deduction under section 170 with respect to the contribution, because the disqualified person does not itemize deductions, or is subject to the percentage limitations under section 170(b).

Timing of Reasonableness Determination

The temporary regulations provide that reasonableness is determined with respect to any *fixed payment* (as defined for purposes of the initial contract rule) at the time the parties enter into the contract. For non-fixed payments, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. A comment requested that final regulations clarify that the timing for determining the reasonableness of a benefit is not affected by the existence of a substantial risk of forfeiture. In response to this comment, the final regulations are revised to clarify that the general timing rules apply to property subject to a substantial risk of forfeiture. Therefore, if the property subject to a substantial risk of forfeiture satisfies the definition of *fixed payment*, reasonableness is determined at the time the parties enter into the contract providing for the transfer of the property. If the property is not a fixed payment, then reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. An example is also added to illustrate how the regular timing rules for determining reasonableness for section 4958 purposes apply to property that is subject to a substantial risk of forfeiture.

Contemporaneous Substantiation

The temporary regulations provide that an organization must provide written substantiation that is contemporaneous with the transfer of benefits at issue in order to provide clear and convincing evidence of its intent to treat benefits provided to a disqualified person as compensation for services. This requirement may be satisfied by either: (1) The organization reporting the economic benefit as compensation on an original Federal tax information return, or on an amended Federal tax information return filed prior to the commencement of an IRS examination of the applicable tax-exempt organization or the disqualified person for the taxable year in which the transaction occurred; or (2) the recipient disqualified person reporting the benefit as income on the person's original Federal tax return, or on the person's amended Federal tax return filed prior to the commencement of an IRS examination. The final regulations clarify that for an amended return filed by a disqualified person to be considered contemporaneous substantiation, the person must file an amended return prior to the earlier of the following dates: (1) Commencement of an IRS examination; or (2) the first documentation in writing by the IRS of a potential excess benefit transaction.

The temporary regulations provide that, if a benefit is not reported on a return filed with the IRS, other written contemporaneous evidence (such as an approved written employment contract executed on or before the date of the transfer) may be used to demonstrate that the appropriate decision-making body or an authorized officer approved a transfer as compensation for services in accordance with established procedures. A comment was received requesting that the reference to "established procedures" be deleted.

The final regulations retain the reference to "established procedures" because it appears in the legislative history to section 4958 (See H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 57). The IRS will interpret the term *established procedures* to refer to the organization's usual practice for approving compensation, not to require an organization to have a formal written procedure for approving compensation. For clarity, the final regulations replace the term *authorized officer* with "officer *authorized to approve compensation*".

The final regulations also clarify that written evidence upon which the applicable tax-exempt organization based a reasonable belief that a benefit was nontaxable can serve as written contemporaneous evidence demonstrating that a transfer was approved as compensation, even if the organization's belief later proves to be erroneous. The written evidence must have been in existence on or before the due date of the applicable Federal tax return (including extensions but not amendments). The final regulations include an example illustrating this rule.

Finally, the final regulations provide that in no event will an economic benefit that a disqualified person obtains by theft or fraud be treated as consideration for the performance of services.

Transaction in Which the Amount of the Economic Benefit is Determined in Whole or in Part by the Revenues of One or More Activities of the Organization

Section 4958(c)(2) identifies a second type of excess benefit transaction: any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of one or more activities of the applicable tax-exempt organization, where the transaction results in impermissible inurement under section 501(c)(3) or (4). The statute provides, however, that this type of transaction is only an excess benefit transaction to the extent provided in regulations prescribed by the Secretary.

The August 1998 proposed regulations provided standards for determining when a revenue-sharing transaction constitutes an excess benefit transaction. Numerous comments were received on this section of the proposed regulations. Commenters offered multiple, often conflicting, suggestions and recommendations to address the many issues raised with respect to revenue-sharing transactions.

The temporary regulations reserve the section of the regulations governing revenue-sharing transactions. The temporary regulations provide that, until specific rules are issued to regulate such transactions, all transactions with disqualified persons (regardless of whether the person's compensation is computed by reference to revenues of the organization) will be evaluated under general rules defining an *excess benefit transaction* in § 53.4958–4T. A written comment was received supporting the decision to reserve that section of the regulations. However, a speaker at the public hearing objected to the lack of specific limits on revenue-sharing transactions in the temporary regulations. The speaker would allow only a small percentage of a disqualified person's salary to be based on an applicable tax-exempt organization's revenues.

Another comment asked whether revenue-sharing transactions that are reasonable in amount may nonetheless violate the inurement prohibition, so that they jeopardize the organization's tax-exempt status. The temporary regulations and these final regulations make clear that the general exemption standards of sections 501(c)(3) and (4) still apply. Under these standards, inurement may exist even though a disqualified person receives a reasonable amount from a revenue-

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sharing arrangement. However, most situations that constitute inurement will also violate the general rules of § 53.4958–4 (*e.g.*, exceed reasonable compensation).

The final regulations continue to reserve the separate section governing revenue-sharing transactions. The IRS and the Treasury Department will continue to monitor these types of transactions, and if appropriate, will consider issuing specific rules to regulate them. Any later regulations that may become necessary will be issued in proposed form.

The final regulations provide that the general rules of § 53.4958–4 apply to all transactions with disqualified persons, regardless of whether the amount of the benefit provided is determined, in whole or in part, by the revenues of one or more activities of the organization.

Rebuttable Presumption That a Transaction Is Not an Excess Benefit Transaction

An informal question was presented with respect to the definition of *authorized body* contained in the temporary regulations for purposes of the rebuttable presumption of reasonableness. The IRS was asked whether approval by one authorized official of an applicable tax-exempt organization could satisfy the requirement of approval by an *authorized body* for purposes of establishing the presumption. Under the regulatory definition of *authorized body* in both the temporary regulations and these final regulations, a single individual may constitute either a committee of the governing body or a party authorized by the governing body to act on its behalf, if State law allows a single individual to act in either of these capacities.

Correction

Several comments were received with respect to the specific correction rules contained in the temporary regulations. One commenter requested that, in the case of an excess benefit involving a transfer of property by an applicable tax-exempt organization to a disqualified person, the final regulations be modified to require the return of the specific property if the organization wants the property back. The commenter suggested that such a rule would be consistent with the private foundation self-dealing regulations under section 4941, which require rescission of the transaction where possible. Rescission is appropriate under section 4941, where most transactions between a private foundation and a disqualified person are absolutely prohibited. By contrast, section 4958 is intended to ensure that transactions between an applicable tax-exempt organization and a disqualified person, which are permissible, do not result in an excess benefit to the disqualified person. Therefore, no change has been made in the final regulations on this point.

Another commenter requested additional guidance on the rules governing correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt. The temporary regulations provide that, in such cases, the correction amount may not be paid to an organization that is related to the disqualified person. The commenter noted that the "related to" standard is imprecise. The commenter suggested replacing this standard with a requirement that the recipient organization in these instances either be a publicly-supported charity with respect to which the disqualified person has no authority to make or recommend grants, or an organization selected with the consent of the appropriate State official.

In response to this comment, the final regulations require that a section 501(c)(3) organization receiving the correction amount be a publicly-supported charity that has been in existence as such for a continuous period of at least 60 calendar months ending on the correction date. The time in existence requirement prevents the disqualified person from creating a new organization to receive the correction amount. The final regulations also require that the organization receiving the correction amount does not allow the disqualified person to make or recommend any grants or distributions by the organization. The final regulations replace the relatedness standard with a requirement that the disqualified person is not also a disqualified person with respect to the organization receiving the correction amount. Similar requirements, except for the publicly-supported charity requirement, apply to a section 501(c)(4) organization receiving the correction amount.

Factors To Determine Whether Revocation Is Appropriate

The preamble of the August 1998 proposed regulations listed four factors that the IRS will consider in determining whether to revoke an applicable tax-exempt organization's exempt status: (1) Whether the organization has been involved in repeated excess benefit transactions; (2) the size and scope of the excess benefit transaction; (3) whether, after concluding that it has been party to an excess benefit transaction, the organization has implemented safeguards to prevent future recurrences; and (4) whether there was compliance with other applicable laws. The preamble of the temporary regulations indicates that the IRS will publish guidance regarding the factors that it will consider in enforcing the requirements of sections 4958, 501(c)(3), and 501(c)(4), as it gains more experience in administering section 4958. One comment was received recommending several factors in addition to the four factors. The IRS continues to consider the suggested additions and revisions. Until it publishes a revised or expanded list of factors, the IRS will consider all relevant facts and circumstances in the administration of section 4958 cases.

Other Substantiation Requirements

The final regulations add a special rule clarifying that compliance with the specific substantiation rules of the regulations does not relieve applicable tax-exempt organizations of other rules and requirements of the Code, regulations, Revenue Rulings, and other guidance issued by the IRS (such as the substantiation rules of sections 162 and 274, or § 1.6001–1(a) and (c)).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. A final regulatory flexibility analysis has been prepared for a collection of information in this Treasury decision under 5 U.S.C. 604.

Final Regulatory Flexibility Analysis

These final regulations clarifying section 4958 of the Code (Taxes on excess benefit transactions) may have an impact on small organizations if those organizations avail themselves of the rebuttable presumption of reasonableness described in the regulations (26 CFR 53.4958–6(a)(2), 53.4958–6(a)(3), 53.4958–6(c)(2), and 53.4958–6(c)(3)). The rebuttable presumption is available because the legislative history of section 4958 (H. REP. 104–506 at 56–7, March 28, 1996) stated that parties to a transaction should be entitled to rely on such a rebuttable presumption that a compensation arrangement or a property transaction between certain organizations and disqualified persons of the organizations is reasonable or at fair market value. The legislative history further instructed the Secretary of the Treasury and the IRS to issue guidance in connection with the standard for establishing reasonable compensation or fair market value that incorporates this presumption.

The objective for the rebuttable presumption is to allow organizations that satisfy the three requirements to presume that compensation arrangements and property transactions entered into with disqualified persons pursuant to satisfaction of those requirements are reasonable or at fair market value. In such cases, the section 4958 excise taxes can be imposed only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction. The legal basis for the proposed rule is Code sections 4958 and 7805.

The final rule affects organizations described in Code sections 501(c)(3) and (4) (applicable tax-exempt organizations). Some applicable tax-exempt organizations may be small organizations, defined in 5 U.S.C. 601(4) as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed recordkeeping burden entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value. These actions are necessary to meet two of the requirements specified in the legislative history for obtaining the rebuttable presumption of reasonableness. The skills necessary for these actions are of the type required for obtaining and considering comparability data, and for documenting the membership and actions of the governing board or relevant committee of the organization. Applicable tax-exempt organizations that are small entities of the class that files Form 990-EZ, "Short Form Return of Organization Exempt From Income Tax" (i.e., those with gross receipts of less than $100,000 and assets of less than $250,000), are unlikely to undertake fulfilling the requirements of the rebuttable presumption of reasonableness, and therefore will not be affected by the recordkeeping burden. All other classes of applicable tax-exempt organizations that file Form 990, "Return of Organization Exempt from Income Tax", up to organizations with assets of $50 million, are likely to be small organizations that avail themselves of the rebuttable presumption of reasonableness. These classes range from organizations with assets of $100,000 to $50 million. The final rule contains a less burdensome safe harbor for one of the requirements (obtaining comparability data on compensation) for organizations with annual gross receipts of less than $1 million. The IRS is not aware of any other relevant Federal rules which may duplicate, overlap, or conflict with the final rule. A less burdensome alternative for small organizations would be to exempt those entities from the requirements for establishing the rebuttable presumption of reasonableness. However, it is not consistent with the statute to allow organizations to rely on this presumption without satisfying some conditions. Satisfaction of the requirements as outlined in the legislative history leads to a benefit, but failure to satisfy them does not necessarily lead to a penalty. A more burdensome alternative would be to require all applicable tax-exempt organizations under Code section 4958 to satisfy the three requirements of the rebuttable presumption of reasonableness under all circumstances.

Pursuant to section 7805(f) of the Code, this final regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on business.

Drafting Information

The principal author of these regulations is Phyllis D. Haney, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements, Trusts and trustees.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 53, 301, and 602 are amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

1a. Sections 53.4958–0T through 53.4958–8T are removed.

2. Sections 53.4958–0 through 53.4958–8 are added to read as follows:

§ 53.4958–0 Table of contents.

This section lists the major captions contained in §§ 53.4958–1 through 53.4958–8.

Section 53.4958–1 Taxes on Excess Benefit Transactions

(a) In general.
(b) Excess benefit defined.
(c) Taxes paid by disqualified person.
(1) Initial tax.
(2) Additional tax on disqualified person.
(i) In general.
(ii) Taxable period.
(iii) Abatement if correction during the correction period.
(d) Tax paid by organization managers.
(1) In general.
(2) Organization manager defined.
(i) In general.
(ii) Special rule for certain committee members.
(3) Participation.
(4) Knowing.
(i) In general.
(ii) Amplification of general rule.
(iii) Reliance on professional advice.
(iv) Satisfaction of rebuttable presumption of reasonableness.
(5) Willful.
(6) Due to reasonable cause.
(7) Limits on liability for management.
(8) Joint and several liability.
(9) Burden of proof.
(e) Date of occurrence.
(1) In general.
(2) Special rules.
(3) Statute of limitations rules.
(f) Effective date for imposition of taxes.
(1) In general.
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Section 53.4958–2 Definition of Applicable Tax-Exempt Organization

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§ 53.4958–1 Taxes on excess benefit transactions.

(a) *In general.* Section 4958 imposes excise taxes on each excess benefit transaction (as defined in section 4958(c) and § 53.4958–4) between an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958–2) and a disqualified person (as defined in section 4958(f)(1) and § 53.4958–3). A disqualified person who receives an excess benefit from an excess benefit transaction is liable for payment of a section 4958(a)(1) excise tax equal to 25 percent of the excess benefit. If an initial tax is imposed by section 4958(a)(1) on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958–7) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section), then any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed is liable for an additional tax of 200 percent of the excess benefit. An organization manager (as defined in section 4958(f)(2) and paragraph (d) of this section) who participates in an excess benefit transaction, knowing that it was such a transaction, is liable for payment of a section 4958(a)(2) excise tax equal to 10 percent of the excess benefit, unless the participation was not willful and was due to reasonable cause. If an organization manager also receives an excess benefit from an excess benefit transaction, the manager may be liable for both taxes imposed by section 4958(a).

(b) *Excess benefit defined.* An excess benefit is the amount by which the value of the economic benefit provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person exceeds the value of the consideration (including the performance of services) received for providing such benefit.

(c) *Taxes paid by disqualified person*—(1) *Initial tax.* Section 4958(a)(1) imposes a tax equal to 25 percent of the excess benefit on each excess benefit transaction. The section 4958(a)(1) tax shall be paid by any disqualified person who received an excess benefit from that excess benefit transaction. With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(a)(1), all such persons are jointly and severally liable for that tax.

(2) *Additional tax on disqualified person*—(i) *In general.* Section 4958(b) imposes a tax equal to 200 percent of the excess benefit in any case in which section 4958(a)(1) imposes a 25-percent tax on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958–7) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section). If a disqualified person makes a payment of less than the full correction amount under the rules of § 53.4958–7, the 200-percent tax is imposed only on the unpaid portion of the correction amount (as described in § 53.4958–7(c)). The tax imposed by section 4958(b) is payable by any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed by section 4958(a)(1). With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(b), all such persons are jointly and severally liable for that tax.

(ii) *Taxable period. Taxable period* means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earlier of—

(A) The date of mailing a notice of deficiency under section 6212 with respect to the section 4958(a)(1) tax; or

(B) The date on which the tax imposed by section 4958(a)(1) is assessed.

(iii) *Abatement if correction during the correction period.* For rules relating to abatement of taxes on excess benefit transactions that are corrected within the correction period, as defined in section 4963(e), see sections 4961(a), 4962(a), and the regulations thereunder. The abatement rules of section 4961 specifically provide for a 90-day correction period after the date of mailing a notice of deficiency under section 6212 with respect to the section 4958(b) 200-percent tax. If the excess benefit is corrected during that correction period, the 200-percent tax imposed shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment. For special rules relating to abatement of the 25-percent tax, see section 4962.

(d) *Tax paid by organization managers*—(1) *In general.* In any case in which section 4958(a)(1) imposes a tax, section 4958(a)(2) imposes a tax equal to 10 percent of the excess benefit on the participation of any organization manager who knowingly participated in the excess benefit transaction, unless such participation was not willful and was due to reasonable cause. Any organization manager who so participated in the excess benefit transaction must pay the tax.

(2) *Organization manager defined*—(i) *In general.* An organization manager is, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization, or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization, regardless of title. A person is an officer of an organization if that person—

(A) Is specifically so designated under the certificate of incorporation, by-laws, or other constitutive documents of the organization; or

(B) Regularly exercises general authority to make administrative or policy decisions on behalf of the organization. A contractor who acts solely in a capacity as an attorney, accountant, or investment manager or advisor, is not an officer. For purposes of this paragraph (d)(2)(i)(B), any person who has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior, is not an officer.

(ii) *Special rule for certain committee members.* An individual who is not an officer, director, or trustee, yet serves on a committee of the governing body of an applicable tax-exempt organization (or as a designee of the governing body described in § 53.4958–6(c)(1)) that is attempting to invoke the rebuttable presumption of reasonableness described in § 53.4958–6 based on the committee's (or designee's) actions, is an organization manager for purposes of the tax imposed by section 4958(a)(2).

(3) *Participation.* For purposes of section 4958(a)(2) and this paragraph (d), participation includes silence or inaction on the part of an organization manager where the manager is under a duty to speak or act, as well as any affirmative action by such manager. An organization manager is not considered to have participated in an excess benefit transaction, however, where the manager has opposed the transaction in a manner consistent with the fulfillment of the manager's responsibilities to the applicable tax-exempt organization.

(4) *Knowing*—(i) *In general.* For purposes of section 4958(a)(2) and this paragraph (d), a manager participates in a transaction knowingly only if the person—

(A) Has actual knowledge of sufficient facts so that, based solely upon those facts, such transaction would be an excess benefit transaction;

(B) Is aware that such a transaction under these circumstances may violate the provisions of Federal tax law governing excess benefit transactions; and

(C) Negligently fails to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction, or the manager is in fact aware that it is such a transaction.

(ii) *Amplification of general rule. Knowing* does not mean having reason to know. However, evidence tending to show that a manager has reason to know of a particular fact or particular rule is relevant in determining whether the manager had actual knowledge of such a fact or rule. Thus, for example, evidence tending to show that a manager has reason to know of sufficient facts so that, based solely upon such facts, a transaction would be an excess benefit transaction is relevant in determining whether the manager has actual knowledge of such facts.

(iii) *Reliance on professional advice.* An organization manager's participation in a transaction is ordinarily not considered knowing within the meaning of section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction, to the extent that, after full disclosure of the factual situation to an appropriate professional, the organization manager relies on a reasoned written opinion of that professional with respect to elements of the transaction within the professional's expertise. For purposes of section 4958(a)(2) and this paragraph (d), a written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion. The absence of a written opinion of an appropriate professional with respect to a transaction shall not, by itself, however, give rise to any inference that an organization manager participated in the transaction

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knowingly. For purposes of this paragraph, appropriate professionals on whose written opinion an organization manager may rely, are limited to—

(A) Legal counsel, including in-house counsel;

(B) Certified public accountants or accounting firms with expertise regarding the relevant tax law matters; and

(C) Independent valuation experts who—

(*1*) Hold themselves out to the public as appraisers or compensation consultants;

(*2*) Perform the relevant valuations on a regular basis;

(*3*) Are qualified to make valuations of the type of property or services involved; and

(*4*) Include in the written opinion a certification that the requirements of paragraphs (d)(4)(iii)(C)(*1*) through (*3*) of this section are met.

(iv) *Satisfaction of rebuttable presumption of reasonableness.* An organization manager's participation in a transaction is ordinarily not considered knowing within the meaning of section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction, if the appropriate authorized body has met the requirements of § 53.4958–6(a) with respect to the transaction.

(5) *Willful.* For purposes of section 4958(a)(2) and this paragraph (d), participation by an organization manager is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make the participation willful. However, participation by an organization manager is not willful if the manager does not know that the transaction in which the manager is participating is an excess benefit transaction.

(6) *Due to reasonable cause.* An organization manager's participation is due to reasonable cause if the manager has exercised responsibility on behalf of the organization with ordinary business care and prudence.

(7) *Limits on liability for management.* The maximum aggregate amount of tax collectible under section 4958(a)(2) and this paragraph (d) from organization managers with respect to any one excess benefit transaction is $10,000.

(8) *Joint and several liability.* In any case where more than one person is liable for a tax imposed by section 4958(a)(2), all such persons shall be jointly and severally liable for the taxes imposed under section 4958(a)(2) with respect to that excess benefit transaction.

(9) *Burden of proof.* For provisions relating to the burden of proof in cases involving the issue of whether an organization manager has knowingly participated in an excess benefit transaction, see section 7454(b) and § 301.7454–2 of this chapter. In these cases, the Commissioner bears the burden of proof.

(e) *Date of occurrence*—(1) *In general.* Except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit for Federal income tax purposes. When a single contractual arrangement provides for a series of compensation or other payments to (or for the use of) a disqualified person over the course of the disqualified person's taxable year (or part of a taxable year), any excess benefit transaction with respect to these aggregate payments is deemed to occur on the last day of the taxable year (or if the payments continue for part of the year, the date of the last payment in the series).

(2) *Special rules.* In the case of benefits provided pursuant to a qualified pension, profit-sharing, or stock bonus plan, the transaction occurs on the date the benefit is vested. In the case of a transfer of property that is subject to a substantial risk of forfeiture or in the case of rights to future compensation or property (including benefits under a nonqualified deferred compensation plan), the transaction occurs on the date the property, or the rights to future compensation or property, is not subject to a substantial risk of forfeiture. However, where the disqualified person elects to include an amount in gross income in the taxable year of transfer pursuant to section 83(b), the general rule of paragraph (e)(1) of this section applies to the property with respect to which the section 83(b) election is made. Any excess benefit transaction with respect to benefits under a deferred compensation plan which vest during any taxable year of the disqualified person is deemed to occur on the last day of such taxable year. For the rules governing the timing of the reasonableness determination for deferred, contingent, and certain other noncash compensation, see § 53.4958–4(b)(2).

(3) *Statute of limitations rules.* See sections 6501(e)(3) and (l) and the regulations thereunder for statute of limitations rules as they apply to section 4958 excise taxes.

(f) *Effective date for imposition of taxes*—(1) *In general.* The section 4958 taxes imposed on excess benefit transactions or on participation in excess benefit transactions apply to transactions occurring on or after September 14, 1995.

(2) *Existing binding contracts.* The section 4958 taxes do not apply to any transaction occurring pursuant to a written contract that was binding on September 13, 1995, and at all times thereafter before the transaction occurs. A written binding contract that is terminable or subject to cancellation by the applicable tax-exempt organization without the disqualified person's consent (including as the result of a breach of contract by the disqualified person) and without substantial penalty to the organization, is no longer treated as a binding contract as of the earliest date that any such termination or cancellation, if made, would be effective. If a binding written contract is materially changed, it is treated as a new contract entered into as of the date the material change is effective. A material change includes an extension or renewal of the contract (other than an extension or renewal that results from the person contracting with the applicable tax-exempt organization unilaterally exercising an option expressly granted by the contract), or a more than incidental change to any payment under the contract.

§ 53.4958–2 Definition of applicable tax-exempt organization.

(a) *Organizations described in section 501(c)(3) or (4) and exempt from tax under section 501(a)*—(1) *In general.* An applicable tax-exempt organization is any organization that, without regard to any excess benefit, would be described in section 501(c)(3) or (4) and exempt from tax under section 501(a). An applicable tax-exempt organization also includes any organization that was described in section 501(c)(3) or (4) and was exempt from tax under section 501(a) at any time during a five-year period ending on the date of an excess benefit transaction (the lookback period).

(2) *Exceptions from definition of applicable tax-exempt organization*—(i) *Private foundation.* A private foundation as defined in section 509(a) is not an applicable tax-exempt organization for section 4958 purposes.

(ii) *Governmental unit or affiliate.* A governmental unit or an affiliate of a governmental unit is not an applicable tax-exempt organization for section 4958 purposes if it is—

(A) Exempt from (or not subject to) taxation without regard to section 501(a); or

(B) Relieved from filing an annual return pursuant to the authority of § 1.6033–2(g)(6).

(3) *Organizations described in section 501(c)(3).* An organization is described in section 501(c)(3) for purposes of section 4958 only if the organization—

(i) Provides the notice described in section 508; or

(ii) Is described in section 501(c)(3) and specifically is excluded from the requirements of section 508 by that section.

(4) *Organizations described in section 501(c)(4).* An organization is described in section 501(c)(4) for purposes of section 4958 only if the organization—

(i) Has applied for and received recognition from the Internal Revenue Service as an organization described in section 501(c)(4); or

(ii) Has filed an application for recognition under section 501(c)(4) with the Internal Revenue Service, has filed an annual information return as a section 501(c)(4) organization under the Internal Revenue Code or regulations promulgated thereunder, or has otherwise held itself out as being described in section 501(c)(4) and exempt from tax under section 501(a).

(5) *Effect of non-recognition or revocation of exempt status.* An organization is not described in paragraph (a)(3) or (4) of this section during any period covered by a final determination or adjudication that the organization is not exempt from tax under section 501(a) as an organization described in section 501(c)(3) or (4), so long as that determination or adjudication is not based upon participation in inurement or one or more excess benefit transactions. However, the organization may be an applicable tax-exempt organization for that period as a result of the five-year lookback period described in paragraph (a)(1) of this section.

(b) *Special rules*—(1) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(2) *Certain foreign organizations.* A foreign organization, recognized by the Internal Revenue Service or by treaty, that receives substantially all of its support (other than gross investment income) from sources outside of the United States is not an organization described in section 501(c)(3) or (4) for purposes of section 4958.

§ 53.4958–3 Definition of disqualified person.

(a) *In general*—(1) *Scope of definition.* Section 4958(f)(1) defines *disqualified person*, with respect to any transaction, as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction (the lookback period). Paragraph (b) of this section describes persons who are defined to be disqualified persons under the statute, including certain family members of an individual in a position to exercise substantial influence, and certain 35-percent controlled entities. Paragraph (c) of this section describes persons in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization by virtue of their powers and responsibilities or certain interests they hold. Paragraph (d) of this section describes persons deemed not to be in a position to exercise substantial influence. Whether any person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person with respect to a transaction for purposes of section 4958 is based on all relevant facts and circumstances, as described in paragraph (e) of this section. Paragraph (f) of this section describes special rules for affiliated organizations. Examples in paragraph (g) of this section illustrate these categories of persons.

(2) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(b) *Statutory categories of disqualified persons*—(1) *Family members.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a disqualified person described in paragraph (a) of this section (other than as a result of this paragraph) with respect to any transaction with the same organization. For purposes of the following sentence, a legally adopted child of an individual is treated as a child of such individual by blood. A person's family is limited to—

(i) Spouse;

(ii) Brothers or sisters (by whole or half blood);

(iii) Spouses of brothers or sisters (by whole or half blood);

(iv) Ancestors;

(v) Children;

(vi) Grandchildren;

(vii) Great grandchildren; and

(viii) Spouses of children, grandchildren, and great grandchildren.

(2) *Thirty-five percent controlled entities*—(i) *In general.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a 35-percent controlled entity. A 35-percent controlled entity is—

(A) A corporation in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the combined voting power;

(B) A partnership in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the profits interest; or

(C) A trust or estate in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the beneficial interest.

(ii) *Combined voting power.* For purposes of this paragraph (b)(2), combined voting power includes voting power represented by holdings of voting stock, direct or indirect, but does not include voting rights held only as a director, trustee, or other fiduciary.

(iii) *Constructive ownership rules*—(A) *Stockholdings.* For purposes of section 4958(f)(3) and this paragraph (b)(2), indirect stockholdings are taken into account as under section 267(c), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(B) *Profits or beneficial interest.* For purposes of section 4958(f)(3) and this paragraph (b)(2), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than section 267(c)(3)), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(c) *Persons having substantial influence.* A person who holds any of the following powers, responsibilities, or interests is in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization:

(1) *Voting members of the governing body.* This category includes any individual serving on the governing body of the organization who is entitled to vote on any matter over which the governing body has authority.

(2) *Presidents, chief executive officers, or chief operating officers.* This category includes any person who, regardless of title, has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or

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operation of the organization. A person who serves as president, chief executive officer, or chief operating officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals (e.g., co-presidents), who may exercise such responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(3) *Treasurers and chief financial officers.* This category includes any person who, regardless of title, has ultimate responsibility for managing the finances of the organization. A person who serves as treasurer or chief financial officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals who may exercise the responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(4) *Persons with a material financial interest in a provider-sponsored organization.* For purposes of section 4958, if a hospital that participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act, 42 U.S.C. 1395w–25) is an applicable tax-exempt organization, then any person with a material financial interest (within the meaning of section 501(o)) in the provider-sponsored organization has substantial influence with respect to the hospital.

(d) *Persons deemed not to have substantial influence.* A person is deemed not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization if that person is described in one of the following categories:

(1) *Tax-exempt organizations described in section 501(c)(3).* This category includes any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(2) *Certain section 501(c)(4) organizations.* Only with respect to an applicable tax-exempt organization described in section 501(c)(4) and § 53.4958–2(a)(4), this category includes any other organization so described.

(3) *Employees receiving economic benefits of less than a specified amount in a taxable year.* This category includes, for the taxable year in which benefits are provided, any full- or part-time employee of the applicable tax-exempt organization who—

(i) Receives economic benefits, directly or indirectly from the organization, of less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i);

(ii) Is not described in paragraph (b) or (c) of this section with respect to the organization; and

(iii) Is not a substantial contributor to the organization within the meaning of section 507(d)(2)(A), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years.

(e) *Facts and circumstances govern in all other cases*—(1) *In general.* Whether a person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person depends upon all relevant facts and circumstances.

(2) *Facts and circumstances tending to show substantial influence.* Facts and circumstances tending to show that a person has substantial influence over the affairs of an organization include, but are not limited to, the following—

(i) The person founded the organization;

(ii) The person is a substantial contributor to the organization (within the meaning of section 507(d)(2)(A)), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years;

(iii) The person's compensation is primarily based on revenues derived from activities of the organization, or of a particular department or function of the organization, that the person controls;

(iv) The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees;

(v) The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole;

(vi) The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person; or

(vii) The person is a non-stock organization controlled, directly or indirectly, by one or more disqualified persons.

(3) *Facts and circumstances tending to show no substantial influence.* Facts and circumstances tending to show that a person does not have substantial influence over the affairs of an organization include, but are not limited to, the following—

(i) The person has taken a bona fide vow of poverty as an employee, agent, or on behalf, of a religious organization;

(ii) The person is a contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the organization is providing professional advice (without having decision-making authority) with respect to transactions from which the contractor will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered);

(iii) The direct supervisor of the individual is not a disqualified person;

(iv) The person does not participate in any management decisions affecting the organization as a whole or a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or

(v) Any preferential treatment a person receives based on the size of that person's contribution is also offered to all other donors making a comparable contribution as part of a solicitation intended to attract a substantial number of contributions.

(f) *Affiliated organizations.* In the case of multiple organizations affiliated by common control or governing documents, the determination of whether a person does or does not have substantial influence shall be made separately for each applicable tax-exempt organization. A person may be a disqualified person with respect to transactions with more than one applicable tax-exempt organization.

(g) *Examples.* The following examples illustrate the principles of this section. A finding that a person is a disqualified person in the following examples does not indicate that an excess benefit transaction has occurred. If a person is a disqualified person, the rules of section 4958(c) and § 53.4958–4 apply to determine whether an excess benefit transaction has occurred. The examples are as follows:

Example 1. N, an artist by profession, works part-time at R, a local museum. In the first taxable year in which R employs N, R pays N a salary and provides no additional benefits to N except for free admission to the museum, a benefit R provides to all of its employees and volunteers. The total economic benefits N receives from R during the taxable year are less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i). The part-time job constitutes N's only relationship with R. N is not related to any other disqualified person with respect to R. N is deemed not to be in a position to exercise substantial influence over the affairs of R. Therefore, N is not a disqualified person with respect to R in that year.

Example 2. The facts are the same as in *Example 1*, except that in addition to the salary that R pays N for N's services during the taxable year, R also purchases one of N's paintings for $x. The total of N's salary plus $x exceeds the amount referenced for highly compensated employees in section 414(q)(1)(B)(i). Consequently, whether N is in a position to exercise substantial influence over the affairs of R for that taxable year depends upon all of the relevant facts and circumstances.

Example 3. Q is a member of K, a section 501(c)(3) organization with a broad-based public membership. Members of K are entitled to vote only with respect to the annual election of directors and the approval of major organizational transactions such as a merger or dissolution. Q is not related to any other disqualified person of K. Q has no other relationship to K besides being a member of K and occasionally making modest donations to K. Whether Q is a disqualified person is determined by all relevant facts and circumstances. Q's voting rights, which are the same as granted to all members of K, do not place Q in a position to exercise substantial influence over K. Under these facts and circumstances, Q is not a disqualified person with respect to K.

Example 4. E is the headmaster of Z, a school that is an applicable tax-exempt organization for purposes of section 4958. E reports to Z's board of trustees and has ultimate responsibility for supervising Z's day-to-day operations. For example, E can hire faculty members and staff, make changes to the school's curriculum and discipline students without specific board approval. Because E has ultimate responsibility for supervising the operation of Z, E is in a position to exercise substantial influence over the affairs of Z. Therefore, E is a disqualified person with respect to Z.

Example 5. Y is an applicable tax-exempt organization for purposes of section 4958 that decides to use bingo games as a method of generating revenue. Y enters into a contract with B, a company that operates bingo games. Under the contract, B manages the promotion and operation of the bingo activity, provides all necessary staff, equipment, and services, and pays Y *q* percent of the revenue from this activity. B retains the balance of the proceeds. Y provides no goods or services in connection with the bingo operation other than the use of its hall for the bingo games. The annual gross revenue earned from the bingo games represents more than half of Y's total annual revenue. B's compensation is primarily based on revenues from an activity B controls. B also manages a discrete activity of Y that represents a substantial portion of Y's income compared to the organization as a whole. Under these facts and circumstances, B is in a position to exercise substantial influence over the affairs of Y. Therefore, B is a disqualified person with respect to Y.

Example 6. The facts are the same as in *Example 5*, with the additional fact that P owns a majority of the stock of B and is actively involved in managing B. Because P owns a controlling interest (measured by either vote or value) in and actively manages B, P is also in a position to exercise substantial influence over the affairs of Y. Therefore, under these facts and circumstances, P is a disqualified person with respect to Y.

Example 7. A, an applicable tax-exempt organization for purposes of section 4958, owns and operates one acute care hospital. B, a for-profit corporation, owns and operates a number of hospitals. A and B form C, a limited liability company. In exchange for proportional ownership interests, A contributes its hospital, and B contributes other assets, to C. All of A's assets then consist of its membership interest in C. A continues to be operated for exempt purposes based almost exclusively on the activities it conducts through C. C enters into a management agreement with a management company, M, to provide day to day management services to C. Subject to supervision by C's board, M is given broad discretion to manage C's day to day operation and has ultimate responsibility for supervising the management of the hospital. Because M has ultimate responsibility for supervising the management of the hospital operated by C, A's ownership interest in C is its primary asset, and C's activities form the basis for A's continued exemption as an organization described in section 501(c)(3), M is in a position to exercise substantial influence over the affairs of A. Therefore, M is a disqualified person with respect to A.

Example 8. T is a large university and an applicable tax-exempt organization for purposes of section 4958. L is the dean of the College of Law of T, a substantial source of revenue for T, including contributions from alumni and foundations. L is not related to any other disqualified person of T. L does not serve on T's governing body or have ultimate responsibility for managing the university as whole. However, as dean of the College of Law, L plays a key role in faculty hiring and determines a substantial portion of the capital expenditures and operating budget of the College of Law. L's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. L's management of a discrete segment of T that represents a substantial portion of the income of T (as compared to T as a whole) places L in a position to exercise substantial influence over the affairs of T. Under these facts and circumstances L is a disqualified person with respect to T.

Example 9. S chairs a small academic department in the College of Arts and Sciences of the same university T described in *Example 8*. S is not related to any other disqualified person of T. S does not serve on T's governing body or as an officer of T. As department chair, S supervises faculty in the department, approves the course curriculum, and oversees the operating budget for the department. S's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. Even though S manages the department, that department does not represent a substantial portion of T's activities, assets, income, expenses, or operating budget. Therefore, S does not participate in any management decisions affecting either T as a whole, or a discrete segment or activity of T that represents a substantial portion of its activities, assets, income, or expenses. Under these facts and circumstances, S does not have substantial influence over the affairs of T, and therefore S is not a disqualified person with respect to T.

Example 10. U is a large acute-care hospital that is an applicable tax-exempt organization for purposes of section 4958. U employs X as a radiologist. X gives instructions to staff with respect to the radiology work X conducts, but X does not supervise other U employees or manage any substantial part of U's operations. X's compensation is primarily in the form of a fixed salary. In addition, X is eligible to receive an incentive award based on revenues of the radiology department. X's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. X is not related to any other disqualified person of U. X does not serve on U's governing body or as an officer of U. Although U participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act), X does not have a material financial interest in that organization. X does not receive compensation primarily based on revenues derived from activities of U that X controls. X does not participate in any management decisions affecting either U as a whole or a discrete segment of U that represents a substantial portion of its activities, assets, income, or expenses. Under these facts and circumstances, X does not have substantial influence over the affairs of U, and therefore X is not a disqualified person with respect to U.

Example 11. W is a cardiologist and head of the cardiology department of the same hospital U described in *Example 10*. The cardiology department is a major source of patients admitted to U and consequently represents a substantial portion of U's income, as compared to U as a whole. W does not serve on U's governing board or as an officer of U. W does not have a material financial interest in the provider-sponsored organization (as defined in section 1855(e) of the Social Security Act) in which U participates. W receives a salary and retirement and welfare benefits fixed by a three-year renewable employment contract with U. W's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. As department head, W manages the cardiology department and has authority to allocate the budget for that department, which includes authority to distribute incentive bonuses among cardiologists according to criteria that W has authority to set. W's management of a discrete segment of U that represents a substantial portion of its income and activities (as compared to U as a whole) places W in a position to exercise substantial influence over the affairs of U. Under these facts and circumstances, W is a disqualified person with respect to U.

Example 12. M is a museum that is an applicable tax-exempt organization for purposes of section 4958. D provides accounting services and tax advice to M as

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a contractor in return for a fee. D has no other relationship with M and is not related to any disqualified person of M. D does not provide professional advice with respect to any transaction from which D might economically benefit either directly or indirectly (aside from fees received for the professional advice rendered). Because D's sole relationship to M is providing professional advice (without having decision-making authority) with respect to transactions from which D will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered), under these facts and circumstances, D is not a disqualified person with respect to M.

Example 13. F is a repertory theater company that is an applicable tax-exempt organization for purposes of section 4958. F holds a fund-raising campaign to pay for the construction of a new theater. J is a regular subscriber to F's productions who has made modest gifts to F in the past. J has no relationship to F other than as a subscriber and contributor. F solicits contributions as part of a broad public campaign intended to attract a large number of donors, including a substantial number of donors making large gifts. In its solicitations for contributions, F promises to invite all contributors giving $z or more to a special opening production and party held at the new theater. These contributors are also given a special number to call in F's office to reserve tickets for performances, make ticket exchanges, and make other special arrangements for their convenience. J makes a contribution of $z to F, which makes J a substantial contributor within the meaning of section 507(d)(2)(A), taking into account only contributions received by F during its current and the four preceding taxable years. J receives the benefits described in F's solicitation. Because F offers the same benefit to all donors of $z or more, the preferential treatment that J receives does not indicate that J is in a position to exercise substantial influence over the affairs of the organization. Therefore, under these facts and circumstances, J is not a disqualified person with respect to F.

§ 53.4958–4 Excess benefit transaction.

(a) *Definition of excess benefit transaction*—(1) *In general.* An *excess benefit transaction* means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person, and the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. Subject to the limitations of paragraph (c) of this section (relating to the treatment of economic benefits as compensation for the performance of services), to determine whether an excess benefit transaction has occurred, all consideration and benefits (except disregarded benefits described in paragraph (a)(4) of this section) exchanged between a disqualified person and the applicable tax-exempt organization and all entities the organization controls (within the meaning of paragraph (a)(2)(ii)(B) of this section) are taken into account. For example, in determining the reasonableness of compensation that is paid (or vests, or is no longer subject to a substantial risk of forfeiture) in one year, services performed in prior years may be taken into account. The rules of this section apply to all transactions with disqualified persons, regardless of whether the amount of the benefit provided is determined, in whole or in part, by the revenues of one or more activities of the organization. For rules regarding valuation standards, see paragraph (b) of this section. For the requirement that an applicable tax-exempt organization clearly indicate its intent to treat a benefit as compensation for services when paid, see paragraph (c) of this section.

(2) *Economic benefit provided indirectly*—(i) *In general.* A transaction that would be an excess benefit transaction if the applicable tax-exempt organization engaged in it directly with a disqualified person is likewise an excess benefit transaction when it is accomplished indirectly. An applicable tax-exempt organization may provide an excess benefit indirectly to a disqualified person through a controlled entity or through an intermediary, as described in paragraphs (a)(2)(ii) and (iii) of this section, respectively.

(ii) *Through a controlled entity*—(A) *In general.* An applicable tax-exempt organization may provide an excess benefit indirectly through the use of one or more entities it controls. For purposes of section 4958, economic benefits provided by a controlled entity will be treated as provided by the applicable tax-exempt organization.

(B) *Definition of control*— (*1*) *In general.* For purposes of this paragraph, *control* by an applicable tax-exempt organization means—

(*i*) In the case of a stock corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation;

(*ii*) In the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in the partnership;

(*iii*) In the case of a nonstock organization (i.e., an entity in which no person holds a proprietary interest), that at least 50 percent of the directors or trustees of the organization are either representatives (including trustees, directors, agents, or employees) of, or directly or indirectly controlled by, an applicable tax-exempt organization; or

(*iv*) In the case of any other entity, ownership of more than 50 percent of the beneficial interest in the entity.

(*2*) *Constructive ownership.* Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(iii) *Through an intermediary.* An applicable tax-exempt organization may provide an excess benefit indirectly through an intermediary. An intermediary is any person (including an individual or a taxable or tax-exempt entity) who participates in a transaction with one or more disqualified persons of an applicable tax-exempt organization. For purposes of section 4958, economic benefits provided by an intermediary will be treated as provided by the applicable tax-exempt organization when—

(A) An applicable tax-exempt organization provides an economic benefit to an intermediary; and

(B) In connection with the receipt of the benefit by the intermediary—

(*1*) There is evidence of an oral or written agreement or understanding that the intermediary will provide economic benefits to or for the use of a disqualified person; or

(*2*) The intermediary provides economic benefits to or for the use of a disqualified person without a significant business purpose or exempt purpose of its own.

(iv) *Examples.* The following examples illustrate when economic benefits are provided indirectly under the rules of this paragraph (a)(2):

Example 1. K is an applicable tax-exempt organization for purposes of section 4958. L is a wholly-owned taxable subsidiary of K. J is employed by K, and is a disqualified person with respect to K. K pays J an annual salary of $*12m*, and reports that amount as compensation during calendar year 2001. Although J only performed services for K for nine months of 2001, J performed equivalent services for L during the remaining three months of 2001. Taking into account all of the economic benefits K provided to J, and all of the services J performed for K and L, $*12m* does not exceed the fair market value of the services J performed for K and L during 2001. Therefore, under these facts, K does not provide an excess benefit to J directly or indirectly.

Example 2. F is an applicable tax-exempt organization for purposes of section 4958. D is an entity controlled by F within the meaning of paragraph (a)(2)(ii)(B) of this section. T is the chief executive officer (CEO) of F. As CEO, T is responsible for overseeing the activities of F. T's duties as CEO make him a disqualified person with respect to F. T's compensation package with F represents the maximum reasonable compensation for T's services as CEO. Thus, any additional economic benefits that F provides to T without T providing additional consideration constitute an excess benefit. D contracts with T to provide enumerated consulting services to D. However, the contract does not require T to perform any additional services for D that T is not already obligated to perform as F's chief executive officer. Therefore, any payment to T pursuant to the consulting contract with D represents an indirect excess benefit that F provides through a controlled entity, even if F, D, or T treats the additional payment to T as compensation.

Example 3. P is an applicable tax-exempt organization for purposes of section 4958. S is a taxable entity controlled by P within the meaning of paragraph (a)(2)(ii)(B) of this section. V is the chief executive officer of S, for which S pays V $*w* in salary and benefits. V also serves as a voting member of P's governing body. Consequently, V is a disqualified person with respect to P. P provides V with $*x* representing compensation for the services V provides P as a member of its governing body. Although $*x* represents reasonable compensation for the services V provides directly to P as a member of its governing body, the total compensation of $*w* + $*x* exceeds reasonable compensation for the services V provides to P and S collectively. Therefore, the portion of total compensation that exceeds reasonable compensation is an excess benefit provided to V.

Example 4. G is an applicable tax-exempt organization for section 4958 purposes. F is a disqualified person who was last employed by G in a position of substantial influence three years ago. H is an entity engaged in scientific research and is unrelated to either F or G. G makes a grant to H to fund a research position. H subsequently advertises for qualified candidates for the research position. F is among several highly qualified candidates who apply for the research position. H hires F. There was no evidence of an oral or written agreement or understanding with G that H will use G's grant to provide economic benefits to or for the use of F. Although G provided economic benefits to H, and in connection with the receipt of such benefits, H will provide economic benefits to or for the use of F, H acted with a significant business purpose or exempt purpose of its own. Under these facts, G did not provide an economic benefit to F indirectly through the use of an intermediary.

(3) *Exception for fixed payments made pursuant to an initial contract*—(i) *In general.* Except as provided in paragraph (a)(3)(iv) of this section, section 4958 does not apply to any fixed payment made to a person pursuant to an initial contract.

(ii) *Fixed payment*—(A) *In general.* For purposes of paragraph (a)(3)(i) of this section, *fixed payment* means an amount of cash or other property specified in the contract, or determined by a fixed formula specified in the contract, which is to be paid or transferred in exchange for the provision of specified services or property. A fixed formula may incorporate an amount that depends upon future specified events or contingencies, provided that no person exercises discretion when calculating the amount of a payment or deciding whether to make a payment (such as a bonus). A specified event or contingency may include the amount of revenues generated by (or other objective measure of) one or more activities of the applicable tax-exempt organization. A fixed payment does not include any amount paid to a person under a reimbursement (or similar) arrangement where discretion is exercised by any person with respect to the amount of expenses incurred or reimbursed.

(B) *Special rules.* Amounts payable pursuant to a qualified pension, profit-sharing, or stock bonus plan under section 401(a), or pursuant to an employee benefit program that is subject to and satisfies coverage and nondiscrimination rules under the Internal Revenue Code (e.g., sections 127 and 137), other than nondiscrimination rules under section 9802, are treated as fixed payments for purposes of this section, regardless of the applicable tax-exempt organization's discretion with respect to the plan or program. The fact that a person contracting with an applicable tax-exempt organization is expressly granted the choice whether to accept or reject any economic benefit is disregarded in determining whether the benefit constitutes a fixed payment for purposes of this paragraph.

(iii) *Initial contract.* For purposes of paragraph (a)(3)(i) of this section, *initial contract* means a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the contract.

(iv) *Substantial performance required.* Paragraph (a)(3)(i) of this section does not apply to any fixed payment made pursuant to the initial contract during any taxable year of the person contracting with the applicable tax-exempt organization if the person fails to perform substantially the person's obligations under the initial contract during that year.

(v) *Treatment as a new contract.* A written binding contract that provides that the contract is terminable or subject to cancellation by the applicable tax-exempt organization (other than as a result of a lack of substantial performance by the disqualified person, as described in paragraph (a)(3)(iv) of this section) without the other party's consent and without substantial penalty to the organization is treated as a new contract as of the earliest date that any such termination or cancellation, if made, would be effective. Additionally, if the parties make a material change to a contract, it is treated as a new contract as of the date the material change is effective. A material change includes an extension or renewal of the contract (other than an extension or renewal that results from the person contracting with the applicable tax-exempt organization unilaterally exercising an option expressly granted by the contract), or a more than incidental change to any amount payable under the contract. The new contract is tested under paragraph (a)(3)(iii) of this section to determine whether it is an initial contract for purposes of this section.

(vi) *Evaluation of non-fixed payments.* Any payment that is not a fixed payment (within the meaning of paragraph (a)(3)(ii) of this section) is evaluated to determine whether it constitutes an excess benefit transaction under section 4958. In making this determination, all payments and consideration exchanged between the parties are taken into account, including any fixed payments made pursuant to an initial contract with respect to which section 4958 does not apply.

(vii) *Examples.* The following examples illustrate the rules governing fixed payments made pursuant to an initial contract. Unless otherwise stated, assume that the person contracting with the applicable tax-exempt organization has performed substantially the person's obligations under the contract with respect to the payment. The examples are as follows:

Example 1. T is an applicable tax-exempt organization for purposes of section 4958. On January 1, 2002, T hires S as its chief financial officer by entering into a five-year written employment contract with S. S was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the January 1, 2002, contract (initial contract). S's duties and responsibilities under the contract make S a disqualified person with respect to T (see § 53.4958–3(a)). Under the initial contract, T agrees to pay S an annual salary of $200,000, payable in monthly installments. The contract provides that, beginning in 2003, S's annual salary will be adjusted by the increase in the Consumer Price Index (CPI) for the prior year. Section 4958 does not apply because S's compensation under the contract is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. Thus, for section 4958 purposes, it is unnecessary to evaluate whether any

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portion of the compensation paid to S pursuant to the initial contract is an excess benefit transaction.

Example 2. The facts are the same as in *Example 1*, except that the initial contract provides that, in addition to a base salary of $200,000, T may pay S an annual performance-based bonus. The contract provides that T's governing body will determine the amount of the annual bonus as of the end of each year during the term of the contract, based on the board's evaluation of S's performance, but the bonus cannot exceed $100,000 per year. Unlike the base salary portion of S's compensation, the bonus portion of S's compensation is not a fixed payment pursuant to an initial contract, because the governing body has discretion over the amount, if any, of the bonus payment. Section 4958 does not apply to payment of the $200,000 base salary (as adjusted for inflation), because it is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. By contrast, the annual bonuses that may be paid to S under the initial contract are not protected by the initial contract exception. Therefore, each bonus payment will be evaluated under section 4958, taking into account all payments and consideration exchanged between the parties.

Example 3. The facts are the same as in *Example 1*, except that in 2003, T changes its payroll system, such that T makes biweekly, rather than monthly, salary payments to its employees. Beginning in 2003, T also grants its employees an additional two days of paid vacation each year. Neither change is a material change to S's initial contract within the meaning of paragraph (a)(3)(v) of this section. Therefore, section 4958 does not apply to the base salary payments to S due to the initial contract exception.

Example 4. The facts are the same as in *Example 1*, except that on January 1, 2003, S becomes the chief executive officer of T and a new chief financial officer is hired. At the same time, T's board of directors approves an increase in S's annual base salary from $200,000 to $240,000, effective on that day. These changes in S's employment relationship constitute material changes of the initial contract within the meaning of paragraph (a)(3)(v) of this section. As a result, S is treated as entering into a new contract with T on January 1, 2003, at which time S is a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3. T's payments to S made pursuant to the new contract will be evaluated under section 4958, taking into account all payments and consideration exchanged between the parties.

Example 5. J is a performing arts organization and an applicable tax-exempt organization for purposes of section 4958. J hires W to become the chief executive officer of J. W was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the employment contract with J. As a result of this employment contract, W's duties and responsibilities make W a disqualified person with respect to J (see § 53.4958–3(c)(2)). Under the contract, J will pay W $*x* (a specified amount) plus a bonus equal to 2 percent of the total season subscription sales that exceed $*100x*. The $*x* base salary is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. The bonus payment is also a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section, because no person exercises discretion when calculating the amount of the bonus payment or deciding whether the bonus will be paid. Therefore, section 4958 does not apply to any of J's payments to W pursuant to the employment contract due to the initial contract exception.

Example 6. Hospital B is an applicable tax-exempt organization for purposes of section 4958. Hospital B hires E as its chief operating officer. E was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 immediately prior to entering into the employment contract with Hospital B. As a result of this employment contract, E's duties and responsibilities make E a disqualified person with respect to Hospital B (see § 53.4958–3(c)(2)). E's initial employment contract provides that E will have authority to enter into hospital management arrangements on behalf of Hospital B. In E's personal capacity, E owns more than 35 percent of the combined voting power of Company X. Consequently, at the time E becomes a disqualified person with respect to B, Company X also becomes a disqualified person with respect to B (see § 53.4958–3(b)(2)(i)(A)). E, acting on behalf of Hospital B as chief operating officer, enters into a contract with Company X under which Company X will provide billing and collection services to Hospital B. The initial contract exception of paragraph (a)(3)(i) of this section does not apply to the billing and collection services contract, because at the time that this contractual arrangement was entered into, Company X was a disqualified person with respect to Hospital B. Although E's employment contract (which is an initial contract) authorizes E to enter into hospital management arrangements on behalf of Hospital B, the payments made to Company X are not made pursuant to E's employment contract, but rather are made by Hospital B pursuant to a separate contractual arrangement with Company X. Therefore, even if payments made to Company X under the billing and collection services contract are fixed payments (within the meaning of paragraph (a)(3)(ii) of this section), section 4958 nonetheless applies to payments made by Hospital B to Company X because the billing and collection services contract itself does not constitute an initial contract under paragraph (a)(3)(iii) of this section. Accordingly, all payments made to Company X under the billing and collection services contract will be evaluated under section 4958.

Example 7. Hospital C, an applicable tax-exempt organization, enters into a contract with Company Y, under which Company Y will provide a wide range of hospital management services to Hospital C. Upon entering into this contractual arrangement, Company Y becomes a disqualified person with respect to Hospital C. The contract provides that Hospital C will pay Company Y a management fee of *x* percent of adjusted gross revenue (*i.e.*, gross revenue increased by the cost of charity care provided to indigents) annually for a five-year period. The management services contract specifies the cost accounting system and the standards for *indigents* to be used in calculating the cost of charity care. The cost accounting system objectively defines the direct and indirect costs of all health care goods and services provided as charity care. Because Company Y was not a disqualified person with respect to Hospital C immediately before entering into the management services contract, that contract is an initial contract within the meaning of paragraph (a)(3)(iii) of this section. The annual management fee paid to Company Y is determined by a fixed formula specified in the contract, and is therefore a fixed payment within the meaning of paragraph (a)(3)(ii) of this section. Accordingly, section 4958 does not apply to the annual management fee due to the initial contract exception.

Example 8. The facts are the same as in *Example 7*, except that the management services contract also provides that Hospital C will reimburse Company Y on a monthly basis for certain expenses incurred by Company Y that are attributable to management services provided to Hospital C (e.g., legal fees and travel expenses). Although the management fee itself is a fixed payment not subject to section 4958, the reimbursement payments that Hospital C makes to Company Y for the various expenses covered by the contract are not fixed payments within the meaning of paragraph (a)(3)(ii) of this section, because Company Y exercises discretion with respect to the amount of expenses incurred. Therefore, any reimbursement payments that Hospital C pays pursuant to the contract will be evaluated under section 4958.

Example 9. X, an applicable tax-exempt organization for purposes of section 4958, hires C to conduct scientific research. On January 1, 2003, C enters into a three-year written employment contract with X (initial contract). Under the terms of the contract, C is required to work full-time at X's laboratory for a fixed annual salary of $90,000. Immediately prior to entering into the employment contract, C was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3, nor did C become a disqualified person pursuant to the initial contract. However, two years after joining X, C marries D, who is the child of X's president. As D's spouse, C is a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3 with respect to X. Nonetheless, section 4958 does not apply to X's salary payments to C due to the initial contract exception.

Example 10. The facts are the same as in *Example 9*, except that the initial contract included a below-market loan provision under which C has the unilateral right to borrow up to a specified dollar amount from X at a specified interest rate for a specified term. After C's marriage to D, C borrows money from X to purchase a home under the terms of the initial contract. Section 4958 does not apply to X's loan to C due to the initial contract exception.

Example 11. The facts are the same as in *Example 9*, except that after C's marriage to D, C works only sporadically at the laboratory, and performs no other services for X. Notwithstanding that C fails to perform substantially C's obligations under the initial contract, X does not exercise its right to terminate the initial contract for nonperformance and continues to pay full salary to C. Pursuant to paragraph (a)(3)(iv) of this section, the initial contract exception does not apply to any payments made pursuant to the initial contract during any taxable year of C in which C fails to perform substantially C's obligations under the initial contract.

(4) *Certain economic benefits disregarded for purposes of section 4958.* The following economic benefits are disregarded for purposes of section 4958—

(i) *Nontaxable fringe benefits.* An economic benefit that is excluded from income under section 132, except any liability insurance premium, payment, or reimbursement that must be taken into account under paragraph (b)(1)(ii)(B)(2) of this section;

(ii) *Expense reimbursement payments pursuant to accountable plans.* Amounts paid under reimbursement arrangements that meet the requirements of § 1.62–2(c) of this chapter;

(iii) *Certain economic benefits provided to a volunteer for the organization.* An economic benefit provided to a volunteer for the organization if the benefit is provided to the general public in exchange for a membership fee or contribution of $75 or less per year;

(iv) *Certain economic benefits provided to a member of, or donor to, the organization.* An economic benefit provided to a member of an organization solely on account of the payment of a membership fee, or to a donor solely on account of a contribution for which a deduction is allowable under section 170 (charitable contribution), regardless of whether the donor is eligible to claim the deduction, if—

(A) Any non-disqualified person paying a membership fee or making a charitable contribution above a specified amount to the organization is given the option of receiving substantially the same economic benefit; and

(B) The disqualified person and a significant number of non-disqualified persons make a payment or charitable contribution of at least the specified amount;

(v) *Economic benefits provided to a charitable beneficiary.* An economic benefit provided to a person solely because the person is a member of a charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of the organization's exempt purpose; and

(vi) *Certain economic benefits provided to a governmental unit.* Any transfer of an economic benefit to or for the use of a governmental unit defined in section 170(c)(1), if the transfer is for exclusively public purposes.

(5) *Exception for certain payments made pursuant to an exemption granted by the Department of Labor under ERISA.* Section 4958 does not apply to any payment made pursuant to, and in accordance with, a final individual prohibited transaction exemption issued by the Department of Labor under section 408(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 854) (ERISA) with respect to a transaction involving a plan (as defined in section 3(3) of ERISA) that is an applicable tax exempt organization.

(b) *Valuation standards*—(1) *In general.* This section provides rules for determining the value of economic benefits for purposes of section 4958.

(i) *Fair market value of property.* The value of property, including the right to use property, for purposes of section 4958 is the fair market value (*i.e.*, the price at which property or the right to use property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell or transfer property or the right to use property, and both having reasonable knowledge of relevant facts).

(ii) *Reasonable compensation*—(A) *In general.* The value of services is the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances (*i.e.*, reasonable compensation). Section 162 standards apply in determining reasonableness of compensation, taking into account the aggregate benefits (other than any benefits specifically disregarded under paragraph (a)(4) of this section) provided to a person and the rate at which any deferred compensation accrues. The fact that a compensation arrangement is subject to a cap is a relevant factor in determining the reasonableness of compensation. The fact that a State or local legislative or agency body or court has authorized or approved a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation for purposes of section 4958.

(B) *Items included in determining the value of compensation for purposes of determining reasonableness under section 4958.* Except for economic benefits that are disregarded for purposes of section 4958 under paragraph (a)(4) of this section, compensation for purposes of determining reasonableness under section 4958 includes all economic benefits provided by an applicable tax-exempt organization in exchange for the performance of services. These benefits include, but are not limited to—

(*1*) All forms of cash and noncash compensation, including salary, fees, bonuses, severance payments, and deferred and noncash compensation described in § 53.4958–1(e)(2);

(*2*) Unless excludable from income as a *de minimis* fringe benefit pursuant to section 132(a)(4), the payment of liability insurance premiums for, or the payment or reimbursement by the organization of—

(*i*) Any penalty, tax, or expense of correction owed under section 4958;

(*ii*) Any expense not reasonably incurred by the person in connection with a civil judicial or civil administrative proceeding arising out of the person's performance of services on behalf of the applicable tax-exempt organization; or

(*iii*) Any expense resulting from an act or failure to act with respect to which the person has acted willfully and without reasonable cause; and

(*3*) All other compensatory benefits, whether or not included in gross income for income tax purposes, including payments to welfare benefit plans, such as plans providing medical, dental, life insurance, severance pay, and disability benefits, and both taxable and nontaxable fringe benefits (other than fringe benefits described in section 132), including expense allowances or reimbursements (other than expense reimbursements pursuant to an accountable plan that meets the requirements of § 1.62–2(c)), and the economic benefit of a below-market loan (within the meaning of section 7872(e)(1)). (For this purpose, the economic benefit of a below-market loan is the amount deemed transferred to the disqualified person under section 7872(a) or (b), regardless of whether section 7872 otherwise applies to the loan).

(C) *Inclusion in compensation for reasonableness determination does not govern income tax treatment.* The determination of whether any item listed in paragraph (b)(1)(ii)(B) of this section is included in the disqualified person's gross income for income tax purposes is made on the basis of the provisions of chapter 1 of Subtitle A of the Internal Revenue Code, without regard to whether the item is taken into account for purposes of determining reasonableness of compensation under section 4958.

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(2) *Timing of reasonableness determination*—(i) *In general.* The facts and circumstances to be taken into consideration in determining reasonableness of a fixed payment (within the meaning of paragraph (a)(3)(ii) of this section) are those existing on the date the parties enter into the contract pursuant to which the payment is made. However, in the event of substantial non-performance, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. In the case of any payment that is not a fixed payment under a contract, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. In no event shall circumstances existing at the date when the payment is questioned be considered in making a determination of the reasonableness of the payment. These general timing rules also apply to property subject to a substantial risk of forfeiture. Therefore, if the property subject to a substantial risk of forfeiture satisfies the definition of fixed payment (within the meaning of paragraph (a)(3)(ii) of this section), reasonableness is determined at the time the parties enter into the contract providing for the transfer of the property. If the property is not a fixed payment, then reasonableness is determined based on all facts and circumstances up to and including circumstances as of the date of payment.

(ii) *Treatment as a new contract.* For purposes of paragraph (b)(2)(i) of this section, a written binding contract that provides that the contract is terminable or subject to cancellation by the applicable tax-exempt organization without the other party's consent and without substantial penalty to the organization is treated as a new contract as of the earliest date that any such termination or cancellation, if made, would be effective. Additionally, if the parties make a material change to a contract (within the meaning of paragraph (a)(3)(v) of this section), it is treated as a new contract as of the date the material change is effective.

(iii) *Examples.* The following examples illustrate the timing of the reasonableness determination under the rules of this paragraph (b)(2):

Example 1. G is an applicable tax-exempt organization for purposes of section 4958. H is an employee of G and a disqualified person with respect to G. H's new multi-year employment contract provides for payment of a salary and provision of specific benefits pursuant to a qualified pension plan under section 401(a) and an accident and health plan that meets the requirements of section 105(h)(2). The contract provides that H's salary will be adjusted by the increase in the Consumer Price Index (CPI) for the prior year. The contributions G makes to the qualified pension plan are equal to the maximum amount G is permitted to contribute under the rules applicable to qualified plans. Under these facts, all items comprising H's total compensation are treated as fixed payments within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of H's compensation is determined based on the circumstances existing at the time G and H enter into the employment contract.

Example 2. The facts are the same as in *Example 1*, except that the multi-year employment contract provides, in addition, that G will transfer title to a car to H under the condition that if H fails to complete *x* years of service with G, title to the car will be forfeited back to G. All relevant information about the type of car to be provided (including the make, model, and year) is included in the contract. Although ultimate vesting of title to the car is contingent on H continuing to work for G for *x* years, the amount of property to be vested (i.e., the type of car) is specified in the contract, and no person exercises discretion regarding the type of property or whether H will retain title to the property at the time of vesting. Under these facts, the car is a fixed payment within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of H's compensation, including the value of the car, is determined based on the circumstances existing at the time G and H enter into the employment contract.

Example 3. N is an applicable tax-exempt organization for purposes of section 4958. On January 2, N's governing body enters into a new one-year employment contract with K, its executive director, who is a disqualified person with respect to N. The contract provides that K will receive a specified amount of salary, contributions to a qualified pension plan under section 401(a), and other benefits pursuant to a section 125 cafeteria plan. In addition, the contract provides that N's governing body may, in its discretion, declare a bonus to be paid to K at any time during the year covered by the contract. K's salary and other specified benefits constitute fixed payments within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of those economic benefits is determined on the date when the contract was made. However, because the bonus payment is not a fixed payment within the meaning of paragraph (a)(3)(ii) of this section, the determination of whether any bonus awarded to N is reasonable must be made based on all facts and circumstances (including all payments and consideration exchanged between the parties), up to and including circumstances as of the date of payment of the bonus.

(c) *Establishing intent to treat economic benefit as consideration for the performance of services*—(1) *In general.* An economic benefit is not treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid. Except as provided in paragraph (c)(2) of this section, an applicable tax-exempt organization (or entity controlled by an applicable tax-exempt organization, within the meaning of paragraph (a)(2)(ii)(B) of this section) is treated as clearly indicating its intent to provide an economic benefit as compensation for services only if the organization provides written substantiation that is contemporaneous with the transfer of the economic benefit at issue. If an organization fails to provide this contemporaneous substantiation, any services provided by the disqualified person will not be treated as provided in consideration for the economic benefit for purposes of determining the reasonableness of the transaction. In no event shall an economic benefit that a disqualified person obtains by theft or fraud be treated as consideration for the performance of services.

(2) *Nontaxable benefits.* For purposes of section 4958(c)(1)(A) and this section, an applicable tax-exempt organization is not required to indicate its intent to provide an economic benefit as compensation for services if the economic benefit is excluded from the disqualified person's gross income for income tax purposes on the basis of the provisions of chapter 1 of Subtitle A of the Internal Revenue Code. Examples of these benefits include, but are not limited to, employer-provided health benefits and contributions to a qualified pension, profit-sharing, or stock bonus plan under section 401(a), and benefits described in sections 127 and 137. However, except for economic benefits that are disregarded for purposes of section 4958 under paragraph (a)(4) of this section, all compensatory benefits (regardless of the Federal income tax treatment) provided by an organization in exchange for the performance of services are taken into account in determining the reasonableness of a person's compensation for purposes of section 4958.

(3) *Contemporaneous substantiation*—(i) *Reporting of benefit*—(A) *In general.* An applicable tax-exempt organization provides contemporaneous written substantiation of its intent to provide an economic benefit as compensation if—

(*1*) The organization reports the economic benefit as compensation on an original Federal tax information return with respect to the payment (e.g., Form W–2, "Wage and Tax Statement", or Form 1099, "Miscellaneous Income") or with respect to the organization (e.g., Form 990, "Return of Organization Exempt From Income Tax"), or on an amended Federal tax information return filed prior to the commencement of an Internal Revenue Service examination of the applicable tax-exempt organization or the disqualified person for the taxable year in which the transaction occurred (as determined under § 53.4958–1(e)); or

(*2*) The recipient disqualified person reports the benefit as income on the person's original Federal tax return (e.g., Form 1040, "U.S. Individual Income Tax Return"), or on the person's amended Federal tax return filed prior to the earlier of the following dates—

(*i*) Commencement of an Internal Revenue Service examination described in paragraph (c)(3)(i)(A)(*1*) of this section; or

(*ii*) The first documentation in writing by the Internal Revenue Service of a potential excess benefit transaction involving either the applicable tax-exempt organization or the disqualified person.

(B) *Failure to report due to reasonable cause.* If an applicable tax-exempt organization's failure to report an economic benefit as required under the Internal Revenue Code is due to reasonable cause (within the meaning of § 301.6724–1 of this chapter), then the organization will be treated as having clearly indicated its intent to provide an economic benefit as compensation for services. To show that its failure to report an economic benefit that should have been reported on an information return was due to reasonable cause, an applicable tax-exempt organization must establish that there were significant mitigating factors with respect to its failure to report (as described in § 301.6724–1(b) of this chapter), or the failure arose from events beyond the organization's control (as described in § 301.6724–1(c) of this chapter), and that the organization acted in a responsible manner both before and after the failure occurred (as described in § 301.6724–1(d) of this chapter).

(ii) *Other written contemporaneous evidence.* In addition, other written contemporaneous evidence may be used to demonstrate that the appropriate decision-making body or an officer authorized to approve compensation approved a transfer as compensation for services in accordance with established procedures, including but not limited to—

(A) An approved written employment contract executed on or before the date of the transfer;

(B) Documentation satisfying the requirements of § 53.4958–6(a)(3) indicating that an authorized body approved the transfer as compensation for services on or before the date of the transfer; or

(C) Written evidence that was in existence on or before the due date of the applicable Federal tax return described in paragraph (c)(3)(i)(A)(*1*) or (*2*) of this section (including extensions but not amendments), of a reasonable belief by the applicable tax-exempt organization that a benefit was a nontaxable benefit as defined in paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the requirement that an organization contemporaneously substantiate its intent to provide an economic benefit as compensation for services, as defined in paragraph (c) of this section:

Example 1. G is an applicable tax-exempt organization for purposes of section 4958. G hires an individual contractor, P, who is also the child of a disqualified person of G, to design a computer program for it. G executes a contract with P for that purpose in accordance with G's established procedures, and pays P $1,000 during the year pursuant to the contract. Before January 31 of the next year, G reports the full amount paid to P under the contract on a Form 1099 filed with the Internal Revenue Service. G will be treated as providing contemporaneous written substantiation of its intent to provide the $1,000 paid to P as compensation for the services P performed under the contract by virtue of either the Form 1099 filed with the Internal Revenue Service reporting the amount, or by virtue of the written contract executed between G and P.

Example 2. G is an applicable tax-exempt organization for purposes of section 4958. D is the chief operating officer of G, and a disqualified person with respect to G. D receives a bonus at the end of the year. G's accounting department determines that the bonus is to be reported on D's Form W–2. Due to events beyond G's control, the bonus is not reflected on D's Form W–2. As a result, D fails to report the bonus on his individual income tax return. G acts to amend Forms W–2 affected as soon as G is made aware of the error during an Internal Revenue Service examination. G's failure to report the bonus on an information return issued to D arose from events beyond G's control, and G acted in a responsible manner both before and after the failure occurred. Thus, because G had reasonable cause (within the meaning § 301.6724–1 of this chapter) for failing to report D's bonus, G will be treated as providing contemporaneous written substantiation of its intent to provide the bonus as compensation for services when paid.

Example 3. H is an applicable tax-exempt organization and J is a disqualified person with respect to H. J's written employment agreement provides for a fixed salary of $*y*. J's duties include soliciting funds for various programs of H. H raises a large portion of its funds in a major metropolitan area. Accordingly, H maintains an apartment there in order to provide a place to entertain potential donors. H makes the apartment available exclusively to J to assist in the fundraising. J's written employment contract does not mention the use of the apartment. H obtains the written opinion of a benefits compensation expert that the rental value of the apartment is not includable in J's income by reason of section 119, based on the expectation that the apartment will be used for fundraising activities. Consequently, H does not report the rental value of the apartment on J's Form W–2, which otherwise correctly reports J's taxable compensation. J does not report the rental value of the apartment on J's individual Form 1040. Later, the Internal Revenue Service correctly determines that the requirements of section 119 were not satisfied. Because of the written expert opinion, H has written evidence of its reasonable belief that use of the apartment was a nontaxable benefit as defined in paragraph (c)(2) of this section. That evidence was in existence on or before the due date of the applicable Federal tax return. Therefore, H has demonstrated its intent to treat the use of the apartment as compensation for services performed by J.

§ 53.4958–5 Transaction in which the amount of the economic benefit is determined in whole or in part by the revenues of one or more activities of the organization. [Reserved]

§ 53.4958–6 Rebuttable presumption that a transaction is not an excess benefit transaction.

(a) *In general.* Payments under a compensation arrangement are presumed to be reasonable, and a transfer of property, or the right to use property, is presumed to be at fair market value, if the following conditions are satisfied—

(1) The compensation arrangement or the terms of the property transfer are approved in advance by an authorized body of the applicable tax-exempt organization (or an entity controlled by the organization within the meaning of § 53.4958–4(a)(2)(ii)(B)) composed entirely of individuals who do not have a conflict of interest (within the meaning of paragraph (c)(1)(iii) of this section) with respect to the compensation arrangement or property transfer, as described in paragraph (c)(1) of this section;

(2) The authorized body obtained and relied upon appropriate data as to comparability prior to making its determination, as described in paragraph (c)(2) of this section; and

(3) The authorized body adequately documented the basis for its determination concurrently with making that determination, as described in paragraph (c)(3) of this section.

(b) *Rebutting the presumption.* If the three requirements of paragraph (a) of this section are satisfied, then the Internal Revenue Service may rebut the presumption that arises under

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paragraph (a) of this section only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. With respect to any fixed payment (within the meaning of § 53.4958–4(a)(3)(ii)), rebuttal evidence is limited to evidence relating to facts and circumstances existing on the date the parties enter into the contract pursuant to which the payment is made (except in the event of substantial nonperformance). With respect to all other payments (including non-fixed payments subject to a cap, as described in paragraph (d)(2) of this section), rebuttal evidence may include facts and circumstances up to and including the date of payment. See § 53.4958–4(b)(2)(i).

(c) *Requirements for invoking rebuttable presumption*—(1) *Approval by an authorized body*—(i) *In general.* An authorized body means—

(A) The governing body (i.e., the board of directors, board of trustees, or equivalent controlling body) of the organization;

(B) A committee of the governing body, which may be composed of any individuals permitted under State law to serve on such a committee, to the extent that the committee is permitted by State law to act on behalf of the governing body; or

(C) To the extent permitted under State law, other parties authorized by the governing body of the organization to act on its behalf by following procedures specified by the governing body in approving compensation arrangements or property transfers.

(ii) *Individuals not included on authorized body.* For purposes of determining whether the requirements of paragraph (a) of this section have been met with respect to a specific compensation arrangement or property transfer, an individual is not included on the authorized body when it is reviewing a transaction if that individual meets with other members only to answer questions, and otherwise recuses himself or herself from the meeting and is not present during debate and voting on the compensation arrangement or property transfer.

(iii) *Absence of conflict of interest.* A member of the authorized body does not have a conflict of interest with respect to a compensation arrangement or property transfer only if the member—

(A) Is not a disqualified person participating in or economically benefitting from the compensation arrangement or property transfer, and is not a member of the family of any such disqualified person, as described in section 4958(f)(4) or § 53.4958–3(b)(1);

(B) Is not in an employment relationship subject to the direction or control of any disqualified person participating in or economically benefitting from the compensation arrangement or property transfer;

(C) Does not receive compensation or other payments subject to approval by any disqualified person participating in or economically benefitting from the compensation arrangement or property transfer;

(D) Has no material financial interest affected by the compensation arrangement or property transfer; and

(E) Does not approve a transaction providing economic benefits to any disqualified person participating in the compensation arrangement or property transfer, who in turn has approved or will approve a transaction providing economic benefits to the member.

(2) *Appropriate data as to comparability*—(i) *In general.* An authorized body has appropriate data as to comparability if, given the knowledge and expertise of its members, it has information sufficient to determine whether, under the standards set forth in § 53.4958–4(b), the compensation arrangement in its entirety is reasonable or the property transfer is at fair market value. In the case of compensation, relevant information includes, but is not limited to, compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the availability of similar services in the geographic area of the applicable tax-exempt organization; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the disqualified person. In the case of property, relevant information includes, but is not limited to, current independent appraisals of the value of all property to be transferred; and offers received as part of an open and competitive bidding process.

(ii) *Special rule for compensation paid by small organizations.* For organizations with annual gross receipts (including contributions) of less than $1 million reviewing compensation arrangements, the authorized body will be considered to have appropriate data as to comparability if it has data on compensation paid by three comparable organizations in the same or similar communities for similar services. No inference is intended with respect to whether circumstances falling outside this safe harbor will meet the requirement with respect to the collection of appropriate data.

(iii) *Application of special rule for small organizations.* For purposes of determining whether the special rule for small organizations described in paragraph (c)(2)(ii) of this section applies, an organization may calculate its annual gross receipts based on an average of its gross receipts during the three prior taxable years. If any applicable tax-exempt organization is controlled by or controls another entity (as defined in § 53.4958–4(a)(2)(ii)(B)), the annual gross receipts of such organizations must be aggregated to determine applicability of the special rule stated in paragraph (c)(2)(ii) of this section.

(iv) *Examples.* The following examples illustrate the rules for appropriate data as to comparability for purposes of invoking the rebuttable presumption of reasonableness described in this section. In all examples, compensation refers to the aggregate value of all benefits provided in exchange for services. The examples are as follows:

Example 1. Z is a university that is an applicable tax-exempt organization for purposes of section 4958. Z is negotiating a new contract with Q, its president, because the old contract will expire at the end of the year. In setting Q's compensation for its president at $600*x* per annum, the executive committee of the Board of Trustees relies solely on a national survey of compensation for university presidents that indicates university presidents receive annual compensation in the range of $100*x* to $700*x*; this survey does not divide its data by any criteria, such as the number of students served by the institution, annual revenues, academic ranking, or geographic location. Although many members of the executive committee have significant business experience, none of the members has any particular expertise in higher education compensation matters. Given the failure of the survey to provide information specific to universities comparable to Z, and because no other information was presented, the executive committee's decision with respect to Q's compensation was not based upon appropriate data as to comparability.

Example 2. The facts are the same as *Example 1*, except that the national compensation survey divides the data regarding compensation for university presidents into categories based on various university-specific factors, including the size of the institution (in terms of the number of students it serves and the amount of its revenues) and geographic area. The survey data shows that university presidents at institutions comparable to and in the same geographic area as Z receive annual compensation in the range of $200*x* to $300*x*. The executive committee of the Board of Trustees of Z relies on the survey data and its evaluation of Q's many years of service as a tenured professor and high-ranking university official at Z in setting Q's compensation at $275*x* annually. The data relied upon by the executive committee constitutes appropriate data as to comparability.

Example 3. X is a tax-exempt hospital that is an applicable tax-exempt organization for purposes of section 4958. Before renewing the contracts of X's chief executive officer and chief financial officer, X's governing board commissioned a customized compensation survey from an independent firm that specializes in consulting on issues related to executive placement and compensation. The survey covered executives with comparable responsibilities at a significant number of taxable and tax-exempt hospitals. The survey data are sorted by a number of different variables, including the size of the hospitals and the nature of the services they provide, the level of experience and specific responsibilities of the executives, and the composition of the annual compensation packages. The board members were provided with the survey results, a detailed written analysis comparing the hospital's executives to those covered by the survey, and an opportunity to ask questions of a member of the firm that prepared the survey. The survey, as prepared and presented to X's board, constitutes appropriate data as to comparability.

Example 4. The facts are the same as *Example 3*, except that one year later, X is negotiating a new contract with its chief executive officer. The governing board of X obtains information indicating that the relevant market conditions have not changed materially, and possesses no other information indicating that the results of the prior year's survey are no longer valid. Therefore, X may continue to rely on the independent compensation survey prepared for the prior year in setting annual compensation under the new contract.

Example 5. W is a local repertory theater and an applicable tax-exempt organization for purposes of section 4958. W has had annual gross receipts ranging from $400,000 to $800,000 over its past three taxable years. In determining the next year's compensation for W's artistic director, the board of directors of W relies on data compiled from a telephone survey of three other unrelated performing arts organizations of similar size in similar communities. A member of the board drafts a brief written summary of the annual compensation information obtained from this informal survey. The annual compensation information obtained in the telephone survey is appropriate data as to comparability.

(3) *Documentation*—(i) For a decision to be documented adequately, the written or electronic records of the authorized body must note—

(A) The terms of the transaction that was approved and the date it was approved;

(B) The members of the authorized body who were present during debate on the transaction that was approved and those who voted on it;

(C) The comparability data obtained and relied upon by the authorized body and how the data was obtained; and

(D) Any actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the authorized body but who had a conflict of interest with respect to the transaction.

(ii) If the authorized body determines that reasonable compensation for a specific arrangement or fair market value in a specific property transfer is higher or lower than the range of comparability data obtained, the authorized body must record the basis for its determination. For a decision to be documented concurrently, records must be prepared before the later of the next meeting of the authorized body or 60 days after the final action or actions of the authorized body are taken. Records must be reviewed and approved by the authorized body as reasonable, accurate and complete within a reasonable time period thereafter.

(d) *No presumption with respect to non-fixed payments until amounts are determined*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, in the case of a payment that is not a fixed payment (within the meaning of § 53.4958–4(a)(3)(ii)), the rebuttable presumption of this section arises only after the exact amount of the payment is determined, or a fixed formula for calculating the payment is specified, and the three requirements for the presumption under paragraph (a) of this section subsequently are satisfied. See § 53.4958–4(b)(2)(i).

(2) *Special rule for certain non-fixed payments subject to a cap.* If the authorized body approves an employment contract with a disqualified person that includes a non-fixed payment (such as a discretionary bonus) subject to a specified cap, the authorized body may establish a rebuttable presumption with respect to the non-fixed payment at the time the employment contract is entered into if—

(i) Prior to approving the contract, the authorized body obtains appropriate comparability data indicating that a fixed payment of up to a certain amount to the particular disqualified person would represent reasonable compensation;

(ii) The maximum amount payable under the contract (taking into account both fixed and non-fixed payments) does not exceed the amount referred to in paragraph (d)(2)(i) of this section; and

(iii) The other requirements for the rebuttable presumption of reasonableness under paragraph (a) of this section are satisfied.

(e) *No inference from absence of presumption.* The fact that a transaction between an applicable tax-exempt organization and a disqualified person is not subject to the presumption described in this section neither creates any inference that the transaction is an excess benefit transaction, nor exempts or relieves any person from compliance with any Federal or state law imposing any obligation, duty, responsibility, or other standard of conduct with respect to the operation or administration of any applicable tax-exempt organization.

(f) *Period of reliance on rebuttable presumption.* Except as provided in paragraph (d) of this section with respect to non-fixed payments, the rebuttable presumption applies to all payments made or transactions completed in accordance with a contract, provided that the provisions of paragraph (a) of this section were met at the time the parties entered into the contract.

§ 53.4958–7 Correction.

(a) *In general.* An excess benefit transaction is corrected by undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the applicable tax-exempt organization involved in the excess benefit transaction in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards. Paragraph (b) of this section describes the acceptable forms of correction. Paragraph (c) of this section defines the correction amount. Paragraph (d) of this section describes correction where a contract has been partially performed. Paragraph (e) of this section describes correction where the applicable tax-exempt organization involved in the transaction has ceased to exist or is no longer tax-exempt. Paragraph (f) of this section provides examples illustrating correction.

(b) *Form of correction*—(1) *Cash or cash equivalents.* Except as provided in paragraphs (b)(3) and (4) of this section, a disqualified person corrects an excess benefit only by making a payment in cash or cash equivalents, excluding payment by a promissory note, to the applicable tax-exempt organization equal to the correction amount, as defined in paragraph (c) of this section.

(2) *Anti-abuse rule.* A disqualified person will not satisfy the requirements of paragraph (b)(1) of this section if the Commissioner determines that the disqualified person engaged in one or more transactions with the applicable tax-exempt organization to circumvent the requirements of this correction section, and as a result, the disqualified person effectively transferred property other than cash or cash equivalents.

(3) *Special rule relating to nonqualified deferred compensation.* If an excess benefit transaction results, in whole or in part, from the vesting (as

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described in § 53.4958–1(e)(2)) of benefits provided under a nonqualified deferred compensation plan, then, to the extent that such benefits have not yet been distributed to the disqualified person, the disqualified person may correct the portion of the excess benefit resulting from the undistributed deferred compensation by relinquishing any right to receive the excess portion of the undistributed deferred compensation (including any earnings thereon).

(4) *Return of specific property*—(i) *In general.* A disqualified person may, with the agreement of the applicable tax-exempt organization, make a payment by returning specific property previously transferred in the excess benefit transaction. In this case, the disqualified person is treated as making a payment equal to the lesser of—

(A) The fair market value of the property determined on the date the property is returned to the organization; or

(B) The fair market value of the property on the date the excess benefit transaction occurred.

(ii) *Payment not equal to correction amount.* If the payment described in paragraph (b)(4)(i) of this section is less than the correction amount (as described in paragraph (c) of this section), the disqualified person must make an additional cash payment to the organization equal to the difference. Conversely, if the payment described in paragraph (b)(4)(i) of this section exceeds the correction amount (as described in paragraph (c) of this section), the organization may make a cash payment to the disqualified person equal to the difference.

(iii) *Disqualified person may not participate in decision.* Any disqualified person who received an excess benefit from the excess benefit transaction may not participate in the applicable tax-exempt organization's decision whether to accept the return of specific property under paragraph (b)(4)(i) of this section.

(c) *Correction amount.* The correction amount with respect to an excess benefit transaction equals the sum of the excess benefit (as defined in § 53.4958–1(b)) and interest on the excess benefit. The amount of the interest charge for purposes of this section is determined by multiplying the excess benefit by an interest rate, compounded annually, for the period from the date the excess benefit transaction occurred (as defined in § 53.4958–1(e)) to the date of correction. The interest rate used for this purpose must be a rate that equals or exceeds the applicable Federal rate (AFR), compounded annually, for the month in which the transaction occurred. The period from the date the excess benefit transaction occurred to the date of correction is used to determine whether the appropriate AFR is the Federal short-term rate, the Federal mid-term rate, or the Federal long-term rate. See section 1274(d)(1)(A).

(d) *Correction where contract has been partially performed.* If the excess benefit transaction arises under a contract that has been partially performed, termination of the contractual relationship between the organization and the disqualified person is not required in order to correct. However, the parties may need to modify the terms of any ongoing contract to avoid future excess benefit transactions.

(e) *Correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt*—(1) *In general.* A disqualified person must correct an excess benefit transaction in accordance with this paragraph where the applicable tax-exempt organization that engaged in the transaction no longer exists or is no longer described in section 501(c)(3) or (4) and exempt from tax under section 501(a).

(2) *Section 501(c)(3) organizations.* In the case of an excess benefit transaction with a section 501(c)(3) applicable tax-exempt organization, the disqualified person must pay the correction amount, as defined in paragraph (c) of this section, to another organization described in section 501(c)(3) and exempt from tax under section 501(a) in accordance with the dissolution clause contained in the constitutive documents of the applicable tax-exempt organization involved in the excess benefit transaction, provided that—

(i) The organization receiving the correction amount is described in section 170(b)(1)(A) (other than in section 170(b)(1)(A)(vii) and (viii)) and has been in existence and so described for a continuous period of at least 60 calendar months ending on the correction date;

(ii) The disqualified person is not also a disqualified person (as defined in § 53.4958–3) with respect to the organization receiving the correction amount; and

(iii) The organization receiving the correction amount does not allow the disqualified person (or persons described in § 53.4958–3(b) with respect to that person) to make or recommend any grants or distributions by the organization.

(3) *Section 501(c)(4) organizations.* In the case of an excess benefit transaction with a section 501(c)(4) applicable tax-exempt organization, the disqualified person must pay the correction amount, as defined in paragraph (c) of this section, to a successor section 501(c)(4) organization or, if no tax-exempt successor, to any organization described in section 501(c)(3) or (4) and exempt from tax under section 501(a), provided that the requirements of paragraphs (e)(2)(i) through (iii) of this section are satisfied (except that the requirement that the organization receiving the correction amount is described in section 170(b)(1)(A) (other than in section 170(b)(1)(A)(vii) and (viii)) shall not apply if the organization is described in section 501(c)(4)).

(f) *Examples.* The following examples illustrate the principles of this section describing the requirements of correction:

Example 1. W is an applicable tax-exempt organization for purposes of section 4958. D is a disqualified person with respect to W. W employed D in 1999 and made payments totaling *$12t* to D as compensation throughout the taxable year. The fair market value of D's services in 1999 was *$7t*. Thus, D received excess compensation in the amount of *$5t*, the excess benefit for purposes of section 4958. In accordance with § 53.4958–1(e)(1), the excess benefit transaction with respect to the series of compensatory payments during 1999 is deemed to occur on December 31, 1999, the last day of D's taxable year. In order to correct the excess benefit transaction on June 30, 2002, D must pay W, in cash or cash equivalents, excluding payment with a promissory note, *$5t* (the excess benefit) plus interest on *$5t* for the period from the date the excess benefit transaction occurred to the date of correction (i.e., December 31, 1999, to June 30, 2002). Because this period is not more than three years, the interest rate D must use to determine the interest on the excess benefit must equal or exceed the short-term AFR, compounded annually, for December, 1999 (5.74%, compounded annually).

Example 2. X is an applicable tax-exempt organization for purposes of section 4958. B is a disqualified person with respect to X. On January 1, 2000, B paid X *$6v* for Property F. Property F had a fair market value of *$10v* on January 1, 2000. Thus, the sales transaction on that date provided an excess benefit to B in the amount of *$4v*. In order to correct the excess benefit on July 5, 2005, B pays X, in cash or cash equivalents, excluding payment with a promissory note, *$4v* (the excess benefit) plus interest on *$4v* for the period from the date the excess benefit transaction occurred to the date of correction (i.e., January 1, 2000, to July 5, 2005). Because this period is over three but not over nine years, the interest rate B must use to determine the interest on the excess benefit must equal or exceed the mid-term AFR, compounded annually, for January, 2000 (6.21%, compounded annually).

Example 3. The facts are the same as in *Example 2*, except that B offers to return Property F. X agrees to accept the return of Property F, a decision in which B does not participate. Property F has declined in value since the date of the excess benefit transaction. On July 5, 2005, the property has a fair market value of *$9v*. For purposes of correction, B's return of Property F to X is treated as a payment of *$9v*, the fair market value of the property determined on the date the property is returned to the organization. If *$9v* is greater than the correction amount (*$4v* plus interest on *$4v* at a rate that equals or exceeds 6.21%, compounded annually, for the period from January 1, 2000, to July 5, 2005), then X may make a cash payment to B equal to the difference.

Example 4. The facts are the same as in *Example 3*, except that Property F has increased in value since January 1, 2000, the date the excess benefit transaction occurred, and on July 5, 2005, has a fair market value of *$13v*. For purposes of correction, B's return of Property F to X is treated as a payment of *$10v*, the fair market value of the property on the date the excess benefit transaction occurred. If *$10v* is greater than the correction amount (*$4v* plus interest on *$4v* at a rate that equals or exceeds 6.21%, compounded annually, for the period from January 1, 2000, to July 5, 2005), then X may make a cash payment to B equal to the difference.

Example 5. The facts are the same as in *Example 2*. Assume that the correction amount B paid X in cash on July 5, 2005, was *$5.58v*. On July 4, 2005, X loaned *$5.58v* to B, in exchange for a promissory note signed by B in the amount of *$5.58v*, payable with interest at a future date. These facts indicate that B engaged in the loan transaction to circumvent the requirement of this section that (except as provided in paragraph (b)(3) or (4) of this section), the correction amount must be paid only in cash or cash equivalents. As a result, the Commissioner may determine that B effectively transferred property other than cash or cash equivalents, and therefore did not satisfy the correction requirements of this section.

§ 53.4958–6 Special rules.

(a) *Substantive requirements for exemption still apply.* Section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3) or (4), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual. Thus, regardless of whether a particular transaction is subject to excise taxes under section 4958, existing principles and rules may be implicated, such as the limitation on private benefit. For example, transactions that are not subject to section 4958 because of the initial contract exception described in § 53.4958–4(a)(3) may, under certain circumstances, jeopardize the organization's tax-exempt status.

(b) *Interaction between section 4958 and section 7611 rules for church tax inquiries and examinations.* The procedures of section 7611 will be used in initiating and conducting any inquiry or examination into whether an excess benefit transaction has occurred between a church and a disqualified person. For purposes of this rule, the reasonable belief required to initiate a church tax inquiry is satisfied if there is a reasonable belief that a section 4958 tax is due from a disqualified person with respect to a transaction involving a church. See § 301.7611–1 Q&A 19 of this chapter.

(c) *Other substantiation requirements.* These regulations, in § 53.4958–4(c)(3), set forth specific substantiation rules. Compliance with the specific substantiation rules of that section does not relieve applicable tax-exempt organizations of other rules and requirements of the Internal Revenue Code, regulations, Revenue Rulings, and other guidance issued by the Internal Revenue Service (including the substantiation rules of sections 162 and 274, or § 1.6001–1(a) and (c) of this chapter).

PART 301—PROCEDURE AND ADMINISTRATION

3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.7611–1 [Amended]

4. In § 301.7611–1, Q–19 and A–19 at the end of the section are revised to read as follows:

§ 301.7611–1 Questions and answers relating to church tax inquiries and examinations.

* * * * *

Application to Section 4958

Q–19: When do the church tax inquiry and examination procedures described in section 7611 apply to a determination of whether there was an excess benefit transaction described in section 4958?

A–19: See § 53.4958–7(b) of this chapter for rules governing the interaction between section 4958 excise taxes on excess benefit transactions and section 7611 church tax inquiry and examination procedures.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

6. In § 602.101, paragraph (b) is amended by removing the entry for "53.4958–6T" and adding an entry for "53.4958–6" to the table in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . .	. . .
53.4958–6	1545–1623
. . .	. . .

Approved: December 21, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–985 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AK91

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects Without Remanding

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) to permit the Board to obtain evidence, clarify the evidence, cure a procedural defect, or perform any other action essential for a proper appellate decision in any appeal properly before it without having to remand the appeal to the agency of original jurisdiction. It also allows the Board to consider additional evidence without having to refer the evidence to the agency of original jurisdiction for initial consideration and without having to obtain the appellant's waiver. By reducing the number of appeals remanded, VA intends to shorten appeal processing time and to reduce the backlog of claims awaiting decision.

DATES: *Effective Date:* These amendments are effective February 22, 2002.

Applicability Date: These amendments apply to appeals for which the notice of disagreement was filed on or after February 22, 2002, and to appeals pending, whether at the Board of Veterans' Appeals, the United States Court of Appeals for Veterans Claims, or

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the United States Court of Appeals for the Federal Circuit, on February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals ((202) 565–5978), or Michael J. Timinski, Attorney, Office of General Counsel ((202) 273–6327), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits.

On August 6, 2001, VA published a notice of proposed rulemaking (NPRM) which would permit the Board to obtain evidence and correct procedural defects without remanding the case to the agency of original jurisdiction. 66 FR 40942 (2001). We received seven comments: Two from individuals; three from veterans service organizations; one from a state department of veterans affairs; and one from an association of attorneys.

For the reasons described below, we are adopting the regulations largely as proposed, but with some amendments based on the comments and other concerns.

Changes to Proposed Regulations

One commenter suggested extensive changes to Rule 903 (38 CFR 20.903), relating to notification of evidence secured and law to be considered by the Board and opportunity for response. While we decline to follow all of the suggestions, we have amended Rule 903 to clarify that the appellant may, within the 60-day period, submit evidence and argument relating to the evidence or law. Proposed Rule 1304(b)(2) (38 CFR 20.1304(b)) implicitly provided the right to submit evidence and argument in connection with the Board's consideration of evidence or law not previously considered by the agency of original jurisdiction.

We decline to adopt the commenter's suggestion that the Board's notice include a statement of the weight the Board intends to assign to new evidence or law, an assessment of whether the evidence or law is "determinative, significant or of minimal impact," a statement of whether the new evidence or law will likely result in the denial of the appeal, and a list of the claimant's options. These matters are generally not determined until the Board weighs the evidence and decides the appeal. The purpose of our amendments to § 20.903 is to ensure that an appellant receives adequate notice of new evidence obtained by the Board and of law that the Board intends to consider, as well as an opportunity to respond with additional evidence or argument; the purpose is not to give an appellant advance notice of the decision the Board intends to make in an appeal. Our purpose is adequately served by providing the appellant with a copy of the evidence obtained by the Board, a copy or summary of the law to be considered, and an opportunity to submit relevant evidence or argument in response.

Another commenter suggested that, in connection with the Board's consideration of law not already considered by the agency of original jurisdiction, we should provide a copy or summary of the law, rather than a copy or "reference" to the law. We think this is a good suggestion and have incorporated it into Rule 903(c).

The same commenter suggested that, when the Board secures evidence not provided by the appellant, the Board should provide a copy of that evidence to the appellant. Because that was our intent, we have clarified Rule 903(b) to make it explicit.

Further, that commenter asserted that the record development procedures in 38 CFR 19.9 lack provisions to make this record development comply with the notice and other requirements of the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. 106–475, 114 Stat. 2096. We agree and have amended proposed § 19.9(a)(2) to clarify that any development undertaken by the Board will comply with 38 CFR 3.159(a) and (c)–(f), which implements the VCAA. Those provisions delineate the obligations of VA and the claimant with respect to obtaining evidence. Section 3.159(b) relates to notices VA must give when it receives a substantially complete or incomplete application. Because that notice is normally given in the earliest stages of claim processing, even before evidence gathering begins, § 3.159(b) was designed for implementation by regional offices. Application of those provisions to the Board would be inapt. Nevertheless, because under § 19.9(a)(2) the Board could provide the notice, we have made other amendments to § 19.9(a)(2) to provide the same protections afforded by the VCAA.

We have added a provision (38 CFR 19.9(a)(2)(ii)) to ensure two things: First, if the Board undertakes to provide the notice required by 38 U.S.C. 5103(a) and/or 38 CFR 3.159(b)(1), the appellant shall have not less than 30 days in which to respond to that notice. Second, because 38 U.S.C. 5103(b) appears to give the claimant one year to provide the evidence requested of the claimant in the notice, we have clarified that, if the appellant submits relevant evidence within one year of the notice but after the Board's decision, the evidence will be referred to the agency of original jurisdiction. If that agency makes a favorable determination based on that evidence, the effective date of the determination will be the same as if the Board had granted the appeal. This latter rule is based on Rule 1304(b)(1), which relates to evidence submitted to the Board before its decision, but not accepted in connection with the appeal.

We have modified Rule 903(c) to make explicit that, in two situations, the Board need not notify the appellant that it intends to consider a law not considered by the regional office: (1) If the Board intends to grant the benefit; or (2) if the appellant or the appellant's representative has advanced or otherwise argued consideration of the law in question. If the Board intends to grant the benefit, there is no need to delay the claim with notice. Similarly, if the appellant has raised the applicability of a law, then he or she has already been heard with respect to the law, and Rule 903(c)'s purpose has been satisfied. Accordingly, there would be no need to go through these notice procedures in either of these situations.

We have also corrected an erroneous reference in proposed § 20.903(b).

Alternative Approach

One commenter suggested an alternative approach. Under this approach, if a case requires additional evidence, a Board member would prepare a memorandum listing such evidence. Personnel from the Veterans Benefits Administration (VBA), the part of VA that operates the regional offices, would be temporarily assigned to the Board and would complete the required development. When the development was completed, the appellant would be given the choice, as under prior regulatory procedures, of having the Board decide the case or first having the regional office make another decision, based on the additional evidence.

The chief efficiency in this approach would probably be that experienced VBA personnel would be developing the evidence, rather than the Board, which has essentially no experience in such matters. On the other hand, the approach would not eliminate remands to the regional offices to decide a claim based on new evidence, since the appellant could decline to waive initial regional office consideration.

While we appreciate this thoughtful suggestion, we do not believe that it would do as much to relieve pressure on the regional offices.

Hearings

One commenter suggested that the Board's rules should provide a right to a hearing when the Board is considering new evidence. While we understand the concern motivating this suggestion, we think that Rule 1304(b), which permits a hearing upon a showing of good cause, is sufficient to protect the appellant's right to due process.

First, there should be no question that these regulations provide substantial due process protections when the Board develops new evidence: We have amended 38 CFR 20.903(b) to provide that, if the Board obtains pertinent evidence not submitted by the appellant, the Board will provide the appellant a copy of the evidence and 60 days to submit additional evidence or argument in response.

Second, evidence submitted after an appeal is transferred to the Board is not a new situation. The Board has dealt with it for many years. *Compare* 38 CFR 20.709 (2001) (procurement of additional evidence following a hearing) *with* 38 CFR 19.164 (1983) (same), *published in* 48 FR 6961 (1983); *also compare* 38 CFR 20.1304(b) (evidence submitted after certification and transfer) *with* 38 CFR 19.174 (1983) (same), *published in* 48 FR 6961 (1983). While in the past, Board consideration in the first instance required the appellant to waive initial consideration by the regional office, 38 CFR 20.1304(c) (2001), a hearing would have been available—and is still available—upon a showing of good cause, *id.* 20.1304(b).

We think this time-tested approach will adequately serve the interests of veterans both in being heard and in receiving a prompt decision on appeal. In sum, we believe we are protecting the important due process rights of all appellants.

Objections

The veterans service organizations and the association of attorneys opposed the proposed rule. In general, their reasons for opposition fell into four categories: (1) Procedural issues relating to the rulemaking; (2) alleged legal barriers to implementation of the proposed rules; (3) alleged conflicts with the VCAA; and (4) policy issues which allegedly make adoption of the rule unwise. In addition, one commenter raised questions concerning the effective date of these rules.

We do not agree with these objections. We will address them in turn.

1. Procedural Issues

One commenter felt the 30-day comment period was too short and suggested that, in connection with publication of the final rule, we announce another 30-day comment period. We decline to do so.

As we explained in our NPRM, 66 FR at 40944, we chose a 30-day comment period because of the exigent nature of the backlog of claims at our regional offices. We received thoughtful comments from a number of commenters. While we are always interested in comments from the public relating to our rules, we do not see any particular interest that would be served by reopening the comment period.

2. Legal Barriers to Regulations

Several commenters suggested that provisions of the proposed rule conflict with general legal principles or particular statutes that would prevent the rule's adoption.

a. The Board's Status as an Appellate Body Prevents it From Developing Evidence

Three commenters asserted that the Board does not have the authority to develop evidence because it is an appellate tribunal and hence limited to review of the record below. We have examined the applicable statutes and court decisions interpreting them. We do not agree that the nature of the Board's administrative appellate review excludes the possibility of securing and ruling on evidence or ruling on issues of law that were not decided by the agency of original jurisdiction.

As a general matter, an agency's administrative appellate body has all the power the agency has in the initial decision process—in VA's case, the process at the regional offices—and the power to receive additional or supplemental evidence. 2 Am. Jur. 2d *Administrative Law* §§ 372, 375 (2000). Other agencies have issued regulations authorizing their administrative appellate bodies to secure and review new evidence. *See* 42 CFR 404.976(b)(2) (in appeals from decisions of Social Security Administration administrative law judges, Appeals Council has authority to obtain additional evidence if needed); 29 CFR 1614.404(a) (in appeals from decisions of administrative judges, the Equal Employment Opportunity Commission may supplement the record by investigation or other procedures); *see also Chrysler Corp.* v. *Federal Trade Comm'n*, 561 F.2d 357, 362–63 (1977) (on appeal from initial decision, FTC could supplement record with evidence it obtained). Because the statutes governing the Board do not withhold the power to receive additional evidence, which is generally held by administrative appellate bodies, we believe the Board also holds that power.

Moreover, in our view, VA's statutory scheme supports the Board's development of evidence. For example, the United States Court of Appeals for Veterans Claims (CAVC) has held that 38 U.S.C. 7109, which authorizes the Board to obtain expert medical opinions from outside VA, is an enabling provision which supplements the Board's inherent authority to secure medical opinions from within VA. *Winsett* v. *West*, 11 Vet. App. 420, 426 (1998) (Board has the authority, and in many cases the duty, to obtain an expert medical opinion irrespective of section 7109), *aff'd*, 217 F.3d 854 (Fed. Cir. 1999) (unpublished opinion). Furthermore, the CAVC has indicated that evidentiary development by the Board is consistent with statutory authority also suggestive of a Board fact-finding role. *Austin* v. *Brown*, 6 Vet. App. 547, 551 (1994); *see also Gilbert* v. *Derwinski*, 1 Vet. App. 49, 52 (1990) (Board is an administrative tribunal which functions as a fact finder in a manner similar to that of a trial court, although, for the most part, in a non-adversarial setting).

To support its assertion that the Board's status as an appellate body prevents the Board from developing evidence, one commenter cited a number of cases, including *Nolen* v. *Gober*, 222 F.3d 1356 (Fed. Cir. 2000); *Winters* v. *Gober*, 219 F.3d 1375 (Fed. Cir. 2000); *Hensley* v. *West*, 212 F.3d 1255 (Fed. Cir. 2000); *Smith* v. *Brown*, 35 F.3d 1516 (Fed. Cir. 1994); and *McCormick* v. *Gober*, 14 Vet. App. 39 (2000). We have reviewed those cases. While some of them deal with the nature of review by the CAVC, none of them stands for the proposition—or even implies the proposition—that the Board cannot develop evidence.

With respect to the Board applying law not considered by the regional office, the CAVC has never held that the Board is barred from such consideration, only that the appellant must be given notice and the opportunity to submit evidence and argument on that point. *e.g.*, *Sutton* v. *Brown*, 9 Vet. App. 553, 564–67 (1994). Our amendment to Rule 903 meets this standard.

Accordingly, we conclude that the Board's status as an appellate body does not bar it from developing evidence or considering law not considered by the regional office.

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b. Statutes Prohibit the Board From Developing Evidence or Curing Procedural Defects

Several commenters asserted that various statutes, 38 U.S.C. 511, 7101, 7104, 7105, and 7105A, prohibit the Board from developing evidence. We have carefully reviewed those statutes. We find nothing in any of them prohibiting or precluding the Board from developing evidence.

One commenter referred extensively to what various statutes "contemplated." For example, this commenter stated that 38 U.S.C. 7104(a) "does not contemplate that the Board is to cure procedural defects." This is the text of that statute:

> All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

Nothing in the statute refers to procedural defects, much less to curing them. The commenter provided no authority for its conclusion. Because we disagree with the commenters that any statute prohibits or precludes the Board from engaging in the activities mentioned in the proposed rule, we decline to make any change based on these comments.

That same commenter asserted that VA had never before interpreted 38 U.S.C. 7104(a) to authorize the Board to obtain evidence or cure procedural defects. While that may be true, the Board has long been authorized by statute to collect evidence in connection with a hearing, 38 U.S.C. 7107(b), and in connection with a request for independent medical opinions, *id.* 7109. Further, the commenter ignores the fact that the substance of Rule 901(a) (38 CFR 20.901(a)), relating to Board requests for medical opinions from VA's Under Secretary for Health (formerly the Chief Medical Director), has been in the Board's published rules of practice for more than 35 years. *See* 38 CFR 19.144 (1965) (expert medical opinions), *published in* 29 FR 1464, 1468 (1964). The commenter also fails to consider the Board's ability to cure some procedural defects, e.g., clarification of the issues on appeal or whether the appellant wants a hearing before the Board, without remand, which has been in the Board's appeals regulations since 1996. *See* 38 CFR 19.9(a). Regardless of whether VA has previously interpreted section 7104(a) to permit the Board to obtain evidence and cure procedural defects, that interpretation is consistent with all governing statutes.

Accordingly, we do not accept the proposition that statutes in title 38, United States Code, bar the Board from obtaining evidence or curing procedural defects.

c. Statutes Require Waiver of Consideration by the Regional Office When Evidence is Developed by the Board

One commenter asserted that the proposed amendment to 38 CFR 20.1304, which would allow the Board to consider evidence that it obtains or that is submitted to it, without having to refer the evidence to the agency of original jurisdiction for initial consideration in the absence of the appellant's waiver, is inconsistent with the statutory language of 38 U.S.C. 7104(a), 7105(a), 7109(a), and 7109(c). This commenter offered no authority for this proposition, other than to assert that, (1) as an appellate body, the Board is limited to the record before the Secretary, and (2) the amendment represents a change.

As discussed above, we think administrative appellate bodies generally are not limited to the evidence developed below, and that the Board in particular is not so limited. With respect to the comment that these amendments represent a change in policy, we agree. However, VA has the right to amend its regulations as long as the amendments do not conflict with statutes. We have carefully reviewed the cited statutes, and find nothing in them that would prohibit or preclude the change. Accordingly, we reject this objection.

Another commenter argued that 38 U.S.C. 7101 and 7104 prevent the Board from generating determinations which have not been subject to prior agency adjudication and review. The commenter offers no other authority for this proposition. We have reviewed those provisions carefully and find in their text no support for the commenter's argument. We reject this argument.

The same commenter argued that, by considering laws not considered by the regional office, the Board would unlawfully relieve the regional office of its obligation to follow all applicable statutes and regulations. The argument appears to be this: If the Board considers a law not considered by the regional office and decides the case without remand, it will have sanctioned the regional office's failure to consider the law.

The only authority the commenter offers for this proposition is a case which reiterates the axiom that agencies must act in accordance with applicable statutes and regulations. *Paralyzed Veterans of America* v. *West*, 136 F.3d 1434, 1436 (Fed. Cir. 1998). That axiom provides no support for the proposition that an administrative tribunal has no authority to apply law not applied by an inferior tribunal. If a regional office has failed to consider an applicable law, it is important that the law be considered in connection with the claim, but whether the consideration is made by the Board in the first instance or by the regional office on remand from the Board is not important. The Board's functions include correction of errors by the regional offices. For the reasons stated in the NPRM, we have decided to have the Board make such consideration in the first instance. We therefore reject the commenter's argument.

3. Conflicts With the VCAA

a. The Board Has No Jurisdiction To Implement the VCAA

Two commenters asserted that any evidence development by VA requires application of the VCAA and that, because the Board has no authority to implement that Act, the Board cannot develop evidence. The only argument advanced in support of this proposition is that the VCAA specifies that the Secretary provide assistance but does not mention the Board.

The VCAA requires the Secretary of Veterans Affairs to provide certain types of assistance in connection with a claim for benefits. By statute, the Board stands in place of the Secretary in connection with appeals. 38 U.S.C. 7104(a). Even if we were to associate some significance with the fact that the VCAA does not mention the Board—which, since it also does not mention agencies of original jurisdiction, we do not—the Secretary can delegate his VCAA obligations, which he is doing by publishing this regulation. Therefore, we reject this argument.

b. The Regulation's 60-Day Time Periods for Response Conflict With the One-year Time Period Set Forth in the VCAA

One commenter, without specifying any statutory or regulatory provisions other than "the VCAA," asserted that an appellant is always entitled to a one-year response period because of the VCAA. We do not agree.

New Rule 903, relating to notification of evidence secured and law to be considered by the Board and opportunity for response, provides a 60-day response period. The VCAA does not prohibit or preclude such a period.

The only one-year period provided by the VCAA is mentioned in 38 U.S.C. 5103(b). Under 38 U.S.C. 5103(a), when VA receives a substantially complete application for benefits, it must notify the claimant of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. In the case of information or evidence that VA tells the claimant he or she must provide, section 5103(b)(1) provides that, if such information or evidence is not received by VA within one year from the date of the notification, no benefit may be paid or furnished by reason of the claimant's application.

This one-year period in the VCAA is expressly applicable to information and evidence requested from a claimant in VA's notification in response to receiving a substantially complete application. The limitation in section 5103(b)(1) simply does not apply to an appellant's opportunity to respond to an opinion, evidence, or law, as set forth in new Rule 903.

We therefore reject this argument.

4. Policy Issues

Several commenters raised questions as to whether this increased authority for the Board made sense from a policy perspective.

a. Quality Problems at the Regional Offices

Three commenters were concerned that, to the extent these regulations curtailed the Board's remand function, the quality of regional office determinations would suffer. As one commenter stated:

> Appellate review is a quality control function. The goal (and perhaps intensity) of quality review is lost if the quality reviewer must itself correct the mistakes it finds. If the Board must correct the mistakes of the agency of original jurisdiction, the agency of original jurisdiction has no incentive to improve performance, and without having to ever acknowledge and correct its own mistakes, the agency of original jurisdiction is deprived of the means to learn from them.

We are sensitive to these concerns. However, a remand does not always connote error on the part of the regional office. For example, during the period October 2000 through March 2001, more than 27% of the Board's remands were based primarily on the need for the regional office to apply law which was not in effect at the time of the original decision. Similarly, during the period October 1998 through March 2001, between 5% and 10% of the Board's remands were based primarily on the appellant's request for a Board hearing at the regional office, which may have been submitted subsequent to the filing of the appeal. In any event, we believe that VBA's quality-review programs will solve any perceived problem with quality.

b. Inefficient Use of Resources

One commenter opposed the regulations in part because they would foster inefficient use of resources. Specifically, this commenter argued that Board employees possess a higher level of expertise than regional office employees, and that that higher expertise should be used where most appropriate, i.e., in reviewing regional office decisions, not in duplicating the regional offices' work.

As described in our NPRM, VA is now concerned with the very large backlog at the regional offices. At the end of August 2001, there were 367,000 original and reopened claims for service-connected disability compensation pending in VA's regional offices, double the number pending at the end of August 2000. Of the August 2001 cases, 40% (146,000 of 367,000) had been pending for more than 180 days, and 11% had been pending for more than a year (40,000 of 367,000). (The corresponding percentages in August 2000 were 28% and 8%, respectively.) We think employing the Board to help develop appealed claims will take pressure off the regional offices so that they can deal with these pending claims.

c. If Board Applies New Law, Claims Will Be Denied

One commenter argued that, if the Board decides a case based on law not applied by the regional office, the Board will deny the appeal because of inadequately developed records. The argument is essentially that the Board will consider the new law without providing the appellant an opportunity to submit evidence or argument.

The commenter does not take into account new Rule 903(c), which provides for notice to the claimant that the Board intends to consider such law and provides 60 days for a response. This approach is consistent with the CAVC's holding in *Sutton*, *supra*, and provides the appellant with an opportunity to present evidence and argument.

In addition, we have modified all three paragraphs in Rule 903 to clarify that the appellant may submit evidence and/or argument in response to the Board's notice.

d. Issues Relating to the Supplemental Statement of the Case

Two commenters raised questions relating to supplemental statements of the case (SSOC).

Generally, after a claimant files a notice of disagreement with a regional office decision, the regional office must prepare what the law calls a "statement of the case" (SOC). 38 U.S.C. 7105(d). An SOC includes a summary of pertinent evidence in the case, a citation to pertinent laws and regulations, a discussion of how those laws and regulations affect the decision, and a summary of the reasons for the decision. *Id.* 7105(d)(1)(A)–(C).

VA's regulations require the regional office to prepare an SSOC if the regional office receives additional pertinent evidence or the SOC is otherwise inadequate, such as where the regional office must apply new law in a case and the subsequent decision does not grant the benefits sought. 38 CFR 19.31. An SSOC is a document prepared by the regional office to inform the appellant of any material changes in, or additions to, the information included in the SOC or any prior SSOC.

One commenter appeared to assume that the Board would issue an SSOC if it considers new evidence or new law. It will not. The purpose of the SSOC is to provide the claimant with the reasons for the regional office decision so that the claimant can make an informed decision on whether to continue the appeal to the Board. Once a regional office transfers an appeal to the Board, this stage of the appeal is passed and there no longer is a need for an SSOC.

One commenter asserted that the Board's failure to provide an SSOC would eliminate a "substantive due process right" of the claimant. As discussed above, once an appeal has reached the Board, there is no reason to provide an SSOC, so no right is being eliminated.

We reject these arguments.

5. Effective Date

One commenter asserted that the new rules cannot apply to appeals pending on the date the rules become effective. Accordingly, it objected to our proposal that the amendments apply to appeals for which the notice of disagreement was filed on or after the effective date of these amendments and to appeals that were pending on that date. 66 FR at 40944.

As this commenter argues, retroactivity is not favored in regulations. *Bowen* v. *Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988). However, the effective date provisions in this rule do not make it retroactive.

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The fact that a regulation applies to pending matters does not make it retroactive. As the Supreme Court has said, a statute has retroactive effect if it "impairs rights a party possessed when he acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 280 (1994). And as the Federal Circuit has said, "an effective date, unless expressly conditioned on other events, governs the application of a new rule." *Schockley* v. *Arcan, Inc.*, 248 F.3d 1349, 1358–59 (Fed. Cir. 2001) (where reissue patent was pending when new rule took effect, the new rule applies); *cf. Demars* v. *First Service Bank for Savings*, 907 F.2d 1237, 1239–40 (1st Cir. 1990) (where substantive rights are not affected and there is no manifest injustice, new regulatory provisions apply to pending cases).

Under the new regulations, according to the commenter, appellants will lose their "rights" to have regional offices secure evidence and to have the regional offices adjudicate claims under laws those offices did not previously consider. In our view, which office within VA that will attempt to obtain evidence on behalf of a claimant or which office will adjudicate the effect of a law not previously considered are procedural matters. The appellant's rights to submit evidence and argument, as well as the right to have his or her regional office denial reviewed by the Board, are unabridged by these amendments.

Accordingly, we believe that it is proper to apply these rules to all pending appeals.

We do note, however, that these rules in no way abridge the appellant's right, under *Stegall* v. *West*, 11 Vet. App. 268, 271 (1998), to have VA comply with all remand orders, whether from the CAVC or from the Board. Accordingly, with respect to cases remanded by the Board, whether before or after the effective date of these amendments, VA's regional offices will continue to execute the remand orders, as well as prepare a SSOC when appropriate.

Paperwork Reduction Act

All collections under the Paperwork Reduction Act (44 U.S.C. 3501–3520) referenced in this document have existing Office of Management and Budget approval. This document makes no changes to those collections of information other than to change which VA component collects the information. Under this rule, the Board would collect some information currently collected by VA regional offices.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: November 14, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons stated in the preamble, 38 CFR parts 19 and 20 are amended as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.9 is revised to read as follows:

§ 19.9 Further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Board Member or panel of Members may:

(1) Remand the case to the agency of original jurisdiction, specifying the action to be undertaken; or

(2) Direct Board personnel to undertake the action essential for a proper appellate decision.

(i) Any such action shall comply with the provisions of § 3.159(a) and (c)–(f) of this chapter (relating to VA's assistance to claimants in developing claims).

(ii) If the Board undertakes to provide the notice required by 38 U.S.C. 5103(a) and/or § 3.159(b)(1) of this chapter, the appellant shall have not less than 30 days to respond to the notice. If, following the notice, the Board denies a benefit sought in the pending appeal and the appellant submits relevant evidence after the Board's decision but before the expiration of one year following the notice, that evidence shall be referred to the agency of original jurisdiction. If any evidence so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the award's effective date will be the same as if the Board had granted the benefit in the appeal pending when the notice was provided.

(b) *Examples.* A remand to the agency of original jurisdiction is not necessary:

(1) To clarify a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, and requests for a hearing before the Board; or

(2) For the Board to consider an appeal in light of law, including but not limited to statute, regulation, or court decision, not already considered by the agency of original jurisdiction.

(c) *Scope.* This section does not apply to:

(1) The Board's request for an opinion under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with a recognized medical treatise; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (§§ 20.609 and 20.610 of this chapter).

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a)).

3. Section 19.31 is revised to read as follows:

§ 19.31 Supplemental statement of the case.

(a) *Purpose and limitations.* A "Supplemental Statement of the Case," so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

(b) *When furnished.* The agency of original jurisdiction will furnish the appellant and his or her representative, if any, a Supplemental Statement of the Case if:

(1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;

(2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or

(3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.

(c) *Pursuant to remand from the Board.* The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

(Authority: 38 U.S.C. 7105(d)).

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

4. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart J—Action by the Board

5. Section 20.903 is revised to read as follows:

§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) *If the Board obtains a legal or medical opinion.* If the Board requests an opinion pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the appellant if there is no representative. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(b) *If the Board obtains other evidence.* If, pursuant to § 19.9(a) or § 19.37(b) of this chapter, the Board obtains pertinent evidence that was not submitted by the appellant or the appellant's representative, the Board will notify the appellant and his or her representative, if any, of the evidence obtained by furnishing a copy of such evidence. A period of 60 days from the date the Board furnishes the notice will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter or memorandum that accompanies the notice for purposes of determining whether a response was timely filed.

(c) *If the Board considers law not already considered by the agency of original jurisdiction.* If the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. The notice from the Board will contain a copy or summary of the law to be considered. A period of 60 days from the date the Board furnishes the notice will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter that accompanies the notice for purposes of determining whether a response was timely filed. No notice is required under this paragraph if the Board intends to grant the benefit being sought or if the appellant or the appellant's representative has advanced or otherwise argued the applicability of the law in question.

(Authority: 38 U.S.C. 7104(a), 7109(c)).

Subpart N—Miscellaneous

6. Section 20.1304 is amended by:

a. Revising the last sentence in paragraph (a);

b. Revising paragraph (b);

c. Removing paragraph (c); and

d. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) * * * Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence*—(1) *General rule.* Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Depending upon the ruling on the motion, action will be taken as follows:

(i) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or

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additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(ii) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(2) *If the Board obtains evidence or considers law not considered by the agency of original jurisdiction.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to the notice described in paragraph (b) or (c) of Rule 903 (paragraph (b) or (c) of § 20.903 of this part).

* * * * *

(Authority: 38 U.S.C. 7104, 7105, 7105A).

[FR Doc. 02–1536 Filed 1–22–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL –7128–3]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Idaho Department of Environmental Quality

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency, Region 10 (EPA) approves the Idaho Department of Environmental Quality's (IDEQ) request for program approval and delegation of authority to implement and enforce specific National Emission Standards for Hazardous Air Pollutants (NESHAPs) as they apply to major sources in Idaho required to obtain an operating permit under Title V of the federal Clean Air Act (CAA or Act). Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that Idaho State law, regulations, and resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for straight delegation common to all approval options, and in applicable EPA guidance.

The purpose of this delegation is to acknowledge IDEQ's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to IDEQ for Title V sources, also referred to as "major sources." Although EPA will look to IDEQ as the lead for implementing the NESHAPs delegated to IDEQ at major sources in Idaho, EPA retains authority under section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for major sources, if needed. EPA also retains authority to implement and enforce these standards for non-Title V sources. With program approval, IDEQ may choose to request newly promulgated or updated standards and expand its program to include non-Title V sources by-way-of a streamlined request and approval process, described below.

Concurrent with this direct final rule, EPA is publishing a proposed rule in today's **Federal Register**. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives adverse comment by February 22, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be submitted to the address below:

Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1172.

Copies of delegation requests and other supporting documentation are available for public inspection at US EPA, Region 10 office during normal business hours. Please contact Tracy Oliver to make an appointment.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1172.

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I. Background and Purpose

Hazardous air pollutants are defined in the Act as pollutants that present or may present the threat of adverse human health effects through inhalation or other type of exposure. These pollutants are commonly referred to as "air toxics" and are listed in section 112(b)(1) of the Act. National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of section 112 of the Act. These standards, found in 40 CFR Parts 61 and 63, constitute the Federal Air Toxics Program.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these entities can accept delegation of authority for implementation and enforcement. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

On June 18, 2001, IDEQ requested program approval and delegation of authority to implement and enforce certain NESHAPs as they apply to "major sources"[1] required to obtain an operating permit under Title V of the Act. A "major source" of hazardous air pollutants is defined in the Act as any stationary source—or group of stationary sources in a contiguous area and under common control—that emit, or have the potential to emit: (1) 10 tons per year or more of any hazardous air pollutant; or (2) 25 tons or more of any combination of hazardous air pollutants.

Pursuant to the authority of section 112(l) of the Act, EPA is approving IDEQ's NESHAP program and delegating authority to implement and enforce certain NESHAPs adopted unchanged into state law, as they apply to major sources. The purpose of this action is to acknowledge IDEQ's ability to implement and enforce a NESHAP program and to transfer primary responsibility from EPA to IDEQ for certain NESHAPs as they apply to Title V sources. Although EPA will look to IDEQ as the lead to implement and enforce delegated NESHAPs at Title V sources in Idaho, EPA retains authority under section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for these sources, if needed. EPA also retains authority to implement and enforce these standards for non-Title V sources. With today's NESHAP program approval, IDEQ may update its delegation status in the future by way of a streamlined process. This will simplify the delegation of additional, newly promulgated, or revised standards as they apply to Title V sources, as well as non-Title V sources.

a. What Are the Requirements for NESHAP Delegation?

EPA may delegate authority for NESHAPs if the requesting agency is able to satisfy requirements of 40 CFR 63.91(b), including the ability to demonstrate:

(1) The state or local program is not less stringent than the corresponding federal program or rule;

(2) The state or local has adequate authority and resources to implement and enforce the program;

(3) The schedule for compliance is sufficiently expeditious;

(4) The program is otherwise in compliance with federal guidance.

Once approval is granted, the agency's air toxics program can be implemented and enforced by the requesting agency. EPA also retains enforcement authority.

If—as in this case—an agency with an approved operating permit program under Title V of the Act is requesting NESHAP delegation for major sources only, it is presumed that they already meet section 112(l) delegation requirements for major sources. This is because the authority and enforcement requirements for Part 70 program approval are equivalent to the authority and enforcement requirements for section 112(l) delegation found in 40 CFR 63.91(d). And, the approval of a Title V program already confers the responsibility to implement and enforce all requirements applicable to sources subject to the Title V program, including section 112.

In addition to meeting the delegation criteria implicit in Title V program approval, IDEQ has submitted documents to demonstrate it satisfies 40 CFR 63.91(d) approval requirements for delegation for all sources. Because IDEQ has satisfied these requirements, it will only need to reference this demonstration and reaffirm that it continues to meet these criteria if it asks for delegation of new and updated standards, or requests broader applicability of its delegation to include non-Title V sources. These changes can be made in IDEQ's delegation status by-way-of a streamlined request and approval process, described below.

b. What Is the History of This Delegation?

On September 15, 1995, IDEQ requested delegation of authority to implement and enforce specific NESHAP regulations that IDEQ had adopted unchanged into Idaho law as they apply to major sources. On December 14, 1995, IDEQ also requested approval of its mechanism for receiving automatic delegation of future NESHAP standards, as promulgated.

On June 17, 1995, EPA proposed interim approval of IDEQ's request for delegation under section 112(l) of the Act and requested public comment on the action. EPA also proposed approval of a mechanism for IDEQ to receive delegation of future NESHAPs. (*See* 61 FR 30570) No comments were received on EPA's proposed action, and on December 6, 1996, EPA promulgated final interim approval of the delegation. (*See* 61 FR 64622) EPA granted interim rather than full approval because it determined that IDEQ's enforcement authorities substantially, but not fully, met the requirements of 40 CFR 70.11.

In granting Idaho interim approval of its NESHAPs program for major sources, EPA delegated authority for implementing and enforcing the following NESHAPs as they applied to Title V sources: (1) 40 CFR Part 61, subparts A, C, D, E, F, J, L through P, V, Y, BB, and FF; and (2) 40 CFR Part 63, subparts A, D, L, and M. EPA granted interim approval of a streamlined mechanism for receiving future delegation of NESHAPs which were adopted unchanged into Idaho law and as they applied to Title V sources.

On July 9, 1998, May 25, 1999, and March 15, 2001, the State of Idaho submitted to EPA materials addressing the Part 70 enforcement authority issues which had previously prevented full approval of its Title V program and NESHAP delegation, as well as all other issues that previously precluded full approval of Idaho's Title V program. These submittals requested full approval of Idaho's air operating permits program, transmitted the State's revised Title V statutes and rules, and discussed changes made to the State's operating permits program since interim approval was granted.

Based on EPA's review of the Title V program revisions submitted by the State of Idaho, EPA proposed full approval of Idaho's operating permits program on August 13, 2001. EPA determined that the State corrected the deficiencies and requested public comments on the proposed action. (*See* 66 FR 42490) On October 4, 2001, EPA promulgated final approval of Idaho's Title V program. (*See* 66 FR 50574)

On June 18, 2001, IDEQ requested final full delegation of authority for specific NESHAPs as they apply to Title V sources. This request was for delegation of Part 61 and 63 subparts in effect on July 1, 2000 and adopted unchanged into Idaho rules on March 30, 2001.

c. How Has IDEQ Satisfied the Requirements for NESHAP Delegation?

40 CFR 63.91 contains requirements that an Agency must meet for NESHAP delegation. If this request is for authority to implement and enforce the standards for all sources, the agency must demonstrate that it has adequate

[1] For the purposes of this action: (1) A source that is required to obtain an operating permit under Title V of the federal Clean Air Act may be considered a "major source," as defined in 40 CFR Part 70.2; (2) "Title V source" and "major source" may be considered equivalent; and (3) "Title V program" and "Part 70 permit program" may be considered equivalent.

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enforcement authority, legal authority, resources, and schedule for expeditious compliance. If the State already has an approved Title V program and the request is for Title V sources only, it is presumed that they have already met the requirements needed to implement and enforce NESHAPs for these sources.

Idaho's Title V approval was promulgated as an interim approval in 1997 because EPA determined that Idaho's authorities did not meet all of the requirements in 40 CFR part 70. Its request for NESHAP delegation also received interim approval because EPA determined that Idaho's enforcement authorities did not meet all of the requirements in 40 CFR 70.11, as required by 40 CFR 63.91(5)(6).

In the **Federal Register** notice that granted interim approval, EPA outlined several changes Idaho needed to make before it could receive final approval. The three changes that affected NESHAP delegation pertained to maximum criminal penalties, false statements and tampering, and the environmental audit statute. (*See* 61 FR 62622) These issues were all adequately addressed by Idaho in their subsequent Title V program application, which was approved by EPA. (*See* 66 FR 42490 and 66 FR 50574).

IDEQ has shown by way of Title V program approval, that IDEQ has adequate statutes, rules, authority, and program capacity to: (1) meet the requirements of Part 70.11 to address violations; (2) request information from regulated sources regarding compliance status; and (3) inspect sources and records to determine compliance status. These requirements of Title V are also requirements for section 112(l) delegation. Also, as a condition of its Title V program approval, EPA has determined that IDEQ has the ability to implement and enforce all applicable requirements for sources subject to the part 70 permit program, including section 112 requirements. As a result, EPA finds that IDEQ meets the requirements for NESHAP delegation for major sources. (*See* 40 CFR 63.91(d)(3))

With regard to program approval, in addition to demonstrating the enforcement authorities described above, Idaho met the following criteria for approval listed in 63.91(b):

(1) A copy of state statutes, regulations, and requirements that grant authority to implement a NESHAP program upon approval;

(2) a demonstration that the agency has the capacity to implement a NESHAP program, supported by a description of their program, a description of the implementing agency (including such things as budget and staffing);

(3) a schedule demonstrating expeditious implementation upon approval;

(4) a plan that ensures expeditious compliance by all sources subject to the delegated standards upon approval.

All of these requirements were met with IDEQ's submittal. These documents are available for public review and inspection at the address listed above.

II. EPA Action

a. What Specific Emission Standards Is EPA Delegating to IDEQ?

EPA is delegating certain part 61 and 63 Subparts to IDEQ based on its ability to carry out implementation and enforcement responsibilities for Title V sources subject to these standards. The following subparts—also summarized in the part 61 and 63 tables at the end of this rule—are delegated: (1) 40 CFR part 61 Subparts A, C, D, E, F, J, L, M, N, O, P, T, V, Y, and BB in effect July 1, 2000; (2) 40 CFR part 63 Subparts A, D, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, HH, EE, GG, II, JJ, KK, LL, OO, PP, QQ, RR, TT, UU, VV, WW, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, RRR, TTT, VVV, and XXX in effect July 1, 2000.

b. What Specific Standards Does EPA Not Delegate?

EPA does not delegate all the 40 CFR part 61 subparts pertaining to radon or radionuclides. Typically, EPA delegates all standards adopted (and requested) by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA is not delegating several 40 CFR part 61 subparts pertaining to radon or radionuclides which include: subparts B, Q, H, I, K, R, and W. EPA has determined that there are either no sources in Idaho (and that no new sources are likely to emerge), or if there are sources, the IDEQ does not have sufficient expertise to implement these NESHAPs.

Additionally, EPA is not delegating the regulations that implement CAA sections 112(g) and 112(j), codified at 40 CFR part 63, Subpart B, to IDEQ. EPA has determined that Subpart B need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing CAA section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*See* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the Title V permit process as the primary vehicle for establishing requirements" (*See* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) of the Act do not need approval under section 112(l).

c. What General Provisions Authorities Are Automatically Granted as Part of Idaho's Title V Operating Permits Program Approval?

Certain General Provisions authorities are automatically granted to IDEQ as part of its part 70 operating permits program approval. These are 40 CFR 63.6(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."[2] Additionally, for 40 CFR 63.6(i)(1), IDEQ does not need to have been delegated a particular standard or have issued a part 70 operating permit for a particular source to grant that source a compliance extension. However, IDEQ must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

d. What General Provisions Authorities Is EPA Delegating in This Action?

In a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, "Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarified which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR part 63, subpart E. Based on this memo, EPA is delegating to IDEQ the part 63, subpart A, sections that are listed below.

[2] Sections 112(i)(1) and (3) state that "Extension of Compliance with Emission Standards" and "Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this authority does not require delegation through Subpart E and, instead, is automatically granted to States as part of its Title V operating permits program approval provided the State has authority to implement those NESHAP standards in the Title V permit.

Delegation of these General Provisions authorities will enable IDEQ to carry out the EPA Administrator's responsibilities in these sections of subpart A. In delegating these authorities, EPA grants IDEQ the authority to make decisions which are not likely to be nationally significant or alter the stringency of the underlying standard. The intent is that these agencies will make decisions on a source-by-source basis, not on a source category-wide basis.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA DELEGATES TO IDEQ

Section	Authorities
63.1	Applicability Determinations
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors
63.7(e)(2)(iv) and (h)(2), (3)	Waiver of Performance Testing
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans
63.8(f)	Approval of Minor Alternatives to Monitoring
63.8(f)	Approval of Intermediate Alternatives to Monitoring
63.9 and 63.10 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports

In delegating 40 CFR 63.9 and 63.10, "Approval of Adjustments to Time Periods for Submitting Reports," IDEQ has the authority to approve adjustments to the timing of the reports that are due, but do not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by part 70 and nothing herein will change that requirement.

e. What General Provisions Authorities Are Not Delegated?

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. The types of authorities that EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and any decision that requires rulemaking to implement. The authorities listed in the table below (also mentioned in the footnotes of the parts 61 and 63 delegation tables at the end of this rule) are the specific General Provisions authorities that cannot be delegated to any state or local agency, which EPA therefore retains sole authority to implement.[3]

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA CANNOT DELEGATE TO STATE AND LOCAL AGENCIES.

Section	Authorities
61.04(b)	Waiver of Recordkeeping
61.12(d)(1)	Approval of Alternative Means of Emission Limitation
61.13(h)(1)(ii)	Approval of Major Alternatives to Test Methods
61.14(g)(1)(ii)	Approval of Major Alternatives to Monitoring
61.16	Availability of Information
61.53(c)(4)	List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chlor-alkl Plants
63.6(g)	Approval of Alternative Non-Opacity Emission Standards
63.6(h)(9)	Approval of Alternative Opacity Standard
63.7(e)(2)(ii) and (f)	Approval of Major Alternative to Test Methods
63.8(f)	Approval of Major Alternatives to Monitoring
63.10(f)	Waiver of Recordkeeping—all

[3] For authorities in 40 CFR parts 61 and 63 that are not addressed in this rulemaking and not otherwise identified as authorities that cannot be delegated, one may assume that they are delegated.

III. Implications

a. How Will This Delegation Affect the Regulated Community?

Once a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, IDEQ) becomes the primary point of contact with respect to that NESHAP. As a result of today's action, Title V sources in Idaho should direct questions and compliance issues to IDEQ.

For those authorities that are NOT delegated—those noted in Table 2 or any section of 40 CFR 61 and 63 that specifically indicates that authority may not be delegated—affected Title V sources should continue to work with EPA as their primary contact and submit materials directly to EPA for Administrator decision. In these specific cases, the delegated agency should be copied on all submittals, questions, and requests.

EPA continues to have primary responsibility to implement and enforce Federal regulations that do not have current state or local agency delegations. In this action, Idaho is receiving delegation for NESHAPs as they apply to Title V sources only. Therefore, EPA is the only agency that can implement and enforce NESHAPs as they apply to Idaho's area sources (non-Title V sources).

b. Where Will the Regulated Community Send Notifications and Reports?

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to IDEQ for their action, and send copies to EPA. Sources should

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continue to send to EPA—with a copy to IDEQ—notifications, reports, and requests required by authorities not delegated to IDEQ in this action.

c. How Will This Delegation Affect Indian Country?

This delegation to IDEQ to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because IDEQ has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

d. What Will Be IDEQ's Reporting Requirements to EPA?

In delegating the authority to implement and enforce these rules, EPA requires that IDEQ submit the following to EPA:

(1) IDEQ must input all minimum reportable requirements into the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) for both point and area sources. IDEQ must enter the information into the AIRS/AFS system by September 30 of each year;

(2) IDEQ must report to EPA all reportable requirements for MACTRAX semiannually (MACTRAX provides the summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);

(3) IDEQ must also provide any additional compliance related information to EPA as agreed upon in the Compliance Assurance Agreement between EPA and IDEQ;

(4) IDEQ must submit to EPA copies of determinations issued pursuant to delegated General Provisions authorities, listed in Table 1 above;

(5) IDEQ must also forward to EPA copies of any notifications received pursuant to 40 CFR 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(6) IDEQ must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate, and minor alternative test methods or monitoring methods, see the July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods or monitoring changes should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

e. How Will IDEQ Receive Delegation of Future and Revised Standards?

IDEQ will receive delegation of future standards by the following process:

(1) IDEQ will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into Idaho regulations;

(2) EPA will send a letter of response back to IDEQ granting this delegation request (or explaining why EPA cannot grant the request);

(3) IDEQ does not need to send a response back to EPA;

(4) If EPA does not receive a negative response from IDEQ within 10 days of EPA's letter to IDEQ, then the delegation will be final 10 days after the date of the letter from EPA; and

(5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

f. How Frequently Should IDEQ Update Its Delegation?

IDEQ should update its incorporations by reference of 40 CFR parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated. Preferably, IDEQ should adopt federal regulations effective as of the most recent publication date of 40 CFR parts 61 and 63, which is July first of each year.

IV. Summary

EPA approves IDEQ's request for program approval and delegation of authority to implement and enforce specific NESHAPs as they apply to major sources required to obtain a part 70 operating permit in Idaho. Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that Idaho state law, regulations, and resources meet the requirements for program approval and delegation of authority specified in 40 CFR 63.91 and applicable EPA guidance.

The purpose of this delegation is to acknowledge IDEQ's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to IDEQ for major sources. Although EPA will look to IDEQ as the lead for implementing delegated NESHAPs at major sources in Idaho, EPA retains authority under Section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for major sources, if needed. EPA also retains authority to implement and enforce these standards for non-major sources. With program approval, IDEQ may choose to request newly promulgated or updated standards and expand its program to include non-major sources by way of a streamlined process.

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to IDEQ for their action, and send a copy to EPA. Sources should continue to send notifications, reports, requests, etc. pursuant to Authorities not delegated to Idaho to EPA for our action, and send a copy to IDEQ.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full delegation of NESHAP standards to IDEQ for major sources should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 22, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 25, 2002 and no further action will be taken on the proposed rule.

V. Administrative Requirements

a. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled "Regulatory Planning and Review."

This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

b. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request.

c. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

d. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

e. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

f. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

g. Petitions for Judicial Review

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it

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extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 13, 2001.

L. John Iani,

Regional Administrator, Region 10.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended by revising the table in paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10

Subpart	AK	ID	Oregon		Washington							
	ADEC[1]	IDEQ[2]	ODEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	OAPCA[8]	PSCAA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A. General Provisions[13]	X	X[2]			X	X	X	X	X	X	X	X
B. Radon from Underground Uranium Mines												
C. Beryllium		X[2]			X	X	X	X	X	X	X	X
D. Beryllium Rocket Motor Firing		X[2]			X	X	X	X	X	X	X	X
E. Mercury	X	X[2]			X	X	X	X	X	X	X	X
F. Vinyl Chloride		X[2]			X	X	X	X	X	X	X	X
H. Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I. Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J. Equipment Leaks of Benzene	X	X[2]			X	X	X	X	X	X	X	X
K. Radionuclides from Elemental Phosphorus Plants												
L. Benzene from Coke Recovery		X[2]			X	X	X	X	X	X	X	X
M. Asbestos	X[1]	X[2]			X[5]	X[6]	X	X[8]	X	X	X	X
N. Arsenic from Glass Plants		X[2]			X	X	X	X	X	X	X	X
O. Arsenic from Primary Copper Smelters		X[2]			X	X	X	X	X	X	X	X
P. Arsenic from Arsenic Production Facilities		X[2]			X	X	X	X	X	X	X	X
Q. Radon from Dept of Energy facilities												
R. Radon from Phosphogypsum Stacks												
T. Radon from Disposal of Uranium Mill Tailings		X[2]										
V. Equipment Leaks	X	X[2]			X	X	X	X	X	X	X	X
W. Radon from Operating Mill Tailings												
Y. Benzene from Benzene Storage Vessels	X	X[2]			X	X	X	X	X	X	X	X
BB. Benzene from Benzene Transfer Operations		X[2]			X	X	X	X	X	X	X	X
FF. Benzene Waste Operations	X				X	X	X	X	X	X	X	X

[1] Alaska Department of Environmental Conservation (1/18/97)
Note: Alaska received delegation for §61.145 and §61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in §61.145, as §61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for Subpart M for sources not required to obtain an operating permit under Alaska's regulations.
[2] Idaho Department of Environmental Quality (7/1/00)
Note: Delegation of these Part 61 subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.
[3] Oregon Department of Environmental Quality
[4] Lane Regional Air Pollution Authority
[5] Washington Department of Ecology (7/1/00)
Note: Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford)
[6] Benton Clean Air Authority (7/1/00)
Note: Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, excluding Hanford.
[7] Northwest Air Pollution Authority (7/1/99)
[8] Olympic Air Pollution Control Authority (July 1, 2000)
Note: Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act
[9] Puget Sound Clean Air Agency (7/1/99)
[10] Spokane County Air Pollution Control Authority (7/1/00)
[11] Southwest Air Pollution Control Authority (8/1/96)
[12] Yakima Regional Clean Air Authority (7/1/00)
[13] Authorities which are not delegated include: §§61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; §61.14(g)(1)(ii) for approval of major alternatives to monitoring; §61.16; §61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(12) to read as follows:

§ 63.99 Delegated federal authorities.

* * * * *

(a) * * *

(12) Idaho.

(i) The following table lists the specific part 63 subparts that have been delegated unchanged to the Idaho Department of Environmental Quality. The (X) symbol indicates that all or part of the subpart is delegated, subject to the conditions and limits in EPA's action:

DELEGATION STATUS OF PART 63 NESHAPS—STATE OF IDAHO[1]

Subpart	IDEQ
A. General Provisions	X
D. Early Reductions	X
F. HON–SOCMI	X
G. HON-Process Vents	X
H. HON-Equipment Leaks	X
I. HON-Negotiated Leaks	X
L. Coke Oven Batteries	X
M. Perchloroethylene Dry Cleaning	X
N. Chromium Electroplating	X
O. Ethylene Oxide Sterilizers	X
Q. Industrial Process Cooling Towers	X
R. Gasoline Distribution	X
S. Pulp and Paper	X
T. Halogenated Solvent Cleaning	X
U. Polymers and Resins I	X
W. Polymers and Resins II—Epoxy	X
X. Secondary Lead Smelting	X
Y. Marine Tank Vessel Loading	X
AA. Phosphoric Acid Manufacturing Plants	X
BB. Phosphate Fertilizers Production Plants	X
CC. Petroleum Refineries	X
DD. Off-Site Waste and Recovery	X
EE. Magnetic Tape Manufacturing	X
GG. Aerospace Manufacturing & Rework	X
HH. Oil and Natural Gas Production Facilities	X
II. Shipbuilding and Ship Repair	X
JJ. Wood Furniture Manufacturing Operations	X
KK. Printing and Publishing Industry	X
LL. Primary Aluminum	X
OO. Tanks—Level 1	X
PP. Containers	X
QQ. Surface Impoundments	X
RR. Individual Drain Systems	X
SS. Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process	
TT. Equipment Leaks—Control Level 1	X
UU. Equipment Leaks—Control Level 2	X
VV. Oil-Water Separators and Organic-Water Separators	X
WW. Storage Vessels (Tanks)—Control Level 2	X
YY. Source Categories: Generic MACT	X
CCC. Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	X
DDD. Mineral Wool Production	X
EEE. Hazardous Waste Combustors	X
GGG. Pharmaceuticals Production	X
HHH. Natural Gas Transmission and Storage Facilities	X
III. Flexible Polyurethane Foam Production	X
JJJ. Polymers and Resins IV	X
LLL. Portland Cement Manufacturing	X
MMM. Pesticide Active Ingredient Production	X
NNN. Wool Fiberglass Manufacturing	X
OOO. Manufacture of Amino Phenolic Resins	X
PPP. Polyether Polyols Production	X
RRR. Secondary Aluminum Production	X
TTT. Primary Lead Smelting	X
VVV. Publicly Owned Treatment Works	X
XXX. Ferroalloys Production: Ferromanganese & Silicomanganese	X

[1] Delegation is for major sources only and subject to all federal law, regulations, policy and guidance.

(ii) [Reserved]

* * * * *

[FR Doc. 02–1119 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301209; FRL–6818–7]

RIN 2070–AB78

Mepiquat; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of mepiquat (N,N-dimethylpiperidinium) in or on cottonseed at 2.0 parts per million (ppm); cotton, gin byproducts at 6.0 ppm; and meat byproducts of cattle, goat, hog, horse and sheep at 0.1 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective January 23, 2002. Objections and requests for hearings, identified by docket control number OPP–301209, must be received by EPA on or before March 25, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301209 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the

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"**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.h tml*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301209. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 15, 2001 (66 FR 57446) (FRL–6809–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.384 be amended by establishing a tolerance for residues of the plant growth regulator mepiquat, N,N-dimethylpiperidinium chloride and N,N-dimethylpiperidinium pentaborate, in or on cottonseed at 2.0 ppm; cotton, gin byproducts at 6.0 ppm; and meat byproducts of cattle, goat, hog, horse, and sheep at 0.1 ppm.

The Agency is making the following minor changes to the tolerance action proposed in the petition:

1. The title for the tolerance (§ 180.384) will be revised to mepiquat (N,N-dimethylpiperidinium) to reflect the fact that the tolerance covers both the "chloride salt" (mepiquat chloride) and "pentaborate salt" (mepiquat pentaborate) forms of mepiquat.

2. Paragraph (a) is divided into two paragraphs with paragraph (a)(1) reflecting the "generic " tolerance for residues of either the "chloride salt," or "pentaborate salt," or both (e.g., cotton); while paragraph (a)(2) reflects those tolerances established only for the "chloride salt " form of mepiquat, i.e., mepiquat chloride. It is possible that in the future the Agency may propose combining these two paragraphs; however, mepiquat pentaborate is currently only proposed for registration on cotton. The only new commodity in this document for both mepiquat chloride and mepiquat pentaborate is cotton gin byproducts. The Mepiquat Chloride RED (March 1997) required residue data for this commodity, it has now been reviewed and the Agency has determined that a separate tolerance is required for this commodity. This resulted because of a revision to the Pesticide Assessment Guideline (Subdivision O, Residue Chemistry, 9/95) which recognized cotton gin byproducts as a raw agricultural commodity of cotton.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

A human health risk assessment was previously conducted for mepiquat chloride foliar use on cotton and was published in the Mepiquat Chloride RED, March 1997. In fact, tolerances have been established for mepiquat chloride in/on cottonseed at 2.0 ppm and animal commodities at 0.1 ppm. In addition, the Agency recently published a risk assessment (65 FR 1790, January 12, 2000) (FRL–6485–4) for mepiquat chloride use on grapes and raisins which included the previously registered use on cotton. The January 12, 2000, risk assessment reflects the most current risk assessment available for mepiquat and will be referred to throughout this document. A revised risk and exposure analysis for use of mepiquat pentaborate, a "pentaborate salt" of mepiquat being registered for foliar use on cotton, was not conducted because exposure to mepiquat chloride from use on cotton was evaluated in the Agency's January 12, 2000, risk assessment. The registrant was required to submit a complete battery of acute toxicity studies, product chemistry data and a dissociation study to verify that mepiquat pentaborate application would be toxicologically equivalent to mepiquat chloride application and that the impurities would remain essentially equivalent or improved (more protective of human/ecological health) over current mepiquat chloride products. The company maintains, and the Agency has verified that both compounds, the "chloride salt" version mepiquat chloride and the "pentaborate salt" version mepiquat pentaborate, disassociate in water in the same manner and result in the same exposure, both qualitatively and quantitatively. Use rates and other label restrictions, related to food residue levels and tolerance issues, will be the same as for current mepiquat chloride products. Review of the product chemistry data confirmed that no new toxicologically significant impurities would be involved. Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of mepiquat on cottonseed at 2.0 ppm; cotton, gin byproducts at 6.0 ppm; and meat byproducts of cattle, goat, hog, horse, and sheep at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

The Agency has determined that mepiquat pentaborate and mepiquat chloride are not significantly different as to impurities and/or toxicologically significant moieties. The registrant has submitted a battery of acute toxicity studies for mepiquat pentaborate which demonstrate that the acute toxicity is not significantly different from that of mepiquat chloride. The registrant has also submitted a dissociation study that demonstrates that mepiquat pentaborate dissociates in water in an identical physical manner to mepiquat chloride. It is the Agency's general policy that toxicology data for one "salt" support other mineral salts and that no additional toxicological data would be required for those entities. Mepiquat chloride is already registered for use on cotton and tolerances are established in 40 CFR 180.384 for residues of mepiquat chloride in/on cottonseed. In addition, tolerances for mepiquat chloride already exist for the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep (each at 0.1 ppm). The acute toxicity data for technical grade mepiquat pentaborate indicate toxicity category III for acute oral toxicity, acute dermal, acute inhalation, and primary eye irritation. The primary dermal irritation for mepiquat pentaborate is category IV, and mepiquat pentaborate is not a skin sensitizer.

B. Toxicological Endpoints

The Agency has determined that mepiquat pentaborate and mepiquat chloride are not significantly different as to impurities and/or toxicological significant moieties. Therefore, the toxicological endpoints published for mepiquat chloride on January 12, 2000 (65 FR 1790), pertain to this revision to 40 CFR 180.384. This revision to 40 CFR 180.384 simply adds tolerances for the pentaborate "salt" of mepiquat to the existing tolerances for the chloride "salt" version of mepiquat.

The Acute Population Adjusted Dose (aPAD) is 0.6 milligrams/kilograms/day (mg/kg/day) based on a 1-year dog feeding study with a 90-day dog feeding study supporting the 1-year dog study. The no observed adverse effect level (NOAEL) was 58.4 mg/kg/day with an Uncertainty Factor of 100 and the FQPA safety factor reduced to 1X. The Chronic Population Adjusted Dose (cPAD) is 0.6 mg/kg/day based on the 1-year dog feeding study with a supporting 90-day dog feeding study. The NOAEL was 58.4 mg/kg/day with an Uncertainty Factor of 100 and the FQPA safety factor reduced to 1X. Mepiquat chloride is classified as "not likely" to be a human carcinogen.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.384) for the residues of mepiquat, in or on a variety of raw agricultural commodities. Tolerances are established for cottonseed and for the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm. A risk assessment was conducted by EPA and published for mepiquat chloride on January 12, 2000, that discusses use on cotton as well as all other registered uses of mepiquat chloride. Dietary exposure from the use of mepiquat pentaborate on cotton will be qualitatively and quantitatively the same as for the existing use of mepiquat chloride on cotton. The Agency has a disassociation study that confirms the qualitative equivalence and the same use rates and other restrictions will ensure equivalent quantitative exposure. The company expects that the pentaborate salt formulation of mepiquat, mepiquat pentaborate, will replace a significant amount of mepiquat chloride use on cotton.

i. *Acute exposure.* The acute dietary food exposures (95th percentile) occupy only 1.5% of the aPAD for the most highly exposed subgroup (children 1–6 years). This is based on a Tier 1 analysis, assuming tolerance level residues and 100% crop treated. Percent crop treated and/or anticipated residues were not used in the January 12, 2000, analysis.

ii. *Chronic exposure.* The chronic dietary food exposures occupy only 0.3% of the cPAD for the most highly exposed subgroup (children 1–6 years). This is based on a Tier 1 analysis, assuming tolerance level residues and 100% crop treated. Percent crop treated and/or anticipated residues were or were not used in the January 12, 2000, analysis.

iii. *Cancer.* Mepiquat chloride was classified as "not a likely human carcinogen." Therefore, a cancer risk assessment was not conducted for this risk analysis; nor, was one conducted for the January 12, 2000, risk analysis that discussed the use on cotton as well as all other mepiquat uses.

2. *Dietary exposure from drinking water.* The Agency published a risk assessment for mepiquat chloride on January 12, 2000, that discusses use on cotton as well as all other registered uses of mepiquat chloride. In that analysis risk estimates for exposure to mepiquat chloride were below the Agency's level of concern. The Agency has reviewed a dissociation study for mepiquat pentaborate that demonstrates that mepiquat pentaborate dissociates in an identical physical manner to mepiquat chloride in water. Therefore, the analysis performed for mepiquat chloride or the "chloride salt," also pertains to this mepiquat "pentaborate salt" use because the use rate, maximum seasonal use rate and other pertinent use factors remain the same as for mepiquat chloride or the "chloride salt."

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Mepiquat chloride and/or mepiquat pentaborate are not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether mepiquat pentaborate and/or mepiquat chloride have a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, mepiquat does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mepiquat has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

In general. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal

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and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

The Agency has determined that the FQPA safety factor for mepiquat is 1X. See the Agency's risk assessment for mepiquat chloride dated January 12, 2000, for details. The facts are that mepiquat pentaborate is another "salt" of mepiquat and that mepiquat pentaborate disassociates to mepiquat and therefore the basic toxicology data base for mepiquat chloride pertains to mepiquat pentaborate.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* The Agency concludes that residues of mepiquat in food and drinking water will not exceed the Agency's level of concern (100% of the aPAD). For details see the Agency risk assessment published on January 12, 2000.

2. *Chronic risk.* The Agency concludes that residues of mepiquat in food and drinking water will not exceed the Agency's level of concern (100% of the cPAD). For details see the Agency's risk assessment published on January 12, 2000.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mepiquat chloride and mepiquat pentaborate are not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mepiquat chloride and mepiquat pentaborate are not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Mepiquat chloride is classified as a "not likely" human carcinogen and thus not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to mepiquat residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances established for mepiquat on cotton. Thus, there are no international harmonization issues for these tolerances.

C. Conditions

The Agency is requiring as conditions for registration the following:

1. Side-by-side residue field trials conducted with water as the diluent in all cotton growing areas of the United States (minimum of three).

2. Developmental neurotoxicity study for mepiquat pentaborate.

V. Conclusion

Therefore, the tolerance expression in 40 CFR 108.384(a)(1) is revised to reflect residues of mepiquat, in or on cottonseed; cotton gin by-products; and meat byproducts of cattle, goat, hog, horse, and sheep at 2.0, 6.0, and 0.1 ppm, respectively.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301209 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 25, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301209, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

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rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 4, 2002.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.384 is revised to read as follows:

§ 180.384 Mepiquat (N,N-dimethylpiperidinium); tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant growth regulator mepiquat (N,N-dimethylpiperidinium) in or on the following commodities:

Commodity	Parts per million
Cattle, mbyp	0.1
Cotton, gin by-products	6.0
Cottonseed	2.0
Goats, mbyp	0.1
Hogs, mbyp	0.1
Horses, mbyp	0.1
Sheep, mbyp	0.1

(2) Tolerances are established for residues of the plant growth regulator mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Goat, fat	0.1
Goat, meat	0.1
Grapes	1.0
Hogs, fat	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, meat	0.1
Raisins	5.0
Sheep, fat	0.1
Sheep, meat	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–1618 Filed 1–22–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 01–2928]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission updates line count input values for the high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2002. Specifically, the Commission shall use updated line count data in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism. The Commission further updates the company-specific data used in the model to calculate investment in general support facilities and switching costs.

DATES: Effective February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Order on Reconsideration in CC Docket No. 96–45 released on December 18, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Order

1. *2000 Line Counts.* Consistent with the framework adopted in the *Twentieth Reconsideration Order*, 66 FR 26513, May 8, 2000, and the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, the Commission concludes the cost model should use year-end 2000 line counts filed July 31, 2001, as input values for purposes of estimating average forward-looking costs and determining support for the year 2002. The Commission also concludes that line counts should be allocated to the classes of service used in the model based on the line count data filed pursuant to the *1999 Data Request*. The Commission further concludes that special access line counts should be allocated on the basis of the *1999 Data Request* data and trued-up to 2000 43–08 ARMIS special line counts. In addition, the Commission will adjust support amounts every quarter to reflect the lines reported by carriers, according to the methodology set forth in the *Twentieth Reconsideration Order*, 66 FR 26513, May 8, 2000. The Commission also stated that it plans to initiate a proceeding to study how often line counts and other input values should be updated.

2. Further, consistent with its action in the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, and because an updated customer location and road data set remains unavailable at this time, the Commission will not update customer location and road data at this time. Although the Commission recognizes that a new source of year 2000 Census data may be useful in creating an updated customer location and road data set in the future, such information is not in a usable data set format for purposes of determining support for 2002. The Commission, therefore, defers the issue of using these data in the model until the Commission initiates a comprehensive proceeding to study revisions and changes to the model inputs and model platform. In the meantime, all new lines should be treated as if they were located at existing locations in the model.

3. *Class of Service Allocations.* The Commission finds that using the methodology employed in the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, which used year-end wire center line count data filed pursuant to the *1999 Data Request*, remains a reasonable method for allocating line counts to the classes of service used in the model. The Commission believes this methodology is a preferable approach because it remains a reasonably accurate process for disaggregating line counts without imposing burdensome reporting requirements on carriers. For purposes of 2002 support, the Commission therefore shall allocate line counts to the classes of service used in the model by dividing the year-end 2000 lines reported by non-rural carriers into business lines, residential lines, payphone lines, and single line business lines for each wire center in the same proportion as the lines filed pursuant to the *1999 Data Request* (year-end 1998 lines).

4. The Commission also finds that estimating special line growth for purposes of calculating 2002 support can be accurately determined by dividing the 2000 ARMIS special access lines among wire centers in the same proportion as the special lines from the *1999 Data Request*. The Commission finds that this methodology continues to be a reasonable approach to estimating special line growth for calculating support for 2002.

5. *Matching Wire Centers.* The Commission will use the same methodology employed in the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000, to match wire centers reported by carriers in their quarterly line count filings with wire centers found in the *1999 Data Request* and in the model's customer location data.

6. *General Support Facilities.* In addition to line counts, the model uses other types of data that are updated annually under current Commission rules and procedures. Among other things, the model uses company-specific ARMIS data to calculate investment in general support facilities (GSF). GSF investment includes buildings, motor vehicles, and general purpose computers. A portion of GSF investment must be added to the model's estimate of outside plant, switching, and transport investment to adequately reflect the cost providing the supported services. The Commission finds that updating the tables used in the model with 2000 ARMIS data used to compute GSF investment will improve the model's cost estimates by taking into account the current costs of GSF investment associated with supported services.

7. *Switching.* The model also uses company-specific data in determining switching costs. A wire center's switch directs both interstate and intrastate traffic. Universal service support, however, is only provided for the portion of the switch used to direct intrastate traffic. Therefore, to determine the amount of a wire center's switch that is eligible for support, the model needs to determine the percentage of the switch used to direct intrastate service. The model currently uses 1998 ARMIS Dial Equipment Minutes (DEM) data to determine the overall switch usage. Then, because the ARMIS DEM data do not distinguish between local and intrastate toll usage, the model uses 1997 traffic parameter data filed with the National Exchange Carrier Association (NECA) which, in addition to identifying intrastate and interstate switch usage, identifies the local DEM to compute the portion of non-interstate local usage. Therefore, the model currently uses data sources from different years to determine the portion of the switch used to direct intrastate traffic. The Commission further concludes that it should update the tables in the model with the most recent traffic parameters available from NECA to determine the percentage of the switch allocated to supported services and the switch port requirement for interoffice transport. The Commission finds that using only NECA data for switch allocation, which are only one year behind the ARMIS data but contain all the data necessary to serve as the sole source for switch apportionment is a preferable alternative than using two different sources of data. Further, the Commission will continue to use ARMIS traffic parameter data for estimating signaling costs.

8. *Model Platform.* The Commission defers, until a later date, the question of whether and when to transition to the Delphi version of the forward-looking cost model. The Delphi version posted on the Commission's web site contained certain modifications, in addition to translation to the Delphi computer language. Commenters have noted that some of the cost estimates generated by this modified version of the cost model of the cost model significantly differ with the results from the previous year's Turbo-Pascal version. This may warrant further investigation of whether the total amount of universal service support can vary substantially with small changes in inputs due to technical corrections to the model. In addition, numerous commenters have recommended use of the cost model in Visual Basic computer language in lieu of the Delphi version. They contend that Visual Basic is a preferable computer language because it is: (1) More widely used than Delphi; and (2) part of the cost model already uses Visual Basic and therefore, transition here would make the cost model more uniform. In order to permit an opportunity for further consideration and analysis of these issues, the Commission will use a Turbo-Pascal version of the model, at present, to calculate support for non-rural carriers for calculating 2002 cost estimates. The Commission anticipates that a number of technical corrections will ultimately be made to the cost model. Upon further examination of proposed modifications, the Commission may revise its calculations of support for future quarters in 2002.

II. Order on Reconsideration

9. The Commission denies Sprint Corporation's (Sprint) petition for reconsideration of the *2001 Line Counts Update Order*, 65 FR 81759, December 27, 2000. Specifically, after review of the arguments presented on reconsideration, the Commission concludes that Sprint has not provided any new information or arguments that requires it to alter its decision to update line counts without updating customer location data for purposes of calculating support for 2001. As the Commission explained in the *2001 Line Counts Update Order*, updated line count data were available for the model's inputs, but updated customer location data were not. Consequently, the Commission concluded that, on balance, it was better to update the model with available line count data at that time than wait until a customer location data set could be obtained.

10. Relying on that same analysis and reasoning, the Commission has decided to use updated line count data in the universal service cost model for purposes of calculating support for non-rural carriers for 2002 without updating customer location data. Again, because an updated customer location and road data set remains unavailable for use at this time, the Commission finds that, on balance, it is best not to delay updating line counts. In addition, the Commission has noted that it intends to initiate, at a later date, a proceeding to study proposed revisions and changes to the model inputs and model platform.

VI. Order Clauses

11. It is ordered pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 218–220, 254, 303(r), 403, and 410, and section 1.108 of the Commission's rules, 47 CFR 0.91(f), this Order is adopted. Specifically, the Commission updates line count input values for the high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2002. Therefore, the Commission shall use updated line count data in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism. In addition, non-rural support amounts will continue to be adjusted each quarter to account for line growth based on the wire center line count data reported quarterly by non-rural carriers. The Commission further updates the company-specific data used in the model to calculate investment in general support facilities and switching costs.

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12. It is further ordered that, pursuant to sections 4, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, and sections 1.106 and 1.429 of the Commission's rules, 47 CFR 1.106, 1.429, that the petition for reconsideration filed January 26, 2001, by Sprint Corporation is denied.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1567 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Endangered Status for *Carex lutea* (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine endangered status for *Carex lutea* (golden sedge) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only eight populations (one population is made up of two subpopulations) in Pender and Onslow Counties, North Carolina. *Carex lutea* is endangered throughout its range because of habitat alteration; conversion of its limited habitat for residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. In addition, herbicide use, particularly along utility or road rights-of-way, may also be a threat. This action extends the protection of the Act to *C. lutea*.

DATES: This rule is effective February 22, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Ratzlaff at the above address (828/258–3939, extension 229).

SUPPLEMENTARY INFORMATION:

Background

Carex lutea (LeBlond) is a perennial member of the sedge family (Cyperaceae) known only from North Carolina. Fertile culms (stems) may reach one meter (39 inches (in)) or more in height. The yellowish green leaves are grasslike, with those of the culm mostly basal and up to 28 centimeters (cm) (11 in) long, while those of the vegetative shoots reach a length of 65 cm (26 in). Fertile culms produce two to four flowering spikes (multiple flowering structure with flowers attached to the stem), with the terminal (end) spike being male and the one to three (usually two) lateral spikes being female. Lateral spikes are subtended by leaflike bracts (a much-reduced leaf). The male spike is about 2 to 4 cm (0.8 to 1.6 in) long, 1.5 to 2.5 millimeters (mm) (0.06 to 0.12 in) wide, with a peduncle (stalk) about 1 to 6 cm (0.4 to 2.4 in) long. Female spikes are round to elliptic, about 1 to 1.5 cm (0.4 to 0.6 in) long and 1 cm (0.4 in) wide. The upper female spike is sessile (not stalked; sitting), while lower female spikes, if present, have peduncles typically 0.5 to 4.5 cm (0.2 to 1.8 in) long. When two to three female spikes are present, each is separated from the next, along the culm, by 4.5 to 18 cm (1.8 to 7.1 in). The inflated perigynia (sac that encloses the ovary) are bright yellow at flowering and about 4 to 5 mm (0.16 to 0.20 in) long; the perigynia beaks (point) are out-curved and spreading, with the lowermost in a spike strongly reflexed (turned downward). *Carex lutea* is most readily identified from mid-April to mid-June during flowering and fruiting. It is distinguished from other *Carex* species that occur in the same habitat by its bright yellow color (particularly the pistillate (female) spikes), by its height and slenderness, and especially by the out-curved beaks of the crowded perigynia, the lowermost of which are reflexed (LeBlond *et al.* 1994).

LeBlond *et al.* described *Carex lutea* in 1994 from specimens collected in 1992 in Pender County, North Carolina. It is the only member of the *Carex* section *Ceratocystis* found in the southeastern United States.

Carex lutea grows in sandy soils overlying coquina limestone deposits, where the soil pH is unusually high for this region, typically between 5.5 and 7.2 (Glover 1994). Soils supporting the species are very wet to periodically shallowly inundated. The species prefers the ecotone (narrow transition zone between two diverse ecological communities) between the pine savanna and adjacent wet hardwood or hardwood/conifer forest (LeBlond 1996; Schafale and Weakley 1990). Most plants occur in the partially shaded savanna/swamp where occasional to frequent fires favor an herbaceous ground layer and suppress shrub dominance. Other species with which this sedge grows include tulip poplar (*Liriodendron tulipifera*), pond cypress (*Taxodium ascendens*), red maple (*Acer rubrum* var. *trilobum*), wax myrtle (*Myrica cerifera* var. *cerifera*), colic root (*Aletris farinosa*), and several species of beakrush (*Rhynchospora* spp.). At most sites, *C. lutea* shares its habitat with Cooley's meadowrue (*Thalictrum cooleyi*), federally listed as endangered, and with Thorne's beakrush (*Rhynchospora thornei*), a species of management concern. All known populations are in the northeast Cape Fear River watershed in Pender and Onslow Counties, North Carolina. As stated by LeBlond (1996):

> * * * localities where *Carex lutea* have been found are ecologically highly unusual * * * The combination of fairly open conditions underlain by a calcareous substrate is very rare on the Atlantic coastal plain. Many rare plant species are associated with these localities, and several have very restricted distributions, either being endemic to a small area or with a few highly scattered occurrences. The affinities of these taxa are variable, but include connections to the calcareous savannas of the Gulf Coast States; alkaline marshes of the Atlantic tidewater; calcareous glades, barrens, and prairies of the Appalachian region and the ridge and valley province of Georgia and Alabama; and pinelands of the Carolinas and southern New Jersey.

These rare savannas, underlain by calcareous deposits, support unusual assemblages of plants, including several species known from less than a dozen sites worldwide (Schafale 1994). LeBlond (1996) characterizes these habitats as "a small archipelago of phytogeographic islands" that form a refuge for these rare and unique species. Despite extensive searches of the Gulf Coast in northern Florida and southern Alabama, and Atlantic Coast sites in South Carolina, Georgia, and Florida, no other populations of *Carex lutea* were found outside the North Carolina coastal plain. The species appears to be a very rare endemic, narrowly restricted to an area within a 3.2 kilometer (2-mile) radius of the Onslow/Pender County line in southeastern North Carolina (LeBlond 1996). It is listed as endangered by the State of North Carolina (Amoroso and Weakley 1995; M. Boyer, North Carolina Department of Agriculture, personal communication, 1998).

Previous Federal Activities

Federal Government actions on this species have only recently begun because the species was unknown to science before 1991 and its official description was not published until 1994. In 1995, we funded a survey to determine the status of *Carex lutea* throughout its known and potential range; we accepted the final report on this survey in 1997. A 1998 status report confirmed the species' precarious status (LeBlond 1998). We elevated *C. lutea* to candidate status (species for which we have sufficient information on status and threats to propose the taxon for listing as endangered or threatened) on October 16, 1998. On August 16, 1999, we proposed the species for listing as endangered (64 FR 44470).

Our final rule would have been due on August 16, 2000. However, we were forced to cease our work on the rule because compliance with outstanding court orders, judicially approved settlement agreements, and litigation related activities required all remaining fiscal year 2000 funds and exhausted the entire fiscal year 2001 budget that Congress appropriated for completing listings and critical habitat designations pursuant to section 4 of the Act. The Director of the Service issued a memo on November 17, 2000, directing all Regions to immediately halt listing actions not under court order or settlement agreement.

The Service and several conservation organizations have reached an agreement that will enable us to complete work on evaluations of numerous species proposed for listing under the Act. This final rule is made in accordance with a judicially approved settlement agreement, which requires us to submit for publication in the **Federal Register** a final listing determination for the golden sedge on or before January 26, 2002.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we provided copies of the proposed rule to five independent specialists in order to solicit comments on the scientific or commercial data and assumptions relating to the supportive biological and ecological information for *Carex lutea*. The purpose of such review is to ensure that the listing decision is based on the best scientific and commercial information available, as well as to ensure that reviews by appropriate experts and specialists are included into the review process of rulemakings. Although solicited, none of the five reviewers provided comments on the proposed rule.

Summary of Comments and Recommendations

In the August 16, 1999, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties and requested them to comment. We published a newspaper notice inviting public comment in the *Wilmington Journal* (North Carolina) on August 26, 1999.

We received one comment, from the North Carolina Department of Environment and Natural Resources, that expressed support for listing, and concurred with our conclusion in the proposed rule that designation of critical habitat would not be beneficial for golden sedge because of the plant's extreme rarity.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Carex lutea* should be classified as an endangered species. We followed procedures found in section 4 of the Act and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *C. lutea* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Seven of the eight known populations of *Carex lutea* are on privately owned land and are threatened with the destruction or adverse modification of their habitat from residential, commercial, or industrial development; clay mining; drainage activities associated with silviculture and agriculture; and suppression of fire. The eighth population, on land now owned by the North Carolina Department of Transportation (NCDOT), was severely disturbed in the 1980s by clearcutting, ditching, and draining prior to NCDOT ownership. This site has been purchased by the NCDOT as a mitigation site and is currently under study for the restoration of natural communities and protection and enhancement of rare species populations. At least some of the original *C. lutea* plants survived the previous damage to the site, and the remaining population appears stable.

As described in the "Background" section, the habitat upon which this species depends is extremely rare. Most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters (624 square feet). Three of the sites have populations composed of fewer than 50 individuals. Although little is known about natural population fluctuations in this species, severe population declines (exceeding 83 percent) were noted between 1992 and 1996 at three of the eight remaining sites. The exact causes for these losses are unknown. One population is on a roadside, and all of one population and part of another are on power line rights-of-way, where they are exceptionally vulnerable to destruction from highway expansion or improvement or herbicide application. All the known sites have been damaged to some degree in the past by ditching and drainage, mining, logging, bulldozing, right-of-way maintenance, or road building. Because the species was only recently discovered, knowing exactly what its historic distribution and population numbers might have been is not possible. However, LeBlond (1996) states: "It is probable that drainage ditches (that lower the water table over a large area) have reduced, perhaps greatly, the amount of suitable habitat available for *Carex lutea* and other rare species at these sites."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial trade in *Carex lutea* at this time. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity. Most populations are too small to support even the limited collection of plants for scientific or other purposes.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Carex lutea* is listed by the State of North Carolina as endangered. As such, it is afforded legal protection within the State by North Carolina General Statutes, §§ 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for the monitoring and management of State-listed species and prohibit the taking of plants without a permit and written permission from the landowner. However, State prohibitions against

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taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Two of the sites are somewhat protected by registry agreements between the landowner and the North Carolina Natural Heritage Program. These agreements are strictly voluntary, however, and may be canceled by the landowner at any time. Although part of another population is owned by The Nature Conservancy (TNC), this population is adjacent to a quarry. Activities in the quarry may alter the hydrology of the area occupied by *C. lutea* and thus pose a threat to this population. Portions of the population not owned by TNC are also vulnerable to destruction by timber harvesting and fire suppression.

Section 404 of the Clean Water Act represents the primary Federal law that may provide some regulation of the species' wetland habitats. However, the Clean Water Act by itself does not provide adequate protection for the species. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, the Corps may issue nationwide permits for certain activities that are considered to have minimal impacts. However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. The Corps may also authorize activities by an individual or regional general permit when the project does not qualify for authorization under a nationwide permit. These projects include those that would result in more than minimal adverse environmental effects, either individually or cumulatively, and are typically subject to more extensive review. Whatever the type of permit deemed necessary under section 404, rare species such as *Carex lutea* may receive no special consideration regarding conservation or protection unless they are listed under the Act.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this final rule, most of the remaining populations are small in numbers of individuals and in area covered by the plants. This may suggest low genetic variability within populations, making it more important to maintain as much habitat and as many remaining colonies as possible.

Little is known about the life history of this species or about its specific environmental requirements. However, its apparent restriction to wet pine savannas is a strong indication that it is adapted to the pyric (associated with burning) and hydrological conditions associated with this community type. Such habitats were historically exposed to wildfires approximately every 3 to 5 years, usually during the growing season, which maintained the open habitats favored by *Carex lutea* and dozens of other fire-adapted species. During winter and spring, the soils where *C. lutea* grows are often shallowly flooded. At other times of the year these sites are very wet to saturated. Such high water tables also serve to control woody growth in undisturbed savanna habitats. However, without regular fire, which has been intensively suppressed on the Atlantic coastal plain for half a century, and with the lowering of water tables due to ditching, the open savannas are rapidly changing to dense thickets dominated by the trees and shrubs of the adjacent uplands. As a result, the extraordinary plant diversity characteristic of the savannas is being eliminated, and species such as *C. lutea* are disappearing from the landscape. Even where such habitat is owned by an organization that is able to manage the land with prescribed fire, like TNC, increasingly restrictive smoke management regulations make burning very difficult.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, we find it appropriate to list *Carex lutea* as an endangered species. Endangered status is more appropriate than threatened status because of the following factors—this species occurs in only 2 counties; only 8 populations survive, all of which have already been damaged to some degree; most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters (624 square feet); three of the remaining populations are composed of fewer than 50 individuals; there are documented severe population declines (exceeding 83 percent) between 1992 and 1996 at three of the eight remaining sites; and all of the remaining populations are currently threatened by fire suppression, highway expansion, right-of-way management with herbicides, drainage ditching, or a combination thereof.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate any critical habitat at the time the species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The designation of critical habitat does not, in itself, restrict State or private activities within the area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and describing the features within those areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the Act, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., activities authorized, funded, or conducted by a Federal agency) and does not affect exclusively State or private activities.

Under the Act's section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Whether or not there is a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' currently occupied range have been designated. In these cases, Federal agencies are required to consult with us (50 CFR 402.14(a)) when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

Theoretically, a designation of critical habitat provides Federal agencies with a clearer indication as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when or where golden sedge is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 consultation requirements (i.e., activities that may affect essential features of the designated area). For example, a project some distance away that depleted the groundwater in the aquifers that feed the wetland habitat of golden sedge, or otherwise affected an essential feature of the designated habitat, would be subject to the provisions of section 7 of the Act.

In the proposed rule, we found that designation of critical habitat for *Carex lutea* was not prudent because of the increased risks to the species associated with disclosing specific locations, and because such a designation would not be beneficial to the species. As to increased risks, we determined that because most populations of this species were small, the loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Although taking without a permit is prohibited by the Act from locations under Federal jurisdiction, none of the known populations are located on Federal land. Therefore, we believed that publication of critical habitat descriptions and maps would increase the vulnerability of the species to collection, but would not increase its protection under the Act. In fact, the contractor we hired to conduct the rangewide status survey declined to include directions to the occupied sites in his report, stating: "Due to the extreme rarity of *Carex lutea* and its vulnerability to extinction, a description of site boundaries or precise directions to population micro sites cannot be provided here" (LeBlond 1996).

In determining in the proposed rule that designation of critical habitat would not benefit the golden sedge, we first noted that all but one of the remaining populations of golden sedge occur on land that is in private ownership, with the other site owned by the NCDOT. In other words, none of the populations occur on Federal land. We realized that Federal involvement with this species may occur through Federal funding for power line construction, maintenance, and improvement; highway construction, maintenance and improvement; drainage alterations; and permits for mineral exploration and mining on non-Federal lands, and that the use of such funding for projects affecting occupied habitat for this species would be subject to review under section 7(a)(2) of the Act. However, this would be true whether or not critical habitat was designated. Furthermore, the precarious status of *Carex lutea* is such that any adverse modification or destruction of its occupied habitat would also jeopardize its continued existence. Thus, the only potential benefit that would result from critical habitat designation would be notification to Federal, State and local government agencies and private landowners. However, during the listing process, and after a species is listed, we conduct public outreach in affected local communities and with government agencies, so that the owners and managers of all the known populations of *C. lutea* were made aware of the plant's location and how important it is to protect the plant and its habitat. For these reasons, we concluded that designation of currently occupied habitat as critical habitat would not result in any additional benefit to the species.

Finally, because this species occupies an extremely rare habitat type, little of which remains in an unaltered, functional state, we did not expect that reintroduction to currently unoccupied habitat would be essential for recovery efforts. Therefore, we also concluded that designation of currently unoccupied habitat as critical habitat would not result in any additional benefit to the species.

We received only one comment on our prudency determination. The North Carolina Department of Environment and Natural Resources, in its comments on the proposed rule, concurred that designation of critical habitat for this species would not be beneficial.

However, recent court decisions (e.g., Natural Resources Defense Council v. U.S. Department of the Interior 113 F. 3d 1121 (9th Cir. 1997); Conservation Council for Hawaii v. Babbitt, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) have forced us to reevaluate our "not prudent" finding. The *Conservation Council* ruling is particularly relevant to our determination. In that case, the court held that in order to conclude that designation would increase the risk to the species, the Service must have evidence of specific threats (such as instances of collection and vandalism) that would be increased by designation of critical habitat. The court said that without species-specific evidence, the fact that there are few plants and that even a single taking could cause the species to become extinct was not sufficient justification for a "not prudent" finding based on increased threat.

We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. Due to the low numbers of individuals, the small area covered by the eight remaining populations, and the inherent transportability of plants, golden sedge is vulnerable to collection and other disturbance. However, at this time we have no specific evidence of taking, vandalism, illegal collection, or trade of this species. This may be due to its recent description as a new species to science and to the locations of the populations being known by only a few individuals. Also, it is very difficult to monitor such losses on scattered private lands. Nonetheless, in the absence of specific evidence, we cannot conclude that designation would not be prudent based on increased threat.

Without a finding that critical habitat would increase threats to a species, then designation would be prudent if it would provide any benefits to the species. As to benefits of designation, the *Conservation Council* court held that the mere absence of a species from

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nonfederal land did not mean that there were no benefits to designating that land as critical habitat, as there could be Federal activity on that land in the future. As to Federal land, the court held that if even as a general rule an action that would adversely modify critical habitat was likely to jeopardize the continued existence of the species, the Service must consider the adverse modification/jeopardy relationship for each species individually. Finally, the court ruled that designation of critical habitat on any type of land serves to educate the public and government officials that this habitat is essential to the protection of the species.

With this taxon, designation of critical habitat may provide some minor benefits to the species. Although the remaining populations of golden sedge are located exclusively on non-Federal lands, there may be Federal actions affecting these lands in the future. Furthermore, the primary regulatory effect of critical habitat designation is to require Federal agencies to consult before taking any action that could destroy or adversely modify critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. No such habitat is known at this time, but some may be found in the future. Finally, there will be educational or informational benefits from designating critical habitat.

Reevaluating our prudency determination under the standards mandated by court decisions, we must find that designation of critical habitat for the golden sedge is prudent. However, we are deferring our critical habitat determination due to budgetary constraints associated with the listing program. Our entire FY 2002 budget for listing actions has been consumed due to required compliance with outstanding court orders, settlement agreements, meeting statutory deadlines, and litigation related activities. This final rule is made in accordance with a judicially approved settlement agreement that requires us to submit for publication in the **Federal Register** a final listing determination for the golden sedge on or before January 26, 2002. Funds are insufficient to also allow us to propose critical habitat with this final determination. Critical habitat designations are costly, requiring mapping, economic analysis, and often public hearings and meetings that are costs above those incurred for listing the species. We will develop a proposal to designate critical habitat for this species as soon as feasible, considering our budget and workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its designated critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could impact *Carex lutea* and its habitat in the future include, but are not limited to, the following—power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. We will work with the involved agencies to secure protection and proper management of *C. lutea* while accommodating agency activities to the extent possible.

Now that the species has been added to the Federal List of Endangered and Threatened Wildlife and Plants, additional protection from taking is provided when the taking is in violation of any State law, including State trespass laws. The listing also provides protection from inappropriate commercial trade and encourages active management for *Carex lutea*. Specifically, the Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued, because the species is not common in cultivation or in the wild. You may request copies of the regulations on plants from and direct inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia (telephone 404/679–4176).

It is our policy, published on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The eight remaining populations of *Carex lutea* occur on non-Federal land. We believe that, based upon the best available information, you can take the following actions without resulting in a violation of section 9 of the Act, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, wetland modification; power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; and permits for mineral exploration and mining) when such activity is conducted in accordance with any biological opinion issued by us under section 7 of the Act;

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(3) Normal landscape activities around personal residences.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal land if conducted in knowing violation of State law or regulation or in violation of State criminal trespass law. North Carolina prohibits the intrastate trade and take of *C. lutea* without a State permit and written permission from the landowner; and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

References Cited

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Glover, L. 1994. *Carex lutea*: alive and well in Pender County, North Carolina. Report prepared by the North Carolina Chapter of The Nature Conservancy, Durham.

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—1996. Status survey for *Carex lutea* LeBlond. Unpublished report submitted to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC.

LeBlond, R., A. Weakley, A. Reznicek, and W. Crins. 1994. *Carex lutea* (Cyperaceae), a rare new coastal plain endemic from North Carolina. *SIDA* 16:153–161.

Schafale, M. 1994. Inventory of longleaf pine natural communities in North Carolina. Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Schafale, M., and A. Weakley. 1990. Classification of the natural communities of North Carolina (third approximation). Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Author

The primary author of this document is Mr. Allen Ratzlaff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Carex lutea	Golden sedge	U.S.A. (NC)	Cyperaceae	E	721	NA	NA
*	*	*	*	*	*	*	*

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Dated: January 15, 2002.
Marshall P. Jones, Jr.,
Acting Director, Fish and Wildlife Service.
[FR Doc. 02–1630 Filed 1–22–02; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 102501B]

RIN 0648–AP06

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, final 2002 specifications, and preliminary commercial quota adjustment; correction.

SUMMARY: On December 26, 2001, NMFS published final specifications for the 2002 summer flounder, scup, and black sea bass fisheries and made preliminary adjustments to the 2002 commercial quotas for these fisheries. The preamble to the final rule clearly indicated that the minimum mesh threshold catch level for black sea bass is established at 500 lb (226.8 kg) from January through March, and to 100 lb (45.3 kg) from April through December. However, the regulation to implement this change was written incorrectly. The intent of this action is to correct the portion of the regulations that implements the minimum mesh threshold catch limit for black sea bass.

DATES: Effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978)281–9279, fax (978)281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2001 (66 FR 58097) NMFS published proposed specifications for the summer flounder, scup, and black sea bass fisheries for the 2002 fishing year. The final specifications were published on December 26, 2001 (66 FR 66348). Both the proposed and final specifications addressed reduction of the threshold black sea bass catch level that triggers the minimum mesh-size requirement from 1,000 lb (453.6 kg) to 500 lb (226.8 kg) for Quarter 1 (Jan. through March), and to 100 lb (45.3 kg) for Quarters 2 through 4 (April through December). However, in both the proposed and final rules, the regulation at § 648.14(a)(92) was incorrectly written. It inadvertently referenced the recreational possession limit of 25 black sea bass at § 648.145(a), rather than the minimum mesh threshold catch level of 500 lb (226.8 kg) or 100 lb (45.3 kg) described at § 648.144(a). Section 648.14(a)(2) should have referenced the threshold black sea bass catch level approved by the Mid-Atlantic Fishery Management Council at § 648.144(a), rather than the recreational possession limit at § 648.145(a). This document corrects this error.

§ 648.14 [Corrected]

On page 66357, in § 648.14(a)(92), sixth line down, remove "§ 648.145(a)" and add, in its place, "648.144(a)(1)(i) (i.e., 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the gear restrictions of § 648.144(a)."

Dated: January 15, 2002.
Rebecca Lent,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.
[FR Doc. 02–1528 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the pollock total allowable catch (TAC) for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., March 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the pollock TAC in Statistical Area 630 is 1,122 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 522 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630. Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 A season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 A season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under

5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.
Jonathan M. Kurland,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 02–1631 Filed 1–17–02; 4:24 pm]
BILLING CODE 3510–22–S

VOL 67 ISS 15 JA 23 2002 UMI

Proposed Rules

Federal Register
Vol. 67, No. 15
Wednesday, January 23, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 213

RIN 3206–AJ53

Excepted Service—Schedule A Authority for Chinese, Japanese, and Hindu Interpreters

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revoke the Schedule A excepted service appointing authority for Chinese, Japanese and Hindu interpreters because the conditions justifying the original exception no longer exist. Revocation would bring the positions filled under this Schedule A authority into the competitive service and permit noncompetitive conversion of persons serving under the authority to either competitive or excepted service appointments.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Send or deliver written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Christina Vay on 202–606–0960 or FAX 202–606–0390.

SUPPLEMENTARY INFORMATION: The Schedule A authority, 5 CFR 213.3102(f), was established in 1903 for use by all agencies. In the past, complexities in the examining system necessitated excepted service authorities on the basis that examining was impracticable. In 1903, this was true for Chinese, Japanese, and Hindu languages.

Competitive examining has changed drastically in the almost 100 years since this authority's creation. Today, agencies successfully examine for positions with specific language requirements. Because agencies can examine for all other languages, we see no reason to continue this authority.

Conversion of Employees

The revocation of this authority would bring the positions into the competitive service as provided in 5 CFR 316.701 and 316.702. If this regulation becomes final, persons serving under 5 CFR 213.3102(f) and who are citizens would be noncompetitively converted to the competitive service. If there are positions for which examining is still impracticable, or there are noncitizens serving under the authority, they will be placed under other appropriate excepted appointing authorities.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees. Reporting and recordkeeping requirements.

Kay Coles James,
Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

PART 213 —EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 et. seq.; and Pub. L. 106–117 (113 Stat. 1545).

§ 213.3102 [Amended]

2. Paragraph (f) of § 213.3102 is removed and reserved.

[FR Doc. 02–1603 Filed 1–22–02; 8:45 am]
BILLING CODE 6325–39–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1703

RIN 0572–AB70

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This proposed rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging scoring criterion; clarify financial information to be submitted; and make other minor changes and corrections.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than February 22, 2002.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590 or via facsimile transmission to (202) 720–0810. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). All comments received will be made available for public inspection at room 4056, South Building, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief, DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250–1550. Telephone: 202–720–0413; e-mail at *mmorgan@rus.usda.gov;* or, Fax: 202–720–1051.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the Rules and Regulations direct final rule section of this **Federal Register** for the applicable supplementary information on this action.

Dated: December 28, 2001.

Roberta D. Purcell,
Acting Administrator, Rural Utilities Service.

[FR Doc. 02–1538 Filed 1–22–02; 8:45 am]
BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket Nos. RM02–4–000 and PL02–1–000]

Notice of Inquiry and Guidance for Filings in the Interim

January 16, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is considering whether to revise its rules to address public availability of critical energy infrastructure information. The Commission issued a policy statement in Docket No. PL02–1–000 on October 11, 2001 (66 FR 52917, October 18, 2001), removing from easy public access previously public documents that detail the specifications of energy facilities licensed or certificated by the Commission. The policy statement directed requesters seeking this information to follow the Freedom of Information Act procedures found at 18 CFR 388.108. This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner.

EFFECTIVE DATES: Responses must be submitted on or before March 11, 2002. Requests for copies of the non-public appendix must be filed on or before February 7, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is initiating an inquiry into the appropriate treatment of previously public documents in the aftermath of the September 11, 2001 terrorist attacks on the United States of America. Accordingly, this Notice sets forth the Commission's general views on how it intends to treat those documents, and asks specific questions on the scope and implications of maintaining the confidentiality of certain documents that previously had been made public but removed from easy public access under the Policy Statement issued in Docket No. PL02–1–000 on October 11, 2001 (Policy Statement). See 97 FERC ¶ 61,030. The major matter that this Notice addresses is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and Federal environmental laws and the need to protect the safety and well being of American citizens from attacks on our nation's energy infrastructure.

By definition, this Notice does not propose any specific changes to the Commission's regulations, but it does reflect what the Commission may consider doing in the future. As an initial matter, the Commission believes that the process under the Freedom of Information Act, 5 U.S.C. 552 (FOIA), which the Policy Statement established as the means for requesting previously public documents in the short run, is not well suited in the long run for handling most requests for this critical energy infrastructure information (CEII).[1] Therefore, the questions posed in the Notice are premised on the Commission's processing most CEII requests outside of the FOIA procedures. The Commission also believes that the scope of the Policy Statement should probably be maintained, viz., that limiting access to CEII should be confined to certificated, licensed, or constructed projects. Put another way, the Commission currently intends that information contained in or related to proposed projects should be available as before October 11, 2001. (Care would have to be taken to the extent the information detailed existing facilities.) Otherwise, the implementation of the environmental laws may be impeded or the processing of certificate or license applications may be unduly complicated. Nevertheless, the Notice asks specific questions as to the correctness of this approach. The Commission emphasizes that its intention here is to address how the public with a need for certain documents obtains access to those documents, not whether they should have access to them.

As a separate matter, the Commission is using this opportunity to provide guidance on making filings with the Commission to the companies whose facilities could be the targets of terrorist attacks. Between now and the effective date of a final decision in Docket No. RM02–4–000, these companies may seek confidential treatment of filings or parts of filings which in their opinion contain CEII. For this purpose, they are directed to follow the procedures in 18 CFR 388.112, and also clearly note "PL02–1" on the first page of the document.

II. Background

The September 11, 2001 terrorist attacks prompted the Commission to issue a policy statement on October 11, 2001, in PL02–1–000, addressing the treatment of previously public documents. See 97 FERC ¶61,030.[2] The

[1] Assuming that much of the information identified as CEII will be exempt from mandatory disclosure under FOIA, using FOIA as the exclusive mechanism for determining release would mean that people with a need for the information might be denied access to exempt information. In any event, under FOIA, the agency may not consider a requester's particular need for the information. Moreover, once release is made to one requester under FOIA, release is generally available to all requesters, and if information is released pursuant to FOIA, the agency may not restrict the recipient's use or dissemination of that information. Therefore, if the Commission wishes to make otherwise exempt information available to a requester based on the requester's need for the information, or wishes to limit the recipient's use and dissemination of the information, it must do so outside of the confines of the FOIA.

[2] Shortly after the attacks, the Commission issued another policy statement in Docket No. PL01–6–000, in which it provided guidance to regulated companies regarding extraordinary expenditures necessary to safeguard national energy supplies. See 96 FERC ¶61,299 (2001). The Commission recognized there that electric, gas, and oil

Continued

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Commission announced there that it would no longer make available to the public through its Internet site, the Records and Information Management System (RIMS), or the Public Reference Room, documents such as oversized maps that detail the specifications of energy facilities already licensed or certificated under Part I of the Federal Power Act, 16 U.S.C. 719a, *et seq.*, and section 7 (c) of the Natural Gas Act, 15 U.S.C. 717f(c), respectively. Rather, anyone requesting such documents was directed to follow the procedures set forth in 18 CFR 388.108 (Requests for Commission records not available through the Public Reference Room (FOIA Requests)). The Policy Statement also instructed staff to report back to the Commission within 90 days on the impact of this newly announced policy on the agency's business. This Notice reflects staff's report.

The Commission was not alone in its reaction to protecting sensitive information. The Associated Press reported on October 12, 2001, that "Federal agencies are scrutinizing their Web sites and removing any information they believe terrorists might use to plot attacks against the nation. Federal agencies have been reviewing their sites in the wake of the terrorist attacks." The report referred to action by the Nuclear Regulatory Commission, the Environmental Protection Agency, the Centers for Disease Control and Prevention, and the United States Department of Transportation Office of Pipeline Safety. Along the same lines, the United States Department of Justice pointed out a short time later:

> In light of those events [of September 11, 2001], and the possibilities for further terrorist activity in their aftermath, federal agencies are concerned with the need to protect critical systems, facilities, stockpiles, and other assets from security breaches and harm—and in some instances from their potential use as weapons of mass destruction in and of themselves. Such protection efforts, of course, must at the same time include the protection of any agency information that could enable someone to succeed in causing the feared harm.

www.usdoj.gov/oip/foiapost/2001foiapost19.htm.[3] Subsequently, in early November, the Department of Energy Office of Environment, Safety and Health blocked all access to environmental assessments and environmental impact statements and related documents published on the Department's National Environmental Policy Act Web site.

Since September 11, 2001, our country fortunately has not experienced any attacks as devastating as the ones experienced on that day. On at least three occasions, however, the Attorney General of the United States put the country on high alert because of threatened terrorist attacks.[4] The Federal Bureau of Investigation has likewise warned oil and gas companies throughout the United States and Canada to be on the highest alert. Under these circumstances, the Commission finds that the concerns about threats to the energy infrastructure over which it has regulatory responsibilities still exist, and that the Commission must proceed to examine its policy and any related regulations on making information about that infrastructure available to the public. The Commission emphasizes, however, that in no way is it proposing to prevent or otherwise impede the public from having access to information needs in order to respond to applications and other proposals from the regulated companies. This Notice is not intended to address whether the public with such a need has access to certain documents; rather, it is intended to address how the public with such a need will have access to certain documents.

III. Implementation of Policy Statement

A brief overview of the Commission's experience since issuance of the Policy Statement may help to understand the instant task better, because this Notice is understandably informed by that experience. To implement the policy, the Commission's staff first disabled RIMS access to all oversized documents, which frequently contain detailed infrastructure information and also removed them from the Public Reference Room. Staff next identified and disabled or denied access to other types of documents dealing with licensed hydropower projects, certificated natural gas pipelines, and electric transmission lines that appeared to include critical infrastructure information. This effort, which was undertaken as cautiously and methodically as possible, affected tens of thousands of documents.

As of January 3, 2002, the treatment of previously public documents as non-public generated twenty-five FOIA requests. Most of these requests are pending, as the time for responding is still running or has been tolled because the Commission sent letters to the submitters of the information for their views on the applicability of the FOIA exemptions. See CFR 385.112(d). In one instance, however, the FOIA request was mooted, because the Commission provided the document to the requester outside the FOIA process. The requester was a pipeline applicant who sought a non-published environmental assessment that was referenced in the order issuing the applicant a certificate. As the applicant, the requester was a unique member of the public, who had to have the environmental assessment to decide whether to accept the certificate, and, if so, how to comply with its terms. Moreover, a company whose facilities were intended to be protected from terrorist attacks by the Policy Statement could fairly be assumed to treat any sensitive information contained in the environmental assessment in the same way that the Commission would, that is, to protect it from getting into the hands of terrorists. Therefore, the company's request was handled outside the FOIA process.[5]

As a separate matter, since the issuance of the Policy Statement, the Commission has also entertained a request from a company to remove what in its view was critical infrastructure information which had not been removed from public access as part of the staff's efforts to implement the policy on previously public documents. Williston Basin Interstate Pipeline Company filed revised tariff sheets on November 30, 2001, to remove the system maps from its tariff, and requested a waiver of 18 CFR 154.106 to do so.[6] The Commission denied Williston Basin's specific proposal as unnecessary because it construed the proposal as a request for confidential treatment of those particular sheets in its tariff, and granted that request. See Williston Basin Interstate Pipeline Company, 97 FERC ¶ 61,369 (2001). The Commission reasoned that this action would allow it to have the information needed to fulfill its regulatory obligations, while at the same time satisfying Williston Basin's desire to keep the maps out of the public domain for safety purposes. Id. at __, slip op. at 2. The Commission further took into account that customers or prospective customers of Williston Basin will be able to obtain a copy of the map directly from the pipeline company. Id.

companies may need to adopt new procedures, update existing procedures, and install facilities to further safeguard their systems, and that these efforts might result in extraordinary expenditures. The Commission assured these companies that it would give its highest priority to processing any filing made for the recovery of such expenditures.

[3] This statement accompanied the issuance of a FOIA memorandum to the heads of all Federal departments and agencies from Attorney General John Ashcroft on October 12, 2001. This memorandum emphasized the Bush Administration's commitment to full compliance with FOIA as an important means of maintaining an open and accountable system of government. At the same time, it recognized the importance of protecting the sensitive institutional, commercial, and personal interests that can be implicated in government records—such as the need to safeguard national security, to maintain law enforcement effectiveness, to respect business confidentiality, to protect internal agency deliberations, and to preserve personal privacy.

[4] Since September 11, 2001, the United States government has issued a total of four warnings—three official warnings and one unofficial warning. On October 11, 2001, Attorney General John Ashcroft issued the first official warning of possible attacks. He again issued an official warning on October 29, 2001. On December 3, 2001, Tom Ridge, Director of Homeland Security, issued the third official warning because Attorney General Ashcroft was out of town. This third warning, which was to be in effect throughout the holiday season, was extended on January 2, 2002 to last through March 11, 2002. As most relevant here, in late November 2001, Attorney General Ashcroft warned of an uncorroborated report of a possible terrorist threat against natural gas pipelines. Accordingly, the American Petroleum Institute, the lead industry group coordinating with the FBI and Energy Department on security matters, issued a warning to oil and gas companies.

[5] Two other FOIA requests were likewise mooted. One involved a request from a law firm representing a regulated company, which no longer had a particular map filed previously by its client. This request was handled outside of FOIA as it concerned a request from a company for its own material. The other request was made by an intervener in a certificate proceeding. In this case, the pipeline applicant provided the information directly to the requester.

[6] Section 154.106 requires each natural gas pipeline to display a system map in its tariff and to update its maps annually to reflect any major changes in facilities.

IV. Questions for Response

A. Legal Authority to Protect CEII

To reiterate, the Commission's goal is not to alter in any way the public's right to access documents that they need to participate in a meaningful way in Commission proceedings. For this reason, for example, the proposed location of new gas pipeline facilities would not be restricted from public access or involvement. Likewise, the Commission does not want to prevent the general public, including the press, from accessing information to understand better how the Commission operates. The Commission must balance these goals against legitimate concerns about the integrity of the nation's energy infrastructure. For this purpose, the Commission believes it is necessary to devise procedures for the public to access CEII. To do so, the Commission starts with the premise that any information it collects will generally be publicly available. That is consistent with the scheme of its enabling statutes, which are grounded in public participation in reviewing companies' rates and terms and conditions of service and in processing their certificate and license applications. See, e.g., section 4(c) of the Natural Gas Act, 15 U.S.C. 717c; section 205 of the Federal Power Act, 16 U.S.C. 824d. Nonetheless, the Commission's enabling statutes do not appear to prohibit the Commission from devising procedures to control the public's access to CEII. On the other hand, the Commission's regulations or policies may foreclose such procedures to the extent they require certain CEII to be made public and foreclose their being treated confidentially.

For example, there may be an anomaly in the Commission's maintaining the confidentiality of CEII, such as oversized, detailed system maps (which show not only the proposed facilities, but their relationship to existing facilities), but still requiring companies to maintain a public file of all relevant documents at a suitable location or locations outside of FERC. See 18 CFR 157.10. Similarly, the Commission requires pipeline applicants to make a good faith effort to place materials in a location that provides maximum accessibility to the public, and to make available complete copies of their applications in accessible central locations in each county throughout the project area, either in paper or electronic format, within three business days of the date a filing is issued a docket number. See 18 CFR 157.10(b)(2) and (c).

Under these circumstances, as a threshold matter, the Commission must decide whether any of its current regulations or policies need to be revised in order to implement changes in the way the public accesses CEII.[7] To assist this inquiry, the Commission is attaching to this Notice, as a non-public appendix, a list of previously public documents, which are likely candidates for consideration as CEII.[8] The Commission requests that respondents distinguish as much as possible in their answers between the legal implications for proposed projects versus operational projects. *See* B.4. below.

Against this backdrop, the Commission seeks responses to the following questions:

1. Are there statutory impediments to protecting CEII under the following:
   a. Natural Gas Act, 15 U.S.C. 717, *et seq.*;
   b. Federal Power Act, 16 U.S.C. 791a, *et seq.*;
   c. FERC's other enabling statutes;
   d. National Environmental Policy Act, 42 U.S.C. 4321–4370d; or
   e. Substantive environmental laws?
2. Are there regulatory impediments to protecting CEII?
   a. What changes, if any, are required to the Commission's own regulations to enable it to protect CEII adequately?
   b. What changes, if any, are required to the Commission's regulations to enable regulated entities to protect CEII?
   c. Are there non-FERC regulations that impair the Commission's or the regulated companies' ability to protect CEII adequately?
   d. Do Order Nos. 608[9] and 609[10] create any impediment if the Commission defines CEII to include only information regarding licensed or certificated projects?

B. Definition of Critical Energy Infrastructure Information (CEII)

A major issue throughout the past three months has been identifying information that warrants protection in light of the September 11 events. After the issuance of the Policy Statement, the Commission removed from ready public access documents "that detail the specifications of energy facilities licensed or certificated under part I of the Federal Power Act * * * and section 7(c) of the Natural Gas Act. * * *" Since that time, the Commission has recognized that there may be additional information that warrants protection as well, for instance, information relating to the transmission of electricity. The Commission must develop a workable definition of CEII that is broad enough to encompass information useful to would-be terrorists in planning a terrorist attack, without removing from the public domain information that poses little to no risk. The definition will guide submitters of information and Commission staff reviewing such submissions in determining whether or not the information should be freely available to the general public.

Below is a list of questions that may assist the Commission in devising a consistent method of identifying CEII.

1. What are the primary considerations that the Commission should use to determine which information should be protected? Should the Commission only protect information relating to certain critical components of the infrastructure? If so, how does it identify such components? If information is removed only for those identified facilities, will that highlight critical facilities for would-be terrorists?
2. Should CEII include all information related to locations of existing facilities? Does the scale of the map make a difference? Should the Commission protect location information only where a map provides exact location of facilities (e.g., longitude and latitude, or map coordinates)? What if the information is otherwise publicly available from another source, e.g., a commercial map?
3. Aside from location, what additional types of information may warrant protection (i.e., removal from existing systems where possible, or redaction from future filings)?
   a. Diameter, throughput and pressure information relating to gas pipelines?
   b. System constraints for both gas and electric transmission systems?
   c. Supply lines to critical facilities (hospitals, military installations, government facilities, etc.)?
   d. Number of retail customers served by a particular portion of the infrastructure?
   e. Redundancy or lack of redundancy in the system?
   f. Compressor station layouts and layouts of other above-ground facilities?
   g. Location of critical components, e.g. shut off valves?
   h. Inundation information and other similar information that details areas likely to be affected by a failure in the system?
   i. Vulnerability/risk assessments and other information that may provide insights into vulnerabilities in the infrastructure?
   j. Emergency Action Plans or other documents detailing steps to be taken in the event of an emergency involving a facility?
4. Should the restrictions be limited to existing projects or should they be extended to proposed projects or extensions?
   a. What are the legal impediments and practical difficulties associated with extending the restrictions to pending projects?
   b. How should the Commission handle hydropower relicensing situations where there is a need for public participation, and

[7] As separate matter, the Commission is aware of at least six pieces of legislation that have been introduced in the First Session of the 107th Congress, including S. 1407, S. 1456, S. 1529, S. 1534, H.R. 1292, and H.R. 1158. The Commission does not believe, however, that it needs a change in its legislative mandate to proceed with this Notice. That is not to say, of course, that it would not welcome guidance from the Congress on these matters.

[8] The procedures to obtain a copy of the non-public appendix are set forth at the end of this Notice in the section entitled "Document Availability."

[9] "Collaborative Procedures for Energy Facility Applications," Order No. 608, 64 FR 51209 (September 22, 1999); FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,080 (September 15, 1999), order on reh'g, Order No. 608–A, 65 FR 65752 (November 2, 2000); FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,110 (October 27, 2000).

[10] "Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements," Order No. 609, 64 FR 57374 (October 25, 1999), FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,082 (October 13, 1999), order on reh'g, Order No. 609–A, 65 FR 15234 (March 22, 2000), FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000, ¶ 31,095 (March 16, 2000).

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also a risk that an existing facility could be endangered by release of certain information?

c. How should the Commission handle situations where documents relating to a yet-to-be-approved project contain CEII relating to existing facilities? Can those portions be removed and still permit effective public participation in the process? Is there an effective way to limit access to those with a need for the information?

d. If CEII related to proposed projects is not restricted during the licensing/certificate stage, at what point in the process should the information no longer be readily available to the public?

(1) Once the Commission issues the license/certificate?

(2) When a pipeline applicant accepts the certificate or when it commences construction?

(3) When a hydropower licensee or exemptee commences construction?

(4) After construction is completed, or any operational portion is completed?

(5) When rehearing period or appeal period has run or all rehearings or appeals have been decided?

C. Requester's Status and Need for the Information

At present, the Commission is considering an approach that would strive to process most requests for CEII outside of the FOIA process.[11] As part of this approach, requesters may be subject to different procedures and entitled to more or less information, depending on their status and their need for the information. The Commission has identified the following categories of potential requesters: (1) Federal government entities, including Congress; (2) state governments; (3) local governments; (4) Native American Tribes; (5) submitters of CEII; (6) parties seeking CEII relating to their own project or facility; (7) representatives of submitters or parties seeking information relating to their client's own project or facility; (8) interveners; (9) those who have sought, but have not yet been granted, intervener status; (10) landowners and landowner groups; (11) media representatives; (12) third-party requesters who want the information for a business purpose such as selling a product or service or advising clients of potential business opportunities; and (13) members of the general public. Below are some issues that must be considered if the Commission adopts an approach that takes a requester's status and need into account.

1. Should Federal requesters have ready access to CEII? If a Federal entity is given access where others involved in a case are not, are there ex parte concerns?

2. Should submitters of information be entitled to ready access to CEII regarding their own facilities? What about facility owners? Should it matter whether the information was submitted by the entity or created by the Commission?

3. Should interveners be afforded ready access to CEII? Should persons who have filed motions to intervene that have not been denied be granted the same access as interveners? If the Commission denies access to these requesters, has it effectively denied them an opportunity to participate in the matter? If the Commission grants ready access to CEII to interveners, do its intervener rules at 18 CFR 385.214 need to be revised to require a greater demonstration of interest than currently is required?

4. Should state governments be given ready access to CEII? There is statutory authority for the Commission to share information with state commissions in both the Natural Gas Act and the Federal Power Act. If a state government is given access where others are not, are there ex parte concerns?

5. Should affected landowners who have not intervened be granted access to CEII? If so, should those landowners be defined using the parameters found in existing regulations, such as 18 CFR 4.32(a)(3)(i)(A) and 157.6(d)(2)? If the current regulations contain no obligation to keep the landowner lists updated, how can the Commission later verify that a requester is still an affected landowner since property can be bought and sold at any time? If the Commission cannot craft a satisfactory method of verifying landowners' status, should non-intervener landowners follow the FOIA procedures in 18 CFR 388.108?

6. How should the Commission handle CEII requests from members of the press since it is highly unlikely that members of the press would be willing to abide by a non-disclosure agreement? If media requests cannot be handled under alternative procedures, should media representatives be directed to follow the FOIA procedures in 18 CFR 388.108?

7. How should the Commission treat other third party requesters that want the information for business purposes, e.g., consulting firms that may want the information to sell a product or service or to advise clients on potential business opportunities? Under those circumstances, the third party would be unlikely to enter into a non-disclosure agreement. If this is the case, should they be directed to follow the FOIA procedures in 18 CFR 388.108?

8. How should the Commission treat requests from a party in one proceeding to obtain information filed at the Commission by someone who is not a party in that particular proceeding?

D. Verification and Access Issues

If the Commission adopts a system where the identity of the requester, the status of the requester, and the requester's need for the information are relevant, the Commission must have a method of verifying the identity and status of the requester. The Commission currently uses an ID and password to verify the identify of filers who make electronic filings using the Internet. It may be possible to use a similar system to verify identities of requesters of CEII.

Another issue is whether the form of the request should be relevant in deciding to grant or deny access to CEII. Internet access seems to provide the broadest, easiest access to documents. Written requests for documents to be mailed to a street address provide an increased level of security because the recipient may be traceable through the address. Similarly, requiring a requester to appear in person at the Public Reference Room with identification provides some level of security as well. Questions relating to verification and access are listed below.

1. What type of system should the Commission use to verify that a requester is who he or she purports to be? Options include, among others, use of IDs and passwords, use of personal identification numbers, and use of digital signatures.

2. How should the Commission verify that a particular individual is authorized to request documents on behalf of an organization? Should the organization provide a list of authorized individuals to the Commission, perhaps as part of its intervention? Should the Commission issue the entity an ID and password and leave it up to the organization to determine which of its employees can have the password?

3. Should the level of verification required depend on how the requester is seeking to obtain the information? For example, should a higher level of verification be required when someone is accessing documents over the Internet than when they are filing a written request for the documents?

4. If the Commission eliminated all Internet access to CEII, would that be sufficient protection?

E. Non-disclosure Agreements and Limitations on Use of Information

One reason that the FOIA is not a useful vehicle for handling requests for CEII is that it does not permit the Commission to place any restrictions on the recipient's use or dissemination of the information. The Commission believes that disclosure of CEII should be restricted to those who have a legitimate need for the information, and that recipients should be under an obligation to protect the information from disclosure. The Commission is considering the extent to which non-disclosure agreements and agreements limiting the use of the CEII are appropriate, especially where the requester has an existing obligation or interest in protecting the CEII. In addition, the Commission is considering a recipient's obligation to dispose of CEII once it is no longer needed.

1. Should a facility applicant, owner, or operator be required to sign a non-disclosure agreement in order to access CEII regarding its own project, or is its interest in protecting the project sufficient to ensure that it will safeguard the information and only share it to the extent necessary?

2. Should representatives of facility owners, applicants, and operators (contractors, insurers, etc.) be required to sign non-disclosure agreements or use limitations as a prerequisite to receiving CEII? Should the Commission rely on the owner, applicant or operator to impose its own conditions on its representative's use and dissemination of the information?

3. Is it preferable for the Commission to direct the requester to negotiate with the submitter for the information wherever possible, or does it make more sense for the Commission to control the disclosure of the information?

[11] The Commission tentatively plans to add a new section to 18 CFR part 388, following the FOIA regulations.

4. Is it necessary to have another Federal agency representative sign a non-disclosure agreement in order to access CEII, or does 44 U.S.C. 3510(b) afford adequate assurance that the information will be handled appropriately?[12] Is there a need to restrict a Federal agency's ability to use CEII outside of the particular Commission proceeding?

5. Should state or local agencies be required to sign non-disclosure agreements as a prerequisite to receiving CEII? Is there a need to restrict the state or local agency's ability to use CEII outside of the particular Commission proceeding?

6. Should Native American Tribal representatives be required to sign non-disclosure agreements as a prerequisite to receiving CEII? Should Tribes' use of CEII be limited to the particular Commission proceeding?

7. Should interveners and those who have sought intervener status be required to sign non-disclosure agreements and use limitations as a prerequisite to receiving CEII?

8. Will media representatives sign non-disclosure agreements and use limitations? If not, should the Commission disseminate CEII to media requesters?

9. Will third party requesters who are seeking the information to sell a product or service or advise clients be willing to sign non-disclosure agreements and use limitations? If not, should the Commission disseminate CEII to such requesters?

F. Applicability of FOIA Exemptions

The Commission's intended approach on handling CEII is premised on the belief that CEII is exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, which gives any person the right to obtain Commission records unless the records are protected by an exemption or exclusion. Generally, records released to one requester under the FOIA must be released to all. Additionally, as discussed above, the FOIA does not allow restrictions to be placed on the recipient's use or dissemination of information released under the FOIA. The procedures contemplated above are intended to provide a process whereby the Commission can, on a limited basis, share otherwise exempt information with those with a legitimate need for the information. The fact that information is exempt from disclosure under FOIA usually will not prevent those with a need for the information from getting it, perhaps with limitations on use and disclosure of the information.

There are nine exemptions and three law enforcement record exclusions under the FOIA.[13] In order to protect CEII from unlimited disclosure to anyone who requests it, the Commission must determine that the information is entitled to an exemption or is excluded from the FOIA. It is highly unlikely that an exclusion would apply to CEII. Of the nine exemptions, the Commission believes that the exemptions that are most likely to apply to CEII are Exemptions 2, 4, and 7(F). Exemption 2 protects from disclosure, documents "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. 552(b)(2). Attorney General John Ashcroft's October 12, 2001 memorandum to heads of departments and agencies states that "[a]ny agency assessment of, or statement regarding, the vulnerability of such a critical asset should be protected pursuant to Exemption 2," and continues that "a wide range of information can be withheld under Exemption 2's 'circumvention' aspect." Exemption 4 covers "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Exemption 7(F) exempts "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * * could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. 552(b)(7)(F). Case law has recognized that this may cover civil and administrative law enforcement as well as criminal law enforcement. Below is a list of issues that relate to the applicability of FOIA protection to CEII.

1. What types of documents are likely to contain CEII that would be exempt under Exemption 2?

2. Do regulated entities consider CEII to be exempt from disclosure under FOIA Exemption 4 ("trade secrets and commercial or financial information obtained from a person and privileged or confidential")?

3. Can regulated entities articulate likely competitive harm associated with the release of all or some categories of CEII?

4. If the Commission seeks to protect CEII as exempt from disclosure to the general public under FOIA Exemption 4, will the Trade Secrets Act, 18 U.S.C. 1905, limit the Commission's ability to make disclosure to select groups (e.g. interveners) that agree to limit use and dissemination of such information?

5. What types of documents containing CEII are compiled by the Commission for law enforcement purposes that could reasonably be expected to endanger the life or physical safety of individuals?

G. Submission of CEII to the Commission

The Commission must also determine what direction to give filers on how to identify and submit CEII in future filings. The Commission currently has provisions in 18 CFR 388.112 that specify hard copy and electronic media filing requirements for information for which privileged treatment is sought. At the present time, the Commission is not accepting Internet filing of any documents that require privileged or confidential treatment. See 18 CFR 385.2003(c)(3). We assume that at the time the Commission is prepared to accept such information over the Internet that CEII information will be included as well.

Generally, the rules in 18 CFR 388.112 require a filer to submit an unredacted, non-public version of a document as well as a redacted, public version of the same document. The disadvantage to the Commission of this approach is that it takes up more file or disk space because there often is significant overlap between the two documents. An alternative approach would be to permit filers to submit any CEII portions of their document as a separate non-public appendix or attachment to their public, non-redacted filing. This approach may be workable where there are only a few portions of a document that contain CEII, but seems less workable where CEII appears throughout a document. In that case, trying to get the full import of the document would be difficult because the reader would have to continually switch between the public filing and the non-public attachment.

1. Should filers submit CEII using the process in 18 CFR 388.112, i.e., submit a redacted public version and an unredacted non-public version?

2. Should filers be permitted or required to submit CEII as a separate non-public appendix or attachment to a public, non-redacted filing?

3. Should the Commission leave it to the filer's discretion which method to use to distinguish CEII from the public portions of the document?

4. What are the burdens, if any, to filers to any of the various approaches for segregating CEII from public information?

H. Challenges to CEII Status of a Document

Another issue is how to handle disputes with respect to the determination of whether a document contains CEII. Under the existing regulation at 18 CFR 388.112(d), a submitter is given an opportunity to explain why the document is entitled to non-public treatment. In the event that the Commission determines to release some or all of the information for which privileged treatment is sought, the submitter is notified prior to release as provided for in 18 CFR 388.112(e).

1. Are the procedures in § 388.112 effective for handling challenges to the CEII status of a document?

2. If a FOIA request is filed pursuant to 18 CFR 388.108, should the filer or submitter be given an opportunity to explain why the document is entitled to non-public treatment as provided for in 18 CFR 388.112 (d)?

3. If the Commission disagrees with the submitter's claim that the information is CEII, should the Commission provide notification prior to release as provided for in 18 CFR 388.112(e)?

4. Is a different process called for where there is no FOIA request filed, for instance where a Federal agency requests access to the information? What should the process be?

5. Is a different process called for where the Commission on its own initiative determines that the information is not entitled to CEII status? What should the process be?

I. Ex Parte Issues

The Administrative Procedures Act and the Commission's Rule 2201, 18 CFR 385.2201, restrict the Commission's ability to transmit or receive CEII off the record if it is relevant to the merits of a contested on-the-record

[12] 44 U.S.C. 3510(b) states that when one Federal agency receives information from another Federal agency, the employees of the recipient agency are subject to all provisions of law relating to unauthorized release of the information that apply to employees of their own agency, as well as those of the agency that supplied the information.

[13] Records that fall under an exclusion are not considered subject to FOIA, enabling an agency to state that there are no documents responsive to the FOIA request.

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proceeding pending before the Commission. As identified below, issues may arise as to whether certain arrangements for sharing non-public CEII violate the ex parte rules.

1. As long as the Commission is willing to provide CEII to all participants who are willing to abide by use and disclosure restrictions, is there any ex parte concern?

2. Is it possible to share CEII with some entities (Federal agencies, for instance), and not share the same information with others (interveners, for instance)? Are there situations where this might be necessary? Should the entity receiving the information be required to agree not to intervene or file comments in the docket, thereby negating the possibility of the CEII being used to attempt to influence the outcome in the matter?

V. Guidance for Filings in the Interim

As noted, the Commission is using this opportunity to provide guidance to the companies whose facilities could be the targets of terrorist attacks with respect to the approach they may use in making filings with the Commission. Between now and the effective date of a final decision in Docket No. RM02–4, these companies may seek confidential treatment of filings or parts of filings which, in their opinion, contain critical energy infrastructure information (CEII). Granted, this Notice is intended to initiate the public debate as to what CEII means for the purpose of the Commission's regulatory responsibilities, so this guidance may seem to be jumping ahead of that debate. But in the interim, the Commission believes that the public will be better protected if companies whose existing facilities and operations are potentially in harm's way have the discretion to seek protection of information which, in their opinion, could increase the risk for those facilities and operations. For that purpose, companies are directed to follow the procedures in 18 CFR 388.112, and also clearly note "PL02–1" on the first page of the document.

The Commission recognizes that as a result of this guidance companies may seek confidential treatment of documents or parts of documents that would otherwise be readily available to all members of the public, either as a matter of practice or as a matter of law (specifically, a Commission regulation). Therefore, companies seeking confidential treatment of documents or parts of documents must include in their request for such treatment an explanation of why they believe the information warrants confidential treatment (as required by 18 CFR 385.112) and, if disclosure of the information is otherwise required to be public by regulation, they must also seek a waiver of the relevant regulation. Axiomatically, the Commission cannot by this guidance amend, without notice and comment, any of its regulations. As is the practice under 18 CFR 383.112, however, the Commission will honor all requests for confidential treatment, and make the information public only if someone else seeks the information and the Commission finds that information does not fit within an exemption under FOIA. Likewise, if the information would otherwise be required to be public by regulation, the Commission will maintain the non-public status of the information while it considers the waiver request, and make the information public only if it finds that a waiver is not warranted. Submitters are advised that, at present, the Commission is not protecting information related to proposed facilities prior to issuance of a certificate or license.

VI. Public Comment Procedure

The Commission invites interested persons to submit written responses on the matters and issues discussed in this Notice to be adopted, including any related matters or alternative proposals that respondents may wish to discuss. Responses are due March 11, 2002. Responses may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

To facilitate the Commission's review of the responses, respondents are requested to identify each specific question to which their response is directed and to correspond the responses to the outline in the Notice. Additional issues the respondents wish to raise should be identified separately. Respondents should double space their responses.

Responses may be filed on paper or electronically via the Internet. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such responses should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket Nos. RM02–4–000 and PL02–1–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on "Make An E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-Mail to *efiling@ferc.fed.us*. Responses should not be submitted to the e-Mail address.

Any person who uses the non-public appendix to respond to the questions in this Notice are directed to file two versions of the responses, a redacted public version and a non-redacted non-public version. The redacted version must exclude any reference to the particulars of the appendix, and will be made available to the public. The non-redacted version will be kept confidential. Persons are further directed to note plainly on their responses: "Redacted" and "Non-Redacted." Anyone referencing information from the non-public appendix must make a paper filing; the Commission currently is not accepting non-public (confidential, privileged or protected) filings electronically via the Internet.

Public versions of responses will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all public versions of responses may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-Mail to *rimsmaster@ferc.fed.us*.

VII. Document Availability

In addition to publishing the full text of this document (without the non-public appendix) in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document (without the non-public appendix) during normal business hours in the Commission's Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426. (See below for the process to use to obtain a copy of the non-public appendix.) Additionally, responses may be viewed and printed remotely via the Internet through FERC's Home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission's Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (*http://www.ferc.gov*) using the CIPS link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and Word Perfect 6.1. User assistance is available at (202) 208–0874 or e-mail to *cips.master@ferc.fed.us*.

The document (without the non-public appendix) is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via the Internet through FERC's Home Page using the RIMS link or Energy Information Online icon. User assistance is available at (202) 208–2222, or by e-mail to *rims.master@ferc.fed.us*.

Finally the complete text of the document (without the non-public appendix) on diskette in Word Perfect format may be purchased from the Commission's copy contractor, RVJ International, Inc., which is located in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The non-public appendix will be available subject to request and signing a non-disclosure statement. Specifically, any person who wants a copy of the non-public appendix must file a request for the appendix by February 7, 2002 with the Office of the Secretary. This request must explain the person's interest in the proceeding. The person wanting a copy of the non-public appendix must also sign a non-disclosure statement, which will limit the use of the appendix to responding to this Notice. Procedurally, the Office of the Secretary will transmit all requests for the non-public appendix to the Office of the General Counsel, General and Administrative Law, which will process the requests expeditiously to enable timely responses to this Notice.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1614 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

RIN 1515–AC91

Single Entry for Split Shipments

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Customs is reopening the period of time within which comments may be submitted in response to the proposed rule providing for a single entry for split shipments, which was published in the **Federal Register** (66 FR 57688) on November 16, 2001. Specifically, the proposed rule would amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which was split by the carrier, and which arrives in the United States separately. The proposed amendments would implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

DATES: Comments must be received on or before February 14, 2002.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations Branch, (202–927–1605).

SUPPLEMENTARY INFORMATION:

Background

Section 1460 of Public Law 106–476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 1484 of the Tariff Act of 1930 (19 U.S.C. 1484), in pertinent part, by adding a new paragraph (j)(2) in order to provide for a single entry in the case of a shipment which is split at the initiative of the carrier and which arrives in the United States separately.

To implement section 1484(j)(2), by a document published in the **Federal Register** (66 57688) on November 16, 2001, Customs proposed to amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which is divided by the carrier into different parts which arrive in the United States at different times, often days apart.

Comments on the proposed rulemaking were to have been received on or before January 15, 2002. Customs has, however, received a request from a Customs broker to extend this period, the broker basically stating that it needed additional time in order to formulate its concerns and make appropriate comments. Customs believes, under the circumstances, that this request has merit. Accordingly, the period of time for the submission of comments is being reopened until February 14, 2002, as indicated above. It should be noted that no further extension of the comment period beyond this additional period will be granted.

Dated: January 15, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–1602 Filed 1–22–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 934]

RIN 1512–AC50

Proposed Addition of Tannat as a Grape Variety Name for American Wines (2001R–207P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is proposing to add a new name, "Tannat," to the list of prime grape variety names for use in designating American wines.

DATES: Written comments must be received by March 25, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 934).

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY, 14202–2301; Telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) (FAA Act), wine labels must provide "the consumer with adequate information as to the identity" of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer.

To help carry out these statutory requirements, ATF has issued regulations, including those that designate grape varieties. Under 27 CFR 4.23(b) and (c), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties, and if the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. ATF believes the listing of approved grape variety names for American wines will help standardize wine label terminology, provide important information about the wine, and prevent consumer confusion.

ATF has received a petition proposing that new grape variety names be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a

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published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape variety names. A name will not be approved:
- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term "Riesling."

The Director reserves the authority to disapprove the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

Tannat Petition

Tablas Creek Vineyard in Paso Robles, California, has petitioned ATF proposing the addition of the name "Tannat" to the list of prime grape variety names approved for the designation of American wines. Tannat is a red varietal with origins in Southwestern France and the Pyrenees.

The petitioner has submitted the following published references to Tannat to establish its acceptance as a grape and the validity of its names:
- Cépages et Vignobles de France, Volume II, by Pierre Galet, 1990, p. 313.
- Catalogue of Selected Wine Grape Varieties and Clones Cultivated in France, published by the French Ministry of Agriculture, Fisheries and Food, 1997, p.151.
- Traité General de Viticulture Ampelographie, Volume II, by P. Viala and V. Vermoral, 1991, pp. 80–82.
- Guide to Wine Grapes, Oxford University Press, 1996, by Jancis Robinson, p. 182.

The first three references are scientific articles that discuss the grape's origin, cultivation, and ampelography (the study and classification of grapevines). "The Guide to Wine Grapes," intended for the general reader, contains a general description of the grape and its uses. According to these references, the Tannat grape produces a wine that is deeply colored and tannic, which is thought to account for its name. They also note its use as a major component of the French wine Madiran.

Tablas Creek Vineyard states that it imported the Tannat plant into the USDA station in Geneva, New York, in 1992. The plant was declared virus free in 1993 and shipped bare-root to Tablas Creek Vineyard in Paso Robles, California, in February 1993. In 1996, the winery multiplied, grafted and started planting Tannat.

The petitioner states that the Tannat grape is currently grown and used in the United States in winemaking. It reports that in 2000 and 2001, it shipped several orders for Tannat plants to vineyards in California, Arizona, and Virginia. Also, Tannat has long been grown in the vine collections of the University of California. At the request of the petitioner, Richard Hoenisch, Vineyard Manager, Viticulture and Enology Department, University of California at Davis, contacted ATF with information about Tannat's history in the university's collection.

According to Mr. Hoenisch, Tannat was part of the original vine collection of the University of California at Berkeley since the 1890's. Professor Eugene Hilgard, founder of the Department of Fruit Science, established several experimental vineyards in California, with sites in Berkeley, Cupertino, Paso Robles, and Jackson. Mr. Hoenisch states that the vines in the Jackson collection, including Tannat, were rediscovered in 1965 by Dr. Austin Goheen and Carl Luhn and repropagated at UC Davis. The university currently blends its Tannat wine into Cabernet Sauvignon to increase tannins, acidity, and color.

Tablas Creek states that Tannat has great commercial potential in California. The variety is easy to graft and relatively vigorous. It is well adapted to most California regions, ripening fairly late in the cycle, after Grenache but before Mourvédre and Cabernet Sauvignon. The petitioner reports that it has had two highly successful crops off its 0.5 acre planting. Its 1999 harvest had a brix of 28 and a pH of 3.18, while the 2000 harvest had a brix of 25 with a pH of 3.45. The petitioner states that the wine is rich, with good color and excellent aromatics and spice. Tablas Creek further reports that the wine has done well in tastings, resulting in additional orders for Tannat plants from other vineyards and nurseries.

Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand.

Can I Review Comments Received?

Copies of the petition and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment. A copy of this notice and all comments will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:
- Be legible.
- Reference this notice number.
- Be 8½" × 11" in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:
- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½" x 11" in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/alcohol/rules/index.htm.*

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of a new grape varietal name. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by adding the name "Tannat", in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Tannat

* * * * *

Signed: September 21, 2001.

Bradley A. Buckles,

Director.

Approved: December 12, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff & Trade Enforcement)

[FR Doc. 02–1661 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7126–2]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Idaho Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency, Region 10 (EPA) proposes to approve the Idaho Department of Environmental Quality's (IDEQ) request for program approval and delegation of authority to implement and enforce specific National Emission Standards for Hazardous Air Pollutants (NESHAPs) as they apply to major sources in Idaho required to obtain an operating permit under Title V of the federal Clean Air Act (CAA or Act). Pursuant to the authority of the section 112(l) of the Act, this proposal is based on EPA's finding that Idaho State Law, regulations, and resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for straight delegations common to all approval options, and in applicable EPA guidance.

If approved, this delegation will acknowledge IDEQ's ability to implement a NESHAP program and will transfer primary implementation and enforcement responsibility for certain NESHAPs from EPA to IDEQ for major sources. Although EPA would look to IDEQ as the lead for implementing delegated NESHAPs at major sources in Idaho, EPA would retain authority under 112(l)(7) to enforce any applicable emission standard or requirement for major sources. EPA would also retain authority to implement and enforce these standards for non-major sources. If approved, IDEQ may choose to request delegation of new and updated standards, or request broader applicability of their delegation to include non-Title V sources (major sources), by-way-of a streamlined process.

If approved, sources subject to delegated NESHAPs will send required notifications and reports to IDEQ for their action, and send a copy to EPA. Sources will continue to send notifications, reports, and requests required by authorities that are not delegated to IDEQ, to EPA, with a copy to IDEQ.

Concurrent with this proposed rule, EPA is publishing a direct final approval of Idaho's NESHAP delegation in the **Federal Register**. This is being published without prior proposal because the Agency views this delegation as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval as well as tables listing the specific NESHAPs delegated are set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments on the direct final rule, it will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by February 22, 2002.

ADDRESSES: Written comments should be addressed to Tracy Oliver, Office of Air Quality, at the EPA Regional Office listed below.

Copies of the state submittal are available at the following address for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1172.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Dated: December 13, 2001.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–1120 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2001–11068, Notice No. 2]

RIN 2130–AB39

Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who Are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comment on Even Broader Application of Rules and on Implementation Issues

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed rule; public hearing.

SUMMARY: FRA's regulation on the control of alcohol and drug use, which applies to all railroads that operate on the general railroad system of transportation in the United States, currently exempts certain operations by foreign railroads and certain small railroads from some of the regulation's requirements. On December 11, 2001 (66 FR 64000), FRA published a Notice of Proposed Rulemaking (NPRM) proposing to narrow the scope of these exemptions.

The NPRM also invites a discussion of alcohol and drug program implementation issues, and comment on whether FRA should expand the basis for requiring post-accident testing and testing for cause to include events that occur outside the United States. This notice announces the scheduling of a public hearing to allow interested parties the opportunity to comment on these issues.

DATES: *Public Hearing:* The date of the public hearing is Thursday, February 14, 2002, at 9 a.m. in Washington, DC. Any person wishing to participate in the public hearing should notify the Docket Clerk by telephone (202–493–6030) or by mail at the address provided below at least five working days prior to the date of the hearing and submit to the Docket Clerk three copies of the oral statement that he or she intends to make at the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address.

ADDRESSES: (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to Ms. Ivornette Lynch, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Ave., NW., Stop 10, Washington, DC 20590.

(2) *Public Hearing:* The public hearing will be held at 1120 Vermont Avenue, NW., Washington, DC 20005. The hearing room will be Room 1001A on the 10th floor. Attendees should first present an identification card with photograph (such as a current driver's license) to the security counter at the Federal Railroad Administration offices on the 7th floor, and follow security procedures as provided at that location.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313); or Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

Issued in Washington, DC, on January 16, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–1637 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 67, No. 15
Wednesday, January 23, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on February 7, 2002, at the Mt. Hood Room, at the Sheraton Portland Airport Hotel, 8235 N.E. Airport Way, Portland, Oregon 97220. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan (NFP). The meeting will begin at 10:30 a.m. and continue until 4:00 p.m. Agenda items to be discussed include, but are not limited to: Monitoring strategies, REO/RMG Accomplishment Reporting, and rent court rulings related to the NFP. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request at least 10 days in advance of the meeting. Written comments may be submitted for the record at he meeting. Time for oral public comments has been scheduled. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding his meeting may be directed to Steve Odell, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, PO Box 3623, Portland, OR 97208 (Phone: 503–808–2166).

Dated: January 17, 2002.

Jay F. Watson,

Acting Executive Director/Designated Federal Official.

[FR Doc. 02–1710 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will hold its first meeting on Wednesday, February 13, 2002, at the Snohomish County Administration Building, Public Conference Room (4th Floor), 3000 Rockefeller Ave. in Everett, WA 98201.

The meeting will begin at 9 a.m. and continue until about 5 p.m. Agenda items to be covered include: (1) Background on the Secure Rural Schools and Community Self-Determination Act of 2000, (2) organization of the Snohomish County Resource Advisory Committee, and (3) future program of work, for the Snohomish County Resource Advisory Committee.

All Snohomish County Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE, Stevens Pass Hwy, PO Box 305, Skykomish, WA 98288 (phone: 360–677–2414) or Terry Skorheim, District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 1405 Emens, St., Darrington, WA 98241 (phone: 360–436–1155).

Dated: January 16, 2002.

Barbara Busse,

Designated Federal Official.

[FR Doc. 02–1596 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, February 18, 2002. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is to set Committee ground rules and goals, discuss teleconferencing opportunities and initial list of projects.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, February 18, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neal, CA, two and one half miles from State Highway 41.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext, 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Set committee ground rules and goals; (2) teleconferencing opportunities; (3) initial list of projects (4) public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 16, 2000.

David W. Martin,

District Ranger.

[FR Doc. 02–1597 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

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DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee will meet on February 6, 2002 in Brookings, Oregon at the Best Western Brookings Inn at 1143 Chetco Ave. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) An update from the Regional Ecosystem Office; (2) public comment; (3) a discussion of forest plan monitoring; and (4) current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: January 16, 2002.

Michael D. Hupp,

Acting Designated Federal Official.

[FR Doc. 02–1595 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

AGENCY: Forest Service, USDA and Department of Interior.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement between the United States, on behalf of the U.S. Department of Interior and the U.S. Department of Agriculture, Forest Service and NL Industries, Inc. for the recovery of costs incurred by the United States in responding to the release or threatened release of hazardous substances at and from the El Portal Barium Mine and Mill Site in El Portal, Mariposa County, California. Under the proposed settlement, NL Industries will pay $190,000 to the US Department of Interior's Central Hazardous Materials Fund and $85,000 to the U.S. Department of Agriculture, Forest Service.

DATES: Comments must be received, in writing, on or before February 22, 2002.

ADDRESSES: Written comments on this proposed settlement agreement may be sent to: both James E. Alexander, USDA Office of General Counsel, Room 1734 Federal Building, 1220 SW 3rd Avenue, Portland, Oregon 97224 and Shawn P. Mulligan, National Park Service, 1050 Walnut Street, Suite 220, Boulder, Colorado 80302 and should refer to the El Portal Barium Mine and Mill site, El Portal, Mariposa County, California. A copy of the proposed settlement agreement may be obtained by mail from Mary Grove, USDA Office of General Counsel, Room 1734 Federal Building, 1220 SW 3rd Avenue, Portland, Oregon 97224.

Dated: January 14, 2002.

Jack A. Blackwell,

Regional Forester, USDA Forest Service, Region 5.

[FR Doc. 02–1445 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Pilot Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: This is to notify interested parties that, during the current fiscal year (FY) 2002, $80 million is available for loans in the Broadband Pilot Loan Program administered by the Rural Utilities Service (RUS). This is a continuation of the Broadband Pilot Loan Program initiated by RUS during FY 2001 to finance the construction of facilities and systems providing broadband transmission service to rural consumers. The program provides financing for facilities serving rural communities of up to 20,000 inhabitants so that rural consumers in those areas may enjoy the same quality and range of telecommunications services as are available in urban and suburban communities. This notice describes the eligibility and application requirements and the criteria RUS will consider in evaluating applications for broadband loans.

RUS currently has applications for broadband loans, submitted in response to the FY 2001 Broadband Pilot Loan Program, in excess of $350 million. Before accepting new applications, RUS will act on those completed applications currently pending. RUS currently has completed applications in the aggregate amount of $150 million. RUS anticipates that the FY 2002 lending authority will be fully committed after it has acted on those completed applications. However, should FY 2002 loan authority remain available thereafter, RUS shall publish a notice advising interested parties that it is accepting additional applications.

DATES: New applications will be accepted only if, after processing all pending completed applications, RUS publishes an additional notice announcing that loan funds remain available. See discussion below.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Information Collection and Recordkeeping Requirements

This notice contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) because RUS has already received all information required for analysis of the loans to be considered under this notice.

General Information

During FY 2002, $80 million will be made available for loans for the construction of facilities and systems to provide broadband transmission services in rural areas. The Broadband Pilot program is authorized by 7 U.S.C. 950aaa and the Agriculture Appropriations Act, 2002, Public Law 107–76 and is a continuation of the Broadband Pilot Loan Program initiated by RUS during FY 2001 pursuant to a NOFA published December 5, 2000, 65 FR 75920 (Initial NOFA).

The Initial NOFA announced that $100 million in loan funds would be available during FY 2001 on a first-come, first-served basis. The queue for considering and approving loans was established by the date on which the application was determined to be complete by RUS. During FY 2001, RUS approved for funding 12 applications totaling $100 million dollars. RUS currently has pending completed applications for broadband loans, submitted in response to the Initial NOFA, in the aggregate amount of $150 million.

Except as discussed below under "Response to Terrorist Events," before accepting new applications for broadband loans, RUS will act on those completed applications it currently has pending based on the date on which RUS determined the application to be complete. Should loan funds remain available thereafter, RUS will publish a notice advising interested parties that it is accepting additional applications.

Drawing on experience gained in reviewing applications over the past year, this notice restates, clarifies, and provides additional information regarding the eligibility and application requirements and criteria RUS will consider in evaluating applications under the Broadband Pilot Loan Program.

After the $80 million provided for in this NOFA is committed, RUS will return any remaining loan applications to their respective applicants. Should financing beyond the $80 million become available for broadband transmission services, RUS will, by separate notice, announce the eligibility and application requirements, priority criterion and approval standards.

Agency Contacts

Applications from: Alabama, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Puerto Rico, Virgin Islands: Mr. Kenneth Kuchno, Director, Eastern Area, Telecommunications, Rural Utilities Service, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, Telephone (202) 690–4673.

Applications from: Alaska, Idaho, Iowa, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Washington, Wyoming: Mr. Jerry Brent, Director, Northwest Area, Telecommunications, Rural Utilities Service, STOP 1595, 1400 Independence Avenue, SW., Washington, DC 20250–1595, Telephone (202) 720–1025.

Applications from: Arizona, Arkansas, California, Colorado, Hawaii, Kansas, Louisiana, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, American Samoa, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, Commonwealth of the Northern Marianas Islands: Mr. Ken Chandler, Director, Southwest Area, Telecommunications, Rural Utilities Service, STOP 1597, 1400 Independence Avenue, SW., Washington, DC 20250–1597, Telephone (202) 720–0800.

Definitions

As used in this notice:

Bandwidth means the capacity of the radio frequency band or physical facility needed to carry the broadband transmission services.

Broadband transmission services means providing an information rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

Eligible applicant shall have the meaning set forth in that paragraph entitled "Eligible Applicant."

Eligible loan purposes shall have the meaning set forth in that paragraph entitled "Eligible Loan Purposes."

Loan design shall have the meaning set forth in the paragraph entitled "Loan Design."

Rural areas means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Spectrum means a defined band of frequencies that will accommodate the broadband transmission services.

Eligible Applicant

To be eligible for a loan, the applicant must meet the following conditions:

(1) The applicant must be a public body; an Indian tribe; a cooperative, nonprofit, limited dividend, or mutual association; an incorporated or limited liability company; or other legally organized entity. The applicant may not be an individual or a partnership.

(2) The applicant must have the legal authority to own and operate the broadband facilities, to enter into contracts, to borrow funds, provide security, and otherwise comply with applicable federal statutes and regulations.

Eligible Loan Purposes

Loans may be approved to finance the improvement, expansion, construction, acquisition and operation of facilities or systems to furnish or improve broadband transmission service in rural areas subject to the following:

(1) Loans may be approved to finance the acquisition of operating lines and facilities only if the acquisition is necessary to furnish or improve broadband transmission service in rural areas;

(2) Loans may be approved to finance the lease or purchase of spectrum rights and bandwidth necessary to provide the broadband transmission services;

(3) Loans may not be approved to finance operating expenses except in limited circumstances, such as for the initial operation of a new system, where RUS determines such financing will enhance feasibility of the loan and no other source of financing is available; and

(4) Loans may not be approved to finance the duplication of existing adequate broadband transmission services provided by others.

Minimum Loan Amount

Loans under this authority will not be made for less than $100,000.

Loan Terms

Loans shall bear interest based on the United States Treasury rate for loans with comparable maturities and shall be repaid with interest within a period, not to exceed 10 years, that approximates the expected useful life of the facilities financed.

Application

Except as set forth below under "Response to Terrorist Events," RUS processes applications for loans for broadband transmission services on a first-come, first-served basis determined by the date on which the applicant submitted a completed application.

A completed application must include the following documentation, studies, reports and information satisfactory to RUS:

(1) Completed Standard Form 424, "Application for Federal Assistance."

(2) Evidence that applicant is an eligible applicant.

(3) A loan design.

(4) Evidence that the proposed project will not result in the duplication of existing facilities providing adequate broadband transmission service.

(5) Description of the qualifications of applicant's management and key employees including relevant training and work experience.

(6) Financial feasibility studies, as described below.

(7) Proposed security arrangements for the loan.

(8) An environmental report on the project.

(9) Evidence that the applicant and the project will be in compliance with applicable laws.

Upon receipt, RUS reviews an application to determine whether the application is complete. If RUS determines that an application is not complete, it advises the applicant of requirements that must be met. Upon determining that the application is

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complete, RUS assigns an application completion date which establishes the order of the application in the loan queue with the earliest application completion dates evaluated first. A determination that an application is complete is not a commitment to approve the application. Applicants are advised in writing of their respective application completion dates and the availability of loan funds.

As of the date of this notice, RUS has a loan queue of completed applications in an aggregate amount well in excess of FY 2002 lending authority. Consequently, RUS is not now accepting additional applications.

Loan Design

A Loan Design should contain the following, satisfactory to RUS:

(1) A narrative discussing the proposed broadband transmission project including the costs of the project, all existing and proposed facilities that are a part of the project, the services to be provided by the project, the proposed service area, and the basis for subscriber forecasts;

(2) Engineering design studies providing an economical and practical engineering design for construction of the applicant's broadband project that includes a detailed description of the facilities to be funded and setting forth technical specifications, data rates, and costs;

(3) A map of the proposed service area reflecting the location of facilities and systems providing similar broadband services owned and operated by other entities; and

(4) Subscriber forecasts and supporting documentation including market surveys.

Feasibility Study

RUS will approve a loan only if, in RUS' sole judgment, the loan will be repaid according to its terms within the time agreed. The applicant must provide RUS with studies, satisfactory to RUS, addressing the financial feasibility of the broadband project. The applicant should include in its application:

(1) Financial statements of the applicant for the last three years or for so long as the applicant has been in business if the applicant has not been in business for three years;

(2) A loan budget showing all costs of the proposed project and the amount of loan and nonloan funds to be used;

(3) A pro-forma five-year financial forecast including all revenues and expenses for the five-year period, a subscriber penetration forecast, and a detailed description of all associated assumptions;

(4) Depreciation rates for the equipment being financed; and

(5) Such additional information relating to financial feasibility as the borrower may choose to include after consulting with RUS.

Loan Security

RUS will approve a loan only if, in RUS' sole judgment, the security therefore is reasonably adequate. Generally, RUS requires as security a first lien on all of the real and personal property that is part of the project financed by the loan, including any additional property relating to the project acquired after the date of the loan. RUS may require additional security, including, without limitation, a first lien on all real and personal property of applicant, and pledges of stock or other ownership interests in the applicant. RUS may also require that the applicant provide equity as a part of project or system financing.

RUS loan documents set forth additional requirements on the applicant with respect to providing and maintaining security including operational, financial, and investment covenants and controls.

Approval Criteria

RUS will consider, for approval, completed applications on a first-come, first-served basis as discussed above under "Application". In order to approve a loan, RUS must determine that the application satisfies the following criteria:

(1) The project will provide broadband transmission services in rural areas in an efficient and economical manner;

(2) Loan funds will be used for eligible loan purposes;

(3) The applicant has the necessary expertise and experience to successfully complete and operate the project;

(4) The project is financially feasible and the loan will be repaid according to its terms;

(5) The security for the loan is reasonably adequate; and

(6) The applicant and the project will be in compliance with applicable laws.

If RUS concludes that the application satisfies the above criteria, RUS may approve the application, in whole or part, and prescribe terms and conditions applicable to the loan.

The applicant will be advised in writing of RUS loan approval and the expected timetable for delivery of loan documents for execution by the borrower.

If RUS does not approve the application, RUS will so advise the applicant in writing.

Loan Documents

The terms and conditions of loans shall be set forth in loan documents prepared by RUS. On request, RUS will provide applicants with examples of notes, loan agreements, and security instruments developed for use in the Broadband Pilot Loan Program. However, the terms and conditions of each loan shall be determined on a case-by-case basis.

Among other matters, RUS may prescribe conditions to the advance of funds that address concerns regarding the feasibility of and the security for the loan. RUS may also prescribe terms and conditions applicable to the construction and operation of the project and the delivery of broadband transmission services to rural areas.

Other Federal Statutes and Regulations

Loan applications will be required to demonstrate compliance with all applicable federal statutes and regulations, including, among others, those relating to nondiscrimination in federally assisted programs, government wide debarment and suspension (non-procurement), government wide requirements for drug-free workplace, restrictions on lobbying, audits, architectural barriers, flood hazard precautions, and delinquent debt.

Applicants should contact the appropriate office identified above under "Agency Contacts" for additional information regarding any federal statutes and regulations which may apply to the project covered by the application.

Response to Terrorist Events

Current RUS borrowers are advised that section 770 of FY 2002 Appropriations Act, Public Law 107–76, provides as follows:

Notwithstanding any other provision of law, from the funds appropriated to the Rural Utilities Service by this Act, any current Rural Utilities Service borrower within 100 miles of New York City shall be eligible for additional financing, refinancing, collateral flexibility, and deferrals on an expedited basis without regard to population limitations for any financially feasible telecommunications, energy or water project that assists endeavors related to the rehabilitation, prevention, relocation, site preparation, or relief efforts resulting from the terrorist events of September 11, 2001.

Current borrowers qualifying under section 770 should contact the appropriate office identified above under "Agency Contacts" for additional information.

Dated: January 11, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1666 Filed 1–22–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 23, 2002.

SUMMARY: The Department of Commerce is extending the time limit for completion of the preliminary results of the administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The period of review is May 1, 2000, through April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood at (202) 482–0656 or (202) 482–3874, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION: On June 19, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The period of review is May 1, 2000, through April 30, 2001. The review covers two producers/exporters of the subject merchandise to the United States.

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. This review involves a number of complicated cost issues. As a result, we need additional time for our analysis. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results. Consequently, we have extended the deadline until May 31, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)(2000)) and 19 CFR 351.213(h)(2).

Dated: January 16, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–1658 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–1766 or (202) 482–1280, respectively.

Final Determination

The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from France. We determine that stainless steel bar from France is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from France. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation.*"

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to 19 CFR part 351 (2001).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From France*, 66 FR 40201 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Aubert & Duval S.A. ("A&D") and Ugine-Savoie Imphy S.A. ("U–SI"). On August 28, 2001, A&D notified the Department that it was no longer participating in this investigation. We issued U–SI's verification report on October 25, 2001. See "Verification" section of this notice for further discussion.

On November 27, 2001, U–SI submitted revised sales and cost databases pursuant to verification findings and to the Department's November 13, 2001, request.

The petitioners [1] and respondent filed case and rebuttal briefs in November 2001. A public hearing was held at the request of the petitioners on December 6, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

[1] The petitioners in this case are Carpenter Technology Corp., Crucible Speciality Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America.

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Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determinations in these investigations, the respondent in this and the companion stainless steel bar ("SSB") investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel ("SQOFES"), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. For details, see the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation."

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES, and with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") is October 1, 1999, through September 31, 2000.

Facts Available

In the *Preliminary Determination*, the Department determined that facts available was warranted in accordance with section 776(a) of the Act to calculate the dumping margin for the respondent A&D. Therefore, for the preliminary determination A&D's dumping margin was based on the simple average of the margins contained in the petition. The use of facts available was required because although A&D responded to the Department's questionnaires, it did not provide usable data for purposes of our preliminary margin analysis. *See Preliminary Determination*, 66 FR at 40201 (August 2, 2001).

Since the preliminary determination and prior to the verification of A&D's home market data, A&D notified the Department of its withdrawal from participation in this investigation.[2] section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the {Department} under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the {Department} shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case under section 776(a)(2)(C) and (D) of the Act because A&D failed to allow the Department to verify its data, thereby significantly impeding the proceeding.

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. A&D decided to withdraw its participation in this investigation, thereby precluding the Department from verifying its data. On this basis the Department determined that it failed to cooperate by not acting to the best of its ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned A&D an antidumping rate based on adverse inferences.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent. *See e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), followed in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907, 25908 (May 4, 2000); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847, 10848 (March 5, 1998), followed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 40433 (July 29, 1998). In accordance with our stated practice, in this case we applied to A&D the highest margin in the notice of initiation which was based on the petition.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action accompanying the URAA, H. Doc. No. 103–316 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In this case, when analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margins for purposes of using them as adverse facts available, we examined the price and cost information provided in the petition when making our preliminary determination. For further details, see Memorandum to Louis Apple from The Team entitled "Preliminary Determination of Stainless Steel Bar from France: Use of Facts Available and Corroboration of Petition Margins," dated July 26, 2001. Since the preliminary determination, we have received no additional information which would cause us to reconsider whether the information in the petition has probative value. Therefore, we have continued to find in the final determination that the rates contained in the petition have probative value.

In accordance with Section 776(c) of the Act, we were able to corroborate the information in the petition using information from independent sources that were reasonably at our disposal. As a result, we are assigning A&D the highest margin contained in the petition, 71.83 percent, for purposes of the final determination.

Fair Value Comparisons

To determine whether sales of stainless steel bar from France to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the January 15, 2002, Decision Memorandum, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Constructed Export Price

For all sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated CEP based on the same methodologies described in the *Preliminary Determination*, with the following exception:

- We treated the technical service expense as an indirect rather than as a direct selling expense.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production and NV, with the following exceptions:

Calculation of NV

- We determined that although there are but two levels of trade ("LOT") in the home market, each of those LOTs were different from the U.S. LOT. Therefore, we granted a CEP offset.
- We treated expenses incurred by a home market affiliate, which acted as a commission agent, as indirect selling expenses rather than direct selling expenses.
- We recalculated home market warranty expenses on a customer-specific basis rather than on a general-product basis and treated both the respondent and its affiliate's home market warranty expenses as direct selling expenses.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

In this investigation, and in the companion SSB investigations from Germany, Italy, Korea, Taiwan, and the United Kingdom, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the tragic events of September 11, for some companies in these countries we were unable to complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits. *See Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) (comparing verification to an audit). The courts concur that verification is a spot check and it is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (CAFC 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete the verifications as originally scheduled. Although the amount of information verified was less than planned in certain SSB cases, verification was conducted as scheduled in this SSB proceeding.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2002, *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we

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have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of SSB from France that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions will remain in effect until further notice. The weighted-average dumping margins for this LTFV proceeding are as follows:

Exporter/manufacturer	Margin percentage
Aubert & Duval, S.A.	71.83
Ugine-Savoie Imphy, S.A.	3.90
All Others*	3.90

*Pursuant to section 785(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de minimis*, or determined entirely on facts available.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Whether to Collapse the Sales Prices and Production Costs of two Affiliates Across Countries
2. Defining Foreign Like Product for Making Product Comparisons
3. Ranking "Peeled and Descaled" as a Final Finish Characteristic
4. Assigning Total Facts Available
5. Calculating the Dumping Margin
6. Level of Trade
7. Home Market Expenses Reported In Lieu of Commissions
8. Treatment of Movement and Selling Expenses Between Home Market Affiliates as Manufacturing Costs
9. Home Market Warranty Expenses
10. Treatment of UFS/U–SF's Restructuring Costs as Selling Expenses
11. U.S. Credit Expenses for Consignment Sales
12. Whether to Include Freight Revenue in Calculation Formulas Used to Report Certain U.S. Discounts and Expenses
13. Treatment of the French Tax Provision

[FR Doc. 02–1651 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–822]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from the United Kingdom. We determine that stainless steel bar from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from the United Kingdom. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation.*"

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from the United Kingdom*, 66 FR 40214 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

On August 24, 27, and September 4, 2001, we received requests for a public hearing from Firth Rixson Special Steels Limited ("FRSS"), Corus Engineering Steels Ltd. ("Corus") and the petitioners, respectively. We conducted verification of Corus's questionnaire responses during the period September through November 2001. *See* "Verification" section of this notice for further discussion. On November 2, 2001, we received a case brief from Valkia Ltd. ("Valkia") in response to a letter issued by the Department on October 19, 2001. Corus submitted revised sales and cost data pursuant to verification findings on November 30, 2001.

The petitioners and FRSS filed case briefs on December 7, 2001. The petitioners and Corus filed rebuttal briefs on December 13, 2001. A public hearing was held on December 14, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondents in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Use of Facts Available

In the *Preliminary Determination*, we based Crownridge's and FRSS's antidumping duty rates on the facts otherwise available, in accordance with section 776(a)(2)(A) and (B) of the Act, respectively. *See also* the Memorandum to Richard W. Moreland from Louis Apple entitled "Preliminary Determination of Stainless Steel Bar (SSB) from the United Kingdom: Use of Facts Available," dated July 26, 2001 (*Facts Available Memorandum*).

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Crownridge did not respond to the antidumping questionnaire. In the preliminary determination, we determined that it was appropriate to assign Crownridge a margin based on facts available (*i.e.*, the all others rate), rather than on adverse facts available, because the information on the record at that time indicated that it was unable to provide a response. We have changed this determination based on information placed on the record since the preliminary determination, indicating that Crownridge (now operating as Valkia) could have responded to the Department's questionnaire and that it provided misleading information during our investigation. Consequently, we find that Crownridge/Valkia failed to act to the best of its ability to comply with a request for information, and a margin based on adverse facts available is warranted. This issue is addressed in further detail in *Comment 2* of the January 15, 2002 *Decision Memorandum*.

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As explained in the *Preliminary Determination*, FRSS withheld or failed to provide the data required to perform the antidumping duty calculations, despite ample opportunity to do so. On this basis we determined that FRSS failed to cooperate by not acting to the best of its ability in this investigation, and the application of a dumping rate based on adverse inferences is warranted. This issue is addressed in further detail in *Comment 1* of the January 15, 2002, *Decision Memorandum*.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), followed in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 10826, 10847 (March 5, 1998), followed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 40433 (July 29, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In this case, when analyzing the petition for purposes of the initiation, we reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. For the preliminary determination, in order to corroborate the petition margins for purposes of using them as adverse facts available, we re-examined the price and cost information provided in the petition in light of information developed during the investigation. *See* the *Facts Available Memorandum* for further details of our corroboration methodology. Since the preliminary determination, we have received no additional information which would cause us to reconsider whether the information in the petition has probative value. Therefore, we have continued to find in the final determination that the rates contained in the petition have probative value.

As we noted in the *Preliminary Determination*, in accordance with section 776(c) of the Act, we were able to corroborate the information in the petition using information from independent sources that were reasonably at our disposal. As a result, we have assigned to Crownridge/Valkia and FRSS the highest rate contained in the petition, 125.77 percent, for purposes of the final determination. *See Comment 1* and *Comment 2* of the January 15, 2002 *Decision Memorandum*.

Fair Value Comparisons

With respect to Corus, to determine whether sales of stainless steel bar from The United Kingdom to the United States were made at less than fair value, we compared constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below, and in the January 15, 2002, *Decision Memorandum* and Memorandum from Taija A. Slaughter to Neal A. Halper (*Calculation Memo*), which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Constructed Export Price

For sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated CEP based on the same methodologies described in the *Preliminary Determination*, with the following exceptions:

We based the final margin calculations on databases provided by Corus since the *Preliminary Determination*, containing corrections to various clerical errors related to Corus's reported sales expense fields, resulting from verification. *See* the November 30, 2001 verification reports on file in room B–099 of the Commerce Department.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

We based the cost of production analysis on a database provided by Corus since the *Preliminary Determination* reflecting minor corrections resulting from verification. *See* the November 9, 2001 verification report on file in room B–099 of the Commerce Department. We also revised Corus's reported general and administrative expenses to include an amount for restructuring costs. *See* Corus's *Comment 1* in the January 15, 2002, *Decision Memorandum* and the *Calculation Memo* for further details of this adjustment.

2. Calculation of NV

We calculated NV based on the same methodologies described in the *Preliminary Determination*, using a database provided by Corus since the *Preliminary Determination*, reflecting minor corrections to Corus's home market sales expense fields, resulting from verification. *See* the November 9, 2001 verification report on file in room B–099 of the Commerce Department. We deducted various discounts, rebates, movement expenses, direct selling expenses, and packing cost from the reported gross unit price, which were inadvertently not included in the calculation of NV in the preliminary determination. We also corrected an error with respect to the weight-averaging of net home market price.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

In this investigation, and in the companion SSB investigations from Germany, France, Italy, Korea and Taiwan, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the tragic events of September 11, for some companies in these countries we were unable to complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States*, 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F.Supp. 275, 281 (C.I.T. 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete the verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2001, *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/frnhome.htm. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of stainless steel bar from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Corus Engineering Steels, Ltd.	4.48
Crownridge Stainless Steel, Ltd.	125.77
Firth Rixson Special Steels, Ltd.	125.77
All Others*	4.48

*Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or de minimis, or determined entirely on facts available.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

1. Facts Available Margin for FRSS
2. Facts Available Margin for Crownridge/Valkia

Corus Issues

3. Restructuring Costs
4. Redundancy Expenses
5. Allocation of Parent Company G&A Expenses
6. Calculation of U.S. Credit Expense
7. Assignment of Product Control Numbers
8. Corus's Comparison Hierarchy
9. CEP Offset Adjustment
10. Treatment of Negative Margin Sales
11. Calculation of NV

[FR Doc. 02–1652 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–847]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from Korea. We determine that stainless steel bar from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from Korea.

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Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation.*"

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Korea*, 66 FR 40222 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Changwon Specialty Steel Co., Ltd. ("Changwon") and Dongbang Industrial Co. Ltd., ("Dongbang") (collectively, "the respondents"). In October 2001, the respondents submitted revised sales and cost databases pursuant to verification findings at the Department's request. We issued verification reports in November 2001. *See* "Verification" section of this notice for further discussion.

The petitioners [1] and the respondents filed case and rebuttal briefs, respectively, on November 16 and November 27, 2001. All parties withdrew their request for a hearing on November 28, 2001.

Although the deadline for this determination was originally December 16, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondents in the companion stainless steel bar investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel ("SQOFES"), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these stainless steel bar investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from stainless steel bar. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

[1] The petitioners in this case (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America)

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Korea to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below, and in the January 15, 2002 *Decision Memorandum* and each individual respondent's calculation memorandum, which are on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Determination*, with the following exceptions:

Changwon

We accepted Changwon's revised U.S. sales listing pursuant to verification findings. Specifically, we accepted the correction to Changwon's U.S. short-term interest rate and imputed credit calculations, and allowed certain duty drawback adjustments to be made to the U.S. sales listing. We accepted the adjustment to the direct selling expense ratio applicable to Changwon's affiliate, POSTEEL. We also corrected a ministerial error by reclassifying sales through Changwon's U.S. affiliate, POSAM, as CEP sales, consistent with our preliminary and final determinations.

Dongbang

We accepted Dongbang's revised U.S. sales listing pursuant to verification findings. Specifically, we accepted the adjustments to duty drawback and the corrections to the inventory carrying cost calculations.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

Changwon

We disallowed Changwon's claimed offset for gains on marketable securities to its reported general and administrative ("G&A") expenses. We further adjusted Changwon's G&A rate by recalculating Changwon's reported cost of goods sold value exclusive of packing.

Dongbang

Pursuant to verification findings, we accepted Dongbang's corrections to its COP and constructed value ("CV") databases to adjust for Dongbang's over-allocation of the amount of scrap revenue offset against its raw material costs. We accepted Dongbang's G&A amount to remove the total amount of scrap revenue that was included both as an offset to raw material cost and as part of Dongbang's reported G&A expenses. We adjusted Dongbang's recalculation of its affiliated supplier's G&A and interest expense used in the calculation of COP based on fiscal year 2000 amounts (rather than fiscal year 1999) pursuant to verification findings. Using Dongbang's affiliated supplier's recalculated COP, we revised our major-input analysis of Dongbang's raw material cost to reflect, on a grade-specific basis, the highest of COP, transfer price, or when available, market price. We made an adjustment to the costs reported for certain products sold but not produced during the POI.

2. Calculation of NV

Changwon

Pursuant to verification findings, we accepted Changwon's exclusion of the sales of billets from its home market sales listing because billets are raw materials used to produce the subject merchandise (*i.e.*, stainless steel bars). We also accepted Changwon's correction of clerical errors presented at the onset of verification, namely the corrections to Changwon's interest revenue, warranty and inland freight calculations. We corrected for ministerial errors identified after the preliminary determination. Specifically, we adjusted the preliminary margin calculation by adding (rather than deducting) interest revenue to NV and correcting an error with respect to home market credit expenses which were inadvertently set to zero. We added (rather than deducted) the cost of U.S. packing to NV. We also made an additional correction to account for the omitted duty drawback adjustment related to local export sales.

Dongbang

We accepted the correction Dongbang presented at the onset of verification, namely a correction to Dongbang's home market interest rate used to calculate imputed credit. We adjusted Dongbang's calculation of its indirect selling expense ratio based on verification findings. We corrected for a ministerial error identified after the preliminary determination by adding (rather than deducting) the cost of U.S. packing to NV in the final determination.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

In this investigation, and in the companion stainless steel bar investigations from Germany, France, Italy, the United Kingdom and Taiwan, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the events of September 11, we were unable to complete all scheduled verifications in these cases. Specifically, in the Korean investigation, we were unable to verify the information relating to Changwon's U.S. affiliate, POSAM. However, for those companies that we were unable to verify on site, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States*, 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F.Supp. 275, 281 (Ct. Int'l Trade 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in these final determinations, despite our inability to complete the

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verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2001, *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of stainless steel bar from Korea that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Changwon Specialty Steel Co., Ltd	13.38
Dongbang Industrial Co., Ltd	4.75
All Others Rate	11.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

Common Issues

Comment 1: Product Characteristics and Matching Methodology
Comment 2: Duty Drawback
Comment 3: Application of the Major Input Rule
Comment 4: Ministerial Errors

Company Specific Issues

Changwon Specialty Steel Co., Ltd.

Comment 5: Treatment of Changwon's U.S. Sales Made Through POSTEEL's U.S. affiliate
Comment 6: Whether to Grant a Constructed Export Price ("CEP") Offset Adjustment for Changwon's CEP Sales
Comment 7: Interest Rate Selection
Comment 8: General & Administrative ("G&A") Expenses
Comment 9: Denominator Used to Calculate G&A and Interest Ratios

Dongbang Industrial Co., Ltd.

Comment 10: Treatment of Class II Stainless Steel Bar
Comment 11: Selection of Cost for Products Which Were not Produced but Sold During the POI

[FR Doc. 02–1653 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–836]

Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination.

SUMMARY: We determine that stainless steel bar from Taiwan is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at not less than fair value of stainless steel bar from Taiwan. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. However, this final determination does not differ from the preliminary determination, in which we found that the respondent did not make sales in the United States at prices below normal value.

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Annika O'Hara, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207 and (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

The preliminary determination in this investigation was issued on July 26, 2001. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Taiwan*, 66 FR 40198 (August 2, 2001) ("*Preliminary Determination*"). Since the *Preliminary Determination*, the following events have occurred:

On July 27, 2001, the Department solicited additional information from the respondent Gloria Material Technology Corporation, ("Gloria"). On August 6, 2001, we received a response, including revised cost of production ("COP") and constructed value ("CV") databases.

Verification of the response submitted by Gloria took place from August 12 through 23, 2001 (*see* the "Verification" section below).

On November 14, 2001, the petitioners in this case (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America) and Gloria submitted case briefs. The petitioners and Gloria submitted rebuttal briefs on November 19, 2001. At the request of the petitioners, the Department held a public hearing on November 28, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondent in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES which the Department disagrees with and has addressed in the January 15, 2002, *Decision Memorandum* in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary scope decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of this investigation ("POI") is October 1, 1999, through September 30, 2000.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Taiwan to the United States were made at less than fair value, we compared export price ("EP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the *Final Determination Calculations for Gloria Material Technology Corporation and Golden Win Steel Corporation ("Golden Win")* Memorandum dated January 15, 2002 ("Calculation Memorandum"), which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price

For sales to the United States, we used EP as defined in section 772(a) of the Act. We calculated EP based on the same methodologies described in the

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Preliminary Determination, with the following exceptions:

Based on our findings at verification, we made revisions to Gloria's U.S. sales database related to its reported date of sale, U.S. credit expenses, domestic inland freight, brokerage and handling, and gross unit price. *See* Gloria's Calculation Memorandum, Gloria's Sales and Cost Verification Report and Comment 2 and 6 of the January 15, 2002 *Decision Memorandum*. Finally, we have included the additional U.S. sales provided by Gloria at verification in our final calculations. See Comment 7 of the January 15, 2002 *Decision Memorandum*.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the COP, whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

Based on information provided by Gloria since the *Preliminary Determination*, we revised Gloria's costs to include the verified COP and CV data based on Gloria's August 6, 2001 supplemental questionnaire response. We have combined Gloria's raw material costs into a single weight-averaged cost for each grade designation under the Department's model matching methodology for the final determination. *See* Comment 1 of the January 15, 2002 *Decision Memorandum*. We revised Gloria's grade designation by collapsing into a single grade designation the direct material costs for three grades Gloria incorrectly reported separately. *See* Comment 2 of the January 15, 2002 *Decision Memorandum*.

Based on our findings at the cost verification, we made revisions to Gloria's COP database to correct errors related to its reported costs for SG&A, research and development, and interest expenses. Because we verified the information in the CV and COP databases submitted by Gloria, we have removed the upward adjustments made at the preliminary determination for direct materials, direct labor, variable and fixed overhead. We have recalculated Golden Win's G&A expense ratio based on its financial statements and excluded the "bad debt loss" from accounts receivable noted in the CPA adjustment from our calculation. *See* Comment 4 of the January 15, 2002 *Decision Memorandum*. We have reduced Gloria's reported COM by the amount of packing expenses reported in the sales database. *See* Comment 7 of the January 15, 2002 *Decision Memorandum*.

For the products Gloria reported sold but not purchased or produced during the POI, we have reassigned costs based on a more appropriate match to the next most similar grade than those reported by Gloria. We have dropped costs associated with products purchased but not produced by Gloria. *See* Comment 3 of the January 15, 2002 *Decision Memorandum*.

2. Calculation of NV

We recalculated credit expenses using the last payment date reported. *See* Comment 6 of the January 15, 2002 *Decision Memorandum*. Furthermore, we excluded from Gloria's home market sales database, the sales of products for which Gloria reported a zero production quantity because these products were produced by other manufacturers. *See* Comment 7 of the January 15, 2002 *Decision Memorandum*.

In addition, we corrected several errors related to Gloria's reported return quantity, warranty, warehousing, and inland freight expense fields, which were presented by Gloria at the onset of the sales verification. *See* Gloria's Calculation Memorandum and Gloria's Sales and Cost Verification Report.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by Gloria for our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2002 *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Determination

We determine that the following weighted-average percentage margins exist for the period October 1, 1999, through September 30, 2000:

Exporter/manufacturer	Weighted-average margin percentage
Gloria	0.00

Suspension of Liquidation

Because the estimated weighted-average dumping margin of the examined company is 0.00 percent, we are not directing the Customs Service to suspend liquidation of entries of stainless steel bar from Taiwan.

Notification of the International Trade Commission

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our determination. This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Gloria's Direct Material Costs.
Comment 2: Gloria's Grade Designations.
Comment 3: Cost Data with Zero Production Quantities.
Comment 4: Golden Win's G&A.
Comment 5: Interest Expense Calculation.
Comment 6: Credit Expenses.
Comment 7: Additional U.S. Sales.
Comment 8: Packing.
Comment 9: Variable and Fixed Overhead Adjustment.

[FR Doc. 02–1654 Filed 1–22–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–829]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from Italy. We determine that stainless steel bar from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from Italy. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled *"Continuation of Suspension of Liquidation."*

EFFECTIVE DATE: February 23, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Melani Miller, or Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–0116, or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Italy*, 66 FR 40214 (August 2, 2001) (*"Preliminary Determination"*)), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Acciaierie Valbruna Srl/Acciaierie Bolzano S.p.A. ("Valbruna"), Acciaiera Foroni SpA ("Foroni"), Trafilerie Bedini, Srl ("Bedini"), and Rodacciai S.p.A. ("Rodacciai") (collectively, "the respondents"). We issued verification reports in October and November 2001. *See* "Verification" section of this notice for further discussion.

The petitioners and respondents filed case and rebuttal briefs, respectively, on November 21 and November 28, 2001. A public hearing was held at the request of the petitioners on December 5, 2001.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of the Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determinations in these investigations, the respondents in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. (For details, *see* the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation.")

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (*See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with*

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Final Antidumping Duty Determination: Stainless Steel Bar from Italy, 66 FR 30414 (June 6, 2001).)

With the exception of one respondent in the Germany investigation which filed comments on the Department's preliminary scope decision with respect to SQOFES with which the Department disagrees and has addressed in the January 15, 2002, Decision Memorandum in that case, no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Use of Facts Available

As explained in the *Preliminary Determination*, we based Cogne's antidumping duty rate on adverse facts available, in accordance with section 776 of the Act.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case because Cogne failed to respond to the Department's questionnaire.

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Cogne decided not to respond to the Department's questionnaire. On this basis the Department determined that it failed to cooperate by not acting to the best of its ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned Cogne an antidumping rate based on adverse inferences.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), followed in *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 10826, 10847 (March 5, 1998), followed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea and Germany*, 63 FR 40433 (July 29, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) ("*SAA*"), states that "corroborate" means to determine that the information used has probative value. *See SAA* at 870.

In this case, when analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margins for purposes of using them as adverse facts available, we re-examined the price and cost information provided in the petition in light of information developed during the investigation. For further details, see the Memorandum to Richard W. Moreland, "Preliminary Determination of Stainless Steel Bar from Italy: *Corroboration Memorandum*," dated July 26, 2001.

As we noted in the *Preliminary Determination*, in accordance with Section 776(c) of the Act, we were able to partially corroborate the information in the petition using information from independent sources that were reasonably at our disposal. Using this information, we were able to corroborate the price-to-price margin calculations in the petition, but were unable to fully corroborate the constructed value margin calculations in the petition. We have re-examined the evidence on the record of this investigation and continue to find that we are unable to corroborate the constructed value margin calculations. As a result, we are continuing to assign Cogne the highest price-to-price margin rate contained in the petition, 33.00 percent, for purposes of the final determination. *See Comment 17* of the January 15, 2002 *Decision Memorandum*.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Italy to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in each individual respondent's calculation memorandum, dated January 15, 2002, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Determination*, with the following exceptions:

Bedini

Based on information provided by Bedini since the *Preliminary Determination*, we revised Bedini's calculations to include its updated and verified further manufacturing costs. We also corrected several clerical errors related to Bedini's reported expense fields based on Bedini's CEP verification. We also revised the order of Bedini's product matching characteristics to follow the Department's instructions. Finally, we revised Bedini's U.S. control numbers so that they would reflect the size as imported instead of the size as sold to the first unaffiliated U.S. customer. For a detailed description of all U.S. sales changes made to Bedini's margin calculations for the final determination, *see Bedini Final Determination Calculation Memorandum*.

Foroni

Based on our findings at the CEP verification, we made revisions to Foroni's U.S. sales database to correct certain errors related to its reported advertising expenses, billing adjustments, indirect selling expenses, U.S. inventory carrying costs, U.S. duty rates and U.S. commissions. See Memorandum from Team to John Brinkmann, "Final Determination Calculation Memorandum for Foroni S.p.A. and Foroni Metals of Texas' ("*Foroni Final Determination Calculation Memorandum*") dated January 15, 2002 and Memorandum from Anthony Grasso to John Brinkmann, "Verification of the Constructed Export Price Sales of Foroni S.p.A."s U.S. Affiliate, Foroni Metals of Texas, in the Antidumping Duty Investigation of Stainless Steel Bar from Italy," dated October 23, 2001.

Rodacciai

Based on information contained in an August 8, 2001 submissions and our findings at the CEP verification, we corrected several clerical errors to Rodacciai's CEP sales database, including the addition of several CEP sales that Rodacciai had inadvertently excluded from the U.S. database. See Rodacciai's August 8, 2001 submission and *Rodacciai Final Determination Calculation Memorandum*.

Based on our findings at the CEP verification, we made several corrections to Rodacciai's reported size coding and revised Rodacciai's reported U.S. indirect selling expense ratio to include the depreciation incurred by Sovereign in the last three months of the POI.

We have revised the treatment of Rodacciai's reported U.S. credit adjustment variables, which were reported as positive integers, by deducting these values from home market and U.S. gross prices, respectively, rather than adding them as we did in the *Preliminary Determination*.

For purposes of calculating Rodacciai's U.S. credit expenses, we are adjusting the gross unit price for credit adjustments and any on-invoice discounts. Further, we are using the last day of verification, August 17, 2001, as the date of payment for unpaid U.S. sales, and have recalculated U.S. credit expenses accordingly.

Valbruna

Based on our findings at the CEP verification, we made several changes to Valbruna's reported CEP sales database. *See Valbruna Final Determination Calculation Memornadum*.

(1) We increased the gross unit price on several observations for which an alloy surcharge was not included.

(2) We applied a price reduction to all reported sales observations related to a particular U.S. sales invoice.

(3) We have changed the U.S. rebate field to reflect the correct rebate percentage for 1999 sales.

(4) We set the U.S. brokerage expense field to zero for all EP sales because all EP sales were made on a C&F basis where the U.S. customer takes responsibility for all duties and charges.

(5) We decreased other transportation expenses for sales made out of the Houston warehouse.

(6) We have revised Valbruna's U.S. sales database to treat certain cleaning costs incurred on one sale of subject merchandise as a warranty expense, and have made a corresponding reduction to indirect selling expenses in order to avoid double-counting this expense.

(7) We have revised Valbruna's U.S. sales database to include certain costs incurred to cut the subject merchandise before it was placed into the consignment inventory for one of Valbruna's customers on all sales to this particular customer.

(8) We have revised Valbruna's U.S. sales database to deduct the per-unit repacking expense from the reported sales price for all sales to one customer whose shipments were subject to U.S. repacking, but for whom there was not a separate line item on the sales invoices.

(9) We adjusted the databases to reflect an increase in the U.S. indirect selling expenses ratio due to the inadvertent omission of certain warehousing expenses and short-term interest revenue, and revised the ratio such that "Other Income" items were not deducted from the total U.S. indirect selling expenses.

Normal Value

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

Foroni

As discussed in the memorandum from Robert Greger to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated January 15, 2002 ("*Final Accounting Calculation Memo—Foroni*"), we adjusted Foroni's reported direct materials costs ("DIRMAT") to account for two errors made in calculating its reported costs: (1) Foroni underestimated the nickel content of its stainless steel scrap inputs and (2) used an average rather than an actual exchange rate in converting its U.S. dollar purchases.

Furthermore, as discussed in the *Final Accounting Calculation Memo—Foroni*, we also decreased the G&A expense ratio and increased the financial expense ratio.

Valbruna

As discussed in the memorandum from Robert Greger to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated January 15, 2002 ("*Final Accounting Calculation Memo—Valbruna*"), we increased the reported total cost of manufacturing ("TOTCOM") to include an unreconciled difference between Valbruna's cost accounting system and the reported cost files, and to include the portion of depreciation on revalued asset amounts related to subject merchandise that were included in Valbruna's unconsolidated financial statements. Furthermore, we excluded Valbruna's claimed inventory charge adjustment from the calculation of the reported TOTCOM.

Finally, as discussed in the *Final Accounting Calculation Memo—Valbruna*, we increased the G&A ratio and decreased the financial expense ratio.

2. Calculation of NV

Bedini

Based on Bedini's November 14 and November 29, 2001 submissions, we revised our calculations to include new home market sales Bedini found in preparation for its home market verification.

Also, consistent with the *Preliminary Determination*, we have dropped from our calculation all home market sales of Ugine Savoie-Imphy (Bedini's parent company and a respondent in the companion French proceeding) stainless steel wire rod that were subcontracted to Bedini as part of a tolling operation for processing into subject merchandise.

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For a detailed description of all home market changes made to Bedini's margin calculations for the final determination, *see Bedini Final Determination Calculation Memorandum*.

Foroni

On August 3, 2001, Foroni submitted a value for the packing costs incurred on exports of subject merchandise from Italy to the United States. For the final determination we used this packing rate in place of the facts available rate applied in the *Preliminary Determination* and accordingly reduced fixed overhead by excluding the total packing expenses. *See Final Accounting Calculation Memo—Foroni* and *Foroni Final Determination Calculation Memorandum*.

Rodacciai

Based on information contained in an August 8, 2001 submissions and our findings at the CEP verification, we corrected several clerical errors to Rodacciai's home market sales database. *See* Rodacciai's August 8, 2001 submission and *Rodacciai Final Determination Calculation Memorandum*.

We have corrected a misreported customer relationship for one of Rodacciai's affiliated customers.

We have revised the treatment of Rodacciai's reported home market credit adjustment variables, which were reported as positive integers, by deducting these values from home market and U.S. gross prices, respectively, rather than adding them as we did in the *Preliminary Determination*.

For purposes of calculating Rodacciai's home market credit expenses, we are adjusting the gross unit price for credit adjustments and any on-invoice discounts.

We corrected certain variable names used in the weight-averaging of Rodacciai's home market adjustment variables.

Valbruna

We revised the home market indirect selling expense ratio to reflect a minor change to the final year-end trial balance.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

In this investigation, and in the companion SSB investigations from Germany, France, the United Kingdom and Korea, verifications were scheduled for all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the events of September 11, for some companies in these countries we were unable to fully complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit" and that the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States*, 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F.Supp. 275, 281 (Ct. Int'l Trade 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete all of the verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the January 15, 2002, *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of stainless steel bar from Italy, except for subject merchandise produced by Bedini (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Furthermore, in accordance with section 735(c)(1)(C) of the Act, we are directing Customs to suspend liquidation of all imports of subject merchandise by Valbruna (which had a *de minimis* weighted-average margin for the *Preliminary Determination*) that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Acciaierie Valbruna Srl/ Acciaierie Bolzano S.p.A	2.50
Acciaiera Foroni SpA	7.07
Trafilerie Bedini, Srl	1.70
Rodacciai S.p.A	5.89
Cogne Acciai Speciali Srl	33.00
All Others* **	3.81

*Pursuant to 19 CFR 351.204(d)(3), we have excluded rates calculated for voluntary respondents from the calculation of the all-others rate under section 735(c)(5) of the Act.

**Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de minimis*, or determined entirely on facts available.

For Bedini, because its estimated weighted-average final dumping margin is *de minimis*, we are directing Customs to terminate suspension of liquidation of Bedini's entries and refund all bonds and cash deposits posted on subject merchandise produced by Bedini.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

Comment 1: Treatment of Sales Above Normal Value.
Comment 2: Commission Offset.
Comment 3: Model Match Methodology.
Comment 4: Differences in Bedini LOT and Bedini CEP Offset.
Comment 5: Bedini HM Commission Expenses.
Comment 6: Clerical Errors in the Calculation of Bedini U.S. Credit Expenses.
Comment 7: Bedini Reconstruction of Identical CONNUMs.
Comment 8: Collapsing the Sales Prices and Production Costs of Bedini and U-SI.
Comment 9: Application of Adverse Facts Available for Bedini Due to Home Market Reporting Flaws.
Comment 10: Bedini HM Billing Adjustments.
Comment 11: Partial Adverse Facts Available for Unreported Bedini U.S. Sales.
Comment 12: Revisions to the Calculation of Certain Bedini Expense Fields.
Comment 13: Adverse Facts Available for All Bedini Expenses Reported on an Average, Not A Transaction-Specific, Basis.
Comment 14: Methodology for Calculating Bedini's U.S. Credit Expenses.
Comment 15: Adjustments to Bedini's Reported Costs to Reconcile With the General Ledger.
Comment 16: Correction to Bedini's Verification Report.
Comment 17: Application of Adverse Facts Available to Cogne.
Comment 18: Use of Facts Available to Value Foroni's Packing Costs.
Comment 19: Foroni's Advertising Expenses.
Comment 20: Foroni's Calculation of Direct Materials.
Comment 21: Exclusion of Foroni's Directors' Fees from the G&A Expense Ratio.
Comment 22: Foroni's Short-Term Bond Interest Offset.
Comment 23: Foreign Exchange Gains & Losses.
Comment 24: Foroni's Yield Loss.
Comment 25: Use of Rodacciai's Reported Data.
Comment 26: Rodacciai's Reported Home Market Date of Sale.
Comment 27: Additional Sales Submitted by Rodacciai.
Comment 28: Rodacciai's U.S. Indirect Selling Expenses.
Comment 29: Rodacciai's U.S. Warehousing Expenses.
Comment 30: Rodacciai's U.S. Sales with Missing Date of Payment.
Comment 31: Rodacciai's G&A Expense Ratio.
Comment 32: Rodacciai's Interest Expense Ratio.
Comment 33: Recalculation of Certain Home Market Expenses Reported by Rodacciai.
Comment 34: Rodacciai's Home Market Credit Adjustments.
Comment 35: Corrections to and Based on Valbruna's CEP Verification Report.
Comment 36: Valbruna's Opportunity Cost on VAT Rebates.
Comment 37: Valbruna's Levels of Trade.
Comment 38: Treatment of Valbruna's Consignment Holding Period.
Comment 39: Valbruna's U.S. Brokerage Expenses.
Comment 40: Valbruna's U.S. Warranty Expenses.
Comment 41: Valbruna's Unreported Price Adjustment.
Comment 42: Valbruna's U.S. Repacking Expenses.
Comment 43: Use of Actual Prices Paid by Valbruna's Customers.
Comment 44: Valbruna's U.S. Indirect Selling Expense Ratio.
Comment 45: Valbruna's Home Market Inventory Carrying Costs.
Comment 46: Valbruna's G&A Expense Ratio.
Comment 47: Valbruna's Financial Expense Ratio.
Comment 48: Inclusion of Depreciation Expense in Valbruna's Reported Manufacturing Costs.
Comment 49: Valbruna's Claimed Inventory Adjustment.
Comment 50: Treatment of Unreconciled Differences in Valbruna's Cost of Manufacture.
Comment 51: Foreign Exchange Gains and Losses on Accounts Payable.
Comment 52: Foreign Exchange Gains and Losses on Financing.

[FR Doc. 02–1656 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of stainless steel bar from Germany. We determine that stainless steel bar from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended. On August 2, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of stainless steel bar from Germany. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled "*Continuation of Suspension of Liquidation*."

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Andrew Covington or Meg Weems, Import Administration,

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International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, (202) 482–3534, or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2000).

Case History

Since the publication of the preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Germany*, 66 FR 40214 (August 2, 2001) ("*Preliminary Determination*")), the following events have occurred:

In August through September 2001, we conducted verifications of the questionnaire responses submitted by Edelstahl Witten-Krefeld GmbH, ("EWK"), Krupp Edelstahlprofile ("KEP"), BGH Edelstahl Seigen GmbH and BGH Edelstahl Freital GmbH ("BGH"), and Walzwerke Einsal GmbH ("Einsal") (collectively, "the respondents"). We issued verification reports in October and November 2001. See "Verification" section of this notice for further discussion.

The petitioners and respondents filed case and rebuttal briefs, respectively, on November 27 and December 3, 2001. No public hearing was held because the only written request received (from the petitioners) was withdrawn.

Although the deadline for this determination was originally December 17, 2001, in order to accommodate certain verifications that were delayed because of the events of September 11, 2001, the Department tolled the final determination deadline in this and the concurrent stainless steel bar investigations until January 15, 2002.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Prior to the preliminary determination in this investigation, the respondents in this and the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests were: stainless steel tool steel, welding wire, special-quality oil field equipment steel (SQOFES), and special profile wire.

In the preliminary determinations, we concluded that all of these products, except for special profile wire, are within the scope of these investigations. Specifically, regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determined that SQOFES does not constitute a separate class or kind of merchandise from SSB. Regarding special profile wire, we preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we did not include special profile wire in these investigations. For details, see the Memorandum to Susan Kuhbach and Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and the Memorandum to Louis Apple from the Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation."

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001).

With the exception of BGH which filed comments on the Department's preliminary scope decision with respect to SQOFES, and with which the Department disagrees and has addressed in the January 15, 2002 *Issues and Decision Memorandum for the Antidumping Duty Investigation of Stainless Steel Bar from Germany; Final Determination* ("*Decision Memorandum*"), no other parties filed comments on our preliminary scope decisions. Furthermore, no additional information has otherwise come to our attention to warrant a change in our preliminary decisions. Therefore, we have made no changes for purposes of the final determinations.

Period of Investigation

The period of investigation ("POI") for this investigation is October 1, 1999, through September 30, 2000.

Fair Value Comparisons

To determine whether sales of stainless steel bar from Germany to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in each individual respondent's calculation memorandum, January 15, 2002, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the Preliminary Determination, with the following exceptions:

EWK

We revised the reported amounts for certain sales for billing adjustments, early payment discounts, U.S. and domestic inland freight, international freight, U.S. brokerage and handling, transportation insurance, imputed credit, indirect selling expenses, inventory carrying costs, based on verification findings. For further information, see January 15, 2002 *EWK Calculation Memorandum* and Comments 20, 21, 22, 23, 24, 25 and 26 in the Decision Memorandum.

KEP

We revised the reported amounts for certain sales for domestic inland freight, international freight, imputed credit, early payment discounts, brokerage and handling, and warranty expenses based on verification findings. For further information, see January 15, 2002 *KEP Calculation Memorandum* and Comments 39 and 40 in the *Decision Memorandum*.

Einsal

We based date of sale on sale invoice date. We revised Einsal's reported domestic inventory carrying costs using the DM short-term interest rate. For further information, see Einsal's January 15, 2002 Calculation Memorandum.

Normal Value

We used the same methodology as that described in the Preliminary Determination to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

1. Cost of Production Analysis

EWK

We adjusted EWK's reported cost of manufacture ("COM") to reflect the market price of EWK's steel scrap purchased from an affiliate. We also adjusted EWK's reported general and administrative ("G&A") expense based on the information obtained during the cost verification. Lastly, we adjusted EWK's reported financial expense factor to exclude the claimed financial expense offset, and to include an estimated amount of interest income that EWK's parent company would have earned from short-term sources. *See* Memorandum to Neal Halper, Director, Office of Accounting, from Sheikh M. Hannan, dated January 15, 2002, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination* and Comments 18, 27 and 29 of the *Decision Memorandum*.

KEP

We adjusted KEP's reported cost of manufacture to reflect the cost of production of one of KEP's inputs purchased from an affiliate and we adjusted the COM of each of KEP's products due to the understatement of the cost of manufacturing. We also adjusted the denominator of the G&A expense ratio as a result of the increased cost of manufacture. Finally, we adjusted KEP's reported financial expense factor to exclude the claimed financial expense offset, and to include an estimated amount of interest income that KEP's parent company would have earned from short-term sources. For further information, *see* Memorandum to Neal Halper, Director, Office of Accounting, from Laurens van Houten, dated January 15, 2002, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination*, and Comments 18 and 36 of the *Decision Memorandum*.

BGH

We adjusted BGH's reported direct materials, direct labor, variable overhead, fixed overhead and general and administrative expenses for errors discovered during verification (*see*, Memorandum to Neal Halper, Director Office of Accounting, from LaVonne Jackson, dated October 26, 2001, *Verification Report on the Cost of Production and Constructed Value Data Submitted by BGH Freital*, Section I). We also adjusted BGH's reported unconsolidated financial expense ratio to reflect BGH's consolidated financial expenses and cost of production. *See* Memorandum to Neal Halper, Director, Office of Accounting, from LaVonne Jackson, dated January 15, 2002, *Cost of Production and Constructed Value Calculation Adjustments for the Final Determination*.

Einsal

We increased Einsal's interest expense ratio to account for an end of the year audit accrual that was not captured in the original interest expense calculation. We also revised the total COM for one of Einsal's reported control numbers based on findings at verification. For further information, see January 15, 2002 *Einsal Calculation Memorandum*.

2. Calculation of NV

EWK

For certain sales, we revised EWK's reported transportation insurance, billing adjustments, early payment discounts, inventory carrying costs and imputed credit. For further information, see January 15, 2002 *EWK Calculation Memorandum*.

KEP

For certain sales, we revised KEP's reported product matching characteristics, manufacturer code, domestic inland freight, early payment discounts, warranty expenses, interest revenue, warehousing expenses, and other direct selling expenses. For further information, see January 15, 2002 *KEP Calculation Memorandum* and Comments 30, 31, 34, and 38 in the *Decision Memorandum*.

BGH

We found three distinct levels of trade in the home market. See January 15, 2002 *BGH Calculation Memorandum* and Comment 3 in the *Decision Memorandum*. We corrected a programming error in the preliminary calculations to grant BGH a level of trade adjustment. For further information, see January 15, 2002 *BGH Calculation Memorandum*.

Einsal

We found two distinct levels of trade in the home market. We based date of sale on sale invoice date. We revised Einsal's inventory carrying expenses and credit expenses using the correct DM short-term interest rate. Based on verification findings, we are no longer using the exchange rates based on Einsal's currency transactions in forward markets. For further information, see January 15, 2002 *Einsal Calculation Memorandum* and Comment 12 in the *Decision Memorandum*.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*, except as discussed above with respect to Einsal.

Verification

In this investigation, and in the companion SSB investigations from Italy, France, the United Kingdom and Korea, verifications were scheduled for

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all responding companies during the period August through October 2001. Based on the security concerns and logistical difficulties brought about by the tragic events of September 11, for some companies in these countries we were unable to complete our verifications as scheduled. However, for these companies, we did verify major portions of the company's questionnaire responses.

While the statute at 782(i)(1) and the Department's regulations at 351.307(b)(1)(i) direct the Department to verify all information relied upon in a final determination of an investigation, the Department's verification process is akin to an "audit," and the Department has the discretion to determine the specific information it will examine in its audits. *See PMC Specialties Group, Inc.* v. *United States*, 20 C.I.T. 1130 (1996). The courts concur that verification is a spot check and is not intended to be an exhaustive examination of the respondent's records. *See Mansato* v. *United States*, 698 F.Supp. 275, 281 (CIT 1988). Furthermore, the courts have noted that Congress has given Commerce wide latitude in formulating its verification procedures. *See Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (CAFC 1997).

In these investigations, we believe that we have met the standard for having verified the information being used in this final determination, despite our inability to complete the verifications as originally scheduled. Although the amount of information verified was less than planned, the respondents did not control what was verified and what was not verified. It was the Department, not the companies, that established the original verification schedule and determined the order in which the segments would be verified. Moreover, each company was fully prepared to proceed with each segment of the original verification based upon the Department's schedule and could not have anticipated that the Department would perhaps not actually verify all segments. Finally, we note that all responding companies and the petitioners fully cooperated with the Department's post-September 11 efforts to conduct as many segments of verification as practicable.

Based on the information verified, we are relying on the responses as submitted, subject to the minor corrections previously noted elsewhere in this notice and the *Decision Memorandum*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Decision Memorandum*, which is hereby adopted and incorporated by reference into this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of stainless steel bar from Germany that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
BGH	16.62
Einsal	4.31
EWK	15.54
KEP	32.24
All Others	17.77

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

BGH

Comment 1: Quantity Differences in Fair Market Value Determination.
Comment 2: Methodology for Price Comparisons.
Comment 3: Level of Trade.
Comment 4: Final Finishing.
Comment 5: Treatment of Sales Above Normal Value.
Comment 6: Level of Trade Adjustment.
Comment 7: Special-Quality Oil Field Equipment Steel.
Comment 8: Commission Paid to BGH's U.S. Affiliate.
Comment 9: Products Sold But Not Produced During the POI.
Comment 10: Affiliated Party Input Methodology.
Comment 11: Verification Errors.

Einsal

Comment 12: Level of Trade.
Comment 13: Products Sold But Not Produced During the POI.
Comment 14: Minor Changes and Revisions Resulting from Verification.

EWK and KEP

Comment 15: Collapsing of EWK and KEP.
Comment 16: Collapsing Methodology.
Comment 17: EWK and KEP LOT Issues.
Comment 18: Net Financial Expense Ratio Calculation.

EWK

Comment 19: Use of Supplied Cost Data for Certain EWK Tool Steel Sales.
Comment 20: Missing Foreign Inland Freight on EWK's CEP sales.
Comment 21: Incomplete Foreign Inland Freight on EWK's EP sales.
Comment 22: EWK Failure to Report U.S. Handling Expenses for Certain CEP Sales.
Comment 23: Understatement of EWK's International Freight on Tool Steel Sales.
Comment 24: Adjustment of Reported U.S. Inland Freight.
Comment 25: Correction of Domestic Indirect Selling Expenses for U.S. and Home Market Sales.
Comment 26: Deducting Domestic Indirect Selling Expenses from CEP sales.
Comment 27: EWK's Affiliated Party Purchases.
Comment 28: Costs for Products Not Produced by EWK.
Comment 29: G&A Ratio Calculation

KEP

Comment 30: Allocation of KEP's Home Market Warehousing Expenses.
Comment 31: Planned versus Actual Warehousing Expenses.
Comment 32: Use of Certain KEP Home Market Sales.
Comment 33: Matching Hierarchy and LOT.
Comment 34: KEP's Inland Freight Values.
Comment 35: KEP's Affiliated Party Purchases.
Comment 36: KEP's Cost of Manufacturing.
Comment 37: KEP's Reported Testing Surcharges.
Comment 38: KEP's Reported Home-Market Discounts, Warranty Expenses, and Interest Revenue.
Comment 39: Understatement of U.S. Brokerage Charges.
Comment 40: Use of Correct U.S. Dollar Interest Rate.

[FR Doc. 02–1657 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–830]

Final Affirmative Countervailing Duty Determination: Stainless Steel Bar From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative determination in a countervailing duty investigation.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to certain producers and exporters of stainless steel bar from Italy. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Jennifer Jones at (202) 482–0176 or (202) 482–4194, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department") regulations are references to the provisions codified at 19 CFR part 351 (April 2000).

Petitioners

The petition in this investigation was filed by Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America, AFL–CIO/CLC (collectively, "the petitioners").

Case History

Since the publication of the preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar From Italy*, 66 FR 30414 (June 6, 2001) ("*Preliminary Determination*")), the following events have occurred:

From June 25, 2001 to July 13, 2001, we conducted a verification of the questionnaire responses submitted by the Government of Italy ("GOI"), the Provincial Government of Bolzano, the Regional Government of Valle D'Aosta, Trafileria Bedini S.r.l. ("Bedini"), Acciaiera Foroni S.p.A. ("Foroni"), Italfond S.p.A., Rodacciai S.p.A., and Acciaierie Valbruna S.p.A. ("Valbruna").

On August 2, 2001, we published a notice postponing the final antidumping determination until December 17, 2001. *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy*, 66 FR 40214 (August 2, 2001). Because of the alignment of this countervailing duty investigation with the antidumping duty investigation, the final determination in this countervailing duty investigation was also postponed until December 17, 2001.

On October 23 and 24, 2001, we informed all interested parties that, due to the events of September 11, 2001, we were tolling the final determination deadline until January 15, 2001. *See* Memorandum to File, "Tolling of Final Determination Deadline," dated October 25, 2001.

On October 29, 2001, we received case briefs from the petitioners, Valbruna, Bedini, and Foroni. On November 5, 2001, we received rebuttal briefs from the petitioners, Valbruna, and Bedini. Foroni did not file a rebuttal brief. No hearing was held because no party requested a hearing.

Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times in thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled product), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedules of the United States* ("HTSUS").

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Changes: Certain requests regarding the scope of this investigation were addressed in the preliminary determinations of the concurrent

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antidumping duty investigations and after the preliminary determination in this countervailing duty case. (*See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Italy*, 66 FR 40214, 40216 (August 2, 2001)). The respondents in the companion antidumping duty investigations filed comments seeking to exclude certain products from the scope of these investigations. Because these comments affect the scope of this investigation as well, we are addressing them now. The specific products identified in their exclusion requests are:

1. Stainless steel tool steel.
2. Welding wire.
3. Special-quality oil field equipment steel ("SQOFES").
4. Special profile wire.

These requests are addressed in more detail in the Memorandum to the File, "Definition of Scope," dated July 26, 2001 and its attachments, which has been placed on the record of this investigation. The conclusions in this memorandum are summarized below.

Regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we determined that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of this investigation. In addition, we determined that SQOFES does not constitute a separate class or kind of merchandise from the subject merchandise.

Regarding special profile wire, we determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we have not included special profile wire in this investigation.

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On February 23, 2001, the ITC published its preliminary determination finding a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of stainless steel bar from Italy. *See Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, 66 FR 11314 (February 23, 2001).

Period of Investigation

The period of investigation for which we are measuring subsidies is the calendar year 2000.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated January 15, 2001 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading "Italy." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual net subsidy rate for each manufacturer of the subject merchandise. Pursuant to section 705(c)(1)(B)(ii) of the Act, we are directing Customs to continue to suspend liquidation of all imports of the subject merchandise from Italy, except for subject merchandise produced and exported by Acciaierie Valbruna S.p.A., Acciaiera Foroni, S.p.A, Trafileria Bedini S.r.l., Italfond S.p.A., or Rodacciai S.p.A. (all of which have either a zero or *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after June 6, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the "all others" rate as CAS" rate, because the rates for all other investigated companies are either zero or *de minimis*. We note that although portions of CAS" rate were based on adverse facts available, we based the majority of our calculations on information provided by the GOI and EC in this investigation. We determine the total estimated net subsidy rate for each company to be:

Producer/exporter	Net subsidy rate (percent)
Cogne Acciai Speciali S.r.l	13.17
Acciaierie Valbruna S.p.A	0.42
Acciaiera Foroni S.p.A	0.00
Trafileria Bedini S.r.l	0.00
Italfond S.p.A	0.18
Rodacciai S.p.A	0.07
All Others	13.17

In accordance with our *Preliminary Determination*, we instructed the Customs Service to suspend liquidation of all entries of stainless steel bar from Italy, which were entered or withdrawn from warehouse, for consumption on or after June 6, 2001, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise for countervailing duty purposes entered on or after October 4, 2001, but to continue the suspension of liquidation of entries made from June 6, 2001 through October 3, 2001.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order ("APO"), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 15, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Facts Available Methodology for CAS.

Comment 2: Appropriate AUL for Valbruna.

Comment 3: Attribution of Subsidies Following Bolzano's Change in Ownership.

Comment 4: Interest Subsidy Received by Falck Under Article 3 of Law 193/84.

Comment 5: Law 193/84 Capacity Reduction Grants.

Comment 6: Repayment of Law 25/81 Benefits by Falck.

Comment 7: Bolzano Industrial Site Lease and Extraordinary Maintenance.

Comment 8: Bolzano Industrial Site Purchase.

Comment 9: Countervailability of Law 44/92.

Comment 10: Exclusion of Valbruna's Non-Italian Production from Sales Denominator.

Comment 11: Denominator Used in Calculating Valbruna's Subsidy Rate.

Comment 12: Appropriate Discount Rate for Valbruna.

Comment 13: Law 451/94 Early Retirement Program.

Comment 14: Attribution of 1983 and 1985 Law 25/81 Grants to Valbruna.

Comment 15: Law 25/81 Environmental Grants.

Comment 16: European Social Fund.

Comment 17: Law 549/95.

Comment 18: Appropriate AUL for Foroni.

[FR Doc. 02–1655 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002; Correction

AGENCY: Office of Global Programs, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Office of Global Programs published a notice in the **Federal Register** on Monday, January 14, 2002, announcing an opportunity for FY 2002 funding for the Global Carbon Cycle program area. This notice corrects and revises the dates for submission of proposals.

FOR FURTHER INFORMATION CONTACT: Steve Auer 301–427–2089 ext. 153.

Correction

In the **Federal Register** issue of January 14, 2002, [Docket No. 000616180–2002–04, page 1719, second column], the date reads as follows: "Full proposals must be received at OGP no later than March 29, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under **SUPPLEMENTARY INFORMATION.**" The sentence with the correct date should read: "Full proposals must be received at OGP no later than April 8, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under **SUPPLEMENTARY INFORMATION.**"

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02–1663 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011602A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a research permit (1360).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. David Secor, Chesapeake Biological Laboratory (CBL).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 22, 2002.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Room 13730, Silver Spring, MD 20910–3226 (phone:301–713–1401).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA.

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Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summary are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Fish

Endangered Shortnose Sturgeon (*Acipenser brevirostrum*)

Application 1360

The applicant hypothesizes that the recovery of shortnose sturgeon on the Hudson River occurred due to one or several strong year-classes following nursery system recovery to normoxia after 1977. The applicant proposes to test this hypothesis by determining the ages of shortnose sturgeon caught in the Hudson river by interpreting annulus of pectoral fin spines. The method will be tested on 10 captive shortnose sturgeon from seven age classes (70 total) from US Fish and Wildlife Service Warm Springs Fish Hatchery, Georgia. The applicant will clip a 1cm section from the primary spine of one pectoral fin near the point of articulation. After this has been tested in hatchery fish, the applicant proposes to capture shortnose sturgeon in the Hudson River with gillnets, handle, measure, check for tags, tag, passive integrated transponder tag, sex (by external or fiberoptic examination), and release. The applicant proposes to take 190 shortnose sturgeon in 2002 and 480 in 2003.

Dated: January 17, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1662 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Public Meeting

AGENCY: Commission on the Future of the United States Aerospace Industry.

ACTION: Notice.

SUMMARY: This meeting is the second in a series of planned public meetings being held by the Commission to carry out its statutory charge with respect to the U.S. civil and military, air and space enterprise. The focus of this meeting is on receiving testimony and conducting deliberations on aerospace business considerations; export control; and communication, navigation and surveillance (CNS). The Commissioners will also address current issues, including aerospace budget, workforce and space concerns. The meeting will close with a discussion and decisions regarding the scope and priorities for the next meeting.

Section 1092 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) established the Commission on the Future of the United States Aerospace Industry to study the issues associated with the future of the United States national security; and assess the future importance of the domestic aerospace industry for the economic and national security of the United States. The Commission is governed by the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation of advisory committees and implementing regulations (41 CFR Subpart 101–6.10). All interested parties are welcome to submit written comments at any time.

TIME AND DATE: Tuesday, February 12, 2002; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Herbert C. Hoover Building Auditorium, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cindy Waters, 1235 Jefferson Davis Highway, Suite 940; Arlington, Virginia 22202; phone 703–602–1515; e-mail *waterscl@osd.pentagon.mil.*

Dated: January 15, 2002.

Charles H. Huettner,

Executive Director, Commission on the Future of the United States Aerospace Industry.

[FR Doc. 02–1640 Filed 1–22–02; 8:45 am]

BILLING CODE 6820–WP–P

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Final Sequestration Report for Fiscal Year 2002 to the Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budge and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Final Sequestration Report for Fiscal Year 2002* to the House of Representatives, the Senate, and the Office of Management and Budget.

William J. Gainer,

Associate Director, Management, Congressional Budget Office.

[FR Doc. 02–1442 Filed 1–22–02; 8:45 am]

BILLING CODE 01–0703–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed AmeriCorps Attrition Overview Study. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 25, 2002.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. William Ward, Department of Research and Policy Development, 9th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: William Ward, (202) 606–5000, ext. 375.

SUPPLEMENTARY INFORMATION:

AmeriCorps Attrition Overview Study

I. Background

Each year, the Corporation collects and reports on enrollment, service completion, and attrition of AmeriCorps participants. Attrition rates for participants in all AmeriCorps programs averaged 28 percent for programs years 1994–1998. As a maturing service organization, the Corporation needs to examine the AmeriCorps programs for attrition trends. An analysis of data on attrition will help the Corporation revise strategies of program development, recruitment, training, and supervision in order to reduce the rate of attrition.

II. Current Action

The Corporation seeks to conduct an in-depth study of the attrition patterns of its AmeriCorps*State and National, AmeriCorps*VISTA and AmeriCorps*NCCC programs. This study will entail telephone interviews of approximately 30 minutes in length with 1000 former AmeriCorps members. It will provide indicators of program success, differences among programs in retaining participants, individual characteristics of participants who tend to drop out, and combinations of member and program characteristics that appear to work well or work poorly.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Attrition Overview Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Former AmeriCorps members.

Total Respondents: 1,000.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 17, 2002.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 02–1660 Filed 1–22–02; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Initiative Implementation; Meeting

AGENCY: U.S. Army Operations Support Command, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. The U.S. Army, Operations Support Command, will host this meeting. The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Security Requirements and ARMS Contractors; Industrial Base Strategy and Industrial Commercialization; Policy on Ownership of Property; ARMS Revenue Projects; and Arsenal Support Program Initiative Update. This meeting is open to the public.

DATES: February 27–28, 2002.

PLACE OF MEETING: Clarion Hotel Universal, 7299 Universal Boulevard, Orlando, FL 32819.

TIME: 8:30 a.m.–5 p.m. on February 27 and 7:30 a.m.–12 p.m. on February 28.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Perez, U.S. Army Operations Support Command, Attn; AMSOS–CCM–E, Rock Island Arsenal, IL 61299; phone (309) 782–3360.

SUPPLEMENTARY INFORMATION: A block of rooms has been reserved at the Clarion Hotel Universal for the nights of 26–28 February 2002. The Clarion Hotel Universal is located at 7299 Universal Boulevard, Orlando, FL 32819, Local Phone (401) 351–5009. Please make your reservations by calling 800–445–7299. Be sure to mention the guest code U.S. Army Operations Support Command. Reserve your room prior to January 26th to get the Government Rate of $89.00 a night. Also notify this office of your attendance by notifying Mike Perez, perezm@osc.army.mil, 309–782–3360 (DSN 793–3360). *To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by February 8, 2002.* Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1648 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, February 27, 2002.

Place of Meeting: Veteran Affairs Conference Room, Room 418, Senate Russell Office Building, Washington, D.C. (Tentative location)

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Start Time of Meeting: Approximately 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs, and the Bicentennial Campaign at the USMA. All proceedings are open.

Edward C. Clarke,

Lieutenant Colonel, U.S. Army, Executive Secretary, USMA Board of Visitors.

[FR Doc. 02–1647 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Method and Kit for Detection of Dengue Virus

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,190,859 entitled "Method and Kit for Detection of Dengue Virus" issued 02/20/01. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: An inactivated dengue virus vaccine to immunize and protect humans against dengue fever is described. The vaccine is based on dengue viruses which have been propagated to high titers in suitable cells, purified and inactivated under conditions which destroy infectivity but preserve immunogenicity, a high level of which is demonstrated in animal models. Uses of the inactivated dengue virus for detecting antibodies to dengue and kits therefore are also described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1643 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning DNA Vaccines Against Tick-Borne Flaviviruses

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,258,788 entitled "DNA Vaccines Against Tick-Borne Flaviviruses" issued 07/10/01. Foreign rights also available (PCT/US98/25322). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301 619–5034.

SUPPLEMENTARY INFORMATION: Particle mediated immunization of tick-borne *flavivirus genes* confers homologous and heterologous protection against tick borne encephalitis.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1642 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Indolo[2,1-b]quinazole-6, 12-dione Antimalarial Compounds and Methods of Treating Malaria

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,284,772 entitled "Indolo[2,1-b]quinazole-6, 12-dione antimalarial compounds and Methods of Treating Malaria" issued 09/04/01. Foreign rights are also available (PCT/US99/22569). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Compounds, compositions and methods are provided for treating malaria parasites in vitro and in vivo by administering indolo [2,1–b]quinazoline-6, 12-dione compounds of Formula 1. On Formula 1 A, B, C, D, E, F, G and H are independently selected from carbon and nitrogen, or A and B or C and D can be taken together to be nitrogen or sulfer, with the proviso that not more than three of A, B, C, D, E, F, G and H are other than carbon; wherein R1 through R8 are independently selected from the group consisting of, but not limited to, the halogens, alkyl groups, trifluoromethyl groups, methoxyl groups, the carboxy methyl or carboxy ethyl group, nitro, aryl, heteroaryl, cyano, amino, dialkylaminoalkyl, 1-(4-alkylpiperazinyl), and the pharmaceutically acceptable salts thereof; and wherein X is independently selected from the group consisting of any atom especially oxygen, or any side chain necessary to make the indolo[2,1-b]quinazoline-6, 12-dione compound a "prodrug" as the term is understood by one of ordinary skill in the art of medicinal chemistry. In other words, a side chain having a structure where a carbon-nitrogen double bond bears substituents that make the prodrug more water soluble and bioavailable.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1645 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Method for Production of Plasmodium Causing Relapsing Malaria

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,090,614 entitled "Method for Production of Plasmodium Causing Relapsing Malaria," issued 07/18/00. Foreign rights are also available (PCT/US97/13770). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention provides for recycling parasites and maintaining long-term cultures of P.vivax and P.ovale. Preferred conditions include: (1) The immediate transfer of parasites to human reticulocytes during the first and second in vitro culture cycles, (2) the use of McCoy's 5A medium modified with L-glutamine containing 25 mM HEPES buffer supplemented with 20% human AB serum, (3) the continual addition of reticulocytes to the culture every 34–44 hours after the beginning of a new culture cycle and (4) the use of alternate static (growth and differentiation phase) and shaker (invasin phase) culture.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1644 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Vaccine Against Ricin Toxin

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,453,271 entitled "Vaccine Against Ricin Toxin" issued 04/05/95. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issue,s Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: It is now possible to immunize susceptible mammals against the pathological effect of exposure to ricin, including inhalation of ricin, by administration of an immunogenic effective amount of ricin toxin subunits, including subunits of both the A chain and the B chain of the ricin toxin given separately to provide safe, efficacious protection.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1646 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Environmental Restoration of Areas Adjacent to the Arlington and Garrows Bend Channels, Mobile Harbor Federal Navigation Project in Mobile County, Alabama.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the removal, transportation, disposal, and/or remediation of contaminated sediments in and adjacent to the Arlington and the Garrows Bend Channels, Mobile Harbor Federal navigation project in Mobile County, Alabama. The DEIS will be used as a basis for evaluating various alternative plans to implement the authorized clean-up action and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Dr. Susan Ivester Rees, Coastal Environment Team, phone (251) 694–4141, or e-mail at *susan.i.rees@sam.usace.army.mil*, Mobile district, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION: 1. A number of hydrological modifications made in the late 1920s have defined a rigid regime at the head of Mobile Bay, which significantly impacts the ecological health of the bay ecosystem. Human intervention at the mouth of the Mobile River over the last 60 to 70 years resulted in the formation of the Garrows Bend Basin. This basin has been the recipient of both urban and industrial runoff since the late 1930s. In the 1950s, Garrows Bend became a slack water tidal basin as a result of the causeway construction across the northern end of the basin linking McDuffie Island with the mainland. Major pollutant loading continued until the 1970s when a principle source was contained by the installation of an improved sewage treatment system; however, historical pollutant residuals and captured urban storm water runoff continue to flow into the basin. This resulted in water bottoms that, although not contaminated by specific concentrated pollutants, exhibit a condition that is not environmentally acceptable. To ensure adequate evaluation of cumulative impacts resulting from the extent of contaminated sediments and the clean-up effort, especially in those areas considered to be sensitive from an environmental standpoint, the Mobile District has decided to undertake a comprehensive environmental impact analysis of options to either remove, transport, dispose, and/or remediate contaminated sediments in and adjacent to the Arlington and Garrows Bend Channels. The extent of geographical coverage for this environmental analysis will include the areas west of the Mobile Ship Channel in the Garrows

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Bend Basin. The analysis process will: evaluate the vertical and horizontal extent of contaminated sediments in the region identified in the DEIS; identify various alternatives to either remove, transport, dispose or remediate contaminated sediments in the area; and evaluate the impact of likely environmental enhancement.

2. Alternative scenarios which may be considered include the "No action" alternative; removal of contaminated sediments with disposal at various locations; capping of the contaminated materials in place; and remediation of contaminated sediments by either chemical or biological methods.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, tribal governments and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant issues and alternative restoration methods and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from proposed future environmental restoration efforts. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, threatened and endangered species, essential fish habitat and other marine habitat, air quality, cultural resources, storm water runoff, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, Alabama State Port Authority, Alabama State Historic Preservation Officer, City of Mobile, and Mobile Bay National Estuary Program.

4. The first scoping meeting will be held in conjunction with a public scooping meeting concerning the initiation of an impact analysis associated with the Alabama State Port Authority Department of the Army permit request for port related development in the Choctaw—Garrows Bend area. This meeting will be held in Federal 2002 in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobile District by issuance of a Public Notice and/or notices in the local media.

5. It is anticipated that the DEIS will be made available for public review in October 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1649 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Choctaw Point and Monroe Park Development Project, Located in Mobile County, Alabama

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers, (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the Alabama State Port Authority's (ASPA) construction of a marine container terminal facility and associated intermodal distribution facilities on existing property owned by the ASPA in the Choctaw Point and Monroe Park area on Mobile Bay in the City of Mobile, Mobile County, Alabama. The Corps will be evaluating a permit application for the work under the authority of section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. The DEIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. John B. McFadyen, Regulatory Branch, phone (251) 690–3261 or e-mail at *john.b.mcfadyen@sam.usace.army.mil*, or Dr. Susan Ivester Rees, Coastal Environment Team, phone (251) 694–4141 or e-mail at *susan.i.rees@sam.usace.army.mil*, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION: 1. The permit applicant (Department of Army permit number AL01–0469–U) is proposing to construct container terminals, a rail intermodal yard, and distribution warehouses on existing property owned by the ASPA in the Choctaw Point and Monroe Park area of Mobile Bay, Mobile County, Alabama. The terminals will consist of piers, bulkheads, and necessary appurtenances to berth two (2) container ships up to 850 feet in length. Each dock will be equipped with cranes for loading and unloading containers. These cranes will be supported on rails laid on the dock structures. Entrance and exit gates and an administrative building will be constructed to facilitate the movement of the containers between ship, rail, and trucks. In addition to these gates, a grade separation will be provided to separate the movement of traffic between the container terminal yard and the new rail intermodal yard (to be constructed west of Choctaw Point) over the rail tracks to and from McDuffie Island. The construction of the container terminals would include about 77 acres of filled uplands and 17 acres of filled open water on the Mobile River channel. About 3,000 linear feet of bulkhead would be placed along this shoreline area. The rail intermodal yard and distribution center would be constructed upon about 187 acres of existing uplands along the north side of the Garrows Bend Basin. Over 91 acres of the uplands would be raised to elevation +12 feet NGVD. The remaining 96 acres of existing uplands would possibly require minor excavation and grading to meet this desired elevation. Additionally, fill would be placed in 44 acres of existing wetlands and 42 acres of existing open water. This fill will be placed behind a containment dike.

2. Alternatives to the applicant's proposal may exist which would reduce the impacts to the Choctaw Point and Monroe Park area of Mobile Bay. These could include alternate sites, alternative site layouts or alternative operational methods.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, tribal governments and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, essential fish habitat and other marine habitat, air quality, cultural resources, recreation, wastewater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, Alabama State Port Authority, Alabama State Historic Preservation Officer, Alabama Department of Transportation and the City of Mobile.

4. The first scoping meeting will be held in conjunction with the DEIS for the restoration of areas adjacent to the Arlington and Garrows Bend Channels scoping meeting in February 2002 in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobil District by issuance of a Public Notice and/or notices in the local media.

5. It is anticipated that the DEIS will be made available for public review in October 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–1650 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Southwest Florida Feasibility Study (SWFFS)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Feasibility Report and DEIS for the Southwest Florida Feasibility Study. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the SWFFS. The SWFFS will develop a comprehensive regional plan for addressing water resource problems and opportunities in southwest Florida.

FOR FURTHER INFORMATION CONTACT: John Kremer, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, or by telephone at 904–232–3551.

SUPPLEMENTARY INFORMATION: a. Authorization: The C&SF Project was first authorized in 1948 to provide flood control, water control, water supply, and other services to an area that stretched from Orlando to Florida Bay. Section 309(l) of the Water Resources Development Act of 1992 (Pub. L. 102–580) provided authorization for the Restudy. The Restudy concluded with an Integrated Feasibility Report and Final Programmatic Environmental Impact Statement in April 1999. Section 528 of the Water Resources Development Act of 1996 (Pub. L. 104–303) authorizes several ecosystem restoration activities recommended by the Restudy, including the SWFFS.

b. Study Area: The SWFFS area covers approximately 4,300 square miles including all of Lee County, most of Collier and Hendry Counties, and portions of Charlotte, Glades, and Monroe Counties.

c. Project Scope: The SWFFS will develop alternative plans and recommendations for structural, non-structural, and operational modifications and improvements in the region. The study will evaluate alternatives based on their ability to improve water deliveries to the estuaries, manage agricultural and urban water supplies, protect and conserve water resources, protect or restore fish and wildlife and their associated habitat, restore and manage wetland and associated upland ecosystems, sustain economic and natural resources, improve water quality, and other performance criteria being developed by the Project Delivery Team.

d. Preliminary Alternatives: Like the Restudy, the Environmental Impact Statement (EIS) will evaluate the following structural and non-structural water resource related features: surface water storage, re-establishment of overland sheet flow, aquifer storage and recovery, stormwater treatment, wastewater treatment, water conservation programs, land acquisition, rehydration of wetlands, ecosystem needs, and operational changes to water management facilities.

e. Issues: The EIS will address the following issues: restoration of estuarine, aquatic, wetland, and upland ecosystems; water flows; future agricultural, environmental, and urban water demand and supply; socio-economic resources; aquifer recharge; conversion of public conservation lands to water storage areas; water quality; impacts to the estuaries; flood protection; the impacts of land acquisition on the tax base; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement, and interagency coordination.

f. Scoping: In July 2000, the Corps and SFWMD conducted the first round of public meetings with stakeholders, agencies, and other members of the public to gather technical input and documentation identifying the water resources problems, needs, and opportunities of southwest Florida. The second round of public meetings occurred in October 2000, to clarify and refine the issues brought up in the first round of meetings, and discuss the draft Project Management Plan (PMP).

A third round of meetings, scheduled to occur in February 2002, will provide an opportunity for public and agency input in response to this Notice. The meetings will discuss the feasibility phase of the study, including the National Environmental Policy Act (NEPA) process, and further gather public input. Other public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers. We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. DEIS Preparation: The integrated Feasibility Report, including a DEIS, is currently scheduled for publication in June 2005.

Dated: January 7, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–1641 Filed 1–22–02; 8:45 am]

BILLING CODE 3710–AJ–M

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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patent. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Patent application Serial Number 09/978669 entitled "A Novel Assay For Detecting Immune Responses Involving Antigen Specific Cytokine and/or Antigen Specific Cytokine Secreting T-Cells" filed 16 October 2001 and its PCT/US01/32442. The present invention relates to a sensitive and specific assay and kit for IFN-gamma activity which is based on the detection of the chemokine monokine induced by gamma interferon (MIG) as a measure of the biological effect of IFN-gamma rather than direct quantitation of IFN-gamma or IFN-gamma secreting cells *per se*. Upregulation of MIG expression was observed following *in vitro* activation of PBMC with defined CD8+ T cell epitopes derived from influenza virus, CMV, or EBV, and in all cases this was antigen-specific, genetically restricted and dependent on both CD8+ T cells and IFN-gamma. Further, antigen-specific MIG expression was also demonstrated with *P. falciparum* CSP peptides, using PBMC from volunteers immunized with irradiated *P. falciparum* sporozoites. Responses as assessed by the MIG assay paralleled those detected by conventional IFN-gamma ELISPOT, but the magnitude of response and sensitivity of the MIG assay were superior. Our data validate this novel method for the detection of high as well as low levels of antigen-specific and genetically restricted IFN-gamma activity or MIG.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428 or e-Mail at *schlagelc@nmrc.navy.mil.*

Dated: November 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1555 Filed 1–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent No. 6,038,344: INTELLIGENT HYPERSENSOR PROCESSING SYSTEM (IHPS), (Navy Case No. 77,409). //U.S. Patent No. 6,167,156: COMPRESSION OF HYPERDATA WITH ORASIS MULTISEGMENT PATTERN SETS (CHOMPS), (Navy Case No. 78,739). //U.S. Patent No. 6,266,704: ONION ROUTING NETWORK FOR SECURELY MOVING DATA THROUGH COMMUNICATION NETWORKS, (Navy Case No. 78,415).//

ADDRESSES: Requests for copies of the patents cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1556 Filed 1–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,025,036 entitled "Method of Producing a Film Coating by Matrix Pulsed Laser Deposition", Navy Case No. 78,117.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1557 Filed 1–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 16, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: New.

Title: Performance Report for the Leveraging Educational Assistance Program (LEAP) and Special Leveraging Educational Assistance Program (SLEAP) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Abstract: The LEAP and SLEAP programs use matching Federal and State Funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. On this performance report the states provide information the Department requires about the state's use of program funds in order to demonstrate compliance with the program's statutory and regulatory requirements. Federal program officials use the performance report data for monitoring program funds distribution. With the clearance of this collection, the Department is seeking to automate the performance reporting process for both the LEAP Program and the subprogram, SLEAP. There are no significant changes to the current LEAP form data elements; there are, however, additional items pertaining to the SLEAP program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1588 Filed 1–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–041]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 16, 2002.

Take notice that on January 9, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of January 1, 2002:

Fourth Revised Sheet No. 20
Third Revised Sheet No. 20A
Third Revised Sheet No. 20B

Columbia Gulf states that it is filing these tariff sheets to correct an inadvertent error in its January 8, 2002 filing in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states further that copies of the filing has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1583 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–176–002]

Georgia Straits Crossing Pipeline LP; Notice of Amendment to Application

January 16, 2002.

Take notice that on January 11, 2002, Georgia Strait Crossing Pipeline LP (GSX) filed an amendment to its application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing GSX to construct a total of 47.5 miles of pipeline from Sumas, Washington, to a marine interconnect with a Canadian pipeline built by GSX-Canada Limited Partnership (GSX-Canada). The project includes the installation of compression in Whatcom County, Washington, and will accommodate approximately 95,700 dekatherms per day of natural gas, all as more fully set forth in the application that is on file with the Commission and open to public inspection. Copies of this filing are on

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file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

GSX proposes by this amendment to change the in-service date for the project from October 2003 to October 2004 and to revise the cost of the project from its original estimate of $90.7 million to $94.8 million, which results in an increase in the proposed rates of approximately 4.6 percent. The amendment does not modify the scope of the project. GSX states that it has concluded that regulatory approvals probably cannot be obtained in time to enable completion of the pipeline construction to meet the former October 2003 in-service date. GSX also states that by amendment dated December 20, 2001, the GSX Project Agreement has been revised to reflect the new schedule.

Any questions regarding the application should be directed to Gary Kotter, Manager, Certificates, at (801) 584–7117, GSX Pipeline, L.L.C., P.O. Box 58900, Salt Lake City, Utah 84158.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 6, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1579 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–048]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

January 16, 2002.

Take notice that on January 10, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. This filing is being submitted in compliance with the Commission's order issued on December 26, 2001, 97 FERC ¶ 61,370 (2001).

Special Negotiated Rate Between Gulf South Pipeline Company, LP and Willmut Gas Company

Gulf South states that copies of the filing has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1582 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–68–001]

Midwestern Gas Transmission Company; Notice of Compliance Tariff Filing

January 16, 2002.

Take notice that on January 9, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective January 1, 2002:

First Revised Sheet No. 80
First Revised Sheet No. 81

Midwestern states that the purpose of this filing is comply with the Commission's order dated December 28, 2001, 97 FERC 61,386, (December 28 Order), wherein the Commission directed Midwestern to file revised tariff sheets for Rate Schedule PAL.

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1585 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–049]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

January 16, 2002.

Take notice that on January 10, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26P.03, to be effective January 10, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1584 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–441–000]

Northern Natural Gas Company; Great Lakes Gas Transmission Limited Partnership; ANR Pipeline Company; Notice of Joint Application

January 16, 2002.

Take notice that on September 6, 2001, Northern Natural Gas Company (Northern) and Southern Natural Gas Company (Southern) filed a joint application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), requesting permission and approval to abandon service under an individually certificated exchange agreement, all as more fully set forth in the joint application which is on file with the Commission, and open to public inspection.

Specifically, Northern and Southern propose to abandon Rate Schedules X–107 in there FERC Gas Tariffs, Original Volumes No. 2. The parties mutually agree to the termination of the service under these Rate Schedules.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103 Street, Omaha, Nebraska 68124, or Patrick B. Pope, Vice President and General Manager, P.O. Box 2563, Birmingham, Alabama 35202–2563.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 and section 385.211 of the Commission's Rules and Regulations. All such protests must be filed by February 6, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed

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on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's *Web* site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1580 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–580–005 and CP99–582–006]

Southern LNG Inc.; Notice of Compliance Filing

January 16, 2002.

Take notice that on January 10, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed sheets to become effective December 1, 2001:

Substitute Original Sheet No. 9
Substitute Original Sheet No. 23
Substitute Original Sheet No. 107
Substitute Original Sheet No. 133

SLNG states that the filing implements certain directives in the Commission's order issued on January 7, 2002 in the captioned proceeding.

SLNG states that copies of the filing will be served upon its customers and interested state commissions, and upon each party designated on the official service listed compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1578 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–144–000]

Superior Natural Gas Corporation and Walter Oil & Gas Corporation, Complainant, v. Williams Gas Processing—Gulf Coast Company, L.P., Williams Field Services Company, and Williams Gulf Coast Gathering Company L.L.C., Respondents; Notice of Complaint

January 16, 2002.

Take notice that on January 15, 2002, Superior Natural Gas Corporation (Superior) and Walter Oil & Gas Corporation (Walter), pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, tendered for filing a Complaint against Williams Field Services Company, Williams Gas Processing—Gulf Coast Company, L.P., and Williams Gulf Coast Gathering Company, L.L.C. (collectively, Williams) for violating the Outer Continental Shelf Lands Act (OCSLA) in its operation of the North Padre Island Gathering System (North Padre System). Superior and Walter have requested that the Commission expeditiously issue an order, pursuant to the OCSLA and the Commission's implementing regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 24, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1586 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–65–000, et al.]

CPV Cunningham Creek, LLC, et al.; Electric Rate and Corporate Regulation Filings

January 15, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. CPV Cunningham Creek, LLC

[Docket No. EG02–65–000]

Take notice that on January 8, 2002, CPV Cunningham Creek, LLC (CPV Cunningham Creek or Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Delaware limited liability company, is a special purpose entity established to develop, construct, own and operate a nominally rated 550 MW natural gas-fired combined cycle generating facility (Facility) to be located in Fluvanna County, Virginia. The Facility will consist of two (2) gas combustion turbines, two (2) heat recovery steam generators and one (1) steam turbine. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment Date: February 5, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CPV Smyth, LLC

[Docket No. EG02–66–000]

Take notice that on January 8, 2002, CPV Smyth, LLC (CPV Smyth or Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Delaware limited liability company, is a special purpose entity established to develop, construct, own and operate a nominally rated 780 MW natural gas-fired combined cycle generating facility (Facility) to be located in Smyth County, Virginia. The Facility will be a natural gas-fired combined-cycle electric generating facility, consisting of three (3) gas combustion turbines, three (3) heat recovery steam generators and three (3) steam turbines. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment Date: February 5, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CPV Warren, LLC

[Docket No. EG02–67–000]

Take notice that on January 8, 2002, CPV Warren, LLC (CPV Warren or Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza II, 8403 Colesville Road, Suite 915, Silver Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status, pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Delaware limited liability company, is a special purpose entity established to develop, construct, own and operate a nominally rated 520 MW natural gas-fired combined cycle generating facility ("Facility") to be located in Warren County, Virginia. The Facility will consist of two (2) gas combustion turbines, two (2) heat recovery steam generators, and two (2) steam turbines. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment Date: February 5, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–3142–005]

Take notice that on January 9, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a redlined and clean version of Substitute First Revised Sheet No. 363 to the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, which was filed with the Commission on December 6, 2001 and contained a typographical error. The Midwest ISO filing in this proceeding regarded, among other things, Attachments A and B (Forms of Service Agreement for Non-Firm, Short-Term Firm and Long-Term Firm Point-to-Point Transmission Service under the Midwest ISO OATT.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.Midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: January 30, 2002.

5. American Transmission Company LLC

[Docket No. ER02–78–001]

Take notice that on January 8, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) (collectively, Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Compliance Filing in compliance with the Commission's Letter Order Accepting Transfer of Rate Schedules. 97 FERC ¶ 61,260 (2001).

Comment Date: January 29, 2002.

6. Rathdrum Power, LLC

[Docket No. ER02–216–001]

Take notice that on January 9, 2002, Rathdrum Power, LLC (Rathdrum) submitted a corrected version of its October 31, 2001 filing of the fourth amendment to the long-term power purchase agreement between Rathdrum and Avista Energy, Inc., as assigned to Avista Turbine Power, Inc., for the sale of power under Rathdrum's market-based rate tariff with the appropriate FERC designations as required by the December 11, 2001 order issued in this docket.

Comment Date: January 30, 2002.

7. New England Power Pool

[Docket No. ER02–581–001]

Take notice that on January 9, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance definitive Standstill Agreements consistent with a term sheet that was previously filed with the Commission, suspended and permitted to become effective on an interim basis. These arrangements implement alternative payment and financial assurance arrangements with Enron Power Marketing, Inc. (EPMI), Enron Energy Marketing Corp. (EEMC), and Enron Energy Services, Inc. (EESI) with respect to transactions occurring on and after December 21, 2001 and permit the immediate and automatic suspension and subsequent termination of participation by EPMI, EEMC and EESI, as the case may be, as members in NEPOOL should there be a failure to make a required payment under the filed arrangements.

A December 21, 2001 effective date was requested for the Standstill Agreements, as contemplated by the previously filed term sheet.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: January 30, 2002.

8. Duke Energy Corporation

[Docket No. ER02–710–000]

Take notice that on January 7, 2002, as amended on January 8, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised service agreement (First Revised Service

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Agreement No. 170) with Rockingham Power L.L.C. in this proceeding.

Comment Date: January 29, 2002.

9. Xcel Energy Services, Inc.

[Docket No. ER02–717–000]

Take notice that on January 8, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern Sates Power Company (Wisconsin) (collectively, NSP) submitted for filing a Form of Service Agreement with EnergyUSA-TPC Corp. (EnergyUSA), which is accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP Companies FERC Electric Tariff, Original Volume No. 6).

Xes request that this agreement become effective on December 13, 2001.

Comment Date: January 29, 2002.

10. Unitil Power Corp.

[Docket No. ER02–718–000]

Take notice that on January 8, 2002 Unitil Power Corp. (UPC) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted service agreement with Enron Power Marketing, Inc. for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

Comment Date: January 29, 2002.

11. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–719–000]

Take notice that on January 9, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *OGE Energy Resources, Inc. and Florida Power Corporation.* Ameren Energy seeks Commission acceptance of these service agreements effective November 1, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counter party.

Comment Date: January 29, 2002.

12. Northern Indiana Public Service Company

[Docket No. ER02–721–000]

Take notice that on January 8, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Aquila Energy Marketing Corporation (Aquila).

Northern Indiana has requested an effective date of January 7, 2002.

Copies of this filing have been sent to Aquila, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: January 29, 2002.

13. Emera Energy Services, Inc.

[Docket No. ER02–723–000]

Take notice that on January 8, 2002, Emera Energy Services, Inc.(EES), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for Order Accepting Initial Rate Schedule For Filing.

Comment Date: January 29, 2002.

14. Wisconsin Power and Light Company

[Docket No. ER02–724–000]

Take notice that on January 10, 2002, Wisconsin Power and Light Company (WPL), tendered for filing a Service Agreement with WPPI and request to terminate Service Agreement No. 39 under FERC Electric Tariff, Original Volume No. 5.

WPL indicates that copies of the filing have been provided to WPPI, Prairie du Sac and the Public Service Commission of Wisconsin.

Comment Date: January 31, 2002.

15. Great Plains Power Incorporated

[Docket No. ER02–725–000]

Take notice that on January 9, 2002, Great Plains Power Incorporated (GPPI) tendered for filing an application for authorization to sell power at market-based rates.

Copies of this filing have been served on the Kansas Corporation Commission and the Missouri Public Service Commission.

Comment Date: January 30, 2002.

16. Nine Mile Point Nuclear Station, LLC

[Docket No. ER02–726–000]

Take notice that on January 9, 2002, Nine Mile Point Nuclear Station, LLC (Nine Mile LLC) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations, an Amended and Restated Operating Agreement for Nine Mile Point Unit No. 2 Nuclear Generating Facility (the Agreement) by and between Nine Mile LLC and Long Island Lighting Company (d/b/a LIPA). The Agreement governs the terms and conditions pursuant to which Nine Mile LLC will operate and maintain the Nine Mile Point Unit No. 2 (NMP–2) nuclear generating facility, including certain limited interconnection facilities appurtenant to NMP–2.

Comment Date: January 30, 2002.

17. Exelon Generation Company, LLC

[Docket No. ER02–727–000]

Take notice that on January 9, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Lower Colorado River Authority under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment Date: January 30, 2002.

18. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–728–000]

Take notice that on January 9, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Dynegy Power Marketing, Inc.

Ameren Energy seeks Commission acceptance of these service agreements effective December 12, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counter party.

Comment Date: January 30, 2002.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–729–000]

Take notice that on January 8, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide interconnection and transmission service to Keyspan/Long Island Power Authority (Keyspan). The Supplement provides for a decrease in the annual fixed rate carrying charges.

Con Edison has requested that this decrease take effect as of October 1, 2002.

Con Edison states that a copy of this filing has been served by mail upon Keyspan.

Comment Date: January 29, 2002.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–730–000]

Take notice that on January 8, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH).

Con Edison has requested that this supplement take effect as of September 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment Date: January 29, 2002.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–731–000]

Take notice that on January 8, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA).

Con Edison has requested that the Supplement take effect as of October 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment Date: January 29, 2002.

22. Columbia Energy Power Marketing Corporation

[Docket No. ER02–733–000]

Take notice that on January 9, 2002, Columbia Energy Power Marketing Corporation (EPM) tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 1 (market-based rate authority).

CEPM states that, as it is not regulated by a state commission, has no long-term customers, and has no outstanding market-based rate transactions, it has not served copies of this filing upon any entity.

Comment Date: January 30, 2002.

23. Boston Edison Company

[Docket No. ER02–734–000]

Take notice that on January 9, 2002, Boston Edison Company (Boston Edison) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 197, to an Interconnection Agreement between Boston Edison and Cabot Power Corporation (Cabot) relating to interconnection work for Cabot's Island End station.

Boston Edison requests an effective date of October 9, 2001.

Boston Edison states that it has served a copy of the filing on Cabot and the Massachusetts Department of Telecommunications and Energy.

Comment Date: January 30, 2002.

24. Conectiv Delmarva Generation, Inc.

[Docket No. ER02–735–000]

Take notice that on January 9, 2002, Conectiv Delmarva Generation, Inc. (CDG), filed a revised tolling agreement between itself and Conectiv Energy Supply, Inc. (the Revised Tolling Agreement). The Revised Tolling Agreement is a service agreement under the CDG's market-based rate tariff, FERC Electric Tariff, First Revised Volume No. 1.

CDG requests waiver of the Commission's notice of filing requirements to allow the Revised Tolling Agreement to become effective on January 10, 2002, the day after filing.

Comment Date: January 30, 2002.

25. New York State Electric & Gas Corporation

[Docket No. ER02–736–000]

Take notice that on January 9, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative). The proposed supplement would decrease revenues by $424.50 based on the twelve month period ending December 31, 2000.

This rate filing is made pursuant to section 1 (c) and section 3 (a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month ended December 31, 2000. The revised facilities charge is levied on the cost of the 34.5 kV tie line from Taylor Road to the Jefferson Substation, constructed by NYSEG for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2002.

Copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: January 30, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1577 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 16, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands.

b. *Project No:* 485–052.

c. *Date filed:* December 4, 2001.

d. *Applicant:* Georgia Power Co.

e. *Name of Project:* Bartletts Ferry Project.

f. *Location:* The project is located on Bartletts Ferry Reservoir, on the Layfield

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Tributary of the Chattahoochee River, Harris County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Robert L. Boyer, Vice President—#10170, 241 Ralph McGill Blvd., Atlanta, GA 30308–3374, (404) 506–7892.

i. *FERC Contact:* Any questions on this notice should be addressed to Hillary Berlin at 202–219–0038 or e-mail address: hillary.berlin@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene and protest:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Mr. Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (485–052) on any comments or motions filed.

k. *Description of Application:* The licensee is requesting to increase the maximum water withdrawal rate from the Barletts Ferry reservoir from the current 11,120,446 gallons per day (per agreement with the City of Opelika Water Works Board) to 42,000,000 gallons per day. The licensee has consulted with the appropriate resource agencies, and their application includes comments from the Alabama Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "DNUMocket" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1581 Filed 1–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–7]

Request for Applications: Decision-Making and Valuation for Environmental Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice of Requests for Applications.

SUMMARY: The purpose of this notice is to advise the public that the participating agencies, the U.S. Environmental Protection Agency and the National Science Foundation, are soliciting individual research proposals of up to 3 years duration, that will contribute to the development of practical approaches for estimating the benefits and costs of environmental policies and improving decision making about environmental issues. This document details the requirements for applications for research support that will be considered by the Federal research partnership. Grants will be awarded following peer review.

DATES: Applications must be received by EPA/NCER no later than 4 p.m. Eastern Time on May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Technical Contacts: Susan Carrillo; Phone: (202) 564–4664; e-mail: *carrillo.susan@epa.gov*, Robert O'Connor; Phone: (703) 292–7263; e-mail: *roconnor@nsf.gov*, Cheryl Eavey; Phone: (703) 292–7269; email *ceavey@nsf.gov* Administrative contact: Susan Carrillo; Phone: (202) 564–4664; email: *carrillo.susan@epa.gov*, The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncerqa*, under "announcements." The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncerqa/rfa/forms/downlf.html*. Forms may be printed from this site.

Dated: January 15, 2002.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 02–1617 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–6]

Termination of Pesticide Producing Establishments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Agency's intention to terminate a number of pesticide producing establishment registrations 45 days following the date of publication of this document for failure to file annual pesticide producing reports as required by section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The list of domestic and foreign pesticide producing establishments appearing in this document will have their establishment registration terminated March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Domestic pesticide producing establishments should contact the EPA Regional office having jurisdiction for the state where their parent company is located. A listing of the EPA Regional Offices is included in this document.

Foreign pesticide producing establishments should contact: Carol L. Buckingham, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Agriculture Division (2225A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, USA, telephone: (202) 564–5008, fax: (202) 564–0085; e-mail: *buckingham.carol@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 7 of FIFRA requires that all establishments that produce any pesticide or active ingredient used in producing a pesticide, or device subject to this Act be registered with the Agency, and that all such establishments submit annual production reports to the Agency. The EPA regulations at 40 CFR part 167 establish requirements concerning these annual reports and the information that must be in annual reports (40 CFR 167.85). The regulations state that establishment registrations will be subject to termination if an annual report is not submitted (40 CFR 167.20(f)).

Notwithstanding the requirements identified above, no annual production reports were received from the establishments identified in this document in 1997, 1998, 1999 and/or 2000. The mailings sent to the last reported address of the companies identified in this document were returned unopened to the Agency, with indications of "undeliverable" or "address unknown" as the reason for the return. Subsequent attempts to locate a number of the identified companies and establishments were unsuccessful. Additionally, some of the companies and/or establishments are out of business. Therefore, the Agency is terminating, without further notice, the registrations of the identified establishments pursuant to 40 CFR 167.20(f) for failure to submit the annual reports in 1997, 1998, 1999 and/or 2000.

Following termination of each domestic pesticide producing establishment's registration, sale or distribution in the United States of any pesticide product in an establishment subsequent to the termination of that establishment's registration will be considered unlawful and a violation of section 12 of FIFRA, subject to possible civil and/or criminal penalties. This document will not preclude the Agency from seeking other appropriate remedies necessary for compliance with FIFRA.

Following termination of each foreign pesticide producing establishment's registration, no pesticide product produced in that establishment may be imported into the United States.

ENVIRONMENTAL PROTECTION AGENCY LIST OF EPA REGIONAL OFFICES AND RESPONSIBLE CONTACTS

EPA regional office	States
U.S. EPA, Region 1, 1 Congress Street, Suite 1100 (SEA), Boston MA 02203–2211, ATTN: Lee Weller, Telephone: 617–918–1849.	CT, MA, ME, NH, RI, VT
U.S. EPA, Region 2, Pesticides Team (MS–500), 2890 Woodbridge Avenue, Bldg. 5, Edison, NJ 08337–3679, ATTN: David Salkie, Telephone: 732–321–6750.	NJ, NY, PR, VI
U.S. EPA, Region 3, Pesticides Programs (3WC32), 1650 Arch Street, Philadelphia, PA 19103–2029, ATTN: Kyla Townsend-McIntyre, Telephone: 215–814–2045.	DE, DC, MD, PA, VA, WV
U.S. EPA, Region 4, AFC Pesticides Section (APTMD), 61 Forsyth Street, SW, Atlanta, GA 30303–8960, ATTN: Jacquelyn Wilkerson, Telephone: 404–562–9011.	AL, FL, GA, KY, MS, NC, SC, TN
U.S. EPA, Region 5, PTES (DT–8J), 77 W. Jackson Blvd., Chicago, IL 60604–3507, ATTN: Gail Muffitt, Telephone: 312–886–6008.	IL, IN, MI, MN, OH, WI
U.S. EPA, Region 6, Pesticides Section (6PD–P), 1445 Ross Avenue, Dallas, TX 75202–2733, ATTN: James Redd, Telephone: 214–665–7560.	AR, LA, NM, OK, TX
U.S. EPA, Region 7, (WWPD/PEST), 901 N. 5th Street, Kansas City, KS 66101, ATTN: Lou Banks, Telephone: 913–551–7125.	IA, KS, MO, NE
U.S. EPA, Region 8, Enforcement Division (ENF–PT), 999 18th Street, Suite 300, Denver, CO 80202–2466, ATTN: Cornelia Maes, Telephone: 303–312–6049.	CO, MT, ND, SD, UT, WY
U.S. EPA, Region 9, Pesticides Section (CMD–4–3), 75 Hawthorne Street, San Francisco, CA 94105, ATTN: Glenda Dugan, Telephone: 415–947–4204.	AZ, CA, HI, NV, AS, GU
U.S. EPA, Region 10, Pesticides Unit (ECO–084), 1200 Sixth Avenue, Seattle, WA 98101, ATTN: Eva Chun, Telephone: 206–553–1970.	AK, ID, OR, WA

EPA Office and Responsible Contact for All Foreign Pesticide Producers

United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Agriculture Division (2225A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460 USA, Attn: Carol L. Buckingham, Telephone 202–564–5008, Fax: 202–564–0085, e-mail: *buckingham.carol@epa.gov*. ½

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
EPA Region 1: (No Listings)	
EPA Region 2:	
Seacoast Laboratories, Old Georges Road, P.O. Box 373, Dayton, NJ 08810.	001159–NJ–001, Seacoast Laboratories, Inc., Old Georges Road, Dayton, NJ 08810.
OSR Cleaning Specialties Co. Inc., 18 Bridge Street, Brooklyn, NY 11202.	004029–NY–001, OSR Cleaning Specialties Co. Inc., 18 Bridge Street, Brooklyn, NY 11202.
Corbin Chemical Corp., 126 25th Street, Brooklyn, NY 11232	012325–NY–001, Corbin Chemical Corp., 126 25th Street, Brooklyn, NY 11232.
EPA Region 3:	

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LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Sunshine Quality Products, PO Box 197, Industrial Park, Frackville, PA 17931.	041260–PA–001, SQP Transition Corporation, PO Box 197, Frackville Industrial Park, Frackville, PA 17931.
McBroom Pool Products, Inc., 113 S. Witchduck Road, Virginia Beach, VA 23462.	050778–VA–001, McBroom Pool Products, Inc., 113 S. Witchduck Road, Virginia Beach, VA 23462.
Augias Environmental Corporation, 13884 Park Center Road, Herndon, VA 22071.	066376–VA–001, Augias Environmental Corporation, 13884 Park Center Road, Herndon, VA 22071.
Barnacle Ban Corporation, 2275 Swallow Hill Road, Bldg. 2500, Pittsburgh, PA 15220.	068316–PA–001, Barnacle Ban Corporation, 2275 Swallow Hill Road, Bldg. 2500, Pittsburgh, PA 15220.
EPA Region 4:	
Steve's Pool Service, 11415 Road, Largo, FL 33773	057179–FL–001, Steve's Pool Service, 11415 Starkey Starkey Road, Largo, FL 33773.
Imperial Custom Packaging Inc., PO Box 1141, Fort Lauderdale, FL 33302.	070504–FL–001, Imperial Custom Packaging Inc., 716 NW 7th Avenue, Fort Lauderdale, FL 33311.
Vision Technologies Inc., PO Box 750665, Memphis, TN 38175	070798–TN–001, Vision Technologies Inc., 4050 Getwell Road, Memphis, TN 38118.
Outback Pools, 4729 Alabama Highway, Rome, GA 30165	071813–GA–001, Outback Pools, 4729 Alabama Highway, Rome, GA 30165.
Harry's Place, 14551 NE 145th Avenue, Silver Springs, FL 34488	072110–FL–001, Harry's Place, 14551 NE 145th Avenue, Silver Springs, FL 34488.
Chempro International, 6995 NW 82nd Avenue, Suite 37, Miami, FL 33166.	073555–FL–001, Chempro International, 6995 NW 82nd Avenue, Suite 37, Miami, FL 33166.
EPA Region 5:	
Archem Corporation, 11th Street, PO Box 767, Portsmouth, OH 45662.	007122–OH–001, Archem Corporation, U.S. Rt. 23 N, Portsmouth, OH 45662.
Uniclean, Inc., P.O. Box 166, North Olmsted, OH 44070	007392–OH–001, Uniclean, Inc., 5200 Mills Industrial Parkway, North Ridgeville, OH 44039.
Countrymark Cooperative, Inc., 4565 Columbus Pike, Delaware, OH 43015.	033272–OH–001, Land O' Lakes, 602 Findlay Road, Fostoria, OH 44830. 033272–OH–011, Countrymark Cooperative, Inc, 601 Goodrich Road, Bellevue, OH 44811.
Ajax Adhesives Industries, 1314 W. 21st Street, Chicago, IL 60608	045488–IL–001, Ajax Adhesives Industries, 1314 W. 21st Street, Chicago, IL 60608.
Central Indiana Farm Bureau Coop, Inc., 1530 W. Epler Avenue, Indianapolis, IN 46217.	053672–IN–005, Cumberland Central Indiana Farm Bureau, 229 S. Muessing, Indianapolis, IN 46229.
R. Carlson Company, Inc., 421 Demers Avenue, E Grand Forks, MN 56721.	055460–MN–001, R. Carlson Co., Inc., 317 W. Robert Street, Crookston, MN 56716.
A–G Coopertive Creamery, 502 W. Main Street, Arcadia, WI 54612.	057863–WI–004, A–G Co-Op, Winnebago Rd. Galesville, WI 54630.
Schultz Agri-Service, Inc., Hwy. 89 South, PO Box 56, Lake Mills, WI 53551.	062157–WI–001, Schultz Agri-Service, Inc., 1324 S. Main Street, Lake Mills, WI 53551.
LaFleur Pool Service, Inc., 555 S. River Street, Batavia, IL 60510	062652–IL–001, LaFleur Pool Service, Inc., 555 S. River Street, Batavia, IL 60510.
School Grain Inc., 5085 S. 500 West, Jamestown, IN 46147	063444–IN–001, School Grain, Inc., Route 1 500 S. & 500 W., Jamestown, IN 46147.
Omega Laboratories, Inc., 2121 Brookshire Road, Fairlawn, OH 44313.	064152–OH–001, Omega Laboratories, Inc., 200 Industrial Parkway, Chargin Falls, OH 44022.
Bio-Medica Concepts, 4503 Williamsburg Road NW, Cincinnati, OH 45215.	064233–OH–001, Bio-Medica Concepts, 8645–B Cincinnati-Columbus Road, Cincinnati, OH 45069.
Maynard Mickelson Co., 1005½ Lacrosse Street, Lacrosse, WI 54601.	064360–WI–001, Maynard Mickelson Co., 1005½ Lacrosse Street, Lacrosse, WI 54601.
H&S Chemical Co., Inc., PO Box 17186, Cincinnati, OH 45217	065169–OH–001, H&S Chemical Co., Inc., 300 Murray Road, Cincinnati, OH 45217.
Farmers Cooperative Elevator Co., 30 Spring Street, PO Box 247, Kent City, MI 49330.	065408–MI–001, Farmers Cooperative Elevator Co., 30 Spring Street, Kent, Michigan 49330.
Wayzata Bay Products, Inc., PO Box 217, St. Bonifacius, MN 55375.	066148–MN–001, Wayzata Bay Products, Inc., 4358 S. County Road 92, St. Bonifacius, MN 55375.
BCW, Inc., PO Box 174, Pendleton, IN 46064	066154–IN–001, BCW, Inc., 6368 So SR 67 Pendleton, IN 46064.
Sacon Laboratories International, Inc., 459 Busse Road, Elk Grove Village, IL 60007.	066389–IL–001, Sacon Laboratories International, Inc., 459 Busse Road, Elk Grove Village, IL 60007.
Associated Chemical & Equipment, 22401 Industrial Blvd., Rogers, MN 55374.	066698–MN–001, Associated Chemical & Equipment, 22401 Industrial Blvd., Rogers, MN 55374.
Whitlock Group, PO Box 4141, Des Plaines, IL 60016	068248–IL–001, Whitlock Group, 915 Pingree Road, Crystal Lake, IL 60014.
Nu Look Enterprises, 2900 17th Avenue South, Minneapolis, MN 55407.	068806–MN–001, Nu Look Enterprises, 6980 Oxford Street, Minneapolis, MN 55426.
Solution Company LLC, 529 Crescent Avenue, South Bend, IN 46607.	Solution Company LLC, 529 Crescent Avenue, South Bend, IN 46607.
Packaging Technologies Group, Inc., 4230 Lee Avenue, Gurnee, IL 60031.	Packaging Technologies Group, Inc., 4230 Lee Avenue, Gurnee, IL 60031.
Chem-I, Inc., 6215 Cedar Avenue, Cleveland, OH 44103	Chem-I, Inc., 6215 Cedar Avenue, Cleveland, OH 44103.

LIST OF DOMESTIC AND FOREIGN COMPANIES WITH SPECIFIC PESTICIDE-PRODUCING ESTABLISHMENTS TO BE TERMINATED—Continued

Domestic company name and mailing address	Domestic pesticide producing establishment number, name and site address
Alexis Chemical Co., 310 25th Avenue, Bellwood, IL 60104	071163–IL–001, Alexis Chemical Co., 310 25th Avenue, Bellwood, IL 60104.
Warren Industries, Inc., 3100 Mt. Pleasant Street, Racine, WI 53404.	073434–WI–002, Warren Industries, Inc., 2825 Four Mile Road, Racine, WI 53404.
EPA Region 6: (No Listings)	
EPA Region 7:	
Universal Technology Inc, PO Box 6, Carl Junction, MO 64834	052585–MO–001, Universal Technology Inc., 813 Joplin Street, Carl Junction, MO 64834.
Crookston Grain & Fertilizer, Box 248, Crookston, NE 69212	056037–NB–001, Crookston Grain & Fertilizer, 1st & Main, Crookston, NE 69212.
Johnson's Val-U-Line, Inc., PO Box 275, Auxvasse, MO 65231	063437–MO–001, Johnson's Val-U-Line, Inc., Hwy 54 North, Auxvasse, MO 65231.
Vanguard Chemical Corp., 1110 Washington Avenue, St. Louis, MO 63101.	065226–MO–001, Vanguard Chemical Corp., 1110 Washington Avenue, St. Louis, MO 63101.
Spray Technology International Ltd., 1851 110th Street, Bode, IA 50519.	069628–IA–001, Spray Technology, 1851 110th Street, Bode, IA 50519.
Barnard Grain Co., PO Box 88, Barnard, KS 67418	070008–KS–002, Jewell Agri Service, 620 North Sheridan, Jewell, KS 66949–0576.
EPA Region 8:	
HBH Enterprises/Lamar Aquarium, 820 W. Center Street, Provo, UT 84601.	065643–UT–001, Lamar Aquarium Products, 820 W. Center Street, Provo, UT 84601.
EPA Region 9:	
ABA–TRON Industries, Inc., PO Box 6341, Beverly Hills, CA 91203.	045265–CA–001, ABA–TRON Industries, Inc., 651 W. California Avenue, Suite 2, Glendale, CA 91203.
Focus 21 International, 2755 Dos Aarons Way, Vista, CA 92083	064048–CA–001, Focus 21 International, 2755 Dos Aarons Way, Vista, CA 92083.
H.B. Gordon Manufacturing Company, 400 N. Nash Street, El Segundo, CA 90245.	064055–CA–001, H.B. Gordon Manufacturing Company, 400 N. Nash Street, El Segundo, CA 90245.
Aquasave Pool & Water Technology, 825 S. 7th Street, Phoenix, AZ 85036.	065955–AZ–001, Aquasave Pool & Water Technology, 825 S. 7th Street, Phoenix, AZ 85036.
Fleaxperts, Inc., 8993 Complex Drive, San Diego, CA 92123	066144–CA–001, Fleaxperts, Inc., 8993 Complex Drive, San Diego, CA 92123.
Copperlok Systems, 4181 Lincoln Avenue, Culver City, CA 90230	067850–CA–001, Copperlok Systems, 11900 Jefferson Boulevard, Culver City, CA 90230.
Sakura, 2001 International Corp., 1622 Hallgreen Drive, Walnut, CA 91789.	068270–CA–001, Sakura, 2001 International Corp., 1622 Hallgreen Drive, Walnut, CA 91789.
Inland Products, Inc., 2304 W. Fillmore, Phoenix, AZ 85036	069271–AZ–001, Inland Products, Inc., 2304 W. Fillmore, Phoenix, AZ 85036.
Wild Products Group, 2485 E. Vernon Avenue, Vernon, CA 90058	070257–CA–001, Wild Products Group, 2485 E. Vernon Avenue, Vernon, CA 90058.
Wiz Out, Inc., 1255 Activity Drive 'A', Vista, CA 92083	070822–CA–001, Wiz Out, Inc., 1255 Activity Drive 'A', Vista, CA 92083.
EPA Region 10:	
DRC Company, 408 Metcalf Street, Sedro Woolley, WA 98284	040685–WA–002, Kemrite Inc., 408 Metcalf Street, Sedro Woolley, WA 98284.
Power One Industrial Supplies, Box 804, Baker City, OR 97914	067718–OR–001, Power One Industrial Supplies, 2700 Broadway, Baker City, OR 97914.
M.S. Magnetic Technology, 621 5th Street, SW, Puyallup, WA 98371.	068045–WA–001, M.S. Magnetic Technology, 621 5th Street, SW, Puyallup, WA 98371.
CSI, P.O. Box 3631, Seattle, WA 98124	070330–WA–001, CSI, 5109 238th Place SW, Mountlake Terrace, WA 98043.

Foreign company name and mailing address	Foreign pesticide producing establishment number, name and site address
Nippon Kayaku c/o Nichimen (Che Dept), 1185–6th Avenue, New York, NY 10036.	033649–JP–001, Nippon Kayaku, New Kaijo BL. 1–2–1 Maru Chiy, Tokyo, Japan. 033649–JP–002, Kashima Plant, Nippon Kayaku Co., ltd., 6, Snayama Kasaki-cho, Kashima, Ibaragi-Ken, Japan. 033649–JP–003, Ooji Plant, Nippon Kayaku Co., Ltd., 31–12, Shimo 3-Chome, Kita-ku, Tokyo, Japan.
Chemol RT c/o Agrichemical Services Inc., c/o Agrichemical Services, Inc., PO Box 808, Isle of Palms, SC 29451.	033675–HG–001, Chemol RT, PMV Sajobabony, 3792 Sajobabony, Hungary.
Sandoz Agro. Mktg & Logistics, Basle CH 4002, Basle, Switzerland	034818–SW–001, Sandoz Ltd., Agro Division, Lichtstrasse 35, Basel CH–4002, Switzerland. 034818–SW–002, Sandoz Ltd., Agro Division, Rothausstrasse 61, Muttenz CH–4132, Switzerland.

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Foreign company name and mailing address	Foreign pesticide producing establishment number, name and site address
Industrias Agricolas S.A. DE C.V., PO Box 507, Calexico, CA 92232–0507.	036331–MX–001, Industrias Agricolas, S.A. DE. C.V., KM. 14.5 Carreteraa San Louis, Mexicali, B.C. C.P. Mexico.
Calabrian Chemicals, c/o Laura Gimpelson, 15600 J.F. Kennedy Boulevard, Suite 570, Houston, TX 77032.	039295–BG–001, Chem Combine, C Srednogorie, Street not shown, Srednogorie, Bulgaria. 039295–MEX–001, Proveedora Quimica IND, Av Industrias 4318, Chihuahua 31430, Mexico. 039295–PE–001, Sulfato De Cobre, Av. Tacna 543, Lima, Peru. 039295–UR–001, Sojuzchimexport, 121200 Agro Chim Dept, Moscow, Russia. 039295–YG–001, Zupa, Not shown, Krusevac, Yugoslavia.
Delmar Chemicals Inc., PO Box 200, Lasalle, Quebec, Canada H8R 3V3.	043406–CN–001, Delmar Chemicals, Inc., 9321 Airlie Street, Lasalle, Quebec, Canada H8R 2B2.
Sun Ko Chemical Co. Ltd., No. 12, Lane 42 Jen-Hua Road, Ta-Li Hisang Taichng, Taiwan.	043842–TW–001, Sun Ko Chemical Co. Ltd., No.53, Chung-Ming Road, Taichung 403, R.O.C., Taiwan.
Commercial Manu S.A., Casilla 715, Lima 100, Peru	043842–WG–001, Riedel-Haen Ag, Wunstorfer Strass 40 Seelze, Seelze 1, Germany. 046821–PE–001, Commerical Manu S.A., Casilla 715, Lima 100, Peru.
Mansion Enterprises California, Inc., 525 De La Fuente, Monterey Park, CA 91754.	049573–TW–001, New Mansion Industrial Co., 93–13, Ta Pien Tou, Hou Chuo Will, San Chih Tsiang, Taiwan.
Nichimen America Inc. Attn: L. Ossi, 1185 Avenue of the Americas, New York, NY 10036.	050269–KR–001, Seo Han Chemical, 363–3, Mae Tan Dong, Kyung Gi Do, Su Weon City, Korea.
Harvex Agromart Inc, PO Box 220, Kemptville, Ontario Canada K0G1J0.	052047–CN–001, Harvex Agromart Inc., Hwy. 43 East, Kemptville, Ontario Canada K0G1JO.
Kingshome, Ltd., 10–5, 750, Tun Hwa S. Road, (World Bldg), Taipei, Taiwan.	052773–TW–001, 7–4F No. 128 Tung Hwa S Road, Sec 2, Taspon Tawan ROC, Taiwan.
Agroquimicos Eq. c/o Bruce Knoblock, 11741 E. Tanque, Tuscon, AZ 85749.	054675–MX–001, Agroquimicas y Equipos SA DE CV, Av. Jose Escandon Y Helguera Cruz N S, H. Matamoros, Tam. Mexico.
Nature Pool (Canada), Inc., 2155 Dunwin Drive, Ste #6, Mississauga, Canada L5L4M1.	056954–CN–001, Owl Associates Ltd., 2155 Dunwin Drive, Ste #6, Mississauga, Canada L5L4M1.
Allseasons Environmental Control Inc., 10 Alden Road, Unit 6, Markham, Ontario Canada L3R 2SI.	061382–CN–001, Allseasons Environmental Control Inc., 11 Dominic Street, Unit 6, Bishop Falls, Newfoundland, Canada.
Caribbean Chemicals Industries Ltd., Carmichael House, St. George, Barbados.	062546–WN–001, Caribbean Chemicals Industries Ltd., Carmichael House, St. George, Barbados.
Noranda Sales Corporation Ltd., 12640 West Cedar Drive, Lakewood, CO 80228.	062589–CN–001, Canadian Electrolytic Zinc Limited, 860 Cadieux Boulevard, Valleyfield, Canada. 062589–CAN–002, Home Smelter, 101 Avenue Portelance, Rouyn-Normanda, Canada. 062589–CAN–003, Gaspe Mines Division, Murdochville, Murdochville, Canada. 062589–CAN–004, Brunswick Mining & Smelting Corp Ltd. Belledune, Belledune, Canada.
Wedeco Environmental, Inc., 4958 Hammermill Road, Tucker, GA 30084–6077.	063804–WG–001, Wedeco GMBH, Daimlerstrasse 5, D–4900 Herford, Germany.
Norchem Ind (Canada) Inc. Diversey Corp., 12025 Tech Center Drive, Livonia, MI 48150.	063957–CN–001, Norchem Ind. (Canada) Inc., Attn: H P Kats, 950 Michelin, Vimont, Laval, Quebec H7L 927 Canada.
Raab Ingenieria Ltda, c/o Roger Tenney, 4900 W Howe Road, Dewitt, MI 48820.	064037–CH–001, Raab Ingenieria Ltda, Vicuna Mackenna N 3551, Santiago, Chile.
Solterra Minerals Inc. c/o Solterra Minerals Inc. (attn: Ray Lee), PO Box 650, Crossfield, Alberta, T0M 0S0 Canada.	064788–CN–001, Solterra Minerals Inc, 702 McCool Street, Crossfield, Alberta, T0M 0S0 Canada.
Tramsa, Av. Arenales No. 1868, Av. Lima 14, Peru	066012–PE–001, Tramsa, Av. Arenales No. 1868, Av. Lima 14, Peru.
Agrivalu Technologies Corporation, 766 Waterford Avenue, Winnipeg, Manitoba Canada.	066291–CN–001, Agrivalu Technologies Corp, 766 Waterford Avenue, Winnipeg, Manitobia, Canada. 066291–CN–002, Indent Technologies Corp., 435 Ellice Avenue, Winnipeg, Manitoba, Canada. 066291–CN–003, Technologies Brokerage Inc., 745 Logan Avenue, Winnipeg, Manitoba, Canada.
Laboratorios Agroenzymas S.A. DE C.V., Hormona No. 9 Altos, Col. San Andres, Ato Naucalpan, Mexico.	067194–MX–001, Laboratorios Agroenzymas S.A. DE C.V., Eje North N. 3 sSgunda Seccion, Ciudad 1, Naucalpan, Mexico.
G.I. & J.P. Jefferys—"Jantra Moon", c/o Tom Morgan, 19718 Auburn park, Spring, TX 77379.	067290–AU–001, Moonbell, 1 Beveridge Road, 4164 Q'land, Thornlands, Australia.
Wilmarg Enterprise Ltd., 80 Nashdene Road, Unit 21, Scarborough, Ontario M1V 5G4 Canada.	067308–CN–001, Wilmarg Enterprise Ltd. 80 Nashdene Road, Unit 21, Scarborough, Ontario M1V 5G4 Canada.
Tata Oil Mills Co., Ltd c/o Agridyne Technologies, 2401 S. Foothill Drive, Salt Lake City, UT 84109.	067610–IY–001, The Tata Oil Mills Co., Ltd., Tatapuram, PO Cochin, 682014 Kapala, India.
Hankin Atlas Ozone Systems Ltd. c/o Hankin Atlas Industries Ltd., 639 5th Avenue, SW, Suite 210, Calgary, Alberta T2P 0M9, Canada.	067792–CN–001, Hankin Atlas Ozone Systems Ltd., 690 Progress Avenue, Unit 12, Scarborough, Ontario M1H 3A6 Canada.
Litehouse Ind. Ltd., c/o Jones Chemicals Inc., 80 Munson Street, Leroy, NY 14482.	068433–CAN–001, Litehouse Ind. Ltd., 2560 Mattheson Boulevard, E-Unit 117, Mississauga Canada.
Ozone by Nicholas Inc. c/o Sam-Son Dist, 203 Eggert Road, PO Box 248, Buffalo, NY 14225–0248.	069041–CAN–001, Ozone by Nicholas Inc., 276 Wildcat Road, Downsview, Ontario M3J 2N5 Canada.

Foreign company name and mailing address	Foreign pesticide producing establishment number, name and site address
Standard Finis Oil Co., c/o Sharmyn Weljee, 1904 N I–35, Gainsville, TX 76240.	069462–PAK–001, Standard Finis Oil Co., D/33 Site Avenue D, Karachi, Pakistan.

Authority: 7 U.S.C. 136.

Dated: January 11, 2002.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–1616 Filed 1–22–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–8]

Flexible State Enforcement Responses to Small Community Violations, EPA Policy and Guidance

AGENCY: Environmental Protection Agency.

ACTION: Policy statement and request for public comment on possible revisions.

SUMMARY: The Environmental Protection Agency (EPA) is evaluating the effectiveness of its 1995 *Policy on Flexible State Enforcement Responses to Small Community Violations* (the Small Communities Policy) and seeks public comment on possible revisions to make the policy more useful and to promote more widespread implementation of the policy among states. Possible revisions include an upward adjustment of the population limit for eligible communities, allowing application to "fence line" projects, and provision of additional incentives for participation. This notice also discusses other potential minor changes. EPA will also consider additional changes that may be suggested by commenters. EPA developed the Small Communities Policy to enhance protection of public health and the environment by encouraging states to help small communities: Identify their environmental problems; develop a priority-based schedule for returning to full, comprehensive environmental compliance; and build the technical, administrative, and financial capacity they need to achieve and sustain environmental compliance. The Small Communities Policy can be downloaded from the Internet at *http://es.epa.gov/oeca/scpolicy.html.*

DATES: EPA requests that interested parties comment on this notice in writing. Comments must be received by April 23, 2002.

ADDRESSES: Send written comments to: the Docket Clerk, Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC–P–2001–003, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (in triplicate, if possible). Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 501–1011. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number EC–P–2001–003 on your document. In person, deliver comments to Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Ariel Rios Building, Room 4033, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 564–2614 or (202) 564–2119. Hours of operation are 8 a.m. through 4 p.m., e.s.t., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Harmon, telephone (202) 564–7049; e-mail harmon.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Explanation of Notice

A. Executive Summary

During 1994, EPA began informal discussions with the states of Oregon and Idaho, (later joined by the state of Nebraska) that centered on those states' planned use of enforcement discretion with respect to small community violators. EPA's enforcement guidelines generally mandate initiation of an enforcement action and assessment of a standard penalty amount (which can be adjusted downward on the basis of the violator's inability to pay) if a local government entity is discovered to have violated environmental regulations. As these states noted, small communities may have more difficulty complying with environmental regulations than larger communities do. Small communities that lack personnel trained in environmental management may be unaware of environmental requirements. Once informed of an environmental violation, a small community may not know how to correct the problem. Because small communities have a smaller tax base and a smaller pool of ratepayers, their residents often must pay higher per household costs for environmental compliance. Oregon, Idaho, and Nebraska sought assurances EPA would defer to a state's exercise of enforcement discretion to reduce or waive the standard penalty where a state determines that a small community violator is working in diligent good faith to correct its violations.

In 1995, EPA responded by issuing the *Policy on Flexible State Enforcement Responses to Small Community Violations* ("the Small Communities Policy"). The Small Communities Policy established the parameters within which EPA encourages states [1] to provide incentives for small communities to seek state assistance in identifying their environmental problems, developing a priority-based schedule for returning to full comprehensive environmental compliance, and building technical, administrative, and financial capacity to achieve and maintain compliance.

The major findings of EPA's preliminary evaluation of the Small Communities Policy and its implementation are as follows:

- During the past six years, few states have elected to establish programs to provide comprehensive environmental compliance assistance to small communities. At present, only the states of Oregon and Nebraska maintain active programs of this type. In these states, the Small Communities Policy has proved effective for reassuring communities that compliance evaluations performed by the state do not always subject the community to an enforcement action and a requirement that they pay penalties.
- The Oregon and Nebraska programs have provided compliance assistance to more than 250 small communities.
- Many states have not established programs to provide comprehensive compliance assistance to small

[1] The term "state" includes territories of the United States and Indian reservations where EPA has approved the Tribe for treatment as a State.

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communities because they believe the Small Communities Policy's population cap of 2,500 is too low. These states say their communities with 2,500 or fewer residents offer only limited and rudimentary public services, lack the administrative capacity to implement a comprehensive compliance effort, and their compliance needs can be adequately met by informal compliance assistance focused on the requirements of individual regulatory programs.

• Many small communities see no benefit to be gained by participating in a state's comprehensive compliance assistance program, as reduction or waiver of the noncompliance penalty is little incentive to a community that, because of its limited financial resources, would not pay a significant penalty in a traditional enforcement action.

In response to these findings and others, EPA is considering a number of revisions to the Small Communities Policy. One possible revision would be to raise the population cap, allowing states to direct comprehensive compliance assistance toward larger (but still small) communities that do offer a variety of public services and do have the capacity to undertake and implement a plan for sustained compliance. The Small Communities Policy could also be revised to permit a comprehensive approach to environmental compliance within the "fence line" of one of a community's operations, rather than requiring comprehensive evaluation of all of a community's operations. EPA has also worked to reduce the resource burdens associated with establishing and participating in comprehensive environmental compliance assistance programs and is considering a number of incentives it can offer to both states and small communities. These options and others are discussed later in this Notice.

B. Overview of the Small Communities Policy

EPA's 1995 Small Communities Policy gives states considerable freedom to tailor small community environmental compliance assistance practices or programs that meet specific local needs. In general, application of the Small Communities Policy is restricted to communities with a population no larger than 2,500 that are working in diligent good faith to achieve and sustain comprehensive environmental compliance. The Small Communities Policy requires that states offering comprehensive environmental compliance assistance have adequate processes for:

• Responding quickly to requests for compliance assistance;

• Selecting communities to participate in the state's compliance assistance program;

• Assessing a community's good faith and compliance status;

• Establishing priorities for addressing violations; and

• Ensuring prompt correction of violations.

Where a state implements the Small Communities Policy, EPA reserves all of its enforcement authorities, but will generally defer to a state's exercise of its enforcement discretion in accordance with the terms of the Small Communities Policy. EPA, however, reserves its enforcement discretion with respect to any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health or the environment.

The Small Communities Policy does not apply if, in EPA's judgment, a state's program to offer comprehensive environmental compliance assistance to small communities fails to satisfy the conditions of the Small Communities Policy. The Small Communities Policy does not apply if, in EPA's judgment, a state's application of its small community environmental compliance assistance program fails in a specific case adequately to protect human health and the environment because it neither requires nor results in reasonable progress toward, and achievement of, environmental compliance by a date certain.

C. Relationship of Small Community Policy to Environmental Management Systems

In many respects, the Small Communities Policy promotes an environmental management system (EMS) approach by encouraging small communities to identify their environmental responsibilities and implement management systems that will enable them to sustain compliance. While the Small Communities Policy asks participating small communities to perform a comprehensive assessment of their environmental compliance, the resulting enforceable compliance schedule need only address the violations discovered. A small community that adopts an EMS signals its ongoing commitment to management practices that minimize the likelihood of violations in the future. For this reason, EPA supports states that promote the use of environmental management systems as a component of their programs that offer comprehensive environmental compliance assistance to small communities. Small communities will be able to use the resources of the PEER Center (*see* below) to assist them in developing an EMS. If a small community develops and implements an EMS as part of its strategy to address its noncompliance, the EMS should be incorporated into the written and enforceable compliance schedule.

D. Differences Among the Self-Disclosure Policies

In addition to the Small Communities Policy, the application of which is expressly limited to small communities, EPA has issued *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the Audit Policy)* and the Small Business Compliance Policy (the Small Business Policy), both of which were last revised in April of 2000. These policies provide penalty relief to violators who promptly disclose their violations to EPA and promptly return to compliance. Although the Small Communities Policy is often grouped with the Audit Policy and the Small Business Policy under the shared term "self-disclosure policies," it is different in significant ways. The Audit Policy and the Small Business Policy apply only to violations voluntarily discovered by the regulated entity, *i.e.*, the violator, not a regulator, discovered the noncompliance, and the violations were not discovered during the performance of a compliance assessment required by statute or regulation. The Small Communities Policy, by contrast, allows inclusion both of violations discovered by the regulator and of violations found during legally required compliance assessments. While the Audit Policy and the Small Business Policy do not provide penalty relief for repeat violations, the Small Communities Policy allows application of the policy to communities with a history of noncompliance if the state determines that the community is acting in good faith. The Audit Policy and the Small Business Policy generally allow disclosing violators 60 days and 90 days, respectively, to correct their violations (the Small Business Policy allows 180 days for corrections if the violator first submits a written schedule, and up to 360 days for corrections if the violator will correct the violations by putting into place pollution prevention measures.) The Small Communities Policy gives communities 180 days to correct violations without a schedule, but, if compliance cannot be achieved within that time, allows communities to enter into a written and enforceable schedule that will address all of their violations in order of risk-based priority as expeditiously as practicable. Both the Audit Policy and the Small Business Policy focus on the noncompliance disclosed by the violator, and the disclosed violations must be corrected in a timely fashion, but the violator is not asked to conduct voluntary evaluations of its compliance with any other regulatory requirements. For this reason, the most significant difference between the Small Communities Policy and the other self-disclosure policies is the Small Communities Policy's emphasis on performing a compliance evaluation of all of a community's environmental operations and on developing the community's capacity to achieve and sustain comprehensive compliance.

II. Possible Revisions to the Small Communities Policy

EPA has identified three areas of the Small Communities Policy that may have the largest influence on whether or not states and small communities participate in programs that provide comprehensive environmental compliance assistance to small communities: (1) The policy's cap on the population of participating communities; (2) the resource burden on states to establish and implement such a program; and (3) the incentives for participation. These three areas of specific concern will be discussed more fully below. EPA seeks comments from the public on how best to address these specific concerns, on other aspects of the policy identified in the discussion to follow, and on any other issues concerning the Small Communities Policy and its implementation.

A. Possible Revisions To Address Areas of Specific Concern

1. The Population Cap

All stakeholders agree that the Small Communities Policy is valuable for the assurances it provides small communities that a good faith request for help can result in compliance assistance instead of an enforcement action and penalty. Some stakeholders have told EPA that the Small Communities Policy appropriately limits participation to communities with a population of 2,500 or less, as a population cap is necessary to limit delivery of comprehensive environmental compliance assistance to those communities that most need help. Other stakeholders believe the Small Communities Policy is of little use to communities with 2,500 or fewer residents. In rural areas, small community residents may obtain their drinking water from their own wells, capture waste water in their own septic systems, or assume responsibility for disposing of their own solid waste. In more densely populated areas, the residents of small communities may receive public services from the surrounding county or district government rather than from their local small government authority. If a community does not provide a range of public services, it has no need for a program that helps it set priorities and develop a schedule for working toward comprehensive environmental compliance. These stakeholders assert that there are numerous larger (but still small) communities that would enjoy greater benefit from participation in such a program, while advancing the Agency's goal of encouraging small communities to achieve and sustain comprehensive environmental compliance.

If the Agency were to revise the Small Communities Policy to address the population cap that some see as an impediment to implementation, EPA would have several options.

a. Raise the Population Cap

The Small Communities Policy capped a small community's population at 2,500 to be consistent with the Small Town Environmental Planning Act, 42 U.S.C. 6908(f) (October 6, 1992), where Congress defined a "small town" as one "with a population of less than 2,500 individuals." If EPA determines that the Small Communities Policy's population cap of 2,500 bars participation of small communities that could benefit from the policy and advance EPA's goals, one possible solution would be to raise the population cap.

Section 9 of the United States Census Bureau's Statistical Abstract of the United States: 2000 indicates that approximately 25,750 of America's 36,000 municipalities, towns, and townships have fewer than 2,500 residents. This 72 percent of America's units of local government is home to only 9 percent of the Americans who live in municipalities, towns, and townships. Doubling the size of the resident population to 5,000 adds another 4,000 units of local government and another 6 percent of the Americans who live within units of local government. Another 2,700 units of local government have populations between 5, 000 and 10,000, and are home to an additional 9 percent of the Americans who live within units of local government. All told, the 32,400 units of local government that have fewer than 10,000 residents represent approximately 90 percent of all units of local government in America, and the 51,400,000 people who live in them represent less than a quarter of all Americans who live in municipalities, towns, or townships.

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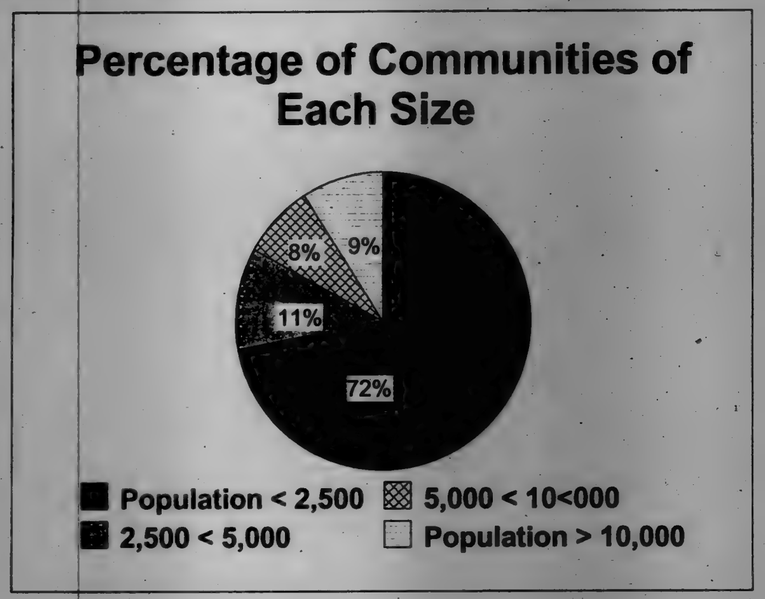

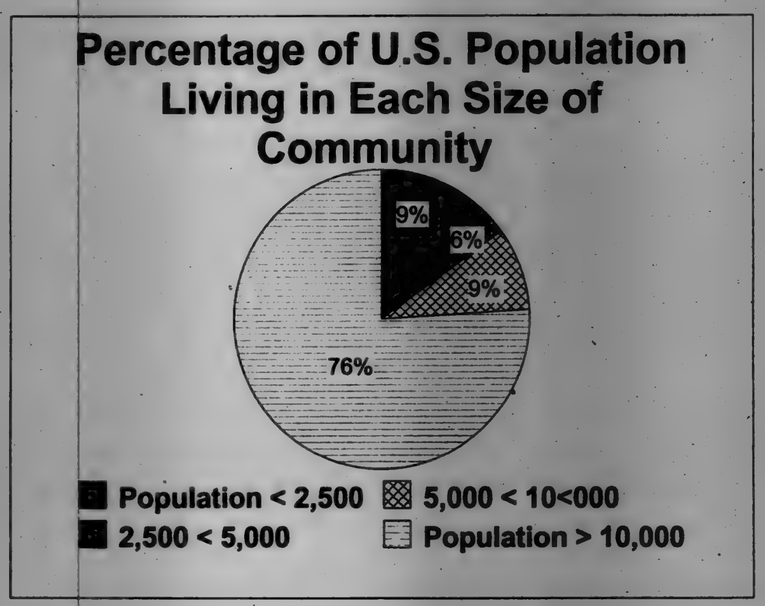

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Congress has defined small town differently in various public laws. In the Small Business Regulatory Enforcement Fairness Act of 1996, and the Small Business Act "small governmental jurisdiction" means the governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Both of these statutes allow a federal agency to establish, after opportunity for public comment, one or more definitions of small governmental jurisdiction "which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction."

Where EPA rules take size into account, most often it is to assign facilities to categories on the basis of the amount of pollution the facility can potentially release into the environment. In regulations controlling municipal storm water discharge facilities and in the primary drinking water standards, EPA has established a regulatory framework that provides different requirements for communities with different resident populations.

In these examples, the size of the resident population is directly proportional to the amount of pollution potentially released into the environment by municipal storm water discharge facilities, to the number of people whose health is potentially placed at risk by drinking water that does not meet standards, and to the number of ratepayers who pay the costs of compliance. For rules related to storm water discharge, EPA defines small local governments as those serving a population of fewer than 100,000. EPA's primary drinking water standards establish a number of different population caps beneath which communities would be considered small enough that they need not meet the more stringent requirements the regulation imposes on larger communities. Primary drinking water standards that establish a small community population cap most often set the cap at either 3,300 or 10,000 residents. In proposing the Arsenic Rule, EPA created provisions intended to lessen the burden on small public water systems that serve fewer than 10,000 persons, citing the population level specified by Congress in section 1412(b)(4)(ii) of the Safe Drinking Water Act for applicability of small system flexibility provisions. EPA requests comment on whether application of the Small Communities Policy should continue to be limited to communities with a population of less than 2,500, whether the Small Communities Policy should adopt the population cap of another EPA statute or regulation, or whether it would be appropriate to establish a population cap at some level not found in EPA statutes or regulations.

b. Replace the Population Cap With a Capacity Test

Noting that the primary goal of the Small Communities Policy is to build a community's capacity to achieve and sustain comprehensive environmental compliance, some stakeholders suggest that the number of people who live in a community may not be the most reliable measure of whether the community lacks or possesses that capacity. They note that some violating communities with fewer than 2,500 residents may have the financial capacity to achieve and sustain comprehensive environmental compliance once their environmental needs are identified. They also note larger, poorer communities may be unable to achieve that result without extensive assistance. For this reason, these stakeholders recommend that EPA's Small Communities Policy determine a community's eligibility to participate in a compliance assistance program not on the basis of a community's population, but solely on a finding that the community lacks the capacity to comply without assistance.

Although the Small Communities Policy already offers a list of indicators states can use to measure a community's capacity to comply, revisions to the policy could require that a community's capacity be determined either on the basis of one or two indicators, on the basis of a detailed demographic analysis, or something in between. Possible capacity indicators for a quick determination would likely focus on whether or not the community employs either a professional government manager or a certified professional whose primary responsibility is environmental compliance. If the Small Communities Policy were to adopt capacity indicators of this type, EPA would take care not to create incentives for communities to avoid employing trained staff as a way to receive preferential treatment from their state.

Some stakeholders have pointed out that a capacity analysis is implicit in the Small Communities Policy's requirement that states assess the good faith of communities that are candidates for their compliance assistance programs. The good faith requirement indicates that a community that has the capacity to comply with environmental requirements, but chose not to exercise that capacity, would not be eligible for participation because it has not acted in good faith. Accordingly, some would view elimination of the Small Communities Policy's population cap in favor of a capacity analysis as removing an arbitrary barrier to delivery of the Small Communities Policy's benefits to needy communities larger than 2,500, not as requiring states to perform additional analysis of candidate communities. Because almost all communities with populations greater than 10,000 are professionally managed and do employ certified environmental professionals, these stakeholders say, elimination of the population cap would not result in application of the Small Communities Policy to large communities, as communities with professional staff should be able to identify and address environmental compliance issues without a state's assistance. Other stakeholders have suggested that small communities with professional staff are *better* able to take advantage of the provisions of the Small Communities Policy, and that employment of professional staff should not bar a small community's participation in comprehensive environmental compliance assistance programs if other capacity measures indicate that the community is unlikely to achieve and sustain comprehensive compliance without assistance from the state. EPA requests comment as to whether the Small Communities Policy should establish a measurement of a small community's compliance capacity as the exclusive criterion for the community's participation in a comprehensive environmental compliance assistance program.

2. The Resource Burden on States

States note that bringing together staff with expertise in various environmental programs, coordinating their efforts, and making them available to provide compliance assistance at the request of small communities can require the investment of significant state resources. EPA hopes to fund a few pilot projects that will help states establish and implement a small community comprehensive environmental compliance assistance program, but Agency resources for such efforts will be limited and subject to annual budget uncertainties.

a. Provide "In Kind" Assistance

EPA anticipates that providing in-kind assistance that lowers a state's implementation costs will prove a reliable and effective method of addressing the states' lack of resources. Many of the tools a state needs to establish a comprehensive

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environmental compliance assistance program have already been developed by EPA and are available from EPA and from other sources. Examples include:

- The Profile of Local Government Operations (EPA 310–R–99–001), which details the environmental requirements triggered by typical local governmental activities. Sections of this 300-page book focus on different government operations (*i.e.*, vehicle/equipment maintenance, construction/property management, *etc.*), and describe the environmental requirements associated with the performance of that operation.
- The Local Government Environmental Assistance Network (LGEAN). EPA and nine non-governmental organizations maintain an Internet site (*www.lgean.org*) that provides information about the environmental responsibilities of local governments; alerts users to new and developing issues related to environmental compliance; allows users to review and comment on statutes, regulations and guidance in development; answers their questions, provides a forum for peer counseling, and offers links to grants information and to technical consultants. LGEAN's information services are also available via a toll free telephone number for those who do not have access to the Internet.
- The Environmental Audit Protocols. To date, EPA has published eleven handbooks that provide detailed information on how to audit for compliance with various environmental statutes. Links to the full text of these protocols can be found at *http://es.epa.gov/oeca/main/strategy/crossp.html*.
- The Environmental Management, Auditing, and Pollution Prevention Tool (EMAPPT). Currently under development, this web-based tool will allow users to customize activity-specific compliance assistance tools that identify the applicable regulatory requirements, audit protocol checklists, environmental management system materials, and opportunities for pollution prevention.
- The Compliance Assistance Clearinghouse *http://cfpub1.epa.gov/clearinghouse/*). This guide to compliance information on the Internet provides users quick access to compliance tools, contacts, and activities available from EPA and other compliance assistance providers.
- The Public Entity EMS Resource (PEER) Center. This Web site is scheduled to go on-line in the spring of 2002, with four Local Resource Centers to open across the nation shortly thereafter. The PEER Center will provide a cost-effective central information source where local governments can find quality-assured, field-tested data, information, tools, resources, technical assistance, and training they need to establish an environmental management system for a variety of public facilities in a variety of circumstances.

In addition to these compliance assistance tools, EPA could develop and distribute model documents and process templates that would further reduce program development costs for states. EPA welcomes comments on the utility of these compliance assistance tools and whether additional materials would be helpful.

b. Allow a "Fence Line" Approach

Because performing a comprehensive evaluation of the environmental compliance status of all of a small community's operations can necessitate input from several individuals and involve extensive analysis, allowing participation of small communities on the basis of "fence line" evaluations could be another means of reducing a state's resource demands. The fence line approach erects a figurative fence around one of the local government's facilities or operations (*i.e.*, a waste water treatment plant, vehicle fleet operations, *etc.*) that is the subject of compliance concern. A state can focus personnel and expertise on the environmental regulation that primarily controls activity within the fence line, and make use of information sources like those described in the preceding section to identify additional environmental requirements that the local government must meet within the fence line. Because the fence line approach has seen widespread use by local government's developing environment management systems, the PEER Center will make available case studies showing how several different types of local government facilities established a process to identify their environmental responsibilities. The PEER Center will also make available field tested templates for environmental management systems local government facilities put in place to ensure sustained environmental compliance. By focusing on a limited subset of the small community's facilities or operations, a state can reduce the amount of resources needed to help a community develop a plan and schedule to address environmental concerns identified during a compliance assessment. The small community, however, remains at risk of future discovery of environmental violations at its other facilities.

c. Shift Costs to the Small Community

While EPA will continue working to reduce a state's resource burdens associated with offering comprehensive environmental compliance assistance to small communities, a state can elect to reduce its resource burden by requiring local governments to demonstrate that they qualify for participation in the state's program, or by placing limits on the violations that are eligible for treatment under the Small Communities Policy. The policy permits states to select small communities for participation in their compliance assistance programs at any point in the compliance determination process. A state small community compliance assistance program that sends staff consultants to each community to evaluate its compliance status and identify its violations will require more operating resources than a program that limits participation to those communities that complete a compliance self-evaluation, find violations of more than one environmental law, and reveal those violations to the state in an application for participation. EPA acknowledges that many small communities currently lack the regulatory knowledge and technical expertise required to perform a comprehensive compliance self-evaluation. States, however, can direct interested small communities to the EPA compliance assistance tools described above, as small communities, in many instances, were EPA's intended audience. These tools will help small communities understand their environmental responsibilities and measure their compliance status. Revisions to the Small Communities Policy could either directly append these materials or indicate where they are available from EPA or on the Internet.

States also can reduce their resource demands by awarding grants to small communities from an amount EPA has set aside from the Safe Drinking Water Act State Revolving Fund. Section 1452(q) of the Safe Drinking Water Act authorizes EPA to fund small system technical assistance grants for communities with populations of up to 10,000. States can award grants that communities are required to use to pay for a preliminary engineering evaluation of environmental compliance concerns at their drinking water facilities. While these funds are available only for activities related to compliance with the primary drinking water standards, they can be used as a source of partial funding for a more comprehensive evaluation of a small community's environmental compliance.

d. Tiering and Streamlining

There are a number of other possible alternatives for states seeking to limit the costs of offering comprehensive environmental compliance assistance to small communities. States could assign communities to tiers on the basis of population, capacity, or some other measure and offer different levels of service to communities in different tiers. For example, the smallest communities could receive comprehensive, hands-on compliance assistance, while larger (but still small) communities would be given an information package that guides them through the process of identifying their violations, developing a compliance strategy, and applying for state approval of their compliance plan.

EPA may also investigate opportunities to coordinate with other federal agencies whose regulations impose requirements on local governments with the goal of increasing efficiency through better coordination among agencies. Streamlining the process of implementing federal regulations could reduce a state's resource burden. EPA seeks comment on these possible revisions intended to reduce a state's resource burden associated with offering comprehensive environmental compliance assistance to small communities, as well as comment on the possibility that state resources devoted to compliance assistance will be offset by cost savings resulting from better coordination among state offices, fewer violations in small communities, the release of less pollution to the environment, improved public health protection, and reduced demands on inspection and enforcement personnel.

3. The Incentives To Participate

For the Small Communities Policy to be effective in helping EPA meet its goal of comprehensive and sustained environmental compliance by small communities, states must have an incentive to offer comprehensive environmental compliance assistance to small communities, and small communities must have an incentive to participate in a state's program.

a. Incentives for States

States with active programs for providing comprehensive environmental compliance assistance to small communities will receive intrinsic benefits.

These states will have more confidence in their assessments of the environmental compliance status of their small communities, they will make measurable progress toward reducing risks to the health of their citizens and to the environment, and will be gathering information that will allow them to make accurate plans and develop realistic budgets for future environmental compliance. States whose comprehensive environmental compliance assistance programs operate within the parameters of the Small Communities Policy enjoy a much greater level of flexibility than they are afforded under EPA's enforcement policies; as they are authorized to exercise their own judgment regarding the most appropriate response to discovered violations. An effective program will also result in sustained compliance on the part of the participating communities that will produce lasting environmental benefits and eventually allow the state to refocus enforcement and compliance resources on other regulated entities.

Additionally, EPA is exploring ways it can award recognition to states that establish and implement programs that provide comprehensive environmental compliance assistance to small communities. For example, special recognition can be awarded to the first state to establish such a program in each EPA Region. The Agency can offer a limited number of grants to states to establish comprehensive small community environmental compliance assistance programs, may offer states opportunities to participate in EPA-funded pilot projects, and give implementing states priority access to new EPA services that support the delivery of compliance assistance. EPA seeks comment on these possible incentives, and welcomes additional suggestions.

b. Incentives for Small Communities

To encourage small communities to participate in comprehensive environmental compliance assistance programs, the Small Communities Policy says EPA will generally defer to a state's decision to waive part or all of the enforcement penalty normally assessed in response to discovered violations. Because EPA guidances allow penalties to be adjusted on the basis of a violator's ability to pay, small communities are rarely ordered to pay large penalties in settlement of enforcement actions. Evidence that penalty mitigation or waiver has not been an effective incentive for small communities can be found in states such as Washington and Alaska. These states established programs to offer comprehensive environmental compliance assistance to small communities, but then found it difficult to recruit communities to participate.

The significant benefits these programs provide to small communities can serve as the incentive to participate if EPA does a better job of publicizing those benefits. Small communities may be more interested in participating in comprehensive environmental compliance assistance programs if they know such programs will identify and address all of their environmental concerns, and that they will emerge from the process both with a plan for sustained environmental compliance and the technical, administrative, and financial capacity to follow through on the plan. Communities that participate in such programs will know they have done what they should do to protect their residents, and they will be able to budget for the future with confidence that they will not be surprised by overlooked environmental requirements that necessitate expensive remediation.

EPA seeks comment on additional incentives the Agency and states can offer small communities to participate in comprehensive environmental compliance assistance programs. Some states currently provide communities a small grant to fund a comprehensive or a program-specific engineering analysis to assess the communities' environmental compliance status. Another option may be to give participating communities priority access to available capital funding in the form of grants or low interest loans, or to provide them greater access to free or low-cost operator training. States may also provide participating communities opportunities to consolidate operations or operators with other nearby communities. EPA may be able to offer participating communities priority access to new or premium compliance assistance services supported by EPA. Possibilities include web-cast information sessions on LGEAN, or environmental management systems counseling through one of the PEER Center's Local Resource Centers. Communities that have completed the process or achieved measurable results could be offered prizes or recognition. Special recognition could be offered to the first few communities to complete the process in an EPA Region, each state, and within additional political subdivisions as appropriate. EPA is also investigating the possibility that certification of compliance with comprehensive environmental assessment standards can result in improved bond ratings and reduced liability insurance premiums. EPA seeks comment on these possible incentives, and welcomes additional suggestions.

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E. Possible Revisions to Other Identified Aspects of the Small Communities Policy

If commenters believe that a policy with less flexibility would provide clearer guidance, EPA will considerrevising the Small Communities Policy to provide states with more specific directions, or to append illustrative models and templates. For example, the Small Communities Policy could:

- Establish a definite time limit within which a state must respond to a small community's request for compliance assistance if the Small Communities Policy is to apply;
- Narrow the definition of community;
- Narrow the range of community activities to which the Small Communities Policy applies;
- Further limit the types of violations a small community comprehensive environmental compliance assistance program can address;
- Specify when and how violations must be discovered if they are to be eligible for inclusion in a comprehensive compliance schedule and agreement;
- Draw distinctions between major and minor violations, between violations of different statutes or regulations with respect to appropriate intervals for disclosing and correcting violations;
- Begin tracking the time elapsed for a small community's compliance activities from the date it requests assistance from the state, the date the state identifies violations in the community, or some other date;
- Shorten or lengthen the 180 day interval for a small community either to return to compliance or to enter into a written and enforceable schedule for returning to compliance;
- Establish a defined interval for achieving compliance that a small community must not exceed;
- Incorporate attainment of necessary funding into compliance deadlines
- Provide specific guidance on how small communities are to prioritize their compliance activities; and
- Provide a structure for how states and EPA will interact and how information will be reported to EPA when a state implements a small community environmental compliance assistance program.

EPA welcomes public comment on these aspects of the Small Communities Policy.

F. Possible Revisions Related to Small Communities on Indian Lands

The Small Communities Policy makes no distinction between states and Tribes that have received EPA approval for treatment as states. Implicit, but not stated in the policy, is the fact that EPA directly implements regulatory programs on Indian reservations where the Tribe has not be approved for treatment as a state. In such circumstances, EPA is the "state" and can choose to offer comprehensive environmental compliance assistance to small tribal communities. EPA requests comment regarding whether the Small Communities Policy contain should include provisions specific to small communities located on Indian lands or, in the alternative, whether EPA should develop a separate policy for such communities.

G. Other Possible Revisions

EPA acknowledges that this **Federal Register** Notice may not have identified all impediments to effective use of the Small Communities Policy to support wide-spread establishment of state programs to provide comprehensive environmental compliance assistance to small communities. The Agency welcomes all comments and suggestions that will promote this goal.

Dated: January 14, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–1615 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00730B; FRL–6822–1]

Draft Guidance for Pesticide Registrants on New Labeling Statements for Spray and Dust Drift Mitigation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On August 22, 2001, the Agency announced the availability of, and sought public comment on, the draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products." On November 14, 2001, EPA published a notice extending the due date for comments until January 19, 2002. The Agency has received several requests to extend the public comment period further to allow commenters more time to prepare their responses to the PR Notice. The Agency believes that additional time is appropriate and would be beneficial; therefore, this notice extends the comment due date until March 31, 2002. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration-related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice provides guidance on drift label statements for pesticide products. The purpose of this new labeling is to provide pesticide registrants and applicators and other individuals responsible for pesticide applications with improved and more consistent product label statements for controlling pesticide drift from spray and dust applications in order to be protective of human health and the environment. The Agency invites comments on any aspect of the draft PR Notice as well as the specific issues addressed under **SUPPLEMENTARY INFORMATION.**

DATES: Comments, identified by the docket control number OPP–00730B, must be received on or before March 31, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. under **SUPPLEMENTARY INFORMATION** of the August 22, 2001 **Federal Register.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00730B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7099, fax number: (703) 305–6244; and e-mail address: ellenberger.jay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It may be of particular interest, however, to those persons who hold pesticide registrations, apply pesticides, or regulate the use of pesticides for states, territories, or tribes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document?

1. *Electronically.* You may obtain electronic copies of this document and the draft PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents" or go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A copy of the draft PR Notice is also available at http://www.epa.gov/opppmsd1/PR—Notices/prdraft-spraydrift801.htm.

2. *Fax-on-demand.* You may request a faxed copy of the draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products" by using a faxphone to call (202) 401–0527 and selecting item 6142. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00730B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of August 22, 2001 (66 FR 44141) (FRL–6792–4), EPA announced the availability of a draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products." The Agency provided a 90–day comment period, which was scheduled to end November 20, 2001. Subsequently, in the **Federal Register** of November 14, 2001 (66 FR 57098) (FRL–6811–3), EPA extended the comment period to January 19, 2002. In response to public comments, the Agency is extending the comment period for the draft PR Notice until March 31, 2002.

List of Subjects

Environmental protection, pesticides.

Dated: January 17, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–1758 Filed 1–18–02; 1:52 pm]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on January 30, 2002 in Washington, DC.

DATES: The meeting will be held on January 30, 2002, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Emergency Management Agency FEMA's Lobby Conference Center, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–3508; or e-mail *pat.tenorio@fema.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) reports from FRPCC subcommittees, (3) old and new business, and (4) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public not more than five minutes in length. Any member of the public who wishes to make an oral statement at the January 30, 2002, FRPCC meeting should request time in writing from Russell Salter, FRPCC Chair, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Dated: January 15, 2002.

Russell Salter,

Director, Technological Hazards Division, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 02–1550 Filed 1–22–02; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974: Proposed New Routine Use, Expansion of an Existing Use and Revision of an Existing System of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed new routine uses, revision of an existing system of records and addition of new systems of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, we, the Federal Insurance and Mitigation Administration (FIMA) of FEMA, give notice of proposed new routine uses, and revision of an existing system of records entitled FEMA/FIA 2, National Flood Insurance Program Application and Related Documents Files and addition of new systems of records.

DATES: The proposed routine uses, revision of existing system of record and addition of new systems of records will become effective on January 23, 2002, without further notice unless comments necessitate otherwise.

We invite your comments on these routine uses and revisions on or before February 22, 2002.

ADDRESSES: Please address comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472; (telefax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen Leshan, FOIA/Privacy Act Specialist, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472,

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(202) 646–4115, (telefax) (202) 646–4536, or email *Eileen.Leshan@fema.gov*.

SUPPLEMENTARY INFORMATION: We last published our notice of system of records on September 11, 2001, 66 FR 47228; January 5, 1987 (52 FR 324); February 3, 1987 (52 FR 3344); March 5, 1987 (52 FR 6875); September 7, 1990 (55 FR 37182); and June 7, 1991 (56 FR 26415). We previously published the system identified as FEMA/FIA–2, National Flood Insurance Application and Related Files on November 26, 1982, 47 FR 53492; amended on October 25, 1983, 48 FR 49376; February 17,1984, 49 FR 6168; May 13,1985, 50 FR 20007; January 5,1987, 52 FR 324; July 28,1988, 53 FR 28437; August 9, 1988, 53 FR 29947.

Proposed New Routine Use

We have created the Repetitive Loss Target Group (RLTG) as part of an initiative to reduce claims under the National Flood Insurance Program (NFIP) with respect to properties that have sustained multiple losses. Generally, we have defined repetitive loss properties as those that have had at least two losses of $1,000 or more within any 10-year period. The RLTG is a subset of these properties that include currently insured properties that have either:

(1) Two or more losses that in the aggregate, equal or exceed the current value of the insured property; or

(2) Four or more losses.

Approximately 11,000 properties are included in the RLTG.

Inclusion of a property in the RLTG results in the transfer of the flood insurance policy to a central facility (Special Direct Facility (SDF)) designed to oversee claims and to coordinate and facilitate mitigation, which will require a new Routine Use to allow transfer of the NFIP Bureau and Statistical Agent RLTG, records to the NFIP's SDF, which has been created for oversight of RLTG activities. Accordingly, a new Routine Use is proposed to permit transfer of RLTG records from the NFIP Bureau and Statistical Agent to the NFIP Special Direct Facility.

Proposed New Routine Use

We have created the Preferred Risk Policy (PRP) for policyholders (1–4 Family) with limited loss experience only located in B, C, and X Zones. Eligible policyholders receive a discount off the standard flood insurance rate. To be eligible to receive this benefit, however, there are certain conditions based upon the building's loss history, regardless of ownership that the owner must meet.

If any of the following conditions, arising from one or more occurrences, exist then the dwelling is *not* eligible:

(1) 2 loss payments, each more than $1,000;

(2) 3 or more loss payments, regardless of amount;

(3) 2 Federal Disaster Relief payments, each more than $1,000;

(4) 3 Federal Disaster Relief payments, regardless of amount; or

(5) 1 flood insurance claim payment and 1 flood disaster relief payment (including loans and grants), each more than $1,000.

If a policyholder applies for a PRP, and is denied, he needs NFIP records regarding the property's loss history before his or her ownership to determine whether the NFIP's determination was correct. Currently, these records are protected from disclosure. Accordingly, we propose a new Routine Use to permit release of a property's prior loss history to a policyholder whose PRP application we have denied.

Proposed New Routine Use

In many instances FEMA must work closely with federal agencies, state and local governments in order to achieve the objectives of the NFIP. In this connection, FEMA will need to transfer NFIP records to federal agencies and state and local governments for the purpose of analysis, research and feasibility studies. Accordingly, we propose a new Routine Use to permit release of NFIP records to federal agencies and state and local governments for research, analysis and feasibility studies.

Revision of an Existing System of Records

We are also revising our existing routine use system, FIMA/FEMA–2 to reflect changes mandated by the passage of time.

New System of Records

We are adding new systems of records to reflect the growth and expansion of the NFIP.

Dated: January 10, 2002.

Michael D. Brown,

General Counsel.

The proposed new routine uses, and the new and revised systems of records follow:

FEMA–FIMA–2

SYSTEM NAME:

National Flood Insurance Direct Servicing Agent Application and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a servicing agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472. We also provide copies of some files to the FEMA Regional offices when they request additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for individual flood insurance and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form	Title of form
FEMA Form 81–64	Applications for Participation in the National Flood Insurance Program.
FEMA Form 81–16	Flood Insurance Application.
FEMA Form 81–18	Flood Insurance General Change Endorsements.
FEMA Form 81–23	Request for Policy Processing and Renewal Information.
FEMA Form 81–17	Flood Insurance Cancellation/Nullification Request Form.
FEMA Form 81–67	Flood Insurance Preferred Risk Policy Application.
FEMA Form 81–31	National Flood Insurance Program Elevation Certificate.
FEMA Form 81–65	National Flood Insurance Program Floodproofing Certificate.
FEMA Form 81–25	V Zone Risk Factor Rating Form.
FEMA Form 81–40	National Flood Insurance Program Worksheet—Contents.
FEMA Form 81–41	National Flood Insurance Program Worksheet—Building.
FEMA Form 41a	National Flood Insurance Program Worksheet—Building.
FEMA Form 81–42	National Flood Insurance Proof of Loss.
FEMA Form 81–43	National Flood Insurance Program Notice of Loss.

Form	Title of form
FEMA Form 81–44	Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy.
FEMA Form 81–45	Adjuster's Short Form Report.
FEMA Form 81–57	National Flood Insurance Program Preliminary Report.
FEMA Form 81–58	National Flood Insurance Program Final Report.
FEMA Form 81–59	National Flood Insurance Program Narrative Report.
FEMA Form 81–63	National Flood Insurance Program Cause of Loss/Subrogation Report.

This system may contain information regarding the name of the bank/lender, date of mortgage, address of the bank/lender and if available, information on every loan placed on the property during the current owner's tenure. This system may also contain the taxpayers' identification number, which may be the social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program and verify nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To insurance agents, brokers, adjusters and lending institutions NFIP policy and claims records for carrying out the purposes of the National Flood Insurance Program and verifying nonduplication of benefits.

To states, Group Flood Insurance Program (GFIP) certificates are provided for carrying out the purposes of the National Flood Insurance Program.

To the Bureau and Statistical Agent, the Direct Servicing Agent provides Transaction Records Reporting and Processing Plan updates regarding policy and claims transactions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1661a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM: STORAGE:

Magnetic Tape/disc/microfilm and paper files.

RETRIEVABILITY:

By name of the policyholder(s) and policy number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in secure areas by card key access during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep policy records as long as the owner desires insurance and pays premiums, and for an appropriate time thereafter and we keep claim records for 6 years and 3 months after final action, unless litigation exists. We will dispose of records in accord with FEMA Records Schedule N1–311–86–1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, a driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEMA/FIMA–3

SYSTEM NAME:

National Flood Insurance Bureau and Statistical Agent (BSA) Data Elements and Related Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a statistical agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

We also provide copies of some of the files to the FEMA Regional offices when additional information is requested from them.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Data elements regarding individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

The NFIP has entered into an "Arrangement" with participating private insurance companies for the sale of flood insurance policies. Under the terms of the "Arrangement", the private insurance companies have reporting requirements applicable to the writing and servicing of policies issued, advanced in the Transaction Record Reporting and Processing (TRRP) Plan. The data elements required by the TRRP plan essentially form the system of records for FEMA/FIMA's Bureau and Statistical Agent contract. The categories of records in the system follow:

(a) Data elements records for New Business.

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(b) Data elements records for Policy Reinstatement Without Policy Changes.
(c) Data elements records for Policy Reinstatement With Policy Change.
(d) Data elements for Renewals.
(e) Data elements for Endorsements.
(f) Data elements for Policy Correction.
(g) Data elements for Cancellation.
(h) Data elements for Cancellation Correction.
(i) Data elements for Open Claim/ Loss-Reserve.
(j) Data elements for Reopen Claim/ Loss.
(k) Data elements for Change Reserve.
(l) Data elements for Partial Payment.
(m) Data elements for Close Claim/ Loss.
(n) Data elements for Close Claim Loss Without Payment.
(o) Data elements for Addition to Final Payment.
(p) Data elements for Recovery After Final Payment.
(q) Data elements for General Claim/ Loss Correction.
(r) Data elements for Claim Payment Correction.
(s) Data elements for Recovery Correction.
(t) Data elements for Special Allocated Loss Adjustment Expense.
(u) Data elements for Special Allocated Loss Adjustment Expense Correction.
(v) Data elements for Change Policy Number Key.
(w) Data elements for Change Date of Loss Key.
(x) Data elements for Change Claims Payment Date Key.
(y) Data elements for Lender Data (Expired Policy Notification).
(z) Adjuster Certification Application.
(aa) NFIP Listing of 1316 Properties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129, 5 U.S.C. 301, Reorganization Plan No.3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O.12127, 3 CFR, 1979 Comp, p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program and verify nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Category of users	Purposes
1. To property loss reporting bureaus, State insurance departments, and insurance companies.	investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA.
2. To insurance adjusters, and lending institutions	for carrying out the purposes of the National Flood Insurance Program.
3. To FEMA's readiness, Recovery and Response Directorate, The Army Corps of Engineers, Small Business Administration, the American Red Cross, the Farm Service Agency for USDA, State and local government individual and family grant and assistance agencies.	for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster.
4. To Write-Your-Own companies as authorized in 44 CFR 62.23.	to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program.
5. To State and local government individual and family grant agencies.	to permit such agencies to assess the degree of financial burdens toward residents such as States and local governments might reasonably expect to assume in the event of a flooding diaster and to further the flood insurance marketing activities of the National Flood Insurance Program.
6. To State and local government agencies that provide the names and address of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties.	for review by the Administrator, Federal Insurance Mitigation Adminstration to ensure that their State or local government agency is engaged in flood plain management, improved real property acquisitions, and relocation projects that are consistent with the National Flood Insurance Program and, upon the approval by the Administrator, Federal Insurance and Mitigation Administration, that the use furthers flood plain management and hazard mitigation goals of the Agency.
7. To the Army Corps of Engineers, state and local government agencies and municipalities.	to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community.
8. To state governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring of banks, savings and loan associations or similar institutions.	for carrying out the purposes of the National Flood Insurance Program.
9. To private companies engaged in or planning to engage in activities to market or assist lenders and mortgage servicing companies.	NFIP records may be released to aid efforts of lenders and mortgage servicing companies to comply with the requirements of the Flood Disaster Protection Act of 1973 and to market the sale of flood insurance policies under the National Flood Insurance Program.
10. To lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios.	NFIP records may be released to secure flood insurance protection for those properties that are a part of a lending institution's mortgage portfolio to assure lender compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.
11. To current owners of properties designated under the National Flood Insurance Program as Repetitive Loss Target Group properties.	the dates and dollar amounts of loss payments made to prior owners may be released so that owners may evaluate whether that designation is appropriate and may, if they believe the designation is not appropriate, use the information to appeal that designation.
12. To the Special Direct Facility	NFIP Repetitive Loss records for the processing of Repetitive Loss Target Group policyholder underwriting and claims receords.
13. To Preferred Risk Property (PRP) owners who are contesting the denial of their PRP applications.	the properties' prior loss history.
14. To federal agencies and state and local governments	NFIP records for research, analysis and feasibilities studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): We may make disclosure from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Tape cartridge/disc/microfilm and paper files.

RETRIEVABILITY:

By name of the policyholder(s) and policy number, property address and 9-digit zip code.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in areas that building guards secure during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep data records for 7 years. Disposition of records will accord with FEMA Manual 5400.1.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals insured under the National Flood Insurance Program (NFIP). Write-Your-Own (WYO) companies that write National Flood Insurance Program policies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEMA/FIMA–4

SYSTEM NAME:

National Flood Insurance Program Marketing Records and Related Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a serving agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers, flood insurance policyholders, insurance agents, Write-Your-Own companies and lenders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Under FIMA's Marketing program, the NFIP contractor collects records under its marketing vehicle, Cover America II.

Research: Cover America II contains NFIP records of research conducted with consumers, flood insurance policyholders, insurance agents, Write-Your-Own (WYO) companies and lenders, including names, addresses, and telephone numbers.

Direct Mail: Records of consumer and insurance agent names and addresses used for direct mailings.

The categories of records in the system are: market research data regarding the NFIP, including information with respect to awareness, attitudes and satisfaction as it relates to the NFIP, which is obtained through qualitative surveys approved by the Office of Management and Budget (OMB), including the names and addresses of participants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978, Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To plan and implement a marketing campaign to notify the public regarding the availability of flood insurance protection and to alert the public to the risks of flooding, as well as to encourage the public to obtain more information regarding the NFIP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): We may disclose from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disc and paper files.

RETRIEVABILITY:

By names, addresses and telephone numbers of consumers, policyholders, insurance agents, WYO companies, and lenders.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in areas that we secure during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep records for research for 2 years. We will dispose of records in accord with FEMA Records Schedule N1–311–86–1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current

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address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Consumers, flood insurance policyholders, flood insurance agents and lenders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEMA/FIMA–5

SYSTEM NAME:

National Flood Insurance Program Telephone Response Center (TRC) Consumer and Policyholder Records and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The office of a servicing agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management, Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers requesting NFIP Marketing material and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

FEMA/FIMA has a contractor administering its Telephone Response Center (TRC), where we maintain records of research conducted with consumers, insurance agents, Write-Your-Own (WYO) companies and individual respondents' names, addresses, and telephone numbers. The TRC contractor also maintains consumer records to review the effectiveness of its operation and for quality control purposes.

The categories of records in the system are: names and addresses of consumers seeking NFIP data, specifically, records regarding consumer research and inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the FEMA Distribution Center, the TRC transfers the names and addresses of consumers for delivery of consumer kits.

To the Bureau and Statistical Agent, the TRC transfers the addresses of callers/consumers who made inquiries to the NFIP to match them against the policyholder file to ascertain the number of callers who purchased a policy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): We may disclose from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Tape cartridge/disc/ and paper files.

RETRIEVABILITY:

By the consumer's name, address and telephone number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in areas that building guards secure during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep consumer records for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who request information about flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FEMA/FIMA–6

SYSTEM NAME:

National Flood Insurance Special Direct Facility (SDF) Repetitive Loss Target Group Records and Related Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The office of a servicing agent under contract to the Federal Insurance and Mitigation Administration, Federal Emergency Management, Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals designated as RLTG policyholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

FEMA/FIMA has selected a contractor to administer and operate the Repetitive Loss Program (RLP), through the Special Direct Facility (SDF). The SDF maintains records of the RLP, consisting of RLP underwriting and claims data that have met the threshold requirements to be designated as Repetitive Loss Target Group (RLTG) properties. The categories of records in the system follow:

Form	Title of form
FEMA Form 81–64	Applications for Participation in the National Flood Insurance Program.
FEMA Form 81–16	Flood Insurance Application.
FEMA Form 81–18	Flood Insurance General Change Endorsements.
FEMA Form 81–23	Request for Policy Processing and Renewal Information.
FEMA Form 81–17	Flood Insurance Cancellation/Nullification Request Form.
FEMA Form 81–67	Flood Insurance Preferred Risk Policy Application.
FEMA Form 81–31	National Flood Insurance Program Elevation Certificate.
FEMA Form 81–65	National Flood Insurance Program Floodproofing Certificate.
FEMA Form 81–25	V Zone Risk Factor Rating Form.
FEMA Form 81–40	National Flood Insurance Program Worksheet—Contents.
FEMA Form 81–41	National Flood Insurance Program Worksheet—Building.
FEMA Form 41a	National Flood Insurance Program Worksheet—Building.
FEMA Form 81–42	National Flood Insurance Proof of Loss.
FEMA Form 81–43	National Flood Insurance Program Notice of Loss.
FEMA Form 81–44	Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy.
FEMA Form 81–45	Adjuster's Short Form Report.
FEMA Form 81–57	National Flood Insurance Program Preliminary Report.
FEMA Form 81–58	National Flood Insurance Program Final Report.
FEMA Form 81–59	National Flood Insurance Program Narrative Report.
FEMA Form 81–63	National Flood Insurance Program Cause of Loss/Subrogation Report.

This system may contain information regarding the name of the bank/lender, date of mortgage, address of bank/lender and if available, information on every loan placed on the property during the current owner's tenure. This system may also contain the taxpayer's identification number, which may be his or her social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To RTLG policyholders who are appealing the determination that their property is a repetitive loss property, NFIP repetitive loss property history prior to their ownership of the property will be provided.

To insurance agents, brokers, adjusters and lending institutions for carrying out the purposes of the National Flood Insurance Program and verifying nonduplication of benefits.

To the Bureau and Statistical Agent, the Special Direct Facility provides TRRP Plan updates regarding RLTG policy and claims transactions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Tape cartridge/disc/and paper files.

RETRIEVABILITY:

By the name of the RLTG policyholders and RLTG number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in secure areas by key card access during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep policy records as long as the owner desires insurance and pays premiums, and for an appropriate time thereafter and we keep claim records for 6 years and 3 months after final action, unless litigation exists. We will dispose of records in accord with FEMA Records Schedule N1–311–86–1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification above.

CONTESTING RECORDS PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISONS OF THE ACT:

None.

FEMA/FIMA–7

SYSTEM NAME:

National Flood Insurance Community Rating System and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a firm selected to administer the CRS program for the Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472. We also provide copies of some of the files to FEMA Regional offices when they request additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Communities that have made CRS applications and Repetitive Loss property owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

FIMA/FEMA has created the Community Rating System (CRS), a program to adjust NFIP insurance premium rates based on the mitigation activities implemented by a community. A firm has been selected to process CRS applications. The categories of records in the system are: community CRS applications and repetitive loss property owners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4129; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; and E.O. 12127, 3 CFR, 1979 Comp., p. 376.

PURPOSE(S):

To carry out the National Flood Insurance Program.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

To communities, repetitive loss records may be provided to address repetitive loss problems within the communities.

To the Bureau and Statistical Agent, we provide repetitive loss records for communities that have updated their repetitive loss mitigative measures.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Magnetic cartridge/disc/and paper files.

RETRIEVABILITY:

By the community's name and number. By the NFIP policyholder name and policy number. By the repetitive loss locator number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; we maintain paper records in locked containers and/or room. We maintain all records in secure areas during non-business hours. We retain records in areas accessible only to authorized personnel, who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

We keep records for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manger identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include the full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification above.

CONTESTING RECORDS PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act regulations are published in 44 CFR part 6.

RECORDS SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: We have identified certain routine uses that apply to many of the FEMA systems of notice records. We will list the specific routine uses applicable to an individual system of record under the "Routine Use" section of the notice itself and they will correspond to the numbering of the routine uses published below. These uses are published only once in the interest of simplicity, economy and to avoid redundancy, rather than repeating them in every individual system notice.

(1) *Routine Use—Law Enforcement:* A record from any FEMA system of records, which indicates either by itself or in combination with other information within FEMA's possession, a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, and which we may disclose, as a routine use, to the appropriate agency whether Federal, State, territorial, local or foreign, or foreign agency or professional organization, charged with the responsibility of enforcing, implementing, investigating or prosecuting such violation or charged with implementing the statute, rule, regulation or order issued under it.

(2) *Routine Use—Disclosure When Requesting Information:* We may disclose as a routine use a record from a FEMA system of records to a Federal, State or local agency, maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information, relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(2) *Routine Use—Disclosure of Requested Information:* We may disclose as a routine use a record from a FEMA system of records to a Federal agency, in response to a written request in connection with the hiring or retention of an employee, the issuance of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(3) *Routine Use—Grievance, Complaint, Appeal:* We may disclose as a routine use a record from a FEMA system of records to an authorized appeal or grievance examiner, formal complaints examiner, equal opportunity investigator, arbitrator, mediator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal by an employee. We may disclose a record from this system of records to the Office of Personnel Management as government-wide records; we will consider those records as part of the government-wide system. We may transfer as a routine use other official personnel records covered by notices published by FEMA and considered to be separate systems of records to the Office of Personnel management in accordance with official personnel programs and activities.

(5) *Routine Use—Congressional Inquiries:* We may disclose as a routine use a record from a FEMA system of records to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

(6) *Routine Use—Private Relief Legislation:* We may disclose as a routine use the information contained in a FEMA system of records to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

(7) *Routine Use—Disclosure to the Office of Personnel Management:* We may disclose as a routine use a record from a FEMA system of records to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

(8) *Routine Use—Disclosure to National Archives and Records Administration:* We may disclose as a routine use a record from a FEMA system of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(9) *Routine Use—Grand Jury:* We may disclose as a routine use a record from any system of records to a grand jury agent pursuant to a federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

[FR Doc. 02–1549 Filed 1–22–02; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, January 28, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Office of Public Affairs at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 18, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1771 Filed 1–18–02; 1:18 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New Computer Matching Agreement

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of a New Computer Matching Agreement (CMA).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a CMA between CMS and the State of California Department of Health Services (DHS) titled "Disclosure of Medicare and Medicaid Information."

EFFECTIVE DATES: CMS filed a CMA report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 15, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT: Howard Cohen, Health Insurance Specialist, Program Integrity Group, Office of Financial Affairs, CMS, Room C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–9537.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

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1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and, 5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all Computer Matching Programs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

CMA No. 2001–06

NAME:

Computer Matching Agreement between the Centers for Medicare & Medicaid Services and the State of California Department of Health Services entitled Disclosure of Medicare and Medicaid Information.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS), and State of California Department of Health Services (DHS).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This Computer Matching Program (CMP) is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) sec. 552a), as amended, the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" published at 65 FR 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching (54 FR 25818 (June 19, 1989)).

Authority for this matching program is given under the matching provisions of sections 1816, 1842, and 1874(b) of the Social Security Act (42 U.S.C. 1395h, 1395u, and 1395kk(b)).

Authority for DHS to participate in this computer-matching program is given under the provisions of sections 10740, 10748, 10750, 14000, 14000.3. 14000.4, 14005, 14005.4, 14100.1, 14200 of the California Welfare and Institutions Code, and 42 CFR 431.300 through 431.307. DHS is charged with administration of the Medicaid program in California and is the single state agency for such purpose. DHS may act as an agent or representative of the Federal government for any purpose in furtherance of DHS's functions or administration of the Federal funds granted to the state. In California, the Medi-Cal Act provides qualifying individuals with health care and related remedial or preventive services, including both Medicaid services and services authorized under state law that are not provided under Federal law. The program to provide all such services is known as the Medi-Cal program.

PURPOSE (S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which the CMS will conduct a computer matching program with DHS to study claims, billing, and eligibility information to detect suspected instances of fraud and abuse (F&A) in the State of California. CMS and DHS will provide a CMS contractor (hereinafter referred to as the "Custodian") with Medicare and Medicaid/Medi-Cal records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of California expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and DHS to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of California against records of Medicaid/Medi-Cal beneficiaries, practitioners, providers, and suppliers in the State of California.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

A. Systems of Records.

The data for CMS are maintained in the following Systems:

National Claims History (NCH), System No. 09–70–0005, was most recently published at 59 FR 19181 (April 22, 1994). NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 55 FR 37547 (September 12, 1990). Matched data will be released to DHS pursuant to the routine use set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 published at 57 FR 23420 (June 3, 1992). Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, published at 53 FR 50584 (Dec 16, 1988). Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published at 59 FR 37243 (July 21, 1994). Matched data will be released to DHS pursuant to the routine use as set forth in the system notice.

B. The data for DHS are maintained in the following data files:

"Medi-Cal RFF035 File Paid Claims," "Medi-Cal Combined Provider Master File;" and "Medi-Cal Eligibility File.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 02–1524 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Deletion of Systems of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice to delete 12 systems of records.

SUMMARY: CMS proposes to delete 12 systems of records from its inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: The deletions will be effective on January 15, 2002.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–3573. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern standard time.

SUPPLEMENTARY INFORMATION: CMS is reorganizing its databases because of the amount of information it collects to administer the Medicare and Medicaid programs. With this reorganization of databases, CMS is deleting the systems of records listed below. Retention and destruction of the data contained in these systems will follow the schedules listed in the system notice. CMS proposes to delete the following systems.

Systems to be Deleted:

System No. 09–70–0504, "Beneficiary Part A and B Uncollectible Overpayment File;"
System No. 09–70–0508, "Reconsideration and Hearing Cases Files (Part A) Hospital Insurance Program;"
System No. 09–70–0512, "Review and Fair Hearing Case Files—Supplementary Medical Insurance Program;"
System No. 09–70–0516, "Medicare Physician Supplier Master File;"
System No. 09–70–0518, "Medicare Clinic Physician Supplier Master File;"
System No. 09–70–0522, "Billing and Collection Master Record System;"
System No. 09–70–1511, "Physical Therapists in Independent Practice (Individuals);"
System No. 09–70–1512, "Peer Review Organizations Data Management Information System;"
System No. 09–70–1516, "Uniform Clinical Data Set;"
System No. 09–70–2003, "Completion of State Medicaid Quality Control Reviews;"
System No. 09–70–2006, "Income and Eligibility Verification for Medicaid Eligibility Quality Control Reviews;"
System No. 09–70–9001, "Health Care Financing Administration Correspondence and Assignment Tracking and Control System;"

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1525 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, CMS is proposing to modify or alter an SOR, "Health Insurance Master Record (HIMR)," System No. 09–70–0502. CMS is reorganizing its databases because of the amount of information it collects to administer the Medicare program. We are proposing to amend the purpose of the HIMR to include maintaining enrollment data without utilization data and change the name from the HIMR to read the "Enrollment Database (EDB)" to reflect this amended purpose. The only data in the HIMR, which are not in the EDB, are the utilization and bill processing data. Since the EDB will now maintain enrollment-related data, all utilization data for bill payment record processing will now be maintained in the "Common Working File (CWF)," System No. 09–70–0526. With this reorganization of databases, CMS is deleting, in a separate notice, the following SOR: "Medicare Enrollment Records Statistics (MERS)," System No. 09–70–0006, and the "Health Insurance Enrollment Statistics, General Enrollment Period (HIES)," System No. 09–70–0007. These 2 systems are being deleted because their enrollment purpose is being subsumed into the EDB. The EDB does maintain data regarding direct billing for Medicare premiums.

The security classification previously reported as "None" will be modified to reflect that data in this system are considered to be "Level Three Privacy Act Sensitive." We propose to delete published routine uses number 1 authorizing disclosures to the Railroad Retirement Board (RRB), number 2 authorizing disclosures to state welfare departments, number 3 authorizing disclosures to state audit agencies, number 8 authorizing disclosure to contractors, number 9 authorizing disclosures to state welfare agencies, number 12 authorizing disclosures to contractors, number 13 authorizing disclosures to agencies of a state government, number 14 authorizing disclosures to group health plans, number 15 authorizing disclosures to contractors, number 16 authorizing disclosures for Medicare Secondary Payer (MSP) utilization purposes, number 17 authorizing disclosures to the Internal Revenue Service (IRS), and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

Disclosures allowed by routine uses number 1, 2, 3, 13, 17, and to the SSA will be covered by a new routine use to permit release of information to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." The proposed routine use for contractors and consultants makes material changes to published routine uses number 8, 12, and 15, and as proposed should be treated as a new routine use. The proposed routine use for "other insurers and group health plans" makes material changes to published routine uses number 11, and 14, and as proposed should be treated as a new routine use. Routine use number 9 is being deleted because the information pertaining to Beneficiary State File and Carrier Alphabetical State File, is no longer maintained in the EDB. Routine use number 16 is also being deleted because the information listed in the routine use as being releasable for MSP utilization purposes is not maintained in the EDB.

We are modifying the language in the remaining routine uses to provide clarity to CMS intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take this opportunity to update any sections of this SOR that were affected by the recent reorganization and to modify language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment,

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Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Act; (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) Peer Review Organizations; (6) other insurers for processing individual insurance claims; (7) facilitate research on the quality and effectiveness of care provided, as well as payment-related and epidemiological projects; (8) support constituent requests made to a congressional representative; (9) support litigation involving the Agency; and (10) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 15, 2002. We will not disclose any information under a routine use until 30 days after publication. We may defer implementation of this SOR or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m. –3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Bob Donnelly, Director, Health Plan Policy Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, Mail Stop C4–25–02, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–0629.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Background

The HIMR, which will be renamed the EDB, was established in 1965 to maintain accurate and complete data on Medicare enrollment, entitlement, and utilization. Notice of the modification to this system, HIMR, was published in the **Federal Register** (FR) at 55 FR 37549, (Dec. 18, 1990); 61 FR 6645 (Feb. 21, 1996) (added unnumbered social security use); 63 FR 38414 (July 16, 1998) (added three fraud and abuse uses); and 65 FR 50552 (Aug. 18, 2000) (deleted one and modified two fraud and abuse uses). MERS, was established to study the characteristics of persons enrolled in the Medicare program and establish the basis for Medicare services utilization rates. MERS is being deleted and the EDB will take over its enrollment purpose. HIES, was established to contact persons eligible for Part B benefits who had refused or withdrawn coverage of these benefits, for purposes of re-enrollment for Part B coverage and to evaluate results of such contacts. This system is also being deleted, and its enrollment purpose is being subsumed by the EDB. Utilization data from both will continue to be maintained in the CWF.

Since these systems were established, the amount of enrollment information CMS collects to administer the Medicare program has vastly increased. To be of maximum use, the data must be organized and categorized into a comprehensive system. This redesign of CMS's databases will result in changes to the collection, aggregation, and analysis of Medicare information. Changes in the way CMS processes its enrollment data are being dramatically affected by the database redesign activity. These changes are necessary to accomplish two major initiatives:

- Enrollment-related data will be processed at the CMS Data Center and not at the SSA National Computer Center;
- Enrollment-related data will be consolidated in one file from various sources.

The EDB is being created to serve as a shared data resource by all CMS information systems. Once the EDB is established, it will be the authoritative source of Medicare enrollment related information. It will identify, in the same manner as the HIMR did, each person currently or previously entitled to Medicare benefits based upon age, disability, or end-stage Renal Disease (ESRD) under Title XVIII of the Act or under provisions of the Railroad Retirement Act, and will also identify whether a person is currently covered or was previously covered for hospital insurance benefits (Part A), medical insurance benefits (Part B), or both.

Given these changes, the purpose statement of the EDB system must be amended to reflect its current function of maintaining enrollment data without utilization data. The amended purpose of the EDB will read as follows: "To maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program."

B. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under sections 226, 226A, 1811, 1818, 1818A, 1831, 1836, 1837, 1838, 1843, 1876, and 1881 of the Social Security Act (the Act) and Title 42 Code of Federal Regulations (CFR), parts 406, 407, 408, 411 and 424.

Authority for maintenance of the system section 1862 of the Act was a published authority in the published SOR. We included section 1862 in the modified SOR since we do maintain a limited number of data elements in the EDB pertaining to MSP.

Authority for maintenance of the system section 1870 of the Act was included in the modified system since the EDB does maintain data regarding direct billing for Medicare premiums. Section 1870 (g) describes refunding these premiums.

II. Collection and Maintenance of Date in the System

A. Scope of the Data Collected

The system contains information related to Medicare enrollment and entitlement and MSP data containing other party liability insurance information necessary for appropriate Medicare claim payment. It contains hospice election, premium billing and collection, direct billing information, and group health plan enrollment data. The system also contains the

individual's health insurance numbers, name, geographic location, race/ethnicity, sex, and date of birth.

Information is collected on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act, individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act, individuals who have been, or currently are, entitled to such benefits because they have ESRD, individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release EDB information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of EDB. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; e.g., ensuring proper enrollment, establishing the validity of individual's entitlement to benefits, verifying the accuracy of information presented by the individual, insuring proper reimbursement for services provided, claims payment, and coordination of benefits provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EDB without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require EDB information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided;

The IRS may require EDB data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C.1395y(b);

In addition, other state agencies in their administration of a Federal health program may require EDB information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state;

The RRB requires EDB information to administer provisions of the Railroad Retirement Act relating to railroad employment and/or the administration of the Medicare program;

SSA requires EDB data to assist in the implementation and maintenance of the Medicare program;

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state;

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We also contemplate disclosing information under this routine use in situations in which state auditing agencies require EDB information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

3. To providers and suppliers of services directly or through fiscal intermediaries (FIs) or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require EDB information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require EDB information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To Peer Review Organizations (PROs) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The PROs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require EDB information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

EDB data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require EDB information for the purpose of combating fraud and abuse in such Federally funded programs. Additional Circumstances Affecting Routine Use Disclosure

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The EDB system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office and Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the EDB system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems

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security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of EDB. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0502

SYSTEM NAME:

Enrollment Database (EDB), HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various other remote locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act; individuals who have been, or currently are, entitled to such benefits because they have ESRD; individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information related to Medicare enrollment and entitlement and MSP data containing other party liability insurance information necessary for appropriate Medicare claim payment. It contains hospice election, Group Health Organization Insurance health plan election, premium billing and collection, direct billing information, and group health plan enrollment data. The system also contains the individual's health insurance numbers, name, geographic location, race/ethnicity, sex, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under sections 226, 226A, 1811, 1818, 1818A, 1831, 1836, 1837, 1838, 1843, 1876, and 1881 of the Act and Title 42 Code of Federal Regulations (CFR), parts 406, 407, 408, 411 and 424.

Authority for maintenance of the system section 1862 of the Act was a published authority in the published SOR. We included section 1862 in the modified SOR since we do maintain a limited number of data elements in the EDB pertaining to MSP.

Authority for maintenance of the system section 1870 of the Act was included in the modified system since the EDB does maintain data regarding direct billing for Medicare premiums. Section 1870 (g) describes refunding these premiums.

PURPOSE(S):

The primary purpose of the SOR is to maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Act; (4) third parties where the contact is expected to have information relating to the individuals capacity to manage his or her own affairs; (5) Peer Review Organizations; (6) other insurers for processing individual insurance claims; (7) facilitate research on the quality and effectiveness of care provided, as well as payment-related and epidemiological projects; (8) support constituent requests made to a congressional representative; (9) support litigation involving the Agency; and (10) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EDB without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To providers and suppliers of services directly or through fiscal intermediaries (FIs) or carriers for the administration of Title XVIII of the Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators, (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMO) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All Medicare records are accessible by HIC number or alpha (name) search. This system supports both on-line and batch access.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the

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exposure of computer equipment and thus achieve an optimum level of protection and security for the EDB system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained for a period of 15 years.

SYSTEM MANAGERS AND ADDRESS:

Director, Health Plan Policy Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, S1–05–06, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the systems manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some MSP situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Railroad Retirement Board, and the Master Beneficiary Record maintained by the SSA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–1526 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a system of records, "Common Working File (CWF)," System No. 09–70–0526. We propose to delete published routine uses number 1 authorizing disclosure to claimants and their authorized representatives, number 3 authorizing disclosure to third party contacts to establish or verify information, number 4 authorizing disclosure to the Treasury Department for investigating alleged theft, number 5 authorizing disclosure to the United States Postal Service (USPS), number 6 authorizing disclosure to the Department of Justice (DOJ) to combat fraud and abuse, number 7 authorizing disclosure to the Railroad Retirement Board (RRB), number 9 authorizing disclosure to State Licensing Board for review of unethical practices, number 12 authorizing disclosure to state welfare departments, number 14 authorizing disclosure to state audit agencies, number 16 authorizing disclosure to peer review groups to assist with questions of medical necessity, number 17 authorizing disclosure to physicians and other supplier of services attempting to validate amounts of individual items, number 18 authorizing disclosure to senior citizen volunteers to assist beneficiaries, number 19 authorizing disclosure to a contractor to recover erroneous Medicare payments, number 20 authorizing disclosure to state and other governmental Workers' Compensation Agencies, number 23 authorizing disclosure to an agency of a state government or established by law, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

Disclosures permitted under routine uses number 4, 5, 7, 9, 12, 14, 20, 23, and to the SSA will be made a part of proposed routine use number 2. Proposed routine use number 2 will allow for release of information to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." Disclosures permitted under published routine uses number 1, 2, 3, and 18 will now be covered by proposed routine use number 3, which will allow for release of information to "third party contacts." Disclosure to "other insurers and group health plans" contained in published routine use 21 has been broaden to include similar groups with similar activities. This routine use will be renumbered as proposed routine use number 6. Disclosures permitted under routine use number 6 will be covered by proposed routine use number 11, which will permit the release of data to other Federal agencies for the purposes of combating fraud and abuse. Disclosures permitted under routine use number 10 will be made a part of proposed routine use number 4, which will permit the release of data to physicians and providers of services. Routine use number 16 is being deleted because the information listed in the routine use as being releasable "at the request of the carrier to assist in the resolution of questions of medical necessity, utilization and overutilization," is no longer maintained in the CWF. Routine use number 17 is also being deleted because the activity listed in the routine use unnecessarily duplicates activities described in proposed routine use number 4. Disclosures permitted under routine use number 19 will now be covered by proposed routine use number 10, which will permit the release of data to a CMS contractor or grantee for the purposes of combating fraud and abuse. We propose to renumber published routine use number 22 as proposed routine use number 1 and modify the language to clarify the circumstances for disclosure to contractors and consultants. We will establish a new proposed routine use number 9 to allow disclosure to DOJ for the purpose of representing Agency employees involved in litigation.

The security classification previously reported as "None" will be modified to reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS systems of records.

The primary purpose of the system of records is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: Support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services directly or through fiscal intermediaries or carriers, Peer Review Organizations (PRO) and Quality Review Organizations (QRO), insurance companies and other groups providing protection for their enrollees, or who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and combat fraud and abuse in certain Federally funded health care programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 15, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Richard Wolfsheimer, Health Insurance Specialist, Division of Fiscal Intermediary Systems and Common Working Files, Business Systems Operating Group, Office of Information Services, CMS, Room N2–09–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6160.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis For System of Records

In 1988, CMS modified an SOR under the authority of sections 1816, and 1874 of Title XVIII of the Act (the Act) (42 United States Code (U.S.C.) 1395h, and 1395kk). Notice of the modification to this system, "Common Working Files, System No. 09–70–0526" was published in the **Federal Register** (FR) at 53 FR 52806 (Dec. 29, 1988), an unnumbered routine use was added for the SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and MSP records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release CWF information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosure of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use. We will only disclose the minimum personal data necessary to achieve the purpose of CWF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

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b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CWF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require CWF information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require CWF data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The USPS may require CWF data for investigating alleged forgery or theft of reimbursement checks.

The RRB requires CWF information to enable them to assist in the implementation and maintenance of the Medicare program.

SSA requires CWF data to enable them to assist in the implementation and maintenance of the Medicare program.

The Internal Revenue Service may require CWF data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Act, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. CWF data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the CWF data for review of unethical practices or nonprofessional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require CWF information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

State and other governmental workers' compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require CWF information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to CWF information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, VANS, and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require CWF information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. PROs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers' compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may require CWF information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The CWF data will provide for research, evaluations and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the Agency to be for a purpose that is compatible with the purposes for which the Agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to

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investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CWF information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, published at 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The CWF system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office of Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CWF system.

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards: All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of CWF data. CWF information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of CWF data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0525

SYSTEM NAME:

Common Working Files (CWF) System, HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at CMS Regional Offices, CMS Intermediaries and Carriers, and at locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and Medicare Secondary Payer (MSP) records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under the authority of sections 1816, and 1874 of Title XVIII of the Social Security Act (42 United States Code (USC) 1395h, and 1395kk).

PURPOSE(S):

The primary purpose of the system of records is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services directly or through fiscal intermediaries or carriers, Peer Review Organizations (PRO), insurance companies and other groups providing protection for their enrollees, or who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the agency related to this system of records, and combat fraud and abuse in certain Federally funded health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CWF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, published at 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a

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court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers' compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the Agency to be for a purpose that is compatible with the purposes for which the Agency collected the records.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's name, HIC, and assigned unique physician identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CWF system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal records center and destroyed after another 2 years.

SYSTEM MANAGERS AND ADDRESS:

Director, Division of Intermediary and Fiscal Systems, Business Systems Operations Group, Office of Information Services, CMS, 7500 Security Boulevard, Room N2–09–27, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, inquiries should addressed to the social security office nearest the requester's residence, the appropriate intermediary, the CMS regional office, or write to the system manager listed above. The entity contacted will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 Code of Federal Regulations (CFR) 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is furnished by the individual. In most cases, the identifying information is provided to the physician by the individual. Information is obtained from other CMS systems of records and data systems: Health Insurance Master Record, Intermediary Medicare Claims Records, Carrier Medicare Claims Records, MSP Record, Third Party Liability Record, Medicare Entitlement Record, Health Maintenance Organization Record, Hospice Record, and in the case of some MSP situations, through third party contacts. The medical information is provided by the providers of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the HCFA Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the HCFA Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

1. Central Office Address

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

2. HCFA Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours:8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

3. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South, Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, P.O. Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, P.O. Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, P.O. Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C □ MS, P.O. Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, P.O. Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/ RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm In), P.O. Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, TrailBlazer, P.O. Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, P.O. BOX 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, P.O. Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, P.O. Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue S.W., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, P.O. Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, P.O. Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, P.O. Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, P.O. Box 2847, Seattle, WA 98111–2847.

4. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

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Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MS 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S—NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian Bcbsnd (CO), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian Bcbsnd (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 1 Vantage Way, Nashville, TN 37228.

Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co., 6601 Little River Turnpike, Suite 300, Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207, 400 South Salina Street, 2890 East Cottonwood Pkwy., Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P.O. Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600, 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 10028.

[FR Doc. 02–1527 Filed 1–22–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan, Annual Progress and Services Report, and Budget Request.

OMB No.: 0980–0047.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act, States and Indian Tribes are to submit a five year Child and Family Services Plan, an Annual Progress and Services Report (APSR), and an annual budget request and estimated expenditure report (CFS–101). The plan is used by States and Indian Tribes to develop and implement services, and describe coordination efforts with other Federal, state and local programs. The APSR is used to provide updates and changes in the goals and services under the five year plan. The CFS–101 will be submitted annually with the APSR to apply for appropriated funds for the next fiscal year. The CFSP also includes the required State plans under seciton 106 of the Child Abuse Prevention Treatment Act and section 477 of title IV–E, the Chafee Foster Care Independence Program.

Respondents: 300.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CFSP	300	1	500	30,000
APSR	300	1	270	81,000
CFS–101	300	1	5	1,500
Estimated total annual burden hours				112,500

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 16, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1634 Filed 1–22–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 30, 2002, from 9 a.m. to 5 p.m.

Location: Holiday Inn, Versailles I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 30, 2002, the committee will discuss the influenza virus vaccine formulation for the 2002–2003 season.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 22, 2002. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 9:45 a.m., and approximately 4:15 p.m. and 5 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 22, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 17, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1713 Filed 1–18–02; 1:52 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Methods for Preparing Bacillus Anthracis Protective Antigen for Use in Vaccines

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention described below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Methods for Preparing *Bacillus Anthracis* Protective Antigen for Use in Vaccines

Joseph Shiloach (NIDDK), Stephen Leppla (NIDCR), Delia Ramirez (NIDDK), Rachel Schneerson (NICHD), John Robbins (NICHD)

DHHS Reference No. E–023–02/0 filed 09 Nov 2001

This invention relates to improved methods of preparing *Bacillus anthracis* protective antigen (PA) for use in vaccines. PA is a secreted, non-toxic protein with a molecular weight of 83 KDa. PA is a major component of the currently licensed human vaccine (Anthrax Vaccine Adsorbed, AVA). Although the licensed human vaccine has been shown to be effective against cutaneous anthrax infection in animals and humans and against inhalation anthrax in rhesus monkeys, the licensed vaccine has several limitations: (1) AVA elicits a relatively high degree of local and systemic adverse reactions, probably mediated by variable amounts of undefined bacterial products, making standardization difficult; (2) the immunization schedule requires

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administration of six doses within an eighteen (18) month period, followed by annual boosters; (3) there is no defined vaccine-induced protective level of antibody to PA by which to evaluate new lots of vaccines; and (4) AVA is comprised of a wild-type PA. It has been suggested that a vaccine comprising a modified purified recombinant PA would be effective, safe, allow precise standardization, and require fewer injections.

This invention claims methods of producing and recovering PA from a cell or organism, particularly a recombinant cell or microorganism. The invention claims production and purification of modified PA from a non-sporogenic strain of Bacillus anthracis. In contrast to other previously described methods, greater quantities of PA are obtainable from these cells or microorganisms. Specifically, a scalable fermentation and purification process is claimed that is suitable for vaccine development, and that produces almost three times more product than earlier-reported processes. This is accomplished using a biologically inactive protease-resistant PA variant in a protease-deficient non-sporogenic avirulent strain of *B. anthracis* (BH445). One of the PA variants described in the patent application lacks the furin and chymotrypsin cleavage sites.

The invention also relates to PA variants, and/or compositions thereof, which are useful for eliciting an immunogenic response in mammals, particularly humans, including responses that provide protection against, or reduce the severity of, infections caused by *B. anthracis*. The vaccines claimed in this application are intended for active immunization for prevention of *B. anthracis* infection, and for preparation of immune antibodies.

Dated: January 15, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1613 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Mentored Scientist Development Award.

Date: February 18–19, 2002.

Time: 7:00 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Roy L. White, PhD, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1608 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders K.

Date: February 10–11, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, Riverwalk, 830 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A.

Date: February 10–11, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, Riverwalk, 830 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders C.

Date: February 25–26, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

Date: February 25–26, 2002.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: Training Grant and Career Development Review Committee.

Date: February 28–March 1, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037–1417.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1607 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

Date: March 26–27, 2002.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jon M. Ranhand, PHD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children, 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1609 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: February 19–20, 2002.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, The Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1610 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Cancellation of Meeting

Notice is hereby given of the cancellation of the Biomedical Research and Research Training Review Subcommittee A, March 13, 2002, 8 a.m. to March 13, 2002, 5 p.m., Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD, 20815 which was published in the **Federal Register** on December 11, 2001, 66 FR 64048.

The meeting is cancelled due to reassignment of applications to another subcommittee.

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1611 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 3–5, 2002.

Time: 6 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

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limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: February 4–5, 2002.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, *nesbitt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Chemical Pathology Study Section.

Date: February 4–6, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 1.

Date: February 4–5, 2002.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Patricia Greenwel, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwelp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 5, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.

Date: February 6–7, 2002.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rass M. Shayiq, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 5.

Date: February 7–8, 2002.

Time: 8:30 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 2.

Date: February 7–8, 2002.

Time: 8:30 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7–8, 2002.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: February 7–8, 2002.

Time: 8:30 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Marcia Steinberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Prevention and Health Behavior 1.

Date: February 7–8, 2002.

Time: 9:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7–8, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy, Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Luci Roberts, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7–8, 2002.

Time: 9:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *banner@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 7, 2002.

Time: 7:00 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 8, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, MS, PHD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 8, 2002.

Time: 9:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Marcia Steinberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 8, 2002.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1612 Filed 1–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Prevention Program Outcomes Monitoring System (PPOMS)—New—Section 516 of the Public Health Service Act [42 U.S.C. 290bb–22] directs SAMHSA's CSAP to "address priority substance abuse prevention needs of regional and national significance through the provision of knowledge development and application projects for prevention and the conduct or support of evaluations of such projects."

Since 1999, CSAP has used the National Registry of Effective Prevention Programs (REPP, OMB No. 0920–0210) to review and rate substance abuse prevention programs utilized nationwide. Through NREPP, CSAP has expanded its information collection to include programs conducted by entities external to CSAP, including state and local governments, nonprofit entities, and the private sector. Programs that are well implemented, rigorously evaluated, produce consistent positive results, and are able to assist in the dissemination effort are selected as model programs. Model programs are then promoted to substance abuse professionals and practitioners nationwide through various channels, including CSAP's State Initiative Grant recipients.

Involving the completion of matrices and a survey, PPOMS will quantify the extent of the field application of NREPP identified science-based prevention programs. PPOMS will also examine such parameters as program fidelity and adaptation, for science-based prevention programs identified through NREPP, as well as documented outcomes of program effectiveness.

PPOMS utilizes a data collection system that will consider several parameters related to CSAP science-based program replication. The PPOMS matrix and survey will: gauge practitioner access to CSAP science-based materials and programs, estimate the proportion of practitioners replicating these programs, quantify and explain barriers to replication and facilitating structures and mechanisms that aid in program replication, document the degree of fidelity and adaptations of program replications, and measure program replication outcomes. Knowledge of these factors will allow CSAP to better direct its dissemination of NREPP identified programs, provide access to training and technical assistance for practitioners, and gain a more comprehensive understanding of the decision making processes involved in choosing NREPP identified programs for replication.

Substance abuse practitioners will be identified to participate in PPOMS by state government officials involved in administering, funding, and monitoring prevention programs nationwide. Aside from State Incentive Grant coordinators and regional representatives for programs such as: the Department of Education's Safe and Drug Free Schools Program, and the Office of Juvenile Justice and Delinquency Prevention, various state and regional offices, and member organizations such as the National Prevention Network and the National Association of State Alcohol/Drug Abuse Directors, will refer prevention program practitioners and professionals to participate in PPOMS.

Data derived from the Prevention Program Outcomes Monitoring Systems (PPOMS) will be used by the Center for Substance Abuse Prevention (CSAP) to determine the extent, magnitude, and effectiveness of CSAP's science-based program replications. The Prevention Programs Outcomes Monitoring System will determine the efficacy of NREPP in identifying, promoting, and disseminating the best science-based substance abuse prevention programs to the field and subsequently, to the American public. The final report of PPOMS findings will contain appropriate information for use by governmental agencies, private organizations, and nonprofit entities.

Annual burden estimates for PPOMS are shown in the following table.

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Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
PPOMS Matrix	400	1	.167	67
PPOMS Survey	400	1	.333	133
Total	400			200

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 16, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–1598 Filed 1–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Silvicultural Activities, Gates County, North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mrs. Clarine Cooper and Mrs. Canzata Turner (Applicants) have applied for an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended. The proposed permit would allow take of one group of the red-cockaded woodpecker (*Picoides borealis*), a federally-listed, endangered species, incidental to silvicultural activities on the applicants' property in Gates County, North Carolina (Project).

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation measures, will individually and cumulatively have a minor or negligible effect on these species covered in the HCP. Therefore, the ITP is a "low-effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE048566–0 in such comments. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Due to Court order, the Department of Interior has temporarily lost access to the internet and may not regain it by the time this notice is published. Commentors are encouraged to submit comments by mail or express courier, or to call (*see* **FOR FURTHER INFORMATION CONTACT**) to confirm whether our internet capability has been restored.

Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the permit application, Determination of Low Effect and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before February 22, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Raleigh Field Office, Post Office Box 33726, Raleigh, North Carolina 27636–3726 (Attn: John Hammond). Written data or comments concerning the application, HCP, or supporting documents should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE048566–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–7313; or Mr. John Hammond, Fish and Wildlife Biologist, Raleigh Field Office, (*see* **ADDRESSES** above), telephone 919/856–4520, Ext 28.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker is a territorial, non-migratory bird species once common in the southern Coastal Plain from east Texas to Florida and north to Maryland, Missouri, and Kentucky. Red-cockaded woodpeckers roost and nest in cavities excavated in large, living pine trees 60 years old or older. The red-cockaded woodpecker is a cooperative breeder that lives in family groups of one to nine birds, with each bird nesting in a separate cavity; the aggregate of cavity trees used by a group is called a cluster. Red-cockaded woodpeckers prefer mature longleaf pine forests, but also inhabit loblolly, pond, slash, shortleaf, and Virginia pine stands. Without periodic fire to control hardwoods, red-cockaded woodpeckers abandon clusters as other cavity competitors and predators typical of hardwood habitats move in. The decline of the red-cockaded woodpecker is due primarily to loss of the old-growth, fire-maintained southern pine ecosystem as a result of logging, fire suppression, and conversion to non-forest land uses.

Recovery activities for the red-cockaded woodpecker are focused on Federal lands. Private lands are also important in the Service's recovery strategy to supplement habitat where the Federal land base is insufficient to support recovery, to establish and maintain connectivity with populations on public lands, and to provide a donor source of juvenile red-cockaded woodpeckers for translocation into designated recovery populations. Red-cockaded woodpeckers have generally declined on private lands because of a lack of active habitat management, and habitat fragmentation. The Service considers that red-cockaded woodpeckers geographically isolated on private lands, as on the Project site, will eventually cease to exist unless private landowners are encouraged to manage their lands for the species.

The Applicants intend to harvest 86 acres of merchantable timber and reforest the Project site in loblolly pine. This would result in the take of one group of red-cockaded woodpeckers (in recent surveys, numbering 2 adults and 2 juveniles) through harm due to alteration of their habitat. The affected group of red-cockaded woodpeckers are not part of a larger population. The nearest known groups outside the applicants' property are about five miles away and do not regularly interact with the group in the project area. This demographic isolation, in a region of fragmented, discontinuous habitat availability, greatly limits any contribution to species' recovery by the red-cockaded woodpeckers affected by the project. The biological goal of the applicants' HCP is to create a new, or augment an existing, group of red-cockaded woodpeckers, via translocation of juveniles from a donor population, into an area of better habitat and thereby help to consolidate a more stable red-cockaded woodpecker population within the species' historic range. This would be accomplished by the applicants' contribution of $13,000 into an existing National Fish and Wildlife Foundation fund. This fund is dedicated to purposes consistent with the mitigation goal stated above. Expenditures from this fund would be made as potential donor and recipient populations of red-cockaded woodpeckers are identified in the future.

The Applicants and the Service believe the biological goal of the HCP to augment or create a new group of red-cockaded woodpeckers at an area of better habitat which would help to consolidate a more stable red-cockaded woodpecker population at an opportune time in the future would offset project impacts while allowing the applicants profitable use of their property.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Service's regulations for approving such permit requests are contained in section 10(a)(2)(B) of the Act.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, which does not require the preparation of an EA or EIS. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the red-cockaded woodpecker and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project.

2. Approval of the HCP would not have adverse effects on known geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a federal, state, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We will evaluate the HCP and public comments to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether the issuance of the ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation to ensure the ITP will not jeopardize the continued existence of this species. We will use the results of this consultation, in combination with the above findings, to determine if the requirements of the ITP are met and whether or not to issue the ITP.

Dated: January 16, 2002.

John R. Lemon,

Acting Regional Director.

[FR Doc. 02–1599 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Servie implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that the following Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued to the following companies:

Company	Activity	Location	Date issued
Phillips Alaska, Inc	Exploration	Rendezvous #3	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Tuvaaq 1, 2, and 3	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Pioneer #1	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Spark 6, 7, and 8	Dec. 10, 2001.
Phillips Alaska, Inc	Exploration	Nova 1 and 2	Dec. 10, 2001.

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Company	Activity	Location	Date issued
Phillips Alaska, Inc	Exploration	Mitre #1	Dec. 10, 2001.
Fairweather Geophysical	Exploration	NPR–A and Colville Rvr	Dec. 10, 2001.
BP Exploration	Production	Northstar Unit	Dec. 10, 2001.
Harding ESE, Inc	Production	Gwydyr Bay State A1	Dec. 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503 (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000)."

Dated: December 19, 2001.

David B. Allen,

Regional Director.

[FR Doc. 02–1665 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications for Funding Assistance Under the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program (CAP) for Fiscal Year (FY) 2002

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for NSDI Cooperative Agreements Program awards for fiscal year 2002, with performance to begin in August 2002 through September 1, 2003.

SUMMARY: The purpose of the NSDI Cooperative Agreements Program is to facilitate and foster partnerships, alliances and technology within and among various public and private entities to assist in building the NSDI. The NSDI consists of technologies, policies, organizations and people necessary to promote cost-effective production, ready availability, and greater utilization of high quality geospatial data among a variety of sectors, disciplines and communities.

The FY 2002 NSDI Cooperative Agreements Program will fund projects in four categories of activities: (1) Metadata implementation assistance, (2) metadata trainer assistance (3) clearinghouse integration with OpenGIS services, and (4) US and Canadian Spatial Data Infrastructure development. Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, non-profit foundations, and Federally acknowledged or state-recognized Native American tribes or groups. Applications from Federal agencies will not be competed against applications from other sources. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcements and application forms for the FY 2002 NSDI Cooperative Agreements Program are expected to be available on or about December 15, 2001. Applications must be received on or before March 15, 2002.

ADDRESSES: Copies of each Program Announcement #02HQPA0005 for the NSDI Cooperative Agreements Program will be available through the Internet at *www.usgs.gov/contracts/index.html* and *www.fgdc.gov*. Copies of Program Announcement #02HQPA0005 may also be obtained by writing to Patricia Masters, U.S. Geological Survey, Office of Acquisition and Grants, National Assistance Programs Branch, MS 205G, 12201 Sunrise Valley Drive, Reston, VA 20192, or e-mailing *pmasters@usgs.gov*. Requests must be in writing; verbal requests will not be honored.

FOR FURTHER INFORMATION CONTACT: For NSDI technical information contact: David Painter, U.S. Geological Survey, Federal Geographic Data Committee, Mail Stop 590, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–5513, fax (703) 648–5755, e-mail *dpainter@fgdc.gov*.

For the NSDI Cooperative Agreements Program contact: Ms. Patricia Masterson, U.S. Geological Survey, Office of Acquisition and Grants, National Programs Assistance Branch, Mail Stop 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7356, fax (703) 648–7359, e-mail *pmasters@usgs.gov*.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program a total of $385,000 is available for award.

2002 NSDI Cooperative Agreement Program Categories

Category 1: "Don't Duck Metadata:" Metadata Implementation and Creation Assistance. The objectives for this category are the documentation of geospatial data through metadata creation and serving that documentation on the Internet through a NSDI clearinghouse. Under this category funds are provided for organizations needing assistance in receiving metadata training and in metadata creation.

Category 2: "Don't Duck Metadata:" Metadata Trainer Assistance. Funding in this category is for those organizations and individuals that can provide training assistance to other organizations in becoming skilled and knowledgeable in metadata creation.

Category 3: Clearinghouse Integration with OpenGIS services will provide funding to extend existing Clearinghouse Nodes with OpenGIS Consortium (OGC) compliant web mapping service capabilities and related standards-based services in a consistent way.

Category 4: Canadian/U.S. Spatial Data Infrastructure Project will provide funding assistance to support a collaborative project between organizations in the U.S. and Canada to coordinate, create, maintain, and share geospatial data to support decision-making over a common geography. The FGDC in partnership with the GeoConnections of Natural Resources Canada will fund lead organizations in their respective countries in a collaborative cross-border project.

Dated: January 14, 2002.

Carol F. Aten,

Chief, Administrative Policy and Services, U.S. Geological Survey.

[FR Doc. 02–1600 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–07–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Office of Management and Budget approved an information collection request for emergency clearance under 5 CFR 1320.13. This information collection request is cleared under OMB Control Number 1076–0094 through April 30, 2002. Basic information is requested of applicants for the issuance of a marriage license or for the dissolution of a marriage by a Court of Indian Offenses under 25 CFR 11. The Bureau of Indian Affairs is now seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted by March 25, 2002.

ADDRESSES: Written comments are to be mailed or hand delivered to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660–MIB, Washington, DC 20240 or e-mailed to *ralphgonzales@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, Bureau of Indian Affairs at (202) 208–4401 or *ralphgongales@bia.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs, Department of the Interior, must collect personal information to carry out the requirements of Title 25, section 11.600(c)—Marriage, and Title 25, Section 11.606 (c)—Dissolution of Marriage. Information is collected by the Clerk of the Court of Indian Offenses in order for the Court to issue a marriage license or dissolve a marriage. The information is collected on a one-page application requesting only basic information necessary for the Court to properly dispose of the matter.

II. Method of Collection

The information is collected on a one-page application for the marriage license or for a dissolution of marriage.

III. Information Collected

Courts of Indian Offenses (CFR Courts) have been established on certain Indian reservation under the authority vested in the Secretary of the Interior by 5 U.S.C. 301, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett* v. *Hodel*, 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox*, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). The CFR Courts provide adequate machinery for the administration of justice for Indian tribes in those areas where tribes retain jurisdiction over Indians and is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction. Accordingly, CFR Courts exercise jurisdiction under part 11 of Title 25 of the Code of Federal Regulations. Domestic relations are governed by 25 CFR 11.600 which authorizes the CFR Court to conduct marriages and dissolve marriages. In order to be married in a CFR Court, a marriage license must be obtained (25 CFR 11.600, 601). To comply with this requirement, an applicant must respond to the following six questions found at 25 CFR 11.600(c):

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship;

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated; and

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

For the purposes of § 11.600, Marriage, Social Security number information is requested to confirm identity. Previous marriage information is requested to avoid multiple simultaneous marriages, and to ensure that any pre-existing legal relationships are dissolved. Information on consanguinity is requested to avoid conflict with state or tribal laws against marriages between parties who are related by blood as defined in such laws. Medical examination information may be requested if required under the laws of the state in which the Court of Indian Offenses is located.

To comply with the requirement for dissolution of marriage, an applicant must respond to the following six questions found at 25 CFR 11.606(c):

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

For the purposes of § 11.606, Dissolution proceedings, information on occupation and residency is necessary to establish court jurisdiction. Information on the status of the parties, whether they have lived apart 180 days or if there is serious marital discord warranting dissolution, is necessary for the court to determine if dissolution is proper. Information on the children of the marriage, their ages and whether the wife is pregnant is necessary for the court to determine the appropriate level of support that may be required from the non-custodial parent.

Description of the need for the information and proposed use of the information: The information is submitted in order to obtain or retain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Affected entities: Indian applicants that are under the jurisdiction of one of the 24 established Courts of Indian Offenses are entitled to receive the benefit of this action by the Court.

Estimated number of respondents: Approximately 260 applications for a marriage license or petition for dissolution of marriage will be filed in the 24 Courts of Indian Offenses annually.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting a marriage license or petition for dissolution of marriage is 15 minutes per application. The total annual burden is estimated as 65 hours.

Estimated cost: There are no costs to consider, except estimated costs of $100 per court annually, for the material

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supplies and staff time required by the Court of Indian Offenses.

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, NW, Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget control number.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: January 9, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

[FR Doc. 02–1623 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1420–01]

Notice of Intent To amend the Arcata Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to amend the Arcata Field Office's Arcata Resource Management Plan (RMP); Humboldt County, California.

SUMMARY: Notice is hereby given that it is the intent of the Bureau of Land Management (BLM) to consider amending the Arcata Field Office's Arcata RMP to address the disposal of one parcel of public land in Humboldt County for the purpose of accomplishing one land exchange. A plan amendment and environmental assessment will be prepared to analyze the effects of disposing of one parcel identified in Township 3 South, Range 2 West, Humboldt Base & Meridian, Section 11, NWSE. The land contains approximately 40 acres.

Public Participation

The public is invited to submit comments on this proposal for consideration in the environmental assessment. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This notice provides for a comment period for a proposed plan amendment. Pursuant to the regulations at 43 CFR 1600, for a period of 30 days from the publication of this notice in the **Federal Register**, interested parties may submit comments and recommendations regarding the proposed plan amendment to Lynda Roush, Field Manager, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Please reference exchange case file CACA 39912 FD/PT.

FOR FURTHER INFORMATION OR RELATED DOCUMENTS CONTACT: Charlotte Hawks, Realty Specialist, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Telephone: (707) 825–2319.

Daniel E. Averill,

Assistant Field Manager, Arcata.

[FR Doc. 02–1669 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of The Record of Decision for the Final Supplemental Environmental Impact Statement for The Old Agency Area (Project 3P13) of the Natchez Trace Parkway

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior, National Park Service, announces the availability of a signed Record of Decision (March 23, 2001) on the Final Supplemental Environmental Impact Statement for the Old Agency Area (Project 3P13) of the Natchez Trace Parkway.

The Natchez Trace Parkway was established in 1938 to commemorate the Old Natchez Trace, a primitive network of trails that stretched approximately 716 kilometers (444 mi.) from Natchez, Mississippi, to Nashville, Tennessee. Today, two portions of the parkway motor road comprising about 32 kilometers (20 mi.) of its total length remain unfinished in Mississippi. The 1.8 kilometer (1.1 mi.) unfinished segment of the parkway known as 3P13 is within the city of Ridgeland and, is the focus of the Final Supplemental Environmental Impact Statement (FSEIS) for the Old Agency Road Area and the Record of Decision.

In 1998, public workshops produced 16 conceptual alternatives for construction of the parkway motor road and local public roads within the project area. Following additional public review and NPS evaluation of the conceptual alternatives, five concepts were determined to be the most viable and consistent with the proposed project's purpose. These five concepts were further refined and were analyzed in the Draft and Final Supplemental Environmental Impact Statement for the Old Agency Road Area as Alternatives 1, 2, 3, 4, and 5. Alternative 1 is the alternative that was originally proposed in the 1978 Final Environmental Impact Statement for Natchez Trace Parkway; it is the no-action alternative and served as a baseline for comparing the other alternatives.

On August 3, 1998, the National Park Service published in the **Federal Register** a notice of intent to prepare a Draft Supplemental Environmental Impact Statement for the Old Agency area (Project 3P13) of the Natchez Trace Parkway.

The National Park Service will implement the Revised Proposed Action as described in the Final Supplemental Environmental Impact Statement for the Old Agency Road Area (Project 3P13) of the Natchez Trace Parkway which was made available to the public in February of 2001.

The Selected Action (Revised Proposed Action) was developed after public review of the Draft Supplemental Environmental Impact Statement. Under the Selected Action, the Natchez Trace Parkway motor road will cross the Old Natchez Trace (Old Agency Road) approximately at-grade and closely follow the existing topography through the NPS right-of-way connecting existing parkway to the east and to the west of the project area. To provide local east-west vehicular circulation and traffic capacity, Old Agency Road Relocated will be constructed south of the parkway motor road from near Whippoorwill Lane to Highland Colony Parkway. To further enhance local north-south traffic circulation through the project area, traffic will crossover the parkway via a bridge which will link Old Agency Road and Old Agency Road Relocated. The new crossover road between Old Agency Road and Old Agency Road Relocated will begin approximately across from St. Andrew's school ballfield parking lot. Access to the Choctaw Agency site will be provided directly from the parkway motor road, and a parking area for visitors will be developed. Old Agency Road from near Whippoorwill Lane to Richardson Road will be closed to vehicular traffic and restored to Old Natchez Trace appearances (the asphalt road surface will be removed, the surface will be graded to drain, planted with turf grasses, and kept mowed); vehicular traffic will be rerouted to Old Agency Road Relocated.

Access to Interstate 55 to the east of the project area will be through the remaining existing Old Agency Road as well as along Old Agency Road Relocated to Highland Colony Parkway. In addition, short portions of Brame Road, and a portion of the northern entrance to the Dinsmor subdivision will be revegetated, and a portion of the Greenwood Plantation driveway will also be closed within the NPS right-of-way and restored to its appearance of historical significance. Access to Brame Road, Dinsmor subdivision and the Greenwood Plantation will be via the new Old Agency Road Relocated. A deed-reserved driveway will be provided from Old Agency Road Relocated to a tract of land south of the parkway and just east of Dinsmor subdivision. Access to the Canterbury and Windrush subdivisions will continue to be accessed via Old Agency Road. Old Agency Road Relocated will provide access and circulation for local through-traffic, and a new intersection will be constructed at Highland Colony Parkway.

Natural resource impacts (such as vegetation, soils, wildlife) for the Selected Action and each of the five alternatives considered are very similar because the parkway motor road would follow nearly the same alignment through the NPS right-of-way in each alternative. In general, natural resource impacts are considered negligible under the Selected Action and all alternatives due to the already highly fragmented landscape and preponderance of locally abundant and edge-adapted plant and animal species occupying the project area. No federally or state threatened or endangered species or their habitats are impacted under the Selected Action. The Selected Action would negatively impact 0.62 ha (1.53 ac) of Palustrine wetlands. Negative wetland impacts between the Selected Action and the alternatives would vary by just 0.2 ha (0.5 ac). As described in the wetland Statement of Findings (reviewed and approved by the Southeast Regional Director, National Park Service), wetland loss will be mitigated at a 2:1 ratio. Implementation of the Selected Action will not result in impairment from indirect, direct, or cumulative impacts and will not violate the NPS Organic Act.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the Record of Decision and Statement of Findings, contact the Superintendent of the Natchez Trace Parkway at (662) 680–4025 or at the following address: Wendell A. Simpson, Superintendent, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38804.

Dated: June 21, 2001.

Editorial Note: This document was received at the Office of the Federal Register on January 17, 2002.

Wally Hibbard,

Regional Director, Southeast Region.

[FR Doc. 02–1694 Filed 1–18–02; 11:21 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Review)]

Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the suspended investigation on fresh tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 4, 2002.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On January 4, 2002, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (66 FR 49975, October 1, 2001) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy,

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and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 16, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1569 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–409–412 and 731–TA–909 (Final)]

Low Enriched Uranium From France, Germany, The Netherlands and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Reopening of the record and request for comments for the subject investigations.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice that it is reopening the record in these investigations for the purpose of considering new factual information submitted on January 15, 2002, by petitioner USEC Inc. concerning the agreement between the governments of the United States and Russia regarding the purchase of certain low enriched uranium. The Commission is not reopening the record for any purpose other than to receive comments from any party on this new factual information. On or before January 17, 2002, parties may submit final comments, not to exceed 10 pages, double-spaced and single-sided, on stationery measuring 8½ by 11 inches, addressing only this new factual information, but such final comments must not contain any new factual information not previously submitted for the record and must otherwise comply with section 207.68 of the Commission's rules.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

SUPPLEMENTARY INFORMATION: On September 5, 2001, the Commission published notice establishing a schedule for the conduct of the final phase of the subject investigations (66 FR 46467, September 5, 2001). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations and on November 19, 2001, the Commission published notice establishing a revised schedule for the investigations (66 FR 57986, November 19, 2001).

For further information concerning these investigations see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 16, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1570 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–988 (Preliminary)]

Pneumatic Directional Control Valves From Japan

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA–988 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of pneumatic directional control valves, provided for in subheading 8481.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 28, 2002. The Commission's views are due at Commerce within five business days thereafter, or by March 7, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on January 14, 2002, by The Pneumatics Group, a trade association of pneumatic directional control valve producers and wholesalers which includes Festo Corp. of Hauppage, NY; IMI Norgren, Inc. of Littleton, CO; Numatics, Inc. of Highland, MI; and Parker Hannifin Corp. of Cleveland, OH.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 1 p.m. on February 4, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than January 28, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 7, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: January 16, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1571 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–413, 731–TA–913–918 (Final)]

In the Matter of Stainless Steel Bar From France, Germany, Italy, Korea, Taiwan, and the United Kingdom; Notice of Commission Determination to Conduct a Portion of the Hearing *In Camera*

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents BDG Edelstahl, Corus Engineering Steels, Edelstahl Witten-Krefeld GmbH, Firth Rixon Special Steels Ltd., Krupp Edelstahlprofile GmbH, Sandvik Metinox Ltd., Stahlwerk Ergste Westig GmbH and Walzwerke Einsal GmbH (collectively "Respondents"), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for January 17, 2002, *in camera*. *See* Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087, e-mail mbernstein@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Respondents have justified the need for a closed session. Respondents seek a closed session to allow testimony concerning the manner in which internal transfers of individual domestic stainless steel bar producers should be valued and related issues regarding financial performance. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a confidential presentation by Respondents and for questions from the Commission relating to the BPI, followed by an *in camera* rebuttal presentation by petitioners and questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigations. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, Inv. Nos. 701–TA–413, 731–TA–

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913–918 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: January 16, 2002.
By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1568 Filed 1–22–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Environmental Bankruptcy Settlement in *In Re American Western Refining, L.P.* and Related Inability To Pay Settlement With Indian Refining I Ltd. Partnership and Indian Refining and Marketing I, Inc.

Notice is hereby given that a proposed settlement entered into by the United States on behalf of U.S. EPA and the Coast Guard, the State of Illinois on behalf of Illinois EPA, and American Western Refining, L.P. was filed on October 26, 2001 in *In re American Western Refining, L.P.*, No. 96–01755 (Bankr. D. Del.) with the United States Bankruptcy Court for the District of Delaware. The proposed settlement is contained in section 6.5 of the Debtor's proposed Plan of Liquidation and would resolve certain claims of the United States and Illinois against the settling party under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, section 311 of the Clean Water Act, 33 U.S.C. 1321, the Oil Pollution Act, 33 U.S.C. 2701 *et seq.* relating to the American Western Refinery Superfund Site in Lawrence County, Illinois. Notice is also hereby given that a proposed related administrative settlement has been entered into by the United States on behalf of U.S. EPA and the Coast Guard, the State of Illinois on behalf of the Illinois Environmental Protection Agency, Indian Refining I Limited Partnership, f/k/a Indian Refining Limited Partnership, and Indian Refining and Marketing I, Inc., f/k/a Indian refining and Marketing, Inc. *In re Indian Refinery—Texaco Property (Indian Refining I Limited Partnership, et al.)*, U.S. EPA Region 5, Docket No. V–W–02–C–668. Under the settlements, debtor American Western Refining, L.P. shall pay the Coast Guard $861,865 as an Allowed Administrative Expense Claim and the debtor will place its refinery property in a liquidating trust and provide certain, funding and consideration that will facilitate cleanup of the facility.

The Department of Justice will receive comments relating to the United States' approval of the terms of proposed settlements for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *In re American Western Refinery Company, et al.*, D.J. Ref. No. 90–11–2–1307A. Copies of the proposed settlements may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed settlements may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the proposed settlements, please enclose a check in the amount of $2.75 for the settlement with debtor American Western Refinery, L.P. and $8.75 for the settlement with Indian Refining I Limited Partnership (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1560 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Degree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed decree embodying a settlement in *United States* v. *Chevron Environmental Management Co., et al.* No. CV 01–11162 MMM (JWJx), was lodged on December 28, 2001, with the United States District Court for the Central District of California, Western Division.

In a complaint filed concurrently with the lodging of the consent decree, the United States, the State of California, and the California Hazardous Substance Account, seek injunctive relief for performance of response actions and reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") and by the California Department of Toxic Substances Control ("DTSC"), pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, in response to releases of hazardous substances at the Operating Industries, Inc. ("OII") Superfund site in Monterey Park, California. Under the proposed consent decree, the settling defendants have agreed to pay response costs and fund perform future response actions at the OII Site.

Overall this consent decree has a combined value of approximately $340 million, contributed by the respective parties in cash, or work commitments and reimbursement of past response costs. The settlement addresses the full implementation of the final remedy at the Site. Under this settlement, Work Defendants will perform the Work required by the consent decree, valued at approximately $297 million ($262 million in work plus $35 million in future oversight costs), which will be funded through Work Defendant contributions, payments by Cash Defendants and escrow accounts established under prior settlement or to be established under this settlement. EPA will receive approximately $10 million to be placed in a Special Account, which is available to pay for Excluded Work. The settlement also includes an agreement by the United States Navy to pay approximately $1 million to resolve the Navy's potential liability at the OII site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, and sent: (1) c/o Noel Wise, United States Department of Justice, 301 Howard Street Suite 1050, San Francisco, CA 94105; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States*

Attorney for the EPA Region 9 Superfund Records Center, 75 Hawthorne Street, Fourth Floor, San Francisco, California 94105, and at the Office of the United States Attorney for the Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $250.50 to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Chevron Environmental Management Co., et al.*, DOJ Ref. #90–11–2–156/4.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1566 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Revision to Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act Published on January 8, 2002

. The notice previously published on January 8, 2002, is hereby revised to provide new instructions for sending comments on the proposed Consent Decree and for obtaining copies of the proposed Decree.

In accordance with the Departmental Policy, 28 CFR 50.7, and section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), notice is hereby given that a Consent Decree in *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc. and TI Automotive Systems Corp.*, Civil Action No. 01–CV–6109, was lodged with the United States District Court for the Eastern District of Pennsylvania on December 6, 2001. This Consent Decree resolves certain claims of the United States' against Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp. ("Settling Defendants") under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a). The Consent Decree requires the Settling Defendants to perform remedial work at the Site consisting of all Operable Unit 2 response activities (as defined in the Decree) and to reimburse the Superfund for past response costs in the amount of $7 million and to pay future response costs for the Boarhead Farms Superfund Site located in Bridgeton Township, Pennsylvania.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this revised notice. The delivery of U.S. Postal Service regular mail has been disrupted, and comments sent by U.S. Postal Service, first-class mail are not expected to be received in a timely manner. Therefore, please address comments to Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, and send: (1) c/o Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029; and/or (2) by facsimile to (202) 353–0296. Each communication must refer on its face to *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp.*, DOJ # 90–11–2–06036/2.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by telefaxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, at (202) 616–6584; telephone confirmation (202) 514–1547. There is a charge for the copy (25 cents/page reproduction cost). When telefaxing your request for a copy, please mail a check payable to the "U.S. Treasury," in the amount of $23.25 (for Decree without appendices) or $29.00 (for Decree with appendices) to: Consent Decree Library, U.S. Department of Justice, c/o U.S. Environmental Protection Agency, Region III, 1560 Arch Street, Philadelphia, PA 19103–2029. The check must refer to *United States* v. *Cytec Industries, Inc., Ford Motor Company, SPS Technologies, Inc., and TI Automotive Systems Corp.*, DOJ No. 90–11–2–06036/2.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 02–1561 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Republication of Notice of Lodging of Consent Decrees Under the Lead-Based Paint Hazard Act

Notice is hereby given that on October 9, 2001, a proposed consent decree in *United States, et al.*, v. *East Lake Management and Development Corp.*, Civil Action No. 01 C 7581, and on October 11, 2001, a proposed consent decree in *United States, et al.*, v. *Wolin-Levin, Inc.*, Civil Action No. 01 C 7580, were lodged with the United States District Court for the Northern District of Illinois. Notice of the lodging of these consent decrees was first published by the Department of Justice in the **Federal Register** on November 15, 2001 (66 FR 57 483). The Department of Justice is republishing the notice of lodging because mail delivery problems associated with anthrax mailings to government offices have precluded the Department of Justice's receipt of public comments. To avoid additional delays related to such problems, the Department of Justice is requesting that any comments that were submitted under the original notice of lodging be resubmitted to the U.S. Attorney's Office for the Northern District of Illinois, as set forth below.

The consent decrees settles claims against management agents of several residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in each of its complaints that the defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under both consent decrees, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, and to perform lead-based paint abatement. In addition, under each decree, each defendant will pay a penalty of $25,000 to be divided among the United States, the State of Illinois, Cook County, and the City of Chicago. Lastly, each of the consent decrees calls for the performance of Child Health Improvement Projects ("CHIPs"), which are projects proposed by HUD to address issues of childhood lead poisoning in Chicago. Wolin-Levin, Inc., will contribute $100,000 as a CHIP to

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the City of Chicago to be used for additional lead-based paint abatement activities in Chicago, primarily replacement of windows. East Lake Management and Development Corp. will contribute $77,000 as a CHIP to community-based health centers to perform blood lead level screening of children and create educational programs in low income areas in South Chicago and Cook County. The defendants manage over 225 buildings with over 10,000 residential units.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. As noted above, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments that are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Jonathan C. Haile, Assistant United States Attorney, 219 S. Dearborn St., 5th Floor Chicago, IL 60604; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States, et al.*, v. *Wolin-Levin, Inc.*, D.J. #90–11–2–06829/1, and *United States, et al.*, v. *East Lake Management and Development Corp.*, D.J. #90–5–2–1–07120.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed Consent Decrees may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $12.25 for the consent decree in *United States, et al.*, v. *Wolin-Levin, Inc.*, D.J. #90–11–2–06829/1, and $14.00 for the consent decree in *United States, et al.*, v. *East Lake Management and Development Corp.*, D.J. #90–5–2–1–07120, to : Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States, et al.*, v. *Wolin-Levin, Inc.*, D.J. #90–11–2–06829/1, and *United States, et al.*, v. *East Lake Management and Development Corp.*, D.J. #90–5–2–1–07120.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1591 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Honeywell International Inc.* (E.D. Va.), Civil Action No. 3:01CV789 was lodged on November 23, 2001 with the United States District Court for the Eastern District of Virginia. The Consent Decree resolves the United States' claims against defendant, Honeywell International Inc., with respect to violations of the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Resource Conservation and Recovery Act ("RCRA") at its chemical manufacturing facility in Hopewell, Virginia.

Under the Consent Decree, defendant will pay the United States $110,000 in penalties. In addition, the defendant will implement five Supplemental Environmental Projects, or "SEPs," at an estimated cost of $772,000. These SEPs include (1) Within ten months of entry of the Consent Decree and at a cost of no less than $375,000, the conversion of a refrigeration unit from use of chlorfluorocarbon-based refrigerant to hydrofluorocarbon-based refrigerant; (2) within seventeen months of entry of the Consent Decree and at a cost of no less than $300,000, the installation of an air emissions control system to reduce the release of ammonia; (3) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $35,000, the purchase of a "reverse 911" interactive notification system for the Hopewell Local Emergency Planning Committee; (4) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $20,000, the purchase of a skirted boom and trailer and associated training services for the Henrico Regional Hazardous Incident Team; and (5) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $42,000, the purchase of mass decontamination equipment and associated training for emergency response teams at two local medical centers, the John Randolph Medical Center in Hopewell, VA and the Southside Regional Medical Center in Petersburg, VA.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. This notice was previously published in the **Federal Register**. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular or overnight mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed and sent: (1) to: Janet E. Sharke, USEPA Region III (3EC00), 1650 Arch Street, Philadelphia, PA 19103; and/or (2) by facsimile to (202) 353–0296, to Chief, Environmental Enforcement Section; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Honeywell International Inc.* DOJ reference number 90–7–1–06900.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Virginia, 600 East Main Street, Suite 1800, Richmond, Virginia and at the Region III Office of the Environmental Protection Agency, 1650 Arch Street Philadelphia, PA 19103. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547., There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $13.00. to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Honeywell International Inc.* DOJ reference number 90–7–1–06900.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1565 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Republication of Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on October 4, 2001, a proposed consent decree in *United States, et al.*, v. *Oak Park Real Estate, Inc., et al.*, Civil Action No. 01 C 7582, was lodged with the United States District Court for the Northern District of Illinois. Notice of the lodging of this consent decree was first published by the Department of Justice in the **Federal Register** on November 15, 2001 (66 FR 57,485). The Department of Justice is republishing the notice of lodging because mail delivery problems associated with anthrax mailings to government offices have precluded the Department of Justice's receipt of public comments. To avoid additional delays related to such problems, the Department of Justice is requesting that any comments that were submitted under the original notice of lodging be resubmitted to the U.S. Attorney's Office for the Northern District of Illinois, as set forth below.

The consent decree settles claims against management agents and owners of several residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that each defendant failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the consent decree, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, to perform lead-based paint abatement, and to pay the United States and the State of Illinois administrative penalties in the amount of $40,000. The defendants manage and/or own 25 buildings with over 650 residential units.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. As noted above, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S, Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Jonathan C. Haile, Assistant United States Attorney, 219 S. Dearborn St., 5th Floor, Chicago, IL 60604; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States, et al.*, v. *Oak Park Real Estate, Inc., et al.*, D.J. #90–5–1–1–07056.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $12.50, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States, et al.*, v. *Oak Park Real Estate, Inc., et al.*, D.J. #90–5–1–1–07056.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1590 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Westvaco Corporation*, Civil Action No. 02–30006–KPN, was lodged with the United States District Court for the District of Massachusetts on January 15, 2001. In the complaint in this action, the United States alleges that Westvaco Corporation ("Westvaco") violated the Clean Air Act, 42 U.S.C. 7401, *et seq.*, at its Springfield, Massachusetts plant by emitting volatile organic carbons from its flexible packaging coating operation at various times at a higher emissions rate than permitted under its State air permit. The complaint also alleges that Westvaco did not timely submit an application for an air permit under Title V of the Clean Air Act. The complaint seeks civil penalties for these violations under section 113 of the Clean Air Act, 42 U.S.C. 7413.

The proposed Consent Decree provides that Westvaco will pay a civil penalty of $117,910. Westvaco closed its flexible packaging operation last year. As part of the settlement, Westvaco also agreed that it would acquire and permanently retire the emissions credits that it was entitled to from the closing of the flexible packaging coating operation.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail through the U.S. Postal Service is not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent (1) c/o Karen L. Goodwin, Assistant United States Attorney, Federal Building and Courthouse, 1550 Main Street, Room #310, Springfield, Massachusetts 01103; and/or (2) by facsimile to (202) 353–0296; and/or (3)

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by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Westvaco Corporation*, D.J. Ref. 90–5–2–1–07312.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Massachusetts, Federal Building and Courthouse, 1550 Main Street, Room #310, Springfield, Massachusetts 02114. A copy of the Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check, payable to the "U.S. Treasury", in the amount of $4.00, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Westvaco Corporation*, Ref. No. 90–5–2–1–07312.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–1562 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on September 28, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Lead-Acid Battery Consortium ("ALABC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lomold Ventures (Pty) Ltd., Paarl, South Africa has been added as a party to this venture. Also, Cominco, Ltd., Toronto, Ontario, Canada has changed its name to Teck Cominco Metals Ltd.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on June 29, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40724).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1559 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Standards-Based Interoperable Guideline System Joint Venture

Notice is hereby given that, on November 26, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IDX Systems Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are IDX Systems Corp., Seattle, WA; Apelon, Inc., Ridgefield, CT; Stanford University, Stanford, CA; Mayo Clinic Rochester, Rochester, MN; IHC Health Services, Inc., Salt Lake City, UT; and Board of Regents, University of Nebraska, University of Nebraska Medical Center, Omaha, NE. The nature and objectives of the venture are the development of healthcare software consisting of a computable format for representing clinical interoperable guidelines, a tool for authoring and editing these guidelines, and software which maps and integrate guideline content into clinical information systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1592 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on December 18, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, General Pattern Company, Blaine, MN has been added as a party to this venture.

Also, Electronic Data Systems, Troy, MI; Interconnection Technology Research Institute (ITRI), Austin, TX; Softzone Engineering, Inc., Plymouth, MI; Johnson Manufacturing Company, Inc., Princeton, IA; Tecumseh Products Company, Tecumseh, MI; and University of New Orleans, New Orleans, LA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 22, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49044).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1563 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Personalization Consortium, Inc.

Notice is hereby given that, on September 21, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Personalization Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kana Software, Menlo Park, CA has been added as a party to this venture. Also, Broadbase Software, Inc., Menlo Park, CA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Personalization Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 15, 2000, Personalization Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 2000 (65 FR 49266).

The last notification was filed with the Department on June 1, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 2001 (66 FR 35459).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1558 Filed 1–22–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Presidential Task Force on Employment of Adults With Disabilities; Notice of Postponement of Meeting

The Department of Labor published notice of an open public meeting of the Presidential Task Force on Employment of Adults with Disabilities in the **Federal Register** on December 17, 2001 (66 FR 64987). That meeting has been postponed. The meeting will be rescheduled and its new date will be announced and published in this publication.

FOR FURTHER INFORMATION CONTACT: Paul Bennett at 202/693–4939 (voice), 202/693–4929 (fax), or 202/693–4920 (TTY).

Dated: January 16, 2002.

Gary B. Reed,

Acting Executive Director, Presidential Task Force on Employment of Adults with Disabilities.

[FR Doc. 02–1624 Filed 1–22–02; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 11, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@ nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by

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the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–02–1, 2 items, 2 temporary items). Records relating to endangered species and their habitats. Included are correspondence, reports, briefings, and graphics pertaining to Army compliance with the Endangered Species Act. Also included are electronic copies of records created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide (N1–AU–02–4, 2 items, 2 temporary items). Records relating to public works activities such as facilities repair, maintenance, and minor construction projects. Included are service orders, work requests, and related documents. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–02–5, 2 items, 2 temporary items). Correspondence relating to the criteria, standards, and practices employed in the maintenance, repair, operation, conservation, and improvement of public works at military installations. Also included are electronic copies of documents created using electronic mail and word processing. This schedule reduces the retention period for the recordkeeping copies of these files, which were previously approved for disposal, and also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–02–6, 2 items, 2 temporary items). Records relating to notarial services. Included are exceptions to policy, notarial certifications, and memorandums granting individuals notarial authority. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–02–7, 2 items, 2 temporary items). Records relating to nonappropriated fund employee job descriptions. Included are master job descriptions, job standards, and similar information used in the analysis, development, and evaluation of specific jobs. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Commerce, U.S. Patent and Trademark Office (N1–241–02–1, 3 items, 2 temporary items). Records documenting provisional patent applications submitted by inventors to claim an early effective filing date for submitted patents that are not referenced in applications that are issued as patents. Included are written descriptions of the inventions, applicable drawings, related filing information from applicants, and reference copies of these records. Proposed for permanent retention are recordkeeping copies of provisional patent application files referenced in applications that are issued as patents.

7. Department of Commerce, National Oceanographic and Atmospheric Administration (N1–370–00–3, 58 items, 46 temporary items). Records documenting the planning and production of nautical charts and hydrographic surveys that define the navigable waters of the United States. Included are field survey data, planning and coordination files, production and quality assurance records, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such final products as nautical charts, hydrographic surveys, and supplementary reports as well as data concerning wrecks and obstructions.

8. Department of Defense, Army and Air Force Exchange Service (N1–334–02–1, 2 items, 2 temporary items). Short term records relating to the individual retirement benefits of nonappropriated fund employees. Included are such records as annuity payment schedules, individual disbursements, and qualified domestic relations orders. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of Energy, Assistant Secretary for Fossil Energy (N1–434–01–7, 7 items, 4 temporary items). Records of the Naval Petroleum and Oil Shale Reserves Program relating to natural gas and crude oil contracts and estimated revenue from sales. Included are such records as natural gas contract summaries, public relations requests, invitations for bids, contract amendments and awards, and related correspondence. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as studies concerning marketing and sales strategies, engineering and technical studies, state-of-the-art recovery procedures, quality assurance requirements, and real estate agreement files.

10. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–01–4, 11 items, 11 temporary items). Records relating to the Clinical Laboratory Improvement Program under which labs are tested to ensure that the work they do is accurate and reliable. Included are correspondence, approvals, summary reports pertaining to annual proficiency testing, records relating to annual reviews of laboratory accreditation organizations, and fiscal records pertaining to user fees paid by labs taking part in the program. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of Housing and Urban Development, Community Planning and Development (N1–207–02–2, 4 items, 4 temporary items). Economic Development Initiative targeted grant case files, which contain such documents as applications, correspondence, progress reports, and budget records. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of Housing and Urban Development, Fair Housing and Equal Opportunity (N1–207–02–3, 4 items, 4 temporary items). Fair Housing Initiative Program grant application case files, which consist of such records as applications, payment schedules, statements of work, and related correspondence. Also included are electronic copies of records created using electronic mail and word processing.

13. Department of the Interior, U.S. Geological Survey (N1–57–02–1, 8 items, 8 temporary items). Records relating to agency Y2K activities, including the development of policies and plans and their implementation and the analysis of specific systems. Also included are electronic copies of records created using electronic mail and word processing.

14. Department of Labor, Employment Standards Administration (N1–448–01–4, 78 items, 67 temporary items). Records of the Office of Management, Administration and Planning relating to such matters as management reviews, studies and initiatives, the implementation of plain language, continuity of Government, agency assistance to colleges, tort litigation reporting, the provision of data to the Immigration and Naturalization Service, financial accounting, strategic planning, and program evaluation. Also included are electronic copies of documents created using electronic mail and word processing. Most of the series included in this schedule were previously approved for disposal. This schedule shortens the retention periods for several of these series, including employee conduct investigations, files relating to financial management and chargebacks, and materials prepared in response to congressional inquiries. The disposition instructions for most of the other previously approved series in the schedule are unchanged but are included since the agency wishes all of the Office's records to be covered by a single schedule. Proposed for permanent retention for the first time are recordkeeping copies of biographical data concerning high level employees. Recordkeeping copies of such files as organization charts and reorganization studies, mission statements, records relating to legislation, briefing books, and press releases were previously approved as permanent.

15. National Credit Union Administration, Office of the Chief Information Officer (N1–413–02–2, 57 items, 55 temporary items). Electronic systems relating to credit union supervision, examination, and insurance activities. Included are inputs, outputs, system data, and the related documentation for systems containing information concerning such matters as the current status and history of active and inactive credit unions, member share and loan transactions, the identities of directors and other credit union officials, correspondence tracking within the agency's Office of Corporate Credit Unions, and insurance related services. Proposed for permanent retention are the electronic data and related documentation for one system that pertains to the annual examination of credit unions to evaluate their soundness.

Dated: January 9, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–1606 Filed 1–22–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Community Development Revolving Loan Program for Credit Unions; Application for Funds.

Description: NCUA requests this information form credit unions to assess financial ability to repay the loans and to ensure the funds are used to benefit the institution and community it serves.

Respondents: Community credit unions which request loans from the revolving loan program.

Estimated No. of Respondents/Recordkeepers: 25.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $3,126.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1551 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management

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and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0151.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Leasing—Statistical Documentation Required for a Guarantor of a Residual Value.

Description: Part 714 of NCUA's Rules and Regulations directs federal credit unions to evaluate whether a guarantor of a residual value has the financial resources to meet the guarantee.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 380.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Recordkeeping. On occasion.

Estimated Total Annual Burden Hours: 760.

Estimated Total Annual Cost: $13,300.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1552 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0152.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Management Official Interlocks.

Description: Part 711 of NCUA's Rules and Regulations directs federally insured credit unions that want to share a management official with another financial institution to either apply for approval from the NCUA Board or maintain records to show the eligibility for a small market share exemption.

Respondents: All federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 1.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Recordkeeping. Upon application.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1553 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 25, 2002.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Doug Verner (703) 518–6441, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Doug Verner, (703) 518–6441.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0011.

Form Number: NCUA 9600.

Type of Review: Extension of a currently approved collection.

Title: Application for Insurance of Accounts State-Chartered Credit Unions.

Description: Section 201 of the Federal Credit Union Act (12 U.S.C. 1781) requires state-chartered credit unions desiring federal insurance to submit an application. The requirement also applies to federal credit unions converting to state charters and desiring federal insurance.

Respondents: State chartered credit unions and federal credit unions converting to state charter that desire federal insurance of member accounts.

Estimated No. of Respondents/ Recordkeepers: 34.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Reporting. Upon application for federal insurance.

Estimated Total Annual Burden Hours: 136.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on January 16, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1554 Filed 1–22–02; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement submitted:

1. *The title of the information collection:* NRC Form 450, "General Assignment".

2. *Current OMB approval number:* OMB No. 3150–0114.

3. *How often the collection is required:* Once during the closeout process.

4. *Who is required or asked to report:* Contractors, Grantees, and Cooperators.

5. *The number of annual respondents:* 100.

6. *The number of hours needed annually to complete the requirement or request:* 200 hours (2 hours per response).

7. *Abstract:* During the contract closeout process, the NRC requires the contractor to execute a NRC Form 450, General Assignment. Completion of the form grants the government all rights, titles, and interest to refunds arising out of the contractor performance.

Submit, by March 25, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC homepage site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 16th day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1633 Filed 1–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia; City of Dalton, Georgia; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Issuance of Renewed Facility Operating Licenses; Nos. DPR–57 and NPF–5 for an Additional 20-year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued (1) Renewed Facility Operating License No. DPR–57 (the Unit 1 license) and (2) Renewed Facility Operating License No. NPF–5 (the Unit 2 license), to Southern Nuclear Operating Company, Inc., operator of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensees). The Unit 1 license authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit 1, by the licensees at reactor core power levels not in excess of 2763 megawatts thermal in accordance with the provisions of the Unit 1 license and its Technical Specifications. The Unit 2 license authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit 2, by the licensees at reactor core power levels not in excess of 2763 megawatts thermal in accordance with the provisions of the Unit 2 license and its Technical Specifications.

The Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Plant Hatch), are pressurized water nuclear reactors located near Baxley, in Appling County, Georgia.

The application for the renewed licenses complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed operating licenses and of opportunity for hearing regarding the proposed issuance of these renewed operating licenses was published in the **Federal Register** on April 3, 2000 (65 FR 17543—17544).

For further details with respect to these actions, see (1) the Southern Nuclear Operating Company's License Renewal Application for Plant Hatch, dated February 29, 2000, as supplemented by letters dated May 31, July 26, August 11, August 21, August 29, August 31, October 10, and December 15, 2000, and February 9, 2001; (2) the Commission's Safety Evaluation Reports dated February 7 and October 5, 2001 (NUREG–1803); (3) the licensees' Safety Analysis Report; and (4) the Commission's Final Environmental Impact Statement (NUREG–1437, Supplement 4), dated May 2001. These items are available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Copies of the Renewed Facility Operating License Nos. DPR–57 and NPF–5, may be obtained by writing to U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the Safety Evaluation Report (NUREG–1803) and the Final Environmental Impact Statement (NUREG–1437, Supplement 4) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (telephone number 1–800–553–6847, *(http://www.ntis.gov/ordernow)*, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (telephone number 202–512–1800, *(http://www.access.gpo.gov/sudocs)*. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account, or VISA or MasterCard number and expiration date.

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Dated at Rockville, Maryland, this 15th day of January 2002.

For the Nuclear Regulatory Commission.

William F. Burton,

Project Manager, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1632 Filed 1–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 21, 28, February 4, 11, 18, 25, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 21, 2002

Wednesday, January 23, 2002

9 a.m.—Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.—Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, January 30, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2 p.m.—Discussion of Intergovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

2 p.m.—Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, February 20, 2002

2:55 p.m.—Affirmation Session (Public Meeting) (If needed)

Week of February 25, 2002—Tentative

Friday, March 1, 2002

9:30 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301)–415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 17, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–1711 Filed 1–18–02; 10:26 am]

BILLING CODE 7590–01–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0006).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0006, the Peace Corps Volunteer Reference Form–PC 1532. The purpose of this information collection is to assist in processing applicants for volunteer service in determining suitability of applicants. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Mr. Jeffrey Herrell, Peace Corps, Office of Volunteer and Recruitment Services, 1111 20th Street, NW., Room 6152, Washington, DC 20526. Mr. Herrell can be contacted by telephone at 202–692–1869 or 800–424–8580 ext 1869. Comments on the form should also be addressed to the attention of Mr. Herrell and should be received on or before March 25, 2002.

Information Collection Abstract

Title: Peace Corps Volunteer Reference Form PC 1532.

Need for and Use of This Information: The Peace Corps Volunteer Reference Form is used to gather information about individuals who have submitted applications, are basically qualified, and are nominees for volunteer service. The form is an integral part of the screening and selection process conducted by the Office of Volunteer Recruitment and Selection. Such information as past criminal records, severe mental problems, poor interpersonal relationships or emotional immaturity is used by the agency in their consideration of applicants. The purpose of this information collection is to assist in processing applicants for volunteer service in determining suitability of applicants. There is no other means of obtaining the required data. This program also fulfills the first goal of the Peace Corps as required by Congressional legislation.

Respondents: Returned Peace Corps Volunteers.

Respondent's Obligation to Reply: Individuals who voluntarily agree to serve as a references for Peace Corps applicants.

Burden on the Public:

a. *Annual reporting burden:* 13,692 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 30 minutes.

d. *Frequency of response:* One time.

e. *Estimated number of likely respondents:* 27,384.

f. *Estimated cost to respondents:* $8.78.

At this time, responses will be returned by mail.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1587 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Career Information Consultants Waiver form, OMB Number 0420–0531. This form is completed voluntarily by returned Peace Corps Volunteers and professionals in specific career fields. This information will be used by Returned Volunteer Services to assist returned Peace Corps Volunteers with re-entry transition issues. participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Returned Volunteer Services' outreach program. This is a renewal of an active OMB Control number. No comments were received in response to the Peace Corps' earlier **Federal Register** Notice (May 21, 2001, Volume 66, Number 98, p. 28005 for 60 days).

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Ms. Elvira May, Office of Returned Volunteer Services, Peace Corps, 111 20th Street, NW., Room 2134, Washington, DC 20526. Ms. May can be contacted by telephone at 202–692–1445 or 800–424–8580 ext 1445 or email at *emay@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Ms. May.

FOR FURTHER INFORMATION CONTACT: Ms. Elvira May, Office of Returned Volunteer Services, Peace Corps, 1111 20th Street, NW., Room 2134, Washington, DC 20526. Ms. May can be contacted by telephone at 202–692–1445 or 800–424–8580 ext 1445 or email at *emay@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Ms. May.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0531.

Title: Peace Corps Career Information Consultants Waiver Form.

Type of Review: Renewal, without change, of a previously approved collection that will expire December 31, 2001.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by returned Peace Corps Volunteers and professionals in specific career fields. This information will be used by Returned Volunteer Services to assist returned Peace Corps Volunteers with re-entry transition issues. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Returned Volunteer Services' outreach program.

This notice is issued in Washington, DC on November 9, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1545 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Agency Information collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Volunteer Application form, OMB Number 0420–0005, is required under the Peace Corps Act for Volunteer recruitment purposes. This is a renewal of an active OMB Control Number. No comments were received in response to the Peace Corps' earlier **Federal Register** Notice (August 20, 2001, Volume 66, Number 161, p. 43598 for 60 days). The Peace Corps is not proposing any changes to the Peace Corps Volunteer Application form.

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580 ext. 2205 or e-mail at *ddunevant@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580 ext. 2205 or e-mail at *ddunevant@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0005.

Title: Peace Corps Volunteer Application form.

Type of Review: Renewal, without change, of a previously approved collection that will expire December 31, 2001.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by potential Peace Corps Volunteers in order to identify prospective applicants and process the applicants for Volunteer service. This information, which is gather by paper copy and electronic on-line version, is used to determine qualifications and potential for placement of applicants into Volunteer service, in fulfillment of the first goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Volunteer process.

This notice is issued in Washington, DC on November 9, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1546 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB Review, comment request.

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SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Volunteer Information Card, OMB Number 0420–0007, is required under the Peace Corps Act for Volunteer recruitment purposes. This is a renewal of an active OMB Control Number. No comments were received in response to the Peace Corps' earlier Federal Register Notice (August 14, 2001, Volume 66, Number 157, p. 42696 for 60 days). The Peace Corps is not proposing any changes to the Peace Corps Volunteer Information Card.

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580. ext 2205 or email at *ddunevant@peacecorps.gov*. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Ms. DeDe Dunevant, Office of Communications, Peace Corps, 1111 20th Street, NW., Room 8407, Washington, DC 20526. Ms. Dunevant can be contacted by telephone at 202–692–2205 or 800–424–8580. ext 2205 or email at *ddunevant@peacecorps.gov*. Email comments must be made in text and not in attachments.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0007.

Title: Peace Corps Volunteer Information Card.

Type of Review: Renewal, without change, of a previously approved collection that will expire December 31, 2001.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by potential Peace Corps Volunteers in order to identify prospective applicants and process the applicants for Volunteer service. This information, which is gathered by paper copy in the form of response devices such as postage paid business reply cards, bookmarks, and reply devices that are used in directing potential applicants to the electronic on-line version of the Peace Corps application, is used to determine initial qualifications of potential for applicants. The Peace Corps needs this information in order to identify prospective applicants for Volunteer service. This information is used to provide information to interested individuals generally and in accordance with the fulfillment of the first goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Volunteer process.

This notice is issued in Washington, DC on November 9, 2001.

July Van Rest,

Associate Director for Management.

[FR Doc. 02–1547 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–1–M

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of submission for OMB Review, comment request.

SUMMARY: The Peace Corps has submitted an information collection to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The Peace Corps Fellows/USA Program Alumni Questionnaire form, OMB Number 0420–0525, to be used by the Peace Corps Fellows/USA Program. The information provided by the respondents is necessary for evaluating the quality of individual programs, for determining whether graduates of education programs have remained in teaching, health and/or community/economic development careers and for seeking future funding. Programmatic information will be disseminated to individual programs and portions of the data collected will be incorporated into grant proposals and reports. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Fellows/USA Program. This is a reinstatement of an OMB Control Number, with change, of a previously approved collection for which approval has expired. No comments were received in response to the Peace Corps' earlier Federal Register Notice (June 13, 2001, Volume 66, Number 114, p. 31950 for 60 days).

DATES: Submit comments on or before December 16, 2001.

ADDRESSES: Comments should be addressed to Dr. Cathryn Ballou, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2101, Washington, DC 20526.

Dr. Ballou can be contacted by telephone at 202–692–1432 or 800–424–8580 ext 1432 or emailed at *cballou@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Dr. Ballou.

FOR FURTHER INFORMATION CONTACT: Dr. Cathryn Ballou, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2101, Washington, DC 20526. Dr. Ballou can be contacted by telephone at 202–692–1432 or 800–424–8580 ext 1432 or emailed at *cballou@peacecorps.gov*. Email comments must be made in text and not in attachments. Comments on the form should also be addressed to the attention of Dr. Ballou.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0420–0525.

Title: Peace Corps Fellows/USA Program Alumni Questionnaire Form.

Type of Review: This is a reinstatement of an OMB Control Number, with change, of a previously approved collection for which approval has expired.

Respondents: Public.

Number of Respondents: None.

Need and Uses: This form is completed voluntarily by returned Peace Corps Volunteers who have completed graduate study as part of the Peace Corps Fellows/USA Program. The information provided by the respondents is necessary for evaluating the quality of individual programs, for determining whether graduates of education programs have remained in teaching, health and/or community/economic development careers and for seeking future funding. Programmatic information will be disseminated to individual programs and portions of the data collected will be incorporated into grant proposals and reports. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Fellows/USA Program.

This notice is issued in Washington, DC on November 9, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–1548 Filed 1–22–02; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25365; File No. 812–12540]

Massachusetts Mutual Life Insurance Company, et al.

January 15, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") and an order of exemption pursuant to Section 17(b) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the substitution of Class II shares of MML Equity Index Fund ("MML Fund") for shares of Dreyfus Life and Annuity Index Fund d/b/a Dreyfus Stock Index Fund ("Dreyfus Fund") and an order to permit in-kind transactions in connection with the substitution.

APPLICANTS: Massachusetts Mutual Life Insurance Company ("MassMutual") and Massachusetts Mutual Variable Life Separate Account I (the "Separate Account").

FILING DATE: The application was filed on June 4, 2001, and amended and restated on January 11, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 7, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants c/o Jennifer B. Sheehan, Esq., Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, Massachusetts 01111–0001.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or William Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management, (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. MassMutual is a mutual life insurance company established under the laws of Massachusetts on May 14, 1851. MassMutual's home office is located in Springfield, Massachusetts. MassMutual is currently licensed to transact life, accident and health insurance business in all states, the District of Columbia, Puerto Rico, and certain provinces of Canada.

2. The Separate Account was established as a separate account under the laws of Massachusetts on July 13, 1988, pursuant to a resolution of the board of directors of MassMutual. The Separate Account is registered with the Commission as a unit investment trust under the Act (File No. 811–08075). The Separate Account is divided into various segments that fund certain variable life insurance policies issued by MassMutual. The segment affected by the application, the Large Case Variable Plus Segment, is divided into eight divisions. Only one of these divisions, the Dreyfus Index Division, is affected by the application. The Dreyfus Index Division invests in the Dreyfus Fund. The Dreyfus Fund is an underlying investment option for Large Case Variable Life Plus, which is the variable life insurance policy funded by the Large Case Variable Plus Segment of the Separate Account (the "Policy").

3. The Dreyfus Fund is a no-load, open-end management investment company. The Dreyfus Corporation ("Dreyfus") is the investment adviser to the Dreyfus Fund. Dreyfus has engaged its affiliate, Mellon Equity Associates ("Mellon"), to serve as the Dreyfus Fund's index manager. The investment objective of the Dreyfus Fund is to seek to match the total return of the Standard & Poor's 500 Composite Stock Price Index ("S&P 500"). The Dreyfus Fund generally invests in all 500 stocks in the S&P 500 in proportion to their weighting in the S&P 500.

4. The total annual fund operating expenses of the Dreyfus Fund for 2000 expressed as a percentage of average net assets were 0.26% with management fees at 0.25% and other expenses at 0.01%. The average annual total return of the Dreyfus Fund was −9.28% for the one-year period ended December 31, 2000, 11.94% for the three-year period ended December 31, 2000, 17.98% for the five-year period ended December 31, 2000, 16.97% for the ten-year period ended December 31, 2000, and 14.79% for the period from its inception on September 29, 1989 to December 31, 2000. As of March 31, 2001, the Dreyfus Fund had approximately $55,773,583.55 in assets.

5. The MML Fund, a separate series of MML Series Investment Fund, is the proposed substitute portfolio for the Dreyfus Fund. MML Series Investment Fund is a no-load open-end management investment company. The investment objective of the MML Fund is to provide investment results that correspond to the price and yield performance of publicly traded common stocks in the aggregate, as represented by the S&P 500. MassMutual serves as the investment adviser to MML Series Investment Fund pursuant to various investment management agreements with respect to each of its series. Deutsche Asset Management, Inc. ("Deutsche") serves as the sub-adviser to the MML Fund.

6. The total annual fund operating expenses of the MML Fund's Class II shares for 2000 expressed as a percentage of average net assets were 0.29% annualized with management fees at 0.10% and other expenses at 0.19%.[1] The average annual total return of the MML Fund's Class II shares was −9.43% for the one-year period ended December 31, 2000, 11.92% for the three-year period ended December 31, 2000, and 15.92% for the period from its inception on May 1, 1997 to December 31, 2000. Because Class II shares commenced operation on May 1, 2000, performance for those shares is based on the performance of Class I shares adjusted to reflect the lower expenses of Class II shares. As of March 31, 2001, the MML Fund had approximately $63,045,950.21 in assets.

7. Applicants state that both the Dreyfus Fund and the MML Fund have substantially similar investment objectives. Each seeks to achieve results that track, as closely as possible (before deduction for expenses), the returns of the S&P 500. In seeking to achieve its investment objective, each fund tries to minimize its deviation from the S&P 500 and to reduce its "tracking error." A correlation to the S&P 500 of 1.00% would mean perfect correlation. The MML Fund seeks a correlation of at least .98%, while the Dreyfus Fund seeks a correlation of at least .95%. Under Mellon's management, the Dreyfus Fund generally holds all the stocks in the S&P 500 in proportion to their index weightings. In contrast, Deutsche uses a method known as "optimization," which is a statistical sampling technique, to manage the portfolio of the MML Fund. Under an "optimization" strategy, the MML Fund may not hold

[1] MassMutual has agreed to bear the expenses (other than management and administrative fees, interest, taxes, brokerage commissions, and extraordinary expenses) of the MML Fund's Class II shares in excess of 0.19% through April 30, 2002. The expenses shown include this waiver/reimbursement. Without the waiver/reimbursement, the MML Fund's other expenses would have been 0.24% and its total annual operating expenses would have been 0.34%.

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all the stocks in the S&P 500. Instead, the MML Fund first buys stocks that make up the larger portions of the S&P 500's value in roughly the same proportion as the S&P 500. In selecting the smaller company stocks, however, Deutsche tries to match the industry and risk characteristics of all the smaller companies in the S&P 500 without buying all the stocks. The MML Fund will invest at least 80% of its assets in securities of companies in the S&P 500. The MML Fund will also use derivatives, such as index futures and options, to help the MML Fund approach the returns of a fully-invested portfolio. This approach attempts to maximize the MML Fund's liquidity and returns while minimizing costs.

8. Applicants state that the proposed substitution is part of MassMutual's plan to consolidate all index funds under its management with one advisory firm with index management expertise, namely Deutsche. MassMutual believes that by placing all index fund assets with one manager, MassMutual can enhance its ability to negotiate lower overall investment sub-advisory fees, which would ultimately benefit policyowners.

9. On November 9, 2001, the Commission granted MassMutual exemptive relief from, among other provisions, Section 15(a) of the Act (the "Sub-Advisers Order"). The Sub-Advisers Order permits MassMutual, as the investment adviser, to employ or replace sub-advisers without submitting such action for the approval of shareholders of affected series. Shareholders of the MML Fund previously approved the multi-manager arrangement at the April 3, 2000 shareholders meeting.

10. Applicants propose to exercise their rights to substitute the MML Fund for the Dreyfus Fund by substituting Class II shares of the MML Fund for shares of the Dreyfus Fund. MassMutual will schedule the substitution to occur as soon as practicable following the issuance by the Commission of the order of approval requested in this application.

11. The substitution will take place at the relative net asset values determined on the date of the substitution in accordance with section 22 of the Act and Rule 22c–1 thereunder. Therefore, there will be no financial impact to any policyowner as a result of the substitution. The substitution will be effected by having the Dreyfus Index Division redeem its shares of the Dreyfus Fund at the net asset value calculated on the date of the substitution. MassMutual would use the proceeds of its redemption of shares of the Dreyfus Fund to purchase Class II shares of the MML Fund.

12. In the alternative, if Dreyfus were to determine that a cash redemption by MassMutual from the Dreyfus Fund would adversely affect the remaining Dreyfus Fund shareholders, Dreyfus may require that MassMutual redeem its interest "in-kind" by taking its proportionate share of each of the securities owned by the Dreyfus Fund. In that case, the substitution will be effected by MassMutual contributing to the MML Fund all the securities it receives from the Dreyfus Fund in exchange for an amount of Class II shares equal to the fair market value of the securities contributed. The transaction will be effected in conformity with Rule 17a–7 under the Act to the extent possible.

13. The substitution requested in this application will be described in a notice that will be mailed to policyowners along with the current prospectus for the MML Fund. The notice will describe the reasons for engaging in the substitution. In addition, the notice will inform affected policyowners that prior to the substitution and for 30 days after the substitution they will have the opportunity to reallocate their account value currently in the Dreyfus Index Division to the remaining divisions or that they may remain invested in the Dreyfus Index Division until the substitution, at which time the division's underlying shares will be substituted for shares of the MML Fund.

14. Any transfers out of the Dreyfus Fund from the date of notice until the substitution occurs and any transfers by affected policyowners out of the MML Fund from the date of substitution through the 30 day period following the substitution will not be assessed a transfer fee and will not be counted as a free transfer. After the order of approval is issued by the Commission, a second notice will be provided to all affected policyowners advising them of the pending substitution and of their ability to transfer, free of charge, to any other division or to remain invested in the Dreyfus Index Division until the substitution. Within five days after the substitution, MassMutual will send affected policyowners written confirmation that the substitution has occurred.

15. MassMutual will pay all expenses and transaction costs of the substitution, including brokerage expenses, if any; none will be borne by policyowners. Affected policyowners will not incur any fees or charges in connection with the substitution, nor will their rights or the obligations of MassMutual under the Policy be altered in any way. The substitution will not cause fees and charges under the Policy currently being paid by policyowners to be greater after the substitution than before the substitution. The substitution will have no adverse tax consequences to policyowners and will in no way alter the tax benefits to policyowners.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either the deduction of a sales load from premium payments, a sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a policy owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares of another issuer, unless the Commission approves that substitution.

3. Applicants believe that their request satisfies the standards for relief of Section 26(c), as set forth below, because:

- The substitution involves investment options with substantially similar investment objectives;
- After the substitution, affected policyowners will be invested in a fund whose actual performance has been substantially similar on a historical basis to that of the Dreyfus Fund;
- After the substitution, affected policyowners will be invested in a fund whose expenses are similar to those of the Dreyfus Fund; and
- After the substitution, affected policyowners will benefit from increased efficiency and enhanced management and oversight capabilities due to the consolidation of index management under one index manager for MassMutual and its affiliates, which

MassMutual believes will ultimately benefit policyowners by allowing MassMutual to negotiate overall lower fees.

4. The purposes, terms and conditions of the substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants believe that the MML Fund will better serve policyowner interests because its performance returns and its expenses have been, or are estimated to be, similar to those of the Dreyfus Fund and because maintaining a relationship with a single index fund manager will increase efficiency and enhance management. In addition, MassMutual believes that Deutsche, the newly appointed sub-adviser for the MML Fund, by using the "optimization" method, has a better ability to achieve closer correlation to the S&P 500 than Mellon, the Dreyfus Fund's manager, because optimization attempts to maximize liquidity and returns while minimizing costs. Although the MML Fund currently has a slightly higher expense ratio than the Dreyfus Fund, the economies of scale that can be achieved as assets are consolidated with one manager may tend to reduce the expense ratio of the MML Fund. The anticipated lower expenses and the prior performance record of MML Fund's new investment sub-adviser reinforce the Applicants' belief that the MML Fund will better serve policyowner interests. Applicants assert that the Commission has routinely approved substitutions of this type. Moreover, MassMutual has reserved the right of substitution in the Policy and disclosed this reserved right in the prospectus for the Policy.

5. MassMutual believes that a multi-manager approach for its fund offerings will serve shareholder and policyowner demands for investment variety, while preserving MassMutual's role to perform due diligence and oversight. The Sub-Advisers Order would allow MassMutual the flexibility to retain and/or change sub-advisers without incurring the significant time and costs necessary to obtain shareholder approval. The substitution is another step in establishing an overall structure that will increase MassMutual's ability to affect administration, management and oversight of the investment options underlying its products, including its variable insurance products. The purpose of the substitution is to provide policyowners with improved investment options through enhanced investment performance. The multi-manager structure will give MassMutual the means to more directly monitor the overall manner in which investment options, including the MML Fund, available through MassMutual products are managed and administered. MassMutual will have greater flexibility to react to poor performance or mismanagement by a service provider, including sub-advisers, than is currently available.

6. The substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) The MML Fund has an investment objective substantially similar to that of the Dreyfus Fund and permits policyowners continuity of their investment objectives and expectations.

(b) The costs of the substitution, including any brokerage costs, will be borne by MassMutual and will not be borne by policyowners. No charges will be assessed to effect the substitution.

(c) The substitution will be at the net asset value of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any policyowner's accumulation value.

(d) The policyowners will be given notice prior to the substitution and will have an opportunity to reallocate value among other available divisions without imposing any transfer charge or limitation and without counting the transfer as one of the free transfers permitted during a policy year.

(e) Within five days after the substitution, MassMutual will send to affected policyowners written confirmation that the substitution has occurred.

(f) MassMutual has agreed to bear that portion of the annual fund operating expenses of the MML Fund's Class II shares in excess of 0.26% on an annualized basis for any fiscal quarter during the two-year period beginning on the date of the substitution. In addition, for those policyowners who are policyowners on the date of the substitution, MassMutual will not increase Separate Account or Policy expenses for a two-year period beginning on the date of the substitution.

(g) The substitution will in no way alter the insurance benefits to policyowners or the contractual obligations of MassMutual.

(h) The substitution will have no adverse tax consequences to policyowners and will in no way alter the tax benefits to policyowners.

7. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

8. The substitution may involve a transfer of portfolio securities by the Dreyfus Fund to the Separate Account. Immediately thereafter, the Separate Account would purchase shares of the MML Fund with the portfolio securities received from the Dreyfus Fund. As the Separate Account and the MML Fund could be viewed as affiliated persons of one another by virtue of being under common control as contemplated by section 2(a)(3)(C) of the Act, it is conceivable that this aspect of the substitution could be viewed as being prohibited by Section17(a). In addition, "affiliated person of another person" is defined in Section 2(a)(3)(E) as, "if such other person is an investment company, any investment adviser thereof" and in section 2(a)(3)(F) as, "if such other person is an unincorporated investment company not having a board of directors, the depositor thereof." Therefore, as the investment adviser to the MML Fund and the depositor of the Separate Account, MassMutual is an affiliate of each thereby rendering the MML Fund and the Separate Account second tier affiliates of each other.

9. Accordingly, Applicants are, to the extent necessary, also seeking relief from Section 17(a). Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

10. Applicants represent that the terms of the proposed transaction as described in this application are (a) reasonable and fair, including the consideration to be paid and received, and do not involve overreaching, (b) consistent with the policies of the affected registered investment

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companies, and (c) consistent with the general purposes of the Act.

11. Applicants submit that the described in-kind redemption transaction is reasonable and fair. It is expected that policyowners will benefit from an in-kind redemption as proposed by virtue of the fact that the MML Fund will be able to acquire portfolio securities that are consistent with its objectives and policies without incurring (or lessening) any brokerage costs and, at the same time, the Dreyfus Fund will also save brokerage costs.

12. The transaction pursuant to which the substitution will be effected, including the possible redemption of shares of the Dreyfus Fund on an in-kind basis and the corresponding purchase of shares of the MML Fund, will be effected in conformity with section 22(c) of the Act and Rule 22c–1 thereunder. Policyowners will not incur any fees or charges as a result of the transfer of value pursuant to the substitution. Policyowners' rights and privileges and Applicants' obligations under the Policy thereunder will not be affected by the substitution. Expenses incurred in connection with the substitution, including legal, accounting, brokerage, and other expenses, will not be borne by policyowners. Policy values will remain unchanged and fully invested following the consummation of the substitution. Accordingly, policyowner interests after the substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the substitution. In each case, therefore, the consideration to be received and paid is reasonable and fair.

13. The investment objectives and policies of the MML Fund are substantially similar to the investment objectives and policies of the Dreyfus Fund. In this regard, the substitution is consistent with the findings required by section 17(b) of the Act.

14. The substitution is consistent with the general purposes of the Act as enunciated in the Findings and Declaration of Policy in section 1 of the Act. The proposed transaction does not present any of the issues or abuses that the Act is designed to prevent. Policyowners will be fully informed as to the terms of the substitution, as described above, and will have an opportunity to reallocate investments prior to and following the substitution.

15. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the substitution and an order of exemption pursuant to section 17(b) of the Act in connection with aspects of the substitution that may be deemed to be prohibited by Section 17(a), as described above. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted. Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application subject to certain conditions. Applicants represent that the proposed in-kind redemption transactions meet all of the requirements of section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

Applicants' Conclusion

Applicants assert that, for the reasons summarized above, the requested orders approving the substitution and exempting the in-kind transaction should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1572 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25386; 812–12642]

Wells Fargo Funds Trust, et al.; Notice of Application

January 15, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: The requested order would permit Wells Fargo Funds Trust ("Funds Trust") not to reconstitute its board of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Wells Fargo Funds Management, LLC ("Funds Management") to rely upon the safe harbor provisions of section 15(f).

APPLICANTS: Funds Trust and Funds Management.

FILING DATES: The application was filed on October 1, 2001 and amended on January 8, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 525 Market Street, 12th Floor, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Funds Trust is an open-end management investment company registered under the Act and consists of sixty-seven series ("Funds Trust Series"). Funds Management, a wholly owned subsidiary of Wells Fargo & Company ("Wells Fargo"), currently serves as investment adviser to sixty-two of the Funds Trust Series, and will serve as investment adviser to a newly created series (the "Successor Fund"). Funds Management is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The SIFE Trust Fund ("SIFE Fund") is an open-end management investment company registered under the Act. SIFE, a privately held company, serves as investment adviser to SIFE Fund and is registered under the Advisers Act.

2. On August 24, 2001, Wells Fargo and SIFE entered into an agreement providing for the acquisition of the outstanding shares of SIFE by Wells Fargo. The transaction is anticipated to occur on February 22, 2002, which will cause SIFE to become an indirect wholly-owned subsidiary of Wells Fargo ("Acquisition"). Following the Acquisition, the Successor Fund will acquire the assets of SIFE Fund ("Reorganization"). Applicants state that the Acquisition will result in a change in control of SIFE within the meaning of section 2(a)(9) of the Act.

3. On August 7, 2001 and August 29, 2001, the respective boards of trustees (each a "Board") of Funds Trust and SIFE Fund unanimously approved the Reorganization. The Reorganization will require approval by a majority of the outstanding shares of SIFE Fund and SIFE Fund has scheduled a special meeting of the SIFE Fund's shareholders for January 31, 2002. Proxy materials for the special meeting were mailed to shareholders on or about November 15, 2001.

4. In connection with the Acquisition and the Reorganization, applicants have determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, following consummation of the Reorganization, more than twenty-five percent of the Board of Funds Trust would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Funds Trust would have to reconstitute its Board to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by, a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of December 31, 2001, Funds Trust had approximately $70 billion and SIFE Fund had approximately $700 million in aggregate net assets, respectively, making SIFE Fund's assets approximately 1% of the aggregate net assets of Funds Trust.

5. Applicants state that three of the eight trustees who serve on the Board of Funds Trust are "interested persons," within the meaning of section 2(a)(19) of the Act, of Funds Management. Applicants state that none of the trustees who serves on the Board of Funds Trust is an interested person of the SIFE Fund or SIFE.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Funds Trust would have to alter the composition of its Board, either by asking experienced trustees to resign or by adding new trustees. Applicants further state that adding new trustees could require a shareholder vote not only of shareholders of the Successor Fund, but also the shareholders of the sixty-seven Funds Trust Series not otherwise affected by the Reorganization. Applicants state that either of these solutions would be unfair to Funds Trust shareholders in view of the amount of the assets of SIFE Fund being acquired relative to the amount of assets of Funds Trust. Applicants state that adequate safeguards will be in place to protect the interest of the former shareholders of SIFE Fund following the consummation of the Reorganization. Applicants also assert that adding a substantial number of additional non-interested trustees to the Board of Funds Trust could entail a lengthy process, which could delay and increase the cost of the Reorganization, and make the Board unwieldy.

7. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1573 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; New Energy Corporation

January 18, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current, adequate and accurate information concerning the securities of New Energy Corporation of San Diego, California. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the value of certain power generation contracts, the existence and size of certain purchase orders for solar chips, and the status of New Energy's strategic partner's relationship with the Los Angeles Department of Water and Power.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 18, 2002, through 11:59 p.m. EST, on February 1, 2002.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–1734 Filed 1–18–02; 1:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45257; File No. SR–NASD–2001–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Affirmative Determination Requirements for Short Sale Orders Received by Members From Non-Member Broker/Dealers

January 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulatiion, Inc. ("NASDR"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is proposing to amend Rule 3370(b)(2)(A) and the corresponding recordkeeping requirements under Rule 3370(b)(4)(B) (the "Affirmative Determination Requirements") of the NASD to require that, before accepting a short sale order from a broker/dealers that is not an NASD member ("non-member broker/dealer"), a member must make an affirmative determination that the member will receive delivery of the security from the non-member broker/dealer or that the member can borrow the security on behalf of the non-member broker/dealer for delivery by settlement date.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Rule 3370. Prompt Receipt and Delivery of Securities

* * * * *

(b)(2) "Short Sales"

(A) Customer *non-member broker/dealer short sales*

No member or person associated with a member shall accept a "short" sale order for any customer *or non-member broker/dealer* in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or *non-member broker/dealer* or that the member can borrow the security on behalf of the customer or non-member *broker/dealer* for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities, *and proprietary orders of a non-member broker/dealer that meet one of the exceptions in subparagraph (B) below.*

* * * * *

(3) No change

(4) "Affirmative Determinations"

(A) No change

(B) To satisfy the requirement for an "affirmative determination" contained in paragraph (b)(2) above for customer, *non-member broker/dealer,* and proprietary short sales, the member or person associated with a member must keep a written record [which] *that* includes:

(i) if a customer or *non-member broker/dealer* assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's or *non-member broker/dealer's* ability to deliver them to the member within three (3) business days; or

(ii) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 3370(b)(2)(A) provides that no member or person associated with a member shall accept a short sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. For purposes of Rule 3370(b)(2), the term "customer" is defined in NASD Rule 0120(g) and excludes a broker or dealer.[3]

As a result, the requirements of Rule 3370(b)(2)(A) generally would not apply directly to orders received by a member from another broker/dealer (the "originating broker/dealer"). This does not present regulatory concerns where the originating broker/dealer is also an NASD member, because, as a member, the originating broker/dealer would have an independent obligation to comply with the Affirmative Determination Requirements with respect to the order. Non-member broker/dealers, however, are not subject to NASD rules and, therefore, are not independently required to comply with the NASD's Affirmative Determination Requirements. Thus the Affirmative Determination Requirements generally do not apply to short sale orders that originate with a non-member broker/dealer and are subsequently routed to an NASD member.

NASDR believes that the failure to have uniform application of the Affirmative Determination Requirements affects the integrity of the marketplace by possibly resulting in increased fails to deliver and also creates regulatory disparity by allowing certain firms to effect short sales outside the purview of the NASD's Affirmative Determination Requirements.

To address these concerns, the proposed rule change would amend Rule 3370(b)(2)(A) to require that no member or person associated with a member shall accept a short sale order for any customer, or any non-member broker/dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker/dealer, or that the member can borrow the security on behalf of the customer or non-member broker/dealer for delivery by settlement date. In such instances, members also would be required to comply wit the corresponding recordkeeping requirements under Rule 3370(b)(4)(B).

While NASD members generally are required to make affirmative determinations for both customer and proprietary orders, there are limited exceptions for proprietary orders that are bona fide market making, bona fide fully hedged or bona fide fully arbitraged transactions.[4] Under the proposed rule change, if a member can establish and document that a proprietary order it has received from a non-member broker/dealer meets one of these exceptions, it would be in compliance with the proposed amendments to the Affirmative Determination Requirements.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Rule 0120(g) states that the term "customer" shall not include a broker or dealer.
[4] Rule 3370(b)(2)(B).

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASDR believes that applying Affirmative Determination Requirements to short sale orders of non-member brokers/dealers will ensure the integrity of the marketplace by minimizing possible fails to deliver and eliminating regulatory disparities created when short sale orders are not conducted in compliance with the Affirmative Determination Requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASDR has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–85 and should be submitted by February 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1575 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45286; File No. SR–NASD–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through April 15, 2002, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110—2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on January 14, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and Small Cap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] 17 CFR 240.19b–4(f)(6)(iii).
[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

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in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on January 14, 2002. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until April 15, 2002. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[8] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[11] and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 14, 2002, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies or the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–07 and should be submitted by February 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1621 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45278; File No. SR–NASD–2001–90]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc.; Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility

January 14, 2002.

On December 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission"), a proposed rule change, pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] relating to The Nasdaq Stock Market's proposed separation from the NASD and the establishment of the NASD Alternative Display Facility. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on January 3, 2002.[3] The comment period expires January 21, 2002. The Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.[4] Accordingly, the comment period shall be extending until January 24, 2002.[5]

Interested persons are invited to submit written data, views, and

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[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(b)(6).

[11] *Id.*

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45156 (December 14, 2001), 67 FR 388.

[4] 15 U.S.C. 78s(b)(2).

[5] The Commission orginially had intended to provide for the full 21–day comment period. Due to delays in publication, however, the comment period was inadvertently shortened.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–90 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1622 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45284; File No. SR–Phlx–2002–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Extend a PACE Automatic Price Improvement Pilot Program

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal under section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] price improvement program ("pilot"). The pilot, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature based on decimal quoting, including a percentage of the spread between the bid and the offer. The pilot has been in effect since January 30, 2001.[6] The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[7] in general, and in particular, with Section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

[5] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

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proposal is both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–01, and should be submitted by February 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1574 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Rate for Attorney Fee Assessment Beginning in 2002

AGENCY: Social Security Administration (SSA).

ACTION: Withdrawal of notice.

SUMMARY: The Social Security Administration is withdrawing the **Federal Register** notice of January 3, 2002 at 67 FR 381 that announced the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d).

This **Federal Register** notice is being withdrawn because the signature line is incorrect. The Social Security Administration published a revised notice that appears in this issue of the **Federal Register**.

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Rate for Attorney Fee Assessment Beginning in 2002

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Social Security Administration is announcing that the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d), is 6.3 percent for 2002.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email: *John.Watson@ssa.gov*.

SUPPLEMENTARY INFORMATION: Section 406 of Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). The legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under either section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. For 2001, the Commissioner of Social Security determined that the assessment rate under section 206(d) of the Act would be 6.3 percent. (See 66 FR 5521, January 19, 2001).

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2002. This assessment rate was based on information compiled by a private contractor, KPMG Consultants, who where tasked by the Social Security Administration to determine the costs we incur to determine and certify fees to attorneys. We will continue to review our costs on a yearly basis.

Dated: January 17, 2002.

Dale W. Sopper,

Acting Deputy Commissioner for Finance, Assessment and Management.

[FR Doc. 02–1724 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–02–U

DEPARTMENT OF STATE

[Public Notice: 3891]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection: Form DS–3053, Statement of Consent: Issuance of a Passport to a Minor Under Age 14 (OMB Control #1405–0129)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, without change, of previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement of Consent: Issuance of a Passport to a Minor Under Age 14.

Frequency: On Occasion.

Form Number: DS–3053.

Respondents: Individuals or Households.

Estimated Number of Respondents: 1.3 million.

Average Hours Per Response: 1/12 hr. (5 minutes).

Total Estimated Burden: 108,300 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–663–2460.

Dated: December 19, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 02–1667 Filed 1–22–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3892]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; Form DS–82, Application for Passport by Mail (formerly DSP–82) OMB #1405–0020.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Application for Passport by Mail.

Frequency: On occasion.

Form Number: DS–82 (formerly DSP–82).

Respondents: Individuals or Households.

Estimated Number of Respondents: 1.5 million.

Average Hours Per Response: ¼ hr. (15 minutes).

Total Estimated Burden: 375,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC. 20522, and at 202–663–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: December 19, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–1668 Filed 1–22–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 18, 2001, pages 37514–37515.

DATES: Comments must be submitted on or before February 22, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airport Security, Part 107.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0656.

Forms(s): NA.

Affected Public: An estimated total of 458 airport and aircraft operators.

Abstract: Provides for the safety and security and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of deadly or dangerous weapons, explosives, or incendiaries onto an aircraft.

Estimated Annual Burden Hours: An estimated 512,426 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 16, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1672 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office

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of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2001, page 48899.

DATES: Comments must be submitted on or before February 22, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration

Title: Airport Noise Compatibility Planning—14 CFR Part 150.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0517.

Forms(s): NA.

Affected Public: An estimated 16 airport operators who voluntarily submit exposure maps and noise compatibility programs to the FAA for review.

Abstract: The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval. FAA approval makes airport operators' noise compatibility programs eligible for discretionary grant funds set aside under the FAA Airport Improvement Program for that purpose.

Estimated Annual Burden Hours: An estimated 50,400 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 15, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1673 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on February 15, 2002, 8:30 a.m.

ADDRESSES: The meeting will be held at the Rosen Centre Hotel, Salon 22, Orlando, FL, telephone (407) 996–9840.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 2–463; 5 U.S.C. App. II).

The agenda will include:

a. Discussion and approval of the Performance and Handling Qualities Requirements NPRM.

b. Working Group Status Reports:

- Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure
- Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure
- Critical Parts

Members of the public may obtain copies of the Performance and Handling Qualities NPRM by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on 16 January 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–1674 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held February 12–14, 2002 starting at 9 a.m.

ADDRESSES: The meeting will be held at Honeywell, Inc., Business, Regional & General Aviation Systems, Mohave Conference Room, 5353 West Bell Road, Glendale, Arizona, 85308.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Honeywell Contact: Mike Kroeger; telephone (602) 436–4554; e-mail *mike.kroeger@honeywell.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Commission Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- February 12–14:
- Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting).
- Discuss/Review Revision Cycle for Document.
- Status Reports on Revisions to Sections 22 and 19.
- Status Report for Sections 6, 9, 10, 11, 12, 13, and 14.
- Electronic Form for Submitting Comments and Revised Sections.

- Determine Content and Schedule for DO–160E.
- Closing Plenary Session (New/Unfinished Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 15, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–1670 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–07–C–00–COS) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Colorado Springs Airport, Submitted by the City of Colorado Springs, Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Colorado Springs Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary W. Green, A.A.E., Director of Aviation, at the following address: 7770 Drennan Road, Colorado Springs, Colorado 80916.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Colorado Springs Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–07–C–00–COS to impose and use PFC revenue at Colorado Springs Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 14, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Colorado Springs, Colorado Springs, Colorado, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 6, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2003.

Proposed charge expiration date: May 1, 2006.

Total requested for use approval: $7,566,700.

Brief description of proposed project: Construct Taxiway "C" from Taxiway "D" to Runway 12/30, Construct Vehicle Service Road, Construct Maintenance Equipment Storage Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Colorado Springs Airport.

Issued in Renton, Washington on January 14, 2002.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–1671 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Alaska Railroad

[Docket Number FRA–2001–11215]

The Alaska Railroad operates passenger service during the summer months, approximately mid-May until late September, between the cities of Talkeetna (mile post 226.7) and Hurricane (mile post 281.4), Alaska. This passenger service is provided on a "Flag Stop" basis for residence and visitors to this wilderness stretch of the railroad, for which there is no road access. The service is normally operated with a single Railway Diesel Car (RDC), manufactured by the Budd Company, that originates each morning in Talkeetna, Alaska.

The Alaska Railroad does not maintain mechanical facilities at either Talkeetna or Hurricane and there are no "Qualified Maintenance Personnel" (QMP) as required by 49 CFR §§ 238.303(c) *Exterior calendar day mechanical inspection of passenger equipment* and 238.305(b) *Interior calendar day mechanical inspection of passenger cars* at either location. The closest QMP personnel are located at Anchorage, Alaska which is 112 miles to the south, or Fairbanks, Alaska, which is 243 miles to the north.

The Alaska Railroad seeks relief from the requirements of 49 CFR 238.303(c) and 238.305(b), as they feel that to provide QMP personnel at Talkeetna or Hurricane, Alaska for the sole purpose of accomplishing the daily interior and exterior inspection for 4.5 months of the year is not reasonable. Further, the railroad stated that they provide this service in the public's interest now at a financial loss, even without the additional burden of the QMP personnel at these two locations. Additionally, they stated that it is anticipated that, if provided, the QMP personnel would only work approximately one hour per day.

The Alaska Railroad proposes that they continue their current practice of

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the train crews, as "Qualified Persons," performing the required daily interior and exterior inspections as provided for by 49 CFR 238.305(d)(2). The 92-day periodic inspection of this passenger equipment is performed at their mechanical facilities in Anchorage, Alaska., as required by 49 CFR 229.23 *Periodic inspection: General.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Docket Number FRA–2001–11215) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 17, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–1636 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2002–01

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory 2002–01.

SUMMARY: The FRA is issuing Safety Advisory 2002–01 addressing the importance of clear, precise, unambiguous railroad safety procedures to ensure the safety of highway-rail grade crossing warning systems or wayside signal systems that are temporarily removed from service for purposes of testing, inspection or repair.

FOR FURTHER INFORMATION CONTACT: William Goodman, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone 202–493–6325) or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone 202–493–6061), e-mail *mark.tessler@fra.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Highway-rail grade crossing warning devices and wayside train signals are among the most important safety systems in the railroad industry for preventing train collisions and highway-rail grade crossing accidents. Despite the high-degree of reliability of these systems, failures occasionally do occur. FRA regulations (49 CFR parts 234 and 236) require that both grade crossing warning devices and wayside signals operate on the "fail safe" principle, which causes a system to revert to its safest state in the event of a failure or malfunction of a vital component of the system. In practical terms, fail safe operations means the grade crossing warning devices will activate to stop traffic or a wayside signal will stop train movement in the event of a component failure. However, under certain circumstances, particularly where human error is involved, the fail-safe features can be deactivated or circumvented, resulting in an accident. FRA has noted that several serious highway-rail grade crossing accidents and numerous false proceed signal failures have occurred in the past three years due to human error failures. While the total number of such failures is very small given the more than 60,000 active highway-rail grade crossing warning systems and approximately 86,000 track miles of railroad signal systems currently in operation on our Nation's railroad network, even a single failure of a grade crossing warning system to activate when needed or a single false-proceed train signal has the potential to result in a serious accident or loss of life.

Grade crossing activation failures are of particular concern, because crossing signals are often the primary means of warning motorists of an approaching train. Wayside railroad signals are also critically important to the safety of train movements; however, there are often redundant safety measures in place to help prevent train collisions. For example, train movements may be remotely monitored by dispatchers at centralized dispatching centers and train crews are sometimes made aware of the presence of nearby trains by monitoring railroad radio transmissions. However, these redundant safety measures are not feasible at grade crossings. It is impossible for train dispatchers or train crews to monitor the movement of motor vehicles over a highway-railroad grade crossing. Therefore, because grade crossing warning devices play an extremely important role in preventing grade crossing collisions, it is imperative that every reasonable precaution be taken to prevent crossing activation failures.

FRA recognizes that the railroad industry has long recognized the importance of having well defined safety procedures in place to ensure the safety of highway-rail grade crossing warning systems and wayside signal systems that have been temporarily removed from service for purposes of testing, inspection or repair. Most railroads have had such safety procedures in place for many years; nevertheless, FRA has been concerned that grade crossing accidents and false proceed signals continue to occur because of the failure to properly notify approaching trains that grade crossing warning devices or wayside signal systems have been temporarily removed from service or because of the failure to properly restore these safety systems back into service. Therefore, FRA believes it is time for the railroad industry to review and re-evaluate these safety procedures. Over the past three years, at least five serious grade crossing collisions were the result of crossing warning device activation failures which were caused, in part, by the failure of railroad personnel to follow appropriate safety procedures when the crossing warning devices were removed from service for repair, or before the crossing warning devices were restored to service after repairs had been made. A brief review of these accidents may help illustrate the critical importance of railroads having clear, precise, and unambiguous railroad safety procedures in place when testing, inspecting or repairing highway-rail grade crossing warning systems or wayside signal systems.

In one incident, two teenage boys were killed when the motor vehicle they were driving was struck by an approaching train at a highway-rail grade crossing where the warning devices, which consisted of gates and flashing lights, failed to activate. An investigation of this tragic accident revealed that, several hours prior to the accident, the grade crossing warning

devices had been temporarily disabled by a railroad signal maintainer for the purpose of making repairs and adjustments to the apparatus, and that the crossing warning devices were not tested to determine whether they were operating properly before the crossing was restored to service.

Another incident involved a grade crossing warning system which had been removed from service for repairs by a signal maintainer. In this instance, the signal maintainer did properly notify the railroad train dispatcher that the crossing warning devices had been temporarily deactivated and removed from service. The same dispatcher did provide proper notice to approaching trains that the grade crossing warning devices had been deactivated and that it would be necessary for the trains to provide flag protection while traversing the crossing. However, later during a change of shifts by dispatchers, the relief dispatcher was not notified that the grade crossing warning devices had been temporarily deactivated and removed from service. Consequently, the relief dispatcher did not notify a subsequent train that the grade crossing was out of service or that the train crew needed to provide flag protection before traversing the crossing. As a result, the train struck a motor vehicle at the crossing, killing the occupant.

In another grade crossing activation failure accident, railroad crossing maintenance personnel were utilizing the maintenance-of-way department's foul time and failed to follow authorized railroad safety procedures when temporarily deactivating the warning devices at a grade crossing. In this instance, a vital grade crossing warning system relay was inverted by a maintenance person and, subsequently, the maintenance-of-way department allowed a passenger train to operate through their work limits without notifying the signal personnel. Neither the train dispatcher nor the train crew were notified that the crossing warning devices had been deactivated. Consequently, a motor vehicle struck the side of a passenger train at the crossing, injuring the occupant of the motor vehicle.

Yet another example involved a railroad signal maintainer who had permission from the train dispatcher to foul the track and perform routine tests and inspections on a grade crossing warning device. During the course of inspecting the warning device, the signal maintainer applied a jumper wire to a vital warning system relay, thereby deactivating the warning device. He was subsequently called to investigate a false activation at another crossing and forgot to remove the jumper wire and restore the crossing warning device to service. He released his foul time with the train dispatcher, the warning system failed to activate for an approaching train, resulting in an accident which injured the occupant of a motor vehicle.

One last example involved a situation where a state highway department reported a false activation of a highway-rail grade crossing warning system to a railroad. The railroad's train dispatcher failed to notify train crews of the reported malfunction, which is required by Federal regulations. The railroad signal maintainer arrived at the crossing and used jumper wires to stop the warning system from falsely activating, without taking any measures to provide for the safety of highway users (i.e., notifying the dispatcher). He then proceeded to walk away from the immediate crossing area while trying to locate the cause of the false activation. A passenger train operating at 79 miles per hour traversed the crossing, hitting a motor vehicle and killing two occupants inside.

These occurrences resulted from interference with the normal functioning of the grade crossing warning systems without measures being taken to provide for the safety of highway traffic and train operations which depend on the normal functioning of such systems. FRA is very concerned about this practice and by issuing this safety advisory seeks to draw the attention of the railroad industry to this issue to reduce the likelihood of similar incidents in the future.

Failure to provide for the safety of motorists and train operations during all periods while the normal functioning of a system is interfered with is a violation of Federal rail safety regulations (See 49 CFR 234.209 and 236.4). FRA considers this requirement to be extremely significant to the safety of railroad employees, highway users, and the general public. Accordingly, when a system is completely or partially deactivated without adequate protective measures being taken, FRA will take firm enforcement action, which could include civil penalties against the companies and/or individuals responsible. However, preventing such serious failures in the first place is our primary goal, and the railroad's consistent application of proper procedures is critical in achieving that goal.

Railroads need to have clear and unambiguous procedures for temporarily removing grade crossing warning devices and wayside signal systems from service when making repairs, tests or inspections. These procedures should also help ensure that these critical safety devices are properly tested and known to be in proper working order before they are restored to service. Most railroads already have such procedures in place; however, in light of the incidents noted above, FRA believes that railroads should review existing procedures to ensure that they are adequate and should take steps to ensure that these safety procedures are followed.

FRA has reviewed some of the safety procedures for disabling grade crossing warning devices and wayside signal system that are in place on the major railroads to determine "best practices" that have been developed in the industry. We found that the most effective safety procedures include: (1) Requirements for signal employees to obtain proper authority from the train dispatcher or transportation department prior to disabling a warning or signal system; (2) documentation of the approval to disable the warning or signal system; (3) a requirement that all disabled warning systems must be properly inspected and tested to ensure proper operation before being restored to service; and (4) a procedure for the railroad maintenance personnel to verify with the train dispatcher or transportation department that the warning system has been properly tested before being restored to service.

Use of Jumper Wires

There are situations in which it may be necessary to temporarily circumvent the normal functioning of a system (i.e., crossing system or signal system maintenance, maintenance-of-way activity, defective system components not readily available for replacement, trains standing within a warning system's approach circuit for extended periods, etc.). A common method for such circumventing is by the application of jumper wires or some other means of circumventing the normal functioning of a system. This is appropriate when done in a safe manner. In such situations involving grade crossing warning systems, system credibility is maintained. For example, if maintenance-of-way work is being performed on trackage which is part of a highway-rail grade crossing warning system's train detection circuit, absent the application of jumper wires, it is highly probable that the warning system will activate, indicating to the motorist that it is not safe to cross the railroad tracks, when in fact no train is approaching the crossing. In this case, the integrity of the warning system would be compromised by the system's

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conveying false information to a motorist such that in the future, the motorist would not necessarily comply with the warning system indications. Appropriate use of jumper wires, or other safe means of bypassing the system, thus prevents the incorrect warning from being displayed, and safety is maintained as long as measures are taken to provide for the safety of motorists and train operations.

Although appropriately deactivating the crossing warning devices through the application of jumpers or other means is a safe practice when combined with protection measures addressed to motorists and train operations, if warning devices are allowed to remain deactivated after maintenance work is completed and workers leave the scene, the motorist may be left with a non-functioning warning system. Similarly, if this is done in a signal system, an incorrect false proceed indication may be displayed.

Because the application of jumper wires to vital control relays is the most widely accepted method for temporarily disabling a grade crossing warning device or wayside signal system, FRA found that the most effective safety procedures also mandate that only approved jumper wires may be used to bypass vital circuits. Furthermore, these procedures require documentation regarding the number of jumper wires applied to circuits, the specific location of the wires, and the circuitry designation to which the wires are applied. Also, when planned maintenance-of-way work is to be performed which could affect the operation of a warning system, the safety procedures insist that a thorough job briefing be conducted by the employee in charge of performing the work on the grade crossing warning devices or wayside signal systems. Again, in all of these cases, testing is required to ensure the proper operation of the warning system prior to returning the warning system to service and the most effective procedures require that a record be kept of the tests that were performed.

In order to mitigate the risks inherent with the circumvention of a system, FRA believes it is important that individual railroads have standard procedures in place before interfering with the normal operation of a system.

Recommended Action

In recognition of the need to assure safety, FRA strongly recommends that:

1. Each railroad having a highway-rail grade crossing warning system or wayside signal system establish specific railroad-wide instructions for the proper temporary deactivation of these systems. These instructions should address:

(a) The manner in which the deactivation is authorized;

(b) The personnel designated to authorize deactivation;

(c) The protocols for notifying designated persons, especially personnel responsible for the movement of trains, that a warning system has been deactivated;

(d) The appropriate methods of providing for the safety of train movements while the warning devices are deactivated;

(e) The requirements necessary to perform an operational test of the pertinent system components after the signal system or crossing warning device work has been completed and prior to restoring the apparatus to service; and

(f) The protocols for documenting and notifying designated persons that the warning devices have been properly tested and restored to service.

2. Each railroad should provide regular periodic training to all affected employees to ensure their understanding of instructions for the proper temporary deactivation of grade crossing warning or wayside signal system, including proper use of jumper wires.

Issued in Washington, DC on January 16, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1638 Filed 1–22–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application for Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0089.

Form Number: ATF F 5100.24.

Abstract: ATF F 5100.24 is completed by persons intending to engage in a business involving beverage alcohol operations at a distilled spirits plant or bonded winery, or to wholesale or import beverage alcohol. The information allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 1 hour and 45 minutes.

Estimated Total Annual Burden Hours: 2,800.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are Invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1502 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0090.

Form Number: ATF F 5100.18.

Abstract: ATF F 5100.18 is completed by permittees who have changes in their operations which require a new permit to be issued or notice to be received by ATF. The permittees are businesses involving beverage alcohol operations at distilled spirits plants, bonded wineries, wholesalers and importers. The information allows ATF to identify the permittee, the changes to the permit or business operations and to determine whether the applicant qualifies for an amended basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 600.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1503 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Federal Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Federal Firearms and Ammunition Excise Tax.

OMB Number: 1512–0507.

Form Number: ATF F 5300.26.

Abstract: A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells and cartridges (ammunition) sold by firearms manufacturers, producers, and importers. The information on the form is necessary to establish the taxpayer's identity, the amount and type of taxes due, and the amount of payments made.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Time Per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 27,020.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to

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enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1504 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Gang Resistance Education and Training Funding Application.

DATES: Written comments should be received on or before March 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachussetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to James Scott, Gang Resistance Education and Training, P.O. Box 50414, Washington, DC 20091, (800) 726–7070.

SUPPLEMENTARY INFORMATION:

Title: Gang Resistance Education and Training Funding Application.

OMB Number: 1512–0548.

Form Number: ATF F 6410.1.

Abstract: State and local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF, G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants' funding needed. The information will also be used to determine funding priorities and levels of funding, as required by law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 800.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–1505 Filed 1–22–02; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register
Vol. 67, No. 15
Wednesday, January 23, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–2002–04]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002

Correction

In notice document 02–898 beginning on page 1719 in the issue of Monday, January 14, 2002 make the following corrections:

1.On page 1720, in the first column, in the third full paragraph, in the fourth line, the e–mail address is corrected to read as follows: "*dilling@ogp.noaa.gov*".

2. On the same page, in the same column, in the same paragraph, in the seventh line, the web address is corrected to read as follows: " *http://www.ogp.noaa.gov/mpe/gcc/index/html.*".

[FR Doc. C2–898 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, 61, 63, 70, 72, 73, and 75

RIN 3150–AG04

Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV

Correction

In rule document 01–27157 beginning on page 55732 in the issue of Friday, November 2, 2001, make the following correction:

On page 55741, in the first column, in the third paragraph, and in the seventh line, "*ensp;* *ensp; A 1010^{-6}" should read "* * * A 10^{-6}".

[FR Doc. C1–27157 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–02]

Proposed Modification of Class E Airspace; Greenville, MI

Correction

In proposed rule document 02–248 beginning on page 706 in the issue of Monday, January 7, 2002, make the following correction:

§71.1 [Corrected]

On page 707, in the second column, in §71.1, in the third paragraph, the heading that reads "**AGL MI ES Greenville, MI [REVISED]**" should read "**AGL MI E5 Greenville, MI [REVISED]**".

[FR Doc. C2–248 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-03]

Proposed Modification of Class E Airspace; Lake Geneva, WI

Correction

In proposed rule document 02–1014 beginning on page 2146 in the issue of Wednesday, January 16, 2002, make the following correction:

§71.1 [Corrected]

On page 2149, in the second column, in §71.1, in the third paragraph, under the heading that reads "**AGL WI ES Lake Geneva, WI [REVISED]**" should read "**AGL WI E5 Lake Geneva, WI [REVISED]**".

[FR Doc. C2–1014 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–07]

Proposed Modification of Class E Airspace; Brainerd, MN

Correction

In proposed rule document 02–1010 beginning on page 2150 in the issue of Wednesday, January 16, 2002, make the following correction:

On page 2150, in the third column, in the last line under the heading **SUMMARY**, "Wing County Region Airport" should read, "Wing County Regional Airport".

[FR Doc. C2–1010 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–09]

Proposed Modification of Class E Airspace; Green Bay, WI

Correction

In proposed rule document 02–1009 beginning on page 2151 in the issue of Wednesday, January 16, 2002, make the following corrections:

1. On page 2151, in the third column, in the fifth line under the heading **ADDRESSES**, "01–AG–09" should read, "01–AGL–09".

§71.1 [Corrected]

2. On page 2152, in the third column, in § 71.1, in the third line under the heading **AGL WI E5 Green Bay, WI [REVISED]**, "long. 88°97′47″W" should read "long. 88°07′47″W".

[FR Doc. C2–1009 Filed 1–22–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–14]

Proposed Modification of Class D Airspace; Columbus, OH

Correction

In proposed rule document 02–1007 beginning on page 2156 in the issue of Wednesday, January 16, 2002, make the following corrections:

§71.1 [Corrected]

1. On page 2157, in column one, under the heading *Paragraph 5000 Class D airspace areas extending upward from the surface of the earth*:

a. In line one, **AFGL OH D Columbus, OH [REVISED]** should read, **AGL OH D Columbus, OH [REVISED]**.

b. In line two,"Columbus, Bolton Filed Airport, OH" should read, "Columbus, Bolton Field Airport, OH".

c. In lines four through six of the paragraph,"extending that portion beyond a 1.9 mile radius of the Bolton Field Airport bearing 290° to 325°" should read, "extending that portion beyond a 1.8 mile radius of the Bolton Field Airport bearing 270° to 325°".

[FR Doc. C2–1007 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–17]

Establishment of Class E5 Airspace, Wauchula, FL

Correction

In rule document 02–164 beginning on page 510 in the issue of Friday, January 4, 2002, make the following correction:

§71.1 [Corrected]

On page 511, in the second column, in §71.1, under the heading **ASO FL E5 Wauchula, FL [New]**, the second line, that reads "(Lat. 27°30'36" N, long. 81°52'50" W)", should read: "(Lat. 27°30'49" N, long. 81°52'50" W)"

[FR Doc. C2–164 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 516

Application Processing

Correction

In rule document 01–4996 beginning on page 12993 in the issue of Friday March 2, 2001, make the following correction:

§516.220 [Corrected]

On page 13004, in § 516.220, in the table in the third column, in item (3), "OTS will not process your to respond" should read "OTS will not process your".

[FR Doc. C1–4996 Filed 1–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 23, 2002

Part II

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); Proposed Rule

Office of Personnel Management
Department of Agriculture
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Social Security Administration
Office of National Drug Control Policy
Department of State
Agency for International Development
Peace Corps
Inter-American Foundation
African Development Foundation
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum and Library Services
Corporation for National and Community Service
Department of Transportation

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3017 and 3021

DEPARTMENT OF ENERGY

10 CFR Parts 606, 607, and 1036

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 145 and 147

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1265 and 1267

DEPARTMENT OF COMMERCE

15 CFR Parts 26 and 29

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 436 and 439

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Parts 1404 and 1405

DEPARTMENT OF STATE

22 CFR Parts 137 and 139

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 208 and 210

PEACE CORPS

22 CFR Parts 310 and 312

INTER-AMERICAN FOUNDATION

22 CFR Parts 1006 and 1008

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Parts 1506 and 1509

DEPARTMENT OF LABOR

29 CFR Parts 94 and 98

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Parts 1471 and 1472

DEPARTMENT OF DEFENSE

32 CFR Parts 25 and 26

DEPARTMENT OF EDUCATION

34 CFR Parts 84, 85, 668 and 682

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1209 and 1212

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 44 and 48

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 32 and 36

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–68 and 105–74

DEPARTMENT OF THE INTERIOR

43 CFR Parts 12, 42 and 43

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 17 and 21

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 76 and 82

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 620 and 630

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1154 and 1155

National Endowment for the Humanities

45 CFR Parts 1169 and 1173

Institute of Museum and Library Services

45 CFR Parts 1185 and 1186

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2542 and 2545

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 29 and 32

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Office of Personnel Management; Department of Agriculture; Department of Energy; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Social Security Administration; Office of National Drug Control Policy; Department of State; Agency for International Development; Peace Corps; Inter-American Foundation; African Development Foundation; Department of Labor; Federal Mediation and Conciliation Service; Department of Defense; Department of Education; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; Department of Health and Human Services; National Science Foundation; National Foundation on the Arts and the Humanities, National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services; Corporation for National and Community Service, and Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The most significant changes are—

First, this proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. If an agency decides that its nonprocurement activities are sufficiently vulnerable to misconduct, poor performance or abuse at levels below the first procurement, the agency may add agency-specific language to the proposed common rule to prohibit lower-tier procurement transactions with excluded persons. Agencies that do not have sufficient vulnerability at lower levels to justify the devotion of resources to enforce exclusions at lower levels need not add language to the common rule.

Second, this proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. This should help clarify an ambiguity in the current common rule created when Congress, in enacting the Federal Acquisition Streamlining Act of 1994, elected to change the terminology in the direct Federal acquisition law from "small purchase threshold" to "simplified acquisition threshold" and increased the level from $25,000 to $100,000. The ambiguity was created because the current common rule is linked to the small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g), but states the current level to be $25,000.

Third, both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the internet, to enforce compliance with the rules.

Fourth, the proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug-free workplace requirements currently are in subpart F of the Debarment and Suspension Nonprocurement Common Rule. Moving those requirements to a separate part will allow them to appear in a more appropriate location nearer other requirements used predominately by award officials.

Finally, this document is prepared in plain language text and format to make it easier to read and use.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 2535(o)), any Department of Housing and Urban Development (HUD) proposed or interim rule that is issued for public comment is subjec to pre-publication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's publication but will propose the common amendments in a separate rulemaking.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Comments on these proposed rules should be addressed to: Robert F. Meunier, Office of Grants and Debarment (3901–R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Comments may be submitted via e-mail (*meunier.robert@epa.gov*), but must be made in the text of the message and not as an attachment.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Debarring Official, Environmental Protection Agency, by phone at (202) 564–5399 or by e-mail (*meunier.robert@epa.gov*). Information about the Interagency Committee on Debarment and Suspension can be found on their home page (*http://www.dot.gov/ost/m60/grant/net.htm*). A chart showing where each agency has codified the common rule may be obtained by accessing the Office of Management and Budget's home page (*http://www.whitehouse.gov/omb*), under the heading "Grants Management."

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12549, "Debarment and Suspension," issued February 18, 1986 (3 CFR 1986 Comp., p. 189) authorized a governmentwide system for debarment and suspension under Federal nonprocurement activities. The Office of Management and Budget (OMB) published initial guidelines to all Executive branch agencies in 1986 and the agencies published a common rule on May 26, 1988 (53 FR 19160). The common rule provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulation (FAR).

On January 31, 1989, the agencies amended the common rule by adding a new subpart F to implement the Drug-Free Workplace Act of 1988. (*See* 54 FR 4946.)

On August 16, 1989, Executive Order 12689, "Debarment and Suspension," (3 CFR 1989 Comp., p. 235) directed agencies to reconcile technical differences existing between the procurement and nonprocurement debarment systems, and to give exclusions under either system reciprocal effect across procurement and nonprocurement activities. In 1994 Congress passed the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 108 Stat. 3327) mandating reciprocity for exclusions issued under the procurement and nonprocurement debarment systems.

On April 12, 1999, OMB asked the Interagency Suspension and Debarment Committee (ISDC) to review the common rule and propose amendments that would: (a) resolve unnecessary technical differences between the procurement and nonprocurement systems; (b) revise the current rule in a plain language style and format; and (c) make other improvements to the common rule consistent with the purpose of the suspension and debarment system. The ISDC's proposed amendments form the basis of this Notice of Proposed Rulemaking.

Format of the Proposed Debarment and Suspension Common Rule

The proposed rule adopts a different approach to the structure and format of the common rule. It is formatted so that matters common to a particular class of readers, or to a particular subject, appear together. This allows readers easy access to information that may be of particular importance to them. The rule also contains tables and a chart to assist the reader in locating or clarifying information presented in the text of the rule.

The proposed rule uses fewer legal terms, and uses more commonly understood words along with shorter sentences. It also presents information in a question-and-answer format. Wherever possible, the rule uses the active voice.

Due to the new format of the proposed rule, requirements would appear in a different order than they do under the current common rule. The following table will assist you in locating and comparing the requirements under both rules.

Proposed nonprocurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections
__.25	none
__.50	none
__.75	none
Subpart A:	
__.100	__.100
__.105	none
__.110	__.100, __.115
__.115	__.200
__.120	__.215
__.125	__.110(c)
__.130	__.110(c)
__.135	__.110(a)
__.140	__.210
__.145	__.105 (ineligible)
Subpart B:	
__.200	__.110(a)
__.205	__.225
__.210	__.110(a)(1)
__.215	__.110(a)(2)
__.220	__.110(a)(1)(ii)
__.225	none
Subpart C:	
__.300	__.220(b), __.225
__.305	__.220(b)
__.310	__.220
__.315	__.510
__.320	__.225
__.325	__.510
__.330	__.510, Appendix A
__.335	__.510, Appendix B
__.340	Appendix A, Appendix B
__.345	__.510(c)
__.350	__.510(c)
__.355	__.510, Appendix B
__.360	__.510(c)
Subpart D:	
__.400	__.200, __.215
__.405	__.200(a)

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Proposed nonprocurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections
__.410	__.200(b)
__.415	__.220
__.420	__.200(b)
__.425	__.505(d), (e)
__.430	__.505(d), (e)
__.435	__.115(a), __.510
__.440 [Reserved].	
__.445	__.225(b)
__.450	__.510 Appendix A
__.455	__.510 Appendix B
Subpart E:	
__.500	__.105, __.500
__.505	__.505, __.510
__.510	__.105, __.500
__.515	__.500
__.520	__.505
__.525	__.505(c)
__.530	none
Subpart F:	
__.600	__.311, __.410(a)
__.605	__.300, __.400
__.610	__.310, __.410
__.615	__.312, __.411
__.620	__.115
__.625	__.325, __.420
__.630	__.325, __.420
__.635	__.315
__.640	__.315
__.645	__.315
Subpart G:	
__.700	__.400(a) & (b)
__.705 (a)	__.400(c)
__.705 (b)	__.412(b)(1)(i) & __.413(a)
__.705 (c)	none
__.710	none
__.715	__.411
__.720	__.412(a)
__.725(a)	__.412(a)
__.725(b)	__.105, definition of Notice, second sentence; none
__.730	none
__.735	__.412(b), __.413(b), none
__.740(a)	__.410(b)
__.740(b)	__.412(b)
__.745	__.413(b)(1), __.412(b)(2)
__.750	__.413(b)
__.755	__.413(a) & (c)
__.760	__.415
Subpart H:	
__.800	__.305
__.805	__.312
__.810	none
__.815	__.313(a)
__.820	__.313(a); __.105, definition of Notice, none
__.825	none
__.830	__.313(b), __.314(b), none
__.835	__.310
__.840	__.313(b)
__.845	none, __.314(a) & (b)(1)
__.850	__.314(c)(1)
__.855	__.314(c)(2), none
__.860	none, See 48 CFR 9.406–1(a)
__.865	__.320(a)
__.870	__.314(a) & (d)
__.875	__.320(c)
__.880	__.320(c)
__.885	__.320(b)
Subpart I Definitions	
__.900– __.1020	__.105

Reconciliation of Technical Differences

The proposed rule incorporates some changes that are designed to bring the procurement and nonprocurement debarment rules into greater conformity with each other. However, the ISDC recommended against issuing a single consolidated rule, or adopting uniform application of the rule as impractical and confusing. This decision was based on the ISDC's view that the procurement and nonprocurement communities have sufficiently different relationships with participants, distinct methods to procure services or to provide benefits or support, varying options for dealing with waste, fraud, abuse, and poor performance, and very different types of exposure to risk.

The ISDC therefore focused its attention on ensuring that both the procurement and nonprocurement rules contained the same level of substantive due process in: (a) Applying the same minimum criteria to suspend or propose debarment; (b) notifying respondents of actions; (c) making a record to support a decision; (d) providing for fact-finding; (e) addressing mitigating and other factors; (f) applying evidentiary standards; and (g) issuing decisions.

Section __.220 of the proposed rule would bring the common rule into closer conformity with the FAR by limiting the mandatory down-tier application of an exclusion under the common rule to the first procurement level. Unless Federal consent is required at a lower level, if an agency wishes to apply an exclusion at levels lower than the first procurement level (*e.g.*, to subcontractors or suppliers), the agency must specifically include that option in its published version of the common rule. The ISDC recommended this change because it recognizes that some agencies' nonprocurement transactions are highly vulnerable to the impact of misconduct and poor performance at levels below the first procurement, while other agencies' transactions are not. This approach allows those Federal agencies with vulnerability at lower tiers to prohibit those transactions, while providing flexibility to those agencies whose programs' exposure does not merit the additional administrative burden of enforcing exclusions at lower tiers.

In addition, the threshold level for application of an exclusion for all procurement-type transactions under a nonprocurement transaction would be set at $25,000. This corrects confusion created when the term "small purchase threshold," formerly found at 10 U.S.C. 2304(g) and 41 U.S.C. 403(11) (set at $25,000), was changed under the Federal Acquisition Streamlining Act of 1994 to "simplified acquisition threshold" and set at $100,000. Because the current common rule uses the "small purchase threshold," as the point beneath which an exclusion does not apply, it has caused confusion as to whether the exclusion level is $25,000 or $100,000. The procurement debarment system has already made regulatory changes to subpart 9.4 of the FAR to keep its exclusion level at $25,000.

In addition to "suspension" and "debarment," the common rule recognizes a status called "voluntary exclusion." Subpart 9.4 of the FAR makes no reference to such a status. The status of voluntary exclusion is a remnant from older rules and practices in the nonprocurement community that pre-date the Governmentwide suspension and debarment system. It was once used because respondents found the "voluntary" nature of the prohibition to be more acceptable. It was, in fact, a special term used for those who accepted ineligibility pursuant to an administrative agreement. The ISDC found that there are benefits to the nonprocurement community in retaining the ability of Federal agencies to accept voluntary exclusion agreements in place of debarment or suspension. However, with the creation of the Governmentwide system, voluntary exclusion agreements that offer protection only to the agency initiating action in the matter, are inconsistent with the purposes of the Governmentwide system. Accordingly, under the proposed rule agencies may still negotiate voluntary exclusion agreements; however, those exclusions must apply equally to all Federal agencies.

Section __.860 of the proposed rule is new to the common rule. This section identifies factors that a debarring official may regard as mitigating or aggravating factors. It includes factors that currently appear under § 9.406–1(a) of the FAR. These factors currently offer useful guidance to the Government and contractors with respect to matters the debarring official should consider in making a debarment decision.

Enhancements to the Proposed Debarment and Suspension Common Rule

This proposed rule would make several modifications to the existing common rule to enhance the effectiveness of, cure some gaps in, or clarify requirements and processes under the existing rule. None of these changes are intended to alter the fundamental principles inherent to debarment and suspension actions. All information related to the purposes and procedures applicable to the current rule as reflected in its preambles at 53 FR 19160–19171 (May 26, 1988), and 60 FR 33036–33040 (June 26, 1995), shall continue to apply under this proposed and/or any final rule unless otherwise stated, or inconsistent with these provisions. Therefore, notwithstanding the technical existence of any cause for debarment, affiliation, imputable conduct, or other actionable condition, debarment or suspension may not be used to punish. Nor may it be used to coerce a respondent into accepting criminal, civil or administrative sanctions. An agency may address its legitimate suspension and debarment concerns before, after or in conjunction with sanctions, so long as suspension or debarment is otherwise appropriate to protect the Federal Government. In all cases, suspending and debarring officials must use business judgment and discretion in electing to use the suspension and debarment authority under this rule to protect government activities from potential waste, fraud, abuse, poor performance and non-compliance with applicable laws, regulations or conditions related to nonprocurement transactions. Where an agency has the authority to act under either the procurement or nonprocurement rule, it may act under either rule to avoid confusion or duplication.

The proposed rule would move definitions from Subpart A of the current rule to Subpart I. Under the proposed rule, a new term is used to refer to ineligibility that arises from sources other than discretionary actions taken under either the common rule or subpart 9.4 of the FAR. This type of ineligibility may arise by operation of a statute, executive order, or other directive and may not be subject to the discretion of the agency suspending or debarring official. In addition, it may have special attributes that are inconsistent with the discretionary actions initiated under the common rule or the FAR. For example, persons convicted under the Clean Air Act or Clean Water Act are automatically ineligible for procurement and nonprocurement participation at the violating facility which gave rise to the conviction until the EPA Debarring Official certifies that the conditions giving rise to the conviction have been corrected. The proposed rule refers to these and other special forms of ineligibility as "disqualifications." Disqualifications must be listed on the General Services Administration (GSA), *List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs* (List), but are not subject to the uniform procedural requirements of this rule. (Note that agencies with special provisions related to disqualification may, at their option, include those requirements in subpart J or other subparts appended to this rule as a convenience to the agency or the public.) For discretionary actions that result in ineligibility under the uniform suspension and debarment procedures covered by the common rule and the FAR, this proposed rule uses the term "exclusion." Therefore, an ineligibility may result from either a disqualification or an exclusion.

The proposed rule adds a new definition for "agent or representative" as is used under the FAR and clarifies the definition of "participant." It also proposes a more useful definition of the types of activities that are encompassed within the term "principal."

The term "voluntary exclusion" is narrowed under this proposed rule to conform to the principles of governmentwide protection and give it the same scope of coverage as other exclusions.

One significant change to the definitions under the proposed common rule relates to the term "conviction." Previously, the common rule defined conviction as a judgment that had to be "entered" by the court before it was recognized as constituting a ground for suspension or debarment. In recent years, courts have used many vehicles to conclude criminal matters short of "entry" of a judgment of conviction, such as probation before judgment, pre-trial diversion, and simply withholding final judgment upon satisfaction of certain conditions in lieu of incarceration or payment of a fine. Currently, the withholding of entry of the judgment in a criminal matter often means that a respondent remains under a temporary suspension until criminal proceedings are concluded. This does not benefit either the government or the respondent because the government is unable to conclude the matter by final decision or with a compliance agreement with any certainty that a baseline for risk assessment can be finally established. From a business point of view, the withholding of an "entry" of judgment under these conditions should not preclude Federal agencies from taking appropriate action to protect the government. It makes no sense for an agency to have to prove the underlying misconduct or conditions all over again, merely because the court decided not to "enter" its judgment. Under the proposed rule, the suspending or debarring official would be able to consider criminal matters resolved by means short of dismissal as final so that appropriate administrative action can be taken, or a remedial plan of compliance concluded. This change would benefit both the government and a respondent.

The proposed rule would significantly clarify confusion under the existing rule as to who may be suspended or debarred and the impact of that decision on a suspended or debarred person. An agency may exclude any "person" as defined in the rule that may be reasonably expected to participate in a "covered transaction" (*see* § __.135).

Even if a person is excluded, agencies could still award a covered transaction to that person when it is in the best interest of the government to do so. The proposed rule sets forth more clearly the two situations that allow an otherwise excluded person to participate in a nonprocurement transaction. The first is when an agency grants an exception to the excluded person to participate in a covered transaction (*see* § __.120). Exceptions are transaction-specific decisions that the designated agency official must justify in writing. The second situation that allows an excluded person to participate in a transaction is when an agency is entering into an exempt transaction (*see* § __.215). Exempt transactions have special status and are not regarded as covered transactions. Exempt transactions may or may not be transaction-specific, and do not require the written justification of a designated agency official before entering into them. Each agency is responsible for clarifying the applicability or non-applicability of an exemption to any of its transactions in its agency-specific rule.

Proposed § __.215 contains a new exemption that has been added at paragraph (e). This exemption is proposed because most often the transactions listed within this paragraph are regulatory vehicles that should not be automatically precluded to an otherwise excluded person. In cases

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where an agency uses a "permit," "license" or other similar transaction to approve or authorize government-regulated activity, but desires to subject issuance of the transaction to the GSA List, it must do so in its regulations or other guidance.

Sections __.615, __.715 and __.805 of the proposed rule would amend the notice provisions of the existing rule. The proposed rule would authorize an agency to use facsimile and e-mail to notify a respondent of debarment or suspension actions affecting that person. The proposed modification to the existing rule would recognize the advances made in communications technology since the original rule was published and would provide a better system for confirming receipt of notices that were sent.

The current common rule identifies the two conclusions that a suspending official must make before imposing a suspension. While the current rule provides some guidance as to how a suspending official may conclude that "adequate evidence" of a cause for action may exist, it is silent as to how the official may conclude that "immediate action" is necessary to protect the public interest. The proposed rule would add information at § __.705(c) that reflects the court's decision in *Coleman American Moving Services, Inc.* v. *Weinberger*, 716 F. Supp. 1405 (M. D. Ala. 1989), that a suspending official need not make a separate and specific finding as to immediate need, but may reach that conclusion from inferences reasonably drawn from the facts and circumstances present.

Also, § __.735 of the proposed rule would authorize the suspending official to preclude fact-finding where a State attorney general's office, State or local prosecutor advises that conducting fact-finding would prejudice substantial interests of the State or local government in pending or contemplated legal proceedings based upon the same facts as the suspension. This language is necessary to close a gap in the current rule that allows a Federal agency to suspend on the basis of a Federal, State or local indictment, but only addresses denial of fact-finding in the context of advice received from Federal officials. In suspension and debarment matters, there is no distinction made between indictments issued at the Federal, state or local level. All indictments for alleged misconduct relevant to nonprocurement and procurement risks provide a basis for Federal concern. Therefore, where the prospect of an administrative fact-finding proceeding could prejudice the outcome of a matter at the state or local level, the suspending official must have the same authority to deny fact-finding to protect those proceedings as for matters based upon actions initiated at the Federal level. Accordingly, §§ __.735 and __.760 of the proposed rule would reflect equality of treatment to be given to our respective levels of government in suspension matters.

Proposed §§ __.730 and __.825 would identify information that a respondent must provide the suspending or debarring official when contesting a suspension or proposed debarment. This information is relevant to the official's decision and is frequently requested during the presentation of matters in opposition. By highlighting this requirement in the rule, a respondent can be prepared in advance to address the issue at the time of the respondent's initial written submission, or during the oral presentation if one is made. These sections of the proposed rule also clarify that a general denial of allegations contained in the notice of action is insufficient to establish a genuine dispute over a material fact. A suspending or debarring official can only determine if a respondent is entitled to a fact-finding proceeding if the respondent's submission in opposition contains enough specific information to identify the issue in question and establish a basis for dispute.

Section __.515(b) of the proposed rule includes additional information to be contained on the GSA List or within its database. Under the current rule, other than the name and address of an excluded person, there is currently insufficient information on the List or in the GSA database that can be used to confirm the identity of a listed person under a commonly used name. Confirmation requires contact with the designated Federal official by telephone or other means, a search of records if available, and confirmation in accordance with that agency's Routine Use Notice. The proposed rule would permit the database for the electronic version of the GSA List to include a field for Taxpayer Identification Numbers (TINs) and Social Security Numbers (SSNs) if legally appropriate. The List and current database contains names of individuals, business entities and organizations that can be the same or confusingly similar. The current commercial world uses TINs and SSNs widely and freely to confirm identities for all kinds of transactions.

The proposed rule would position GSA to compile that information in the event the law should allow public access to it. Otherwise, the current system will remain commercially inefficient. We specifically invite comment on the proposed inclusion of this provision in the common rule.

The proposed rule would also eliminate a requirement under the current rule that the exclusions be enforced through a chain of paper certifications submitted to an agency or between participants under a covered transaction. Certification as a means of enforcement has proven to be administratively awkward and impossible for some transactions that do not even involve an "award." Advancements in technology allow anyone with access to a personal computer to receive up-to-date information about a person's eligibility by accessing the GSA list on line. This makes the certification process largely obsolete. The proposed rule would allow agencies to employ any method of enforcement of the GSA List that is administratively and commercially feasible. This change is consistent with Congress' intent under the Federal Acquisition Reform Act of 1994 (Public Law 104–208), to eliminate unnecessary certifications.

Proposed Separate Part To Implement the Drug-Free Workplace Act

Finally, this document proposes to establish a separate part for the drug-free workplace requirements that are in subpart F of the existing rule. The only requirement of the Drug Free Workplace Act of 1988 that relates to suspension and debarment is incorporated into the causes for debarment. The remaining provisions of subpart F are used predominantly by recipients of Federal assistance awards and by Federal officials who make and administer those awards, which distinguishes them from the common rule that is used mainly by Federal suspension and debarment officials and respondents. Moving the requirements of the current subpart F into a part separate from the common rule allows each Federal agency to place it in an appropriate location within the Code of Federal Regulations where it may be more easily used by recipients and Federal awarding and administering officials.

The proposed separate part to incorporate the provisions of Subpart F, like the proposed update to the debarment and suspension common rule, is reformatted and rewritten in plain language. Due to the proposed reformatting, requirements would appear in a different order than they do in the current Subpart F. The following table will assist you in locating and comparing the requirements under both rules.

Proposed drug-free workplace common rule sections	Current drug-free workplace common rule sections
.100	.600(a)
.105(a)(1)	.610(a)
.105(a)(2)	none
.105(b)	none
.110	.610(b)
.115	.600(b)
.200	.630(a)(1)
.200(a)	certification alt I. A. (g)
.200(b)	certification alt I. B.
.205(a)	certification alt I. A. (a)
.205(b)	certification alt I. A. (a)
.205(c)	certification alt I. A. (d)
.210	certification alt I. A. (c)
.215	certification alt I. A. (b)
.220	.630 (e)
.225(a)	.635 (a)(1)
.225(a)	certification alt I. A. (e)
.225(b)	.635(a)(2)
.225(b)	certification alt I. A. (f)
.230(a)	appendix C. 5
.230(b)	Appendix C. 6
.230(c)	Appendix C. 7
.300	.630(a)(1)
.300	certification alt II.
.300(b)	.635(b)
.400(a)	none
.400(b)	none
.500	.615(b)
.505	.615(c)
.510	.620(a)
.510	.625
.515	.605(b)(7)
.605	.605(b)(1)
.610	.605(b)(2)
.615	none
.620	.605(b)(3)
.625	D&S common rule
.630	.605(b)(4)
.635	.605(b)(5)
.640	.605(b)(6)
.645	none
.650	.605(b)(9)
.655	.605(b)(8)
.660	.605(b)(10)
.665	D&S common rule
.670	.600(a)(1)
	.600(a)(2)
	.610(c)
	.615(a)
D&S common rule	.620(b)
	.630(a)(2)
	.630(b)
	.630(c)
	.630(d)
	Appendix C. 1
	Appendix C. 3
	Appendix C. 4
	Appendix C. 8

The proposed separate part would make one substantive change to the current subpart F. The proposed substantive change would require Federal agencies to obtain recipients' assurances of compliance with drug-free workplace requirements and not require them to obtain certifications from recipients. This substantive change implements section 809 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85, 111 Stat. 1838–1839) that amended the Drug-Free Workplace Act of 1988. The body of the proposed separate part therefore includes the substantive requirements for recipients that now are in the text of the drug-free workplace certification in appendix C to the common rule.

The proposed separate part also would make some definitional changes to the current subpart F. First, it includes a definition of "debarment," since it no longer would be a subpart within the common rule that relies on the definitions in that part. Second, the proposed separate part uses the term "award," rather than the term "grant," to include the grants, cooperative agreements, and other assistance instruments covered by the drug-free workplace requirements. The term "grant" then is proposed to be redefined to bring it into conformance with the use of that term established by the Federal Grant and Cooperative Agreement Act (currently at 31 U.S.C. chapter 63). Doing so should help avoid confusion about the applicability of the drug-free workplace requirements to assistance instruments other than grants. To accommodate the change to the term "award," the proposed separate part includes a definition for the term "cooperative agreement" and uses the term "recipient," rather than "grantee."

Impact Analysis—Executive Order 12866

This is not a significant regulatory action under section 3(f)(4) of Executive Order 12866, "Regulatory Planning and Review."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this proposed rule, if published as a final rule, would not have a significant impact on a substantial number of small entities. This proposed rule addresses Federal agency procedures for suspension and debarment. It clarifies current requirements under the Nonprocurement Common Rule for Debarment and Suspension by reorganizing information and presenting that information in a plain language, question-and-answer format.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Public Law 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in an annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector. Since this proposed rule, if published as a final rule, would not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

D. Paperwork Reduction Act

The participating agencies certify that this proposed rule, if published as a final rule, would not impose additional reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 804). This proposed rule, if published as a final rule, would not: Result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Executive Order 13132: Federalism

This proposed rule, if published as a final rule, would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

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distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Text of the Proposed Common Rules

The text of the proposed common rules appear below:

1. [Part/Subpart] __ is revised to read as follows:

[PART/SUBPART] __ GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
__.25 How is this part organized?
__.50 How is this part written?
__.75 Do terms in this part have special meanings?

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__.105 Does this part apply to me?
__.110 What is the purpose of the nonprocurement debarment and suspension system?
__.115 How does an exclusion restrict a person's involvement in covered transactions?
__.120 May we grant an exception to let an excluded person participate in a covered transaction?
__.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
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__.435 What must I require of a primary tier participant?
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__.450 What action may I take if a primary tier participant fails to disclose the information required under § __.330?
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__.630 May the [Agency noun] impute the conduct of one person to another?
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__.640 May a settlement include a voluntary exclusion?
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__.705 What does the suspending official consider in issuing a suspension?
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__.715 What notice does the suspending official give me if I am suspended?
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__.820 How much time do I have to contest a proposed debarment?
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__.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
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__.840 Is a record made of fact-finding proceedings?
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__.850 What is the standard of proof in a debarment action?
__.855 Who has the burden of proof in a debarment action?
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__.915 Agent or representative.
__.920 Civil judgment.
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__.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
__.970 Nonprocurement transaction.
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__.980 Participant.
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__.990 Preponderance of the evidence.
__.995 Principal.
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Subpart J—[Reserved]

Appendix to Part __ Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p .235.

§ __.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart ...	You will find provisions related to ...
A	general information about this rule.
B	the types of [Agency adjective] transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of [Agency adjective] officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for the *List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs* (Published by the General Services Administration).
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.
J	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are ...	see subpart(s) ...
(1) a participant or principal in a nonprocurement transaction.	A, B, C and I.
(2) a respondent in a suspension action.	A, B, F, G and I.
(3) a respondent in a debarment action.	A, B, F, H and I.
(4) a suspending official.	A, B, E, F, G and I.
(5) a debarring official.	A, B, D, F, H and I.
(6) a(n) [Agency adjective] official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved ..	J.

§ __.50 How is this part written?

(a) This part uses a "plain language" format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as "I" and "you," change from subpart to subpart depending on the audience being addressed. The pronoun "we" always is the [Agency noun].

(c) The "Covered Transactions" chart in the appendix to this part shows the levels or "tiers" at which the [Agency noun] enforces an exclusion under this part.

§ __.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion* or *excluded*, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification* or *disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility* or *ineligible*, which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ __.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for [Agency adjective] nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority.

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This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ __.105 Does this part apply to me?

Portions of this part (see table at § __.25(b)) apply to you if you are a(n):

(a) Participant or principal in a covered transaction;

(b) Respondent (a person against whom the [Agency noun] has initiated a debarment or suspension action);

(c) [Agency adjective] debarring or suspending official; or

(d) [Agency adjective] official who is authorized to enter into covered transactions with non-Federal parties.

§ __.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ __.115 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ __.120, __.315, and __.420, a person who is excluded by the [Agency noun] or any other Federal agency may not:

(a) Be a participant in a(n) [Agency adjective] transaction that is a covered transaction under Subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

§ __.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The [Agency head or designee] may grant an exception permitting an excluded person to participate in a particular covered transaction. If the [Agency head or designee] grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

§ __.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ __.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ __.135 May the [Agency noun] exclude a person who is not currently participating in a nonprocurement transaction?

Given a cause that justifies an exclusion under this part, we may exclude any person who has participated, is currently participating, or may reasonably be expected to participate in a covered transaction.

§ __.140 How do I know if a person is excluded?

Check the Governmentwide *List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs (List)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *List* and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency sends information about the excluded person to the GSA for inclusion on the *List*.

§ __.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion on the *List*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) [Agency adjective] transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

Subpart B—Covered Transactions

§ __.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ __.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § __.305 or § __.415; or

(2) A(n) [Agency adjective] official obtains an exception from the [Agency head or designee] to allow you to be involved in the transaction, as permitted under § _.120.

§ __.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § __.970, are covered transactions unless listed in § __.215. (See appendix to this part.)

§ __.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the [Agency noun] needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the [Agency noun] specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ __.220 Are any procurement contracts included as covered transactions?

Covered transactions under this part do not include any procurement contracts awarded directly by a Federal agency (those transactions are covered under the Federal Acquisition Regulation), but they do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part). Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(a) The contract is awarded by a participant in a nonprocurement transaction that is covered under § __.210, and the amount of the contract is expected to equal or exceed $25,000.

(b) The contract requires the consent of a(n) [Agency adjective] official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(c) The contract is for federally-required audit services.

§ __.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

§ __.300 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the [Agency noun] grants an exception under § __.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ __.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the [Agency noun] grants an exception under § __.120.

§ __.310 May I use the services of an excluded person under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the [Agency noun] grants an exception under § __.120.

§ __.315 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any principal of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the governmentwide *List*.

§ __.320 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ __.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § __.430 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ __.330 What information must I provide before entering into a covered transaction with the [Agency noun]?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the [Agency

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adjective] office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § __.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses listed in § __.800(a); or

(d) Have had one or more public transactions (Federal, state, or local) terminated within the preceding three years for cause or default.

§ __.335 If I disclose unfavorable information required under § __.330, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § __.330 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ __.340 What happens if I fail to disclose information required under § __.330?

If we later determine that you failed to disclose information under § __.330 that you knew at the time you entered into the covered transaction, we may

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ __.345 What must I do if I learn of information required under § __.330 after entering into a covered transaction with the [Agency noun]?

At any time after you enter into a covered transaction, you must give immediate written notice to the [Agency adjective] office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § __.330; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § __.330.

Disclosing Information—Lower Tier Participants

§ __.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ __.355 What happens if I fail to disclose information required under § __.350?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ __.360 What must I do if I learn of information required under § __.350 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § __.350; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § __.350.

Subpart D—Responsibilities of [Agency adjective] Officials Regarding Transactions

§ __.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § __.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ __.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § __.120.

§ __.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § __.120.

§ __.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § __.120.

§ __.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § __.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ __.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ __.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the governmentwide List when you take any action listed in § __.425.

(b) You must review information that a participant gives you, as required by § __.330, about its status or the status of the principals of a transaction.

§ __.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ __.440 [Reserved]

§ __.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration.

You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ __.450 What action may I take if a primary tier participant fails to disclose the information required under § __.330?

If you as an agency official determine that a participant failed to disclose information, as required by § __.330, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ __.455 What may I do if a lower tier participant fails to disclose the information required under § __.350 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § __.350, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

§ __.500 What is the purpose of the List?

The *List* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ __.505 Who uses the List?

(a) Federal agency officials use the *List* to determine whether to enter into a transaction with a person, as required under § __.410.

(b) Participants also may, but are not required to, use the *List* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § __.315; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *List* is available to the general public.

§ __.510 Who maintains the List?

In accordance with the OMB guidelines, the General Services Administration (GSA) compiles, maintains and distributes the *List*.

§ __.515 What specific information is on the List?

(a) At a minimum, the *List* indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Contractor and Government Establishment (CAGE) code or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the electronic version of the *List* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) GSA discloses the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552a.

§ __.520 Who gives the GSA the information that it puts on the List?

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must provide current information about those persons to the GSA. They must give the GSA—

(a) Information required by § __.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person within five working days, unless the GSA agrees to an alternative schedule, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ __.525 Whom do I ask if I have questions about a specific person on the List?

If you have questions about a listed person, ask the Federal agency that took the action placing the person's name on the *List*.

§ __.530 Where can I get the List?

You can get the information contained on the *List* in two ways.

(a) You may subscribe to a printed version which you may obtain by purchasing a yearly subscription. A Federal agency may subscribe through its printing and distribution office. The public may obtain a subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238.

(b) You may access the *List* through the Internet, currently at http://epls.arnet.gov.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ __.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

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§ __.605 How does suspension differ from debarment?

Suspension differs from debarment in that:

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must— (1) Have *adequate evidence* that there may be a cause for debarment of an individual or business; and. (2) Conclude that there is an *immediate need* to take action to protect the Federal interest.	Must conclude, based on a *preponderance of the evidence*, that the individual or business has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension *first*, and promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ __.610 What procedures does the [Agency noun] use in suspension and debarment actions?

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and Subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and Subpart H of this part.

§ __.615 How does the [Agency noun] notify a person of suspension and debarment actions?

The suspending or debarring official sends a written notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, facsimile number, or e-mail address. The notice is effective if sent to any of these persons.

§ __.625 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ __.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ __.630 May the [Agency noun] impute conduct of one person to another?

For purposes of determining the scope of your suspension or debarment, we may impute conduct as follows:

(a) *Conduct imputed to participant.* We may impute the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval or acquiescence. The participant's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed to individuals associated with participant.* We may impute the fraudulent, criminal, or other seriously improper conduct of a participant to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of or had reason to know of the participant's conduct.

(c) *Conduct of one participant imputed to other participants in a joint venture.* We may impute the fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application or similar arrangement, or with the knowledge, approval, or acquiescence of those participants. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

Settlement and Voluntary Exclusion

§ __.635 May the [Agency noun] settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interests of the Federal Government.

§ __.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ __.645 Do other Federal agencies know if the [Agency noun] agrees to a voluntary exclusion?

(a) Yes, we send information regarding a voluntary exclusion to the General

Services Administration for entry into the *List.*

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§ __.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and Subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists adequate evidence to suspect that a cause for debarment under § __.800 may exist; and

(b) Immediate action is necessary to protect the public interest.

§ __.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ __.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ __.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under § __.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ __.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension.

You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ __.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ __.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

§ __.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ __.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

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(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider. In addition, you may present witnesses and confront any person the agency presents as a witness against you.

§ __.745 Is a record made of fact-finding proceedings?

(a) Where fact-finding is conducted, the fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ __.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ __.755 When will I know whether the suspension is continued or terminated?

(a) Where no additional fact-finding is conducted, the suspending official must make the decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official may extend that period for good cause. If fact-finding is conducted, the suspending official must make the final decision as promptly as possible after the record is closed.

(b) In any event, the suspending official must prepare a written final decision and notify you of the decision and the reasons for it. (*See* § __.615.)

§ __.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph

(b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ __.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § __.120 or § __.305;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § _.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ __.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § __.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § __.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § __.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ __.810 When does a debarment take effect?

Unlike suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ __.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but

any information provided orally that you consider important must also be submitted in writing for the official record.

§ __.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ __.825 What information must I provide to the debarring official if I contest a proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § __.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

§ __.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ __.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider. In addition, you may present witnesses and confront any person the agency presents as a witness against you.

§ __.840 Is a record made of fact-finding proceedings?

(a) Where fact-finding is conducted, the fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ __.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § __.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § __.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ __.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ __.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ __.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that

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you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ __.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § __.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ __.870 When do I know if the debarring official debars me?

(a) Where no additional fact-finding is conducted, the debarring official must make the decision whether to debar you within 45 days of closing the official record. The debarring official may extend that period for good cause. If fact-finding is conducted, the debarring official must make the final decision as promptly as possible after the record is closed.

(b) The debarring official sends you written notice, pursuant to § __.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ __.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ __.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A *bona fide* change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ __.885 May the debarring official extend a debarment period?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and Subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ __.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ __.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ __.910 Agency.

Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. The independent regulatory agencies are not considered "agencies" for purposes of this part.

§ __.915 Agent or representative.

Agent or *representative* means any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

§ __.920 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ __.925 Conviction.

Conviction means a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere, or any other resolution, including probation before judgment and deferred prosecution.

§ __.930 Debarment.

Debarment means an action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ __.935 Debarring official.

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ __.940 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ __.945 Excluded or exclusion.

Excluded or *exclusion* means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ __.950 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ __.955 Ineligible or ineligibility.

Ineligible or *ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ __.960 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ __.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.

List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs (List) means the list compiled, maintained, and distributed by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

§ __.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

(1) Grants.

(2) Cooperative agreements.

(3) Scholarships.

(4) Fellowships.

(5) Contracts of assistance.

(6) Loans.

(7) Loan guarantees.

(8) Subsidies.

(9) Insurances.

(10) Payments for specified uses.

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ __.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § __.615.)

§ __.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ __.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ __.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ __.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of influencing the development or outcome of an activity that affects a covered transaction.

§ __.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ __.1005 State.

(a) *State* means—

(1) Any of the States of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a *State*.

(b) For purposes of this part, *State* does not include institutions of higher

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education, hospitals, or units of local government.

§ __.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ __.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ __.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

BILLING CODES 6325–01–P et al.

Subpart J - [Reserved]

Appendix to [Part/Subpart] ___ – Covered Transactions

COVERED TRANSACTIONS

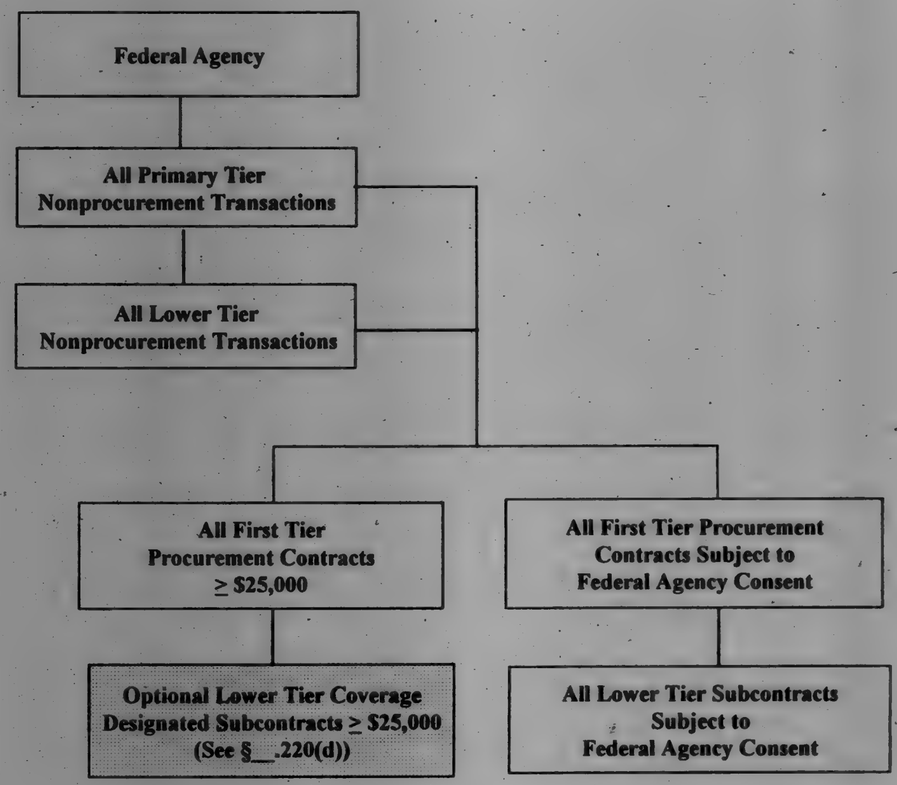

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2. [Part/Subpart] __ is added to read as follows:

[Part/Subpart] __—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)

Subpart A—Purpose and Coverage

Sec.

__.100 What does this part do?
__.105 Does this part apply to me?
__.110 Are any of my Federal assistance awards exempt from this part?
__.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

__.200 What must I do to comply with this part?
__.205 What must I include in my drug-free workplace statement?
__.210 To whom must I distribute my drug-free workplace statement?
__.215 What must I include in my drug-free awareness program?
__.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
__.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
__.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

__.300 What must I do to comply with this part if I am an individual recipient?
__.301 [Reserved]

Subpart D—Responsibilities of [Agency adjective] Awarding Officials

__.400 What are my responsibilities as a(n) [Agency adjective] awarding official?

Subpart E—Violations of this Part and Consequences

__.500 How are violations of this part determined for recipients other than individuals?
__.505 How are violations of this part determined for recipients who are individuals?
__.510 What actions will the Federal Government take against a recipient determined to have violated this part?
__.515 Are there any exceptions to those actions?

Subpart F—Definitions

__.605 Award.
__.610 Controlled substance.
__.615 Conviction.
__.620 Cooperative agreement.
__.625 Criminal drug statute.
__.630 Debarment.
__.635 Drug-free workplace.
__.640 Employee.
__.645 Federal agency or agency.
__.650 Grant.
__.655 Individual.
__.660 Recipient.
__.665 State.
__.670 Suspension

Subpart A—Purpose and Coverage

§ __.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ __.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either

(1) A recipient of an assistance award from the [Agency noun]; or

(2) A(n) [Agency adjective] awarding official. (*See* definitions of *award* and *recipient* in §§ __.605 and __.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are ...	see subparts ...
(1) a recipient who is *not* an individual.	A, B and E.
(2) a recipient who is an individual.	A, C and E.
(3) a(n) [Agency adjective] awarding official.	A, D and E.

§ __.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the [Agency head or designee] determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ __.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § __.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ __.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail is subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ __.205 through __.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § __.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § __.230).

§ __.205 What must I include in my drug-free workplace statement?

You must publish a statement that

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ __.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § __.205 be given to each employee who will be engaged in the performance of any Federal award.

§ __.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ __.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § __.205 and an ongoing awareness program as described in § __.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) the performance period of the award is less than 30 days.	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) the performance period of the award is 30 days or more.	must have the policy statement and program in place within 30 days after award.
(c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the [Agency adjective] awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ __.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § __.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ __.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each [Agency adjective] award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the [Agency adjective] official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by [Agency adjective] officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place.

Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the [Agency adjective] awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the [Agency adjective] awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ __.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) [Agency adjective] award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the [Agency adjective] awarding official or other designee for each award that you currently have, unless § __.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ __.301 [Reserved]

Subpart D—Responsibilities of [Agency adjective] Awarding Officials

§ __.400 What are my responsibilities as a(n) [Agency adjective] awarding official?

As a(n) [Agency adjective] awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ __.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

(a) The recipient has violated the requirements of Subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ __.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

(a) The recipient has violated the requirements of Subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ __.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § __.500 or § __.505, the [Agency noun] may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

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(c) Suspension or debarment of the recipient under [CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689], for a period not to exceed five years.

§ __.515 Are there any provision for exceptions to those actions?

The [Agency head] may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the [Agency head] determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ __.605 Award.

Award means an award of financial assistance by the [Agency noun] or other Federal agency directly to a recipient.

(a) The term *award* includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term *award* does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ __.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ __.615 Conviction.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ __.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (*see* definition of *grant* in § __.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include *cooperative research and development agreements* as defined in 15 U.S.C. 3710a.

§ __.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ __.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ __.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ __.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ __.645 Federal agency or agency.

Federal agency or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ __.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ __.655 Individual.

Individual means a natural person.

§ __.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ __.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ __.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

Adoption of Proposed Common Rules

The adoption of the proposed common rules by the participating agencies, as modified by agency-specific text is set forth below:

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206–AJ31

FOR FURTHER INFORMATION CONTACT: J. David Cope, Debarring Official, Office of the Inspector General, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, e-mail *debar@opm.gov*, fax (202) 606–2153.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Office of Personnel Management adopted the Nonprocurement Debarment and Suspension Common Rule on May 17, 1993, following the text of the governmentwide rule as published on May 26, 1988 (53 FR 19160). OPM did not adopt subpart F of the common rule, pertaining to requirements for drug-free workplace (grants), because the agency did not issue assistance awards, grants, or other forms of financial or nonfinancial assistance that would be covered by those provisions. For the same reasons, OPM is not adopting the separate regulatory part on drug-free workplace requirements that has been developed as part of this governmentwide regulatory package.

List of Subjects in 5 CFR Part 970

Administrative practice and procedure, Government employees, Grant programs, Loan programs, Hostages, Iraq, Kuwait, Lebanon.

Approved: Office of Personnel Management.

Kay Cole James,

Director.

For the reasons stated in the common preamble, the Office of Personnel Management proposes to amend part 970 of title 5, Code of Federal Regulations as follows:

1. Part 970 is revised as set forth in instruction 1 at the end of the common preamble.:

PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
970.25 How is this part organized?
970.50 How is this part written?
970.75 Do terms in this part have special meanings?

Subpart A—General

970.100 What does this part do?
970.105 Does this part apply to me?
970.110 What is the purpose of the nonprocurement debarment and suspension system?
970.115 How does an exclusion restrict a person's involvement in covered transactions?
970.120 May we grant an exception to let an excluded person participate in a covered transaction?
970.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
970.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
970.135 May the OPM exclude a person who is not currently participating in a nonprocurement transaction?
970.140 How do I know if a person is excluded?
970.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

970.200 What is a covered transaction?
970.205 Why is it important to know if a particular transaction is a covered transaction?
970.210 Which nonprocurement transactions are covered transactions?
970.215 Which nonprocurement transactions are not covered transactions?
970.220 Are any procurement contracts included as covered transactions?
970.225 How do I know if a transaction in which I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

970.300 May I enter into a covered transaction with an excluded or disqualified person?
970.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
970.310 May I use the services of an excluded person under a covered transaction?
970.315 Must I verify that principals of my covered transactions are eligible to participate?
970.320 What happens if I do business with an excluded person in a covered transaction?
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970.335 If I disclose unfavorable information required under § 970.330 will I be prevented from entering into the transaction?
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Disclosing Information—Lower Tier Participants

970.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
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Subpart D—Responsibilities of OPM Officials Regarding Transactions

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970.410 May I approve a participant's use of the services of an excluded person?
970.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
970.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
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970.440 What method do I use to communicate those requirements to participants?
970.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
970.450 What action may I take if a primary tier participant fails to disclose the information required under § 970.330?
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Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

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970.740 Are suspension proceedings formal?
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970.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
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Subpart J [Reserved]

Appendix to Part 970—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 970 is further amended as set forth below.

a. "[Agency noun]" is removed and "OPM" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "OPM" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Debarring Official" is added in its place wherever it occurs.

3. Section 970.440 is added to read as follows:

§ 970.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3017 and 3021

RIN 0505–AA11

ADDRESSES: Comments on the Department of Agriculture's additional provisions should be addressed to Patricia E. Healy, Acting Chief Financial Officer, U.S. Department of Agriculture, Room 143–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gerald Miske, Fiscal Policy Division, Office of the Chief Financial Officer, 202–720–1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Agriculture (USDA) is publishing these proposed rules in order to update these two regulations, and to maintain governmentwide uniformity in grants management policy that is a primary objective of Pub. L. 106–107, "The Federal Financial Assistance Management Improvement Act of 1999."

The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and re-codified as a separate part 3021.

The appendix that is referenced in § 3017.50 contains a model for covered transactions that would be accurate for all USDA agencies if USDA had not added certain exclusions in §§ 3017.215 and 3017.220. Therefore, it is necessary to clarify that the appendix contains a general model that will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §§ 3017.215 and 3017.220.

USDA has limited covered transactions under its current debarment and suspension regulation (7 CFR part 3017) to primary tier transactions for all of its export and foreign assistance programs. USDA proposes to retain this limited coverage for most of its export and foreign assistance programs but to expand the coverage slightly for certain market development and foreign assistance programs. The coverage would be expanded to include: (1) Any lower tiers non procurement transaction between a nonprofit trade association or state regional group and a U.S. entity under the Market Excess Program; and (2) any procurement contract for ocean transportation under USDA's foreign assistance programs. The types of lower

tier transactions that would be covered would be those in which the Department of Agriculture would be making an identifiable payment, directly or indirectly, to the participant in the specific lower tier transaction. In accordance with §§ 3017.215 (i) and 3017.220 (d), these two types of transactions would be the only lower tier nonprocurement or procurement transactions in USDA's export and foreign assistance programs that would be covered transactions under this regulation.

USDA has identified in § 3017.215 certain nonprocurement transactions that will not be covered by this regulation.

Under § 3017.220, USDA has included certain procurement contracts as covered transactions when the contract is for the procurement of ocean transportation in connection with USDA's export and foreign assistance programs.

In order to communicate requirements to lower-tier covered transactions, USDA has added § 3017.440 requiring USDA agencies to include a term in each agreement for participants' compliance with Subpart C.

In §§ 3017.755 (a) and 3017.870 (a) USDA has added the requirement that the record remain open for a full 30 days after the respondent receives the notice of suspension or debarment even if a submission in opposition is made before the 30 days expire. This requirement was included in order to make the timing of these actions clear.

USDA does not have a centralized appeal process and therefore has retained in § 3017.765 the appeal process established in the current USDA regulation on debarment.

List of Subjects

7 CFR Part 3017

Administrative practice and procedure, Debarment and suspension, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 3021

Administrative practice and procedure, Drug abuse, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

Dated: June 1, 2001.

Patricia E. Healy,

Acting, Chief Financial Officer.

Dated: June 6, 2001.

Ann M. Veneman,

Secretary of Agriculture.

For the reasons stated in the common preamble, the United States Department of Agriculture proposes to amend 7 CFR Chapter XXX as follows:

1. Part 3017 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

3017.25 How is this part organized?
3017.50 How is this part written?
3017.75 Do terms in this part have special meanings?

Subpart A—General

3017.100 What does this part do?
3017.105 Does this part apply to me?
3017.110 What is the purpose of the nonprocurement debarment and suspension system?
3017.115 How does an exclusion restrict a person's involvement in covered transactions?
3017.120 May we grant an exception to let an excluded person participate in a covered transaction?
3017.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
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3017.140 How do I know if a person is excluded?
3017.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

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3017.200 What is a covered transaction?
3017.205 Why is it important to know if a particular transaction is a covered transaction?
3017.210 Which nonprocurement transactions are covered transactions?
3017.215 Which nonprocurement transactions are not covered transactions?
3017.220 Are any procurement contracts included as covered transactions?
3017.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

3017.300 May I enter into a covered transaction with an excluded or disqualified person?
3017.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
3017.310 May I use the services of an excluded person under a covered transaction?
3017.315 Must I verify that principals of my covered transactions are eligible to participate?
3017.320 What happens if I do business with an excluded person in a covered transaction?
3017.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

3017.330 What information must I provide before entering into a covered transaction with the Department of Agriculture.
3017.335 If I disclose unfavorable information required under § 3017.330 will I be prevented from entering into the transaction?
3017.340 What happens if I fail to disclose the information required under § 3017.330?
3017.345 What must I do if I learn of the information required under § 3017.330 after entering into a covered transaction with the Department of Agriculture?

Disclosing Information—Lower Tier Participants

3017.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
3017.355 What happens if I fail to disclose the information required under § 3017.350?
3017.360 What must I do if I learn of information required under § 3017.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

3017.400 May I enter into a transaction with an excluded or disqualified person?
3017.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
3017.410 May I approve a participant's use of the services of an excluded person?
3017.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
3017.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
3017.425 When do I check to see if a person is excluded or disqualified?
3017.430 How do I check to see if a person is excluded or disqualified?

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3017.435 What must I require of a primary tier participant?
3017.440 What method do I use to communicate those requirements to participants?
3017.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
3017.450 What action may I take if a primary tier participant fails to disclose the information required under § 3017.330?
3017.455 What may I do if a lower tier participant fails to disclose the information required under § 3017.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

3017.500 What is the purpose of the List?
3017.505 Who uses the List?
3017.510 Who maintains the List?
3017.515 What specific information is on the List?
3017.520 Who gives the GSA the information that it puts on the List?
3017.525 Whom do I ask if I have questions about a person on the List?
3017.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

3017.600 How do suspension and debarment actions start?
3017.605 How does suspension differ from debarment?
3017.610 What procedures does the Department of Agriculture use in suspension and debarment actions?
3017.615 How does the Department of Agriculture notify a person of suspension and debarment actions?
3017.620 Do Federal agencies coordinate suspension and debarment actions?
3017.625 What is the scope of a suspension or debarment action?
3017.630 May the Department of Agriculture impute the conduct of one person to another?
3017.635 May the Department of Agriculture settle a debarment or suspension action?
3017.640 May a settlement include a voluntary exclusion?
3017.645 Do other Federal agencies know if the Department of Agriculture agrees to a voluntary exclusion?

Subpart G—Suspension

3017.700 When may the suspending official issue a suspension?
3017.705 What does the suspending official consider in issuing a suspension?
3017.710 When does a suspension take effect?
3017.715 What notice does the suspending official give me if I am suspended?
3017.720 How may I contest a suspension?
3017.725 How much time do I have to contest a suspension?
3017.730 What information must I provide to the suspending official if I contest a suspension?
3017.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
3017.740 Are suspension proceedings formal?
3017.745 Is a record made of fact-finding proceedings?
3017.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
3017.755 When will I know whether the suspension is continued or terminated?
3017.760 How long may my suspension last?
3017.765 How may I appeal my suspension?

Subpart H—Debarment

3017.800 What are the causes for debarment?
3017.805 What notice does the debarring official give me if I am proposed for debarment?
3017.810 When does a debarment take effect?
3017.815 How may I contest a proposed debarment?
3017.820 How much time do I have to contest a proposed debarment?
3017.825 What information must I provide to the debarring official if I contest a proposed debarment?
3017.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
3017.835 Are debarment proceedings formal?
3017.840 Is a record made of fact-finding proceedings?
3017.845 What does the debarring official consider in deciding whether to debar me?
3017.850 What is the standard of proof in a debarment action?
3017.855 Who has the burden of proof in a debarment action?
3017.860 What factors may influence the debarring official's decision?
3017.865 How long may my debarment last?
3017.870 When do I know if the debarring official debars me?
3017.875 May I ask the debarring official to reconsider a decision to debar me?
3017.880 What factors may influence the debarring official during reconsideration?
3017.885 May the debarring official extend a debarment?
3017.890 How may I appeal my debarment?

Subpart I—Definitions

3017.900 Adequate evidence.
3017.905 Affiliate.
3017.910 Agency.
3017.915 Agent or representative.
3017.920 Civil judgment.
3017.925 Conviction.
3017.930 Debarment.
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3017.940 Disqualified.
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3017.950 Indictment.
3017.955 Ineligible or ineligibility.
3017.960 Legal proceedings.
3017.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
3017.970 Nonprocurement transaction.
3017.975 Notice.
3017.980 Participant.
3017.985 Person.
3017.990 Preponderance of the evidence.
3017.995 Principal.
3017.1000 Respondent.
3017.1005 State.
3017.1010 Suspending official.
3017.1015 Suspension.
3017.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 3017—Covered Transactions

Authority: 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); 7 CFR part 2, subpart D, § 2.28.

2. Part 3017 is further amended as set forth below:

a. "[Agency noun]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "the Secretary of Agriculture or designee" is added in its place wherever it occurs.

3. Section 3017.50 is further amended by adding a sentence to the end of paragraph (c) to read as follows:

§ 3017.50 How is this part written?

(c) * * * The "Covered Transactions" chart in the appendix to this part shows the general model for the levels or "tiers" at which the Department of Agriculture enforces an exclusion under this part. However, the chart in the appendix shows only the general model and the model will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §§ 3017.215 and 3017.220.

4. Section 3017.215 is further amended by adding paragraphs (h) through (p) to read as follows:

§ 3017.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) An entitlement or mandatory award required by a statue, including a lower tier entitlement or mandatory award that is required by a statute.

(i) With respect to the Department of Agriculture's export and foreign assistance programs, any transaction below the primary tier covered transaction other than a nonprocurement transaction under the Market Access Program between a nonprofit trade association or state regional group and a U.S. entity, as defined in part 1485 of this title.

(j) Any transaction under the Department of Agriculture's conservation programs, warehouse licensing programs, or programs that provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities.

(k) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The "Export Act"), which provides separate statutory authority to debar.

(l) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(m) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(n) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(o) The receipt of licenses, permit, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(p) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

5. Section 3017.220 is amended by adding paragraph (d) to read as follows:

§ 3017.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is for the procurement of ocean transportation in connection with the Department of Agriculture's foreign assistance programs. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, not withstanding the provisions in paragraphs (a) through (c) of this section.

6. Section 3017.440 is added to read as follows:

§ 3017.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include similar term or condition in lower-tier covered transactions.

7. Section 3017.755 is further amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 3017.755 When will I know whether the suspension is continued or terminated?

(a) * * * However, the record will remain open for the full 30 days, as called for in § 3017.725, even when you make a submission before the 30 days expire.

* * * * *

8. Section 3017.765 is added to subpart G to read as follows:

§ 3017.765 How may I appeal my suspension?

(a) An appeal may be filled only after the respondent has exhausted the option to contest the suspension in § 3017.720. The appeal must be filed within 30 days of receiving the decision required § 3017.755 and it must specify the basis of the appeal. The respondent must file the appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The decision of a suspending official under § 3017.700 may be vacated by the assigned appeals officer only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify, in writing, the respondent(s) and the suspending official, who took the action being appealed, of the decision.

(d) The appeals officer's decision is final and it not appealable within USDA.

9. Section 3017.800 is further amended by adding paragraph (e) to read as follows:

§ 3017.800 What are the causes of debarment?

* * * * *

(e) Notwithstanding paragraph (c) (1) of this section, within the Department of Agriculture a nonprocurement debarment by any Federal agency taken before March 1, 1989.

10. Section 3017.870 is further amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 3017.870 When do I know if the debarring official debars me?

(a) * * * However, the record will remain open for the full 30 days, as called for in § 3017.820, even when you make a submission before the 30 days expire.

* * * * *

11. Section 3017.890 is added to subpart H to read as follows:

§ 3017.890 How may I appeal my debarment?

(a) An appeal may be filed only after the respondent has exhausted the option to contest the debarment in § 3017.815. The appeal must be filed within 30 days of receiving the decision required § 3017.870 and it must specify the basis of the appeal. The respondent must file the appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The decision of a debarring official under § 3017.800 may be vacated by the assigned appeals officer only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing

Clerk, the appeals officer will notify, in writing, the respondent(s) and the debarring official, who took the action being appealed, of the decision.

(d) The appeals officer's decision is final and it not appealable within USDA.

12. Section 3017.935 is further amended by adding paragraph (b) to read as follows:

§ 3017.935 Debarring official.

* * * * *

(b) Within USDA, the Secretary has designated the Administrators of program agencies to be the debarring official, *i.e.* Administrator, Food and Nutrition Service. Further, the Secretary authorizes these officials to delegate any and all functions except for making the final decision. Final decision includes the decision to initiate, maintain, or continue a debarment.

13. Section 3017.1010 is further amended by adding paragraph (b) to read as follows:

§ 3017.1010 Suspending official.

* * * * *

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(b) Within USDA, the Secretary has designated the Administrators of program agencies to be the suspending official, *i.e.* Administrator, Food and Nutrition Service. Further, the Secretary authorizes these officials to delegate any and all functions except for making the final decision. Final decision includes the decision to initiate, maintain, or continue a suspension.

14. Part 3021 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 3021—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
3021.100 What does this part do?
3021.105 Does this part apply to me?
3021.110 Are any of my Federal assistance awards exempt from this part?
3021.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

3021.200 What must I do to comply with this part?
3021.205 What must I include in my drug-free workplace statement?
3021.210 To whom must I distribute my drug-free workplace statement?
3021.215 What must I include in my drug-free awareness program?
3021.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
3021.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
3021.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

3021.300 What must I do to comply with this part if I am an individual recipient?
3021.301 [Reserved]

Subpart D—Responsibilities of Department of Agriculture Awarding Officials

3021.400 What are my responsibilities as a Department of Agriculture awarding official?

Subpart E—Violations of This Part and Consequences

3021.500 How are violations of this part determined for recipients other than individuals?
3021.505 How are violations of this part determined for recipients who are individuals?
3021.510 What actions will the Federal Government take against a recipient determined to have violated this part?
3021.515 Are there any exceptions to those actions?

Subpart F—Definitions

3021.605 Award.
3021.610 Controlled substance.
3021.615 Conviction.
3021.620 Cooperative agreement.
3021.625 Criminal drug statute.
3021.630 Debarment.
3021.635 Drug-free workplace.
3021.640 Employee.
3021.645 Federal agency or agency.
3021.650 Grant.
3021.655 Individual.
3021.660 Recipient.
3021.665 State.
3021.670 Suspension.

Authority: 5 U.S.C. 301; 41 U.S.C. 701, *et seq.*; Pub. L. 101–576, 104 Stat. 2838; 7 CFR Part 2, Subpart D, § 2.28.

15. Part 3021 is further amended as set forth below:

a. "[Agency noun]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Agriculture" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "the Secretary of Agriculture or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "the Secretary of Agriculture" is added in its place wherever it occurs.

16. Section 3021.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "7 CFR part 3017" in its place.

17. Section 3021.605 (a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "7 CFR part 3016" in its place.

DEPARTMENT OF ENERGY

10 CFR Parts 606, 607 and 1036

RIN 1991–AB56

FOR FURTHER INFORMATION CONTACT: Cynthia G. Yee, 202–586–1140; *cynthia.yee@hq.doe.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION: The administrative practices and procedures for suspension and debarment are being removed from part 1036 and recodified in part 606. The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, part 1036, and recodified as a separate part 607.

List of Subjects

10 CFR Part 606

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

10 CFR Part 607

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 29, 2001.

Spencer Abraham,

Secretary of Energy.

Accordingly, as set forth in the common preamble, and under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*, the Department of Energy proposes to amend 10 CFR chapters II and X as follows.

1. Part 606 is added to subchapter H to read as set forth in instruction 1 at the end of the common preamble.

PART 606—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

606.25 How is this part organized?
606.50 How is this part written?
606.75 Do terms in this part have special meanings?

Subpart A—General

606.100 What does this part do?
606.105 Does this part apply to me?
606.110 What is the purpose of the nonprocurement debarment and suspension system?
606.115 How does an exclusion restrict a person's involvement in covered transactions?
606.120 May we grant an exception to let an excluded person participate in a covered transaction?
606.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
606.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
606.135 May the Department of Energy exclude a person who is not currently participating in a nonprocurement transaction?
606.140 How do I know if a person is excluded?
606.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

606.200 What is a covered transaction?
606.205 Why is it important to know if a particular transaction is a covered transaction?
606.210 Which nonprocurement transactions are covered transactions?
606.215 Which nonprocurement transactions are not covered transactions?
606.220 Are any procurement contracts included as covered transactions?
606.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

606.300 May I enter into a covered transaction with an excluded or disqualified person?
606.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
606.310 May I use the services of an excluded person under a covered transaction?
606.315 Must I verify that principals of my covered transactions are eligible to participate?
606.320 What happens if I do business with an excluded person in a covered transaction?
606.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

606.330 What information must I provide before entering into a covered transaction with the Department of Energy?
606.335 If I disclose unfavorable information required under § 606.330 will I be prevented from entering into the transaction?
606.340 What happens if I fail to disclose the information required under § 606.330?
606.345 What must I do if I learn of the information required under § 606.330 after entering into a covered transaction with the Department of Energy?

Disclosing information—Lower Tier Participants

606.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
606.355 What happens if I fail to disclose the information required under § 606.350?
606.360 What must I do if I learn of information required under § 606.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DOE Officials Regarding Transactions

606.400 May I enter into a transaction with an excluded or disqualified person?
606.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
606.410 May I approve a participant's use of the services of an excluded person?
606.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
606.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
606.425 When do I check to see if a person is excluded or disqualified?
606.430 How do I check to see if a person is excluded or disqualified?
606.435 What must I require of a primary tier participant?
606.440 What method do I use to communicate to participants the requirement to comply with Subpart C?
606.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
606.450 What action may I take if a primary tier participant fails to disclose the information required under § 606.330?
606.455 What may I do if a lower tier participant fails to disclose the information required under § 606.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

606.500 What is the purpose of the List?
606.505 Who uses the List?
606.510 Who maintains the List?
606.515 What specific information is on the List?
606.520 Who gives the GSA the information that it puts on the List?
606.525 Whom do I ask if I have questions about a person on the List?
606.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

606.600 How do suspension and debarment actions start?
606.605 How does suspension differ from debarment?
606.610 What procedures does the Department of Energy use in suspension and debarment actions?
606.615 How does the Department of Energy notify a person of suspension and debarment actions?
606.620 Do Federal agencies coordinate suspension and debarment actions?
606.625 What is the scope of a suspension or debarment action?
606.630 May the Department of Energy impute the conduct of one person to another?
606.635 May the Department of Energy settle a debarment or suspension action?
606.640 May a settlement include a voluntary exclusion?
606.645 Do other Federal agencies know if the Department of Energy agrees to a voluntary exclusion?

Subpart G—Suspension

606.700 When may the suspending official issue a suspension?
606.705 What does the suspending official consider in issuing a suspension?
606.710 When does a suspension take effect?
606.715 What notice does the suspending official give me if I am suspended?
606.720 How may I contest a suspension?
606.725 How much time do I have to contest a suspension?
606.730 What information must I provide to the suspending official if I contest a suspension?
606.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
606.740 Are suspension proceedings formal?
606.745 Is a record made of fact-finding proceedings?
606.746 Who conducts fact-finding conferences for DOE?
606.750 What does the suspending official consider in-deciding whether to continue or terminate my suspension?
606.755 When will I know whether the suspension is continued or terminated?
606.760 How long may my suspension last?

Subpart H—Debarment

606.800 What are the causes for debarment?
606.805 What notice does the debarring official give me if I am proposed for debarment?
606.810 When does a debarment take effect?
606.815 How may I contest a proposed debarment?
606.820 How much time do I have to contest a proposed debarment?
606.825 What information must I provide to the debarring official if I contest a proposed debarment?
606.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
606.835 Are debarment proceedings formal?
606.836 Who conducts fact-finding conferences for DOE?
606.840 Is a record made of fact-finding proceedings?
606.845 What does the debarring official consider in deciding whether to debar me?
606.850 What is the standard of proof in a debarment action?
606.855 Who has the burden of proof in a debarment action?
606.860 What factors may influence the debarring official's decision?
606.865 How long may my debarment last?
606.870 When do I know if the debarring official debars me?
606.875 May I ask the debarring official to reconsider a decision to debar me?
606.880 What factors may influence the debarring official during reconsideration?
606.885 May the debarring official extend a debarment?

Subpart I—Definitions

606.900 Adequate evidence.
606.905 Affiliate.
606.910 Agency.
606.915 Agent or representative.
606.920 Civil judgment.
606.925 Conviction.
606.930 Debarment.
606.935 Debarring official.
606.936 Director, Office of Procurement and Assistance Management.
606.940 Disqualified.
606.945 Excluded or exclusion.
606.950 Indictment.
606.955 Ineligible or ineligibility.
606.960 Legal proceedings.
606.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
606.970 Nonprocurement transaction.
606.975 Notice.
606.980 Participant.

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606.985 Person.
606.990 Preponderance of the evidence.
606.995 Principal.
606.1000 Respondent.
606.1005 State.
606.1010 Suspending official.
606.1015 Suspension.
606.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 606—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

2. Part 606 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Energy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOE" is added in its place wherever it occurs. c. "[Agency head or designee]" is removed and "Director, Office of Procurement and "Assistance Management" is added in its place wherever it occurs.

3. Section 606.440 is added to read as follows:

§ 606.440 What method do I use to communicate to participants the requirement to comply with subpart C?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 606.746 is added to read as follows:

§ 606.746 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

5. Section 606.836 is added to read as follows:

§ 606.836 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

6. Section 606.910 is further amended by adding a definition for Department of Energy in alphabetical order to read as follows:

§ 606.910 Agency.

* * * * *

Department of Energy includes the National Nuclear Security Administration (NNSA), and the Federal Energy Regulatory Commission (FERC).

7. Section 606.935 is further amended by adding paragraph (b) to read as follows:

§ 606.935 Debarring official.

* * * * *

(b) The DOE debarring official is the Director, Office of Procurement and Assistance Management, DOE.

8. Section 606.936 is added to read as follows:

§ 606.936 Director, Office of Procurement and Assistance Management.

Director, Office of Procurement and Assistance Management means the Director, Office of Procurement and Assistance Management, DOE, or the Director, Office of Procurement and Assistance Management, NNSA, as appropriate.

9. Section 606.1010 is further amended by adding paragraph (b) to read as follows:

§ 606.1010 Suspending official.

* * * * *

(b) The DOE suspending official is the Director, Office of Procurement and Assistance Management, DOE.

10. Part 607 is added to subchapter H to read as set forth in instruction 2 at the end of the common preamble.

PART 607—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

607.100 What does this part do?
607.105 Does this part apply to me?
607.110 Are any of my Federal assistance awards exempt from this part?
607.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

607.200 What must I do to comply with this part?
607.205 What must I include in my drug-free workplace statement?
607.210 To whom must I distribute my drug-free workplace statement?
607.215 What must I include in my drug-free awareness program?
607.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
607.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
607.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

607.300 What must I do to comply with this part if I am an individual recipient?
607.301 [Reserved]

Subpart D—Responsibilities of DOE Awarding Officials

607.400 What are my responsibilities as a DOE awarding official?

Subpart E—Violations of This Part and Consequences

607.500 How are violations of this part determined for recipients other than individuals?
607.505 How are violations of this part determined for recipients who are individuals?
607.510 What actions will the Federal Government take against a recipient determined to have violated this part?
607.515 Are there any exceptions to those actions?

Subpart F—Definitions

607.605 Award.
607.610 Controlled substance.
607.615 Conviction.
607.620 Cooperative agreement.
607.625 Criminal drug statute.
607.630 Debarment.
607.631 Director, Office of Procurement and Assistance Management.
607.635 Drug-free workplace.
607.640 Employee.
607.645 Federal agency or agency.
607.650 Grant.
607.655 Individual.
607.660 Recipient.
607.665 State.
607.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

11. Part 607 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Energy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOE" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Procurement and Assistance Management" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Energy" is added in its place wherever it occurs.

12. Section 607.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive order 12549 and Executive Order 12689]" and adding "10 CFR part 606" in its place.

13. Section 607.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "10 CFR Part 600" in its place.

14. Section 607.631 is added to read as follows:

§ 607.631 Director, Office of Procurement and Assistance Management.

Director, Office of Procurement and Assistance Management means the Director, Office of Procurement and Assistance Management, DOE, or the Director, Office of Procurement and Assistance Management, NNSA, as appropriate.

15. Section 607.645 is further amended by adding the definition for Department of Energy in alphabetical order to read as follows:

§ 607.645 Federal Agency or agency.

Department of Energy includes the National Nuclear Security Administration (NNSA), and the Federal Energy Regulatory Commission (FERC).

* * * * *

PART 1036 [REMOVED]

16. Part 1036 is removed.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 145 and 147

RIN 3245–AE61

FOR FURTHER INFORMATION CONTACT: Cory Whitehead, SBA Debarring Official, Acting Assistant Administrator for Administration (5331), U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, (202) 205–6630, e-mail: *cory.whitehead@sba.gov* or Michael Campilongo, Office of General Counsel, 409 Third Street, SW, Washington, DC 20416, (202) 205–6879, e-mail: *michael.campilongo@sba.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 145.220 for all contracts that equal or exceed the $25,000 award threshold under SBA nonprocurement transactions. This election maintains the SBA's present practice under the common rule.

In addition, § 145.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under SBA transactions rather than written certifications. This alternative available under the common rule is more efficient than the SBA's current certification process for prospective recipients and participants.

Sections 145.765 and 145.890 are included as additional sections under part 145 and propose to permit persons who have been suspended or debarred by the SBA Debarring Official to obtain a review of that decision on a limited basis as is currently available under SBA's existing rule. These sections propose to delegate the authority to issue a stay on a suspension or debarment decision to the reviewing official. These changes from current practice reflect a more practical approach to matters accepted for review.

Sections 145.935(b) and 145.1010(b) are added to designate the Assistant Administrator for Administration as the SBA debarring and suspending official for SBA programs other than financial assistance. For that program, the SBA debarring and suspending official will be the Assistant Administrator for Financial Assistance.

Section 145.995 of the debarment and suspension common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. SBA is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have an individual employee who is excluded.

The requirements for maintaining a drug-free workplace are being removed as Subpart F in the current debarment and suspension common rule, and re-codified as a separate part 147.

List of Subjects

13 CFR Part 145

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 147

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

John Whitmore,

Acting Administrator, U.S. Small Business Administration.

For the reasons stated in the common preamble, the U.S. Small Business Administration proposes to amend 13 CFR chapter I as follows:

1. Part 145 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
145.25 How is this part organized?
145.50 How is this part written?
145.75 Do terms in this part have special meanings?

Subpart A—General

145.100 What does this part do?
145.105 Does this part apply to me?
145.110 What is the purpose of the nonprocurement debarment and suspension system?
145.115 How does an exclusion restrict a person's involvement in covered transactions?
145.120 May we grant an exception to let an excluded person participate in a covered transaction?
145.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
145.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
145.135 May the SBA exclude a person who is not currently participating in a nonprocurement transaction?
145.140 How do I know if a person is excluded?
145.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

145.200 What is a covered transaction?
145.205 Why is it important to know if a particular transaction is a covered transaction?
145.210 Which nonprocurement transactions are covered transactions?
145.215 Which nonprocurement transactions are not covered transactions?
145.220 Are any procurement contracts included as covered transactions?
145.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

145.300 May I enter into a covered transaction with an excluded or disqualified person?
145.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
145.310 May I use the services of an excluded person under a covered transaction?
145.315 Must I verify that principals of my covered transactions are eligible to participate?
145.320 What happens if I do business with an excluded person in a covered transaction?
145.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

145.330 What information must I provide before entering into a covered transaction with the SBA?
145.335 If I disclose unfavorable information required under § 145.330 will I be prevented from entering into the transaction?
145.340 What happens if I fail to disclose the information required under § 145.330?
145.345 What must I do if I learn of the information required under § 145.330

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after entering into a covered transaction with the SBA?

Disclosing Information—Lower Tier Participants

145.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
145.355 What happens if I fail to disclose the information required under § 145.350?
145.360 What must I do if I learn of information required under § 145.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of SBA Officials Regarding Transactions

145.400 May I enter into a transaction with an excluded or disqualified person?
145.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
145.410 May I approve a participant's use of the services of an excluded person?
145.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
145.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
145.425 When do I check to see if a person is excluded or disqualified?
145.430 How do I check to see if a person is excluded or disqualified?
145.435 What must I require of a primary tier participant?
145.440 What method do I use to communicate § 145.335 requirements to participants?
145.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
145.450 What action may I take if a primary tier participant fails to disclose the information required under § 145.330?
145.455 What may I do if a lower tier participant fails to disclose the information required under § 145.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

145.500 What is the purpose of the List?
145.505 Who uses the List?
145.510 Who maintains the List?
145.515 What specific information is on the List?
145.520 Who gives the GSA the information that it puts on the List?
145.525 Whom do I ask if I have questions about a person on the List?
145.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

145.600 How do suspension and debarment actions start?
145.605 How does suspension differ from debarment?
145.610 What procedures does the SBA use in suspension and debarment actions?
145.615 How does the SBA notify a person of suspension and debarment actions?
145.620 Do Federal agencies coordinate suspension and debarment actions?
145.625 What is the scope of a suspension or debarment action?
145.630 May the SBA impute the conduct of one person to another?
145.635 May the SBA settle a debarment or suspension action?
145.640 May a settlement include a voluntary exclusion?
145.645 Do other Federal agencies know if the SBA agrees to a voluntary exclusion?

Subpart G—Suspension

145.700 When may the suspending official issue a suspension?
145.705 What does the suspending official consider in issuing a suspension?
145.710 When does a suspension take effect?
145.715 What notice does the suspending official give me if I am suspended?
145.720 How may I contest a suspension?
145.725 How much time do I have to contest a suspension?
145.730 What information must I provide to the suspending official if I contest a suspension?
145.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
145.740 Are suspension proceedings formal?
145.745 Is a record made of fact-finding proceedings?
145.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
145.755 When will I know whether the suspension is continued or terminated?
145.760 How long may my suspension last?
145.765 How may I appeal my suspension?

Subpart H—Debarment

145.800 What are the causes for debarment?
145.805 What notice does the debarring official give me if I am proposed for debarment?
145.810 When does a debarment take effect?
145.815 How may I contest a proposed debarment?
145.820 How much time do I have to contest a proposed debarment?
145.825 What information must I provide to the debarring official if I contest a proposed debarment?
145.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
145.835 Are debarment proceedings formal?
145.840 Is a record made of fact-finding proceedings?
145.845 What does the debarring official consider in deciding whether to debar me?
145.850 What is the standard of proof in a debarment action?
145.855 Who has the burden of proof in a debarment action?
145.860 What factors may influence the debarring official's decision?
145.865 How long may my debarment last?
145.870 When do I know if the debarring official debars me?
145.875 May I ask the debarring official to reconsider a decision to debar me?
145.880 What factors may influence the debarring official during reconsideration?
145.885 May the debarring official extend a debarment?
145.890 How may I appeal my debarment?

Subpart I—Definitions

145.900 Adequate evidence.
145.905 Affiliate.
145.910 Agency.
145.915 Agent or representative.
145.920 Civil judgment.
145.925 Conviction.
145.930 Debarment.
145.935 Debarring official.
145.940 Disqualified.
145.945 Excluded or exclusion.
145.950 Indictment.
145.955 Ineligible or ineligibility.
145.960 Legal proceedings.
145.965 List of parties excluded or disqualified from federal procurement and nonprocurement programs.
145.970 Nonprocurement transaction.
145.975 Notice.
145.980 Participant.
144.985 Person.
145.990 Preponderance of the evidence.
145.995 Principal.
145.1000 Respondent.
145.1005 State.
145.1010 Suspending official.
145.1015 Suspension.
145.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 145—Covered Transactions

Authority: 5 U.S.C. 301 *et seq.*; 15 U.S.C. 631 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 145 is further amended as set forth below.

a. "[Agency noun]" is removed and the "SBA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and the "SBA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and the "SBA Debarring Official" is added in its place wherever it occurs.

3. Section 145.220 is further amended by adding a paragraph (d) to read as follows:

§ 145.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the SBA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 145.440 is added to read as follows:

§ 145.440 What method do I use to communicate § 145.435 requirements to participants?

To communicate the requirements in § 145.435 to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

5. Section 145.765 is added to subpart G to read as follows:

§ 145.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under § 145.755 to continue your suspension after you present information in opposition to that suspension under § 145.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 145.755 or paragraph (a)(1) of this section. However, OHA can reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

6. Section 145.890 is added to subpart H to read as follows:

§ 145.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 145.870 to debar you after you present information in opposition to a proposed debarment under § 145.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 145.870 or paragraph (a)(1) of this section. However, OHA can reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA may, in its discretion, stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

7. Section 145.935 is further amended by adding a paragraph (b) to read as follows:

§ 145.935 Debarring official.

* * * * *

(b) For SBA, the suspending official for financial assistance programs means the Assistant Administrator for Financial Assistance; for all other programs, the suspending official means the Assistant Administrator for Administration.

8. Section 145.995 is further amended by adding a paragraph (c) to read as follows:

§ 145.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

9. Section 145.1010 is further amended by adding a paragraph (b) to read as follows:

§ 145.1010 Suspending official.

* * * * *

(b) For SBA, the debarring official for financial assistance programs means the Assistant Administrator for Financial Assistance; for all other programs, the debarring official means the Assistant Administrator for Administration.

10. Part 147 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 147—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (NONPROCUREMENT)

Subpart A—Purpose and Coverage

Sec.
147.100 What does this part do?
147.105 Does this part apply to me?
147.110 Are any of my Federal assistance awards exempt from this part?
147.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

147.200 What must I do to comply with this part?
147.205 What must I include in my drug-free workplace statement?
147.210 To whom must I distribute my drug-free workplace statement?
147.215 What must I include in my drug-free awareness program?
147.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
147.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
147.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

147.300 What must I do to comply with this part if I am an individual recipient?
147.301 [Reserved]

Subpart D—Responsibilities of SBA Awarding Officials

147.400 What are my responsibilities as an SBA awarding official?

Subpart E—Violations of This Part and Consequences

147.500 How are violations of this part determined for recipients other than individuals?

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147.505 How are violations of this part determined for recipients who are individuals?
147.510 What actions will the Federal Government take against a recipient determined to have violated this part?
147.515 Are there any exceptions to those actions?

Subpart F—Definitions

147.605 Award.
147.610 Controlled substance.
147.615 Conviction.
147.620 Cooperative agreement.
147.625 Criminal drug statute.
147.630 Debarment.
147.635 Drug-free workplace.
147.640 Employee.
147.645 Federal agency or agency.
147.650 Grant.
147.655 Individual.
147.660 Recipient.
147.665 State.
147.670 Suspension.

Authority: 41 U.S.C. 701–707.

11. Part 147 is further amended as set forth below.

a. "[Agency noun]" is removed and the "SBA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and the "SBA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and the "SBA Administrator or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and the "SBA Administrator" is added in its place wherever it occurs.

12. Section 147.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "13 CFR part 145" in its place.

13. Section 147.605(a)(2) is amended by removing "[Agency specific CFR citation]" and adding "13 CFR part 147" in its place.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1265 and 1267

RIN 2700–AC43

FOR FURTHER INFORMATION CONTACT: Diane Thompson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20456–0001, (202) 358–0514, e-mail: *diane.thompson@hq.nasa.gov*.

List of Subjects

14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

14 CFR Part 1267

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Anne Guenther,

Acting Associate Administrator for Procurement.

For the reasons stated in the common preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR chapter V as follows:

1. Part 1265 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1265.25 How is this part organized?
1265.50 How is this part written?
1265.75 Do terms in this part have special meanings?

Subpart A—General

1265.100 What does this part do?
1265.105 Does this part apply to me?
1265.110 What is the purpose of the nonprocurement debarment and suspension system?
1265.115 How does an exclusion restrict a person's involvement in covered transactions?
1265.120 May we grant an exception to let an excluded person participate in a covered transaction?
1265.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1265.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1265.135 May NASA exclude a person who is not currently participating in a nonprocurement transaction?
1265.140 How do I know if a person is excluded?
1265.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1265.200 What is a covered transaction?
1265.205 Why is it important to know if a particular transaction is a covered transaction?
1265.210 Which nonprocurement transactions are covered transactions?
1265.215 Which nonprocurement transactions are not covered transactions?
1265.220 Are any procurement contracts included as covered transactions?
1265.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1265.300 May I enter into a covered transaction with an excluded or disqualified person?
1265.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1265.310 May I use the services of an excluded person under a covered transaction?
1265.315 Must I verify that principals of my covered transactions are eligible to participate?
1265.320 What happens if I do business with an excluded person in a covered transaction?
1265.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information Primary Tier Participants

1265.330 What information must I provide before entering into a covered transaction with NASA?
1265.335 If I disclose unfavorable information required under § 1265.330 will I be prevented from entering into the transaction?
1265.340 What happens if I fail to disclose the information required under § 1265.330?
1265.345 What must I do if I learn of the information required under § 1265.330 after entering into a covered transaction with NASA?

Disclosing Information—Lower Tier Participants

1265.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1265.355 What happens if I fail to disclose the information required under § 1265.350?
1265.360 What must I do if I learn of information required under § 1265.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NASA Officials Regarding Transactions

1265.400 May I enter into a transaction with an excluded or disqualified person?
1265.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1265.410 May I approve a participant's use of the services of an excluded person?
1265.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1265.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1265.425 When do I check to see if a person is excluded or disqualified?
1265.430 How do I check to see if a person is excluded or disqualified?
1265.435 What must I require of a primary tier participant?

1265.440 What method do I use to communicate those requirements to participants?
1265.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1265.450 What action may I take if a primary tier participant fails to disclose the information required under § 1265.330?
1265.455 What may I do if a lower tier participant fails to disclose the information required under § 1265.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1265.500 What is the purpose of the List?
1265.505 Who uses the List?
1265.510 Who maintains the List?
1265.515 What specific information is on the List?
1265.520 Who gives the GSA the information that it puts on the List?
1265.525 Whom do I ask if I have questions about a person on the List?
1265.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1265.600 How do suspension and debarment actions start?
1265.605 How does suspension differ from debarment?
1265.610 What procedures does NASA use in suspension and debarment actions?
1265.615 How does NASA notify a person of suspension and debarment actions?
1265.620 Do Federal agencies coordinate suspension and debarment actions?
1265.625 What is the scope of a suspension or debarment action?
1265.630 May NASA impute the conduct of one person to another?
1265.635 May NASA settle a debarment or suspension action?
1265.640 May a settlement include a voluntary exclusion?
1265.645 Do other Federal agencies know if NASA agrees to a voluntary exclusion?

Subpart G—Suspension

1265.700 When may the suspending official issue a suspension?
1265.705 What does the suspending official consider in issuing a suspension?
1265.710 When does a suspension take effect?
1265.715 What notice does the suspending official give me if I am suspended?
1265.720 How may I contest a suspension?
1265.725 How much time do I have to contest a suspension?
1265.730 What information must I provide to the suspending official if I contest a suspension?
1265.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1265.740 Are suspension proceedings formal?
1265.745 Is a record made of fact-finding proceedings?
1265.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1265.755 When will I know whether the suspension is continued or terminated?
1265.760 How long may my suspension last?
1265.765 How may I appeal my suspension?

Subpart H—Debarment

1265.800 What are the causes for debarment?
1265.805 What notice does the debarring official give me if I am proposed for debarment?
1265.810 When does a debarment take effect?
1265.815 How may I contest a proposed debarment?
1265.820 How much time do I have to contest a proposed debarment?
1265.825 What information must I provide to the debarring official if I contest a proposed debarment?
1265.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1265.835 Are debarment proceedings formal?
1265.840 Is a record made of fact-finding proceedings?
1265.845 What does the debarring official consider in deciding whether to debar me?
1265.850 What is the standard of proof in a debarment action?
1265.855 Who has the burden of proof in a debarment action?
1265.860 What factors may influence the debarring official's decision?
1265.865 How long may my debarment last?
1265.870 When do I know if the debarring official debars me?
1265.875 May I ask the debarring official to reconsider a decision to debar me?
1265.880 What factors may influence the debarring official during reconsideration?
1265.885 May the debarring official extend a debarment?
1265.890 How may I appeal my debarment?

Subpart I—Definitions

1265.900 Adequate evidence.
1265.905 Affiliate.
1265.910 Agency.
1265.915 Agent or representative.
1265.920 Civil judgment.
1265.925 Conviction.
1265.930 Debarment.
1265.935 Debarring official.
1265.940 Disqualified.
1265.945 Excluded or exclusion.
1265.950 Indictment.
1265.955 Ineligible or ineligibility.
1265.960 Legal proceedings.
1265.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1265.970 Nonprocurement transaction.
1265.975 Notice.
1265.980 Participant.
1265.985 Person.
1265.990 Preponderance of the evidence.
1265.995 Principal.
1265.1000 Respondent.
1265.1005 State.
1265.1010 Suspending official.
1265.1015 Suspension.
1265.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1265 Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

2. Part 1265 is further amended as set forth below.

a. "The [Agency noun]" is removed and "NASA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NASA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

3. Section 1265.440 is added to read as follows:

§ 1265.440 What method do I use to communicate the requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 1267 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1267—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1267.100 What does this part do?
1267.105 Does this part apply to me?
1267.110 Are any of my Federal assistance awards exempt from this part?
1267.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1267.200 What must I do to comply with this part?
1267.205 What must I include in my drug-free workplace statement?
1267.210 To whom must I distribute my drug-free workplace statement?
1267.215 What must I include in my drug-free awareness program?

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1267.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1267.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1267.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1267.300 What must I do to comply with this part if I am an individual recipient?
1267.301 [Reserved]

Subpart D—Responsibilities of NASA Awarding Officials

1267.400 What are my responsibilities as a NASA awarding official?

Subpart E—Violations of This Part and Consequences

1267.500 How are violations of this part determined for recipients other than individuals?
1267.505 How are violations of this part determined for recipients who are individuals?
1267.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1267.515 Are there any exceptions to those actions?

Subpart F—Definitions

1267.605 Award.
1267.610 Controlled substance.
1267.615 Conviction.
1267.620 Cooperative agreement.
1267.625 Criminal drug statute.
1267.630 Debarment.
1267.635 Drug-free workplace.
1267.640 Employee.
1267.645 Federal agency or agency.
1267.650 Grant.
1267.655 Individual.
1267.660 Recipient.
1267.665 State.
1267.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2473c.

5. Part 1267 is further amended as set forth below.

a. "The [Agency noun]" is removed and "NASA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NASA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

6. Section 1267.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "14 CFR part 1265" in its place.

7. Section 1267.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "14 CFR part 1273" in its place.

DEPARTMENT OF COMMERCE

15 CFR Parts 26 and 29

[Docket No. 950601145–5145–01]

RIN 0605–AA02

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Dorfman, Office of Executive Assistance Management, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room HCHB 6022, Washington, DC 20230, 202–482–4115, e-mail: *EDorfman@doc.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Commerce (DoC) proposes this amendment to the governmentwide common rules on debarment and suspension (nonprocurement) and requirements for drug-free workplace (financial assistance). The DoC will maintain uniform procedures that are consistent with those of other Executive Departments and Agencies. The DoC has reviewed its programs and determined that those identified at § 26.215 (d), (f) and (g) are excluded from coverage under the debarment and suspension regulations. The DoC has elected to add paragraph (d) in § 26.220 so that the coverage of § 26.220 (a) is extended to one additional tier of contracts. As specified in § 26.440, DoC will use a term or condition as a means to communicate requirements to participants.

List of Subjects

15 CFR Part 26

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

15 CFR Part 29

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: June 4, 2001.

Robert F. Kugelman,

Director, Office of Executive Budgeting and Assistance Management, Department of Commerce.

Accordingly, as set forth in the common preamble, 15 CFR subtitle A is proposed to be amended as follows:

1. Part 26 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
26.25 How is this part organized?
26.50 How is this part written?
26.75 Do terms in this part have special meanings?

Subpart A—General

26.100 What does this part do?
26.105 Does this part apply to me?
26.110 What is the purpose of the nonprocurement debarment and suspension system?
26.115 How does an exclusion restrict a person's involvement in covered transactions?
26.120 May we grant an exception to let an excluded person participate in a covered transaction?
26.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
26.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
26.135 May the Department of Commerce exclude a person who is not currently participating in a nonprocurement transaction?
26.140 How do I know if a person is excluded?
26.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

26.200 What is a covered transaction?
26.205 Why is it important to know if a particular transaction is a covered transaction?
26.210 Which nonprocurement transactions are covered transactions?
26.215 Which nonprocurement transactions are not covered transactions?
26.220 Are any procurement contracts included as covered transactions?
26.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

26.300 May I enter into a covered transaction with an excluded or disqualified person?
26.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
26.310 May I use the services of an excluded person under a covered transaction?
26.315 Must I verify that principals of my covered transactions are eligible to participate?
26.320 What happens if I do business with an excluded person in a covered transaction?

26.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

26.330 What information must I provide before entering into a covered transaction with the Department of Commerce?
26.335 If I disclose unfavorable information required under § 26.330 will I be prevented from entering into the transaction?
26.340 What happens if I fail to disclose the information required under § 26.330?
26.345 What must I do if I learn of the information required under § 26.330 after entering into a covered transaction with the Department of Commerce?

Disclosing information—Lower Tier Participants

26.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
26.355 What happens if I fail to disclose the information required under § 26.350?
26.360 What must I do if I learn of information required under § 26.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DoC Officials Regarding Transactions

26.400 May I enter into a transaction with an excluded or disqualified person?
26.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
26.410 May I approve a participant's use of the services of an excluded person?
26.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
26.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
26.425 When do I check to see if a person is excluded or disqualified?
26.430 How do I check to see if a person is excluded or disqualified?
26.435 What must I require of a primary tier participant?
26.440 What method do I use to communicate those requirements to participants?
26.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
26.450 What action may I take if a primary tier participant fails to disclose the information required under § 26.330?
26.455 What may I do if a lower tier participant fails to disclose the information required under § 26.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

26.500 What is the purpose of the List?
26.505 Who uses the List?
26.510 Who maintains the List?
26.515 What specific information is on the List?
26.520 Who gives the GSA the information that it puts on the List?
26.525 Whom do I ask if I have questions about a person on the List?
26.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

26.600 How do suspension and debarment actions start?
26.605 How does suspension differ from debarment?
26.610 What procedures does the Department of Commerce use in suspension and debarment actions?
26.615 How does the Department of Commerce notify a person of suspension and debarment actions?
26.620 Do Federal agencies coordinate suspension and debarment actions?
26.625 What is the scope of a suspension or debarment action?
26.630 May the Department of Commerce impute the conduct of one person to another?
26.635 May the Department of Commerce settle a debarment or suspension action?
26.640 May a settlement include a voluntary exclusion?
26.645 Do other Federal agencies know if the Department of Commerce agrees to a voluntary exclusion?

Subpart G—Suspension

26.700 When may the suspending official issue a suspension?
26.705 What does the suspending official consider in issuing a suspension?
26.710 When does a suspension take effect?
26.715 What notice does the suspending official give me if I am suspended?
26.720 How may I contest a suspension?
26.725 How much time do I have to contest a suspension?
26.730 What information must I provide to the suspending official if I contest a suspension?
26.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
26.740 Are suspension proceedings formal?
26.745 Is a record made of fact-finding proceedings?
26.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
26.755 When will I know whether the suspension is continued or terminated?
26.760 How long may my suspension last?

Subpart H—Debarment

26.800 What are the causes for debarment?
26.805 What notice does the debarring official give me if I am proposed for debarment?
26.810 When does a debarment take effect?
26.815 How may I contest a proposed debarment?
26.820 How much time do I have to contest a proposed debarment?
26.825 What information must I provide to the debarring official if I contest a proposed debarment?
26.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
26.835 Are debarment proceedings formal?
26.840 Is a record made of fact-finding proceedings?
26.845 What does the debarring official consider in deciding whether to debar me?
26.850 What is the standard of proof in a debarment action?
26.855 Who has the burden of proof in a debarment action?
26.860 What factors may influence the debarring official's decision?
26.865 How long may my debarment last?
26.870 When do I know if the debarring official debars me?
26.875 May I ask the debarring official to reconsider a decision to debar me?
26.880 What factors may influence the debarring official during reconsideration?
26.885 May the debarring official extend a debarment?

Subpart I—Definitions

26.900 Adequate evidence.
26.905 Affiliate.
26.910 Agency.
26.915 Agent or representative.
26.920 Civil judgment.
26.925 Conviction.
26.930 Debarment
26.935 Debarring official.
26.940 Disqualified.
26.945 Excluded or exclusion.
26.950 Indictment.
26.955 Ineligible or ineligibility.
26.960 Legal proceedings.
26.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
26.970 Nonprocurement transaction.
26.975 Notice.
26.980 Participant
26.985 Person.
26.990 Preponderance of the evidence.
26.995 Principal.
26.1000 Respondent.
26.1005 State.
26.1010 Suspending official.
26.1015 Suspension.
26.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 26—Covered Transactions

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 26 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Commerce" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoC" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Executive Budgeting and Assistance Management" is added in its place wherever it occurs.

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3. Section 26.215 is amended as follows:

a. Add paragraph (d)(1) and add and reserve paragraph (d)(2).

b. Add paragraph (f)(1) and add and reserve paragraph (f)(2).

c. Add paragraph (g)(1) and add and reserve paragraph (g)(2).

The additions read as follows:

§ 26.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(d) * * *

(1) Fisherman's Contingency Fund

(2) [Reserved]

* * * * *

(f) * * *

(1) For purposes of the DoC this means:

(i) Export Promotion, Trade Information and Counseling, and Trade Policy.

(ii) Geodetic Surveys and Services (Specialized Services).

(iii) Fishery Products Inspection Certification.

(iv) Standard Reference Materials.

(v) Calibration, Measurement and Testing.

(vi) Critically Evaluated Data (Standard Reference Data).

(vii) Phoenix Data System.

(viii) The sale or provision of products, information, and services to the general public.

(2) [Reserved]

(g) * * *

(1) For purposes of the DoC this means:

(i) The Administration of the Antidumping and Countervailing Duty Statutes.

(ii) The Export Trading Company Act Certificate of Review Program.

(iii) Trade Adjustment Assistance Program Certification.

(iv) Foreign Trade Zones Act of 1934, as amended.

(v) Statutory Import Program.

(2) [Reserved]

4. Section 26.220 is amended to add paragraph (d) to read as follows:

§ 26.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is a subcontract awarded by a participant in a procurement transaction that is covered under paragraph (a) of this section, and the amount of the contract exceeds or is expected to exceed $25,000. This extends the coverage of paragraph (a) of this section to one additional tier of contracts, as shown in the diagram in the Appendix to this part.

5. Section 26.440 is added to read as follows:

§ 26.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

6. Section 26.970 is amended to add paragraphs (a)(12) through (a)(16) to read as follows:

§ 26.970 Nonprocurement transaction.

(a) * * *

(12) Joint Project Agreements under 15 U.S.C. 1525.

(13) Cooperative research and development agreements.

(14) Joint statistical agreements.

(15) Patent licenses under 35 U.S.C. 207.

(16) NTIS joint ventures, 15 U.S.C. 3704b.

* * * * *

7. Part 29 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 29—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

29.100 What does this part do?
29.105 Does this part apply to me?
29.110 Are any of my Federal assistance awards exempt from this part?
29.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

29.200 What must I do to comply with this part?
29.205 What must I include in my drug-free workplace statement?
29.210 To whom must I distribute my drug-free workplace statement?
29.215 What must I include in my drug-free awareness program?
29.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
29.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
29.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who are Individuals

29.300 What must I do to comply with this part if I am an individual recipient?
29.301 [Reserved]

Subpart D—Responsibilities of DoC Awarding Officials

29.400 What are my responsibilities as a DoC awarding official?

Subpart E—Violations of This Part and Consequences

29.500 How are violations of this part determined for recipients other than individuals?
29.505 How are violations of this part determined for recipients who are individuals?
29.510 What actions will the Federal Government take against a recipient determined to have violated this part?
29.515 Are there any exceptions to those actions?

Subpart F—Definitions

29.605 Award.
29.610 Controlled substance.
29.615 Conviction.
29.620 Cooperative agreement.
29.625 Criminal drug statute.
29.630 Debarment.
29.635 Drug-free workplace.
29.640 Employee.
29.645 Federal agency or agency.
29.650 Grant.
29.655 Individual.
29.660 Recipient.
29.665 State.
29.670 Suspension.

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*

8. Part 29 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Commerce" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoC" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Executive Budgeting and Assistance Management is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Commerce" is added in its place wherever it occurs.

9. Section 29.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "15 CFR part 26" in its place.

10. Section 29.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "15 CFR part 24" in its place.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 436 and 439

RIN 0096–AE27

FOR FURTHER INFORMATION CONTACT: Phyllis Y. Smith, Grants Management Officer, Office of Acquisition and Grants, Grants Management Team, 1710 Gwynn Oak Ave Baltimore, MD 21207, (410) 965–9518, e-mail: phyllis.y.smith@ssa.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: Prior to March 31, 1995, SSA was an operating component of the Department of Health and Human Services (HHS). As a result of Public Law 103–296, the Social Security Administration (SSA) became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 76 dealing with nonprocurement, debarment and suspension, and the requirements for a drug-free workplace have remained applicable to SSA. In order to implement its own set of regulations on these topics, SSA proposes to adopt the common rules on nonprocurement, debarment and suspension, and requirements for a drug-free workplace with one amendment as new parts 436 and 439 in title 20 of the Code of Federal Regulations. HHS regulations at 45 CFR part 76 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Pub. L. 103–296. Under the proposed amendment, § 436.440 would use terms or conditions to the award transaction as a means to enforce exclusions under SSA transactions rather than written certifications. This alternative available under the common rule is more efficient than SSA's current certification process for prospective recipients and participants.

Paperwork Reduction Act

SSA will clear separately the reporting and recordkeeping requirements in proposed 20 CFR parts 436 and 439 in accordance with the requirements of 44 U.S.C. chapter 35 prior to effectuating its own rules incorporating the proposed common rule. When effective, the proposed SSA rules will not actually impose any additional reporting or recordkeeping burden on the public since SSA has been following the requirements in the HHS rules in 45 CFR part 76 that were in effect on March 31, 1995, the date SSA became an independent agency, and SSA is making no substantive changes to those requirements. However, clearance is necessary to reflect that adoption of the common rule as a final rule by SSA will transfer from HHS to SSA the authority for the reporting and recordkeeping requirements SSA has been imposing on the public under the HHS rules.

List of Subjects

20 CFR Part 436

Administrative practice and procedures, Debarment and suspension, Grant programs, and reporting and Recordkeeping requirements.

20 CFR Part 439

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and record keeping requirements.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons stated in the common preamble, we propose to amend chapter III of title 20 of the Code of Federal Regulations as follows:

1. Part 436 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 436—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
436.25 How is this part organized?
436.50 How is this part written?
436.75 Do terms in this part have special meanings?

Subpart A—General

436.100 What does this part do?
436.105 Does this part apply to me?
436.110 What is the purpose of the nonprocurement debarment and suspension system?
436.115 How does an exclusion restrict a person's involvement in covered transactions?
436.120 May we grant an exception to let an excluded person participate in a covered transaction?
436.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
436.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
436.135 May the SSA exclude a person who is not currently participating in a nonprocurement transaction?
436.140 How do I know if a person is excluded?
436.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

436.200 What is a covered transaction?
436.205 Why is it important to know if a particular transaction is a covered transaction?
436.210 Which nonprocurement transactions are covered transactions?
436.215 Which nonprocurement transactions are not covered transactions?
436.220 Are any procurement contracts included as covered transactions?
436.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

436.300 May I enter into a covered transaction with an excluded or disqualified person?
436.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
436.310 May I use the services of an excluded person under a covered transaction?
436.315 Must I verify that principals of my covered transactions are eligible to participate?
436.320 What happens if I do business with an excluded person in a covered transaction?
436.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

436.330 What information must I provide before entering into a covered transaction with the SSA?
436.335 If I disclose unfavorable information required under § 436.330, will I be prevented from entering into the transaction?
436.340 What happens if I fail to disclose the information required under § 436.330?
436.345 What must I do if I learn of information required under § 436.330 after entering into a covered transaction with the SSA?

Disclosing Information—Lower Tier Participants

436.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
436.355 What happens if I fail to disclose the information required under § 436.350?
436.360 What must I do if I learn of information required under § 436.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of SSA Officials Regarding Transactions

436.400 May I enter into a transaction with an excluded or disqualified person?
436.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
436.410 May I approve a participant's use of the services of an excluded person?
436.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
436.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
436.425 When do I check to see if a person is excluded or disqualified?
436.430 How do I check to see if a person is excluded or disqualified?
436.435 What must I require of a primary tier participant?

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436.440 What method do I use to communicate those requirements to participants?
436.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
436.450 What action may I take if a primary tier participant fails to disclose the information required under § 436.330?
436.455 What may I do if a lower tier participant fails to disclose the information required under § 436.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

436.500 What is the purpose of the List?
436.505 Who uses the List?
436.510 Who maintains the List?
436.515 What specific information is on the List?
436.520 Who gives the GSA the information that it puts on the List?
436.525 Whom do I ask if I have questions about a person on the List?
436.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

436.600 How do suspension and debarment actions start?
436.605 How does suspension differ from debarment?
436.610 What procedures does the SSA use in suspension and debarment actions?
436.615 How does the SSA notify a person of suspension and debarment actions?
436.620 Do Federal agencies coordinate suspension and debarment actions?
436.625 What is the scope of a suspension or debarment action?
436.630 May the SSA impute the conduct of one person to another?
436.635 May the SSA settle a debarment or suspension action?
436.640 May a settlement include a voluntary exclusion?
436.645 Do other Federal agencies know if the SSA agrees to a voluntary exclusion?

Subpart G—Suspension

436.700 When may the suspending official issue a suspension?
436.705 What does the suspending official consider in issuing a suspension?
436.710 When does a suspension take effect?
436.715 What notice does the suspending official give me if I am suspended?
436.720 How may I contest a suspension?
436.725 How much time do I have to contest a suspension?
436.730 What information must I provide to the suspending official if I contest a suspension?
436.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
436.740 Are suspension proceedings formal?
436.745 Is a record made of fact-finding proceedings?
436.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
436.755 When will I know whether the suspension is continued or terminated?
436.760 How long may my suspension last?

Subpart H—Debarment

436.800 What are the causes for debarment?
436.805 What notice does the debarring official give me if I am proposed for debarment?
436.810 When does a debarment take effect?
436.815 How may I contest a proposed debarment?
436.820 How much time do I have to contest a proposed debarment?
436.825 What information must I provide to the debarring official if I contest a proposed debarment?
436.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
436.835 Are debarment proceedings formal?
436.840 Is a record made of fact-finding proceedings?
436.845 What does the debarring official consider in deciding whether to debar me?
436.850 What is the standard of proof in a debarment action?
436.855 Who has the burden of proof in a debarment action?
436.860 What factors may influence the debarring official's decision?
436.865 How long may my debarment last?
436.870 When do I know if the debarring official debars me?
436.875 May I ask the debarring official to reconsider a decision to debar me?
436.880 What factors may influence the debarring official during reconsideration?
436.885 May the debarring official extend a debarment?

Subpart I—Definitions

436.900 Adequate evidence.
436.905 Affiliate.
436.910 Agency.
436.915 Agent or representative.
436.920 Civil judgment.
436.925 Conviction.
436.930 Debarment.
436.935 Debarring official.
436.940 Disqualified.
436.945 Excluded or exclusion.
436.950 Indictment.
436.955 Ineligible or ineligibility.
436.960 Legal proceedings.
436.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.
436.970 Nonprocurement transaction.
436.975 Notice.
436.980 Participant.
436.985 Person.
436.990 Preponderance of the evidence.
436.995 Principal.
436.1000 Respondent.
436.1005 State.
436.1010 Suspending official.
436.1015 Suspension.
436.1020 Voluntary exclusion or voluntarily excluded

Subpart J [Reserved]

Appendix to Part 436—Covered Transactions

Authority: 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 436 is further amended as follows:

a. "[Agency noun]" is removed and "SSA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "SSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "SSA Debarring/Suspension Official" is added in its place wherever it occurs.

3. Section 436.440 is added to read as follows:

§ 436.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 439 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 439—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
439.100 What does this part do?
439.105 Does this part apply to me?
439.110 Are any of my Federal assistance awards exempt from this part?
439.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

439.200 What must I do to comply with this part?
439.205 What must I include in my drug-free workplace statement?
439.210 To whom must I distribute my drug-free workplace statement?
439.215 What must I include in my drug-free awareness program?
439.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
439.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
439.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients who are Individuals

439.300 What must I do to comply with this part if I am an individual recipient?
439.301 [Reserved]

Subpart D—Responsibilities of SSA Awarding Officials

439.400 What are my responsibilities as an SSA awarding official?

Subpart E—Violations of This Part and Consequences

439.500 How are violations of this part determined for recipients other than individuals?
439.505 How are violations of this part determined for recipients who are individuals?
439.510 What actions will the Federal Government take against a recipient determined to have violated this part?
439.515 Are there any exceptions to those actions?

Subpart F—Definitions

439.605 Award.
439.610 Controlled substance.
439.615 Conviction.
439.620 Cooperative agreement.
439.625 Criminal drug statute.
439.630 Debarment.
439.635 Drug-free workplace.
439.640 Employee.
439.645 Federal agency or agency.
439.650 Grant.
439.655 Individual.
439.660 Recipient.
439.665 State.
439.670 Suspension.

Authority: 41 U.S.C. 701 *et seq*; 42 U.S.C. 902(a)(5).

5. Part 439 is further amended as follows:

a. "[Agency noun]" is removed and "the SSA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "SSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "SSA Official or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "the Commissioner of SSA" is added in its place wherever it occurs.

6. Section 439.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]"and adding "20 CFR part 436" in its place.

7. Section 439.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "45 CFR part 92" in its place.

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Parts 1404 and 1405

RIN 3201–ZA02

FOR FURTHER INFORMATION CONTACT: ONDCP, Attn: Daniel R. Petersen, Washington, DC 20503, (202) 395–6745, *Daniel_R._Petersen@ondcp.eop.gov.*

List of Subjects

21 CFR Part 1404

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

21 CFR Part 1405

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Edward H. Jurith,
Acting Director.

Accordingly, as set forth in the common preamble, 21 CFR chapter III is proposed to be amended as follows.

1. Part 1404 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1404.25 How is this part organized?
1404.50 How is this part written?
1404.75 Do terms in this part have special meanings?

Subpart A—General

1404.100 What does this part do?
1404.105 Does this part apply to me?
1404.110 What is the purpose of the nonprocurement debarment and suspension system?
1404.115 How does an exclusion restrict a person's involvement in covered transactions?
1404.120 May we grant an exception to let an excluded person participate in a covered transaction?
1404.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1404.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1404.135 May the Office of National Drug Control Policy exclude a person who is not currently participating in a nonprocurement transaction?
1404.140 How do I know if a person is excluded?
1404.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1404.200 What is a covered transaction?
1404.205 Why is it important to know if a particular transaction is a covered transaction?
1404.210 Which nonprocurement transactions are covered transactions?
1404.215 Which nonprocurement transactions are not covered transactions?
1404.220 Are any procurement contracts included as covered transactions?
1404.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1404.300 May I enter into a covered transaction with an excluded or disqualified person?
1404.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1404.310 May I use the services of an excluded person under a covered transaction?
1404.315 Must I verify that principals of my covered transactions are eligible to participate?
1404.320 What happens if I do business with an excluded person in a covered transaction?
1404.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1404.330 What information must I provide before entering into a covered transaction with the Office of National Drug Control Policy.
1404.335 If I disclose unfavorable information required under § 1404.330 will I be prevented from entering into the transaction?
1404.340 What happens if I fail to disclose the information required under § 1404.330?
1404.345 What must I do if I learn of the information required under § 1404.330 after entering into a covered transaction with the Office of National Drug Control Policy?

Disclosing Information—Lower Tier Participants

1404.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1404.355 What happens if I fail to disclose the information required under § 1404.350?
1404.360 What must I do if I learn of information required under § 1404.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Office of National Drug Control Policy Officials Regarding Transactions

1404.400 May I enter into a transaction with an excluded or disqualified person?

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1404.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1404.410 May I approve a participant's use of the services of an excluded person?
1404.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1404.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1404.425 When do I check to see if a person is excluded or disqualified?
1404.430 How do I check to see if a person is excluded or disqualified?
1404.435 What must I require of a primary tier participant?
1404.440 What method do I use to communicate to participants the requirements in § 1404.435?
1404.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1404.450 What action may I take if a primary tier participant fails to disclose the information required under § 1404.330?
1404.455 What may I do if a lower tier participant fails to disclose the information required under § 1404.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1404.500 What is the purpose of the List?
1404.505 Who uses the List?
1404.510 Who maintains the List?
1404.515 What specific information is on the List?
1404.520 Who gives the GSA the information that it puts on the List?
1404.525 Whom do I ask if I have questions about a person on the List?
1404.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1404.600 How do suspension and debarment actions start?
1404.605 How does suspension differ from debarment?
1404.610 What procedures does the Office of National Drug Control Policy use in suspension and debarment actions?
1404.615 How does the Office of National Drug Control Policy notify a person of suspension and debarment actions?
1404.620 Do Federal agencies coordinate suspension and debarment actions?
1404.625 What is the scope of a suspension or debarment action?
1404.630 May the Office of National Drug Control Policy impute the conduct of one person to another?
1404.635 May the Office of National Drug Control Policy settle a debarment or suspension action?
1404.640 May a settlement include a voluntary exclusion?
1404.645 Do other Federal agencies know if the Office of National Drug Control Policy agrees to a voluntary exclusion?

Subpart G—Suspension

1404.700 When may the suspending official issue a suspension?
1404.705 What does the suspending official consider in issuing a suspension?
1404.710 When does a suspension take effect?
1404.715 What notice does the suspending official give me if I am suspended?
1404.720 How may I contest a suspension?
1404.725 How much time do I have to contest a suspension?
1404.730 What information must I provide to the suspending official if I contest a suspension?
1404.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1404.740 Are suspension proceedings formal?
1404.745 Is a record made of fact-finding proceedings?
1404.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1404.755 When will I know whether the suspension is continued or terminated?
1404.760 How long may my suspension last?

Subpart H—Debarment

1404.800 What are the causes for debarment?
1404.805 What notice does the debarring official give me if I am proposed for debarment?
1404.810 When does a debarment take effect?
1404.815 How may I contest a proposed debarment?
1404.820 How much time do I have to contest a proposed debarment?
1404.825 What information must I provide to the debarring official if I contest a proposed debarment?
1404.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1404.835 Are debarment proceedings formal?
1404.840 Is a record made of fact-finding proceedings?
1404.845 What does the debarring official consider in deciding whether to debar me?
1404.850 What is the standard of proof in a debarment action?
1404.855 Who has the burden of proof in a debarment action?
1404.860 What factors may influence the debarring official's decision?
1404.865 How long may my debarment last?
1404.870 When do I know if the debarring official debars me?
1404.875 May I ask the debarring official to reconsider a decision to debar me?
1404.880 What factors may influence the debarring official during reconsideration?
1404.885 May the debarring official extend a debarment?

Subpart I—Definitions

1404.900 Adequate evidence.
1404.905 Affiliate.
1404.910 Agency.
1404.915 Agent or representative.
1404.920 Civil judgment.
1404.925 Conviction.
1404.930 Debarment
1404.935 Debarring official.
1404.940 Disqualified.
1404.945 Excluded or exclusion.
1404.950 Indictment.
1404.955 Ineligible or ineligibility.
1404.960 Legal proceedings.
1404.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1404.970 Nonprocurement transaction.
1404.975 Notice.
1404.980 Participant.
1404.985 Person.
1404.990 Preponderance of the evidence.
1404.995 Principal.
1404.1000 Respondent.
1404.1005 State.
1404.1010 Suspending official.
1404.1015 Suspension.
1404.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1404—Covered Transactions

Authority: E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12689 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 21 U.S.C. 1701.

2. Part 1404 is further amended as set forth below.

a. "[Agency noun]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director of National Drug Control Policy" is added in its place wherever it occurs.

3. Section 1404.440 is added to read as follows:

§ 1404.440 What method do I use to communicate to participants the requirements in § 1404.435?

You must obtain certifications from participants that they will comply with Subpart C of this part and that they will obtain similar certifications from lower-tier participants.

4. Part 1405 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1405—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

1405.100 What does this part do?
1405.105 Does this part apply to me?
1405.110 Are any of my Federal assistance awards exempt from this part?
1405.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other than Individuals

1405.200 What must I do to comply with this part?
1405.205 What must I include in my drug-free workplace statement?
1405.210 To whom must I distribute my drug-free workplace statement?
1405.215 What must I include in my drug-free awareness program?
1405.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1405.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1405.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1405.300 What must I do to comply with this part if I am an individual recipient?
1405.301 [Reserved]

Subpart D—Responsibilities of Office of National Drug Control Policy Awarding Officials

1405.400 What are my responsibilities as an Office of National Drug Control Policy awarding official?

Subpart E—Violations of This Part and Consequences

1405.500 How are violations of this part determined for recipients other than individuals?
1405.505 How are violations of this part determined for recipients who are individuals?
1405.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1405.515 Are there exceptions to those actions?

Subpart F—Definitions

1405.605 Award.
1405.610 Controlled substance.
1405.615 Conviction.
1405.620 Cooperative agreement.
1405.625 Criminal drug statute.
1405.630 Debarment.
1405.635 Drug-free workplace.
1405.640 Employee.
1405.645 Federal agency or agency.
1405.650 Grant.
1405.655 Individual.
1405.660 Recipient.
1405.665 State.
1405.670 Suspension.

Authority: 21 U.S.C. 1701; 41 U.S.C. 701, *et seq.*

5. Part 1405 is further amended as set forth below.

a. "[Agency noun]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Office of National Drug Control Policy" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director of National Drug Control Policy" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Director of National Drug Control Policy" is added in its place wherever it occurs.

6. Section 1405.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "21 CFR part 1404" in its place.

7. Section 1405.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "21 CFR part 1403" in its place.

DEPARTMENT OF STATE

22 CFR Parts 133 and 137

RIN 1400–AB–33

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Policy Division, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20522, (703) 516–1691.

List of Subjects

22 CFR Part 133

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 137

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

Approved: August 17, 2001.

Lloyd W. Pratsch,

Procurement Executive, Department of State.

Accordingly, as set forth in the common preamble, the Department of State proposes to amend 22 CFR chapter I, as follows:

1. Part 133 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 133—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

133.100 What does this part do?
133.105 Does this part apply to me?
133.110 Are any of my Federal assistance awards exempt from this part?
133.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

133.200 What must I do to comply with this part?
133.205 What must I include in my drug-free workplace statement?
133.210 To whom must I distribute my drug-free workplace statement?
133.215 What must I include in my drug-free awareness program?
133.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
133.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
133.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

133.300 What must I do to comply with this part if I am an individual recipient?
133.301 [Reserved]

Subpart D—Responsibilities of Department of State Awarding Officials

133.400 What are my responsibilities as a Department of State awarding official?

Subpart E—Violations of This Part and Consequences

133.500 How are violations of this part determined for recipients other than individuals?
133.505 How are violations of this part determined for recipients who are individuals?
133.510 What actions will the Federal Government take against a recipient determined to have violated this part?
133.515 Are there any exceptions to those actions?

Subpart F—Definitions

133.605 Award.
133.610 Controlled substance.
133.615 Conviction.
133.620 Cooperative agreement.
133.625 Criminal drug statute.
133.630 Debarment.
133.635 Drug-free workplace.
133.640 Employee.
133.645 Federal agency or agency.
133.650 Grant.
133.655 Individual.
133.660 Recipient.
133.665 State.
133.670 Suspension.

Authority: 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

2. Part 133 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of State" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of State" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Procurement Executive" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Procurement Executive" is added in its place wherever it occurs.

3. Section 133.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations

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implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 137" in its place.

4. Section 133.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "22 CFR part 135" in its place.

5. Part 137 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

137.25 How is this part organized?
137.50 How is this part written?
137.75 Do terms in this part have special meanings?

Subpart A—General

137.100 What does this part do?
137.105 Does this part apply to me?
137.110 What is the purpose of the nonprocurement debarment and suspension system?
137.115 How does an exclusion restrict a person's involvement in covered transactions?
137.120 May we grant an exception to let an excluded person participate in a covered transaction?
137.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
137.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
137.135 May the Department of State exclude a person who is not currently participating in a nonprocurement transaction?
137.140 How do I know if a person is excluded?
137.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

137.200 What is a covered transaction?
137.205 Why is it important to know if a particular transaction is a covered transaction?
137.210 Which nonprocurement transactions are covered transactions?
137.215 Which nonprocurement transactions are not covered transactions?
137.220 Are any procurement contracts included as covered transactions?
137.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

137.300 May I enter into a covered transaction with an excluded or disqualified person?
137.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
137.310 May I use the services of an excluded person under a covered transaction?
137.315 Must I verify that principals of my covered transactions are eligible to participate?
137.320 What happens if I do business with an excluded person in a covered transaction?
137.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information Primary Tier Participants

137.330 What information must I provide before entering into a covered transaction with the Department of State?
137.335 If I disclose unfavorable information required under § 137.330 will I be prevented from entering into the transaction?
137.340 What happens if I fail to disclose the information required under § 137.330?
137.345 What must I do if I learn of the information required under § 137.330 after entering into a covered transaction with the Department of State?

Disclosing Information—Lower Tier Participants

137.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
137.355 What happens if I fail to disclose the information required under § 137.350?
137.360 What must I do if I learn of information required under § 137.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of State Officials Regarding Transactions

137.400 May I enter into a transaction with an excluded or disqualified person?
137.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
137.410 May I approve a participant's use of the services of an excluded person?
137.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
137.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
137.425 When do I check to see if a person is excluded or disqualified?
137.430 How do I check to see if a person is excluded or disqualified?
137.435 What must I require of a primary tier participant?
137.440 What method do I use to communicate those requirements to participants?
137.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
137.450 What action may I take if a primary tier participant fails to disclose the information required under § 137.330?
137.455 What may I do if a lower tier participant fails to disclose the information required under § 137.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs

137.500 What is the purpose of the List?
137.505 Who uses the List?
137.510 Who maintains the List?
137.515 What specific information is on the List?
137.520 Who gives the GSA the information that it puts on the List?
137.525 Whom do I ask if I have questions about a person on the List?
137.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

137.600 How do suspension and debarment actions start?
137.605 How does suspension differ from debarment?
137.610 What procedures does the Department of State use in suspension and debarment actions?
137.615 How does the Department of State notify a person of suspension and debarment actions?
137.620 Do Federal agencies coordinate suspension and debarment actions?
137.625 What is the scope of a suspension or debarment action?
137.630 May the Department of State impute the conduct of one person to another?
137.635 May the Department of State settle a debarment or suspension action?
137.640 May a settlement include a voluntary exclusion?
137.645 Do other Federal agencies know if the Department of State agrees to a voluntary exclusion?

Subpart G—Suspension

137.700 When may the suspending official issue a suspension?
137.705 What does the suspending official consider in issuing a suspension?
137.710 When does a suspension take effect?
137.715 What notice does the suspending official give me if I am suspended?
137.720 How may I contest a suspension?
137.725 How much time do I have to contest a suspension?
137.730 What information must I provide to the suspending official if I contest a suspension?
137.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
137.740 Are suspension proceedings formal?
137.745 Is a record made of fact-finding proceedings?
137.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
137.755 When will I know whether the suspension is continued or terminated?
137.760 How long may my suspension last?

Subpart H—Debarment

137.800 What are the causes for debarment?
137.805 What notice does the debarring official give me if I am proposed for debarment?
137.810 When does a debarment take effect?
137.815 How may I contest a proposed debarment?
137.820 How much time do I have to contest a proposed debarment?
137.825 What information must I provide to the debarring official if I contest a proposed debarment?
137.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
137.835 Are debarment proceedings formal?
137.840 Is a record made of fact-finding proceedings?
137.845 What does the debarring official consider in deciding whether to debar me?
137.850 What is the standard of proof in a debarment action?
137.855 Who has the burden of proof in a debarment action?
137.860 What factors may influence the debarring official's decision?
137.865 How long may my debarment last?
137.870 When do I know if the debarring official debars me?
137.875 May I ask the debarring official to reconsider a decision to debar me?
137.880 What factors may influence the debarring official during reconsideration?
137.885 May the debarring official extend a debarment?

Subpart I—Definitions

137.900 Adequate evidence.
137.905 Affiliate.
137.910 Agency.
137.915 Agent or representative.
137.920 Civil judgment.
137.925 Conviction.
137.930 Debarment.
137.935 Debarring official.
137.940 Disqualified.
137.945 Excluded or exclusion.
137.950 Indictment.
137.955 Ineligible or ineligibility.
137.960 Legal proceedings.
137.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
137.970 Nonprocurement transaction.
137.975 Notice.
137.980 Participant.
137.985 Person.
137.990 Preponderance of the evidence.
137.995 Principal.
137.1000 Respondent.
137.1005 State.
137.1010 Suspending official.
137.1015 Suspension.
137.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 137—Covered Transactions

Authority: 22 U.S.C. 2658; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12689, 3 CFR 1989 Comp., p. 235.

6. Part 137 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of State" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of State" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Procurement Executive" is added in its place wherever it occurs.

7. Section 137.440 is added to read as follows:

§ 137.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 208 and 210

RIN 0412–AA47

FOR FURTHER INFORMATION CONTACT: Kathleen J. O'Hara, M/OP/OD, 1300 Pennsylvania Avenue, NW, Washington, DC 20523–7900, (202) 712–4759.

ADDITIONAL SUPPLEMENTARY INFORMATION: USAID has determined not to require written certifications from awardees or persons with whom they propose to enter into covered transactions. In order to clarify that transactions such as host country contracts and procurements under Commodity Import Programs that USAID finances, but does not award, are covered by this regulation, USAID is adding a sentence to the definition of primary covered transactions in 208.110(a)(1)(i).

List of Subjects

22 CFR Part 208

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 210

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 11, 2001.

Mark S. Ward,

Director, Office of Procurement.

Accordingly, as set forth in the common preamble, 22 CFR chapter II is proposed to be amended as follows:

1. Part 208 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
208.25 How is this part organized?
208.50 How is this part written?
208.75 Do terms in this part have special meanings?

Subpart A—General

208.100 What does this part do?
208.105 Does this part apply to me?
208.110 What is the purpose of the nonprocurement debarment and suspension systems?
208.115 How does an exclusion restrict a person's involvement in covered transactions?
208.120 May we grant an exception to let an excluded person participate in a covered transaction?
208.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
208.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
208.135 May the U.S. Agency for International Development exclude a person who is not currently participating in a nonprocurement transaction?
208.140 How do I know if a person is excluded?
208.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

208.200 What is a covered transaction?
208.205 Why is it important to know if a particular transaction is a covered transaction?
208.210 Which nonprocurement transactions are covered transactions?
208.215 Which nonprocurement transactions are not covered transactions?
208.220 Are any procurement contracts included as covered transactions?
208.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

208.300 May I enter into a covered transaction with an excluded or disqualified person?
208.305 What must I do if a Federal agency excludes a person with whom I am

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already doing business in a covered transaction?
208.310 May I use the services of an excluded person under a covered transaction?
208.315 Must I verify that principals of my covered transactions are eligible to participate?
208.320 What happens if I do business with an excluded person in a covered transaction?
208.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

208.330 What information must I provide before entering into a covered transaction with the U.S. Agency for International Development.
208.335 If I disclose unfavorable information required under § 208.330 will I be prevented from entering into the transaction?
208.340 What happens if I fail to disclose the information required under § 208.330?
208.345 What must I do if I learn of the information required under § 208.330 after entering into a covered transaction with the U.S. Agency for International Development?

Disclosing Information—Lower Tier Participants

208.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
208.355 What happens if I fail to disclose the information required under § 208.350?
208.360 What must I do if I learn of information required under § 208.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of USAID Officials Regarding Transactions

208.400 May I enter into a transaction with an excluded or disqualified person?
208.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
208.410 May I approve a participant's use of the services of an excluded person?
208.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
208.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
208.425 When do I check to see if a person is excluded or disqualified?
208.430 How do I check to see if a person is excluded or disqualified?
208.435 What must I require of a primary tier participant?
208.440 What method do I use to communicate requirements to participants?
208.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
208.450 What action may I take if a primary tier participant fails to disclose the information required under § 208.330?
208.455 What may I do if a lower tier participant fails to disclose the information required under § 208.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

208.500 What is the purpose of the List?
208.505 Who uses the List?
208.510 Who maintains the List?
208.515 What specific information is on the List?
208.520 Who gives the GSA the information that it puts on the List?
208.525 Whom do I ask if I have questions about a person on the List?
208.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

208.600 How do suspension and debarment actions start?
208.605 How does suspension differ from debarment?
208.610 What procedures does the U.S. Agency for International Development use in suspension and debarment actions?
208.615 How does the U.S. Agency for International Development notify a person of suspension and debarment actions?
208.620 Do Federal agencies coordinate suspension and debarment actions?
208.625 What is the scope of a suspension or debarment action?
208.630 May the U.S. Agency for International Development impute the conduct of one person to another?
208.635 May the U.S. Agency for International Development settle a debarment or suspension action?
208.640 May a settlement include a voluntary exclusion?
208.645 Do other Federal agencies know if the U.S. Agency for International Development agrees to a voluntary exclusion?

Subpart G—Suspension

208.700 When may the suspending official issue a suspension?
208.705 What does the suspending official consider in issuing a suspension?
208.710 When does a suspension take effect?
208.715 What notice does the suspending official give me if I am suspended?
208.720 How may I contest a suspension?
208.725 How much time do I have to contest a suspension?
208.730 What information must I provide to the suspending official if I contest a suspension?
208.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
208.740 Are suspension proceedings formal?
208.745 Is a record made of fact-finding proceedings?
208.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
208.755 When will I know whether the suspension is continued or terminated?
208.760 How long may my suspension last?

Subpart H—Debarment

208.800 What are the causes for debarment?
208.805 What notice does the debarring official give me if I am proposed for debarment?
208.810 When does a debarment take effect?
208.815 How may I contest a proposed debarment?
208.820 How much time do I have to contest a proposed debarment?
208.825 What information must I provide to the debarring official if I contest a proposed debarment?
208.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
208.835 Are debarment proceedings formal?
208.840 Is a record made of fact-finding proceedings?
208.845 What does the debarring official consider in deciding whether to debar me?
208.850 What is the standard of proof in a debarment action?
208.855 Who has the burden of proof in a debarment action?
208.860 What factors may influence the debarring official's decision?
208.865 How long may my debarment last?
208.870 When do I know if the debarring official debars me?
208.875 May I ask the debarring official to reconsider a decision to debar me?
208.880 What factors may influence the debarring official during reconsideration?
208.885 May the debarring official extend a debarment?

Subpart I—Definitions

208.900 Adequate evidence.
208.905 Affiliate.
208.910 Agency.
208.915 Agent or representative.
208.920 Civil judgment.
208.925 Conviction.
208.930 Debarment.
208.935 Debarring official.
208.940 Disqualified.
208.945 Excluded or exclusion.
208.950 Indictment.
208.955 Ineligible or ineligibility.
208.960 Legal proceedings.
208.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
208.970 Nonprocurement transaction.
208.975 Notice.
208.980 Participant.
208.985 Person.
208.990 Preponderance of the evidence.
208.995 Principal.
208.1000 Respondent.
208.1005 State.
208.1010 Suspending official.
208.1015 Suspension.
208.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 208—Covered Transactions

Authority: E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

2. Part 208 is further amended as set forth below.

a. "[Agency Noun]" is removed and "U.S. Agency for International Development" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "USAID" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Procurement" is added in its place wherever it occurs.

3. Section 208.440 is added to read as follows:

§ 208.440 What method do I use to communicate requirements in § 208.35 to participants?

To communicate the requirements in § 208.35, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 208.935 is further amended by adding paragraph (b) to read as follows:

§ 208.935 Debarring official.

* * * * *

(b) The U.S. Agency for International Development's debarring official is the Director of the Office of Procurement.

5. Section 208.1010 is further amended by adding paragraph (b) to read as follows:

§ 208.1010 Suspending official.

* * * * *

(b) The U.S. Agency for International Development's suspending official is the Director of the Office of Procurement.

6. Part 210 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 210—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
210.100 What does this part do?
210.105 Does this part apply to me?
210.110 Are any of my Federal assistance awards exempt from this part?
210.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

210.200 What must I do to comply with this part?
210.205 What must I include in my drug-free workplace statement?
210.210 To whom must I distribute my drug-free workplace statement?
210.215 What must I include in my drug-free awareness program?
210.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
210.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
210.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

210.300 What must I do to comply with this part if I am an individual recipient?
210.301 [Reserved]

Subpart D—Responsibilities of USAID Awarding Officials

210.400 What are my responsibilities as a USAID awarding official?

Subpart E—Violations of This Part and Consequences

210.500 How are violations of this part determined for recipients other than individuals?
210.505 How are violations of this part determined for recipients who are individuals?
210.510 What actions will the Federal Government take against a recipient determined to have violated this part?
210.515 Are there any provisions for exceptions to those actions?

Subpart F—Definitions

210.605 Award.
210.610 Controlled substance.
210.615 Conviction.
210.620 Cooperative agreement.
210.625 Criminal drug statute.
210.630 Debarment.
210.635 Drug-free workplace.
210.640 Employee.
210.645 Federal agency or agency.
210.650 Grant.
210.655 Individual.
210.660 Recipient.
210.665 State.
210.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 3 CFR 1979 Comp., p. 435.

7. Part 210 is further amended as set forth below.

a. "[Agency Noun]" is removed and "U.S. Agency for International Development" is added in its place wherever it occurs.

b. "[Agency Adjective]" is removed and "USAID" is added in its place wherever it occurs.

c. "[Agency Head or Designee]" is removed and "Director of the Office of Procurement" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "USAID Administrator or designee" is added in its place wherever it occurs.

8. Section 210.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulation implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 208" in its place.

9. Section 210.605 is further amended by adding a paragraph (c) to read as follows:

§ 210.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

PEACE CORPS

22 CFR Parts 310 and 312

RIN 0420–AA17

FOR FURTHER INFORMATION CONTACT: Ruth L. Ramsey, Acting General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street, NW, Washington, DC 20526, (202) 692–2150.

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes in § 310.440 to use terms or conditions to the award transaction as a means to enforce exclusions under Peace Corps transactions rather than written certifications. This alternative available under the common rule is more efficient than the Peace Corps' current certification process for prospective recipients and participants.

In addition, the requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and are proposed to be re-codified as a separate part 312.

List of Subjects

22 CFR Part 310

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 312

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

VOL 67 ISS 15 JA 23 2002 UMI

Dated: August 22, 2001.

Michael J. Kole,

Director, Office of Administrative Services, Peace Corps.

For the reasons stated in the common preamble, the Peace Corps proposes to amend 22 CFR chapter III, as follows:

1. Part 310 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

310.25 How is this part organized?
310.50 How is this part written?
310.75 Do terms in this part have special meanings?

Subpart A—General

310.100 What does this part do?
310.105 Does this part apply to me?
310.110 What is the purpose of the nonprocurement debarment and suspension system?
310.115 How does an exclusion restrict a person's involvement in covered transactions?
310.120 May we grant an exception to let an excluded person participate in a covered transaction?
310.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in federal procurement contracts?
310.130 Does an exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?
310.140 How do I know if a person is excluded?
310.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

310.200 What is a covered transaction?
310.205 Why is it important to know if a particular transaction is a covered transaction?
310.210 Which nonprocurement transactions are covered transactions?
310.215 Which nonprocurement transactions are not covered transactions?
310.220 Are any procurement contracts included as covered transactions?
310.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

310.300 May I enter into a covered transaction with an excluded or disqualified person?
310.305 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
310.310 May I use the services of an excluded person under a covered transaction?
310.315 Must I verify that principals of my covered transactions are eligible to participate?
310.320 What happens if I do business with an excluded person in a covered transaction?
310.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

310.330 What information must I provide before entering into a covered transaction with the Peace Corps?
310.335 If I disclose unfavorable information required under § 310.330 will I be prevented from entering into the transaction?
310.340 What happens if I fail to disclose the information required under § 310.330?
310.345 What must I do if I learn of the information required under § 310.330 after entering into a covered transaction with the Peace Corps?

Disclosing Information—Lower Tier Participants

310.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
310.355 What happens if I fail to disclose the information required under § 310.350?
310.360 What must I do if I learn of information required under § 310.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions

310.400 May I enter into a transaction with an excluded or disqualified person?
310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
310.410 May I approve a participant's use of the services of an excluded person?
310.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
310.425 When do I check to see if a person is excluded or disqualified?
310.430 How do I check to see if a person is excluded or disqualified?
310.435 What must I require of a primary tier participant?
310.440 What method do I use to communicate those requirements to participants?
310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
310.450 What action may I take if a primary tier participant fails to disclose the information required under § 310.330?
310.455 What may I do if a lower tier participant fails to disclose the information required under § 310.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

310.500 What is the purpose of the List?
310.505 Who uses the List?
310.510 Who maintains the List?
310.515 What specific information is on the List?
310.520 Who gives the GSA the information that it puts on the List?
310.525 Whom do I ask if I have questions about a person on the List?
310.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

310.600 How do suspension and debarment actions start?
310.605 How does suspension differ from debarment?
310.610 What procedures does the Peace Corps use in suspension and debarment actions?
310.615 How does the Peace Corps notify a person of suspension and debarment actions?
310.620 Do federal agencies coordinate suspension and debarment actions?
310.625 What is the scope of a suspension or debarment action?
310.630 May the Peace Corps impute the conduct of one person to another?
310.635 May the Peace Corps settle a debarment or suspension action?
310.640 May a settlement include a voluntary exclusion?
310.645 Do other federal agencies know if the Peace Corps agrees to a voluntary exclusion?

Subpart G—Suspension

310.700 When may the suspending official issue a suspension?
310.705 What does the suspending official consider in issuing a suspension?
310.710 When does a suspension take effect?
310.715 What notice does the suspending official give me if I am suspended?
310.720 How may I contest a suspension?
310.725 How much time do I have to contest a suspension?
310.730 What information must I provide to the suspending official if I contest a suspension?
310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
310.740 Are suspension proceedings formal?
310.745 Is a record made of fact-finding proceedings?
310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
310.755 When will I know whether the suspension is continued or terminated?
310.760 How long may my suspension last?

Subpart H—Debarment

310.800 What are the causes for debarment?
310.805 What notice does the debarring official give me if I am proposed for debarment?
310.810 When does a debarment take effect?
310.815 How may I contest a proposed debarment?
310.820 How much time do I have to contest a proposed debarment?
310.825 What information must I provide to the debarring official if I contest a proposed debarment?
310.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
310.835 Are debarment proceedings formal?
310.840 Is a record made of fact-finding proceedings?
310.845 What does the debarring official consider in deciding whether to debar me?
310.850 What is the standard of proof in a debarment action?
310.855 Who has the burden of proof in a debarment action?
310.860 What factors may influence the debarring official's decision?
310.865 How long may my debarment last?
310.870 When do I know if the debarring official debars me?
310.875 May I ask the debarring official to reconsider a decision to debar me?
310.880 What factors may influence the debarring official during reconsideration?
310.885 May the debarring official extend a debarment?

Subpart I—Definitions

310.900 Adequate evidence.
310.905 Affiliate.
310.910 Agency.
310.915 Agent or representative.
310.920 Civil judgment.
310.925 Conviction.
310.930 Debarment.
310.935 Debarring official.
310.940 Disqualified.
310.945 Excluded or exclusion.
310.950 Indictment.
310.955 Ineligible or ineligibility.
310.960 Legal proceedings.
310.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
310.970 Nonprocurement transaction.
310.975 Notice.
310.980 Participant.
310.985 Person.
310.990 Preponderance of the evidence.
310.995 Principal.
310.100 Respondent.
310.1005 State.
310.1010 Suspending official.
310.1015 Suspension.
310.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 310—Covered Transactions

Authority: 22 U.S.C. 2503; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2. Part 310 is further amended as set forth below.

a. "[Agency noun]" is removed and "Peace Corps" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Peace Corps" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Peace Corps Director or designee" is added in its place wherever it occurs.

3. Section 310.440 is added to read as follows:

§ 310.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 312 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 312—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Subpart A—Purpose and Coverage

312.100 What does this part do?
312.105 Does this part apply to me?
312.110 Are any of my federal assistance awards exempt from this part?
312.115 Does this part affect the federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

312.200 What must I do to comply with this part?
312.205 What must I include in my drug-free workplace statement?
312.210 To whom must I distribute my drug-free workplace statement?
312.215 What must I include in my drug-free awareness program?
312.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
312.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
312.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

312.300 What must I do to comply with this part if I am an individual recipient?
312.301 [Reserved]

Subpart D—Responsibilities of Peace Corps Awarding Officials

312.400 What are my responsibilities as a Peace Corps awarding official?

Subpart E—Violations of This Part and Consequences

312.500 How are violations of this part determined for recipients other than individuals?
312.505 How are violations of this part determined for recipients who are individuals?
312.510 What actions will the Federal Government take against a recipient determined to have violated this part?
312.515 Are there any exceptions to those actions?

Subpart F—Definitions

312.605 Award.
312.610 Controlled substance.
312.615 Conviction.
312.620 Cooperative agreement.
312.625 Criminal drug statute.
312.630 Debarment.
312.635 Drug-free workplace.
312.640 Employee.
312.645 Federal agency or agency.
312.650 Grant.
312.655 Individual.
312.660 Recipient.
312.665 State.
312.670 Suspension.

Authority: 22 U.S.C. 2503(b); 41 U.S.C. 701 *et seq.*

5. Part 312 is further amended as set forth below.

a. "[Agency noun]" is removed and "Peace Corps" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Peace Corps" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Peace Corps Director or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Peace Corps Director" is added in its place wherever it occurs.

6. Section 312.510(c) is further amended by removing "[CFR citation for the federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 310" in its place.

7. Section 312.605 is further amended by adding a paragraph (c) to read as follows:

§ 312.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Peace Corps.

INTER-AMERICAN FOUNDATION

22 CFR Parts 1006 and 1008

FOR FURTHER INFORMATION CONTACT: Carolyn Karr, General Counsel, Inter-

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American Foundation, 901 N. Stuart Street, Arlington, Virginia 22203, (703) 306–4350, *ckarr@iaf.gov*.

List of Subjects

22 CFR Part 1006

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 1008

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved:

David Valenzuela,

President, Inter-American Foundation.

For the reasons stated in the common preamble, the Inter-American Foundation proposes to amend 22 CFR chapter X, as follows:

1. Part 1006 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1006.25 How is this part organized?
1006.50 How is this part written?
1006.75 Do terms in this part have special meanings?

Subpart A—General

1006.100 What does this part do?
1006.105 Does this part apply to me?
1006.110 What is the purpose of the nonprocurement debarment and suspension system?
1006.115 How does an exclusion restrict a person's involvement in covered transactions?
1006.120 May we grant an exception to let an excluded person participate in a covered transaction?
1006.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1006.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1006.135 May the Inter-American Foundation exclude a person who is not currently participating in a nonprocurement transaction?
1006.140 How do I know if a person is excluded?
1006.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1006.200 What is a covered transaction?
1006.205 Why is it important to know if a particular transaction is a covered transaction?
1006.210 Which nonprocurement transactions are covered transactions?
1006.215 Which nonprocurement transactions are not covered transactions?
1006.220 Are any procurement contracts included as covered transactions?
1006.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1006.300 May I enter into a covered transaction with an excluded or disqualified persons?
1006.305 Must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1006.310 May I use the services of an excluded person under a covered transaction?
1006.315 I verify that principals of my covered transactions are eligible to participate?
1006.320 What happens if I do business with an excluded person in a covered transaction?
1006.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1006.330 What information must I provide before entering into a covered transaction with the Inter-American Foundation?
1006.335 If I disclose unfavorable information required under § 1006.330 will I be prevented from entering into the transaction?
1006.340 What happens if I fail to disclose the information required under § 1006.330?
1006.345 What must I do if I learn of the information required under § 1006.330 after entering into a covered transaction with the Inter-American Foundation?

Disclosing Information—Lower Tier Participants

1006.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1006.355 What happens if I fail to disclose the information required under § 1006.350?
1006.360 What must I do if I learn of information required under § 1006.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Inter-American Foundation Officials Regarding Transactions

1006.400 May I enter into a transaction with an excluded or disqualified person?
1006.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1006.410 May I approve a participant's use of the services of an excluded person?
1006.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1006.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1006.425 When do I check to see if a person is excluded or disqualified?
1006.430 How do I check to see if a person is excluded or disqualified?
1006.435 What must I require of a primary tier participant?
1006.440 What method do I use to communicate those requirements to participants?
1006.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1006.450 What action may I take if a primary tier participant fails to disclose the information required under § 1006.330?
1006.455 What may I do if a lower tier participant fails to disclose the information required under § 1006.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1006.500 What is the purpose of the List?
1006.505 Who uses the List?
1006.510 Who maintains the List?
1006.515 What specific information is on the List?
1006.520 Who gives the GSA the information that it puts on the List?
1006.525 Whom do I ask if I have questions about a person on the List?
1006.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1006.600 How do suspension and debarment actions start?
1006.605 How does suspension differ from debarment?
1006.610 What procedures does the Inter-American Foundation use in suspension and debarment actions?
1006.615 How does the Inter-American Foundation notify a person of suspension and debarment actions?
1006.620 Do Federal agencies coordinate suspension and debarment actions?
1006.625 What is the scope of a suspension or debarment action?
1006.630 May the Inter-American Foundation impute the conduct of one person to another?
1006.635 May the Inter-American Foundation settle a debarment or suspension action?
1006.640 May a settlement include a voluntary exclusion?
1006.645 Do other Federal agencies know if the Inter-American Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

1006.700 When may the suspending official issue a suspension?

1006.705 What does the suspending official consider in issuing a suspension?
1006.710 When does a suspension take effect?
1006.715 What notice does the suspending official give me if I am suspended?
1006.720 How may I contest a suspension?
1006.725 How much time do I have to contest a suspension?
1006.730 What information must I provide to the suspending official if I contest a suspension?
1006.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1006.740 Are suspension proceedings formal?
1006.745 Is a record made of fact-finding proceedings?
1006.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1006.755 When will I know whether the suspension is continued or terminated?
1006.760 How long may my suspension last?

Subpart H—Debarment

1006.800 What are the causes for debarment?
1006.805 What notice does the debarring official give me if I am proposed for debarment?
1006.810 When does a debarment take effect?
1006.815 How may I contest a proposed debarment?
1006.820 How much time do I have to contest a proposed debarment?
1006.825 What information must I provide to the debarring official if I contest a proposed debarment?
1006.830 Under what conditions do I get an additional opportunity to challenge the fact on which the proposed debarment is based?
1006.835 Are debarment proceedings formal?
1006.840 Is a record made of fact-finding proceedings?
1006.845 What does the debarring official consider in deciding whether to debar me?
1006.850 What is the standard of proof in a debarment action?
1006.855 Who has the burden of proof in a debarment action?
1006.860 What factors may influence the debarring official's decision?
1006.865 How long may my debarment last?
1006.870 When do I know if the debarring official debars me?
1006.875 May I ask the debarring official to reconsider a decision to debar me?
1006.880 What factors may influence the debarring official during reconsideration?
1006.885 May the debarring official extend a debarment?

Subpart I—Definitions

1006.900 Adequate evidence.
1006.905 Affiliate.
1006.910 Agency.
1006.915 Agent or representative.
1006.920 Civil judgment.
1006.925 Conviction.
1006.930 Debarment.
1006.935 Debarring official.
1006.940 Disqualified.
1006.945 Excluded or exclusion.
1006.950 Indictment.
1006.955 Ineligible or ineligibility.
1006.960 Legal proceedings.
1006.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1006.970 Nonprocurement transaction.
1006.975 Notice.
1006.980 Participant.
1006.985 Person.
1006.990 Preponderance of the evidence.
1006.995 Principal.
1006.1000 Respondent.
1006.1005 State.
1006.1010 Suspending official.
1006.1015 Suspension.
1006.1020 Voluntary exclusion or voluntarily excluded

Subpart J [Reserved]

Appendix to Part 1006—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 1006 is further amended as set forth below.

a. "[Agency noun]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Inter-American Foundation Debarring Official" is added in its place wherever it occurs.

3. Section 1006.440 is added to read as follows:

§ 1006.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

5. Part 1008 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1008.100 What does this part do?
1008.105 Does this part apply to me?
1008.110 Are any of my Federal assistance awards exempt from this part?
1008.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1008.200 What must I do to comply with this part?
1008.205 What must I include in my drug-free workplace statement?
1008.210 To whom must I distribute my drug-free workplace statement?
1008.215 What must I include in my drug-free awareness program?
1008.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1008.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1008.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1008.300 What must I do to comply with this part if I am an individual recipient?
1008.301 [Reserved]

Subpart D—Responsibilities of Inter-American Foundation Awarding Officials

1008.400 What are my responsibilities as an Inter-American Foundation awarding official?

Subpart E—Violations of This Part and Consequences

1008.500 How are violations of this part determined for recipients other than individuals?
1008.505 How are violations of this part determined for recipients who are individuals?
1008.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1008.515 Are there any exceptions to those actions?

Subpart F—Definitions

1008.605 Award.
1008.610 Controlled substance.
1008.615 Conviction.
1008.620 Cooperative agreement.
1008.625 Criminal drug statute.
1008.630 Debarment.
1008.635 Drug-free workplace.
1008.640 Employee.
1008.645 Federal agency or agency.
1008.650 Grant.
1008.655 Individual.
1008.660 Recipient.
1008.665 State.
1008.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

5. Part 1008 is further amended as set forth below.

a. "[Agency noun]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Inter-American

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Foundation President or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

6. Section 1008.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 1006" in its place.

7. Section 1008.605 is further amended by adding a paragraph (c) to read as follows:

§ 1008.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Inter-American Foundation.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Parts 1508 and 1509

RIN Number 3005–ZA00

FOR FURTHER INFORMATION CONTACT: Doris Martin at 202–673–3916 (phone) or *domartin@adf.gov*.

List of Subjects

22 CFR Part 1508

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

22 CFR Part 1509

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved:

Doris Martin,

General Counsel.

For the reasons stated in the preamble, the African Development Foundation proposes to amend 22 CFR chapter XV as follows:

1. Part 1508 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

1508.25 How is this part organized?
1508.50 How is this part written?
1508.75 Do terms in this part have special meanings?

Subpart A—General

1508.100 What does this part do?
1508.105 Does this part apply to me?
1508.110 What is the purpose of the nonprocurement debarment and suspension system?
1508.115 How does an exclusion restrict a person's involvement in covered transactions?
1508.120 May we grant an exception to let an excluded person participate in a covered transaction?
1508.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1508.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1508.135 May the African Development Foundation exclude a person who is not currently participating in a nonprocurement transaction?
1508.140 How do I know if a person is excluded?
1508.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1508.200 What is a covered transaction?
1508.205 Why is it important to know if a particular transaction is a covered transaction?
1508.210 Which nonprocurement transactions are covered transactions?
1508.215 Which nonprocurement transactions are not covered transactions?
1508.220 Are any procurement contracts included as covered transactions?
1508.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1508.300 May I enter into a covered transaction with an excluded or disqualified person?
1508.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1508.310 May I use the services of an excluded person under a covered transaction?
1508.315 Must I verify that principals of my covered transactions are eligible to participate?
1508.320 What happens if I do business with an excluded person in a covered transaction?
1508.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1508.330 What information must I provide before entering into a covered transaction with the African Development Foundation?
1508.335 If I disclose unfavorable information required under § 1508.330 will I be prevented from entering into the transaction?
1508.340 What happens if I fail to disclose the information required under § 1508.330?
1508.345 What must I do if I learn of the information required under § 1508.330 after entering into a covered transaction with the African Development Foundation?

Disclosing Information—Lower Tier Participants

1508.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1508.355 What happens if I fail to disclose the information required under § 1508.350?
1508.360 What must I do if I learn of information required under § 1508.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of ADF Officials Regarding Transactions

1508.400 May I enter into a transaction with an excluded or disqualified person?
1508.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1508.410 May I approve a participant's use of the services of an excluded person?
1508.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1508.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1508.425 When do I check to see if a person is excluded or disqualified?
1508.430 How do I check to see if a person is excluded or disqualified?
1508.435 What must I require of a primary tier participant?
1508.440 What method do I use to communicate those requirements to participants?
1508.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1508.450 What action may I take if a primary tier participant fails to disclose the information required under § 1508.330?
1508.455 What may I do if a lower tier participant fails to disclose the information required under § 1508.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1508.500 What is the purpose of the List?
1508.505 Who uses the List?
1508.510 Who maintains the List?
1508.515 What specific information is on the List?
1508.520 Who gives the GSA the information that it puts on the List?
1508.525 Whom do I ask if I have questions about a person on the List?
1508.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1508.600 How do suspension and debarment actions start?
1508.605 How does suspension differ from debarment?
1508.610 What procedures does the African Development Foundation use in suspension and debarment actions?
1508.615 How does the African Development Foundation notify a person of suspension and debarment actions?
1508.620 Do Federal agencies coordinate suspension and debarment actions?
1508.625 What is the scope of a suspension or debarment action?
1508.630 May the African Development Foundation impute the conduct of one person to another?
1508.635 May the African Development Foundation settle a debarment or suspension action?
1508.640 May a settlement include a voluntary exclusion?
1508.645 Do other Federal agencies know if the African Development Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

1508.700 When may the suspending official issue a suspension?
1508.705 What does the suspending official consider in issuing a suspension?
1508.710 When does a suspension take effect?
1508.715 What notice does the suspending official give me if I am suspended?
1508.720 How may I contest a suspension?
1508.725 How much time do I have to contest a suspension?
1508.730 What information must I provide to the suspending official if I contest a suspension?
1508.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1508.740 Are suspension proceedings formal?
1508.745 Is a record made of fact-finding proceedings?
1508.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1508.755 When will I know whether the suspension is continued or terminated?
1508.760 How long may my suspension last?

Subpart H—Debarment

1508.800 What are the causes for debarment?
1508.805 What notice does the debarring official give me if I am proposed for debarment?
1508.810 When does a debarment take effect?
1508.815 How may I contest a proposed debarment?
1508.820 How much time do I have to contest a proposed debarment?
1508.825 What information must I provide to the debarring official if I contest a proposed debarment?
1508.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1508.835 Are debarment proceedings formal?
1508.840 Is a record made of fact-finding proceedings?
1508.845 What does the debarring official consider in deciding whether to debar me?
1508.850 What is the standard of proof in a debarment action?
1508.855 Who has the burden of proof in a debarment action?
1508.860 What factors may influence the debarring official's decision?
1508.865 How long may my debarment last?
1508.870 When do I know if the debarring official debars me?
1508.875 May I ask the debarring official to reconsider a decision to debar me?
1508.880 What factors may influence the debarring official during reconsideration?
1508.885 May the debarring official extend a debarment?

Subpart I—Definitions

1508.900 Adequate evidence.
1508.905 Affiliate.
1508.910 Agency.
1508.915 Agent or representative.
1508.920 Civil judgment.
1508.925 Conviction.
1508.930 Debarment.
1508.935 Debarring official.
1508.940 Disqualified.
1508.945 Excluded or exclusion.
1508.950 Indictment.
1508.955 Ineligible or ineligibility.
1508.960 Legal proceedings.
1508.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1508.970 Nonprocurement transaction.
1508.975 Notice.
1508.980 Participant.
1508.985 Person.
1508.990 Preponderance of the evidence.
1508.995 Principal.
1508.1000 Respondent.
1508.1005 State.
1508.1010 Suspending official.
1508.1015 Suspension.
1508.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1508—Covered Transactions

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3CFR, 1986 Comp., p.89; E.O. 12689, 3CFR, 1989 Comp., p. 235.

2. Part 1508 is further amended as set forth below:

a. "[Agency noun]" is removed and "African Development Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ADF" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ADF President" is added in its place wherever it occurs.

3. Part 1509 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1509—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Subpart A—Purpose and Coverage

1509.100 What does this part do?
1509.105 Does this part apply to me?
1509.110 Are any of my Federal assistance awards exempt from this part?
1509.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1509.200 What must I do to comply with this part?
1509.205 What must I include in my drug-free workplace statement?
1509.210 To whom must I distribute my drug-free workplace statement?
1509.215 What must I include in my drug-free awareness program?
1509.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1509.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1509.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1509.300 What must I do to comply with this part if I am an individual recipient?
1509.301 [Reserved]

Subpart D—Responsibilities of ADF Awarding Officials

1509.400 What are my responsibilities as an ADF awarding official?

Subpart E—Violations of This Part and Consequences

1509.500 How are violations of this part determined for recipients other than individuals?
1509.505 How are violations of this part determined for recipients who are individuals?
1509.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1509.515 Are there any exceptions to those actions?

Subpart F—Definitions

1509.605 Award.
1509.610 Controlled substance.
1509.615 Conviction.
1509.620 Cooperative agreement.
1509.625 Criminal drug statute.
1509.630 Debarment.
1509.635 Drug-free workplace.
1509.640 Employee.
1509.645 Federal agency or agency.
1509.650 Grant.
1509.655 Individual.
1509.660 Recipient.
1509.665 State.

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1509.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

4. Part 1509 is further amended as set forth below.

a. "[Agency noun]" is removed and "African Development Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ADF" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ADF President" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "ADF President" is added in its place wherever it occurs.

5. Section 1509.310(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 1508" in its place.

6. Section 1509.605 is further amended by adding a paragraph (c) to read as follows:

§ 1509.605 Award.

* * * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for ADF.

DEPARTMENT OF LABOR

29 CFR Part 94 and 98

RIN 1291–AA33

FOR FURTHER INFORMATION CONTACT: Phyllis McMeekin, Director Division of Departmental Procurement Policy, N5425 Washington, DC 20210, (202) 219–9174, email McMeekin-Phyllis@dol.gov

List of Subjects

29 CFR Part 94

Administrative practices and procedures, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

29 CFR Part 98

Administrative practices and procedures, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

Elaine L. Chao,

Secretary of Labor.

For the reasons stated in the common preamble, the Department of Labor proposes to amend 29 CFR subtitle A as follows:

Part 94 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 94—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
94.100 What does this part do?
94.105 Does this part apply to me?
94.110 Are any of my Federal assistance awards exempt from this part?
94.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

94.200 What must I do to comply with this part?
94.205 What must I include in my drug-free workplace statement?
94.210 To whom must I distribute my drug-free workplace statement?
94.215 What must I include in my drug-free awareness program?
94.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
94.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
94.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

94.300 What must I do to comply with this part if I am an individual recipient?
94.301 [Reserved]

Subpart D—Responsibilities of Department of Labor Awarding Officials

94.400 What are my responsibilities as a Department of Labor awarding official?

Subpart E—Violations of this Part and Consequences

94.500 How are violations of this part determined for recipients other than individuals?
94.505 How are violations of this part determined for recipients who are individuals?
94.510 What actions will the Federal Government take against a recipient determined to have violated this part?
94.515 Is there any provision for exceptions to those actions?

Subpart F—Definitions

94.605 Award.
94.610 Controlled substance.
94.615 Conviction.
94.620 Cooperative agreement.
94.625 Criminal drug statute.
94.630 Debarment.
94.635 Drug-free workplace.
94.640 Employee.
94.645 Federal agency or agency.
94.650 Grant.
94.655 Individual.
94.660 Recipient.
94.665 State.
94.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

2. Part 94 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Labor" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Labor" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary of Labor or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Labor or designee" is added in its place wherever it occurs.

3. Section 94.510(c) is further amended by removing "CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "29 CFR Part 98" in its place.

4. Section 98.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "29 CFR part 97" in its place.

5. Part 98 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
98.25 How is this part organized?
98.50 How is this part written?
98.75 Do terms in this part have special meanings?

Subpart A—General

98.100 What does this part do?
98.105 Does this part apply to me?
98.110 What is the purpose of the nonprocurement debarment and suspension system?
98.115 How does an exclusion restrict a person's involvement in covered transactions?
98.120 May we grant an exception to let an excluded person participate in a covered transaction?
98.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
98.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
98.135 May the U.S. Department of Labor exclude a person who is not currently participating in a nonprocurement transaction?
98.140 How do I know if a person is excluded?
98.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

98.200 What is a covered transaction?
98.205 Why is it important to know if a particular transaction is a covered transaction?

98.210 Which nonprocurement transactions are covered transactions?
98.215 Which nonprocurement transactions are not covered transactions?
98.220 Are any procurement contracts included as covered transactions?
98.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

98.300 May I enter into a covered transaction with an excluded or disqualified person?
98.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
98.310 May I use the services of an excluded person under a covered transaction?
98.315 Must I verify that principals of my covered transactions are eligible to participate?
98.320 What happens if I do business with an excluded person in a covered transaction?
98.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

98.330 What information must I provide before entering into a covered transaction with the Department of Labor?
98.335 If I disclose unfavorable information required under § 98.330 will I be prevented from entering into the transaction?
98.340 What happens if I fail to disclose the information required under § 98.330?
98.345 What must I do if I learn of the information required under § 98.330 after entering into a covered transaction with the U.S. Department of Labor?

Disclosing information—Lower Tier Participants

98.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
98.355 What happens if I fail to disclose the information required under § 98.350?
98.360 What must I do if I learn of information required under § 98.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of the Department of Labor Officials Regarding Transactions

98.400 May I enter into a transaction with an excluded or disqualified person?
98.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
98.410 May I approve a participant's use of the services of an excluded person?
98.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
98.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
98.425 When do I check to see if a person is excluded or disqualified?
98.430 How do I check to see if a person is excluded or disqualified?
98.435 What must I require of a primary tier participant?
98.440 [Reserved]
98.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
98.450 What action may I take if a primary tier participant fails to disclose the information required under § 98.330?
98.455 What may I do if a lower tier participant fails to disclose the information required under § 98.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

98.500 What is the purpose of the List?
98.505 Who uses the List?
98.510 Who maintains the List?
98.515 What specific information is on the List?
98.520 Who gives the GSA the information that it puts on the List?
98.525 Whom do I ask if I have questions about a person on the List?
98.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

98.600 How do suspension and debarment actions start?
98.605 How does suspension differ from debarment?
98.610 What procedures does the U.S. Department of Labor use in suspension and debarment actions?
98.615 How does the U.S. Department of Labor notify a person of suspension and debarment actions?
98.620 Do Federal agencies coordinate suspension and debarment actions?
98.625 What is the scope of a suspension or debarment action?
98.630 May the U.S. Department of Labor impute the conduct of one person to another?
98.635 May the U.S. Department of Labor settle a debarment or suspension action?
98.640 May a settlement include a voluntary exclusion?
98.645 Do other Federal agencies know if the U.S. Department of Labor agrees to a voluntary exclusion?

Subpart G—Suspension

98.700 When may the suspending official issue a suspension?
98.705 What does the suspending official consider in issuing a suspension?
98.710 When does a suspension take effect?
98.715 What notice does the suspending official give me if I am suspended?
98.720 How may I contest a suspension?
98.725 How much time do I have to contest a suspension?
98.730 What information must I provide to the suspending official if I contest a suspension?
98.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
98.740 Are suspension proceedings formal?
98.745 Is a record made of fact-finding proceedings?
98.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
98.755 When will I know whether the suspension is continued or terminated?
98.760 How long may my suspension last?

Subpart H—Debarment

98.800 What are the causes for debarment?
98.805 What notice does the debarring official give me if I am proposed for debarment?
98.810 When does a debarment take effect?
98.815 How may I contest a proposed debarment?
98.820 How much time do I have to contest a proposed debarment?
98.825 What information must I provide to the debarring official if I contest a proposed debarment?
98.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
98.835 Are debarment proceedings formal?
98.840 Is a record made of fact-finding proceedings?
98.845 What does the debarring official consider in deciding whether to debar me?
98.850 What is the standard of proof in a debarment action?
98.855 Who has the burden of proof in a debarment action?
98.860 What factors may influence the debarring official's decision?
98.865 How long may my debarment last?
98.870 When do I know if the debarring official debars me?
98.875 May I ask the debarring official to reconsider a decision to debar me?
98.880 What factors may influence the debarring official during reconsideration?
98.885 May the debarring official extend a debarment?

Subpart I—Definitions

98.900 Adequate evidence.
98.905 Affiliate.
98.910 Agency.
98.915 Agent or representative.
98.920 Civil judgment.
98.925 Conviction.
98.930 Debarment.
98.935 Debarring official.
98.940 Disqualified.
98.945 Excluded or exclusion.
98.950 Indictment.
98.955 Ineligible or ineligibility.
98.960 Legal proceedings.
98.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
98.970 Nonprocurement transaction.
98.975 Notice.
98.980 Participant.
98.985 Person.
98.990 Preponderance of the evidence.
98.995 Principal.

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98.1000 Respondent.
98.1005 State.
98.1010 Suspending official.
98.1015 Suspension.
98.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 98—Covered Transactions

Authority: 5 U.S.C. 301, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 Note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

6. Part 98 is further amended as follows:

a. "[Agency noun]" is removed and "Department of Labor" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Labor" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary of Labor or designee" is added in its place wherever it occurs.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Parts 1471 and 1472

RIN 3076–AA08

FOR FURTHER INFORMATION CONTACT: Jane Lorber, General Counsel, 2100 K St., NW, Washington, DC 20427, (202) 606–5444, e-mail: jlorber@fmcs.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: This proposed rule relocates the requirements for maintaining a drug-free workplace from 29 CFR part 1471 to 29 CFR part 1472.

List of Subjects

29 CFR Part 1471

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

29 CFR Part 1472

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved:

C. Richard Barnes,

Director.

Accordingly, as set forth in the common preamble, the Federal Mediation and Conciliation Service proposes to amend 29 CFR chapter XII, as follows:

1. Part 1471 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1471.25 How is this part organized?
1471.50 How is this part written?
1471.75 Do terms in this part have special meanings?

Subpart A—General

1471.100 What does this part do?
1471.105 Does this part apply to me?
1471.110 What is the purpose of the nonprocurement debarment and suspension system?
1471.115 How does an exclusion restrict a person's involvement in covered transactions?
1471.120 May we grant an exception to let an excluded person participate in a covered transaction?
1471.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1471.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1471.135 May FMCS exclude a person who is not currently participating in a nonprocurement transaction?
1471.140 How do I know if a person is excluded?
1471.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1471.200 What is a covered transaction?
1471.205 Why is it important to know if a particular transaction is a covered transaction?
1471.210 Which nonprocurement transactions are covered transactions?
1471.215 Which nonprocurement transactions are not covered transactions?
1471.220 Are any procurement contracts included as covered transactions?
1471.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1471.300 May I enter into a covered transaction with an excluded or disqualified person?
1471.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1471.310 May I use the services of an excluded person under a covered transaction?
1471.315 Must I verify that principals of my covered transactions are eligible to participate?
1471.320 What happens if I do business with an excluded person in a covered transaction?
1471.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1471.330 What information must I provide before entering into a covered transaction with FMCS?
1471.335 If I disclose unfavorable information required under § 1471.330 will I be prevented from entering into the transaction?
1471.340 What happens if I fail to disclose the information required under § 1471.330?
1471.345 What must I do if I learn of the information required under § 1471.330 after entering into a covered transaction with FMCS?

Disclosing Information—Lower Tier Participants

1471.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1471.355 What happens if I fail to disclose the information required under § 1471.350?
1471.360 What must I do if I learn of information required under § 1471.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of FMCS Officials Regarding Transactions

1471.400 May I enter into a transaction with an excluded or disqualified person?
1471.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1471.410 May I approve a participant's use of the services of an excluded person?
1471.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1471.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1471.425 When do I check to see if a person is excluded or disqualified?
1471.430 How do I check to see if a person is excluded or disqualified?
1471.435 What must I require of a primary tier participant?
1471.440 What method do I use to communicate those requirements to participants?
1471.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1471.450 What action may I take if a primary tier participant fails to disclose the information required under § 1471.330?
1471.455 What may I do if a lower tier participant fails to disclose the information required under § 1471.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1471.500 What is the purpose of the List?
1471.505 Who uses the List?
1471.510 Who maintains the List?
1471.515 What specific information is on the List?
1471.520 Who gives the GSA the information that it puts on the List?
1471.525 Whom do I ask if I have questions about a person on the List?
1471.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1471.600 How do suspension and debarment actions start?
1471.605 How does suspension differ from debarment?
1471.610 What procedures does FMCS use in suspension and debarment actions?
1471.615 How does FMCS notify a person of suspension and debarment actions?
1471.620 Do Federal agencies coordinate suspension and debarment actions?
1471.625 What is the scope of a suspension or debarment action?
1471.630 May FMCS impute the conduct of one person to another?
1471.635 May FMCS settle a debarment or suspension action?
1471.640 May a settlement include a voluntary exclusion?
1471.645 Do other Federal agencies know if FMCS agrees to a voluntary exclusion?

Subpart G—Suspension

1471.700 When may the suspending official issue a suspension?
1471.705 What does the suspending official consider in issuing a suspension?
1471.710 When does a suspension take effect?
1471.715 What notice does the suspending official give me if I am suspended?
1471.720 How may I contest a suspension?
1471.725 How much time do I have to contest a suspension?
1471.730 What information must I provide to the suspending official if I contest a suspension?
1471.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1471.740 Are suspension proceedings formal?
1471.745 Is a record made of fact-finding proceedings?
1471.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1471.755 When will I know whether the suspension is continued or terminated?
1471.760 How long may my suspension last?

Subpart H—Debarment

1471.800 What are the causes for debarment?
1471.805 What notice does the debarring official give me if I am proposed for debarment?
1471.810 When does a debarment take effect?
1471.815 How may I contest a proposed debarment?
1471.820 How much time do I have to contest a proposed debarment?
1471.825 What information must I provide to the debarring official if I contest a proposed debarment?
1471.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1471.835 Are debarment proceedings formal?
1471.840 Is a record made of fact-finding proceedings?
1471.845 What does the debarring official consider in deciding whether to debar me?
1471.850 What is the standard of proof in a debarment action?
1471.855 Who has the burden of proof in a debarment action?
1471.860 What factors may influence the debarring official's decision?
1471.865 How long may my debarment last?
1471.870 When do I know if the debarring official debars me?
1471.875 May I ask the debarring official to reconsider a decision to debar me?
1471.880 What factors may influence the debarring official during reconsideration?
1471.885 May the debarring official extend a debarment?

Subpart I—Definitions

1471.900 Adequate evidence.
1471.905 Affiliate.
1471.910 Agency.
1471.915 Agent or representative.
1471.920 Civil judgment.
1471.925 Conviction.
1471.930 Debarment.
1471.935 Debarring official.
1471.940 Disqualified.
1471.945 Excluded or exclusion.
1471.950 Indictment.
1471.955 Ineligible or ineligibility.
1471.960 Legal proceedings.
1471.965 List of parties excluded or disqualified from federal procurement and nonprocurement programs.
1471.970 Nonprocurement transaction.
1471.975 Notice.
1471.980 Participant.
1471.985 Person.
1471.990 Preponderance of the evidence.
1471.995 Principal.
1471.1000 Respondent.
1471.1005 State.
1471.1010 Suspending official.
1471.1015 Suspension.
1471.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1471—Covered Transactions

Authority: E.O. 12549 ,3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 29 U.S.C. 175a.

2. Part 1471 is further amended as set forth below.

a. "[Agency noun]" is removed and "Federal Mediation and Conciliation Service" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FMCS" is added in its place wherever it occurs.

c. "[Agency Head or designee]" is removed and "Agency Director" is added in its place wherever it occurs.

3. Section 1471.440 is added to read as follows:

§ 1471.440 What method do I use to communicate those requirements to participants?

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1472 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1472 —GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1472.100 What does this part do?
1472.105 Does this part apply to me?
1472.110 Are any of my Federal assistance awards exempt from this part?
1472.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other than Individuals

1472.200 What must I do to comply with this part?
1472.205 What must I include in my drug-free workplace statement?
1472.210 To whom must I distribute my drug-free workplace statement?
1472.215 What must I include in my drug-free awareness program?
1472.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1472.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1472.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1472.300 What must I do to comply with this part if I am an individual recipient?
1472.301 [Reserved]

Subpart D—Responsibilities of FMCS Awarding Officials

1472.400 What are my responsibilities as an FMCS awarding official?

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Subpart E—Violations of This Part and Consequences

1472.500 How are violations of this part determined for recipients other than individuals?
1472.505 How are violations of this part determined for recipients who are individuals?
1472.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1472.515 Are there any exceptions to those actions?

Subpart F—Definitions

1472.605 Award.
1472.610 Controlled substance.
1472.615 Conviction.
1472.620 Cooperative agreement.
1472.625 Criminal drug statute.
1472.630 Debarment.
1472.635 Drug-free workplace.
1472.640 Employee.
1472.645 Federal agency or agency.
1472.650 Grant.
1472.655 Individual.
1472.660 Recipient.
1472.665 State.
1472.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

5. Part 1472 is further amended as set forth below.

a. "[Agency noun]" is removed and "Federal Mediation and Conciliation Service" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FMCS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Agency Director" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Agency Director" is added in its place wherever it occurs.

6. Section 1472.510 (c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689] and adding "29 CFR part 1471" in its place.

7. Section 1472.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "29 CFR part 1470" in its place.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 25 and 26

RIN 0790–AG86

FOR FURTHER INFORMATION CONTACT: Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, DC 20301–3080, telephone: (703) 696–0372.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) proposes to adopt two updated common rules, on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. In adopting these rules, the Office of the Secretary of Defense, Military Departments, Defense Agencies, and DoD Field Activities will maintain uniform policies and procedures that are consistent with those of other Executive Departments and Agencies. At the time the final rule is adopted, the DoD will make conforming amendments in other parts of the DoD Grant and Agreement Regulations (32 CFR parts 21, 22, 32, and 34), to update references to the debarment and suspension and the drug-free workplace requirements that currently are in 32 CFR part 25.

List of Subjects

32 CFR Part 25

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements

32 CFR Part 26

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements

Approved: August 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, as set forth in the common preamble, 32 CFR chapter I, subchapter B, is proposed to be amended as follows.

1. Part 25 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
25.25 How is this part organized?
25.50 How is this part written?
25.75 Do terms in this part have special meanings?

Subpart A—General

25.100 What does this part do?
25.105 Does this part apply to me?
25.110 What is the purpose of the nonprocurement debarment and suspension system?
25.115 How does an exclusion restrict a person's involvement in covered transactions?
25.120 May we grant an exception to let an excluded person participate in a covered transaction?
25.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
25.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
25.135 May the DoD Component exclude a person who is not currently participating in a nonprocurement transaction?
25.140 How do I know if a person is excluded?
25.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

25.200 What is a covered transaction?
25.205 Why is it important to know if a particular transaction is a covered transaction?
25.210 Which nonprocurement transactions are covered transactions?
25.215 Which nonprocurement transactions are not covered transactions?
25.220 Are any procurement contracts included as covered transactions?
25.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

25.300 May I enter into a covered transaction with an excluded or disqualified person?
25.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
25.310 May I use the services of an excluded person under a covered transaction?
25.315 Must I verify that principals of my covered transactions are eligible to participate?
25.320 What happens if I do business with an excluded person in a covered transaction?
25.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

25.330 What Information must I provide before entering into a covered transaction with the DoD Component?
25.335 If I disclose unfavorable information required under § 25.330 will I be prevented from entering into the transaction?
25.340 What happens if I fail to disclose the information required under § 25.330?
25.345 What must I do if I learn of the information required under § 25.330 after entering into a covered transaction with the DoD Component?

Disclosing Information—Lower Tier Participants

25.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
25.355 What happens if I fail to disclose the information required under § 25.350?
25.360 What must I do if I learn of information required under § 25.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DoD Component Officials Regarding Transactions

25.400 May I enter into a transaction with an excluded or disqualified person?
25.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
25.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
25.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
25.425 When do I check to see if a person is excluded or disqualified?
25.430 How do I check to see if a person is excluded or disqualified?
25.435 What must I require of a primary tier participant?
25.440 What method do I use to communicate those requirements to participants?
25.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
25.450 What action may I take if a primary tier participant fails to disclose the information required under § 25.330?
25.455 What may I do if a lower tier participant fails to disclose the information required under § 25.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

25.500 What is the purpose of the List?
25.505 Who uses the List?
25.510 Who maintains the List?
25.515 What specific information is on the List?
25.520 Who gives the GSA the information that it puts on the List?
25.525 Whom do I ask if I have questions about a person on the List?
25.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

25.600 How do suspension and debarment actions start?
25.605 How does suspension differ from debarment?
25.610 What procedures does the DoD Component use in suspension and debarment actions?
25.615 How does the DoD Component notify a person of suspension and debarment actions?
25.620 Do Federal agencies coordinate suspension and debarment actions?
25.625 What is the scope of a suspension or debarment action?
25.630 May the DoD Component impute the conduct of one person to another?
25.635 May the DoD Component settle a debarment or suspension action?
25.640 May a settlement include a voluntary exclusion?
25.645 Do other Federal agencies know if the DoD Component agrees to a voluntary exclusion?

Subpart G—Suspension

25.700 When may the suspending official issue a suspension?
25.705 What does the suspending official consider in issuing a suspension?
25.710 When does a suspension take effect?
25.715 What notice does the suspending official give me if I am suspended?
25.720 How may I contest a suspension?
25.725 How much time do I have to contest a suspension?
25.730 What information must I provide to the suspending official if I contest a suspension?
25.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
25.740 Are suspension proceedings formal?
25.745 Is a record made of fact-finding proceedings?
25.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
25.755 When will I know whether the suspension is continued or terminated?
25.760 How long may my suspension last?

Subpart H—Debarment

25.800 What are the causes for debarment?
25.805 What notice does the debarring official give me if I am proposed for debarment?
25.810 When does a debarment take effect?
25.815 How may I contest a proposed debarment?
25.820 How much time do I have to contest a proposed debarment?
25.825 What information must I provide to the debarring official if I contest a proposed debarment?
25.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
25.835 Are debarment proceedings formal?
25.840 Is a record made of fact-finding proceedings?
25.845 What does the debarring official consider in deciding whether to debar me?
25.850 What is the standard of proof in a debarment action?
25.855 Who has the burden of proof in a debarment action?
25.860 What factors may influence the debarring official's decision?
25.865 How long may my debarment last?
25.870 When do I know if the debarring official debars me?
25.875 May I ask the debarring official to reconsider a decision to debar me?
25.880 What factors may influence the debarring official during reconsideration?
25.885 May the debarring official extend a debarment?

Subpart I—Definitions

25.900 Adequate evidence.
25.905 Affiliate.
25.910 Agency.
25.915 Agent or representative.
25.920 Civil judgment.
25.925 Conviction.
25.930 Debarment.
25.935 Debarring official.
25.940 Disqualified.
25.942 DoD Component.
25.945 Excluded or exclusion.
25.950 Indictment.
25.955 Ineligible or ineligibility.
25.960 Legal proceedings.
25.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
25.970 Nonprocurement transaction.
25.975 Notice.
25.980 Participant.
25.985 Person.
25.990 Preponderance of the evidence.
25.995 Principal.
25.1000 Respondent.
25.1005 State.
25.1010 Suspending official.
25.1015 Suspension.
25.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 25—Covered Transactions

Authority: E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12689 , 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Part 25 is further amended as set forth below.

a. "[Agency noun]" is removed and "DoD Component" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoD Component" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Head of the DoD Component or his or her designee" is added in its place wherever it occurs.

3. Section 25.440 is added to read as follows:

§ 25.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 25.935 is further amended by adding paragraph (b) to read as follows:

§ 25.935 Debarring official.

* * * * *

(b) DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4 as debarring officials for procurement contracts.

5. Section 25.942 is added to read as follows:

§ 25.942 DoD Component.

DoD Component means the Office of the Secretary of Defense, a Military

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Department, a Defense Agency, or the Office of Economic Adjustment.

6. Section 25.1010 is further amended by adding a paragraph (b) to read as follows:

§ 25.1010 Suspending official.

* * * * *

(b) DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4 as suspending officials for procurement contracts.

7. Part 26 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 26—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
26.100 What does this part do?
26.105 Does this part apply to me?
26.110 Are any of my Federal assistance awards exempt from this part?
26.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

26.200 What must I do to comply with this part?
26.205 What must I include in my drug-free workplace statement?
26.210 To whom must I distribute my drug-free workplace statement?
26.215 What must I include in my drug-free awareness program?
26.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
26.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
26.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

26.300 What must I do to comply with this part if I am an individual recipient?
26.301 [Reserved]

Subpart D—Responsibilities of DoD Component Awarding Officials

26.400 What are my responsibilities as a DoD Component awarding official?

Subpart E—Violations of This Part and Consequences

26.500 How are violations of this part determined for recipients other than individuals?
26.505 How are violations of this part determined for recipients who are individuals?
26.510 What actions will the Federal Government take against a recipient determined to have violated this part?
26.515 Are there any exceptions to those actions?

Subpart F—Definitions

26.605 Award.
26.610 Controlled substance.
26.615 Conviction.
26.620 Cooperative agreement.
26.625 Criminal drug statute.
26.630 Debarment.
26.632 DoD Component.
26.635 Drug-free workplace.
26.640 Employee.
26.645 Federal agency or agency.
26.650 Grant.
26.655 Individual.
26.660 Recipient.
26.665 State.
26.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

8. Part 26 is further amended as set forth below.

a. "[Agency noun]" is removed and "DoD Component" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DoD Component" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Head of the DoD Component or his or her designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Defense or Secretary of a Military Department" is added in its place wherever it occurs.

9. Section 26.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "32 CFR part 25" in its place.

10. Section 26.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "32 CFR part 33" in its place.

11. Section 26.632 is added to read as follows:

§ 26.632 DoD Component.

DoD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

DEPARTMENT OF EDUCATION

34 CFR Parts 84, 85, 668, and 682

RIN 1890–AA07

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E211, Washington, DC 20202–2243. Telephone: 202–401–6700 or via e-mail *Peter.Wathen-Dunn@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDITIONAL SUPPLEMENTARY INFORMATION: The proposed common rule would provide agencies with certain areas of flexibility in adopting the common rule. An agency can determine the extent to which the effect of a debarment or suspension action flows down to tiers lower than a nonprocurement transaction. Under the original common rule, every procurement below the nonprocurement level is covered if it exceeds the small purchase threshold ($25,000). The Department of Education has significant vulnerabilities to fraud and abuse below the nonprocurement level, particularly among participants in the financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070, *et seq*. Thus, the Secretary proposes language for § 85.220(d) that preserves coverage at multiple lower tiers for any contract or subcontract that is greater than $25,000, and language for § 85.220(e) that reaches contracts for services for title IV HEA programs without regard to dollar amount.

For example, if a subgrantee entered into a contract with a third party and the contract exceeds the $25,000 threshold, the contract would be covered under the proposed rule and every subcontract after that would be covered if it exceeds that threshold.

The Secretary also proposes to adopt the rule so that direct notice between one tier and the next of the potential for suspension and debarment is not needed to impose coverage. As explained more fully later in this preamble, certain persons pose significant risks to the U.S. Department of Education (ED) funded programs even though in some cases those people receive no funds directly from ED related to the transaction over which they have a significant control or influence.

The Secretary proposes additional changes to the common rule. These changes would clarify the effect of debarment and suspension actions on an institution's eligibility to participate in student assistance programs authorized under title IV of the HEA, 20 U.S.C. 1070, *et seq*. These changes are consistent with the original common rule, as adopted by the Department in 1988.

The Secretary also proposes to clarify some of the coverage definitions to ensure that any person who has a significant control or influence over an ED transaction would be covered. The Secretary would also clarify the meaning of "principal" and "participant" in the context of title IV, HEA transactions. The Secretary considers an excluded person to pose significant risk to the integrity of the title IV, HEA programs. Thus, the Secretary proposes changes to the common rule regarding the definition of an excluded "principal." The proposed revised definition would include those persons who would—

- Provide services as third-party servicers to schools, lenders, and guarantors that participate in the title IV, HEA programs.
- Provide counsel or guidance directly to third-party servicers; or
- Provide counsel or guidance through a third-party servicer, indirectly or directly, to the lender, school, or guarantor.

To further clarify this position and to make participants aware of this precaution, the Secretary expressly designates as a covered lower-tier transaction any contract between a third-party servicer and a lender, school, or guarantor, regardless of the amount of the contract.

Parties apparently have structured these types of transactions to avoid the dollar threshold needed to extend coverage to lower-tier procurement transactions. The Secretary proposes this change to avoid attempts by excluded parties to use agreements or arrangements that contain indefinite or ambiguously phrased compensation provisions to evade sanction. In addition, the Secretary considers the dollar amount of the procurement contract for the services of an excluded person to have no necessary connection with the amount of abuse that may be caused by the excluded person.

The proposed changes would make the scope of the exclusion clearer and easier for participants to apply to their transactions.

The common rule allows a participant to continue to use the services of an excluded person on the premise that the transaction or agreement under which a participant operates has a limited duration. However, it is contrary to the intent of the rule, to apply that approach to situations in which the party participates under an agreement or arrangement of extended or even indefinite duration. Several major title IV, HEA agreements have no stated expiration date; others, including program participation agreements with postsecondary institutions, commonly extend for six years.

The Secretary wishes to prevent a title IV, HEA participant from continuing to use the services of an excluded person under this kind of agreement or arrangement. Thus, the Secretary—solely for the purpose of this rule—proposes to treat these agreements as having limited duration, regardless of other regulatory or contractual provisions that control their duration as between the participant and the Government. The Secretary considers this approach necessary in order to ensure a level of protection for these kinds of transactions or agreements that the common rule is intended to achieve for other Federal agreements.

Thus, for the purposes of title IV, HEA transactions, the Secretary proposes to allow a participant to continue to use the services of the excluded person for a period of 90 days or up to the close of the Federal fiscal year in which the participant learns of the exclusion, whichever is longer. This would give the participant time to arrange for a substitute to perform needed services.

Because this NPRM would reorganize part 85 of title 34 of the Code of Federal Regulations (CFR), some of the cross-references to this part in parts 668 and 682 of the CFR would become obsolete when this rule becomes final. Therefore, the Secretary proposes to make conforming amendments to parts 668 and 682 of the CFR so they refer to the proper provisions in part 85.

Also, the Secretary proposes to remove 34 CFR 682.705(a)(3), which prescribes the duration of a suspension by another Federal agency. Because the period of the suspension is expressly covered in proposed 34 CFR 85.612(b), there is no need to retain the separate explanation.

Finally, we note that the common rule clarifies the conditions under which a Federal agency gives a respondent an opportunity to challenge facts on which the agency based a suspension or proposed debarment.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects

34 CFR Part 84

Debarment and suspension, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 85

Administrative practice and procedure, Debarment and suspension, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 6, 2001.

Rod Paige,

Secretary of Education.

For the reasons stated in the common preamble and in the specific preamble of the Department of Education (ED), the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding part 84, revising part 85, and amending parts 668 and 682 to read as follows:

1. Part 84 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 84—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
84.100 What does this part do?
84.105 Does this part apply to me?
84.110 Are any of my Federal assistance awards exempt from this part?
84.115 Does this part affect the Federal contracts that I receive?

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Subpart B—Requirements for Recipients Other Than Individuals

84.200 What must I do to comply with this part?
84.205 What must I include in my drug-free workplace statement?
84.210 To whom must I distribute my drug-free workplace statement?
84.215 What must I include in my drug-free awareness program?
84.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
84.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
84.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

84.300 What must I do to comply with this part if I am an individual recipient?
84.301 [Reserved]

Subpart D—Responsibilities of ED Awarding Officials

84.400 What are my responsibilities as an ED awarding official?

Subpart E—Violations of This Part and Consequences

84.500 How are violations of this part determined for recipients other than individuals?
84.505 How are violations of this part determined for recipients who are individuals?
84.510 What actions will the Federal Government take against a recipient determined to have violated this part?
84.515 Are there any exceptions to those actions?

Subpart F—Definitions

84.605 Award.
84.610 Controlled substance.
84.615 Conviction.
84.620 Cooperative agreement.
84.625 Criminal drug statute.
84.630 Debarment.
84.635 Drug-free workplace.
84.640 Employee.
84.645 Federal agency or agency.
84.650 Grant.
84.655 Individual.
84.660 Recipient.
84.665 State.
84.670 Suspension.

Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327, unless otherwise noted.

2. Part 84 is further amended as follows:

a. "[Agency noun]" is removed and "Department of Education" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ED" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ED Deciding Official" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "ED Deciding Official" is added in its place wherever it occurs.

3. Section 84.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "34 CFR part 85" in its place.

4. Section 84.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "34 CFR part 85" in its place.

5. Each section in part 84 is further amended by adding to the end of each section the following authority citation to read:

(Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

6. Part 85 is revised to read as provided in instruction 1 at the end of the common preamble:

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
85.25 How is this part organized?
85.50 How is this part written?
85.75 Do terms in this part have special meanings?

Subpart A—General

85.100 What does this part do?
85.105 Does this part apply to me?
85.110 What is the purpose of the nonprocurement debarment and suspension system?
85.115 How does an exclusion restrict a person's involvement in covered transactions?
85.120 May we grant an exception to let an excluded person participate in a covered transaction?
85.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
85.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
85.135 May the Department of Education exclude a person who is not currently participating in a nonprocurement transaction?
85.140 How do I know if a person is excluded?
85.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

85.200 What is a covered transaction?
85.205 Why is it important to know if a particular transaction is a covered transaction?
85.210 Which nonprocurement transactions are covered transactions?
85.215 Which nonprocurement transactions are not covered transactions?
85.220 Are any procurement contracts included as covered transactions?
85.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

85.300 May I enter into a covered transaction with an excluded or disqualified person?
85.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
85.310 May I use the services of an excluded person under a covered transaction?
85.315 Must I verify that principals of my covered transactions are eligible to participate?
85.320 What happens if I do business with an excluded person in a covered transaction?
85.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

85.330 What information must I provide before entering into a covered transaction with the Department of Education?
85.335 If I disclose unfavorable information required under § 85.330 will I be prevented from entering into the transaction?
85.340 What happens if I fail to disclose the information required under § 85.330?
85.345 What must I do if I learn of the information required under § 85.330 after entering into a covered transaction with the Department of Education?

Disclosing Information—Lower Tier Participants

85.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
85.355 What happens if I fail to disclose the information required under § 85.350?
85.360 What must I do if I learn of information required under § 85.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of ED Officials Regarding Transactions

85.400 May I enter into a transaction with an excluded or disqualified person?
85.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
85.410 May I approve a participant's use of the services of an excluded person?
85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
85.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

85.425 When do I check to see if a person is excluded or disqualified?
85.430 How do I check to see if a person is excluded or disqualified?
85.435 What must I require of a primary tier participant?
85.440 What method do I use to communicate those requirements to participants?
85.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
85.450 What action may I take if a primary tier participant fails to disclose the information required under § 85.330?
85.455 What may I do if a lower tier participant fails to disclose the information required under § 85.350 to the next higher tier?

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85.500 What is the purpose of the List?
85.505 Who uses the List?
85.510 Who maintains the List?
85.515 What specific information is on the List?
85.520 Who gives the GSA the information that it puts on the List?
85.525 Whom do I ask if I have questions about a person on the List?
85.530 Where can I get the List?

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85.600 How do suspension and debarment actions start?
85.605 How does suspension differ from debarment?
85.610 What procedures does the Department of Education use in suspension and debarment actions?
85.611 What procedures do we use for a suspension or debarment action involving title IV, HEA transaction?
85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in title IV, HEA transaction?
85.615 How does the Department of Education notify a person of suspension and debarment actions?
85.620 Do Federal agencies coordinate suspension and debarment actions?
85.625 What is the scope of a suspension or debarment action?
85.630 May the Department of Education impute the conduct of one person to another?
85.635 May the Department of Education settle a debarment or suspension action?
85.640 May a settlement include a voluntary exclusion?
85.645 Do other Federal agencies know if the Department of Education agrees to a voluntary exclusion?

Subpart G—Suspension

85.700 When may the suspending official issue a suspension?
85.705 What does the suspending official consider in issuing a suspension?
85.710 When does a suspension take effect?
85.711 When does a suspension affect title IV, HEA transactions?
85.715 What notice does the suspending official give me if I am suspended?
85.720 How may I contest a suspension?
85.725 How much time do I have to contest a suspension?
85.730 What information must I provide to the suspending official if I contest a suspension?
85.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
85.740 Are suspension proceedings formal?
85.745 Is a record made of fact-finding proceedings?
85.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
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Subpart H—Debarment

85.800 What are the causes for debarment?
85.805 What notice does the debarring official give me if I am proposed for debarment?
85.810 When does a debarment take effect?
85.811 When does a debarment affect title IV, HEA transactions?
85.815 How may I contest a proposed debarment?
85.820 How much time do I have to contest a proposed debarment?
85.825 What information must I provide to the debarring official if I contest a proposed debarment?
85.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
85.835 Are debarment proceedings formal?
85.840 Is a record made of fact-finding proceedings?
85.845 What does the debarring official consider in deciding whether to debar me?
85.850 What is the standard of proof in a debarment action?
85.855 Who has the burden of proof in a debarment action?
85.860 What factors may influence the debarring official's decision?
85.865 How long may my debarment last?
85.870 When do I know if the debarring official debars me?
85.875 May I ask the debarring official to reconsider a decision to debar me?
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Subpart I—Definitions

85.900 Adequate evidence.
85.905 Affiliate.
85.910 Agency.
85.915 Agent or representative.
85.920 Civil judgment.
85.925 Conviction.
85.930 Debarment.
85.935 Debarring official.
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85.942 ED Deciding Official.
85.945 Excluded or exclusion.
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85.955 Ineligible or ineligibility.
85.960 Legal proceedings.
85.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
85.970 Nonprocurement transaction.
85.975 Notice.
85.980 Participant.
85.985 Person.
85.990 Preponderance of the evidence.
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85.1000 Respondent.
85.1005 State.
85.1010 Suspending official.
85.1015 Suspension.
85.1016 Title IV, HEA participant.
85.1017 Title IV, HEA program.
85.1018 Title IV, HEA transaction.
85.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 85—Covered Transactions

Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12698 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.

7. Part 85 is further amended as follows:

a. "[Agency noun]" is removed and "Department of Education" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "ED" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "ED Deciding Official" is added in its place wherever it occurs.

d. Each section in part 85 is further amended by adding to the end of each section the following authority citation to read:

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

8. Section 85.220 is further amended by adding new paragraphs (d) and (e) to read as follows.

§ 85.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, that is funded or authorized under ED programs and is expected to equal or exceed $25,000.

(e) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

9. Section 85.305 is further amended by adding paragraph (c) to read as follows:

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§ 85.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

* * * * *

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

10. Section 85.310 is further amended by adding paragraph (c) to read as follows:

§ 85.310 May I use the services of an excluded person under a covered transaction?

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

11. Section 85.415 is further amended by adding a new paragraph (c) to read as follows.

§ 85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

12. Subpart D of part 85 is further amended by adding § 85.440 to read as follows:

§ 85.440 What method do I use to communicate those requirements to participants?

(a) To communicate those requirements, you must include a term or condition in the transaction requiring each participant's compliance with subpart C of this part and requiring the participant to include a similar term or condition in lower-tier covered transactions.

(b) The failure of a participant to include a requirement to comply with subpart C of this part in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

(Authority: E.O. 12549 (3 CFR, 1985 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

13. Subpart F of part 85 is further amended by adding a new § 85.611 to read as follows:

§ 85.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 85.715.

(2) Instead of the procedures in §§ 85.720 through 85.760, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in § 85.700.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in §§ 85.805 and 85.870.

(2) Instead of the procedures in §§ 85.810 through 85.885, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debarring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 682, subpart D or G, the debarring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in § 85.800.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

14. Subpart F of Part 85 is further amended by adding § 85.612 to read as follows:

§ 85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b)(1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if—

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency—

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

(3) If ED or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G or part 682, subpart D or G, as applicable.

(4) We use the procedures in § 85.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant—as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable—if that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument to oppose the proposed action;

(3) An opportunity to present its objection at a hearing—

(i) At which the agency has the burden of persuasion by a preponderance of the evidence that there is cause for the exclusion; and

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to the exclusion action;

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

(6) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

15. Subpart G is further amended by adding a new § 85.711,to read as follows:

§ 85.711 When does a suspension affect title IV, HEA transactions?

(a) A suspension under § 85.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G at the same time the Secretary issues the suspension.

(b)(1) Except as provided under paragraph (a) of this section, a suspension under § 85.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the expiration of the 20 days under paragraph (b)(1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

16. Subpart H is further amended by adding a new § 85.811 to read as follows:

§ 85.811 When does a debarment affect title IV, HEA transactions?

(a) A debarment under § 85.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the debarment takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

17. Subpart I of part 85 is further amended by adding § 85.942 to read as follows:

§ 85.942 ED Deciding Official.

The ED Deciding Official is an ED officer who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

18. Subpart I of part 85 is further amended by adding § 85.947 to read as follows:

§ 85.947 HEA.

HEA means the Higher Education Act of 1965, as amended.

19. Section 85.995 is further amended by adding paragraph (c) to read as follows:

§ 85.995 Principal.

* * * * *

(c) For the purposes of Department of Education title IV, HEA transactions—

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

* * * * *

20. Subpart I of part 85 is further amended by adding § 85.1016 to read as follows:

§ 85.1016 Title IV, HEA participant.

A title IV, HEA participant is—

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

21. Subpart I of part 85 is further amended by adding § 85.1017 to read as follows:

§ 85.1017 Title IV, HEA program.

A title IV, HEA program includes any program listed in 34 CFR 668.1(c).

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p.1890: E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

22. Subpart I of part 85 is further amended by adding § 85.1018 to read as follows:

§ 85.1018 Title IV, HEA transaction.

A title IV, HEA transaction includes:

(a) A disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(b) A certification by an educational institution of eligibility for a loan under a title IV, HEA program;

(c) Guaranteeing a loan made under a title IV, HEA program; and

(d) The acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327)

23. The appendix to part 85 is amended by removing and reserving the Covered Transactions Chart and by adding a Covered Transactions for ED Chart to read as follows.

BILLING CODE 6325–01–P et al.

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Appendix to Part 85 - Covered Transactions for ED

Covered Transactions [Reserved]

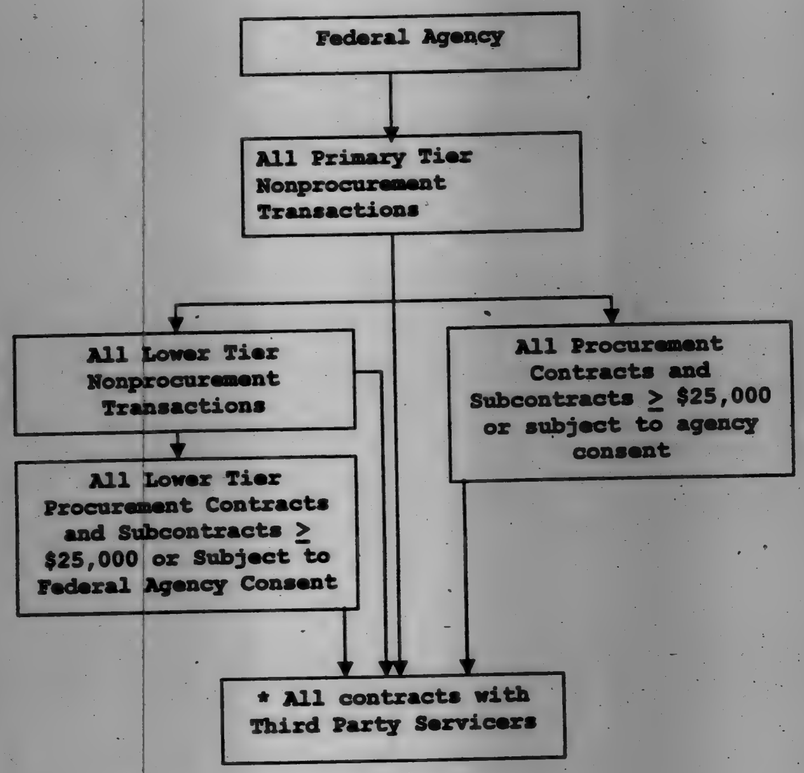

* Note: All contracts for third-party servicers are covered transactions, regardless of whether a Title IV, HEA participant has contracted directly or indirectly with the servicer.

BILLING CODE 6325–01–C et al.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

24. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.82 [Amended]

25. Amend § 668.82 as follows:

a. In paragraph (e)(1)(i)(B), by removing the words "Cause exists under 34 CFR 85.305 or 85.405" and adding, in their place, the words "Cause exists under 34 CFR 85.700 or 85.800".

b. In paragraphs (f)(1) and (f)(2)(i), by removing the citation "34 CFR 85.201(c)" and adding, in its place, the citation "34 CFR 85.612(d)".

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

26. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.416 [Amended]

27. Amend § 682.416(d)(1)(ii)(B) by removing the words "cause under 34 CFR 85.305 or 85.405" and adding, in their place, the words "cause under 34 CFR 85.700 or 85.800."

§ 682.705 [Amended]

28. Amend § 682.705 by removing paragraph (a)(3).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1209 and 1212

RIN 3095–AB04

FOR FURTHER INFORMATION CONTACT: Nancy Allard at Policy and Communications Staff (NPOL), Room 4100, 8601 Adelphi Road, College Park, Maryland 20740–6001, 301–713–7360, extension 226, or *comments@nara.gov*.

List of Subjects

36 CFR Part 1209

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

36 CFR Part 1212

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: May 4, 2001.

John W. Carlin,

Archivist of the United States.

For the reasons stated in the common preamble, the National Archives and Records Administration amends 36 CFR chapter XII as follows:

1. Part 1209 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

1209.25 How is this part organized?
1209.50 How is this part written?
1209.75 Do terms in this part have special meanings?

Subpart A—General

1209.100 What does this part do?
1209.105 Does this part apply to me?
1209.110 What is the purpose of the nonprocurement debarment and suspension system?
1209.115 How does an exclusion restrict a person's involvement in covered transactions?
1209.120 May we grant an exception to let an excluded person participate in a covered transaction?
1209.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1209.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1209.135 May NARA exclude a person who is not currently participating in a nonprocurement transaction?
1209.140 How do I know if a person is excluded?
1209.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1209.200 What is a covered transaction?
1209.205 Why is it important to know if a particular transaction is a covered transaction?
1209.210 Which nonprocurement transactions are covered transactions?
1209.215 Which nonprocurement transactions are not covered transactions?
1209.220 Are any procurement contracts included as covered transactions?
1209.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1209.300 May I enter into a covered transaction with an excluded or disqualified person?
1209.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1209.310 May I use the services of an excluded person under a covered transaction?
1209.315 Must I verify that principals of my covered transactions are eligible to participate?
1209.320 What happens if I do business with an excluded person in a covered transaction?
1209.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1209.330 What information must I provide before entering into a covered transaction with NARA?
1209.335 If I disclose unfavorable information required under § 1209.330 will I be prevented from entering into the transaction?
1209.340 What happens if I fail to disclose the information required under § 1209.330?
1209.345 What must I do if I learn of the information required under § 1209.330 after entering into a covered transaction with NARA?

Disclosing Information—Lower Tier Participants

1209.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1209.355 What happens if I fail to disclose the information required under § 1209.350?
1209.360 What must I do if I learn of information required under § 1209.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NARA Officials Regarding Transactions

1209.400 May I enter into a transaction with an excluded or disqualified person?
1209.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1209.410 May I approve a participant's use of the services of an excluded person?
1209.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1209.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1209.425 When do I check to see if a person is excluded or disqualified?
1209.430 How do I check to see if a person is excluded or disqualified?
1209.435 What must I require of a primary tier participant?
1209.440 What method do I use to communicate those requirements to participants?
1209.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1209.450 What action may I take if a primary tier participant fails to disclose the information required under § 1209.330?
1209.455 What may I do if a lower tier participant fails to disclose the

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information required under § 1209.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1209.500 What is the purpose of the List?
1209.505 Who uses the List?
1209.510 Who maintains the List?
1209.515 What specific information is on the List?
1209.520 Who gives the GSA the information that it puts on the List?
1209.525 Whom do I ask if I have questions about a person on the List?
1209.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1209.600 How do suspension and debarment actions start?
1209.605 How does suspension differ from debarment?
1209.610 What procedures does NARA use in suspension and debarment actions?
1209.615 How does NARA notify a person of suspension and debarment actions?
1209.620 Do Federal agencies coordinate suspension and debarment actions?
1209.625 What is the scope of a suspension or debarment action?
1209.630 May NARA impute the conduct of one person to another?
1209.635 May NARA settle a debarment or suspension action?
1209.640 May a settlement include a voluntary exclusion?
1209.645 Do other Federal agencies know if NARA agrees to a voluntary exclusion?

Subpart G—Suspension

1209.700 When may the suspending official issue a suspension?
1209.705 What does the suspending official consider in issuing a suspension?
1209.710 When does a suspension take effect?
1209.715 What notice does the suspending official give me if I am suspended?
1209.720 How may I contest a suspension?
1209.725 How much time do I have to contest a suspension?
1209.730 What information must I provide to the suspending official if I contest a suspension?
1209.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1209.740 Are suspension proceedings formal?
1209.745 Is a record made of fact-finding proceedings?
1209.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1209.755 When will I know whether the suspension is continued or terminated?
1209.760 How long may my suspension last?

Subpart H—Debarment

1209.800 What are the causes for debarment?
1209.805 What notice does the debarring official give me if I am proposed for debarment?
1209.810 When does a debarment take effect?
1209.815 How may I contest a proposed debarment?
1209.820 How much time do I have to contest a proposed debarment?
1209.825 What information must I provide to the debarring official if I contest a proposed debarment?
1209.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1209.835 Are debarment proceedings formal?
1209.840 Is a record made of fact-finding proceedings?
1209.845 What does the debarring official consider in deciding whether to debar me?
1209.850 What is the standard of proof in a debarment action?
1209.855 Who has the burden of proof in a debarment action?
1209.860 What factors may influence the debarring official's decision?
1209.865 How long may my debarment last?
1209.870 When do I know if the debarring official debars me?
1209.875 May I ask the debarring official to reconsider a decision to debar me?
1209.880 What factors may influence the debarring official during reconsideration?
1209.885 May the debarring official extend a debarment?

Subpart I—Definitions

1209.900 Adequate evidence.
1209.905 Affiliate.
1209.910 Agency.
1209.915 Agent or representative.
1209.920 Civil judgment.
1209.925 Conviction.
1209.930 Debarment
1209.935 Debarring official.
1209.940 Disqualified.
1209.945 Excluded or exclusion.
1209.950 Indictment.
1209.955 Ineligible or ineligibility.
1209.960 Legal proceedings.
1209.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1209.970 Nonprocurement transaction.
1209.975 Notice.
1209.980 Participant.
1209.985 Person.
1209.990 Preponderance of the evidence.
1209.995 Principal.
1209.1000 Respondent.
1209.1005 State.
1209.1010 Suspending official.
1209.1015 Suspension.
1209.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1209—Covered Transactions

Authority: 44 U.S.C. 2104(a); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 1209 is further amended as set forth below.

a. "[Agency noun]" is removed and "NARA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NARA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Archivist of the United States or designee" is added in its place wherever it occurs.

3. Section 1209.440 is added to read as follows:

§ 1209.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1212 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1212—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1212.100 What does this part do?
1212.105 Does this part apply to me?
1212.110 Are any of my Federal assistance awards exempt from this part?
1212.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1212.200 What must I do to comply with this part?
1212.205 What must I include in my drug-free workplace statement?
1212.210 To whom must I distribute my drug-free workplace statement?
1212.215 What must I include in my drug-free awareness program?
1212.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1212.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1212.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who are Individuals

1212.300 What must I do to comply with this part if I am an individual recipient?
1212.301 [Reserved]

Subpart D—Responsibilities of NARA Awarding Officials

1212.400 What are my responsibilities as a NARA awarding official?

Subpart E—Violations of This Part and Consequences

1212.500 How are violations of this part determined for recipients other than individuals?
1212.505 How are violations of this part determined for recipients who are individuals?
1212.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1212.515 Are there any exceptions to those actions?

Subpart F—Definitions

1212.605 Award.
1212.610 Controlled substance.
1212.615 Conviction.
1212.620 Cooperative agreement.
1212.625 Criminal drug statute.
1212.630 Debarment.
1212.635 Drug-free workplace.
1212.640 Employee.
1212.645 Federal agency or agency.
1212.650 Grant.
1212.655 Individual.
1212.660 Recipient.
1212.665 State.
1212.670 Suspension.

Authority: 41 U.S.C. 701, et seq.; 44 U.S.C. 2104(a).

5. Part 1212 is further amended as set forth below.

a. "[Agency noun]" is removed and "NARA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NARA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Archivist of the United States or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Archivist of the United States or designee" is added in its place wherever it occurs.

6. Section 1212.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "36 CFR part 1209" in its place.

7. Section 1212.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "36 CFR part 1207" in its place .

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 44 and 48

RIN 2900–AK16

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7369, e-mail: lgyrfinn@vba.va.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: VA is a party to the proposed common rule with the following differences.

Under proposed § 44.435 for certain nonprocurement transactions, a primary tier participant must communicate to each lower tier participant that the lower tier participant must not have been debarred or suspended. We propose to add § 44.440 to require the communication to be included as a condition in the covered transaction document. We believe this is adequate to ensure that the parties understand and comply with debarment and suspension requirements.

Under the proposed common rule, the debarring and suspending official is the agency head or an official designated by the agency head. We propose at § 44.935 and § 44.1010 of the proposed common rule to add as the debarring and suspending official the following: for the Veterans Health Administration, the Under Secretary for Health; for the Veterans Benefits Administration, the Under Secretary for Benefits; and for the National Cemetery Administration, the Deputy Under Secretary for Operations.

Proposed § 44.995 of the debarment and suspension common rule, defines the term "principal." A principal is subject to the debarment and suspension requirements. Agencies implementing the common rule are allowed to add principals that are commonly involved in their covered transactions. VA proposes to retain as principals, at proposed § 44.995(c), the positions designated in the current regulation, 38 CFR 44.105. This is intended to include those that have significant responsibilities in real estate transactions affecting VA. We also propose to add mortgage brokers to this list due to their significant responsibilities in real estate transactions with VA.

Requirements to ensure that certain grantees maintain a drug-free workplace currently are set forth at 38 CFR part 44, subpart F. We propose that these provisions, with proposed amendments explained above in the preamble for the common rule, be transferred to a new 38 CFR part 48.

List of Subjects

38 CFR Part 44

Administrative practice and procedure, Condominiums, Debarment and suspension, Grant programs, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 48

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: June 15, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR chapter I as follows:

1. Part 44 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
44.25 How is this part organized?
44.50 How is this part written?
44.75 Do terms in this part have special meanings?

Subpart A—General

44.100 What does this part do?
44.105 Does this part apply to me?
44.110 What is the purpose of the nonprocurement debarment and suspension system?
44.115 How does an exclusion restrict a person's involvement in covered transactions?
44.120 May we grant an exception to let an excluded person participate in a covered transaction?
44.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
44.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
44.135 May the Department of Veterans Affairs exclude a person who is not currently participating in a nonprocurement transaction?
44.140 How do I know if a person is excluded?
44.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

44.200 What is a covered transaction?
44.205 Why is it important to know if a particular transaction is a covered transaction?
44.210 Which nonprocurement transactions are covered transactions?
44.215 Which nonprocurement transactions are not covered transactions?
44.220 Are any procurement contracts included as covered transactions?
44.225 How do I know if a transaction that I may participate in is a covered transaction?

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Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

44.300 May I enter into a covered transaction with an excluded or disqualified person?
44.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
44.310 May I use the services of an excluded person under a covered transaction?
44.315 Must I verify that principals of my covered transactions are eligible to participate?
44.320 What happens if I do business with an excluded person in a covered transaction?
44.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

44.330 What information must I provide before entering into a covered transaction with the Department of Veterans Affairs?
44.335 If I disclose unfavorable information required under § 44.330 will I be prevented from entering into the transaction?.
44.340 What happens if I fail to disclose the information required under § 44.330?
44.345 What must I do if I learn of the information required under § 44.330 after entering into a covered transaction with the Department of Veterans Affairs?

Disclosing Information—Lower Tier Participants

44.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
44.355 What happens if I fail to disclose the information required under § 44.350?
44.360 What must I do if I learn of information required under § 44.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Veterans Affairs Officials Regarding Transactions

44.400 May I enter into a transaction with an excluded or disqualified person?
44.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
44.410 May I approve a participant's use of the services of an excluded person?
44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
44.425 When do I check to see if a person is excluded or disqualified?
44.430 How do I check to see if a person is excluded or disqualified?
44.435 What must I require of a primary tier participant?
44.440 What method do I use to communicate those requirements to participants?
44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.330?
44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

44.500 What is the purpose of the List?
44.505 Who uses the List?
44.510 Who maintains the List?
44.515 What specific information is on the List?
44.520 Who gives the GSA the information that it puts on the List?
44.525 Whom do I ask if I have questions about a person on the List?
44.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

44.600 How do suspension and debarment actions start?
44.605 How does suspension differ from debarment?
44.610 What procedures does the Department of Veterans Affairs use in suspension and debarment actions?
44.615 How does the Department of Veterans Affairs notify a person of suspension and debarment actions?
44.620 Do Federal agencies coordinate suspension and debarment actions?
44.625 What is the scope of a suspension or debarment action?
44.630 May the Department of Veterans Affairs impute the conduct of one person to another?
44.635 May the Department of Veterans Affairs settle a debarment or suspension action?
44.640 May a settlement include a voluntary exclusion?
44.645 Do other Federal agencies know if the Department of Veterans Affairs agrees to a voluntary exclusion?

Subpart G—Suspension

44.700 When may the suspending official issue a suspension?
44.705 What does the suspending official consider in issuing a suspension?
44.710 When does a suspension take effect?
44.715 What notice does the suspending official give me if I am suspended?
44.720 How may I contest a suspension?
44.725 How much time do I have to contest a suspension?
44.730 What information must I provide to the suspending official if I contest a suspension?
44.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
44.740 Are suspension proceedings formal?
44.745 Is a record made of fact-finding proceedings?
44.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
44.755 When will I know whether the suspension is continued or terminated?
44.760 How long may my suspension last?

Subpart H—Debarment

44.800 What are the causes for debarment?
44.805 What notice does the debarring official give me if I am proposed for debarment?
44.810 When does a debarment take effect?
44.815 How may I contest a proposed debarment?
44.820 How much time do I have to contest a proposed debarment?
44.825 What information must I provide to the debarring official if I contest a proposed debarment?
44.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
44.835 Are debarment proceedings formal?
44.840 Is a record made of fact-finding proceedings?
44.845 What does the debarring official consider in deciding whether to debar me?
44.850 What is the standard of proof in a debarment action?
44.855 Who has the burden of proof in a debarment action?
44.860 What factors may influence the debarring official's decision?
44.865 How long may my debarment last?
44.870 When do I know if the debarring official debars me?
44.875 May I ask the debarring official to reconsider a decision to debar me?
44.880 What factors may influence the debarring official during reconsideration?
44.885 May the debarring official extend a debarment?

Subpart I—Definitions

44.900 Adequate evidence.
44.905 Affiliate.
44.910 Agency.
44.915 Agent or representative.
44.920 Civil judgment.
44.925 Conviction.
44.930 Debarment
44.935 Debarring official.
44.940 Disqualified.
44.945 Excluded or exclusion.
44.950 Indictment.
44.955 Ineligible or ineligibility.
44.960 Legal proceedings.
44.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
44.970 Nonprocurement transaction.
44.975 Notice.
44.980 Participant.
44.985 Person.
44.990 Preponderance of the evidence.
44.995 Principal.
44.1000 Respondent.
44.1005 State.
44.1010 Suspending official.
44.1015 Suspension.
44.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 44—Covered Transactions

Authority: 38 U.S.C. 501 and 38 U.S.C. 3703(c); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR 1986 comp., p. 189) E.O. 12689 (3 CFR 1989 Comp., p. 235).

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2. Part 44 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary" is added in its place wherever it occurs.

3. Section 44.440 is added to read as follows:

§ 44.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 44.935 is further amended by adding paragraph (b) to read as follows:

§ 44.935 Debarring official.

* * * * *

(b) For the Department of Veterans Affairs the debarring official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

5. Section 44.995 is further amended by adding a paragraph (c) to read as follows:

§ 44.995 Principal.

* * * * *

(c) In the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

(1) Loan officers.
(2) Loan solicitors,
(3) Loan processors.
(4) Loan servicers.
(5) Loan supervisors.
(6) Mortgage brokers.
(7) Office managers.
(8) Staff appraisers and inspectors.
(9) Fee appraisers and inspectors.
(10) Underwriters.
(11) Bonding companies.
(12) Real estate agents and brokers.
(13) Management and marketing agents.
(14) Accountants, consultants, investments bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.
(15) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.
(16) Closing Agents.

6. Section 44.1010 is further amended by adding paragraph (b) to read as follows:

§ 44.1010 Suspending official.

* * * * *

(b) For the Department of Veterans Affairs the suspending official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

7. Part 48 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
48.100 What does this part do?
48.105 Does this part apply to me?
48.110 Are any of my Federal assistance awards exempt from this part?
48.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

48.200 What must I do to comply with this part?
48.205 What must I include in my drug-free workplace statement?
48.210 To whom must I distribute my drug-free workplace statement?
48.215 What must I include in my drug-free awareness program?
48.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
48.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
48.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

48.300 What must I do to comply with this part if I am an individual recipient?
48.301 [Reserved]

Subpart D—Responsibilities of the Department of Veterans Affairs Awarding Officials

48.400 What are my responsibilities as a Department of Veterans Affairs awarding official?

Subpart E—Violations of This Part and Consequences

48.500 How are violations of this part determined for recipients other than individuals?
48.505 How are violations of this part determined for recipients who are individuals?
48.510 What actions will the Federal Government take against a recipient determined to have violated this part?
48.515 Are there any exceptions to those actions?

Subpart F—Definitions

48.605 Award.
48.610 Controlled substance.
48.615 Conviction.
48.620 Cooperative agreement.
48.625 Criminal drug statute.
48.630 Debarment.
48.635 Drug-free workplace.
48.640 Employee.
48.645 Federal agency or agency.
48.650 Grant.
48.655 Individual.
48.660 Recipient.
48.665 State.
48.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 38 U.S.C 501.

8. Part 48 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of Veterans Affairs" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary" is added in its place wherever it occurs.

9. Section 48.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689] and adding "38 CFR part 44" in its place.

10. Section 48.605(a)(2) is further amended by removing "[Agency specific CFR citation]" and adding "38 CFR part 43" in its place.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 32 and 36

[FRL 7075–5]

RIN 2030 AA48

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, EPA Debarring Official, Office of Grants and Debarment (3901R), U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, (202) 564–5399, e-mail: *meunier.robert@epa.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION:

A. Optional Provisions

This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 32.220 for all contracts that equal or exceed the $25,000 award threshold under EPA nonprocurement transactions. This election maintains the EPA's present practice under the common rule.

In addition, § 32.440 proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under EPA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than the EPA's current certification process for prospective recipients and participants.

Sections 32.765 and 32.890 are included as additional sections under part 32 to continue the EPA's practice of permitting persons who have been suspended or debarred by the EPA Debarring Official to obtain a limited review of that decision. However, these sections transfer the authority for issuing a stay on a suspension or debarment decision from the debarring official to the review official. This change from current practice reflects a more practical approach to matters accepted for review. A similar provision appears at § 32.1400 of subpart J to this part for persons seeking review of reinstatement denials under the Clean Air Act (CAA) or Clean Water Act (CWA) disqualification provisions.

Section 32.995 of the nonprocurement suspension and debarment common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. EPA is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have employees who are excluded.

B. Clean Air Act and Clean Water Act Disqualification

The EPA proposes to include a subpart J in its version of the common rule to address CAA and CWA disqualification and reinstatement. In 1994, the EPA transferred the responsibility for administration of those requirements from the Office of Enforcement and Compliance Assurance to the Office of Administration and Resources Management in an effort to consolidate all of the Agency's statutory and discretionary debarment authority into a single program. In 1996, the EPA removed its regulations at 40 CFR part 15 and amended various provisions within 40 CFR part 32 to accommodate the change. A separate subpart J in part 32 will highlight the various differences between EPA's discretionary and statutory debarment authorities, while retaining these complementary actions under a single program.

C. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The disqualification from procurement and nonprocurement awards of persons who have been convicted of designated offenses under the CAA and CWA are statutorily mandated, as are the requirements for reestablishing procurement and nonprocurement eligibility. This proposed rule sets forth the procedures EPA uses under existing rules to decide petitions for CAA and CWA reinstatement in a separate subpart from those procedures that apply to discretionary debarment actions, and explains those procedures in a plain language format. Thus, Executive Order 13175 does not apply to this rule.

D. Drug-Free Workplace Requirements

This proposed rule relocates the requirements for maintaining a drug-free workplace from 40 CFR part 32 to 40 CFR part 36 and proposes to restate those requirements in plain language format.

List of Subjects

40 CFR Part 32

Environmental protection, Administrative practice and procedure, Air pollution control, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

40 CFR Part 36

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and record keeping requirements.

Dated: June 11, 2001.

David J. O'Connor,

Acting Assistant Administrator, Office of Administration and Resources Management, Environmental Protection Agency.

For the reasons stated in the common preamble, the Environmental Protection Agency proposes to amend 40 CFR chapter I, as follows:

1. Part 32 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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Appendix to Part 32—Covered Transactions

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 32 is further amended as set forth below.

a. "[Agency noun]" is removed and "EPA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "EPA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "EPA Debarring Official" is added in its place wherever it occurs.

3. Section 32.220 is further amended by adding a paragraph (d) to read as follows:

§ 32.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the EPA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 32.440 is added to read as follows:

§ 32.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

5. Section 32.765 is added to subpart G to read as follows:

§ 32.765 How may I appeal my suspension?

(a) If the EPA suspending official issues a decision under § 32.755 to continue your suspension after you present information in opposition to that suspension under § 32.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 32.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at §§ 32.615 and 32.975.

6. Section 32.890 is added to subpart H to read as follows:

§ 32.890 How may I appeal my debarment?

(a) If the EPA debarring official issues a decision under § 32.870 to debar you after you present information in opposition to a proposed debarment under § 32.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 32.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at §§ 32.615 and 32.975.

7. Section 32.995 is further amended by adding a paragraph (c) to read as follows:

§ 32.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in EPA covered transactions include:

(1) Principal investigators;

(2) Technical or management consultants;

(3) Individuals performing chemical or scientific analysis or oversight;

(4) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;

(5) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;

(6) Individuals whose duties require special licenses;

(7) Individuals that certify, authenticate or authorize billings; and

(8) Individuals that serve in positions of public trust.

8. Subpart J is added to read as follows:

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

§ 32.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606), and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (*see* § 32.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, and subparts A through I of this part). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

§ 32.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted or likely be convicted of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarring official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

§ 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 32.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (*i.e.*, covered transactions under subparts A through I of this part, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

(a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and

(b) You own, lease or supervise the violating facility.

§ 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debarring official believes were designed to improperly circumvent a CAA or CWA disqualification.

§ 32.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p. 799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

§ 32.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA sends your name and address and that of the violating facility to the General Services Administration (GSA) as soon as possible after the EPA learns of your conviction. The GSA places your name and that of the violating facility on the *List of Parties Excluded from Procurement and Nonprocurement Programs (List)*, along with other information describing the nature of your disqualification . Federal award officials and others who administer Federal programs consult the List before entering into or approving procurement and nonprocurement transactions. Award officials and others, including the public, may obtain a yearly subscription to a printed version of the *List* from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238. As an alternative, anyone may access the *List* through the internet, currently at http://epls.arnet.gov.

§ 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of this part or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debarring officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 32.1105, ordinarily your name and that of the violating facility is placed on the GSA *List* before you receive a confirmation notice of the listing, or have an opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement or nonprocurement activities on the basis

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of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4.

§ 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see §§ 32.1205 and 32.1300.

§ 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from the prohibitions otherwise resulting from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

(1) Be in writing; and

(2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

§ 32.1200 How will I know if I am disqualified under the CAA or CWA?

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction under the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name on the GSA *List*. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been sent to the GSA for inclusion in the *List*. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

§ 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

§ 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

If you request reinstatement under § 32.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

§ 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with §§ 32.830 through 32.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

§ 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in § 32.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U.S. Environmental Protection Agency, Office of Grants and Debarment (3901–R), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

§ 32.1225 When will the EPA debarring official make a decision on my reinstatement request?

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 32.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected—usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 32.1205(b).

§ 32.1230 How will the EPA debarring official notify me of the reinstatement decision?

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under § 32.615.

§ 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

§ 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

(a) Any certification of correction issued by the EPA debarring official, whether the certification results from a reinstatement decision under §§ 32.1205(a) and 32.1230, or from an administrative agreement under §§ 32.1205(b) and 32.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may revoke the certification of correction and immediately reinstate the CAA or CWA disqualification. In addition, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of the Inspector General for potential criminal or civil action.

§ 32.1400 How may I appeal a decision denying my request for reinstatement?

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the EPA debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your receipt of the debarring official's decision under § 32.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and the reason for your position.

(c) A review by the OGD Director under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures identified at §§ 32.615 and 32.975.

§ 32.1500 If I am reinstated, when will my name be removed from the GSA List?

(a) If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will notify the GSA within 5 working days of your reinstatement and ask GSA to remove your name and that of the violating facility from the *List*.

(b) You may check the *List* manually or through the internet as stated at § 32.1125, to confirm that your name and that of the violating facility are removed from the *List* following reinstatement. In the event your name is not removed in a timely manner, you should call the EPA debarring official or the EPA representative identified under the agency contacts section of the *List* to inform them that the listing has not been removed.

§ 32.1600 What definitions apply specifically to actions under this subpart?

In addition to definitions under subpart I of this part that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) *Person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) *Violating facility* means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transaction may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

9. Part 36 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 36—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

36.100 What does this part do?
36.105 Does this part apply to me?
36.110 Are any of my Federal assistance awards exempt from this part?

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36.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

36.200 What must I do to comply with this part?
36.205 What must I include in my drug-free workplace statement?
36.210 To whom must I distribute my drug-free workplace statement?
36.215 What must I include in my drug-free awareness program?
36.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
36.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
36.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

36.300 What must I do to comply with this part if I am an individual recipient?
36.301 [Reserved]

Subpart D—Responsibilities of EPA Awarding Officials

36.400 What are my responsibilities as an EPA awarding official?

Subpart E—Violations of This Part and Consequences

36.500 How are violations of this part determined for recipients other than individuals?
36.505 How are violations of this part determined for recipients who are individuals?
36.510 What actions will the Federal Government take against a recipient determined to have violated this part?
36.515 Are there any exceptions to those actions?

Subpart F—Definitions

36.605 Award.
36.610 Controlled substance.
36.615 Conviction.
36.620 Cooperative agreement.
36.625 Criminal drug statute.
36.630 Debarment.
36.635 Drug-free workplace.
36.640 Employee.
36.645 Federal agency or agency.
36.650 Grant.
36.655 Individual.
36.660 Recipient.
36.665 State.
36.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

10. Part 36 is further amended as set forth below.

a. "[Agency noun]" is removed and "EPA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "EPA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "EPA Administrator or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "EPA Administrator" is added in its place wherever it occurs.

11. Section 36.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "40 CFR part 32" in its place.

12. Section 36.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "40 CFR part 31" in its place.

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–68 and 105–74

RIN 3090–AH35

FOR FURTHER INFORMATION CONTACT: Donald J. Suda, Special Assistant for Contractor Integrity, General Services Administration, 1800 F Street NW., Washington, DC 20405–0002, (202) 501–4770, e-mail: *donald.suda.@gsa.gov*

List of Subjects

41 CFR Part 105–68

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

41 CFR Part 105–74

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: July 5, 2001.

Stephen A. Perry,

Administrator of General Services.

For the reasons stated in the preamble, the General Services Administration proposes to amend 41 CFR chapter 105 as follows:

CHAPTER 105—[AMENDED]

1. Part 105–68 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
105–68.25 How is this part organized?
105–68.50 How is this part written?
105–68.75 Do terms in this part have special meanings?

Subpart A—General

105–68.100 What does this part do?
105–68.105 Does this part apply to me?
105–68.110 What is the purpose of the nonprocurement debarment and suspension system?
105–68.115 How does an exclusion restrict a person's involvement in covered transactions?
105–68.120 May we grant an exception to let an excluded person participate in a covered transaction?
105–68.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
105–68.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
105–68.135 May the General Services Administration exclude a person who is not currently participating in a nonprocurement transaction?
105–68.140 How do I know if a person is excluded?
105–68.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

105–68.200 What is a covered transaction?
105–68.205 Why is it important to know if a particular transaction is a covered transaction?
105–68.210 Which nonprocurement transactions are covered transactions?
105–68.215 Which nonprocurement transactions are not covered transactions?
105–68.220 Are any procurement contracts included as covered transactions?
105–68.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

105–68.300 May I enter into a covered transaction with an excluded or disqualified person?
105–68.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
105–68.310 May I use the services of an excluded person under a covered transaction?
105–68.315 Must I verify that principals of my covered transactions are eligible to participate?
105–68.320 What happens if I do business with an excluded person in a covered transaction?
105–68.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

105–68.330 What information must I provide before entering into a covered transaction with the General Services Administration?
105–68.335 If I disclose unfavorable information required under § 105–68.330 will I be prevented from entering into the transaction?
105–68.340 What happens if I fail to disclose the information required under § 105–68.330?
105–68.345 What must I do if I learn of the information required under § 105–68.330 after entering into a covered transaction with the General Services Administration?

Disclosing Information Lower—Tier Participants

105–68.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
105–68.355 What happens if I fail to disclose the information required under § 105–68.350?
105–68.360 What must I do if I learn of information required under § 105–68.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of GSA Officials Regarding Transactions

105–68.400 May I enter into a transaction with an excluded or disqualified person?
105–68.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
105–68.410 May I approve a participant's use of the services of an excluded person?
105–68.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
105–68.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
105–68.425 When do I check to see if a person is excluded or disqualified?
105–68.430 How do I check to see if a person is excluded or disqualified?
105–68.435 What must I require of a primary tier participant?
105–68.440 What method do I use to communicate those requirements to participants?
105–68.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
105–68.450 What action may I take if a primary tier participant fails to disclose the information required under § 105–68.330?
105–68.455 What may I do if a lower tier participant fails to disclose the information required under § 105–68.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

105–68.500 What is the purpose of the List?
105–68.505 Who uses the List?
105–68.510 Who maintains the List?
105–68.515 What specific information is on the List?
105–68.520 Who gives the GSA the information that it puts on the List?
105–68.525 Whom do I ask if I have questions about a person on the List?
105–68.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

105–68.600 How do suspension and debarment actions start?
105–68.605 How does suspension differ from debarment?
105–68.610 What procedures does the General Services Administration use in suspension and debarment actions?
105–68.615 How does the General Services Administration notify a person of suspension and debarment actions?
105–68.620 Do Federal agencies coordinate suspension and debarment actions?
105–68.625 What is the scope of a suspension or debarment action?
105–68.630 May the General Services Administration impute the conduct of one person to another?
105–68.635 May the General Services Administration settle a debarment or suspension action?
105–68.640 May a settlement include a voluntary exclusion?
105–68.645 Do other Federal agencies know if the General Services Administration agrees to a voluntary exclusion?

Subpart G—Suspension

105–68.700 When may the suspending official issue a suspension?
105–68.705 What does the suspending official consider in issuing a suspension?
105–68.710 When does a suspension take effect?
105–68.715 What notice does the suspending official give me if I am suspended?
105–68.720 How may I contest a suspension?
105–68.725 How much time do I have to contest a suspension?
105–68.730 What information must I provide to the suspending official if I contest a suspension?
105–68.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
105–68.740 Are suspension proceedings formal?
105–68.745 Is a record made of fact-finding proceedings?
105–68.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
105–68.755 When will I know whether the suspension is continued or terminated?
105–68.760 How long may my suspension last?

Subpart H—Debarment

105–68.800 What are the causes for debarment?
105–68.805 What notice does the debarring official give me if I am proposed for debarment?
105–68.810 When does a debarment take effect?
105–68.815 How may I contest a proposed debarment?
105–68.820 How much time do I have to contest a proposed debarment?
105–68.825 What information must I provide to the debarring official if I contest a proposed debarment?
105–68.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
105–68.835 Are debarment proceedings formal?
105–68.840 Is a record made of fact-finding proceedings?
105–68.845 What does the debarring official consider in deciding whether to debar me?
105–68.850 What is the standard of proof in a debarment action?
105–68.855 Who has the burden of proof in a debarment action?
105–68.860 What factors may influence the debarring official's decision?
105–68.865 How long may my debarment last?
105–68.870 When do I know if the debarring official debars me?
105–68.875 May I ask the debarring official to reconsider a decision to debar me?
105–68.880 What factors may influence the debarring official during reconsideration?
105–68.885 May the debarring official extend a debarment?

Subpart I—Definitions

105–68.900 Adequate evidence.
105–68.905 Affiliate.
105–68.910 Agency.
105–68.915 Agent or representative.
105–68.920 Civil judgment.
105–68.925 Conviction.
105–68.930 Debarment
105–68.935 Debarring official.
105–68.940 Disqualified.
105–68.945 Excluded or exclusion.
105–68.950 Indictment.
105–68.955 Ineligible or ineligibility.
105–68.960 Legal proceedings.
105–68.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
105–68.970 Nonprocurement transaction.
105–68.975 Notice.
105–68.980 Participant
105–68.985 Person.
105–68.990 Preponderance of the evidence.
105–68.995 Principal.
105–68.1000 Respondent.
105–68.1005 State.
105–68.1010 Suspending official.
105–68.1015 Suspension.
105–68.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 105–68—Covered Transactions

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 105–68 is further amended as set forth below.

a. "[Agency noun]" is removed and "General Services Administration" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "GSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Administrator of General Services" is added in its place wherever it occurs.

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3. Section 105–68.440 is added to read as follows:

§ 105–68.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 105–74 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 105–74—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
105–74.100 What does this part do?
105–74.105 Does this part apply to me?
105–74.110 Are any of my Federal assistance awards exempt from this part?
105–74.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

105–74.200 What must I do to comply with this part?
105–74.205 What must I include in my drug-free workplace statement?
105–74.210 To whom must I distribute my drug-free workplace statement?
105–74.215 What must I include in my drug-free awareness program?
105–74.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
105–74.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
105–74.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

105–74.300 What must I do to comply with this part if I am an individual recipient?
105–74.301 [Reserved]

Subpart D—Responsibilities of GSA Awarding Officials

105–74.400 What are my responsibilities as a GSA awarding official?

Subpart E—Violations of This Part and Consequences

105–74.500 How are violations of this part determined for recipients other than individuals?
105–74.505 How are violations of this part determined for recipients who are individuals?
105–74.510 What actions will the Federal Government take against a recipient determined to have violated this part?
105–74.515 Are there any exceptions to those actions?

Subpart F—Definitions

105–74.605 Award.
105–74.610 Controlled substance.
105–74.615 Conviction.
105–74.620 Cooperative agreement.
105–74.625 Criminal drug statute.
105–74.630 Debarment.
105–74.635 Drug-free workplace.
105–74.640 Employee.
105–74.645 Federal agency or agency.
105–74.650 Grant.
105–74.655 Individual.
105–74.660 Recipient.
105–74.665 State.
105–74.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

5. Part 105–74 is further amended as set forth below.

a. "[Agency noun]" is removed and "General Services Administration" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "GSA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Administrator of General Services" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Administrator of General Services" is added in its place wherever it occurs.

6. Section 105–74.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "41 CFR part 105–68" in its place.

7. Section 105–74.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "41CFR part 105–71" in its place.

DEPARTMENT OF THE INTERIOR

43 CFR Parts 12, 42 and 43

RIN 1090–AA79

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, Director, Office of Acquisition and Property Management, (202) 208–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) proposes to adopt the proposed common, governmentwide rule for debarment and suspension, and the common, governmentwide rule implementing the Drug-Free Workplace Act of 1988, with several specific provisions that apply to the Department of the Interior. The two proposed common rules are contained in the Notice of Proposed Rulemaking for a number of agencies, earlier in this document. This preamble for the Department sets out the headings of the sections of the proposed common rules that the Department proposes to adopt, with the appropriate numbering system for the Department. This preamble also explains the deviations from the proposed common rules.

The Department joined in the publication of the governmentwide common rule which provided requirements for nonprocurement debarment and suspension by Executive branch agencies published on May 26, 1988 (53 FR 19160), found at 43 CFR 12.100 to 12.510. In 43 CFR 12.200(c)(8), the Department excluded from the requirements of the rule any transactions entered into pursuant to Pub. L. 93–638, "Indian Self Determination and Education Assistance Act," since application of the common rule to such transactions was prohibited by Pub. L. 93–638.

The Department also joined in the January 31, 1989, publication of the amendment to the governmentwide common rule on nonprocurement debarment and suspension and revised Subpart D to implement the Drug-Free Workplace Act of 1988 (54 FR 4946), found at 43 CFR 12.600 to 12.635.

At the time of the revision to the common rule for nonprocurement debarment and suspension which was issued in response to Executive Order 12689 and section 2455 of the Federal Acquisition Streamlining Act of 1994, and published on June 26, 1995 (60 FR 33035), the Department excluded additional transactions from the requirements of the nonprocurement debarment and suspension regulations. Specifically, in 43 CFR 12.200(c)(9)–(11), the Department excluded all transactions concerning permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims, water service contracts, and repayment contracts from the nonprocurement debarment and suspension regulations.

In this proposed rule, the Department will continue to exclude all transactions excluded in the current regulations at 43 CFR 12.200(c)(8)–(11). These exclusions are found at 43 CFR 42.215 (h)–(k) in the proposed rule.

In this proposed rule, the Department will discontinue the use of a certification from participants contained in 43 CFR 12.510(a). The Department proposes to include a term or condition in transaction documents which requires the participants' compliance. The term or condition will also require participants to include a similar term or condition in lower-tier covered transactions as well. This new provision is found at 43 CFR 42.440 of the proposed rule.

The requirements for nonprocurement debarment and suspension, currently found at 43 CFR 12.100 to 12.510 are being removed from 43 CFR part 12 and are proposed to be placed in 43 CFR part 42.

The requirements for maintaining a drug-free workplace, currently found at 43 CFR 12.600 to 12.635, are being removed from 43 CFR part 12 and are proposed to be placed in 43 CFR part 43.

Compliance With Laws, Executive Orders, and Department Policy

In addition to the certifications stated in the general preamble, the Department is including the following statements:

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3 (b) of the Order.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and Executive Order 13175 (65 FR 67249), we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on trust resources.

List of Subjects

43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grant administration.

43 CFR Part 42

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grants administration, Reporting and recordkeeping requirements.

43 CFR Part 43

Administrative practice and procedure, Contract programs, Cooperative agreements, Drug abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: May 30, 2001.

Robert J. Lamb,

Acting Assistant Secretary-Policy, Management and Budget.

Accordingly, for the reasons stated in the common preamble and in the above additional supplementary information section, 43 CFR subtitle A is proposed to be amended as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; U.S.C 6101 note.

2. Part 12, Subpart D is removed and reserved.

3. Part 42 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
42.25 How is this part organized?
42.50 How is this part written?
42.75 Do terms in this part have special meanings?

Subpart A—General

42.100 What does this part do?
42.105 Does this part apply to me?
42.110 What is the purpose of the nonprocurement debarment and suspension system?
42.115 How does an exclusion restrict a person's involvement in covered transactions?
42.120 May we grant an exception to let an excluded person participate in a covered transaction?
42.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
42.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
42.135 May the Department of the Interior exclude a person who is not currently participating in a nonprocurement transaction?
42.140 How do I know if a person is excluded?
42.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

42.200 What is a covered transaction?
42.205 Why is it important to know if a particular transaction is a covered transaction?
42.210 Which nonprocurement transactions are covered transactions?
42.215 Which nonprocurement transactions are not covered transactions?
42.220 Are any procurement contracts included as covered transactions?
42.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

42.300 May I enter into a covered transaction with an excluded or disqualified person?
42.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
42.310 May I use the services of an excluded person under a covered transaction?
42.315 Must I verify that principals of my covered transactions are eligible to participate?
42.320 What happens if I do business with an excluded person in a covered transaction?
42.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

42.330 What information must I provide before entering into a covered transaction with the Department of the Interior?
42.335 If I disclose unfavorable information required under § 42.330 will I be prevented from entering into the transaction?
42.340 What happens if I fail to disclose the information required under § 42.330?
42.345 What must I do if I learn of the information required under § 42.330 after entering into a covered transaction with the Department of the Interior?

Disclosing Information—Lower Tier Participants

42.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
42.355 What happens if I fail to disclose the information required under § 42.350?
42.360 What must I do if I learn of information required under § 42.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of the Interior Officials Regarding Transactions

42.400 May I enter into a transaction with an excluded or disqualified person?
42.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
42.410 May I approve a participant's use of the services of an excluded person?
42.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

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42.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
42.425 When do I check to see if a person is excluded or disqualified?
42.430 How do I check to see if a person is excluded or disqualified?
42.435 What must I require of a primary tier participant?
42.440 What method do I use to communicate those requirements to participants?
42.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
42.450 What action may I take if a primary tier participant fails to disclose the information required under § 42.330?
42.455 What may I do if a lower tier participant fails to disclose the information required under § 42.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

42.500 What is the purpose of the List?
42.505 Who uses the List?
42.510 Who maintains the List?
42.520 Who gives the GSA the information that it puts on the List?
42.525 Whom do I ask if I have questions about a person on the List?
42.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

42.600 How do suspension and debarment actions start?
42.605 How does suspension differ from debarment?
42.610 What procedures does the Department of the Interior use in suspension and debarment actions?
42.615 How does the Department of the Interior notify a person of suspension and debarment actions?
42.620 Do Federal agencies coordinate suspension and debarment actions?
42.625 What is the scope of a suspension or debarment action?
42.630 May the Department of the Interior impute the conduct of one person to another?
42.635 May the Department of the Interior settle a debarment or suspension action?
42.640 May a settlement include a voluntary exclusion?
42.645 Do other Federal agencies know if the Department of the Interior agrees to a voluntary exclusion?

Subpart G—Suspension

42.700 When may the suspending official issue a suspension?
42.705 What does the suspending official consider in issuing a suspension?
42.710 When does a suspension take effect?
42.715 What notice does the suspending official give me if I am suspended?
42.720 How may I contest a suspension?
42.725 How much time do I have to contest a suspension?
42.730 What information must I provide to the suspending official if I contest a suspension?
42.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
42.740 Are suspension proceedings formal?
42.745 Is a record made of fact-finding proceedings?
42.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
42.755 When will I know whether the suspension is continued or terminated?
42.760 How long may my suspension last?

Subpart H—Debarment

42.800 What are the causes for debarment?
42.805 What notice does the debarring official give me if I am proposed for debarment?
42.810 When does a debarment take effect?
42.815 How may I contest a proposed debarment?
42.820 How much time do I have to contest a proposed debarment?
42.825 What information must I provide to the debarring official if I contest a proposed debarment?
42.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
42.835 Are debarment proceedings formal?
42.840 Is a record made of fact-finding proceedings?
42.845 What does the debarring official consider in deciding whether to debar me?
42.850 What is the standard of proof in a debarment action?
42.855 Who has the burden of proof in a debarment action?
42.860 What factors may influence the debarring official's decision?
42.865 How long may my debarment last?
42.870 When do I know if the debarring official debars me?
42.875 May I ask the debarring official to reconsider a decision to debar me?
42.880 What factors may influence the debarring official during reconsideration?
42.885 May the debarring official extend a debarment?

Subpart I—Definitions

42.900 Adequate evidence.
42.905 Affiliate.
42.910 Agency.
42.915 Agent or representative.
42.920 Civil judgment.
42.925 Conviction.
42.930 Debarment.
42.935 Debarring official.
42.940 Disqualified.
42.945 Excluded or exclusion.
42.950 Indictment.
42.955 Ineligible or ineligibility.
42.960 Legal proceedings.
42.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
42.970 Nonprocurement transaction.
42.975 Notice.
42.980 Participant.
42.985 Person.
42.990 Preponderance of the evidence.
42.995 Principal.
42.1000 Respondent.
42.1005 State.
42.1010 Suspending official.
42.1015 Suspension.
42.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 42—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; 31 U.S.C.

4. Part 42 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of the Interior" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Department of the Interior" is added in its place where it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Acquisition and Property Management" is added in its place wherever it occurs.

5. Section 42.215 is further amended by adding paragraphs (h) through (k) to read as follows:

§ 42.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) Transactions entered into pursuant to Public Law 93–638, 88 Stat. 2203.

(i) Under natural resource management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(j) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et. seq.*

(k) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

6. Section 42.440 is added to read as follows:

§ 42.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

7. Section 42.935 is further amended by adding paragraph (b) to read as follows:

§ 42.935 Debarring official.

* * * * *

(b) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

8. Section 42.970 is further amended by adding paragraphs (a)(12) through (a)(15) to read as follows:

§ 42.970 Nonprocurement transaction.

* * * * *

(a) * * *

(12) Federal acquisition of a leasehold interest or any other interest in real property.

(13) Concession contracts.

(14) Disposition of Federal real and personal property and natural resources.

(15) Any other nonprocurement transactions between the Department and a person.

* * * * *

9. Section 42.1010 is further amended by adding paragraph (b) to read as follows:

§ 42.1010 Suspending official.

* * * * *

(b) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

10. Part 43 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 43—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
43.100 What does this part do?
43.105 Does this part apply to me?
43.110 Are any of my Federal assistance awards exempt from this part?
43.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

43.200 What must I do to comply with this part?
43.205 What must I include in my drug-free workplace statement?
43.210 To whom must I distribute my drug-free workplace statement?
43.215 What must I include in my drug-free awareness program?
43.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
43.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
43.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

43.300 What must I do to comply with this part if I am an individual recipient?
43.301 Is there a central point to which I may report information required by § 43.300?

Subpart D—Responsibilities of Department of the Interior Awarding Officials?

43.400 What are my responsibilities as a Department of the Interior awarding official?

Subpart E—Violations of This Part and Consequences

43.500 How are violations of this part determined for recipients other than individuals?
43.505 How are violations of this part determined for recipients who are individuals?
43.510 What actions will the Federal Government take against a recipient determined to have violated this part?
43.515 Are there any exceptions to those actions?

Subpart F—Definitions

43.605 Award.
43.610 Controlled substance.
43.615 Conviction.
43.620 Cooperative agreement.
43.625 Criminal drug statute.
43.630 Debarment.
43.635 Drug-free workplace.
43.640 Employee.
43.645 Federal agency or agency.
43.650 Grant.
43.655 Individual.
43.660 Recipient.
43.665 State.
43.670 Suspension.

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. Sections 252a and 701 *et seq.*

11. Part 43 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of the Interior" is added in its place where it occurs.

b. "[Agency adjective]" is removed and "Department of the Interior" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Office of Acquisition and Property Management" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of the Interior" is added in its place wherever it occurs.

12. Section 43.301 is added to read as follows:

§ 43.301 Is there a central point to which I may report information required by § 43.300?

No. The Department of the Interior is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

13. Section 43.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "43 CFR part 42" in its place.

14. Section 43.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "43 CFR part 12" in its place.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 17 and 21

RIN 3067–AD15

FOR FURTHER INFORMATION CONTACT: Edward Broyles, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3961, e-mail *Edward.Broyles@fema.gov*.

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 17.220 for all contracts that equal or exceed the $25,000 award threshold under FEMA nonprocurement transactions. This election maintains FEMA's present practice under the common rule.

In addition, § 17.440 proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under FEMA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than FEMA's current certification process for prospective recipients and participants.

This proposed rule relocates the requirements for maintaining a drug-free workplace from 44 CFR part 17 to 44 CFR part 21.

List of Subjects

44 CFR Part 17

Administrative practice and procedure, Grant programs.

44 CFR Part 21

Administrative practice and procedure, Grant programs, Drug abuse, Reporting and recordkeeping requirements.

Dated: June 22, 2001.

Patricia A. English,

Acting Chief Financial Officer, Federal Emergency Management Agency.

For the reasons stated in the common preamble, the Federal Emergency Management Agency proposes to amend 44 CFR chapter I, as follows:

1. Part 17 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
17.25 How is this part organized?

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17.50 How is this part written?
17.75 Do terms in this part have special meanings?

Subpart A—General

17.100 What does this part do?
17.105 Does this part apply to me?
17.110 What is the purpose of the nonprocurement debarment and suspension system?
17.115 How does an exclusion restrict a person's involvement in covered transactions?
17.120 May we grant an exception to let an excluded person participate in a covered transaction?
17.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
17.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
17.135 May FEMA exclude a person who is not currently participating in a nonprocurement transaction?
17.140 How do I know if a person is excluded?
17.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

17.200 What is a covered transaction?
17.205 Why is it important if a particular transaction is a covered transaction?
17.210 Which nonprocurement transactions are covered transactions?
17.215 Which nonprocurement transactions are not covered transactions?
17.220 Are any procurement contracts included as covered transactions?
17.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

17.300 May I enter into a covered transaction with an excluded or disqualified person?
17.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
17.310 May I use the services of an excluded person under a covered transaction?
17.315 Must I verify that principals of my covered transactions are eligible to participate?
17.320 What happens if I do business with an excluded person in a covered transaction?
17.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

17.330 What information must I provide before entering into a covered transaction with FEMA?
17.335 If I disclose unfavorable information required under § 17.330 will I be prevented from entering into the transaction?
17.340 What happens if I fail to disclose the information required under § 17.330?
17.345 What must I do if I learn of the information required under § 17.330 after entering into a covered transaction with FEMA?

Disclosing Information—Lower Tier Participants

17.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
17.355 What happens if I fail to disclose the information required under § 17.350?
17.360 What must I do if I learn of information required under § 17.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of FEMA Officials Regarding Transactions

17.400 May I enter into a transaction with an excluded or disqualified person?
17.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
17.410 May I approve a participant's use of the services of an excluded person?
17.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
17.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
17.425 When do I check to see if a person is excluded or disqualified?
17.430 How do I check to see if a person is excluded or disqualified?
17.435 What must I require of a primary tier participant?
17.440 What method do I use to communicate those requirements to participants?
17.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
17.450 What action may I take if a primary tier participant fails to disclose the information required under § 17.330?
17.455 What may I do if a lower tier participant fails to disclose the information required under § 17.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

17.500 What is the purpose of the List?
17.505 Who uses the List?
17.510 Who maintains the List?
17.515 What specific information is on the List?
17.520 Who gives the GSA the information that it puts on the List?
17.525 Whom do I ask if I have questions about a person on the List?
17.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

17.600 How do suspension and debarment actions start?
17.605 How does suspension differ from debarment?
17.610 What procedures does FEMA use in suspension and debarment actions?
17.615 How does FEMA notify a person of suspension and debarment actions?
17.620 Do Federal agencies coordinate suspension and debarment actions?
17.625 What is the scope of a suspension or debarment action?
17.630 May FEMA impute the conduct of one person to another?
17.635 May FEMA settle a debarment or suspension action?
17.640 May a settlement include a voluntary exclusion?
17.645 Do other Federal agencies know if FEMA agrees to a voluntary exclusion?

Subpart G—Suspension

17.700 When may the suspending official issue a suspension?
17.705 What does the suspending official consider in issuing a suspension?
17.710 When does a suspension take effect?
17.715 What notice does the suspending official give me if I am suspended?
17.720 How may I contest a suspension?
17.725 How much time do I have to contest a suspension?
17.730 What information must I provide to the suspending official if I contest a suspension?
17.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
17.740 Are suspension proceedings formal?
17.745 Is a record made of fact-finding proceedings?
17.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
17.755 When will I know whether the suspension is continued or terminated?
17.760 How long may my suspension last?

Subpart H—Debarment

17.800 What are the causes for debarment?
17.805 What notice does the debarring official give me if I am proposed for debarment?
17.810 When does a debarment take effect?
17.815 How may I contest a proposed debarment?
17.820 How much time do I have to contest a proposed debarment?
17.825 What information must I provide to the debarring official if I contest a proposed debarment?
17.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
17.835 Are debarment proceedings formal?
17.840 Is a record made of fact-finding proceedings?
17.845 What does the debarring official consider in deciding whether to debar me?
17.850 What is the standard of proof in a debarment action?
17.855 Who has the burden of proof in a debarment action?

17.860 What factors may influence the debarring official's decision?
17.865 How long may my debarment last?
17.870 When do I know if the debarring official debars me?
17.875 May I ask the debarring official to reconsider a decision to debar me?
17.880 What factors may influence the debarring official during reconsideration?
17.885 May the debarring official extend a debarment?

Subpart I—Definitions

17.900 Adequate evidence.
17.905 Affiliate.
17.910 Agency.
17.915 Agent or representative.
17.920 Civil judgment.
17.925 Conviction.
17.930 Debarment.
17.935 Debarring official.
17.940 Disqualified.
17.945 Excluded or exclusion.
17.950 Indictment.
17.955 Ineligible or ineligibility.
17.960 Legal proceedings.
17.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
17.970 Nonprocurement transaction.
17.975 Notice.
17.980 Participant.
17.985 Person.
17.990 Preponderance of the evidence.
17.995 Principal.
17.1000 Respondent.
17.1005 State.
17.1010 Suspending official.
17.1015 Suspension.
17.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 17—Covered Transactions

Authority: 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 17 is further amended as set forth below.

a. "[Agency noun]" is removed and "FEMA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FEMA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "FEMA Debarring Official" is added in its place wherever it occurs.

3. Section 17.220 is further amended by adding a paragraph (d) to read as follows:

§ 17.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative, in any transaction, regardless of tier, to be funded or provided by FEMA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 17.440 is added to read as follows:

§ 17.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

5. Part 21 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
21.100 What does this part do?
21.105 Does this part apply to me?
21.110 Are any of my Federal assistance awards exempt from this part?
21.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

21.200 What must I do to comply with this part?
21.205 What must I include in my drug-free workplace statement?
21.210 To whom must I distribute my drug-free workplace statement?
21.215 What must I include in my drug-free awareness program?
21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
21.125 What actions must I take concerning employees who are convicted of drug violations in the workplace?
21.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

21.300 What must I do to comply with this part if I am an individual recipient?
21.301 [Reserved]

Subpart D—Responsibilities of FEMA Awarding Officials

21.400 What are my responsibilities as a FEMA awarding official?

Subpart E—Violations of This Part and Consequences

21.500 How are violations of this part determined for recipients other than individuals?
21.505 How are violations of this part determined for recipients who are individuals?
21.510 What actions will the Federal Government take against a recipient determined to have violated this part?
21.515 Are there any exceptions to those actions?

Subpart F—Definitions

21.605 Award.
21.610 Controlled substance.
21.615 Conviction.
21.620 Cooperative agreement.
21.625 Criminal drug statute.
21.630 Debarment.
21.635 Drug-free workplace.
21.640 Employee.
21.645 Federal agency or agency.
21.650 Grant.
21.655 Individual.
21.660 Recipient.
21.665 State.
21.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

6. Part 21 is further amended as set forth below.

a. "[Agency noun]" is removed and "FEMA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "FEMA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "FEMA Director or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "FEMA Director" is added in its place wherever it occurs.

7. Section 21.1510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "44 CFR part 17" in its place.

8. Section 21.1605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "44 CFR part 13" in its place.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 76 and 82

RIN 0991–AB12

FOR FURTHER INFORMATION CONTACT: Terrence J. Tychan, Deputy Assistant Secretary, Office of Grants and Acquisition Management, 202–690–6901; for the hearing impaired only: TDD 202–690–6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) proposes to adopt the common rule on nonprocurement debarment and suspension with a few amendments. The first proposed amendment would cover additional tiers of contracts below covered nonprocurement transactions. The

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common rule as drafted includes automatic coverage for any contract at the first tier below a covered nonprocurement transaction, if the amount of the contract is expected to equal or exceed a threshold value of $25,000. It also includes an option for agencies to extend that coverage to lower tiers of contracts expected to equal or exceed the threshold value of $25,000. HHS proposes to extend coverage to lower tiers of contracts, but at a higher threshold value equal to the "simplified acquisition threshold" defined at 41 U.S.C. 403(11), which is currently set at $100,000. At final rulemaking, this proposed amendment would require a conforming change in the illustration at appendix A to the common rule, which shows the $25,000 threshold amount for optional coverage of lower tier contracts.

In addition, § 76.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under HHS transactions rather than written certifications. This alternative available under the common rule is more efficient than HHS's current certification process for prospective recipients and participants.

Section 76.995 of the debarment and suspension common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. HHS is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have an individual employee who is excluded.

In addition to the general regulatory language developed by the Interagency Committee on Debarment and Suspension to be used governmentwide, we are proposing to add clarifying language to the HHS nonprocurement common rule at 45 CFR part 76. This additional language reflects minor changes to address adequately the relationship of the HHS Office of Inspector General's (OIG) program exclusion authorities (42 U.S.C. 1320a–7) to the common rule, and the applicability of these exclusion authorities to participation in Executive branch procurement and nonprocurement programs. Accordingly, we are proposing the inclusion of the following additional language in 45 CFR part 76:

1. Adding a new § 76.230 in subpart B, Covered Transactions, that would address the relationship between covered transactions and Federal health care program exclusions under Title XI of the Social Security Act. Specifically, an individual or entity excluded by the OIG from Medicare, Medicaid and other Federal health care program participation would also be prohibited from participating in all other Federal Government procurement and nonprocurement programs.

2. Adding a new section in Subpart D, Responsibilities of Agency (HHS) Officials Regarding Transactions, that would address the obligations of Medicare carriers, intermediaries and other Medicare contractors. Specifically, proposed § 76.460 would state that these entities assume the same responsibilities and obligations for checking the GSA List as Medicare agency officials under this part.

3. Amending the proposed definition of the term "disqualified" in § 76.940 in Subpart I to include direct reference to the OIG exclusion authorities. The amended definition would indicate that an example of disqualifications include persons prohibited under the "* * * program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a-7) * * *" For purposes of exclusions from participation in Federal health care programs by the HHS OIG, the governing regulations are set forth in 42 CFR part 1001.

In addition, the requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and re-codified as a new separate part 82.

List of Subjects

45 CFR Part 76

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 82

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: June 5, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

For the reasons stated in the common preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A as follows:

1. Part 76 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
76.25 How is this part organized?
76.50 How is this part written?
76.75 Do terms in this part have special meanings?

Subpart A—General

76.100 What does this part do?
76.105 Does this part apply to me?
76.110 What is the purpose of the nonprocurement debarment and suspension system?
76.115 How does an exclusion restrict a person's involvement in covered transactions?
76.120 May we grant an exception to let an excluded person participate in a covered transaction?
76.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
76.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
76.135 May HHS exclude a person who is not currently participating in a nonprocurement transaction?
76.140 How do I know if a person is excluded?
76.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

76.200 What is a covered transaction?
76.205 Why is it important to know if a particular transaction is a covered transaction?
76.210 Which nonprocurement transactions are covered transactions?
76.215 Which nonprocurement transactions are not covered transactions?
76.220 Are any procurement contracts included as covered transactions?
76.225 How do I know if a transaction that I may participate in is a covered transaction?
76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

76.300 May I enter into a covered transaction with an excluded or disqualified person?
76.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
76.310 May I use the services of an excluded person under a covered transaction?
76.315 Must I verify that principals of my covered transactions are eligible to participate?

76.320 What happens if I do business with an excluded person in a covered transaction?
76.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

76.330 What information must I provide before entering into a covered transaction with HHS?
76.335 If I disclose unfavorable information required under § 76.330 will I be prevented from entering into the transaction?
76.340 What happens if I fail to disclose the information required under § 76.330?
76.345 What must I do if I learn of the information required under § 76.330 after entering into a covered transaction with HHS?

Disclosing Information—Lower Tier Participants

76.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
76.355 What happens if I fail to disclose the information required under § 76.350?
76.360 What must I do if I learn of information required under § 76.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of HHS Officials Regarding Transactions

76.400 May I enter into a transaction with an excluded or disqualified person?
76.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
76.410 May I approve a participant's use of the services of an excluded person?
76.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
76.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
76.425 When do I check to see if a person is excluded or disqualified?
76.430 How do I check to see if a person is excluded or disqualified?
76.435 What must I require of a primary tier participant?
76.440 What method do I use to communicate those requirements to participants?
76.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
76.450 What action may I take if a primary tier participant fails to disclose the information required under § 76.330?
76.455 What may I do if a lower tier participant fails to disclose the information required under § 76.350 to the next higher tier?
76.460 What are the obligations of Medicare carriers and intermediaries?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

76.500 What is the purpose of the List?
76.505 Who uses the List?
76.510 Who maintains the List?
76.515 What specific information is on the List?
76.520 Who gives the GSA the information that it puts on the List?
76.525 Whom do I ask if I have questions about a person on the List?
76.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

76.600 How do suspension and debarment actions start?
76.605 How does suspension differ from debarment?
76.610 What procedures does HHS use in suspension and debarment actions?
76.615 How does HHS notify a person of suspension and debarment actions?
76.620 Do Federal agencies coordinate suspension and debarment actions?
76.625 What is the scope of a suspension or debarment action?
76.630 May HHS impute the conduct of one person to another?
76.635 May HHS settle a debarment or suspension action?
76.640 May a settlement include a voluntary exclusion?
76.645 Do other Federal agencies know if HHS agrees to a voluntary exclusion?

Subpart G—Suspension

76.700 When may the suspending official issue a suspension?
76.705 What does the suspending official consider in issuing a suspension?
76.710 When does a suspension take effect?
76.715 What notice does the suspending official give me if I am suspended?
76.720 How may I contest a suspension?
76.725 How much time do I have to contest a suspension?
76.730 What information must I provide to the suspending official if I contest a suspension?
76.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
76.740 Are suspension proceedings formal?
76.745 Is a record made of fact-finding proceedings?
76.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
76.755 When will I know whether the suspension is continued or terminated?
76.760 How long may my suspension last?

Subpart H—Debarment

76.800 What are the causes for debarment?
76.805 What notice does the debarring official give me if I am proposed for debarment?
76.810 When does a debarment take effect?
76.815 How may I contest a proposed debarment?
76.820 How much time do I have to contest a proposed debarment?
76.825 What information must I provide to the debarring official if I contest a proposed debarment?
76.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
76.835 Are debarment proceedings formal?
76.840 Is a record made of fact-finding proceedings?
76.845 What does the debarring official consider in deciding whether to debar me?
76.850 What is the standard of proof in a debarment action?
76.855 Who has the burden of proof in a debarment action?
76.860 What factors may influence the debarring official's decision?
76.865 How long may my debarment last?
76.870 When do I know if the debarring official debars me?
76.875 May I ask the debarring official to reconsider a decision to debar me?
76.880 What factors may influence the debarring official during reconsideration?
76.885 May the debarring official extend a debarment?

Subpart I—Definitions

76.900 Adequate evidence.
76.905 Affiliate.
76.910 Agency.
76.915 Agent or representative.
76.920 Civil judgment.
76.925 Conviction.
76.930 Debarment.
76.935 Debarring official.
76.940 Disqualified.
76.945 Excluded or exclusion.
76.950 Indictment.
76.955 Ineligible or ineligibility.
76.960 Legal proceedings.
76.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
76.970 Nonprocurement transaction.
76.975 Notice.
76.980 Participant.
76.985 Person.
76.990 Preponderance of the evidence.
76.995 Principal.
76.1000 Respondent.
76.1005 State.
76.1010 Suspending official.
76.1015 Suspension.
76.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 76—Covered Transactions

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 76 is further amended as set forth below.

a. "[Agency noun]" is removed and "HHS" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "HHS" is added in its place wherever it occurs.

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c. "[Agency head or designee]" is removed and "HHS Debarring/Suspension Official" is added in its place wherever it occurs.

3. Section 76.220 is further amended by adding a paragraph (d) to read as follows:

§ 76.220 Are any procurement contracts included as covered transactions?

* * * * *

(d) The contract is a subcontract at any tier below a procurement transaction that is covered under paragraph (a) of this section, and the value of the contract exceeds or is expected to exceed the "simplified acquisition threshold" defined at 42 U.S.C. 403(11). This extends the coverage of paragraph (a) of this section to all lower tiers of contracts that exceed the simplified acquisition threshold (see optional lower tier coverage shown in the diagram in the appendix to this part).

4. Section 76.230 is added to read as follows:

§ 76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Any individual or entity excluded from participation in Medicare, Medicaid and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, will be subject to the prohibitions against participating in covered transactions, as set forth in this part. In addition, these excluded parties are also prohibited from participating in all Executive Branch procurement programs and activities. (Public Law 103–355, section 2455) For example, if an individual or entity is excluded by the HHS Office of Inspector General from participation in Medicare, Medicaid and all other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all Federal Government procurement and nonprocurement programs (42 CFR part 1001).

5. Section 76.440 is added to read as follows:

§ 76.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

6. Section 76.460 is added to read as follows:

§ 76.460 What are the obligations of Medicare carriers and intermediaries?

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as Medicare agency officials with respect to actions under 45 CFR part 76. This would include these entities checking the GSA List and taking necessary steps to effectuate this part.

7. Section 76.940 is further amended by adding a paragraph (d) to read as follows:

§ 76.940 Disqualified.

* * * * *

(d) The program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a–7) and enforced by the HHS Office of Inspector General.

8. Section 76.995 is further amended by adding a paragraph (c) to read as follows:

§ 76.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in HHS covered transactions include:

(1) Principal investigators;

(2) Providers of Federally-required audit services; and

(3) Researchers.

9. Part 82 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 82—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
82.100 What does this part do?
82.105 Does this part apply to me?
82.110 Are any of my Federal assistance awards exempt from this part?
82.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

82.200 What must I do to comply with this part?
82.205 What must I include in my drug-free workplace statement?
82.210 To whom must I distribute my drug-free workplace statement?
82.215 What must I include in my drug-free awareness program?
82.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
82.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
82.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

82.300 What must I do to comply with this part if I am an individual recipient?
82.301 [Reserved]

Subpart D—Responsibilities of HHS Awarding Officials

82.400 What are my responsibilities as an HHS awarding official?

Subpart E—Violations of This Part and Consequences

82.500 How are violations of this part determined for recipients other than individuals?
82.505 How are violations of this part determined for recipients who are individuals?
82.510 What actions will the Federal Government take against a recipient determined to have violated this part?
82.515 Are there any exceptions to those actions?

Subpart F—Definitions

82.605 Award.
82.610 Controlled substance.
82.615 Conviction.
82.620 Cooperative agreement.
82.625 Criminal drug statute.
82.630 Debarment.
82.635 Drug-free workplace.
82.640 Employee.
82.645 Federal agency or agency.
82.650 Grant.
82.655 Individual.
82.660 Recipient.
82.665 State.
82.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

10. Part 82 is further amended as set forth below.

a. "[Agency noun]" is removed and "HHS" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "HHS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "HHS Official or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "the Secretary of HHS" is added in its place wherever it occurs.

11. Section 82.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 76" in its place.

12. Section 82.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "45 CFR part 92" in its place.

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 620 and 630

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia, 22230, (703) 292–8060; e:mail: *aeisenst@nsf.gov.*

List of Subjects

45 CFR Part 620

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 630

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Lawrence Rudolph,

General Counsel, National Science Foundation.

Accordingly, as set forth in the common preamble, the National Science Foundation proposes to amend 45 CFR chapter VI as follows:

1. Part 620 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
620.25 How is this part organized?
620.50 How is this part written?
620.75 Do terms in this part have special meanings?

Subpart A—General

620.100 What does this part do?
620.105 Does this part apply to me?
620.110 What is the purpose of the nonprocurement debarment and suspension system?
620.115 How does an exclusion restrict a person's involvement in covered transactions?
620.120 May we grant an exception to let an excluded person participate in a covered transaction?
620.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
620.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
620.135 May the National Science Foundation exclude a person who is not currently participating in a nonprocurement transaction?
620.140 How do I know if a person is excluded?
620.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

620.200 What is a covered transaction?
620.205 Why is it important to know if a particular transaction is a covered transaction?
620.210 Which nonprocurement transactions are covered transactions?
620.215 Which nonprocurement transactions are not covered transactions?
620.215 Are any procurement contracts included as covered transactions?
620.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

620.300 May I enter into a covered transaction with an excluded or disqualified person?
620.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
620.310 May I use the services of an excluded person under a covered transaction?
620.315 Must I verify that principals of my covered transactions are eligible to participate?
620.320 What happens if I do business with an excluded person in a covered transaction?
620.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

620.330 What information must I provide before entering into a covered transaction with the National Science Foundation?
620.335 If I disclose unfavorable information required under § 620.330 will I be prevented from entering into the transaction?
620.340 What happens if I fail to disclose the information required under § 620.330?
620.345 What must I do if I learn of the information required under § 620.330 after entering into a covered transaction with the National Science Foundation?

Disclosing Information—Lower Tier Participants

620.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
620.355 What happens if I fail to disclose the information required under § 620.350?
620.360 What must I do if I learn of information required under § 620.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of National Science Foundation Officials Regarding Transactions

620.400 May I enter into a transaction with an excluded or disqualified person?
620.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
620.410 May I approve a participant's use of the services of an excluded person?
620.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
620.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
620.425 When do I check to see if a person is excluded or disqualified?
620.430 How do I check to see if a person is excluded or disqualified?
620.435 What must I require of a primary tier participant?
620.440 What method do I use to communicate those requirements to participants?
620.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
620.450 What action may I take if a primary tier participant fails to disclose the information required under § 620.330?
620.455 What may I do if a lower tier participant fails to disclose the information required under § 620.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

620.500 What is the purpose of the List?
620.505 Who uses the List?
620.510 Who maintains the List?
620.515 What specific information is on the List?
620.520 Who gives the GSA the information that it puts on the List?
620.525 Whom do I ask if I have questions about a person on the List?
620.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

620.600 How do suspension and debarment actions start?
620.605 How does suspension differ from debarment?
620.610 What procedures does the National Science Foundation use in suspension and debarment actions?
620.615 How does the National Science Foundation notify a person of suspension and debarment actions?
620.620 Do Federal agencies coordinate suspension and debarment actions?
620.625 What is the scope of a suspension or debarment action?
620.630 May the National Science Foundation impute the conduct of one person to another?
620.635 May the National Science Foundation settle a debarment or suspension action?
620.640 May a settlement include a voluntary exclusion?
620.645 Do other Federal agencies know if the National Science Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

620.700 When may the suspending official issue a suspension?

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620.705 What does the suspending official consider in issuing a suspension?
620.710 When does a suspension take effect?
620.715 What notice does the suspending official give me if I am suspended?
620.720 How may I contest a suspension?
620.725 How much time do I have to contest a suspension?
620.730 What information must I provide to the suspending official if I contest a suspension?
620.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
620.740 Are suspension proceedings formal?
620.745 Is a record made of fact-finding proceedings?
620.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
620.755 When will I know whether the suspension is continued or terminated?
620.760 How long may my suspension last?

Subpart H—Debarment

620.800 What are the causes for debarment?
620.805 What notice does the debarring official give me if I am proposed for debarment?
620.810 When does a debarment take effect?
620.815 How may I contest a proposed debarment?
620.820 How much time do I have to contest a proposed debarment?
620.825 What information must I provide to the debarring official if I contest a proposed debarment?
620.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
620.835 Are debarment proceedings formal?
620.840 Is a record made of fact-finding proceedings?
620.845 What does the debarring official consider in deciding whether to debar me?
620.850 What is the standard of proof in a debarment action?
620.855 Who has the burden of proof in a debarment action?
620.860 What factors may influence the debarring official's decision?
620.865 How long may my debarment last?
620.870 When do I know if the debarring official debars me?
620.875 May I ask the debarring official to reconsider a decision to debar me?
620.880 What factors may influence the debarring official during reconsideration?
620.885 May the debarring official extend a debarment?

Subpart I—Definitions

620.900 Adequate evidence.
620.905 Affiliate.
620.910 Agency.
620.915 Agent or representative.
620.920 Civil judgment.
620.925 Conviction.
620.930 Debarment
620.935 Debarring official.
620.940 Disqualified.
620.945 Excluded or exclusion.
620.950 Indictment.
620.955 Ineligible or ineligibility.
620.960 Legal proceedings.
620.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
620.970 Nonprocurement transaction.
620.975 Notice.
620.980 Participant.
620.985 Person.
620.990 Preponderance of the evidence.
620.995 Principal.
620.1000 Respondent.
620.1005 State.
620.1010 Suspending official.
620.1015 Suspension.
620.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 620—Covered Transactions

Authority: 42 U.S.C. 1870(a); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 620 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Science Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "National Science Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director or designee" is added in its place wherever it occurs.

3. Section 620.440 is added to read as follows:

§ 620.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 630 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 630—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
630.100 What does this part do?
630.105 Does this part apply to me?
630.110 Are any of my Federal assistance awards exempt from this part?
630.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

630.200 What must I do to comply with this part?
630.205 What must I include in my drug-free workplace statement?
630.210 To whom must I distribute my drug-free workplace statement?
630.215 What must I include in my drug-free awareness program?
630.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
630.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
630.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

630.300 What must I do to comply with this part if I am an individual recipient?
630.301 [Reserved]

Subpart D—Responsibilities of National Science Foundation Awarding Officials

630.400 What are my responsibilities as a National Science Foundation awarding official?

Subpart E—Violations of This Part and Consequences

630.500 How are violations of this part determined for recipients other than individuals?
630.505 How are violations of this part determined for recipients who are individuals?
630.510 What actions will the Federal Government take against a recipient determined to have violated this part?
630.515 Are there any exceptions to those actions?

Subpart F—Definitions

630.605 Award.
630.610 Controlled substance.
630.615 Conviction.
630.620 Cooperative agreement.
630.625 Criminal drug statute.
630.630 Debarment.
630.635 Drug-free workplace.
630.640 Employee.
630.645 Federal agency or agency.
630.650 Grant.
630.655 Individual.
630.660 Recipient.
630.665 State.
630.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

5. Part 630 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Science Foundation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "National Science Foundation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Director, National Science Foundation" is added in its place wherever it occurs.

6. Section 630.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 620" in its place.

7. Section 630.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 602" in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1154 and 1155

RIN 3135–AA18 and 3135–AA19

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, (202) 682–5418, or by e-mail: *eliask@arts.gov.*

ADDITIONAL SUPPLEMENTARY INFORMATION:

Section 1154.440 of this part proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under NEA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than the NEA's current reliance on the certification process for prospective recipients and participants.

This proposed rule relocates the requirements for maintaining a drug-free workplace from 45 CFR part 1154 to 45 CFR part 1155 and proposes to restate those requirements in plain language format.

List of Subjects

45 CFR Part 1154

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

45 CFR Part 1155

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 28, 2001.

Karen L. Elias,

Deputy General Counsel, National Endowment for the Arts.

For the reasons stated in the preamble, the National Endowment for the Arts proposes to amend 45 CFR chapter XI as follows:

1. Part 1154 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1154.25 How is this part organized?
1154.50 How is this part written?
1154.75 Do terms in this part have special meanings?

Subpart A—General

1154.100 What does this part do?
1154.105 Does this part apply to me?
1154.110 What is the purpose of the nonprocurement debarment and suspension system?
1154.115 How does an exclusion restrict a person's involvement in covered transactions?
1154.120 May we grant an exception to let an excluded person participate in a covered transaction?
1154.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1154.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1154.135 May the National Endowment for the Arts exclude a person who is not currently participating in a nonprocurement transaction?
1154.140 How do I know if a person is excluded?
1154.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1154.200 What is a covered transaction?
1154.205 Why is it important to know if a particular transaction is a covered transaction?
1154.210 Which nonprocurement transactions are covered transactions?
1154.215 Which nonprocurement transactions are not covered transactions?
1154.220 Are any procurement contracts included as covered transactions?
1154.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1154.300 May I enter into a covered transaction with an excluded or disqualified person?
1154.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1154.310 May I use the services of an excluded person under a covered transaction?
1154.315 Must I verify that principals of my covered transactions are eligible to participate?
1154.320 What happens if I do business with an excluded person in a covered transaction?
1154.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1154.330 What information must I provide before entering into a covered transaction with the National Endowment for the Arts?
1154.335 If I disclose unfavorable information required under § 1154.330 will I be prevented from entering into the transaction?
1154.340 What happens if I fail to disclose the information required under § 1154.330?
1154.345 What must I do if I learn of the information required under § 1154.330 after entering into a covered transaction with the National Endowment for the Arts?

Disclosing information—Lower Tier Participants

1154.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1154.355 What happens if I fail to disclose the information required under § 1154.350?
1154.360 What must I do if I learn of information required under § 1154.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NEA Officials Regarding Transactions

1154.400 May I enter into a transaction with an excluded or disqualified person?
1154.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1154.410 May I approve a participant's use of the services of an excluded person?
1154.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1154.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1154.425 When do I check to see if a person is excluded or disqualified?
1154.430 How do I check to see if a person is excluded or disqualified?
1154.435 What must I require of a primary tier participant?
1154.440 What method do I use to communicate those requirements to participants?
1154.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1154.450 What action may I take if a primary tier participant fails to disclose the information required under § 1154.330?
1154.455 What may I do if a lower tier participant fails to disclose the information required under § 1154.350 to the next higher tier?

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Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1154.500 What is the purpose of the List?
1154.505 Who uses the List?
1154.510 Who maintains the List?
1154.515 What specific information is on the List?
1154.520 Who gives the GSA the information that it puts on the List?
1154.525 Whom do I ask if I have questions about a person on the List?
1154.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1154.600 How do suspension and debarment actions start?
1154.605 How does suspension differ from debarment?
1154.610 What procedures does the National Endowment for the Arts use in suspension and debarment actions?
1154.615 How does the National Endowment for the Arts notify a person of suspension and debarment actions?
1154.620 Do Federal agencies coordinate suspension and debarment actions?
1154.625 What is the scope of a suspension or debarment action?
1154.630 May the National Endowment for the Arts impute the conduct of one person to another?
1154.635 May the National Endowment for the Arts settle a debarment or suspension action?
1154.640 May a settlement include a voluntary exclusion?
1154.645 Do other Federal agencies know if the National Endowment for the Arts agrees to a voluntary exclusion?

Subpart G—Suspension

1154.700 When may the suspending official issue a suspension?
1154.705 What does the suspending official consider in issuing a suspension?
1154.710 When does a suspension take effect?
1154.715 What notice does the suspending official give me if I am suspended?
1154.720 How may I contest a suspension?
1154.725 How much time do I have to contest a suspension?
1154.730 What information must I provide to the suspending official if I contest a suspension?
1154.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1154.740 Are suspension proceedings formal?
1154.745 Is a record made of fact-finding proceedings?
1154.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1154.755 When will I know whether the suspension is continued or terminated?
1154.760 How long may my suspension last?

Subpart H—Debarment

1154.800 What are the causes for debarment?
1154.805 What notice does the debarring official give me if I am proposed for debarment?
1154.810 When does a debarment take effect?
1154.815 How may I contest a proposed debarment?
1154.820 How much time do I have to contest a proposed debarment?
1154.825 What information must I provide to the debarring official if I contest a proposed debarment?
1154.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1154.835 Are debarment proceedings formal?
1154.840 Is a record made of fact-finding proceedings?
1154.845 What does the debarring official consider in deciding whether to debar me?
1154.850 What is the standard of proof in a debarment action?
1154.855 Who has the burden of proof in a debarment action?
1154.860 What factors may influence the debarring official's decision?
1154.865 How long may my debarment last?
1154.870 When do I know if the debarring official debars me?
1154.875 May I ask the debarring official to reconsider a decision to debar me?
1154.880 What factors may influence the debarring official during reconsideration?
1154.885 May the debarring official extend a debarment?

Subpart I—Definitions

1154.900 Adequate evidence.
1154.905 Affiliate.
1154.910 Agency.
1154.915 Agent or representative.
1154.920 Civil judgment.
1154.925 Conviction.
1154.930 Debarment
1154.935 Debarring official.
1154.940 Disqualified.
1154.945 Excluded or exclusion.
1154.950 Indictment.
1154.955 Ineligible or ineligibility.
1154.960 Legal proceedings.
1154.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1154.970 Nonprocurement transaction.
1154.975 Notice.
1154.980 Participant.
1154.985 Person.
1154.990 Preponderance of the evidence.
1154.995 Principal.
1154.1000 Respondent.
1154.1005 State.
1154.1010 Suspending official.
1154.1015 Suspension.
1154.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1154—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 1154 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Endowment for the Arts" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEA Chairman" is added in its place wherever it occurs.

3. Section 1154.440 is added to read as follows:

§ 1154.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 1155 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1155—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1155.100 What does this part do?
1155.105 Does this part apply to me?
1155.110 Are any of my Federal assistance awards exempt from this part?
1155.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1155.200 What must I do to comply with this part?
1155.205 What must I include in my drug-free workplace statement?
1155.210 To whom must I distribute my drug-free workplace statement?
1155.215 What must I include in my drug-free awareness program?
1155.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1155.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1155.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1155.300 What must I do to comply with this part if I am an individual recipient?
1155.301 [Reserved]

Subpart D—Responsibilities of NEA Awarding Officials

1155.400 What are my responsibilities as an NEA awarding official?

Subpart E—Violations of This Part and Consequences

1155.500 How are violations of this part determined for recipients other than individuals?
1155.505 How are violations of this part determined for recipients who are individuals?
1155.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1155.515 Are there any exceptions to those actions?

Subpart F—Definitions

1155.605 Award.
1155.610 Controlled substance.
1155.615 Conviction.
1155.620 Cooperative agreement.
1155.625 Criminal drug statute.
1155.630 Debarment.
1155.635 Drug-free workplace.
1155.640 Employee.
1155.645 Federal agency or agency.
1155.650 Grant.
1155.655 Individual.
1155.660 Recipient.
1155.665 State.
1155.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

5. Part 1155 is further amended as set forth below.

a. "[Agency noun]" is removed and "National Endowment for the Arts" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEA Chairman" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "NEA Chairman" is added in its place wherever it occurs.

6. Section 1155.310(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 1154" in its place.

7. Section 1155.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 1157" in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1169 and 1173

RIN 3136–AA25

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Assistant General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 530, Washington, DC, 20506, (202) 606–8322.

List of Subjects

45 CFR Part 1169

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 1173

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

Laura S. Nelson,

Assistant General Counsel.

Accordingly, as set forth in the common preamble, 45 CFR chapter XI is proposed to be amended as follows.

1. Part 1169 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1169.25 How is this part organized?
1169.50 How is this part written?
1169.75 Do terms in this part have special meanings?

Subpart A—General

1169.100 What does this part do?
1169.105 Does this part apply to me?
1169.110 What is the purpose of the nonprocurement debarment and suspension system?
1169.115 How does an exclusion restrict a person's involvement in covered transactions?
1169.120 May we grant an exception to let an excluded person participate in a covered transaction?
1169.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1169.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1169.135 May the NEH exclude a person who is not currently participating in a nonprocurement transaction?
1169.140 How do I know if a person is excluded?
1169.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1169.200 What is a covered transaction?
1169.205 Why is it important to know if a particular transaction is a covered transaction?
1169.210 Which nonprocurement transactions are covered transactions?
1169.215 Which nonprocurement transactions are not covered transactions?
1169.220 Are any procurement contracts included as covered transactions?
1169.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1169.300 May I enter into a covered transaction with an excluded or disqualified person?
1169.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1169.310 May I use the services of an excluded person under a covered transaction?
1169.315 Must I verify that principals of my covered transactions are eligible to participate?
1169.320 What happens if I do business with an excluded person in a covered transaction?
1169.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1169.330 What information must I provide before entering into a covered transaction with the NEH?
1169.335 If I disclose unfavorable information required under § 1169.330 will I be prevented from entering into the transaction?
1169.340 What happens if I fail to disclose the information required under § 1169.330?
1169.345 What must I do if I learn of the information required under § 1169.330 after entering into a covered transaction with the NEH?

Disclosing Information—Lower Tier Participants

1169.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1169.355 What happens if I fail to disclose the information required under § 1169.350?
1169.360 What must I do if I learn of information required under § 1169.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NEH Officials Regarding Transactions

1169.400 May I enter into a transaction with an excluded or disqualified person?
1169.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1169.410 May I approve a participant's use of the services of an excluded person?
1169.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1169.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

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1169.425 When do I check to see if a person is excluded or disqualified?
1169.430 How do I check to see if a person is excluded or disqualified?
1169.435 What must I require of a primary tier participant?
1169.440 What method do I use to communicate requirements to participants?
1169.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1169.450 What action may I take if a primary tier participant fails to disclose the information required under § 1169.330?
1169.455 What may I do if a lower tier participant fails to disclose the information required under § 1169.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

1169.500 What is the purpose of the List?
1169.505 Who uses the List?
1169.510 Who maintains the List?
1169.515 What specific information is on the List?
1169.520 Who gives the GSA the information that it puts on the List?
1169.525 Whom do I ask if I have questions about a person on the List?
1169.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1169.600 How do suspension and debarment actions start?
1169.605 How does suspension differ from debarment?
1169.610 What procedures does the NEH use in suspension and debarment actions?
1169.615 How does the NEH notify a person of suspension and debarment actions?
1169.620 Do Federal agencies coordinate suspension and debarment actions?
1169.625 What is the scope of a suspension or debarment action?
1169.630 May the NEH impute the conduct of one person to another?
1169.635 May the NEH settle a debarment or suspension action?
1169.640 May a settlement include a voluntary exclusion?
1169.645 Do other Federal agencies know if the NEH agrees to a voluntary exclusion?

Subpart G—Suspension

1169.700 When may the suspending official issue a suspension?
1169.705 What does the suspending official consider in issuing a suspension?
1169.710 When does a suspension take effect?
1169.715 What notice does the suspending official give me if I am suspended?
1169.720 How may I contest a suspension?
1169.725 How much time do I have to contest a suspension?
1169.730 What information must I provide to the suspending official if I contest a suspension?
1169.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1169.740 Are suspension proceedings formal?
1169.745 Is a record made of fact-finding proceedings?
1169.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1169.755 When will I know whether the suspension is continued or terminated?
1169.760 How long may my suspension last?

Subpart H—Debarment

1169.800 What are the causes for debarment?
1169.805 What notice does the debarring official give me if I am proposed for debarment?
1169.810 When does a debarment take effect?
1169.815 How may I contest a proposed debarment?
1169.820 How much time do I have to contest a proposed debarment?
1169.825 What information must I provide to the debarring official if I contest a proposed debarment?
1169.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1169.835 Are debarment proceedings formal?
1169.840 Is a record made of fact-finding proceedings?
1169.845 What does the debarring official consider in deciding whether to debar me?
1169.850 What is the standard of proof in a debarment action?
1169.855 Who has the burden of proof in a debarment action?
1169.860 What factors may influence the debarring official's decision?
1169.865 How long may my debarment last?
1169.870 When do I know if the debarring official debars me?
1169.875 May I ask the debarring official to reconsider a decision to debar me?
1169.880 What factors may influence the debarring official during reconsideration?
1169.885 May the debarring official extend a debarment?

Subpart I—Definitions

1169.900 Adequate evidence.
1169.905 Affiliate.
1169.910 Agency.
1169.915 Agent or representative.
1169.920 Civil judgment.
1169.925 Conviction.
1169.930 Debarment.
1169.935 Debarring official.
1169.940 Disqualified.
1169.945 Excluded or exclusion.
1169.950 Indictment.
1169.955 Ineligible or ineligibility.
1169.960 Legal proceedings.
1169.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1169.970 Nonprocurement transaction.
1169.975 Notice.
1169.980 Participant.
1169.985 Person.
1169.990 Preponderance of the evidence.
1169.995 Principal.
1169.1000 Respondent.
1169.1005 State.
1169.1010 Suspending official.
1169.1015 Suspension.
1169.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1169—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 959(a)(1).

2. Part 1169 is further amended as set forth below.

a. "[Agency noun]" is removed and "NEH" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEH" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEH Assistant General Counsel" is added in its place wherever it occurs.

3. Section 1169.440 is added to read as follows:

§ 1169.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1173 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1173—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1173.100 What does this part do?
1173.105 Does this part apply to me?
1173.110 Are any of my Federal assistance awards exempt from this part?
1173.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1173.200 What must I do to comply with this part?
1173.205 What must I include in my drug-free workplace statement?
1173.210 To whom must I distribute my drug-free workplace statement?
1173.215 What must I include in my drug-free awareness program?

1173.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1173.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1173.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1173.300 What must I do to comply with this part if I am an individual recipient?
1173.301 [Reserved]

Subpart D—Responsibilities of NEH Awarding Officials

1173.400 What are my responsibilities as an NEH awarding official?

Subpart E—Violations of This Part and Consequences

1173.500 How are violations of this part determined for recipients other than individuals?
1173.505 How are violations of this part determined for recipients who are individuals?
1173.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1173.515 Are there any exceptions to those actions?

Subpart F—Definitions

1173.605 Award.
1173.610 Controlled substance.
1173.615 Conviction.
1173.620 Cooperative agreement.
1173.625 Criminal drug statute.
1173.630 Debarment.
1173.635 Drug-free workplace.
1173.640 Employee.
1173.645 Federal agency or agency.
1173.650 Grant.
1173.655 Individual.
1173.660 Recipient.
1173.665 State.
1173.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 20 U.S.C. 959(a)(1).

5. Part 1173 is further amended as set forth below.

a. "[Agency noun]" is removed and "NEH" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NEH" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "NEH Assistant General Counsel" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "NEH Assistant General Counsel" is added in its place wherever it occurs.

6. Section 1173.510(c) is further amended by removing "[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 1169" in its place.

7. Section 1173.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 1174" in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services

45 CFR Parts 1185 and 1186

RIN 3137–AA14

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506; Telephone: (202) 606–5414; E-mail: *nweiss@imls.gov*.

List of Subjects

45 CFR Part 1185

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

45 CFR Part 1186

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: August 10, 2001.

Robert S. Martin,

Director, Institute of Museum and Library Services.

For the reasons stated in the preamble, the Institute of Museum and Library Services proposes to amend 45 CFR chapter XI as follows:

1. Part 1185 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1185.25 How is this part organized?
1185.50 How is this part written?
1185.75 Do terms in this part have special meanings?

Subpart A—General

1185.100 What does this part do?
1185.105 Does this part apply to me?
1185.110 What is the purpose of the nonprocurement debarment and suspension system?
1185.115 How does an exclusion restrict a person's involvement in covered transactions?
1185.120 May we grant an exception to let an excluded person participate in a covered transaction?
1185.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
1185.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1185.135 May the Institute of Museum and Library Services exclude a person who is not currently participating in a nonprocurement transaction?
1185.140 How do I know if a person is excluded?
1185.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1185.200 What is a covered transaction?
1185.205 Why is it important to know if a particular transaction is a covered transaction?
1185.210 Which nonprocurement transactions are covered transactions?
1185.215 Which nonprocurement transactions are not covered transactions?
1185.220 Are any procurement contracts included as covered transactions?
1185.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1185.300 May I enter into a covered transaction with an excluded or disqualified person?
1185.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1185.310 May I use the services of an excluded person under a covered transaction?
1185.315 Must I verify that principals of my covered transactions are eligible to participate?
1185.320 What happens if I do business with an excluded person in a covered transaction?
1185.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1185.330 What information must I provide before entering into a covered transaction with the Institute of Museum and Library Services?
1185.335 If I disclose unfavorable information required under § 1185.330 will I be prevented from entering into the transaction?
1185.340 What happens if I fail to disclose the information required under § 1185.330?
1185.345 What must I do if I learn of the information required under § 1185.330 after entering into a covered transaction with the Institute of Museum and Library Services?

Disclosing information—Lower Tier Participants

1185.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

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1185.355 What happens if I fail to disclose the information required under § 1185.350?
1185.360 What must I do if I learn of information required under § 1185.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Institute of Museum and Library Services Officials Regarding Transactions

1185.400 May I enter into a transaction with an excluded or disqualified person?
1185.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1185.410 May I approve a participant's use of the services of an excluded person?
1185.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1185.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1185.425 When do I check to see if a person is excluded or disqualified?
1185.430 How do I check to see if a person is excluded or disqualified?
1185.435 What must I require of a primary tier participant?
1185.440 What method do I use to communicate those requirements to participants?
1185.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1185.450 What action may I take if a primary tier participant fails to disclose the information required under § 1185.330?
1185.455 What may I do if a lower tier participant fails to disclose the information required under § 1185.350 to the next higher tier?

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1185.500 What is the purpose of the List?
1185.505 Who uses the List?
1185.510 Who maintains the List?
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1185.525 Whom do I ask if I have questions about a person on the List?
1185.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1185.600 How do suspension and debarment actions start?
1185.605 How does suspension differ from debarment?
1185.610 What procedures does the Institute of Museum and Library Services use in suspension and debarment actions?
1185.615 How does the Institute of Museum and Library Services notify a person of suspension and debarment actions?
1185.620 Do Federal agencies coordinate suspension and debarment actions?
1185.625 What is the scope of a suspension or debarment action?
1185.630 May the Institute of Museum and Library Services impute the conduct of one person to another?
1185.635 May the Institute of Museum and Library Services settle a debarment or suspension action?
1185.640 May a settlement include a voluntary exclusion?
1185.645 Do other Federal agencies know if the Institute of Museum and Library Services agrees to a voluntary exclusion?

Subpart G—Suspension

1185.700 When may the suspending official issue a suspension?
1185.705 What does the suspending official consider in issuing a suspension?
1185.710 When does a suspension take effect?
1185.715 What notice does the suspending official give me if I am suspended?
1185.720 How may I contest a suspension?
1185.725 How much time do I have to contest a suspension?
1185.730 What information must I provide to the suspending official if I contest a suspension?
1185.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1185.740 Are suspension proceedings formal?
1185.745 Is a record made of fact-finding proceedings?
1185.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1185.755 When will I know whether the suspension is continued or terminated?
1185.760 How long may my suspension last?

Subpart H—Debarment

1185.800 What are the causes for debarment?
1185.805 What notice does the debarring official give me if I am proposed for debarment?
1185.810 When does a debarment take effect?
1185.815 How may I contest a proposed debarment?
1185.820 How much time do I have to contest a proposed debarment?
1185.825 What information must I provide to the debarring official if I contest a proposed debarment?
1185.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1185.835 Are debarment proceedings formal?
1185.840 Is a record made of fact-finding proceedings?
1185.845 What does the debarring official consider in deciding whether to debar me?
1185.850 What is the standard of proof in a debarment action?
1185.855 Who has the burden of proof in a debarment action?
1185.860 What factors may influence the debarring official's decision?
1185.865 How long may my debarment last?
1185.870 When do I know if the debarring official debars me?
1185.875 May I ask the debarring official to reconsider a decision to debar me?
1185.880 What factors may influence the debarring official during reconsideration?
1185.885 May the debarring official extend a debarment?

Subpart I—Definitions

1185.900 Adequate evidence.
1185.905 Affiliate.
1185.910 Agency.
1185.915 Agent or representative.
1185.920 Civil judgment.
1185.925 Conviction.
1185.930 Debarment.
1185.935 Debarring official.
1185.940 Disqualified.
1185.945 Excluded or exclusion.
1185.950 Indictment.
1185.955 Ineligible or ineligibility.
1185.960 Legal proceedings.
1185.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
1185.970 Nonprocurement transaction.
1185.975 Notice.
1185.980 Participant
1185.985 Person.
1185.990 Preponderance of the evidence.
1185.995 Principal.
1185.1000 Respondent.
1185.1005 State.
1185.1010 Suspending official.
1185.1015 Suspension.
1185.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 1185—Covered Transactions

Authority: 20 U.S.C. 9101 *et seq.*; Sec. 2455 Pub.L. 103–355, 108 Stat. 311867 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR,1986 Comp., p.189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 1185 is further amended as set forth below:

a. "[Agency noun]" is removed and "Institute of Museum and Library Services" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "IMLS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Institute of Museum and Library Services" is added in its place wherever it occurs.

3. Section 1185.440 is added to read as follows:

§ 1185.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1186 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1186—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1186.100 What does this part do?
1186.105 Does this part apply to me?
1186.110 Are any of my Federal assistance awards exempt from this part?
1186.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1186.200 What must I do to comply with this part?
1186.205 What must I include in my drug-free workplace statement?
1186.210 To whom must I distribute my drug-free workplace statement?
1186.215 What must I include in my drug-free awareness program?
1186.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1186.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1186.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1186.300 What must I do to comply with this part if I am an individual recipient?
1186.301 [Reserved]

Subpart D—Responsibilities of Institute of Museum and Library Services Awarding Officials

1186.400 What are my responsibilities as an Institute of Museum and Library Services awarding official?

Subpart E—Violations of This Part and Consequences

1186.500 How are violations of this part determined for recipients other than individuals?
1186.505 How are violations of this part determined for recipients who are individuals?
1186.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1186.515 Are there any exceptions to those actions?

Subpart F—Definitions

1186.605 Award.
1186.610 Controlled substance.
1186.615 Conviction.
1186.620 Cooperative agreement.
1186.625 Criminal drug statute.
1186.630 Debarment.
1186.635 Drug-free workplace.
1186.640 Employee.
1186.645 Federal agency or agency.
1186.650 Grant.
1186.655 Individual.
1186.660 Recipient.
1186.665 State.
1186.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

5. Part 1186 is further amended as set forth below.

a. "[Agency noun]" is removed and "Institute of Museum and Library Services" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "IMLS" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Director, Institute of Museum and Library Services or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Director, Institute of Museum and Library Services" is added in its place wherever it occurs.

6. Section 1186.310(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 1185" in its place.

7. Section 1186.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 1183" in its place.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2542 and 2545

RIN 3045–AA28

FOR FURTHER INFORMATION CONTACT: Suzanne Dupré, Office of General Counsel, Corporation for National and Community Service, Room 8200, 1201 New York Ave., NW., Washington, DC 20525, (202) 606–5000 ext. 396, e-mail: *sdupre@cns.gov*.

List of Subjects

45 CFR Part 2542

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 2545

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: May 31, 2001.

Wendy Zenker,

Chief Operating Officer, Corporation for National and Community Service.

Accordingly, as set forth in the common preamble, the Corporation for National and Community Service proposes to amend 45 CFR chapter XXV as follows:

1. Part 2542 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
2542.25 How is this part organized?
2542.50 How is this part written?
2542.75 Do terms in this part have special meanings?

Subpart A—General

2542.100 What does this part do?
2542.105 Does this part apply to me?
2542.110 What is the purpose of the nonprocurement debarment and suspension system?
2542.115 How does an exclusion restrict a person's involvement in covered transactions?
2542.120 May we grant an exception to let an excluded person participate in a covered transaction?
2542.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
2542.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
2542.135 May the Corporation exclude a person who is not currently participating in a nonprocurement transaction?
2542.140 How do I know if a person is excluded?
2542.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

2542.200 What is a covered transaction?
2542.205 Why is it important to know if a particular transaction is a covered transaction?
2542.210 Which nonprocurement transactions are covered transactions?
2542.215 Which nonprocurement transactions are not covered transactions?
2542.220 Are any procurement contracts included as covered transactions?
2542.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

2542.300 May I enter into a covered transaction with an excluded or disqualified person?
2542.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
2542.310 May I use the services of an excluded person under a covered transaction?

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2542.315 Must I verify that principals of my covered transactions are eligible to participate?
2542.320 What happens if I do business with an excluded person in a covered transaction?
2542.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

2542.330 What information must I provide before entering into a covered transaction with the Corporation?
2542.335 If I disclose unfavorable information required under § 2542.330 will I be prevented from entering into the transaction?
2542.340 What happens if I fail to disclose the information required under § 2542.330?
2542.345 What must I do if I learn of the information required under § 2542.330 after entering into a covered transaction with the Corporation?

Disclosing Information—Lower Tier Participants

2542.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
2542.355 What happens if I fail to disclose the information required under § 2542.350?
2542.360 What must I do if I learn of information required under § 2542.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Corporation Officials Regarding Transactions

2542.400 May I enter into a transaction with an excluded or disqualified person?
2542.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
2542.410 May I approve a participant's use of the services of an excluded person?
2542.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
2542.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
2542.425 When do I check to see if a person is excluded or disqualified?
2542.430 How do I check to see if a person is excluded or disqualified?
2542.435 What must I require of a primary tier participant?
2542.440 What method do I use to communicate requirements to primary tier participants?
2542.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
2542.450 What action may I take if a primary tier participant fails to disclose the information required under § 2542.330?
2542.455 What may I do if a lower tier participant fails to disclose the information required under § 2542.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

2542.500 What is the purpose of the List?
2542.505 Who uses the List?
2542.510 Who maintains the List?
2542.515 What specific information is on the List?
2542.520 Who gives the GSA the information that it puts on the List?
2542.525 Whom do I ask if I have questions about a person on the List?
2542.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

2542.600 How do suspension and debarment actions start?
2542.605 How does suspension differ from debarment?
2542.610 What procedures does the Corporation use in suspension and debarment actions?
2542.615 How does the Corporation notify a person of suspension and debarment actions?
2542.620 Do Federal agencies coordinate suspension and debarment actions?
2542.625 What is the scope of a suspension or debarment action?
2542.630 May the Corporation impute the conduct of one person to another?
2542.635 May the Corporation settle a debarment or suspension action?
2542.640 May a settlement include a voluntary exclusion?
2542.645 Do other Federal agencies know if the Corporation agrees to a voluntary exclusion?

Subpart G—Suspension

2542.700 When may the suspending official issue a suspension?
2542.705 What does the suspending official consider in issuing a suspension?
2542.710 When does a suspension take effect?
2542.715 What notice does the suspending official give me if I am suspended?
2542.720 How may I contest a suspension?
2542.725 How much time do I have to contest a suspension?
2542.730 What information must I provide to the suspending official if I contest a suspension?
2542.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
2542.740 Are suspension proceedings formal?
2542.745 Is a record made of fact-finding proceedings?
2542.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
2542.755 When will I know whether the suspension is continued or terminated?
2542.760 How long may my suspension last?

Subpart H—Debarment

2542.800 What are the causes for debarment?
2542.805 What notice does the debarring official give me if I am proposed for debarment?
2542.810 When does a debarment take effect?
2542.815 How may I contest a proposed debarment?
2542.820 How much time do I have to contest a proposed debarment?
2542.825 What information must I provide to the debarring official if I contest a proposed debarment?
2542.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
2542.835 Are debarment proceedings formal?
2542.840 Is a record made of fact-finding proceedings?
2542.845 What does the debarring official consider in deciding whether to debar me?
2542.850 What is the standard of proof in a debarment action?
2542.855 Who has the burden of proof in a debarment action?
2542.860 What factors may influence the debarring official's decision?
2542.865 How long may my debarment last?
2542.870 When do I know if the debarring official debars me?
2542.875 May I ask the debarring official to reconsider a decision to debar me?
2542.880 What factors may influence the debarring official during reconsideration?
2542.885 May the debarring official extend a debarment?

Subpart I—Definitions

2542.900 Adequate evidence.
2542.905 Affiliate.
2542.910 Agency.
2542.915 Agent or representative.
2542.920 Civil judgment.
2542.925 Conviction.
2542.930 Debarment.
2542.935 Debarring official.
2542.940 Disqualified.
2542.945 Excluded or exclusion.
2542.950 Indictment.
2542.955 Ineligible or ineligibility.
2542.960 Legal proceedings.
2542.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
2542.970 Nonprocurement transaction.
2542.975 Notice.
2542.980 Participant.
2542.985 Person.
2542.990 Preponderance of the evidence.
2542.995 Principal.
2542.1000 Respondent.
2542.1005 State.
2542.1010 Suspending official.
2542.1015 Suspension.
2542.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 2542—Covered Transactions

Authority: 42 U.S.C. 12651(c); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 2542 is further amended as set forth below.

a. "[Agency noun]" is removed and "Corporation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Corporation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Corporation Chief Executive Officer or designee" is added in its place wherever it occurs.

3. Section 2542.440 is added to read as follows:

§ 2542.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 2545 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 2545—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
2545.100 What does this part do?
2545.105 Does this part apply to me?
2545.110 Are any of my Federal assistance awards exempt from this part?
2545.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

2545.200 What must I do to comply with this part?
2545.205 What must I include in my drug-free workplace statement?
2545.210 To whom must I distribute my drug-free workplace statement?
2545.215 What must I include in my drug-free awareness program?
2545.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
2545.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
2545.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

2545.300 What must I do to comply with this part if I am an individual recipient?
2545.301 [Reserved]

Subpart D—Responsibilities of Corporation Awarding Officials

2545.400 What are my responsibilities as a Corporation awarding official?

Subpart E—Violations of This Part and Consequences

2545.500 How are violations of this part determined for recipients other than individuals?
2545.505 How are violations of this part determined for recipients who are individuals?
2545.510 What actions will the Federal Government take against a recipient determined to have violated this part?
2545.515 Are there any exceptions to those actions?

Subpart F—Definitions

2545.605 Award.
2545.610 Controlled substance.
2545.615 Conviction.
2545.620 Cooperative agreement.
2545.625 Criminal drug statute.
2545.630 Debarment.
2545.635 Drug-free workplace.
2545.640 Employee.
2545.645 Federal agency or agency.
2545.650 Grant.
2545.655 Individual.
2545.660 Recipient.
2545.665 State.
2545.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 42 U.S.C. 12644 and 12651(c).

5. Part 2545 is further amended as set forth below.

a. "[Agency noun]" is removed and "Corporation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "Corporation" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Corporation Chief Executive Officer or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Corporation Chief Executive Officer" is added in its place wherever it occurs.

6. Section 2545.510(c) is further amended by removing "[CFR citation for the Federal Agencies' regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 2542" in its place.

7. Section 2545.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 2541" in its place.

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 29 and 32

RIN 2105–AD07

FOR FURTHER INFORMATION CONTACT: Ladd Hakes, Office of the Senior Procurement Executive (M–62), 400 Seventh Street SW., Washington, DC 20590, (202) 366–4268, e-mail: *ladd.hakes@ost.dot.gov*.

ADDITIONAL SUPPLEMENTARY INFORMATION: This part proposes additional debarment and suspension exception authority by including a paragraph (c) in § 29.120 to allow any DOT debarring or suspending official to grant exceptions and make written determinations under that section. In addition, § 29.440 proposes to use terms or conditions to the award transactions as a means to enforce exclusions under DOT transactions rather than written certifications. This alternative available under the common rule is more efficient that DOT's current certification process for prospective recipients and participants. This part also proposes to add a paragraph (d) to § 29.520 requiring DOT officials, when providing information to GSA, to include their Operating Administration identifying code. This part also proposes to add a paragraph (b) to the definitions of a "debarring official" at § 29.935 and "suspending official" at § 29.1010 to include the head of a Departmental operating administration, with downward delegation authority. Finally, this proposed rule relocates the requirements for maintaining a drug-free workplace from 49 CFR part 29 to 49 CFR part 32.

List of Subjects

49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

49 CFR Part 32

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: November 2, 2001.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons stated in the common preamble, the Department of Transportation proposes to amend 49 CFR chapter I, as follows:

1. Part 29 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
29.25 How is this part organized?
29.50 How is this part written?
29.75 Do terms in this part have special meanings?

Subpart A—General

29.100 What does this part do?
29.105 Does this part apply to me?
29.110 What is the purpose of the nonprocurement debarment and suspension system?

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29.115 How does an exclusion restrict a person's involvement in covered transactions?
29.120 May we grant an exception to let an excluded person participate in a covered transaction?
29.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
29.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
29.135 May DOT exclude a person who is not currently participating in a nonprocurement transaction?
29.140 How do I know if a person is excluded?
29.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

29.200 What is a covered transaction?
29.205 Why is it important to know if a particular transaction is a covered transaction?
29.210 Which nonprocurement transactions are covered transactions?
29.215 Which nonprocurement transactions are not covered transactions?
29.220 Are any procurement contracts included as covered transactions?
29.225 How do I know if a transaction that I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

29.300 May I enter into a covered transaction with an excluded or disqualified person?
29.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
29.310 May I use the services of an excluded person under a covered transaction?
29.315 Must I verify that principals of my covered transactions are eligible to participate?
29.320 What happens if I do business with an excluded person in a covered transaction?
29.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

29.330 What information must I provide before entering into a covered transaction with DOT?
29.335 If I disclose unfavorable information required under § 29.330 will I be prevented from entering into the transaction?
29.340 What happens if I fail to disclose the information required under § 29.330?
29.345 What must I do if I learn of the information required under § 29.330 after entering into a covered transaction with DOT?

Disclosing Information—Lower Tier Participants

29.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
29.355 What happens if I fail to disclose the information required under § 29.350?
29.360 What must I do if I learn of information required under § 29.350 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DOT Officials Regarding Transactions

29.400 May I enter into a transaction with an excluded or disqualified person?
29.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
29.410 May I approve a participant's use of the services of an excluded person?
29.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
29.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
29.425 When do I check to see if a person is excluded or disqualified?
29.430 How do I check to see if a person is excluded or disqualified?
29.435 What must I require of a primary tier participant?
29.440 What method do I use to communicate those requirements to participants?
29.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
29.450 What action may I take if a primary tier participant fails to disclose the information required under § 29.330?
29.455 What may I do if a lower tier participant fails to disclose the information required under § 29.350 to the next higher tier?

Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

29.500 What is the purpose of the List?
29.505 Who uses the List?
29.510 Who maintains the List?
29.515 What specific information is on the List?
29.520 Who gives the GSA the information that it puts on the List?
29.525 Whom do I ask if I have questions about a person on the List?
29.530 Where can I get the List?

Subpart F—General Principles Relating to Suspension and Debarment Actions

29.600 How do suspension and debarment actions start?
29.605 How does suspension differ from debarment?
29.610 What procedures does DOT use in suspension and debarment actions?
29.615 How does DOT notify a person of suspension and debarment actions?
29.620 Do Federal agencies coordinate suspension and debarment actions?
29.625 What is the scope of a suspension or debarment action?
29.630 May DOT impute the conduct of one person to another?
29.635 May DOT settle a debarment or suspension action?
29.640 May a settlement include a voluntary exclusion?
29.645 Do other Federal agencies know if DOT agrees to a voluntary exclusion?

Subpart G—Suspension

29.700 When may the suspending official issue a suspension?
29.705 What does the suspending official consider in issuing a suspension?
29.710 When does a suspension take effect?
29.715 What notice does the suspending official give me if I am suspended?
29.720 How may I contest a suspension?
29.725 How much time do I have to contest a suspension?
29.730 What information must I provide to the suspending official if I contest a suspension?
29.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
29.740 Are suspension proceedings formal?
29.745 Is a record made of fact-finding proceedings?
29.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
29.755 When will I know whether the suspension is continued or terminated?
29.760 How long may my suspension last?

Subpart H—Debarment

29.800 What are the causes for debarment?
29.805 What notice does the debarring official give me if I am proposed for debarment?
29.810 When does a debarment take effect?
29.815 How may I contest a proposed debarment?
29.820 How much time do I have to contest a proposed debarment?
29.825 What information must I provide to the debarring official if I contest a proposed debarment?
29.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
29.835 Are debarment proceedings formal?
29.840 Is a record made of fact-finding proceedings?
29.845 What does the debarring official consider in deciding whether to debar me?
29.850 What is the standard of proof in a debarment action?
29.855 Who has the burden of proof in a debarment action?
29.860 What factors may influence the debarring official's decision?
29.865 How long may my debarment last?
29.870 When do I know if the debarring official debars me?
29.875 May I ask the debarring official to reconsider a decision to debar me?
29.880 What factors may influence the debarring official during reconsideration?
29.885 May the debarring official extend a debarment?

Subpart I—Definitions

29.900 Adequate evidence.
29.905 Affiliate.
29.910 Agency.
29.915 Agent or representative.
29.920 Civil judgment.
29.925 Conviction.
29.930 Debarment.
29.935 Debarring official.
29.940 Disqualified.
29.945 Excluded or exclusion.
29.950 Indictment.
29.955 Ineligible or ineligibility.
29.960 Legal proceedings.
29.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.
29.970 Nonprocurement transaction.
29.975 Notice.
29.980 Participant.
29.985 Person.
29.990 Preponderance of the evidence.
29.995 Principal.
29.1000 Respondent.
29.1005 State.
29.1010 Suspending official.
29.1015 Suspension.
29.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

Appendix to Part 29—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O.11738 (3 CFR, 1973 Comp., p.799); E.O.12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 29 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Transportation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOT" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "debarring or suspending official" is added in its place wherever it occurs.

3. Section 29.120 is further amended by adding a paragraph (c) to read as follows:

§ 29.120 May we grant an exception to an excluded person to participate in a covered transaction?

* * * * *

(c) A debarring or suspending official may grant exceptions and make written determinations under this section.

4. Section 29.440 is added to read as follows:

§ 29.440 What method do I use to communicate those requirements to participants?

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

5. Section 29.520 is further amended by removing the period at the end of paragraph (c)(4) and adding a semicolon, and adding a paragraph (d) to read as follows:

§ 29.520. Who gives the GSA the information that it puts on the List?

* * * * *

(d) The DOT official's Operating Administration code, as follows: United States Coast Guard [DOT–USCG]; Federal Aviation Administration [DOT–FAA]; Federal Highway Administration [DOT–FHWA]; Federal Motor Carrier Safety Administration [DOT–FMCSA]; Federal Railway Administration [DOT–FRA]; Federal Transit Administration [DOT–FTA]; National Highway Traffic Safety Administration [DOT–NHTSA]; Research and Special Programs [DOT–RSPA]; Maritime Administration [DOT–MARAD]; and DOT (general) [DOT–OST].

6. Section 29.935 is further amended by adding a paragraph (b) to read as follows:

§ 29.935 Debarring official.

* * * * *

(b) For DOT "debarring official" means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

7. Section 29.1010 is further amended by adding a paragraph (b) to read as follows:

§ 29.1010 Suspending official.

* * * * *

(b) For DOT "suspending official" means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

8. Part 32 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 32—GOVERNMENTWIDE REQUIREMENTS FOR DRUG–FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
32.100 What does this part do?
32.105 Does this part apply to me?
32.110 Are any of my Federal assistance awards exempt from this part?
32.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

32.200 What must I do to comply with this part?
32.205 What must I include in my drug-free workplace statement?
32.210 To whom must I distribute my drug-free workplace statement?
32.215 What must I include in my drug-free awareness program?
32.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
32.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
32.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

32.300 What must I do to comply with this part if I am an individual recipient?
32.301 [Reserved]

Subpart D—Responsibilities of DOT Awarding Officials

32.400 What are my responsibilities as a DOT awarding official?

Subpart E—Violations of This Part and Consequences

32.500 How are violations of this part determined for recipients other than individuals?
32.505 How are violations of this part determined for recipients who are individuals?
32.510 What actions will the Federal Government take against a recipient determined to have violated this part?
32.515 Are there any exceptions to those actions?

Subpart F—Definitions

32.605 Award.
32.610 Controlled substance.
32.615 Conviction.
32.620 Cooperative agreement.
32.625 Criminal drug statute.
32.630 Debarment.
32.635 Drug-free workplace.
32.640 Employee.
32.645 Federal agency or agency.
32.650 Grant.
32.655 Individual.
32.660 Recipient.
32.665 State.
32.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

9. Part 32 is further amended as set forth below.

a. "[Agency noun]" is removed and "Department of Transportation" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "DOT" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Secretary of Transportation" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Secretary of Transportation" is added in its place wherever it occurs.

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10. Section 32.510 (c) is further amended by removing "CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689" and adding "49 CFR part 29" in its place.

11. Section 32.605(a)(2) is further amended by removing "[Agency-specific CFR citation]"and adding "49 CFR part 18" in its place.

[FR Doc. 02–1 Filed 1–22–02; 8:45 am]

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Federal Register

Wednesday,
January 23, 2002

Part III

Environmental Protection Agency

40 CFR Parts 9 and 434
Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 434

[FRL–7125–4]

RIN 2040–AD24

Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the current regulations for the Coal Mining Point Source Category by adding two new subcategories to the existing regulation. EPA is establishing a Coal Remining Subcategory that will address pre-existing discharges at coal remining operations. EPA also is establishing a Western Alkaline Coal Mining Subcategory that will address drainage from coal mining reclamation and non-process areas in the arid and semiarid western United States. These amendments do not otherwise change the existing regulations.

The establishment of new subcategories has the potential to create significant environmental benefits at little or no additional cost to the industry. Establishing the Coal Remining Subcategory will encourage remining activities and will reduce hazards associated with abandoned mine lands. The new subcategory has the potential to significantly improve water quality by reducing the discharge of acidity, iron, manganese, and sulfate from abandoned mine lands. EPA projects total monetized annual benefits of $0.7 million to $1.2 million due to remining. Additionally, EPA expects that this regulation will result in significant ecological and public safety benefits that could not be quantified and/or monetized. EPA projects that the annual compliance cost for this new subcategory will be $0.33 million to $0.76 million.

EPA estimates that the Western Alkaline Coal Mining Subcategory will result in a net cost savings to affected surface mine operators. The monetized and non-monetized benefits for this subcategory are a result of adopting alternative sediment control technologies for reclamation and non-process areas in the arid west. These technologies are projected to increase the volume of storm water drainage to arid watersheds and avoid the disturbance of approximately 600 acres per year, thus reducing severe erosion, sedimentation, hydrologic imbalance, and water loss. EPA projects that the subcategory will result in annualized monetized benefits of $0.04 to $0.75 million.

DATES: This regulation is effective February 22, 2002.

ADDRESSES: A copy of the supporting documents cited in this document are available for review at EPA's Water Docket; Room EB57, 401 M Street, SW, Washington, DC 20460. A copy of the record supporting the development of the Western Alkaline Coal Mining Subcategory is also available for review at the Office of Surface Mining Library, 1999 Broadway, 34th Floor, Denver, CO. The public record for this rulemaking has been established under docket number W–99–13, and includes supporting documentation. The public record supporting this rule does not include any information claimed as Confidential Business Information (CBI). For access to EPA docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m Eastern Standard Time, Monday through Friday, excluding Federal holidays, to schedule an appointment. For access to docket materials at the Office of Surface Mining Library, please call (303) 844–1436 between 8 a.m. and 4 p.m. Mountain Standard Time to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact William Telliard at (202) 260–7134 or "*Telliard.William@EPA.gov*". For additional economic information contact Kristen Strellec at (202) 260–6036 or "*Strellec.Kristen@EPA.gov*".

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities potentially regulated by this action include:

Category	Examples of regulated entities	SIC codes	NAICS codes
Industry	Operations engaged in the remining of abandoned surface and underground coal mines and coal refuse piles for remaining coal reserves in areas containing discharges defined as "pre-existing" Operations engaged in coal mine reclamation activities in the arid and semiarid western coal region..	1221 1222 1231	212111 212112 212113

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 434. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

In accordance with 40 CFR 23.2, this rule will be considered promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on February 6, 2002. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered promulgated for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Compliance Dates

Existing direct dischargers must comply with limitations based on the Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), and Best Available Technology Economically Achievable (BAT) as soon as their National Pollutant Discharge Elimination System (NPDES) permits include such limitations. The compliance date for New Source Performance Standards (NSPS) is the date the new source commences discharging.

Supporting Documentation

The regulations are supported by several key documents:

1. "*Coal Remining Best Management Practices Guidance Manual*" (EPA 821–B–01–010). This document describes abandoned mine land conditions and the performance of Best Management Practices (BMPs) that have been implemented at remining operations. The BMP Guidance Manual is a technical reference document that presents research and data concerning the prediction and prevention of acid mine drainage to the waters of the United States. There have been minimal changes to the BMP manual since proposal.

2. "*Coal Remining Statistical Support Document*" (EPA 821–B–01–011). This document describes the statistical methodology for establishing and monitoring baseline conditions and setting discharge limits at remining sites.

3. "*Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory*" (EPA 821–B–01–012): This document presents EPA's technical conclusions concerning the Western Alkaline Coal Mining Subcategory.

4. "*Economic and Environmental Impact Assessment of Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories*" (EPA–821–B–01–013): This document presents the methodology employed to assess economic and environmental impacts of the final rule and the results of the analysis.

5. *Statistical Analysis of Abandoned Mine Drainage in the Assessment of Pollution Load.* (EPA 821–B–01–014) This document describes pollutant characteristics of pre-existing discharges at abandoned mine lands.

How To Obtain Supporting Documents

All documents are available from the National Service Center for Environmental Publications, 11029 Kenwood Road, Cincinnati, OH 45242, (800) 490–9198, *http://www.epa.gov/ncepi*. Several of these documents can also be obtained on the Internet, located at *http://www.epa.gov/OST/guide/coal*. This website also links to an electronic version of today's notice.

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Appendix A: Definitions, Acronyms, and Abbreviations Used in This Document

I. Legal Authority

These regulations are promulgated under the authority of sections 301, 304, 306, 308, 402, 501, and 502 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361, and 1362.

II. Background

A. Statutory Authorities

1. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the

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chemical, physical, and biological integrity of the Nation's waters' (section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is in establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial and public sources of wastewater.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

a. Best Practicable Control Technology Currently Available (BPT)—section 304(b)(1) of the CWA. Effluent limitations guidelines based on BPT apply to discharges of conventional, toxic, and non-conventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance in terms of pollution control by plants in a particular industrial category or subcategory. In establishing BPT, EPA considers the cost of achieving pollution reductions in relation to the pollution reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate. Where the pollution control performance of existing sources for a category or subcategory is uniformly inadequate, EPA may set BPT by transferring technology used in a different subcategory or category.

b. Best Available Technology Economically Achievable (BAT)—section 304(b)(2) of the CWA. In general, BAT effluent limitations guidelines are based on the degree of pollution control achievable by applying the best available technology economically achievable for facilities in the industrial subcategory or category. The CWA requires BAT for controlling the direct discharge of toxic and non-conventional pollutants. The factors considered in determining BAT for a category or subcategory include the age of the equipment and facilities involved, the process employed, potential process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate. EPA retains considerable discretion in assigning the weight to be accorded these factors. Generally, economic achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry's (or subcategory's) financial health. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, such as product substitution, even when these technologies are not common industry practice. The CWA does not require cost-benefit comparison in establishing BAT.

c. Best Conventional Pollutant Control Technology (BCT)—section 304(b)(4) of the CWA. The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from point sources other than publicly owned treatment works. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

d. New Source Performance Standards (NSPS)—section 306 of the CWA. NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. Pretreatment Standards for Existing Sources (PSES)—section 307(b) of the CWA—and Pretreatment Standards for New Sources (PSNS)—section 307(b) of the CWA.

Pretreatment standards are designed to prevent the discharge of pollutants to a publicly-owned treatment works (POTW) which pass through, interfere, or are otherwise incompatible with the operation of the POTW. Since none of the facilities to which this rule applies discharge to a POTW, pretreatment standards are not part of this rulemaking.

f. CWA section 304(m) Requirements. Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards and (2) promulgating new effluent guidelines. On January 2, 1990 (55 FR 80), EPA published an Effluent Guidelines Plan, which established schedules for developing new and revised effluent guidelines for several industry categories. The Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia (*NRDC* v. *Browner*, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which established schedules for EPA's proposal of and final action on effluent guidelines for a number of point source categories. The Effluent Guidelines Plan published in the **Federal Register** on September 4, 1998 (63 FR 47285) required, among other things, that EPA propose the Coal Mining Effluent Guidelines by December 1999 and take final action on the Guidelines by December 2001. On November 19, 1999, the Court modified the decree revising the deadline for proposal to March 31, 2000. The deadline of December 2001 for taking final action on these guidelines was not modified.

2. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Public Law 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101 (b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

The PPA directs EPA to, among other things, "review regulations of the EPA prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). Source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction "includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. * * * The term source 'reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service" (42 U.S.C. 13102(5)). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In today's rule, EPA encourages pollution prevention by requiring the use of site-specific Best Management Practices (BMPs) that are integral to remining operations in abandoned mine lands and to reclamation activities in the arid and semiarid western coal regions. These BMPs, under each subcategory, are designed and implemented to improve existing conditions and to reduce pollutant discharges at the source, thereby reducing the need for treatment.

B. Regulation of the Coal Mining Point Source Category

1. EPA Regulations at 40 CFR Part 434

On October 9, 1985 (50 FR 41296), EPA promulgated effluent limitations guidelines and standards that are in effect today under 40 CFR part 434. Prior to today's rule, there were four subcategories: Coal Preparation Plants and Coal Preparation Plant Associated Areas; Acid or Ferruginous Mine Drainage; Alkaline Mine Drainage; and Post-Mining Areas. Additionally, there is a subpart for Miscellaneous Provisions. The subcategories include BPT, BAT, and NSPS limitations for TSS, pH, iron, manganese, and/or settleable solids (SS).

2. Surface Mining Control and Reclamation Act

In 1977, Congress enacted the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 *et seq*, to address the environmental problems associated with coal mining on a nationwide basis. SMCRA created the Office of Surface Mining Reclamation and Enforcement (OSMRE) within the Department of Interior, which is responsible for preparing regulations and assisting the States financially and technically to carry out regulatory activities.

Title V of the statute gives OSMRE broad authority to regulate specific management practices before, during, and after mining operations. OSMRE has promulgated comprehensive regulations to control both surface coal mining and the surface effects of underground coal mining (30 CFR parts 700 *et seq*). Implementation of these requirements has significantly improved mining practices, control of water pollution, and protection of other resources. Title IV of SMCRA addresses the problem of presently abandoned coal mines by authorizing and funding abandoned mine reclamation projects.

All mining operations subject to today's regulation must also comply with SMCRA requirements. EPA has worked extensively with OSMRE in the preparation of this rule in order to ensure that today's requirements are consistent with OSMRE requirements.

3. Rahall Amendment

As part of the 1987 amendments to the CWA, Congress added Section 301(p), often called the Rahall Amendment, to provide incentives for remining abandoned mine lands that pre-date the passage of SMCRA in 1977. Section 301(p) provides an exemption for remining operations from the BAT effluent limits for iron, manganese, and pH for pre-existing discharges from abandoned mine lands. Instead, a permit writer may set site-specific, numerical BAT limits for pre-existing discharges based on Best Professional Judgement (BPJ). The effluent limits may not allow discharges to exceed pre-existing "baseline" levels of iron, manganese, and pH. In addition, the permit applicant must demonstrate that the remining operation "will result in the potential for improved water quality from the remining operation." The Rahall Amendment defines remining as a coal mining operation which began after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977, which was the effective date of SMCRA. Thus, the Rahall Amendment attempted to encourage remining by no longer requiring operators to treat degraded pre-existing discharges to the BAT levels established in Subpart C of 40 CFR part 434.

Despite the statutory authority provided by the Rahall Amendment, coal mining companies remained hesitant to pursue remining without formal EPA approval and guidelines. Today's regulation establishes requirements for determining baseline pollutant loadings in pre-existing discharges. It also specifies how to determine site-specific BAT requirements for remining operations and how to demonstrate the potential for environmental improvement from a remining operation. EPA is today promulgating a regulation that is consistent with, but not identical to, the Rahall Amendment.

C. Proposed Rule

On April 11, 2000 (65 FR 19440), EPA published proposed amendments to effluent limitations guidelines and new source performance standards for the coal mining point source category. EPA proposed adding two new subparts to the existing regulations at 40 CFR part 434 applicable to Coal Remining (subpart G) and Western Alkaline Coal Mining (subpart H).

In the proposal, EPA solicited comment on 18 specific areas identified by the Agency, in addition to a general comment solicitation on all aspects of the proposed regulation. During the comment period, EPA held public meetings in three locations in the western coal mining region (Denver, CO; Gillette, WY; and Flagstaff, AZ) and three public meetings in areas affected by remining (Nitro, WV; Frankfort, KY; and Zanesville, OH) to explain the proposal and to solicit comment.

On July 30, 2001 (66 FR 39300), EPA published a Notice of Data Availability (NODA) to provide a discussion of options relating to two issues raised by commenters on the Coal Remining Subcategory that were not presented in the proposal. EPA presented these comments, data collected since the proposal, and options being considered for the final rulemaking in the notice and solicited comment on: (1) The expansion of applicability of the Coal Remining Subcategory to sites abandoned after 1977, and (2) alternative effluent limits for solids in pre-existing discharges. The majority of comments received supported these proposed changes. In Section XII of this document, EPA presents a summary of the significant comments received on the proposal and NODA and a summary of the Agency's responses. The complete

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set of comments and EPA's detailed responses can be found in the "Comment Response Document for the Coal Remining and Western Alkaline Coal Mining Subcategories" (DCN 3056).

III. Summary of Significant Changes to Proposed Rule

Based on comments received, EPA has made several changes to the proposed subcategory applicability, regulated parameters, and statistical methodology presented in the April 11, 2000 **Federal Register** notice. EPA has summarized these changes below, and is presenting its rationale for these changes in Sections V and VI of this document.

A. Coal Remining Subcategory

- At proposal, EPA defined a remining operation as a coal mining operation at a site on which coal mining was conducted prior to August 3, 1977. EPA has modified the definition of "remining" to include coal mining operations on sites where coal mining was previously conducted and where the site was abandoned or the performance bond forfeited after August 3, 1977. The rationale for these changes is provided in Section V of this document.
- EPA proposed to establish alternative effluent limitations for pH, iron, and manganese. EPA has modified the pollutants to be regulated by setting limits for net acidity instead of pH, and by establishing alternative limitations for sediment such that solids loads cannot be increased over baseline during remining and reclamation activities, but must meet standards for post-mining areas prior to bond release. The rationale for this decision is described in Section VI.D of this document.
- For pre-existing discharges where it is infeasible to determine baseline conditions for discharge monitoring, EPA is providing an exclusion from numeric standards. In these cases, the coal mining operator will be required to implement a pollutant abatement plan. The rationale for this decision is described in Section V of this document.
- For the calculation and monitoring of numeric limitations in pre-existing discharges, EPA has made several changes to the statistical methodology. Further information on the statistical procedures is described in sections VI.A and VI.B of this document and in Appendix B of the final regulation.

B. Western Alkaline Coal Mining Subcategory

- In the proposal, EPA limited the application of the Western Alkaline Coal Mining Subcategory requirements to "reclamation areas" but solicited comment on the possibility of expanding the scope of coverage to include other areas. EPA received significant comment on the use of alternative sediment controls for non-process runoff at mine sites subject to the Western Alkaline Coal Mining Subcategory. Based on comments received, EPA has revised the applicability of the subcategory to allow the use of alternative sediment controls on runoff from some non-process areas of western coal mines. This allowance is discussed in Section V.B of this document.
- At proposal, EPA calculated the costs and benefits based on a model mine run for conditions present in the desert southwest. This model represented the "worst case" scenario (in that runoff in the desert southwest contains the highest sediment loadings in the western alkaline coal regions) in order to demonstrate that alternative sediment controls can be used effectively to control sediment to below pre-mined, undisturbed conditions in the arid west. For the final regulation, EPA incorporated the results for two additional model mines representing the "intermountain" and "northern plains" regions. The changes in EPA's estimates of cost savings and benefits are the result of using three different model mines to represent three different types of conditions present in the arid west. The results of these changes are presented in Sections VIII and IX of this document.

IV. Scope of Final Regulation

Today, EPA is promulgating effluent limitations and performance standards for the Coal Remining Subcategory and for the Western Alkaline Coal Mining Subcategory. The new subcategories will be added to the existing regulations for the Coal Mining Point Source Category found at 40 CFR part 434. The new subcategories will create a set of standards and requirements for the specific waste streams defined in the final regulation. The new subcategories will not otherwise change the existing regulations.

A. Coal Remining Subcategory

The effluent limitations and standards for the Coal Remining Subcategory apply to pre-existing discharges that are located within, or that are hydrologically connected to, pollution abatement areas of a coal remining operation.

EPA proposed to define coal remining as the mining of surface mine lands, underground mine lands, and coal refuse piles that were abandoned prior to the enactment of the Surface Mining Reclamation and Control Act (August 3, 1977), consistent with the language of the Rahall Amendment to the Clean Water Act. However, due to the anticipated benefits of the remining subcategory, EPA received comment on the proposal requesting that EPA extend the applicability of the Remining Subcategory to mine lands that have been abandoned since August 3, 1977. In response to this comment, EPA published a Notice of Data Availability (NODA) to solicit further comment on the issue, including whether to limit applicability to mine lands abandoned before the effective date of today's rule. As described in the NODA, it is estimated that there are currently 260 bond forfeiture sites producing acid mine drainage.

EPA concluded that remining of abandoned mine lands (AML) has many potential benefits, and has decided to extend the applicability of the subcategory to mine lands that are abandoned after August 3, 1977. EPA also concluded that there is no basis for precluding applicability of today's rule to AML abandoned after the effective date of today's rule. Based on comments received from regulatory authorities, EPA does not believe that this change will create an incentive for future bond forfeitures. As noted by commenters, once a coal operator has abandoned an active permit and forfeited the performance bond, there are safeguards that prevent the operator from being allowed to mine in the future. Upon forfeiture of the bond, no portion of the bond would be returned until the site meets all the standards of the operator's permit, including the applicable effluent limitations. Secondly, SMCRA provides an avenue to pursue additional monies and to place additional liabilities upon an operator if the bond is insufficient to complete total reclamation. This includes barring the operator from receiving any other SMCRA permits until reclamation is completed, penalties are paid, and any outstanding liabilities are resolved.

The provisions of this new subpart apply only to pre-existing discharges and do not apply to discharges produced or generated in active mining areas, which include the active mining areas of remining operations. Section 434.11(b) defines active mining area as "the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas." Wastewater discharges produced or generated by active coal mining operations will remain subject to the effluent limitations already established in part 434, Subpart C—Acid or Ferruginous Mine Drainage or Subpart D—Alkaline Mine Drainage.

Additionally, in accordance with § 434.61, any waste stream subject to this rule that is commingled for treatment or discharge with a waste stream subject to another subpart of part 434 will be required to meet the most stringent limitations applicable to any component of the combined waste stream. However, EPA would like to further clarify this statement of applicability for the Coal Remining Subcategory. For the reasons discussed in the proposal, a waste stream that is intercepted and/or commingled with active mining wastewater during remining is subject to the provisions of § 434.61. However, § 434.61 applies to the commingled waste stream only during the time when the pre-existing discharge is intercepted by active mining or is combined with active mine wastewater for treatment or discharge. After commingling has ceased, the pre-existing discharge remains subject to the provisions established by the Coal Remining Subcategory.

B. Western Alkaline Coal Mining Subcategory

Today's rule establishes effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory applicable to alkaline mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas at western coal mining operations. "Western coal mining operation" is defined as a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less. "Alkaline mine drainage" is defined as "mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/L." The Western Alkaline Coal Mining Subcategory may also apply to drainage where the total iron concentration is greater than 10 mg/L, provided that the discharge, before any treatment, has a pH equal to or greater than 6.0, and a dissolved iron concentration less than 10 mg/L; and a net alkalinity greater than zero.

The regulation applies to the following areas:

- "Reclamation area" is the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
- "Brushing and grubbing area" is the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.
- "Topsoil stockpiling area" is the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.
- "Regraded area" is the surface area of a coal mine which has been returned to required contour.

The provisions in Subpart D—Alkaline Mine Drainage will continue to apply to discharges produced or generated in active mining areas. Section 434.11(b) defines active mining area as "the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas." Wastewater discharges produced or generated by active coal mining operations will not be affected by this regulation and will remain subject to the effluent limitations already established in part 434.

Additionally, in accordance with § 434.61, any waste stream subject to this rule that is commingled with a waste stream subject to another subpart of part 434 will be required to meet the most stringent limitations applicable to any component of the combined waste stream. Today's new rule simply maintains this regulatory approach.

V. Development of Final Effluent Limitations Guidelines

In this section, EPA describes the rationale for the development of the final limitations and guidelines being promulgated today. For more detailed information on the profile of the industry, please see section IV, "Industry profile," in the April 11, 2000 proposal. For more detailed information on the data gathering efforts used to support this regulation, please see section V, "Summary of data gathering efforts," in the proposal.

A. Coal Remining Subcategory

1. Background

Coal remining is the mining of surface mine lands, underground mine lands, and coal refuse piles that have been previously mined. Acid mine drainage from abandoned coal mines is damaging a significant number of waterways in the Appalachian and mid-continent coal regions of the eastern United States. Information gathered from the Interstate Mining Compact Commission (IMCC) and the Office of Surface Mining and Regulatory Enforcement (OSMRE) Abandoned Mine Land Inventory System indicates that there are over 1.1 million acres of abandoned coal mine lands and over 9,709 miles of streams polluted by acid mine drainage in Appalachia alone. As discussed in the proposal, EPA recognizes that one of the most successful means for improvement of abandoned mine land is for coal mining companies to remine abandoned areas and extract the coal reserves that remain. EPA also recognizes that if abandoned mine lands are ignored during mining of adjacent areas, a time-critical opportunity for reclaiming the abandoned mine land is lost. Once coal mining operations have ceased on the adjacent areas, there is little incentive for operators to return.

During remining operations, acid-forming materials are removed with the extraction of the coal, pollution abatement Best Management Practices (BMPs) are implemented to control acid-forming materials and sediment, and the abandoned mine land is reclaimed. During remining, many of the problems associated with abandoned mine land, such as dangerous highwalls, vertical openings, and abandoned coal refuse piles can be corrected without using public funds from OSMRE's Abandoned Mine Land Program. Furthermore, implementation of appropriate BMPs during remining operations can be effective at improving the water quality of pre-existing discharges. For example, implementation of appropriate BMPs during 112 remining operations in Pennsylvania has been effective in improving or eliminating acidity loading in 45 percent of the pre-existing discharges, total iron loading in 44 percent of the discharges, and total manganese in 42 percent of the discharges. This improvement has resulted in reduced annual pollutant loadings of up to 5.8 million pounds of acidity, 189,000 pounds of iron, 11,400 pounds of manganese, and 4.8 million pounds of sulfate. The environmental benefits associated with reclamation of abandoned mine lands are discussed further in Section VIII of this document.

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The current regulations at 40 CFR part 434 create a disincentive for remining because of their high compliance costs. Moreover, the potential of the statutory exemption contained in the Rahall Amendment to overcome this disincentive and derive the maximum environmental benefits from remining operations has not been fully realized in the absence of implementing regulations. If mining companies face substantial potential liability or economic loss from remining, they will continue to focus on mining virgin areas and ignore abandoned mine lands that may contain significant coal resources. Based on information collected in support of this regulation, EPA believes that remining operations are environmentally preferable to ignoring the coal resources in abandoned mine lands.

As described in Section II of this document, Congress attempted to address the problems associated with discharges from abandoned mine lands by passing the Rahall Amendment to provide incentives to encourage coal remining. The Rahall Amendment (CWA section 301(p)) allows permitting authorities to issue NPDES permits for remining sites with different requirements than those in the existing regulations for some pollutant limits. Specifically, section 301(p) allows permit writers to use best professional judgement (BPJ) to set site-specific BAT limits determined for pre-existing discharges. These limits may not exceed baseline levels of iron, manganese, and pH. The operator must also demonstrate that the remining operation will result in the potential for improved water quality. The statute does not specify how to determine site-specific BAT, baseline pollutant discharge levels, or the potential for improved water quality and has left these up to each permitting authority to determine.

Between 1987 (date of enactment of Rahall Amendment) and 1999, seven States established formal remining programs that issued approximately 330 Rahall permits with numeric limits for pre-existing discharges that are less stringent than those in the existing regulations. Of these 330 Rahall remining permits, 300 were issued by the Commonwealth of Pennsylvania. The remaining thirty Rahall permits were issued by Alabama, West Virginia, Kentucky, Virginia, Ohio, and Maryland. Under these Rahall permits, remining operations must meet the alternate baseline numeric limits specified in the permits and must implement site-specific BMPs. These BMPs include special handling of acid-producing materials, daylighting of abandoned underground mines, control of surface water and ground water, control of sediment, addition of alkaline material, and passive treatment. Remining operations currently underway have proven to be a viable means of remediating the environmental conditions associated with abandoned mine lands without imposing a significant cost burden on industry (Skousen, *Water Quality Changes and Costs of Remining in Pennsylvania and West Virginia*, 1997).

A discussion paper released by IMCC, EPA and OSMRE in February 1998 (Discussion Paper on Water Quality Issues Related to Remining) presented an alternative BMP-based remining permit approach where implementation of BMPs would be the central focus of permitting. This alternative would not impose any numeric limits for pre-existing discharges, but would require implementation of selected BMPs. The IMCC Remining Task Force believes that BMPs can result in improved water quality and, in certain cases, can qualify as BAT for achieving standards required by the Clean Water Act. EPA has considered conditions under which remining permits based solely on BMP implementation in lieu of numeric effluent limits may be appropriate. In addition, EPA recently accepted a Coal Remining and Reclamation Project XL agreement from the Pennsylvania Department of Environmental Protection. Once completed, this pilot project is expected to provide a substantial amount of data about remining BMPs in eight different watersheds throughout Pennsylvania.

2. Scope of Final Regulation

EPA is today promulgating a new remining subcategory with effluent limitations guidelines based on a combination of numeric limits and non-numeric BMP requirements. EPA is also allowing effluent limits based on BMP only requirements where numeric monitoring of a baseline pre-existing discharge is infeasible. EPA is establishing a standardized procedure for determining pollutant loadings for baseline and for compliance monitoring. This procedure is described in Appendix B of the regulation and in chapter 3 of the *Coal Remining Statistical Support Document*. Example calculations using these procedures and further discussion of EPA's determination of these procedures are provided in the support document. EPA intends these regulations to control pre-existing discharges at remining operations in a manner consistent with, but not identical to, requirements under the Rahall Amendment. These requirements are effluent limitations guidelines authorized under section 304(b) of the CWA, but are also in effect implementing regulations for section 301(p), providing EPA's interpretation of of the intent of that provision. Section 301(p) requires the permit authority to establish BAT on a case-by-case basis, using best professional judgment to set specific numeric effluent limitations for pH, iron, and manganese in each permit. Section 301(p) requires the operator to demonstrate that the coal remining operation will result in the potential for improved water quality, and in no event may pH, iron, or manganese discharges exceed the levels discharged prior to the remining operation.

Under the final regulations, the permit will contain specific numeric and non-numeric requirements, constituting BPT, BCT, BAT and NSPS. The numeric requirements will be established on a case-by-case basis in compliance with standardized requirements for statistical procedures to establish and monitor baseline. The numeric effluent limitations set at baseline levels will ensure that the pollutant discharges do not exceed the pollutant levels in the discharges prior to remining consistent with section 301(p)(2).

The extent of the non-numeric permit provisions will be established using best professional judgement to evaluate the adequacy of the selected BMPs contained in a pollution abatement plan to improve conditions of the abandoned mine lands. The pollution abatement plan must demonstrate that the remining operation has the potential to improve water quality, consistent with section 301(p)(2). Together, the numeric and non-numeric requirements constitute BPT, BCT, BAT and NSPS.

3. Pollution Abatement Plan

In the regulatory text, EPA has included a qualitative description of the pollutant abatement plan that must be developed. The regulation requires an operator to prepare a pollution abatement plan that identifies the characteristics of the remining area and the pre-existing discharges at the site, identifies design specifications for selected BMPs, and includes periodic inspection and maintenance schedules. The pollution abatement plan must demonstrate that there is a potential for water quality improvement. These requirements are intended to help the permitting authority evaluate the efficacy of the plan in relation to the conditions existing at the site. EPA has provided a support document, the *Coal Remining BMP Guidance Manual*, to assist industry and permitting

authorities in the development and implementation of the pollution abatement plan. EPA and OSMRE plan to sponsor guidance workshops for the States and Tribes on implementation issues and approaches to maximize efficiency and eliminate possible duplication with respect to requirements in the final rule and SMCRA permitting requirements. Upon review of the permit application, it is within the discretion of the regulatory authority to determine whether additional or more intensive BMPs than those identified in an applicant's proposed plan are required.

The SMCRA permit application process requires a coal mining operator to submit an extensive operation and reclamation plan, documentation, and analysis to OSMRE or the primacy permitting authority for approval. The requirements for the operation and reclamation plan are specified in 30 CFR part 780 for surface mining permit applications and part 784 for underground mining permit applications. In brief summary, some of the OSMRE requirements that directly relate to this CWA regulation include requirements for coal mining operators to provide: a description of coal mining operations; a plan for reclaiming mined lands; a plan for revegetating mined lands; geologic information; hydrologic information including: a description of baseline ground water and surface water characteristics under seasonal conditions; and an analysis of the hydrologic impacts caused by the mining activity. Specifically, the plan must include a "probable hydrologic consequences (PHC)" determination to determine the impacts of the mining on existing hydrologic conditions and a hydrologic reclamation plan to show measures for reducing impacts and to meet water quality laws and regulations. Furthermore, the coal mining regulatory authority is required to conduct a cumulative hydrologic impact analysis of the proposed operation and all anticipated mining on surface water and ground water systems.

EPA believes that many requirements for the pollution abatement plan will be contained in the operations and reclamation sections of an approved SMCRA permit. However, EPA or the State NPDES permitting authority will retain the authority to require additional or expanded BMPs as necessary to ensure that implementation of the identified BMPs is consistent with Clean Water Act requirements. The permitting authority will evaluate the adequacy of the plan as part of its evaluation of whether the permit application is complete, pursuant to 40 CFR 124.3(c).

EPA is also requiring that this pollution abatement plan be developed to the extent practicable for the entire "pollution abatement area," defined as the area that is causing or contributing to the baseline pollution load of the pre-existing discharge. The pollution abatement area shall include the part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.

Commenters suggested that the definition of pollution abatement area be modified to include "adjacent and nearby areas that must be affected to reduce pollution load." EPA agrees with commenters that the additional flexibility afforded by today's rule is needed to identify the entire pollution abatement area within which BMPs can affect improvement in water quality. EPA believes that this will further the intent of today's regulation by focusing on those areas that must be affected to achieve improved water quality. In this manner, the regulatory authority may require a different or larger permit boundary in order to demonstrate the potential for improvement in water quality, or to develop a holistic approach for water quality improvement in the context of related SMCRA programs such as the Acid Mine Drainage Treatment and Abatement Fund or the Title IV Abandoned Mine Reclamation Program. This definition reflects the often complex hydrologic relationships between discharges within or emanating from a permit area and those which originate on adjacent or nearby sites but which may affect pollution loadings on the permit site. This is also consistent with the definition in Pennsylvania's remining program (25 Pa. Code section 87.202).

EPA has defined a pre-existing discharge as "any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application." EPA has modified the definition of pre-existing discharge from the proposal to address issues raised by commenters.

4. Pollution Abatement Plan and Passive Treatment

EPA received comments from stakeholders concerned that coal mining operators may be held perpetually liable for maintaining certain passive treatment technologies installed during the remining process. As discussed in section 4.0 of the *Coal Remining BMP Guidance Manual*, passive treatment encompasses a series of engineered treatment practices that require very little or no maintenance once constructed and operational. Passive water treatment generally involves natural physical, biochemical, and geochemical actions and reactions, such as calcium carbonate dissolution, sulfate/iron reduction, bicarbonate alkalinity generation, metals oxidation and hydrolysis, and metals precipitation. The systems are commonly powered by existing water pressure created by differences in elevation between the discharge point and the treatment facilities. Passive treatment technologies discussed in the *Coal Remining BMP Guidance Manual* include: limestone drains, constructed wetlands, successive alkalinity-producing systems, open limestone channels, Pyrolusite® systems, and alkalinity-producing diversion wells.

However, passive treatment may not meet the standard definition of a BMP. In general, BMPs consist of abatement, remediation, and/or prevention techniques that are conducted within the mining area during active remining operations.

Passive treatment, by its nature, is commonly accepted as an end-of-the-pipe solution to an existing source of acid mine drainage (AMD). A passive treatment system is designed to be a self-sustaining system that relies on chemical or biological processes that should require no external reagents, maintenance, or support to treat AMD. BMPs, on the other hand, may be performed as part of the mining or reclamation process to eliminate or prevent the formation of AMD. For example, EPA considers the application of lime to the overburden to be a BMP and not passive treatment.

Stakeholders expressed concern that the language concerning bond release in § 434.71 for remining operations could be debilitating if the language is interpreted to mean that any time passive treatment is incorporated into the pollution abatement plan, the operator will be perpetually liable for the operation and maintenance of the treatment facility. EPA recognizes that passive treatment technologies can be used as part of the overall abatement plan to reduce pollution loads discharging from remining sites and that there are situations where passive treatment may be employed to improve water quality above what was

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acceptable through the use of BMPs alone.

Therefore, EPA clarifies that for those remining operations that include passive treatment as an inherent portion of an approved Pollution Abatement Plan, the passive treatment operation shall be treated as part of the Pollution Abatement Plan. Today's regulation requires that the Pollution Abatement Plan is incorporated into the permit as an effluent limitation and applies until the appropriate SMCRA authority has authorized bond release. In this manner, passive treatment technologies also can be incorporated into the Pollution Abatement Plan along with more traditional BMPs in order to further improve water quality. Therefore, coal mining operators are responsible for maintaining passive treatment technologies in accordance with the Pollution Abatement Plan until the appropriate SMCRA authority has authorized bond release.

5. Commingling of Waste Streams

Today's rule makes it clear that the requirements of this subcategory apply only to pre-existing discharges that are not commingled with waste streams from active mining areas and that are not intercepted by active mining. It is not the intention of this rule or of the Rahall Amendment to provide alternative standards for active discharges that are generated by mining and remining operations.

Any pre-existing discharge that is commingled with active mining wastewater for treatment or discharge is subject to the most stringent limitations applicable to any component of the waste stream. This maintains the current regulatory approach at § 434.61 for "commingling of waste streams," which states that where waste streams that are subject to two different effluent limits are commingled for treatment or discharge, the combined discharge is subject to the more stringent limitation.

EPA also recognizes that during remining, it may be necessary or even preferable for an operator to intercept and/or commingle a pre-existing discharge with active mining wastewater. Unless the active wastewater has been previously treated and discharged, this combined wastewater would be required to meet the more stringent applicable limitations for active coal mining operations and would not be covered by the conditions of the Coal Remining Subcategory. However, in cases where a pre-existing discharge is not eliminated by the remining activity and remains after remining has been completed, the pre-existing discharge would no longer be commingled with active mining wastewater. A discharge that is no longer commingled with active wastewater becomes subject to the Coal Remining Subcategory requirements which bar an increase in pollutant loadings from baseline conditions.

In today's rule, a pre-existing discharge that has been intercepted by, or commingled with, an active discharge is not required to continue to meet the more stringent effluent limitations once commingling has ceased. If EPA were to require that these commingled discharges remain subject to effluent limitations designed for active mining operations once interception or commingling has ceased, EPA believes it would create a significant disincentive for remining activities. Based on anecdotal and historical evidence of current mining activities, mining companies may try to avoid intercepting pre-existing discharges because they do not want to assume the liability for future treatment of discharges that were not the result of their mining operations. This can result in a "donut hole" in the permitted area, to which BMPs are not applied and from which pre-existing degraded mine drainage continues to be discharged. In many cases, EPA believes that the most environmentally beneficial approach would be for the coal operation to physically intercept this pre-existing discharge, treat the discharge to the more stringent standards during active mining and reclamation, implement BMPs, and then allow the pre-existing discharge to continue discharging at or below baseline pollutant levels. This approach is consistent with the approach Pennsylvania has been using to implement the Rahall provisions. Another option for a remining operator would be to divert the discharge stream away from the active mining area. In this case, the pre-existing discharge that has been diverted would be subject to the Coal Remining Subcategory effluent limitations, and the mine operator would have to implement appropriate BMPs and demonstrate that the pollutant loadings of the diverted pre-existing discharge stream have not been increased.

6. Relocation of Pre-Existing Discharges

EPA recognizes that the implementation of certain BMPs, particularly hydrologic and sediment control BMPs (*e.g.*, daylighting, regrading, revegetation, spoil pile reclamation, and diversion ditches) within the pollution abatement area is often intended to redirect runoff and infiltration water. In these cases, BMP implementation may result in relocation or dispersion of the pre-existing discharges and of the infiltration water that contributes to these pre-existing discharges. It is the intention of the pollution abatement plan to improve both the pollution loading from pre-existing discharges and the overall environmental conditions. For this reason, today's regulations are also applicable to those pre-existing discharges that have been relocated as a result of the implementation of the best management practices contained in the Pollution Abatement Plan, and that are not commingled with discharges from active mining operations.

7. BMP-Only Permits

As explained in the preamble to the proposed rule (65 FR 19451), EPA interprets the definition of "effluent limitation" in section 502 of the CWA to include non-numeric effluent limitations where it is not feasible to establish numeric effluent limitations. This longstanding interpretation is implemented in 40 CFR 122.44(k), which provides that permits may include BMPs to supplement, or in lieu of, numeric effluent limitations when "numeric effluent limitations are infeasible."

In Section VI.A of the preamble to the proposal (65 FR 19449), EPA discussed the issue of BMP-only permits for the Coal Remining Subcategory. After considering comment on this approach, EPA included a limited provision in the final rule for "BMP-only" effluent limitations where numeric limitations are infeasible. EPA believes that in specific and limited cases, permit requirements may be based on implementation of an approved BMP plan in lieu of numeric limitations based on baseline pollutant levels. EPA has determined that in certain specific cases, it is infeasible to calculate and monitor baseline pollutant levels in pre-existing discharges. These limited circumstances include: a pre-existing discharge that exists as diffuse groundwater flow or as base flow to a receiving stream and is therefore inaccessible; a pre-existing discharge that is inaccessible due to steep or hazardous slopes; a pre-existing discharge that is too large to adequately assess via sample collection; or, a number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

In today's final rule, EPA has included a provision for "BMP-only" permits for those cases in which determination and monitoring of baseline pollutant loading is infeasible and for which remining will result in significant improvement that would not otherwise occur.

EPA considered requiring that the mine operator monitor the receiving stream to assess the impact the remining operation is having on the receiving stream when there are no numeric limitations on the pre-existing discharge. Pennsylvania's approved Coal Remining and Reclamation Project XL agreement that uses the BMP-based remining permit approach requires the operator to monitor the receiving stream. While EPA strongly supports and encourages monitoring the receiving stream as part of a BMP-based permit, EPA acknowledges that receiving stream monitoring may not be appropriate in all cases (such as a small AML discharge into a very large river), and EPA has not included a requirement for in-stream monitoring. EPA recommends that the regulatory authority review the site-specific factors of the discharge site and include in-stream monitoring wherever appropriate and useful.

8. Water Quality Variances

Section 303(d) of the Clean Water Act provides that States are to list waters for which point source technology-based limits do not ensure attainment of water quality standards, identify the pollutants causing a violation of the standards, and establish total maximum daily loads (TMDLs) that will meet water quality standards for each listed water. Generally, a TMDL identifies what must be done to meet water quality standards in a particular water or watershed. In recent years, EPA and the States have increased their emphasis on TMDL activities. When water quality impairments are identified and TMDLs are established, pollution allocations are determined and implemented. TMDL analyses have identified drainage emanating from abandoned mine land as the source of pollutants inhibiting attainment of water quality standards for thousands of stream miles.

EPA received comments requesting EPA to categorically allow water quality variances for pre-existing discharges at coal remining operations. Water quality variances under the Clean Water Act are a form of State water quality standards developed on a case-by-case basis. Effluent limitations guidelines are national technology-based regulations that establish restrictions on the discharge of pollutants to surface waters or to publicly owned treatment works by specific categories of industries. The requirements are developed by EPA based on the application of process or treatment technologies to control pollutant discharges. The effluent limitations guidelines promulgated under part 434 establish minimum national technology-based effluent standards for the coal mining industry. Therefore, EPA has not included potential variances on water quality standards in this guideline. Of course, a State may submit a proposed variance to EPA under the applicable provisions of 40 CFR part 131.

9. BAT for the Coal Remining Subcategory

Today, EPA promulgates BAT effluent limitations for the Coal Remining Subcategory to control identified toxic and non-conventional pollutants. EPA is defining BAT for the Coal Remining Subcategory through a combination of numeric and non-numeric limitations. Specifically, EPA is establishing that the best available technology economically achievable for remining operations is implementation of a pollution abatement plan that incorporates BMPs designed to improve pH (as acidity) and reduce pollutant loadings of iron, manganese and sediment, and a requirement that such pollutant levels do not increase over baseline conditions. This is essentially the level of treatment that is currently required under permits issued in accordance with the Rahall Amendment (with the exception of sediment), and that has been demonstrated to be currently available by remining facilities included in EPA's Coal Remining database (Record section 3.5.1), the *Coal Remining BMP Guidance Manual* and in Pennsylvania's study of 112 closed remining sites (Record section 3.5.3). These data support EPA's conclusion that site-specific pollution abatement plans have potential for significant removals of pollutant loadings compared to pre-existing discharge conditions. Based on these data, EPA determined that design and implementation of a pollution abatement plan should, in most cases, achieve reductions below baseline discharge levels.

In order to evaluate available technologies to determine BAT, EPA relied on data from 41 remining operations in Pennsylvania. These data are contained in section 3.2.4 of the regulatory record. All of these facilities used abatement plans implementing various combinations of BMPs as their pollutant control technology. Section 301(p) allows permit writers to use best professional judgment (BPJ) to set site-specific BAT limits determined for pre-existing discharges. Pennsylvania completed this BAT determination for 40 of the 41 remining operations. These 40 remining permit modules indicated that the only more stringent technology available (other than BMPs) included treatment (chemical addition, precipitation, and settling). In all 40 cases, remining was considered not economically feasible if treatment of pre-existing discharges to part 434 subpart C effluent limits was required. In the same 40 cases, remining was economically feasible if the abatement plan was implemented. Thus, the Pennsylvania remining permits issued under Rahall were issued as BAT permits. Congress recognized that remining was not being conducted on abandoned mine lands because of the cost and liability of requiring treatment to meet existing regulations and authorized less stringent requirements for remining operations. Therefore, EPA has determined that the implementation of a pollution abatement plan represents the BAT level of control.

The problem with setting numeric effluent limitations representing the reductions achieved through implementation of a pollution abatement plan is that it is difficult to project the results, in terms of measured improvements in pre-existing pollutant discharges, that will be produced through the application of any given BMP or group of BMPs at a particular site. EPA believes that the *Coal Remining BMP Guidance Manual* compiles the best information available on appropriate implementation and projected performance of all currently identified BMPs applicable to coal remining operations. However, the *Coal Remining BMP Guidance Manual* provides only reasonable estimates of projected performance and efficiency. There are numerous variables associated with the design, implementation, and effectiveness of a particular BMP or group of BMPs at a particular site. Additionally, application of these estimates is subject to substantial, site-specific uncertainties. In some cases, despite appropriate design and implementation of a BMP plan, there is the potential for little improvement over baseline discharges. For these reasons, it is not feasible to project the expected numeric improvements that will occur for a specific pre-existing discharge through application of a particular BMP plan. As a consequence, EPA is establishing a case-by-case non-numeric requirement to implement a pollution abatement plan incorporating BMPs designed to reduce the pollutant levels of acidity, iron, manganese, and solids (TSS or SS) in pre-existing discharges.

Although it is not feasible to establish numeric limits based on predicting pollutant removal efficiencies, it is possible to calculate baseline pollutant

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levels in pre-existing discharges at most remining sites. Moreover, the record indicates that application of appropriately designed BMPs should be able to prevent any increase in these pollutant loadings. Today, EPA promulgates numeric effluent limitations that require that the pollutant levels for net acidity, iron, manganese, and solids do not exceed baseline levels. EPA is promulgating a uniform methodology to use for determining and monitoring these levels. Baseline level determination and monitoring procedures are presented in Appendix B of the regulation and in the *Coal Remining Statistical Support Document*.

EPA expects that these limitations and standards will apply primarily to new remining operations. In cases of existing remining operations with Rahall-type permits and established BPJ limitations, EPA believes that it may not be feasible for a remining operator to re-establish baseline pollutant levels during active remining because the BMPs implemented may have already affected the pre-existing discharge. In this case, it would be impossible to require additional baseline sampling after the baseline time window has passed. In situations where coal remining operations seek reissuance of an existing remining permit, the regulatory authority may determine that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures contained in today's rulemaking. Therefore, pre-existing discharges at existing remining operations would remain subject to baseline pollutant levels established during the original permit application.

In its determination of BAT, EPA also performs a cost analysis on the level of treatment required by the regulation. The cost methodology for this assessment was described in Section X.B of the proposal, and EPA has made no changes to the cost methodology for this final action. EPA projects that the annual compliance cost for this new subcategory will be approximately $330,000 to $759,000.

10. BPT for the Coal Remining Subcategory

As discussed above, EPA concluded that the requirement to design and implement a pollution abatement plan represents BAT and that there are no more stringent technologies that are economically achievable. Furthermore, EPA is aware that permits containing these BMPs are currently in place and are being implemented by a large number of operators. Thus, EPA determined that pollution abatement plans also represent the average of the best technology currently available. The pollution abatement plan is required to be designed to control conventional, toxic and non-conventional pollutants, and the plan must reflect levels of control consistent with BPT for conventional pollutants. The *Coal Remining BMP Guidance Manual* should be consulted to determine the adequacy of the plan. As discussed above, EPA concluded that it is infeasible to express BAT as a single numeric limit. Therefore, EPA has established a combination of site-specific numeric and non-numeric effluent limitation guidelines for BPT identical to the BAT limitations for net acidity, iron, manganese, and TSS.

11. BCT for the Coal Remining Subcategory

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) A POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (*i.e.*, the cost increase must be less than 29 percent).

In today's notice, EPA is establishing BCT effluent limitations guidelines for TSS equivalent to the BPT guidelines for the Coal Remining Subcategory. In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than established for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than established for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA is establishing BCT effluent limitations equal to the established BPT effluent limitations guidelines.

12. NSPS for the Coal Remining Subcategory

In the proposal, EPA did not consider any regulatory options for new sources for the Coal Remining Subcategory because pre-existing discharges at abandoned mine lands covered by the proposed regulation would be by definition in existence prior to permit application. Therefore, at proposal EPA defined all pre-existing discharges as existing sources. However, as described earlier, EPA requested comment in the NODA on applying the effluent limitations for the Remining Subcategory to coal mining operations conducted and abandoned after August 3, 1977. Based on comments received on the NODA, EPA has modified the definition of "remining" to include coal mining operations on sites where coal mining is conducted and abandoned after August 3, 1977. Therefore, despite SMCRA requirements and disincentives to bond forfeiture, it is possible that in the future there will be as-yet unmined sites that will be mined and abandoned for which remining permits will be sought. Pre-existing discharges from remining areas where active mining commenced after the effective date of today's rule and which are subsequently abandoned will be subject to new source performance standards. EPA is establishing NSPS equivalent to BPT, BCT, and BAT because EPA has not identified any economically achievable technology more stringent that BAT.

B. Western Alkaline Coal Mining Subcategory

1. Background

The effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory apply to alkaline mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. This new subcategory is being created primarily because of negative impacts caused by the predominant use of sedimentation ponds necessary to meet the guidelines for Subpart D—Alkaline Mine Drainage. Additional information on the rationale for the new subcategory are explained in Section VI.B of the proposal.

Today's final regulation requires that a western coal mine operator develop and implement a site-specific sediment control plan for applicable areas. The sediment control plan must identify sediment control BMPs and present their design, construction, maintenance specifications, and their expected effectiveness. The final regulations require the operator to demonstrate, using watershed models accepted by the permitting authority, that implementation of the selected BMPs will not increase sediment loads over pre-mined, undisturbed condition sediment levels. The permit must then incorporate the site-specific sediment control plan and require the operator to implement the plan.

Sediment control BMPs for the coal mining industry are well known and established and include regrading, revegetation, mulching, check dams, vegetated channels, straw bales, dikes, silt fences, small sumps and berms, contour terracing, sedimentation ponds, and other construction practices (*e.g.*, grass filters, serpentines, leaking berms, etc). In order to maintain pre-mined, undisturbed conditions on reclamation and associated areas, EPA is promulgating non-numeric effluent limits based on the design, implementation, and maintenance of these BMPs.

As noted in the proposal, EPA has determined that the predominant use of sedimentation ponds in order to meet the Subpart E numeric standards for settleable solids have caused negative impacts in arid and semiarid environments. This is predominantly due to the large land areas and volume of runoff that must be controlled through ponds in order to meet a sediment limit that is not appropriate for runoff in the arid and semiarid regions of the western United States. EPA notes that sedimentation ponds are considered an effective BMP for controlling sediment, and that sedimentation ponds may be used in conjunction with other BMPs in order to control sediment loads. EPA also recognizes that sedimentation ponds do not necessarily cause negative environmental impacts in all cases. EPA believes that ponds may be necessary in certain circumstances to ensure that sediment levels are not increased over pre-mined levels, or may be necessary to meet SMCRA requirements or to protect water quality. In certain cases, it may also be necessary for the regulatory authority to establish numeric limits to protect water quality. EPA notes that ponds are one in a suite of BMPs that a mine operator may install in order to meet reclamation standards. However, ponds may not be necessary in all circumstances and the use of other BMPs such as check dams, vegetation, silt fences, and other construction practices can be equally protective of the environment. Advantages of using other BMPs in lieu of, or in addition to, ponds is that less land is disturbed than for pond construction and removal and more water is available to maintain the hydrologic balance. EPA believes that the regulation promulgated today allows permitting authorities and mining operators sufficient flexibility to use the appropriate BMPs necessary to control sediment and protect water quality in these regions. EPA has provided information on the range and implementation of available BMPs in the *Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory*.

Under today's regulation, EPA is establishing a requirement to develop and implement site-specific sediment control plans that apply in lieu of numeric limits. EPA is requiring that a mine operator develop a site-specific sediment control plan for these areas.

EPA is establishing requirements for site-specific sediment control plans based on computer modeling in lieu of nationally applicable numeric effluent limitations. As discussed above in section V.A.7, such requirements are authorized at 40 CFR 122.4(k) as non-numeric effluent limitations where it is infeasible to establish numeric effluent limitations.

EPA believes that determining compliance for settleable solids based on a single numeric standard for runoff from BMPs is infeasible at western coal mines due to the environmental conditions present. Precipitation events are often localized, high-intensity, short-duration thunderstorms and watersheds often cover vast and isolated areas. Rain may fall in one area of a watershed while other areas remain dry, making it extremely difficult to evaluate overall performance of the BMPs. These factors combine to take it burdensome for a permitting authority or mining operator to extract periodic, meaningful samples on a timely basis to determine if a facility is meeting effluent limitations for settleable solids. The difficulty of sample collection is described in the Phase I Report: Technical Information Package provided by the Western Coal Mining Work Group (Record Section 3.3.1).

Because it is infeasible in such areas to determine compliance and performance of the BMPs in numeric terms, EPA believes that establishment of non-numeric effluent limitations for sediment for this subcategory is authorized under, and is necessary to carry out the purposes and intent, of the CWA.

2. Inspection and Maintenance of BMPs

EPA believes a key factor in using BMPs is the opportunity for continual inspection and maintenance by permitting authorities and coal mine personnel to ensure that sediment control measures will continue to function as designed. EPA concludes that requirements based on site-specific control plans will ease the implementation burden of the rule and allow a permit authority to determine compliance on a regular basis. A permit authority will be able to visit the site and determine if BMPs have been implemented according to the site's sediment control plan. The permit authority would not have to wait for a significant precipitation event to determine compliance.

EPA believes that regular operation and maintenance inspections of BMPs are necessary to ensure compliance with the sediment control plan. EPA also recognizes that SMCRA establishes inspection and monitoring requirements for both surface coal mining and reclamation operations. These requirements include partial inspections at least once per month and complete inspections at least once per quarter. The monitoring requirements include maintenance of records and monitoring equipment, monthly reports to the permitting authority, and provision of other information as the permitting authority deems appropriate.

EPA received several comments on appropriate inspection frequencies and monitoring requirements. The State of New Mexico envisions monthly inspections during the first three years a watershed is in reclamation status and quarterly inspections thereafter. New Mexico believes that field notes or forms maintained on file in mine records and available for inspection is appropriate documentation of these inspections. Other States and mine operators have suggested that self inspections be conducted quarterly and after significant precipitation events.

EPA is not specifying a frequency or procedure for BMP inspections because EPA believes that these decisions should be left to discretion of the permitting authority and be made on a site-specific basis, in accordance with SMCRA and CWA requirements (40 CFR 122.41(i), 122.43, 122.48).

3. Affected Areas

In the proposal, EPA described that the Agency also was considering the use of alternative sediment controls for non-process areas in addition to reclamation areas. Such non-process areas include areas that are not directly in contact with the excavation and processing of coal materials. EPA received numerous comments on the issue in support of expanding the applicability of the final regulation to include these additional non-process areas. EPA also received additional data from the National

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Mining Association, in a report entitled "Western Alkaline Coal Mining Subcategory Modeling of Pre-mining Activities Supporting Reclamation and Performance Cost-Benefit Analysis."

As described in the proposal, EPA determined that alternative sediment controls were appropriate for reclamation areas for several reasons. These reasons included: sediment is a natural component of runoff in arid watersheds; sediment is typically the only parameter of concern in runoff from western alkaline reclamation areas; BMPs are proven to be effective at controlling sediment; and computer modeling procedures are able to accurately predict sediment runoff conditions. Due to comments received in support of expanding the application of alternative sediment controls, EPA evaluated non-process areas in addition to reclamation areas under the same set of circumstances. Based on this rationale, in addition to comments and data received on the proposal, EPA determined that similar circumstances exist for runoff from some, but not all, non-process mine areas. Namely, that sediment is typically the only parameter of concern; BMPs can be implemented to maintain sediment levels below baseline; and modeling procedures are accurate for these areas. Therefore, EPA has expanded the Western Alkaline Subcategory to include "brushing and grubbing areas," "topsoil stockpiling areas," and "regraded areas."

- "Brushing and grubbing area" is defined to mean "the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged." BMPs modeled and/or utilized for sediment control of this area include infiltration berms, silt fences, porous rock check dams, and woody plant chipping/rotoclearing surface treatments.
- "Topsoil stockpiling area" is defined to mean "the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms." BMPs modeled and/or utilized for sediment control of this area include establishing vegetation, infiltration berms, and silt fences.
- "Regraded areas" are defined to mean "the surface area of a coal mine that has been returned to required contour." BMPs modeled and/or utilized for sediment control of this area include contour furrowing, establishing timely vegetation, silt fences, porous rock check dams, and woody plant chipping/rotoclearing surface treatments.

EPA concluded that these areas may be sufficiently consistent in slope, vegetative cover, and soil stability such that BMPs can be modeled and implemented to maintain sediment levels below pre-mined, undisturbed conditions. Due to lack of exposure to potential acid forming or toxic materials, EPA does not believe that runoff from these areas will cause degredation of water quality. Therefore, EPA believes that alternative sediment controls can be effectively used on disturbed areas where sediment is typically the only pollutant of concern in order to avoid additional land disturbance.

However, EPA does not believe that alternative sediment controls should be applicable to spoil piles. Spoil piles are areas where overburden is placed prior to regrading and revegetating. Overburden is the material that lies on top of the coal that is removed to gain access to the coal seam. First, EPA does not believe that computer modeling programs are sufficient to accurately model runoff from a highly erodible, unconsolidated land form with steep slopes, such as spoil piles. Second, in terms of BMPs that would be available to sufficiently control runoff from these areas, EPA notes that many of the traditional BMPs, including regrading, revegetating, mulching, check dams, vegetated channels, straw bales, dikes, silt fences, small sumps and berms, and contour terracing could not be implemented or adequate on unconsolidated steep slopes or highly erodible areas. EPA notes that the most likely form of sediment control for runoff from these areas would be site containment by means of temporary berms, ponds, diversion into pit area, and/or commingling with process waters. In contrast, the non-process areas where the Agency is allowing alternative sediment control structures are amenable to utilization of BMPs due to their level surfaces or more stable environment.

EPA generally considers spoil piles as part of the active mine due to the disturbed nature of the materials and the potential for toxic or acid forming materials to be present. Additionally, EPA believes there exists the potential for exposure to toxic or acid forming materials in runoff from spoil piles. EPA notes that, as part of SMCRA requirements, the mine operator must conduct an analysis of the potential toxic or acid forming materials present in the overburden and take appropriate action to prevent the discharge of these materials to surface waters. However, the appropriate action (such as covering material) may be concurrent with deposition of overburden, and EPA does not believe that the Agency has been presented with sufficient evidence that toxic or acid forming materials are guaranteed not to be present in runoff from spoil piles.

EPA believes that the exclusion of spoil pile areas from the Western Alkaline Subcategory will not significantly detract from the benefits of this new subcategory. OSMRE regulations restrict the size of the overburden salvaging area and require timely regrading and revegetation (SMCRA, Pub. L. 95–87 sections 508 and 515). In a report submitted in comments by the National Mining Association, the salvaging area was estimated to be 750 feet wide and 5,083 feet long. Although the spoil pile area has a fairly large footprint, EPA notes that the area generating runoff that EPA considered for inclusion of the Western Alkaline Subcategory is limited. EPA notes that the runoff from the spoil piles adjacent to the active mine pit will drain directly into the mine pit and will be treated as active mine water, regardless of EPA's decision. The only area that would be affected by EPA's decision is the area containing runoff from the outslope of the last spoil pile, and this area is relatively limited. Based on the decision not to include spoil piles in the Western Alkaline Coal Mining Subcategory, EPA envisions that the runoff from spoil pile areas will be rerouted back into the mine pit through temporary berms and dikes and will not likely involve construction of additional sedimentation ponds. Such spoil piles continue to be covered by existing regulations at subpart D—Alkaline Mine Drainage.

4. SMCRA Requirements

The SMCRA permit application process requires a coal mining operator to submit an extensive operation and reclamation plan, documentation, and analysis to OSMRE or the primacy permitting authority for approval. The requirements for the operation and reclamation plan are specified in 30 CFR part 780 for surface mining permit applications and part 784 for underground mining permit applications. In brief summary, some of the OSMRE requirements that directly relate to this CWA regulation include requirements for coal mining operators to provide: a description of coal mining operations; a plan for reclaiming mined lands; a plan for revegetating mined lands; geologic information; hydrologic information including: a description of baseline ground water and surface water characteristics under seasonal conditions; and an analysis of the

hydrologic and geologic impacts caused by the reclamation activity. Specifically, the plan requires a "probable hydrologic consequences (PHC)" determination to determine the impacts of the mining on existing hydrologic conditions and a hydrologic reclamation plan to show measures for reducing impacts and to meet water quality laws and regulations. Furthermore, the coal mining regulatory authority is required to conduct a cumulative hydrologic impact analysis of the proposed operation and all anticipated mining on surface water and ground water systems.

Additionally, SMCRA requires a chemical analysis of potentially acid or toxic forming sections of the overburden and chemical analysis of the stratum lying immediately underneath the coal (Section 507 (b)(15)). The mine operator must provide for avoiding acid or other toxic mine drainage by such measures as, but not limited to: preventing or removing water from contact with toxic producing deposits; treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and keeping acid or other toxic drainage from entering ground and surface waters (Section 515 (b) (10)). This analysis is required for the determination that the mine produces alkaline mine drainage and will be covered by the Alkaline Mine Drainage Subcategory. Based on the applicability of this regulation which restricts the Western Alkaline Coal Mining Subcategory to areas producing alkaline drainage in arid and semi arid areas, EPA does not believe that toxic or acid forming materials will be present in the runoff from non-process areas of alkaline coal mines. However, EPA acknowledges that SMCRA requirements are an additional measure of protection to ensure that any acid forming or toxic forming pockets will be identified and addressed as necessary to prevent the release of these materials in stormwater runoff.

EPA concluded that sediment control plans developed to comply with SMCRA requirements will usually fulfill the requirements in today's regulation. In general, the sediment control plan will largely consist of materials generated as part of the SMCRA permit application. The requirement to use modeling techniques also is not inconsistent with SMCRA permit application requirements, as mining facilities already submit a watershed model as part of their SMCRA reclamation plan.

EPA proposed and is finalizing the following language regarding acceptable computer models: "The operator must use the same watershed model that was, or will be, used to acquire the SMCRA permit." EPA intends this to mean that a mine can use the upgraded version of a computer model that was used in the original application. For example, if the mine used SEDCAD 4.0 in their SMCRA permit application, then the mine operator can use SEDCAD 5.0 in subsequent modeling procedures for its CWA permit application. EPA believes that this language provides the necessary flexibility to use the most recent and appropriate modeling procedure. A guidance manual entitled "Guidelines for the Use of the Revised Universal Soil Loss Equation (RUSLE) Version 1.06 on Mined Lands, Construction Sites, and Reclaimed Lands" published by OSMRE in August, 1998 describes the use of RUSLE for sediment modeling and should be consulted for modeling approaches.

5. Bond Release

The new subpart for Western Alkaline Coal Mining includes the following language: "The effluent limitations in this subpart apply until the appropriate SMCRA authority has authorized bond release." This language is consistent with the language in other subparts to part 434. As defined in § 434.11(d) General definitions: "The term 'bond release' means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed." EPA notes that this language does not necessarily mean "final" bond release (which may be applicable to an entire mining operation) and that reclamation work may be satisfactorily completed on a watershed or a specific part of a disturbed area before the entire mine site has been reclaimed (or even mined), i.e., "partial bond release." Therefore, EPA intends this current definition to allow a facility to terminate NPDES discharge points when "partial" bond release is obtained.

6. Definition of Alkaline Mine Drainage

EPA received comment that the proposed definition for alkaline mine drainage imposes limitations for iron concentrations without regard to the form of the iron. The commenter noted that the primary mineral responsible for high total iron readings in certain western areas is magnetite. Magnetite (Fe_3O_4) is a naturally occurring iron mineral, which is in a form not typically associated with coal mining operations and acid mine drainage. In natural undisturbed conditions, the commenter cited that surface water samples register values for total iron as high as 40,000 mg/L (or 4%), due to the sediment, which is collected as part of the water sample. The commenter argued that the form of iron was not considered in the original mining regulations, and the commenter requested that EPA modify the definition of the Western Coal Mining Subcategory to include areas that have naturally-occurring high concentrations of iron due to magnetite.

Although EPA has not revised either the definition of alkaline mine drainage or western coal mining operations, EPA acknowledges the concern regarding the high levels of total iron that may be found in natural discharges from western alkaline coal regions. EPA recognizes that the geochemistry of the western arid and semiarid coal regions, which is predominated by sandstone and limestone, differs from that of the eastern coal regions. As a result, the production of acid mine drainage is much less typical due to the inherent buffering capacity. In addition, EPA recognizes that there is a low occurrence of pyrite in the west, which is the common culprit of acid mine drainage generation. Instead, iron often occurs in the form of magnetite (Fe_3O_4), an inert iron oxide that has no acid forming potential.

EPA evaluated the processes that produce acid mine drainage and the geologic conditions typical of the western alkaline coal regions to determine the most appropriate parameters for indicating alkaline mine drainage. In summary, EPA concluded that pyrite is generally uncommon in this coal region and that, if it does occur at a significant level, it can be identified by the presence of dissolved iron. For this reason, it is also appropriate to measure dissolved iron, in lieu of total iron, for surface runoff from the areas affected by the Western Alkaline Coal Mining Subcategory. Additionally, acid mine drainage in the western region is often prevented by the presence of carbonate minerals. Therefore, to ensure that acid-forming potential is not inherent to a particular discharge, EPA believes that an assessment of net alkalinity should be made. Determination of net alkalinity takes into account the effects of non-ferrous metals (e.g., Al, Mn), carbonates, and other substances, and, as such, negative values of net alkalinity are a true indication of potential acidity of drainage waters.

For these reasons, EPA has revised the applicability of the Western Alkaline Coal Mining Subcategory as follows: "This subpart applies to drainage at western coal mining operations from

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reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas where the discharge, before any treatment, meets all the following requirements: (1) pH is equal to or greater than 6; (2) dissolved iron concentration is less than 10 mg/L; and (3) net alkalinity is greater than zero." EPA believes that this will enable certain mines to use alternative sediment controls while maintaining the intent of the regulation that this subcategory does not apply to mines that produce acid mine drainage.

7. BPT for the Western Alkaline Coal Mining Subcategory

EPA is today promulgating BPT effluent limitations for the Western Alkaline Coal Mining Subcategory to control sediment in discharges from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. For further information on the basis for the limitations and technologies selected see the *Development Document for Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory.*

EPA determined that BPT for the Western Coal Mining Subcategory consists of designing and implementing BMPs to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions. EPA has developed this new subcategory primarily to addresss the negative environmental impacts created by the previous requirements.

Requirements for reclamation areas (40 CFR part 434, subpart E) establish BPT, BAT, and NSPS based on the use of sedimentation pond technology, and set effluent limitations for settleable solids and pH. The Subpart E guidelines apply to all reclamation areas throughout the United States, regardless of climate, topography, or type of mine drainage (i.e., acid or alkaline).

Subpart E establishes controls on the amount of settleable solids that can be discharged into waterways from reclamation areas. Although sedimentation ponds are proven to be effective at reducing sediment discharge, EPA believes that there are numerous non-water quality impacts that may harm the environment when construction of large sedimentation ponds in arid and semi arid regions are necessary to meet current effluent limits. The negative non-water quality impacts associated with existing regulations include: disturbing the natural hydrologic balance of arid and semiarid western drainage areas; accelerating erosion; reducing groundwater recharge; reducing water availability; and impacting large areas of land for sedimentation pond construction. A further discussion of these impacts can be found in Section VIII of this document and in the *Development Document for the Western Alkaline Coal Mining Subcategory.*

EPA has concluded that the current numeric requirements at subpart E are not appropriate for arid and semiarid western reclamation areas because of the negative non-water quality impacts associated with the predominant use of sedimentation ponds to meet these limits, as discussed above. The appropriate goal for reclamation and discharges from post-mined lands should be to mimic conditions that were present prior to mining activities. In order to do this, it is necessary to maintain the hydrologic balance and sediment loadings of pre-mining, undisturbed conditions on post-mined lands. EPA believes that use of BMPs, including sedimentation ponds where appropriate, to control discharges is the most effective control technology. Therefore, EPA is establishing BPT that consists of designing and implementing BMPs that are projected to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions. This would ensure that undisturbed conditions are maintained. In order to achieve these results, EPA requires that the coal mining operator develop a sediment control plan and demonstrate the effectiveness of the sediment controls through computer modeling. These requirements are detailed in the regulatory text.

EPA also evaluated the costs of BPT. As discussed in Section IX of this document, EPA estimates that today's regulation will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral for affected underground operators (although EPA believes that most will also incur cost savings). Therefore, implementing these standards will result in no facility closures or negative economic impact to the industry. EPA projects that the new subcategory will result in cost savings of $12.8 million to $13.2 million annually.

8. BCT for the Western Alkaline Coal Mining Subcategory

EPA is establishing BPT and BAT to control conventional, toxic, and non-conventional pollutants based on a sediment control plan. EPA is not establishing numeric effluent limitations for any conventional pollutant and EPA is not promulgating BCT limitations for this subcategory at this time.

9. BAT for the Western Alkaline Coal Mining Subcategory

EPA has not identified any more stringent treatment technology that could represent BAT level of control for maintaining discharge levels of solids consistent with pre-mined conditions on post-mined land in the western alkaline coal region. EPA is therefore establishing that BAT standards be equivalent to BPT. Further, as discussed in Section IX of this document, EPA estimates that today's regulation will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral for affected underground operators. Therefore, implementing BAT standards will result in no facility closures or negative economic impact to the industry.

10. NSPS for the Western Alkaline Coal Mining Subcategory

As discussed for BAT, EPA has not identified any more stringent treatment technology option that it considers to represent NSPS level of control. Further, EPA estimates that today's regulation will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral to affected underground operators. Therefore, implementing NSPS standards will result in no barrier to entry based upon the establishment of this level of control for new sources. EPA has therefore determined that NSPS standards be established equivalent to BAT.

VI. Statistical and Monitoring Procedures for the Coal Remining Subcategory

A. Statistical Procedures for the Coal Remining Subcategory

EPA's statistical procedures are presented in Appendix B of the regulation and described in detail in the *Coal Remining Statistical Support Document.* The procedures in Appendix B apply to the Coal Remining Subcategory.

The regulatory text requires that calculations described in Appendix B be applied to pollutant loadings. Pollutant loadings are calculated as the product of a flow measurement and a pollutant concentration. As described in the proposal, EPA has interpreted the Rahall amendment's requirement not to exceed a pollutant baseline "level" as a requirement not to exceed a pollutant baseline loading. EPA's record demonstrates that BMPs applied during remining act principally by reducing discharge flow and pollutant loading. In fact, pollutant concentration may actually increase in some cases where the pollutant quantity (loading) is

reduced substantially. Setting limits based on concentrations would very likely inhibit beneficial remining projects and would be counter-productive and ineffective. To achieve pollutant reductions from remining, EPA concluded that it is essential to set limits for pollutant loadings rather than concentrations.

The objective of these statistical procedures is to provide a method for deciding when the pollutant levels of a discharge exceed baseline pollutant levels. These procedures are intended to detect a substantial, continuing state of exceedance, while reducing the likelihood of a "false alarm." To do this, it is essential to a have an adequate duration and frequency of sample collection to determine baseline levels and to determine compliance with these levels.

In developing these procedures, EPA considered the statistical distribution and characteristics of discharge loadings data from pre-existing discharges, the suitability of parametric and non-parametric statistical procedures for such data, the number of samples required for these procedures to perform adequately and reliably, and the balance between false positive and false negative decision error rates. EPA also considered the cost involved with sample collection as well as delays in permit approval during the establishment of baseline, and considered the potential that increased sampling could discourage remining. In order to sufficiently characterize pollutant levels during baseline determination and during each annual monitoring period, EPA is requiring that the results of at least one sample be obtained per month for a period of 12 months.

EPA evaluated the statistical properties of eastern coal mine discharge data (EPA's Coal Remining Database, DCN 1335 and the *Statistical Analysis of Abandoned Mine Drainage in the Assessment of Pollution Load,* EPA (821–B–01–014). EPA verified its findings as discussed in the proposal on relative variability of pollutant loadings. EPA also characterized the serial correlation of loadings and flow. EPA found that (a) to a first approximation, loadings might reasonably be described by a first-order autoregressive model, and (b) the coefficient of serial correlation for loadings at a one-month time lag typically ranged from 0.35 to 0.65, with the median near 0.50.

EPA evaluated the proposed statistical procedures and a variety of parametric and non-parametric alternative procedures to determine their decision error rates, their suitability for serially correlated data, and their ability to accommodate zero loadings and negative loadings. As a result of these evaluations, EPA modified the proposed statistical procedures so as to achieve the objective stated in the preamble to the proposed rule: to have a power of at least 0.75 for detecting an increase of one standard deviation in the average for loadings, while minimizing the chance of 'false alarms' in the event that the average loading decreases or remains unchanged.

Zero loadings are expected to occur, at least for some remining sites, after regrading and contouring when discharge flows may be reduced greatly; zero flows have been observed after remining at some mine sites (EPA's Coal Remining Database, DCN 1335 and the *Coal Remining BMP Guidance Manual*). Negative values of loadings are possible and have been observed for net acidity at some mine sites.

Serial correlation has a profound influence over the power of statistical procedures. The statistical procedures, as proposed, were more suitable for uncorrelated data than for serially correlated data. EPA modified the procedures so that they have the intended power when applied to serially correlated loadings data of the sort typical of remining sites in the eastern U.S. (Record section 11.1). The modifications consisted of (a) increasing the number of times in succession that the baseline trigger value must be exceeded for additional sampling or treatment to be required, (b) changing numeric constants used in the calculation of baseline trigger values, and (c) under proposed Procedure B, dropping the parametric statistical methods and providing a nonparametric calculation for the single-observation trigger.

In the preamble to the proposed rule, EPA discussed the potential problem of unrepresentative baseline years and optional measures that could mitigate the uncertainty of characterizing the baseline loadings. It is possible that one year of sampling may not accurately characterize baseline levels, because discharge flows can vary among years in response to inter-year variations in rainfall and ground water flow. There is some risk that the particular year chosen to characterize baseline flows and loadings will be a year of atypically high or low flow or loadings. There may be a need to evaluate differences among baseline years in loadings and flows. Therefore, EPA investigated optional procedures that could be used to account for the uncertainty in characterizing baseline from a one-year sample duration, or that could be used to account for the unrepresentative character of a baseline sampling year. EPA evaluated correlations between discharge flow and various parameters of existing mine discharge data and indices for which data spanning over many years are available to the public (i.e., Palmer Indices, Standardized Precipitation Index, Crop Moisture Index, Surface Water Supply Index, and USGS Current and Historical Daily Streamflow). EPA concluded that historical stream flow data from a USGS gage station associated with a discharge could be used to test whether the given baseline year was significantly different from the previous years. This would be done by comparing the mean stream flow for the baseline year to the 2.5th and 97.5th percentiles of annual mean stream flows prior to the baseline year. If the mean stream flow for the baseline year falls below the 2.5th percentile or above the 97.5th percentile, corrective action can be taken on the baseline data, and EPA recommends that the operator or permitting authority conduct additional monitoring to establish a meaningful baseline. However, due to the site-specific nature of discharges and the variability of streamflow compared to discharge data, EPA was unable to establish any optional procedure that could incorporate existing data from public sources into a meaningful baseline calculation.

Stakeholders have commented that, occasionally, a pre-existing discharge may contain iron or manganese concentrations that are lower than the current subpart E effluent limitations established for active mine wastewater. In these circumstances, the baseline standards may be a disincentive for remining because the operator may have to treat a discharge to levels below those currently required by BAT for active mine discharges. This may be a disincentive for remining operations. Therefore, EPA has incorporated a methodology in the statistical procedure for determining baseline so that the BAT concentration limit is substituted for certain baseline measurements when a measured concentration is below the BAT limit.

B. Evaluation of Statistical Triggers

EPA evaluated the power of the statistical triggers in Section VIII of the proposed rule. Power can be defined in plain language as the frequency with which a statistical decision procedure will declare that remining loadings exceed baseline loadings when the remining loadings truly are greater than baseline loadings.

The ideal statistical procedure would always declare "not larger" when

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remining pollutant loadings are less than or equal to baseline loadings, and would always signal "larger" when remining loadings exceeded baseline. No such ideal procedure exists. Instead, the rate of signaling "larger" will increase as the average difference between baseline and remining loadings increases in magnitude. Statistical triggers may be "tuned" by choosing their numeric constants so that a compromise is achieved between false alarms (that is, signaling "larger" when remining loadings are not larger than baseline loadings) and correct alarms (when remining loadings truly are greater).

Power of the statistical triggers was evaluated by simulating a 60-month monitoring program for 5000 discharges, and recording the frequency with which the triggers indicated that the remining loadings exceeded baseline. The evaluations of power led to a choice of numeric constants that achieve a reasonable balance between false alarms and correct alarms.

This reasonable balance was considered to be achieved when a trigger produced the following results:

(1) When there was no change in loadings from the baseline to remining time period, the power ("false alarm rate"; type-I error rate) was not larger than that for the triggers used by Pennsylvania's successful remining program;

(2) When there was a decrease of 0.5 standard deviations in the mean loading after the baseline period, the power ("false alarm rate," in this case the probability of concluding that loadings increased during remining when they actually decreased) was smaller than 5%;

(3) When the mean loading increased by 1 to 2 standard deviations after the baseline period, the power ("correct alarm rate") was maximized.

EPA reached several conclusions about the proposed statistical triggers based on these evaluations.

(1) The proposed Cumulative Sum Control Chart (CUSUM) method under Procedure B did not add value to the simpler monthly and annual comparisons. Accordingly, the CUSUM method is omitted from Appendix B to the final rule.

(2) The magnitude of serial correlation has a substantial effect on power. Statistical triggers that have reasonable power when there is no serial correlation could be unreasonable when there is substantial serial correlation, because they could then have very high rates of type I errors (false alarms). It was necessary to select numeric constants for the statistical triggers that are appropriate to data having autocorrelation. For evaluating and comparing statistical methods and triggers, EPA relied primarily upon the power in simulations for which the first-order autocorrelation coefficient took the value of 0.5.

(3) The Single Observation Trigger of the proposed Procedure A had a high rate of declaring loadings to be larger than baseline when they were not. The Single Observation Trigger was therefore modified to agree with the method that has long been used successfully in the State of Pennsylvania. The statistical modification was to change the Single Observation Trigger at Step 5 from *"If any two observations exceed L during weekly monitoring, * * *"* to the following: *"If all four weekly observations exceed L during weekly monitoring, * * *"*

(4) Proposed Procedure B, "E. Annual Comparisons," also had a high rate of declaring loadings to be larger than baseline when they were not. This part of proposed Procedure B was modified to require use of Tables for the 99.9% level (alpha = 0.001) rather than the 95% level (alpha = 0.05) for the Wilcoxon-Mann-Whitney Test.

(5) The Single Observation Limit of the proposed Procedure B was changed from a parametric to a nonparametric method which has similar power. The nonparametric method accommodates zero flows (which may occur during remining) and negatively-valued loading data (which may occur for net acidity) without requiring additional or complex modifications (as the proposed parametric method would).

(6) The annual (subtle trigger) and single-observation (quick trigger) triggers long used in Pennsylvania were included in the simulations. EPA believes that the error rates and power of these triggers were acceptable in practice because BMPs reduced discharge loadings substantially. Hawkins (1994) reviewed the application of these triggers to remining operations in Pennsylvania, and concluded that the rates of triggering were low because remining almost always reduced loadings substantially. EPA's *Coal Remining Best Management Practices Guidance Manual* includes an extensive analysis of remining discharges that supports this conclusion. EPA concluded that the statistical triggers that Pennsylvania uses in its remining program are acceptable and effective. Method 1 of the Final Rule follows the Pennsylvania triggers exactly except that a different constant (1.815 = 1.96 * 1.25 / 1.35) is used in the formula for the Annual Procedure in order to decrease the likelihood of obtaining false positives. Pennsylvania uses a more stringent number (1.58 = 1.7 * 1.25 / 1.35). For a complete discussion of EPA's rationale and selection of statistical methodology, see the *Coal Mining Statistical Support Document.*

(7) The evaluation of power applies to a worst-case situation. In particular, the rate of declaring loadings to be larger than baseline when they are not is overstated by the results. It is evaluated in terms of the percentage of mines that would experience at least one finding that loadings exceed the baseline level over a period of five years (60 months), when in fact there has been no change from baseline. In practice, the area contributing to a discharge should be remined and regraded in less time, after which the discharge flow and loading will be substantially reduced. Thus, the time period during which one can expect loadings at the baseline level typically will be shorter than five years. This in turn will mean lower percentages than reported in Table 1 for the condition of no change from baseline loadings.

(8) The procedures as proposed had unreasonably high "false alarm rates" because they were designed for uncorrelated data. The modified procedures provided for the final regulation have reasonable performance when applied to serially-correlated, lognormally-distributed data typical of coal mine discharge loadings.

The power of statistical triggers for the final regulation is shown in Table VI.B.1. The results show that Method 1 and Method 2 have comparable power. The main difference stems from the Monthly Procedure, which has higher power when Method 1 is used. Note that the Annual Procedure used without the Monthly Procedure would not have a high rate of detecting an increase of one standard deviation above baseline. Used in combination, the monthly and annual triggers provide power over 90% to detect substantial increases above baseline at least once during five years, although in practice the power will be smaller for reasons discussed above under (7).

TABLE VI.B.1.—STATISTICAL TRIGGERS AS MODIFIED FOR FINAL REGULATION: PERCENTAGE OF MINES DECLARED TO EXCEED BASELINE LEVEL (AT LEAST ONCE DURING 5 YEARS OF SIMULATED MONTHLY MONITORING) [1]

Annual trigger [3]	Monthly trigger [4]	Shift from baseline to remining period [2]			
		−0.5	0	+1	2
None	Method 1	10	33	89	99
Method 1 (a=1.96)	none	3	11	59	94
Method 1 (a=1.96)	Method 1	12	39	93	100
Method 1 (a=1.96)	Method 2	7	29	91	100
None	Method 2	5	22	86	100
Method 2 (α=0.001)	none	2	11	65	97
Method 2 (α=0.001)	Method 2	7	28	91	100
Method 2 (α=0.001)	Method 1	12	38	93	100

[1] Assumes monthly serial correlation of 0.5 for log(x), with x distributed lognormally. Percentages were rounded to the nearest 1%.
[2] The shift was scaled in terms of standard deviation units (sigma symbol = standard deviation)
[3] Annual procedures: Method 1 of the final regulation is the Subtle Trigger under Procedure A of the proposed regulation, with the leading constant changed from 1.58 to 1.96. Method 2 of the final regulation is the Wilcoxon-Mann-Whitney Test under Procedure B (E. Annual Comparisons) of the proposed regulation, with the significance level changed from 0.05 to 0.001.
[4] Monthly procedures: Method 1 of the final regulation is the Single-Observation Trigger under Procedure A of the proposed regulation. Method 2 of the final regulation is a nonparametric replacement for the parametric Single-Observation Trigger under Procedure A of the proposed regulation.

C. Sample Collection To Establish Baseline Conditions and To Monitor Compliance for the Coal Remining Subcategory

EPA evaluated the duration and frequency of sampling necessary to apply the statistical procedures. Those procedures are used to compare the levels of baseline loadings to the levels of loadings during remining or the period when the discharge is permitted. Without an adequate duration and frequency of sampling, the statistical procedures would often fail to detect genuine exceedance of baseline conditions or could establish baseline levels that are established as either too low or too high.

Based on the considerations described below, EPA proposed that the smallest acceptable number and frequency of samples is 12 monthly samples, taken consecutively over the course of one year. In the proposal, EPA raised the possibility that seasonal stratification might have the potential to provide a basis for more precise estimates of baseline characteristics, if the sampling plan is designed and executed correctly and if results are calculated using appropriate statistical estimators, and that there may be alternative plans that could be based upon subdivision of the year into distinct time periods. These time periods might be sampled with different intensities, or could be based on other types of stratified sampling plans that attempt to account for seasonal variations. EPA received several comments stating that a baseline sampling period of less than 12 months may be appropriate.

EPA considers an adequate number of samples to be that number that would allow an appropriate statistical procedure to detect an increase of one standard deviation in the mean or median loading between a baseline year and a monitoring year with a probability (power) of at least 0.75.

The power analysis used in the proposed statistical procedures was based on a two-sample t-test. The t-test can be an appropriate statistical procedure for a yearly comparison because loadings from mine discharges appear to be approximately distributed log-normally, and thus logarithms of loadings are expected to be approximately distributed normally. The (non-parametric) Wilcoxon-Mann-Whitney test is also appropriate for yearly comparisons and has a power nearly equal to that of the t-test when applied to normally distributed data. EPA determined that annual comparisons of baseline to remining years based upon 12 samples in each year were expected to have a power 0.75 to detect a difference of one standard deviation. While the t-test was dropped as a statistical procedure for assessing baseline in the Final Rule, the analyses defined in Appendix B, including the Wilcoxon-Mann-Whitney test, were designed to have similar power if 12 baseline samples were collected. If significant autocorrelation is present between samples (as discussed in section VI.B), the estimated power is likely to be less than 0.75; therefore, 12 samples should be considered the minimum acceptable for determining baseline.

An increase of one standard deviation can represent a large increase in loading, given the large variability of flows and loadings observed in mine discharges. The coefficient of variation (CV) is the ratio of the standard deviation to the mean of the observations. Sample CVs for iron loadings range approximately from 0.25 to 4.00, and commonly exceed 1.00. Sample CVs for manganese loadings range approximately from 0.24 to 5.00. When the CV equals 1.00, an increase of the average loading by one standard deviation above baseline implies a doubling of the loading.

The duration, frequency, and seasonal distribution of sampling are important aspects of a sampling plan, and can affect the precision and accuracy of statistical estimates as much as can the number of samples. To avoid systematic bias, sampling, during and after baseline determination, should systematically cover all periods of the year during which substantially high or low discharge flows can be expected.

Unequal sampling of months could bias the baseline mean or median toward high or low loadings by over-sampling of high-flow or low-flow months. However, unequal sampling of different time periods can be accounted for using statistical estimation procedures appropriate to stratified sampling. Stratified seasonal sampling, possibly with unequal sampling of different time periods, is a suitable alternative to regular monthly sampling, provided that correct statistical estimation procedures for stratified sampling are applied to estimate the mean, median, variance, interquartile range, and other quantities used in the statistical procedures, and provided that at least one sample be taken per month over the course of 1 year.

In conclusion, EPA is promulgating a statistical procedure that requires a minimum of 12 monthly samples, taken

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consecutively over the course of one year to determine baseline.

D. Regulated Pollutant Parameters in Pre-Existing Discharges

EPA proposed to regulate iron, manganese, and pH, which are the parameters addressed by the Rahall Amendment and are a subset of the parameters directly regulated in 40 CFR part 434. Additionally, EPA solicited comment in the proposal and NODA on regulating acidity instead of pH, on establishing alternative limits for sediment, and on establishing limitations or monitoring requirements for additional parameters such as sulfate. Based on comments received and on further data evaluation, EPA is establishing limitations for iron, manganese, net acidity, and solids. These issues are addressed below.

1. Acidity

The Rahall Amendment provides an exemption for remining operations from BAT effluent limitations for the pH level in pre-existing discharges. In the proposed rule, EPA solicited comment on the use of acidity instead of pH for pre-existing discharges. In very dilute or pure water, pH can be considered a measurement of acidity. In drainage from abandoned coal mines, however, pH is an indication of the instantaneous hydrogen ion concentration, and does not measure the potential of the solution to produce additional hydrogen from metals or carbon dioxide during neutralization or further oxidation. Because hydrogen ions are only one component of the acidity that can occur in acid mine drainage, there can be instances where, although the pH is nearly neutral, acidity exceeds alkalinity. Therefore, EPA concluded that the reduction of pollutant loadings can best be achieved by evaluating acidity, which includes pH.

In the final rule, pollutant loading is used to define baseline conditions for remining operations because loading captures both pollutant concentration and discharge flow. Although it is possible to determine a pH load (*i.e.*, load of H^+ ions), it is not very meaningful because pH load does not account for the latent acidity that is present in the form of dissolved metals or carbon dioxide. Additionally, in cases where treatment of discharges is required, the amount of treatment is based on acidity or net alkalinity rather than on pH. For this reason, acidity data already are typically submitted with remining permit applications and reporting. Pollutant loading is also used to determine mass balances and the effects of a discharge on a receiving waterbody. Such a determination is possible for acidity, net acidity, or alkalinity, but is not likely to be meaningful for pH because mixing can result in precipitation or dissolution of ions.

EPA notes that commenters were unanimous in their support for the use of acidity instead of pH. For these reasons, EPA has modified the limitations in the final rule to require compliance with baseline net acidity determinations.

2. Sulfate

EPA also solicited comments and data regarding the merits of using sulfate as a parameter for assessment of pollution loading from pre-existing discharges. Commenters agreed that this is a useful parameter for determining whether or not a pre-existing discharge is affected by mine drainage, and how remining BMPs have affected the discharge. However, commenters noted that it should be assessed as part of the baseline and for the potential effects of remining, but should not be included as a baseline effluent limit.

EPA concluded that sulfate is a useful parameter for evaluating the effectiveness of BMPs implemented under a Pollution Abatement Plan, and is aware that current State remining programs request that sulfate data are submitted during permit application and periodic reporting. EPA encourages this practice, but EPA agrees with commenters that effluent limitations for sulfate are unnecessary to determine that pre-existing discharge loadings are not increased over baseline.

3. Solids

EPA did not initially propose alternative limits for solids. However, due to comments received on the proposal, EPA issued a Notice of Data Availability (NODA) presenting commenters' concerns and new data submitted to EPA regarding solids levels in pre-existing discharges. EPA received numerous comments on the NODA which supported EPA's decision to adopt alternative limits for solids.

Based on the existing conditions of sediment present at some AML, EPA concluded that the benefits of remining may be severely limited if EPA does not address sediment in the final rule. Consistent with the intent of the Rahall Amendment, which seeks to encourage remining while ensuring that the remining activity will potentially improve and reclaim AML, EPA is establishing alternative limits for TSS such that the sediment load of the pre-existing discharge cannot be increased over baseline during remining and reclamation activities.

EPA believes that the final regulation is consistent with SMCRA which mandates the prevention of additional contribution of suspended solids to streamflow to the extent possible using the best technology currently available. EPA has adopted what is essentially a compliance schedule so that, during remining and reclamation activities, the operator cannot contribute sediment levels beyond the baseline discharge loading. After remining and reclamation has been completed, the operator must meet the standards for TSS and SS contained in subpart E—Post Mining areas prior to bond release. EPA concluded that the implementation of successful sediment control BMPs should, in most cases, be able to meet the BPT standards contained in subpart E—Post Mining areas regardless of whether the area has been disturbed due to remining or virgin mining.

Based on comments provided, however, EPA believes that there may be some exceptions where the post-mining sediment standards may not be economically feasible and may be detrimental for remining areas. Therefore, EPA has provided an exclusion from the post-mining sediment standards for "steep-slope" areas and other areas where the permitting authority determines it is infeasible or impractical based on the site-specific conditions of soil, climate, topography, or baseline conditions. In these instances, the pre-existing discharge must still meet the alternative baseline standards.

An example of when it would be impractical to establish subpart E numeric standards would be a tract of AML in the pollution abatement area that is not disturbed by remining. In this case, voluntary vegetative growth may have already been established and sediment runoff may be minimal. In this case, however, the AML area may not support 100% plant coverage and the discharge may contain a moderate amount of sediment that does not meet the subpart E numeric standards. In this case, the NPDES permitting authority may decide that it would be excessively costly and may even be more harmful to disturb the area, reclaim the land, revegetate the area and incorporate BMPs to meet the subpart E standards. EPA believes that this exclusion establishes necessary flexibility to permit authorities to adopt the most environmentally beneficial and cost-effective approach to reclamation.

During remining, the alternative limits for TSS are to be established in a manner consistent with the alternative

limits established for acidity, iron, and manganese (*i.e.*, based on the statistical methodology provided in Appendix B of the final regulation). The statistical procedures are described in Section VI.A above. This protocol requires a minimum of 12 monthly samples to establish baseline. EPA recommends that baseline sediment sampling include precipitation events in order to adequately characterize the baseline where runoff contributes directly to the sediment load.

VII. Non-Water Quality Environmental Impacts of Final Regulations

The elimination or reduction of pollution has the potential to aggravate non water quality environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of this regulation on air pollution, solid waste generation, energy consumption, and safety. Today's rule does not require the implementation of treatment technologies that result in any increase in air emissions, in solid waste generation or in energy consumption over present industry activities.

Non-water quality environmental impacts are a major consideration for this rule because the rule is intended to improve or eliminate a number of existing non-water quality environmental and safety problems. Remining operations have improved or eliminated adverse non-water quality environmental conditions such as abandoned and dangerous highwalls, dangerous spoil piles and embankments, dangerous impoundments, subsidence, mine openings, and clogged streams that pose a threat to health, safety, and the general welfare of people. EPA projects that remining has the potential to eliminate nearly three million feet of dangerous highwall in the Appalachian and mid-Continent coal regions.

EPA also does not expect today's rule to have an adverse impact on health, safety, and the general welfare of people in the arid and semiarid western coal region. The intent of the rule is to allow runoff to flow naturally from disturbed and reclaimed areas. EPA believes that, in most cases, this is preferable to retention in sedimentation ponds that is accompanied by periodic releases of runoff containing sediment imbalances potentially disruptive to land stability. Alternate sediment control technologies in these regions address and alleviate adverse non-water quality environmental conditions such as: quickly eroding stream banks, water loss through evaporation, soil and slope instability, and lack of vegetation.

Based on this evaluation, EPA concluded that the regulations being promulgated today under these new subcategories will improve existing AML conditions in the eastern United States and will improve the hydrologic imbalances produced by application of current regulations in the western arid and semiarid United States.

VIII. Environmental Benefits Analysis

EPA presented estimates of the environmental benefits of today's regulation in Section IX of the proposal. The benefits assessment for the Coal Remining Subcategory is identical to the assessment performed at proposal. For the Western Alkaline Coal Mining Subcategory, the methodology for the assessment is identical to that performed at proposal. However, the calculations have changed due to the incorporation of additional data provided by two model mine studies submitted during the comment period.

EPA's complete benefits assessment can be found in *Benefits Assessment of Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories* (hereafter referred to as the "Benefits Assessment"). A detailed summary is also contained in Chapter 8 of *Economic and Environmental Impact Analysis of Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories* (hereafter referred to as the "EA").

A. Coal Remining Subcategory

The water quality improvements associated with today's rule for remining depend on (1) changes in annual permitting rates for remining; (2) characteristics of sites selected for remining; and (3) the type and magnitude of the environmental improvements expected from remining. Remining permits in Pennsylvania increased by an estimated factor of three to eight following State implementation of a regulation that is similar to today's remining rule. EPA believes that implementing today's rule is likely to have a similar effect on other States with remineable coal reserves and similar abandoned mine drainage problems. The type and magnitude of site-specific water quality improvements under the final rule are not expected to be dramatically different than those that have occurred under existing requirements in Pennsylvania.

Of approximately 9,500 miles of acid mine drainage impacted streams in States where coal mining has previously occurred (Record Section 3.2.2), EPA estimates that remining operations have the potential to improve 2,900 to 4,800 miles of impacted streams, and that 1,100 to 2,100 miles of these streams may demonstrate significant improvement. EPA estimates that one to six miles of stream may see improvement for every 1,000 acres of abandoned mine land reclaimed. Based on an average of 38 acres of AML reclamation per permit, EPA estimates approximately 0.04 to 0.2 miles of stream improvement per remining project. EPA estimates that AML sites affected by the rule have an average of 70 highwall feet per acre. EPA also estimates that an additional 216,000 to 307,000 feet of highwall (41 to 58 miles) will be targeted for removal each year as a result of today's rule.

EPA assessed the potential impacts of remining BMPs on water quality using pollutant loadings data from pre-existing discharges at 13 mines included in EPA's Coal Remining Database (Record Section 3.5.1). Approximately 58 percent of the post-baseline observations showed a decrease in mean pollutant loadings. Approximately half of these sites (27 percent of the post-baseline observations) showed a statistically significant decrease in loadings. The 13 mines examined by EPA are active remining operations; decreases in pollutant loads are expected to become more significant with time. In comparison, Pennsylvania's Remining Site Study of 112 closed remining sites (Record Section 3.5.3) found that the Pennsylvania program for these sites was effective in improving or eliminating acidity loading in 45 percent of the pre-existing discharges, total iron loading in 44 percent of the discharges, and total manganese in 42 percent of the discharges. The Pennsylvania Remining Site Study focused on sites reclaimed to at least Stage II bond release standards, so that the mitigating impacts of BMPs had ample time to take effect.

Remining generates human health benefits by reducing the risk of injury at AML sites and reducing discharge of acid mine drainage to waterways. However, the human health benefits associated with consumption of water and organisms are not likely to be significant because (1) acid mine drainage constituents are not bioaccumulative, and adverse health effects associated with fish consumption are therefore not expected; and (2) public drinking water sources are

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treated for most acid mine drainage constituents associated with adverse health effects. Eliminating safety hazards by closing abandoned mine openings, eliminating highwalls, stabilizing unstable spoils, and removing hazardous waterbodies potentially prevents injuries and saves lives.

EPA evaluated the potential impacts to human and aquatic life by comparing the number of water quality criteria exceedances in receiving waterbodies in the baseline (pre-remining) and post-baseline sampling periods for 11 remining sites in the Coal Remining Database for which relevant data exist. Exceedances of the human health criterion for pH (water plus organism consumption, field pH) were eliminated at two sites while exceedances of chronic aquatic life criteria were eliminated for pH (field pH) and iron at two sites. Exceedances of the acute aquatic life criterion for manganese also were eliminated at two sites. Although surface water quality data examined indicate changes in the number of water quality exceedances due to remining, nine of the 11 sites consist of active remining operations where the full environmental impacts of BMPs have yet to be realized. Correlations between pre-existing discharge loads and pollutant concentrations in receiving water can be used to determine the extent to which remining BMPs are responsible for changes in surface water quality. However, the lack of sufficient data on relevant sources of acid mine drainage upstream from pre-existing discharges at the selected mine sites made it difficult to estimate these correlations.

Remining and the associated reclamation of AML is expected to generate ecological and recreational benefits by (1) improving terrestrial wildlife habitat, (2) reducing pollutant concentrations below levels that adversely affect aquatic biota, and (3) improving the aesthetic quality of land and water resources. EPA was able to quantify and monetize some of the benefits expected from increased remining using a benefits transfer approach. The benefits transfer approach relies on information from existing benefit studies applicable to assessing the benefits of improved environmental conditions at remining sites. Benefits are estimated by multiplying relevant values from the literature by the additional acreage reclaimed under the remining subcategory.

EPA used the following assumptions to estimate annual benefit values for ecological improvements: (1) 3,100 to 4,400 acres will be permitted annually under the subcategory; (2) 57 percent of the acres permitted will actually be reclaimed (1,800 to 2,500 acres) ; (3) 38 percent to 44 percent of acres reclaimed per year are expected to be associated with significant decreases in acid mine drainage (AMD) pollutant loads to surface water bodies; and (4) annualized benefits from remining begin to occur five years after permit issuance and are calculated for a five year period. EPA assumed that 57 percent of the acres permitted would actually be reclaimed based on a study of 105 remining permits in Pennsylvania (Hawkins, 1995, *Characterization and Effectiveness of Remining Abandoned Coal Mines in Pennsylvania*). The study found that on average, a remining site had 67 AML acres, of which 38 acres (or 57 percent) were actually reclaimed. The assumption that 38 to 44 percent of acres reclaimed would be associated with significant decreases in AMD pollutant loads was based on the results of Pennsylvania's study of 112 closed remining sites. A detailed explanation of all assumptions is provided in the Benefits Assessment document for the proposed rule.

EPA estimated water-related ecological benefits using the benefits transfer approach with values taken from a benefit-cost study of surface mine reclamation in central Appalachia by Randall et al. (1978, *Reclaiming Coal Surface Mines in Central Appalachia: A Case Study of the Benefits and Costs*). EPA's analysis is based on two values from the study: (1) Degradation of life-support systems for aquatic and terrestrial wildlife and recreation resources, valued at $37 per acre per year (1998$); and (2) aesthetic damages, valued at $140 per acre per year (1998$). EPA estimated nonuse benefits using a widely accepted approach developed by Fisher and Raucher (1984, *Intrinsic Benefits of Improved Water Quality: Conceptual and Empirical Perspectives*), where nonuse benefits are estimated as one-half of the estimated water-related recreational use benefits. The estimated water-related benefits range from $0.53 to $0.89 million per year.

Reclaiming the surface area at AML sites will enhance the sites' appearance and improve wildlife habitats, positively affecting populations of various wildlife species, including game birds. This is likely to have a positive effect on wildlife-oriented recreation, including hunting and wildlife viewing. EPA estimated land-related ecological benefits using the benefits transfer approach with values taken from a study of improved opportunities for hunting and wildlife viewing resulting from open space preservation by Feather et al. (1999, *Economic Valuation of Environmental Benefits and the Targeting Conservation Programs*). EPA's analysis is based on two values from the study: (1) The average wildlife viewing value of $21 per acre per year; and (2) the improved pheasant hunting value of $7 per acre per year. Based on an aggregate value of $28 per acre per year, EPA estimates land-related benefits of $0.20 to $0.29 million per year.

The sum of the estimated monetary values of the different benefit categories results in total annual benefits of $0.73 to $1.17 million from implementing the remining subcategory. This estimate does not include benefit categories that EPA was unable to quantify and/or monetize, which include human health and safety impacts. EPA examined a number of data sources to determine the annual rate of accidents associated with exposed highwall and other hazardous features of AML in order to estimate the benefits attributable to the decreased risk resulting from remining safety improvements. EPA contacted State and Federal agencies responsible for AML statistics as well as agencies responsible for maintaining public health statistics and concluded that the necessary information was not available to support such an analysis.

B. Western Alkaline Coal Mining Subcategory

Only a small percentage of potentially affected western coal mines discharge to permanent or perennial water bodies. Information about receiving waters is available for 39 of the existing surface coal mines affected by this rule, and 30 of these discharge to intermittent or ephemeral creeks, washes, or arroyos. Only two of these mines list a permanent water body as the primary receiving water. It is therefore difficult to describe the benefits of the Western Alkaline Coal Mining Subcategory in terms of the use designations referenced in the section 101(a) goals of the Clean Water Act.

The environmental conditions and naturally high sediment yields in arid and semiarid coal regions were discussed in Section IV of the proposal. The potential impacts of the predominant use of sedimentation ponds to control settleable solids in these regions include reduced sediment loads to natural drainage features, reduced downstream flood peaks and runoff volumes, and downstream channel bed and bank changes. The environmental and water quality effects of these hydrologic impacts include: (1) Reducing ground water recharge, (2) shrinking biological communities consisting of and reliant upon riparian and hydrophytic vegetation, (3) degrading downstream channel beds by cleaner waters, resulting from retention of water and sediment runoff, and (4) accelerating erosion. Because of the depletion of runoff associated with such ponds, the potential impact to endangered fish species exists in some watersheds in the West. Therefore, construction of sedimentation ponds in Utah, Colorado or Southern Wyoming that results in an additional water depletion to the upper Colorado or Platte River system triggers formal Section 7 Endangered Species Act consultation with the U.S. Fish and Wildlife Service.

Site-specific alternative sediment control plans incorporating BMPs designed and implemented to control sediment and erosion have the potential to provide both land and water-related benefits. Land-related benefits include decreased surface area disturbance, increased soil conservation, and improved vegetation. Surface disturbance is estimated to decrease by approximately 600 acres per year across all existing potentially affected surface mine sites in the western region. Vegetative cover may increase by five percent when BMPs are used.

EPA was only able to monetize land-related benefits associated with decreased surface area disturbance. Hunting benefits from increased availability of undisturbed open space were estimated to be between $0.37 and $2.46 per acre per year based on Feather et al. (1999) and Scott (Scott, M., G.R. Bilyard, S.O. Link, C.A. Ulibarri, H. Westerdahl, P.F. Ricci, and H.E. Seely. 1998. Valuation of Ecological Resources and Functions. *Environmental Management, Vol. 22, No 1:49–68*). Annual land-related benefits of the subcategory range from $2,000 to $13,000 per year, based on the value of enhanced hunting opportunities. However, this estimate does not account for a number of benefit categories, including nonuse ecological benefits that may account for the major portion of land-related benefits in relatively unpopulated areas such as those affected by this rule.

Water-related benefits include improved hydrologic and fluvial stability in the watersheds affected by western mining operations. These benefits will be site-specific and depend upon the nature of environmental quality changes; the current in-stream water uses, if any, and; the population expected to benefit from increased water quantity. EPA estimated water-related benefits using the estimated mean "willingness to pay" (WTP) values for preservation of perennial stream flows adequate to support abundant stream side plants, animals and fish from Crandall et al. (1992, *Valuing Riparian Areas: A Southwestern Case Study*). The WTP value is applied to water-based recreation consumers residing in counties affected by western mining operations discharging to, or affecting, water bodies with perennial flow. EPA identified seven perennial streams located in six counties that are likely to be affected by today's rule. The estimated monetary value of recreational water-related benefits for these streams ranges from $25,000 to $488,000. As noted above, EPA estimates that nonuse benefits are equal to one-half of the water-related recreational benefits, or $12,500 to $244,000 per year.

Total estimated annualized benefits for the subcategory range from $39,500 to $745,000. This estimate does not include benefit categories that EPA was unable to quantify and/or monetize, which include increased vegetative cover and some additional recreational and nonuse benefits associated with western alkaline coal mine reclamation areas. A more detailed discussion of the benefits analysis is contained in the EA.

IX. Economic Analysis

A. Introduction, Overview, and Sources of Data

This section presents EPA's estimates of the economic impacts attributed to the final regulation. The economic impacts are evaluated for each subcategory for BPT, BCT, BAT, and NSPS as applicable. A description of the regulatory requirements for each subcategory is given in Section V of today's document. EPA's detailed economic impact assessment can be found in *Economic and Environmental Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories* (referred to as the "EA"). Additional information can be found in *Coal Remining and Western Alkaline Mining: Economic and Environmental Profile*, which EPA prepared in support of the proposed rulemaking.

This section of today's document describes the segment of the coal industry that would be impacted by the final rule (*i.e.*, the number of firms and number of mines that would incur costs or realize savings under the final rule), the financial condition of the potentially affected firms, the aggregate cost or cost savings to that segment, and the economic impacts attributed to the final rule. The section also discusses impacts on small entities and presents a cost-benefit analysis. This discussion will form the basis for EPA's findings on regulatory flexibility, presented in Section X.B. All costs are reported in 1998 dollars unless otherwise noted.

EPA developed this regulation using an expedited rulemaking procedure. Therefore, EPA's economic analysis relied on industry profile information voluntarily provided by stakeholders, on data compiled from individual mining permits, and on data from publicly available sources. For the Coal Remining Subcategory, EPA obtained information on abandoned mine lands from the Abandoned Mine Lands Information System (AMLIS) maintained by the Office of Surface Mining (Record Section 3.5.2), the National Abandoned Lands Inventory System (NALIS) database maintained by the Pennsylvania Department of Environmental Protection (Record Section 3.5.5), and a survey of States conducted by the Interstate Mining Compact Commission (Record Section 3.2.2). For the Western Alkaline Coal Mining Subcategory, EPA relied on industry profile data developed and submitted to EPA by the Western Coal Mining Work Group as described in Section V of the proposal. Specifically, the work group provided data on coal mine operators, mine locations, annual production, reclamation permit numbers, acres of land reclaimed, and reclamation bond amounts. This information is included in Section 3.3 of the Record.

Data on the coal industry as a whole, including coal production, employment, and prices, as well as information on individual western alkaline underground mines, were obtained from various Energy Information Administration sources, including the 1997 *Coal Industry Annual*, the 1998 *Annual Energy Outlook*, and the 1992 *Census of Mineral Industries*. EPA used the Security and Exchange Commission's Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks, for financial data and information on corporate structures. EPA also used a database maintained by Dun & Bradstreet, which provides estimates of employment and revenue for many privately held firms, and obtained industry financial performance data from Leo Troy's *Almanac of Business and Industrial Financial Ratios*.

B. Method for Estimating Compliance Costs

The costs and savings of the final regulation are associated with BMP

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implementation, baseline monitoring, and performance monitoring. For each subcategory, EPA estimated economic baseline conditions based on existing State and Federal regulations and current industry practices. For remining, EPA assumed as economic baseline conditions remining under a Rahall permit, pursuant to section 301(p).

1. Coal Remining Subcategory

As discussed in the proposal, EPA projected costs for each remining site by calculating the cost of monitoring requirements for determining baseline, the cost of potential increases in reclamation permit numbers, acres of land reclaimed, and reclamation bond amounts. This information is included in Section 3.3 of the Record.

Data on the coal industry as a whole, including coal production, employment, and prices, as well as information on individual western alkaline underground mines, were obtained from various Energy Information Administration sources, including the 1997 *Coal Industry Annual*, the 1998 *Annual Energy Outlook*, and the 1992 *Census of Mineral Industries*. EPA used the Security and Exchange Commission's Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks, for financial data and information on corporate structures. EPA also used a database maintained by Dun & Bradstreet, which provides estimates of employment and revenue for many privately held firms, and obtained industry financial performance data from Leo Troy's *Almanac of Business and Industrial Financial Ratios*.

B. Method for Estimating Compliance Costs

The costs and savings of the final regulation are associated with BMP implementation, baseline monitoring, and performance monitoring. For each subcategory, EPA estimated economic baseline conditions based on existing State and Federal regulations and current industry practices. For remining, EPA assumed as economic baseline conditions remining under a Rahall permit, pursuant to section 301(p).

1. Coal Remining Subcategory

As discussed in the proposal, EPA projected costs for each remining site by calculating the cost of monitoring requirements for determining baseline, the cost of potential increases in compliance monitoring requirements, and the potential costs associated with implementing the required pollution abatement plan. To assess the increased baseline determination and monitoring requirements of the rule, EPA evaluated current State requirements for operations permitted under the Rahall provision and calculated the costs under this final regulation that exceed the current State requirements. Current State sample collection requirements for determining and monitoring baseline are included in the Record at Section 3.4.

Although EPA estimated that the Coal Remining Subcategory would be applicable to 64 to 91 remining sites and 3,810 to 5,400 acres annually, EPA projects that fewer sites would realize costs or benefits from this proposal. As noted throughout the proposal, the Commonwealth of Pennsylvania has an advanced remining program and EPA does not believe that the rule will have a measurable impact on Pennsylvania's remining activities. Therefore, EPA did not include Pennsylvania's remining sites in the estimation of costs or benefits. EPA's cost and benefit analysis were calculated for a total of 43 to 61 sites representing 3,100 to 4,400 permitted acres each year. EPA estimates that approximately 1,800 to 2,500 of these acres would actually be reclaimed each year. Table IX. B.1 shows the various estimates EPA used in the estimation of costs and benefits (these are the same estimates used in the proposal).

TABLE IX. B.1: ANNUAL ESTIMATES OF AFFECTED REMINING SITES USED IN THE ECONOMIC ANALYSES

Additional sites permitted	Number of sites	Acres	Used in analysis of
All types, all States (initial estimate)	64–91	3,812–5,401	
All types, excluding PA	43–61	3,111–4,407	Monitoring costs for selected States; NPDES permitting authority costs.
10% of surface & underground sites only (no coal refuse piles), excluding PA	3.9–5.6	309–438	Costs of additional BMPs.
Additional acres reclaimed: (57% of acres permitted, all types excluding PA).	.....	1,773–2,512	Benefits from recreational use of reclaimed land.
Additional acres reclaimed expected to have significant decreases in AMD pollutant loads (37.6–44.4% of additional reclaimed acres).	.....	667–1,115	Benefits from recreational use of improved water bodies; Aesthetic improvements in water bodies; Non-use benefits.

2. Western Alkaline Coal Mining Subcategory

EPA's *Coal Remining and Western Alkaline Mining: Economic and Environmental Profile* prepared for proposal provides profile information on the 47 surface coal mines and 24 underground coal mines initially believed to be in scope of the subcategory. As discussed in the proposal, EPA determined that one of the surface mines profiled was already in the final reclamation stage and would not be affected by the rule. EPA also determined that any savings to underground producers were likely to be small given the limited acreage and lack of complexity associated with these reclamation areas, and did not calculate these benefits. The remainder of this section considers only the 46 active existing surface mines in its discussion.

In the proposal, the only incremental cost attributed to the subcategory was associated with the watershed modeling requirements. Although information provided by OSMRE during the comment period (Record Section 7.2) indicates that all coal mine operators already perform modeling (to support their SMCRA permit applications) that is sufficient for purposes of this rulemaking, EPA has chosen to maintain the proposed costing approach that conservatively allows for some additional modeling costs due to this regulation.

C. Costs and Cost Savings of the Final Rule

1. Coal Remining Subcategory

Under the final rule, EPA is requiring operators to conduct one year of monthly sampling to determine the baseline pollutant levels for net acidity, iron (total), TSS, and manganese (total) (see part 434 Appendix B). Although most States with remining activities have similar requirements, remining sites in Alabama and Kentucky will be required to add six samples annually. EPA did not have data for Illinois, Indiana, or Tennessee because the remining operations that occur in these States do not incorporate Rahall provisions for pre-existing discharges. EPA has conservatively assumed sample collection costs for 12 additional samples annually for these States. Information representing current state sampling requirements is included in the Record at Section 5.

EPA has generated compliance costs based on monthly monitoring. Most States already have similar requirements, with the exception of Ohio, which currently requires quarterly modeling. Again, EPA did not have data for Illinois, Indiana, or Tennessee because these States do not incorporate Rahall provisions in their remining permits. For these States, EPA has conservatively assumed that an additional 12 compliance monitoring samples per year would be required for five years.

Because each remining site will typically have more than one pre-existing discharge, EPA reviewed Pennsylvania remining sites to estimate the average number of pre-existing discharges per site. EPA used this calculated average of four pre-existing discharges per site for estimating baseline determination and compliance monitoring costs (Record Section 3.3.1). Additionally, EPA assumed that remining operators would have to purchase and install flow weirs to comply with the baseline monitoring requirements in the States that do not currently incorporate Rahall provisions in their remining permits. These assumptions result in an upper-bound estimate of additional monitoring costs for the 43 to 61 potentially affected sites per year.

EPA estimates the total annual incremental monitoring costs to be in the range of $133,500 to $193,500. Of this, between $83,000 and $120,000 is associated with incremental baseline monitoring requirements and between $50,500 and $73,500 results from incremental compliance monitoring during the five-year mining period. Detailed assumptions and calculations are presented in the EA.

In addition to baseline determination and compliance monitoring, remining operators must develop and implement a site-specific pollution abatement plan for each remining site. In many cases, EPA believes that the requirements for the pollution abatement plan will be satisfied by an approved SMCRA plan. However, EPA recognizes that some operators may be required to implement additional or more intensive BMPs under the rule beyond what is included in a SMCRA-approved pollution abatement plan.

EPA developed a general estimate of the potential costs of additional BMPs based on review of the existing remining permits contained in the Coal Remining Database (Record Section 3.5.1), and on information provided in the *Coal Remining BMP Guidance Manual*. EPA determined that the most likely additional BMP that NPDES permit writers might require would be a one-time increase in the amount of alkaline material used as a soil amendment to prevent or ameliorate the formation of acid mine drainage. EPA assumed that an average mine facility requiring additional BMPs would need to increase its alkaline addition by a rate of 50 to 100 tons per acre to meet the additional NPDES permit review requirements. EPA estimated an average cost for alkaline addition of $12.90/ton, and assumed that 10 percent of surface and underground remining sites would be required to incur these additional BMP costs. Because the typical BMP for coal refuse piles is simply removal of the pile, no incremental BMP costs would be incurred for these sites. Based on EPA's estimate that between 309 and 438 acres could be required to implement additional or more intensive BMPs each year, the estimated annual cost of additional BMP requirements would range from $199,500 to $565,000.

Based on the above assumptions, the total estimated incremental costs associated with the final rule range from $333,000 to $758,500 per year for the Coal Remining Subcategory. These costs are based on EPA's estimates of what is likely to happen in the future, and they would be incurred by new remining operations. Table IX. C.1 summarizes the incremental costs associated with the subcategory. These are the same estimates presented in the proposal.

TABLE IX. C.1.—ANNUAL COSTS FOR THE REMINING SUBCATEGORY
[1998$]

Monitoring Costs	$133,500–$193,500
Additional BMPs	$199,500–$565,000
Total Compliance Costs	*$333,000–$758,500*

2. Western Alkaline Coal Mining Subcategory

The cost impacts of the subcategory will vary, depending on site-specific conditions at each eligible coal mine. However, based on available data and information, EPA believes that the costs of reclamation under today's rule will be less than or equal to reclamation costs for Subpart E for each individual operator, and thus for the subcategory as a whole.

EPA expects that the sediment control plan will consist entirely of materials generated as part of the SMCRA permit application. The SMCRA permit application process requires that a coal mining operator submit an extensive reclamation plan, documentation and analysis to OSMRE or the permitting authority for approval. Based on these requirements, EPA believes that plans developed to comply with SMCRA requirements will fulfill the EPA requirements for sediment control plans. The requirement to use watershed modeling techniques is not inconsistent SMCRA permit application requirements. As discussed in the proposal, EPA believes that none of the coal mine operators will incur incremental modeling costs. However, because modeling requirements for this regulation may differ in some circumstances from SMCRA requirements, EPA has conservatively assumed that each surface mine operator will incur $50,000 in watershed modeling costs in the economic impact analysis. Total incremental modeling costs (annualized at seven percent over ten years) for the 46 surface mines are estimated to be $327,000 based on this assumption.

EPA projects that cost savings for this subcategory would result from lower capital and operating costs associated with implementing the BMP plans, and from an expected reduction in the reclamation bonding period. The cost savings for controls based on BMPs were calculated for three representative model mines differentiated by geographic region: Desert Southwest (DSW), Intermountain (IM), and Northern Plains (NP). The cost models were submitted by the Western Coal

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Mining Work Group (WCMWG, 1999a, 2001). The cost models are discussed in detail in the *Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory* and are included in the Record at Section 3.3.2. The cost estimates for each model mine relied on data taken from case study mine permit applications, mine records, technical resources and industry experience. The models estimated capital costs (design, construction and removal of ponds and implementation of BMPs) and operating costs (inspection, maintenance, and operation) over the anticipated bonding period.

EPA classified each mine by region within the subcategory (DSW, IM, or NP). Cost savings for reclamation at each mine were calculated by extrapolating the cost savings per disturbed acre calculated for the appropriate model mine. Costs are discounted at a seven percent real rate over a ten-year period. Although individual input data changed with the addition of the two new representative model mine types, EPA's methodology did not change from proposal. The present value of cost savings for the DSW model mine was calculated to be $672,000 ($1,760 per acre). For the IM model mine, the present value of expected cost savings is $199,000 ($522 per acre). Finally, the NP model mine is expected to achieve a present value of cost savings of $235,000 ($617 per acre) under the new subcategory.

EPA used the projected disturbance acreage divided by the remaining mine life to estimate the annual acres reclaimed at each existing mine site. This information was available for 26 mines: two DSW mines, one IM mine, and 23 NP mines. The 20 mines without data available on expected mine life and disturbance acres are located in the NP (18 mines) and IM (two mines) regions. EPA used the average annual acres reclaimed for mines with available data in these two regions (305 acres per year) to estimate reclamation cost savings. For each mine site, annual acres reclaimed were multiplied by the present value of savings per acre for the appropriate regional model mine and totaled. Estimated annual reclamation cost savings total $12.7 million for the 46 producing surface mines in the subcategory, significantly smaller than the estimate for proposed rulemaking of $30.8 million. The decrease in total estimated annual reclamation savings is primarily due to the lower savings per acre at IM and NP mines which comprise the majority of the subcategory. A detailed analysis of this difference as it relates to the additional model mines that account for different geographical features is contained in the EA.

EPA has also calculated cost savings that may result from earlier Phase II bond release. The OSMRE hydrology requirement to release performance bonds at Phase II, requires compliance with the previously applicable 0.5 ml/L effluent standard for SS (30 CFR part 800.40(c)(1)). The Western Coal Mining Work Group, in its draft Mine Modeling and Performance Cost Report (Record Section 3.3.2) estimates that the typical post-mining Phase II bonding period can be ten years or more under the previous effluent guidelines. Reclamation areas must achieve considerable maturity before they are capable of meeting this standard. The BMP-based approach in today's rule uses the inspection of BMP design, construction, operation and maintenance to demonstrate compliance instead of the current sampling and analysis of surface water drainage for reclamation success evaluations. The report estimates that the BMP-based approach would reduce the time it takes reclaimed lands to qualify for Phase II bond release by about five years. 3

EPA used the following assumptions to estimate cost savings due to earlier Phase II bond release: (1) A post-mining Phase II bonding period of ten years under the numeric effluent guidelines and five years under the new subcategory; (2) twenty-five percent of the reported bond amount would be released at the end of Phase II; and (3) surety bonds were used, with annual fees between $3.75 and $5.50 per thousand. Twenty-six mines provided information necessary to calculate associated bond savings. The total estimated savings for these mines range from $0.2 to $0.3 million when annualized at seven percent over the five-year permit period. EPA assumes that the remaining 20 mines for which savings could not be calculated would achieve the average savings per mine ($7,200 to $10,600) resulting in total annualized savings between $0.1 and $0.2 million. Detailed assumptions and calculations are contained in the EA. Projected bond savings for the entire subcategory thus total from $0.3 to $0.5 million. These estimated bond savings are about 2 percent less than the estimated bond savings presented at proposal. The difference in the two estimates is entirely attributable to lower expected disturbance acres per permit period in IM and NP mines.

The estimated net savings in compliance costs associated with the subcategory, considering the savings to mining operations in sediment control and bonding costs, is estimated to be approximately $12.8 million, as shown in Table IX. C.2.

TABLE IX. C.2.—ANNUAL COST SAVINGS FOR THE WESTERN ALKALINE COAL MINING SUBCATEGORY

[$1998]

Modeling Costs	($ 327,000)
Sediment Control Cost Savings	$12,721,000
Earlier Phase 2 Bond Release Savings	$341,900–$501,400
Total Compliance Cost Savings	$12,735,900–$12,895,400

D. Economic Impacts of the Final Rule

1. Economic Impacts for the Coal Remining Subcategory

As discussed in Section V, EPA is promulgating BPT, BCT, BAT, and NSPS that have the same technical basis. EPA believes that the final rule will not impact existing remining permits. For new permits, remining operators will have the ability to choose among potential remining sites, and will only select sites that they believe are economically achievable to remine. Furthermore, any additional BMPs required by the NPDES authority under the final rule will be site-specific. Today's requirements will not create any barriers to entry in coal remining, but instead are specifically designed to encourage new remining operations. Hence, the Agency finds no significant negative impacts to the industry associated with the subcategory.

The implementation of a pollution abatement plan containing BMPs may impose additional costs beyond what is included in a SMCRA-approved pollution abatement plan. At the same time, the profits may increase at remining sites because the new regulations provide an incentive to mine coal from abandoned mine land areas

that may have been avoided in the absence of implementing regulations. The subcategory will also affect the relative profitability of remining different types of sites, with the potential to encourage remining of the sites with the worst environmental impacts. An analysis by the Department of Energy (DOE) of potential remining sites estimated an average coal recovery of between 2,300 and 3,300 tons per acre of remined land (1993, *Coal Remining: Overview and Analysis*). At these coal recovery rates, the estimated steady state annual increase in acres being remined would produce between 7.1 and 14.5 million tons of coal per year. This represents only 1.5 to 3.1 percent of total 1997 Appalachian coal production of 468 million tons. The same DOE report noted that, given the general excess capacity in the coal market, it is likely that coal produced from new remining sites will simply displace coal produced elsewhere, with no net increase in production overall. The Coal Remining Subcategory is therefore not expected to have a significant impact on overall coal production or prices.

2. Economic Impacts for the Western Alkaline Coal Mining Subcategory

As discussed in Section V, EPA is promulgating BPT, BAT, and NSPS limitations that have the same technical basis. EPA concludes that all economic impacts are positive, that compliance will result in a cost savings to the industry, and that the rule is economically achievable. Because reclamation costs under today's rule will be less than or equal to those previously incurred by all individual operators, and thus, to the subcategory as a whole, no facility closures or direct job losses associated with post-compliance closure are expected. However, EPA did estimate potential changes in labor requirements attributable to the rule caused by changes in labor hours associated with the types of erosion and sediment control structures used.

EPA based its estimates of changes in labor requirements on the detailed cost estimates developed for the three model mines submitted by the WCMWG (1999, 2001). Dividing the full time equivalent (FTE) reduction for each model mine by the 10 year project life results in an estimated annual reduction of 0.22 FTE at the DSW model mine, 0.11 FTE at the NP model mine, and 0.09 FTE at the IM model mine. Applying these reductions in FTE to each mine in the appropriate region results in an estimated annual reduction of 5.2 FTEs per year. This represents less than 0.1 percent of the total 1997 coal mine employment (6,862 FTEs) in the western alkaline region States.

The cost savings associated with the subcategory are not expected to have a substantial impact on the industry average cost of mining per ton of coal, and therefore are not expected to have major impacts on coal prices. While the savings are substantial in the aggregate (and for some individual mine operators), on average they represent a small portion of the total value of coal produced from the affected mines. As described in the EA, the overall estimated cost savings are, on average, 3 cents per ton or about 0.4 percent of the value of production. In addition, the value of production reflects the value of coal at the minehead. Transportation costs of coal, especially from the western alkaline region to the Midwestern utilities and other consumers, are significant and the estimated savings as a percent of delivered price will be smaller than 0.4 percent. Thus, as with the Coal Remining Subcategory, the Western Alkaline Coal Mining Subcategory is not expected to result in significant industry-level changes in coal production or prices.

EPA is promulgating NSPS equivalent to the limitations for BPT and BAT for the Western Alkaline Coal Mining Subcategory. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. Specifically, to the extent that existing sources have already incurred costs associated with installing sedimentation ponds, new sources would be able to avoid such costs. There is nothing about today's rule that would give existing operators a cost advantage over new mine operators; therefore, NSPS limitations will not present a barrier to entry for new facilities.

E. Additional Impacts

1. Costs to the NPDES Permitting Authority

Additional costs will be incurred by the NPDES permitting authority to review new permit applications and issue revised permits based on the rule. Under the final rule, NPDES permitting authorities will review baseline pollutant levels and pollution abatement plans for the Coal Remining Subcategory and watershed modeling results and sediment control plans for the Western Alkaline Coal Mining Subcategory.

EPA estimates that permit review will require an average of 35 hours of a permit writer's time per site and that permit writers receive an hourly wage of $31.68. Based on these assumptions, total annual costs to the NPDES permitting authorities range from $47,500 to $67,500 for the 43 to 61 additional sites that can be expected to be permitted under the Coal Remining Subcategory. An upper-bound estimate of costs associated with implementing the western subcategory assumes that all 46 existing surface mine permits are renewed. The total incremental annual cost would be $12,500 when annualized over a 5-year permit (using a seven percent discount rate). Total additional permit review costs for the rule are therefore estimated to be between $60,000 and $80,000 per year. A detailed analysis is contained in the EA.

2. Community Impacts

EPA considered whether the rule would significantly alter the competitive position of coal produced in different regions of the country, or lead to growth or reductions in employment in different regions and communities. EPA concluded that the final rule would not have a significant impact on relative coal production in the West versus the East. The annualized cost savings estimates for Western Alkaline surface mines affected by today's regulation average about $0.033 per ton, or only 0.4 percent of the value of coal production from these mines. Data from the Department of Energy indicate that the average cost of rail transportation for coal from western to midwestern States is approximately $0.00912 per ton-mile. Therefore, the potential cost savings that would be realized by this rule in western mines would not affect the price competitiveness of coal because Western Alkaline mines would be able to ship their coal about 4 additional miles while maintaining the same delivered price. The coal from western mines appears to compete directly with eastern coal in about eight States, where the $0.033 savings per ton comprises only 0.13 percent of the average delivered price (the average delivered price of coal was about $25.51 per ton in 1998). Therefore, EPA concluded that the cost savings generated for Western Alkaline Coal Mines as a result of today's rule will have minimal impact on coal production in the West versus the East coal regions.

For the Coal Remining Subcategory, it is likely that production and employment will shift toward eligible abandoned mine lands, but will not to increase national coal production and

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employment or affect coal prices significantly overall.

EPA projects that impacts of the Western Alkaline Coal Mine Subcategory on mine employment will also be minor. As discussed above, EPA estimated a reduction in labor requirements of 5.2 FTEs per year by extrapolating from the model mine results for each region. This represents less than 0.1 percent of the total 1997 coal mine employment in the western alkaline region States. The estimated annual 5.2 FTE direct mine job losses would result in an additional 8.7 FTE indirect job losses based on RIMSII regional employment multipliers (U.S. Bureau of Economic Analysis, *Regional Input-Output Modeling Systems, "RIMSII"*). Therefore, the total impact on employment, direct and indirect, that may result from the Western Alkaline Coal Mining Subcategory is a reduction of approximately 13.9 FTEs per year. This reduction in employment might be offset if lower costs under the subcategory encourage growth in coal mining in the western alkaline region.

3. Foreign Trade Impacts

EPA does not project any foreign trade impacts as a result of the final effluent limitations guidelines and standards. U.S. coal exports consist primarily of Appalachian bituminous coal, especially from West Virginia, Virginia and Kentucky (U.S. DOE/EIA, Coal Data: A Reference; U.S. DOE/EIA Coal Industry Annual 1997). Coal imports to the U.S. are insignificant. Impacts are difficult to predict, since coal exports are determined by economic conditions in foreign markets and changes in the international exchange rate for the U.S. dollar. However, no foreign trade impacts are expected given the relatively small projected increase in production and projected lack of impact on costs of production or prices.

F. Cost Effectiveness Analysis

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of regulatory options in removing toxic and non-conventional pollutants. Cost-effectiveness is calculated as the incremental annual cost of a pollution control option per incremental pollutant removal. The results for an option are considered relative to another option or to a benchmark, such as existing treatment. In EPA's cost-effectiveness analysis for effluent guidelines, pollutant removals are measured in toxicity normalized units called "pounds-equivalent." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the technology will be in removing pollutants, taking into account their toxicity. While not required by the CWA, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants.

While cost-effectiveness results are usually reported in the Notice of Final Rulemaking for effluent guidelines, such results are not presented in today's document because of the nature of the two subcategories. For the Coal Remining Subcategory, EPA is unable to predict pollutant reductions that would be achieved at future remining operations. As described in Section V, it is difficult to project the results, in terms of measured improvements in pollutant discharges, that will be produced through the application of any given BMP or group of BMPs at a particular site. EPA is therefore unable to calculate cost-effectiveness. For the Western Alkaline Coal Mining Subcategory, cost-effectiveness was not calculated because there are no incremental costs attributed to the rule.

G. Cost Benefit Analysis

EPA estimated and compared the costs and benefits for each of the subcategories. Both subcategories have the potential to create significant environmental benefits at little or no additional cost to the industry. The monetized annual benefit estimates for the Coal Remining Subcategory ($734,000 to $1,175,500) substantially outweigh the projected annual costs ($380,500 to $826,000).

In addition to the monetized benefits, the increase in remining is projected to result in the removal of some 216,000 to 307,000 feet of highwall each year. As described in the EA, EPA was not able to find reliable data to evaluate the decreased risk of serious injury or death resulting from remining safety improvement. It is clear that AMLs are dangerous sites and that implementation of the Coal Remining Subcategory will result in benefits by making these sites less hazardous. The increase in remining also has the potential to recover an estimated 7.1 to 14.5 million tons of coal per year that might otherwise remain unrecovered, with a value of approximately $188.5 to $385.0 million (based on an average 1997 value per ton of coal in Appalachia of $26.55).

The Western Alkaline Coal Mining Subcategory is projected to result in net cost savings while increasing environmental benefits. The industry compliance cost savings associated with the final rule arise from reduced costs for sediment control and earlier Phase II bond release. Total annual cost savings to society are expected to be approximately $13 million. Annual environmental benefits are valued between $39,500 and $745,000—with the majority of benefits resulting from recreational use of waters with improved water flow. Table IX.G.1 summarizes the total social costs/cost savings and benefits attributed to today's rulemaking.

TABLE IX.G.1.—TOTAL ANNUAL SOCIAL COSTS/(COST SAVINGS) AND BENEFITS OF THE RULE

[$1998]

Social Costs/Cost Savings:	
Total Social Costs—Remining	$380,500–$826,000
Total Social Cost Savings—Western Alkaline	($12,723,500–$12,882,500)
Total Social Cost Savings	($12,343,000–$12,056,500)
Monetized Social Benefits:	
Total Monetized Benefits—Remining	$734,000–$1,175,500
Total Monetized Benefits—Western Alkaline	$39,500–$745,000
Total Monetized Benefits	$773,500–$1,920,500

X. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has 500 or fewer employees (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, I certify that this action will not have significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA projects that the new subcategory for western alkaline mines results in cost savings for all small surface mine operators. For all small underground mine operators, EPA projects no incremental costs, and the Agency believes that many are likely to experience some cost savings. Section IX of this document discusses the likely cost savings associated with the subcategory in more detail. As described in Section V of this document, the previous regulations at 40 CFR part 434 create a disincentive for remining by imposing limitations on pre-existing discharges for which compliance is cost prohibitive. Despite the statutory authority for exemptions from these limitations provided by the Rahall Amendment, coal mining companies and States remain hesitant to pursue remining without formal EPA guidelines. The remining subcategory provides standardized procedures for developing effluent limits for pre-existing discharges, thereby eliminating the uncertainty involved in interpreting and implementing current Rahall requirements. This subcategory is intended to remove barriers to the permitting of remining sites with pre-existing discharges, and is therefore expected to encourage remining activities by small entities. Thus, we have concluded that today's final rule will relieve regulatory burden for all small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 22, 2002.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0239.

Today's rule requires an applicant to submit baseline monitoring and a pollution abatement plan for coal mining operations involved in remediation of abandoned mine lands and the associated acid mine drainage during extraction of remaining coal resources. In addition, today's rule requires an applicant involved in reclamation of coal mining areas in arid regions to submit a sediment control plan for sediment control activities. Information collection is needed to determine whether these plans will achieve the reclamation and environmental protection pursuant to the Surface Mining Control and Reclamation Act and the Clean Water Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests. Data collection and reporting requirements associated with these activities are substantively covered by the "Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan—30 CFR part 780" ICR, OMB Control Number 1029–0036. Data collection and reporting requirements from today's rule that may not be included in the 30 CFR part 780 ICR are: some incremental baseline and annual monitoring and some sediment yield modeling.

The initial burden for coal mining and remining sites under the rule is estimated at 1,890 hours and $314,538 for baseline determination monitoring at coal remining sites. The initial burden associated with preparation of a site's pollution abatement plan or sediment control plan is already covered by an applicable SMCRA ICR. The annual burden for coal mining and remining sites under the rule is estimated at 3,024 hours per year and $189,302 per year for

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annual monitoring at coal remining sites.

The initial burden for NPDES control authorities is estimated at 9,800 hours and $310,464 for review of SMCRA remining and reclamation plans (which include BMPs) and preparation of the NPDES permit. The annual burden for NPDES control authorities is estimated at 2,340 hours per year and $74,131 per year for review of annual monitoring data at coal remining sites.

For the Coal Remining Subcategory, the reporting burden is estimated to average 15.6 hours per respondent per year ((1,890 hours/3 years + 3,024 hours/year)/234 coal remining sites). This estimate includes time for collecting and submitting baseline and annual monitoring results. For the Western Alkaline Coal Mining Subcategory, there is projected to be no additional reporting burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year. Although the rule will impose some permit review and approval requirements on regulatory authorities, EPA has determined that this cost burden will be less than $80,000 annually. Accordingly, today's regulation is not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that this regulation contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, it is not subject to the requirements of Section 203 of the UMRA. The regulation does not establish requirements that apply to small governments.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Although EPA has identified sites in the western United States with existing coal mining operations that are located on Tribal lands, EPA projects that this regulation will generate a net cost savings for these mine sites. Thus, Executive Order 13175 does not apply to this rule.

Nevertheless, EPA consulted with representatives of tribal governments. EPA has identified sites in the western United States with existing coal mining operations that are located on Tribal lands. With assistance from its American Indian Environmental Office, EPA has identified five Tribes as having lands in the western U.S. with, or having an interest in, coal mining activities. The Tribes are the Navajo Nation, the Hopi Tribe, the Crow Tribe, the Southern Ute Indian Tribe, and the Northern Cheyenne Tribe. EPA representatives met with Tribal officials from the Navajo Nation during coal mine site visits in New Mexico and Arizona in August 1998 to review environmental conditions and the applicability of the proposed regulation. In December 1999, EPA sent meeting invitations to Tribal Chairmen, Directors of Tribal Environmental Departments, and other representatives of the five Tribes with existing or potential interest in coal mining, and met with Tribal representatives from the Navajo Nation and Hopi Tribes in Albuquerque, NM on December 16, 1999 to consult on the proposed amendments to the existing effluent limitations guidelines, and to discuss plans for involvement at public meetings in western locations. As a result of this consultation, EPA agreed to an initial comment period on the proposal of 90 days. EPA later granted an extension to the comment period of 60 days. EPA provided a copy of the relevant portions of the Rulemaking Record at the western location identified in the **ADDRESSES** section of this document to be available for Tribal representatives. During the comment period, EPA held public meetings in three locations that were convenient for attendance by Tribal representatives. No significant issues were raised by the Tribes. In response to the proposed rule, EPA received written comments from the Navajo EPA, which indicated general support for the Western Alkaline Coal Mining Subcategory.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. The rule establishes effluent limitations imposing requirements that apply to coal mining facilities. The rule does not apply directly to States and localities and will only affect State and local governments when they are administering CWA permitting programs. The rule, at most, imposes minimal administrative costs on States that have an authorized NPDES program. (These States must incorporate the new limitations and standards in new and reissued NPDES permits). Thus, Executive Order 13132 does not apply to this rule. Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State governments throughout this regulatory development. State authorities raised numerous issues which are discussed in Section XII of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113 section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that today's rule requires dischargers to monitor for total suspended solids (TSS), settleable solids (SS), manganese, iron, and acidity. Facilities monitoring for these analytes need to use previously-approved technical standards already specified in the tables at 40 CFR 136.3.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither "economically significant" as defined under Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

XI. Regulatory Implementation

Upon promulgation of these regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to affected facilities in the Western Alkaline Coal Mining Subcategory and Coal Remining Subcategory. This section discusses upset and bypass provisions, variances and modifications, and monitoring requirements.

A. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n), and 40 CFR 403.16 (upset) and 403.17 (bypass).

B. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to section 301 or the pretreatment standards of section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

1. Fundamentally Different Factors Variances

EPA will develop effluent limitations guidelines or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the guidelines or standards applicable to the individual facility. Such a modification is known as a

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"fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added section 301(n) explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of an FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative guidelines and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (*e.g.*, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (*e.g.*, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's NPDES permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. FDF variance requests with all supporting information and data must be received by the permitting authority within 180 days of publication of the final effluent limitations guideline. The specific regulations covering the requirements for and the administration of FDF variances are found at 40 CFR 122.21(m)(1), and 40 CFR 125 Subpart D. FDF variances are not available for new sources.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final NPDES permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modifications are described in 40 CFR 122.63.

C. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under section 402 of the Act.

The Agency has developed the limitations for this regulation to cover the discharge of pollutants for these industrial categories. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

All mining operations subject to today's regulation must also comply with SMCRA requirements. EPA has worked extensively with OSMRE in the preparation of this rule in order to ensure that today's requirements are consistent with OSMRE requirements. EPA believes that, in most cases, CWA requirements for a pollution abatement plan and sediment control plan will be satisfied by the requirements contained in an approved SMCRA permit.

EPA believes that compliance determinations under today's rule will encourage coordination and cooperation between SMCRA and NPDES authorities. EPA believes that, in some cases, the NPDES permit authority may not have the mining expertise or resources to adequately review pollution abatement plans, sediment control plans and associated modeling efforts and recognizes that the requirements for permit application provided under SMCRA, section 507, reclamation plans under SMCRA section 508, and inspections and monitoring provided under SMCRA section 517 are, in most cases, substantial and adequate. EPA envisions that approval by OSMRE or the delegated authority on the modeling effort and sediment control plan will often be sufficient review to satisfy the NPDES permitting authority. The coordination of regulatory agencies may require a memorandum of understanding to be developed between regulatory agencies or other

mechanisms in order to implement alternative sediment control standards efficiently.

D. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. Facilities use these methods to determine the presence and concentration of pollutants in wastewater, and EPA, State and local control authorities use them for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25.

The final rule requires facilities in the Coal Remining Subcategory to monitor for net acidity, TSS, SS, iron, and manganese. EPA has previously approved test methods for all these pollutants at 40 CFR 136.3.

XII. Summary of EPA Responses to Significant Comments on Proposal

The following section summarizes significant comments received on the proposed rule and the NODA, and a summary of EPA's response. Thirty-two stakeholders provided comments on the April 11, 2000 proposal addressing over 40 separate issues, and ten stakeholders provided comment on the NODA.

The complete comment summary and response document can be found in the public record for this final rule (DCN 3056). In selecting comments and responses for summary, the Agency selected those major and controversial issues that received considerable comment. Alternatively, comments and responses on other less controversial issues and issues where EPA essentially agrees with the commenters are not included below.

A. Coal Remining Subcategory

Comment: The implications of the language concerning bond release for remining operations could be debilitating if the language is interpreted to mean that any time passive treatment is incorporated into the pollution abatement plan, the operator will be perpetually liable for the operation and maintenance of the treatment facility. The ultimate result could be that the operator is never able to achieve complete bond release due to the existence of a passive treatment system.

Response: EPA understands the concern regarding perpetual liability for remining operations implementing passive treatment operations. EPA clarifies that for those remining operations that include passive treatment as an inherent portion of an approved Pollution Abatement Plan, the passive treatment operation should be considered a BMP and treated as part of implementing the Pollution Abatement Plan. See section V.A.4 of this document.

Comment: The requirements for baseline data collection for remining sites with pre-existing discharges should be no more stringent than baseline data collection requirements for permit applications that do not include remining. If existing water quality and seasonal variation requirements are more stringent, burdensome, and expensive for remining applicants, this will present another barrier for remining.

Response: There are no baseline data collection requirement for NPDES permit applications. However, EPA is aware that baseline data collection requirements for coal mining permits under SMCRA that do not include remining may be less stringent than those for remining permits. For mining permits that do not include remining operations, baseline information is typically collected from undisturbed areas and is used for a number of purposes. These purposes include: indicating overburden quality; predicting post-mining water quality; establishing background conditions for affected and unaffected groundwater (for permit decision making); providing background data for water supplies; and establishing circumstances for which a mining operation resulted in environmental improvement or degradation. The baseline data collected for these mining permits is not used to establish effluent limitations, and the collection of baseline data is not required for establishing effluent limitations.

Part 434 does not require baseline data collection for mines not involved in remining. The differing baseline sampling requirements reflect the different purpose and use of the baseline data in each circumstance. In the case of remining, baseline pollutant discharge samples are collected for the establishment of baseline conditions which are then used to establish site-specific effluent limitations for the pre-existing discharge. The effluent limitations based on this data collection are incorporated into the NPDES permit. Therefore, EPA believes that an adequate baseline sampling program must be used in order to accurately characterize baseline conditions that are used to establish effluent limitations. Therefore, EPA believes that the baseline data collection for Coal Remining Subcategory, while more stringent than that associated with non-remining permits, is necessary due to the site-specific nature of the Coal Remining Subcategory NPDES effluent limitations.

Comment: Where incentives are offered to encourage remining, those incentives should not include a lowering of environmental protection standards, but rather should focus on financial incentives that encourage remining without compromising the post-remining environmental quality of the area. Predictably, the resulting proposed rule is skewed towards assisting coal operators to cut costs in remining previously disturbed areas, while sacrificing the ability to achieve meaningful improvements in baseline conditions from previously mined areas.

Response: EPA agrees that coal operators should be provided financial incentives that encourage remining without compromising the post-remining environmental water quality. However, EPA does not agree that it has lowered environmental standards in order to achieve this goal. The issue with AML is that there is no responsible party for cleaning abandoned mine land, and discharges from abandoned mine lands continue to be a very serious problem affecting many areas of the Appalachian coal region. As noted in the proposal, there are over 1.1 million acres of abandoned coal mine lands in the United States which have produced over 9,709 miles of streams polluted by acid mine drainage.

Under SMCRA, a fund was established to pay for damage associated with abandoned mine lands. Expenditures from this fund are authorized through the regular congressional budgetary and appropriations process. Additionally, the funds are prioritized to fix problems that pose immediate health and safety risks, such as highwalls and open mine shafts. In 1999, $2.5 billion of the $3.6 billion of high priority coal related AML problems in OSMRE's AML inventory had yet to be funded and reclaimed. Due to the vast expense of reclaiming all AML, EPA believes that remining is a timely and cost-efficient means of reclaiming AML.

EPA does not agree that the remining regulations are sacrificing the ability to achieve meaningful environmental improvements. As noted in comments submitted by the Commonwealth of Pennsylvania, over 100 sites containing over 200 pollution discharges and 34,000 acres have been successfully reclaimed as a result of remining. This has been done at no expense to the taxpayer and has resulted in the reduction of discharge of acid loading by 15,918 pounds/day. A detailed

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assessment of the water quality improvements and BMP implementation at these sites was provided in EPA's proposed rulemaking record and in Chapter 6 of EPA's *Coal Remining BMP Guidance Manual.*

Comment: The rule should include provision for BMP-based permit requirements in lieu of specific loading-based effluent limits for remining sites because remining is virtually certain to result in improvement.

Response: The goal of this rule is to improve water quality. EPA agrees that in most cases, remining operations will result in improved water quality. In fact, EPA's record on the rule contains data that overwhelmingly demonstrate improvement in water quality and environmental conditions resulting from remining operations. At these remining operations, most pre-existing discharges demonstrated a significant improvement in water quality. However, numerous pre-existing discharges demonstrated no change in water quality, and a small number demonstrated a decrease in water quality. At these sites, other non-water quality benefits may have been achieved. Therefore, EPA concluded that implementing BMPs is not a guarantee of success, and EPA concluded that numeric monitoring is necessary in most cases to ensure that a mine operator is not contributing additional quantities of pollutant loads to the nation's waterways. While EPA believes that there is a high likelihood of improvement in pre-existing discharges due to remining, EPA also acknowledges that improper or inadequate BMPs may increase pollutant loadings. EPA concluded that it is necessary for mine operators to adequately demonstrate that they are not increasing pollutant loadings over baseline, as required by the Rahall amendment.

EPA does not believe that monitoring poses an undue burden on the mine operator. EPA notes that monitoring costs are less than $3000 per year per discharge. If BMPs are appropriately incorporated into the plan and implemented accordingly, then the mine operator should be able to comply with the baseline numeric limits established in this regulation without incurring additional cost. Therefore, EPA has concluded that numeric limits, in addition to a pollution abatement plan, is the Best Available Technology for the Coal Remining Subcategory.

EPA has included a provision in the final rule for BMP-based effluent limitations where numeric limitations are infeasible. EPA believes this provision will allow improvement of AML that otherwise would continue to remain unreclaimed. EPA has determined that in certain specific cases, it is infeasible to calculate and monitor baseline pollutant levels in pre-existing discharges.

Comment: Under the current language in the law the States have some flexibility on how they would approach their respective remining programs. This enables a State program to develop rules and policies in concert with their State water quality authority that work for their specific region. A one-size-fits-all approach as contained in this rule does not necessarily work for all of the States' mining areas.

Response: In this final rule, EPA is balancing the need to provide guidance and clarification of the provisions of the Rahall Amendment with a recognition of the authority and flexibility given States to allow alternative requirements for remining permits. EPA is specifying the minimum requirements necessary for determining baseline. The permit authority then has the discretion to determine appropriate remining standards (which can be set at baseline or better) and site-specific BMPs. EPA is providing guidance on appropriate BMPs, but is not specifying the actual selection of BMPs. Thus, the final rule assumes that the coal remining expertise available from State and regional agencies will be used heavily in the review and approval of appropriate BMPs for each remining site's Pollution Abatement Plan.

Comment: A twelve-month sampling program to determine baseline pollution loads is a significant disincentive to remining due to the cost and time involved.

Response: The comment asserts that the monitoring requirements of a minimum of 12 monthly samples is too restrictive and will serve as disincentives to remining. EPA disagrees with this assertion. EPA has considered the findings by R.D. Zande & Associates and the Ohio Coal Development Office, which included responses to a questionnaire given to mine operators. While the responses did identify the number of samples as a disincentive to remining, responses also expressed concern over "the risk operators take that the information they are getting from the sampling will not give an accurate picture of how the remining will affect the effluent for the NPDES discharge," which is precisely the reason EPA has established the requirement for at least 12 representative baseline samples. Although EPA agrees there are likely to be some circumstances where the requirements for baseline sample collection may discourage remining, there are clearly other disincentives for remining that this rule will reduce. Namely, this regulation will establish formal EPA procedures for remining procedures based on standardized statistical procedures and the use of BMPs.

Moreover, EPA does not agree with the commenter's assertion that the requirement for 12 monthly baseline samples is a significant deterrent to obtaining a mining permit because this would cause an unreasonable delay in getting a permit. This has not been the experience of Ohio's neighbor, Pennsylvania, which has required 12 monthly samples since 1986. As explained in one of the documents supporting the proposed rule (*i.e.*, Coal Remining Statistical Support Document (EPA 821–R–00–011)), since 1985, PADEP has issued approximately 300 remining permits, with a 98 percent success rate. This document defines a successful remining site as one that has been mined without incurring treatment liability as the result of exceeding the baseline pollution load of the pre-existing discharges. The comment does not explain why the requirement for 12 monthly samples would act as disincentives in Ohio when Pennsylvania has demonstrated its success.

EPA further notes that planning, collecting data, completing the paperwork, and processing SMRCA mine permits is a time-consuming process of about a year during which the baseline samples can be collected. In particular, meeting the SMCRA requirements before preparing and submitting a permit application will require several months, during which a mine operator has the opportunity to begin baseline sampling. For example, the PA DEP requires at least three samples to have been collected prior to submission of a remining permit application. In theory, this can be accomplished within 60 days (by sampling on days 1, 30 and 60). EPA also believes, optimistically, that it will take at least 2 months for an operator to prepare a permit application due to the necessity of complying with SMCRA, and a minimum of 6 months for permit review and approval. Thus, if the permit were approved in an unusually short time, a mine operator would need to obtain an additional 2 or 3 monthly samples in order to accumulate 12 months of baseline data, and more likely, a 12-month sampling program could be completed before permit approval. Thus, because of the SMCRA requirements and Pennsylvania's success, EPA does not believe that requiring 12 monthly samples places an undue burden on mine operators, and EPA believes it is more likely that a mine operator will be able to obtain 12 samples during the permitting process if the operator identifies and plans for baseline sampling early in the remining process.

In addition, EPA notes that the baseline sample collection requirements of this rule protect both the remining operator and the environment. If baseline characterization of pre-existing pollutant discharges is inadequate (for example, if it is based on too few samples), there is a chance that an operator could consistently face noncompliance by discharging pollutant loadings above an underestimated baseline that did not adequately incorporate natural variation in pollutant loading. In addition, there is the chance that environmental improvement could be jeopardized by allowing for pollutant loading discharges at high levels that still fall below an overestimated baseline.

Finally, as discussed in the Coal Remining Statistical Support Document (EPA–821–B–01–011), and in Statistical Analysis of Abandoned Mine Drainage in the Assessment of Pollution Load (EPA–821–B–01–014), EPA believes that 12 monthly samples are the minimum to derive a statistically sound estimate of baseline.

Comment: EPA should consider expanding the rule to allow for alternative remining limits for other parameters, including suspended solids and settleable solids. The same rationale justifying alternative limits for acid mine drainage should apply to all existing water quality problems from abandoned mine lands. For instance, in Virginia, the State's 1998 303(d) list identifies fifteen streams in the coalfields impaired by resource extraction. Only two of those streams are identified as impaired by AMD and only one by active coal mining. The majority of the impaired streams have been impacted by discharges from abandoned underground mines or drainage from unreclaimed surface mines containing high levels of dissolved, settleable, and suspended solids. Coal companies will continue to be discouraged from assuming these significant drainage and discharge liabilities without some alternative effluent limitations.

Response: Based on the baseline conditions of sediment present at some AML, EPA believes that the benefits of remining may be severely limited if EPA does not address sediment in the final rule. In accordance with the intent of the Rahall Amendment, which seeks to encourage remining while ensuring that the remining activity will potentially improve and reclaim AML, and due to comments received on the NODA, EPA is establishing alternative limits for sediment in pre-existing discharges.

Comment: EPA does not have the authority to promulgate alternative standards for sediment because this is inconsistent with the Rahall amendment.

Response: The authority for today's rule is section 304(b) of the Clean Water Act, which requires the Agency to adopt and revise regulations providing guidelines for effluent limitations as appropriate. The Rahall Amendment, section 301(p) of the Act, provided specific authority for modified, less stringent effluent limitations for specified coal remining operations. Because the effluent limitations guidelines for the Coal Mining Point Source Category did not provide any different requirements for coal remining operations, the Rahall Amendment provided the only basis for issuing permits containing modified requirements to remining operations. In promulgating today's regulations adopting effluent limitation guidelines for the coal remining subcategory, EPA is adopting requirements that are consistent with, but not necessarily identical to, the provisions of the Rahall Amendment. The applicability of these effluent limitation guidelines to remining operations in AML abandoned after the enactment of SMCRA is within EPA's discretion under section 304(b).

B. Western Alkaline Coal Mining Subcategory

Comment: EPA documents related to the rule assume that the proposed Western Alkaline Coal Mining Subcategory would have no "significant impacts on relative coal production in the West versus the East" but fail to detail the basis for this assumption.

Response: EPA further examined the potential impact of the proposed guidelines on the competitiveness of coal production in the East relative to coal production in the West. This analysis supported EPA's conclusions that the rule would have no significant impact on competitiveness. The revised estimated cost savings comprise an average of about $0.033 saved per ton of coal produced in western alkaline surface mines or about 0.4 percent of the value of coal production. This relatively small percentage decrease in delivered price, combined with the effect of transportation costs, suggest that the impact of the savings on the relative competitiveness of eastern and western coal should be very small. A detailed analysis of this issue is presented in the economic analysis, included in the rulemaking record.

Comment: The commenter believes that if modeling can demonstrate compliance it does not matter where the runoff originates. The commenter supports the expansion of the Western Alkaline Coal Mining Subcategory to include drainage from active mining areas.

Response: The Agency has considered the use of alternative sediment controls for non-process areas in addition to reclamation areas. EPA determined that alternative sediment controls were appropriate for reclamation areas for several reasons. These reasons included that sediment is a natural component of runoff in arid watersheds, that sediment is typically the only parameter of concern in runoff from western alkaline reclamation areas, that BMPs are proven to be effective at controlling sediment, and that computer modeling procedures are able to accurately predict sediment runoff conditions. Due to comments received in support of expanding the area of alternative sediment controls, EPA evaluated additional non-process areas under the same set of circumstances. Based on this rationale, in addition to comments and data received on the proposal, EPA determined that similar circumstances exist for runoff from some non-process mine areas including brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. In each of these areas, sediment is typically the only parameter of concern, BMPs can be implemented to maintain sediment levels below baseline, and modeling procedures are appropriate. Therefore, EPA has expanded the Western Alkaline Coal Mining Subcategory to include these areas in addition to the mining reclamation area. However, EPA decided not to include spoil piles in the Western Alkaline Coal Mining Subcategory due to the lack of applicable BMPs, the lack of adequate modeling procedures for an unconsolidated land area, and the potential for contamination of the runoff. See section V.B.3 for further explanation.

Comment: If indeed there are serious negative impacts to retaining sedimentation ponds after active mining has ceased, then EPA has chosen the wrong solution. The obvious remedy is to enforce the existing regulations, not change them to accommodate these negative impacts that violate Federal and State mining laws.

Response: EPA notes that it has received comments from other stakeholders which have both agreed and disagreed with EPA's assertion that

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sedimentation ponds may be causing negative environmental impacts. EPA believes that sedimentation ponds, when constructed to meet numeric discharge standards, may cause negative environmental impacts in certain circumstances. EPA listed the potential impacts in the proposal which include loss of water due to evaporation, additional land disturbance, accelerated erosion, and upset of the natural hydrologic balance. While in many cases sedimentation ponds are not causing negative impacts, EPA also believes that there are instances where sedimentation ponds are causing upsets to the natural hydrologic balance. As discussed in the preamble, EPA believes that the most environmentally responsible goal is to maintain sediment loads at pre-disturbed conditions.

The negative impacts caused by the exclusive use of sedimentation ponds cannot necessarily be remedied by enforcing existing regulations. For example, water loss from a sedimentation pond cannot reasonably be controlled. Additionally, land must be disturbed during the construction, maintenance, and removal of the sedimentation ponds. Although this land must eventually be reclaimed in order to meet existing regulations, EPA estimates that 600 acres per year will not be disturbed due to implementation of the sediment control plan required by the Western Alkaline Coal Mining Subcategory.

OSMRE regulations require that mine operators "minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation * * *" (SMCRA section 515(b)(10)). While existing EPA regulations at 40 CFR part 434, subpart E Post-Mining Areas require that wastewater discharges from reclamation areas contain less than 0.5 ml/L settleable solids, EPA has concluded that background sediment concentrations in the arid and semiarid west are significantly higher than the 0.5 ml/L standard. EPA has recognized this discrepancy by adopting the Western Alkaline Subcategory.

Comment: In Colorado, all of the coal mines rely extensively on approved and permitted sedimentation ponds to ensure compliance with applicable discharge standards, to control sediment and to protect downstream water quality. Colorado's topography and hydrologic regime generally dictate the need for sedimentation ponds to achieve this compliance and protection. The proposed alternative standards and practices may also be applicable in some cases and such options should be allowed. However, we recommend that the rules clearly include a "grandfather clause" which states that mines can continue to utilize, now and in the future, sedimentation ponds with numeric standard methods.

Response: EPA notes that in many cases, sedimentation ponds may be necessary to meet water quality standards or to protect receiving streams and has concluded that the use of sedimentation ponds should be determined on a site by site basis in accordance with computer modeling, NPDES permit authorities and SMCRA permit authorities. EPA does not believe that a "grandfather clause" is necessary to address the commenter's concerns. EPA has clearly stated in the proposed and final preamble that sedimentation ponds are considered a BMP which may be necessary in certain circumstances to protect water quality. EPA also believes that numeric limitations may be necessary in certain circumstances to protect water quality, and recognizes that the NPDES authority can impose numeric effluent limits on point source discharges from reclamation areas where necessary to meet water quality standards.

Comment: A commenter would like further clarification regarding the use of the term "natural" in reference to sediment loading, background levels and undisturbed conditions. In New Mexico most land cannot be considered "natural" since it has been disturbed some way. There is nothing that could be considered "natural".

Response: EPA agrees with the commenter that "natural" conditions are not the same as "background" conditions because much of the applicable land has been disturbed in some way by activities such as grazing or development. EPA erroneously used these two terms interchangeably in the proposal. EPA has revised its language in the final preamble and rule to correct this error by using the term "pre-mined, undisturbed" to indicate the level of sediment present prior to disturbance by surface coal mining.

Comment: The successful enforcement of both SMCRA and Clean Water Act requirements on the coal industry is, at best, a tenuous situation. EPA proposes to eliminate numeric effluent limitations in the western alkaline coal mining subcategory and instead place its trust in control plans based on computer modeling. This rather subjective standard would be difficult to enforce.

Response: As documented by comments submitted by the Office of Surface Mining, State and Tribal regulatory authorities, and mine operators, EPA does not agree that enforcement of both SMCRA and CWA requirements will be difficult. In fact, EPA believes that the new subcategory requirements will be much easier to enforce than numeric limits. As described in the proposal, implementation of a sediment control plan based on computer modeling will allow inspectors to determine compliance at any time, regardless of whether or not precipitation has occurred. Additionally, EPA does not agree that computer modeling produces a "subjective" standard. The RUSLE and SEDCAD models are well documented models based on many years of experience. As documented by comments submitted, these models are commonly used by regulatory authorities to determine sediment loadings.

Comment: The requirements for the proposed western alkaline coal mining subcategory have the potential to duplicate many permitting, inspection, and enforcement provisions of SMCRA.

Response; EPA does not intend for the new subcategory requirements to result in a duplication of work. Rather, EPA believes that compliance determinations under today's rule will encourage coordination and cooperation between SMCRA and NPDES authorities. EPA believes that, in many cases, the NPDES permit authority may not have the expertise or resources to adequately review mining related sediment control plans and associated modeling efforts. EPA recognizes that the requirements for permit application provided under SMCRA section 507, reclamation plans provided under SMCRA section 508, and inspections and monitoring provided under SMCRA section 517 are, in most cases, substantial and adequate. EPA envisions that approval by OSMRE or the delegated authority on the modeling effort and sediment control plan will often be sufficient to satisfy the NPDES permitting authority. As stated in Section XI.2.C of this document, this may require a Memorandum of Understanding to be developed to further the cooperation between regulatory agencies.

Comment: Some experience with sedimentation ponds in the arid and semiarid West is that downstream erosion caused by "clear water discharge," while theoretically possible, is not generally a problem because storm runoff at most western mines is stored and rarely discharges from these ponds. Water is mostly lost to evaporation and seepage. Also, in northwest Colorado, coal mine operators may also discharge into streams that, by contrast, are shrub lined, stable and not subject to additional erosion or scouring. Thus, sedimentation ponds produce environmental benefits and are generally used by coal mine operators in the Uinta Basin to meet applicable discharge requirements.

Response: EPA thanks the commenter for clarification that "clear water discharge" may not typically be a problem. Comment on this issue has been varied. Some commenters have supported the claim that sedimentation ponds disturb downstream hydrologic balances and the "clear water" discharge from such ponds can cause erosion to receiving streams. Other commenters have noted that they have not found this to be the case.

EPA agrees that sedimentation ponds do not necessarily result in adverse environmental impacts. EPA believes that ponds may be necessary in certain circumstances to ensure that sediment levels are maintained below pre-mine levels. EPA notes that ponds are one of a suite of BMPs that a mine may install in order to meet reclamation standards. However, ponds may not be necessary in all circumstances and the use of other BMPs such as check dams, vegetation, silt fences, and other construction practices may be equally protective of the environment. One advantage of using BMPs in lieu of, or in addition to, ponds is that less land is disturbed for pond construction and removal.

EPA also acknowledges there are differences in background conditions among sites in the West. For this reason, EPA has established a regulatory structure for the Western Alkaline Coal Mining Subcategory that allows mine sites to design site-specific sediment control plans that demonstrate that the discharge of sediment will not be greater than pre-mined, undisturbed conditions. Therefore, the sediment control plan and discharge limitations for a mine in northwest Colorado will likely be different from a mine site in New Mexico.

Comment: Models are constantly in a state of upgrade, thus model predictions written into an operator's permit application package can become outdated. New models may be released that better predict sediment yield for reclaimed areas than one used for the original reclamation and hydrologic analysis. The commenter recommends that EPA stipulate in the final regulation flexibility with regard to models that OSMRE validates for developing sediment yield standards.

Response: EPA proposed and finalized the following language regarding acceptable computer models: "The operator must use the same watershed model that was or will be used to acquire the SMCRA permit." EPA intends this to mean that a mine can use the upgraded version of a computer model that was used in the original application. For example, if the mine used SEDCAD 4.0 in their application, then the mine operator could use SEDCAD 5.0 in subsequent modeling procedures. This does not mean that the operator could switch to an entirely new model that was not approved in the original mine permit. EPA believes that this language provides the necessary flexibility that the commenter desires to use the most recent and appropriate modeling procedure.

Appendix A: Definitions, Acronyms, and Abbreviations Used in This Document

Act—Clean Water Act
Agency—U.S. Environmental Protection Agency
Alkaline mine drainage—mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/l.
AMD—Acid mine drainage, which means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or greater than 10 mg/l.
AML—Abandoned mine land
BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act
BCT—Best conventional pollutant control technology under section 304(b)(4)(B) of the Clean Water Act
BMP—Best management practice
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act
Brushing and grubbing area—The area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.
CFR—Code of Federal Regulations
Clean Water Act—Federal Water Pollution Control Act Amendments (33 U.S.C. 1251 *et seq.*)
Conventional pollutants—Constituents of wastewater as determined by Section 304(a)(4) of the Clean Water Act, including pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH
CWA—Clean Water Act
EPA—U.S. Environmental Protection Agency
FTE—Full-time employees
ICR—Information Collection Request
NAICS—North American Industry Classification System
NPDES—National Pollutant Discharge Elimination System
NSPS—New source performance standards under Section 306 of the Clean Water Act
OMB—Office of Management and Budget
OSMRE —Office of Surface Mining, Reclamation and Enforcement
Pollution abatement area—The part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.
POTW—Publicly-owned treatment works
PPA—Pollution Prevention Act of 1990
Pre-existing discharge—Any discharge resulting from mining activities that have been abandoned prior to the time of the remining permit application.
Pre-mined, undisturbed—The conditions present at the time of a mining permit application.
PSNS—Pretreatment standards for new sources
Reclamation area—the surface area of a coal mine that has been returned to required contour and on which revegetation (specifically, seeding or planting) work has been commenced.
Regraded area—The surface area of a coal mine which has been returned to required contour.
Remining—Coal remining refers to a coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.
RFA—Regulatory Flexibility Act
RUSLE—Revised Universal Soil Loss Equation
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act
Sediment—All undissolved organic and inorganic material transported or deposited by water.
Sediment Yield—The sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.
SIC—Standard Industrial Classifications
SMCRA—Surface Mining Control and Reclamation Act
SS—Settleable Solids
Topsoil stockpiling area—The area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.
Toxic Pollutants—The pollutants designated by EPA as toxic in 40 CFR 401.15.
TSS—Total Suspended Solids
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
WTP—Willingness to pay

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

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40 CFR Part 434

Environmental protection, Mines, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 27, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 9 and 434 are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a new heading with entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
Coal Mining Point Source Category	
434.72–434.75	2040–0239
434.82–434.83	2040–0239
434.85	2040–0239
Appendix B	2040–0239
. . . . .	

PART 434—[AMENDED]

2. The authority citation for part 434 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361.

3. Revise § 434.50 to read as follows:

§ 434.50 Applicability.

The provisions of this subpart are applicable to discharges from post-mining areas, except as provided in subpart H—Western Alkaline Coal Mining of this part.

4. Revise § 434.60 to read as follows:

§ 434.60 Applicability.

The provisions of this subpart F apply to this part 434 as specified in subparts B, C, D, E and G of this part.

5. Add subpart G, consisting of §§ 434.70 through 434.75, to read as follows:

Subpart G—Coal Remining

Sec.

434.70 Specialized definitions.
434.71 Applicability.
434.72 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
434.73 Effluent limitations attainable by application of the best available technology economically achievable (BAT).
434.74 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT).
434.75 New source performance standards (NSPS).

Subpart G—Coal Remining

§ 434.70 Specialized definitions.

(a) The term *coal remining operation* means a coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.

(b) The term *pollution abatement area* means the part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.

(c) The term *pre-existing discharge* means any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application. This term shall include a pre-existing discharge that is relocated as a result of the implementation of best management practices (BMPs) contained in the Pollution Abatement Plan.

(d) The term *steep slope* means any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State. This term does not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered and through which the mining operation is to proceed, leaving a plain or predominantly flat area.

(e) The term *new source remining operation* means a remining operation at a coal mine where mining first commences after February 22, 2002 and subsequently becomes an abandoned mine.

§ 434.71 Applicability.

(a) This subpart applies to pre-existing discharges that are located within or are hydrologically connected to pollution abatement areas of a coal remining operation.

(b) A pre-existing discharge that is intercepted by active mining or that is commingled with waste streams from active mining areas for treatment is subject to the provisions of § 434.61 Commingling of waste streams. For the purposes of this subpart, § 434.61 requires compliance with applicable BPT, BAT, BCT, and NSPS effluent limitations in subparts C, D, and F of this part. Section 434.61 applies to the commingled waste stream only during the time when the pre-existing discharge is intercepted by active mining or is commingled with active mine wastewater for treatment or discharge. After commingling has ceased, the pre-existing discharge is subject to the provisions of this part.

(c) In situations where coal remining operations seek reissuance of an existing remining permit with BPJ limitations and the regulatory authority determines that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures contained in Appendix B of this part, pre-existing discharge limitations at existing remining operations shall remain subject to baseline pollutant levels established during the original permit application.

(d) The effluent limitations in this subpart apply to pre-existing discharges until the appropriate SMCRA authority has authorized bond release.

§ 434.72 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) The operator must submit a site-specific Pollution Abatement Plan to the permitting authority for the pollution abatement area. The plan must be approved by the permitting authority and incorporated into the permit as an effluent limitation. The Pollution Abatement Plan must identify characteristics of the pollution abatement area and the pre-existing discharges. The Pollution Abatement Plan must be designed to reduce the pollution load from pre-existing discharges and must identify the selected best management practices (BMPs) to be used. The plan must describe the design specifications, construction specifications, maintenance schedules, criteria for monitoring and inspection, and expected performance of the BMPs. The BMPs must be implemented as specified in the plan.

(b) (1) Except as provided in 40 CFR 125.30 through 125.32 and paragraph (b)(2) of this section, the following effluent limits apply to pre-existing discharges:

EFFLUENT LIMITATIONS

Pollutant	Requirement
(i) Iron, total	May not exceed baseline loadings (as defined by Appendix B of this part).
(ii) Manganese, total	May not exceed baseline loadings (as defined by Appendix B of this part).
(iii) Acidity, net	May not exceed baseline loadings (as defined by Appendix B of this part).
(iv) TSS	During remining and reclamation, may not exceed baseline loadings (as defined by Appendix B of this part). Prior to bond release, the pre-existing discharge must meet the applicable standards for TSS or SS contained in Subpart E.[1]

[1] A pre-existing discharge is exempt from meeting standards in Subpart E of this part for TSS and SS when the permitting authority determines that Subpart E standards are infeasible or impractical based on the site-specific conditions of soil, climate, topography, steep slopes, or other baseline conditions provided that the operator demonstrates that significant reductions of TSS and SS will be achieved through the incorporation of sediment control BMPs into the Pollution Abatement Plan as required by paragraph (a) of this section.

(2) If the permitting authority determines that it is infeasible to collect samples for establishing the baseline pollutant levels pursuant to paragraph (b)(1) of this section, and that remining will result in significant improvement that would not otherwise occur, then the numeric effluent limitations in paragraph (b)(1) of this section do not apply. Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to, discharges that exist as a diffuse groundwater flow that cannot be assessed via sample collection; a base flow to a receiving stream that cannot be monitored separate from the receiving stream; a discharge on a steep or hazardous slope that is inaccessible for sample collection; or, a number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

§ 434.73 Effluent limitations attainable by application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32 and 434.72(b)(2), a pre-existing discharge must comply with the effluent limitations listed in § 434.72(b) for net acidity, iron and manganese. The operator must also submit and implement a Pollution Abatement Plan as required in § 434.72(a).

§ 434.74 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32 and 434.72(b)(2), a pre-existing discharge must comply with the effluent limitations listed in § 434.72(b) for total suspended solids. The operator must also submit and implement a Pollution Abatement Plan as required in § 434.72(a).

§ 434.75 New source performance standards (NSPS).

Except as provided in § 434.72(b)(2), a pre-existing discharge from a new source remining operation must comply with the effluent limitations listed in § 434.72(b) for iron, manganese, acidity and total suspended solids. The operator must also submit and implement a Pollution Abatement Plan as required in § 434.72(a).

6. Add subpart H, consisting of §§ 434.80 through 434.85, to read as follows:

Subpart H—Western Alkaline Coal Mining

Sec.

434.80 Specialized definitions.
434.81 Applicability.
434.82 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
434.83 Effluent limitations attainable by application of the best available technology economically achievable (BAT).
434.84 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT). [Reserved]
434.85 New source performance standards (NSPS).

Subpart H—Western Alkaline Coal Mining

§ 434.80 Specialized definitions.

(a) The term *brushing and grubbing area* means the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.

(b) The term *regraded area* means the surface area of a coal mine that has been returned to required contour.

(c) The term *sediment* means undissolved organic and inorganic material transported or deposited by water.

(d) The term *sediment yield* means the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.

(e) The term *topsoil stockpiling area* means the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.

(f) The term *western coal mining operation* means a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less.

§ 434.81 Applicability.

(a) This subpart applies to alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas.

(b) This subpart applies to drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas where the discharge, before any treatment, meets all the following requirements:

(1) pH is equal to or greater than 6.0;

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(2) Dissolved iron concentration is less than 10 mg/L; and

(3) Net alkalinity is greater than zero.

(c) The effluent limitations in this subpart apply until the appropriate SMCRA authority has authorized bond release.

§ 434.82 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, the following effluent limitations apply to mine drainage from applicable areas of western coal mining operations:

(a) The operator must submit a site-specific Sediment Control Plan to the permitting authority that is designed to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions. The Sediment Control Plan must be approved by the permitting authority and be incorporated into the permit as an effluent limitation. The Sediment Control Plan must identify best management practices (BMPs) and also must describe design specifications, construction specifications, maintenance schedules, criteria for inspection, as well as expected performance and longevity of the best management practices.

(b) Using watershed models, the operator must demonstrate that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The operator must use the same watershed model that was, or will be, used to acquire the SMCRA permit.

(c) The operator must design, implement, and maintain BMPs in the manner specified in the Sediment Control Plan.

§ 434.83 Effluent limitations attainable by application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing western coal mining operation with drainage subject to this subpart must meet the effluent limitations in § 434.82.

§ 434.84 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT). [Reserved]

§ 434.85 New source performance standards (NSPS).

Any new source western coal mining operation with drainage subject to this subpart must meet the effluent limitations in § 434.82.

6. Part 434 is amended by adding appendix B to part 434 as follows:

Appendix B to Part 434—Baseline Determination and Compliance Monitoring for Pre-existing Discharges at Remining Operations

I. General Procedure Requirements

a. This appendix presents the procedures to be used for establishing effluent limitations for pre-existing discharges at coal remining operations, in accordance with the requirements set forth in Subpart G; Coal Remining. The requirements specify that pollutant loadings of total iron, total manganese, total suspended solids, and net acidity in pre-existing discharges shall not exceed baseline pollutant loadings. The procedures described in this appendix shall be used for determining site-specific, baseline pollutant loadings, and for determining whether discharge loadings during coal remining operations have exceeded the baseline loading. Both a monthly (single-observation) procedure and an annual procedure shall be applied, as described below.

b. In order to sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

c. Calculations described in this appendix must be applied to pollutant loadings. Each loading value is calculated as the product of a flow measurement and pollutant concentration taken on the same date at the same discharge sampling point, using standard units of flow and concentration (to be determined by the permitting authority). For example, flow may be measured in cubic feet per second, concentration in milligrams per liter, and the pollutant loading could be calculated in pounds per year.

d. Accommodating Data Below the Maximum Daily Limit at subpart C of this part. In the event that a pollutant concentration in the data used to determine baseline is lower than the daily maximum limitation established in subpart C of this part for active mine wastewater, the statistical procedures should not establish a baseline more stringent than the BPT and BAT effluent standards established in subpart C of this part. Therefore, if the total iron concentration in a baseline sample is below 7.0 mg/L, or the total manganese concentration is below 4.0 mg/L, the baseline sample concentration may be replaced with 7.0 mg/L and 4.0 mg/L, respectively, for the purposes of some of the statistical calculations in this Appendix B: The substituted values should be used for all methods in this Appendix B with the exception of the calculation of the interquartile range (R) in Method 1 for the annual trigger (Step 3), and in Method 2 for the single observation trigger (Step 3). The interquartile range (R) is the difference between the quartiles M_{-1} and M_1; these values should be calculated using actual loadings (based on measured concentrations) when they are used to calculate R. This should be done in order to account for the full range of variability in the data.

II. Procedure for Calculating and Applying a Single-Observation (Monthly) Trigger

Two alternative methods are provided for calculating a single-observation trigger. One method must be selected and applied by the permitting authority for any given remining permit.

A. Method 1 for Calculating a Single Observation Trigger (L)

(1) Count the number of baseline observations taken for the pollutant of interest. Label this number n. In order to sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(2) Order all baseline loading observations from lowest to highest. Let the lowest number (minimum) be $x_{(1)}$, the next-lowest be $x_{(2)}$, and so forth until the highest number (maximum) is $x_{(n)}$.

(3) If fewer than 17 baseline observations were obtained, then the single observation trigger (L) will equal the maximum of the baseline observations ($x_{(n)}$).

(4) If at least 17 baseline observations were obtained, calculate the median (M) of all baseline observations:

Instructions for calculation of a median of n observations:

If n is odd, then M equals $x_{(n/2+1/2)}$.

For example, if there are 17 observations, then $M = X_{(17/2+1/2)} = x_{(9)}$, the 9th highest observation.

If n is even, then M equals $0.5 * (x_{(n/2)} + x_{(n/2+1)})$.

For example, if there are 18 observations, then M equals 0.5 multiplied by the sum of the 9th and 10th highest observations.

(a) Next, calculate M_1 as the median of the subset of observations that range from the calculated M to the maximum $x_{(n)}$; that is, calculate the median of all x larger than or equal to M.

(b) Next, calculate M_2 as the median of the subset of observations that range from the calculated M_1 to $x_{(n)}$; that is, calculate the median of all x larger than or equal to M_1.

(c) Next, calculate M_3 as the median of the subset of observations that range from the calculated M_2 to $x_{(n)}$; that is, calculate the median of all x larger than or equal to M_2.

(d) Finally, calculate the single observation trigger (L) as the median of the subset of observations that range from the calculated M_3 to $x_{(n)}$.

Note: When subsetting the data for each of steps 3a–3d, the subset should include all observations greater than or equal to the median calculated in the previous step. If the median calculated in the previous step is not an actual observation, it is not included in the new subset of observations. The new median value will then be calculated using the median procedure, based on whether the number of points in the subset is odd or even.

(5) Method for applying the single observation trigger (L) to determine when the baseline level has been exceeded.

If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for four weeks (four weekly samples).

(a) If three or fewer of the weekly observations exceed L, resume monthly monitoring

(b) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

B. Method 2 for Calculating a Single Observation Trigger (L)

(1) Follow Method 1 above to obtain M_1 (the third quartile, that is, the 75th percentile).

(2) Calculate M_{-1} as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate interquartile range, $R = (M_1 - M_{-1})$.

(4) Calculate the single observation trigger L as

$L = M_1 + 3 * R$

(5) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for four weeks (four weekly samples).

(a) If three or fewer of the weekly observations exceed L, resume monthly monitoring

(b) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

III. Procedure for Calculating and Applying an Annual Trigger

A. Method 1 for Calculating and Applying an Annual Trigger (T)

(1) Calculate M and M_1 of the baseline loading data as described above under Method 1 for the single observation trigger.

(2) Calculate M_{-1} as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate the interquartile range, $R = (M_1 - M_{-1})$.

(4) The annual trigger for baseline (Tb) is calculated as:

$$Tb = M + \frac{(1.815 * R)}{\sqrt{n}}$$

where n is the number of baseline loading observations.

(5) To compare baseline loading data to observations from the annual monitoring period, repeat steps 1–3 for the set of monitoring observations. Label the results of the calculations M′ and R′. Let m be the number of monitoring observations.

(6) The subtle trigger (Tm) of the monitoring data is calculated as:

$$Tm = M' - \frac{(1.815 * R')}{\sqrt{m}}$$

(7) If Tm > Tb, the median loading of the monitoring observations has exceeded the baseline loading.

B. Method 2 for Calculating and Applying an Annual Trigger (T)

Method 2 applies the Wilcoxon-Mann-Whitney test to determine whether the median loading of the monitoring observations has exceeded the baseline median. No baseline value T is calculated.

(1) Steps for Conducting the Wilcoxon-Mann-Whitney Test

(a) Let n be the number of baseline loading observations taken, and let m be the number of monitoring loading observations taken. In order to sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(b) Order the combined baseline and monitoring observations from smallest to largest.

(c) Assign a rank to each observation based on the assigned order: the smallest observation will have rank 1, the next smallest will have rank 2, and so forth, up to the highest observation, which will have rank n + m.

(1) If two or more observations are tied (have the same value), then the average rank for those observations should be used. For example, suppose the following four values are being ranked:

3, 4, 6, 4

Since 3 is the lowest of the four numbers, it would be assigned a rank of 1. The highest of the four numbers is 6, and would be assigned a rank of 4. The other two numbers are both 4. Rather than assign one a rank of 2 and the other a rank of 3, the average of 2 and 3 (*i.e.*, 2.5) is given to both numbers.

(d) Sum all the assigned ranks of the n baseline observations, and let this sum be S_n.

(e) Obtain the critical value (C) from Table 1. When 12 monthly data are available for both baseline and monitoring (*i.e.*, n = 12 and m = 12), the critical value C is 99.

(f) Compare C to S_n. If S_n is less than C, then the monitoring loadings have exceeded the baseline loadings.

(2) Example Calculations for the Wilcoxon-Mann-Whitney Test

BASELINE DATA											
8.0	9.0	9.0	10.0	12.0	15.0	17.0	18.0	21.0	23.0	28.0	30.0
MONITORING DATA											
9.0	10.0	11.0	12.0	13.0	14.0	16.0	18.0	20.0	24.0	29.0	31.0
BASELINE RANKS											
1.0	3.0	3.0	5.5	8.5	12.0	14.0	15.5	18.0	19.0	21.0	23.0
MONITORING RANKS											
3.0	5.5	7.0	8.5	10.0	11.0	13.0	15.5	17.0	20.0	22.0	24.0

Sum of Ranks for Baseline is Sn = 143.5, critical value is $C_{n,m}$ = 99.

(3) Critical Values for the Wilcoxon-Mann-Whitney Test

(a) When n and m are less than 21, use Table 1.

In order to find the appropriate critical value, match column with correct n (number of baseline observations) to row with correct m (number of monitoring observations)*.

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TABLE 1.—CRITICAL VALUES (C) OF THE WILCOXON-MANN-WHITNEY TEST
(for a one-sided test at the 0.001 significance level)

n / m	10	11	12	13	14	15	16	17	18	19	20
10	66	79	93	109	125	142	160	179	199	220	243
11	68	82	96	112	128	145	164	183	204	225	248
12	70	84	99	115	131	149	168	188	209	231	253
13	73	87	102	118	135	153	172	192	214	236	259
14	75	89	104	121	138	157	176	197	218	241	265
15	77	91	107	124	142	161	180	201	223	246	270
16	79	94	110	127	145	164	185	206	228	251	276
17	81	96	113	130	149	168	189	211	233	257	281
18	83	99	116	134	152	172	193	215	238	262	287
19	85	101	119	137	156	176	197	220	243	268	293
20	88	104	121	140	160	180	202	224	248	273	299

(b) When n or m is greater than 20 and there are few ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let N = n + m.

$$\text{CriticalValue} = 0.5 * n * (N+1) - 3.0902 * \sqrt{n * m (N+1)/12}$$

For example, this calculation provides a result of 295.76 for n = m = 20, and a result of 96.476 for n = m = 12. Rounding up produces approximate critical values of 296 and 97.

(c) When n or m is greater than 20 and there are many ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let S be the sum of the squares of the ranks or average ranks of all N observations. Let N = n + m.

$$\text{CriticalValue} = 0.5 * n * (N+1) - 3.0902 * \sqrt{V}$$

In the preceding formula, calculate V using

$$V = \frac{n * m * S}{N * (N-1)} - \frac{n * m * (N+1)^2}{4 * (N-1)}$$

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January 23, 2002

Part IV

Federal Emergency Management Agency

44 CFR Part 206

Disaster Assistance; Federal Assistance to Individuals and Households; Proposed Rule

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD25

Disaster Assistance; Federal Assistance to Individuals and Households

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 206 of the Disaster Mitigation Act of 2000 by consolidating "Temporary Housing Assistance" and "Individual and Family Grant Programs" into a single program called "Federal Assistance to Individuals and Households". Through this consolidation we are attempting to streamline the administration of the provision of assistance to disaster victims.

DATES: We (FEMA) invite your comments on this proposed rule, which we should receive by March 11, 2002.

ADDRESSES: Please send any comments on this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Lumumba Yancey, Readiness, Response and Recovery Directorate, (202) 646–3939, or (email) at *lumumba.yancey@fema.gov*.

SUPPLEMENTARY INFORMATION: By virtue of its enactment of section 206(a) of the Disaster Mitigation Act of 2000, Pub.L. 106–390, Congress effectively combined into one section of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, or the Act) what previously had been two separate provisions. The first is the old version of section 408 of the Stafford Act, 42 U.S.C. 5174, entitled "Temporary Housing Assistance". The second is section 411 of the Stafford Act, 42 U.S.C. 5178, entitled "Individual and Family Grant Programs". Under section 206(d) of Pub.L. 106–390, this consolidation of sections 408 and 411 of the Stafford Act will not become effective until 18 months after enactment of Pub.L. 106–390. The President signed Pub.L. 106–390 on October 30, 2000; the new consolidated authority becomes effective on May 1, 2002. Once made final this proposed rule will guide FEMA's implementation of the new statutory provision.

The intent of section 206 of Pub.L. 106–390 is to consolidate and streamline the provision of assistance under sections 408 and 411 of the Stafford Act. For example, House Report No. 106–40 (the report that accompanied H.R. 707, which became Pub.L. 106–390) indicates that H.R. 707 "attempts to increase the efficiency of existing disaster assistance programs by eliminating unnecessary and complicated aspects of the program. This includes * * * combining the housing and individual and family assistance programs." *See* p. 11 of House Report No. 106–40.

Because of the clear Congressional interest in streamlining the provision of assistance under the new version of section 408 of the Act, 42 U.S.C. 5174, we propose to administer a consolidated program under section 408. Under the new version of 42 U.S.C. 5174 there would be a single registration period for assistance (see § 206.103 of the proposed rule), a consolidated statement of eligibility and ineligibility conditions for assistance (§ 206.104 of the proposed rule), a consolidated definition of the criteria for assistance (§ 206.105 of the proposed rule), a consolidated appeal process (§ 206.106 of the proposed rule), a consolidated process for recovery of funds (§ 206.107 of the proposed rule), and a consolidated process for possible State administration of certain types of assistance that are authorized by amended section 408 (§ 206.111 of the proposed rule).

We anticipate that generally FEMA will administer all assistance under amended 42 U.S.C. 5174. However, under § 206.111 of the proposed rule the States will have the discretion to administer certain types of assistance previously known as the Individual and Family Grant Programs (see § 206.111(a) of the proposed rule). In addition, we anticipate that some States may ask to participate in the management of a portion of the direct housing program. The decision to allow States to do so is within FEMA's discretion, which we will apply by a Memorandum of Understanding (MOU). States that wish to administer these programs would work with FEMA to develop an annual MOU to govern their activities under 42 U.S.C. 5174 as a precondition of active involvement in such activities. The MOUs would reflect the streamlined approach to the activities authorized by 42 U.S.C. 5174 and would describe different optional procedures for States to use in the administration of the program.

Under § 206.111(a) of the proposed rule, States would be given the option to administer certain types of assistance under the new authority entitled "Assistance to Address Other Needs." See revised 42 U.S.C. 5174(e). We drafted the proposed regulation to give States this discretion in light of the language of 42 U.S.C. 5174(f), which authorizes States to "request a grant from (FEMA) to provide financial assistance to individuals and households in the State under paragraph (e)* * *." We anticipate that most States that opt to administer this program will use FEMA's processing system in performing their activities, but we also plan to offer States the opportunity to administer the program more independently. At the same time we are sensitive to the clear expression of congressional intent to consolidate and streamline assistance under the provision. We invite comment from the public on the tension between the need to consolidate and streamline the activities which are authorized by the new version of 42 U.S.C. 5174, on the one hand, and the need to ensure the availability of an active State role in the process, on the other hand.

In addition, the proposed rule contemplates that in some situations States may opt to participate in the management of "direct" disaster housing assistance programs under 42 U.S.C. 5174(c)(1)(B). See § 206.111(b) of the proposed rule. Our existing rule at 44 CFR 206.101(s) contemplates the possibility of States managing any portion of a temporary housing program. On the other hand, § 206.111(b) of the proposed rule only contemplates the possibility of a State managing the "direct housing" authority under 42 U.S.C. 5174(c)(1)(B). We decided to draft the regulation in a more limited manner than the current regulation because of the clear congressional desire for a more consolidated and streamlined program under 42 U.S.C. 5174. At the same time we propose to continue the policy of enabling States that desire to do so to become active participants in the process of providing temporary direct housing assistance to their residents in the aftermath of major disasters.

The current version of 42 U.S.C. 5174 does not contain an explicit reference to the possibility of a State administering the temporary housing authority of the Act. Nevertheless, FEMA published 44 CFR 206.101(s) several years ago in spite of the lack of explicit authority for States to administer any portion of the temporary housing authorities of the Stafford Act. Because no one has questioned this rule in the many years that it has been in place, we believe that there is implicit authority to retain a rule that calls for possible State

management of the temporary direct housing authority of the Stafford Act. We solicit input from the public on this aspect of the proposed rule.

42 U.S.C. 5174(b) is the general authority for the President to provide housing assistance to disaster victims, which the President delegated to the Director of FEMA under Executive Order 12148. This new paragraph explicitly indicates that FEMA has authority to determine the most appropriate form of housing assistance to provide to disaster victims. This is a new provision in the Stafford Act that in the past we addressed in our implementing regulations. In addition, 42 U.S.C. 5174(b) states explicitly for the first time that we can provide more than one form of housing assistance to disaster victims "based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation." *See* 42 U.S.C. 5174(b)(2)(B).

Section 408(a)(3) of the previous version of the Stafford Act stated that "Federal financial and operational assistance under this section shall continue for not longer than 18 months...." The general rule under this provision is that *all* forms of temporary housing assistance are available for up to 18 months, unless FEMA extends the period in the public interest. On the other hand, under the amended version of 42 U.S.C. 5174(c)(1)(B)(ii) the only type of temporary housing assistance that is specifically limited to 18 months is "direct" housing assistance (e.g., mobile homes and travel trailers). However, there is no indication in the Disaster Mitigation Act of 2000 that Congress intended for other forms of temporary housing assistance to be available generally for more than 18 months. In addition, in most cases if we were to provide rental assistance under the new version of 42 U.S.C. 5174(c)(1) for more than 18 months, the total assistance would exceed the $25,000 cap that is imposed by amended 42 U.S.C. 5174(h). Therefore, we have included a provision in the proposed rule that would limit temporary housing assistance generally (rather than only in the case of the provision of "direct" housing assistance) to no more than 18 months (see § 206.101(d) of the proposed rule). We would appreciate comments from the public on this aspect of the proposed rule.

The new version of 42 U.S.C. 5174(c) identifies the types of housing assistance that FEMA can provide in the aftermath of presidentially-declared major disasters. The types of authorized housing assistance are:

(1) Financial assistance to rent alternate housing (see the amended version of 42 U.S.C. 5174(c)(1)(A), as well as § 206.108(b)(1)(i) of the proposed rule);

(2) "Direct" housing assistance in the form of temporary housing units (e.g., mobile homes and travel trailers) that FEMA purchases or leases for disaster victims, usually in situations where rental accommodations are not available (see the amended version of 42 U.S.C. 5174(c)(1)(B), as well as § 206.108(b)(1)(ii) of the proposed rule);

(3) Financial assistance (up to $5,000 per household) for the repair of owner-occupied private residences, utilities, and residential infrastructure that are damaged in major disasters (which can be provided without demonstrating that a disaster victim's housing needs can be met by other means, other than by insurance reimbursement) (see the amended version of 42 U.S.C. 5174(c)(2), as well as § 206.108(b)(2) of the proposed rule);

(4) Financial assistance (up to $10,000 per household) for the replacement of owner-occupied private residences that are damaged by major disasters (see the amended version of 42 U.S.C. 5174(c)(3), as well as § 206.108(b)(3) of the proposed rule); and

(5) Financial assistance or direct assistance to disaster victims to construct permanent housing in insular areas (i.e., the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and in Puerto Rico and other remote locations when no alternate housing resources are available and when the other forms of authorized temporary housing assistance are "unavailable, infeasible, or not cost-effective" (see the amended version of 42 U.S.C. 5174(c)(4), as well as § 206.108(b)(4) of the proposed rule).

There are several significant differences between this new version of the Stafford Act's housing authority and the previous version. The previous version of 42 U.S.C. 5174 was entitled "Temporary Housing Assistance", and it authorized exclusively temporary assistance to address the housing needs of disaster victims. The new version of 42 U.S.C. 5174, on the other hand, contains two housing authorities that have more permanent than temporary features. There is now an authorization for replacement housing to be provided to disaster victims (see the amended version of 42 U.S.C. 5174(c)(3), which we discuss below), and there is an authority for permanent housing construction at the new version of 42 U.S.C. 5174(c)(4), which we also discuss below. These new provisions of the Act suggest congressional recognition that in some unique circumstances we should implement the traditionally temporary housing authorities of the Stafford Act so as to provide a longer term solution to the housing needs of disaster victims.

Another change to the Act relates to 42 U.S.C. 5174(b) of the earlier version of the Act. That provision, which is not in the new version of the temporary housing authority, authorized the payment of mortgage or rental assistance to disaster victims who, as a result of financial hardship caused by a major disaster, were unable to continue paying their pre-disaster rent or mortgages. Because this form of housing assistance is no longer in the Act, for major disasters declared on or after May 1, 2002, this type of housing assistance will not be available under the Stafford Act.

Another change in the new housing authority relates to the authority to provide financial assistance to repair owner-occupied residences in the aftermath of major disasters. The previous version of this authority did not contain a cap on the amount of such assistance. Our practice has been to impose such caps administratively. The new version of the temporary housing authority (see the revised version of 42 U.S.C. 5174(c)(2)) contains a $5,000 cap on this type of assistance (to be adjusted annually to reflect changes in the Consumer Price Index). *See* § 206.108(b)(2) of the proposed rule. The $5,000 cap would cover not only repairs to owner-occupied private residences, but also hazard mitigation measures. The legislative history relating to this new provision suggests that there is some confusion whether the amended language imposes an absolute cap on the amount of authorized repair assistance. Although we believe that the enacted provision creates an absolute $5,000 cap on this type of assistance, we are concerned that that cap might imprudently tie our hands in our administration of this provision of the revised legislation. Therefore, we ask for public comments on the housing repair authority generally, and on the $5,000 cap in particular.

Congress also authorized two new forms of housing assistance in the new version of 42 U.S.C. 5174. The first appears at 42 U.S.C. 5174(c)(3). This provision authorizes for the first time in the history of the Federal disaster assistance program funding to replace owner-occupied private residences that are damaged in major disasters. The provision of the proposed regulation that would implement this new authority appears at § 206.108(b)(3) of the proposed rule. The proposed rule

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states that before we can provide this type of replacement assistance, an authorized member of the affected household must agree to purchase flood insurance on the replacement housing unit under any applicable flood insurance purchase mandates that are created by the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994. The proposed rule indicates that this new replacement housing authority would only apply where an owner-occupied private residence could be replaced "in its entirety" for $10,000 or less (adjusted annually to reflect changes in the Consumer Price Index). FEMA does not expect that it will be feasible to use this authority often.

The second new form of housing assistance in the new version of 42 U.S.C. 5174 authorizes the construction of permanent housing in insular areas and other remote areas where it would not be feasible or cost-effective to rely on other types of temporary housing assistance. On several occasions in the past we have provided permanent housing assistance in remote insular areas of Puerto Rico and various Pacific islands because there were no rental resources available, repairs to pre-disaster residences were not feasible, and it would not have been cost-effective to purchase and ship mobile homes or other readily-fabricated dwellings to the disaster sites. The enactment of this new provision reflects an understanding that in rare, limited circumstances permanent housing assistance may be the only viable way to provide housing in the aftermath of major disasters. We would implement this new authority under § 206.108(b)(4) of the proposed regulation. The new authority could be implemented in insular areas, i.e., the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, and in Puerto Rico and other areas that are eligible to receive disaster assistance under the Stafford Act, but which are so remote as to make other forms of housing assistance extremely difficult and costly to provide.

The regulations that implement the current version of 42 U.S.C. 5174 explicitly refer to the provision of "transient accommodations" assistance. See 44 CFR 206.101(g)(1)(ii). That provision of the existing regulations authorizes FEMA to provide short-term housing assistance for up to 30 days to help disaster victims meet their immediate post-disaster housing needs. The proposed rule that we publish today does not explicitly refer to "transient accommodations", but we propose to provide this type of financial assistance as an implicit subset of the financial assistance that we will continue to provide under the revised version of 42 U.S.C. 5174(c)(1)(A) of the Stafford Act and under § 206.108(b)(1)(i) of the proposed rule.

The new version of 42 U.S.C. 5174(d) imposes certain terms and conditions on the provision of direct housing assistance to disaster victims. The general rule is that we will place direct housing assistance on a site provided by the State, local government, owner of the site, or by the disaster victim. We can, however, provide a site when we determine that a site that we provide would be more economical or accessible than one provided by the State, local government, site owner, or the disaster victim. The previous version of 42 U.S.C. 5174(a)(4) dictated that the costs of site construction and development would be cost shared between FEMA and the State or local government, but the new version of 42 U.S.C. 5174 does not retain this cost sharing provision. Therefore, we may fund the entire costs of site construction and development in the future" but only where we determine that it is necessary for the Federal government to assume this obligation.

New 42 U.S.C. 5174(d)(2) describes the process for disposal of temporary housing units that are purchased for the use of disaster victims. We may sell such housing units directly to disaster victims who occupy the units if they lack other permanent housing. As described in the proposed rule at § 206.109(a)(1)(ii), the sales price will be at fair market value, except that FEMA may adjust the sales price for purchasers who are not able to pay such an amount for the purchase of a temporary housing unit. As provided under new 42 U.S.C. 5174(d)(2)(A)(iii), as well as § 206.109(a)(1)(iii) of the proposed rule, we would deposit the proceeds of such sales into the Disaster Relief Fund, which we administer to implement the Stafford Act.

Paragraphs (A)(iv) and (B)(ii)(II) of revised 42 U.S.C. 5174(d)(2) relate to the obligation to purchase insurance on disaster housing units. The insurance purchase mandates relate to "hazard insurance" and "flood insurance" (flood insurance is not typically provided in standard homeowners insurance policies). Initially we want to point out that we interpret the mandate to purchase "hazard insurance" to equate to a mandate to obtain standard homeowners insurance policies on disaster housing units that are purchased following major disaster responses. We do not intend to require the purchase of insurance for every conceivable hazard that might exist in a given locale under these two paragraphs in 42 U.S.C. 5174(d)(2).

We also want to ask those who review this proposed rule to note the different statutory provisions relating to the purchase of flood insurance on housing units that FEMA sells under 42 U.S.C. 5174(d)(2). 42 U.S.C. 5174(d)(2)(A)(iv) and (d)(2)(B)(ii)(II) mandate that as a condition of the sale of a housing unit to disaster victims or to States, to other governmental entities, or to voluntary organizations, respectively, the purchaser must agree to purchase and maintain flood insurance on the housing unit. That mandate does not apply to "any other person" who purchases a housing unit under the terms of 42 U.S.C. 5174(d)(2)(B). There is no indication in the legislation or the legislative history why Congress may have intended to require disaster victims, State or local governments, or voluntary organizations to purchase flood insurance on housing units that FEMA sells in the aftermath of major disasters, but not to require other purchasers of housing units to buy flood insurance. In addition, it is noteworthy that the revised version of 42 U.S.C. 5174(c)(3)(C) (relating to replacement housing grants, as opposed to the sale of housing units that FEMA purchases) only requires the purchase of flood insurance on replacement housing when such housing is in a designated special flood hazard area.

There is no legislative history clarifying the distinction between the different flood insurance purchase mandates in amended 42 U.S.C. 5174. We believe that although there are different provisions relating to flood insurance purchase mandates within 42 U.S.C. 5174, it is important that we should apply the flood insurance purchase mandates arising out of the Act consistently. Therefore, we interpret the various flood insurance purchase mandates of 42 U.S.C. 5174 to apply only when a housing unit is to be placed in a designated special flood hazard area. This interpretation is consistent with the generic flood insurance purchase mandate that arises out of the Flood Disaster Protection Act of 1973, Public Law 93–234. However, in light of the differences between the different flood insurance purchase provisions within this new statutory provision, we invite comments from the public on our interpretation of this issue.

We also want to direct the public's attention to another significant aspect of amended 42 U.S.C. 5174 as it relates to the administration of this authority vis-á-vis the flood insurance purchase mandates of other legislation. Section 102 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a, and section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, respectively, impose stringent flood insurance purchase mandates generically and on disaster victims in particular. It is also noteworthy that 42 U.S.C. 5174(c)(3)(C) of the amended Act (relating to "replacement housing") explicitly provides that there is no authority to waive "any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of * * * "replacement housing assistance.

The regulations that implement the current IFG program authorize victims of flood disasters who qualify for IFG assistance to receive flood insurance coverage under a Group Flood Insurance Policy (GFIP). Under the GFIP, IFG assistance is used to purchase a three-year flood insurance policy under the National Flood Insurance Program, which FEMA administers pursuant to the National Flood Insurance Act of 1968, as amended. *See* 44 CFR 206.131(d)(2). No similar provision is included in the proposed rule that accompanies this discussion because we propose to eliminate the GFIP and restore the responsibility for the flood insurance purchase requirement back to the individual or household receiving the federal assistance. Under the current GFIP process, IFG funds are used to purchase three years of flood insurance for disaster victims who are eligible for IFG assistance. If the GFIP process is eliminated, as we are proposing, then victims of flooding disasters will be responsible for obtaining and maintaining flood insurance at their own expense. If they fail to do so, then in the aftermath of future flooding they will not be eligible to receive assistance under subsection 408(e) of the Act. We recognize that while we have the discretion to require disaster victims to purchase flood insurance using their own resources, as we are proposing to do, there are other ways to address this issue. We could keep in place the current GFIP process, pursuant to which disaster victims are provided flood insurance coverage for three years at subsidized rates without having to provide their own resources to pay for such coverage. We could also implement a modified version of the GFIP process, pursuant to which disaster victims would be provided flood insurance for three years at subsidized rates that they would have to pay for using their own resources. Or we could do away with the GFIP process but still provide victims with flood insurance coverage that would be paid out of assistance for which the disaster victims qualify under section 408 of the Act. *See* § 206.101(k)(3)(i) of the proposed rule. We invite comments from the public on this aspect of the proposed rule.

The amended version of 42 U.S.C. 5174(e), entitled "Financial Assistance to Address Other Needs", is similar to the program that is currently authorized at section 411, "Individual and Family Grant Programs", 42 U.S.C. 5178. Beginning on May 1, 2002, 42 U.S.C. 5174(e) will authorize FEMA, in consultation with the Governor of a State in which the President has declared a major disaster, to provide financial assistance to meet disaster-related medical, dental, and funeral expenses. The section will also authorize FEMA to address personal property, transportation, and other necessary expenses or serious needs resulting from major disasters.

In addition, new 42 U.S.C. 5174(f) addresses the role that States may play in the implementation of the program entitled "Financial Assistance to Address Other Needs". Sections 206.110 and 206.111 of the proposed regulation describe how we will implement these provisions of 42 U.S.C. 5174. Under § 206.111 of the proposed regulation States will have the option (1) to let FEMA administer the financial assistance that 42 U.S.C. 5174(e) authorizes, (2) to work with FEMA to administer the program, or (3) to run the program independently, consistent with the Stafford Act and FEMA's implementing regulations and policies.

The amended version of 42 U.S.C. 5174(f)(2) is a new provision. It relates to the mandates of the Privacy Act, 5 U.S.C. 552a. The new provision states that FEMA should "provide for the substantial and ongoing involvement of the States * * * including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance* * * Section 206.101(j) of the proposed rule would implement this new statutory provision by authorizing FEMA to share applicant information with States in order to facilitate the provision of additional State and local assistance to disaster victims. We would be interested in hearing from members of the public their reaction to this provision of the proposed rule, especially as it relates to the mandates of the Privacy Act.

As mandated in the revised version of 42 U.S.C. 5174(g), the costs of providing "financial assistance to address other needs" will be cost shared on a 75 percent Federal/25 percent State basis, as was the case before the recent amendments to the Stafford Act. In addition, the amended version of 42 U.S.C. 5174(h) indicates that no individual or household can receive more than $25,000 (adjusted annually under changes in the Consumer Price Index) with respect to a single major disaster declaration.

Finally, section 206(b) of the Disaster Mitigation Act of 2000 amends section 502(a)(6) of the Stafford Act, 42 U.S.C. 5192(a)(6), to make assistance under the revised version of 42 U.S.C. 5174 available in the aftermath of presidentially-declared emergencies, as well as major disasters. The draft rule that accompanies this discussion refers throughout to declarations of major disaster. However, because of the amendment at section 206(b) there is now authorization to make assistance available under 42 U.S.C. 5174 in both emergencies and major disasters.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, because of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If an action will have a significant effect, then the agency uses the EA to develop an EIS.

Agencies can categorically identify actions that do not normally have a significant impact on the environment. FEMA's existing regulations implementing NEPA exempt from NEPA review the preparation of regulations relating to actions that qualify for categorical exclusions. See 44 CFR 10.8(d)(2)(ii). In addition, FEMA's regulations also categorically exclude temporary housing and Individual and Family Grant assistance from NEPA review. See 44 CFR 10.8(d)(2)(xix)(D) and (F). Therefore, we have determined that FEMA's rules implementing NEPA exempt this rule from the preparation of an EA or an EIS. The changes reflected in this proposed rule are exempt from NEPA because they reflect administrative changes to the program that would have no effect on the environment. However, we would perform an environmental review under 44 CFR part 10 on any proposed project

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that we would fund and implement under the authorities covered by this rule.

Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements. As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)), we have submitted the proposed rule with a copy of the PRA OMB clearance package to the Office of Management and Budget (OMB) for review. Under the PRA, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number.

FEMA has already obtained OMB approval for the information collection request under OMB Control Number 3067–0009, Disaster Assistance Registration/Application for Disaster Assistance. The information from the form is used to implement the current versions of sections 408 and 411 of the Stafford Act. Although the OMB approval for this information collection request expires July 28, 2003, FEMA is taking steps to reduce the information collection burden relating to this form. Our effort to reduce the burden is independent of the recent amendment to section 408 of the Stafford Act, to the recent repeal of section 411 of the Stafford Act, and the information collection requirements contained in this proposed rule.

Collection of Information

Title: Request for Approval of Late Application.

Abstract: After the registration period ends, FEMA will accept late registrations for an additional 60 days. FEMA will process late registrations for those applicants who provide justification for the delay in their registration. In order for FEMA to effectively review the late application request, we ask that the request be in writing and explain the reason(s) for the delay in registering.

Respondents: Applicant.

Title: Request for Continued Assistance (Housing and Medical).

Abstract: After the initial assistance, FEMA may provide continued Housing and Medical reimbursement, based on need. In order for FEMA to effectively evaluate the continuing need for housing and/or medical assistance, we ask that the request be in writing and that the applicant provide information about their permanent housing plans or receipts (bills) for medical expenses.

Respondents: Applicant.

Title: Appeal of Program Decision.

Abstract: Under the provisions of section 423 of the Stafford Act, applicants for assistance from FEMA may appeal any eligibility determination. In order for FEMA to effectively respond to an applicants appeal, we ask that the appeal be in writing and explain the reason(s) for the appeal.

Respondents: Applicant.

Title: Review of Memorandum of Understanding (MOU) and Guidance Supplemental.

Abstract: The Governor may request the authority to participate in administration or management of the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively coordinate program activities, we require the State to sign an agreement, which establishes a partnership between FEMA and the State for the delivery of disaster assistance. The agreement is used to identify the State's proposed level of support and participation during disaster recovery.

Respondents: State.

Title: Development of Management Plans for Direct Housing (to include Financial Agreement).

Abstract: The Governor may request authority to participate in the management of the Temporary Housing-Direct Assistance Program under the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively account for the program costs, we require the State to provide a management plan to address the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

Respondents: State.

Title: Development of State Management Plans for Financial Assistance to Address Other Needs (to include Financial Agreement).

Abstract: The Governor may request a grant from FEMA to provide financial assistance to individuals and households in the State under the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively account for the program costs, we require the State to provide a management plan to address the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

Respondents: State.

Estimated Total Annual Burden:

Information collection request	Number of respondents	Frequency of response	Time per response	Annual burden hours	Annual costs to respondents
Applicants:					
Request for Approval of Late Application	8000	1	45 minutes	6000	36000
Request for Continued Assistance (Housing and Medical)	2000	1	30 minutes	1000	6000
Appeal of Program Decision (to include review and use of supplemental guidance)	30000	1	45 minutes	22500	135000
States:					
Review Memorandum of Understanding (MOU) and Guidance Supplemental	56	1	3 hours	168	2676
Development of Management Plans for Direct Housing (to include for Financial Agreements)	56	1	2 hours	112	1784
Development of State Administrative Plans for Financial Assistance to Address Other Needs (to include Financial Agreement)	56	1	3 hours	168	2676
Total	40168			29948	184136

Comments

We are soliciting written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) obtain recommendations to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate the extent to which automated, electronic, mechanical, or other technological collection techniques may further reduce the respondents' burden. Your comments should be submitted to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, Washington, DC 20503 by [insert date 60 days from the date of publication of this notice in the **Federal Register**].

For Further Information Contact: For copies of the information collection requirements in this proposed rule, contact Muriel B. Anderson, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472 using one of the following: telephone number (202) 646–2625; facsimile number (202) 646–2247; or e-mail address: *muriel.anderson@fema.gov*.

Regulatory Planning and Review

Under section 408 of the Stafford Act, as it would be implemented by this proposed rule, FEMA could provide different types of housing assistance to individuals and families whose pre-disaster housing became uninhabitable as a result of a catastrophe that the President declared to be an emergency or a major disaster under the Stafford Act. We described earlier the different forms that housing assistance could take, depending upon the needs of the disaster victim, the location of the disaster victim's residence, the extent of the damage to the victim's residence, the cost to the government of providing different forms of housing assistance, and the availability of alternate interim housing accommodations in the vicinity of the disaster victim's residence. We also described the types of other serious needs that FEMA is authorized to address pursuant to 42 U.S.C. 5174. Based upon its enactment of section 206 of the Disaster Mitigation Act of 2000, as well as the earlier versions of these authorities, Congress has determined that the Federal government should provide certain forms of disaster assistance to individuals and families who are adversely affected by those catastrophes which the President determines to be of sufficient severity and magnitude to require governmental assistance to recover from the effects of such catastrophes. This proposed regulation would merely describe the process by which FEMA would implement this program.

Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires agencies that promulgate regulations under the Administrative Procedure Act to prepare and make available for public comment an initial regulatory flexibility analysis. Agencies are required in these analyses to describe the impact of regulatory activities on "small entities", as that term is defined at 5 U.S.C. 601. The term includes "small business concerns" (under section 3 of the Small Business Act), "small organizations" (which is defined as independently owned and operated non-profit entities that are not dominant in their fields), and "small governmental jurisdictions" (which means governments of cities, counties, towns, townships, villages, school districts, or special districts that have populations of less than 50,000). *See* 5 U.S.C. 601. Because disaster assistance under 42 U.S.C. 5174 is provided to individuals and families, rather than to "small entities", this proposed rule would not have a significant economic impact on small entities. It is obvious that the provision of housing and other forms of assistance to disaster victims in communities with populations under 50,000 would benefit the disaster victims. It is also clear that such assistance would indirectly benefit any "small" communities in which disaster victims live because it would relieve those governments from having to provide disaster relief without assistance from FEMA. Therefore, any impact on small governments that might result from FEMA's implementation of 42 U.S.C. 5174 would be beneficial to those entities. Nevertheless, because this proposed rule would not have a direct impact on small entities, we have determined that there is no need for FEMA to prepare an initial regulatory impact analysis relating to this proposed rule under the Regulatory Flexibility Act. We invite comments from the public on this determination.

In addition, pursuant to Executive Order 12866 we examined whether this proposed rule would be a "significant regulatory action", as that term is defined at section 3(f) of the Executive Order. E.O. 12866 requires agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects. A regulatory impact analysis must be prepared for major rules with economically significant effects ($100,000,000 in any one year). In the course of our development of this proposed rule vis-á-vis the analysis that is contemplated by E.O. 12866, we reviewed FEMA's costs of implementing the temporary housing authority that is codified at the existing version of 42 U.S.C. 5174 (relating only to the provision of temporary housing assistance) and at the existing version of 42 U.S.C. 5178 Act (relating to the Individual and Family Grant, or IFG, Program) for the past three fiscal years. Pursuant to section 502(a)(6) of the Stafford Act, 42 U.S.C. 5192(a)(6), temporary housing assistance can be provided in response to either Presidentially-declared emergencies or major disasters. However, Individual and Family Grant assistance can only be provided in response to major disaster declarations. In accordance with the revisions to 42 U.S.C. 5174 that will become effective in May of 2002, the entire range of assistance under the new version of 42 U.S.C. 5174 will be available in the aftermath of both emergencies and major disasters.

Our review of FEMA's costs over the past three fiscal years reveals that in approximately 16 percent of the Presidentially-declared major disasters FEMA did not provide either temporary housing or Individual and Family Grant assistance. This is because the housing and IFG authorities within the Stafford Act are not triggered in every Presidential emergency and major disaster declaration—in particular situations there may only be a need to provide disaster assistance to governmental entities. However, in the majority of the major disasters that the Presidents have declared during the past three fiscal years we did provide housing and IFG assistance. In those major disasters where we provided housing and IFG assistance, there was a broad range of costs associated with the aid. In one major disaster the amount of temporary housing expenditures was only about $7,700, while in two other major disasters we provided temporary housing assistance which in each situation resulted in the expenditure of approximately $150,000,000. The range of expenditures for the IFG program was also substantial. In two major disasters FEMA did not distribute any IFG assistance, while in one major disaster during fiscal year 2001 we distributed in excess of $182,000,000 in IFG assistance. In any event, in each of fiscal years 1999, 2000, and 2001, FEMA paid out in excess of $100,000,000 as temporary housing and IFG assistance.

Section 3(f) of E.O. 12866 defines "significant regulatory action" as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy * * * (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs * * * or (4) Raise novel legal or policy issues.* * *" This proposed

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rule does not meet the criteria under paragraphs 2, 3, or 4 of this provision of the Executive Order. In addition, we have determined that this rule is not likely to adversely affect the economy (under paragraph 1 of this provision). It is clear based upon the statistics cited in the preceding paragraph that FEMA will in all likelihood pay out in excess of $100,000,000 in most fiscal years under 42 U.S.C. 5174 after it becomes effective. Therefore, one could determine that this proposed rule is "significant" pursuant to the definition at section 3(f)(1) of E.O. 12866. For this reason we have prepared the economic impact analysis which follows.

However, we believe it is also noteworthy that this proposed rule does not relate to a new or discretionary program of a regulatory nature. The new version of 42 U.S.C. 5174 reflects a Congressional desire for a consolidated and streamlined approach to the pre-existing authorities of sections 408 and 411 of the Stafford Act, 42 U.S.C. 5174 and 5178, respectively. It is apparent from a review of the statistics cited above that there is already a baseline expenditure by FEMA of amounts which vary from year-to-year depending on each year's disaster activity, but which exceed $100,000,000 per year. Because the consolidated authority at 42 U.S.C. 5174 has not created a new program, but is merely a refinement of two pre-existing authorities, we do not expect that FEMA will pay out annually in excess of $100,000,000 more than we currently provide in the course of our implementation of the existing temporary housing and IFG authorities.

We have determined that disaster assistance which will be distributed under 42 U.S.C. 5174 will have a positive impact on disaster victims and their families, on the economies of local and tribal governments which have been affected by emergencies and major disasters, on the economies of States in which catastrophes occur, and generally on the health and safety of communities which are struck by catastrophes. Although FEMA has not performed studies to quantify the positive impacts that have historically inured to the benefit of disaster victims and their communities as a result of the provision of temporary housing and IFG benefits, it is obvious that such forms of assistance have a positive impact. Helping disaster victims obtain temporary housing has significant favorable economic consequences—both directly for disaster victims and their families, and indirectly by funneling money back into local, tribal, and State economies which have been adversely affected by emergencies and major disasters. The provision of financial assistance to eligible disaster victims enables them to address their short-term needs, both by obtaining housing and by purchasing goods and services that are essential to meeting their disaster-related needs that are not met by insurance or other sources. At the same time, the expenditure by disaster victims of financial assistance provides much-needed boosts to the local, tribal, and State economies, both in the form of expenditures relating to housing needs (*e.g.*, rentals of available housing and construction activities) and relating to other necessary needs (*e.g.*, funeral, medical and dental expenses). It is also obvious that the provision of housing assistance and assistance to address other unmet needs provides an indirect benefit to local governments because it relieves those governments of the burden of providing assistance to their residents and of the associated expenses of caring for families that might otherwise require sheltering and other forms of assistance. However, as stated above, this rule would, for the most part, consolidate and streamline existing authorities, and this rule cannot claim benefits from the existing programs. Thus FEMA expects that the primary benefits of this rule will be a reduction in the cost to the State governments of administering these programs and to the public in obtaining this assistance. FEMA has not analyzed these possible costs savings and requests additional information from the public.

Assessment of Regulation on Families

The provision of assistance under 42 U.S.C. 5174 pursuant to the proposed rule would also have a positive impact on families under section 654 of the Treasury and General Government Appropriations Act of 1999. That provision requires agencies to assess the impact of proposed agency actions on family well-being, the stability and safety of families, and the performance of family functions. It is clear that FEMA's implementation of the program which is authorized by 42 U.S.C. 5174 will have a beneficial impact on family well-being in the aftermath of emergencies and major disasters. In the absence of such a program there would be a greater possibility that family stability might be at risk as a result of the stresses that inevitably come from the displacement of families from their homes and communities following catastrophes that damage their homes or make them inaccessible. The provision of housing assistance relieves families of financial and emotional stress, enables families to resume a normal lifestyle, and helps maintain the cohesion of families that have been struck by catastrophes. Therefore, we have determined that this proposed rule is consistent with section 654 of the Treasury and General Government Appropriations Act of 1999 and that FEMA's implementation of the rule would help to stabilize family circumstances following Presidentially-declared emergencies and major disasters.

Executive Orders 11988 and 11990, Floodplain Management and Protection of Wetlands

Under Executive Order 11988 federal agencies are required to "provide leadership to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains * * *" *See* section 1 of E.O. 11988. Under Executive Order 11990 federal agencies are required to "provide leadership and * * *take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities * * *" *See* section 1 of E.O. 11990. The requirements of these Executive Orders apply in the context of the provision of federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting federal programs affecting land use.

Most of the activities that FEMA will carry out pursuant to section 408 of the Stafford Act and these regulations will not involve either providing federal financial assistance relating to construction and property improvements or conducting federal programs that will affect land use. We anticipate that much of the housing assistance we will provide in the context of major disasters which are declared by the President after May 1, 2002, will be in the form of funds to rent alternative accommodations while victims' pre-disaster residences are being repaired. *See* subsection 408(c)(1)(A)(i). A substantial portion of the housing assistance we will provide when this rule becomes effective will be in the form of funding to repair residences which have been damaged by major disasters. *See* subsection 408(c)(2). These types of construction activities are not the type, which typically trigger the application of the Executive Orders. Finally, the majority of the needs that will be addressed under subsection 408(e) of the Stafford Act relate to replacement of personal property and to medical, dental, and funeral expenses. These forms of financial assistance do not trigger the Executive Orders either. *See* 44 CFR 9.5(c)(8)–(11), which describe FEMA's interpretation of this issue under the pre-existing versions of sections 408 and 411 of the Stafford Act.

Nevertheless, there are certain activities that are authorized by the revised version of section 408 of the Act and this rule that may trigger the requirements of the Executive Orders. For example, the use of federal funds to construct housing pursuant to subsections 408(c)(3) and (4) could trigger the process described in the Executive Orders and FEMA's implementing regulation, which appears at 44 CFR part 9. In addition, if federal funds were used pursuant to subsection 408(d)(1) to construct group sites for the placement of mobile homes or readily fabricated dwellings for the use of disaster victims, FEMA would follow the process described in the Executive Orders and our implementing regulation.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under Executive Order 13132 and have determined that the rule does not have "substantial direct effects on the States" and therefore does not have the type of federalism implications contemplated by the Executive Order. While the draft rule contemplates the possible optional involvement of States in the implementation of portions of the activities authorized by amended section 408 of the Stafford Act, it is also clear that the revised statutory provision anticipates that FEMA will have a leadership role in overseeing the implementation of the overall program. We can foresee no way that the rule would affect significantly the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

In addition, we have consulted with State and local representatives in the development of the proposed rule. Our consultations included discussions with various State Emergency Management Directors at meetings in: (1) St. Louis, Missouri, in January 2001; (2) at a conference of the National Emergency Management Association (NEMA) in Arlington, Virginia, in February 2001; and (3) at a NEMA Response and Recovery Subcommittee meeting in April 2001. We also held discussions with the local emergency management directors at a meeting with the International Association of Emergency Managers in Emmitsburg, Maryland on April 3, 2001. Further, we held a meeting for the national associations and organizations that represent State and local officials in Washington, DC on April 26, 2001, in order to describe and discuss the issues and programs involved in this proposed rule. Also in attendance at the briefing were Governors' Washington, DC representatives. In summary, based on our extensive consultations with representatives of a number of States, and based on our determination that the proposed rule will not have "substantial direct effects on the States", we believe that the publication of this proposed rule is consistent with the terms of Executive Order 13132. We invite comment from State and local officials on this important issue.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color, or national origin. No action that we can anticipate under the proposed rule will have a disproportionately high and adverse human health effect on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply to this proposed rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal government or we consult with those governments. If FEMA complies by consulting, Executive Order 13175 requires us to provide to the Office of Management and Budget a description of the extent of our prior consultations with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires us to provide to the Director of OMB a tribal summary impact statement describing the extent of our prior consultation with tribal officials, the nature of their concerns, and our position supporting the need to issue the regulation, and a statement of the extent to which we have met the concerns of tribal officials.

The Disaster Mitigation Act of 2000 requires this proposed rule. We have not consulted with Indian tribal officials, grounded on our belief that this proposed rule will not significantly and uniquely affect the communities of Indian tribal governments. Nor will the rule impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 13175 do not apply in the context of this proposed rule.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR part 206 as follows:

1. The authority citation of Part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121—5206; Reorganization Plan No. 3 of 1978, 43 FR 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise Subpart D as follows and remove Subpart E.

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Subpart D—Federal Assistance to Individuals and Households

Sec.
206.101 Federal assistance to individuals and households.
206.102 Definitions.
206.103 Registration period.
206.104 Eligibility factors.
206.105 Criteria for continued assistance.
206.106 Appeals.
206.107 Recovery of funds.
206.108 Housing assistance.
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Subpart D—Federal Assistance to Individuals and Households

§ 206.101 Federal Assistance to Individuals and Households.

(a) *Purpose.* This section implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than $25,000 under this subpart with respect to a single major disaster. FEMA will adjust the $25,000 limit annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA shall determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary Housing and Repair assistance shall be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart will begin on the date of the incident that results in a presidential declaration that a major disaster exists, except that reasonable expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Associate Director (AD) may extend this period if he/she determines that due to extraordinary circumstances an extension would be in the public interest.

(f) *Assistance not counted as income.* Assistance under this subpart is not to be counted as income or a resource in the determination of eligibility for welfare, income assistance or income-tested benefit programs that the Federal Government funds.

(g) *Exemption from garnishment.* All assistance provided under this subpart is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release or waiver. Recipients of rights under this provision may not reassign or transfer the rights.

(h) *Duplication of benefits.* In accordance with the requirements of section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when:

(1) Payment of the applicable benefits are significantly delayed;

(2) Applicable benefits are exhausted;

(3) Applicable benefits are insufficient to cover the housing need; or

(4) Housing is not available on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (h)(2) of this section, the Federal share of eligible costs paid under this subpart shall be 100 percent.

(2) Federal and State cost shares for assistance under § 206.110 will be as follows;

(i) The Federal share will be 75 percent; and

(ii) The State will pay the 25 percent non-Federal share from funds that the State makes available.

(j) *Application of the Privacy Act.* (1) All provisions of the Privacy Act of 1974, 5 U.S.C. 552a, apply to this subpart. FEMA may not disclose an applicant's record except in response to:

(i) A release signed by the applicant that specifies the purpose for the release, to whom the release is to be made, and who authorizes the release;

(ii) In accordance with one of the published routine uses in our system of records; or

(iii) As provided in paragraph (i)(2) of this section.

(2) Under section 408(f)(2) of the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households.

(i) States receiving applicant information under this paragraph must protect such information in the same manner that the Privacy Act requires FEMA to protect it.

(ii) States receiving such applicant information must not disclose the information further to other entities, nor must they use it for purposes other than providing additional State or local disaster assistance to individuals and households.

(k) *Flood Disaster Protection Act requirement.* (1) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended (42 U.S.C. section 4106), imposes certain restrictions on federal financial assistance for acquisition and construction purposes. For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means a grant to an individual or household to buy, receive, build, repair or improve insurable portions of a home and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR part 61, Insurance Coverage and Rates.

(2) Individuals or households may not receive Federal Assistance grants for real and/or personal property that is located in a special flood hazard area, see § 59.1 of this title. However, if the community in which the damaged property is located is participating in the National Flood Insurance Program (NFIP), then individuals and households can receive assistance. If a community qualifies for and enters the National Flood Insurance Program during the 6-month period following the declaration, the Governor's Authorized Representative (GAR) may request a time extension from FEMA (see § 206.103) to accept registrations and to process grant applications in that community.

(3) Flood insurance purchase requirement:

(i) Individuals and households named by FEMA as eligible recipients under section 408 of the Stafford Act who receive a grant, due to flood damages, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the grant amount, in order to get any Federal assistance for future flood damage to any insurable property. This applies only to real and personal property that is in or will be in a designated Special Flood Hazard Area and that can be insured under the National Flood Insurance Program.

(A) If the grantee is a homeowner, flood insurance coverage must be maintained on the structure at the flood-damaged property address for as long as the address exists. The flood insurance requirement is reassigned to any subsequent owner of the flood-damaged structure.

(B) If the grantee is a renter, flood insurance coverage must be maintained on the contents for as long as the renter resides at the flood-damaged rental unit. The restriction is lifted once the renter moves from the rental unit.

(ii) FEMA may not provide financial assistance for acquisition or construction purposes to individuals or households who fail to buy and maintain flood insurance required under paragraph (k)(3)(i) of this section.

(l) *Citizenship requirement.* (1) Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L.104–193), FEMA may only provide assistance under this subpart to applicants who are:

(i) *U.S. Citizens*—born in the United States, derivative citizens, or naturalized citizens;

(ii) *Non-Citizen Nationals*—generally, persons born in certain outlying possessions of the United States, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements); or

(iii) *Qualified Aliens*—this category generally includes individuals who are Lawful Permanent residents (possessing an alien registration receipt card, sometimes referred to as a "Green Card") or those with legal status provided in Pub. L. 104–193 (admission into the U.S. for humanitarian purposes).

(2) For purposes of this subpart, the citizenship requirements listed in this paragraph do not apply to citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) when residing in the FSM or RMI at the time a declared major disaster or emergency impacts this area. However, the requirements of this paragraph continue to apply to such citizens when an event affects them while residing outside FSM or RMI.

§ 206.102 Definitions.

Adequate, alternate housing means housing that: Accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant in the realization of a realistic permanent housing plan.

Alternative housing resources means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, mobile homes and travel trailers.

Applicant means an individual or household who has applied for assistance under this subpart.

Assistance from other means includes monetary or in-kind contributions from voluntary or charitable organizations, insurance, other governmental programs, or from any sources other than those of the applicant.

Dependent means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not actually claim them on the tax return.

Displaced applicant means one whose primary residence is uninhabitable, inaccessible, required by the landlord or not functional as a direct result of the disaster and has no other housing available in the area, i.e., a secondary home or vacation home.

Effective date of assistance means the date that the applicant was determined eligible for assistance.

Eligible hazard mitigation measures are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damages to essential components of the home.

Fair market rent means housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The fair market rent rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area.

Financial ability means the capability of the applicant to pay the housing costs on a permanent basis. The determination is based on 30 percent of the post-disaster household income. At the discretion of FEMA, extreme or unusual financial circumstances may be considered when computing financial ability.

Financial assistance means a cash grant that may be provided to eligible individuals and households, usually in the form of a check or electronic funds transfer.

Functional means an item or home capable of being used for its intended purpose.

Household means all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, plus any additions during the assistance period, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.

Housing costs means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, and utility costs.

Inaccessible means as a result of the incident, the applicant cannot reasonably be expected to gain entry to his or her pre-disaster residence due to the disruption, or destruction, of access routes or other impediments to access, or restrictions placed on movement by a responsible official due to continued health or safety problems.

Individuals mean all persons living in a household who are not dependents.

In-kind contributions mean something other than monetary assistance, such as goods, commodities or services.

Manufactured housing sites means those sites used for the placement of government or privately owned mobile homes, travel trailers, and other manufactured housing units, including:

(1) *Commercial Site,* a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private Site,* a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group Site,* a site provided by the State that accommodates two or more units and is complete with utilities.

Necessary expense means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

Occupant means a resident of a housing unit.

Owner-occupied means that the residence is occupied by:

(1) The legal owner;

(2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or

(3) A person who has lifetime occupancy rights with formal title vested in another.

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Permanent housing plan means a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

Primary residence means the dwelling where the applicant normally lives, during the major portion of the calendar year, or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income.

Reasonable commuting distance means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, *e.g.*, mountainous regions or bridges out and the normal commuting patterns of the area.

Safe means secure from disaster-related hazards or threats to occupants.

Sanitary means free of disaster-related health hazards.

Serious need means the requirement for an item, or service, that is essential to an applicant's ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.

Uninhabitable—means the dwelling is not safe, sanitary or fit to occupy.

We, our, or *us* mean FEMA.

§ 206.103 Registration Period.

(a) *Initial period.* The standard FEMA registration period is 60 days following the date that the President declares an incident a major disaster or an emergency.

(b) *Extension of the registration period.* The Regional Director or his/her designee may extend the registration period when the State requests more time to collect registrations from the affected population. The Regional Director or his/her designee may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Late registrations.* After the standard or extended registration period ends, FEMA will accept late registrations for an additional 60 days. We will process late registrations for those registrants who provide suitable documentation to support and justify the reason for the delay in their registration.

§ 206.104 Eligibility Factors.

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify for such assistance under section 408 of the Stafford Act and this subpart. FEMA may only provide assistance:

(1) When the individual or household meets citizenship requirements defined in § 206.101(l);

(2) When the individual or household has incurred a necessary expense or serious need in the disaster area, without regard to their residency in the area, within the State in which the President has declared an emergency or major disaster;

(3) In a situation where the applicant has insurance, when the individual or household files a claim with their insurance provider for all potentially applicable types of insurance coverage and is denied;

(4) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds have been significantly delayed through no fault of his, her or their own, and the applicant has agreed to repay the assistance to FEMA or the State from insurance proceeds that he, she or they receive later; the insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs; or when housing is not available on the private market;

(5) When the individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance;

(6) When the applicant agrees to refund to FEMA or the State any portion of the grant that the applicant receives or is eligible to receive as assistance from another source;

(7) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible; and

(8) With respect to housing assistance, if a renter's rental unit is no longer available;

(b) *Conditions of ineligibility.* We may not provide assistance under this subpart:

(1) For housing to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For housing to individuals or households who have adequate rent-free housing accommodations;

(3) For housing to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own unoccupied rental property that meets their temporary housing needs;

(4) For housing to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and who are able to return to the residence immediately after the incident;

(5) For housing for improvements or additions to the pre-disaster condition of property, except those required to comply with local and State ordinances or eligible mitigation measures;

(6) To individuals or households who have adequate insurance coverage and where there is no indication that insurance proceeds will be delayed, or who have refused assistance from insurance providers;

(7) To individuals or households whose damaged primary residence is located in a designated special flood hazard area, and in a community that is not participating in the National Flood Insurance Program, except that financial assistance may be provided to rent alternate housing and for medical, dental and funeral expenses to such individuals or households;

(8) For business losses, including farm businesses and self-employment; or

(9) For any items not otherwise authorized by this section.

§ 206.105 Criteria for Continued Assistance.

(a) FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide continued Housing assistance up to18 months, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) Additional Criteria for Continued Assistance:

(1) All applicants requesting continued rent assistance must establish a realistic permanent housing plan no later than the first certification for continued assistance. Applicants will be required to provided documentation showing that they are making efforts to obtain permanent housing.

(2) Applicants requesting continued rent assistance must submit rent receipts to show that they have exhausted the FEMA rent funds.

(3) FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, we may certify them for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(4) FEMA may certify pre-disaster owners for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(5) Individuals or households requesting additional assistance for personal property, transportation, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs will be required to submit information and/or documentation identifying the continuing need.

§ 206.106 Appeals.

(a) Under the provisions of section 423 of the Stafford Act, applicants for assistance under this subpart may appeal any determination of eligibility for assistance made under this subpart. Applicants must file their appeal within 60 days after the date that we notify the applicant of the award or denial of assistance. Applicants may appeal the following:

(1) Eligibility for assistance, including recoupment;

(2) Amount or type of assistance;

(3) Cancellation of an application;

(4) The rejection of a late application;

(5) The denial of continued assistance under section 206.105, Criteria for Continued Assistance;

(6) FEMA's intent to collect rent for occupants of a housing unit that FEMA provides;

(7) Termination of direct housing assistance;

(8) Denial of a request to purchase a FEMA-provided housing unit at the termination of eligibility;

(9) The sales price of a FEMA-provided housing unit they want to purchase; or

(10) Any other eligibility-related decision.

(b) Appeals must be in writing and explain the reason(s) for the appeal. The applicant or person who the applicant authorizes to act on his or her behalf must sign the appeal. If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent him, her or them.

(c) Applicants must appeal to the Regional Director or his/her designee for decision made under this subpart, except when FEMA has made a grant to the State to provide assistance to individuals and households under § 206.111(a), State Administration of Other Needs Program.

(d) An applicant may ask for a copy of information in his/her or their file by writing to FEMA or the State. If someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent him, her, or them.

(e) The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal.

(f) The Regional Director or his/her designee or appropriate State official will review the original decision after receiving the appeal. FEMA or the State will give the appellant a written notice of the disposition of the appeal within 90 days of the receiving the appeal. The decision of the appellate authority is final.

§ 206.107 Recovery of Funds.

(a) The applicant must agree to repay to FEMA or the State from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA or the State when FEMA or the State determines that FEMA or the State made the grant erroneously, the applicant spent the money inappropriately, or the applicant obtained the grant through fraudulent means.

(c) If FEMA has approved a grant to the State to provide assistance under section 206.110, then the State must return to FEMA 75 percent of all funds recovered by the State from applicants. FEMA will return to the State 25 percent of all funds recovered from applicants under § 206.110 when FEMA administers the program.

§ 206.108 Housing Assistance.

(a) *Purpose.* FEMA may provide financial or direct assistance under this section to respond to the disaster-related housing needs of individuals and households.

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Financial assistance.* Eligible individuals and households may receive financial assistance to rent alternate housing resources, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings. In addition, FEMA may provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing and reasonable lodging expenses incurred because of the disaster.

(A) We will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the rental assistance on the Department of Housing and Urban Development's current fair market rates for existing rental units. FEMA will further base the applicable rate on the household's bedroom requirement and the location of the rental unit.

(C) The occupant is responsible for all utility costs and security deposits, except where the utility does not meter services separately and utilities are a part of the rental charge. The Regional Director or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to individuals or households who lack available housing resources and would be unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a household in a single application and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(C) Any site upon which a FEMA-provided housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and Part 10, Environmental Considerations.

(D) All utility costs and security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(E) FEMA-provided housing units may be placed in the following locations:

(*1*) A commercial site that is complete with utilities; when the Regional Director or his/her designee determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than

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other types of resources, then Federal assistance may be authorized for such actions.

(2) A private site that an applicant provides, complete with utilities; when the Regional Director or his/her designee determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(3) A group site the State or local government provides that accommodates two or more units and is complete with utilities; when the Regional Director or his/her designee determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(4) A group site provided by FEMA, if the Regional Director or his/her designee determines that such a site would be more economical or accessible than one that the State or local government provides.

(F) At the end of the 18-month period of assistance, FEMA may charge up to the fair market rent rate for each temporary housing unit provided. We will base the rent charged on the number of bedrooms occupied and needed by the household. When establishing the amount of rent, FEMA will take into account the financial ability of the household.

(G) We may terminate direct assistance for reasons that include, but are not limited to, the following:

(1) The period of assistance expired under § 206.101(d) and has not been extended;

(2) Adequate alternate housing is available to the occupant(s);

(3) The occupant obtained housing assistance either through misrepresentation or fraud;

(4) The occupant failed to comply with any term of the lease/rental agreement or other rules of the site where the unit is located.

(5) The occupant does not provided documentation showing that they are working towards the permanent housing plan

(H) FEMA will provide written notice when initiating the termination of any assistance that we provide under our lease agreements. This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as the Regional Director or his/her designee deems appropriate after the termination date, including fair market rent for the unit.

(I) Duplication of benefits may occur when an applicant has additional living expense insurance benefits to cover the cost of renting alternate housing. In these instances, FEMA may provide a temporary housing unit if adequate alternate housing is not available, or if doing so is in the best interest of the household and the government. We will establish fair market rent, not to exceed insurance benefits available.

(2) *Repairs.* (i) FEMA may provide financial assistance for the repairs of uninsured disaster-related damages to an owner's primary residence. The funds are to help return owner-occupied primary residences to a safe and sanitary living or functioning condition. Repairs may include utilities and residential infrastructure (such as private access routes, wells and/or septic systems) damaged by a major disaster.

(ii) The type of repair FEMA authorizes may vary depending upon the nature of the disaster. We may authorize repair of items where feasible or replacement when necessary to insure the safety or health of the occupant and to make the residence functional.

(iii) FEMA may also provide assistance for eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities or infrastructure.

(iv) Eligible individuals or households may receive up to $5,000 under this paragraph, adjusted annually to reflect changes in the CPI, to repair damages to their primary residence without first having to show that the assistance can be met through other means, except insurance proceeds.

(v) The individual or household is responsible for obtaining local permits or inspections that applicable State or local building codes may require.

(3) *Replacement.* FEMA may provide financial assistance under this paragraph to replace a disaster-damaged owner's occupied, primary residence if the dwelling can be replaced, in its entirety, for $10,000 or less, as adjusted annually to reflect changes in the CPI.

(4) *Permanent housing construction.* FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent housing in insular areas outside the continental United States and in other remote locations when alternative housing resources are not available and the types of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost-effective.

(c) *Eligible costs.* (1) Repairs to the primary residence or replacement of items must be disaster-related and must be of average quality, size, and capacity, taking into consideration the needs of the occupant. Repairs to the primary residence are limited to restoration of the dwelling to a safe and sanitary living or functioning condition and may include:

(i) Repair or replacement of the structural components, including foundation, exterior walls, and roof;

(ii) Repair or replacement of the structure's windows and doors;

(iii) Repair or replacement of the structure's Heating, Ventilation and Air Conditioning System;

(iv) Repair or replacement of the structure's utilities, including electrical, plumbing, gas, water and sewage systems;

(v) Repair or replacement of the structure's interior, including floors, walls, ceilings, doors and cabinetry;

(vi) Repair to the structure's access and egress, including privately owned access road;

(vii) Blocking, leveling, and anchoring of a mobile home, and reconnecting or resetting mobile home sewer, water, electrical and fuel lines and tanks; and

(viii) Items or services determined to be eligible hazard mitigation measures.

(2) Permanent Housing Construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

§ 206.109 Disposal of Housing Units.

(a) FEMA may sell housing units purchased under § 206.108(b)(1)(ii), Temporary Housing, Direct Assistance, as follows:

(1) Sale to an applicant.

(i) Sale to the individual or household occupying the unit, if the occupant lacks permanent housing, has a site that complies with local codes and ordinances and Part 9 of this Title.

(ii) Adjustment to the sales price.

(A) FEMA may approve adjustments to the sales price when selling a housing unit to the occupant of a unit, if the purchaser's financial resources are less than the fair market value of the home or unit, and when doing so is in the best interest of the applicant and FEMA.

(iii) We will deposit the proceeds of a sale under paragraph (a)(1) of this section in the appropriate Disaster Relief Fund account.

(iv) FEMA may sell a housing unit to an individual or household only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the unit if it is or will be in a designated Special Flood Hazard Area.

(2) Other methods of disposal:

(i) FEMA may sell, transfer, donate, or otherwise make a unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and

(B) Obtain and maintain hazard insurance on the unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell housing units at a fair market value to any other person.

(b) A unit will be sold "as is, where is", except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that he/she may have to bring the unit up to codes and standards that are applicable at the proposed site.

§ 206.110 Financial Assistance to Address Other Needs.

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. To qualify for a grant under this section, an applicant must also:

(1) Apply to the United States Small Business Administration's (SBA) Disaster Home Loan Program for all available assistance under the program; and

(2) Be declined for SBA Disaster Home Loan Program assistance; or

(3) Demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster.

(b) *Types of assistance.*—(1) *Medical, dental, and funeral expenses.* FEMA may provide financial assistance for medical, dental and funeral items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(2) *Personal property, transportation, and other expenses.* (i) FEMA may provide financial assistance for personal property and transportation items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(ii) FEMA may provide financial assistance for other items or services that are not included in the specified categories for other assistance but which FEMA approves, in coordination with the State, as eligible to meet unique necessary expenses and serious needs of individuals and households.

(c) *Eligible costs.*—(1) *Personal property.* Necessary expenses and serious needs for repair or replacement of personal property are generally limited to the following:

(i) Clothing;

(ii) Household items, furnishings or appliances;

(iii) Tools, specialized or protective clothing, and equipment required by an employer as a condition of employment;

(iv) Computers, uniforms, schoolbooks and supplies required for educational purposes; and

(v) Cleaning or sanitizing any eligible personal property item.

(2) *Transportation.* Necessary expenses or serious needs for transportation are generally limited to the following:

(i) Repairing or replacing vehicles; and

(ii) Financial assistance for public transportation and any other transportation related costs or services.

(3) *Medical expenses.* Medical expenses are generally limited to the following:

(i) Medical costs;

(ii) Dental costs; and

(iii) Repair or replacement of medical equipment.

(4) *Funeral expenses.* Funeral expenses are generally limited to the following

(i) Funeral services;

(ii) Burial or cremation; and

(iii) Other related funeral expenses.

(5) *Moving and storage expenses.* Necessary expenses and serious needs related to moving and storing personal property away from the threat of damage including the evacuation, storage, and return of the personal property to the individual or household's place of residence.

(6) *Other.* Other disaster-related expenses not addressed in the above categories may include:

(i) Costs of towing, setup, and connecting or reconnecting essential utilities for an owner-occupied manufactured housing unit not provided by FEMA; and

(ii) Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

§ 206.111 State Participation in the Section 408 Program.

(a) *State Administration of Other Needs Program.* A State may request a grant from FEMA to provide financial assistance to individuals and households in the State under § 206.110 of this subpart. The total Federal grant under this paragraph will be equal to 75 percent of the cost of meeting necessary expenses or serious needs of individuals and households, plus State administrative costs not to exceed 5 percent of the Federal grant. Any State that administers the program to provide financial assistance to individuals and households must administer the program consistent with § 206.110 of this subpart and under the Memorandum of Understanding that we describe at paragraph (c) of this section.

(b) *State Participation in the Management of the Temporary Housing-Direct Assistance Program.* A State may request authority to participate in the management of the Temporary Housing-Direct Assistance Program that we describe at § 206.108(b)(1)(ii) of this subpart. The total Federal cost under this paragraph will be 100 percent. The Regional Director or his/her designee may approve such a request if State participation in the management of the program would be in the best interest of the Federal government and those needing housing assistance.

(1) Any State that participates in the management of a Temporary Housing-Direct Assistance Program must do so consistent with § 206.108(b)(1)(ii) of this subpart and under the Memorandum of Understanding that we describe at paragraph (c) of this section;

(2) Before a State may participate in the management of the Temporary Housing-Direct Assistance Program, the State must agree to hold and save the United States free from damages and indemnify the Federal Government against any claims arising from the Temporary Housing-Direct Assistance Program;

(3) The State may perform one or more of the following activities in the course of its participation in the management of the Temporary Housing-Direct Assistance Program:

(i) Site assessment;

(ii) Unit procurement and installation;

(iii) Unit maintenance;

(iv) Staging operations;

(v) Group site design and development;

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(vi) Occupant Services (Leasing in and certifying occupants for continuing assistance); and

(vii) Site Restoration.

(c) *FEMA-State Memorandum of Understanding.* The delivery of assistance by a State under this section is contingent upon and governed by a FEMA-State Memorandum of Understanding (MOU), which describes the partnership between FEMA and the State for the delivery of assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

(1) General. The MOU explains the roles and responsibilities of FEMA and the State in the provision of assistance by the State under this section;

(2) The Regional Director and the Governor or designee will execute the MOU, which they will renew annually. The effective date of each year's MOU will be January 1, and each executed MOU will be effective for one year. FEMA and the State may amend executed MOUs during the course of a year.

(3) If both parties do not execute an MOU by January 1, FEMA will administer all assistance under this section for that calendar year.

(4) The MOU will include provisions relating to the need for the State to comply with this section and the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including parts 11 and 13 of this title.

(5) The MOU will include provisions for State compliance with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151.

Dated: January 15, 2002.

Michael D. Brown,

Acting Deputy Director.

[FR Doc. 02–1386 Filed 1–22–02; 8:45 am]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–063–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties in Texas to the list of regulated areas. The interim rule, which followed the detection of bunted kernels in samples taken from bins of wheat grain stored in Baylor County and harvested in Archer and Baylor Counties, was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States.

EFFECTIVE DATE: This interim rule became effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Director for Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1231; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 13, 2001, and published in the **Federal Register** on July 19, 2001 (66 FR 37575–37576, Docket No. 01–063–1), we amended the Karnal bunt regulations in 7 CFR 301.89–3 by adding Archer and Baylor Counties, in their entirety, to the list of regulated areas in Texas. This action was necessary due to the detection of bunted wheat kernels in samples taken from bins of wheat grain stored in Baylor County. The wheat grain was harvested in Archer and Baylor Counties.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties, TX, to the list of regulated areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. The entities most likely to have been affected by the interim rule are wheat producers. The size of these entities is unknown. It is reasonable to assume, however, that most have gross annual receipts of less than $750,000 and are, therefore, small in size according to the U.S. Small Business Administration's criteria. This assumption is based on composite data from the 1997 Census of Agriculture, which reports that wheat was harvested for grain from 50,167 acres on 159 farms in Archer County in 1997; that grain had a market value of $4.161 million. In Baylor County, wheat was harvested for grain from 84,368 acres on 166 farms in 1997; that grain had a market value of $6.686 million.

Producers in regulated areas may grow Karnal bunt host crops, but the wheat, durum wheat, or triticale must be tested for Karnal bunt before the harvested crop is moved from the field in which it was grown. This required testing is provided to producers free of charge. Negative-testing grain may be moved out of the regulated area without restriction. Grain found to contain bunted kernels may be moved outside a regulated area only under a limited permit and only to a specified destination for specified handling, utilization, or processing that will mitigate the Karnal bunt risk associated with the grain.

Compensation has been made available to producers in regulated areas to address the loss in value of positive-testing grain. As the 2000–2001 crop season was the first regulated crop season for Archer and Baylor Counties, producers there were eligible for compensation payments of up to $1.80 per bushel. Those payments have, in many cases, already been made to producers affected by the detection of Karnal bunt in Archer and Baylor Counties, thus limiting the negative effects of Karnal bunt infection and the subsequent regulatory restrictions intended to prevent the further spread of the disease.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 66 FR 37575–37576 on July 19, 2001.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 16th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1748 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–34–U

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No.01–019F]

RIN 0583–AC89

Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2002

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These increases in fees reflect the national and locality pay raise for Federal employees (the increase of 3.6 percent anticipated at the time of the proposal to be effective January 2002) and inflation. At this time, FSIS is not changing the fee for the Accredited Laboratory Program. To raise the fees for voluntary egg products inspection (base time) and overtime and holiday voluntary inspection activities, done on other than a continuous resident basis, the Agency is adding Part 592 to the CFR. At this time, FSIS is only including the voluntary egg products inspection fees in this new part. The Agency is also amending the heading of Subchapter I of Chapter III of the CFR by deleting the word "Act" so the heading reads "Egg Products Inspection" because voluntary inspection of egg products is performed under the Agricultural Marketing Act (AMA).

DATES: The final rule is effective January 27, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations and Directive Development Staff, Office of Policy, Program Development and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

For information concerning fees, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Drop 5262 Beltsville, MD 20705, (301) 504–5885.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments, meat and poultry processed at official establishments and egg products processed at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*)(AMA), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for October 1, 2001 to September 30, 2002, the Agency has identified increases in the costs of these inspection services due specifically to the national and locality pay raise for Federal employees (the increase of 3.6 percent anticipated at the time of the proposal to be effective January 2002) and inflation.

FSIS calculated the new fees by adding the projected increase in salaries and inflation for FY 2001 and FY 2002 to the actual cost of the services in FY 2000. The Agency calculated inflation to be 2.0% for FY 2001 and 2.0% for FY 2002. The Agency considered the costs that it will incur because of the pay raise in January 2002 and averaged its pay costs out over the entire FY 2002.

FSIS did not use the fees currently charged as a base for calculating the new fees for FY 2002 because the current fees are based on estimates of costs to the Agency for FY 2001 and FY 2002. The Agency now knows the actual cost of inspection services for FY 2000 and used the actual costs in calculating the new fees.

The current and new fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND NEW FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

[Except for voluntary inspection of egg products]

Service	Current rate	New rate
Base time	$38.44	$42.64
Overtime & holiday	41.00	44.40
Laboratory	60.44	68.32

The differing new fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors, including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES IN TABLE 1

Base Time:	
Actual FY 2000 cost	$39.67
Inflation and salary increases	2.95
Adjustment for divisibility by quarter hours	.02
Total	$42.64
Overtime and Holiday Inspection Services:	
Actual FY 2000 cost	$41.32
Inflation and salary increases	3.07
Adjustment for divisibility by quarter hours	.01
Total	$44.40
Laboratory Services:	
Actual FY 2000 cost	$63.59
Inflation and salary increases	4.73
Total	$68.32

FSIS is also raising the fees for its voluntary inspection of egg products for base time, which are currently set forth in § 55.510 (b) of Title 7 of the Code of Federal Regulations (CFR), from $33.64 to $42.64 per hour per program employee and for overtime and holiday inspection which is currently set forth in § 55.510 (c) of Title 7 of the CFR from $35.52 to $44.40 per hour per program employee. The differing proposed fees for basetime services and for holiday and overtime services is due to the different amount that it costs FSIS to provide those services. These differences in cost stem from various factors, which include the differing salary levels of the program employees who perform the services. These fees have not been changed in six years. Additionally, in conjunction with the new fee increase for the voluntary inspection of egg products, FSIS is adding provisions that delineate the types of services that would be considered to be overtime or holiday work.

When the regulations governing the mandatory inspection of egg products were transferred to Title 9 of the Code of Federal Regulations (CFR) on December 31, 1998 (63 FR 72352), the regulations governing the voluntary inspection of egg products were not also transferred. FSIS, however, does perform voluntary inspection of egg products, and certain other products, under the AMA. The Agency is now adding part 592 to Title 9 of the CFR which contains the fees for basetime and overtime and holiday voluntary inspection of egg products, as well as an explanation of what services are considered to be overtime and holiday work. Further, the Agency is amending the heading of Subchapter I of Chapter III of the CFR by deleting the word "Act" so the heading will be "Egg Products Inspection."

At this time, FSIS is only including in part 592 of Title 9 of the CFR the base time fee scheme and the overtime and holiday fee scheme for the voluntary inspection of egg products that is done on other than a continuous resident basis. In a separate rulemaking, the Agency will propose to include in Title 9 of the CFR other provisions of the voluntary inspection of egg products regulations. FSIS will coordinate this effort with AMS.

The Agency must recover the actual cost of voluntary inspection services covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's costs.

Proposed Rule and Comments

On October 16, 2001, FSIS published a proposed rule (66 FR 52548) to increase the fees it charges for meat, poultry, and egg products voluntary, overtime, and holiday inspection services. The Agency provided 30 days for public comment, ending on November 11, 2001. FSIS received no comments on the proposed rule. The Agency believes that adequate notice has been given to affected parties. The Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register** in order for FSIS to recover the costs of the services provided and reduce the possibility of monetary losses for the Agency. Therefore, the increases in fees will be effective January 27, 2002.

Summary of the Final Rule

FSIS is amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $38.44 to $42.64 per hour per program employee. The Agency is also amending §§ 391.3, 590.126, and 590.128(a) to increase the rate for providing meat, poultry, and egg products overtime and holiday inspection services from $41.00 per hour per employee to $44.40 per hour per employee. Additionally, FSIS is amending § 391.4 to increase the rate for laboratory services from $60.44 per hour per employee to $68.32 per hour per employee. Further, the Agency is adding part 592 to the CFR to increase the rate for the voluntary inspection of egg products for base time from $33.64 to $42.64 per hour per employee and for overtime and holiday inspection from $35.52 to $44.40 per hour per program employee. FSIS is also amending the heading of Subchapter I of Chapter III of the CFR by deleting the word "Act" so the heading reads "Egg Products Inspection" because voluntary inspection of egg products is performed under the AMA.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments and plants should not be affected adversely by the increases in fees because the new fee increases provided for, in general, reflect only a small increase in the costs currently borne by those entities that choose to use the inspection services for which fees are being raised. Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. The inspection services that the fee increases effect are generally used by larger establishments and plants because of their larger production volume, the greater complexity and diversity of the products that they produce, and the need of their clients (large commercial or institutional establishments) for on-time delivery of large volumes of product.

Establishments and plants that seek the Agency's services are likely to have calculated that the incremental costs of overtime and holiday inspection services will be less than the incremental expected benefits of additional revenues that they would realize from additional production.

Economic Effects

As a result of the new fees, the Agency expects to collect an estimated $101 million in revenues for FY 2002, compared to $94 million under the current fee structure. The costs that industry will experience by the raise in fees are similar to other increases that the industry faces because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2000 was about 82 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, March 28, 2001). The total volume of U.S. egg product production in 2000 was about 2.3 billion pounds (2001 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the proposed fees increases is, in general, $.00008. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the proposed fee increases to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System of U.S. Demand for Food. USDA/ERS Technical Bulletin No 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

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Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information, or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $42.64 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $44.40 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $68.32 per hour per program employee.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

3. The authority citation for Part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

4. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $44.40.

5. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $44.40.

* * * * *

6. Revise the heading of Subchapter I to read as follows:

SUBCHAPTER I—EGG PRODUCTS INSPECTION

7. Add part 592 to Subchapter I to read as follows:

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

Sec.
592.1 Scope and purpose.
592.2 Base time rate.
593.3 Overtime rate.
593.4 Holiday rate.

Authority: 7 U.S.C. 1621–1627.

§ 592.1 Scope and purpose.

The fees that shall be charged for, and collected by the Food Safety and Inspection Service for the voluntary base time, overtime, and holiday time inspection services of egg products as provided by FSIS on other than a continuous resident basis shall be at the applicable rates, and on the basis set forth in §§ 592.2 through 592.4 below, in lieu of that for such services set forth in 7 CFR part 55. The fees and charges for such services shall be paid by check, draft, or money order to the Food Safety and Inspection Service.

§ 592.2 Base time rate.

The base time rate for voluntary inspection services of egg products is $42.64 per hour per program employee.

§ 592.3 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $44.40.

§ 592.4 Holiday rate.

When an official plant requires voluntary inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $44.40.

Done at Washington, DC, on January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–1751 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG87

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 28, 2002, for the direct final rule that appeared in the **Federal Register** of November 14, 2001 (66 FR 56982). This direct final rule amended the NRC's regulations by revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS was also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. This document confirms the effective date.

DATES: The effective date of January 28, 2002, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (http://ruleforum.llnl.gov). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–8126 (e-mail: *mlh1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On November 14, 2001 (66 FR 56982), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 to revise the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS were also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 17th day of January, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–1719 Filed 1–23–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 01P–0304]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Ingestible Telemetric Gastrointestinal Capsule Imaging System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the ingestible telemetric gastrointestinal capsule imaging system device into class II (special controls). The special controls that will apply to this device are set forth below. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carolyn Neuland, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

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On June 11, 2001, FDA received a petition submitted under section 513(f)(2) of the act by Given Imaging, Ltd., through Hogan & Hartson, L.L.P., seeking an evaluation of the automatic class III designation of its GIVEN Diagnostic Imaging System [GIVEN System]. In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the GIVEN System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the GIVEN System can be classified in class II with the establishment of special controls. This device is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Biocompatibility; (2) electrical and mechanical safety; (3) radio-frequency radiated power and electromagnetic compatibility, including interference with other medical devices and with this device (e.g., interference with image acquisition); (4) functional reliability, including structural integrity and image acquisition; (5) intestinal obstruction or injury; and (6) misinterpretation of the captured images. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA."

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including testing standards for biocompatibility, and electrical and mechanical performance. The class II special controls guidance also includes appropriate prescription and patient labeling. FDA believes that adherence to the class II special controls addresses the risks to health identified above and provides a reasonable assurance of the safety and effectiveness of the device.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA review of key design features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the ingestible telemetric gastrointestinal capsule imaging system before marketing the device.

On August 1, 2001, FDA issued an order classifying the GIVEN System and substantially equivalent devices of this generic type into class II under the generic name, ingestible telemetric gastrointestinal capsule imaging system. FDA identifies this generic type of device as an ingestible telemetric gastrointestinal capsule imaging system, which is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities in the small bowel.

FDA is codifying this device by adding § 876.1300. The order also identifies a special control applicable to this device a guidance document entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA."

II. Electronic Access

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1385) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA" is available on the Internet at http://www.fda.gov/cdrh/ode/guidance/1385.pdf.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.1300 is added to subpart B to read as follows:

§ 876.1300 Ingestible telemetric gastrointestinal capsule imaging system.

(a) *Identification.* An ingestible telemetric gastrointestinal capsule imaging system is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. The device captures images of the small bowel with a wireless camera contained in a capsule. This device includes an ingestible capsule (containing a light source, camera, transmitter, and battery), an antenna array, a receiving/recording unit, a data storage device, computer software to process the images, and accessories.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance, "Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging Systems; Final Guidance for Industry and FDA."

Dated: January 14, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–1722 Filed 1–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 15

RIN 2900–AJ63

Delegations of Authority—Equal Employment Opportunity (EEO) Responsibilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document delegates to certain Department of Veterans Affairs (VA) officials authority to supervise and control the operation of the administrative Equal Employment Opportunity (EEO) Discrimination Complaint Processing System; to make procedural decisions to accept or dismiss discrimination complaints; to decide breach of settlement agreement claims; to resolve claims of dissatisfaction with the processing of previously filed discrimination complaints; to make under limited circumstances substantive final agency decisions; and take final agency action following an Equal Employment Opportunity Commission (EEOC) Administrative Judge's decision; and to monitor agency compliance with orders and decisions of the Office of Employment Discrimination Complaint Adjudication (OEDCA) and EEOC. The document also requires that any complaint filed against the Secretary or Deputy Secretary based upon personal actions or decisions by these officials as opposed to ministerial actions will be transferred to another Federal agency for processing and adjudication on a cost reimbursable basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Management is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

DATES: *Effective Date:* January 24, 2002.

FOR FURTHER INFORMATION CONTACT: James S. Jones, Deputy Assistant Secretary for Resolution Management, 202–501–2800.

SUPPLEMENTARY INFORMATION: When the Department's EEO complaint resolution process was reorganized several years ago, a cumbersome regulation was promulgated which outlined a transitional process for the transfer of procedural decision making authority from the Office of General Counsel to the Office of Resolution Management (ORM). Since that time, the authority transfer has been completed, and there is no further need for the bifurcated authority in the regulation. It is rescinded by this document, and in its place new regulations delegate a series of authorities to manage the employment discrimination complaint resolution process; to make procedural decisions to accept or dismiss complaints; to decide claims of breach of settlement agreement; to resolve claims of dissatisfaction related to the processing of a previously filed employment discrimination complaint; to make limited substantive final agency decisions and to take final agency action following an EEOC Administrative Judge's decision; to monitor agency compliance with the orders and decisions of OEDCA and EEOC; and to transfer to another federal agency for processing and adjudication any complaints filed against the Secretary or Deputy Secretary based upon their personal actions or decisions rather than ministerial actions.

The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO discrimination complaint processing within the Department. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and Regional EEO Officers/Field Managers are delegated authority to accept or dismiss discrimination complaints filed by employees, former employees, and applicants for employment. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are also

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delegated authority to decide breach of settlement agreement claims, resolve claims which express dissatisfaction with the processing of a previously filed employment discrimination complaint, and to monitor agency compliance with the orders and decisions of OEDCA and EEOC.

The Director and Associate Director of OEDCA are delegated authority to make procedural decisions to accept or dismiss employment discrimination complaints filed by employees, former employees and applicants for employment that may be pending before OEDCA, where the interests of administrative complaint processing efficiency may be best served by OEDCA making such decisions. The Director and Associate Director are also delegated authority to dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment against ORM; to decide all breach of settlement claims raised by ORM employees, former employees, or applicants for employment; to consider and resolve claims by ORM employees, former employees, and applicants for employment that express dissatisfaction with the processing of previously filed complaints; and to make procedural decisions to accept or dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment, where ORM must recuse itself because of an actual, apparent, or potential conflict of interest.

The Chairman, Board of Contract Appeals, is delegated authority to make procedural decisions to accept or dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment and to make substantive decisions and take final agency actions following a decision by an EEOC Administrative Judge in cases where OEDCA has recused itself due to an actual, apparent, or potential conflict of interest.

Where an EEO complaint is based upon the personal actions or decisions of the Secretary or Deputy Secretary rather than ministerial acts, the complaint will be transferred to another Federal agency for processing and adjudication on a cost reimbursement basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Mangement is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

This document is published without regard to the notice and comment and effective date provisions of 5 U.S.C. 553 since it relates to agency management and personnel.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 15

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Approved: January 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 2 and 15 are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729; 44 U.S.C. 3702, unless otherwise noted.

2. Section 2.6 is amended by:

A. Removing paragraph (e)(6);

B. Redesignating paragraphs (e)(7) through (e)(12) as paragraphs (e)(6) through (e)(11), respectively;

C. Adding paragraphs (h), (i), (j), and (k) immediately following the authority citation for paragraph (g).

The additions and revisions read as follows:

§ 2.6 Secretary's Delegations of Authority to Certain Officials (38 U.S.C. 512).

* * * * *

(h) *Delegations to Office Resolution Management Officials (ORM).* (1) The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO Discrimination Complaint Processing System within the Department.

(2) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and all Regional EEO Officers/Field Managers are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints based upon race, color, national origin, sex, religion, age, disability, or reprisal filed by employees, former employees, or applicants for employment.

(3) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to make agency decisions on all breach of settlement claims raised by employees, former employees, and applicants for employment.

(4) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to consider and resolve all claims raised by employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to monitor compliance by Department organizational components with orders and decisions of the OEDCA and the EEOC.

(i) *Delegations to officials of the Office of Employment Discrimination Complaint Adjudication (OEDCA).* (1) The Director and Associate Director, OEDCA, are delegated authority to make procedural decisions to dismiss, in whole or in part, any EEO discrimination complaint filed by any employee, former employee, or applicant for employment that may be pending before OEDCA, where administrative complaint processing efficiency may be best served by doing so.

(2) The Director and Associate Director, OEDCA, are delegated authority to dismiss, in whole or in part any EEO discrimination complaint based upon race, color, religion, sex, national origin, age, disability, or reprisal filed by any ORM employee, former employee, or applicant for employment.

(3) The Director and Associate Director, OEDCA, are delegated authority to make the agency decision on all breach of settlement claims raised by ORM employees, former employees, and applicants for employment.

(4) The Director and Associate Director, OEDCA, are delegated authority to consider and resolve all claims raised by ORM employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Director and Associate Director, OEDCA, are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints filed by employees, former employees, or applicants for employment where the ORM must recuse itself from a case due to an actual, apparent, or potential conflict of interest.

(j) *Delegation to the Chairman, Board of Contract Appeals.* In cases where OEDCA has recused itself from a case due to an actual, apparent, or potential conflict of interest, the Chairman, Board of Contract Appeals, is delegated authority to make procedural agency decisions to dismiss, in whole or in part, EEO discrimination complaints filed by agency employees, former employees, and applicants for employment; to make substantive final agency decisions where complainants do not request an EEOC hearing; and to take agency action following a decision by an EEOC Administrative Judge.

(k) *Processing complaints involving certain officials.* A complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural acceptability review, investigation, and substantive decisionmaking to another Federal agency (e.g., The Department of Justice) pursuant to a cost reimbursement agreement. Referral will not be made when the action complained of relates merely to ministerial involvement in such matters (e.g., ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, assistant secretaries, or staff office heads).

PART 15—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERANS AFFAIRS

3. The authority citation for part 15 continues to read as follows:

Authority: 29 U.S.C. 794, unless otherwise noted.

§ 15.170 [Amended]

4. In § 15.170, paragraph (c) is amended by removing "Equal Employment Opportunity" each time it appears, and adding, in its place, "Resolution Management".

[FR Doc. 02–1735 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7130–9]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this direct final action, EPA is approving the State of Colorado's request to relax the federal Reid Vapor Pressure ("RVP") gasoline standard that applies to gasoline supplied to the Denver/Boulder area (hereafter "Denver area") from June 1st to September 15th (the ozone control season) of each year. This action amends our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch ("psi") to 9.0 psi. EPA has determined that this change to our federal RVP regulations is consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

DATES: This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives substantive adverse comments by February 25, 2002. If substantive adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov

SUPPLEMENTARY INFORMATION:

Plain language: Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

Regulated Entities: Entities potentially affected by this rule are fuel producers and distributors. Regulated categories include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, gasoline retailers and wholesale purchaser-consumers.

To determine whether you are affected by this rule, you should carefully examine the requirements in section 80.27(a)(2) of title 40 of the Code of Federal Regulations ("CFR"). If you have any questions regarding the applicability of this action to a particular entity, you should consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking: A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area.*

I. Background

A. History of Gasoline Volatility Regulation

In 1987, we determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline,

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referred to as volatile organic compounds ("VOCs"), are precursors for the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lung sensitization to other pollutants.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is the Reid Vapor Pressure ("RVP"). Under authority in section 211(c) of the Clean Air Act (CAA), we promulgated regulations on March 22, 1989, that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1 to September 15. These regulations were referred to as Phase I of a two-phase nationwide [1] program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season.[2] On June 11, 1990, we promulgated more stringent volatility controls for Phase II.[3] These requirements established volatility standards of 9.0 psi and 7.8 psi maximum RVP (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone National Ambient Air Quality Standard or "NAAQS") during the ozone control season.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires us to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. It further requires us to establish more stringent RVP standards in non-attainment areas if we find such standards "necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors." Section 211(h) prohibits us from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone non-attainment area redesignated to attainment.

On December 12, 1991, we modified our Phase II volatility regulations to be consistent with section 211(h) of the CAA.[4] The modified regulations prohibit the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as non-attainment, the regulations retained the original Phase II standards published in 1990.[5]

As stated in the preamble for the Phase II volatility controls,[6] and reiterated in the proposed change to the volatility standards published in 1991,[7] we will rely on States to initiate changes to our volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.[8] In those rulemakings, we explained that the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi for some month or months in a non-attainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. We have approved such petitions to amend the federal RVP regulations for South Carolina[9] and Tennessee.[10]

B. History of Federal RVP Requirements for the Denver Area

On November 6, 1991, we issued ozone nonattainment designations for the 1-hour ozone NAAQS (hereafter "ozone NAAQS" or "ozone standard") pursuant to section 107(d)(4)(A) of the CAA (56 FR 56694). In that action, we designated the Denver area as a nonattainment area [11] and classified it as a "transitional area" as determined under section 185A of the CAA.[12]

Because we designated the Denver area as a transitional ozone nonattainment area, the applicable volatility standard for the Denver area, under the Federal RVP rule promulgated on December 12, 1991, was 9.0 psi RVP in May and 7.8 psi from June 1 to September 15, beginning in 1992.[13] Since 1992, and in response to waiver petitions from the Governor of Colorado, we have waived the 7.8 psi RVP requirement for the Denver area and have required the less stringent 9.0 psi RVP. In-depth discussions of these past actions can be found in the applicable **Federal Register** notices.[14] Our decisions to grant these petitions were based on evidence that demonstrated the 7.8 psi standard was not necessary given the area's record of continued attainment of the 1-hour ozone standard using 9.0 psi RVP gasoline and evidence presented by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained.

On August 8, 1996, the Governor of Colorado submitted a maintenance plan and requested that we redesignate the Denver area to attainment for the ozone NAAQS.[15] We did not act on the Governor's request as the maintenance plan had both legal and technical problems that precluded our full approval.

In July, 1997, we established a new 8-hour ozone NAAQS of 0.08 parts per million (ppm).[16] At that time, we also promulgated regulations governing when the 1-hour ozone standard would no longer apply to areas. On June 5, 1998, we published a final rule (*see* 63 FR 31014) that revoked the 1-hour ozone standard for areas that were attaining the 1-hour standard; this included the Denver area.[17] As a result of our finding that the 1-hour ozone standard was revoked and no longer applied to the Denver area, the State's August 8, 1996, 1-hour ozone redesignation request and maintenance plan became moot and neither the State nor EPA contemplated further action.

In 1998, the Governor of Colorado again requested that we waive the federal 7.8 psi RVP requirement for the Denver area. We found that while a 9.0 psi RVP standard was in place, the Denver area had shown continuous attainment of the 1-hour ozone standard since 1987 and had monitored attainment of the 8-hour standard since 1994. We concluded that retaining the 9.0 psi RVP standard would not cause the area's air quality to significantly deteriorate. *See* 63 FR 31627, (June 10, 1998). Moreover, we concluded that imposing a 7.8 psi standard would result in significant costs for consumers and refiners. We therefore extended the waiver relaxing the federal RVP standard for the area to 9.0 psi for the ozone control seasons of 1998 through 2000. We explained that designations under the new 8-hour ozone standard would be made by July 2000, and that our consideration of a permanent revision to the federal RVP standard for the area would be appropriate at that time.

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded, but did not vacate, the revised 8-hour ozone standard.[18] On February 27, 2001, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and remanded the decision to the Court of Appeals for further proceedings.[19] In the interim period, while the Supreme Court was considering the case, we reinstated the 1-hour ozone standard in all areas of the nation to ensure the availability of a fully enforceable Federal ozone standard to protect public health.[20] With the reinstatement of the 1-hour ozone standard, the 1-hour standard designations and classifications that applied at the time the standard was revoked were also reinstated. We reinstated the 1-hour standard for the Denver area effective January 16, 2001, and returned the area to nonattainment for the 1-hour ozone standard with its prior "transitional" classification.

As a result of the reinstatement of the nonattainment designation, the Denver Regional Air Quality Council (RAQC) and the State developed a revised maintenance plan that updated the August 8, 1996, Governor's submittal and addressed our technical and legal concerns with the 1996 submittal. The Governor submitted a redesignation request and a proposed revised maintenance plan on November 30, 2000, in conjunction with a request for parallel processing. The Governor subsequently submitted the final redesignation request and maintenance plan on May 7, 2001.

The Governor's final submittal of the revised maintenance plan incorporated a gasoline RVP limit of 9.0 psi. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance plan's time period of 1993 through 2013 with the 9.0 psi limit, Colorado requested that the 9.0 psi summertime RVP standard (10.0 psi for ethanol blends) be made permanent for the Denver area upon our approval of the redesignation request and maintenance plan.

EPA's Region VIII approved the State's redesignation request and maintenance plan on September 11, 2001 (66 FR 47086) and it became effective October 11, 2001.[21] In that decision, Region VIII indicated that the change to assign a permanent RVP standard of 9.0 psi for the Denver area would be appropriate, but a separate rulemaking would be necessary to revise the federal RVP requirements for Colorado as specified in 40 CFR § 80.27(a)(2). That is the purpose of this direct final rule.

II. Justification for Granting Colorado's Request To Permanently Change the RVP Standard for the Denver Area

As previously mentioned, according to the preamble for the Phase II volatility controls,[22] the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. The June 23, 2000, petition by the Governor of Colorado to extend the temporary exemption from the 7.8 psi RVP standard for the Denver area to the 2001 ozone control season (see 66 FR 28808, May 24, 2001) and available evidence indicate that imposing the 7.8 psi standard would result in costs to consumers and industry, and that these costs are not reasonable given that the 7.8 psi RVP standard is not necessary to ensure continued attainment of the 1-hour ozone standard.

Six refiners supply the Denver market and these refiners vary in size, refining capacity and complexity. The Colorado Petroleum Association (CPA) estimated that all of the refiners would have to spend capital dollars to upgrade and reconfigure their facilities to provide gasoline blended at the 7.8 psi RVP level for the Denver market. The CPA [23] estimated that upgrading equipment and reconfiguring facilities to provide 7.8 psi RVP gasoline to the Denver market would cost refiners approximately $15–25 million. Documentation submitted in support of Colorado's petition for relaxation of the 7.8 psi RVP standard for the 2001 ozone control season indicate that implementation of that standard would cost the consumer about 1.5 cents more per gallon of gasoline with an overall seasonal cost of $4,500,000.[24]

The record also supports the conclusion that retention of the 9.0 psi standard will not cause deterioration of air quality in the Denver area. As stated above, the area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. Further, the State has demonstrated that it has sufficient additional contingency measures, including a control on gasoline RVP, that can be implemented to bring the area back into attainment should the area exceed the 1-hour ozone NAAQS in the future. These State contingency measures are identified in Chapter 3, section F of the revised maintenance plan.

[1] Hawaii, Alaska and U.S. territories were excepted.

[2] 54 FR 11868 (Mar. 22, 1989).

[3] 55 FR 23658 (June 11, 1990).

[4] 56 FR 64704 (Dec. 12, 1991).

[5] See 55 FR 23658 (June 11, 1990).

[6] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[7] See 56 FR 24242 (May 29, 1991).

[8] See CAA section 211(h)(1) (allowing EPA to set a standard more stringent than 9.0 psi as necessary to achieve comparative emissions in nonattainment areas considering enforceability, the need of an area for emissions control and economic factors).

[9] 58 FR 46508 (Sept. 1, 1993).

[10] 59 FR 15625 (Apr. 4, 1994).

[11] The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

[12] Section 185A defines a transitional area as "an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 (that) has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989." In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

[13] The standard applicable in other areas of Colorado is 9.0 psi from May 1 to September 15.

[14] See 53 FR 26067 (Apr. 30, 1993); 59 FR 15629 (Apr. 4, 1994); 61 FR 16391 (Apr. 15, 1996); 63 FR 31627 (June 10, 1998); and 66 FR 28808 (May 24, 2001).

[15] In order for EPA to redesignate an area to attainment under section 107(d)(3)(D) of the CAA, the Governor must submit a redesignation request and a maintenance plan that meets the requirements of section 107(d)(3)(E) and section 175A of the CAA, the redesignation requirement of the General Preamble for the Implementation of Title I of CAA Amendments of 1990 (57 FR 13498 (Apr. 16, 1991), and 57 FR 18070 (April 28, 1992)), and addresses the provisions of EPA redesignation policies and guidance documents. In general, the ozone maintenance plan must demonstrate long-term (i.e., 10 years) maintenance of the ozone NAAQS.

[16] 62 FR 38856 (July 18, 1997).

[17] Similar rulemakings for other areas were promulgated on July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911).

[18] *American Trucking Ass'n* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999).

[19] *Whitman* v. *Am. Trucking Ass'ns*, 531 U.S. 457 (2001).

[20] 65 FR 45182 (July 20, 2000).

[21] Documents related to EPA's approval of the Colorado redesignation request and maintenance plan are available for public inspection during normal business hours at: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the State documents relevant to that action are available for public inspection at: Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

[22] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[23] Memorandum from Stan Dempsey, Colorado Petroleum Association, Denver, CO, to Kerri Fiedler, EPA Region VIII, dated 2/07/2001.

[24] Memorandum from K.B. Livo, Colorado Department of Public Health and Environment, to Kerri Fiedler, Region VIII, dated 12/07/2000.

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Based on the foregoing, we have decided to grant Colorado's's request to permanently change the federal volatility standard from 7.8 psi to 9.0 psi RVP for gasoline in the Denver/Boulder area during the ozone control season. The State has met the criteria outlined in our December 12, 1991 RVP rulemaking for relaxing the federal RVP regulations. The State has demonstrated that it has sufficient alternative programs to achieve attainment and maintenance of the ozone NAAQS and that the less stringent federal RVP standard is appropriate given the local economic impact that the more stringent 7.8 psi RVP requirement would cause.

III. Final Action

We are taking direct final action to approve Colorado's request to permanently relax the federal RVP standard applicable to summertime gasoline supplied to the Denver area. This action will change the applicable standard from 7.8 psi to 9.0 psi in 40 CFR 80.27(a)(2).[25] We view this as a noncontroversial action. Our final rule of September 11, 2001, fully approved the maintenance plan for the Denver area. It shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. This maintenance plan went through public notice and comment during the approval process (see 66 FR 24075, May 11, 2001), and no adverse comments were received. Further, EPA has granted Colorado exemptions allowing the Denver area to receive gasoline containing up to 9.0 psi RVP since 1992, and this rule merely makes this currently applicable RVP limit permanent.

Because we view this as a noncontroversial amendment and anticipate no adverse comment, we are publishing this action without prior proposal. However, in the "Proposed Rules" section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the rule amendment should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 25, 2002.

If EPA receives such comments, we will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule merely permanently continues the current temporary relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997) applies to any rule that:

[25] Consistent with Colorado's request, this direct final action also automatically changes the effective federal RVP standard for summertime ethanol blends of gasoline supplied to the Denver area. Under 40 CFR 80.27(d), gasoline having a denatured anhydrous ethanol concentration of at least 9.0 percent but no more than 10.0 percent (by volume) is allowed to have an RVP that exceeds the applicable standard in 40 CFR 80.27(a) by one psi. Since this direct final action relaxes the RVP standard in 40 CFR 80.27(a) for Denver's summertime gasoline from 7.8 to 9.0 psi, the effective RVP standard for Denver's ethnol blends of summertime gasoline is relaxed from 8.8 to 10.0 psi.

(1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver area must comply. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's rule does not have tribal implications. It affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is

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not a significant regulatory action under Executive Order 12866.

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

APPLICABLE STANDARDS[1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
Colorado[2]	9.0	9.0	9.0	9.0	9.0

[1] Standards are expressed in pounds per square inch (psi).
[2] From 1992 through 2001, the RVP standard for the former Denver-Boulder nonattainment area was 7.8 psi, but waived to 9.0 psi.

* * * * *

[FR Doc. 02–1493 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7132–3]

RIN 2060–AJ69

Amendments to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: With this action, due to the receipt of adverse comments, EPA is withdrawing two of the amendments to the requirements on variability in the composition of additives certified under the gasoline deposit control program that were included in the direct final rule published on November 5, 2001 (66 FR 55885). We will address these comments in a subsequent final action based on the parallel proposal published on November 5, 2001 (66 FR 55905).

DATES: The following provisions of the direct final rule published at 66 FR 55885 (November 5, 2001) are withdrawn as of January 24, 2002.

(1) The revision to 40 CFR 80.162(a)(3)(i)(B), and

(2) The revision to 40 CFR 80.162(a)(3)(ii).

ADDRESSES: Comments and other materials supporting this rulemaking are contained in Public Docket No. A–2001–15, at: Air Docket Section, U.S. Environmental Protection Agency, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4227; Fax (734) 214–4816; e-mail *herzog.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 5, 2001, EPA published a direct final rule entitled "Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program" (66 FR 55885) and a parallel proposed rule (66 FR 55905). This rule was intended to make four revisions to EPA's gasoline deposit control program that were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309). These notices were published by EPA as a result of a settlement agreement to resolve the Chemical Manufacturer Association's (now the American Chemistry Council) petition for judicial review of specific provisions of the gasoline deposit control program. Because EPA received adverse comment on two specific amendments contained in the direct final rule, we are withdrawing the two amendments on which we received adverse comments. We stated in the direct final rule that if we received adverse comments on one or more distinct amendments, paragraphs, or sections of the direct final rule by January 4, 2001, we would publish a timely withdrawal in the **Federal Register** indicating which amendments, paragraphs, and sections would become effective and which amendments, paragraphs, or sections would be withdrawn. We received adverse comments on the following two amendments in that direct final rule: the revision to 40 CFR 80.162(a)(3)(i)(B), and the revision to 40 CFR 80.162(a)(3)(ii). We will address these comments in a subsequent final action based on the parallel proposal published on November 5, 2001 (66 FR 55905). As stated in the parallel proposal, we will not institute a second comment period on this action. The following two amendments that did not receive adverse comment will become effective on February 4, 2002, as provided in the November 5, 2001, direct final rule: 40 CFR 80.162(d), and 40 CFR 80.169(c)(4)(i)(C)(*2*).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–1756 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC 96–45; FCC 01–376]

Implementation of Interim Filing Procedures for Filings of Requests for Review

AGENCY: Federal Communications Commission.

ACTION: Temporary procedural requirements.

SUMMARY: In this document, the Commission waives its procedures for filing requests for review from decisions of the Universal Service Administrative Company (Administrator) and petitions for reconsideration and applications for review that arise from such proceedings and establishes the following interim procedures. We extend the period for filing a request for review, or applications for review arising from such proceedings, from the current 30 day period to 60 days, provide applicants with the option of electronic filing (via either electronic mail or facsimile) for requests for review and petitions for reconsideration or applications for review that arise from such proceedings, and provide parties that have mailed such pleadings on or after September 12, 2001 with an opportunity to refile their pleadings electronically. These measures will help to ensure continued timely processing of such filings and to avoid prejudice to parties as a result of the recent disruptions in mail service.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This Order, adopted December 20, 2001, and released December 26, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., S.W., Washington, DC 20554. The complete text is available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication in the **Federal Register** and until further notice, we waive our filing procedures and establish the following procedures on an interim, emergency basis. First, requests for review filed pursuant to §§ 54.719 through 54.725, 47 CFR 54.719 through 54.725, and any applications for review arising from such proceedings shall be filed within 60 days of the issuance of the decision being reviewed. This 60-day period will be applicable to all such pleadings that were required to be filed on or after September 12, 2001 and were received by the Commission on or after September 12, 2001. Second, parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.

2. If filed by electronic mail, pleadings shall be filed at the following e-mail address: *CCBSecretary@fcc.gov*. Documents filed via electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. Pleadings submitted by electronic mail will be considered filed on a business day if they are received at the Commission on that day at any time up to 12:00 a.m. Pleadings received after that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered filed on a business day if the complete transmission is received by any time up to 12:00 a.m.

3. We further provide that pleadings of the type described in paragraph 1 above that were due on or after September 12, 2001 and that were submitted by non-electronic means between September 12, 2001 and the effective date of this order may be refiled electronically within 30 days of the effective date of this order in accordance with the procedures specified in the preceding paragraph. Pleadings filed electronically pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed, and providing the date the pleading was originally mailed to the Commission, and by what means. For this purpose only, the original pleading will be considered filed as of the date that it was mailed.

4. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this order and WAIVES any contrary requirements.

5. *It is further ordered* that the waiver shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1601 Filed 1–23–02; 8:45 am]

BILLING CODE 6712–01–U

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, parts 52 to 99, revised as of October 1, 2001, § 52.244–6 is corrected by adding the introductory text of paragraph (a), and paragraph (c) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

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Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

* * * * *

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

* * * * *

[FR Doc. 02–55500 Filed 2–23–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005245–2012–02; I.D. 092401C]

RIN 0648–AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2002 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2002 specifications for the Atlantic herring fishery.

SUMMARY: NMFS issues final specifications for the 2002 Atlantic herring fishery. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries, and to comply with the provisions in the Fishery Management Plan for Atlantic Herring (FMP), which require annual specifications for the fishery. This rule also corrects and clarifies the final rule implementing the FMP by clarifying the vessel owners' or operators' reporting requirements.

DATES: The amendment to § 648.7 is effective January 24, 2002; the specifications are effective January 24, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, Final Regulatory Flexibility Analysis, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2000 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at http:/www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP appear at 50 CFR part 648, subpart K. The FMP requires the New England Fishery Management Council (Council), with the Atlantic States Marine Fisheries Commission (Commission), to develop and recommend the following specifications annually: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The Council and Commission also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. A proposed rule to implement the 2002 Atlantic herring specifications was published in the Federal Register on October 29, 2001 (66 FR 54498), with a comment period ending November 28, 2001. The process used to develop the specifications was thoroughly described in the preamble to the proposed rule and is not repeated here.

Final 2002 Specifications

Specifications for the 2002 fisheries are provided below. The only changes from the 2001 specifications are an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change are discussed in the proposed rule and the EA/RIR for the 2002 herring specifications.

TABLE. SPECIFICATIONS AND AREA TACS FOR THE 2002 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000
	(Area 2 & Area 3)
IWP	10,000
USAP	20,000
BT	4,000
TALFF	0
Reserve	0
TAC-Area 1A	60,000
TAC-Area 1B	10,000
TAC-Area 2	50,000
	TAC reserve: 80,000)
TAC-Area 3	50,000

This rule also implements a change to § 648.7(b)(1)(iii)(B) and adds § 648.7(b)(1)(iii)(C) to clarify the Council's intent concerning the reporting requirements for owners or operators of vessels who have been issued Atlantic herring permits but who are not required to have a Vessel Monitoring System (VMS) unit on board the vessel. This rule clarifies that only owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring on any one trip in a week must submit an Atlantic herring catch report via the Interactive Voice Response (IVR) reporting system by Tuesday of the following week. Even if the herring has not yet been landed, the operator must estimate the amount of herring on board the vessel and report that amount via the IVR system. As currently written, the regulations imply that this provision applies at all times to any owner or operator of a vessel issued a Federal permit for Atlantic herring who is not required to have a VMS unit on board the vessel. In addition, this rule clarifies that owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week. As currently written, the regulations require that the reporting provision also applies at all times to vessels catching herring in or from the EEZ. A review of the FMP and background material germane to the issue shows that this clarifying change is consistent with Council intent.

Changes from the Proposed Rule

While the amounts of the specifications remain the same as those found in the proposed rule, the restriction in the proposed rule on JVP to Area 2 only has been modified to retain the 2001 restriction of JVP to Areas 2 and 3. JVP remains prohibited in Areas 1A and 1B. This change to the proposed rule is a result of comments regarding the proposed restriction, and is based on a determination that, on balance, net benefits to fishing will be enhanced by continuing to allow JVP activity in both Areas 2 and 3.

Comments and Responses

Eight sets of public comments were received on the proposed rule from two vessel owners, a Maine fisheries association, the State of Connecticut, the Mid-Atlantic Fishery Management Council, the Russian Federation, a U.S. JVP partner, and a shoreside processor.

Comment 1: Two vessel owners and a Maine fisheries association opposed the elimination of JVP in Area 3 because they believe it would remove an opportunity for U.S. vessels to fish for herring at a time when fishing for other species is restricted or unavailable to them. The MAFMC, a representative of a canned sardine company, and the State of Connecticut specifically recommended that 10,000 mt of JVP should be made available in both Areas 2 and 3. The State of Connecticut believes that preventing JVP in Area 3 could leave fish unharvested in Area 3 because it is not certain that U.S. shoreside processors will fully utilize the Area 3 TAC.

Response: In 2001, 50,000 mt of TAC was allocated to Area 3. As of December 1, 2001, 28,700 mt, or 57 percent of the Area 3 TAC had been delivered to shoreside processors. While this figure represents a substantial increase in shoreside deliveries from 13,065 mt in 2000, it appears unlikely that shoreside processors will utilize the entire Area 3 TAC of 50,000 mt in 2002, as the Council believed. While the increase in shoreside deliveries reflects the addition of a new herring processing facility in Gloucester, MA, it is still uncertain that U.S. processing capacity is sufficient to utilize the full Area 3 TAC of 50,000 mt. NMFS agrees with the State of Connecticut that, while the export sector of the domestic industry has further developed over the past year, removing opportunities for U.S. vessels to participate in JVP operations in Area 3 would cause economic hardships of varying degrees to those vessels. Also, net benefits to the fishery will likely be enhanced by continuing to allow JVP activity in both areas. Therefore, this final rule allocates JVP to both Area 2 and Area 3.

Comment 2: The Russian Federation commented that all products processed at sea by Russian vessels are sent to foreign markets in accordance with U.S. law. The Federation believes that allocating JVP and TALFF to Russia provides additional advantages to U.S. fishermen – in particular, new possibilities for more profitable operations and full utilization of fishing capacities – and also promotes rational use of marine resources. A U.S. partner of foreign fishing operations supported this view.

Response: Based on an increase of estimated DAH/DAP by 5,000 mt for Atlantic herring over last year's estimate, the estimated portion of 2002 OY not harvested by U.S. vessels is zero, and, therefore, TALFF is zero. The Council has concluded that TALFF, even in relatively small amounts, can compete with U.S. exports in limited global markets. The potentially negative economic impacts of competition with TALFF-caught fish is discussed in the RIR. However, an allocation of zero TALFF does not preclude opportunities for U.S. vessels to participate in JVP operations. NMFS accepts the Council's analysis and rationale; this final rule sets TALFF at zero.

Comment 3: A Maine fisheries association and a U.S. JVP partner suggested increasing JVP to 20,000 mt for Atlantic herring.

Response: NMFS believes that a JVP specification of 20,000 mt could potentially impact the development of shoreside processors and would not be consistent with the FMP. If the majority of a 20,000 mt JVP allocation is taken from Area 3, this would allow only approximately 30,000 mt of herring to be delivered to shoreside processors. Since those processors have almost taken this amount in 2001, this would not leave additional allocation for further development of shoreside processing capabilities. However, NMFS will continue to closely monitor harvest from the various sectors of the fishery throughout the year, and if shoreside production falls short of expectations, NMFS, in consultation with the Council, could increase JVP allocation at any time during the fishing year, if warranted.

Comment 4: A U.S. JVP partner recommended a separate herring allocation for the Maine purse seine fleet.

Response: A separate allocation for Maine purse seiners was not within the scope of this action and would require an amendment or framework to the FMP. The commenter would have to convince the Council that such an action has enough merit to direct staff to develop a sufficient number of alternatives and supporting analyses, given the Council's current list of priorities.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes the annual and management area 2002 TACs for the Atlantic herring fishery, which are used for the purpose of closing the fishery when the quotas are reached.

Framework 1 to the FMP, as approved by the Secretary, is published elsewhere in today's Federal Register, effective immediately. That action gives NMFS the authority to divide the TAC for Management Area 1A into two seasons to preserve the much larger traditional fishery that has occurred from June through December. The fishing year begins on January 1, and the TAC for the January through May period is being set as a percentage of the annual quota allocation established by this rule, currently equating to only 6,000 mt for the 2002 fishing year. As such, unless this rule, which establishes the annual specifications for herring, is made effective prior to, or at the same time as, Framework 1, then there exists no basis upon which to determine the January through May TAC. Thus, the ability to implement Framework 1 is completely dependent upon the effectiveness of this action; without this rule in place, the basis upon which Framework 1 is predicated does not exist. Accordingly, the AA finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30 day delayed effectiveness for these specifications, since doing so is likely to prove necessary in order to close Area 1A.

Additionally, waiving the 30 day delayed effectiveness for these specifications will relieve a restriction on JVP operations (i.e., U.S. harvesters delivering to foreign processors) who are currently waiting to deliver herring. Some of the foreign vessels who received herring from domestic fishermen in 2001 intend to engage in herring JVP operations in 2002, and are currently waiting to do so. However, until the herring specifications are finalized and these foreign vessels are permitted, they are prohibited from doing so. Thus, a delay in the effectiveness of this action would prolong a restriction upon those vessels, while making these specifications immediately effective will serve to relieve the existing restriction. Therefore, there exists authority under 5

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U.S.C. 553(d)(1) to waive the 30-day delayed effectiveness period for this rule.

NMFS prepared a final regulatory flexibility act analysis (FRFA) for this action. A copy of the FRFA, which incorporates the IRFA, is available from the Council (see **ADDRESSES**). A summary of the FRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the preamble to the proposed rule and are not repeated here. This action does not contain new reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Eight sets of public comments were received on the proposed rule. None of the comments directly addressed the results of the IRFA. However, comments 1 through 3 addressed economic impacts to vessels and shoreside processors. Responses to those comments are provided in the preamble of this final rule.

Number of Small Entities

All of the affected businesses (fishing vessels and dealers) are considered small entities. The last full year of data available for the herring fishery is the year 2000. There were 169 vessels, 6 processors, and 104 dealers participating in the fishery in 2000.

Minimizing Economic Impacts on Small Entities

The only change from the 2001 specifications is an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change in DAP could benefit domestic processors because domestic shoreside processing has increased recently. The impacts were discussed in the proposed rule published on October 29, 2001 (66 FR 54498) and in the EA/RIR/IRFA for the 2002 herring specifications. The Regulatory Flexibility Act requires an agency to consider alternative measures that would mitigate adverse economic impacts to small businesses. While this action would eliminate TALFF fees to the Nation and decrease the profitability of foreign fishing vessels that previously participated in JVP/TALFF operations, it would not have an adverse economic impact on U.S. herring processors or other U.S. small businesses as compared to the status quo, which allocates 5,000 mt of TALFF and would have a negative impact on U.S. processors who are attempting to penetrate emerging markets for herring. The Council also considered a specification of 20,000 mt of TALFF and concluded that this level of TALFF would also cause significant negative impacts on U.S. processors by competing directly with the U.S. export market for herring. NMFS did not adopt the recommendation of the Council to limit JVP to Area 2, because it is likely there would be significant negative economic impacts to several vessels in 2002 that participated in Area 3 JVPs in 2001. However, NMFS did not adopt Council non-preferred alternatives that would have increased JVP up to 50,000 mt because amounts over the 10,000 mt preferred specification of JVP could limit the supply of herring going to U.S processors while providing foreign nations with additional amounts of herring to sell into emerging markets in direct competition with U.S. exports.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a permit holder letter that also serves as a small entity compliance guide was prepared. The guide (i.e., permit holder letter) will be sent to all holders of permits issued for the Atlantic herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and are also available at the following web site http://www.nero.nmfs/gov/ro/doc/nero.html.

This action clarifies a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0212. Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.7, paragraph (b)(1)(iii)(B) is revised, paragraph (b)(1)(iii)(C) is redesignated as paragraph (b)(1)(iii)(D), and a new paragraph (b)(1)(iii)(C) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

* * * * *

[FR Doc. 02–1761 Filed 1–18–02; 3:41 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011221308-1308-01; I.D. 112101A]

RIN 0648-AP44

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures contained in Framework Adjustment 1 to the Atlantic Herring Fishery Management Plan (FMP). This final rule modifies the annual specification of herring quota for Management Area 1A by establishing two quota periods. The intent of this final rule is to cap the landings of herring from Area 1A during the winter/spring (January through May) season so that more annual quota will be available to vessels fishing during the summer/fall (June through December) peak demand season.

DATES: Effective January 24, 2002.

ADDRESSES: Copies of Framework Adjustment 1 to the Atlantic Herring FMP, including the Environmental Assessment (EA), and Regulatory Impact Review (RIR) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at http://www.nero.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281-9103, fax (978) 281-9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: This final rule implements the measures contained in Framework 1 to the FMP. These measures require annual specification of herring quotas for two seasonal fishing periods for Management Area 1A (January - May and June - December). The annual quota (TAC) for each period will be established each year through the existing annual specifications' process outlined in 50 CFR 648.200. The annual Atlantic herring specifications for fishing year 2002 are published elsewhere in this edition of the Federal Register. This final rule also modifies the 2002 Area 1A TAC of 60,000 mt by allocating 6,000 mt to the January - May period, leaving 54,000 mt for the June - December period. The annual 2002 TAC for Area 1A would remain unchanged. The intent of this final rule is to modify the 2002 Area 1A TAC upon implementation of the 2002 specifications. Complementary action is being proposed for implementation by the states through the Atlantic States Marine Fisheries Commission's Atlantic Sea Herring Interstate FMP (IFMP).

Prior to this modification, the FMP required NMFS to close the directed herring fishery in a management area when 95 percent of the TAC for that area is harvested. Management area TACs were established by the states under the IFMP for the 2000 fishing year, and by NMFS under the FMP for the 2001 fishing year (66 FR 28846). Therefore, 2000 was the first year landings from Area 1A were constrained by the TAC. The traditional peak demand for herring coming from Area 1A occurs during June - November, when the primary use is for lobster bait. In both 2000 and 2001, the TAC was attained prior to the end of November (October 27, 2000 under the ASMFC Plan; November 10, 2001 under the Atlantic Herring FMP (66 FR 56041), respectively).

Over the past year, the New England Fishery Management Council (Council) and its Herring Oversight Committee discussed at several meetings the various proposed alternatives to address the industry's concerns, including limited entry or controlled access in Area 1A. Causes of the early attainment of the TAC in Area 1A, include excessive harvesting capacity of the herring fleet given Area 1A TAC levels specified in recent years, and the lower cost for vessels from Maine, New Hampshire, and Massachusetts to harvest herring from Area 1A compared to other areas located farther offshore. These vessels are induced to concentrate their effort in Area 1A in order to maximize profits, provided the fish are available in sufficient quantities. As a result, the herring TAC is reached earlier than desired by the fleet as a whole. For several years, the Council has considered developing an amendment to the FMP to establish a limited entry or controlled access program to address the capacity issue. However, other fishery issues have been identified as having higher priority, at least through 2002. Therefore, the Council developed Framework 1 to address the problem for the near future.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR 648.206. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, where comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analysis and provide an opportunity to comment on them, specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to NMFS that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary. For this action, the Council recommended, and NMFS concurred after review of current circumstances in this fishery as further explained in the classification section of the final rule, that the measures be published as a final rule.

The initial and final meetings for Framework 1 at which public comment was received were on July 24-26, 2001, and September 25-27, 2001, respectively. The Council's Herring Oversight Committee and Herring Advisory Panel also met in August, between the two Council meetings, to take public comments and to discuss the action under consideration. Documents summarizing the Council's proposals and the analysis of biological, economic and social impacts were available for public review one week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to and during the final meeting. The Council received no written comments on the proposed action.

Classification

The fishing year for the Atlantic herring fishery begins on January 1, and the TAC for the January - May period is being set at only 6,000 mt for the 2002 fishing year in this final rule. Because herring are currently plentiful in Area 1A and landings data from the fishery indicate that significant catches are being made, the TAC may be reached within a few weeks. Without this rule in place, NMFS would have no authority to close the directed herring fishery once 95 percent of the seasonal TAC is attained. Furthermore, NMFS needs some lead time before a closure is effected in order to notify industry of the closure. Therefore, it is essential that this action be implemented as quickly

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as possible in order to avoid exceeding the TAC for the first quota period, which would defeat the purpose of the action, as described in the preamble to this final rule. Therefore, the Assistant Administrator for NOAA (AA) finds that the July 24-26, 2001, and the September 25-27, 2001, Council meetings provided adequate prior notice and opportunity for public comment and, because any further delay could result in the seasonal TAC for the first quota period being exceeded, further notice and opportunity for public comment are impracticable. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive additional opportunity for prior public comment.

The AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this final rule. The TAC for the 2002 fishery for Management Area 1A implemented in the 2002 Atlantic Herring specifications (published elsewhere in this edition of the Federal Register) is 60,000 mt. This action modifies the annual specification for Management Area 1A by establishing two quota periods so that more annual quota will be available to vessels fishing during the summer/fall peak demand season. Because this action caps the landings of herring from Area 1A during the January - May season, state agencies and fishers must be notified of the new cap in order to plan accordingly. In order for industry to plan accordingly for the upcoming fishing year, this modification of the annual specifications for the herring fishery must be published on or about January 1. Further, as explained in the preceding paragraphs, the availability of herring in Area 1A in January 2002 and preliminary landings information from the industry indicate that the directed fishery in Area 1A may need to be closed within a few weeks. Without this final rule's measures in place, the authority to close the fishery at 95 percent of the 6000 mt TAC in Area 1A would not exist, and the expected benefits of this action would be lost in 2002. As such, it is contrary to the public interest and impracticable to delay effectiveness for 30 days.

Because a prior notice and opportunity for public comment is not required for this final rule under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This final rule has been determined not to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.200, the first two sentences of paragraph (a) are revised to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually, but no later than July, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.202(f). * * *

* * * * *

3. In § 648.202, the first sentence of paragraphs (a) is revised, and paragraph (f) is added to read as follows:

§ 648.202 Total allowable catch (TAC) controls

(a) If NMFS determines that catch will reach or exceed 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. * * *

* * * * *

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A shall be set through the annual specification process described in § 648.200.

[FR Doc. 02–1762 Filed 1–18–02; 3:45 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011702A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District (Statistical Area (area) 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2002 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to prevent exceeding the A season HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2002 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., September 1, 2002. The first directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t., January 23, 2002, until 1200 hrs, A.l.t., January 28, 2002. The second directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t.,

January 30, 2002, until 1200 hrs, A.l.t., February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of Atka mackerel TAC for non-jig gear in the Eastern Aleutian District and the Bering Sea subarea is 2,518 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). See § 679.20 (a)(8)(ii).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of TAC for non-jig gear Atka mackerel in the Eastern Aleutian District (Area 541) and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,918 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

In accordance with § 679.20 (a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543. The opening is to occur 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has establish the opening date for the second HLA directed fisheries as 48 hours after the closure of the first HLA fisheries in both 542 and 543. Consequently, NMFS is opening directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the **DATES** section of this publication.

In accordance with § 679.20 (a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the platoon or platoons associated with the directed fishery or fisheries for which they have been registered. NMFS has notified the operator of each vessel as to which platoon each vessel has been assigned by NMFS. (See the notification appearing in this publication of the **Federal Register**.)

In accordance with § 679.20 (a)(8)(ii)(C)(1), the A season harvest limit of the seasonal TAC in areas 542 and 543 are 6,605 mt and 5,467 mt respectively. Based on those seasonal apportionments and the proportion of the number of vessels in each platoon compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543 during the A season, the harvest limit for each HLA directed fisheries for areas 542 and 543 are as follows: For the first directed fishery in area 542: 3,302 mt; for the first directed fishery in area 543: 2,733 mt; for the second directed fishery in area 542: 3,302 mt; for the second directed fishery in area 543: 2,733 mt. In accordance with § 679.20 (a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the platoons participating in the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this action.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season allowance of the 2002 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and to prevent exceeding the A season HLA limit of the 2002 TAC of Atka mackerel allocated to the Central and Western Aleutian Districts constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season allowance of the 2002 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and to prevent exceeding the A season Atka mackerel HLA harvest limits established for the Central (area 542) and Western (area 543) Aleutian Districts constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1759 Filed 1–18–02; 3:05 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011702B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Platoons in Areas 542 and 543

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification

SUMMARY: NMFS is notifying operators of registered vessels of their platoon assignments for the Atka mackerel fishery in harvest limit areas (HLA) in Statistical Area (area) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the A season HLA limits established for area 542 and area 543 pursuant to the 2002 Atka mackerel total allowable catch and associated Steller sea lion protection measures.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 18, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

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Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the emergency rule implementing 2002 harvest specifications and Steller sea lion protection measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002), NMFS established HLAs for Atka mackerel directed fishing in areas 542 and 543. Operators of vessels had until January 15, 2002, to register to fish in the HLA in area 542 and/or 543. NMFS is required to randomly assign vessels between these areas to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time.

In accordance with § 679.20(a)(8)(iii)(A), operators of eight vessels using trawl gear for directed fishing for Atka mackerel have registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B) the Administrator, Alaska Region has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which the vessel operators have registered and is now notifying each vessel operator of the assignment.

Vessels assigned to Platoon A that will participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery for area 543 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: Federal Fishery Permit number (FFP) 2733 Seafreeze Alaska; FFP 4093 Alaska Victory; FFP 3835 Seafisher; and FFP 3819 Alaska Spirit.

Vessels assigned to Platoon B that will participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery for 542 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: FFP 2443 Alaska Juris; FFP 3400 Alaska Ranger; FFP 2134 Ocean Peace; and FFP 3423 Alaska Warrior.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action that notifies each vessel of their platoon assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion that notifies each vessel of their platoon assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1760 Filed 1–18–02; 3:05 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 16

Thursday, January 24, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of the American Water Heater Company's Energy Saver Control From the DOE Water Heater Test Procedure, Denial of the Application for an Interim Waiver, and Request for Comments on Testing Water Heater Performance With Electronic Controls (Case No. WH–010)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Solicitation of comments.

SUMMARY: This document publishes a Petition for Waiver to the Department of Energy (DOE or Department) water heater test procedure from the American Water Heater Company (American) regarding an adaptive thermostat control. American's Petition for Waiver requests that DOE lower the average tank temperature and base the water draws on equal energy content compared to the existing test procedure. This document also denies an Interim Waiver to American from the existing DOE water heater test procedure. The Department solicits comments, data, and information as to whether to grant the Petition for Waiver as well as comments on testing water heaters with electronic controls.

DATES: DOE will accept comments, data, and information not later than February 25, 2002 on American's Petition for Waiver and comments on testing water heaters with electronic controls.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Building Research and Standards, Case No. WH–010, Mail Stop EE–41, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127. We welcome electronic comments but they must be followed by a signed letter. Send email comments to terry.logee@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1689, email: Terry.Logee@ee.doe.gov or Ms. Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters.

The DOE test procedure, "Uniform Test Method for Measuring the Energy Consumption of Water Heaters" prescribes a method for characterizing the energy requirements of all types of water heaters and yields model-specific energy efficiency information that can aid consumers in their purchasing decisions. The test procedure is set forth in Title 10 CFR part 430, Subpart B, Appendix E.

The Department amended the test procedure rules on September 26, 1980, to provide for a waiver process by adding Section 430.27 to Title 10 CFR part 430. 45 FR 64108. The waiver process allows the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to temporarily waive test procedures for a particular basic model. On November 26, 1986, DOE amended the waiver process to allow the Assistant Secretary to grant an Interim Waiver for immediate relief from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823. The amendment is codified at 10 CFR 430.27(a)(2).

Any person may submit a petition to waive the requirements of the applicable test procedure based on a claim that a basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate a basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. The Department publishes the Petition for Waiver in the **Federal Register** and requests comments from interested parties during a 30-day comment period. The Department analyzes the petition, including all comments, and publishes a notice of each waiver granted or denied in the **Federal Register**. Prior to a decision, the Assistant Secretary will consult with the Federal Trade Commission pursuant to 10 CFR 430.27(l). Waivers generally remain in effect until future test procedure amendments become effective; resolving the problem that is the subject of the waiver.

Any interested person who has submitted a Petition for Waiver may also file an Application for Interim Waiver to the applicable test procedure requirements. The Application may be filed jointly with, or subsequent to, the filing of a Petition for Waiver.

Each Application for Interim Waiver must identify the basic models for which the interim waiver is requested, demonstrate that it meets the criteria in 10 CFR 430.27, and be signed by the applicant or by an authorized representative. In addition, each applicant for an Interim Waiver must notify all known manufacturers of domestically marketed units of the same product type of its filing and provide copies of both the Application for Interim Waiver and the Petition for Waiver to these manufacturers. These manufacturers may send comments to DOE regarding the Petition for an Interim Waiver. An application for an Interim Waiver does not allow the manufacturer to disregard DOE's test procedure requirements until an Interim Waiver has been granted.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27 (g). An Interim Waiver remains in effect for a

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period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Summary of Petition

On April 26, 2001, American Water Heater Company filed an Application for Interim Waiver and a Petition for Waiver, Case No. WH–010, concerning the tank temperature of water heaters during testing of water heaters with adaptive electronic controls. There was no confidential material deleted from American's petition. However, American submitted test data at DOE's request which was originally marked confidential. Thereafter, on December 13, 2001, American withdrew its designation of confidentiality for this test data (Letter dated December 13, 2001, from Alex Kovalenko, Manager of Product Development Engineering, American Water Heater Company to Terry Logee, U.S. Department of Energy). The test data is in the docket file. A copy of American's Petition for Waiver and Application for Interim Waiver is appended to this notice.

Whereas the typical electric water heater control has a fixed temperature thermostat setpoint, American's electronic controller can automatically adjust the thermostat setpoint up or down according to actual household water usage patterns. This automatic thermostat adjustment is called an "Energy Saver Cycle." American does not identify any upper or lower thermostat setpoints in its proposal.

American's application seeks the following changes to DOE's test procedure for a controller with an "Energy Saver Cycle": (1) Add a qualification test; (2) Decrease the temperature of the thermostat to the lowest stable temperature; (3) Adjust the amount of water withdrawn from the tank during the simulated-use test; and (4) Modify the equations used to compute the energy factor. The current DOE test procedure requires a constant tank temperature of 135 °F and does not permit a variable thermostat setpoint. The test procedure does not have a controller qualification test. DOE's current test procedure also requires a first hour rating test to determine the amount of hot water that can be withdrawn from a tank of water heated to 135 °F.

American's first proposed change for a qualification test for the "Energy Saver Cycle" would prove that the controller could automatically adjust the thermostat setpoint. In its proposal, American prescribes a large number of water draws to allow the tank thermostat to reach a minimum setpoint and then to return to 135 °F. The petition calls this control process an "Energy Saver Cycle" if the controller reaches an equilibrium temperature lower than 135 °F when the water heater is subjected to the following water usage pattern, herein called draws. Each draw would end when the lower element energizes, and the subsequent draw would commence when the thermostat turns off the power to the lower element. The test would initially start with the tank at 135 °F. The petition states that the sequence will continue until the mean tank temperature reaches 125°F or less. This test shows that the control will lower the set point in response to small water draws. If this sequence is continued, the lowest "stable" temperature can be determined. The petition defines the lowest stable temperature as the point at which water draws of 10.7 gallons will not cause the controller to increase the thermostat setpoint.

To test whether the controller will also automatically raise the temperature, water draws large enough to energize the upper element must be made until the controller has returned to the mean tank temperature of 135 °F. These tests demonstrate that the controller adjusts the set point up and down based on actual water usage. Since the "adjusting" process could take approximately 100 cycles for the American control logic, the petition seeks to run this test only once for each model of controller; once the controller has been qualified, any water heaters using that controller would qualify to use the "Energy Saver Cycle" test procedure.

American's second proposed change would lower the water heater thermostat set point to the lowest stable temperature. This temperature would be obtained through knowledge of the temperature adjustment logic for the "Energy Saver Cycle". This lowest stable temperature must be maintained during the six draws of 10.7 gallons or the test is invalid. In this case, the test would need to be repeated at a higher stable temperature.

American's third proposed change is to modify the amount of water drawn in each of the six draws to match the energy contained in each draw of the current procedure. This accounts for the fact that the temperature of the water delivered from the water heater in American's proposal will be lower than that delivered in the current DOE test procedure. Each draw is approximately 10.7 gallons of water and the energy required to raise 10.7 gallons of water from its inlet temperature of 58 °F to 135 °F is 6836 BTU. For the Energy Saver Cycle, the draw would be terminated when 6836 BTU have been removed.

American's fourth proposed change is to modify several calculations in the current test procedure. The calculations in the current DOE test procedure reference a nominal tank temperature of 135 °F and a nominal outlet temperature of 135 °F. The petition for waiver seeks to modify Section 6.1.6, the calculation of the adjusted daily water heating energy consumption from:

$$Q_{da} = Q_D - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - (135°\ F - 67.5°\ F)\right] UA\tau_{stby,2}$$

to:

$$Q_{da} = Q_D - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - \left(T_{su} - 67.5°\ F\right)\right] UA\tau_{stby,2},$$

where T_{su} is the maximum tank temperature observed after the sixth draw of the simulated-use test.

The petition seeks to change the calculation of $Q_{hw,77}$ in Section 6.1.6 from:

$$Q_{hw,77} = \sum_{i=1}^{6} \frac{M_i C_{p,i} (135°\ F - 58°\ F)}{\eta_r}$$

to:

$$Q_{hw,77} = \sum_{i=1}^{6} \frac{M_i C_{p,i} \left(T_{su} - 58°\ F\right)}{\eta_r}$$

The last calculation that the petition for waiver seeks to modify is that of the energy factor in Section 6.1.7. The proposed modification would change the equation from:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p,i} (135°\ F - 58°\ F)}{Q_{dm}}$$

to:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p,i} \left(T_{su} - 58°\ F\right)}{Q_{dm}}$$

Discussion of American's Petition for Waiver

The Department's waiver regulations provide that the applicant for Interim Waiver is required to notify in writing all known manufacturers of domestically marketed units of the same product type that it has filed an Application for Interim Waiver and a Petition for Waiver and provide copies of these documents to the manufacturers. The regulations also provide that the Assistant Secretary will receive and consider timely written comments on the Application for Interim Waiver. 10 CFR 430.27(c)(2).

The Department received comments from Rheem and Applied Energy Technology (AET). Rheem has indicated DOE should recognize new control technologies for water heaters and should pursue changes to credit resulting energy savings. Rheem is concerned, however, that American's proposed method is designed specifically for one type of control system and disqualifies or discounts other well-known alternative control schemes.

Rheem expressed a concern that the proposed procedure assumes the best-case scenario for the test condition. Rheem indicates that potential savings would only be realized if the "Energy Saver Cycle" were selected and if a homeowner's water use patterns resulted in a water heater setpoint temperature below 135 °F. Rheem is concerned the proposed procedure would lead to manufacturers claiming water heater efficiencies not representative of those achieved in practice.

Rheem also believes that the first hour rating would need to be adjusted if the tank temperature is lowered. Rheem states that the revised tank temperature, i.e., the lowest stable temperature, should be used for the first-hour rating test.

AET commented that a comprehensive reexamination of the DOE water heater test procedure is needed to allow proper representation of in-field efficiency improvements made possible by a variety of control approaches. While AET indicates that the proposed test method is an improvement over the current test procedure, AET claims that the proposed test method excludes other forms of controls that could be applied to water heaters and therefore would provide a competitive advantage to American.

AET is concerned that because a lowest stable temperature is not specified in the proposed test procedure, the delivered water temperature could consequently be extremely low. AET also commented that the proposed test procedure's absence of a lower and upper setpoint temperature could be abused. A manufacturer could use a large on-off temperature differential on the upper thermostat so that the upper heating element would not energize. This could allow a lowest stable temperature of about 59 °F, resulting in nearly 100 percent efficiency.

AET's final point echoes the concern of Rheem that the proposed test procedure would yield a best-case scenario and would not necessarily reflect the energy use patterns that are typical of consumers. AET claims that the proposed test procedure does not use long draws, like those seen in actual use that would force the controller to reach a stable temperature different from the lowest stable temperature.

In response to these comments, the Department notes that a waiver is issued for specific basic models and that American has identified those models it is seeking to waive in its petition for waiver. Other basic models or other control schemes would have a different waiver and test procedure. The comments by Rheem and AET on the general test procedure are of use because they have identified issues related to the methodology of how to arrive at a test temperature representative of actual consumer use and how to measure the first hour rating. These issues would need to be discussed and resolved before a waiver could be issued regarding testing of water heaters with electronic controls.

Discussion of American's Application for Interim Waiver

Pursuant to the requirements in 10 CFR 430.27(g), an Interim Waiver will be granted if the applicant can show that it will experience economic hardship if the application for Interim Waiver is denied, if the petition for waiver will likely be granted and/or if the Assistant Secretary determines for public policy reasons to grant immediate relief pending a determination on the petition for waiver. DOE will address each of these criteria separately as applied to American's petition for an interim waiver.

First, DOE does not believe American has provided information in its application for the interim waiver to support its claim of economic hardship. In its application, American merely stated, "From an economic point of view, American Water Heater Company has invested significantly in the development of this product and to not be able to present one of its best features would cause loss of sales and discourage further development." (Letter dated April 26, 2001 from Timothy J. Schellenberger, Senior Vice President—Product Engineering, to the Assistant Secretary, Application for Interim Waiver). American's mere assertion of economic hardship does not establish that it will experience such hardship. American did not provide any factual information to justify its assertion.

Second, at this time, the Assistant Secretary does not have adequate information from American to determine that American's Petition for Waiver from the DOE test procedure will likely be granted. The petition is incomplete for the following reasons:

American's proposed test protocol depends on establishing a lowest stable temperature for their thermostat controller. The procedure outlined in the petition uses a 100 draw-cycle to qualify the controller as having an “Energy Saver Cycle". However, this procedure only establishes that the controller will lower and raise the thermostat setpoint. American did not provide any test data that DOE could use to determine that a lower thermostat setpoint would result from typical household use and what that lower thermostat setpoint might be. For the petition for waiver to be complete, it must contain the test temperature for each basic model for which a waiver is requested. From the confidential test

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data that was provided, DOE can only determine that the controller can automatically reduce or raise the thermostat setpoint.

DOE believes that American must provide data from field tests of water heaters using this controller to determine an average lowest stable temperature for the U.S. for each basic model for which a waiver is requested. There are probably a number of variables that should be considered so that the resultant lowest stable temperature is representative of U.S. households including tank volumes, various inlet water temperatures and varying family sizes. The appropriate test time and the allowed variability to demonstrate a "stable" temperature would have to be determined. Furthermore, the field tests should contain a sample large enough to be statistically relevant at high confidence. The Department would like to receive comments on the concerns listed above.

DOE recognizes that developing the necessary data to quantify the lowest stable temperature for each basic model could be a time consuming and costly task. Since this petition for waiver from the DOE test procedure for an automatic thermostat controller is the first DOE has received for this type of device, we are very interested in receiving comments that would help develop a general test method for automatic thermostat controllers. For instance, is it practical to develop a computer model that could be used to qualify any automatic controller? Is it possible to use existing databases such as the Energy Information Administration's Residential Energy Consumption Survey for housing and family characteristics combined with average inlet water temperature data from ground water temperatures to develop an algorithm that would yield a reasonable lowest stable temperature? Are there other ways to simplify and generalize the test procedure for an automatic thermostat controller?

Second, American's petition for waiver does not address the first hour rating of the water heater. This test result is used by retailers and installers as an indication of what size water heater to install in a given home. The FTC also uses this value to determine which group of water heaters a given model belongs in for establishing the range of energy factors and yearly costs of operation. In the current DOE test procedure, the first hour rating test starts at a maximum temperature of 135 °oF ±5 °F and continues until the average tank temperature has dropped 25 °F. If the water is reheated within the hour, the draw is initiated again and the water withdrawn is summed. American's proposed modification to the current 24-hour simulated-use test did not provide a first hour rating test which is a necessary component of the water heater test procedure. DOE believes it would be logical for the first hour rating test to be conducted at the same tank temperature as the test for determining the energy factor. However, if that temperature is much lower than the current 135 °F ±5 °F, the final water temperature could be too cool to be considered useful.

Finally, the Department has determined that there are no public policy impacts that warrant granting immediate relief pending a determination on the Petition for Waiver.

Conclusions

Following a careful consideration of all material that was submitted by American and based on the criteria for granting an interim waiver as provided in 10 CFR 430.27(g), and for the reasons stated above, the Department has concluded that American's Application for an Interim Waiver should be denied.

At the same time, the Department solicits comments, data, and information as to whether to grant the Petition for Waiver, as well as comments on testing water heaters with electronic controls. Such comments will assist the Department in determining whether it can develop a practical test procedure for these devices.

Issued in Washington, DC, on January 17, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

April 26, 2001

Assistant Secretary for Conservation and Renewable Energy
United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585

To Whom It May Concern: Subject: Petition for Waiver

Specific Requirements to be Waived.

American Water Heater Company seeks a waiver in the application of the "Uniform Test Method for Measuring the Energy Consumption of Water Heaters" contained in 10 CFR Part 430 Subpart B Appendix E as applied to electric water heater models that have adaptive electronic controls.

Utilizing a microprocessor-based control on an electric water heater allows a level of intelligence to be added to the control logic that is not possible with the conventional electro-mechanical control systems used today. One use of this intelligence is to have the control adjust the stored water temperature based on the actual hot water usage pattern to determine the lowest possible temperature to store water that will meet the needs of the consumer. The result of this new control logic is a reduction in energy consumption. Such a control cycle will be identified as an "Energy Saver Cycle".

American Water Heater plans to commercialize a microprocessor-based control system with an Energy Saver Cycle. However, we are unable to characterize and market the true efficiency benefit to the consumer through the "Uniform Test Method for Measuring the Energy Consumption of Water Heaters" ratings process. The test procedure does not allow the efficiency benefit of an Energy Saver Cycle to be demonstrated. These types of intelligent electronic controls are more expensive and without the ability to demonstrate the benefits in terms of energy savings, it is difficult to justify the additional cost to the consumer. We are specifically petitioning to allow the use of an alternate test procedure described below to rate and label the efficiency of a water heater when using the "Energy Saver Cycle".

Basic Models and all Manufacturers

(See attached list)

Design Characteristics

Background Information

The predominate energy loss of a tank type electric water heater is the standby loss associated with storing the hot water. There are two methods of reducing these losses; one can increase the effectiveness of the insulation system, or reduce the stored water temperature. The "Energy Saver Cycle" saves energy by reducing the stored water temperature.

The study report "Baseline Results and Methodology of the Consumer Subgroup Analysis for Residential Water Efficiency Standards", submitted to the Department of Energy October 1998, shows that the average set point temperature of residential water heaters varies widely across the United States. The northern states tend to be hotter with average set points as high as 142 °F and the south as low as 123 °F. This corresponds inversely with the average inlet water temperature in the same areas. At the time of use, the hot water is blended with cold water to produce the desired use temperature. This process of blending causes the usage quantity of hot water to change inversely with the stored water temperature. For example: A shower

lasting 10 minutes with a delivered water temperature of 105 °F and a flow rate of 2.5 gallons/minute uses 25 gallons of water. If 135 °F hot water, supplied by a water heater, is blended with cold water at 58 °F, the shower will consume 9.74 gallons of cold water and 15.26 gallons of hot water. In contrast, if the hot water supply temperature were reduced to 115 °F the usage proportions would change to 4.39 gallons of cold water and 20.61 gallons of hot water. The energy consumed and the quantity of water used in the shower is the same in both cases but the proportion of heated water goes up. The important difference is that, in the time between showers, the energy consumed to maintain the stored water temperature goes down by 29.85% when the water is stored at 115 °F versus 135 °F. The person taking the shower didn't know the difference except they had to use more hot water to get the desired temperature. As the stored water temperature is further lowered, eventually the water heater will not be able to supply the needed amount of blended hot water and the water temperature will have to be increased.

The adaptive control logic continually adjusts stored water temperature within specified limits to get to the temperature where the maximum demand event can be met by the quantity and temperature of water stored in the heater. This "Energy Saver Cycle" will produce real energy savings in a significant number of households and thus deserves to have a test procedure designed to allow the efficiency benefits to be demonstrated. The current test procedure doesn't allow this because the mean tank test temperature is fixed at 135 °F.

Energy Saver Cycle Qualification test

It is simple for a manufacturer to put an electronic control on a water heater and label a cycle as an "Energy Saver Cycle" without having an adaptive control that will adjust stored water temperature based on usage. Some examples of other controls that would not qualify for this modified test procedure could be, a conventional control with a fixed but lower set point which is identified as an "Energy Saver Cycle" or an off peak type control that simply adjusts the set point based on the time of the day. This new test is required to prove that the control meets the "Energy Saver Cycle" criteria as a qualifier to use the energy saver test modifications. The object of the Page 3 test is to confirm that the control does adapt the stored water temperature based on water usage.

The following simple test would be used to prove that the control adapts water temperature to water usage.

1. The unit is set up per the "Uniform Test Method for Measuring the Energy Consumption of Water Heaters", 10 CFR 430.23.

2. The unit is run on normal cycle and the thermostat is adjusted until the mean tank temperature is 135 °F. Then the control is switched to the "Energy Saver Cycle" and a series of small draws are made. Each draw should be sufficient to cause the lower element to come on. The lower element will reheat the water until it shuts off at which time another draw will start. This sequence will continue until the mean tank temperature, at the element shutoff point, is 125 °F or less. The mean tank temperature after the first cycle should be 135 °F and the last cycle will be 125 °F or less to show that the control will lower the set point in response to a low water usage situation.

3. Then the draw size will be changed to be large enough that the control will adjust the temperature up. After each reheat the draw will be repeated until the control has adjusted the set point up enough to return the mean tank temperature back to the 135 °F point. At this point, the test would have proven that the control adjusts set point up and down based on actual water usage. If the control can not demonstrate the adaptive ability to adjust stored water temperature based on actual usage, it will not qualify to use the proposed modified procedure.

4. This test is somewhat cumbersome in that a large number of draw reheat cycles would be required to complete the test. In our case, it would require approximately 100 cycles. The test could be automated and allowed to run over night to speed up the qualification process. The test should only have to be run once for a given manufacturer's control. Once the control has been qualified, any units using that control would qualify for the Energy Saver Cycle test sequence.

Test Procedure Changes

Staying with the principal that the delivered hot water energy doesn't change as the stored water temperature changes, the following changes are required to allow the energy savings of an "Energy Saver Cycle" to be demonstrated and evaluated.

1. The size of the six water draws will be adjusted such that the BTUs of delivered hot water (BTUs to heat the water from 58F to delivery temperature) is equal to BTUs for the six 10.7 gallon draws heated from 58F to 135F. This calculation = (Gallons × Lbs./gal. × Specific Heat × (delivered temp. −58F) = (6851 BTU for 10. 7 gal. heated from 58F to 135F). Since the delivered water temperature is not a constant during a draw, this calculation could be accomplished by using "Simpson's Rule" method or another suitable numerical method to integrate the delivered water temperature-volume function. The water draw is started and the total is calculated every 5 seconds until the 6851 BTU of delivered hot water energy is reached. The actual volume of each draw will vary inversely as the delivered water temperature varies. The Energy Saver Cycle typically draws about 90 to100 gallons versus the 64.2 gallons of the current test procedure. The hot water energy delivered in both cases is the same.

One approach to running this modified test on a heater with an "Energy Saver Cycle" would be to set up the heater as "normal" with the thermostat set to give a mean tank temperature of 135 °F. Then run the test draw sequence repeatedly until the temperature adjustment logic of the control lowers the temperature to the lowest stable temperature. At that point, a full 24 hour efficiency test would be conducted to determine the efficiency of the heater using Energy Saver Cycle. This would require over 100 draw and reheat cycles using our control algorithm. This approach is impractical. The practical approach is to run the control in normal mode and adjust the water temperature to the lowest stable temperature that the "Energy Saver Cycle" would reach if the above approach were used.

2. *Definition of lowest stable temperature:* This is the lowest water temperature set point such that when the six draw sequence in step 1 is performed, the control will not adjust the set point higher. In our control logic, the set point is increased if the cold water rises far enough in the tank to cause the upper element to come on. Thus for our control logic; the lowest temperature where the draw sequence in step 1 doesn't cause the upper element to come on is our "lowest stable temperature". Other control logic could result in another "lowest stable temperature" point. To determine this temperature, the tester would need to know the temperature adjustment logic for the Energy Saver Cycle. He would set the test water temperature to the lowest stable temperature based on that logic. He then would observe the draw quantities and temperatures during the efficiency test to see that a temperature adjustment condition was not present. If a temperature adjustment would have been made the test is invalid and the

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test would need to be repeated at a higher temperature.

3. In the current procedure, the mean tank temperature is to be adjusted to 135F. There are three places in the calculation of efficiency where the raw data is adjusted back to 135F to correct for variation between actual and ideal test conditions. Since the Energy Saver Cycle test doesn't run at 135F mean tank temperature, this correction needs to be changed to reflect the new test conditions. This means that the hard coded 135 values in the calculations must be changed to a variable so the actual value can reflect the current test conditions. The most appropriate variable is "Tsu" which is the maximum mean tank temperature observed after the sixth draw. In the current procedure, Tsu must be 135F ± 5F and is the logical equivalent of the 135F of the current procedure. Thus the calculation of Qda is changed from

$$Qda = Qd - ((Tstby,2 - Ta,stby,2) - (135 - 67.5))\ UA\ tstby,2\ to$$

$$Qda = Qd - ((Tstby,2 - Ta,stby,2) - (Tsu - 67.5))\ UA\ tstby,2\ and\ QHW,77\ is\ change\ from$$

$$QHW,77 = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (135F - 58F)}{Nr}\ to\ QHW,77 = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (Tsu - 58F)}{Nr}$$

$$Ef\ is\ changed\ from\ Ef = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (Tsu - 58F)}{Qdm}\ to\ Ef = \sum_{i=1}^{6} \frac{Mi\ Cpi (Tsu - 58F)}{Qdm}.$$

Conclusion

New technologies can foster changes that obsolete current practices. American Water Heater's adaptive control has created an energy saving control method that was not anticipated or covered by the current DOE test procedure. This waiver will allow the efficiency benefits of this improved control method to be demonstrated while the test procedures are modified to keep up with technology. This change in control method will reduce water heater energy consumption, and thus its adoption by the industry should be encouraged. This can best be done by granting this waiver and modifying the test procedure. Confidential test data, which demonstrates the energy efficiency benefit, can be made available upon your request.

Respectfully submitted,

Timothy J. Shellenberger,
Sr. Vice President—Product Engineering.

April 26, 2001

Assistant Secretary for Conservation and Renewable Energy United States Department of Energy,
1000 Independence Avenue, SW.,
Washington, DC 20585

To Whom It May Concern: Subject: Application for Interim Waiver.

American Water Heater Company seeks a waiver in the application of the "Uniform Test Method for Measuring the Energy Consumption of Water Heaters" contained in 10 CFR Part 430 Subpart B Appendix E as applied to electric water heater models that have adaptive electronic controls. We are seeking this interim waiver to allow the initial marketing of our new product to claim the benefits of the "Energy Saving Cycle" as described in the petition for waiver.

We feel that the interim waiver should be granted because it is likely that the petition for waiver will be granted. The new technology addressed by the petition for waiver yields a legitimate energy savings and improvement in the energy efficiency level of this category of appliance. This improvement serves the interest and goal of the Department of Energy and thus should be supported. Allowing the waiver will encourage other manufacturers to produce similar products creating a general improvement in energy conservation. As new technology is developed, test procedures need to be modified to accommodate the improvement and allow the benefits to be shown to the consumer. These are all good arguments as to why the waiver should be granted and thus the interim waiver be granted.

From an economic point of view, American Water Heater Company has invested significantly in the development of this product and to not be able to present one of its best features would cause loss of sales and discourage further development.

Respectfully submitted,

Timothy Shellenberger,
Sr. Vice President—Product Engineering.

TJS/meh

I, the undersigned, on behalf of American Water Heater Company, hereby certify that a copy of the foregoing Petition for Waiver and Petition for Interim Waiver, has been sent to each of the following known manufacturers of domestically marketed units of the same product type (as listed in Section 322(a) of the Act), as follows:

Rheem Water Heater Division, Rheem Manufacturing Company, 2600 Gunter Park Drive East, Montgomery, AL 36109–1413, Attention: Scott D. Martin

A.0. Smith Water Products Company, Rochelle Park, Suite 200, 600 E. John Carpenter Freeway, Irving, TX 75062–3990, Attention: Ronald Massa

Bradford White Corporation, 200 Lafayette Street, Middleville, MI 49333–9492, Attention: Eric M. Lannes

State Industries, 500 Lindahl Parkway, Ashland City, TN 37015–1234, Attention: John R. Lindahl, Jr.

Lochinvar Corporation, 2005 Elm Hill Pike, Nashville, TN 37210–3807, Attention: Mr. William L. Vallett, Jr.

I further hereby certify that the Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

This the 26th day of April 2001.

Timothy J. Shellenberger.

DOE Waiver Model Comparison

AWHC wholesale models electronic	AWHC retail models electronic	AWHC wholesale models standard	AWHC retail models standard	RHEEM (Richmond, Rudd, GE)	A.O. Smith	Bradford White	State Industries (Reliance, Maytag, Sears)	Lochinvar
EE92-40H***D***	EE2H40HD******	E92-40H***D***	E2H40HD******	81XH40D MDH40-2 82R40-2 EXR40-2	PEST-40	M-I-40T10DS M-II-40T10DS	PS-40-20RT 9-40-2KRT HE20-40T SSX-40-2LRT 32746	STA040KK-3

DOE Waiver Model Comparison—Continued

AWHC wholesale models electronic	AWHC retail models electronic	AWHC wholesale models standard	AWHC retail models standard	RHEEM (Richmond, Rudd, GE)	A.O. Smith	Bradford White	State Industries (Reliance, Maytag, Sears)	Lochinvar
EE122-40H***D***	EE2J40HD******	E122-40H***D***	E2J40HD******	81XH40D MEH40-2	PEST-40	M-I-40T10DS M-II-40T10DS	PX-40-20RT 9-40-2KRT HE29-40T SSX-40-2LRT 32746	STA040KK-3
EE122-40H***D***	EE3H40HD******	E93-40H***D***	E3H40HD******	MR40245 MP40245	PEHT-40	M-III-40T10DS	12-40-2ART 32049 LT-40-2LRT	
EE93-40H***D***	EE3J40HD******	E123-40H***D***	EJ40HD******	MR40245 MP40245	PDHT-40	M-III-40T10DS	32049 LT-40-2LRT	
EE92-40R***D***	EE2H40RD******	EE92-40R***D***	E2H40RD******	RMEMKR 40-2	PES-40	M-III-40S10DS	SSX-40-2LRS 9-40-2KRS	
EE122-40R***D***	EE2J40RD******	E122-40R***D***	E2J40RD******	RMEMKR 40-2 PE40M9A	PES-40	M-II-40S10DS	SSX-40-2LRS 9-40-SK4S 12-40-2ARS	
EE93-40R***D***	EE3H40RD******	E93-40R***D***	E3H40RD***H***	RMEMXR 40-2TI SE40M12A	PEC-40		HE21240S LT 40-2LRS	
EE123-40R***D***	EE3J40RD******	E123-40R***D***	E3J40RD******	RMEMXR 40-2TI SE40M12A	PEC-40		HE21240S LT 40-2LRS	
EE92-50H***D***	EE2H50HD******	E92-50H***D***	E2H50HD******	81X52 D ME52-2 RMEKR 50-2 PE50T9A 82XR52-2 EXR52-2	PEST-52	M-II-50T10DS	PX-52-20RT 9-52-2KRT HE29 50T 32756 SSX-52-2LRT	STA052KK-3
EE122-50H***D***	EE2J50HD******	E122-50H***D***	E2J50HD******	RMEXR 50-2TI SE50T12A		M-II-50T10DS	12-52-ART 32059	
EE93-50H***D***	EE3H50HD******	E93-50H***DC***	E3H50HD***C***	MR50245 MP50245	PEH-52	M-III-50T10DS	HE212 50T LT-52-2LRT 32151	
EE123-50H***D***	EE3J50HD******	E123-50H***DC***	E3J50HD***C***	MR50245 MP50245	PEH-52	M-III-50T10DS	HE212 50T LT-52-2LRT 32151	
EE92-50R***D***	EE2H50RD******	E92-50R***D***	E2H50RD******	RMEMKR 50-2 PE50M9A 82 MXR52-2 EMXR52-2	PES-52	M-II-50S10DS	PX-52-2ORS SSX-52-2LRS 9-52-2KRS HE2950S	
EE122-50R***D***	EE2J50RD******	E122-50R***D***	E2J50RD******	RMEMXR 50-2TI SE50M12A	PEC-52		12-52-2ARS HE212 50S	
EE93-50R***D***	EE3H50RD******	E93-50R***DC***	E3H50RD***C***				LT-52-2LRS	
EE123-50R***D***	EE3J50RD******	E123-50R***DC***	E3J50RD***C***					
EEZ3-50R***D***	EE3Z50RD******	EZ3-50R***DC***	E3Z50RD***C***	MSR50245				
EE92-65H***D***	EE2H65HD******	E92-65H***D***	E2H65HD******	81X66D ME66-2 RMEKR65-2 82XR66-2 EXR66-2 PE65T9A	PEC-66	M-II-65R10DS	HE29 66T 32766 SSX-66-2LRT	STA066KK-3
E122-65H***D***	EE2J65HD******	E122-65H***D***	E2J65HD******				12-66-2ART	
EE93-65H***D***	EE3H65HD******	E93-65H***DC***	E3H65HD***C***					
E123-65H***D***	EE3J65HD******	E123-65H***DC***	E3J65HD***C***	RMEXR 65-2TI	PEH-66	M-III-65R10DS	32069	
EE92-80H***D***	EE2H80HD******	E92-80H***D***	E2H80HD******	RMEKR80-2 82XR80-2 EXR80-2	PES-80		32786 SSX-82-2LRT	STA082KK-3
EE122-80H***D***	EE2J80HD******	E122-80H***D***	E2J80HD******		PEC-80		12-82-2ART	
EE93-80H***D***	EE3H80HD******	E93-80H***DC***	E3H80HD***C***					
EE123-80H***D***	EE3J80HD******	E123-80H***DC***	E3J80HD***C***	RMEXR 80-2TI SE80T12A MR85245 MP85245	PEH-80	M-III-80R10DS	HE212 82T 32089 LT 82-2LRT	

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11346; Notice No. 02–06]

RIN 2120–AH38

Lower Deck Service Compartments on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning lower deck service compartments. The proposed amendment would require that two-way voice communication systems between lower deck service compartments and the flightdeck remain available following loss of the normal electrical power generating system. It also would clarify the requirements for seats installed in the lower deck service compartment. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before March 25, 2002.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the Docket No. FAA–2002–11346 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–XXXX." We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov*.

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2194; facsimile 425–227–1320, e-mail *jayson.claar@faa.gov*.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire: Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at http://www.faa.gov/avr/armhome.htm or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the

requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry (including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)) proposed an accelerated process to reach harmonization.

What Is the "Fast Track Harmonization Program"?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled "The Fast Track Harmonization Program," is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be "enveloped" into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be "enveloped" (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested one minor editorial change, which has been incorporated into this NPRM.

Discussion of the Proposal

How Does This Proposed Regulation Relate to "Fast Track"?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this NPRM, the FAA proposes to amend § 25.819, concerning lower deck service compartments on transport category airplanes. A lower deck service compartment as used in § 25.819 is defined as follows: "A lower deck service compartment is a galley or other service compartment located below the main passenger deck that is accessible during flight by crewmembers. A lavatory is not considered a lower deck service compartment and therefore is not covered by this regulation. Occupancy is not permitted during taxi, takeoff and landing. Also, it is limited to crewmembers only." This action has

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been identified as a Category 1 (Envelope) project under the Fast Track program.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The standards ensure the safety of occupants of lower deck service compartments that are not certified to be occupied during takeoff and landing. The standards apply design criteria relative to evacuation routes and various items of safety equipment. Many of the regulations that provide evacuation requirements and safety equipment address passenger and flightcrew compartments, but do not include lower deck service compartments.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.819 (Amendment 25–53 (45 FR 41593, June 19, 1980)) is:

Section 25.819 Lower deck service compartments (including galleys).

For airplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant or the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exit to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(c) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the lift if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

The current text of JAR paragraph 25.819 (Change 15, Amendment 25/96/1, October 2000) is:

JAR 25.819 Lower deck service compartments (including galleys).

For aeroplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant or the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exit to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of JAR 25.785 (d) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the lift if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

What Are the Differences in the Standards and What Do Those Differences Result in?

There are two substantive differences between the standards:

First, the JAR requires that two-way voice communication between the flight deck and each lower deck service compartment remain available following loss of the normal electrical power generating system. Part 25 does not contain such a requirement. This results in system power on those airplanes certificated under the JAR being supplied from the essential bus; whereas, system power on airplanes certificated under part 25 may be supplied from a nonessential bus.

Second, the requirements for the seats located in the lower deck compartment are different between the part 25 and the JAR. Section 25.819(f) of part 25 requires that installed seats must meet the requirements of § 25.785(*c*), while JAR paragraph 25.819(f) requires that installed seats must comply with the requirements of JAR paragraph 25.785(*d*). At the current amendment levels, § 25.785(c) and JAR paragraph 25.785(d) present different requirements, although at one time (prior to Amendment 25–72) they were the same. This apparently is due to a renumbering error that occurred at Amendment 25–72, in which paragraph (c) of § 25.785 became paragraph (d), and there was no associated change to the reference in § 25.819(f). Thus, by referring to § 25.785(*c*), § 25.819(f) currently requires only that seats be "approved," which is not what was intended. The intent is that seat designs must comply with the specific design safety criteria that is described in § 25.785(d) (including a safety belt and either a shoulder harness, an energy absorbing rest, or no injurious objects present in the head strike path, as appropriate). The correct reference in § 25.819 should be to § 25.785(d).

What, If Any, Are the Differences in the Means of Compliance?

Currently, U.S. manufacturers must comply with the more stringent JAR requirements if they intend to sell their airplanes in Europe. Future certificated airplanes also are expected to meet the existing JAR requirements.

What Is the Proposed Action?

The FAA proposes to amend § 25.819 by incorporating the "more stringent" requirements of the current JAR standard. The proposed amendment would require that:

- Two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system.
- Seats installed in the lower deck compartment meet the requirements of § 25.785(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the original underlying safety issue. It would ensure the safety of occupants of lower deck service compartments that are not certified to be occupied during takeoff and landing.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

By requiring the more stringent standards of the JAR, the proposed amendment would mandate a higher level of safety than that provided by the currently applicable requirements.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

In current practice, U.S. manufacturers already are complying with the more stringent JAR requirements in order to sell their airplanes in Europe. Future certificated airplanes also are expected to meet the existing JAR requirements, and this proposed rule would simply adopt those same requirements.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considered two alternatives to this proposal:

1. *No change to the existing standards.* The FAA did not select this option because it would mean that the standards would continue to be "unharmonized" and manufacturers would continue to meet two different sets of standards when certificating their airplanes.

2. *The JAA could unilaterally adopt the standards of part 25.* The FAA did not seriously consider this option, however, because where the part 25 standards are "less stringent," this could potentially mean adopting a lower level of safety.

The FAA considers the proposal, as contained in this NPRM, to be the most appropriate method of ensuring that the highest level of safety is achieved and fulfilling the objectives of harmonizing the U.S. and European standards.

Who Would Be Affected by the Proposed Change?

Manufacturers of transport category airplanes, as well as airplane modifiers potentially would be affected by the proposed amendment.

Is Existing FAA Advisory Material Adequate?

The FAA does consider that current guidance on this subject is adequate and that additional advisory material is not necessary as a result of the proposed rule.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal has no substantial costs, and that it is not "a significant regulatory action" as defined in Executive Order 12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows:

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as "harmonization."

This proposal would revise the FAA requirements for lower deck service compartments on transport category airplanes that are not certified to be occupied during takeoff and landing. As explained previously in this preamble, this proposal would revise part 25 to include the following "more stringent" requirements of the JAR standards:

- § 25.819(b): two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system; and
- § 25.819(f): seats installed in the lower deck compartment meet the requirements of § 25.785(d), which include safety belt and either a shoulder

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harness, and/or energy absorbing rest, and/or elimination of injurious objects in the head strike path.

This proposed rule results from the FAA's acceptance of recommendations made by ARAC. We have concluded that, for the reasons previously discussed in the preamble, the adoption of the proposed requirements in 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

There was consensus within the ARAC members, comprised of representatives of the affected industry, that the requirements of the proposed rule will not impose additional costs on U.S. manufacturers of part 25 airplanes. Concerning the cost impact of complying with the proposed standard, ARAC states there are apparent administrative savings for the relevant airworthiness authorities and indirect savings for the general public. In fact, ARAC believes that the industry would estimate the cost burden being at a neutral level. We have reviewed the cost analysis provided by industry through the ARAC process. A copy is available through the public docket. Based on this analysis, we consider that a full regulatory evaluation is not necessary.

We invite comments with supporting documentation regarding the regulatory evaluation statements based on ARAC's proposal.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category airplane manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport category airplane manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for airplane manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it complies with the Act because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follbws:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Amend § 25.819 by revising paragraphs (b) and (f) to read as follows:

§ 25.819 Lower deck surface compartments (including galleys).

* * * * *

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

* * * * *

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(d), and must be able to withstand maximum flight loads when occupied.

* * * * *

Issued in Renton, Washington, on January 8, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1766 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards; Correction

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects part 542 of a proposed rule published in the **Federal Register** on December 26, 2001, regarding the Minimum Internal Control Standards. This correction remedies formatting changes made to the proposed rule and clarifies with which sections Tribal gaming operations are to comply.

FOR FURTHER INFORMATION CONTACT: Michele F. Mitchell, 202–632–7003.

Correction

In the proposed rule FR Doc. 01–30788, beginning on page 66500 in the issue of December 26, 2001, make the following correction:

1. On page 66506, in the second column, correct § 542.3(a)(1) to read as follows:

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier.*

(1) Tier A gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.20 through 542.23 of this part.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.30 through 542.33 of this part.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.40 through 542.43 of this part.

* * * * *

Dated: January 9, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–882 Filed 1–23–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking that will clarify the application of section 263(a) of the Internal Revenue Code to expenditures incurred in acquiring, creating, or enhancing certain intangible assets or benefits. This document also invites comments from the public regarding these standards. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by March 25, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–125638–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125638–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions

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electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor (202) 622–7180; concerning the proposals, Andrew J. Keyso (202) 927–9397 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The IRS and Treasury Department are reviewing the application of section 263(a) of the Internal Revenue Code to expenditures that result in taxpayers acquiring, creating, or enhancing intangible assets or benefits. This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking.

A fundamental purpose of section 263(a) is to prevent the distortion of taxable income through current deduction of expenditures relating to the production of income in future taxable years. See *Commissioner* v. *Idaho Power Co.*, 418 U.S. 1, 16 (1974). Thus, the Supreme Court has held that expenditures that create or enhance separate and distinct assets or produce certain other future benefits of a significant nature must be capitalized under section 263(a). See *INDOPCO, Inc.* v. *Commissioner*, 503 U.S. 79 (1992); *Commissioner* v. *Lincoln Savings & Loan Ass'n*, 403 U.S. 345 (1971).

The difficulty of translating general capitalization principles into clear, consistent, and administrable standards has been recognized for decades. See *Welch* v. *Helvering*, 290 U.S. 111, 114–15 (1933). Because courts focus on particular facts before them, the results reached by the courts are often difficult to reconcile and, particularly in recent years, have contributed to substantial uncertainty and controversy. The IRS and Treasury Department are concerned that the current level of uncertainty and controversy is neither fair to taxpayers nor consistent with sound and efficient tax administration.

Recently, much of the uncertainty and controversy in the capitalization area has related to expenditures that create or enhance intangible assets or benefits. To clarify the application of section 263(a), the forthcoming notice of proposed rulemaking will describe the specific categories of expenditures incurred in acquiring, creating, or enhancing intangible assets or benefits that taxpayers are required to capitalize. In addition, the forthcoming notice of proposed rulemaking will recognize that many expenditures that create or enhance intangible assets or benefits do not create the type of future benefits for which capitalization under section 263(a) is appropriate, particularly when the administrative and record keeping costs associated with capitalization are weighed against the potential distortion of income.

To reduce the administrative and compliance costs associated with section 263(a), the forthcoming notice of proposed rulemaking is expected to provide safe harbors and simplifying assumptions including a "one-year rule," under which expenditures relating to intangible assets or benefits whose lives are of a relatively short duration are not required to be capitalized, and "de minimis rules," under which certain types of expenditures less than a specified dollar amount are not required to be capitalized. The IRS and Treasury Department are also considering additional administrative relief, for example, by providing a "regular and recurring rule," under which transaction costs incurred in transactions that occur on a regular and recurring basis in the routine operation of a taxpayer's trade or business are not required to be capitalized.

The proposed standards and rules described in this document will not alter the manner in which provisions of the law other than section 263(a) (e.g., sections 195, 263(g), 263(h), or 263A) apply to determine the correct tax treatment of an item. Moreover, these standards and rules will not address the treatment of costs other than those to acquire, create, or enhance intangible assets or benefits, such as costs to repair or improve tangible property. The IRS and Treasury Department are considering separate guidance to address these other costs.

The following discussion describes the specific expenditures to acquire, create, or enhance intangible assets or benefits for which the IRS and Treasury Department expect to require capitalization in the forthcoming notice of proposed rulemaking. The IRS and Treasury Department anticipate that other expenditures to acquire, create, or enhance intangible assets or benefits generally will not be subject to capitalization under section 263(a).

A. Amounts Paid To Acquire Intangible Property

1. Amounts Paid To Acquire Financial Interests

Under the expected regulations, capitalization will be required for an amount paid to purchase, originate, or otherwise acquire a security, option, any other financial interest described in section 197(e)(1), or any evidence of indebtedness. For a discussion of related transaction costs see section C of this document.

For example, a financial institution that acquires portfolios of loans from another person or originates loans to borrowers would be required to capitalize the amounts paid for the portfolios or the amounts loaned to borrowers.

2. Amounts Paid To Acquire Intangible Property From Another Person

Under the expected regulations, capitalization will be required for an amount paid to another person to purchase or otherwise acquire intangible property from that person. For a discussion of related transaction costs see section C of this document.

For example, an amount paid to another person to acquire an amortizable section 197 intangible from that person would be capitalized. Thus, a taxpayer that acquires a customer base from another person would be required to capitalize the amount paid to that person in exchange for the customer base. On the other hand, a taxpayer that incurs costs to create its own customer base through advertising or other expenditures that create customer goodwill would not be required to capitalize such costs under this rule.

B. Amounts Paid To Create or Enhance Certain Intangible Rights or Benefits

1. 12-Month Rule

The IRS and Treasury Department expect to propose a 12-month rule applicable to expenditures paid to create or enhance certain intangible rights or benefits. Under the rule, capitalization under section 263(a) would not be required for an expenditure described in the following paragraphs 2 through 8 unless that expenditure created or enhanced intangible rights or benefits for the taxpayer that extend beyond the earlier of (i) 12 months after the first date on which the taxpayer realizes the rights or benefits attributable to the expenditure, or (ii) the end of the taxable year following the taxable year in which the expenditure is incurred.

The IRS and Treasury Department request comments on how the 12-month rule might apply to expenditures paid to create or enhance rights of indefinite duration and contracts subject to termination provisions. For example, comments are requested on whether costs to create contract rights that are terminable at will without substantial penalties would not be subject to capitalization as a result of the 12-month rule.

2. Prepaid Items

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount prepaid for goods, services, or other benefits (such as insurance) to be received in the future.

For example, a taxpayer that prepays the premium for a 3-year insurance policy would be required to capitalize such amount under the rule.

Similarly, a calendar year taxpayer that pays its insurance premium on December 1, 2002, for a 12-month policy beginning the following February would be required to capitalize the amount of the expenditure. The 12-month rule would not apply because the benefit attributable to the expenditure would extend beyond the end of the taxable year following the taxable year in which the expenditure was incurred. On the other hand, if the insurance contract had a term beginning on December 15, 2002, the taxpayer could deduct the premium expenditure under the 12-month rule because the benefit neither extends more than 12 months beyond December 15, 2002 (the first date the benefit is realized by the taxpayer) nor beyond the taxable year following the year the expenditure was incurred.

3. Certain Market Entry Payments

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to an organization to obtain or renew a membership or privilege from that organization.

For example, subject to the 12-month rule, the rule would require capitalization of costs to obtain a stock trading privilege, admission to practice medicine at a hospital, and access to the multiple listing service. The rule does not contemplate requiring capitalization for costs to obtain ISO 9000 certification or similar costs.

4. Amounts Paid To Obtain Certain Rights From a Governmental Agency

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to a governmental agency for a trade name, trademark, copyright, license, permit, or other right granted by that governmental agency.

For example, under the rule, a restaurant would be required to capitalize the amount paid to a state to obtain a license to serve alcoholic beverages that is valid indefinitely.

5. Amounts Paid To Obtain or Modify Contract Rights

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount (e.g., $5,000) paid to another person to induce that person to enter into, renew, or renegotiate an agreement that produces contract rights enforceable by the taxpayer, including payments for leases, covenants not to compete, licenses to use intangible property, customer contracts and supplier contracts. The IRS and Treasury Department request comments on whether there are standards other than the standard described above that would be more appropriate for determining whether expenditures related to the creation or enhancement of contractual rights should be capitalized.

Subject to the 12-month rule, this rule would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to enter into a lease. This rule also would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to terminate a lease and enter into a new lease. See, e.g., *U.S. Bancorp* v. *Commissioner*, 111 T.C. 231 (1998). However, this rule would not require a lessee to capitalize an amount paid to a lessor to terminate a lease where the parties do not enter into a new or renegotiated agreement. This rule also would not require a taxpayer to capitalize a payment that does not create enforceable contract rights but, for example, merely creates an expectation that a customer or supplier will maintain its business relationship with the taxpayer. See, e.g., *Van Iderstine Co.* v. *Commissioner*, 261 F.2d 211 (2nd Cir. 1958).

6. Amounts Paid To Terminate Certain Contracts

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid by a lessor to a lessee to induce the lessee to terminate a lease of real or tangible personal property or by a taxpayer to terminate a contract that grants another person the exclusive right to conduct business in a defined geographic area.

For example, under the rule, a lessor that pays a lessee to terminate a lease of real property with a remaining term of 24 months would be required to capitalize such payment. See, e.g., *Peerless Weighing and Vending Machine Corp.* v. *Commissioner*, 52 T.C. 850 (1969). On the other hand, if the lease had a remaining term of 6 months, the 12-month rule would apply, and the taxpayer would not be required to capitalize the termination payment under the rule.

As a further example, where a taxpayer grants another person the exclusive right to develop the taxpayer's motel chain in four states, and the taxpayer later pays that other person to terminate such right at a time when the remaining useful life of the right is 5 years, the taxpayer would be required to capitalize the termination payment under the rule. *See Rodeway Inns of America* v. *Commissioner*, 63 T.C. 414 (1974).

7. Amounts Paid in Connection With Tangible Property Owned by Another

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount paid to facilitate the acquisition, production, or installation of tangible property that is owned by a person other than the taxpayer where the acquisition, production, or installation of the tangible property results in the type of intangible future benefit to the taxpayer for which capitalization is appropriate. This rule would apply even though there is no contractual relationship between the taxpayer and the other person. This rule is intended to require capitalization of expenditures that produce intangible future benefits similar to those that were in issue in *Kauai Terminal Ltd.* v. *Commissioner*, 36 B.T.A. 893 (1937) (expenditure incurred to construct a publicly owned breakwater for the purpose of increasing taxpayer's freight lighterage operation). The IRS and Treasury Department request comments on standards that can be established to ensure that the expenditures described in this rule result in the type of future benefits that are similar to those in *Kauai Terminal* and therefore should be capitalized. The IRS and Treasury Department also request comments on whether safe harbors or dollar thresholds should be used to determine whether capitalization of such expenditures is appropriate under section 263(a).

8. Defense or Perfection of Title to Intangible Property

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts paid to defend or perfect title to intangible property.

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For example, under the rule, if a taxpayer and another person both claim title to a particular trademark, the taxpayer must capitalize any amount paid to the other person for relinquishment of such claim. See, e.g., *J.J. Case Company* v. *United States*, 32 F.Supp. 754 (Ct. Cl. 1940).

C. Transaction Costs

The IRS and Treasury Department expect to propose a rule that requires a taxpayer to capitalize certain transaction costs that facilitate the taxpayer's acquisition, creation, or enhancement of intangible assets or benefits described above (regardless of whether a payment described in sections A or B of this document is made). In addition, this rule would require a taxpayer to capitalize transaction costs that facilitate the taxpayer's acquisition, creation, restructuring, or reorganization of a business entity, an applicable asset acquisition within the meaning of section 1060(c), or a transaction involving the acquisition of capital, including a stock issuance, borrowing, or recapitalization. However, this rule would not require capitalization of employee compensation (except for bonuses and commissions that are paid with respect to the transaction), fixed overhead (e.g., rent, utilities and depreciation), or costs that do not exceed a specified dollar amount, such as $5,000. The IRS and Treasury Department request comments on how expenditures should be aggregated for purposes of applying the de minimis exception, whether the de minimis exception should allow a deduction for the threshold amount where the aggregate transaction costs exceed the threshold amount, and whether there are certain expenditures for which the de minimis exception should not apply (e.g., commissions).

The IRS and Treasury Department are considering alternative approaches to minimize uncertainty and to ease the administrative burden of accounting for transaction costs. For example, the rules could allow a deduction for all employee compensation (including bonuses and commissions that are paid with respect to the transaction), be based on whether the transaction is regular or recurring, or follow the financial or regulatory accounting treatment of the transaction. The IRS and Treasury Department request comments on whether the recurring or nonrecurring nature of a transaction is an appropriate consideration in determining whether an expenditure to facilitate the transaction must be capitalized under section 263(a) and, if so, what criteria should be applied in distinguishing between recurring and nonrecurring transactions. In addition, the IRS and Treasury Department request comments on whether a taxpayer's treatment of transaction costs for financial or regulatory accounting purposes should be taken into account when developing simplifying assumptions.

For example, under the rule described above, a taxpayer would be required to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in drafting a 3-year covenant not to compete because such costs facilitated the creation of the covenant not to compete. Similarly, the rule would require a taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in defending a trademark owned by the taxpayer.

Conversely, a taxpayer that originates a loan to a borrower in the course of its lending business would not be required to capitalize amounts paid to secure a credit history and property appraisal to facilitate the loan where the total amount paid with respect to that loan does not exceed the threshold dollar amount. The taxpayer also would not be required to capitalize the amount of salaries paid to employees or overhead costs of the taxpayer's loan origination department.

In addition, the rule would require a corporate taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside counsel to facilitate an acquisition of all of the taxpayer's outstanding stock by an acquirer. See, e.g., *INDOPCO, Inc.* v. *Commissioner*, 503 U.S. 79 (1992). However, the rule would not require capitalization of the portion of officers' salaries that is allocable to time spent by the officers negotiating the acquisition. Cf. *Wells Fargo & Co.* v. *Commissioner*, 224 F.3d 874 (8th Cir. 2000).

The rule also would not require capitalization of post-acquisition integration costs or severance payments made to employees as a result of an acquisition transaction because such costs do not facilitate the acquisition.

D. Other Items on Which Public Comment is Requested

1. Other Costs of Creating, Acquiring or Enhancing Intangible Assets or Benefits That Require Capitalization

The IRS and Treasury Department are considering what general principles of capitalization should be used to identify the costs of acquiring, creating, or enhancing intangible assets or benefits that should be capitalized under section 263(a) but are not described above. The IRS and Treasury Department anticipate that these general principles will apply in rare and unusual circumstances to require capitalization of costs that are similar to those described above. Comments are requested on capitalization principles (for example, a separate and distinct asset test or a significant future benefit test) that can be used to identify other costs that should be capitalized under section 263(a) and the administrability of such principles. The IRS and Treasury Department also request comments on other categories of costs associated with intangible assets or benefits that should be capitalized under section 263(a), but are not described above.

2. Book-Tax Conformity

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which the taxpayer's treatment for financial or regulatory accounting purposes should be taken into account in determining the treatment for federal income tax purposes or to simplify tax reporting.

3. Amortization Periods

Certain intangibles have readily ascertainable useful lives that can be determined with reasonable accuracy, while others do not. The IRS and Treasury Department expect to provide safe harbor recovery periods and methods for certain capitalized expenditures that do not have readily ascertainable useful lives. Comments are requested regarding whether guidance should provide one uniform period or multiple recovery periods and what the recovery periods and methods should be.

4. *De Minimis* Rules

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which it would be appropriate to prescribe de minimis rules that would not require capitalization under section 263(a). If there are such categories or thresholds, comments are requested on how expenditures would be aggregated in applying these de minimis rules.

5. Costs of Software

The IRS and Treasury Department request comments on what rules and principles should be used to distinguish acquired software from developed software and the administrability of those rules and principles. See Rev. Proc. 2000–50, 2000–2 C.B. 601.

Heather C. Maloy,

Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–1678 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Limited re-opening of the rulemaking record for Occupational Exposure to Tuberculosis (TB).

SUMMARY: The Agency is re-opening the record in the TB rulemaking to allow interested persons to review the National Academy of Sciences/Institute of Medicine (NAS/IOM) report, "Tuberculosis in the Workplace" and the comments by the peer reviewers on OSHA's draft final risk assessment. This record re-opening is limited to the draft final risk assessment, the peer review comments on that assessment, and the NAS/IOM report.

DATES: Comments and data must be postmarked no later than March 25, 2002. Comments submitted electronically or by FAX must be submitted by March 25, 2002.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov*. Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the docket office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–2270, FAX (202) 693–1678.

SUPPLEMENTARY INFORMATION: On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). In addition, the Agency provided a draft of its final risk assessment (Ex. 184) for peer review to two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in the use of tuberculin skin testing as a diagnostic for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Public Law 106–113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA is placing it in the record for comment. (Ex. 187)

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1712 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–11358]

RIN 2135–AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and

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Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before February 25, 2002.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/oubmit/BlankDSS.asp*. All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC)and the St. Lawrence Seaway Management Corporation (SLSMC)of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System. This requirement would go into effect beginning in the 2002 navigation season. This will be in addition to the existing U.S. and Canadian legal ballast water requirements as well as the tremendous amount of undertakings at the international, national, and regional levels by government and the private sector regarding control of ANS. This rule is one more effort in the commitment of many to find a cost-effective solution that protects the Great Lakes Seaway System from ANS while facilitating commerce.

Specifically, the SLSDC, along with the SLSMC, proposes to amend the Seaway Regulations and Rules in Part 401 of title 33 of the Code of Federal Regulations by adding a new subsection (d) to ".30, "quate ballast and proper trim," which section would be retitled § llast water and trim." This new subsection would require that, to obtain clearance to transit the Seaway, every vessel entering the Seaway must agree to comply with the applicable, existing industry ballast water management practices while operating anywhere within the Great Lakes and the Seaway. This involves two types of vessels and two codes of practice respectively. Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000. That code reads as follows:

Recognizing that discharge of ballast water from ships is viewed as a principle vector for the introduction and spread of harmful aquatic organisms and pathogens,

Recognizing the role shipowners and vessel operators can play in minimizing the introduction and spread of non-indigenous organisms and protecting the Great Lakes waters,

Considering the current status of technology for the treatment of ballast water and the need to develop standards against which to measure efficiency of management procedures;

Vessels entering into the Great Lakes commit to the following Code of best Practices For Ballast Water Management.

1. To conduct ballast water management whenever practical and at every opportunity even if the vessel is not bound for a port where such a procedure may be required. This process will ensure that residual ballast on board will, to the greatest extent possible, be subjected to these practices. This process will also aid to minimize sediment accumulations in ballast tanks, and where mid-ocean exchange is practiced, subject fresh-water organisms to an extended exposure to salt water.

Where mid-ocean ballast water exchange is the, or one of the management practices used as required by IMO, USCG, Canadian or other regulations, the safety of the ship shall be a top priority and management shall be practiced according to recognized safe practices.

2. To regular inspection of ballast tanks and removal of sediment, if necessary, to at least the level comparable to that required by the vessel's Classification Society in order to conduct a "close-up" Enhanced Survey, Ballast Tank Structural and Coating Inspection.

3. To ballast water exchange procedures as provided for in US legislation and approved and enforced through United States Coast Guard Regulations.

4. To record keeping and reporting according to United States Coast Guard Regulations (ballast water report forms)—the master to record all uptake and discharge of ballast water in an appropriate log book; Ballast Water Report Forms to be completed and submitted as per Regulations; inspection and cleaning of ballast tanks to be recorded and records to be made available to inspectors upon request.

5. To provide information and logs to authorized inspectors and regulators for the purposes of verifying the vessel's compliance with this Code of Best Practices.

6. To apply a precautionary approach in the uptake of ballast water by minimizing ballasting operations under the following conditions:

a. In areas identified in connection with toxic algal blooms, outbreaks of known populations of harmful aquatic organisms and pathogens, sewage outfalls and dredging activity.

b. In darkness, when bottom dwelling organisms may rise in the water column.

c. In very shallow water.

d. Where a ship's propellers may stir up sediment.

e. In areas with naturally high levels of suspended sediments, e.g. river mouths, and delta areas, or in locations that have been affected significantly by soil erosion from inland drainage.

f. In areas where harmful aquatic organisms or pathogens are known to occur.

7. To the disposal of accumulated sediments as provided for in the existing IMO Ballast Water Protocols during ocean passages outside International Ballast Water Management Areas or as otherwise approved by Port State Authorities.

8. To foster and support scientific research sampling programs and analysis—Facilitate access to on board sampling and testing of ballast water and sediment including opening of ballast tank covers and safe access to ballast tanks following safety procedures for entering enclosed spaces. Sampling, testing and inspection to be planned and coordinated to fit within vessels' operational programs and minimize any delays.

9. To cooperate and participate in standards development and treatment systems testing and approval processes, including, but not limited to mechanical management and treatment systems, and pesticide management systems as well as improved techniques for ballast water exchange and their scientific assessment.

10. To strive toward global, integrated ballast water management strategies in conformity with internationally agreed principles that respect national and regional aquatic ecosystems. This Code of Best Practices is endorsed by the undersigned and represents our common goal to attain the highest standards of safe ballast water management to minimize the introduction and spread of aquatic nuisance species in the Great Lakes.

These Federation practices already cover approximately 95% of the commercial oceangoing vessels using the Seaway.

Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the "Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping" of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001. That code reads as follows:

Owners and operators of vessels that trade within the Great Lakes and the St. Lawrence Waterway and do not go out beyond the Exclusive Economic Zone (EEZ) recognize their role in reducing the risk of transfer of Aquatic Nuisance Species. Introduction of Aquatic Nuisance Species into the Great Lakes has taken place by ships operating outside the EEZ and has caused ecosystem and economic damage. The co-sponsors of this voluntary plan will take management action to reduce the risk of transferring these species. This plan will apply to U.S and Canadian vessels that operate entirely within the Great Lakes and St. Lawrence Waterway. Design, construction, and structural criteria on some vessels may require consideration and variance from this management practice; however, efforts will be made to comply wherever possible.

For All Vessels Operating Totally Within the Great Lakes and St. Lawrence Waterway System.

None of these practices will be undertaken if the master feels the safety of crew or ship will be compromised

1. Vessel operators will assist in developing programs such as the Duluth-Superior Harbor and Alpena, Michigan Ruffe Voluntary Ballast Management Programs should U.S. Fish and Wildlife Service or an equivalent Canadian authority determine a nuisance species has established niche communities in a specific harbor, providing that these programs will result in substantial prevention of the spread of the species or harmful organism via ballast water.

2. Each vessel will perform annual inspections to assess sediment accumulations. Removal of sediment, if necessary, will be carried out. Records of these actions will be kept onboard the ship.

3. Each company will develop sediment removal policies and plans.

4. When practical and safe, vessels will take only the minimum amount of ballast required to safely depart the dock and will complete ballasting in deeper water. Records of all ballasting operations will be kept onboard the ship.

5. Cooperation will be provided, as mutually agreed upon, for scientific research into sampling and analysis programs that will not interfere with normal and safe ship operations.

6. Cooperation will be provided, as mutually agreed upon, for developing and testing ballast water treatment systems.

7. Cooperation will be provided toward harmonization of regional ballast water practices.

These rules already cover nearly 100% of the commercial non-oceangoing vessels (lakers) using the Seaway.

The texts of both of these codes would be printed in the "Seaway Handbook," which is distributed to Seaway users by the SLSMC and the SLSDC and is also posted on the joint "Great Lakes St. Lawrence Seaway System Web" site, which can be found at *http://www.greatlakes-seaway.com/en/pdf/handbook.pdf*. If promulgated, the SLSDC and the SLSMC will assess the effectiveness of this regulation after the 2002 Seaway navigation season.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321,*et seq.*) because it is not a major federal action significantly affecting the quality of human environment. The environmental considerations applicable to the basic substance of this proposed regulation are essentially discussed in the U.S. Coast Guard's Environmental Assessment for its May 17, 1999, "Implementation of the National Invasive Species Act of 1996" rulemaking (64 FR 26672).

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. § 401.30 would be amended by revising the heading and by adding a new paragraph (d) to read as follows:

§ 401.30 Ballast water and trim.

* * * * *

(d) Beginning in the 2002 navigation season, to obtain clearance to transit the Seaway:

(1) Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000, while operating anywhere within the Great Lakes and the Seaway; and

(2) Every other vessel entering the Seaway that operates within the Great

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Lakes and the Seaway must agree to comply with the "Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping" of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001, while operating anywhere within the Great Lakes and the Seaway.

Issued at Washington, D.C. on January 18, 2002.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–1752 Filed 1–18–02; 2:26 pm]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7131–1]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing approval of the State of Colorado's request to relax the Federal Reid Vapor Pressure ("RVP") gasoline standard that applies to gasoline that is supplied to the Denver/Boulder area (hereafter "Denver area") from June 1st to September 15th (the ozone control season) of each year. This action proposes to amend our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch ("psi") to 9.0 psi. EPA has determined that this change to our federal RVP regulations would be consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

In the "Rules and Regulations" section of today's **Federal Register**, we are approving this amendment to the federal RVP regulations as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 25, 2002.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov.

SUPPLEMENTARY INFORMATION: This document concerns the amendment to EPA's regulations governing the RVP of gasoline supplied to the Denver/Boulder area of Colorado. For further information, please see the information provided in the direct final rule of the same title which is located in the "Rules and Regulations" section of this **Federal Register**.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule merely permanently continues the current relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to incremental evaporative emissions, or to ozone caused by incremental evaporative emissions, resulting from a relaxed RVP standard of 9.0 psi for gasoline in the Denver/Boulder area.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's proposed rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as:

(1) A small business, including its affiliates: a refinery that has a maximum of 1500 employees—NAICS code 324110, a bulk gasoline station or terminal or gasoline wholesaler that has a maximum of 100 employees—NAICS codes 422710 and 422720, respectively; a gasoline pipeline transporter that has a maximum of 1,500 employees—NAICS code 486910; a gasoline station that has a maximum of $6.5 million annual receipts—NAICS code 447190; and a gasoline station with a convenience store that has a maximum of $20 million annual receipts—NAICS code 447110 (see 13 CFR 121.201);

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of

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the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. We have therefore concluded that today's proposed rule will relieve regulatory burden for any small entity.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area. Thus, Executive Order 13175 does not apply to this proposed rule.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Electronic Copies of Rulemaking

For more information about this proposed rule and more details as described in the preamble to the direct final rule see a copy of this rule on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area*

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–1494 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens; 1626 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR part 1626. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1626 Negotiated Rulemaking Working Group will meet on January 28–29, 2002. The meeting will begin at 9:00 a.m. on January 28, 2002. It is anticipated that the meeting will end by 5:00 p.m. on January 29, 2002.

ADDRESSES: The meeting will be held in the First Floor Conference Room at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., N.E., 11th Floor, Washington, DC, 20002; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR part 1626. In September 2001, LSC solicited expressions of interest in participation in a negotiated rulemaking working group. (66 FR 46977, September 10, 2001). The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov*.

Dated: January 18, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 02–1808 Filed 1–22–02; 10:37 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA–2001–11048]

RIN 2127–AI68

Light Truck Average Fuel Economy Standard, Model Year 2004

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish the corporate average fuel economy standard for light trucks manufactured in model year (MY) 2004. The establishment of the standard is required by statute. The proposed standard is 20.7 mpg.

DATES: Comments must be received on or before February 25, 2002. The comment period has been shortened due to a statutory deadline.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically. You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Office of Planning and Consumer Programs, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov*. For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V was amended from time to time, and was codified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall, at least eighteen months prior to the beginning of each model year, prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for that model year. That section also states that "[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that, in determining the maximum feasible average fuel economy level, we shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Using this authority, we have set light truck CAFE standards through MY 2003. See 49 CFR 533.5(a). The standard for MY 2003 is 20.7 miles per gallon (mpg)(66 FR 17513; April 12, 2001).

From 1995 through mid-December 2001, the standards-setting process for light truck CAFE standards was affected by restrictions imposed in the Department of Transportation's annual Appropriations Acts.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Public Law 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM), limited to MY 1998, that proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). We adopted this 20.7 mpg-standard in a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for MY 1999. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards at a level other than the standard set for MY 1998. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

Because the same limitation on the setting for CAFE standards was included in the appropriations acts for FYs 1998–2001, we followed that same procedure during those fiscal years and did not issue any NPRMs in the series of rulemakings we conducted to establish the light truck fuel economy standards for MYs 2000–2003. The agency concluded in those rulemakings, as it had when setting the MY 1999 standard, that the restrictions contained in the appropriations acts prevented us from issuing any standards other than the standard set for the prior model year. We also determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

The Department of Transportation and Related Agencies Appropriations Act for FY 2001 was enacted on October 23, 2000. Public Law 106–346. This law provided appropriations for the Department of Transportation for FY 2001, and is the law under which we issued the light truck CAFE standard for MY 2003. While Section 320 of that Act contains a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the Conference Committee Report for that Act directed the National Academy of Sciences (NAS) to conduct a study to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

The NAS submitted its report to the Department of Transportation on July 30, 2001. The report contains a number of key findings and recommendations. The Department of Transportation is in the process of evaluating and responding to the issues raised by the report. With regard to this proposal, however, it is important to note that the NAS also found that any policy change that is implemented in too short a period of time has the potential to adversely affect manufacturers, their suppliers, their employees, and consumers.

The series of restrictions on appropriations ended with the enactment of the Department of Transportation and Related Agencies Appropriations Act for FY 2002 on December 18, 2001. Public Law 107–87. The FY 2002 Appropriations Act, unlike the appropriations acts for fiscal years 1998–2001, does not prevent NHTSA from expending funds to prepare, propose or promulgate fuel economy standards. Accordingly, for the first time since 1995, NHTSA is authorized to expend funds to establish fuel economy standards for non-passenger automobiles at the maximum feasible average fuel economy level in accordance with section 32902(a) of Chapter 329.

The availability of these funds does not, as a practical matter, translate into an effective ability to conduct its customary level of analysis of potential MY 2004 light truck fuel economy standards. NHTSA cannot delay the beginning of rulemaking to establish the

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MY 2004 standard to provide time for that analysis. As noted above, NHTSA must establish the fuel economy standard for a given model year at least 18 months before that model year begins. In the case of MY 2004, this statutory deadline requires NHTSA to issue a fuel economy standard on or before April 1, 2002. As the agency was unable, from 1995 until mid-December 2001, to spend any funds for the collection and analysis of data relating to CAFE levels, it has not been able to lay the factual or analytical foundation necessary to develop a proposed standard other than one at 20.7 mpg, the level of the MY 1996–2003 standards.

II. Agency Proposal

The agency is proposing to establish the MY 2004 fuel economy standard for all light trucks manufactured by a manufacturer at 20.7 mpg, the same level previously adopted for MY 2003. The agency's proposal reflects the absence of any current information or analysis regarding the impact of any change in CAFE standards and the capabilities of manufacturers.

The agency is inviting comments, however, on the maximum feasible level of average fuel economy, including comments as to whether motor vehicle manufacturers can, with the limited leadtime available and product plans essentially established, achieve a level higher than 20.7 mpg in MY 2004. In establishing CAFE standards, NHTSA is commanded by section 32902(f) to determine the maximum feasible average fuel economy after considering technological feasibility, economic practicability, the effect of other Government motor vehicle standards on fuel economy, and the need of the United States to conserve energy. NHTSA has traditionally performed the analysis required by section 32902(f) through the publication of requests for information (similar to the one published concurrently with this notice) seeking data from manufacturers and other interested parties regarding technical capabilities, future product plans, anticipated model mix, impact of safety and emissions regulations, the economic impacts of changes in fuel economy standard, the need of the nation to conserve energy and other factors. Once these data are obtained, the agency traditionally assesses the accuracy of manufacturer projections, the likelihood that certain technical innovations may increase fuel efficiency, the potential impact of consumer demand on the composition of manufacturer fleets, the capability of different manufacturers to attain a minimum levels of fuel efficiency, and the effects of weight and other penalties imposed by changes in safety and emissions standards. While this process must be considerably compressed due to the limited time remaining for setting the MY 2004 standard, we will nonetheless consider all comments, including comments with data and analysis suggesting a level higher or lower than 20.7 mpg.

III. Impact Analyses

A. Economic Impacts

This proposal rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Although our proposed standard for MY 2004 does not differ from the fuel economy standards for the preceding model years, we are treating this rule as "economically significant" under Executive Order 12866 and "major" under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996. This proposal is also considered significant under the Department's regulatory policies and procedures.

As noted above, the agency has been operating under a restriction on the use of appropriations for the last six fiscal years. The restriction has prevented the agency from gathering and analyzing data relating to fuel economy capabilities and the costs and benefits of improving the level of fuel economy. Particularly since that restriction was lifted only very recently, on December 18, 2001, the agency has been unable to prepare an economic analysis for this rulemaking.

B. Environmental Impacts

C. Energy Impacts

NHTSA is not proposing to change the light truck CAFE standard for the 2004 model year. Assuming that this proposal is adopted in a final rule, this action will not have "a significant adverse effect on the supply, distribution, or use of energy," as defined by Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. At this point, therefore, this action is not a "significant energy action" under Executive Order 13211 and no "Statement of Energy Effects" is required.

D. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the proposed rule would be classified as a "small business" under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this proposal regarding the corporate average fuel economy of light trucks would not have a significant economic impact on a substantial number of small entities.

E. Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This proposal would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. For the same reasons discussed in the section above on economic impacts, the agency has been unable to prepare an assessment.

G. Paperwork Reduction Act

There are no information collection requirements in this proposal.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the proposal clearly stated?

—Does the proposal contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the proposal easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting a fuel economy standard for light trucks.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [1] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, i.e., ones regarding the maximum feasible level of corporate average fuel economy for MY 2004 light trucks. Therefore, this proposal is not based on any voluntary consensus standards.

[1] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

L. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this proposal to the Department of Energy for review. That Department did not make any comments that we have not responded to.

IV. Comments

Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, we try to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed,

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stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. The "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

V. Conclusion

Based on the foregoing, we are proposing to establish the combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2004 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

PART 533—[AMENDED]

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7
2003	20.7
2004	20.7

* * * * *

Issued on: January 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–1675 Filed 1–18–02; 12:25 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 67, No. 16

Thursday, January 24, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–020N]

Applied Epidemiology and Other Vital Public Health Tools To Inform Food Safety Actions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a two-day public meeting on the use of epidemiological data, principles, and techniques, and other public health tools to help the Agency achieve its public health goals. The Agency will describe its use of epidemiology and other public health tools in outbreak investigations and in in-plant environmental assessments, present hypothetical scenarios, and invite discussion and comment on its approach. This meeting is intended to be the first in a series of meetings that will aid FSIS in developing a framework for how the Agency will conduct public health investigations, and how it will integrate the scientific principles of applied epidemiology into its food safety activities. The long-term goal is to arrive at a consensus on how and when these tools should be used.

DATES: The public meeting is scheduled for January 29 and 30, 2002. The meeting will be from 8:30 a.m. to approximately 4 p.m. each day. A tentative agenda is available in the FSIS Docket Room and on the FSIS website at *http://fsis.usda.gov.*

ADDRESSES: The meeting will be held at the Holiday Inn Select Atlanta/Decatur, 130 Clairemont Avenue in Decatur, GA; telephone (404) 371–0204. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Clerk, Docket #01–020N, 102 Cotton Annex, Washington, DC 20250–3700. All comments and the official transcript, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gioglio at (202) 205–0256. Registration for the meeting will be on-site. If a sign language interpreter or other special accommodation is necessary, contact Ms. Mary Harris as soon as possible at (202) 690–6497.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic or foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

In recent years, the Agency has placed increased emphasis on its public health protection role. Throughout the 1990's, the Agency's most important goal was an improved food safety inspection system, exemplified by the Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) regulations which are now fully implemented. FSIS has consistently sought to enhance the public health by minimizing foodborne illness from meat, poultry, and egg products. The Agency has worked toward achieving this goal by implementing measures intended to reduce pathogens on raw products, by strengthening relationships with public health agencies at the Federal and State levels, by making food safety information and training available to people at every point in the food production and marketing chain, and by promoting international cooperation in food safety.

The Agency's Strategic Plan for 2000–2005 proposes that FSIS continue to focus its operations and resources on food safety and continue to strengthen the scientific basis for its regulatory activities and initiatives.

FSIS would like the views, suggestions, and comments of all of its food safety constituencies, including the general public, on the approaches it has been using, and on how it should continue to use applied epidemiology and other public health tools to achieve its mission. For many years, FSIS has used epidemiology and other methods as tools in tracking the source of outbreaks of foodborne illness. On several occasions, FSIS has based a recall request or a regulatory action on epidemiological data that indicated that product from a particular establishment is adulterated, but without a positive laboratory finding. Recent improvements in the technology of outbreak investigation and genetic fingerprinting of pathogens from persons and food products have resulted in significant changes. It is now possible to identify otherwise unrecognized outbreaks and to provide substantive evidence to link products to illnesses. The Agency has begun using the techniques of epidemiology during in-plant assessments to help identify the source of on-going plant contamination.

Public Meeting

At the public meeting, FSIS officials will discuss the use of applied epidemiology and other public health tools in foodborne illness outbreak investigations and their application to in-plant assessments and regulatory decisions, including whether to request a recall of FSIS regulated products. The first day of the meeting will focus on foodborne illness outbreaks; the second day will focus on in-plant applications of epidemiological principles and approaches and other tools. During the meeting, FSIS officials will discuss the Agency's public health approach to foodborne illness outbreaks and in-plant assessments. FSIS officials will discuss the role of epidemiology and other public health tools in outbreak investigations and recall decisions, and the use of epidemiological data, principles, and investigative and other techniques in conducting in-plant environmental assessments to prevent foodborne illness. The Agency also will present its current thinking on approaches that integrate epidemiological principles and techniques into inspection methods and activities. Hypothetical scenarios based on recent cases of foodborne illnesses and in-plant contamination will be presented by Agency personnel to discussion panels of food safety experts.

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Finally, the Agency will open the discussion to include, and solicit comment from, the attendees. FSIS believes that this type of public process will assist it in achieving its goals and will enhance the understanding of the public health community.

Additional Public Information

Public awareness of all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and others that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–1750 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–044N]

Codex Alimentarius Commission: Fifth Session of the Codex Committee on Milk and Milk Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and the Department of Health and Human Services (DHHS), are sponsoring a public meeting on March 20, 2002, to review the technical content of the agenda item documents and receive comments on all issues coming before the Fifth Session of the Codex Committee on Milk and Milk Products, which will be held in Wellington, New Zealand, April 2–8, 2002.

DATES: The public meeting is scheduled for Wednesday, March 20, 2002, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3501, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250.

To receive copies of documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Room, U.S. Department of Agriculture, FSIS, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also become accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/Codex.* Send comments, in triplicate, to the FSIS Docket Room and reference Docket #01–044N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex; Telephone: (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration and correctly labeled.

The Codex Committee on Milk and Milk Products was established to elaborate codes and standards for Milk and Milk Products. The Government of New Zealand hosts this committee and will chair the committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex committees

2. Review of the Proposed Draft and Draft Revised Standards: Cream; Fermented Milk Products; Dairy Spreads; Processed Cheese; Individual Cheeses; and Whey Powders

3. Proposed Standards for Products in Which Milkfat is Substituted for by Vegetable Fat

4. Model Export Certificate for Milk Products

5. Review of Proposals for New Standards for "Parmesan" and "Cheese Specialities"

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 18, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–1749 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on March 7, 2002 at Bureau of Land Management, 355 Hemsted Drive, Redding, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held March 7, 2002.

ADDRESSES: The meeting will be held in the Conference Room at the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 17, 2002.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 02–1715 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forest's Eastern Idaho Resource Advisory Committee will meet Wednesday, February 13, 2002 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on February 13, 2002 from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Quality Inn, 850 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on February 13, begins at 10 am, at the Quality Inn, 850 Lindsay Boulevard, Idaho Falls, Idaho. Agenda topics will include FACA overview, Charter overview, Process for project identification/recommendation, election of Chairperson, operating guidelines, and establishment of future meeting schedule.

Dated: January 26, 2002.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 02–1716 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–11–M

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in Washington, DC.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On Thursday, February 7, 2002, the Council will hold a Business Meeting from 9:30 a.m.–10:30 a.m. Eastern Standard Time (EST) to discuss the final recommendation of the Council for a restructured and rationalized national intercity rail passenger system. Following the Business Meeting, the Council will hold a press conference from 10:30 a.m. to 12:30 p.m.

During its most recent Council meeting, held on January 11, 2002, the Council discussed four options for restructuring Amtrak. A majority of the Council (eight in favor and one opposed) voted to approve the basic elements for a restructuring plan. Under the Council's proposal, the National Railroad Passenger Corporation (NRPC), which has been commonly referred to as Amtrak, would be reconfigured as a small federal program management agency that would control the passenger rail franchise rights, define funding requirements for train operations and infrastructure needs, secure funding from the Congress, and oversee the performance of the system. The reorganization of the NRPC would be completed, in principal part, by putting its train operations into one subsidiary and its real property infrastructure into another. Once the reorganization is in place, the NRPC could introduce competition into the national rail passenger system by permitting other train operating companies, along with Amtrak, to compete for the right to operate a particular route or routes under contract. The NRPC could also exercise its franchise authority to operate passenger trains at the request of a state or an interstate compact.

On November 9, 2001, the Amtrak Reform Council approved a resolution finding that Amtrak would not achieve operational self-sufficiency by December 2, 2002, as required by the Amtrak Reform and Accountability Act of 1997. The Council's finding started a 90-day clock in which the Council must submit an action plan for to Congress.

DATES: The Business Meeting will be held on Thursday, February 7, 2002, from 9:30 a.m.–10:30 a.m. EST, followed by a press conference from 10:30 a.m. to 12:30 p.m. The event is open to the public.

ADDRESSES: The Business Meeting will take place in the Ballroom in the Phoenix Park Hotel at 580 N. Capitol Street, NW, Washington, DC 20001. The nearest Metro stop is Union Station on the Red Line. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's Finding Resolution, the ARC's Proposed Four Options for Restructuring Amtrak, the ARC's two Annual Reports, information about ARC Council Members and staff, and more, you can also visit the Council's Web site at *www.amtrakreformcouncil.gov.*

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the

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Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—January 15, 2002.

Thomas A. Till,

Executive Director.

[FR Doc. 02–1695 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–846)

Notice of Court Decision: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 27, 2001, the United States Court of International Trade issued a final judgment with respect to the litigation in Nippon Steel Corp. v. United States, Consol. Ct. No. 99–08–00466. Slip Op. 01–152 ("Nippon IV"). This case arises out of the Department's Notice of Final Determination of Sales at Less Than Fair Value: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999). The final judgment in this case was not in harmony with the Department's May, 1999, Final Determination.

DATES: The effective date of this notice is January 6, 2002, which is 10 days from the date on which the judgment of the Court was issued.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The decision of the Court of International Trade in Nippon IV is that Court's final decision in a series of decisions addressing issues related to the antidumping margin assigned to Nippon Steel Corporation ("Nippon") in the above–referenced Final Determination.

In Nippon Steel Corp. v. United States ("Nippon I"), 118 F. Supp. 2d 1366 (CIT 2000), that Court (1) remanded for Commerce to determine whether, as to weight conversion factors, Nippon acted to the best of its ability within the meaning of 19 U.S.C. § 1677e(b); (2) ordered Commerce to issue a policy statement on ex–parte memoranda in accordance with the opinion; and (3) upheld the Department on all other challenged aspects relating to Nippon. In Nippon Steel Corp. v. United States ("Nippon II"), 146 F. Supp. 2d 835 (CIT 2001), the Court (1) found that a revised policy statement as to ex–parte memoranda, 66 FR 16906 (March 28, 2001), complied with the Court's order in Nippon I; but (2) held that Commerce had erred in finding that Nippon did not act to the best of its ability with respect to providing requested weight conversion factors, and that, accordingly, Nippon's failure to timely provide these factors did not warrant an adverse inference in the selection of facts available for the affected sales. Thus, the Nippon II Court remanded for Commerce to recalculate Nippon's margin without using an adverse assumption in that respect. In Nippon Steel Corp. v. United States ("Nippon III"), Slip Op. 01–122 (CIT, October 12, 2001), the Court (1) rejected Nippon's claims that the Department's remand results methodology impermissibly took a different approach from that used in the investigation, but (2) rejected the Department's selection of the non–adverse facts available associated with the missing weight conversion factors, and remanded again for the Department to devise a new approach to the determination of neutral facts available.

In Nippon IV, the Court rejected the "application" of the Department's new approach, taking no position on whether it was reasonable as a general matter, and ordered the Department to use Nippon's untimely submitted (proprietary) weight conversion factor. Slip Op. 01–152, at 6–7. As mentioned above, this decision was issued as a final judgement in this case.

In its decision in Timken Co. v. United States, 893 F.2d 337, 341 (Fed. Cir. 1990) ("Timken"), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in Nippon IV on December 27, 2001, constitutes a final decision of that court which is "not in harmony" with the Department's final determination of sales at less than fair value. This notice is published in fulfillment of the publication requirements of Timken.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a "conclusive" court decision.

January 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1790 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–504

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China

ACTION: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to a request from Shanghai New Star Im/Ex Co., Ltd. (New Star). The review covers the period August 1, 2000 through January 31, 2001.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. (See the "Preliminary Results of Review" section of this notice.)

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Javier Barrientos, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312 or (202) 482–2243, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions

effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

The Department published in the Federal Register an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). On February 28, 2001 the Department received, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, a timely request from New Star to conduct a new shipper review of the antidumping duty order on petroleum wax candles from the PRC. On March 28, 2001 the Department published its initiation of this new shipper review for the period August 1, 2000 through January 31, 2001 (66 FR 16903). On August 27, 2001 the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until January 15, 2002 (66 FR 45005).

This new shipper request was made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted–average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non–market–economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. See section 351.214(b)(2) of the Department's regulations.

New Star submitted the information and certifications establishing the effective date on which this company first shipped and entered petroleum wax candles for consumption in the United States, the volume of its shipment, and the date of first sale to an unaffiliated customer in the United States. New Star certified that it was not affiliated with any company which exported petroleum wax candles from the PRC during the POI. In addition, New Star certified that its export activities are not controlled by the central government.

Scope of Review

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the questionnaire responses of both New Star and its U.S. importer, Peak Candles, LLC (Peak Candle). We used standard verification procedures, including on–site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

New Shipper Status

Based on the questionnaire responses received from New Star and Peak Candle, and our verifications thereof, we preliminarily determine that New Star has met the requirements to qualify as a new shipper during the POR. We have determined that the company made its first sale or shipment of subject merchandise to the United States during the POR, that this sale was a *bona fide* sale, and that this company was not affiliated with any exporter or producer that previously shipped to the United States during the POI.

Separate Rates

New Star has requested a separate, company–specific rate. In its questionnaire responses, the company states that it is an independent legal entity.

To establish whether a company operating in a non–market economy (NME) country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company–specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record indicates that New Star's export activities are not controlled by the government. New Star

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submitted evidence of its legal right to set prices independently of all government oversight. The business license of the company indicates that it is permitted to engage in the exportation of candles. We find no evidence of *de jure* government control restricting this company's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately–owned companies, such as New Star, and that control over these enterprises rests with the enterprises themselves. The Administrative Regulations of the People's Republic of China Governing the Registration of Enterprises as Legal Persons, issued on June 3, 1988 by the State Council of the PRC, the Company Law of the People's Republic of China, issued on December 29, 1993 by the National People's Congress, the Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons, promulgated by the State Administration for Industry and Commerce on June 13, 1988, and the General Principles of the Civil Law of the People's Republic of China, effective on January 1, 1987, all placed on the record of this review, provide that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045 (November 6, 1995) (Manganese Metal). At verification, we saw that the business license for New Star was granted in accordance with these laws. Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to this firm.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information provided in the questionnaire responses, and reviewed at verification, indicates that the management of New Star is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. New Star has stated that its management is selected by its board of directors and/or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondent concerning purchases of subject merchandise from other suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that New Star is eligible for a separate rate for purposes of this review.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at prices below NV, we compared the United States prices to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For New Star, we based United States price on EP, in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. See, the memorandum entitled Analysis of the Relationship and Treatment of Sale between Shanghai New Star Im/Ex Co., Ltd. (New Star) and Peak Candles, LLC (Peak Candle), January 15, 2002. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight, foreign inland insurance, and international freight expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors–of–production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Review of Petroleum Wax Candles from the People's Republic of China, January 15, 2002 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with numerous other cases involving the PRC, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. See the November 27, 2001 memo from the Office of Policy regarding surrogate country selection for this review and the Factor Values Memo. We valued the factors of production using publicly available information from India. We adjusted the Indian input prices by adding freight expenses to reflect delivered prices. At verification we found that New Star had not reported in its questionnaire responses factor information for several factors, including water, scent, additive and plaster. Because these factors are a relatively minor part of the production process for candles, we gathered information at verification to use as the basis for including these factors in the calculation of NV. Thus, the information gathered at verification for these factors is being used as facts available (FA) in accordance with section 776(a) of the Act and section 351.308 of the Department's regulations.

We valued the factors of production as follows:

To value petroleum wax, we used the average Indian price for paraffin wax derived from rates published in Chemical Weekly for the second quarter 2000 (IIQ00), as found in petitioner's August 17, 2001 Surrogate Value Submission in the 1999–2000 administrative review of Sulfanilic Acid from the PRC. We selected the price quotes from the IIQ00 because that period represents the most recent complete quarter available from that submission. This price was adjusted on a tax–exclusive basis to account for the Indian excise tax of 16 percent and has been inflated through the POR.

To value wicks, we used the average Indian import price for HTS number 5908 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value color, we used the average Indian import price for HTS numbers 3204.1121 and 3204.1129 from the February 2001 issue of the Monthly Statistics, which includes data for the period April 2000–February 2001. These HTS numbers are for red and pink dyes, which were the colors used by New Star's producer. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value additive (stearic acid), we used the average Indian import price for HTS number 2915.7003 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value scent, we used the average Indian import price for HTS number 3302.9002 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value plaster, we used the average Indian import price for HTS number 2520.2001 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of "Steam Coal for Industry" and "Electricity for Industry," published in the International Energy Agency's publication, Energy Prices and Taxes, First Quarter, 2000. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the company under review, we adjusted these factor values to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data from the April 2000 through February 2001 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics). We did not adjust these prices to reflect inflation to the candles processing season during the POR because most months from this period overlap with the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier of the packing materials and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the distance between the domestic supplier and the factory. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) (Roofing Nails).

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used information reported in the January, 1997 Reserve Bank of India Bulletin, "Statement 1 – Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group–wise" of that report for the Indian metals and chemicals (and products thereof) industries.

For labor, we used the PRC regression–based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001. See http://ia.ita.doc.gov/wages/. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2000, International Labour Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

We valued movement expenses as follows:

To value truck freight expenses, we used the average of seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the IFS.

To value inland insurance, we used data available on our website's index of factor values at http://ia.ita.doc.gov/factorv/prc/insuranc.htm. The published rate of Rs. 133.75/mt was inflated through the POR and converted to a per kilogram rate.

To value domestic ocean freight, we used data available on our website's index of factor values at http://ia.ita.doc.gov/factorv/prc/freight.htm. The published rate of $0.17/kg was inflated through the POR.

To value international ocean freight, we used freight quotes from the first administrative and new shipper reviews of crawfish tail meat from the PRC (See Memorandum to the File from Mike Strollo to Maureen Flannery: Ocean Freight Rates for the New Shipper and Administrative Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, dated September 29, 1999). These quotes were the most contemporaneous to the POR that we were able to locate. For additional values, we used freight quotes from Maersk/Sea Land and Transoceanic Shipping Co., Inc. See Memorandum to the File from Scott Lindsay to Maureen Flannery: Ocean Freight Rates for the New Shipper and Administrative Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, dated September 29, 2000). Ocean freight rates from Sea Land Services have been obtained and applied in previous investigations, such as Saccharin from the People's Republic of China, 59 FR 58818 (November 15, 1994), Coumarin from the People's

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Republic of China, 59 FR 66895 (December 2, 1994) and Persulfates. All ocean freight surrogate values have been adjusted for inflation through the POR.

Currency Conversion

We made currency conversions pursuant to §351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. See http://ia.ita.doc.gov/exchange/index.html.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ Exporter	Time Period	Margin (*ad valorem*)
New Star	8/1/00–1/31/01	74.20%

Any interested party may request a hearing within 30 days of publication of this notice in accordance with §351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue assessment instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we intend to calculate importer–specific assessment rates for petroleum wax candles from the PRC. We will divide the total dumping margins (calculated as the difference between NV and the United States price) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rate against the entered quantity of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC–wide rate, which is currently 54.21 percent; and (4) for all other non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

January 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1791 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817, C–351–835, C–427–823, C–580–849]

Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea from January 28, 2002 until no later than February 25, 2002. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam (Argentina and France), at (202) 482–0176; Sean Carey (Brazil), at (202) 482–3964; and Tipten Troidl (the Republic of Korea), at (202) 482–1767, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Extension of Due Date for Preliminary Determinations

On October 18, 2001, the Department of Commerce ("the Department") initiated the countervailing duty ("CVD") investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001). The initial deadline for these preliminary determinations was December 22, 2001. On November 30, 2001, we issued a notice partially extending these preliminary determinations until January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 66 FR 63523 (December 7, 2001) ("*Preliminary Postponement*"). Pursuant to section 703(c)(1)(B) of the Act, we find that, because of the continued, "extraordinarily complicated" nature of these investigations, we must extend the preliminary determinations deadline for the full 130 days.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that

(i) The case is extraordinarily complicated by reason of

(I) The number and complexity of the alleged countervailable subsidy practices;

(II) The novelty of the issues presented;

(III) The need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement for extraordinarily complicated cases, it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather, the *specific transactions*, e.g., equity infusions, debt-to-equity conversions, etc., applied under those programs, which are numerous and appropriately categorized as "practices." With respect to the issue of the complexity of the practice, these practices are complex in nature as reflected in the extensive analysis required to address these subsidies. Therefore, we find that each of these four cases is extraordinarily complicated as described below.

Argentina

As stated in the *Preliminary Postponement*, the Argentine investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. Also, in addition to the reasons stated in the *Preliminary Postponement*, the recent political turmoil in Argentina has made it difficult for the Government of Argentina to provide complete responses to the Department's questionnaire.

Brazil

As stated in the *Preliminary Postponement*, the Brazil investigation is extraordinarily complicated because a number of newly alleged countervailable subsidies practices are complex or novel. This continues to be the case. In order to properly analyze these new allegations, the Department has asked several detailed supplemental questions regarding complex tax provisions which will not be due earlier than January 24, 2002. The answers to these questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

France

As stated in the *Preliminary Postponement*, the French investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. In addition, the Department has asked several detailed supplemental questions which were due on January 16, 2002. The answers to the supplemental questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

The Republic of Korea

As stated in the *Preliminary Postponement*, the Korean investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. In addition, the Department is issuing supplemental questionnaires. The answers to the supplemental questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

Accordingly, we deem these investigations to be extraordinarily complicated and determine, with regard to the third requirement noted above, that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations for an additional 28 days to no later than February 25, 2002.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 18, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1792 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 011109273–1273–01]

RIN 0660–XX13

Closing Comment Period on Deployment of Broadband Networks and Advanced Telecommunications

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: On November 19, 2001, the National Telecommunications and Information Administration (NTIA) published a Notice in the **Federal Register** inviting the public to submit comments on broadband deployment in the United States.[1] Interested parties were requested to submit comments in response to the Notice on or before December 19, 2001. Comments received after the December 19, 2001 deadline were received and posted as late-filed comments. As of January 18, 2002, the comment period in this docket is closed. NTIA will no longer accept or place in the record late-filed documents.

DATES: The comment period in this docket is closed as of January 18, 2002.

[1] 66 FR 57941 (2001). The initial Notice contained an incorrect date for the deadline, but a correction was published the following week. *See* 66 FR 59050 (Nov. 26, 2001).

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SUPPLEMENTARY INFORMATION:

Background

NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy. NTIA is the principal advisor to the President on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry. The request for comment on the deployment of broadband and advanced services is a part of NTIA's ongoing effort to obtain more information about broadband issues. The comments submitted in this proceeding will be used to assist the Administration in developing a domestic telecommunications policy and NTIA's continuing support for removing obstacles to broadband deployment.

Due to the complexity of the issues in this proceeding and to facilitate a fully developed record, NTIA allowed interested parties to submit comments after the December 19, 2001 deadline. Since that time, NTIA received a substantial number of comments. Effective January 18, 2002, however, NTIA will no longer accept or place in the public record comments in this proceeding.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–1706 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB).

The package covers collections of information concerning the public and the management and administration of DOE's government-owned contractor-operated (GOCO) facilities and offsite contractors. The information is used by Departmental management to exercise management oversight with respect to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure the Government has sufficient information to judge the degree to which contractors meet contractual requirements; that public funds are being spent in the manner intended, and that fraud, waste, and abuse are immediately detected and eliminated.

DATES: Written comments and recommendations for the proposed collections of information must be submitted to the OMB Desk Officer, within February 25, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of the Deputy Associate CIO for Architecture Standards & Policy, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, MD 20874–1290.)

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Department's Paperwork Reduction Act Submission should be directed to James Renjilian, Office of the General Counsel (GC–80), U.S. Department of Energy, Washington, DC 20585, (202) 586–1522. Any other information should be directed to Ms. Susan L. Frey, (see above address), by telephone at (301) 903–3666 or e-mail at *Susan.Frey@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) Current OMB No. 1910–0800; (2) Title: Legal Collections Packages; (3) Summary: Request for a three-year extension of the existing clearance; (4) Purpose: This information is required by DOE to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively and to exercise management oversight over DOE M&O contractors of the Department's GOCO facilities, and off-site contractors. (5) Type of Respondents: DOE management and operating contractors and off-site contractors; (6) Estimated Number of Responses: 1,894. Estimated number of Burden Hours: 14,100 .

Statutory Authority: Section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on January 15, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Deputy Associate Architecture Standards & Policy, Office of the Chief Information Officer.

[FR Doc. 02–1742 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management, Environmental Management Advisory Board; Renewal

Pursuant to Sectioin 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board has been renewed for a two-year period beginning on January 18, 2002. The Board will provide advice to the Assistant Secretary for Environmental Management.

The Board provides the Assistant Secretary for Environmental Management with information and strategic advice on corporate issues, with a focus on achieving closure of selected sites by 2006. It recommends options to resolve difficult issues faced in the Environmental Management program including; public and worker health and safety, integration and disposition of waste, regulatory agreements, roles and authorities, risk assessment and cost-benefit analyses, program performance and functionality, and science requirements and applications. Consensus recommendations to the Department of Energy from the Board on programmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Board may be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on January 17, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–1746 Filed 1–23–02; 8:45 am]

BILLING CODE6450–01–M

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14278]

Chemical Industry of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost shared research and development (R&D) of technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical industry. The research is to address priorities identified by the U.S. chemical industry in Technology Vision 2020: The U.S. Chemical Industry and associated technology roadmaps.

DATES: The issuance date of Solicitation Number DE-PS07-02ID14278 will be on or about January 21, 2002. The deadline for receipt of applications will be approximately on April 24, 2002.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS__HelpDesk@e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doe.gov.*

SUPPLEMENTARY INFORMATION: Approximately $3 million in federal funds are expected to be available to fund the first 12 months of selected research projects. Subject to the availability of funds, approximately $6 million is planned to fund the remaining years of the projects. DOE anticipates making 6 to 8 cooperative agreement awards, each with a duration of three to five years or less. A minimum of three industrial chemical companies must be involved. Collaborations among industry, university, and National Laboratory participants are encouraged. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 15, 2002.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–1744 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 11, 2002, 6:00 p.m.—12:00 p.m.

ADDRESSES: Public Environmental Information Center, 10995 Hamilton-Cleves Highway, Harrison, OH

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order
6:00–6:15 p.m. Chair's Remarks and Ex Officio Announcements
6:15–6:45 p.m. Current Remediation Issues, Silos, Efficiency Efforts
6:45–7:15 p.m. Site Technology Coordination Group Overview and Update on Alpha Monitor
7:15–7:30 p.m. Break
7:30–8:00 p.m. Progress Tracking Materials
8:00–8:45 p.m. Planning for Public Records Workshop
8:45–9:00 p.m. Public Comment
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on January 18, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1745 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

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SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Public Law 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed on or before February 25, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1, 3, 5, 6A, 6Q, 7A, and 20, "Coal Program Package."
2. Energy Information Administration.
3. OMB Number 1905–0167.
4. Revision and three-year approval requested—Data currently collected on Forms EIA–3A and EIA–5A will be collected by adding appropriate data elements to Forms EIA–3 and EIA–5, which will allow EIA to drop the annual surveys, EIA–3A and EIA–5A. EIA is adding an additional data element to section J. Mining Location, namely, the datum (or geospatial referencing system) that is used in determining the latitude and longitude locations which will not be held confidential.
5. Mandatory.
6. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.
7. Business or other for-profit; Federal Government; State, Local or Tribal Government.
8. 9,247 hours (3,440 respondents × 1.5 responses per year × 1.78 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, January 10, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–1743 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–40–002]

Attala Energy Company, LLC; Notice of Filing

January 17, 2002.

Take notice that on January 14, 2002, Attala Energy Company, LLC submitted for filing substitute pages to its FERC Electric Tariff, Original Volume No. 1, in compliance with the order issued in these dockets on December 19, 2001, 97 FERC ¶ 61,282.

Any person desiring to be heard or to protests such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov*. Using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Comment Date: January 24, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1733 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–51–000]

California Electricity Oversight Board, Complainant, v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing L.P., Mirant Delta LLC, Reliant Energy Services, Inc., Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynegy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company LLC, Southern California Edison Company, All Other Public and Non-Public Utilities Who Own or Control Generation in California and Who Sell Through the Markets or Use the Transmission Lines Operated by the California Independent System Operator Corporation, and All Scheduling Coordinators Acting on Behalf of the Above Entities, Respondents; Notice of Complaint

January 17, 2002.

Please take notice that on January 14, 2002, the California Electricity Oversight Board (Board) tendered for filing a Complaint alleging that Respondents are submitting unjust and unreasonable bids for decremental energy in the real-time Supplemental Energy market operated by the California Independent System Operator Corporation (CAISO) such that the resulting wholesale electricity rates are unjust and unreasonable. The Board urges the Federal Energy Regulatory Commission (Commission) to issue an immediate cease and desist order, to impose a "must-offer" obligation on generators to submit to the CAISO marginal cost based decremental bids until demonstrable evidence exists that California's wholesale electricity markets are workably competitive, and to take such other action as the Commission deems appropriate.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 5, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 5, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1730 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–52–000]

Municipal Wholesale Power Group, Complainant, v. Wisconsin Power & Light Company, Respondent; Notice of Complaint

January 17, 2002.

Take notice that on January 16, 2002, Municipal Wholesale Power Group (MWPG) filed a complaint with the Federal Energy Regulatory Commission (Commission) against Wisconsin Power & Light Company (WPL) alleging violations of WPL's Rate Schedule W–3, W–3A, and BP–1, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14.

WPL has been served with a copy of the Complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 5, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 5, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1731 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–62–000]

National Fuel Gas Supply Corporation; Notice of Application

January 17, 2002.

Take notice that on January 11, 2002, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP02–62–000 , an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon certain pipeline facilities, located in McKean County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

National Fuel proposes to abandon approximately 12,354 feet of 16-inch diameter steel pipeline, known as Line C–Maloney Farm, located in Bradford and Foster Townships, McKean County, Pennsylvania. National Fuel states that Line C–Maloney Farm was constructed and placed in service by their predecessor, United Natural Gas Company, in 1947. National Fuel proposes to abandon Line C–Maloney Farm due to the age and condition of the pipeline, and the cost to replace certain deteriorated sections of this pipeline. National Fuel asserts that Line C–Maloney Farm has not been utilized since 1987, but is still maintained in accordance with Department of Transportation Guidelines & Practices. National Fuel avers that in order to continue to meet Department of Transportation standards, Line C–Maloney Farm would require a cathodic protection upgrade at an estimated cost of $106,400.

National Fuel states that it would remove approximately 9,187 feet of 16-inch diameter pipeline, and would abandon approximately 3,167 feet of 16-inch diameter pipeline in place, due to its proximity to residences and areas of steep slopes. National Fuel declares that the abandonment project would begin at a point of interconnection with National Fuel Gas Distribution Corporation at Station T–No. 2593 and extend northwest terminating at the Pennsylvania-New York state line.

National Fuel indicates that since Line C-Maloney Farm has not been utilized since 1987, there will be no abandonment or decrease in service to any customers of National Fuel as a result of the proposed abandonment.

National Fuel states that the estimated cost to abandon the subject facilities is $40,000.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949, or at *reitz@natfuel.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 7, 2002,

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file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1729 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2928–002]

Progress Ventures, Inc.; Notice of Filing

January 17, 2002.

Take notice that on January 15, 2002, Progress Ventures, Inc. and Progress Genco Ventures, LLC tendered for filing an amendment to its application for authorization to sell power at market-based rates in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: January 24, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1732 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–569–020, *et al.*]

Entergy Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

January 17, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Entergy Services, Inc.

[Docket No. ER91–569–020]

Take notice that on January 10, 2002, Entergy Services, Inc., on behalf of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy), submits this status report in response to the Commission's November 20, 2001 Order in the above-captioned docket. A copy of this filing has been served upon the state regulators of the Entergy operating companies.

Comment Date: January 31, 2002.

2. Southern Company Energy Marketing L.P.

[Docket No. ER97–4166–010]

Take notice that on January 10, 2002, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, submitted a Status Report in response to the Commission's directions in the above-referenced dockets.

Comment Date: January 31, 2002.

3. Consumers Energy Company

[Docket No. ER01–1587–004]

Take notice that on January 11, 2002, Consumers Energy Company (Consumers) tendered for filing a corrected page 5 of Exhibit A of the unexecuted agreement filed December 20, 2001 in this docket. The page corrects a typo in the originally filed version. The agreement is to have an effective date of March 21, 2001. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: February 1, 2002.

4. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn, Power Company (Allegheny Power)

[Docket No. ER02–454–003]

Take notice that on January 14, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 371 and Supplement No. 1 to Service Agreement No. 371, which redesignated and corrected First Revised Service Agreement Nos. 364 and 365 under Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date for the Service Agreement and Supplement is January 1, 2002.

Comment Date: February 4, 2002.

5. Wisconsin Power & Light Company

[Docket No. ER02–469–000]

Take notice that on January 11, 2002, Wisconsin Power & Light Company (WPL) filed a Notice of Withdrawal with respect to its rate filing it made in the captioned docket on December 4, 2001. WPL requests that its Notice of Withdrawal be accepted effective as of January 26, 2002.

Comment Date: February 1, 2002.

6. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–756–000]

Take notice that on January 11, 2002, Florida Power Corporation (FPC) tendered for filing a Service Agreement for Short-Term Network Contract Demand Transmission Service with Tampa Electric Company. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: February 1, 2002.

7. Nevada Power Company

[Docket No. ER02–757–000]

Take notice that on January 11, 2002, Nevada Power Company (Nevada Power) tendered for filing a compliance filing in the above-captioned docket pursuant to the Commission's July 31, 1997 omnibus compliance order regarding the filing of transmission service agreements.

Comment Date: February 1, 2002.

8. Orange and Rockland Utilities, Inc., New York Independent System Operator, Inc.

[Docket No. ER02–758–000]

Take notice that on January 11, 2002 Orange and Rockland Utilities, Inc. (O&R) submitted for approval to the Commission modifications to certain O&R specific information contained in Table 1 of Attachment H of the New York Independent System Operator's (NYISO) Open Access Transmission Tariff. These modifications are required as a result of the Commission's Order issued December 21, 2001 in Docket Nos. EC02–7–000 and ER02–109–000 authorizing the establishment of a new Rockland Electric Company zone in the PJM Interconnection, L.L.C. On that same date, the NYISO also filed parallel changes to Table 1 of Attachment H. O&R and the NYISO request an effective date of February 1, 2002 and request waiver of the Commission's notice requirements.

Copies of this filing have been served on the New York, New Jersey and Pennsylvania regulatory commissions and upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: February 1, 2002.

9. Idaho Power Company

[Docket No. ER02–759–000]

Take notice that on January 11, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and IDACORP Energy Company, under its open access transmission tariff in the above-captioned proceeding.

Comment Date: February 1, 2002.

10. Idaho Power Company

[Docket No. ER02–760–000]

Take notice that on January 11, 2002, Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and IDACORP Energy Company, under its open access transmission tariff in the above-captioned proceeding.

Comment Date: February 1, 2002.

11. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–761–000]

Take notice that on January 11, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 154 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of December 12, 2001 to EnergyUSA–TPC Corp.

Copies of the filing have been provided to all parties of record.

Comment Date: February 1, 2002.

12. Alliant Energy Corporate Services Inc.

[Docket No. ER02–762–000]

Take notice that on January 11, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing with the Federal Energy Regulatory Commission (Commission), a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Utilities Plus, (Customer).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of December 13, 2001.

Comment Date: February 1, 2002.

13. Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP

[Docket No. ER02–763–000]

Take notice that on January 11, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) rendered for filing two agreements pursuant to which the Wildflower Entities will sell capacity, energy and ancillary services at market-based rates according to their FERC Electric Tariff, Original Volume No. 1 to their affiliates Coral Energy Management, LLC, under one agreement, and to Coral Power, L.L.C. under the other agreement.

Comment Date: February 1, 2002.

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14. Virginia Electric and Power Company

[Docket No. ER02–764–000]

Take notice that on January 14, 2002, Virginia Electric and Power Company (the Company), respectfully tendered for filing Service Agreement by Virginia Electric and Power Company to MIECO, Inc., designated as Service Agreement No. 8, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001.

The Company requests an effective date of December 27, 2001, as requested by the customer. Copies of the filing were served upon MIECO, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 4, 2002.

15. UtiliCorp United Inc.

[Docket No. ER02–765–000]

Take notice that on January 14, 2002, UtiliCorp United Inc. (UtiliCorp) tendered for filing Service Agreement No. 109 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 24, a network transmission service agreement between UtiliCorp's Missouri Public Service division and the City of El Dorado Springs, Missouri. UtiliCorp requests an effective date for the service agreement of December 16, 2001.

Comment Date: February 4, 2002.

16. Florida Power & Light Company

[Docket Nos. ER02–766–000]

Take notice that on January 14, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted Interconnection and Operation Agreement between FPL and Progress Energy's DeSoto County Generating Company, LLC (Progress DeSoto) that sets forth the terms and conditions governing the interconnection between Progress DeSoto's generating project and FPL's transmission system. A copy of this filing has been served on Progress DeSoto and the Florida Public Service Commission.

Comment Date: February 4, 2002.

17. Allegheny Energy Global Markets, LLC

[Docket No. ER02–767–000]

Take notice that on January 14, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Global Markets, LLC (AEGM) filed a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1–5. AEGM requests an effective date for the cancellation of December 31, 2001.

Comment Date: February 4, 2002.

18. Idaho Power Company and IDACORP Energy, Inc.

[Docket No. ER02–768–000]

Take notice that on January 14, 2002, Idaho Power Company (IPC) and IDACORP Energy, Inc.(IE) filed an amendment to the Agreement for Electricity Supply Services between IPC and IE in this proceeding.

Comment Date: February 4, 2002.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–769–000]

Take notice that on January 14, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The supplement provides for an increase in the carrying charges under the facilities agreement.

Con Edison states that a copy of this filing has been served upon O&R.

Comment Date: February 4, 2002.

20. International Transmission Company

[Docket No. ER02–770–000]

Take notice that on January 14, 2002, International Transmission Company (ITC) filed with the Federal Energy Regulatory Commission (the Commission) an executed Service Agreement between ITC and Mirant Wyandotte, LLC (the Agreement).

ITC requests that the Commission accept the Agreement for filing effective as of January 15, 2002.

Comment Date: February 4, 2002.

21. Handsome Lake Energy, LLC

[Docket No. ER02–771–000]

Take notice that on January 14, 2002, Handsome Lake Energy, LLC (Handsome Lake) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for reactive power and voltage control from generation sources service provided to the transmission facilities controlled by the PJM Interconnection LLC (PJM).

Handsome Lake requests an effective date for the proposed rate schedule of January 12, 2002.

Handsome Lake mailed a copy of this filing to PJM.

Comment Date: February 4, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1728 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–42–000, *et al.*]

Maritime Electric Company, Limited, *et al*; Electric Rate and Corporate Regulation Filings

January 16, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Maritime Electric Company, Limited, FortisUS Energy Corporation and Fortis Properties Corporation

[Docket No. EC02–42–000]

Take notice that on January 10, 2002, Maritime Electric Company, Limited, on behalf of itself, FortisUS Energy Corporation, and Fortis Properties Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities under an intra-corporate restructuring.

Comment Date: January 31, 2002.

2. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on January 14, 2002, TXU Tradinghouse Company LP (TXU) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on January 14, 2002, TXU DeCordova Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU Mountain Creek Company LP

[Docket No. EG02–51–000]

Take notice that on January 14, 2002, TXU Mountain Creek Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on January 14, 2002, TXU Big Brown Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on January 14, 2002, TXU Handley Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Generation Company LP

[Docket No. EG02–54–000]

Take notice that on January 14, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. ExTex LaPorte Limited Partnership

[Docket No. EG02–60–000]

Take notice that on January 9, 2002, ExTex LaPorte Limited Partnership (ExTex) filed a supplement to its Application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: February 6, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Southwestern Electric Power Company

[Docket No. ER02–251–000]

Take notice that on January 10, 2002, Southwestern Electric Power Company (SWEPCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Power Supply Agreement Between Southwestern Electric Power Company and the City of Hope, Arkansas.

Comment Date: January 31, 2002.

10. Central Maine Power Company

[Docket No. ER02–720–000]

Take notice that on January 8, 2002, Central Maine Power Company (Central Maine) filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, an executed System Contract Entitlement Agreement, an executed Renewable and Eligible Resource Entitlement Agreement, and an executed Nuclear Entitlement Agreement (collectively, Entitlement Agreements), as well as an executed Comprehensive Credit Support and Final Settlement Calculation Agreement (A Credit Support Agreements). In addition, CMP requested confidential treatment for certain competitively sensitive material contained in the Entitlement Agreements and Credit Support Agreement.

Comment Date: January 29, 2002.

11. PPL Electric Utilities Corporation

[Docket No. ER02–722–000]

Take notice that on January 8, 2002, PPL Electric Utilities Corporation (PPL Electric) filed notice of termination of the Service Agreement between it and GPU Advanced Resources, Inc. designated as Service Agreement No. 11 under PPL Electric's FERC Electric Rate Schedule, First Revised Volume No. 5. PPL Electric requests a March 11, 2002 termination date for the Agreement.

Notice of the termination has been served upon GPU Advanced Resources, Inc.

Comment Date: January 29, 2002.

12. MxEnergy Inc.

[Docket No. ER02–737–000]

Take notice that on January 9, 2002, MxEnergy Inc. (Seller) petitioned the Federal Energy Regulatory Commission (Commission) for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under subparts B and C of part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: January 30, 2002.

13. Illinois Power Company

[Docket No. ER02–738–000]

Take notice that on January 9, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Corn Belt Electric Cooperative Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of January 1, 2002, for the Agreements and accordingly seeks a waiver of the Commission's notice requirement.

Comment Date: January 30, 2002.

14. Avista Corporation

[Docket No. ER02–739–000]

Take notice that on January 9, 2002, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.12 of the Commissions, 18

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CFR part 35.12 , an executed Mutual Netting Agreement, Rate Schedule No. 292, with Sacramento Municipal Utility District, effective January 1, 2002.

Notice of the filing has been served to Mr. Thomas W. Ingwers Director, Energy Trading & Contracts Sacramento Municipal Utility District.

Comment Date: January 30, 2002.

15. Northwest Natural Gas Company

[Docket No. ER02–740–000]

Take notice that on January 9, 2002, Northwest Natural Gas Company (NW Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its Rate Schedule FERC No. 1 applicable to sales of electricity at market-based rates. NW Natural states that it has not made any sales of electricity under that rate schedule and has no plans to do so.

NW Natural has asked to make the Notice of Cancellation effective on January 10, 2002.

Comment Date: January 30, 2002.

16. Exelon Generation Company, LLC

[Docket No. ER02–741–000]

Take notice that on January 10, 2002, Exelon Generation Company, LLC tendered for filing a service agreement under its market-based rate wholesale power sales tariff under which it will make sales of capacity and energy to Exelon Energy Company.

Comment Date: January 31, 2002.

17. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–742–000]

Take notice that on January 10, 2002, Florida Power Corporation (FPC) tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Florida Power & Light Company. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC. A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of January 1, 2002 for this Service Agreement.

Comment Date: January 31, 2002.

18. Cinergy Services, Inc.

[Docket No. ER02–743–000]

Take notice that on January 10, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and East Kentucky Power Cooperative, Inc. (East Kentucky). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment Date: January 31, 2002.

19. New York State Electric & Gas Corporation

[Docket No. ER02–744–000]

Take notice that on January 10, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, a supplement to Rate schedule 72 filed with FERC corresponding to an agreement with the Municipal Board of the Village of Bath (the Village). The proposed supplement would decrease revenues by $277.63 based on the twelve month period ending December 31, 2000.

NYSEG requests an effective date of January 1, 2002. Copies of the filing were served upon the Municipal board of the Village of Bath and the Public Service Commission of the State of New York.

Comment Date: January 31, 2002.

20. American Transmission Company LLC

[Docket No. ER02–753–000]

Take notice that on January 10, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Network Operating Agreement and a Revised Network Integration Service Agreement for Wisconsin Rapids Water Works and Lighting Commission. ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 31, 2002.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–754–000]

Take notice that on January 10, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of September 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment Date: January 31, 2002.

22. Virginia Electric and Power Company

[Docket No. ER02–755–000]

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with GenPower Earleys, L.L.C. (GenPower) that complies with the Commission's December 11, 2001 Order.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the revised tariff page effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11th Order.

Copies of the filing were served upon GenPower, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment Date: January 31, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1697 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7132–7]

EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period for draft perchlorate toxicological review and risk characterization.

SUMMARY: On January 2, 2002, EPA published a **Federal Register** notice (67 FR 75) announcing: the public availability, expected on January 9, 2002, of the revised draft document entitled, "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization" (NCEA–I–0503); the beginning of a 30-day public comment period on the revised draft document; and an external peer review workshop in Sacramento, California on March 5 and 6, 2002. Due to some necessary technical editing to clarify the discussion of some of the studies included in the draft document, public release, and availability of the perchlorate external review draft was delayed by approximately one week. Accordingly, EPA is extending the public comment period until February 19, 2002. Please note that comments received by February 19 will be made available at the peer review workshop.

DATES: Only comments postmarked by February 19, 2002, will be made available at the workshop.

ADDRESSES: The external review draft of the perchlorate document is available on EPA's National Center for Environmental Assessment (NCEA) Web site at *http://www.epa.gov/ncea*. Written comments should be submitted to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *meetings@erg.com*.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and submission of comments should be directed to EPA's contractor, Eastern Research Group, Inc. (ERG), at 781–674–7374. For technical inquiries, please contact: Annie M. Jarabek, U.S. Environmental Protection Agency (MD 52), USEPA Mailroom, Research Triangle Park, NC 27711; telephone 919–541–4847; facsimile 919–541–1818; e-mail *jarabek.annie@epa.gov*.

Dated: January 17, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–1757 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices; Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 29, 2002 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, January 31, 2002 at 10:00 A.M.

PLACE: 999 E Street, N.W., Washington, DC. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Comments on Draft Interpretation of Travel Allocation Regulations at 11 CFR 106.3(b).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–1933 Filed 1–22–02; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011745–003.
Title: Evergreen/Lloyd Triestino Alliance Agreement.
Parties: Evergreen Marine Corp.(Taiwan) Ltd. ("Evergreen"), Lloyd Triestino Di Navegazione S.P.A.
Synopsis: The proposed amendment: adds Hatsu Marine Limited as a party to the agreement; adds four additional vessels to be delivered between April of 2002 and June of 2003, replacing four Evergreen vessels; and adds certain authority concerning the sharing of personnel for supervisory, administrative, marketing, accounting, and operational functions.

Agreement No.: 201022–001.
Title: New Orleans/Coastal Terminal Agreement.
Parties: The Board of Commissioners of the Port of New Orleans, Coastal Cargo Company, Inc.
Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through March 31, 2002.

Agreement No.: 201030–002.
Title: New Orleans/SSA Gulf/P&O Ports Terminal Agreement.
Parties: The Board of Commissioners of the Port of New Orleans, SSA Gulf Terminals, Inc., P&O Ports Gulfport, Inc.
Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through July 23, 2002.

Agreement No.: 201044–002.
Title: San Francisco MTC Non-Exclusive Terminal Management Agreement.
Parties: San Francisco Port Commission, Marine Terminals Corporation.
Synopsis: The proposed amendment makes changes in management details and provides a sharing arrangement to offset losses to MTC resulting from MTC not meeting its revenues for the facility. The agreement continues to run through December 31, 2002.

Agreement No.: 201108–001.
Title: New Orleans/Empire Terminal Agreement.
Parties: The Board of Commissioners of the Port of New Orleans, Empire Stevedoring (LA), Inc.
Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges.

Agreement No.: 201110–004.
Title: Oakland/Hanjin/Total Terminal Agreement.
Parties: Port of Oakland, Hanjin Shipping Company, Ltd., Total Terminals International, LLC.
Synopsis: The proposed amendment assigns Hanjin's rights under the

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agreement to Total Terminals International, LLC. The agreement continues to run through June 7, 2016.

Agreement No.: 201121–001.

Title: New Orleans/Pacorini Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Pacorini USA, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through April 14, 2006.

By Order of the Federal Maritime Commission.

Dated: January 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1801 Filed 1–23–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

US Rich Long, Inc., 10932 Schmidt Road, #H, El Monte, CA 91733, Officers: George Sun, President, (Qualifying Individual), Gloria You, Director

Florida Trade Consolidators Inc., 6123 NW 72nd Avenue, Miami, FL 33166, Officer: Samir Assad, President, (Qualifying Individual)

DLS Logistics, Inc., 1026 Edwards Road, Burlingame, CA 94010, Officers: Denis I. Cheng, President, (Qualifying Individual), Lawrence Chang, Vice President

ADCOM Express Inc. dba ADCOM Worldwide Inc., 7424 W. 78th Street, Edina, MN 55439, Officers: Douglas Bramer, Vice President, (Qualifying Individual), Robert Friedman, CEO

America Keyun Int'l Logistics, Inc., 939 S. Atlantic Blvd., #209A, Monterey Park, CA 91754, Officers: Yan Yu, Secretary, (Qualifying Individual), Li, Ying Jie, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

KCC Logistics Inc., 2300 E. Higgins Road, Suite #204, Elk Grove Village, IL 60007, Officer: James S. Lee, President, (Qualifying Individual)

Associated Consolidators Express, 1273 Industrial Pkwy, Unit 290, Hayward, CA 94544, Officer: Frank Escalante, Operations Manager, (Qualifying Individual)

American Links Logistics International, Inc., 3591 Highland Drive, San Bruno, CA 94066, Officers: Letty Batacan, Import Manager, (Qualifying Individual), Walfredo M. Enrico, President

7 Seas Shipping, Inc. dba E J Freight Forwarding, Inc., 9060 Telstar Avenue, Suite 220, El Monte, CA 91731, Officer: Liqiu Mai, President, (Qualifying Individual)

Moog International, Inc., 1223 Grove Road, Pittsburgh, PA 15234–2397, Officers: James A. Frye, Vice President, (Qualifying Individual), Ronald P. Moog, President

United Shipping Services, Inc., 2321 Highbury Avenue, #51, Los Angeles, CA 90032, Officers: Rachel Liu, President, (Qualifying Individual), Peng-Xing Liu, Secretary

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Krenz International Inc., 3125 S. 56th Street, Milwaukee, WI 53219, Officer: John F. Krenz, President, (Qualifying Individual)

Dated: January 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1802 Filed 1–23–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Credit Riviere Bancorporation, Inc., Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Sinai, Sinai, South Dakota.

Board of Governors of the Federal Reserve System, January 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1709 Filed 1–23–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the twelfth meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on February 13, 2002, and 8:30 a.m. to 5 p.m. on February 14, 2002, at the Bethesda Marriott, 5151 Pooks Hill road, Bethesda, MD 20814. The meeting will be open to the public with attendance limited to space available.

The Committee will discuss a number of topics, including a report from HHS agencies on their support of activities that increase the knowledge and utility of genetic tests, horizon scanning in genetic testing, and the Informed Consent Work Group's development of principles of informed consent in clinical and public health settings. Through a number of invited presentations, the Committee will also begin exploring issues regarding the collection and analysis of population data by race and ethnicity in health policy generally and in genetic testing specifically. Time will be provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGT office is located at 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Dated: January 15, 2002.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 02–1793 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Anthropometric Survey of Respirator Users—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

The overall goal of the current project is to develop respirator fit-test panels that accurately represent today's workers who rely on respirators to prevent work-related respiratory illnesses, injuries, and death. The respirator fit-test panels currently used are 25-subject panels, developed by Los Alamos National Laboratory (LANL) based on data from the 1967–1968 survey of U.S. Air Force men and women. The half-mask panel is based on face length and lip length and the full-facepiece panel is based on face length and face width. These panels were established to represent the working population. The fit of respirators on these subject panels is assumed to be representative of the fit of respirators in the user populations. Respirators designed to fit these panels are also expected to accommodate at least 95% of the wearers. However, NIOSH research indicated that the LANL panel for full-facepiece respirators accommodated only 84% of current civilian subjects. Sizing data generated by the military for use in fitting respirators has been the normative basis for commercial respirator sizing. Anthropometric data developed for males of military age in the 1950's and 1960's is still in use today. Military populations cannot represent the worker population because of relatively strict anthropometric armed forces entry requirements and height/weight guidelines for troop retention. Personal protective equipment designed and sized for a military population may not provide the same level of protection to civilian workers because of the greater diversity in body size and shape seen in civilian populations. In addition, the demographics of the U.S. population have changed over the last 30 years. Thus, it is necessary to assess and refine the LANL fit-test panels.

This project will first develop an anthropometric database detailing the face-size distributions of respirator users using both traditional measurement methods and three-dimensional (3–D) scanning systems. The source population for this study will be the nationwide respirator users population. The databases will then be used to establish respirator fit-test panels that accurately represent today's workers. Three-dimensional anthropometry has only been available recently, and there is no track record of applying scan data to respirators. This study will provide preliminary data on which to develop methods for sizing and designing respirators and protective eyewear using 3–D scan data.

The subjects will be recruited from various industries in which workers rely on respirators to prevent work-related respiratory illnesses, injuries, and death (*e.g.*, manufacturing, construction, mining, and health care). The project will also address emergency responders to chemical and biological terrorism and other crisis situations. Thus, subjects will also include law enforcement officers, firefighters, and health care workers. Height and weight plus 18 facial dimensions will be measured with traditional methods. A total of 4,000 subjects will be measured using traditional methods. Of those, 1,000 will

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be scanned using a 3–D head scanner (Cyberware Model 3030/RGB). The populations will be sampled by age, race and gender. A stratified sampling plan is being used with equal sample size in each cell (166). The strata consist of: 3 age groups (18–29, 30–44, and 45–65 years), 2 gender strata (male and female), and 4 ethnic groups (White, African Americans, Hispanic, and Others). The total number of cells is 24. The study will be conducted at five locations nationwide. Although test sites have yet to be determined, data collection is anticipated at two facilities in the western U.S., one in the central portion of the country, and at two locations in the east.

Information generated by this research project will benefit:

(1) The participants and workers exposed to various gases and aerosols by improving fit and function of respirators worn during work; and (2) those involved in testing, certifying, and manufacturing respirators to be used in industry, by providing them with fit-test panels that accurately represent today's workers. The panels can be used for evaluating respirator facepiece fit characteristics. The long-term potential benefits are improved respirator quality and performance and increased worker protection. There are no costs to respondents.

Respondents	Number of respondents	Number of responses respondent	Average burden per response (in hours)	Total burden in hours
Workers (Data Collection #1)	3000	1	15/60	750
Workers (Data Collection #2)	1000	1	20/60	333
Total				1083

Dated: January 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Program Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1690 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Preventive Health and Health Services Block Grant, Annual Application and Reports (OMB #0920–0106)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). In 1994, OMB approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services (PHHS) Block Grant (OMB #0920–0106). This approval expires on November 30, 2001. CDC is requesting OMB clearance for this legislatively mandated information collection until November 30, 2004. The request is to approve the development and adherence to *Healthy People 2010*, the Nation's Health Objectives which was released the Spring of 2000. The PHHS block grant is mandated according to section 1904 to adhere to the Healthy People framework, therefore, the current application and report format was restructured to coincide with 2010.

This information collected through the applications from the official State health agencies is required from section 1905 of the Public Health Service Act. There is a slight change in the proposed information collection from previous years. The changes include more program specific information and the relationship of block funded activities to program strategy. The information collected from the annual reports is required by section 1906. The development of a PHHS block grant Web page with data Web links from existing federal databases will be used to coincide with the collection of uniform data for the annual report. The availability to collect data through internet accessibility will allow for a more streamlined and efficient use of data processing by the states and will reduce the states burden of duplicate reporting on outcome and risk factor data. The total annual burden for this data collection is 4,270 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)
Application	61	1	30
Report	61	1	40

Dated: January 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1689 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02E01]

Medical Monitoring for New York Personnel Engaged in Emergency Response Activities Related to the Disaster of September 11, 2001; Notice of Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of funds for a cooperative agreement program for Medical Monitoring for New York Personnel Engaged in Emergency Response Activities Related to the Disaster of September 11, 2001. The purpose of the program is to provide medical monitoring for New York City Fire Department and New York State Personnel who may have been exposed to hazardous substances while providing emergency response services as a result of the disaster of September 11, 2001. This program addresses the "Healthy People 2010" focus areas Environmental Health and Public Health Infrastructure.

B. Eligible Applicant

Eligible applicants are Health Research, Inc./New York State Department of Health and New York City Fire Department. No other applications were solicited. New York State has received a Presidential declaration of disaster.

This project is authorized by H.R. 2888, 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States.

C. Availability of Funds

Approximately $4,801,550 is available to fund one award to New York City Fire Department, and approximately $2,406,000 is available to fund one award to Health Research, Inc./New York State Department of Health. It is expected that each award will be made for a 12-month budget period. As long as funds are directed for these applicants, continuation funding will be made available for up to 5 years. Funding estimates may vary and are subject to change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Lead Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2740, E-mail address: *sqr2@cdc.gov*.

For program technical assistance, contact: Ron Burger, Public Health Advisor, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (MS F–38) Atlanta, GA 30341–3724, Telephone number: (404) 488–4024, E-mail address: *rburger@cdc.gov*.

Dated: January 17, 2002.

Rebecca B. O'Kelley,

Chief, International Grants and Contracts Branch, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 02–1717 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #02001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #02001.

Times and Dates:

7 p.m.–7:25 p.m., February 17, 2002 (Open)

7:30 p.m.–10:15 p.m., February 17, 2002 (Closed)

8 a.m.–6 p.m., February 18, 2002 (Closed)

8 a.m.–6:30 p.m., February 19, 2002 (Closed)

8 a.m.–1 p.m., February 20, 2002 (Closed)

Place: Trade Winds Sandpiper Hotel, 6000 Gulf Boulevard, St. Pete Beach, Florida 33706.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #02001.

CONTACT PERSON FOR MORE INFORMATION: Bernadine Kuchinski, Ph.D., Occupational Health Consultant, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, M/S D40, telephone (404) 639–3342.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 16, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–1718 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Centers for Medicare and Medicaid Services, HHS.

This notice announces and displays OMB control numbers for Centers for Medicare and Medicaid Services (CMS) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR part 1320. Once OMB has

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approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be "provided in a manner that is reasonably calculated to inform the public." To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement, CMS has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for CMS's information collections that have been approved by OMB.

	OMB control Nos.
42 CFR:	
405.262	0938–0267
405.371	0938–0600
405.376	0938–0270
405.378	0938–0600
405.410	0938–0730
405.430, 405.435, 405.440, 405.445, 405.455	0938–0730
405.711	0938–0045
405.807	0938–0033
405.821	0938–0034
405.2100–405.2171	0938–0386
405.2110, 405.2112	0938–0657, & 0658
405.2133	0938–0046
405.2135–405.2171	0938–0360
405.2470	0938–0155
406.7	0938–0251
406.13	0938–0080
406.15	0938–0501
406.28	0938–0025 & 0787
407.10, 407.11	0938–0245
407.18	0938–0679
407.27	0938–0025 & 0787
407.40	0938–0035
408.6	0938–0041
409.40–409.50	0938–0357
410.1	0938–0679
410.2	0938–0770
410.32	0938–0685
410.33	0938–0721
410.36	0938–0357
410.38	0938–0534
410.40	0938–0042
410.61	0938–0730
410.71	0938–0685
410.141–410.145	0938–0818
410.170	0938–0357
411.1	0938–0846
411.4–411.15	0938–0357
411.20–411.206	0938–0565
411.350–411.357	0938–0846
411.370–411.389	0938–0714
411.404–411.406	0938–0465, 0781 & 0692
411.408	0938–0566
412	0938–0842
412.20–412.32	0938–0358
412.40–412.52	0938–0359
412.42	0938–0692
412.44, 412.46	0938–0445
412.92	0938–0477
412.105	0938–0456
412.106	0938–0691
412.116	0938–0269
412.256	0938–0573
413	0938–0842
413.17	0938–0202 & 0685
413.20	0938–0202, 0236 & 0600
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0236, 0301, 0463, 0511 & 0758
413.64	0938–0269

	OMB control Nos.
413.106	0938–0022
413.170	0938–0296
413.343	0938–0739
414.40	0938–0008
414.63	0938–0818
414.330	0938–0372
415.50, 415.55, 415.60, 415.70	0938–0301
415.110	0938–0730
415.150, 415.152, 415.160, 415.162	0938–0301
416.1–416.150	0938–0266
416.44	0938–0242
417.126	0938–0469 & 0732
417.143	0938–0470
417.162	0938–0469
417.408	0938–0470
417.436	0938–0610
417.440	0938–0692
417.470	0938–0732
417.478	0938–0469
417.479, 417.500	0938–0700
417.801	0938–0610
417.800–417.840	0938–0768
418.1–418.405	0938–0313& 0379
418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100	0938–0302
418.100	0938–0242
420.200–420.206	0938–0086
421.100	0938–0357
421.310, 421.312	0938–0723
422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, 422.560–422.622	0938–0763
422.1–422.700	0938–0753
422.64, 422.111, 422.560—422.622	0938–0778
422.152	0938–0701 & 0840
422.208, 422.210	0938–0700
422.300–422.312	0938–0742
422.370–422.378	0938–0722
422.568	0938–0829
422.620	0938–0692
424.5	0938–0534 & 0279
424.20	0938–0454
424.22	0938–0357, 0489 & 0846
424.24	0938–0730
424.32	0938–0008 & 0739
424.44	0938–0008
424.57	0938–0717, 0749, & 0685
424.73, 424.80	0938–0685
424.103	0938–0023
424.123	0938–0484
424.124	0938–0042
426.102–426.104	0938–0526
430.10	0938–0673
430.10–430.20	0938–0193
430.12	0938–0610
430.20	0938–0610
430.30	0938–0101
431.1–431.865	0938–0062
431.17	0938–0467
431.107	0938–0610
431.306	0938–0467
431.630	0938–0445
431.636	0938–0841
431.800	0938–0300
431.800–431.820	0938–0144
431.800–431.865	0938–0146, 0147, & 0246
433.68, 433.74	0938–0618
433.138	0938–0502
434.28	0938–0610
434.44, 434.67, 434.70	0938–0700
435.1–435.1011	0938–0062
435.910, 435.920, 435.940–435.960	0938–0467
438.364	0938–0786
440.1–440.270	0938–0062
440.30	0938–0685

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	OMB control Nos.
440.167	0938–0193
440.180	0938–0272, & 0449
441.16	0938–0713
441.60	0938–0354
441.152	0938–0754
441.300–441.305	0938–0272
441.300–441.310	0938–0449
442.1–442.119	0938–0062
447.31	0938–0287
447.53	0938–0429
447.254	0938–0784
447.272	0938–0618 & 0855
447.280	0938–0824
447.321	0938–0855
447.500–447.542	0938–0676
447.550	0938–0676
455.100–455.106	0938–0086
456.654	0938–0445
456.700, 456.705, 456.709, 456.711, 456.712	0938–0659
457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180.	0938–0841
460.12, 460.22, 460.30, 460.32, 460.52, 460.60, 460.68, 460.70, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.206, 460.208, 460.210.	0938–0790
466.71, 466.73, 466.74, 466.78	0938–0445
466.78	0938–0692
473.18, 473.34, 473.36, 473.42	0938–0443
476.104, 476.105, 476.116, 476.134	0938–0426
482.1–482.66	0938–0380
482.2–482.57	0938–0382
482.12, 482.22	0938–0328
482.27	0938–0328
482.41	0938–0242
482.30, 482.41, 482.43, 482.53, 482.56, 482.57	0938–0328
482.45	0938–0810
482.60–482.62	0938–0378 & 0328
482.66	0938–0328, & 0624
483.10	0938–0610
483.270	0938–0242
483.350–483.376	0938–0833
483.400–483.480	0938–0062
483.470	0938–0242
484.1–484.52	0938–0365
484.10	0938–0610 & 0781
484.10–484.52	0938–0355
484.11	0938–0761
484.12	0938–0685
484.18	0938–0357
484.20	0938–0761
484.55	0938–0760
484.220	0938–0760
485.56, 485.58, 485.60, 485.64, 485.66	0938–0267
485.701–485.729	0938–0065, & 0273
486.100–486.110	0938–0027
486.104, 486.106, 486.110	0938–0338
486.301–486.325	0938–0512, & 0688
488.4–488.9	0938–0690
488.18	0938–0391, & 0667
488.26	0938–0391
488.28	0938–0391
488.60	0938–0360
488.201	0938–0690
489	0938–0832
489.20	0938–0214, 0667, & 0692
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.32, 489.34	0938–0692
489.66, 489.67	0938–0713
489.102	0938–0610
491.1–491.11	0938–0074

	OMB control Nos.
491.3, 491.8	0938–0792
491.9	0938–0334
493.1–493.2001	0938–0151, 0544, 0581, 0599, 0612, 0650, & 0653
493.551–493.557	0938–0686
493.1269—493.1285	0938–0170
493.1840	0938–0655
498.40–498.95	0938–0486, & 0567
1003.100, 1003.101, 1003.103	0938–0700
1004.40, 1004.50, 1004.60, 1004.70	0938–0444
45 CFR:	
5b	0938–0734
146	0938–0702
146.121	0938–0819
146.141	0938–0827
148	0938–0703 & 0797

Dated: January 15, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–1686 Filed 1–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0651]

Determination of Regulatory Review Period for Purposes of Patent Extension; T-Scan 2000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for T-Scan 2000 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device T-Scan 2000. T-Scan 2000 is intended for use as an adjunct to mammography in patients who have equivocal mammographic findings within ACR–BI–RADS categories 3 and 4. In particular, it is not intended for use in cases with clear mammographic or non-mammographic indications for biopsy. This device provides the radiologist with additional information to guide a biopsy recommendation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for T-Scan 2000 (U.S. Patent No. 4,291,708) from Transcan Research and Development Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 13, 2000, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of T-Scan 2000 represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for T-Scan 2000 is 1,595 days. Of this time, 964 days occurred during the testing phase of the regulatory review period, while 631 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: December 5, 1994. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective December 5, 1994.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: July 25, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for T-Scan 2000 (PMA P970033) was initially submitted July 25, 1997.

3. *The date the application was approved*: April 16, 1999. FDA has

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verified the applicant's claim that PMA P970033 was approved on April 16, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 25, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 23, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1723 Filed 1–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: February 20–21, 2002.

Open: February 20, 2002, 8:45 AM to 4 PM.

Agenda: Program reports and presentations: Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: February 20, 2002, 11:55 AM to 12:55 PM.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: February 20, 2002, 12:55 PM to 1:55 PM.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Ellen Feigal, Executive Secretary, Subcommittee on Clinical Investigations, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, 3A44, Bethesda, MD 20892, (301) 496–6711.

Name of Committee: National Cancer Advisory Board.

Closed: February 20, 2002, 4:15 PM to Recess.

Agenda: Review of grant applications; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 21, 2002, 8:45 AM to Adjournment.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1794 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of other and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: January 23, 2002.

Closed: 1 PM to 3 PM.

Agenda: In preparation for the appointment of new members under the Bush Administration, the current President's Cancer Panel Members intend to discuss and review the performance on Federal and contract support staff for the Panel, evaluate the Panel's process, and make recommendations to be forwarded to incoming members and NCI management.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1796 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 23, 2002.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 8, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1795 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Mental Retardation Research Subcommittee, Mental Retardation Research Subcommittee.

Date: March 21–22, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1797 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

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and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Drug Development for Opportunistic Infections—Hepatitis C.

Date: February 28—March 1, 2002.

Time: February 28, 2002, 8:30 AM to adjournment.

Agenda: To review and evaluate contract proposals.

Place: 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, NMSC–7617, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1798 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: February 20–21, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, 1400 M Street NW, Washington, DC 20005.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1799 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: February 15, 2002.

Time: 12:00 PM to 2:30 PM.

Agenda: To review and evaluate contract proposals.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 746, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1800 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4733–N–01]

Notice of Proposed Information Collection: Comment Request, HUD-Administered Small Cities Program Performance Assessment Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Steve Rhodeside at (202) 708–1322, Extension 7375 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD-Administered Small Cities Program Performance Assessment Report.

OMB Control Number, if applicable: 2506–0020.

Description of the need for the information and proposed use: The information collected from grant recipients participating in the state-administered CDBG program provides HUD with financial and physical development status of each activity funded. These reports are used to determine grant recipient performance and for HUD's Annual Report to Congress on accomplishments.

Agency form numbers, if applicable: The Housing and Community Development Act of 1974, as amended, requires grant recipients that receive CDBG funding to submit a Performance Assessment Report (PAR) on an annual basis to report on program progress; and such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds (section 104(e)(2)).

Members of affected public: Grant recipients participating in the State-administered CDBG program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 800. The proposed frequency of the response to the collection of information is annual. Annual recordkeeping is estimated at 6,400 hours for approximately 800 grant recipients.

Status of the proposed information collection: Reinstatement, with minor changes, of a previously approved collection with expired and a request for OMB renewal for three years. The current OMB approval expired in January 2000.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 10, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary.

[FR Doc. 02–1685 Filed 1–23–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–01]

Notice of Submission of Proposed Information Collection to OMB; Loan Guarantee Recovery Fund Established Pursuant to the Church Arson Prevention Act of 1996

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0159) should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Report Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (2) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recover Fund established pursuant to the Church Arson Prevention Act of 1996.

OMB Approval Number: 2506–0159.

Form Numbers: SF–424, HUD–40076–LGA.

Description of the Need for the Information and Is Proposed Use: Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts or arson or terrorism.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submissions: Monthly.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	100		8		12.75		10,200

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Total Estimated Burden Hours: 10,200.

Status: Extension of a currently approved collection.

Authority Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 17, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–1684 Filed 1–23–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review (extension of a currently approved collection); nomination for Young American Medal for Service.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 1, 2001 (Volume 66, page 49980), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 25, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Service.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/2, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal. *Other:* Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–1706 Filed 1–23–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information collection under review (extension of a currently approved collection); nomination for Young American Medal for Bravery.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 1, 2001 (Volume 66, page 49979), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 25, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/1, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government, State, Local or Tribal.

Other: Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 the annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–1707 Filed 1–23–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,482; Colorgraphic Offset Printing Co., Lancaster, NY
TA–W–40,128; TNS Mills, Inc., Eufala Plant, Eufala, AL
TA–W–40,050; Moco Thermal Industries, Romulus, MI
TA–W–39,605; Kimble Glass, Inc., Vineland, NJ
TA–W–40,317; Texfi Industries, Inc., Rocky Mount, NC
TA–W–39,658; Taylor Wharton, Harsco Gas and Fluid Control, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,794; M/A-Com Ceram Buffalo, NY
TA–W–39,938; Honeywell, Inc., Clearfield, UT
TA–W–38,579; National Starch and Chemical Co., Meredosia, IL
TA–W–40,097; Ismeca, USA, Vista, CA
TA–W–40,222; Richmond Technology, An Illinois Tool Works Co., Redlands, CA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,319; General Electro Mechanical Corp., West Seneca, NY
TA–W–40,296; Rubatex Corp., Bedford, VA
TA–W–39,713 & A; J.M. Huber Corp., Headquartered in Houston, TX and Operating Throughout the State of Texas

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,448; Newbold Corp., Rocky Mount, VA: May 28, 2000
TA–W–39,604 & A; Doran Mills, LLC, Shelby, NC and New York, NY: June 20, 2000
TA–W–40,005; SDK Knitting, Inc., Schaefferstown, PA: August 25, 2000
TA–W–40,009; JC Surrey 2001, Inc., Leander, TX: August 24, 2000
TA–W–40,078; Guilford Mills, Pine Grove, PA: September 9, 2000
TA–W–40,181; BASF Corp., Rensselaer, NY: June 19, 2001
TA–W–40,276; Dorel Juvenile Group, Inc., Formerly Cosco, Inc., St. Smith, AZ: October 8, 2000
TA–W–40,294; Fairfield Glove and Textile Col, Inc., Cherryville, NC: October 10, 2000
TA–W–40,325; Covington Industries, Inc., Calhoun Falls, SC: November 9, 2000
TA–W–40,379; HC Contracting, Inc., New York, NY: October 31, 2000
TA–W–40,454; Biltwell Clothing Co., Rector Sportswear, Rector, AR November 9, 2000
TA–W–39,374; Signature Cloth, Clifton, NJ: May 18, 2000
TA–W–39,793; Fourth Edition, Inc., Terre Hill, PA: July 30, 2000

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TA–W–39,832; Fiskars Consumer Products, Inc., Wausau, WI: July 26, 2000
TA–W–39,952; MJM Knitwear Corp., Brooklyn, NY: August 16, 2000
TA–W–40,279; C & C Fashions, Inc., Bronx, NY: October 2, 2000
TA–W–40,365; Hyde Inc., Bangor, ME: November 11, 2000
TA–W–40,371; Regal Rugs, Inc., A Subsidiary of Spring Industries, Inc., North Vernon, IN: November 1, 2000

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) or (4) were not met. Imports from Canada or Mexico did not contribute importantly to worker's separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04460; National Starch and Chemical Co., Meredosia, IL
NAFTA–TAA–05159; Colorgraphic Offset Printing Co., Lancaster, NY
NAFTA–TAA–05191; Chiquita Processed Foods LLC, Eugene, OR
NAFTA–TAA–05375; Shasta Paper Co., Anderson, CA
NAFTA–TAA–05482; Texfi Industries, Inc., Rocky Mount Plant, Rocky Mount, NC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–5151; Fiskars Consumer Products, Inc., Wausau, WI: July 26, 2000
NAFTA–TAA–05324; Honeywell, Inc., Clearfield, UT: September 10, 2000
NAFTA–TAA–05427; Richmond Technology, An Illinois Tool Works Co., Redland, CA: October 8, 2000
NAFTA–TAA–05531; Regal Rugs, Inc., A Subsidiary of Spring Industries, Inc., North Vernon, IN
NAFTA–TAA–5609 & A; Key Industries, Buffalo, MO and Nevada, MO: December 5, 2000
NAFTA–TAA–05137; Kemet Electronics Corp., Greenwood Plant, Greenwood, SC, A; Mauldin Plant, Simpsonville, SC, B; Simpsonville Plant, Simpsonville, SC and C; Fountain Inn Plant, Fountain Inn, SC: July 23, 2000
NAFTA–TAA–05357; Linq Industrial Fabrics, Inc., Marino Technologies Div., Opalocka, FL: September 18, 2000
NAFTA–TAA–055883; Weavexx, A Xerium Co., Greenville, TN: November 27, 2000
NAFTA–TAA–05214; Horton, Inc., Britton, SD: June 29, 2000

I hereby certify that the aforementioned determinations were issued during the month of January, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 15, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1784 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,557]

Midwest Garment Co., Chesterfield, Missouri; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 14, 2002, in response to a worker petition which was filed by the company on behalf of workers at Midwest Garment Company, Chesterfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1783 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 211(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 4, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 4, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 12/17/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,429	Onkyo America (Co.)	Columbus, IN	11/30/2001	Automotive Speakers.
40,430	Vesuvius USA (Co.)	Cleveland, OH	11/05/2001	Hot and Cold Rolled Steel.
40,431	ACME Steel (Wkrs)	Riverdale, IL	11/28/2001	Hot Rolled Steel.
40,432	Phoenix Finishing (Co.)	Gaffney, SC	11/01/2001	Finished Broadwoven Fabrics.
40,433	Olin Brass (Co.)	Indianapolis, IN	11/09/2001	Brass and Copper Alloys.
40,434	Imperial Carbide (Co.)	Meadville, PA	11/29/2001	Machine Parts, Die Parts, Die and Molds.
40,435	Telaxrs Communications (Wkrs)	So. Deerfield, MA	11/04/2001	Communication Products.
40,436	Dometic Corp.(Co.)	LaGrange, IN	11/12/2001	R/V Air Conditioners.
40,437	Thomas Henshall Silk (UNITE)	Paterson, NJ	9/27/2001	Finished Textile Fabrics.
40,438	Appleton Papers (Co.)	Camp Hill, PA	10/31/2001	Carbonless Paper.
40,439	Communication Associates (Wkrs)	Anniston, AL	11/14/2001	Power Magnetics.
40,440	Cardinal Brands, Inc (Wkrs)	Washington, MO	10/22/2001	Desk Folders Business Bags.
40,441	Road Machinery Co. (Wkrs)	Bayard, NM	12/03/2001	Heavy Road Machinery.
40,442	Case New Holland Global (Co.)	Burlington, IA	12/06/2001	Self-Propelled Backhoes, Bulldozers.
40,443	James Hamilton Constructi (Co.)	Silver City, NM	12/07/2001	Copper.
40,444	Purcel Tire (Co.)	Silver City, NM	12/03/2001	Mining Tires.
40,445	Composidie (Wkrs)	Apollo, PA	11/05/2001	High Speed Progressive Dies and Tolling.
40,446A	Value Line Textiles, Inc (Co.)	Lenoir City, TN	10/31/2001	Socks.
40,446	Value Line Textiles (Co.)	Pilot Mountain, NC	10/31/2001	Socks.
40,447	SCI, Inc. (Wkrs)	Lynchburg, VA	11/01/2001	Cellular Phones.
40,448	Metalloy Corp. (Wkrs)	Hudson, MI	11/15/2001	Truck Parts.
40,449	Clebert's Hosiery Mill (Co.)	Connelly Spring, NC	11/07/2001	Men's and Ladies' Socks.
40,450	A.O. Smith Electrical (Wkrs)	Lexington, TN	11/28/2001	Electric Motors.
40,451	Modern Prototype (Co.)	Troy, MI	11/02/2001	Automotive Prototype Parts.
40,452	N and H Corporation (Co.)	Mohnton, PA	11/06/2001	T-Shirt, Shorts and Lingerie.
40,453	Penley Corporation (Co.)	West Paris, ME	12/06/2001	Wooden Spring Clothes Pens.
40,454	Biltwell Clothing Co. (Co.)	Ractor, AR	11/09/2001	Men's Tailored Pants.
40,455	Phelps Dodge Bagdad (Co.)	Bagdad, AZ	11/13/2001	Copper—Mining and Milling.
40,456	Magnequench International (UAW)	Anderson, IN	12/07/2001	Magnets and Magnetic Power.

[FR Doc. 02–1774 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,750]

Portex Technologies, College Point, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Portex Technologies, College Point, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,750; Portex Technologies College Point, New York (November 1, 2001)

Signed at Washington, DC this 16th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1785 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 15, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade

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Adjustment Assistance, at the address shown below, not later than February 4, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC this 21st day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 12/21/2001

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,457	Trane Company (IAMAW)	La Crosse, WI	10/10/2001	Air conditioning equipment.
40,458	Handler Textile—Duro (Co.)	Stone Mountain, GA	10/24/2001	Textile processing.
40,459	Ispat Inland, Inc. (Co.)	East Chicago, IL	12/13/2001	Cold rolled flat steel.
40,460	Radax Industries (Wrks)	Webster, NY	10/22/2001	Hex socket set screws.
40,461	Daishowa American Co. Ltd (Wrks)	Port Angeles, WA	12/10/2001	Alder chips.
40,462	Vishay Vitramon (Co.)	Roanoke, VA	12/12/2001	Ceramic capacitors.
40,463	Dunham-Bush, Inc. (Co.)	Harrisonburg, VA	10/31/2001	Heating and air haulders equipment.
40,464	Low Cost Manufacturing (Wrks)	Utica, NY	10/08/2001	Customer replacement units.
40,465	Hershey Foods Corp (Wrks)	Pennsburg, PA	11/29/2001	Hershey's Pot of Gold Candies.
40,466	Precision Cable Assemblie (Wrks)	Longansport, IN	12/14/2001	Wire harnesses—cables.
40,467	Gold Seam (Wrks)	Passaic, NJ	10/30/2001	Ladies' blouses.
40,468	DT Magnetics Int'l (Wrks)	Dover, NH	10/22/2001	Power transformers.
40,469	Kellogg Crankshaft Co (Union)	Jackson, MI	11/15/2001	Automobile crankshaft.
40,470	RBN Manufacturing, Inc. (Co.)	Dothan, AL	11/09/2001	Boxer shorts, knit tops.
40,471	FCI USA, Inc. (Wrks)	Cypress, CA	10/23/2001	Data and telecommunications.
40,472	Romart, Inc. (UNITE)	Scranton, PA	10/24/2001	Men's dress and sport coats.
40,473	Marlan Tool, Inc. (Wrks)	Meadville, PA	10/31/2001	Design molds—plastic parts.
40,474	Acme Steel Co (USWA)	Chicago, IL	10/26/2001	Steel coils.
40,475	Quality Tool and Die (Wrks)	Meadville, PA	11/16/2001	Mold and die tooling.
40,476	A.S. Haight (UNITE)	Cartersville, GA	11/19/2001	Screen printing cloth.
40,477	Precision Tool and Die (Wrks)	Louisville, KY	11/16/2001	Tooling and die components.
40,478	Dimension Carbide, Inc. (Co.)	Guys Mills, PA	11/15/2001	Custom form grinding.
40,479	Gategourmet Unit 498 (Wrks)	Charlotte, NC	11/06/2001	Food for airlines.
40,480	Flambeau Micro (Co.)	Sun Prairie, WI	10/25/2001	Motorola cell phone components.
40,481	Artex International (Co.)	Highland, IL	10/20/2001	Table linens—airline, restaurants.
40,482	Bridgestone/Firestone (USWA)	Russellville, AR	10/19/2001	Inner tubes.
40,483	Sumitomo Electric Wiring (Co.)	Morgantown, KY	12/12/2001	Electric wiring harnesses.
40,484	Bristol Compressors, Inc (Co.)	Sparta, NC	10/22/2001	Compressors for air conditioning.
40,485	Dyersburg Corp. (Co.)	Charlotte, NC	12/11/2001	Yarn dye and piece dye knit fabric.
40,486	LSI Logic (Wrks)	Santa Clara, CA	11/07/2001	Wafer fabrication.
40,487	Atlanta Manufacturing (Wrks)	Norcross, GA	10/22/2001	Cable television electronic headware.
40,488	Sunbrand (Wrks)	Norcross, GA	11/05/2001	Sell & distribution of equipment.
40,489	Empire Iron Mining (Co.)	Palmer, MI	11/30/2001	Iron ore.
40,490	Schmalbach-Lubeca Plastic (Wrks)	Erie, PA	10/23/2001	Metal mold base assemblies.
40,491	Wesley Industries, Inc (Co.)	New Haven, MI	11/20/2001	Gray iron OEM automotive parts.
40,492	Coastal Lumber Co (Wrks)	Suffolk, VA	12/04/2001	Wood products.
40,493	Kaiser Aluminum Corp (USWA)	Tacoma, WA	11/09/2001	Aluminum products.
40,494	Accuride International (Co.)	So. Bend, IN	12/17/2001	Linear slides.
40,495	Galey and Lord Services (Wrks)	Eagle Pass, TX	11/30/2001	Men's and ladies' pants.

[FR Doc. 02–1773 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05634]

A.O. Smith, Electrical Products Co., Scottsville, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 11, 2001, in response to a petition filed by a company official on behalf of workers at A.O. Smith Electrical Products Company, Scottsville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1786 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than February 4, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than February 4, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Chemical Lime (Co)	Douglas, AZ	12/12/2001	NAFTA–5,685	Lime (calcium oxide).
Road Machinery—Phelps Dodge Chino (Wkrs).	Bayard, NM	12/31/2001	NAFTA–5,686	Machine parts.
Valhoma Corp.—Nexus Management (Wkrs).	Tulsa, OK	12/28/2001	NAFTA–5,687	Horse holters.
Greenwood Mills—Liberty Mfg. (Co.)	Liberty, SC	12/28/2001	NAFTA–5,688	Finished denim fabric.
Knitcraft (Co.)	Belmont, NC	01/02/2002	NAFTA–5,689	Unfinished knit goods.
Titan Plastic Group—Plastic Engineered (Wkrs).	El Paso, TX	01/02/2002	NAFTA–5,690	Plastic injection molded parts.
International Paper (PACE)	Menasha, WI	11/13/2001	NAFTA–5,691	Silicon coated substrate.
Emerson Electric—Alco Controls (Co.).	Hazlehurst, GA	12/28/2001	NAFTA–5,692	Refrigeration filter driers.
Braeco (Co.)	Marshall, NC	12/31/2001	NAFTA–5,693	Tee shirts and shorts.
King Press (Co.)	Joplin, MO	12/28/2001	NAFTA–5,694	Printing presses.
B.B. Walker Co. and Bender Shoe Co. (Co.).	Asheboro, NC	12/27/2001	NAFTA–5,695	Western boots, work shoes.
Pittsburgh Gear (USWA)	Pittsburgh, PA	12/28/2001	NAFTA–5,696	Gears and transmissions.
R.B. and W Corp. (USWA)	Coraoplis, PA	12/28/2001	NAFTA–5,697	Fasterns for automotive.
Leech Tool and Die Works (Wkrs)	Meadville, PA	12/28/2001	NAFTA–5,698	Tool and dies (molds).
Applied Concepts (Wkrs)	Warrendale, PA	12/28/2001	NAFTA–5,699	Hand tools.
Hein Werner—Snap On (Co.)	Baraboo, WI	01/03/2002	NAFTA–5,700	Collision repair equipment.
Treno Technologies (Wkrs)	Round Rock, TX	01/04/2002	NAFTA–5,701	Plastic and sheetmetal computer cases.
Meridian Automotive Systems (Wkrs)	Portland, OR	01/02/2002	NAFTA–5,702	Rigs.
ITT Industries (Wkrs)	Newton, MA	01/07/2002	NAFTA–5,703	Switches.
Odetics, Inc. (Co.)	Anaheim, CA	12/07/2001	NAFTA–5,704	Viedo surveilance recorder.
Denso Sales California (Co.)	Long Beach, CA	11/10/2001	NAFTA–5,705	Automotive tube, hoses, air conditioning.
Clearwater Forest Industries (Co.)	Kooskia, ID	01/03/2002	NAFTA–5,706	Dimensional lumber.
Hunter Sadler—Lanier Clothes (Co.)	Tupelo, MS	01/04/2002	NAFTA–5,707	Clothing.
Seco Warwick Corporation (Co.)	Meadville, PA	01/11/2002	NAFTA–5,708	Industrial heat treating equipment.
Precision Twist Drill (Wkr)	Rhinelander, WI	12/20/2001	NAFTA–5,709	Twist drill bits.
Rockwell Collins (Co.)	Pomona, CA	01/07/2002	NAFTA–5,710	In flight entertainment system.
FCI USA (Wkrs)	Emigsville, PA	01/11/2002	NAFTA–5,711	Electrical connectors.
Crown, Corky and Seal. Pakaging (Wkrs).	So. Connellsville, PA	01/11/2002	NAFTA–5,712	Plastical lined closures.
Borg Warner Automotive (Wkrs)	Coldwater, MI	01/08/2002	NAFTA–5,713	Automotive transmission components.
Artex International (Wkrs)	Highland, IL	01/08/2002	NAFTA–5,714	Table linens (napkins & tablecloths).
Bilco Manufacturing (Co.)	Macon, GA	01/09/2002	NAFTA–5,715	Wooden shell rolls.
VF Jeanswear (Wkrs)	Prague, OK	01/08/2002	NAFTA–5,716	Jeans and causalwear.
National Oilwell (Wkrs)	McAlester, OK	01/08/2002	NAFTA–5,717	Pumps.
Iris Graphics—A Creo Co. (Co.)	Billerila, MA	01/07/2002	NAFTA–5,718	Proofing products.
Monona Wire (Co.)	Livington, WI	01/09/2001	NAFTA–5,719	Wiring harnesses for medical.
Hershey Chocolate and Confectionery (Wkrs).	Wheatridge, CO	12/13/2001	NAFTA–5,720	Hard candy.
Steelcase (Wkrs)	Fletcher, NC	01/10/2002	NAFTA–5,721	Wood.
Siemens Energy and Automation (Co.).	Osceola, IA	01/04/2002	NAFTA–5,722	Elevator starters.

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APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Screen Creations (Wkrs)	O'Fallon, MO	01/10/2002	NAFTA–5,723	T-shirts.
Credence Systems (Wkrs)	Hillsboro, OR	11/09/2001	NAFTA–5,724	Automative test equipment.
Inoac Packaging Group (Co.)	Leitchfield, KY	01/10/2002	NAFTA–5,725	Plastic bottle decoration.
Agere Systems (Co.)	Breingsville, PA	01/14/2002	NAFTA–5,726	Optic devices.
Burlington Industries (Wkrs)	Cordova, NC	01/08/2002	NAFTA–5,727	Synthetic fabrics.
Quality Metal Products (Co.)	Bessener City, NC	01/14/2002	NAFTA–5,728	Fabricated truck parts.
M.S. Chambers and Son (Co.)	Baltic, CT		NAFTA–5,729	Gravure print cylinders.
SDS Lumber (Co.)	Bingan, WA	01/14/2002	NAFTA–5,730	Plywood.
Hammond Power Solutions (Co.)	Baraboo, WI	01/14/2002	NAFTA–5,731	Transformers.
New Era Textile Parts (Co.)	Gastonia, NC	01/11/2002	NAFTA–5,732	Card screens and card plates.
Charmilles Technologies (Wkrs)	Owosso, MI	01/11/2002	NAFTA–5,733	Electrical discharge machinery.
Emerson (Co.)	Oxford, MS	01/08/2002	NAFTA–5,734	Fractional horse power motor.

[FR Doc. 02–1781 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04606]

Collis, Inc., Elizabethtown, Kentucky; Notice of Revised Determination on Reconsideration

On December 17, 2001, the Department, issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on August 8, 2001, because criteria (3) and (4) of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. There was no company imports from Canada or Mexico, nor was production shifted from the subject facility to Mexico or Canada.

New information received by the Department shows that a meaningful portion of plant production was shifted to Mexico during the relevant period. The workers at the subject plant were engaged in employment related to the production of residential refrigerator shelves and were not separately identifiable by product line.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Collis, Inc., Elizabethtown, Kentucky who became totally or partially separated from employment on or after February 16, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 14th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1778 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5418]

CTI Audio, Inc., Conneaut, Ohio; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 11, 2001, in response to a petition filed by a company official, on behalf of workers at CTI Audio, Inc., Conneaut, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1772 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Nafta–05208]

Dunlap Sales, Inc.; Hopkinsville, Kentucky; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Dunlap Sales, Inc., Hopkinsville, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–05208; Dunlap Sales, Inc. Hopkinsville, Kentucky (January 3, 2002)

Signed at Washington, DC this 10th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1776 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05329]

Emerson Process Management, Formerly Fisher Controls Regulator Division, McKinney, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 19, 2001, applicable to workers of Emerson Process Management, Regulator Division, McKinney, Texas. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63262).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of regulators for gas pipelines.

New findings show that the Department incorrectly identified the subject firm name. The Department is amending this certification determination to correctly identify the subject firm title name to read Emerson Process Management, formerly Fisher Controls, Regulator Division.

The intent of the Department's certification is to include all workers of Emerson Process Management, formerly Fisher Controls, Regulator Division, McKinney, Texas who were adversely affected by layoffs, declines in sales and production and a shift in production of regulators for gas pipelines to Mexico.

The amended notice applicable to NAFTA–05329 is hereby issued as follows:

All workers of Emerson Process Management, formerly Fisher Controls, Regulator Division, McKinney, Texas, who became totally or partially separated from employment on or after September 11, 2000, through November 19, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1779 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04636]

Freightliner LLC Truck Manufacturing and Parts Plant, Portland, Oregon; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 19, 2001, applicable to workers of Freightliner LLC, Truck Manufacturing Plant, Portland, Oregon. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63262).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medium and heavy-duty trucks.

New information shows that the Department incorrectly identified the subject firm name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read Freightliner LLC, Truck Manufacturing and Parts Plant.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Freightliner LLC, Truck Manufacturing and Parts Plant, Portland, Oregon, who were adversely affected by a shift in production of medium and heavy-duty trucks to Mexico.

The amended notice applicable to NAFTA—04636 is hereby issued as follows:

All workers of Freightliner, LLC, Truck Manufacturing and Parts Plant, Portland, Oregon, who became totally or partially separated from employment on or after March 9, 2000, through November 19, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1780 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5219]

Henry Manufacturing, Swat Fame, City of Industry, Los Angeles, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 16, 2001, in response to a petition which was filed on behalf of workers at Henry Manufacturing, Swat Fame, City of Industry, Los Angeles, California.

The U.S. Department of Labor was unable to locate an official of the company to obtain the information necessary to render a decision.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1777 Filed 1–23–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5602]

Intervet, Inc., Gainesville Facility; Gainesville, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on December 4, 2001, in response to a worker petition which was filed by the company on behalf of workers at Intervet, Inc., Gainesville Facility, Gainesville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1775 Filed 1–24–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5622]

Lexmark International, Lexington, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment

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assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on December 5, 2001, in response to a worker petition which was filed by the company on behalf of workers at Lexmark International, Lexington, Kentucky.

The investigation revealed that on January 5, 2001, workers of the subject firm were certified eligible to apply for NAFTA–TAA under petition number NAFTA–4314, which does not expire until January 5, 2003.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1782 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5439]

Midwest Garment Co., Chesterfield, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on October 17, 2001, in response to a worker petition which was filed by the company on behalf of workers at Midwest Garment Company, Chesterfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1787 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Nicholson, Personnel Officer, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). P.J. Winzer, who will serve as Chair, and Barbara Wade have been appointed as new members. John Seal, Clyde B. Blandford, Jr., and Robert Lawshe will continue to serve as members of the PRB.

Dated: January 17, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02–1676 Filed 1–23–02; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Evaluation of Credit Union Non-Maturity Deposits; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: NCUA is soliciting public comment on a study by National Economic Research Associates (n/e/r/a), titled "The Evaluation of Credit Union Non-Maturity Deposits." NCUA intends to consider whether to use the study to prepare examiner guidance on the appropriate treatment of these instruments in the assessment of interest rate risk.

DATES: Comments must be received on or before April 24, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Jeremy Taylor, Senior Investment Officer, Office of Investment Services, at the above address or telephone (703) 518–6620; or Dan Gordon, Senior Investment Officer, Office of Investment Services, at the above address or telephone (703) 518–6620.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA commissioned n/e/r/a, an economics-consulting firm, to complete a study of methods to value non-maturity shares. The study has been completed and is available following the text of this Request for Comments on the NCUA website at *http://www.ncua.gov/news/draftboardactions/BAM-01-12-13-6.pdf*. Alternatively, to get to the study from the NCUA website (*www.ncua.gov*), select News, then Proposed Rules, then select on the page that follows, Request for Comments "The Evaluation of Credit Union Non-Maturity Deposits." It can also be obtained in hard copy by requesting it from the Office of Public and Congressional Affairs, 1775 Duke Street, Alexandria, Virginia, 22314–3428, telephone number (703) 518–6330.

NCUA believes the majority of credit unions would not be affected by the results of the n/e/r/a study, either because their interest rate risk profile is limited, or because they treat shares at par value for interest rate risk measurement purposes. This study will be most relevant to those institutions that assume non-maturity shares materially mitigate the risk of a high level of long-term assets.

Non-maturity shares include share drafts, regular shares and money market share accounts. Non-maturity shares may provide mitigation of interest rate risk to the extent they are a stable, low cost source of funds. Non-maturity shares have uncertain cash flows. This is because they have no contractual maturity and the dividends are set by the credit unions. Therefore, in interest rate risk assessment, credit unions must make assumptions on these cash flows.

NCUA in its asset liability review questionnaire provides guidance to examiners in establishing a scope for their review of a credit union's asset liability management (ALM), including assessment of interest rate risk. However, the questionnaire does not provide a framework for examiner review of non-maturity share assumptions.

The n/e/r/a study contains a comprehensive review of the literature on valuing non-maturity deposits. It provides a conceptual evaluation of alternative methods, with an analysis of the costs and benefits of these methods. The study discusses implementation issues for NCUA and credit unions, and provides recommendations for the most suitable valuation approaches to meet NCUA and credit union needs. The study proposes effective maturities that may reasonably be used for credit union shares where the cash flows are not explicitly documented and modeled by the credit union. The study proposes a method to value these shares, and discusses the appropriate discount rate for these funds. The characteristics of credit union shares, and their differences from bank depository funds, are included in the discussion. Recommendations are also provided where credit unions analyze their cash flows from these shares.

The n/e/r/a study may be useful in evaluating net economic value (NEV) analysis. NEV analysis measures the potential effect of changes in interest rates on net economic value (NEV). NEV means the fair value of assets minus the fair value of liabilities. Valuation techniques used to estimate fair values require assumptions about maturities and interest rates to calculate the present value of cash flows of non-maturity shares. As with gap analysis and review of income simulation models, examiners judge whether these assumptions are reasonable.

B. Areas for Comment

When its analysis of the n/e/r/a study is completed, NCUA will likely use the conclusions to provide guidance for examiner ALM scope determination and evaluation of credit union interest rate risk models and consider what should be the next stage in the evaluation of these issues. NCUA desires to identify reasonable methods for assumptions, valuation techniques and estimated values for non-maturity shares.

NCUA is soliciting comments on the study. Specifically, the agency is interested in comment on the following issues.

(1) Provide specific comments on the study. If there are points with which you disagree or you believe are incorrect, provide both the specific citations in the study and the support for your conclusion.

(2) NCUA is considering establishing a "safe harbor" for non-maturity share assumptions, such as a maturity of 1.0 year for money market shares, 2.5 years for regular shares, and 3.0 years for share drafts. Examiners would judge these, or shorter, terms to be acceptable maturity assumptions for non-maturity shares. Please comment on whether this approach is reasonable.

(3) The characteristics of a non-maturity account, not its labeling, are important determinates of value. For example, two credit unions may have accounts labeled regular shares: the first credit union may rarely change the interest rate; in contrast, the second may reset the rate frequently, similar to a money market share account at the first credit union. What documentation, if any, would be appropriate to use "safe harbor" assumptions?

(4) A credit union might choose to use its own empirical analysis to demonstrate a risk mitigation value larger than a "safe harbor" assumption. NCUA examiners would expect a statistically valid empirical analysis to justify such values. Should NCUA use the validation guidelines addressed in Chapter VIII of the report? If not, please provide alternative guidelines you believe are appropriate and provide evidence to support your recommendation.

(5) Is there background information from sources other than those covered in the n/e/r/a study that NCUA should consider? Please indicate the source of the information and the results. If possible, provide complete copies of the studies or the analysis.

(6) NCUA is contemplating whether to conduct an empirical study of credit union non-maturity share behavior. Please provide specific recommendations on what should be included in such a study.

(7) Are there other considerations in the valuation of shares, beyond those discussed in the n/e/r/a study, which should be taken into account?

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1682 Filed 1–23–02; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–344 and 72–17]

Portland General Electric Company Trojan Nuclear Plant and Trojan Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Application Regarding Proposed Acquisition of Portland General Electric Company by Northwest Natural Holdco and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the indirect transfer of Facility Operating License No. NPF–1 for the Trojan Nuclear Plant (TNP or Trojan) and Materials License No. SNM–2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI) to the extent currently held by Portland General Electric Company (PGE), as part owner and licensed operator of TNP and the Trojan ISFSI.

According to an application for approval filed by PGE, Northwest Natural Holdco (NW Natural Holdco) has entered into an agreement to purchase all of the common stock of PGE from Enron Corporation (Enron). PGE, currently a wholly-owned subsidiary of Enron, would become a wholly-owned subsidiary of NW Natural Holdco, thereby effecting an indirect transfer of the TNP and Trojan ISFSI licenses, to the extent held by PGE, to NW Natural Holdco. No physical or operational changes are being proposed to TNP or the Trojan ISFSI in the application. No direct transfer of the licenses for TNP or the Trojan ISFSI would result from the change in ownership of PGE. PacifiCorp and the Eugene Water and Electric Board (EWEB), the other co-owners of TNP and the Trojan ISFSI, are not involved in the purchase of PGE, and the licenses as held by PacifiCorp and EWEB are not presently subject to any proposed transfer.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effectuating the indirect tranfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 13, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance

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with the Commission's rules of practice set forth in 10 CFR part 2, subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications." In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas R. Nichols, Esq., General Counsel, Portland General Electric Company, Suite 1700, 121 SW Salmon Street, Portland, Oregon 97204 (telephone number 503–464–8402); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 25, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 6, 2001, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, MD, this 17th day of January, 2002.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1720 Filed 1–23–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25370; (812–12654)]

Harbor Fund and Harbor Capital Advisors, Inc.; Notice of Application

January 16, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") to amend a prior order that granted an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order amending a prior order (the "Prior Order") that permits them to enter into and materially amend sub-advisory agreements without shareholder approval.[1]

Applicants: Harbor Fund (the "Trust") and Harbor Capital Advisors, Inc. (the "New Adviser").

FILING DATE: The application was filed on October 4, 2001 and amended on January 14, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: One SeaGate,, Toledo, Ohio 43666.

FOR FURTHER INFORMATION CONTACT: Jean Minarick, Senior Counsel, at (202) 942–0527 or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. The Trust is an open-end management investment company currently composed of thirteen series ("Funds").[2] The New Adviser, a wholly owned subsidiary of Robeco Groep, N.V., acts as investment adviser to the Trust and has the responsibility, subject to oversight by the board of trustees of the Trust ("Board") to oversee the selection of investment sub-advisers ("Portfolio Managers") which it selects and to recommend to the Trust's Board their hiring, termination and replacement. The New Adviser is registered under the Investment Advisers Act of 1940.

2. On October 21, 1997, the Trust and its prior investment adviser, then a wholly owned subsidiary of Owens-Illinois, Inc. (the "Prior Adviser"), received the Prior Order permitting the Trust and the Prior Adviser to enter into and materially amend sub-advisory agreements ("Sub-Advisory Agreements") for the Funds without obtaining shareholder approval.

[1] *Harbor Fund and Harbor Capital Advisors, Inc.*, Investment Company Act Release Nos. 22832 (Sept. 25, 1997) (notice) and 22863 (Oct. 21, 1997) (order).

[2] Applicants request that any relief granted also apply to any future series of the Trust and any other registered open-end management investment company or series thereof (a) that are advised by the New Adviser or any entity controlling, controlled by or under common control with the New Adviser, and (b) that use the management structure described in the application ("Future Funds," and together with the Funds, the "Funds.") Any Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The trust is the only existing open-end management investment company that currently intends to rely on the order. No Fund will have in its name the name of a Portfolio Manager, as defined below.

Applicants seek to amend the Prior Order to permit the New Adviser to enter into and materially amend Sub-Advisory Agreements for the Funds without obtaining shareholder approval. Except for the identity of the parent company, the New Adviser and the Prior Adviser are substantially similar in all material respects. The entire management team of the Prior Adviser has continued in their same capacities with the New Adviser. All key employees of the Prior Adviser have continued their employment with the New Adviser. Applicants also seek to modify condition 6 to the Prior Order to conform with recent precedent.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that amending the Prior Order as requested would be consistent with the standards of section 6(c) of the Act. The New Adviser employs the same manager-of-managers investment management approach as did the Prior Adviser and similarly holds itself out to the public as an investment adviser whose strength, experience and expertise lies in its ability to evaluate, select and oversee those Portfolio Managers who can add the most value to a shareholder's investment in a Fund. While the New Adviser is a new legal entity, its experience in operating as a manager-of-managers comes from the experience of its management and staff, all of whom were previously employed by the Prior Adviser.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of the Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the New Adviser has the ultimate responsibility to oversee Portfolio Managers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be persons each of whom is not an "interested person" (as defined in section 2(a)(19) of the Act) (the "Disinterested Trustees"), and the nomination of new or additional Disinterested Trustees will be at the discretion of the then-existing Disinterested Trustees.

4. The New Adviser will not enter into a Sub-Advisory Agreement with any Portfolio Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust, the New Adviser or the Funds, other than by reason of serving as a Portfolio Manager to one or more of the Funds (the "Affiliated Portfolio Manager") without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the New Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, the New Adviser will furnish the shareholders of the affected Fund with all information about a new Portfolio Manager that would be contained in a proxy statement. This information will include any change in such disclosure caused by the addition of a new Portfolio Manager. The New Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The New Adviser will provide general management services to each Fund, including overall oversight responsibility for the general management and investment of each Fund's securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Portfolio Managers; (c) when appropriate, recommend to the Board the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (d) monitor and evaluate the performance of Portfolio Managers, including their compliance with the Fund's investment objectives, policies and restrictions; and (e) implement procedures to ensure that the Portfolio Managers comply with the Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of the New Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Portfolio Manager except for: (a) Ownership of interests in the New Adviser or any entity that controls, is controlled by, or is under common control with the New Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by, or is under common control with a Portfolio Manager.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1698 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45282; File No. SR–CHX–2001–30]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 21, 2001, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule, effective through June 30, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria described below. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to change its fee schedule to provide for assessment of a marketing fee of $.01 per share applicable to "Subject Transactions"[3] in "Subject Issues"[4] occurring on or before June 30, 2002. The marketing fee would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently imposes a marketing fee under a provision of the CHX fee schedule that, by its term, would expire on December 31, 2001.[5] Under the system in place until December 31, 2001, the CHX calculates, bills, and collects the marketing fee and then remits the proceeds to the specialist firm that trades the Subject issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment for order flow arrangements relating to the Subject Issue, or in certain instances, to market makers who have contributed to market share growth. The CHX has also issued quarterly refunds of unspent marketing fee proceeds to market makers, floor brokers, and specialists, on a *pro rata* basis, for amounts in excess of $1,000.

The CHX is currently proposing to: (a) Extend the marketing fee provision until June 30, 2002; (b) modify the definition of Subject Issue to exclude issues other than ETFs' (c) revise the definition of Subject Transaction to include any trade with a customer where the order is delivered to the CHX via the MAX system; and (d) revise procedures to preclude assessment of the marketing fee against specialists in the case of transactions where market makers are exercising their entitlement rights under CHX rules.

The CHX states that the continued imposition of the marketing fee is intended to allocate equitably the financial burden of seeking order flow for Subject Issues. Prior to the establishment of the current fees program, according to the CHX, a CHX specialist trading a particular Subject Issue was the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as any licensing fees that the licensor of the product imposes.[6] The CHX also notes that, prior to the implementation of the current program, CHX market makers that participated in transactions in Subject Issues did not share any of these costs.

By extending the current payment for order flow program, the proposed rule change would continue to allow a specialist trading a Subject Issue to impose the marketing fee in instances where the specialist believes that it would be appropriate to allocate the financial burden of trading the Subject Issue among all those who trade it, including the specialist and market makers. The CHX believes that the proposed rule change will continue to provide specialist trading Subject Issues with sufficient incentive to continued their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act[7] in that it would provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change From Members, Participants or Others

The CHX neither solicited nor received written comments with respect to the proposed rule change.

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–30 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1702 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[3] "Subject Transaction" means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] "Subject Issue" means any issue which constitutes an exchange-traded fund ("ETF") and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (9b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10).

[6] Under the proposed rule change, the marketing fee would be assessed only against ETF products, which almost always have an associated licensing fee.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45300; File No. SR–NASD–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc.; To Amend NASD Code of Procedure Rule 9522

January 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On January 11, 2002, NASD Regulation amended the proposal.[3] NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Code of Procedure Rule 9522, Initiation of Eligibility Proceeding; Member Regulation Consideration, to describe in the Rule the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(2)(A) No change.

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h–1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.];*or*

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation proposes to amend Rule 9522 to expressly describe in the Rule those instances in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC–400 application in those cases in which the disqualifying event is excepted from the "full" notice requirements of Rule 19h–1 under the Act,[6] but where a "short form" notification to the SEC under Rule 19h–1 is still required.[7] The proposed rule change provides a complete description, within Rule 9522, of those cases in which the disqualifying event permits "short form" notification to the SEC under Rule 19h–1.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 11, 2002 letter from Sarah J. Williams, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation provided its rationale for waiver of the 30-day operative delay. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–(f)(6). The 60-day abrogation period runs from January 11, 2002, the date that NASD Regulation filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). NASD Regulation asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay.

[6] 17 CFR 240.19h–1.

[7] *See* Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (SR–NASD–99–78) at 48269.

[8] 15 U.S.C. 78o–3(b)(6).

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B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD Regulation has asked that the Commission waive the 5-day pre-filing notice requirement and accelerate the operative date. The Commission finds good cause to do so, because such designation is consistent with the protection of investors and the public interest. Rule 9522, in its current form, does not provide a full description of the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. Because the proposed rule change would amend Rule 9522 to provide a complete description of those cases in which the disqualifying event requires "short form" notification to the SEC under Rule 19h–1, the Commission finds waiver of the pre-filing notice requirement and operative delay is consistent with the protection of investors and the public interest. For these reasons, the Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period to allow the proposed rule change to be both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submission should refer to file number SR–NASD–2002–02 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1699 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that, should cases arise where approval of an MC–400 application for relief from NASD eligibility requirements does not reasonably fall within the scope of Rule 9522 as amended by this proposed rule change, the NASD must file a proposed rule change to amend the Rule.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45283; File No. SR–NASD–2001–84]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 by the National Association of Securities Dealers, Inc. To Change the Description of the Market Capitalization Listing Standard to Market Value of Listed Securities

January 15, 2002.

I. Introduction

On November 14, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change to modify the description of the market capitalization listing standard to market value of listed securities. Nasdaq is also proposing to provide a definition of the term "listed securities" in Nasdaq's Marketplace Rules.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal. On December 18, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

II. Description

The Exchange has proposed to amend the description of the market capitalization listing standard to market value of listed securities. One of the standards under which issuers can qualify for listing on The Nasdaq National Market ("National Market") is to have a market capitalization of at least $75,000,000. Issuers may also qualify for continued inclusion on the National Market with at least $50,000,000 in market capitalization. The minimum market capitalization standards for initial and continued inclusion on The Nasdaq SmallCap Market are $50,000,000 and $35,000,000, respectively.

For purposes of initial listing eligibility, Nasdaq has historically interpreted the term market capitalization to include only the value of listed securities. In connection with continued listing eligibility, however, Nasdaq has also considered market capitalization to include classes of non-redeemable convertible preferred stock, provided that the conversion price was "in the money." According to Nasdaq, this approach has created uncertainty among issuers and investors as to the definition and application of the market capitalization listing standard. In addition, Nasdaq's Marketplace Rules do not define market capitalization and Nasdaq believes that this term may be thought to include more than just the value of listed securities or non-redeemable convertible preferred stock that is in the money.

Accordingly, Nasdaq is amending the description of the market capitalization listing standard so that it is based on the market value of listed securities. In conjunction with this change, Nasdaq also is adding a definition of the term "listed securities" to Nasdaq's Marketplace Rules. Nasdaq believes that these modifications will clarify for issuers and investors that initial and continued listing eligibility will be based only upon the value of an issuer's securities that are quoted on Nasdaq or listed on a national securities exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] In particular, the Commission believes that the proposal is consistent with the requirements of sections 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the rule change should clarify the standards under which issuers can qualify for listing on the National Market. In particular, the rule change should clarify for issuers and investors that initial and continued listing eligibility will be based only upon the value of an issuer's securities that are quoted on Nasdaq or listed on a national securities exchange.

IV. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, Nasdaq notified the Commission that in order to minimize the impact of the proposed rule change on existing issuers, the rule will go into effect on June 1, 2002. The Commission believes that this is a suitable delay to allow issuers listed on the National Market to become informed of the rule change and prepare accordingly. Therefore, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.[7]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–84 and should be submitted by February 14, 2002.

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2001–84) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1703 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45116 (November 28, 2001), 66 FR 63275 (December 5, 2001).

[4] *See* Letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 17, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange requested that the proposed rule change become effective on June 1, 2002.

[5] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(2) and (6).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No 34–45285; File No. SR–NASD–2001–93]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Fees Associated With the Nasdaq Application of the Primex Auction System™

January 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2001, the National Association of Securities Dealers, Inc., ("NASD" or "Association") through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. Nasdaq will not assess fees pursuant to this fee schedule for approximately the first three months after the Nasdaq application of the Primex Auction System ("Primex" or "System") is operational.[3] Nasdaq intends to begin assessing fees pursuant to this fee schedule beginning on April 1, 2002. However, Nasdaq will issue a Head Trader Alert to notify users of the exact date it will begin assessing fees. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As described above, Nasdaq will not assess any fees pursuant to the fee schedule during the initial few months the System is operating, which also means Nasdaq will not share any transaction fees in accordance with the fee schedule during such period. However, Primex Trading N.A., L.L.C., an entity independent of Nasdaq and the licensor of the System, has indicated it will pay any revenue sharing amounts earned by participants during such period.

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish the fee schedule for Nasdaq's application of the Primex Auction System.™ Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(q) No changes.

(r) Nasdaq Application of the Primex Auction System™

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) *Transaction Charges:*	
Execution Services—for all participants:	
Order entry	*No fee.*
*Auction Response (per share, per execution—$5.00 maximum).**	*$.01.*
Matching Rights—Primex Auction Market Markers (PAMMs) only:	
50 Percent Match	*No fee*
*Two-Cent Match (per share, per retained order—$2.50 Maximum.**)*	*$.0025.*
Revenue Sharing—PAMMs only:	
*Each order executed:***	*⅓ of traction fee.*
(2) Monthly Access fees:	
Software:	
Workstation license or unique logon:	*Per workstation logon:*
Stations/logons 1–10	*$200.*
Stations/logons 11–25	*$100.*
Stations/logons 26 and above	*$50.*
Proprietary interface license:	*Per license:*
API specification	*$500.*
FIX (customized protocol)	*$500.*
Network:	
Dedicated line:	*Per line:*
256K primary with backup	*$1,564.*
Installation/Uninstall	*$1,000 per Nasdaq Staff site visit.*

* This fee applies to both Indications and "real-time" Responses. When two orders match directly, a fee is charged to the party that entered the second order.

** This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

*** Paid to PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a quarterly basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 17, 2001, Nasdaq filed a Form PILOT to commence operation of the Primex System.[4] The System is designed to replicate, in an electronic form, the competitive trading crowd that is associated with an auction market. The System is completely voluntary and available to any NASD member in good standing. Non-NASD members can access the System through an NASD member that subscribes to Primex. Members that desire access to the System must execute the necessary agreements with Nasdaq. Members granted access to the System are referred to as Participants. There are two types of Participants in Primex: (1) Crowd Participants, and (2) Primex Auction Market Makers ("PAMMs").

By becoming a Participant, members automatically receive the right to trade as Crowd Participants. Crowd Participants can view all orders exposed in the System; interact with any order put to auction by responding to the auction using all of the System's response tools; submit orders to be auctioned; and trade as principal, agent, or riskless principal. Crowd Participants can interact with orders being auctioned by submitting Indications, which are instructions to the System that can reside within the System and automatically respond in a certain manner to an auction if and when orders put to auction are available, or by submitting a Response. A Response is an individual instruction that is entered and responds in "real time" to orders being auctioned. A firm that elects to register as a PAMM has the same rights and entitlements as Crowd Participants, but because they elect to meet other additional qualifications,[5] PAMMs are entitled to additional privileges. For example, PAMMs are entitled to use the System's automated Match Parameters allowing them to participate in the execution of their own customer orders submitted to the System (*e.g.*, the Two Cent Match Parameter or the 50% Match Parameter[6]). PAMMs also are entitled to

[4] The Form PILOT was amended on November 26, 2001. *See* Letter from Peter R. Geraghty, Associate General Counsel, Nasdaq, to John Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated November 26, 2001.

[5] The requirements to become and maintain registration as a PAMM are contained in NASD Rule 5020. In general, a PAMM for a particular security eligible for trading in the System must be either: (1) A Nasdaq market maker in the security, if the security is listed on Nasdaq; or (2) a Consolidated Quotation System market maker, if the security is listed on an exchange. PAMMs may retain their PAMM status for a prospective calendar quarter provided they had qualified by submitting to the System a minimum percentage of certain order-types in the previous calendar quarter, as detailed in NASD Rule 5020. There never is any requirement for participants to register as a PAMM or to submit any amount of orders at any time.

[6] A complete description of the matching parameters and their operation are contained in NASD Rule 5014. Generally, however, when a PAMM submits an order to the System with the 50% Match parameter, the order will be executed against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the System to provide the order with an additional execution of like size and price against the PAMM that entered the order.

[7] The one exception is where an order submitted to auction directly meets and interacts with another order submitted to auction, in which case the second order is treated as a Response, and is charged a fee accordingly.

[8] 15 U.S.C. 78k–1(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

revenue sharing, allowing PAMMs to share in the transaction fee paid by other participants when such participants execute against an order submitted to auction by a PAMM.

Nasdaq will impose monthly fees to access the System. These fees vary based on the method chosen by the Participant to access the System. The System will operate on a network that is independent from Nasdaq's other existing systems (*e.g.*, SuperSoes℠). Primex Participants will be charged a monthly fee for this independent network. In addition, Participants will be charged for each visit by Nasdaq staff to install, or uninstall, software or hardware necessary to access the System.

In addition to monthly charges, Nasdaq will impose fees based on orders executed through the System. As set forth in the schedule of fees, no fee is charged for submitting an order to auction, and in general no fee is charged to have such orders executed.[7] Execution fees are only charged against Participants that extract liquidity by responding to, and executing against, orders submitted for auction. This execution fee is a penny per share with a maximum charge of $5.00 per execution. Accordingly, the fee would be charged to a Participant for any execution resulting from that Participant's Indication or real-time Response that interacted with an order put to auction.

In addition, and as discussed above, PAMMs have the option of attaching certain matching rights on orders they submit to the System. Nasdaq will impose a fee when a PAMM utilizes the Two-Cent Match feature and retains an order for execution. In such circumstances, the PAMM will be charged $.0025 per share, with a $2.50 maximum per retained order. If the PAMM does not retain the order because the order is executed against the Crowd Participant(s) who has offered more that two cents of price improvement, there is no charge to the PAMM. Instead, Nasdaq will share with the PAMM one-third of the transaction fee collected for such transaction. Nasdaq has decided to share the transaction fee in these circumstances to encourage PAMMS to submit orders for auction in the System. The revenue sharing amounts will be paid on a quarterly basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act[8] in that the proposed fees provide for the equitable allocation of reasonable fees among members. The fees apply equally to all Participants in the System, based upon the category the member has chosen to participate in the System. All members in the same category of Participant (*e.g.*, PAMM) are subject to the same fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] in that it establishes the fee schedule for the use of a Nasdaq system.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–2001–93 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1705 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45301; File No. SR–PCX–2001–45]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Inactive Lessors' Eligibility To Serve on the Board of Governors

January 17, 2002

On December 7, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article III, Section 2(b) of the PCX Constitution and PCX Rule 1.1(h) to provide for the eligibility of inactive lessors to serve on the PCX Board of Governors ("Board").

The proposed rule change was published for comment in the **Federal Register** on December 17, 2001.[3] The Commission notes that the proposed rule change was noticed for a 15-day comment period, and the Commission received no comments regarding the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45144 (December 10, 2001), 66 FR 65015.

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Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal to clearly establish that PXC inactive lessors are eligible to serve on the PCX Board is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principals of trade and to protect investors and the public interest. Inactive lessors have a financial interest in the activities of the Board and the Exchange due to their ownership of an Exchange membership. The Commission finds that allowing inactive lessors to serve on the Board is a fair and reasonable practice to provide inactive lessors and their interests to be represented on the Board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PCX–2001–45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1741 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45295; File No. SR–Phlx–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a PACE Order Execution and Price Protection Pilot Program

January 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange field this proposal under section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] order execution and price protection pilot program ("pilot"). The pilot, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates decimal pricing into two PACE provisions—immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection for equities trading in decimals. The pilot has been in effect since August 25, 2000.[6] The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[7] in general, and in particular, with section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number SR–Phlx–2002–03, and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1700 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day prefiling notice requirement, and the 30-day operative delay.

[5] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] The pilot was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). The pilot has been extended several times, most recently through January 14, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); and 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102). The price improvement portion of the pilot program (Supplementary Material .07(c)(i) to Rule 229) has been replaced by a price improvement pilot program with an automatic price improvement feature based on decimal trading, including a percentage of the spread between the bid and the offer. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001)(SR–Phlx–2001–12).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45288; File No. SR–Phlx–2001–107]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Interim Intermarket Linkage Program

January 16, 2002.

On November 29, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to extend the pilot program authorizing implementation of "interim linkages" with the other options exchanges until April 1, 2002.[3]

The proposed rule change was published for comment in the **Federal Register** on December 12, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change should enable investors effecting transactions on the Phlx to obtain better prices displayed on the other exchanges and therefore is consistent with the objects of section 6(b)(5) under the Act[7] which requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–2001–107) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1701 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

[3] On May 16, 2001, the Commission issued a notice of filing and immediate effectiveness of a pilot program submitted by the Phlx authorizing the implementation of an interim linkage. *See* Securities Exchange Act Release No. 44311, 66 FR 28768 (May 24, 2001).

[4] *See* Securities Exchange Act Release No. 45132 (December 5, 2001), 66 FR 64330.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 16 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45289; File No. SR–Phlx–2001–117]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase to the Exchange Technology Fee

January 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to increase its technology fee applicable to all members and foreign currency options participants not also holding legal title to a Phlx membership from the current charge of $100.00 per month to $150.00 per month. The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange charges a monthly technology fee on its members and foreign currency options participants that are not also holding legal title to a Phlx membership. This charge of $100.00 per month was instituted in March of 1997 at the rate of $100.00 to cover system software modifications, specific systems development (maintenance) costs, increased costs associated with the Securities Industry Automation Corporation, and the Options Price Reporting Authority communication changes and ongoing system maintenance charges.[3] Over the four and one half years since the technology fee was instituted, the complexity and expansion of the software and hardware, such as LANs, servers, and communications systems (both wireless and hardwired/tethered) has increased to serve the membership and the investing public. The Exchange's Board believes an increase to the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology on the trading floors to facilitate trading.

The technology fee was instituted to capture costs associated with system development costs associated with new risk management systems, order handling rule revisions, specialized quote feeds, and new products. Over the past four plus years, the Exchange's software and hardware systems have grown in order to process increased trading, resulting in more systems maintenance costs. The proposed increase in the technology fee is necessary to allow the Exchange to continue to operate its automated systems and compete with the other market centers in offering new technology features to facilitate trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] as establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–117 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1704 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[3] See Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3890]

30-Day Notice of Proposed Information Collection: Proposal Submission Instructions: Department of State Forms DS–2011, DS–2012, DS–2013, DS–2014, DS–2015, DS–2016, DS–2017, and DS–2018 (OMB Control #1405–0115)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a currently approved collection.

Originating Office: ECA–IIP/EX.

Title of Information Collection: Proposal Submission Instructions (PSI).

Frequency: 40 times a year (average), coincidental with Request for Grant Proposal competitions published in the **Federal Register**.

Form Number: DS–2011, DS–2012, DS–2013, DS–2014, DS–2015, DS–2016, DS–2017, DS–2018.

Respondents: Public and private non-profit organizations meeting the provisions described in IRS Code section 26 USC 501(c)(3).

Estimated Number of Respondents: Approximately 800 proposals will be submitted to the Bureau annually, accompanied by the Proposal Submission Instructions (PSI).

Average Hours Per Response: 20 hours per response.

Total Estimated Burden: 14,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from ECA–IIP/EX/PM, 301 4th Street, SW, (202) 619–5416, U.S. Department of State, Washington, DC 20547. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: November 29, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1803 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3894]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection: Form DS–11, Application for Passport/Registration (OMB Control #1405–0004)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, without change, of previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Application for Passport/Registration.

Frequency: On Occasion.

Form Number: DS–11.

Respondents: Individuals or Households.

Estimated Number of Respondents: 6.5 million.

Average Hours Per Response: ⅓ hr. (20 minutes).

Total Estimated Burden: 2,166,666 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW, Room H904, Washington, D.C. 20522, and at 202–663–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: December 20, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–1805 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3895]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Age of Impressionism: European Masterpieces From Ordrupgaard, Copenhagen"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Age of Impressionism: European Masterpieces from Ordrupgaard, Copenhagen" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Walters Art Museum, Baltimore, MD, from on or about February 17, 2002, through May 26, 2002, the Metropolitan Museum of Art, New York, NY from on or about June 17, 2002, through September 8, 2002, and the Museum of Fine Arts, Houston, TX, from on or about October 6, 2002, through January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: January 17, 2002.

Brian Sexton,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1806 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3896]

Culturally Significant Objects Imported for Exhibition Determinations: "The Sacred Spaces of Pieter Saenredam"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

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October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "The Sacred Spaces of Pieter Saenredam," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about April 16, 2002, to on or about July 7, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: January 17, 2002.

Brian J. Sexton,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1807 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3893]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Three Chinese Entities, Including Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that three Chinese entities have engaged in activities that require the imposition of measures pursuant to section 3 of the Iran Nonproliferation Act of 2000.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: On general issues: Pamela K. Roe, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to sections 2 and 3 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on January 11, 2001, that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

Liyang Chemical Equipment (China) and any successor, sub-unit, or subsidiary thereof.

Q.C. Chen (China).

China Machinery and Electric Equipment Import and Export Company and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons.

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: January 16, 2002.

Vann H. Van Diepen,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–1804 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Consideration of Two Petitions To Alter AGOA Benefits for Canned Pears and Manganese Metal; Notice of Review Timetable and Public Hearings Regarding These Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Trade Policy Staff Committee (TPSC) provides this notice to identify the Harmonized Tariff Schedule of the United States (HTS) numbers of two articles proposed for designation or termination as GSP-eligible articles when imported from African Growth and Opportunity Act (AGOA) beneficiary countries (*see* ANNEX). This notice also sets forth the timetable for public hearings for GSP Subcommittee consideration in reviewing the articles for GSP eligibility, and the procedures for further public comment.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, Room F220, 1724 F Street, NW., Washington, DC 20508. Telephone: (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program grants duty-free treatment to designated eligible articles imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*). The GSP program was implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations. Legislation amending the GSP program to, inter alia, extend GSP benefits to AGOA beneficiaries through September 30, 2008, was signed by the President on May 18, 2000 (19 U.S.C. 2462–67).

In a notice dated April 13, 2001, the United States Trade Representative (USTR) initiated the 2001 GSP Annual Review and announced a deadline of June 13, 2001, for filing petitions (63 FR 1893). The GSP Subcommittee of the TPSC has considered only those petitions involving AGOA benefits; the GSP program remains in effect for AGOA beneficiaries, notwithstanding the expiration of the GSP program for all other beneficiary countries on September 30, 2001.

The Annex to this notice sets forth the case number, U.S. HTS number, change requested and petitioner for each AGOA petition that has been accepted for review.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR part 2007, including sections 2007.0 and 2007.1. All submissions should identify the subject article(s) in terms of the current U.S. HTS nomenclature.

Comments should be submitted, in English, to the Chairman of the GSP Subcommittee by facsimile at (202) 395–9481. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "Business Confidential" status pursuant to 15 CFR 2003.6, and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains confidential information, a confidential version of the submission also should be submitted. In addition, any document containing confidential information should be clearly marked "Confidential" at the top and bottom of each page of the document. The version that does not contain confidential information also should be clearly marked at the top and bottom of every page (either "Public Version" or "Nonconfidential"). Comments should be submitted no later than 5 p.m. on February 20, 2002.

Notice of Public Hearings

Hearings will be held on March 5, 2002, beginning at 10 a.m. at the Office of the United States Trade Representative, Annex, 1724 F Street, NW., Washington, DC 20508. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witnesses representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by a written brief or statement, in English, and should be received by 5 p.m. on February 20, 2002. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted, in English, no later than 5 p.m. on March 2, 2002. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5 p.m. on February 20, 2002, and post-hearing and rebuttal written briefs or statements by March 20, 2002. Comments by interested persons on the U.S. International Trade Commission (USITC) Report prepared as part of the product review should be submitted in English, by 5 p.m. on May 22, 2002.

Jon Rosenbaum,

Assistant USTR for Trade and Development and, Chairman, GSP Subcommittee, Trade Policy Staff Committee.

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Annex

Case Number	HTS Subheading	Article	Petitioner
[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]			
A. Petition to add a product to the list of eligible articles for the Generalized System of Preferences only for countries designated as a beneficiary sub-Saharan African country in general note 16 of the Harmonized Tariff Schedule of the United States (HTS).			
2001-AGOA-1	8111.00.45 pt	Manganese and articles thereof, including waste and scrap: [Waste and scrap] Other: Unwrought manganese: Flake containing at least 99.5% by weight of manganese	Eramet Marietta Inc., Marietta, OH; Manganese Metal Company (Pty) Ltd., South Africa
B. Petition to remove a product from the list of articles eligible for the Generalized System of Preferences only for countries designated as a beneficiary sub-Saharan African country in general note 16 of the HTS.			
2001-AGOA-2	2008.40.00	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Pears	Northwest Horticultural Council, Yakima, WA; Pacific Northwest Canned Pear Service, Yakima, WA; California Pear Advisory Board, Sacramento, CA; Washington-Oregon Canning Pear Assn., Yakima, WA; Pacific Coast Producers, Lodi, CA; Signature Fruit Co., LLC, San Roman, CA

[FR Doc. 02–1683 Filed 1–23–02; 8:45 am]
BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Abernathy Municipal Airport, Abernathy, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Abernathy Municipal Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Russell, City Manager, at the following address: City of Abernathy, PO Box 310, Abernathy, Texas 79311.

FOR FURTHER INFORMATION CONTACT: Ms. Kimchi Hoang, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5681, e-mail: *Kimchi.Hoang@faa.gov*, fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Abernathy Municipal Airport under the provisions of the AIR 21.

On January 16, 2002, the FAA determined that the request to release property at Abernathy Municipal Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole on in part, no later than March 31, 2002.

The following is a brief overview of the request:

The City of Abernathy requests the release of 211.355 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The fair market value of the sale is appraised at $31,700 to be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the City Hall of Abernathy, telephone number (806) 298–2546 or at the Texas Department of Transportation, Aviation Division, 125 E. 11th Street, Austin, TX 78701–2483, Ms. Sandra Gaither, telephone number (512) 416–4544.

Issued in Forth Worth, Texas on January 16, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–1769 Filed 1–23–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Montgomery County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: James A. Cheatham, Division Administrator, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3461 OR Andrew L. Warren, District Administrator, Pennsylvania Department of Transportation, District 6–0, 7000 Geerdes Blvd., King of Prussia, PA 19406, (610) 205–6700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), Montgomery County, Chester County, Upper Marion Township, Norristown Borough, Bridgeport Borough, West Norriton Township, Lower Providence Township, Tredyffrin Township, Schuylkill Township and the Delaware Valley Regional Planning Commission will prepare and Environmental Impact Statement (EIS) to identify and evaluate alternatives for modifications to the US Route 23 corridor in Montgomery County, Pennsylvania. The proposed action would consider improvements in the following study area: north of the Schuylkill River to include Tropper Road (PA 363), Egypt Road and Main Street (Ridge Pike); west to US 422 and including the Valley Forge National Park; south along US 202 and east along US 202 and the Dannehower Bridge.

Included in the overall project will be the identification of a range of alternatives that meet the identified project needs, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is included as part of the project.

Documentation of the need for the project is being prepared. This process will identify the need for roadway improvements through the study area based on local and regional transportation demand, transportation system linkage and continuity, geometric criteria, highway safety, and local and regional community planning.

Alternatives that will be considered may include, but will not be limited to: No Build; Transportation Systems Management (TSM); upgrade existing PA 23 facility; construction on new alignment; upgrade of existing roadway network adjacent to, and supplementing PA 23 corridor traffic; and mass transit infrastructure upgrades and increased service. These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comment or questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: October 23, 2001.

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA

[FR Doc. 02–1696 Filed 1–23–02; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation and Notice of Cancellation

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses. The license listed below was not revoked; it was cancelled due to death of the license holder.

Name	License	Port Name
Isidore Cohen	01668	New York

December 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–1788 Filed 1–23–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Revocation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs broker license revocation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19

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CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

Name	License	Port
Unimex Brokerage, Inc.	12585	El Paso

Dated: December 20, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–1789 Filed 1–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before March 25, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849.

Abstract: Sections 6402, 6404, sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit or interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governsments.

Estimated Number of Respondents: 125,292.

Estimated Time Per Respondent: 14 hours, 42 minutes.

Estimated Total Annual Burden Hours: 1,841,954.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1679 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8838

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8838, Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

DATES: Written comments should be received on or before March 25, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

OMB Number: 1545–1395.

Form Number: 8838.

Abstract: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Current Actions: There are no changes being made to the Form 8838 at this time.

Type of Review: Extension of a current approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1000.

Estimated Time Per Respondent: 8 hrs., 14 min.

Estimated Total Annual Burden Hours: 8,440.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 16, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1680 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12196

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12196, Small Business Office Order Blank.

DATES: Written comments should be received on or before March 25, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Small Business Office Order Blank.

OMB Number: 1545–1638.

Form Number: Form 12196.

Abstract: Form 12196 is used by Small Business Information and Development Centers and One-Stop Capital Shops to order IRS tax forms and publications for distribution to their clients. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

Current Actions: Form 12196 is used primarily by the Small Business Administration's Business Information Centers (BICs) to order key IRS small business products. Last year, the IRS expanded the availability of the form to the Small Business Development Centers (SBDCs) and the Women Business Centers (WBCs) to order key IRS small business products that will benefit new small business owners/operators. Additional products were added to the form to expand distribution and increase availability of selected IRS educational products to new business start-ups.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1681 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This

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notice solicits comments for information needed to determine insured's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0120" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment by Attending Physician, VA FL 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from attending physician to determine the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: January 11, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1736 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0496]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0496."

SUPPLEMENTARY INFORMATION:

Title: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

OMB Control Number: 2900–0496.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide the information needed to authorize payment of the insurance. The information is used to process the mortgage holder's claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at pages 57156–57157.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0496" in any correspondence.

Dated: January 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1737 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0095."

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant's eligibility for VA pension benefits is determined, in part, by countable income. VA Form 21–4165 is used to develop the necessary income and asset information peculiar to farm operations. The information is used to determine whether the claimant is eligible for VA benefits. If eligibility exists, the information is used to determine the proper rate of benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at pages 57155–57156.

Affected Public: Individuals or households, and Farms.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0095" in any correspondence.

Dated: January 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1738 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0422" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–81, Work Coordination. (This Clause will be renumbered as "Alternate 1" to VAAR Clause 852.236–80.)

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Supplement 1 (which will be renamed as "Alternate 1").

d. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Supplement 1 (which will be renamed as "Alternate 1").

e. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information is necessary for VA to administer construction contracts and to carry out its responsibility to construct, maintain and repair real property for VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at page 54342.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 4,802 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,311.

Estimated Number of Total Respondents: 3,534.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0422" in any correspondence.

Dated: January 11, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1739 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held February 7 and 8, 2002. This will be a regularly scheduled meeting for the purpose of reviewing the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m., and adjourn at 4:30 p.m.

The agenda for Thursday, February 7, will include a review of the activities and reported conclusions of the Under Secretary for Health (USH) Special Committee on PTSD. The Committee will also review areas of potential partnership with the USH's Committee regarding the effective treatment of traumatic stress disorders in veterans exposed to war-zone stressors while on active duty in the military.

On Friday, February 8, the Committee will review VA's activities in response to the terrorist attack against the World Trade Center in New York City. The Committee's focus will be on veterans' mental health needs in the wake of such attacks, VA's timely response to the readjustment needs of new eras of veterans engaged in the war against terrorism, and VA's role in homeland security and local community-based disaster response.

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The agenda for both days will also include strategic planning sessions to formulate goals and objectives for the Committee field visit to VA facilities planned for later in the year. In addition, the Committee will formulate recommendations for inclusion in its annual report to Congress.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting may contact Alfonso R. Batres, Ph.D., M.S.S.W., Chief Readjustment Counseling Officer, Department of Veterans Affairs Headquarters Office at (202) 283–8967.

Dated: January 14, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–1740 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 16

Thursday, January 24, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards

Corrections

In proposed rule document 01–30788 beginning on page 66500 in the issue of Wednesday, December 26, 2001, make the following corrections:

§542.7 [Corrected]

On page 66507, in §542.7(b), in the second column, the first line should read "(b) *Game play standards.* (1) The".* * *

§542.9 [Corrected]

On page 66510, in §542.9(i), in the first column, the third line should read "*card room.* (1) Promotional funds displayed".* * *

§542.12 [Corrected]

1. On page 66515, in §542.12(j), in the first column, the first line should read "(j) *Marker credit play.* (1) If a gaming".* * *

2. On page 66516, in §542.12(k), in the first column, the second line should read "*in the pit.* (1) For the purposes of this".* * *

§542.13 [Corrected]

On page 66520, in §542.13(3), in the second column, the second line should read "*standards.* (i) A Central computer acting as".* * *

§542.14 [Corrected]

On page 66521, in §542.14(d), in the third column, the second line should read "*standards.* (1) All transactions that flow".* * *

§542.15 [Corrected]

On page 66522, in §542.15(c), in the second column, the first line should read " (c) *Payment standards.* (1) All payments".* * *

§542.23 [Corrected]

1. On page 66530, in §542.23(p), in the second column, the second line should read "*record retention.* (1) All video recordings".* * *

2. On the same page, in §542.23(r), in the second column, the second line should read "(1) Surveillance personnel shall maintain a".* * *

§542.31 [Corrected]

On page 66536, in §542.31(r), in the first column, the second line should read "keys. (1) The physical custody of the keys".* * *

§542.33 [Corrected]

1. On page 66538, in §542.33(t), in the second column, the first line should read "(t) *Currency and coin.* (1) The".* * *

2. On the same page, in §542.33(v), in the second column, the third line should read *record retention.* (1) All video recordings".* * *

3. On the same page, in §542.33(x), in the third column, the second line should read "(1) Surveillance personnel shall maintain a".* * *

4. On the same page, in §542.33(y), in the first column, the first line should read "(y) *Surveillance log.* (1) Surveillance".* * *

5. On page 66539, the first column, in the first column, the nineteenth line should read **Tier C Gaming Operations**

§542.41 [Corrected]

On page 66541, in §542.41(g), in the first column, the first line should read "(g) *Hard count room personnel.* (1) The".* * *

§542.42 [Corrected]

On page 66545, in §542.42(n), in the first column, the first line should read "(n) *Keno.* (1) The surveillance system".* * *

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Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions to proposed amendments to the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The amendments are based on those proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The amendments include making districts producing more than 6 million pounds per year subject to volume regulations (rather than 15 million pounds); making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all processed cherries subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Remaining amendments pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy. The proposed amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: Written exceptions must be filed by February 13, 2002.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, FAX number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued on March 17, 2000, and published in the March 23, 2000, issue of the **Federal Register** (65 FR 15580).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin (hereinafter referred to as the order), and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Anne M. Dec whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of the order is based on the record of a public hearing held in Rochester, New York on March 27 and 28, 2000; in Grand Rapids, Michigan on March 29, 30, and 31, 2000; in Kennewick, Washington on April 4 and 5, 2000; and in Salt Lake City, Utah on April 6, 2000. Notice of the hearing was published in the **Federal Register** on March 23, 2000. The notice of hearing contained numerous proposals submitted by the Board, and one proposed by the Agricultural Marketing Service (AMS).

The Board's proposed amendments included making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Other amendments proposed by the Board pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform with the effectuated amendments.

Ninety-five witnesses testified at the hearing. These witnesses represented tart cherry growers, processors and marketers throughout the production area. Some witnesses supported the Board's proposed amendments, while others were opposed to some of the recommended changes. Most witnesses addressed the issue of whether all districts should be subject to volume regulation rather than only those with production in excess of 15 million pounds. Other amendments that generated considerable interest at the hearing were providing diversion credits for cherry juice and juice concentrate to certain markets and allowing additional alternates to serve at Board meetings when both a member and his or her alternate are unable to attend.

At the conclusion of the hearing, the Administrative Law Judge fixed July 7, 2000, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. That date was later extended to July 31, 2000, and then further extended to September 15, 2000. Two briefs were filed. A brief in support of the proposed amendments was filed by the Board. A brief in opposition to several of the proposed amendments was filed by the Oregon Tart Cherry Association.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether all districts in the production area should be subject to volume regulation rather than only those with annual production in excess of 15 million pounds;

(2) Whether Board membership should be allocated among districts based on levels of production and whether a corresponding change should be made in quorum requirements;

(3) Whether the Board should be able to designate any alternate to serve for a member at a Board meeting in the event that member and his or her alternate are unavailable;

(4) Whether the diversion and exemption provisions of the order should be clarified by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions;

(5) Whether specific authority should be added to the order to exempt or provide diversion credit for cherries exported to designated markets;

(6) Whether diversion credit should be provided for shipments of cherry juice and juice concentrate to established diversion markets;

(7) Whether to add specific authority for the transfer of diversion credits among handlers;

(8) Whether grower diversions that take place in districts that are subsequently exempt from volume regulation should qualify for diversion credit;

(9) Whether cherries in the inventory reserve should be able to be released for use in only certain designated markets;

(10) Whether the 10-percent reserve release for market expansion should only apply during years when volume regulations are in effect;

(11) Whether assessments should be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by grower diversion certificates;

(12) Whether to eliminate the requirement that differential assessment rates be established for various cherry products based on the volumes of cherries needed to produce those products and their relative market values; and

(13) Whether the Board should be able to use estimates other than the official USDA crop estimate in developing its marketing policy.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof. In the presentation of its findings and conclusions, the Department takes official notice, where appropriate, of certain facts and figures that were not available at the time of the hearing. These include statistics relative to the 2000 and 2001 tart cherry crops, free and restricted percentages established for those years, and changes that have been made in Board membership since the hearing.

Material Issue Number 1—Districts Subject to Volume Regulation

The order should be amended to provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation, rather than only those with annual production in excess of 15 million pounds.

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. "Free market tonnage percentage" cherries may be marketed in any outlet. "Restricted percentage" cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6

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District	1997	1998	1999	2000	2001
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich.	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criteria for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150 percent
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon have reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more importantly, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (e.g., harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversion.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	%	Price	Income
Open Market	240,000	60	$0.14	$33,600

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	Lbs.	%	Price	Income
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100	.....	45,040
For a grower in a non-regulated district, income was estimated as follows:				
Open Market	400,000	100	$0.135	$54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

Witnesses stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (*e.g.*, susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that was comprised of older trees in 1998.

State	Percent acreage 21–25 years	Percent acreage 26+ years	Total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already "done their part" to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15 million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

The Department is proposing that § 930.52 of the order be amended by changing the threshold for regulation from 15 million pounds to 6 million pounds.

Material Issue Number 2—Allocation of Board Membership

The order should be amended to allocate Board membership based on a district's production level, rather than have a set number of members per district. Corresponding changes should be made in quorum requirements.

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members to represent growers and handlers in that district. One additional Board member is selected to represent the general public, and need not be from any specific area.

As originally constituted (and as was true at the time of the hearing), the

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Board consisted of 18 members: 17 tart cherry growers and handlers, and 1 public member. Five of the nine districts, including all districts initially subject to volume regulation, were allocated more than one member. Those five districts were Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each were Oregon, Pennsylvania, Washington and Wisconsin.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation because it exceeds the 15-million pound production threshold, that district is entitled to a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation. However, this could be accomplished through informal rulemaking under the authority in § 930.21 which allows for the reestablishment of districts and the redistribution of membership among those districts.

Effective July 11, 2001, the Board was increased in size from 18 to 19 members [66 FR 35889, July 10, 2001]. A second member was added to represent the State of Washington (District 8) because, following harvest of the 2000 crop, it was determined that that district's annual average production for the 3 years 1998 to 2000 exceeded the 15-million pound threshold required for districts to become regulated. This is the only change that has been made in Board membership since the order's inception.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that each district should have at least one Board member to ensure that the interests of all regions of the production area are represented in Board deliberations and decisions. Additional members should be allocated among districts based on their production levels. This would recognize that the larger districts should have a greater voice in Board decisions because they are more greatly impacted by those decisions. Additionally, the record shows that the number of growers and handlers operating in a district is related to the volume of production in that district. For example, the three Michigan districts account for about 75 percent of total annual tart cherry production. About 71 percent of the growers, and almost half of the handlers operate in Michigan. The number of growers and handlers in the other districts are also related to the volume of production in those districts. Thus, the production levels among the districts are a good indication of the constituencies in those districts, and those districts with larger constituencies should have more representation on the Board.

The allocation of industry membership between growers and handlers would remain unchanged under this amendment. For districts with one member, that member could be either a grower or a handler. Districts with two members would have one grower and one handler member position. Districts with three members would have one grower member and one handler member, and the third position would alternate between a grower and handler member. Districts that are allocated four members would be entitled to two grower members and two handler members.

The major benefit of this amendment is that it would allow Board membership to be reallocated annually, and thereby more closely reflect changing production trends in the industry. This would include having representation of a district decrease when conditions so warrant.

The following table shows the difference that would have occurred in Board membership for the term of office that began July 1, 2001, if the proposed amendment were in effect compared to the actual representation under current order provisions.

District	Number of members under current provision	Number of members under proposed amendment
1—Northern Michigan	4	4
2—Central Michigan	3	3
3—Southern Michigan	2	2
4—New York	2	2
5—Oregon	1	1
6—Pennsylvania	1	1
7—Utah	2	2
8—Washington	2	2
9—Wisconsin	1	2
Total number of industry members	18	19

If the proposed amendment had been in effect, industry representation on the Board would have increased from 18 to 19 members. Total membership (including the public member) would have increased from 19 to 20 members. Wisconsin would have been entitled to two members rather than one member. Representation of the other eight districts would not have changed.

One witness testified in opposition to this proposal, stating that it would give Michigan more power in Board decisions. However, as the above table shows, Michigan would have gone from having 9 of 18 industry members (50 percent) to 9 of 19 industry members (47 percent). Looking at total membership (including the public member), Michigan would have gone from 9 of 19 seats (47 percent) to 9 of 20 seats (45 percent).

Committee members serve 3-year terms of office. The terms are staggered so that about one-third of the members are selected each year. The terms of office begin July 1 of each year. Final production figures for a crop year are typically available in September, and nominations are conducted early in the calendar year (January or February) for the term that begins the following July 1. If this amendment is adopted, the Board as constituted at the time of the amendment would remain in effect. Reallocation of membership would take place prior to the next regularly scheduled round of nominations. If, for example, the amendment were to become effective in September 2002, reallocation would take place prior to the nominations scheduled for January or February 2003, for the term of office beginning July 1, 2003.

If a district were to lose a seat, and none of its members' terms were expiring, it would be necessary to determine which member would need to be removed from the Board. Testimony at the hearing suggested that the members of the district in question would likely be able to agree among themselves who should resign. If that proves not to be the case, the Board could recommend rules and regulations concerning how to determine which Board position should be abolished. To provide for this possibility, USDA is recommending that a new paragraph (i) be added to § 930.20 to authorize the establishment of any rules and regulations needed to implement the provisions of that section.

In determining which member should resign, however, it would be necessary to comply with the provisions of § 930.20 pertaining to allocation of membership between grower and handler positions. For example, if a district's representation was reduced from four members (two grower and two handler positions) to three members (two grower positions and one handler position), one of the handler member positions would have to be vacated.

In a related matter, § 930.32 of the order provides that 12 members of the Board constitute a quorum, and that two-thirds of the total membership must vote in favor of any Board action for it to pass.

With the Board initially established at 18 members and with the two-thirds voting requirement, a 12-member quorum was logical (since two-thirds of 18 is 12). However, the proposed revision to § 930.20 would result in a varying number of Board members over time. In the example shown above, the Board would have been expanded to 20 members (19 industry members and 1 public member). The two-thirds voting requirement in that case would require the affirmative votes of at least 14 members to pass any Board action. It would not be reasonable to have the quorum remain at 12 members, since that number of members would not be able to pass a vote. Therefore, it is recommended that § 930.32 be amended to provide that two-thirds of the Board membership constitutes a quorum.

Material Issue Number 3—Board Designation of a Temporary Alternate To Act for an Absent Board Member

The order should be amended to provide more flexibility for a Board member to designate someone to act in his or her place when that member and his or her alternate are unable to attend a Board meeting. However, this discretion should not be given to the Board or its chairperson in the event the member in question chooses not to designate another alternate to serve in his or her place.

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine geographic districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate choose to make such a designation, the Board's chairperson would be free to do so with the concurrence of a majority of present members.

In support of the Board's proposal, witnesses stated that it is important to have a full contingency of members present at each Board meeting to ensure full consideration of and deliberation upon program issues. Further, an empty seat constitutes a "no" vote, which could hamper Board decision-making. This is because all Board actions require the approval of at least two-thirds of its members. One witness suggested that without this proposed amendment, Board expenses could increase because additional meetings might be needed due to vacant member seats and the inability to garner the requisite number of votes for Board action.

Witnesses in opposition to this proposal opined that it is very important to maintain representation of all districts at each Board meeting. They stated that Board representation is allocated among the districts because the conditions in those districts vary. The record shows that there have been very few instances where Board members (and their alternates) have been unable to attend a meeting. The few times a seat was empty was when the member from district 5 (Oregon) or district 8 (Washington) was unable to be present due to airline delays because of bad weather or due to personal emergencies. Since most Board meetings are held in Michigan, it is likely that if the Board's proposed amendment had been in place, a person from Michigan would have been asked to fill the empty position. Witnesses from outside the State of Michigan strongly objected to this scenario.

The Department agrees that full participation at Board meetings should be encouraged. However, we also believe there is merit in allocating membership among districts, and that the conditions in one district may vary considerably from those in another. Further, growers and handlers in each district nominate the people they want to represent them at Board meetings. For these reasons, we conclude that a Board member should be able to choose another alternate to serve in his or her place when that member and that member's alternate are unavailable. However, this choice should remain with the member. If he or she chooses not to name someone to fill his or her seat and cast votes on his or her behalf, the choice should not then revert to the Board or its chairperson.

The record supports the conclusion that this proposal is not intended to change the composition of the Board with respect to grower versus handler representation. Therefore, a modification to the proposed amendment is made providing that in naming an additional alternate to act on his or her behalf, a Board member should designate an alternate from the same group (grower or handler) as that member. This would ensure appropriate grower and handler representation on the Board.

The proposed amendment of § 930.28 has been changed accordingly. Also, we have deleted the requirement that a member must choose an alternate "from another district" to act in his or her place. This would enable a member who is from a district with more than one member position to designate another alternate from the same district to act in his or her stead. The member would not be required to name an alternate from a different district to fill his or her seat.

Material Issue Number 4—Clarification of Diversion and Exemption Provisions

The diversion and exemption provisions of the order should be

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clarified by eliminating certain cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions.

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries may be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for "uses exempt under § 930.62." A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation. This part of § 930.58 would not change.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development received diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

Proponent witnesses asked that the authority in § 930.58 for growers to receive diversion certificates for uses exempt under § 930.62 remain in the order. This authority has been in the order from the time it became effective and would need to be implemented through rulemaking. Presently, grower diversion rules provide for two types of diversion: leaving cherries unharvested and in-orchard tank diversion. It could be possible for the Board to provide (with USDA approval) for a form of grower diversion that would be the same as an exempt use utilized by handlers under § 930.62. The intent would be to encourage growers to find new uses and new markets for their cherries.

To retain this authority, a conforming change is needed in § 930.62. That section of the order is proposed to be changed by, among other things, stating that diversion certificates shall not be issued for cherries used for exempt purposes. This revision was intended to apply to handlers and not to growers seeking diversion certificates for exempt uses. Thus, a clarification is being proposed in the regulatory text of § 930.62.

The Department is also proposing a conforming change in § 930.50 relating to the Board's marketing policy. That provision of the order specifies how free and restricted percentages are to be calculated. The order currently sets forth an "optimum supply formula" (OSF) which the Board must follow in its consideration of annual volume regulations. First, the Board considers the available supply of tart cherries, which is the sum of the crop estimate and the carry-in supply from previous crop years. The Board next computes the optimum supply and compares it with the available supply. If the available supply exceeds the optimum supply, a surplus exists, calling for the use of supply controls.

The optimum supply is defined as 100 percent of the average sales of the prior 3 years, reduced by the average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same 3 years. There is no mention of how cherries used for exempt purposes should figure into the equation.

Witnesses testifying at the hearing explained that exempt cherries should be treated in the same way as cherries qualifying for diversion credit in the OSF. That is, they should be deducted from the total sales figure. Paragraph (a) of § 930.50 is proposed to be revised accordingly.

Section 930.59 currently states that in some cases, handlers must notify the Board of their intent to divert cherries, while in other cases they must apply for and receive Board approval prior to diverting cherries. This decision proposes revising this section to provide that in all cases, handlers must notify the Board of their plans to divert cherries. This change was proposed by the Board, and is intended to simplify current procedures. It should be noted, however, that should additional safeguards be needed to ensure compliance with handler diversion procedures (i.e., that cherries receiving diversion credits are actually utilized in approved outlets), the Board has authority to recommend additional rules and regulations. Such rules and regulations would require USDA approval through the informal rulemaking process.

The authority for this additional rulemaking is currently provided in §§ 930.30 and 930.31 of the order. These sections set forth the Board's powers and duties, which include recommending rules and regulations needed to effectively administer the provisions of the order. As a clarifying change, a new paragraph (f) is proposed to be added to § 930.59 to specify that the Board may establish (with USDA approval) rules and regulations necessary and incidental to the administration of the handler diversion provisions of the order.

One final conforming change is being proposed by the Department relative to the provisions concerning diversions and exemptions. At the hearing, it was clearly stated that if certain uses of cherries were exempt from regulation, handlers should be able to use cherries from their inventory reserves for those uses at any time. While this is currently permitted under the terms of § 930.62, we are proposing a clarifying change in § 930.54, Prohibition on the use or disposition of inventory reserve cherries. That section is also being proposed to be revised by deleting a reference to a nonexistent paragraph (b) of that section.

Material Issue Number 5—Exemption or Diversion Credit for Export Shipments

The order should be amended to provide specific authority to designate shipments to certain export markets as exempt or eligible for diversion credit.

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as being eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers in recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits has resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only.

Material Issue Number 6—Diversion Credit for Juice and Juice Concentrate

The order should be amended to provide that sales of cherry juice and juice concentrate may receive diversion credits if those sales are in outlets that have been designated as eligible for receipt of diversion credits.

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the proviso in § 930.59 (b) so that shipments of cherry juice and juice concentrate to approved diversion outlets may be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in the Pacific Northwest have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace could have resulted in an accompanying reduction in prices for juice. This could have unduly harmed the industry in Washington and Oregon. USDA therefore inserted a provision in § 930.59 to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with the order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00—$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was

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about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was important that handlers in Washington be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

It should be noted that the intent of this amendment proposal is to make sales of juice and juice concentrate eligible for diversion credit only if those sales are in outlets that have been approved for diversion credit. Sales of juice and juice concentrate in the primary market would not be eligible for diversion credit. This would prevent the influx of heavy supplies of juice into primary markets, which would have the potential to harm processors who rely on a healthy juice market.

The Department is proposing that § 930.59 be amended by deleting the proviso in paragraph (b) of that section. We are also proposing a clarifying change in that paragraph to state that shipments of juice and juice concentrate would only be eligible for diversion credit if they are used in markets specifically approved as diversion outlets.

Material Issue Number 7—Handler Transfers of Diversion Credits

The order should be amended to provide specific authority for handlers to be able to transfer diversion credits.

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that this authority would provide additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This authority could also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversion to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversion (pounds)	Excess diversions credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversion (pounds)	Excess diversions credits (pounds)
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use. Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	"Free" sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of "free" cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products.

The Board's proposal included the statement that transfers of handler diversion credits be allowed "Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer * * *" Testimony at the hearing indicated that rules to implement this transfer authority may be needed. The only example given was that uniform reporting requirements may be necessary (i.e., to make sure that handlers record transfers in the same way so that diversion credits are not counted to offset more than one handler's restricted obligation). No witnesses gave any examples of limitations on transfers that may be needed, but they wanted the flexibility to do that in the future if the need arises.

No opposition to this proposal was stated at the hearing or in the briefs filed.

This amendment would be implemented by adding a new paragraph (e) to § 930.59 to specifically authorize the transfer of handler diversions certificates.

Material Issue Number 8—Grower Diversion Certificates

The order should be amended to provide that diversion certificates issued by the Board to a grower remain valid even if that grower's district subsequently becomes exempt from volume regulation under § 930.52(d).

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers are already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy meeting is typically held a week or two after the release of the official USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete.

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This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and it Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

There was no opposition to this proposed amendment expressed at the hearing or in the briefs filed after the hearing.

To implement this proposal, it is recommended that § 930.58(a) be revised by adding a sentence to that paragraph.

Material Issue Number 9—Release of Cherries in the Inventory Reserve

The order should be amended to provide that cherries in the inventory reserve may be released either for use in any market or for use in only certain designated markets, depending on prevailing market conditions.

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54 (a). The first, under § 930.50 (g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes, and is discussed more fully under Material Issue Number 10.

The second release, under § 930.50 (j) occurs in years when the expected availability from the current crop plus expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be "free" percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

There was no opposition to this proposed amendment.

The Department is recommending this proposal be implemented by adding a new paragraph (b) to § 930.54 to say that reserve cherries may be released for sale in certain designated markets. We are proposed adding a sentence to that new paragraph to state that these designated markets may be defined in terms of the use or form of cherries.

Material Issue Number 10—Ten Percent Reserve Release for Market Expansion

The order should be amended to provide that the 10-percent reserve release for market expansion apply only during years when volume regulations are in effect.

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at the handler's facility, or shipment into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an "optimum supply" of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the optimum supply of free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10-percent reserve release only apply during years when volume regulations are in effect.

The record shows that the 10-percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10-percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more importantly, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversion (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the affects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

There was no opposition to this Board proposal expressed at the hearing or in the briefs filed.

The Department recommends amending § 930.50(g) to specify that when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. This release would not be required in years when restricted percentages are not established.

Material Issue Number 11—Assessments on All Cherries Handled

The order should be amended to provide that assessments be imposed on all cherries processed and sold by handlers. The only cherries that would not be assessed would be those diverted by handlers by destruction at their facilities and those diverted by growers in the orchard.

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their *pro rata* share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

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Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. If a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. It was concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses are incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (*e.g.*, new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

No objections were raised at the hearing or in the briefs concerning this amendment.

The Department proposes that § 930.41(c) be revised to state that assessments are due on all cherries handled except for those that are diverted by destruction at a handler's facility or are represented by valid grower diversion certificates. A conforming change is proposed in § 930.62 of the order which relates to exempt shipments. A conforming change is also proposed in § 930.51(c) which refers to diverted cherries being exempt from assessments.

Material Issue Number 12—Uniform Assessment Rate

The order should be amended to eliminate the requirement that different assessment rates be established for cherries used for manufacturing different products.

As discussed in the preceding material issue, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it take approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the recommended amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis. Paragraph (f) of § 930.41 has been revised accordingly.

Material Issue Number 13—Crop Production Estimate

The order should be amended to provide that the Board may use estimates other than the official USDA crop estimate in developing its annual marketing policy.

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the "optimum supply" which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by the States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces over 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

No opposition was expressed regarding this proposed amendment authorizing the Board to use estimates other than the official USDA estimates.

The Department is therefore recommending this change through a proposed amendment to § 930.50(b).

Conforming Changes

The Agricultural Marketing Service proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. Necessary conforming changes have been identified and discussed in this Recommended Decision under the pertinent material issue.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments could result in additional regulatory requirements being imposed on some tart cherry handlers, while regulatory burdens on other handlers could be reduced. Overall benefits are expected to exceed costs.

The record indicates that there are about 40 handlers regulated under Marketing Order No. 930. In addition, there are about 905 producers of tart cherries in the production area.

The record indicates that of the 41 tart cherry handlers operating during the 1999–2000 season, 7 had processed tonnage of more than 10 million pounds (or 17 percent of all handlers); 8 had between 5.1 and 10 million pounds (20 percent); 12 had between 2.1 and 5 million pounds (29 percent); and the remaining 14 had less than 2 million pounds of processed tonnage (34 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities.

Twenty handlers are located in Michigan—nine in district 1 (Northern Michigan), eight in district 2 (Central Michigan) and three in district 3 (Southern Michigan). Of the remaining 21 handlers, 4 are in district 4 (New York), 3 are in district 5 (Oregon); 1 is in district 5 (Pennsylvania), 3 are in district 7 (Utah), 5 are in district 8 (Washington), and 5 are in district 9 (Wisconsin). Many handlers process cherries grown in more than one district.

Of the 904 growers who produced cherries in 1999, 368 were in Northern Michigan (41 percent), 149 were in Southern Michigan (16 percent), 129 percent in Central Michigan (14 percent), 84 in New York (9 percent), 65 in Wisconsin (7 percent), 38 in Utah (4 percent), 29 in Pennsylvania (3 percent), 27 in Oregon (3 percent), and 17 in Washington (2 percent).

During the 3-year period 1999–2001, production of tart cherries averaged 300.6 million pounds. By district, Northern Michigan accounted for 44.0 percent of the production, followed by Central Michigan with 22.4 percent, Southern Michigan with 8.7 percent, Utah and Washington each with 6.6 percent, New York with 5.3 percent, Wisconsin with 3.4 percent, Pennsylvania with 1.7 percent, and Oregon with 1.3 percent.

Dividing total production by the number of growers, the average grower produces about 332,500 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $66,500. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

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At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition that was in effect at the time of the hearing. The evidence of record is that only 13 growers (or less than 2 percent of the total number of growers) produced 2.5 million pounds or more during the 1999–2000 crop year. Five of those growers (or 38 percent) were located in Northern Michigan (district 1) and three operated (23 percent) in Central Michigan (district 2). The remaining five growers in this category (38 percent) were distributed among the remaining seven districts. The distribution of large growers is thus in proportion to the overall distribution of growers among the districts.

A large majority (more than 98 percent) of the tart cherry growers falls into the previous SBA definition of a small entity (annual receipts of less than $500,000); it is reasonable to assume that an even greater majority qualify under the current SBA definition of a small grower (annual receipts of less than $750,000).

During the 3 years 1999 to 2001, the average grower accounted for about 333,000 pounds of cherries. By district, average grower size varies considerably. The average grower in Washington accounts for roughly 1,159,000 pounds of cherries. Next in size is Central Michigan with 530,000 pounds, followed by Utah (518,000 pounds), Northern Michigan (360,000 pounds), New York (191,000 pounds), Pennsylvania (179,000 pounds), Southern Michigan (177,000 pounds), Wisconsin (155,000 pounds) and Oregon (141,000 pounds).

This decision recommends that the order be amended: (1) To provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation rather than only those with annual production in excess of 15 million pounds; (2) To allocate Board membership among districts based on levels of production and make a corresponding change in quorum requirements; (3) To authorize a Board member to designate any alternate to serve for that member at a Board meeting in the event the member and his or her alternate are unavailable; (4) To clarify the diversion and exemption provisions of the order by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions; (5) To add specific authority to the order to exempt or provide diversion credit for cherries exported to designated markets; (6) To provide diversion credit for shipments of cherry juice and juice concentrate to established diversion markets; (7) To add specific authority for the transfer of diversion credits among handlers; (8) To provide that grower diversions that take place in districts that are subsequently exempt from volume regulation qualify for diversion credit; (9) To allow cherries in the inventory reserve to be released for use in only certain designated markets; (10) To specify that the 10-percent reserve release for market expansion only applies during years when volume regulations are in effect; (11) To require assessments to be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by a grower diversion certificate; (12) To eliminate the requirement that differential assessment rates be established for various cherry products based on the relative market values of such products; and (13) To allow the Board should to use an estimate other than the official USDA crop estimate in developing its marketing policy.

Industry Background

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995–96 through 1999–00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987–88 through 1997–98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999–00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999–00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop years 1987–88 through 1999–00, tart cherry production ranged from a high of 396.0 million pounds in 1995–96 to a low of 189.9 million pounds in 1991–92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since most tart cherries are either canned or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies. In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry would result in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

The free and restricted percentages established under the order release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from operation of the marketing order program are difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Districts Subject to Volume Regulation

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. "Free market tonnage percentage" cherries may be marketed in any outlet. "Restricted percentage" cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

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District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criteria for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150 Percent
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon have reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more importantly, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.6
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (*e.g.*, harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversion.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

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	Lbs.	Percent	Price	Income
Open Market	240,000	60	$0.14	$33,600
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100		45,040
For a grower in a non-regulated district, income was estimated as follows:				
Open Market	400,000	100	0.135	54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

Witnesses stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (e.g., susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that was comprised of older trees in 1998.

State	Percent acreage 21–25 years	Percent acreage 26+ years	Percent total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already "done their part" to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15-million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

Allocation of Board Membership

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. The Board consists of 19 members: 18 tart cherry growers and handlers, and 1 public member.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. Six of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), Utah (two members), and Washington (two members). The three districts with one member each are Oregon, Pennsylvania, and Wisconsin. The nineteenth Board member is selected to represent the general public, and need not be from any specific area.

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Section 930.20 further provides that if a district with a single member becomes subject to volume regulation, that district will get a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that this amendment could result in a larger number of Board members. Using average annual production figures for the years 1999 through 2001, one district (Wisconsin) would have been entitled to an additional Board member position for the term of office that began July 1, 2000. Thus, the total number of Board members under this proposed amendment would have increased to 20 members (versus 19 members under the provisions currently in effect).

An increase in the number of Board members would result in a marginal increase in Board expenses. This is because the Board reimburses members for costs incurred in attending Board meetings (travel costs, etc.). Since Board expenses are funded through handler assessments, all handlers would be impacted by slightly higher assessments.

However, these slight cost increases will be offset by better industry representation on the Board. Reallocating membership on an annual basis will allow membership to more closely reflect changing production trends in the industry. This should lead to better decision making by a more representative administrative body.

Designation of a Temporary Alternate To Act for an Absent Board Member

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate choose to make such a designation, the Board's chairperson would be free to do so (with the concurrence of a majority of present members).

The record supports the concept of allowing more flexibility for alternates to fill in for absent Board members. However, the Department is recommending a revision in the Board's proposal. This decision proposes allowing a Board member to designate an additional alternate to act in his or her place when that member and that member's alternate are unable to attend a Board meeting. However, if the member chooses not to name an additional alternate, that decision would not then revert to the Board or its chairperson.

This proposed amendment would allow more flexibility for Board members who cannot attend a Board meeting. It should also encourage a full contingency of voting members at Board meetings, while maintaining adequate representation among the districts comprising the production area. No additional costs should be incurred as a result of this change.

Clarification of Diversion and Exemption Provisions

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries must be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for "uses exempt under § 930.62." A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development were eligible for diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

This proposed amendment is a clarification of the current order and its operation. It would not introduce new or different concepts. To the extent that it makes the order easier for growers and handlers to understand, it should be of benefit to the industry.

Exemption or Diversion Credit for Export Shipments

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as being eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers during recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only. It would impose no new or different regulatory requirements on the tart cherry industry.

Diversion Credit for Juice and Juice Concentrate

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the prohibition in § 930.59 (b) that shipments of cherry juice and juice concentrate to approved diversion outlets be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in that area of the country have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace and an accompanying reduction in juice prices could result. This would unduly harm the industry in the Washington and Oregon. USDA therefore inserted the provision to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00—$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the

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U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5+1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was critical for handlers in Washington to be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

This proposed amendment would result in additional options for handlers in meeting their restricted obligations under the order. It would also encourage expansion of markets for U.S. tart cherry products, which should benefit the industry as a whole. It would not adversely impact the sale of juice and juice concentrate in primary markets; in fact, it could tend to strengthen prices in those markets. This is because more juice would likely be exported, which would reduce the supply available in the domestic market.

Handler Transfers of Diversion Credits

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that allowing transfers of diversion certificates provides additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This can also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversion to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversions (pounds)	Excess diversion credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use.

Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	"Free" Sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of "free" cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products. Allowing transfers of diversion certificates therefore has a positive impact on the industry.

Grower Diversion Certificates

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy is typically a week or two after the release of the USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete. This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

This amendment should benefit tart cherry growers who choose to divert cherries in anticipation of a volume regulation. It should also contribute to the supply management objectives of the program, which would benefit the U.S. tart cherry industry as a whole.

Release of Cherries in the Inventory Reserve

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54(a). The first, under § 930.50(g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes.

The second release, under § 930.50(j) occurs in years when the expected availability from the current crop plus

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expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be "free" percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Ten Percent Reserve Release for Market Expansion

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an "optimum supply" of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10 percent reserve release only apply during years when volume regulation is in effect.

The record shows that the 10 percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10 percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more importantly, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversion (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the affects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Assessments on All Cherries Handled

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their pro rata share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. It was their opinion that if a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. Those in support of assessing all processed cherries concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses are incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (e.g., new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

This amendment would increase assessment obligations on handlers who choose to divert their restricted percentage cherries in approved outlets. However, it would also tend to result in a more reasonable assessment system.

Uniform Assessment Rate

As discussed in the preceding section, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In

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their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it take approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the recommended amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis.

Implementation of this amendment could result in a single, uniform assessment rate applicable to all cherries. Such action would likely increase the rate established for cherries used for juice concentrate and puree, and could result in a lower rate for cherries used for other products. The impact of any such action would be analyzed by the Board and USDA prior to its effectuation.

Crop Production Estimate

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the "optimum supply" which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by those States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces over 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

The record shows that the USDA estimate should be used by the Board unless two things happen. The first would be that the Board would have to agree that the USDA estimate was inaccurate. The second would be that the Board would have to agree on another estimate or estimates to use. Both these actions would require concurrence by at least two-thirds of the Board members. This would safeguard against the possibility of some members attempting to manipulate the crop estimate to impact the level of volume restriction.

In addition, witnesses testified that other estimates used by the Board would have to be from other reliable, independent sources, and would be averaged in with the USDA estimate. Currently available is an annual estimate made by the Michigan Food Processors Association. Other possible sources include the Michigan Agricultural Cooperative Marketing Association and individual State grower associations.

This proposed amendment provides the Board with more flexibility in developing its marketing policy and recommending preliminary free and restricted percentages. To the extent that the Board's decision making improves, the entire U.S. tart cherry industry would benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate so that this rulemaking may be completed prior to the upcoming season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order and the previously issued amendment thereto. All said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 930.20 as follows:

a. By revising paragraphs (a), (b), (d) and (e);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and

c. Adding new paragraphs (f) and (i).

The additions and revisions read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the membership of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous

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three year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members;

(4) Greater than 80 million pounds shall have 4 members; and

(5) Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members on	Handler members
Up to and including 10 million pounds	1	1
More than 10 and up to 40 million pounds	1	1
More than 40 and up to 80 million pounds	1	2
More than 80 million pounds	2	2

* * * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handlers members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to a district, then the Board shall be reestablished by the Secretary, and such seats shall be filled according to the applicable provisions of this part.

* * * * *

(i) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

3. Revise § 930.28 to read as follow:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided*, that such alternate represent the same group (grower or handler) as the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

4. Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

5. Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

* * * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

* * * * *

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

* * * * *

6. Amend § 930.50 by revising paragraphs (a), (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: From the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated over-production which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

* * * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in paragraph (a) of this section, for market expansion.

* * * * *

7. Amend § 930.51 by revising paragraph (c) to read as follows:

§ 930.51 Issuance of volume regulations.

* * * * *

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year.

* * * * *

8. Amend § 930.52 by revising paragraph (a) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 3 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 3-year period in which the 6-million pound average production requirement is exceeded in that district.

* * * * *

9. Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraphs (a), (b), or (c) of this section.

(a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets. Such designated markets may be defined in terms of the use or form of the cherries.

(c) Cherries in the primary and/or secondary inventory reserve may be used at any time for uses exempt from regulation under § 930.62.

10. Amend § 930.58 by revising paragraph (a) to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

11. Revise § 930.59 to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

12. Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) experimental purposes; or.

(4) for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year

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average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided*, that growers engaging in such activities under the authority of § 930.58 shall be issued diversion certificates for such activities.

Dated: January 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–1423 Filed 1–23–02; 8:45 am]

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Federal Register

Thursday,
January 24, 2002

Part III

The President

Proclamation 7518—Martin Luther King, Jr., Federal Holiday, 2002

Proclamation 7519—National Mentoring Month, 2002

Proclamation 7520—National Sanctity of Human Life Day, 2002

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7518 of January 17, 2002

Martin Luther King, Jr., Federal Holiday, 2002

By the President of the United States of America

A Proclamation

For too brief a time, our Nation was blessed by the life of Dr. Martin Luther King, Jr. Dr. King was a modern American hero whose leadership rallied people of all races to rise up against injustice. His commitment to stand peacefully for the conviction that all men are created equal brought about changes in the laws of our Nation, and he paid the ultimate price for the courage he demonstrated in attempting to ensure that all men and women were treated equally in the eyes of the law and by their fellow citizens. It is with a great sense of pride and gratitude that we celebrate this 17th national holiday in honor of Dr. King's life and work. Let us take this opportunity to recall his vision and renew his call for equal justice for all.

We enter this new year and this annual celebration with a revived national spirit. The events of September 11, 2001, have drawn us closer as a Nation and increased our resolve to protect the life and liberty we cherish. And while our patriotism and neighborly affections run high, these circumstances have given us renewed purpose in rededicating ourselves to Dr. King's "dream." As he said on the steps of the Lincoln Memorial on August 28, 1963: "I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by content of their character." Dr. King's words were not just a call to change our laws, but they also served as a challenge to all Americans to change their hearts by refusing to judge people by their skin color or their national origin, by their race or their religion. For while we have made progress, there is much work to be done, both at home and abroad.

In the face of massive injustice, Dr. King's unwavering commitment to nonviolent means of bringing the people of our Nation together provided a foundation for healing and trust. That trust brought us through our recent tragedy as we reached out to each other without regard to race or religion. Dr. King spent his life working for those who held the uncelebrated jobs in our communities—people who simply performed their work with dignity and pride. The words from his Nobel Peace Prize acceptance speech of 1964, spoken about the workers in the freedom movement, still ring true for those men and women who unselfishly attempted to rescue innocent persons in the World Trade Center buildings and at the Pentagon:

Most of these people will never make the headlines and their names will not appear in Who's Who. Yet when years have rolled past and when the blazing light of truth is focused on this marvelous age in which we live—men and women will know and children will be taught that we have a finer land, a better people, a more noble civilization—because these humble children of God were willing to suffer for righteousness' sake.

We are so thankful for those "humble children of God," and we are thankful for the life and times of Dr. Martin Luther King, Jr. His abiding faith in America has helped us become a fairer and more colorblind society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution

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and laws of the United States, do hereby proclaim Monday, January 21, 2002, as the Martin Luther King, Jr., Federal Holiday. I encourage Americans to observe this day with appropriate community programs, gatherings, and civic activities that honor the memory and the legacy of Dr. King.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

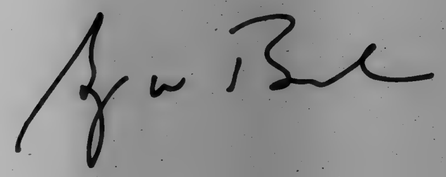

[FR Doc. 02–1969
Filed 1–23–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7519 of January 18, 2002

National Mentoring Month, 2002

By the President of the United States of America

A Proclamation

National Mentoring Month allows us to recognize the important contributions made by the millions of our fellow citizens who choose to strengthen our Nation by giving their time, effort, and heart to serve as a mentor and role model for a young person. Through quality education programs, community initiatives, and personal involvement, mentors help our children become better citizens by showing them how to make the right choices, to work hard, and to care for their neighbors in need. Mentors play an important role in a child's life, particularly if a parent is absent. A mentor's involvement in the life of a child can brighten that child's future, help maintain healthy families, and help promote more vibrant communities.

Community mentoring programs have given millions of young people, particularly those at high-risk for poor school performance and behavior problems, a boost in life. Statistics indicate that most children who have been mentored improve their school attendance and performance, go to college, and are less likely to use drugs or alcohol. By being a positive role model, a mentor can demonstrate the blessings of living a virtuous life by sharing their values and experiences and motivating a child to learn and achieve. We must teach our children the difference between right and wrong; and we must seize every opportunity to help a young person find the right path. We must also teach discipline and accountability.

Many adults recall lessons they learned from childhood as a result of observing and interacting with role models. They recognize their childhood homes and schools as places where love, encouragement, and instruction provided them with the tools they needed to become contributing citizens. Today, the role of families, schools, and communities remains crucial to providing stability and direction to America's young people.

My Administration strongly supports Federal, State, and local programs that help families stay together, keep both parents involved in their child's life, and utilize our education system to stand by parents and reinforce the values that are taught in the home. I am particularly pleased that the Congress passed and I have signed into law legislation I proposed to strengthen and expand successful mentoring initiatives aimed at serving a vulnerable population: children whose parents are incarcerated. This new initiative—"Promoting Safe and Stable Families Amendments of 2001"—represents the first comprehensive Federal effort to improve the lives of these children. This important legislation will help surround vulnerable youth with positive, one-on-one role models, and help them not just dream big dreams, but achieve them.

On the occasion of National Mentoring Month, we pay tribute to the parents, teachers, community leaders, and citizens who serve as mentors and role models for our children. We encourage others to become involved in mentoring.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2002 as National

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Mentoring Month. I call upon the people of the United States to recognize the importance of being role models for our youth, to look for mentoring opportunities in their communities, and to celebrate this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

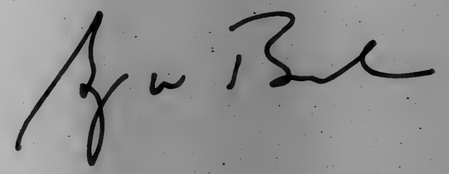

[FR Doc. 02–1970
Filed 1–23–02; 8:45 am]
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Presidential Documents

Proclamation 7520 of January 18, 2002

National Sanctity of Human Life Day, 2002

By the President of the United States of America

A Proclamation

This Nation was founded upon the belief that every human being is endowed by our Creator with certain "unalienable rights." Chief among them is the right to life itself. The Signers of the Declaration of Independence pledged their own lives, fortunes, and honor to guarantee inalienable rights for all of the new country's citizens. These visionaries recognized that an essential human dignity attached to all persons by virtue of their very existence and not just to the strong, the independent, or the healthy. That value should apply to every American, including the elderly and the unprotected, the weak and the infirm, and even to the unwanted.

Thomas Jefferson wrote that, "[t]he care of human life and happiness and not their destruction is the first and only legitimate object of good government." President Jefferson was right. Life is an inalienable right, understood as given to each of us by our Creator.

President Jefferson's timeless principle obligates us to pursue a civil society that will democratically embrace its essential moral duties, including defending the elderly, strengthening the weak, protecting the defenseless, feeding the hungry, and caring for children—born and unborn. Mindful of these and other obligations, we should join together in pursuit of a more compassionate society, rejecting the notion that some lives are less worthy of protection than others, whether because of age or illness, social circumstance or economic condition. Consistent with the core principles about which Thomas Jefferson wrote, and to which the Founders subscribed, we should peacefully commit ourselves to seeking a society that values life—from its very beginnings to its natural end. Unborn children should be welcomed in life and protected in law.

On September 11, we saw clearly that evil exists in this world, and that it does not value life. The terrible events of that fateful day have given us, as a Nation, a greater understanding about the value and wonder of life. Every innocent life taken that day was the most important person on earth to somebody; and every death extinguished a world. Now we are engaged in a fight against evil and tyranny to preserve and protect life. In so doing, we are standing again for those core principles upon which our Nation was founded.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Sunday, January 20, 2002, as National Sanctity of Human Life Day. I call upon all Americans to reflect upon the sanctity of human life. Let us recognize the day with appropriate ceremonies in our homes and places of worship, rededicate ourselves to compassionate service on behalf of the weak and defenseless, and reaffirm our commitment to respect the life and dignity of every human being.

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IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

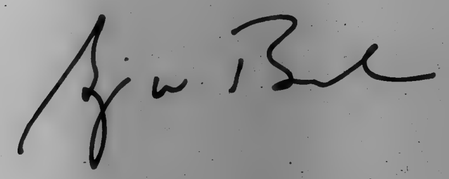

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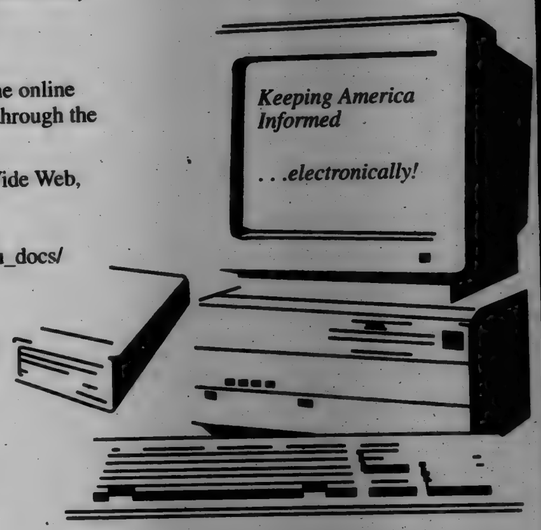

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Rules and Regulations

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Vol. 67, No. 17
Friday, January 25, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN: 3206–AJ47

Basic Pay for Employees of Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations on setting pay for employees of temporary organizations established by law or Executive order. These regulations will enable agencies to determine the rate of basic pay and locality payments for employees of temporary organizations.

DATES: Effective Date: The regulations are effective on January 25, 2002.

Applicability Dates: The regulations apply on the first day of the first applicable pay period beginning on or after January 25, 2002.

Comments Date: Comments must be received on or before March 26, 2002.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: *payleave@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Ron Genua, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations on compensation for employees of temporary organizations established by law or Executive order. Section 1101 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Public Law 106–398, October 30, 2000), adds a new subchapter IV to chapter 31 of title 5, United States Code. Subchapter IV provides that the head of a temporary organization may make excepted service appointments of up to 3 years to fill positions of the temporary organization. The appointments may be extended for an additional 2 years consistent with regulations published by OPM. This authority is available to executive and legislative branch agencies. In addition, subchapter IV provides that, upon request by the head of a temporary organization, the head of any department or agency of the Government may detail employees on a nonreimbursable basis to the temporary organization to assist the temporary organization in carrying out its duties.

Subchapter IV defines a temporary organization as a commission, committee, board, or other organization that is established for a specific period of time, not in excess of 3 years, for the purpose of performing a specific study or other project. Such a temporary organization generally terminates upon completion of the study or project.

Subchapter IV provides OPM with authority to establish regulations to determine the rate of basic pay for employees of temporary organizations without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. (See 5 U.S.C. 3161(d).) These interim regulations do not apply to temporary organizations established prior to October 30, 2000.

Subchapter IV also provides that the rate of basic pay for the chairman, a member, an executive director, a staff director, or other executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service (SES) under section 5382 of title 5, United States Code. The rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for GS–15. However, the rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the agency to be exceptional, exceed the maximum rate of basic pay for GS–15, but may not exceed the maximum rate of basic pay for the SES. Subchapter IV defines *basic pay* as including locality pay provided under section 5304 of title 5, United States Code.

In setting rates of basic pay for staff and other non-executive level positions, the interim regulations require that the head of a temporary organization give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. This is consistent with a parallel requirement established under regulations published by the General Services Administration for setting basic pay for advisory committee members and staff under the Federal Advisory Committee Act. (See 41 CFR 101–6.1033.) The interim regulations also require the head of a temporary organization to take into account rates of basic pay paid to Federal employees who have duties that are similar in terms of difficulty and responsibility.

The interim regulations provide General Schedule locality payments to all executive level and staff positions of temporary organizations. The regulations set maximum rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. This will make it easier to determine pay when employees move from General Schedule positions to positions in temporary organizations, and vice versa.

The compensation authority in 5 U.S.C. 3161(d) is limited to determining rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. In addition, subchapter IV provides that an employee of a temporary organization is entitled to the same benefits provided to temporary employees under title 5, United States Code. The interim regulations clarify, however, that subchapter IV provides no new independent authority for the head of a temporary organization to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific authority. For example, the law does not create any new authority for providing premium pay, bonuses, awards, leave, or benefits differently than under title 5 or any other already existing statute.

The interim regulations require that the head of a temporary organization comply with section 5504 of title 5, United States Code, including the requirement for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic

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hourly, daily, weekly, or biweekly rate. The regulations also require that employees of temporary organizations receive basic pay on an hourly basis. These requirements will facilitate compliance with the laws and regulations on crediting and using leave on an hourly basis, or fractions thereof.

Finally, subchapter IV provides criteria under which the head of a temporary organization may accept volunteer services without regard to section 1342 of title 31, United States Code.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the interim regulations are being published to implement changes in law that are already in effect.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending part 534 of title 5 of the Code of Federal Regulations as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

2. Subpart C of part 534 is added to read as follows:

Subpart C—Basic Pay for Employees of Temporary Organizations

534.301 General.
534.302 Applicability.
534.303 Basic pay for executive level positions.
534.304 Basic pay for staff positions.
534.305 Pay periods and computation of pay.

Subpart C—Basic Pay for Employees of Temporary Organizations

§ 534.301 Coverage.

This subpart provides rules for setting rates of basic pay for employees who are appointed to positions in temporary organizations in accordance with subchapter IV of chapter 31 of title 5, United States Code (5 U.S.C. 3161). Such temporary organizations are established by law or Executive order. Employees appointed under 5 U.S.C. 3161(b) are not subject to the provisions applicable to General Schedule employees covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

§ 534.302 Applicability.

The regulations in this subpart are applicable to employees of temporary organizations who are appointed and compensated under 5 U.S.C. 3161. The rates of basic pay for employees appointed under 5 U.S.C. 3161(b) must be established under the regulations in this subpart. This subpart provides rules for determining rates of basic pay and locality-adjusted rates of basic pay. This subpart does not provide authority to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific statutory authority.

§ 534.303 Basic pay for executive level positions.

(a) Rates of basic pay for executive level positions of temporary organizations may not exceed the maximum rate of basic pay established for the Senior Executive Service under 5 U.S.C. 5382. Therefore, the highest rate of basic pay for executive level positions of temporary organizations, not including any applicable locality-based comparability payment under 5 U.S.C. 5304, may not exceed the rate of basic pay for level IV of the Executive Schedule.

(b) Employees in executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay for executive level positions may not exceed the rate of basic pay for level III of the Executive Schedule.

§ 534.304 Basic pay for staff positions.

(a)(1) Rates of basic pay for staff or other non-executive level positions of temporary organizations may not exceed the maximum rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5332, excluding any locality-based comparability payment under 5 U.S.C. 5304.

(2) In establishing rates of basic pay for staff and other non-executive level positions of temporary organizations, the head of a temporary organization must give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. The head of a temporary organization must also take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility.

(b) Employees in staff and other non-executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay may not exceed the locality-adjusted rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5304, for the locality pay area involved.

(c) Notwithstanding the limitations in paragraphs (a) and (b) of this section, the rate of basic pay and locality-adjusted rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of a temporary organization to be exceptional, exceed the maximum rates established under those paragraphs. However, the higher payable rates may not exceed the applicable maximum rate of basic pay or locality-adjusted rate of basic pay authorized under this subpart for an executive level position.

§ 534.305 Pay periods and computation of pay.

(a) The requirements of 5 U.S.C. 5504, must be applied to employees of temporary organizations. This includes requirements for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate.

(b) Employees of temporary organizations must receive basic pay on an hourly basis.

[FR Doc. 02–1604 Filed 1–24–02; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–036–3]

Citrus Canker; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to detections of citrus canker in these areas. The interim rule imposed restrictions on the interstate movement of regulated articles from and through the quarantined areas and was necessary to prevent the spread of citrus canker into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on August 29, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective August 29, 2000, and published in the **Federal Register** on September 5, 2000 (65 FR 53528–53531, Docket No. 00–036–1), we amended the citrus canker regulations, contained in 7 CFR 301.75–1 through 301.75–16, in response to the detection of the disease in areas outside of the previously quarantined areas. On September 26, 2000, we published a correction (65 FR 57723, Docket No. 00–036–2) that clarified the description of quarantined areas contained in the interim rule. The interim rule, as corrected by that document, added portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and expanded the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL. The interim rule imposed restrictions on the interstate movement of regulated articles from and through the quarantined areas.

Comments on the interim rule were required to be received on or before November 6, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372, 12866, and 12988, the Paperwork Reduction Act, and the National Environmental Policy Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by adding portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to the detection of citrus canker in those areas. The interim rule imposed certain restrictions on the interstate movement of regulated articles from and through the quarantined areas. The interim rule was necessary to prevent the spread of citrus canker into noninfested areas of the United States.

In accordance with 5 U.S.C. 604 of the Regulatory Flexibility Act, we have performed a final regulatory flexibility analysis regarding the economic effects of the interim rule on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as "small" if it has less than $750,000 in annual receipts.

The entities who could be affected by the interim rule include those businesses that produce, sell, process, handle, or move regulated articles, such as commercial groves, grove maintenance services, fruit transporters, fruit processors, nurseries, nursery stock dealers, fresh fruit retail stores, fruit packers, gift fruit shippers, fruit harvesting contractors, lawn maintenance businesses, and flea markets. Because the interim rule restricted the interstate movement of regulated articles from and through the quarantined areas, entities that are located within the new or expanded quarantined areas, as well as entities located outside the quarantined areas, could be affected.

The number of these entities that meet the SBA definition of a small entity is unavailable. However, it is reasonable to assume that most of these entities are small in size because the majority of the same or similar businesses in southern Florida, as well as the rest of the United States, are small by SBA standards. For example, we have identified a total of 317 commercial citrus groves in those counties in which quarantined areas were established or expanded by the interim rule. Approximately 285 of the 317 commercial citrus groves in those counties meet the SBA definition of a small entity.

Commercial citrus growers, processors, packers, and shippers within the quarantined areas will still be able to move their fruit interstate, provided that, among other things, the fruit is treated and not shipped to another citrus-producing State. Growers will have to bear the cost of treatment, but that cost is expected to be minimal. The prohibition on moving the fruit to other citrus-producing States is not expected to negatively affect entities within the quarantined areas because most States do not produce citrus and growers are expected to be able to find a ready market in non-citrus-producing States.

Alternatively, owners of commercial citrus groves whose trees were removed because of citrus canker pursuant to a public order between 1986 and 1990 or on or after September 28, 1995, may, subject to the availability of funding, receive payments to replace commercial citrus trees. Eligible commercial citrus grove owners may also, subject to the availability of funding, receive payments to recover income from production that was lost as a result of the removal of commercial citrus trees to control citrus canker. These lost production and tree replacement payments will help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

The nurseries and commercial groves affected by the interim rule will be required to undergo periodic inspections. These inspections may be inconvenient, but the inspections will not result in any additional costs for the nurseries or growers because the Animal and Plant Health Inspection Service or the State of Florida will provide the services of an inspector without cost to the nursery or grower.

Fresh fruit retail stores, nurseries, and lawn maintenance companies, for the most part, operate locally; they do not typically move regulated articles outside of the State of Florida during the normal course of their business, and consumers do not generally move products purchased from those entities out of the State. The fruit sold by grocery stores and other retail food outlets is generally sold for local consumption. Retail nurseries also market their products for local consumption. Lawn maintenance businesses collect yard debris, but they do not normally transport that debris outside the State for disposal.

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The fresh fruit retailers affected by the interim rule will be required to abide by restrictions on the interstate movement of regulated articles. They may be affected by the interim rule because fruit sold within the quarantined areas in retail stores cannot be moved outside of the quarantined areas. However, we expect any direct costs of compliance for fresh fruit retailers will be minimal.

The lawn maintenance companies affected by the interim rule will be required to perform additional sanitation measures when maintaining an area inside the quarantined areas. Lawn maintenance companies will have to clean and disinfect their equipment after grooming an area within the quarantined areas, and they must properly dispose of any clippings from plants or trees within the quarantined areas. These requirements will slightly increase costs for lawn maintenance companies affected by the interim rule.

Consideration of Alternatives

The alternative to the interim rule was to make no changes in the citrus canker regulations. We rejected this alternative because failure to quarantine portions of Hendry and Hillsborough Counties, FL, and additional portions of Broward, Collier, Dade, and Manatee Counties, FL, could result in greater economic losses for domestic citrus producers due to citrus canker.

The interim rule contained no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 that was published at 65 FR 53528–53531 on September 5, 2000, and that was corrected in a document that was published at 65 FR 57723 on September 26, 2000.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 18th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1858 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 34, 70, 71, 72, and 73

RIN 3150–AG79

Revised Filing Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise filing and advance notification requirements to reflect organizational changes within the NRC. The amended regulations are necessary to correct telephone numbers, eliminate duplicative filings, and to inform the public of administrative changes within the NRC.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8092, e-mail: cxb@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission's Announcement No. 108, dated December 24, 1998, announced its decision to abolish the Office for Analysis and Evaluation of Operational Data (AEOD), effective January 3, 1999. The emergency response function of AEOD was transferred to the Office of Incident Response Operations (IRO). Any future general correspondence and technical documents relating to incident response should be addressed to IRO. This final rule also corrects the telephone number for the NRC Operations Center.

In 1995 the NRC transferred responsibility for receiving advance notification of shipments of licensed materials from the Division of Industrial and Medical Nuclear Safety (IMNS) and NRC Regional Administrators to the Spent Fuel Project Office (SFPO). Future applications and reports as required under parts 72 and 73 should be addressed to the SFPO rather than IMNS or the Regional Administrators. The attached final rule will inform the public of these previous organizational changes and will eliminate duplicate filings.

Because these minor amendments only reflect organizational changes, the notice and comment provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective on publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because this amendment is of a minor and administrative nature, dealing with the NRC's organization.

Environmental Impact: Categorical Exclusion

NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees to eliminate the submittal of multiple copies of reports to the NRC Regional Administrator and the Director, Office of Nuclear Material Safety and Safeguards for 10 CFR 72.44(f) and 72.186(b). The public burden reduction for this information collection is estimated to average 0.20 hour(s) per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, NRC is adopting the following amendments to 10 CFR Parts 1, 20, 34, 70, 71, 72, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.32 [Amended]

2. In § 1.32(b), remove the words "the Office for Analysis and Evaluation of Operational Data," and add in their place the words "Incident Response Operations,".

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202,206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 20.2201 [Amended]

4. In § 20.2201(a)(2)(ii), revise the telephone number for the NRC Operations Center from "301–951–0550" to "(301)–816–5100."

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETYREQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

5. The authority citation for Part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 34.45 also issued under sec. 206, 88 Stat. 1246, (42 U.S.C. 5846).

§ 34.101 [Amended]

6. In § 34.101(a), remove the words "Office for Analysis and Evaluation of Operational Data," and add in their place the words "Incident Response Operations,".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243). Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.20b [Amended]

8. Section 70.20b is amended as follows:

a. In paragraphs (f)(1) and (g)(1), remove the words "Division of Industrial and Medical Nuclear Safety," and add in their place the words "Director, Spent Fuel Project Office,".

b. In paragraph (f)(2)(ii), remove the words "Division of Industrial and Medical Nuclear Safety has been notified by telephone at (301) 415–7197," and add in their place the words "Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500,".

c. In paragraph (f)(2)(iii), remove the words "Division of Industrial and Medical Nuclear Safety will be notified by telephone at (301) 415–7197," and add in their place the words "Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500,".

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

9. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

§ 71.1 [Amended]

10. In § 71.1(a), remove the words "Office of Nuclear Material Safety and Safeguards," and add in their place the words "Spent Fuel Project Office,".

§ 71.5 [Amended]

11. In § 71.5(b), remove the words "Office of Nuclear Material Safety and Safeguards," and add in their place the words "Spent Fuel Project Office,".

§ 71.12 [Amended]

12. In § 71.12(c)(3), remove the words "Office of Nuclear Material Safety and Safeguards," and add in their place the words "Spent Fuel Project Office,".

§ 71.93 [Amended]

13. In § 71.93(c), remove the words "Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter," and add in their place the words "Director, Spent Fuel Project Office,".

§ 71.95 [Amended]

14. In § 71.95, remove the words "Office of Nuclear Material Safety and

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Safeguards," and add in their place the words "Spent Fuel Project Office,".

§ 71.97 [Amended]

15. In § 71.97(c)(1), remove the words "Administrator of the appropriate NRC Regional Office listed in appendix A to part 73 of this chapter." and add in their place the words "Director, Spent Fuel Project Office.".

15a. In § 71.97(f)(1), remove the words "Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter." and add in their place the words "Director, Spent Fuel Project Office.".

§ 71.101 [Amended]

16. In § 71.101(c) and (f), remove the words "Office of Nuclear Material Safety and Safeguards," and add in their place the words "Spent Fuel Project Office,".

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

17. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168). Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

§ 72.16 [Amended]

18. In § 72.16(a), remove the words "Division of Industrial and Medical Nuclear Safety," and add in their place the words "Spent Fuel Project Office,".

§ 72.44 [Amended]

19. In § 72.44(f), remove the words "appropriate NRC Regional Office specified in appendix A to part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards," and add in their place the words "Director, Spent Fuel Project Office,".

§ 72.186 [Amended]

20. In § 72.186(b) remove the words "Regional Administrator of the appropriate NRC Regional Office specified in appendix A of part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards," and add in their place the words "Director, Spent Fuel Project Office,".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

21. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.26 [Amended]

22. In § 73.26(i)(6), remove the words "appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part" and add in their place the words "Director, Spent Fuel Project Office".

§ 73.27 [Amended]

23. In § 73.27(b) in the first, second, and fourth sentences remove the words "Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A" and add in their place the words "Director, Spent Fuel Project Office". In the third sentence remove the words "Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part," and add in their place the words "Director, Spent Fuel Project Office,".

§ 73.67 [Amended]

24. In § 73.67(e)(7)(ii), remove the words "Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A" and add in their place the words "Director, Spent Fuel Project Office".

§ 73.71 [Amended]

25. In § 73.71(a)(4), remove the words " appropriate NRC Regional Office listed in appendix A to this part." and add in their place the words "Director, Spent Fuel Project Office.".

§ 73.72 [Amended]

26. Section 73.72 is amended as follows:

a. In paragraph (a)(1), remove the words "Division of Industrial and Medical Nuclear Safety," and add in their place the words "Director, Spent Fuel Project Office,".

b. In paragraphs (a)(4) and (a)(5), remove the words "Division of Industrial and Medical Nuclear Safety by telephone at 301– 415–7197" and add in their place the words "Director, Spent Fuel Project Office by telephone at (301) 415–8500".

§ 73.73 [Amended]

27. Section 73.73 is amended as follows:

a. In paragraph (a)(1), remove the words "Division of Industrial and Medical Nuclear Safety," and add in their place the words "Director, Spent Fuel Project Office,".

b. In paragraph (b), remove the words "Division of Industrial and Medical Nuclear Safety at 301–415–7197." and add in their place the words "Director, Spent Fuel Project Office at (301)415–8500.".

§ 73.74 [Amended]

28. Section 73.74 is amended as follows:

a. In paragraph (a)(1), remove the words "Division of Industrial and Medical Nuclear Safety," and add in their place the words "Director, Spent Fuel Project Office,".

b. In paragraph (b), remove the words "Division of Industrial and Medical Nuclear Safety at 301–415–7197." and add in their place the words "Director, Spent Fuel Project Office at (301) 415–8500.".

Appendix A to Part 73 [Amended]

29. In appendix A to Part 73, under the **ADDRESSES** column, remove the words "Office for Analysis and Evaluation of Operational Data," and add in their place the words "Incident Response Operations,".

Dated at Rockville, Maryland, this 10th day of January, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–1721 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1777

RIN 2550–AA12

Prompt Supervisory Response and Corrective Action

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule to set forth the procedures by which OFHEO administers the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, under which OFHEO takes prompt corrective action in response to specified declines in the capital levels of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The rule also implements a system of prompt supervisory responses to be taken whenever developments internal or external to an Enterprise, as identified by the agency on a case-by-case basis, may warrant special supervisory review by OFHEO. The initiation of a special supervisory review pursuant to such a procedure does not of itself indicate that an Enterprise is in an unsound condition; rather, it means only that OFHEO is undertaking a focused inquiry to ascertain the likely consequences of a particular development or developments for the Enterprise.

EFFECTIVE DATE: February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 414–3788 or David W. Roderer, Deputy General Counsel, (202) 414–6924 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD only).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development with responsibility for ensuring that the Enterprises are adequately capitalized and operate safely and in conformity to the requirements of applicable statutes, rules and regulations, including their respective charter acts.[1] The Enterprises were established to effect specific public purposes under Federal law, including the provision of liquidity to the residential mortgage market and the promotion of the availability of mortgage credit benefiting low- and moderate-income families and areas that are underserved by lending institutions.[2]

The enumerated statutory authorities of the Director explicitly include the authority to issue rules to carry out the duties of the Director,[3] as well as other broad supervisory powers essentially similar to those of the Federal bank regulatory agencies. OFHEO is empowered to conduct examinations of the Enterprises; to require the Enterprises to provide reports;[4] to establish capital standards for the Enterprises;[5] and, in appropriate circumstances, to exercise administrative enforcement authority. OFHEO's range of enforcement authorities include, among other things, the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to otherwise sanction or impose civil money penalties when appropriate.[6] OFHEO's enforcement regime, addressing the scope of these authorities and the applicable rules of practice and procedure, is set forth in part 1780 of OFHEO's regulations.[7]

In addition, subtitle B of the 1992 Act requires OFHEO to establish certain capital thresholds for the Enterprises.[8] The statute directs OFHEO to assign capital classifications to the Enterprises based on those capital thresholds, and authorizes OFHEO to reclassify an Enterprise notwithstanding the thresholds.[9] An Enterprise that is not classified as "adequately capitalized" is required to obtain OFHEO's approval for, and carry out, a formal plan to restore the Enterprise's capital. Statutory provisions also prohibit an Enterprise from making any capital distribution that would result in the Enterprise not meeting the capital thresholds, absent OFHEO's approval, and imposes additional restrictions on capital distributions so long as the Enterprise is not classified as adequately capitalized. An Enterprise that is not classified as adequately capitalized may also be subject to a variety of regulatory limitations and restrictions as deemed to be appropriate by OFHEO.[10]

On April 10, 2001, OFHEO published a notice of proposed rulemaking at 66 FR 18694 seeking public comment on a proposal to issue a rule describing the scope of the actions the agency is authorized to take under certain prompt corrective action statutory provisions applicable to the Enterprises at 12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623, as well as the procedures by which such actions will be carried out. OFHEO also sought public comment on adopting a proposed prompt supervisory response procedure, separate from the capital-based prompt corrective action regime, under which OFHEO proposed to monitor various supervisory concerns in addition to an

[1] 12 U.S.C. 4513(a). *See also* 12 U.S.C. 4513(b)(1)–(5), 4517, 4521(a)(2)–(3), 4631(a)(3), 4636(a)(1).

[2] See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; 1992 Act at 12 U.S.C. 4561–4567, 4562 note.

[3] 12 U.S.C. 4513(b)(1).

[4] 12 U.S.C. 4514, 4517, 1456(c), 1723a(k).

[5] 12 U.S.C. 4611–4614.

[6] 12 U.S.C. 4631–4641.

[7] 12 CFR part 1780; *see* 66 FR 18040 (April 5, 2001)(OFHEO final rule amending purpose and scope section of part 1780, to summarize agency's statutory enforcement powers).

[8] *See* 12 U.S.C. 4614–4619, 4622, 4623.

[9] Subtitle B of the 1992 Act directs OFHEO to classify the Enterprises into one of four capital classifications ("adequately capitalized," "undercapitalized," "significantly undercapitalized," or "critically undercapitalized,"), based on the level of capital maintained by the Enterprise. For these purposes, OFHEO assesses the Enterprises' capital by reference to two standards. The first capital standard is based on ratios of core capital instruments to on balance sheet assets and off balance sheet obligations. The ratios are set according to percentages contained in 12 U.S.C. 4612 and 4613, subject to certain adjustments by OFHEO, and calculated in accordance with guidance from OFHEO under part 1750 of OFHEO's regulations (12 CFR Part 1750). The statute provides for a "minimum capital" level based on these ratios, as well as a "critical capital" level, based on lower ratios, that triggers additional enforcement requirements and authorities under subtitle B of the 1992 Act. The other capital standard is risk-based. On September 13, 2001, OFHEO published a final rule amending 12 CFR Part 1750 to implement this capital standard. 66 FR 47729. Rather than applying leverage ratios, this risk-based capital standard requires the Enterprises to hold sufficient total capital to maintain a positive capital position during a hypothetical ten-year stress period characterized by statutorily prescribed stressful credit conditions and large movements in interest rates, plus an additional amount to cover management and operations risk. As directed by 12 U.S.C. 4611, OFHEO has developed a stress test which, when applied to an Enterprise's book of business, will project the amount of total capital that would be necessary to survive the stresses described in the statute during the stress period. However, as provided in 12 U.S.C. 4614(d) and 4615(c), OFHEO is not to include consideration of an Enterprise's total capital during the classification process, until September 13, 2002.

[10] For a more detailed description of the prompt corrective action provisions of subtitle B of the 1992 Act, *see* 66 FR 18696–18698 (April 10, 2001)(OFHEO's NPR on prompt supervisory response and PCA).

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Enterprise's capital classification, and to pursue early action by an Enterprise to preclude losses or possible losses, or to address particular threats to safety and soundness. The proposed procedure would be part of OFHEO's ongoing supervisory program that includes monitoring and examination of Enterprise activities on a continuous basis. The prompt supervisory response approach would complement and not supplant ongoing review programs. Similar to the procedures under the capital-based, prompt corrective action regime, as proposed the prompt supervisory response provision would have established a set of "tripwires," looking to specifically enumerated developments proposed to be appropriate junctures for a supervisory review to ascertain the financial or operational consequences of such developments upon the Enterprise. Under the proposal, the occasion of a specified tripwire event or condition would have triggered an automatic supervisory response by OFHEO.

OFHEO received comments on these proposals from Fannie Mae, Freddie Mac, and one former senior government official. The three commenters questioned the need for the prompt supervisory response regime. They similarly asserted that, since OFHEO already conducts continuous and comprehensive on-site supervision of the Enterprises and can work with the Enterprises informally to resolve any significant supervisory issues that arise, the prompt supervisory response approach would add nothing to OFHEO's ability to exercise supervisory oversight for the Enterprises.

The prompt supervisory response approach reflects OFHEO's commitment to use a broad-based method to effectuate early identification of and supervisory action regarding potentially adverse developments or conditions affecting the Enterprises, by moving beyond the capital-based focus of prompt corrective action in appropriate circumstances. The prompt supervisory response approach mandates no specific conduct by the Enterprises; indeed, the need for action is to be ascertained on a case-by-case basis. In those instances in which the Enterprise has already undertaken appropriate steps, OFHEO anticipates that no additional action will be necessary. The approach also increases the transparency of the procedures and analytical framework OFHEO is to use in such matters. The role of OFHEO to ensure the safety and soundness of the Enterprises is not restricted to examination and capital monitoring functions on the one hand and to an enforcement or prompt corrective action procedures on the other. OFHEO's duty to ensure the Enterprises are adequately capitalized and operate safely [11] means that the agency is charged by Congress to act to ensure the safety and soundness of the Enterprises at all points on the supervisory spectrum between examination and enforcement.[12] Thus, OFHEO is also charged with ensuring that each Enterprise acts prudently in dealing with perceived problems as they emerge.

OFHEO has taken the comments provided into consideration and is now issuing a final rule, with several modifications. In formulating Subpart A, the final prompt supervisory response rule, OFHEO has adopted a less rigid approach to identify developments warranting specific supervisory response under the rule, while the supervisory response process set out in the rule has been adopted as proposed, without substantive change. OFHEO has also made certain modifications to Subpart B, the prompt corrective action provisions of the rule. The final rule, along with the comments and modifications, are described below.

Prompt Supervisory Response Provisions of the Proposed Rule

Subpart A establishes a system of prompt supervisory response to be taken when developments internal or external to an Enterprise, as identified by OFHEO, warrant special supervisory review. In order to provide a broad early intervention regime that addresses both capital-related and non-capital-related supervisory concerns, the rule describes how OFHEO may initiate specified prompt supervisory responses to address non-capital considerations that are outside the primary focus of the prompt corrective action regime, of Subpart B.

Authority, Purpose, and Scope

In their comments, each Enterprise asserted that the prompt supervisory response rule, as proposed, exceeded OFHEO's statutory authority, and should be wholly withdrawn. The rule—as proposed, and as adopted in final form here—contemplates that a letter be issued directing an Enterprise to respond to OFHEO's inquiry or that OFHEO may require an Enterprise to prepare and carry out an acceptable action plan. The Enterprises argue that this procedure would bypass specified statutory thresholds and procedural protections contained in the 1992 Act, under which OFHEO may only issue cease and desist orders or require capital restoration plans in certain narrowly defined circumstances, pursuant to defined due process procedures. Moreover, the Enterprises asserted that OFHEO has no explicit statutory mandate to establish safety and soundness standards by regulation or other guidance.

As OFHEO discussed in the preamble to the proposed rule, the prompt supervisory response approach is simply a procedural framework through which OFHEO may employ its current array of supervisory tools and regulatory authority to confront special factual scenarios. The 1992 Act, at 12 U.S.C. 4631(a)(3)(A), sets out OFHEO's authority to order an Enterprise to cease and desist unsafe or unsound practices.[13] By identifying and working with an Enterprise to eliminate perceived unsafe or unsound conditions or practices through an interactive supervisory process, such as is reflected in the prompt supervisory response approach, instead of resorting directly to an adjudicative enforcement action, OFHEO seeks to carry out its oversight responsibilities and neither exceeds its statutory authority nor circumvents the procedural scheme contained in 12 U.S.C. 4631. Any subsequent use of formal or informal enforcement procedures will be dependent, in large part, upon Enterprise action to address supervisory concerns, and will be undertaken pursuant to the applicable statutory procedures.

OFHEO rejects assertions that the agency has no explicit statutory mandate to establish safety and soundness standards by regulation or guideline. The 1992 Act, at 12 U.S.C. 4513, particularly 12 U.S.C. 4513(b)(1) and (b)(5), explicitly establishes such authority without reservation. More pertinently, the prompt supervisory response rule does not establish supervisory standards or specify remedies; rather, it establishes a supervisory process.

As described in § 1777.1(a) and 1777.1(b) of the final rule, the regulation is being issued under OFHEO's broad statutory authority to take such actions as the Director of OFHEO deems appropriate to ensure that the Enterprises operate in a safe and sound

[11] *See*, e.g., 12 U.S.C. 4513(a).

[12] *See, e.g.*, 12 U.S.C. 4513(b)(5)(OFHEO authorized to take such actions and perform such functions as OFHEO determines necessary regarding "* * * *other* matters relating to safety and soundness" (emphasis added)).

[13] OFHEO has responded to Enterprise challenges to its authority to institute cease and desist proceedings to address unsafe or unsound practices. *See* 66 Fed. Reg. 18040, 18041 (April 5, 2001) (discussion of Fannie Mae's and Freddie Mac's comments on OFHEO's procedural rules for enforcement actions).

manner, together with OFHEO's reporting [14] and examination [15] authorities. As set out in § 1777.1(b), the purpose of subpart A of the rule is to fashion an early intervention regime to address matters of supervisory concern to OFHEO under its congressional mandate in addition to the capital considerations already focused upon by the prompt corrective action regime. However, as stated in § 1777.1(b) of the final rule, OFHEO's initiation of the procedures under the rule does not necessarily indicate that an unsound condition exists; rather, the final rule is consistent with the process that OFHEO employs in reviewing the conduct of an Enterprise's affairs as a safety and soundness regulator. The possible supervisory responses described below, including a supervisory letter, an action plan, or a notice to show cause, as they might be used under the rule, do not constitute orders under the 1992 Act for purposes of 12 U.S.C. 4631 or 4636. They are simply steps in a predictable and organized process under which OFHEO will review issues and, as necessary and appropriate, provide supervisory guidance to an Enterprise.

Developments Prompting Supervisory Response

In § 1777.10 of the proposed rule, OFHEO proposed to adopt a list of nine possible developments that would cause OFHEO to initiate a special review under the prompt supervisory response process. The proposed list included both external indicators tied to market factors, as well as internal indicators tied to factors within a particular Enterprise. The Enterprises submitted separate comments objecting to each of the nine proposed "triggers" on various grounds. In some instances, the Enterprises agreed that occurrence of a particular trigger event might indicate a potential for financial difficulties for the Enterprise, but asserted that the proposed triggers generally failed to take into account countervailing factors that could ameliorate any supervisory concern about a particular development. The Enterprises also asserted that the proposed triggers focused on matters that would most often have innocuous underlying causes, and would likely have already been subject to identification and assessment by the Enterprises and by OFHEO prior to the time that a prompt supervisory response inquiry might be initiated under the rule. OFHEO does not agree with the Enterprises' conclusions. OFHEO does agree that ongoing supervision and examination are central to its regulatory oversight, and OFHEO notes that ameliorative actions and prudent planning by an Enterprise to address a particular development would be relevant to a supervisory inquiry or suggested remedy under the prompt supervisory response approach.

The final version of § 1777.10 revises the approach of the proposed rule. In response to the comments, the list of developments prompting a supervisory response has been revised by deleting certain proposed developments and by retaining others, either as proposed or with modifications. The revised list retains proposed § 1777.10(a) (relating to declines in the Housing Price Index) and proposed paragraph (j), redesignated as paragraph (e) (as to the discretionary authority of the Director to initiate a supervisory letter in other circumstances). The final rule modifies § 1777.10(c) to provide only that changes in "publicly reported" net income are the type of development addressed, and similarly paragraph (d) to provide only that changes in "publicly reported" net interest margin are the type of development addressed. The final rule modifies § 1777.10(d) to raise the threshold amount of change in delinquent loans contemplated under this paragraph from one half of one percent to one percent, more appropriately defining the point that prompts a supervisory response. Based on comments received, the final rule does not include earlier proposed paragraphs (b) (relating to interest rate risk measures), (f) (matters related to equity calculations), (g) (matters related to data system operational problems), (h) (matters related to external auditor changes) and (i) (matters related to board meetings). The deletion of those paragraphs does not preclude their consideration as developments that might merit a supervisory response either under routine examination and supervision procedures of OFHEO or under the discretionary authority retained by the Director, under redesignated subsection (e).[16] OFHEO will continue to review and refine the list of early warning indicators and to identify additional developments that may signal a significant possibility of difficulties so as to warrant a prompt supervisory response.

In their comments, both Enterprises noted that proposed § 1777.10 (j), redesignated (e) in the final rule, would be sufficient to encompass all of the possible developments with which OFHEO was concerned under proposed § 1777.10. In addition, Freddie Mac noted that proposed § 1777.10 (j) most closely approximates OFHEO's existing oversight practices because it incorporates discretionary elements and implicitly suggests that OFHEO will consider the context of particular developments before initiating the prompt supervisory response process. Under § 1777.10 (e) of the final rule, the Director of OFHEO has the discretion to initiate the prompt supervisory response process whenever he or she is concerned about a development or condition relating to an Enterprise's safety and soundness, regardless of whether it has manifested an impact on the Enterprise's capital level. Developments and conditions of concern to the Director under § 1777.10 (e) might be detected by OFHEO in connection with an examination of the Enterprises, or in some other manner as the agency conducts its continuous supervisory and oversight functions.

Supervisory Response

Section 1777.11 of the final rule sets out the various forms of supervisory response that may be taken under the regulation. As noted earlier, all elements of the response process are recognized and existing elements of OFHEO's oversight authorities. The final rule adopts the approach of the proposal with only conforming changes and one clarification. Under the procedures set forth under the final rule, there are several levels of response.

In each case, OFHEO is to initiate a Level I supervisory action under § 1777.11(a) within five days of OFHEO's determination under § 1777.10 that a development or condition warrants supervisory response. The Enterprise will receive a supervisory letter advising the Enterprise that OFHEO has begun the prompt supervisory response process to address the development or condition and setting forth such other information and specific directions as the Director deems appropriate in light of the circumstances. For example, OFHEO may direct the Enterprise to provide information about the situation, to respond to OFHEO's specific questions or concerns, to take corrective or remedial action, or other preventative action as deemed appropriate.

Based on the Enterprise's response to the supervisory letter and other relevant concerns, OFHEO will promptly

[14] 12 U.S.C. 4514, 1456(c), 1723a(k).

[15] 12 U.S.C. 4517.

[16] Redesignated § 1777.10(e) provides that a supervisory response may be initiated upon the occurrence of "[a]ny other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprises or is a possible violation of applicable law, regulation, or order."

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determine whether additional supervisory response under the rule is necessary. The Enterprise's response to the supervisory letter may cause OFHEO to conclude that the subject development creates no substantial supervisory concern or that the Enterprise's management of the risks and concerns presented by the development is adequate. In other instances, the supervisory letter process may cause OFHEO to conclude that a heightened level of supervisory concern is warranted, yet the letter process itself and continuing supervisory dialogue may be all that is needed to ensure that the Enterprise undertakes sufficient preventative or remedial measures.

If additional supervisory action is deemed necessary, OFHEO has a variety of alternatives under § 1777.11. Level II supervisory action, as set out in § 1777.11(b), provides for a special review of an Enterprise. A special review may be useful in supplementing information already obtained by OFHEO through the examination process, and might provide OFHEO with a clearer picture of the situation than could otherwise be obtained through letters or reports. Such review could be conducted by OFHEO's Office of General Counsel, Office of Research and Model Development, Office of Examination and Oversight, Office of Policy Analysis and Research, or such other department or individual as designated by the Director. In light of such a special review, OFHEO will determine whether further supervisory action is warranted.

Under Level III supervisory action set out in § 1777.11(c), OFHEO may direct an Enterprise to prepare and submit an action plan addressing the development or condition. Among other things, the Enterprise's action plan may be required to include information about the circumstances leading up to the subject condition or development and an assessment of its possible effects upon the Enterprise. The Enterprise may also be asked to describe its proposed course of action for dealing with the development, including an analysis of available alternatives. If OFHEO determines that the action plan is insufficient to resolve the supervisory issues created by the development, OFHEO may direct the Enterprise to revise the plan. However, if OFHEO determines that the supervisory issues will not be resolved even under a revised plan, OFHEO may determine to initiate other supervisory responses.

Under Level IV supervisory action, as set out in § 1777.11(d), OFHEO will require the Enterprise to show cause why OFHEO should not initiate formal enforcement action against the Enterprise. OFHEO is not, however, required to issue a show cause notice prior to initiating an administrative enforcement action.

The three commenters alleged that the prompt supervisory response process represents a "one-size-fits-all" approach that would unnecessarily limit OFHEO's flexibility and discretion, as well as the agency's ability to formulate timely, fact-specific, and flexible responses to emerging supervisory issues. OFHEO disagrees with that characterization. OFHEO is well aware of the necessity for a regulatory agency to apply its expertise to specific supervisory problems in light of the particular attendant facts, and to do so swiftly. Nothing in the prompt supervisory response process limits the flexibility necessary for OFHEO to meet its supervisory responsibilities. As the exclusive safety and soundness regulator of the Enterprises, OFHEO has been constituted with broad supervisory authorities in order to detect and address any safety and soundness concerns that may arise, and has broad enforcement powers to ensure that any safety and soundness deficiency or violation of law is promptly remedied, possibly long before harm to an Enterprise reaches the level of capital impairment. OFHEO's concerns may include an array of considerations—ranging, for example, from matters such as declining collateral values to asset quality, liquidity, and operational difficulties—that could result in substantial harm to an Enterprise before capital is impaired. OFHEO will analyze the totality of each situation, rather than awaiting a decline in capital to initiate agency action. If an analysis reveals a supervisory concern, then OFHEO's response might reasonably include a mixture of early warning and early action initiatives that would be effective before specific problems seriously affect an Enterprise.

OFHEO designed the prompt supervisory response process to provide it flexibility as a supervisor, both in structuring the scope of the review and in overseeing the Enterprise's implementation of responsive measures. Under § 1777.11(a), OFHEO will issue a supervisory letter commencing the prompt supervisory response review, but the content of the letter will depend entirely on the "particular circumstances and the nature of the development." There are then three additional levels of available supervisory responses under § 1777.11(b) through (d), but OFHEO's decision as to which, if any, of the levels to use will be based on the Enterprise's "response to the supervisory letter and other appropriate factors." At every level of supervisory response in § 1777.11(b) through (d), the rule expressly states that OFHEO will assess the effectiveness of actions as well as other relevant factors in determining whether additional supervisory action is appropriate. As stated in the preamble to the proposed rule, the levels of supervisory response need not be carried out sequentially, and OFHEO may pursue simultaneous actions. In the final rule, OFHEO has expanded the text of the rule at § 1777.11(a)(4), so as to avoid confusion on this point.[17] In addition, as reflected in § 1777.2 and § 1777.12, the prompt supervisory response process in no way limits OFHEO's discretion to use any of its other supervisory tools and authorities to respond to the particular situation. OFHEO also rejects the suggestion that the prompt supervisory response process would not be rapid. The supervisory letter is to be issued within five days after OFHEO determines that a development or condition warrants review under the rule, and the text of § 1777.11 requires OFHEO to implement any additional levels of supervisory response promptly and review the effectiveness of such response promptly.

Finally, the commenters expressed concerns that, if the prompt supervisory response approach results in public disclosure of supervisory actions, discussions, or correspondence, the contents could be misunderstood by the public and could cause the markets to lose confidence in the Enterprises. However, as reflected in § 1777.2(b), supervisory responses issued under § 1777.11 do not constitute public orders enforceable under 12 U.S.C. 1371 or 1376, and, as noted in § 1777.1(b), OFHEO's initiation of procedures under the prompt supervisory response regime does not necessarily indicate that an unsound condition exists.

Implementation of the Prompt Corrective Action Provisions of the 1992 Act by the Final Rule

Subpart B of the final rule describes the scope of actions OFHEO is authorized to take under the prompt corrective action provisions applicable to the Enterprises under the 1992 Act at 12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623, as well as the procedures by which such an actions are to be carried out. The following is an overview of the provisions of the final rule and the statutory authorities implemented thereby. Freddie Mac and Fannie Mae submitted numerous comments on proposed Subpart B, which OFHEO has taken into account in formulating the final rule. These comments are addressed below, as part of the description of the section of the final rule to which each comment pertains.

[17] With the exception of nonsubstantive changes made to conform § 1777.11 of the final rule to the revised § 1777.10, OFHEO has made no other alterations to § 1777.11.

Authority, Purpose, Scope, and Implementation Dates

The authority, purpose, and scope of subpart B are set out in § 1777.1(a) and (c), which briefly review the statutes underlying the rule. Subpart B is issued under OFHEO's broad authorities to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital and operate in a safe and sound manner, as established by 12 U.S.C. 4513, 4631, 4632, and 4636, as well as under the specific prompt corrective action provisions contained in subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), the Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions.

As discussed in § 1777.1(d), the 1992 Act directs OFHEO to determine capital classifications for the Enterprises by reference to three capital "triggers" (the minimum capital level, the critical capital level, and the risk-based capital level). Notably, however, 12 U.S.C. 4614(d) delays consideration of the risk-based capital level until one year after OFHEO's risk-based capital rule becomes effective, that is, September 13, 2001. Section 4615 of Title 12, which sets out the supervisory actions to be taken as applicable to an Enterprise that is classified as undercapitalized, similarly provides that its provisions will not take effect until one year after OFHEO's risk-based capital rule becomes effective. Section 4614(d) provides that, until that time, an Enterprise shall be classified as adequately capitalized if the Enterprise maintains an amount of capital that equals or exceeds the minimum capital level.

Therefore, under subpart B of the final rule at § 1777.20, different sets of capital classifications will apply before and after September 13, 2002. Section 1777.20(a) contains the "permanent" set of capital classifications taking the risk-based capital level into account as well as the minimum capital level and critical capital level. This set of capital classifications will apply any time after September 13, 2002.

The currently applicable "temporary" set of capital classifications is contained in § 1777.20(c) as an exception to § 1777.20(a) that applies until September 13, 2002. This currently applicable set of classifications is based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. Section 4614(a) of Title 12, when read together with 12 U.S.C. 4616(c)[18] and 12 U.S.C. 4617(d),[19] indicates that Congress intended OFHEO to classify the Enterprises for prompt corrective action purposes by reference to minimum capital and critical capital levels, pending expiration of the one-year post-effectiveness period for the risk-based capital test.

Preservation of Other Authority

As set forth in § 1777.2(b) through (c), the prompt corrective action provisions are but one aspect of OFHEO's broad supervisory authority to ensure that each Enterprise maintains capital that is adequate for its safe and sound operation. In their comments, the Enterprises objected to language in § 1777.2(b) that states OFHEO has authority to require an Enterprise to hold capital in addition to that necessary to comply with the minimum and risk-based capital levels, when in OFHEO's judgment circumstances indicate additional capital is necessary or appropriate in light of the overall strength of the Enterprise and market conditions. The Enterprises argue that the minimum and risk-based capital levels defined by the statute are exclusive, and OFHEO is not vested under law with discretion to require the Enterprises to hold additional capital.

[18] 12 U.S.C. 4616(c) provides that statutory provisions requiring prompt corrective action with regard to a significantly undercapitalized Enterprise are to be effective from the time the Enterprise is first classified under 12 U.S.C. 4614.

[19] 12 U.S.C. 4617(d) provides that statutory provisions requiring prompt corrective action with regard to a critically undercapitalized Enterprise are to be effective from the time the Enterprise is first classified under 12 U.S.C. 4614.

OFHEO disagrees and has adopted § 1777.2(b) without change. Subtitle B of the 1992 Act, establishing the minimum and risk-based capital levels, contains no language to the effect that such levels are exclusive. The 1992 Act taken as a whole demonstrates congressional understanding that capital by itself is but one indicator of the financial health or weakness of an Enterprise. All circumstances must be weighed in determining the capital adequacy of an Enterprise. That is, differing conditions may warrant greater capital to ensure the strength and viability of an Enterprise. Thus, under 12 U.S.C. 4513(a), it is the supervisory responsibility of OFHEO to ensure that the Enterprises are adequately capitalized and operating safely. Under 12 U.S.C. 4513(b), OFHEO has exclusive authority to take such actions as it determines necessary regarding the safety and soundness of the Enterprises.

An Enterprise's maintenance of capital sufficient to meet the minimum capital level and risk-based capital level does not alone establish that the Enterprise possesses sufficient capital to operate safely and soundly in all circumstances. The legislative history of the 1992 Act indicates that Congress specifically debated whether subtitle B established the exclusive capital levels for the Enterprises or instead represented a minimum "floor" level. In the end, Congress concluded that subtitle B takes the "floor" approach, and that OFHEO's safety and soundness authority includes the ability to require an Enterprise to hold additional capital whenever circumstances indicate supplementary capital is appropriate in consideration of the Enterprise's overall safety and soundness.[20] Similarly, the language of 12 U.S.C. 4614(a)(1) provides that, for an Enterprise to be classified as adequately capitalized, the Enterprise should "meet or exceed" the minimum and risk-based capital levels (emphasis added).

In addition to its authority to require the Enterprises to maintain additional capital as a safety and soundness matter, OFHEO is authorized, as reflected in § 1777.2(c) of the final rule, to take various kinds of supervisory action to deal with capital deficiencies at an Enterprise, other than or in addition to the prompt corrective action provisions. The 1992 Act grants OFHEO broad discretion to take other supervisory

[20] *See, e.g.*, 138 Cong. Rec. S9353–54 (July 1, 1992)(colloquy between Senator Metzenbaum and Senator Reigle concerning the effect of section 202 of S. 2733, which is substantially the same as 12 U.S.C. 1362); 138 Cong. Rec. H11102 (Oct. 3, 1992)(colloquy between Mr. Gonzalez, Mr. Frank, and Mr. Leach).

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actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator, entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Moreover, the initiation of a particular action or a combination of actions does not foreclose OFHEO from pursuing any other action.

Definitions

The definitions in § 1777.3 cross-reference to OFHEO's capital rules at 12 CFR part 1750 in defining core and total capital. Section 1777.3 defines the minimum capital level as the minimum amount of core capital specified for an Enterprise pursuant to 12 U.S.C. 4612, as determined under OFHEO's capital rules at § 1750.4. The definition of the critical capital level in § 1777.3 refers to the calculation of core capital required to meet the minimum capital level under § 1750.4 of OFHEO's capital rules, making the appropriate adjustments thereto in order to implement the lower percentages specified in 12 U.S.C. 4613 as compared to 12 U.S.C. 4612. Thus, § 1777.3 defines the critical capital level as the amount of core capital that is equal to the sum of one half of the amount determined under § 1750.4(a)(1) and five-ninths of the amounts determined under § 1750.4(a)(2) through § 1750.4(a)(7). Section 1777.3 defines the risk-based capital level to mean the amount of total capital specified for an Enterprise pursuant to 12 U.S.C. 4611, as determined under OFHEO's risk-based capital regulations in 12 CFR part 1750.[21]

The definitions of "affiliate" and "Enterprise" are taken from 12 U.S.C. 4502(1) and 4502(6), respectively. The 1992 Act, in defining an Enterprise to include the Enterprise's affiliates, vests OFHEO with the same broad jurisdiction over the supervision and regulation of such affiliates as the agency has over the operations and activities of the federally chartered entity. Section 4502(1) defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. The 1992 Act does not, however, define control, thereby leaving the term to be interpreted by OFHEO in light of the context in which the term is to be used and the particular provision of the 1992 Act at issue.[22] In its comments, Freddie Mac disagreed with OFHEO's statement to this effect in the preamble to the proposed rule, and instead asserted that the term should be interpreted to have a single meaning throughout the 1992 Act. However, as seen in other laws, when Congress intends that an agency use a single definition of "control" throughout an entire act in connection with an "affiliate" definition, Congress enacts a statutory definition of "control," including language in the definition that specifies the test to be applied. *See, e.g.*, 12 U.S.C. 1813(w)(5); 12 U.S.C. 1841(a)(2). Where, as is the case in the 1992 Act, the term is not defined, Congress leaves the term to be defined by the expert agency in light of the particular context in which it is to be used and the particular substantive provision at issue.

The term "capital distribution" as defined in the rule is taken from 12 U.S.C. 4502(2). Both Enterprises' comments included objections to one aspect of OFHEO's proposed definition, under which an Enterprise's payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan would not be treated as a capital distribution so long as it was approved in writing by OFHEO in advance. The Enterprises argue that, under 12 U.S.C. 4502(2)(B), OFHEO's only proper approval function goes to the issue of whether an employee stock ownership plan is substantially equivalent to a plan that is qualified under section 401 of the Internal Revenue Code, and the Enterprises are not required to obtain OFHEO's approval of payments made to fulfill the Enterprises' repurchase obligations under the plan.

The language of 12 U.S.C. 4502(2)(B) is susceptible to either the proposed or the subsequently suggested interpretation. Upon further review, OFHEO has modified the final version of § 1777.3 to eliminate the requirement that the Enterprises obtain OFHEO's prior written approval for stock repurchases by employee stock ownership plans and such substantially equivalent plans. Under the revised language, payments made by an Enterprise to repurchase its shares for the purpose of fulfilling the Enterprise's obligation under an ESOP that is qualified under IRC 401 will not be defined as capital distributions. The same types of payments made to ESOPs that are substantially equivalent to 401-qualified ESOPs will also enjoy the exception, so long as OFHEO determines that the plan in question is substantially equivalent to a 401-qualified ESOP.

Section 4502(2) authorizes OFHEO to define additional transactions as capital distributions by regulation for these purposes. OFHEO has at this time identified no other transactions to be deemed capital distributions beyond those listed in the statutory definition.

Capital Classifications and Discretionary Reclassification

Section 1777.20(a) sets out the capital classifications that, as discussed above, will be applicable to the Enterprises after September 13, 2002, taking the risk-based capital level into account as well as the minimum and critical capital levels. Until then, the classifications under § 1777.20(c), discussed below, apply to the Enterprises. Section 1777.20(a) sets out the capital classifications as follows:

- *Adequately capitalized:* An Enterprise will be classified as adequately capitalized if the Enterprise meets the risk-based capital level and the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into a lower capital classification;
- *Undercapitalized:* An Enterprise will be classified as undercapitalized if it meets the minimum capital level but does not meet the risk-based capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into a lower capital classification;
- *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if the Enterprise meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized;
- *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if the Enterprise does not meet the critical capital level; and
- *Discretionary reclassification:* As is set out in more detail below, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into the next lower capital classification at any time, in the discretion of the Director of OFHEO. Appropriate grounds for reclassification include a finding by the Director that the Enterprise is either engaging in conduct that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. Other reclassifications, based on other sections of subtitle B of the 1992 Act pertaining to failure to submit an acceptable capital restoration plan or implement it, are located in § 1777.7, the section addressing capital restoration plans.

Under § 1777.20(a), the minimum and critical capital levels are the determinative standards for assessing whether an Enterprise falls into the significantly undercapitalized or critically undercapitalized classification based on capital, without regard to whether the Enterprise maintains total capital at or above its risk-based capital level. Under the 1992 Act, the minimum and critical capital levels act as the "tripwires" for the prompt corrective actions specified in 12 U.S.C. 4616 and 4617. The amount of capital an Enterprise is required to hold to meet its risk-based capital level could be either less or more than the amount of the capital required to meet its minimum capital level or even its critical capital level. The rule therefore avoids a result under which an Enterprise that fails to meet its minimum capital level or critical capital level might avoid classification as significantly undercapitalized or critically undercapitalized by maintaining total capital in compliance with its risk-based capital level.

The final version of § 1777.20(a)(5) sets forth the grounds for reclassification of an Enterprise. Under section 4614(b), grounds for reclassification include a finding by the Director that the Enterprise is either engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. In their comments, the Enterprises objected to language proposed in § 1777.20(a)(5) to the effect that OFHEO could also issue a discretionary reclassification if OFHEO deems it to be necessary to ensure that the Enterprise holds adequate capital and operates safely. OFHEO disagrees. Section 4614(b) recites that OFHEO may issue a discretionary reclassification if the Director determines that an Enterprise is engaging in conduct that could result in a rapid depletion of core capital, or that the value of the Enterprise's mortgage collateral has decreased significantly. Notably, section 4614(b) is silent with regard to whether the statutorily recited grounds for reclassification are exclusive. Section 4513(b) empowers the Director of OFHEO to make other determinations, including those necessary to determine the capital classification of an Enterprise and those necessary for other matters that the Enterprises are adequately capitalized and operating safely.

Taken together, the above-referenced statutory provisions evidence a Congressional purpose that the Director of OFHEO have the discretionary authority to reclassify Enterprise if the Director determines that the Enterprise's capital position is not deemed by the Director to be sufficient to ensure its safety and soundness. OFHEO is therefore adopting § 1777.20 (a)(5) as proposed.

For purposes of OFHEO's discretionary authority to reclassify an Enterprise based on "conduct that could result in a rapid depletion of core capital" under 12 U.S.C. 4614(b), OFHEO interprets the term "conduct" to include action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events). In its comments, Fannie Mae objected to inclusion of this language in proposed § 1777.20(a)(5)(i). However, the regulatory language is well within the ordinary meaning of the term "conduct," and OFHEO has included it in the final version of § 1777.20(a)(5) without change. Freddie Mac also objected to OFHEO's assertion in the preamble to the proposed rule that the rapid depletion of core capital referred to in section 4614(b) and § 1777.20(a)(5) need only be a possible consequence of the conduct in question. Freddie Mac argues that OFHEO appears to be implementing too liberal a standard in light of the more extreme formulation contained in section 4614(b) itself. OFHEO reiterates the point, as stated in the preamble to the proposed rule, that the statutory language under section 4614(b) does not require OFHEO to find that the rapid depletion is underway or imminent, but requires only that OFHEO determine that such rapid depletion "could result," i.e., that it is a possible outcome or result of the conduct in question, or that the conduct could contribute significantly to deepening losses. Congress, having already established the capital classifications based on capital levels to address cases in which an Enterprise's capital has already declined, established a broad standard for discretionary reclassification, to authorize early intervention by OFHEO when appropriate.

Section 1777.20(d) of the final rule provides that OFHEO will not reclassify an Enterprise for conduct that was previously approved by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan or of a written agreement that is enforceable in accordance with 12 U.S.C. 4631. The Enterprises argued in their comments that OFHEO proposal impermissibly would narrow section 4614(b), and that the statutory language thereunder immunizes any conduct however approved by the Director.

Section 4614(b) provides that OFHEO may reclassify an Enterprise that engages in conduct "not approved by the Director" that could result in a rapid depletion of core capital. However, the statute is silent as to what constitutes an approval for these purposes, leaving OFHEO to define the term by regulation pursuant to the authority granted by section 4513(b). An administrative agency is entitled under law to establish reasonable procedures in such manner as to enable the agency to channel and manage its approval processes.

The Enterprises suggest that the only reasonable interpretation of section 4614(b) is that it immunizes all conduct "approved by the Director" of OFHEO in any context or manner. However, such interpretation is so open-ended as to be unreasonable. In light of the significance of an approval for purposes of section 4614(b), the statute can be reasonably read to require an approval to be made through a formal mechanism, in a context in which OFHEO can evaluate the consequences thereof for purposes of capital classification. Thus, it is reasonable to define the approvals exception under section 4614(b) as referring to approvals made as part of a capital restoration plan under subtitle B and to formal supervisory agreements. The inclusion of formal written agreements serves the underlying purpose of fairness to the Enterprise, particularly since such written agreements may be used simultaneously with a capital restoration plan.

As provided in § 1777.20(b), if an Enterprise is reclassified by OFHEO on grounds that the Enterprise is engaging in action or inaction that could result in a rapid depletion of core capital, OFHEO will continue to take such conduct into account for each subsequent determination of the Enterprise's capital classification, until

[21] OFHEO has recently published such rules at 66 FR 47729 (Sept. 13, 2001).

[22] In determining whether control exists for the purposes of exercising jurisdiction over an affiliate of an Enterprise under any particular provision of the 1992 Act, OFHEO considers the nature of the particular provision and the facts and circumstances involved. Among other things, OFHEO considers whether an Enterprise or other entity exercises a controlling influence over the management and policies of a particular entity, by ownership of, or the power to vote, a substantial percentage of any class of voting securities, by the ability to elect or appoint members of the board of directors or officers of the entity, or by other means.

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OFHEO determines that the action, inaction, or condition in question has ceased and been remedied to OFHEO's satisfaction. For example, if OFHEO reclassified an Enterprise from adequately capitalized to undercapitalized based on such conduct, and during the pendency of such conduct, the Enterprise's total capital declined below the risk based capital level (which, standing alone, would result in classification in the undercapitalized category), the resulting classification could be to the significantly undercapitalized category. In addition, as provided in § 1777.20(b), nothing in 12 U.S.C. 4614(b) prohibits OFHEO from subsequently reclassifying an Enterprise again if the action, inaction or condition has not ceased or been eliminated and remedied to OFHEO's satisfaction within a reasonable time. The foregoing would also apply for a discretionary reclassification under § 1777.20(a)(5), based on a decline in collateral values.

The Enterprises also objected to proposed § 1777.20(b), on various grounds. Freddie Mac argues that once OFHEO has issued a reclassification based on conduct and the Enterprise has submitted an acceptable capital restoration plan, OFHEO may not subsequently reclassify the Enterprise for failure to eliminate the objectionable conduct within a reasonable time, so long as the Enterprise continues to make good faith reasonable efforts to comply with the capital restoration plan. However, section 4614(b) contains no explicit restriction or limitation on reasonable successive reclassifications, and such a limit could inhibit OFHEO's ability to meet its supervisory obligations under evolving circumstances. Thus, OFHEO is adopting the text of § 1777.20(b)(2) without change.

Fannie Mae suggests § 1777.20(b)(2) should be revised to ensure the Enterprises are given advance notice of what constitutes a reasonable period to remedy or eliminate conduct or conditions forming the basis of a discretionary reclassification. However, this issue is too fact-driven for OFHEO to specify by rule. The question of timing will be resolved as it arises. OFHEO would specify such timing matters reasonably and fairly, in light of relevant circumstances.

Fannie Mae further suggests that it would be unfair that OFHEO might attempt to exercise unbridled discretion over so significant a question as to when a discretionary reclassification should be terminated. Fannie Mae suggests discretionary reclassifications should be presumptively terminated fifteen days after an executive officer certifies that the condition that led to reclassification has been corrected for at least one calendar quarter. However, given that initiation of a reclassification under section 4614(b) is vested in OFHEO's discretion, as is approval of the capital restoration plan designed to restore the Enterprise to a secure condition, OFHEO rejects Fannie Mae's assertion that OFHEO's discretion over termination of such reclassification is somehow unfair, or of such significance to be beyond the agency's supervisory authority. Moreover, the quarterly classification process gives the Enterprise formal written notice of OFHEO's intention with regard to continuation or termination of a discretionary reclassification; provides the Enterprise with an opportunity to submit information that OFHEO might take into consideration; and provides the Enterprise with the opportunity for judicial review (if the Enterprise is not classified as critically undercapitalized). The Enterprises are thus adequately insulated from possible unfair treatment by the agency.

As noted above, § 1777.20(c) contains a set of capital classifications based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. These classifications apply until September 13, 2002, which is one year following the initial effective date of OFHEO's regulations establishing the risk-based test:

- *Adequately capitalized:* Until September 13, 2002, an Enterprise is deemed to be classified as adequately capitalized so long as it meets the minimum capital level, as required by 12 U.S.C. 4614(d);
- *Undercapitalized:* Until September 13, 2002, 12 U.S.C. 4614(d) provides that an Enterprise that meets the minimum capital level is to be classified as adequately classified, notwithstanding whether the Enterprise maintains an amount of total capital that equals or exceeds the risk-based capital level as otherwise required by 12 U.S.C. 4614(a)(2)(A);
- *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if it meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized;
- *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if it does not meet the critical capital level; and
- *Discretionary reclassification:* As set out above, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into a lower capital classification in certain circumstances, in the discretion of the Director of OFHEO.

The Enterprises specifically objected to proposed § 1777.20(c)(5)(i)(A) and (B), under which OFHEO notes that the agency can reclassify an Enterprise that otherwise meets the minimum capital requirement. The Enterprises assert that, during the one-year transition period following the effective date of OFHEO's risk-based capital rules, OFHEO may not make a discretionary reclassification of an Enterprise otherwise classified as "adequately capitalized," because 12 U.S.C. 4614(d) and 4615(c) prohibit OHFEO from issuing such a reclassification.

OFHEO disagrees. Sections 4614(d) and 4615(c) are merely transition provisions designed to give the Enterprises one year to optimize their operations in light of the new risk-based capital rules before OFHEO begins periodically issuing capital classifications based on risk-based capital as well as minimum capital. Nothing in the law or its legislative history indicates a Congressional intention to make the OFHEO powerless to confront circumstances that might threaten the viability of the Enterprises during the transition period. Nor were the referenced sections intended by Congress to immunize an Enterprise engaged in conduct that might result in rapid depletion of core capital. OFHEO is therefore adopting § 1777.20(c)(5) as proposed.

The Enterprises' comments on proposed § 1777.20(a)(5)(i), concerning the scope of the conduct included therein, and on proposed § 1777.20(a)(5)(ii), concerning the scope of conduct approved by the Director, as well as OFHEO's responses to those comments as discussed above, apply equally to § 1777.20(c)(5) of the final rule. The Enterprise's comments on § 1777.20(b), concerning successive reclassifications, specification of reasonable periods to remedy conduct upon which reclassification was based, and OFHEO's discretion over termination of reclassifications, as well as OFHEO's response to these comments as discussed above, apply equally to reclassifications under § 1777.20(a)(5) as they do to reclassifications under § 1777.20(c)(5) of the final rule.

Classification Procedures

Section 1777.21, implementing 12 U.S.C. 4618, sets out the procedure by which OFHEO classifies the Enterprises. These procedures apply to routine classifications that OFHEO issues for each Enterprise at least once a quarter based on capital reports from the Enterprise and any other additional relevant information. These procedures would also be used by OFHEO to reclassify an Enterprise pursuant to its discretionary authority to do so under subtitle B of the 1992 Act, or if OFHEO otherwise determines that a new classification would be appropriate. OFHEO's current classification procedures at 12 CFR 1750.5 are terminated as part of this rulemaking, but procedures for submitting capital reports to OFHEO will continue to be addressed in part 1750.

OFHEO may determine capital classifications using different "as of" dates for the Enterprise's risk-based capital level and minimum and critical capital levels. The respective "as of" dates will be specifically identified in the proposed and final capital classifications. Thus, OFHEO may assess compliance by an Enterprise with the minimum capital level more often than it would calculate the Enterprise's risk-based capital level.

As § 1777.21(a)(4) provides, OFHEO may initiate a capital classification proceeding at any time. If another proposed capital classification is pending at such time, OFHEO will advise the Enterprise whether the later proposed classification supersedes the pending one.

Under the classification procedure in 12 U.S.C. 4618, OFHEO is to deliver written information to the Enterprise describing the proposed capital classification and the agency's basis for such classification, as described in § 1777.21(a)(1) of the final rule. In their comments, the Enterprises argued that OFHEO's proposed procedure in § 1777.21(a)(1)(ii), for reclassifying an Enterprise for failure to file an acceptable capital plan, without additional notice, is inconsistent with 12 U.S.C. 4618(a) and (b), under which an Enterprise is entitled to additional notice when OFHEO takes new action. The Enterprises assert that OFHEO may not combine notices in this way.

OFHEO disagrees. 12 U.S.C. 4618(b) evidences Congress' express authorization that the notice required under 12 U.S.C. 4618(a) may be a combined notice. Section 4618(b) states that, in providing notice under 12 U.S.C. 4618(a), OFHEO may combine a notice of classification or reclassification under 12 U.S.C. 4614 (classifications based on capital levels or discretionary reclassification based on conduct or housing prices) with a notice of discretionary supervisory action under 12 U.S.C. 4615 (reclassification from undercapitalized to significantly undercapitalized for failure to file an acceptable capital plan or to comply with an approved plan). The statute's language can be given meaning only if a notice of proposed classification as undercapitalized is permitted to be combined with a notice of proposing to reclassify the Enterprise as significantly undercapitalized in the event the Enterprise fails to submit an acceptable capital plan. Similarly, 12 U.S.C. 4618(b) provides that OFHEO may combine notice of discretionary supervisory action under 12 U.S.C. 4616 (issuance of certain orders to the Enterprise, as well as reclassification from significantly undercapitalized to critically undercapitalized based on failure to file an acceptable plan or comply with an approved plan) with notices of classification or reclassification under 12 U.S.C. 4614.

Contrary to Freddie Mac's comments, such a notice is also consistent with the remainder of 12 U.S.C. 4618. It satisfies the requirements of 12 U.S.C. 4618(a), since the combined notice describes both proposed actions, the reasons therefore, and the information upon which they are based. During the Enterprise's response period under 12 U.S.C. 4618(c), the Enterprise has an opportunity to submit information and arguments as to why the Enterprise should not be further reclassified. OFHEO's notice to Congress under 12 U.S.C. 4618(d) will provide all information required therein. OFHEO is therefore adopting proposed § 1777.21(a)(1)(ii), as well as § 1777.23(c)(1) and § 1777.23(c)(3), without change.

As described in § 1777.21(a)(2), an Enterprise is to have thirty days from the date it is provided notice of capital classification to submit any relevant information in response to a notice. 12 U.S.C. 4618 authorizes OFHEO to extend the response period up to an additional thirty days for good cause or to reduce the response period if the condition of the Enterprise so requires; the Enterprise may also consent to an abbreviated response period. In exigent circumstances, the response period afforded to an Enterprise may be quite brief. In its comments, Fannie Mae objected to proposed § 1777.21(a)(2)(i), to the extent the proposed rule suggests that OFHEO can shorten an Enterprise's response period to less than thirty days as OFHEO determines to be appropriate. Fannie Mae points out that the statutory standard, at 12 U.S.C. 4618(c)(3), is that the condition of the Enterprise requires the period to be shortened. OFHEO's determination as to whether an curtailment is "appropriate," as under the language of proposed § 1777.21(a)(2)(i), is to be made in consideration of the statutory standard under 12 U.S.C. 4618(c)(3). In light of the comment, OFHEO has changed the language of the final version of § 1777.21(a)(2)(i) to reflect the language of 12 U.S.C. 4618(c)(3).

An Enterprise's failure to respond within the applicable period waives the opportunity to comment on the proposed classification. Once the response period has closed, OFHEO will make a final determination of the Enterprise's capital classification. OFHEO will take into consideration any relevant information submitted by the Enterprise during the response period in reaching the final decision. The final capital classification is to be provided to the Enterprise in writing, including a description of OFHEO's basis for the classification.

OFHEO proposed a requirement under § 1777.21(b)(1) that the Enterprise notify OFHEO of any material event that may reasonably be expected to cause the Enterprise's minimum, critical, or risk-based capital level to fall to a point that could result in a capital classification lower than the Enterprise's existing or proposed capital classifications. In their comments, the Enterprises objected to this requirement as being overly vague. Freddie Mac suggested it be narrowed, to require notice only when the Enterprise has reason to believe it has failed to meet a capital requirement. Fannie Mae called for elimination of any such notice requirement. In response to the Enterprises' expressed concerns about vagueness, OFHEO has decided to model its standard on a similar standard successfully used by the Federal bank regulatory agencies under their PCA system. *See, e.g.*, 12 CFR 325.102(c)(1). Thus, OFHEO has revised final § 1777.21(b)(1) to require notice of any material development that would cause the Enterprise's core or total capital to fall to a point that would cause the Enterprise to be placed in a lower capital classification.

As suggested by one commenter, OFHEO has deleted the words "as appropriate" from the proposed version of § 1777.21(a)(1)(i), as unnecessary. In addition, various erroneous citations and cross-references have been corrected in the final rule.[23]

[23] Freddie Mac's comments on the prompt corrective action proposal also expressly incorporated by reference certain comments Freddie Mac made to OFHEO in a submission dated March 10, 2000, as to OFHEO's second risk-based capital proposal. Those comments addressed the proposed risk-based capital reporting procedure and other matters unrelated to the classification procedure, and have been responded to in the

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Capital Distribution Restrictions

Section 1777.22 sets forth statutory capital distribution restrictions, including those provisions of the Enterprise's respective charter acts [24] prohibiting, without regard to capital classification, an Enterprise from making a capital distribution that would decrease the capital of the Enterprise to an amount less than the risk-based capital level or the minimum capital level, except as explicitly approved by OFHEO. Section 1777.22(a) reflects these statutory restrictions.[25] Under § 1777.22(b)(1), any Enterprise that is not classified as adequately capitalized is prohibited from making a capital distribution that would result in classification into a lower capital classification as provided by 12 U.S.C. 4615(a)(2) and 4616(a)(2). Under § 1777.22(b)(2), a significantly undercapitalized Enterprise is prohibited from making a capital distribution absent OFHEO's prior approval, as provided by 12 U.S.C. 4616(a)(2). Section 1777.22(b)(2) also applies in the case of an Enterprise classified as critically undercapitalized. The final rule recites, in a manner consistent with 12 U.S.C. 4617(b) through (c), OFHEO's authority to take actions authorized by 12 U.S.C. 4616 in the case of a critically undercapitalized Enterprise. Under the same authority, § 1777.23 requires an Enterprise classified as critically undercapitalized to submit a complete and acceptable capital restoration plan to OFHEO.

Capital Restoration Plans

Under § 1777.23(a)(1), an Enterprise is required to file a complete capital restoration plan with OFHEO within ten days of receiving final notice of capital classification indicating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO extends the period. In its comments, Fannie Mae objected to this ten-day period as being too short. However, the time period is consistent with 12 U.S.C. 4622(b). OFHEO has set the deadline at ten days as a general rule to allow sufficient time for the Enterprise to articulate its responsive business plans, which, absent catastrophe, would likely have been developed over some time before a written submission is required. At the very least, the Enterprise and OFHEO will likely be aware of any impending threat and need for a capital restoration strategy by the time a notice of proposed classification is issued. In light of the serious implications of an adverse classification under subtitle B of the 1992 Act, swift implementation of a required capital plan is crucial. If it appears to OFHEO that additional time is appropriate under the particular circumstances, § 1777.23(a)(1) provides that OFHEO may extend the timeframe.

Under § 1777.23(a)(2), an Enterprise that is already operating under an approved capital restoration plan need not submit a new plan each time the Enterprise receives subsequent notices of capital classification, unless OFHEO notifies the Enterprise to the contrary. As a general matter, OFHEO would likely direct an Enterprise to submit a new or amended plan if subsequent notices of capital classification are on grounds different from or in addition to the grounds underlying previous notices, or if changes in circumstances underlying the original plan necessitate a revised plan, or if the original plan is not effective within a reasonable period.

Section 1777.23(b) requires an Enterprise's capital restoration plan to include the information specified in by 12 U.S.C. 4622(a) and such other information as directed by OFHEO. If the Enterprise does not submit a complete plan by the specified deadline, OFHEO may in its discretion lower the Enterprise's capital classification, as set forth in § 1777.23(c). If a complete and timely capital restoration plan is not filed by an Enterprise, OFHEO may reclassify the Enterprise under § 1777.21(a)(3) immediately upon expiration of the filing deadline, without further notice. As further provided in § 1777.23(c), an Enterprise's failure to submit a complete and timely plan may be considered in the determination of each subsequent capital classification of the Enterprise, until the Enterprise files a plan that obtains OFHEO's approval. If the Enterprise has not corrected its failure to file an acceptable plan after a reasonable period, OFHEO may reclassify the Enterprise, without further written notice.[26]

As specified in § 1777.23(d), OFHEO is to review the Enterprise's capital plan and issue an order within thirty days either approving or disapproving the plan, subject to extension for an additional thirty days as OFHEO deems necessary. If the plan is disapproved, the Enterprise must then submit an amended plan acceptable to OFHEO within thirty days or such longer period as OFHEO specifies. Notably, the thirty-day period is longer than the ten-day period for submission of the initial plan in order to facilitate dialogue with the Enterprise as to how the Enterprise may rehabilitate a disapproved plan. However, as provided in § 1777.23(c), OFHEO may reclassify the Enterprise into a lower capital classification, without additional notice, at any time before the Enterprise files an amended capital plan and OFHEO approves it.

Once a capital plan is approved, it may be amended only with the prior written approval of OFHEO, as provided in § 1777.23(f). As that section provides, the Enterprise's obligations under an approved plan remain in place except to the extent the plan itself identifies dates, events, or conditions upon which the obligations terminate. To the extent the plan is silent in regard to a particular obligation, the obligation remains in place until OFHEO issues an order terminating the obligation. An Enterprise may seek such termination orders from OFHEO under § 1777.23(g)(2).

In its comments, Fannie Mae objected to proposed § 1777.23(g), on the grounds that leaving a decision as significant as termination of a capital plan to the unlimited discretion of OFHEO would be fundamentally unfair.[27] Fannie Mae asserted that the plan should terminate upon the Enterprise's certification that the measures in the plan have been fulfilled, absent specific written findings to the contrary by OFHEO.

agency's disposition of the final risk-based capital rule at 66 FR 47730 (September 13, 2001).

[24] The Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2).

[25] The proposed rule contained § 1777.22(c), implementing these statutory provisions prior to the initial date of OFHEO's risk-based capital rules. With the publication of such rules on September 13, 2001, § 1777.22(c) is unnecessary and has been dropped from the final rule.

[26] As is discussed above in connection with § 1777.21(a)(1)(ii), the Enterprises object to this combined notice under § 1777.23(c)(1) and § 1777.23(c)(3), but this approach is specifically authorized under 12 U.S.C. 4616(b).

[27] Fannie Mae also requested, under similar arguments of potential unfairness, that OFHEO create an ombudsman function within OFHEO, and that OFHEO also establish a formal appeals process whereby the Enterprises would have an avenue to appeal any significant supervisory decision to a senior agency official who was not involved in the original decision making process. Fannie Mae notes that the Federal bank regulatory agencies are required by the FDI Act to maintain such an appellate procedure. OFHEO has not implemented these suggestions because key differences between OFHEO and the bank regulatory agencies render such functions superfluous. Among such differences, because OFHEO supervises only two entities it lacks a large, decentralized supervisory structure, common among the banking agencies. The significantly smaller size of OFHEO makes it impracticable to provide a senior supervisory officer to act as ombudsman in such matters. The Enterprises have greater opportunities to provide input into the prompt corrective action classification and order process under the 1992 Act than is provided for insured depository institutions under the Federal Deposit Insurance Act.

OFHEO disagrees. The initial approval of the capital restoration plan (including its duration) is vested wholly in OFHEO's discretion. No reason supports a contention that OFHEO's parallel discretion over termination of a capital restoration plan is somehow otherwise unfair, or of such significance as to be beyond the agency's supervisory purview. Furthermore, an Enterprise can request that its obligations under an approved plan be terminated. In addition, as noted in § 1777.23(g)(1), to the extent particular provisions of a particular plan may be appropriately subject to termination by reference to specified dates, events, or conditions, the plan may be structured accordingly.

If an Enterprise fails to take timely action reasonably necessary to comply with an approved plan, OFHEO may exercise its authority under 12 U.S.C. 4615(b)(2) and 4616(b)(5) to reclassify the Enterprise. In their comments, the Enterprises objected to the language of proposed § 1777.23(h)(1), under which an Enterprise must make efforts reasonably necessary to comply with the capital restoration plan and to fulfill the schedule thereunder, as not being consistent with the statutory standard. OFHEO interprets the "good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan" language in sections 4615(b) and 4616(b) to mean that the Enterprise must make all reasonable efforts as are necessary to comply with the plan. OFHEO would consider it a demonstration of a lack of good faith if an Enterprise fails to attempt to carry out one or more efforts contemplated by an approved capital restoration plan. OFHEO would not deem an Enterprise's efforts to be in bad faith simply because such efforts fail to effect a desired result.

In light of the Enterprise's comments that OFHEO's proposed formulation does not adequately express the statutory standard, § 1777.23(h)(1)(i) has been revised to expressly refer to good faith, and to note that it is incumbent upon the Enterprise to make all reasonable efforts necessary to comply with an approved plan. The final rule provides that OFHEO may reclassify the Enterprise if, in the agency's discretion, the Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with a capital restoration plan and to fulfill the schedule thereunder.

As is provided in § 1777.23(h)(1)(ii) through (iii), an Enterprise's failure to implement an approved capital plan may be considered in the determination of each subsequent capital classification of the Enterprise until OFHEO determines the Enterprise is making reasonable efforts. The Enterprise may face successive reclassifications for failure to make such efforts after a reasonable period.

As is noted in § 1777.23(h)(2), a capital plan that has received an approval order by OFHEO shall be deemed an order under the 1992 Act for enforcement purposes, and an Enterprise in any capital classification, its executive officers, and directors may be subject to action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with an approved plan. In its comments, Fannie Mae objects to such characterization. Fannie Mae asserts that the terms of an approved capital plan are not enforceable under OFHEO's cease and desist authority or civil money penalties, and that such an action by OFHEO would exceed its authority under the 1992 Act.

OFHEO disagrees and is adopting § 1777.23(h)(2) without change. Fannie Mae improperly infers that the only "orders" susceptible to enforcement action under these statutes are OFHEO determinations that are designated as "orders" by the 1992 Act itself. However, the 1992 Act does not designate any particular OFHEO determination with respect to an Enterprise or its directors or executive officers as an "order," thereby begging the question under Fannie Mae's reasoning as to what would constitute an "order" for purposes of sections 4631, 4632, and 4636. While the 1992 Act describes OFHEO's decisions under sections 4631, 4632, and 4636 as "orders," to argue that these are the exclusive "orders" to which such sections refer is not convincing. It would be circular to interpret these sections to mean that the only order the violation of which is redressable by a cease and desist order is another cease and desist order or an order imposing civil money penalties. While circumstances may occur in which a regulatory agency that is faced with noncompliance with a formal enforcement order may appropriately resort to further administrative enforcement action, more often a judicial enforcement of the enforcement order is likely to be sought. *Cf.* 12 U.S.C. 4635(a) (judicial actions to enforce orders and notice issued under subtitles B and C of the 1992 Act). Moreover, the statutory language in section 4361(a)(3)(A) and section 4636(a)(1) broadly refers to any order under the 1992 Act or the charter acts, without restriction as to particular sections of such acts.

Orders Under Section 4616

Section 1777.24 of the final rule implements OFHEO's discretionary authority under 12 U.S.C. 4616(b)(1) through (4), to issue orders requiring a significantly undercapitalized Enterprise to take remedial and corrective actions. OFHEO may fashion such remedy or require supervisory action as appropriate including, but not limited to, any of the following:

- Limit an increase in, or require a reduction of, any borrowings and other types of obligations of an Enterprise, including off-balance sheet obligations;
- Limit or prohibit the growth of assets of an Enterprise or require reduction of its assets;
- Require an Enterprise to obtain additional capital in such form and amount as specified by OFHEO; and
- Require an Enterprise to terminate, reduce, or modify a program or activity that entails excessive risk to the Enterprise.

As indicated by § 1777.24, OFHEO may also issue orders to an Enterprise that has been classified as critically undercapitalized under authority provided by 12 U.S.C. 4617(b) through (c).

The procedures under which such orders may be issued are similar to the procedures for issuance of capital classifications, and are set out in §§ 1777.24 through 1777.26. Similar to the treatment of approved capital plans discussed above, the provisions contained in these orders will bind the Enterprise until such provisions terminate under the terms of the order or OFHEO modifies the order, as discussed in § 1777.26(b). As indicated in § 1777.26(c), such orders constitute orders under the 1992 Act, and an Enterprise in any capital classification, its executive officers, and directors may be subject to administrative enforcement action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with such orders. Moreover, 12 U.S.C. 4635 provides jurisdiction in the United States District Court of the District of Columbia for direct enforcement of such orders.

Administrative Exhaustion

Section 1777.27 summarizes 12 U.S.C. 4623, which provides that an Enterprise not classified as critically undercapitalized may seek judicial review of OFHEO's final notice of its capital classification, or a final notice of order issued under 12 U.S.C. 4616(b)(1) through (4). For any issue raised by such Enterprise in connection with such review, the Enterprise must have first exhausted its administrative remedies,

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by presenting its objections, arguments, and information relating to such issue for OFHEO's consideration in the Enterprise's response to OFHEO's notice of capital classification or notice of intent to issue an order. The Enterprise's judicial action will not operate as a stay of a capital classification or order by OFHEO.

In its comments, Freddie Mac asserted that OFHEO's requirement in proposed § 1777.27(b) that the Enterprise assert its objections concerning a classification to OFHEO before raising them before the D.C. Circuit would be inconsistent with applicable judicial doctrine. OFHEO disagrees. Section 1777.27 is consistent with controlling judicial precedent on exhaustion and review, and has been adopted in the final rule without change.

Appointment of a Conservator for a Significantly or Critically Undercapitalized Enterprise

Section 1777.28 addresses appointment of a conservator for a significantly undercapitalized or critically undercapitalized Enterprise.[28] As is described in § 1777.28(a), 12 U.S.C. 4616 empowers OFHEO to appoint a conservator for a significantly undercapitalized Enterprise, if OFHEO determines the Enterprise's core capital is less than the minimum capital level and the alternative remedies available to OFHEO under the 1992 Act are not satisfactory. As is described in § 1777.28(b), 12 U.S.C. 4617 requires the Director to appoint a conservator for a critically undercapitalized Enterprise, unless the Director makes a written determination, and the Secretary of the Treasury concurs in writing, that the appointment of a conservator is likely to have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market, and that the public interest would be better served by taking some other enforcement action authorized by the 1992 Act. In response to a comment, OFHEO has revised the final version of § 1777.28(b)(2), to clarify that the written determination described therein is to be in support of the agency's determination not to appoint a conservator.

Under 12 U.S.C. 4619(e)(2), a conservatorship appointment under either § 1777.28(a) or 1777.28(b) is to be terminated by OFHEO upon determining that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level. OFHEO is also vested with discretion, under 12 U.S.C. 4619(e)(1), to terminate such a conservatorship appointment based upon determining that such termination is in the public interest and may safely be accomplished. These termination provisions are reflected in § 1777.28(d).

[28] OFHEO also has authority under 12 U.S.C. 4619(a)(1) through (2) to appoint conservators on various grounds, regardless of an Enterprise's capital classification.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The final rule is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This final rule does not include a Federal mandate that could result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule only affects the Enterprises, their executive officers, and their directors.

Paperwork Reduction Act of 1995

This final rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1777

Administrative practice and procedure, Capital classification, Mortgages.

Accordingly, for the reasons set out in the preamble, OFHEO adds part 1777 to subchapter C of 12 CFR chapter XVII, to read as follows:

PART 1777—PROMPT CORRECTIVE ACTION

Sec.
1777.1 Authority, purpose, scope, and implementation dates.
1777.2 Preservation of other authority.
1777.3 Definitions.

Subpart A—Prompt Supervisory Response

1777.10 Developments prompting supervisory response.
1777.11 Supervisory response.
1777.12 Other supervisory action.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

1777.20 Capital classifications.
1777.21 Notice of capital category, and adjustments.
1777.22 Limitation on capital distributions.
1777.23 Capital restoration plans.
1777.24 Notice of intent to issue an order.
1777.25 Response to notice.
1777.26 Final notice of order.
1777.27 Exhaustion and review.
1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

Authority: 12 U.S.C. 1452(b)(2), 1456(c), 1718(c)(2), 1723a(k), 4513(e), 4513(b), 4514, 4517, 4611–4619, 4622, 4623, 4631, 4635.

§ 1777.1 Authority, purpose, scope, and implementation dates.

(a) *Authority.* This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313, 1371, 1372, and 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act (1992 Act) (12 U.S.C. 4513, 4631, 4632, and 4636). These provisions broadly authorize OFHEO to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises) maintain adequate capital and operate in a safe and sound manner.

(b) *Authority, purpose and scope of subpart A.* In addition to the authority set forth in paragraph (a) of this section, subpart A of this part is also issued pursuant to section 1314 of the 1992 Act (12 U.S.C. 4514), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), requiring each Enterprise to submit such reports to OFHEO as the Director of OFHEO determines, in his or her judgment, are necessary to carry out the purposes of the 1992 Act. Subpart A of this part is also issued in reliance on section 1317 of the 1992 Act (12 U.S.C. 4517) authorizing OFHEO to conduct examinations of the Enterprises. The purpose of subpart A of this part is to set forth a framework of early intervention supervisory measures, other than formal enforcement actions, that OFHEO may take to address emerging developments that merit supervisory review to ensure they do not pose a current or future threat to the safety and soundness of an Enterprise. OFHEO's initiation of procedures under subpart A does not necessarily indicate that any unsound condition exists. The supervisory responses enumerated in § 1777.11 do not constitute orders under the 1992 Act for purposes of sections 1371 and 1376 thereof (12 U.S.C. 4631 and 4636).

(c) *Authority, purpose, and scope of subpart B.* In addition to the authority set forth in paragraph (a) of this section, subpart B of this part is also issued pursuant to subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)(2)), and section 303(c)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718(c)(2)). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions. Subpart B implements the provisions of sections 1364 through 1368, 1369(b) through (e), 1369C, and 1369D of the 1992 Act as they apply to the Enterprises (12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623). The principal purposes of subpart B are to identify the capital measures and capital levels that OFHEO uses in determining the capital classification of an Enterprise; to set out the procedures OFHEO uses in determining such capital classifications; to establish procedures for submission and review of capital restoration plans of an Enterprise that is not classified as adequately capitalized; and to establish procedures under which OFHEO issues orders pursuant to section 1366(b)(1) through (4) of the 1992 Act (12 U.S.C. 4616(b)(1) through (4)).

(d) *Effective dates of capital classifications.* Section 1364 of the 1992 Act (12 U.S.C. 4614(d)) directs OFHEO to determine capital classifications for the Enterprises by reference to two capital standards, consisting of the minimum or critical capital level on the one hand, and the risk-based capital level on the other. Section 1364(d) of the 1992 Act (12 U.S.C. 4614(d)) excludes consideration of whether the Enterprises meet the risk-based capital level in determining capital classifications or reclassifications under 1364, until one year after the effective date of OFHEO's regulation implementing OFHEO's risk-based capital test (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)), until such time, section 1364(d) provides that an Enterprise is to be classified as adequately capitalized so long as it meets the minimum capital level. Subpart B contains a currently effective set of capital classifications omitting consideration of the risk-based capital level, as well as another set of capital classifications which will take effect, and displace the current set of capital classifications, on September 13, 2002 that is, one year after the effective date of OFHEO's risk-based capital rule published at 66 FR 47730, September 13, 2001.

§ 1777.2 Preservation of other authority.

(a) *Supervisory standards.* Notwithstanding the existence of procedures in § 1777.10 for the Director of OFHEO to designate certain developments for supervisory response under subpart A of this part, nothing in this part in any way limits the authority of OFHEO otherwise to take such actions with respect to any issue as is deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital, operate in a safe and sound manner, and comply with the 1992 Act and regulations, orders, and agreements thereunder.

(b) *Capital floor.* Classification of an Enterprise as adequately capitalized in accordance with subtitle B of the 1992 Act and subpart B of this part indicates that the Enterprise meets the capital levels under sections 1361 and 1362 of the 1992 Act (12 U.S.C. 4611 and 4612) and regulations promulgated thereunder as of the times specified in the classification determination. Nothing in subpart B of this part or subtitle B of the 1992 Act limits OFHEO's authority otherwise to address circumstances that would require additional capital through regulations, orders, notices, guidance, or other actions.

(c) *Form of supervisory action or response.* In addition to the supervisory responses contemplated under subpart A of this part, and the authority to classify and reclassify the Enterprises, to issue orders, and to appoint conservators under subpart B of this part, the 1992 Act grants OFHEO broad discretion to take such other supervisory actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator under section 1369(a)(1) through (2) of the 1992 Act (12 U.S.C. 4619(a)(1) through (2)), entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Neither the 1992 Act nor this part in any way limit OFHEO's discretion over the selection of the type of these actions, and the selection of one type of action under this part or under these other statutory authorities, or a combination thereof, does not foreclose OFHEO from pursuing any other action.

§ 1777.3 Definitions.

For purposes of this part, the following definitions will apply:

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

Affiliate means an entity that controls an Enterprise, is controlled by an Enterprise, or is under common control with an Enterprise.

Capital distribution means:

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise; and

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise

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makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan as determined by the Director of OFHEO in writing in advance.

Core capital has the same meaning as provided in 12 CFR 1750.2.

Critical capital level means the amount of core capital that is equal to the sum of one half of the amount determined under 12 CFR 1750.4(a)(1) and five-ninths of the amounts determined under 12 CFR 1750.4(a)(2) through 1750.4(a)(7).

Enterprise means the Federal National Mortgage Association and any affiliate thereof, and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Minimum capital level means the minimum amount of core capital specified for an Enterprise pursuant to section 1362 of the 1992 Act (12 U.S.C. 4612), as determined under 12 CFR 1750.4.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Risk-based capital level means the amount of total capital specified for an Enterprise pursuant to section 1361 of the 1992 Act (12 U.S.C. 4611), as determined under OFHEO's regulations implementing section 1361.

Total capital has the same meaning as provided at 12 CFR 1750.11(n).

Subpart A—Prompt Supervisory Response

§ 1777.10 Developments prompting supervisory response.

In the event of any of the following developments, OFHEO shall undertake one of the supervisory responses enumerated in § 1777.11, or a combination thereof:

(a) OFHEO's national House Price Index (HPI) for the most recent quarter is more than two percent less than the national HPI four quarters previously, or for any Census Division or Divisions in which are located properties securing more than 25 percent of single-family mortgages owned or securing securities guaranteed by an enterprise, the HPI for the most recent quarter for such Division or Divisions is more than five percent less than the HPI for that Division or Divisions four quarters previously;

(b) An Enterprise's publicly reported net income for the most recent calendar quarter is less than one-half of its average quarterly net income for any four-quarter period during the prior eight quarters;

(c) An Enterprise's publicly reported net interest margin (NIM) for the most recent quarter is less than one-half of its average NIM for any four-quarter period during the prior eight quarters;

(d) For single-family mortgage loans owned or securities by an Enterprise that are delinquent ninety days or more or in foreclosure, the proportion of such loans in the most recent quarter has increased more than one percentage point compared to the lowest proportion of such loans in any of the prior four quarters; or

(e) Any other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprise or a possible violation of applicable law, regulation, or order.

§ 1777.11 Supervisory response.

(a) *Level I supervisory response*—(1) *Supervisory letter.* Not later than five business days after OFHEO determines that a development enumerated in § 1777.10 has transpired, OFHEO shall deliver a supervisory letter alerting the chief executive officer or the board of directors of the Enterprise to OFHEO's determination.

(2) *Contents of supervisory letter.* The supervisory letter shall notify the Enterprise that, pursuant to this subpart, OFHEO is commencing review of a potentially adverse development. As is appropriate under the particular circumstances and the nature of the potentially adverse development, the letter may direct the Enterprise to undertake one or more of the following actions, as of such time as OFHEO directs:

(i) Provide OFHEO with any relevant information known to the Enterprise about the potentially adverse development, in such format as OFHEO directs;

(ii) Respond to specific questions and concerns that OFHEO poses about the potentially adverse development; and

(iii) Take appropriate action.

(3) *Review; further action.* Based on the Enterprise's response to the supervisory letter and consideration of other relevant factors, OFHEO shall promptly determine whether the Level I supervisory response is adequate to resolve any supervisory issues implicated by the potentially adverse development, or whether additional supervisory response under this section is warranted.

(4) *Sequence of supervisory responses.* The Level II through Level IV supervisory responses in paragraphs (b) through (d) of this section may be carried out in any sequence, including simultaneous performance of two or more such responses. OFHEO may also carry out one or more such responses simultaneously with a Level I supervisory response pursuant to this paragraph (a).

(b) *Level II supervisory response*—(1) *Special review.* In addition to any other supervisory response described in this section, OFHEO may conduct a special review of an Enterprise in order to assess the impact of the potentially adverse development on the Enterprise.

(2) *Review; further action.* Based on the results of the special review and consideration of other factors deemed by OFHEO to be relevant, OFHEO shall promptly determine whether additional supervisory response under this section is warranted.

(c) *Level III supervisory response*—(1) *Action plan.* In addition to any other supervisory response described in this section, OFHEO may direct the Enterprise to prepare and submit an action plan to OFHEO, in such format and at such time as OFHEO directs.

(2) *Contents of action plan.* Such action plan shall include, subject to additional direction by OFHEO, the following:

(i) In the case of any potentially adverse development arising from conditions or practices internal to the Enterprise, any relevant information known to the Enterprise about the circumstances that led to the potentially adverse development;

(ii) An assessment of likely consequences that the potentially adverse development may have for the Enterprise; and

(iii) The proposed course of action the Enterprise will undertake in response to the potentially adverse development, including an explanation as to why such approach is preferred to any other alternative actions by the Enterprise and how such approach will address the concerns of OFHEO.

(3) *Review; further action.* If OFHEO in its discretion determines that the information, assessment, or proposed course of action contained in the action plan is incomplete or inadequate, OFHEO shall promptly direct the Enterprise to correct such deficiencies to the extent OFHEO determines such corrections will aid in resolving supervisory issues implicated by the potentially adverse development, and will promptly determine whether additional supervisory response under this section is warranted.

(d) *Level IV supervisory response*—(1) *Notice to show cause.* In addition to any other supervisory response described in this section, OFHEO may issue written notice to the chief executive officer or the board of directors of the Enterprise directing the Enterprise to show cause, on or before the date specified in the notice, why OFHEO should not issue one or more of the following:

(i) A notice of charges to the Enterprise under section 1371 of the 1992 Act (12 U.S.C. 4631) and the procedures in 12 CFR part 1780 commencing an action to order the Enterprise to cease and desist conduct, conditions, or violations specified in the notice to show cause;

(ii) A temporary order to the Enterprise under section 1372 of the 1992 Act (12 U.S.C. 4632) and the procedures in 12 CFR part 1780 to cease and desist from, and take affirmative actions to prevent or remedy harm from, conduct, conditions, or violations specified in the notice to show cause;

(iii) A notice of charges under section 1376 of the 1992 Act (12 U.S.C. 4636) and the procedures in 12 CFR part 1780 commencing imposition of a civil money penalty against the Enterprise; or

(iv) A notice of discretionary reclassification of the Enterprise's capital classification under section 1364(b) of the 1992 Act (12 U.S.C. 4614(b)) and subpart B of this part.

(2) *Review; further action.* Based on the Enterprise's response to the notice to show cause and consideration of other relevant factors, OFHEO shall promptly determine whether to commence the actions described in the notice, and whether additional supervisory response under this section is warranted.

§ 1777.12 Other supervisory action.

Notwithstanding the pendency or completion of one or more supervisory responses described in § 1777.11, OFHEO may at any time undertake additional supervisory steps and actions in the form of any informal or formal supervisory tool available to OFHEO under the 1992 Act, including, but not limited to, issuing guidance or directives under section 1313 (12 U.S.C. 4513), requiring reports under section 1314 (12 U.S.C. 4514), conducting other examinations under section 1317 (12 U.S.C. 4517), issuing discretionary reclassification under section 1364 (12 U.S.C. 4614), initiating discretionary action under section 1366(b) (12 U.S.C. 4616(b)), appointing a conservator under section 1369(a) (12 U.S.C. 4619(a)), or initiating administrative enforcement action under sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632 and 4636). In addition, OFHEO may take any such steps or actions with respect to an Enterprise that fails to make a submission or comply with a directive as required by § 1777.11, or to address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan under § 1777.11.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

§ 1777.20 Capital classifications.

(a) *Capital classifications after the effective date of section 1365 of the 1992 Act.* The capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided under paragraph (a)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital equaling or exceeding the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital less than the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise holds core capital less than the critical capital level.

(5) *Discretionary reclassification—determination to reclassify.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly, or that reclassification is otherwise deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(b) *Duration of reclassification; successive reclassifications.* (1) A reclassification of an Enterprise based on action, inaction, or conditions under paragraph (a)(5) or (c)(5) of this section shall be considered in the determination of each subsequent capital classification of the Enterprise, and shall only cease being considered in the determination of the Enterprise's capital classification after OFHEO determines that the action, inaction or condition upon which the reclassification was based has ceased or been eliminated and remedied to OFHEO's satisfaction.

(2) If the action, inaction, or condition upon which a reclassification was based under paragraph (a)(5) or (c)(5) of this section has not ceased or been eliminated and remedied to OFHEO's satisfaction within such reasonable time as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under such paragraph (a)(5) or (c)(5) of this section into a lower capital classification.

(c) *Capital classifications before the effective date of section 1365 of the 1992 Act.* Notwithstanding paragraph (a) of this section, until September 13, 2002, the capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided in paragraph (c)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise, as of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* An Enterprise will be classified as undercapitalized if the Enterprise:

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(i) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level; and

(ii) Is reclassified as undercapitalized by OFHEO under paragraph (c)(5) of this section.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (c)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise held core capital less than the critical capital level.

(5) *Discretionary reclassification.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly or that reclassification is deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(d) *Prior approvals.* In making a determination to reclassify an Enterprise under paragraph (a)(5) or (c)(5) of this section, OFHEO will not base its decision to reclassify solely on action or inaction that previously was given specific approval by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan under section 1369C of the 1992 Act (12 U.S.C. 4622), or of a written agreement with the Enterprise that is enforceable in accordance with section 1371 of the 1992 Act.

§ 1777.21 Notice of capital category, and adjustments.

(a) *Notice of capital classification.* OFHEO will classify each Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c) on at least a quarterly basis. OFHEO may classify an Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c), or reclassify an Enterprise as set out in § 1777.20(a)(5), § 1777.20(c)(5), § 1777.23(c), or § 1777.23(h), at such other times as OFHEO deems appropriate.

(1) *Notice of proposed capital classification.*—(i) Before OFHEO classifies or reclassifies an Enterprise, OFHEO will provide the Enterprise with written notice containing the proposed capital classification, the information upon which the proposed classification is based, and the reason for the proposed classification.

(ii) Notices proposing to classify or reclassify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice that OFHEO may further reclassify the Enterprise under § 1777.23(c), without additional notice.

(iii) Notices proposing to classify or reclassify an Enterprise as significantly undercapitalized or critically undercapitalized may be combined with a notice under § 1777.24 that OFHEO intends to issue an order under section 1366 of the 1992 Act (12 U.S.C. 4616).

(iv) Notices proposing to classify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice proposing to simultaneously reclassify the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5).

(2) *Response by the Enterprise.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in classifying or reclassifying the Enterprise.

(i) The Enterprise may, within thirty calendar days from receipt of a notice of proposed capital classification, submit a response to OFHEO, unless OFHEO determines the condition of the Enterprise requires a shorter period or the Enterprise consents to a shorter period.

(ii) The Enterprise's response period may be extended for up to an additional thirty calendar days if OFHEO determines there is good cause for such extension.

(iii) The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed capital classification.

(3) *Classification determination and written notice of capital classification.* After the Enterprise has submitted its response under paragraph (a)(2) of this section or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will make its determination of the Enterprise's capital classification, taking into consideration such relevant information as is provided by the Enterprise in its response, if any, under paragraph (a)(2) of this section. OFHEO will provide the Enterprise with a written notice of capital classification, which shall include a description of the basis for OFHEO's determination.

(4) *Timing.* OFHEO may, in its discretion, issue a notice of proposed capital classification to an Enterprise at any time. If a notice of proposed classification is pending (under the process set out in paragraphs (a)(1) through (3) of this section) at that time, OFHEO may, in its discretion, specify whether the subsequent notice of proposed capital classification supersedes the pending notice.

(b) *Developments warranting possible change to capital classification*—(1) *Notice to OFHEO.* An Enterprise shall promptly provide OFHEO with written notice of any material development that would result in the Enterprise's core or total capital to fall to a point causing the Enterprise to be placed in a lower capital classification than the capital classification assigned to the Enterprise in its most recent notice of capital classification from OFHEO, or than is proposed to be assigned in the Enterprise's most recent notice of proposed capital classification from OFHEO. The Enterprise shall deliver such notice to OFHEO no later than ten calendar days after the Enterprise becomes aware of such development.

(2) OFHEO, in its discretion, will determine whether to issue a new notice of proposed capital classification under paragraph (a) of this section, based on OFHEO's review of the notice under paragraph (b)(1) of this section from the Enterprise and any other information deemed relevant by OFHEO.

§ 1777.22 Limitation on capital distributions.

(a) *Capital distributions in general.* An Enterprise shall make no capital distribution that would decrease the total capital of the Enterprise to an amount less than the risk-based capital level or the core capital of the Enterprise to an amount less than the minimum capital level without the prior written approval of OFHEO.

(b) *Capital distributions by an Enterprise that is not adequately capitalized*—(1) *Prohibited distributions.* An Enterprise that is not classified as adequately capitalized shall make no capital distribution that would result in the Enterprise being classified into a lower capital classification than the one to which it is classified at the time of such distribution.

(2) *Restricted distributions.* An Enterprise classified as significantly or critically undercapitalized shall make no capital distribution without the prior written approval of OFHEO. OFHEO may grant a request for such a capital distribution only if OFHEO determines, in its discretion, that the distribution:

(i) Will enhance the ability of the Enterprise to meet the risk-based capital level and the minimum capital level promptly;

(ii) Will contribute to the long-term financial safety and soundness of the Enterprise; or

(iii) Is otherwise in the public interest.

§ 1777.23 Capital restoration plans.

(a) *Schedule for filing plans*—(1) *In general.* An Enterprise shall file a capital restoration plan in writing with OFHEO within ten days of receiving a notice of capital classification under § 1777.21(a)(3) stating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO in its discretion determines an extension of the ten-day period is necessary and provides the Enterprise with written notice of the date the plan is due.

(2) *Successive capital classifications.* Notwithstanding paragraph (a)(1) of this section, an Enterprise that has already submitted and is operating under a capital restoration plan approved by OFHEO under this part is not required to submit an additional capital restoration plan based on a subsequent notice of capital classification, unless OFHEO notifies the Enterprise that it must submit a new or amended capital restoration plan. An Enterprise that receives such a notice to submit a new or amended capital restoration plan shall file in writing with OFHEO a complete plan that is responsive to the terms of and within the deadline specified in such notice.

(b) *Contents of capital restoration plan.* (1) The capital restoration plan submitted under paragraph (a)(1) or (2) of this section shall:

(i) Specify the level of capital the Enterprise will achieve and maintain;

(ii) Describe the actions that the Enterprise will take to become classified as adequately capitalized;

(iii) Establish a schedule for completing the actions set forth in the plan;

(iv) Specify the types and levels of activities (including existing and new programs) in which the Enterprise will engage during the term of the plan;

(v) Describe the actions that the Enterprise will take to comply with any mandatory or discretionary requirements to be imposed under Subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623) or subpart B of this part;

(vi) To the extent the Enterprise is required to submit or revise a capital restoration plan as the result of a reclassification of the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5), describe the steps the Enterprise will take to cease or eliminate and remedy the action, inaction, or conditions that caused the reclassification; and

(vii) Provide any other information or discuss any other issues as instructed by OFHEO.

(2) The plan shall include a declaration by the chief executive officer, treasurer, or other officer designated by the Board of Directors of the Enterprise to make such declaration, that the material contained in the plan is true and correct to the best of such officer's knowledge and belief.

(c) *Failure to submit*—(1) *Failure to submit; submission of unacceptable plan.* If, upon the expiration of the period provided in paragraph (a)(1) or (2) of this section for an Enterprise to submit a capital restoration plan, an Enterprise fails to comply with the requirement to file a complete capital restoration plan, or if the capital restoration plan is disapproved after review under paragraph (d) of this section, OFHEO may, in accordance with § 1777.21(a)(1)(ii) without additional notice, reclassify the Enterprise:

(i) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(ii) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(2) *Duration of reclassification.* An Enterprise's failure to submit an approved capital restoration plan as described in paragraph (c)(1) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after the Enterprise files a capital restoration plan that receives OFHEO's approval under paragraph (d) of this section.

(3) *Successive reclassifications.* If an Enterprise has not remedied its failure to file a complete capital restoration plan or an acceptable capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (c)(1) of this section into a lower capital classification. Such reclassification may be made without additional notice in accordance with § 1777.21(a)(1)(ii).

(d) *Order approving or disapproving plan.* Not later than thirty calendar days after receipt of the Enterprise's complete or amended capital restoration plan under this section (subject to extension upon written notice to the Enterprise for an additional thirty calendar days as OFHEO deems necessary), OFHEO shall issue an order to the Enterprise approving or disapproving the plan. An order disapproving a plan shall include the reasons therefore.

(e) *Resubmission.* An Enterprise that receives an order disapproving its capital restoration plan shall submit an amended capital plan acceptable to OFHEO within thirty calendar days of the date of such order, or a longer period if OFHEO determines an extension is in the public interest.

(f) *Amendment.* An Enterprise that has received an order approving its capital restoration plan may amend the capital restoration plan only after written notice to OFHEO and OFHEO's written approval of the modification. Pending OFHEO's review and approval of the amendment in OFHEO's discretion, the Enterprise shall continue to implement the capital restoration plan under the original approval order.

(g) *Termination*—(1) *Termination under the terms of the plan.* An Enterprise that has received an order approving its capital restoration plan remains bound by each of its obligations under the plan until each such obligation terminates under express terms of the plan itself identifying a date, event, or condition upon which such obligation shall terminate.

(2) *Termination orders.* To the extent the plan does not include such express terms for any obligation thereunder, the Enterprise's obligation continues until OFHEO issues an order terminating such obligation under the plan. The Enterprise may also submit a written request to OFHEO seeking termination of such obligations. OFHEO will approve termination of such obligation to the extent that OFHEO determines, in its discretion, that the obligation's purpose under the plan has been fulfilled and that termination of the obligation is consistent with the overall safety and soundness of the Enterprise.

(h) *Implementation*—(1) An Enterprise that has received an order approving its capital restoration plan is required to implement the plan.

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(i) If OFHEO determines, in its discretion, that an Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule thereunder, OFHEO may reclassify the Enterprise:

(A) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(B) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(ii) *Duration of reclassification.* An Enterprise's failure to implement an approved capital restoration plan as described in paragraph (h)(1)(i) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after OFHEO determines, in its discretion, that the Enterprise is making such efforts as are reasonably necessary to comply with the capital restoration plan and fulfill the schedule thereunder.

(iii) *Successive reclassifications.* If an Enterprise has not remedied its failure to implement an approved capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (h)(1)(i) of this section into a lower capital classification.

(2) *Administrative enforcement action.* A capital plan that has received an approval order from OFHEO under this section shall constitute an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers, and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such plan.

§ 1777.24 Notice of intent to issue an order.

(a) *Orders under section 1366 of the 1992 Act (12 U.S.C. 4616).* In addition to any other action taken under this part, part 1780 of this chapter, or any other applicable authority, OFHEO may, in its discretion, issue an order to an Enterprise that is classified as significantly undercapitalized or critically undercapitalized, or is in conservatorship, directing the Enterprise to take one or more of the following actions:

(1) Limit any increase in, or reduce, any obligations of the Enterprise, including off-balance sheet obligations;

(2) Limit or eliminate growth of the Enterprise's assets or reduce the amount of the Enterprise's assets;

(3) Acquire new capital, in such form and amount as determined by OFHEO; or

(4) Terminate, reduce, or modify any activity of the Enterprise that OFHEO determines creates excessive risk to the Enterprise.

(b) *Notice of intent to issue an order.* Before OFHEO issues an order to an Enterprise pursuant to section 1366 of the 1992 Act (12 U.S.C. 4616), OFHEO will provide the Enterprise with written notice containing the proposed order.

(c) *Contents of notice.* A notice of intent to issue an order under this subpart shall include:

(1) A statement of the Enterprise's capital classification and its minimum capital level or critical capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25 Response to notice.

(a) *Content of response.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in connection with the proposed order. The response should include, but is in no way limited to, the following:

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification to the proposed order, and justification thereof.

(b) *Time to respond.* The Enterprise may, within thirty calendar days after receipt of the notice of proposed order, submit a response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period. OFHEO may extend the Enterprise's response period for up to an additional thirty calendar days if OFHEO determines, in its discretion, that there is good cause for such extension.

(c) *Waiver and consent.* The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed order.

§ 1777.26 Final notice of order.

(a) *Determination and notice.* After the Enterprise has submitted its response under § 1777.25 or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will determine, in its discretion, whether to take into consideration such relevant information as is provided by the Enterprise in its response, if any, under § 1777.25. OFHEO will provide the Enterprise with a written final notice of any order issued by OFHEO under this subpart, which is to include a description of the basis for OFHEO's determination.

(b) *Termination or modification.* An Enterprise that has received an order under paragraph (a) of this section remains subject to each provision of the order until each such provision terminates under the express terms of the order. The Enterprise may submit a written request to OFHEO seeking modification or termination of one or more provisions of the order. Pending OFHEO's review and approval, in OFHEO's discretion of the Enterprise's request, the Enterprise shall remain subject to the provisions of the order.

(c) *Enforcement of order*—(1) *Judicial enforcement.* An order issued under paragraph (a) of this section is an order for purposes of section 1375 of the 1992 Act (12 U.S.C. 4635). An Enterprise in any capital classification may be subject to enforcement of such order in the United States District Court for the District of Columbia pursuant to such section.

(2) *Administrative enforcement.* An order issued under paragraph (a) of this section constitutes an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such order.

§ 1777.27 Exhaustion and review.

(a) *Judicial review*—(1) *Review of certain actions.* An Enterprise that is not classified as critically undercapitalized may seek judicial review of a final notice of capital classification issued pursuant to § 1777.21(a)(3) or a final notice of order issued pursuant to § 1777.26(a) in accordance with section 1369D of the 1992 Act (12 U.S.C. 4623)

(2) *Other review barred.* Except as set out in paragraph (a)(1) of this section, or review of conservatorship appointments to the limited extent provided in section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)) and § 1777.28(c), no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of a capital classification or any other action of OFHEO pursuant to this subpart B, as provided in section 1369D of the 1992 Act (12 U.S.C. 4623).

(b) *Exhaustion of administrative remedies.* In connection with any issue for which an Enterprise seeks judicial review in connection with an action described in paragraph (a)(1) of this section, the Enterprise must have first exhausted its administrative remedies, by presenting all its objections, arguments, and information relating to such issue for OFHEO's consideration pursuant to § 1777.21(a)(2), as part of the Enterprise's response to OFHEO's notice of capital classification, or pursuant to § 1777.25, as part of the Enterprise's response to OFHEO's notice of intent to issue an order.

(c) *No stay pending review.* The commencement of proceedings for judicial review of a final capital classification or order as described in paragraph (a)(1) of this section shall not operate as a stay thereof.

§ 1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

(a) *Significantly undercapitalized Enterprise.* At any time after an Enterprise is classified as significantly undercapitalized, OFHEO may issue an order appointing a conservator for the Enterprise upon determining that:

(1) The amount of core capital of the Enterprise is less than the minimum capital level; and

(2) The alternative remedies available to OFHEO under the 1992 Act are not satisfactory.

(b) *Critically undercapitalized Enterprise*—(1) *Appointment upon classification.* Not later than thirty days after issuing a final notice of capital classification pursuant to § 1777.21(a)(3) classifying an Enterprise as significantly undercapitalized, OFHEO shall issue an order appointing a conservator for the Enterprise.

(2) *Exception.* Notwithstanding paragraph (b)(1) of this section, OFHEO may determine not to appoint a conservator if OFHEO makes a written finding, with the written concurrence of the Secretary of the Treasury, that:

(i) The appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(ii) The public interest would be better served by taking some other enforcement action authorized under this title.

(c) *Judicial review.* An Enterprise for which a conservator has been appointed pursuant to paragraph (a) or (b) of this section may seek judicial review of the appointment in accordance with section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)). Except as provided therein, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of the powers or functions of a conservator.

(d) *Termination*—(1) *Upon reaching the minimum capital level.* OFHEO will issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level.

(2) *In OFHEO's discretion.* OFHEO may, in its discretion, issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that such termination order is in the public interest and may safely be accomplished.

Dated: January 18, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–1842 Filed 1–24–02; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–198–AD; Amendment 39–12607; AD 2002–01–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG) and various follow-on actions. That AD also currently requires termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. This amendment prohibits the use of a particular corrosion inhibiting compound during accomplishment of the terminating action. This action is necessary to prevent the collapse of the MLG due to stress corrosion cracking of the aft trunnion of the outer cylinder. This action is intended to address the identified unsafe condition.

DATES: Effective March 1, 2002.

The incorporation by reference of Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of March 1, 2002.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 55080, October 24, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–21–06, amendment 39–9783 (61 FR 55080, October 24, 1996), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on August 24, 2001 (66 FR 44553). The action proposed to continue to require inspections and various follow-on actions to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG). The action also proposed to continue to require termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. Finally, the action proposed to prohibit the use of a particular corrosion inhibiting compound during accomplishment of the terminating action.

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Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Supersede Multiple ADs

One commenter requests that the FAA revise the proposed AD to supersede AD 96–21–06, AD 95–19–10, amendment 39–9372 (60 FR 47689, September 14, 1995), and AD 95–20–51, amendment 39–9398 (60 FR 53109, October 12, 1995), with one AD. The commenter sees no benefit in having four ADs (i.e., the three listed previously and the proposed AD) that address the same area of the aft trunnion of the MLG on Model 767 series airplanes. The commenter states that superseding all of the ADs related to the aft trunnion would ease the administrative burden and simplify the recordkeeping associated with these ADs.

The FAA does not concur with the commenter's request. We note that this AD does supersede AD 96–21–06, one of the ADs to which the commenter refers. We also note that the applicability statements of all three ADs differ; that is, all three ADs apply to different groups of airplanes. With this in mind, combining the three ADs into one superseding AD would result in a lengthy, highly complex AD, which may be confusing for operators. For this reason, we find that a combined AD would be likely to impose more of an administrative and recordkeeping burden, rather than less of one, as the commenter suggests, and could increase the potential for recordkeeping mistakes. For these reasons, we find it inappropriate to supersede the three ADs listed above with a single AD action. No change to the final rule is needed in this regard.

Refer to Alternative Terminating Action

The same commenter presents an alternative if we do not agree to supersede the three ADs identified previously. It asks that we revise paragraph (e) of the proposed AD to refer to Part 4 of Boeing Service Bulletin 767–32A0192, dated May 31, 2001, as an acceptable terminating action for paragraph (e) of the proposed AD. The commenter states that the actions in Part 4 of that service bulletin are equivalent to those in Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, which is identified in paragraph (e) of the proposed AD as the appropriate source of service information for the actions in that paragraph.

We concur with the intent of the commenter's request. We agree that accomplishment of "Part 4—Terminating Action" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192 terminates paragraph (e) of this AD. We note that we have previously issued another notice of proposed rulemaking (NPRM), Rules Docket Number 2001–NM–189–AD, which, if adopted, would apply to all Boeing Model 767–200, –300, and –300F series airplanes. Paragraph (i) of that NPRM specifies accomplishment of the terminating action in Boeing Alert Service Bulletin 767–32A0192. In addition, paragraph (j) of that NPRM states, "Accomplishment of the actions specified in paragraph (i) of this AD is considered acceptable for compliance with the requirements of paragraph (e) of AD 96–21–06, amendment 39–9783." The provision of paragraph (j) of that NPRM applies to paragraph (e) of this AD because this AD supersedes AD 96–21–06. Therefore, for clarification, we have added a new paragraph (h) to this AD to state that accomplishment of "Part 4—Terminating Action" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192 constitutes terminating action for paragraph (e) of this AD. Paragraphs subsequent to this new paragraph (h) have been reordered accordingly.

Limit Area of Prohibition

One commenter recommends that the proposed AD prohibit the application of the corrosion inhibiting compound Desoto 823E508 (Titanine JC5A) only on the aft trunnion of the MLG. The commenter notes that the wording of paragraph (h) of the proposed rule prohibits application of that compound anywhere on an airplane. The commenter states that service history and laboratory test data have shown that typical usage of this corrosion inhibiting compound in thin layers (such as on fasteners and faying surfaces) does not promote corrosion.

While we neither accept nor reject the commenter's argument, we agree that the unsafe condition associated with this AD relates specifically to the aft trunnion of the MLG. Therefore, it is appropriate to limit the prohibition of the application of the subject corrosion inhibiting compound to the aft trunnion of the MLG. Due to the addition of a paragraph described previously, paragraph (h) of the proposed AD has been reordered as paragraph (i) in this final rule, and we have revised that paragraph accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 605 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–21–06 take approximately 252 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $9,510 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $4,926,000, or $24,630 per airplane.

The prohibition of a certain corrosion inhibiting compound, which is the only new requirement of this AD, will not change the cost impact on U.S. operators from that associated with AD 96–21–06.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9783 (61 FR 55080, October 24, 1996), and by adding a new airworthiness directive (AD), amendment 39–12607, to read as follows:

2002–01–13 Boeing: Amendment 39–12607. Docket 2001–NM–198–AD. Supersedes AD 96–21–06, Amendment 39–9783.

Applicability: Model 767 series airplanes having line numbers 001 through 605 inclusive, on which the terminating action required by paragraph (e) of this AD has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG) due to stress corrosion cracking of the aft trunnion of the outer cylinder, accomplish the following:

Note 2: This AD is merely a restatement of the requirements of AD 96–21–06, amendment 39–9783, with one exception: Only Revision 2, dated November 30, 2000, of Boeing Service Bulletin 767–32A0148, which disallows the use of Desoto 823E508 (Titanine JC5A) corrosion inhibiting compound, may be used after the effective date of this new AD. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 96–21–06 have already been accomplished prior to the effective date of this AD in accordance with prior versions of that service bulletin, this AD does not require that those actions be repeated. However, the FAA is considering the issuance of a separate rulemaking action to further address the identified unsafe condition on airplanes on which Desoto 823E508 (Titanine JC5A) was used.

Restatement of the Requirements of AD 96–21–06

Inspections and Various Follow-On Actions

(a) Perform the inspections described in paragraph III, Accomplishment Instructions, of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996, to detect cracking and corrosion of the aft trunnion of the outer cylinder of the MLG at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. These inspections are to be accomplished in accordance with Figure 1 of the service bulletin. Repeat these inspections thereafter at the intervals specified in that service bulletin. To determine the category in which an airplane falls, the age of the outer cylinder of the MLG is to be calculated as of February 16, 1996 (the effective date of AD 96–03–02 R1, amendment 39–9526). For airplanes on which the age of the right MLG differs from the age of the left MLG, an operator may place the airplane into a category that is the higher (numerically) of the two categories to ease its administrative burden, and to simplify the recordkeeping requirements imposed by this AD. Once the category into which an airplane falls is determined, operators must obtain approval from the Manager, Seattle Aircraft Certification Office (ACO), FAA, to move that airplane into another category.

Note 3: The broken (dash) lines used in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Revision 1, dated October 10, 1996, denote "go to" actions for findings of discrepancies detected during any of the inspections required by this AD.

Note 4: Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Revision 1, dated October 10, 1996, refer to Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, and Revision 1, dated October 10, 1996, for procedures to repair the outer cylinder and replace the bushings in the outer cylinder of the MLG with new bushings.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections within 30 days after February 16, 1996 (the effective date of AD 96–03–02 R1, amendment 39–9526).

(2) For airplanes identified as Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections within 90 days after February 16, 1996.

(3) For airplanes identified as Category 1 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections prior to the accumulation of 2½ years since the MLG outer cylinder was new or last overhauled, or within 150 days after February 16, 1996, whichever occurs later.

(b) If no cracking or corrosion is detected during the inspections required by paragraph (a) of this AD, accomplish the follow-on actions described in Boeing Alert Service Bulletin 767–32A0151, November 30, 1995, or Revision 1, dated October 10, 1996, at the time specified in the service bulletin. These follow-on actions are to be accomplished in accordance with that service bulletin.

(c) If any cracking is detected during the inspections required by paragraph (a) of this AD, prior to further flight, replace the outer cylinder with a new or serviceable outer cylinder in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996.

(d) If any corrosion is detected during the inspections required by paragraph (a) of this AD, accomplish the follow-on actions at the time specified in the "Corrosion Flowchart," in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996. The follow-on actions are to be accomplished in accordance with that service bulletin.

Terminating Action

(e) Unless previously accomplished in accordance with paragraph (e) of AD 96–21–06, at the time specified in either paragraph (e)(1) or (e)(2) of this AD, as applicable, repair the outer cylinder and replace the bushings in the aft trunnion and crossbolt of the MLG with new bushings, in accordance with Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000. Accomplishment of this repair and replacement constitutes terminating action for this AD, and for the requirements of AD 95–19–10, amendment 39–9372; and AD 95–20–51, amendment 39–9398.

Note 5: Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, refers to Boeing Component Maintenance Manual (CMM) 32–11–40 for certain procedures.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Accomplish the repair and replacement within 18 months after November 29, 1996 (the effective date of AD 96–21–06, amendment 39–9783).

(2) For airplanes identified as either Category 1 or Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151,

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dated November 30, 1995, or Revision 1, dated October 10, 1996: Accomplish the repair and replacement at the time specified in either paragraph (e)(2)(i) or (e)(2)(ii) of this AD:

(i) Prior to the accumulation of 5½ years since the MLG outer cylinders were new or last overhauled, or within 18 months after November 29, 1996, whichever occurs later; or

(ii) Prior to the accumulation of 7 years since the MLG outer cylinders were new or last overhauled, provided that accomplishment of visual and non-destructive testing (NDT) inspections at the times specified in Figure 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996, are repeated until the repair and replacement are accomplished.

(f) Accomplishment of the inspection requirements of this AD (in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996) is considered acceptable for compliance with AD 95–19–10, amendment 39–9372; and AD 95–20–51, amendment 39–9398.

New Requirements of This AD

(g) Except as provided by paragraph (h) of this AD: As of the effective date of this AD, only Revision 2, dated November 30, 2000, of Boeing Service Bulletin 767–32A0148 shall be used to accomplish the actions required by paragraph (e) of this AD.

(h) Accomplishment of the terminating action (including removal of the existing bushings, repair of the aft trunnion area of the outer cylinder, and machining and installation of new bushings] in accordance with "Part 4—Terminating Action" of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001, constitutes terminating action for the requirements of paragraph (e) of this AD.

Use of Titanine JC5A Prohibited

(i) As of the effective date of this AD, no person shall use the corrosion inhibiting compound Desoto 823E508 (Titanine JC5A) on the aft trunnion of the MLG on any airplane.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved in accordance with AD 96–03–02, amendment 39–9497; AD 96–03–02 R1, amendment 39–9526; AD 95–19–10, amendment 39–9372; or AD 95–20–51, amendment 39–9398; are approved as alternative methods of compliance with this AD except as required in paragraph (i) of this AD.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(l) Except as provided by paragraphs (a) and (h) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995; Boeing Service Bulletin 767–32A0151, Revision 1, dated October 10, 1996; or Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995; was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

(3) The incorporation by reference of Boeing Service Bulletin 767–32A0151, Revision 1, dated October 10, 1996; was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 55080, October 24, 1996).

(4) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(m) This amendment becomes effective on March 1, 2002.

Issued in Renton, Washington, on January 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1452 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30292; Amdt. No. 2090]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

Effective February 21, 2002

Sacramento, CA, Sacramento Mather, VOR or GPS RWY 4R, Orig-C, CANCELLED

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-C

Sacramento, CA, Sacramento Mather, VOR/DME or GPS RWY 22L, Orig-C, CANCELLED

Sacramento, CA, Sacramento Mather, VOR/DME RWY 22L, Orig-C

Santa Ana, CA, John Wayne Airport-Orange County, NDB or GPS RWY 1L, Amdt 1A, CANCELLED

Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 1L, Amdt 1A

Santa Ana, CA, John Wayne Airport-Orange County, NDB or GPS RWY 19R, Amdt 1, CANCELLED

Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 19R, Amdt 1

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, NDB or GPS RWY 13, Amdt 15, CANCELLED

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, NDB RWY 13, Amdt 15

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, VOR or GPS RWY 27R, Amdt 11, CANCELLED

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, VOR RWY 27R, Amdt 11

Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR or GPS RWY 27L, Amdt 4A, CANCELLED

Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR RWY 27L, Amdt 4A

Kahului, HI, Kahului, NDB/DME or GPS RWY 2, Amdt 2A, CANCELLED

Kahului, HI, Kahului, NDB/DME RWY 2, Amdt 2A

Pella, IA, Pella Muni, NDB or GPS RWY 34, Amdt 7, CANCELLED

Pella, IA, Pella Muni, NDB RWY 34, Amdt 7

Chicago, IL, Chicago Midway, NDB or GPS RWY 4R, Amdt 12C, CANCELLED

Chicago, IL, Chicago Midway, NDB RWY 4R, Amdt 12C

Marks, MS, Selfs, NDB or GPS RWY 2, Amdt 4, CANCELLED

Marks, MS, Selfs, NDB RWY 2, Amdt 4

West Point, MS, McCharen Field, VOR/DME RNAV or GPS RWY 36, Amdt 3A, CANCELLED

West Point, MS, McCharen Field, VOR/DME RNAV RWY 36, Amdt 3A

Kalispell, MT, Glacier Park Intl, VOR or GPS RWY 30, Amdt 9A, CANCELLED

Kalispell, MT, Glacier Park Intl, VOR RWY 30, Amdt 9A

Asheville, NC, Asheville Regional, NDB or GPS RWY 16, Amdt 15B, CANCELLED

Asheville, NC, Asheville Regional, NDB RWY 16, Amdt 15B

Asheville, NC, Asheville Regional, NDB or GPS RWY 34, Amdt 18C, CANCELLED

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Asheville, NC, Asheville Regional, NDB RWY 34, Amdt 18C
Monroe, NC, Monroe, NDB or GPS RWY 5, Amdt 2C, CANCELLED
Monroe, NC, Monroe, NDB RWY 5, Amdt 2C
Newark, NJ, Newark Intl, NDB or GPS RWY 4L, Amdt 10A, CANCELLED
Newark, NJ, Newark Intl, NDB RWY 4L, Amdt 10A
Newark, NJ, Newark Intl, NDB or GPS RWY 4R, Amdt 6A, CANCELLED
Newark, NJ, Newark Intl, NDB RWY 4R, Amdt 6A
Albuquerque, NM, Albuquerque Intl Sunport, NDB or GPS RWY 35, Amdt 7B, CANCELLED
Albuquerque, NM, Albuquerque Intl Sunport, NDB RWY 35, Amdt 7B
Medford, OR, Medford/Rouge Valley Intl-Medford, VOR/DME or GPS RWY 14, Amdt 4, CANCELLED
Medford, OR, Medford/Rouge Valley Intl-Medford, VOR/DME RWY 14, Amdt 4
Harrisburg, PA, Harrisburg Intl, VOR or GPS RWY 31, Amdt 1, CANCELLED
Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Amdt 1
Madisonville, TX, Madisonville Muni, VOR/DME or GPS RWY 18, Amdt 1, CANCELLED
Madisonville, TX, Madisonville Muni, VOR/DME RWY 18, Amdt 1
Roanoke, VA, Roanoke Regional/ Woodrum Field, NDB or GPS RWY 33, Amdt 9, CANCELLED
Roanoke, VA, Roanoke Regional/ Woodrum Field, NDB RWY 33, Amdt 9

[FR Doc. 02–1866 Filed 1–24–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30291; Amdt. No. 2089]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion of FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January, 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
12/26/01	GA	Atlanta	The William B. Hartsfield Atlanta Intl	1/3457	RNAV (GPS) Rwy 27R, Orig.
01/03/02	NC	Greensboro	Piedmont Triad Intl	2/0074	RADAR-1, Amdt 9B.
01/03/02	AK	Fairbanks	Fairbanks Intl	2/0076	ILS Rwy 19R, Amdt 21.
01/03/02	UT	Salt Lake City	Salt Lake City Intl	2/0088	ILS Rwy 35, Amdt 1C.
01/04/02	AK	Petersburg	James A. Johnson	2/0096	LDA/DME-D, Amdt 5C.
01/04/02	TN	Hohenwald	John A. Baker Field	2/0105	NDB Rwy 2, Orig.
01/04/02	UT	Cedar City	Cedar City Regional	2/0107	ILS Rwy 20, Amdt 3A.
01/04/02	UT	Cedar City	Cedar City Regional	2/0108	VOR Rwy 20, Amdt 6A
01/04/02	UT	Cedar City	Cedar City Regional	2/0109	NDB Rwy 20, Amdt 2A.
01/07/02	LA	Bastrop	Morehouse Memorial	2/0173	NDB or GPS Rwy 34, Amdt 5.
01/07/02	LA	Bastrop	Morehouse Memorial	2/0174	VOR/DME-A, Amdt 8.
01/08/02	AL	Gadsen	Gadsden Muni	2/0192	GPS Rwy 24, Orig.
01/08/02	TX	Houston	William P. Hobby	2/0193	VOR/DME Rwy 30L, Amdt 17.
01/10/02	UT	Salt Lake City	Salt Lake City Muni	2/0277	RNAV (GPS) Rwy 34, Orig.
01/11/02	FL	Gainesville	Gainesville Regional	2/0308	VOR/DME Rwy 6, Orig-A.
01/11/02	GA	Tifton	Henry Tift Myers	2/0309	ILS Rwy 33, Orig-B.
01/11/02	FL	Gainesville	Gainesville Regional	2/0311	VOR Rwy 28, Orig-A.
01/11/02	FL	Gainesville	Gainesville Regional	2/0314	VOR Rwy 24, Orig-A.

[FR Doc. 02–1865 Filed 1–24–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30290; Amdt. No. 2088]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the national Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR), sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identified and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 21, 2002

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt 7
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 27R, Orig
Fort Mead (Odenton), MD, Tipton, VOR–A, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 10, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 28, Orig
Marks, MS, Selfs, RNAV (GPS) RWY 2,. Orig
Marks, MS, Selfs, RNAV (GPS) RWY 20, Orig
Union, SC, Union County, Troy Shelton Field, NDB RWY 5, Orig
Hohenwald, TN, John A. Baker Field, RNAV (GPS) RWY 2, Orig

Effective April 18, 2002

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig
Harrisburg, IL, Harrisburg-Raleigh, RNAV (GPS) RWY 24, Orig
Harrisburg, IL, Harrisburg-Raleigh, GPS RWY 24, Orig-A CANCELLED
Tecumseh, MI, Meyers-Diver's, VOR OR GPS–A, Amdt 7 CANCELLED
Duluth, MN, Duluth Intl, NDB RWY 9, Amdt 24
Duluth, MN, Duluth Intl, RNAV (GPS) RWY 9, Orig
Ely, MN, Ely Muni, RNAV (GPS) RWY 12, Orig
Ely, MN, Ely Muni, RNAV (GPS) RWY 30, Orig
Longville, MN, Longville Muni, RNAV (GPS) RWY 31, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 1, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 19, Orig

[FR Doc. 02–1864 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK64

Diseases Specific to Radiation-Exposed Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning presumptive service connection for certain diseases for veterans who participated in radiation-risk activities during active service or while members of reserve components during active duty for training or inactive duty training. This amendment adds cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amends the definition of the term "radiation-risk activity." The intended effect of this amendment is to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

DATES: Effective Date: March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 8, 2001 (66 FR 41483–41485), VA proposed to amend its adjudication regulations concerning presumptive service connection for veterans who participated in radiation-risk activities during active service. VA proposed to add cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amend the definition of the term "radiation-risk activity." The intended effect of this amendment was to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

I. Comments on the Proposed Rule

The comment period ended October 9, 2001. We received written comments from the American Legion, the National Association of Atomic Veterans, the Honorable Patsy T. Mink (HI) and 14 individuals. Ten of the comments expressed support of the proposed rule.

Definition of Radiation-Risk Activity

Current law defines "radiation-risk activity" for purposes of presuming that specified diseases are the result of radiation exposure during military service to mean (1) onsite participation in a test involving the atmospheric detonation of a nuclear device; (2) the occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946; or (3) internment as a prisoner of war in Japan or service on active duty in Japan following such internment during World War II which resulted in an opportunity for exposure to ionizing radiation. (See 38 U.S.C. 1112(c)(3)(B) and 38 CFR 3.309(d)).

As stated in the preamble to the proposed rule, recent legislation authorized benefits for certain Department of Energy (DOE) employees and persons employed by DOE contractors, subcontractors, and vendors who were involved in DOE nuclear weapons-related programs. This includes those who worked on Amchitka Island, Alaska prior to January 1, 1974, who were exposed to ionizing radiation in the performance of duty related to certain underground nuclear tests. It also includes certain persons who worked at gaseous diffusion plants in Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee before February 1, 1992. Our rulemaking proposed to add these exposures to the list of radiation-risk activities in 38 CFR 3.309(d).

One commenter stated that VA's definition of radiation-risk activity, even as expanded by this rulemaking, does not cover all veterans exposed to radiation while in the service of their country, and urged VA to expand its definition to include veterans exposed to "residual contamination" of nuclear tests. Another commenter urged VA to include veterans who may have been exposed to radiation during various activities involving the development, maintenance and handling of nuclear weapons, as well as clean up operations following nuclear testing. Another commenter specifically asked that VA expand the definition to include all military personnel who participated in the clean up of Enewetak Atoll from 1977 to 1980. Another commenter suggested that the definition of "radiation-risk" activity should include military duty at all DOE nuclear weapons development, testing, and manufacturing facilities.

Congress created certain presumptions for veterans in the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, section 2(a), 102 Stat. 485–86 (codified as amended at 38 U.S.C. 1112(c)). Congress has also created presumptions for certain civilians in the Radiation Exposure Compensation Act (RECA), Pub. L. 101–426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note), the RECA Amendments of 2000, Public Law 106–245, section 3, 114 Stat. 501, 502, and title XXXVI of the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398, 114 Stat. 1654A–1232. Under the Energy Employees Occupational Illness Compensation Program Act of 2000, if a member of the Special Exposure Cohort develops a "specified" cancer after beginning employment at a DOE facility or at an atomic weapons facility for an atomic weapons contractor, the cancer is presumed to have been sustained in the performance of duty and is compensable. The burden of proof for the Special Exposure Cohort is similar to that under 38 CFR 3.309(d). Congress has not created any presumptions for veterans or civilians based on "residual contamination" of nuclear tests, service at Enewetak Atoll, or any of the other types of duties suggested by the commenters.

This rulemaking was only intended to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes. We proposed to expand the definition of radiation-risk activity in § 3.309(d)(3)(ii) to include only the relevant activities listed in these civilian statutes. We therefore make no change based on these comments.

One commenter noted that the "Radiation Compensation Act of 1990" was recently amended to include civilian employees assigned to DOE nuclear weapons-related programs who were exposed to radiation, beryllium or silica. The commenter also stated that veterans involved in these programs are effectively precluded from being compensated for diseases related to such duty. The commenter urged that, in order to achieve true equity between radiation-exposed veterans and civilians, VA regulations should be amended to include veterans who were exposed to beryllium and silica during service.

We are aware that the RECA Amendments of 2000, Public Law 106–245, section (2)(A)(ii) and 3(c)(1), 114 Stat. at 501, 502, authorized compensation for above-ground uranium miners, millers and persons who transported ore and have a "nonmalignant respiratory disease," which the statute defines as fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the

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lung, silicosis, and pneumoconiosis. The Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398, tit. xxxvi, 114 Stat. 1654A–1232, authorized compensation for employees exposed to beryllium in the performance of duty for a DOE contractor, subcontractor, beryllium vendor, or subcontractor of a vendor.

However, under these statutes, beryllium-related diseases and silica-related diseases are clearly classified separately from radiogenic diseases. The purpose of this rulemaking is only to amend VA's presumptions for radiation exposure and radiogenic diseases.

In addition, we believe that existing regulations allow a sufficient basis to grant service connection, on a direct basis, for veterans exposed to beryllium or silica during military service who later suffer from these diseases. For these reasons, we do not revise the regulation to include diseases related to beryllium or silica exposure in this rulemaking, and we therefore make no change based on these comments.

Dose Reconstruction

One commenter stated that he opposed the current dose estimate requirement in 38 CFR 3.311, as being arbitrary, unreliable and inaccurate. Another commenter urged that VA should not rely on dose reconstruction estimates because they are based on lab tests, not on data collected at the atomic test sites. Another commenter also asked VA to eliminate the use of dose estimates since they are inaccurate.

Dose reconstruction is required only under 38 CFR 3.311, which is a separate and distinct basis for service connection from 38 CFR 3.309(d). The purpose of the rulemaking is only to amend VA's presumption for radiation exposure and radiogenic diseases (found in 3.309(d)), which does not require a dose estimate to establish entitlement to service connection. Therefore, these comments are outside the scope of this rulemaking and we make no change based on these comments.

Radiogenic Diseases

Several commenters urged VA to add certain diseases to 3.309(d)(2), in addition to those we proposed to add in this rulemaking. One commenter stated that radiation is a "complete carcinogen" and therefore we should list all cancers. Another commenter urged VA to add certain non-cancer diseases, such as cardiovascular disease, chronic hepatitis, and liver cirrhosis, which have been linked to radiation exposure by the Radiation Effects Research Foundation.

The basis for enactment of the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000 was scientific data resulting from enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, and obtained from the President's Advisory Committee on Human Radiation Experiments. Based on data from these sources, Congress authorized compensation for persons suffering from these cancers who lived downwind from Government above-ground nuclear tests, were underground uranium miners, participated onsite in a test involving the atmospheric detonation of a nuclear device, or were employed at certain locations by DOE contractors or subcontractors or an atomic weapons employer. We believe this data also supports compensation for veterans suffering from the same cancers, some of whom participated in the same activities as persons entitled to be compensated under the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000. We therefore proposed to amend 38 CFR 3.309(d)(2) to include the cancers for which compensation is payable under these other statutes.

As explained above and in the notice of proposed rulemaking, this rulemaking was only intended to ensure equity between veterans who may have been exposed to radiation during military service and civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes, including RECA. The Federal statutes referenced above do not presume that the diseases that the commenters asked VA to add to this rulemaking are due to radiation exposures in civilian occupations. Therefore, veterans do not have a higher burden of proof than civilians do, and we are making no change based on this comment.

Public Laws 98–542 and 102–578

One commenter stated that, because VA submitted a report to Congress containing its response to a report submitted to VA by the Veterans' Advisory Committee on Environmental Hazards on May 26, 1994, rather than December 1, 1993, as required by the Veterans' Radiation Exposure Amendments of 1992, Public Law 102–578, section 3, 106 Stat. 4774, 4775, radiation exposure by naval nuclear propulsion workers, those involved in weapons development for the Department of Defense, nuclear weapons maintenance workers and handlers and others have never been considered under the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542, 98 Stat. 2725 (1984), or the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, 102 Stat. 485.

This rulemaking does not involve VA's compliance with Public Law 102–578 and these comments are outside the scope of this rulemaking. We therefore make no change based on these comments.

Effective Dates

One commenter stated that the effective date for claims that VA previously denied but are now granted under these new regulations should be the date of the original claim. The commenter urged that veterans exposed to radiation be given the same consideration as veterans exposed to Agent Orange under *Nehmer* v. *United States Veterans Admin.*, C.A. No. C–86–6160 TEH (N.D. Cal.).

Section 5110 of title 38 United States Code and 38 CFR 3.114 establish effective date requirements that are binding on VA. Those requirements limit retroactive awards to no earlier than the effective date of a liberalizing statute or regulation, such as this rulemaking. The *Nehmer* lawsuit and court rulings do create an exception to these effective date rules, but the Nehmer case is limited to only diseases linked to herbicide exposure under 38 CFR 3.309(e). We have no authority to expand the exceptions established by the *Nehmer* court to include claims filed under 3.309(d). We therefore make no change based on this comment.

Opposition to Proposed Rule

One commenter asserted that it is very unlikely that any of the cancers developed by veterans are caused by their radiation exposure during military service. He stated that many of the premises contained in the preamble to the proposed rule are not based on valid scientific information. This commenter urged VA not to promulgate this proposed rule.

As we explained above, the basis for enactment of the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000 was scientific data resulting from enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, and obtained from the President's Advisory Committee on Human Radiation Experiments. We believe this data equally supports adding these same cancers to the list of diseases that may be presumptively

service connected for radiation-exposed veterans, some of whom participated in the same activities as persons entitled to be compensated under the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000.

This rulemaking was only intended to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes, including RECA. If we do not adopt this rule, veterans will have a higher burden of proof than civilians do. Therefore, we make no change based on this comment.

Medical Benefits

One commenter suggested that atomic veterans should be given a special priority for VA medical services, which should be provided without means testing and co-payments. The commenter also suggested that VA should focus on preventive measures to reduce the risk of cancer, appropriate medical treatment to keep atomic veterans healthy, and programs to educate veterans on dietary and lifestyle changes to prevent cancer. The commenter also suggested VA should work with Congress to determine if an arrangement for financial cost sharing between VA and Medicare is possible.

These comments are beyond the scope of the rulemaking. Also, some of the comments would require an amendment to title 38, United States Code, which cannot be accomplished by rulemaking. We therefore make no changes based on these comments.

II. Compliance With the Congressional Review Act, the Regulatory Flexibility Act, and Executive Order 12866

We estimate that the ten-year benefits cost of this rule from appropriated funds will be $769 million in benefits costs. We estimate that during several of these years, the annual benefits costs will be more than $100 million. We also estimate that the ten-year cost in government operating expenses will be $34 million. Since we estimate that the adoption of the rule will have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to E.O. 12866.

The Secretary has made this regulatory amendment to ensure that veterans exposed to radiation during military service receive the same consideration for the risks of this exposure as DOE employees, contractors and subcontractors. There are no feasible alternatives to this proposed rule, since it is needed to provide fairness and equity for veterans and their survivors. This rule will not interfere with state, local or tribal governments in the exercise of their governmental functions.

Benefits Costs

Over the next ten years, VA expects to process 91,567 service-connected disability compensation claims (living veterans) and 48,050 Dependency and Indemnity Compensation (DIC) claims (veterans' survivors claims for service connection for cause of death) filed as a result of this proposed rule. Historically, about 12% of all radiation related claims have been granted. If past experience proves a reliable indicator of future events, VA expects to grant approximately 10,988 of those disability compensation claims and approximately 5,766 of those DIC claims.

We estimate that the cumulative totals of benefits awards to claimants over the next ten years will be as follows: $8,040,630; $26,248,947; $44,265,910; $61,126,347; $76,565,137; $90,329,734; $102,328,198; $112,436,560; $120,555,709; and $126,704,527, for a total benefits cost of $768,601,698 over ten years.

Administrative Costs

Based on the administrative workload projected to result from this rule (discussed above), VA estimates that full time employee (FTE) resources devoted to processing claims in years one through ten will be 77, 113, 69, 64, 51, 40, 39, 35, 35, and 33 respectively. Estimated government operating expenses (GOE) costs for the next 10 years are as follows: $3,910,578; $5,047,838; $3,584,683; $4,127,798; $3,419,862; $2,817,402; $2,825,825; $2,669,755; $2,780,414; and $2,750,142, for a total GOE cost of $33,934,297 over ten years.

Unfunded Mandates

The Unfunded Mandates Reform Act requires , at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

OMB Review

This rule is economically significant under Executive Order 12866 and major under the Congressional Review Act. This rule has been reviewed by OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments will not directly affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 10, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.309 is amended by:

A. Adding new paragraphs (d)(2)(xvii) through (d)(2)(xxi).

B. Adding new paragraph (d)(3)(ii)(D).

The additions read as follows:

§ 3.309 Diseases subject to presumptive service connection.

* * * * *

(d) *Diseases specific to radiation-exposed veterans.* * * *

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(2) * * *
(xvii) Cancer of the bone.
(xviii) Cancer of the brain.
(xix) Cancer of the colon.
(xx) Cancer of the lung.
(xxi) Cancer of the ovary.
(3) * * *
(ii) * * *

(D)(*1*) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

(i) Was monitored for each of the 250 days of such service through the use of dosimetry badges for exposure at the plant of the external parts of veteran's body to radiation; or

(ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or

(*2*) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(*3*) For purposes of paragraph (d)(3)(ii)(D)(1) of this section, the term "day" refers to all or any portion of a calendar day.

* * * * *

[FR Doc. 02–1839 Filed 1–24–02; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[FCC 02–3]

Termination of Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of rulemaking proceedings.

SUMMARY: The Federal Communications Commission has terminated the rulemaking proceedings as set forth in the Order adopted by the Commission on January 9, 2002, and released January 11, 2002. The Commission has determined that no further action by the Commission is required in the proceedings.

DATES: These docket proceedings are terminated effective January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Consumer Information Bureau, (202) 418–0294

SUPPLEMENTARY INFORMATION: 1. We have reviewed the open rulemaking proceedings listed in the Appendix, and have determined that the proceedings should be terminated. The matters at issue in these rulemaking proceedings are either moot or stale due to the passage of time or other regulatory and industry changes. Therefore, no further action by the Commission is required in the proceedings listed in the attached Appendix, and they are hereby closed.

2. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), *it is ordered* that the rulemaking proceedings set forth in the Appendix *are closed and terminated*, effective on January 11, 2002.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

APPENDIX

Docket No.	Subject matter	Action	Cite
CC 84–490	Amendment of the rules to permit registration of terminal equipment for connection to voiceband private line channels; petition for rule making filed by AT&T.	NPRM	FCC 84–230
CC 90–629	Order To Show Cause; Nevada Bell Tariff F.C.C. No. 1; Transmittal No. 113	OSC	6 FCC Rcd 48
CC 91–377	U.S. Communications of Westchester Tocsia Informational Tariffs	OR	DA 91–1612
CC 92–275	New Service Reporting Requirements Under Price Cap Regulation	NPRM	8 FCC Rcd 2150
CC 94–139	AT&T Communications F.C.C. Tariff No. 1, Transmittal No. 7322	OR	DA 95–2407
CC 94–18	Establishment of a Federal Advisory Committee To Assist the Common Carrier Bureau in the Development and Implementation of an Electronic Filing System.	PN	59 FR 11604
CS 94–42	Amendment of the Commission's Rules To Include Decatur, Texas in the Dallas-Fort Worth, Texas, Television.	NPRM	59 FR 26615
CS 94–43	Amendment of the Commission's Rules To Include Kenosha and Racine, Wisconsin, in the Milwaukee, Wisconsin, Television Market.	NPRM	59 FR 26617
CS 94–99	Amendment of Section 76.51 of the Rules To Include Sanger, California in the Fresno-Visalia-Hanford-Clovis, California Television Market.	NPRM	59 FR 50538
CS 95–143	Amendment of Section 76.51 of the Commission's Rules To Include Greensburg, Pennsylvania in the Pittsburgh, Pennsylvania Television Market.	NPRM	60 FR 46805
CS 96–119	Amendment of Section of the Commission's Rules To Include Dubuque, Iowa in the Cedar Rapids-Waterloo, Iowa Television Market.	NPRM	61 FR 29336
CS 96–139	Amendment of Section 76.51 of the Commission's Rules To Include Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas in the Houston, Texas Television Market.	NPRM	61 FR 34408
ET 93–59	Amendment of Section 2.106 of the Rules to Allocate Spectrum for Wind Profiler Radar Systems.	NPRM	58 FR 19644
ET 99–300	Information Sought on Methods for Verifying Compliance With E911 Accuracy Standards	PN	DA 99–2130
ET 99–34	in the Matter of An Industry Coordination Committee System for Broadcast Digital Television Service.	NPRM	64 FR 6296
GN 84–361	Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983–1984.	OR	49 FR 27179
GN 85–75	Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1985–1986.	FN	50 FR 26593
GN 86–367	In the Matter of Private Sector Preparation and Administration of Commission Commercial Radio Operator Examinations.	NOI	51 FR 36415
MM 89–77	Transfers of Control of Certain Licensed Non-Stock Entities	NOI	54 FR 15957
MM 91–214	Station KROQ–FM	LT	6 FCC Rcd 7262
MM 93–225	Amendment of Part 73 of the Rules To Clarify the Definition and Measurement of Aural Modulation Limits in the Broadcast Services.	NOI	58 FR 44483
MM 93–226	Revision of 47 CFR 73.208, Reference Points and Distance Computations	NPRM	58 FR 49278

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
MM 93–232	Amendment of Section 76.51 of the Rules To Include Concord, California, in the San Francisco-Oakland-San Jose, California, Television Market.	NPRM	58 FR 45312
MM 93–260	Amendment of Section 76.51 of the Rules To Include Marion, Indiana, in the Indianapolis-Bloomington, Indiana, Television Market.	NPRM	58 FR 53698
MM 93–303	Amendment of Section 76.51 of the Rules To Include Hazelton and Williamsport, Pennsylvania in the Wilkes-Barre-Scranton, Pennsylvania Television Market.	NPRM	58 FR 68844
PP 96–17	Improving Commission Processes	NOI	11 FCC Rcd 14006
PR 93–199	Amendment of Part 90 Concerning the Commission's Finder's Preference Rules	NPRM	58 FR 38722

Action: FN Further Notice of Proposed Rulemaking.
LT Letter.
NOI Notice of Inquiry.
NPRM Notice of Proposed Rulemaking.
OR Order.
OS Order to Show Cause.
PN Public Notice.

[FR Doc. 02–1860 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[FCC 01–385]

Termination of Stale or Moot Docketed Proceedings

AGENCY: Federal Communications Commission

ACTION: Final rule; termination of docketed proceedings.

SUMMARY: The Federal Communications Commission has terminated the stale or moot docketed proceedings as set forth in the Order adopted by the Commission on December 21, 2001, and released January 11, 2002. The Commission has determined that no further action by the Commission is required in the proceedings.

DATES: These docket proceedings are terminated effective on January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Consumer Information Bureau, (202) 418–0294.

SUPPLEMENTARY INFORMATION: 1. We have reviewed the docket proceedings listed in the Appendix, and have determined that the dockets should be terminated. None of the dockets have any outstanding issues. The matters at issue in these proceedings were resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and the court's mandate was issued. Therefore, no further action by the Commission is required in the dockets listed in the attached Appendix, and they are hereby deemed terminated.

2. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), *it is ordered* that the docketed proceedings set forth in the Appendix are terminated, effective on January 11, 2002.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

APPENDIX

Docket No.	Subject matter	Action	Cite
CC 85–89	Preemption of State Entry Regulation in the Public Land Mobile Service	MO	2 FCC Rcd 6434
CC 85–93	Tariff FCC No. 3 (Transmittal Nos. 197, 208 & 209); Tariff FCC No. 38 (Transmittal Nos. 445 and 455); Tariff FCC No. 41 (Transmittal Nos. 742 and 753).	MO	5 FCC Rcd 2573
CC 86–1	WATS-Related and Other Amendments of Part 69 of the Commission's Rules	MO	7 FCC Rcd 5644
CC 86–164	Amendment of the Commission's Rules To Simplify Individual Licensing Procedures in the Domestic Public Air-Ground Radiotelephone Service.	RO	51 FR 39754
CC 86–165	Amendment of the Commission's Rules To Simplify the Separate Subsidiary Reporting Requirement in the Domestic Public Cellular Radio Telecommunications Service.	RO	51 FR 37022
CC 87–120	In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services.	OR	57 FR 37105
CC 87–274	Amendment of Section 22.901(D) of the Commission's Rules To Eliminate Commission Review of Capitalization Plans for Mobile Radio Cellular Systems.	RO	53 FR 23765
CC 88–326	In the Matter of Access Tariff Filing Schedules	RO	55 FR 6989
CC 88–471	In the Matter of Tariff F.C.C. No. 15—Competitive Pricing Plans; Holiday Rate Plan. (Transmittal No. 1215).	ON	5 FCC Rcd 7504
CC 91–141	Expanded Interconnection With Local Telephone Company Facilities	ON	13 FCC Rcd 16102
CC 91–213	MTS and WATS Market Structure/Transport Rate Structure and Pricing	RO	13 FCC Rcd 6332
CC 91–328	CPS Operator Services, Inc. TOCSIA Informational Tariffs	OR	DA 91–1548
CC 91–64	Amendment of Equal Access Balloting and Carrier Selection Rules To Require That Interexchange Carriers Obtain Written Customer Authorization Before Submitting Primary Interchange Carrier Selections.	OR	8 FCC Rcd 3215
CC 92–135	Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation	ON	12 FCC Rcd 2259
CC 92–24	Local Exchange Carrier Line Information Database—Open Network Architecture	OR	8 FCC Rcd 8118
CC 93–162	Ameritech Operating Companies Revisions to Tariff FCC No. 2; Bell Atlantic Telephone Companies Revisions to Tariff FCC No. 1; Bellsouth Telecommunications Inc. Revisions to Tariff FCC No. 1, etc.	OR	14 FCC Rcd 987
CC 93–179	Price Cap Regulation of Local Exchange Carriers; Rate of Return Sharing and Lower Formula Adjustment.	OR	10 FCC Rcd 11979

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APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
CC 94–157	Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690; NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328.	OR	12 FCC Rcd 18724
CC 95–133	AT&T Contract Tariff No. 374	OR	DA 95–2142
CC 95–146	AT&T Communications Contract Tariff No. 360	OR	10 FCC Rcd 1379
CC 95–80	AT&T Communications Contract Tariff No. 360	OR	11 FCC Rcd 3194
CC 96–150	Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.	ON	15 FCC Rcd 1161
CC 96–152	Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services.	OR	14 FCC Rcd 19259
CC 96–187	Implementation of a Section of the Telecommunications Act of 1996	RO	62 FR 5757
CC 96–22	Responsible Accounting Officer Letter 20, Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32 Amendments to Part 65, Interstate Rate of Return Precription Procedures A.	RO	62 FR 15117
CC 96–23	Revision of Filing Requirements	RO	62 FR 5160
CC 96–237	Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996	OR	65 FR 26203
CC 97–11	Implementation of Section 402(B)(2)(A) of the Telecommunications Act of 1996	RO	64 FR 39938
CC 98–103	In the Matter of SBC Communications Inc. Pacific Bell Telephone Company Pacific Transmittal No. 1986.	MO	13 FCC Rcd 23667
CC 98–108	In the Matter of Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada	ON	14 FCC Rcd 8077
CC 98–117	In the Matter of 1998 Biennial Regulatory Review—Review of Armis Reporting Requirements	RO	14 FCC Rcd 11443
CC 98–131	1998 Biennial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements.	RO	64 FR 46584
CC 98–137	In the Matter of 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers.	ON	66 FR 13690
CC 98–14	In the Matter of Number Portability Query Services	MO	14 FCC Rcd 1664
CC 98–157	In the Matter of Petition of US West Communications, Inc. for Forbearance From Regulation ASA Dominant Carrier in the Phoenix, Arizona MS.	MO	14 FCC Rcd 19947
CC 98–161	In the Matter of BellSouth Telecommunications, Inc	MO	13 FCC Rcd 23667
CC 98–199	In the Matter of BellSouth Telecommunications, Inc. F.C.C. Tariff No. 1 for Provision of Local Number Portability Database Services.	OR	14 FCC Rcd 1320
CC 98–210	Fidelity Telephone Company and Bourbeuse Telephone Company Joint Applications for Consent to Assignment of Authority Under Section 214 of the Communications Act.	MO	13 FCC Rcd 22899
CC 98–25	Application for Authority, Pursuant to Part of the Commission's Rules, to Transfer Control of Licenses Controlled By Southern New England.	MO	13 FCC Rcd 21292
CC 98–81	In the Matter of 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements.	RO	13 FCC Rcd 21625
CC 98–91	Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief From Regulation Pursuant to Section of the Telecommunications Act of 1996 and 47 U.S.C. for ADSL Infrastructure and Service.	OR	66 FR 2336
CC 98–92	Petition for Preemption of Tennessee Code Annotated and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority To Provide Service in Tennessee Rural LEC Service Areas.	MO	16 FCC Rcd 1247
CC 98–94	In the Matter of 1998 Biennial Regulatory Review—Testing New Technology	ST	14 FCC Rcd 6065
CC 99–249	In the Matter of Low-Volume Long-Distance Users	OR	15 FCC Rcd 23614
CC 99–316	In the Matter of National Exchange Carrier Association, Inc	OR	65 FR 64892
CS 94–48	Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.	RT	59 FR 64657
CS 95–61	Implementation of Section of the Cable Television Consumer Protection and Competition of 1992—Annual Assessment of the Status of Competition in the Market for Delivery of Video Prog.	RT	61 FR 1932
CS 96–46	Implementation of Section 302 of the Telecommunications Act of 1996	OR	65 FR 375
CS 98–201	In the Matter of Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.	ON	64 FR 73429
CS 98–61	In the Matter of 1998 Biennial Regulatory Review—Annual Report of Cable Television System, Form 325, Filed Pursuant to Section of the Commission's Rules.	OR	15 FCC Rcd 9707
ET 93–40	Allocation of the 219–220 Band for Use by the Amateur Radio Service	MO	61 FR 15382
ET 94–124	Amendment of Part 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHZ for New Radio Applications.	MO	65 FR 38431
ET 96–20	Amendment of Parts 2 and 25 of the Commission's Rules to Allocate the 13.75–14.0 GHZ Band to the Fixed-Satelite Service.	RO	61 FR 52301
ET 96–256	Amendment of the Commission's Rules to Revise the Experimental Radio Service Regulations.	RO	63 FR 64199
ET 97–206	In the Matter of Technical Requirements To Enable Blocking of Video Programming Based on Program Ratings.	RO	63 FR 20131
ET 98–197	Amendment of Parts of the Commission's Rules Regarding the Radionavigation Service at 31.8–32.3 GHz.	RO	65 FR 60108
ET 99–254	In the Matter of Closed Captioning Requirements for Digital Television Receivers	RO	65 FR 58467
ET 99–261	In the Matter of Amendment of Part of the Commission's Rules to Allocate Additional Spectrum to the Inter-Satellite, Fixed, and Mobile Services and to Permit Unlicensed Devices to Use Certain Segments in the 50.2–50.4 GHz and 51.4–71.0.	RO	66 FR 7402
FO 91–171	Inquiry into Possible Technical Improvements in the Emergency Broadcasting System	RO	64 FR 5950

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
FO 91–301	Amendment of Part 73, Subpart G. of the Commission's Rules Regarding the Emergency Broadcast System.	RO	64 FR 5950
GC 91–119	Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in Which the Commission is a Party.	MO	57 FR 32180
GC 97–113	Electronic Filing of Documents in Rulemaking Proceedings	MO	63 FR 56090
GN 84–467	In the Matter of Preparation for an International Telecommunications Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605–1705 kHz Band.	OR	53 FR 26612
GN 85–172	In the Matter of Further Sharing of the UHF Television Band by Private Land Mobile Radio Services.	OR	52 FR 43205
GN 88–441	In the Matter of Technical compatibility protocol standards for equipment operating in the 800 MHz public safety bands.	OR	55 FR 4888
GN 89–554	In the Matter of an Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing With Frequency Allocations in Certain parts of the Spectrum.	RT	56 FR 31095
GN 90–357	Amendment of the Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services.	MO	63 FR 24126
GN 93–252	Implementaiton of Sections 3(N) and 332 of the Communications Act—Regulatory Treatment of Mobile Services.	ON	66 FR 13022
GN 94–90	Eligibility for Specialized Mobile Radio Services and Radio Services in the 220–222 MHZ Land Mobile Band and Use of Radio Dispatch Communications.	MO	12 FCC Rcd 9962
IB 97–142	Rules and Policies on Foreign Participation in the U.S. Telecommunications Market	PN; OR	15 FCC Rcd 21945; 65 FR 60113
IB 98–212	AT&T Corporation and British Telecommunications PLC	MO	14 FCC Rcd 19140
MD 92–92	Establishment of Systems of Records Exempt Under the Privacy Act	RO	58 FR 11549
MD 94–19	Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year.	MO	62 FR 39450
MD 96–186	Amendment of Part 1 of the Commission's Rules, Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services.	RO	62 FR 59822
MD 98–200	In the Matter of Assessment and Collection of Regulatory Fees For Fiscal year 1999	MO	65 FR 78989
MM 85–91	Amendment of the Commission's Rules To Expand the Use of Automatic Transmission Systems at AM, FM and Television Broadcast Stations.	RO	51 FR 1374
MM 85–126	Review of Technical and Operational Requirements: Broadcast Remote Pickup Service; and Low Power Auxiliary Stations.	RO	51 FR 4599
MM 86–110	Amendment of Part 73 of the Commission's Rules Regarding Telecommunications Transmissions in the Vertical Blanking Interval.	RO	51 FR 34620
MM 87–267	Review of Technical Assignment Criteria for AM Broadcast Service	MO	65 FR 59751
MM 87–268	Institute Inquiry on Issues Relating to the Introduction of Advanced Television Technologies (e.g., HDTV).	OR	FCC 00–59
MM 91–122	Commission Policies Regarding Spousal Attribution	ST	57 FR 8845
MM 91–168	Codification of the Commission's Political Programming Policies	MO	9 FCC Rcd 7919
MM 91–204	For Renewal of License of Station KUCB(FM); for Construction Permit for a New FM Station Des Moines, IA.	MO	FCC 92M–264
MM 92–304	Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations.	OR	58 FR 48323
MM 94–149	Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	MO	64 FR 56974
MM 94–34	Implementation of Commission's Equal Employment Opportunity Rules	RT	59 FR 53363
MM 95–176	Closed Captioning and Video Description of Video Programming	OR	16 FCC Rcd 5067
PR 84–232	In the Matter of Future Public Safety Telecommunications	OR	50 FR 42573
PR 87–5	Amendment of Footnote 3 of the Rules To Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625–952.8375 MHZ Band.	MO	54 FR 19836
PR 89–552	Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHZ Band by the Private Land Mobile Radio Services.	MO	15 FCC Rcd 13924
PR 89–553	Modification of the Rules Governing Multiple Sites for Specialized Mobile Radio Service Systems in Rural Markets.	MO	65 FR 24419
PR 90–315	Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations	MO	8 FCC Rcd 3156
PR 91–111	Miscellaneous Amendments to Part 80 of the Rules Governing the Maritime Radio Services	OR	57 FR 26778
PR 91–167	Amendment of the Maritime Services Rules (Part 80) To Permit VHF Marine Channel 9 To Be Used as a Second Calling Channel.	RO	57 FR 19552
PR 93–61	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic 16 Vehicle Monitoring Systems.	ON	14 FCC Rcd 1339
PR 94–103	Petition for Authority To Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii.	RO	10 FCC Rcd 7872
PR 94–104	Petition To Extend State Authority Over Rate and Entry Regulation of All Commerical Mobile Radio Services.	RO	10 FCC Rcd 7824
PR 94–105	Petition To Retain Regulatory Authority Over Intrastate Cellular Service Rates (Accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition To Retain Regulatory Authority Over Intrastate.	OR	11 FCC Rcd 796
PR 94–106	Petition To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut.	OR	11 FCC Rcd 848

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APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
PR 94–107	Petition for Authority To Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana.	RO	10 FCC Rcd 7898
PR 94–108	Petition To Extend Rate Regulation	RO	10 FCC Rcd 8187
PR 94–109	Statement of Intention To Preserve Its Right for Future Rate and Market Entry Regulation of the Commercial Mobile Radio Services.	OR	10 FCC Rcd 12427
PR 94–110	Petition for Authority To Maintain Current Regulation of Rates and Market Entry	PN	DA 94–1043
WT 00–130	Request Amendment of the Commission's Rules to seek consent to Transfer Control of, or Assign,Broadband PCS and LMDS Licenses.	MO	DA 00–2443
WT 00–81	Application of Southwestern Bell Mobile Systems, Inc. and Alloy LLC for Authority, Pursuant to Part of the Commission's Rules, To Transfer Control of a License Controlled by SBC Communications Inc.	MO	15 FCC Rcd 25459
WT 95–11	In the Matter of the Application of Herbert L. Schoenbohm for Amateur Station and Operator License, Kingshill, Virgin Islands.	OR	13 FCC Rcd 23774
WT 95–35	Applications of George E. Rodgers for Amateur Station and Operator Licenses	MO	FCC 94M–121
WT 95–5	Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures.	MO	65 FR 43349
WT 95–56	Amendment of the Commission's Rules Concerning Low Power and Automated Maritime Telecommunications System Operations in the 216–217 MHZ Band.	MO	63 FR 24126
WT 96–148	Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees.	SRO	FCC 00–141
WT 96–162	Amendment of the Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commerical Mobile Radio Services.	OR	14 FCC Rcd 414
WT 97–150	Commission Opens Inquiry on Competitive Bidding Process for Report to Congress	RT	13 FCC Rcd 9601
WT 98–228	Commission Opens Filing Window For Commercial Operator License Examination Managers	PN	DA 98–2537
WT 99–263	Petition of the Wireless Consumers Alliance, Inc. for a Declaratory Ruling concerning the provisions of the Communications Act of 1934.	ON	16 FCC Rcd 5618
WT 99–355	SBC Communications Inc. and RadioFone, Inc. seek FCC Consent to Transfer Control or Assign RadioFone's Licenses to SBC.	PN	15 FCC Rcd 4441
WT 99–364	Triton Communications, L.L.C. and RCC Holdings, Inc. Seek Consent For Assignment	PN	DA 00–309
WT 99–365	In the Matter of Paging Network, Inc. and Arch Communications Group, Inc. for Transfers of Control of Their Radio Licenses Location.	OR	16 FCC Rcd 1026
WT 00–207	In the Matter of Petition for Determination of the Public Interest Under Section of the Communications Act 1934, As Amended.	PN	DA 00–2397
WT 00–38	Bell Atlantic, GTE, and ALLTEL Seek FCC Consent For Assignment and Transfer of Control of Wireless Licenses to Comply with Sopectrum Cap Rules and Department of Justice Consent Decree Regarding Pending Applications of Bell Atlantic, GTE, and Vodafone Airt.	PN	DA 00–502

Action: ET Order Granting Extention of. Time
MO Memorandum Opinion and Order.
ON Order on Reconsideration.
OR Order.
PN Public Notice.
RO Report and Order.
RT Report.
SRO Second Report and Order.
ST Statement.

[FR Doc. 02–1859 Filed 1–24–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC 96–45; FCC 01–376]

Implementation of Interim Filing Procedures for Filings of Requests for Review

AGENCY: Federal Communications Commission.

ACTION: Temporary waiver of procedural requirements.

SUMMARY: In this document, the Commission waives its procedures for filing requests for review from decisions of the Universal Service Administrative Company (Administrator) and petitions for reconsideration and applications for review that arise from such proceedings on an emergency, interim basis. We extend the period for filing a request for review, or applications for review arising from such proceedings, from the current 30 day period to 60 days, provide applicants with the option of electronic filing (via either electronic mail or facsimile) for requests for review and petitions for reconsideration or applications for review that arise from such proceedings, and provide parties that have mailed such pleadings on or after September 12, 2001 with an opportunity to refile their pleadings electronically. These measures will help to ensure continued timely processing of such filings and to avoid prejudice to parties as a result of the recent disruptions in mail service.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This Order, adopted December 20, 2001, and released December 26, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication in the **Federal Register** and until further notice, we waive our rules as follows. First, requests for review filed pursuant to §§ 54.719 through 54.725, 47 CFR 54.719 through 54.725, and any applications for review arising from such proceedings shall be filed within 60 days of the issuance of the decision being reviewed. This 60-day period will be applicable to all such pleadings that were required to be filed on or after September 12, 2001 and were received by the Commission on or after September 12, 2001. Second, parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.

2. If filed by electronic mail, pleadings shall be filed at the following e-mail address: *CCBSecretary@fcc.gov*. Documents filed via electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. Pleadings submitted by electronic mail will be considered filed on a business day if they are received at the Commission on that day at any time up to 12 a.m. Pleadings received after that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered filed on a business day if the complete transmission is received by any time up to 12 a.m.

3. We further provide that pleadings of the type described in paragraph 1 above that were due on or after September 12, 2001 and that were submitted by non-electronic means between September 12, 2001 and the effective date of this order may be refiled electronically within 30 days of the effective date of this order in accordance with the procedures specified in the preceding paragraph. Pleadings filed electronically pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed, and providing the date the pleading was originally mailed to the Commission, and by what means. For this purpose only, the original pleading will be considered filed as of the date that it was mailed.

4. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this order and waives any contrary requirements.

5. *It is further ordered* that the waiver shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 02–873 Filed 1–24–02; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–105, WT Docket No. 00–110; FCC 01–351]

Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the public information collection contained in the Commission's decision regarding the use of N11 codes and other abbreviated emergency dialing arrangements. Therefore, the Commission announces that those regulations containing public information collections, including 47 CFR 64.3002, are effective February 13, 2002.

DATES: Section 64.3002, published at 67 FR 1649, January 14, 2002, is effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: David Siel and Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the reporting requirement in its Fifth Report and Order in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110, and Memorandum Opinion and Order in CC docket No. 92–105, and WT Docket No. 00–110 (known collectively as the Order), which appears at 67 FR 1643, January 14, 2002. The effective date of the rules and regulations adopted in that decision was published as February 13, 2002, except for § 64.3002, which contains modified information collection requirements that will not be effective until approved by the Office of Management and Budget. Through this document, the Commission announces that it has received this approval (OMB Control No.: 3060–0954, Expiration Date: 06/30/02) and that § 64.3002 and other non-codified requirements adopted in the Order will also be effective on February 13, 2002. Pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 02–1693 Filed 1–24–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 01–344]

The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the rules regarding per-call compensation for payphone calls to ensure that payphone service providers (PSPs) are fairly compensated for all completed, coinless calls made from payphones. The Commission addresses the key issues raised in the petitions for declaratory ruling, reconsideration and/or clarification, and clarifies, on its own motion, certain aspects of the per-call compensation rules.

DATES: Effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tania Cho, (202) 418–2320; fax (202)

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418–2345; TTY (202) 418–0484; email at *tcho@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration and Order on Clarification* in CC Docket No. 96–128, FCC 01–344, adopted and released on November 21, 2001. The full text of the item is available for inspection and copying during the hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Suite CY–B402, Washington, DC 20554, phone (202) 863–2893. This Order contains no new or modified information collection subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Synopsis of the Third Order on Reconsideration and Order on Clarification

To implement Section 276 of the Telecommunications Act of 1996, the Commission has adopted several rules that define the relationship between PSPs and carriers in the call path in order to ensure that PSPs are adequately compensated for calls placed from payphones. In the *First Payphone Order*, 61 FR 52309, October 7, 1996, the Commission concluded that the interexchange carrier (IXC), as the primary beneficiary of payphone calls, should compensate the PSP. The Commission also recognized that a reseller lacking its own facilities does not have the ability to track calls, and that the facilities-based carrier should therefore pay compensation to the PSP. A requirement to track, or arrange for tracking of, compensable calls was also established for the underlying IXC, and the IXC was permitted to recover the cost of such tracking from the reseller. In the *Payphone Order on Reconsideration*, 61 FR 65341, December 12, 1996, the Commission modified its rules to provide that switch-based resellers (SBRs) are responsible for paying compensation directly to PSPs. In the *Coding Digit Waiver Order*, 63 FR 26497, May 13, 1998, the Common Carrier Bureau responded to PSP complaints that IXCs refused to identify SBRs by clarifying that when SBRs identified themselves to the first facilities-based IXC as responsible for paying compensation, the IXC was obligated to provide this information to the PSP.

On April 5, 2001, the Commission released the *Second Order on Reconsideration*, 66 FR 21105, April 27, 2001, which modified the payphone compensation rules. The modified rules provided that the first facilities-based IXC to which a LEC routes a coinless payphone call must (1) Compensate the PSP for the completed call; (2) track or arrange for tracking of all compensable calls; and (3) send to the PSP call completion information to enable the PSP to verify the accuracy of compensation it receives for coinless, compensable calls and/or to bill the underlying facilities-based carrier. The first IXC may then seek reimbursement from the switchless or switch-based reseller ultimately responsible for the compensation.

In this *Third Order on Reconsideration and Order on Clarification*, we decline to modify the rules as established in the *Second Order on Reconsideration*. We also reaffirm that, for purposes of payphone compensation, only calls that are answered by the called party are "completed" and thus compensable. Further, we clarify that the Commission supports the preservation and establishment of direct relationships and agreements between PSPs and SBRs for tracking and payment of payphone compensation, and that the liability of the first facilities-based IXC is limited to the extent that SBRs enter into such direct relationships. We also reiterate that the Commission did not, by revising the payphone compensation rules, intend to nullify any current or future contractual arrangements. Finally, we clarify that carriers are only required to report to PSPs calls that are completed, and thus compensable.

Ordering Clause

Pursuant to the authority contained in Sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, the Bulletins Petition for Clarification is denied to the extent described herein; WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration is granted in part and denied in part to the extent described herein; AT&T Petition for Clarification and/or Reconsideration is denied to the extent described herein; and Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification is denied, to the extent described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1810 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–203; FCC 01–306]

RIN 4213

The Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the Commission's amended rules to require that noncommercial educational ("NCE") television licensees provide a nonprofit, noncommercial educational service. We hope that this clarifies the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

DATES: Sections 73.621(i); 73.624(g) introductory text and (g)(2)(ii); 73.642(a), (b) and (e); and 73.644(a) became effective on December 26, 2001. Section 73.624(g)(2)(i) is not yet effective. The Commission will release a document in the **Federal Register** announcing the effective date of this section.

FOR FURTHER INFORMATION CONTACT: Jane Gross, Policy and Rules Division, Mass Media Bureau (202) 418–2130, or *jgross@fcc.gov*.

SUPPLEMENTARY INFORMATION: 1. On October 17, 2001, the Commission released Report & Order ("*R&O*") clarifying the manner in which noncommercial educational ("NCE") television licensees may use their excess digital television ("DTV") capacity for remunerative purposes. In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees, MM Docket No. 98–203, 66 FR 58973 (November 26, 2001). Among other things, the Commission amended § 73.621 of its rules to apply to the entire digital bitstream, including ancillary or supplementary services, thereby requiring NCE licensees to use their digital capacity primarily for a noncommercial, nonprofit, educational broadcast service. The Commission also amended §§ 73.642 (a), (b), (e) and § 73.644(a) of its rules to clarify that NCE licenses may offer subscription services on their excess digital capacity. When it amended these rules, the Commission ordered that the amended rules would "be effective the later of either thirty days after publication in the **Federal Register**, or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104–121" (summary of *R&O* paragraph 49).

2. Under current General Accounting Office ("GAO") procedures, submission to the GAO or publication in the **Federal Register** is sufficient to satisfy the requirements of the Congressional Review Act (formerly known as the Contract with America Advancement Act). The amendments to §§ 73.621, 73.642 and 73.644 of the Commission's rules were submitted to the GAO and to Congress on November 26, 2001, the same day that they were published in the **Federal Register**. Thus, pursuant to the Administrative Procedure Act, the amended §§ 73.621, 73.642 and 73.644 of the Commission's rules will be effective on December 26, 2001, thirty days after publication in the **Federal Register**.

3. Finally, in the same proceeding the Commission amended §§ 73.624(g)(1), (g)(2)(i), and (g)(2)(ii) of its rules to apply to NCE licensees the program for assessing and collecting fees upon feeable ancillary or supplementary services provided on their DTV capacity that it had previously established for commercial licensees, as required by the Telecommunications Act of 1996 ("1996 Act"). Public Law 104–104, 110 Stat. 56 section 201 (1996), codified at 47 U.S.C. 336. In addition, NCE licensees will be required to maintain documentation sufficient to show, at renewal time and in response to any complaint, compliance with the requirement to use their entire bitstream primarily for nonprofit, noncommercial, educational broadcast services on a weekly basis (summary of *R&O* paragraph 16). These requirements were analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Thus, implementation of these requirements is subject to approval by the Office of Management and Budget as prescribed by the PRA (summary of *R&O* paragraphs 46, 50 and 66). The Commission will publish a notice in the **Federal Register** when this approval is received.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1811 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. No. 092401D]

RIN 0648–AP08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; specifications for 2002.

SUMMARY: NMFS announces final initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2002 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

DATES: This rule is effective January 25, 2002. The quotas in Tables 1 and 2 for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish are effective January 25, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Essential Fish Habitat Assessment, are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2002 initial specifications were published on October 23, 2001 (66 FR 53575). Public comments were accepted through November 23, 2001. The final specifications are unchanged from those that were proposed except that they reflect the research set-aside (RSA) allocations that have been recommended to the NOAA Grants Office for funding. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2002 Final Initial Specifications

The following table contains the final initial specifications and RSA for the 2002 MSB fisheries as recommended by the Mid-Atlantic Fishery Management Council (Council).

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,898[5]	24,000	85,000[2]	5,900
DAH	16,898[5]	24,000	85,000[3]	5,900

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TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002—Continued

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
DAP	16,898[5]	24,000	50,000	5,900
JVP	0	0	20,000[4]	0
TALFF	0	0	0	0
RSA	102	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 30,000 mt at discretion of Regional Administrator.
[5] Excludes 102 mt for RSA.

Atlantic Mackerel

This final rule specifies an Atlantic mackerel JVP of 20,000 mt for the 2002 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 30,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, through publication of notification in the **Federal Register**, following consultation with the Council. The action also specifies an Atlantic mackerel DAP of 50,000 mt and a DAH of 85,000 mt, which includes a 15,000–mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2002 Atlantic mackerel fishery, as follows: (1) JVPs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but it should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Research Set-Asides

Framework Adjustment 1 to the FMP allows the specification of quota set-asides to be used for research purposes. The Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes for each of the species in the FMP. A Request for Proposals was published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001. On November 8, 2001, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panelist comments, two *Loligo* squid project proposals were recommended for approval and forwarded to the NOAA Grants Office for award. Consistent with the recommendations, the quotas in this final rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Distribution of the Annual *Loligo* Squid Quota

Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this final rule adjusts the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2002 quarterly allocations are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons (mt)	Research Set-aside (mt)
I (Jan—Mar)	33.23	5,615	N/A
II (Apr—Jun)	17.61	2,976	N/A
III (Jul—Sep)	17.3	2,923	N/A
IV (Oct—Dec)	31.86	5,384	N/A
Total	100	16,898	102

Carry-over of *Loligo* Squid Quarterly Quota Underages

For the 2001 fishing year, by default, quarterly underages carry over into Quarter IV because the directed fishery in Quarter IV does not close until 95 percent of the total annual quota has been harvested. This final rule modifies the method for carrying over *Loligo* squid quarterly underages for 2002 and subsequent fishing years by adding a provision stating that, in the event that the Quarter I landings for *Loligo* squid are less than 70 percent of the Quarter I allocation, the underage below 70 percent would be applied to Quarter III. Underages from Quarters II and III would continue to be added to Quarter IV by default, based on the 95–percent closure rule mentioned above.

Comments and Responses

Three commenters made five comments on the proposed specifications.

Comment 1: One commenter supported the proposed allocation of Atlantic mackerel JVP.

Response 1: This final rule implements the proposed allocation of Atlantic mackerel JVP.

Comment 2: One commenter supported the proposed zero allocation of Atlantic mackerel TALFF.

Response 2: This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

Comment 3: Two commenters instead proposed specifying TALFF at 5,000 mt and a possible JVP increase of up to 20,000 mt (for a total JVP of up to 40,000 mt) later in the fishing year.

Response 3: The question of whether or not to recommend a level of optimum yield that provided for an allocation of TALFF, other than zero, was reviewed and discussed by the Council at length before it made its final recommendation to the National Marine Fisheries Service. After extended debate, the Council recommended a level of OY that was a reduction of the maximum sustainable yield based upon all relevant social, economic, and ecological factors. The Council firmly believed that the specification of the OY at a level that resulted in a zero TALFF would provide the greatest overall benefit to the Nation, because it would enhance development of the U.S. domestic mackerel fishery, which is one of the principal objectives of the Magnuson-Stevens Fishery Conservation and Management Act. Even though a zero TALFF would result in an economic loss to the Nation from the loss of any poundage fees collected from foreign fishing vessel owners for allocations of TALFF, the Council was concerned that allocations of TALFF would compete directly with mackerel produced by United States processors for foreign markets. Such competition would impede the expansion of domestic mackerel processing facilities. The expansion of domestic mackerel processing facilities would enable the domestic fleet to use more of their harvesting capacity to land mackerel at shoreside facilities.

Comment 4: One commenter opposed the Atlantic mackerel JVP specification of 20,000 mt for the 2002 fishery because he believes shore-based processors would be negatively affected by foreign joint ventures. The commenter believes the foreign at-sea processors can operate at lower cost than U.S. shoreside plants in part due to U.S. legal requirements such as Hazard Analysis Critical Control Point standards.

Response 4: The Council's annual processor survey indicates that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 20,000–mt JVP allocation to provide additional opportunity for U.S. vessels to sell mackerel.

Comment 5: One commenter stated that NMFS was utilizing outdated data to set the 2002 *Loligo* squid quota specification. The commenter recommended a *Loligo* quota increase, either in this rule or through an in-season adjustment to the annual specifications.

Response 5: The commenter is correct that the most recent stock assessment for *Loligo* squid (29th Northeast Regional Stock Assessment Workshop (SAW–29)) was completed some time ago, in August 1999. However, the Council and NMFS did not rely solely on that information in recommending the 2002 quota. The Council and NMFS also utilized the most recent survey data for *Loligo* squid, which indicates that abundance of this species has increased significantly since SAW–29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near the biomass level that would produce maximum sustainable yield (B_{msy}). Based on the assumption that the stock would be at or near B_{msy} in 2001, the Council recommended, and NMFS implemented, an ABC specification for 2001 that is the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt. Given the high survey index observed in the fall 2000 survey, the quota is being maintained at that level in 2002. The Council and NMFS may adjust the specifications through an in-season adjustment during the 2002 fishing year should the results of the 34th Northeast Regional Stock Assessment Workshop warrant that change.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA for this action. The FRFA includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The reasons why action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (3 and 4) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex* squid, and 2,098 for Atlantic mackerel. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 95,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The levels of landings allowed under the specifications for 2002 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of this action.

From 1996–2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 DAH specification of 16,898 mt for *Loligo* squid is achieved, there would be a slight increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996–2000.

This action modifies the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the Quarter I allocation would be applied to Quarter III. Previously, all underages from Quarter I were applied to Quarter IV because the directed *Loligo* fishery in Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders will be able to fish during a time when the quarter may have otherwise been closed. This could potentially provide an added economic benefit to fishers during Quarter III. This provision will only shift a limited amount of quota from one period to another and does not modify the *Loligo* squid annual quota, so no overall change in revenue is expected.

Three non-selected alternatives were considered for the Atlantic mackerel fishery. The first was to set the 2002

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specifications at the same level as 2001. The specifications under this alternative are the same as those established by this action, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher than the specification in the preferred alternative (88,000 mt) because TALFF would be specified at 3,000 mt. However, specifying TALFF at 3,000 mt would be inconsistent with the goal of further developing the U.S. domestic fishery for Atlantic mackerel. This alternative would have had no constraints and consequently no revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been attained in recent years.

The second alternative for Atlantic mackerel was to set ABC at the long-term potential catch, or 134,000 mt. This alternative was found inconsistent with the FMP because it did not consider the variations in the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at 134,000 mt would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The potential level of foregone yield under this alternative was considered unacceptable.

The third alternative considered for mackerel eliminated the JVP allocation for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected because JVPs allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. None of these alternatives were expected to constrain the mackerel fishery and they all were determined to have no impact on the revenues of participants in this fishery.

Two non-selected alternatives were considered for *Loligo* squid. The first would have set the ABC, DAH, DAP, and IOY at 13,000 mt, a 23.3–percent reduction from the 2001 level. This was the same level initially specified for the 2000 fishing year (an in-season adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). If the 13,000–mt alternative were adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction of greater than 6 percent (all species combined). The remaining 365 vessels would experience a 4–percent or less reduction in revenue or an increase in revenue. The second alternative would have set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31–percent reduction in landings relative to 2000. Under this scenario, 170 of the 497 impacted vessels would experience a gross revenue reduction of greater than 6 percent (all species combined). The remaining 327 vessels would experience a 4–percent or less reduction in revenue, or an increase in revenue.

Two non-selected alternatives were considered for *Illex* squid. The first would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and the second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these non-selected specifications.

Two non-selected alternatives were considered for butterfish. The first would have set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed the specifications implemented by this final rule. Recent harvests in the butterfish fishery have been well below the level allowed by this final rule, so none of the alternatives would constrain or impact the industry. However, the non-selected alternatives could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see **ADDRESSES**).

This final rule establishes annual and seasonal quotas for the managed species, which are used for the purpose of closing the fishery when the quotas are reached and which serve as the basis for issuing joint venture permits. The mackerel specifications have a foreign fishing component. Until the specifications are final, no foreign fishing permits to authorize joint ventures may be issued. A number of foreign fishing vessels operated in the EEZ in 2001. Some of these foreign vessels have remained in U.S. waters in anticipation of receiving foreign fishing permits authorizing joint ventures for Atlantic mackerel in 2002. Until the mackerel specification are finalized and these foreign vessels are permitted, domestic fishermen cannot deliver mackerel to these foreign vessels. This will have a negative economic impact on domestic fishermen. Therefore, with respect to the mackerel fishery, this final rule relieves a restriction and pursuant to 5 U.S.C. 553(d)(1) the 30–day delay in effectiveness does not apply.

In addition, if implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the loligo squid fishery. The loligo squid fishery covered by this action is already underway. Landings data for loligo squid in previous years reflect that landings are highly variable and largely dependent on availability. Since the loligo squid fishery is now managed on a quarterly quota basis, the unpredictable nature of loligo squid landing could compromise the initial quarterly quota if no closure mechanism is in place due to a delay in the effectiveness of the loligo squid specification. Failure to implement timely closures could result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the mackerel and loligo squid specifications and other management measures.

This final rule does not contain policies with federalism implications under Executive Order 13132.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 22, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (f)(3) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

* * * * *

[FR Doc. 02–1997 Filed 1–23–02; 1:26 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AG91

Specification of a Probability for Unlikely Features, Events and Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada, to define the term "unlikely" in quantitative terms. That is, it would be defined as a range of numerical values for use in determining whether a feature, event, or process (FEP) or sequence of events and processes should be excluded from certain required assessments. The NRC is proposing this amendment to clarify how it plans to implement two of the final environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). Specifically, EPA's final standards require the exclusion of "unlikely" FEPs, or sequences of events and processes, from the required assessments for the human intrusion and ground-water protection standards. In accordance with the Energy Policy Act of 1992, the NRC has adopted EPA's final standards in its recently published technical requirements for a potential geologic repository at Yucca Mountain.

DATES: The comment period expires April 10, 2002. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via NRC's interactive rulemaking website http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room (PDR), Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737; or by email to: *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail: tjm3@nrc.gov; or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2001 (66 FR 55732), the U.S. Nuclear Regulatory Commission (NRC) published its final rule, 10 CFR Part 63, governing disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. These are the regulations that the U.S. Department of Energy (DOE) must meet in any license application for construction and operation of a potential repository. As mandated by the Energy Policy Act of 1992, Public Law 102–486 (EnPA), NRC's final rule adopts the radiation protection standards established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA's standards for disposal include an individual protection standard (40 CFR 197.20); a human intrusion standard (40 CFR 197.25); and ground-water protection standards (40 CFR 197.30). These EPA standards have been incorporated into NRC's regulations at 10 CFR 63.311, 63.321, and 63.331, respectively.

DOE's performance assessments are required to consider the naturally occurring features, events, and processes (FEPs) that could affect the performance of a geologic repository (i.e., specific conditions or attributes of the geologic setting; degradation, deterioration, or alteration processes of engineered barriers; and interactions between natural and engineered barriers). EPA's standards include limits on what DOE must consider in performance assessments undertaken to determine whether the repository will perform in compliance with the standards (40 CFR 197.36). DOE's performance assessments shall not include consideration of "very unlikely" features, events or processes (FEPs), which EPA defines to be those FEPs that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. In addition, EPA's standards require NRC to exclude "unlikely" FEPs, or sequences of events and processes, from the required assessments for demonstrating compliance with the human intrusion and ground-water protection standards. EPA did not define unlikely FEPs in its standards, but, rather, left the specific probability of the unlikely FEPs for NRC to define.

The Commission explained in its rulemaking establishing Part 63 that it "* * * fully supports excluding unlikely FEPs from analyses for estimating compliance with the standards for human intrusion and ground-water protection * * *," and that it "* * * considers a frequency for unlikely FEPs would fall somewhere between 10^{-8} to 10^{-4} per year * * *," but that it had decided not to provide a specific quantitative value for defining unlikely FEPs in the final rule (66 FR 55734; November 2, 2001). Instead, the Commission stated that it "* * * plan[ned] to conduct an expedited rulemaking to quantitatively define the term "unlikely." Consideration will be given to whether a range of values or a single specific value should be used as well as the appropriate numerical value(s). The expedited rulemaking will provide an opportunity for public comment to assist the Commission in determining an appropriate approach" (66 FR 55734; November 2, 2001). This proposed rule initiates the rulemaking to quantitatively define the term "unlikely" promised by the Commission.

II. Discussion

EPA's standards for disposal include an individual protection standard; a human intrusion standard; and ground-water protection standards. EPA's standards also prescribe that DOE should exclude "very unlikely" FEPs from the performance assessments used to determine compliance with the three postclosure standards (i.e., individual protection, human intrusion, and ground-water protection). Unlike the broader purposes served by the performance assessment for the all-pathway individual protection standard, the performance assessments used to determine compliance with the human intrusion standard and the ground-water protection standards serve narrow, focused objectives. In the case of the performance assessment for human intrusion, the purpose is to evaluate the robustness of the repository system to the consequences of human intrusion. In the case of the performance assessment for ground-water protection, the purpose is to evaluate the degradation of the ground-water resource. Consistent with the specific purposes of these two standards, EPA prescribed specific conditions to be used in determining compliance with the human intrusion standard and the ground-water protection standards. For these two standards, EPA prescribed the exclusion of not only "very unlikely" FEPs, but also "unlikely" FEPs. Although EPA's final standards did not specify a numerical value to define unlikely FEPs in quantitative terms, the preamble to the standards stated that the exclusion of unlikely FEPs is intended to focus these assessments on the "expected" or "likely" performance of the repository.[1] This intent is consistent with the NRC approach of requiring the use of reasonable and prudently conservative assumptions in modeling exposure scenarios.

Under 10 CFR 63.321(b)(1), DOE must demonstrate the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion could occur without recognition by the drillers and "* * * demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than an annual dose of 0.15 mSv (15 mrem) as a result of a human intrusion, at or before 10,000 years after disposal." The elements of the stylized human intrusion scenario are specified by 10 CFR 63.322 and specifically direct DOE to assume that no releases are included which are caused by unlikely natural processes and events. With respect to the ground-water standards (10 CFR 63.331), DOE must demonstrate that there is a reasonable expectation that, for 10,000 years of undisturbed performance (i.e., 10,000 years during which the occurrence of unlikely FEPs do not disturb the repository) after disposal, releases of radionuclides from waste in the Yucca Mountain disposal system into the accessible environment will not cause the level of radioactivity in the representative volume of ground water to exceed the limits specified in a table attached to 10 CFR 63.331.

In assessing compliance with both the human intrusion standard and ground-water protection standards, 10 CFR 63.342 provides that unlikely FEPs, or sequences of events and processes, shall be excluded "* * * upon prior Commission approval for the probability limit used for unlikely FEPs." Although the Commission could review and approve a probability limit in the context of its review of a potential DOE license application, it is proposing to set this limit in advance, through the rulemaking process, so that it will have the advantage of public views on this question, and so that DOE, interested participants, and the public will have knowledge, before the license application, of what probability the Commission would find acceptable.

The Commission has considered whether the probability for unlikely FEPs should be defined as a single value or a range of values. A single value would be used as a probability limit such that each FEP with a probability less than the specified limit should be considered unlikely. A probability range would be used to define the spread of probability (i.e., upper and lower values) that represents unlikely FEPs. Although both approaches specify an upper value for probability, a probability range provides a more complete description of the spread of probability that is identified with unlikely FEPs. The Commission is not aware of any disadvantages to using a range and therefore is specifying a probability range because it provides a better characterization of the range of probabilities associated with FEPs than what would be provided by a single number.

Assigning specific numerical values to a qualitative term such as "unlikely" is complicated by the subjective nature of this term. As a first step, the Commission found it useful to describe three broad categories to represent the entire probability range for what could occur at the Yucca Mountain repository site. These three categories are: (1) Very unlikely; (2) unlikely; and (3) likely. As a practical matter, the rationale for the quantitative range defining unlikely FEPs is easier to describe in terms of the categories of likely and very unlikely, because unlikely is bounded by these two categories. Very unlikely FEPs have been described in the EPA standards as FEPs with such low probability of occurrence that they need not be considered in any performance assessments for Yucca Mountain. As mentioned previously, the EPA standards quantitatively define very unlikely FEPs as those FEPs with less than a 0.01 percent chance of occurring within the 10,000 year compliance period (i.e., annual probability less than 10^{-8}). In a qualitative sense, likely FEPs are those FEPs that can be reasonably expected to occur during the 10,000 year compliance period. From a probabilistic perspective, any FEP with an annual probability of 10^{-4} or higher would have a high probability of occurring within the 10,000 year compliance period.[2] However, likely FEPs should include not only FEPs very likely to occur but also those reasonably likely to occur. Given uncertainties in estimating the occurrence of FEPs over a 10,000 year time period, the Commission believes a prudent decision is to consider FEPs with 10 percent or greater chance of occurring within the 10,000 year compliance period as likely FEPs. Thus, unlikely FEPs are defined as those FEPs with less than a 10

[1] For example, the preamble states: (1) "[t]he assessment of resource pollution potential is based upon the engineered design of the repository being sufficiently robust under expected conditions to prevent unacceptable degradation of the ground-water resources over time" (66 FR 32114; June 12, 2001); and (2) the term "undisturbed," which is used in connection with demonstrating compliance with the ground-water protection standards, means the "disposal system is not disturbed by human intrustion but that other processes or events that are likely to occur could disturb the system" (66 FR 32104; June 13, 2001).

[2] Estimating a high probability of occurrence for an FEP creates an expectation than an FEP will occur, however, it does not guarantee such an occurence; there is a chance that even high probability FEPs will not occur.

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percent chance but greater than or equal to a 0.01 percent chance, of occurring within the 10,000 year compliance period (i.e., annual probability less than 10^{-5} but greater than or equal to 10^{-8} which is the upper boundary for very unlikely events).

In light of the foregoing discussion, the Commission seeks comment on the appropriateness of using an annual probability range of greater than or equal to 10^{-8} and less than 10^{-5} to define unlikely FEPs. As a matter of reference, current understanding of FEPs relevant to Yucca Mountain indicates that this designation would allow exclusion of igneous activity as an unlikely FEP, whereas a wide range of seismic events, fault movement, and rock fall would have higher probabilities than the upper bound for unlikely FEPs and would be included in the performance assessments for human intrusion and ground-water protection.

In arriving at this decision, the Commission considered the merits of using a lower value for the demarcation between likely and unlikely FEPs. For example, a 1 percent chance of occurring over the 10,000 year compliance period (i.e., annual probability of 10^{-6}) would also be considered unlikely. It is somewhat subjective whether a qualitative term such as "unlikely" should be quantitatively defined as less than a 1 or a 10 percent chance of occurring. Selection of an appropriate value needs to consider the context of the performance assessments (i.e., robustness of the repository system to the consequences of human intrusion and the degradation of the ground-water resource). As mentioned previously, the focus of the performance assessments for human intrusion and ground-water protection is to be on expected conditions. The Commission considers that an FEP having a 1 percent chance of occurring is neither expected nor likely and, therefore, an inappropriate value for the lower bound for likely events. The Commission believes a lower bound for likely FEPs of a 10 percent chance of occurring within the compliance period is consistent with the intended focus for these two standards. Although "unlikely" FEPs would not be considered in the performance assessments for human intrusion and ground-water protection, these FEPs are required to be considered in the performance assessment for the individual protection standard.

This rulemaking is proposing a probability range for unlikely FEPs as part of NRC's implementation of EPA's final standards for Yucca Mountain, in accordance with EnPA. Specification of the probability for unlikely FEPs is in the context of assessments of compliance with the human intrusion standard and ground-water protection standards, which have a regulatory compliance period of 10,000 years. The Commission made clear in its final regulations in Part 63 that the "[C]riteria set out in this final rule apply specifically and exclusively to the proposed repository at Yucca Mountain" (66 FR 55732; November 2, 2001). Similarly, the proposed definition for the term "unlikely" in this rulemaking is intended to apply specifically and exclusively to the potential repository at Yucca Mountain and is not intended to suggest or imply precedent for NRC regulations in other parts of this Chapter that use the term "unlikely" in significantly different contexts (e.g., compliance periods of tens of years, higher dose limits, different facilities, and different activities).

III. Section-by-Section Analysis

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will determine which features, events, and processes will be considered in the performance assessments described in Subpart L of Part 63.

IV. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is establishing probability limits for unlikely features, events, and processes at a potential geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Finding of No Significant Environmental Impact: Availability

Pursuant to Section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of Section 102(2) of such act.

VII. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995. (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0199.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. It is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: cwp@ nrc.gov.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, DOE, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

X. Backfit Analysis

NRC has determined that the backfit rule does not apply to this proposed rule and, therefore, that a backfit analysis is not required, because this proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to 10 CFR Part 63.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

1. The authority citation for Part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141); and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. Section 63.342 is revised to read as follows:

§ 63.342 Limits on performance assessments.

DOE's performance assessments should not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. DOE's assessments for the human intrusion and ground-water protection standards should not include consideration of unlikely features, events, and processes, or sequences of events and processes, i.e., those that are estimated to have less than one chance in 10 and at least one chance in 10,000 of occurring within 10,000 years of disposal. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

Dated at Rockville, Maryland, this 18th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–1891 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 70

[Docket Number 020103004–2004–01]

Cutoff Dates for Recognition of Boundary Changes for Census 2000 and for the Intercensal Period

AGENCY: Bureau of the Census, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) is establishing cutoff dates for recognition of boundary changes to geographic entities for which the Census Bureau reports data in various surveys, estimates, censuses, programs, compilations, and publications throughout the period between decennial censuses (years 2001 through 2009). These operations include, but are not limited to, the American Community Survey, the Population Estimates Program, and the 2002 and 2007 Economic Censuses. The Census Bureau establishes cutoff dates for including boundary changes to be used in tabulating data from these operations; such cutoff dates were last established for Census 2000. For the tabulation and dissemination of data from its intercensal operations, the Census Bureau will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Census Bureau no later than April 1 of the same year.

DATES: Any comments, suggestions, or recommendations concerning this proposed rule should be submitted in writing by February 25, 2002.

ADDRESSES: Address all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, 4700 Silver Hill Road, Stop 7400, U.S. Census Bureau, Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail *(rmarx@geo.census.gov)*.

SUPPLEMENTARY INFORMATION: The Census Bureau proposes to amend Title 15, Code of Federal Regulations (CFR), part 70, to establish cutoff dates for recognition of boundary changes for all geographic data operations throughout the intercensal period (years 2001 through 2009). This amendment is necessary because the dates established for Census 2000 on March 3, 1998, (63 FR 10303) do not cover the intercensal period. For the intercensal period, the Census Bureau will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Census Bureau no later than April 1 of the same year.

Administrative Procedure Act

Because this rule makes only procedural changes to Title 15, CFR, part 70, the Administrative Procedure Act does not require the Census Bureau to issue a proposed rule and request for comments (Title 5, United States Code (U.S.C.), section 553(b)(3)(A)). Nevertheless, the Census Bureau is doing so in order to ensure that the public is given a forum to provide any comments or raise any issues.

Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by 5 U.S.C. 553, or any other law, so a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

List of Subjects in 15 CFR Part 70

Census data.

For the reasons set forth in the preamble, Part 70 is amended as follows:

PART 70—CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR CENSUS 2000 AND FOR THE INTERCENSAL PERIOD

1. The authority citation for Part 70 continues to read as follows:

Authority: 13 U.S.C. 4 and Department of Commerce Organization Order 35–2A (40 FR 42765).

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2. Revise the heading of Part 70 to read as set forth above.

3. Amend §70.1 by revising the second sentence and by adding a third sentence to read as follows:

§ 70.1 Cutoff dates and effect on enumeration and data tabulation.

* * * The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, federal and state American Indian reservations and federal off-reservation trust land, Alaska Native Regional Corporations, Hawaiian home lands, and equivalent entities as those limits legally exist on January 1, 2000. For the tabulation and publication of data from its surveys, estimates, censuses, and other operations during the intercensal period (years 2001 through 2009), the Bureau of the Census will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Bureau of the Census no later than April 1 of the same year.

4. Amend § 70.2 by revising the second sentence and by adding a third sentence to read as follows:

§ 70.2 "Municipality and "county subdivision" defined for census purposes.

* * * A more complete description appears on pages A–13, A–14, A–18 and A–19 of Appendix A, Geographic Terms and Concepts, which appear in the Census 2000 printed reports (PHC–1, Summary Population and Housing Characteristics; PHC–2, Summary Social, Economic, and Housing Characteristics; and PHC–3, Population and Housing Unit Totals). The same text (Appendix A, Geographic Terms and Concepts) also is available online under Technical Documentation, Summary File 1, 2000 Census of Population and Housing.

5. Amend §70.3 by adding both a third and fourth sentence to read as follows:

§ 70.3 Effect of boundary changes occurring or reported after the cutoff dates.

* * * For the tabulation and publication of data from surveys, estimates, censuses, and other operations during the intercensal period (years 2001 through 2009), the Census Bureau will not recognize changes in boundaries that become effective after January 1 of the survey, estimate, or census year. The Census Bureau will not recognize changes in boundaries occurring on or before January 1 of the survey, estimate, or census year, if reported officially to the Census Bureau after April 1 of the same year.

Dated: January 8, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–1815 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardizing Generator Interconnection Agreements and Procedures; Notice of Extension of Time

January 16, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On October 25, 2001, the Federal Energy Regulatory Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) seeking comments on a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act, 66 FR 55140 (November 1, 2001). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments on issues posed by the ANOPR published at 66 FR 55140 (November 1, 2001) shall be filed on or before February 1, 2002.

ADDRESSES: Federal Energy Regulatory Commission,888 First Street, NE.,Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Linwood A. Watson, Jr.,Acting Secretary,888 First Street, NE.,Washington, DC 20426,(202) 208–0400.

SUPPLEMENTARY INFORMATION: On January 16, 2002, the American Public Power Association, the American Wind Energy Association, the Edison Electric Institute, the Electric Power Supply Association, the National Association of Regulatory Utility Commissioners, the National Rural Electric Cooperative Association, and the Project for Sustainable FERC Policy (collectively, Petitioners) filed a joint motion for an extension of time for the filing of comments on the issues posed by the Commission's Advance Notice of Proposed Rulemaking (ANOPR), as directed by the Notice issued by the Commission on December 14, 2001, in the above-docketed proceeding.

In its motion, Petitioners state that due to the voluminous nature of the documents involved in this proceeding to date, additional time is needed for industry personnel to prepare and file comments. The motion also states that an extension will not unduly delay the Commission's process and will lead to more thoughtful and well-developed comments in the effort to enhance the ANOPR process.

Upon consideration, notice is hereby given that an extension of time for the filing of comments on issues posed by the ANOPR is granted to and including February 1, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1823 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Suspension of Operations for Exploration Under Salt Sheets; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; correction.

SUMMARY: MMS proposed to modify regulations that govern suspension of operations for oil and gas leases on the Outer Continental Shelf (OCS) in the **Federal Register** of January 9, 2002 (67 FR 1171). The title of the signer of that document was in error. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, 703/787–1598.

SUPPLEMENTARY INFORMATION: In the **Federal Register** document published on January 9, 2002, there was an error in the title of the signer of the document. While the authority of the signer was not diminished by the erroneous title, the Department wishes that an accurate title be indicated on the document. The Department is correcting the documents as follows:

In proposed rule document (Federal Register document 02–521) make the following correction:

On page 1173, in the second column, 3 lines from the top of the column, the title for James C. Cason is corrected to read "Acting Deputy Secretary."

Dated: January 21, 2002.

Timothy S. Elliott,

Acting Deputy Solicitor.

[FR Doc. 02–1918 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–135–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes revisions to rules about surface and ground water monitoring in order to satisfy a required program amendment at 30 CFR 938.16(hh), and revisions to rules about coal refuse disposal to satisfy required program amendments at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb). Additionally, Pennsylvania is submitting new rules concerning coal refuse disposal operations. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and provide additional safeguards.

Finally, Pennsylvania requested we remove the required regulatory program amendment at 30 CFR 938.16(kk) (1) and (2). In this program amendment, we required Pennsylvania to correct cross-section references within the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA).

This document gives the times and locations that the Pennsylvania program and proposed amendments to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t., February 25, 2002. If requested, we will hold a public hearing on the amendment on February 19, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on February 11, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Beverly Brock, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Harrisburg Field Office.

Beverly Brock, Acting Director,Harrisburg Field Office,Office of Surface Mining Reclamation and Enforcement,Harrisburg Transportation Center, Third Floor, Suite 3C,4th and Market Streets,Harrisburg, Pennsylvania 17101,Telephone: (717) 782–4036.

J. Scott Roberts, Director,Bureau of Mining and Reclamation,Pennsylvania Department of Environmental Protection,Rachel Carson State Office Building,PO Box 8461,Harrisburg, Pennsylvania 17105–8461,Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Telephone: 717–782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By two letters, both dated December 20, 2001, Pennsylvania sent us proposed amendments to its program (administrative record Nos. PA 881.00 and 837.101) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendments in response to the required program amendments at 30 CFR 938.16(hh), (vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb) and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.** In a third letter dated November 16, 2001, (administrative record No. PA 880.00) Pennsylvania sent us an explanation regarding citation of cross-references in PA SMCRA required by the program amendment at 30 CFR 938.16(kk). This letter is also available for you to read at the locations listed under **ADDRESSES.**

In the first letter dated December 20, 2001, (administrative record No. PA 881.00) Pennsylvania notes that 30 CFR 938.16(hh) required it to amend 25 Pa. Code 89.59(a)(1) and (2) to be no less effective than 30 CFR 784.14(h)(1), relating to ground water monitoring plans. Specifically, 30 CFR 938.16(hh) required ground water monitoring plans to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese and water levels shall be monitored and data submitted to Pennsylvania at least every three months for each monitoring location.

In response to 30 CFR 938.16(hh) Pennsylvania submitted changes made to its regulations at 25 Pa. Code 89.59(a)(2), (3) and (b). The change in 25 Pa. Code 89.59(a)(2) was to delete the word "periodically" from the first sentence and to add the following phrase to the end to the section:

> At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, acidity, alkalinity, total iron, total manganese, sulfates and water levels shall be monitored and reported to the Department at least every 3 months for each monitoring location.

The change Pennsylvania is proposing to 25 Pa. Code 89.59(a)(3) is to delete the last sentence from the section that reads, "The Department will approve

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the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs." Pennsylvania is proposing to add the following to the end of the section:

Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

Pennsylvania is also proposing to change 25 Pa. Code 89.59(b) by adding a sentence to the end of the section that reads, "The Department may also require the operator to conduct monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section."

In the second letter of December 20, 2001, (administrative record No. PA 837.101) Pennsylvania submitted changes to various sections of its rules in 25 Pa. Code Chapters 88 and 90. Some of the proposed changes were to respond to required amendments at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa) and (bbbb). Other changes included adding 25 Pa. Code 90.116(a) to clarify that the water supply replacement requirements of 25 Pa. Code 87.119, relating to water rights and replacement for surface mining activities, are applicable to coal refuse disposal activities and adding subchapters E, F, and G to Chapter 90.

Changes to 25 Pa. Code Chapter 88 include the addition of references to 25 Pa. Code Chapter 90 to the first paragraph of 25 Pa. Code 88.281, replacing the word "full" with the phrase, "the fill," in 25 Pa. Code 88.310(e), and the addition of subsections 25 Pa. Code 88.310(j) and (k). The full text of subsections (j) and (k) is:

(j) The system to prevent adverse impacts to the surface water and groundwater shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(k) The system to prevent precipitation from coming in contact with the coal refuse shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles and cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse.

(1) The system shall be installed as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for a period in excess of 90 days (unless the department approves a longer period, not to exceed 1 year) or when the operation permanently ceases.

(2) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 88.330 (relating to revegetation: standards for successful revegetation) and for prevention of erosion.

In addition, Pennsylvania is proposing to amend 25 Pa. Code 88.332 by adding the following sentences to the end of subsection (a):

The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The department may approve a longer period, not to exceed 1 year, under subsection (b).

Numerous changes were proposed for 25 Pa. Code Chapter 90. Definitions for the terms "coal refuse disposal," "operator," and "public recreational impoundment" were to 25 Pa. Code 90.1. The proposed definitions are:

Coal refuse disposal—The storage, placement or disposal of coal refuse. The term includes engineered features integral to the placement of the coal refuse including relocations or diversions of stream segments contained within the proposed fill area and the construction of required systems to prevent adverse impacts to surface water and groundwater and to prevent precipitation from contacting the coal refuse.

Operator—A person operating a coal refuse disposal area, or part thereof.

Public recreational impoundment—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water and which is owned, rented or leased by the federal government, the commonwealth or a political subdivision of the commonwealth and which is used for swimming, boating, water skiing, hunting, fishing, skating or other similar activities.

Section 90.5 titled, "Site Selection and Permitting" is proposed to be added. The full text of this section, as proposed, is:

90.5. Site Selection and Permitting

(a) Prior to applying for a permit to conduct coal refuse disposal activities, the applicant shall comply with Subchapter E (relating to site selection). The department's technical guidance document number 563–2113–660, titled Coal Refuse Disposal—Site Selection, shall be used as guidance for selecting a coal refuse disposal site.

(b) After the department has approved a site in accordance with Subchapter E, the applicant may apply for a permit for coal refuse disposal activities in accordance with Chapters 86 and 88 (relating to Surface and Underground Coal Mining: General; and Anthracite Coal) and this chapter.

Pennsylvania is proposing numerous changes to section 25 Pa. Code 90.12 including organizational changes, deletion of some portions of existing regulations and addition of new regulations. The section as proposed to be changed now reads:

90.12. Geology

(a) The application shall include a description of the areal and structural geology within the proposed permit and adjacent area, including the lithology of the strata that influence the occurrence, availability, movement and quality of groundwater that may be affected by the coal refuse disposal. For lands within the proposed permit and adjacent areas, the applicant shall provide a description of the geology with complementing maps and cross sections and the results of test borings. The description shall include the strata down to and including any aquifer that may be affected. At a minimum, the description shall include:

(1) Location and quality of subsurface water.

(2) Depth, lithology and structure of near-surface bedrock.

(3) Location, identification and status of mining and coal refuse disposal operations within or adjacent to the proposed permit area.

(4) A description of any glacial, alluvial, or colluvial deposits or other unconsolidated deposits that are present within or beneath the proposed permit area, including their thickness and location.

(5) A description of any mine workings that are present beneath the proposed permit area.

(6) The attitude and characteristics of joints, cleats, fracture zones, and faults within the permit and adjacent areas.

(7) The location and identification of all coal seam croplines within the permit area.

(8) A description of the physical characteristics of soils within the permit area.

(9) A description of aquifers that are present beneath the proposed permit area.

(b) Maps, cross-sections, and geologic descriptions required by this section shall be prepared and certified by a qualified registered professional geologist.

Pennsylvania is proposing to revise section 90.13(2) to read as follows:

(2) Other information on the baseline hydrogeologic properties of the groundwater system shall be included with the application. The Department may require information on indicator parameters such as pumping test, lithologic and piezometer data or that other appropriate information be provided. The application shall include a description of the groundwater flow system as it relates to the design and operation of the proposed groundwater and surface water protection system as described in § 90.50 (relating to Design Criteria: Groundwater and Surface Water Protection System).

Pennsylvania is proposing some organizational changes to 25 Pa. Code 90.34(a). The section, as proposed, reads:

(a) An application shall contain a description of the proposed land use, following reclamation, of the lands to be affected within the proposed permit area by coal refuse disposal activities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain the following:

(1) How the proposed postdisposal land use is to be achieved, and the necessary support activities which may be needed to achieve the proposed land use.

(2) The detailed management plan to be implemented when pastureland is the postdisposal land use.

(3) Materials needed for approval of the alternative use under § 90.166 (relating to postdisposal land use).

(4) The consideration given to making all of the proposed coal refuse disposal activities consistent with surface owner plans and applicable Commonwealth and local land use plans and programs.

Pennsylvania is proposing to add a phrase to the first sentence of section 25 Pa. Code 90.45. The sentence now reads, "A person who conducts, or intends to conduct, coal refuse disposal activities on prime farmlands historically used for cropland, in accordance with Subchapter E (relating to site selection), shall submit a plan, as part of the permit application, for the disposal and restoration of the land."

Pennsylvania is proposing to add section 25 Pa. Code 90.49. The section, as proposed, reads:

90.49. Stream Buffer Zone Variance

(a) Stream buffer zone restriction. Coal refuse disposal may not occur within 100 feet (30.48 meters) of the bank of a stream. The department may grant a variance for disposal of coal refuse under subsection (c) if consistent with subchapter E (relating to site selection).

(b) Compliance required. Surface mining operations supporting coal refuse disposal shall comply with § 86.102(12) (relating to areas where mining is prohibited or limited).

(c) Variance. The department may grant a variance from the 100-foot (30.48-meter) stream buffer zone to dispose of coal refuse and to relocate or divert streams in the 100-foot (30.48-meter) stream buffer zone. The stream buffer zone is the area within 100 feet (30.48 meters) measured horizontally from the bank of any stream.

(1) Stream buffer zone variances will only be granted if the operator demonstrates to the satisfaction of the department that, as a result of the variance, coal refuse disposal will not adversely affect water quality and quantity, or other environmental resources of the stream and will not cause or contribute to the violation of applicable state or federal water quality standards.

(2) Prior to granting a variance, the operator shall be required to give public notice of the application in two newspapers of general circulation in the area once a week for two successive weeks.

(i) If a person files an exception to the proposed variance within 20 days of the last publication of the notice, the department will conduct a public hearing with respect to the application within 30 days of receipt of the exception.

(ii) The department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

(3) The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent or mitigate adverse impacts. Mitigation can include, but is not limited to, compensatory restoration and enhancements of nearby streams or stream segments.

Pennsylvania is proposing to add 25 Pa. Code 90.5. The full text of the section, as proposed, is:

90.50. Design Criteria: Groundwater and Surface Water Protection System

(a) The application shall include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water. The description shall include maps, plans, and other information necessary to evaluate the design of the system.

(b) The application shall include a description of the system that will be installed to prevent precipitation from coming into contact with the coal refuse. The description shall include maps, plans, and other information necessary to evaluate the design of the system. The coal refuse disposal operation shall be designed in phases to minimize the amount of time the entire coal refuse area is exposed to precipitation prior to the installation of the system to prevent precipitation from contacting the coal refuse. The application shall describe the design of the system for preventing precipitation from contacting coal refuse and how the system will be installed in accordance with the following:

(1) During routine coal refuse disposal as phases of the coal refuse disposal area reach capacity.

(2) During periods of temporary cessation as directed under § 90.167(d) (relating to cessation of operations: temporary).

(3) When the operation permanently ceases.

(c) The department's technical guidance document number 563–2112–656, titled Liners—Impoundments, Stockpiles, and Coal Refuse Disposal Areas, shall be used as guidance for designing coal refuse disposal sites incorporating earthen, admixed or synthetic liners or caps for preventing adverse impacts to groundwater and surface water and for preventing precipitation from contacting coal refuse.

(d) The application shall include a description of the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b). The description shall address the site's susceptibility to mine subsidence and the potential impacts of mine subsidence on the systems described in subsections (a) and (b). The description shall also address the potential for deterioration of components of the systems described in subsections (a) and (b) due to other physical or chemical processes including but not limited to attack from sulfate-laden or acidic groundwater and/or leachate.

In section 25 Pa. Code 90.101(b), Pennsylvania is proposing to replace the phrase, "the water," with the phrase, "groundwater and surface water."

Pennsylvania is proposing to add section 25 Pa. Code 90.116a. This section reads:

90.116a. Hydrologic Balance: Water Rights and Replacement

An operator who conducts coal refuse disposal and adversely affects a water supply by contamination, pollution, diminution, or interruption shall comply with § 87.119 (relating to water rights and replacement).

In 25 Pa. Code 90.122, Pennsylvania is proposing to delete former subsections (e) and (g). Under the proposed amendment, former subsection (f) is now subsection (e) and former subsection (h) is now subsection (f). In addition, Pennsylvania has submitted new subsections (g) and (h). The new subsections are:

(g) The disposal area shall be provided with a system to prevent adverse impacts to the surface water and groundwater. The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(h) When a phase of the coal refuse disposal area reaches capacity, the operator shall install a system to prevent precipitation from coming in contact with the coal refuse in the completed phase.

(1) The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit.

(2) During normal coal refuse disposal, the system is not required to prevent precipitation from coming in contact with the coal refuse being placed in phases of the operation that have not reached capacity.

(3) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion.

(4) If the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days (unless the department, for reasons of labor strike or business necessity, approves a longer period not to exceed one year) or when the operation permanently ceases, the operator shall install the system for preventing precipitation from contacting the coal refuse.

In 25 Pa. Code 90.167, Pennsylvania is proposing to change "shall" to "may" in section (b) and to add new subsection (d). Subsection (d) reads:

The operator shall install the system for preventing precipitation from contacting the

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coal refuse when the temporary cessation exceeds 90 days. The department may approve a longer period, not to exceed 1 year, for reasons of a labor strike or business necessity.

Finally, Pennsylvania is proposing to add three new subchapters to 25 Pa. Code Chapter 90. The new subchapters are E. Site Selection, F. Coal Refuse Disposal Activities on Areas With Preexisting Pollutional Discharges, and G. Experimental Practices. The full text of these new subchapters follow:

Subchapter E. Site Selection

Section 90.201. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Preferred Site—A watershed polluted by acid mine drainage; a watershed containing an unreclaimed surface mine but which has no mining discharge; a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation; or other unreclaimed areas previously affected by mining activities.

Search area—The geographic area within a 1-mile radius of an existing coal preparation facility or the 25-square-mile geographic area encompassing a proposed coal preparation facility

Selected Site—A location selected by the applicant and approved by the Department under this Subchapter for which the applicant can then apply for a permit to conduct coal refuse disposal activities.

Section 90.202. General Requirements

(a) A preferred site shall be used for coal refuse disposal unless the applicant demonstrates to the Department that an alternate site is more suitable based upon engineering, geology, economics, transportation systems, and social factors and is not adverse to the public interest.

(b) The applicant is required to determine whether the search area contains a preferred site.

(1) For a new coal refuse disposal area that will support an existing coal preparation facility, the applicant shall examine the geographic area within a 1-mile radius of the existing coal preparation facility.

(2) For a proposed coal refuse disposal area that will support a proposed coal preparation facility, the applicant shall examine a 25-square-mile geographic area encompassing the proposed coal preparation facility. In defining the 25-square-mile area, consideration shall be given to environmental, technical, transportation, economic, and social factors where applicable.

(c) If there are no preferred sites located within the search area, the applicant must conduct a comparative analysis of the potential coal refuse disposal sites in accordance with § 90.204(b) (relating to proposing an alternate site).

(d) The Department will not approve a site proposed by the applicant for coal refuse disposal activities when the Department finds that the adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.

(e) Except on preferred sites, the Department shall not approve coal refuse disposal on or within any of the following areas:

(1) Prime Farmlands.

(2) An exceptional value watershed as defined under Chapter 93 (relating to water quality standards).

(3) Sites known to contain threatened or endangered animals listed exclusively under the Commonwealth's protection programs.

(4) An area that is hydrologically connected to and contributes at least 5% of the drainage to wetlands designated as exceptional value under Chapter 105 (relating to dam safety and waterway management) unless a larger percentage contribution is authorized by the Department after consultation with the Fish and Boat Commission.

(5) A watershed less than 4 square miles in area upstream of the intake of a public water supply.

(6) A watershed less than 4 square miles in area upstream of the upstream limit of a public recreational impoundment.

(7) Sites known to contain Federally listed threatened or endangered plants or animals. At preferred sites known to contain Federally listed threatened or endangered species, approval will be granted only where the Department concludes and the United States Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973 (16 U.S.C.A. 1538).

(f) As part of the site selection process, an applicant may request approval for more than one site. The Department will evaluate each site proposed for coal refuse disposal and, if the Department finds that a proposed site meets the requirements of this subchapter, it will designate it as an approved site. The applicant will then have the option of choosing a selected site from among the approved sites and submitting an application for coal refuse disposal for that site.

Section 90.203. Proposing a Preferred Site

If the applicant proposes to use a preferred site, the Department will approve the proposed site subject to § 90.202(c) (relating to general requirements) provided the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits.

Section 90.204. Proposing an Alternate Site

(a) Where a preferred site(s) exists within the search area, but the applicant proposes an alternate site, the applicant shall:

(1) Demonstrate that the alternate site is more suitable, using criteria in § 90.202(a) (relating to general requirements), than all preferred sites within the search area.

(2) Identify other alternate sites considered and provide the basis for the rejection of these sites.

(3) Based on reasonably available data, demonstrate that it is the most suitable site based on environmental, economic, technical, transportation and social factors.

(b) If a preferred site does not exist within the search area, the applicant shall:

(1) Identify all the sites considered within the search area and provide the basis for their consideration.

(2) Provide the basis for the rejection of considered sites.

(3) Based on reasonably available data, demonstrate to the Department that the proposed site is the most suitable based on environmental, economic, technical, transportation, and social factors.

Section 90.205. Alternatives Analysis

The alternatives analysis required by §§ 90.202(b) and 90.204 (relating to general requirements; and proposing an alternate site) satisfies the requirement for an alternatives analysis under the Dam Safety and Encroachments Act (32 P.S. 693.1–693.27) and regulations promulgated thereunder. See Chapter 105 (relating to dam safety and waterway management).

Section 90.206. Disapproval of a Proposed Site

If the Department disapproves the applicant's proposed site, the applicant may submit a new proposal supporting the selection of another site located either within or outside of the search area.

Section 90.207. Approval of a Selected Site

Department approval of a selected site does not indicate the Department will approve an application for coal refuse disposal activities for the selected site.

Subchapter F. Coal Refuse Disposal Activities on Areas With Preexisting Pollutional Discharges

Section 90.301. Scope

(a) This subchapter specifies procedures and rules applicable to those who seek authorization to engage in coal refuse disposal activities on an area on which there are preexisting pollutional discharges resulting from previous mining and describes the terms and conditions under which the Department may release bonds to operators who have received authorization.

(b) Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D apply to authorizations to mine areas with preexisting pollutional discharges except as specifically modified by this subchapter.

Section 90.302. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Abatement Plan—Any individual technique or combination of techniques, the implementation of which will result in reduction of the base line pollution load. Abatement techniques include but are not limited to: Addition of alkaline material, special plans for managing toxic and acid-

forming material, regrading, revegetation and relocating coal refuse to a coal refuse disposal area that includes systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse.

Actual Improvement—The reduction of the baseline pollution load resulting from the implementation of the approved abatement plan; except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement provided, however, that treatment approved by the Department of the coal refuse before, during or after placement in the coal refuse disposal area shall not be considered to be water treatment.

Baseline Pollution Load—The characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings.

Best Professional Judgment—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C.A. 1311 and 1342).

Best Technology—Measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

Coal Refuse Disposal Activities—The storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations. The term shall not include the removal or storage of overburden from surface mining activities.

Excess Soil and Related Material—Rock, clay or other material located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil.

Pollution Abatement Area—The part of the permit area that is causing or contributing to the baseline pollution load. It shall include adjacent and nearby areas that must be affected to bring about significant improvements of the baseline pollution load and may include the immediate locations of the discharges.

Section 90.303. Applicability

(a) Authorization may be granted under this subchapter when the authorization is part of the following:

(1) A permit issued after February 6, 1995, but only if the authorization request is made during one of the following periods:

(i) At the time of the submittal of the permit application for the coal refuse disposal activities, including the proposed pollution abatement area.

(ii) Prior to a Department decision to issue or deny that permit.

(2) A permit revision under § 86.52 (relating to permit revisions), but only if the operator affirmatively demonstrates to the satisfaction of the Department that:

(i) The operator has discovered pollutional discharges within the permit area that came into existence after its permit application was approved.

(ii) The operator has not caused or contributed to the pollutional discharges.

(iii) The proposed pollution abatement area is not hydrologically connected to an area where coal refuse disposal activities have been conducted under the permit.

(iv) The operator has not affected the proposed pollution abatement area by coal refuse disposal activities.

(v) The Department has not granted a bonding authorization and mining approval for the area under § 86.37(b) (relating to criteria for permit approval or denial).

(b) Notwithstanding subsection (a), no authorization may be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

Section 90.304. Application for Authorization

(a) An operator who requests authorization under this Subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D, except as specifically modified by this subchapter. The operator shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the preexisting discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for pH, alkalinity, acidity, total iron, total manganese, aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a description of the abatement plan that represents best technology and includes the following:

(i) Plans, cross-sections and schematic drawings describing the abatement plan proposed to be implemented.

(ii) A description and explanation of the range of abatement level that is anticipated to be achieved, costs and each step in the proposed abatement plan.

(iii) A description of the standard of success for revegetation necessary to ensure success of the abatement plan.

(b) The operator seeking this authorization shall continue the water quality and quantity monitoring program required by subsection (a)(2) after making the authorization request. The operator shall submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

Section 90.305. Application Approval or Denial

(a) Authorization may not be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates the following to the satisfaction of the Department on the basis of information set forth in the application:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor, or a related party as defined in § 86.1 (relating to definitions) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause additional surface water pollution or groundwater degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation for sites previously reclaimed to the standards of Chapters 87, 88 and 90 shall be the standards set forth in § 90.159 (relating to revegetation: standards for successful revegetation). The standard of success for revegetation for sites not previously reclaimed to the standards of Chapters 87, 88 and 90 shall be, at a minimum, the following, provided the site is not a bond forfeiture site where the forfeited money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by coal refuse disposal activities.

(iii) Adequate vegetation to control erosion. Vegetation may be no less than that necessary to ensure the success of the abatement plan.

(6) The coal refuse disposal activities on permitted areas other than the proposed pollution abatement area will not cause surface water pollution or groundwater degradation.

(7) Requirements of § 86.37(a) (relating to criteria for permit approval or denial) that are consistent with this section have been met.

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(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect a legal responsibility or liability under The Clean Streams Law (35 P.S. 691.1–691.1001), the Surface Mining Conservation and Reclamation Act (52 P.S. 1396.1–1396.19a), Chapter 86 (relating to surface and underground coal mining: general) or Subchapters A–D, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(c) Authorization may not be granted under this subchapter unless there are one or more preexisting discharges from or on the pollution abatement area.

(d) The authorization allowed under this subchapter is only for the pollution abatement area and does not apply to other areas of the permit.

Section 90.306. Operational Requirements

(a) An operator who receives an authorization under this subchapter shall comply with the requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas) are met.

(2) Implement the approved abatement plan.

(3) Notify the Department immediately prior to the completion of each step of the abatement plan.

(4) Provide a progress report to the Department within 30 days after the completion of each step of the abatement program that includes a statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.

Section 90.307. Treatment of Discharges

(a) Except for preexisting discharges that are not encountered during coal refuse disposal activities or the implementation of the abatement plan, the operator shall comply with § 90.102 (relating to hydrologic balance: effluent standards).

(b) The operator shall treat the preexisting discharges that are not encountered during coal refuse disposal activities or implementation of the abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load. If the baseline pollution load, when expressed as a concentration for a specific parameter, satisfies the effluent limitation in § 90.102 for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations in § 90.102.

(c) For purposes of subsections (a) and (b), the term encountered may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan that would otherwise drain into the affected area, as long as the diversions are designed, operated and maintained under § 90.104 (b)–(h) (relating to hydrologic balance: diversions).

(d) An operator required to treat preexisting discharges will be allowed to discontinue treating the discharges under subsection (b) when the operator affirmatively demonstrates the following to the Department's satisfaction:

(1) The preexisting discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Coal refuse disposal activities under the permit—including the pollution abatement area—are being or were conducted under the requirements of the permit and the authorization, and Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(3) The operator has implemented each step of the abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional surface water pollution or groundwater degradation by reaffecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges under subsection (b). An operator who reinstitutes treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

Section 90.308. Request for Bond Release

Sections 86.172(c) and 90.309 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollution abatement areas authorized by this subchapter. Section 86.172(a), (b) and (d) shall not be applicable to the release of bonds.

Section 90.309. Criteria and Schedule for Release of Bonds on Pollution Abatement Areas

(a) The Department will release up to 50% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds the following:

(1) The coal refuse disposal activities were conducted on the permit area, including the pollution abatement area, under the requirements of the permit and the authorization, Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(2) The operator has satisfactorily completed backfilling, grading, installing the water impermeable cover and drainage control in accordance with the approved reclamation plan.

(3) The operator has properly implemented each step of the pollution abatement plan approved and authorized under this subchapter.

(4) The operator has not caused degradation of the baseline pollution load at any time during the 6 months prior to the submittal of the request for bond release under this subsection and until the bond release is approved as shown by all groundwater and surface water monitoring conducted by the permittee under § 90.306(a)(1) (relating to operational requirements) or conducted by the Department.

(5) The operator has not caused or contributed to surface water pollution or groundwater degradation by reaffecting the pollution abatement area.

(b) The Department will release up to an additional 35% of the amount of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds the following:

(1) The operator has replaced the topsoil or material conserved under § 90.97 (relating to topsoil: removal), completed final grading, planting and established revegetation under the approved reclamation plan and achieved the standards of success for revegetation in § 90.305(a)(5) (relating to application approval or denial).

(2) The operator has not caused or contributed to groundwater or surface water pollution by reaffecting the pollution abatement area.

(3) The operator has achieved the following standards:

(i) Achieved the actual improvement of the baseline pollution load described in the approved abatement plan as shown by groundwater and surface water monitoring conducted by the permittee for the time provided in the abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard for success in § 90.305(a)(5).

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by groundwater and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For a period of 12 months from the date of initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and § 90.307(e) (relating to treatment of discharges), for 12 months from the date of discontinuance of treatment under

§ 90.307(d), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(B) Conducted all the measures provided in the approved abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) of this section for the area requested for bond release.

(C) Caused aesthetic or other environmental improvements and the elimination of public health and safety problems by engaging in coal refuse disposal activities and reaffecting the pollution abatement area.

(D) Stabilized the pollution abatement area.

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the operator demonstrates and the Department finds the following:

(1) The operator has successfully completed the approved abatement and reclamation plans, and the pollution abatement area is capable of supporting the postdisposal land use approved under § 90.166 (relating to postdisposal land use).

(2) The operator has complied with the permit and the authorization, Chapter 86 and this chapter, except as specifically modified by this subchapter.

(3) The operator has not caused degradation of the baseline pollution load from the time of bond release under subsection (b) or, if treatment has been initiated after bond release under subsection (b) in accordance with § 90.307(e) for 5 years from the discontinuance of treatment under § 90.307(d).

(4) The applicable liability period has expired under § 86.151 (relating to period of liability).

Subchapter G. Experimental Practices

Section 90.401. General

(a) To encourage advances in coal refuse disposal practices, coal refuse site reclamation, and advances in technology or practices that will enhance environmental protection with respect to coal refuse disposal activities, the Department may grant permits approving experimental practices and demonstration projects. The Department may grant these permits under the following circumstances:

(1) The environmental protection provided will be potentially more protective or at least as protective as required by this chapter, the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51 30.66) and Chapter 86 (relating to surface and underground coal mining: general).

(2) The coal refuse disposal activities approved under the permits are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices or demonstration projects.

(3) The experimental practices or demonstration projects do not reduce the protection afforded public health and safety below that provided by this chapter, the Coal Refuse Disposal Control Act and Chapter 86.

(b) Experimental practice permits issued under this subchapter shall meet all the provisions, standards, and information requirements of the 30 CFR 785.13 (relating to experimental practices mining).

In the letter of November 16, 2001, (administrative record No. PA 880.00) Pennsylvania notes that 30 CFR 938.16(kk) required it to amend the references contained in sections 3.1(c) and 3.1(d) of PA SMCRA. The condition requires the cross-reference to section 4.2(f) in section 3.1(c) be replaced with section 4b(f) and the cross reference to section 18.6 in section 3.1(d) be replaced with section 24.

Pennsylvania explained that sections 3.1(c) and 3.1(d) of PA SMCRA are part of a numbering system used by the Pennsylvania Legislative Reference Bureau. Likewise the cross-referenced sections 4.2(f) and 18.6 are also Legislative Reference Bureau numbering. Section 4b(f) is part of a numbering system used in Purdon's Pennsylvania Statutes Annotated (Purdon's). The complete number for section 4(b)(f) in Purdon's is 52 P.S. 1396.4b(f). Purdon's 52 P.S. 1396.4b(f) is the Legislative Reference Bureau's Section 4.2(f). Section 24 was formerly a Purdon's number. The complete number for section 24 in Purdon's was 52 P.S. 1396.24. Section 1396.24 was renumbered to 1396.18f in 1993 as a result of amendments to PA SMCRA. Purdon's section 1396.18f is the Legislative Reference Bureau's Section 18.6. Pennsylvania believes that since the cross-references in sections 3.1(c) and 3.1(d) of SMCRA are the appropriate Legislative Reference Bureau Numbers that should be referenced, 30 CFR 938.16(kk) should be removed.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on February 11, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

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IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)Of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–1945 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7132–8]

RIN 2060–AJ73

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed Non-Conformance Penalties for 2004 and Later Model Year Emission Standards for Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of January 16, 2002, regarding non-conformance penalties for heavy-duty diesel engines and vehicles. This correction provides the correct EPA docket number for the submission of comments on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; Fax: (734) 214–4816; e-mail: *borushko.margaret@epa.gov*.

Correction

In the **Federal Register** of January 16, 2002, in FR Doc. 02–1109, on page 2159, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: *Comments:* We must receive your comments by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. In your correspondence, refer to Docket A–2001–25. See Section VI.B for more information on comment procedures.

Public hearing: We will hold a public hearing on February 15, 2002 at the Washington Dulles Airport Marriott, 45020 Aviation Drive, Dulles, Virginia 20166. Phone: (703–471–9500). If you want to testify at the hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section VI.B for more information on the public-hearing procedures.

Public docket: EPA's Air Docket makes materials related to this rulemaking available for review in Docket No. A–2001–25 located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M. Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Dated: January 18, 2002.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–1880 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–9877–P]

RIN 0938–AH53

Medicare and Medicaid Programs; Terms, Definitions, and Addresses: Technical Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This technical regulation would amend CMS rules—

To simplify and rationalize the system of definitions and increase uniformity in the use of terms;

To clarify which steps of the appeals process are "final" and which are "binding";

To correct outdated addresses and organizational unit names;

To remove content that is outdated or duplicative; and

To make other editorial changes and technical corrections.

These revisions are necessary to preclude confusion regarding our regulations and to better ensure uniform understanding and application. By updating and removing content that is outdated, unnecessary, or duplicative, these changes would also shorten our rules and make them easier to use.

DATES: *Comment date:* We will consider all comments received at one of the addresses indicated below no later than 5 p.m. on March 26, 2002.

ADDRESSES: Please mail written comments (one original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: HCF–9877–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received in the event of delivery delays.

If you prefer, you may deliver your written comments by courier (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the above addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–9877–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 of the headquarters Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone: (410) 786–7197.

FOR FURTHER INFORMATION CONTACT: Margaret Teeters, (410) 786–4678.

SUPPLEMENTARY INFORMATION:

A Simplification and Rationalization of the System of Definitions

In revising the definitions system, we aim to ensure that each definition would meet the following conditions:

1. Is worded so as to preclude confusion or misinterpretation.
2. Is not duplicated.
3. Does not include requirements or prohibitions (which belong in the text of the rules); or personnel qualifications (which need to be identified as such).
4. If it is of general applicability, is located at the beginning of chapter IV.
5. If it is of limited applicability, is presented as a basic definition in that part of the regulations to which it is most pertinent or in which it is most frequently used. (When the term is used elsewhere, with the same meaning it has in the basic definition, we cite that basic definition and do not duplicate it. A separate definition of that term would be presented only if it is used with a special, different meaning (for example, in a broader or more limited sense).

We do not include definitions of terms that are not used in the text, are used in their ordinary, usual sense, or are used only once or twice. (In the latter case, the word is explained where used, not placed in a definitions section.)

We would keep all the acronyms for both programs in § 400.200.

Because of the great number of definitions in CMS's regulations, attempting to deal with all of them now would unduly delay issuance of this rule. That would not be desirable for a rule that includes content (updating and correcting) that must be made available promptly to those who implement our regulations and to the general public. We will be developing another technical rule to deal with the remaining definitions.

With respect to personnel qualifications, which have sometimes been presented as "definitions," our goal has been to include in a new § 400.210, the qualifications for the practitioners whose services are most frequently used in the Medicare program. The personnel qualifications for practitioners who furnish less frequently used services would be retained in their current locations.

Qualifications that are different from the basic qualifications set forth in the new section would also be retained where they have been.

A proposed rule identified as BPD–819–P was published on March 10, 1997 at 62 FR 11005. The final rule, identified as CMS–3819–F, will revise part 484 of the CMS regulations, which

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sets forth the conditions of participation for home health agencies. The revision includes changes to the personnel qualifications for speech language pathologists, physical and occupational therapists and their assistants, and social workers and social work assistants. For that reason, this rule proposes no changes in part 484, and does not include in the new § 400.210 the qualifications for the above-noted skilled professionals.

B. Effect of Appeals Decisions

Several sections in part 417 pertaining to the appeals process would be revised to clarify which steps in the process are "binding" but not "final." The aim is to make clear that the last step in the administrative appeals process must be completed before the appellant has any right to judicial review.

C. Correction of Addresses

We would revise the following sections of the regulations to reflect CMS's new address and any applicable name changes that result from the reorganization of CMS: 401.128, 401.148, 412.63, 412.210, 430.62, 483.102, 485.623.

D. Conforming Amendments

We would correct or remove cross-references to reflect removal or transfer of definitions and personnel qualifications, and outdated or duplicative rules.

E. Clarifying Editorial Revisions

The editorial revisions would—

1. Shorten the regulations and, in order to improve clarity, make the following kinds of changes:

- Eliminate repetition and highlight the similarities and differences among rules that apply to different types of providers or practitioners. Part 456 (Utilization Control) currently includes 3 subparts that repeat all the requirements that apply equally to hospitals, mental hospitals, and intermediate care facilities for the mentally retarded (ICFs/MR).
- Shorten the content and highlight the similarities and differences by presenting the common requirements once in subpart C ("Utilization Control: All Hospitals") and revising subparts D and F to set forth only the additional requirements that apply to mental hospitals and to ICFs/MR, respectively.
- Remove undesignated centered headings and either substitute designated subparts, or incorporate the content of the undesignated heading into the section headings. Undesignated centered headings, unlike designated subparts, cannot be used to refer to the whole group of sections they encompass. They are usually followed by incomplete section headings because the writer depends too much on the centered heading language—even when the section may appear many pages after the centered heading. This kind of change would be made in part 456 and also in part 447 (Payments for Services).
- Provide an overview of disclosure of information rules set forth in several sections. A single section lists and designates the kinds of information that must be disclosed and the entities that must make disclosure. (Part 420—Program Integrity: Medicare)

2. Make numerous minor modifications to—

- Reflect the fact that the nursing home reform amendments identify Medicaid facilities as "nursing facilities" (NFs) rather than "skilled nursing facilities" (SNFs); and
- Limit "intermediate care facilities" (ICFs) to those that serve persons with mental retardation and related conditions.

3. In part 498, which establishes rules for appeals from CMS determinations, we are proposing to—

- Remove references to the Office of the Inspector General (OIG) because the OIG now has its own appeals regulations in part 1005 of chapter V of this title; and
- In § 498.3(d), restore a sentence removed by a previous technical amendment. That sentence makes absolutely clear that the only administrative actions that qualify as "initial determinations" are those listed in paragraph (b) of the section.

4. Remove regulations that are no longer in effect.

Subpart E of part 417 would be removed because the requirements applicable to employer group health plans that include HMOs have become outdated.

Subpart I of part 456 would be removed because section 4751 of the Balanced Budget Act (BBA) of 1997 amended sections 1902(a)(26) and 1902(a)(31) of the Social Security Act to remove the requirement for States to perform Inspection of Care (IoC) reviews in institutions for mental diseases and ICFs/MR.

5. Correct cross-references that have become outdated through changes made by other regulations, as in parts 410 and 424.

F. Deferred Changes

The definitions in subpart J of part 411 and parts 435 and 436 would not be revised because those rules are undergoing extensive changes included in other **Federal Register** documents.

Other Required Information

A. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

B. Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget.

C. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA), Public Law 96–354. Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have reviewed this rule and have determined that it is not a major rule. Therefore, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule and a final rule that has been preceded by a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule or a final rule preceded by a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of sections 603 and 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This rule would have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule and have determined that it would not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of Public Law 104–121, the Contract with America Act, it is not a major rule.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 402

Administrative practice and procedure, Health facilities, Health Professions, Medicaid, Medicare, Penalties.

42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-ray.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Medicare, Reporting and record keeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMOs), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 420

Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Health maintenance organizations (HMO), Medicare+Choice, Provider sponsored organizations (PSO).

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 430

Administrative practice and procedure, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirement.

42 CFR Part 434

Grant programs—health, Health maintenance organizations (HMOs), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and record keeping requirements.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Medicaid, Nursing homes, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs—health,

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Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 475

Grant programs—health, Health care, Health professions, Peer Review Organizations (PROs).

42 CFR Part 476

Grant programs—health, Health care, Health facilities, Health professions, Peer Review organizations (PROs), Reporting and record keeping requirements.

42 CFR Part 478

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PROs), Reporting and record keeping requirements.

42 CFR Part 480

Health care, Health professionals, Health records, Peer Review Organizations (PROs), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR 482

Grant programs—health, Hospitals, Medicare, Medicaid, Reporting and record keeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Medicare, Reporting and record keeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

PART 400—INTRODUCTION: DEFINITIONS; PERSONNEL QUALIFICATIONS; COLLECTIONS OF INFORMATION

A. Part 400 is amended as set forth below.

1. The heading of part 400 is revised to read as set forth above.

2. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C.1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart B—Definitions and Personnel Qualifications

3. The heading of subpart B is revised to read as set forth above.

4. In § 400.200, the following changes are made:

a. The definitions of "Area", DAB", "ICF", and "United States" are removed.

b. In the definition of "FQCH", "means" is revised to read "stands for:".

c. The following definitions are added in alphabetical order to read as follows:

§ 400.200 General definitions.

* * * * *

Anesthetist means a physician anesthetist, an anesthesiologist assistant, or a certified registered nurse anesthetist.

* * * * *

CAH stands for critical access hospital.

* * * * *

Departmental Appeals Board means either of the following:

(1) A panel of members of a Board established in the office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department or by ALJs.

(2) The Medicare Appeals Council designated by the Board Chair to review ALJ decisions under part 405, subparts G and H; part 417, subpart Q; part 422, subpart M; and part 478, subpart B.

EACH stands for essential access community hospital.

* * * * *

FMAP stands for Federal medical assistance percentage.

* * * * *

HIO stands for health insuring organization.

* * * * *

Hospital means an institution that meets the requirements of section 1861(e) of the Act.

ICD–9–CM stands for International Classification of Diseases, Ninth Revision, Clinical Modification.

* * * * *

IMD stands for institution for mental diseases.

* * * * *

MCO stands for managed care organization.

* * * * *

NF stands for nursing facility.

* * * * *

PHP stands for prepaid health plan.

PHS stands for Public Health Service, and PHS Act means the Public Health Service Act.

Practitioner means a physician or any other individual who has the credentials to practice within a recognized health care discipline and who furnishes the services of that discipline to patients.

* * * * *

Qualified practitioner means a practitioner who meets the personnel qualification requirements set forth in the statute, or in this part or elsewhere in this chapter, as a condition for coverage of his or her services under Medicare or Medicaid, or both.

* * * * *

Religious nonmedical health care institution means an institution that meets the requirements of section 1861(ss)(1) of the Act.

* * * * *

RNHCI stands for religious nonmedical health care institution.

* * * * *

Significant business transaction means a business transaction or series of transactions carried out by an entity involved in the furnishing of health care services, the total of which, during any fiscal year, exceeds 5 per cent of the facility's total operating expenses or $25,000, whichever is less.

* * * * *

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands.

State survey agency means the State health agency or other appropriate State or local agency that—

(1) Has an agreement with CMS under section 1864 of the Act, under which it performs surveys and inspections of health care facilities and recommends to CMS whether they meet the applicable requirements of section 1819, section 1832, section 1861, or subpart C of title XVIII of the Act; and

(2) Is used by the State to determine, on the basis of surveys and inspections, whether health care facilities meet the requirements for participation in Medicaid.

* * * * *

5. In § 400.202, the following changes are made:

a. In the definition of "Carrier", the phrase "payable on a charge basis" is removed.

b. In the definition of "Intermediary", "(or under any Prospective Payment System)" is added immediately after "payable on a cost basis".

c. The following definitions are added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

Assignment means that the beneficiary transfers the right to claim payment for a service to the physician or other supplier of the service.

* * * * *

Covered services means services for which payment may be made to or on behalf of a Medicare beneficiary, subject to all requirements and limitations imposed by title XVIII of the Act and by this chapter.

* * * * *

Deductible means any of the following:

(1) The fixed amount for which the beneficiary is liable when he or she receives inpatient services in a hospital or CAH for the first time in a benefit period.

(2) The specified amount of expenses that a beneficiary must incur for covered Part B services in a calendar year before Medicare payment may be made, on his or her behalf, for additional Part B services (other than those specifically exempted under section 1833(b) of the Act and elsewhere in this chapter) furnished in that year.

(3) The expenses incurred for the first three pints of whole blood or units of packed red cells furnished to a beneficiary during a calendar year under Medicare Part A or Part B.

* * * * *

Medicare enrollee means a beneficiary who has elected to have his or her Medicare coverage provided through an HMO, CMP, HCPP, or M+C organization that participates in Medicare.

* * * * *

Physician means—

(1) A doctor of medicine or osteopathy authorized to practice medicine and surgery in the State in which he or she performs the function; and

(2) For certain specified services, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor. (The specific services are set forth in subpart B of part 410 of this chapter.)

* * * * *

Skilled nursing facility (SNF) means a facility that meets the requirements of sections 1819(a) through 1819(d) of the Act.

* * * * *

6. In § 400.203, the following changes are made:

a. The definition of "State" is removed.

b. A definition of "Institution for mental diseases" is added in alphabetical order.

c. The definitions of "FMAP" and "Nursing facility" are revised to read as set forth below.

§ 400.203 Definitions specific to Medicaid.

* * * * *

Federal medical assistance percentage (FMAP) means the percentage used to calculate the amount of the Federal share of State expenditures under the Medicaid program in accordance with section 1905(b) of the Act.

* * * * *

Institution for mental diseases (IMD) means a facility that meets the requirements of section 1905(i) of the Act and the definition in § 435.1009 of this chapter.

* * * * *

Nursing facility (NF) means a facility that meets the requirements of sections 1919(a) through 1919(d) of the Act.

* * * * *

7. A new § 400.210 is added to read as follows:

§ 400.210 Personnel qualifications for Medicare.

(a) *Basis and scope.* (1) *Basis.* In order to participate in the Medicare program, providers and certain suppliers must use qualified staff. In order to be paid for the services they furnish to Medicare beneficiaries, physicians and other practitioners must meet specified qualifications.

(2) *Scope.* (i) This section sets forth the specific qualifications that must be met by those practitioners whose services are most frequently and widely used in the Medicare program.

(ii) Qualifications required of practitioners whose services are less frequently used or that are different for a particular program aspect are set forth in the subparts or sections that deal with those program aspects.

(b) *Specific requirements.* As a condition for Medicare payment to the providers and suppliers that employ them, or for the services that they furnish in independent practice, practitioners must meet the requirements for State licensing, certification, or approval, and the additional qualifications set forth in this section.

(c) An *anesthesiologist assistant* must meet the following requirements:

(1) Work under the direction of an anesthesiologist.

(2) Be in compliance with all applicable requirements of State law, including any licensure requirements the State imposes on anesthetists who are not physicians.

(3) Be a graduate of a medical school-based anesthesiologist's assistant educational program that—

(i) Is accredited by the Committee on Allied Health Education and Accreditation; and

(ii) Includes approximately 2 years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

(d) A *certified registered nurse anesthetist* must meet the following requirements:

(1) Be licensed as a registered professional nurse by the State in which he or she practices.

(2) Meet any licensure requirements the State imposes on anesthetists who are not physicians.

(3) Be a graduate of a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Programs or any other accreditation organization that CMS designates.

(4) Meet one of the following conditions:

(i) Have passed a certification examination of the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or any other certification organization that CMS designates.

(ii) Be a graduate of a program described in the qualification in paragraph (d)(3) of this section and, within 24 months after that graduation, meet the condition in paragraph (d)(4)(i) of this section.

(e) A *nurse-midwife* must meet the requirements in paragraphs (e)(1) and (2) of this section, and the requirement in paragraph (e)(3) or the requirement in paragraph (e)(4):

(1) Be currently licensed to practice in the State as a registered professional nurse.

(2) Be legally authorized under State law or regulations to practice as a nurse-midwife.

(3) Have completed a State-specified program of study and clinical experience for nurse-midwives.

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(4) If there is no State-specified program of study and clinical experience for nurse-midwives, meet one of the following conditions:

(i) Be currently certified as a nurse-midwife by the American College of Nurse-Midwives.

(ii) Have successfully completed a formal educational program (of a least 1 academic year) that, upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse-Midwives.

(iii) Have successfully completed a formal educational program for preparing registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the post-partum period and care to normal newborns; and have practiced as a nurse-midwife for a total of 12 months during any 18-month period between August 8, 1976 and July 16, 1982.

(f) A *nurse practitioner* must meet one of the following requirements:

(1) Be a registered professional nurse who—

(i) Is authorized by the State in which he or she furnishes the services to practice as a nurse practitioner in accordance with State law; and

(ii) Is certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners.

(2) Be a registered professional nurse who—

(i) Is authorized by the State in which he or she furnishes the services to practice as a nurse practitioner under State law; and

(ii) Has been granted a Medicare billing number as a nurse practitioner by December 31, 2000.

(3) Be a nurse practitioner who—

(i) On or after January 1, 2001, applies for a Medicare billing number for the first time; and

(ii) Meets the requirements specified in paragraph (f)(1) of this section

(4) Be a nurse practitioner who—

(i) On or after January 1, 2003, applies for a Medicare billing number for the first time;

(ii) Has a master's degree in nursing; and

(iii) Meets the requirements specified in paragraph (f)(1) of this section.

(g) A *physician assistant* must meet all of the following requirements:

(1) Have graduated from a physician assistant educational program that is accredited by the National Commission on Accreditation of Allied Health Education Programs;

(2) Have passed the national certification examination of the National Commission on Certification of Physician Assistants; and

(3) Be licensed by the State to practice as a physician assistant.

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

B. Part 401 is amended as set forth below.

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

§ 401.128 [Amended]

2. In paragraph (a)(3), under "Region IX", "Trust Territory of Pacific Islands" is removed, and "Northern Mariana Islands" is added after "American Samoa".

3. In paragraph (b), the address "Director, Office of Research, Demonstrations, and Statistics, CMS, Baltimore, Maryland 21235" is revised to read "Privacy Officer, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1850", and ", Office of Research, Demonstrations and Statistics", the second time it appears, is removed.

§ 401.148 [Amended]

4. In § 401.148, the address "CMS, 700 East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235," is revised to read "Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850".

PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

C. Part 402 is amended as set forth below.

1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 402.113 [Amended]

2. In § 402.113, in paragraph (c), "DAB" is revised to read "Departmental Appeals Board (the Board).".

PART 403—SPECIAL PROGRAMS AND PROJECTS

D. Part 403 is amended as set forth below.

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 403.300 [Amended]

2. In § 403.300, the section heading is revised to read "Basis and scope" and the heading of paragraph (b) is revised to read "Scope".

§ 403.302 [Amended]

3. In § 403.302, the following changes are made:

a. The definition of "Chief executive officer of a State" is removed.

b. The definition of "State system or system" is amended by placing a period after "control system" and removing all that follows.

4. In § 403.304, the following changes are made:

a. The section heading is revised.

b. Paragraph (a) is revised.

c. Paragraph (b)(1) is revised.

The changes read as follows:

§ 403.304 Minimum requirements for approval of a State system.

(a) *Application and submission of documentation.* The State Governor or his or her designee is responsible for submitting the application for system approval and any assurances and other documentation required under this subpart.

(b) *Basis for approval: Specific requirements.* (1) CMS may approve the making of Medicare payments under a State reimbursement control system if CMS determines that the system meets the requirements of paragraphs (b) and (c) and, if applicable, paragraph (d), of this section.

(i) CMS evaluates any application for approval of a State system and gives the State notice of its determination within 60 days.

(ii) CMS may reconsider a denied application in accordance with § 403.316.

* * * * *

§§ 403.312 and 403.314 [Removed]

5. §§ 403.312 and 403.314 are removed.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

E. Part 405 is amended as set forth below.

1. In subpart C, the authority citation is revised to read as follows:

Authority: Secs. 1102, 1870, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395gg, and 1395hh), and 31 U.S.C. 3711.

2. In § 405.400, the definition of "Emergency care services" is removed, and the definition of "Emergency services" is added to read as follows:

§ 405.400 Definitions.

* * * * *

Emergency services has the meaning given the term in § 422.113 of this chapter.

* * * * *

3. In subparts G and H, the authority citations are revised to read as follows:

Authority: Secs. 1102, 1869 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395ff and 1395hh).

4. In § 405.802, the definition of "Assignment" is removed.

§ 405.855 [Amended]

5. In § 405.855, in paragraph (c)(1)(i), "DAB" is revised to read "Departmental Appeals Board".

§ 405.857 [Amended]

6. In § 405.857, in paragraph (a), "DAB", the first time it appears, is revised to read "Departmental Appeals Board".

§ 405.1875 [Corrected]

7. In § 405.1875, in paragraph (a)(2), "Attorney Advisory" is corrected to read "Attorney Advisor".

§ 405.1877 [Amended]

8. In § 405.1877, the following changes are made:

a. In paragraph (b) "must file its appeal" is revised to read "must file the civil action".

b. The heading of paragraph (e) is revised to read "*Group actions.*".

c. The heading of paragraph (f) is revised to read "*Venue for group actions.*".

Subpart U [Amended]

9. In subpart U, the authority citation is revised to read as follows:

Authority: Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395qq).

10. In § 405.2401, the definitions of "Act", "Beneficiary", "Carrier", "CMS", "Covered services", "Deductible", "Nurse-midwife", "Nurse practitioner and physician assistant", "Reporting period", and "Secretary" are removed, and the definition of "Physician" is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

Physician includes residents who meet the definition of § 415.152 of this chapter and meet the requirements of § 415.206(b) of this chapter for payment under the physician fee schedule.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

F. Part 406 is amended as set forth below.

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 406.21, paragraph (f)(1) is revised to read as follows:

§ 406.21 Individual enrollment.

* * * * *

(f) *Transfer enrollment period for HMO and CMP enrollees.* (1) *Applicability.* This paragraph applies to an enrollee of an HMO or CMP that has a contract with CMS under subpart L of part 417 of this chapter.

* * * * *

PART 409—HOSPITAL INSURANCE BENEFITS

G. Part 409 is amended as set forth below.

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 409.3 [Amended]

2. In § 409.3, the definition of "Covered" is removed.

§ 409.60 [Amended]

3. In § 409.60, in paragraph (c), "405.330", wherever it appears, is revised to read "§ 411.400".

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

H. Part 410 is amended as set forth below.

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh unless otherwise indicated).

§ 410.1 [Amended]

2. In § 410.1, paragraph (b), "copayment" is revised to read "coinsurance", and "subpart C of part 405" is revised to read "part 411".

3. In § 410.2, the definition of "nominal charge provider" is revised to read as follows:

§ 410.2 Definitions.

* * * * *

Nominal charge provider has the meaning given the term in § 409.3 of this chapter.

* * * * *

§ 410.32 [Amended]

4. In § 410.32, in paragraph (d)(1), "RPCH" is revised to read "CAH".

§ 410.50 [Amended]

5. In § 410.50, in paragraph (b), the word "independent" is removed and "subpart M of part 405 of this chapter." is revised to read "part 493 of this chapter.".

§ 410.58 [Amended]

6. In § 410.58, the following changes are made:

a. In paragraph (a)(1), "as defined in § 491.2 of this chapter," is removed.

b. In paragraph (a)(2), "as defined in § 417.416" is revised to read "who has the qualifications specified in § 417.416(d)(2)".

7. In § 410.62, the following changes are made:

a. Paragraph (a)(2)(i) is revised to read as set forth below.

b. In paragraph (a)(2)(iii), "§ 410.63" is revised to read "§ 424.24".

§ 410.62 Outpatient speech pathology services: Conditions and exclusions.

(a) * * *

(2) * * *

(i) Is established either by a physician or by the speech pathologist who will provide the services to the particular individual;

* * * * *

8. Section 410.69 is revised to read as follows:

§ 410.69 Services of a certified registered nurse anesthetist or an anesthesiologist assistant.

Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist assistant who—

(a) Is legally authorized to perform the services by the State in which he or she performs them; and

(b) Meets the qualifications specified in § 400.210 of this chapter.

§ 410.74 [Amended]

9. In § 410.74, the following changes are made:

a. In paragraph (a)(2)(i), "paragraph (c) of this section" is revised to read "§ 400.210 of this chapter".

b. Paragraph (c) is removed and reserved.

10. In § 410.75, paragraph (b) is revised to read as follows:

§ 410.75 Nurse practitioner's services.

* * * * *

(b) *Qualifications.* For Medicare Part B coverage of his or her services, a nurse practitioner must meet one of the requirements specified in § 400.210(f) of this chapter.

* * * * *

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PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

I. Part 411 is amended as set forth below.

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.6 [Amended]

2. In § 411.6, in paragraph (b)(4), "(as defined in § 409.3 of this chapter)" is removed.

§ 411.15 [Amended]

3. In § 411.15, the following changes are made:

a. In paragraph (m)(1), "(as defined in § 409.3 of this chapter)" is removed.

b. Paragraph (m)(3)(vi) is revised to read "Services of a certified registered nurse anesthetist or of an anesthesiologist's assistant.".

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

J. Part 412 is amended as set forth below.

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.50 [Amended]

2. In § 412.50, in paragraph (c), "(as defined in § 409.3 of this chapter)" is removed.

§§ 412.63 and 412.210 [Amended]

3. In § 412.63(b)(3) and § 412.210(b)(2), the address "CMS, East High Rise Building, Room 132, 6325 Security Boulevard, Baltimore, Maryland, 21207" is revised to read "Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850".

§ 412.106 [Amended]

4. In § 412.106, paragraph (a)(1)(i), "as defined in" is revised to read "as determined under".

5. In § 412.113, in paragraph (c)(2)(i)(B), the first sentence is revised to read as follows:

§ 412.113 Other payments.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The hospital must, as of January 1, 1988, have employed or contracted with a certified registered nurse anesthetist or an anesthesiologist's assistant to perform anesthesia services in that hospital.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

K. Part 413 is amended as set forth below.

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

§ 413.20 [Amended]

2. In § 413.20, in paragraph (c) introductory text, "provider of services (as defined in § 400.202 of this chapter)" is revised to read "provider".

§ 413.53 [Amended]

3. In § 413.53, in the table for Hospital K, "ICF-type", wherever it appears, is revised to read "NF-type".

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

L. Part 414 is amended as set forth below.

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

§ 414.2 [Amended]

2. In § 414.2, the following changes are made:

a. The definitions for *CY* and *FY* are removed.

b. In paragraph (3) of the definition of "Physician services", remove "of services as defined in § 400.202 of this chapter".

PART 416—AMBULATORY SURGICAL SERVICES

M. Part 416 is amended as set forth below.

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 416.42 [Amended]

2. In § 416.42, in paragraph(b)(2), "as defined in § 410.68(b) of this chapter" is removed.

§ 416.61 [Amended]

3. In § 416.61, in paragraph (b), "include items and services" is revised to read "include services", and "of part 405" is removed.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

N. Part 417 is amended as set forth below.

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e-5, and 300e-9); and 31 U.S.C. 9701.

§ 417.1 [Amended]

2. In § 417.1, the following changes are made:

a. The definitions of "Secretary" and "Significant business transaction" are removed.

b. In the definition of "Furnished", "maid" is corrected to read "made", and "dierctly" is corrected to read "directly".

§ 417.101 [Amended]

3. In § 417.101, in paragraph (c), "§§ 417.168 and 417.169," is revised to read

"§ 417.142(g) and (h),".

4. In § 417.126, the following changes are made:

a. In paragraph (b)(1), "(as defined in paragraph (c) of this section)" is revised to read "(as defined in § 400.200 of this chapter)".

b. Paragraph (c) is revised to read as set forth below.

c. Paragraphs (d) and (e), the first time they appear, are removed.

§ 417.126 Recordkeeping and reporting requirements.

* * * * *

(c) *Business transaction defined.* As used in paragraph (b) of this section, a business transaction is any of the following kinds of transactions:

(1) Sale, exchange, or lease of property.

(2) Goods, services, or facilities furnished for a monetary consideration, including management services but not including—

(i) Salaries paid to employees for services performed in the normal course of their employment; or

(ii) Health services furnished to the HMO's enrollees by hospitals and other providers and by HMO staff, medical groups, IPAs, or any combination of these entities.

* * * * *

§ 417.143 [Amended]

5. In § 417.143, in paragraph (b)(2), "417.168 and 427.169 of subpart F." is revised to read "§ 417.142(g) and (h).".

Subpart E [Removed]

6. Subpart E, consisting of §§ 417.150 through 417.159, is removed and reserved.

§ 417.404 [Amended]

7. In § 417.404, in paragraph (a)(1), "§ 117.142" is revised to read "§ 417.142".

§ 417.416 [Amended]

8. In § 417.416, in paragraph (d)(1),"(as defined in § 491.2 of this chapter)" is removed.

§ 417.602 [Removed]

9. § 417.602 is removed.

§ 417.604 [Amended]

10. In § 417.604, in paragraph (b)(3), the parenthesis preceding "§ 427.440(b)(2)" is moved to precede "under".

§§ 417.646, 417.658, and 417.690 [Amended]

11. in § 417.646 introductory text, § 417.658, and § 417.690(c), "final and binding" is revised to read "binding".

§ 417.800 [Amended]

12. In § 417.800, the definition of "Medicare enrollee" is removed.

PART 418—HOSPICE CARE

O. Part 418 is amended as set forth below.

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 418.3 [Amended]

2. In § 418.3, the definition of "Physician" is removed.

§ 418.98 [Amended]

3. In 418.98(b)(2), "An ICF" is revised to read "An NF".

§ 418.202 [Amended]

4. In § 418.202, in paragraph (c), "as defined in § 410.20 of this chapter" is removed.

PART 420—PROGRAM INTEGRITY: MEDICARE

P. Part 420 is amended as set forth below.

1. The authority citation for part 420 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. § 420.200 is revised to read as follows:

§ 420.200 Basis, scope, and applicability.

(a) *Basis and scope.* This subpart is based on sections 1124, 1124A, 1126, and 1861(v)(1)(I) of the Act. It sets forth requirements for providers, Part B suppliers, health maintenance organizations, and intermediaries and carriers to disclose information about the following matters and persons.

(1) The hiring of an intermediary's former employees by a provider.

(2) Any person who—

(i) Has an ownership or control interest in the provider or supplier or serves as the agent or managing employee of the provider or supplier;

(ii) Has been convicted of a criminal offense, subjected to a civil money penalty, or excluded from the program, as a result of any activities related to involvement in Medicare, Medicaid, the Maternal and Child Health program under title V of the Act, or the Social Services program under title XX of the Act, at any time since the inception of these programs; or

(iii) Has an ownership or control interest in, or is the agent or managing employee of, an entity that has been sanctioned as described in paragraph (a)(2)(ii) of this section.

(3) Significant business transactions between the provider or supplier and any subcontractor or wholly owned supplier.

(b) *Applicability.* The following are subject to the requirements of this subpart as disclosing entities:

(1) A provider of services as defined in section 1861(u) of the Act or a Part B supplier.

(2) A clinical laboratory.

(3) A renal disease facility.

(4) A rural health clinic.

(5) A Federally qualified health center.

(6) A health maintenance organization as defined in section 1301(a) of the PHS Act.

(7) A Medicare intermediary or carrier.

(8) A Medicare+Choice organization, as defined in section 1859 of the Act.

(9) A managed care entity as defined in section 1932 of the Act.

3. In § 420.201, the following changes are made:

a. The definition of "Significant business transaction" is removed.

b. The definitions of "Disclosing entity", "Other disclosing entity", "Indirect ownership interest" and "Ownership interest" are revised and the newly revised definition of *Other disclosing entity* is transferred to proper alphabetical order, to read as follows:

§ 420.201 Definitions.

* * * * *

Disclosing entity means any of the entities specified in § 420.200(b).

Indirect ownership interest means an ownership interest in an entity that has a direct or indirect ownership interest in a disclosing entity.

* * * * *

Other disclosing entity means any entity (other than an individual practitioner or group of practitioners) that—

(1) Is not listed in § 420.200 (b) and does not participate in Medicare; but

(2) Is required to disclose ownership and control information because it furnishes health-related services under any of the programs established under title V, XIX, or XX of the Act, or serves as a Medicaid fiscal agent.

* * * * *

Ownership interest means the possession of equity in the capital, the stock, or the profits of a disclosing entity.

* * * * *

§ 420.301 [Amended]

4. In § 420.301, the definition of "Provider" is removed.

PART 421—INTERMEDIARIES AND CARRIERS

Q. Part 421 is amended as set forth below.

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§§ 421.1 and 421.3 [Revised]

2. §§ 421.1 and 421.3 are revised to read as follows:

§ 421.1 Basis and scope.

(a) *Basis.* (1) This part is based on the indicated provisions of the following sections of the Act:

1124—Requirements for disclosure of certain information.

1816 and 1842—Use of organizations and agencies to make Medicare payments to providers and suppliers of covered services.

(2) Section 421.118 is also based on 42 U.S.C. 1395b-1(a)(1)(F), which authorizes demonstration projects involving intermediary agreements and carrier contracts.

(b) *Scope.* This part sets forth—

(1) The procedures for selecting intermediaries and carriers;

(2) The requirements for approval of intermediary agreements and carrier contracts;

(3) The functions that intermediaries and carriers are required to perform;

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(4) The criteria for—

(i) Evaluating intermediary and carrier performance;

(ii) Designating intermediaries and carriers to serve a class of providers on a regional or national basis; and

(iii) Assigning and reassigning providers or suppliers to particular intermediaries.

(5) CMS's authority to perform certain functions directly or by contract; and

(6) The appeal rights of intermediaries and carriers dissatisfied with specified adverse actions.

§ 421.3 Definition.

For purposes of designation of intermediaries (§ 421.117) and application of performance criteria and standards (§§ 421.120 and 421.122) "intermediary" includes a Blue Cross plan that has entered into a CMS-approved subcontract with the Blue Cross and Blue Shield Association to perform intermediary functions.

PART 422—MEDICARE+CHOICE PROGRAM

R. Part 422 is amended as set forth below.

1. The authority citation for part 422 continues to read as follows:

Authority: Secs.1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–21 through 1395w–27, and 1395hh).

§ 422.500 [Amended]

2. In § 422.500, the definition of "Significant business transaction" is removed.

§ 422.562 [Amended]

3. In paragraph (b)(3)(v), "DAB" is revised to read "Departmental Appeals Board".

PART 424—CONDITIONS FOR MEDICARE PAYMENT

S. Part 424 is amended as set forth below.

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.3 [Amended]

2. In § 424.3, the definition of "ICD–9-CM" is removed.

§ 424.20 [Amended]

3. In § 424.20(e)(2), "neither of whom has" is revised to read "who does not have".

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

Part 430 is amended as set forth below.

1. The authority citation for part 430 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 430.25 [Amended]

2. In § 430.25(c)(2), "SNF, ICF, or ICF/MR" is revised to read "NF or ICF/MR".

§ 430.30 [Amended]

3. In § 430.30(e), the language following "under this subpart:" is revised to read as follows:

§ 430.30 Grants procedures.

* * * * *

(e) * * *

§ 74.12—Forms for applying for HHS financial assistance.

§ 74.23—Cost sharing or matching.

§ 74.25—Revision of budget and program plans.

§ 74.52—Financial reporting.

§ 430.62 [Amended]

4. In § 430.62, the name and address "Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement, and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone: (301) 594–8261" is revised to read "Centers for Medicare & Medicaid Services, Office of Hearings, 7500 Security Boulevard, Baltimore, MD 21244–1850".

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

U. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Throughout this subpart E, all references to "skilled nursing facility" are removed.

§ 431.57 [Amended]

3. In § 431.57, the following changes are made:

a. In paragraphs (b) and (c),"subchapter" is revised to read "chapter".

b. In paragraph (e), "of this part" is removed.

§ 431.200 [Amended]

4. In § 431.200, remove "skilled nursing facilities and".

§ 431.201 [Amended]

5. In § 431.201:

a. In the definition of "Action", remove "skilled nursing facilities and".

b. The definition of "Date of action" is removed.

§ 431.206 [Amended]

6. In § 431.206, in paragraph (c)(3), remove "a skilled nusring facility or".

§ 431.210 [Amended]

7. In § 431.210, in paragraph (a), remove "State, skilled nursing facility, or nursing facility" and add in its place "State or nursing facility".

8. Section 431.211 is revised to read as follows:

§ 431.211 Advance notice.

Except as permitted under §§ 431.213 and 431.214, the State or local agency must mail the notice required under § 431.206(c)(2) through (c)(4) at least 10 days before the intended effective date of the action.

9. In § 431.213, the following changes are made:

a. The introductory text and paragraph (h) are revised to read as set forth below.

b. Remove the semicolons at the end of paragraphs (a) through (g) and add periods in their place, and remove the "or" after paragraph (g).

§ 431.213 Exceptions to advance notice requirements.

The agency may mail the notice no later than the effective date of the action or the date of the determination, as applicable, under any of the following circumstances:

* * * * *

(h) The discharge or transfer of the recipient will be effective in less that 10 days and the timing exception of § 483.12(a)(5)(ii) of this chapter applies.

10. In § 431.214, the introductory text is revised to read as follows:

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the effective date of the action or the date of the determination, as applicable, if—

* * * * *

§ 431.220 [Amended]

11. In § 431.220, in paragraph (a)(3), remove "skilled nursing facility or".

§ 431.241 [Amended]

12. In § 431.241, in paragraph (c), remove "skilled nursing facility or".

§ 431.242 [Amended]

13. In § 431.242, in paragraph (a)(2), remove "skilled nursing facility".

14. In § 431.610, the following changes are made:

a. In paragraph (g)(1), "subchapter" is revised to read "chapter".

b. Paragraph (g)(3) is revised to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(g) * * *

(3) Have qualified personnel perform on-site inspections at least once during each certification period, or more often if there is a compliance question.

* * * * *

15. In § 431.620, paragraph (b) is revised to read as follows:

§ 431.620 Agreement with State mental health authority or mental institutions.

* * * * *

(b) *Definition. Institution for mental diseases (IMD)* has the meaning given the term in § 400.203 of this chapter.

* * * * *

§ 431.701 [Amended]

16. In § 431.701, the following changes are made:

a. Under the definition of "Nursing home", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2).

b. In newly designated paragraph (2), "subchapter" is revised to read "chapter".

17. In § 431.804, the definitions of "active case" and "administrative period" are revised to read as follows:

§ 431.804 Definitions.

* * * * *

Active case means an individual or family that the State agency has determined to be currently eligible for Medicaid.

Administrative period means the 2-month period (review month and preceding month) during which a case error is not cited for the State agency's failure to take any action required by a change in case circumstances.

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

V. Part 433 is amended as set forth below.

1. The authority citation for part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 433.1 [Removed]

2. § 433.1 is removed.

3. In subpart A, a new § 433.5 is added, to read as follows:

§ 433.5 Basis and scope.

(a) *Basis.* Most of the sections in this subpart identify the statutory provisions on which the rules are based. Certain portions of section 1902(a) of the Act are the basis for general administrative requirements such as those for accounting systems, cost allocation, reporting, and the handling of checks that are uncashed or canceled.

(b) *Scope.* This subpart sets forth the conditions for, and the rates of, FFP and the general administrative requirements related to the State's fiscal activities.

4. Section 433.111 is amended to revise the section heading and paragraph (b) to read as follows:

§ 433.111 Terminology.

* * * * *

(b) *Mechanized claims processing and information retrieval system* or *system* means the system of hardware and software used to process Medicaid claims and to produce and retrieve services utilization and management information required by the Medicaid single State agency and the Federal Government for program administration and auditing.

(1) The claims are from providers of medical care and services furnished to recipients under the Medicaid program.

(2) The system consists of the following:

(i) Required subsystems specified in the State Medicaid Manual.

(ii) Required changes to the required system or subsystem, published in accordance with § 433.123, and specified in the State Medicaid Manual.

(iii) System enhancements approved by CMS.

(3) Eligibility determination systems are not part of the claims processing and information retrieval system or enhancements to that system.

5. In § 433.304, the following changes are made:

a. The definitions of "Provider" and "Recoupment" are removed.

b. The definitions of "Abuse", "Fraud", "Overpayment", and "Third party" are revised; and a definition of "Sixty-day period" is added to read as set forth below.

§ 433.304 Definitions.

Abuse has the meaning given the term in § 455.2 of this chapter.

* * * * *

Fraud has the meaning given the term in § 455.2 of this chapter.

Overpayment means the portion of a Medicaid payment to a provider—

(1) That is in excess of the amount allowable for the services under section 1902 of the Act and implementing regulations; and

(2) That must be refunded to CMS by the State under section 1903 of the Act and this subpart.

* * * * *

Sixty-day period means the 60 calendar days immediately following discovery of an overpayment, allowed for the State agency to recover or seek to recover the overpayment.

Third party has the meaning given the term in § 433.136.

PART 434—CONTRACTS

W. Part 434 is amended as set forth below.

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 434.2 [Corrected]

2. In § 434.2, the definition of "Prepaid health plan", "Medical agency" is corrected to read "Medicaid agency".

§ 434.6 [Amended]

3. In § 434.6(a)(1), "appendix G;" is revised to read "appendix A;".

§ 434.21 [Amended]

4. In § 434.21(b)(3), "Skilled nursing facility (SNF) services" is revised to read "Nursing facility services".

PART 440—SERVICES: GENERAL PROVISIONS

X. Part 440 is amended as set forth below.

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.10 [Amended]

2. In § 440.10(b), "SNF and ICF services" is revised to read "NF services".

3. In § 440.20, the following changes are made:

a. The introductory text of paragraph (b) and paragraph (b)(1) are revised to read as set forth below.

b. In paragraph (b)(2), "(as defined in §§ 405.2401 and 491.2 of this chapter)" is removed.

c. In paragraph (c), second sentence, "furnishd" is corrected to read "furnished".

§ 440.20 Outpatient hospital services and rural health clinic services.

* * * * *

(b) *Rural health clinic services* means the following services when they are furnished by a rural health clinic that has been certified in accordance with part 491 of this chapter, and by practitioners who are acting within the scope of their practice under State law and who meet the conditions specified in this paragraph:

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(1) Services furnished by a physician in the clinic and services furnished away from the clinic if the physician's contract with the clinic so provides.

4. In § 440.40, paragraph (a) is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in institutions for mental diseases), EPSDT, and family planning services and supplies.

(a) *Nursing facility services.* (1) "Nursing facility services for individuals age 21 or older other than services in an institution for mental disease" means inpatient care that meets the requirements of paragraphs (a)(2) and (a)(3) of this section and includes the following:

(i) Skilled nursing care and related services for residents who require medical or nursing care.

(ii) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(iii) Health related care and services for individuals who, because of their mental or physical condition, require, on a regular basis, services that—

(A) Are above the level of room and board; and

(B) Must be made available on an inpatient basis.

(2) The services must be ordered by, and furnished under the direction of, a physician.

(3) The services must be provided by one of the following:

(i) A facility or distinct part of a facility that is certified as meeting the requirements for participation that are set forth in subpart B of part 483 of this chapter.

(ii) If specified in the State plan, a swing-bed hospital that has CMS approval to furnish SNF services under Medicare.

(iii) Any facility located on an Indian reservation if the facility is certified by the Secretary as meeting the requirements of subpart B of part 483 of this chapter.

* * * * *

§ 440.50 [Amended]

5. In paragraph (a) introductory text, "skilled" and "by a physician" are removed.

6. In § 440.70. paragraph (c) is revised to read as follows:

§ 440.70 Home health services.

* * * * *

(c) Services furnished to a recipient whose place of residence is a hospital or a nursing facility are not "home health services". However, home health services may be furnished to residents of an ICF/MR if they are services other than those required under subpart I of part 483 of this chapter. For example, a registered nurse may provide short-term care for a recipient in an ICF/MR to avoid having to transfer the recipient to a nursing facility.

* * * * *

§ 440.80 [Amended]

7. In § 440.80(c)(3), "A skilled nursing facility" is revised to read "A nursing facility".

8. In § 440.140, the following changes are made:

a. The section heading is revised to read as follows: "§ 440.140 Inpatient hospital services and nursing facility services for individuals age 65 or older in institutions for mental diseases."

b. In paragraph (a), introductory text, "(b), (c), and (e)" is removed.

c. In paragraph (a)(2), "subpart H of" is removed.

§ 440.165 [Amended]

9. Section 440.165 is amended by revising paragraph (b) to read as follows:

§ 440.165 Nurse-midwife service.

* * * * *

(b) "Nurse-midwife" means a registered professional nurse who meets the applicable qualifications set forth in § 400.210(b) of this chapter.

§ 440.166 [Amended]

10. In § 440.166, in paragraph (d), "this subchapter." is revised to read "this chapter.".

§ 440.220 [Amended]

11. In § 440.220, in paragraph (a)(3), "skilled" is removed.

§ 440.250 [Amended]

12. In § 440.250, the following changes are made:

a. In paragraph (a), "skilled nursing facility services" is revised to read "nursing facility services".

b. In paragraph (m), "(as defined in § 440.255)" is removed.

13. Paragraph (b)(1) is revised to read as follows:

§ 440.255 Limited services available to certain aliens.

* * * * *

(b) * * *

(1) Emergency services as defined in § 447.53(b) of this chapter.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Y. Part 441 is amended as set forth below.

1. The authority citation for part 441 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.1 [Amended]

2. In § 441.1, the following changes are made:

a. The word "subchapter", wherever it appears, is revised to read "chapter".

b. Revise "intermediate care facility services for the mentally retarded" to read "nursing facilities and intermediate care facilities for persons with mental retardation".

§ 441.15 [Amended]

3. In § 441.15, the following changes are made:

a. In the introductory text, the word "subchapter" is revised to read "chapter".

b. In paragraph (b)(2), "skilled" and "individuals;" are removed.

c. In paragraph (b)(3), "skilled nursing facility" is revised to read "nursing facility".

4. Section 441.17 is revised to read as follows:

§ 441.17 Laboratory services.

(a) The plan must provide for payment for laboratory services as defined in § 440.30 of this chapter, if they are furnished by entities that meet the following additional requirements, as appropriate:

(1) For hospital-based laboratories, the requirements of § 482.27 of this chapter.

(2) For services furnished by rural health clinics, the requirements of § 491.9(c)(2) of this chapter.

(3) For NF-based laboratories, the requirements of § 483.75(j) of this chapter

(b) Laboratory records must contain the name (or other identifier approved by the Medicaid agency) of the person from whom the specimen was taken.

§ 441.100 [Amended]

5. In § 441.100, ", skilled nursing services, and intermediate care facility services" is revised to read "and nursing facility services".

§ 441.150 [Amended]

6. In § 441.150, "subchapter" is revised to read "chapter".

§ 441.152 [Amended]

7. In § 441.152, the following changes are made:

a. The designation "(a)" is removed and "§ 441.154" is revised to read"§ 441.153".

b. The designations "(1)", "(2)", and "(3)" are revised to read "(a)", "(b)", and "(c)", respectively.

c. Paragraph (b) is removed.

§ 441.155 [Amended]

8. In § 441.155, the following changes are made:

a. In paragraph (a), "to the extent that" is revised to read "to the point at which".

b. Paragraph (d) is removed.

§ 441.181 [Amended]

9. In paragraph (a)(2), the parenthetical statement at the end is removed.

§ 441.302 [Amended]

10. In § 441.302, the following changes are made:

a. Throughout § 441.302, "a NF" is revised to read "an NF".

b. In § 441.302(d), "an SNF, ICF, or ICF/MR" is revised to read "an NF or ICF/MR".

§ 441.354 [Amended]

11. In § 441.354, the following changes are made:

a. In paragraph (b)(1), "an SNF or ICF" is revised to read "an NF", and "(NF effective October 1, 1990)" is removed.

b. In paragraph (c), in the "P" and "Q" factors of the formula, "for SNF and ICF" is revised to read "for NF", and "(NF effective October 1, 1990)" is removed.

PART 442—STANDARDS FOR PAYMENT TO NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Z. Part 442 is amended as set forth below.

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.2 [Amended]

2. In § 442.2, the definition of "Immediate jeopardy" is revised to read as follows:

§ 442.2 Terms.

* * * * *

Immediate jeopardy has the meaning given that term in § 488.1 of this chapter.

* * * * *

PART 447—PAYMENT FOR SERVICES

AA. Part 447 is amended as set forth below.

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Subparts B and C are redesignated as subparts C and D, respectively.

3. The undesignated centered heading "Cost Sharing" is removed and the following is added in its place:

* * * * *

Subpart B—Cost Sharing

* * * * *

§ 447.50 [Amended]

4. In § 447.50, the following changes are made:

a. The heading of § 447.50 is revised to read "Basis and purpose.".

b. The designation "(a)" is removed.

c. "§§ 447.51 through 447.59 prescribe " is revised to read "this subpart prescribes".

5. The undesignated centered heading immediately preceding § 447.51 is removed.

§ 447.51 [Amended]

6. In § 447.51, the following changes are made:

a. The heading of § 447.51 is revised to read "Enrollment fees and premiums or similar charges: Requirements and options.".

b. In paragraph (a), "subchapter" is revised to read "chapter".

§ 447.52 [Amended]

7. In § 447.52, the heading is revised to read "Enrollment fees and premiums or similar charges: Minimum and maximum income-related charges.".

8. The undesignated centered heading immediately preceding § 447.53 is removed.

9. In § 447.53, the following changes are made:

a. The heading of § 447.53 is revised to read as set forth below.

b. The heading for paragraph (a) is revised to read "Basic rule.".

c. Paragraphs (b) and (c) are revised to read as follows:

§ 447.53 Deductibles, coinsurance, and copayment, or similar charges: General rules.

* * * * *

(b) *Exceptions.* The plan may not provide for imposition of a deductible, coinsurance, copayment, or similar charge for the following services furnished to categorically needy or medically needy individuals:

(1) *Services to children.* This means services to individuals under 18 years of age or (at State option) to individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over but under 21.

(2) *Services related to pregnancy.* This means services furnished to pregnant women if the services are related to the pregnancy or to any other condition that may complicate the pregnancy. These services include the following:

(i) Routine prenatal care.

(ii) Labor and delivery.

(iii) Routine postpartum care.

(iv) Family planning services.

(v) Services for complications likely to affect pregnancy or delivery, such as hypertension, diabetes, or urinary tract infection.

(vi) Services furnished during the postpartum period for conditions or complications related to the pregnancy.(The postpartum period begins on the last day of the pregnancy and ends on the last day of the month in which the subsequent 60-day period ends.)

(3) *Services to individuals in institutions.* This means services furnished to any individual who—

(i) Is an inpatient of a hospital, NF, other medical institution, or ICF/MR; and

(ii) Is required, as a condition for receiving services in the institution, to contribute to the medical care costs all but the minimum amount of income he or she needs for personal expenses. (Sections 435.725, 435.733, 435.832, and 436.832 of this chapter specify the groups to which this requirement applies.)

(4) *Emergency services.* This means services furnished in a hospital, clinic, office, or other facility that is equipped to furnish emergency services, that is, services that are required after the sudden onset of a medical condition manifesting itself by acute symptoms so severe (including severe pain) that failure to provide immediate medical attention could reasonably be expected to result in—

(i) Serious jeopardy to the patient's health;

(ii) Serious impairment of bodily functions; or

(iii) Serious dysfunction of any bodily organ or part.

(5) *Family planning services.* This means family planning services furnished to individuals of child-bearing age.

(6) *Hospice care.* This means hospice care as defined in section 1905(o) of the Act.

(c) *Optional exclusions.* States may, at their option—

(1) Exempt from cost sharing all services furnished to pregnant women; and

(2) Exempt from copayment charges any HMO services furnished to medically needy Medicaid enrollees.

* * * * *

§ 447.54 [Amended]

10. In § 447.54, the section heading is revised to read: "Maximum allowable cost sharing amounts.".

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11. The undesignated center heading immediately preceding § 447.59 is removed.

12. § 447.59 is revised to read as follows:

§ 447.59 Federal financial participation (FFP): Limits related to cost sharing.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, FFP is not available for expenditures for cost sharing amounts (enrollment fees or premiums, deductibles, coinsurance, copayment, or similar charges) that a recipient should have paid.

(b) *Exception.* FFP is available for the amounts that the agency pays as bad debts of providers under § 447.57. (We note that FFP is not available for payments the agency makes on behalf of an ineligible individual even if he or she has paid any required premium or enrollment fee.)

13. The undesignated center headings immediately preceding §§ 447.251, 447.257, 447.271, and 447.280 are removed.

14. Section 447.253 is amended to revise paragraph (b)(1)(ii)(B) to read as follows:

§ 447.253 Other requirements.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) If a State elects to cover services furnished at an inappropriate level of care (hospital inpatient services furnished to patients who require nursing facility level of care), the State's methods and standards specify that payment for this type of care is at the lower rates appropriate for nursing facility care, consistent with section 1861(v)(1)(G) of the Act; and

* * * * *

§ 447.257 [Amended]

15. The heading of § 447.257 is revised to read "Limits on FFP.".

§ 447.272 [Amended]

16. In § 447.272, paragraph (c), "§§ 447.296 through 447.299." is revised to read "subpart E.".

§ 447.280 [Amended]

17. The heading of § 447.280 is revised to read "Special rules for swing-bed hospitals.".

Subpart F [Amended]

18. All undesignated center headings in subpart F are removed.

§ 447.331 [Amended]

19. In § 447.331, in paragraph (a), "set forth in paragraph (b)" is revised to read "set forth in paragraph (b) of this section".

20. In § 447.332, the following changes are made:

a. In paragraph (a)(1) introductory text, "will establish" is revised to read "establishes".

b. In paragraph (a)(3), "will identify" is revised to read "identifies".

c. Paragraph (b) is revised to read as follows:

§ 447.332 Upper limits for multiple source drugs.

* * * * *

(b) *Specific upper limits.* (1) The agency's payments for multiple source drugs identified and listed in accordance with paragraph (a) of this section may not exceed, in the aggregate, payment levels determined by applying, for each drug entity—

(i) A reasonable dispensing fee established by the agency; plus

(ii) An amount established by CMS that is equal to 150 percent of the published price at which the least costly therapeutic equivalent can be purchased by pharmacists.

(2) In selecting the size of the drug entity, the agency must—

(i) For non-liquids commonly available in quantities of 100 tablets or capsules, use that size;

(ii) For non-liquids not commonly available in quantities of 100 tablets or capsules, use the commonly listed package size; and

(iii) For liquids, use the commonly listed package size.

(3) In determining the least costly equivalent, the agency must use all available national compendia.

§ 447.333 [Amended]

21. In § 447.333, in paragraphs (b)(1)(i) and (b)(1)(ii), "this subpart" is revised to read "this part".

§ 447.334 [Amended]

22. In § 447.334, the following changes are made:

a. "skilled nursing facility services" is revised to read "nursing facility services".

b. "and intermediate care facility services" is removed.

PART 455—PROGRAM INTEGRITY: MEDICAID

BB. Part 455 is amended as set forth below.

1. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 455.2 [Amended]

2. In § 455.2, the following changes are made:

a. The definitions of "Practitioner" and "Suspension" are removed.

b. The definition of "Exclusion" is revised to read as follows:

§ 455.2 Definitions.

* * * * *

Exclusion means denial of participation in the Medicaid program for a provider that has defrauded or abused the program, or been convicted of a program-related offense under a Federal, State, or local law.

* * * * *

3. In § 455.3, the following changes are made:

a. The introductory text is republished and paragraph (a) is revised to read as set forth below.

b. In paragraph (b), "or suspended practitioners" is removed.

c. In paragraph (c), "or suspension" is removed.

§ 455.3 Other applicable regulations.

Part 1002 of this title sets forth the following:

(a) State plan requirements for excluding providers for fraud or abuse or for conviction of program-related crimes.

* * * * *

4. Section 455.100 is revised to read as follows:

§ 455.100 Basis and scope.

(a) This subpart implements sections 1124, 1126, 1902(a)(38), and 1903(i)(2) of the Act.

(b) It sets forth State plan requirements for disclosure of information regarding—

(1) Ownership and control of providers and fiscal agents, and their subcontractors;

(2) Persons convicted of criminal offenses related to their involvement in any program under Medicare, Medicaid, or the social services program under title XX of the Act; and

(3) Business transactions between providers and their subcontractors or wholly owned suppliers.

(c) It also provides instructions for determining ownership or control percentages, and specifies the penalties for failure to furnish the required information timely.

§ 455.101 [Amended]

5. In § 455.101, the definition of "Significant business transaction" is removed, and the definitions of "Indirect ownership interest" and "Ownership interest" are revised to read as follows:

§ 455.101 Definitions.

* * * * *

Indirect ownership interest has the meaning given the term in § 420.201 of this chapter.

* * * * *

Ownership interest has the meaning given the term in § 420.201 of this chapter.

* * * * *

PART 456—UTILIZATION CONTROL

CC. Part 456 is amended as set forth below.

1. The authority citation for part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart A [Amended]

2. In subpart A, the following changes are made:

§ 456.1 [Amended]

a. In § 456.1, the following changes are made:

1. In paragraph (b)(2), in the last full sentence of the introductory text, "and intermediate care facilities (ICF's)." is revised to read "and ICFs/MR.".

2. In paragraph (b)(5), "(IMD's)" is revised to read "(IMDs)", and "ICF's" is revised to read "ICFs/MR".

b. § 456.5 is revised to read as follows:

§ 456.5 Evaluation criteria.

(a) The agency must establish and use written criteria for evaluating the quality and appropriateness of Medicaid services.

(b) The utilization review (UR) plan must provide that the UR committee—

(1) Develops written criteria for assessment of the need for admission and the need for continued stay; and

(2) Develops more extensive written criteria for cases that its experience shows are—

(i) Associated with high costs;

(ii) Associated, frequently, with the furnishing of excessive services; or

(iii) Attended by physicians whose patterns of care are frequently found to be questionable.

c. A new § 456.10 is added, to read as follows:

§ 456.10 Definitions.

As used in this part—

Medical care appraisal norms or *norms* means numerical or statistical measures of usually observed performance; and

Medical care criteria or *criteria* means predetermined elements against which aspects of the quality of a medical service may be compared.

Subpart C—Utilization Control: All Hospitals

3. In subpart C, the following changes are made:

a. The heading of subpart C is revised to read as set forth above.

b. All undesignated centered headings in subpart C are removed.

c. § 456.50 is revised to read as follows:

§ 456.50 Scope.

This subpart sets forth the requirements that all hospitals must meet for certification of need for care, plan of care, and utilization review (UR) plans.

§ 456.51 [Removed]

d. Section 456.51 is removed.

456.60 [Amended]

e. In § 456.60, in paragraph (b)(1), "(as defined in § 491.2 of this chapter)" is removed.

f. § 456.100 is revised to read as follows:

§ 456.100 UR plan: Basic requirement.

The State plan must provide that each hospital furnishing inpatient services under the plan has in effect a written UR plan that meets the requirements of this subpart.

§ 456.101 [Removed]

g. § 456.101 is removed.

§ 456.111 [Amended]

h. In § 456.111, the following changes are made:

1. In paragraph (d), "§ 456.70." is revised to read "§ 456.80.".

2. In paragraph (h), "(or, in an ICF/MR, the mental retardation professional)" is inserted immediately before "believes continued stay is necessary.".

i. Section 456.133 is revised to read as follows:

§ 456.133 Subsequent continued stay review dates.

The UR plan must provide as follows:

(a) The committee assigns subsequent continued stay review dates in accordance with §§ 456.128 and 456.134(a).

(b) The committee assigns a subsequent review date each time it decides that the continued stay is needed and, for a mental hospital patient, it schedules subsequent reviews for at least every 90 days.

(c) The committee ensures that each continued stay review date it assigns is entered in the recipient's record.

j. Section 456.135 is amended to revise paragraphs (f), (g), and (h) to read as follows:

§ 456.135 Continued stay review process.

* * * * *

(f) If the committee, subgroup, or designee finds that a continued stay is not needed, it notifies the recipient's attending physician (in the case of a mental hospital patient, it may be the attending or staff physician) and provides an opportunity for the physician to present his or her views before it makes a final decision.

(g) If the attending or staff physician does not present additional information or clarification of the need for continued stay, the decision of the committee, subgroup, or designees is final.

(h) If the attending or staff physician presents additional information or clarification, at least two physician members of the committee (at least one of which is knowledgeable about mental diseases) review the need for continued stay. If they find that the patient no longer needs inpatient care, their decision is final.

k. Section 456.136 is amended to revise paragraph (b), to read as follows:

§ 456.136 Notification of adverse decision.

* * * * *

(b) The attending physician (or the attending or staff physician in a mental hospital);

* * * * *

§ 456.141 Medical care evaluation studies: Purpose and general description.

l. The section heading is revised to read as set forth above.

Subpart D—Utilization Control: Additional Requirements for Mental Hospitals

4. In subpart D, the following changes are made:

a. The subpart heading is revised to read as set forth above.

b. All undesignated center headings are removed.

c. Section 456.150 is revised to read as follows:

§ 456.150 Scope.

This subpart sets forth the utilization control requirements that mental hospitals must meet in addition to those required of all hospitals as set forth in subpart C of this part.

§§ 456.151 and 456.160 [Removed]

d. §§ 456.151 and 456.160 are removed.

e. § 456.180 is revised to read as follows:

§ 456.180 Individual written plan of care.

For mental hospital patients, the following rules apply:

(a) The plan of care required under § 456.80 must be expanded to include—

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(1) Objectives;
(2) Any orders for therapies or for special procedures recommended for the patient's health and safety; and
(3) Provision for modifying the plan of care as needed.
(b) The attending or staff physician must participate in reviewing the plan at least every 90 days (rather than every 60 days as is required for all other hospitals).

§§ 456.200, 456.201, and 456.205 [Removed]

f. Sections 456.200, 456.201, and 456.205 are removed.
g. Section 456.206 is revised to read as follows:

§ 456.206 Organization of UR committee; disqualification from UR committee membership.

The rules for mental hospitals differ from those set forth in § 456.106 only in that—
(a) One of the physician members of the UR committee must be knowledgeable in the diagnosis and treatment of mental diseases; and
(b) A member is disqualified on the basis of financial interest only if it is an interest in a mental hospital.

§§ 456.211 through 456.213 [Removed]

h. Sections 456.211 through 456.213 are removed.
i. § 456.231 is revised to read as follows:

§ 456.231 Continued stay review: Basic requirement.

The UR plan must provide for a review of each recipient's continued stay in a mental hospital to decide whether it is needed, in accordance with the applicable requirements of subpart C of this part and this subpart.

§ 456.232 [Removed]

j. Section 456.232 is removed.
k. Section 456.233 is revised to read as follows:

§ 456.233 Date of initial continued stay review.

(a) For mental hospital patients, the following rules apply, in addition to those set forth in § 456.128.
(b) If an individual applies for Medicaid while a patient in a mental hospital—
(1) The committee sets the date for initial continued stay review within 1 working day after the hospital receives notice of the application; and
(2) That date may not be later than 30 days after admission of the patient or 30 days after receipt of notice of his or her application for Medicaid, whichever is earlier.

§§ 456.234 through 456.245 [Removed]

l. Sections 456.234 through 456.245 are removed.

Subpart F—Utilization Control: Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)

5. In subpart F, the following changes are made:
a. The heading of subpart F is revised as set forth above.
b. All undesignated center headings in subpart F are removed.
c. Section 456.350 is revised to read as follows:

§ 456.350 Scope.

This subpart sets forth the requirements that ICFs/MR must meet in addition to those specified, for hospitals, in subparts C and D of this part. In applying the rules of those subparts, references to "hospitals" must be read as references to "ICF/MR".
d. § 456.351 is revised to read as follows:

§ 456.351 Definition.

ICF/MR services means services that meet the conditions specified in § 440.150 of this chapter, but exclude services furnished in a religious nonmedical health care institution as defined in § 440.170(b) of this chapter.
e. Section 456.360 is revised to read as follows:

§ 456.360 Certification and recertification of need for inpatient care.

The rules of § 456.60 apply, except that recertification is required every 12 months rather than every 60 days.
f. In § 456.370, the following changes are made:
1. Paragraphs (a) and (b) are revised to read as set forth below.
2. In paragraph (c)(8), "ICF", wherever it appears, is revised to read "ICF/MR".

§ 456.370 Medical, social, and psychological evaluations.

(a) Before admission to an ICF/MR, or before authorization of payment, an interdisciplinary team of health professionals must make a comprehensive medical and social evaluation, and if appropriate, a psychological evaluation, of each applicant's or recipient's need for care in an ICF/MR.
(b) The psychological evaluation must be made not more than 3 months before admission.
* * * * *

§ 456.371 [Amended]

g. In § 456.371, "ICF services" is revised to read "ICF/MR services".
h. § 456.380 is revised to read as follows:

§ 456.380 Individual written plan of care.

The plan of care must meet the requirements set forth in § 456.180 for a plan of care for a mental hospital patient.
i. Section 456.381 is revised to read as follows:

§ 456.381 Reports and evaluations of plans of care.

The rules for mental hospitals, as set forth in § 456.181, also apply to ICFs/MR.
j. § 456.400 is revised to read as follows:

§ 456.400 Utilization review plan: General requirements.

The State plan must—
(a) Provide that each ICF/MR has on file and implements a written UR plan that provides for review of each recipient's need for the services the ICF/MR furnishes, and meets the requirements of this subpart; and
(b) Specify the method used to perform UR, which may be any of the following:
(1) Review conducted by the facility.
(2) Direct review in the facility by individuals who are—
(i) Employed by the medical assistance unit of the Medicaid agency; or
(ii) Under contract to the Medicaid agency.
(3) Any other method.

§ 456.401 [Removed]

k. § 456.401 is removed.
l. Section 456.405 is revised to read as follows:

§ 456.405 UR plan: Administrative requirements.

The UR plan must meet the following requirements:
(a) Specify how and when UR review is performed.
(b) Provide that review is performed by a group of professional personnel that—
(1) Includes at least one physician and one mental retardation professional; and
(2) Does not include any individual who—
(i) Is responsible for the care of the individual being reviewed;
(ii) Is employed by the ICF/MR; or
(iii) Has a financial interest in any ICF/MR.
(c) Describe the UR support responsibilities of the ICF/MR's administrative staff and the procedures used by that staff to take corrective action.

§§ 456.406 and 456.407 [Removed]

m. §§ 456.406 and 456.407 are removed.
n. § 456.411 is revised to read as follows:

§ 456.411 UR plan: Information requirements.

(a) *Recipient records.* The UR plan must provide that each recipient's record contains the information specified in § 456.111 and also the name of the qualified mental retardation professional. (The qualifications for this professional are set forth in § 483.430 of this chapter.)
(b) *Other records and reports, and confidentiality.* The requirements set forth in §§ 456.112 and 456.113 apply also to ICFs/MR.

§§ 456.412 and 456.413 [Removed]

o. §§ 456.412 and 456.413 are removed.
p. In § 456.431, the following changes are made:
1. In paragraph (a), "recipients" is revised to read "recipient's".
2. The section heading and paragraphs (b) introductory text, (b)(1), and (b)(2) are revised to read as follows:

§ 456.431 Continued stay review.

* * * * *

(b) The UR plan requirement for continued stay review may be met by either of the following:
(1) Reviews that apply the criteria specified in § 456.5(b) and are performed in accordance with this subpart.
(2) Reviews that meet the onsite inspection requirements of subpart I of this part provided—
(i) The composition of the independent professional review team meets the requirements of § 456.405; and
(ii) The reviews are conducted at least every 6 months.

§ 456.432 [Removed]

q. § 456.432 is removed.
r. § 456.433 is revised to read as follows:

§ 456.433 Initial continued stay review date.

The UR plan must—
(a) Provide that, when a recipient is admitted to an ICF/MR, the UR committee assigns, for the initial continued stay review, a specific date that is—
(1) Not later than 6 months after admission; and
(2) May be earlier than 6 months after admission if indicated at the time of admission.
(b) Describe the methods and criteria that are the basis for assigning the date; and
(c) Ensure that the date is entered in the recipient's record.

§ 456.434 [Amended]

s. In § 456.434, in paragraph (a), "§ 456.435." is revised to read "the methods and criteria required to be described under § 456.433(b).".

§ 456.435 [Removed]

t. § 456.435 is removed.
u. In § 456.436, the following changes are made:
1. In paragraph (c), "ICF" is revised to read "ICF/MR", "§ 456.411" is revised to read "§ 456.411(a)", "§ 456.432" is revised to read "§ 456.5(b)(1)", and "§ 456.432(b)" is revised to read "§ 456.5(b)(2)".
2. Paragraph (f) is revised to read as set forth below.
3. In paragraphs (g) and (h), "attending physician or" is removed.
4. In paragraph (i), "ICF services" is revised to read "ICF/MR services".

§ 456.436 Continued stay review process.

* * * * *

(f) If the group or subgroup making the review under paragraph (e) of this section finds that a continued stay is not needed, it notifies the recipient's qualified mental retardation professional within one working day of its decision and allows 2 working days from the date of notice for the professional to present his or her views before it makes a final decision.
* * * * *
v. § 456.437 is revised to read as follows:

§ 456.437 Notification of adverse decision.

The UR plan must provide that the UR committee gives written notice of any adverse decision on the need for continued stay—
(a) Not later than 2 days after the final decision; and
(b) To the following:
(1) The administrator of the ICF/MR.
(2) The qualified mental retardation professional.
(3) The Medicaid agency.
(4) The recipient.
(5) If possible, the next of kin or sponsor.

§ 456.438 [Removed]

w. § 456.438 is removed.

Subpart H [Amended]

6. In subpart H, the following changes are made:
a. The undesignated center heading immediately preceding § 456.505 is removed.
b. The heading of § 456.505 is revised to read as follows:

§ 456.505 Basis for waiver of UR requirements.

* * * * *

Subpart I [Removed]

7. Subpart I, consisting of §§ 456.600 through 456.614, is removed and reserved.

§ 456.722 [Amended]

8. In § 456.722(c)(1), in the second sentence, "subpart P and appendix G–O of OMB circular A–102" is removed.

PART 475—PEER REVIEW ORGANIZATIONS

DD. Part 475 is amended as set forth below.
1. The authority citation for part 475 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 475.1 [Amended]

2. In § 475.1, the following changes are made:
a. The introductory text is revised to read "As used in this subchapter—".
b. Definitions of "Affiliate of a payor organization", "Non-facility organization", and "PRO area" are added, in alphabetical order.
c. The heading *Health care facility* is revised to read *Health care facility or facility.*
d. The definitions of "Payor organization" and "Physician" are revised to read as set forth below.

§ 475.1 Definitions.

* * * * *

Affiliate of a payor organization means an organization with a governing body, two or more members of which are—
(1) Governing body members, officers, partners, or 5 percent or more owners of the payor organization; or
(2) Managing employees of an HMO or CMP.
* * * * *

Non-facility organization means a corporate entity that—
(1) Is not a health care facility;
(2) Is not a 5 percent or more owner of a health care facility; and
(3) Is not owned by one or more health care facilities or any association of facilities in the PRO area.

Payor organization means any organization (other than a self-insured employer) that pays providers or practitioners (directly or indirectly) for services that the organization reviews,

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or would review if it entered into a PRO contract.

Physician includes—

(1) An intern, resident, or Federal Government employee authorized under State or Federal law to practice medicine, surgery, or osteopathy in the PRO area; and

(2) An individual licensed to practice medicine in American Samoa or the Northern Mariana Islands.

PRO area means the geographic area designated as the area within which a designated PRO performs utilization and quality control review under its PRO contract with CMS.

§ 475.100 [Amended]

3. In § 475.100, "Social Security" and "as amended by the Peer Review Improvement Act of 1982 (Pub. L. 97–248)" are removed.

§ 475.105 [Amended]

4. In paragraph (b) of § 475.105, "Effective November 15, 1984, the" is removed, and "The" is added in its place, and "will not apply" is revised to read "does not apply".

5. Section 475.106 is revised to read as follows:

§ 475.106 Prohibition against contracting with payor organizations and affiliates of payor organizations.

Payor organizations and their affiliates are not eligible to become PROs for the area in which they make payments unless CMS determines, on the basis of lack of response to an appropriate Request for Proposal, that there is not available any eligible organization that is not a payor organization or affiliate of a payor organization.

§ 475.107 [Amended]

6. In § 475.107, the following changes are made:

a. In the introductory text, "will take" is revised to read "takes".

b. In paragraphs (a) and (b), "Identify" is revised to read "Identifies".

c. In paragraph (c), "Assign" is revised to read "Assigns".

d. In paragraph (d), "award" is revised to read "awards".

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

EE. Part 476 is amended as set forth below.

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 476.1 [Amended]

2. In § 476.1, the following changes are made:

a. The definitions of "Five percent or more owner", "Health care facility or facility", "Health care practitioners other than physicians", "Hospital", "Non-facility organization", "Physician", "Practitioner", "Preadmission certification", "Review responsibility" and "Skilled nursing facility" are removed.

b. The following definitions are revised to read as follows:

§ 476.1 Definitions.

* * * * *

Active staff privileges means authorization, on a regular, rather than an infrequent or courtesy basis—

(1) For a physician or other health care practitioner to order the admission of patients to a facility; and

(2) For a physician to perform diagnostic and treatment services in the facility.

* * * * *

Diagnosis related group (DRG) means a system for classifying inpatient hospital discharges as a basis for Medicare payment under the prospective payment system.

DRG validation means PRO validation to the effect that the DRG classification assigned to a discharge is based on the correct diagnostic and procedural information.

* * * * *

Hospital means a health care institution or distinct part of an institution as defined in section 1861(e) through (g) of the Act, including a religious nonmedical health care institution as defined in section 1861(ss)(1) of the Act.

* * * * *

Peer review means review of services by health care practitioners in the same professional field as the practitioner who ordered or furnished the services.

* * * * *

3. § 476.74 is revised to read as follows:

§ 476.74 General requirements for the assumption of review.

In assuming review responsibility, a PRO must comply with the following conditions:

(a) Assume review responsibility in accordance with the schedule, functions, and negotiated objectives specified in its contract with CMS.

(b) Notify the appropriate Medicare fiscal intermediary or carrier of its assumption of review in particular health care facilities no later than 5 working days after the day it assumes review in the facility.

(c) Maintain and make available for public inspection at its principal business office—

(1) A copy of each agreement with a Medicare intermediary or carrier;

(2) A copy of its current approved review plan, including its method for implementing review; and

(3) Copies of all subcontracts for the conduct of review.

(d) Limit subcontracts for review by health care facilities to review of quality of care. (There is no limit to the types of review that the PRO may subcontract to organizations that are not health care facilities.)

(e) If required by CMS—

(1) Compile statistics based on the criteria specified in § 411.402 of this chapter;

(2) Make limitation of liability determinations in accordance with subpart K of part 411 of this chapter; and

(3) Notify providers regarding these determinations. (Appeals from these determinations are subject to the rules set forth in part 405 of this chapter—subpart G for Part A services, and subpart H for Part B services.)

(f) Make its responsibilities under its contract with CMS primary to all its other interests and activities.

§ 476.86 [Amended]

4. In § 476.86(b), "or SNF care" is removed and "§§ 405.1035, 405.1042, and 405.1137 of this chapter." is revised to read "§ 482.30 of this chapter.".

PART 478—RECONSIDERATIONS AND APPEALS

FF. Part 478 is amended as set forth below.

1. The authority citation for part 478 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 478.46 [Revised]

2. Section 478.46 is revised to read as follows:

§ 478.46 Departmental Appeals Board review and judicial review.

(a) *Board review.* The circumstances under which the Departmental Appeals Board (the "Board") will review an ALJ hearing decision or dismissal are the same as those set forth at 20 CFR 404.970 for Appeals Council review.

(b) *Basis for seeking judicial review.* (1) The affected party may seek judicial review of the Board's decision, or of the ALJ's hearing decision if the Board denies review, if the amount in controversy is $2,000 or more.

(2) The party must file the civil action within 60 days from the date of receipt of the notice of the Board's determination or denial of review.

PART 480—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

GG. Part 480 is amended as set forth below.

1. The authority citation for part 480 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—PRO Information: General Provisions

2. The heading of subpart B is revised to read as set forth above.

3. The undesignated centered heading immediately preceding § 480.101 is removed.

§ 480.101 [Amended]

4. In § 480.101, the following changes are made:

a. The definitions of "Health care facility or facility", "Non-facility organization", and "practitioner" are removed.

b. The definition of *Implicitly identify (ies)* is removed and a new definition of *Implicitly identifies* is added in its place to read as follows:

§ 480.101 Scope and definitions.

* * * * *

(b) * * *

Implicitly identifies refers to data so unique, or to numbers so small, that the identity of a particular patient, practitioner, or reviewer would be obvious.

5. § 480.103 is amended to revise paragraph (b) to read as follows:

§ 480.103 Statutory bases for disclosure of information.

* * * * *

(b) Section 1160 of the Act provides that PRO information must be held in confidence and not disclosed to any person except—

(1) To the extent necessary to carry out the purposes of title XI, part B, of the Act;

(2) In cases and circumstances specified by regulation to ensure adequate protection of the rights and interests of patients, practitioners, and providers of health care; and

(3) As necessary to assist the following agencies in the performance of their duties:

(i) Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse.

(ii) Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health.

(iii) Appropriate State agencies responsible for licensing or certifying providers or practitioners.

(iv) Federal or State health planning agencies that need PROs to furnish them aggregate statistical data on a geographical, institutional, or other basis.

Subpart C—PRO Access to Information and PRO Responsibilities

6. The heading of subpart C is revised to read as set forth above.

7. The undesignated center heading immediately preceding § 480.115 is removed.

Subpart D—Disclosure of Nonconfidential Information

8. The heading of subpart D is revised to read as set forth above.

Subpart E—Disclosure of Confidential Information

9. The heading of subpart E is revised to read as set forth above.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

HH. Part 482 is amended as set forth below.

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 482.30 [Amended]

2. In § 482.30(a)(2), "§ 456.50 through 456.245 of this chapter." is revised to read "part 456 of this chapter.".

§ 482.52 [Amended]

3. In § 482.52, in paragraphs (a)(4) and (a)(5), ", as defined in § 410.69(b) of this chapter," is removed.

PART 483—REQUIREMENTS FOR STATES AND FOR LONG TERM CARE FACILITIES

II. Part 483 is amended as set forth below.

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 483.40 [Amended]

2. In § 483.40, in paragraph (e)(1)(i), "the applicable definition in § 491.2 of this chapter" is revised to read "the qualifications set forth in § 400.210 of this chapter".

§ 483.102 Applicability and evaluation criteria.

3. In § 483.102, the following changes are made:

a. The section heading is revised to read as set forth above.

b. The paragraph heading *Applicability* is inserted immediately after the designation (a).

c. The heading of paragraph (b) is revised to read *Evaluation criteria.*

d. Footnotes 1 and 2 are revised to read as set forth below.

* * * * *

[1] The Diagnostic and Statistical Manual of Mental Disorders is available for inspection at the Centers for Medicare & Medicaid Services, CMS Library, Room C2–07–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, or at the Office of the Federal Register, suite 700, 800 North Capitol St., NW., Washington, DC. Copies may be obtained from the American Psychiatric Association, Division of Publications and Marketing, 4100 K Street, NW., Washington, DC 20005.

* * * * *

[2] The American Association on Mental Retardation's Manual on Classification in Mental Retardation is available for inspection at the Centers for Medicare & Medicaid Services, CMS Library, Room C2–07–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, or at the Office of the Federal Register, suite 700, 800 North Capitol St., NW., Washington, DC. Copies may be obtained from the American Association on Mental Retardation, 1719 Kalorama Rd., NW., Washington, DC 20009.

§ 483.460 [Amended]

4. In § 483.460—

a. In paragraph (b)(1), "that specified plan of care requirements for ICFs" is removed.

b. In paragraph (b)(2), the phrase "physicians must participate in" is removed.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

JJ. Part 485 is amended as set forth below.

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.51 is revised to read as follows:

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§ 485.51 Definition.

As used in this subpart, unless the context indicates otherwise, *Comprehensive outpatient rehabilitation facility, CORF,* or *facility* means a nonresidential facility that is established and operated, at a single fixed location, exclusively for the purpose of providing outpatient diagnostic, therapeutic, and restorative services that are for the rehabilitation of injured, disabled, or sick persons, and that are furnished by, or under the supervision of, a physician.

§ 485.70 [Amended]

3. In § 485.70, the following changes are made:

a. In paragraph (c), "§ 405.1202(f) and (g) of this chapter." is revised to read "§ 484.4 of this chapter."

b. In paragraph (m),"§ 485.705(f) of this chapter." is revised to read "§ 484.4 of this chapter.".

4. In § 485.604, paragraphs (b) and (c) are removed, and a new paragraph (b) is added, to read as follows:

§ 485.604 Personnel qualifications.

* * * * *

(b) A nurse practitioner and a physician assistant must meet the qualifications specified in § 400.210(f) and (g) of this chapter.

* * * * *

§ 485.639 [Amended]

5. In § 485.639, in paragraphs (c)(1)(v) and (c)(1)(vi), ", as defined in § 410.69(b) of this chapter" is removed.

§ 485.705 [Amended]

6. In § 485.705, paragraphs (b)(2) and (c)(8) are revised to read as set forth below.

§ 485.705 Personnel qualifications.

* * * * *

(b) * * *

(2) For a speech/language pathologist, the qualifications set forth in § 484.4 of this chapter.

* * * * *

(c) * * *

(8) A nurse practitioner is a person who must meet one of the requirements specified in § 400.210(f) of this chapter.

* * * * *

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

KK. Part 488 is amended as set forth below.

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 488.1 [Amended]

2. In § 488.1, the following changes are made:

a. The definitions of "Act", "Provider of services or provider", and "State" are removed.

b. The following definition is added in alphabetical order:

§ 488.1 Definitions.

* * * * *

Immediate jeopardy means a situation in which the provider's noncompliance with one or more of the requirements for participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient or resident.

* * * * *

c. In the definition of "Substantial allegation of noncompliance", "raises doubts as to a provider's or supplier's noncompliance" is revised to read "raises doubts as to a provider's or supplier's compliance".

§ 488.56 [Amended]

3. In § 488.56, in paragraph (b) introductory text and paragraph (b)(2), "§ 488.75(i)" is corrected to read "§ 483.75".

4. In § 488.64, the following changes are made:

a. Paragraph (b) is revised to read as set forth below.

b. In paragraphs (c), and (d), "§ 405.1137 of this chapter, or § 482.30 of this chapter, as applicable." is revised to read "§ 482.30 of this chapter.".

c. In paragraph (g), "pursuant to § 405.1137 of this chapter or § 482.30" is revised to read "in accordance with § 482.30 of this chapter".

§ 488.64 Remote facility variances for utilization review requirements.

* * * * *

(b) The Secretary may grant a facility a variance from the utilization review time-frames set forth in § 482.30 of this chapter if the requesting facility can show, to CMS's satisfaction, that it has been unable to comply with those time-frames by reason of lack of sufficient professional personnel available to conduct the reviews.

* * * * *

§ 488.301 [Amended]

5. In § 488.301, the following changes are made:

a. In the definition of "Validation survey", "Secretary" is revised to read "CMS".

b. The definition of "Immediate jeopardy" is removed.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVALS

LL. Part 489 is amended as set forth below.

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1819, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, and 1395hh).

§ 489.3 [Amended]

2. In § 489.3, the definition of "Immediate jeopardy" is revised and a definition of "Supplier approval" is added, in alphabetical order, to read as follows:

§ 489.3 Definitions.

Immediate jeopardy has the meaning given the term in § 488.1 of this chapter.

* * * * *

Supplier approval means approval by CMS for a supplier to receive payment for Medicare covered services it furnishes to Medicare beneficiaries.

PART 491—CERTIFICATION OF CERTAIN FACILITIES

MM. Part 491 is amended as set forth below.

1. The authority citation for part 491 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), and sec. 332 of the Public Health Service Act (42 U.S.C. 254e).

§ 491.2 [Amended]

2. In § 491.2, the following changes are made:

a. The definitions of "Nurse practitioner", "Physician", "Physician assistant", and "Secretary" are removed.

b. The definition of "FQHC" is removed and a new definition of *Federally qualified health center (FQHC)* is added in its place to read as follows:

§ 491.2 Definitions.

* * * * *

Federally qualified health center (FQHC) has the meaning given the term in § 405.2401(b) of this chapter.

* * * * *

§ 491.3 [Amended]

3. In § 491.3, "subpart S of 42 CFR part 405" is revised to read "subparts A through C of part 488 of this chapter.".

PART 493—LABORATORY REQUIREMENTS

NN. Part 493 is amended as set forth below.

1. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act and secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 263a, 1302, and 1395hh).

§ 493.1 [Corrected]

2. In § 493.1, "the sentence following section 1861(s)(13)," is removed.

§ 493.2 [Amended]

3. In § 493.2, the following changes are made:

a. The statements and definitions for "HHS", "Physician", and "State survey agency" are removed.

b. The definition of "immediate jeopardy" is revised to read as set forth below.

c. In the definition of "party", the word "imposed" is inserted immediately before "by CMS".

d. The definitions of "sample", "State" and "Substantial allegation of noncompliance" are revised to read as follows:

§ 493.2 Definitions.

* * * * *

Immediate jeopardy has the meaning given that term in § 488.1 of this chapter.

* * * * *

Sample, in relation to proficiency testing, means the material that is to be tested by the participants in the proficiency testing program.

State includes any political subdivision to which the State has expressly delegated powers sufficient to enable it to enforce requirements equal to, or more stringent than, CLIA requirements.

* * * * *

Substantial allegation of noncompliance has the meaning given that term in § 488.1 of this chapter.

* * * * *

§ 493.57 [Amended]

4. In § 493.57, in paragraph (e)(2), "as defined in subpart C of this part;" is revised to read "as set forth in subpart C of this part;".

§ 493.61 [Amended]

5. In § 493.61, the following changes are made:

a. In paragraph (e)(2), "for a certificate as defined in subpart C of this part; and" is revised to read "for one of the certificates specified in subpart C of this part; and".

b. In paragraph (i)(2), "for a certificate as defined in subpart C of this part; " is revised to read "for any of the certificates specified in subpart C of this part;"

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

OO. Part 498 is amended as set forth below.

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 498.2 [Amended]

2. In § 498.2, the definitions of "Departmental Appeals Board", "OHA", and "OIG" are removed.

§ 498.3 [Amended]

3. In § 498.3:

a. Paragraph (a)(1) is revised to read as set forth below.

b. In paragraph (c), the introductory text is designated as "(1)", paragraph designations "(1)", "(2)", and "(3)" are revised to read "(i)", "(ii)", and "(iii)", respectively.

c. A new paragraph (c)(2) is added to read as set forth below.

d. Paragraph (d) introductory text is revised as set forth below.

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that CMS makes with respect to the matters specified in paragraph (b) of this section, and identifies, in paragraph (c) of this section, matters for which the OIG makes initial determinations and provides appeals procedures. It also specifies, in paragraph (d) of this section, administrative actions that are not subject to appeal under this part.

* * * * *

(c) * * *

(2) Appeals procedures for OIG determinations are set forth in part 1005 of this chapter.

* * * * *

(d) *CMS Administrative actions that are not initial determinations.* CMS administrative actions other than those specified in paragraph (b) of this section are not initial determinations and thus are not subject to appeal under this part. Administrative actions that are not initial determinations (and therefore not subject to appeal under this part) include but are not limited to the following:

* * * * *

§ 498.5 [Amended]

4. In § 498.5(j)(2)(i), "the SNF or ICF" is revised to read "the ICF/MR", and "patients" is revised to read "residents".

§ 498.22 [Amended]

5. In § 498.22, in paragraph (a), the parenthetical statement at the end of the paragraph is removed.

§ 498.40 [Amended]

6. In § 498.40, in paragraph (a)(1), "or the OIG, as appropriate, or with OHA." is removed and "or the Departmental Appeals Board." is added in its place.

§ 498.42 [Amended]

7. In § 498.42, insert a period after "CMS", and remove the remainder of the sentence.

8. Section 498.44 is revised to read as follows:

§ 498.44 Designation of hearing official.

(a) The Chair of the Departmental Appeals Board (the Board) or his or her delegate designates an ALJ or a member or members of the Board to conduct the hearing.

(b) If appropriate, the Chair or the delegate may substitute a different ALJ or member or members of the Board to conduct the hearing.

(c) As used in this part, "ALJ" includes a member or members of the Board who are designated to conduct a hearing.

§ 498.56 [Amended]

9. In § 498.56, in paragraph (b)(5), "SNFs or ICFs" is revised to read "ICFs/MR".

§ 498.82 [Amended]

10. In § 498.82, paragraph (a)(2), the following changes are made:

a. The term "the OHA" is revised to read "the Board".

b. "Departmental Appeals Board" is revised to read "Board".

c. "§ 98.22(c)(3)" is corrected to read "§ 498.22(b)(3)".

11. In § 498.83, paragraph (d) is revised to read as follows:

§ 498.83 Departmental Appeals Board action on request for review.

* * * * *

(d) *Review panel.* If the Board grants a request for review of the ALJ decision, the review is conducted by a panel of three members of the Board designated by the Chair or Deputy Chair.

PP. Nomenclature changes.

1. Throughout this chapter IV:

a. "DAB", wherever it appears, is revised to read "Board".

b. "DAB's", wherever it appears, is revised to read "Board's".

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c. "(DAB)", wherever it appears, is removed.

2. Throughout this chapter IV, "a SNF", and "a NF", wherever they appear, are revised to read "an SNF" and "an NF", respectively.

3. Throughout chapter IV, "intermediate care facility for the mentally retarded" wherever it appears, is revised to read "intermediate care facility for persons with mental retardation and related conditions".

4. In the following locations, "co-payment" wherever it appears, is revised to read "copayment": §§ 447.54(a)(3) (table heading), 447.55(a) and (b), 447.56, and 447.58.

5. In § 447.54(a)(3) text, "co-payments" is revised to read "copayments".

6. In the following locations, "the OIG, as appropriate," is removed: § 498.20(a)(1), § 498.25(b)(1), and § 498.32(a)(1).

7. In the following locations, "or the OIG" is removed: § 498.32(b)(2), § 498.56(a)(2), § 498.56(d), heading and text, § 498.66(b)(2), § 498.78(a), and § 498.83(a), heading and text.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance; Program No. 93.778, Medical Assistance)

Dated: August 8, 2001.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Dated: September 9, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1065 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 401

[CMS–6011–P]

RIN 0938–AK45

Medicare Program; Reporting and Repayment of Overpayments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would supplement and modify the notice of proposed rulemaking that was published on March 25, 1998 (63 FR 14506). That notice proposed to amend the Medicare regulations governing liability for overpayments from the Centers for Medicare & Medicaid services (CMS) to providers, suppliers, and individuals to eliminate application of certain regulations of the Social Security Administration and to replace them with regulations more specific to circumstances involving Medicare overpayments.

This proposed regulation would supplement and modify that notice in order to establish, in regulations, the longstanding resp[onsibility of providers, suppliers, individuals and also managed care organizations contracting with us to report and return overpayments to us. This proposed would establish the timeframe and process for making the reports and returning the overpayments.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 26, 2002.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6011–P, PO Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver, by courier, your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or Centers for Medicare & Medicaid Services, C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–6011–P on each comment.

Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Paul Reed (410) 786–4001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1998 we published in the **Federal Register** (63 FR 14506) a notice of proposed rulemaking that would amend the Medicare regulations governing liability for overpayments to eliminate application of certain regulations of the Social Security Administration and to replace them with regulations more specific to circumstances involving Medicare overpayments.

Section 401.310 of those proposed regulations defined overpayment as those Medicare funds that a provider, supplier, or individual has received in excess of amounts payable under the Medicare statute and regulations. The notice of proposed rulemaking described the types of overpayments, and gave examples of causes of overpayments, such as payments made by Medicare for noncovered services, Medicare payments in excess of the allowable amount for an identified covered service, errors and nonreimbursable expenditures in cost reports, duplicate payments, and Medicare payment when another entity had the primary responsibility for payment (63 FR 14517). It also stated that once a determination and any adjustments in the amount of the overpayments have been made, the remaining amount is a debt owed to the United States Government. After publishing that notice of proposed rulemaking, we received several comments on their provisions. In addition, on June 26, 1998, we published the Medicare+Choice (M+C) interim final rules (63 FR 34968) in which we addressed a process for reporting to us violations of the law, including overpayments. We stated that we wanted M+C organizations to self identify when they had been overpaid. While the amount of estimated overpayments has decreased in recent years, the number and amount of overpayments continue to be a significant issue in the Medicare program.

The June 29, 2000 final M+C regulation (65 FR 40170) eliminated any requirement for self-reporting of overpayments on the basis that it was arguably unfair to impose a self-reporting requirement on M+C organizations, but not on other types of providers and suppliers participating in the Medicare program. The preamble to that regulation stated:

"While we are withdrawing all requirements for self-reporting in this rule, we believe that the required reporting of overpayments is an effective tool for promoting Medicare program integrity generally. Accordingly, HCFA intends to develop policies through separate notice and comment rulemaking in cooperation with the HHS Office of Inspector General that would require all Medicare providers, suppliers, and contractors to report overpayments to HCFA." (65 FR 40265)

With this proposed modification to the March 25, 1998 notice of proposed rulemaking, we intend to issue one comprehensive rule on this subject.

The obligation to report and return overpayments is derived from sections 1870, 1871, and 1102 of the Social Security Act (the Act). Section 1870 of the Act establishes that providers and suppliers are liable for overpayments unless determined to be without fault, as defined in proposed § 401.323, with respect to the overpayments. Individuals may be liable in certain circumstances unless the individual is determined to be without fault, as defined in proposed § 401.355, and the recovery of the overpayment would either defeat the purposes of the statute or be against equity and good conscience.

Section 1102 of the Act requires that the Secretary make and publish such rules and regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is charged under the Act. Under section 1871 of the Act, the Secretary must prescribe such regulations as may be necessary to carry out the administration of the insurance programs under the Medicare statute. In certain contexts, formal guidance requires providers to report overpayments through our Medicare Credit Balance Report, and suppliers to report overpayments through their reporting mechanisms. This proposed rule would further memorialize the longstanding responsibility for all providers, suppliers, individuals, and other entities, including managed care organizations contracting with us, to report overpayments and establish the time frame and process for making those reports.

In addition, section 1128B(a)(3) of the Act establishes that persons are under a legal duty to disclose the occurrence of events affecting the right to payment or benefits by a Federal health care program. Specifically, this section makes it a felony for a person, "having knowledge of the occurrence of any event affecting * * * his initial or continued right to any [Federal health care] benefit or payment * * *, [to conceal or fail] to disclose such event with an intent fraudulently to secure such benefit or payment * * *." Thus, failure to notify us of an overpayment within a reasonable period of time may, in certain circumstances, establish criminal liability, and result in a referral to the Office of Inspector General.

II. Provisions of the Proposed Rule

In this rule we are proposing to modify and supplement the notice of proposed rulemaking that was published in the **Federal Register** on March 25, 1998 (63 FR 14506). We are revising the definition of overpayment to cover not just excess Medicare funds received by a provider, supplier, or individual, but also funds received by other entities. We are also adding a definition of other entities, which defines them as entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422, that are not providers, suppliers, or individuals, that provide Medicare services to Medicare beneficiaries. The new definition makes clear that other entities include managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422. We are also adding a paragraph to memorialize in regulations the responsibility and procedures for returning overpayments to us. The March 25, 1998 notice of proposed rulemaking would amend the Medicare regulations governing liability for overpayments in order to eliminate application of certain regulations of the Social Security Administration and replace them with regulations more specific to circumstances involving Medicare overpayments. This proposed rule would modify and supplement the March 25, 1998 notice of proposed rulemaking. It would require providers, suppliers, and individuals that have identified a Medicare payment received in excess of amounts payable under the Medicare statute and regulations to report and return the overpayment, within 60 days of identifying the overpayment, to the appropriate intermediary or carrier at the correct address. In the case of a managed care organization contracting with us, the managed care organization must, within 60 days of identifying the overpayment, notify us either in a manner consistent with certification of payment data requirements described at 42 CFR 422.502(l) or in a manner consistent with our cost settlement processes described at 42 CFR part 417, subparts O and U, so that we can adjust the identified overpayment appropriately. For overpayments identified by managed care organizations for a period beyond which payment data have already been certified or settled, the managed care organization must notify us in writing of the overpayment within 60 days of identifying or learning of the excess payment, so that we can recover the identified overpayment appropriately. For overpayments identified by other entities, other than managed care organizations, the other entities must notify us in writing of the overpayment within 60 days of identifying or learning of the excess payment, so that we can recover the identified overpayment appropriately. Submission of corrected bills in conformance with our policy, within 60 days, fulfills these requirements for providers, suppliers, and individuals. Our existing certification requirements for M+C organizations, described at § 422.502(l), and cost settlement processes for cost-based contractors, described at 42 CFR part 417, subparts O and U, and this new requirement for overpayments reported after payment certifications have already been submitted, provide the process for notifying, documenting, and correcting overpayments for managed care organizations contracting with us.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60 days notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting comments from the public, including the provider and supplier community, on each of these issues for the information collection requirements discussed below.

§ 401.310(e)—If a provider, supplier, or individual identifies a Medicare payment received in excess of the amounts payable under the Medicare statute and regulations, the provider, supplier, or individual must, within 60 days of identifying or learning of the

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excess payment, notify the intermediary or carrier, in writing, of the reason for the overpayment, and return the overpayment to the appropriate intermediary or carrier, at the correct address.

It is estimated that there will be approximately 906,724 notifications submitted on an annual basis and that it will take 5 minutes per instance for providers, suppliers, or individuals to notify the appropriate intermediary or carrier. The total annual burden associated with this requirement is 75,560 hours.

If a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422 identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations before the payment data have been certified or settled, the managed care organization must notify us either in accordance with certification of payment data requirements described in § 422.502(l) or in accordance with cost settlement processes described in 42 CFR part 417, subparts O and U.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

If a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422 identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations after payment data have been certified or settled, it must notify us, in writing, of the overpayment within 60 days of identifying or learning of the overpayment so that we can recover the identified overpayment appropriately.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

If an other entity, other than a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422, identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations, it must notify us, in writing, of the overpayment so that we can recover the identified overpayment appropriately.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 401.310. These requirements are not effective until they have been approved by OMB.

If you have any comments concerning any of these information collection and record keeping requirements, please mail one original and three copies within 60 days of this publication date to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard,Baltimore, MD 21244–1850, Attn: John Burke CMS–6011–P, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document. Because this document proposes to modify and supplement a notice of proposed rulemaking published on March 25, 1998 in the **Federal Register** (63 FR 14506), we will respond to all comments received concerning both that notice of proposed rulemaking and this proposed modification in the preamble to the combined subsequent document.

V. Regulatory Impact

A. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This proposed rule is not a major rule. The requirements of this rule add another program integrity tool, but do not replace existing overpayment recovery efforts. Additionally, providers, suppliers, individuals, and other entities already report and return many overpayments. Any overpayments made by us are not amounts that are due to these entities. The cost of the required reporting should be minimal for providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422.

The RFA also requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of between $5 million and $25 million annually. Individuals and States are not included in the definition of small entities. Under this proposed rule, providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422, would be required to notify the Medicare intermediary or carrier, or us, as appropriate, in writing, within 60 days of identifying any payment that exceeds the amount payable under the Medicare statute and regulations.

The cost of the required reporting should be minimal for providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422. Because standard business practices dictate keeping accurate records concerning monies due and/or payable, the required reporting of overpayments will add minimal cost for some providers, suppliers, individuals, and other entities, and no cost for providers, suppliers, individuals, and other entities already reporting overpayments. Therefore, we have determined, and we certify, that this proposed regulation would not result in a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 100 beds. The cost of the required reporting should be minimal for small rural hospitals. Because standard business practices dictate keeping accurate records concerning monies due and/or payable, the required reporting of overpayments will add minimal cost for some small rural hospitals and no cost for those hospitals already reporting overpayments. Therefore, we have determined, and we certify, that this proposed rule would not have a significant effect on the operations of a substantial number of rural hospitals.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would have no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Any overpayments made by us to a provider, supplier, individual, or other entity that are reported and returned to us are not expenditures. The overpayments are not amounts owed to the provider, supplier, individual, or other entity and their return would have no economic impact. Therefore, we have determined, and we certify, that this proposed regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. We are requiring providers, suppliers, individuals, and other entities that identify that we have overpaid them to report the overpayment to us and return the amount overpaid.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget. This proposed rule is not a major rule as defined at 5 U.S.C 804(2).

List of Subjects in 42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

Accordingly, the Centers for Medicare & Medicaid Services proposes to amend the notice of proposed rulemaking at 63 FR 14506 (March 25, 1998), which proposed to amend 42 CFR chapter IV, part 401 by adding subpart D, as follows:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart D—Recovery of Overpayments, Suspension of Payment, and Repayment of Scholarships and Loans

1. The authority citation for part 401, subpart D, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Proposed § 401.310 is amended by revising paragraph (a), adding a new paragraph (b)(4), and adding a new paragraph (e) as follows:

§ 401.310 Overpayments.

(a) *Definitions.* As used in this section, the following definitions apply:

Other entity means an entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter, that is not a provider, a supplier, or an individual, that provides Medicare services to Medicare beneficiaries.

Overpayment means Medicare funds a provider, a supplier, an individual, or other entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter, has received in excess of amounts payable under the Medicare statute and regulations.

* * * * *

(b) * * *

(4) Medicare overpayment to an other entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter.

* * * * *

(e) *Reporting and returning overpayments.* Identified payments in excess of amounts payable under the Medicare statute and regulations must be reported and returned as follows:

(1) If a provider, supplier, or individual identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations, the provider, supplier, or individual must, within 60 days of identifying or learning of the excess payment, return the overpayment to the appropriate intermediary or carrier, at the correct address, and notify the intermediary or carrier, in writing, of the reason for the overpayment.

(2) If a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations before the payment data have been certified or settled, the managed care organization must, within 60 days of identifying or learning of the excess payment, notify CMS, either—

(i) In accordance with certification of payment data requirements described in § 422.502(1) of this chapter; or

(ii) In accordance with cost settlement processes described in part 417, subparts O and U of this chapter.

(3) If a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations after payment data have been certified or settled, it must, within 60 days of identifying or learning of the excess payment, notify CMS, in writing so that CMS can recover the identified overpayment appropriately.

(4) If an other entity, other than a managed care organization contracting with CMS in accordance with 42 CFR parts 417 or 422, identifies a Medicare payment in excess of amounts payable under the Medicare statute and regulations it must, within 60 days of identifying or learning of the overpayment, notify CMS, in writing, so that CMS can recover the identified overpayment appropriately.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 30, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 2, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1688 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

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NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

RIN 3145–AA39

Research Misconduct

AGENCY: National Science Foundation (NSF).

ACTION: Proposed rule.

SUMMARY: NSF proposes to revise its existing misconduct in science and engineering regulations at 45 CFR Part 689. These revisions implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Comments should be sent to Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260–76264 ("the Federal policy"). The Federal policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct. The policy directs Federal agencies that support or conduct research to implement it within one year.

The National Science Foundation has had regulations governing research misconduct since 1989. The Foundation is proposing to revise its existing regulations to make them fully consistent with the Federal policy.

The primary change concerns the definition of misconduct. The Federal policy provides a uniform Federal definition of research misconduct. It defines research misconduct as "fabrication, falsification, and plagiarism in proposing, performing, or reviewing research or reporting research results." The Federal policy also defines "fabrication," "falsification," and "plagiarism." This proposed rule adopts the definition of research misconduct set forth in the Federal Policy in place of the definition of misconduct contained in the existing regulation.

A significant portion of the Foundation's budget supports science and engineering education, and NSF has an ongoing interest in the integration of research and education. In order to ensure the same level of integrity for both education and research activities funded by the Foundation, NSF amended its regulations in 1991 to explicitly include misconduct in NSF-funded science and engineering education within the definition of misconduct. NSF continues to believe that it is important to ensure integrity in proposing, performing, reviewing, or reporting results from education proposals submitted to NSF. For this reason, the revised regulation would continue to define misconduct to include plagiarism, falsification, and fabrication in connection with NSF-funded science and engineering education.

The procedures for responding to allegations of misconduct found in the existing regulations would not materially change because they already conform to the Federal policy. Consistent with the Federal policy, NSF will also continue to protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act, to the extent permitted by law and regulation. Finally, this rule proposes some minor adjustments to the Foundation's internal timeframes for completing the investigative and adjudicative phases of misconduct proceedings.

Determinations

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866. The proposed rule is not an economically significant rule or a major rule under the Congressional Review Act. The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that may result in annual expenditures of $100 million by State, local and Indian tribal governments, or by the private sector. As any final rule would not result in expenditures of this magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this proposed rule because there are no new or revised recordkeeping or reporting requirements. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 689

Misconduct, Debarment and suspension, Fraud.

Dated: January 18, 2002.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation proposes to revise part 689 of title 45, chapter VI of the Code of Federal Regulations, to read as follows:

PART 689—RESEARCH MISCONDUCT

Sec.

689.1 Definitions.
689.2 General policies and responsibilities.
689.3 Actions.
689.4 Role of awardee institutions.
689.5 Initial NSF handling of misconduct matters.
689.6 Investigations.
689.7 Pending proposals and awards.
689.8 Interim administrative actions.
689.9 Dispositions.
689.10 Appeals.

Authority: Section 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 689.1 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

(1) *Fabrication* means making up data or results and recording or reporting them.

(2) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research*, for purposes of § 689.1(a), includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) Research misconduct does not include honest error or differences of opinion.

§ 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An "investigation" is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

(3) The allegation be proven by a preponderance of evidence.

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating or adjudicating the same allegation of research misconduct.

(e) Debarment or suspension for research misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.8 and 689.9, respectively. Severe research misconduct, as established under these regulations, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees investigations of research misconduct and conducts any NSF inquiries and investigations into suspected or alleged research misconduct.

(g) The Deputy Director adjudicates research misconduct proceedings and the Director decides appeals.

§ 689.3 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) Group I Actions. (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions. (i) Totally or partially suspend an active award, or restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

(3) Group III Actions. (i) Terminate an active award.

(ii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(iii) Debar or suspend an individual or institution from participation in Federal programs for a specified period after further proceedings under applicable regulations.

(b) In deciding what final actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) The degree to which the misconduct was knowing, intentional, or reckless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(5) Other relevant circumstances.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Suspending eligibility for Federal awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending participation as an NSF reviewer, advisor, or consultant.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.4 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

(b) If an institution wishes NSF to defer independent inquiry or investigation, it should:

(1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(2) Inform OIG immediately if an initial inquiry supports a formal investigation.

(3) Keep OIG informed during such an investigation.

(4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(5) Provide OIG with the final report from any investigation.

(c) NSF expects institutions to promptly notify OIG should the

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institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) NSF's resources, reputation, or other interests need protecting;

(3) There is reasonable indication of possible violations of civil or criminal law;

(4) Research activities should be suspended;

(5) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(6) The scientific community or the public should be informed.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to research misconduct, which should indicate when NSF should be notified.

§ 689.5 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

(c) If OIG determines that alleged research misconduct involves potential civil or criminal violations, OIG may refer the matter to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged research misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency; or

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 90 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.6 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG may proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. if notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with subjects or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the subject of the investigation to be heard.

(e) OIG may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report its recommendations, if any, to the Deputy Director within 180 days after initiating it.

§ 689.7 Pending proposals and awards.

(a) Upon learning of alleged research misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.6(c)).

(b) Neither a suspicion or allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Program Director may consult with OIG and, after further consultation with the Office of General Counsel, either defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

§ 689.8 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.3(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR part 620, and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation by NSF and modified as warranted. An interested party may request a review or modification by the Deputy Director of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

§ 689.9 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct,

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct,

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR part 620 and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report and recommended disposition will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) The notice of the debarring official's decision will include instructions on how to pursue an appeal to the Director.

(2) In all other cases,

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.3 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within 120 days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.10 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1813 and 1852

RIN 2700–AC33

Non-Commercial Representations and Certifications andEvaluation Provisions for Use in Simplified Acquisitions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed change to the NFS will establish a consolidated set of representations and certifications and an evaluation provision for the acquisition of non-commercial items within the simplified acquisition threshold.

DATES: Comments should be submitted on or before March 26, 2002.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK),Washington, DC 20546. Comments may also be submitted by e-mail to: *cdalton@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, Code HK, (202) 358–1645, e-mail: *cdalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently for commercial acquisition, FAR provision 52.212–3, Offeror Representations and Certifications—CommercialItems, provides a consolidated set of representations and certifications. No equivalent provision exists for non commercial items. NASA proposes to establish an equivalent provision for use with NASA's non-commercial acquisitions within the simplified acquisition threshold (SAT). This new consolidated provision will ensure that all appropriate representations and certifications are consistently used and will simplify the incorporation of representation and certification into solicitations. Additionally, this rule proposes to establish an evaluation provision to be used in non-commercial acquisitions within the SAT when selection is based on other than technically acceptable low offer. This evaluation provision will provide a consistent notice to offerors of how evaluations will be conducted.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), because this proposed rule merely consolidates within one provision existing FAR representations and certifications for use in non-commercial simplified acquisitions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1813 and 1852

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1813 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1813 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

2. Add section 1813.302–570 to read as follows:

§ 1813.302–570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the micropurchase threshold that are for other than commercial items.This provision must not be used for acquisitions conducted under FAR 13.5.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of

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other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer. Use the provision with itsAlternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4). Use the provision with its AlternateII in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3). Use the provision with its Alternate III in solicitations which include the clause at FAR 52.227–14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213–71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when evaluation factors are to be included for evaluation and the selection will be based upon best value, rather than technically acceptable, low price (see FAR 13.106).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add sections 1852.213–70 and 1852.213–71 to read as follows:

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302–570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS

(XX/XX)

(a) *Definitions.* As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

"Service-disabled veteran-owned small business concern"—(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

"Veteran-owned small business concern" means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

"Women-owned small business concern" means a small business concern—

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN: _____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049–4;

[ ] Other _____.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

[ ] TIN _____.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of employees	Average annual gross revenues
__ 50 or fewer	__ $1 million or less.
__ 51–100	__ $1,000,001–$2 million.
__ 101–250	__ $2,000,001–$3.5 million.
__ 251–500	__ $3,500,001–$5 million.
__ 501–750	__ $5,000,001–$10 million.
__ 751–1000	__ $10,000,001–$17 million.
__ Over 1000	__ Over $17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed $25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) *[The offeror shall check the category in which its ownership falls):*

__ Black American.

__ Hispanic American.

__ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

__ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

__ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

__ Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Buy American Act—Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(f)(1) Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

NAFTA Country or Israeli End Products:

Line Item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I. If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph(f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

Canadian End Products:

Line Item No.
_____
_____
_____

[List as necessary]

(3) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II. If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy

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American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program":

Canadian or Israeli End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

*Other End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (j)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed end product	Listed countries of origin
_____	_____
_____	_____
_____	_____

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

ALTERNATE I

(XX/XX)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

ALTERNATE II

(XX/XX)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College Or University And Minority Institution Representation

(1) *Definitions.* As used in this provision—

"Historically black college or university" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institution" means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) *Representation.* The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

ALTERNATE III

(MONTH/YEAR)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation Of Limited Rights Data And Restricted Computer Software. (1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227–16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at 52.227–14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227–14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data-General."

§ 1852.213–71 Evaluation—Other than commercial items.

As prescribed in 1813.302–570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS

(XX/XX)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[FR Doc. 02–1915 Filed 1–24–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 176

[Docket No. RSPA–2002–11270; Notice No. 02–3]

Regulatory Flexibility Act Section 610 and Plain Language Reviews

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules on Carriage by Vessel to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

DATES: Comments must be received by April 25, 2002.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket number RSPA–2002–11270 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You can also submit comments by e-mail by accessing the Dockets Management System on the Internet at *"http://dms.dot.gov"* or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the Dockets Management System at *"http://dms.dot.gov."*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on December 3, 2001, listing in Appendix D (66 FR 61900) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, we) has divided its Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and Section 610 Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 began in the fall of 1998 and ended in the fall of 1999; Year 2 began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA Section 610 Review Plan 1999–2009

Title	Regulation	Analysis year	Review year
Incident reports	§§ 171.15 and 171.16	1998	N/A
Hazmat safety procedures	Parts 106 and 107	1999	N/A
General Information, Regulations, and Definitions	Part 171		
Carriage by Rail and Highway	Parts 174 and 177	2000	2001

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RSPA SECTION 610 REVIEW PLAN 1999–2009—Continued

Title	Regulation	Analysis year	Review year
Carriage by Vessel	Part 176	2001	2002
Radioactive Materials	Parts 172, 173, 174, 175, 176, 177, 178	2002	2003
Explosives	Parts 172, 173, 174, 176, 178	2003	2004
Cylinders	Parts 172, 173, 178, 180		
Shippers—General Requirements for Shipments and Packagings.	Part 173	2004	2005
Specifications for Non-bulk Packagings	Part 178	2005	2006
Specifications for Bulk Packagings	Parts 178, 179, 180	2006	2007
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements.	Part 172	2007	2008
Carriage by Aircraft	Part 175.		

C. Regulations Under Analysis

During Year 4 (2001–2002), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR Part 176, Carriage by Vessel. It includes the following subparts:

Subpart	Title
Subpart A	General.
Subpart B	General Operating Requirements.
Subpart C	General Handling and Stowage.
Subpart D	General Segregation Requirements.
Subpart E	Special Requirements for Transport Vehicles Loaded with Hazardous Materials and Transported on Board Ferry Vessels.
Subpart F	Special Requirements for Barges.
Subpart G	Detailed Requirements for Class 1 (Explosive) Materials.
Subpart H	Detailed Requirements for Class 2 (Compressed Gas) Materials.
Subpart I	Detailed Requirements for Class 3 (Flammable) and Combustible Liquid Materials.
Subpart J	Detailed Requirements for Class 4 (Flammable Solid), Class 5 (Oxidizers and Organic Peroxides), and Division 1.5 (Blasting Agents) Materials.
Subpart L	Detailed Requirements for Division 2.3 (Poisonous Gas) and Division 6.1 (Poisonous) Materials.
Subpart M	Detailed Requirements for Radioactive Materials.
Subpart N	Detailed Requirements for Class 8 (Corrosive) Materials.
Subpart O	Detailed Requirements for Cotton and Vegetable Fibers, Motor Vehicles, and Asbestos.

We are seeking comments on whether any requirements in part 176 have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the requirements in part 176 has a significant economic impact on your business or organization, please submit a comment explaining how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

II. Plain Language

A. Background and Purpose

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

For an example of a rule drafted in plain language, you can refer to RSPA's notice of proposed rulemaking entitled "Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures," which was published December 11, 1998 (63 FR 68624). This NPRM proposed to rewrite 49 CFR part 106 and subpart A of part 107 in plain language and to create a new part 105 that would contain definitions and general procedures. We are currently evaluating comments received in response to the NPRM.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a ten-year period on a schedule consistent with the section 610 review schedule. Thus, our review of part 176 will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables or consolidating regulatory requirements, that may make the regulations easier to use.

Issued in Washington, DC, on January 18, 2002 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 02–1862 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–97–2426; Notice 4]

RIN 2137–AB48

Maps and Records of Pipeline Locations and Characteristics; Notification of State Agencies; Pipe Inventory

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of removal of regulatory agenda item.

SUMMARY: This agenda item contemplated a rulemaking action to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would have been required to keep an inventory of pipe and periodically report mileage and other data to federal and State agencies. This action was considered because of congressional and State concerns about the need for appropriate public officials to have pipeline information. Since this contemplated rulemaking was initiated in 1997, RSPA has developed the National Pipeline Mapping System (NPMS), a non-regulatory approach, to address these needs. Furthermore, pipeline security issues have been raised by recent events. In light of the development of the NPMS and the security issues, this item is removed from the regulatory agenda.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, by telephone at (202) 366–4565, by fax at (202) 366–4566, or by e-mail at *richard.huriaux@rspa.dot.gov*, regarding the subject matter of this notice. You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this notice or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov*. General information about the RSPA Office of Pipeline Safety programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION: In Section 102 and 202 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561, October 31, 1988), Congress directed RSPA to establish standards to require pipeline operators to complete and maintain an inventory of gas and hazardous liquid pipelines, including information on the location and history of leaks.

This requirement was to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would have been required to keep an inventory of pipe and periodically report mileage and other facts to Federal and State agencies. A rulemaking action was considered because of congressional and State concerns about the need for appropriate public officials to have pipeline information.

Since the publication of this agenda item in 1997, RSPA has developed a non-regulatory alternative approach to ensuring that information on the location and characteristics of gas and hazardous liquid pipelines is available to Federal and State agencies. RSPA has worked with other Federal and State agencies and the pipeline industry to create the NPMS. The NPMS shows the location and selected attributes of the major natural gas and hazardous liquid pipelines and liquefied natural gas facilities in the Untied States.

The NPMS is a full-featured geographic information system that allows RSPA, for the first time, to accurately view pipelines in relation to the communities and environments they cross. The pipeline data layers now being populated cover both interstate and intrastate natural gas transmission pipelines and hazardous liquid pipelines. It includes data depicting population, urbanized areas, political boundaries, roads, railroads, hydrography, consequence and hazard areas, and unusually sensitive areas. At present, the NPMS includes data on 85–90 percent of the hazardous liquid pipeline milage and on more than 50 percent of the gas transmission pipeline mileage.

In addition, pipeline security issues have been raised by recent events. In light of the development of the NPMS and the security issues, a rulemaking action is no longer necessary.

On the basis of the foregoing, RSPA hereby removes this action from the regulatory agenda.

Authority: 49 U.S.C. 60102 *et seq.*; 49 CFR 1.53.

Issued in Washington, D.C. on January 22, 2002.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 02–1909 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH50

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Mariana Mallard and the Guam Broadbill From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service), propose to remove the Mariana mallard (*Anas platyrynchos oustaleti*) and the Guam broadbill (*Myiagra freycineti*) from the Federal List of Endangered and Threatened Wildlife. All available information indicates that these birds are extinct. The Mariana mallard was endemic to the islands of Guam, Tinian, Saipan, and possibly Rota, of the Mariana Archipelago in the western Pacific ocean. It was listed as endangered on June 2, 1977, because its population was critically low due to excessive hunting and loss of wetland habitat. No confirmed sightings of the Mariana mallard have been made since 1979. The Guam broadbill, endemic to Guam, was listed as endangered on August 27, 1984, because its population was critically low. No confirmed sightings or other evidence of the Guam broadbill in the Pajon Basin have been made since May 15, 1984. This proposal, if made final, would remove Federal protection provided by the Act for these species. Removal of the Mariana mallard and the Guam broadbill from the Federal list of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species. The Mariana mallard is not a protected wildlife species by the government of the Commonwealth of the Northern Mariana Islands (CNMI).

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DATES: Comments must be received by March 26, 2002. Public hearing requests must be received by March 11, 2002.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson (see **ADDRESSES** section), telephone 808/541–2749; facsimile 808/541–2756; e-mail *paul_:henson@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Mariana mallard (*Anas platyrynchos oustaleti*) (Salvadori 1894) was first described by Salvadori based on six specimens collected from Guam in 1887 and 1888 (Reichel and Lemke 1994, Stinson 1994). The species is believed to have been a subspecies that originated as a hybrid between the common mallard (*Anas platyrhynchos*) and the grey duck (*Anas superciliosa*) (Reichel and Lemke 1994).

The Mariana mallard is known only from Guam, Tinian, and Saipan of the Marianas Archipelago. There is an unverified sighting of two "unidentified ducks" on Rota on October 20, 1945 (Baker 1948) and one specimen of *Anas* sp. found during a 1990 excavation of a late Holocene deposit in Payapai Cave, Rota (Steadman 1992). Other than these records, the Mariana mallard has never been reported on Rota. There are no records of this species from the more northern islands in the archipelago.

First collected by the early explorers in the late 1800s, only sporadic notes and observations have been made on this species. Marche (Baker 1951) collected six specimens from Guam in 1888. Collections from the time of Marche showed that the Mariana mallard concurrently inhabited the islands of Saipan and Tinian. A total of 38 specimens were collected from Tinian and Saipan by Japanese collectors between 1931 and 1940 (Baker 1951). There are probably fewer than 50 specimens of the Mariana mallard in collections in France, Japan, the United States, and elsewhere. Reichel and Lemke (1994) were able to locate 37 specimens. Most of these were collected by the Japanese in the 1930s and 1940s.

The Mariana mallard probably was never abundant (Baker 1951) due to limited habitat availability. There have never been extensive freshwater marshes or swamps in the Mariana Archipelago. The largest number of Mariana mallards ever recorded was by Kuroda (1942) who reported that his collector saw 2 flocks of 50 to 60 Mariana mallards at 2 locations at Lake Hagoi, Tinian. Gleize (1945) estimated a population of 12 mallards on Tinian. Marshall (1949) recorded their presence at both Lake Susupe, Saipan, and Lake Hagoi, Tinian. However, he speculated that they flew between the two islands as he never saw them at "both * * * lakes during any one month." The last confirmed sighting of this species was in 1979 by Eugene Kridler of the Service who estimated that there were probably fewer than a dozen Mariana mallards remaining (Kridler 1979). At this time, Mr. Kridler collected a pair of birds for captive propagation. Captive breeding was first conducted at Pohakuloa, Hawaii, then at Sea World, San Diego, California. These attempts failed and the last known Mariana mallard died at Sea World, San Diego in 1981 (Stinson 1995).

On Guam, the last recorded sighting of the Mariana mallard was made by G.S.A. Perez on February 25, 1967 (Drahos 1977). Wetland surveys were conducted on Guam from the late 1960s through the 1980s; however, no Mariana mallards were seen (Engbring *et al.* 1986, Stinson *et al.* 1991, Reichel *et al.* 1992).

Small populations persisted on Tinian and Saipan until the late 1970s (Pratt *et al.* 1979, Stinson 1995). No confirmed sightings of the Mariana mallard have been made since 1979. Extensive surveys were conducted intermittently from 1982 through 1984 by us and staff from the Division of Fish and Wildlife (DFW) of the Commonwealth of the Northern Mariana Islands (CNMI). All of the known wetland habitat in the CNMI was surveyed. There were no confirmed sightings or vocalizations (U.S. Fish and Wildlife Service 1983). A special effort was made to search for the Mariana mallard during forest bird surveys conducted on the islands of Saipan, Tinian, Rota, and Agiguan in 1982. Teams comprising biologists and biotechnicians simultaneously surveyed wetlands on Saipan and Tinian from which the most recent (1979) sightings of the mallard had been recorded to determine the status and distribution of this species. No mallards were observed on either island (U.S. Fish and Wildlife Service 1983).

During the period from May, 1983, through December, 1989, biologists from the CNMI's DFW conducted 5 to 79 surveys of each permanent wetland and each seasonal wetland greater than 0.5 hectares (1.2 acres) in the CNMI (230 surveys). Wetlands that contained better mallard habitat were surveyed more often. Surveys occurred year round and the greatest frequency occurred from May through September (112 surveys) to coincide with the historical nesting season of the Mariana mallards. No Mariana mallards were seen during these intensive and systematic searches. The determination of the investigators at the conclusion of these surveys was that the Mariana mallard was extinct (Reichel and Lemke 1994). Researchers and managers currently in Guam and the CNMI concur that the Mariana mallard is probably extinct, as it has not been seen since 1979 despite frequent and intensive surveys of wetlands for waterbirds such as the endangered Mariana common moorhen (*Gallinula chloropus guami*) (Evans *et al.* 1996; Gary Wiles, Guam Division of Aquatic and Wildlife Resources (DAWR), pers. comm. 1998; Mike Ritter, Service, pers. comm. 1998).

The Mariana mallard's reduction in range and eventual extinction has been attributed to habitat loss and hunting, especially during, and immediately after, World War II (WWII) (Baker 1948, Engbring and Fritts 1988, Reichel and Lemke 1994). Evolving without predators, the mallard was not wary of humans and easily caught (Kuroda 1942, Stott 1947). They were hunted and trapped for food (Fritz 1904, Safford 1904). Safford (1904) reported that the Mariana mallard was "the best game bird" and "very highly esteemed for food." Kuroda (1942) reported that there was a hunting season on Saipan from July through December, but no hunting was allowed on Tinian. However, it is unknown if these regulations were enforced. After WWII, islanders were allowed to own firearms and hunting of the birds persisted. Even with the designation of the species as endangered by the Trust Territories and the Service, there was little enforcement of the regulations (Drahos 1977).

Habitat loss due to draining and fragmentation of wetlands have greatly reduced the quantity and quality of wetlands on Guam, Tinian, and Saipan (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). Though early reports on Tinian mention two lakes, Lake Hagoi is the only lake currently found on the island. It is probable that the second lake referenced is now known as Makpo Swamp. It is currently too overgrown with woody vegetation to be mallard habitat. Additionally, this wetland has been drained for water for San Jose village and converted into farmland (Bowers 1950, Reichel and Lemke 1994). During the Japanese occupation of Saipan and Tinian between 1914 and 1945, most wetlands were channelized and converted to rice paddies. Also during this time, sugarmill wastes were discharged into Lake Susupe on Saipan. Since 1945, many wetlands have been drained or filled in the course of urban development on all three islands (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). The Mariana mallard, never great in number, lost most of its limited habitat with the decimation of the wetlands, while being hunted with little to no restriction.

The Guam broadbill (*Myiagra freycineti*), a member of the family Muscicapidae, was endemic to the island of Guam in the Mariana Archipelago (U.S. Fish and Wildlife Service 1990). First collected by explorers in 1820, the specimens were labeled "kingfisher with a russet throat" and erroneously noted as being from Australia (Oustalet 1895). Marché collected 23 specimens in 1887 and 1888, from which Oustalet described *Myiagra freycineti* (Oustalet 1895).

Although the species was probably never abundant, a reduction in the range of the Guam broadbill was noted from 1950 into the early 1980s. Prior to 1950, the species occupied 500 square kilometers (sq km) (193 sq miles (mi)) of habitat throughout the island of Guam. By 1950, broadbill range had been reduced to 312 sq km (120 sq mi) or 62 percent of its former range (Ernie Kosaka, Service, *in litt.* 1982). By the early 1970s, the species was entirely absent from the southern two-thirds of the island but still relatively common in northern Guam into the mid-1970s. Decline of the Guam broadbill continued with no individuals detected on northern roadside counts that were initiated in 1973 (Drahos 1977). Further losses were attributed to super typhoon Pamela in 1976 (Joseph E. Ada, Acting Governor of Guam, *in litt.* 1979). By 1979, the Guam broadbill was restricted to the remaining areas of natural vegetation that occurred primarily along the northern cliff line in a thin strip from Naval Communication Station (NCS) Beach through Catalina Point on the eastern side of Guam (DAWR 1979–1986). At that time, the Guam broadbill had the lowest relative abundance and the lowest density of any native passerine during station counts. Although relative densities of the broadbill were highest at Pati and Ritidian Points and Tarague in 1980, the species was recorded only at Ritidian and Urunao Points and Anderson Air Force Base in 1981. This represented a further reduction of habitat range to 43 sq km (16.6 sq mi) or 9 percent of its original range (Engbring and Pratt 1985). Combined broadbill densities showed a 70 percent decline since 1979 (DAWR 1979–1986). By 1983, the population had declined 83 percent in the Ritidian Basin area (DAWR 1979–1986) and was further restricted to the extreme northern end of Guam in the Pajon Basin in 150 hectares (ha) (370 acres (ac)) or 1.5 sq km (0.57 sq mi) of habitat (Savidge 1987). Estimates of 460 birds (Engbring and Ramsey 1984) in 1981 and fewer than 100 individuals (Engbring and Pratt 1985) in 1983 from the Pajon Basin had dwindled to only one sighting of a male in October 1983 (Beck 1984a). The last two sightings of the Guam broadbill in the wild were of transient males in 1984. Robert E. Beck, Jr. (DAWR) and Dr. Eugene Morton (Smithsonian Institution) sighted a male at Northwest Field in March 1984, and Philip Bruner (Brigham Young University of Hawaii) sighted the other in an area adjacent to the Navy golf course in Barrigada in August 1984 (Beck 1984a). The Guam broadbill has not been sighted in the Pajon Basin area since May 15, 1984, and the species is believed to be extinct (DAWR 1979–1986).

In September 1983, a male was collected for captive propagation (Beck 1984b). This captive breeding attempt failed as other wild individuals were not located and the captive male died of unknown causes (DAWR 1979–1986). Attempts at captively breeding the Guam broadbill were abandoned in 1984 due to its virtual disappearance from the wild (Beck 1984a, b).

Based on the last field sightings, the approximate date of extirpation of the Guam broadbill is 1984 (Beck 1984a, Wiles *et al.* 1995), and it was presumed to be extinct by 1985 (Beck 1984a, b; Savidge 1987; U.S. Fish and Wildlife Service 1990; Reichel and Glass 1991; Stinson 1994).

Reduction in the range of the Guam broadbill and its eventual extinction have been variously attributed to excessive pesticide spraying during and after World War II, the spread of avian diseases, and predation by introduced animals including rats (*Rattus* spp.), the monitor lizard (*Varanus indicus*), and the brown tree snake (*Boiga irregularis*). However, studies conducted by our Patuxtent Wildlife Research Center in 1983 indicated that pesticide overuse and avian diseases were not responsible for broadbill declines noted in the early 1980s. Instead, studies conducted by Savidge in 1986 implicated predation by the brown tree snake as the single most important factor in the decline of Guam's native forest birds, including the Guam broadbill (Savidge 1986, 1987; Conry 1988; Wiles *et al.* 1995; Rodda *et al.* 1997).

Previous Federal Action

Federal action on the Mariana mallard began on May 22, 1975, when the Fund for Animals, Inc., requested that we list 216 taxa of plants and animals as endangered species pursuant to the Act. These species appeared in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but did not appear on the United States List of Endangered and Threatened Wildlife and Plants. On September 26, 1975, we published in the **Federal Register** (40 FR 44329), a proposed rule to list 216 species as endangered, including the Mariana mallard. The rule that determined 159 of the 216 taxa to be endangered species was published on June 14, 1976 (41 FR 24062). The Mariana mallard was not included in this rule because the Governors of the States (which is defined by the Act to include Guam and the CNMI) in which this species was resident, inadvertently were not notified of the proposal as required by the Act. These Governors were then notified and allowed 90 days for comment. The Mariana mallard was listed as an endangered species on June 2, 1977, without critical habitat (42 FR 28137).

Federal action on the Guam broadbill began on February 27, 1979, when the Acting Governor of Guam petitioned us to list the Guam broadbill and five other forest bird species as endangered. On May 18, 1979, we issued a notice of review (44 FR 29128) for 12 petitioned animals, including the Guam broadbill. In our December 30, 1982, Review of Vertebrate Wildlife (47 FR 58454) the Guam broadbill was considered a category 1 candidate for Federal listing. Category 1 species were those for which we had substantial information on biological vulnerability and threats to support preparation of a listing proposal, but for which a listing proposal had not yet been published because it was precluded by other listing activities. On November 29, 1983, we published a proposed rule (48 FR 53729) to list the Guam broadbill as endangered. The final rule determining the Guam broadbill to be an endangered species was published on August 27, 1984 (49 FR 33881). Critical habitat was not designated.

Summary of Factors Affecting the Species

In accordance with the Act and implementing regulations at 50 CFR part 424, a species shall be listed if the

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Secretary of the Interior determines that one or more of five factors listed in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) original data for classification of the species were in error.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss was a major factor in the decline and subsequent extinction of the Mariana mallard. Since 1945, draining, fragmentation, and filling of wetlands for urban development has greatly reduced their quantity and quality on Guam, Tinian, and Saipan (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). Between 1914 and 1945, during the Japanese occupation of Saipan and Tinian, most wetlands were converted to rice paddies. In more recent times, wetlands have been drained to provide potable water for new villages and converted into farmland (Bowers 1950, Reichel and Lemke 1994).

The Guam broadbill was endemic to the island of Guam and, until the mid-1970s, common in the northern half of the island. This species was found in woodland areas, forests with brushy undercover, areas dominated by the alien shrub, tangantangan (*Leucaena leucocephala*), southern riparian areas, coastal strand, and mangrove swamps. Though the island of Guam has undergone massive development and urbanization over the last 20 years, habitat destruction or modification is not believed to have been a major factor in the decline of this bird because population numbers declined in areas with intact habitat over this time period.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over-hunting is believed to have been a major factor leading to the decline and subsequent extinction of the Mariana mallard, particularly during and immediately after WW II (Kuroda 1942, Baker 1948, Engbring and Fritts 1988, Reichel and Lemke 1994). Overutilization is not known to be a factor in the decline of the Guam broadbill.

C. Disease or Predation

Disease or predation is not known to have been a factor in the decline of the Mariana mallard. While the brown tree snake is believed to have been accidentally introduced to Guam between 1945 and 1952 (Rodda *et al.* 1992), it is not believed to have been a factor in the decline of the mallard because the snake prefers forest habitat. While a population of this voracious predator may now be established on Saipan, it is not believed to have been present on the island during the 1970s, when the last sighting of the Mariana mallard was made. The brown tree snake is not known to be established on Tinian.

The spread of avian disease and predation by introduced animals, including the monitor lizard, rats (*Rattus* spp.), cats (*Felis catus*), dogs (*Canis familiaris*), pigs (*Sus scrofa*), and the brown tree snake, were suspected as factors in the decline of the Guam broadbill at the time of its listing. However, later studies concluded that predation by the brown tree snake was probably the single most important factor in the drastic decline and subsequent extinction of the Guam broadbill (Savidge 1986, 1987; Conry 1988). These studies provided no evidence of its decline due to avian disease (Savidge 1986, 1987). By 1986, the snake was probably present throughout the island (Savidge 1986, 1987). Primarily arboreal, this snake preys upon eggs and hatchlings in nests, and roosting young and adults.

D. The Inadequacy of Existing Regulatory Mechanisms

The Mariana mallard was listed as an endangered species by the Trust Territory of the Pacific Islands in 1976 and by us in 1977. It is currently protected as endangered under Guam's Endangered Species Act (Pub. L. 15–36). The Mariana mallard was not listed as a threatened or endangered species by the CNMI government (CNMI 1991).

The Guam broadbill is presently protected as endangered under Guam's Endangered Species Act (Pub. L. 15–36) and is federally protected as an endangered species under the Endangered Species Act of 1973.

Protection as endangered species by the Federal government and governments of Guam and the Trust Territory of the Pacific Islands, was probably too late to compensate for the earlier effects of unrestricted hunting and habitat loss, in the case of the Mariana mallard, and for the accidental introduction and subsequent spread of the brown tree snake, in the case of the Guam broadbill.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

At the time it was listed, one of the factors believed to have contributed to the critically low population levels of the Guam broadbill was overuse of pesticides. However, pesticide use has not been found to be a major factor in the decline of this species (Grue 1986, Savidge 1986, 1987).

In summary, all available information indicates that the Mariana mallard and the Guam broadbill are extinct. Previous population estimates made on Guam (1944), Tinian (1945), and Saipan (1947) for the Mariana mallard reported 12 or fewer individuals on each of these islands (Baker 1951). No confirmed sightings or vocalizations have been reported for this bird since 1979, and the last captive bird died in 1981. The Guam broadbill was reported to be on the verge of extinction at the time of its listing, and population estimates of 460 and less than 100 individuals were reported in 1981 and 1983, respectively. No confirmed sightings or vocalizations have been reported for this species since May 14, 1984, and the last captive bird died in February 1984. We propose to remove the Mariana mallard and the Guam broadbill from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule, if made final, would revise § 17.11(h) to remove the Mariana mallard and the Guam broadbill from the Federal list of Endangered and Threatened Wildlife due to extinction. The prohibitions and conservation measures provided by the Act, particularly sections 7 and 9, will no longer apply to these species if this rule is made final. There is no designated critical habitat for these species.

The Mariana mallard and the Guam broadbill are protected by the government of Guam (Pub. L. 15–36). Removal of these species from the Federal list of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate as possible. Therefore, we solicit data, comments, or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning the Mariana mallard and the Guam broadbill not included in this document; and

(2) The location of any individuals or populations of the Mariana mallard and the Guam broadbill.

The final decision on this proposal will take into consideration the comments and any additional information we receive, and such communications may lead to a final determination that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

Public Hearings

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor (see **ADDRESSES** section).

Clarity of This regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding the rule? (3) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

National Environmental Policy Act

We have determined that preparation of an environmental assessment or environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, is not necessary when issuing regulations adopted under section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this decision in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

The OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on ten or more persons. This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Arlene Pangelinan and Lee Ann Woodward, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entries for "Mallard, Mariana" and "Broadbill, Guam" under "BIRDS" from the List of Endangered and Threatened Wildlife.

Dated: July 17, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–1876 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 010302D]

RIN 0648–AL86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Sustainable Fishery Act Amendment to the Fishery Management Plans of the U.S. Caribbean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted a Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions of the Magnuson-Stevens Act in the Fishery Management Plans of the U.S. Caribbean (Comprehensive SFA Amendment) for review, approval, and implementation by NMFS. The Comprehensive SFA Amendment would define status determination criteria and overfishing thresholds (e.g., maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT)) for the species or species complexes under the Council's authority, establish rebuilding plans for three overfished species: queen conch, Nassau grouper, and goliath grouper (formerly known as jewfish), and modify existing or add new framework adjustment procedures to all Caribbean FMPs.

These new and modified framework procedures would allow timely modification/addition of required stock parameters and management measures relating to preventing overfishing and rebuilding overfished stocks. The proposed measures should result in improved management of U.S. Caribbean marine fishery resources.

In addition, the Comprehensive SFA Amendment also would provide descriptions of the U.S. Caribbean

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fisheries and fishing communities based on the best information available and recommend future establishment of a socio-economic data collection program and permanent expansion of NMFS' Marine Recreational Fisheries Statistical Survey to include Puerto Rico and the U.S. Virgin Islands to enhance the available information. The comprehensive SFA Amendment would also address bycatch in the fisheries managed under the Council's FMPs and recommend future development of a standardized bycatch reporting program.

DATES: Written comments must be received on or before March 26, 2002.

ADDRESSES: Written comments on the Comprehensive SFA Amendment should be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of the Comprehensive SFA Amendment, which includes a regulatory impact review and an environmental assessment, should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918–1920; e-mail: Caribbean.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The Comprehensive SFA Amendment includes Amendment 2 to the FMP for Corals and Reef Associated Plants and Invertebrates, Amendment 1 to the FMP for Queen Conch Resources, Amendment 3 to the FMP for the Reef Fish Fishery, and Amendment 2 to the FMP for the Spiny Lobster Fishery. These FMPs were prepared by the Council, approved by NMFS, and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Section 303 of the Magnuson-Stevens Act requires, in part, that FMPs provide descriptions of the applicable fisheries and fishing communities; assess the amount and types of bycatch and include management measures that, to the extent practicable, minimize bycatch and bycatch mortality; specify objective and measurable criteria for identifying when a stock is overfished, i.e., status determination criteria; and rebuild stocks to achieve MSY. The Council developed its Comprehensive SFA Amendment to address these requirements.

The Comprehensive SFA Amendment would define status determination criteria and overfishing thresholds (e.g., maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT)) for the species or species complexes under the Council's authority, establish rebuilding plans for three overfished species: queen conch, Nassau grouper, and goliath grouper (formerly known as jewfish), and modify existing or add new framework adjustment procedures to all Caribbean FMPs.

Because information on U.S. Caribbean fisheries is sparse and incomplete, the fisheries can be classified as data-poor (among other parameters, biomass and fishing mortality rates are not available for most Caribbean fishery resources). Thus, managers must use biomass-based proxies for the MSY, OY, MFMT, and MSST parameters for the respective fishery resources. Formulae for the derivation of these proxies are presented in the Comprehensive SFA Amendment. In general, the MSY proxies are based on average landings of commercial fisheries for a specified time period. OY must be less than or equal to the MSY proxy. The proxies for MSST are defined either as the greater of $(1-M)\ xB_{msy}$ or $0.5\ x\ B_{msy}$ where M is the estimated instantaneous natural mortality rate and B is the estimated spawning biomass. MFMT is considered equal to the estimated M for the respective species or species complex. Values for each proxy, when available, are presented in the Comprehensive SFA Amendment. Assessment information provided in the Comprehensive SFA Amendment reflects conditions in the commercial fisheries. Due to lack of adequate catch and effort data, the status of recreational fisheries is currently unknown.

The NMFS 2000 Report to Congress on the Status of U.S. Fisheries listed Nassau grouper, goliath grouper, and queen conch as overfished in the U.S. Caribbean. The Comprehensive SFA Amendment would establish rebuilding timeframes for these species.

In addition, the Comprehensive SFA Amendment also would provide descriptions of the U.S. Caribbean fisheries and fishing communities based on the best information available and recommend future establishment of a socio-economic data collection program and permanent expansion of NMFS' Marine Recreational Fisheries Statistical Survey to include Puerto Rico and the U.S. Virgin Islands to enhance the available information. The comprehensive SFA Amendment would also address bycatch in the fisheries managed under the Council's FMPs and recommend future development of standardized bycatch reporting program.

NMFS is requesting comment on the proposed framework procedures, especially concerning any changes that would allow the public to comment more fully on proposed management measures. Also, NMFS invites comment concerning the types of information that should be collected to more precisely describe Caribbean fisheries and fishing communities.

Comments received by March 26, 2002, whether specifically directed to those management measures in the Comprehensive SFA Amendment that would amend the Caribbean FMPs or to the proposed rule that NMFS plans to publish that would implement the Comprehensive SFA Amendment, will be considered by NMFS in its decision to approve, disapprove, or partially approve those measures amending the FMPs. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the Comprehensive SFA Amendment or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2002.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1872 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Pacific Southwest Region; California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Southwest Region to publish legal notices of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR parts 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers listed will begin with decisions subject to appeal that are made after publication of this notice in the **Federal Register**. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Manager, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592, 707–562–8945.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day publication of the notice.

In addition to the primary newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (primary) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Regional Forester Decisions

Sacramento Bee, published daily in Sacramento, Sacramento County, California, for decisions affecting National Forest System lands and for any decision of Region-wide impact.

Angeles National Forest, California

Forest Supervisor Decisions

Los Angeles Times, published daily in Los Angeles, Los Angeles County, California.

District Rangers Decisions

Los Angeles Ranger District *Daily News*, published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Los Angeles District Ranger decisions: *Pasadena Star News*, published in Pasadena, California; and *Foothill Leader*, published in Glendale, California.

San Gabriel River Ranger District: *Inland Valley Bulletin*, published daily in Los Angeles, Los Angeles County, California.

Newspaper providing additional notice of San Gabriel River District Ranger decisions: *San Gabriel Valley Tribune*, published in the eastern San Gabriel Valley, California.

Santa Clara/Mojave Ranger District: *Daily News*, published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Santa Clara/Mojave Rivers District Ranger decisions: *Antelope Valley Press*, published in Palmdale, California; and *Mountaineer Progress*, published in Wrightwood, California.

Cleveland National Forest, California

Forest Supervisor Decisions

San Diego Union-Tribune, published daily in San Diego, San Diego County, California.

District Rangers Decisions

Descanso Ranger District: *San Diego Union-Tribune*, published daily in San Diego, San Diego County, California.

Palomar Ranger District: *San Diego Union-Tribune*, published daily in San Diego, San Diego County, California.

Newspaper providing additional notice of Palomar District Ranger decisions: *Riverside Press Enterprise*, published daily in Riverside, Riverside County, California.

Trabuco Ranger District: *Riverside Press Enterprise*, published daily in Riverside, Riverside County, California.

Newspaper providing additional notice of Trabuco District Ranger decisions: *Orange County Register*, published daily in Santa Ana, Orange County, California

Eldorado National Forest, California

Forest Supervisor Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

District Rangers Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

Inyo National Forest, California

Forest Supervisor Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

District Rangers Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

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Klamath National Forest, California

Forest Supervisor Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

District Rangers Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

Lake Tahoe Basin Management Unit, California and Nevada

Forest Supervisor Decisions

Tahoe Daily Tribune, published daily (five-times weekly) in South Lake Tahoe, El Dorado County, California.

Lassen National Forest, California

Forest Supervisor Decisions

Lassen County Times, published weekly in Susanville, Lassen County, California.

District Rangers Decisions

Eagle Lake Ranger District: *Lassen County Times*, published weekly in Susanville, Lassen County, California.

Almanor Ranger District: *Chester Progressive*, published weekly in Chester, Plumas County, California.

Hat Creek Ranger District: *Intermountain News*, published weekly in Burney, Shasta County, California.

Los Padres National Forest, California

Forest Supervisor Decisions

Santa Barbara News Press, published daily in Santa Barbara, Santa Barbara County, California.

District Rangers Decisions

Monterey Ranger District: *Monterey County Herald*, published daily in Monterey, Monterey County, California.

Santa Lucia Ranger District: *Telegram Tribune*, published daily in San Luis Obispo, San Luis Obispo County, California.

Santa Barbara Ranger District: *Santa Barbara News Press*, published daily in Santa Barbara, Santa Barbara County, California.

Ojai Ranger District: *Ventura Star*, published daily in Ventura, Ventura County, California.

Mt. Pinos Ranger District: *The Bakersfield Californian*, published daily in Bakersfield, Kern County, California.

Mendocino National Forest, California

Forest Supervisor Decisions

Chico Enterprise-Record, published daily in Chico, Butte County, California.

District Rangers Decisions

Grindstone Ranger District: *Chico Enterprise-Record*, published daily in Chico, Butte County, California.

Upper Lake and Covelo Districts: *Ukiah Daily Journal*, published daily in Ukiah, Mendocino County, California.

Modoc National Forest, California

Forest Supervisor Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

District Rangers Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

Plumas National Forest, California

Forest Supervisor Decisions

Feather River Bulletin, published weekly in Quincy, Plumas County, California.

Newspaper providing additional notice for Environmental Impact Statements: *Sacramento Bee*, published daily in Sacramento, Sacramento County, California.

District Rangers Decisions

Beckwourth Ranger District: *Portola Reporter*, published weekly in Portola, Plumas County, California.

Newspaper occasionally providing additional notice of Beckwourth District Ranger decisions: *Feather River Bulletin*, published weekly in Quincy, Plumas County, California.

Feather River Ranger District: *Oroville Mercury Register*, published daily in Oroville, Butte County, California.

Newspaper occasionally providing additional notice of Feather River District Ranger decisions: *Feather River Bulletin*, published weekly in Quincy, Plumas County, California.

Mt. Hough Ranger District: *Feather River Bulletin*, published weekly in Quincy, Plumas County, California.

Newspaper occasionally providing additional notice of Mt. Hough District Ranger decisions: *Portola Reporter*, published weekly in Portola, Plumas County, California.

San Bernardino National Forest, California

Forest Supervisor Decisions

San Bernardino Sun, published daily in San Bernardino, San Bernardino County, California.

District Rangers Decisions

Mountaintop Ranger District—Arrowhead Area: *Mountain News*, published weekly in Blue Jay, San Bernardino County, California.

Mountaintop Ranger District—Big Bear Area: *Big Bear Life and Grizzly*, published weekly in Big Bear, San Bernardino County, California.

Front Country Ranger District: *San Bernardino Sun*, published daily in San Bernardino, San Bernardino County, California.

San Jacinto Ranger District: *Idyllwild Town Crier*, published weekly in Idyllwind, Riverside County, California.

Sequoia National Forest, California

Forest Supervisor Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

District Rangers Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

Shasta-Trinity National Forest, California

Forest Supervisor Decisions

Record Searchlight, published daily in Redding, Shasta County, California

District Rangers Decisions

Record Searchlight, published daily in Redding, Shasta County, California.

Sierra National Forest, California

Forest Supervisor Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

District Rangers Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

Six Rivers National Forest, California

Forest Supervisor Decisions

Times Standard, published daily in Eureka, Humboldt County, California.

District Rangers Decisions

Smith River National Recreation Area: *Del Norte Triplicate*, published daily in Crescent City, Del Norte County, California.

Orleans and Lower Trinity Districts: *The Kourier*, published weekly in Willow, Humboldt County, California.

Mad River District: *Times Standard*, published daily in Eureka, Humboldt County, California.

Stanislaus National Forest, California

Forest Supervisor Decisions

The Union Democrats, published daily (five-times weekly) in Sonora, Tuolumne County, California.

District Rangers Decisions

The Union Democrat, published daily (five-times weekly) in Sonora, Tuolumne County, California.

Newspaper sometimes providing additional notice of Groveland District Rangers decisions: *Mariposa Gazette*, published weekly in Mariposa, California.

Newspaper sometimes providing additional notice of Calaveras District Ranger decisions: *Calaberas Enterprise*, published twice weekly in San Andrea, California.

Tahoe National Forest, California

Forest Supervisor Decisions

The Union, published daily (except Sunday) in Grass Valley, Nevada County, California.

District Rangers Decisions

Downieville and Sierraville Ranger Districts: *Mountain Messenger*, published weekly in Downieville, Sierra County, California.

Newspapers providing additional notice of Sierraville District Ranger decisions: *Sierra Booster*, published weekly in Loyalton, Sierra County, California; and *Portola Recorder*, published weekly in Portola, Plumas County, California.

Foresthill Ranger District: *Auburn Journal*, published daily in Auburn, Placer County, California.

Nevada City Ranger District: *The Union*, published daily (except Sunday) in Grass Valley, Nevada County, California.

Truckee Ranger District: *Sierra Sun*, published weekly in Truckee, Nevada County, California.

Newspaper providing additional notice of Truckee District Ranger decisions: *Tahoe World*, published weekly in Tahoe City, Placer County, California.

Dated: January 17, 2002.

Gilbert J. Espinosa,

Deputy Regional Forester.

[FR Doc. 02–1714 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on February 14–15, 2002 in John Day, Oregon. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 14 from 9:30 a.m. to 4 p.m. and February 15, 2002 from 8 a.m. until 2 p.m.

ADDRESSES: The meeting will be held in Juniper Hall, at the Malheur National Forest Headquarters Office located at 431 Patterson Bridge Road, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Bonnie Wood, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3100.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members, becoming familiar with duties and responsibilities, selecting a chairperson, and reviewing Title II project proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. The meeting is open to the public. A public input opportunity will be provided, and individuals will have the opportunity to address the committee at that time.

Dated: January 18, 2002.

William T. Supulski II,

Ecosystem Staff Officer.

[FR Doc. 02–1843 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–DK–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 25, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Janitorial/Custodial, Environmental Protection Agency/Western Ecology Division, National Health and Environmental Effects Research Laboratory,Main Site and Research Station, Corvallis, Oregon.
NPA: Williamette Valley Rehabilitation Center, Inc., Lebanon, Oregon.
Government Agency: Environmental Protection Agency.

Service

Janitorial/Custodial, VA Medical Center, Salem Primary Care Clinic,Salem, Oregon.
NPA: The Garten Foundation, Salem, Oregon.
Government Agency: Portland Veterans Affairs Medical Center.

Service

Laundry Service, Naval Air Station, Patuxent River, Maryland.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
Government Agency: Department of the Navy.

Service

Transcription Services, Equal Employment

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Office, Federal Bureau of Prisons, Washington, DC.
NPA: The Lighthouse of Houston, Houston, Texas.
Government Agency: Federal Bureau of Prisons.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–1885 Filed 1–24–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.
EFFECTIVE DATE: February 25, 2002.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.
FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.
SUPPLEMENTARY INFORMATION: On October 5, November 9, November 16, November 23 and November 30, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 51005, 56638, 57703, 58712 and 59778) of proposed additions to and deletions from the Procurement List:

The following comments pertain to Brush, Tooth Brush Style: Comments were received from the current contractor for this brush. The contractor indicated that it has been providing the brush to the Government for over thirty years. Government sales of the brush are a large minority of the company's total sales of the brush, allowing for economies of scale in purchasing brush components which could be lost if the brush were added to the Procurement List. While Government sales of the brush do not represent a large percentage of the company's total sales, the contractor stated that losing the Government contract for the brush would exacerbate the losses the company has suffered in the past year because of the economy and the company's debt burden, resulting in severe adverse impact on the company. The contractor noted that it has already substantially reduced employment and cut pay because of these economic factors, and it anticipates further employee terminations if the Committee adds the brush to the Procurement List.

The percentage of the contractor's current total sales, taking into account the losses of the past year, which its Government sales of this brush represent is less than half the minimum percentage which the Committee normally considers to be likely to constitute severe adverse impact on a contractor. Even taking into account the contractor's long history of dependence on Government sales of this brush, and the economies of scale in purchasing materials which may be lost because of addition of this brush to the Procurement List, the Committee does not believe that the effects of the addition rise to a level which is likely to be severe adverse impact on this contractor.

The unemployment rate for people with severe disabilities exceeds sixty-five percent, well above that for the groups represented by the contractor's employees. Consequently, the Committee believes that the creation of jobs for people with severe disabilities through addition of the brush to the Procurement List outweighs the possibility of job losses by people who might more easily find replacement work.

The following material pertains to all of the items being added to the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are added to the Procurement List:

Commodity
Stapler, 7520–00–240–5727.

Commodity
Brush, Tooth Brush Style, 7920–00–900–3577.

Commodity
Mop, Twist-Wring and Twist-Wring Head, 7920–01–448–0218, 7920–01–448–0220.

Commodity
Undershirt, Man's, Brown, 8420–01–112–1472, 8420–01–112–1473,8420–01–112–1474, 8420–01–112–1475,8420–01–112–1476, 8420–01–112–1477,8420–01–112–1478, 8420–01–112–1479
(Additional 500,000 shirts/increase from 1,600,000 to 2,100,000).

Commodity
Cleaner, Tobacco Pipe, 9920–00–292–9946.

Service
Grounds Maintenance, Basewide, Fort Bragg, North Carolina.

Service
Janitorial/Custodial, Naval Sea Systems Command (NAVSEA), Buildings 22, 28, 104, 176, 197, 201, 213 and 214,Washington Navy Yard, DC.

Service
Janitorial/Custodial, Naval Reserve Readiness Command, Regional North Central,715 Apollo Avenue,Minneapolis, Minnesota.

Service
Janitorial/Custodial, Missouri Air National Guard, 10800 Lambert International Boulevard,Bridgeton, Missouri.

Service
Janitorial/Custodial, U.S. Marshals Service, Will Rogers World Airport,5900 Air Cargo Road,Oklahoma City, Oklahoma.

Service
Laundry Service, At the following locations: Naval Air Station, Brunswick, Maine; Naval Shipyard, Portsmouth, New Hampshire.

Service
Office Supply Store, at the following locations: Defense Supply Service—Washington, Hoffman Building II, Alexandria, Virginia; Defense Supply Service—Washington,Army Material Command,Alexandria, Virginia; Defense Supply Service—Washington,Pentagon,Rooms 1E700 and 3C157,Arlington, Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are deleted from the Procurement List:

Commodity
Sheath, Ax, 8465–01–110–2078.

Commodity
Sheath, Brush Hook (Brush), 8465–01–136–4720.

Commodity
Tissue, Facial, 8540–00–900–4891.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–1886 Filed 1–24–02; 8:45 am]
BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Friday, February 22, 2002, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to be briefed on current projects, hold new member orientation, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 18, 2002.

Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 02–1857 Filed 1–24–02; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the California Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 3 p.m. on Wednesday, February 13, 2002, at the Crowne Plaza Union Square Hotel, 480 Sutter Street, San Francisco, California 94108. The purpose of the meeting is to hold new member orientation and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 17, 2002.

Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 02–1855 Filed 1–24–02; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, February 12, 2002 at the Embassy Suites Hotel, 425 South 7th Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC January 18, 2002.

Ivy L. Davis,
Chief, Regional Programs Coordination Unit.
[FR Doc. 02–1856 Filed 1–24–02; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2002]

Foreign-Trade Zone 61—San Juan, Puerto Rico Expansion of Manufacturing Authority-Subzone 61G IPR Pharmaceuticals, Inc. Plant (Pharmaceuticals) Carolina, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by IPR Pharmaceuticals, Inc., requesting to expand the scope of manufacturing authority under zone procedures within Subzone 61G, at the IPR plant in Carolina, Puerto Rico. It was formally filed on January 17, 2002.

Subzone 61G was approved by the Board in 1995 at a single site (2 bldgs./ 135,552 square feet, on 6.78 acres)

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located at Sabana Gardens Industrial Park, Main Street, Carolina, Puerto Rico, with authority granted for the manufacture of a range of human health products (Board Order 787, 60 FR 63499, December 11, 1995).

IPR is now proposing to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 61G to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, colloidal precious metals, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic and ethylene polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances. Materials sourced from abroad represent some 50%–65% of finished product value.

Zone procedures would exempt IPR from Customs duty payments on foreign materials used in production for export. Some 30–40 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty free—14.2%) instead of the rates otherwise applicable to the foreign input materials (duty free—20%)(noted above). The application indicates that the savings from zone procedures would help improve IPR's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 11, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 5-day period (to March 18, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: January 16, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–1911 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), Okaya (U.S.A.), Inc. ("Okaya"), a U.S. importer of subject merchandise filed a request for a changed circumstances review of the antidumping order on certain tin mill products from Japan with respect to certain tin–free steel as described below. Weirton Steel, the only petitioner producer in the underlying investigation, filed a letter with the Department of Commerce ("the Department") stating that they do not object to the exclusion of this product from the order. In response to the apparent lack of interest in this product from the domestic industry, the Department of Commerce ("the Department") is initiating a changed circumstances review with respect to this request for all future entries of certain tin–free steel as described below.

EFFECTIVE DATES: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the Federal Register the antidumping duty order on certain tin mill products from Japan. See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan 65 FR 52067 (August 28, 2000). On December 3, 2001, Okaya, a U.S. importer requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. Okaya also requested that the partial revocation apply retroactively for all unliquidated entries. Specifically, the U.S. importer requested that the Department revoke the order with respect to imports meeting the following specifications: Steel coated with a metallic chromium layer between 100–200 mg/mFD and a chromium oxide layer between 5–30 mg/mFD; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density ("Br") of 10 kg minimum and a coercive force ("Hc") of 3.8 Oe minimum. The U.S. importer indicated that, based on its consultations with domestic producers, the domestic producers lack interest in producing this specialized product.

On January 16, 2002, Weirton Steel, the only petitioner producer in the underlying investigation filed a letter

stating that they do not object to the exclusion of this product from the order. Weirton Steel, a domestic producer of tin mill products, together with the Independent Steelworkers Union and the United Steelworkers of America, AFL–CIO, were the petitioners in the underlying sales at less–than–fair–value investigation (see 65 FR 52067). The Department notes that Weirton Steel is a producer of tin mill products, but individually does not account for substantially all of the production of the domestic like product. See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review, 66 FR 52109 (October 12, 2001). However, the Department has no information on the record that the other known domestic producers of tin mill products, Bethlehem Steel Corp., National Steel Corp., Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS–Posco Industries, Inc., have no interest in maintaining the antidumping duty order with respect to certain tin–free steel described in Okaya's request. Therefore, we are not combining this initiation with the preliminary determination, which is our normal practice under section 351.221(c)(3)(ii). This initiation will accord all interested parties an opportunity to address this proposed exclusion.

Scope of Review

The products covered by this antidumping order are tin mill flat–rolled products that are coated or plated with tin, chromium or chromium oxides. Flat–rolled steel products coated with tin are known as tin plate. Flat–rolled steel products coated with chromium or chromium oxides are known as tin–free steel or electrolytic chromium–coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed; such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single– or double–reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

– Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (± 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m–FD; with a chrome oxide coating restricted to 6 to 25 mg/m–FD with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut–off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m–FD as type DOS, or 3.5 to 6.5 mg/m–FD as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

– Single reduced electrolytically chromium–or tin–coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

– Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

– Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/mFD, with a chromium oxide layer of 5–30 mg/mFD , with a tensile strength of 260–440 N/mmFD , with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

– Bright finish tin–coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

– Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m–FD and chromium oxide of 10 mg/m–FD, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ± 1/8 inch, with a thickness tolerance of ±0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag)

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per coil, with a surface free of scratches, holes, and rust.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non–alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. To the Department's knowledge the following are U.S. producers of tin mill products: Bethlehem Steel Corp., National Steel Corp., Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS–Posco Industries, Inc. Based upon Weirton's statement of no interest and the silence of other domestic producers, we believe there is information sufficient to warrant initiation of this changed circumstances review.

The Department will publish in the Federal Register a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the Federal Register. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: January 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1910 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011702C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given that the State of Washington through Washington State Department of Transportation (WSDOT), King, Pierce, Snohomish, Clallam, Kitsap, Mason, and Thurston Counties, and the Cities of Bellevue, Bremerton, Burien, Covington, Edgewood, Everett, Kenmore, Kent, Lake Forest Park, Lakewood, Maple Valley, Newcastle, Renton, Sammamish, Shoreline, Tacoma, and University Place have jointly submitted a Routine Road Maintenance Program (RMP) pursuant to protective regulations promulgated under the ESA. The RMP would affect 12 Evolutionarily Significant Units (ESUs) of threatened salmonids identified in the

SUPPLEMENTARY INFORMATION. This document serves to notify the public of the availability of the RMP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft RMP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on February 25, 2002.

ADDRESSES: Written comments should be sent to Laura Hamilton, Habitat Conservation Division, National Marine Fisheries Service, 510 Desmond Drive, Suite 103, Lacey, Washington 98503. Comments may also be faxed to 360–753–9517. Copies of the entire RMP are available on the Internet at http://www.metrokc.gov/roadcon/bmp/pdfguide.htm, or from the address posted on that site. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Laura Hamilton at phone number 360-753-5820, or e-mail: Laura.Hamilton@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following 12 threatened salmonid ESUs: Puget Sound, Lower Columbia River, Upper Willamette River, Snake River spring/summer, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); Hood Canal summer-run and Columbia River chum salmon (*O. Keta*); Ozette Lake sockeye salmon (*O. Nerka*), and; Snake River Basin, Lower Columbia River, Upper Willamette River, and Middle Columbia River steelhead (*O. mykiss*).

Background

WSDOT and the counties and cities named above, submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened in Washington State. The RMP was designed so that routine road maintenance activities would be protective of salmonids and their habitat.

In Part 1, the RMP describes the program framework including the 10 program elements that comprise the program (Regional Forum, Program Review, Best Management Practices (BMPs) and Conservation Outcomes (element 3), Training, Compliance Monitoring, Research, Adaptive Management, Emergency Response, Biological Data Collection, and Reporting). In Part 2, the RMP elaborates on element 3, the BMPs, in much greater detail and provides detailed instructions to crews, supervisors, environmental support staff, design personnel and managers. Part 3 describes a process by which additional counties, cities, and ports in Washington State may develop routine road maintenance programs by adopting RMP parts 1 and 2, and then submit their RMP to NMFS for review, public comment, and approval or disapproval.

The RMP defines what activities are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact.

Finally, the RMP includes a biological review of the RMP prepared by WSDOT and the other entities named above. The biological review analyzes the effects of the RMP on listed salmonids and their habitat statewide. The biological review concludes that the identified routine road maintenance activities conducted throughout Washington State under the RMP will not impair properly functioning habitat, nor appreciably reduce the functioning of already impaired habitat, nor retard the long-term progress of impaired habitat toward PFC. Approval or disapproval of the RMP will depend on NMFS' findings after public review and comment.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve a routine road maintenance program of any state, city, county, or port, provided that NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition. Prior to final approval of a routine road maintenance program, NMFS must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: January 18, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1873 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402H]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Thursday, February 7, 2002, and will conclude at 4 p.m. on Friday, February 8, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review a regulatory amendment on rebuilding the red grouper stock and to review a study of the charter and party boat fishing industry of Alabama, Mississippi, Louisiana, and Texas. The SEP will also discuss bioeconomic modeling as an approach to future economic assessments.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held on the week of February 25th, 2002. Also, the SEP report will be presented to the Council at its meeting on the week of March 11th, 2002 in Mobile, AL.

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Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by January 31, 2002.

Dated: January 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1897 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011102F]

North Pacific Fishery Management Council; Public Meeting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of correction of a public meeting notice.

SUMMARY: The North Pacific Fishery Management Council's (Council) Essential Fish Habitat (EFH) Committee will meet in Juneau, AK.

DATES: The meeting will be held on January 29-30, 2002.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Office, 709 W. 9th Street, 4th Floor, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, North Pacific Fishery Management Council; 907–271–2809.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on January 16, 2002 (67 FR 2198). This notice serves as a correction to the address of the meeting. The original notice stated that the meeting would be held at the Alaska Fisheries Science Center in Seattle, WA.

All other previously-published information remains the same.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1896 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153]

Federal Acquisition Regulation; Submission for OMB Review; OMB Circular A–119

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0153).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Circular A–119. A request for public comments was published at 66 FR 58493, November 21, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 25, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: January 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–1912 Filed 1–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Federal Acquisition Regulation; Submission for OMB Review; Delivery Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning delivery schedules. A request for public comments was published at 66 FR 58454, November 21, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 25, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses Per Respondent: 5.
Total Responses: 17,200.
Hours Per Response: .167.
Total Burden Hours: 2,872.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: January 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–1913 Filed 1–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 10 a.m. to 4 p.m., February 27, 2002.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

10 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 14, 2001
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: January 18, 2002.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1951 Filed 1–22–02; 4:37 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, February 21, 2002, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion

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6 p.m.—Call to Order; Approve Minutes
6:10 p.m.—DDFO's Comments; Board Response; Public Comments
7 p.m.—Presentations
8:30 p.m.—Task Force and Subcommittee Reports; Board Response; Public Comments
9 p.m.—Administrative Issues
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on January 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1853 Filed 1–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with a meeting of the IEA's Emergency Response Exercise 2 Design Group will be held on February 1, 2002, at the headquarters of the IEA in Paris, France.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with a meeting of the IEA's Emergency Response Exercise 2 (ERE 2) Design Group will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on February 1, 2002, beginning at approximately 9:15 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at the ERE 2 Design Group meeting. The purpose of this meeting is to develop scenarios for an oil supply disruption simulation exercise in connection with the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA between March 12–14, 2002.

The Agenda for the meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

Introductions

1. Introductions by the Chair.
2. Introduction by OME [IEA Secretariat Oil Markets and Emergency Preparedness staff]: Background and Objectives of IEA Objectives of Emergency Response Exercises.
3. Presentation of goals and objectives of the ERE 2 Simulation Exercise

Scenario Building: Oil Disruption Scenarios in the Wake of September 11, 2001.

4. Presentation on Scenario Building and Risk Assessments.
5. Discussion on Scenario Building for the ERE 2 Simulation Exercise.

Design Group Meeting on ERE 2 Training and Simulation Exercise

6. Discussion led by the Chair.

Points for Discussion include:

- Approve the half-day training agenda for distribution to the SEQ.
- Approve goals and objectives for scenario building for the Simulation Exercise.
- Approve agenda for the Simulation Exercise.
- Discussion on operational issues.
- Briefing on the outcome of the December 12, 2001, SEQ/SLT [Standing Group on Long-Term Cooperation] Interfuels Workshop.

7. Chairman's Conclusion.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 22, 2002.

Lee Liberman Otis,

General Counsel.

[FR Doc. 02–1979 Filed 1–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–000]

East Tennessee Natural Gas Company; Notice of Site Visit

January 18, 2002.

Between January 28 and 31, 2002 the staff will be conducting site visits and an overflight of the project route alternatives for the proposed Patriot Extension in Wythe, Carroll, Floyd, Patrick, and Henry Counties, Virginia, and Rockingham County, North Carolina. Representatives of East Tennessee Natural Gas Company will accompany Commission staff. Anyone interested in participating in the site visits may contact the Commission's Office of External Affairs at (201) 208–1088 for more details and must provide their own transportation.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 02–1824 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2060–005, 2084–020, 2320–005, and 2330–007]

Erie Boulevard Hydropower, L.P.; Notice of Teleconference

January 18, 2002.

a. *Date and Time of Meeting:* January 24, 2002, 12 noon EST.

b. *FERC Contact:* Tom Dean at (202) 219–2778; *thomas.dean@ferc.fed.us* or John Costello at (202) 219–2914; *john.costello@ferc.fed.us.*

c. *Purpose of the Teleconference:* As follow-up to discussions during the January 18, 2002, teleconference regarding four projects on the Raquette River, the Federal Energy Regulatory Commission, the New York State Historic Preservation Office, and the Advisory Council on Historic Preservation intend to discuss agency concerns regarding consultation with the St. Regis Mohawk Tribe.

d. *Proposed Agenda:*

A. Introduction, Recognition of Participants, Teleconference Objectives

B. Discussion of PA, Appendices, and License Orders

C. Summary of meeting

D. Follow-up actions

E. Information regarding the teleconference including the toll free telephone number will be provided later.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1831 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP02–65–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

(January 18, 2002)

Take notice that on January 14, 2002, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP02–65–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by sale and transfer to Kokomo Gas & Fuel Company (Kokomo) a portion of Panhandle's piping downstream of Panhandle's Kokomo Meter Station, located in Tipton County, Indiana, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Panhandle proposes to transfer approximately 352 feet of certain pipeline segments and appurtenances constituting a portion of Panhandle's Tipton Lateral, Line No. 45–06–0001–0023, located in Tipton County, Indiana. Specifically, Panhandle proposes to transfer the last 352 feet of Line No. 45–06–0001–0023, which consists of approximately 64 feet of 16-inch outlet meter station header pipe, 243 feet of 12-inch, 37 feet of 16-inch, and 8 feet of 10-inch diameter pipelines. Panhandle indicates that these segments of the Tipton Lateral extend from the outlet side of Panhandle's Kokomo measuring station to the inlet side of Kokomo's facilities. Panhandle declares that currently, this portion of the lateral is used to deliver gas to Kokomo for its local distribution system. Panhandle states that Kokomo has indicated that its acquisition of the last 352 feet and appurtenances of the Tipton Lateral would provide better continuity for its distribution facilities and enhance the operation of its distribution system.

Panhandle avers that during the past twelve months, there have been three customers (NESI Energy Marketing L.L.C., Energy USA-TPC Corporation, and Northern Indiana Public Service Company) receiving firm service from Panhandle delivered at Panhandle's Kokomo Meter Station for further transportation on Kokomo's distribution system, and these three customers are all affiliated with Kokomo. Panhandle states that there are no other connections along the 352-foot segment of pipe. Panhandle asserts that since all transportation services which utilize these facilities are affiliated with Kokomo, the proposed abandonment will have no effect on the service Panhandle is providing to these customers through this short segment of pipe.

Panhandle states that Kokomo will acquire all rights, title, and interest in the last 352 feet of pipeline and appurtenances and incorporate the facilities as part of its distribution system.

Any questions regarding the prior notice request should be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs , Panhandle Eastern Pipe Line Company, 5444 Westheimer Road, Houston, Texas 77056–5306, at (713) 989–7000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1826 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–005; 2931–002; 2941–002; 2932–003; and 2897–003]

S.D. Warren Company; Notice of Commission Staff's 10(j) Meeting With Representatives of the Fish and Wildlife Service

January 18, 2002.

The staff of the Office of Energy Projects, Federal Energy Regulatory Commission will hold a Section 10(j) meeting on Tuesday, February 19, 2002, at the Holiday Inn West, 81 Riverside Street, in the city of Portland, Maine. The meeting is scheduled to begin at 12:30 p.m. to end no later than 3 p.m.

The purpose of the meeting is to discuss and resolve with the Fish and Wildlife Service that agency's following two Section 10(j) recommendations for the relicensing of the Presumpscot River Projects.

(1) Maintain minimum flows in the bypassed reaches of the Dundee, Gambo, and Mallison Falls projects as

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follows: 57 cubic feet per second (cfs) year round at Dundee; 40 cfs year round at Gambo; and 63 cfs year round at Mallison Falls.

(2) Develop a detailed shoreline management plan for licensee-owned lands abutting project waters within 500 feet of the high water elevation that are determined to be needed for project-related purposes, such as fish and wildlife habitat protection, providing public access for recreation, or protecting sensitive, unique, or scenic areas.

Representatives of the licensee and the State of Maine's fish and wildlife agencies are encouraged to participate in meeting discussions; due to the nature of the 10(j) process, representatives of concerned non-governmental organizations and other interested persons are invited to attend the meeting as observers.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1829 Filed 1–24–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–000 and RP01–253–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

January 18, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Monday, February 4, 2002 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Bill Collins at (202) 208–0248 or Irene Szopo at (202) 208–1602.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1832 Filed 1–24–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–93–002]

Virginia Electric and Power Company; Notice of Filing

January 18, 2002.

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with GenPower Earleys, L.L.C. (GenPower) that complies with the Commission's December 11, 2001 Letter Order in Docket No. ER02–93–000.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11th Order. pies of the filing were served upon GenPower, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 31, 2002.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1827 Filed 1–24–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–63–000]

White Rock Pipeline, L.L.C.; Notice of Application

January 18, 2002.

Take notice that on January 11, 2002, White Rock Pipeline, L.L.C. (White Rock), 426 East Missouri Avenue, Pierre, South Dakota 57501, filed in Docket No. CP02–63–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations (Commission), for a certificate of public convenience and necessity authorizing White Rock to operate an existing single-use pipeline that is approximately 10.5 miles long and 4.5 inches in diameter, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

White Rock states that the proposed pipeline is to be used for the sole purpose of transporting natural gas from an interconnection with the Alliance Pipeline in North Dakota, to a end-use customer, the Tri-State Ethanol Company, L.L.C. (Tri-State), which is White Rock's affiliate. White Rock states that Tri-State is a farmer-owned company that is in the process of building a facility near Rosholt, South Dakota that will produce ethanol from locally-produced corn. It is stated that the plant will be operational by mid-February. According to White Rock, Tri-State will be the majority owner and will exercise ownership and operational control over the pipeline.

White Rock states that the proposed pipeline is located in a sparsely-populated agricultural area in the extreme southeast corner of North Dakota and the extreme northeast corner of South Dakota. According to White Rock, the pipeline passes through farms and under rural roads; it will not pass through any residential areas. The sole purpose and use of the pipeline will be to transport natural gas to White Rock's affiliate, Tri-State.

White Rock states that the proposed pipeline has already been constructed. It was built in October and November 2001 because, at that time, it was conceived that there would be two companies that would own the pipeline—White Rock, which would own the portion of the pipeline in South Dakota, and another company, Fairmount Natural Gas Pipeline Company, L.L.C. (Fairmount), which would own the pipeline running from the Alliance interconnection to the North Dakota-South Dakota border. White Rock and Fairmount believed this arrangement would not be subject to FERC jurisdiction because the White Rock pipeline (as then conceived) would be a non-jurisdictional, intra-state plant line located wholly within South Dakota, and the Fairmount pipeline would be an intrastate pipeline located wholly in North Dakota, only interconnecting with the White Rock pipeline at the state border.

As a result, according to White Rock, the pipeline running from Alliance to the Tri-State facility was constructed in the Fall of 2001. No landowners expressed concern with the construction, as all easements and rights-of-way already had been purchased from consenting landowners.

According to White Rock, in accordance with Alliance's suggestion expressed during negotiations of an interconnect development agreement, White Rock agreed to obtain either an NGA certificate of public convenience and necessity, or a FERC determination that the pipelines were not required to obtain an NGA certificate.

According to White Rock, as a result and because the owners of these pipelines wish to put the entire pipeline into service as promptly as possible, White Rock has filed the subject application to operate the pipeline. Furthermore, and to simplify this application and its intent, the entire pipeline running from the Alliance interconnection to the Tri-State facility has been consolidated and now is owned and will be operated as a single pipeline—i.e., the White Rock pipeline, and the Fairmount entity will be or has been dissolved. The entire 10.5 mile pipeline is now owned by White Rock.

White Rock states that in addition to approving its request for a certificate, White Rock requests that the Commission grant a waiver of any regulations and requirements that White Rock may not have complied with in constructing its pipeline as it did. White Rock further requests waiver of various otherwise-applicable FERC regulations and requirements.

Any questions regarding this application should be directed to James Robbennolt, Olinger, Lovald, Robbennolt, McCahren & Reimers, P.C., 117 E. Capitol, P. O. Box 66, Pierre, S.D. 57501, at (605) 224–8851.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 25, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–1825 Filed 1–24–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5376–062]

Horseshoe Bend Hydroelectric Company; Notice of Availability of Environmental Assessment

January 18, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, the Division of Hydropower Administration and Compliance, Office of Energy Projects has reviewed an application to amend the license for the Horseshoe Bend Hydroelectric Project. The amendment application is for the modification of existing facilities and construction of new facilities in two phases to control sediment accumulation in the project's power canal. The proposed Phase I facilities include (a) widening of the entrance of the canal bottom width from 79 feet to 360 feet, (b) installing a 540-foot long elevated sill at the canal entrance, (c) constructing a diverging channel downstream of the sill and a sluice way on the river side of the sill, with trash racks over sluiceway boxes. Features of the Phase II include (a) a desanding/settling basin in the canal area, (b) desander sluice boxes end-to-end across the canal bed, and (c) access ramp for the maintenance of desander and other facilities. Phase II facilities will be constructed only if required after evaluating the effectiveness of Phase I facilities.

An Environmental Assessment (EA) has been prepared by staff for the proposed Phase I activities only, because the implementation of Phase II actions is uncertain and would depend upon the effectiveness of the facilities under Phase I. In the EA, staff does not identify any significant impacts that would result from the Commission's approval of the construction of Phase I facilities. Thus, staff concludes that approval of the proposed amendment of license would not cause a major federal action significantly affecting the quality of the human environment.

The EA has been attached and made part of an Order Amending the License

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Under Article 2, issued January 18, 2002, for the Horseshoe Bend Project (FERC No. 5376–062). Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may also be viewed on the Web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1828 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

January 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2782–006.

c. *Date filed:* October 30, 2001.

d. *Applicant:* Parowan City.

e. *Name of Project:* Red Creek Hydroelectric Project.

f. *Location:* On Red Creek near the City of Paragonah, in Iron County, Utah. The project occupies 19.06 acres of lands of the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Travis S. Taylor, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 219–2756 or *gaylord.hoisington@FERC.fed.us.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Red Creek Hydroelectric Project consists of: (1) (a) The South Fork 8-foot-high, 29-foot-long concrete overflow type diversion dam; a radial gate and trash racks incorporating an intake structure connected to a 4,263-foot-long, 10-inch-diameter steel penstock extending from the diversion structure to a pump-house located at the junction of the South Fork and the Red Creek Canyon penstock; and (b) the Red Creek Canyon 8-foot-high, 48-foot-long concrete overflow type diversion dam; a radial gate and trash racks incorporating an intake structure connected to a 16,098-foot-long steel penstock that consists of 7,838-foot, 18-inch-diameter 12 gauge; 1,408-foot, 18-inch-diameter 10-gauge; 2,620-foot, 16-inch-diameter 10-gauge; and 4,232-foot, 16-inch-diameter 7-gauge steel pipe, (2) a pump station, at the junction of the South Fork penstock and the Red Creek penstock, housing a 15 horsepower and a 20 horsepower pump with control equipment, (3) a 27-foot by 32-foot concrete block powerhouse housing a 500-kilowatt (kW) generator having a total installed capacity of 500 kW; and (3) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1830 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 18, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Exempt

1. Project Nos. 20, 2401 and 472, 01–08–02, John G. Carter
2. Project No. 2000–036, 01–08–02, David L Dickinson
3. CP01–361–000, 01–08–02, Susan Smillie
4. Project No. 10942–001, 01–08–02, John Phipps
5. Project No. 2342, 01–08–02, Loree Randall
6. Project No. 2055, 01–10–02, Susan Pengilly Neitzel
7. Project No. 2342, 01–14–02, Jim Rhoads
8. Project No. 2342, 01–14–02, Jerry Smith
9. Project Nos. 10461 and 10462, 01–16–02, Janet Hutzel

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1822 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D–USA–D11032–PA Rating EC2, Fort Indiantown Gap National Guard Training Center, To Enhance Training and Operations, Pennsylvania National Guard (PANG), Annville, Dauphin and Lebanon Counties, PA.

Summary: EPA expressed environmental concerns regarding wetlands, noise and prime and unique farmland issues. EPA requested that the FEIS include wetlands delineation, the type and quality of wetland habitat and functions/values. In addition, EPA recommended the use of a noise map that depicts the land use areas below the noise contours (including sensitive receptors), the acreage of land affected by noise and the number of people living within the impacted area. Regarding farmland issues, EPA requested that prime and unique farmland impacted by the project be delineated.

Final EISs

ERP No. F–AFS–J65343–MT, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County, MT.

Summary: EPA did not identify potential environmental impacts requiring substantive changes to the selected alternative.

ERP No. F–AFS–J65347–MT, Gold/Boulder/Sullivan (GBS), Implementation of Timber Harvest and Associated Activities Prescribed Burning, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about impacts to watersheds and wildlife habitat and security from proposed timber harvest and road management, with particular concern over exceedances of Forest Standards for open road density.

ERP No. F–BLM–L65318–OR, Southeastern Oregon Resource Management Plan, Implementation, Comprehensive Framework of Managing Public Land, Malheur, Jordan and Andrew Resource Areas, Vale and Burns Districts, Malheur, Harney and Grant Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–HUD–K89062–CA North Hollywood Arts and Entertainment District Project, Construction and Operation, North Hollywood Redevelopment Project, City of Los Angeles, and Los Angeles County, CA.

Summary: EPA found the FEIS adequately addresses most of the issues raised in its comment letter on the DEIS. However, EPA

ERP No. F–UAF–D11048–VA Initial F–22 Operational Wing Beddown Replacing the Existing F–15C at Langley (AFB) or one of the Four Alternative Locations, VA.

Summary: EPA has determined that the United States Air Force has adequately addressed its comments within the FEIS.

ERP No. FS–COE–K36098–CA Prado Dam Water Conversion Plan, Implementation, New Information Concerning New Modified Flood Protection Features, Remaining Features of the Santa Ana River Project (SARP) and Stabilization of the Bluff Toe at Norco Bluffs, Riverside, Orange and San Bernardino Counties, CA.

Summary: EPA expressed continuing environmental concerns regarding potential impacts associated with toxic air contaminants (due to project construction), mitigation for toxic air contaminants and criteria air pollutants, consistency with the Clean Water Act section 404, and analyzing cumulative impacts under the National Environmental Policy Act.

Dated: January 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1883 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed January 14, 2002 Through January 18, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020022, FINAL EIS, AFS, MT, Dry Fork Vegetation Restoration Project, To Improve Forest and Watershed Health and Sustainability, King Hill Ranger District, Lewis and Clark National Forest, Cascade and Judith Basin Counties, MT, Wait Period Ends: February 25, 2002, Contact: Jennifer Johnsten (406) 791–7765.

EIS No. 020023, DRAFT SUPPLEMENT, AFS, ID, North Lochsa Face Ecosystem Management Project,

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Updated Information on the Potential Effects of the Vegetation and Aquatic Restoration, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID, Comment Period Ends: March 11, 2002, Contact: Lois Foster (208) 935–4258.

EIS No. 020024, DRAFT EIS, BLM, OR, Coos County Natural Gas Transmission Pipeline, Construction, Operation and Maintenance, Proposed Natural Gas Pipeline from Roseburg to Coos Bay, Right-of-Way Permit, Coos Bay District, Coos County, OR, Comment Period Ends: March 26, 2002, Contact: Bob Gunther (541) 751–4295. This document is available on the Internet at: (*www.or.blm.gov/coosbay*) and (*http://www.co.coos.or.us*).

EIS No. 020025, FINAL EIS, AFS, ID, West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Latah County, ID, Wait Period Ends: February 25, 2002, Contact: Larry W. Ross (208) 875–1131.

EIS No. 020026, DRAFT EIS, FRC, ID, Four Mid-Snake River Hydroelectric Projects, Applications for New License for the Existing Projects: Shoshane Falls-FERC No. 2778, Upper Salmon Falls-FERC No. 2777, Lower Salmon Falls-FERC No. 2061 and Bliss-FERC No. 1975, Snake River, ID, Comment Period Ends: March 26, 2002, Contact: John Blair (202) 219–2845. This document is available on the Internet at: *http://www.ferc.gov/hydro/hydro2.htm*.

EIS No. 020027, FINAL EIS, AFS, ID, Little Blacktail Ecosystem Restoration Project, Health and Productivity of Terrestrial and Aquatic Habitats Improvement, Implementation, Idaho PanhandleNational Forests, Sandpoint Ranger District,Bonner County, ID, Wait Period Ends: February 25,2002, Contact: Nancy Kertis (208) 263–5111.This document is available on the Internet at: *http://www.fs.fed.us/ipnf/eco/manage/nepa/index.html*.

EIS No. 020028, DRAFT EIS, NRS, OK, Lower ClearBoggy Creek Watershed Project, FloodwaterRetarding Structure (FWRS) Site 32B Construction,Atoka County, OK, Comment Period Ends: March 11,2002, Contact: M. Darrel Dominick (405) 742–1227.

EIS No. 020029, FINAL EIS, USN, HI, ProgrammaticEIS—Ford Island Development Program, ProposedConsolidation of Selected Operations at PearlHarbor by Locating and Relocating CertainActivities, Ford Island, HI, Wait Period Ends:February 25, 2002, Contact: Stanley Uehara(808) 474–5909.

EIS No. 020030, DRAFT EIS, IBR, CA, ImperialIrrigation District Water Conservation andTransfer Project and Draft Habitat ConservationPlan (HCP), To Implement a Grant and Section 10Permit to Authorize the Incidental Take, ColoradoRiver, Imperial County, CA, Comment Period Ends:April 26, 2002, Contact: Bruce Ellis (602) 216–3854.This document is available on the Internet at: *www.is.ch2m.com/iidweb*.

Amended Notices

EIS No. 010541, DRAFT EIS, COE, TX, Texas City'sProposed Shoal Point Container Terminal Project,Containerized Cargo Gateway Development, US ArmyCOE Section 404 and 10 Permits Issuance, MaterialPlacement Area (DMPA), City of Texas, GalvestonCounty, TX, Comment Period Ends: February 19, 2002,Contact: Sharon Manella Tirpak (409) 766–3136.Published FR 01–04–02 Correction to Contact Person telephone number.

EIS No. 020017, DRAFT EIS, BLM, WY, Powder RiverBasin Oil and Gas Project, To Extract, Transport, and Sell Oil and Natural Gas Resource,Application of Permit to Drill (APD), Special UsePermit and Right-of-Way Grant, Campbell,Converse, Johnson and Sheridan Counties, WY ,Comment Period Ends: April 18, 2002, Contact:Paul Beels (307) 684–1100.Published FR 01–18–02—Correction to Website Address.This document is available on the Internet at: *www.wy.blm.gov*.

Dated: January 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1884 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203J; FRL–6819–6–]

Chlorpyrifos; End-Use Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the cancellations, as requested by the companies, that hold the registrations of pesticide end-use products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a December 5, 2001, notice of receipt of requests for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34203J. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In a memorandum of agreement ("Agreement") effective June 7, 2000, EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel their registrations for these products.

In the **Federal Register** of December 5, 2001 (66 FR 63237) (FRL–6811–4), EPA published a notice of the Agency's receipt of end-use product cancellation requests from registrants that hold the pesticide registrations containing chlorpyrifos (who are in large part the customer of the basic manufacturers). These requests were submitted as a result of the Memorandum of Agreement that was signed on June 7, 2000, between EPA and the basic manufacturers of chlorpyrifos. A copy of the Memorandum of Agreement that was signed on June 7, 2000, is located in OPP docket control number 34203D.

B. Requests for Voluntary Cancellation of End-Use Products

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1. END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Dragon Chemical Corporation	16–101	Dursban 4 Granular Insecticide
	16–123	Dragon Home Pest Control
	16–139	Dragon Home Pest Killer
	16–146	Dragon Termite and Soil Insect Killer
	16–163	Dragon Crawling Insect Killer
	16–172	Dragon Dursban 1% Granular Insecticide
The Scotts Company	239–2423	Ortho Lawn Insect Spray
	239–2490	Ortho Home Pest Insect Control
	239–2513	Ortho-Klor Soil Insect and Termite Killer
	239–2517	Ortho-Klor Indoor & Outdoor Insect Killer
	239–2520	Ortho Mole Cricket Bait Formula II
	239–2521	Ortho Mole Cricket Bait Formula III
	239–2570	Ortho-Klor 1% Dursban Lawn & Soil Granules
	239–2633	Ortho Dursban Lawn Insect Formula II
	239–2635	Ortho Multipurpose Borer & Insect Spray
Amvac Chemical Corporation	5481–68	Alco Chlorpyrifos 1E Emulsifiable Insecticide
	5481–121	Chlorpyrifos Granules 1
	5481–216	Dursban-DDVP 2-50 Pest Control
	5481–217	Dursban-DDVP 1.25
	5481–221	Dursban 2E Insecticide
	5481–222	Bilco Dursban 4E Insecticide
	5481–240	Alco Bug Spray Flea, Ant and Roach Killer
Contact Industries, a Division of Safeguard Chemical Corporation	10806–52	Contact Roach & Ant Killer II
	10806–99	Contact Ant and Roach Killer IV
	10806–100	Contact Ant and Roach Killer XV
	10806–101	Contact Liquid Ant & Roach Killer V
	10806–102	Contact Roach and Ant Killer XVI
Amrep, Incorporated	10807–116	Misty Ant, Roach, & Spider Residual Insecticide with Dursban
	10807–187	Misty Aqueous Residual Spray
Drexel Chemical Company	19713–229	Drexel Chlorpyrifos 0.5G
	19713–341	Leisur and Lawn Insect Control

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In the **Federal Register** notice of December 5, 2001 (66 FR 63237), EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C).

No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested registration cancellations. The Agency orders that the registrations identified in Table 1 are hereby canceled. After January 25, 2002, any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

1. *Distribution or sale by registrants.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 1 will not be lawful under FIFRA after January 25, 2002.

2. *Retail and other distribution or sale.* The retail sale of existing stocks of products listed in Table 1 will not be lawful under FIFRA after January 25, 2002. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

3. *Use of existing stocks.* The use of existing stocks of products listed in Table 1 is permitted until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides andpests.

Dated: January 15, 2002.

Jack Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–1764 Filed 1–24–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1066; FRL–6819–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1066, must be received on or before February 25, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1066 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Geri McCann, Insecticide/Rodenticide Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8375; e-mail address: mccann.geri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1066. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1066 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1066. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 1F6301

EPA has received a pesticide petition (PP 1F6301) from E. I. du Pont de Nemours and Company (DuPont), P.O. Box 30, Newark, DE 19714, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3H)- carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno [1,2-e] [1,3,4]oxadiazine-4a(3H)-carboxylate] in a 75:25 mixture (DPX MP062), respectively, in or on the raw agricultural commodities as follows: Alfalfa forage at 12 parts per million (ppm), alfalfa hay at 50 ppm, peanut at 0.01 ppm, peanut hay at 40 ppm, potato at 0.02 ppm, soybean aspirated grain fractions at 70 ppm, soybean hulls at 6.5 ppm, head lettuce at 5 ppm, meat (of cattle, goats, hogs, horses and sheep) at 0.05 ppm, fat (of cattle, goats, hogs, horses and sheep) at 1.5 ppm, meat by-products (of cattle, goats, hogs, horses and sheep) at 0.03 ppm and milk at 0.15 ppm. Two analytical enforcement methods are available for determining these plant and animal residues. They are GC-MSD and HPLC column-switching with UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

The active ingredient in the end-use formulations, Steward® and Avaunt™, is a 75:25 mixture of two isomers, indoxacarb (IN-KN128) and IN-KN127. Only one of the isomers, indoxacarb (DPX-KN128), has insecticidal activity. Since the insecticidal efficacy is based

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on the concentration of indoxacarb (DPX-KN128), the application rates have been normalized on an indoxacarb (DPX-KN128) basis. The proposed tolerance expression includes both indoxacarb (DPX-KN128) and IN-KN127 and the residue method does not distinguish between the enantiomers, therefore residues are reported as the sum of indoxacarb (DPX-KN128) combined with IN-KN127. Residues of indoxacarb (DPX-KN128) combined with IN-KN127 will be referred to as "KN128/KN127."

1. *Plant metabolism* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, grapes and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method*. One plant residue enforcement method detects and quantitates indoxacarb in cotton and sweet corn matrices by HPLC with UV detection. The other plant residue enforcement method detects and quantitates indoxacarb in various matrices including lettuce, tomato, pepper, cabbage, broccoli, cauliflower, apple, pear, grape, cottonseed, tomato and apple processed commodity samples by GC-MSD. The analytical method for detecting and quantitating indoxacarb in animal matrices including whole and skim milk, cream, fat, muscle, liver and kidney is an HPLC column-switching method using UV detection. The limit of quantitation in each method allows monitoring of crops and animal matrices with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues—i. Alfalfa*. Residue studies were conducted at a total of 12 field sites. All studies were done using Steward® Insecticide. One broadcast application of Steward® Insecticide was made for each alfalfa cutting at each test site. Each application was made at a maximum rate of 0.11 lb. a.i. DPX-KN128/A. After application, the plant was cut at a PHI of 7 days and samples of forage were taken. Additional forage was allowed to dry to proper moisture content to produce hay samples (cutting 1). Plants were allowed to regrow and were retreated with 0.11 lb. a.i. DPX-KN128 seven days prior to the next cutting. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate forage samples were 9.0 ppm at a PHI of 7 days (range 0.8–9.0 ppm). Maximum residues of KN128/KN127 in individual duplicate hay samples were 39 ppm at a PHI of 7 days (range 3.2–39 ppm).

ii. *Lettuce*. Residue studies were conducted at a total of 18 field sites. All studies were done using Avaunt™ Insecticide. Avaunt™ contains 30% active ingredient (a.i.) (300 g DPX-KN128 per kg, w/w). Four broadcast applications of Avaunt ™ Insecticide were made at each test site. Each application was made at a maximum rate of 0.111 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.444 lb. a.i./A). Applications were made approximately 3 days apart. The target PHI was 3 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate head lettuce samples collected from the field with wrapper leaves were 4.4 ppm at a PHI of 3 days (range < 0.40–4.4 ppm). Maximum residues of KN128/KN127 in individual duplicate head lettuce samples without wrapper leaves were 1.1 ppm at a PHI of 3 days (range < 0.02–1.1 ppm). Maximum residues of KN128/KN127 in individual duplicate leaf lettuce samples were 8.7 ppm at a PHI of 3 days (range 2.7–8.7 ppm). Head lettuce and leaf lettuce were each grown at 9 field sites.

iii. *Peanuts*. Residue studies were conducted at a total of 12 field sites. All studies were done using Steward® Insecticide. Steward® contains 15% a.i (150 g DPX-KN128 per liter, w/v). Four broadcast applications of Steward Insecticide were made at each test site. Each application was made at a maximum rate of 0.110 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.440 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 14 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in peanut hay were 32 ppm at a PHI of 14 days (range 2.1–32 ppm). No detectable residues of KN128/KN127 were found in peanut nutmeat at a PHI of 14 days at any of the 12 test sites in the study (residues < 0.003 ppm).

iv. *Peanuts, process fractions*. A processing study was conducted to determine the magnitude of KN128/KN127 residues in peanut nutmeat and their possible concentration in peanut processed fractions (refined oil and meal). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Peanuts were treated with Steward Insecticide (see description above). Four broadcast applications were made each at a rate of 0.110 and 0.550 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.440 lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 14 days. At 5X the maximum seasonal use rate, quantifiable residues of KN128/KN127 were found in peanut nutmeat (0.013 ppm). Residues of KN128/KN127 in refined oil were 0.013 ppm. Quantifiable residues were not found in meal (residues < 0.0075 ppm). Residues of KN128/KN127 did not concentrate in refined oil or meal to levels greater than those on the raw agricultural commodity (concentration factors =1 or < 1, respectively).

v. *Potatoes*. Residue studies were conducted at a total of 16 field sites. All studies were done using Avaunt™ Insecticide. Avaunt™ contains 30% a.i. (300 g DPX-KN128 per kg, w/w). Four broadcast applications of Avaunt™ Insecticide were made at each test site. Each application was made at a maximum rate of 0.065 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.26 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 7 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). No quantifiable residues of KN128/KN127 were found in potato tubers at a PHI of 7 days at any of the 16 test sites in the study (residues < 0.010 ppm).

vi. *Potatoes, process fractions*. A processing study was conducted state to determine the magnitude of KN128/KN127 residues in unwashed and washed potato tubers and culls and their possible concentration in potato tuber processed fractions (wet peel, chips and flakes). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Potatoes were treated with Avaunt Insecticide (see description above). Four broadcast applications were made each at a rate of 0.065 and 0.325 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.26 lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 7 days. At 5X, the maximum seasonal use rate, no quantifiable residues of KN128/KN127 were found in unwashed or washed potatoes, culls or in wet peel, chips or flakes (residues < 0.010 ppm). Residues of KN128/KN127 did not concentrate in any potato processed fraction to levels greater than those on the raw agricultural commodity.

vii. *Soybeans*. Residue studies were conducted at a total of 20 field sites. All studies were done using Steward® Insecticide. Steward® contains 15% a.i. (150 g DPX-KN128 per liter, w/v). Four broadcast applications of Steward® Insecticide were made at each test site. Each application was made at a maximum rate of 0.111 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.444 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 21 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in soybean seed were 0.59 ppm at a PHI of 21 days (range < 0.010–0.59 ppm). As part of this study, large samples of soybean seed were collected and subsequently processed into aspirated grain fraction (dust). Analysis of the seed showed a residue of 0.032 ppm. Analysis of the aspirated grain fraction (dust) showed a residue of 2.8 ppm (concentration factor of 88:1).

viii. *Soybean, process fractions*. A processing study was conducted to determine the magnitude of KN128/KN127 residues in soybean seed and their possible concentration in processed fractions (hulls, meal and refined oil). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Soybeans were treated with Steward® Insecticide (see description above). Four broadcast applications were made each at a rate of 0.111 and 0.555 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.444-lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 21 days. At 5X the maximum seasonal use rate, residues of KN128/KN127 in soybean seed were 0.077 ppm. Quantifiable residues were found in hulls (0.63 ppm) and refined oil (0.049 ppm). Quantifiable residues were not found in meal (residues < 0.010 ppm). Residues of KN128/KN127 concentrated in hulls (concentration factor = 8.12) but did not concentrate in refined oil or meal to levels greater than those on the raw agricultural commodity (concentration factors < 1).

B. Toxicological Profile

1. *Acute toxicity* Based on EPA criteria, indoxacarb is classified as follows for Toxicity Categories

Guideline	Title	Results	Category
81–1	Acute oral txicity	LD_{50} 1,730 mg/kg (M Rat) LD_{50} 268 mg/kg/(F Rat)	Category II
81–2	Acute dermal toxicity	LD_{50} > 5,000 mg/kg (Rat)	Category IV
81–3	Acute inhalation toxicity	LC_{50} > 5.5 mg/L (M Rat) (70% MUP)	Category IV
81–4	Primary eye irritation	Effects reversed within 72 hours (Rabbit)	Category III
81–5	Primary Dermal Irritation	No irritation (Rabbit)	Category IV
81–6	Skin Sensitization	Sensitizer (Guinea Pig)	————

Formulated products are slightly less acutely toxic than indoxacarb.

In an acute neurotoxicity study, indoxacarb exhibited decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity, but only at the highest doses tested. The NOAEL was 100 mg/kg for males and 12.5 mg/kg for females based on body weight effects in females 50 mg/kg.

2. *Genotoxicty*. Indoxacarb has shown no genotoxic activity in the following listed *in-vitro* and *in-vivo* tests:

i. Ames--Negative

ii. *In-vitro* mammalian gene mutation (CHO/HGPRT)-- Negative

iii. *In-vitro* unscheduled DNA synthesis-- Negative

iv. *In-vitro* chromosomal aberration--Negative

v. *In-vivo* mouse micronucleus--Negative

3. *Reproductive and developmental toxicity*. The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of indoxacarb. In a 2-generationrat reproduction study, the parental no observed adverse effect level (NOAEL) was 1.5 mg/kg/day. The parental NOAEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F0 generation and potential treatment-related changes in spleen weights for the higher groups of the F1 generation. There was no effect on mating or fertility. The NOAEL for fertility and reproduction was 6.4 mg/kg/day. The offspring NOAEL was 1.5 mg/kg/day, and was based on the reduced mean pup weights noted for the F1 litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. In studies conducted to evaluate developmental toxicity potential, indoxacarb was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX-MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOAEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOAEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOAELS were 500 mg/kg/day based on body weight effects, decreased food consumption in dams and decreased weight and delayed ossification in fetuses at 1,000 mg/kg/day.

4. *Subchronic toxicity*. Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In a 90–day feeding study in rats, the NOAEL was 3.1 and 2.1 mg/kg/day for males and females, respectively. In male rats, the NOAEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOAEL was based on decreased body weight and food efficiency. In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The subchronic NOAEL in dogs (5.0 mg/kg/day, M/F) was based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in

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a clinical setting. Mice were less sensitive to indoxacarb than the rats or dogs. NOAELs (23 mg/kg/day, males, 16 mg/kg/day, females) were based on mortality (males only); increased reticulocytes and Heinz bodies and decreased body weight, weight gain, food consumption, food efficiency; and increased clinical signs (leaning to one side and/or with abnormal gait or mobility) (females only). In a 28–day repeated dose dermal study, the NOAEL was 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters, the spleen and clinical signs of toxicity in both sexes in rats.

5. *Chronic toxicity.* Chronic studies with indoxacarb were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Indoxacarb was not oncogenic in rats or mice. The chronic NOAEL in male rats was 5 mg/kg/day based on body weight and nutritional effects. In females, the NOAEL of 2.1 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above. Hemolytic effects were present only through the 6–month evaluation and only in females. The regenerative nature of indoxacarb-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at later evaluations. In mice, the chronic NOAEL of 2.6 mg/kg/day for males was based on deceased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOAEL for females was 4.0 mg/kg/day based on body weight nutritional effects, neurotoxicity, and clinical signs at 20 mg/kg/day. In dogs, the chronic NOAEL was about 2.3 and 2.4 mg/kg/day in males and females, respectively based on hemolytic effects similar to those seen in the subchronic dog study.

6. *Animal metabolism.* –i. *Livestock animal metabolism.* Animal metabolism has been studied in the rat, hen, and cow and is well understood. In contrast to crops, indoxacarb is extensively metabolized in animals.

ii. *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87–88% of the total administered dose was excreted; parent comprised 51–54% of the total dose in excreta. Concentration of residues in eggs were low, 0.3–0.4 of the total dose, as was the concentration of residues in muscle, 0.2% of the total dose. Parent and metabolite IN-JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN-JT333 were found in egg yolks; however, their concentrations were very low- 0.01–0.02 ppm. Concentrations of parent and IN-JT333 in muscle were at or below the limit of quantitation, (LOQ) (0.01 ppm).

iii. *Cattle.* For the cow study, the cattle were fed at 10 ppm/day for 5-days; approximately 20% of the total administered dose was excreted in urine and 53–60% was excreted in feces in 5-days. Four- tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46–68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN-JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN-JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN-JT333 were monitored in the cattle feeding study.

iv. *Cattle feeding study.* A cattle feeding study was conducted with indoxacarb at doses of 7.5 ppm, 22.5 and 75 ppm. KN128/KN127 concentrations at the 22.5 ppm feeding level were 0.053 ppm for whole milk, 0.018 ppm for skim milk and 0.58 ppm for cream. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk and cream. IN-JT333 concentrations at the 22.5 ppm feeding level were below the LOQ for whole milk and skim milk. The concentration of IN-JT333 in cream was 0.022 ppm. The mean IN-JT333 concentrations were proportional to the dosing level in cream. KN128/KN127 and IN-JT333 concentrations at the 22.5 ppm feeding level were below the level of LOQ for all tissues, except fat (0.45 ppm, KN128/KN127 and 0.03 ppm IN-JT333) and kidney (0.017 ppm KN128/KN127), throughout 28 days of dosing. The mean KN128/ KN127 residues in muscle, fat, liver, and kidney samples were proportional to the dosing level. The mean IN-JT333 residues in fat were proportional to the dosing level. Tolerances have been established at 0.75 ppm in fat (cattle, goat, horse, sheep and hog), 0.03 ppm in meat, 0.02 ppm in meat by-products, 0.10 ppm in milk and 3.0 ppm in milk fat.

7. *Metabolite toxicology.* In rats, indoxacarb was readily absorbed at low dose (5 mg/kg), but saturated at the high dose (150 mg/kg). Indoxacarb was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN-JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products (containing only one radiolabel), while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring, which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, UV and/or by comparison to standards chemically synthesized or produced by microsomal enzymes.

8. *Endocrine disruption.* Lifespan, and multigenerational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of indoxacarb is negligible.

C. Aggregate Exposure

Tolerances for indoxacarb are proposed to support agricultural uses on alfalfa, lettuce, peanuts, potatoes and soybean. There are no residential uses of indoxacarb.

1. *Dietary exposure.* The chronic RfD of 0.02 mg/kg bw/day is based on a NOAEL of 2.0 mg/kg bw/day from the subchronic rat feeding study, the subchronic rat neurotoxicity study, and the chronic/carcinogenicity study, using an uncertainty factor of 100. The acute RfD for the general population is 0.12 mg/kg/day, based on the NOAEL of 12.5 mg/kg in the acute neurotoxicity study and an uncertainty factor of 100. The acute RfD for females 13–50 years of age is 0.02 mg/kg/day, based on the NOAEL of 2 mg/kg/day observed in the developmental rat toxicity study and using an uncertainty factor of 100.

Food. Chronic dietary exposure assessment. Chronic dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, pears, peppers, sweet corn, tomatoes and the proposed uses on alfalfa, lettuce, peanuts, potatoes and soybeans are well within acceptable limits for all sectors

of the population. The Chronic Module of the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 7.075) was used to conduct the assessment with the reference dose (RfD) of 0.02 mg/kg/day. The analysis used overall mean field trial values and conservatively assumed that 100% of the crops on the proposed label would be treated with indoxacarb. The chronic dietary exposure to indoxacarb is 0.001428 mg/kg/day, and utilizes 7.1% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.003929 mg/kg/day, and utilizes 19.6% of the RfD. The table below lists the results of this analysis, which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to indoxacarb.

Subgroup	Maximum Dietary Exposure (mg/kg/day)	%RfD
U.S population	0.001428	7.1
Non-nursing infants (< 1 year old)	0.001707	8.5
Children (1–6 years)	0.003929	19.6
Children (7–12 years)	0.002233	11.2
Females (13+, pregnant/not nursing)	0.001353	6.8

2. *Acute dietary exposure.* Acute dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, pears, peppers, sweet corn, tomatoes and the proposed uses on alfalfa, lettuce, peanuts, and soybeans are well within acceptable limits for all sectors of the population. The Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 7.075) was used to conduct the assessment. Margins of exposure (MOE) were calculated based on an acute NOAEL of 2 mg/kg/day for women of childbearing age and a NOAEL of 12 mg/kg/day for children and the general population (Pesticide Fact Sheet for Indoxacarb). The Tier 2 analysis used anticipated residues and conservatively assumed that 100% of the crops on the proposed label would be treated with indoxacarb. The results of this analysis are given in the table below. The percent of the acute population adjusted dose (a PAD) for all population subgroups shows that an adequate margin of safety exists in each case. Thus, the acute dietary safety of indoxacarb for established and follow-on uses clearly meets the FQPA standard of reasonable certainty of no harm and presents much lower acute dietary risk than many of its competitors.

Subgroup	95th Percentile of Exposure	
	Exposure (mg/kg/day)	% Acute Population Adjusted Dose (aPAD)
U.S. population	0.009013	7.5
Non-Nursing (< 1 year)	0.013429	11.9
Children (1–6 years)	0.018211	15.8
Children (7–12 years)	0.010682	8.9
Females (13+, pregnant/not nursing)	0.006256	31.3

Drinking water. Indoxacarb is highly unlikely to contaminate ground water resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the PRZM/EXAMS and SCI-GROW models the highly conservative, estimated environmental concentrations (EECs) of indoxacarb and its R-enantiomer for acute exposures are estimated to be 3.81 parts per billion (ppb) for surface water and 0.02 ppb for ground water. (Indoxacarb Final Rule, 65 FR 58421). The EECs for chronic exposures are estimated to be 0.56 ppb for surface water and 0.02 ppb for ground water. Drinking water levels of comparison (DWLOCs), theoretical upper limits on the pesticides concentration in drinking water, were calculated to be much higher than the EEC's. Thus, exposures to drinking water are expected to be negligible.

3. *Non-dietary exposure.* Indoxacarb products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for DPX-MP062 has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population, and ample margins of safety have been demonstrated for both situations. The chronic dietary exposure to indoxacarb is 0.001428 mg/kg/day, which utilizes 7.1% of the RfD for the overall U.S. population, assuming 100% of the crops are treated and residues equivalent to overall mean field trial values. The percent of the acute population adjusted dose (7.5% aPAD) for all population subgroups shows that an adequate margin of safety exists. Using only PHED data levels A and B (those with a high level of confidence, MOEs for occupational exposure are 600 for mixer/loaders and 2,500 for applicators. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of indoxacarb including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.003929 mg/kg/day or 19.6% of the RfD. For infants (non-nursing, >1 year), the exposure

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accounts for 8.5% of the RfD. For acute exposure at the 95th percentile (based on a conservative Tier 2 assessment) the exposure was 0.018211 mg/kg/day (15.8% aPAD) for children 1–6 and 0.013429 mg/kg/day (11.9% aPAD) for non-nursing infants. There are no residential uses of indoxacarb and contamination of drinking water is extremely unlikely. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to indoxacarb, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for indoxacarb.

[FR Doc. 02–1763 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50692; FRL–6815–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 220, Crystal Mall #2, Arlington, VA; (703) 305–6502; e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUP

EPA has issued the following EUP:

241–EUP–141. Extension. BASF Corporation, P.O. Box 400, Princeton, NJ 08543–0400. This EUP allows the use of 289.27 pounds of the termiticide chlorfenapyr (4–bromo–2–(4–chlorophenyl)–1–(ethoxymethyl)–5–(trifluoromethyl)–1H–pyrrole–3–carbonitrile) on less than 22 acres of residential/commercial structures to evaluate the control of termites. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington. The EUP extension is effective from November 26, 2001 to December 31, 2002.

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–1765 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7132–9]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Pittsfield Economic Development Authority ("PEDA"), Related to CERCLA Site Known as the GE-Pittsfield/Housatonic River Site, Located in Pittsfield, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, *et seq.*, notice is hereby given of a Prospective Purchaser Agreement and Covenant Not to Sue between the United States, on behalf of the U.S. Environmental Protection Agency ("EPA" or the "Agency"), and the Pittsfield Economic Development Authority (PEDA) ("Purchaser"). The Purchaser plans to acquire 52 acres of the GE-Pittsfield/Housatonic River Site for the purpose of redeveloping for the economic benefit of the City of Pittsfield. Pursuant to a Definitive Economic Development Agreement entered into by PEDA, the City, and the General Electric Company ("GE"), approximately 52 acres of the GE-Pittsfield/Housatonic River Site will be transferred to PEDA after the completion of removal actions pursuant to a CERCLA consent decree entered by the United States District Court in the matter of *United States* v. *General Electric Company,* Civil Docket No. 99–30225-MAP. PEDA will be the fee owner of property transferred to it by GE and will be responsible for managing future land uses thereon. Under the Proposed Agreement, the United States grants a Covenant Not to Sue to the Purchaser under provisions of CERCLA, the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean Water Act, the Toxic Substances Control Act, and the Rivers and Harbors Act, with respect to existing contamination at the Site. In exchange, the Purchaser agrees to perform the following with respect to the property: grant access; abide by the terms of institutional controls; perform post-removal site control work for the response actions undertaken at the Property; and pay the natural resource trustees up to $4 million, consisting of in-kind services and/or a percentage of PEDA's net revenues. In addition, under the Agreement, PEDA will abide by its obligations in the Consent Decree and provide particular covenants not to sue the government.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02114.

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Pittsfield Economic Development Authority (PEDA) related to CERCLA Site known as the GE-Pittsfield/Housatonic River Site, U.S. EPA Docket No. CERCLA–01–2002–0007.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Agreement and Covenant Not to Sue can be obtained from Rose Howell, Paralegal, U.S. Environmental Protection Agency, Region 1, One Congress Street, Mailcode HIO, Boston, Massachusetts 02214, (617) 918–1213.

Dated: January 3, 2002.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. 02–1881 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 15, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0999.

Expiration Date: 01/31/05.

Title: Exemption of Public Mobile Service Phones from the Hearing Aid Compatibility Act.

Form No.: N/A.

Respondents: Individuals or households; business or other for-profit.

Responses: 3,860.

Estimated Time Per Response: Between 2 hours and 8 hours.

Estimated Total Annual Burden: 20,265 hours.

Total Annual Cost: 0.

Description: The reporting requirement, if adopted, will be used by the Commission to monitor wireless carriers and handset and hearing aid manufacturers progress towards compliance with hearing aid compatibility requirements, if the current exemption is limited or revoked. Technical standards are mandated by the Hearing Aid Compatibility Act of 1988, if the Commission decides to limit or revoke the current exemption, and will be used as a guide to compliance with hearing aid compatibility requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1809 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–161]

Rescheduled Seventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the seventh meeting of the WRC–03 Advisory Committee that was originally scheduled for January 30, 2002 has been rescheduled and will now be held on February 6, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: February 6, 2002; 10:00 am—12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the seventh meeting is as follows:

Agenda—Seventh Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

February 6, 2002; 10 am–12 noon

1. Opening Remarks

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2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Donald Abelson,

Chief, International Bureau.

[FR Doc. 02–1812 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 29, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule—Part 325—Risk-Based Capital Treatment for Claims on Securities Firms.

Discussion Agenda

Memorandum re: Special Examination Activities.

The meeting will be held on the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 22, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–2015 Filed 1–23–02; 2:01 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—January 30, 2002.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open and the remainder will be closed.

MATTERS TO BE CONSIDERED: The Open Portion of the Meeting:

1. Passenger Vessel Operator Program: Issues Regarding Financial Coverage for Performance of Cruises.

The Closed Portion of the Meeting:

1. Fact Finding Investigation No. 24—Exclusive Tug Arrangements in Florida Ports

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–2031 Filed 1–23–02; 2:00 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Mildred M. Hansen Trust and Mildred M. Hansen, as an individual and trustee of the Mildred M. Hansen Trust, Currie, Minnesota; to retain voting shares of Currie Bancorporation, Inc., Currie, Minnesota, and thereby indirectly retain voting shares of Currie State Bank, Currie, Minnesota.

Board of Governors of the Federal Reserve System, January 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1932 Filed 1–24–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2002.

A.Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Colony Bankcorp, Inc., Fitzgerald, Georgia; to acquire Quitman Bancorp, Inc., Quitman, Georgia, and thereby indirectly acquire Quitman Federal Savings Bank, Quitman, Georgia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–1931 Filed 1–24–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("FTC").

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Funeral Industry Practices Rule ("Funeral Rule" or "Rule"). The FTC is seeking public comments on its proposal to extend through February 28, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on February 28, 2002.

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Funeral Rule: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Myra Howard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On November 21, 2001, the FTC sought comment on the information collection requirements associated with the Funeral Rule, 16 CFR part 453 (OMB Control Number: 3084–0025). See 66 FR 58492. No comments were received on any aspect of the notice, including staff's PRA burden estimates. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

The Funeral Rule ensures that consumers who are purchasing funeral goods and service have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires the funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,000 hours, rounded to the nearest thousand. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1998.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's prior estimate in 1998.

The original rulemaking record indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[1] Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributable to disclosures required solely by the Rule, since many providers would provide the requested information even without it. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½ × 3 minute call × 2 calls/funeral) × 207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600 + 2,899 + 10,350). The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,000, rounded to the nearest thousand (22,300 hours for recordkeeping + 57,849 hours for disclosure).

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,000 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate "Statement of Funeral Goods and Services Selected." The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

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Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers).

The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425.

The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $776,250.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,613,925 ($2,620,250 + $217,425 + $776,250). The total labor cost for recordkeeping and disclosures is $3,837,000 ($223,000 for recordkeeping + $3,613,925 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798. Thus, estimated non-labor costs are $340,000, rounded to the nearest thousand.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

William E. Kovacic,

General Counsel.

[FR Doc. 02–1889 Filed 1–24–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

Name: Task Force on Community Preventive Services.

Times and Dates: 9 a.m.–7 p.m., February 6, 2002, 8 a.m.–3 p.m., February 7, 2002.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone (404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be discussed: Agenda items include: Presentations on the following chapters: Cancer (Informed Decision Making, School Based Interventions to Prevent Skin Cancer, and Interventions to Increase Breast, Cervical and Colorectal Cancer Screening), Nutrition and the Yale Obesity Reviews, Sexual Behavior, Vaccine Preventive Diseases (Expanding Access In Health Care Settings) and Violence Prevention (Early Childhood Home Visitation and Shall Issue Laws); presentations on the dissemination of the Physical Activity Chapter; dissemination and evaluation plans for the Cancer Chapter; and general updates on the evaluation plans and methods.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Peter Briss, M.D., M.P.H., Acting Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 1, 2002.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: January 18, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1848 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Conference Call: CDC Advisory Committee on HIV and STD Prevention.

Time and Date: 1 a.m.–2:30 p.m., February 15, 2002.

Bridge Number: 1–800–713–1971.

Conference Code: 896071.

Status: Open to the public, limited only by the phone space available. The bridge number will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be discussed: Agenda items include issues pertaining to how the meeting formats might be changed to enable CDC Advisory Committee on HIV and STD Prevention (ACHSP)to more actively participate in and guide CDC activities.

Contact Person for More Information: Paulette Ford-Knights, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1846 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Coimmittee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–5:30 p.m., February 20, 2002, 8 a.m.–3:45 p.m., February 21, 2002.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be discussed: The agenda will include a discussion on the adult harmonized schedule; yellow fever vaccine; update on 2001–2002 influenza season; update on 2001–2002 influenza vaccine supply; update on pediatric influenza vaccination feasibility study; economics of vaccinating children for influenza; 2002 options for recommending influenza vaccine for children; 2002 Recommendations for Control and Prevention of Influenza; update on supplemental recommendations for use of anthrax vaccine; update on anthrax events and response; vaccinia (smallpox) vaccine safety; smallpox containment strategies; use of smallpox vaccine in the pre-attack setting; role of jet injectors in the event of a smallpox emergency; update on supply of smallpox vaccine and vaccinia immune globulin; updates from the National Immunization Program, Food and Drug Administration, Vaccine Injury Compensation Program, National Institutes of Health, National Vaccine Program, and National Center for Infectious Diseases; a discussion on rotavirus vaccine and intussusception; process of formulating the childhood harmonized immunization schedule; update on vaccine supply; and update on thimerosal.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1845 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8:30 a.m.–5:30 p.m., February 28, 2002, 8 a.m.–5 p.m., March 1, 2002.

Place: Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana 70131, telephone 504/586–0300.

Status: Open 8:30 a.m.–9:30 a.m., February 28, 2002, Closed 9:30 a.m.–5:00 p.m., February 28, 2002, Closed 8 a.m.–5 p.m., March 1, 2002.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of the NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be discussed: The meeting will convene in open session from 8:30–9:30 a.m. on February 28, 2002, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Charles N. Rafferty, Ph.D., NIOSH Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, Maryland 20892, telephone 301/435–3562, fax 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1844 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–5 p.m., February 5, 2002,8:30 a.m.–1:15 p.m., February 6, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent

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procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be discussed: Agenda items will include: A report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; a report from the Acting Assistant Secretary for Health; a report from the Rotavirus Vaccine Workshop; Thimerasol in Vaccines—Followup; discussion of decisions in the face of uncertainty; discussions on Bioterrorism Issues, Departmental Initiatives, Smallpox Preparedness, & Anthrax Preparedness; an update on Vaccine Supply—Report from the NVAC Workgroup; Vaccine Safety and Communication Subcommittee report; Immunization Coverage Subcommittee report, Pediatric and Adolescent Immunization Standards; Future Vaccines Subcommittee report; Rotavirus Vaccine Workshop—Report; an update on Immunization Registries; a report on Polio Laboratory Containment, an update on Global Polio Eradication; reports from Advisory Commission on Childhood Vaccines/Division of Vaccine Injury Compensation, Vaccine Related Biological Products Advisory Committee/Food and Drug Administration, Advisory Committee on Immunization Practices/National Immunization Program/National Center for Infectious Diseases.

Name: Subcommittee on Future Vaccines.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be discussed: Agenda items will include a report from CDC Consultation on Partially Effective Vaccines for HIV; discussions on possible future topics including Pneumococcal Vaccine and Varicella in Immunocompromised hosts.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be discussed: Agenda items will include a report on the status of the adult immunization standards and the adolescent and child immunization standards; an update on the Mandatory Immunization Guidelines Workgroup; and a report on vaccine financing issues.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Institute of Medicine Vaccine Safety Committee final report; Selection of Vaccine Safety Hypotheses for Year 2002; discussion of a Possible Alternative Standard for Adjudication of VICP Claims for Non-Table Injuries; follow-up to the "Workshop on Vaccine Communications".

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4770 Burford Highway M/S K–77, Atlanta, Georgia 30341, telephone 770/488–2040.

An unavoidable administrative delay meeting the 15-day publication requirement.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: January 18, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1847 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2139–N]

Medicaid Program; Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of funding, through grants, for eligible States under the Ticket to Work and Work Incentives Improvement Act of 1999. The grant program is designed to assist States in developing infrastructures to support the competitive employment of people with disabilities by extending necessary Medicaid coverage to these individuals. This notice also contains pertinent information where States may apply for the grant program.

DATES: States should submit a notice of intent to apply for a grant no later than March 15, 2002.

Deadline for Grant Submission: Grant applications must be submitted by June 7, 2002 to be considered under the Fiscal Year 2003 annual funding cycle.

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: Judith Norris, Centers for Medicare and Medicaid Services, Office of Internal Customer Support, Acquisition and Grants Group, C2–21–15 Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850. (410) 786–5130, E-mail: *Jnorris1@cms.hhs.gov*.

Please note: While State agencies are only required to submit an original and two copies, submission of an original and 14 copies will greatly expedite the application process.

Website: You may access up-to-date information about the Medicaid Infrastructure Grants and obtain a complete Grant Solicitation at: *http://www.hcfa.gov/medicaid/twwiia/twwiiahp.htm*.

FOR FURTHER INFORMATION CONTACT: Questions about the grants may be directed to: Joe Razes, TWWIIA Program Manager, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Center for Medicare and Medicaid Services, Room S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6126, e-mail: *Jrazes@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the availability of funding for the infrastructure grants for the Fiscal Year 2003 annual funding cycle and contains the filing dates for consideration of grant applications for this funding cycle. Please refer to our May 31, 2000 notice (65 FR 34715), in which we first solicited States to apply for these grants under the Ticket to Work and Work Incentives Improvement Act of 1999, for more information concerning the grant process. The May 31, 2000 notice includes detailed information on application requirements, review procedures, an explanation of timely submission, and other relevant information.

Authority: Section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170. (Catalog of Federal Domestic Assistance Program No. 93.779, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations).

Dated: January 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–2017 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

CMS–2087–PN

RIN 0938–AK91

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2001

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: The Social Security Act provides for the Medicaid program to pay all or part of the Medicare Part B premiums (for months during the period beginning with January 1998, and ending with December 2002) for two specific eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals. This notice announces the proposed allotments that would be available for State agencies to pay Medicare Part B premiums for these eligibility groups for Federal fiscal year 2001.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 26, 2002.

If the proposed allotments are adopted as final, they will be available for expenditures made during the Federal fiscal year 2001 (beginning October 1, 2000).

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2087–PN, PO Box 8010,Baltimore, MD 21244–8010.

To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, orRoom C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8010.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2087–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Blvd, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 to 5 p.m. (phone: (410) 786–9994).

FOR FURTHER INFORMATION CONTACT: Miles McDermott, (410) 786–3722.

SUPPLEMENTARY INFORMATION:

I. Background

A. Before the Balanced Budget Act of 1997

Before the enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act (the Act) specified that a Medicaid State plan must provide for Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included Qualified Medicare Beneficiaries (QMBs), Specified Low-income Medicare Beneficiaries (SLMBs), and Qualified Disabled and Working Individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in MedicarePart A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

B. After the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of all or part of the Medicare Part B premiums, during the period beginning January 1998 and ending December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply. Under section 1933(b)(2)(B) of the Act, when selecting persons who will receive assistance in calendar years after 1998, State agencies must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be, or become, QIs. Under section 1933(b)(4), persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to

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receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's allotment is limited by law, section 1933(b)(3) of the Act provides that the State agency must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the State's allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State agency that is to be based on each State's share of the Secretary's estimate of the ratio of—

(1) An amount equal to the sum of the following: (a) Twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; and (b) The total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; to

(2) The sum of all of these individuals under item (1) for all eligible States.

II. Provisions of This Proposed Notice

This notice announces the proposed allotments to be made available to individual States for Federal fiscal year 2001 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. The formula used to calculate these allotments was described in detail in the January 26, 1998 **Federal Register** (63 FR 3752, 3754) and, except for the incorporation of the latest data, has been used here without changes.

FY 2001 State Allotments for Payment of Part B Premiums

[Under Sec. 4732 of the BBA of 1997]

State	(in thousands) (a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)	State share of (c) (percent)	State FY2001 allocation (dollars in thousands)
AK	1	4	6	0.10	340
AL	28	74	130	2.10	7,357
AR	21	46	88	1.42	4,980
AZ	21	66	108	1.75	6,112
CA	108	310	526	8.50	29,766
CO	10	27	47	0.76	2,660
CT	8	57	73	1.18	4,131
DC	2	5	9	0.15	509
DE	6	10	22	0.36	1,245
FL	113	282	508	8.21	28,747
GA	22	67	111	1.79	6,281
HI	4	14	22	0.36	1,245
IA	17	59	93	1.50	5,263
ID	6	19	31	0.50	1,754
IL	38	148	224	3.62	12,676
IN	41	80	162	2.62	9,167
KS	10	40	60	0.97	3,395
KY	20	65	105	1.70	5,942
LA	24	67	115	1.86	6,508
MA	34	79	147	2.38	8,319
MD	26	52	104	1.68	5,885
ME	7	16	30	0.49	1,698
MI	36	138	210	3.40	11,884
MN	23	46	92	1.49	5,206
MO	24	78	126	2.04	7,130
MS	15	44	74	1.20	4,188
MT	4	11	19	0.31	1,075
NC	46	111	203	3.28	11,487
ND	5	13	23	0.37	1,302
NE	10	34	54	0.87	3,056
NH	2	12	16	0.26	905
NJ	35	101	171	2.76	9,677
NM	7	25	39	0.63	2,207
NV	6	23	35	0.57	1,981
NY	94	236	424	6.86	23,994
OH	51	161	263	4.25	14,883
OK	23	61	107	1.73	6,055
OR	8	39	55	0.89	3,112

FY 2001 State Allotments for Payment of Part B Premiums—Continued

[Under Sec. 4732 of the BBA of 1997]

State	(in thousands) (a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)	State share of (c) (percent)	State FY2001 allocation (dollars in thousands)
PA	81	195	357	5.77	20,202
RI	9	18	36	0.58	2,037
SC	28	61	117	1.89	6,621
SD	5	13	23	0.37	1,302
TN	36	58	130	2.10	7,357
TX	81	223	385	6.22	21,787
UT	7	18	32	0.52	1,811
VA	31	87	149	2.41	8,432
VT	3	8	14	0.23	792
WA	22	48	92	1.49	5,206
WI	21	95	137	2.22	7,753
WV	13	42	68	1.10	3,848
WY	3	7	13	0.21	736
Total	1296	3593	6185	100.00	350,000

[1] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of FPL

[2] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of FPL

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this notice, and, if we proceed with a subsequent document, we will respond to the major comments in that document.

IV. Regulatory Impact Statement

We have examined the impact of this proposed notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact statement (RIA) must be prepared for major rules with economic effects of $100 million or more annually. Under 5 U.S.C. 804, we have determined this to be a major rule.

The RFA requires agencies to analyze options for regulatory relief for small entities. For purposes of the RFA, States and individuals are notconsidered to be small entities.

This proposed notice would allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State allotments is specified in the statute, there were not other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not currently available, we have used comparable data from the U.S. Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. These new allotments for FY 2001 incorporate the latest data from the Census Bureau covering 1998 through 2000, as specified in the footnotes to the preceding table.

We believe the statutory provisions that would be implemented in this proposed notice would have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for selected QIs, and a greater number of low-income Medicare beneficiaries would be eligible to have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

Section 605(b) of the RFA states that preparing an impact analysis is not necessary if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, and is not proposing any new requirements, it would not have a significant impact on small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in an expenditure in any one year by State, local or tribal governments, in the aggregate, or any the private sector, or $110 million or more. This notice would have no consequential effect of the governments mentioned or on the private sector.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order

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13132, Federalism. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, and is not proposing any new requirements, we have determined that this proposed notice would not significantly affect the rights, roles, and responsibilities of States.

Authority: Sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E) and 1396x).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid, Services.

[FR Doc. 02–1304 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4025–FN]

RIN 0938–ZA15

Medicare Program; Medicare+Choice Organizations—Approval of the Deeming Authority of the National Committee for Quality Assurance (NCQA) for Medicare+Choice (M+C) Managed Care Organizations That Are Licensed as Health Maintenance Organizations (HMOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the National Committee for Quality Assurance (NCQA) for deeming authority of Medicare+Choice (M+C) organizations that are licensed as health maintenance organizations (HMOs). We have found that NCQA's standards for managed care organizations (MCOs) submitted to us in the application process meet or exceed those established by the Medicare program. Therefore, M+C organizations that are licensed as HMOs and are accredited by NCQA may receive, at their request, deemed status for the M+C requirements in the six areas—Quality Assurance, Information on Advance Directives, Antidiscrimination, Access to Services, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records—that are specified in Section 1852(e)(4)(C) of the Social Security Act (the Act). Regulations set forth in 42 CFR 422.157(b)(2) specify that the Secretary will publish a **Federal Register** notice that indicates whether an accreditation organization's request for approval has been granted and the effective date and term of the approval, which may not exceed 6 years.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization (MCO) that has a Medicare+Choice (M+C) contract with the Centers for Medicare & Medicaid Services (CMS). To enter into an M+C contract, the organization must be licensed by the State as a risk bearing entity and must meet the requirements that are set forth in 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MCO must provide and the requirements that the organization must meet to be an M+C contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Following approval of the M+C contract, CMS engages in routine monitoring of the M+C organization to ensure continuing compliance. The monitoring process is comprehensive and uses a written protocol that itemizes the Medicare requirements the M+C organization must meet.

An M+C organization may be exempt from CMS monitoring of the requirements that are in the areas listed in section 1852(e)(4)(C) of the Act as a result of the organization being accredited by a CMS-approved accrediting organization. In essence, the Secretary "deems" that the Medicare requirements are met based on a determination that the accrediting organization's standards are at least as stringent as Medicare requirements. Regulations for the M+C deeming program are set forth in §§ 422.156, 422.157, and 422.158. The term for which an accrediting organization may be approved by CMS may not exceed 6 years as stated in § 422.157(b)(2). For continuing approval, the accrediting organization will have to re-apply to CMS.

II. Provisions of the Proposed Notice

On August 1, 2001, we published a proposed notice in the **Federal Register** (66 FR 39775) announcing the receipt of an application from NCQA for approval of deeming authority for M+C organizations that are licensed as health maintenance organizations (HMOs). In the proposed notice, we provided the factors on which we would base our evaluation. In accordance with § 422.157(b)(iii) of the proposed notice, we provided a 30-day public comment period. We did not receive public comments in response to the proposed notice for NCQA.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the NCQA's accreditation program was compared to the requirements set forth in part 422 for the M+C program.

A. Components of the Review Process

The review of NCQA's application for approval of M+C deeming authority included the following components.

1. Site Visit

A site visit to NCQA's headquarters to assess—

- Corporate policies and procedures that relate to the MCO accreditation program;
- The survey, decision-making, and report-writing processes used in NCQA's MCO accreditation program;
- The resources available for accreditation reviews and the ability to financially sustain an M+C deeming program;
- The staff and surveyor training and evaluation programs;

- The ability to investigate and respond appropriately to complaints against accredited MCOs; and
- Communication, customer support and release of accreditation information to the public.

2. Desk-Top Review

A desk-top review of NCQA's MCO accreditation program, including—

- A description of NCQA's survey process for MCOs, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited M+C organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;
- Information about the individuals who perform MCO accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience requirements, the content and frequency of the in-service training, the evaluation system used to monitor performance, and conflict of interest requirements;
- A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by NCQA, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation if CMS grants NCQA M+C organization deeming authority;
- The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including coordination of these activities with licensing bodies and ombudsmen programs;
- A description of how NCQA provides accreditation information to the general public;
- The policies and procedures for (1) withholding, denying and removal of accreditation status, and the other actions NCQA may take in response to noncompliance with their standards and requirements, and (2) how NCQA deals with accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;
- Lists of all (1) NCQA accredited M+C organizations, (2) MCOs surveyed by NCQA in the past 3 years, and (3) MCOs that were scheduled to be surveyed by NCQA within 3 months of submitting their application;
- A written presentation of NCQA ability to furnish data electronically, via telecommunications;
- A resource analysis that included financial statements for the past 3 years (audited, if possible) and the projected number of deemed status surveys for the upcoming year; and
- A statement acknowledging that, as a condition of approval, NCQA agreed to comply with the ongoing responsibility requirements stated in § 422.157(c).

3. Assessment of NCQA's Standards and Methods of Evaluation

As part of the application, NCQA submitted a crosswalk that compared their standards and methods of evaluations with corresponding M+C requirements. A multicomponent team of CMS regional and central office staffs then reviewed and evaluated NCQA's standards and processes and compared them to the M+C requirements in six areas: Quality Assurance, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

4. Observation of an NCQA Accreditation

An observation of an NCQA accreditation of an MCO allowed CMS staff to (1) validate that the accreditation review methods described in NCQA's application were equal to (or exceeded) the corresponding Medicare requirements, and (2) resolve outstanding issues that were identified during the review of NCQA's application materials.

B. Results of the Review Process

We determined that NCQA's current accreditation program for MCOs did not either address or "meet or exceed" several of the M+C requirements that are contained in 5 of the 6 categories set forth in section 1852(e)(4)(C) of the Act. To address this issue, NCQA agreed to complement their current MCO accreditation program by applying a "Medicare+Choice Module" (M+C Module). Thus, when assessing M+C organizations that seek deemed status for the Medicare requirements contained in the six categories established in the Act, NCQA will complement their current accreditation program with the M+C Module. The M+C Module will include the following:

1. Quality Assurance (42 CFR 422.152)

- A statement that "if/when" CMS establishes minimum performance levels, the M+C organization must meet the performance level(s) and report them to CMS.
- A requirement that M+C organizations must meet the full range of CMS Quality Assessment and Performance Improvement project topic requirements.

2. Provider Participation Rules (42 CFR Subpart E)

- A requirement for a written notice of (1) material changes in participating rules before the changes are put into effect, (2) initial participation decisions that are adverse to physicians, and (3) the appeals process and reasons for the action when a participating provider is suspended or terminated.
- A requirement that the majority of the appeals hearing panel members are peers of the affected physician.
- A requirement that both the M+C organization and contracting provider provide at least 60 days written notice to each other before terminating the contract without cause.
- A requirement that participating providers and suppliers who provide services to Medicare enrollees are approved for participation in Medicare and that the M+C organization does not employ or contract with providers who have opted-out of Medicare participation.
- A requirement that M+C organizations do not discriminate against health care professionals who serve high-risk populations or who specialize in the treatment of costly conditions in the formal selection and retention criteria.
- A requirement that the M+C organization provide sufficient notice to CMS and enrollees, if they object to covering, furnishing or paying for counseling or referral service on the basis of moral or religious grounds and that the M+C organization provides conscience protection policies to enrollees.
- NCQA agreed to a Physician Incentive Plan (PIP) review strategy proposed by CMS. M+C organizations will continue to provide PIP information to CMS. CMS will notify accrediting organizations of M+C organizations that they have deemed are "noncompliant" for any of the PIP requirements; then the accrediting organization will contact the M+C organization to inform them that they must comply with the PIP provisions. If, at the end of the accrediting organization's corrective action process,

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the M+C organization continues to be noncompliant, the accrediting organization will turn the case over to CMS. However, PIP disclosure for 2002 is delayed until further notice. CMS is working to modify the regulations for disclosure as part of the effort to reduce administrative burdens on managed care organizations.

- A requirement that addresses the limitation on provider indemnification that is stated in § 422.212.

3. Information on Advance Directives (42 CFR 422.128)

- NCQA agreed to add all the CMS requirements regarding information on advance directives to their M+C Module.

4. Antidiscrimination (42 CFR 422.110, 422.502(h))

- A requirement that an M+C organization may not deny, limit, or condition the coverage or furnishing of benefits to individuals eligible to enroll in an M+C plan offered by the organization on the basis of any factor that is related to health status.
- A requirement that an M+C organization may not enroll an individual who has been medically determined to have end-stage renal disease and a requirement that an enrollee who develops end-stage renal disease while enrolled in an M+C organization may not be disenrolled for that reason.

5. Access to Services (42 CFR 422.112)

- A requirement that M+C organizations have policies and procedures that allow an enrollee's representative to facilitate care or treatment decisions when the enrollee is unable to do so.
- A requirement that M+C organizations support a network of providers with written arrangements that address the provision of services covered under the M+C program.
- A requirement that M+C organizations provide direct access to women's health services for routine and preventive health care services.
- A statement that ensures that M+C organizations have procedures to identify individuals with complex needs and/or serious medical conditions.
- A requirement that M+C organizations should make a "best effort" attempt to conduct an initial assessment of enrollee health care needs within 90 days of the effective date of enrollment.

C. Term of Approval

Regulations at § 422.157(b)(2) permit us to grant a term of approval for deeming authority for accreditation organizations of up to 6 years. On January 18, 2002, we notified NCQA of our approval of their application as a national accreditation organization for MCOs that request participation in the M+C program. We are granting this deeming authority through January 17, 2008.

IV. Paperwork Reduction Act

The requirements associated with granting and withdrawal of deeming authority to national accreditation, codified in part 422, Medicare+Choice Program, are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of June 30, 2002. Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes NCQA as a national accreditation organization that has approval for deeming authority for HMOs that are participating in the M+C program. Since M+C organizations are monitored every 2 years by CMS's regional office staff to determine compliance with M+C requirements, we believe that the M+C deeming program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare+Choice program. In FY 2001, there were 179 M+C contracts and 5,578,605 enrollees. Approximately, 75 of those M+C organizations were accredited by NCQA.

This notice, however, is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and does not significantly affect State authority. This regulation describes only processes that must be undertaken to fulfill our obligation to conduct enforcement as required by the April 8, 1997 regulation.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 USC 1395w–21 and 42 USC 1395w–25)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1874 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3081–N]

RIN 0938–ZA26

Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations—Alaska, Hawaii, Idaho, Illinois, Kentucky, Maine, Nebraska, South Carolina, Vermont, and Wyoming

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with section 1153(i) of the Social Security Act, gives at least 6 months advance notice of the expiration dates of contracts with out-of-State Utilization and Quality Control Peer Review Organizations. It also specifies the period of time in which in-State organizations may submit a statement of interest so that they may be eligible to compete for these contracts.

DATES: Written statements of interest must be received at the address specified no later than 5 p.m. EST February 11, 2002. Due to staffing and resource limitations, we cannot accept statements submitted by facsimile (FAX) transmission.

ADDRESSES: Statements of interest must be submitted to the Centers for Medicare & Medicaid Services, Acquisitions and Grants Groups, OICS, Attn.: Edward L. Hughes, 7500 Security Boulevard, Mail Stop C2–21–15, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Udo Nwachukwu, (410) 786–7234.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services furnished under title XVIII of the Act (Medicare) and under certain other Federal programs to determine whether those services are reasonable, medically necessary, provided in the appropriate setting, and are of a quality that meets professionally recognized standards. PRO activities are a part of the Health Care Quality Improvement Program (HCQIP), a program which supports our mission to ensure health care security for our beneficiaries. The HCQIP rests on the belief that a plan's, provider's, or practitioner's own internal quality management system is key to good performance. The HCQIP is carried out locally by the PRO in each State. Under the HCQIP, PROs provide critical tools (for example, quality indicators and information) for plans, providers, and practitioners to improve the quality of care provided to Medicare beneficiaries. The Congress created the PRO program in part to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review process.

In June 1984, we began awarding contracts to PROs. We currently maintain 53 PRO contracts with organizations that provide medical review activities for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The organizations that are eligible to contract as PROs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with sections 1152 and 1153 of the Act and our regulations at 42 CFR 475.102 and 475.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the respective review area, and who are representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, a health care facility affiliate, or in most cases a payor organization. (Statutes and regulations provide that, in the event CMS determines no otherwise qualified nonpayor organization is available to undertake a given PRO contract, CMS may select a payor organization that otherwise meets requirements to be eligible to conduct PRO Utilization and Quality Control Peer Review.) The selected organization must have a consumer representative on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding a new paragraph (i) that prohibits us from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register**, a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date the contract expires and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time, we cannot automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. An in-State organization is defined as an organization that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 10 PRO contracts with entities that do not meet the statutory definition of an in-State organization. The areas affected for purposes of this notice along with their respective expiration dates are as follows:

Illinois, July 31, 2002
Vermont, July 31, 2002
Wyoming, July 31, 2002
Maine, July 31, 2002
Alaska, October 31, 2002
Idaho, October 31, 2002
Hawaii, January 31, 2003
Kentucky, January 31, 2003
Nebraska, January 31, 2003
South Carolina, January 31, 2003

II. Provisions of the Notice

The notice announces the scheduled expiration dates of the current contracts between CMS and out-of-State PROs responsible for review in the areas mentioned above.

Interested in-State organizations may submit statements of interest to be the PRO for these States. We must receive the statements no later than February 11, 2002, and in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted or be a subsidiary of a parent corporation, whose headquarters is located in that State. In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be Either a Physician-Sponsored or a Physician-Access Organization

1. Physician-Sponsored Organization

a. The organization must be composed of a substantial number of the licensed

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doctors of medicine and osteopathy practicing medicine or surgery in the review area, and who are representative of the physicians practicing in the review area.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or in most cases a payor organization.

c. In order to meet the "substantial number of doctors of medicine and osteopathy" requirement of paragraph A.1.a of this section, an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of paragraph A.1.a of this section, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. Alternatively, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, the organization must demonstrate in its statement of interest through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician-Access Organization

a. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or in most cases a payor organization.

c. An organization meets the requirements of paragraph A.2.a of this section if it demonstrates that it has available to it at least one physician in every generally recognized specialty and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least One Individual Who Is a Representative of Consumers on Its Governing Board

If one or more organizations meet the above requirements in a PRO area and submit statements of interest in accordance with this notice, we will consider those organizations to be potential sources for the 10 contracts upon their expiration. These organizations will be entitled to participate in a full and open competition for the PRO contract to perform the PRO statement of work.

III. Information Collection Requirements

This notice contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB Control Number 0938–0526.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 12, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1066 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4034–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—February 13, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. App. 2), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on Wednesday, February 13, 2002. This Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on opportunities for CMS to optimize the effectiveness of the National Medicare Education Program and other CMS programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available with the passage of the Medicare+Choice program. The Panel meeting is open to the public.

DATES: The meeting is scheduled for Wednesday, February 13, 2002, from 9:00 am. to 5:00 pm.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC, 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via e-mail at *APME@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 and the charter renewing the Panel on January 18, 2001. The Advisory Panel on Medicare Education advises the Department of Health and Human Services and the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are to provide advice concerning optimal strategies for:

- Developing and implementing a national Medicare education program that describes the options for selecting a health plan under Medicare;
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships;
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program;
- Assembling an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Diane Archer, J.D., President, Medicare Rights Center; David Baldridge, Executive Director, National Indian Council on Aging; Bruce Bradley, M.B.A., Director, Managed Care Plans, General Motors Corporation; Carol Cronin, Chairperson, Advisory Panel on Medicare Education; Joyce Dubow, M.U.P., Senior Policy Advisor, Public Policy Institute, AARP; Jennie Chin Hansen, Executive Director, On Lok Senior Health Services; Elmer Huerta, M.D., M.P.H., Director, Cancer Risk and Assessment Center, Washington Hospital Center; Bonita Kallestad, J.D., M.S., Mid Minnesota Legal Assistance; Steven Larsen, J.D., M.A., Maryland Insurance Commissioner, Maryland Insurance Administration; Brian Lindberg, M.M.H.S., Executive Director, Consumer Coalition for Quality Health Care; Heidi Margulis, B.A., Vice President, Government Affairs, Humana, Inc.; Patricia Neuman, Sc.D., Director, Medicare Policy Project, Henry J. Kaiser Family Foundation; Elena Rios, M.D., M.S.P.H., President, National Hispanic Medical Association; Samuel Simmons, B.A., President and CEO, The National Caucus and Center on Black Aged, Inc.; Nina Weinberg, M.A., President, National Health Council; and Edward Zesk, B.A., Executive Director, Aging 2000.

The agenda for the February 14, 2002 meeting will include the following:

- A recap of the previous (October 25, 2001) meeting;
- CMS update/issues;
- Update on the Fall Medicare Ad Campaign;
- Update on the State Health Insurance Assistance Program;
- Medicare Education Research Update;
- APME Annual Report;
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, Thursday, February 7, 2002. In conjunction, a written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, Thursday, February 7, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, Thursday, February 7, 2002. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Ms. Caliman at least 15 days before the meeting.

(Section 222 of the Public Health Service Act (42 USC 217a) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a) and 41 CFR 102–3))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1687 Filed 1–18–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 66, No. 177, pp. 47497–47499 dated September 12, 2001) is amended to reflect changes to the Press Office and the Center for Medicaid and State Operations (CMSO). Specifically, the Press Office will be retitled as the Public Affairs Office (PAO) and the Intergovernmental and Tribal Affairs Group (ITAG) will be transferred from CMSO. The transfer of ITAG from CMSO to PAO will strengthen and improve the coordination of responses to the press, and local/national media, while integrating the State, local government, and tribal affairs programs into the PAO media relations and communications activities.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Strategic Planning (FAK)
7. Office of Communications and Operations Support (FAL)
8. Office of Clinical Standards and Quality (FAM)
9. Office of the Actuary (FAN)
10. Center for Medicaid and State Operations (FAS)
11. Northeastern Consortium (FAU)
12. Southern Consortium (FAV)
13. Midwestern Consortium (FAW)
14. Western Consortium (FAX)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)

- Section F.20. (Functions) is amended by deleting the functional statements in their entirety for the Press Office and the Center for Medicaid and State Operations. The new functional statements read as follows:

1. Public Affairs Office (FAC)

- Serves as the focal point for the Agency to the news media and provides leadership for the Agency in the area of intergovernmental affairs. Advises the Administrator and other Agency components in all activities related to the media and on matters which affect other units and levels of government.
- Coordinates CMS activities with the Office of the Assistant Secretary for Public Affairs and the Secretary's intergovernmental affairs officials.
- Serves as senior counsel to the Administrator in all activities related to the media. Provides consultation, advice, and training to the Agency's senior staff with respect to relations with the news media.
- Develops and executes strategies to further the Agency's relationship and dealings with the media. Maintains a broad based knowledge of the Agency's structure, responsibilities, mission, goals, programs, and initiatives in order to provide or arrange for rapid and accurate response to news media needs.
- Prepares and edits appropriate materials about the Agency, its policies, actions and findings, and provides them to the public through the print and broadcast media. Develops and directs media relations strategies for the Agency.
- Responds to inquiries from a broad variety of news media, including major newspapers, national television and radio networks, national news magazines, local newspapers and radio and television stations, publications directed toward the Agency's beneficiary populations, and newsletters serving the health care industry.
- Manages press inquiries, coordinates sensitive press issues, and develops policies and procedures for how press and media inquiries are handled.
- Arranges formal interviews for journalists with the Agency's Administrator or other appropriate senior Agency staff; identifies for interviewees the issues to be addressed, and prepares or obtains background materials as needed.
- For significant Agency initiatives, issues media advisories and arranges press conferences as appropriate; coordinates material and personnel as necessary.

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- Serves as liaison with the Department of Health and Human Services and White House press offices.
- Serves as focal point for all Agency interactions with Native American and Alaskan Native tribes.
- Coordinates State program issues/concerns (i.e., waiver reviews, Medigap, Medicare-Select, survey and certification, Clinical Laboratory Improvement Act (CLIA), tribal affairs) with program staff and regional offices.
- Serves as coordinator of State health care policy and as liaison between CMS and State and local officials, and individual lobbyists representing State and local officials and advocate groups.
- Serves as coordinator of tribal affairs issues and liaison between CMS and State and local officials representing tribal affairs groups.
- Responsible for handling highly sensitive and complex correspondence from and to State and local elected officials. Reviews proposed regulations affecting States.
- Coordinates roll-out of waivers or other significant announcements relating to States.

10. Center for Medicaid and State Operations (FAS)

- Serves as the focal point for all Agency interactions with States and local governments (including the Territories).
- Develops national Medicaid policies and procedures which support and assure effective State program administration and beneficiary protection. In partnership with the States, evaluates the success of State agencies in carrying out their responsibilities and, as necessary, assists the States in correcting problems and improving the quality of their operations.
- Develops, interprets, and applies specific laws, regulations, and policies that directly govern the financial operation and management of the Medicaid program and the related interactions with the States and regional offices.
- Develops national policies and procedures to support and assure appropriate State implementation of the rules and processes governing group and individual health insurance markets and the sale of health insurance policies that supplement Medicare coverage.
- In coordination with other components, develops, implements, evaluates and refines standardized provider performance measures used within provider certification programs. Supports States in their use of standardized measures for provider feedback and quality improvement activities. Develops, implements and supports the data collection and analysis systems needed by States to administer the certification program.
- Reviews, approves and conducts oversight of Medicaid managed care waiver programs. Provides assistance to States and external customers on all Medicaid managed care issues.
- Develops national policies and procedures on Medicaid automated claims/encounter processing and information retrieval systems such as the Medicaid Management Information System (MMIS) and integrated eligibility determination systems.
- In coordination with the Office of Financial Management, directs, coordinates, and monitors program integrity efforts and activities by States and regions. Works with the Office of Financial Management to provide input in the development of program integrity policy.
- Through administration of the home and community based services program and policy collaboration with other Agency components and the States, promotes he appropriate choice and continuity of quality services available to frail elderly, disabled and chronically ill beneficiaries.
- Develops and tests new and innovative methods to improve the Medicaid program through demonstrations and best practices including managing review, approval, and oversight of the Section 1115 demonstrations.
- Directs the planning, coordination, and implementation of the survey, certification, and enforcement programs for all Medicare and Medicaid providers and suppliers, and for laboratories under the auspices of the Clinical Laboratory Improvement Act (CLIA). Reviews and approves applications by States for "exemption" from CLIA and applications from private accreditation organizations for deeming authority. Develops assessment techniques and protocols for periodically evaluating the performance of these entities. Monitors the performance of proficiency testing programs under the auspices of CLIA.

Dated: January 2, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1064 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0399]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 25, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Rapid Response Surveys (OMB Control No. 0910–0457)—Extension

Under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device related deaths, serious injuries, and malfunctions, and user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to effectively carry out the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical device usage that are not foreseen or apparent during the premarket notification and review process. FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch Reporting Systems using FDA Forms 3500 and 3500A (OMB Control No. 0910–0281).

FDA received a 1-year OMB approval on February 5, 2001, to implement Emergency Health Surveys (since that time, renamed "Rapid Response Surveys"), via a series of surveys, thus implementing section 705(b) of the act and the Commissioner's authority as specified in section 903(d)(2) of the act. To date, FDA has initiated one Rapid Response Survey (66 FR 49391, September 27, 2001), with two more in development. FDA is now seeking OMB clearance to continue collecting this information. Participation in these surveys has been, and will continue to be, voluntary. This request covers Rapid Response Surveys for general type medical facilities and specialized medical facilities (those known for cardiac surgery, obstetric/gynecological services, pediatric services, etc.), and health professionals, but more typically risk managers working in medical facilities.

FDA currently uses the information gathered from these surveys to quickly obtain vital information from the appropriate clinical sources so that FDA may take appropriate public health or regulatory action. FDA projects 10 rapid response surveys per year with a sample of between 50 and 200 respondents per survey.

In the **Federal Register** of September 27, 2001 (66 FR 49391), the agency requested comments on the proposed collection of information. No comments were received.

FDA originally estimated the burden of this collection to be 2 hours per survey. However, FDA is revising the estimated burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	10 (maximum)	2,000	.5	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the maximum sample size per questionnaire that FDA could analyze in a timely manner. The annual frequency per response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while another respondent may be contacted several times—depending on the medical device under evaluation. Based on the questions developed for the one survey that has been conducted, and for the two under development, it is estimated, given the expected type of issues that will be addressed by the surveys, that at a maximum it will take 30 minutes for a respondent to gather the requested information and fill in the answers.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1928 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1234]

Determination of Regulatory Review Period for Purposes of Patent Extension; SONATA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SONATA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all

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of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SONATA (zaleplon). SONATA is indicated for the short-term treatment of insomnia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SONATA (U.S. Patent No. 4,626,538) from American Cyanamid Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SONATA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SONATA is 3,027 days. Of this time, 2,435 days occurred during the testing phase of the regulatory review period, while 592 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 2, 1991. The applicant claims May 16, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 2, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 30, 1997. The applicant claims January 13, 1998, as the date the new drug application (NDA) for SONATA (NDA 20–859) was initially submitted. However, FDA records indicate that NDA 20–859 was submitted on December 30, 1997.

3. *The date the application was approved*: August 13, 1999. FDA has verified the applicant's claim that NDA 20–859 was approved on August 13, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,835 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above). Three copies of any information are to be submitted, except that individuals may submit one copy. Comments and petitions are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1925 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0363]

Determination of Regulatory Review Period for Purposes of Patent Extension; MIFEPREX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MIFEPREX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MIFEPREX (mifepristone). MIFEPREX is indicated for the medical termination of intrauterine pregnancy through 49 days pregnancy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MIFEPREX (U.S. Patent No. 4,386,085) from the Population Council, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MIFEPREX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MIFEPREX is 2,249 days. Of this time, 593 days occurred during the testing phase of the regulatory review period, while 1,656 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: The applicant claims August 3, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 4, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 18, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for MIFEPREX (NDA 20–687) was initially submitted on March 18, 1996.

3. *The date the application was approved*: September 28, 2000. FDA has verified the applicant's claim that NDA 20–687 was approved on September 28, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 14, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1926 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1346]

Determination of Regulatory Review Period for Purposes of Patent Extension; KEPPRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KEPPRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product KEPPRA (Levetiracetam). KEPPRA is indicated as adjunctive therapy in the treatment of partial onset seizures in adults with epilepsy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for KEPPRA (U.S. Patent No. 4,943,639) from UCB Societe Anonyme, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 3, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of KEPPRA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KEPPRA is 2,010 days. Of this time, 1,707 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 1, 1994. The applicant claims May 3, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 1, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: February 1, 1999. FDA has

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verified the applicant's claim that the new drug application (NDA) for KEPPRA (NDA 21–035) was initially submitted on February 1, 1999.

3. *The date the application was approved*: November 30, 1999. FDA has verified the applicant's claim that NDA 21–035 was approved on November 30, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,155 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1927 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 19, 2002, from 8 a.m. to 5:30 p.m. and on February 20, 2002, from 8 a.m. to 4 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 19, 2002, the committee will hear presentations on the proposed approach for selection of delta in noninferiority (equivalence) clinical trials. The impact of this approach on studies of anti-infective drug products will be considered, with a focus on acute exacerbation of chronic bronchitis and hospital-acquired-pneumonia. On February 20, 2002, the committee will discuss approaches to the development of antimicrobial agents for the treatment of resistant pathogens.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 11, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 16, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1814 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 27, 2002, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) Trial design considerations and appropriate patient populations for studies of investigational agents for adjuvant therapy of melanoma given the availability of an approved agent for this indication; and (2) the appropriate study design and control for the proposed phase 3 trial of investigational new drug (IND) 2885, MELACINE (melanoma vaccine), Corixa Corp., for adjuvant treatment of melanoma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 20, 2002. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and 1:15 p.m. and 1:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 20, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by February 20, 2002, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 18, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1924 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grantee Reporting Requirements for the Rural Health Network Development Grant Program (OMB No. 0915–0218)—Revision

This is a request for revision of the reporting requirements for the Rural Health Network Development Grant Program authorized by section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Pub. L. 104–229).

The purpose of the program is to assist in the development of integrated networks of health care providers in rural communities. Grantee networks work to strengthen the health care delivery system in their service areas thereby improving access to, restraining the cost of, and improving the quality of essential health care services for rural residents. Grantees submit annual reports that provide information on progress toward goals and objectives of the network, specific network activities, and certain financial data related to the grant budget.

The information is used to evaluate progress on the grants, to identify grantees in need of technical assistance, and to identify best practices in the development of rural health networks. The information is also used to evaluate the impact of networks on access of care and quality of care. To minimize the burden on grantees, the reports will be submitted electronically. The estimated burden is as follows:

HRSA form	Number of responses	Responses per respondent	Total reponses	Hours per responses	Total burden hours
Tracking	45	1	45	1.5	67.5

Written comments and recommendations concerning the proposed information collection should be sent within 60 days of this notice to: Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1850 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Healthy Schools, Healthy Communities User/Visit Surveys—NEW

The Bureau of Primary Health Care of HRSA is planning to conduct User/Visit Surveys of the Healthy Schools, Healthy Communities (HSHC) Program. The purpose of these surveys is to obtain nationally representative data about the patients of HSHC health centers and the services provided to them. The study consists of two parts. One is the User Survey, which involves interviewing HSHC patients or their parents about the patients' health and health care. The second is the Visit Survey, in which patient visit data will be collected from medical records in order to find out what health services are being used by

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patients. The data collected will provide policymakers with a better understanding of the services students are receiving at HSHC health centers and how well these centers are meeting the needs of students. The surveys will provide new information about health care received in HSHC settings.

Data from the surveys will provide quantitative information on the population served by the HSHC program, specifically: (a) Sociodemographic characteristics, (b) health care access and utilization, (c) health status and morbidity, (d) health care experiences and risk behaviors, (e) content of medical encounters, (f) preventive care and (g) patient satisfaction. These surveys will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden on respondents is as follows:

Respondents	Number of respondents	Hours per respondent	Total Hour burden
Adolescent Users	500	.5	250
Guardians (Proxies) of Users	500	.5	250
Medical Records	1000	.25	250
Total	1000		750

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1851 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2002.

The National Advisory Committee on Rural Health will convene its fortieth meeting at the time and place specified below:

Name: National Advisory Committee on Rural Health.

Date and Time: March 3, 2002; 2 p.m.–5 p.m., March 4, 2002; 8:30 a.m.–5 p.m., March 5, 2002; 8:30 a.m.–3 p.m.

Place: Grand Hyatt Capitol Hill, 100 H Street, NW, Washington, DC 20001–4520.

The meeting is open to the public.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health care services in rural areas.

Agenda: Sunday afternoon, March 3, 2002, at 2 p.m. the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Meeting Agenda and Goals by the Office of Rural Health Policy (ORHP) Director, Dr. Marcia Brand. This will be followed by a discussion of the Committee's role in the Department, administrative business and the Committee's 2002 Agenda.

Monday morning at 8:30 a.m., the session will open with an update by ORHP. After the break, the Committee will discuss and approve the 2001 project, "A Targeted Look at the Rural Safety Net." After lunch, there will be presentations on two topics relating to the Committee's 2002 workplan.

The final session will be convened on Tuesday, March 5. Beginning at 8:30 a.m. there will be a brief session with the National Rural Health Association's Policy Institute. This will be followed by a session discussing the Committee's strategic plan and future agenda and the selection of a Steering Committee. The strategic planning will continue after lunch. The meeting will conclude with a discussion of the June meeting. The meeting will be adjourned at 3:00 p.m.

Anyone requiring information regarding the subject Committee should contact Marcia K. Brand, Ph.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray, Office of Rural Health Policy (ORHP), (301) 443–0835. The National Advisory Committee meeting agenda will be posted on ORHP's Web site, *http://www.ruralhealth.hrsa.gov.*

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1852 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in February 2002.

A portion of the meeting will be open and will include a roll call, general announcements, and discussion about consumer affairs, the Administrator's priority areas for SAMHSA, emergency services and disaster relief, and products from the Homeless Programs Branch.

Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10(d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Eileen Pensinger, Executive Secretary, CMHS, Room 15–99, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–4823.

Committee Name: CMHS National Advisory Council.

Meeting Date: February 7–8, 2002.

Place The Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland.

Type:

Closed: February 7, 2002—8:30 a.m.–9:30 a.m.

Open: February 7, 2002—10 a.m.–4:30 p.m.

Open: February 8, 2002—9 a.m.–12:30 p.m.

Contact: Eileen S. Pensinger, M.Ed., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 15–99, Rockville, Maryland 20857. Telephone: (301) 443–4823 and FAX (301) 443–5163.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: January 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1929 Filed 1–24–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in February 2002. A portion of the meeting is open and includes discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council will hear feature presentations by SAMHSA's Administrator Charles Curie, M.A., A.C.S.W., and CSAT Director H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM. Significant issues to be discussed with the Council include Trauma and Substance Abuse; Mental Health: Culture, Race, and Ethnicity—A Supplement to Mental Health: A Report of the Surgeon General; Parity; Guidance for Applicants (GFA) Update and Evaluation Review; the Health Insurance Portability and Accountability Act and its impact on substance abuse; an information exchange on the New Freedom Initiative; status reports on HIV/AIDS; OPIOID Accreditation; Buprenorhphine; CSAT's Faith and Community Partners Initiative; Healthcare Professional Impairment; and Health Disparities.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c), and (6) and 5 U.S.C. App. 2, section 10(d).

If special accommodations are needed for persons with disabilities, please notify the contact person listed below. Substantive program information, a summary of the meeting and roster of Council members may also be obtained from the contact person.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: February 21, 2002—9 a.m.–5:30 p.m. February 22, 2002—8:30 a.m.–1:00 p.m.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro, Bethesda, Maryland 20814.

Type:

Open: February 21, 2002—9 a.m.–5:30 p.m.

Closed: February 22, 2002—8:30 a.m.–9:30 a.m.

Open: February 22, 2002—9:30 a.m.–1 p.m.

Contact: Cynthia Graham, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, Telephone: (301) 443–8923; FAX: (301) 480–6077, E-mail: cgraham@samhsa.gov.

Dated: January 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1930 Filed 1–24–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register.**

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Frank S. Sullivan, Ph.D., Chairperson
H. Westley Clark, M.D., J.D., M.P.H.
Ruth Sanchez-Way, Ph.D.
Randolph Wykoff, M.D., M.P.H., T.M.

For further information about the SAMHSA Performance Review Board, contact the Division of Human Resources Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–5030 (not a toll-free number).

Dated: October 29, 2001.

Joseph H. Autry III,

Acting Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1854 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–04]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development. Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 18, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–1813 Filed 1–24–02; 8:45 am]

BILLING CODE 4210–29–M

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance

Endangered Species

On December 27, 2001, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–051290) to Conservation International/IUCN Turtle Survival Alliance, Aiken, South Carolina, to import five river terrapin (*Batagur baska*) from Kadoorie Farms and Botanic Gardens, Tai Po, New Territories, Hong Kong. The 30-day comment period required by Section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of these terrapins existed, and that no reasonable alternative was available to the applicant for several reasons.

The terrapins were part of a seizure by the Agriculture, Fisheries and Conservation Department in Hong Kong, which took place on December 11, 2001. The seizure which included 12 different Asian species totaling 10,000 live turtles, were concealed in four 20-foot containers. The confiscated turtles were smuggled to Macau by air from Singapore, and then shipped to China. The shipment was destined for the illegal food trade. The river terrapin was the only species listed as Appendix I under the Convention on International Trade in Endangered Species (CITES) and classified as endangered under the U.S. Endangered Species Act (ESA). The balance of the shipment was comprised of three species that were listed as Appendix II under CITES, and the remaining eight species that were not CITES or ESA listed.

Because the exact origin of these specimens was not known, and based on information showing an increasing market demand for turtles in South China that poses a severe threat to wild turtle populations in Asian, returning these specimens to their natal country of origin and/or their possible release back into the wild was not an option. The terrapins were shipped in very poor conditions which also put their immediate health in question. The IUCN Turtle Survival Alliance is planning to establish viable assurance colonies of this species to allow the opportunity for later repatriation of the species to protected areas within the range states, once these areas become established.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 11, 2002.

Timothy J. Van Norman,

Chief, Branch of Permits (International), Division of Management Authority.

[FR Doc. 02–1877 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments; or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

PRT–051952

Applicant: Samuel M. Dollyhigh, Newport News, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–051994

Applicant: Thomas Henry Baird, Bowling Green, KY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–050691

Applicant: Underwater World Guam, Tumon, Guam.

The applicant requests a permit to import 0.0.2 captive held Hawksbill sea turtle (*Eretmochelys imbricata*) as well as 0.0.2 captive held green sea turtle (*Chelonia mydas*) currently at Underwater World Singapore, Sentosa, Singapore for the purpose of enhancement of the species through conservation education and support of on-going scientific research.

PRT–724540

Applicant: Archie Carr Center for Sea Turtle Research, University of Florida, Gainsville, FL.

The applicant requests re-issuance of a permit to import biological samples collected from wild, captive held, and/or captive hatched leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), green sea turtle (*Chelonia mydas*), kemp's ridley sea turtle (Lepidochelys kempii), and olive ridley sea turtle (*L. olivacea*) for the purpose of scientific research. Samples are to be collected from live or salvaged specimens. This notification covers activities conducted by the applicant over a five year period.

PRT–051712

Applicant: Melanie Culver, Virginia Polytechnic Institute & State University, Blacksburg, VA.

The applicant requests a permit to import biological samples from wild specimens of Madagascar fish eagle (*Haliaeetus vociferoides*) from Ruth Tingay, University of Nottingham, United Kingdom, for scientific research.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1878 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Moorpark Highlands Habitat Conservation Plan, Ventura County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Morrison-Fountainwood-Agoura (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service proposes to issue a Permit to the applicant for a period of 10 years that would authorize take of the coastal California gnatcatcher (*Polioptila californica californica*) incidental to otherwise lawful activities at the northern terminus of Spring Road, Moorpark, California. Activities covered by the requested Permit and addressed by the proposed Plan include the construction and occupation of 570 residential units and appurtenant infrastructure on a 445-acre site north of the City of Moorpark, Ventura County, California.

The Service requests comment from the public on the application and Environmental Assessment which are available for review. The application includes the proposed Habitat Conservation Plan (HCP) and an accompanying Implementing Agreement (legal contract). The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of the coastal California gnatcatcher.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments must be received no later than March 26, 2002.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Rick Farris, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of these documents by contacting the Ventura Fish and Wildlife Office at the above address and telephone number. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

Background Information

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

The Applicant has proposed to construct 570 residential units and appurtenant infrastructure on a 445-acre site. The project site is located at the northern terminus of Spring Road, north of the city of Moorpark, Ventura County, California. Typical land uses in the area surrounding the project site include agriculture, residential development, commercial buildings, and undeveloped shrublands. Biologists surveyed the project site for special-status plants and wildlife in 1996, 1997, and periodically between 1998 and 2001. Based on these surveys, the Service concluded that the project may result in the take of two pairs of the threatened coastal California gnatcatcher.

The Applicant proposes to implement numerous measures to minimize and mitigate take of the coastal California gnatcatchers. These measures include: (1) Purchase of mitigation credits equivalent to the territories of two pairs at a mitigation bank; (2) placement into permanent open space 94 acres of the site as the Habitat Conservation Plan Conservation Area; (3) creation and implementation of a habitat enhancement program to preserve and improve habitat values within the conservation area; (5) establishment of a non-wasting endowment for funding of the habitat maintenance program; (6) controlling human access into the conservation area; (7) construction of the Spring Road extension to minimize impacts to habitat and the coastal California gnatcatcher; and (8) revegetation of disturbed areas with coastal sage scrub plant species. Other measures are defined in the Plan and implementing agreement.

The Environmental Assessment considers the environmental consequences of three alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the coastal California gnatcatcher. Under the No Action Project Alternative, the Permit would not be issued and no take of the coastal California gnatcatcher would occur. The Reduced Intensity Alternative would decrease the total number of dwelling units; however impacts to the coastal California gnatcatcher would be the same and the project would become economically infeasible. The No Development Alternative would still involve the construction of the Spring Road extension by the City of Moorpark and the loss of one pair of coastal California gnatcatchers; however, the second pair would not be taken because the residential development would not be built. Because the applicant would not be involved, it would suffer economic loss, and the City of Moorpark would have to apply for the Permit. In a single alternative, the EA also examines several variations on the proposed Spring Road alignment. All but the preferred alignment are deemed infeasible due to topography, circulation needs, fire department regulations, and impacts to the coastal California gnatcatcher.

This notice is provided pursuant to section 10(a) of the Act and regulations implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued to the Applicant for the incidental take of the coastal California gnatcatcher. The final permit decision will be made no sooner than 60 days from the date of this notice.

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Dated: January 16, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–1849 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On August 7, 2001, a notice was published in the **Federal Register** (66 FR 41260) that an application had been filed with the Fish and Wildlife Service by Terri M. Williams, University of California, Santa Cruz, California, for a permit (PRT–045447) to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on January 8, 2002, a permit (MA045447–0) was issued by the Fish and Wildlife Service, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: January 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1879 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

[INT–DES–01–44]

Imperial Irrigation District Water Conservation and Transfer Project, Draft Habitat Conservation Plan, California

AGENCIES: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has issued a draft EIR/EIS on Imperial Irrigation District's (IID) proposed project that would conserve and transfer the right to use up to 300,000 acre-feet per year of Colorado River water, which IID is otherwise entitled to divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD) and/or The Metropolitan Water District (MWD). These transfers, which are to remain in effect for up to 75 years, would facilitate efforts to reduce California's diversion of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment. Approval of the Secretary of the Interior (Secretary) will be required to change the point of delivery for the transferred water. In addition, IID has applied for a permit with Fish and Wildlife Service (FWS) pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA). This Section 10 permit would authorize the incidental take of covered species associated with the proposed water conservation and transfer project, as well as IID's ongoing operation and maintenance activities. As a condition of applying for a Section 10 permit, IID has developed a Habitat Conservation Plan (HCP) in consultation with FWS and the California Department of Fish and Game, which is appended to the draft EIR/EIS. The HCP would provide measures to minimize and mitigate the effects of the proposed taking of listed and sensitive species and the habitats upon which they depend.

Both Reclamation's approval of the change in point of delivery of Colorado River water and FWS' approval of the HCP and issuance of a Section 10 permit are Federal actions that require compliance with the National Environmental Policy Act (NEPA) of 1969, as amended. This draft EIR/EIS has been prepared pursuant to NEPA and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, and is being issued by Reclamation as the lead agency. The FWS is a cooperating agency. Both agencies intend to use the EIR/EIS document to issue separate Records of Decision. This document also serves as IID's compliance with the California Environmental Quality Act (CEQA), and is therefore a combined draft EIR/EIS. Public hearings will be held to receive written or verbal comments on the draft EIR/EIS. Notice of hearings will appear at a future date.

DATES: A 90-day public review and comment period begins with the filing of the draft EIR/EIS with the Environmental Protection Agency. Written comments must be received no later than April 12, 2002 (see **ADDRESSES** below).

ADDRESSES: Send written comments to one of the following: Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006; Mr. Elston Grubaugh, Manager, Resource Planning and Management Department, Imperial Irrigation District, PO Box 937, Imperial, CA 92251, fax number (760) 339–9009.

A read-only downloadable copy of the draft EIR/EIS document is available on the Internet at *http://www.is.ch2m.com/iidweb*. A copy of the draft EIR/EIS is also available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIR/EIS is also available for public inspection and review at the locations listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Mr. Ellis at the address provided above, or telephone (602) 216–3854. For information related to the HCP, please contact Ms. Carol Roberts at the Carlsbad FWS office, telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION: The terms of IID's water conservation and transfer transactions are set forth in the "Agreement for Transfer of Conserved Water" (IID/SDCWA Transfer Agreement), executed by IID and SDCWA in 1998 (as amended), and a proposed Quantification Settlement Agreement (QSA) to be executed by IID, CVWD, and MWD. The QSA establishes a framework of conservation measures and water transfers within southern California for up to 75 years, and would facilitate California's efforts to reduce its diversions of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment, thus benefiting the entire Colorado River Basin. It would authorize the transfer of up to 200,000 acre-feet to SDCWA pursuant to the IID/SDCWA Transfer Agreement, and provide for the transfer of up to 100,000 acre-feet of water conserved by IID to CVWD and/or MWD.

The Secretary of the Interior (Secretary), pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support

California's efforts. One of these actions is execution of an Implementation Agreement (IA) that would commit the Secretary to make Colorado River water deliveries to facilitate implementation of the QSA. The Secretary's execution of the IA is the subject of Reclamation's IA, Inadvertent Overrun and Payback Policy, and Related Federal Actions Draft EIS (INT–DES 01–44), which was recently distributed for public review and comment (67 FR 1988). Impacts to the Colorado River, that would result from the change in point of delivery of IID's conservation and transfer of up to 300,000 acre-feet of Colorado River water, are incorporated into an analysis of all changes in the point of delivery proposed in the IA and included in the QSA.

The draft EIR/EIS identifies and summarizes the impacts to the Colorado River associated with IID's proposed change in point of delivery of up to 300,000 acre-feet of Colorado River water, under either the IID/SDCWA Transfer Agreement or QSA. It also describes the anticipated impacts associated with the water conservation measures to be undertaken. IID's proposed methods of conserving the water to be transferred, and use of that water, are also described in the draft EIR/EIS.

IID has applied for a Section 10 permit under which FWS would authorize the incidental take of a number of federally listed species, as well as other sensitive species that are being considered for listing, within the IID water service area, the right-of-way of the All American Canal, and the Salton Sea. The draft EIR/EIS also includes a description of impacts that are anticipated to occur from IID's implementation of an HCP for affected species, once it is approved by FWS.

Copies of the draft EIR/EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- San Bernardino County Library, 104 W. 4th St., San Bernardino, CA 92401.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- IID Offices, 1284 Broadway, El Centro, CA 92243.
- IID Offices, 81–600 Avenue 58, La Quinta, CA 92253.
- El Centro Public Library, 539 State Street, El Centro, CA 92243.
- Brawley Public Library, 400 Main Street, Brawley, CA 92227.

Written comments received by Reclamation or IID become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: January 8, 2002.

Terence Martin,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–1888 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–RN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–436]

Apparel Inputs in "Short Supply" (2002): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African and Caribbean Basin Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on January 14, 2002, the Commission instituted investigation No. 332–436, *Apparel Inputs in "Short Supply" (2002): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African and Caribbean Basin Countries*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice in connection with requests filed in 2002 with respect to the "short supply" provisions of the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA). The Commission conducted a similar investigation in 2001 to provide advice with respect to requests filed that year. During 2001, the Commission conducted 10 "short supply" reviews under investigation No. 332–428, *Apparel Inputs in "Short Supply" (2001): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African and Caribbean Basin Countries.*

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466; *jones@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS On-Line) *http://dockets.usitc.gov/eol/public/*.

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Background

Section 112(b)(5) of the AGOA and section 213(b)(2)(A)(v) of the Caribbean Basin Economic Recovery Act, as added by section 211(a) of the CBTPA, allow preferential treatment for apparel made in beneficiary countries from certain fabrics or yarns to the extent that apparel of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement. These sections also authorize the President, on request of an interested party, to proclaim preferential treatment for apparel made in beneficiary countries from additional fabrics or yarns, if the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President complies with certain procedural requirements, one of which is to obtain the advice of the Commission. The President is required to submit a report to the House Ways and Means and Senate Finance Committees that sets forth the action proposed to be proclaimed, the reasons for such action, and the advice obtained from the Commission and the appropriate advisory committee, within 60 days after a request is received from an interested party.

In Executive Order No. 13191, the President delegated to the Committee for the Implementation of Textile Agreements (CITA) the authority to determine whether particular fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. He authorized CITA and the USTR to submit the required report to the Congress, and delegated to USTR the authority to obtain advice from the Commission.

As requested by the USTR, the Commission will provide advice regarding the probable economic effect of providing preferential treatment for apparel made in AGOA and/or CBTPA beneficiary countries from fabrics or yarns, regardless of the source of the fabrics or yarns, which allegedly cannot be supplied by the domestic industry in commercial quantities in a timely manner (i.e., which allegedly are in "short supply"). The advice will be provided as to the probable economic effect of such action on affected segments of the U.S. textile and apparel industries, workers in these industries, and consumers of affected goods.

The Commission will follow the same procedures as it did in conducting "short supply" reviews in 2001 under Investigation No. 332–428. Thus, during 2002, the Commission will provide advice for each "short supply" review under a single investigation number. The Commission will not publish notices in the **Federal Register** of receipt of individual requests for advice. Instead, the Commission will issue a news release each time it initiates an analysis, and the news release will identify the article(s) under consideration, indicate the deadline for submission of public comments on the proposed preferential treatment, and provide the name, telephone number, and Internet e-mail address of staff who will be able to provide additional information on the request. CITA publishes a summary of each request from interested parties in the **Federal Register**. To view these notices, see the Internet site of the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA), at *http://otexa.ita.doc.gov/fr.stm*.

The Commission has developed a special area on its Internet site (*http://www.usitc.gov/shortsup/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis. The Commission has also developed a group list of facsimile addresses of interested parties or individuals who wish to be automatically notified via facsimile about any requests for which the Commission initiated analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466; *jones@usitc.gov*).

The Commission will submit its reports to the USTR not later than the 42nd day after receiving a request for advice. The Commission will issue a public version of each report as soon thereafter as possible, with any confidential business information deleted.

Written Submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements (original and 3 copies) concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in the reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that could reveal the individual operations of the firms supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: African, Apparel, Caribbean, Fabric, Imports, Tariffs, and Yarn.

By order of the Commission.

Issued: January 18, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1838 Filed 1–24–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–003]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 8, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–920 (Final) (Certain Welded Large Diameter Line Pipe from Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 19, 2002.)
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: January 22, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1972 Filed 1–23–02; 11:57 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alcoa, Inc.*, Civ. No. 4:99CV61 AS, was lodged with the United States District Court for the Northern District of Indiana, Hammond Division at Lafayette, on January 16, 2002. The action was brought by the United States against Alcoa, Inc. ("Alcoa") under section 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), for injunctive relief and assessment of civil penalties. The complaint alleges that Alcoa violated the Act and its National Pollutant Discharge Elimination System permit ("NPDES Permit") issued pursuant to the Act, by failing to comply with numerical limitations governing specific pollutants established by Alcoa's NPDES Permit, including Five-Day Biochemical Oxygen Demand ("BOD5"), polychlorinated biphlenyls ("PCB"), Total Residual Chlorine, Fecal Coliform, Total Suspended Solids ("TSS"), Oil & Grease, and Total Aluminum, discharged by Alcoa to Elliott Ditch at its aluminum manufacturing facility located in Lafayette, Indiana.

Under the proposed consent decree, Alcoa will pay a civil penalty of $550,000; comply with all applicable NPDES Permit requirements by implementing five delineated corrective measures, other corrective measures as necessary to ensure continued compliance, additional corrective measures including enhanced monitoring, and contingent corrective measures if compliance with NPDES Permit requirements for TSS and PCB are not maintained for a 12 month period; perform a Supplemental Environmental Project ("SEP") valued at $2 million; perform other injunctive relief in the form of instituting an Environmental Management System at its facility; and conduct an Elliott Ditch/Wea Creek Investigation to evaluate sources, fate and transport of PCBs in the water column, sediments and fish in these water bodies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Clifford D. Johnson, Assistant U.S. Attorney, Office of the United States Attorney for the Northern District of Indiana, Robert A. Grant Federal Building, 204 South Main Street, Room M–01, South Bend, Indiana 46601, (219–236–8287); and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Alcoa, Inc.*, D.J. Ref. No. 90–5–1–1–06358.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, Robert A. Grant Federal Building, 204 South Main Street, Room M–01, South Bend, Indiana 46601, and at the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact: Joseph Williams (312–886–6631)). A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $10.75 for the consent decree including one appendix (43 pages) to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Alcoa, Inc.*, D.J. Ref. No. 90–5–1–1–06358.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1836 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Complaint and Consent Decree in *United States* v. *Conoco Inc.*, Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas. Notice of this proposed settlement was first published in the **Federal Register** on January 2, 2002 (Volume 67, Number 1, page 107), opening a public comment period for thirty (30) days on the Consent Decree and instructing that comments be sent by regular first class mail to the U.S. Department of Justice. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which were addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. This notice is to provide revised instructions for the submission of comments, to extend the public comment period, and to request that persons resubmit comments on this settlement that were previously addressed to the Washington, DC post office box.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. ("Conoco") pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's 4 refineries in Colorado, Montana, Oklahoma and Louisiana. Under the settlement, Conoco will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides ("NO_X") and sulfur dioxide ("SO_2") from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Koch will pay a civil penalty of $1.5 million and spend $5.5 million on supplemental and beneficial environmental projects. The states of Colorado, Montana, Oklahoma and Louisiana will join in this settlement as signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Persons who have already submitted comments pursuant to the January 2, 2002 notice

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are requested to resubmit their comments in accordance with these revised instructions. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Gordon M. Speights Young, Assistant United States Attorney, Southern District of Texas, PO Box 61129, Houston, TX 77208; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Conoco Inc.*, D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the "U.S. Treasury", in the amount of $36.50, to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Conoco Inc.*, D.J. Ref. 90–5–2–1–07295/1.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1837 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Re-Published Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.), was lodged with the United States District Court for the Eastern District of New York on December 13, 2001, pertaining to the payment of a civil penalty, compliance and other injunctive relief, and implementation of a supplemental environmental project in connection with the Mobil Oil Corporation's ("Mobil") violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at the Port Mobil facility in Staten Island, New York City, New York. Notice of this proposed consent decree was published in the **Federal Register** on January 2, 2002 (67 FR 109). This notice is being re-published, and the public comment period extended, because of continuing serious disruptions of mail delivery at the Department of Justice in Washington, DC that have resulted from measures taken in response to the receipt of anthrax-contaminated mail in various facilities. Persons who submitted comments to the address given in the January 2, 2002 notice should assume they have not been received and should resubmit them to the address given below.

Under the proposed consent decree, Mobil will pay a civil penalty of $8.2 million, will agree to comply with RCRA at the Port Mobil facility and implement corrective action as directed by the U.S. Environmental Protection Agency, will agree to refrain from making certain legal arguments under specified circumstances, and will agree to implement a supplemental environmental project—purchasing land for preservation in the Staten Island or New York City harbor area—at a cost of at least $3 million. the Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA section 7003(d), 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.) and to DOJ Reference No. 90–7–1–794, and should be submitted in one of the following ways: (1) By mail c/o the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201; or (2) by facsimile to (202) 353–0296; or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Any comments that were submitted by mail to the Assistant Attorney General at the Department of Justice address in Washington, DC 20530, should be re-submitted in one of the three ways listed above, in order to ensure that they are considered.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, (718) 254–7000; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York, New York 10007 (contact Stuart Keith, Office of Regional Counsel). A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood (202) 616–6584 (phone confirmation number (202) 514–1547). There is a charge for the copy. When you request a copy, please mail a check payable to "U.S. Treasury" in the amount of $6.00 (24 pages at 25 cents per page copying costs) to: Consent Decree Library, PO Box 7611, Washington, DC 20044. The check should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.) and to DOJ Reference No. 90–7–1–794.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–1835 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be

prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause as hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–1726 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–2001]

TUV America, Inc., Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV America, Inc., for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on January 25, 2002, and will be valid until January 25, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of TUV America, Inc. (TUVAM), as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment or materials (i.e., products), and includes the sites, described later in this notice. The recognition also includes TUVAM's use of certain supplemental programs, also described later herein. The applicant's NRTL

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activities will be handled by its TUV Product Services division. OSHA will detail TUVAM's scope of recognition on an informational web page for the NRTL, as further explained below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

TUVAM applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required preliminary notice in the **Federal Register** on November 23, 2001 (66 FR 58756) to announce the application. The notice included a preliminary finding that TUVAM could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by December 24, 2001. OSHA received one comment in response to the notice, which was supportive of the recognition (see Exhibit 4–1).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL2–2001, the permanent record of public information on the TUVAM recognition.

The current addresses of the facilities (sites) that OSHA recognizes for TUVAM are:

TUV Product Services (TUVAM), 5 Cherry Hill Drive, Danvers, Massachusetts 01923

TUV Product Services (TUVAM), 10040 Mesa Rim Road, San Diego, California 92121

TUV Product Services (TUVAM), 1775 Old Highway 8 NW, Suite 104, New Brighton (Minneapolis), Minnesota 55112

Background on the Applicant and the Application

According to the application, TUV America, Inc., is a "privately held Massachusetts" corporation. At time of application, the applicant was TUV Product Services, Inc., a wholly-owned subsidiary of TUVAM and also a "privately held Massachusetts" corporation, according to the application. However, TUVAM informed OSHA recently that TUV Product Services, Inc. (TPS), no longer exists as a separate legal entity but is now a division within TUVAM. As stated above, this division would handle TUVAM's NRTL activities. As a result, OSHA primarily evaluated the testing and certification capabilities of this division and former separate entity.

The application states that TUV Product Services, Inc., was incorporated in 1990, and that it has "10 years of experience with [testing] medical, telecommunications, computing, industrial machinery and controls, software, consumer electronics, sporting, and appliance products." The applicant submitted information that traces its origins to German steam boiler inspection associations founded in the 1870's "to help regulate and supervise the safety of steam installations in the interest of public safety." TUV Product Services GmbH (TUVPSG), which is organizationally part of TUVAM's parent company, included similar information in its application for recognition. OSHA already processed TUVPSG's application and granted it recognition on July 20, 2001 (*see* **Federal Register** notice: 66 FR 38032).

Although TUVAM and TUVPSG are affiliated, they have separate operations and are legally distinct, and their recognition is separate. However, by their own arrangement, both organizations will utilize the same registered certification mark for purposes of their NRTL certifications. OSHA imposed a condition on TUVPSG regarding use of this mark and imposes a related condition on TUVAM, as described later in this notice.

The application showed that TUVAM was owned by TUV Suddeutschland and TUV Nord, both based in Germany. However, as mentioned in the March 16 notice for TUVPSG, TUV Suddeutschland has since become sole owner of TUVAM. Also, TUV Suddeutschland provides testing and other technical services in a number of areas throughout the world. The on-site review report (*see* Exhibit 3) indicates that TUVAM "receives administrative and technical direction" from TUVPSG. Moreover, the report indicates that TUVAM owns, and its TPS division operates, laboratories at additional U.S. locations, i.e., sites not listed above. The recognition only covers the three sites listed above, of which the Danvers site is currently TUVAM's headquarters.

TPS and therefore TUVAM submitted an application for recognition, dated February 1, 1999 (*see* Exhibit 2). In response to a request from OSHA for clarification and additional information, TUVAM supplemented its application in a submission dated November 9, 1999 (*see* Exhibit 2–1). In addition, the applicant provided additional documents on April 28 and May 1, 2000. It also supplemented its application on May 9, 2001 (*see* Exhibit 2–2), clarifying the test standards it requests for recognition and the supplemental programs it wishes to use.

The applicant originally requested recognition for 18 test standards. However, the NRTL Program staff determined that 3 of these test standards are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing NRTL applications. Therefore, OSHA recognizes TUVAM for the 15 test standards listed below (*see* List of Test Standards).

Some documents in the November 9 submission, and virtually all of its documents in the original application, have been designated as "confidential" by the applicant. We follow provisions of 29 CFR part 70 in determining whether we can or must disclose application information. This part generally deals with procedures to process a request for disclosure under the Freedom of Information Act (FOIA). Under Subpart B of this Part 70, information designated as confidential by a business submitter may be afforded protection under Exemption 4 of the FOIA. This exemption protects commercial or financial information, the disclosure of which would cause substantial competitive harm to the submitter.

As part of our normal process for handling applications, OSHA requested that the applicant provide reasons for designating application documents as confidential, and specifically whether disclosure would cause it substantial competitive harm. The applicant

provided the necessary justification in its response dated November 9, 1999 (*see* Exhibit 2–1). Generally, the applicant maintains the 4 levels of operational documentation mentioned in international quality standards. It generally considers its level 3 and 4 documents to be confidential or privileged, and so stated in revising the designations in its November 9 response. These documents are detailed internal procedures that explain more specifically how the applicant does or will operate.

OSHA has evaluated the applicant's designations and determined that disclosure of certain documents in the original application, and all or a portion of the documents in the November 9, April 28, and May 1 supplements to the application described above, could potentially give to prospective or current competitors knowledge that could cause the applicant substantial competitive harm. Therefore, under the provisions of 29 CFR part 70, those documents could be withheld from disclosure under Exemption 4 of the Freedom of Information Act (FOIA). Accordingly, we are not making them available for public review and have not included those documents in the public docket for the application, which we further describe later in this notice. OSHA has previously withheld from disclosure similar such documents in response to FOIA requests received concerning documents submitted by other NRTLs.

Staff of the NRTL Program performed an on-site review (assessment) of the Danvers, Massachusetts, facility on October 23–26, 2000. The staff performed the reviews of the sites at San Diego and New Brighton on December 4–8, 2000. In the on-site review report (*see* Exhibit 3), the program staff recommended a "positive finding," signifying that the applicant appears to meet the requirements for recognition in 29 CFR 1910.7.

Regarding the merits of the application, the applicant presented detailed documentation that describes how it currently performs its testing and certification activities. The policies, procedures, work instructions, methods, and other practices described in this documentation will be used in its operations as an NRTL. Where appropriate, it has supplemented or modified the policies and procedures to conform to OSHA's requirements for an NRTL under 29 CFR 1910.7.

TUVAM currently performs product testing and certification activities, primarily for purposes of showing conformity to European based testing standards, such as EN and IEC standards, as indicated in the review report. It provided forms it uses when performing tests required under EN 60950. One of the test standards for which it requests recognition is UL 1950, which is equivalent to EN60950 but includes the US deviations. TUVAM has also performed testing to US-based test standards, such as UL 1950. As part of its current certification activities, it conducts initial and follow-up inspections at manufacturers' facilities, one facet of the activities that NRTLs recognized by OSHA must perform. It also authorizes the use of certification marks, another aspect of the work that NRTLs must perform. For purposes of its certifications under OSHA's NRTL Program, TUVAM will utilize a US certification mark. At the time of preparation of this notice, the registration of this mark is still pending. As already mentioned, both TUVAM and TUVPSG will utilize the same registered certification mark for purposes of their NRTL certifications.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with an explanation illustrating how TUVAM has met or plans to meet each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The application and on-site review report indicate that TUVAM has adequate testing equipment and adequate facilities to perform the tests required under the test standards for which it seeks recognition. Security measures are in place to restrict or control access to their facility, and procedures exist for handling test samples. The application and report also indicate that testing and processing procedures are in place, and the application describes the program for the development of new testing procedures. The applicant submitted a listing and examples of specific test methods that it currently uses and will utilize for its NRTL testing activities.

It utilizes outside calibration sources and does not intend to perform internal calibrations of equipment used for its NRTL testing activities. The application indicates that TUVAM maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. The application and on-site review report address personnel qualifications and training, and identify the applicant's staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that TUVAM personnel have adequate technical knowledge for the work they perform. Moreover, the review report describes the applicant's quality assurance program, which is explained in more detail in its Integrated Management System (IMS) manual. Finally, the applicant performs internal system and internal technical audits of its operations on a regular basis.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has procedures and related documentation for initially qualifying a manufacturer and for performing the required follow-up inspections at a manufacturer's facility. In its procedures, TUVAM identifies criteria it will use to determine the frequency for performing these follow-up factory inspections. It has adopted the criteria detailed in OSHA policies for NRTLs, which specify that NRTLs perform no fewer than four (4) inspections per year at certain facilities and no fewer than two (2) inspections per year under certain conditions. The factory inspections would be one part of the activities that the applicant will utilize in controlling its certification mark. In its application, TUVAM included evidence of its application for registration of a TUV certification mark with the U.S. Patent and Trademark Office (USPTO). As previously mentioned, this mark is still pending approval by the USPTO.

The applicant has procedures for control and issuance of product certifications. According to the review report, TPS "has been involved in a certification program for over ten years." As indicated in the report, the TPS Certification Body has been recently established under the TPS division but will operate in a manner consistent with the applicant's current certification practices, under which a Technical Certifier issues the formal

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product certification. As stated in the report, only those certifiers that are "[TPS] employees and reside at one of the recognized sites will be authorized to certify" a product for purposes of TUVAM's NRTL operations. The applicant maintains a detailed database of the product certifications, which will serve as its listing record. The application contains policies and terms and conditions to address control of a certification mark, and the procedures for such control are integral to more detailed procedures that the applicant uses for processing its certification certificates. For purposes of OSHA's NRTL Program, tight control by the NRTL of its certification mark is essential and procedures for such control must ensure that the NRTL's registered mark is applied to those products that the NRTL has certified. Such control must be proactive and not just reactive. TUVAM's control of a U.S. registered certification mark under the type of certification process required in OSHA's NRTL Program regulations will be a new activity for the applicant, and we include a condition related to this control.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously stated, TUV Suddeutschland is currently the sole owner of TUVAM. In addition, the information reviewed by OSHA has not indicated that TUVAM has the kinds of relationships described in OSHA policy that would cause the applicant to fail to meet the independence requirement. This information shows that TUVAM does not own or control and is not owned or controlled by the kind of entities of concern to OSHA. In addition, OSHA's review of information on business activities and subsidiaries of TUVAM's parent company has not revealed any apparent conflicts of interest that could adversely influence the applicant's testing and certification activities. TUVAM has policies to protect against conflicts of interest by its employees.

Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The applicant utilizes standardized formats for recording and reporting testing data and inspection data. It has procedures for evaluating and reporting the findings for testing and inspection activities to check conformance to all requirements of a test standard. The applicant provided examples of its test and inspection reporting forms.

Regarding the handling of complaints and disputes, the applicant's complaint and error management procedure provides the framework to handle complaints it receives from its clients or from the public or other interested parties. It maintains a detailed database that it uses as part of its quality assurance activities, which provides for recording and tracking complaint information. According to the review report, "there have not been any complaints received concerning any of the certifications that have issued" through the date of the review.

Supplemental Programs

TUV America, Inc., also seeks to use the supplemental programs listed below, subject to the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). That notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition always includes the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that TUVAM appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Additional Conditions

As already indicated, TUVAM and TUVPSG plan to utilize the same U.S. registered certification mark for purposes of their NRTL certifications. This is a new undertaking for the applicant and although it has procedures for controlling a certification mark, it still needs to further develop and refine the detailed procedures it will use to control this particular mark. As a result, OSHA will conditionally recognize TUVAM subject to an assessment of the detailed procedures and practices for controlling this mark once they are in place.

The U.S. registered mark is the only one that OSHA will recognize for TUVAM. In addition, only the sites listed in this notice will be able to authorize use of this mark for the TUVAM product certifications under the NRTL Program. Conversely, no other TUVAM laboratories or locations may authorize the use of this mark for product certifications under the NRTL Program. To ensure the applicant and the public understand this fact, OSHA will impose a condition to this effect. A similar condition was imposed in the July 20, 2001, recognition notice for TUVPSG, mentioned above.

As also noted, the applicant has recently adopted procedures concerning the criteria for the frequency at which it will conduct factory follow-up inspections. Here, too, it needs to refine these procedures to effectively and properly implement the criteria. OSHA will have to review TUVAM's approach in implementing the criteria for the twice-per-year inspections before it begins to conduct inspections at this frequency. As a result, OSHA will conditionally recognize TUVAM subject to an assessment of the details of this approach once it is in place.

Imposing these conditions is consistent with OSHA's past recognition of certain organizations as NRTLs that met the basic requirements but needed to further develop or refine their procedures (for example, *see* 63 FR 68306 12/10/1998; and 65 FR 26637, 05/08/2000). Given the applicant's current breadth of activities in testing and certification, OSHA is confident that TUVAM will develop and implement procedures and practices to appropriately perform the activities in the areas noted above.

Therefore, OSHA will impose the three conditions noted above in this final notice. These conditions apply solely to TUVAM's operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. These three conditions, listed first under Conditions below, are in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

Final Decision and Order

The NRTL Program staff has examined the application, the additional submissions, the on-site review report, and other pertinent documents. Based upon this examination and the program staff recommendation, OSHA finds that TUV America, Inc., has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory. The recognition applies to the sites listed above. In addition, it covers the test standards, listed below, and it is subject to the limitations and conditions, also listed below.

Limitations

OSHA hereby limits the recognition of TUVAM to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 45 Portable Electric Tools
UL 50 Enclosures for Electrical Equipment
UL 67 Panelboards
UL 73 Motor-Operated Appliances
UL 508 Industrial Control Equipment
UL 751 Vending Machines
UL 813 Commercial Audio Equipment
UL 1004 Electric Motors
UL 1012 Power Units Other Than Class 2
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1950 Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice.

The Agency's recognition of TUVAM, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. Conversely, OSHA's recognition of an NRTL for a test standard excludes the testing of any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

Many of the Underwriters Laboratories (UL) test standards listed above are also approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (*e.g.*, UL 1004) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI Web site, *http://www.ansi.org*, and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUV Product Services GmbH must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, TUVAM will notify the OSHA NRTL Program Director so that OSHA may review TUVAM's implementation of its procedures for controlling its US registered certification mark in conjunction with use of this mark by TUV Product Services GmbH of Germany;

Only TUV America, Inc., or TUV Product Services GmbH may authorize the US registered certification mark currently owned by TUVAM, provided each one is recognized as an NRTL by OSHA. TUVAM may authorize the use of this mark, for purposes of its product certifications under the NRTL Program, only at the TUVAM sites recognized by OSHA;

Prior to conducting inspections of manufacturing facilities based on a frequency of twice per year, OSHA must review and accept the detailed procedures that TUVAM will utilize to determine when to use this frequency for such inspections;

OSHA must be allowed access to TUVAM's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVAM has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVAM must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVAM agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVAM will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVAM will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–1887 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–006)]

NASA Advisory Committees; Renewal of the Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice renewal of the charter of the Centennial of Flight Commission.

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SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Centennial of Flight Commission (Commission) is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of the Commission remain unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Foster, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: Information regarding the Centennial of Flight Commission is available on the World Wide Web at *http://www.centennialofflight.gov.*

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–1914 Filed 1–24–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336 and 50–423]

Dominion Nuclear Connecticut, Inc.; Millstone Nuclear Power Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Dominion Nuclear Connecticut, Inc. (the licensee) for the Millstone Nuclear Power Station, Unit 1, a permanently shutdown nuclear facility located in Waterford, Connecticut, and to Facility Operating License Nos. DPR–65 and NPF–49, issued to Dominion Nuclear Connecticut, Inc., for operation of the Millstone Nuclear Power Station, Units 2 and 3, located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the physical protection (security) related license condition to indicate that the physical security program plans listed may, rather than do, contain safeguards information; and change the name of the 'Millstone Nuclear Power Station' to the 'Millstone Power Station.'

The proposed action is in accordance with the licensee's application dated August 8, 2001.

The Need for the Proposed Action

Currently, License Condition 2.C.(4) for Units 1 and 2 and License Condition 2.E for Unit 3, identifies the plans which describe the NRC approved program for physical protection of Millstone Units 1, 2, and 3. They are the Millstone Nuclear Power Station Physical Security Plan, the Millstone Nuclear Power Station Suitability, Training, and Qualification Plan, and the Millstone Nuclear Power Station Safeguards Contingency Plan. License Conditions 2.C.(4) and 2.E also indicate that the plans contain safeguards information protected under 10 CFR 73.21. However, Revision 15 to the Millstone Nuclear Power Station Suitability, Training, and Qualification Plan removed safeguards information to allow declassification of the document. The proposed revision to the license conditions would allow declassification of the document. Additionally, the licensee also proposed the deletion of the word "Nuclear" from the title of the physical security program plans listed under the security related license condition and when it is used in the phrase "Millstone Nuclear Power Station" elsewhere in the operating license. This change is purely administrative and does not alter any regulatory requirements or commitments made by the licensee.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed amendment will not have an environmental impact. The proposed changes to the licenses are considered editorial or administrative in nature. The licensee does not propose any changes to structures, systems, components, site boundaries or operational practices.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station.

Agencies and Persons Consulted

On December 12, 2001, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 8, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 18th day of January 2002.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1893 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–1113 (which should be mentioned in all correspondence concerning this draft guide), is "Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors." This draft guide is being developed to provide guidance to licensees of operating power reactors on acceptable methods and assumptions for performing evaluations of fission product releases and radiological consequences of several postulated light-water reactor design basis accidents.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 30, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC homepage, http://www.nrc.gov. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. W.M. Blumberg at (301) 415–1083; e-mail *WMB1@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800)397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 15th day of January, 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–1892 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:00 A.M., Monday, February 4, 2002; 8:30 a.m., Tuesday, February 5, 2002.

PLACE: Phoenix, Arizona, at the Biltmore Hotel, 24th Street and Missouri, in the Canyon and Grand Rooms.

STATUS: February 4—10 a.m. (Closed); February 5—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, February 4—10 a.m. (Closed)

1. Financial Performance.
2. Preliminary Annual Performance Plan Target FY 2003.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, February 5—8:30 a.m. (Open).

1. Minutes of the Previous Meeting, January 7–8, 2002.
2. Remarks of the Postmaster General and CEO.
3. Appointment of Members to Board Committees.
4. Report on the Western Area and Phoenix Performance Cluster.
5. Tentative Agenda for the March 4–5, 2002, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 02–2014 Filed 1–23–02; 2:01 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25372; 812–12702]

The Hartford Mutual Funds Inc.; Notice of Application

January 18, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(f)(1)(A) of the Act.

Summary of Application: Applicants request an order to permit certain registered open-end investment companies advised by HL Investment Advisors, LLC and Hartford Investment Financial Services, LLC (together, the "Hartford Advisers") not to reconstitute their boards of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act, following the acquisition of the assets of certain other registered open-end investment companies.

Applicants: The Hartford Mutual Funds, Inc., ("Mutual Funds"), Hartford Series Fund, Inc., ("Series Fund"), Hartford Advisers HLS Fund, Inc., ("Advisers HLS"), Hartford Money Market HLS Fund, Inc., ("Money Market HLS"), Hartford Bond HLS Fund, Inc., ("Bond HLS"), Hartford Index HLS Fund, Inc., ("Index HLS") (collectively, the "Hartford Funds"), and the Hartford Advisers.

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Filing Dates: The application was filed on November 21, 2001, and amended on January 16, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 12, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 60 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Janet M. Grossnickle, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Hartford Funds are open-end management investment companies registered under the Act. Mutual Funds, a Maryland corporation, consists of 23 series. Series Fund, a Maryland corporation, consists of 14 series. Advisers HLS, Money Market HLS, Bond HLS, and Index HLS are all Maryland corporations. The Hartford Advisers, indirect subsidiaries of the Hartford Life and Accident Insurance Company ("Hartford Life") serve as investment advisers to the Hartford Funds. The Hartford Advisers are registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. Hartford-Fortis Series Fund, Inc. ("Hartford-Fortis Series Fund"), a Maryland corporation, offers 14 separate series. Fortis Series Fund, Inc. ("Fortis Series Fund"), a Minnesota corporation, offers 23 separate series. At the time of the Acquisition (as defined below), Fortis Advisers Inc. ("Fortis") (now known as Hartford Administrative Services Company) served as investment adviser to the Hartford-Fortis Series Fund and the Fortis Series Fund. Fortis was registered under the Advisers Act.

3. Hartford Life purchased all of the outstanding stock of Fortis on April 2, 2001, (the "Acquisition"), and shareholders of each of the Fortis Funds approved an investment management agreement with the Hartford Advisers at a shareholder meeting held on May 31, 2001. It is now proposed that certain series of the Hartford Funds would acquire the assets of six series of the Hartford-Fortis Series Fund, and seven series of Fortis Series Fund (the "Reorganization").[1] The series of the Hartford-Fortis Series Fund and the Fortis Series Fund proposed to be acquired by the Hartford Funds are referred to as the "Fortis Funds."

4. Applicants state that the Acquisition resulted in a change of control of Fortis and an assignment under the Act of the investment advisory agreements between the Fortis Funds and Fortis, resulting in their automatic termination in accordance with their terms, as required by section 15(a)(4) of the Act. The boards of directors ("Boards") of the Fortis Funds, at a meeting held on March 23, 2001, approved interim advisory agreements which remained in effect from the date of the Acquisition until investment advisory agreements for each of the Fortis Funds were approved by their shareholders on May 31, 2001 in reliance on rule 15a–4 under the Act.

5. On August 9, 2001 and August 2, 2001, the Hartford Funds' Boards (including all of the directors who are not "interested persons" of the Hartford Advisers) and the Fortis Funds' Boards (all of whom are not "interested persons" of the Hartford Advisers or the Hartford Funds), respectively, unanimously approved the proposed Reorganization. Participation in the Reorganization will require approval by a majority of the outstanding shares of each of the Fortis Funds. The Fortis Funds' Boards have called a special meeting of the Hartford-Fortis Series Fund's shareholders to be held on January 31, 2002, and intend to call a special meeting of the Fortis Series Fund's shareholders to be held in April 2002, for the purpose of considering the Reorganization. If approved by shareholders, the Reorganization is scheduled to be effective on or about February 19, 2002, in the case of the Hartford-Fortis Series Fund, and in the case of Fortis Series Fund is proposed to be effective in April 2002.

6. In connection with the Acquisition and the Reorganization, applicants have determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that following consummation of the Reorganization, more than twenty-five percent of the Boards of Directors of the Hartford Funds, which have identical membership, would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Hartford Funds would have to reconstitute their Boards to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of December 31, 2001, Fortis Funds had approximately $2,345,000,000 in aggregate net assets. Applicants also state that, as of December 31, 2001, the aggregate net assets of the Hartford Funds were approximately $33,077,000,000. Applicants thus assert that the Fortis Funds' assets would represent approximately 7.09% of the aggregate net assets of the Hartford Funds.

5. Applicants state that two of the seven directors who serve on the Boards of Hartford Funds are "interested persons," within the meaning of section 2(a)(19) of the Act, of the Hartford Advisers. Applicants state that none of the directors owns any interest in or is otherwise an "interested person" of Fortis or the Fortis Funds.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Hartford Funds would have to alter the composition of their Boards, either by asking experienced directors to resign or by adding a new director. Applicants, further state that adding a new director could require a shareholder vote, not only of shareholders of the acquiring Hartford Funds but also the shareholders of the other series of the Hartford Funds not otherwise affected by the Reorganization. Applicants assert that adding an additional non-interested director to the Boards of Hartford Funds could entail a lengthy process and increase the ongoing costs of Hartford Funds.

7. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1898 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Applicants state that it is not anticipated that any of the remaining series of the Hartford-Fortis Series Fund or the Fortis Series Fund not party to the Reorganization will be reorganized into the Hartford Funds within the three years following the Acquisition.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25371; 812–12656]

Wells Fargo Funds Management LLC and Wells Fargo Funds Trust; Notice of Application

January 18, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 12(d)(3) of the Act.

Summary of the Application: Applicants request an order to permit a registered open-end management investment company to: (a) Acquire securities of an entity involved in securities-related activities in connection with a merger with another non-affiliated registered open-end management investment company and; (b) continue to hold the securities for up to two years to effect their orderly liquidation following the merger.

Filing Dates: The application was filed on October 9, 2001, and amended on January 7, 2002. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 525 Market Street, 12th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Wells Fargo Funds Trust, a Delaware business trust, is registered under the Act as an open-end management investment company and consists of multiple series, including Wells Fargo Specialized Financial Services Fund (the "Acquiring Fund"). Wells Fargo Funds Management, LLC ("WFFM"), a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940 and is an indirect wholly owned subsidiary of Wells Fargo & Company ("Wells Fargo"), a publicly-traded Delaware corporation, whose principal businesses are retail and commercial banking and providing financial services. Although a significant majority of Wells Fargo's annual revenues derive from its core banking business, Wells Fargo may also be deemed to be engaged in "securities related activities," as defined by rule 12d3–1 under the Act.

2. SIFE Trust Fund (the "Acquired Fund," and together with the Acquiring Fund, the "Funds") is registered under the Act as an open-end management investment company. The Acquired Fund has investment objectives and policies substantially similar to the Acquiring Fund and has been in continuous operation since July 2, 1962. SIFE, a California corporation, currently acts as investment adviser to the Acquired Fund. Pursuant to an Agreement and Plan of Reorganization, SIFE is expected to merge with and into a wholly-owned subsidiary of Wells Fargo on February 22, 2002. In addition, in February, 2002, the Acquired Fund will transfer all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund (the "Reorganization"). Upon the effectiveness of the Reorganization, WFFM will act as investment adviser to the Acquiring Fund.

3. Between May, 1989, and September, 1999, the Acquired Fund made 14 separate purchases of Wells Fargo stock totaling 680,000 shares, in compliance with the Act and the rules thereunder. Each purchase was made on the open market at prices ranging from $4.57 per share to $44.34 per share, at a total cost of $19,774,452. All such purchases were made prior to the time that Wells Fargo and SIFE began negotiating the purchase of SIFE by Wells Fargo. The Acquired Fund currently holds 500,000 shares of Wells Fargo stock equal to approximately 3% of its total net assets and these shares represents an unrealized gain to the Acquired Fund of $8,844,244 (the "Wells Fargo Position"). In connection with the Reorganization, the Acquired Fund will transfer the Wells Fargo Position to the Acquiring Fund (the "Transfer"). The Reorganization is expected to qualify as a tax-free reorganization under the Internal Revenue Code, and accordingly, the tax basis of all securities holdings and other

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assets of the Acquired Fund will be transferred to the Acquiring Fund.

4. Each Fund's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, approved the Reorganization and concluded that the Reorganization was in the best interest of the respective Fund. In approving the Reorganization, each Board considered the Wells Fargo Position. To effect the Reorganization, a shareholder meeting of the Acquired Fund's shareholders will be held on or about January 31, 2002. A proxy statement soliciting shareholder approval, which discussed the Wells Fargo Position, was mailed in November, 2001.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act, in relevant part, prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. Rule 12d3–1(c) provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person thereof.

2. Applicants state that because Wells Fargo is an affiliated person of WFFM, the Acquiring Fund's investment adviser, the Transfer and the Acquiring Fund's continued holding of the Wells Fargo Position would not meet the conditions of rule 12d3–1(c).[1] Applicants request relief from section 12(d)(3) to permit the Acquiring Fund to effect the Transfer and the continued holding for up to two years of the Wells Fargo Position following the Reorganization in order to permit the Acquiring Fund to effect its orderly liquidation.

3. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard.

4. Applicants state that the relief is warranted because none of the abuses that section 12(d)(3) was intended to prevent are present in the instant situation and the two-year disposition period will permit the Acquiring Fund to maximize the realization of gain on the orderly sale of the Wells Fargo Position while minimizing the tax effects of the disposition. Applicants also state that the Acquired Fund obtained the Wells Fargo Position in compliance with the Act and the rules thereunder.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will seek to liquidate the Wells Fargo Position as soon as possible, consistent with the maximization of shareholder return and the best interests of the Acquiring Fund, and in any case, within two years of the date of the Reorganization.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1900 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–P

[1] See Investment Company Act Release No. 3542. (Sep. 21, 1962).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 28, 2002: a closed meeting will be held on Tuesday, January 29, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 22, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–1987 Filed 1–23–02; 11:57 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8056; 34–45321; FR–61]

Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Commission statement.

SUMMARY: The Commission today is issuing a statement regarding Management's Discussion and Analysis of Financial Condition and Results of Operations. The release sets forth certain views of the Commission regarding disclosure that should be considered by registrants. Disclosure matters addressed by the release are liquidity and capital resources including off-balance sheet arrangements; certain trading activities that include non-exchange traded contracts accounted for at fair value; and effects of transactions with related and certain other parties.

FOR FURTHER INFORMATION CONTACT: Questions about this statement should be referred to Jackson Day or Robert Bayless, Office of the Chief Accountant (202 942–4400) or Paula Dubberly, Division of Corporation Finance (202 942–2900), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2001, the Commission received a petition from the accounting firms of Arthur Andersen LLP, Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP.[1] The petition, which was endorsed by the American Institute of Certified Public Accountants, requested that the Commission issue additional interpretive guidance regarding Item 303 of Regulation S–K, *Management's Discussion and Analysis of Financial Condition and Results of Operations*,[2] Item 303 of Regulation S–B, *Management's Discussion and Analysis or Plan of Operations*,[3] and Item 5 of Form 20–F, *Operating and Financial Review and Prospects*[4] (collectively, "MD&A" or "the MD&A rules").[5] The petition requested that additional guidance be provided to public companies preparing their annual reports for the fiscal year just ended.

The petition identified three areas of concern regarding disclosure in MD&A:

- Liquidity and capital resources, including off-balance sheet arrangements;
- Certain trading activities involving non-exchange traded contracts accounted for at fair value; and
- Relationships and transactions with persons or entities that derive benefits from their non-independent relationship with the registrant or the registrant s related parties.

Generally, we believe that the quality of information provided by public companies in the three areas identified in the petition should be improved. Because many companies are currently preparing disclosures for fiscal 2001 annual reports, the Commission believes it is appropriate to issue this statement so that public companies can consider the petition and this statement in preparing year-end and interim financial reports and other disclosures made after the issuance of this release.

While the Commission intends to consider rulemaking regarding the topics addressed in this statement and other topics covered by MD&A, the purpose of this statement is to suggest steps that issuers should consider in meeting their current disclosure obligations with respect to the topics described. This statement does not create new legal requirements, nor does it modify existing legal requirements.

[1] The petition is posted on the Commission's web page (*www.sec.gov*) under Regulatory Actions, Petitions for Rulemaking.

[2] 17 CFR 229.303.

[3] 17 CFR 228.303.

[4] *See* 17 CFR 249.220f.

[5] The accounting profession has made previous petitions to improve MD&A disclosure. *See, e.g.*, Securities Act Release No. 6711 (April 17, 1987), Concept Release on Management's Discussion and Analysis of Financial Condition and Results of Operations, 52 FR 13715; and Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427.

II. Regulation S–K. Item 303. Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)

Paragraph (a) of Item 303 of Regulation S–K identifies a basic and overriding requirement of MD&A: to "provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations." The Commission has explained this requirement on a number of occasions. In 1987, we said:

> The Commission has long recognized the need for a narrative explanation of the financial statements, because numerical presentations and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company.[6]

And, as we said in 1989, "[t]he MD&A requirements are intended to provide in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future."[7]

Disclosure is mandatory where there is a known trend or uncertainty that is reasonably likely to have a material effect on the registrant's financial condition or results of operations.[8] Accordingly, the development of MD&A disclosure should begin with management's identification and evaluation of what information, including the potential effects of known trends, commitments, events, and uncertainties, is important to providing investors and others an accurate understanding of the company's current and prospective financial position and operating results.[9]

Investors have become increasingly concerned about the sufficiency of disclosure regarding liquidity risk, market price risks, and effects of "off-balance sheet" transaction structures. Also, many readers of financial statements have cited a lack of transparent disclosure about transactions with unconsolidated entities and other parties where that information appeared necessary to understand how significant aspects of the business were conducted.

Accordingly, the Commission is reminding companies of the requirements of MD&A as they relate to (1) liquidity and capital resources, including off-balance sheet arrangements; (2) certain trading activities involving non-exchange traded contracts accounted for at fair value; and (3) relationships and transactions on terms that would not be available from clearly independent third parties on an arm's-length basis. This statement suggests steps that companies should consider in meeting their disclosure obligations.

We also want to remind registrants that disclosure must be both useful and understandable. That is, management should provide the most relevant information and provide it using language and formats that investors can be expected to understand. Registrants should be aware also that investors will often find information relating to a particular matter more meaningful if it is disclosed in a single location, rather than presented in a fragmented manner throughout the filing.

A. Disclosures Concerning Liquidity and Capital Resources, Including "Off-Balance Sheet" Arrangements

Paragraphs (a)(1) and (a)(2)(ii) of Item 303 of Regulation S–K set forth certain requirements for disclosures about "Liquidity" and "Capital Resources."

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.

* * * * *

(2)(ii) *Capital Resources.* Describe any known material trends, favorable or

[6] Securities Act Release No. 6711 (April 17, 1987), Concept Release on Management's Discussion and Analysis of Financial Condition and Results of Operations, 52 FR 13715.

[7] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22438 (footnote omitted).

[8] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22429 ("Required disclosure is based on currently known trends, events, and uncertainties that are reasonably expected to have material effects. * * * In contrast, optional forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty.").

[9] See Instructions to Item 303 ("The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.").

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unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

A registrant's liquidity and capital resources are closely aligned. Disclosures about each are likely to be affected by many of the same facts and circumstances. And off-balance sheet financing arrangements often are integral to both.[10] Management should consider all of these items together, as well as individually, when drafting disclosures responsive to the MD&A rules.

1. Liquidity Disclosures

MD&A disclosures should not be overly general. For example, disclosure that the registrant has sufficient short-term funding to meet its liquidity needs for the next year provides little useful information. Instead, registrants should consider describing the sources of short-term funding and the circumstances that are reasonably likely to affect those sources of liquidity.

For example, a registrant that identifies its principal source of liquidity as operating cash flows may need also to disclose the extent of the risk that a decrease in demand for the company's products would reduce the availability of funds. That risk might arise, to further the example, where customer demand is reasonably likely to fluctuate in response to rapid technological changes. Similarly, if commercial paper is a principal source of liquidity, the registrant should consider the need to disclose how this facility could be adversely affected by a debt rating downgrade or deterioration in certain of the company's financial ratios or other measures of financial performance. The discussion should be limited to material risks, and, as with MD&A generally, should be sufficiently detailed and tailored to the company's individual circumstances, rather than "boilerplate."

If the registrant's liquidity is dependent on the use of off-balance sheet financing arrangements, such as securitization of receivables or obtaining access to assets through special purpose entities, the registrant should consider disclosure of the factors that are reasonably likely to affect its ability to continue using those off-balance sheet financing arrangements.[11] Registrants also should make informative disclosures about matters that could affect the extent of funds required within management's short- and long-term planning horizons.

Registrants are reminded that identification of circumstances that could materially affect liquidity is necessary if they are "reasonably likely" to occur. This disclosure threshold is lower than "more likely than not." Market price changes, economic downturns, defaults on guarantees, or contractions of operations that have material consequences for the registrant's financial position or operating results can be reasonably likely to occur under some conditions. Material effects on liquidity as a result of any reasonably likely changes should be disclosed pursuant to Item 303(a).

In 1989, the Commission identified two assessments management must make where a trend, demand, commitment, event or uncertainty is known:

1. Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.

2. If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.[12]

The Commission further reminded registrants that each final determination resulting from the assessments made by management must be objectively reasonable, as viewed at the time the determination is made.[13]

To identify trends, demands, commitments, events and uncertainties that require disclosure, management should consider the following:

- Provisions in financial guarantees or commitments, debt or lease agreements or other arrangements that could trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity, or the creation of an additional financial obligation, such as adverse changes in the registrant's credit rating, financial ratios, earnings, cash flows, or stock price, or changes in the value of underlying, linked or indexed assets;
- Circumstances that could impair the registrant's ability to continue to engage in transactions that have been integral to historical operations or are financially or operationally essential, or that could render that activity commercially impracticable, such as the inability to maintain a specified investment grade credit rating, level of earnings, earnings per share, financial ratios, or collateral;
- Factors specific to the registrant and its markets that the registrant expects to be given significant weight in the determination of the registrant's credit rating or will otherwise affect the registrant's ability to raise short-term and long-term financing;
- Guarantees of debt or other commitments to third parties; and
- Written options on non-financial assets (for example, real estate puts).

2. Off-Balance Sheet Arrangements

Registrants should consider the need to provide disclosures concerning transactions, arrangements and other relationships with unconsolidated entities or other persons that are reasonably likely to affect materially liquidity or the availability of or requirements for capital resources. Specific disclosure may be necessary regarding relationships with unconsolidated entities that are contractually limited to narrow activities that facilitate the registrant's transfer of or access to assets. These entities are often referred to as structured finance or special purpose entities. These entities may be in the form of corporations, partnerships or limited liability companies, or trusts.

Material sources of liquidity and financing, including off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities, should be discussed pursuant to Item 303(a).[14] The extent of the registrant's reliance on off-balance sheet arrangements should be described fully and clearly where those entities provide financing, liquidity, or market or credit risk support for the registrant; engage in leasing, hedging, research and development services with the registrant; or expose the registrant to liability that is not reflected on the face of the financial statements. Where contingencies inherent in the arrangements are reasonably likely to affect the continued availability of a material historical source of liquidity and finance, registrants must disclose those uncertainties and their effects.

Registrants should consider the need to include information about the off-balance sheet arrangements such as: their business purposes and activities; their economic substance; the key terms and conditions of any commitments; the initial and ongoing relationships with the registrant and its affiliates; and the registrant's potential risk exposures resulting from its contractual or other commitments involving the off-balance sheet arrangements.

For example, a registrant may be economically or legally required or reasonably likely to fund losses of an unconsolidated, limited purpose entity, provide it with additional funding, issue securities pursuant to a call option held by that entity, purchase the entity's capital stock or assets, or the registrant otherwise may be financially affected by the performance or non-performance of an entity or counterparty to a transaction or arrangement. In those circumstances, the registrant may need to include information about the arrangements and exposures resulting from contractual or other commitments to provide investors with a clear understanding of the registrant's business activities, financial arrangements, and financial statements. Other disclosures that registrants should consider to explain the effects and risks of off-balance sheet arrangements include:

- Total amount of assets and obligations of the off-balance sheet entity, with a description of the nature of its assets and obligations, and identification of the class and amount of any debt or equity securities issued by the registrant;
- The effects of the entity's termination if it has a finite life or it is reasonably likely that the registrant's arrangements with the entity may be discontinued in the foreseeable future;
- Amounts receivable or payable, and revenues, expenses and cash flows resulting from the arrangements;
- Extended payment terms of receivables, loans, and debt securities resulting from the arrangements, and any uncertainties as to realization, including repayment that is contingent upon the future operations or performance of any party;
- The amounts and key terms and conditions of purchase and sale agreements between the registrant and the counterparties in any such arrangements; and
- The amounts of any guarantees, lines of credit, standby letters of credit or commitments or take or pay contracts, throughput contracts or other similar types of arrangements, including tolling, capacity, or leasing arrangements, that could require the registrant to provide funding of any obligations under the arrangements, including guarantees of repayment of obligors of parties to the arrangements, make whole agreements, or value guarantees.

Although disclosure regarding similar arrangements can be aggregated, important distinctions in terms and effects should not be lost in that process. The relative significance to the registrant's financial position and results of the arrangements with unconsolidated, non-independent, limited purpose entities should be clear from the disclosures to the extent material. While legal opinions regarding "true sale" issues or other issues relating to whether a registrant has contingent, residual or other liability can play an important role in transactions involving such entities, they do not obviate the need for the registrant to consider whether disclosure is required. In addition, disclosure of these matters should be clear and individually tailored to describe the risks to the registrant, and should not consist merely of recitation of the transactions' legal terms or the relationships between the parties or similar boilerplate.

3. Disclosures About Contractual Obligations and Commercial Commitments

Accounting standards[15] require disclosure concerning a registrant's obligations and commitments to make future payments under contracts, such as debt and lease agreements, and under contingent commitments, such as debt guarantees. Disclosures responsive to these requirements usually are located in various parts of a registrant's filings. We believe investors would find it beneficial if aggregated information about contractual obligations and commercial commitments[16] were provided in a single location so that a total picture of obligations would be readily available. One aid to presenting the total picture of a registrant's liquidity and capital resources and the integral role of on- and off-balance sheet arrangements may be schedules of contractual obligations and commercial commitments as of the latest balance sheet date. Examples that could be adapted to the registrant's particular facts are presented below.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	4–5 years	After 5 years
Long-Term Debt					
Capital Lease Obligations					
Operating Leases					
Unconditional Purchase Obligations					
Other Long-Term Obligations					
Total Contractual Cash Obligations					

The preceding table could be accompanied by footnotes to describe provisions that create, increase or accelerate liabilities, or other pertinent data.

[10] *See* Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, particularly Section III.C.

[11] "The scope of the discussion should thus address liquidity in the broadest sense, encompassing internal as well as external sources, current conditions as well as future commitments and known trends, changes in circumstances and uncertainties." [Securities Act Release No. 6349 (September 28, 1981)].

[12] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22430.

[13] *Id.*

[14] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, at III.C.

[15] *See, e.g.*, Statement of Financial Accounting Standards Nos. 5, *Accounting for Contingencies*, 13, *Accounting for Leases*, 47, *Disclosure of Long-Term Obligations*, and 129, *Disclosure of Information about Capital Structure*."

[16] Commercial commitments are intended to include lines of credit, guarantees, and other potential cash outflows resulting from a contingent event that requires registrant performance pursuant to a funding commitment.

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Other commercial commitments	Total amounts committed	Amount of commitment expiration per period			
		Less than 1 year	1–3 years	4–5 years	Over 5 years
Lines of Credit					
Standby Letters of Credit					
Guarantees					
Standby Repurchase Obligations					
Other Commercial Commitments					
Total Commercial Commitments					

B. Disclosures About Certain Trading Activities That Include Non-Exchange Traded Contracts Accounted for at Fair Value

The Commission is concerned that there may be a lack of transparency and clarity with respect to the disclosure of trading activities involving commodity contracts that are accounted for at fair value but for which a lack of market price quotations necessitates the use of fair value estimation techniques. These contracts may be indexed to measures of weather, commodities prices, or quoted prices of service capacity, such as energy storage and bandwidth capacity contracts. Companies engaged to a material extent in trading activities [17] involving these contracts should consider providing disclosures in MD&A that supplement those required in the financial statements by applicable accounting standards. Investor understanding and financial reporting transparency may depend on additional statistical and other information about these business activities and transactions. That information should include any contracts that are derivatives involving the same commodities that are part of those trading activities (for example, energy derivatives that are part of energy trading activities [18]).

The Commission reminds registrants that accounting standards require disclosures in financial statements of material energy trading and risk management activities.[19] Discussion in MD&A of material trends and uncertainties arising from those activities is also required. Information about these trading activities, contracts and modeling methodologies, assumptions, variables and inputs, along with explanations of the different outcomes reasonably likely under different circumstances or measurement methods, should be considered for inclusion in management's discussion of how the activities affect reported results for the latest annual period and subsequent interim period and how financial position is affected as of the latest balance sheet date. The Commission recently issued cautionary advice encouraging companies to include in their MD&A full explanations, in plain English, of their "critical accounting policies," the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.[20]

Consistent with that advice, registrants should consider the need to furnish information, quantified to the extent practicable, that does the following:

- Disaggregates realized and unrealized changes in fair value;
- Identifies changes in fair value attributable to changes in valuation techniques;
- Disaggregates estimated fair values at the latest balance sheet date based on whether fair values are determined directly from quoted market prices or are estimated; and
- Indicates the maturities of contracts at the latest balance sheet date (*e.g.*, within one year, within years one through three, within years four and five, and after five years).

An example of this disclosure in the form of a schedule is provided below.

Fair value of contracts outstanding at the beginning of the period—xxxxxx
Contracts realized or otherwise settled during the period—xxxxxx
Fair value of new contracts when entered into during the period—xxxxxx
Changes in fair values attributable to changes in valuation techniques and assumptions—xxxxxx
Other changes in fair values—xxxxxx
Fair value of contracts outstanding at the end of the period—xxxxxx

Source of fair value	Fair value of contracts at period-end				
	Maturity less than 1 year	Maturity 1–3 years	Maturity 4–5 years	Maturity in excess of 5 years	Total fair value
Prices actively quoted.					
Prices provided by other external sources.					
Prices based on models and other valuation methods.					

[17] Companies that may find the suggested disclosures particularly valuable are those engaged to a material extent in (a) energy trading activities as defined in Emerging Issues Task Force Issue 98–10 (EITF 98–10), *Accounting for Contracts Involved in Energy Trading and Risk Management Activities*, (b) weather trading activities as defined in Emerging Issues Task Force Issue No. 99–2, *Accounting for Weather Derivatives*, or (c) non-exchange traded commodity trading contracts that are marked to fair value through earnings and are part of analogous trading activities (for example, nonderivative trading contracts on pulp, bandwidth, newsprint, and so on).

[18] Emerging Issues Task Force No. 98–10 (September 23, 1999) identifies factors that distinguish energy trading activities from other activities that involve the purchase or sale of energy.

[19] Emerging Issues Task Force Issue 98–10 (September 23, 1999), *Accounting for Contracts Involved in Energy Trading and Risk Management Activities.*

[20] Financial Reporting Release No. 60, *Cautionary Advice Regarding Disclosure About Critical Accounting Policies (December 12, 2001) 66 FR 65013.*

In addition, issuers should consider the need to disclose the fair value of net claims against counterparties that are reported as assets at the most recent balance sheet date, based on the credit quality of the contract counterparty (*e.g.*, investment grade; noninvestment grade; and no external ratings).

Registrants should also consider their disclosure obligations regarding risk management in connection with the trading activities discussed above. Registrants should consider whether they should provide fuller disclosure regarding the management of risks related to, for example, changes in credit quality or market fluctuations of underlying, linked or indexed assets or liabilities, especially where such assets are illiquid or susceptible to material uncertainties in valuation.

C. Disclosures About Effects of Transactions With Related and Certain Other Parties

Statement of Financial Accounting Standards No. 57 (FAS 57), *Related Party Disclosures*, sets forth the requirements under GAAP concerning transactions with related parties.[21] As noted in that standard, "[t]ransactions involving related parties cannot be presumed to be carried out on an arm's length basis, as the requisite conditions of competitive, free-market dealings may not exist." [22] Accordingly, where related party transactions are material, MD&A should include discussion of those transactions to the extent necessary for an understanding of the company's current and prospective financial position and operating results. In addition, Item 404 of Regulation S–K and Item 404 of Regulation S–B require disclosure of certain relationships and transactions with related parties.[23]

Registrants should consider whether investors would better understand financial statements in many circumstances if MD&A included descriptions of all material transactions involving related persons or entities, with clear discussion of arrangements that may involve transaction terms or other aspects that differ from those which would likely be negotiated with clearly independent parties.[24] Registrants should consider describing the elements of the transactions that are necessary for an understanding of the transactions' business purpose and economic substance, their effects on the financial statements, and the special risks or contingencies arising from these transactions. Discussion of the following may be necessary:

- The business purpose of the arrangement;
- Identification of the related parties transacting business with the registrant;
- How transaction prices were determined by the parties;
- If disclosures represent that transactions have been evaluated for fairness, a description of how the evaluation was made; and
- Any ongoing contractual or other commitments as a result of the arrangement.

Registrants should also consider the need for disclosure about parties that fall outside the definition of "related parties," but with whom the registrant or its related parties have a relationship that enables the parties to negotiate terms of material transactions that may not be available from other, more clearly independent, parties on an arm's-length basis. For example, an entity may be established and operated by individuals that were former senior management of, or have some other current or former relationship with, a registrant, The purpose of the entity may be to own assets used by the registrant or provide financing or services to the registrant. Although former management or persons with other relationships may not meet the definition of a related party pursuant to FAS 57, the former management positions may result in negotiation of terms that are more or less favorable than those available on an arm's-length basis from clearly independent third parties that are material to the registrant's financial position or results of operations. In some cases, investors may be unable to understand the registrant's reported results of operations without a clear explanation of these arrangements and relationships.

Dated: January 22, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1899 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–U

[21] Statement of Financial Accounting Standard No. 57, *Related Party Disclosures* (March 1982). See also 17 CFR 210.4–08(k)(1), which states, "Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows."

[22] *Id.*, paragraph 3.

[23] 17 CFR 229.404 and 17 CFR 228.404, which require, with certain exceptions, disclosure of transactions or series of transactions in which the company was, or is to be, a party, the amount involved exceeds $60,000, and a director, executive officer, nominee for election as director, security holder of more than five percent of any class of the company's voting securities, or any member of the immediate family of any of such persons, had or will have a direct or indirect material interest. Required disclosures include the name of the person and the person's relationship with the registrant, the nature of the person's interest, the amount of the transaction(s), and, where practicable, the amount of the person's interest in the transaction(s). In addition, section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1, requires that each audit of financial statements pursuant to that Act include procedures designed to identify related party transactions that are material to the financial statements or that require disclosure. Statement on Auditing Standards No. 45, *Related Parties*, published by the Auditing Standards Board and effective for periods ended after September 30, 1983, provides guidance on auditing related party transactions.

[24] Audit committees may wish to include a review of such relationships and transactions in their discussions with management and auditors, including a review of their terms and internal corporate and Board actions involving the transactions, prior to their recommendation that the financial statements be included in the company's Form 10–K. *See generally*, Regulation S–K Item 306, 17 CFR 229.306, and Regulation S–B Item 306, 17 CFR 228.306.

SECURITIES AND EXCHANGE COMMISSION

Tel-One, Inc., File No. 500–1; Order of Suspension of Trading

January 23, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tel-One, Inc. ("Tel-One"), because of questions regarding the accuracy of assertions by Tel-One, and by others, in documents sent to and statements made to market makers of the stock of Tel-One, other broker-dealers, and investors concerning, among other things: (1) The company's claims about its prospects in the video teleconferencing industry; (2) the future price of Tel-One's stock; and (3) the involvement of persons in control of the operations and management of the company in efforts to tout, and inflate artificially the price of, Tel-One's stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 23, 2002, through 11:59 p.m. EST, on February 5, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–1986 Filed 1–23–02; 12:50 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45312; File No. SR–Amex–2001–42]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change by American Stock Exchange LLC To Increase Position And Exercise Limits For Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

I. Introduction

On June 27, 2001, the American Stock Exchange LLC (the "Amex" or "Exchnge") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to position and exercise limits for the Nasdaq-100 Index Trading Stock ("QQQ") options. On December 26, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on January 10, 2002.[3] To date, no comment letters have been received. This order approves the proposal, as amended, on an accelerated basis.

II. Description of Proposal

The Exchange is proposing to increase position and exercise limits for QQQ options from 75,000 contracts to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 906. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. Finally, the Exchange will add a commentary to reiterate its authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon a member or member organization when the Exchange determines that a higher requirement is warranted.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in liquid options classes.[5]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[6]

The Commission has carefully considered the Amex's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange, and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable depth and liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the Amex notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The Amex also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[7] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the Amex, under its rules, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Amex Rule 906(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help Amex to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged position, as provided under its rules. In this regard, the Commission believes the Amex's adoption of Commentary .11 under Amex Rule 906 is appropriate and will reiterate its authority under Amex Rule 462 to require additional margin for under-hedged positions.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Amex rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[9] to approve the proposal on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–2001–42), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1903 Filed 1–24–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378.

[4] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[5] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[6] *Id.*

[7] The Amex has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the Amex, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion. In its filing, the Amex stated that the Commission should apply an analysis similar to what was used in connection with broad-based index options. The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[8] Of course, the Commission expects that Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ should any unanticipated adverse market effects develop due to the increased limits.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45305; File No. SR–Amex–2001–108]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Biotech-Pharmaceutical Notes

January 17, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade notes, the return on which is based upon the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index is based upon the blended performance of the Amex Biotechnology index (the "Biotech Index") and the Amex Pharmaceutical Index (the "Pharmaceutical Index") (each, an "Underlying Index" and together, the "Underlying Indices"), discussed more fully below. Initially, the Underlying Indices will each have a weighting of 50% of the Biotech-Pharmaceutical Index, and the Biotech-Pharmaceutical Index will be rebalanced annually to reset the weighting of the Underlying Indices to 50% each.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Biotech-Pharmaceutical Index (the "Notes"). The Biotech-Pharmaceutical Index will be determined, calculated, and maintained solely by the Amex.[4]

The Notes will conform to the initial listing guidelines under Section 107[5] and continued listing guidelines under Sections 1001–1003[6] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch") that provide for single payment at maturity. The Notes will have a term of not less than one nor more than ten years and will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Biotech-Pharmaceutical Index on the date on which the issuer prices the Notes issue for the initial offering to the public. The "Ending Index Value" is the value of the Biotech-Pharmaceutical Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indices or any other ownership right or interest in these securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. biotechnology and pharmaceutical industries and who are willing to forgo market interest payments on the Notes during such term.

The Biotech-Pharmaceutical Index is based upon the combined performance of the Biotech Index and the Pharmaceutical Index. The Biotech Index is designed to measure the performance of a cross section of companies in the biotechnology industry that are primarily involved in the use of biological processes to develop products or provide services. The Biotech Index is an equal-dollar weighted index, designed to ensure that each of its component securities is represented in approximate equal dollar value. Equal-dollar weighting was established by designating the number of shares of each component security that represented approximately $10,000 in market value, based on closing prices on October 18, 1991.[7] The aggregate value of the stocks was reduced by a divisor[8] to establish a Biotech Index benchmark value of 200.00. To ensure that each component stock continues to represent approximate equal market value, adjustments are made quarterly after the close of trading on the third Friday of January, April, July and October. As of December 13, 2001, the market capitalization of the securities included in the Biotech Index ranged from a high of $59.3 billion to a low of $1.7 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 8.9 million shares to a low of .531 million shares.[9] The Commission has previously approved the listing and trading of options on the Biotech Index.[10]

The Pharmaceutical Index is designed to represent a cross section of widely held, highly capitalized companies involved in various phases of the pharmaceutical industry. The Pharmaceutical Index is a market-value (capitalization) weighted index reflecting the total market value of fifteen stocks.[11] The Pharmaceutical Index was developed with a base value of 200.00 as of July 31, 1999. A 2-for-1 split of the Pharmaceutical Index occurred on March 23, 1999. The securities included in the Pharmaceutical Index are listed on the Amex, New York Stock Exchange, Inc. or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System ("Nasdaq") and reported National Market System securities. As of December 13, 2001, the market capitalization of the securities included in the Pharmaceutical Index ranged from a high of $247.7 billion to a low of $3.9 billion. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 10.6 million shares to a low of .458 million shares. The Commission has previously approved the listing and trading of options on the Pharmaceutical Index.[12]

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Biotech Index and Pharmaceutical Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents an equal percentage of the value of the Biotech-Pharmaceutical Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Biotech-Pharmaceutical Index at any time will equal: (1) The sum of the values of each Underlying Index multiplied by their respective multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[13] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by an issuer represented in the Underlying Indices, multiplied by the number of shares of stock in the respective Underlying Index on the ex-dividend date, divided by the index divisor applicable to such Underlying Index, multiplied by the multiplier applicable to such Underlying Index on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each respective Underlying Index in the Biotech-Pharmaceutical Index. Thus, the value of the dividends is allocated to each respective Underlying Index. The share multiplier of each Underlying Index will be adjusted to reflect a reinvestment of such current quarter dividends into each Underlying Index based on the closing market price of the Underlying Index on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the day the Biotech-Pharmaceutical Index was initially calculated and set to 100) the Biotech-Pharmaceutical Index will be rebalanced so that each Underlying Index will represent approximately 50% of the value of the Biotech-Pharmaceutical Index. To effectuate this, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage for each index, given the closing value of each index on the anniversary date, so that each index represents an equal percentage of the Biotech-Pharmaceutical Index value at the close of business on such anniversary date. For example, if the Biotech-Pharmaceutical Index value at the close of business on an anniversary date was 200, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Biotech-Pharmaceutical Index value was 80, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 40 and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will calculate the Biotech-Pharmaceutical Index and, similar to other stock index values published by the Exchange, the value of the Biotech-Pharmaceutical Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to equity indices, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[16]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[17] in general and furthers the objectives of Section 6(b)(5)[18] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Subject to the criteria described in the prospectus supplement regarding the construction of the Biotech-Pharmaceutical Index, the Exchange has sole discretion regarding changes to the Biotech-Pharmaceutical Index.

[5] The initial listing standards for Industrial 15 Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Industrial 15 Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[7] For example, a stock that closed at $20 per share would be represented in the Biotech Index by 500 shares for a total market value of $10,000.

[8] The divisor for the Biotech Index was initially set to 750.1506 on October 18, 1991.

[9] As of December 13, 2001, the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation (CRA); Biogen, Inc. (BGEN); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); COR Therapeutics, Inc. (CORR); Genentech Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Immunex Corporation (IMNX); Medimmune Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

[10] *See* Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options ("LEAPS") based on the Biotech Index and a reduced value Biotech Index) ("Biotech LEAPS Order").

[11] As of December 13, 2001, the Pharmaceutical Index was composed of shares of the following companies: Abbott Laboratories (ABT); American Home Products Corporation (AHP); Amgen, Inc. (AMGN); AstraZeneca PLC (AZN); Bristol-Myers Squibb Company (BMY); Forest Laboratories Inc. (FRX); Glaxo Smith Kline Plc (GSK); IVAX Corporation (IVX); Johnson & Johnson (JNJ); King Pharmaceuticals, Inc. (KG); Lilly (Eli) & Company (LLY); Merck & Company, Inc. (MRK); Pfizer, Inc. (PFE); Pharmacia Corporation (PHA) and Schering-Plough Corporation (SGP).

[12] *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221 (June 24, 1992) (approving the listing and trading of long-term options ("LEAPS") based on the Pharmaceutical Index and a reduced value Pharmaceutical Index) ("Pharmaceutical LEAPS Order").

[13] At the end of each day, the Biotech-Pharmaceutical Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). This reduction to the value of the Biotech-Pharmaceutical Index will reduce the total return to investors upon the exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or accounted accepted.

[15] *See* Amex Rule 462 and Section 107B of the Company Guide.

[16] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on January 8, 2002.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–108 and should be submitted by February 15, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[19] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[20] Accordingly, the Commission finds that the listing and trading of the Notes based on the Biotech-Pharmaceutical Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

As described more fully above, at maturity, or upon redemption, the holder of a Note will receive an amount based upon the percentage change in the value of the Biotech-Pharmaceutical Index, less the index adjustment factor. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. biotechnology and pharmaceutical industries. As described by the Amex, the value of the dividends is allocated to each respective Underlying Index.

The Notes are not leveraged, non-principal protected instruments. The Notes are debt instruments whose price will still be derived and based upon the value of the Biotech-Pharmaceutical Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[22] Thus, if the Biotech-Pharmaceutical Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Indices, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have at least $4 million in market value.[23] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Biotech-Pharmaceutical Index, will be publicly available.[24]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[25] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Biotech-Pharmaceutical Index or raise manipulative concerns. As discussed more fully above, the Biotech-Pharmaceutical Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Biotech-Pharmaceutical Index, initially, and immediately following each annual rebalancing of the Biotech-Pharmaceutical Index. In addition, the Biotech Index's equal-dollar weighting and the Pharmaceutical Index's market-value (capitalization) weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.[26] In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.[27] In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Biotech-Pharmaceutical Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Biotech-Pharmaceutical Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[28] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[29] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2001–108), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1905 Filed 1–24–02; 8:45 am]

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[19] *Id.*

[20] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 28, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001), (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000), (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[21] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date.

[23] *See* Company Guide Section 107A.

[24] The companies that comprise the Biotech-Pharmaceutical Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[25] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[26] *See* Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

[27] Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. *See* Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

[28] *See supra* note 20.

[29] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45309; File No. SR–CBOE–2001–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Increasing Position and Exercise Limits on QQQ Options

January 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange act of 1934,[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On December 19, 2001, the CBOE filed Amendment No. 1 to the proposed rule change,[3] and on January 14, 2002, the CBOE filed Amendment No. 2 to the proposed rule change.[4]

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock℠ ("QQQ") options. The Exchange represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] Amendment No. 2 removes language added to Rule 4.13(b) by the proposed rule change that increased the reporting requirement level specified in Rule 4.13 for QQQ options.

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proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Commission has stated that position and exercise limits "must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."[5]

The Exchange represents that the QQQs are by far the most actively-traded options product. Average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to April 30, 2001 were 70.5 million shares and 189,046 contracts, respectively. The current standard position and exercise limits for QQQ options were recently adjusted from 75,000 contracts to 150,000 contracts, due to a 2-for-1 split in the value of the underlying QQQ. In January 2002, however, the current limits are scheduled to revert to 75,000 contracts.

Based on the large trading volume in both the underlying QQQ and QQQ options, the Exchange believes that position and exercise limits of the QQQ option are too restrictive and may adversely affect the Exchange's ability to provide liquidity in this popular product. In addition, the CBOE believes that current base limits for the QQQ options may not be adequate in many instances for the hedging needs of certain institutions which engage in trading strategies differing from those covered under the equity hedge exemption policy in Interpretation .04 to Exchange Rule 4.11 (*e.g.*, delta hedges; OTC vs. listed hedges).

To accommodate the need for continued liquidity in this product, the Exchange proposes to increase position and exercise limits for QQQ options to 300,000 contracts. The Exchange will require both that member organizations report all QQQ options positions exceeding 200 contracts pursuant to existing Exchange Rule 4.13(a), and that they report information on the hedging of all positions in excess of 10,000 contracts on the same side of the market, pursuant to an amended Exchange Rule 4.13(b). The Exchange believes that increasing position limits for this product will lead to a more liquid and competitive market environment for QQQ options that will benefit customers interested in the product.

Reporting Requirements

Consistent with Exchange Rule 4.13(b), the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, member or member organizations must similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options.[6] Lastly, it is important to note that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the office of the CBOE. All submissions should refer File No. SR–CBOE–2001–44 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trades, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of the position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[11]

The Commission has carefully considered the CBOE's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specially, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the CBOE notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to April 30, 2001 were 70.5 million shares and 189,046 contracts, respectively. CBOE has also noted that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[12] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margins and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the CBOE, under CBOE Rules 4.13 and 12.10, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under CBOE Rule 4.13, which will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information, will help protect against potential manipulation. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help the CBOE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[13]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current CBOE rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Commission believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limits to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[14] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2001–

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[5] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[6] *See* Exchange Rule 4.13(a).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[10] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[11] *Id.*

[12] As noted by the CBOE, the QQQ is designed to closely track the performance of the Nasdaq-100 Index. As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

[13] Of course, the Commission expects that CBOE will take prompt action, including timely communicational with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

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44) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1906 Filed 1–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45311; File No. SR–ISE–2001–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by International Securities Exchange LLC To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock ("QQQ") options to 300,000 contracts on the same side of the market. The text of the proposed rule change is available at the Office of the Secretary, ISE, and at the Commission.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase position and exercise limits for options on the Nasdaq 100 Index Tracking Stock ("QQQ options") up to 300,000 contracts on the same side of the market. As discussed below, the Exchange believes that the current limits for non-flex equity options are no longer appropriate for QQQ options given the liquidity of the options, the underlying security, and the securities that comprise the Nasdaq-100 Index.

QQQ options are popular hedging instruments in today's market and by far the most active listed option product. The average daily trading volume for QQQ options was 243,763 contracts during the first quarter of 2001, 330,786 contracts during the second quarter, and 316,425 contracts during the third quarter. As of October 2001, the average daily trading volume of QQQ options is 298,858 contracts.[4]

One of the primary purposes for imposing position and exercise limits is to minimize the opportunity for mini-manipulation, which is an attempt to influence the price movement of an underlying stock to benefit a previously established options position.[5] The Nasdaq 100 Index Tracking Stock represents ownership in a long-term unit investment trust that holds a portfolio of the equity securities that track and Nasdaq-100 Index. Thus, while QQQ options are not technically index options (for which the Commission has previously approved the elimination of position limits for options on certain enormously capitalized indexes),[6] the ISE believes that they are economically similar and are used by investors in the same manner and with the same investment objectives as index options.[7] The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on Nasdaq, each of which has an average daily trading volume of at least 100,000 shares and a market capitalization of at least $500 million.[8] The Exchange believes that it would be extremely difficult for an investor to influence the price of the Nasdaq-100 Index in order to benefit a previously established options position.

The reporting requirements in ISE Rule 415(b) will continue to apply to QQQ options.[9] Rule 415(b) requires Electronic Access Members to report end of day positions in all non-FLEX equity options in excess of 10,000 contracts on the same side of the market. The report must specify whether such position is hedged and provide documentation as to how such position is hedged, including a description of any collateral used to carry the position. This report is required at the time the account exceeds the 10,000 contract threshold and thereafter, for customer accounts, when

[4] The ISE notes that in comparison, the Commission approved the total elimination of position limits for options traded on the SPX, OEX and DJX, all of which are broadbased indexes traded solely on the Chicago Board of Options Exchange ("CBOE"). Year to date the average daily trading volume of options on these three indexes is 92,814 contracts, 43,544 contracts, and 35,365 contracts respectively. Thus, daily average volume in QQQ options is more than 3.2 times that of the SPX and nearly 8.5 times that of the DJX. *See* Securities Exchange Act Release No. 41011 (Feb. 1, 1999) (Order approving elimination of position and exercise limits for XMI and XII options on a two-year pilot basis); and Securities Exchange Act Release No. 40969 (Feb. 1, 1999) (Order approving the elimination of position and exercise limits for SPX, OEX, DJX on a two-year pilot basis).

[5] *See* Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276 (Jan. 5, 1998)

[6] *See supra* note 4.

[7] The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalizations of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23,96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[8] According to information available on Bloomberg, L.P., an information company, the average daily trading volume for the Nasdaq 100 Index Tracking Stock was 66.8 million shares during the first quarter of this year, 69.8 million shares during second quarter, and 64.6 million during the third quarter.

[9] The general reporting requirement contained in ISE Rule 415(a) for customer accounts that maintain a position in excess of 200 contracts also will remain applicable for QQQ options.

the position increases by 2,500 contracts and for proprietary accounts, when the position increases by 5,000. Exchange market-makers are not required to report under ISE Rule 415(b) as market-makers account positions can be accessed through the Exchange's market surveillance systems.

Finally, the Exchange proposes to explicitly state in Supplementary Material to ISE Rule 412 that it may use its authority under ISE Rule 1204(b) to impose additional margin requirements upon an account that maintains under-hedged options positions.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of section 6(b)(5)[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer File No. SR–ISE–2001–26 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[13]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14]

The Commission has carefully considered the ISE's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying product that a lower position limit may protect against. In this regard, the ISE notes that the average daily trading volume for QQQ options was 243,763 contracts during the third quarter of 2001, 330,786 contracts during the second quarter, and 316,425 contracts during the third quarter. The ISE also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[15] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[13] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[14] *Id.*

[15] As noted by the ISE, the QQQ is designed to closely track the performance of the Nasdaq-100 Index. As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

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methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. In this regard, the Commission believes the ISE's adoption of Supplementary Material to ISE Rule 412, to state that the ISE has the authority to impose additional margin on options positions if it determines that this is warranted, is appropriate.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under ISE Rule 415(b), which will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information, will help protect against potential manipulation. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. The information should help the ISE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements coupled with the special trading characteristics of the QQQ options and the underlying QQQs noted above, warrant approval of the Exchange's proposal.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Exchange rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Commission notes that limits of 75,000 contracts for the QQQ options could reduce depth and liquidity in the QQQ market. The Commission believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[17] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–ISE–2001–26) is hereby approved, as amended, on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1907 Filed 1–24–02; 8:45 am]

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[16] Of course, the Commission expects that ISE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45299; File No. SR–MBSCC–2001–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Implementing a Real-Time Trade Matching Service

January 17, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 19, 2001, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") and on September 26, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will implement a real-time trade matching service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In furtherance of MBSCC's mission to reduce the costs and risks associated with trading in the mortgage-backed securities market, MBSCC has enhanced its services to enable its participants to submit executed trade terms and to receive comparison results from MBSCC in a more timely manner. The cornerstone of this objective is the implementation of the Real-Time Trade Matching ("RTTM") service that will replace MBSCC's current twice-daily match process with respect to trade input information. MBSCC anticipates that the RTTM service will provide more certainty, will reduce execution/market risk, and will eliminate the redundancy between the verbal checkout process (which is described below) and the current MBSCC matching process.[3]

MBSCC's objective in implementing the RTTM service is to match all trade input in real-time within minutes of trade execution while providing participants with the greatest flexibility and least amount of disruption in the

[2] The Commission has modified parts of these statements.

[3] One of the main objectives of the RTTM service is to significantly reduce the risks associated with a prolonged period of time between trade execution and achievement of legal and binding confirmation. The elapsed time between trade execution and verbal checkout, followed by a legal and binding confirmation, is a known and serious risk to the ultimate settlement of the trade for all trading organizations. Reducing the elapsed time between trade execution and achievement of a legal and binding confirmation increases certainty and reduces risk.

migration towards this goal. MBSCC will retire its batch trade matching process with respect to trade input information upon implementation of the RTTM service. All trade activity for all participants, regardless of the form of trade input, will be matched solely by the RTTM service upon its implementation. Therefore, participants that increase the frequency of submission and reconciliation throughout the business day will be able to realize the benefits of the RTTM service.

MBSCC's Current Matching Process

Currently, MBSCC participants submit details of executed trades daily to MBSCC by means of terminal or batch submissions. While participants may submit trade input to MBSCC anytime during published business hours, MBSCC performs its matching process of participant submitted data twice per day: at 10:30 a.m. ("AM Pass") and at 11:30 p.m. ("PM Pass").

Output reports/files detailing the results of the matching process are available to participants at 11:30 a.m. for the AM Pass and at 4:00 a.m., for the PM Pass. The primary outputs are the "Purchase and Sale Report" listing submitted trades that successfully compared and the "Transaction Summary Report" listing, among other things, submitted trades that did not compare. The Purchase and Sale Report serves as the sole and binding confirmation of trades and provides data for Rule 10b–10 compliance purposes as well.

Given that the majority of trades are submitted after the AM Pass, the timing limitations of a twice-daily matching/reporting process mean that participants generally are notified, at the earliest, that a trade has achieved "binding confirmation" status during the morning following submission to MBSCC. To overcome this time delay, participants engage in a process known as "verbal checkout." Shortly after execution, participants contact each other and verbally confirm executed trade details. The verbal checkout process is important to participants to ascertain, with some degree of certainty, their intraday trading positions. While generally effective, the verbal checkout process is cumbersome, error-prone, and lacks the "binding" status afforded by the two-sided matching and confirmation through MBSCC.

The RTTM Service and the Requisite Rules Changes

In order to provide more certainty, to reduce execution/market risk, and to eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process, MBSCC will offer the RTTM service. As stated above, MBSCC currently processes transaction information in two batch processing passes. One segment of that processing, the matching of trade input information, will be processed by the RTTM service. The other segments of the daily processing, including the matching of clearance information, will continue to be done in either one or both of the two existing batch processing passes.

The RTTM service will provide trade input matching for dealer-to-dealer trades and inter-dealer broker trades. The RTTM service will support all of the trade types currently supported by MBSCC (settlement balance order destined, trade-for-trade, comparison only, and option) as well as the various trade functions used by participants, such as the "Don't Know" or "DK" function.

Participants will be able to submit transaction information for processing through the RTTM service using the batch file submission method that is used today, which is called "File Transmission Service." In addition, participants will also be able to use a batch file transmission method that employs SWIFT formats, the RTTM terminal service, and interactive messaging. Regardless of the input method, MBSCC will make available to participants real-time updates on all transactions entered into the system.

The following rule changes are necessary to accommodate the introduction of the RTTM service:

i. *General provisions on the RTTM service:* MBSCC is proposing to add two provisions to its rules to provide generally for the RTTM service. One of these provisions (new Section 1 or Rule 3 of Article II) will provide taht MBSCC's comparison of trade input will occur in real time, and the other (new Section 1 of Rule 4 of Article II) will distinguish the RTTM processing from the current processing passes.

ii. *New reports provided by the RTTM service:* MBSCC's RTTM processing will produce output via the RTTM terminal service as well as via interactive messages. MBSCC is proposing to add a definition for the term "Report" to encompass any type of output in any form that is provided by MBSCC to its participants. As a result specifically of RTTM processing, there will be "Reports" that will indicate the transactions whose trade input has compared ("RTTM Compare Reports"),[4] and "Reports" that will indicate the transactions whose trade input has not compared ("RTTM Uncompare Reports").

iii. *Changes to existing reports:* MBSCC will continue to provide the reports that are created as a result of its current two processing passes, with some modifications in one case. The Purchase and Sale Report details the results of the current batch trade processing, which includes the matching of trade input submissions, as well as the matching of clearance information. No changes are proposed to the information provided by the Purchase and Sale Report. Like the Purchase and Sale Report, the Transaction Summary Report is also provided as a result of the current twice-daily processing passes. Upon implementation of RTTM processing, the Transaction Summary Report will no longer provide details of unmatched trade terms. Unmatched trade terms will be available to participants via the RTTM Uncompare Reports (which as stated above, will be in the form of output provided by MBSCC via the RTTM terminal service as well as via interactive messages). MBSCC is proposing to modify its rules to delete references to the Transmission Summary Report as notification of unmatched trades and to provide for this notification to occur by means of the RTTM Uncompare Reports.

iv. *Sole and binding confirmation of trades:* The rules currently provide that the Purchase and Sale Report is the sole and binding confirmation of the trade. In addition, the Purchase and Sale Report currently fulfills Rule 10b–10 requirements for generation of trade confirms. As stated above, upon implementation of RTTM, the Purchase and Sale Report will continue to be purchased twice daily displaying matched trades. Participants will, however, have received notice of trade input matching prior to the production of the Purchase and Sale report by means of the RTTM Compare Reports. To enable participants to rely upon the results of the RTTM processing, MBSCC is proposing to amend its rules to confer sole and binding trade confirmation status on the RTTM Compare Reports. Since the Purchase and Sale Report covers the matching of clearing information (which is not covered by the RTTM processing and thus would not be reported in the RTTM Compare Reports), it will remain the sole and binding confirmation with respect to that information. The Purchase and Sale Report will remain the Rule 10b–10 complaint confirmation.

[4] These reports will also indicate cancellations of previously compared trades.

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v. *Trade input submission by inter-dealer brokers ("IDBs"):* Certain RTTM trade input formats require that an IDB submit two separate transactions linked together by a common reference number per trade. Under the current trade submission format, IDBs submit two transactions, one identifying one dealer (buyer) and one identifying the other dealer (seller), on give-up trades. The rule on IDB trade input (current Section 1 of Rule 3of Article II) speaks generally in terms of trade input and does not specify the number of submissions required. The only rule change that is proposed in this respect is a reference to MBSCC's procedures, which will describe in detail the trade input submission requirements.

vi. *Retirement of maximum match mode:* MBSCC's rules provide that each dealer must select a match mode to govern the comparison of each such dealer's MBSCC-eligible transactions involving an IDB. The rules currently provide for three match modes: theexact match mode, the net position match mode, and the maximum match mode.[5] Upon implementation of the RTTM service, only the exact and net position match modes will be available. MBSCC is proposing to retire the maximum match mode due to lack of participant demand for this feature. The proposed rule changes delete all references to the maximum match mode.

vii. *Review of reports by participants:* MBSCC's rules currently contain a provision that requires participants and limited purpose participants to review the reports that they receive from MBSCC. MBSCC desires to expand the provision to cover any type of communication provided to participants by MBSCC and to require participants to inform MBSCC promptly, and in no event later than ten calendar days upon receipt of the communication, if there is any error, omission, or other problem with respect to the communication. MBSCC believes that the ten-day timeframe will provide participants with a sufficient amount of time within which to detect problems in a communication from MBSCC.

viii. *New definitions:* MBSCC is proposing to add definitions for the following new terms: "Real Time" and "RTTM Processing" to encompass the new real-time processing concepts that will be introduced in the rules; "RTTM Compare Report" and "RTTM Uncompare Report" to specify the reports that will be available under the RTTM service; and "Report" to encompass all of the different types of output that can be provided by MBSCC to participants. The proposed amendments to existing definitions are incidental to the changes described above.

ix. *Amendment to MBSCC's Schedule of Charges for IDBs:* MBSCC is proposing to amend its Schedule of Charges to give IDBs a service-fee based incentive to move to interactive messaging. MBSCC believes that it is important to offer the incentive to its IDB participants because their early participation is critical to a successful implementation of the RTTM service. From a dealer perspective, lack of participation by one or more of the IDBs severely dilutes the benefits the dealer will gain from RTTM usage because a large percentage of the dealers' matching activity is against IDBs. The perception of reduced benefit leads to delays in dealer participation and a protracted rollout process. Therefore, MBSCC is proposing to waive, for a period of one year commencing with putting the RTTM service into production, all trade recording "Give-Up Trade Create" fees for IDBs that participate in MBSCC's testing (or "beta") phase of the RTTM service and subsequently move to production (IDBs must be interactive in order to participate in the testing phase, which is scheduled to take place during the first quarter of 2002).

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder, because they will reduce execution/market risk and eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to file No. SR–MBSCC 2001–02 and should be submitted by February 15, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1901 Filed 1–24–02; 8:45 am]

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[5] The "exact match mode" means that trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased by the dealer for a particular transaction is identical to the par amount of a particular transaction reported by the broker. The "net position match mode" means that trade input that matches in all other respects will be compared only if the aggregate par amount of one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. The "maximum match mode" means that trade input that matches in all other respects will be compared to the extent that the par amount of eligible securities reported to have been sold or purchased by the dealer does not exceed the aggregate par amount for one ore more transactions reported by the broker with transactions reported by the broker in any excess par amount remaining uncompared.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45313; File No. SR–PCX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Pacific Exchange, Inc. To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock ("QQQ") options to 300,000 contracts on the same side of the market.[3] The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PCX also proposed a non-substantive amendment to Rule 6.9(a) clarifying that options on securities such as unit investment trusts must follow equity position and exercise limit rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 6.6. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The PCX believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[4] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Manipulation

Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission, by imposing these limits on exchange-traded options, has sought to: (1) Minimize the potential for mini-manipulations,[5] as well as other forms of market manipulations; (2) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[6] The PCX believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and options market for QQQs should allay regulatory concerns of potential manipulation. The PCX further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidity and activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the PCX and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ option is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdaq-100 index.[7] Therefore, the PCX believes that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broadbased index options.[8]

The PCX believes in connection with QQQ options that the restrictive

[4] Although the current position limit is 75,000 contracts due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000.

[5] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[6] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Synthetics* (1994), Probus Publishing Company, and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

[7] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at 1/40th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994) (order approving trading of Nasdaq-100 options by the CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion, while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented is technology amounting to 68.91%. The top QQQ holding is Microsoft, accounting, for 11.97% while the top ten holdings constitute 43.22%.

[8] *See* Securities Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis).

The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001) 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

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position and exercise limits no longer serve their stated purpose. The Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[10] Accordingly, the Exchange believes that the liquidity of the QQQ option and the underlying cash market for QQQs greatly reduces the potential for manipulations in both the options and underlying cash market.

To date, there has not been a single disciplinary action involving manipulation or potential manipulation in the QQQ or the QQQ option on the Exchange. The PCX further believes that its extensive experience conducting surveillance of derivative products and program trading activity is sufficient to identify improper activity. Routine oversight inspections of the PCX's regulatory programs by the Commission should uncover any inconsistencies or shortcomings in the manner in which derivative and options surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying cash markets.

Competition

The Commission has stated that "limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."[11] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the PCX's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Exchange may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[12] Member firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, the PCX believes that current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions, which engage in trading strategies differing from those covered under the current index hedge exemption policy (*e.g.*, delta hedges; OTC vs listed hedges).[13]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under PCX Rules 2.16 and 6.8 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Reporting Requirements

Consistent with PCX Rule 6.6, the PCX will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, the PCX will require members and member organizations to similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to PCX Rule 6.6, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Phlx believes that the 10,000 contract reporting requirements is above and beyond what is currently required in the OTC market. According to the Exchange, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with

[9] Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[10] For the period of January 1, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 million shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[11] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[12] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. *See* NASD Rule 2860.

[13] The current limit for QQQ options is 150,000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001. At the time of approval of QQQ options, position and exercise limits were set at 25,000 (250,000 QQQ shares) equating to an aggregate value of $2,500,000 as of March 9, 1999 (commencement of trading). When QQQs commenced trading, the volume was 10.4 million shares with an opening price of $100.00 per share. The average daily trading volumes for the QQQ during 1999, 2000 and year-to-day 2001 were 13.9 million, 30.9 million and 71.21 million shares respectively, while for the same periods the average daily trading contract volume for the QQQ option were 9,208, 91,856, and 148,181. As of November 30, 2001, the price of a single QQQ was $39.65.

Section 6(b) of the Act[14] in general and furthers the objectives of Section 6(b)(5)[15] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect and mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer File No. SR–PCS–2002–03 and should be submitted by February 15, 2002.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

IV. Commissions Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[16] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognize that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[17]

The Commission has carefully considered the PCX's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the PCX notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The PCX also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[18] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the PCX, under Rules 2.16 and 6.8, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under PCX Rule 6.6, each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in position limits, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things,

[16] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[17] *Id.*

[18] The PCX has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the PCX, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

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whether or not the options position is hedged, and if so, a description of the hedge. This information should help the PCX to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increasing position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options noted above, warrant approval of the Exchanges proposal.[19]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current PCX rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. The Commission also believes it is appropriate to approve the clarifying language proposed for Exchange Rule 6.9(a) noted above. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[20] to approve the proposal on an accelerated basis.

[19] Of course, the Commission expects that PCX will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[20] 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–PCX–2002–03) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1902 Filed 1–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45310; File No. SR–Phlx–2002–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Philadelphia Stock Exchange, Inc. to Increase Position And Exercise Limits for Nadsaq-100 Index Tracking Stock Options

January 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock[4] ("QQQ") options to 300,000 contracts on the same side of the market. The Phlx represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 1003(a). Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The Phlx believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[5] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Potential Manipulation

Position limits restrict the number of options contracts that an investor, or a group of investors acting in correct, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission, by imposing these limits on exchange-traded options, has sought to: (1) Minimize the potential for mini-manipulations,[6] as well as other forms of market manipulations; (2) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[7] The Phlx believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and options market for QQQs should allay regulatory concerns of potential manipulation. The Phlx further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidty and activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the Phlx and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ option is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdaq-100 index.[8] Therefore, the Phlx believes that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broadbased index options.[9]

The Phlx believes in connection with QQQ options that the restrictive position and exercise limits no longer serve their stated purpose. The Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[11] Accordingly, the Exchange believes that the liquidity of the QQQ option and the underlying cash market for QQQs greatly reduces the potential for manipulation in both the options and underlying cash market.

To date, the Exchange has not experienced significant disciplinary issues in the QQQ or the QQQ option on the Exchange. The Exchange represents that it conducts appropriate surveillance of options products, such as the QQQ options, to identify improper activity.

Competition

The Commission has stated that "limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."[12] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the Exchange's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Phlx may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[13] Members firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, the Phlx believes that current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions, which engage in trading strategies

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] The Phlx represents that Nasdaq-100, Nasdaq-100 Index ("Index"), Nasdaq, The Nasdaq Stock Market, Nasdaq-100 Shares, Nasdaq-100 Trust, Nasdaq-100 Index Tracking Stock, and QQQ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes of the Phlx ("Licensee") pursuant to a License Agreement with Nasdaq. The Index determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust, or the beneficial owners of Nasdaq-100 Shares. The Phlx represents that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[5] Although the current position limit is 75,000 contracts, due to a 50% reduction in the value of the underlying QQQ on March 20, 2002, the limit was adjusted to 150,000.

[6] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[7] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Symthetics* (1994), Probus Publishing Company, and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

[8] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at 1/40th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994)(order approving trading of Nasdaq-100 options by the CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion, while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented in technology amounting to 68.91%. The top QQQ holdings Microsoft, accounting, for 11.97% while the top ten holdings constitute 43.22%.

[9] *See* Securities Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999)(order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999)(order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis). The Phlx does not currently list any broad based index products.

The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26 2001), 66 FR 55722 (November 2, 2001)(permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contract, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlyingQQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[10] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[11] For the period of January 1, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 billion shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[12] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[13] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. *See* NASD Rule 2860.

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differing from those covered under the current index hedge exemption policy (*e.g.*, delta hedges; OTC vs. listed hedges).[14]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Phlx Rule 722(d) and 722(i)(8) to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Reporting Requirements

Consistent with Phlx Rule 1003(b), the Phlx will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. This Phlx proposes to require members organizations, once the 10,000 contract reporting threshold is attained, to report similarly each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to Phlx Rule 1003(a), the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Phlx believes that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. According to the Exchange, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[15] in general and furthers the objectives of Section 6(b)(5)[16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer File No. SR–Phlx–2002–06 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[17] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[18]

The Commission has carefully considered the Phlx's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes

[14] The current limit for QQQ options is 150,000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[18] *Id.*

the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits form 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable depth and liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the Phlx notes that the average daily trading volumes of the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The Phlx also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[19] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the Phlx, under Phlx Rule 722(d) and 722(i)(8), may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Phlx Rule 1003(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the option position is hedged, and if so, a description of the hedge. This information should help the Phlx to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[20]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Phlx rules, the position and exercise limits applicable to QQQ options are 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that a limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits form 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contract son January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Phlx–2002–06), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1904 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

[19] The Phlx has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the Phlx, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

[20] Of course, the Commission expects that Phlx will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45304; File No. SR–Phlx–2001–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Reducing Exchange Fees for Trading Floor Members Participating in the Wireless Phone System

January 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2001, the Philadelphia Stock Exchange, Inc., ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to decrease from $200 to $100 the fee per month for each phone used by Phlx members on the equity and options floors of the Exchange participating in the Exchange's Ericsson Wireless Phone

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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System ("system").[3] The proposed amended fee will be implemented beginning January 1, 2002.[4]

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to decrease from $200 to $100 the fee per month for each phone used by members on the equity and options floors participating in the system. Each member user of the wireless phones has to agree to pay a monthly fee per phone (which will be reduced to $100 commencing January 1, 2002) for a period of twelve months, or, if an agreement has been already signed, for the remainder of the twelve month period. At the end of the twelve-month period, a new agreement will be presented to the user. Phlx Rule 50 will govern payment of the monthly fees.

The Exchange believes that the proposed decrease in the monthly wireless phone fee is reasonable and equitable to all members on the equity and options floors of the Exchange that use the wireless phone system. This fee will help to offset the expense incurred in using and maintaining the system.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b)[5] of the Act in general, and furthers the objectives of section 6(b)(4)[6] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members, because the members who pay the reduced monthly fee incur the benefit of using the phones on the Exchange's wireless phone system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(2)[8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–112 and should be submitted by February 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1908 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

[3] A $200 fee per month for each phone used on the system has been in effect since 1999. *See* Securities Exchange Act Release No. 41449 (May 25, 1999), 64 FR 29725 (June 2, 1999) (SR–Phlx–99–10). Users of the system are also assessed a one-time fee to purchase a handset, headset, battery, and accessories. While the system is available for use on both the equity and options floors, at this time it is used only on the options floor.

[4] This fee will continue to be ineligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715, (May 18, 2001) (SR–Phlx–2001–49).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9O14]

State of Florida

Charlotte and Lee Counties and the contiguous counties of Collier, De Soto, Glades, Hendry, Highlands, and Sarasota in the State of Florida constitute an economic injury disaster loan area as a result of a Red Tide condition and subsequent closure of the Gasparilla Sound beginning August 22, 2001 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 17, 2002, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The number assigned for economic injury for the State of Florida is 9O1400.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1894 Filed 1–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3390]

State of Texas

Travis County and the contiguous Counties of Bastrop, Blanco, Burnet, Caldwell, Hays, and Williamson in the State of Texas constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes that occurred November 15 through 18, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 18, 2002, and for economic injury until the close of business on October 17, 2002, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations Without CreditAvailable Elsewhere	4.000
Others (Including Non-profit Organizations) With CreditAvailable Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster are 339011 for physical damage and 9O1500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1895 Filed 1–24–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Environmental Assessment or Environmental Impact Statement—Proposed Commercial and Recreational Developments on the Muscle Shoals and Wilson Dam Reservations, Colbert and Lauderdale Counties, AL

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act. TVA will prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) on alternatives for commercial and recreational development requested by local governments in the jurisdictions surrounding TVA property in the Shoals area of northwestern Alabama (Colbert County, city of Florence, Lauderdale County, city of Muscle Shoals, city of Sheffield, and city of Tuscumbia). The local governments have requested that TVA make available 263 hectares (650 acres) of federal property on the Muscle Shoals Reservation and 6 ha (15 acres) of federal property on the Wilson Dam Reservation for their use in constructing a hotel, conference center, and golf course development. The project would be funded by the Retirement System of Alabama (RSA), a state agency, and the local governments.

DATES: Comments on the scope of the environmental review must be received on or before February 25, 2002.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail *hmdraper@tva.gov.*

SUPPLEMENTARY INFORMATION: TVA acquired control of the Muscle Shoals and Wilson Dam reservation properties, consisting of about 1229 hectares (3036 acres), from the U.S. War Department in 1933. During the past few years, TVA has received a variety of proposals for development and use of the two reservation properties by nonfederal entities. Local governments have been interested in promoting regional economic development and have provided TVA with several concepts for evaluation. In 1996, TVA prepared a land plan to identify portions of the two reservations that could be made available to non-federal entities for development. The land plan contemplated that TVA would reserve the majority of the property for the agency's own use, but would make available limited property for regional development. TVA subsequently made available a site for construction of a chamber of commerce headquarters for the region on the Wilson Dam Reservation, and a site for commercial development at the junction of two major streets on the Muscle Shoals Reservation.

In 2001, responding to a local government request to invest in the Shoals region. RSA proposed to partially fund construction of a first class hotel, conference center, and 36-hole golf course, as part of an Alabama tourism development effort called the Robert Trent Jones Golf Trail. The hotel, conference center, and golf course would be constructed on TVA land. In addition, an existing city park, known as Florence Veterans Park and now used for a campground and for dispersed day uses, would be converted to a zoo, water theme park, marina, and other improvements. Under the terms of the easement to the City of Florence for the Florence Veterans Park, TVA approval also would be needed for the Veterans Park improvements. Finally, a "river heritage trail" would be developed on the north side of the Tennessee River. Because TVA has received a unified request from the local governments and the request supports regional development goals, TVA has decided to evaluate the Shoals proposal in more detail. Although detailed concept plans have not yet been presented to TVA, the agency is providing early notice of the proposal to facilitate the identification of issues to be addressed and the development of alternatives to be assessed in the environmental review. The alternatives to be analyzed have not been developed at this time, but at a minimum involve no action, full or partial development of the 665 acres specifically requested by the local governments, and other potential sites. The property proposed for the golf course is now available to the public for dispersed recreational use, including foot and bicycle trails and a picnic area. The property proposed for the hotel and

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conference center is now open space on the north side of Wilson Dam.

Based on the results of the previous public interaction for projects on the Muscle Shoals and Wilson Reservations, TVA anticipates that the EA or EIS will include discussion of the potential effects of alternatives on the following resources: visual resources, cultural resources, threatened and endangered species, terrestrial ecology, wetlands, recreation, water quality, aquatic ecology, and socioeconomics.

TVA is interested in receiving additional comments on the issues to be addressed. Written comments on the scope of the environmental review should be received on or before February 25, 2002.

TVA will begin by developing an EA for the proposed project. In the event that information gathered or analyses conducted in preparing this EA indicate that the proposal could have a significant impact on the environment, the agency will prepare an EIS. If TVA decides to prepare an EIS, the scoping process now underway for the EA will be used for the EIS and will not be repeated.

TVA will hold public meetings to provide more information and to receive comments on the Shoals proposals the week of February 11, 2002. Times, locations, and places will be announced in local newspapers, and may be obtained by contacting the persons listed above.

Dated: January 17, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 02–1840 Filed 1–24–02; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Correction to notice of request for written submissions from the public.

SUMMARY: The Office of the United States Trade Representative published a document in the **Federal Register** on December 26, 2001, concerning request for submissions on foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act. The document contained incorrect address details for submission and reviews of those comments and an incorrect title for one of the contacts for further information.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property (202) 395–6864; Kira Alvarez, Director for Intellectual Property (202) 395–6864; Stephen Kho or Victoria Espinel, Assistant General Counsels (202) 395–7305, Office of the United States Trade Representative.

Correction

In the **Federal Register** of December 26, 2001, in 66 FR 66492, correct the address to read:

ADDRESSES: FR0012@USTR.GOV.

In the **Federal Register** of December 26, 2001, in 66 FR 66492, correct the contact details to read: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property.

In the **Federal Register** of December 26, 2001, in 66 FR 66493, correct the contact details to read:

All comments should be sent to Sybia Harrison Special Assistant to the Section 301 committee, at the following email address: FR0012@USTR.GOV. Please note, only electronic submissions will be accepted.

In the **Federal Register** of December 26, 2001, in 66 FR 66493, correct the contact details for the Public Inspection of Submissions to read:

An appointment to review the file may be made by calling Sybia Harrison, (202) 395–9411.

Joseph Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 02–1890 Filed 1–24–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–11351]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0539, 2115–0504, 2115–0576, 2115–0581, and 2115–0626

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise Requirements for Lightering of Oil and Hazardous Material Cargoes, Tank Vessel Examination Letters, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers, Instructional Material for Lifesaving, Fire Protection and Emergency Equipment, Vapor Control Systems for Facilities and Tank Vessels, and Alternate Compliance Program. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before March 26, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–11351] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–11351], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 2115–0539.

Summary: The information for this report allows the Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Need: 46 U.S.C. 3715 authorizes the Coast Guard to establish lightering rules. 33 CFR 156.200 to 156.330 prescribes the Coast Guard rules for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 228 hours a year.

2. *Title:* Tank Vessel Examination Letters, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 2115–0504.

Summary: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under 46 U.S.C. The affected public includes some owners and operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.

Need: 46 U.S.C. 3301, 3305, 3306, 3702, 3703, 3711, and 3714 authorizes the Coast Guard to establish marine safety regulations to protect life, property, and the environment. 46 CFR prescribe these Coast Guard rules. The requirements for reporting Boiler/Pressure Valve Repairs, maintaining Cargo Gear Records, maintaining Shipping Papers, issuance of Certificates of Compliance (CG–3585) and Tank Vessel Examination Letters (CG–840S–1/CG–840S–2, as appropriate) provide the marine inspector with available information as to the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 17,555 hours a year.

3. *Title:* Instructional Material for Lifesaving, Fire Protection and Emergency Equipment.

OMB Control Number: 2115–0576.

Summary: This information is needed to ensure that vessel crews have instructional material for lifesaving, firefighting and emergency equipment. The material is used during training sessions and during emergencies. It is needed because crew members must have complete information on the proper operation of equipment.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to establish regulations concerning lifesaving, fire protection and other equipment. 46 CFR Subchapters Q and W prescribes regulations that include the instructional materials needed to ensure a vessel's crew has the necessary information on the proper use of lifesaving, fire protection and emergency equipment.

Respondents: Manufacturers of Equipment.

Frequency: On occasion.

Burden Estimate: The estimated burden is 22,516 hours a year.

4. *Title:* Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 2115–0581.

Summary: The information is needed to ensure compliance with U.S. rules for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: 33 U.S.C. 1225 and 46 U.S.C. 3703 authorize the Coast Guard to establish rules to promote the safety of life and property of facilities and vessels. 33 CFR part 154.800 prescribes the Coast Guard rules for VCS and certifying entities,

Respondents: Owners, operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,073 hours a year.

5. *Title:* Alternate Compliance Program.

OMB Control Number: 2115–0626.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) prior to issuance of a Certificate of Inspection.

Need: 46 U.S.C. 3306, 3316, and 3703 authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. 46 CFR part 8 prescribes the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Respondents: Recognized classification societies.

Frequency: On occasion.

Burden Estimate: The estimated burden is 150 hours a year.

Dated: January 17, 2002.

D.F. Shuell,

Acting Director of Information Technology.

[FR Doc. 02–1870 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on two currently approved public information collections which received emergency clearances and now will be submitted to OMB for extensions of those clearances.

DATES: Comments must be received on or before March 26, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden,

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the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0673, Criminal History Records Checks, 14 CFR 107&108. Public Law 106–528 provided for fingerprinting of all individuals on and after December 23, 2000, unescorted access and those individuals who perform certain screening functions at Category X airports. The rule requires that the airport operators and aircraft operators fingerprint those covered individuals at all categories of airports who, previous to November 14, 2001, were not subject to a criminal history records check. The current estimated annual reporting burden is 123,471 hours.

2. 2120–0674, Special Federal Aviation Regulation (SFAR) 92, Flightcrew Compartment Access and Door Designs. SFAR 92 (to part 119) temporarily authorizes variances for certain air carriers from existing design standards for the flightcrew compartment doors and allows for return to service of modified airplanes without prior approved data. This allows certain air carriers to modify their flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. The modifications are conditional on submitting a detailed description of the changes within 90 days, and within 180 days providing a schedule for accomplishing changes to comply with all applicable airworthiness requirements. Current estimated annual reporting burden is 6480 hours.

Issued in Washington, DC, on January 18, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1869 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of San Antonio for San Antonio International Airport, San Antonio, Texas, under the provisions of Title 49, U.S.C., Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps is January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for San Antonio International Airport, San Antonio, Texas are in compliance with applicable requirements of Part 150, effective January 16, 2002.

Under Title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The city of San Antonio submitted to the FAA on January 7, 2002, noise exposure maps, descriptions and other documentation, which were produced during the update to the part 150 Study. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of San Antonio. The specific maps under consideration are *Noise Exposure Map: 1998 and Noise Exposure Map: 2004* in the submission. The FAA has determined that these maps for San Antonio International Airport are in compliance with applicable requirements. This determination is effective on January 16, 2002. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Title 49, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

City of San Antonio, Aviation Department, 9800 Airport Boulevard, San Antonio, Texas 78216

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, January 16, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–1867 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Record of Decision, Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability—Record of Decision (ROD).

The Federal Aviation Administration (FAA) has published a Final Environmental Impact Statement (FEIS) for proposed airport development at Piedmont Triad International Airport, Greensboro, North Carolina. The proposed development consists of constructing and operating a new Runway 5L/23R, an overnight air cargo sorting and distribution facility and associated development. Further, the FAA has prepared a Record of Decision that clearly communicates FAA's consideration of all reasonable alternatives, communicates FAA's findings and rationale for selecting the chosen alternative, and identifies any mitigation measures to be implemented as a part of the selected alternative. The ROD was signed by the Regional Administrator, Southern Region, on December 31, 2001, announcing FAA's decision of the Preferred Alternative, W1–A1. The ROD is being made available to interested parties at the following locations:

Greensboro Public Library, 219 N. Church Street, Greensboro, NC

Guilford County, Branch Library, 619 Dolly Madison Road, Greensboro, NC

High Point Public Library, 901 North Main Street, High Point, NC

Forsyth County Library, 660 West Fifth Street, Winston-Salem, NC

Piedmont Triad International Airport, 6415 Airport Parkway, Greensboro, NC

Federal Aviation Administration, 1701 Columbia Avenue, Suite C–260, College Park, GA

In addition, the ROD can be viewed at the Piedmont Triad Airport Authority's web page *www.gsoair.org.*

For additional information contact Mr. Scott L. Seritt, Manager, FAA Southern Region, Atlanta Airports District Office, 1701 Columbia Avenue, Suite C–260, College Park, Georgia.

Issued in College Park, Georgia, January 9, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 02–1868 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9707; Notice 2]

Decision That Nonconforming Model Years 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 PassengerCars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming model years ("MY") 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of January 25, 2002.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards ("FMVSS") shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies, LLC, of Baltimore, MD, ("J.K.") (Registered Importer 90–006) petitioned NHTSA to decide whether MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on June 12, 2001 (66 FR 31749) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Mercedes Benz USA, Inc., ("Mercedes"), the manufacturer of MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars. In this comment, Mercedes stated that, for the vehicles in question, the symbols found on the European version of the cruise control lever on the steering column have to be changed to words to satisfy FMVSS 101 Controls and Displays. Mercedes also noted that, under FMVSS 206 Door Locks and door retention components, the inside door locks for the European versions of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are not identical to the versions originally manufactured for importation into and sale in the United States. The European versions of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars have cylindrical interior door lock push buttons that submerge into the door panel when in the "lock" position, but the U.S. versions have mushroom shaped push buttons.

NHTSA accorded J.K. an opportunity to respond to Mercedes' comments. J.K. stated that for FMVSS 101 and FMVSS 206, it would replace the cruise control lever and the door lock push buttons, respectively, with the correct U.S. part numbers in the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars that are the subject of its petition.

In view of Mercedes' comments and J.K."s response, NHTSA has decided to grant import eligibility to the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars.

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Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–370 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 22, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety, Compliance.

[FR Doc. 02–1861 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–01]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA and the Department of Transportation's Office of Inspector General (OIG) are investigating the unauthorized marking of high-pressure compressed gas cylinders by Bev Con International (Bev Con), 6400 and 6420 Highway 51 South, Brighton, Tennessee. Bev Con is also known as or has done business as Bev-con, BCI Inc., BCI Industries and BCI Industries, Inc. All companies are located at the Brighton, Tennessee address listed above. RSPA and the OIG have determined that Bev Con marked and certified an undetermined number of cylinders with invalid Retester Identification Numbers (RINs), apparently without conducting hydrostatic retests of the cylinders in accordance with the Hazardous Materials Regulations (HMR). The cylinders at issue are mostly used in the beverage service industry.

On December 13, 2001, a Federal Grand Jury in Tennessee handed down a 31-count indictment against Bev Con and two of its principals. The indictment includes charges for the unauthorized cylinder marking described in this safety advisory.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material.

FOR FURTHER INFORMATION CONTACT: Cheryl K. Johnson, Senior Inspector, Southern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 1701 Columbia Avenue, Suite 520, College Park, GA 30337. Telephone: (404) 305–6120, Fax: (404) 305–6125.

SUPPLEMENTARY INFORMATION: Through an investigation of Bev Con, RSPA and the OIG have determined that Bev Con marked and certified an undetermined number of cylinders with two expired RINs. In addition, it does not appear that Bev Con conducted proper hydrostatic testing of the cylinders, as required by the HMR. The HMR requires that a cylinder retester obtain a RIN from RSPA. Bev Con has never been issued a RIN by RSPA, and any cylinders marked by Bev Con as having been tested in accordance with the HMR are unauthorized for use in hazardous materials service until properly retested by a DOT-authorized retester.

The cylinders in question are stamped with one of the following two RINs: C173 or C137. The markings appear in the following pattern:

(1)

C1
M Y
37

(2)

C1
M Y
73

M is the month of retest (e.g., 10), and Y is the year of the retest (e.g., 01).

RIN C173 was issued to Cee Kay Supply, 4241 Folsum Avenue, St. Louis, Missouri, on October 28, 1987. Cee Kay Supply was granted renewal of that RIN on August 27, 1992. Authorization for RIN C173 expired on August 27, 1997, and any use of that RIN to mark DOT specification or exemption cylinders after that date is unauthorized.

RIN C137 was issued to Koch Carbonic Corporation, 433 Raymond Boulevard, Newark, New Jersey, on July 8, 1987. Koch Carbonic Corporation last renewed the RIN on October 8, 1992. Authorization for RIN C137 expired on October 8, 1997, and any use of that RIN to mark DOT specification or exemption cylinders after that date is unauthorized.

Anyone who has a cylinder that has been serviced by or purchased from Bev Con and that is marked with RIN C173 and stamped with a retest date after August 1997, or that is marked with RIN C137 and stamped with a retest date after October 1997, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under no circumstance should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing a cylinder described in this safety advisory or with questions concerning other cylinders sold or serviced by Bev Con contact Ms. Johnson for additional information.

Issued in Washington, DC, on January 22, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–1863 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 9X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in LaMoure and Barnes Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR part 1152, subpart F-*Exempt Abandonments* to abandon approximately 32.9 miles of rail line from approximately milepost 27.4 in or near Lucca, ND, to the end of the line at approximately milepost 60.3 in or near Marion, ND, in LaMoure and Barnes Counties, ND. The line traverses United States Postal Service Zip Codes 58049, 58466 and 58461.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance(OFA) has been received, this exemption will be effective on February 26, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 4, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 19th Street NW, 5th Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by February 1, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by January 25, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 16, 2002.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,000. See 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1635 Filed 1–24–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–262–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–262–82 (TD 8600), Definition of an S Corporation. (§ 1.136–1).

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: PS–262–82.

Abstract: This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Current Actions: There is no change to this existing regulation.

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Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,005.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,005.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1921 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105312–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–105312–98, Reporting of Gross Proceeds Payments to Attorneys.

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Gross Proceeds Payments to Attorneys.

OMB Number: 1545–1644.

Regulation Project Number: REG–105312–98.

Abstract: The information is required to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used by the IRS to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly.

Current Actions: There is no change to this proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

The burden is reflected in the burden of Form 1099–MISC.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 16, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1922 Filed 1–24–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–1214]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–1214 (TD 7430), Discharge of Liens (§ 301.7425–3(b)(2)).

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: LR–1214.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1923 Filed 1–24–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

Correction

In rule document 01–30282 beginning on page 63474 in the issue of Thursday, December 6, 2001 make the following correction:

§ 107.209 [Corrected]

On page 63483, in the second column, §107.209, in the second column, in the second full paragraph, "(1) *Continuing resopnsibilities.*" should read, "(l) *Continuing responsibilities*".

[FR Doc. C1–30282 Filed 1–24–02; 8:45 am]
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Federal Register

Friday,
January 25, 2002

Part II

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Nonfinancial Equity Investments; Final Rule

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 02–01]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1097]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC47

Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Nonfinancial Equity Investments

AGENCIES: Office of the Comptroller of the Currency (OCC), DOT; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, Board and FDIC (collectively, the agencies) are amending their capital guidelines to establish special minimum capital requirements for equity investments in nonfinancial companies. The new capital requirements, which will apply symmetrically to equity investments of banks and bank holding companies, impose a series of marginal capital charges on covered equity investments that increase with the level of a banking organization's overall exposure to equity investments relative to the organization's Tier 1 capital. The final rule is substantially similar to the proposal that the agencies published for comment in February 2001.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT:
OCC: Tommy Snow, Director, Capital Policy (202/874–5070); Karen Solomon, Director (202/874–5090), or Ron Shimabukuro, Counsel (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Michael G. Martinson, Associate Director (202/452–3640), James A. Embersit, Assistant Director (202/452–5249), or Mary Frances Monroe, Senior Supervisory Financial Analyst (202/452–5231), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), or Kieran J. Fallon, Senior Counsel (202/452–5270), Legal Division; Jean Nellie Liang, Assistant Director (202/452–2918), Division of Research & Statistics; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551. For users of Telecommunications Device for the Deaf ("TDD") only, contact 202/263–4869.

FDIC: Mark S. Schmidt, Associate Director, (202/898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section (202/898–8904), Curtis Vaughn, Examination Specialist (202/898–6759), Division of Supervision; Michael B. Phillips, Counsel, (202/898–3581), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

A. Background

In March 2000, the Board invited public comment on a proposal to amend its consolidated capital adequacy guidelines for bank holding companies to establish special capital requirements for investments made, directly or indirectly, by bank holding companies in nonfinancial companies.[1] The Board's proposal, which was developed in consultation with the Secretary of the Treasury, applied to nonfinancial investments made directly or indirectly by a bank holding company under a variety of authorities, including investments made by financial holding companies under the merchant banking authority granted by the Gramm-Leach-Bliley Act (GLB Act) and investments made directly or indirectly by a bank holding company through a small business investment company (SBIC). The Board's initial capital proposal would have assessed, at the holding company level, a 50 percent capital charge on the carrying value of each covered investment.

In February 2001, the Board, OCC and FDIC jointly issued for comment a revised capital proposal (revised proposal).[2] The revised proposal attempted to balance the concerns raised by commenters on the Board's initial proposal with the belief of the agencies that banking organizations must maintain sufficient capital to offset the risks associated with equity investment activities. In developing the revised proposal, the agencies were guided by several important principles, including that:

- Equity investment activities in nonfinancial companies generally involve greater risks than traditional bank and financial activities;
- The risk of loss associated with a particular equity investment is likely to be the same regardless of the legal authority used to make the investment or whether the investment is held by a bank holding company or a bank; and
- The financial risks to an organization engaged in equity investment activities increase as the level of the organization's investments accounts for a larger portion of its capital, earnings and activities.

In light of these principles, the revised proposal provided for a progression of Tier 1 marginal capital charges that increases with the size of the aggregate equity investment portfolio of the banking organization relative to its Tier 1 capital. The proposed Tier 1 charge ranged from 8 percent for investments that aggregated up to 15 percent of the banking organization's Tier 1 capital, to 25 percent for investments representing 25 percent or more of the banking organization's Tier 1 capital.

The agencies proposed to apply these higher capital charges symmetrically to nonfinancial equity investments held by banks and bank holding companies. In particular, the agencies proposed to apply these charges to investments held directly or indirectly under the merchant banking authority of section 4(k)(4)(H) of the BHC Act; held directly or indirectly by bank holding companies in less than 5 percent of the shares of a nonfinancial company under section 4(c)(6) or 4(c)(7) of the BHC Act; made by bank holding companies or banks in nonfinancial companies through SBICs; held directly or indirectly by bank holding companies or banks in nonfinancial companies under the portfolio investment provisions of Regulation K; and held by banks in nonfinancial companies under section 24 of the Federal Deposit Insurance Act (FDI Act).

The agencies proposed that the higher capital charges would not apply to SBIC investments of a bank or bank holding company to the extent such investments, in the aggregate, did not exceed 15 percent of the banking organization's Tier 1 capital. All SBIC investments, including any amount exempted from the higher proposed charges, would be included in the calculation of a banking organization's aggregate equity investment portfolio for purposes of determining the marginal capital charge applicable to non-SBIC investments and SBIC investments that, in the aggregate, exceed 15 percent of Tier 1 capital. The agencies also proposed to exempt from coverage investments made by state banks under the special grandfather rights established by section 24(f) of the FDI Act.

The agencies requested comment on all aspects of the revised proposal and on a number of specific topics identified in the proposal. For example, the agencies requested comment on whether it would be necessary or appropriate to grandfather individual equity investments that were made before banking organizations received notice that the capital requirements for such investments might change.

[1] *See* 65 FR 16480, March 28, 2000.

[2] *See* 66 FR 10212, Feb. 14, 2001.

B. Overview of Comments

The agencies collectively received approximately 60 comments on the revised proposal, including many comments that were submitted to more than one of the agencies. Commenters included trade associations for the banking, securities and insurance industries, state banking departments and individual banks and bank holding companies. Some commenters supported the lower marginal capital charge structure and level of deductions adopted by the revised proposal. For example, some commenters stated that the marginal approach embodied in the revised proposal was appropriate, logical, and consistent with the agencies' responsibilities to ensure the safety and soundness of banking organizations. One large banking organization with a significant amount of equity investments also stated that the revised proposal would not have a significantly negative impact on its ability to make equity investments. Many commenters also supported the agencies' willingness to take steps to meaningfully address some of the issues raised by commenters concerning the initial proposal.

A number of commenters, however, stated their belief that no special capital charge was necessary for equity investments. Some of these commenters argued that banking organizations are adept at managing the risks of these investment activities and that additional regulatory capital is not necessary to adequately support these activities. Some commenters also expressed concern that the higher capital charges imposed by the revised proposal would place banking organizations at a competitive disadvantage to independent securities firms and foreign banks in the market for making equity investments. In addition, several commenters asserted that the higher proposed charges would discourage independent securities firms that make equity investments as part of their business from affiliating with a bank. Commenters argued that these effects would frustrate Congress' desire, as expressed in the GLB Act, to permit a "two-way street" between securities firms and banking organizations.

Some commenters also asserted that the agencies should delay adoption of a final rule and address the issue of the appropriate capital treatment for equity investments in connection with the broader revisions to the capital rules currently being considered by the Basel Committee on Banking Supervision (Basel Committee). A number of commenters also reiterated their position that banking organizations should be permitted to use their internal capital models to determine the amount of regulatory capital necessary to support the particular investment portfolio of the organization, subject to supervisory review of these models during the examination process. A few commenters suggested that a smaller, uniform capital charge or risk-weight (e.g. a 10 percent Tier 1 capital deduction or a 250 percent risk-weight) would be adequate to offset the risk of all equity investments held by banking organizations, regardless of the size of the organization's overall equity investment portfolio.

A number of commenters also contended that, if a higher capital charge was imposed, the capital charge should apply only to investments made by financial holding companies under the GLB Act's merchant banking authority, and not to any investment made by a banking organization under one or more of the legal authorities that were in effect prior to the GLB Act. Commenters asserted that banking organizations have a history of profitably making investments under these pre-existing authorities and that there is no evidence to support an increase in the regulatory capital charge for such investments. A few commenters also contended that the proposed higher capital charges should not apply to equity investments made by a company engaged in a nonfinancial activity so long as the company was "predominantly" engaged in financial activities.

Commenters strongly supported several specific aspects of the revised proposal. For example, many commenters supported the decision by the agencies to exempt from the new capital charge SBIC investments that, in the aggregate, represented less than 15 percent of the banking organization's Tier 1 capital.[3] Many of these commenters, however, also argued that any SBIC investments that were exempted from the higher proposed charges also should be excluded for purposes of determining the aggregate size of the banking organization's equity portfolio and, thus, the appropriate marginal charge to be applied to non-exempt investments. Commenters also supported the agencies' proposal to exclude from coverage investments made by insurance company subsidiaries of financial holding companies under section 4(k)(4)(I) of the BHC Act; investments made by state banks under the grandfather rights established by section 24(f) of the FDI Act (12 U.S.C. 1831a(f)); and investments in debt instruments that do not serve as the functional equivalent of equity.

In addition, in response to the agencies' request for comments on the subject, many commenters asserted that any higher capital charges established for nonfinancial equity investments should not apply to investments made before March 13, 2000. These commenters noted that such investments were made before the industry was aware that a higher capital charge might be established for equity investments and argued that applying the higher charges to these pre-existing investments would be inequitable and could cause some investments to become unprofitable. Many of these commenters also argued that any grandfathered investments should not be included in the banking organization's aggregate equity portfolio for purposes of determining the marginal charge applicable to non-exempt investments made on or after March 13, 2000.

Commenters also argued that the higher proposed capital charges should not be applied in determining a banking organization's Tier 1 leverage ratio, because the leverage ratio generally does not account for the relative risks of a banking organization's assets. Finally, some commenters requested that the agencies clarify whether or how the proposed higher charges would apply to particular types of equity investments, including equity investments held in the trading account or for hedging purposes; investments that are acquired in satisfaction of a debt previously contracted (DPC); and investments made by a financial holding company under section 4(k)(1)(B) of the BHC Act in a

[3] One large banking organization, however, opposed providing an exemption for SBIC investments on the grounds that these investments entail the same risks as other types of nonfinancial equity investments.

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company that is engaged in activities that the Board has determined are "complementary" to a financial activity.

C. Explanation of the Final Rule

The agencies have carefully reviewed the revised proposal in light of all of the comments received. Following this review, the agencies have adopted a final rule that is substantially similar to the revised proposal that was issued for comment. As described further below, the agencies also have made several changes to the rule to address matters raised by commenters and to further clarify the scope and application of the rule. These changes include a grandfather provision designed to apply the rule's capital charges only to investments made on or after March 13, 2000.

As an initial matter, the agencies believe it is important and appropriate to adopt a final rule at this time that establishes a regulatory minimum capital requirement for equity investments made by banking organizations in nonfinancial companies that is higher than the regulatory minimum capital charge that applies more broadly to banking assets. Data demonstrate that equity investments in nonfinancial companies generally involve greater risks than traditional banking and financial activities. An analysis of the annual returns for the period 1946 through 1998 for publicly traded small capitalization stocks in the United States indicates that a banking organization would have to hold capital well in excess of the current regulatory minimum capital levels to maintain the margin of safety required to retain the lowest investment grade rating on a bond issued to finance a portfolio of small capitalization stocks. Furthermore, as discussed in the revised proposal, data from a study of venture capital investment firms over the past 25 years, information and analysis from two national rating agencies, and a survey of the internal capital allocation policies of several banking organizations and securities firms engaged in equity investment activities all indicate that equity investments require higher capital support than traditional banking activities. The performance of the U.S. equity markets over the past few quarters further evidences the volatility and risk of equity investments.

The level and significance of equity investment activities at banking organizations also has increased substantially in the years since adoption of the original capital rules that govern banks and bank holding companies generally. For example, the size of SBICs owned by banking organizations more than doubled in the period from 1995 to 1999, and aggregate equity investments held by banking organizations during that period more than quadrupled. In addition, as of June 30, 2001, financial holding companies held more than $8.5 billion in investments under the new GLB Act authority to make merchant banking investments—authority that only became effective on March 13, 2000. Although the growth of these activities recently has slowed, equity investment activities have become, and are likely to continue to be, a significant business line for many banking organizations.

In light of the increased significance of the equity investment activities of banking organizations and the risks associated with these investments, the agencies believe it is important to revise their capital rules to reflect more accurately the risks equity investments may pose to the safety and soundness of banking organizations. For these same reasons, the agencies do not believe it would be prudent or appropriate to delay adoption of a final rule, as some commenters suggested. The agencies are aware of, and are participating actively in, the ongoing comprehensive review and revision of the Basel Capital Accord, which is expected to include provisions addressing equity investment activities. The agencies believe this rule is consistent with the efforts of the Basel Committee to develop a minimum regulatory capital requirement for equities that is more risk-sensitive than the current 100-percent risk-weighting. The agencies note, moreover, that any revised Accord is not expected to become effective until 2005 at the earliest. The agencies view this final rule as an interim step or "bridge" to the revised Accord. The agencies fully expect to revisit the capital charge applicable to equity investments once the Basle Capital Accord is revised, and will at that time decide whether and what, if any, revisions to the agencies' capital guidelines should be adopted in light of the final revised Accord.

The agencies also continue to believe that internal capital models that take account of the different risks and capital needs of the credit and equity activities of a particular banking organization ultimately represent an effective method for determining the capital adequacy of an organization. The agencies do not believe that it would be appropriate at this time, however, to rely on internal capital models, as a replacement for regulatory minimum capital requirements, to address the higher risks associated with the equity investment activities of banking organizations. The stage of development and sophistication of internal models for assessing equity risk exposures varies widely across institutions. While modeling techniques for equity investments are being developed and refined at major U.S. banking organizations, few institutions have adequately robust modeling capabilities for equity investments at the present time.

The agencies note that the Basel Committee is actively considering the circumstances under which it would be appropriate for a banking organization to calculate its capital requirements under an internal models-based approach. As part of this effort, the agencies are working as part of the Basel Committee to develop the criteria under which a banking organization could use internal measurement systems or internal models to estimate the organization's risk exposure to equity investments for risk-based capital purposes.[4] The agencies will continue to work with banking organizations that seek to develop robust and effective internal models and with other domestic and international regulatory agencies to develop a regulatory framework that permits banking organizations to use models that meet appropriate quantitative and qualitative standards in assessing the organization's capital adequacy.

The Board notes that, once the final rule becomes effective on April 1, 2002, the aggregate investment review thresholds that currently apply to the merchant banking investments of financial holding companies will expire automatically.[5] These thresholds currently require a financial holding company to obtain the Board's approval prior to making additional merchant banking investments if the aggregate carrying value of the holding company's existing merchant banking investments exceeds the lesser of 30 percent of Tier 1 capital, or 20 percent of Tier 1 capital after excluding investments in private equity funds. As the Board previously noted, these review thresholds were adopted as an interim measure pending adoption of a final rule addressing the appropriate regulatory capital treatment of merchant banking investments.

1. Equity Investments Covered by Final Rule

The final rule, like the revised proposal, applies symmetrically to equity investments made by bank holding companies and banks. Bank holding companies and banks generally make equity investments in reliance on, and the capital charge applies only to investments held under, the following authorities—

- The merchant banking authority of section 4(k)(4)(H) of the BHC Act (12 U.S.C. 1843(k)(4)(H)) and subpart J of the Board's Regulation Y (12 CFR 225.170 *et seq.*);
- The authority to acquire up to 5 percent of the voting shares of any company under section 4(c)(6) or 4(c)(7) of the BHC Act (12 U.S.C. 1843(c)(6) and (c)(7));
- The authority to invest in SBICs under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));
- The portfolio investment provisions of Regulation K (12 CFR 211.8(c)(3)), including the authority to make portfolio investments through Edge and Agreement corporations; [6] and
- The authority to make investments under section 24 of the FDI Act (other than under section 24(f)) (12 U.S.C. 1831a).

For purposes of the rule, an equity investment includes the purchase, acquisition or retention of any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. The rule generally does not apply to investments in nonconvertible senior or subordinated debt. The agencies, however, may impose the rule's higher charges on any instrument if the agency, based on a case-by-case review of the investment in the supervisory process, determines that the instrument serves as the functional equivalent of equity or exposes the banking organization to essentially the same risks as an equity instrument. The agencies believe this reservation of supervisory authority is appropriate to ensure that the higher capital charges apply to instruments that function as equity, and ensure that banking organizations do not evade the requirements of the ruie through financial engineering.

The capital charge applies only to investments held directly or indirectly in nonfinancial companies under one or more of the authorities listed above. For purposes of the final capital rule, a nonfinancial company is defined to mean an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the BHC Act. For investments held directly or indirectly by a bank, the term "nonfinancial company" also does not include a company that engages only in activities that are permissible for the parent bank to conduct directly. The rule does not apply to investments made in companies that engage solely in banking and financial activities. Banking organizations have special expertise in managing the risks associated with banking and financial activities.

A few commenters asserted that the proposed higher capital charges should apply only to merchant banking investments made by financial holding companies under section 4(k)(4)(H) of the BHC Act, or should not apply to investments made under one or more of the other investment authorities listed above. The risk of loss associated with a particular equity investment is likely to be the same regardless of the legal authority used by a banking organization to make the investment, or whether the investment is held by a bank holding company or a bank. Supervisory experience, particularly over the past few quarters, has confirmed that significant valuation declines may occur with respect to equity investments held under a variety of legal authorities. It is for these reasons that banking organizations are increasingly making investment decisions and managing equity investment risks across legal entities as a single business line within the organization. It is for these same reasons that the final rule, like the revised proposal, applies symmetrically to nonfinancial equity investments held by banks and bank holding companies and applies to equity investments made under each of the principal legal authorities currently available to banking organizations for making such investments.

As noted above, the final rule applies to investments made by bank holding companies or banks in or through SBICs under section 302(b) of the Small Business Investment Act. In light of Congress' express desire to facilitate the funding of small businesses through SBICs, the statutory limits on the amount of capital a banking organization may invest in SBICs, and the existing regulatory framework governing the formation and operations of SBICs, the agencies proposed to exempt from the higher capital charges SBIC investments of banking organizations that, in the aggregate, did not exceed 15 percent of the Tier 1 capital of the banking organization.

Commenters strongly supported this treatment. Accordingly, the final rule continues to provide an exception for SBIC investments. As described further below (*see* Part C.4 below), the rule does not place any additional regulatory capital charge on SBIC investments held directly or indirectly by a bank to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the Tier 1 capital of the bank. For bank holding companies, no additional regulatory capital charge is imposed on SBIC investments held directly or indirectly by the holding company to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the aggregate of the holding company's pro rata interests in the Tier 1 capital of its subsidiary banks.

The rule also applies to investments held by state banks in a nonfinancial company under section 24 of the FDI Act. Section 24 permits a state bank to acquire equity in a nonfinancial company if the FDIC determines that the investment does not pose a significant risk to the deposit insurance fund. The FDIC is empowered to establish and has established higher capital requirements and other limitations on equity investments of state banks held under this authority, such as investments in companies engaged in real estate investment and development activities. The FDIC has to date in most cases required state banks that make these investments to limit the amount of the investment and to deduct these investments from the bank's capital, effectively imposing a 100 percent capital charge on these investments. Because of the FDIC's practice in establishing higher capital charges, the final rule will not have the effect of imposing additional capital requirements on investments held under section 24 of the FDI Act.[7]

The agencies proposed to exclude from coverage equity investments made

[4] *See* Basel Committee on Banking Supervision, Working Paper on Risk Sensitive Approaches for Equity Exposures in the Banking Book for IRB Banks (August 2001) ("Equity Risk Working Paper").

[5] *See* 12 CFR 225.174(c); 12 CFR 1500.5(c).

[6] Recently, the Board comprehensively revised Regulation K, which, among other things, governs the foreign activities of U.S. banking organizations. *See* 66 FR 54346, Oct. 26, 2001. As part of that action, the portfolio investment provisions previously located at 12 CFR 211.5(b)(1)(iii) were amended and moved to 12 CFR 211.8(c)(3).

[7] The final rule permits the Board of Directors of the FDIC, acting directly in exceptional cases and after a review of the proposed activity, to allow a lower capital deduction for investments approved by the Board of Directors under section 24 of the FDI Act so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank. The FDIC may also impose a higher capital charge on any investment made under section 24 where appropriate.

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by state banks under the grandfather rights established by section 24(f) of the FDI Act and commenters strongly supported this exception. Section 24(f) permits a state bank to make investments only in shares of publicly traded companies and registered investment companies, and only if the investment was permitted under a state law enacted as of a certain date and the state bank engaged in the investment activity as of a certain date. The FDI Act also provides that the total amount of investments made by a state bank under section 24(f) may not exceed the capital of the bank, and expressly authorizes the FDIC to require the divestiture of any investment made under the section if the FDIC determines the investment will have an adverse effect on the safety and soundness of the bank. In light of the limited scope of these investments and the statutory restrictions applicable to them, the agencies have adopted an exemption for these investments in the final rule.

Some commenters asserted that the proposed higher charges should not apply to any investment made in a company that is predominantly engaged in banking or financial activities. These investments, by definition, involve some mixing of banking and commerce, and present special risks to the investing banking organization. In addition, the agencies believe that the adoption of a "predominantly financial" standard would create significant administrative and verification burdens for banking organizations and their supervisors, and could create opportunities for banking organizations to evade the higher capital charges established by the rule. In this regard, the agencies believe it would be difficult for banking organizations to establish and document adequately, and for the appropriate supervisor to monitor effectively, the mix of a company's financial and nonfinancial activities. On the other hand, the approach adopted by the final rule provides a clear standard for banking organizations and their supervisors to use in identifying investments covered by the rule while, at the same time, excluding from coverage investments in companies engaged solely in banking or financial activities that the banking organization could hold under their traditional authorities to engage in such activities.

In response to questions raised by commenters, the agencies wish to clarify that the rule does not apply to investments made in a community development corporation to promote the public welfare under 12 U.S.C. 24(Eleventh). In addition, the rule does not apply to equity securities that are acquired in satisfaction of a debt previously contracted (DPC) and that are held and divested in accordance with applicable law, or to unexercised warrants acquired by a bank as additional consideration for making a loan where the warrants are not held under one of the legal authorities covered by the rule.

The final rule also does not apply to equity investments made under section 4(k)(4)(I) of the BHC Act by an insurance underwriting affiliate of a financial holding company. Investments made by insurance underwriting affiliates of a financial holding company generally are already subject to higher capital charges under state insurance laws. The Board expects to monitor financial holding companies with insurance underwriting affiliates to ensure that they do not arbitrage any differences in the capital requirements applicable to equity investments made by insurance companies and other financial holding company affiliates. The Board also currently is considering the appropriate method for accounting for insurance companies and their investments under the Board's consolidated capital adequacy guidelines and will address any issues that arise in this area in a separate proposal.

The agencies proposed to exempt from the higher capital charges any equity instrument that was held in the trading account of the relevant banking organization in accordance with generally accepted accounting principles (GAAP) and as part of an underwriting, market making or dealing activity.

Several commenters asserted that the higher capital charges should not apply to any equity instrument that is held for hedging purposes, or to any equity instrument that is held in the trading account in accordance with GAAP. Some commenters also asked the agencies to clarify the scope of the proposed exemption for equity instruments held in the trading account.

The final rule does not apply the higher capital charges to equity securities acquired and held by a bank or bank holding company as a bona fide hedge of an equity derivative transaction lawfully entered into by the bank or bank holding company. Moreover, banking organizations have separate authority to underwrite, deal in, and make a market in equity securities through a securities broker or dealer that is subject to special capital and accounting requirements, and securities lawfully acquired under these statutory provisions are not covered by the rule.[8]

Because the trading account provision of the revised proposal was included for the purpose of exempting these types of holdings from the capital proposal, the agencies do not believe that, with the clarifications discussed above, a general exemption for investments held in the trading account is necessary. Moreover, a more general exception for equities held in the trading account, as advocated by some commenters, could allow banking organizations to evade the requirements of the rule by placing nonfinancial equity investments in their trading account. Accordingly, the final rule does not include a general exemption for investments that are held in the trading account.

A few commenters questioned whether the proposed charges would apply to investments made by financial holding companies in a company engaged in "complementary" activities. Section 4(k)(1)(B) of the BHC Act (12 U.S.C. 1843(k)(1)(B)) permits a financial holding company to acquire a company engaged in a nonfinancial activity if the Board finds that the activity is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. A financial holding company must obtain the Board's prior approval to acquire a company under this authority.[9] The Board will review and consider the appropriate capital treatment of investments made by a financial holding company under section 4(k)(1)(B) in connection with its review of any notice filed by a financial holding company to acquire a company engaged in a complementary activity, or in connection with its determination that a particular activity is "complementary" to a financial activity.[10] Accordingly, the final rule does not apply to investments made by a financial holding company under the "complementary" investment authority of section 4(k)(1)(B) of the BHC Act.

The agencies believe that the legal authorities covered by the rule represent

[8] *See* 12 U.S.C. 24a, 335 and 1831w (financial subsidiaries of national, state member and state nonmember banks, respectively); 12 U.S.C. 1843(k)(4)(E) (financial holding companies); and 12 U.S.C. 1843(c)(8) and *J.P. Morgan & Co., Inc.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industry Ass'n* v. *Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990) (bank holding companies).

[9] *See* 12 CFR 225.89.

[10] *See* 65 FR 80384, Dec. 21, 2000 (requesting comment on a proposal to determine that certain data processing and data transmission activities are complementary to a financial activity and on the appropriate capital treatment for such investments).

the principal legal authorities available to banking organizations for making equity investments in nonfinancial companies. The agencies intend to monitor developments relating to nonfinancial equity investments of banking organizations and may expand the types of investments covered by the rule if necessary to ensure that banking organizations maintain adequate capital to support their equity investment activities.

2. Transition Rule for Investments Made Before March 13, 2000

As noted above, the agencies specifically requested comment on whether the higher proposed capital charges should apply to individual investments made by a bank or bank holding company prior to March 13, 2000. The agencies proposed that, if investments made prior to March 13, 2000, were grandfathered, the amount of such investments be included in determining the aggregate size of the banking organization's equity investment portfolio and, thus, the appropriate marginal capital charge that would apply to investments that were not grandfathered.

Commenters strongly supported grandfathering investments that were made prior to March 13, 2000. Commenters noted that these investments were made before the agencies publicly indicated that a higher regulatory capital charge might be imposed, and argued that applying the new charges retroactively to these investments would be unfair and could render certain existing investments unprofitable. Commenters also favored a permanent grandfather for individual investments made prior to March 13, 2000, rather than a phase-in period that would apply the new capital requirements to such investments over a period of years.

After reviewing the comments received, the agencies have determined to exempt from the new capital charges any individual investment that was made by a bank or bank holding company before March 13, 2000, or that was made after such date pursuant to a binding written commitment entered into by the banking organization prior to March 13, 2000.[11] These investments are modest in amount at most banking organizations and will be liquidated over time. As discussed further below (*see* Part C.4), the adjusted carrying value of any grandfathered investment must be included in determining the total amount of nonfinancial equity investments held by the banking organization in relation to its Tier 1 capital and, thus, the marginal capital charge that applies to the organization's covered equity investments.[12]

The final rule grants these grandfather rights only to investments that were made prior to March 13, 2000, or that were made on or after March 13, 2000 pursuant to a binding written commitment entered into prior to March 13, 2000.[13] For example, if a bank holding company acquired 100 shares of a nonfinancial company under section 4(c)(6) of the BHC Act prior to March 13, 2000, the adjusted carrying value of that investment would be exempt from the rule's higher capital charges. However, if the bank holding company purchased additional shares of the company after March 13, 2000, or made a capital contribution to the company after March 13, 2000, the adjusted carrying value of the additional investment would be subject to the marginal capital charges of the rule (assuming that the additional investment was not made pursuant to a binding written commitment entered into before March 13, 2000). Shares or other interests received by a banking organization through a stock split or stock dividend on an investment made prior to March 13, 2000, are not considered a new investment if the banking organization does not provide any consideration for the shares or interests received and the transaction does not materially increase the organization's proportional interest in the company. On the other hand, shares or interests acquired on or after March 13, 2000, through the exercise of options or warrants acquired before March 13, 2000, will be considered a new investment if the banking organization provides any consideration for the shares or interests received.

An investment qualifies for grandfather rights only if the banking organization has continuously held the investment since March 13, 2000. Thus, in the example discussed above, if the bank holding company sold and repurchased 40 shares of the nonfinancial company after March 13, 2000, those 40 shares would no longer qualify for grandfather rights under the rule. The grandfather status of an investment is not affected if the banking organization determines to hold that investment under a different legal authority than the authority originally used to acquire the investment. A financial holding company could, for example, decide to hold certain investments made through an SBIC or under section 4(c)(6) of the BHC Act prior to March 13, 2000, under the GLB Act's expanded merchant banking authority, and such decision would not affect the grandfathered treatment of the investment under the rule.

3. Marginal Capital Charge Structure

The agencies are adopting a final marginal capital charge structure that is substantially as outlined in the revised proposal. This structure applies a higher capital charge to equity investments as the aggregate amount of the organization's nonfinancial equity investments increases in relation to its capital. This approach reflects the fact that the financial risks to a banking organization from equity investment activities increases as the level of these activities account for a larger portion of the organization's capital, earnings, and activities. The charges, which are reflected in the following table, are applied by making a deduction from the banking organization's Tier 1 capital.

[11] A few commenters asserted that grandfather rights should be granted to all investments made prior to the effective date of the final rule. The agencies do not believe granting broader grandfather rights for equity investments would be appropriate in light of the risks these investments pose to banking organizations. Also, the Board in its initial capital proposal specifically gave notice that it expected banking organizations to maintain capital in sufficient amounts to allow the organizations to transition to higher regulatory capital levels for equity investments if required. Thus, the agencies expect that banking organizations will not face significant burdens in complying with the final rule which, as noted above, imposes capital charges that are lower than those initially proposed.

[12] In addition, all grandfathered investments that are not subject to a deduction under the rule will be risk-weighted at 100 percent and included in the banking organization's risk-weighted assets for purposes of calculating the organization's risk-based capital ratios.

[13] For purposes of the rule a binding written commitment means a legally binding written agreement that requires the banking organization to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a banking organization the right to acquire equity or make an investment, but do not require the banking organization to take such actions, are not considered a binding written commitment for purposes of the rule.

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TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the banking organization (as a percentage of the Tier 1 capital of the banking organization)	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

Each tier of charges applies, on a marginal basis, to the adjusted carrying value of the banking organization's nonfinancial equity investments that fall within the specified range of the organization's Tier 1 capital.[14] The total adjusted carrying value of a nonfinancial equity investment that is subject to a deduction under the rule is excluded from the banking organization's risk-weighted assets for purposes of computing the denominator of the organization's risk-based capital ratio.

The amount of the deduction is based on the adjusted carrying value of the banking organization's nonfinancial equity investments. The "adjusted carrying value" of an investment is the value at which the investment is recorded on the balance sheet of the banking organization, reduced by (i) net unrealized gains that are included in carrying value but that have not been included in Tier 1 capital and (ii) associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investment as reflected on the banking organization's balance sheet, less the sum of (i) unrealized gains on those investments included in the organization's other comprehensive income and not reflected in Tier 1 capital and (ii) any associated deferred tax liabilities.

[14] For purposes of determining the amount of a banking organization's nonfinancial equity investments as a percentage of its Tier 1 capital, Tier 1 capital is calculated *before* any deduction for disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, disallowed purchased credit card relationships, disallowed credit enhancing interest-only strips (both purchased and retained), disallowed deferred tax assets, and nonfinancial equity investments.

The agencies recently adopted amendments to their capital guidelines to better address the regulatory capital treatment of recourse obligations, residual interests (including credit enhancing interest-only strips) and direct credit substitutes. *See* 66 FR 59614 (Nov. 29, 2001) ("Securitization Rule"). The amendments to the agencies' capital guidelines adopted by this final rule reflect the changes made to the capital guidelines by the Securitization Rule.

Comments were mixed on using the adjusted carrying value of an investment for purposes of determining the amount of the required deduction. While some commenters favored this approach, others argued that it unfairly penalized well performing investments that are marked-up with the unrealized gains flowing into Tier 1 capital.

The agencies continue to believe that the adjusted carrying value of an investment provides an appropriate benchmark for applying the deduction because it reflects the full amount of an organization's capital exposure to equity investments. Adjusted carrying value reflects both the amount actually invested by the banking organization and any additional unrealized gains (or losses) on the investment that are reflected in the organization's Tier 1 capital. All of the adjusted carrying value of an investment is potentially subject to loss in the event of devaluation of the investment. Applying the charge to the adjusted carrying value of an investment also takes into account that some banking organizations use AFS accounting for GAAP reporting purposes, which is a prudent and appropriate accounting method in many situations and one that results in an effective 100 percent capital charge on unrealized gains.[15]

4. SBIC Investments

The final rule applies to equity investments made by bank holding companies and banks in nonfinancial companies through one or more SBICs that are consolidated with the banking organization, and to equity investments in one or more SBICs that are not consolidated with the banking organization. For the reasons discussed above, the final rule provides an accommodation for SBIC investments made by a bank holding company or bank provided such investments remain within traditional investment ranges. In particular, no additional capital charge is applied to SBIC investments held directly or indirectly by a bank to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the Tier 1 capital of the bank. In the case of a bank holding company, no additional capital charge is applied to SBIC investments held directly or indirectly by the bank holding company to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the aggregate of the holding company's pro rata interests in the Tier 1 capital of its subsidiary banks.[16] SBIC investments that are not subject to a deduction under the rule will be risk-weighted at 100 percent and included in the banking organization's risk-weighted assets for purposes of calculating the organization's risk-based capital ratios.

The final rule continues to provide that a banking organization, in calculating the aggregate adjusted carrying value of its nonfinancial equity investments for purposes of determining the appropriate marginal charge to be applied to an equity investment subject to the rule, must include all nonfinancial equity investments held by the organization in or through an SBIC as well as all grandfathered investments that are exempt from the rule's higher capital charges. A number of commenters opposed this treatment and argued that this treatment would effectively subject exempt SBIC investments and grandfathered investments to the rule's higher capital charges.

One of the principles that has guided the agencies during this rulemaking process is that the risks to a banking organization from equity investment activities increase as equity investments constitute a larger component of the organization's capital and operations. Although the agencies, for the reasons discussed above, have determined to provide an exemption for SBIC investments and investments made prior to March 13, 2000, the agencies believe it is appropriate to consider the risks associated with an organization's total equity investment portfolio in determining the marginal charge that would apply to SBIC investments that exceed traditional levels and to investments made on or after March 13, 2000. This approach balances Congress' desire to promote the funding of small businesses through SBICs and the desire of banking organizations to preserve the existing capital treatment of investments made prior to March 13, 2000, with the agencies' strong belief, based on available data, that regulatory capital levels higher than the current requirements are necessary to support the greater risks associated with equity investments and ensure the safety and soundness of banking organizations. The agencies also note that this approach does not impose a higher capital charge on exempted SBIC investments or grandfathered investments. These investments would continue to be subject to the same capital requirements that apply to such investments today. However, these investments could cause a higher marginal capital charge to be imposed on each additional dollar of non-exempt and non-grandfathered investments made by the banking organization to reflect the organization's higher concentration and exposure to equity investment activities.

If a banking organization has an investment in a SBIC that is consolidated with the banking organization for accounting purposes, but that is not wholly owned by the banking organization, the adjusted carrying value of the organization's nonfinancial equity investments held through the SBIC is equal to the organization's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the adjusted carrying value of the SBIC's investments, which represents the minority interest holders' proportionate share, is excluded from the banking organization's risk-weighted assets.[17]

[15] The rule does not affect the treatment of unrealized gains and losses on AFS securities for purposes of calculating supplementary (Tier 2) capital. Under the agencies' risk-based capital rules, up to 45 percent of an organization's pretax net unrealized gains on AFS equity securities may be included in Tier 2 capital.

[16] The amount a bank holding company may invest in the stock of an SBIC under section 4(c)(5) of the BHC Act and section 302(b) of the Small Business Investment Act is based on the bank holding company's proportionate interest in the capital and surplus of its subsidiary banks. *See* 12 CFR 225.111. The Board believes a similar methodology is appropriate for determining the level of SBIC investments held directly or indirectly by a bank holding company that qualify for an exemption from the rule's higher capital charges.

[17] If a banking organization has an investment in a SBIC that is not consolidated with the banking organization for accounting purposes, that organization may (but is not required to) reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the SBIC's investments that are in companies engaged only in banking or financial activities. A banking organization may adjust its interest in a non-consolidated SBIC in this manner only if the organization has current information that identifies the percentage of the SBIC's investments that are in companies engaged in a nonfinancial activity. This information must be available to examiners upon request.

Similar treatment applies to investments that a bank holding company holds through equity investment funds that are controlled by the holding company (such as, by acting as general partner of the fund) but that are not wholly owned by the holding company. In these circumstances, the capital charge applies only to the holding company's proportionate share of the fund's investments even if the fund is consolidated in the holding company's financial reporting statements.

In addition, if a less-than-wholly-owned SBIC or investment fund is consolidated into the banking organization's financial statements for accounting and reporting purposes, any minority interest resulting from the consolidation may not be included in the Tier 1 capital of the banking organization. The agencies believe this treatment is appropriate because the minority interest is not available to support the overall financial business of the banking organization and, therefore, should not be included in the banking organization's capital.

The agencies do not expect that any nonfinancial company acquired by a banking organization under one of the legal authorities covered by the rule would be consolidated into the banking organization's financial statements, either because the investment is temporary or limited to a non-controlling stake. However, if consolidation does occur, any resulting minority interest also must be excluded from Tier 1 capital because the minority interest is not available to support the general financial business of the banking organization.

5. Examples of Application of Rule's Marginal Charges

The following two examples illustrate how the rule's marginal charges apply.

Example 1: A financial holding company has $1 million in Tier 1 capital and has nonfinancial equity investments with an aggregate adjusted carrying value of $270,000. All of the financial holding company's nonfinancial equity investments are held under the GLB Act's merchant banking authority and all were made after March 13, 2000. The total amount of the financial holding company's required Tier 1 capital deduction would be $28,998, determined as follows: (i) 8 percent of the first $149,999 ($11,999); (ii) 12 percent of the amount between $150,000 and $249,999 ($11,999); and (iii) 25 percent of the amount from $250,000 to $270,000 ($5,000).[18] The average Tier 1 charge on the financial holding company's portfolio would be 10.74 percent.

Example 2: A bank has $1 million in Tier 1 capital and has nonfinancial equity investments with an aggregate adjusted carrying value of $375,000. Of this amount, $100,000 represents the adjusted carrying value of investments made prior to March 13, 2000, and an additional $175,000 represents the adjusted carrying value of investments made through the bank's wholly owned SBIC. The $100,000 in investments made prior to March 13, 2000, and $150,000 of the bank's SBIC investments would not be subject to the rule's marginal capital charges. These amounts are considered for purposes of determining the marginal charge that applies to the bank's covered investments (including the $25,000 of non-exempt SBIC investments). In this case, the total amount of the bank's Tier 1 capital deduction would be $31,250. This figure is 25 percent of $125,000, which is the amount of the bank's total nonfinancial equity portfolio subject to the rule's marginal capital charges. The average Tier 1 capital charge on the bank's entire nonfinancial equity portfolio would be 8.33 percent.

The $31,250 charge in Example 2 reflects the provisions of the rule that impose no additional capital charge on investments made prior to March 13, 2000, and on SBIC investments to the extent such investments do not exceed 15 percent of Tier 1 capital. While these grandfathered and SBIC investments are not subject to a Tier 1 capital deduction under the final rule, these investments would be given a 100 percent risk-weight and would remain subject to the normal Tier 1 and total capital charges applicable to the organization's risk-weighted assets under the agencies's risk-based capital guidelines.

6. Leverage Ratio

The revised proposal required banking organizations to apply the proposed capital deduction in calculating the organization's Tier 1 capital. Consequently, the proposal would affect both the organization's risk-based capital ratio and its ratio of Tier 1 capital to average total assets (Tier 1 leverage ratio). The agencies requested comment on whether the final rule should be adjusted to eliminate application of the deduction for purposes of calculating the Tier 1 leverage ratio and, if so, how this might be done. A small number of commenters addressed this issue, and generally opposed incorporating the higher capital charges for equity investments into the calculation of an organization's Tier 1 leverage ratio. Commenters asserted that the leverage ratio was

[18] For purposes of these examples, all figures have been rounded to the nearest dollar.

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intended to provide an absolute measure of the bank's capital to asset ratio without adjusting the bank's assets according to the relative risk associated with different classes of assets.

After carefully reviewing the comments on this issue, the agencies have decided to adopt the approach proposed, which applies the deduction to Tier 1 for both risk-based and leverage capital purposes.[19] In reaching this conclusion, the agencies have carefully considered a number of factors and alternatives. The agencies have long used a uniform definition of Tier 1 capital for both risk-based and leverage capital purposes based, in part, on the view that the nature and composition of "core" capital does not differ depending on whether it is being compared to risk-weighted or average total assets. In addition, although the leverage ratio generally is intended to provide an absolute measure of a banking organization's ratio of core capital to average total assets, the agencies also previously have determined that certain types of assets that involve special risks should be deducted from, and not considered part of, Tier 1 capital for both risk-based and leverage capital purposes.[20] As discussed above, equity investments involve significantly greater risks than those associated with traditional banking and financial activities and, accordingly, the agencies believe it is appropriate to require that these investments be deducted from core capital for leverage capital purposes in the manner provided in the rule.

The agencies note, moreover, that the most direct method of implementing the commenters' proposal would be to require banks to apply the rule's deductions only for risk-based capital purposes. Such an approach would result in many banking organizations having two separate Tier 1 capital amounts—one for risk-based purposes and one for leverage purposes. This dichotomy could create significant confusion in, and burden for, the industry, particularly because a number of regulatory and reporting requirements are based on an organization's "Tier 1 capital" and two such numbers might exist. The agencies also have considered potential alternative approaches that would implement the commenters' suggestion while, at the same time, retaining an uniform definition of Tier 1. These alternative approaches, however, also would significantly increase the complexity and burden of the rule.

The agencies also have reviewed information obtained through the supervisory and examination process for a sample of banking organizations with a significant amount of equity investments. This review indicates that applying the rule's Tier 1 deductions for leverage capital purposes likely will have a de minimis impact on the leverage ratio of banking organizations at this time. For these reasons, the final rule requires banking organizations to make the rule's Tier 1 deductions for both risk-based and leverage capital purposes.

The final rule provides that the total adjusted carrying value of a banking organization's nonfinancial equity investments that is subject to a deduction from Tier 1 capital will be excluded from the organization's average total consolidated assets for purposes of computing the denominator of the organization's Tier 1 leverage ratio. Any amount of equity investments that is not subject to a deduction under the rule (*e.g.* grandfathered investments and SBIC investments that, in the aggregate, do not exceed 15 percent of Tier 1 capital) must be included in the organization's average total consolidated assets.

7. Risk Management and the Supervisory Process

Although strong capital adequacy is critically important to ensure that equity investment activities do not pose an undue risk to a banking organization, capital strength must be supplemented by strong internal controls and management practices to ensure that equity investment activities are conducted in a safe and sound manner. Accordingly, all banking organizations are expected to develop, maintain and employ sound risk management policies, procedures and systems that are reasonably designed to manage the risks associated with the organization's equity investment activities. These policies, procedures and systems should include established limits on the types and amounts of equity investments that may be made by the banking organization; parameters governing portfolio diversification; sound policies governing the valuation and accounting of investments; periodic reviews of the performance of individual investments and the aggregate portfolio; and strong internal controls, including investment review and authorization procedures and recordkeeping requirements. The level and complexity of an organization's risk management policies, procedures and systems should be commensurate to the size, nature and complexity of the organization's equity investment activities and consistent with any guidance published by the agencies.[21]

The agencies note, moreover, that the capital requirements established by this final rule are viewed as the minimum capital levels required for a banking organization to adequately support its equity investment activities. The agencies' risk-based capital guidelines require banking organizations at all times to maintain capital that is commensurate with the level and nature of the risks to which they are exposed and the agencies fully expect that individual banking organizations will allocate higher economic capital levels, as appropriate, to support their equity investment activities in amounts commensurate with the risk in the individual investment portfolios of the organization.

Furthermore, the agencies may impose a higher capital charge on the nonfinancial equity investments of a banking organization if the facts and circumstances indicate that a higher capital level is appropriate in light of the risks associated with the organization's investment activities. The agencies believe that strong capital levels above the minimum requirements are particularly important when a banking organization has a high degree of concentration in nonfinancial equity investments. As proposed, the agencies will apply heightened supervision to the equity investment activities of banking organizations with significant concentrations in equity investments. In addition, capital levels above the minimums established by this rule may be appropriate in light of the nature, concentration or performance of a particular organization's equity investments, or the sufficiency of the organization's policies, procedures, and systems used to monitor and control the risks associated with the organization's equity investments.

[19] A few commenters also asserted that the agencies should, as a general matter, eliminate the Tier 1 leverage ratio for banking organizations. This suggestion is beyond the scope of this targeted rulemaking, and the agencies believe that the leverage ratio continues to be a useful tool in ensuring that banking organizations operate with adequate capital to support their activities.

[20] For example, the agencies' risk-based and leverage capital guidelines may require banking organizations to deduct all or a portion of the following assets from Tier 1 capital: goodwill; mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing interest-only strips; other identifiable intangible assets; and deferred tax assets.

[21] *See, e.g.* Federal Reserve SR Letter No. 00–9 (SPE), Supervisory Guidance on Equity Investment and Merchant Banking Activities (June 22, 2000).

8. Regulatory Requirements Based on Tier 1 Capital

A number of regulatory restrictions and reporting requirements are based on, or refer to, a bank's Tier 1 capital. For example, Tier 1 capital is one component used in determining the dollar amount of covered transactions that a bank may have with any one affiliate and all affiliates in the aggregate under section 23A of the Federal Reserve Act, and the amount of extensions of credit that a national bank may have outstanding to a single borrower under the National Bank Act.[22]

The final rule requires banking organizations, in calculating their Tier 1 capital, to deduct the appropriate percentage of their nonfinancial equity investments from the sum of their core capital elements. The organization's Tier 1 capital is the amount remaining after the deduction for nonfinancial equity investments, and after any other deductions and adjustments required by the agencies' capital guidelines. Accordingly, banking organizations must use their Tier 1 capital, calculated in the manner required by the agencies' capital guidelines as amended by this final rule, in determining their compliance with any regulatory restriction or reporting requirement that is based on Tier 1 capital.

D. Regulatory Flexibility Act Analysis

OCC: The OCC hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the regulatory capital requirements will not have a significant economic impact on a substantial number of small entities. As described in detail elsewhere in the supplementary information, the final rule amends the OCC's risk-based capital guidelines to apply a series of marginal capital charges that increase as the size of a national bank's portfolio of certain nonfinancial equity investments increases in relation to its Tier 1 capital. For the following reasons, the OCC concludes that the new capital requirements are unlikely to have a significant economic impact on a substantial number of small banks.

First, the final rule applies to only two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through, SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through, SBICs. The OCC believes that SBIC investment activities are conducted primarily by large banks rather than by small banks within the Small Business Administration's definition of "small entity" (asset size of $100 million or less).

Moreover, several key features of the rule mitigate any effect that the increased capital requirements may have on small banks that do engage in nonfinancial equity investments covered by the rule. For example, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are "grandfathered." Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions. Moreover, the final rule does not apply the higher capital requirements to investments by national banks in community development corporations pursuant to 12 U.S.C. 24(Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

Finally, the new capital requirements apply only to levels of investment that equal or exceed 15 percent of the bank's Tier 1 capital. Most national banks will not be required to hold additional capital for the SBIC investments that they currently hold either because the investments are grandfathered or because the bank's level of investment is below 15 percent. As a result, the new capital charge should not deter prudent new investment in small companies, since most national banks could undertake new investments without tripping the 15 percent threshhold.

Board: In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule amends the Board's consolidated risk-based and leverage capital adequacy guidelines for state member banks and bank holding companies to establish special minimum regulatory capital requirements for equity investments in nonfinancial companies. *See* 12 CFR Part 208, Appendix A and Appendix B (state member banks); 12 CFR Part 225, Appendix A and Appendix D (bank holding companies). As discussed more fully above, available data indicate that equity investments generally involve greater risks than the traditional banking and financial activities of banking organizations. Data also indicate that the level and significance of equity investment activities at banking organizations has increased significantly in recent years. The final rule modifies the Board's capital adequacy guidelines to better reflect the riskiness of equity investments and the potential risks such investments pose to the safety and soundness of insured depository institutions.

The Board specifically requested comment on the likely burden that the revised proposal would impose on bank holding companies and state member banks. One bank holding company that owns or controls a substantial quantity of equity investments stated that the revised proposal would not have a significantly adverse impact on its ability to make equity investments. Some commenters, on the other hand, argued that the higher capital charges imposed by the rule would place banking organizations at a competitive disadvantage to independent securities firms and foreign banks in the market for making equity investments, or would discourage securities firms from affiliating with banks. In addition, some commenters also asserted that the agencies should adopt one or more alternative approaches suggested by the commenters. These alternatives included establishing a uniform capital charge or risk-weight for all equity investments, relying on a banking organization's internal capital models to determine the appropriate amount of capital to support a banking organization's equity investment portfolio, and delaying adoption of a final rule pending completion of the ongoing revisions to the Basle Capital Accord.

For the reasons discussed in detail above, the Board believes that the capital charges imposed by the final rule are necessary and appropriate to ensure that state member banks and bank holding companies maintain capital commensurate with the risk associated with their equity investment activities and that these activities do not pose an undue risk to the safety and soundness of insured depository institutions. The Board also has reviewed the alternatives suggested by commenters and, for the reasons discussed above, believes it would not be prudent or appropriate at this time to adopt these approaches as an alternative to the marginal regulatory capital charge structure implemented by the final rule.

The Board notes, moreover, that the final rule includes several features that likely will reduce the potential effect of the rule on bank holding companies (including their bank and nonbank subsidiaries) and state member banks,

[22] *See* 12 CFR 250.242; 12 CFR 32.2(b).

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including in particular small banking organizations and other small entities. As described fully above, the rule exempts from the higher capital charges SBIC investments held by banks and bank holding companies that remain within traditional limits, investments made by banking organizations prior to March 13, 2000, and investments made by state banks under the special grandfather rights granted by section 24(f) of the FDI Act. For covered investments, the rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. The highest marginal Tier 1 charge (25 percent) is well below the uniform charge initially proposed (50 percent).

In addition, once the final rule becomes effective on April 1, 2002, the aggregate investment review thresholds currently applicable to the merchant banking investments of financial holding companies will expire automatically. See 12 CFR 225.174(c); 12 CFR 1500.5(c). Thus, adoption of the final rule will relieve financial holding companies of all sizes from any burden associated with seeking formal Board approval to expand their merchant banking activities.

The Board's supervisory experience also indicates that a significant number of small banks and bank holding companies do not engage in the type of equity investment activities covered by the rule.[23] In addition, the Board's risk-based and leverage capital guidelines generally do not apply to bank holding companies that have less than $150 million in consolidated total assets and, accordingly, the amendments made by the final rule generally would not apply to such small bank holding companies. The Board also has reviewed information concerning a sample banking organizations that are actively engaged in equity investment activities and, based on this review, believes the final rule is not likely to have a significantly adverse impact on banking organizations or their ability to engage in equity investment activities.

FDIC: The final rule amends the FDIC's risk-based and leverage capital standards for state nonmember banks (12 CFR part 325). These amendments establish the regulatory capital requirements applicable to certain nonfinancial equity investments of state nonmember banks. The FDIC hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the regulatory capital requirements will not have a significant economic impact on a substantial number of small entities because of the exclusion in this final rule for grandfathered equity investments by state banks under section 24(f) of the FDI Act and the grandfather provision that was added to this final rule for nonfinancial equity investments made before March 13, 2000.

Since March 13, 2000, the FDIC has received approximately 37 applications and notices under section 24 of the FDI Act for equity investment activities in nonfinancial companies. It is anticipated that most of these equity investment activities would be covered under this rule. However, the capital charges required in this final rule for nonfinancial equity investments would be less than the capital charges imposed by the FDIC for the great majority of the nonfinancial equity investment activities approved by the FDIC under section 24 since March 13, 2000. Also, these section 24 notices and applications have involved investments that generally were significantly below 15 percent of the respective banks' Tier 1 capital.

In order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, the final rule provides for a "grandfather" provision for nonfinancial equity investments made before March 13, 2000. These commenters noted such investments were made before the industry was aware that a higher capital charge might be established for nonfinancial equity investments.

In addition, the FDIC notes that the final rule includes several features that likely will reduce the potential effect of the rule on banking organizations and, especially, small banking organizations and other small entities. The final rule exempts from the higher capital charges SBIC investments held by banking organizations that remain within traditional limits, and equity investments made by state nonmember banks under the grandfather rights granted by Congress in section 24(f) of the FDI Act. For covered investments, the rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. The highest marginal Tier 1 charge (25 percent) under the final rule is well below the uniform capital charge initially proposed by the Board for bank holding companies (50 percent of Tier 1 capital).

In response to questions raised by commenters, the agencies have clarified in this preamble to the final rule that the rule does not apply to investments made in a community development corporation to promote welfare under 12 U.S.C. 24 (Eleventh). In addition, the rule does not apply to equity securities that are acquired in satisfaction of a DPC and that are held and divested in accordance with applicable law, or to unexercised warrants acquired by a bank as additional consideration for making a loan where the warrants are not held under one of the legal authorities covered by this final rule.

E. Paperwork Reduction Act

OCC: The OCC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3505; 5 CFR 1320 App. A.1), the Board has reviewed this final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information as defined in the Paperwork Reduction Act are contained in the final rule.

FDIC: The FDIC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

F. Executive Order 12866 Determination

OCC: The OCC has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866. The final rule amends the OCC's risk-based capital guidelines with respect to the regulatory capital treatment applicable to certain nonfinancial equity investments by national banks. While the general effect of this final rule is to raise the capital requirements for certain nonfinancial equity investments held by banking organizations, for the following reasons, the OCC does not believe that this final rule will have a significant economic impact on national banks.

This final rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. Specifically with respect to national banks, the final rule only applies to two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through SBICs. However, under the final rule SBIC investments held by a national bank in amounts that remain within traditional limits (15 percent of Tier 1 capital) are exempted from the higher capital requirements. The final rule also clarifies that the higher capital requirements do not apply to national bank investments in community development corporations pursuant to 12 U.S.C. 24 (Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

In addition, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are "grandfathered." Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions.

G. Unfunded Mandates Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. While the general effect of this final rule is to raise the capital requirements for nonfinancial equity investments held by banking organizations, for the following reasons, the OCC does not believe that this final rule will result in expenditures of $100 million or more in any one year.

This final rules applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. Specifically with respect to national banks, the final rule only applies to two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through SBICs. However, under the final rule SBIC investments held by a national bank in amounts that remain within traditional limits (15 percent of Tier 1 capital) are exempted from the higher capital requirements. The final rule also clarifies that the higher capital requirements do not apply to national bank investments in community development corporations pursuant to 12 U.S.C. 24 (Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

In addition, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are "grandfathered." Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions.

H. Use of "Plain Language"

Section 722 of the GLB Act requires the agencies to use "plain language" in all proposed and final rules published after January 1, 2000. The agencies invited comment on whether the proposed rule was drafted in plain language and clearly presented. No commenters specifically addressed this issue. The agencies have used a variety of "plain language" techniques to ensure that the final rule is presented in a clear fashion, including using numerous topical headings in the rule, easy-to-read tables to set forth the marginal capital charge structure adopted by the rule, and textual examples to illustrate application of the rule. The agencies believe the final rule is written plainly and clearly.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and record keeping requirements, State non-member banks.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. The first sentence in paragraph (a) of section 3.2 is amended to read as follows:

§ 3.2 Definitions.

* * * * *

(a) *Adjusted total assets* means the average total assets figure required to be computed for and stated in a bank's most recent quarterly *Consolidated Report of Condition and Income* (Call Report) minus end-of-quarter intangible assets, deferred tax assets, and credit-enhancing interest-only strips, that are deducted from Tier 1 capital, and minus nonfinancial equity investments for which a Tier 1 capital deduction is required pursuant to section 2(c)(5) of appendix A of this part 3. * * *

* * * * *

3. In appendix A to part 3:

A. In section 1, paragraphs (c)(17) through (c)(31) are redesignated as paragraphs (c)(20) through (c)(34); paragraphs (c)(12) through (c)(16) are redesignated as paragraphs (c)(14)

[23] For purposes of the Regulatory Flexibility Act, small entities are defined to include state member banks and bank holding companies that have $100 million or less in assets. See 13 CFR 121.201.

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through (c)(18); and paragraphs (c)(1) through (c)(11) are redesignated as paragraphs (c)(2) through (c)(12).

B. In section 1, new paragraphs (c)(1), (c)(13) and (c)(19) are added.

C. In section 2, paragraph (a)(3) is amended;

D. In section 2, new paragraph (c)(1)(v) is added;

E. In section 2, paragraph (c)(5) is redesignated as paragraph (c)(6);

F. In sections 3 and 4, Tables A through D are redesignated as Tables B through E, respectively;

G. All references to "Table A" are revised to read "Table B";

H. All references to "Table B" are revised to read "Table C";

I. All references to "Table C" are revised to read "Table D";

J. All references to "Table D" are revised to read "Table E"; and

K. In section 2, new paragraph (c)(5), including new Table A, is added. The additions and revisions read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(1) *Adjusted carrying value* means, for purposes of section 2(c)(5) of this appendix A, the aggregate value that investments are carried on the balance sheet of the bank reduced by any unrealized gains on the investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and reduced by any associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and that are not reflected in Tier 1 capital, and less any associated deferred tax liabilities. Unrealized losses on AFS nonfinancial equity investments must be deducted from Tier 1 capital in accordance with section 1(c)(8) of this appendix A. The treatment of small business investment companies that are consolidated for accounting purposes under generally accepted accounting principles is discussed in section 2(c)(5)(ii) of this appendix A. For investments in a nonfinancial company that is consolidated for accounting purposes, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's Tier 1 capital in accordance with section 2(c)(2) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) are excluded from the bank's risk-weighted assets.

* * * * *

(13) *Equity investment* means, for purposes of section 1(c)(19) and section 2(c)(5) of this appendix A, any equity instrument including warrants and call options that give the holder the right to purchase an equity instrument, any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. An investment in any other instrument, including subordinated debt or other types of debt instruments, may be treated as an equity investment if the OCC determines that the instrument is the functional equivalent of equity or exposes the bank to essentially the same risks as an equity instrument.

* * * * *

(19) *Nonfinancial equity investment* means any equity investment held by a bank in a nonfinancial company through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) or under the portfolio investment provisions of Regulation K (12 CFR 211.8(c)(3)). An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in a SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment in the manner provided in section 2(c)(5)(ii)(C) of this appendix A. A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for a bank to conduct directly or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

* * * * *

Section 2. Components of Capital

* * * * *

(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that minority interests in a small business investment company or investment fund that holds nonfinancial equity investments, and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(19) of this appendix A, are not included in Tier 1 capital or total capital.

* * * * *

(c) * * *

(1) * * *

(v) Nonfinancial equity investments as provided by section 2(c)(5) of this appendix A.

* * * * *

(5) *Nonfinancial equity investments—(i) General.* (A) A bank must deduct from its Tier 1 capital the appropriate percentage, as determined in accordance with Table A, of the adjusted carrying value of all nonfinancial equity investments held by the bank and its subsidiaries.

TABLE A.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by banks (as a percentage of the Tier 1 capital of the bank)[1]	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8.0 percent.
Greater than or equal to 15 percent but less than 25 percent	12.0 percent.
Greater than or equal to 25 percent	25.0 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of the Tier 1 capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, disallowed purchased credit card relationships, disallowed credit-enhancing interest only strips (both purchased and retained), disallowed deferred tax assets, and nonfinancial equity investments.

(B) Deductions for nonfinancial equity investments must be applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments equal to, or in excess of, 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under section 2(c)(5) of this appendix A is excluded from the bank's weighted risk assets for purposes of computing the denominator of the bank's risk-based capital ratio. For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator of the risk-based capital ratio.

(D) Banks engaged in equity investment activities, including those banks with a high concentration in nonfinancial equity investments (e.g., in excess of 50 percent of Tier 1 capital), will be monitored and may be subject to heightened supervision, as appropriate, by the OCC to ensure that such banks maintain capital levels that are appropriate in light of their equity investment activities, and the OCC may impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(ii) *Small business investment company investments.* (A) Notwithstanding section 2(c)(5)(i) of this appendix A, no deduction is required for nonfinancial equity investments that are made by a bank or its subsidiary through a SBIC that is consolidated with the bank, or in a SBIC that is not consolidated with the bank, to the extent that such investments, in the aggregate, do not exceed 15 percent of the Tier 1 capital of the bank. Except as provided in paragraph (c)(5)(ii)(B) of this section, any nonfinancial equity investment that is held through or in a SBIC and not deducted from Tier 1 capital will be assigned to the 100 percent risk-weight category and included in the bank's consolidated risk-weighted assets.

(B) If a bank has an investment in a SBIC that is consolidated for accounting purposes but the SBIC is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments held through the SBIC is equal to the bank's proportionate share of the SBIC's adjusted carrying value of its equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.*, the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank.

(C) If a bank has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. The amount by which the adjusted carrying value of the bank's investment in the SBIC is reduced under this paragraph will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

(D) To the extent the adjusted carrying value of all nonfinancial equity investments that the bank holds through a consolidated SBIC or in a nonconsolidated SBIC equals or exceeds, in the aggregate, 15 percent of the Tier 1 capital of the bank, the appropriate percentage of such amounts, as set forth in Table A, must be deducted from the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a nonconsolidated SBIC (including any nonfinancial equity investments for which no deduction is required) must be included in determining, for purposes of Table A the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(iii) *Nonfinancial equity investments excluded.* (A) Notwithstanding section 2(c)(5)(i) and (ii) of this appendix A, no deduction from Tier 1 capital is required for the following:

(1) Nonfinancial equity investments (or portion of such investments) made by the bank prior to March 13, 2000, and continuously held by the bank since March 13, 2000.

(2) Nonfinancial equity investments made on or after March 13, 2000, pursuant to a legally binding written commitment that was entered into by the bank prior to March 13, 2000, and that required the bank to make the investment, if the bank has continuously held the investment since the date the investment was acquired.

(3) Nonfinancial equity investments received by the bank through a stock split or stock dividend on a nonfinancial equity investment made prior to March 13, 2000, provided that the bank provides no consideration for the shares or interests received, and the transaction does not materially increase the bank's proportional interest in the nonfinancial company.

(4) Nonfinancial equity investments received by the bank through the exercise on or after March 13, 2000, of an option, warrant, or other agreement that provides the bank with the right, but not the obligation, to acquire equity or make an investment in a nonfinancial company, if the option, warrant, or other agreement was acquired by the bank prior to March 13, 2000, and the bank provides no consideration for the nonfinancial equity investments.

(B) Any excluded nonfinancial equity investments described in section 2(c)(5)(iii)(A) of this appendix A must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of Table A. In addition, any excluded nonfinancial equity investments will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

* * * * *

Dated: January 4, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1842(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, the following amendments are made:

a. In section II.A—

i. The undesignated paragraph following paragraph 1.(iii) is revised;

ii. One sentence is added at the end of paragraph 1.c.; and

iii. The first undesignated paragraph following paragraph 2.(v) is revised.

b. In section II.B—

i. A new paragraph (v) is added following paragraph (iv) Deferred tax assets;

ii. Paragraph 1.e.ii is revised;

iii. Paragraph 4.b is revised; and

iv. A new paragraph 5 is added at the end of section II.B.

c. In sections III. and IV., footnotes 21 through 48 are redesignated as footnotes 27 through 54, respectively.

d. Attachment II is revised.

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [5] less any amounts of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.B. of this appendix A.

* * * * *

c. * * * Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b.

* * * * *

2. * * *

The maximum amount of tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of tier 1

[5] [Reserved]

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capital (net of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.B. of this appendix A).

* * * * *

B. * * *

(v) Nonfinancial equity investments-portions are deducted from the sum of core capital elements in accordance with section II.B.5 of this appendix.

* * * * *

1. * * *

e. * * *

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. * * *

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, any disallowed deferred-tax assets, and any nonfinancial equity investments. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

5. *Nonfinancial equity investments*—a. *General.* A bank must deduct from its core capital elements the sum of the appropriate percentages (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the bank or by its direct or indirect subsidiaries. For purposes of this section II.B.5, investments held by a bank include all investments held directly or indirectly by the bank or any of its subsidiaries.

b. *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank in a nonfinancial company: through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));[21] or under the portfolio investment provisions of the Board's Regulation K (12 CFR 211.8(c)(3)). A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly, or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

c. *Amount of deduction from core capital.* i. The bank must deduct from its core capital elements the sum of the appropriate percentages, as set forth in Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank increases as a percentage of the bank's Tier 1 capital.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (as a percentage of the Tier 1 capital of the bank)[1]	Deduction from Core Capital Elements (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

ii. These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

iii. The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank's risk-weighted assets for purposes of computing the denominator of the bank's risk-based capital ratio.[22]

iv. As noted in section I, this appendix establishes *minimum* risk-based capital ratios and banks are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a bank from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a bank has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The Federal Reserve intends to monitor banks and apply heightened supervision to equity investment activities as appropriate, including where the bank has a high degree of concentration in nonfinancial equity investments, to ensure that each bank maintains capital levels that are appropriate in light of its equity investment activities. The Federal Reserve also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

d. *SBIC investments.* i. No deduction is required for nonfinancial equity investments that are held by a bank through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank to the extent that all such investments, in the aggregate, do not exceed 15 percent of the bank's Tier 1 capital. Any nonfinancial equity investment that is held through or in an SBIC and that is not required to be deducted from Tier 1 capital under this section II.B.5.d. will be assigned a 100 percent risk-weight and included in the bank's consolidated risk-weighted assets.[23]

ii. To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holds through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank exceeds, in the aggregate, 15 percent of the bank's Tier 1 capital, the appropriate percentage of such amounts (as set forth in Table 1) must be deducted from the bank's core capital elements. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of Table 1, the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

e. *Transition provisions.* No deduction under this section II.B.5 is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank prior to March 13, 2000, or that was made by the bank after such date pursuant to a binding written commitment[24] entered into prior to March 13, 2000, provided that in either case the bank has continuously held the investment since the relevant investment date.[25] For purposes of this section II.B.5.e., a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank provides no consideration for the shares or interests received and the transaction does not materially increase the bank's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of Table 1. In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. will be assigned a 100-percent risk weight and included in the bank's consolidated risk-weighted assets.

f. *Adjusted carrying value.* i. For purposes of this section II.B.5., the "adjusted carrying value" of investments is the aggregate value at which the investments are carried on the balance sheet of the bank reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) *less* any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[26]

ii. As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's core capital in accordance with section II.B.1. of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the bank's risk-weighted assets for regulatory capital purposes.

g. *Equity investments.* For purposes of this section II.B.5., an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.B.5.b. of this appendix A. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the Federal Reserve, the instrument is the functional equivalent of equity or exposes the state member bank to essentially the same risks as an equity instrument.

* * * * *

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS*

[Using the Year-End 1992 Standard]

Components	Minimum requirements
CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; banks should avoid undue reliance on preferred stock in tier 1.

[21] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in an SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment.

[22] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator for the risk-based capital ratio.

[23] If a bank has an investment in an SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments through the SBIC is equal to the bank's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.*, the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank. If a bank has an investment in an SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[24] A "binding written commitment" means a legally binding written agreement that requires the bank to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a bank the right to acquire equity or make an investment, but do not require the bank to take such actions, are not considered a binding written commitment for purposes of this section II.B.5.

[25] For example, if a bank made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, the adjusted carrying value of that investment would not be subject to a deduction under this section II.B.5. However, if the bank made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.B.5. In addition, if the bank sold and repurchased, after March 13, 2000, 40 shares of the company, the adjusted carrying value of those 40 shares would be subject to a deduction under this section II.B.5.

[26] Unrealized gains on AFS equity investments may be included in supplementary capital to the extent permitted under section II.A.2.e. of this appendix A. In addition, the unrealized losses on AFS equity investments are deducted from Tier 1 capital in accordance with section II.A.1.e. of this appendix A.

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ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS *—Continued

[Using the Year-End 1992 Standard]

Components	Minimum requirements
Minority interest in equity accounts of consolidated	Banks should avoid using minority interests to subsidiaries introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital [1]	
SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1,[2] amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; banks encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
DEDUCTIONS (from sum of tier 1 and tier 2)	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital.[3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority after a formal rulemaking.	On a case-by-case basis or as a matter of policy.
TOTAL CAPITAL (tier 1 + tier 2—deductions)	Must equal or exceed 8% of weighted-risk assets.

[1] Requirements for the deduction of other intangible assets, residual interests and nonfinancial equity investments are set forth in section II.B. of this appendix.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix B to part 208, in section II.b., footnotes 2 and 3 are revised and the fourth sentence of section II.b. is revised to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * * [2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted Tier 1 capital; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitations set forth in section II.B.4 of appendix A of this part; and the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital.[3]

* * * * *

[2] Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; amounts of credit enhancing interest-only strips in excess of 25 percent of Tier 1 capital; other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and a percentage of the bank's nonfinancial equity investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B in appendix A of this part.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(*l*), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Appendix A to part 225, the following amendments are made:

a. In section II.*A*—

i. The undesignated paragraph following paragraph 1.(iv) is revised;

ii. One sentence is added at the end of paragraph 1.c; and

iii. The first undesignated paragraph following paragraph 2.(v) is revised.

b. In section II.*B*—

i. A new paragraph (v) is added following paragraph (iv) Deferred tax assets;

ii. Paragraph 1.e.ii is revised;

iii. Paragraph 4.b is revised; and

iv. A new paragraph 5 is added at the end of section II.B.

c. In sections III. and IV., footnotes 24 through 51 are redesignated as footnotes 31 through 58, respectively.

d. Attachment II is revised.

Appendix A to Part 225—Capital Adequacy Guidelines For Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [6] less any amounts of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.*B.* of this appendix A.

* * * * *

c. * * * Minority interests in small business investment companies, investment

[6] [Reserved]

funds that hold nonfinancial equity investments (as defined in section II.*B.*5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's Tier 1 or total capital base if the banking organization's interest in the company or fund is held under one of the legal authorities listed in section II.*B.*5.b.

* * * * *

2. * * *

The maximum amount of tier 2 capital that may be included in an institution's qualifying total capital is limited to 100 percent of tier 1 capital (net of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.*B.* of this appendix A).

* * * * *

B. * * *

(v) Nonfinancial equity investments—portions are deducted from the sum of core capital elements in accordance with section II.*B.*5 of this appendix A.

* * * * *

1. * * *

e. * * *

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. * * *

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, any disallowed deferred-tax assets, and any nonfinancial equity investments. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

5. *Nonfinancial equity investments*—a. *General.* A bank holding company must deduct from its core capital elements the sum of the appropriate percentages (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the parent bank holding company or by its direct or indirect subsidiaries. For purposes of this section II.B.5, investments held by a bank holding company include all investments held directly or indirectly by the bank holding company or any of its subsidiaries.

b. *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank holding company: under the merchant banking authority of section 4(k)(4)(H) of the BHC Act and subpart J of the Board's Regulation Y (12 CFR 225.175 et seq.); under section 4(c)(6) or 4(c)(7) of BHC Act in a nonfinancial company or in a company that makes investments in nonfinancial companies; in a nonfinancial company through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958;[24] in a nonfinancial company under the portfolio investment provisions of the Board's Regulation K (12 CFR 211.8(c)(3)); or in a nonfinancial company under section 24 of the Federal Deposit Insurance Act (other than section 24(f)).[25] A nonfinancial company is an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

c. *Amount of deduction from core capital.* i. The bank holding company must deduct from its core capital elements the sum of the appropriate percentages, as set forth in Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank holding company. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank holding company increases as a percentage of the bank holding company's Tier 1 capital.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank holding company (as a percentage of the Tier 1 capital of the parent banking organization)[1]	Deduction from Core Capital Elements (as a percentage of the adjustedcarrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

ii. These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent holding company's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank holding company equals 20 percent of the Tier 1 capital of the bank holding company, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the company's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the company's Tier 1 capital.

iii. The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank holding company's risk-weighted assets for purposes of consolidated bank holding company capital calculation so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank.

[24] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in an SBIC that is not consolidated with the parent banking organization is treated as a nonfinancial equity investment.

[25] *See* 12 U.S.C. 1843(c)(6), (c)(7) and (k)(4)(H); 15 U.S.C. 682(b); 12 CFR 211.5(b)(1)(iii); and 12 U.S.C. 1831a. In a case in which the Board of Directors of the FDIC, acting directly in exceptional cases and after a review of the proposed activity, has permitted a lesser capital deduction for an investment approved by the Board of Directors under section 24 of the Federal Deposit Insurance Act, such deduction shall also apply to the

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computing the denominator of the company's risk-based capital ratio.[26]

iv. As noted in section I, this appendix establishes *minimum* risk-based capital ratios and banking organizations are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a banking organization from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a banking organization has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The Federal Reserve intends to monitor banking organizations and apply heightened supervision to equity investment activities as appropriate, including where the banking organization has a high degree of concentration in nonfinancial equity investments, to ensure that each organization maintains capital levels that are appropriate in light of its equity investment activities. The Federal Reserve also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the banking organization, or other information, indicate that a higher minimum capital requirement is appropriate.

d. *SBIC investments.* i. No deduction is required for nonfinancial equity investments that are held by a bank holding company through one or more SBICs that are consolidated with the bank holding company or in one or more SBICs that are not consolidated with the bank holding company to the extent that all such investments, in the aggregate, do not exceed 15 percent of the aggregate of the bank holding company's pro rata interests in the Tier 1 capital of its subsidiary banks. Any nonfinancial equity investment that is held through or in an SBIC and not required to be deducted from Tier 1 capital under this section II.B.5.d. will be assigned a 100 percent risk-weight and included in the parent holding company's consolidated risk-weighted assets.[27]

ii. To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holding company holds through one or more SBICs that are consolidated with the bank holding company or in one or more SBICs that are not consolidated with the bank holding company exceeds, in the aggregate, 15 percent of the aggregate Tier 1 capital of the company's subsidiary banks, the appropriate percentage of such amounts (as set forth in Table 1) must be deducted from the bank holding company's core capital elements. In addition, the aggregate adjusted carrying value of *all* nonfinancial equity investments held through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of Table 1, the total amount of nonfinancial equity investments held by the bank holding company in relation to its Tier 1 capital.

e. *Transition provisions.* No deduction under this section II.*B*.5 is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank holding company prior to March 13, 2000, or that was made after such date pursuant to a binding written commitment[28] entered into by the bank holding company prior to March 13, 2000, provided that in either case the bank holding company has continuously held the investment since the relevant investment date.[29] For purposes of this section II.B.5.e., a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank holding company through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank holding company provides no consideration for the shares or interests received and the transaction does not materially increase the bank" holding company's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank holding company provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. must be included in determining the total amount of nonfinancial equity investments held by the bank holding company in relation to its Tier 1 capital for purposes of Table 1. In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. will be assigned a 100-percent risk weight and included in the bank holding company's consolidated risk-weighted assets.

f. *Adjusted carrying value.* i. For purposes of this section II.*B*.5., the "adjusted carrying value" of investments is the aggregate value at which the investments are carried on the balance sheet of the consolidated bank holding company reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank holding company's Tier 1 capital and associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank holding company) *less* any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[30]

ii. As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the parent banking organization's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of this Appendix). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the banking organization's

[26] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator for the risk-based capital ratio.

[27] If a bank holding company has an investment in an SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank holding company, the adjusted carrying value of the bank holding company's nonfinancial equity investments through the SBIC is equal to the holding company's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank holding company. If a bank holding company has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank holding company may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank holding company reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[28] A "binding written commitment" means a legally binding written agreement that requires the banking organization to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a banking organization the right to acquire equity or make an investment, but do not require the banking organization to take such actions, are not considered a binding written commitment for purposes of this section II.*B*.5.

[29] For example, if a bank holding company made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, that investment would not be subject to a deduction under this section II.*B*.5. However, if the bank holding company made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company, and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.*B*.5. In addition, if the bank holding company sold and repurchased shares of the company after March 13, 2000, the adjusted carrying value of the re-acquired shares would be subject to a deduction under this section II.*B*.5.

[30] Unrealized gains on AFS investments may be included in supplementary capital to the extent permitted under section II.A.2.e of this appendix A. In addition, the unrealized losses on AFS equity investments are deducted from Tier 1 capital in accordance with section II.A.1.a of this appendix A.

risk-weighted assets for regulatory capital purposes.

g. *Equity investments.* For purposes of this section II.*B*.5, an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.*B*.5.b. of this appendix. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the Federal Reserve, the instrument is the functional equivalent of equity or exposes the state member bank to essentially the same risks as an equity instrument.

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ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES*

[Using the Year-End 1992 Standard]

Components	Minimum requirements
CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; bank holding companies should avoid undue reliance on preferred stock in tier 1.
Qualifying cumulative perpetual preferred stock	Limited to 25% of the sum of common stock, qualifying perpetual stock, and minority interests.
Minority interest in equity accounts of consolidated subsidiaries	Organizations should avoid using minority interests to introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital [1]	
SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1. [2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets. [2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; organizations encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
DEDUCTIONS (from sum of tier 1 and tier 2)	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital. [3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after a formal rule-making.
TOTAL CAPITAL (tier 1 + tier 2 − deductions)	Must equal or exceed 8% of weighted-risk assets.

[1] Requirements for the deduction of other intangible assets and residual interests are set forth in section II.B.1. of this appendix.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix D to part 225, in section II.b., footnotes 3 and 4 are revised and the fourth sentence of section II.b. is revised to read as follows.

Appendix D to Part 225-Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * *[3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of appendix A of this part; and the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital. [4]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and a percentage of the organization's nonfinancial equity investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

[4] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. of appendix A of this part.

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Dated: January 7, 2002.

Jennifer J. Johnson,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In § 325.2, paragraphs (v) and (x) are revised to read as follows:

§ 325.2 Definitions.

* * * * *

(v) *Tier 1 capital* or *core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus identified losses (to the extent that Tier 1 capital would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the insured depository institution's books), minus investments in financial subsidiaries subject to 12 CFR part 362, subpart E, and minus the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part.

* * * * *

(x) *Total assets* means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Report) or, for savings associations, the consolidated total assets required to be included in the "Thrift Financial Report," as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c) and 325.5(d) of this part), minus intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus assets classified loss and any other assets that are deducted in determining Tier 1 capital, and minus the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

* * * * *

3. Paragraphs (f)(3), (f)(4), and (g)(2)(i) of § 325.5 are revised to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) * * *

(3) *Tier 1 capital limitations.* (i) The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets in the aggregate will be limited to the lesser of:

(A) 100 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(B) The sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, determined in accordance with paragraph (f)(2) of this section.

(ii) The maximum allowable amount of credit-enhancing interest-only strips, whether purchased or retained, will be limited to the lesser of:

(A) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(B) The sum of the face amounts of all credit-enhancing interest-only strips.

(4) *Tier 1 capital sublimit.* In addition to the aggregate limitation on mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets set forth in paragraph (f)(3) of this section, a sublimit will apply to purchased credit card relationships and nonmortgage servicing assets. The maximum allowable amount of the aggregate of purchased credit card relationships and nonmortgage servicing assets will be limited to the lesser of:

(i) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(ii) The sum of the amounts of purchased credit card relationships and nonmortgage servicing assets determined in accordance with paragraph (f)(2) of this section.

(g) * * *

(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) 10 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. In appendix A to part 325:

A. Revise section I.A.1 (*Core capital elements (Tier 1)*);.

B. Amend section II.B. by adding a new paragraph (6);

C. Amend section II. by redesignating footnotes 16 through 40 as footnotes 23 through 47, respectively; and

D. Revise Table I.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

1. *Core capital elements (Tier 1) consists of:*

i. Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

ii. Noncumulative perpetual preferred stock,[2] including any related surplus; and

iii. Minority interests in the equity capital accounts of consolidated subsidiaries.

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. Core (Tier 1) capital is defined as the sum of core capital elements minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)),[3] minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f)), minus any disallowed deferred tax assets, and minus any amount of nonfinancial equity investments required to be deducted pursuant to section II.B.(6) of this Appendix.

Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.(6)(ii) of this appendix A), and subsidiaries that are engaged in nonfinancial activities are not included in a bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A.

* * * * *

II.B. * * *

(6) *Nonfinancial equity investments.* (i) General. A bank must deduct from its Tier 1 capital the sum of the appropriate percentage (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the bank or by its direct or indirect subsidiaries. For purposes of this section II.B.(6), investments held by a bank include all investments held directly or indirectly by the bank or any of its subsidiaries.

(ii) *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank in a nonfinancial company: through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));[16] under the portfolio investment provisions of Regulation K issued by the Board of Governors of the Federal Reserve System (12 CFR 211.8(c)(3)); or under section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a), other than an investment held in accordance with section 24(f) of that Act.[17] A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly, or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

(iii) *Amount of deduction from core capital.* (A) The bank must deduct from its Tier 1 capital the sum of the appropriate percentages, as set forth in the table following this paragraph, of the adjusted carrying value of all nonfinancial equity investments held by the bank. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank increases as a percentage of the bank's Tier 1 capital.

DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (as a percentage of the Tier 1 capital of the bank)[1]	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

[16] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in a SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment.

[17] The Board of Directors of the FDIC, acting directly, may, in exceptional cases and after a review of the proposed activity, permit a lower capital deduction for investments approved by the Board of Directors under section 24 of the FDI Act so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank. The FDIC reserves the authority to impose higher capital charges on any investment where appropriate.

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(B) These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank's risk-weighted assets for purposes of computing the denominator of the bank's risk-based capital ratio and from total assets for purposes of calculating the denominator of the leverage ratio.[18]

(D) This Appendix establishes *minimum* risk-based capital ratios and banks are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a bank from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a bank has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The FDIC intends to monitor banks and apply heightened supervision to equity investment activities as appropriate, including where the bank has a high degree of concentration in nonfinancial equity investments, to ensure that each bank maintains capital levels that are appropriate in light of its equity investment activities. The FDIC also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(iv) *SBIC investments.* (A) No deduction is required for nonfinancial equity investments that are held by a bank through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank to the extent that all such investments, in the aggregate, do not exceed 15 percent of the bank's Tier 1 capital. Any nonfinancial equity investment that is held through an SBIC or in an SBIC and that is not required to be deducted from Tier 1 capital under this section II.B.(6)(iv) will be assigned a 100 percent risk-weight and included in the bank's consolidated risk-weighted assets.[19]

(B) To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holds through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank exceeds, in the aggregate, 15 percent of the bank's Tier 1 capital, the appropriate percentage of such amounts (as set forth in the table in section II.B.(6)(iii)(A)) must be deducted from the bank's common stockholders' equity in determining the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held by a bank through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of the table in section II.B.(6)(iii)(A), the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(v) *Transition provisions.* No deduction under this section II.B.(6) is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank prior to March 13, 2000, or that was made by the bank after such date pursuant to a binding written commitment[20] entered into prior to March 13, 2000, provided that in either case the bank has continuously held the investment since the relevant investment date.[21] For purposes of this section II.B.(6)(v) a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank provides no consideration for the shares or interests received and the transaction does not materially increase the bank's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.(6)(v) must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of the table in section II.B.(6)(iii)(A). In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.(6)(v) will be assigned a 100-percent risk weight and included in the bank's consolidated risk-weighted assets.

(vi) *Adjusted carrying value.* (A) For purposes of this section II.B.(6), the "adjusted carrying value" of investments is the aggregate value at which the investments are carried on the balance sheet of the bank reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and associated deferred tax liabilities. For example, for equity investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of those investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[22]

(B) As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from

[18] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from both risk-weighted assets and total assets in calculating the respective denominators for the risk-based capital and leverage ratios.

[19] If a bank has an investment in a SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments through the SBIC is equal to the bank's proportionate share of the adjusted carrying value of the SBIC's investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.*, the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank. If a bank has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[20] A "binding written commitment" means a legally binding written agreement that requires the bank to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a bank the right to acquire equity or make an investment, but do not require the bank to take such actions, are not considered a binding written commitment for purposes of this section II.B.(6)(v).

[21] For example, if a bank made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, the adjusted carrying value of that investment would not be subject to a deduction under this section II.B.(6). However, if the bank made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.B.(6). In addition, if the bank sold and repurchased, after March 13, 2000, 40 shares of the company, the adjusted carrying value of those 40 shares would be subject to a deduction under this section II.B.(6).

[22] Unrealized gains on available-for-sale equity investments may be included in Tier 2 capital to the extent permitted under section I.A.(2)(f) of this appendix A. In addition, the net unrealized losses on available-for-sale equity investments are deducted from Tier 1 capital in accordance with section I.A.(1) of this appendix A.

the bank's core capital in accordance with section I.A.(1) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the bank's risk-weighted assets for regulatory capital purposes.

(vii) *Equity investments.* For purposes of this section II.B.(6), an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the FDIC, the instrument is the functional equivalent of equity or exposes the bank to essentially the same risks as an equity instrument.

* * * * *

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements
(1) CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
(a) Common stockholders' equity	No limit.[1]
(b) Noncumulative perpetual preferred stock and any related surplus.	No limit.[1]
(c) Minority interest in equity accounts of consolidated	No limit.[1]
(d) Less: All intangible assets other than certain mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships.	([2]).
(e) Less: Certain credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital.	([3]).
(f) Less: Certain deferred tax assets	([4]).
(2) SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[5]
(a) Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[5]
(b) Unrealized gains on certain equity securities.[6]	Limited to 45% of pretax net unrealized gains.[6]
(c) Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus.	No limit within tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
(d) Auction rate and similar preferred stock (both cumulative and non-cumulative).	No limit within Tier 2.
(e) Hybrid capital instruments (including mandatory convertible debt securities).	No limit within Tier 2.
(f) Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1[5] and amortized for capital purposes as they approach maturity.
(3) DEDUCTIONS (from sum of tier 1 and tier 2)	
(a) Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes	
(b) Intentional, reciprocal cross-holdings of capital securities issued by banks	
(c) Other deductions (such as investment in other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after formal consideration of relevant issues.
(4) TOTAL CAPITAL	Must equal or exceed 8% of weighted-risk assets.

[1] No express limits are placed on the amounts of nonvoting common, noncumulative perpetual preferred stock, and minority interests that may be recognized as part of Tier 1 capital. However, voting common stockholders' equity capital generally will be expected to be the dominant form of Tier 1 capital and banks should avoid undue reliance on other Tier 1 capital elements.

[2] The amounts of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). All deductions are for capital purposes only; deductions would not affect accounting treatment.

[3] The amounts of credit-enhancing interest-only strips that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). The amounts of nonfinancial equity investments that must be deducted for purposes of calculating Tier 1 capital are set forth in section II.B.(6) of appendix A to part 325.

[4] Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

[5] Amounts in excess of limitations are permitted but do not qualify as capital.

[6] Unrealized gains on equity securities are subject to the capital limitations set forth in paragraph I.A(2)(f) of appendix A to part 325.

* * * * *

Dated at Washington, DC, this 10th day of December, 2001.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–794 Filed 1–24–02; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108
Criminal History Records Checks; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. FAA–2001–10999;Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule with request for comments; reopening of comment period.

SUMMARY: On December 6, 2001, the FAA published a final rule with request for comments regarding criminal history records checks and invited comments. The comment period closed on January 17, 2002; however, the FAA is reopening the comment period in response to a request from the AFL–CIO.

DATES: Comments must be received on or before March 11, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number FAA–2001–10999 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov.*

You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 202–267–3413.

SUPPLEMENTARY INFORMATION:

Comments Invited

The final rule was adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons were, and are, invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the docket number or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. The final rule may be amended in light of the comments received.

See **ADDRESSES** above for information on how to submit comments.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

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You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the amendment number or docket number of this final rule.

Reopening of Comment Period

On December 6, 2001, the FAA published a final rule with request for comments entitled "Criminal History Records Checks" (66 FR 63474). The FAA requested that comments be submitted by January 7, 2002. The comment period was extended to January 17, 2002, by request of the Air Transport Association (ATA) and the Regional Airline Association (RAA) (67 FR 655; Jan. 7, 2002).

By letter dated January 15, 2002, the AFL–CIO Transportation Trades Department (TTD) requested an additional 45 days to submit comments. TTD stated that the FAA had allowed an unusually short comment period, which prevented TTD from providing substantive input on the rule.

The FAA determines that reopening the comment period is in the public interest. Accordingly, the comment period for the final rule "Criminal Records Checks" is reopened until March 11, 2002.

Issued in Washington, DC, on January 22, 2002.

Robin C. Burke,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 02–2016 Filed 1–23–02; 2:02 pm]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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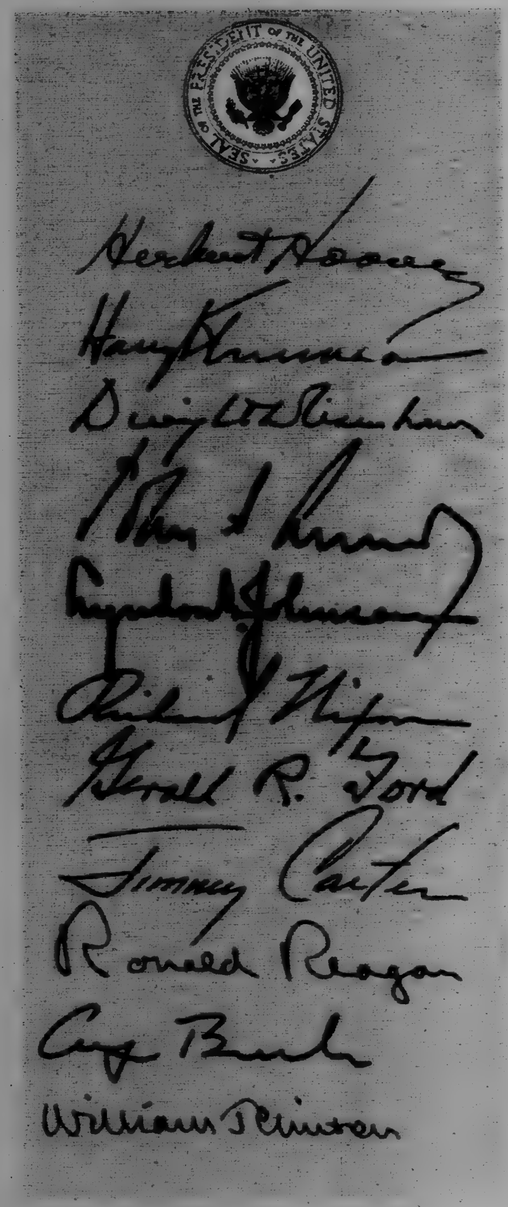

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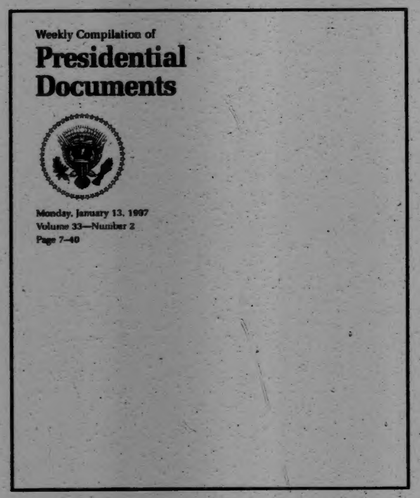

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